

AL-MUHALLA

كِتَابُ الشُّفْعَةِ

The Book of Pre-emption

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[كِتَابُ الشُّفْعَةِ] [مَسْأَلَةٌ الشُّفْعَةُ وَاجِبَةٌ فِي كُلِّ جُزْءٍ بِيعَ مُشَاعًا]

L25312–25313 **[Book of Pre-emption] [The ruling is that pre-emption is obligatory for every portion sold as joint property.]**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الشُّفْعَةِ ١٥٩٥ مَسْأَلَةٌ: الشُّفْعَةُ وَاجِبَةٌ فِي كُلِّ جُزْءٍ بِيعَ مُشَاعًا غَيْرَ مَقْسُومٍ بَيْنَ اثْنَيْنِ فَصَاعِدًا، مِنْ أَيِّ شَيْءٍ كَانَ مِمَّا يَنْقَسِمُ، وَمِمَّا لَا يَنْقَسِمُ: مِنْ أَرْضٍ، أَوْ شَجَرَةٍ وَاحِدَةٍ، فَأَكْثَرَ، أَوْ عَبْدٍ، أَوْ ثَوْبٍ، أَوْ أَمَةٍ، أَوْ مِنْ سَيْفٍ، أَوْ مِنْ طَعَامٍ، أَوْ مِنْ حَيَوَانٍ، أَوْ مِنْ أَيِّ شَيْءٍ بِيعَ: لَا يَحِلُّ لِمَنْ لَهُ ذَلِكَ الْجُزْءُ أَنْ يَبِيعَهُ حَتَّى يَعْرِضَهُ عَلَى شَرِيكِهِ أَوْ شُرَكَائِهِ فِيهِ، فَإِنْ أَرَادَ مَنْ يُشْرِكُهُ فِيهِ الْأَخْذَ لَهُ بِمَا أَعْطَى فِيهِ غَيْرُهُ فَالشَّرِيكُ أَحَقُّ بِهِ، وَإِنْ لَمْ يُرِدْ أَنْ يَأْخُذَ فَقَطْ سَقَطَ حَقُّهُ، وَلَا قِيَامَ لَهُ بَعْدَ ذَلِكَ إِذَا بَاعَهُ مِمَّنْ بَاعَهُ.

L25314 In the name of Allah, the Most Gracious, the Most Merciful. The Book of Pre-emption: Issue 1595. Pre-emption is obligatory for every undivided portion sold as joint ownership (mushāʿ) between two or more co-owners, whether the property is divisible or indivisible—including land, one tree or more, a male slave, a garment, a female slave, a sword, food, an animal, or any other sold item. It is unlawful for the owner of such a portion to sell it without first offering it to his co-owner or co-owners. If the co-owner wishes to acquire it for the price offered by others, the co-owner has the greater right to it. If the co-owner declines to acquire it, his right is forfeited, and he loses all entitlement to contest the sale thereafter if the owner proceeds to sell it to another party.

فَإِنْ لَمْ يَعْرِضْ عَلَيْهِ كَمَا ذَكَرْنَا حَتَّى بَاعَهُ مِنْ غَيْرِ مَنْ يُشْرِكُهُ فِيهِ؟ فَمَنْ يُشْرِكُهُ مُخَيَّرٌ بَيْنَ أَنْ يُمْضِيَ ذَلِكَ الْبَيْعَ وَبَيْنَ أَنْ يُبْطِلَهُ وَيَأْخُذَ ذَلِكَ الْجُزْءَ لِنَفْسِهِ بِمَا بِيعَ بِهِ.

L25315 If he did not present the offer to his co-owner as stipulated before selling the shared property to another party, the co-owner may choose either to ratify the sale or annul it. If annulled, the co-owner may claim the portion as his own at the price for which it was sold.

وَهَا هُنَا خِلَافٌ فِي أَرْبَعَةِ مَوَاضِعَ:

L25316 And here, there is a difference of opinion in four matters:

أَحَدُهَا هَلْ يَجُوزُ بَيْعُ الْمُشَاعِ أَمْ لَا؟

L25317 One of them is: Is the sale of undivided jointly owned property permissible or not?

وَالثَّانِي: هَلْ يَكُونُ فِي بَيْعِهِ شُفْعَةٌ أَمْ لَا؟

L25318 And the second: Does the sale involve a right of preemption or not?

وَالثَّالِثُ: الْأَشْيَاءُ الَّتِي تَكُونُ فِيهَا الشُّفْعَةُ.

L25319 Third: The things in which pre-emption exists.

وَالرَّابِعُ: إِنْ عَرَضَ الْبَائِعُ عَلَى مَنْ يُشْرِكُهُ قَبْلَ أَنْ يَبِيعَ فَأَبَى شَرِيكُهُ مِنَ الْأَخْذِ هَلْ يَسْقُطُ حَقُّهُ بِذَلِكَ أَمْ لَا؟ فَقَالَ عَبْدُ الْمَلِكِ بْنُ يَعْلَى وَهُوَ تَابِعِيٌّ قَاضِي الْبَصْرَةِ: لَا يَجُوزُ بَيْعُ الْمُشَاعِ، رُوِّينَا ذَلِكَ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ أَنَا أَيُّوبُ السِّخْتِيَانِيُّ قَالَ: رُفِعَ إِلَى

L25320 The fourth: If the seller offers his share to his partner before selling, and his partner refuses from taking it, does this forfeit his right or not? Abd al-Malik ibn Yaʿla – a Tabi'i and judge of Basra – said: "The sale of undivided joint property is invalid. It has been narrated to us through Hammad ibn Zayd from Ayyub al-Sikhtiyani, who said: A case was presented to Abd al-Malik ibn Yaʿla, judge of Basra, concerning a man who sold his undivided joint

property share. He ruled it invalid. When this was mentioned to Muhammad ibn Sirin, he also deemed it impermissible."

عَبْدِ الْمَلِكِ بْنِ يَعْلَى قَاضِي الْبَصْرَةِ رَجُلٌ بَاعَ نَصِيبًا لَهُ غَيْرَ مَقْسُومٍ فَلَمْ يُجِزْهُ، فَذَكَرَ لِمُحَمَّدِ بْنِ سِيرِينَ فَرَآهُ غَيْرَ جَائِزٍ.

L25321–25322 Muhammad ibn Sirin said: There is no harm if two partners, who have between them an item or a thing that is neither measured by volume nor weighed, sell it before dividing it.

وَقَالَ مُحَمَّدُ بْنُ سِيرِينَ: لَا بَأْسَ بِالشَّرِيكَيْنِ يَكُونُ بَيْنَهُمَا الْمَتَاعُ أَوْ الشَّيْءُ الَّذِي لَا يُكَالُ وَلَا يُوزَنُ أَنْ يَبِيعَهُ قَبْلَ أَنْ يُقَاسِمَهُ.

L25323 Al-Ḥasan said: He should not sell from it or from other than it until he divides it with his partner, unless it is a pearl or something he is unable to divide it.

وَقَالَ الْحَسَنُ: لَا يَبِعْ مِنْهُ وَلَا مِنْ غَيْرِهِ حَتَّى يُقَاسِمَهُ إِلَّا أَنْ يَكُونَ لُؤْلُؤَةً أَوْ مَا لَا يَقْدِرُ عَلَى قِسْمَتِهِ.

L25324 Uthman al-Batti permitted the sale of co-owned undivided property and did not recognize the right of pre-emption for the partner.

وَأَجَازَ عُثْمَانُ الْبَتِّيُّ بَيْعَ الْمُشَاعِ وَلَمْ يَرَ الشُّفْعَةَ لِلشَّرِيكِ.

L25325 Abu Hanifa and al-Shafi'i said: There is no pre-emption right except in land alone, or in land with what is on it—buildings or naturally growing trees—alone.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: لَا شُفْعَةَ إِلَّا فِي الْأَرْضِ فَقَطْ أَوْ فِي أَرْضٍ بِمَا فِيهَا مِنْ بِنَاءٍ أَوْ شَجَرٍ نَابِتٍ فَقَطْ.

L25326 Malik said: The right of pre-emption is mandatory in land alone, in land combined with what is on it - whether buildings or naturally growing trees - or in fruits located at the tops of trees, even when sold without the roots or trunks.

قَالَ مَالِكٌ: الشُّفْعَةُ وَاجِبَةٌ فِي الْأَرْضِ وَحْدَهَا، وَفِي الْأَرْضِ بِمَا فِيهَا مِنْ بِنَاءٍ أَوْ شَجَرٍ نَابِتٍ، أَوْ فِي الثِّمَارِ الَّتِي فِي رُءُوسِ الشَّجَرِ وَإِنْ بِيعَتْ دُونَ الْأُصُولِ.

L25327 We have been narrated from Uthman ibn Affan - may Allah be pleased with him - that there is no pre-emption right for a well or a stallion. We received this narration through the chain of Ibn Abi Shaybah who reported to us from Abdullah ibn Idris, from Muhammad ibn Umarah, from Abu Bakr ibn Muhammad ibn Amr ibn Hazm, from Aban ibn Uthman ibn Affan, from his father, who said: "There is no pre-emption right for a well or a stallion, and al-ʿurf (customary practice) nullifies every pre-emption right."

وَرُوِّينَا عَنْ عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - لَا شُفْعَةَ فِي بِئْرٍ وَلَا فَحْلٍ: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ عَنْ مُحَمَّدِ بْنِ عُمَارَةَ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبَانَ بْنِ عُثْمَانَ بْنِ عَفَّانَ عَنْ أَبِيهِ قَالَ: لَا شُفْعَةَ فِي بِئْرٍ وَلَا فَحْلٍ وَالْأُرْفُ يَقْطَعُ كُلَّ شُفْعَةٍ.

L25328 The customary practices (ʿurf), the prescribed legal penalties (ḥudūd), and the guiding markers (maʿālim).

الْأُرْفُ الْحُدُودُ وَالْمَعَالِمُ.

L25329 Abū Muḥammad said: The proof for the validity of our view is what we have transmitted through the chain of al-Bukhārī: I, Musaddad, I, ʿAbd al-Wāḥid

- he is Ibn Ziyād - I, Maʿmar, from al-Zuhrī, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Jābir ibn ʿAbd Allāh, who said: "The Messenger of Allāh - may Allāh bless him and grant him peace - decreed the right of pre-emption in all undivided properties. Once boundaries are established and pathways are marked out, there is no pre-emption."

قَالَ أَبُو مُحَمَّد: وَبُرْهَانُ صِحَّةِ قَوْلِنَا: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا مُسَدَّدٌ أَنَا عَبْدُ الْوَاحِدِ هُوَ ابْنُ زِيَادٍ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ فِي كُلِّ مَا لَمْ يُقْسَمْ فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» .

L25330 And also through the chain of Al-Bukhari: I, Mahmud ibn Ghaylan, said: I heard from ʻAbd al-Razzāq, who said: I heard from Maʻmar, from al-Zuhrī, from Abū Salama ibn ʻAbd al-Raḥmān ibn ʻAwf, from Jābir ibn ʻAbd Allāh, who said: "The Messenger of Allah (peace be upon him) established the right of pre-emption in every undivided property. When boundaries are fixed and accessways are delineated, there is no pre-emption."[1]

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَيْضًا أَنَا مَحْمُودٌ هُوَ ابْنُ غَيْلَانَ أَنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الشُّفْعَةَ فِي كُلِّ مَالٍ لَمْ يُقْسَمْ فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» .

L25331–25332 I found in the book of Yaḥyā ibn Mālik ibn ʿĀʾidh, in his own handwriting: The judge Abū ʿAbd Allāh al-Ḥusayn ibn Aḥmad ibn Muḥammad ibn Salamah, known as Ibn Abī Ḥanīfah, informed me. He said: Abū Jaʿfar al-Ṭaḥāwī narrated to us: Muḥammad ibn Khuzaymah; I, Yūsuf ibn ʿAdī al-Qarāṭīsī; I, Ibn Idrīs – who is ʿAbd Allāh al-Awdī – from Ibn Jurayj, from ʿAṭāʾ, from Jābir, who said: "The Messenger of Allah, peace and blessings be upon him, decreed the right of pre-emption in all matters."

وَوَجَدْت فِي كِتَابِ يَحْيَى بْنِ مَالِكِ بْنِ عَائِذٍ بِخَطِّهِ: أَخْبَرَنِي الْقَاضِي أَبُو عَبْدِ اللَّهِ الْحُسَيْنُ بْنُ أَحْمَدَ بْنِ مُحَمَّدِ بْنِ سَلَمَةَ الْمَعْرُوفُ بِابْنِ أَبِي حَنِيفَةَ قَالَ: نا أَبُو جَعْفَرٍ الطَّحَاوِيَّ قَالَ نا مُحَمَّدُ بْنُ خُزَيْمَةَ أَنَا يُوسُفُ بْنُ عَدِيٍّ هُوَ الْقَرَاطِيسِيُّ أَنَا ابْنُ إِدْرِيسَ هُوَ عَبْدُ اللَّهِ الْأَوْدِيُّ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ جَابِرٍ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ فِي كُلِّ شَيْءٍ» .

L25333 Al-Ṭaḥāwī said: Ibrāhīm ibn Abī Dāwūd narrated to us from Nuʿaym, from al-Faḍl ibn Mūsā, from Abū Ḥamzah al-Sukkārī, from ʿAbd al-ʿAzīz ibn Rufayʿ, from Ibn Abī Mulaykah, from Ibn ʿAbbās, who said: The Messenger of Allāh (peace and blessings be upon him) said: "A partner holds the right of shufʿah (pre-emption), and pre-emption applies to all things."

قَالَ الطَّحَاوِيَّ: وَحَدَّثَنَا إِبْرَاهِيمُ بْنُ أَبِي دَاوُد نا نُعَيْمٌ أَنَا الْفَضْلُ بْنُ مُوسَى عَنْ أَبِي حَمْزَةَ السُّكَّرِيِّ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشَّرِيكُ شَفِيعٌ وَالشُّفْعَةُ فِي كُلِّ شَيْءٍ» .

L25334 Through the chain of Muslim: I am Abu Tahir, I am Ibn Wahb, from Ibn Jurayj, that Abu al-Zubayr informed him he heard Jabir ibn Abdullah say: The

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو الطَّاهِرِ أَنَا ابْنُ وَهْبٍ عَنِ ابْنِ جُرَيْجٍ أَنَّ أَبَا الزُّبَيْرِ أَخْبَرَهُ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشُّفْعَةُ فِي

[1] **Hadith references (L25330):** Sunan Abi Dawud 3514.

Messenger of Allah (peace and blessings be upon him) said: “Pre-emptive right applies to every jointly owned property - whether land, residential quarter, or walled garden. It is not permissible for one to sell until they inform their partner, so the partner may take it or abandon it. If he refuses, the partner has more right to it until the seller informs him.”

كُلِّ شِرْكٍ فِي أَرْضٍ أَوْ رَبْعٍ أَوْ حَائِطٍ، لَا يَصْلُحُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ فَيَأْخُذُ أَوْ يَدَعُ، فَإِنْ أَبَى فَشَرِيكُهُ أَحَقُّ بِهِ حَتَّى يُؤْذِنَهُ» .

L25335–25336 Abu Muhammad said: These are mass-transmitted, corroborating narrations encompassing all that we have stated - Jābir and Ibn ʿAbbās from the Prophet, peace and blessings of Allah be upon him - that “the right of pre-emption applies to all property, to everything, and to all that has not been divided.”

قَالَ أَبُو مُحَمَّدٍ: فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ بِكُلِّ مَا قُلْنَا، جَابِرٌ، وَابْنُ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ «الشُّفْعَةَ فِي كُلِّ مَالٍ، وَفِي كُلِّ شَيْءٍ، وَفِي كُلِّ مَا لَمْ يُقْسَمْ» .

L25337 It was narrated as such from Jābir: Abū al-Zubayr heard it from him, ʻAṭāʼ, and Abū Salamah. Ibn Abī Mulaykah narrated it from Ibn ʻAbbās. Thus, the ambiguity was entirely resolved, and all praise is due to God, the Exalted.

وَرَوَاهَا كَذَا عَنْ جَابِرٍ: أَبُو الزُّبَيْرِ سَمَاعًا مِنْهُ وَعَطَاءٌ، وَأَبُو سَلَمَةَ، وَرَوَاهُ عَنْ ابْنِ عَبَّاسٍ: ابْنُ أَبِي مُلَيْكَةَ، فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً وَلِلَّهِ تَعَالَى الْحَمْدُ.

L25338 Among those who held our opinion in this matter, as reported to us by Ibn Abi Shaybah: From Yazeed ibn Harun, from Yahya ibn Sa’eed, from ’Awn ibn ’Ubaydullah ibn Abi Rafi’, from ’Ubaydullah ibn ’Abdullah ibn ’Umar ibn al-Khattab, that ’Umar ibn al-Khattab said: “When property boundaries have been established and people recognize their rights, no right of pre-emption exists among them.”

وَمِمَّنْ قَالَ بِقَوْلِنَا فِي هَذَا كَمَا رُوِّينَا عَنْ ابْنِ أَبِي شَيْبَةَ أَنَا يَزِيدُ بْنُ هَارُونَ أَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ عَوْنِ بْنِ عُبَيْدِ اللَّهِ بْنِ أَبِي رَافِعٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إذَا وَقَعَتْ الْحُدُودُ وَعَرَفَ النَّاسُ حُقُوقَهُمْ فَلَا شُفْعَةَ بَيْنَهُمْ.

L25339 From the path of Saʻīd ibn Manṣūr: From Hushaym, from Muḥammad ibn Isḥāq, from Manẓūr ibn Abī Thaʻlabah, from Abān ibn ʻUthmān ibn ʻAffān, that his father ʻUthmān said: There is no *mukāyalah* when the *ḥudūd* penalties have been applied, so there is no right of pre-emption.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ مَنْظُورِ بْنِ أَبِي ثَعْلَبَةَ عَنْ أَبَانَ بْنِ عُثْمَانَ بْنِ عَفَّانَ أَنَّ أَبَاهُ عُثْمَانَ قَالَ: لَا مُكَايَلَةَ إذَا وَقَعَتْ الْحُدُودُ فَلَا شُفْعَةَ.

L25340 These two, ʻUmar ibn al-Khaṭṭāb and ʻUthmān ibn ʻAffān—may Allah be pleased with them—support the termination of the pre-emptive right after its obligation arises through the occurrence of legal rulings and people’s knowledge of their rights. They did not limit this ruling to land to the exclusion of other properties; rather, they stated it concisely and comprehensively. Legal rulings apply to every physical item sold, and likewise, every individual’s knowledge of their right.

فَهَذَانِ عُمَرُ بْنُ الْخَطَّابِ، وَعُثْمَانُ بْنُ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُمَا - يَحْمِلَانِ قَطْعَ الشُّفْعَةِ بَعْدَ وُجُوبِهَا بِوُقُوعِ الْحُدُودِ، وَمَعْرِفَةِ النَّاسِ حُقُوقَهُمْ وَلَمْ يَخُصَّا أَرْضًا دُونَ سَائِرِ الْأَمْوَالِ، بَلْ أَجْمَلَا ذَلِكَ، وَالْحُدُودُ تَقَعُ فِي كُلِّ جِسْمٍ مَبِيعٍ، وَكَذَلِكَ مَعْرِفَةُ كُلِّ أَحَدٍ حَقَّهُ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو الْأَحْوَصِ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ ابْنِ مُلَيْكَةَ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ فِي كُلِّ شَيْءٍ: الْأَرْضِ وَالدَّارِ، وَالْجَارِيَةِ، وَالْخَادِمِ» .

L25341 Through the chain of Ibn Abi Shaybah: I, Abu al-Ahwas, reported from Abd al-Aziz ibn Rufay' from Ibn Mulaykah, who said: "The Messenger of Allah—may the peace and blessings of Allah be upon him—decreed the right of pre-emption in all things: land, dwellings, female slaves, and male slaves."

فَقَالَ عَطَاءٌ: إنَّمَا الشُّفْعَةُ فِي الْأَرْضِ وَالدَّارِ.

L25342 Then Ata said: The right of preemption applies only to the land and the dwelling.

فَقَالَ لَهُ ابْنُ أَبِي مُلَيْكَةَ: تَسْمَعُنِي لَا أُمَّ لَكَ، أَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ تَقُولُ مِثْلَ هَذَا وَإِلَى هَذَا رَجَعَ عَطَاءٌ

L25343 Ibn Abi Mulaikah said to him: "Do you hear me? Shame on you! I cite the Messenger of Allah (peace be upon him), and then you say such a thing?" At this, Ata relented.

كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ قَالَ أَنَا أَبَانُ عَنْ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: سَأَلْت عَطَاءً عَنْ الشُّفْعَةِ فِي الثَّوْبِ؟ فَقَالَ: لَهُ شُفْعَةٌ وَسَأَلْته عَنْ الْحَيَوَانِ؟ فَقَالَ: لَهُ شُفْعَةٌ وَسَأَلْته عَنْ الْعَبْدِ؟ فَقَالَ: لَهُ شُفْعَةٌ.

L25344 As we have been narrated through the chain of Waki', who said: "I, Abān, report from 'Abdullāh al-Bajalī, who said: 'I asked 'Aṭā' about preemption rights regarding a garment.' He replied: 'It has the right of preemption.' Then I asked him about livestock, and he answered: 'It has the right of preemption.' Then I asked him about a slave, and he responded: 'It has the right of preemption.'"

فَهَذَانِ: عَطَاءٌ، وَابْنُ أَبِي مُلَيْكَةَ بِأَصَحِّ إسْنَادٍ عَنْهُمَا.

L25345–25346 So these two—'Aṭā' and Ibn Abī Mulaykah—have the soundest chain of transmission narrated from them.

قَالَ أَبُو مُحَمَّدٍ: فَلَا تَخْلُو الشُّفْعَةُ مِنْ أَنْ تَكُونَ مِنْ طَرِيقِ النَّصِّ كَمَا نَقُولُ نَحْنُ أَوْ مِنْ طَرِيقِ النَّظَرِ كَمَا يَقُولُ الْمُخَالِفُونَ.

L25347 Abu Muhammad said: Preemption cannot exist except through textual injunction, as we maintain, or through analogical reasoning, as opposing scholars hold.

فَإِنْ كَانَتْ مِنْ طَرِيقِ النَّصِّ فَهَذِهِ النُّصُوصُ الَّتِي أَوْرَدْنَا لَا يَحِلُّ الْخُرُوجُ عَنْهَا وَإِنْ كَانَتْ مِنْ طَرِيقِ النَّظَرِ كَمَا يَزْعُمُونَ أَنَّهَا إنَّمَا جُعِلَتْ لِدَفْعِ ضَرَرٍ عَنْ الشَّرِيكِ فَالْعِلَّةُ بِذَلِكَ مَوْجُودَةٌ فِي غَيْرِ الْعَقَارِ كَمَا هِيَ مَوْجُودَةٌ فِي الْعَقَارِ، بَلْ أَكْثَرُ، وَفِيمَا لَا يَنْقَسِمُ، كَوُجُودِهَا فِيمَا يَنْقَسِمُ، بَلْ هِيَ فِيمَا لَا يَنْقَسِمُ أَشَدُّ ضَرَرًا.

L25348 If it is established through textual injunction, then it is impermissible to deviate from these texts we have cited. If it is derived through analogical reasoning, as they claim—asserting that it was only instituted to repel harm from a co-owner—then this legal cause exists in non-real estate just as it exists in real estate, indeed even more so. It exists in indivisible property like its existence in divisible property, but rather, the harm is indeed more severe in indivisible property.

L25349 As for those who prohibit the sale of undivided co-ownership, we do not know of any argument for them whatsoever. Rather, this contradicts the

Quran and the Sunnah. Allah the Exalted said: And Allah has permitted sale [Al-Baqarah: 275].[2]

فَأَمَّا مَنْ مَنَعَ بَيْعَ الْمُشَاعِ فَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، بَلْ هُوَ خِلَافُ الْقُرْآنِ، وَالسُّنَّةِ، قَالَ اللَّهُ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] .

L25350 And He, the Exalted, said: "And He has indeed detailed for you what He has forbidden to you" [Al-An'am 6:119].[3]

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

L25351 Therefore, this sale, the prohibition of which has not been explicitly outlined to us, is permissible.

فَهَذَا بَيْعٌ لَمْ يُفَصَّلْ لَنَا تَحْرِيمُهُ فَهُوَ حَلَالٌ.

L25352 Indeed, it was incumbent upon the Hanafis—who prohibit pledging an undivided share of jointly owned property, gifting an undivided share of jointly owned property, donating an undivided share as charitable alms, and leasing an undivided share of jointly owned property—to prohibit the sale of such shares as well. This is because the effective cause underlying all these transactions is identical, and taking possession is required in sale just as it is in gifting, pledging, charitable donation, and leasing. Yet their mutual negligence in their religious doctrinal statements is the lightest matter to them.

وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْمُحَرِّمِينَ رَهْنَ الْجُزْءِ مِنْ الْمُشَاعِ، وَهِبَةَ الْجُزْءِ مِنْ الْمُشَاعِ، وَالصَّدَقَةَ بِالْجُزْءِ مِنْ الْمُشَاعِ، وَالْإِجَارَةَ لِلْجُزْءِ الْمُشَاعِ: أَنْ يَمْنَعُوا مِنْ بَيْعِ الْجُزْءِ مِنْ الْمُشَاعِ؛ لِأَنَّ الْعِلَّةَ فِي كُلِّ ذَلِكَ وَاحِدَةٌ، وَالْقَبْضُ وَاجِبٌ فِي الْبَيْعِ كَمَا هُوَ فِي الْهِبَةِ، وَالرَّهْنِ، وَالصَّدَقَةِ وَالْإِجَارَةِ وَلَكِنَّ التَّخَاذُلَ فِي أَقْوَالِهِمْ فِي الدِّينِ أَخَفُّ شَيْءٍ عَلَيْهِمْ.

L25353 If they say, "We followed the aforementioned precedents in permitting the sale of jointly owned property?" We reply: You have not done so; rather, you contradicted them, as we will clarify after this, God the Exalted and Majestic willing. The most direct instance of this is your contradiction of them regarding the lapse of the partner's right when he was offered the option to take his share before the sale but did not take it. Then you said: "Rather, his right remains and does not lapse."

فَإِنْ قَالُوا: اتَّبَعْنَا فِي إجَازَةِ بَيْعِ الْمُشَاعِ الْآثَارَ الْمَذْكُورَةَ؟ قُلْنَا: مَا فَعَلْتُمْ، بَلْ خَالَفْتُمُوهَا كَمَا نُبَيِّنُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، وَأَقْرَبُ ذَلِكَ مُخَالَفَتُكُمْ إيَّاهَا فِي سُقُوطِ حَقِّ الشَّرِيكِ إذَا عَرَضَ عَلَيْهِ الْأَخْذَ قَبْلَ الْبَيْعِ فَلَمْ يَأْخُذْ، فَقُلْتُمْ: بَلْ حَقُّهُ بَاقٍ وَلَا يَسْقُطُ.

L25354 Moreover, there is an explicit text regarding the gift of undivided jointly owned property, as the Messenger of Allah—may Allah bless him and grant him peace—bestowed upon the Ash'aris a small herd of three camels to be distributed among them, yet you did not validate it.

وَأَيْضًا فَقَدْ جَاءَ نَصٌّ بِهِبَةِ الْمُشَاعِ إذْ «وَهَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْأَشْعَرِيِّينَ ثَلَاثَ ذَوْدٍ مِنْ الْإِبِلِ بَيْنَهُمْ» فَلَمْ تُجِيزُوهُ.

L25355 As for those who do not affirm the right of pre-emption, their argument is to say: The report concerning pre-emption contradicts fundamental legal principles, for when someone owns a thing through purchase, it is not per-

وَأَمَّا مَنْ لَمْ يَقُلْ بِالشُّفْعَةِ فَإِنَّ حُجَّتَهُ أَنْ يَقُولَ: خَبَرُ الشُّفْعَةِ مُخَالِفٌ لِلْأُصُولِ، وَمَنْ مَلَكَ شَيْئًا بِالشِّرَاءِ فَلَا يَجُوزُ لِغَيْرِهِ أَخْذُهُ وَهَذَا خِلَافٌ لِمَا ثَبَتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[2] **Qur'an references (L25349):** Qur'an 2:275 (Al-Baqarah).
[3] **Qur'an references (L25350):** Qur'an 6:119 (Al-An'am).

missible for others to take it away from him—and this is contrary to what has been authentically established from the Messenger of Allah (peace be upon him).

وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْمُخَالِفِينَ لِلثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ حُكْمِ الْمُصَرَّاةِ، وَمِنْ حُكْمِ مَنْ وَجَدَ سِلْعَتَهُ عِنْدَ مُفْلِسٍ فَهُوَ أَوْلَى بِهَا، وَالْقُرْعَةُ بَيْنَ الْأَعْبُدِ السِّتَّةِ فِي الْعِتْقِ، وَقَالُوا: هَذِهِ الْأَخْبَارُ مُخَالِفَةٌ لِلْأُصُولِ أَنْ يَقُولُوا مِثْلَ هَذَا فِي خَبَرِ الشُّفْعَةِ، وَلَكِنَّ التَّنَاقُضَ أَسْهَلُ شَيْءٍ عَلَيْهِمْ، وَلَا حُجَّةَ فِي نَظَرٍ مَعَ حُكْمٍ ثَابِتٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L25356–25358 Indeed, it was incumbent upon the dissenting Hanafis—who contradicted the established teachings from the Messenger of Allah (peace and blessings be upon him)—concerning the legal ruling on tied-udder animals (al-muṣarrah). Among the rulings is that whoever finds a commodity with a bankrupt person has the strongest claim to it. The drawing of lots is used among six slaves regarding emancipation. They said: "These narrations contradict the legal principles by their making such a statement in the narration on pre-emption, but contradiction is the easiest thing for them. There is no validity in speculative reasoning alongside a ruling firmly established from the Messenger of Allah (peace be upon him)."

وَأَمَّا الْخِلَافُ فِيمَا تَكُونُ فِيهِ الشُّفْعَةُ فَإِنَّهُمْ قَالُوا: إِنَّمَا ذَكَرَ فِي حَدِيثِ جَابِرٍ مِنْ رِوَايَةِ أَبِي الزُّبَيْرِ «فِي كُلِّ شِرْكٍ فِي أَرْضٍ أَوْ رَبْعٍ أَوْ حَائِطٍ» .

L25359 As for the disagreement regarding the cases in which pre-emption applies, they said: It was only mentioned in the ḥadīth of Jābir from the narration of Abū al-Zubayr: "In every shared portion of land, a dwelling, or a wall."

وَفِي رِوَايَةِ أَبِي سَلَمَةَ عَنْهُ «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» وَمَا نَعْلَمُ لَهُمْ شَيْئًا شَغَبُوا بِهِ إِلَّا هَذَا.

L25360 In the narration of Abu Salama from him: "When boundaries are established and pathways are formally designated, there is no right of pre-emption." We know of no matter regarding which they caused contention except this.

فَجَوَابُنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَنَّهُ لَا حُجَّةَ لَهُمْ فِي هَذَيْنِ اللَّفْظَيْنِ، أَمَّا «قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: فِي كُلِّ شِرْكٍ فِي أَرْضٍ أَوْ رَبْعٍ أَوْ حَائِطٍ» فَلَيْسَ فِيهِ أَنَّهُ لَا شُفْعَةَ إلَّا فِي هَذَا فَقَطْ، وَإِنَّمَا فِيهِ إيجَابُ الشُّفْعَةِ فِي الْأَرْضِ وَالرَّبْعِ وَالْحَائِطِ، وَلَيْسَ فِيهِ ذِكْرُ هَلْ الشُّفْعَةُ فِيمَا عَدَاهَا أَمْ لَا؟ فَوَجَبَ طَلَبُ حُكْمِ مَا عَدَا هَذِهِ فِي غَيْرِ هَذَا اللَّفْظِ، وَقَدْ وَجَدْنَا خَبَرَ جَابِرٍ هَذَا نَفْسِهِ مِنْ طَرِيقِ عَطَاءٍ بِأَنَّ الشُّفْعَةَ فِي كُلِّ شَيْءٍ، وَمَا يَجْهَلُ أَنَّ عَطَاءً فَوْقَ أَبِي الزُّبَيْرِ إلَّا جَاهِلٌ.

L25361 Our answer—and success comes only from Allah, the Exalted—is that they have no valid evidence in these two expressions. As for his statement—peace and blessings be upon him—"In every shared portion of land, a dwelling, or an orchard," it does not indicate that pre-emption applies solely to these. Rather, it establishes the obligation of pre-emption in land, dwellings, and orchards. It does not address whether pre-emption applies to other cases. Therefore, the ruling for what lies beyond these must be sought outside this wording. We have found this very report of Jābir through the narration of 'Aṭā', affirming that pre-emption applies to all things. None is ignorant that 'Aṭā' is superior to Abū al-Zubayr except an ignorant person.

L25362–25364 This report was transmitted through the chain of Abū Khaythama Zuhayr

ibn Muʿāwiya from Abū al-Zubayr from Jābir from the Prophet—peace and blessings be upon him: "Whoever has a partner in a dwelling or date palms may not sell until he informs his partner. If the partner approves, he takes his share; if he objects, he leaves it." Do you consider this proof that pre-emption applies only to dwellings or date palms, excluding other fruits? If they say: "Another report with an addition exists," we reply: "Another report has also reached us with an addition: 'Every undivided property.'" There is no distinction. How then—when the Ḥanafīs, Mālikīs, and Shāfiʿīs, who oppose us in this matter while claiming to be advocates of analogy—do they not analogize the ruling for land, walls, buildings, and other properties based on the effective cause of preventing harm, just as they analogized gold, silver, wheat, barley, salt, dates, and other categories? I wonder what necessitates analogy in those cases and in all they have analogized, yet prohibits it here. No... Especially, the Malikis and Shafi'is establish pre-emption in mahr by analogy to sale. Why did they not analogize sale to sale, as that would be more appropriate than analogizing mahr to sale? The Malikis hold that pre-emption applies to fruits but not to the principal properties. Why did they not analogize assets other than fruits to real estate, just as they analogized fruits to real estate—particularly given their acknowledgment that they know of no one who held this view before them?[4]

وَقَدْ جَاءَ هَذَا الْخَبَرُ مِنْ طَرِيقِ أَبِي خَيْثَمَةَ زُهَيْرِ بْنِ مُعَاوِيَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَانَ لَهُ شَرِيكٌ فِي رَبْعَةٍ أَوْ نَخْلٍ فَلَيْسَ لَهُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ، فَإِنْ رَضِيَ أَخَذَ، وَإِنْ كَرِهَ تَرَكَ» أَفَتَرَوْنَ هَذَا حُجَّةً فِي أَنْ لَا شُفْعَةَ إِلَّا فِي رَبْعٍ أَوْ نَخْلٍ فَقَطْ دُونَ سَائِرِ الثِّمَارِ؟ فَإِنْ قَالُوا: قَدْ جَاءَ خَبَرٌ آخَرُ بِزِيَادَةٍ؟ قُلْنَا: وَقَدْ جَاءَ خَبَرٌ آخَرُ لَنَا أَيْضًا بِزِيَادَةٍ «كُلُّ مَالٍ لَمْ يُقْسَمْ» وَلَا فَرْقَ فَكَيْفَ وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، الْمُخَالِفُونَ لَنَا فِي هَذَا أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا عَلَى حُكْمِ الْأَرْضِ، وَالْحَائِطِ، وَالْبِنَاءِ: سَائِرَ الْأَمْلَاكِ بِعِلَّةِ الضَّرَرِ وَدَفْعِهِ، كَمَا قَاسُوا عَلَى الذَّهَبِ، وَالْفِضَّةِ، وَالْبُرِّ، وَالشَّعِيرِ، وَالْمِلْحِ، وَالتَّمْرِ: سَائِرَ الْأَنْوَاعِ؟ فَلَيْتَ شِعْرِي مَا الْمُوجِبُ لِلْقِيَاسِ هُنَالِكَ وَفِي سَائِرِ مَا قَاسُوا فِيهِ وَمُنِعَ مِنْهُ هَاهُنَا، لَا سِيَّمَا وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ يَجْعَلُونَ الشُّفْعَةَ فِي الصَّدَاقِ قِيَاسًا عَلَى الْبَيْعِ، فَهَلَّا قَاسُوا الْبَيْعَ عَلَى الْبَيْعِ، فَهُوَ أَوْلَى مِنْ قِيَاسِ الصَّدَاقِ عَلَى الْبَيْعِ؟ وَالْمَالِكِيُّونَ يَرَوْنَ الشُّفْعَةَ فِي الثَّمَرَةِ دُونَ الْأُصُولِ، فَهَلَّا قَاسُوا غَيْرَ الثَّمَرَةِ عَلَى الْعَقَارِ كَمَا قَاسُوا الثَّمَرَةَ عَلَى الْعَقَارِ، لَا سِيَّمَا مَعَ إقْرَارِهِ بِأَنَّهُ لَا يَعْرِفُ أَحَدًا قَالَ بِذَلِكَ قَبْلَهُ.

L25365 Then all of them contravene this very report itself, in that they do not nullify the partner's right in preemption when his partner presents him with taking the share for the price given, and he does not take it. So how can it be permissible for a Muslim to invoke part of a report as proof—particularly in matters wherein there is nothing from it—while not invoking it as proof in what is explicitly stated within it? We seek refuge in Allah from the likes of this.

ثُمَّ كُلُّهُمْ مُخَالِفُونَ لِهَذَا الْخَبَرِ نَفْسِهِ، فِي أَنَّهُمْ لَا يُسْقِطُونَ حَقَّ لِلشَّرِيكِ فِي الشُّفْعَةِ إذَا عَرَضَ عَلَيْهِ شَرِيكُهُ أَخْذَ الشِّقْصِ بِمَا يُعْطَى فِيهِ فَلَمْ يَأْخُذْهُ، فَكَيْفَ يَحِلُّ لِمُسْلِمٍ أَنْ يَجْعَلَ بَعْضَ خَبَرٍ حُجَّةً، لَا سِيَّمَا فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ، وَلَا يَجْعَلُهُ حُجَّةً فِيمَا هُوَ فِيهِ مَنْصُوصٌ وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِ هَذَا.

L25366 As for the wording in the narration of Abū Salama from Jābir: "When bound-

[4] **Hadith references (L25362):** Sahih Muslim 1608a.

aries are fixed and paths are arranged, there is no preemption," they have no valid argument in it, for this wording contains neither explicit text nor evidence indicating that this applies exclusively to land, immovable property, or buildings.

وَأَمَّا اللَّفْظُ الَّذِي فِي رِوَايَةِ أَبِي سَلَمَةَ عَنْ جَابِرٍ «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِي هَذَا اللَّفْظِ نَصٌّ وَلَا دَلِيلٌ عَلَى أَنَّ ذَلِكَ لَا يَكُونُ إلَّا فِي الْأَرْضِ، وَالْعَقَارِ، وَالْبِنَاءِ.

L25367 Boundaries indeed apply to everything divisible - including food, animals, plants, and goods - and the way of necessity applies to all these matters, just as it applies to buildings and walls without distinction. His mention - peace be upon him - of boundaries and paths constitutes an instruction about the ruling concerning divisible properties, while the ruling remains applicable to indivisible properties in their original state. How much more so when the beginning of the ḥadīth provides sufficient clarification that pre-emption is obligatory for every divisible asset and every undivided asset? This constitutes a universal principle encompassing all properties - those that admit division and those that do not.

بَلْ الْحُدُودُ وَاقِعَةٌ فِي كُلِّ مَا يَنْقَسِمُ مِنْ طَعَامٍ، وَحَيَوَانٍ، وَنَبَاتٍ، وَعُرُوضٍ، وَإِلَى كُلِّ ذَلِكَ طَرِيقُ ضَرُورَةٍ، كَمَا هُوَ إلَى الْبِنَاءِ وَإِلَى الْحَائِطِ وَلَا فَرْقَ، وَكَانَ ذِكْرُهُ - عَلَيْهِ السَّلَامُ - لِلْحُدُودِ وَالطُّرُقِ إعْلَامًا بِحُكْمِ مَا يُمْكِنُ قِسْمَتُهُ، وَبَقِيَ الْحُكْمُ فِيمَا لَا يُقْسَمُ عَلَى حَسْبِهِ، فَكَيْفَ وَأَوَّلُ الْحَدِيثِ بَيَانٌ كَافٍ فِي أَنَّ الشُّفْعَةَ وَاجِبَةٌ فِي كُلِّ مَالٍ يُقْسَمُ، وَفِي كُلِّ مَا لَمْ يُقْسَمْ، وَهَذَا عُمُومٌ لِجَمِيعِ الْأَمْوَالِ مَا احْتَمَلَ مِنْهَا الْقِسْمَةَ وَمَا لَمْ يَحْتَمِلْهَا.

L25368 Among the untenable falsehoods is the claim that the Messenger of Allah—may Allah bless him and grant him peace—intended by this ruling merely "the land," then summarizes it in this brief manner. Far removed is Allah from this, for he was commanded to clarify, not to obscure or deceive. This notion cannot take form in the mind of any rational being except his [the claimant's]. And with Allah, the Exalted, lies all success.

وَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يَكُونَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُرِيدُ بِهَذَا الْحُكْمِ " الْأَرْضَ " فَقَطْ، ثُمَّ يُجْمِلُ هَذَا الْإِجْمَالَ، حَاشَا لِلَّهِ مِنْ هَذَا، وَهُوَ مَأْمُورٌ بِالْبَيَانِ لَا بِالْإِبْهَامِ وَالتَّلْبِيسِ هَذَا أَمْرٌ لَا يَتَشَكَّلُ فِي عَقْلِ ذِي عَقْلٍ سِوَاهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25369–25370 Abu Muhammad said: Thus, any basis they might have had was invalidated. Some of them dared - following their customary practice of falsehood - to claim consensus regarding the obligation of pre-emption rights in land, structures, and trees alone, and they claimed consensus regarding the nullification of pre-emption rights in all other categories.

قَالَ أَبُو مُحَمَّد: فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ، وَقَدْ جَسَرَ بَعْضُهُمْ عَلَى جَارِي عَادَتِهِ فِي الْكَذِبِ فَادَّعَى الْإِجْمَاعَ عَلَى وُجُوبِ الشُّفْعَةِ فِي الْأَرْضِ، وَالْبِنَاءِ، وَالْأَشْجَارِ فَقَطْ، وَادَّعَى الْإِجْمَاعَ عَلَى سُقُوطِ الشُّفْعَةِ فِيمَا سِوَاهَا.

L25371 Abu Muhammad said: As for the consensus on the obligation of pre-emption in land and what it contains of structures and trees, we have cited disagreement from al-Hasan, Ibn Sirin, ʿAbd al-Malik ibn Yaʿlā, and ʿUthman al-Batti regarding this matter, and these were jurists among the Tābiʿūn.

قَالَ أَبُو مُحَمَّد: أَمَّا الْإِجْمَاعُ عَلَى وُجُوبِ الشُّفْعَةِ فِي الْأَرْضِ وَمَا فِيهَا مِنْ بِنَاءٍ وَشَجَرٍ: فَقَدْ أَوْرَدْنَا عَنْ الْحَسَنِ وَابْنِ سِيرِينَ، وَعَبْدِ الْمَلِكِ بْنِ يَعْلَى وَعُثْمَانَ الْبَتِّيِّ خِلَافَ ذَلِكَ، وَهَؤُلَاءِ فُقَهَاءُ تَابِعُونَ.

L25372 As for the consensus that there is no pre-emption right in matters apart from that, we have mentioned the generality of the narrations from Umar and Uthman, the narration from Ibn Abi Mulaykah and Aṭāʾ, and it being the opinion of Meccan jurists. This Malik holds the view that pre-emption applies to sold fruit but not to the original asset.

وَأَمَّا الْإِجْمَاعُ عَلَى أَنْ لَا شُفْعَةَ فِيمَا عَدَا ذَلِكَ، فَقَدْ ذَكَرْنَا عُمُومَ الرِّوَايَةِ عَنْ عُمَرَ وَعُثْمَانَ، وَالرِّوَايَةَ عَنْ ابْنِ أَبِي مُلَيْكَةَ، وَعَطَاءٍ، وَهُوَ قَوْلُ فُقَهَاءِ أَهْلِ مَكَّةَ، وَهَذَا مَالِكٌ يَرَى الشُّفْعَةَ فِي الثَّمَرَةِ الْمَبِيعَةِ دُونَ الْأَصْلِ.

L25373 We do not know of any reliably transmitted report advocating the abolition of pre-emption in cases other than land except those attributed to Ibn ʿAbbās, Shurayḥ, and Ibn al-Musayyab—none of which are authentic. It is also reported from ʿAṭāʾ (who retracted this view), Ibrāhīm, al-Shaʿbī, al-Ḥasan, Qatādah, Ḥammād ibn Abī Sulaymān, and Rabīʿah. The report from these latter scholars is authentic.

وَمَا نَعْلَمُ رُوِيَ إِسْقَاطُ الشُّفْعَةِ فِيمَا عَدَا الْأَرْضِ إِلَّا عَنِ ابْنِ عَبَّاسٍ، وَشُرَيْحٍ، وَابْنِ الْمُسَيِّبِ، وَلَا يَصِحُّ عَنْهُمْ، وَعَنْ عَطَاءٍ وَقَدْ رَجَعَ عَنْ ذَلِكَ وَعَنْ إِبْرَاهِيمَ، وَالشَّعْبِيِّ، وَالْحَسَنِ وَقَتَادَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَرَبِيعَةَ، وَهُوَ عَنْ هَؤُلَاءِ صَحِيحٌ.

L25374 As for Ibn Abbas, the narration attributed to him regarding this matter – through the chain of Muḥammad ibn ʿAbd al-Raḥmān from ʿAṭāʾ from Ibn Abbas – states: “There is no preemption for animals.” However, Muḥammad ibn ʿAbd al-Raḥmān is an unverified narrator. Moreover, this narration does not explicitly negate preemption for non-animals, just as the ḥadīth of ʿUthmān only abolishes preemption in the cases of barley and stallions. Consequently, their entire argument based on this is invalid.

أَمَّا ابْنُ عَبَّاسٍ: فَإِنَّ الرِّوَايَةَ عَنْهُ فِي ذَلِكَ مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَطَاءٍ عَنِ ابْنِ عَبَّاسٍ: لَا شُفْعَةَ فِي الْحَيَوَانِ مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ مَجْهُولٌ وَلَيْسَ فِيهِ أَيْضًا: أَنَّهُ لَا شُفْعَةَ فِي غَيْرِ الْحَيَوَانِ، كَمَا لَيْسَ فِي حَدِيثِ عُثْمَانَ إِسْقَاطُ الشُّفْعَةِ عَنْ غَيْرِ الْبُرِّ وَالْفَحْلِ فَبَطَلَ تَعَلُّقُهُمْ بِهَا جُمْلَةً.

L25375 As for Ibn al-Musayyib, his narration comes through Ibn Samʿān—who is accused of lying—and from Shurayḥ via the chain of Jābir al-Juʿfī. This suffices.

وَأَمَّا ابْنُ الْمُسَيِّبِ: فَهُوَ مِنْ طَرِيقِ ابْنِ سَمْعَانَ وَهُوَ مَذْكُورٌ بِالْكَذِبِ وَهُوَ عَنْ شُرَيْحٍ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ، وَيَكْفِي.

L25376 We have transmitted it through the chain of Saʿīd ibn Manṣūr: I, Hushaym, narrate from ʿUbaydah, Jarīr, and Yūnus. ʿUbaydah reported from Ibrāhīm, Jarīr from al-Shaʿbī, and they both said together: “There is no pre-emption right except in a dwelling or immovable property.” Yūnus reported from al-Ḥasan: “There is no pre-emption right except in land.”

وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ عُبَيْدَةَ، وَجَرِيرٌ، وَيُونُسُ، قَالَ عُبَيْدَةُ عَنْ إِبْرَاهِيمَ، وَقَالَ جَرِيرٌ عَنِ الشَّعْبِيِّ قَالَا جَمِيعًا: لَا شُفْعَةَ إِلَّا فِي دَارٍ، أَوْ عَقَارٍ، وَقَالَ يُونُسُ عَنِ الْحَسَنِ: لَا شُفْعَةَ إِلَّا فِي تُرْبَةٍ.

L25377 Abū Muḥammad said: None would deem a group of this size to constitute consensus [ijmāʿ] except a liar lacking in modesty. We have cited the disagreement regarding this matter from those we mentioned, and success comes only from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَمِثْلُ عَدَدِ هَؤُلَاءِ لَا يَعُدُّهُمْ إِجْمَاعًا إِلَّا كَذَّابٌ، قَلِيلُ الْحَيَاءِ وَقَدْ أَوْرَدْنَا الْخِلَافَ فِي ذَلِكَ عَمَّنْ ذَكَرْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25378–25379 Indeed, Malik differed with all of them, holding the opinion that pre-emption

applies to figs, grapes, olives, and fruits on the treetops, and it is not a house, nor real estate, nor soil. Ibn Shubruma held the opinion that pre-emption applies to water.

وَقَدْ خَالَفَ هَؤُلَاءِ كُلَّهُمْ مَالِكٌ، فَرَأَى الشُّفْعَةَ فِي التِّينِ، وَالْعِنَبِ، وَالزَّيْتُونِ، وَالْفَوَاكِهِ فِي رُءُوسِ الشَّجَرِ، وَلَيْسَتْ دَارًا، وَلَا عَقَارًا، وَلَا تُرْبَةً وَرَأَى ابْنُ شُبْرُمَةَ الشُّفْعَةَ فِي الْمَاءِ.

L25380 It is astonishing that the Malikis compel a partner to sell jointly with his co-partner, though no textual ruling (naṣṣ), transmitted precedent (athar), analogical deduction (qiyās), or juristic reasoning (nazar) has ever required this. Moreover, they do not grant him the right of preemption (shufʿah), despite its establishment through an explicit textual ruling.

وَالْعَجَبُ مِنْ الْمَالِكِيِّينَ فِي إجْبَارِهِمْ الشَّرِيكَ عَلَى أَنْ يَبِيعَ مَعَ شَرِيكِهِ، وَلَمْ يُوجِبْ قَطُّ ذَلِكَ نَصٌّ، وَلَا أَثَرٌ، وَلَا قِيَاسٌ، وَلَا نَظَرٌ، ثُمَّ لَا يُوجِبُ لَهُ الشُّفْعَةَ، وَقَدْ جَاءَ بِهَا النَّصُّ.

L25381 Another astonishment arises from them and the Ḥanafīs regarding their claim that the *musnad* is equivalent to the *mursal*—to the point that some of them said: “Rather, the *mursal* is stronger.” We have just mentioned that the finest *mursal* reports mandate the obligation of pre-emption (*shufʿah*) for the female slave (*jāriyah*) and the servant (*khādim*).

وَعَجَبٌ آخَرُ مِنْهُمْ، وَمِنْ الْحَنَفِيِّينَ فِي قَوْلِهِمْ: الْمُسْنَدُ كَالْمُرْسَلِ سَوَاءً، حَتَّى أَنَّ بَعْضَهُمْ قَالَ: بَلْ الْمُرْسَلُ أَقْوَى، وَقَدْ ذَكَرْنَا آنِفًا: أَحْسَنَ الْمَرَاسِيلِ بِإِيجَابِ الشُّفْعَةِ فِي الْجَارِيَةِ وَفِي الْخَادِمِ.

L25382 It has been narrated to us through the chain of Muḥammad ibn Jaʿfar, who reported from Shuʿbah, from ʿAbd al-ʿAzīz ibn Rufayʿ, from Ibn Abī Mulaykah, that the Prophet—peace and blessings of Allah be upon him—said: “The right of preemption applies to a slave and to all things.” We do not know of a stronger report among the mursal narrations than this, yet they opposed it, objecting to it only due to its mursal status. What religion, or what revival of faith, could endure with this? We seek refuge in Allah from being forsaken.

وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ أَنَا شُعْبَةُ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ، قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فِي الْعَبْدِ شُفْعَةٌ وَفِي كُلِّ شَيْءٍ» وَمَا نَعْلَمُ فِي الْمُرْسَلَاتِ أَقْوَى مِنْ هَذَا فَخَالَفُوهُ، وَمَا عَابُوهُ إلَّا بِإِرْسَالٍ؟ فَأَيُّ دِينٍ، أَوْ أَيُّ إحْيَاءٍ، يَبْقَى مَعَ هَذَا؟ وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L25383 As for the lapse of the co-owner’s right when his partner offers him the option to take the property and he declines, the Ḥanafīs—except al-Ṭaḥāwī—the Mālikīs, and the Shāfiʿīs maintain that his right is not invalidated by this. Rather, he may exercise pre-emption after the sale. They argued that pre-emption had not yet become incumbent upon him, as it only becomes incumbent after the sale. Therefore, his abstention before it became incumbent has no legal significance, and his right does not lapse once the obligation is established. They have no other foundational argument at all.

وَأَمَّا سُقُوطُ حَقِّ الشَّرِيكِ إذَا عَرَضَ عَلَيْهِ شَرِيكُهُ الْأَخْذَ فَلَمْ يَأْخُذْهُ، فَإِنَّ الْحَنَفِيِّينَ حَاشَا الطَّحَاوِيَّ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، قَالُوا: لَا يَسْقُطُ حَقُّهُ بِذَلِكَ، بَلْ لَهُ أَنْ يَأْخُذَ بَعْدَ الْبَيْعِ، وَاحْتَجُّوا بِأَنْ قَالُوا: بِأَنَّ الشُّفْعَةَ لَمْ تَجِبْ لَهُ بَعْدُ، وَإِنَّمَا يَجِبُ لَهُ بَعْدَ الْبَيْعِ؟ فَتَرْكُهُ مَا لَمْ يَجِبْ لَهُ بَعْدُ لَا مَعْنَى لَهُ، وَلَا يَسْقُطُ حَقُّهُ إذَا وَجَبَ، مَا لَهُمْ حُجَّةٌ غَيْرُ هَذَا أَصْلًا.

L25384 This is baseless. First, their assertion that the pre-emptive right has not

وَهَذَا لَيْسَ بِشَيْءٍ: أَوَّلُ ذَلِكَ قَوْلُهُمْ: إنَّ الشُّفْعَةَ لَمْ تَجِبْ لَهُ بَعْدُ، فَهَذَا بَاطِلٌ؛ لِأَنَّ الشُّفْعَةَ وَغَيْرَ الشُّفْعَةِ مِنْ أَحْكَامِ الدِّيَانَةِ كُلِّهَا لَا تَجِبُ إلَّا إذَا أَوْجَبَهَا اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِلَّا فَمَا لَمْ يَجِئْ هَذَا الْمَجِيءَ فَلَيْسَ هُوَ مِنْ الدِّينِ، وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الَّذِي أَوْجَبَ حَقَّ الشَّفِيعِ بِعَرْضِ الشُّفْعَةِ عَلَيْهِ قَبْلَ الْبَيْعِ، وَأَسْقَطَ حَقَّهُ بِتَرْكِهِ الْأَخْذَ حِينَئِذٍ، وَلَمْ يَجْعَلْ لَهُ بَعْدَ الْبَيْعِ حَقًّا أَصْلًا، إلَّا بِأَنْ لَا يَعْرِضَ عَلَيْهِ قَبْلَ الْبَيْعِ فَحِينَئِذٍ يَبْقَى لَهُ الْحَقُّ بَعْدَ الْبَيْعِ، وَإِلَّا فَلَا هَذَا هُوَ حُكْمُ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلْيَأْتُونَا عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ الْأَخْذَ لَا يَجِبُ لِلشَّفِيعِ إلَّا بَعْدَ الْبَيْعِ فَقَطْ، وَهَذَا مَا لَا يَجِدُونَهُ أَبَدًا فَظَهَرَ فَسَادُ قَوْلِهِمْ مِنْ كَثَبٍ.

yet become obligatory for him is invalid, for all rulings of the religion—pre-emption and others—only become obligatory when God Almighty ordains them through the tongue of His Messenger, peace and blessings be upon him. Whatever does not arrive through this channel is not part of the religion. The Messenger of God, peace and blessings be upon him, is the one who obligated the joint owner's pre-emptive right by presenting the pre-emption to him before the sale, nullified his right if he declined to exercise it at that time, and did not grant him any right after the sale whatsoever—unless the seller does not present it to him before the sale, in which case his right persists after the sale. Otherwise, no right exists. This is the ruling of God Almighty as conveyed by His Messenger, peace and blessings be upon him. Let them bring forth from him, peace and blessings be upon him, proof that the pre-emptor's right to claim does not become obligatory except solely after the sale. They will never find such evidence, thus their claim's invalidity is unequivocally evident.

وَلَيْتَ شِعْرِي أَيْنَ كَانَ الْحَنَفِيُّونَ عَنْ هَذَا النَّظَرِ حَيْثُ أَجَازُوا الزَّكَاةَ قَبْلَ الْحَوْلِ، نَعَمْ، وَقَبْلَ دُخُولِهِ، وَالْمَالِكِيُّونَ كَذَلِكَ قَبْلَ تَمَامِ الْحَوْلِ بِشَهْرَيْنِ، وَالشَّافِعِيُّونَ كَذَلِكَ قَبْلَ تَمَامِ الْحَوْلِ؟ وَأَيْنَ كَانَ الْمَالِكِيُّونَ عَنْ هَذَا النَّظَرِ حَيْثُ أَجَازُوا إذْنَ الْوَارِثِ لِلْمُوصِي فِي أَكْثَرَ مِنْ الثُّلُثِ وَالْمَالُ لَمْ يَجِبْ لَهُمْ بَعْدُ، وَلَا لَهُمْ فِيهِ حَقٌّ وَلَعَلَّهُ هُوَ يَرِثُهُمْ أَوْ لَعَلَّهُ سَيَحْدُثُ لَهُ وَلَدٌ يَحْجُبُهُمْ؟ وَأَيْنَ كَانُوا عَنْ هَذَا النَّظَرِ فِي إجَازَتِهِمْ الطَّلَاقَ قَبْلَ النِّكَاحِ، وَالْعِتْقَ قَبْلَ الْمِلْكِ، فَأُعْجِبُوا لِهَذِهِ التَّخَالِيطِ وَبِهِ يَقُولُ جَمَاعَةٌ مِنْ أَهْلِ الْعِلْمِ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَشْعَثَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِي الرَّجُلَيْنِ بَيْنَهُمَا دَارٌ أَوْ أَرْضٌ فَقَالَ أَحَدُهُمَا لِلْآخَرِ: أُرِيدُ أَنْ أَبِيعَ وَلَك الشُّفْعَةُ فَاشْتَرِ مِنِّي، فَقَالَ

I wish I knew where the Hanafis stood in this consideration when they permitted Zakāh before the ḥawl—indeed, even before its commencement—and the Malikis similarly allowed it two months before the ḥawl's completion, and the Shāfiʿīs likewise before its full completion? Where were the Malikis in this consideration when they permitted an heir to authorize the testator to bequeath beyond a third, though the wealth was not yet due to them nor did they hold any right to it—perhaps he might inherit them, or a child might be born to him who would exclude them? Where were they in this consideration when they validated divorce prior to marriage and emancipation before ownership? They marveled at these inconsistencies, and a group of scholars upholds this view, as narrated to us via ʿAbd al-Razzāq's chain: Sufyān al-Thawrī narrated to us from Ashʿath from al-Ḥakam ibn ʿUtaybah regarding two men co-owning a house or land. One said to the other, "I wish to sell, and you have the right of preemption—so buy from me." The other replied, "I have no need. I grant you permission to sell," so he sold it. Later, the claimant of preemption came and said, "The price has been set, and I hold the prior right." Al-Ḥakam ruled, "He has no claim once he permitted."

L25385–25386

لَهُ الْآخَرُ: لَا حَاجَةَ لِي بِهِ، قَدْ أَذِنْت لَك أَنْ تَبِيعَ، فَبَاعَ، ثُمَّ يَأْتِي طَالِبُ الشُّفْعَةِ فَيَقُولُ قَدْ قَامَ الثَّمَنُ وَأَنَا أَحَقُّ، قَالَ الْحَكَمُ: لَا شَيْءَ لَهُ إذَا أَذِنَ.

L25387 Sufyan said: "We adhere to this, and it is the view of Abī ʿUbayd, Isḥāq, and al-Ḥasan ibn Ḥayy."

قَالَ سُفْيَانُ: وَبِهِ نَأْخُذُ وَهُوَ قَوْلُ أَبِي عُبَيْدٍ، وَإِسْحَاقَ وَالْحَسَنِ بْنِ حَيٍّ.

L25388 One of the two opinions of Ahmad: also held by a group of Hadith scholars.

وَأَحَدُ قَوْلَيْ أَحْمَدَ: وَطَائِفَةٍ مِنْ أَصْحَابِ الْحَدِيثِ.

L25389 If someone argues: "This report has come via the chain of Abū al-Zubayr from Jābir, and it states: 'It is not permissible for him to sell?'" We reply: Abū al-Zubayr did not mention direct hearing [of this] from Jābir in the chain, and he confessed against himself that whatever he did not attribute to direct hearing was conveyed to him by an unnamed transmitter from Jābir.

فَإِنْ قَالَ قَائِلٌ: قَدْ جَاءَ هَذَا الْخَبَرُ مِنْ طَرِيقِ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ وَفِيهِ: لَا يَحِلُّ لَهُ أَنْ يَبِيعَ؟ قُلْنَا: لَمْ يَذْكُرْ فِيهِ أَبُو الزُّبَيْرِ سَمَاعًا مِنْ جَابِرٍ، وَهُوَ قَدْ اعْتَرَفَ عَلَى نَفْسِهِ بِأَنَّ مَا لَمْ يُذْكَرْ فِيهِ سَمَاعًا فَإِنَّهُ حَدَّثَهُ بِهِ مَنْ لَمْ يُسَمِّهِ عَنْ جَابِرٍ

L25390 Then, if it were authentic, the latter part of the narration would take precedence over the former, and it is impermissible to disregard any authentic ruling from the Messenger of Allah (peace and blessings be upon him).

ثُمَّ لَوْ صَحَّ لَكَانَ آخِرُ الْخَبَرِ حَاكِمًا عَلَى أَوَّلِهِ، وَلَا يَحِلُّ تَرْكُ شَيْءٍ، صَحَّ مِنْ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L25391–25393 And this is a report we have narrated through the chain of Isḥāq ibn Rāhawayh via ʿAbdullāh ibn Idrīs, Ibn Jurayj, Abū al-Zubayr, from Jābir: "The Messenger of Allah, may Allah bless him and grant him peace, ruled regarding the right of pre-emption in every undivided partnership—whether a residence or a garden. It is not lawful for one to sell until he informs his partner. If the partner wishes, he may take it, and if he wishes, he may leave it. If one sells without informing him, the partner has the greatest right to it." Abū Muḥammad said: He (peace be upon him) established that after an invalid sale, the exclusive right belongs solely to the pre-emption right holder. Thus, it becomes clear that the right to claim or forgo [the property] after the sale rests with the pre-emption right holder if consent was not obtained before the sale. If he voids it, the sale is nullified; if he ratifies it, it is then upheld. And success is from Allah alone, the Most High.[5]

وَهَذَا خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ إِسْحَاقَ بْنِ رَاهْوَيْهِ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ أَنَا ابْنُ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ فِي كُلِّ شَرِكَةٍ لَمْ تُقْسَمْ: رَبْعَةٍ، أَوْ حَائِطٍ، لَا يَحِلُّ لَهُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ، فَإِنْ شَاءَ أَخَذَ وَإِنْ شَاءَ تَرَكَ فَإِذَا بَاعَ وَلَمْ يُؤْذِنْهُ فَهُوَ أَحَقُّ بِهِ» قَالَ أَبُو مُحَمَّدٍ: فَإِنَّمَا جَعَلَهُ - عَلَيْهِ السَّلَامُ - بَعْدَ الْبَيْعِ الَّذِي لَا يَحِلُّ أَحَقَّ فَقَطْ، فَلَاحَ أَنَّ الْحَقَّ فِي الْأَخْذِ أَوْ التَّرْكِ بَعْدَ الْبَيْعِ إلَى الشَّفِيعِ إذَا لَمْ يُؤْذَنْ قَبْلَ الْبَيْعِ فَإِنْ أَبْطَلَهُ بَطَلَ وَإِنْ أَجَازَهُ فَحِينَئِذٍ جَازَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الشُّفْعَة فِي غَيْر الْبَيْع]

L25394 ## The Issue of Pre-emption in Cases Other than Sale

[5] **Hadith references (L25391):** Sahih Muslim 1608b; Mishkat al-Masabih 2962.

L25395 1596 - Issue: There is no pre-emption except in sale alone—not in dower, rent, gift, or anything else. This is the opinion of a group of the *Salaf*.

١٥٩٦ - مَسْأَلَةٌ: وَلَا شُفْعَةَ إِلَّا فِي الْبَيْعِ وَحْدَهُ، وَلَا شُفْعَةَ فِي صَدَاقٍ وَلَا فِي إِجَارَةٍ، وَلَا فِي هِبَةٍ، وَلَا غَيْرِ ذَلِكَ، وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ السَّلَفِ.

L25396 It was narrated to us via the chain of Saʿīd ibn Manṣūr: Hushaym narrated from Manṣūr ibn al-Muʿtamir, from al-Ḥasan, that he did not recognize the right of preemption in the dowry.

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ الْحَسَنِ أَنَّهُ كَانَ لَا يَرَى الشُّفْعَةَ فِي الصَّدَاقِ

L25397 From the chain of Muḥammad ibn al-Muthannā: ʿAbd al-Raḥmān ibn Mahdī reported from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, who said: "It reached me from al-Shaʿbī that he said: There is no right of preemption in a dower." This is the opinion of Abū Ḥanīfa, his companions, Abū Sulaymān, our companions, and al-Layth ibn Saʿd.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ قَالَ: بَلَغَنِي عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: لَا شُفْعَةَ فِي صَدَاقٍ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَاللَّيْثِ بْنِ سَعْدٍ.

L25398 Al-Ḥārith al-ʻUklī, Ibn Abī Laylā, Ibn Shubrumah, al-Ḥasan ibn Ḥayy, Mālik, and al-Shāfiʿī expressed opinions regarding the dower (ṣadāq) and pre-emption (shufʿah).

وَقَالَ الْحَارِثُ الْعُكْلِيُّ، وَابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَمَالِكٌ، وَالشَّافِعِيُّ فِي الصَّدَاقِ وَالشُّفْعَةِ.

L25399 Then they differed. Al-ʻUklī and Al-Shāfiʿī stated: The preemptor takes possession of the share at its equivalent dower value. Ibn Abī Laylā, Ibn Shubruma, Al-Ḥasan ibn Ḥayyin, and Mālik maintained: The preemptor claims the share at its market value. Mālik and Al-Shāfiʻī ruled that the preemptive right applies to leasing agreements.

ثُمَّ اخْتَلَفُوا فَقَالَ الْعُكْلِيُّ وَالشَّافِعِيُّ: يَأْخُذُ الشَّفِيعُ بِصَدَاقِ مِثْلِهَا، وَقَالَ ابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَالْحَسَنِ بْنِ حَيٍّ وَمَالِكٌ: يَأْخُذُهُ بِقِيمَةِ الشِّقْصِ وَأَوْجَبَ مَالِكٌ، وَالشَّافِعِيُّ: الشُّفْعَةَ فِي الْإِجَارَةِ.

L25400–25402 Abu Muhammad said: If it is asked: Why do you not enforce the obligation of pre-emption in all such cases by the general principle of the Messenger of Allah's statement - peace and blessings be upon him - and his ruling that pre-emption applies to all undivided properties? We answer: Your assertion is invalid, for "pre-emption" is not an ancient term but rather a legal term unknown to the Arabs in meaning before the Messenger of Allah - peace and blessings be upon him - just as they did not know the term "prayer," the term "obligatory charity," the term "fasting," the term "atonement," the term "sacrificial rites," or the term "prescribed penalty" - all of which are mentioned in... Matters of the religion, until the Messenger of Allah (peace

قَالَ أَبُو مُحَمَّدٍ: إنْ قِيلَ: فَهَلَّا أَخَذْتُمْ بِإِيجَابِ الشُّفْعَةِ فِي كُلِّ ذَلِكَ بِعُمُومِ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَضَائِهِ بِالشُّفْعَةِ فِي كُلِّ مَا لَمْ يُقْسَمْ؟ قُلْنَا: لَمْ يَجُزْ مَا تَقُولُونَ، لِأَنَّ " الشُّفْعَةَ " لَيْسَتْ لَفْظَةً قَدِيمَةً إنَّمَا هِيَ لَفْظَةٌ شَرِيعِيَّةٌ لَمْ تَعْرِفْ الْعَرَبُ مَعْنَاهَا قَبْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا لَمْ تَعْرِفْ لَفْظَةَ " الصَّلَاةِ " وَلَفْظَةَ " الزَّكَاةِ " وَلَفْظَةَ " الصِّيَامِ " وَلَفْظَةَ " الْكَفَّارَةِ " وَلَفْظَةَ " النُّسُكِ " وَلَفْظَةَ " الْحَدِّ " الْوَارِدَ كُلُّ ذَلِكَ فِي الدِّينِ، حَتَّى بَيَّنَهَا لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا لَمْ

تَعْرِفْهُ الْعَرَبُ قَطُّ: مِنْ صِفَةِ الرُّكُوعِ، وَالسُّجُودِ، وَالْقِرَاءَةِ، وَمَا يُعْطَى مِنْ الْأَمْوَالِ، وَمَا يُمْتَنَعُ مِنْهُ فِي رَمَضَانَ، وَغَيْرِ ذَلِكَ، وَكَذَلِكَ " الشُّفْعَةُ " مِنْ هَذَا الْبَابِ لَا يَدْرِي أَحَدٌ مَا الْمُرَادُ بِهَا حَتَّى بَيَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ بَيَّنَ أَنَّ ذَلِكَ فِي الْبَيْعِ، وَلَمْ يَذْكُرْهَا غَيْرَ ذَلِكَ، فَلَمْ يَجُزْ أَنْ يُتَعَدَّى بِهَا بَيَانُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى الظُّنُونِ الْكَاذِبَةِ.

and blessings of Allah be upon him) clarified them for us through that which the Arabs had never known: the manner of bowing, prostration, recitation, what is to be given from assets, what is prohibited regarding it during Ramadan, and other matters. Similarly, "pre-emption" (shufʿah) belongs to this category – no one knew its intended meaning until the Messenger of Allah (peace and blessings of Allah be upon him) clarified it. He explicitly stated that this applies to sales and did not mention it in any other context. Thus, it is impermissible for the clarification of the Messenger of Allah (peace and blessings of Allah be upon him) to be overstepped through it into baseless assumptions.

فَإِنْ قَالُوا: قِسْنَا الصَّدَاقَ، وَالْإِجَارَةَ عَلَى الْبَيْعِ؟ قُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّ الْقِيَاسَ كُلَّهُ بَاطِلٌ.

If they say: "We have analogized the dowry and lease to the sale?" We say: "This is invalid; because all analogical reasoning (qiyas) is invalid."

ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْفَسَادِ؛ لِأَنَّ الصَّدَاقَ، وَالْإِجَارَةَ لَا يُشْبِهَانِ الْبَيْعَ فِي شَيْءٍ مِنْ الْأَشْيَاءِ، وَإِنَّمَا الْقِيَاسُ عِنْدَ الْقَائِلِينَ بِهِ أَنْ يُحْكَمَ لِلشَّيْءِ بِحُكْمِ نَظِيرِهِ، وَالْبَيْعُ تَمْلِيكٌ لِلْمَبِيعِ، وَلَيْسَتْ الْإِجَارَةُ تَمْلِيكًا لِلْمُؤَاجِرِ، إنَّمَا هِيَ إبَاحَةٌ لِلْمَنَافِعِ الْحَادِثَةِ الظَّاهِرَةِ، وَلَا الصَّدَاقُ تَمْلِيكًا لِلرَّقَبَةِ، وَلَا يَحِلُّ بَيْعُ مَا لَمْ يُخْلَقْ، وَالْإِجَارَةُ إنَّمَا هِيَ فِيمَا لَمْ يُخْلَقْ مِنْ الْمَنَافِعِ، وَالنِّكَاحُ يَجُوزُ بِلَا ذِكْرِ صَدَاقٍ، وَلَا يَجُوزُ الْبَيْعُ بِغَيْرِ ذِكْرِ ثَمَنٍ.

Then, if it were deemed valid, this would amount to clear corruption in his reasoning, for neither dower nor lease resemble sale in any respect. The analogy posited by its proponents requires assigning a ruling to something based on its equivalent. While sale entails full ownership transfer of the sold item, lease does not grant ownership rights to the lessor—it merely permits the use of newly occurring and manifest benefits. Similarly, dower does not confer ownership of the person, nor is it permissible to sell uncreated entities. Lease applies specifically to benefits not yet created, marriage remains valid without stipulating a dower, and sale cannot be valid without specifying a price.

ثُمَّ اخْتِلَافُهُمْ فِي ذَلِكَ أَبِصَدَاقِ مِثْلِهَا أَمْ بِقِيمَةِ الشِّقْصِ؟ بَيَانٌ أَنَّهُ رَأْيٌ فَاسِدٌ مُتَعَارِضٌ لَيْسَ أَحَدُ الْقَوْلَيْنِ أَوْلَى مِنْ الْآخَرِ.

Furthermore, their disagreement concerning this matter—whether it is based on the dowry of her equivalent or the value of the share—is a clarification that it is an invalid and contradictory opinion, where neither of the two opinions is more preferable than the other.

وَلَيْتَ شِعْرِي أَيْنَ كَانُوا عَنْ هَذَا الْقِيَاسِ فِي أَنْ يَقِيسُوا عَلَى الْأَرْضِينَ فِي " الشُّفْعَةِ " سَائِرَ الْأَمْوَالِ؟ وَهَذَا أَصَحُّ فِي الْقِيَاسِ لَوْ صَحَّ الْقِيَاسُ يَوْمًا.

I wish I knew: Where were they concerning this analogy—why did they not extend analogy in preemption to all properties? This would be more correct in analogy—if analogy could ever be valid.

If they cite the narration attributed to the Prophet—peace and blessings

be upon him—"Whoever purchases a debt owed by a man, the creditor has priority," this is invalid because it is transmitted via an unnamed narrator from 'Umar ibn 'Abd al-'Azīz, from the Prophet—peace and blessings be upon him. Furthermore, even if it were authentic, they could not benefit from it, as it also applies to sale transactions. Thus, it serves as proof against them regarding their rejection of the right of pre-emption in matters other than real estate.

فَإِنْ ذَكَرُوا الْخَبَرَ الَّذِي فِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ ابْتَاعَ دَيْنًا عَلَى رَجُلٍ فَصَاحِبُ الدَّيْنِ أَوْلَى» فَهَذَا بَاطِلٌ؛ لِأَنَّهُ عَمَّنْ لَمْ يُسَمَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ لَوْ صَحَّ لَمْ يَنْتَفِعُوا بِهِ؛ لِأَنَّهُ فِي الْبَيْعِ أَيْضًا، فَهُوَ حُجَّةٌ عَلَيْهِمْ فِي مَنْعِهِمْ مِنْ الشُّفْعَةِ فِيمَا عَدَا الْعَقَارِ.

L25408

A legal issue where he sold the property without having offered his partner the right of pre-emption until he sold it.

[مَسْأَلَة لَمْ يعرض عَلَى شَرِيكه الْأَخذ قَبْل الْبَيْع حَتَّى بَاعَ]

L25409

1597 - Issue: If someone does not offer their co-owner the opportunity to purchase before selling, thereby establishing the right of pre-emption for the co-owner through that sale, the co-owner retains their pre-emptive right whether they knew of the sale or not, whether they were present or absent, and whether witnesses were appointed for it or not. This right persists until they exercise it whenever they wish—even if it is after eighty years or more—or until they verbally relinquish it, at which point it is nullified. Their right cannot be invalidated by an offer made to them by anyone other than their co-owner or the latter's messenger.

١٥٩٧ - مَسْأَلَةٌ: وَمَنْ لَمْ يَعْرِضْ عَلَى شَرِيكِهِ الْأَخْذَ قَبْلَ الْبَيْعِ حَتَّى بَاعَ فَوَجَبَتْ الشُّفْعَةُ بِذَلِكَ لِلشَّرِيكِ، فَالشَّرِيكُ عَلَى شُفْعَتِهِ عَلِمَ بِالْبَيْعِ أَوْ لَمْ يَعْلَمْ، حَضَرَهُ أَوْ لَمْ يَحْضُرْهُ، أَشْهَدَ عَلَيْهِ أَوْ لَمْ يُشْهِدْ حَتَّى يَأْخُذَ مَتَى شَاءَ، وَلَوْ بَعْدَ ثَمَانِينَ سَنَةً أَوْ أَكْثَرَ، أَوْ يَلْفِظُ بِالتَّرْكِ فَيَسْقُطُ حِينَئِذٍ، وَلَا يَسْقُطُ حَقُّهُ بِعَرْضِ غَيْرِ شَرِيكِهِ أَوْ رَسُولِهِ عَلَيْهِ.

L25410–25412

The attendees differed regarding this. Abū Ḥanīfah said: Whenever he became aware of the sale and recognized that he possessed the right. Regarding pre-emption: If one asserts the right within the time or formally attests through witnesses that he is taking his pre-emption, he retains the right perpetually. If he remains silent thereafter for years without attesting nor claiming it, his right becomes invalidated.

وَاخْتَلَفَ الْحَاضِرُونَ فِي هَذَا فَقَالَ أَبُو حَنِيفَةَ: مَتَى عَلِمَ بِالْبَيْعِ، وَعَلِمَ أَنَّ لَهُ الشُّفْعَةَ، فَإِنْ طَلَبَ فِي الْوَقْتِ أَوْ أَشْهَدَ عَلَى أَنَّهُ آخِذٌ بِشُفْعَتِهِ فَلَهُ الشُّفْعَةُ أَبَدًا، وَإِنْ سَكَتَ بَعْدَ ذَلِكَ سِنِينَ فَإِنْ لَمْ يُشْهِدْ، وَلَا طَلَبَ فَقَدْ بَطَلَ حَقُّهُ.

L25413

It is reported from Abū Ḥanīfah regarding the co-owner: that he is granted a period of three days. If he claims pre-emption within them, it is ruled in his favor. But if the three days pass without him claiming pre-emption, his right becomes void and no pre-emption remains for him.

وَرُوِيَ عَنْ أَبِي حَنِيفَةَ فِي الْحَاضِرِ: أَنَّ لَهُ أَجَلَ ثَلَاثَةِ أَيَّامٍ، فَإِنْ طَلَبَ الشُّفْعَةَ فِيهَا قُضِيَ لَهُ، وَإِنْ مَرَّتْ الثَّلَاثُ وَلَمْ يَطْلُبْ الشُّفْعَةَ بَطَلَ حَقُّهُ وَلَا شُفْعَةَ لَهُ.

L25414

His companion Muhammad ibn al-Hasan similarly held this view, except he stated: No benefit is derived from attesting that one is demanding the right of pre-emption unless this testimony occurs in the presence of the party sub-

وَقَالَ صَاحِبُهُ مُحَمَّدُ بْنُ الْحَسَنِ كَذَلِكَ، إِلَّا أَنَّهُ قَالَ: لَا يَنْتَفِعُ بِالْإِشْهَادِ عَلَى أَنَّهُ طَالِبٌ بِالشُّفْعَةِ إِلَّا بِأَنْ يَكُونَ إِشْهَادُهُ بِذَلِكَ بِحَضْرَةِ الْمَطْلُوبِ بِالشُّفْعَةِ، أَوْ بِحَضْرَةِ الشِّقْصِ الْمَطْلُوبِ وَقَالَ أَيْضًا: فَإِنْ سَكَتَ بَعْدَ الْإِشْهَادِ الْمَذْكُورِ شَهْرًا وَاحِدًا لَا يَطْلُبُ بَطَلَتْ شُفْعَتُهُ.

ject to the pre-emption claim or in the presence of the share being claimed. He also said: If he remains silent for one month after the aforementioned testimony without demanding it, his right of pre-emption becomes invalidated.

وَقَالَ بَعْضُ كِبَارِ نُظَّارِ مُقَلِّدِي أَبِي حَنِيفَةَ: لِلشَّفِيعِ مِنْ أَمَدِ الْخِيَارِ إِنْ سَكَتَ وَلَمْ يُشْهِدْ وَلَا طَلَبَ مَا لِلْمَرْأَةِ الْمُخَيَّرَةِ.

L25415 Some senior theoreticians among the adherents of Abū Ḥanīfah stated: The preemptor derives a period from the option term if he remains silent, neither having it attested nor asserting his right, akin to what applies to the woman granted the option.

وَبِقَوْلِ أَبِي حَنِيفَةَ يَقُولُ الْبَتِّيُّ، وَابْنُ شُبْرُمَةَ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ، وَالْأَوْزَاعِيُّ، إِلَّا أَنَّ عُبَيْدَ اللَّهِ قَالَ: لَا يُمْهَلُ إِلَّا سَاعَةً وَاحِدَةً.

L25416 Al-Battī, Ibn Shubrumah, Ubayd Allāh ibn al-Ḥasan, and al-Awzāʿī cite the opinion of Abū Ḥanīfah. However, Ubayd Allāh added: “No delay is permitted except for one hour.”

وَقَالَ مَالِكٌ ثَلَاثَةَ أَقْوَالٍ: مَرَّةً قَالَ: إِنْ بَلَغَهُ الْبَيْعُ أَنَّ لَهُ الْقِيَامَ بِالشُّفْعَةِ فَسَكَتَ، وَلَمْ يَطْلُبْ وَلَا أَشْهَدَ، فَهُوَ عَلَى حَقِّهِ، وَلَهُ أَنْ يَطْلُبَ مَا لَمْ يَطُلْ الْأَمَدُ جِدًّا دُونَ تَحْدِيدٍ فِي ذَلِكَ.

L25417 Mālik held three opinions. On one occasion, he said: If the sale is brought to his knowledge that he has the right to preemption, and he remains silent—neither claiming nor having it witnessed—he remains entitled to his right. He may still demand it as long as the period has not become excessively long, though no specific duration is defined.

وَمَرَّةً قَالَ: إِنْ قَامَ مَا بَيْنَهُ وَبَيْنَ خَمْسَةِ أَعْوَامٍ فَلَهُ ذَلِكَ وَإِنْ لَمْ يَقُمْ حَتَّى مَضَتْ خَمْسَةُ أَعْوَامٍ فَقَدْ بَطَلَ حَقُّهُ.

L25418 And on one occasion, he said: If he establishes [his claim] within five years, he is entitled to that; but if he does not do so until five years have passed, his right lapses.

وَقَالَ الشَّافِعِيُّ: إِنْ تَرَكَ الطَّلَبَ ثَلَاثَةَ أَيَّامٍ فَأَقَلَّ كَانَ لَهُ أَنْ يَطْلُبَ، فَإِنْ لَمْ يَطْلُبْ حَتَّى مَضَتْ لَهُ ثَلَاثَةُ أَيَّامٍ فَقَدْ بَطَلَ حَقُّهُ وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ

L25419 Al-Shafi’i said: If he ceases to pursue the claim for three days or less, he has the right to pursue it. However, if he does not pursue it until three days have passed in his case, his right is nullified, and this is also the view of Sufyan al-Thawri.

ثُمَّ رَجَعَ الشَّافِعِيُّ فَقَالَ: إِنْ تَرَكَ الطَّلَبَ دُونَ عُذْرٍ مَانِعٍ مَا قَلَّ أَوْ كَثُرَ فَقَدْ بَطَلَ حَقُّهُ، وَإِنْ تَرَكَهُ لِعُذْرٍ فَهُوَ عَلَى حَقِّهِ طَالَ الْأَمَدُ أَوْ قَصُرَ وَهُوَ قَوْلُ مَعْمَرٍ

L25420 Then Al-Shafi’i reverted and said: If one abandons pursuit [of the claim] without a preventing excuse - whether the period is short or long - his right becomes invalidated. If he abandons it due to an excuse, he retains his right whether the period is long or short. This is the opinion of Ma’mar.

L25421 And it was narrated from Shuraih, and its authenticity is established through

Al-Shaʿbi.

وَرُوِيَ عَنْ شُرَيْحٍ وَصَحَّ عَنْ الشَّعْبِيِّ

L25422 It was narrated from al-Shaʿbī that his term is one day.

وَرُوِيَ عَنْ الشَّعْبِيِّ أَنَّ لَهُ أَجَلَ يَوْمٍ وَاحِدٍ.

L25423–25425 Among those who said the same as our statement is what was transmitted to us through the narration route of Muḥammad ibn al-Muthannā—I, ʿAbd al-Raḥmān ibn Mahdī. From Sufyan al-Thawri, from Abu Ishaq al-Shaybani, from Humayd al-Azraq: that Umar ibn Abd al-Aziz ruled in favor of the right of preemption after thirteen to nineteen years.

وَمِمَّنْ قَالَ مِثْلَ قَوْلِنَا مَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ حُمَيْدٍ الْأَزْرَقِ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى بِالشُّفْعَةِ بَعْدَ بِضْعَ عَشْرَةَ سَنَةً.

L25426 Abu Muhammad said: As for Malik's statements as they stand, they are utterly invalid because they either specify without proof or generalize without specification. Thus, no one knows when one's right lapses or when it does not lapse. In time, nothing is inherently long except in relation to what is shorter. A day is long for one being tormented within it, yet brief when compared to an hour; and a hundred years is short relative to the world's lifespan. Moreover, these statements were never reported from anyone before him, nor are they supported by the Qur'an, nor the Sunnah, nor even a weak narration, nor the sayings of the predecessors, nor analogical reasoning, nor any opinion with a valid basis.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا أَقْوَالُ مَالِكٍ كَمَا هِيَ، فَهِيَ فِي غَايَةِ الْفَسَادِ لِأَنَّهَا إمَّا تَحْدِيدٌ بِلَا بُرْهَانٍ، وَإِمَّا إجْمَالٌ بِلَا تَحْدِيدٍ، فَلَا يَدْرِي أَحَدٌ مَتَى يَسْقُطُ حَقُّهُ وَلَا مَتَى لَا يَسْقُطُ حَقُّهُ، وَلَيْسَ فِي الزَّمَانِ طَوِيلٌ إلَّا بِإِضَافَةٍ إلَى مَا هُوَ أَقْصَرُ مِنْهُ، فَالْيَوْمُ طَوِيلٌ لِمَنْ عُذِّبَ فِيهِ، وَبِالْإِضَافَةِ إلَى سَاعَةٍ وَمِائَةِ عَامٍ قَلِيلٌ بِالْإِضَافَةِ إلَى عُمْرِ الدُّنْيَا مَعَ أَنَّهَا أَقْوَالٌ لَمْ تُعْهَدْ عَنْ أَحَدٍ قَبْلَهُ وَلَا يَعْضُدُهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ سَلَفٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

L25427 Similarly, the opinion of Sufyān, the first of the two opinions of al-Shāfiʿī, and the opinion of al-Shaʿbī concerning the specification of a day—these amount to two utterly invalid opinions, for these two constitute a specification without evidence. Reverting this matter to the transmitted reports granting a choice of three days is more appropriate than reverting it to the choice of the waiting period—wherein one may revoke the divorce if desired or finalize it, the waiting period being three months. All of these are confused notions.

وَكَذَلِكَ قَوْلُ سُفْيَانَ، وَالْأَوَّلُ مِنْ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلُ الشَّعْبِيِّ فِي تَحْدِيدِ يَوْمٍ، فَهُمَا قَوْلَانِ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُمَا تَحْدِيدٌ بِلَا بُرْهَانٍ، وَلَيْسَ رَدُّ ذَلِكَ إلَى مَا جَاءَ مِنْ الْأَخْبَارِ بِخِيَارِ ثَلَاثَةِ أَيَّامٍ أَوْلَى مِنْ أَنْ يُرَدَّ إلَى خِيَارِ الْعِدَّةِ إنْ شَاءَ ارْتَجَعَ وَإِنْ شَاءَ أَمْضَى الطَّلَاقَ وَهُوَ ثَلَاثَةُ أَشْهُرٍ، وَهَذِهِ كُلُّهَا تَخَالِيطُ.

L25428 Likewise, the statement of Muḥammad ibn al-Ḥasan and his restriction to a month, and that witnessing is only valid in the presence of the pre-emptor or the sold portion—this is consummate confusion and an arbitrary imposition in religious matters through illegitimate means.

وَكَذَلِكَ قَوْلُ مُحَمَّدِ بْنِ الْحَسَنِ وَتَحْدِيدُهُ بِشَهْرٍ، وَبِأَنْ لَا يَكُونَ الْإِشْهَادُ إلَّا بِحَضْرَةِ الْمَطْلُوبِ بِالشُّفْعَةِ، أَوْ الشِّقْصِ الْمَبِيعِ فَهَذَا تَخْلِيطٌ نَاهِيك بِهِ، وَتَحَكُّمٌ فِي الدِّينِ بِالْبَاطِلِ.

L25429 As for the statement of those who claim, “He has a duration akin to that of the optionee,” it is the most absurd utterance ever heard, for it constitutes arguing falsehood with falsehood and folly with folly. Never has a more foolish statement than theirs concerning the ruling on the optionee been heard.

وَأَمَّا قَوْلُ مَنْ قَالَ: " لَهُ مِنْ الْأَمَدِ مَا لِلْمُخَيَّرَةِ " فَأَسْخَفُ قَوْلٍ سُمِعَ بِهِ، لِأَنَّهُ احْتِجَاجٌ لِلْبَاطِلِ بِالْبَاطِلِ، وَلِلْهَوَسِ بِالْهَوَسِ، وَمَا سُمِعَ بِأَحْمَقَ مِنْ أَقْوَالِهِمْ فِي حُكْمِ الْمُخَيَّرَةِ.

L25430 As for the position of Abū Ḥanīfah, Al-Awzāʿī, Al-Battī, and those who agreed with them, their stipulation in this matter through attestation followed by silence—if he so wills—is an assertion without evidence. Whatever corresponds to this is invalid.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَالْأَوْزَاعِيُّ، وَالْبَتِّيِّ، وَمَنْ وَافَقَهُمْ فَإِنَّ تَحْدِيدَهُمْ فِي ذَلِكَ بِالْإِشْهَادِ، ثُمَّ السُّكُوتِ إنْ شَاءَ قَوْلٌ بِلَا بُرْهَانٍ لَهُ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L25431 We know that the partner’s right becomes obligatory after the sale if the seller did not inform him before the sale. What need does he have for formal testimony, or how can they compel him to it? Invalidating his right due to this omission is a grave error and a nullification of a right that God Almighty has obligated for him. Formal testimony neither strengthens it nor does its omission weaken it. Thus, Abu Hanifah’s opinion is invalid, and only one of the two opinions—either Al-Shafiʿi’s or Al-Shaʿbi’s—remains. We examined their argument and found no proof at all, except that some deceivers cited a fabricated, false statement attributed to the Messenger of God—peace and blessings be upon him: “Pre-emption is like untying a hobble, and pre-emption belongs to the one who seizes it promptly.”

وَقَدْ عَلِمْنَا أَنَّ حَقَّ الشَّرِيكِ وَاجِبٌ بَعْدَ الْبَيْعِ إذَا لَمْ يُؤْذِنْهُ الْبَائِعُ قَبْلَ الْبَيْعِ، فَأَيُّ حَاجَةٍ بِهِ إلَى الْإِشْهَادِ، أَوْ مِنْ أَيْنَ أَلْزَمُوهُ إيَّاهُ وَأَسْقَطُوا حَقَّهُ بِتَرْكِهِ هَذَا خَطَأٌ فَاحِشٌ، وَإِسْقَاطٌ لِحَقٍّ قَدْ وَجَبَ بِإِيجَابِ اللَّهِ تَعَالَى لَهُ، فَمَا يُقَوِّيهِ الْإِشْهَادُ وَلَا يُضَعِّفُهُ تَرْكُهُ فَبَطَلَ قَوْلُ أَبِي حَنِيفَةَ، وَلَمْ يَبْقَ إلَّا أَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَالشَّعْبِيِّ فَنَظَرْنَا فِيهِ فَلَمْ نَجِدْ لَهُمْ حُجَّةً أَصْلًا إلَّا أَنَّ بَعْضَ الْمُمَوِّهِينَ نَزَعَ بِقَوْلٍ مَكْذُوبٍ مَوْضُوعٍ مُضَافٍ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الشُّفْعَةُ كَنَشْطَةِ عِقَالٍ وَالشُّفْعَةُ لِمَنْ وَاثَبَهَا» .

L25432–25433 This is a report we have narrated through the chain of Al-Bazzār, who said: Muḥammad ibn al-Muthannā narrated from Muḥammad ibn al-Ḥārith, from Muḥammad ibn ʿAbd al-Raḥmān ibn al-Baylamānī, from his father, from ʿAbd Allāh ibn ʿUmar, from the Prophet—peace and blessings of Allah be upon him—who said: “There is no preemption right for an absentee or a minor. Preemption is as immediate as untying a restraint. Whoever mutilates his slave, that slave is emancipated and he becomes a freedman of Allah and His Messenger. People are bound by their contractual stipulations, provided they conform to divine law.”

وَهَذَا خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ قَالَ: أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُحَمَّدُ بْنُ الْحَارِثِ أَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْبَيْلَمَانِيِّ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا شُفْعَةَ لِغَائِبٍ وَلَا لِصَغِيرٍ وَالشُّفْعَةُ كَحَلِّ الْعِقَالِ مَنْ مَثَّلَ بِمَمْلُوكِهِ فَهُوَ حُرٌّ وَهُوَ مَوْلَى اللَّهِ وَرَسُولِهِ وَالنَّاسُ عَلَى شُرُوطِهِمْ مَا وَافَقُوا الْحَقَّ.»

L25434–25435 Abu Muhammad said: Could there be anything more astonishing than their contradiction of all that is in this report while citing parts of it as evidence—so that some of it is true and some false? Ugh! Such disgraceful religions!

قَالَ أَبُو مُحَمَّدٍ: أَفَيَكُونُ أَعْجَبُ مِنْ مُخَالَفَتِهِمْ كُلَّ مَا فِي هَذَا الْخَبَرِ وَاحْتِجَاجِهِمْ بِبَعْضِهِ، فَبَعْضُهُ حَقٌّ وَبَعْضُهُ بَاطِلٌ؟ أُفٍّ لِهَذِهِ الْأَدْيَانِ.

L25436 As for “preemption belongs to the one who vigorously claims it,” we cannot presently cite its chain of transmission, except that it is a baseless report. Ibn al-Baylamānī is weak and rejected, and there is consensus to abandon his narrations.

وَأَمَّا «الشُّفْعَةُ لِمَنْ وَاثَبَهَا» ، فَمَا يَحْضُرُنَا الْآنَ ذِكْرُ إِسْنَادِهَا، إِلَّا أَنَّهُ جُمْلَةً لَا خَيْرَ فِيهِ، وَابْنُ الْبَيْلَمَانِيِّ ضَعِيفٌ مُطْرَحٌ، وَمُتَّفَقٌ عَلَى تَرْكِهِ.

L25437 As for the expression “for the one who acts promptly upon it,” this is an invalid phrase. It is unlawful to attribute such wording to the Messenger of Allah—may Allah bless him and grant him peace—because the statement “preemption belongs to the one who acts promptly upon it” necessitates that the claim must coincide with the sale, not follow it. For prompt mutual action is an act involving two actors, thus the claim must align with the sale, not occur afterward, since delay in promptly exercising [the right] is not termed mutual prompt action.

وَأَمَّا لَفْظُ «لِمَنْ وَاثَبَهَا» فَهُوَ لَفْظٌ فَاسِدٌ، لَا يَحِلُّ أَنْ يُضَافَ مِثْلُهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَنَّ قَوْلَ الْقَائِلِ: الشُّفْعَةُ لِمَنْ وَاثَبَهَا: مُوجِبٌ أَنْ يَلْزَمَهُ الطَّلَبُ مَعَ الْبَيْعِ لَا بَعْدَهُ؛ لِأَنَّ الْمُوَاثَبَةَ فِعْلٌ مِنْ فَاعِلَيْنِ، فَوَجَبَ أَنْ يَكُونَ طَلَبُهُ مَعَ الْبَيْعِ لَا بَعْدَهُ؛ لِأَنَّ التَّأَنِّي فِي الْوَثْبِ لَا يُسَمَّى مُوَاثَبَةً.

L25438 As for his statement, “Pre-emption is like untying a knot,” its meaning is evident, and they have no argument in this matter. For untying the knot means releasing the knot, and similarly pre-emption involves releasing ownership from the sold property and obligating it exclusively to another.

وَأَمَّا قَوْلُهُ «الشُّفْعَةُ كَنَشْطَةِ عِقَالٍ» فَمَعْنَاهُ ظَاهِرٌ، وَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ نَشْطَ الْعِقَالِ: هُوَ حَلُّ الْعِقَالِ، وَكَذَلِكَ الشُّفْعَةُ؛ لِأَنَّهَا حَلُّ مِلْكٍ عَنْ الْمَبِيعِ وَإِيجَابُهُ لِغَيْرِهِ فَقَطْ.

L25439 Ali said: Allah the Exalted has established the right of pre-emption as obligatory and decreed through the declaration of His Messenger—the truthful one, peace be upon him—that the pre-emptor has a greater right, provided no prior permission was granted before the sale. Every right established by the judgment of Allah the Exalted and His Messenger—peace be upon him—never ceases except through an explicit scriptural text stipulating its revocation. If the buyer conditions the transaction upon the pre-emptor’s choice to take or leave, the buyer is bound to one of the two options. The judge must compel the buyer to fulfill one choice, for the pre-emptor has been granted his rightful claim and must not neglect it, as this constitutes waste of property. The pre-emptor must either claim the property or relinquish it to another; otherwise, he acts deceitfully and fails to advise his brother who acts equitably toward him. Success is from Allah the Exalted.

قَالَ عَلِيٌّ: وَقَدْ جَعَلَ اللَّهُ تَعَالَى حَقَّ الشَّفِيعِ وَاجِبًا وَجَعَلَهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - الْمُصَدَّقِ أَحَقَّ، إِذَا لَمْ يُؤْذَنْ قَبْلَ الْبَيْعِ، فَكُلُّ حَقٍّ ثَبَتَ بِحُكْمِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَسْقُطُ أَبَدًا إِلَّا بِنَصٍّ وَارِدٍ بِسُقُوطِهِ، فَإِنْ وَقَفَهُ الْمُشْتَرِي عَلَى أَنْ يَأْخُذَ أَوْ يَتْرُكَ لَزِمَهُ أَحَدُ الْأَمْرَيْنِ، وَوَجَبَ عَلَى الْحَاكِمِ إِجْبَارُهُ عَلَى أَحَدِ الْأَمْرَيْنِ لِأَنَّهُ قَدْ أُعْطِيَ حَقَّهُ فَلَا يَنْبَغِي لَهُ تَضْيِيعُهُ، فَهُوَ إِضَاعَةٌ لِلْمَالِ، وَلَا بُدَّ لَهُ مِنْ أَخْذِهِ، أَوْ أَنْ يُبِيحَهُ لِغَيْرِهِ، وَإِلَّا فَهُوَ غَاشٌّ غَيْرُ نَاصِحٍ لِأَخِيهِ الْمُنْصِفِ لَهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25440 As for one whose right is denied and not granted, waiving his claim does not invalidate his right even if he remains silent his entire life. There is no disagreement regarding one whose property is wrongfully seized, or who

وَأَمَّا مَنْ مُنِعَ حَقُّهُ وَلَمْ يُعْطَهُ، فَلَيْسَ سُقُوطُهُ عَنْ طَلَبِهِ قَطْعًا لِحَقِّهِ وَلَوْ سَكَتَ عُمْرَهُ كُلَّهُ وَلَا يَخْتَلِفُونَ فِيمَنْ غُصِبَ مَالًا، أَوْ كَانَ لَهُ دَيْنٌ أَوْ مِيرَاثٌ، أَوْ حَقٌّ مَا، فَإِنَّ

holds a debt, inheritance right, or any rightful claim: relinquishing the claim does not nullify the right, which endures perpetually. Why then have they singled out the right of preemption from the rest of the rights with these illogical exceptions?

L25441 **Issue: When the Preemptor Claims His Right**

L25442–25444 1598. Issue: If the pre-emptor takes his right, the buyer is obligated to return what was utilized, and every action executed therein—whether a gift, charity, manumission, endowment, construction, manumission agreement, or division—is entirely invalid. The sale is revoked and annulled permanently, and its debris must be demolished—there is no alternative. This applies especially to the disputing obstructive party, for he is an unjust usurper, an encroacher who denies another's right without doubt. If the co-owner relinquishes preemption, the entire transaction becomes valid and binding irrevocably, and the usufruct belongs to the purchaser. This applies if notifying the co-owner was feasible for him or for the seller at the time of purchase. If notifying the co-owner was impossible for the seller due to some excuse or lack of means, preemption remains available to the co-owner whenever he claims it. In that case, the purchaser is not obligated to return the usufruct. However, any alterations made to the property as described are annulled, and their construction must be demolished without exception.

L25445 The proof of this lies in his statement—peace and blessings be upon him—which we cited earlier: "It is not permissible for one to sell until he notifies his partner." Thus, a partner's sale before notifying his partner must conform to one of three scenarios, with no fourth possibility: either the sale is invalid even if the preemptor validates it by relinquishing his right of preemption—and this is invalid, for if that were the case, he would be obligated to return the proceeds unconditionally, whether the preemptor exercises the right or relinquishes it. However, the report necessitates otherwise, affirming that the partner holds the preemptive right and that relinquishing it is permissible. If the sale were invalid, it would necessitate renewing another contract, which is erroneous. Alternatively, the sale could be valid until the preemptor nullifies it by exercising preemption—but this is invalidated by his statement—

سُقُوطَهُ عَنْ طَلَبِهِ لَا يُبْطِلُهُ، وَأَنَّهُ عَلَى حَقِّهِ أَبَدًا فَمِنْ أَيْنَ خَصُّوا حَقَّ الشُّفْعَةِ مِنْ سَائِرِ الْحُقُوقِ بِهَذِهِ التَّخَالِيطِ؟

[مَسْأَلَة إِذَا أَخَذَ الشَّفِيع حَقّه]

١٥٩٨ - مَسْأَلَةٌ: فَإِنْ أَخَذَ الشَّفِيعُ حَقَّهُ لَزِمَ الْمُشْتَرِي رَدُّ مَا اسْتَغَلَّ وَكَانَ كُلُّ مَا أَنْفَذَ فِيهِ مِنْ هِبَةٍ، أَوْ صَدَقَةٍ أَوْ عِتْقٍ، أَوْ حَبْسٍ، أَوْ بُنْيَانٍ، أَوْ مُكَاتَبَةٍ، أَوْ مُقَاسَمَةٍ، فَهُوَ كُلُّهُ بَاطِلٌ مَرْدُودٌ مَفْسُوخٌ أَبَدًا، وَتُقْلَعُ أَنْقَاضُهُ لَيْسَ لَهُ غَيْرُ ذَلِكَ، لَا سِيَّمَا الْمُخَاصِمُ الْمَانِعُ، فَإِنَّ هَذَا غَاصِبٌ ظَالِمٌ مُتَعَدٍّ، مَانِعٌ حَقَّ غَيْرِهِ بِلَا مِرْيَةٍ، فَإِنْ تَرَكَ الشَّرِيكُ الْأَخْذَ بِالشُّفْعَةِ نَفَذَ كُلُّ ذَلِكَ وَصَحَّ، وَلَمْ يَرُدَّ شَيْئًا مِنْهُ، وَكَانَتْ الْغَلَّةُ لَهُ، هَذَا إِذَا كَانَ إِيذَانُهُ الشَّرِيكَ مُمْكِنًا لَهُ، أَوْ لِلْبَائِعِ حِينَ اشْتَرَى، فَإِنْ لَمْ يَكُنْ إِيذَانُ الشَّرِيكِ مُمْكِنًا لِلْبَائِعِ لِعُذْرٍ مَا، أَوْ لِتَعَذُّرِ طَرِيقٍ، فَإِنَّ الشُّفْعَةَ لِلشَّرِيكِ مَتَى طَلَبَهَا، وَلَيْسَ عَلَى الْمُشْتَرِي رَدُّ الْغَلَّةِ حِينَئِذٍ، لَكِنَّ كُلَّ مَا أَحْدَثَ فِيهِ مِمَّا ذَكَرْنَا فَمَفْسُوخٌ وَيُقْلَعُ بُنْيَانُهُ وَلَا بُدَّ.

بُرْهَانُ ذَلِكَ: قَوْلُهُ - عَلَيْهِ السَّلَامُ - الَّذِي أَوْرَدْنَا قَبْلُ «لَا يَصْلُحُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ» فَلَا يَخْلُو بَيْعُ الشَّرِيكِ قَبْلَ أَنْ يُؤْذِنَ شَرِيكَهُ مِنْ أَحَدِ أَوْجُهٍ ثَلَاثَةٍ، لَا رَابِعَ لَهَا: إِمَّا أَنْ يَكُونَ بَاطِلًا وَإِنْ صَحَّحَهُ الشَّفِيعُ بِتَرْكِهِ الشُّفْعَةَ وَهَذَا بَاطِلٌ؛ لِأَنَّهُ لَوْ كَانَ ذَلِكَ لَوَجَبَ عَلَيْهِ رَدُّ الْغَلَّةِ عَلَى كُلِّ حَالٍ أَخَذَ الشَّفِيعُ أَوْ تَرَكَ، وَالْخَبَرُ يُوجِبُ غَيْرَ هَذَا، بَلْ يُوجِبُ أَنَّ الشَّرِيكَ أَحَقُّ، وَأَنَّهُ إِنْ تَرَكَ فَلَهُ ذَلِكَ، فَلَوْ كَانَ الْبَيْعُ بَاطِلًا لَاحْتَاجَ إِلَى تَجْدِيدِ عَقْدٍ آخَرَ وَهَذَا خَطَأٌ، أَوْ يَكُونُ صَحِيحًا حَتَّى يُبْطِلَهُ الشَّفِيعُ بِالْأَخْذِ

peace and blessings be upon him—"It is not permissible," for it is contradictory to deem valid what he—peace and blessings be upon him—declared impermissible. Or the sale could be contingent: if the preemptor exercises preemption, the sale is rendered invalid, and if he relinquishes his right, the sale is validated. This third scenario is correct, as the first two are invalidated by his statement—peace and blessings be upon him—"The partner holds the preemptive right."

L25446 Therefore, it is confirmed that the buyer retains a right after the shufʿah holder's right.

L25447 Thus, what we said is correct.

L25448 And success is from Allah, the Most High.

L25449 We ask those who differ in this matter: When does the preemptor acquire the prior right—at the moment he takes possession or when the sale is retracted? If they respond, "From the time he took possession," we assert: This is invalid, for it contradicts the ruling of the Messenger of Allah—peace be upon him—who established his prior right from the time of the sale. Since his prior right exists from the time of the sale, his taking possession constitutes claiming a right that was established at the time of the sale.

L25450 If the seller has not notified the partner, then Allah, the Exalted, says: "Allah does not charge a soul except [according to] its capacity" [Al-Baqarah: 286].[6]

L25451 The Messenger of Allah—peace and blessings be upon him—said: "When I command you with a matter, do from it as much as you are able."

L25452–25453 Thus, it is undoubtedly established that whoever is unable to notify his partner and incapable of doing so, his right lapses and selling becomes permissible for him. This is because the statement of the Prophet (peace be upon him) — "It is not valid to sell until one notifies his partner" — necessarily applies only to those capable of notification. Therefore, the ruling regarding one who cannot notify his partner is exempted from this textual ruling. Such

[6] **Qur'an references (L25450):** Qur'an 2:286 (Al-Baqarah).

وَهَذَا بَاطِلٌ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «لَا يَصْلُحُ» فَمِنْ الْبَاطِلِ أَنْ يَكُونَ صَحِيحًا مَا أَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ لَا يَصْلُحُ، أَوْ يَكُونَ مَوْقُوفًا، فَإِنْ أَخَذَ الشَّفِيعُ بِالشُّفْعَةِ عُلِمَ أَنَّ الْبَيْعَ وَقَعَ بَاطِلًا، وَإِنْ تَرَكَ حَقَّهُ عُلِمَ أَنَّ الْبَيْعَ وَقَعَ صَحِيحًا وَهَذَا هُوَ الصَّحِيحُ لِبُطْلَانِ الْوَجْهَيْنِ الْأَوَّلَيْنِ لِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «الشَّرِيكُ أَحَقُّ»

فَصَحَّ أَنَّ لِلْمُشْتَرِي حَقًّا بَعْدَ حَقِّ الشَّفِيعِ.

فَصَحَّ مَا قُلْنَاهُ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَنَسْأَلُ مَنْ خَالَفَ فِي هَذَا: مَتَى كَانَ الشَّفِيعُ أَحَقَّ، أَحِينَ أَخَذَ أَمْ حِينَ رَدَّ الْبَيْعَ؟ فَإِنْ قَالُوا: مِنْ حِينِ أَخَذَ؟ قُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّهُ خِلَافُ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ جَعَلَهُ أَحَقَّ حِينَ الْبَيْعِ، فَإِذْ هُوَ أَحَقُّ حِينَ الْبَيْعِ فَإِذَا أَخَذَ فَقَدْ أَخَذَ حَقَّهُ مِنْ حِينِ الْبَيْعِ.

وَأَمَّا إذَا لَمْ يَكُنْ لِلْبَائِعِ إعْلَامُ الشَّرِيكِ، فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

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

فَصَحَّ بِلَا شَكٍّ أَنَّ مَنْ لَمْ يَقْدِرْ عَلَى إيذَانِ الشَّرِيكِ، وَلَمْ يَسْتَطِعْهُ فَقَدْ سَقَطَ حَقُّهُ وَحَلَّ لَهُ الْبَيْعُ؛ لِأَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ -: «لَا يَصْلُحُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَ شَرِيكَهُ» يَقْتَضِي ضَرُورَةً مَنْ يَقْدِرُ عَلَى إيذَانِهِ، فَخَرَجَ عَنْ هَذَا النَّصِّ حُكْمُ مَنْ لَمْ يَقْدِرْ عَلَى إيذَانِهِ فَهُوَ قَادِرٌ عَلَى الْبَيْعِ، وَعَاجِزٌ عَنْ الْإِيذَانِ فَمُبَاحٌ لَهُ مَا قَدَرَ عَلَيْهِ، وَسَاقِطٌ عَنْهُ مَا

لَيْسَ فِي وُسْعِهِ فَهَذَا إذَا طَلَبَ الشَّفِيعُ وَأَخَذَ شُفْعَتَهُ، فَحِينَئِذٍ بَطَلَ الْعَقْدُ، وَكَانَ قَبْلَ ذَلِكَ صَحِيحًا، فَإِذَا هُوَ كَذَلِكَ فَالْغَلَّةُ لَهُ، لِأَنَّهَا غَلَّةُ مَالِهِ.

a person may proceed with the sale despite being unable to notify, as he is only obligated within his capacity, and what is beyond his capacity is waived. In such a case, if the preemptor claims and exercises his right of preemption, the contract is thereby invalidated, though it was valid prior to that. Thus, the profits [accrued during the contract's validity] belong to him, as they are the yield of his property.

وَأَمَّا الْبِنَاءُ وَسَائِرُ مَا أَحْدَثَ فَقَدْ أَبْطَلَهُ حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ الشَّفِيعَ أَحَقُّ مِنْهُ فَإِنَّمَا أَنْفَذَ حُكْمَهُ فِيمَا غَيْرُهُ أَحَقُّ بِهِ مِنْهُ فَبَطَلَ أَنْ يَنْفُذَ حُكْمُهُ فِيمَا جَعَلَهُ تَعَالَى حَقًّا لِغَيْرِهِ لِقَوْلِهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤]

L25454 As for the improvements and all that was introduced, the judgment of the Messenger of Allah—peace be upon him—invalidated them by affirming that the pre-emptor holds a greater right to them than the one who made the additions. He enforced his judgment only in matters where others had a greater right than the claimant. Thus, it became invalid for his judgment to be implemented regarding what Allah the Exalted has designated as a right for others, as He states: {No soul bears the burden of another} [Al-An'ām 6:164].[7]

وَاخْتَلَفَ النَّاسُ فِي هَذَا: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ، وَابْنِ أَبِي لَيْلَى، قَالَا جَمِيعًا: إذَا بَنَى ثُمَّ جَاءَ الشَّفِيعُ بَعْدَهُ فَالْقِيمَةُ.

L25455 People have differed regarding this matter: It has been narrated to us through 'Abd al-Razzāq — Sufyān al-Thawrī — Abū Isḥāq al-Shaybānī — al-Sha'bī and Ibn Abī Laylā, both of whom reported together: If someone builds [on the property] and the pre-emptor comes afterward, then the assessed value is owed.

وَقَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ: يَقْلَعُ بِنَاءَهُ وَبِهِ يَأْخُذُ سُفْيَانُ الثَّوْرِيُّ وَأَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ وَبِقَوْلِ الشَّعْبِيِّ يَأْخُذُ مَالِكٌ، وَالْبَتِّيُّ، وَالْأَوْزَاعِيُّ، وَالشَّافِعِيُّ، وَأَحْمَدَ

L25456 Hammad ibn Abi Sulayman said: He must demolish his construction. This position is adopted by Sufyan al-Thawri, Abu Hanifah, Abu Sulayman, and their followers, and in accordance with al-Sha'bi's opinion, it is adopted by Malik, al-Batti, al-Awza'i, al-Shafi'i, and Ahmad.

قَالَ أَبُو مُحَمَّدٍ: إلْزَامُهُ قَلْعَ بِنَائِهِ وَاجِبٌ بِمَا ذَكَرْنَا، وَبِأَنَّهُ لَا يَجُوزُ لَهُ إبْقَاءُ أَنْقَاضِهِ فِي سَاحَةِ غَيْرِهِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ».

L25457 Abu Muhammad said: Compelling him to demolish his structure is obligatory due to what we have mentioned, and because it is impermissible for him to leave his debris in another's courtyard, in accordance with the saying of the Messenger of Allah - may Allah's peace and blessings be upon him -: "Your blood and your wealth are inviolable to you."

وَلَا يَجُوزُ إلْزَامُهُ غَرَامَةً فِي ابْتِيَاعِ مَا لَا يُرِيدُ ابْتِيَاعَهُ مِنْ أَنْقَاضِ بِنَاءِ الْمَخْرَجِ مِنْ الِابْتِيَاعِ لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ نَصٌّ، فَهُوَ ظُلْمٌ مُجَرَّدٌ.

L25458 It is impermissible to impose a fine on someone for purchasing what they do not wish to purchase through the debris of constructing an exit from the purchase, as no textual evidence obligates this, for it is pure injustice.

[7] **Qur'an references (L25454):** Qur'an 6:164 (Al-An'am).

وَلَا فَرْقَ بَيْنَ إِلْزَامِهِ غَرَامَةً لِلْمَخْرَجِ عَنْ الْمِلْكِ وَبَيْنَ إبَاحَةِ أَنْقَاضِ الْمَخْرَجِ لِلشَّفِيعِ وَكُلُّ ذَلِكَ أَكْلُ مَالٍ مُحَرَّمٍ بِالْبَاطِلِ، بَلْ كُلُّ ذِي حَقٍّ أَوْلَى بِحَقِّهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25459 There is no distinction between obliging someone to pay a penalty for property removed from ownership and permitting the residual rights of the relinquished property to the preemptor. All such cases constitute unlawful consumption of wealth through wrongful means. Rather, every right-holder is more entitled to their due right, and success is granted by Allah, the Exalted.

قَالَ عَلِيٌّ أَوْجَبَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْخِيَارَ فِي الْبَيْعِ فِي خَمْسَةِ مَوَاضِعَ: الْمُصَرَّاةُ، وَمَنْ بَايَعَ وَقَالَ: لَا خِلَابَةَ فَهَذَانِ خِيَارُهُمَا ثَلَاثَةُ أَيَّامٍ بِلَيَالِيهَا فَقَطْ.

L25460 Ali said: Allah the Exalted, through His Messenger—peace and blessings be upon him—has ordained the option of choice in sales for five situations, two of which are: the tied-udder practice (al-muṣarrāh), and one who sells while stating, "There is no deception." For these two, the option lasts exactly three days and nights.

وَمَنْ تُلُقِّيَتْ سِلْعَتُهُ فَهَذَا لَهُ الْخِيَارُ إذَا دَخَلَ السُّوقَ، لَا قَبْلَ ذَلِكَ.

L25461–25462 The one who has taken delivery of their goods holds the right of option upon entering the marketplace, but not prior to that.

وَمَنْ وَجَدَ عَيْبًا لَمْ يُبَيَّنْ لَهُ بِهِ، وَلَا شَرَطَ السَّلَامَةَ مِنْهُ.

L25463 Whoever finds a defect that was not disclosed to him, nor stipulated warranty of soundness from it.

وَالشَّرِيكُ يَبِيعُ مَعَ غَيْرِ شَرِيكِهِ وَلَا يُؤْذِنُهُ.

L25464 A partner may sell jointly with someone other than their partner without seeking their permission.

فَهَؤُلَاءِ لَهُمْ الْخِيَارُ بِلَا تَحْدِيدِ مُدَّةٍ إلَّا حَتَّى يُقِرُّوا بِتَرْكِ حَقِّهِمْ: فَوَجَدْنَا مُشْتَرِي الْمُصَرَّاةِ، وَمَنْ بَايَعَ عَلَى أَنْ لَا خِلَابَةَ: يَنْقَضِي خِيَارُهُمَا بِتَمَامِ الثَّلَاثَةِ الْأَيَّامِ وَلَا يَكُونُ لَهُمَا خِيَارٌ بَعْدَهَا، وَيَلْزَمُهُمَا الشِّرَاءُ، فَصَحَّ يَقِينًا أَنَّ الْعَقْدَ وَقَعَ صَحِيحًا، إذْ لَوْ وَقَعَ فَاسِدًا لَمْ يَلْزَمْ أَصْلًا إلَّا بِتَجْدِيدِ عَقْدٍ، فَإِذْ قَدْ صَحَّ هَذَا بِمَا ذَكَرْنَا، وَأَنَّهُ لَوْ وَقَعَ فَاسِدًا لَمْ يُخَيَّرْ فِي إمْضَائِهِ أَوْ فِي رَدِّهِ، بَلْ كَانَ يَكُونُ بَاطِلًا لَا خِيَارَ لِأَحَدٍ فِي تَصْحِيحِهِ، فَقَدْ صَحَّ أَنَّهُ وَقَعَ صَحِيحًا، ثُمَّ جَعَلَ تَعَالَى لِلْمُشْتَرِي رَدَّهُ إنْ شَاءَ.

L25465 So these individuals retain the option without time restriction until they affirm relinquishing their right. Thus, we observe that the buyer of an animal with tied udders (muṣarrāh) and one who contracts under the stipulation of no fraudulent misrepresentation (khilābah): the option period for both parties concludes after three full days, after which neither party retains the option and the purchase becomes binding. This definitively confirms the contract's validity, for had it been invalid, it would not be binding without renewal. Since our reasoning establishes this – and since an invalid contract would permit neither ratification nor rejection, being void without recourse to validation – it is thereby proven valid. The Exalted then ordained the buyer's right to annul it at their discretion.

فَصَحَّ أَنَّ الْغَلَّةَ لَهُ رَدَّ أَوْ أَخَذَ لِأَنَّهَا حَدَثَتْ فِي مَالِهِ.

L25466 Thus, it is valid that the usufruct belongs to him - he must either return it or retain it, since it originated from his property.

L25467 We found those who intercepted the goods and purchased them, even if they

were prohibited from that act. Verily, Allah the Exalted did not grant the seller an option except after his entry into the market, nor did He grant him any option prior to that. Thus, it is confirmed that the sale remains valid, even though intercepting is prohibited, for He did not prohibit purchasing itself—because interception differs from purchasing: they are two distinct acts. He prohibited one of them and did not prohibit the other. However, the seller is granted the option to revoke or confirm the sale. Had it been inherently invalid, it would have been wholly nullified.

وَوَجَدْنَا مَنْ تَلَقَّى السِّلَعَ فَابْتَاعَ، وَإِنْ كَانَ مَنْهِيًّا عَنْ ذَلِكَ فَإِنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ لِلْبَائِعِ خِيَارًا إِلَّا بَعْدَ دُخُولِهِ إِلَى السُّوقِ، وَلَمْ يَجْعَلْ لَهُ قَبْلَ ذَلِكَ خِيَارًا، فَصَحَّ أَنَّ الْبَيْعَ صَحِيحٌ، وَإِنْ كَانَ مَنْهِيًّا عَنْ التَّلَقِّي، وَلَمْ يَنْهَ عَنْ الِابْتِيَاعِ؛ لِأَنَّ التَّلَقِّيَ غَيْرُ الِابْتِيَاعِ فَهُمَا فِعْلَانِ، أَحَدُهُمَا غَيْرُ الْآخَرِ نَهَى عَنْ أَحَدِهِمَا وَلَمْ يَنْهَ عَنْ الْآخَرِ، لَكِنْ جُعِلَ لِلْبَائِعِ خِيَارٌ فِي رَدِّهِ أَوْ إمْضَائِهِ وَلَوْ وَقَعَ فَاسِدًا لَبَطَلَ جُمْلَةً.

L25468 Therefore, this establishes that the effective cause pertains to the buyer regarding the seller's rescission or ratification of the sale.

فَوَجَبَ بِذَلِكَ أَنَّ الْعِلَّةَ لِلْمُشْتَرِي فِي رَدِّ الْبَائِعِ الْبَيْعَ، أَوْ إجَازَتِهِ.

L25469 We have determined that whoever discovers a defect not disclosed to them nor stipulated freedom from it also has the option to proceed with the sale or rescind it. Thus we concluded that the sale was valid, for had it been invalid, ratification would not have been permissible. It was also established that the usufruct belongs to them, whether they return [the item] or take it.

وَوَجَدْنَا مَنْ وَجَدَ عَيْبًا لَمْ يُبَيَّنْ لَهُ بِهِ، وَلَا شَرَطَ السَّلَامَةَ مِنْهُ، لَهُ الْخِيَارُ أَيْضًا فِي إمْضَاءِ الْبَيْعِ أَوْ رَدِّهِ، فَعَلِمْنَا أَنَّ الْبَيْعَ وَقَعَ صَحِيحًا، إذْ لَوْ وَقَعَ فَاسِدًا لَمْ يَجُزْ إمْضَاؤُهُ، فَوَجَبَ أَيْضًا أَنَّ الْغَلَّةَ لَهُ، رَدَّ أَوْ أَخَذَ.

L25470 The matter of pre-emption (shuf'ah) remains, and we found it differing from all the sales we have mentioned, because no textual prohibition has come regarding the aforementioned sales. Rather, the text has come permitting them as we have previously presented, and the evidence became clear that they occurred as valid transactions.

وَبَقِيَ أَمْرُ الشَّفِيعِ فَوَجَدْنَاهُ بِخِلَافِ كُلِّ مَا ذَكَرْنَاهُ مِنْ الْبُيُوعِ؛ لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِالْمَنْعِ مِنْ الْبُيُوعِ الْمَذْكُورَةِ، بَلْ جَاءَ النَّصُّ بِإِجَازَتِهَا كَمَا قَدَّمْنَا، وَبَانَ الدَّلِيلُ بِأَنَّهَا وَقَعَتْ صَحِيحَةً.

L25471–25473 We maintain that one who can notify his partner must do so, as the text states that it is impermissible for him to sell until he informs him. Were this wording alone to stand, it would necessitate the invalidity of the contract in all cases. However, since the Prophet — peace and blessings be upon him — decreed the partner to have the prior right and permitted him to take or leave, it is necessary that this condition is observed as we mentioned. If he takes it... We have ascertained that he did not ratify that contract, but rather invalidated it. Thus, it is established that it was concluded defectively, obligating him to return the usufruct. If he refrained from taking it, he has ratified it, thereby establishing that it was concluded validly.

وَوَجَدْنَا مَنْ يُمْكِنُهُ إيذَانُ شَرِيكِهِ فَقَدْ جَاءَ النَّصُّ بِأَنَّهُ لَا يَصْلُحُ لَهُ أَنْ يَبِيعَ حَتَّى يُؤْذِنَهُ، فَلَوْ لَمْ يَكُنْ إلَّا هَذَا اللَّفْظُ وَحْدَهُ لَوَجَبَ بُطْلَانُ الْعَقْدِ بِكُلِّ حَالٍ، لَكِنْ لَمَّا جَعَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الشَّرِيكَ أَحَقَّ، وَأَبَاحَ لَهُ الْأَخْذَ أَوْ التَّرْكَ: وَجَبَ أَنَّهُ مُرَاعًى كَمَا ذَكَرْنَا، فَإِنْ أَخَذَ فَقَدْ عَلِمْنَا أَنَّهُ لَمْ يُمْضِ ذَلِكَ الْعَقْدَ، بَلْ أَبْطَلَهُ، فَصَحَّ أَنَّهُ انْعَقَدَ فَاسِدًا فَلَزِمَهُ رَدُّ الْغَلَّةِ، وَإِنْ تَرَكَ الْأَخْذَ فَقَدْ أَجَازَهُ، فَصَحَّ أَنَّهُ انْعَقَدَ جَائِزًا.

L25474 As for one who is unable to notify [the partner], the text does not state that

the sale is invalid, since Allah has permitted trade, but the partner has the choice to take or leave. If he takes, the contract is nullified at that point—not before. Thus, the usufruct belongs to the purchaser in all circumstances, and with Allah, the Exalted, is success.

A Question Regarding Those Who Have the Right to Pre-emption

1599 - Issue: The right of pre-emption is mandatory for the Bedouin, the resident outside the town, the absentee, the minor upon reaching adulthood, the insane person upon regaining sanity, and the dhimmi, based on the generality of his statement—peace be upon him—"His partner is more entitled to it." Some of the early scholars have said: There is no right of pre-emption.

Al-Sha'bi said: There is no right of pre-emption for one who does not reside in the town, nor does it apply to the *dhimmi*.

Ahmad ibn Hanbal said: There is no right of pre-emption for a dhimmi.

Al-Nakha'ī said: "There is no shuf'ah (preemption right) for an absent person." Al-Ḥārith al-'Uklī and 'Uthmān al-Battī also affirmed this, stating: "Except for the absent close relative."

Ibn Abi Layla said: There is no pre-emption for a minor, and we do not know of any valid evidence at all for those who prohibit this. And with Allah, the Exalted, is success. If the guardian of a minor or mentally incapacitated person abandons exercising pre-emption, then if this abandonment was in their best interest, the decision becomes binding upon them, because he acted with the sincere counsel required of them. But if the abandonment was not in their best interest, it does not bind them, and they retain the right to pre-emption indefinitely, for he engaged in what he was prohibited from - deceit toward them.

The issue regarding selling an undivided share in exchange for movable property or real estate.

وَأَمَّا مَنْ لَمْ يُمْكِنْهُ الْإِيذَانُ فَلَمْ يَأْتِ النَّصُّ فِيهِ بِأَنَّهُ لَا يَصْلُحُ، وَقَدْ أَحَلَّ اللَّهُ الْبَيْعَ، إلَّا أَنَّ لِلشَّرِيكِ الْأَخْذَ أَوْ التَّرْكَ، فَإِنْ أَخَذَ فَحِينَئِذٍ بَطَلَ الْعَقْدُ، لَا قَبْلَ ذَلِكَ، فَالْغَلَّةُ لِلْمُشْتَرِي هَاهُنَا عَلَى كُلِّ حَالٍ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ مِنْ تجب لَهُ الشُّفْعَةَ]

١٥٩٩ - مَسْأَلَةٌ: وَالشُّفْعَةُ وَاجِبَةٌ لِلْبَدْوِيِّ، وَلِلسَّاكِنِ فِي غَيْرِ الْمِصْرِ، وَلِلْغَائِبِ، وَلِلصَّغِيرِ إذَا كَبُرَ، وَلِلْمَجْنُونِ إذَا أَفَاقَ، وَلِلذِّمِّيِّ بِعُمُومِ قَوْلِهِ - عَلَيْهِ السَّلَامُ -: «فَشَرِيكُهُ أَحَقُّ بِهِ» وَقَدْ قَالَ قَوْمٌ مِنْ السَّلَفِ: لَا شُفْعَةَ.

قَالَ الشَّعْبِيُّ: لَا شُفْعَةَ لِمَنْ لَا يَسْكُنُ الْمِصْرَ، وَلَا لِلذِّمِّيِّ.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: لَا شُفْعَةَ لِذِمِّيٍّ.

وَقَالَ النَّخَعِيُّ: لَا شُفْعَةَ لِغَائِبٍ، وَقَالَهُ أَيْضًا الْحَارِثُ الْعُكْلِيُّ، وَعُثْمَانُ الْبَتِّيُّ، قَالَا: إلَّا الْقَرِيبَ الْغَيْبَةِ.

وَقَالَ ابْنُ أَبِي لَيْلَى: لَا شُفْعَةَ لِصَغِيرٍ وَمَا نَعْلَمُ لِمَنْ مَنَعَ مِنْ ذَلِكَ حُجَّةً أَصْلًا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، فَإِنْ تَرَكَ وَلِيُّ الصَّغِيرِ، أَوْ الْمَجْنُونِ الْأَخْذَ بِالشُّفْعَةِ فَإِنْ كَانَ ذَلِكَ نَظَرًا لَهُمَا لَزِمَهُمَا، لِأَنَّهُ فَعَلَ مَا أُمِرَ بِهِ مِنْ النَّصِيحَةِ لَهُمَا، وَإِنْ كَانَ التَّرْكُ لَيْسَ نَظَرًا لَهُمَا لَمْ يَلْزَمْهُمَا، وَلَهُمَا الْأَخْذُ أَبَدًا، لِأَنَّهُ فَعَلَ مَا نُهِيَ عَنْهُ مِنْ غِشِّهِمَا

[مَسْأَلَةَ بَيْعِ الشِّقْصِ بِعَرْضٍ أَوْ بعقار]

L25482 1600. Issue: If a share is sold in exchange for chattel or real estate, the preemptor may only claim it by offering equivalent real estate or equivalent chattel. If the obligated party is entirely incapable of this, they may choose either to be liable for the value of the chattel or real estate, or to surrender the share while remaining obligated to provide equivalent real estate or chattel whenever they are able to provide it. This is because the sale was concluded exclusively for that specific chattel or real estate, and the co-owner may not claim the share except by what the seller agreed to - whether it was presented to him before the sale or he took it after the sale. There is no disagreement among scholars on this matter, for it is impermissible to compel the seller to accept anything other than what he willingly approved. And success is attained through Allah, the Exalted.

L25483–25485 If he is unable to do so, it becomes obligatory for him to provide chattels or immovable property as a substitute due to his inability to fulfill it. Allah says: And the sacred months are [a time for] equitable retaliation. He may retaliate with compensation equivalent to the sanctity of the property owed to him. And with Allah, the Exalted, is all success.[8]

The issue of selling a share for a deferred payment.

L25486

L25487 Issue: If someone sells their share for a price with a deferred term, the preemptor has the superior right to claim it for that price with the same deferred term.

L25488 Malik said: If he is solvent, he is to take the share at the agreed price for the specified term. Likewise, if he is insolvent, then a solvent person is to guarantee it; otherwise, there is no obligation.

L25489 Ash-Shāfiʿī and Abū Ḥanīfah said: [The creditor] may only take it as immediate payment. If [the debtor] refuses, he is told: Wait. When the term arrives, he may collect it at that time.

L25490 Ali said: They argued by asserting that the seller did not accept the guarantee

١٦٠٠ - مَسْأَلَةٌ: فَإِنْ بَاعَ الشِّقْصَ بِعَرَضٍ، أَوْ بِعَقَارٍ لَمْ يَجُزْ لِلشَّفِيعِ أَخْذُهُ إِلَّا بِمِثْلِ ذَلِكَ الْعَقَارِ، أَوْ مِثْلِ ذَلِكَ الْعَرَضِ، فَإِنْ لَمْ يَقْدِرْ عَلَى ذَلِكَ أَصْلًا فَالْمَطْلُوبُ مُخَيَّرٌ بَيْنَ أَنْ يَلْزَمَهُ قِيمَةُ الْعَرَضِ أَوْ الْعَقَارِ، وَبَيْنَ أَنْ يُسَلِّمَ إلَيْهِ الشِّقْصَ وَيَلْزَمَهُ مِثْلُ ذَلِكَ الْعَقَارِ، أَوْ مِثْلُ ذَلِكَ الْعَرَضِ مَتَى قَدَرَ عَلَيْهِ؛ لِأَنَّ الْبَيْعَ لَمْ يَقَعْ إلَّا بِذَلِكَ الْعَرَضِ أَوْ ذَلِكَ الْعَقَارِ، وَلَيْسَ لِلشَّرِيكِ أَخْذُ الشِّقْصِ إلَّا بِمَا رَضِيَ بِهِ الْبَائِعُ سَوَاءٌ عَرَضَهُ عَلَيْهِ قَبْلَ الْبَيْعِ أَوْ أَخَذَهُ بَعْدَ الْبَيْعِ، هَذَا مَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ؛ فَلَا يَجُوزُ إجْبَارُ الْبَائِعِ عَلَى أَخْذِ غَيْرِ مَا طَابَتْ بِهِ نَفْسُهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ لَمْ يَقْدِرْ عَلَيْهِ فَقَدْ تَعَيَّنَ لَهُ قِبَلَهُ عَرَضٌ أَوْ عَقَارٌ عَجَزَ عَنْهُ، وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَلَهُ الِاقْتِصَاصُ بِالْقِيمَةِ الَّتِي هِيَ مِثْلُ حُرْمَةِ الْمَالِ الَّذِي لَهُ عِنْدَهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع الشِّقْص بِثَمَنٍ إلَى أَجَل]

١٦٠١ - مَسْأَلَةٌ: وَمَنْ بَاعَ شِقْصَهُ بِثَمَنٍ إلَى أَجَلٍ فَالشَّفِيعُ أَحَقُّ بِهِ بِذَلِكَ الثَّمَنِ إلَى ذَلِكَ الْأَجَلِ.

وَقَالَ مَالِكٌ: إنْ كَانَ مَلِيًّا أَخَذَ الشِّقْصَ بِذَلِكَ الثَّمَنِ إلَى ذَلِكَ الْأَجَلِ، وَكَذَلِكَ إنْ كَانَ مُعْسِرًا فَضَمِنَهُ مَلِيءٌ وَإِلَّا فَلَا.

وَقَالَ الشَّافِعِيُّ: وَأَبُو حَنِيفَةَ: لَا يَأْخُذُهُ إلَّا بِالنَّقْدِ، فَإِنْ أَبَى قِيلَ لَهُ: اصْبِرْ، فَإِذَا جَاءَ الْأَجَلُ فَخُذْهَا حِينَئِذٍ.

قَالَ عَلِيٌّ: احْتَجُّوا بِأَنْ قَالُوا: إنَّ الْبَائِعَ لَمْ يَرْضَ ذِمَّةَ الشَّرِيكِ وَقَدْ يُعْسِرُ قَبْلَ الْأَجَلِ.

[8] **Qur'an references (L25483):** Qur'an 2:194 (Al-Baqarah).

of the partner, and he might become insolvent before the due date.

L25491 Abū Muḥammad said: This is baseless, and we say to them: If he did not accept the partner's contractual obligation, then what? From what basis does the obligation arise to take into account his approval and disapproval? Similarly, he did not accept dealings with him, and the seller from whom he purchased may become insolvent – for provisions are apportioned. The statement of Allah's Messenger – peace and blessings be upon him – "The partner has the greater right" obligates him to take what he sells in its entirety and prioritizes him over the buyer regarding what he has purchased. Success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّد: هَذَا لَا شَيْءَ، وَنَقُولُ لَهُمْ: إنْ كَانَ لَمْ يَرْضَ ذِمَّةَ الشَّرِيكِ فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ مُرَاعَاةُ رِضَاهُ وَسَخَطِه؟ وَكَذَلِكَ أَيْضًا لَمْ يَرْضَ مُعَامَلَتَهُ، وَقَدْ يُعْسِرُ الَّذِي بَاعَ مِنْهُ أَيْضًا، فَالْأَرْزَاقُ مَقْسُومَةٌ، وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَالشَّرِيكُ أَحَقُّ» مُوجِبٌ لَهُ الْأَخْذُ بِمَا يَبِيعُ بِهِ جُمْلَةً وَتَفْضِيلُهُ عَلَى الْمُشْتَرِي فِيمَا اشْتَرَى فَقَطْ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: A partner sold his share after his female partner sold her share, before he notified her.

[مَسْأَلَة بَاعَ الشَّرِيك حِصَّته بَعْد بَيْع شريكة قَبْل أَنْ يُؤْذِنهُ]

L25492

L25493 1602. Issue: If a partner, after his co-partner's sale and before being notified of it, sells his share from that selling partner, to the buyer who purchased from him, or to a third party – whether the third party knew of the preemption right or was unaware, and whether the preemptor knew of the sale or not – the preemption right remains valid for him as it was. This is because it is a right Allah the Exalted has decreed for him; thus, neither the sale of his property nor anything else at all can invalidate it. And with Allah, the Exalted, is success.

١٦٠٢ - مَسْأَلَةٌ: وَلَوْ أَنَّ الشَّرِيكَ بَعْدَ بَيْعِ شَرِيكِهِ قَبْلَ أَنْ يُؤْذِنَهُ بَاعَ أَيْضًا حِصَّتَهُ مِنْ ذَلِكَ الشَّرِيكِ الْبَائِعِ، أَوْ مِنْ الْمُشْتَرِي مِنْهُ، أَوْ مِنْ أَجْنَبِيٍّ عَلِمَ بِأَنَّ لَهُ الشُّفْعَةَ أَوْ لَمْ يَعْلَمْ عَلِمَ بِالْبَيْعِ، أَوْ لَمْ يَعْلَمْ فَالشُّفْعَةُ لَهُ كَمَا كَانَتْ؛ لِأَنَّهُ حَقٌّ قَدْ أَوْجَبَهُ اللَّهُ تَعَالَى لَهُ فَلَا يُسْقِطُهُ عَنْهُ بَيْعُ مَالِهِ، وَلَا غَيْرُ ذَلِكَ أَصْلًا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A legal case in which the right of pre-emption has been established for him, though he possesses no property.

[مَسْأَلَة وَجَبَتْ لَهُ الشُّفْعَة وَلَا مَال لَهُ]

L25494

L25495 1603 - Issue: If someone is entitled to the right of first refusal but has absolutely no wealth, he must not be overlooked. Rather, that share is sold to his liability. If he fulfills the payment, the matter is settled. If a surplus remains, it is delivered to him. If he fails to pay, he is held liable for the remaining amount and given time to become solvent. This is because he has a vested interest in that obligatory share.

١٦٠٣ - مَسْأَلَةٌ: وَمَنْ وَجَبَتْ لَهُ الشُّفْعَةُ وَلَا مَالَ لَهُ لَمْ يَجِبْ أَنْ يُهْمَلَ، لَكِنْ يُبَاعُ ذَلِكَ الشِّقْصُ عَلَيْهِ، فَإِنْ وَفَّى بِالثَّمَنِ فَذَلِكَ، وَإِنْ فَضَلَتْ فَضْلَةٌ دُفِعَتْ إلَيْهِ، وَإِنْ لَمْ يَفِ اُتُّبِعَ بِالْبَاقِي، وَأُنْظِرَ فِيهِ أَنْ يُوسِرَ، وَذَلِكَ لِأَنَّهُ ذُو مَالٍ بِذَلِكَ الشِّقْصِ الْوَاجِبِ لَهُ.

L25496 Whoever possesses wealth is not deemed insolvent. Rather, his wealth must be sold for the debt he owes. If it does not suffice, then, for the remaining

debt, he is then considered insolvent, and then a reprieve until his circumstances improve, as Allah the Exalted has commanded.

وَمَنْ كَانَ لَهُ مَالٌ فَلَيْسَ ذَا عُسْرَةٍ، لَكِنْ يُبَاعُ مَالُهُ فِي الدَّيْنِ الَّذِي عَلَيْهِ، فَإِنْ لَمْ يَفِ فَهُوَ حِينَئِذٍ ذُو عُسْرَةٍ بِالْبَاقِي فَنَظِرَةٌ إِلَى مَيْسَرَةٍ حِينَئِذٍ كَمَا أَمَرَ اللَّهُ تَعَالَى.

L25497–25498 A group held that his right to pre-emption is nullified, but this is invalid. For it removes from his possession a right to which Allah the Exalted has made him more entitled, without proof—and this is impermissible.

وَقَالَ قَوْمٌ: يَبْطُلُ حَقُّهُ فِي الشُّفْعَةِ، وَهَذَا بَاطِلٌ؛ لِأَنَّهُ إِخْرَاجُ حَقِّهِ الَّذِي جَعَلَهُ اللَّهُ تَعَالَى أَحَقَّ بِهِ عَنْ يَدِهِ بِلَا بُرْهَانٍ، وَهَذَا لَا يَجُوزُ.

L25499 And success is from Allah, the Exalted.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَاتَ الشَّفِيعُ قَبْلَ أَنْ يَقُولَ أَنَا آخُذُ شُفْعَتِي]

١٦٠٤ - مَسْأَلَةٌ: وَإِنْ مَاتَ الشَّفِيعُ قَبْلَ أَنْ يَقُولَ: أَنَا آخُذُ شُفْعَتِي فَقَدْ بَطَلَ حَقُّهُ وَلَا حَقَّ لِوَرَثَتِهِ فِي الْأَخْذِ بِالشُّفْعَةِ أَصْلًا؛ لِأَنَّ اللَّهَ تَعَالَى إنَّمَا جَعَلَ الْحَقَّ لَهُ لَا لِغَيْرِهِ، وَالْخِيَارُ لَا يُورَّثُ، وَهَذَا قَوْلُ مُحَمَّدِ بْنِ سِيرِينَ.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ فُضَيْلٍ عَنْ مُحَمَّدِ بْنِ سَالِمٍ عَنْ الشَّعْبِيِّ قَالَ: سَمِعْنَا أَنَّ الشُّفْعَةَ لَا تُبَاعُ وَلَا تُوهَبُ وَلَا تُورَّثُ وَلَا تُعَارُ، هِيَ لِصَاحِبِهَا الَّذِي وَقَعَتْ لَهُ.

قَالَ عَبْدُ الرَّزَّاقِ: وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: الشُّفْعَةُ لِوَرَثَتِهِ.

وَاحْتَجُّوا بِأَنْ قَالُوا: تُورَّثُ الشُّفْعَةُ كَمَا يُورَّثُ الْعَفْوُ فِي الدَّمِ أَوْ الْقِصَاصِ مَا نَعْلَمُ لَهُمْ شَيْئًا أَوْهَمُوا بِهِ غَيْرَ هَذَا، وَهَذَا بَاطِلٌ؛ لِأَنَّهَا دَعْوَى بِلَا بُرْهَانٍ ثُمَّ هُوَ احْتِجَاجٌ لِلْخَطَأِ بِالْخَطَأِ.

وَقَوْلُهُمْ: إنَّ الْعَفْوَ وَالْقِصَاصَ يُورَّثَانِ، خَطَأٌ، بَلْ هُمَا لِمَنْ جَعَلَهُمَا اللَّهُ تَعَالَى لَهُ مِنْ ذُكُورِ الْأَوْلِيَاءِ فَقَطْ، وَإِنَّمَا أَوْجَبَ اللَّهُ تَعَالَى الْمِيرَاثَ فِي الْأَمْوَالِ، لَا فِيمَا لَيْسَ مَالًا، وَلَوْ وُرِّثَ الْخِيَارُ لَوَجَبَ أَنْ يُورَّثَ عِنْدَهُمْ فِيمَنْ جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِ إنْسَانٍ بِعَيْنِهِ وَخَيَّرَهُ

Issue: The preemptor died before declaring "I claim my right of preemption."

Issue 1604: If the pre-emptor dies before declaring, "I claim my right of pre-emption," their right becomes invalid, and their heirs possess no entitlement whatsoever to exercise pre-emption. This is because Allah the Exalted granted this right exclusively to the pre-emptor and not to others, as the legal option cannot be inherited. This is the opinion of Muḥammad ibn Sīrīn.

It has been narrated to us through the chain of ʿAbd al-Razzāq from Fuḍayl from Muḥammad ibn Sālim from al-Shaʿbī, who said: We heard that the right of pre-emption cannot be sold, gifted, transferred through inheritance, or lent; it belongs exclusively to its rightful owner to whom it has been assigned.

ʿAbd al-Razzāq said, "It is the opinion of Sufyān al-Thawrī."

This is the opinion of Abū Ḥanīfah, Sufyān ibn ʿUyaynah, al-Ḥasan ibn Ḥayy, Aḥmad, Isḥāq, Abū Sulaymān, and their companions.

Mālik and al-Shāfiʿī held that the right of pre-emption belongs to his heirs.

They argued, saying: "The right of pre-emption is inherited, just as pardon regarding bloodshed or qisas (retributive justice) is inherited." We know of no other basis for their misconception besides this. This is invalid because it is an unsubstantiated claim, and further, it constitutes defending one error with another.

Their assertion that pardon and retaliation are inheritable is erroneous; rather, these rights belong exclusively to the male guardians for whom Allah has designated them. Allah has ordained inheritance solely in matters of wealth, not in matters unrelated to wealth. If the legal prerogative were inheritable, their doctrine would necessitate that when a man places the decision regarding his wife into the hands of a specific individual, granting him the option to divorce or retain her, and that individual dies, his heirs should

inherit the prerogative assigned to him according to their own principle. Yet they themselves do not uphold this [view].

فِي طَلَاقِهَا أَوْ إِبْقَائِهَا، فَمَاتَ ذَلِكَ الْإِنْسَانُ، فَكَانَ يَجِبُ عَلَى قَوْلِهِمْ أَنْ يَرِثَ وَرَثَتُهُ مَا جُعِلَ لَهُ مِنَ الْخِيَارِ، وَهُمْ لَا يَقُولُونَ هَذَا.

L25508 We also ask them: For whom do the heirs exercise the right of preemption - for the deceased or for themselves? If they say: "For the deceased," we reply: This is invalid, because the deceased cannot own anything.

وَنَسْأَلُهُمْ أَيْضًا: لِمَنْ يَأْخُذُونَ الْوَرَثَةُ بِالشُّفْعَةِ، أَلِلْمَيِّتِ أَمْ لِأَنْفُسِهِمْ؟ فَإِنْ قَالُوا: لِلْمَيِّتِ؟ قُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّ الْمَيِّتَ لَا يَمْلِكُ شَيْئًا.

L25509 And if they say, "For themselves?" We say: This is void; because their partnership occurred only after the sale, thus no right of pre-emption exists, and since they were not partners at the time of the sale, no right of pre-emption becomes incumbent upon them.

وَإِنْ قَالُوا: لِأَنْفُسِهِمْ؟ قُلْنَا: هَذَا بَاطِلٌ؛ لِأَنَّ شَرِكَتَهُمْ إِنَّمَا حَدَثَتْ بَعْدَ الْبَيْعِ فَلَا تُوجَدُ شُفْعَةٌ، وَلَمْ يَكُونُوا حِينَ الْبَيْعِ شُرَكَاءَ، فَلَمْ تَجِبْ لَهُمْ شُفْعَةٌ.

L25510–25512 This is one of the matters in which the Mālikīs contradicted themselves and opposed the majority of scholars: for they say that... If one of the guardians entitled to forgiveness or retribution dies, leaving a wife and daughters, they did not inherit the choice that belonged to him.

وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الْمَالِكِيُّونَ، وَخَالَفُوا جُمْهُورَ الْعُلَمَاءِ؛ لِأَنَّهُمْ يَقُولُونَ: إِنَّ أَحَدَ الْأَوْلِيَاءِ الَّذِي لَهُمُ الْعَفْوُ أَوِ الْقِصَاصُ إِنْ مَاتَ وَتَرَكَ زَوْجَةً وَبَنَاتٍ لَمْ يَرِثْنَ الْخِيَارَ الَّذِي لَهُ.

L25513 This is among the contradictions in the Hanafi school, for they permit inheritance of the rights of waiver (ʿafw) and retaliation (qiṣāṣ) but do not permit inheritance of the contractual option (khiyār) in this case. However, if the co-owner learns of the sale and declares, "I will exercise the right of pre-emption (shufʿah)," then dies, the right has become valid for him and becomes inheritable from him at that point. His heirs may pursue the claim because it is now an asset that has been perfected for him.

وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الْحَنَفِيُّونَ؛ لِأَنَّهُمْ يُوَرِّثُونَ الْعَفْوَ وَالْقِصَاصَ وَلَا يُوَرِّثُونَ الْخِيَارَ هَاهُنَا، فَأَمَّا إِذَا بَلَغَ الشَّرِيكَ أَمْرُ الْبَيْعِ فَقَالَ: أَنَا آخُذُ بِالشُّفْعَةِ ثُمَّ مَاتَ فَقَدْ صَحَّتْ لَهُ، وَهِيَ مَوْرُوثَةٌ عَنْهُ حِينَئِذٍ، وَلِوَرَثَتِهِ الطَّلَبُ؛ لِأَنَّهَا حِينَئِذٍ مَالٌ قَدْ تَمَّ لَهُ.

L25514 There is no validity to the claim before the judge, nor to the judge's ruling, for Allah the Exalted has never obligated this, nor has His Messenger—may Allah bless him and grant him peace. The judge is only appointed to compel the one withholding [what is due] from the right—nothing more. If people were to administer the rights among themselves, there would be no need for a judge. And with Allah is success.

وَلَا مَعْنَى لِلطَّلَبِ عِنْدَ الْقَاضِي، وَلَا لِحُكْمِ الْقَاضِي؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ قَطُّ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا جُعِلَ الْقَاضِي لِيُجْبِرَ الْمُمْتَنِعَ مِنَ الْحَقِّ فَقَطْ وَلَا مَزِيدَ، وَلَوْ تَعَاطَى النَّاسُ الْحُقُوقَ بَيْنَهُمْ مَا احْتِيجَ إِلَى قَاضٍ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25515 **An issue where one sold a share or a commodity in a single transaction, and the partner with preemption rights seeks to exercise preemption.**

[مَسْأَلَة بَاعَ شِقْصًا أَوْ سِلْعَةً مَعَهُ صَفْقَةً وَاحِدَةً فَجَاءَ الشَّفِيعُ يَطْلُبُ]

L25516 1605 - Issue: If someone sells a share or goods combined in a single transaction and the preemptor comes to claim, he must either take the entirety or relinquish the entirety. This is the view of Uthman al-Batti and the two judges Sawwar ibn Abdullah and Ubayd Allah ibn al-Hasan.

١٦٠٥ - مَسْأَلَةٌ: وَمَنْ بَاعَ شِقْصًا أَوْ سِلْعَةً مَعَهُ صَفْقَةٌ وَاحِدَةٌ فَجَاءَ الشَّفِيعُ يَطْلُبُ فَلَيْسَ لَهُ إِلَّا أَنْ يَأْخُذَ الْكُلَّ أَوْ يَتْرُكَ الْكُلَّ وَهَذَا قَوْلُ عُثْمَانَ الْبَتِّيِّ وَسَوَّارِ بْنِ عَبْدِ اللَّهِ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ الْقَاضِيَيْنِ.

L25517 It has also been narrated from Abū Ḥanīfah through an obscure chain of transmission.

وَرُوِيَ أَيْضًا عَنْ أَبِي حَنِيفَةَ مِنْ طَرِيقٍ خَامِلَةٍ.

L25518 Abu Hanifah, in the well-known opinion attributed to him, along with Sufyan, Malik, Ibn Shubrumah, and al-Shafi'i, held that the co-owner takes his proportionate share of the price. They argued that preemption does not apply to matters where it is inherently inapplicable, nor can it be invalidated in cases where it is textually mandated.

وَقَالَ أَبُو حَنِيفَةَ فِي الْمَشْهُورِ عَنْهُ، وَسُفْيَانُ، وَمَالِكٌ، وَابْنُ شُبْرُمَةَ، وَالشَّافِعِيُّ: يَأْخُذُ الشِّقْصَ بِحِصَّتِهِ مِنْ الثَّمَنِ، وَاحْتَجُّوا بِأَنَّهُ لَا يَدْخُلُ فِي الشُّفْعَةِ مَا لَا شُفْعَةَ فِيهِ، وَلَا يُقْطَعُ بِالشُّفْعَةِ فِيمَا فِيهِ شُفْعَةٌ بِالنَّصِّ.

L25519 Ali said: The preemptor has no right after the sale except what he had as a right when the seller permitted him before the sale. The explicit text and the certain consensus - we have clarified - demonstrate that nothing exits the seller's ownership except that which he consents to remove from it. Allah the Exalted said: "Do not consume your wealth among yourselves unjustly, except through trade by mutual consent" [4:29]. The seller did not consent to sell the share alone without the rest of the commodity, thus it is impermissible to compel him to sell what he withholds consent to sell absent textual evidence.[1]

قَالَ عَلِيٌّ: لَيْسَ لِلشَّفِيعِ بَعْدَ الْبَيْعِ إلَّا مَا كَانَ لَهُ إذَا أَذِنَهُ الْبَائِعُ قَبْلَ الْبَيْعِ، وَالنَّصُّ وَالْإِجْمَاعُ الْمُتَيَقَّنُ قَدْ بَيَّنَّا بِأَنَّهُ لَا يَخْرُجُ عَنْ مِلْكِ الْبَائِعِ إلَّا مَا رَضِيَ بِإِخْرَاجِهِ عَنْ مِلْكِهِ، قَالَ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] وَالْبَائِعُ لَمْ يَرْضَ بِبَيْعِ الشِّقْصِ وَحْدَهُ دُونَ تِلْكَ السِّلْعَةِ فَلَا يَجُوزُ إجْبَارُهُ عَلَى بَيْعِ مَا لَا يَرْضَى بَيْعَهُ بِغَيْرِ نَصٍّ.

L25520–25522 If the offer was presented to him before the sale, the partner has no option except to take the entirety or leave it by their consensus in agreement with us. Similarly, if he was present during the sale, the Messenger of Allah—peace be upon him—did not assign him after the sale from other than the sale except what would have been his right if he had taken it when the offer was presented to him before the sale only. The partner has no right in the pre-sale offer to divide what the seller does not wish to divide. His entitlement now is solely what his entitlement was at that time, with no increase. And with Allah, the Exalted, lies success. Furthermore, it is impermissible to obligate the buyer to accept part of a transaction he never consented to divide, nor

وَلَوْ عَرَضَ عَلَيْهِ قَبْلَ الْبَيْعِ لَمْ يَكُنْ لِلشَّرِيكِ إلَّا أَخْذُ الْكُلِّ أَوْ التَّرْكُ بِإِجْمَاعِهِمْ مَعَنَا، وَكَذَلِكَ لَوْ حَضَرَ عِنْدَ الْبَيْعِ، وَلَمْ يَجْعَلْ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدَ الْبَيْعِ مِنْ غَيْرِهِ إلَّا مَا كَانَ حَقُّهُ لَوْ أَخَذَهُ إذَا عَرَضَ عَلَيْهِ قَبْلَ الْبَيْعِ فَقَطْ وَلَيْسَ لَهُ فِي الْعَرْضِ قَبْلَ الْبَيْعِ تَبْعِيضُ مَا لَا يُرِيدُ الْبَائِعُ تَبْعِيضَهُ، فَإِنَّمَا لَهُ الْآنَ مَا كَانَ لَهُ حِينَئِذٍ وَلَا مَزِيدَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ وَأَيْضًا فَلَا يَجُوزُ أَنْ يَلْزَمَ الْمُشْتَرِي بَعْضَ صَفْقَةٍ لَمْ

[1] **Qur'an references (L25519):** Qur'an 4:29 (An-Nisa).

to... The seller cannot annul a valid sale that has occurred unless there is an explicit textual evidence. Since no such text exists for any of those cases, the entire sale is null and void.

L25523 If the buyer consents to delivering the share alone, it has been said that nothing else remains for the preemptor, as this resembles the seller's consent at the time of notification.

L25524 The preferred opinion in our view is that the partner holds the rightful claim to the entire transaction if he so desires, as it constitutes a single transaction and an indivisible contract. Either the entire contract stands valid or is rendered wholly void. It is impermissible to fragment a unified contract by validating one portion and invalidating another, except through an explicit scriptural proof specifically addressing such a case.

L25525 **Issue: A case where a person had partners and sold from one of them.**

L25526 1606 - Issue: If someone has partners and sells from one of them, the partners retain their shared right over it. He remains entitled to his share of the purchased property as one of them, because he is a partner and they are partners. Thus he is included in the ruling of Allah's Messenger - peace and blessings be upon him - who said: "His partner has the greatest right." Some have argued: "The buyer has no share." This contradicts the textual evidence, as we mentioned.

L25527 And it has been reported to us through Layth ibn Abī Sulaym from al-Sha'bī that he said: When one sells to any of his partners, there is no preemption right for the others from among them.

L25528 Likewise, also from al-Hasan and Uthman al-Battī.

L25529 Ali said: "And this is also contrary to the text."

L25530 **A juridical question concerning a scenario where some**

يَرْضَ قَطُّ تَبْعِيضَهَا، وَلَا أَنْ يَفْسَخَ عَنْ الْبَائِعِ بَيْعًا وَقَعَ صَحِيحًا إلَّا بِنَصٍّ وَارِدٍ، وَلَا نَصَّ فِي شَيْءٍ مِنْ ذَلِكَ، فَهُوَ كُلُّهُ بَاطِلٌ.

فَإِنْ رَضِيَ الْمُشْتَرِي بِتَسْلِيمِ الشِّقْصِ وَحْدَهُ فَقَدْ قِيلَ لَيْسَ لِلشَّفِيعِ غَيْرُهُ، لِأَنَّهُ كَرِضَا الْبَائِعِ بِذَلِكَ حِينَ الْإِيذَانِ.

وَالْأَوْلَى عِنْدَنَا: أَنَّ الشَّرِيكَ أَحَقُّ بِجَمِيعِ الصَّفْقَةِ إنْ أَرَادَ ذَلِكَ، لِأَنَّهَا صَفْقَةٌ وَاحِدَةٌ، وَعَقْدٌ وَاحِدٌ، إمَّا تَصِحُّ فَتَصِحُّ كُلُّهَا، وَإِمَّا تَفْسُدُ فَتَفْسُدُ كُلُّهَا، وَلَا يُمْكِنُ تَبْعِيضُ عَقْدٍ وَاحِدٍ بِتَصْحِيحِ بَعْضِهِ وَإِفْسَادِ بَعْضِهِ إلَّا بِنَصٍّ وَارِدٍ فِي ذَلِكَ.

[مَسْأَلَة كَانَ لَهُ شُرَكَاءُ فَبَاعَ مِنْ أَحَدِهِمْ]

١٦٠٦ - مَسْأَلَةٌ: وَمَنْ كَانَ لَهُ شُرَكَاءُ فَبَاعَ مِنْ أَحَدِهِمْ كَانَ لِلشُّرَكَاءِ مُشَارَكَتُهُ فِيهِ وَهُوَ بَاقٍ عَلَى حِصَّتِهِ مِمَّا اشْتَرَى كَأَحَدِهِمْ، لِأَنَّهُ شَرِيكٌ وَهُمْ شُرَكَاءُ، فَهُوَ دَاخِلٌ مَعَهُمْ فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَشَرِيكُهُ أَحَقُّ» وَقَدْ قَالَ قَائِلٌ: لَا حِصَّةَ لِلْمُشْتَرِي وَهَذَا خِلَافُ النَّصِّ كَمَا ذَكَرْنَا.

وَرُوِّينَا مِنْ طَرِيقِ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: إذَا بَاعَ مِنْ أَحَدِ شُرَكَائِهِ فَلَا شُفْعَةَ لِلْآخَرِينَ مِنْهُمْ.

وَكَذَلِكَ أَيْضًا عَنْ الْحَسَنِ، وَعُثْمَانَ الْبَتِّيِّ

قَالَ عَلِيٌّ: وَهَذَا خِلَافُ النَّصِّ أَيْضًا.

[مَسْأَلَة كَانَ بَعْض الشُّرَكَاء غَائِبًا فَاشْتَرَى أَحَدهمْ]

partners were absent, and one of the partners acquired.

L25531 1607. Issue: If some of the partners are absent and one of them makes a purchase, the same applies. The present partner cannot say, "I will only take my share," because the seller does not consent to selling part of it without the remainder, as we mentioned earlier regarding someone who sells a share and a commodity.

L25532 If he sold to a third party while a partner was present, according to some jurists, the partner may only claim his share. As for our position: he must either accept the entire sale or reject it entirely, for at the time of the offer, he possessed no right beyond this. His entitlement is strictly limited to what was his due at the time of the offer. Success is granted by Allah, the Exalted.

L25533 **Issue: If two or more partners sold, from whom does the co-partner take his share?**

L25534–25536 1608 - Issue: If two or more [sellers] sell to one [buyer], or to more than one [buyer], or if one [seller] sells to two or more [buyers], the partner may take whichever share he wishes and leave whichever share he wishes, and he may take... for all, because they are different contracts even if they are together, based on the statement of Allah the Exalted: {No soul earns except against itself} [al-Anʿām 164]. Thus Zayd's contract is different from ʿAmr's.[2]

L25537 If one of the two parties becomes entitled to the price he paid, resulting in the annulment of his contract, this does not impair the share of the other party for the reason previously stated. This is the opinion of Abū Ḥanīfah and al-Shāfiʿī. And success comes only from Allah, the Most High.

L25538 **An issue: partners in a shared thing, some acquiring their share through inheritance and others through sale.**

L25539 1609. Issue: If partners in something include some who acquired their shares through inheritance, others through purchase, and others through

[2]**Qur'an references (L25534):** Qur'an 6:164 (Al-An'am).

١٦٠٧ - مَسْأَلَةٌ: فَلَوْ كَانَ بَعْضُ الشُّرَكَاءِ غُيَّبًا فَاشْتَرَى أَحَدُهُمْ فَكَذَلِكَ أَيْضًا، وَلَيْسَ لِلْحَاضِرِ أَنْ يَقُولَ: لَا آخُذُ إِلَّا حِصَّتِي لِأَنَّ الْبَائِعَ لَا يَرْضَى بِبَيْعِ بَعْضِ ذَلِكَ دُونَ بَعْضٍ كَمَا ذَكَرْنَا آنِفًا فِيمَنْ بَاعَ شِقْصًا وَسِلْعَةً.

فَلَوْ بَاعَ مِنْ أَجْنَبِيٍّ فَحَضَرَ أَحَدُ الشُّرَكَاءِ فَلَيْسَ لَهُ أَنْ يَأْخُذَ إِلَّا حِصَّتَهُ فَقَطْ فِي قَوْلِ قَوْمٍ وَالَّذِي نَقُولُ بِهِ: إِنَّهُ لَيْسَ لَهُ إِلَّا أَخْذُ الْكُلِّ أَوْ تَرْكُ الْكُلِّ، لِأَنَّهُ لَمْ يَكُنْ لَهُ حِينَ الْإِيذَانِ إِلَّا ذَلِكَ، فَإِنَّمَا هُوَ أَحَقُّ بِمَا كَانَ حَقَّهُ حِينَ الْإِيذَانِ فَقَطْ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَاعَ اثْنَانِ فَأَكْثَرُ مِنْ وَاحِدٍ فممن يَأْخُذ الشَّرِيك حِصَّته]

١٦٠٨ - مَسْأَلَةٌ: فَإِنْ بَاعَ اثْنَانِ فَأَكْثَرُ مِنْ وَاحِدٍ، أَوْ مِنْ أَكْثَرَ مِنْ وَاحِدٍ، أَوْ بَاعَ وَاحِدٌ مِنْ اثْنَيْنِ فَصَاعِدًا، فَلِلشَّرِيكِ أَنْ يَأْخُذَ أَيَّ حِصَّةٍ شَاءَ وَيَدَعَ أَيَّهَا شَاءَ، وَلَهُ أَنْ يَأْخُذَ الْجَمِيعَ، لِأَنَّهَا عُقُودٌ مُخْتَلِفَةٌ وَإِنْ كَانَتْ مَعًا لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَعَقْدُ زَيْدٍ غَيْرُ عَقْدِ عَمْرٍو.

وَلَوْ اسْتَحَقَّ الثَّمَنَ الَّذِي أَعْطَى أَحَدُهُمَا فَانْفَسَخَ عَقْدُهُ لَمْ يَكْدَحْ ذَلِكَ فِي حِصَّةِ غَيْرِهِ لِمَا ذَكَرْنَا وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ شُرَكَاءُ فِي شَيْءٍ بَعْضُهُمْ بِمِيرَاثٍ وَبَعْضُهُمْ بِبَيْعٍ]

١٦٠٩ - مَسْأَلَةٌ: وَإِنْ كَانَ شُرَكَاءُ فِي شَيْءٍ بَعْضُهُمْ بِمِيرَاثٍ، وَبَعْضُهُمْ بِبَيْعٍ، وَبَعْضُهُمْ بِهِبَةٍ، وَفِيهِمْ إِخْوَةٌ وَرِثُوا أَبَاهُمْ مَا كَانَ أَبُوهُمْ وَرِثَهُ مَعَ أَعْمَامِهِمْ، فَبَاعَ أَحَدُهُمْ فَالْجَمِيعُ

شُفَعَاءُ عَلَى عَدَدِهِمْ، لَيْسَ الْأَخُ أَوْلَى بِحِصَّةِ أَخِيهِ مِنْ عَمِّهِ، وَلَا مِنْ امْرَأَةِ أَبِيهِ، وَلَا مِنْ امْرَأَةِ جَدِّهِ، وَلَا مِنْ الْأَجْنَبِيِّ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فَشَرِيكُهُ أَحَقُّ» وَكُلُّهُمْ شَرِيكُهُ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ.

gift—and among them are brothers who inherited what their father had inherited alongside their uncles—and one of them sells his share, then all are pre-emptors based on their number. A brother is not more entitled to his brother's share than an uncle, his father's wife, his grandfather's wife, or a stranger. This is because the Messenger of Allah (peace and blessings be upon him) said: "His partner has the greatest right," and all of them are his partners. This is the opinion of Abū Ḥanīfa and al-Shāfiʿī.

وَقَالَ مَالِكٌ: إنْ كَانَ إخْوَةُ الْأُمِّ وَزَوْجَاتٌ وَبَنَاتٌ وَأَخَوَاتٌ وَعَصَبَةٌ فَبَاعَ أَحَدُ الْإِخْوَةِ لِلْأُمِّ فَسَائِرُ الْإِخْوَةِ لِلْأُمِّ أَحَقُّ بِالشُّفْعَةِ مِنْ سَائِرِ الْوَرَثَةِ.

L25540 And Mālik said: If there are maternal brothers, wives, daughters, sisters, and residuaries, and if one of the maternal brothers sells his share, then the remaining maternal brothers have a stronger claim to the right of pre-emption than the other heirs.

وَكَذَلِكَ لَوْ بَاعَ إحْدَى الزَّوْجَاتِ فَسَائِرُهُنَّ أَحَقُّ بِالشُّفْعَةِ مِنْ سَائِرِ الْوَرَثَةِ، وَكَذَلِكَ لَوْ بَاعَ أَحَدُ الْبَنَاتِ فَسَائِرُهُنَّ أَحَقُّ بِالشُّفْعَةِ مِنْ سَائِرِ الْوَرَثَةِ.

L25541 Similarly, if one of the wives sells, the remaining wives are more entitled to pre-emption than the rest of the heirs. Likewise, if one of the daughters sells, the remaining daughters are more entitled to pre-emption than the rest of the heirs.

وَكَذَلِكَ لَوْ بَاعَ إحْدَى الْأَخَوَاتِ فَسَائِرُهُنَّ أَحَقُّ بِالشُّفْعَةِ مِنْ سَائِرِ الْوَرَثَةِ، ثُمَّ نَاقَضَ فَقَالَ: لَوْ بَاعَ أَحَدُ الْعُصْبَةِ لَمْ يَكُنْ سَائِرُ الْعُصْبَةِ أَحَقَّ بِالشُّفْعَةِ، بَلْ يَأْخُذُهَا مَعَهُمْ الْبَنَاتُ، وَالزَّوْجَاتُ، وَالْأَخَوَاتُ، وَالْإِخْوَةُ لِأُمٍّ.

L25542 Similarly, if one of the sisters sells, the remaining sisters have a greater right to pre-emption over the other heirs. He then contradicted this ruling, stating: If one of the agnates sells, the remaining agnates would not have a greater right to pre-emption. Rather, the daughters, wives, sisters, and uterine brothers share this right with the agnates.

قَالَ: فَلَوْ اشْتَرَى بَنَاتُ إنْسَانٍ شِقْصًا وَاشْتَرَى أَخَوَاتُهُ شِقْصًا آخَرَ مِنْ ذَلِكَ الشَّيْءِ، وَاشْتَرَى أَجْنَبِيُّونَ شِقْصًا ثَالِثًا مِنْهُ فَبَاعَ إحْدَى الْبَنَاتِ أَوْ إحْدَى الْأَخَوَاتِ لَمْ يَكُنْ أَخَوَاتُهَا أَحَقَّ بِالشُّفْعَةِ مِنْ عَمَّتِهَا، وَلَا مِنْ الْأَجْنَبِيِّينَ.

L25543 He said: If a man's daughters acquire a portion, his sisters acquire another portion of that jointly held asset, and strangers acquire a third portion thereof, then should one of the daughters or sisters sell her share, her sisters have no greater right to pre-emption (shufʿah) than her paternal aunt or the strangers.

قَالَ: وَلَوْ كَانَ وَرَثَةٌ وَمُشْتَرُونَ فِي شَيْءٍ فَبَاعَ أَحَدُ الْوَرَثَةِ فَلِلْأَجْنَبِيِّ الشُّفْعَةُ فِي ذَلِكَ مَعَ سَائِرِ الْوَرَثَةِ، وَهَذَا كَلَامٌ يُغْنِي إيرَادُهُ عَنْ تَكَلُّفِ إفْسَادِهِ لِفُحْشِ تَنَاقُضِهِ، وَظُهُورِ فَسَادِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25544 He said: If there are heirs and purchasers in a jointly owned asset, and one of the heirs sells, the right of pre-emption in that matter belongs to the non-heir third party alongside the other heirs. This statement suffices in its presentation, rendering any effort to corrupt it unnecessary due to its gross self-contradiction and evident invalidity. With Allah the Exalted lies all success.

[مَسْأَلَة بَاعَ شِقْصًا وَلَهُ شُرَكَاء مختلفة أنصبائهم]

١٦١٠ - مَسْأَلَةٌ: وَمَنْ بَاعَ شِقْصًا وَلَهُ شُرَكَاءُ لِأَحَدِهِمْ مِائَةُ سَهْمٍ، وَلِآخَرَ عِشْرُونَ، وَلِآخَرَ عُشْرُ الْعُشْرِ أَوْ أَقَلُّ أَوْ أَكْثَرُ: فَكُلُّهُمْ سَوَاءٌ فِي الْأَخْذِ بِالشُّفْعَةِ، وَيَقْتَسِمُونَ مَا أَخَذُوا بِالسَّوَاءِ، وَلَا مَعْنَى لِتَفَاضُلِ حِصَصِهِمْ.

وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَالْحَسَنِ الْبَصْرِيِّ، وَابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَشَرِيكٍ، وَالْحَسَنِ بْنِ حَيٍّ، وَعُثْمَانَ الْبَتِّيِّ، وَعَبْدِ اللَّهِ بْنِ الْحَسَنِ، وَأَبِي سُلَيْمَانَ، وَأَشْهَرُ قَوْلَيْ الشَّافِعِيِّ.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنْ عُبَيْدَةَ: وَأَشْعَثَ قَالَ عُبَيْدَةُ عَنْ إِبْرَاهِيمَ، وَأَشْعَثَ عَنْ الشَّعْبِيِّ، قَالَا جَمِيعًا: الشُّفْعَةُ عَلَى رُءُوسِ الرِّجَالِ، قَالَ هُشَيْمٌ: وَبِهِ كَانَ يَقْضِي ابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ

وَقَالَ آخَرُونَ: هِيَ عَلَى قَدْرِ الْأَنْصِبَاءِ وَهُوَ قَوْلُ عَطَاءٍ: وَابْنِ سِيرِينَ وَرُوِيَ عَنْ الْحَسَنِ أَيْضًا.

وَبِهِ يَقُولُ مَالِكٌ، وَسَوَّارُ بْنُ عَبْدِ اللَّهِ، وَإِسْحَاقُ، وَأَبُو عُبَيْدٍ

قَالَ عَلِيٌّ: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَشَرِيكُهُ» تَسْوِيَةٌ بَيْنَ جَمِيعِ الشُّرَكَاءِ وَلَوْ كَانَ هُنَالِكَ مُفَاضَلَةً لَبَيَّنَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يُجْمِلْ الْأَمْرَ: فَبَطَلَتْ الْمُفَاضَلَةُ.

وَلَا يَخْتَلِفُونَ فِي أَنَّ مَنْ أَوْصَى لِوَرَثَةِ فُلَانٍ، فَإِنَّهُمْ فِي الْوَصِيَّةِ سَوَاءٌ وَلَا يَقْتَسِمُونَهَا عَلَى حِصَصِ الْمِيرَاثِ، وَإِنَّمَا اسْتَحَقُّوهَا بِكَوْنِهِمْ مِنْ الْوَرَثَةِ.

Issue: He sold a share and has partners with differing shares.

Issue 1610: If someone sells a share and has partners—one of whom holds one hundred shares and another twenty shares. As for another claimant with a fractional share—be it a tenth of a tenth, less, or more—all are equal in exercising the right of pre-emption. They divide what they obtain equally, and no consideration is given to the disparity in their shares.

This is the opinion of Ibrahim al-Nakha'i, al-Sha'bi, al-Hasan al-Basri, Ibn Abi Layla, Ibn Shubrumah, Sufyan al-Thawri, Abu Hanifah and his companions, Shareek, al-Hasan ibn Hayy, Uthman al-Batti, Abdullah ibn al-Hasan, Abu Sulayman, and the more famous of the two opinions of al-Shafi'i.

We were narrated through the chain of Saʿīd ibn Manṣūr: "I am Hushaym from ʿUbaydah and Ashʿath." ʿUbaydah narrated from Ibrāhīm, while Ashʿath narrated from Al-Shaʿbī. They both said together: "The right of pre-emption is upon the heads of the men." Hushaym said: "In accordance with this, Ibn Abī Laylā and Ibn Shubrumah used to issue rulings."

Others said, it is in proportion to the shares. This is the opinion of ʿAṭāʾ and Ibn Sīrīn, and it is also reported from al-Ḥasan.

In accordance with this view say Mālik, Sawwār ibn ʿAbd Allāh, Isḥāq, and Abū ʿUbayd.

Ali said: The statement of the Messenger of Allah—peace and blessings be upon him—"so his partner" ensures equalization among all partners. Had there been any preferential distinction, the Messenger of Allah—peace and blessings be upon him—would have clarified it and would not have left the matter general. Thus, preferential distinction is nullified.

There is consensus that if one makes a bequest to the heirs of a specific person, they share the bequest equally without dividing it according to the

inheritance shares prescribed by law; rather, they become entitled to it solely by virtue of their status as heirs.

L25555 **A legal issue: There is no preemptive right unless the sale is fully concluded through partitioning or choice.**

L25556 1611. Issue: There is no right of pre-emption except upon the completion of the sale through partition of the property or option, because pre-emption itself is not considered a sale prior to that. This is the position of all who uphold the principle of separation of the bodies (of the contracting parties).

L25557 **The Issue of What Terminates the Right of Pre-emption**

L25558 Issue 1612: Pre-emption remains obligatory even when shares are divided, provided the easement serving them constitutes a single owned passage - whether effective for the claimants or ineffective for them. But if the easement becomes divided, or exists as an effective passage not owned by them, then no right of pre-emption applies at that stage, regardless of whether the property adjoins theirs or not.

L25559 The proof of this is the statement of the Messenger of Allah (peace and blessings be upon him): "When boundaries are established and paths are assigned, there is no preemption." He (peace and blessings be upon him) nullified it only upon the concurrence of both conditions: the enforcement of boundaries and the assignment of paths—not by one without the other.

L25560 A void division preceding a sale does not invalidate the right of pre-emption (shufʿah), as such a division is not legally recognized.

L25561–25562 A valid partition after the sale does not invalidate the right, because the right had been established prior to it.

L25563 Abu Hanifah and Sufyan said: The right of shufʿah belongs to the partner. If the partner relinquishes it or there is no partner, then it passes to his partner in the pathway. If the land or house has been divided, and the partner relinquishes it or there is none, the right of shufʿah belongs to the adjacent neighbor. If the division has taken place and the pathway is altered, there is no right of shufʿah for a non-adjacent neighbor.

[مَسْأَلَة لَا شُفْعَةَ إِلَّا بِتَمَامِ الْبَيْعِ بِالتَّفْرِيقِ أَوْ التَّخْيِيرِ]

١٦١١ - مَسْأَلَةٌ: وَلَا شُفْعَةَ إِلَّا بِتَمَامِ الْبَيْعِ بِالتَّفْرِيقِ أَوْ التَّخْيِيرِ لِأَنَّهَا لَيْسَ بَيْعًا قَبْلَ ذَلِكَ وَهُوَ قَوْلُ كُلِّ مَنْ يَقُولُ بِتَفَرُّقِ الْأَبْدَانِ.

[مَسْأَلَة مَا يَقْطَعُ الشُّفْعَةَ]

١٦١٢ - مَسْأَلَةٌ: وَالشُّفْعَةُ وَاجِبَةٌ وَإِنْ كَانَتْ الْأَجْزَاءُ مَقْسُومَةً إذَا كَانَ الطَّرِيقُ إلَيْهَا وَاحِدًا مُتَمَلَّكًا نَافِذًا أَوْ غَيْرَ نَافِذٍ لَهُمْ، فَإِنْ قُسِّمَ الطَّرِيقُ أَوْ كَانَ نَافِذًا غَيْرَ مُتَمَلَّكٍ لَهُمْ فَلَا شُفْعَةَ حِينَئِذٍ كَانَ مُلَاصِقًا أَوْ لَمْ يَكُنْ.

بُرْهَانُ ذَلِكَ: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» فَلَمْ يَقْطَعْهَا - عَلَيْهِ السَّلَامُ - إلَّا بِاجْتِمَاعِ الْأَمْرَيْنِ مَعًا، وُقُوعُ الْحُدُودِ، وَصَرْفُ الطُّرُقِ، لَا بِأَحَدِهِمَا دُونَ الْآخَرِ.

وَلَا يَقْطَعُ الشُّفْعَةَ قِسْمَةٌ فَاسِدَةٌ قَبْلَ الْبَيْعِ؛ لِأَنَّهَا لَيْسَتْ قِسْمَةً.

وَلَا يَقْطَعُهَا قِسْمَةٌ صَحِيحَةٌ بَعْدَ الْبَيْعِ؛ لِأَنَّ الْحَقَّ قَدْ وَجَبَ قَبْلَهَا.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ: الشُّفْعَةُ لِلشَّرِيكِ، فَإِنْ تَرَكَ، أَوْ لَمْ يَكُنْ لَهُ شَرِيكٌ، فَلِشَرِيكِهِ فِي الطَّرِيقِ، وَإِنْ كَانَتْ الْأَرْضُ أَوْ الدَّارُ قَدْ قُسِّمَتْ، فَإِنْ تَرَكَ أَوْ لَمْ يَكُنْ فَالشُّفْعَةُ

لِلْجَارِ الْمُلَاصِقِ، وَإِنْ كَانَتْ الْقِسْمَةُ قَدْ وَقَعَتْ وَالطَّرِيقُ غَيْرُ الطَّرِيقِ، وَلَا شُفْعَةَ لِجَارٍ غَيْرِ مُلَاصِقٍ.

L25564 Malik, al-Shafi'i, Ahmad, Ishaq, Abu Thawr, al-Awza'i, and al-Layth ibn Sa'd said: There is no right of pre-emption except solely for a co-owner who has not partitioned the property.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَإِسْحَاقُ وَأَبُو ثَوْرٍ، وَالْأَوْزَاعِيُّ، وَاللَّيْثُ بْنُ سَعْدٍ: لَا شُفْعَةَ إلَّا لِشَرِيكٍ لَمْ يُقَاسِمْ فَقَطْ.

L25565 Others stated: The right of pre-emption is granted to every neighbor.

وَقَالَ آخَرُونَ: الشُّفْعَةُ لِكُلِّ جَارٍ.

L25566 Then they disagreed, and narrations were transmitted concerning all of that. It was transmitted to us via Abd al-Razzaq from Ibn Jurayj from Yahya ibn Sa'id al-Ansari that Umar ibn al-Khattab said, "When the land is divided and demarcated, the right of preemption does not apply."

ثُمَّ اخْتَلَفُوا، وَرُوِيَ فِي كُلِّ ذَلِكَ آثَارٌ: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إذَا قُسِّمَتْ الْأَرْضُ وَحُدِّدَتْ فَلَا شُفْعَةَ.

L25567 And through the chain of transmission of Ibn Wahb from Mālik from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm from his father from Abān ibn ʿUthmān from his father that "When the prescribed punishments have been applied, the right of pre-emption is nullified." And from Maʿmar from Ibrāhīm ibn Maysarah that ʿUmar ibn ʿAbd al-ʿAzīz said: "When the prescribed punishments are carried out, the right of pre-emption is nullified."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ أَبَانَ بْنِ عُثْمَانَ عَنْ أَبِيهِ إذَا وَقَعَتْ الْحُدُودُ فَلَا شُفْعَةَ، وَعَنْ مَعْمَرٍ عَنْ إبْرَاهِيمَ بْنِ مَيْسَرَةَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَالَ: إذَا ضُرِبَتْ الْحُدُودُ فَلَا شُفْعَةَ.

L25568 It is narrated from Ibn al-Musayyib and Sulaymān ibn Yasār that the right of shufʿah applies solely to lands and dwellings, and exists exclusively among co-owners.

وَرُوِيَ عَنْ ابْنِ الْمُسَيِّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ إنَّمَا الشُّفْعَةُ فِي الْأَرْضِينَ، وَالدُّورِ، وَلَا تَكُونُ إلَّا بَيْنَ الشُّرَكَاءِ.

L25569 Abu Muhammad said: All of this is based on the obligation of pre-emption in conjunction with division if the pathway remains owned and undivided; because the boundaries have not yet been demarcated and the division has not been completed.

قَالَ أَبُو مُحَمَّدٍ: يَخْرُجُ كُلُّ هَذَا عَلَى وُجُوبِ الشُّفْعَةِ مَعَ الْقِسْمَةِ إذَا بَقِيَ الطَّرِيقُ مُتَمَلَّكًا غَيْرَ مَقْسُومٍ، لِأَنَّ الْحُدُودَ لَمْ تُضْرَبْ بَعْدُ وَالْقِسْمَةَ لَمْ تَتِمَّ.

L25570–25572 It has been authentically reported from Yaḥyā ibn Saʿīd al-Anṣārī, Abū al-Zināḍ, and Rabīʿah that they held the same opinion as Mālik and al-Shāfiʿī, as we have clarified. It was narrated to us through the chain of Sufyān ibn ʿUyaynah, from Ibrāhīm ibn Maysarah, from ʿAmr ibn al-Sharīd, that he

وَصَحَّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ وَأَبِي الزِّنَادِ وَرَبِيعَةَ مِثْلُ قَوْلِ مَالِكٍ وَالشَّافِعِيِّ بَيِّنًا، وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ أَنَا إبْرَاهِيمُ بْنُ مَيْسَرَةَ أَنَا «عَمْرُو بْنُ الشَّرِيدِ أَنَّهُ حَضَرَ

was present with al-Miswar ibn Makhramah, Saʿd ibn Abī Waqqāṣ, and Abū Rāfiʿ. Abū Rāfiʿ said to al-Miswar: “Will you not instruct this man”—meaning Saʿd—“to purchase my two houses located on his land?” Saʿd replied: “By Allah, I will not increase your price beyond four hundred dinars, whether in divided payments or, as he said, ’installments.’” Abū Rāfiʿ responded: “If I were...” I would prevent them from taking five hundred dinars in cash, and had I not heard the Messenger of Allah—may Allah bless him and grant him peace—say: “The neighbor has a greater right to his pre-emption right; I would not have sold it to you.”

مَعَ الْمِسْوَرِ بْنِ مَخْرَمَةَ وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَأَبِي رَافِعٍ فَقَالَ أَبُو رَافِعٍ لِلْمِسْوَرِ: أَلَا تَأْمُرُ هَذَا يَعْنِي سَعْدًا فَيَشْتَرِيَ مِنِّي بَيْتَيَّ اللَّذَيْنِ فِي دَارِهِ فَقَالَ لَهُ سَعْدٌ: وَاللَّهِ لَا أَزِيدُكَ عَلَى أَرْبَعِمِائَةِ دِينَارٍ مُقَطَّعَةً أَوْ قَالَ مُنَجَّمَةً، فَقَالَ أَبُو رَافِعٍ: إِنْ كُنْتُ لَأَمْنَعُهُمَا مِنْ خَمْسِمِائَةِ دِينَارٍ نَقْدًا، وَلَوْلَا أَنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: الْجَارُ أَحَقُّ بِسَقَبِهِ مَا بِعْتُكَ» .

L25573 From the transmission of Ibn Abī Shaybah, narrated by ʿAbd al-Wahhāb al-Thaqafī from Khālid al-Ḥadhāʾ from Iyās ibn Muʿāwiyah: he would adjudicate based on neighborly rights until a letter from ʿUmar ibn ʿAbd al-ʿAzīz reached him, instructing him not to apply this ruling except in cases involving two intermingled neighbors or a house secured by a single door.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ أَنَّهُ يَقْضِي بِالْجِوَارِ حَتَّى أَتَاهُ كِتَابُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنْ لَا يَقْضِيَ بِهِ إِلَّا مَا كَانَ بَيْنَ جَارَيْنِ مُخْتَلِطَيْنِ أَوْ دَارٍ يُغْلَقُ عَلَيْهَا بَابٌ وَاحِدٌ.

L25574 Via the chain of Ibn Abi Shaybah: Ibn Ulayyah narrated to us from Ibn Jurayj, who reported that Al-Zubayr ibn Musa informed him from Umar ibn Abd al-Aziz, who said: “If the land is partitioned, its boundaries are established, and its pathways are allocated, then there is no right of pre-emption.” All of this constitutes an opinion consistent with our position, for none of them opposed Abu Rafi’s view affirming pre-emption in partitioned land when there exists a single pathway under exclusive ownership.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي الزُّبَيْرُ بْنُ مُوسَى عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: إِذَا قُسِّمَتْ الْأَرْضُ وَحُدَّتْ وَصُرِّفَتْ طُرُقُهَا فَلَا شُفْعَةَ فَهَذَا كُلُّهُ قَوْلٌ مُوَافِقٌ لِقَوْلِنَا، لِأَنَّهُمْ كُلَّهُمْ لَمْ يُخَالِفُوا أَبَا رَافِعٍ فِي رُؤْيَتِهِ الشُّفْعَةَ فِي الْمَقْسُومِ إِذَا كَانَ الطَّرِيقُ وَاحِدًا مُتَمَلَّكًا.

L25575 Through the chain of Saʿīd ibn Manṣūr: Narrated to us Sufyān ibn ʿUyaynah from ʿAmr ibn Dīnār from Abū Bakr ibn Ḥafṣ, who said: Shurayḥ said: ʿUmar ibn al-Khaṭṭāb wrote to me, “Rule in favor of the neighbor’s preemptive right.” Some narrators added: “The adjacent neighbor.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي بَكْرِ بْنِ حَفْصٍ قَالَ شُرَيْحٌ: كَتَبَ إِلَيَّ عُمَرُ بْنُ الْخَطَّابِ اقْضِ بِالشُّفْعَةِ لِلْجَارِ زَادَ بَعْضُهُمْ: الْمُلَازِقِ.

L25576 From the narration of Ibn Abi Shaybah: I, Muʿawiyah ibn Hisham, narrate: I, Sufyan, narrate from Abu Hayyan, from his father, that ʻAmr ibn Ḥurayth used to issue legal rulings based on al-jiwār—the principles of neighborly rights.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا مُعَاوِيَةُ بْنُ هِشَامٍ أَنَا سُفْيَانُ عَنْ أَبِي حَيَّانَ عَنْ أَبِيهِ أَنَّ عَمْرَو بْنَ حُرَيْثٍ كَانَ يَقْضِي بِالْجِوَارِ.

L25577–25578 Via the chain of Waki‘, via Sufyān, via al-Ḥasan, via ʿAmr ibn Fuḍayl ibn

ʿAmr, via Ibrāhīm al-Nakhaʿī, who said: The co-sharer takes precedence over the neighbor, and the neighbor takes precedence over others. This aligns with the view of Abū Ḥanīfah.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ الْحَسَنِ عَنْ عَمْرِو بْنِ فُضَيْلِ بْنِ عَمْرٍو عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْخَلِيطُ أَحَقُّ مِنْ الْجَارِ وَالْجَارُ أَحَقُّ مِنْ غَيْرِهِ فَهَذَا مُوَافِقٌ لِقَوْلِ أَبِي حَنِيفَةَ.

L25579 It has been similarly narrated to us from Qatadah, al-Hasan, and Hammad, and they all stated: There is no preemption right for a non-adjoining neighbor if there is an unowned road between them.

وَرُوِّينَا مِثْلَهُ عَنْ قَتَادَةَ، وَالْحَسَنِ، وَحَمَّادٍ، وَقَالُوا كُلُّهُمْ: لَا شُفْعَةَ لِجَارٍ غَيْرِ مُلَاصِقٍ بَيْنَهُمَا طَرِيقٌ غَيْرُ مُتَمَلَّكَةٍ.

L25580 And it has been narrated to us from Ṭāwūs that when the statement of ʿUmar ibn ʿAbd al-ʿAzīz was mentioned to him—"If land is divided, there is no pre-emption"—he responded: "No, the neighbor is more entitled to it through pre-emption."

وَرُوِّينَا عَنْ طَاوُسٍ أَنَّهُ ذُكِرَ لَهُ قَوْلَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إذَا قُسِّمَتْ الْأَرْضُ فَلَا شُفْعَةَ فَقَالَ: لَا، الْجَارُ أَحَقُّ بِهِ.

L25581 Through the chain of Ibn al-Jahm: Yaḥyā ibn Muḥammad narrated from Ibn ʿAskar, from ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Jābir, from al-Shaʿbī, from Shurayḥ, who ruled concerning the co-owner: "Priority is given to the first [in line]," referring to the right of pre-emption (shufʿah).

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا يَحْيَى بْنُ مُحَمَّدٍ نا ابْنُ عَسْكَرٍ عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ فِي الْجَارِ: الْأَوَّلُ فَالْأَوَّلُ يَعْنِي فِي الشُّفْعَةِ.

L25582 Al-Ḥasan ibn Ḥayy said: The right of pre-emption belongs unconditionally to the neighbor after the co-owner.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: الشُّفْعَةُ لِلْجَارِ مُطْلَقًا بَعْدَ الشَّرِيكِ.

L25583 Others said: The neighbor entitled to pre-emption is the one within forty houses surrounding the house.

وَقَالَ آخَرُونَ: الْجَارُ الَّذِي تَجِبُ لَهُ الشُّفْعَةُ أَرْبَعُونَ دَارًا حَوْلَ الدَّارِ.

L25584 And others said: From every side among the sides of the residential complex, there are forty dwellings.

وَقَالَ آخَرُونَ: مِنْ كُلِّ جَانِبٍ مِنْ جَوَانِبِ الدَّارِ أَرْبَعُونَ دَارًا.

L25585 Others said: It is anyone who prayed the Fajr prayer with him in the mosque.

وَقَالَ آخَرُونَ: هُوَ كُلُّ مَنْ صَلَّى مَعَهُ صَلَاةَ الصُّبْحِ فِي الْمَسْجِدِ.

L25586 Some of them said, "All the people of the city are neighbors."

وَقَالَ بَعْضُهُمْ: أَهْلُ الْمَدِينَةِ كُلُّهُمْ جِيرَانٌ.

L25587 It has been narrated to us via Ibn al-Jahm: Ahmad ibn al-Haytham → Sulayman ibn Harb → Abu al-Ayzar → I heard Abu Qilabah reporting: "The neighborhood is forty houses."

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ الْهَيْثَمِ نا سُلَيْمَانُ بْنُ حَرْبٍ نا أَبُو الْعَيْزَارِ سَمِعْت أَبَا قِلَابَةَ يَقُولُ: الْجِوَارُ أَرْبَعُونَ دَارًا.

L25588 From the path of Ibn al-Jahm: Ahmad ibn Faraj narrated to us, Nasr ibn

Ali al-Jahdhami narrated to us: My father said: Al-Walid narrated to us—I heard al-Hasan say: “Forty houses here, and forty houses—they are from its four sides: forty, forty, forty.”

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ فَرَجٍ نا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ أَنَا أَبِي قَالَ: نا الْوَلِيدُ سَمِعْت الْحَسَنَ يَقُولُ: أَرْبَعُونَ دَارًا هَاهُنَا وَأَرْبَعُونَ دَارًا هِيَ مِنْ جَوَانِبِهَا الْأَرْبَعِ أَرْبَعُونَ أَرْبَعُونَ أَرْبَعُونَ.

L25589 Through the chain of Ibn al-Jahm, Aḥmad ibn Muḥammad ibn al-Mu’ammal, my maternal uncle, narrated to us, ʿAlī ibn al-Madīnī narrated to us, Ibn Abī Zā’ida narrated to us from Isḥāq ibn Fā’id: Muḥammad ibn ʿAlī ibn al-Ḥusayn ibn ʿAlī was asked, “Who is a man’s neighbor?” He replied, “The one who prays the morning with him.”

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْمُؤَمَّلِ خَالِي نا عَلِيَّ بْنَ الْمَدِينِيِّ نا ابْنُ أَبِي زَائِدَةَ عَنْ إِسْحَاق بْن فائد سُئِلَ مُحَمَّدُ بْنُ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيٍّ: مَنْ جَارُ الرَّجُلِ؟ قَالَ: مَنْ يُصَلِّي مَعَهُ الْغَدَاةَ.

L25590 Abu Muhammad said: We cannot currently recall the name of the one who stated, “They are all the people of Madinah,” except that it is an opinion which has indeed been expressed.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَحْضُرُنَا الْآنَ ذِكْرُ اسْمِ مَنْ قَالَ: هُمْ جَمِيعُ أَهْلِ الْمَدِينَةِ إِلَّا أَنَّهُ قَوْلٌ قَدْ قِيلَ.

L25591–25592 Ali said: As for those who restrict [the neighbor’s right] to forty dwellings, or to the Fajr prayer, or to the residents of Medina, they have relied on the narration “The neighbor has greater right to his preemption.” However, the limitation to forty dwellings or the Fajr prayer lacks any basis. We therefore scrutinized the narration cited by these individuals and found what we previously mentioned through the transmission chain of ʿAmr ibn al-Sharīd from Abū Rāfiʿ.

قَالَ عَلِيٌّ: أَمَّا مَنْ حَدَّ بِأَرْبَعِينَ دَارًا، أَوْ بِصَلَاةِ الْغَدَاةِ، أَوْ بِأَهْلِ الْمَدِينَةِ، فَإِنَّهُمْ تَعَلَّقُوا بِالْخَبَرِ «الْجَارُ أَحَقُّ بِسَقَبِهِ» إِلَّا أَنَّ تَحْدِيدَ الْأَرْبَعِينَ، وَصَلَاةَ الْغَدَاةِ، لَا وَجْهَ لَهُ، فَنَظَرْنَا فِي الْخَبَرِ الَّذِي احْتَجَّ بِهِ هَؤُلَاءِ فَوَجَدْنَا مَا ذَكَرْنَاهُ آنِفًا مِنْ طَرِيقِ عَمْرِو بْنِ الشَّرِيدِ عَنْ أَبِي رَافِعٍ.

L25593 We have not transmitted it through the chain of Aḥmad ibn Shuʿayb: I, Muḥammad ibn ʿAbd al-ʿAzīz al-Marwazī, narrated: Al-Faḍl ibn Mūsā narrated to us from Ḥusayn from Abū al-Zubayr from Jābir: “The Messenger of Allah (peace be upon him) ruled regarding preemption and neighboring rights.”[3]

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْعَزِيزِ الْمَرْوَزِيِّ نا الْفَضْلُ بْنُ مُوسَى عَنْ حُسَيْنٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشُّفْعَةِ وَالْجِوَارِ»

L25594 From the narration of Ibn Abi Shaybah: Abdah ibn Sulayman narrated to us from Abdul-Malik ibn Abi Sulayman al-Azrami, from Ata’, from Jabir, who said: The Messenger of Allah (peace and blessings be upon him) said: “The neighbor has the strongest right to the pre-emption of his neighbor if

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ الْعَرْزَمِيِّ عَنْ عَطَاءٍ عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْجَارُ أَحَقُّ بِشُفْعَةِ جَارِهِ إِذَا كَانَ طَرِيقُهُمَا وَاحِدًا يَنْتَظِرُ بِهَا وَإِنْ كَانَ غَائِبًا» .

[3] **Hadith references (L25593):** Sunan an-Nasai 4705.

they share a common pathway. He retains the right to pre-emption even if absent."

L25595 Similarly, it was narrated to us via the chain transmitted by Abū Dāwūd: from Aḥmad ibn Ḥanbal, from Hushaym, from ʿAbd al-Malik, from ʿAṭāʾ, from Jābir.

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد عَنْ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ هُشَيْمٍ عَنْ عَبْدِ الْمَلِكِ عَنْ عَطَاءٍ عَنْ جَابِرٍ

L25596 From the chain of Ibn Ayman: Muḥammad ibn Sulaymān narrated to us, Sulaymān ibn Dāwūd narrated to us, Hushaym said: I am ʻAbd al-Malik ibn Abī Sulaymān al-ʻArzamī, from ʻAṭāʾ, from Jābir, who said: "I purchased land adjoining a man's property. He said: 'I have a prior claim to it.' We brought our dispute to the Messenger of Allah—peace be upon him. I said: 'O Messenger of Allah, he has neither a pathway nor any right in my land?' He—peace be upon him—responded: 'He has the stronger right to it,' and ruled in his favor regarding the neighborhood right."

وَمِنْ طَرِيقِ ابْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ سُلَيْمَانَ نا سُلَيْمَانُ بْنُ دَاوُد نا هُشَيْمٌ أَنَا عَبْدُ الْمَلِكِ بْنُ أَبِي سُلَيْمَانَ الْعَرْزَمِيُّ عَنْ عَطَاءٍ عَنْ «جَابِرٍ قَالَ: اشْتَرَيْتُ أَرْضًا إِلَى جَنْبِ أَرْضِ رَجُلٍ فَقَالَ: أَنَا أَحَقُّ بِهَا؟ فَاخْتَصَمْنَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: يَا رَسُولَ اللَّهِ لَيْسَ لَهُ فِي أَرْضِي طَرِيقٌ وَلَا حَقٌّ؟ فَقَالَ - عَلَيْهِ السَّلَامُ - هُوَ أَحَقُّ بِهَا فَقَضَى لَهُ بِالْجِوَارِ»

L25597 From the chain of Ibn Ayman as well: Aḥmad ibn Muḥammad al-Birtī the judge narrated to us, Muḥammad ibn Kathīr narrated to us, Sufyān al-Thawrī narrated to us, from Manṣūr—who is Ibn al-Muʿtamir—from al-Ḥakam, from one who heard ʿAlī and Ibn Masʿūd: they both said collectively, "The Messenger of Allāh—may Allāh bless him and grant him peace—ruled in favor of the rights of neighbors (al-jiwār)."[4]

وَمِنْ طَرِيقِ ابْنِ أَيْمَنَ أَيْضًا نا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ الْقَاضِي نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورٍ هُوَ ابْنُ الْمُعْتَمِرِ عَنْ الْحَكَمِ عَمَّنْ سَمِعَ عَلِيًّا، وَابْنَ مَسْعُودٍ قَالَا جَمِيعًا: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْجِوَارِ» .

L25598 Via the narration of Shuʿbah from Qatādah from al-Ḥasan from Samurah ibn Jundub, the Messenger of Allah (peace be upon him) said: "The neighbor of the house has the pre-emptive right to the house and land," meaning [this applies] in the context of _shufʿah_ (pre-emptive right).

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «جَارُ الدَّارِ أَحَقُّ بِالدَّارِ وَبِالْأَرْضِ» يَعْنِي فِي الشُّفْعَةِ.

L25599–25601 From the path of Ibn Ayman: Aḥmad ibn Zuhayr ibn Ḥarb narrated to us, Aḥmad ibn Ḥubāb narrated to us, ʿĪsā ibn Yūnus narrated to us. From Saʿīd ibn Abī ʿArūbah from Qatādah from Anas, the Messenger of Allah—peace and blessings of Allah be upon him—said: "The neighbor of the house has the strongest claim to it." Aḥmad ibn Ḥubāb said: "'Īsā erred in this; it is mawqūf (attributed solely to Al-Ḥasan)."

وَمِنْ طَرِيقِ ابْنِ أَيْمَنَ نا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ نا أَحْمَدُ بْنُ حُبَابٍ نا عِيسَى بْنُ يُونُسَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «جَارُ الدَّارِ أَحَقُّ بِالدَّارِ» قَالَ أَحْمَدُ بْنُ حُبَابٍ، أَخْطَأَ فِيهِ عِيسَى إِنَّمَا هُوَ مَوْقُوفٌ عَلَى الْحَسَنِ.

[4] **Hadith references (L25597):** Musnad Ahmad 923.

L25602 From the chain of Qāsim ibn Aṣbagh: Muḥammad ibn Ismāʿīl narrated to us, al-Ḥasan ibn Sawwār narrated to us, Abū al-Muʿallā narrated to us, Ayyūb ibn ʿUtbah al-Yamāmī narrated to us, from al-Faḍl, from Qatādah, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ that the Messenger of Allah—peace and blessings be upon him—said: "The neighbor is most entitled to the adjoining part of his land."

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ نا الْحَسَنُ بْنُ سَوَّارٍ نا أَبُو الْمُعَلَّى نا أَيُّوبُ بْنُ عُتْبَةَ الْيَمَامِيُّ عَنْ الْفَضْلِ عَنْ قَتَادَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْجَارُ أَحَقُّ بِصَقَبِ أَرْضِهِ»

L25603 And through the chain of Ibn Abī Shaybah, from Abī Usāmah, from Al-Ḥusayn the Teacher, from ʿAmr ibn Shuʿayb, from ʿAmr ibn Al-Sharīd ibn Suwayd, from his father: I said, "O Messenger of God, what about land in which no one has a share or partnership except neighboring rights?" He said, "The neighbor has the greatest right to his adjoining area as long as it is."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ، عَنْ أَبِي أُسَامَةَ عَنْ الْحُسَيْنِ الْمُعَلِّمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ «عَنْ عَمْرِو بْنِ الشَّرِيدِ بْنِ سُوَيْدٍ عَنْ أَبِيهِ قُلْتُ: يَا رَسُولَ اللَّهِ أَرْضٌ لَيْسَ فِيهَا لِأَحَدٍ قَسْمٌ وَلَا شِرْكٌ إِلَّا الْجِوَارُ؟ قَالَ: الْجَارُ أَحَقُّ بِصَقَبِهِ مَا كَانَ» .

L25604 And through the chain of Ibn al-Jahm: Yusuf ibn Yaqub narrated to us, Muhammad ibn Abi Bakr - who is al-Muqaddami - from Dalal bint Abi al-Adl from al-Ṣuhāfaq: "From Aisha, the Mother of the Believers: I said, 'O Messenger of Allah, what is the right of the neighbor?' He said, 'Forty houses.'"

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا يُوسُفُ بْنُ يَعْقُوبَ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ هُوَ الْمُقَدَّمِيُّ عَنْ دَلَالَ بِنْتِ أَبِي الْعَدْلِ عَنْ الصهفاق «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قُلْتُ: يَا رَسُولَ اللَّهِ مَا حَقُّ الْجِوَارِ؟ قَالَ: أَرْبَعُونَ دَارًا» .

L25605 Through the chain of ʿAbd al-Razzāq from Sufyān from Hishām ibn al-Mughīrah al-Thaqafī, who said: I heard al-Shaʿbī say: The Prophet - peace and blessings of God be upon him - said: "The pre-emptor has priority over the neighbor, and the neighbor has priority over the third party."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ عَنْ هِشَامِ بْنِ الْمُغِيرَةِ الثَّقَفِيِّ قَالَ: سَمِعْت الشَّعْبِيَّ يَقُولُ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشَّفِيعُ أَوْلَى مِنْ الْجَارِ وَالْجَارُ أَوْلَى مِنْ الْجَنْبِ»

L25606 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us: Yūnus from al-Ḥasan: "The Messenger of Allah (peace and blessings be upon him) ruled on the right of preemption."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا يُونُسُ عَنْ الْحَسَنِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالْجِوَارِ» .

L25607 Narrated through the chain of Saʿīd ibn Manṣūr: Abū'l-Aḥwaṣ narrated to us from ʿAbd al-ʿAzīz ibn Rafīʿ, from Ibn Abī Mulaykah, who reported that the Messenger of Allah (peace be upon him) said: "The partner has the prior right to his preemptive right."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو الْأَحْوَصِ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشَّرِيكُ أَوْلَى بِشُفْعَتِهِ» .

L25608–25610 This is all that has come to them pertaining to their claims. We have exhaustively traced for them all that we know they have; they have nothing else besides this at all. Before all else, the entirety of this matter—from be-

ginning to end—contradicts Abū Ḥanīfah's position. For none of the reports we cited contain anything except either: "The neighbor is more entitled in general"—thus serving as evidence for those who uphold pre-emption for every neighbor—whereas they do not uphold it for every neighbor, but only for the immediately adjacent neighbor, or for one sharing a jointly owned pathway. Alternatively: "The neighbor with whom they share only a pathway." We do not deny this, but apart from these. The reports thus rendered the obfuscation employed by the Ḥanafīs entirely invalid, resulting in their position being devoid of agreement with any of the reports.

هَذَا كُلُّ مَا جَاءَ لَهُمْ مِمَّا يَتَعَلَّقُونَ بِهِ قَدْ تَقَصَّيْنَاهُ لَهُمْ مَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا أَصْلًا، وَقَبْلَ كُلِّ شَيْءٍ فَهُوَ كُلُّهُ أَوَّلُهُ عَنْ آخِرِهِ مُخَالِفٌ لِقَوْلِ أَبِي حَنِيفَةَ؛ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ الْأَخْبَارِ الَّتِي أَوْرَدْنَا إلَّا إمَّا الْجَارُ أَحَقُّ عَلَى الْعُمُومِ، فَهِيَ حُجَّةٌ لِمَنْ رَأَى الشُّفْعَةَ لِكُلِّ جَارٍ، وَهُمْ لَا يَرَوْنَهَا لِكُلِّ جَارٍ، لَكِنْ لِلْمُلَاصِقِ وَحْدَهُ، أَوْ لِلَّذِي طَرِيقُهُمَا وَاحِدٌ مُتَمَلَّكٌ فَقَطْ وَإِمَّا الْجَارُ الَّذِي طَرِيقُهُمَا وَاحِدٌ فَقَطْ: وَهَذَا لَا نُنْكِرُهُ، وَلَكِنْ مِنْ غَيْرِ هَذِهِ الْأَخْبَارِ فَبَطَلَ تَمْوِيهُ الْحَنَفِيِّينَ بِهَا جُمْلَةً، وَحَصَلَ قَوْلُهُمْ عَارِيًّا مِنْ مُوَافَقَةِ شَيْءٍ مِنْ الْأَخْبَارِ.

L25611 Then we examined whether there exists any evidence therein supporting those who assert preemption rights for every neighbor. We began with the narration transmitted by Abū al-Zubayr from Jābir and found it devoid of valid proof for their stance due to two reasons. The first is that any narration where Abū al-Zubayr is not explicitly cited as having directly heard from Jābir, and which al-Layth did not transmit from him, was not directly heard from Jābir. However, it remains unknown from whom he obtained it, as he affirmed it upon himself, thus invalidating this narration.

ثُمَّ نَظَرْنَا هَلْ فِيهَا حُجَّةٌ لِمَنْ يَرَى الشُّفْعَةَ لِكُلِّ جَارٍ: فَبَدَأْنَا بِالْخَبَرِ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ: أَحَدُهُمَا أَنَّ كُلَّ مَا لَمْ يُذْكَرْ فِيهِ أَبُو الزُّبَيْرِ سَمَاعًا مِنْ جَابِرٍ، وَلَا رَوَاهُ اللَّيْثُ عَنْهُ، فَلَمْ يَسْمَعْهُ مِنْ جَابِرٍ، لَكِنْ لَا يُدْرَى مِمَّنْ هُوَ أَقَرَّ بِذَلِكَ عَلَى نَفْسِهِ فَسَقَطَ هَذَا الْخَبَرُ.

L25612 The second point is that if we had witnessed Jābir—may Allah the Exalted be pleased with him—narrating it, they would have no argument against it, because the explicit wording states that the Prophet—may the peace and blessings of Allah be upon him—ruled on preemption and the right of adjacency.

وَالْوَجْهُ الثَّانِي أَنَّا لَوْ شَهِدْنَا جَابِرًا - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - يُحَدِّثُ بِهِ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ نَصَّهُ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالشُّفْعَةِ وَالْجِوَارِ»

L25613 As for preemption, we have indeed come to know what it is from other narrations.

فَأَمَّا الشُّفْعَةُ فَقَدْ عَرَفْنَا مَا هِيَ مِنْ أَخْبَارٍ أُخَرَ.

L25614 As for al-jiwār (protection pact), we do not know what it signifies in this narration at all.

وَأَمَّا الْجِوَارُ فَمَا نَدْرِي مَا هُوَ مِنْ هَذَا الْخَبَرِ أَصْلًا.

L25615 Whoever interprets the speech of Allah's Messenger (peace be upon him) according to his own reasoning in a manner contrary to what its wording necessitates has lied against Allah's Messenger (peace be upon him), ascribing

وَمَنْ فَسَّرَ كَلَامَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عَقْلِهِ بِمَا لَا يَقْتَضِيهِ لَفْظُهُ فَهُوَ كَاذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُقَوِّلٌ لَهُ مَا لَمْ يَقُلْ وَقَوْلُ الْقَائِلِ:

to him what he did not say. The statement of one who claims, "He ruled based on neighborly bonds," provides no evidence for any rulings pertaining to preemption. It may instead denote kindness toward a neighbor due to proximity. This further clarifies the obligation's validity through the Quran and the authentic Prophetic traditions, thereby invalidating their reliance upon it.

قَضَى بِالْجِوَارِ، لَا دَلِيلَ فِيهِ عَلَى شَيْءٍ مِنْ أَحْكَامِ الشُّفْعَةِ وَلَعَلَّهُ الْبِرُّ لِلْجَارِ مِنْ أَجْلِ الْجِوَارِ، فَهَذَا أَبْيَنُ بِصِحَّةِ وُجُوبِهِ بِالْقُرْآنِ، وَبِالسُّنَنِ الصِّحَاحِ فَسَقَطَ تَعَلُّقُهُمْ بِهِ.

L25616 Then we examined the narration of 'Aṭā' from Jābir and found it transmitted through the chain of 'Abd al-Malik ibn Abī Sulaymān (a narrator of disputed reliability), whom Shu'bah—a renowned hadith critic—and others weakened. Even if it were authentic, it would constitute evidence in our favor, as it aligns with our position. However, we do not adduce as evidence what we do not authenticate, even if it concurs with us—unlike those who do not revere Allah, the Mighty and Majestic, for they ceaselessly cite whatever aligns with their view, whether it is weak or authentic, while rejecting the weak and the authentic if they contradict his adherence.

ثُمَّ نَظَرْنَا فِي حَدِيثِ عَطَاءٍ عَنْ جَابِرٍ فَوَجَدْنَاهُ مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ وَهُوَ مُتَكَلَّمٌ فِيهِ، ضَعَّفَهُ شُعْبَةُ وَغَيْرُهُ، ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا، لِأَنَّهُ مُوَافِقٌ لَنَا، وَلَكِنَّا لَا نَحْتَجُّ بِمَا لَا نُصَحِّحُهُ وَإِنْ وَافَقَنَا، لَا كَمَا يَصْنَعُ مَنْ لَا يَتَّقِي اللَّهَ عَزَّ وَجَلَّ فَلَا يَزَالُ يَحْتَجُّ بِمَا وَافَقَهُ، وَإِنْ كَانَ ضَعِيفًا أَوْ صَحِيحًا، وَيَرُدُّ الضَّعِيفَ، وَالصَّحِيحَ إِذَا لَمْ يُوَافِقْ تَقْلِيدَهُ

L25617 Then we examined the third hadith and found it also to be from the narration of Abd al-Malik ibn Abi Sulayman, who is weak.

ثُمَّ نَظَرْنَا فِي الْحَدِيثِ الثَّالِثِ فَوَجَدْنَاهُ أَيْضًا مِنْ رِوَايَةِ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ وَهُوَ ضَعِيفٌ.

L25618 Then the narration of ʿAbdah and Aḥmad from Hushaym from al-ʿArzamī contains an addition not mentioned by Sulaymān ibn Dāwūd: namely, that the path is singular. If al-ʿArzamī's narration were authentic, it would be preferable to accept the addition of the two reliable ones. As for his statement, "He has no path in my land," we do not contradict this opinion if their path is one, because the grazing path pertains to access to the land, not its presence within the land.

ثُمَّ رِوَايَةُ عَبْدَةَ وَأَحْمَدَ عَنْ هُشَيْمٍ عَنِ الْعَرْزَمِيِّ جَاءَتْ بِزِيَادَةٍ لَمْ يَذْكُرْهَا سُلَيْمَانُ بْنُ دَاوُد وَهِيَ كَوْنُ الطَّرِيقِ وَاحِدًا فَلَوْ صَحَّتْ رِوَايَةُ الْعَرْزَمِيِّ لَكَانَ الْأَخْذُ بِزِيَادَةِ الْعَدْلَيْنِ أَوْلَى، وَقَوْلُهُ لَيْسَ لَهُ فِي أَرْضِي طَرِيقٌ، لَا نُخَالِفُ الْقَوْلَ إِذَا كَانَ طَرِيقُهُمَا وَاحِدًا، لِأَنَّ الطَّرِيقَ الْمُرْعَاةَ إِنَّمَا هِيَ إِلَى الْأَرْضِ، لَا كَوْنُهَا فِي الْأَرْضِ.

L25619–25621 Then we examined the report of ʿAlī and Ibn Masʿūd and found it disconnected, as al-Ḥakam did not meet either of them nor did he name those from whom he heard it regarding them. Thus, it is nullified. Moreover, even if it were authentic, they would have no valid basis for relying on it whatsoever, because it merely... In it, [it is stated] that he (peace be upon him) ruled on neighborly relations, and there is absolutely no evidence in this for pre-emption whatsoever.

ثُمَّ نَظَرْنَا فِي خَبَرِ عَلِيٍّ، وَابْنِ مَسْعُودٍ فَوَجَدْنَاهُ مُنْقَطِعًا، لِأَنَّ الْحَكَمَ لَمْ يُدْرِكْهُمَا وَلَا سَمَّى مَنْ سَمِعَهُ مِنْهُ عَنْهُمَا: فَبَطَلَ، ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ إِنَّمَا فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - قَضَى بِالْجِوَارِ وَلَيْسَ فِي هَذَا دَلِيلٌ عَلَى الشُّفْعَةِ أَصْلًا.

L25622 Then we examined the narration of Samura and found no proof for them in it, because Al-Hasan heard nothing from Samura except the hadith of the ʾAqeeqah itself, thus their reliance on it is nullified.

ثُمَّ نَظَرْنَا فِي خَبَرِ سَمُرَةَ فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ سَمُرَةَ إِلَّا حَدِيثَ الْعَقِيقَةِ وَحْدَهُ فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L25623 Then we examined the ḥadīth of Anās and found its explicit text: "The neighbor of the property is most entitled to the property." This might perhaps serve as evidence for those who grant preemption rights to every neighbor, were it not for what we shall mention when we complete our discussion of these narrations, God the Exalted willing.

ثُمَّ نَظَرْنَا فِي حَدِيثِ أَنَسٍ فَوَجَدْنَا نَصَّهُ «جَارُ الدَّارِ أَحَقُّ بِالدَّارِ» فَكَانَ هَذَا رُبَّمَا أَمْكَنَ أَنْ يَكُونَ حُجَّةً لِمَنْ جَعَلَ الشُّفْعَةَ لِكُلِّ جَارٍ لَوْلَا مَا نَذْكُرُهُ إِذَا أَتْمَمْنَا الْكَلَامَ فِي هَذِهِ الْأَخْبَارِ إِنْ شَاءَ اللَّهُ تَعَالَى.

L25624 Furthermore, we do not consider ʿĪsā ibn Yūnus's hearing from Ibn Abī ʿArūbah to have occurred except after the latter's mental impairment. Let it suffice you that the one who narrated from him stated that Ibn Abī ʿArūbah erred in this matter.

هَذَا وَمَا نَرَى سَمَاعَ عِيسَى بْنِ يُونُسَ كَانَ مِنْ ابْنِ أَبِي عَرُوبَةَ إِلَّا بَعْدَ اخْتِلَاطِهِ، وَحَسْبُكَ أَنَّ الَّذِي رَوَاهُ عَنْهُ ذَكَرَ أَنَّهُ أَخْطَأَ فِيهِ.

L25625 Moreover, there is no mention of preemption in it at all, and divination is not permissible. Perhaps the intended meaning is that he is more entitled to the righteous treatment and support of the household members. This is better and more appropriate due to the soundness of the Qur'an's mention of that. Allah the Exalted said: "And the neighbor who is near and the neighbor who is a stranger" [An-Nisa': 36].[5]

وَأَيْضًا فَلَيْسَ فِيهِ ذِكْرٌ لِشُفْعَةٍ أَصْلًا، وَالتَّكَهُّنُ لَا يَحِلُّ، وَلَعَلَّ الْمُرَادَ أَنَّهُ أَحَقُّ بِبِرِّ أَهْلِ الدَّارِ وَرِفْدِهِمْ، فَهَذَا أَحْسَنُ وَأَوْلَى لِصِحَّةِ وُرُودِ الْقُرْآنِ بِذَلِكَ، قَالَ اللَّهُ تَعَالَى: {وَالْجَارِ ذِي الْقُرْبَى وَالْجَارِ الْجُنُبِ} [النساء: ٣٦]

L25626 The Messenger of Allah (may Allah bless him and grant him peace) had enjoined kindness to neighbors, thus invalidated their insistence on the claim that he only intended preemption. Their statement was equivalent to soothsaying and conjecture, and conjecture is the most untruthful of speech.

وَقَدْ أَوْصَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْجَارِ فَبَطَلَ تَعَلُّقُهُمْ بِأَنَّهُ إِنَّمَا أَرَادَ الشُّفْعَةَ، وَكَانَ قَوْلُهُمْ هَذَا كَهَانَةً وَظَنًّا، وَالظَّنُّ أَكْذَبُ الْحَدِيثِ.

L25627 Then we examined the ḥadīth of ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ and found it at the lowest level of reliability, for it is narrated through Ayyūb ibn ʿUtbah al-Yamāmī—who is weak—then via al-Faḍl: if this refers to Ibn Dalham, he is discarded; if another narrator, he is unidentified. Moreover, Qatādah never heard a single word from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ nor met him, thus it is invalidated in every aspect. Even if authenticated, it would only state "the neighbor has the strongest claim to his adjoining land," making its ruling exactly the same in every way as the ruling regarding the ḥadīth of Anas.

ثُمَّ نَظَرْنَا فِي حَدِيثِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ فَوَجَدْنَاهُ فِي نِهَايَةِ السُّقُوطِ، لِأَنَّهُ عَنْ أَيُّوبَ بْنِ عُتْبَةَ الْيَمَامِيِّ وَهُوَ ضَعِيفٌ، ثُمَّ عَنْ الْفَضْلِ، فَإِنْ كَانَ ابْنُ دَلْهَمٍ فَهُوَ سَاقِطٌ، وَإِنْ كَانَ غَيْرَهُ فَهُوَ مَجْهُولٌ، ثُمَّ لَمْ يَسْمَعْ قَتَادَةُ مِنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَطُّ كَلِمَةً، وَلَا اجْتَمَعَ مَعَهُ فَبَطَلَ مِنْ كُلِّ وَجْهٍ ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ إِلَّا الْجَارُ أَحَقُّ بِصَقَبِ أَرْضِهِ، فَالْقَوْلُ فِيهِ كَالْقَوْلِ فِي حَدِيثِ أَنَسٍ سَوَاءً سَوَاءً.

[5] **Qur'an references (L25625):** Qur'an 4:36 (An-Nisa).

ثُمَّ نَظَرْنَا فِي حَدِيثِ عَائِشَةَ فَوَجَدْنَاهُ أَسْقَطَهَا كُلَّهَا؛ لِأَنَّهُ عَنْ دَلَالَ بِنْتِ أَبِي المدل وَلَا يُدْرَى مَنْ هِيَ عَمَّنْ: لَا يُدْرَى مَنْ هُوَ، ثُمَّ لَيْسَ فِيهِ أَيْضًا بَيَانُ أَنَّهُ فِي الشُّفْعَةِ.

L25628 Then we examined the narration attributed to ʾĀʾishah and found its chain entirely broken, for it is narrated from Dalāl bint Abī al-Mudallal - whose reliability is indeterminate, as it is unknown whom she reported from nor who transmitted her narration. Moreover, the text contains no explicit indication that it pertains to the right of pre-emption.

لَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْمُتَكَهِّنِينَ فِي الْأَخْبَارِ الَّتِي ذَكَرْنَا أَنْ يَأْخُذُوهُ؛ لِأَنَّهُ مِثْلُهَا وَلَا فَرْقَ، كَهَانَةٌ بِكَهَانَةٍ.

L25629 Indeed, it was obligatory for the Hanafis—who engaged in evaluating the reports we mentioned—to adopt it, as it is equivalent to those [reports] with no distinction: soothsaying is no different from soothsaying.

ثُمَّ نَظَرْنَا فِي حَدِيثِ الشَّعْبِيِّ فَوَجَدْنَاهُ لَا شَيْءَ؛ لِأَنَّهُ مُنْقَطِعٌ، ثُمَّ هُوَ عَنْ هِشَامِ بْنِ الْمُغِيرَةِ الثَّقَفِيِّ وَهُوَ ضَعِيفٌ ثُمَّ نَظَرْنَا فِي خَبَرِ الْحَسَنِ فَوَجَدْنَاهُ مُرْسَلًا، ثُمَّ لَيْسَ فِيهِ إِلَّا أَنَّهُ - عَلَيْهِ السَّلَامُ - قَضَى بِالْجِوَارِ وَلَيْسَ فِي هَذَا مِنَ الشُّفْعَةِ أَثَرٌ وَلَا عِثْيَرٌ وَلَا إِشَارَةٌ وَكَمَا ذَكَرْنَا قَبْلُ.

L25630–25632 Then we examined the ḥadīth of al-Shaʿbī and found it baseless because its chain is interrupted; then it is narrated from Hishām ibn al-Mughīrah al-Thaqafī—and he is a weak narrator. Then we examined the report of al-Ḥasan and found it to be mursal. Furthermore, it contains nothing except that he—may Allah have mercy on him—ruled in favor of neighboring rights. In this, there is no trace, allusion, or indication of preemption, just as we mentioned before.

ثُمَّ نَظَرْنَا فِي حَدِيثِ ابْنِ أَبِي مُلَيْكَةَ فَوَجَدْنَاهُ أَيْضًا مُرْسَلًا، ثُمَّ لَيْسَ فِيهِ إِلَّا الشَّرِيكُ أَوْلَى بِصَقَبِهِ، وَهَذَا لَا نُنْكِرُهُ، بَلْ نَقُولُ بِهِ.

L25633 Then we examined the ḥadīth of Ibn Abī Mulaykah and also found it to be mursal. Moreover, it contains nothing except the statement that “the partner is more entitled to his right of pre-emption (shufʿah).” We do not deny this; rather, we affirm it.

ثُمَّ نَظَرْنَا فِي حَدِيثِ عَمْرِو بْنِ الشَّرِيدِ عَنْ أَبِي رَافِعٍ عَنْ أَبِيهِ فَوَجَدْنَاهُ لَا مُتَعَلَّقَ لَهُمْ بِهِ؛ لِأَنَّهُ لَيْسَ فِيهِ إِلَّا الْجَارُ أَحَقُّ بِصَقَبِهِ، وَلَيْسَ فِيهِ لِلشُّفْعَةِ ذِكْرٌ وَلَا أَثَرٌ.

L25634 Then we examined the narration of ʿAmr ibn al-Sharīd from Abū Rāfiʿ from his father and found no basis for their position in it, for it contains nothing except “the neighbor has the prior right to what adjoins him,” with no mention or trace of preemption therein.

وَقَدْ حَدَّثَنَا حُمَامُ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ نا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ يَعْلَى بْنِ كَعْبٍ الثَّقَفِيُّ قَالَ: سَمِعْتُ عَمْرَو بْنَ الشَّرِيدِ يُحَدِّثُ عَنْ الشَّرِيدِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْمَرْءُ أَحَقُّ وَأَوْلَى بِصَقَبِهِ قُلْتُ لِعَمْرٍو: مَا صَقَبُهُ؟ قَالَ: الشُّفْعَةُ، قُلْتُ: زَعَمَ النَّاسُ

L25635 Humam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Ahmad ibn Zuhayr narrated to us: Abu Nuʿaym al-Fadl ibn Dukayn narrated to us: Abdullah ibn Abd al-Rahman ibn Yaʿla ibn Kaʿb al-Thaqafi said: I heard Amr ibn al-Sharid narrating from al-Sharid, from the Prophet—peace and blessings be upon him—who said: “A person is most entitled and deserving of his ṣaqab.” I asked Amr: “What is his ṣaqab?” He replied: “The pre-emption (shufʿah).” I said: “People assert it refers to jiwār (neighborhood).” He said: “People say that.” Thus, the narrator of this hadith, Amr ibn al-Sharid, does not hold that pre-emption

applies to neighborhood nor considers the narration's wording to necessitate it. Therefore, all the deceptive arguments they contrived are invalidated.

أَنَّهَا الْجِوَارُ؟ قَالَ: النَّاسُ يَقُولُونَ ذَلِكَ» فَهَذَا رَاوِي الْحَدِيثِ عَمْرُو بْنُ الشَّرِيدِ لَا يَرَى الشُّفْعَةَ بِالْجِوَارِ، وَلَا يَرَى لَفْظَ مَا رُوِيَ يَقْتَضِي ذَلِكَ فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ.

L25636 Then, if these hadiths were established with a clear statement that the right of pre-emption belongs to the neighbor, his ruling—peace and blessings be upon him—his saying, and his judgment, "When boundaries are fixed and paths are designated, there is no pre-emption," would decisively settle all of that and resolve the ambiguity. How then when there is no clarification in any of them, as we have mentioned? Most are inauthentic, and it is not appropriate to occupy oneself with them due to the weakness of their chains of transmission. Success is from Allah, the Exalted.

ثُمَّ لَوْ صَحَّتْ هَذِهِ الْأَحَادِيثُ بِبَيَانٍ وَاضِحٍ أَنَّ الشُّفْعَةَ لِلْجَارِ لَكَانَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَقَوْلُهُ، وَقَضَاؤُهُ «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» يَقْضِي عَلَى ذَلِكَ كُلِّهِ وَيَرْفَعُ الْإِشْكَالَ، فَكَيْفَ وَلَا بَيَانَ فِي شَيْءٍ مِنْهَا كَمَا ذَكَرْنَا، وَأَكْثَرُهَا لَا يَصِحُّ، وَلَا يَنْبَغِي أَنْ يَشْتَغِلَ بِهَا لِسُقُوطِ طُرُقِهَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25637 Among the grave audacities of later generations—in their era, their faiths, and in the sight of Allah the Exalted—is the claim by some regarding what is authentically established from the Messenger of Allah (ﷺ): his statement, "When legal punishments are enacted and paths are established, there is no pre-emption"—that these words are not from the Prophet's speech. If only I knew where they obtained this! Who informed them of it! These people have been granted by Allah the Exalted an ample share of trivializing falsehood in matters of religion, and we seek refuge in Allah from the likes of this.

وَمِنْ عَظِيمِ إقْدَامِ الْمُتَأَخِّرِينَ فِي زَمَانِهِمْ وَأَدْيَانِهِمْ وَعِنْدَ اللَّهِ تَعَالَى قَوْلُ بَعْضِهِمْ فِي الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» أَنَّ هَذَا اللَّفْظَ لَيْسَ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَيْتَ شِعْرِي أَيْنَ وَجَدُوا هَذَا؟ وَمَنْ أَخْبَرَهُمْ بِهِ؟ وَالْقَوْمُ قَدْ رَزَقَهُمْ اللَّهُ تَعَالَى مِنْ اسْتِسْهَالِ الْكَذِبِ فِي الدِّينِ حَظًّا وَافِرًا وَنَعُوذُ بِاَللَّهِ مِنْ مِثْلِهِ.

L25638 And they said regarding what was narrated to us through the chain of Abu Dawud: Muhammad ibn Yahya ibn Faris narrated to us, al-Hasan ibn al-Rabīʿ narrated to us, Ibn Idris—who is ʿAbdullah—narrated to us from Ibn Jurayj from Ibn Shihab from Abu Salamah ibn ʿAbd al-Rahman or from Saʿid ibn al-Musayyab or from all of them collectively from Abu Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said: "When land is divided and delimited, there is no right of preemption [shufʿah] in it."

وَقَالُوا فِيمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ يَحْيَى بْنِ فَارِسٍ نا الْحَسَنُ بْنُ الرَّبِيعِ نا ابْنُ إدْرِيسَ هُوَ عَبْدُ اللَّهِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ أَوْ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَوْ عَنْهُمْ جَمِيعًا عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا قُسِّمَتْ الْأَرْضُ وَحُدَّتْ فَلَا شُفْعَةَ فِيهَا.»

L25639–25641 They said: Yes, neither division nor specification necessitates pre-emption in it; rather, pre-emption is obligatory. Regarding the sale, this stands as compelling proof that the absence of modesty lies solely with the speaker himself. And Allah has protected His Messenger—peace be upon him—from uttering foolishness and speech devoid of meaning.

قَالُوا: نَعَمْ لَيْسَتْ الْقِسْمَةُ وَلَا التَّحْدِيدُ مُوجِبَيْنِ فِيهَا شُفْعَةً، إنَّمَا تَجِبُ الشُّفْعَةُ بِالْبَيْعِ، فَكَانَ هَذَا بُرْهَانًا قَوِيًّا عَلَى عَدَمِ الْحَيَاءِ مِنْ وَجْهِ قَائِلِهِ فَقَطْ وَقَدْ أَعَاذَ اللَّهُ رَسُولَهُ - عَلَيْهِ السَّلَامُ - مِنْ أَنْ يَتَكَلَّمَ بِالسُّخْفِ وَبِمَا لَا مَعْنَى لَهُ.

L25642 Every person of sound judgment knows that pre-emption has no place in partition. How then could pre-emption apply to land that has already been partitioned? Would one of them seize his partner's property through confrontation? This is impossible.

وَقَدْ عَلِمَ كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ الشُّفْعَةَ لَا مَدْخَلَ لَهَا فِي الْقِسْمَةِ فَكَيْفَ تَكُونُ الشُّفْعَةُ فِي أَرْضٍ قُسِّمَتْ؟ أَتَرَى أَحَدَهُمَا يَأْخُذُ مَالَ صَاحِبِهِ مُصَادَمَةً؟ هَذَا مُحَالٌ.

L25643 How then, when it is an authenticated report? At times, trustworthy narrators cited this wording alone from the Messenger of Allah (peace and blessings be upon him), and at other times, they appended it to another of his phrases (peace be upon him).

فَكَيْفَ وَهُوَ خَبَرٌ مُسْنَدٌ، مَرَّةً ذَكَرَ الثِّقَاتُ هَذَا اللَّفْظَ وَحْدَهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَرَّةً أَضَافُوهُ إِلَى لَفْظٍ آخَرَ لَهُ - عَلَيْهِ السَّلَامُ -

L25644 As we have been narrated through the chain of Qāsim ibn Aṣbagh, who narrated to us ʿUbayd Allāh ibn Muḥammad al-ʿUmarī, who narrated to us Yaḥyā ibn Abī Qatīlah, Abū Ibrāhīm al-Madanī, who narrated to us Mālik from al-Zuhrī from Saʿīd ibn al-Musayyib and Abū Salamah ibn ʿAbd al-Raḥmān from Abū Hurayrah, who said: The Messenger of Allah (peace be upon him) said: "The right of shufʿah applies to what has not been divided. When boundaries are demarcated, there is no shufʿah."

كَمَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا عُبَيْدُ اللَّهِ بْنُ مُحَمَّدٍ الْعُمَرِيُّ نا أَبُو إِبْرَاهِيمَ يَحْيَى بْنُ أَبِي قَتِيلَةَ الْمَدَنِيُّ نا مَالِكٌ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشُّفْعَةُ فِيمَا لَمْ يُقْسَمْ فَإِذَا وَقَعَتْ الْحُدُودُ فَلَا شُفْعَةَ» .

L25645 Thus, the invalidity of the aforementioned opinions has become evident, with the most invalid of them being the opinions of Abū Ḥanīfah, because he contradicted all the transmitted rulings. He did not rely on a sound report, nor even a weak narration, nor a Companion's statement. Rather, he opposed every juridical precedent transmitted from a Companion regarding that matter, because the rulings transmitted from them (may Allah be pleased with them)—as we have earlier cited from ʿUmar and ʿUthmān—establish that "legal penalties abrogate the right of pre-emption."

فَظَهَرَ فَسَادُ الْأَقْوَالِ الْمَذْكُورَةِ، فَأَشَدُّهَا فَسَادًا أَقْوَالُ أَبِي حَنِيفَةَ، لِأَنَّهُ خَالَفَ جَمِيعَ الْأَخْبَارِ، وَلَمْ يَتَعَلَّقْ لَا بِخَبَرٍ صَحِيحٍ، وَلَا بِرِوَايَةٍ سَقِيمَةٍ، وَلَا بِقَوْلِ صَاحِبٍ، بَلْ خَالَفَ كُلَّ رِوَايَةٍ جَاءَتْ فِي ذَلِكَ عَنْ صَاحِبٍ، لِأَنَّ الرِّوَايَةَ عَنْهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - كَمَا قَدَّمْنَا عَنْ عُمَرَ، وَعُثْمَانَ أَنَّ الْحُدُودَ تَقْطَعُ الشُّفْعَةَ.

L25646 And a narration from ʿUmar concerning preemption rights for neighbors, with some adding "the adjoining neighbors" - though this wording is not recognized. Even if it were authentic, the statement attributed to him applies to "the neighbor" as a general principle, making it an extension beyond "the adjoining neighbors."

وَرِوَايَةً عَنْ عُمَرَ بِالشُّفْعَةِ لِلْجَارِ وَزَادَ بَعْضُهُمْ الْمُلَازِقِ، وَلَا تُعْرَفُ هَذِهِ اللَّفْظَةُ، وَحَتَّى لَوْ صَحَّتْ فَقَدْ جَاءَ عَنْهُ لِلْجَارِ جُمْلَةً، فَهِيَ زِيَادَةٌ عَلَى الْمُلَازِقِ.

L25647 From Saʿīd and Abū Rāfiʿ—they both did not mention the absence of a preemption right for neighbors separated by an unowned road—neither from ʿAmr ibn Ḥurayth nor from any of the Companions.

وَعَنْ سَعِيدٍ، وَأَبِي رَافِعٍ وَلَمْ يَذْكُرَا أَنْ لَا شُفْعَةَ لِجَارٍ بَيْنَهُمَا طَرِيقٌ غَيْرُ مُتَمَلَّكٍ، لَا عَنْ عَمْرِو بْنِ حُرَيْثٍ، وَلَا عَنْ أَحَدٍ مِنَ الصَّحَابَةِ.

وَأَمَّا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ: فَإِنَّهُمْ تَعَلَّقُوا بِهَذَا الْخَبَرِ وَبِمِثْلِهِ مِمَّا فِيهِ «فَإِذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» ؟ فَقُلْنَا: إنَّ حَدِيثَ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ عَنْ جَابِرٍ فِيهِ «إذَا وَقَعَتْ الْحُدُودُ وَصُرِّفَتْ الطُّرُقُ فَلَا شُفْعَةَ» فَكَانَ هَذَا بَيَانًا زَائِدًا لَا يَحِلُّ تَرْكُهُ وَزِيَادَةَ عَدْلٍ أَخْذُهَا وَاجِبٌ.

L25648–25650 As for the statements of Mālik and al-Shāfiʿī, they based their argument on this narration and others like it containing the wording: "When property boundaries have been established and pathways have been designated, there is no preemption right." We responded: The ḥadīth transmitted by Maʿmar from al-Zuhrī from Abū Salama from Jābir states: "When boundaries have been established..." The prescribed penalties have been established, the juristic paths have been expounded, and thus there is no right of preemption. This constitutes an additional clarification that it is impermissible to abandon, and the adoption of further justice is obligatory.

وَأَيْضًا: فَإِنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ - «إذَا قُسِّمَتْ الْأَرْضُ فَلَا شُفْعَةَ» يُوجِبُ قَوْلَنَا لَا قَوْلَهُمْ، حَتَّى لَوْ لَمْ يَأْتِ زِيَادَةُ مَعْمَرٍ، لِأَنَّهُ وَإِنْ قُسِّمَتْ الْأَرْضُ وَالدَّارُ، وَكَانَ الطَّرِيقُ إلَيْهَا مُتَمَلَّكًا لِأَهْلِهَا فَلَمْ يُقَسِّمُوهُ فَلَمْ تُقَسَّمْ تِلْكَ الْأَرْضُ بَعْدُ، لَكِنْ قُسِّمَ بَعْضُهَا وَحُدَّ بَعْضُهَا، وَلَمْ يُبْطِلْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ الشُّفْعَةَ بِقِسْمَةِ الْبَعْضِ، لَكِنْ بِقِسْمَةِ الْكُلِّ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25651 Moreover, the statement of the Prophet—peace and blessings of Allah be upon him—"When land is divided, there is no pre-emption right," necessitates our position, not theirs. This would hold even without Maʿmar's supplementary report, for if the land and property were divided while the path leading to them remained owned by their owners and undivided, that land would still not be divided. Rather, part of it was divided and part was demarcated. The Prophet—peace and blessings of Allah be upon him—never invalidated the pre-emption right due to partial division, but only due to complete division. And success comes from Allah, the Most High.



AL-MUHALLA

كِتَابُ السَّلَمِ

The Book of Advance Payment Sales (Salam)

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

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[كِتَابُ السَّلَمِ] [مَسْأَلَةٌ السَّلَمُ لَيْسَ بَيْعًا]

In the name of Allah, the Most Gracious, the Most Merciful, and may Allah bless Muhammad and his household and grant them peace. The Book of Salam, Issue 1613: Abu Muhammad Ali ibn Ahmad ibn Sa'id ibn Hazm—may Allah be pleased with him—said: Salam is not a sale; because naming in religions belongs solely to Allah, the Almighty, on the tongue of His Messenger (peace be upon him). The Messenger of Allah (peace be upon him) indeed designated it as Salaf, Taslif, or Salam.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلَّمَ كِتَابُ السَّلَمِ ١٦١٣ مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ عَلِيُّ بْنُ أَحْمَدَ بْنِ سَعِيدِ بْنِ حَزْمٍ - رَضِيَ اللَّهُ عَنْهُ -: السَّلَمُ لَيْسَ بَيْعًا؛ لِأَنَّ التَّسْمِيَةَ فِي الدِّيَانَاتِ لَيْسَتْ إلَّا لِلَّهِ عَزَّ وَجَلَّ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا سَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - السَّلَفَ، أَوْ التَّسْلِيفَ، أَوْ السَّلَمَ.

Sale is permissible with dinars and dirhams as immediate payment, on credit without a specified term, and deferred until capability of payment.

وَالْبَيْعُ يَجُوزُ بِالدَّنَانِيرِ وَبِالدَّرَاهِمِ حَالًّا وَفِي الذِّمَّةِ إلَى غَيْرِ أَجَلٍ مُسَمًّى وَإِلَى الْمَيْسَرَةِ.

Salam is permissible only with a specified term, and this is necessary, while sale is permissible for any owned item where there is no textual prohibition against its sale.

وَالسَّلَمُ لَا يَجُوزُ إلَّا إلَى أَجَلٍ مُسَمًّى وَلَا بُدَّ وَالْبَيْعُ يَجُوزُ فِي كُلِّ مُتَمَلَّكٍ لَمْ يَأْتِ النَّصُّ بِالنَّهْيِ عَنْ بَيْعِهِ.

A salam contract is permissible only for commodities measured by volume or by weight.

وَلَا يَجُوزُ السَّلَمُ إلَّا فِي مَكِيلٍ أَوْ مَوْزُونٍ فَقَطْ.

It is not permissible for animals, nor for measured [goods], nor for counted [items], nor for anything other than what we have mentioned.

وَلَا يَجُوزُ فِي حَيَوَانٍ وَلَا مَذْرُوعٍ وَلَا مَعْدُودٍ وَلَا فِي شَيْءٍ غَيْرِ مَا ذَكَرْنَا.

The sale is not permissible for what is not in your possession.

وَالْبَيْعُ لَا يَجُوزُ فِيمَا لَيْسَ عِنْدَك.

Salam is permissible in that which is not in your possession.

وَالسَّلَمُ يَجُوزُ فِيمَا لَيْسَ عِنْدَك.

A sale is not valid in any circumstance unless it pertains to a specific thing.

وَالْبَيْعُ لَا يَجُوزُ أَلْبَتَّةَ إلَّا فِي شَيْءٍ بِعَيْنِهِ.

Fundamentally, Salam is not permissible in any specifically identified item.

وَلَا يَجُوزُ السَّلَمُ فِي شَيْءٍ بِعَيْنِهِ أَصْلًا.

The evidence for that is what has been transmitted to us through the chain of Muslim: he informed us via Shaybān ibn Farrūkh, Yaḥyā ibn Yaḥyā, and Abū Bakr ibn Abī Shaybah; Yaḥyā said, and Abū Bakr, from Ibn ʿUlayyah.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا شَيْبَانُ بْنُ فَرُّوخَ، وَيَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، قَالَ يَحْيَى، وَأَبُو بَكْرٍ عَنْ ابْنِ عُلَيَّةَ.

Abū Muḥammad said: This is in my book from Ibn Nāmī, and in another's

book from Ibn ʿUyaynah. Shaybān narrated to us from ʿAbd al-Wārith ibn Saʿīd al-Tannūrī, then the chains of ʿAbd al-Wārith and the other transmitter converged—both of them from Ibn Abī Najīḥ. ʿAbdullāh ibn Kathīr narrated to me from Abū al-Minhāl from Ibn ʿAbbās, who said: The Messenger of Allah (peace be upon him) said: "Whoever advances a loan must only do so with a known measure and a known weight."[1]

قَالَ أَبُو مُحَمَّدٍ: هَذَا فِي كِتَابِي عَنْ ابْنِ نَامِي، وَفِي كِتَابِ غَيْرِي عَنِ ابْنِ عُيَيْنَةَ وَقَالَ شَيْبَانُ نا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ، ثُمَّ اتَّفَقَ عَبْدُ الْوَارِثِ وَالْآخَرُ، كِلَاهُمَا عَنِ ابْنِ أَبِي نَجِيحٍ حَدَّثَنِي عَبْدُ اللَّهِ بْنُ كَثِيرٍ عَنْ أَبِي الْمِنْهَالِ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَسْلَفَ فَلَا يُسْلِفْ إِلَّا فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ» .

L25666 Thus, this is the prohibition by the Salaf and its absolute forbiddance, except for items measured by volume or weight.

فَهَذَا مَنْعُ السَّلَفِ وَتَحْرِيمُهُ أَلْبَتَّةَ إِلَّا فِي مَكِيلٍ أَوْ مَوْزُونٍ.

L25667 From the chain of Ahmad ibn Shuʿayb: I am Qutaybah ibn Saʿid; Sufyan ibn ʿUyaynah reported to us from Ibn Abī Najīḥ from ʿAbdullāh ibn Kathīr from Abū al-Minhāl from Ibn ʿAbbās, who said: The Messenger of Allah—peace be upon him—said, "Whoever advances a Salam contract must do so in a known measure, a known weight, and until a known term."[2]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ عَنْ أَبِي الْمِنْهَالِ عَنِ ابْنِ عَبَّاسٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَسْلَفَ سَلَفًا فَلْيُسْلِفْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ»

L25668 From the narration of Waki', who reported from Sufyān al-Thawrī, from ʿAbdullāh ibn Abī Najīḥ, from ʿAbdullāh ibn Kathīr, from Abu al-Minhal, from Ibn ʿAbbās, who said: The Messenger of Allah (peace be upon him) said, "Whoever enters a _salam_ contract must do so with a specified measure, a specified weight, to a specified term." This establishes the obligation of a clearly defined term.

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي نَجِيحٍ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ عَنْ أَبِي الْمِنْهَالِ عَنِ ابْنِ عَبَّاسٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَسْلَمَ فَلْيُسْلِمْ فِي كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ» فَفِي هَذَا إِيجَابُ الْأَجَلِ الْمَعْلُومِ.

L25669 The Prophet's prohibition—peace be upon him—against sales involving gharārāt and the sale of what is not in your possession has been authentically established. Thus, what we have stated is explicitly confirmed by the textual evidence, and all praise is due to Allah, the Most High.

وَقَدْ صَحَّ «نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْغَرَرِ وَعَنْ بَيْعِ مَا لَيْسَ عِنْدَكَ» فَصَحَّ مَا قُلْنَا نَصًّا وَلِلَّهِ تَعَالَى الْحَمْدُ.

L25670 Indeed, Al-Awzaʿi, along with the majority of Hanafis, Malikis, and our Zahiri scholars, distinguished between _bayʿ_ (sale) and _salam_ (advance payment contract).

وَقَدْ فَرَّقَ الْأَوْزَاعِيُّ، وَجُمْهُورُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَأَصْحَابُنَا الظَّاهِرِيِّينَ بَيْنَ الْبَيْعِ وَالسَّلَمِ.

L25671 Ibn al-Qassar said: A transaction formulated with the wording of a bayʿ

قَالَ ابْنُ الْقَصَّارِ: مَا كَانَ بِلَفْظِ الْبَيْعِ جَازَ حَالًّا، وَمَا كَانَ بِلَفْظِ السَّلَمِ لَمْ يَجُزْ إِلَّا بِأَجَلٍ.

[1] **Hadith references (L25665):** Sahih Muslim 1604b.
[2] **Hadith references (L25667):** Sunan an-Nasai 4616.

(sale) is valid immediately, whereas one expressed in the terms of a salam contract is invalid unless deferred to a specified term.

L25672 Al-Awzāʿī said: If its term is three days or fewer, it is a sale (bayʿ), and if its term is more, it is a salam contract (salam).

وَقَالَ الْأَوْزَاعِيّ: مَا كَانَ أَجَلُهُ ثَلَاثَةَ أَيَّامٍ فَأَقَلَّ فَهُوَ بَيْعٌ، وَمَا كَانَ أَجَلُهُ أَكْثَرَ فَهُوَ سَلَمٌ.

L25673–25675 Al-Quduri—one of the senior Hanafi jurists—said: "Salam (an advance-payment sale) is not a sale. Concerning what we have mentioned, there is a difference of opinion. We will present from it what Allah, the Exalted, has facilitated to be mentioned." So, a group disapproved of the al-salam contract in its entirety, as reported to us by Muhammad ibn al-Muthannā from ʿAmr ibn ʿĀṣim al-Kilābī, from Hammām ibn Yaḥyā, from Qatādah, from Abū Kathīr, from Abū ʿUbaydah ibn ʿAbd Allāh ibn Masʿūd that he completely rejected al-salam in all forms.

قَالَ الْقُمِّيُّ وَهُوَ مِنْ كِبَارِ الْحَنَفِيِّينَ: السَّلَمُ لَيْسَ بَيْعًا، وَفِيمَا ذَكَرْنَا خِلَافٌ نَذْكُرُ مِنْهُ مَا يَسَّرَ اللَّهُ تَعَالَى لِذِكْرِهِ: فَطَائِفَةٌ كَرِهَتْ السَّلَمَ جُمْلَةً: كَمَا رُوِّينَا عَنْ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَمْرُو بْنُ عَاصِمٍ الْكِلَابِيُّ نا هَمَّامُ بْنُ يَحْيَى نا قَتَادَةُ عَنْ أَبِي كَثِيرٍ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ كَانَ يَكْرَهُ السَّلَمَ كُلَّهُ.

L25676 And from the chain of Ibn Abī Shaybah: Ibn Abī Shaybah narrated to us from Ḥafṣ ibn Ghīyāth, from Layth, from ʿAṭāʾ, from Ibn ʿUmar, who said: "It was forbidden to engage in ʿĪnah [a usurious transaction involving immediate repurchase at a lower price]."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ لَيْثٍ عَنْ عَطَاءٍ عَنْ ابْنِ عُمَرَ قَالَ: نُهِيَ عَنْ الْعِينَةِ.

L25677 And via the chain of Ibn Abī Shaybah: Muʿādh ibn Muʿādh narrated to us from ʿAbd Allāh ibn ʿAwn, who said: They mentioned the ʿīnah sale (a deferred resale transaction) in the presence of Muḥammad ibn Sīrīn, so he said: I was informed that Ibn ʿAbbās used to say: "Exchanging dirhams for dirhams [with disparity], and between them is a sin."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُعَاذُ بْنُ مُعَاذٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ قَالَ: ذَكَرُوا عِنْدَ مُحَمَّدِ بْنِ سِيرِينَ الْعِينَةَ فَقَالَ: نُبِّئْت أَنَّ ابْنَ عَبَّاسٍ كَانَ يَقُولُ: دَرَاهِمُ بِدَرَاهِمَ وَبَيْنَهُمَا جَرِيرَةٌ.

L25678 And via the chain of Ibn Abī Shaybah: Ḥafṣ narrated to us from Ashʿath, from al-Ḥakam, from Masrūq, who said: "The ʿīnah transaction is ḥarām."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ عَنْ أَشْعَثَ عَنْ الْحَكَمِ عَنْ مَسْرُوقٍ قَالَ: الْعِينَةُ حَرَامٌ.

L25679 Through the chain of Ibn Abī Shaybah from Rabīʿ ibn Ṣubayḥ from al-Ḥasan and Ibn Sīrīn: that they both considered the ʿīnah and what people have engaged in thereof to be reprehensible.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ الرَّبِيعِ بْنِ صُبَيْحٍ عَنْ الْحَسَنِ، وَابْنِ سِيرِينَ أَنَّهُمَا كَرِهَا الْعِينَةَ، وَمَا دَخَلَ النَّاسُ فِيهِ مِنْهَا.

L25680 Ibn Abi Shaybah reported from Al-Fadl ibn Dukayn, who narrated from Abu Janab and Zayd ibn Mardanubah, both of whom said: Umar ibn Abd al-Aziz

wrote to Abd al-Hamid instructing him to forbid those under his authority from practicing ʿeenah transactions, for it is the sister of usury.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا الْفَضْلُ بْنُ دُكَيْنٍ عَنْ أَبِي جَنَابٍ، وَزَيْدِ بْنِ مَرْدَانُبَةَ قَالَا: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إِلَى عَبْدِ الْحَمِيدِ: انْهَ مَنْ قِبَلَك عَنْ الْعِينَةِ، فَإِنَّهَا أُخْتُ الرِّبَا.

L25681 Abu Muhammad said: Al-'Aynah is the same as Salam, or the sale of a commodity to a specified term. There is no disagreement on this, and thus, Salam remains.

قَالَ أَبُو مُحَمَّدٍ: الْعِينَةُ هِيَ السَّلَمُ نَفْسُهُ، أَوْ بَيْعُ سِلْعَةٍ إلَى أَجَلٍ مُسَمًّى، وَلَا خِلَافَ فِي هَذَا، فَبَقِيَ السَّلَمُ.

L25682–25684 Ali said: "No argument holds for anyone alongside the Messenger of Allah—peace and blessings be upon him." Malik and Abu Hanifa permitted salam contracts for counted items and cloth measured by volume without mentioning its weight, while prohibiting immediate loans (salaf). This aspect of their opinion was perplexing, for if the Messenger of Allah's stipulation—peace and blessings be upon him—"to a known term" prohibits salam contracts from being immediate or settled through prompt payment, then his prohibition—peace and blessings be upon him—against advancing loans except in known volume or known weight constitutes a stricter injunction and more emphatic restriction against salam contracts without volumetric or weight measurements. If analogical reasoning applied to items measured by volume, weighed, measured by length, or counted is permissible, then analogizing the permissibility of immediate settlement to the permissibility of deferred terms would be more logically consistent. Thus the invalidity of their opinion becomes indisputably clear. Indeed, the prohibition of loans in non-measured... Items sold by volumetric measure or weight are unequivocally clear, because the ruling is derived from explicit prohibitory language. Qiyās (legal analogy) is impermissible according to its proponents if it contradicts the scriptural text.

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي أَحَدٍ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبَاحَ مَالِكٌ وَأَبُو حَنِيفَةَ السَّلَمَ فِي الْمَعْدُودِ، وَالْمَذْرُوعِ مِنْ الثِّيَابِ بِغَيْرِ ذِكْرِ وَزْنِهِ وَمَنَعَا مِنْ السَّلَفِ حَالًّا، فَكَانَ هَذَا عَجَبًا مِنْ قَوْلِهِمَا، لِأَنَّهُ إنْ كَانَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إلَى أَجَلٍ مَعْلُومٍ» مَانِعًا مِنْ أَنْ يَكُونَ السَّلَمُ حَالًّا، أَوْ نَقْدًا، فَإِنَّ نَهْيَهُ - عَلَيْهِ السَّلَامُ - عَنْ أَنْ يُسَلَّفَ إلَّا فِي كَيْلٍ مَعْلُومٍ، أَوْ وَزْنٍ مَعْلُومٍ أَشَدُّ فِي التَّحْرِيمِ وَأَوْكَدُ فِي الْمَنْعِ مِنْ السَّلَمِ فِي غَيْرِ كَيْلٍ أَوْ وَزْنٍ، وَلَئِنْ كَانَ الْقِيَاسُ عَلَى الْمَكِيلِ، وَالْمَوْزُونِ، وَالْمَذْرُوعِ، وَالْمَعْدُودِ جَائِزًا فَإِنَّ قِيَاسَ جَوَازِ الْحُلُولِ وَالنَّقْدِ عَلَى جَوَازِ الْأَجَلِ أَوْلَى، فَظَهَرَ فَسَادُ قَوْلِهِمَا بِيَقِينٍ لَا شَكَّ فِيهِ، بَلْ الْمَنْعُ مِنْ السَّلَفِ فِي غَيْرِ الْمَكِيلِ وَالْمَوْزُونِ أَوْضَحُ، لِأَنَّهُ جَاءَ بِلَفْظِ النَّهْيِ، وَلَا يَجُوزُ الْقِيَاسُ عِنْدَ الْقَائِلِينَ بِهِ إذَا خَالَفَ النَّصَّ.

L25685 As for al-Shāfiʿī, he permitted immediate-delivery _salam_ contracts by analogy to their permissibility for deferred terms, and he allowed _salam_ in all things by analogy to items measured by volume or weight. Thus, divergence from the transmitted texts became entrenched in every case it applied to, and he was the most rigorous in applying analogy yet the most egregious in error.

وَأَمَّا الشَّافِعِيُّ فَأَجَازَ السَّلَمَ حَالًّا قِيَاسًا عَلَى جَوَازِهِ إلَى أَجَلٍ، وَأَجَازَ السَّلَمَ فِي كُلِّ شَيْءٍ قِيَاسًا عَلَى الْمَكِيلِ وَالْمَوْزُونِ، فَانْتَظَمَ خِلَافُ الْخَبَرِ فِي كُلِّ مَا جَاءَ فِيهِ، وَكَانَ أَطْرَدَهُمْ لِلْقِيَاسِ وَأَفْحَشَهُمْ خَطَأً.

فَإِنْ قِيلَ: إِنَّ السَّلَمَ بَيْعٌ اُسْتُثْنِيَ مِنْ جُمْلَةِ بَيْعِ مَا لَيْسَ عِنْدَكَ؟ قُلْنَا: هَذَا بَاطِلٌ، لِأَنَّهُ دَعْوَى بِلَا دَلِيلٍ وَلَيْسَ كُلُّ مَا عُوِّضَ فِيهِ بِآخَرَ بَيْعًا، فَهَذَا الْقَرْضُ مَالٌ بِمَالٍ، وَلَيْسَ بَيْعًا بِلَا خِلَافٍ.

L25686 If it is said: "Indeed, the *salam* contract is a sale excepted from the category of selling what is not in your possession?" We reply: This is null and void, for it is a claim without evidence. Not every exchange of one thing for another constitutes a sale. For instance, a loan entails property for property, yet it is indisputably not a sale.

وَلَمْ يُجِزْ أَبُو حَنِيفَةَ السَّلَمَ فِي الْحَيَوَانِ، وَأَجَازَهُ مَالِكٌ، وَالشَّافِعِيُّ وَمَا نَعْلَمُ لِتَخْصِيصِهِمْ الْحَيَوَانَ بِالْمَنْعِ مِنْ - السَّلَمِ فِيهِ دُونَ سَائِرِ مَا أَبَاحُوا السَّلَمَ فِيهِ مِنْ غَيْرِ الْمَكِيلِ وَالْمَوْزُونِ: حُجَّةً أَصْلًا، إِلَّا أَنَّ بَعْضَهُمْ مَوَّهَ بِأَنَّهُ قَدْ رُوِيَ عَنْ عُمَرَ أَنَّهُ قَالَ: مِنْ الرِّبَا مَا لَا يَكَادُ يَخْفَى كَالسَّلَمِ فِي سِنٍّ.

L25687 Abu Hanifah did not permit *salam* in animals, while Malik and Al-Shafi'i permitted it. We are unaware of any valid proof whatsoever for their specific restriction of animals from *salam* transactions, unlike other items not measured by volume or weight in which they permitted *salam*. However, some of them put forward a specious argument by citing a narration attributed to 'Umar, who said: "Among forms of usury is what is scarcely concealed, such as *salam* in age."

قَالُوا: وَعُمَرُ حُجَّةٌ فِي اللُّغَةِ، وَلَا يَقُولُ مِثْلَ هَذَا إِلَّا بِتَوْقِيفٍ.

L25688 They said: "Umar is a decisive authority in linguistic matters, and he would not say such a thing except through divine authorization."

فَقُلْنَا لَهُ: هَذَا لَا يُسْنَدُ عَنْ عُمَرَ ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْكُمْ، لِأَنَّ فِي هَذَا الْخَبَرِ نَفْسِهِ أَنَّهُ نَهَى عَنْ بَيْعِ الثَّمَرَةِ، وَهِيَ مُغَضَّفَةٌ لَمَّا تَطِبْ بَعْدُ، وَأَنْتُمْ تُجِيزُونَهُ عَلَى الْقَطْعِ فَمَرَّةً عُمَرُ حُجَّةٌ، وَمَرَّةً لَيْسَ هُوَ بِحُجَّةٍ.

L25689 We said to him: This is not transmitted with a chain from 'Umar. Even if it were authentic, it would constitute authoritative evidence against you, for this very report contains his prohibition against selling fruit while still immature and not yet fit [for sale]—yet you permit it once harvested. Thus, you sometimes uphold 'Umar as a binding precedent and other times disregard him as such.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ وَكِيعٍ عَنْ مَعْمَرٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: قَالَ عُمَرُ: مِنْ الرِّبَا أَنْ تُبَاعَ الثَّمَرَةُ وَهِيَ مُغَضَّفَةٌ لَمَّا تَطِبْ.

L25690 It was narrated to us through the chain of Ibn Abi Shaybah, who narrated to us from Ibn Abi Za'idah, from Waki', from Ma'mar, from Al-Qasim ibn 'Abd al-Rahman, who said: 'Umar said: "Among the forms of riba is selling the fruit while it is still unripe and not yet ripened."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ ابْنِ بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: سَأَلْت ابْنَ عُمَرَ عَنْ الرَّهْنِ فِي السَّلَفِ؟ فَقَالَ: ذَلِكَ الرِّبَا الْمَضْمُونُ، وَهُمْ يُجِيزُونَ الرَّهْنَ فِي السَّلَفِ، وَلَمْ يَكُنْ قَوْلُ ابْنِ عُمَرَ فِي ذَلِكَ إنَّهُ الرِّبَا بِأَصَحِّ طَرِيقٍ حُجَّةً فِي أَنَّهُ رِبًا مَا شَاءَ اللَّهُ كَانَ.

L25691 From the chain of Sa'id ibn Mansur: Abu 'Awanah narrated to us from Ibn Bishr from Sa'id ibn Jubayr, who said: I asked Ibn 'Umar about collateral in a prepayment contract. He replied: That is collateralized usury. Other scholars permit collateral in prepayment contracts, but Ibn 'Umar's assertion that this constitutes usury – even if transmitted through the most authentic chain – does not serve as valid evidence for its classification as usury. What Allah wills occurs.

L25692–25694 As for the Mālikīs and Shāfiʿīs, they cited evidence from the narration of ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ that he used to purchase a male camel in exchange for two or three young she-camels up to the number required for Zakat camels, with the knowledge and command of the Messenger of Allah (peace be upon him). This is a hadith with an extremely defective chain of transmission: We have transmitted it through the chain of Muhammad ibn Ishaq. Once, he narrated it from Abu Sufyan, and he is unknown; once from Muslim ibn Kathir, and he is unknown; once from Amr ibn Dinar al-Dinawari, and he is unknown; and once from Amr ibn Ḥuraish al-Zubaidi, and he is unknown.

وَأَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: فَإِنَّهُمْ احْتَجُّوا بِمَا رُوِيَ مِنْ طَرِيقِ «عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ كَانَ يَبْتَاعُ الْبَعِيرَ بِالْقَلُوصَيْنِ وَالثَّلَاثَةِ إلَى إبِلِ الصَّدَقَةِ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِأَمْرِهِ» وَهَذَا حَدِيثٌ فِي غَايَةِ فَسَادِ الْإِسْنَادِ: رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ إسْحَاقَ، فَمَرَّةً رَوَاهُ عَنْ أَبِي سُفْيَانَ وَلَا يُدْرَى مَنْ هُوَ عَنْ مُسْلِمِ بْنِ كَثِيرٍ وَلَا يُدْرَى مَنْ هُوَ وَعَنْ عَمْرِو بْنِ دِينَارٍ الدِّينَوَرِيِّ وَلَا يُدْرَى مَنْ هُوَ عَنْ عَمْرِو بْنِ حَرِيشٍ الزُّبَيْدِيِّ وَلَا يُدْرَى مَنْ هُوَ.

L25695 And once the chain of transmission was reversed, so its beginning was made its end and its end its beginning: he narrated it from Yazīd ibn Abī Ḥabīb from Muslim from Jubayr—from one who is unknown—from Abū Sufyān—from one who is unknown—from ʿAmr ibn Ḥuraysh.

وَمَرَّةً قُلِبَ الْإِسْنَادُ، فَجُعِلَ أَوَّلُهُ آخِرَهُ وَآخِرُهُ أَوَّلَهُ: فَرَوَاهُ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ مُسْلِمٍ عَنْ جُبَيْرٍ وَلَا يُدْرَى مَنْ هُوَ عَنْ أَبِي سُفْيَانَ وَلَا يُدْرَى مَنْ هُوَ عَنْ عَمْرِو بْنِ حُرَيْثٍ.

L25696 And no one pays attention to such a thing except one who openly flaunts falsehood or a blind and ignorant person.

وَمِثْلُ هَذَا لَا يَلْتَفِتُ إلَيْهِ إلَّا مُجَاهِرٌ بِالْبَاطِلِ أَوْ جَاهِلٌ أَعْمَى.

L25697 Then, if it were valid, it would serve as evidence against the Malikis and the Shafi'is, because stipulating a term for zakat is impermissible according to them. Thus, they contradicted him. The arrival of zakat camels during his time—peace be upon him—varied significantly: some of these arrivals took less than a day like Baliyy and Juhaynah, while others took up to twenty days like Tamim and Tayy.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَى الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ: لِأَنَّ الْأَجَلَ عِنْدَهُمْ إلَى الصَّدَقَةِ لَا يَجُوزُ، فَقَدْ خَالَفُوهُ، وَمَجِيءُ إبِلِ الصَّدَقَةِ كَانَ عَلَى عَهْدِهِ - عَلَيْهِ السَّلَامُ - يَخْتَلِفُ اخْتِلَافًا عَظِيمًا مِنْهُ عَلَى أَقَلَّ مِنْ يَوْمٍ كَبَلِيٍّ وَجُهَيْنَةَ، وَمِنْهُ عَلَى عِشْرِينَ يَوْمًا كَتَمِيمٍ، وطيئ.

L25698 Additionally, the Mālikīs do not permit a *salam* contract for camels in exchange for camels except on the condition that they differ in their suitability for travel purposes and distinctive capabilities, and this condition is not mentioned in this ḥadīth.

وَأَيْضًا: فَإِنَّ الْمَالِكِيِّينَ لَا يُجِيزُونَ سَلَمَ الْإِبِلِ فِي الْإِبِلِ إلَّا بِشَرْطِ اخْتِلَافِهَا فِي الرِّحْلَةِ وَالنَّجَابَةِ، وَلَيْسَ هَذَا مَذْكُورًا فِي هَذَا الْحَدِيثِ.

L25699 If they say, "Should we interpret it thus?" We reply: If you do so, you would have lied and added to the narration what is not in it, and what has never been narrated in any of the reports.

فَإِنْ قَالُوا: نَحْمِلُهُ عَلَى هَذَا؟ قُلْنَا: إنْ فَعَلْتُمْ كُنْتُمْ قَدْ كَذَبْتُمْ وَزِدْتُمْ فِي الْخَبَرِ مَا لَيْسَ فِيهِ، وَمَا لَمْ يُرْوَ قَطُّ فِي شَيْءٍ مِنْ الْأَخْبَارِ.

L25700 Indeed, it is incumbent upon the Hanafis—who cite every stringent ruling as proof, such as invalidating ablution due to laughter during prayer and performing ablution with wine—to adopt this narration, for it is analogous to such cases.

وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ الْمُحْتَجِّينَ بِكُلِّ بَلِيَّةٍ، كَالْوُضُوءِ مِنْ الْقَهْقَهَةِ فِي الصَّلَاةِ، وَالْوُضُوءِ بِالْخَمْرِ: أَنْ يَأْخُذُوا بِهَذَا الْخَبَرِ، لِأَنَّهُ مِثْلُهَا.

L25701 Some of them said, “That did not occur through the Prophet’s awareness (peace and blessings be upon him).”

وَقَدْ قَالَ بَعْضُهُمْ: لَمْ يَكُنْ ذَلِكَ بِعِلْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L25702–25704 So we said: This is astonishing—that the statement of Umar, “Salam (a forward contract) involving specified age [of livestock] constitutes usury,” is falsely attributed to the Prophet (peace be upon him) through false conjecture, and that this report exists without the Prophet’s (peace be upon him) knowledge. Yet the text states: “The Messenger of Allah (peace be upon him) commanded me to collect the camels of charity. I would purchase a camel using two and three young she-camels from the charity camels, to be added to the charity herd. When the charity arrived, the Messenger of Allah (peace be upon him) fulfilled the obligation. Uff! Uff! For the lack of shame!” Do not be misled by reports stating that a first-year camel was owed to the Messenger of Allah (peace be upon him) which he settled, for it is authentically established that this was a loan, as we have mentioned in “The Book of Loans” within this diwan of ours.

فَقُلْنَا: هَذَا عَجَبٌ يَكُونُ قَوْلُ عُمَرَ " مِنْ الرِّبَا السَّلَمُ فِي سِنٍّ " مُضَافًا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالظَّنِّ الْكَاذِبِ، وَيَكُونُ هَذَا الْخَبَرُ بِغَيْرِ عِلْمِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي نَصِّهِ: «فَأَمَرَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ آخُذَ فِي إبِلِ الصَّدَقَةِ، فَكُنْتُ أَبْتَاعُ الْبَعِيرَ بِالْقَلُوصَيْنِ وَالثَّلَاثَةِ إلَى إبِلِ الصَّدَقَةِ، فَلَمَّا قَدِمَتْ الصَّدَقَةُ قَضَاهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأُفٍّ أُفٍّ لِعَدَمِ الْحَيَاءِ» وَلَا تُمَوِّهُوا بِمَا رُوِيَ مِنْ أَنَّهُ كَانَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكْرٌ فَقَضَاهُ، فَإِنَّهُ صَحَّ أَنَّهُ كَانَ قَرْضًا كَمَا ذَكَرْنَاهُ فِي " كِتَابِ الْقَرْضِ " مِنْ دِيوَانِنَا هَذَا.

L25705 “Similarly, the Prophet (peace be upon him) purchased the slave who migrated to him in exchange for two slaves, and he purchased Safiyyah—the Mother of the Believers—in exchange for seven captives. All these transactions were paid in cash.”

وَكَذَلِكَ «ابْتِيَاعُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعَبْدَ الَّذِي هَاجَرَ إلَيْهِ بِعَبْدَيْنِ وَصَفِيَّةَ أُمَّ الْمُؤْمِنِينَ بِسَبْعَةِ أَرْؤُسٍ» : فَكُلُّ ذَلِكَ كَانَ نَقْدًا.

L25706 Indeed, it was incumbent upon the Mālikīs who cited as evidence the report of al-Ḥajjāj ibn Arṭāh that ʿUmrah is voluntary, and who relied on those mursal reports and prevalent adversities, to affirm what we have transmitted through the chain of Aḥmad ibn Shuʿayb—narrated by ʿAmr ibn ʿAlī, from Yaḥyā ibn Saʿīd al-Qaṭṭān, Yazīd ibn Zuraiʿ, and Khālid ibn al-Ḥārith—all of whom said: From Saʿīd ibn Abī ʿArūbah, from Qatādah, from al-Ḥasan, from Samurah ibn Jundub: “The Messenger of Allāh—peace and blessings of Allāh be upon him—prohibited the sale of an animal for an animal on credit.”

وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْمُحْتَجِّينَ بِخَبَرِ الْحَجَّاجِ بْنِ أَرْطَاةَ فِي أَنَّ الْعُمْرَةَ تَطَوُّعٌ، وَبِتِلْكَ الْمَرَاسِيلِ وَالْبَلَايَا أَنْ يَقُولُوا: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ عَلِيٍّ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَيَزِيدُ بْنُ زُرَيْعٍ، وَخَالِدُ بْنُ الْحَارِثِ كُلُّهُمْ قَالَ: نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْحَيَوَانِ بِالْحَيَوَانِ نَسِيئَةً» .

L25707 From the narration of Ibn Abi Shaybah: Ibn Abi Za'idah reported from Al-Hajjaj ibn Artah, from Al-Zubayr, from Jabir, who said: The Messenger of Allah—peace and blessings be upon him—said, "Exchanging two animals for one—there is no harm in it hand to hand, but there is no good in it involving women."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الزُّبَيْرِ عَنْ جَابِرٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْحَيَوَانُ اثْنَانِ بِوَاحِدٍ لَا بَأْسَ بِهِ يَدًا بِيَدٍ وَلَا خَيْرَ فِيهِ نَسَاءً» .

L25708 Through the chain of ʿAbd al-Razzāq, from Maʿmar, from Yaḥyā ibn Abī Kathīr, from ʿIkrimah, the freed slave of Ibn ʿAbbās, who said: "The Messenger of Allah (peace and blessings of Allah be upon him) prohibited selling an animal for an animal with deferred payment." This is among the finest mursal reports, but the Mālikīs differed with it completely.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ الْحَيَوَانِ بِالْحَيَوَانِ نَسِيئَةً» ، وَهَذَا مِنْ أَحْسَنِ الْمَرَاسِيلِ فَخَالَفَهُ الْمَالِكِيُّونَ جُمْلَةً.

L25709 They permitted exchanging all animals with animals of a different species on deferred payment.

وَأَجَازُوا الْحَيَوَانَ كُلَّهُ بِالْحَيَوَانِ مِنْ غَيْرِ جِنْسِهِ نَسِيئَةً.

L25710 They permitted it from a single genus when its attributes differed due to unintelligible mixtures.

وَأَجَازُوهُ مِنْ جِنْسٍ وَاحِدٍ إذَا اخْتَلَفَتْ أَوْصَافُهُ بِتَخَالِيطَ لَا تُعْقَلُ.

L25711 The Hanafis neglected their own position that the Prophet's statement—peace and blessings be upon him—"Zakat applies to grazing livestock" indicates the absence of zakat on non-grazing livestock. Why then do they not argue here that his prohibition—upon him be peace—against exchanging animals for animals on credit serves as evidence for permitting the exchange of goods for animals on credit? But they are people who lack discernment.

وَنَسِيَ الْحَنَفِيُّونَ قَوْلَهُمْ: إنَّ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الزَّكَاةُ فِي السَّائِمَةِ» دَلِيلٌ عَلَى أَنَّ غَيْرَ السَّائِمَةِ لَا زَكَاةَ فِيهَا، فَهَلَّا قَالُوا هَاهُنَا: نَهْيُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَنْ الْحَيَوَانِ بِالْحَيَوَانِ نَسِيئَةً دَلِيلٌ عَلَى جَوَازِ الْعُرُوضِ بِالْحَيَوَانِ نَسِيئَةً، وَلَكِنَّهُمْ قَوْمٌ لَا يَفْقَهُونَ.

L25712 The Hanafis permitted contractual manumission agreements for specified slaves, the establishment of dowries for specified slaves within the scope of financial liability, and prohibited forward sales involving specified slaves. They argued: "Does marriage permit what commercial transactions prohibit?" We responded: "The legal ruling on theft differs from that on marriage. Yet you analogized what constitutes a dowry to matters requiring hand amputation—though this applies exclusively to a distinct ruling that contradicts all other legal principles. This did not deter you from applying analogy between certain rulings whenever it aligned with your desires."

وَأَجَازَ الْحَنَفِيُّونَ الْمُكَاتَبَةَ عَلَى الْوُصَفَاءِ، وَإِصْدَاقَ الْوُصَفَاءِ فِي الذِّمَّةِ وَمَنَعُوا مِنْ السَّلَمِ فِي الْوُصَفَاءِ فَقَالُوا: النِّكَاحُ يَجُوزُ فِيهِ مَا لَا يَجُوزُ فِي الْبُيُوعِ؟ قُلْنَا: وَالسَّرِقَةُ حُكْمُهَا غَيْرُ حُكْمِ النِّكَاحِ، وَقَدْ قِسْتُمْ مَا يَكُونُ صَدَاقًا عَلَى مَا تُقْطَعُ فِيهِ الْيَدُ، وَمَا فِي حُكْمٍ إلَّا، وَهُوَ يُخَالِفُ سَائِرَ الْأَحْكَامِ ثُمَّ لَمْ يَمْنَعْكُمْ ذَلِكَ مِنْ قِيَاسِ بَعْضِهَا عَلَى بَعْضٍ حَيْثُ اشْتَهَيْتُمْ.

L25713–25714 Abu Muhammad said: Among those from whom a similar opinion to ours has been reported, as it has been narrated to us through Shu'bah's chain

from al-Aswad ibn Qays, who heard Nubayḥ al-ʻAnazī, who narrated from Abū Saʻīd al-Khudrī, who said: "Salam is at the price, but stipulate your dirhams or dinars for a specified term and a known measure."

قَالَ أَبُو مُحَمَّد: وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا: كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْأَسْوَدِ بْنِ قَيْسٍ أَنَّهُ سَمِعَ نُبَيْحًا الْعَنَزِيَّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: السَّلَمُ بِالسِّعْرِ، وَلَكِنْ اسْتَكْثِرْ بِدَرَاهِمِك أَوْ بِدَنَانِيرِك إلَى أَجَلٍ مُسَمًّى وَكَيْلٍ مَعْلُومٍ

L25715 And through the transmission of Sufyān, al-Aswad ibn Qays, Nubayḥ, and Abu Saʻīd, a similar report is related.

وَمِنْ طَرِيقِ سُفْيَانَ عَنْ الْأَسْوَدِ بْنِ قَيْسٍ عَنْ نُبَيْحٍ عَنْ أَبِي سَعِيدٍ مِثْلَهُ.

L25716 From the transmission of Muhammad ibn al-Muthanna: From Muhammad ibn Muḥabib, from Sufyan al-Thawri, from Abu Hayyan al-Taymi, from a man, from Ibn Abbas: This verse, {When you contract a debt for a specified term} [Al-Baqarah: 282], was revealed regarding the Salam contract with a specified measure to a specified term.[3]

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُحَمَّدُ بْنُ مُحَبَّبٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي حَيَّانَ التَّيْمِيِّ عَنْ رَجُلٍ عَنْ ابْنِ عَبَّاسٍ نَزَلَتْ هَذِهِ الْآيَةُ {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى} [البقرة: ٢٨٢] فِي السَّلَفِ فِي كَيْلٍ مَعْلُومٍ إلَى أَجَلٍ مَعْلُومٍ.

L25717 And through the chain of Wakīʻ, ʻĪsā al-Ḥannāṭ narrated to us from his father, I heard Ibn ʻUmar say, "A specified measure for a specified term."

وَمِنْ طَرِيقِ وَكِيعٍ نا عِيسَى الْحَنَّاطُ عَنْ أَبِيهِ سَمِعْت ابْنَ عُمَرَ يَقُولُ: كَيْلٌ مَعْلُومٌ إلَى أَجَلٍ مَعْلُومٍ.

L25718 From Ibn ʻUmar: The permissibility of the salam contract for karābīs (linen garments) and in silk.

عَنْ ابْنِ عُمَرَ إبَاحَةُ السَّلَمِ فِي الْكَرَابِيسِ وَهِيَ ثِيَابٌ وَفِي الْحَرِيرِ.

L25719 From Ibn Abbas concerning the sabā'ib – which is flax, and all of that can be weighed. We know of no Companion permitting a salam contract with immediate [delivery], nor in items not measured by volume nor those not weighed, except what they disagreed about regarding salam in animals. Differing [opinions] were reported from Ali, Ibn Masʻud, and Ibn Umar concerning this.

وَعَنْ ابْنِ عَبَّاسٍ فِي السَّبَائِبِ وَهُوَ الْكَتَّانُ وَكُلُّ ذَلِكَ يُمْكِنُ وَزْنُهُ، وَمَا نَعْلَمُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ إجَازَةَ سَلَمٍ حَالٍّ، وَلَا فِي غَيْرِ مَكِيلٍ، وَلَا مَوْزُونٍ إلَّا مَا اخْتَلَفُوا فِيهِ مِنْ السَّلَمِ فِي الْحَيَوَانِ: فَاخْتُلِفَ فِيهِ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ وَابْنِ عُمَرَ.

L25720 We have also received reports that its permissibility is ascribed to Ibn ʻAbbās based on inferential evidence, not explicit textual authority.

وَرُوِّينَا أَيْضًا: إبَاحَتَهُ عَنْ ابْنِ عَبَّاسٍ بِاسْتِدْلَالٍ لَا بِنَصٍّ.

L25721 The prohibition concerning that matter has been authentically transmitted to us from Umar, Hudhayfah, and Abd al-Rahman ibn Samurah, along with other Companions—may Allah be pleased with them—and success is from Allah, the Exalted.

وَرُوِّينَا النَّهْيَ عَنْ ذَلِكَ عَنْ عُمَرَ، وَحُذَيْفَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ صَحِيحًا، وَغَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[3] **Qur'an references (L25716):** Qur'an 2:282 (Al-Baqarah).

The Issue of the Term in Salam

1614 - Issue: The period in salam is what is termed a period, as the Messenger of Allah - peace and blessings be upon him - commanded, and He did not fix a specific period from among periods: “And your Lord is not forgetful” [Maryam 19:64].[4]

“He does not speak out of desire. (53:3) It is nothing but a revelation that is revealed. (53:4)”[5]

To clarify for the people what has been revealed to them [An-Nahl 16:44]. Thus, the term is a period and beyond.[6]

Some Hanafis stated that the stipulated period in that matter cannot be less than half a day.

And some of them said: It must not be less than three days.

Abu Muhammad said: This is an invalid determination, because it lacks proof.

The Maliki jurists said: It is disliked for it to be two days or fewer.

Sa‘īd ibn al-Musayyib said: “The markets do not adapt to it, and this is the pinnacle of disorder because it...” Specification without evidence. Then, the markets may change from that day onward or remain unchanged for months. In both scenarios, we know of no one before them who specified such a specification in the religion of Allah the Exalted. Al-Layth said: “Fifteen days.”

The Matter of the Price in *Salam*

Issue 1615: The price in a salam contract must be received in full. If the two parties separate before full receipt of the entire amount, the whole

[4]**Qur’an references (L25723):** Qur’an 19:64 (Maryam).
[5]**Qur’an references (L25724):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm).
[6]**Qur’an references (L25725):** Qur’an 16:44 (An-Nahl).

[مَسْأَلَة الْأَجَلُ فِي السَّلَمِ]

١٦١٤ - مَسْأَلَةٌ: وَالْأَجَلُ فِي السَّلَمِ مَا وَقَعَ عَلَيْهِ اسْمُ أَجَلٍ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَحُدَّ أَجَلًا مِنْ أَجَلٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] : {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] .

{لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَالْأَجَلُ سَاعَةٌ فَمَا فَوْقَهَا.

وَقَالَ بَعْضُ الْحَنَفِيِّينَ: لَا يَكُونُ الْأَجَلُ فِي ذَلِكَ أَقَلَّ مِنْ نِصْفِ يَوْمٍ.

وَقَالَ بَعْضُهُمْ: لَا يَكُونُ أَقَلَّ مِنْ ثَلَاثَةِ أَيَّامٍ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَحْدِيدٌ فَاسِدٌ، لِأَنَّهُ بِلَا بُرْهَانٍ.

وَقَالَ الْمَالِكِيُّونَ: يُكْرَهُ أَنْ يَكُونَ يَوْمَيْنِ فَأَقَلَّ.

وَقَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: مَا تَتَغَيَّرُ إِلَيْهِ الْأَسْوَاقُ وَهَذَا فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ تَحْدِيدٌ بِلَا بُرْهَانٍ ثُمَّ إِنَّ الْأَسْوَاقَ قَدْ تَتَغَيَّرُ مِنْ يَوْمِهَا، وَقَدْ لَا تَتَغَيَّرُ شُهُورًا وَكِلَاهُمَا لَا نَعْلَمُ أَحَدًا سَبَقَهُمْ إِلَى التَّحْدِيدِ فِي دِينِ اللَّهِ تَعَالَى بِهِ، وَقَالَ اللَّيْثُ: خَمْسَةَ عَشَرَ يَوْمًا.

[مَسْأَلَة الثَّمَن فِي السَّلَمِ]

١٦١٥ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يَكُونَ الثَّمَنُ فِي السَّلَمِ إِلَّا مَقْبُوضًا فَإِنْ تَفَرَّقَا قَبْلَ تَمَامِ قَبْضِ جَمِيعِهِ بَطَلَتْ الصَّفْقَةُ كُلُّهَا، لِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِأَنْ يُسَلَّفَ فِي كَيْلٍ مَعْلُومٍ أَوْ وَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ» .

transaction becomes void. This is because the Messenger of Allah (peace be upon him) commanded that one must enter into a salam contract for a known measure or a known weight, for a known term.

L25735 “The advance loan (at-taslīf)” in the terminology with which He addressed us—peace be upon him—is that one gives something in exchange for something. Thus, whoever does not deliver what was advanced has not granted any advance, but has promised to advance.

L25736 If he pays part without the rest – whether it is the greater portion or the lesser – it constitutes a single transaction and a single contract. Every contract that mixes invalid and valid terms is entirely invalid, for a contract cannot be split into parts. Their mutual consent at the time of contracting applied only to the whole agreement, not to partial elements. It is therefore unlawful to impose obligations on them for what they have not mutually consented to in full, as this constitutes wrongful appropriation of wealth without mutual agreement.

L25737 As for *salam*, though not considered a sale, it constitutes a mutually agreed debt for a specified term and a form of trade. Thus, it is only permissible through mutual consent. This view of ours aligns with the positions of Sufyan al-Thawri, Ibn Shubruma, Ahmad, al-Shafi’i, Abu Sulayman, and their companions.

L25738 Abū Ḥanīfah said: The salam contract is valid in what is received and invalid in what is not received.

L25739 Malik said: If the receipt of the price is delayed by a day or two, it is permissible. And if it is delayed beyond that or delayed with a term, the entire transaction is void.

L25740 These are two corrupt opinions—especially that of Mālik, for it is inherently contradictory and invalid. And success is from Allah, the Exalted.

L25741 **If a defect is found in the goods of the salam (advance payment) contract.**

“ وَالتَّسْلِيفُ ” فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا - عَلَيْهِ السَّلَامُ -: هُوَ أَنْ يُعْطِيَ شَيْئًا فِي شَيْءٍ، فَمَنْ لَمْ يَدْفَعْ مَا أُسْلِفَ فَلَمْ يُسَلِّفْ شَيْئًا، لَكِنْ وَعَدَ بِأَنْ يُسَلِّفَ.

فَلَوْ دَفَعَ الْبَعْضَ دُونَ الْبَعْضِ سَوَاءٌ أَكْثَرُهُ أَوْ أَقَلُّهُ فَهِيَ صَفْقَةٌ وَاحِدَةٌ، وَعَقْدٌ وَاحِدٌ، وَكُلُّ عَقْدٍ وَاحِدٍ جَمَعَ فَاسِدًا وَجَائِزًا فَهُوَ كُلُّهُ فَاسِدٌ، لِأَنَّ الْعَقْدَ لَا يَتَبَعَّضُ، وَالتَّرَاضِي مِنْهُمَا لَمْ يَقَعْ حِينَ الْعَقْدِ إِلَّا عَلَى الْجَمِيعِ، لَا عَلَى الْبَعْضِ دُونَ الْبَعْضِ، فَلَا يَحِلُّ إِلْزَامُهُمَا مَا لَمْ يَتَرَاضَيَا جَمِيعًا عَلَيْهِ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ، لَا عَنْ تَرَاضٍ.

وَالسَّلَمُ وَإِنْ لَمْ يَكُنْ بَيْعًا فَهُوَ دَيْنٌ تَدَايَنَاهُ إِلَى أَجَلٍ مُسَمًّى، وَتِجَارَةٌ، فَلَا يَجُوزُ أَنْ يَكُونَ إِلَّا عَنْ تَرَاضٍ وَقَوْلُنَا هَذَا هُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَابْنِ شُبْرُمَةَ، وَأَحْمَدَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

وَقَالَ أَبُو حَنِيفَةَ: يَصِحُّ السَّلَمُ فِيمَا قُبِضَ وَيَبْطُلُ فِيمَا لَمْ يُقْبَضْ.

وَقَالَ مَالِكٌ: إِنْ تَأَخَّرَ قَبْضُ الثَّمَنِ يَوْمًا أَوْ يَوْمَيْنِ جَازَ، وَإِنْ تَأَخَّرَ أَكْثَرَ أَوْ بِأَجَلٍ بَطَلَ الْكُلُّ.

وَهَذَانِ قَوْلَانِ فَاسِدَانِ كَمَا ذَكَرْنَا، لَا سِيَّمَا قَوْلَ مَالِكٍ، فَإِنَّهُ مُتَنَاقِضٌ مَعَ فَسَادِهِ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة إِذَا وجد بِثَمَنِ السَّلَم عَيْبًا]

L25742 1616 - Issue: If the buyer discovers a defect in the received price, then if he had stipulated a guarantee of validity, the entire transaction is nullified. This is because what was given differs from what was contracted upon, thereby rendering it a *salam* contract where the valid price was not received. If he had not stipulated such a guarantee, he may choose either to retain what he received with no further claim or to return it, thereby invalidating the entire transaction. This is because if he returns the defective price, it becomes a *salam* contract for which the price was not fully paid, rendering it void. This is the opinion of al-Shāfiʿī.

١٦١٦ - مَسْأَلَةٌ: فَإِنْ وَجَدَ بِالثَّمَنِ الْمَقْبُوضِ عَيْبًا، فَإِنْ كَانَ اشْتَرَطَ السَّلَامَةَ بَطَلَتْ الصَّفْقَةُ كُلُّهَا؛ لِأَنَّ الَّذِي أُعْطِيَ غَيْرَ الَّذِي عَقَدَ عَلَيْهِ، فَصَارَ عَقْدَ سَلَمٍ لَمْ يَقْبِضْ ثَمَنَهُ، فَإِنْ كَانَ لَمْ يَشْتَرِطْ السَّلَامَةَ فَهُوَ مُخَيَّرٌ بَيْنَ أَنْ يَحْبِسَ مَا أَخَذَ وَلَا شَيْءَ لَهُ غَيْرُهُ، أَوْ يَرُدَّ وَتَنْقَضُ الصَّفْقَةُ كُلُّهَا؛ لِأَنَّهُ إنْ رَدَّ الْمَعِيبَ صَارَ سَلَمًا لَمْ يَسْتَوْفِ ثَمَنَهُ فَهُوَ بَاطِلٌ، وَهُوَ قَوْلُ الشَّافِعِيِّ.

L25743–25744 Abu Hanifah said: He substitutes the counterfeit item and invalidates from the transaction the portion corresponding to the defective amount found; the remainder of the transaction remains valid.

وَقَالَ أَبُو حَنِيفَةَ: يَسْتَبْدِلُ الزَّائِفَ، وَيُبْطِلُ مِنْ الصَّفْقَةِ بِقَدْرِ مَا وَجَدَ مِنْ السَّتُّوقِ، وَيَصِحُّ فِي الْبَاقِي.

L25745 Malik said: He substitutes all of that, and the evidence in this matter is the same as the one before it, with no difference.

وَقَالَ مَالِكٌ: يَسْتَبْدِلُ كُلَّ ذَلِكَ وَالْحُجَّةُ فِي هَذِهِ كَالَّتِي قَبْلَهَا وَلَا فَرْقَ.

[مَسْأَلَة مَا يَشْتَرِط فِي السَّلَم]

L25746 **Issue Regarding the Stipulated Conditions in the Salam Contract**

L25747 1617. Issue: It is not permissible for them to stipulate in a Salam contract its payment in a specific place. If they do so, the entire transaction is invalid. And whenever we have said or say that it is invalid, it is perpetually annulled and subject to the rulings of usurpation.

١٦١٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يَشْتَرِطَا فِي السَّلَمِ دَفْعَهُ فِي مَكَانٍ بِعَيْنِهِ، فَإِنْ فَعَلَا فَالصَّفْقَةُ كُلُّهَا فَاسِدَةٌ وَكُلَّمَا قُلْنَا أَوْ نَقُولُ: إنَّهُ فَاسِدٌ، فَهُوَ مَفْسُوخٌ أَبَدًا، مَحْكُومٌ فِيهِ بِحُكْمِ الْغَصْبِ.

L25748 The proof of that is that it is a condition not found in the Book of Allah, the Exalted, and the Messenger of Allah - may Allah bless him and grant him peace - said: "Every condition that is not in the Book of Allah is void, even if it were a hundred conditions."[7]

وَبُرْهَانُ ذَلِكَ: أَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ»

L25749 However, the right in the Salam sale is owed to the seller. Wherever the buyer encounters him at the appointed time and place, the buyer may take possession, and the seller must deliver his due. If the seller is absent, the judge shall compel him to fulfill his obligation from his property if it is found, based on Allah's statement: *{Indeed, Allah commands you to render

لَكِنَّ حَقَّ السَّلَمِ قِبَلَ الْمُسَلَّمِ إلَيْهِ فَحَيْثُ مَا لَقِيَهُ عِنْدَ مَحَلِّ الْأَجَلِ فَلَهُ أَخْذُهُ، يَدْفَعُ حَقَّهُ إلَيْهِ، فَإِنْ غَابَ أَنْصَفَهُ الْحَاكِمُ مِنْ مَالِهِ إنْ وُجِدَ لَهُ بِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا} [النساء: ٥٨] فَهُوَ مَأْمُورٌ بِأَدَاءِ أَمَانَتِهِ حَيْثُ وَجَبَتْ عَلَيْهِ وَيُسْأَلُهَا.

[7] **Hadith references (L25748):** Sunan Ibn Majah 2521.

trusts to their rightful owners}* [An-Nisa': 58]. Thus, he is commanded to fulfill his trust when it becomes due, and he will be questioned about it.[8]

L25750 The predominant opinion attributed to Ibn al-Qāsim is that the salam contract becomes invalid if the place of fulfillment is not specified.

L25751 Abu Hanifah and Al-Shafi'i stated: If the commodity entails expense and transportation costs, the salam contract is invalid unless the place of delivery is stipulated. If the commodity involves neither transportation costs nor expense, the salam contract remains valid even if the place of delivery is not stipulated.

L25752 These are unsubstantiated statements, so they are vitiated.

L25753 ## The Question of the Condition Pertaining to Salam

L25754 Issue 1618: Stipulating a guarantor in a salaf contract renders the contract invalid, as this is a condition not stipulated in the Book of Allah, the Exalted, and thus the condition itself is invalid.

L25755 As for stipulating a pledge within the contract, it is permissible due to what we have mentioned in the Book of Pledges, making its repetition superfluous. Among those who invalidated the contract due to this pledge stipulation are Ibn ʻUmar, Saʻīd ibn Jubayr, and others besides them.

L25756 ## The Issue of Prepaid Forward Sale (*Salam*) in Dirhams and Dinars

L25757 1619 - Issue: The salam is permissible in dinars and dirhams when they are delivered as the commodity, for they are of a known weight. Thus, it is lawful by the explicit text of his speech (peace be upon him). Mālik prohibited this, and we know of no valid proof for his position at all.

L25758–25760 Among the permissible salam contracts (forward sales) is the delivery of an animal that is lawful to own and transfer ownership of, even if its use is

[8] **Qur'an references (L25749):** Qur'an 4:58 (An-Nisa).

وَالْمَشْهُورُ عَنْ ابْنِ الْقَاسِمِ أَنَّ السَّلَمَ يَبْطُلُ إِنْ لَمْ يُذْكَرْ مَكَانُ الْإِيفَاءِ.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: مَالُهُ مُؤْنَةٌ وَحِمْلٌ فَالسَّلَمُ فَاسِدٌ، إِنْ لَمْ يَشْتَرِطْ مَوْضِعَ الدَّفْعِ، وَمَا لَيْسَ لَهُ حِمْلٌ وَلَا مُؤْنَةٌ فَالسَّلَمُ جَائِزٌ، وَإِنْ لَمْ يَشْتَرِطْ مَوْضِعَ الدَّفْعِ.

وَهَذِهِ أَقْوَالٌ لَا بُرْهَانَ عَلَى صِحَّتِهَا، فَهِيَ فَاسِدَةٌ.

[مَسْأَلَة الشَّرْط فِي السَّلَم]

١٦١٨ - مَسْأَلَةٌ: وَاشْتِرَاطُ الْكَفِيلِ فِي السَّلَمِ يَفْسُدُ بِهِ السَّلَمُ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

وَأَمَّا اشْتِرَاطُ الرَّهْنِ فِيهِ فَجَائِزٌ، لِمَا ذَكَرْنَا فِي " كِتَابِ الرَّهْنِ " فَأَغْنَى عَنْ إِعَادَتِهِ وَمِمَّنْ أَبْطَلَ بِهِ الْعَقْدَ ابْنُ عُمَرَ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَغَيْرُهُمَا.

[مَسْأَلَة السَّلَم فِي الدَّرَاهِم وَالدَّنَانِير]

١٦١٩ - مَسْأَلَةٌ: وَالسَّلَمُ جَائِزٌ فِي الدَّنَانِيرِ، وَالدَّرَاهِمِ إِذَا سُلِّمَ فِيهِمَا عَرَضًا؛ لِأَنَّهُمَا وَزْنٌ مَعْلُومٌ، فَهُوَ حَلَالٌ بِنَصِّ كَلَامِهِ - عَلَيْهِ السَّلَامُ -، وَمَنَعَ مِنْ ذَلِكَ مَالِكٌ وَمَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا.

وَمِنْ السَّلَمِ الْجَائِزِ: أَنْ يُسَلَّمَ الْحَيَوَانُ الَّذِي يَجُوزُ تَمَلُّكُهُ وَتَمْلِيكُهُ وَإِنْ لَمْ يَجُزْ بَيْعُهُ، أَوْ جَازَ بَيْعُهُ فِي لَحْمٍ مِنْ صِنْفِهِ إِنْ كَانَ يَحِلُّ أَكْلُ لَحْمِهِ، أَوْ فِي لَحْمٍ مِنْ غَيْرِ صِنْفِهِ كَتَسْلِيمِ

otherwise impermissible. The sale, or if the sale is permissible in meat from its own species when its meat is lawful to consume, or in meat from another species—such as delivering a male or female slave, dog, cat, ram, male goat, camel, cow, stag, chicken, or all other such cases—in ram meat, bull meat, male goat meat, or other meats, for all of this constitutes a salam contract of known weight for a predetermined term.

L25761 It is absolutely impermissible to engage in prepayment (salaf) for animals, as they are not measured by volume nor weighed.

L25762 It is permissible to sell wheat as salam in exchange for wheat flour, and wheat flour as salam in exchange for wheat, with disparity in quantity as they wish. Similarly, olive oil may be sold as salam in exchange for olives, olives for oil, and milk for milk. All such transactions are permissible except what we have detailed in the "Book of Riba"—specifically gold sold for silver or silver for gold, which is impermissible in principle. Likewise, dates, barley, wheat, and salt cannot be sold as salam whether within their own category or across other categories among these specified items. However, all of them may be sold as salam in exchange for items outside their category among measured by volume or weighed commodities. Excluded from this are unharvested crops of any kind, which may not be sold as salam as wheat under any circumstance, and grapes and raisins—neither may be sold as salam for the other by volume measurement. However, advancing grapes for raisins (or vice versa) by weight is permissible, as we have elaborated in the "Book of Riba," making its repetition unnecessary.

L25763 Among the rulings included in this is the saying of the Messenger of Allah—peace and blessings be upon him—"Let him advance payment in a specified measure or a specified weight for a specified term." He—upon him be peace—excluded nothing from this save for the aforementioned types of goods. {Nor does he speak from [his own] whim} (53:3) {It is nothing but a revelation revealed} (53:4).[9]

L25764 "And He has explained in detail what He has forbidden upon you (Quran

عَبْدٍ، أَوْ أَمَةٍ، أَوْ كَلْبٍ، أَوْ سِنَّوْرٍ، أَوْ كَبْشٍ، أَوْ تَيْسٍ، أَوْ بَعِيرٍ، أَوْ بَقَرَةٍ، أَوْ أَيِّلٍ، أَوْ دَجَاجٍ، أَوْ غَيْرِ ذَلِكَ كُلِّهِ فِي لَحْمِ كَبْشٍ، أَوْ لَحْمِ ثَوْرٍ، أَوْ لَحْمِ تَيْسٍ، أَوْ غَيْرِ ذَلِكَ؛ لِأَنَّهُ كُلَّهُ سَلَفٌ فِي وَزْنٍ مَعْلُومٍ إِلَى أَجَلٍ مَعْلُومٍ.

وَلَا يَجُوزُ السَّلَفُ فِي الْحَيَوَانِ أَصْلًا؛ لِأَنَّهُ لَيْسَ يُكَالُ وَلَا يُوزَنُ.

وَجَائِزٌ أَنْ يُسَلَّمَ الْبُرُّ فِي دَقِيقِ الْبُرِّ، وَدَقِيقُ الْبُرِّ فِي الْبُرِّ، مُتَفَاضِلًا وَكَيْفَ أَحَبَّا وَكَذَلِكَ الزَّيْتُ فِي الزَّيْتُونِ وَالزَّيْتُونُ فِي الزَّيْتِ وَاللَّبَنُ فِي اللَّبَنِ، وَكُلُّ شَيْءٍ حَاشَا مَا بَيَّنَّا فِي " كِتَابِ الرِّبَا " وَهُوَ الذَّهَبُ فِي الْفِضَّةِ أَوْ الْفِضَّةُ فِي الذَّهَبِ فَلَا يَحِلُّ أَصْلًا أَوْ التَّمْرُ، وَالشَّعِيرُ، وَالْبُرُّ، وَالْمِلْحُ فَلَا يَحِلُّ أَنْ يُسَلَّفَ صِنْفٌ مِنْهَا، لَا فِي صِنْفِهِ وَلَا فِي غَيْرِ صِنْفِهِ مِنْهَا خَاصَّةً، وَكُلُّهَا يُسَلَّفُ فِيمَا لَيْسَ مِنْهَا مِنْ الْمَكِيلَاتِ وَالْمَوْزُونَاتِ، وَحَاشَ الزَّرْعَ أَيُّ زَرْعٍ كَانَ، فَلَا يَجُوزُ تَسْلِيفُهُ فِي الْقَمْحِ أَصْلًا، وَحَاشَا الْعِنَبِ وَالزَّبِيبِ فَلَا يَجُوزُ تَسْلِيفُ أَحَدِهِمَا وَالْآخَرُ كَيْلًا، وَيَجُوزُ تَسْلِيفُ كُلِّ وَاحِدٍ مِنْهُمَا فِي الْآخَرِ وَزْنًا لِمَا قَدْ بَيَّنَّاهُ فِي " كِتَابِ الرِّبَا " فَأَغْنَى عَنْ إعَادَتِهِ.

وَمِمَّا يَجْمَعُهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَلْيُسْلِفْ فِي كَيْلٍ مَعْلُومٍ أَوْ وَزْنٍ مَعْلُومٍ إلَى أَجَلٍ مَعْلُومٍ» فَلَمْ يَسْتَثْنِ - عَلَيْهِ السَّلَامُ - مِنْ ذَلِكَ شَيْئًا، حَاشَا الْأَصْنَافِ الْمَذْكُورَةِ فَقَطْ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤]

{وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] .

[9] **Qur'an references (L25763):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).

6:119)."[10]

L25765 "And your Lord is not forgetful" [Maryam 19:64].[11]

L25766 And {to make clear to the people what has been revealed to them} [An-Nahl 16:44].[12]

L25767 "This day I have perfected for you your religion" (Surah Al-Mā'idah 5:3).[13]

L25768 Whoever prohibits what the Messenger of Allah—peace and blessings be upon him—did not explicitly forbid for us has introduced into the religion what Allah has not permitted. And whoever attributes to the Messenger of Allah—peace and blessings be upon him—a statement he did not make or adds to it what he did not explain has lied against him.

L25769 And he - peace be upon him - said, "Whoever intentionally lies about me, let him prepare his abode in the Fire."

L25770 Those who oppose us have differed among themselves: Abū Ḥanīfah permits exchanging anything measured by volume for anything measured by weight. Thus, he and Sufyān allow trading wheat for meat and meat for wheat.

L25771–25772 Malik permits selling iron in exchange for copper, whereas Abū Ḥanīfah prohibits it and classifies the transaction as *ribā* (usury): *"Had it been from anyone other than Allah, they would have found much discrepancy within it"* (Quran 4:82).[14]

L25773 Al-Shāfiʿī permits exchanging *fulūs* for *fulūs*.

L25774 And Sufyan permits bread made from flour of the same type.

L25775 **Chapter: The Salam as an Immediate Liability Without a Specified Time**

{وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَ {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

وَ {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣]

فَمَنْ حَرَّمَ مَا لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ شَرَعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ، وَمَنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ أَوْ أَضَافَ إِلَيْهِ مَا لَمْ يُبِينْهُ فَقَدْ كَذَبَ عَلَيْهِ.

وَقَالَ - عَلَيْهِ السَّلَامُ - «مَنْ كَذَبَ عَلَيَّ مُتَعَمِّدًا فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنْ النَّارِ»

وَقَدْ اخْتَلَفَ الْمُخَالِفُونَ لَنَا: فَأَبُو حَنِيفَةَ يُجِيزُ أَنْ يُسَلَّمَ كُلُّ مَا يُكَالُ فِي كُلِّ مَا يُوزَنُ، فَيُجِيزُ هُوَ وَسُفْيَانُ تَسْلِيمَ الْقَمْحِ فِي اللَّحْمِ، وَاللَّحْمِ فِي الْقَمْحِ.

وَيُجِيزُ مَالِكٌ تَسْلِيمَ الْحَدِيدِ فِي النُّحَاسِ وَأَبُو حَنِيفَةَ يُحَرِّمُ ذَلِكَ وَيَجْعَلُهُ رِبًا {وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلافًا كَثِيرًا} [النساء: ٨٢]

وَالشَّافِعِيُّ يُجِيزُ تَسْلِيمَ الْفُلُوسِ فِي الْفُلُوسِ.

وَسُفْيَانُ يُجِيزُ الْخُبْزَ فِي الدَّقِيقِ مِنْ جِنْسِهِ.

[فَصْلُ السَّلَمَ حَالًّا فِي الذِّمَّةِ إلَى غَيْرِ أَجَلٍ]

[10] **Qur'an references (L25764):** Qur'an 6:119 (Al-An'am).
[11] **Qur'an references (L25765):** Qur'an 19:64 (Maryam).
[12] **Qur'an references (L25766):** Qur'an 16:44 (An-Nahl).
[13] **Qur'an references (L25767):** Qur'an 5:3 (Al-Ma'idah).

L25776 Chapter: We have noted something cited by the Shāfiʿīs to validate their position permitting immediate salam as debt obligations without a specified term, supported by two narrations. The first: We narrated it via al-Bazzār's chain, who said: Al-Ḥasan ibn Aḥmad ibn Abī Shuʿayb al-Ḥarrānī reported to us from Muḥammad ibn Isḥāq from Muḥammad ibn Jaʿfar ibn al-Zubayr from ʿUrwah ibn al-Zubayr from ʿĀ'ishah, the Mother of the Believers, who said: "Allah's Messenger (peace be upon him) purchased a camel from a Bedouin in exchange for a wasq of provisioned stored dates, which are the ajwa dates. When the Messenger of Allah (peace be upon him) brought it to his home, he searched for the dates but could not find them. He said to the Bedouin: 'O servant of Allah, we bought a camel from you for a wasq of provisioned stored dates, believing we had them here. We searched but found none.' The Bedouin exclaimed: 'O treachery!' The people rebuked him, saying: 'Do you speak thus to Allah's Messenger (peace be upon him)?' The Messenger of Allah (peace be upon him) said: 'Leave him, for the claimant has the right to speak.' He then repeated his words a second time as previously recounted, and the Bedouin again cried: 'O treachery!' When the Bedouin did not understand him, the Messenger of Allah (peace be upon him) sent to Umm Ḥakīm, saying: 'Lend us a wasq of provisioned stored dates until we acquire some, and we shall repay you.' She replied: 'Send a messenger; he will come and take it.' The Messenger of Allah (peace be upon him) told the Bedouin: 'Accompany him so he may settle your due.'" The remainder of the narration has been mentioned.

L25777 Therefore, there is no valid argument in this for them against both their school and ours, because the sale had not yet been completed between the Prophet—peace be upon him—and the Bedouin; as they had not parted.

L25778–25780 The text of the hadith states thus, and this is clarified by the Prophet's statement (peace be upon him) to him: "We had purchased a camel from you for a wasq [approximately 60 kg measure] of reserve dates, and we believed it was in our possession. We sought it but did not find it." The statement of the Mother of the Believers in the narration itself: When the Bedouin did

فَصْلٌ اسْتَدْرَكْنَا شَيْئًا يَحْتَجُّ بِهِ الشَّافِعِيُّونَ فِي إِجَازَتِهِمْ السَّلَمَ حَالًّا فِي الذِّمَّةِ إِلَى غَيْرِ أَجَلٍ، وَهُمَا خَبَرَانِ: أَحَدُهُمَا: رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ قَالَ: نا الْحَسَنُ بْنُ أَحْمَدَ بْنِ أَبِي شُعَيْبٍ الْحَرَّانِيُّ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ جَعْفَرِ بْنِ الزُّبَيْرِ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «ابْتَاعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَزُورًا مِنْ أَعْرَابِيٍّ بِوَسْقٍ مِنْ تَمْرِ الذَّخِيرَةِ وَهِيَ الْعَجْوَةُ فَجَاءَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى مَنْزِلِهِ، فَالْتَمَسَ التَّمْرَ فَلَمْ يَجِدْهُ، فَقَالَ لِلْأَعْرَابِيِّ: يَا عَبْدَ اللَّهِ إِنَّا ابْتَعْنَا مِنْكَ جَزُورًا بِوَسْقٍ مِنْ تَمْرِ الذَّخِيرَةِ، وَنَحْنُ نَرَى أَنَّهُ عِنْدَنَا، فَالْتَمَسْنَاهُ فَلَمْ نَجِدْهُ؟ فَقَالَ الْأَعْرَابِيُّ: وَاغَدْرَاهُ، فَزَجَرَهُ النَّاسُ وَقَالُوا: أَتَقُولُ هَذَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَعُوهُ فَإِنَّ لِصَاحِبِ الْحَقِّ مَقَالًا، ثُمَّ أَعَادَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْكَلَامَ ثَانِيَةً كَمَا أَوْرَدْنَا، فَقَالَ الْأَعْرَابِيُّ: وَاغَدْرَاهُ، قَالَ: فَلَمَّا لَمْ يَفْهَمْ عَنْهُ الْأَعْرَابِيُّ أَرْسَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى أُمِّ حَكِيمٍ: أَقْرِضِينَا وَسْقًا مِنْ تَمْرِ الذَّخِيرَةِ حَتَّى يَكُونَ عِنْدَنَا فَنَقْضِيكَ؟ فَقَالَتْ: أَرْسِلْ رَسُولًا يَأْتِي يَأْخُذُهُ، فَقَالَ لِلْأَعْرَابِيِّ: انْطَلِقْ مَعَهُ حَتَّى يُوفِيَكَ» وَذُكِرَ بَاقِي الْخَبَرِ.

فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ عَلَى مَذْهَبِهِمْ وَمَذْهَبِنَا؛ لِأَنَّ الْبَيْعَ لَمْ يَكُنْ تَمَّ بَعْدُ بَيْنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَيْنَ الْأَعْرَابِيِّ؛ لِأَنَّهُمَا لَمْ يَتَفَرَّقَا.

هَكَذَا نَصَّ الْحَدِيثُ، وَيُبَيِّنُ ذَلِكَ «قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُ إِنَّا كُنَّا ابْتَعْنَا مِنْكَ بَعِيرًا بِوَسْقٍ مِنْ تَمْرِ الذَّخِيرَةِ، وَنَحْنُ نَرَى أَنَّهُ عِنْدَنَا، فَالْتَمَسْنَاهُ فَلَمْ نَجِدْهُ» وَقَوْلُ أُمِّ الْمُؤْمِنِينَ فِي الْخَبَرِ نَفْسِهِ، فَلَمَّا لَمْ يَفْهَمْ عَنْهُ الْأَعْرَابِيُّ اسْتَقْرَضَ مِنْ أُمِّ حَكِيمٍ فَصَحَّ

[14] **Qur'an references (L25772):** Qur'an 4:82 (An-Nisa).

not grasp his meaning, the Prophet—peace be upon him—borrowed from Umm Ḥakīm. Thus it became evident that he—peace be upon him—at that time concluded the stipulated contract with him, and the sale was perfected with the price present, while the Bedouin took possession.

أَنَّهُ - عَلَيْهِ السَّلَامُ - حِينَئِذٍ أَمْضَى مَعَهُ الْعَقْدَ الْمَحْدُودَ وَتَمَّ الْبَيْعُ بِحُضُورِ الثَّمَنِ وَقَبَضَ الْأَعْرَابِيُّ.

L25781 This report is a proof against the Ḥanafīs and Mālikīs, for they hold that a sale is concluded before the parties separate, and they cannot claim this ruling is abrogated by the stipulation of a term in *salam* contracts. The stipulation of terms in *salam* occurred during the early Hijrī period, as narrated via al-Bukhārī's transmission chain: Ṣadaqah ibn Khālid narrated to us, Sufyān ibn ʿUyaynah narrated to us, Ibn Abī Najīḥ informed me from ʿAbdullāh ibn Kathīr from Abū al-Minhāl from Ibn ʿAbbās, who said: "When the Messenger of Allah (peace and blessings be upon him) arrived in Medina, they were advancing payments for dates with deferred terms of two or three years. He said: 'Whoever advances payment for something must do so from a known measure and weight to a known term.'" The report of ʿĀ'ishah postdates this.

هَذَا الْخَبَرُ حُجَّةٌ عَلَى الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ؛ لِأَنَّهُمْ يَرَوْنَ الْبَيْعَ يَتِمُّ قَبْلَ التَّفَرُّقِ وَلَيْسَ لَهُمْ أَنْ يَقُولُوا: إنَّ هَذَا مَنْسُوخٌ بِذِكْرِ الْأَجَلِ فِي السَّلَمِ؛ لِأَنَّ ذِكْرَ الْأَجَلِ فِي السَّلَمِ كَانَ فِي أَوَّلِ الْهِجْرَةِ: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا صَدَقَةُ هُوَ ابْنُ خَالِدٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ أَخْبَرَنِي ابْنُ أَبِي نَجِيحٍ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ عَنْ أَبِي الْمِنْهَالِ عَنْ ابْنِ عَبَّاسٍ قَالَ: «قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ وَهُمْ يُسَلِّفُونَ بِالتَّمْرِ السَّنَتَيْنِ، وَالثَّلَاثَ فَقَالَ: مَنْ أَسْلَفَ فِي شَيْءٍ فَلْيُسْلِفْ مِنْ كَيْلٍ مَعْلُومٍ وَوَزْنٍ مَعْلُومٍ إلَى أَجَلٍ مَعْلُومٍ» وَكَانَ خَبَرُ عَائِشَةَ بَعْدَ ذَلِكَ.

L25782 If it is said: The statement of the Prophet (peace be upon him), "Leave him, for the one entitled to a right has a right to speak," serves as proof that the sale had been completed between them.

فَإِنْ قِيلَ: إنَّ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «دَعُوهُ فَإِنَّ لِصَاحِبِ الْحَقِّ مَقَالًا» دَلِيلٌ عَلَى أَنَّ الْبَيْعَ قَدْ كَانَ تَمَّ بَيْنَهُمَا.

L25783 We said: Because he—peace be upon him—did not state that this Bedouin was a rightful claimant; rather, he merely clarified that the rightful claimant has only a claim, and that is indeed the case. Far be it from Allah that the Bedouin should be a rightful claimant while he accuses the Prophet—peace and blessings of Allah be upon him—of treachery?

قُلْنَا: لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَقُلْ: إنَّ هَذَا الْأَعْرَابِيَّ صَاحِبُ حَقٍّ، إنَّمَا أَخْبَرَ أَنَّ لِصَاحِبِ الْحَقِّ مَقَالًا فَقَطْ، وَهُوَ كَذَلِكَ، وَحَاشَا اللَّهِ أَنْ يَكُونَ الْأَعْرَابِيُّ صَاحِبَ حَقٍّ وَهُوَ يَصِفُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْغَدْرِ؟

L25784–25786 The second report: We narrated it through the chain of Ibn Abi Shaybah—Abdullah ibn Numayr narrated to us, Yazid ibn Ziyad ibn Abi al-Ja'd narrated to us, Abu Sakharah Jami' ibn Shaddad narrated to us from Tariq ibn Abdullah al-Muharibi, who said: "I saw the Messenger of Allah—peace and blessings be upon him—twice. Once at the market of Dhu al-Majaz, proclaiming in the loudest voice, 'O people! Say: There is no god but Allah, and you will prosper!'—while Abu Lahab pursued him, pelting stones that wounded his

وَالْخَبَرُ الثَّانِي: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نا يَزِيدُ بْنُ زِيَادِ بْنِ أَبِي الْجَعْدِ نا أَبُو صَخْرَةَ جَامِعُ بْنُ شَدَّادٍ عَنْ طَارِقِ بْنِ عَبْدِ اللَّهِ الْمُحَارِبِيِّ: قَالَ «رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّتَيْنِ مَرَّةً بِسُوقِ ذِي الْمَجَازِ وَهُوَ يُنَادِي بِأَعْلَى صَوْتِهِ يَا أَيُّهَا النَّاسُ قُولُوا: لَا إلَهَ إلَّا اللَّهُ تُفْلِحُوا، وَأَبُو لَهَبٍ يَتْبَعُهُ بِالْحِجَارَةِ قَدْ أَدْمَى

heels and ankle sinews. When Islam triumphed, he [Tariq] came to Medina. We departed from al-Rabadhah until we camped near Medina, accompanied by a woman traveling with us in a howdah. A man approached us, greeted us with peace, and we returned his greeting. We had a camel with us, and he asked: 'Will you sell the camel?' We said: 'Yes.' He asked: 'For how much?' We replied: 'For a saʿ of dates.' He said: 'I accept it.' Then he took the camel's reins and led it into Medina. We began to blame one another, saying: 'You handed your camel to a stranger!' The woman said: 'Do not blame one another, for I saw a countenance incapable of betraying you. Never have I seen a face more akin to the full moon than his face.' At dusk, a man came to us and said: 'Peace be upon you. I am a messenger sent by the Messenger of Allah to you.'" And indeed, He commands you to eat until you are full and to measure until you have given full measure. So we did, and when the next day came, we entered the city. There, the Messenger of Allah (peace and blessings of Allah be upon him) was standing on the pulpit addressing the people. The remainder of the report was mentioned.

كَعْبَيْهِ وَعُرْقُوبَيْهِ، فَلَمَّا ظَهَرَ الْإِسْلَامُ قَدِمَ الْمَدِينَةَ أَقْبَلْنَا مِنْ الرَّبَذَةِ حَتَّى نَزَلْنَا قَرِيبًا مِنْ الْمَدِينَةِ، وَمَعَنَا ظَعِينَةٌ لَنَا، فَأَتَانَا رَجُلٌ فَسَلَّمَ عَلَيْنَا، فَرَدَدْنَا عَلَيْهِ السَّلَامَ، وَمَعَنَا جَمَلٌ لَنَا، فَقَالَ: أَتَبِيعُونَ الْجَمَلَ؟ فَقُلْنَا نَعَمْ، قَالَ: بِكَمْ؟ قُلْنَا: بِكَذَا وَكَذَا صَاعًا مِنْ تَمْرٍ، قَالَ: قَدْ أَخَذْتُهُ ثُمَّ أَخَذَ بِرَأْسِ الْجَمَلِ حَيْثُ دَخَلَ الْمَدِينَةَ، فَتَلَاوَمْنَا وَقُلْنَا: أَعْطَيْتُمْ جَمَلَكُمْ رَجُلًا لَا تَعْرِفُونَهُ؟ فَقَالَتْ الظَّعِينَةُ: لَا تَلَاوَمُوا فَلَقَدْ رَأَيْتُ وَجْهًا مَا كَانَ لِيَخْفِرَكُمْ مَا رَأَيْتُ وَجْهًا أَشْبَهَ بِالْقَمَرِ لَيْلَةَ الْبَدْرِ مِنْ وَجْهِهِ، فَلَمَّا كَانَ الْعَشِيُّ أَتَانَا رَجُلٌ فَقَالَ: السَّلَامُ عَلَيْكُمْ إنِّي رَسُولُ رَسُولِ اللَّهِ إلَيْكُمْ وَإِنَّهُ يَأْمُرُكُمْ أَنْ تَأْكُلُوا حَتَّى تَشْبَعُوا وَتَكْتَالُوا حَتَّى تَسْتَوْفُوا، فَفَعَلْنَا، فَلَمَّا كَانَ مِنْ الْغَدِ دَخَلْنَا الْمَدِينَةَ، فَإِذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَائِمٌ عَلَى الْمِنْبَرِ يَخْطُبُ النَّاسَ» وَذُكِرَ بَاقِي الْخَبَرِ.

L25787 Ali said: This contains no proof for them herein for two reasons. The first is that there is no evidence in it indicating that the one who purchased the camel was the Messenger of Allah (peace be upon him), nor that he knew about the details of its purchase. The more apparent view is that someone else was the buyer, as evidenced by Tariq's statement that he saw the Messenger of Allah (peace be upon him) twice: once at Dhū al-Majāz and once on the pulpit while delivering a sermon. For if he (peace be upon him) had been the one who purchased the camel, Tariq would have seen him three times, and this contradicts the report.

قَالَ عَلِيٌّ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ: أَحَدُهُمَا: أَنَّهُ لَيْسَ فِيهِ دَلِيلٌ عَلَى أَنَّ الَّذِي اشْتَرَى الْجَمَلَ كَانَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا أَنَّهُ عَلِمَ بِصِفَةِ ابْتِيَاعِهِ، وَالْأَظْهَرُ أَنَّ غَيْرَهُ كَانَ الْمُبْتَاعَ بِدَلِيلِ قَوْلِ طَارِقٍ بِأَنَّهُ رَأَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَرَّتَيْنِ مَرَّةً بِذِي الْمَجَازِ وَمَرَّةً عَلَى الْمِنْبَرِ يَخْطُبُ، فَلَوْ كَانَ - عَلَيْهِ السَّلَامُ - هُوَ الَّذِي ابْتَاعَ الْجَمَلَ لَكَانَ قَدْ رَآهُ ثَلَاثَ مَرَّاتٍ وَهَذَا خِلَافُ الْخَبَرِ.

L25788 Thus, it was established that he was other than him, and there is no valid argument based on the actions of another. Indeed, among the Companions of the Prophet (peace and blessings of Allah be upon him) there was outstanding beauty, handsomeness, and gracious treatment.

فَصَحَّ أَنَّهُ كَانَ غَيْرَهُ، وَلَا حُجَّةَ فِي عَمَلِ غَيْرِهِ، وَقَدْ كَانَ فِي أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْجَمَالُ الْبَارِعُ، وَالْوَسَامَةُ، وَالْمُعَامَلَةُ الْجَمِيلَةُ.

L25789 While none can conclusively affirm the superiority of any Companion over Bilāl except Abū Bakr and ʿUmar, he purchased a ṣāʿ of dates for two ṣāʿs of dates. It may well be that the purchaser of the camel requested Allah's

Messenger—peace and blessings be upon him—to pay the camel's price to the people on his behalf, and he did so.

وَقَدْ اشْتَرَى بِلَالٌ وَمَا يُقْطَعُ بِفَضْلِ أَحَدٍ مِنْ الصَّحَابَةِ عَلَيْهِ غَيْرِ أَبِي بَكْرٍ، وَعُمَرَ: صَاعًا مِنْ تَمْرٍ بِصَاعَيْ تَمْرٍ، وَقَدْ يَكُونُ مُشْتَرِي الْجَمَلِ سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُؤَدِّيَ عَنْهُ إلَى الْقَوْمِ ثَمَنَ الْجَمَلِ فَفَعَلَ.

L25790 The second view: If it were valid that he—peace be upon him—were the buyer or that he knew the matter and did not disapprove of it, then Ibn Abbas's hadith stipulating the designated period would constitute an addition to it—one that must be incorporated—and it is impermissible to neglect it.

الْوَجْهُ الثَّانِي: أَنَّهُ لَوْ صَحَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - كَانَ الْمُشْتَرِي، أَوْ أَنَّهُ عَلِمَ الْأَمْرَ فَلَمْ يُنْكِرْهُ لَكَانَ حَدِيثُ ابْنِ عَبَّاسٍ بِإِيجَابِ الْأَجَلِ زَائِدًا عَلَيْهِ زِيَادَةً يَلْزَمُ إضَافَتُهَا إلَيْهِ، وَلَا يَحِلُّ تَرْكُهَا.

L25791 Their reliance on these two reports is invalid. Let anyone who reads this book of ours know that they are authentic and free of defects, except that the ruling regarding them is as we have mentioned. Success comes from Allah, the Exalted.

فَبَطَلَ تَعَلُّقُهُمْ بِهَذَيْنِ الْخَبَرَيْنِ، وَلْيَعْلَمْ مَنْ قَرَأَ كِتَابَنَا هَذَا أَنَّهُمَا صَحِيحَانِ لَا دَاخِلَةَ فِيهِمَا إلَّا أَنَّ الْقَوْلَ فِيهِمَا كَمَا ذَكَرْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25792 **Issue: If one enters into a *salam* contract for two types without specifying the quantity of each kind.**

[مَسْأَلَة إذَا أَسْلَمَ فِي صِنْفَيْنِ وَلَمْ يُبَيِّنْ مِقْدَار كُلّ صنف]

L25793 1620 - Issue: If someone enters into a salam contract involving two categories without specifying the quantity of each category, the contract is invalid and annulled. For example, if they enter into a salam contract for two qafīz of wheat and barley, because it is unknown how much of them is wheat and how much is barley. It is not permissible to conclusively assert that they are halves, as there is no evidence for that. And with Allah, the Most High, is success.

١٦٢٠ - مَسْأَلَةٌ: وَمَنْ أَسْلَمَ فِي صِنْفَيْنِ وَلَمْ يُبَيِّنْ مِقْدَارَ كُلِّ صِنْفٍ مِنْهُمَا فَهُوَ بَاطِلٌ مَفْسُوخٌ، مِثْلُ أَنْ يُسَلِّمَ فِي قَفِيزَيْنِ مِنْ قَمْحٍ وَشَعِيرٍ؛ لِأَنَّهُ لَا يَدْرِي كَمْ يَكُونُ مِنْهُمَا قَمْحًا، وَكَمْ يَكُونُ شَعِيرًا، وَلَا يَجُوزُ الْقَطْعُ بِأَنَّهُمَا نِصْفَانِ لِأَنَّهُ لَا دَلِيلَ عَلَى ذَلِكَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25794 If two individuals enter into a salam contract with a single party, it is permissible. The salam obligation between the two sellers and the single buyer is proportionate to their respective shares in the upfront price they pay, since the commodity they have sold through salam corresponds precisely to the price—a matter of consensus.

فَلَوْ أَسْلَمَ اثْنَانِ إلَى وَاحِدٍ فَهُوَ جَائِزٌ، وَالسَّلَمُ بَيْنَهُمَا عَلَى قَدْرِ حِصَصِهِمَا فِي الثَّمَنِ الَّذِي يَدْفَعَانِ؛ لِأَنَّ الَّذِي أَسْلَمَا فِيهِ إنَّمَا هُوَ بِإِزَاءِ الثَّمَنِ بِلَا خِلَافٍ.

L25795–25797 If one were to enter into a Salam contract with two others as a single agreement, the two are equal in what they have received, for they are partners. If they both took it jointly, it is impermissible for them to have disparity in

their shares unless it is established during the contract that one is allocated a third of it and the other two-thirds of it, or as they mutually stipulate. And success comes only from Allah, the Exalted.

The issue of describing what remains valid.

1621. Issue: It is necessary to describe the item being delivered with its defining attributes, for if this is not done, it becomes a transaction without mutual consent. This is because the transferor does not know what they are giving to the transferee, and the transferee does not know what they are receiving from the transferor. Thus, this constitutes wrongful consumption of wealth through false means.

Mutual consent is neither permissible nor possible except in a known matter, and in Allah, the Exalted, we seek support.

The Issue of What is Permissible in the Salam Contract

1622 - Issue: Salam is permissible for items—whether absent or present at the time of contracting—and [may be concluded] with one who possesses none of the item or one who does possess it.

It is not permissible to engage in a salam contract for something that does not exist at the time of its due date.

The proof of this is that the Messenger of Allah—peace and blessings be upon him—commanded the salam contract as we mentioned, specifying regulations for measurement by volume, measurement by weight, and a stipulated term. If salam were impermissible in a commodity except when it exists or when directed to one who already possesses the item to be delivered, he—peace and blessings be upon him—would not have neglected to clarify this, thereby leaving us dependent on others' [standards]. Far removed is Allah

فَلَوْ أَسْلَمَ وَاحِدٌ إلَى اثْنَيْنِ صَفْقَةً وَاحِدَةً، فَهُمَا فِيمَا قَبَضَا سَوَاءٌ؛ لِأَنَّهُمَا شَرِيكَانِ فِيهِ، وَأَخَذَاهُ مَعًا، فَلَا يَجُوزُ أَنْ يَتَفَاضَلَا فِيهِ إلَّا بِأَنْ يَتَبَيَّنَ عِنْدَ الْعَقْدِ أَنَّ لِهَذَا ثُلُثَهُ وَلِهَذَا ثُلُثَيْهِ، أَوْ كَمَا يَتَّفِقُونَ عَلَيْهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة وصف مَا يسلم]

١٦٢١ - مَسْأَلَةٌ: وَلَا بُدَّ مِنْ وَصْفِ مَا يُسْلِمُ فِيهِ بِصِفَاتِهِ الضَّابِطَةِ لَهُ؛ لِأَنَّهُ إنْ لَمْ يَفْعَلْ ذَلِكَ كَانَ تِجَارَةً عَنْ غَيْرِ تَرَاضٍ، إذْ لَا يَدْرِي الْمُسَلِّمُ مَا يُعْطِيهِ الْمُسَلَّمَ إلَيْهِ وَلَا يَدْرِي الْمُسَلَّمُ إلَيْهِ مَا يَأْخُذُ مِنْهُ الْمُسَلِّمُ فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ.

وَالتَّرَاضِي لَا يَجُوزُ وَلَا يُمْكِنُ إلَّا فِي مَعْلُومٍ وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَة مَا يَجُوز فِيهِ السَّلَم]

١٦٢٢ - مَسْأَلَةٌ: وَالسَّلَمُ جَائِزٌ فِيمَا لَا يُوجَدُ حِينَ عَقْدِ السَّلَمِ، وَفِيمَا يُوجَدُ، وَإِلَى مَنْ لَيْسَ عِنْدَهُ مِنْهُ شَيْءٌ، وَإِلَى مَنْ عِنْدَهُ.

وَلَا يَجُوزُ السَّلَمُ فِيمَا لَا يُوجَدُ حِينَ حُلُولِ أَجَلِهِ.

بُرْهَانُ ذَلِكَ -: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِالسَّلَمِ كَمَا ذَكَرْنَا " وَبَيَّنَ فِي الْكَيْلِ " وَفِي الْوَزْنِ، وَإِلَى أَجَلٍ، فَلَوْ كَانَ كَوْنُ السَّلَمِ فِي الشَّيْءِ لَا يَجُوزُ إلَّا فِي حَالِ وُجُودِهِ، أَوْ إلَى مَنْ عِنْدَهُ مَا سُلِّمَ إلَيْهِ فِيهِ لَمَا أَغْفَلَ - عَلَيْهِ السَّلَامُ - بَيَانَ ذَلِكَ حَتَّى يَكِلَنَا إلَى غَيْرِهِ، حَاشَا لِلَّهِ مِنْ ذَلِكَ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

from such [negligence]! “He does not speak from whim—it is but revelation revealed” (53:3-4), “And your Lord is never forgetful” (19:64).[15]

وَأَمَّا السَّلَمُ فِيمَا لَا يُوجَدُ حِينَ حُلُولِ أَجَلِهِ فَهُوَ تَكْلِيفُ مَا لَا يُطَاقُ، وَهَذَا بَاطِلٌ، قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَهُوَ عَقْدٌ عَلَى بَاطِلٍ فَهُوَ بَاطِلٌ.

L25805 As for the salam contract (a forward sale) pertaining to what is nonexistent at the time of its delivery term, this constitutes imposing what exceeds one’s capacity and is invalid. Allah the Exalted said: “Allah does not burden any soul beyond its capacity.” [Al-Baqarah: 286] Thus, a contract founded upon falsehood is void.[16]

وَقَوْلُنَا فِي هَذَا كُلِّهِ هُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي ثَوْرٍ وَأَبِي سُلَيْمَانَ - وَلَمْ يُجِزْ السَّلَمَ فِي شَيْءٍ لَا يُوجَدُ حِينَ السَّلَمِ فِيهِ: سُفْيَانُ، وَالْأَوْزَاعِيُّ، وَأَبُو حَنِيفَةَ.

L25806 Our opinion in all of this is the opinion of Mālik, al-Shāfiʿī, Aḥmad, Abū Thawr, and Abū Sulaymān. Those who did not permit *salam* in anything not extant at the time of the *salam* contract are Sufyān, al-Awzāʿī, and Abū Ḥanīfah.

وَزَادَ أَبُو حَنِيفَةَ فَقَالَ: لَا يَجُوزُ السَّلَمُ إلَّا فِيمَا هُوَ مَوْجُودٌ مِنْ حِينِ السَّلَمِ إلَى حِينِ أَجَلِهِ لَا يَنْقَطِعُ فِي شَيْءٍ مِنْ تِلْكَ الْمُدَّةِ - وَمَا نَعْلَمُ هَذَا الْقَوْلَ عَنْ أَحَدٍ قَبْلَهُ.

L25807 Abu Hanifah added: “*Salam* is permissible only for what exists from the time of the contract until its appointed term and remains available without interruption throughout that period.” We do not know of this opinion being reported from anyone before him.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: لَا يَجُوزُ السَّلَمُ فِي شَيْءٍ يَنْقَطِعُ، وَلَوْ فِي شَيْءٍ مِنْ السَّنَةِ - وَلَا يُعْلَمُ أَيْضًا هَذَا عَنْ أَحَدٍ قَبْلَهُ.

L25808 Al-Ḥasan ibn Ḥayyin said: It is not permissible to engage in a *salam* contract for goods that cease to exist, even for something within the year. This ruling is also not known from anyone before him.

وَاحْتَجَّ الْمَانِعُونَ مِنْ هَذَا «بِنَهْيِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ السُّنْبُلِ حَتَّى يَشْتَدَّ وَعَنْ بَيْعِ الثَّمَرِ حَتَّى يَبْدُوَ صَلَاحُهُ.»

L25809 Those who prohibit this cite the Messenger of Allah—peace and blessings be upon him—forbidding the sale of grain ears until they mature fully and agricultural produce until its ripeness becomes apparent.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَوَّلُ ذَلِكَ أَنَّهُمْ مُخَالِفُونَ لَهُ؛ لِأَنَّهُمْ يُجِيزُونَ السَّلَمَ فِي الْبُرِّ وَالشَّعِيرِ وَهُمَا بَعْدُ سُنْبُلٌ لَمْ يَشْتَدَّ وَأَمَّا بَيْعُ الثَّمَرِ قَبْلَ بُدُوِّ صَلَاحِهِ، فَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ السَّلَمَ عِنْدَ الْحَنَفِيِّينَ وَعِنْدَنَا لَيْسَ بَيْعًا - فَبَطَلَ تَعَلُّقُهُمْ بِهِ جُمْلَةً.

L25810–25811 Abū Muḥammad said: In this, there is no proof for them — the first point being that they contradict it, for they permit salam contracts in wheat and barley while they are still in the ear and have not yet hardened. As for selling fruits before the appearance of its ripeness, there is no proof for them in it, because the salam contract according to the Ḥanafīs and according to us is not a sale. Thus, their entire reliance upon it is nullified.

[15] **Qur’an references (L25804):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm); Qur’an 19:64 (Maryam).

[16] **Qur’an references (L25805):** Qur’an 2:286 (Al-Baqarah).

L25812 If it were a sale, it would not be lawful, “due to the Prophet’s prohibition—may Allah’s peace and blessings be upon him—against selling what is not in your possession,” not [forbidding] what one possesses at the time of salam. If they were to except salam from that? We say: Then make an exception for it from the category of selling fruits before the appearance of ripeness in them. Otherwise, you have ruled baselessly in falsehood.

وَلَوْ كَانَ بَيْعًا لَمَا حَلَّ، «لِنَهْيِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ مَا لَيْسَ عِنْدَكَ» لَا لِمَنْ هُوَ عِنْدَهُ حِينَ السَّلَمِ - فَإِنْ خَصُّوا السَّلَمَ مِنْ ذَلِكَ؟ قُلْنَا: فَخُصُّوهُ مِنْ جُمْلَةِ بَيْعِ الثَّمَرِ قَبْلَ بُدُوِّ الصَّلَاحِ فِيهِ وَإِلَّا فَقَدْ تَحَكَّمْتُمْ فِي الْبَاطِلِ.

L25813 They obscured by citing what was narrated to us through the chain in Abū Dāwūd’s collection: Muḥammad ibn Kathīr narrated to us from Sufyān al-Thawrī from Abū Isḥāq from a man of Najrān from Ibn ʿUmar, who said: The Messenger of Allah—peace and blessings be upon him and his family—said, “Do not engage in advance sales for dates until their ripeness becomes evident.”

وَمَوَّهُوا بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ عَنْ رَجُلٍ نَجْرَانِيٍّ عَنْ ابْنِ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا تُسْلِفُوا فِي النَّخْلِ حَتَّى يَبْدُوَ صَلَاحُهُ» .

L25814 And Hammam narrated to us: Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Ahmad ibn Muhammad al-Birtī the judge narrated to us, Abu Hudhayfa narrated to us, Sufyan al-Thawri narrated from Abu Ishaq from al-Najrani from Ibn Umar, from the Prophet—peace and blessings of Allah be upon him—that he prohibited advance sale (salam) in the fruit of a palm tree until its ripeness becomes evident. Al-Najrani expressed astonishment, saying: “How could their narration transgress this ruling? Yet it refers solely to the fruit of the palm tree specifically.”

وَحَدَّثَنَا حُمَامُ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَحْمَدُ بْنُ مُحَمَّدٍ الْبِرْتِيُّ الْقَاضِي نا أَبُو حُذَيْفَةَ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ عَنِ النَّجْرَانِيِّ عَنِ ابْنِ عُمَرَ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَنَّهُ نَهَى أَنْ يُسْلَفَ فِي ثَمَرَةِ نَخْلٍ حَتَّى يَبْدُوَ صَلَاحُهُ» النَّجْرَانِيُّ عَجَبٌ مَا كَانَ لِيَعْدُوَهُمْ حَدِيثُ النَّجْرَانِيِّ، ثُمَّ لَيْسَ فِيهِ إِلَّا ثَمَرُ النَّخْلِ خَاصَّةً.

L25815 If they say, “We applied qiyās based on dates?” We respond: “Why did you not instead apply qiyās to grazing livestock as opposed to stall-fed livestock? Furthermore, there is nothing in it of what they said regarding the prolonging of its existence until its designated period.”

فَإِنْ قَالُوا: قِسْنَا عَلَى ثَمَرَةِ النَّخْلِ؟ قُلْنَا: وَهَلَّا قِسْتُمْ عَلَى السَّائِمَةِ غَيْرَ السَّائِمَةِ، ثُمَّ لَيْسَ فِيهِ مَا قَالُوهُ مِنْ تَمَادِي وُجُودِهِ إِلَى حِينِ أَجَلِهِ.

L25816 As for the salam contract to one who possesses none of the commodity—it has been narrated to us via the chain of Ibn Abi Shaybah: Ibn Abi Za’idah reported from Yahya ibn Sa‘id al-Ansari from Nafi‘, who said: When Ibn ‘Umar was asked about a man buying something on a term when he does not have the commodity in his possession, he would see no objection to it. But Ibn al-Musayyib, Ikrimah, Tawus, and Ibn Sirin disapproved of it. Thus, all the narrations they depended upon was nullified.

وَأَمَّا السَّلَمُ إِلَى مَنْ لَيْسَ عِنْدَهُ مِنْهُ شَيْءٌ -: فَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ أَبِي زَائِدَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ نَافِعٍ قَالَ: كَانَ ابْنُ عُمَرَ إِذَا سُئِلَ عَنْ الرَّجُلِ يَبْتَاعُ شَيْئًا إِلَى أَجَلٍ وَلَيْسَ عِنْدَهُ أَصْلُهُ لَا يَرَى بِهِ بَأْسًا، وَكَرِهَهُ ابْنُ الْمُسَيِّبِ، وَعِكْرِمَةُ، وَطَاوُسٌ، وَابْنُ سِيرِينَ - فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ الْآثَارِ.

وَذَكَرُوا فِي ذَلِكَ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا أَبُو الْوَلِيدِ هُوَ الطَّيَالِسِيُّ - نا شُعْبَةُ عَنْ عَمْرٍو هُوَ ابْنُ مُرَّةَ - عَنْ أَبِي الْبَخْتَرِيِّ قَالَ: سَأَلْتُ ابْنَ عُمَرَ عَنْ السَّلَمِ فِي النَّخْلِ؟ فَقَالَ: " نَهَى عَنْ بَيْعِ النَّخْلِ حَتَّى يَصْلُحَ وَسَأَلْت ابْنَ عَبَّاسٍ عَنْ السَّلَمِ فِي النَّخْلِ؟ فَقَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ النَّخْلِ حَتَّى يُؤْكَلَ مِنْهُ» وَمِنْ الْبُخَارِيِّ: نا مُحَمَّدُ بْنُ بَشَّارٍ نا غُنْدَرٌ نا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ أَبِي الْبَخْتَرِيِّ سَأَلْت ابْنَ عُمَرَ عَنْ السَّلَمِ فِي النَّخْلِ؟ فَقَالَ: نَهَى عُمَرُ عَنْ بَيْعِ التَّمْرِ حَتَّى يَصْلُحَ.

L25817–25819 They mentioned in this regard—via narrators other than the Messenger of Allah (peace and blessings be upon him)—what was relayed to us through Al-Bukhari's chain: Abu al-Walid (Al-Tayalisi) narrated to us; Shu'bah narrated from 'Amr ibn Murrah, from Abu al-Bakhtari, who said: "I asked Ibn 'Umar about a *salam* contract for palm trees." He replied: "He prohibited selling palm trees until they mature." I then asked Ibn 'Abbas about the *salam* contract for palm trees, and he said: "The Messenger of Allah (peace and blessings be upon him) prohibited selling palm trees until some of their fruit can be eaten." From Al-Bukhari: Narrated by Muḥammad ibn Bishār from Ghundar from Shu'bah, from 'Amr ibn Murrah, from Abī al-Bakhtari: I asked Ibn 'Umar about the salam contract for palm dates. He said: "'Umar prohibited the sale of dates until they are fit for sale."

وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: لَا بَأْسَ أَنْ يُسْلِمَ الرَّجُلُ فِي الطَّعَامِ الْمَوْصُوفِ إلَى أَجَلٍ مُسَمًّى مَا لَمْ يَكُنْ ذَلِكَ فِي زَرْعٍ لَمْ يَبْدُ صَلَاحُهُ أَوْ ثَمَرٍ لَمْ يَبْدُ صَلَاحُهُ.

L25820 There is no objection to a person conducting a forward sale (salam) for specified food with a named term, provided it does not involve crops whose fitness has not become apparent or produce whose fitness has not become apparent.

وَمِنْ طَرِيقِ أَبِي ثَوْرٍ نا مُعَلَّى نا أَبُو الْأَحْوَصِ نا طَارِقٌ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَالَ عُمَرُ: لَا تُسْلِمُوا فِي فِرَاخٍ حَتَّى تَبْلُغَ - وَذَكَرُوا كَرَاهِيَةَ ذَلِكَ عَنْ الْأَسْوَدِ، وَإِبْرَاهِيمَ.

L25821 And from the chain of transmission of Abī Thawr: Muʿallā reported to us, from Abū al-Aḥwaṣ, from Ṭāriq, from Saʿīd ibn al-Musayyib, who said: ʿUmar said: "Do not hand over chicks until they reach maturity." They also mentioned that disapproval of this practice was transmitted from al-Aswad and Ibrāhīm.

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَالظَّاهِرُ مِنْ قَوْلِ عُمَرَ، وَابْنِهِ، وَابْنِ عَبَّاسٍ: أَنَّهُمْ إنَّمَا نَهَوْا عَنْ ذَلِكَ مَنْ أَسْلَمَ فِي زَرْعٍ بِعَيْنِهِ أَوْ فِي ثَمَرِ نَخْلٍ بِعَيْنِهِ - وَنَصُّ هَذِهِ الْأَخْبَارِ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ: أَنَّهُمَا رَأَيَا السَّلَمَ بَيْعًا، وَالْحَنَفِيُّونَ لَا يَرَوْنَهُ بَيْعًا - وَمِنْ الْبَاطِلِ أَنْ يَكُونَ قَوْلُهُمَا حُجَّةً فِي شَيْءٍ غَيْرَ حُجَّةٍ فِي شَيْءٍ آخَرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25822 Ali said: There is no valid proof in anyone apart from the Messenger of Allah—peace and blessings be upon him. How then can this hold, when the apparent meaning of the statements of Umar, his son, and Ibn Abbas shows that they prohibited *to* one who concluded a *salam* contract for a specific crop or the dates of a specific palm tree? The explicit texts of these reports from Ibn Abbas and Ibn Umar state that they regarded *salam* as a valid sale, whereas the Hanafis do not deem it permissible under sale contracts. It is invalid to accept their opinion as binding authority in one matter but not in another. And success is from Allah, the Exalted.

[مَسْأَلَة سلم فِي شَيْءٍ فَضَيَّعَ قَبْضَهُ أَوْ اشْتَغَلَ حَتَّى فَاتَ وَقْتُهُ وَعَدِمَ]

L25823 **A case where a party enters into a *salam* contract (advance payment sale) for an item but neglects to take posses-**

sion of it or becomes preoccupied until the delivery time elapses, resulting in the item's loss or nonexistence.

L25824 Issue 1623: If someone enters into a salam contract for an item but negligently loses possession of it or becomes occupied until the time lapses and the item becomes unavailable, the entitled party may choose between waiting until it becomes available or claiming its value if it existed at that time, from whatever they mutually agreed upon. This derives from Allah's decree: "For violations of sacred matters, there is lawful retribution" (Quran 2:194). Thus, the sanctity of the salam claimant's right - when unable to obtain the specific item owed - equates to the sanctity of its equivalent. We have discussed this in the Book of Sales.[17]

L25825 **[Issue: Rescission in the Salam Contract]**

L25826 1624 - Issue: Rescission is not permissible in a salam contract because rescission is a valid sale as we clarified earlier, and the Prophet's prohibition - peace and blessings of Allah be upon him - against selling what has not been taken possession of and against selling the unknown has been authentically established, as it is gharar (prohibited uncertainty). However, if one releases the other party from whatever he wishes of it, it is an act of goodness - and success comes only from Allah, the Most High.

L25827 **The case of one who purchases a property: the entire structure thereby belongs to him.**

L25828 1625 – A supplementary ruling from the section on sales: Whoever purchases land, it becomes theirs with everything therein—be it standing structures or firmly rooted trees.

L25829–25831 Similarly, whoever purchases a house, its entire construction belongs to him, including everything fixed within it—such as a door, drawer, or other such things. This is a certain and indisputable consensus. People have continually engaged in buying and selling houses and lands since the time of the

[17] **Qur'an references (L25824):** Qur'an 2:194 (Al-Baqarah).

١٦٢٣ - مَسْأَلَةٌ: وَمَنْ سَلَمَ فِي شَيْءٍ فَضَيَّعَ قَبْضَهُ أَوْ اشْتَغَلَ حَتَّى فَاتَ وَقْتُهُ وَعَدِمَ فَصَاحِبُ الْحَقِّ مُخَيَّرٌ بَيْنَ أَنْ يَصْبِرَ حَتَّى يُوجَدَ، وَبَيْنَ أَنْ يَأْخُذَ قِيمَتَهُ لَوْ وُجِدَ فِي ذَلِكَ الْوَقْتِ مِنْ أَيِّ شَيْءٍ تَرَاضَيَا عَلَيْهِ لِقَوْلِ اللَّهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَحُرْمَةُ حَقِّ صَاحِبِ السَّلَمِ إذَا لَمْ يَقْدِرْ عَلَى عَيْنِ حَقِّهِ كَحُرْمَةِ مِثْلِهَا - وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْبُيُوعِ ".

[مَسْأَلَةٌ الْإِقَالَةُ فِي السَّلَمِ]

١٦٢٤ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْإِقَالَةُ فِي السَّلَمِ، لِأَنَّ الْإِقَالَةَ بَيْعٌ صَحِيحٌ عَلَى مَا بَيَّنَّا قَبْلُ وَقَدْ صَحَّ «نَهْيُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ بَيْعِ مَا لَمْ يَقْبِضْ وَعَنْ بَيْعِ الْمَجْهُولِ» ؛ لِأَنَّهُ غَرَرٌ لَكِنْ يَبَرُّئُهُ مِمَّا شَاءَ مِنْهُ فَهُوَ فِعْلُ خَيْرٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ مَنْ اشْتَرَى دَارًا فَبِنَاؤُهَا كُلُّهُ لَهُ]

١٦٢٥ - مَسْأَلَةٌ: مُسْتَدْرَكَةٌ مِنْ الْبُيُوعِ -: مَنْ اشْتَرَى أَرْضًا فَهِيَ لَهُ بِكُلِّ مَا فِيهَا مِنْ بِنَاءٍ قَائِمٍ أَوْ شَجَرٍ ثَابِتٍ.

وَكَذَلِكَ مَنْ اشْتَرَى دَارًا فَبِنَاؤُهَا كُلُّهُ لَهُ وَكُلُّ مَا يَكُونُ مُرَكَّبًا فِيهَا مِنْ بَابٍ أَوْ دُرْجٍ أَوْ غَيْرِ ذَلِكَ - وَهَذَا إجْمَاعٌ 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، وَدُرْجٍ، وَآجُرٍّ، وَرُخَامٍ: وَخَشَبٍ، وَغَيْرِ ذَلِكَ.

Messenger of Allah—peace and blessings be upon him—in this manner, such that not a day passes without a house or land being sold. The sale does not include items placed therein that are not built into the structure, such as doors, staircases, drawers, bricks, marble: wood, and other such things.

وَلَا يَكُونُ لَهُ الزَّرْعُ الَّذِي يُقْلَعُ وَلَا يَنْبُتُ، بَلْ هُوَ لِبَائِعِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25832 The crop that is uprooted and does not grow is not his; rather, it belongs to its seller. And with Allah, the Exalted, is success.

وَمَنْ ابْتَاعَ أَنْقَاضًا أَوْ شَجَرًا دُونَ الْأَرْضِ فَكُلُّ ذَلِكَ يُقْلَعُ وَلَا بُدَّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25833 Whoever purchases rubble or trees without the land, all of that must be uprooted without exception—and success is by Allah, the Exalted. The Book of Salam is concluded.

تَمَّ كِتَابُ السَّلَمِ



AL-MUHALLA

كِتَابُ الْهِبَاتِ

The Book of Gifts

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

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[كِتَابُ الْهِبَاتِ] [مَسْأَلَةٌ لَا تَجُوزُ الْهِبَةُ إِلَّا فِي مَوْجُودٍ مَعْلُومٍ مَعْرُوفِ الْقَدْرِ وَالصِّفَاتِ وَالْقِيمَةِ]

L25834–25835 **The Book of Gifts. Issue: A gift is not valid unless it pertains to an existing, known item clearly defined in its quantity, attributes, and value.**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ كِتَابُ الْهِبَاتِ ١٦٢٦ - مَسْأَلَةٌ: لَا تَجُوزُ هِبَةٌ إِلَّا فِي مَوْجُودٍ، مَعْلُومٍ، مَعْرُوفِ الْقَدْرِ، وَالصِّفَاتِ، وَالْقِيمَةِ، وَإِلَّا فَهِيَ بَاطِلٌ مَرْدُودَةٌ.

L25836 In the name of Allah, the Most Gracious, the Most Merciful, and may Allah send blessings upon Muhammad and his family. The Book of Gifts 1626 – Issue: A gift is not valid unless it pertains to something existing, known, and determined in quantity, attributes, and value; otherwise, it is void and invalidated.

وَكَذَلِكَ مَا لَمْ يُخْلَقْ بَعْدُ كَمَنْ وَهَبَ مَا تَلِدُ أَمَتُهُ، أَوْ شَاتُهُ، أَوْ سَائِرُ حَيَوَانِهِ، أَوْ مَا يَحْمِلُ شَجَرُهُ الْعَامَ - وَهَكَذَا كُلُّ شَيْءٍ؛ لِأَنَّ الْمَعْدُومَ لَيْسَ شَيْئًا، وَلَوْ كَانَ شَيْئًا لَكَانَ اللَّهُ عَزَّ وَجَلَّ لَمْ يَزَلْ وَالْأَشْيَاءَ مَعَهُ - وَهَذَا كُفْرٌ مِمَّنْ قَالَهُ.

L25837 Similarly, that which has not yet been created—such as one who assigns as an endowment what his female slave will bear, his sheep, the rest of his animals, or what his tree will yield for the year—and likewise everything [non-existent], because the non-existent is not a thing. Were it a thing, Allah the Almighty would have eternally existed with things existing alongside Him. This is disbelief on the part of whoever asserts it.

وَالْهِبَةُ وَالصَّدَقَةُ وَالْعَطِيَّةُ يَقْتَضِي كُلُّ ذَلِكَ مَوْهُوبًا وَمُتَصَدَّقًا، فَمَنْ أَعْطَى مَعْدُومًا أَوْ تَصَدَّقَ بِمَعْدُومٍ فَلَمْ يُعْطِ شَيْئًا، وَلَا وَهَبَ شَيْئًا، وَلَا تَصَدَّقَ بِشَيْءٍ.

L25838 A gift, charity, or grant each necessitates the existence of an item to be gifted and given as charity. Whoever gives a nonexistent thing or donates a nonexistent thing has neither given anything, gifted anything, nor donated anything as charity.

وَإِذَا لَمْ يَفْعَلْ كُلَّ مَا ذَكَرْنَا فَلَا يَلْزَمُهُ حُكْمٌ - وَقَدْ حَرَّمَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْوَالَ النَّاسِ إِلَّا بِطِيبِ أَنْفُسِهِمْ، وَلَا يَجُوزُ أَنْ تَطِيبَ النَّفْسُ عَلَى مَا لَا تَعْرِفُ صِفَاتِهِ وَلَا مَا هُوَ، وَلَا مَا قَدْرُهُ، وَلَا مَا يُسَاوِي، وَقَدْ تَطِيبُ نَفْسُ الْمَرْءِ غَايَةَ الطِّيبِ عَلَى بَذْلِ الشَّيْءِ وَبَيْعِهِ، وَلَوْ عَلِمَ صِفَاتِهِ وَقَدْرِهِ وَمَا يُسَاوِي لَمْ تَطِبْ نَفْسُهُ بِهِ - فَهَذَا أَكْلُ مَالٍ بِالْبَاطِلِ فَهُوَ حَرَامٌ لَا يَحِلُّ.

L25839 If he does not fulfill all that we have mentioned, no ruling is binding upon him—and indeed, God Almighty has forbidden through the words of His Messenger (peace be upon him) the taking of people's wealth except with their willing consent. It is impermissible for one to consent to something whose attributes, nature, quantity, or what it is equivalent to they do not know. A person may consent with utmost willingness to relinquish or sell something, but had they known its attributes, quantity, and what it is equivalent to, they would not have agreed to it—thus, this constitutes wrongful consumption of wealth, which is forbidden and unlawful.

L25840 Similarly, whoever gives or donates a *dirham* from these *dirhams*, a *ratl* from this flour, or a *ṣāʿ* of this wheat—all of it is null and void due to what we have mentioned; because he did not direct his charity or his gift

to a specifically measured-by-volume, weighed, or counted item. Thus, he has neither given nor donated anything at all.

وَكَذَلِكَ مَنْ أَعْطَى أَوْ تَصَدَّقَ بِدِرْهَمٍ مِنْ هَذِهِ الدَّرَاهِمِ أَوْ بِرِطْلٍ مِنْ هَذَا الدَّقِيقِ، أَوْ بِصَاعٍ مِنْ هَذَا الْبُرِّ، فَهُوَ كُلُّهُ بَاطِلٌ لِمَا ذَكَرْنَا؛ لِأَنَّهُ لَمْ يُوقِعْ صَدَقَتَهُ، وَلَا هِبَتَهُ، عَلَى مَكِيلٍ بِعَيْنِهِ، وَلَا مَوْزُونٍ بِعَيْنِهِ، وَلَا مَعْدُودٍ بِعَيْنِهِ، فَلَمْ يَهَبْ وَلَا تَصَدَّقَ أَصْلًا.

L25841 Similarly, none of that is permissible for one who does not know, nor for one who has not been created, due to what we have mentioned. As for the endowment, it differs entirely from this ruling based on the textual evidence transmitted regarding this matter – and with Allah, the Exalted, is success.

وَكَذَلِكَ لَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ لِمَنْ لَا يَدْرِي، وَلَا لِمَنْ لَمْ يُخْلَقْ، لِمَا ذَكَرْنَا، وَأَمَّا الْحَبْسُ فَبِخِلَافِ هَذَا كُلِّهِ لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25842–25843 Analogy is invalid, and everything has its ruling as stated therein by the text.

وَالْقِيَاسُ بَاطِلٌ، وَلِكُلِّ شَيْءٍ حُكْمُهُ الْوَارِدُ فِيهِ بِالنَّصِّ.

L25844 If they mention the ḥadīth narrated to us through Muslim's chain: Zuhayr ibn Ḥarb narrated to us, Ibn ʿUlayyah narrated to us from ʿAbd al-ʿAzīz ibn Ṣuhayb from Anas ibn Mālik: "The Messenger of Allah—peace and blessings be upon him—was approached by Diḥyah on the day of Khaybar, who said: 'O Messenger of Allah, grant me a female captive from the spoils.' He replied: 'Go and take a female captive.' So he took Ṣafiyyah bint Ḥuyayy. A man then came and said: 'O Messenger of Allah, you have granted Diḥyah the daughter of Ḥuyayy, chief of Qurayẓah and al-Naḍīr—she is only suitable for you.' He said: 'Summon him with her.' When he brought her, the Prophet—peace and blessings be upon him—looked at her and told Diḥyah: 'Take a female captive from the spoils other than her.' He then emancipated her and married her."

فَإِنْ ذَكَرُوا الْحَدِيثَ الَّذِي رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا ابْنُ عُلَيَّةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ دِحْيَةُ يَوْمَ خَيْبَرَ: يَا رَسُولَ اللَّهِ أَعْطِنِي جَارِيَةً مِنْ السَّبْيِ؟ قَالَ: اذْهَبْ فَخُذْ جَارِيَةً فَأَخَذَ صَفِيَّةَ بِنْتَ حُيَيٍّ، فَجَاءَ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ أَعْطَيْتَ دِحْيَةَ بِنْتَ حُيَيِّ سَيِّدِ قُرَيْظَةَ وَالنَّضِيرِ وَمَا تَصْلُحُ إلَّا لَكَ، قَالَ: ادْعُهُ بِهَا، قَالَ: فَجَاءَ بِهَا، فَلَمَّا نَظَرَ إلَيْهَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: خُذْ جَارِيَةً مِنْ السَّبْيِ غَيْرَهَا - وَأَعْتَقَهَا وَتَزَوَّجَهَا.»

L25845 We said: This is the strongest argument for us, for if the gift had been completed, the Messenger of Allah - may Allah's blessings and peace be upon him and his family - would not have revoked it, and he is exalted above such behavior. The evil example does not apply to him, while he - upon him be peace and blessings - said: "We do not have the evil example of one who retracts his gift, like the one who returns to his vomit, as a dog returns to its vomit."

قُلْنَا: هَذَا أَعْظَمُ حُجَّةً لَنَا، لِأَنَّ الْعَطِيَّةَ لَوْ تَمَّتْ لَمْ يَرْتَجِعْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَحَاشَا لَهُ مِنْ ذَلِكَ لَيْسَ لَهُ الْمَثَلُ السَّوْءُ، وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - يَقُولُ: «لَيْسَ لَنَا مَثَلُ السَّوْءِ الْعَائِدُ فِي هِبَتِهِ كَالْعَائِدِ فِي قَيْئِهِ، كَالْكَلْبِ يَعُودُ فِي قَيْئِهِ»

L25846 However, his taking her, his complete ownership of her, and the perfection of his gift to her (peace be upon him) occurred because he (peace and blessings be upon him) knew her essence, her attributes, her worth, and her identity.

لَكِنَّ أَخْذَهَا وَتَمَامَ مِلْكِهِ لَهَا، وَكَمَالَ عَطِيَّتِهِ - عَلَيْهِ السَّلَامُ - لَهُ، إذْ عَرَفَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَيْنَهَا، أَوْ صِفَتَهَا، أَوْ قَدْرَهَا، وَمَنْ هِيَ؟ ؟ فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ

مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ عَنْ أَنَسٍ «أَنَّهُ - عَلَيْهِ السَّلَامُ - اشْتَرَى صَفِيَّةَ مِنْ دِحْيَةَ وَقَدْ وَقَعَتْ فِي سَهْمِهِ بِسَبْعَةِ أَرْؤُسٍ» .

If it is asked: "You have narrated through the chain of Ḥammād ibn Salamah from Thābit from Anas that he (peace and blessings be upon him) purchased Ṣafiyyah from Diḥyah when she was allotted to his share in exchange for seven captives"?

قُلْنَا: كِلَا الْخَبَرَيْنِ عَنْ أَنَسٍ صَحِيحٌ، وَتَأْلِيفُهُمَا ظَاهِرٌ.

L25847 We said: Both reports from Anas are authentic, and their reconciliation is evident.

وَقَوْلُهُ " إنَّهَا وَقَعَتْ فِي سَهْمِهِ، إنَّمَا مَعْنَاهُ بِأَخْذِهِ إيَّاهَا إذْ سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَارِيَةً مِنْ السَّبْيِ؟ فَقَالَ لَهُ: اذْهَبْ فَخُذْ جَارِيَةً - وَبِلَا شَكٍّ أَنَّ مَنْ أَخَذَ شَيْئًا لِنَفْسِهِ بِوَجْهٍ صَحِيحٍ فَقَدْ وَقَعَ فِي سَهْمِهِ.

L25848 And his statement, "Indeed, she was allocated to his share," only means that he took her when he asked the Prophet—may God bless him and his family and grant him peace—for a female captive from the captives. So he said to him, "Go and take a female captive." Undoubtedly, whoever takes something for himself by a legitimate manner, it has indeed been allocated to his share.

وَقَوْلُهُ «اشْتَرَاهَا - عَلَيْهِ السَّلَامُ - بِسَبْعَةِ أَرْؤُسٍ» يُخَرَّجُ عَلَى أَحَدِ وَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ - عَلَيْهِ السَّلَامُ - عَوَّضَهُ مِنْهَا فَسَمَّى أَنَسٌ ذَلِكَ الْفِعْلَ شِرَاءً. وَالثَّانِي - «أَنَّ دِحْيَةَ إذْ أَتَى بِهَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لَهُ: خُذْ غَيْرَهَا، قَدْ سَأَلَهُ إيَّاهَا» وَكَانَ - عَلَيْهِ السَّلَامُ - لَا يُسْأَلُ شَيْئًا إلَّا أَعْطَاهُ، فَأَعْطَاهُ إيَّاهَا، فَصَحَّتْ لَهُ، وَصَحَّ وُقُوعُهَا فِي سَهْمِهِ، ثُمَّ اشْتَرَاهَا مِنْهُ بِسَبْعَةِ أَرْؤُسٍ.

L25849 The statement "he purchased her—may God bless him and grant him peace—with seven captives" is interpreted according to one of two perspectives. The first is that he—may God bless him and grant him peace—compensated him with her, and Anas explicitly termed that action a purchase. The second is that when Dihyah brought her to the Prophet—may God bless him and grant him peace—he said to him: "Take another instead, for Dihyah had indeed requested her from him." He—may God bless him and grant him peace—never declined a request, so he granted her to him, thereby validating her status for him and confirming her inclusion in his allotted share. He then purchased her from him with seven captives.

وَلَا شَكَّ فِي صِحَّةِ الْخَبَرَيْنِ، وَلَا يُمْكِنُ الْجَمْعُ بَيْنَهُمَا لِصِحَّتِهِمَا، إلَّا كَمَا ذَكَرْنَا، وَمَا لَا شَكَّ فِيهِ فَلَا شَكَّ فِيمَا لَا يَصِحُّ إلَّا بِهِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L25850 There is no doubt regarding the validity of the two reports, and reconciling them is impossible despite their authenticity, except as we have stated. What is certain cannot be questioned in matters that depend on it for validity - and in Allah, the Exalted, we seek aid.

فَإِنْ ذَكَرُوا «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِجَابِرٍ: لَوْ قَدْ جَاءَ مَالُ الْبَحْرَيْنِ أَعْطَيْتُكَ هَكَذَا وَهَكَذَا وَهَكَذَا» .

L25851–25852 If they cite the Messenger of Allah's words—peace be upon him and his family and grant him salvation—to Jabir, "When the wealth of Bahrain arrives, I would give you so much, so much, and so much."

L25853 We said: This is a promise, not a gift, and Abū Bakr, may Allah be pleased with him, fulfilled this promise after the death of the Prophet, peace be upon him. They unanimously agree that whoever makes such a statement and then dies, their words are not to be carried out after their death—this being

the position of Abū Sulaymān and our scholarly companions. Success comes solely from Allah, the Exalted.

قُلْنَا: هَذِهِ عِدَّةٌ لَا عَطِيَّةٌ، وَقَدْ أَنْفَذَ أَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - هَذِهِ الْعِدَّةَ بَعْد مَوْتِهِ - عَلَيْهِ السَّلَامُ - وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ قَالَ ذَلِكَ ثُمَّ مَاتَ لَمْ يَنْفُذْ قَوْلُهُ بَعْدَ مَوْتِهِ - وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كَانَ لَهُ عِنْدَ آخَرَ حَقٌّ فِي الذِّمَّةِ فَقَالَ لَهُ قَدْ وَهَبْتُ لَك مَا لِي عِنْدَك]

L25854 **If someone had a right in another's liability and said to them, "I have gifted you what I am owed by you."**

١٦٢٧ - مَسْأَلَةٌ: وَمَنْ كَانَ لَهُ عِنْدَ آخَرَ حَقٌّ فِي الذِّمَّةِ دَرَاهِمَ أَوْ دَنَانِيرَ، أَوْ غَيْرَ ذَلِكَ، أَوْ أَيِّ شَيْءٍ كَانَ، فَقَالَ لَهُ: قَدْ وَهَبْتُ لَك مَا لِي عِنْدَك، أَوْ قَالَ: قَدْ أَعْطَيْتُكَ مَا لِي عِنْدَك، أَوْ قَالَ لِآخَرَ: قَدْ وَهَبْتُ لَك مَا لِي عِنْدَ فُلَانٍ، أَوْ قَالَ: أَعْطَيْتُك مَا لِي عِنْدَ فُلَانٍ -: فَلَا يَلْزَمُ شَيْءٌ مِنْ ذَلِكَ لِمَا ذَكَرْنَا؛ لِأَنَّهُ لَا يَدْرِي ذَلِكَ الْحَقَّ الَّذِي لَهُ عِنْدَ فُلَانٍ فِي أَيِّ جَوَانِبِ الدُّنْيَا هُوَ، وَلَعَلَّهُ فِي مِلْكِ غَيْرِهِ الْآنَ - وَإِنَّمَا يَجُوزُ هَذَا بِلَفْظِ: الْإِبْرَاءِ، أَوْ الْعَفْوِ، أَوْ الْإِسْقَاطِ، أَوْ الْوَضْعِ.

L25855 Issue 1627: If a person holds a right against another's liability - whether dirhams, dinars, or any other item - and states to the debtor: "I have gifted you what you owe me," or "I have transferred to you what you owe me," or declares to a third party: "I have gifted you what so-and-so owes me," or "I have transferred to you what so-and-so owes me" - none of these statements are binding for the reason we previously mentioned. This is because the creditor remains unaware of the specific nature or existence of that right, which may currently belong to another owner. Such release is only permissible when expressed through explicit terms like "discharge," "waiver," "cancellation," or "relinquishment."

وَيَجُوزُ أَيْضًا بِلَفْظِ " الصَّدَقَةِ " لِلْحَدِيثِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ نا لَيْثٌ هُوَ ابْنُ 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 وَآلِهِ وَسَلَّمَ - فِي ثِمَارٍ ابْتَاعَهَا فَكَثُرَ دَيْنُهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَصَدَّقُوا عَلَيْهِ» - فَهَذَا عُمُومٌ لِلْغُرَمَاءِ وَغَيْرِهِمْ.

L25856 It is also permissible to use the wording "ṣadaqah" based on the hadith we narrated through Muslim's chain of transmission: Qutaybah narrated to us, Layth ibn Sa'd narrated to us, from Bukayr ibn al-Ashajj, from 'Iyāḍ ibn 'Abd Allāh, from Abū Sa'īd al-Khudrī, who said: "A man was afflicted with a loss during the time of the Messenger of Allah—peace and blessings be upon him and his family—in fruits he had purchased, and his debt became excessive. The Messenger of Allah—peace and blessings be upon him and his family—said: 'Give ṣadaqah to him.'" This constitutes a general ruling applicable to ghuramā' (debtors) and others.

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {لِأَهَبَ لَكِ غُلَامًا زَكِيًّا} [مريم: ١٩] .

L25857 If they mention the words of Allah, the Almighty and Majestic: "I will bestow upon you a pure son" [Mary: 19].[1]

[1] **Qur'an references (L25857):** Qur'an 19:19 (Maryam).

L25858 We said: The acts of Allah, the Exalted, and His gifts cannot be measured against the acts of His creation or their gifts, for there is none above Him to command Him, nor any legislation that binds Him. Rather, He does what He wills, with none to reverse His decree. How then is that gifted boy—a created being composed of an existing soul whose creation had preceded, of clay, and of what his mother nourished herself with, all of which was created beforehand?

قُلْنَا: أَفْعَالُ اللَّهِ تَعَالَى وَهِبَاتُهُ لَا يُقَاسُ عَلَيْهَا أَفْعَالُ خَلْقِهِ وَلَا هِبَاتُهُمْ؛ لِأَنَّهُ تَعَالَى لَا آمِرَ فَوْقَهُ، وَلَا شَرْعَ يَلْزَمُهُ، بَلْ يَفْعَلُ مَا يَشَاءُ، لَا مُعَقِّبَ لِحُكْمِهِ فَكَيْفَ وَذَلِكَ الْغُلَامُ الْمَوْهُوبُ مَخْلُوقٌ مُرَكَّبٌ مِنْ نَفْسٍ مَوْجُودَةٍ قَدْ تَقَدَّمَ خَلْقُهَا، وَمِنْ تُرَابٍ، وَمَا تَتَغَذَّى بِهِ أُمُّهُ، قَدْ تَقَدَّمَ خَلْقُ كُلِّ ذَلِكَ.

L25859 And similarly the air, for Allah the Exalted has encompassed in knowledge the intrinsic realities of all such matters—unlike His creation—while all existence is His dominion, distinct from His creation. And success is from Allah, the Exalted.

وَكَذَلِكَ الْهَوَاءُ، وَقَدْ أَحَاطَ اللَّهُ تَعَالَى عِلْمًا بِأَعْيَانِ كُلِّ ذَلِكَ، بِخِلَافِ خَلْقِهِ، وَالْكُلُّ مِلْكُهُ بِخِلَافِ خَلْقِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25860 Our opponents have differentiated between hiba (gift) and sadaqah (charity): some of them permitted charity without taking possession, but did not permit the gift unless possession was taken.

وَقَدْ فَرَّقَ مُخَالِفُونَا بَيْنَ الْهِبَةِ وَالصَّدَقَةِ -: فَبَعْضُهُمْ أَجَازَ الصَّدَقَةَ غَيْرَ مَقْبُوضَةٍ، وَلَمْ يُجِزْ الْهِبَةَ إِلَّا مَقْبُوضَةً.

L25861–25862 Some scholars permitted revoking a gift (hibah) but did not permit it in charity (ṣadaqah).

وَبَعْضُهُمْ أَجَازَ الرُّجُوعَ فِي الْهِبَةِ وَلَمْ يُجِزْهُ فِي الصَّدَقَةِ.

L25863 It suffices from all of this that the Prophet (peace be upon him and his family) would accept gifts and grants, eat gifts, but did not eat charity—for charity was forbidden to him and his family, while grants and gifts were not forbidden to both him and his family. And with Allah, the Exalted, is success.

وَيَكْفِي مِنْ هَذَا كُلِّهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يَقْبَلُ الْهِبَةَ وَالْعَطِيَّةَ، وَيَأْكُلُ الْهَدِيَّةَ، وَلَا يَأْكُلُ الصَّدَقَةَ» ، وَحُرِّمَتْ عَلَيْهِ الصَّدَقَةُ، وَعَلَى آلِهِ، وَلَمْ يُحَرَّمْ عَلَيْهِمَا الْعَطَايَا وَلَا الْهِبَاتُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A Legal Question of the Gift with a Condition

[مَسْأَلَة الْهِبَة بِشَرْطٍ]

L25864

L25865 1628 - Issue: A gift stipulated with a condition is fundamentally invalid—such as one who gives a gift on the condition that the gifted item not be sold, or that usufruct be derived from it, or other similar conditions. Such a gift is entirely invalid and nullified, in accordance with the statement of Allah's Messenger (peace and blessings be upon him and his family): "Every condition not ordained in Allah's Book is void." Moreover, any contract contingent upon validating what is invalid remains unestablished thereby.[2]

١٦٢٨ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْهِبَةُ بِشَرْطٍ أَصْلًا، كَمَنْ وَهَبَ عَلَى أَنْ لَا يَبِيعَهَا الْمَوْهُوبُ، أَوْ عَلَى أَنْ يُوَلِّدَهَا، أَوْ غَيْرَ ذَلِكَ مِنْ الشُّرُوطِ -: فَالْهِبَةُ بِكُلِّ ذَلِكَ بَاطِلٌ مَرْدُودَةٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَكُلُّ مَا لَا يُعْقَدُ إِلَّا بِصِحَّةِ مَا لَا يَصِحُّ فَلَمْ يَقَعْ فِيهِ عَقْدٌ بِهِ.

[2] **Hadith references (L25865):** Sunan Ibn Majah 2521.

The Issue of the Gift Conditional on Consideration.

[مَسْأَلَة الْهِبَة بِشَرْطِ الثَّوَاب]

1629 - Issue: A gift stipulating reward is fundamentally impermissible; it is invalid and invalidated. This is because such a condition is not found in the Book of Allah Almighty, rendering it invalid. Rather, the Quran explicitly prohibits this very practice, as Allah says: “And do not give favors expecting to receive more” [Al-Muddaththir: 6]. This is the opinion of the majority of the early scholars.[3]

١٦٢٩ - مَسْأَلَةٌ: وَلَا تَجُوزُ هِبَةٌ يُشْتَرَطُ فِيهَا الثَّوَابُ أَصْلًا، وَهِيَ فَاسِدَةٌ مَرْدُودَةٌ؛ لِأَنَّ هَذَا الشَّرْطَ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، فَهُوَ بَاطِلٌ، بَلْ فِي الْقُرْآنِ الْمَنْعُ مِنْهُ بِعَيْنِهِ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَلَا تَمْنُنْ تَسْتَكْثِرُ} [المدثر: ٦] وَهُوَ قَوْلُ جُمْهُورٍ مِنْ السَّلَفِ.

It has been narrated to us through the chain of Muḥammad ibn al-Jahm → from Yaḥyā al-Jabbānī → from Muḥammad ibn ʿUbayd → from Muḥammad ibn Thawr → from Maʿmar → from Qatādah → from Ibn ʿAbbās concerning Allah’s verse: {And whatever you give as ribā} [30:39]. He said: It refers to a man’s gift or a man’s grant, given with the intention of receiving a greater reward in return. Such a deed neither increases in value with Allah, nor does its giver receive any reward for it—yet no sin is held against him.[4]

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْجَهْمِ نا يَحْيَى الْجَبَّانِيُّ نا مُحَمَّدُ بْنُ عُبَيْدٍ نا مُحَمَّدُ بْنُ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ تَعَالَى: {وَمَا آتَيْتُمْ مِنْ رِبًا} [الروم: ٣٩] قَالَ: هُوَ هَدِيَّةُ الرَّجُلِ، أَوْ هِبَةُ الرَّجُلِ يُرِيدُ أَنْ يُثَابَ أَفْضَلَ مِنْهُ، فَذَلِكَ الَّذِي لَا يَرْبُو عِنْدَ اللَّهِ، وَلَا يُؤْجَرُ عَلَيْهِ صَاحِبُهُ، وَلَا إثْمَ عَلَيْهِ.

Ali said, “This applies if he intends it in his heart, but if he stipulates it, then it is the epitome of falsehood and sin.”

قَالَ عَلِيٌّ: هَذَا إذَا أَرَادَهُ بِقَلْبِهِ وَأَمَّا إذَا اشْتَرَطَهُ فَعَيْنُ الْبَاطِلِ وَالْإِثْمِ.

And from the path of Ibn al-Jahm: Muḥammad ibn Saʿīd al-ʿAwfī narrated to us; my father Saʿīd ibn Muḥammad ibn al-Ḥasan narrated to us. My uncle al-Ḥusayn ibn al-Ḥasan ibn ʿAṭiyyah narrated to me: My father narrated to me from his father, from Ibn ʿAbbās in a similar manner.

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ سَعِيدٍ الْعَوْفِيُّ نا أَبِي سَعِيدِ بْنِ مُحَمَّدِ بْنِ الْحَسَنِ حَدَّثَنِي عَمِّي الْحُسَيْنُ بْنُ الْحَسَنِ بْنِ عَطِيَّةَ حَدَّثَنِي أَبِي عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ نَحْوَهُ.

From the path of Ismāʿīl ibn Isḥāq al-Qāḍī: From Muḥammad ibn ʿUbayd, from Muḥammad ibn Thawr, from Maʿmar, from Qatādah in explanation of Allah’s statement, the Exalted: **{And do not give while seeking to gain more}** [Al-Muddaththir: 6]. He said: “Do not give something expecting to be rewarded with something better.” Maʿmar said: Ṭāwūs also held this interpretation. Al-Ḥasan said: “Do not remind of your gift, nor your deed, nor seek to gain more.”[5]

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنَ إسْحَاقَ الْقَاضِي نا مُحَمَّدُ بْنُ عُبَيْدٍ نا مُحَمَّدُ بْنُ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلَا تَمْنُنْ تَسْتَكْثِرُ} [المدثر: ٦] قَالَ: لَا تُعْطِ شَيْئًا لِتُثَابَ أَفْضَلَ مِنْهُ، قَالَ مَعْمَرٌ: وَقَالَهُ طَاوُسٍ أَيْضًا - وَقَالَ الْحَسَنُ: لَا تَمْنُنْ عَطِيَّتَك، وَلَا عَمَلَك، وَلَا تَسْتَكْثِرْ.

And through him to Ismāʿīl: Naṣr ibn ʿAlī al-Jahḍamī narrated to us—my

[3] **Qur’an references (L25867):** Qur’an 74:6 (Al-Muddaththir).
[4] **Qur’an references (L25868):** Qur’an 30:39 (Ar-Rum).
[5] **Qur’an references (L25871):** Qur’an 74:6 (Al-Muddaththir).

father informed me from Hārūn from Abū Rajāʾ from ʿIkrimah regarding the verse *"And do not confer favor seeking to increase"* [Al-Muddaththir 74:6]. He said: Do not give wealth hypocritically, hoping for a greater reward than that from worldly gains.[6]

وَبِهِ إِلَى إِسْمَاعِيلَ نا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ أَخْبَرَنِي أَبِي عَنْ هَارُونَ عَنْ أَبِي رَجَاءٍ عَنْ عِكْرِمَةَ {وَلا تَمْنُنْ تَسْتَكْثِرُ} [المدثر: ٦] قَالَ: لَا تُعْطِ مَالًا مُصَانَعَةً رَجَاءَ أَفْضَلَ مِنْهُ مِنَ الثَّوَابِ مِنَ الدُّنْيَا.

L25873–25874 And from the chain of ʿAbd ibn Ḥumayd: Muḥammad ibn al-Faḍl—he is ʿĀrim—narrated to us from Yazīd ibn Zuraiʿ, from Abū Rajāʾ: I heard ʿIkrimah concerning the statement of Allah the Exalted: *And do not confer favor seeking increase* [Al-Muddaththir 74:6]. He said: Do not give something so that you may be given more than it.[7]

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا مُحَمَّدُ بْنُ الْفَضْلِ هُوَ عَارِمٌ - عَنْ يَزِيدَ بْنِ زُرَيْعٍ عَنْ أَبِي رَجَاءٍ سَمِعْتُ عِكْرِمَةَ فِي قَوْلِ اللَّهِ تَعَالَى: {وَلا تَمْنُنْ تَسْتَكْثِرُ} [المدثر: ٦] قَالَ: لَا تُعْطِ شَيْئًا لِتُعْطَى أَكْثَرَ مِنْهُ.

L25875 Through the chain of ʿAbd ibn Ḥumayd: From Hāshim ibn al-Qāsim, who narrated to us from Abū Muʿāwiyah from Manṣūr ibn al-Muʿtamir from Mujāhid and Ibrāhīm al-Nakhaʿī, both of whom said together: "Do not give something to obtain something better than it."

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ نا هَاشِمُ بْنُ الْقَاسِمِ عَنْ أَبِي مُعَاوِيَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مُجَاهِدٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، قَالَا جَمِيعًا: لَا تُعْطِ شَيْئًا لِتُصِيبَ أَفْضَلَ مِنْهُ.

L25876 From the transmission chain of Ibn al-Jahm: Ahmad ibn Faraj narrated to us; Al-Harawi narrated to us from Ali ibn Hashim; Al-Zibriqan narrated to us from Abu Razin, regarding the verse: _"Whatever you give in usury so that it may increase in people's wealth does not increase with Allah"_ [Ar-Rum 30:39]. He said: "Whatever you give with the intention of gaining worldly benefits or seeking to be rewarded for it does not ascend to Allah, the Almighty and Majestic." And regarding the verse: _"But whatever you give in zakah, seeking the Face of Allah"_ [Ar-Rum 30:39], he said: "Whatever you give as zakah for the sake of Allah, the Exalted, it is that which ascends."[8]

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ فَرَجٍ نا الْهَرَوِيُّ عَنْ عَلِيِّ بْنِ هَاشِمٍ نا الزِّبْرِقَانُ عَنْ أَبِي رَزِينٍ {وَمَا آتَيْتُمْ مِنْ رِبًا لِيَرْبُوَ فِي أَمْوَالِ النَّاسِ فَلا يَرْبُو عِنْدَ اللَّهِ} [الروم: ٣٩] قَالَ: مَا أَعْطَيْتَ مِنْ شَيْءٍ تُرِيدُ بِهِ عَرَضَ الدُّنْيَا، أَوْ تُثَابُ عَلَيْهِ لَمْ يَصْعَدْ إِلَى اللَّهِ عَزَّ وَجَلَّ: {وَمَا آتَيْتُمْ مِنْ زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ} [الروم: ٣٩] قَالَ: مَا أَعْطَيْتَ مِنْ هَدِيَّةٍ لِوَجْهِ اللَّهِ تَعَالَى فَهُوَ الَّذِي يَصْعَدُ.

L25877 And from the chain of Ibn al-Jahm → ʿAbdullāh ibn Aḥmad ibn Ḥanbal → my father → ʿAbd al-Raḥmān ibn Mahdī → Sufyān al-Thawrī → Manṣūr ibn Ṣafiyyah → Saʿīd ibn Jubayr, regarding the verse **{And whatever you give in usury to increase}** [Ar-Rūm 30:39]: he said: "One gives a gift so that He may reward him for it."[9]

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ صَفِيَّةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: {وَمَا آتَيْتُمْ مِنْ رِبًا لِيَرْبُوَ} [الروم: ٣٩] قَالَ: يُعْطِي الْعَطِيَّةَ لِيُثِيبَهُ عَلَيْهَا.

[6] **Qur'an references (L25872):** Qur'an 74:6 (Al-Muddaththir).
[7] **Qur'an references (L25874):** Qur'an 74:6 (Al-Muddaththir).
[8] **Qur'an references (L25876):** Qur'an 30:39 (Ar-Rum).
[9] **Qur'an references (L25877):** Qur'an 30:39 (Ar-Rum).

وَبِهِ إِلَى ابْنِ الْجَهْمِ نا أَبُو بَكْرٍ النَّرْسِيُّ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى نا إِسْرَائِيلُ عَنِ السُّدِّيِّ عَنْ أَبِي مَالِكٍ قَالَ: لَا تُعْطِ الْأَغْنِيَاءَ لِتُصِيبَ أَفْضَلَ مِنْهُ.

L25878 And through his chain to Ibn al-Jahm: Abū Bakr al-Narsī narrated, ʿUbayd Allāh ibn Mūsā narrated, Isrāʾīl narrated from al-Suddī, from Abū Mālik, who said: Do not give to the wealthy with the intention of gaining something better in return.

وَبِهِ إِلَى ابْنِ الْجَهْمِ نا أَحْمَدُ بْنُ فَرَجٍ نا الْهَرَوِيُّ نا الْعَلَاءُ بْنُ عَبْدِ الْجَبَّارِ نا نَافِعٌ عَنِ الْقَاسِمِ بْنِ أَبِي بَزَّةَ قَالَ: لَا تُعْطِ شَيْئًا تَطْلُبُ أَكْثَرَ مِنْهُ.

L25879 And through him to Ibn al-Jahm: Ahmad ibn Faraj reported to us, al-Harawi reported to us, al-Ala ibn Abd al-Jabbar reported to us, and Nafi' narrated from al-Qasim ibn Abi Bazzah, who said: "Do not give something while seeking more than it."

وَبِإِبْطَالِ هِبَةِ الثَّوَابِ يَقُولُ الشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L25880 Al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and their companions hold the view that the gift of reward is invalid.

وَأَجَازَهَا أَبُو حَنِيفَةَ، وَمَالِكٌ، وَمَا نَعْلَمُ لَهُمَا حُجَّةً إِلَّا أَنَّهُمَا رَوَيَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَبِي الدَّرْدَاءِ، وَفَضَالَةَ بْنِ عُبَيْدٍ - رَضِيَ اللَّهُ عَنْهُ - إِجَازَتَهَا

L25881 Abu Hanifah and Malik permitted it, and we know of no argument for their position except that they transmitted narrations from Umar ibn al-Khattab, Ali ibn Abi Talib, Abu al-Darda, and Fadalah ibn Ubayd—may Allah be pleased with them—regarding its permissibility.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعَطَاءٍ، وَرَبِيعَةَ، وَشُرَيْحٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ وَأَبِي الزِّنَادِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَجَمَاعَةٍ مِنَ التَّابِعِينَ - وَاحْتَجُّوا بِمَا رُوِيَ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» .

L25882 From Umar ibn Abd al-Aziz, Ata, Rabi'ah, Shurayh, al-Qasim ibn Muhammad, Abu al-Zinad, Yahya ibn Sa'id al-Ansari, and a group of the Successors: they cited as evidence what was narrated, "Muslims are held to their stipulations."

قَالَ أَبُو مُحَمَّد: أَمَّا مَالِكٌ: فَإِنَّهُ مُخَالِفٌ لِمَا ذَكَرْنَا؛ لِأَنَّهُمْ لَا يُجِيزُونَ الرُّجُوعَ فِي الْهِبَةِ، وَهَؤُلَاءِ يُجِيزُونَ ذَلِكَ.

L25883–25884 Abu Muhammad said: As for Malik, he differs from what we have mentioned because they do not permit revoking a gift, whereas this group permits that.

وَأَمَّا أَبُو حَنِيفَةَ فَمُخَالِفٌ لَهُمْ عَلَى مَا نَذْكُرُ فِي الرُّجُوعِ فِي الْهِبَةِ إِنْ شَاءَ اللَّهُ تَعَالَى.

L25885 As for Abū Ḥanīfa, he opposes them, as we will discuss concerning the revocation of a gift, God willing.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا إِلَّا فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَقَدْ خَالَفَ هَؤُلَاءِ ابْنُ عَبَّاسٍ كَمَا ذَكَرْنَا.

L25886 We have no proof except solely in the saying of the Messenger of Allah—peace and blessings of Allah be upon him—and indeed Ibn Abbas opposed these people as we have mentioned.

L25887 As for "Muslims are bound by their stipulations," we have previously invalidated this corrupt argument through three aspects—each being independently sufficient: First, that this statement was never validly established as

originating from the Messenger of Allah—peace and blessings of Allah be upon him—nor narrated by any trustworthy transmitter, for it is only transmitted through Kathīr ibn Zayd—who is discarded and rejected—or constitutes a *mursal* report. Second—

وَأَمَّا «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» فَقَدْ تَقَدَّمَ إبْطَالُنَا لِهَذَا الِاحْتِجَاجِ الْفَاسِدِ بِوُجُوهٍ ثَلَاثَةٍ كُلُّ وَاحِدٍ مِنْهَا كَافٍ -: أَوَّلُهَا - أَنَّهُ كَلَامٌ لَمْ يَصِحَّ قَطُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا رَوَاهُ مَنْ فِيهِ خَيْرٌ؛ لِأَنَّهَا إنَّمَا هِيَ مِنْ رِوَايَةِ كَثِيرِ بْنِ زَيْدٍ - وَهُوَ سَاقِطٌ مُطْرَحٌ - أَوْ مُرْسَلٌ. وَالثَّانِي -

L25888 They do not differ with us in that if someone stipulates for another person to sing for him, to perform a dance for him, to go out with him to the garden, or to dye his own shirt red, none of that is binding upon him.

أَنَّهُمْ لَا يُخَالِفُونَنَا فِي أَنَّ مَنْ شَرَطَ لِآخَرَ أَنْ يُغَنِّيَ لَهُ، أَوْ أَنْ يَزْفِنَ لَهُ، أَوْ أَنْ يَخْرُجَ مَعَهُ إلَى الْبُسْتَانِ، أَوْ أَنْ يَصْبُغَ قَمِيصَ نَفْسِهِ أَحْمَرَ: أَنَّ كُلَّ ذَلِكَ لَا يَلْزَمُهُ.

L25889 They invalidated many contracts due to many stipulations, thereby nullifying their argument for the principle “Muslims are bound by their stipulations,” and it became clear that Muslims are not bound by their stipulations in general.

وَقَدْ أَبْطَلُوا كَثِيرًا مِنْ الْعُقُودِ بِكَثِيرٍ مِنْ الشُّرُوطِ، فَأَبْطَلُوا احْتِجَاجَهُمْ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» فَصَحَّ أَنَّ الْمُسْلِمِينَ لَيْسُوا عِنْدَ شُرُوطِهِمْ عَلَى الْجُمْلَةِ.

L25890 Since there is no doubt or disagreement regarding this matter, the Messenger of Allah (peace and blessings be upon him and his family) has explicitly stated: “Every condition not stipulated in the Qur’an is void.” Thus, it is established that Muslims are not permitted to stipulate any condition not present in the Qur’an of Allah, the Almighty, the Exalted. The third point—[10]

فَإِذْ لَا شَكَّ فِي ذَلِكَ وَلَا خِلَافَ، فَقَدْ أَفْصَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنَّ «كُلَّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» ، فَصَحَّ أَنَّ الْمُسْلِمِينَ لَيْسَ لَهُمْ أَنْ يَشْتَرِطُوا شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ. وَالثَّالِثُ -

L25891 If this wording were valid, it would not be permissible to ascribe to Muslims any conditions such that phrases like “the conditions of the Muslims” or “Muslims are bound by their conditions” could apply—except to permissible conditions, not those that are prohibited.

أَنَّ هَذَا اللَّفْظَ لَوْ صَحَّ لَكَانَ لَا يَجُوزُ أَنْ يُضَافَ إلَى الْمُسْلِمِينَ مِنْ الشُّرُوطِ فَيُقَالُ: شُرُوطُ الْمُسْلِمِينَ وَالْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ إلَّا فِي الشُّرُوطِ الْجَائِزَةِ، لَا فِي الشُّرُوطِ الْمَنْهِيِّ عَنْهَا.

L25892 And the prohibition of the Messenger of Allah—peace and blessings be upon him and his family—against every condition not in the Book of Allah, the Exalted, and his invalidation thereof when it occurs has been authentically established. Thus, it is confirmed that the conditions of the Muslims are only those stipulated in the Book of Allah, the Exalted, and the Sunnah of the Messenger of Allah—peace and blessings be upon him and his family—whose following is obligatory in the Book of Allah, the Exalted.

وَقَدْ صَحَّ نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ كُلِّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ وَإِبْطَالِهِ إيَّاهُ إذَا وَقَعَ - فَصَحَّ أَنَّ شُرُوطَ الْمُسْلِمِينَ إنَّمَا هِيَ الشُّرُوطُ الْمَنْصُوصَةُ فِي كِتَابِ اللَّهِ تَعَالَى، وَسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْمُفْتَرَضِ اتِّبَاعُهَا فِي كِتَابِ اللَّهِ تَعَالَى.

[10] **Hadith references (L25890):** Sunan Ibn Majah 2521.

L25893–25895 It is not permissible for anyone to know the permissibility of a stipulation unless a text permitting it exists, for otherwise the text has already been conveyed. By invalidating every condition not in the Book of Allah the Exalted—thus clarifying the invalidity of gifts given to seek divine reward—and success is solely from Allah, the Exalted.

وَلَا يَجُوزُ أَنْ يَعْلَمَ أَحَدٌ جَوَازَ شَرْطٍ إِلَّا بِوُرُودِ النَّصِّ بِجَوَازِهِ، وَإِلَّا فَالنَّصُّ قَدْ وَرَدَ بِإِبْطَالِ كُلِّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى - فَوَضَحَ الْأَمْرُ فِي بُطْلَانِ هِبَةِ الثَّوَابِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25896 And the one who permits it said: It is a sale among valid sales.

وَقَالَ مَنْ أَجَازَهَا: هِيَ بَيْعٌ مِنْ الْبُيُوعِ.

L25897 Abu Muhammad said: This is invalid because a sale is not permissible without a specified price or with an unknown price. The gift [given for] rewards [thawab] had its rewards neither mentioned nor known. Therefore, if it constitutes a sale, it is a void, forbidden, and corrupt sale. If it is not a sale, then their legal ruling for it—by applying the ruling of a sale—has been nullified. And in Allah, the Exalted, we seek strength.

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ؛ لِأَنَّ الْبَيْعَ لَا يَجُوزُ بِغَيْرِ ثَمَنٍ مَذْكُورٍ، وَلَا بِثَمَنٍ مَجْهُولٍ، وَهِبَةُ الثَّوَابِ لَمْ يُذْكَرْ ثَوَابُهَا، وَلَا عُرِفَ، فَهِيَ إنْ كَانَتْ بَيْعًا فَهِيَ بَيْعٌ فَاسِدٌ حَرَامٌ خَبِيثٌ، وَإِنْ لَمْ تَكُنْ بَيْعًا فَقَدْ بَطَلَ حُكْمُهُمْ لَهَا بِحُكْمِ الْبَيْعِ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L25898 And they have here some egregious inconsistencies—among them: that Abū Ḥanīfah said, "Every gift conditioned upon a known countervalue is—along with that countervalue—legally treated as a gift provided neither the gift nor its countervalue has been reciprocally transferred."

وَلَهُمْ هَاهُنَا تَخَالِيطُ شَنِيعَةٌ -: مِنْهَا: أَنَّ أَبَا حَنِيفَةَ قَالَ: كُلُّ هِبَةٍ وَقَعَتْ عَلَى اشْتِرَاطِ عِوَضٍ مَعْلُومٍ فَهِيَ وَعِوَضُهَا فِي حُكْمِ الْهِبَةِ مَا لَمْ يَتَقَابَضَا الْهِبَةَ وَعِوَضَهَا.

L25899 It is not permissible in undivided jointly owned property. If they mutually receive possession, they assume the status of the buyer and seller. Each of them has the right to annul [the transaction] due to a defect, with no recourse for either after mutual possession. Has there ever been a statement more invalid than this—that a gift would transform into a sale through mutual exchange according to the juristic doctrine of Abū Ḥanīfa, which Allah the Exalted did not permit? Yet they permitted this gift and this condition.

وَلَا تَجُوزُ فِي مُشَاعٍ فَإِذَا تَقَابَضَا ذَلِكَ حَلَّا مَحَلَّ الْمُتَبَايِعَيْنِ وَلِكُلِّ وَاحِدٍ مِنْهُمَا الرَّدُّ بِالْعَيْبِ، وَلَا رُجُوعَ لَهُمَا بَعْدَ التَّقَابُضِ - فَهَلَّا سُمِعَ بِأَفْسَدَ مِنْ هَذَا الْقَوْلِ أَنْ تَكُونَ هِبَةٌ تَنْقَلِبُ بَيْعًا هَكَذَا مُطَارَفَةً بِشَرْعِ أَبِي حَنِيفَةَ الَّذِي لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى؟ وَأَجَازُوا هَذِهِ الْهِبَةَ وَهَذَا الشَّرْطَ.

L25900 Then they said: Whoever gives a gift to another on the condition that he returns a third, a quarter, or a portion of it, or on the condition that he compensates him with a third, a quarter, or a portion of it - or gives him a female slave on the condition that he returns her to him, or on the condition that he makes her an *umm walad*, or on the condition that he frees them both - and he takes possession of her, then the gift is valid in all such cases, and the condition is void.

ثُمَّ قَالُوا: مَنْ وَهَبَ لِآخَرَ هِبَةً عَلَى أَنْ يَرُدَّ عَلَيْهِ ثُلُثَهَا أَوْ رُبُعَهَا أَوْ بَعْضَهَا أَوْ عَلَى أَنْ يُعَوِّضَهُ ثُلُثَهَا أَوْ رُبُعَهَا أَوْ بَعْضَهَا - أَوْ وَهَبَ لَهُ جَارِيَةً عَلَى أَنْ يَرُدَّهَا عَلَيْهِ، أَوْ عَلَى أَنْ يَتَّخِذَهَا أُمَّ وَلَدٍ، أَوْ عَلَى أَنْ يُعْتِقَهُمَا، فَقَبَضَهَا فَالْهِبَةُ فِي كُلِّ ذَلِكَ جَائِزَةٌ وَالشَّرْطُ بَاطِلٌ.

L25901 At times, both the condition and the gift are valid, and at times the gift

is valid while the condition is nullified—could there be greater arbitrariness than this? Mālik said: Gifts are of three types. The first is a gift given for maintaining kinship ties to relatives, the second is parents' gift to their child, and the third is a gift given for divine reward.

فَمَرَّةً جَازَ الشَّرْطُ وَالْهِبَةُ، وَمَرَّةً جَازَتْ الْهِبَةُ وَبَطَلَ الشَّرْطُ - فَهَلْ فِي التَّحَكُّمِ أَكْثَرُ مِنْ هَذَا؟ وَقَالَ مَالِكٌ: الْهِبَةُ عَلَى ثَلَاثَةِ أَوْجُهٍ -: أَحَدُهُمَا - هِبَةٌ لِذِي رَحِمٍ عَلَى الصِّلَةِ، وَهِبَةُ الْوَالِدَيْنِ لِلْوَلَدِ، وَهِبَةٌ لِلثَّوَابِ.

L25902 The granting of reward depends on what we will mention later—if Allah, the Exalted, wills—and this classification lacks evidence for its validity. Success comes only from Allah, the Exalted.

فَهِبَةُ الثَّوَابِ يَرْجِعُ فِيهَا عَلَى مَا نَذْكُرُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى - وَهَذَا تَقْسِيمٌ لَا دَلِيلَ بِصِحَّتِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L25903 1630 – Issue: Whoever gives a gift free from any stipulation of reward or other conditions, grants a grant in the same manner, or gives charity likewise, it is deemed complete by the verbal declaration alone—there is no significance to taking possession of it or laying claim to it—and it is not invalidated by the donor's reacquisition of it or the charitable donor's repossession of it.

١٦٣٠ - مَسْأَلَةٌ: وَمَنْ وَهَبَ هِبَةً سَالِمَةً مِنْ شَرْطِ الثَّوَابِ، أَوْ غَيْرِهِ، أَوْ أَعْطَى عَطِيَّةً كَذَلِكَ، أَوْ تَصَدَّقَ بِصَدَقَةٍ كَذَلِكَ، فَقَدْ تَمَّتْ بِاللَّفْظِ - وَلَا مَعْنَى لِحِيَازَتِهَا، وَلَا لِقَبْضِهَا - وَلَا يُبْطِلُهَا تَمَلُّكُ الْوَاهِبِ لَهَا، أَوْ الْمُتَصَدِّقِ بِهَا.

L25904–25905 The ruling is the same whether with or without the permission of the gift recipient or charity beneficiary. It applies equally whether he retained possession until his death, for a short duration or a long one—whether the recipient is a minor child, an adult, or a stranger—except that he must return what he utilized from it, as in cases of usurpation. This applies equally during his lifetime and from the principal of his wealth after his death. This is the position of Abū Sulaymān and our companions.

وَسَوَاءٌ بِإِذْنِ الْمَوْهُوبِ لَهُ، أَوْ الْمُتَصَدَّقِ عَلَيْهِ كَانَ ذَلِكَ أَمْ بِغَيْرِ إذْنِهِ، سَوَاءٌ تَمَلَّكَهَا إلَى أَنْ مَاتَ، أَوْ مُدَّةً يَسِيرَةً أَوْ كَثِيرَةً - عَلَى وَلَدٍ صَغِيرٍ كَانَتْ أَوْ عَلَى كَبِيرٍ، أَوْ عَلَى أَجْنَبِيٍّ - إلَّا أَنَّهُ يَلْزَمُهُ رَدُّ مَا اسْتَغَلَّ مِنْهَا كَالْغَصْبِ سَوَاءٌ سَوَاءٌ فِي حَيَاتِهِ، وَمِنْ رَأْسِ مَالِهِ بَعْدَ وَفَاتِهِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L25906 Abū Ḥanīfah said: Whoever donates or gives charity to a stranger, a minor relative—whether a child or another—or an adult relative (child or otherwise), this is not valid. The legal ruling of a gift or charity does not take effect, nor can he be compelled by judicial ruling to deliver it to the recipient of the charity or the donee. If he voluntarily delivers it, then the gift or charity is completed, and ownership of the gifted item or charity recipient becomes valid. If the donee or charity recipient takes possession without the donor's or charity-giver's permission, no ownership is thereby established, and he is legally required to return it to the donor or charity-giver—except in the case of a minor, for his father or guardian shall take possession on his behalf.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ وَهَبَ أَوْ تَصَدَّقَ عَلَى أَجْنَبِيٍّ، أَوْ قَرِيبٍ صَغِيرٍ، أَوْ كَبِيرٍ - وَلَدٍ أَوْ غَيْرِهِ - فَلَيْسَ ذَلِكَ بِشَيْءٍ، وَلَا يَلْزَمُهُ حُكْمُ هِبَةٍ، وَلَا صَدَقَةٍ، وَلَا يُحْكَمُ عَلَيْهِ بِأَنْ يَدْفَعَهَا إلَى الَّذِي تَصَدَّقَ بِهَا عَلَيْهِ، وَلَا إلَى الَّذِي وَهَبَهَا لَهُ، فَإِنْ دَفَعَ ذَلِكَ مُخْتَارًا، فَحِينَئِذٍ تَمَّتْ الْهِبَةُ وَالصَّدَقَةُ، وَصَحَّ مِلْكُ الْمَوْهُوبِ أَوْ الْمُتَصَدَّقِ عَلَيْهِ، فَلَوْ قَبَضَهَا الْمَوْهُوبُ لَهُ أَوْ الْمُتَصَدَّقُ عَلَيْهِ بِغَيْرِ إذْنِ الْوَاهِبِ وَالْمُتَصَدِّقِ لَمْ يَصِحَّ لَهُ بِذَلِكَ مِلْكٌ، وَقُضِيَ عَلَيْهِ بِرَدِّهَا إلَى الْوَاهِبِ أَوْ الْمُتَصَدِّقِ إلَّا الصَّغِيرَ، فَإِنَّ أَبَاهُ أَوْ وَصِيَّهُ يَقْبِضَانِ لَهُ.

قَالَ: فَإِنْ مَاتَ الْوَاهِبُ، أَوْ الْمُتَصَدِّقُ، أَوْ الْمَوْهُوبُ لَهُ، أَوْ الْمُتَصَدَّقُ عَلَيْهِ -: بَطَلَتْ الصَّدَقَةُ وَالْهِبَةُ.

L25907 He said: If the giver, the donor of sadaqah, the recipient of the gift, or the beneficiary of sadaqah dies, the charity and the gift are rendered invalid.

وَقَالَ مَالِكٌ: مَنْ وَهَبَ أَوْ تَصَدَّقَ عَلَى ابْنٍ لَهُ صَغِيرٍ فَذَلِكَ جَائِزٌ - وَهُوَ الْحَائِزُ لِلصَّغِيرِ الذَّكَرِ حَتَّى يَبْلُغَ، وَلِلْأُنْثَى تُنْكَحُ وَتَرْشُدُ.

L25908 Mālik said: Whoever gifts or gives in charity to a minor son of his, that is permissible—and he is the custodian for the male minor until he reaches puberty, and for the female minor until she is married and attains maturity.

فَإِنْ وَهَبَ أَوْ تَصَدَّقَ عَلَى وَلَدٍ كَبِيرٍ، أَوْ عَلَى أَجْنَبِيٍّ -: أُجْبِرَ عَلَى دَفْعِ ذَلِكَ إلَيْهِمَا فَإِنْ قَبَضَاهُ بِغَيْرِ إذْنِهِ فَهُوَ قَبْضٌ صَحِيحٌ، فَإِنْ غَفَلَ عَنْ ذَلِكَ حَتَّى مَاتَ، وَالْهِبَةُ أَوْ الصَّدَقَةُ فِي يَدِهِ وَاعْتِمَارِهِ -: بَطَلَتْ الصَّدَقَةُ وَالْهِبَةُ وَعَادَتْ مِيرَاثًا - فَإِنْ دَفَعَ الْبَعْضَ وَاعْتَمَرَ الْبَعْضَ - فَإِنْ كَانَ الَّذِي اعْتَمَرَ لِنَفْسِهِ أَكْثَرَ مِنْ الثُّلُثِ -: بَطَلَ الْجَمِيعُ - وَإِنْ كَانَ الثُّلُثُ فَأَقَلُّ -: صَحَّتْ الْهِبَةُ وَالصَّدَقَةُ فِي الْجَمِيعِ فِيمَا اعْتَمَرَ وَفِيمَا لَمْ يَعْتَمِرْ.

L25909 If he gives a gift or charity to an adult child or to a stranger, he is compelled to deliver it to the recipient. If they take possession of it without his permission, this constitutes valid possession. If he neglects this until his death while the gift or charity remains in his possession and under his control, both the charity and gift become invalid and revert to inheritance. If he delivers part [of the gift] and retains part [of it] - if what he retains for himself exceeds one-third of the total, the entire gift and charity are invalidated. If the retained portion amounts to one-third or less, the gift and charity remain valid in full, including both what he retained and what he did not retain.

وَقَالَ الشَّافِعِيُّ فِي الْهِبَاتِ وَالْعَطَايَا وَالصَّدَقَاتِ الْمُطْلَقَةِ بِقَوْلِ أَبِي حَنِيفَةَ، وَفِي الْأَحْبَاسِ - فَقَطْ - بِالْقَوْلِ الَّذِي ذَكَرْنَا عَنْ أَصْحَابِنَا.

L25910 Al-Shafi'i aligned with Abu Hanifah's opinion regarding gifts, bestowals, and absolute charities, while concerning endowments exclusively, he upheld the view we mentioned from our companions.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ لَمْ يُجِزْ الْهِبَةَ، وَالصَّدَقَةَ إلَّا بِالْقَبْضِ -: بِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ أَبِيهِ قَالَ: لَمَّا نَزَلَتْ {أَلْهَاكُمُ التَّكَاثُرُ} [التكاثر: ١] قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَقُولُ ابْنُ آدَمَ: مَالِي مَالِي، وَهَلْ لَكَ مِنْ مَالِكَ إلَّا مَا أَكَلْتَ فَأَفْنَيْتَ، أَوْ لَبِسْتَ فَأَبْلَيْتَ أَوْ أَعْطَيْتَ فَأَمْضَيْتَ.»

L25911 Abu Muhammad said: Those who did not consider gifts and charity valid except upon physical transfer cited as evidence what we have narrated through the chain of Shu'bah from Qatādah from Muṭarrif ibn 'Abdullāh ibn al-Shikhkhīr from his father, who said: When the verse {Competition in [worldly] increase diverts you} [102:1] was revealed, the Messenger of Allah (peace be upon him) said: "The son of Adam says: My wealth, my wealth! But do you possess anything of your wealth except what you consumed through eating, wore out through clothing, or gave away and thereby disbursed?"[11]

وَمِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ نا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - عَنْ قَتَادَةَ «عَنْ مُطَرِّفِ بْنِ عَبْدِ اللَّهِ بْنِ الشِّخِّيرِ عَنْ أَبِيهِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْرَأُ {أَلْهَاكُمُ

L25912–25913 From the path of Abū Dāwūd al-Ṭayālisī, narrated to us Hishām—he is al-Dastuwā'ī—from Qatādah, from Muṭarrif ibn 'Abdullāh ibn al-Shikhkhīr, from his father, that he heard the Messenger of Allāh (peace be upon him)

[11] **Qur'an references (L25911):** Qur'an 102:1 (At-Takathur).

reciting {The rivalry in amassing [wealth] diverts you} [Al-Takāthur: 1] and saying: “The son of Ādam says: ’My wealth, my wealth!’ But do you possess anything of your wealth except what you ate and finished, or wore and wore out, or gave in charity and sent ahead?”[12]

التَّكَاثُرُ} [التكاثر: ١] وَيَقُولُ: يَقُولُ ابْنُ آدَمَ: مَالِي مَالِي، وَهَلْ لَكَ مِنْ مَالِكَ إِلَّا مَا أَكَلْتَ فَأَفْنَيْتَ، أَوْ لَبِسْتَ فَأَبْلَيْتَ، أَوْ تَصَدَّقْتَ فَأَمْضَيْتَ.»

L25914 They said: The Prophet (peace and blessings be upon him) stipulated that gifts and charitable acts require completion - meaning physical transfer - as a condition for their validity. They added: We analogized this ruling to loans and loans for use, which only become valid when physically transferred, because all such acts are forms of piety and recognized goodness. As for a bequest, it is not validated by mere verbal declaration alone, but requires another element linked to it: death.

قَالُوا: فَشَرَطَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي الْعَطِيَّةِ وَالصَّدَقَةِ الْإِمْضَاءَ، وَهُوَ الْإِقْبَاضُ - وَقَالُوا: قِسْنَا ذَلِكَ عَلَى الْقَرْضِ، وَالْعَارِيَّةِ، فَلَا يَصِحَّانِ إِلَّا مَقْبُوضَيْنِ، بِعِلَّةِ أَنَّ كُلَّ ذَلِكَ بِرٌّ وَمَعْرُوفٌ، وَعَلَى الْوَصِيَّةِ، فَلَا تَصِحُّ بِاللَّفْظِ وَحْدَهُ، لَكِنْ بِمَعْنًى آخَرَ مُقْتَرِنٍ إِلَيْهِ وَهُوَ الْمَوْتُ.

L25915 They also mentioned—what we have narrated through Malik’s chain that Ibn Shihab informed him from Urwah ibn al-Zubayr from Aisha, the Mother of the Believers—that when Abu Bakr’s death approached, he said to her: “I had granted you twenty wasqs of new palm trees. If you had harvested them and secured them, they would have been yours. But since you did not, they now belong to the heir.” He mentioned the report, which states: “She said, ’By Allah, O my father, had it been such and such, I would have returned it.’”

وَذَكَرُوا أَيْضًا - مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ أَنَّ ابْنَ شِهَابٍ أَخْبَرَهُ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ " أَنَّ أَبَا بَكْرٍ لَمَّا حَضَرَتْهُ الْوَفَاةُ قَالَ لَهَا: إِنِّي كُنْتُ نَحَلْتُكِ جِدَادَ عِشْرِينَ وَسْقًا، فَلَوْ كُنْتِ جَدَدْتِيهِ وَاحْتَزْتِيهِ لَكَانَ لَكِ فَإِذْ لَمْ تَفْعَلِي فَإِنَّمَا هُوَ مَالُ الْوَارِثِ، وَذَكَرَ الْخَبَرَ، وَفِيهِ: أَنَّهَا قَالَتْ " وَاَللَّهِ يَا أَبَتِ لَوْ كَانَ كَذَا وَكَذَا لَرَدَدْتُه ".

L25916 From the narration of Abd al-Razzaq, from Ma’mar, from al-Zuhri, from Urwah, from Aisha, the Mother of the Believers, who said: When Abu Bakr’s death approached, he said to her: “I had bequeathed to you twenty wasq of new harvest from my land in al-Ghabah. If you had taken possession of it, it would have been yours. But if you did not do so, then it is the heir’s property.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: لَمَّا حَضَرَتْ أَبَا بَكْرٍ الْوَفَاةُ، قَالَ لَهَا: إِنِّي كُنْتُ نَحَلْتُكِ جِدَادَ عِشْرِينَ وَسْقًا مِنْ أَرْضِي الَّتِي بِالْغَابَةِ، وَإِنَّكِ لَوْ كُنْتِ احْتَزْتِيهِ لَكَانَ لَكِ، فَإِذَا لَمْ تَفْعَلِي، فَإِنَّمَا هُوَ مَالُ الْوَارِثِ.

L25917 And through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from ʿUrwah: al-Miswar ibn Makhramah and ʿAbd al-Raḥmān ibn ʿAbd al-Qārī reported to me that they heard ʿUmar ibn al-Khaṭṭāb saying: “What is the matter with people who assign gifts to their children? When the son dies, the father says, ’My wealth is in my hand,’ and when the father dies, he says,

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ أَخْبَرَنِي الْمِسْوَرُ بْنُ مَخْرَمَةَ، وَعَبْدُ الرَّحْمَنِ بْنُ عَبْدٍ الْقَارِيِّ: أَنَّهُمَا سَمِعَا عُمَرَ بْنَ الْخَطَّابِ يَقُولُ: مَا بَالُ أَقْوَامٍ يَنْحَلُونَ أَوْلَادَهُمْ فَإِذَا مَاتَ الِابْنُ قَالَ الْأَبُ: مَالِي وَفِي يَدِي، وَإِذَا مَاتَ الْأَبُ قَالَ: قَدْ كُنْتُ نَحَلْتُ ابْنِي كَذَا وَكَذَا، لَا نَحْلَ إِلَّا لِمَنْ حَازَهُ وَقَبَضَهُ عَنْ أَبِيهِ.

[12] **Qur’an references (L25913):** Qur’an 102:1 (At-Takathur).

'I had granted my son such-and-such.' There is no gift except for one who takes possession of it and receives it from his father."

L25918 Al-Zuhri said: Sa'id ibn al-Musayyab informed me, saying: When this matter was complained of to Uthman, Uthman said: "We examined these guardianship cases and concluded that the most entitled to assume guardianship over the child is his father." This is the most authentic narration regarding this issue, and it has been established that the two narrations are conflicting, as we have cited.

قَالَ الزُّهْرِيُّ: فَأَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ قَالَ: فَلَمَّا كَانَ عُثْمَانُ شُكِيَ ذَلِكَ إِلَيْهِ، فَقَالَ عُثْمَانُ: نَظَرْنَا فِي هَذِهِ النُّحُولِ فَرَأَيْنَا أَحَقَّ مَنْ يَحُوزُ عَلَى الصَّبِيِّ أَبُوهُ - فَهَذِهِ أَصَحُّ رِوَايَةٍ فِي هَذَا، وَصَحَّ أَنَّهُمَا مُخْتَلِفَانِ كَمَا أَوْرَدْنَا.

L25919–25921 From the chain of Mālik, from al-Zuhrī, from ʿUrwah, from ʿAbd al-Raḥmān ibn ʿAbd al-Qārī, from ʿUmar ibn al-Khaṭṭāb, that he said: "Why do men grant their sons a gift, then withhold it? If the son dies..." The son of one of them said: "My property is in my possession; I have not given it to anyone." Yet if he dies, he declares: "It is for my son—I had indeed given it to him." Whoever grants a gift (nahlah) that the recipient does not take possession of before the giver's death—thereby causing it to revert to the giver's heir—such a gift is invalid.

وَمِنْ طَرِيقِ مَالِكٍ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدٍ الْقَارِي عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: مَا بَالُ رِجَالٍ يَنْحَلُونَ أَبْنَاءَهُمْ نُحْلًا ثُمَّ يُمْسِكُونَهَا، فَإِنْ مَاتَ ابْنُ أَحَدِهِمْ قَالَ: مَالِي بِيَدِي لَمْ أُعْطِهِ أَحَدًا، وَإِنْ مَاتَ قَالَ: لِابْنِي قَدْ كُنْتُ أَعْطَيْتُهُ إِيَّاهُ، مَنْ نَحَلَ نِحْلَةً لَمْ يَحُزْهَا الَّذِي نُحِلَهَا حَتَّى تَكُونَ لِوَارِثِهِ إِنْ مَاتَ فَهِيَ بَاطِلٌ.

L25922 Via the chain of Ibn Wahb, from Mālik, from al-Zuhrī, from Saʿīd ibn al-Musayyib, from ʿUthmān ibn ʿAffān, that he said: Whoever bestows an irrevocable gift upon his minor child who has not reached the age to take possession of a gift—then publicly announces it and has it formally attested—it is valid, even if the father administers it as his guardian.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُثْمَانَ بْنِ عَفَّانَ أَنَّهُ قَالَ: مَنْ نَحَلَ وَلَدًا صَغِيرًا لَهُ لَمْ يَبْلُغْ أَنْ يَحُوزَ نِحْلَةً فَأَعْلَنَ بِهَا، وَأَشْهَدَ عَلَيْهَا فَهِيَ جَائِزَةٌ وَإِنْ وَلِيَهَا أَبُوهُ.

L25923 Ibn Wahb said: Men from the people of knowledge informed me from Umar ibn al-Khattab, Umar ibn Abd al-Aziz, Shurayh, al-Zuhri, Rabi'ah, and Bukayr ibn al-Ashajj: from this.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَشُرَيْحٍ، وَالزُّهْرِيِّ وَرَبِيعَةَ، وَبُكَيْرِ بْنِ الْأَشَجِّ: مِنْ هَذَا.

L25924 And through the chain of Ibn Wahb from al-Ḥārith ibn Nabhān from Muḥammad ibn ʿUbayd Allāh (al-ʿArzamī) from ʿAmr ibn Shuʿayb, Ibn Abī Mulaykah, and ʿAṭāʾ ibn Abī Rabāḥ. ʿAmr reported from Saʿīd ibn al-Musayyib. Then Saʿīd, ʿAṭāʾ, and Ibn Abī Mulaykah concurred that Abū Bakr, ʿUmar, ʿUthmān, Ibn ʿAbbās, and Ibn ʿUmar stated: Charity is not valid until it is taken possession of.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ الْحَارِثِ بْنِ نَبْهَانَ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ هُوَ الْعَرْزَمِيُّ - عَنْ عَمْرِو بْنِ شُعَيْبٍ، وَابْنِ أَبِي مُلَيْكَةَ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ عَمْرٌو عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، ثُمَّ اتَّفَقَ سَعِيدٌ وَعَطَاءٌ، وَابْنُ أَبِي مُلَيْكَةَ أَنَّ أَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ، قَالُوا: لَا تَجُوزُ صَدَقَةٌ حَتَّى تُقْبَضَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ: كَانَ مُعَاذُ بْنُ جَبَلٍ لَا يُجِيزُ الصَّدَقَةَ حَتَّى تُقْبَضَ.

L25925 Reported via the chain: Abd al-Razzaq → Sufyan al-Thawri → Jabir al-Ju'fi → al-Qasim ibn Abd al-Rahman: Mu'adh ibn Jabal would not accept charity as valid until it had been taken possession of.

وَرُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ بِإِسْنَادِهِ، وَزَادَ فِيهِ: إلَّا الصَّبِيَّ بَيْنَ أَبَوَيْهِ.

L25926 We have narrated it via Wakī''s transmission from Sufyān with his (Sufyān's) chain of transmission, and he added therein: "except for a male child in the custody of his parents."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مُجَالِدٌ عَنْ الشَّعْبِيِّ: أَنَّ شُرَيْحًا وَمَسْرُوقًا، كَانَا لَا يُجِيزَانِ صَدَقَةً إلَّا مَقْبُوضَةً - وَكَانَ الشَّعْبِيُّ يَقْضِي بِذَلِكَ.

L25927 And from the transmission of Sa'id ibn Mansur: Hushaym narrated to us, I am Mujalid from Al-Sha'bi that Shurayh and Masruq would not validate any charity unless it was physically received, and Al-Sha'bi used to rule accordingly.

قَالَ هُشَيْمٌ: وَأَخْبَرَنِي مُطَرِّفٌ هُوَ ابْنُ طَرِيفٍ - عَنْ الشَّعْبِيِّ قَالَ: الْوَاهِبُ أَحَقُّ بِهِبَتِهِ مَا كَانَتْ فِي يَدِهِ فَإِذَا أَمْضَاهَا فَقُبِضَتْ، فَهِيَ لِلْمَوْهُوبِ لَهُ.

L25928 Hushaym said: Mutarrif—who is Ibn Tarif—narrated to me from Al-Sha'bi, who said: The donor has the greater right to his gift as long as it remains in his possession. Once he finalizes it and it is delivered, it then belongs to the donee.

قَالَ عَلِيٌّ: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، فَأَمَّا قَوْلُ رَسُولِ اللَّهِ: «إلَّا مَا تَصَدَّقْتَ، أَوْ أَعْطَيْتَ فَأَمْضَيْتَ» فَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ -: إنَّ الْإِمْضَاءَ هُوَ شَيْءٌ آخَرُ غَيْرُ التَّصَدُّقِ، وَالْإِعْطَاءِ، وَلَا جَاءَ ذَلِكَ قَطُّ فِي لُغَةٍ، بَلْ كُلُّ تَصَدُّقٍ وَإِعْطَاءٍ إعْطَاءٌ، فَاللَّفْظُ بِهِمَا إمْضَاءٌ لَهُمَا، وَإِخْرَاجٌ لَهُمَا عَنْ مِلْكِهِ، كَمَا أَنَّ الْأَكْلَ نَفْسَهُ هُوَ الْإِفْنَاءُ، وَاللِّبَاسُ هُوَ الْإِبْلَاءُ؛ لِأَنَّ لِكُلِّ لُبْسَةٍ حَظَّهَا مِنْ الْإِبْلَاءِ، فَإِذَا تَرَدَّدَ اللِّبَاسُ ظَهَرَ الْإِبْلَاءُ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

L25929 Ali said: This is all they have relied on as evidence; we know of nothing else beyond this for them, and none of it contains any valid argument for them in any part of it. As for the statement of God's Messenger—peace be upon him—"except what you gave in charity, or gave and then executed," he did not say—peace be upon him—that "execution" is something distinct from charity and giving, nor has this ever existed in any language. Rather, every act of charity and giving is itself an act of giving, and the use of these terms signifies their execution and removal from his ownership, just as eating itself is consumption, and wearing is deterioration—for every garment has its share of deterioration. Thus, when clothing is used repeatedly, the deterioration becomes evident. Therefore, their reliance on this report is invalid.

وَأَيْضًا - فَإِنَّ مَنْ قَالَ: مَا لِي هَذَا صَدَقَةٌ عَلَى فُلَانٍ، أَوْ قَالَ: قَدْ تَصَدَّقْت عَلَيْك بِهَذَا الشَّيْءِ، أَوْ قَالَ: مَالِي هَذَا هِبَةٌ لِفُلَانٍ، أَوْ قَالَ: قَدْ وَهَبْتُهُ لِفُلَانٍ -: فَلَا يَخْتَلِفُ اثْنَانِ مِمَّنْ يُحْسِنُ اللُّغَةَ الْعَرَبِيَّةَ فِي أَنَّهُ يُقَالُ: قَدْ تَصَدَّقَ فُلَانٌ بِكَذَا عَلَى فُلَانٍ، وَقَدْ وَهَبَ لَهُ كَذَا فَلَوْ لَمْ تَكُنْ الصَّدَقَةُ كَامِلَةً تَامَّةً بِاللَّفْظِ، لَكَانَ الْمُخْبِرُ عَنْهُ بِأَنَّهُ تَصَدَّقَ، أَوْ وَهَبَ

L25930–25931 Moreover, if someone says, "This property of mine is charity for so-and-so," or says, "I have given you this thing as charity," or says, "This property of mine is a gift for so-and-so," or says, "I have given this as a gift to so-and-so"—no two people proficient in the Arabic language disagree that it is said: "So-and-so has given such-and-such as charity to so-and-so," and "He has granted such-and-such to him as a gift." For if the charity were not complete and perfected by the utterance, the one reporting that he gave charity or a

gift would be lying. Therefore, it is obligatory to base the ruling on what the language necessitates, unless a text introduces an additional ruling beyond the language's requirements—in which case it is restricted to it and implemented.

كَاذِبًا - فَوَجَبَ حَمْلُ الْحُكْمِ عَلَى مَا تُوجِبُهُ اللُّغَةُ، مَا لَمْ يَأْتِ نَصٌّ بِحُكْمٍ زَائِدٍ لَا تَقْتَضِيهِ اللُّغَةُ فَيُوقَفُ عِنْدَهُ وَيُعْمَلُ بِهِ.

L25932 The Malikis in particular are asked about one who says: "I have given this thing to you as a gift," or says: "This thing is a gift for you," or says: "I have given this to you as charity," or says: "This is charity to you" - does this [statement] constitute charity (sadaqa) and thereby a gift (hiba), or does it neither constitute charity nor a gift? There is no third option in this classification.

وَيُسْأَلُ الْمَالِكِيُّونَ خَاصَّةً عَمَّنْ قَالَ: قَدْ وَهَبْتُ هَذَا الشَّيْءَ لَك، أَوْ قَالَ: هَذَا الشَّيْءُ هِبَةٌ لَك، أَوْ قَالَ: قَدْ تَصَدَّقْت عَلَيْك بِهَذَا، أَوْ قَالَ: هَذَا صَدَقَةٌ عَلَيْك - أَتَصَدَّقُ، وَوَهَبَ بِذَلِكَ الشَّيْءِ أَمْ لَمْ يَتَصَدَّقْ بِهِ وَلَا وَهَبَهُ؟ وَلَا ثَالِثَ لِهَذَا التَّقْسِيمِ.

L25933 If they say: Yes, he has given it as charity and gifted it? We respond: Since he has given it as charity and gifted it, the charitable act and gift are fully concluded and valid. What invalidates them due to the lack of taking possession or actual taking, when no textual evidence mandates this? If they say: He neither gifted nor gave it as charity? We counter: How can you justify compelling him and ruling that he must hand over wealth from his property – wealth he neither gave as charity to the recipient, nor gifted it to someone he had not given it to, nor given as charity to him? This is the very essence of injustice and falsehood, leaving them no escape from either charge.

فَإِنْ قَالُوا: نَعَمْ، قَدْ تَصَدَّقَ بِهِ وَوَهَبَهُ؟ قُلْنَا: فَإِذْ قَدْ تَصَدَّقَ بِهِ وَوَهَبَهُ فَقَدْ تَمَّتْ الصَّدَقَةُ وَالْهِبَةُ وَصَحَّتْ، فَمَا يَضُرُّهُمَا تَرْكُ الْحِيَازَةِ وَالْقَبْضِ، إذَا لَمْ يُوجِبْ ذَلِكَ نَصٌّ؟ فَإِنْ قَالُوا: لَمْ يَهَبْ وَلَا تَصَدَّقَ؟ قُلْنَا: فَمِنْ أَيْنَ اسْتَحْلَلْتُمْ إجْبَارَهُ وَالْحُكْمَ عَلَيْهِ بِدَفْعِ مَالٍ مِنْ مَالِهِ لَمْ يُتَصَدَّقْ بِهِ عَلَيْهِ، وَلَا وَهَبَهُ إلَى مَنْ لَمْ يَهَبْهُ لَهُ وَلَا تَصَدَّقَ بِهِ عَلَيْهِ؟ هَذَا عَيْنُ الظُّلْمِ وَالْبَاطِلِ، وَلَا مُخَلِّصَ لَهُمْ مِنْ أَحَدِهِمَا.

L25934 As for those below the rank of the Companions, there is no authoritative evidence in anyone apart from the Messenger of Allah—peace and blessings be upon him and his family—especially since disagreement concerning this matter existed among the Companions (may Allah be pleased with them).

وَأَمَّا مَنْ دُونَ الصَّحَابَةِ فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، لَا سِيَّمَا وَالْخِلَافُ قَدْ وَرَدَ فِي ذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L25935 Moreover, most of these reports are either unauthentic, contradict the wording they relied upon, or oppose the teachings transmitted from those Companions—either in the manner these narrations are transmitted or by what is more authentic—as we will clarify in accordance with what follows, if Allah the Exalted wills.

وَأَيْضًا - فَأَكْثَرُ تِلْكَ الْأَخْبَارِ إمَّا لَا تَصِحُّ، وَإِمَّا قَدْ جَاءَتْ بِخِلَافِ مَا تَعَلَّقُوا بِهِ مِنْ أَلْفَاظِهَا، وَإِمَّا قَدْ خَالَفُوا أُولَئِكَ الصَّحَابَةَ فِيمَا جَاءَ عَنْهُمْ، كَمَجِيءِ هَذِهِ الرِّوَايَاتِ، أَوْ بِأَصَحَّ عَلَى مَا نُبَيِّنُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L25936–25938 As for their analogy equating gifts, charity, loans, bequests, and the commodatum—the entire analogy is invalid. Even if it were valid, this aspect would constitute the very essence of invalidity. Regarding the loan: they have inval-

وَأَمَّا قِيَاسُهُمْ الْهِبَةَ، وَالصَّدَقَةَ عَلَى الْقَرْضِ، وَالْوَصِيَّةِ، وَالْعَارِيَّةِ -: فَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ -: أَمَّا الْقَرْضُ: فَقَدْ أَبْطَلُوا - وَهُوَ لَازِمٌ بِاللَّفْظِ

idated it—though it remains binding by its explicit wording, legally binding, and inevitable to uphold in the absence of any contradicting textual evidence—for the invalidity arising from the loan stems solely from the lack of physical transfer, just as occurs with the invalidity of gifts and charity. It is the same in both cases. This only applies to what is non-specified. For example, if one says: "I have lent you ten dinars from my wealth," or "I have given you ten dinars from my wealth as charity," or "I have gifted you ten dinars from my wealth": none of these are binding, for the reason we stated earlier: that all such actions are invalid except with specified items. Otherwise, he is not gifting anything, nor giving anything as charity, nor lending anything.

وَمَحْكُومٌ بِهِ وَلَا بُدَّ - إِذْ لَمْ يَأْتِ نَصٌّ بِخِلَافِ هَذَا، وَإِنَّمَا يَبْطُلُ مِنْ الْقَرْضِ بِعَدَمِ الْإِقْبَاضِ مِثْلُ مَا يَبْطُلُ مِنْ الْهِبَةِ، وَالصَّدَقَةِ، سَوَاءٌ سَوَاءٌ، وَلَيْسَ ذَلِكَ إِلَّا مَا كَانَ فِي غَيْرِ مُعَيَّنٍ، مِثْلُ أَنْ يَقُولَ: قَدْ أَقْرَضْتُكَ عَشَرَةَ دَنَانِيرَ مِنْ مَالِي، أَوْ تَصَدَّقْتُ عَلَيْكَ بِعَشَرَةِ دَنَانِيرَ مِنْ مَالِي، أَوْ وَهَبْتُكَ عَشَرَةَ دَنَانِيرَ مِنْ مَالِي -: فَهَذَا كُلُّهُ لَا يَلْزَمُ لِمَا ذَكَرْنَا قَبْلُ: مِنْ أَنَّ كُلَّ ذَلِكَ لَا يَجُوزُ، إِلَّا فِي مُعَيَّنٍ، وَإِلَّا فَلَيْسَ وَاهِبًا لِشَيْءٍ، وَلَا مُتَصَدِّقًا بِشَيْءٍ، وَلَا مُقْرِضًا لِشَيْءٍ.

L25939 The ruling concerning the gratuitous loan (ʿāriyyah) is exactly the same as the ruling we have previously mentioned—identical in every respect. Were this analogy valid, it would indeed be conclusive proof against them.

وَالْقَوْلُ فِي الْعَارِيَّةِ كَالْقَوْلِ فِيمَا ذَكَرْنَا سَوَاءً سَوَاءً، وَلَوْ صَحَّ هَذَا الْقِيَاسُ لَكَانَ حُجَّةً عَلَيْهِمْ.

L25940 Moreover, the loan (qard) can be reclaimed whenever the lender wishes, and the loan (ʿāriyyah) similarly can be reclaimed. However, in our school, a gift (hibah) or charity (sadaqah) cannot be reclaimed. Additionally, charity and a gift entail transfer of ownership without compensation, while the loan (qard) entails transfer of ownership in exchange for repayment, and the loan (ʿāriyyah) does not involve transfer of ownership at all. Thus, analogical reasoning (qiyās) of some of these upon others is invalid due to the differences in their legal rulings.

وَأَيْضًا - فَإِنَّ الْقَرْضَ يَرْجِعُ فِيهِ مَتَى أَحَبَّ، وَالْعَارِيَّةَ كَذَلِكَ، وَلَا يَرْجِعُ عِنْدَنَا فِي الْهِبَةِ وَلَا فِي الصَّدَقَةِ، وَأَيْضًا - فَإِنَّ الصَّدَقَةَ وَالْهِبَةَ تَمْلِيكٌ لِلرَّقَبَةِ بِغَيْرِ عِوَضٍ، وَالْقَرْضَ تَمْلِيكٌ لِلرَّقَبَةِ بِعِوَضٍ، وَالْعَارِيَّةَ لَيْسَتْ تَمْلِيكًا لِلرَّقَبَةِ أَصْلًا -: فَبَطَلَ قِيَاسُ بَعْضِ ذَلِكَ عَلَى بَعْضٍ لِاخْتِلَافِ أَحْكَامِهَا.

L25941 The opinion of those who assert that all such acts agree in being righteous and recognized good, thereby justifying analogizing some to others, is no more valid than the opinion of those who assert that their divergent rulings preclude such analogy. For if agreement in rulings necessitates qiyās, then divergence invalidates it. Otherwise, they would merely assert claims without proof.

وَلَيْسَ قَوْلُ مَنْ قَالَ: اتِّفَاقُ جَمِيعِهَا فِي أَنَّهَا بِرٌّ وَمَعْرُوفٌ فَأَنَا أَقِيسُ بَعْضَهَا عَلَى بَعْضٍ بِأَوْلَى مِمَّنْ قَالَ افْتِرَاقُهَا فِي أَحْكَامِهَا يُوجِبُ أَنْ لَا يُقَاسَ بَعْضُهَا عَلَى بَعْضٍ، وَإِذَا كَانَ الِاتِّفَاقُ يُوجِبُ الْقِيَاسَ، فَالِافْتِرَاقُ يُبْطِلُ الْقِيَاسَ، وَإِلَّا فَقَدْ تَحَكَّمُوا بِالدَّعْوَى بِلَا بُرْهَانٍ.

L25942 And it is said to them: Why did you not compare all of that to the obligatory vow according to you, which is binding by mere utterance even if possession of it is not taken? For it is more analogous to charity and a gift than to a

commodatum (loan for temporary use) or a loan (qard). As for the bequest, we have relieved them of the need to analogize it, for they do not require validity in it through taking possession at all; rather, it becomes obligatory only upon death.

وَيُقَالُ لَهُمْ: هَلَّا قِسْتُمْ كُلَّ ذَلِكَ عَلَى النَّذْرِ الْوَاجِبِ عِنْدَكُمْ بِاللَّفْظِ وَإِنْ لَمْ يُقْبَضْ، فَهُوَ أَشْبَهُ بِالصَّدَقَةِ وَالْهِبَةِ مِنْ الْعَارِيَّةِ وَالْقَرْضِ؟ وَأَمَّا الْوَصِيَّةُ: فَقَدْ كَفَوْنَا مُؤْنَةَ قِيَاسِهِمْ عَلَيْهَا، لِأَنَّهُمْ لَا يُوجِبُونَ فِيهَا الصِّحَّةَ بِالْقَبْضِ أَصْلًا، بَلْ هِيَ وَاجِبَةٌ بِالْمَوْتِ فَقَطْ.

L25943 Their statement that "the obligation is not established by the wording alone without another meaning—death"—is a feeble, invalid obfuscation. For the testator never established the will's obligation through his wording at all; rather, he only established it after death. Thus, it became obligatory solely through what he stipulated for its obligation, without any additional meaning. Consequently, the invalidity, weakness, and insipidity of their analogy—along with its contradiction of the truth—have become evident. All praise is to Allah, Lord of the worlds.

وَقَوْلُهُمْ: لَا تَجِبُ بِاللَّفْظِ دُونَ مَعْنًى آخَرَ - وَهُوَ الْمَوْتُ - فَتَمْوِيهٌ بَارِدٌ فَاسِدٌ، لِأَنَّ الْمُوصِيَ لَمْ يُوجِبْ الْوَصِيَّةَ قَطُّ بِلَفْظِهِ، بَلْ إنَّمَا أَوْجَبَهَا بَعْدَ الْمَوْتِ فَحِينَئِذٍ وَجَبَتْ بِمَا أَوْجَبَهَا بِهِ فَقَطْ دُونَ مَعْنًى آخَرَ -: فَظَهَرَ فَسَادُ قِيَاسِهِمْ وَبَرْدُهُ وَغَثَاثَتُهُ، وَمُخَالَفَتُهُ لِلْحَقِّ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L25944–25946 As for the narration from the Companions—may Allah be pleased with them—we begin with the account of Abu Bakr and Aisha—may Allah be pleased with them both—and we say—and with Allah, the Most High, is success—: When the hadith explicitly stated that he gifted her twenty wasqs of fresh dates from his property in Al-Ghabah, it must necessarily be one of two possibilities—there is no third option: either that he intended date palms that yield twenty wasqs.

وَأَمَّا الرِّوَايَةُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَنَبْدَأُ بِخَبَرِ أَبِي بَكْرٍ، وَعَائِشَةَ - رَضِيَ اللَّهُ عَنْهُمَا - فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: لَمَّا نَصَّ الْحَدِيثُ أَنَّهُ نَحَلَهَا جِدَادَ عِشْرِينَ وَسْقًا مِنْ مَالِهِ بِالْغَابَةِ، فَلَا يَخْلُو ضَرُورَةً مِنْ أَحَدِ أَمْرَيْنِ لَا ثَالِثَ لَهُمَا -: إمَّا أَنْ يَكُونَ أَرَادَ نَخْلًا تَجِدُّ مِنْهَا عِشْرِينَ وَسْقًا.

L25947 Alternatively, he may have intended dates amounting to twenty wasqs of produced yield, which must necessarily be one of the two. Whichever case applies, it is merely a stipulated period. This ruling does not bind according to their school nor ours, because it does not pertain to specified palm trees nor specified dates. One might produce twenty wasqs from forty palm trees, or from two hundred palm trees, or fail to produce twenty wasqs from palm trees in the grove due to blight affecting the fruit. This arrangement is only valid when he specifies either the palm trees or the wasq quantity pertaining to a particular tree, whereby the arrangement is then completed through harvesting and possession. This case neither falls under the legally recognized gift contracts with defined parameters, nor under the distinct category of charity applicable to neither incoming nor outgoing [transactions]. Rather,

وَإِمَّا أَنْ يَكُونَ أَرَادَ تَمْرًا يَكُونُ عِشْرِينَ وَسْقًا مَجْدُودَةً، لَا بُدَّ مِنْ أَحَدِهِمَا وَأَيُّ الْأَمْرَيْنِ كَانَ فَإِنَّمَا هِيَ عِدَةٌ؟ وَلَا يَلْزَمُ هَذِهِ الْقَضِيَّةُ عِنْدَهُمْ وَلَا عِنْدَنَا، لِأَنَّهَا لَيْسَتْ فِي مُعَيَّنٍ مِنْ النَّخْلِ، وَلَا مُعَيَّنٍ مِنْ التَّمْرِ، وَقَدْ تَجِدُّ عِشْرِينَ وَسْقًا مِنْ أَرْبَعِينَ نَخْلَةً، وَقَدْ تَجِدُّ مِنْ مِائَتَيْ نَخْلَةٍ، وَقَدْ لَا تَجِدُّ مِنْ نَخْلَةٍ بِالْغَابَةِ عِشْرِينَ وَسْقًا لِعَاهَةٍ تُصِيبُ الثَّمَرَةَ، فَهَذَا لَا يَتِمُّ إلَّا حَتَّى يُعَيِّنَ النَّخْلَ أَوْ الْأَوْسَاقَ فِي نَخْلَةٍ، فَيَتِمُّ حِينَئِذٍ بِالْجِدَادِ وَالْحِيَازَةِ، فَلَيْسَتْ هَذِهِ الْقِصَّةُ مِنْ الْهِبَةِ الْمَعْرُوفَةِ الْمَحْدُودَةِ، وَلَا مِنْ الصَّدَقَةِ الْمَعْلُومَةِ الْمُتَمَيِّزَةِ فِي وِرْدٍ وَلَا صَدْرٍ، وَلَكِنَّهُمْ قَوْمٌ يُوهِمُونَ فِي الْأَخْبَارِ مَا لَيْسَ فِيهَا.

they are people who insinuate falsely in textual reports what is not contained within them.

وَأَيْضًا - فَقَدْ رَوَى هَذَا الْخَبَرَ مَنْ هُوَ أَجَلُّ مِنْ عُرْوَةَ، وَآخَرُ هُوَ مِثْلُ عُرْوَةَ بِخِلَافِ مَا رَوَاهُ عُرْوَةُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ: أَنَّ الْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ أَخْبَرَهُ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَالَ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ: يَا بُنَيَّةُ، إِنِّي نَحَلْتُكِ نَخْلًا مِنْ خَيْبَرَ، وَإِنِّي أَخَافُ أَنْ أَكُونَ آثَرْتُكِ عَلَى وَلَدِي، وَأَنَّكِ لَمْ تَكُونِي احْتَزْتِيهِ فَرُدِّيهِ عَلَى وَلَدِي؟ فَقَالَتْ: يَا أَبَتَاهُ، لَوْ كَانَتْ لِي خَيْبَرُ بِجِدَادِهَا لَرَدَدْتُهَا.

L25948 Moreover, this report has been narrated by one more eminent than ʿUrwah and another comparable to ʿUrwah, contradicting ʿUrwah's narration—as conveyed to us through the chain of ʿAbd al-Razzāq on the authority of Ibn Jurayj: Ibn Abī Mulaykah informed me that al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq reported to him that Abū Bakr al-Ṣiddīq said to ʿĀ'ishah, the Mother of the Believers: "O my daughter, I gifted you palm trees from Khaybar, but I fear I may have favored you over my children and that you have not taken possession of it. Should you return it to my children?" She replied: "O my father, if I possessed Khaybar with all its fresh dates, I would still return it!"

فَالْقَاسِمُ لَيْسَ دُونَ عُرْوَةَ، وَابْنُ أَبِي مُلَيْكَةَ لَيْسَ دُونَ ابْنِ شِهَابٍ؛ لِأَنَّهُ أَدْرَكَ مِنْ الصَّحَابَةِ مِنْ لَمْ يَأْخُذْ الزُّهْرِيُّ عَنْهُمْ، كَأَسْمَاءَ وَابْنِ عُمَرَ وَغَيْرِهِمَا - وَابْنُ جُرَيْجٍ لَيْسَ دُونَ مَالِكٍ.

L25949 Al-Qāsim is not inferior to ʿUrwah, and Ibn Abī Mulaykah is not inferior to al-Zuhrī, for he was contemporaneous with Companions from whom al-Zuhrī did not learn, such as Asmā' and Ibn ʿUmar and others – and Ibn Jurayj is not inferior to Mālik.

وَهَذِهِ السِّيَاقَةُ مُوَافِقَةٌ لِقَوْلِنَا لَا لِقَوْلِهِمْ.

L25950 And this guidance is in agreement with our view, not theirs.

فَمِنْ الْبَاطِلِ أَنْ يَكُونَ مَا رَوَوْهُ مِمَّا لَا يُوَافِقُ قَوْلَهُمْ، بَلْ يُخَالِفُهُ: حُجَّةً لِمَا لَا يُوَافِقُهُ، وَلَا يَكُونُ مَا رُوِّينَاهُ مُوَافِقًا لِقَوْلِنَا: حُجَّةً لِمَا يُوَافِقُهُ هَذِهِ سَوَاءٌ سَوَاءٌ مِمَّنْ أَطْلَقَهَا.

L25951 It is invalid that what they narrated—which does not conform to their position but rather contradicts it—should constitute valid proof for what opposes their stance, while what we narrated—which conforms to our position—does not constitute valid proof for what aligns with it. This equivalence is absolute, irrespective of who asserted it.

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا إبْرَاهِيمُ الْحَرْبِيُّ نا ابْنُ نُمَيْرٍ هُوَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ - نا أَبِي عَنْ الْأَعْمَشِ عَنْ شَقِيقٍ أَبِي وَائِلٍ عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، قَالَتْ: قَالَ لِي أَبُو بَكْرٍ حِينَ أُحْضِرَ: إنِّي قَدْ كُنْتُ أَبَنْتُكِ بِنَخْلٍ فَإِنْ شِئْتِ أَنْ تَأْخُذِي مِنْهُ قِطَاعًا أَوْ قِطَاعَيْنِ ثُمَّ تَرُدِّينَهُ إلَى الْمِيرَاثِ؟ قَالَتْ: قَدْ فَعَلْتُ.

L25952 From the chain of Ibn al-Jahm, from Ibrāhīm al-Ḥarbī, from Ibn Numayr—Muḥammad ibn ʿAbd Allāh ibn Numayr—from his father, from al-Aʿmash, from Shaqīq Abū Wā'il, from Masrūq, from ʿĀ'ishah, Mother of the Believers, who said: Abū Bakr said to me when he was on his deathbed: "I had assigned you a bridal gift. If you wish, take one portion or two portions from it, then return it to the inheritance." She said: "I did so."

وَلَا خِلَافَ مِنْ أَنَّ مَسْرُوقًا أَجَلُّ مِنْ عُرْوَةَ؛ لِأَنَّهُ أَفْتَى فِي خِلَافَةِ عُمَرَ وَكَانَ أَخَصَّ النَّاسِ بِأُمِّ الْمُؤْمِنِينَ - وَشَقِيقٌ أَجَلُّ مِنَ الزُّهْرِيِّ؛ لِأَنَّهُ أَدْرَكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَإِنْ كَانَ لَمْ يَرَهُ، وَصَحِبَ الصَّحَابَةَ مِنْ بَعْدِ مَوْتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْأَكَابِرَ الْأَكَابِرَ.

There is no disagreement that Masruq is more eminent than Urwah, for he issued legal rulings during the caliphate of Umar and was the most closely associated of people with the Mother of the Believers. Shaqiq is more eminent than al-Zuhri because he lived during the time of the Messenger of Allah (peace and blessings be upon him) even though he did not see him, and after his death (peace and blessings be upon him), he accompanied the greatest of the great Companions.

وَالْأَعْمَشُ إِنَّمَا يُعَارَضُ بِهِ شُيُوخُ مَالِكٍ؛ لِأَنَّهُ قَدْ أَدْرَكَ أَنَسًا وَرَآهُ، فَهُوَ مِنَ التَّابِعِينَ مِنَ الْقَرْنِ الثَّانِي، وَإِنَّمَا فِيهِ كَمَا تَرَى بِأَنَّهُ إِنَّمَا اسْتَرَدَّهُ بِإِذْنِهَا، لَا بِأَنَّهُ لَمْ يَتِمَّ بِاللَّفْظِ.

Al-A'mash is only contradicted by Malik's teachers because he met Anas and saw him, placing him among the Followers of the second century AH. The matter regarding him, as is evident, is solely that he reclaimed the ruling with her permission, not that it was not completed by explicit wording.

وَرُوِّينَاهُ أَيْضًا مُرْسَلًا كَذَلِكَ، مِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ - فَبَطَلَ تَعَلُّقُهُمْ بِخَبَرِ أَبِي بَكْرٍ جُمْلَةً وَعَادَ حُجَّةً عَلَيْهِمْ - وَلِلَّهِ تَعَالَى الْحَمْدُ، وَصَحَّ أَنَّهُمَا رَأَيَا الْهِبَةَ جَائِزَةً بِغَيْرِ قَبْضٍ.

We have also narrated it as *mursal* in the same manner, through the chain of Waki' from Ismā'īl ibn Abī Khālid from al-Sha'bī—thus their reliance on the report of Abū Bakr is entirely invalidated, and it became evidence against them—and all praise is due to Allah, the Exalted—and it has been established that both of them deemed the gift permissible without physical possession.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ: لَا تَجُوزُ صَدَقَةٌ حَتَّى تُقْبَضَ فَبَاطِلٌ؛ لِأَنَّ رَاوِيَهَا مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ الْعَرْزَمِيُّ - وَهُوَ هَالِكٌ مُطْرَحٌ. وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ الْمُوَافِقَةُ لِلرِّوَايَةِ عَنْ عُثْمَانَ فَلَا شَيْءَ؛ لِأَنَّ ابْنَ وَهْبٍ لَمْ يُسَمِّ مَنْ أَخْبَرَهُ بِهَا - وَالرِّوَايَةُ عَنْ مُعَاذٍ فِيهَا جَابِرٌ الْجُعْفِيُّ، وَبَقِيَّةُ الرِّوَايَةِ عَنْ عُمَرَ، وَعُثْمَانَ، فَهِيَ حُجَّةٌ إِلَّا أَنَّهُمَا اخْتَلَفَا -: فَعُمَرُ عَمَّ كُلَّ مَوْهُوبٍ، وَعُثْمَانُ خَصَّ مِنْ ذَلِكَ صِغَارَ الْوَلَدِ، وَإِنَّمَا هِيَ رَأْيٌ مِنْ رَأْيِهِمَا اخْتَلَفَا فِيهِ، لَا تَقُومُ بِهِ حُجَّةٌ عَلَى أَحَدٍ - وَقَدْ صَحَّ عَنْ أَبِي بَكْرٍ، وَعَائِشَةَ خِلَافُ ذَلِكَ، كَمَا أَوْرَدْنَا.

As for the narration attributed to Abu Bakr, Umar, Uthman, Ibn Abbas, and Ibn Umar stating that charity is not valid until it is physically received, this is invalid because its narrator, Muhammad ibn Ubaydullah al-Arzami, is rejected and abandoned. As for the narration from Umar that corresponds to the narration from Uthman, it holds no weight because Ibn Wahb did not name the one who reported it to him. The narration from Mu'adh includes Jabir al-Ju'fi, while the remaining narrations from Umar and Uthman constitute probative evidence, except that they disagreed: Umar applied the ruling universally to all gifts, whereas Uthman restricted it to young children. This is merely an opinion they differed on, which does not establish binding proof for anyone. Authentic reports from Abu Bakr and 'Aishah contradict this, as we have presented.

وَأَيْضًا - فَإِنَّمَا هُوَ عَنْ عُمَرَ، وَعُثْمَانَ فِي النُّحْلِ خَاصَّةً، لَا فِي الصَّدَقَةِ.

Moreover, this applies specifically to the positions of ʿUmar and ʿUthmān concerning voluntary gifts (al-nuḥl), not to obligatory alms (al-ṣadaqah).

It has been narrated to us via the chain of Al-Ḥajjāj ibn Al-Minhāl: Al-

Muʿtamir ibn Sulaymān At-Taymī narrated to us, saying: "I heard ʿĪsā ibn Al-Musayyib relate that he heard Al-Qāsim ibn ʿAbd ar-Raḥmān ibn ʿAbdillāh ibn Masʿūd narrating from his father, from his grandfather ʿAbdullāh ibn Masʿūd, who said: 'Charity is permissible, whether it has been collected or not.'"

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ قَالَ: سَمِعْتُ عِيسَى بْنَ الْمُسَيِّبِ يُحَدِّثُ: أَنَّهُ سَمِعَ الْقَاسِمَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ يُحَدِّثُ عَنْ أَبِيهِ عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: الصَّدَقَةُ جَائِزَةٌ، قُبِضَتْ أَوْ لَمْ تُقْبَضْ.

L25960 From the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Jabir al-Ju'fi, from al-Qasim ibn Abd al-Rahman, who said: Ali ibn Abi Talib and Ibn Mas'ud would permit charity—even if it was not received—and this is a chain like that of Mu'adh's hadith. Those are interrupted chains.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ، وَابْنُ مَسْعُودٍ: يُجِيزَانِ الصَّدَقَةَ - وَإِنْ لَمْ تُقْبَضْ - فَهَذَا إسْنَادٌ كَإِسْنَادِ حَدِيثِ مُعَاذٍ، وَتِلْكَ الْمُنْقَطِعَاتُ.

L25961–25963 Via the narration route of Ibn Abī Shaybah: Wakīʿ reported to us from Hammām from Qatādah from Al-Nadr ibn Anas ibn Malik said: My father granted me half of his house as a voluntary gift. Abu Burda then said: If you wish to secure it, take possession of it, for Umar ruled regarding grants: Whatever is taken possession of becomes valid, and whatever is not taken possession of becomes part of the inheritance. Thus, Anas—as reported through the most authentic chain of transmission—did not consider safekeeping to be of any significance.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ هَمَّامٍ عَنْ قَتَادَةَ عَنْ النَّضْرِ بْنِ أَنَسِ بْنِ مَالِكٍ قَالَ: نَحَلَنِي أَبِي نِصْفَ دَارِهِ، فَقَالَ أَبُو بُرْدَةَ: إنْ سَرَّك أَنْ تَحُوزَ ذَلِكَ فَاقْبِضْهُ، فَإِنَّ عُمَرَ قَضَى فِي الْأَنْحَالِ: مَا قُبِضَ مِنْهُ فَهُوَ جَائِزٌ، وَمَا لَمْ يُقْبَضْ مِنْهُ فَهُوَ مِيرَاثٌ - فَهَذَا أَنَسٌ بِأَصَحِّ سَنَدٍ لَا يَرَى الْحِرْزَ شَيْئًا.

L25964 And through the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us: "I [heard] from Yūnus, from al-Ḥasan, from a man who gifted to his wife." Al-Ḥasan said: "It is permissible for her, even if she does not take possession of it."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا يُونُسُ عَنْ الْحَسَنِ عَنْ رَجُلٍ وَهَبَ لِامْرَأَتِهِ قَالَ: هِيَ جَائِزَةٌ لَهَا، وَإِنْ لَمْ تَقْبِضْهَا.

L25965 There are numerous cases where they opposed the rulings of ʿUmar and ʿUthmān, such as their ruling that the child of a woman legally recognized as a slave is enslaved to the master of the child's mother, their ruling imposing a liability of five camels for the child of an Arab man by an enslaved woman, and their permitting conditional stipulations during Hajj.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُمَرَ، وَعُثْمَانَ، كَقَضَائِهِمَا بِوَلَدِ الْمُسْتَحَقَّةِ رَقِيقًا لِسَيِّدِ أُمِّهِمْ، وَقَضَائِهِمَا فِي وَلَدِ الْعَرَبِيِّ مِنْ الْأَمَةِ بِخَمْسٍ مِنْ الْإِبِلِ، وَكَإِبَاحَتِهِمَا الِاشْتِرَاطَ فِي الْحَجِّ.

L25966 What has been reported from Abū Bakr and ʿUmar concerning the annulment of unspecified gifts.

وَمَا رُوِيَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، مِنْ إبْطَالِ هِبَةِ الْمَجْهُولِ.

L25967 And like the speech of 'Umar and 'Uthman during the Friday sermon in the presence of the Muhajirun and Ansar, when 'Umar mentioned to the people

the Friday bath, and their obligating retaliation for a poke or slap, and their prostration during the sermon after they both recited the prostration verse before the Companions without opposition, and their statement: "Whoever declares [hostility] incurs the prescribed penalties (Hudud)" – with no dissent from the Companions – and their granting the missing man's wife the choice between remaining [as his wife] or receiving the dowry upon his return – among a great many such examples. Sometimes they are authoritative, and other times not.

وَكَكَلَامِ عُمَرَ، وَعُثْمَانَ، يَوْمَ الْجُمُعَةِ فِي الْخُطْبَةِ بِحَضْرَةِ الْمُهَاجِرِينَ وَالْأَنْصَارِ، إِذْ ذَكَرَ لَهُ عُمَرُ غُسْلَ الْجُمُعَةِ، وَكَإِيجَابِهِمَا الْقِصَاصَ مِنْ الْوَكْزَةِ وَاللَّطْمَةِ، وَسُجُودِهِمَا فِي الْخُطْبَةِ، إِذْ قَرَآ السَّجْدَةَ بِحَضْرَةِ الصَّحَابَةِ دُونَ مُخَالِفٍ وَقَوْلُهُمَا: مَنْ أَشْعَرَ لَزِمَتْهُ الْحُدُودُ - وَلَا مُخَالِفَ لَهُمَا مِنْ الصَّحَابَةِ، وَكَتَخْيِيرِهِمَا الْمَفْقُودَ إِذَا قَدِمَ امْرَأَتُهُ بَيْنَهَا وَبَيْنَ الصَّدَاقِ - وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا، فَمَرَّةً هُمَا حُجَّةٌ وَمَرَّةً لَيْسَا حُجَّةً.

L25968 As for Mālik's categorization regarding one who endowed from what he donated or gifted—whether a third or more, or less than a third—this is an opinion unattributed to any predecessor, despite its inherent contradictions. He classified a third as "substantial" in this context, yet deemed it "minor" in matters where a woman disposes of her wealth—a truly perplexing stance, particularly as it diverges entirely from the narration transmitted from ʿUmar, ʿUthmān, and every Companion cited on this matter. For all of them either entirely invalidate gifts in impermissible cases, similarly invalidate them in charity, or permit them unconditionally.

وَأَمَّا تَقْسِيمُ مَالِكٍ فِيمَنْ اعْتَمَرَ مِمَّا تَصَدَّقَ بِهِ أَوْ وَهَبَ الثُّلُثَ فَمَا فَوْقَهُ، أَوْ مَا دُونَ الثُّلُثِ، فَقَوْلٌ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ مَعَ تَنَاقُضِهِ هَاهُنَا، فَجَعَلَ الثُّلُثَ فِي حَيِّزِ الْكَثِيرِ، وَجَعَلَهُ فِيمَا تَحْكُمُ فِيهِ الْمَرْأَةُ مِنْ مَالِهَا فِي حَيِّزِ الْقَلِيلِ - وَهَذَا عَجَبٌ جِدًّا مَعَ أَنَّهُ خِلَافٌ مُجَرَّدٌ لِلرِّوَايَةِ عَنْ عُمَرَ، وَعُثْمَانَ وَكُلِّ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ مِنْ الصَّحَابَةِ لَفْظَةٌ، لِأَنَّ جَمِيعَهُمْ إِمَّا مُبْطِلٌ لِلْهِبَةِ فِيمَا لَمْ يَجُزْ جُمْلَةً، أَوْ فِي الصَّدَقَةِ كَذَلِكَ، أَوْ مُجِيزٌ لَهُ جُمْلَةً.

L25969 As for the statement of Abū Ḥanīfah: "If the recipient of the gift or the beneficiary of charity takes possession of it without the permission of the donor or the charity giver, it does not qualify as valid possession"—this is not attested from anyone before him, and it contradicts the narration transmitted from ʿUmar.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: إِنْ قَبَضَهَا الْمَوْهُوبُ لَهُ أَوْ الْمُتَصَدَّقُ عَلَيْهِ بِغَيْرِ إِذْنِ الْوَاهِبِ أَوْ الْمُتَصَدِّقِ فَلَيْسَ قَبْضًا - فَلَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ، وَهُوَ مُخَالِفٌ لِلرِّوَايَةِ عَنْ عُمَرَ.

L25970 And ʿUmar and ʿUthmān in that matter—may Allah be pleased with them both—for they did not say "until he takes possession with his permission," but rather said: "until he takes possession." If their statement constitutes authoritative evidence (ḥujjah) and consensus (ijmāʿ), then the Ḥanafīs and Mālikīs have contradicted the authoritative evidence and consensus by their own admission against themselves. If their statement is not considered authoritative evidence nor consensus, then there is no basis for their citing it as evidence—thus, their reliance on all such arguments they have attached to this matter is invalidated.

وَعُثْمَانَ فِي ذَلِكَ، لِأَنَّهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - لَمْ يَقُولَا حَتَّى يَقْبِضَ بِإِذْنِهِ، لَكِنْ قَالَا: حَتَّى يَقْبِضَ، فَإِنْ كَانَ قَوْلُهُمَا حُجَّةً وَإِجْمَاعًا فَقَدْ خَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ الْحُجَّةَ وَالْإِجْمَاعَ بِإِقْرَارِهِمْ عَلَى أَنْفُسِهِمْ وَإِنْ لَمْ يَكُنْ قَوْلُهُمَا حُجَّةً وَلَا إِجْمَاعًا فَلَا مَعْنَى لِاحْتِجَاجِهِمْ بِهِ - فَبَطَلَ تَعَلُّقُهُمْ بِكُلِّ مَا تَعَلَّقُوا بِهِ مِنْ ذَلِكَ.

L25971–25972 As for the statement of al-Shāfiʿī: We have been narrated from Ibrāhīm al-

Nakhaʿī that charity is a whole perfected without physical acquisition. They argued: Charity can only be for Allah, the Exalted.

وَأَمَّا قَوْلُ الشَّافِعِيِّ: فَإِنَّنَا رُوِّينَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّ الصَّدَقَةَ جُمْلَةٌ تَتِمُّ بِلَا حِيَازَةٍ - وَاحْتَجُّوا: بِأَنَّ الصَّدَقَةَ لَا تَكُونُ إِلَّا لِلَّهِ تَعَالَى.

L25973 Abu Muhammad said, "This is baseless, for if a gift is not for the sake of Allah the Exalted, it is void. Were we to act upon this, we would not consider it valid, since every act performed for other than Allah the Exalted is invalid. We refute his statement regarding gifts with the same argument by which we invalidated the opinions of Abu Hanifah and Malik—and success is attained through Allah the Exalted."

قَالَ أَبُو مُحَمَّدٍ، وَهَذَا لَيْسَ بِشَيْءٍ؛ لِأَنَّ الْهِبَةَ إِذَا لَمْ تَكُنْ لِلَّهِ تَعَالَى، فَهِيَ بَاطِلٌ، فَلَوْ عَمِلْنَا ذَلِكَ لَمَا أَجَزْنَاهَا، إِذْ كُلُّ عَمَلٍ عُمِلَ لِغَيْرِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، وَنُبْطِلُ قَوْلَهُ فِي الْهِبَةِ بِمَا أَبْطَلْنَا بِهِ قَوْلَ أَبِي حَنِيفَةَ، وَمَالِكٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25974 The adherents of al-Shafi'i argued: Unrestricted gifts and voluntary alms are owned by their donors, thus requiring the recipients to take physical acceptance. As for endowments, there is no owner for them except Allah, the Exalted, and everything is within His grasp, the Almighty and Majestic. Thus, there is no one to take physical acceptance of them besides Him.

وَاحْتَجَّ أَصْحَابُ الشَّافِعِيِّ: بِأَنَّ الْهِبَاتِ وَالصَّدَقَاتِ الْمُطْلَقَةَ يَمْلِكُهَا أَرْبَابُهَا، فَاحْتَاجُوا إِلَى الْقَبْضِ - وَأَمَّا الْحُبُسُ فَلَا مَالِكَ لَهَا إِلَّا اللَّهُ تَعَالَى، وَكُلُّ شَيْءٍ فِي قَبْضَتِهِ عَزَّ وَجَلَّ، فَلَا قَابِضَ لَهَا دُونَهُ.

L25975 Ali said: "The entire earth and all things belong to Allah the Exalted; nothing has departed from His ownership so that it must be returned to Him. His opinion concerning gifts and charity has been invalidated by what invalidates the opinions of Mālik and Abū Ḥanīfah - and with Allah the Exalted is success."

قَالَ عَلِيٌّ: الْأَرْضُ كُلُّهَا وَكُلُّ شَيْءٍ لِلَّهِ تَعَالَى، لَمْ يَخْرُجْ شَيْءٌ عَنْ مِلْكِهِ فَيُرَدُّ إِلَيْهِ، وَقَدْ بَطَلَ قَوْلُهُ فِي الْهِبَةِ وَالصَّدَقَةِ بِمَا يُبْطِلُ بِهِ قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L25976 When all the evidence they presented is nullified, the proof for our position is Allah's statement, the Most High: "Fulfill the covenants" [al-Māʾidah: 1]. This is the correct context to cite this verse—not where they cited it, in matters the Sunnah has shown to have no bearing on it.[13]

فَإِذَا بَطَلَ كُلُّ مَا احْتَجُّوا بِهِ، فَالْحُجَّةُ لِقَوْلِنَا: قَوْلُ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] ، وَهَذَا مَكَانُ الِاحْتِجَاجِ بِهَذِهِ الْآيَةِ، لَا حَيْثُ احْتَجُّوا بِهَا مِمَّا بَيَّنَتْ السُّنَنُ أَنَّهُ لَا مَدْخَلَ لَهُ فِيهَا.

L25977 And likewise, the saying of the Most High, "Do not nullify your deeds" (Muhammad 47:33).[14]

وَكَذَلِكَ قَوْله تَعَالَى: {وَلا تُبْطِلُوا أَعْمَالَكُمْ} [محمد: ٣٣] .

L25978 Whoever utters [a statement of] gift or charity has performed an act and concluded a contract that obligates him to fulfill it. It is impermissible for

وَمَنْ تَلَفَّظَ بِالْهِبَةِ أَوْ الصَّدَقَةِ فَقَدْ عَمِلَ عَمَلًا، وَعَقَدَ عَقْدًا لَزِمَهُ الْوَفَاءُ بِهِ، وَلَا يَحِلُّ لِأَحَدٍ إبْطَالُهُ إلَّا بِنَصٍّ، وَلَا نَصَّ فِي إبْطَالِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[13] **Qur'an references (L25976):** Qur'an 5:1 (Al-Ma'idah).
[14] **Qur'an references (L25977):** Qur'an 47:33 (Muhammad).

anyone to invalidate it except through textual evidence, and no such evidence exists for its invalidation—and with Allah, the Exalted, is success.

The Legal Question of Retracting a Gift

[مَسْأَلَة الرُّجُوع فِي الْهِبَة]

Issue 1631: Whoever gives a valid gift is not permitted to revoke it at all from the moment of its utterance, except the father and the mother—or one of them—in what they have given to their child. They may revoke it forever - the minor and the adult being the same.

١٦٣١ - مَسْأَلَةٌ: وَمَنْ وَهَبَ هِبَةً صَحِيحَةً لَمْ يَجُزْ لَهُ الرُّجُوعُ فِيهَا أَصْلًا مُذْ يَلْفِظُ بِهَا إِلَّا الْوَالِدَ، وَالْأُمَّ فِيمَا أَعْطَيَا، أَوْ أَحَدُهُمَا لِوَلَدِهِمَا فَلَهُمَا الرُّجُوعُ فِيهِ أَبَدًا - الصَّغِيرُ وَالْكَبِيرُ سَوَاءٌ.

It is the same whether the child, whether son or daughter, marries based on that gift or does not marry, takes a loan against it or does not borrow. If the asset itself is lost, there is no recourse for them to reclaim anything, nor to the usufruct, nor to any child born after the donation. If part of it is lost while part remains, they may reclaim only what remains. This is the view of Al-Shāfiʿī, Abū Sulaymān, and their companions.

وَسَوَاءٌ تَزَوَّجَ الْوَلَدُ أَوْ الِابْنَةُ عَلَى تِلْكَ الْعَطِيَّةِ أَوْ لَمْ يَتَزَوَّجَا، دَايَنَا عَلَيْهَا أَوْ لَمْ يُدَايِنَا، فَإِنْ فَاتَ عَيْنُهَا فَلَا رُجُوعَ لَهُمَا بِشَيْءٍ، وَلَا رُجُوعَ لَهُمَا بِالْغَلَّةِ وَلَا بِالْوَلَدِ الْحَادِثِ بَعْدَ الْهِبَةِ، فَإِنْ فَاتَ الْبَعْضُ وَبَقِيَ الْبَعْضُ كَانَ لَهُمَا الرُّجُوعُ فِيمَا بَقِيَ فَقَطْ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

Abu Hanifah said: If someone gives a gift to a mahram relative by blood or to a child and transfers possession of it to them, or if one spouse gives a gift to the other and transfers possession of it, there is no revocation for any of the aforementioned givers regarding what they have gifted.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ وَهَبَ لِذِي رَحِمٍ مَحْرَمَةٍ أَوْ لِوَلَدٍ هِبَةً وَأَقْبَضَهُ إِيَّاهَا أَوْ وَهَبَ أَحَدُ الزَّوْجَيْنِ لِصَاحِبِهِ هِبَةً وَأَقْبَضَهُ إِيَّاهَا فَلَا رُجُوعَ لِأَحَدٍ مِمَّنْ ذَكَرْنَا فِيمَا وَهَبَ.

Whoever gifts to a stranger, a freed slave, or a non-mahram relative and delivers the gift to them, the giver may revoke it whenever they wish—even after a prolonged period—provided the gift has not increased in its physical substance, the recipient has not transferred it out of their ownership, neither the giver nor recipient has died, nor the recipient or another party on the recipient's behalf has provided the giver with compensation acceptable to them. Whichever of these causes occurs, the giver may no longer revoke what they have gifted.

وَمَنْ وَهَبَ لِأَجْنَبِيٍّ، أَوْ لِمَوْلًى، أَوْ لِذِي رَحِمٍ غَيْرِ مَحْرَمَةٍ: هِبَةً وَأَقْبَضَهُ إِيَّاهَا، فَلِلْوَاهِبِ أَنْ يَرْجِعَ فِيمَا وَهَبَ مِنْ ذَلِكَ مَتَى شَاءَ - وَإِنْ طَالَتْ الْمُدَّةُ - مَا لَمْ تَزِدْ الْهِبَةُ فِي بَدَنِهَا، أَوْ مَا لَمْ يُخْرِجْهَا الْمَوْهُوبُ لَهُ عَنْ مِلْكِهِ، أَوْ مَا لَمْ يَمُتْ الْوَاهِبُ، أَوْ الْمَوْهُوبُ لَهُ، أَوْ مَا لَمْ يُعَوِّضْ الْمَوْهُوبُ لَهُ، أَوْ غَيْرُهُ عَنْهُ الْوَاهِبَ عِوَضًا يَقْبَلُهُ الْوَاهِبُ، فَأَيُّ هَذِهِ الْأَسْبَابِ كَانَ فَلَا رُجُوعَ لِلْوَاهِبِ فِيمَا وَهَبَ.

It is not permissible to revoke a gift if none of the aforementioned conditions exist, except by the recipient surrendering the gifted item, or in the presence of a judge—regardless of whether the recipient is willing or reluctant. He said: If another person gifted a female slave, and the recipient taught her

وَلَا يَجُوزُ الرُّجُوعُ فِي الْهِبَةِ إِذَا لَمْ يَكُنْ شَيْءٌ مِمَّا ذَكَرْنَا إِلَّا بِتَسْلِيمِ الْمَوْهُوبِ لَهُ ذَلِكَ، أَوْ بِحَضْرَةِ الْحَاكِمِ أَحَبَّ الْمَوْهُوبُ لَهُ أَمْ كَرِهَ - قَالَ: فَلَوْ وَهَبَ آخَرُ جَارِيَةً فَعَلَّمَهَا

the Quran, writing, and righteousness, this does not prevent the giver from revoking the gift. However, if the recipient paid off a debt on her behalf, or if she was a non-Muslim and embraced Islam, the giver cannot revoke it.

الْمَوْهُوبُ لَهُ الْقُرْآنَ وَالْكِتَابَةَ وَالْخَيْرَ، فَلَيْسَ ذَلِكَ بِمَانِعٍ مِنْ رُجُوعِ الْوَاهِبِ فِيهَا، فَإِنْ كَانَ عَلَيْهَا دَيْنٌ فَأَدَّاهُ الْمَوْهُوبُ لَهُ عَنْهَا، أَوْ كَانَتْ كَافِرَةً فَأَسْلَمَتْ فَلَا رُجُوعَ لِلْوَاهِبِ فِيهَا.

L25986 As for charity, there is no revocation for the donor regarding it—whether given to a stranger or a non-stranger—unlike a gift. Mālik said: Neither a giver (of gifts) nor a charity donor may revoke their giving at all, whether to a stranger or a mahram relative, except in the case of a reward-based gift alone, and in what a man gifts to his son or daughter whether they are adults or minors, provided he did not state: "He gifted it to his child for the sake of Allah the Exalted." If he makes this declaration, he cannot revoke what he gifted. If he did not state it, he may revoke his gift unless the child incurs debt using the gift, or the son or daughter marries by virtue of it, or the son or daughter confirms their father's action regarding it. Whichever of these scenarios occurs, the father's revocation of the gift becomes invalid.

وَأَمَّا الصَّدَقَةُ فَلَا رُجُوعَ لِلْمُتَصَدِّقِ فِيهَا - لِأَجْنَبِيٍّ كَانَتْ أَوْ لِغَيْرِ أَجْنَبِيٍّ - بِخِلَافِ الْهِبَةِ - وَقَالَ مَالِكٌ: لَا رُجُوعَ لِوَاهِبٍ وَلَا لِمُتَصَدِّقٍ فِي هِبَتِهِ أَصْلًا، لَا لِأَجْنَبِيٍّ وَلَا لِذِي رَحِمٍ مَحْرَمَةٍ، إلَّا فِي هِبَةِ الثَّوَابِ فَقَطْ، وَفِيمَا وَهَبَ الرَّجُلُ لِوَلَدِهِ أَوْ ابْنَتِهِ الْكَبِيرَيْنِ أَوْ الصَّغِيرَيْنِ، مَا لَمْ يَقُلْ: إنَّهُ وَهَبَهَا لِوَلَدِهِ لِوَجْهِ اللَّهِ تَعَالَى - فَإِنْ قَالَ هَذَا فَلَا رُجُوعَ لَهُ فِيمَا وَهَبَ، فَإِنْ لَمْ يَقُلْهُ فَلَهُ الرُّجُوعُ فِيمَا وَهَبَ، مَا لَمْ يُدَايِنْ الْوَلَدَ عَلَى تِلْكَ الْهِبَةِ، أَوْ مَا لَمْ يَتَزَوَّجْ الِابْنُ أَوْ الِابْنَةُ عَلَيْهَا، أَوْ مَا لَمْ يَثْبْ الْوَلَدُ أَوْ الِابْنَةُ أَبَاهُمَا عَلَى ذَلِكَ، فَأَيُّ هَذِهِ الْوُجُوهِ كَانَ فَقَدْ بَطَلَ رُجُوعُ الْأَبِ فِي الْهِبَةِ.

L25987 The mother similarly may reclaim what she gifted specifically to her minor children while their father is alive. If their father dies, she has no right to revoke it. Likewise, she cannot reclaim what she gifted to her adult children, whether their father is alive or not.

وَتَرْجِعُ الْأُمُّ كَذَلِكَ فِيمَا وَهَبَتْ الْأُمُّ لِوَلَدِهَا الصِّغَارِ خَاصَّةً مَا دَامَ أَبُوهُمْ حَيًّا، فَلَهَا الرُّجُوعُ فِيهِ، فَإِنْ مَاتَ أَبُوهُمْ فَلَا رُجُوعَ لَهَا، وَكَذَلِكَ لَا رُجُوعَ لَهَا فِيمَا وَهَبَتْ لِوَلَدِهَا الْكِبَارِ، كَانَ أَبُوهُمْ حَيًّا أَوْ لَمْ يَكُنْ.

L25988 He said: Regarding a reward-based grant, the grantor retains the right to revoke it as long as no reward has been established in return for it. If he is rewarded with less than its value, he retains the right to revoke it.

قَالَ: وَهِبَةُ الثَّوَابِ صَاحِبُهَا الْوَاهِبُ لَهَا لَهُ الرُّجُوعُ فِيهَا مَا لَمْ يُثَبْ مِنْهَا، فَإِنْ أُثِيبَ مِنْهَا أَقَلَّ مِنْ قِيمَتِهَا فَلَهُ الرُّجُوعُ.

L25989–25991 If he is compensated its value, he may retract. If he is compensated its value, they hold two positions: one is that he cannot retract, and the other is that he may retract unless he has accepted that compensation. They maintain there is no compensation for what one spouse gifts to the other, nor for what a poor person presents to a wealthy individual. Regarding transported goods—such as bananas and the like—he stated: "There is no revocation of

فَإِنْ أُثِيبَ قِيمَتَهَا فَلَهُ الرُّجُوعُ، فَإِنْ أُثِيبَ قِيمَتَهَا فَلَهُمْ قَوْلَانِ: أَحَدُهُمَا -: أَنَّهُ لَا رُجُوعَ لَهُ، وَالْآخَرُ - أَنَّ لَهُ الرُّجُوعَ مَا لَمْ يَرْضَ بِذَلِكَ الثَّوَابِ، وَلَا ثَوَابَ عِنْدَهُمْ فِيمَا وَهَبَ

charitable gifts whatsoever, neither for a parent in what they voluntarily gave to their child nor for anyone else."

أَحَدُ الزَّوْجَيْنِ لِصَاحِبِهِ، وَلَا لِلْفَقِيرِ فِيمَا أَهْدَى إِلَى الْغَنِيِّ يَقْدُمُ مِنْ سَفَرٍ، كَالْمَوْزِ وَنَحْوِ ذَلِكَ - قَالَ: وَلَا رُجُوعَ فِي صَدَقَةٍ أَصْلًا، لَا لِوَالِدٍ فِيمَا تَصَدَّقَ بِهِ عَلَى وَلَدِهِ وَلَا لِغَيْرِهِ.

L25992 Abu Muhammad said: These are irrational statements, riddled with contradictions and baseless claims—merely hearing them suffices without requiring detailed rebuttal. Examples include preventing the poor person from presenting bananas or similar items to the wealthy to seek reward, when no one is more in need of seeking reward than him; permitting the wealthy to seek reward while denying the mother the right to revoke her gift if the child's father dies, yet allowing her revocation if the child's father is alive; permitting the revocation of gifts to an orphan, whether a close or distant relative, while distinguishing between her case and the father's ruling in such matters; and their specification that if the son or daughter marries contingent upon that gift, revocation is prohibited.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَقَاوِيلُ لَا تُعْقَلُ، وَفِيهَا مِنْ التَّضَادِّ، وَالدَّعَاوَى بِلَا دَلِيلٍ مَا يَكْفِي سَمَاعُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ، فَمِنْ ذَلِكَ مَنْعُ الْفَقِيرِ يُهْدِي إِلَى الْغَنِيِّ يُقَدِّمُ الْمَوْزَ وَنَحْوَهُ مِنْ طَلَبِ الثَّوَابِ، وَمَا أَحَدٌ أَحْوَجُ إلَيْهِ مِنْهُ، وَإِطْلَاقُهُمْ الْغَنِيَّ عَلَى طَلَبِ الثَّوَابِ، وَمَنْعُهُمْ الْأُمَّ مِنْ الرُّجُوعِ إذَا مَاتَ أَبُو وَلَدِهَا، وَإِبَاحَتُهُمْ لَهَا الرُّجُوعَ إذَا كَانَ أَبُوهُمْ حَيًّا، وَإِبَاحَتُهُمْ الرُّجُوعَ فِيمَا وَهَبَ لِيَتِيمٍ قَرِيبٍ أَوْ بَعِيدٍ، وَتَفْرِيقِهِمْ بَيْنَهَا وَبَيْنَ حُكْمِ الْوَالِدِ فِي ذَلِكَ، ثُمَّ تَخْصِيصُهُمْ إذَا تَزَوَّجَ الْوَلَدُ أَوْ الِابْنَةُ عَلَى تِلْكَ الْهِبَةِ بِالْمَنْعِ مِنْ الرُّجُوعِ.

L25993 Similarly, the statements of Abū Ḥanīfa also hold, as he considered Islam after disbelief a good that prevents reversion, but did not regard learning the Quran a good that prevents reversion.

وَكَذَلِكَ أَقْوَالُ أَبِي حَنِيفَةَ أَيْضًا، إذْ رَأَى الْإِسْلَامَ بَعْدَ الْكُفْرِ خَيْرًا يَمْنَعُ الرُّجُوعَ، وَلَمْ يَرَ تَعَلُّمَ الْقُرْآنِ خَيْرًا يَمْنَعُ الرُّجُوعَ.

L25994 If he deems the repayment of the slave's debt to prevent retraction, yet does not consider maintenance expenses upon him to prevent retraction, and if he does not deem retraction permissible except in the presence of a judge, this is utterly astonishing. For if retraction is a rightful claim, why is it not permissible without the judge's presence? If it is not a rightful claim, how does it become permissible in the judge's presence? Among the wonders of the world is their argument to invalidate the established Sunnah regarding a seller's retraction of a commodity found in its original state with a bankrupt buyer. This must be one of two scenarios: either the buyer acquired ownership of it or he did not. If he did not own it, how did it come into his possession and become part of his assets? If he did own it, the seller has no claim over the buyer's property—thus this objection is valid in this case but not in that one. Similarly, the recipient of a gift must either have owned the gifted item or not. If he did not own it, how could intimate relations, consumption, sale, and disposal be lawful for him? By what right

وَإِذَا رَأَى أَدَاءَ دَيْنِ الْعَبْدِ يَمْنَعُ الرُّجُوعَ، وَلَمْ يَرَ النَّفَقَةَ عَلَيْهِ تَمْنَعُ الرُّجُوعَ وَإِذَا لَمْ يَرَ الرُّجُوعَ إلَّا بِحَضْرَةِ الْحَاكِمِ هَذَا عَجَبٌ جِدًّا، وَلَئِنْ كَانَ الرُّجُوعُ حَقًّا فَمَا بَالُهُ لَا يَجُوزُ بِغَيْرِ حَضْرَةِ الْحَاكِمِ، وَلَئِنْ كَانَ غَيْرَ حَقٍّ فَمِنْ أَيْنَ جَازَ بِحَضْرَةِ الْحَاكِمِ؟ وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُهُمْ فِي إبْطَالِ السُّنَّةِ الثَّابِتَةِ مِنْ رُجُوعِ بَائِعِ السِّلْعَةِ فِيهَا إذَا وَجَدَهَا بِعَيْنِهَا عِنْدَ مُفْلِسٍ، فَإِنَّهُ لَا يَخْلُو أَنْ يَكُونَ الْمُشْتَرِي لَهَا مَلَكَهَا أَوْ لَمْ يَمْلِكْهَا، فَإِنْ كَانَ لَمْ يَمْلِكْهَا فَبِأَيِّ شَيْءٍ صَارَتْ عِنْدَهُ، وَفِي جُمْلَةِ مَالِهِ، وَإِنْ كَانَ مَلَكَهَا فَلَا سَبِيلَ لِلْبَائِعِ عَلَى مَالِهِ - فَهَاهُنَا كَانَ هَذَا الِاعْتِرَاضُ صَحِيحًا لَا هُنَاكَ - وَهَا هُنَا لَا يَخْلُو الْمَوْهُوبُ لَهُ مِنْ أَنْ يَكُونَ مَلَكَ مَا وَهَبَ لَهُ أَمْ لَمْ يَمْلِكْهُ، فَإِنْ كَانَ لَمْ يَمْلِكْهُ فَبِأَيِّ شَيْءٍ حَلَّ لَهُ

الْوَطْءُ وَالْأَكْلُ، وَالْبَيْعُ، وَالتَّصَرُّفُ، وَبِأَيِّ شَيْءٍ وَرِثْت عَنْهُ إنْ مَاتَ، وَإِنْ كَانَ قَدْ مَلَكَهُ، فَلَا سَبِيلَ لِلْوَاهِبِ عَلَى مَالِهِ.

could he inherit from him if he died? If he did own it, the giver has no claim over his property.

L25995 قَالَ أَبُو مُحَمَّد: احْتَجَّ مَنْ رَأَى الرُّجُوعَ فِي هِبَةِ الثَّوَابِ مَا لَمْ يَثِبْ مِنْهَا أَوْ لَمْ يَرْضَ مِنْهَا -: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَنْ عُمَرَ قَالَ: مَنْ وَهَبَ هِبَةً فَلَمْ يُثْبَ مِنْهَا فَهُوَ أَحَقُّ بِهَا إلَّا لِذِي رَحِمٍ.

Abū Muḥammad said: Those who hold that retraction is permissible in a reward-seeking gift, provided the divine recompense has not been realized or the donor remains dissatisfied with it, cited as proof the narration we transmitted via Saʿīd ibn Manṣūr's chain—Sufyān narrated to us from ʿAmr ibn Dīnār, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, from ʿUmar, who said: "Whoever gives a gift while its intended reward remains unattained may rightfully reclaim it, except when given to a close relative."

L25996–25998 وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إبْرَاهِيمَ عَنْ الْأَسْوَدِ قَالَ عُمَرُ بْنُ الْخَطَّابِ: مَنْ وَهَبَ هِبَةً لِذِي رَحِمٍ فَهُوَ جَائِزٌ، وَمَنْ وَهَبَ هِبَةً لِغَيْرِ ذِي رَحِمٍ فَهُوَ أَحَقُّ بِهَا مَا لَمْ يُثَبْ عَلَيْهَا.

And through the chain of Saʿīd ibn Manṣūr, Abū Muʿāwiyah narrated to us, al-Aʿmash narrated to us, on the authority of Ibrāhīm, on the authority of al-Aswad, who said: Umar ibn al-Khattab said: Whoever gives a gift to a relative, it is permissible. But whoever gives a gift to a non-relative, the giver has a stronger claim to it unless it is confirmed.

L25999 وَمِنْ طَرِيقِ وَكِيعٍ نا حَنْظَلَةُ هُوَ ابْنُ أَبِي سُفْيَانَ الْجُمَحِيِّ - عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ: الرَّجُلُ أَحَقُّ بِهِبَتِهِ مَا لَمْ يُرْضَ مِنْهَا.

From the chain of Waki', who narrated to us from Hanzalah—the son of Abu Sufyan al-Jumahi—from Salim ibn Abdullah ibn Umar, from his father, who said: 'Umar said: A man has the greatest right to his gift as long as he has not taken anything from it.

From the narration of Hammad ibn Salama through Humaid from Al-Hasan, who said: The first to return a gift was Uthman ibn Affan, and the first to request evidence that his creditor had died while the debt was still owed to him was Uthman.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ قَالَ: أَوَّلُ مَنْ رَدَّ الْهِبَةَ عُثْمَانُ بْنُ عَفَّانَ، وَأَوَّلُ مَنْ سَأَلَ الْبَيِّنَةَ عَلَى أَنَّ غَرِيمَهُ مَاتَ وَدَيْنُهُ عَلَيْهِ عُثْمَانُ.

And through the chain of Ibn Abī Shaybah: Wakiʿ narrated from Sufyān from Jābir al-Juʿfī from al-Qāsim from Ibn Abzā from ʿAlī ibn Abī Ṭālib, who said: “A man is more entitled to his gift as long as no condition is established therefrom.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الْقَاسِمِ عَنْ ابْنُ أَبْزَى عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الرَّجُلُ أَحَقُّ بِهِبَتِهِ مَا لَمْ يُثَبْ مِنْهَا.

Via the chain of Ibn Wahb from Ibn Lahiʿah from Yazid ibn Abi Habib from ʿAli, that he said: Gifts are of three types: a gift given to seek the Countenance of Allah the Exalted, a gift given to seek the favor of people, and a gift given to attain reward. As for the gift given for reward, its giver may reclaim it if the reward is not realized.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَلِيٍّ أَنَّهُ قَالَ: الْمَوَاهِبُ ثَلَاثَةٌ: مَوْهِبَةٌ يُرَادُ بِهَا وَجْهُ اللَّهِ تَعَالَى، وَمَوْهِبَةٌ يُرَادُ بِهَا وَجْهُ النَّاسِ، وَمَوْهِبَةٌ يُرَادُ بِهَا الثَّوَابُ - فَمَوْهِبَةُ الثَّوَابِ يَرْجِعُ فِيهَا صَاحِبُهَا إذَا لَمْ يُثَبْ.

From the chain of Ibn Abi Shaybah: He narrated from Yahya ibn Zakariyya ibn Abi Za’ida, from ‘Ubayd Allah ibn ‘Umar, from Nafi‘, from Ibn ‘Umar, who said: “He has the strongest claim to it as long as he has not approved it”—meaning the gift.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: هُوَ أَحَقُّ بِهَا مَا لَمْ يُرْضَ مِنْهَا - يَعْنِي الْهِبَةَ.

From the chain of Ibn Abi Shaybah: Abdurrahman ibn Mahdi narrated to us from Mu’awiyah ibn Salih from Rabi’ah ibn Yazid from Abdullah ibn Amir, who said: I was seated with Fadalah ibn ’Ubayd when two men came to him disputing over a hawk. One of them said: “I gifted him my hawk expecting him to reciprocate, but he took my hawk and did not reciprocate.” The other said: “He gifted me his hawk without my request, and I did not approach him for it.” Fadalah then ruled: “Return his hawk to him or compensate him for it, for only women and the vilest of people take back their gifts.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ عَنْ رَبِيعَةَ بْنِ يَزِيدَ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرٍ قَالَ: كُنْتُ جَالِسًا عِنْدَ فَضَالَةَ بْنِ عُبَيْدٍ فَأَتَاهُ رَجُلَانِ يَخْتَصِمَانِ إلَيْهِ فِي بَازٍ، فَقَالَ أَحَدُهُمَا: وَهَبْتُ لَهُ بَازِي رَجَاءَ أَنْ يُثِيبَنِي فَأَخَذَ بَازِي وَلَمْ يُثِبْنِي فَقَالَ الْآخَرُ: وَهَبَ لِي بَازِيَهُ مَا سَأَلْتُهُ وَلَا تَعَرَّضْت لَهُ، فَقَالَ فَضَالَةُ: رُدَّ عَلَيْهِ بَازِيَهُ أَوْ أَثِبْهُ مِنْهُ، فَإِنَّمَا يَرْجِعُ فِي الْمَوَاهِبِ النِّسَاءُ وَشِرَارُ الْأَقْوَامِ.

It has been reported from Muʿāwiyah ibn Ṣāliḥ from Rāshid ibn Saʿd from Abū al-Dardā’ that he said: Gifts are of three types. A man who gives a gift without being petitioned for it—this resembles the path of charity, so he has no right to retract his gift. A man who is petitioned for a gift and gives it—he is entitled to the reward. If he accepts a reward in relation to his gift, he is entitled solely to that reward, and may retract his gift provided it has

وَرُوِيَ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ عَنْ رَاشِدِ بْنِ سَعْدٍ عَنْ أَبِي الدَّرْدَاءِ قَالَ: الْمَوَاهِبُ ثَلَاثَةٌ: رَجُلٌ وَهَبَ مِنْ غَيْرِ أَنْ يُسْتَوْهَبَ، فَهِيَ كَسَبِيلِ الصَّدَقَةِ، فَلَيْسَ لَهُ أَنْ يَرْجِعَ فِي صَدَقَتِهِ، وَرَجُلٌ اُسْتُوْهِبَ فَوَهَبَ فَلَهُ الثَّوَابُ، فَإِنْ قَبِلَ عَلَى مَوْهِبَتِهِ ثَوَابًا فَلَيْسَ لَهُ إلَّا

not been ratified. A man who gives a gift while stipulating a reward—this becomes a debt upon its recipient during his lifetime and after his death.

ذَلِكَ، وَلَهُ أَنْ يَرْجِعَ فِي هِبَتِهِ مَا لَمْ يُثَبْ، وَرَجُلٌ وَهَبَ وَاشْتَرَطَ الثَّوَابَ فَهُوَ دَيْنٌ عَلَى صَاحِبِهَا فِي حَيَاتِهِ وَبَعْدَ مَمَاتِهِ.

L26006 These are Umar, Uthman, Ali, Ibn Umar, Fudayl ibn ʿUbayd, and Abu al-Darda from the Companions—may Allah be pleased with them all—with no dissenter among them.

فَهَؤُلَاءِ: عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، وَابْنُ عُمَرَ، وَفَضَالَةُ بْنُ عُبَيْدٍ، وَأَبُو الدَّرْدَاءِ، مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا مُخَالِفَ لَهُمْ مِنْهُمْ.

L26007–26008 And from the narration of Ibn Wahb from ʾAmr ibn Qays from ʾAdi ibn ʾAdi al-Kindi: He wrote to ʾUmar ibn ʾAbd al-ʾAziz, “Whoever grants a gift retains the right to revoke it until he is compensated from it with what satisfies him. If the gift yields profit while in the recipient’s possession, the giver is entitled only to the original gift itself and has no claim to any of its profits.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ قَيْسٍ عَنْ عَدِيِّ بْنِ عَدِيٍّ الْكِنْدِيِّ كَتَبَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مَنْ وَهَبَ هِبَةً فَهُوَ بِالْخِيَارِ حَتَّى يُثَابَ مِنْهَا مَا يَرْضَى، فَإِنْ نَمَتْ عِنْدَ مَنْ وُهِبَتْ لَهُ فَلَيْسَ لِمَنْ وَهَبَهَا إِلَّا هِيَ بِعَيْنِهَا لَيْسَ لَهُ مِنْ النَّمَاءِ شَيْءٌ.

L26009 And through the chain of Ibn Wahb, I heard Abd al-Rahman ibn Ziyad ibn An’um narrate from Umar ibn Abd al-Aziz that he wrote: Any man who gives an unspecified gift and wishes to revoke it—if he finds it in its original state with the recipient, whether preserved or having perished while in his possession—may reclaim it publicly, not secretly, and it shall be returned to him. However, if he gifted a specified item that the recipient improved, the giver must compensate him with its equivalent value as of the day it was gifted. This does not apply to one who gifts to a blood relative, for he cannot revoke such a gift, nor to spouses: whichever of them gives something to the other freely with a willing heart, no revocation is permitted in any of it.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ سَمِعْتُ عَبْدَ الرَّحْمَنِ بْنَ زِيَادِ بْنِ أَنْعُمٍ يُحَدِّثُ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ كَتَبَ أَيُّمَا رَجُلٍ وَهَبَ هِبَةً لَمْ يُثَبْ عَلَيْهَا فَأَرَادَ أَنْ يَرْجِعَ فِي هِبَتِهِ، فَإِنْ أَدْرَكَهَا بِعَيْنِهَا عِنْدَ مَنْ وَهَبَهَا لَهُ لَمْ يُتْلِفْهَا أَوْ تَلِفَتْ عِنْدَهُ فَلْيَرْجِعْ فِيهَا عَلَانِيَةً غَيْرَ سِرٍّ، ثُمَّ تُرَدُّ عَلَيْهِ، إِلَّا أَنْ يَكُونَ وَهَبَ شَيْئًا مُثْبَتًا فَحَسُنَ عِنْدَ الْمَوْهُوبِ لَهُ، فَلْيَقْضِ لَهُ بِشَرْوَاهُ يَوْمَ وَهَبَهَا لَهُ، إِلَّا مَنْ وَهَبَ لِذِي رَحِمٍ، فَإِنَّهُ لَا يَرْجِعُ فِيهَا، أَوْ الزَّوْجَيْنِ، أَيُّهُمَا أَعْطَى صَاحِبَهُ شَيْئًا طَيِّبَةً بِهِ نَفْسُهُ، فَلَا رَجْعَةَ لَهُ فِي شَيْءٍ مِنْهَا.

L26010 From the chain of Saʿīd ibn Manṣūr: Hushaym reported to us: Manṣūr, Yūnus, and Ibn ʿAwn—all of whom reported from Ibn Sīrīn from Shurayḥ, who said: “Whoever gives for maintaining ties, kinship, or acts of kindness, we accept his gift. The affluent one is rewarded for his gift, or it is returned to him.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مَنْصُورٌ وَيُونُسُ، وَابْنُ عَوْنٍ، كُلُّهُمْ عَنْ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ قَالَ: مَنْ أَعْطَى فِي صِلَةٍ أَوْ قَرَابَةٍ أَوْ مَعْرُوفٍ أَجَزْنَا عَطِيَّتَهُ، وَالْجَانِبُ الْمُسْتَغْزِرُ يُثَابُ عَلَى هِبَتِهِ أَوْ تُرَدُّ عَلَيْهِ.

L26011 Through Ibn Abi Shaybah’s transmission: Yahya ibn Yaman reported to us from Maʿmar from al-Zuhri from Saʿid ibn al-Musayyib, who said: Whoever gives a gift to someone not among his relatives may retract it so long as the recipient has not reciprocated for it.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ يَمَانٍ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ قَالَ: مَنْ وَهَبَ هِبَةً لِغَيْرِ ذِي رَحِمٍ فَلَهُ أَنْ يَرْجِعَ مَا لَمْ يُثَبْ.

L26012 From the chain of Sa’īd ibn Manṣūr: I am Hushaym; al-Mughīrah narrated to us from Ibrāhīm, who said: “Whoever donates a gift to a relative has no right to revoke it. Whoever donates to a non-relative has a stronger right to reclaim his gift. If he is rewarded in return for it – whether a small or large amount – he may not reclaim his donation.” We have narrated this from him with an addition: “If he is satisfied with it, he may not revoke it.” This is the view of ʿAṭāʾ, Rabīʿah, and others.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ قَالَ: مَنْ وَهَبَ هِبَةً لِذِي رَحِمٍ فَلَيْسَ لَهُ أَنْ يَرْجِعَ، وَمَنْ وَهَبَ لِغَيْرِ ذِي رَحِمٍ فَهُوَ أَحَقُّ بِهِبَتِهِ، فَإِنْ أُثِيبَ مِنْهَا قَلِيلٌ أَوْ كَثِيرٌ فَلَيْسَ لَهُ أَنْ يَرْجِعَ فِي هِبَتِهِ - وَقَدْ رُوِّينَاهُ عَنْهُ بِزِيَادَةٍ: فَرَضِيَ بِهِ فَلَيْسَ لَهُ أَنْ يَرْجِعَ فِيهِ - وَهُوَ قَوْلُ عَطَاءٍ، وَرَبِيعَةَ، وَغَيْرِهِمْ.

L26013 From the narration of Saʿīd ibn Manṣūr: Hushaym reported to us; al-Mughīrah reported from al-Ḥārith al-ʿUklī: A man donated a servant to his mother as charity, then married, and delivered the servant to his wife. His wife took possession of her. The mother sued her before Shurayḥ. Shurayḥ said to her: “Your son did not validly give you his charity, and he ratified it for his wife, because the mother had not taken possession of her.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا الْمُغِيرَةُ عَنْ الْحَارِثِ الْعُكْلِيِّ: أَنَّ رَجُلًا تَصَدَّقَ عَلَى أُمِّهِ بِخَادِمٍ لَهُ وَتَزَوَّجَ فَسَاقَ الْخَادِمَ إِلَى امْرَأَتِهِ فَقَبَضَتْهَا امْرَأَتُهُ فَخَاصَمَتْهَا الْأُمُّ إِلَى شُرَيْحٍ فَقَالَ لَهَا شُرَيْحٌ: إِنَّ ابْنَك لَمْ يَهَبْك صَدَقَتَهُ وَأَجَازَهَا لِلْمَرْأَةِ، لِأَنَّ الْأُمَّ لَمْ تَكُنْ قَبَضَتْهَا.

L26014 They said: Thus, these are a group of the Companions for whom no dissenting opinion is known, and the majority of the Successors.

قَالُوا: فَهَؤُلَاءِ طَائِفَةٌ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مُخَالِفٌ، وَجُمْهُورُ التَّابِعِينَ.

L26015–26017 And they mentioned what we have narrated through the chain of Abū Dāwūd, who narrated to us: Sulaymān ibn Dāwūd al-Mahri, on the authority of Usāmah ibn Zayd. “Amr ibn Shuʿayb narrated from his father, from ʿAbdullāh ibn ʿAmr, that the Messenger of Allah—peace and blessings be upon him—said: ‘The likeness of one who reclaims his gift is that of a dog that vomits and then eats its vomit.’”

وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا سُلَيْمَانُ بْنُ دَاوُد الْمَهْرِيُّ أَنَا أُسَامَةُ بْنُ زَيْدٍ أَنَّ عَمْرَو بْنَ شُعَيْبٍ حَدَّثَهُ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَثَلُ الَّذِي اسْتَرَدَّ مَا وَهَبَ كَمَثَلِ الْكَلْبِ يَقِيءُ فَيَأْكُلُ قَيْئَهُ» .

L26018 If the donor seeks to reclaim his gift, his request should be suspended and he should be formally informed of what he seeks to reclaim. Then what he had gifted should be returned to him. We have narrated through the chain of Waki‘, from Ibrāhīm ibn Ismā‘īl ibn Mujamma‘, from ‘Amr ibn Dīnār, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said, “A man has more right to his gift as long as he has not been compensated for it.”

فَإِذَا اسْتَرَدَّ الْوَاهِبُ فَلْيُوقَفْ فَلْيُعَرَّفْ مَا اسْتَرَدَّ ثُمَّ لِيُدْفَعْ إِلَيْهِ مَا وَهَبَ، وَمَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ نا إِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ بْنِ مُجَمِّعٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الرَّجُلُ أَحَقُّ بِهِبَتِهِ مَا لَمْ يُثَبْ مِنْهَا» .

L26019 From the chain of Al-‘Uqayli: From ‘Ali ibn ‘Abd al-‘Aziz, from Abu ‘Ubayd, from Abu Bakr ibn ‘Ayyash, from Yahya ibn Hani’, from Abu Hudhayfah, from ‘Abd al-Malik ibn Muhammad ibn Bashir, from ‘Abd al-Rahman ibn

وَمِنْ طَرِيقِ الْعُقَيْلِيِّ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ نا أَبُو بَكْرِ بْنُ عَيَّاشٍ عَنْ يَحْيَى بْنِ هَانِئٍ أَخْبَرَنِي أَبُو حُذَيْفَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ مُحَمَّدِ بْنِ بَشِيرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَلْقَمَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ الصَّدَقَةَ يُبْتَغَى بِهَا وَجْهُ اللَّهِ عَزَّ وَجَلَّ، وَإِنَّ الْهَدِيَّةَ يُبْتَغَى بِهَا وَجْهُ الرَّسُولِ وَقَضَاءُ الْحَاجَةِ.»

'Alqamah, who said: The Messenger of Allah—peace and blessings be upon him—said: "Charity is given to seek the Face of Allah, the Mighty and Majestic, whereas a gift is given to seek the Face of the Messenger and the fulfillment of a need."

قَالُوا: فَعَلَى هَذَا لَهُ مَا ابْتَغَى إِذْ لِكُلِّ امْرِئٍ مَا نَوَى.

L26020 They said, "Therefore, upon this, he attains what he sought, for every individual has what he intended."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ «وَهَبَ رَجُلٌ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هِبَةً فَأَثَابَهُ فَلَمْ يَرْضَ فَزَادَهُ فَلَمْ يَرْضَ، فَقَالَ - عَلَيْهِ السَّلَامُ -: لَقَدْ هَمَمْتُ أَنْ لَا أَقْبَلَ هِبَةً» .

L26021 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Ibn ʿAjlān, from Saʿīd al-Maqburī, from Abū Hurayrah, who said: "A man gifted something to the Prophet (peace and blessings of Allah be upon him), so he reciprocated with a reward, but the man remained dissatisfied. The Prophet (peace be upon him) then increased it, yet he still was not satisfied. Thereupon the Prophet (peace be upon him) said: 'I resolved not to accept any gift.'"

وَرُبَّمَا قَالَ مَعْمَرٌ «أَنْ لَا أَتَّهِبَ إِلَّا مِنْ قُرَشِيٍّ أَوْ أَنْصَارِيٍّ أَوْ ثَقَفِيٍّ أَوْ دَوْسِيٍّ» وَمَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ مَا ذَكَرْنَا.

L26022 And sometimes Ma'mar said, "I should only accept from a Qurayshi, an Ansari, a Thaqafi, or a Dawsi," and we know nothing about them other than what we have mentioned.

فَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ هَذَا الْأَدْنَى وَهُوَ أَحْسَنُهَا إِسْنَادًا فَلَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّا لَمْ نُنْكِرْ إِثَابَةَ الْمَوْهُوبِ، بَلْ هُوَ فِعْلٌ حَسَنٌ، وَإِنَّمَا أَنْكَرْنَا وُجُوبَهُ إِذْ لَمْ يُوجِبْهُ نَصُّ قُرْآنٍ وَلَا سُنَّةٍ وَلَا أَنْكَرْنَا أَنْ يُوجِبَ فِي النَّاسِ الطَّمَعَ الَّذِي لَا يُقْنِعُهُ تَطَوُّعُ مَنْ لَا شَيْءَ لَهُ عِنْدَهُ.

L26023 As for this hadith of Abū Hurayrah—this weakest one, and it has the soundest chain of transmission—there is no proof for them in it. For we do not deny the reward for the recipient of the gift; indeed, it is a virtuous act. Rather, we deny its obligation, since neither a Quranic text nor a Sunnah has mandated it, nor do we deny that making it obligatory would incite in people a greed that the voluntary giving of one who has nothing of his own cannot satisfy it.

وَلَيْسَ فِي هَذَا الْخَبَرِ مِمَّا أَنْكَرْنَا مَعْنًى وَلَا إِشَارَةً، وَإِنَّمَا فِيهِ مَا لَا نُنْكِرُهُ مِمَّا ذَكَرْنَا، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - هَمَّ أَنْ لَا يَقْبَلَ هِبَةً إِلَّا مِمَّنْ ذَكَرَ - وَلَوْ أَنْفَذَ ذَلِكَ لَكَانَ مُبَاحًا فِعْلُهُ وَتَرْكُهُ وَلَيْسَ مِنَ الْمَحْذُورِ عَلَيْهِ خِلَافُهُ، فَيَلْزَمُ الْقَوْلُ بِمَا هَمَّ بِهِ مِنْ ذَلِكَ - فَبَطَلَ

L26024–26025 There is nothing in this report that we have rejected in meaning or allusion. Rather, it contains only what we do not reject from what we have mentioned—that he, peace be upon him, intended not to accept a gift except from the one specified. Had he implemented that, both acting upon it and abandoning it would have been permissible, and opposing it would not have been among the reprehensible acts for him. Thus, it is necessary to adhere to the opinion of what he intended regarding that matter. Therefore,

their attachment to this report is nullified, for it contains no sanction for a reward-based gift, nor does it stipulate a reward in that gift, nor does it permit retracting the gift in any respect.

تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ إِذْ لَيْسَ فِيهِ إِجَازَةُ هِبَةِ الثَّوَابِ، وَلَا أَنَّ تِلْكَ الْهِبَةَ اُشْتُرِطَ فِيهَا الثَّوَابُ وَلَا فِيهِ إِجَازَةُ الرُّجُوعِ فِي الْهِبَةِ أَصْلًا.

L26026 And with Allah, the Exalted, lies all success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L26027 Then we examined the narration of Abd al-Rahman ibn ʾAlqamah and found no merit in it. In it are Abu Bakr ibn ʾAyyash and Abd al-Malik ibn Muhammad ibn Bashir, both of whom are weak narrators. It is not known that Abd al-Malik had any hearing from Abd al-Rahman ibn ʾAlqamah.

ثُمَّ نَظَرْنَا فِي خَبَرِ عَبْدِ الرَّحْمَنِ بْنِ عَلْقَمَةَ: فَوَجَدْنَاهُ لَا خَيْرَ فِيهِ، فِيهِ: أَبُو بَكْرِ بْنُ عَيَّاشٍ، وَعَبْدُ الْمَلِكِ بْنُ مُحَمَّدِ بْنِ بَشِيرٍ، وَكِلَاهُمَا ضَعِيفٌ، وَلَا يُعْرَفُ لِعَبْدِ الْمَلِكِ سَمَاعٌ مِنْ عَبْدِ الرَّحْمَنِ بْنِ عَلْقَمَةَ.

L26028 And in the chain: Abū Ḥudhayfah. If [the narrator] is Isḥāq ibn Bashīr al-Najjārī, he is deemed unreliable; if not, he is unknown. Thus, the narration is wholly invalidated, and it is impermissible to cite it as evidence.

وَفِيهِ أَيْضًا: أَبُو حُذَيْفَةَ، فَإِنْ كَانَ إِسْحَاقُ بْنُ بَشِيرٍ النَّجَّارِيُّ فَهُوَ هَالِكٌ، وَإِنْ لَمْ يَكُنْهُ فَهُوَ مَجْهُولٌ - فَسَقَطَ جُمْلَةً، وَلَمْ يَحِلَّ الِاحْتِجَاجُ بِهِ.

L26029 Moreover, even if it were valid, they would have no argument in it whatsoever, because it contains no mention of the bestowal of rewards at all - nor any reference to retracting the gift in any way. Rather, it merely states that the gift is given to seek the pleasure of the Messenger and to fulfill a need.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا؛ لِأَنَّهُ لَيْسَ فِيهِ ذِكْرٌ لِهِبَةِ الثَّوَابِ أَصْلًا - وَلَا لِلرُّجُوعِ فِي الْهِبَةِ بِوَجْهٍ مِنْ الْوُجُوهِ، وَإِنَّمَا فِيهِ: أَنَّ الْهَدِيَّةَ يُبْتَغَى بِهَا وَجْهُ الرَّسُولِ وَقَضَاءُ الْحَاجَةِ.

L26030 As for their statement, “He attains what he seeks”—this is madness (needless to say), for this report indicates that he sought to relieve himself. Yet who can claim such a thing? They may be fulfilled or not, for a person has no assurance of attaining what he intends in worldly matters. Indeed, this pertains solely to the rulings of the Hereafter regarding recompense.

وَأَمَّا قَوْلُهُمْ " لَهُ مَا ابْتَغَى " فَجُنُونٌ، نَاهِيكَ بِهِ؛ لِأَنَّ فِي هَذَا الْخَبَرِ: أَنَّهُ ابْتَغَى قَضَاءَ حَاجَتِهِ، وَمَنْ لَهُ بِذَلِكَ؟ وَقَدْ تُقْضَى وَلَا تُقْضَى، لَيْسَ لِلْمَرْءِ مَا نَوَى فِي الدُّنْيَا: إنَّمَا هَذَا مِنْ أَحْكَامِ الْآخِرَةِ فِي الْجَزَاءِ فَقَطْ.

L26031 Then we say: Indeed, Allah the Exalted has protected His Prophet—peace be upon him—from validating the permissibility of consuming a gift whose giver did not intend by it the pleasure of Allah the Exalted, but rather aimed solely to fulfill his own need and seek the Messenger’s approval. This is the very bribe—cursed are the one who accepts it and the one who gives it in falsehood. Thus, it becomes evident (given this report’s deficiency in

ثُمَّ نَقُولُ: إنَّ اللَّهَ تَعَالَى قَدْ صَانَ نَبِيَّهُ - عَلَيْهِ السَّلَامُ - عَنْ أَنْ يُصَوِّبَ أَنْ يُجِيزَ أَكْلَ هَدِيَّةٍ لَمْ يَبْتَغِ بِهَا مُهْدِيهَا وَجْهَ اللَّهِ تَعَالَى، وَإِنَّمَا قَصَدَ قَضَاءَ حَاجَتِهِ فَقَطْ وَوَجْهَ الرَّسُولِ، وَهَذِهِ هِيَ الرِّشْوَةُ الْمَلْعُونُ قَابِلُهَا وَمُعْطِيهَا فِي الْبَاطِلِ، فَلَاحَ - مَعَ تَعَرِّي هَذَا الْخَبَرِ - عَنْ أَنْ يَكُونَ لَهُمْ فِيهِ مُتَعَلَّقٌ، مَعَ أَنَّهُ خَبَرُ سُوءٍ مَوْضُوعٌ بِلَا شَكٍّ.

authenticity) that they have no grounds to rely on it, particularly since it is a spurious narration undoubtedly fabricated.

L26032 Then we examined the narration of Abū Hurayrah with which we began our discussion and found it contains no valid proof for their position on two grounds: The first is that it comes through the chain of Ibrāhīm ibn Ismāʿīl ibn Mujammiʿ - who is weak. The second -

L26033–26035 That ʿAmr ibn Dīnār had no direct hearing (samāʿ) whatsoever from Abū Hurayrah, nor did he comprehend him through intellectual means. Fundamentally, the most prominent among his contemporaries who lived beyond seventy - such as Ibn ʿAbbās, Ibn ʿUmar, Ibn al-Zubayr, and Jābir - while Abū Hurayrah died before sixty, thereby nullifying the entirety.

L26036 Moreover, it is a proof against them and contradicts their opinion, for its text explicitly states: "A man has the strongest right to his gift unless it has been confirmed from it." It does not specify a relative over a non-relative, nor a gift in which a reward is stipulated over one without, nor a small reward over a large one—and all of this contradicts the opinion of Abū Ḥanīfa and Mālik.

L26037 If this hadith is true, then they have opposed the truth by their acknowledgment, and this is exceedingly grave. If it is false, then there is no valid argument in falsehood, and they are rejecting the established traditions with their false claim that they contradict the Quran and the principles of jurisprudence. Everything they have cited as evidence here is contrary to the Quran and the principles of jurisprudence.

L26038 As for the narration of ʿAmr ibn Shuʿayb from his father from ʿAbdullāh ibn ʿAmr — it is a disconnected document, holding no authoritative evidence. Moreover, it is transmitted through Usāma ibn Zayd — who is weak — so even if authenticated, it would stand as evidence against them and contradict their position, for it does not restrict [the ruling] to relatives over non-relatives, nor a husband to a wife, nor whether debts were settled on her behalf or not, nor any of the specifications asserted by Abū Ḥanīfah and Mālik. It neither addresses gifts for divine reward distinct from other types, but rather generalizes the ruling to all gifts. Thus, whoever restricts it has lied

ثُمَّ نَظَرْنَا فِي خَبَرِ أَبِي هُرَيْرَةَ الَّذِي بَدَأْنَا فِيهِ: فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ إِسْمَاعِيلَ بْنِ مُجَمِّعٍ وَهُوَ ضَعِيفٌ. الثَّانِي -

أَنَّ عَمْرَو بْنَ دِينَارٍ لَيْسَ لَهُ سَمَاعٌ أَصْلًا مِنْ أَبِي هُرَيْرَةَ، وَلَا أَدْرَكَهُ بِعَقْلِهِ أَصْلًا، وَأَعْلَا مَنْ عِنْدَهُ مَنْ كَانَ بَعْدَ السَّبْعِينَ، كَابْنِ عَبَّاسٍ وَابْنِ عُمَرَ وَابْنِ الزُّبَيْرِ، وَجَابِرٍ، وَمَاتَ أَبُو هُرَيْرَةَ قَبْلَ السِّتِّينَ، فَسَقَطَ جُمْلَةً.

ثُمَّ إِنَّهُ حُجَّةٌ عَلَيْهِمْ وَمُخَالِفٌ لِقَوْلِهِمْ؛ لِأَنَّ نَصَّهُ «الرَّجُلُ أَحَقُّ بِهِبَتِهِ مَا لَمْ يُثَبْ مِنْهَا» فَلَمْ يَخُصَّ ذَا رَحِمٍ مِنْ غَيْرِهِ، وَلَا هِبَةً اُشْتُرِطَ فِيهَا الثَّوَابُ مِنْ غَيْرِهَا، وَلَا ثَوَابًا قَلِيلًا مِنْ كَثِيرٍ - وَهَذَا كُلُّهُ خِلَافُ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ.

فَإِنْ كَانَ هَذَا الْحَدِيثُ حَقًّا فَقَدْ خَالَفُوا الْحَقَّ بِإِقْرَارِهِمْ، وَهَذَا عَظِيمٌ جِدًّا، وَإِنْ كَانَ بَاطِلًا فَلَا حُجَّةَ فِي الْبَاطِلِ، وَهُمْ يَرُدُّونَ السُّنَنَ الثَّابِتَةَ بِدَعْوَاهُمْ الْكَاذِبَةَ أَنَّهَا خِلَافُ الْقُرْآنِ وَالْأُصُولِ، وَكُلُّ مَا احْتَجُّوا بِهِ هَاهُنَا فَخِلَافُ الْقُرْآنِ، وَالْأُصُولِ.

وَأَمَّا خَبَرُ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو -: فَصَحِيفَةٌ مُنْقَطِعَةٌ، وَلَا حُجَّةَ فِيهَا، ثُمَّ هُوَ عَنْ أُسَامَةَ بْنِ زَيْدٍ - وَهُوَ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَيْهِمْ، وَمُخَالِفًا لِقَوْلِهِمْ؛ لِأَنَّهُ لَيْسَ فِيهِ تَخْصِيصُ ذِي رَحِمٍ مِنْ غَيْرِهِ، وَلَا زَوْجٍ لِزَوْجَةٍ وَلَا أَدَايَنَ عَلَيْهَا أَوْ لَمْ يُدَايِنْ، وَلَا شَيْءٍ مِمَّا خَصَّهُ أَبُو حَنِيفَةَ وَمَالِكٌ، وَلَا هِبَةَ ثَوَابٍ مِنْ غَيْرِهَا، بَلْ أَطْلَقَ ذَلِكَ عَلَى كُلِّ هِبَةٍ، فَمَنْ خَصَّهَا فَقَدْ كَذَبَ بِإِقْرَارِهِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ

by affirming upon the Messenger of Allah — peace and blessings of Allah be upon him — what he did not state, attributing to him words he never uttered. There is no distinction between one who contradicts an entire ḥadīth and one who contradicts part of it while affirming another part — particularly between those like them and those like us — for they contradict what they themselves acknowledge as truth and as impermissible evidence to oppose, thereby confessing against themselves to destruction and ruin. As for us, we only contradict what is unauthenticated, as is obligatory for every rational Muslim. We seek refuge in Allah from opposing any narration we authenticate except through abrogation by another scriptural text or specification by another scriptural text.

عَلَيْهِ وَسَلَّمَ - وَقَوْلَهُ مَا لَمْ يَقُلْهُ وَلَا فَرْقَ بَيْنَ مَنْ خَالَفَ حَدِيثًا بِأَسْرِهِ وَمَنْ خَالَفَ بَعْضَهُ وَأَقَرَّ بِبَعْضِهِ، لَا سِيَّمَا مِثْلُهُمْ وَمِثْلُنَا، فَإِنَّهُمْ يُخَالِفُونَ مَا يُقِرُّونَ بِأَنَّهُ حَقٌّ، وَأَنَّهُ حُجَّةٌ لَا يَجُوزُ خِلَافُهَا، فَاعْتَرَفُوا عَلَى أَنْفُسِهِمْ بِالدَّمَارِ وَالْبَوَارِ، وَأَمَّا نَحْنُ فَلَا نُخَالِفُ إِلَّا مَا لَا يَصِحُّ، كَالَّذِي يَجِبُ عَلَى كُلِّ مُسْلِمٍ ذِي عَقْلٍ، وَمَعَاذَ اللَّهِ مِنْ أَنْ نُخَالِفَ خَبَرًا نُصَحِّحُهُ إِلَّا بِنَسْخٍ بِنَصٍّ آخَرَ، أَوْ بِتَخْصِيصٍ بِنَصٍّ آخَرَ.

L26039–26041 And the utmost astonishment is at their assertion—uttered without shame—that the explicitly stated ruling in the report on pre-emption: “When boundaries are demarcated and paths are diverted, there is no pre-emption” is not from the words of the Prophet (peace be upon him), since it could possibly be from the narrator’s own words. Why, then, do they not apply the same reasoning here to this invalid contradiction in this undoubtedly fabricated narration—which states that “the reclaimed gift is invalidated and then returned to him”—by asserting that this is not from the speech of the Prophet (peace be upon him), as it could be from the narrator’s words? This would be their inevitable position without doubt in this matter, were the chain of this narration authentic. For it is patently false to claim that he (peace be upon him) likened one who revokes a gift to a dog in its most repulsive state—that of eating its vomit—the very analogy Allah the Exalted used for the disbeliever when He said: “His example is like that of a dog: if you chase it, it pants; if you leave it, it pants” [Al-A‘rāf: 176]. Then he (peace be upon him) executes the ruling as described. Allah is far above such a thing.[1]

وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ قَوْلِهِمْ بِلَا حَيَاءٍ: إِنَّ الْمَنْصُوصَ فِي خَبَرِ الشُّفْعَةِ مِنْ أَنَّ «إِذَا وَقَعَتْ الْحُدُودُ وَصُرِفَتْ الطُّرُقُ فَلَا شُفْعَةَ» لَيْسَ مِنْ قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ قَدْ يُمْكِنُ أَنْ يَكُونَ مِنْ قَوْلِ الرَّاوِي، فَهَلَّا قَالُوا هَاهُنَا فِي هَذِهِ الْمُنَاقَضَةِ الْفَاسِدَةِ الَّتِي فِي هَذَا الْحَدِيثِ الْمَكْذُوبِ بِلَا شَكٍّ: مِنْ أَنَّهُ يُوقَفُ ثُمَّ يُرَدُّ عَلَيْهِ مَا اسْتَرَدَّ، لَيْسَ مِنْ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ مُمْكِنٌ أَنْ يَكُونَ مِنْ كَلَامِ الرَّاوِي، بِلَا شَكٍّ فِي هَذَا لَوْ صَحَّ إسْنَادُ هَذَا الْحَدِيثِ، إِذْ مِنْ الْبَاطِلِ أَنْ يُخْبِرَ - عَلَيْهِ السَّلَامُ - أَنَّ مُسْتَرِدَّ الْهِبَةِ كَالْكَلْبِ فِي أَقْبَحِ أَحْوَالِهِ مِنْ أَكْلِ قَيْئِهِ، وَالَّذِي ضَرَبَ اللَّهُ تَعَالَى بِهِ الْمَثَلَ لِلْكَافِرِ فَقَالَ تَعَالَى: {فَمَثَلُهُ كَمَثَلِ الْكَلْبِ إِنْ تَحْمِلْ عَلَيْهِ يَلْهَثْ أَوْ تَتْرُكْهُ يَلْهَثْ} [الأعراف: ١٧٦] ثُمَّ يُنْفِذُ - عَلَيْهِ السَّلَامُ - الْحُكْمَ بِمَا هَذِهِ صِفَتُهُ، حَاشَا لِلَّهِ مِنْ ذَلِكَ.

L26042 Rather, if someone were to argue against them using this report, it would constitute a stronger substantive challenge; because its apparent meaning indicates that when the donor reclaims what he donated, the matter is suspended until the reclaimed item is verified, then the donated item is to be

بَلْ لَوْ احْتَجَّ عَلَيْهِمْ مُحْتَجٌّ بِهَذَا الْخَبَرِ لَكَانَ أَقْوَى تَشْغِيبًا، لِأَنَّ ظَاهِرَهُ: أَنَّ الْوَاهِبَ إِذَا اسْتَرَدَّ مَا وَهَبَ وُقِفَ وَعُرِفَ مَا اسْتَرَدَّ، ثُمَّ لِيُدْفَعْ إِلَيْهِ مَا وَهَبَ، فَهَذَا يُوجِبُ أَنْ

[1] **Qur’an references (L26039):** Qur’an 7:176 (Al-A’raf).

delivered. This necessitates that the reclaimed item be withheld until resolved, then delivered to the donee, and not left with the reclaimant—one uncertainty after another, one claim countering another.

يُوقَفَ عَلَى مَا اسْتَرَدَّ ثُمَّ يَدْفَعُ إِلَى الْمَوْهُوبِ لَهُ، وَلَا يُتْرَكُ عِنْدَ الْمُسْتَرِدِّ، وَاحْتِمَالٌ بِاحْتِمَالٍ، وَدَعْوَى بِدَعْوَى.

L26043 It is astonishing how they lack shame in citing this report as evidence—though it is against them, not for them—as we have clarified. The narration of ʿAmr ibn Shuʿayb here through his father from his grandfather is treated as proof, while they reject narrations not transmitted via ʿAmr ibn Shuʿayb's chain from his father and grandfather—even though they are better than it: such as our narration from Ḥammād ibn Salamah through Dāwūd ibn Abī Hind and Ḥabīb al-Muʿallim, both narrating from ʿAmr ibn Shuʿayb through his father from his grandfather, that the Messenger of Allah—peace and blessings of Allah be upon him—said: "A woman may not dispose of her property once her husband assumes marital authority over her."[2]

وَالْعَجَبُ مِنْ قِلَّةِ الْحَيَاءِ فِي احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ - وَهُوَ عَلَيْهِمْ لَا لَهُمْ - كَمَا بَيَّنَّا، وَصَارَتْ رِوَايَةُ عَمْرِو بْنِ شُعَيْبٍ هَاهُنَا عَنْ أَبِيهِ عَنْ جَدِّهِ حُجَّةً، وَهُمْ يَرُدُّونَ الرِّوَايَةَ الَّتِي لَيْسَتْ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ أَحْسَنَ مِنْهَا -: كَرِوَايَتِنَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدٍ، وَحَبِيبٍ الْمُعَلِّمِ، كِلَاهُمَا عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَجُوزُ لِامْرَأَةٍ أَمْرٌ فِي مَالِهَا إِذَا مَلَكَ زَوْجُهَا عِصْمَتَهَا» .

L26044 The narration of Abu Dawood: Mahmud ibn Khalid → Marwan ibn Muhammad → Al-Haytham ibn Humaid → Al-Ala' ibn Al-Harith → Amr ibn Shu'ayb → his father → his grandfather, who said: "The Messenger of Allah, peace and blessings be upon him, ruled that one-third of the blood money is due for the sixth eye due to its position."

وَرِوَايَةُ أَبِي دَاوُد نَا مَحْمُودُ بْنُ خَالِدٍ نَا مَرْوَانُ هُوَ ابْنُ مُحَمَّدٍ - نَا الْهَيْثَمُ بْنُ حُمَيْدٍ نَا الْعَلَاءُ بْنُ الْحَارِثِ نَا عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ، قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْعَيْنِ السَّادَّةِ لِمَكَانِهَا بِثُلُثِ الدِّيَةِ.»

L26045 And other than this is a great multitude they only refuted by asserting it was a scroll. So what religion could endure with this, or what deed could be elevated thereby? This constitutes blatant deception in the religion of Allah the Exalted - we seek refuge in Allah from being deprived of His aid. Thus it is invalidated for them to have any basis in any of the narrations.

وَغَيْرُ هَذَا كَثِيرٌ جِدًّا لَمْ يَرُدُّوهُ إِلَّا بِأَنَّهُ صَحِيفَةٌ، فَأَيُّ دِينٍ يَبْقَى مَعَ هَذَا، أَوْ أَيُّ عَمَلٍ يَرْتَفِعُ مَعَهُ، وَهَذَا هُوَ التَّلْبِيسُ فِي دِينِ اللَّهِ تَعَالَى جِهَارًا - نَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ فِي شَيْءٍ مِنْ الْأَخْبَارِ.

L26046 As for what they have cited from the Companions—may Allah be pleased with them—none of it serves as proof for them, for there is no proof from anyone except the Messenger of Allah.

وَأَمَّا مَا تَعَلَّقُوا بِهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: فَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ إِذْ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ.

L26047–26048 Then, if this were a proof, it would entirely be against them, not in their favor. The first of these is the authentic report from 'Umar—may Allah be pleased with him—who stated: "Whoever gifts something to someone

ثُمَّ لَوْ كَانَ حُجَّةً فَهُوَ كُلُّهُ عَلَيْهِمْ لَا لَهُمْ -: أَوَّلُ ذَلِكَ: حَدِيثُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - هُوَ صَحِيحٌ عَنْهُ مَنْ وَهَبَ هِبَةً لِغَيْرِ ذِي رَحِمٍ فَهُوَ أَحَقُّ بِهَا مَا لَمْ يُثْبَ مِنْهَا أَوْ لَمْ يَرْضَ

[2] **Hadith references (L26043):** Sunan Abi Dawud 3546.

unrelated by kinship retains the greater right to it unless it is confirmed or he approves of it." He made no distinction between a mahram (prohibited-degree relative) and a non-mahram—contrary to the Ḥanafī position—nor did he specify gifts exchanged between spouses as they specified. Rather, it is authentically established from him that a wife may retract what she gifted her husband, as we will mention hereafter, Allah, the Exalted and Majestic, willing. Thus, they opposed 'Umar even as they cited him as proof that contradicting him is impermissible. "Indeed, the curse of Allah is upon the wrongdoers [Hud 18]—those who hinder others from Allah's path and seek to make it crooked [Hud 19]."[3]

مِنْهَا فَلَمْ يَخُصَّ رَحِمًا مَحْرَمَةً مِنْ غَيْرِ مَحْرَمَةٍ - وَهَذَا خِلَافُ قَوْلِ الْحَنَفِيِّينَ - وَلَا خَصَّ مَا وَهَبَهُ أَحَدُ الزَّوْجَيْنِ لِلْآخَرِ كَمَا خَصُّوا، بَلْ قَدْ صَحَّ عَنْهُ: أَنَّ لَهَا الرُّجُوعَ فِيمَا وَهَبَتْ لِزَوْجِهَا، كَمَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - فَقَدْ خَالَفُوا عُمَرَ، وَهُمْ يَحْتَجُّونَ بِهِ فِي أَنَّهُ لَا يَحِلُّ خِلَافُهُ، {أَلا لَعْنَةُ اللَّهِ عَلَى الظَّالِمِينَ} [هود: ١٨] {الَّذِينَ يَصُدُّونَ عَنْ سَبِيلِ اللَّهِ وَيَبْغُونَهَا عِوَجًا} [هود: ١٩] .

L26049 O Muslims! If the statement of Umar—may Allah be pleased with him—is impermissible to oppose, how did they deem it permissible to oppose his statement? And if it is not a valid proof, then why do they obscure matters in the religion of Allah the Exalted and hinder the way of truth—: It has been narrated to us through the chain of Waki': he [Waki'] narrated to us from Abu Jinab (who is Yahya ibn Abi Hayyah) from Abu 'Awn (who is Muhammad ibn 'Ubaydullah al-Thaqafi) from Shurayh the judge, that Umar ibn al-Khattab said regarding a woman and her husband: "She may reclaim what she gave him, but he may not reclaim what he gave her."

يَا لِلْمُسْلِمِينَ إِنْ كَانَ قَوْلُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - لَا يَحِلُّ خِلَافُهُ، فَكَيْفَ اسْتَحَلُّوا خِلَافَهُ، وَإِنْ كَانَ لَيْسَ بِحُجَّةٍ فَلِمَا يُمَوِّهُونَ بِهِ فِي دِينِ اللَّهِ تَعَالَى، وَيَصُدُّونَ عَنْ سَبِيلِ الْحَقِّ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا أَبُو جَنَابٍ هُوَ يَحْيَى بْنِ أَبِي حَيَّةَ - عَنْ أَبِي عَوْنٍ هُوَ مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ الثَّقَفِيُّ - عَنْ شُرَيْحٍ الْقَاضِي أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْمَرْأَةِ وَزَوْجِهَا: تَرْجِعُ فِيمَا أَعْطَتْهُ وَلَا يَرْجِعُ فِيمَا أَعْطَاهَا.

L26050 And through the chain of Ibn Abi Shaybah: 'Ali ibn Mushir narrated to us from Abu Ishaq al-Shaybani from Muhammad ibn 'Ubayd Allah al-Thaqafi, who said: 'Umar ibn al-Khattab wrote that women may give to their husbands out of desire or fear. Whichever woman gave her husband something then wished to retract it, she is more entitled to it. The ruling was established as valid by Shurayh, al-Sha'bi, and Mansur ibn al-Mu'tamir—so much so that Shurayh ruled in her favor to recover what she had gifted him after the husband's death.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الثَّقَفِيِّ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ: أَنَّ النِّسَاءَ يُعْطِينَ أَزْوَاجَهُنَّ رَغْبَةً وَرَهْبَةً فَأَيُّمَا امْرَأَةٍ أَعْطَتْ زَوْجَهَا شَيْئًا فَأَرَادَتْ أَنْ تَعْتَصِرَهُ فَهِيَ أَحَقُّ بِهِ، وَصَحَّ الْقَضَاءُ بِهَا عَنْ شُرَيْحٍ، وَالشَّعْبِيِّ، وَمَنْصُورِ بْنِ الْمُعْتَمِرِ، حَتَّى أَنَّ شُرَيْحًا قَضَى لَهَا بِالرُّجُوعِ فِيمَا وَهَبَتْ لَهُ بَعْدَ مَوْتِهِ.

L26051 It was narrated to us through the route of Shaybah, from Ghaylan, from Abu Ishaq al-Sabi'i, from Shurayh.

رُوِّينَا ذَلِكَ مِنْ طَرِيقِ شَيْبَةَ عَنْ غَيْلَانَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ شُرَيْحٍ.

[3] **Qur'an references (L26048):** Qur'an 11:18 (Hud); Qur'an 7:45 (Al-A'raf); Qur'an 11:19 (Hud).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: مَا أَدْرَكْتُ الْقُضَاةُ إلَّا يُقِيلُونَ الْمَرْأَةَ فِيمَا وَهَبَتْ لِزَوْجِهَا، وَلَا يُقِيلُونَ الزَّوْجَ فِيمَا وَهَبَ لِامْرَأَتِهِ - فَبَطَلَ تَعَلُّقُهُمْ بِعُمَرَ وَصَارَ حُجَّةً عَلَيْهِمْ، وَلَاحَ أَنَّ قَوْلَهُمْ خِلَافُ قَوْلِهِ.

L26052 From the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: “I have not encountered judges except those who permit a woman the annulment of what she gifted to her husband, but do not permit the husband the annulment of what he gifted to his wife.” Thus, their adherence to ʿUmar was invalidated, it became a proof against them, and it became evident that their opinion contradicts his.

وَأَمَّا خَبَرُ عُثْمَانَ - فَبَيِّنٌ فِيهِ أَنَّهُ رَأْيٌ مُحْدَثٌ، لِأَنَّ فِي نَصِّهِ " أَنَّ أَوَّلَ مَنْ رَدَّ الْهِبَةَ عُثْمَانُ " وَمَا كَانَ هَذَا سَبِيلُهُ فَلَا حُجَّةَ فِيهِ.

L26053 As for the narration regarding ʾUthmān - it demonstrates that this is an innovated opinion, for its text states “the first to refuse the gift was ʾUthmān,” and since this was not the established practice, it holds no legal authority.

ثُمَّ هُوَ أَيْضًا مُخَالِفٌ لِقَوْلِهِمْ، لِأَنَّ فِيهِ رَدَّ الْهِبَةِ جُمْلَةً بِلَا تَخْصِيصِ ذِي رَحِمٍ وَلَا أَحَدِ الزَّوْجَيْنِ لِلْآخَرِ - فَصَارُوا مُخَالِفِينَ لَهُ - وَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L26054–26055 Moreover, this [ruling] also contradicts their statement, as it entails revoking the gift in its entirety without specifying an exception for blood relatives or either spouse toward the other. They have thereby become contradictors of their own position, and their reliance on it is invalidated.

وَأَمَّا خَبَرُ عَلِيٍّ - فَبَاطِلٌ، لِأَنَّ أَحَدَ طَرِيقَيْهِ فِيهَا جَابِرٌ الْجُعْفِيُّ، وَفِي الْآخَرِ ابْنُ لَهِيعَةَ - ثُمَّ لَوْ صَحَّ لَكَانُوا مُخَالِفِينَ لَهُ، لِأَنَّ فِي أَحَدِهِمَا «الرَّجُلُ أَحَقُّ بِهِبَتِهِ مَا لَمْ يُثَبْ مِنْهَا» دُونَ تَخْصِيصِ ذِي رَحِمٍ مِنْ غَيْرِهِ، وَلَا أَحَدِ الزَّوْجَيْنِ لِلْآخَرِ - وَهُمْ مُخَالِفُونَ لِهَذَا، وَفِي الْأُخْرَى أَيْضًا كَذَلِكَ فِي هِبَةِ الثَّوَابِ جُمْلَةً - فَبَطَلَ تَعَلُّقُهُمْ بِكُلِّ ذَلِكَ.

L26056 As for the report attributed to ʿAlī, it is invalid because one of its two chains includes Jābir al-Juʿfī, while the other contains Ibn Lahīʿah. Even if it were authentic, they would still contradict it, for one version states: “A man has the prior right to his gift unless it has been legally confirmed, without singling out blood relatives over others or one spouse over the other”—but they oppose this ruling. The same applies to the other version regarding the gifting of compensation in its entirety. Thus, their legal basis for all of this is invalidated.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ - فَصَحِيحٌ عَنْهُ، وَالْقَوْلُ فِيهِ كَالْقَوْلِ فِي الرِّوَايَةِ عَنْ عُثْمَانَ مِنْ أَنَّهُمْ قَدْ خَالَفُوهُ، لِأَنَّ فِيهِ «أَنَّهُ أَحَقُّ بِهَا مَا لَمْ يُثَبْ» وَلَيْسَ فِيهِ تَخْصِيصُ ذِي رَحِمٍ مَحْرَمَةٍ مِنْ غَيْرِهَا، وَلَا تَخْصِيصُ مَا وَهَبَهُ أَحَدُ الزَّوْجَيْنِ لِلْآخَرِ - فَعَادَ حُجَّةً عَلَيْهِمْ.

L26057 As for the ḥadīth of Ibn ʿUmar, it is authentically reported from him. The ruling concerning it is like the ruling regarding the narration from ʿUthmān—that they opposed him because it states, “He has the greatest right to it as long as it is not confirmed.” The narration does not distinguish a mahram relative from others, nor does it specify what one spouse gifted to the other. Thus, it becomes a proof against them.

وَأَمَّا خَبَرُ فَضَالَةَ - فَكَذَلِكَ أَيْضًا وَهُوَ ضَعِيفٌ، لِأَنَّهُ عَنْ مُعَاوِيَةَ بْنِ صَالِحٍ - وَلَيْسَ بِالْقَوِيِّ - وَهُوَ حُجَّةٌ عَلَيْهِمْ، لِأَنَّهُ لَمْ يَشْتَرِطْ ذَا رَحِمٍ مِنْ غَيْرِهِ، وَلَا تَخْصِيصُ مَا وَهَبَهُ

L26058 As for the report of Faḍālah, similarly it too is weak because it is narrated from Muʿāwiyah ibn Ṣāliḥ—who is not strong [in reliability]—and it constitutes a proof against them, as he did not stipulate a relative from others nor restrict [the ruling] to what one spouse gifted to the other. The apparent invalidation of remunerative gifts [is established]. In any case, this report

serves as a proof against him (Muʿāwiyah), not in their favor, for they have contradicted it.

أَحَدُ الزَّوْجَيْنِ لِلْآخَرِ، وَظَاهِرُ إِبْطَالِ هِبَةِ الثَّوَابِ، فَعَلَى كُلِّ حَالٍ هُوَ حُجَّةٌ عَلَيْهِ لَا لَهُمْ؛ لِأَنَّهُمْ قَدْ خَالَفُوهُ.

L26059 As for the report of Abū al-Dardā'—it entirely contradicts their position.

وَأَمَّا خَبَرُ أَبِي الدَّرْدَاءِ - فَكُلُّهُ مُخَالِفٌ لِقَوْلِهِمْ.

L26060–26062 All the reports proved to be against their position. If they constituted an ijmāʿ, they have contradicted it, and if they were— They have contradicted the rightful proof which it is impermissible to contradict. If it is neither a proof nor a consensus, then misleading through its presentation is impermissible.

فَعَادَتْ الْأَخْبَارُ كُلُّهَا خِلَافًا لَهُمْ، فَإِنْ كَانَتْ إِجْمَاعًا فَقَدْ خَالَفُوا الْإِجْمَاعَ وَإِنْ كَانَتْ حُجَّةَ حَقٍّ لَا يَجُوزُ خِلَافُهَا فَقَدْ خَالَفُوا حُجَّةَ الْحَقِّ الَّتِي لَا يَجُوزُ خِلَافُهَا، وَإِنْ لَمْ تَكُنْ حُجَّةً وَلَا إِجْمَاعًا فَالْإِيهَامُ بِإِيرَادِهَا لَا يَجُوزُ.

L26063 It has been narrated to us that the Companions differed regarding this matter—as transmitted through the chain of Abd al-Razzāq from Ibn Jurayj, who reported from Ibn Ṭāwūs from his father, who said concerning Muʿādh ibn Jabal's judicial rulings in Yemen among its people: He ruled that whichever man grants a land on the condition "Do you listen and obey?" and he listens to him and obeys, then it belongs to the donee. Whichever man grants such-and-such items for a fixed term then reclaims it, it reverts to the donor when the term arrives. Whichever man grants a land without stipulating conditions, it belongs to the donee.

وَقَدْ رُوِّينَا خِلَافَ ذَلِكَ عَنْ الصَّحَابَةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ قَالَ فِي قَضَاءِ مُعَاذِ بْنِ جَبَلٍ بِالْيَمَنِ بَيْنَ أَهْلِهَا قَضَى: أَنَّهُ أَيُّمَا رَجُلٍ وَهَبَ أَرْضًا عَلَى أَنَّكَ تَسْمَعُ وَتُطِيعُ؟ فَسَمِعَ لَهُ وَأَطَاعَ، فَهِيَ لِلْمَوْهُوبَةِ لَهُ، وَأَيُّمَا رَجُلٍ وَهَبَ كَذَا وَكَذَا إلَى أَجَلٍ ثُمَّ رَجَعَ إلَيْهِ، فَهُوَ لِلْوَاهِبِ إذَا جَاءَ الْأَجَلُ، وَأَيُّمَا رَجُلٍ وَهَبَ أَرْضًا وَلَمْ يَشْتَرِطْ فَهِيَ لِلْمَوْهُوبَةِ لَهُ.

L26064 And through him in the chain to Abd al-Razzaq from Ma'mar, who said: Al-Hasan al-Basri used to declare, "A gift is irrevocable."

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: كَانَ الْحَسَنُ الْبَصْرِيُّ يَقُولُ: لَا يُعَادُ فِي الْهِبَةِ.

L26065 And through him [the previous narrator] to Maʿmar, from Ibn Ṭāwus, from his father, who said: A man may not revoke a gift.

وَبِهِ إلَى مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: لَا يَعُودُ الرَّجُلُ فِي الْهِبَةِ.

L26066 So here are Muʿadh, al-Ḥasan, and Ṭāwūs, stating our view in exactly the same terms, alike in every way.

فَهَذَا مُعَاذٌ، وَالْحَسَنُ، وَطَاوُسٌ يَقُولُونَ بِقَوْلِنَا سَوَاءً سَوَاءً.

L26067 They said: We have specified mahram relatives because a gift to them is treated as charity, and between spouses due to the statement of the Prophet (peace and blessings be upon him): "When a Muslim spends on his family with the intention of seeking reward, it is a charity for him." They said: There is no disagreement that one cannot reclaim charity.

وَقَالُوا: إنَّمَا خَصَصْنَا ذَوِي الرَّحِمِ الْمَحْرَمَةِ لِأَنَّ الْهِبَةَ لَهُمْ مَجْرَى الصَّدَقَةِ وَبَيْنَ الزَّوْجَيْنِ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ الْمُسْلِمَ إذَا أَنْفَقَ عَلَى أَهْلِهِ نَفَقَةً يَحْتَسِبُهَا فَهِيَ لَهُ صَدَقَةٌ» قَالُوا: وَلَا خِلَافَ فِي أَنَّهُ لَا يَرْجِعُ فِي الصَّدَقَةِ.

L26068 Ali said: So we said to them, “A gift to someone who is neither a relative nor one’s wife is also charity, for Allah the Exalted says: *‘And do not forget generosity between you’* (Quran 2:237).”[4]

قَالَ عَلِيٌّ: فَقُلْنَا لَهُمْ: وَالْهِبَةُ لِغَيْرِ ذِي الرَّحِمِ وَلِغَيْرِ الزَّوْجَةِ أَيْضًا صَدَقَةٌ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] .

L26069 It was narrated to us through Ibn Abi Shaybah’s chain: Abbad ibn al-‘Awwam narrated to us from Abu Malik al-Ashja’i, from Rib‘i ibn Ḥirāsh, from Hudhayfah that the Messenger of Allah (peace and blessings be upon him) said: “Every good deed is charity.” This narration is rigorously authentic.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ أَبِي مَالِكٍ الْأَشْجَعِيِّ عَنْ رِبْعِيِّ بْنِ حِرَاشٍ عَنْ حُذَيْفَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ مَعْرُوفٍ صَدَقَةٌ» فَهَذَا فِي غَايَةِ الصِّحَّةِ.

L26070 It has been established that every gift to a Muslim constitutes charity. Since there is a valid consensus among them that charity cannot be revoked, and they claim to be proponents of analogy, why do they not analogize gifts to charity, as gifts are the most similar thing to it? But they neither practice analogy competently nor follow scriptural texts.

فَصَحَّ أَنَّ كُلَّ هِبَةٍ لِمُسْلِمٍ فَهِيَ صَدَقَةٌ، فَإِذْ قَدْ صَحَّ إجْمَاعٌ عِنْدَهُمْ عَلَى أَنْ لَا رُجُوعَ فِي الصَّدَقَةِ، فَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا الْهِبَةَ عَلَى الصَّدَقَةِ فَهِيَ أَشْبَهُ شَيْءٍ بِهَا؟ وَلَكِنَّهُمْ لَا يُحْسِنُونَ قِيَاسًا وَلَا يَتَّبِعُونَ نَصًّا.

L26071–26073 Abu Muhammad said: Since all that they have embellished has been invalidated, the proof for our claim is the statement of Allah, the Most High: “Fulfill the covenants” [Al-Mā’idah: 1] and His saying, exalted is He: “Do not nullify your deeds” [Muḥammad: 33]. This is the place for citing these two verses as evidence, not the context in which they cited them, since the Sunnah clarified that these verses have no place in their argument. They forgot their own argumentation using the Muslims concerning their conditions.[5]

قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ بَطَلَ كُلُّ مَا مَوَّهُوا بِهِ فَالْحُجَّةُ لِقَوْلِنَا هُوَ قَوْلُ اللَّهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَبِقَوْلِهِ تَعَالَى: {وَلا تُبْطِلُوا أَعْمَالَكُمْ} [محمد: ٣٣] ، فَهَذَا مَوْضِعُ الِاحْتِجَاجِ بِهَاتَيْنِ الْآيَتَيْنِ لَا حَيْثُ احْتَجُّوا بِهِمَا حَيْثُ بَيَّنَتْ السُّنَّةُ أَنَّهُ لَا مَدْخَلَ لَهُ فِيهِمَا وَنَسُوا احْتِجَاجَهُمْ بِالْمُسْلِمِينَ عِنْدَ شُرُوطِهِمْ.

L26074 Also: what has been transmitted to us through Al-Bukhari’s chain—Muslim ibn Ibrāhīm narrated to us: Hishām, who is Al-Dastuwā’ī, and Shu‘bah. Both narrated together: from Qatādah from Sa‘īd ibn Al-Musayyib from Ibn ‘Abbās, who said: The Messenger of Allah—peace and blessings be upon him—said: “The one who revokes his gift is like the one who goes back to his vomit.”

وَأَيْضًا - مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسْلِمُ بْنُ إبْرَاهِيمَ نا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ - وَشُعْبَةُ، قَالَا جَمِيعًا نا قَتَادَةُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ ابْنِ عَبَّاسٍ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْعَائِدُ فِي هِبَتِهِ كَالْعَائِدِ فِي قَيْئِهِ» .

L26075 Through the chain of al-Bukhārī: ʿAbd al-Raḥmān ibn al-Mubārak narrated to us from ʿAbd al-Wārith—he is Ibn Saʿīd al-Tannūrī—from Ayyūb al-Sakhtiyānī, from ʿIkrimah, from Ibn ʿAbbās, who said: “The Messenger of

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا عَبْدُ الرَّحْمَنِ بْنُ الْمُبَارَكِ نا عَبْدُ الْوَارِثِ هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَيْسَ لَنَا مَثَلُ السَّوْءِ الَّذِي يَعُودُ فِي هِبَتِهِ كَالْكَلْبِ يَرْجِعُ فِي قَيْئِهِ» .

[4] **Qur’an references (L26068):** Qur’an 2:237 (Al-Baqarah).
[5] **Qur’an references (L26071):** Qur’an 47:33 (Muhammad); Qur’an 5:1 (Al-Ma’idah).

Allāh—peace and blessings be upon him—said: ’There is no evil example for us like one who returns to his gift, as the dog returns into its vomit.”’[6]

L26076 From the chain of transmission of Aḥmad ibn Shuʿayb: ʿAbd al-Raḥmān ibn Muḥammad ibn Sallām narrated to us: Isḥāq al-Azraq narrated to us: al-Ḥusayn al-Muʿallim narrated to us from ʿAmr ibn Shuʿayb from Ṭāwūs from Ibn ʿAbbās and Ibn ʿUmar, who both said: The Messenger of Allah (peace be upon him) said: «It is not permissible for anyone who gives an al-ʿaṭiyyah (a gift) to revoke it, except a parent who gives to his child. The likeness of one who gives a gift then revokes it is that of a dog: it eats until satiated, vomits, then returns and goes back to its vomit.»

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَّامٍ نا إِسْحَاقُ الْأَزْرَقُ نَا الْحُسَيْنُ الْمُعَلِّمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، قَالَا: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَحِلُّ لِأَحَدٍ يُعْطِي الْعَطِيَّةَ فَيَرْجِعُ فِيهَا إِلَّا الْوَالِدُ يُعْطِي وَلَدَهُ، وَمَثَلُ الَّذِي يُعْطِي الْعَطِيَّةَ فَيَرْجِعُ فِيهَا كَالْكَلْبِ، أَكَلَ حَتَّى إِذَا شَبِعَ قَاءَ ثُمَّ عَادَ فَرَجَعَ فِي قَيْئِهِ» .

L26077–26078 So these are the established narrations which it is not permissible to contradict or depart from. Narrated via the chain of Zayd ibn Aslam, from his father, from ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him), who reported that the Messenger of Allah said: “The parable of one who takes back his sadaqah is like that of a dog returning to its vomit.”

فَهَذِهِ الْآثَارُ الثَّابِتَةُ الَّتِي لَا يَحِلُّ خِلَافُهَا، وَلَا الْخُرُوجُ عَنْهَا وَمِنْ طَرِيقِ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ رَسُولُ اللَّهِ: «مَثَلُ الَّذِي يَعُودُ فِي صَدَقَتِهِ مَثَلُهُ كَمَثَلِ الْكَلْبِ يَعُودُ فِي قَيْئِهِ» .

L26079 Abū Muḥammad said: The ruling concerning one who retracts his gift and one who retracts his charity is identical according to the words of the Messenger of Allah—peace and blessings be upon him. Whoever distinguishes between them is in error. The most astonishing thing is their statement: “He only likened it to a dog returning to its vomit, and for the dog this is not forbidden—thus this is like it.” May they enjoy this analogy by which they have sanctioned their own inclusion within it, while the Prophet—peace and blessings be upon him—declares it to be a vile analogy. How can this be, when the authentic report states that it is like returning to one’s vomit—and vomit is forbidden in their view, though we know not by what? As for others, it is forbidden by this text.

قَالَ أَبُو مُحَمَّدٍ: الْحُكْمُ فِي الْعَائِدِ فِي هِبَتِهِ، وَفِي الْعَائِدِ فِي صَدَقَتِهِ سَوَاءٌ عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْمُفَرِّقُ بَيْنَهُمَا مُخْطِئٌ، وَالْعَجَبُ كُلُّهُ قَوْلُهُمْ " إِنَّمَا شَبَّهَهُ بِالْكَلْبِ يَعُودُ فِي قَيْئِهِ، وَالْكَلْبُ لَيْسَ ذَلِكَ عَلَيْهِ حَرَامًا فَهَذَا مِثْلُهُ " فَهَنِيئًا لَهُمْ هَذَا الْمَثَلُ الَّذِي أَبَاحُوا لِأَنْفُسِهِمْ الدُّخُولَ فِيهِ وَالنَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُخْبِرُ أَنَّهُ مَثَلُ السَّوْءِ، فَكَيْفَ وَقَدْ جَاءَ الْخَبَرُ الصَّحِيحُ أَنَّهُ كَالْعَائِدِ فِي قَيْئِهِ، وَالْقَيْءُ عِنْدَهُمْ حَرَامٌ لَا نَدْرِي بِمَاذَا؟ وَأَمَّا عِنْدَ غَيْرِهِمْ فَبِهَذَا النَّصِّ.

L26080 The most outrageous claim is their statement: “The fact that it is ḥarām does not negate its permissibility.” This is an open desecration of Islam.

وَأَطَمُّ شَيْءٍ قَوْلُ بَعْضِهِمْ " لَا يَمْنَعُ كَوْنُهُ حَرَامًا مِنْ جَوَازِهِ " وَهَذَا هَتْكُ الْإِسْلَامِ جِهَارًا.

[6] **Hadith references (L26075):** Sahih al-Bukhari 2622.

L26081 Among the astonishing things is their assertion that the Prophet's statement (peace be upon him) - "It is not permissible for anyone who gives a gift to revoke it, except a parent giving to their child" - means he (peace be upon him) intended by this that if the parent is in need, he may take his provision.

وَمِنْ الْعَجَائِبِ أَيْضًا قَوْلُهُمْ إنَّ قَوْلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَحِلُّ لِأَحَدٍ يُعْطِي الْعَطِيَّةَ فَيَرْجِعُ فِيهَا إلَّا الْوَالِدُ يُعْطِي وَلَدَهُ» أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ بِذَلِكَ إذَا احْتَاجَ الْوَالِدُ فَيَأْخُذُ نَفَقَتَهُ.

L26082 Abu Muhammad said: Lying against the Messenger of Allah—peace and blessings be upon him—is easy and trivial for them. Has anyone ever understood this meaning from such a statement? All people know that when a father is in need, his rightful claim extends not merely to what he gave his child but to all his property—even that which he did not grant to him.

قَالَ أَبُو مُحَمَّد: الْكَذِبُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَهُمْ سَهْلٌ خَفِيفٌ، وَهَلْ فَهِمَ أَحَدٌ قَطُّ مِنْ هَذَا الْكَلَامِ هَذَا الْمَعْنَى، وَقَدْ عَلِمَ الْجَمِيعُ أَنَّ الْأَبَ إذَا احْتَاجَ لَمْ يَكُنْ حَقُّهُ فِيمَا أَعْطَى وَلَدَهُ دُونَ سَائِرِ مَالِهِ الَّذِي لَمْ يُعْطِهِ إيَّاهُ.

L26083 We seek refuge with Allah from being forsaken (by His support).

وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L26084 As for our position granting the grandfather and the mother the right to retract what they have given to the grandson and to the son generally, it is based on the statement of Allah: "O children of Adam" [Al-A'rāf: 26].[7]

وَأَمَّا جَعْلُنَا لِلْجَدِّ وَلِلْأُمِّ الرُّجُوعَ فِيمَا أَعْطَيَا لِابْنِ الِابْنِ وَلِلِابْنِ عُمُومًا لِقَوْلِ اللَّهِ تَعَالَى: {يَا بَنِي آدَمَ} [الأعراف: ٢٦] .

L26085 The Almighty said: {As He brought your parents out of Paradise} [Al-A'rāf 7:27]. Thus, the Exalted established the grandfather and grandmother as parents, while the mother is referred to by the feminine term _al-wālidah_ (the mother), which applies to the general category of parenthood. In this context, the term _al-wālid_ (the parent) is used as a masculine noun encompassing her.[8]

وَقَالَ تَعَالَى: {كَمَا أَخْرَجَ أَبَوَيْكُمْ مِنَ الْجَنَّةِ} [الأعراف: ٢٧] فَجَعَلَ تَعَالَى الْجَدَّ وَالْجَدَّةَ أَبَوَيْنِ، وَالْأُمَّ وَالِدَةً تَقَعُ عَلَى الْجِنْسِ، وَهِيَ فِيهِ اسْمُ الْوَالِدِ.

L26086–26087 All success is from Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26088 As for the Mālikīs—they argued based on what was transmitted to us through Ibn al-Jahm's chain: Ibrāhīm al-Ḥarbī narrated to us; Muḥammad ibn 'Abd al-Malik [Ibn Abī al-Shawārib] narrated to us; 'Abd al-Razzāq narrated to us; Ma'mar narrated from Ayyūb from Abū Qilābah, who said: 'Umar ibn al-Khaṭṭāb decreed, "A man may revoke what he gave to his child, provided the child has not died, squandered it, or incurred a debt against it."

وَأَمَّا الْمَالِكِيُّونَ - فَإِنَّهُمْ احْتَجُّوا بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا إبْرَاهِيمُ الْحَرْبِيُّ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ هُوَ ابْنُ أَبِي الشَّوَارِبِ - نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ يَعْتَصِرُ الرَّجُلُ مِنْ وَلَدِهِ مَا أَعْطَاهُ، مَا لَمْ يَمُتْ، أَوْ يَسْتَهْلِكْ، أَوْ يَقَعْ فِيهِ دَيْنٌ.

[7] **Qur'an references (L26084):** Qur'an 7:26 (Al-A'raf).
[8] **Qur'an references (L26085):** Qur'an 7:27 (Al-A'raf).

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ الْقَاضِي نا أَبُو ثَابِتٍ الْمَدِينِيُّ ني ابْنُ وَهْبٍ عَنِ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ مُوسَى بْنَ سَعْدٍ حَدَّثَهُ أَنَّ سَعْدًا مَوْلَى الزُّبَيْرِ نَحَلَ ابْنَتَهُ جَارِيَةً فَلَمَّا تَزَوَّجَتْ أَرَادَ ارْتِجَاعَهَا فَقَضَى عُمَرُ بْنُ الْخَطَّابِ أَنَّ الْوَالِدَ يَعْتَصِرُ مَا دَامَ يَرَى مَالَهُ، مَا لَمْ يَمُتْ صَاحِبُهَا فَتَقَعُ فِي مِيرَاثٍ أَوْ تَكُونُ امْرَأَةً تُنْكَحُ، ثُمَّ تَلَاهُ عُثْمَانُ عَلَى ذَلِكَ.

L26089 And through the chain of Ibn al-Jahm, Ismāʿīl ibn Isḥāq al-Qāḍī narrated from Abū Thābit al-Madīnī to Ibn Wahb, from Ibn Lahīʿah, from Yazīd ibn Abī Ḥabīb that Mūsā ibn Saʿd reported to him that Saʿd - the client of al-Zubayr - gifted his daughter a slave girl. When she married, he sought to reclaim her. ʿUmar ibn al-Khaṭṭāb ruled that a parent may reclaim [the gift] as long as he retains his property, provided the recipient does not die (causing the gift to enter inheritance) or the slave girl becomes a woman who is married. Later, ʿUthmān upheld this ruling.

وَرُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ أَنَّ رَجُلًا وَهَبَ لِابْنِهِ نَاقَةً فَرَجَعَ فِيهَا، فَرُفِعَ ذَلِكَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَرَدَّهَا عَلَيْهِ بِعَيْنِهَا، وَجَعَلَ نَمَاهَا لِابْنِهِ.

L26090 We have narrated it through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī that a man gifted a she-camel to his son then revoked it. The matter was brought to ʿUmar ibn al-Khaṭṭāb, who restored the very same she-camel to the man and assigned its growth to the son.

قَالُوا: فَهَذَا عَمَلُ عُمَرَ، وَعُثْمَانَ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L26091 They said: Thus, this was the conduct of ʿUmar and ʿUthman in the presence of the Companions (may Allah be pleased with them).

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ ذَكَرْنَا عَنْ عُمَرَ، وَابْنِهِ، بِأَصَحَّ مِنْ هَذَا السَّنَدِ رُجُوعُ الْمَرْءِ فِيمَا وَهَبَ مَا لَمْ يُثَبْ إِلَّا لِذِي رَحِمٍ.

L26092 Abu Muhammad said: We have cited from Umar and his son—via a chain of narration more authentic than this one—that retraction of a gift is not valid unless it was given to a blood relative.

وَعَنْ عُثْمَانَ مِثْلُهُ فَمَا الَّذِي جَعَلَ هَذِهِ الرِّوَايَةَ أَوْلَى مِنْ تِلْكَ؟ فَكَيْفَ وَقَدْ خَالَفُوا هَذِهِ أَيْضًا، لِأَنَّهُمْ يَقُولُونَ: إِنَّمَا لِلْأَبِ الِارْتِجَاعُ فِي ذَلِكَ فِي صِحَّتِهِ فَقَطْ، وَلَيْسَ هَذَا فِيمَا رُوِيَ عَنْ عُمَرَ، وَعُثْمَانَ، وَيَقُولُونَ: لَيْسَ لِلْأَبِ الِارْتِجَاعُ فِيمَا وَهَبَ ابْنُهُ لِلَّهِ تَعَالَى، وَلَيْسَ هَذَا فِيمَا رُوِيَ عَنْ عُمَرَ، وَعُثْمَانَ، وَحَاشَا لَهُمَا: أَنْ يُجِيزَا هِبَةً لِغَيْرِ اللَّهِ تَعَالَى، وَإِذَا لَمْ تَكُنْ لِلَّهِ فَهِيَ لِلشَّيْطَانِ.

L26093 The same is reported from Uthman. What then makes this narration more preferable than that? How could this be, when they contradict this also? For they assert that the father's right to revoke applies only to the validity of the dedication itself—yet this is absent in the narrations from Umar and Uthman. They further claim the father cannot revoke what he has dedicated his son to Allah the Exalted—but this too is absent in the reports from Umar and Uthman. It is inconceivable that these two would sanction a dedication to anyone other than Allah the Exalted, for what is not for Allah belongs to Satan.

فَصَحَّ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، لَا حُجَّةَ لَهُمَا أَصْلًا، وَمُخَالِفًا لِكُلِّ مَا أَظْهَرُوا أَنَّهُمْ تَعَلَّقُوا بِهِ عَنِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L26094 The opinion of Abu Hanifah and Malik is established, yet they possess no valid legal argument whatsoever, and it contradicts all that they openly asserted to have derived through transmission from the Companions (may Allah be pleased with them).

1632 - Issue: If the gift undergoes a change in the child's possession such

L26095–26097

that its original legal designation (as a revocable gift) is voided, or it leaves his ownership, or he dies, or it becomes religiously impermissible to possess, then the father has no right to revoke it. This is because if it has changed, it is no longer the same entity for which the Prophet (peace be upon him) granted the right of revocation. If it leaves his ownership or he dies, the father has no right of revocation against [the new possessor]. The Prophet—peace and blessings be upon him—did not grant him the right of retraction over him. And if her ownership is invalidated, then the father has no ownership in her whatsoever—and success is from Allah, the Most High.

١٦٣٢ - مَسْأَلَةٌ: فَإِنْ تَغَيَّرَتْ الْهِبَةُ عِنْدَ الْوَلَدِ حَتَّى يَسْقُطَ عَنْهَا الِاسْمُ، أَوْ خَرَجَتْ عَنْ مِلْكِهِ، أَوْ مَاتَ، أَوْ صَارَتْ لَا يَحِلُّ تَمَلُّكُهَا فَلَا رُجُوعَ لِلْأَبِ فِيهِ؛ لِأَنَّهَا إذَا تَغَيَّرَتْ فَهِيَ غَيْرُ مَا جَعَلَ لَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرُّجُوعَ فِيهِ، وَإِذَا خَرَجَتْ عَنْ مِلْكِهِ، أَوْ مَاتَ، فَلَا رُجُوعَ لَهُ عَلَى مَنْ لَمْ يَجْعَلْ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرُّجُوعَ عَلَيْهِ - وَإِذَا بَطَلَ تَمَلُّكُهَا، فَلَا تَمَلُّكَ لِلْأَبِ فِيهَا أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا تَنْفُذُ هِبَةٌ وَلَا صَدَقَةٌ لِأَحَدٍ إلَّا فِيمَا أَبْقَى لَهُ وَلِعِيَالِهِ غِنًى]

A legal ruling: Neither a gift nor charity is valid from a person unless they retain sufficient provision for themselves and their dependents.

١٦٣٣ - مَسْأَلَةٌ: وَلَا تَنْفُذُ هِبَةٌ وَلَا صَدَقَةٌ لِأَحَدٍ إلَّا فِيمَا أَبْقَى لَهُ وَلِعِيَالِهِ غِنًى، فَإِنْ أَعْطَى مَا لَا يَبْقَى لِنَفْسِهِ وَعِيَالِهِ بَعْدَهُ غِنًى فُسِخَ كُلُّهُ.

Issue 1633: No gift or charity takes effect from a person unless it leaves them and their dependents in sufficiency. If they give that which does not leave themselves and their dependents in sufficiency thereafter, the entire act is annulled.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا أَبُو عَوَانَةَ عَنْ أَبِي مَالِكٍ الْأَشْجَعِيِّ عَنْ حُذَيْفَةَ قَالَ: قَالَ نَبِيُّكُمْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ مَعْرُوفٍ صَدَقَةٌ».

The proof of that is what we have narrated via Muslim's narration: Qutaybah ibn Saʿīd narrated to us, Abū ʿAwānah narrated to us, from Abū Mālik al-Ashjaʿī, from Ḥudhayfah, who said: "Your Prophet—may Allah's peace and blessings be upon him—said: 'Every act of kindness is charity.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ سَوَادٍ عَنْ ابْنِ وَهْبٍ أَنَا يُونُسُ عَنْ ابْنِ شِهَابٍ نا سَعِيدُ بْنُ الْمُسَيِّبِ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «خَيْرُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنًى وَابْدَأْ بِمَنْ تَعُولُ».

Through the chain of Ahmad ibn Shuʿayb: I [received from] ʿAmr ibn Sawād, who [received] from Ibn Wahb, who [received] from Yūnus, from Ibn Shihāb, from Saʿīd ibn al-Musayyib, who heard Abū Hurayrah say: The Messenger of Allah—peace and blessings be upon him—said, "The best charity is that given from surplus wealth. Begin with those you are responsible for."[9]

وَرُوِّينَا مَعْنَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

Its meaning has also been narrated to us via the chain of Abu Salih from Abu Hurairah from the Prophet, peace be upon him.

And from the chain of Ahmad ibn Shu'ayb: I, Amr ibn Ali, inform [you] from Yahya ibn Sa'id al-Qattan, from Amr ibn Uthman, who said: I heard Musa

[9] **Hadith references (L26101):** Sahih al-Bukhari 1426; Sahih al-Bukhari 5356; Sunan an-Nasai 2544.

ibn Talha ibn Ubaydullah narrate from Hakim ibn Hizam that the Messenger of Allah—peace and blessings be upon him and his family—said: “The best charity is that which is given from surplus wealth.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا عَمْرُو بْنُ عُثْمَانَ سَمِعْتُ مُوسَى بْنَ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ أَنَّ حَكِيمَ بْنَ حِزَامٍ حَدَّثَهُ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «أَفْضَلُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنًى» .

L26104–26106 Thus, every good deed is charity, and the finest and best thereof is that given from surplus wealth. Undoubtedly and necessarily, whatever increases in charity but diminishes goodness – as for the superior [act], there is no reward in it nor any good. And there is no excess in it, and it is invalid. Since it is invalid, it constitutes unlawfully consuming wealth—thus, this is prohibited by the definitive text of the Quran.

فَإِذًا كُلُّ مَعْرُوفٍ صَدَقَةٌ، وَأَفْضَلُ الصَّدَقَةِ وَخَيْرُهَا مَا كَانَ عَنْ ظَهْرِ غِنًى، فَبِلَا شَكٍّ وَبِالضَّرُورَةِ: أَنَّ مَا زَادَ فِي الصَّدَقَةِ وَنَقَصَ مِنْ الْخَيْرِ، وَالْأَفْضَلِ فَلَا أَجْرَ فِيهِ، وَلَا خَيْرَ فِيهِ، وَلَا فَضْلَ فِيهِ، وَأَنَّهُ بَاطِلٌ، وَإِذَا كَانَ بَاطِلًا، فَهُوَ أَكْلُ مَالٍ بِالْبَاطِلِ - فَهَذَا مُحَرَّمٌ بِنَصِّ الْقُرْآنِ.

L26107 From the chain of Yahya ibn Sa’id al-Qattan, from Muhammad ibn ’Ajlan: Sa’id al-Maqburi narrated to me from Abu Hurairah that the Messenger of Allah (peace and blessings be upon him) said: “Give charity.” A man asked: “O Messenger of Allah, I have a dinar.” He replied: “Spend it on yourself.” The man said: “I have another.” He said: “Spend it on your wife.” The man said: “I have another.” He said: “Spend it on your child.” The man said: “I have another.” He said: “Spend it on your servant.” The man said: “I have another.” He responded: “You are more discerning in its use.”

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ حَدَّثَنِي سَعِيدٌ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: تَصَدَّقُوا فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ عِنْدِي دِينَارٌ قَالَ: تَصَدَّقْ بِهِ عَلَى نَفْسِكَ قَالَ: عِنْدِي آخَرُ، قَالَ: تَصَدَّقْ بِهِ عَلَى زَوْجَتِكَ، قَالَ: عِنْدِي آخَرُ، قَالَ: تَصَدَّقْ بِهِ عَلَى وَلَدِكَ، قَالَ: عِنْدِي آخَرُ، قَالَ: تَصَدَّقْ بِهِ عَلَى خَادِمِكَ، قَالَ: عِنْدِي آخَرُ، قَالَ: أَنْتَ أَبْصَرُ بِهِ» وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: «أَعْتَقَ رَجُلٌ مِنْ بَنِي عُذْرَةَ عَبْدًا لَهُ عَنْ دُبُرٍ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَلَكَ مَالٌ غَيْرُهُ؟ قَالَ: لَا، قَالَ: مَنْ يَشْتَرِيهِ مِنِّي؟ فَاشْتَرَاهُ نُعَيْمُ بْنُ عَبْدِ اللَّهِ بْنِ النَّحَّامِ بِثَمَانِمِائَةِ دِرْهَمٍ، فَدَفَعَهَا إِلَيْهِ، ثُمَّ قَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ابْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ، فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِي قَرَابَتِكَ، فَإِنْ فَضَلَ عَنْ ذِي قَرَابَتِكَ شَيْءٌ فَكَهَذَا وَهَكَذَا» .

From the narration in Sahih Muslim: Qutaybah ibn Sa’id reported to us: al-Layth ibn Sa’d narrated from Abu al-Zubayr, from Jabir, who said: “A man from Banu ’Udhrah emancipated a slave posthumously. The Messenger of Allah (peace and blessings be upon him) asked him: ’Do you possess any other wealth?’ He answered: ’No.’ The Prophet said: ’Who will purchase him from me?’ Nu’aym ibn ’Abdullah ibn al-Nahham bought him for eight hundred dirhams and delivered the sum to the man. The Messenger of Allah (peace and blessings be upon him) then instructed him: ’Begin by providing for yourself. If surplus remains, allocate it to your household. If surplus remains after your household, distribute it among your relatives. If surplus remains after your relatives, then continue in this manner and so on.”’

L26108 And through the chain of Muslim: Abu Tahir—Ahmad ibn Amr ibn al-

Sarh—informed us: Ibn Wahb informed me, Yunus informed me from Ibn Shihab, who informed me: "Abd al-Rahman ibn Kaʿb ibn Malik said: I heard my father say"—then he [Kaʿb] mentioned the hadith concerning his staying behind from Tabuk. He said: I said, "O Messenger of Allah, part of my repentance is that I divest myself of my wealth as charity to Allah and His Messenger—peace and blessings be upon him." The Messenger of Allah—peace and blessings be upon him—said, "Retain some of your wealth for yourself, is that not better for you?" I said, "I hereby keep my share which is in Khaybar."

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ هُوَ أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ - أَخْبَرَنِي ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي «عَبْدُ الرَّحْمَنِ بْنُ كَعْبِ بْنِ مَالِكٍ سَمِعْتُ أَبِي يَقُولُ: فَذَكَرَ الْحَدِيثَ فِي تَخَلُّفِهِ عَنْ تَبُوكَ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّ مِنْ تَوْبَتِي أَنْ أَنْخَلِعَ مِنْ مَالِي صَدَقَةً إِلَى اللَّهِ وَإِلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْسِكْ عَلَيْكَ بَعْضَ مَالِكَ فَهُوَ خَيْرٌ لَكَ؟ فَقُلْتُ: إِنِّي أُمْسِكُ سَهْمِي الَّذِي بِخَيْبَرَ» .

L26109–26110 Through the chain of Aḥmad ibn Shuʿayb: I am ʿUbaydullāh ibn Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf. Narrated to us my father and my paternal uncle Saʿd, and Yaʿqūb—the two sons of Ibrāhīm ibn Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf. Both of them said collectively: Narrated to us Ibn Abī Dhi'b, from Muḥammad ibn al-Munkadir, from Jābir ibn ʿAbdullāh: "A man manumitted a slave he owned who had no other property besides him. The Messenger of Allāh (peace be upon him) returned the slave to him, and Nuʿaym ibn al-Naḥḥām purchased him."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نا أَبِي وَعَمِّي سَعْدٌ، وَيَعْقُوبُ ابْنَا إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، قَالَا جَمِيعًا: نا ابْنُ أَبِي ذِئْبٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا أَعْتَقَ عَبْدًا لَهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ، فَرَدَّهُ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَابْتَاعَهُ نُعَيْمُ بْنُ النَّحَّامِ» .

L26111 Narrated to us by Humam, narrated to us by Abbas ibn Asbagh, narrated to us by Muhammad ibn Abd al-Malik ibn Ayman, narrated to us by Bakr ibn Hammad, narrated to us by Musaddad, narrated to us by Hammad (i.e., Ibn Zayd), from Muhammad ibn Ishaq, from Asim ibn Umar ibn Qatadah, from Mahmud ibn Labid, from Jabir ibn Abdullah: "A man came to the Prophet—peace and blessings be upon him—with a piece of gold resembling an egg and said: 'O Messenger of Allah, this is charity. I have left no wealth for myself besides it.' The Prophet—peace and blessings be upon him—threw it toward him, and had it struck him, it would have pained him. He then said: 'One of you goes forth and divests himself of his wealth, and then becomes a dependent on others.'"

حَدَّثَنَا حُمَامُ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ بْنُ حَمَّادٍ نا مُسَدَّدٌ نا حَمَّادٌ هُوَ ابْنُ زَيْدٍ - عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَاصِمِ بْنِ عُمَرَ بْنِ قَتَادَةَ عَنْ مَحْمُودِ بْنِ لَبِيدٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِ الْبَيْضَةِ مِنْ الذَّهَبِ فَقَالَ: يَا رَسُولَ اللَّهِ هَذِهِ صَدَقَةٌ مَا تَرَكْتُ لِي مَالًا غَيْرَهَا، فَحَذَفَهُ بِهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَوْ أَصَابَهُ لَأَوْجَعَهُ، ثُمَّ قَالَ: يَنْطَلِقُ أَحَدُكُمْ فَيَنْخَلِعُ مِنْ مَالِهِ ثُمَّ يَصِيرُ عِيَالًا عَلَى النَّاسِ» .

L26112 Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Isḥāq narrated to us: Ibn al-Aʿrābī narrated to us: Isḥāq ibn Ismāʿīl narrated to us: Sufyān narrated from Ibn ʿAjlān from ʿIyāḍ ibn ʿAbdullāh ibn Saʿd ibn Abī Sarḥ that he heard

Abū Saʿīd al-Khudrī say: “A man entered the mosque, so the Prophet—peace and blessings of Allah be upon him—ordered the people to donate garments. They donated, and he ordered that two garments be given to him. Then he—peace and blessings of Allah be upon him—urged toward charity. The man came and donated one of the two garments. The Messenger of Allāh—peace and blessings of Allah be upon him—exclaimed to him: ’Take your garment!’”

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا إِسْحَاقُ بْنُ إِسْمَاعِيلَ نا سُفْيَانُ عَنِ ابْنِ عَجْلَانَ عَنْ عِيَاضِ بْنِ عَبْدِ اللَّهِ بْنِ سَعْدِ بْنِ أَبِي سَرْحٍ أَنَّهُ سَمِعَ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ «دَخَلَ رَجُلٌ الْمَسْجِدَ فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّاسَ أَنْ يَطْرَحُوا ثِيَابًا، فَطَرَحُوا، فَأَمَرَ لَهُ بِثَوْبَيْنِ، ثُمَّ حَثَّ - عَلَيْهِ السَّلَامُ - عَلَى الصَّدَقَةِ، فَجَاءَ فَطَرَحَ أَحَدَ الثَّوْبَيْنِ، فَصَاحَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذْ ثَوْبَكَ» .

L26113 Thus, the Messenger of Allah—may Allah bless him and grant him peace—invalidated manumission, tadbeer (testamentary freeing after death), charity equivalent to an egg’s weight in gold, and Kaʿb ibn Mālik’s donation of his entire wealth, and he did not permit any of that.

فَهَذَا «رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ رَدَّ الْعِتْقَ، وَالتَّدْبِيرَ، وَالصَّدَقَةَ بِمِثْلِ الْبَيْضَةِ مِنَ الذَّهَبِ، وَصَدَقَةَ كَعْبِ بْنِ مَالِكٍ بِمَالِهِ كُلِّهِ، وَلَمْ يُجِزْ مِنْ ذَلِكَ شَيْئًا» .

L26114 And this is also clarified by his statement (peace and blessings be upon him): “Whoever performs a deed not based on our command, it is invalid.”

وَيُبَيِّنُ ذَلِكَ أَيْضًا: قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L26115–26116 From the method of reasoning: any contract combining forbidden and permissible elements is entirely annulled, for it was not formed in compliance with Allah the Exalted’s command, nor were its permissible elements distinguished from its forbidden ones. Thus, it is a contract whose execution was never valid.

وَمِنْ طَرِيقِ النَّظَرِ: أَنَّ كُلَّ عَقْدٍ جَمَعَ حَرَامًا وَحَلَالًا فَهُوَ عَقْدٌ مَفْسُوخٌ كُلُّهُ؛ لِأَنَّهُ لَمْ يَنْعَقِدْ كَمَا أَمَرَ اللَّهُ تَعَالَى، وَلَا تَمَيَّزَ حَلَالُهُ مِنْ حَرَامِهِ، فَهُوَ عَقْدٌ لَمْ يَكُنْ قَطُّ صَحِيحًا عَمَلُهُ.

L26117 These are mass-transmitted, conspicuously clear traditions of utmost authenticity and clarity. It is unlawful for anyone to contradict them through the routes of Abū Hurayrah, Jābir, Ḥakīm ibn Ḥizām, Kaʿb ibn Mālik, and Abū Saʿīd.

وَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ مُتَظَاهِرَةٌ فِي غَايَةِ الصِّحَّةِ وَالْبَيَانِ لَا يَحِلُّ لِأَحَدٍ خِلَافُهَا مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَجَابِرٍ، وَحَكِيمِ بْنِ حِزَامٍ، وَكَعْبِ بْنِ مَالِكٍ، وَأَبِي سَعِيدٍ.

L26118 And it has also been narrated to us its meaning from Ṭāriq al-Muḥāribī from the Messenger of Allah—peace and blessings of Allah be upon him—as authentic.

وَرُوِّينَا أَيْضًا مَعْنَاهَا عَنْ طَارِقٍ الْمُحَارِبِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَحِيحًا.

L26119 Among the proofs for the validity of this from the Quran are the words of Allah the Most High: “And do not keep your hand chained to your neck, nor

وَمِنَ الْبُرْهَانِ عَلَى صِحَّةِ ذَلِكَ -: مِنَ الْقُرْآنِ قَوْلُ اللَّهِ تَعَالَى: {وَلا تَجْعَلْ يَدَكَ مَغْلُولَةً إِلَى عُنُقِكَ وَلا تَبْسُطْهَا كُلَّ الْبَسْطِ فَتَقْعُدَ مَلُومًا مَحْسُورًا} [الإسراء: ٢٩] .

stretch it out completely, lest you find yourself blameworthy and regretful" [Al-Isra: 29].[10]

L26120 The words of the Most High: "And give its due on the day of its harvest, and do not be extravagant. Indeed, He does not love the extravagant" [Al-An'am: 141].[11]

L26121 And give the kinsman his due, the needy, and the wayfarer, and do not squander wastefully. Indeed, the squanderers were brethren of the devils. [Al-Isrāʾ: 26–27][12]

L26122 Among those who held this view from the early generations is what we were narrated through the chain of Ibn Wahb from Yahya ibn Ayyub from Ibn al-Hād, who reported to us on the authority of ʿAbdullāh ibn Dīnār from Ibn Umar, that he said to his father Umar ibn al-Khattab: "Should I give all my wealth in charity?" Umar replied: "Do not part with all your wealth, but give some in charity and keep the rest."

L26123 From the chain of Ibn al-Jahm: Ibrāhīm al-Ḥarbī narrated to us, Muḥammad ibn Sahl narrated to us, ʿAbd al-Razzāq narrated to us from Maʿmar from al-Zuhrī from ʿUrwah ibn al-Zubayr, who said: "Unfairness in a donor's gift is to be rejected just as unfairness in a deceased's will is rejected."

L26124 From the chain of Ibn Wahb via Yunus ibn Yazīd, from Ibn Shihāb, who said: I do not deem it permissible for a person to donate all their wealth, but rather a third of it. What is rejected due to the disposer's injustice during their lifetime is treated as what is rejected due to the deceased's injustice in their will at death.

L26125–26127 And via the chain of Ibn Wahb from Ibn Abī al-Zināد from his father: that ʿUmar ibn ʿAbd al-ʿAzīz was present while... A man from the family of al-Zubayr donated all his wealth to some of his children except for a small

وقَوْله تَعَالَى: {وآتُوا حَقَّهُ يَوْمَ حَصَادِهِ وَلا تُسْرِفُوا إِنَّهُ لا يُحِبُّ الْمُسْرِفِينَ} [الأنعام: ١٤١] ٠

وقَوْله تَعَالَى: {وآتِ ذَا الْقُرْبَى حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ وَلا تُبَذِّرْ تَبْذِيرًا} [الإسراء: ٢٦] {إِنَّ الْمُبَذِّرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ} [الإسراء: ٢٧]

وَمِمَّنْ قَالَ بِهَذَا السَّلَفُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ ابْنِ الْهَادِ نا عَبْدُ اللَّهِ بْنُ دِينَارٍ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ لأَبِيهِ عُمَرَ بْنِ الْخَطَّابِ: إِنِّي رَأَيْت أَنْ أَتَصَدَّقَ بِمَالِي كُلِّهِ؟ فَقَالَ لَهُ عُمَرُ: لَا تَخْرُجْ مِنْ مَالِك كُلِّهِ، وَلَكِنْ تَصَدَّقْ وَأَمْسِكْ.

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا إِبْرَاهِيمُ الْحَرْبِيُّ نا مُحَمَّدُ بْنُ سَهْلٍ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: يُرَدُّ مِنْ حَيْفِ النَّاحِلِ مَا يُرَدُّ مِنْ حَيْفِ الْمَيِّتِ فِي وَصِيَّتِهِ.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ قَالَ: لَا أَرَى أَنْ يَتَصَدَّقَ الْمَرْءُ بِمَالِهِ كُلِّهِ، وَلَكِنْ يَتَصَدَّقُ بِثُلُثِ مَالِهِ يُرَدُّ مِنْ حَيْفِ النَّاحِلِ فِي حَيَاتِهِ مَا يُرَدُّ مِنْ حَيْفِ الْمَيِّتِ فِي وَصِيَّتِهِ عِنْدَ مَوْتِهِ.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ أَنَّهُ حَضَرَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَقَدْ تَصَدَّقَ رَجُلٌ مِنْ آلِ الزُّبَيْرِ عَلَى بَعْضِ وَلَدِهِ بِجَمِيعِ مَالِهِ إِلَّا شَيْئًا يَسِيرًا فَأَمْضَى لِلْمُتَصَدَّقِ عَلَيْهِ الثُّلُثَ، أَوْ نَحْوَهُ.

[10] **Qur'an references (L26119):** Qur'an 17:29 (Al-Isra).
[11] **Qur'an references (L26120):** Qur'an 6:141 (Al-An'am).
[12] **Qur'an references (L26121):** Qur'an 17:26 (Al-Isra); Qur'an 17:27 (Al-Isra).

portion, but only a third (or approximately that amount) of his wealth was approved for the recipient.

قَالَ أَبُو مُحَمَّدٍ: لَا نَحُدُّ الثُّلُثَ وَلَا أَكْثَرَ وَلَا أَقَلَّ إِنَّمَا هُوَ مَا أَبْقَى غِنًى.

L26128 Abu Muhammad said: We do not fix a limit at one-third, nor more nor less. It is only what maintains sufficiency.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ أَبِي الزِّنَادِ قَالَ: كُلُّ صَدَقَةٍ تَصَدَّقَ بِهَا رَجُلٌ أَوْ امْرَأَةٌ قَدْ بَلَغَ لَا بَأْسَ بِعَقْلِهِ وَلَيْسَ عَلَيْهِ دَيْنٌ لَا وَفَاءَ لَهُ بِهِ جَائِزَةٌ إِلَّا أَنْ يَكُونَ رَجُلٌ أَوْ امْرَأَةٌ لَهُ غِنًى فَيَتَصَدَّقُ عَلَى بَعْضِ وَرَثَتِهِ بِمَالِهِ كُلِّهِ دُونَ بَعْضٍ، فَإِنَّ ذَلِكَ يُعَدُّ سَرَفًا، فَتَرُدُّ الْوُلَاةُ مِنْ ذَلِكَ الشَّيْءَ بِقَدْرِ رَأْيِهِمْ فِيهِ، وَيُجِيزُونَ السَّدَادَ، عَلَى هَذَا جَرَى أَمْرُ الْقُضَاةِ.

L26129 From the narration of Ibn Wahb, from Yunus ibn Yazid, from Abu al-Zinad, who said: Every charity given by a man or woman who has reached puberty, is of sound mind, and is not indebted with a debt they cannot repay is permissible—except when a wealthy man or woman donates their entire wealth to some of their heirs to the exclusion of others, for this is deemed wasteful. In such cases, the authorities may reduce the amount according to their discretion, approving the settlement. The judges have consistently ruled according to this principle.

فَهَؤُلَاءِ عُمَرُ بْنُ الْخَطَّابِ، وَعُرْوَةُ، وَابْنُ شِهَابٍ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَأَبُو الزِّنَادِ، وَالْقُضَاةُ جُمْلَةً لَا يُجِيزُونَ الصَّدَقَةَ بِجَمِيعِ الْمَالِ.

L26130 These are ʿUmar ibn al-Khaṭṭāb, Urwah, Ibn Shihāb, ʿUmar ibn ʿAbd al-ʿAzīz, Abū al-Zinād, and the judges collectively, as they do not permit giving away the entirety of one's wealth as charity.

قَالَ عَلِيٌّ: وَالْغِنَى هُوَ مَا يَقُومُ بِقُوتِ الْمَرْءِ وَأَهْلِهِ عَلَى الشِّبَعِ مِنْ قُوتِ مِثْلِهِ، وَبِكِسْوَتِهِمْ كَذَلِكَ وَسُكْنَاهُمْ، وَبِمِثْلِ حَالٍ مِنْ مَرْكَبٍ وَزِيٍّ فَقَطْ.

L26131 Ali said: Wealth is that which suffices for a person's sustenance and his dependents' needs to satiety, derived from the sustenance typical of his peers, as well as their clothing and dwelling, and only for a similar condition concerning a mount and attire.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L26132 And with Allah, the Exalted, is all divine success.

فَهَذَا يَقَعُ عَلَيْهِ فِي اللُّغَةِ اسْمُ غِنًى، لِاسْتِغْنَائِهِ عَنْ النَّاسِ، فَمَا زَادَ فَهُوَ وَفْرٌ وَدَثْرٌ وَيَسَارٌ، وَفَضْلٌ إِلَى الْإِكْثَارِ، وَمَا نَقَصَ فَلَيْسَ غِنًى، وَلَكِنَّهُ حَاجَةٌ وَعُسْرَةٌ وَضِيقَةٌ، إِلَّا أَنْ يَنْزِلَ إِلَى الْمَسْكَنَةِ، وَالْفَاقَةِ، وَالْفَقْرِ، وَالْإِدْقَاعِ، وَالضَّرُورَةِ - وَنَعُوذُ بِاللَّهِ مِنْ ذَلِكَ، وَمِنْ فِتْنَةِ الْغِنَى وَالْمَالِ.

L26133 This is what is linguistically termed wealth (ghinā), due to independence from people. Whatever exceeds that constitutes abundance (wafr), affluence (dathr), prosperity (yasar), and excess leading to abundance. Whatever falls short is not wealth, but rather constitutes need (ḥājah), hardship (ʿusrah), and straitened circumstance (ḍīqah), unless it descends to destitution (maskanah), indigence (fāqah), poverty (faqr), extreme poverty (idqāʿ), and necessity (ḍarūrah) – and we seek refuge in Allah from these states, and from the trials of affluence and wealth.

فَإِنْ ذَكَرَ الْمُخَالِفُ قَوْلَ اللَّهِ تَعَالَى: {الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ} [البقرة: ٢٦١]

L26134 If the opponent mentions the statement of Allah, the Most High: "Those

who spend their wealth in the way of Allah" [al-Baqarah 2:261][13]

L26135 And His saying, the Exalted: "They prioritize others over themselves, even if they themselves are in need. And whoever is safeguarded [by Allah] from his soul's greed—it is they who are the successful" [Al-Hashr: 9].[14]

وقَوْله تَعَالَى: {وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ وَمَنْ يُوقَ شُحَّ نَفْسِهِ فَأُولَئِكَ هُمُ الْمُفْلِحُونَ} [الحشر: ٩] :

L26136 And His saying, Exalted is He: "And those who can find nothing except their utmost effort." [Surah At-Tawbah 9:79][15]

وقَوْله تَعَالَى {وَالَّذِينَ لا يَجِدُونَ إِلا جُهْدَهُمْ} [التوبة: ٧٩]

L26137 The Messenger of Allah—may Allah bless him and grant him peace—would urge people to give charity, so one of us would go out, carry a load, and bring back a *mudd*.

وَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي أُسَامَةَ عَنْ زَائِدَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ عَنْ ابْنِ مَسْعُودٍ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ بِالصَّدَقَةِ فَيَنْطَلِقُ أَحَدُنَا فَيُحَامِلُ فَيَجِيءُ بِالْمُدِّ.

L26138–26139 From the narration of Ahmad ibn Shu'ayb: Qutaybah ibn Sa'id narrated to us, al-Layth—that is, ibn Sa'd—narrated to us from Ibn 'Ajlan ibn Sa'id al-Maqburi from Abu Hurayrah, who said: The Messenger of Allah (peace be upon him) said: "A single dirham surpassed a hundred thousand dirhams. A man had two dirhams and gave the more excellent of the two in charity, while another man went to his merchandise, took a hundred thousand dirhams from it, and gave them away in charity."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ عَجْلَانَ بْنِ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «سَبَقَ دِرْهَمٌ مِائَةَ أَلْفٍ، كَانَ لِرَجُلٍ دِرْهَمَانِ فَتَصَدَّقَ أَجْوَدَهُمَا، وَانْطَلَقَ رَجُلٌ إِلَى عُرْضِ مَالِهِ فَأَخَذَ مِنْهَا مِائَةَ أَلْفٍ فَتَصَدَّقَ بِهَا» .

L26140 From the chain of Ahmad ibn Shuʿayb: From ʿAbd al-Wahhab ibn al-Hakam al-Raqqi, from Hajjaj. Ibn Jurayj said: ʿUthman ibn Abi Sulayman informed me, from ʿAli—who is Ibn ʿAbdullah al-Bariqi—from ʿUbayd ibn ʿUmayr, from ʿAbdullah ibn Habashi al-Sanʿani al-Khathʿami: "The Messenger of Allah—peace and blessings be upon him—was asked: 'Which charity is most virtuous?' He said: 'The effort of the one with little.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ الْوَهَّابِ بْنُ الْحَكَمِ الرَّقِّيِّ عَنْ حَجَّاجٍ قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي عُثْمَانُ بْنُ أَبِي سُلَيْمَانَ عَنْ عَلِيٍّ هُوَ ابْنُ عَبْدِ اللَّهِ الْبَارِقِيُّ - عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عَبْدِ اللَّهِ بْنِ حَبَشِيٍّ الصَّنْعَانِيِّ الْخَثْعَمِيِّ " «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ أَيُّ الصَّدَقَةِ أَفْضَلُ؟ قَالَ: جُهْدُ الْمُقِلِّ» .

L26141 From the chain of Shuʿbah, Ibn Abī Burdah (who is Saʿīd) narrated to me, saying: I heard my father report from Abū Mūsā from the Prophet - peace be upon him - who said: "Every Muslim must perform an act of charity."

وَمِنْ طَرِيقِ شُعْبَةَ أَخْبَرَنِي ابْنُ أَبِي بُرْدَةَ هُوَ سَعِيدٌ - قَالَ: سَمِعْتُ أَبِي يُحَدِّثُ عَنْ أَبِي مُوسَى عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «عَلَى كُلِّ مُسْلِمٍ صَدَقَةٌ قَالَ: أَرَأَيْتَ إِنْ لَمْ يَجِدْهَا؟ قَالَ: يَعْمَلُ بِيَدِهِ فَيَنْفَعُ نَفْسَهُ وَيَتَصَدَّقُ» وَذَكَرَ الْحَدِيثَ.

[13] **Qur'an references (L26134):** Qur'an 2:261 (Al-Baqarah); Qur'an 2:262 (Al-Baqarah).
[14] **Qur'an references (L26135):** Qur'an 59:9 (Al-Hashr).
[15] **Qur'an references (L26136):** Qur'an 9:79 (At-Tawbah).

He was asked: “What if he cannot find the means?” He replied: “Let him work with his hands, so he may benefit himself and then give charity.” And he mentioned the ḥadīth.

L26142 Through Muslim’s transmission: From Abu Kuraib, who narrated to us from Waki‘, from Fudayl ibn Ghazwan, from Abu Hazim, from Abu Hurairah: “A man from the Ansar had a guest stay overnight while possessing nothing but his own sustenance and his children’s provisions. He told his wife: ’Put the children to sleep, extinguish the lamp, and bring forth for the guest what you have.’ Thereupon this verse was revealed: {They give preference to others over themselves even when they themselves are in need} [Al-Hashr: 9].”[16]

وَمِنْ طَرِيقِ مُسْلِمٍ عَنْ أَبِي كُرَيْبٍ نا وَكِيعٌ عَنْ فُضَيْلِ بْنِ غَزْوَانَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَجُلًا مِنْ الْأَنْصَارِ بَاتَ بِهِ ضَيْفٌ فَلَمْ يَكُنْ عِنْدَهُ إِلَّا قُوتَهُ وَقُوتَ صِبْيَانِهِ، فَقَالَ لِامْرَأَتِهِ: نَوِّمِي الصِّبْيَةَ، وَأَطْفِئِي السِّرَاجَ، وَقَرِّبِي لِلضَّيْفِ مَا عِنْدَكِ - فَنَزَلَتْ هَذِهِ الْآيَةُ: {وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ} [الحشر: ٩] » .

L26143 From the chain of Ibn Wahb via Yunus ibn Yazid from Ibn Shihab, it has been conveyed to us that a man gave his parents a charity (which was all his wealth), then inherited their estate. The Messenger of Allah (peace and blessings be upon him) said to him: “All of it is lawful for you.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ بَلَغَنَا: «أَنَّ رَجُلًا تَصَدَّقَ عَلَى أَبَوَيْهِ صَدَقَةً - وَهُوَ مَالُهُ كُلُّهُ - ثُمَّ وَرِثَهُمَا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: هُوَ كُلُّهُ لَكَ حَلَالٌ» .

L26144–26145 From the chain of Ibn al-Jahm: Muhammad ibn Yunus al-Kudaymi narrated to us, al-‘Ala’ ibn ‘Amr al-Hanafi narrated to us, Abu Ishaq al-Fazari narrated to us from Sufyan al-Thawri from Adam ibn ‘Ali, from Ibn ‘Umar, who said: I was with the Prophet—peace and blessings of Allah be upon him—and Abu Bakr was with him, wearing a cloak fastened at his chest with clasps. Suddenly, Gabriel—peace be upon him—descended upon him and said: “O Messenger of Allah, why do I see Abu Bakr wearing a cloak fastened with clasps?” He replied: “O Gabriel, he spent his wealth on me before the Conquest.” Gabriel said: “O Muhammad, Allah the Exalted says to you: Convey peace to Abu Bakr al-Siddiq, and Allah says to him: ’Are you content with Me in this state of poverty, or are you displeased?’” The Prophet conveyed this to him? Abu Bakr wept, saying: “O Messenger of Allah, would I be displeased with my Lord? I am content with my Lord!” He repeated this phrase three times: “I am content with my Lord!”

وَمِنْ طَرِيقِ ابْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ يُونُسَ الْكُدَيْمِيُّ نا الْعَلَاءُ بْنُ عَمْرٍو الْحَنَفِيُّ نا أَبُو إِسْحَاقَ الْفَزَارِيّ عَنْ سُفْيَانَ الثَّوْرِيّ عَنْ آدَمَ بْنِ عَلِيٍّ «عَنْ ابْنِ عُمَرَ قَالَ كُنْتُ عِنْدَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعِنْدَهُ أَبُو بَكْرٍ وَعَلَيْهِ عَبَاءَةٌ قَدْ خَلَّهَا فِي صَدْرِهِ بِخِلَالٍ إِذْ هَبَطَ عَلَيْهِ جِبْرِيلُ - عَلَيْهِ السَّلَامُ - فَقَالَ: يَا رَسُولَ اللَّهِ مَالِي أَرَى أَبَا بَكْرٍ وَعَلَيْهِ عَبَاءَةٌ قَدْ خَلَّهَا بِخِلَالٍ؟ قَالَ: يَا جِبْرِيلُ أَنْفَقَ عَلَيَّ مَالَهُ قَبْلَ الْفَتْحِ؟ فَقَالَ: يَا مُحَمَّدُ إِنَّ اللَّهَ تَعَالَى يَقُولُ لَكَ: اقْرَأْ عَلَى أَبِي بَكْرٍ الصِّدِّيقِ السَّلَامَ، وَقَالَ لَهُ: أَرَاضٍ أَنْتَ عَنِّي يَا أَبَا بَكْرٍ فِي فَقْرِكَ هَذَا أَمْ سَاخِطٌ؟ فَقَالَ لَهُ النَّبِيُّ ذَلِكَ؟ فَبَكَى أَبُو بَكْرٍ، وَقَالَ: يَا رَسُولَ اللَّهِ أَأَسْخَطُ عَلَى رَبِّي، أَنَا عَنْ رَبِّي رَاضٍ وَكَرَّرَهَا ثَلَاثًا» .

L26146 And from the chain of Abu Dawud: Uthman ibn Abi Shaybah narrated to us,

[16] **Qur’an references (L26142):** Qur’an 59:9 (Al-Hashr).

al-Fadl ibn Dukayn narrated to us, Hisham ibn Sa'd narrated to us, from Zayd ibn Aslam from his father that Umar ibn al-Khattab said: "The Messenger of Allah (peace be upon him) commanded us to give alms. Abu Bakr brought all his wealth, so the Messenger of Allah (peace be upon him) said to him: 'What have you left for your family?' He replied: 'I have left for them Allah and His Messengers.'"

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا الْفَضْلُ بْنُ دُكَيْنٍ نا هِشَامُ بْنُ سَعْدٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ «أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالصَّدَقَةِ فَأَتَى أَبُو بَكْرٍ بِمَالِهِ كُلِّهِ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَا أَبْقَيْتَ لِأَهْلِكَ؟ فَقَالَ: أَبْقَيْتُ لَهُمْ اللَّهَ وَرُسُلَهُ» .

L26147 Through the transmission chain of Al-Bazzār: Muḥammad ibn ʿĪsā narrated to us, from Isḥāq ibn Muḥammad al-Farawī, from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar, from ʿUmar who said: "Allah's Messenger (peace be upon him) commanded us to give alms. I brought half my wealth, whereupon Allah's Messenger (peace be upon him) asked: 'What have you left for your family?' I answered: 'An equal amount.' He then said: '...' Then Abū Bakr came with all his possessions, and Allah's Messenger (peace be upon him) inquired: 'O Abū Bakr, what have you left for your family?' He responded: 'I have left them Allah and His Messenger.'"

وَمِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ عِيسَى نا إِسْحَاقُ بْنُ مُحَمَّدٍ الْفَرْوِيُّ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ «عَنْ عُمَرَ، قَالَ أَمَرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالصَّدَقَةِ، فَجِئْتُ بِنِصْفِ مَالِي، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَبْقَيْتَ لِأَهْلِكَ؟ فَقُلْتُ: مِثْلَهُ، قَالَ: وَجَاءَ أَبُو بَكْرٍ بِكُلِّ مَا عِنْدَهُ فَقَالَ: يَا أَبَا بَكْرٍ مَا أَبْقَيْتَ لِأَهْلِكَ؟ قَالَ: اللَّهَ وَرَسُولَهُ» .

L26148 This is all they can mention; we [feminine] have investigated it, but there is no argument for them in any of it.

هَذَا كُلُّ مَا يُمْكِنُ أَنْ يَذْكُرُوهُ قَدْ تَقَصَّيْنَاهُ وَلَكِنَّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ.

L26149 As for the statement of Allah, the Exalted: "Those who spend their possessions in the way of Allah" [Al-Baqarah: 261], He, the Exalted, did not say "all of their possessions."[17]

أَمَّا قَوْلُ اللَّهِ تَعَالَى: {الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ} [البقرة: ٢٦١] فَلَمْ يَقُلْ تَعَالَى أَمْوَالَهُمْ كُلَّهَا.

L26150 Whoever spends three times in the cause of Allah, or spends three instances in number likewise, has spent his wealth in the cause of Allah the Exalted. Just as whoever spends a dirham, or even less, in the cause of Allah the Mighty and Majestic has spent his wealth in the cause of Allah, since any portion of one's wealth - however small - is termed his wealth.

وَمَنْ أَنْفَقَ ثَلَاثَ مَرَّاتٍ فِي سَبِيلِ اللَّهِ، أَوْ أَنْفَقَ ثَلَاثَةً بِالْعَدَدِ كَذَلِكَ: فَقَدْ أَنْفَقَ أَمْوَالَهُ فِي سَبِيلِ اللَّهِ تَعَالَى، كَمَا أَنَّ مَنْ أَنْفَقَ دِرْهَمًا فِي سَبِيلِ اللَّهِ تَعَالَى أَوْ أَقَلَّ، فَقَدْ أَنْفَقَ مَالَهُ فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ؛ لِأَنَّ بَعْضَ مَالِهِ وَإِنْ قَلَّ يُسَمَّى مَالَهُ.

L26151–26153 Then, the clarification of what is permissible to spend and what is not permissible in the verses and hadiths we have presented. And it is not permissible [to do so]. That it is said: "This verse abrogates that one, permits the fullest extent of open-handedness, permits squandering, and permits extravagance"—whoever makes such a claim is lying against Allah, the Exalted.

ثُمَّ بَيَانُ مَا يَجُوزُ إِنْفَاقُهُ وَمَا لَا يَجُوزُ فِي الْآيَاتِ وَالْأَحَادِيثِ الَّتِي قَدَّمْنَا، وَلَا يَجُوزُ أَنْ يُقَالَ: إِنَّ هَذِهِ الْآيَةَ نَاسِخَةٌ لِتِلْكَ وَمُبِيحَةٌ لِبَسْطِ يَدِهِ كُلَّ الْبَسْطِ، وَلِلتَّبْذِيرِ وَالسَّرَفِ، فَيَكُونُ مَنْ قَالَ ذَلِكَ كَاذِبًا عَلَى اللَّهِ تَعَالَى.

[17] **Qur'an references (L26149):** Qur'an 2:261 (Al-Baqarah); Qur'an 2:262 (Al-Baqarah).

L26154 As for the statement of Allah the Exalted: {And [also] those who can give nothing except their utmost effort} [At-Tawbah: 79], alongside the Prophet's declaration (peace and blessings be upon him) when asked about "the best charity is the utmost effort of the destitute," these two texts are elucidated by the narration we transmitted through Abū Dāwūd's chain: Qutaybah narrated to us, Al-Layth ibn Saʿd narrated to us, from Abū al-Zubayr, from Yaḥyā ibn Jaʿdah, from Abū Hurayrah, who said: "O Messenger of Allah, which charity is best?" He replied: "The utmost effort of the destitute; and begin with those you are responsible to provide for."[18][19]

وَأَمَّا قَوْله تَعَالَى: {وَالَّذِينَ لا يَجِدُونَ إِلا جُهْدَهُمْ} [التوبة: ٧٩] مَعَ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِذْ سُئِلَ عَنْ «أَفْضَلِ الصَّدَقَةِ جُهْدُ الْمُقِلِّ» فَإِنَّ هَذَيْنِ النَّصَّيْنِ بَيَّنَهُمَا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا قُتَيْبَةُ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ يَحْيَى بْنِ جَعْدَةَ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ قَالَ «يَا رَسُولَ اللَّهِ، أَيُّ الصَّدَقَةِ أَفْضَلُ؟ قَالَ: جُهْدُ الْمُقِلِّ، وَأَبْدَأْ بِمَنْ تَعُولُ» .

L26155 Thus, it is established that this verse and the narration of ʿAbd Allāh ibn Ḥabashī pertain solely to one's utmost capacity, even if one's wealth is meager, not plentiful, provided they ensure adequate provision for their dependents as a necessity.

فَصَحَّ أَنَّ هَذِهِ الْآيَةَ، وَخَبَرَ عَبْدِ اللَّهِ بْنِ حَبَشِيٍّ إِنَّمَا هُمَا فِي جُهْدِهِ، وَإِنْ كَانَ مُقِلًّا مِنْ الْمَالِ غَيْرَ مُكْثِرٍ إذَا أَبْقَى لِمَنْ يَعُولُ غِنًى وَلَا بُدَّ.

L26156 As for Allah's statement, the Exalted: {They prefer others over themselves even if they are in destitution} [Al-Hashr: 9], this is true, and there is no valid argument for them in it. For whoever is in destitution yet prefers others over himself, this is only possible through exertion, and this is what we say. It does not indicate that it is permissible to squander oneself and one's family or to give charity to someone wealthier than him.[20]

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَيُؤْثِرُونَ عَلَى أَنْفُسِهِمْ وَلَوْ كَانَ بِهِمْ خَصَاصَةٌ} [الحشر: ٩] فَحَقٌّ، وَلَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ مَنْ بِهِ خَصَاصَةٌ وَآثَرَ عَلَى نَفْسِهِ فَلَا يَكُونُ ذَلِكَ إلَّا فِي مَجْهُودٍ، وَهَكَذَا نَقُولُ، وَلَيْسَ فِيهَا أَنَّهُ مُبَاحٌ لَهُ تَضْيِيعُ نَفْسِهِ، وَأَهْلِهِ، وَالصَّدَقَةُ عَلَى مَنْ هُوَ أَغْنَى مِنْهُ.

L26157 As for the ḥadīth of Ibn Masʿūd: "One of them would carry loads on his back, obtain a *mudd*, and give it in charity," this is Ḥasan. It refers to one who has sufficient means for himself and his family, with no surplus. He carries loads on his back, acquires a *mudd* he does not need, and gives it in charity.

وَأَمَّا «حَدِيثُ ابْنِ مَسْعُودٍ: أَنَّ أَحَدَهُمْ كَانَ يُحَامِلُ فَيَأْتِي بِالْمُدِّ فَيَتَصَدَّقُ بِهِ» فَهَذَا حَسَنٌ، وَهُوَ أَنْ يَكُونَ لَهُ غِنًى وَلِأَهْلِهِ، وَلَا فَضْلَ عِنْدَهُ فَيَحْمِلُ عَلَى ظَهْرِهِ فَيُصِيبُ مُدًّا هُوَ عَنْهُ فِي غِنًى فَيَتَصَدَّقُ بِهِ.

L26158 All of this is built upon "Begin with those you are responsible for," "The best charity is that which is given from one's surplus," and his returning—peace and blessings be upon him—of what exceeds the surplus.

وَهَذَا كُلُّهُ مَبْنِيٌّ عَلَى «ابْدَأْ بِمَنْ تَعُولُ» - «وَأَفْضَلُ الصَّدَقَةِ مَا كَانَ عَنْ ظَهْرِ غِنًى» «، وَرَدُّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا زَادَ عَلَى ذَلِكَ» .

[18] **Hadith references (L26154):** Sunan Abi Dawud 1677; Mishkat al-Masabih 1938.
[19] **Qur'an references (L26154):** Qur'an 9:79 (At-Tawbah).
[20] **Qur'an references (L26156):** Qur'an 59:9 (Al-Hashr).

L26159 As for the ḥadīth of Abū Hurayrah, "A dirham surpassed a hundred thousand," this is clarified. It is based on him being self-sufficient while having only two dirhams remaining, so he donated the better of the two in charity. The proportion of that single dirham relative to his total wealth exceeded only the proportion of the hundred thousand relative to the other person's wealth. It does not indicate that he lacked self-sufficiency beyond those two dirhams.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ «سَبَقَ دِرْهَمٌ مِائَةَ أَلْفٍ» تَصْحِيحٌ وَهُوَ مَبْنِيٌّ عَلَى أَنَّهُ كَانَ لَهُ غِنًى، وَفَضَلَ لَهُ دِرْهَمَانِ فَقَطْ فَتَصَدَّقَ بِأَجْوَدِهِمَا، وَكَانَتْ نِسْبَةُ الدِّرْهَمِ مِنْ مَالِهِ أَكْثَرَ مِنْ نِسْبَةِ الْمِائَةِ الْأَلْفِ مِنْ مَالِ الْآخَرِ فَقَطْ، وَلَيْسَ فِيهِ أَنَّهُ لَمْ يَكُنْ لَهُ غِنًى سِوَاهُمَا.

L26160–26161 As for the ḥadīth of Abū Mūsā, "He works with his hands, benefits himself, and gives charity," it is clear as we say, because the Prophet (peace be upon him) did not isolate charity to the exclusion of his own benefit. Rather, he began with his own benefit for himself, and this is what we say.

وَأَمَّا حَدِيثُ أَبِي مُوسَى يَعْتَمِلُ بِيَدِهِ فَيَنْفَعُ نَفْسَهُ وَيَتَصَدَّقُ فَبَيِّنٌ كَقَوْلِنَا؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يُفْرِدْ الصَّدَقَةَ دُونَ مَنْفَعَةِ نَفْسِهِ، بَلْ بَدَأَ بِنَفْسِهِ لِنَفْسِهِ، وَهَكَذَا نَقُولُ.

L26162 As for the Ḥadīth of the Anṣārī man who hosted the guest overnight, we have transmitted it with a clear clarification, just as we transmitted it via the chain reported in Muslim's collection: Abū Kurayb narrated to us, Ibn Fuḍayl narrated to us from his father - who is Fuḍayl ibn Ghazwān - from Abū Ḥāzim al-Ashjaʿī from Abū Hurayrah, who said: "A man came to the Messenger of Allāh - peace be upon him - seeking hospitality, but he had nothing to offer his guest. He said: 'Is there no man who will host this guest, may Allāh have mercy on him?' Thereupon a man from the Anṣār named Abū Ṭalḥah stood up and took him to his home." He then related the Ḥadīth as narrated by Jarīr and Wakīʿ from Fuḍayl ibn Ghazwān. Thus, it was confirmed that the man was Abū Ṭalḥah, who was among the affluent notables of the Anṣār.

وَأَمَّا حَدِيثُ الْأَنْصَارِيِّ الَّذِي بَاتَ بِهِ الضَّيْفُ فَقَدْ رُوِّينَاهُ بِبَيَانٍ لَائِحٍ، كَمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو كُرَيْبٍ نا ابْنُ فُضَيْلٍ عَنْ أَبِيهِ - هُوَ فُضَيْلُ بْنُ غَزْوَانَ - عَنْ أَبِي حَازِمٍ الْأَشْجَعِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُضِيفَهُ فَلَمْ يَكُنْ عِنْدَهُ مَا لِضَيْفِهِ فَقَالَ: أَلَا رَجُلٌ يُضِيفُ هَذَا رَحِمَهُ اللَّهُ؟ فَقَامَ رَجُلٌ مِنْ الْأَنْصَارِ يُقَالُ لَهُ: أَبُو طَلْحَةَ، فَانْطَلَقَ بِهِ إلَى رَحْلِهِ» ، ثُمَّ سَاقَ الْحَدِيثَ، كَمَا رَوَاهُ جَرِيرٌ، وَوَكِيعٌ عَنْ فُضَيْلِ بْنِ غَزْوَانَ - فَصَحَّ أَنَّ ذَلِكَ الرَّجُلَ كَانَ أَبَا طَلْحَةَ وَهُوَ مُوسِرٌ مِنْ مَيَاسِيرِ الْأَنْصَارِ.

L26163 It has been reported to us from Anas that he said: Abu Talhah was the wealthiest of the Ansar in Medina in terms of palm trees. Yet at times, even the wealthy might lack prepared food—thus their reliance on this report became invalid.

وَرُوِّينَا عَنْ أَنَسٍ أَنَّهُ قَالَ: كَانَ أَبُو طَلْحَةَ أَكْثَرَ الْأَنْصَارِ بِالْمَدِينَةِ مَالًا مِنْ نَخْلٍ، وَقَدْ لَا يَحْضُرُ الْمُوسِرَ أَكْلٌ حَاضِرٌ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

L26164 As for the narration of Ibn Shihab, its chain is interrupted. We have transmitted it with a more clearly documented chain than this, as we transmitted it through the chain of Muhammad ibn al-Jahm: Abu al-Walid al-Antaki narrated to us, al-Haytham ibn Jamil narrated to us, Sufyan narrated from 'Amr ibn Dinar and Humayd al-A'raj, both of whom narrated from Abu Bakr ibn

وَأَمَّا حَدِيثُ ابْنِ شِهَابٍ فَمُنْقَطِعٌ، وَقَدْ رُوِّينَاهُ بِأَحْسَنَ مِنْ هَذَا السَّنَدِ بَيَانًا، كَمَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْجَهْمِ نا أَبُو الْوَلِيدِ الْأَنْطَاكِيُّ نا الْهَيْثَمُ بْنُ جَمِيلٍ نا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ وَحُمَيْدٍ الْأَعْرَجِ كِلَاهُمَا عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَبْدِ اللَّهِ

بْنِ زَيْدٍ الْأَنْصَارِيِّ قَالَ «جَاءَ رَجُلٌ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّ حَائِطِي صَدَقَةٌ إِلَى اللَّهِ عَزَّ وَجَلَّ وَرَسُولِهِ، فَأَتَى أَبُوهُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَا كَانَ لَنَا عَيْشٌ غَيْرُهَا، فَرَدَّهَا عَلَيْهِ - يَعْنِي عَلَى الْأَبِ - فَمَاتَ فَوَرِثَهَا - يَعْنِي الِابْنُ عَنْ أَبِيهِ -» فَهَذَا أَحْسَنُ مِنْ ذَلِكَ السَّنَدِ - وَفِيهِ رَدُّهُ - عَلَيْهِ السَّلَامُ - لِتِلْكَ الصَّدَقَةِ الَّتِي كَانَ لَا عَيْشَ لِأَبِيهِ إِلَّا مِنْهَا، فَرَدَّهَا عَلَيْهِ، وَلَيْسَ فِيهِ أَنَّ الِابْنَ لَمْ يَكُنْ لَهُ غِنًى غَيْرُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Muhammad ibn ’Amr ibn Hazm, from ’Abdullah ibn Zayd al-Ansari, who said: “A man came to the Prophet (peace be upon him) and said: ’O Messenger of Allah, my walled garden is a charity dedicated to Allah, the Almighty and His Messenger.’ Then his father came to the Prophet (peace be upon him) and said: ’We have no livelihood other than it.’ So he returned it to him—meaning to the father. When he died, the son inherited it from his father.” This chain is superior to the previous one, and it includes his (peace be upon him) returning of that charity from which the father had no livelihood except through it, thus restoring it to him. It does not mention that the son lacked other means of sufficiency besides it. Success comes solely from Allah, the Exalted.

وَأَمَّا حَدِيثُ أَبِي بَكْرٍ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - فَغَيْرُ صَحِيحٍ أَصْلًا؛ لِأَنَّ إِحْدَى طَرِيقَيْهِ مِنْ رِوَايَةِ هِشَامِ بْنِ سَعْدٍ - وَهُوَ ضَعِيفٌ - وَالثَّانِيَةُ مِنْ رِوَايَةِ إِسْحَاقَ الْفَرْوِيِّ - وَهُوَ ضَعِيفٌ - عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ الْعُمَرِيِّ الصَّغِيرِ - وَهُوَ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَهُمْ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ الْأَصْلَ إبَاحَةُ الصَّدَقَةِ مَا لَمْ يَأْتِ نَهْيٌ عَنْ تَحْرِيمِهَا فَكَانَ يَكُونُ مُوَافِقًا لِمَعْهُودِ الْأَصْلِ، وَكَانَ النَّصُّ الَّذِي قَدَّمْنَا مِنْ الْقُرْآنِ وَالسُّنَّةِ وَارِدًا بِالْمَنْعِ مِنْ بَعْضِ الصَّدَقَةِ، فَهُوَ بِيَقِينٍ لَا شَكَّ فِيهِ نَاسِخٌ لِمَا يَقْدُمُهُ، وَمَنْ ادَّعَى فِيمَا تَيَقَّنَ أَنَّهُ نَاسِخٌ أَنَّهُ قَدْ نُسِخَ، فَقَدْ كَذَبَ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ وَرَامَ إبْطَالَ الْيَقِينِ بِالظَّنِّ الْإِفْكِ.

L26165 As for the ḥadīth of Abū Bakr—may Allah the Exalted be pleased with him—it is not authentic at all, because one of its two chains is transmitted through Hishām ibn Sa‘d—and he is weak—and the second is transmitted through Isḥāq al-Farwī—and he is weak—from ‘Abdullāh ibn ‘Umar al-‘Umarī al-Ṣaghīr—and he is weak. Moreover, even if it were deemed authentic according to them, it would not constitute proof for them, because the foundational principle is the permissibility of charity unless there arises a prohibition against its prohibition. Thus, it would align with the established principle. The textual evidence we presented earlier from the Quran and the Sunnah, which prohibits certain forms of charity, abrogates what precedes it with absolute certainty, beyond any doubt. Whoever claims that what is confirmed as abrogating has itself been abrogated has lied, pursued matters of which he has no knowledge, and sought to invalidate certainty through false conjecture.

وَأَمَّا الْحَدِيثُ الْآخَرُ الَّذِي فِيهِ «أَنْفَقَ عَلَيَّ مَالَهُ قَبْلَ الْفَتْحِ» فَلَا يَحِلُّ الِاحْتِجَاجُ بِهِ؛ لِأَنَّهُ مِنْ طَرِيقِ الْعَلَاءِ بْنِ عَمْرٍو الْحَنَفِيِّ - وَهُوَ هَالِكٌ مُطْرَحٌ - ثُمَّ التَّوْلِيدُ فِيهِ لَائِحٌ؛ لِأَنَّ فِيهِ نَصًّا: أَنَّ ذَلِكَ كَانَ بَعْدَ الْفَتْحِ، وَكَانَ فَتْحُ خَيْبَرَ قَبْلَ الْفَتْحِ بِعَامَيْنِ، وَكَانَ لِأَبِي بَكْرٍ فِيهَا مِنْ سَهْمِهِ مَالٌ وَاسِعٌ مَشْهُورٌ.

L26166–26167 As for the other hadith containing the statement “He spent his wealth on me before the conquest,” it is impermissible to use it as evidence because its chain includes al-‘Alā’ ibn ‘Amr al-Ḥanafī—an abandoned and discarded transmitter. Moreover, the interpolation within it is apparent, as it explicitly states this occurred after the conquest, while the conquest of Khaybar preceded the Conquest of Mecca by two years. Furthermore, Abū Bakr possessed vast and well-known wealth from his share in Khaybar.

L26168 Whoever adopts these hadiths has contradicted those, and this is not per-

missible. And whoever adopts those has adopted these. It is imperative to reconcile what is authentic from those reports, combining some with others. It is impermissible to leave aside some for others except due to an addition, abrogation, or specification by another text.

وَمَنْ أَخَذَ بِهَذِهِ الْأَحَادِيثِ كَانَ قَدْ خَالَفَ تِلْكَ، وَهَذَا لَا يَحِلُّ، وَكَانَ مَنْ أَخَذَ بِتِلْكَ قَدْ أَخَذَ بِهَذِهِ، وَلَا بُدَّ مِنْ تَأْلِيفِ مَا صَحَّ مِنْ تِلْكَ الْأَخْبَارِ، وَضَمِّ بَعْضِهَا إِلَى بَعْضٍ، وَلَا يَحِلُّ تَرْكُ بَعْضِهَا لِبَعْضٍ إِلَّا بِزِيَادَةٍ أَوْ نَسْخٍ أَوْ تَخْصِيصِ بِنَصٍّ آخَرَ.

L26169 And among the astonishing things is their argument using the hadith we mentioned from Ibn Umar: "I resolved to give all my wealth in charity." How astonishing it is to use the dreams of a sleeper as proof in matters of religion! This is truly astonishing, and indeed Umar, his father—may Allah be pleased with him—heard that dream yet paid no heed to it.

وَمِنْ الْعَجَبِ احْتِجَاجُهُمْ بِالْحَدِيثِ الَّذِي ذَكَرْنَا عَنْ ابْنِ عُمَرَ: رَأَيْت أَنْ أَتَصَدَّقَ بِمَالِي كُلِّهِ، فَمِنْ الْعَجَبِ الِاحْتِجَاجُ فِي الدِّينِ بِأَحْلَامِ نَائِمٍ، هَذَا عَجَبٌ جِدًّا وَقَدْ سَمِعَ عُمَرُ أَبُوهُ - رَضِيَ اللَّهُ عَنْهُ - تِلْكَ الرُّؤْيَا فَلَمْ يَعْبَأْ بِهَا.

L26170 Thus, all that they contested is nullified, and all that we have presented remains valid in its rightful measure. And success is from Allah, the Exalted.

فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ وَبَقِيَ كُلُّ مَا أَوْرَدْنَا بِحَسْبِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26171 Among the wonders of the world which have no equal: the prohibition by Malikis and Shafi'is preventing a person deceived in transactions from donating a single dirham for Allah's sake, or emancipating his slave for Allah's sake—though he possesses a million dinars and a hundred slaves, while Allah the Exalted has urged him to perform good deeds. Yet they permit him—if he testifies before the judge that he is not defrauded in sales, and the judge grants him unrestricted authority over his wealth (do you realize what the judge is capable of?)—to give all his wealth to a prodigal poet or his boon companion for purposes contrary to Allah's will. Consequently, he, his children, and his household remain begging at doors, perishing from hunger and cold. By Allah, this has never been part of Allah the Exalted's judgment—it is nothing but Satan's ruling. We seek refuge in Allah from such disgrace.

وَمِنْ عَجَائِبِ الدُّنْيَا الَّتِي لَا نَظِيرَ لَهَا: مَنْعُ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، مَنْ يُخْدَعُ فِي الْبُيُوعِ مِنْ أَنْ يَتَصَدَّقَ بِدِرْهَمٍ لِلَّهِ تَعَالَى، أَوْ بِعِتْقِ عَبْدِهِ لِلَّهِ تَعَالَى، وَهُوَ صَاحِبُ أَلْفِ أَلْفِ دِينَارٍ وَمِائَةِ عَبْدٍ - وَقَدْ حَضَّهُ اللَّهُ تَعَالَى عَلَى فِعْلِ الْخَيْرِ - ثُمَّ يُجِيزُونَ لَهُ إذَا شَهِدَ عِنْدَ الْقَاضِي أَنْ لَا يُغْبَنَ فِي الْبَيْعِ فَأَطْلَقَهُ الْقَاضِي عَلَى مَالِهِ، وَمَا أَدْرَاك مَا الْقَاضِي أَنْ يُعْطِيَ جَمِيعَ مَالِهِ لِشَاعِرٍ سَفِيهٍ، أَوْ لِنَدِيمِهِ فِي غَيْرِ وَجْهِ اللَّهِ عَزَّ وَجَلَّ، وَيَبْقَى هُوَ وَأَطْفَالُهُ وَعِيَالُهُ يَسْأَلُونَ عَلَى الْأَبْوَابِ وَيَمُوتُونَ جُوعًا وَبَرْدًا، وَاَللَّهِ مَا كَانَ قَطُّ هَذَا مِنْ حُكْمِ اللَّهِ تَعَالَى، مَا هُوَ إلَّا مِنْ حُكْمِ الشَّيْطَانِ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

The juristic issue of giving a gift or charity to one of the children.

[مَسْأَلَةُ الْهِبَةِ أَوْ الصَّدَقَةِ لِأَحَدِ الْأَوْلَادِ]

L26173 1634. Issue: It is not permissible for anyone to give a gift or charity to one of his children unless he gives or gives as charity an equivalent amount to each of them.

١٦٣٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَهَبَ، وَلَا أَنْ يَتَصَدَّقَ عَلَى أَحَدٍ مِنْ وَلَدِهِ إلَّا حَتَّى يُعْطِيَ أَوْ يَتَصَدَّقَ عَلَى كُلِّ وَاحِدٍ مِنْهُمْ بِمِثْلِ ذَلِكَ.

L26174 It is impermissible to favor a male over a female or a female over a male. If

one does so, the act is perpetually annulled and invalidated without exception. This ruling applies only to voluntary acts; as for obligatory expenses, it does not apply. The same applies to obligatory clothing.

وَلَا يَحِلُّ أَنْ يُفَضِّلَ ذَكَرًا عَلَى أُنْثَى، وَلَا أُنْثَى عَلَى ذَكَرٍ، فَإِنْ فَعَلَ فَهُوَ مَفْسُوخٌ مَرْدُودٌ أَبَدًا وَلَا بُدَّ، وَإِنَّمَا هَذَا فِي التَّطَوُّعِ - وَأَمَّا فِي النَّفَقَاتِ الْوَاجِبَاتِ فَلَا، وَكَذَلِكَ الْكِسْوَةُ الْوَاجِبَةُ.

L26175–26177 However, he provides for each individual among them according to his need, and for the poor among them to the exclusion of the wealthy. He is not obligated in what we mentioned concerning grandchildren, nor in their mothers, nor in their wives, nor in... The father is not restricted to distributing his wealth solely among their slaves or to those other than his children; rather, he may favor with his wealth whomever he wishes. If he has children and gives to them, then a child is born to him afterward, he must give to the new child as he gave to the others, or include the new child in the gifts given to them. If the specific gifted item changes—provided that none of them has died—such that his wealth becomes owned by another, then the father must give to this child as he gave to the others. If he does not do so, the child is to be given from the father's estate an equivalent amount to what was given to the others, drawn from the principal of his wealth.

لَكِنْ يُنْفِقُ عَلَى كُلِّ امْرِئٍ مِنْهُمْ بِحَسْبِ حَاجَتِهِ، وَيُنْفِقُ عَلَى الْفَقِيرِ مِنْهُمْ دُونَ الْغَنِيِّ، وَلَا يَلْزَمُهُ مَا ذَكَرْنَا فِي وَلَدِ الْوَلَدِ، وَلَا فِي أُمَّهَاتِهِمْ، وَلَا فِي نِسَائِهِمْ، وَلَا فِي رَقِيقِهِمْ، وَلَا فِي غَيْرِ وَلَدٍ، بَلْ لَهُ أَنْ يُفَضِّلَ بِمَالِهِ كُلَّ مَنْ أَحَبَّ، فَإِنْ كَانَ لَهُ وَلَدٌ فَأَعْطَاهُمْ، ثُمَّ وُلِدَ لَهُ وَلَدٌ فَعَلَيْهِ أَنْ يُعْطِيَهُ كَمَا أَعْطَاهُمْ، أَوْ يُشْرِكَهُمْ فِيمَا أَعْطَاهُمْ، وَإِنْ تَغَيَّرَتْ عَيْنُ الْعَطِيَّةِ - مَا لَمْ يَمُتْ أَحَدُهُمْ - فَيَصِيرُ مَالُهُ لِغَيْرِهِ، فَعَلَى الْأَبِ حِينَئِذٍ أَنْ يُعْطِيَ هَذَا الْوَلَدَ، كَمَا أَعْطَى غَيْرَهُ، فَإِنْ لَمْ يَفْعَلْ أُعْطِيَ مِمَّا تَرَكَ أَبُوهُ مِنْ رَأْسِ مَالِهِ مِثْلَ ذَلِكَ.

L26178 This was narrated from the majority of the Salaf: as transmitted to us through Abd al-Razzaq's chain from Ma'mar, from Ayyub al-Sakhtiyānī, from Ibn Sirīn—Sa'd ibn Ubadah distributed his wealth among his sons during his lifetime. A child was subsequently born to him after his death. Umar met Abu Bakr and said: "I could not sleep tonight because of this son of Sa'd—the newborn was left nothing." Abu Bakr responded: "By Allah, neither did I. Come with me to Qays ibn Sa'd that we may speak to him about his brother." When they approached him and conveyed their concern, Qays declared: "As for what Sa'd executed during his lifetime, I shall never revoke it. However, I call you both to witness that my share is his."

وَرُوِيَ ذَلِكَ عَنْ جُمْهُورِ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنِ ابْنِ سِيرِينَ أَنَّ سَعْدَ بْنَ عُبَادَةَ قَسَمَ مَالَهُ بَيْنَ بَنِيهِ فِي حَيَاتِهِ فَوُلِدَ لَهُ بَعْدَ مَا مَاتَ فَلَقِيَ عُمَرُ أَبَا بَكْرٍ فَقَالَ لَهُ: مَا نِمْتُ اللَّيْلَةَ مِنْ أَجْلِ ابْنِ سَعْدٍ هَذَا الْمَوْلُودُ لَمْ يُتْرَكْ لَهُ شَيْءٌ؟ فَقَالَ أَبُو بَكْرٍ: وَأَنَا وَاللَّهِ، فَانْطَلِقْ بِنَا إِلَى قَيْسِ بْنِ سَعْدٍ نُكَلِّمْهُ فِي أَخِيهِ، فَأَتَيْنَاهُ فَكَلَّمْنَاهُ فَقَالَ قَيْسٌ: أَمَّا شَيْءٌ أَمْضَاهُ سَعْدٌ فَلَا أَرُدُّهُ أَبَدًا، وَلَكِنْ أُشْهِدُكُمَا أَنَّ نَصِيبِي لَهُ.

L26179 Abu Muhammad said: Qays has overstepped his right, and Abu Bakr's ratification of that division is proof of the validity of its fairness.

قَالَ أَبُو مُحَمَّدٍ: قَدْ زَادَ قَيْسٌ عَلَى حَقِّهِ، وَإِقْرَارُ أَبِي بَكْرٍ لِتِلْكَ الْقِسْمَةِ دَلِيلٌ عَلَى صِحَّةِ اعْتِدَالِهَا.

L26180 From the path of Abd al-Razzaq, from Ibn Jurayj: Ibn Abi Mulaykah informed me that al-Qasim ibn Muhammad informed him that Abu Bakr al-Siddiq said to Aisha, the Mother of the Believers: “O my dear daughter, I have gifted you palm trees from Khaybar, but I fear I favored you over my children, and you did not take possession of them for yourself. So return them to my children.” She replied: “O my father, if Khaybar, with its annual yield, were gold, I would return it [Khaybar].”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ أَنَّ الْقَاسِمَ بْنَ مُحَمَّدٍ أَخْبَرَهُ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَالَ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ: يَا بُنَيَّةُ، إِنِّي نَحَلْتُكِ نَخْلًا مِنْ خَيْبَرَ، وَإِنِّي أَخَافُ أَنْ أَكُونَ آثَرْتُكِ عَلَى وَلَدِي، وَإِنَّكِ لَمْ تَكُونِي احْتَزْتِيهِ، فَرُدِّيهِ عَلَى وَلَدِي؟ فَقَالَتْ: يَا أَبَتَاهُ، لَوْ كَانَتْ لِي خَيْبَرُ بِجِدَادِهَا ذَهَبًا لَرَدَدْتُهَا.

L26181 From the chain of Muḥammad ibn Aḥmad ibn al-Jahm, we narrate from Ibrāhīm al-Ḥarbī, from Mu’ammal ibn Hishām, from Ismāʿīl ibn Ibrāhīm—who is Ibn ʿUlayyah—from Bahz ibn Ḥakīm, from his father Ḥakīm ibn Muʿāwiyah, from his father Muʿāwiyah ibn Ḥaydaht: That his father Ḥaydaht had sons from different mothers—minor children among his offspring—and he possessed abundant wealth which he allocated solely to sons from one mother. His son Muʿāwiyah then traveled until he met ʿUthmān ibn ʿAffān and informed him of this. ʿUthmān presented the elderly man with a choice: either to take back his wealth or to distribute it among all the sons. He took back his wealth. When he died, the elder sons left it for their brothers.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ الْجَهْمِ نا إِبْرَاهِيمُ الْحَرْبِيُّ نا مُؤَمَّلُ بْنُ هِشَامٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ هُوَ ابْنُ عُلَيَّةَ - عَنْ بَهْزِ بْنِ حَكِيمٍ عَنْ أَبِيهِ حَكِيمِ بْنِ مُعَاوِيَةَ عَنْ أَبِيهِ مُعَاوِيَةَ بْنِ حَيْدَةَ أَنَّ أَبَاهُ حَيْدَةَ كَانَ لَهُ بَنُونَ لِعَلَّاتٍ أَصَاغِرُ وَلَدِهِ، وَكَانَ لَهُ مَالٌ كَثِيرٌ فَجَعَلَهُ لِبَنِي عَلَّةٍ وَاحِدَةٍ، فَخَرَجَ ابْنُهُ مُعَاوِيَةُ حَتَّى قَدِمَ عَلَى عُثْمَانَ بْنِ عَفَّانَ فَأَخْبَرَهُ بِذَلِكَ، فَخَيَّرَ عُثْمَانُ الشَّيْخَ بَيْنَ أَنْ يَرُدَّ إِلَيْهِ مَالَهُ وَبَيْنَ أَنْ يُوَزِّعَهُ بَيْنَهُمْ؟ فَارْتَدَّ مَالُهُ، فَلَمَّا مَاتَ تَرَكَهُ الْأَكَابِرُ لِإِخْوَتِهِمْ.

L26182–26184 And through him to Ibrāhīm al-Ḥarbī: Mūsā ibn Ismāʿīl narrated to us, Ḥammād—he is Ibn Salamah—narrated to us, from... Humaid narrated from Al-Hasan ibn Muslim from Mujahid, who said: “Whoever grants a nuḥla to one of his children to the exclusion of his other children and then dies, that gift becomes part of the inheritance.”

وَبِهِ إِلَى إِبْرَاهِيمَ الْحَرْبِيِّ نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادٌ هُوَ ابْنُ سَلَمَةَ - عَنْ حُمَيْدٍ عَنِ الْحَسَنِ بْنِ مُسْلِمٍ عَنْ مُجَاهِدٍ قَالَ: مَنْ نَحَلَ وَلَدًا لَهُ نُحْلًا دُونَ بَنِيهِ فَمَاتَ فَهُوَ مِيرَاثٌ.

L26185 The unjust portion from the living testator’s injustice is rejected, just as the unjust portion from the deceased’s will is rejected.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: يُرَدُّ مِنْ حَيْفِ النَّاحِلِ الْحَيِّ مَا يُرَدُّ مِنْ حَيْفِ الْمَيِّتِ مِنْ وَصِيَّتِهِ.

L26186 From the chain of ʿAbd al-Razzāq: Ibn Jurayj narrated to us from Ibn Ṭāwūs, who narrated from his father, who said regarding children: “No one is to be favored over another by even a hair. Preferential gifts are invalid; this is a satanic practice. Be equitable between them when they reach adulthood and explain this justice to them.” Ibn Jurayj said: I asked him, “What if some of their preferential gifts are destroyed, then their father dies?” He replied,

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا ابْنُ طَاوُسٍ عَنْ أَبِيهِ قَالَ فِي الْوَلَدِ: لَا يُفَضَّلُ أَحَدٌ عَلَى أَحَدٍ بِشَعْرَةٍ، النُّحْلُ بَاطِلٌ، هُوَ مِنْ عَمَلِ الشَّيْطَانِ، اعْدِلْ بَيْنَهُمْ كِبَارًا وَأَبْنَهُمْ

"The recipient of the gift is entitled to its equivalent from their father's estate itself."

بِهِ، قَالَ ابْنُ جُرَيْجٍ: قُلْت لَهُ: هَلَكَ بَعْضُ نُحْلِهِمْ ثُمَّ مَاتَ أَبُوهُمْ؟ قَالَ: لِلَّذِي نَحَلَهُ مِثْلُهُ مِنْ مَالِ أَبِيهِ.

L26187 From the chain of Abd al-Razzaq via Zuhayr ibn Nafi', who said: I asked Ata ibn Abi Rabah, then said, "I intended to favor some of my children by giving them a gift." He replied, "No," refusing vehemently, and said, "Treat them equally."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ زُهَيْرِ بْنِ نَافِعٍ قَالَ: سَأَلْتُ عَطَاءَ بْنَ أَبِي رَبَاحٍ فَقُلْت: أَرَدْت أَنْ أُفَضِّلَ بَعْضَ وَلَدِي فِي نُحْلٍ أَنْحَلُهُ؟ فَقَالَ: لَا، وَأَبَى إبَاءً شَدِيدًا وَقَالَ: سَوِّ بَيْنَهُمْ.

L26188 And through him to Abd al-Razzaq from Ibn Jurayj: I said to Ata, "If he bestows a gift upon his child, should equality be maintained between them [the children] and between their father and his wife?" He said, "Only the child was mentioned; I have not heard anything beyond that from the Prophet, peace and blessings of Allah be upon him."

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: يَنْحَلُ وَلَدَهُ أَيُسَوَّى بَيْنَهُمْ وَبَيْنَ أَبٍ وَزَوْجَةٍ؟ قَالَ: لَمْ يُذْكَرْ إلَّا الْوَلَدَ، لَمْ أَسْمَعْ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرَ ذَلِكَ.

L26189 Abū Muḥammad said: These individuals—Abū Bakr, ʿUmar, ʿUthmān, Qays ibn Saʿd, and ʿĀ'ishah the Mother of the Believers—were among the Companions (may Allah be pleased with them), with no dissenter known among them to oppose them. Then Mujāhid, Ṭāwūs, ʿAṭā', ʿUrwah, and Ibn Jurayj—and this is the opinion of al-Nakhaʿī, al-Shaʿbī, Shurayḥ, ʿAbdullāh ibn Shaddād ibn al-Hād, Ibn Shubrumah, Sufyān al-Thawrī, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhwayh, Abū Sulaymān, and all our companions.

قَالَ أَبُو مُحَمَّدٍ: فَهَؤُلَاءِ أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، وَقَيْسُ بْنُ سَعْدٍ، وَعَائِشَةُ أُمُّ الْمُؤْمِنِينَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، ثُمَّ مُجَاهِدٌ، وَطَاوُسٌ، وَعَطَاءٌ، وَعُرْوَةُ، وَابْنُ جُرَيْجٍ - وَهُوَ قَوْلُ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَشُرَيْحٍ، وَعَبْدِ اللَّهِ بْنِ شَدَّادِ بْنِ الْهَادِ، وَابْنِ شُبْرُمَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L26190 Then they differed. Shuraih, Ahmad, and Ishaq held that the equitable approach is for the male to receive two shares and the female one share. Others said equality should apply in that matter.

ثُمَّ اخْتَلَفُوا، فَقَالَ شُرَيْحٌ، وَأَحْمَدُ، وَإِسْحَاقُ، الْعَدْلُ أَنْ يُعْطِيَ الذَّكَرَ حَظَّيْنِ، وَالْأُنْثَى حَظًّا - وَقَالَ غَيْرُهُمْ: بِالسَّوِيَّةِ فِي ذَلِكَ.

L26191 It has also been narrated to us [an opinion] differing from that, along with the permissibility of favoring some children over others—transmitted from al-Qāsim ibn Muḥammad, Rabīʿah, and others. This is the position upheld by Abū Ḥanīfah, Mālik, and al-Shāfiʿī.

وَرُوِّينَا خِلَافَ ذَلِكَ، وَإِجَازَةُ تَفْضِيلِ بَعْضِ الْوَلَدِ عَلَى بَعْضٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَرَبِيعَةَ وَغَيْرِهِمَا - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ.

L26192–26193 Abu Hanifah disliked it and permitted it if it happens.

وَكَرِهَهُ أَبُو حَنِيفَةَ، وَأَجَازَهُ إنْ وَقَعَ.

L26194 Malik disapproved of a parent giving all his wealth to some of his children. They mentioned from the Companions—may Allah be pleased with them—the story of Abu Bakr and Aisha, and the statement of Umar: "Whoever gives a gift to his child..."

وَكَرِهَ مَالِكٌ: أَنْ يَنْحَلَ بَعْضَ وَلَدِهِ مَالَهُ كُلَّهُ - وَذَكَرُوا عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قِصَّةَ أَبِي بَكْرٍ وَعَائِشَةَ، وَقَوْلَ عُمَرَ مَنْ نَحَلَ وَلَدًا لَهُ.

L26195 From the transmission of Ibn Wahb from Ibn Lahīʿah from Bukayr ibn al-Ashajj from Nāfiʿ that Ibn ʿUmar excluded three portions or four for some of his children to the exclusion of others. Bukayr said: Al-Qāsim ibn ʿAbd al-Raḥmān al-Anṣārī narrated to me that he was with Ibn ʿUmar when he purchased land from a man of the Anṣār. Then Ibn ʿUmar said to him: "This land is for my son Wāqid, as he is poor. He granted it to him as a gift, excluding his children."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ قَطَعَ ثَلَاثَةَ أَرْؤُسٍ أَوْ أَرْبَعَةً لِبَعْضِ وَلَدِهِ دُونَ بَعْضٍ، قَالَ بُكَيْرٌ: وَحَدَّثَنِي الْقَاسِمُ بْنُ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيُّ أَنَّهُ كَانَ مَعَ ابْنِ عُمَرَ إِذْ اشْتَرَى أَرْضًا مِنْ رَجُلٍ مِنْ الْأَنْصَارِ، ثُمَّ قَالَ لَهُ ابْنُ عُمَرَ: هَذِهِ الْأَرْضُ لِابْنِي وَاقِدٍ، فَإِنَّهُ مِسْكِينٌ، نَحَلَهُ إيَّاهَا دُونَ وَلَدِهِ.

L26196 Ibn Wahb said: It was reported to me from Amr ibn Dinar that Abd al-Rahman ibn Awf gifted four thousand dirhams to his daughter (born to Umm Kulthum bint Uqbah ibn Abi Mu'ayt), and he had children by other women.

قَالَ ابْنُ وَهْبٍ: وَبَلَغَنِي عَنْ عَمْرِو بْنِ دِينَارٍ: أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ نَحَلَ ابْنَتَهُ مِنْ أُمِّ كُلْثُومٍ بِنْتِ عُقْبَةَ بْنِ أَبِي مُعَيْطٍ أَرْبَعَةَ آلَافِ دِرْهَمٍ وَلَهُ وَلَدٌ مِنْ غَيْرِهَا.

L26197 They mentioned what was transmitted by us through the chain of Ibn Wahb from Sa'īd ibn Abī Ayyūb from Bashīr ibn Abī Sa'īd from Muḥammad ibn al-Munkadir that the Messenger of Allah—peace be upon him—said: "Every possessor of wealth has the most right to his wealth." And we know of no proof for them other than this.

وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ سَعِيدِ بْنِ أَبِي أَيُّوبَ عَنْ بَشِيرِ بْنِ أَبِي سَعِيدٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ ذِي مَالٍ أَحَقُّ بِمَالِهِ» وَمَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا.

L26198 We found those who adhere to our opinion citing as evidence the narration transmitted through Muslim's chain: Yahya ibn Yahya, Abu Bakr ibn Abi Shaybah, Ishaq ibn Ibrahim (known as Ibn Rahawayh), Ibn Abi Umar, Qutaybah, Muhammad ibn Rumḥ, Harmalah ibn Yahya, and Abdullah ibn Humayd. Yahya narrated to us from Ibrahim ibn Sa'd. Ibn Abi Shaybah, Ishaq, and Ibn Abi Umar—all transmitted from Sufyan ibn Uyaynah. Qutaybah and Ibn Rumḥ both transmitted from Layth ibn Sa'd. Harmalah said: Ibn Wahb narrated to us; he was informed by Yunus. Abdullah said: Abd al-Razzaq narrated to us, stating: "I am Ma'mar." Thereafter, the chains of Ibrahim, Sufyan, Layth, Yunus, and Ma'mar converged, all transmitting from al-Zuhri, from Muhammad ibn al-Nu'man ibn Bashir and Humayd ibn Abd

وَوَجَدْنَا مَنْ قَالَ بِقَوْلِنَا يَحْتَجُّ بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقَ بْنِ إِبْرَاهِيمَ هُوَ ابْنُ رَاهْوَيْهِ - وَابْنِ أَبِي عُمَرَ، وَقُتَيْبَةُ، وَمُحَمَّدُ بْنُ رُمْحٍ، وَحَرْمَلَةُ بْنُ يَحْيَى، وَعَبْدُ بْنُ حُمَيْدٍ، قَالَ يَحْيَى: نا إِبْرَاهِيمُ بْنُ سَعْدٍ، وَقَالَ ابْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ، وَابْنُ أَبِي عُمَرَ، كُلُّهُمْ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ، وَقَالَ قُتَيْبَةُ، وَابْنُ رُمْحٍ، كِلَاهُمَا عَنْ اللَّيْثِ بْنِ سَعْدٍ، وَقَالَ حَرْمَلَةُ: نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ، وَقَالَ عَبْد نا عَبْدُ الرَّزَّاقِ: أَنَا مَعْمَرٌ، ثُمَّ اتَّفَقَ إِبْرَاهِيمُ، وَسُفْيَانُ، وَاللَّيْثُ وَيُونُسُ، وَمَعْمَرٌ، كُلُّهُمْ

عَنْ الزُّهْرِيِّ عَنْ مُحَمَّدِ بْنِ النُّعْمَانِ بْنِ بَشِيرٍ، وَحُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ كِلَاهُمَا «عَنْ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: أَتَى بِي أَبِي إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنِّي نَحَلْتُ ابْنِي هَذَا غُلَامًا، فَقَالَ: أَكُلَّ بَنِيكَ نَحَلْتَ؟ قَالَ: لَا، فَارْدُدْهُ -» هَذَا لَفْظُ إِبْرَاهِيمَ، وَيُونُسَ، وَمَعْمَرٍ، وَقَالَ سُفْيَانُ، وَاللَّيْثُ: «أَكُلَّ وَلَدِك نَحَلْتَ» ؟ وَاتَّفَقُوا فِيمَا سِوَى ذَلِكَ.

This is the exact wording transmitted by Ibrahim, Yunus, and Ma‘mar. Sufyan and Layth phrased it: “Have you gifted all your children?” They agreed on the remainder of the narration.

مِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَمُحَمَّدِ بْنِ النُّعْمَانِ بْنِ بَشِيرٍ أَنَّهُمَا حَدَّثَاهُ «عَنْ النُّعْمَانِ بْنِ بَشِيرٍ: أَنَّ أَبَاهُ أَتَى بِهِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي نَحَلْتُ ابْنِي هَذَا غُلَامًا؟ فَقَالَ: أَكُلَّ وَلَدِكَ نَحَلْتَ مِثْلَهُ؟ قَالَ: لَا، قَالَ: فَارْجِعْهُ» .

From the path of Malik, from Az-Zuhri, from Humaid ibn Abdur-Rahman ibn Awf and Muhammad ibn An-Nu’man ibn Bashir, that they both narrated **to him** from An-Nu’man ibn Bashir: “His father brought him to the Prophet - peace and blessings be upon him - and said: ’O Messenger of Allah, I have granted this son of mine a male servant as a gift.’ He asked: ’Have you granted all your children the same gift?’ He replied: ’No.’ He said: ’Then take **him** back.’”

L26199–26200

وَهَكَذَا رُوِّينَاهُ أَيْضًا نَصًّا مِنْ طَرِيقِ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ.

And likewise, we have transmitted this as a text via Al-Awzaʿī’s chain from Al-Zuhrī.

L26201

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ جَرِيرٍ، وَعَبْدِ اللَّهِ بْنِ الْمُبَارَكِ، كِلَاهُمَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ “.

We have also had it narrated to us via the chain of Jarīr and ʿAbdullāh ibn al-Mubārak, both of them from Hishām ibn ʿUrwah, from his father, from al-Nuʿmān ibn Bashīr.

L26202

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ سَعْدِ بْنِ إبْرَاهِيمَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ، كُلُّهُمْ يَقُولُ فِيهِ “ إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ: «رُدَّهُ، أَوْ اُرْدُدْهُ» .

And via the chain of Shuʿbah from Saʿd ibn Ibrāhīm, from ʿUrwah ibn al-Zubayr, from al-Nuʿmān ibn Bashīr—all of them narrate in it: “The Messenger of Allah—may Allah bless him and his family and grant him peace—said to him: ’Return it, and insist on returning it.’”

L26203

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا حَامِدُ بْنُ عُمَرَ نا أَبُو عَوَانَةَ عَنْ حُصَيْنٍ هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - عَنْ الشَّعْبِيِّ سَمِعْتُ «النُّعْمَانَ بْنَ بَشِيرٍ وَهُوَ عَلَى الْمِنْبَرِ يَقُولُ: أَعْطَانِي أَبِي عَطِيَّةً فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي أَعْطَيْت ابْنِي مِنْ عَمْرَةَ بِنْتِ

And through the chain of al-Bukhārī: Ḥāmid ibn ʿUmar narrated to us, Abū ʿAwānah narrated to us from Ḥuṣayn—who is Ibn ʿAbd al-Raḥmān—from al-Shaʿbī: I heard al-Nuʿmān ibn Bashīr, while he was on the pulpit, saying: “My father gave me a gift, then my father came to the Messenger of Allah (peace and blessings be upon him) and said: ’O Messenger of Allah, I gave a gift to my son, whose mother is ʿAmrah bint Rawāḥah, and she instructed

L26204

me to ask you to witness it, O Messenger of Allah.' He (peace and blessings be upon him) said: 'Have you given all your children the like of this?' He replied: 'No.' He said: 'Fear Allah and be just between your children! Go back and take back your gift.'"

رَوَاحَةَ عَطِيَّةً، فَأَمَرَتْنِي أَنْ أُشْهِدَكَ يَا رَسُولَ اللَّهِ؟ فَقَالَ - عَلَيْهِ السَّلَامُ -: أَعْطَيْتَ سَائِرَ وَلَدِكَ مِثْلَ هَذَا؟ قَالَ: لَا، قَالَ: فَاتَّقُوا اللَّهَ وَاعْدِلُوا بَيْنَ أَوْلَادِكُمْ؟ ارْجِعْ فَرُدَّ عَطِيَّتَهُ» .

L26205 Through Muslim's chain: Yahya ibn Yahya → Abu al-Ahwas → Husayn ibn Abd al-Rahman → al-Shaʿbi → al-Nuʿman ibn Bashir, who said: "My father donated some of his wealth to me as charity. He then went to the Messenger of Allah (peace be upon him) to have him witness my charity. The Messenger of Allah (peace be upon him) asked: 'Have you done this to all your children?'"

وَمِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى نا أَبُو الْأَحْوَصِ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ «عَنْ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: تَصَدَّقَ عَلَيَّ أَبِي بِبَعْضِ مَالِهِ، فَانْطَلَقَ أَبِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُشْهِدَهُ عَلَى صَدَقَتِي، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَفَعَلْتَ هَذَا بِوَلَدِكَ كُلِّهِمْ؟

L26206–26207 The Prophet said, "No." He added, "Fear Allah and be just toward your children—" so my father returned and revoked that charity.

قَالَ: لَا، قَالَ: اتَّقُوا اللَّهَ وَاعْدِلُوا فِي أَوْلَادِكُمْ - فَرَجَعَ أَبِي فَرَدَّ تِلْكَ الصَّدَقَةَ» .

L26208 And from the chain of Muslim: Muḥammad ibn ʿAbd Allāh ibn Numayr narrated to us, Muḥammad ibn Bishr narrated to us, Abū Ḥayyān—who is Yaḥyā ibn Saʿīd al-Taymiyy—narrated to us, from al-Shaʿbī: Nuʿmān ibn Bashīr narrated to me. He then mentioned this report, and in it is: "The Messenger of Allāh—peace and blessings be upon him—said: «Therefore, I do not bear witness to injustice.»"

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا مُحَمَّدُ بْنُ بِشْرٍ نا أَبُو حَيَّانَ هُوَ يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ - عَنْ الشَّعْبِيِّ حَدَّثَنِي النُّعْمَانُ بْنُ بَشِيرٍ، فَذَكَرَ هَذَا الْخَبَرَ، وَفِيهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فَلَا أَشْهَدُ عَلَى جَوْرٍ» .

L26209 Thus, these transmissions were successive and manifest: Al-Shaʿbi, Urwah ibn al-Zubayr, Muhammad ibn Nuʿman, and Humayd ibn ʿAbd al-Rahman; all of them heard it from Nuʿman.

فَكَانَتْ هَذِهِ الْآثَارُ مُتَوَاتِرَةً مُتَظَاهِرَةً: الشَّعْبِيُّ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَمُحَمَّدُ بْنُ النُّعْمَانِ، وَحُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ، كُلُّهُمْ سَمِعَهُ مِنْ النُّعْمَانِ.

L26210 All these narrators from among the Imams transmitted it, and there is unanimous agreement among them all concerning the command of Allah's Messenger—peace and blessings be upon him—to annul that charity and gift and their return. Some of them clarified that it was indeed returned, and that he—peace and blessings be upon him—declared it to be injustice. Injustice cannot lawfully be upheld in the religion of Allah the Exalted. If this were permissible, it would permit the upholding of every injustice and every oppression—and this is openly dismantling Islam.

وَرَوَاهُ عَنْ هَؤُلَاءِ الْحُفَّاظُ مِنْ الْأَئِمَّةِ كُلِّهِمْ مُتَّفِقٌ عَلَى أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِفَسْخِ تِلْكَ الصَّدَقَةِ وَالْعَطِيَّةِ وَرَدِّهَا، وَبَيَّنَ بَعْضُهُمْ أَنَّهَا رُدَّتْ، وَأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَخْبَرَ أَنَّهَا جَوْرٌ، وَالْجَوْرُ لَا يَحِلُّ إمْضَاؤُهُ فِي دِينِ اللَّهِ تَعَالَى، وَلَوْ جَازَ ذَلِكَ لَجَازَ إمْضَاءُ كُلِّ جَوْرٍ وَكُلِّ ظُلْمٍ، وَهَذَا هَدْمُ الْإِسْلَامِ جِهَارًا.

فَوَجَدْنَا الْمُخَالِفِينَ قَدْ تَعَلَّلُوا بِهَذَا فِي هَذَا بِأَنْ قَالَ بَعْضُهُمْ: إِنَّهُ وَهَبَهُ جَمِيعَ مَالِهِ.

L26211 We found that the dissenters had used this as a pretext in this matter on the grounds that some of them said: "He gifted him the entirety of his wealth."

فَقُلْنَا: سُبْحَانَ اللَّهِ فِي نَصِّ الْحَدِيثِ " بَعْضَ مَالِهِ " وَفِي بَعْضِ الرِّوَايَاتِ الثَّابِتَةِ " بَعْضَ الْمَوْهِبَةِ مِنْ مَالِهِ ".

L26212 We said, "Glory be to Allah. The text of the hadith states 'some of his wealth,' and in some authentic narrations 'some of the bestowed gift from his wealth.'"

وَقَالَ آخَرُونَ: رَوَى هَذَا الْخَبَرَ دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ النُّعْمَانِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِبَشِيرٍ: فَأَشْهِدْ عَلَى هَذَا غَيْرِي، أَيَسُرُّكَ أَنْ يَكُونُوا أُولَئِكَ فِي الْبِرِّ سَوَاءً؟ قَالَ: بَلَى، قَالَ: فَلَا إذًا» .

L26213 Others said: Dāwūd ibn Abī Hind narrated this report from al-Shaʿbī, from al-Nuʿmān, that the Messenger of Allāh—peace and blessings be upon him—said to Bashīr: "So have someone else bear witness to this. Would it please you if those [people] were equal in righteousness?" He replied: "Yes." He said: "Therefore, no."

وَرَوَاهُ الْمُغِيرَةُ عَنْ الشَّعْبِيِّ عَنْ النُّعْمَانِ، وَقَالَ فِيهِ «فَأَشْهِدْ عَلَى هَذَا غَيْرِي» ؟ فَقُلْنَا: هَذَا حُجَّةٌ عَلَيْكُمْ، لِأَنَّ قَوْلَهُ - عَلَيْهِ السَّلَامُ - " فَلَا إذًا " نَهْيٌ صَحِيحٌ كَافٍ لِمَنْ عَقَلَ.

L26214 Al-Mughirah narrated it from Ash-Shaʿbi through An-Nuʿman. In the narration, he stated: "Then have someone other than me witness this?" We responded: This constitutes evidence against you, for the Prophet's statement - peace be upon him - "If that is the case, then do not" represents a sound and sufficient prohibition for anyone endowed with understanding.

وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «أَشْهِدْ عَلَى هَذَا غَيْرِي» لَوْ لَمْ يَأْتِ إلَّا هَذَا اللَّفْظُ لَمَا كَانَ لَكُمْ فِيهِ مُتَعَلَّقٌ.

L26215 And his statement—peace and blessings be upon him—"Summon another witness besides me for this"—if only this wording had come, you would have had no basis therein.

وَأَمَّا وَقَدْ رَوَى مَنْ هُوَ أَجَلُّ مِنْ الْمُغِيرَةِ وَدَاوُد بْنِ أَبِي هِنْدٍ الزِّيَادَةَ الثَّابِتَةَ الَّتِي لَا يَحِلُّ لِأَحَدٍ الْخُرُوجُ عَنْهَا مِنْ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِرَدِّ تِلْكَ الصَّدَقَةِ وَالْعَطِيَّةِ وَارْتِجَاعِهَا - فَصَحَّ بِهَذِهِ الزِّيَادَةِ، وَبِإِخْبَارِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ جَوْرٌ أَنَّ مَعْنَى قَوْلِهِ «أَشْهِدْ عَلَى هَذَا غَيْرِي» إنَّمَا هُوَ الْوَعِيدُ كَقَوْلِ اللَّهِ تَعَالَى: {فَإِنْ شَهِدُوا فَلَا تَشْهَدْ مَعَهُمْ} [الأنعام: ١٥٠] لَيْسَ عَلَى إبَاحَةِ الشَّهَادَةِ عَلَى الْجَوْرِ وَالْبَاطِلِ، لَكِنْ كَمَا قَالَ تَعَالَى: {فَمَنْ شَاءَ فَلْيُؤْمِنْ وَمَنْ شَاءَ فَلْيَكْفُرْ} [الكهف: ٢٩] .

L26216–26218 Moreover, since one more esteemed than Al-Mughīrah and Dāwūd ibn Abī Hind has narrated this established additional ruling concerning the Prophet's command (peace and blessings be upon him) to return that charity and gift and retrieve them—a ruling from which no one may lawfully depart— The ruling is affirmed by this addition and by the report of the Prophet (peace and blessings be upon him) that the meaning of his statement "Have someone else witness this instead of me" is indeed a threat, like Allah the Exalted's saying: *"But if they testify, then do not testify with them"* [Al-Anʿām: 150]. This is not a permission to testify for tyranny and falsehood, but rather as Allah the Exalted states: *"So whoever wills, let him believe, and whoever wills, let him disbelieve"* [Al-Kahf: 29].[21]

وَكَقَوْلِهِ تَعَالَى: {اعْمَلُوا مَا شِئْتُمْ} [فصلت: ٤٠]

[21] **Qur'an references (L26216):** Qur'an 6:150 (Al-An'am); Qur'an 18:29 (Al-Kahf).

L26219 And like His saying, the Most High: *“Do whatever you will”* [Fussilat 41:40].[22]

وَ {كُلُوا وَتَمَتَّعُوا قَلِيلا إِنَّكُمْ مُجْرِمُونَ} [المرسلات: ٤٦]

L26220 And, “Eat and enjoy for a little while. Indeed, you are wrongdoers.” (77:46)[23]

L26221 Far be it from him—peace be upon him—to permit anyone to testify regarding what he himself has declared an injustice, or to validate it without rejecting it. This is something no Muslim would deem permissible. It suffices here to say: Is that gift and charity more rightful and permissible, or invalid and impermissible?

وَحَاشَ لَهُ - عَلَيْهِ السَّلَامُ - أَنْ يُبِيحَ لِأَحَدٍ الشَّهَادَةَ عَلَى مَا أَخْبَرَ بِهِ هُوَ أَنَّهُ جَوْرٌ، وَأَنْ يُمْضِيَهُ وَلَا يَرُدَّهُ، هَذَا مَا لَا يُجِيزُهُ مُسْلِمٌ، وَيَكْفِي مِنْ هَذَا أَنْ نَقُولَ: تِلْكَ الْعَطِيَّةُ وَالصَّدَقَةُ أَحَقُّ جَائِزٌ هِيَ أَمْ بَاطِلٌ غَيْرُ جَائِزٍ.

L26222 And there is no way to posit a third category? If they say, “A permissible truth?”—they have magnified their slander, for they claim that he (peace and blessings be upon him) refused to testify to the truth—he, who conveyed to us from our Lord (Exalted is He), His words: “And let not the witnesses refuse when they are called” [Al-Baqarah: 282].[24]

وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ؟ فَإِنْ قَالُوا: حَقٌّ جَائِزٌ؟ أَعْظَمُوا الْفِرْيَةَ، إِذْ أَخْبَرُوا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَبَى أَنْ يَشْهَدَ عَلَى الْحَقِّ - وَهُوَ الَّذِي أَتَانَا عَنْ رَبِّنَا تَعَالَى بِقَوْلِهِ تَعَالَى: {وَلا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا} [البقرة: ٢٨٢]

L26223 And by the statement of the Most High: “No harm should be caused to the scribe nor to the witness.” [Al-Baqarah: 282][25]

وَبِقَوْلِهِ تَعَالَى: {وَلا يُضَارَّ كَاتِبٌ وَلا شَهِيدٌ} [البقرة: ٢٨٢]

L26224 And if they say, “It is invalid and impermissible,” they have magnified the slander, for they have claimed that the Prophet—peace be upon him—judged with falsehood, enforced injustice, and commanded having witnesses attest to his contract. Both claims undeniably lead to disbelief, and one of the two is necessarily true.

وَإِنْ قَالُوا: إِنَّهَا بَاطِلٌ غَيْرُ جَائِزٍ؟ أَعْظَمُوا الْفِرْيَةَ، إِذْ أَخْبَرُوا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِالْبَاطِلِ، وَأَنْفَذَ الْجَوْرَ، وَأَمَرَ بِالْإِشْهَادِ عَلَى عَقْدِهِ، وَكِلَا الْقَوْلَيْنِ مُخْرِجٌ إِلَى الْكُفْرِ بِلَا مِرْيَةٍ، وَلَا بُدَّ مِنْ أَحَدِهِمَا.

L26225 Some of them added further misguidance and fabrication by claiming: “The meaning of the Prophet’s statement—peace and blessings be upon him—’Let someone other than me witness this’ is that I am an Imam, and the Imam does not testify.” Thus they combined two fabrications. The first: lying against Allah’s Messenger—peace and blessings of Allah be upon him—by attributing to him words he never uttered. Let whoever asserted this take his seat in the

وَزَادَ بَعْضُهُمْ ضَلَالًا وَفِرْيَةً فَقَالَ: مَعْنَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «أَشْهِدْ عَلَى هَذَا غَيْرِي» أَيْ إِنِّي إِمَامٌ وَالْإِمَامُ لَا يَشْهَدُ، فَجَمَعُوا فِرْيَتَيْنِ، إِحْدَاهُمَا: الْكَذِبُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَقْوِيلِهِ مَا لَمْ يَقُلْ فَلْيَتَبَوَّأْ مَنْ أَطْلَقَ هَذَا مَقْعَدَهُ مِنَ النَّارِ، وَالثَّانِيَةُ قَوْلُهُمْ: إِنَّ الْإِمَامَ لَا يَشْهَدُ، فَقَدْ كَذَبُوا وَأَفِكُوا فِي ذَلِكَ، بَلْ الْإِمَامُ يَشْهَدُ، لِأَنَّهُ أَحَدُ الْمُسْلِمِينَ الْمُخَاطَبِينَ بِأَنْ لَا يَأْبَوْا إِذَا دُعُوا، وَبِقَوْلِهِ عَزَّ وَجَلَّ {كُونُوا

[22] **Qur’an references (L26219):** Qur’an 41:40 (Fussilat).
[23] **Qur’an references (L26220):** Qur’an 77:46 (Al-Mursalat).
[24] **Qur’an references (L26222):** Qur’an 2:282 (Al-Baqarah).
[25] **Qur’an references (L26223):** Qur’an 2:282 (Al-Baqarah).

Fire. The second: their statement that "The Imam does not testify." They have lied and forged falsehood in this matter, for the Imam does indeed testify, being among the Muslims who are commanded not to refuse when they are summoned, and by Allah's words—Exalted and Glorious is He—: *"Be upholders of justice, bearing witness for Allah even against yourselves, your parents, or close relatives"* (4:135). This constitutes a clear command to the Imams without any doubt or suspicion.[26]

قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ} [النساء: ١٣٥] فَهَذَا أَمْرٌ لِلأَئِمَّةِ بِلَا شَكٍّ وَلَا مِرْيَةٍ.

L26226 It is astonishing how lacking in moral scrupulousness this speaker is, and that his statement and doctrine assert that an Imam's testimony becomes valid if he testifies before a ruler from among his own authorities. For had testifying not been within his inherent responsibilities, his testimony would not have been valid.

وَالْعَجَبُ مِنْ قِلَّةِ حَيَاءِ هَذَا الْقَائِلِ، وَمِنْ قَوْلِهِ وَمَذْهَبِهِ أَنَّ الْإِمَامَ إِذَا شَهِدَ عِنْدَ حَاكِمٍ مِنْ حُكَّامِهِ جَازَتْ شَهَادَتُهُ، فَلَوْ لَمْ يَكُنْ مِنْ شَأْنِهِ أَنْ يَشْهَدَ لَمَا جَازَتْ شَهَادَتُهُ.

L26227–26229 Then one of them made an argument so weak that even a speech-impaired person would disown it, saying, "Perhaps An-Nu'mān was elderly and had not received the dowry"—and whoever utters this is either ignorant of the zakah threshold for male goats or stripped of decency and religious integrity, because... The young age of An-Nu'mān is more renowned than the sun, and that he was born after the Hijrah without disagreement from any of the scholars. This has been clarified in the ḥadīth of Abū Ḥayyān from Ash-Sha'bī from An-Nu'mān: "And I was a boy at that time." This term is not applied to an adult man at all.

ثُمَّ أَتَى بَعْضُهُمْ بِمَا كَانَ الْخَرَسُ أَوْلَى بِهِ فَقَالَ: لَعَلَّ النُّعْمَانَ كَانَ كَبِيرًا وَلَمْ يَكُنْ قَبَضَ النُّحْلَ - وَقَائِلُ هَذَا إِمَّا فِي نِصَابِ التَّيُوسِ جَهْلًا، وَإِمَّا مَنْزُوعُ الْحَيَاءِ وَالدِّينِ، لِأَنَّ صِغَرَ النُّعْمَانِ أَشْهَرُ مِنَ الشَّمْسِ، وَأَنَّهُ وُلِدَ بَعْدَ الْهِجْرَةِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ، وَقَدْ بَيَّنَ ذَلِكَ فِي حَدِيثِ أَبِي حَيَّانَ عَنِ الشَّعْبِيِّ عَنِ النُّعْمَانِ، " وَأَنَا يَوْمَئِذٍ غُلَامٌ " وَلَا تُطْلَقُ هَذِهِ اللَّفْظَةُ عَلَى رَجُلٍ بَالِغٍ أَصْلًا.

L26230 Some of them claimed the paternal gift was not completed, asserting it was merely a consultation. They obfuscated by citing Shu'ayb ibn Abi Hamzah's narration of this report from al-Zuhri, wherein he stated: "From al-Nu'man: 'My father granted me a servant as a paternal gift, then brought me to the Prophet (peace and blessings of Allah be upon him) and said: "I have granted my son this servant as a paternal gift. If you permit me to validate it, I will validate it."'" Abu Muhammad remarked: Were it not for the blindness and misguidance of these people, their desires would not have dominated them to this degree. They hear in the report's opening "My father granted me

وَقَالَ بَعْضُهُمْ لَمْ يَكُنِ النُّحْلُ تَمَّ إِنَّمَا كَانَ اسْتِشَارَةً وَمَوَّهُوا بِرِوَايَةِ شُعَيْبِ بْنِ أَبِي حَمْزَةَ بِهَذَا الْخَبَرِ عَنِ الزُّهْرِيِّ فَقَالَ فِيهِ «عَنِ النُّعْمَانِ، نَحَلَنِي أَبِي غُلَامًا ثُمَّ جَاءَ بِي إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنِّي نَحَلْتُ ابْنِي هَذَا غُلَامًا فَإِنْ أَذِنْتَ لِي أَنْ أُجِيزَهُ أَجَزْتُهُ» ؟ قَالَ أَبُو مُحَمَّدٍ: لَوْلَا عَمَى هَؤُلَاءِ الْقَوْمِ وَضَلَالِهِمْ مَا تَمَكَّنَ الْهَوَى مِنْهُمْ هَذَا التَّمَكُّنَ، هُمْ يَسْمَعُونَ فِي أَوَّلِ الْخَبَرِ " نَحَلَنِي أَبِي غُلَامًا " وَفِي وَسَطِهِ " يَا رَسُولَ اللَّهِ نَحَلْتُ ابْنِي هَذَا غُلَامًا " وَيَقُولُونَ: لَمْ يَتِمَّ النُّحْلُ.

[26] **Qur'an references (L26225):** Qur'an 4:135 (An-Nisa).

a servant," and in its midst "O Messenger of Allah, I granted my son this servant," yet they insist: The paternal gift was not completed.

L26231 The statement of Bashir, "If you permit me to approve it, I will do so," is a sound statement. The statement of a believer, "He acts only according to what the Messenger of Allah (peace be upon him) has made lawful for him, adhering to its apparent meaning without interpretation." If the Prophet (peace be upon him) approved it, Bashir would approve it. If he (peace and blessings be upon him) did not approve it, Bashir would reject it and refrain from approving it, just as he himself acted.

L26232 They also mentioned the narration of ʻAbdullāh ibn ʻAwn from Al-Shaʻbī regarding this report: from Al-Nuʻmān ibn Bashīr, who said: "My father granted me a gift, then brought me to the Messenger of Allah—peace and blessings be upon him—to have him witness it. He asked: 'Have you given each of your children such a gift?' He replied: 'No.' He said: 'Do you not desire righteousness from them as you desire from this one?' He answered: 'Yes.' He said: 'Then indeed, I will not bear witness.'" Ibn ʻAwn said: "I related this to Ibn Sīrīn, and he said: 'He only narrated to us that the Prophet said: "Treat your children fairly."'"[27]

L26233 Ali said: The opinion regarding this is that it constitutes the greatest proof against them due to what we have mentioned, because the Prophet—peace and blessings of Allah be upon him—does not bear witness to falsehood, and this is falsehood, since he—peace be upon him—did not consider it permissible to testify to it. Such is the narration of Abd al-Samad ibn Abd al-Warith from Shuʻbah from Saʻid regarding this report, which contains the wording "I do not testify." As for Ibn Sirin's statement: "Bring your children closer together," it has an interrupted chain. Even if it were authentic, it would serve as proof for us against them, for he commanded bringing children closer and prohibited opposing it, while they permit opposing closeness and do not obligate it. Who is more astray than these deprived ones?

L26234–26235 Striving closely (al-muqārabah) refers to diligent exertion in pursuing equity, as the Exalted states: {You will never be able to do justice between women,

وَقَوْلُ بَشِيرٍ " فَإِنْ أَذِنْت لِي أَنْ أُجِيزَهُ أَجَزْته " قَوْلٌ صَحِيحٌ، وَقَوْلُ مُؤْمِنٍ لَا يَعْمَلُ إلَّا مَا أَبَاحَهُ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ظَاهِرِهِ بِلَا تَأْوِيلٍ، نَعَمْ، إنْ أَجَازَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَجَازَهُ بَشِيرٌ، وَإِنْ لَمْ يُجِزْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - رَدَّهُ بَشِيرٌ وَلَمْ يُجِزْهُ كَمَا فَعَلَ.

وَذَكَرُوا أَيْضًا - رِوَايَةَ عَبْدِ اللَّهِ بْنِ عَوْنٍ لِهَذَا الْخَبَرِ عَنْ الشَّعْبِيِّ «عَنْ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: نَحَلَنِي أَبِي نُحْلًا ثُمَّ أَتَى بِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُشْهِدَهُ فَقَالَ: أَكُلَّ وَلَدِك أَعْطَيْتَهُ هَذَا؟ قَالَ: لَا، قَالَ: أَلَيْسَ تُرِيدُ مِنْهُمْ الْبِرَّ مِثْلَ مَا تُرِيدُ مِنْ ذَا؟ قَالَ: بَلَى، قَالَ: فَإِنِّي لَا أَشْهَدُ» قَالَ ابْنُ عَوْنٍ: فَحَدَّثْتُ بِهِ ابْنَ سِيرِينَ، فَقَالَ: إنَّمَا حَدَّثَنَا أَنَّهُ قَالَ: «قَارِبُوا بَيْنَ أَبْنَائِكُمْ» .

قَالَ عَلِيٌّ: وَالْقَوْلُ فِي هَذَا أَنَّهُ أَعْظَمُ حُجَّةٍ عَلَيْهِمْ لِمَا ذَكَرْنَا لِمَا أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَشْهَدُ عَلَى بَاطِلٍ، وَهَذَا بَاطِلٌ، إذْ لَمْ يَسْتَجِزْ - عَلَيْهِ السَّلَامُ - أَنْ يَشْهَدَ عَلَيْهِ - وَهَكَذَا رِوَايَةُ عَبْدِ الصَّمَدِ بْنِ عَبْدِ الْوَارِثِ عَنْ شُعْبَةَ عَنْ سَعِيدٍ لِهَذَا الْخَبَرِ، وَفِيهِ «لَا أَشْهَدُ» . وَأَمَّا قَوْلُ ابْنِ سِيرِينَ: قَارِبُوا بَيْنَ أَبْنَائِكُمْ، فَمُنْقَطِعٌ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّهُ أَمَرَ بِالْمُقَارَبَةِ وَنَهَى عَنْ خِلَافِهَا، وَهُمْ يُجِيزُونَ خِلَافَ الْمُقَارَبَةِ، وَلَا يُوجِبُونَ الْمُقَارَبَةَ، فَمَنْ أَضَلُّ مِنْ هَؤُلَاءِ الْمَحْرُومِينَ.

وَالْمُقَارَبَةُ: هُوَ الِاجْتِهَادُ فِي التَّعْدِيلِ، كَمَا قَالَ تَعَالَى: {وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلَا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ} [النساء: ١٢٩] فَصَحَّ أَنَّ الْمُجْتَهِدَ

[27] **Hadith references (L26232):** Sahih Muslim 1623j.

no matter how keen you are. So do not incline completely [to one], leaving her [another] as if suspended.} [An-Nisā': 129] Thus, it is established that one who exerts diligent effort to establish equity among his children - if his striving fails to achieve true equity - is deemed to have striven closely, provided he cannot do more than that.[28]

فِي التَّعْدِيلِ بَيْنَ أَوْلَادِهِ إِنْ لَمْ يُصَادِفْ حَقِيقَةَ التَّعْدِيلِ كَانَ مُقَارِبًا، إِذَا لَمْ يَقْدِرْ عَلَى أَكْثَرَ مِنْ ذَلِكَ.

L26236 Among the wonders of the world is their citation of the narration transmitted by Zuhayr ibn Mu'āwiyah from Abū al-Zubayr from Jābir concerning this report: "Jābir said: The wife of Bashīr said: 'Grant my son this servant of yours, and let the Messenger of Allah (peace be upon him) bear witness for me.' He then went to the Messenger of Allah (peace be upon him) and mentioned this to him. The Messenger of Allah (peace be upon him) asked him: 'Does he have brothers?' He replied: 'Yes.' He said: 'Have you given all of them the same as you gave him?' He answered: 'No.' The Messenger of Allah (peace be upon him) said: 'This is not proper. Know that I only bear witness to what is right.'"

وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُهُمْ بِرِوَايَةِ زُهَيْرِ بْنِ مُعَاوِيَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ لِهَذَا الْخَبَرِ «قَالَ جَابِرٌ: قَالَتْ امْرَأَةُ بَشِيرٍ: انْحَلْ ابْنِي غُلَامَكَ هَذَا، أَشْهِدْ لِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَكَرَ ذَلِكَ لَهُ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلَهُ إِخْوَةٌ؟ قَالَ: نَعَمْ، قَالَ: فَكُلُّهُمْ أَعْطَيْتَهُ مِثْلَ مَا أَعْطَيْتَهُ؟ قَالَ: لَا، قَالَ: فَلَيْسَ يَصْلُحُ هَذَا، أَلَا وَإِنِّي لَا أَشْهَدُ إِلَّا عَلَى حَقٍّ» .

L26237 Abū Muḥammad said: Can there be anything more astonishing than their argumentation with this report, when it constitutes the greatest proof against them? For its opening states, "It is not valid," and its conclusion states, "I only testify to what is true." Thus, it is confirmed that it is not the truth, and since it is not the truth, it is falsehood and misguidance. The Most High said: "So what is there after the truth except misguidance?" [Yūnus 10:32][29]

قَالَ أَبُو مُحَمَّدٍ: أَفَيَكُونُ أَعْجَبُ مِنْ احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ وَهُوَ أَعْظَمُ حُجَّةٍ عَلَيْهِمْ؛ لِأَنَّ فِي أَوَّلِهِ «لَيْسَ يَصْلُحُ» وَفِي آخِرِهِ «إِنِّي لَا أَشْهَدُ إِلَّا عَلَى حَقٍّ» فَصَحَّ أَنَّهُ لَيْسَ حَقًّا، وَإِذْ لَيْسَ حَقًّا فَهُوَ بَاطِلٌ وَضَلَالٌ قَالَ تَعَالَى: {فَمَاذَا بَعْدَ الْحَقِّ إِلا الضَّلالُ} [يونس: ٣٢]

L26238 If they say: He (peace be upon him) stated, "It is not proper to sell" in the hadith regarding pre-emption, yet you permit it if the pre-emptor approves; and he (peace be upon him) forbade vows, yet you obligate them once they are made.

فَإِنْ قَالُوا: فَقَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «لَا يَصْلُحُ أَنْ يَبِيعَ» فِي حَدِيثِ الشُّفْعَةِ، ثُمَّ أَجَزْتُمُوهُ إِذَا أَجَازَهُ الشَّفِيعُ وَنَهَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَنِ النَّذْرِ، ثُمَّ أَوْجَبْتُمُوهُ إِذَا وَقَعَ.

L26239 We said: Yes, because the Messenger of Allah—peace and blessings be upon him—granted the option of pre-emption to the partner with pre-emptive right: if he wishes, he may take it, and if he wishes, he may leave it. Through

قُلْنَا: نَعَمْ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الْخِيَارَ لِلشَّفِيعِ إِنْ شَاءَ أَخَذَ وَإِنْ شَاءَ تَرَكَ، وَفِي تَرْكِهِ إِقْرَارُ ذَلِكَ الْبَيْعِ، فَوَقَفْنَا عِنْدَ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي ذَلِكَ.

[28] **Qur'an references (L26235):** Qur'an 4:129 (An-Nisa).
[29] **Qur'an references (L26237):** Qur'an 10:32 (Yunus).

his leaving it, that sale is confirmed. Thus, we adhere to his command—upon him be peace and blessings—in this matter.

L26240 He (peace be upon him) prohibited vows, then commanded their fulfillment, and stated that "it is extracted from the miser through them." We reflected deeply upon his command, and thus it became clear to us in this chapter that he (peace and blessings be upon him) enforced it after commanding him to retract it. We are the first in hearing and obeying - that which they shall never attain forever.

L26241 Some of them cited a unique narration, which is that he mentioned what we have transmitted through the chain of transmission of Yaḥyā ibn Saʿīd al-Qaṭṭān from Fiṭr ibn Khalīfah from Muslim ibn Ṣubayḥ—known as Abū al-Ḍuḥā—who said: I heard al-Nuʿmān ibn Bashīr state: "My father brought me to the Messenger of Allah—peace and blessings be upon him—concerning something he had granted me. He inquired: 'Do you have children other than him?' My father responded: 'Yes,' and gestured with his hand to encompass all of them in this manner. The Prophet said: 'Have you not equalized between them?'"

L26242–26243 Abū Muḥammad said: Indeed, whoever opposes the narration of all those we have mentioned with the narration of Fiṭr is forsaken, and Fiṭr's narration is weak. Were it not that Sufyān narrated it from Abū al-Ḍuḥā from al-Nuʿmān, they would have no argument in this matter, for all other narrations exceed this one—both in legal ruling and wording. How could it be, when we have this narration in Fiṭr's ḥadīth via a chain including one who—if not superior to Yaḥyā ibn Saʿīd al-Qaṭṭān—is certainly not below him, namely ʿAbdullāh ibn al-Mubārak, from Fiṭr, from Muslim ibn Ṣubayḥ: "I heard al-Nuʿmān ibn Bashīr deliver a sermon, saying: 'My father brought me to the Messenger of Allah (peace be upon him) to witness a gift he had given me. He asked: "Do you have other sons besides him¿' He replied: "Yes." He said: "Equalize between them."'" This establishes a binding mandate for equal treatment among them.

L26244 The Malikis interpreted his command—peace and blessings be upon him—to proclaim "Allahu Akbar" (takbīr) during the obligatory prayer as an obli-

وَنَهَى - عَلَيْهِ السَّلَامُ - عَنْ النَّذْرِ ثُمَّ أَمَرَ بِالْوَفَاءِ بِهِ، وَأَخْبَرَ أَنَّهُ «يُسْتَخْرَجُ بِهِ مِنْ الْبَخِيلِ» فَوَقَفْنَا عِنْدَ أَمْرِهِ، فَبَانُونَ فِي هَذَا الْبَابِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمْضَاهُ بَعْدَ أَنْ أَمَرَهُ بِرَدِّهِ، وَنَحْنُ أَوَّلُ سَامِعٍ وَمُطِيعٍ، وَذَلِكَ مَا لَا يَجِدُونَهُ أَبَدًا.

وَأَتَى بَعْضُهُمْ بِآبِدَةٍ، وَهِيَ أَنَّهُ ذَكَرَ مَا رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ فِطْرِ بْنِ خَلِيفَةَ عَنْ مُسْلِمِ بْنِ صُبَيْحٍ هُوَ أَبُو الضُّحَى - سَمِعْتُ «النُّعْمَانَ بْنَ بَشِيرٍ يَقُول: ذَهَبَ بِي أَبِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي شَيْءٍ أَعْطَانِيهِ فَقَالَ: أَلَكَ وَلَدٌ غَيْرُهُ؟ قَالَ: نَعَمْ، وَصَفَّ بِيَدِهِ أَجْمَعَ كُلِّهِ كَذَا، أَلَا سَوَّيْتَ بَيْنَهُمْ.»

قَالَ أَبُو مُحَمَّد: إنَّ مَنْ عَارَضَ رِوَايَةَ كُلِّ مَنْ ذَكَرْنَا بِرِوَايَةِ فِطْرٍ لَمَخْذُولٌ، وَفِطْرٌ ضَعِيفٌ، وَلَوْلَا أَنَّ سُفْيَانَ رَوَاهُ عَنْ أَبِي الضُّحَى عَنْ النُّعْمَانِ مَا كَانَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّ سَائِرَ الرِّوَايَاتِ زَائِدَةٌ - حُكْمًا وَلَفْظًا - عَلَى هَذِهِ الرِّوَايَةِ، فَكَيْفَ وَقَدْ رُوِّينَا فِي حَدِيثِ فِطْرٍ هَذَا مِنْ طَرِيقِ مَنْ إنْ لَمْ يَكُنْ فَوْقَ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ لَمْ يَكُنْ دُونَهُ - وَهُوَ عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ - عَنْ فِطْرٍ عَنْ مُسْلِمِ بْنِ صُبَيْحٍ سَمِعْتُ «النُّعْمَانَ بْنَ بَشِيرٍ يَخْطُبُ يَقُولُ: جَاءَ بِي أَبِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُشْهِدَهُ عَلَى عَطِيَّةٍ أَعْطَانِيهَا؟ فَقَالَ: هَلْ لَكَ بَنُونَ سِوَاهُ؟ قَالَ: نَعَمْ قَالَ: سَوِّ بَيْنَهُمْ» فَهَذَا إيجَابٌ لِلتَّسْوِيَةِ بَيْنَهُمْ.

gation based solely on the imperative form, while the Hanafis interpreted his command—peace and blessings be upon him—requiring those who performed the Eid al-Adha prayer before the Imam to repeat it as an obligation based solely on the imperative form.

وَقَدْ حَمَلَ الْمَالِكِيُّونَ أَمْرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالتَّكْبِيرِ عَلَى الْفَرْضِ بِمُجَرَّدِ الْأَمْرِ، وَحَمَلَ الْحَنَفِيُّونَ أَمْرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْإِعَادَةِ مَنْ ضَحَّى قَبْلَ الْإِمَامِ عَلَى الْفَرْضِ بِمُجَرَّدِ الْأَمْرِ.

L26245 They persisted in recklessly opposing the truth through various forms of absurdity until some of them declared: "This [conduct] resembles what was narrated - peace and blessings be upon him - that he brought beads and distributed them to a free woman and an enslaved woman."

وَمَا زَالُوا يَهْجُمُونَ عَلَى وُجُوهِ السُّخْفِ مُعَارَضَةً لِلْحَقِّ حَتَّى قَالَ بَعْضُهُمْ: هَذَا كَمَا رُوِيَ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَتَى بِخَرَزٍ فَقَسَمَهُ لِلْحُرَّةِ وَالْأَمَةِ.

L26246 Abu Muhammad said: What resemblance is there between this and his command (peace and blessings be upon him) to return that charity and gift, and his declaration that it is injustice if they understood? Thus, all that they have fabricated is nullified, and praise be to Allah, the Lord of the worlds.

قَالَ أَبُو مُحَمَّدٍ: أَيُّ شَبَهٍ بَيْنَ هَذَا وَبَيْنَ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنْ يَرُدَّ تِلْكَ الصَّدَقَةَ وَالْعَطِيَّةَ، وَإِخْبَارُهُ بِأَنَّهَا جَوْرٌ لَوْ عَقَلُوا: فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L26247 As for the report "Every property owner is most entitled to their property," this is authentic, for Allah, the Most High, has said: {It is not for a believing man or a believing woman, when Allah and His Messenger have decreed a matter, that they should have any choice in their affair} [Al-Aḥzāb 33:36].[30]

وَأَمَّا الْخَبَرُ «كُلُّ ذِي مَالٍ أَحَقُّ بِمَالِهِ» فَصَحِيحٌ، فَقَدْ قَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦]

L26248 And He, the Exalted, said: {The Prophet has more right over the believers than their own selves} [Al-Aḥzāb: 6].[31]

وَقَالَ تَعَالَى: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦]

L26249 The One who decreed the obligation of Zakāh, invalidated the earnings of the prostitute, the remuneration of the diviner, the sale of wine, the sale of an umm al-walad, and transactions involving ribā, is the same One who invalidated the ṣadaqah and the gift that preferentially favors some children over others. If they had subjected their own position to this critique in invalidating the nuḥl and the ṣadaqah that had not been taken possession of, it would have been more correct and firmly established. But they are like drunkards, stumbling blindly. Some of them argued that it is people's customary practice, so we responded: People's customary practice is predominantly invalid.

فَالَّذِي حَكَمَ بِإِيجَابِ الزَّكَاةِ، وَفَسَخَ أَجْرَ الْبَغِيِّ، وَحُلْوَانَ الْكَاهِنِ، وَبَيْعَ الْخَمْرِ، وَبَيْعَ أُمِّ الْوَلَدِ، وَبَيْعَ الرِّبَا، هُوَ الَّذِي فَسَخَ الصَّدَقَةَ وَالْعَطِيَّةَ الْمُفَضَّلَ فِيهَا بَعْضُ الْوَلَدِ عَلَى بَعْضٍ، وَلَوْ أَنَّهُمْ اعْتَرَضُوا أَنْفُسَهُمْ بِهَذَا الِاعْتِرَاضِ فِي إِبْطَالِهِمْ النُّحْلَ وَالصَّدَقَةَ الَّتِي لَمْ تُقْبَضْ لَكَانَ أَصَحَّ وَأَثْبَتَ، وَلَكِنَّهُمْ كَالسُّكَارَى يَخْبِطُونَ وَاحْتَجَّ بَعْضُهُمْ بِأَنَّهُ عَمَلُ النَّاسِ فَقُلْنَا: عَمَلُ النَّاسِ الْغَالِبُ عَلَيْهِ الْبَاطِلُ.

L26250 Anas said, "I do not know of anything from what I have witnessed the people

وَقَالَ أَنَسٌ: مَا أَعْرِفُ مِمَّا أَدْرَكْت النَّاسَ عَلَيْهِ إلَّا الصَّلَاةَ.

[30] **Qur'an references (L26247):** Qur'an 33:36 (Al-Ahzab).
[31] **Qur'an references (L26248):** Qur'an 33:6 (Al-Ahzab).

adhering to except the *ṣalāh*."

L26251 Some scholars said: Since favoritism among brothers is permissible, is favoritism among children also permissible?

L26252–26253 We said: Is this the ruling of Iblis? Why did you not say: Since qisas is permissible between a person and his brother, it is permissible between a person and his child? That would have been more correct.

L26254 Abu Muhammad said: As for what they have glossed over concerning the Companions—may Allah be pleased with them—none of it is a proof for them, for there is no proof in anyone except the Messenger of Allah—may Allah bless him and grant him peace.

L26255 Then, the ḥadīth of Abū Bakr we have indeed cited contrary to what they cited.

L26256 As for the statement of 'Umar and 'Uthmān, "Whoever grants his child a parental gift," we did not prohibit parental gifts to children; rather, we prohibited preferential treatment. Their statements do not entail the permissibility of preferential treatment, just as they do not entail the permissibility of selling intoxicants and swine, and there is no distinction.

L26257 A prohibition thereof has been authentically established from both of them, as we have cited.

L26258 As for the narration from Ibn 'Umar, it does not indicate that he did not grant the others similar gifts either before or after this. Rather, it contains his statement: "Wāqid is my poor son." This establishes that he had not yet granted him as he had granted his brothers, so he joined him with them and brought him out of destitution—though this is reported via the chain of Ibn Lahī'ah, who is discredited.

L26259 Similarly, the ruling regarding the report from ʿAbd al-Raḥmān is also disconnected. Even if it were authentic, there is no mention that he ever equalized [the matter] between them, neither before nor after. Thus, all they have relied upon is invalidated. And success is from Allah, the Exalted.

L26260 Abu Muhammad said: As for the obligatory expenditures, the Prophet's

وَقَالَ بَعْضُهُمْ: لَمَّا جَازَتْ مُفَاضَلَةُ الْإِخْوَةِ جَازَتْ مُفَاضَلَةُ الْأَوْلَادِ؟

قُلْنَا: هَذَا حُكْمُ إبْلِيسَ؟ وَهَلَّا قُلْتُمْ: لَمَّا جَازَ الْقَوَدُ بَيْنَ الْمَرْءِ وَأَخِيهِ جَازَ بَيْنَ الْمَرْءِ وَوَلَدِهِ؟ فَكَانَ أَصَحَّ.

قَالَ أَبُو مُحَمَّد: وَأَمَّا مَا مَوَّهُوا بِهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

ثُمَّ حَدِيثُ أَبِي بَكْرٍ قَدْ أَوْرَدْنَاهُ بِخِلَافِ مَا أَوْرَدُوهُ.

وَأَمَّا قَوْلُ عُمَرَ، وَعُثْمَانَ، مَنْ نَحَلَ وَلَدَهُ نُحْلًا، فَنَحْنُ لَمْ نَمْنَعْ نُحْلَ الْوَلَدِ وَإِنَّمَا مَنَعْنَا الْمُفَاضَلَةَ، وَلَيْسَ فِي كَلَامِهِمَا إبَاحَةُ الْمُفَاضَلَةِ، كَمَا لَيْسَ فِيهِ إبَاحَةُ بَيْعِ الْخَمْرِ وَالْخَنَازِيرِ وَلَا فَرْقَ.

وَقَدْ صَحَّ عَنْهُمَا الْمَنْعُ مِنْهَا، كَمَا أَوْرَدْنَا.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عُمَرَ فَلَيْسَ فِيهَا أَنَّهُ لَمْ يَنْحَلْ الْآخَرِينَ قَبْلُ وَلَا بَعْدُ بِمِثْلِ ذَلِكَ، بَلْ فِيهَا أَنَّهُ قَالَ: وَاقِدٌ ابْنِي مِسْكِينٌ، فَصَحَّ أَنَّهُ لَمْ يَكُنْ نَحَلَهُ بَعْدُ كَمَا نَحَلَ إخْوَتَهُ، فَأَلْحَقَهُ بِهِمْ، وَأَخْرَجَهُ عَنْ الْمَسْكَنَةِ، عَلَى أَنَّهَا مِنْ طَرِيقِ ابْنِ لَهِيعَةَ وَهُوَ سَاقِطٌ.

وَكَذَلِكَ الْقَوْلُ فِي الرِّوَايَةِ عَنْ عَبْدِ الرَّحْمَنِ هِيَ أَيْضًا مُنْقَطِعَةٌ، ثُمَّ لَوْ صَحَّتْ فَلَيْسَ فِيهَا أَنَّهُ لَمْ يُسَوِّ قَبْلُ وَلَا بَعْدُ بَيْنَهُمْ، فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

injunction (peace and blessings be upon him), "Be just between your children," obligates providing each child with what is necessary for their subsistence. Whoever transgresses this rule has not been just between them.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا النَّفَقَاتُ الْوَاجِبَاتُ: فَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «اعْدِلُوا بَيْنَ أَوْلَادِكُمْ» إيجَابٌ لَأَنْ يُنْفِقَ عَلَى كُلِّ وَاحِدٍ مَا لَا قَوَامَ لَهُ إلَّا بِهِ، وَمَنْ تَعَدَّى هَذَا فَلَمْ يَعْدِلْ بَيْنَهُمْ.

L26261 Similarly, this statement from him—peace and blessings be upon him—obligates equitable treatment between male and female, and this has no connection to inheritance whatsoever. Each text has its ruling, and this ruling does not apply beyond children, if the text does not come except regarding them.

وَكَذَلِكَ هَذَا الْقَوْلُ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إيجَابٌ لِلتَّسْوِيَةِ بَيْنَ الذَّكَرِ وَالْأُنْثَى، وَلَيْسَ هَذَا مِنْ الْمَوَارِيثِ فِي شَيْءٍ، وَلِكُلِّ نَصٍّ حُكْمُهُ، وَلَيْسَ هَذَا الْحُكْمُ فِي غَيْرِ الْأَوْلَادِ، إذَا لَمْ يَأْتِ النَّصُّ إلَّا فِيهِمْ.

L26262 As for grandchildren, there is no disagreement concerning them. The Companions of the Prophet (peace be upon him) had grandchildren through sons and grandchildren through daughters, yet he (peace be upon him) did not obligate giving to them or equitable treatment between them.

وَأَمَّا وَلَدُ الْوَلَدِ: فَلَا خِلَافَ فِيهِمْ، وَقَدْ كَانَ لِأَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَنُو بَنِينَ وَبَنُو بَنَاتٍ فَلَمْ يُوجِبْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إعْطَاءَهُمْ وَلَا الْعَدْلَ فِيهِمْ.

L26263–26265 If a child dies after being given a gift in which there is no partiality, the gift passes to his heirs, and the father's right to it is nullified. If the father dies, equitable adjustment among them is a debt upon him, from the principal of his wealth. And with Allah alone is success.

وَإِذَا مَاتَ الْوَلَدُ بَعْدَ أَنْ وُهِبَ هِبَةً لَا مُحَابَاةَ فِيهَا فَقَدْ صَارَتْ لِوَرَثَتِهِ وَبَطَلَ أَمْرُ الْأَبِ فِيهَا، وَأَمَّا إنْ مَاتَ الْوَالِدُ فَالتَّعْدِيلُ بَيْنَهُمْ دَيْنٌ عَلَيْهِ، فَهُوَ مِنْ رَأْسِ مَالِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْهِبَةُ وَالصَّدَقَةُ بِمُشَاعٍ لَا يَنْقَسِمُ]

The Issue of Gifts and Charity Given as Joint Ownership That Cannot Be Divided

L26266

L26267 1635 - Issue: The gift of a specified allocated portion (such as a third, a quarter, or similar) from undivided jointly owned property, and donating it as charity, is permissible and commendable—whether for co-owners, non-co-owners, the wealthy, or the poor—in divisible and indivisible assets (e.g., animals or other items), with no distinction made.

١٦٣٥ - مَسْأَلَةٌ: وَهِبَةُ جُزْءٍ مُسَمًّى مَنْسُوبٍ مِنْ الْجَمِيعِ كَثُلُثٍ أَوْ رُبُعٍ أَوْ نَحْوِ ذَلِكَ مِنْ الْمُشَاعِ وَالصَّدَقَةُ بِهِ جَائِزَةٌ حَسَنَةٌ لِلشَّرِيكِ وَلِغَيْرِ الشَّرِيكِ، وَلِلْغَنِيِّ وَالْفَقِيرِ فِيمَا يَنْقَسِمُ وَفِيمَا لَا يَنْقَسِمُ، كَالْحَيَوَانِ وَغَيْرِهِ وَلَا فَرْقَ.

L26268 This is the opinion of Uthman al-Battī, Maʿmar, Mālik, al-Shāfiʿī, Aḥmad, Isḥāq, Abū Thawr, Abū Sulaymān, and all their disciples—this is also the opinion of Ibrāhīm al-Nakhaʿī.

وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَمَعْمَرٍ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ.

L26269 Abū Ḥanīfa said: It is not permissible to gift divisible jointly owned property

وَقَالَ أَبُو حَنِيفَةَ: لَا تَجُوزُ هِبَةُ الْمُشَاعِ فِيمَا يَنْقَسِمُ، وَلَا الصَّدَقَةُ بِهِ - لَا لِلشَّرِيكِ وَلَا لِغَيْرِهِ، لَا عَلَى فَقِيرٍ وَلَا عَلَى غَنِيٍّ - وَتَجُوزُ الْهِبَةُ وَالصَّدَقَةُ بِمُشَاعٍ لَا يَنْقَسِمُ عَلَى الْفَقِيرِ وَالْغَنِيِّ وَلِلشَّرِيكِ وَلِغَيْرِهِ.

nor give it as charity—neither to a partner nor to others, neither to a poor person nor to a rich one. However, it is permissible to gift and give as charity indivisible jointly owned property to a poor person and a rich one, to a partner and to others.

وَالَّذِي يَنْقَسِمُ عِنْدَهُ: الدُّورُ، وَالْأَرَضُونَ، وَالْمَكِيلَاتُ، وَالْمَوْزُونَاتُ وَالْمَعْدُودَاتُ، وَالْمَذْرُوعَاتُ - وَالَّذِي لَا يَنْقَسِمُ عِنْدَهُ الرَّأْسُ الْوَاحِدُ مِنْ الْحَيَوَانِ، وَالْحَمَامُ، وَالسَّيْفُ، وَاللُّؤْلُؤَةُ، وَالثَّوْبُ، وَالطَّرِيقُ، وَنَحْوُ ذَلِكَ.

L26270 That which can be divided in his view includes houses, lands, volumetric measures, weighed items, countable items, and things measured by cubits. And that which cannot be divided in his view includes a single animal, pigeons, a sword, a pearl, a garment, a road, and similar things.

قَالَ: وَالْإِجَارَةُ بِمُشَاعٍ مِمَّا يَنْقَسِمُ وَمِمَّا لَا يَنْقَسِمُ لَا تَجُوزُ أَلْبَتَّةَ، إلَّا مِنْ الشَّرِيكِ وَحْدَهُ - قَالَ: وَرَهْنُ الْمُشَاعِ الَّذِي يَنْقَسِمُ وَالَّذِي لَا يَنْقَسِمُ لَا يَجُوزُ أَلْبَتَّةَ، لَا مِنْ الشَّرِيكِ وَلَا مِنْ غَيْرِهِ.

L26271 He said: Leasing co-owned property—whether of a divisible or indivisible type—is strictly prohibited, except when done by the co-owner alone. He further stated: Pledging co-owned property, whether divisible or indivisible, is strictly prohibited, neither by the co-owner nor by anyone else.

قَالَ: وَبَيْعُ الْمُشَاعِ وَإِصْدَاقِهِ وَالْوَصِيَّةُ بِهِ - مِمَّا يَنْقَسِمُ وَمَا لَا يَنْقَسِمُ

L26272 He said: The sale of undivided joint property, its dower, and the bequest pertaining to it—whether divisible or indivisible.

-: جَائِزٌ مِنْ الشَّرِيكِ وَغَيْرِ الشَّرِيكِ، وَكَذَلِكَ عِتْقُ الْمُشَاعِ فَاعْجَبُوا لِهَذِهِ التَّقَاسِيمِ الَّتِي لَا تَعْقِلُ، وَلَا لَهَا فِي الدِّيَانَةِ أَصْلٌ بِالْمَنْعِ خَاصَّةً فِي شَيْءٍ مِنْ ذَلِكَ وَلَمْ يَخْتَلِفْ عَنْهُ فِي أَنَّ الْهِبَةَ وَالصَّدَقَةَ بِشَيْءٍ وَاحِدٍ مِمَّا يَنْقَسِمُ: كَمِائَةِ دِينَارٍ، أَوْ كَدَارٍ وَاحِدَةٍ، أَوْ ضَيْعَةٍ وَاحِدَةٍ، أَوْ كُرِّ طَعَامٍ، أَوْ قِنْطَارِ حَدِيدٍ، أَوْ غَيْرِ ذَلِكَ، لِغَنِيَّيْنِ لَا يَجُوزُ - وَاخْتَلَفَ عَنْهُ فِي الصَّدَقَةِ بِذَلِكَ عَلَى فَقِيرَيْنِ، أَوْ هِبَةِ ذَلِكَ لِفَقِيرَيْنِ، فَرُوِيَ عَنْهُ فِي الْهِبَةِ فِي الْجَامِعِ الصَّغِيرِ: أَنَّهَا تَجُوزُ لِلْفَقِيرَيْنِ - وَفِي الْأَصْلِ: أَنَّهَا لَا تَجُوزُ، وَالْأَشْهَرُ عَنْهُ فِي الصَّدَقَةِ عَلَى الْفَقِيرَيْنِ كَذَلِكَ، أَنَّهَا تَجُوزُ، إلَّا فِي رِوَايَةٍ مُبْهَمَةٍ غَيْرِ مُبَيِّنَةٍ أَجْمَلَ فِيهَا الْمَنْعَ فَقَطْ.

L26273 It is permissible from a partner or non-partner, and likewise the manumission of a co-owned slave. Marvel at these classifications that lack reason and have no basis in religion regarding prohibition specifically in any of these matters. There is no disagreement from him that gifting or donating a single divisible item - such as a hundred dinars, a single house, a single estate, a kurr of food, a quintal of iron, or similar - to two wealthy individuals is impermissible. However, differing opinions are narrated from him concerning donating such items to two needy persons or gifting them to two needy persons. In Al-Jāmiʿ al-Ṣaghīr, it is related from him that gifting to two needy persons is permissible, while in the foundational text it states this is impermissible. The most prevalent opinion attributed to him regarding charitable donation to two needy persons similarly permits it, except in an ambiguous narration where he summarized the prohibition concisely without clarification.

وَقَالَ: مُحَمَّدُ بْنُ الْحَسَنِ: إنْ وَهَبَ دَارًا لِاثْنَيْنِ بَيْنَهُمَا بِنِصْفَيْنِ جَازَ ذَلِكَ، فَإِنْ وَهَبَ لِأَحَدِهِمَا الثُّلُثَ، وَلِلْآخَرِ الثُّلُثَيْنِ فَدَفَعَهَا إلَيْهِمَا مَعًا -: جَازَ ذَلِكَ، فَإِنْ دَفَعَ إلَى الْوَاحِدِ ثُمَّ إلَى الْآخَرِ -: لَمْ يَجُزْ ذَلِكَ.

L26274–26275 Muhammad ibn al-Ḥasan said: If one gifts a house to two individuals, divided between them into halves, this is permissible. If he gifts one-third to one and two-thirds to the other, and delivers it to both at the same time, the gift is valid. But if he delivers it to one first and then to the other, it is invalid.

وَمَنَعَ سُفْيَانُ مِنْ هِبَةِ الْمُشَاعِ، إلَّا أَنَّهُ أَجَازَ هِبَةَ وَاحِدٍ دَارًا لِاثْنَيْنِ، وَهِبَةَ الِاثْنَيْنِ دَارًا لِوَاحِدٍ - وَمَنَعَ ابْنُ شُبْرُمَةَ مِنْ هِبَةِ الْمُشَاعِ، وَمِنْ هِبَةِ وَاحِدٍ دَارًا لِاثْنَيْنِ فَصَاعِدًا، وَأَجَازَ هِبَةَ اثْنَيْنِ دَارًا لِوَاحِدٍ.

L26276 Sufyan prohibited the gifting of undivided shared property; however, he permitted a single person to gift a property to two individuals and two individuals to gift a property to a single person. Ibn Shubruma prohibited the gifting of undivided shared property and a single person gifting a property to two or more individuals, but he permitted two individuals to gift a property to a single person.

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ لَهُمْ شَغَبًا مَوَّهُوا بِهِ إلَّا إنْ قَالُوا: قَبْضُ الْمُشَاعِ لَا يُمْكِنُ. فَقُلْنَا لَهُمْ: كَذَبْتُمْ، بَلْ هُوَ مُمْكِنٌ، وَهَبْكَ أَنَّهُ غَيْرُ مُمْكِنٍ فَلِمَ أَجَزْتُمْ بَيْعَهُ، وَالْبَيْعُ عِنْدَكُمْ يَحْتَاجُ فِيهِ إلَى الْقَبْضِ، وَلِمَ أَجَزْتُمْ إصْدَاقَهُ، وَالصَّدَاقُ وَاجِبٌ فِيهِ الْإِقْبَاضُ قَالَ اللَّهُ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] : وَقَالَ تَعَالَى: {وَلا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا} [البقرة: ٢٢٩] وَلِمَ أَجَزْتُمْ الْوَصِيَّةَ بِهِ؟ وَلِمَ أَجَزْتُمْ إجَارَةَ الْمُشَاعِ مِنْ الشَّرِيكِ، وَمَنَعْتُمْ الرَّهْنَ فِيهِ مِنْ الشَّرِيكِ، وَمَنَعْتُمْ الْهِبَةَ مِنْ الشَّرِيكِ - وَأَقْرَبُ ذَلِكَ لِمَ أَجَزْتُمْ هِبَةَ الْمُشَاعِ فِيمَا لَا يَنْقَسِمُ وَالْعِلَّةُ وَاحِدَةٌ. فَهَلْ فِي التَّلَاعُبِ وَالسَّخَافَةِ أَكْثَرُ مِنْ هَذَا؟ وَمَوَّهُوا أَيْضًا بِالرِّوَايَةِ الَّتِي ذَكَرْنَا قَبْلُ مِنْ قَوْلِ أَبِي بَكْرٍ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُمَا -: إنِّي كُنْتُ نَحَلْتُك جَادَّ عِشْرِينَ وَسْقًا مِنْ مَالِ الْغَابَةِ فَلَوْ كُنْتِ جَدَدْتِيهِ وَاحْتَزْتِيهِ لَكَانَ لَك، هَذَا دَلِيلٌ عَلَى الْمَنْعِ مِنْ هِبَةِ الْمُشَاعِ. قَالَ أَبُو مُحَمَّدٍ: هَذَا عَظِيمٌ جِدًّا، وَفَاحِشُ الْقُبْحِ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L26277 Abu Muhammad said: We know of no specious argument they have fabricated except their claim that taking possession of undivided jointly-owned property is impossible. We countered them: You lie! Rather, it is possible. Even if we suppose it were impossible, why do you permit its sale when your doctrine requires delivery in sales? Why do you permit its use as dower when dowers mandate delivery, as Allah the Exalted said: {Give women their dowers as a free gift} [4:4], and He said: {It is unlawful for you to reclaim anything you have given them} [2:229]? Why do you permit bequeathing it? Why do you allow leasing undivided jointly-owned property by a co-owner, yet prohibit mortgaging it by a co-owner and forbid gifting it by a co-owner—while the closest analogy is: Why do you permit gifting undivided jointly-owned property that cannot be partitioned when the legal rationale is identical? Is there any greater frivolity and inanity than this?

They also disguised their argument with the previously mentioned narration of Abu Bakr's statement to Aisha, Mother of the Believers (may Allah be pleased with both of them): "I had granted you twenty wasqs from the Ghābah estate. Had you renewed and demarcated it, it would have been yours," claiming this as evidence against gifting undivided jointly-owned property.

Abu Muhammad said: This is profoundly grave and excessively vile for several reasons: First—No one's statement constitutes proof except the Messenger of Allah (peace and blessings of Allah be upon him).[32]

L26278 The second is that how many statements there are from Abu Bakr and Aisha—may Allah be pleased with them both—which you have contradicted, such as Abu Bakr's view along with other Companions—may Allah be pleased with them—regarding zakat: "If there is no bint makhad, then an ibn labun male," his abstention from performing Udhiyah while being wealthy, Aisha's fasting during the days of Tashreeq, and her statement: "There is no valid fast for one who does not resolve it before dawn," along with many other such instances that are exceedingly numerous.

L26279 And the third is that this very report we have cited runs contrary to this narrative.

L26280–26282 Fourthly, the textual proof they relied on openly contradicts their own position; rather, the wording itself permits the gifting of a portion. From the jointly owned land allocated for a female slave, as he gifted her twenty wasqs of newly harvested produce from his property in the woodland.

L26283 This matter must necessarily fall into one of two scenarios: either he gifted her from those palm trees an amount that would yield twenty wasqs, or he gifted her twenty wasqs of freshly yielded produce. Thus, it is either a promise that he would gift her that amount – and this is the preponderant opinion – or that he gifted her and ratified that quantity, which was indeterminate in measure, number, and specific item within undivided jointly-owned property. They both jointly deemed this permissible in the presence of the Companions, with none opposing them, and Abū Bakr did not invalidate it on these grounds.

L26284 So they lied in their statement outright. Rather, Abu Bakr invalidated it solely by the explicit text of his statement: "because she did not take possession of it." Had she renewed it and taken possession of it, it would have been effective. Thus, it reverted to being decisive evidence against them. And

[32]**Qur'an references (L26277):** Qur'an 4:4 (An-Nisa); Qur'an 2:229 (Al-Baqarah).

وَثَانِيهَا - أَنَّهُ كَمْ قَوْلَةٌ لِأَبِي بَكْرٍ، وَعَائِشَةَ - رَضِيَ اللَّهُ عَنْهُمَا - قَدْ خَالَفْتُمُوهُمَا فِيهَا كَقَوْلِ أَبِي بَكْرٍ، وَغَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي الزَّكَاةِ إنْ لَمْ تَكُنْ بِنْتَ مَخَاضٍ فَابْنَ لَبُونٍ ذَكَرٍ، وَكَتَرْكِهِ التَّضْحِيَةَ وَهُوَ غَنِيٌّ، وَكَصِيَامِ عَائِشَةَ أَيَّامَ التَّشْرِيقِ، وَقَوْلِهَا: لَا صِيَامَ لِمَنْ لَمْ يُبَيِّتْهُ مِنْ اللَّيْلِ وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا.

وَثَالِثُهَا - أَنَّ هَذَا الْخَبَرَ نَفْسَهُ قَدْ أَوْرَدْنَاهُ بِخِلَافِ هَذِهِ الْقِصَّةِ.

وَرَابِعُهَا - أَنَّ اللَّفْظَ الَّذِي احْتَجُّوا بِهِ مُخَالِفٌ لِقَوْلِهِمْ جِهَارًا بَلْ فِيهِ إجَازَةُ هِبَةِ جُزْءٍ مِنْ الْمُشَاعِ لِغَنِيَّةٍ، لِأَنَّهُ نَحَلَهَا جِدَادَ عِشْرِينَ وَسْقًا مِنْ مَالِهِ بِالْغَابَةِ.

وَلَا يَخْلُو ذَلِكَ ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ -: إمَّا أَنْ يَكُونَ نَحَلَهَا مِنْ تِلْكَ النَّخْلِ مَا تَجِدُّ مِنْهَا عِشْرِينَ وَسْقًا، أَوْ نَحَلَهَا عِشْرِينَ وَسْقًا مَجْدُودَةً، فَهِيَ إمَّا عِدَةٌ بِأَنْ يَنْحَلَهَا ذَلِكَ - وَهَذَا هُوَ الْأَظْهَرُ، وَإِمَّا أَنَّهُ نَحَلَهَا وَأَمْضَى لَهَا ذَلِكَ الْمِقْدَارَ، وَهُوَ مَجْهُولُ الْقَدْرِ وَالْعَدَدِ وَالْعَيْنِ فِي مُشَاعٍ، فَرَأَيَاهُ مَعًا بِحَضْرَةِ الصَّحَابَةِ جَائِزًا وَلَا مُخَالِفَ لَهُمَا مِنْهُمْ، وَلَمْ يُبْطِلْهُ أَبُو بَكْرٍ لِذَلِكَ.

فَكَذَبُوا فِي قَوْلِهِمْ صُرَاحًا، وَإِنَّمَا أَبْطَلَهُ أَبُو بَكْرٍ بِنَصِّ قَوْلِهِ " لِأَنَّهَا لَمْ تَحُزْهُ " فَقَطْ، وَلَوْ جَدَدْته وَحَازَتْهُ لَكَانَ نَافِذًا، فَعَادَ حُجَّةً عَلَيْهِمْ، وَصَدَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْحَيَاءُ مِنْ الْإِيمَانِ» .

the Messenger of Allah—peace and blessings be upon him—spoke the truth: "Modesty is a branch of faith."

L26285 Thus, all that they disguised with it fell away—and all praise belongs to Allah, the Exalted.

L26286 Abū Muḥammad said: We returned to our statement and found that Allah, the Exalted, has urged charity, virtuous acts, and benevolence. Giving gifts is a virtuous act, and the Almighty knew that within the wealth of those urged regarding gifts and charity lies both shared and non-shared property. Had the Exalted not permitted them to give charity and gifts from shared assets, He would have clarified it to them and would not have concealed it from them. Whoever ascribes a prohibition to Allah the Exalted, or imposes an obligation that Allah the Almighty has not decreed its prohibition or obligation through His Messenger—peace and blessings be upon him—who was commanded to convey and clarify, has indeed lied against Allah the Exalted and fabricated falsehood against Him. This is an immensely grave matter.

L26287 It is definitively established that gifting undivided jointly owned property, giving it as charity, leasing it, or mortgaging it—all such acts are permissible, whether the property is divisible or indivisible, for co-owners and others, and for the wealthy and the poor. {And your Lord is not forgetful} (19:64).[33]

L26288–26290 From the chain of Ibn Abī Shaybah: From Wakīʿ, from Sharīk, from Ibrāhīm ibn al-Muhājir, from Qays ibn Abī Ḥāzim, who said: A man came to the Messenger of Allah—peace and blessings be upon him—with a ball of hair from the spoils and said, "O Messenger of Allah, grant this to me, for we are a household that works with hair." The Prophet—peace and blessings be upon him—replied, "My portion of it is yours," and they... They argue using the mursal report and the narrations of Sharik and Ibrāhīm ibn al-Muhājir. What diverted them from this report? It is authentically established that Asmā' bint Abī Bakr al-Ṣiddīq said to al-Qāsim ibn Muḥammad ibn Abī Bakr and ʿAbdullāh ibn Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Bakr: "I inherited property from my sister ʿĀ'ishah in al-Ghābah. Muʿāwiyah gave me one

فَسَقَطَ كُلُّ مَا مَوَّهُوا بِهِ - وَلِلَّهِ تَعَالَى الْحَمْدُ.

قَالَ أَبُو مُحَمَّد: فَعُدْنَا إلَى قَوْلِنَا فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ حَضَّ عَلَى الصَّدَقَةِ وَفِعْلِ الْخَيْرِ، وَالْفَضْلِ، وَكَانَتْ الْهِبَةُ فِعْلَ خَيْرٍ، وَقَدْ عَلِمَ عَزَّ وَجَلَّ أَنَّ فِي أَمْوَالِ الْمَحْضُوضِينَ عَلَى الْهِبَةِ وَالصَّدَقَةِ مُشَاعًا وَغَيْرَ مُشَاعٍ، فَلَوْ كَانَ تَعَالَى لَمْ يُبِحْ لَهُمْ الصَّدَقَةَ وَالْهِبَةَ فِي الْمُشَاعِ لَبَيَّنَهُ لَهُمْ، وَلَمَا كَتَمَهُ عَنْهُمْ، وَمَنْ حَرَّمَ عَنْ اللَّهِ تَعَالَى، أَوْ أَوْجَبَ مَا لَمْ يُنَصَّ اللَّهُ عَزَّ وَجَلَّ عَلَى تَحْرِيمِهِ وَإِيجَابِهِ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَأْمُورِ بِالتَّبْلِيغِ، وَالْبَيَانِ -: فَقَدْ كَذَبَ عَلَى اللَّهِ تَعَالَى، وَافْتَرَى عَلَيْهِ، وَهَذَا عَظِيمٌ جِدًّا.

فَصَحَّ يَقِينًا: أَنَّ هِبَةَ الْمُشَاعِ وَالصَّدَقَةَ بِهِ، وَإِجَارَتَهُ وَرَهْنَهُ -: جَائِزٌ كُلُّ ذَلِكَ - فِيمَا يَنْقَسِمُ وَمَا لَا يَنْقَسِمُ - لِلشَّرِيكِ وَلِغَيْرِهِ، وَلِلْغَنِيِّ وَلِلْفَقِيرِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ نا شَرِيكٌ عَنْ إبْرَاهِيمَ بْنِ الْمُهَاجِرِ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ " قَالَ: «أَتَى رَجُلٌ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِكُبَّةِ شَعْرٍ مِنْ الْغَنِيمَةِ، فَقَالَ: يَا رَسُولَ اللَّهِ هَبْهَا لِي، فَإِنَّا أَهْلُ بَيْتٍ نُعَالِجُ الشَّعْرَ. فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: نَصِيبِي مِنْهَا لَكَ» وَهُمْ يَحْتَجُّونَ بِالْمُرْسَلِ، وَبِرِوَايَةِ شَرِيكٍ، وَإِبْرَاهِيمَ بْنِ الْمُهَاجِرِ فَمَا صَرَفَهُمْ عَنْ هَذَا الْخَبَرِ؟ وَقَدْ صَحَّ عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّهَا قَالَتْ لِلْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَلِعَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ: إنِّي وَرِثْت عَنْ أُخْتِي عَائِشَةَ مَالًا بِالْغَابَةِ، وَقَدْ أَعْطَانِي مُعَاوِيَةُ بِهَا مِائَةَ أَلْفٍ، فَهُوَ لَكُمَا، لِأَنَّهُمَا لَمْ يَرِثَا مِنْ أُمِّ

[33] **Qur'an references (L26287):** Qur'an 19:64 (Maryam).

hundred thousand for it, so this is yours—since they inherited nothing from the Mother of the Believers. They only inherited from Asmā' and ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Abī Bakr." This constitutes a gift to two affluent, resource-rich individuals under joint ownership. Asmā's action, may Allah be pleased with her, performed in the presence of the Companions (may Allah be pleased with them), stands unchallenged, with no known opposition from them. The Companions' charitable acts for their children and grandchildren through the yields of their endowments—whether as charity or gifts to wealthy recipients under joint ownership—are more renowned than the sun.

الْمُؤْمِنِينَ شَيْئًا إِنَّمَا وَرِثَا أَسْمَاءَ، وَعَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ - فَهَذِهِ هِبَةٌ لِغَنِيَّيْنِ مُكْثِرَيْنِ مُشَاعَةً، وَفِعْلُ أَسْمَاءَ - رَضِيَ اللَّهُ تَعَالَى عَنْهَا - بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا يُعْرَفُ لَهَا مِنْهُمْ مُخَالِفٌ، وَصَدَقَاتُ الصَّحَابَةِ عَلَى بَنِيهِمْ وَبَنِي بَنِيهِمْ بِغَلَّةِ أَوْقَافِهِمْ أَشْهَرُ مِنْ الشَّمْسِ صَدَقَةً أَوْ هِبَةً لِأَغْنِيَاءَ بِمُشَاعٍ.

L26291 And it has been narrated to us through the chain of Muḥammad ibn Isḥāq from ʿAmr ibn Shuʿayb from his father from his grandfather, where he mentioned the story of Ḥunayn and Hawāzin's request for their dependents and children. The Messenger of Allāh (peace and blessings be upon him) said: "Whatever was for me and for Banu ʿAbd al-Muṭṭalib is yours." The Muhājirūn and the Anṣār said: "And whatever was for us is for the Messenger of Allāh." And he mentioned the ḥadīth.

وَرُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ فَذَكَرَ قِصَّةَ حُنَيْنٍ وَطَلَبَ هَوَازِنَ عِيَالَهُمْ وَأَبْنَاءَهُمْ «فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا كَانَ لِي وَلِبَنِي عَبْدِ الْمُطَّلِبِ فَهُوَ لَكُمْ فَقَالَ الْمُهَاجِرُونَ وَالْأَنْصَارُ: وَمَا كَانَ لَنَا فَهُوَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَذَكَرَ الْحَدِيثَ.

L26292 Therefore, this constitutes a gift of jointly held undivided property (mushāʿ), and they invoke this method as evidence when it aligns with their legal school emulation (taqlīd).

فَهَذِهِ هِبَةُ مُشَاعٍ وَهُمْ يَحْتَجُّونَ بِهَذِهِ الطَّرِيقِ إذَا وَافَقَتْ تَقْلِيدَهُمْ.

L26293 The report that we have narrated through the chain of Muslim: Yahya ibn Yahya reported to us, who said: "I [heard] Abu Khaythama narrate from Abu al-Zubayr from Jabir, who said: 'The Messenger of Allah—peace and blessings be upon him—dispatched us, appointing Abu 'Ubaydah as our commander. He intercepted a Quraysh caravan and provisioned us with a sack of dates, having found nothing else for us. Abu 'Ubaydah would give us one date at a time.'" This is the shared gift of dates.

وَالْخَبَرُ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى قَالَ: أَنَا أَبُو خَيْثَمَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: «بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمَّرَ عَلَيْنَا أَبَا عُبَيْدَةَ فَتَلَقَّى عِيرًا لِقُرَيْشٍ وَزَوَّدَنَا جِرَابًا مِنْ تَمْرٍ، لَمْ يَجِدْ لَنَا غَيْرَهُ، فَكَانَ أَبُو عُبَيْدَةَ يُعْطِينَا تَمْرَةً تَمْرَةً» فَهَذِهِ عَطِيَّةُ تَمْرٍ مُشَاعَةٍ.

L26294 The proof is established by what we have transmitted via the chain in Ṣaḥīḥ Muslim: Khalaf ibn Hishām narrated to us, Ḥammād ibn Zayd narrated to us from Ghaylān ibn Jarīr from Abū Burdah ibn Abī Mūsā al-Ashʿarī from his father: "I came to the Prophet (peace and blessings of Allah be upon him) with a group of Ashʿarīs to request mounts, and he granted us three

وَالْحُجَّةُ تَقُومُ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا خَلَفُ بْنُ هِشَامٍ نَا حَمَّادُ بْنُ زَيْدٍ عَنْ غَيْلَانَ بْنِ جَرِيرٍ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ «أَتَيْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ

camels white-marked on their faces, legs, and forearms," and he mentioned the report. This constitutes an undivided jointly owned gift.

وَسَلَّمَ - فِي نَفَرٍ مِنْ الْأَشْعَرِيِّينَ نَسْتَحْمِلُهُ فَأَمَرَ لَنَا بِثَلَاثِ ذَوْدٍ غُرِّ الذُّرَى» وَذَكَرَ الْخَبَرَ - فَهَذِهِ هِبَةُ مُشَاعٍ لَمْ يَنْقَسِمْ.

L26295–26296 From the perspective of legal reasoning, there is only valid ownership followed by a transaction within what is legitimately owned, nothing more. Thus, the recipient of the gift and the beneficiary of charity acquire ownership of the undivided share exactly as the donor and the charitable giver owned it, with no difference at all. The recipient of the gift, the beneficiary of charity, and the lessee may exercise rights over it just as the donor, the charitable giver, the lessee, and their agents would, without any distinction. The mortgagee's legal possession over it is equivalent to the mortgagor's possession and that of his agent, with no distinction whatsoever. There is absolutely no escape from this ruling for them—and success comes only from Allah, the Most High.

وَأَمَّا مِنْ النَّظَرِ: فَلَيْسَ إلَّا مِلْكٌ صَحِيحٌ، ثُمَّ تَصَرَّفَ فِيمَا صَحَّ الْمِلْكُ فِيهِ وَلَا مَزِيدَ، فَتَمَلُّكُ الْمَوْهُوبِ لَهُ وَالْمُتَصَدَّقِ عَلَيْهِ بِالْجُزْءِ الْمُشَاعِ كَمَا مَلَكَهُ الْوَاهِبُ وَالْمُتَصَدِّقُ، وَلَا فَرْقَ أَلْبَتَّةَ - وَيَتَصَرَّفُ الْمَوْهُوبُ لَهُ، وَالْمُتَصَدَّقُ، وَالْمُكْتَرِي، كَمَا يَتَصَرَّفُ فِيهِ الْوَاهِبُ، وَالْمُتَصَدِّقُ، وَالْمُكْتَرِي، وَوُكَلَاؤُهُمْ وَلَا فَرْقَ، وَتَكُونُ يَدُ الْمُرْتَهِنِ عَلَيْهِ كَمَا هِيَ عَلَيْهِ يَدُ الرَّاهِنِ وَوَكِيلُهُ وَلَا فَرْقَ - وَهَذَا لَا مُخَلِّصَ لَهُمْ مِنْهُ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A jurisprudential issue concerning the giving of an unspecified item from a group.

[مَسْأَلَةٌ أَعْطَى شَيْئًا غَيْرَ مُعَيَّنٍ مِنْ جُمْلَةٍ]

L26297

L26298 1636. Issue: If someone gives something unspecified from a group—whether an unspecified number, linear measure, weight, or dry measure—it is invalid and impermissible. Examples include giving a dirham from these dirhams, an animal from these animals, five dinars from these dinars, a ritl from this flour, a ṣāʿ from these dates, or a cubit from this garment. This ruling applies universally to charity, gifts, bridal gifts (mahr), sales, pledges, and leases—all such transactions are void, whether their parts differ or not, neither to a partner nor to others, neither to the wealthy nor to the poor. This is because the gift, charity, bridal gift, pledge, or lease is not applied to any specific item distinguished from his ownership, nor does the legal ruling of a pledge or lease attach to it. Consequently, nothing from that group leaves his ownership, nor does any legal ruling take effect upon it. Therefore, the transaction is void, constituting unlawful appropriation of wealth. This contradicts the earlier ruling, as the specified portion would inherently include a share for the buyer, charity-giver, gift recipient, pledgee, or lessee. It has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar:

١٦٣٦ - مَسْأَلَةٌ: وَأَمَّا إذَا أَعْطَى شَيْئًا غَيْرَ مُعَيَّنٍ مِنْ جُمْلَةٍ، أَوْ عَدَدًا كَذَلِكَ، أَوْ ذَرْعًا كَذَلِكَ، أَوْ وَزْنًا كَذَلِكَ، أَوْ كَيْلًا كَذَلِكَ، فَهُوَ بَاطِلٌ لَا يَجُوزُ، مِثْلُ: أَنْ يُعْطِيَ دِرْهَمًا مِنْ هَذِهِ الدَّرَاهِمِ، أَوْ دَابَّةً مِنْ هَذِهِ الدَّوَابِّ أَوْ خَمْسَةَ دَنَانِيرَ مِنْ هَذِهِ الدَّنَانِيرِ، أَوْ رِطْلًا مِنْ هَذَا الدَّقِيقِ، أَوْ صَاعًا مِنْ هَذَا التَّمْرِ، أَوْ ذِرَاعًا مِنْ هَذَا الثَّوْبِ، وَهَكَذَا فِي كُلِّ شَيْءٍ، وَالصَّدَقَةُ بِكُلِّ هَذَا، وَالْهِبَةُ وَالْإِصْدَاقُ، وَالْبَيْعُ، وَالرَّهْنُ، وَالْإِجَارَةُ، بَاطِلٌ كُلُّ ذَلِكَ سَوَاءٌ فِيمَا اخْتَلَفَتْ أَبْعَاضُهُ أَوْ لَمْ تَخْتَلِفْ - لَا لِشَرِيكٍ وَلَا لِغَيْرِهِ، وَلَا لِغَنِيٍّ وَلَا لِفَقِيرٍ - لِأَنَّهُ لَمْ يُوقِعْ الْهِبَةَ وَلَا الصَّدَقَةَ، وَلَا الْإِصْدَاقَ، وَلَا الرَّهْنَ، وَلَا الْإِجَارَةَ عَلَى شَيْءٍ أَبَانَهُ عَنْ مِلْكِهِ، أَوْ أَوْقَعَ فِيهِ حُكْمَ الرَّهْنِ، أَوْ الْإِجَارَةِ، فَإِذْ ذَلِكَ كَذَلِكَ، فَلَمْ يَخْرُجْ شَيْءٌ مِنْ تِلْكَ الْجُمْلَةِ عَنْ مِلْكِهِ، وَلَا أَوْقَعَ فِيهِ حُكْمًا -: فَلَا شَيْءَ فِي ذَلِكَ،

"I asked al-Zuhrī about a man partnered with his father, where the father says, 'You have one hundred dinars from the property jointly held between us.'" Al-Zuhrī replied, "Abū Bakr and ʿUmar ruled this impermissible until he physically takes possession of the amount and segregates it."

وَهَذَا هُوَ أَكْلُ الْمَالِ بِالْبَاطِلِ، وَهَذَا خِلَافُ مَا تَقَدَّمَ؛ لِأَنَّ الْجُزْءَ الْمُسَمَّى مُتَيَقَّنٌ أَنَّهُ لَا جُزْءَ إِلَّا وَفِيهِ حَظٌّ لِلْمُشْتَرِي، أَوْ الْمُصَدِّقِ، أَوْ الْمَوْهُوبِ لَهُ، أَوْ الْمُتَصَدَّقِ عَلَيْهِ، أَوْ الْمُرْتَهِنِ، أَوْ الْمُسْتَأْجِرِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ سَأَلْت الزُّهْرِيَّ عَنْ الرَّجُلِ يَكُونُ شَرِيكًا لِأَبِيهِ فَيَقُولُ لَهُ أَبُوهُ: لَك مِائَةُ دِينَارٍ مِنْ الْمَالِ الَّذِي بَيْنِي وَبَيْنَك؟ فَقَالَ الزُّهْرِيُّ: قَضَى أَبُو بَكْرٍ، وَعُمَرُ: أَنَّهُ لَا يَجُوزُ، حَتَّى يَحُوزَهُ مِنْ الْمَالِ وَيَعْزِلَهُ.

L26299 And from him [via the chain] from Maʿmar, on the authority of Simāk ibn al-Faḍl: ʿUmar ibn ʿAbd al-ʿAzīz decreed that no grant is valid unless it is singled out, set apart, and publicly declared.

وَبِهِ إلَى مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنَّهُ لَا يَجُوزُ مِنْ النَّحْلِ، إلَّا مَا أُفْرِدَ، وَعُزِلَ، وَأُعْلِمَ.

The Ruling Regarding One Who Is Given Something Without Asking

L26300

[مَسْأَلَة مَنْ أُعْطِي شَيْئًا مِنْ غَيْرِ مَسْأَلَةٍ]

L26301 1637. Issue: Whoever is given something without requesting it is obliged to accept it. He may subsequently gift it—if he wishes—to the one who gave it to him. This ruling applies to charity, gifts, and all other forms of benefit.

١٦٣٧ - مَسْأَلَةٌ: وَمَنْ أُعْطِي شَيْئًا مِنْ غَيْرِ مَسْأَلَةٍ، فَفَرَضَ عَلَيْهِ قَبُولَهُ، وَلَهُ أَنْ يَهَبَهُ بَعْدَ ذَلِكَ - إنْ شَاءَ - لِلَّذِي وَهَبَهُ لَهُ، وَهَكَذَا الْقَوْلُ فِي الصَّدَقَةِ، وَالْهَدِيَّةِ، وَسَائِرِ وُجُوهِ النَّفْعِ.

L26302–26303 The evidence for this is what we have narrated through the transmission chain of Al-Bazzār: Narrated to us Ibrāhīm ibn Saʿīd al-Jawharī, narrated to us Sufyān ibn ʿUyaynah, from al-Zuhrī, from al-Sā'ib ibn Yazīd, from Ḥuwayṭib ibn ʿAbd al-ʿUzzā, from Ibn al-Sāʿidī, from ʿUmar ibn al-Khaṭṭāb, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "Whatever comes to you of this wealth without requesting it or eagerness of the soul, then accept it." We know of no ḥadīth narrated by four Companions in a consecutive chain where each transmits from the other except this one.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ نَا إبْرَاهِيمُ بْنُ سَعِيدٍ الْجَوْهَرِيُّ نَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ السَّائِبِ بْنِ يَزِيدَ عَنْ حُوَيْطِبِ بْنِ عَبْدِ الْعُزَّى عَنْ ابْنِ السَّاعِدِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَا أَتَاكَ مِنْ هَذَا الْمَالِ مِنْ غَيْرِ مَسْأَلَةٍ، وَلَا إشْرَافِ نَفْسٍ، فَاقْبَلْهُ» لَا نَعْلَمُ حَدِيثًا رَوَاهُ أَرْبَعَةٌ مِنْ الصَّحَابَةِ فِي نَسَقٍ بَعْضِهِمْ عَنْ بَعْضٍ إلَّا هَذَا.

L26304 And from the chain recorded in Ṣaḥīḥ Muslim: Abu al-Ṭāhir narrated to us, Ibn Wahb narrated to us, ʿAmr ibn al-Ḥārith narrated from Ibn Shihāb from Sālim ibn ʿAbd Allāh ibn ʿUmar from his father: "The Messenger of

Allah—peace and blessings be upon him—would grant ʿUmar a portion, and ʿUmar would say: ’O Messenger of Allah, give it to one more in need than me.’ The Messenger of Allah—peace and blessings be upon him—responded: ’Take it. Keep it for yourself or give it in charity. Whatever comes to you of this wealth without you coveting it or asking for it—accept it. But what does not come to you, do not pursue it.”’[34]

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو الطَّاهِرِ نَا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ ابْنِ شِهَابٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُعْطِي عُمَرَ الْعَطَاءَ فَيَقُولُ لَهُ عُمَرُ: يَا رَسُولَ اللَّهِ أَعْطِهِ أَفْقَرَ إِلَيْهِ مِنِّي فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خُذْهُ فَتَمَوَّلْهُ، أَوْ تَصَدَّقْ بِهِ، وَمَا جَاءَكَ مِنْ هَذَا الْمَالِ - وَأَنْتَ غَيْرُ مُشْرِفٍ وَلَا سَائِلٍ -: فَخُذْهُ، وَمَا لَا فَلَا تُتْبِعْهُ نَفْسَكَ» .

L26305 Salim said: “For that reason, Ibn Umar would not ask anyone for anything, nor would he refuse anything that was given to him.”

قَالَ سَالِمٌ: فَمِنْ أَجْلِ ذَلِكَ كَانَ ابْنُ عُمَرَ لَا يَسْأَلُ أَحَدًا شَيْئًا، وَلَا يَرُدُّ شَيْئًا أُعْطِيهِ “.

L26306 Narrated by Aḥmad b. Muḥammad b. al-Jasūr from Aḥmad b. al-Faḍl b. Bahrām al-Dīnawarī from Muḥammad b. Jarīr al-Ṭabarī from al-Faḍl b. al-Ṣabbāḥ from ʿAbd Allāh b. Yazīd from Saʿīd b. Abī Ayyūb from Abū al-Aswad from Bukayr b. ʿAbd Allāh b. al-Ashajj from Busr b. Saʿīd from Khālid b. ʿAdī al-Juhanī: “The Messenger of Allah—peace and blessings of Allah be upon him and his family—said: ’Whoever receives an act of goodness from his brother should accept it and not refuse it, for it is a provision that Allah has sent to him.’”

نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ بْنِ بَهْرَامُ الدِّينَوَرِيُّ نَا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ نَا الْفَضْلُ بْنُ الصَّبَّاحِ نَا عَبْدُ اللَّهِ بْنُ يَزِيدَ نَا سَعِيدُ بْنُ أَبِي أَيُّوبَ عَنْ أَبِي الْأَسْوَدِ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ خَالِدِ بْنِ عَدِيٍّ الْجُهَنِيِّ “ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَنْ جَاءَهُ مِنْ أَخِيهِ مَعْرُوفٌ فَلْيَقْبَلْهُ وَلَا يَرُدَّهُ فَإِنَّمَا هُوَ رِزْقٌ سَاقَهُ اللَّهُ إِلَيْهِ» .

L26307–26308 These are consecutively transmitted reports that it is not permissible for anyone to disregard. Among the Companions who upheld this were Ibn ʿUmar, as we mentioned earlier, and his father ʿUmar ibn al-Khaṭṭāb—as has been narrated to us through the chain of Aḥmad ibn Shuʿayb, who reported to us from ʿAmr ibn Manṣūr and Isḥāq ibn Manṣūr, both of whom narrated from al-Ḥakam ibn Nāfiʿ (Abū al-Yamān), who reported to us from Shuʿayb ibn Abī Ḥamzah, from al-Zuhrī, who narrated: al-Sā’ib ibn Yazīd informed me that Ḥuwayṭib ibn ʿAbd al-ʿUzzā informed him that ʿAbdullāh ibn al-Saʿdī informed him that ʿUmar ibn al-Khaṭṭāb said to me during his caliphate: “Have I not been informed that you handle people’s affairs, yet when granted administrative compensation, you dislike it?” I replied: “I have horses and servants, and I am well-off. I wish for my compensation to be a charity upon

فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ لَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْهَا، وَأَخَذَ بِذَلِكَ مِنَ الصَّحَابَةِ ابْنُ عُمَرَ كَمَا ذَكَرْنَا آنِفًا وَأَبُوهُ عُمَرُ بْنُ الْخَطَّابِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا عَمْرُو بْنُ مَنْصُورٍ، وَإِسْحَاقُ بْنُ مَنْصُورٍ، كِلَاهُمَا عَنِ الْحَكَمِ بْنِ نَافِعٍ - هُوَ أَبُو الْيَمَانِ - نَا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ - عَنِ الزُّهْرِيِّ أَخْبَرَنِي السَّائِبُ بْنُ يَزِيدَ أَنَّ حُوَيْطِبَ بْنَ عَبْدِ الْعُزَّى أَخْبَرَهُ أَنَّ عَبْدَ اللَّهِ بْنَ السَّعْدِيِّ أَخْبَرَهُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ لِي فِي خِلَافَتِهِ: أَلَمْ أُحَدَّثْ أَنَّكَ تَلِي مِنْ أَعْمَالِ النَّاسِ أَعْمَالًا فَإِذَا أُعْطِيتَ الْعِمَالَةَ كَرِهْتَهَا. قُلْتُ: إِنَّ لِي

[34] **Hadith references (L26304):** Sahih Muslim 1045b.

the Muslims." ʻUmar said to him: "Do not do that"—then he recounted to him his report with the Prophet (peace and blessings be upon him and his family) similar to what we previously mentioned.

L26309 So this Umar forbids returning what was granted to a person.

L26310 And from the narration of Ḥammād ibn Salamah: Thābit al-Bunānī narrated to us from Abū Rāfiʻ from Abū Hurayrah, who said: "There is none who gives me a gift except that I accept it. But as for me to ask - I have never been one to ask."

L26311 From al-Ḥajjāj ibn al-Minhāl, from Mahdī ibn Maymūn, from Wāṣil, the freed slave of Abū ʻUyaynah, from a companion of his: That Abū al-Dardāʼ said: "Whoever Allah, the Mighty and Majestic, grants something from this wealth without asking or coveting, let him consume it and let him retain it as his property."

L26312 And through the chain of al-Ḥajjāj ibn al-Minhāl, from ʻAbdullāh ibn Dāwūd—he is al-Khuraibī—from al-Aʻmash from Ḥabīb ibn Abī Thābit, who said: I saw the gifts of al-Mukhtār come to Ibn ʻAbbās and Ibn ʻUmar, so they would accept them.

L26313 And through the chain of Muḥammad ibn al-Muthannā: Abū ʻĀṣim al-Ḍaḥḥāk ibn Makhlad narrated to us from Sufyān al-Thawrī from Manṣūr ibn al-Muʻtamir from Ibrāhīm al-Nakhaʻī, who said: "Accept from the ruler what he has granted you."

L26314 Abu Muhammad said: This is from the perspective of transmitted tradition. As for rational deduction, the one who gives—whether a ruler or non-ruler, whoever they may be, whether righteous or oppressive—cannot avoid being in one of three aspects with no fourth possibility: either the giver is certain that what he gave is unlawful, certain it is lawful, or he doubts and does not know whether it is lawful or unlawful.

L26315–26316 This category is further divided into three cases: either his preponderant

أَفْرَاسًا وَأَعْبُدًا وَأَنَا بِخَيْرٍ، فَأُرِيدُ أَنْ تَكُونَ عِمَالَتِي صَدَقَةً عَلَى الْمُسْلِمِينَ قَالَ لَهُ عُمَرُ: فَلَا تَفْعَلْ - ثُمَّ ذَكَرَ لَهُ خَبَرَهُ مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَحْوَ مَا ذَكَرْنَاهُ - فَهَذَا عُمَرُ يَنْهَى عَنْ رَدِّ مَا أُعْطِيَ الْمَرْءُ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، نَا ثَابِتٌ الْبُنَانِيُّ عَنْ أَبِي رَافِعٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: مَا أَحَدٌ يُهْدِي إِلَيَّ هَدِيَّةً إِلَّا قَبِلْتُهَا، فَأَمَّا أَنْ أَسْأَلَ، فَلَمْ أَكُنْ لِأَسْأَلَ.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا مَهْدِيُّ بْنُ مَيْمُونٍ نَا وَاصِلٌ مَوْلَى أَبِي عُيَيْنَةَ عَنْ صَاحِبٍ لَهُ: أَنَّ أَبَا الدَّرْدَاءِ قَالَ: مَنْ آتَاهُ اللَّهُ عَزَّ وَجَلَّ مِنْ هَذَا الْمَالِ شَيْئًا مِنْ غَيْرِ مَسْأَلَةٍ وَلَا إِشْرَافٍ، فَلْيَأْكُلْهُ، وَلْيَتَمَوَّلْهُ

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا عَبْدُ اللَّهِ بْنُ دَاوُد - هُوَ الْخُرَيْبِيُّ - عَنْ الْأَعْمَشِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ قَالَ: رَأَيْت هَدَايَا الْمُخْتَارِ تَأْتِي ابْنَ عَبَّاسٍ وَابْنَ عُمَرَ فَيَقْبَلَانِهَا.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا أَبُو عَاصِمٍ الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: خُذْ مِنْ السُّلْطَانِ مَا أَعْطَاك.

قَالَ أَبُو مُحَمَّد: هَذَا مِنْ طَرِيقِ الْأَثَرِ، وَأَمَّا مِنْ طَرِيقِ النَّظَرِ فَإِنَّهُ لَا يَخْلُو مَنْ أَعْطَاهُ: سُلْطَانٌ أَوْ غَيْرُ سُلْطَانٍ، كَائِنًا مَنْ كَانَ، مِنْ بَرٍّ أَوْ ظَالِمٍ، مِنْ أَحَدِ ثَلَاثَةِ أَوْجُهٍ لَا رَابِعَ لَهَا -: إمَّا أَنْ يُوقِنَ الْمُعْطَى أَنَّ الَّذِي أُعْطِي حَرَامٌ، وَإِمَّا أَنْ يُوقِنَ أَنَّهُ حَلَالٌ، وَإِمَّا أَنْ يَشُكَّ فَلَا يَدْرِي أَحَلَالٌ هُوَ أَمْ حَرَامٌ؟

assumption is that it is forbidden, his preponderant assumption is that it is permissible, or both possibilities are equally probable.

ثُمَّ يَنْقَسِمُ هَذَا الْقِسْمُ ثَلَاثَةُ أَقْسَامٍ: إِمَّا أَنْ يَكُونَ أَغْلَبُ ظَنِّهِ أَنَّهُ حَرَامٌ، أَوْ يَكُونَ أَغْلَبُ ظَنِّهِ أَنَّهُ حَلَالٌ، وَإِمَّا أَنْ يَكُونَ كِلَا الْأَمْرَيْنِ مُمْكِنًا عَلَى السَّوَاءِ.

L26317 If he is certain that it is forbidden, an injustice, and usurped property, yet retains it, he is a transgressor, disobedient to Allah the Exalted, and an oppressor, for by keeping it with him, he aids a wrongdoer in sin and aggression, and fails to cooperate in righteousness and piety by seizing it from him. Allah the Exalted has prohibited this and commanded him to do the opposite of what he did, as stated in His words: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" [Al-Ma'idah: 2].[35]

فَإِنْ كَانَ مُوقِنًا أَنَّهُ حَرَامٌ وَظُلْمٌ وَغَصْبٌ، فَإِنْ رَدَّهُ فَهُوَ فَاسِقٌ عَاصٍ لِلَّهِ تَعَالَى ظَالِمٌ؛ لِأَنَّهُ يُعِينُ بِهِ ظَالِمًا عَلَى الْإِثْمِ وَالْعُدْوَانِ بِإِبْقَائِهِ عِنْدَهُ، وَلَا يُعِينُ عَلَى الْبِرِّ وَالتَّقْوَى فِي انْتِزَاعِهِ مِنْهُ، وَقَدْ نَهَى اللَّهُ تَعَالَى عَنْ ذَلِكَ وَأَمَرَهُ بِخِلَافِ مَا فَعَلَ بِقَوْلِهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L26318 It necessarily follows that he either knows the one who unlawfully took from him or does not. If he knows him, [then...]

ثُمَّ لَا يَخْلُو مِنْ أَنْ يَكُونَ يَعْرِفُ صَاحِبَهُ الَّذِي أَخَذَ مِنْهُ بِغَيْرِ حَقٍّ أَوْ لَا يَعْرِفُهُ، فَإِنْ كَانَ يَعْرِفُهُ.

L26319 Here, his transgression increased, his oppression multiplied, and he committed a major sin among the gravest sins. He became more unjust than that oppressor because he was capable of redressing the injustice for its victim and removing it from the oppressor, yet he did not act. Rather, he aided the oppressor, supported him, strengthened him, and assisted in the oppression against the wronged person. If he does not know the rightful owner, then any property with an unknown owner belongs to the welfare of the Muslims. Thus, the ruling regarding this category is exactly the same in every respect as the previous one, since he deprived the needy, the poor, and the weak of their rights, contributed to their destruction, and empowered the oppressor through impermissible means. This is exceedingly grave—we seek refuge with Allah from it.

فَهُنَا زَادَ فِسْقُهُ، وَتَضَاعَفَ ظُلْمُهُ، وَأَتَى كَبِيرَةً مِنْ الْكَبَائِرِ، وَصَارَ أَظْلَمَ مِنْ ذَلِكَ الظَّالِمِ؛ لِأَنَّهُ قَدَرَ عَلَى رَدِّ الْمَظْلِمَةِ إلَى صَاحِبِهَا وَعَلَى إزَالَتِهَا عَنْ الظَّالِمِ فَلَمْ يَفْعَلْ، بَلْ أَعَانَ الظَّالِمَ، وَأَيَّدَهُ وَقَوَّاهُ، وَأَعَانَ عَلَى الْمَظْلُومِ. وَإِنْ كَانَ لَا يَعْرِفُ صَاحِبَهُ فَكُلُّ مَالٍ لَا يُعْرَفُ صَاحِبُهُ فَهُوَ فِي مَصَالِحِ الْمُسْلِمِينَ، فَالْقَوْلُ فِي هَذَا الْقِسْمِ كَالْقَوْلِ فِي الَّذِي قَبْلَهُ سَوَاءً سَوَاءً، إذْ مَنَعَ الْمَسَاكِينَ وَالْفُقَرَاءَ وَالضُّعَفَاءَ حَقَّهُمْ، وَأَعَانَ عَلَى هَلَاكِهِمْ، وَقَوَّى الظَّالِمَ بِمَا لَا يَحِلُّ لَهُ، وَهَذَا عَظِيمٌ جِدًّا - نَعُوذُ بِاَللَّهِ مِنْهُ.

L26320 If he is certain it is permissible, then the one who gave it is undoubtedly acquiring abundant good deeds through that. Thus, in returning what he gave him, he is not advising him, since he prevents him from abundant good deeds. The Messenger of Allah (peace be upon him) said: "Religion is sincere counsel, religion is sincere counsel to Allah, His Messenger, His Book, the

فَإِنْ كَانَ يُوقِنُ أَنَّهُ حَلَالٌ فَإِنَّ الَّذِي أَعْطَاهُ مُكْتَسِبٌ بِذَلِكَ حَسَنَاتٍ جَمَّةً بِلَا شَكٍّ، فَهُوَ فِي رَدِّهِ عَلَيْهِ مَا أَعْطَاهُ غَيْرُ نَاصِحٍ، لَهُ، إذْ مَنْعُهُ الْحَسَنَاتِ الْكَثِيرَةَ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدِّينُ النَّصِيحَةُ الدِّينُ النَّصِيحَةُ لِلَّهِ وَلِرَسُولِهِ وَلِكِتَابِهِ وَلِأَئِمَّةِ الْمُسْلِمِينَ وَعَامَّتِهِمْ» فَمَنْ لَمْ يَنْصَحْ لِأَخِيهِ الْمُسْلِمِ فِي دِينِهِ فَقَدْ عَصَى اللَّهَ عَزَّ وَجَلَّ فِي

[35] **Qur'an references (L26317):** Qur'an 5:2 (Al-Ma'idah).

leaders of the Muslims, and their common people." Therefore, whoever does not advise his Muslim brother in his religion has disobeyed Allah Almighty in that. Perhaps if he returns it, the recipient may not return to him with another intention to offer it, thus depriving him of reward and blocking one of the paths of goodness. If he does not know whether it is permissible or forbidden, this is the characteristic of all transactions people engage in, except in the limited cases where one is certain it is permissible or forbidden. If taking this were forbidden, all transactions would be forbidden except in the extremely rare cases.

ذَلِكَ، وَلَعَلَّهُ إِنْ رَدَّهُ لَا يَحْضُرُ الْمَرْدُودَ عَلَيْهِ بِنِيَّةٍ أُخْرَى فِي بَذْلِهِ، فَيَكُونُ قَدْ حَرَمَهُ الْأَجْرَ وَصَدَّ عَنْ سَبِيلٍ مِنْ سُبُلِ الْخَيْرِ. وَإِنْ كَانَ لَا يَدْرِي أَحَلَالٌ هُوَ أَمْ حَرَامٌ؟ فَهَذِهِ صِفَةُ كُلِّ مَا يَتَعَامَلُ بِهِ النَّاسُ إِلَّا فِي الْيَسِيرِ الَّذِي يُوقِنُ فِيهِ أَنَّهُ حَلَالٌ، أَوْ أَنَّهُ حَرَامٌ، فَلَوْ حُرِمَ أَخْذُ هَذَا لَحَرُمَتْ الْمُعَامَلَاتُ كُلُّهَا إِلَّا فِي النَّادِرِ الْقَلِيلِ جِدًّا.

L26321–26322 During the time of Allah's Messenger—peace and blessings be upon him—there occurred thefts and corrupt transactions that were not well-known. Yet he—peace and blessings be upon him—never prohibited acquiring wealth people conventionally used in dealings because of such circumstances. However, some scrupulously cautious individuals avoided what they predominantly considered unlawful. Such cases fall under the obligation to advise about accepting such wealth. If one's soul is at ease with it, that is permissible, but if one avoids it, let them donate it as charity—they will be rewarded regardless. This constitutes clear and evident evidence.

وَقَدْ كَانَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَرِقَاتٌ وَمُعَامَلَاتٌ فَاسِدَةٌ غَيْرُ مَشْهُورَةٍ، فَمَا حَرَّمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ مِنْ أَجْلِ ذَلِكَ أَخْذَ مَالٍ يَتَعَامَلُ بِهِ النَّاسُ، إِلَّا أَنَّ قَوْمًا مِنْ أَهْلِ الْوَرَعِ اتَّقُوا مَا الْأَغْلَبُ عِنْدَهُمْ أَنَّهُ حَرَامٌ، فَمَا كَانَ مِنْ هَذَا الْقِسْمِ فَهُوَ دَاخِلٌ فِي بَابِ وُجُوبِ النَّصِيحَةِ بِأَخْذِهِ، فَإِنْ طَابَتْ نَفْسُهُ عَلَيْهِ فَحَسَنٌ، وَإِنْ اتَّقَاهُ فَلْيَتَصَدَّقْ بِهِ فَيُؤْجَرُ عَلَى كُلِّ حَالٍ، فَهَذَا بُرْهَانٌ ظَاهِرٌ لَائِحٌ.

L26323 Another proof is that among the manifestations of excessive ignorance and acting in religion without knowledge is when a person recklessly trivializes taking Zayd's wealth without any effort—whether through a sale transaction between them or by leasing his labor for work done for him—yet avoids accepting that very same wealth when Zayd willingly offers it. This is profoundly astonishing and has no place in God-consciousness whatsoever. For if he truly feared that wealth being impure, he would have already deemed it so through the sale or *Ijarah*. This almost amounts to hypocrisy tainted by ignorance.

وَبُرْهَانٌ آخَرُ -: وَهُوَ أَنَّ مِنْ الْجَهْلِ الْمُفْرِطِ، وَالْعَمَلِ فِي الدِّينِ بِغَيْرِ عِلْمٍ أَنْ يَكُونَ الْمَرْءُ يَسْتَسْهِلُ بِلَا مُؤْنَةٍ أَخْذَ مَالِ زَيْدٍ فِي بَيْعٍ يَبِيعُهُ مِنْهُ، أَوْ فِي إجَارَةٍ يُؤَجِّرُ نَفْسَهُ فِي عَمَلٍ يَعْمَلُهُ، لَهُ، ثُمَّ يَتَجَنَّبُ أَخْذَ مَالِ ذَلِكَ الزَّيْدِ نَفْسِهِ إذَا أَعْطَاهُ إيَّاهُ طَيِّبَ النَّفْسِ بِهِ، فَهَذَا عَجَبٌ عَجِيبٌ، لَا مَدْخَلَ لَهُ فِي الْوَرَعِ أَصْلًا؛ لِأَنَّهُ إنْ كَانَ يَتَّقِي كَوْنَ ذَلِكَ الْمَالِ خَبِيثًا فَقَدْ أَخَذَهُ فِي الْبَيْعِ وَالْإِجَارَةِ فَهَذَا يَكَادُ يَكُونُ رِيَاءً مَشُوبًا بِجَهْلٍ.

L26324 If it is said: "Is it disliked for a person to accept it?" The response is: This contradicts the practice of Allah's Messenger—peace and blessings be upon him—and reluctance toward his Sunnah. We seek refuge in Allah from this. As we have been transmitted through the chain of Al-Bukhārī: Muḥammad ibn Bashār → Muḥammad ibn Abī ʿAdiyy → Shuʿbah → Sulaymān (al-Aʿmash) → Abī Ḥāzim → Abī Hurayrah → the Prophet—peace and blessings be upon

فَإِنَّ قِيلَ: يَكْرَهُ الْمَرْءُ أَخْذَهُ؟ قِيلَ: هَذَا خِلَافُ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالرَّغْبَةُ عَنْ سُنَّتِهِ نَعُوذُ بِاَللَّهِ مِنْ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ بَشَّارٍ نَا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ شُعْبَةَ عَنْ سُلَيْمَانَ - هُوَ الْأَعْمَشُ - عَنْ أَبِي حَازِمٍ

him—who said: “If I were invited to a forearm or a shank, I would respond, and if a forearm or a shank were gifted to me, I would accept it.” Whoever shows reluctance toward his Sunnah has not been guided to goodness. It is authentically established that he—peace and blessings be upon him—said: “Whoever shows reluctance toward my Sunnah is not of me.” Abū Muḥammad said: Mālik and al-Shāfiʿī would not reject what was given to them, nor would they ask anyone for anything. If the one who disagrees argues with the ḥadīth of al-Ṣaʿb ibn Jaththāmah: “When he gifted a wild donkey to the Prophet—peace and blessings be upon him—he returned it to him, saying: ‘We only returned it to you except that we are in iḥrām.’”[36]

عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَوْ دُعِيتُ إلَى ذِرَاعٍ أَوْ كُرَاعٍ لَأَجَبْتُ، وَلَوْ أُهْدِيَ إلَيَّ ذِرَاعٌ أَوْ كُرَاعٌ لَقَبِلْتُ» وَمَنْ رَغِبَ عَنْ سُنَّتِهِ فَمَا وُفِّقَ لِخَيْرٍ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «مَنْ رَغِبَ عَنْ سُنَّتِي فَلَيْسَ مِنِّي» . قَالَ أَبُو مُحَمَّد: وَكَانَ مَالِكٌ، وَالشَّافِعِيُّ لَا يَرُدَّانِ مَا أُعْطِيَا، وَلَا يَسْأَلَانِ أَحَدًا شَيْئًا، فَإِنْ احْتَجَّ الْمُخَالِفُ بِحَدِيثِ الصَّعْبِ بْنِ جَثَّامَةَ «إذْ أَهْدَى إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِمَارَ وَحْشٍ فَرَدَّهُ عَلَيْهِ وَقَالَ: إنَّا لَمْ نَرُدَّهُ عَلَيْكَ إلَّا أَنَّا حُرُمٌ» .

L26325 And according to what has been narrated to us through the chain of ʿAbd al-Razzāq, who narrated to us Maʿmar, from Ibn ʿAjlān, from Saʿīd al-Maqburī, from Abū Hurayrah, that the Prophet—peace and blessings of Allāh be upon him and his family—said: “I have indeed resolved not to accept any gift except from a Qurayshī, an Ansārī, a Thaqafī, or a Dawsī.”

وَبِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نَا مَعْمَرٌ عَنْ ابْنِ عَجْلَانَ عَنْ سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَقَدْ هَمَمْتُ أَنْ لَا أَقْبَلَ هِبَةً إلَّا مِنْ قُرَشِيٍّ أَوْ أَنْصَارِيٍّ أَوْ ثَقَفِيٍّ أَوْ دَوْسِيٍّ» .

L26326–26327 And from the path of Abū Dāwūd: narrated to us Muḥammad ibn ʿAmr, narrated to us al-Rāzī, narrated to us Salamah ibn al-Faḍl, narrated to us Muḥammad ibn Isḥāq from Saʿīd ibn Abī Saʿīd al-Maqburī from his father from Abū Hurayrah, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him and his family—said: “By Allāh, I will not accept any gift from anyone after this day unless they are from among the Qurashī Muhājirīn, or an Anṣārī, or one from Thaqīf (Thaqafī), or one from Daws (Dawsī).”

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ عَمْرٍو وَالرَّازِيُّ نَا سَلَمَةُ بْنُ الْفَضْلِ نَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «وَايْمُ اللَّهِ لَا أَقْبَلُ بَعْدَ يَوْمِي هَذَا مِنْ أَحَدٍ هَدِيَّةً إلَّا أَنْ يَكُونَ مِنْ مُهَاجِرِيٍّ قُرَشِيٍّ أَوْ أَنْصَارِيٍّ أَوْ ثَقَفِيٍّ أَوْ دَوْسِيٍّ» .

L26328 And through what we have narrated by way of Al-Bukhari: Muhammad ibn Yusuf narrated to us, Al-Awza’i narrated to us from Az-Zuhri from Sa’id ibn Al-Musayyib and Urwah ibn Az-Zubair that Hakim ibn Hizam said: “I asked the Messenger of Allah—peace and blessings be upon him and his family—and he gave me. Then I asked him again, and he gave me. Then he said: ’O Hakim, this wealth is alluring and sweet. Whoever takes it with a generous heart will be blessed in it, and whoever takes it with a greedy soul will not be

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ يُوسُفَ نَا الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ أَنَّ حَكِيمَ بْنَ حِزَامٍ قَالَ «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَعْطَانِي ثُمَّ سَأَلْتُهُ فَأَعْطَانِي، ثُمَّ قَالَ: يَا حَكِيمُ إنَّ هَذَا الْمَالَ خَضِرَةٌ حُلْوَةٌ فَمَنْ أَخَذَهُ بِسَخَاوَةِ نَفْسٍ بُورِكَ لَهُ فِيهِ، وَمَنْ أَخَذَهُ بِإِشْرَافِ نَفْسٍ لَمْ يُبَارَكْ فِيهِ، وَكَانَ كَالَّذِي يَأْكُلُ وَلَا يَشْبَعُ، وَالْيَدُ الْعُلْيَا خَيْرٌ مِنْ الْيَدِ السُّفْلَى قَالَ حَكِيمٌ فَقُلْتُ: يَا

[36] **Hadith references (L26324):** Sahih al-Bukhari 2568.

blessed in it, and he will be like one who eats but is not satisfied. The upper hand is better than the lower hand.'" Hakim said: "I said: 'O Messenger of Allah, by the One who sent you with the truth, I will never take anything from anyone after you until I depart this world.'" Then Abu Bakr would summon Hakim to grant him his stipend, but he refused to accept it. Later, Umar called him to give him his share, but he refused to accept it. Umar said: "O assembly of Muslims, I present to him his rightful share that Allah has apportioned for him from this fay' wealth, yet he refuses to take it." Thus, Hakim never took anything from anyone after the Messenger of Allah—peace and blessings be upon him and his family—until Hakim passed away.

رَسُولَ اللَّهِ وَالَّذِي بَعَثَكَ بِالْحَقِّ لَا أَرْزَأُ بَعْدَكَ أَحَدًا شَيْئًا حَتَّى أُفَارِقَ الدُّنْيَا» ، فَكَانَ أَبُو بَكْرٍ يَدْعُو حَكِيمًا لِيُعْطِيَهُ الْعَطَاءَ فَيَأْبَى أَنْ يَقْبَلَ مِنْهُ شَيْئًا، ثُمَّ إِنَّ عُمَرَ دَعَاهُ لِيُعْطِيَهُ فَأَبَى أَنْ يَقْبَلَ مِنْهُ شَيْئًا، فَقَالَ عُمَرُ: يَا مَعْشَرَ الْمُسْلِمِينَ إِنِّي أَعْرِضُ عَلَيْهِ حَقَّهُ الَّذِي قَسَمَهُ اللَّهُ لَهُ مِنْ هَذَا الْفَيْءِ فَيَأْبَى أَنْ يَأْخُذَهُ - فَلَمْ يَرْزَأْ حَكِيمٌ أَحَدًا مِنَ النَّاسِ شَيْئًا بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَتَّى تُوُفِّيَ ".

L26329 And according to what we have narrated through the chain of Abū Dharr, that he said to Al-Aḥnaf ibn Qays when Al-Aḥnaf asked him, "What about the public stipend?" Abū Dharr replied: "Take it, for today it is assistance. But if it becomes a price for your religion, do not take it."

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي ذَرٍّ أَنَّهُ قَالَ لِلْأَحْنَفِ بْنِ قَيْسٍ وَقَدْ سَأَلَهُ الْأَحْنَفُ عَنِ الْعَطَاءِ؟ فَقَالَ لَهُ أَبُو ذَرٍّ: خُذْهُ، فَإِنَّ فِيهِ الْيَوْمَ مَعُونَةً، فَإِذَا كَانَ ثَمَنًا لِدِينِكَ فَلَا تَأْخُذْهُ.

L26330–26332 All of this is no proof for them in this matter. As for the ḥadīth "I had indeed intended not to accept any gift," Sa'īd ibn Abī Sa'īd can only be in one of two states: either he heard it from Abū Hurayrah or he did not. If he did not hear it, then the chain is disconnected; if he did hear it... He heard it, and indeed it indicates that he—peace be upon him—intended that action but did not carry it out, which aligns with the established principle. For the principle holds that the recipient has the unrestricted choice: if he wishes, he may accept, and if he wishes, he may reject.

فَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا حَدِيثُ «لَقَدْ هَمَمْتُ أَنْ لَا أَقْبَلَ هِبَةً» فَإِنَّ سَعِيدَ بْنَ أَبِي سَعِيدٍ لَا يَخْلُو: إِمَّا أَنْ يَكُونَ سَمِعَهُ مِنْ أَبِي هُرَيْرَةَ أَوْ لَمْ يَسْمَعْهُ. فَإِنْ كَانَ لَمْ يَسْمَعْهُ فَهُوَ مُنْقَطِعٌ، وَإِنْ كَانَ سَمِعَهُ فَإِنَّمَا فِيهِ: أَنَّهُ - عَلَيْهِ السَّلَامُ - هَمَّ بِذَلِكَ، لَا أَنَّهُ أَنْفَذَهُ وَهُوَ مُوَافِقٌ لِمَعْهُودِ الْأَصْلِ، لِأَنَّ الْأَصْلَ كَانَ أَنَّ الْمُعْطَى مُخَيَّرٌ إِنْ شَاءَ قَبِلَ وَإِنْ شَاءَ رَدَّ.

L26333 The narration of Umar—may Allah be pleased with him—is cited to invalidate the first scenario. There is no doubt about this, as the Prophet—peace and blessings be upon him—commanded him to accept wealth received without request or covetousness of the soul.

وَحَدِيثُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَارِدٌ بِإِبْطَالِ الْحَالِ الْأَوَّلِ، وَلَا شَكَّ فِي ذَلِكَ حِينَ أَمَرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِقَبُولِ مَا جَاءَ مِنَ الْمَالِ مِنْ غَيْرِ مَسْأَلَةٍ وَلَا إِشْرَافِ نَفْسٍ.

L26334 It has thus been established that this matter has been abrogated with certain knowledge, leaving no room for doubt. Whoever claims that the abrogator has invoked and abrogated what is conclusively known to be abrogated has claimed falsehood and what he has no knowledge of. Allah forbid that such a thing could be permissible in religion! For if this were allowed, we would

فَصَحَّ أَنَّ هَذَا الْهَمَّ قَدْ صَحَّ نَسْخُهُ بِيَقِينٍ لَا مِرْيَةَ فِيهِ، فَمَنِ ادَّعَى أَنَّ الْمُوقَنَ نَسْخُهُ قَدْ دَعَا وَنَسَخَ النَّاسِخُ، فَقَدِ ادَّعَى الْبَاطِلَ، وَمَا لَا عِلْمَ لَهُ بِهِ، وَحَاشَ اللَّهِ مِنْ جَوَازِ ذَلِكَ

not know the sound aspects of religion from its unsound elements within it, nor distinguish between what is binding upon us and what is not - Allah protect us from this! Therefore, clinging to this report is entirely invalid.

L26335 As for the other narration, "I will not accept any gift from anyone after this day"—this is the narration of Salamah ibn al-Faḍl al-Abrash, who is deemed weak and rejected. Thus, any reliance on it is wholly invalidated.

L26336 As for the ḥadīth of Ṣaʿb ibn Jaththāmah, the Prophet (peace and blessings be upon him) clarified the reason for rejecting the gift, which was their being in a state of *iḥrām*. This is some of the situations covered by ʿUmar's ḥadīth, so it is an exception from it. Similarly, we say that if game is gifted to a person in *iḥrām*, they are given the choice to accept or refuse it. Likewise, it has been narrated to us from ʿĀ'ishah, the Mother of the Believers, and Ibn ʿUmar that they both would accept gifts but refuse game if it was gifted to them while they were in *iḥrām*.

L26337 As for the narration of Ḥakīm, it is exceedingly clear. When the Messenger of Allah—peace and blessings be upon him and his family—stated regarding one who takes wealth with covetousness of the soul, "No blessing is granted to him in it," and Ḥakīm recognized within himself covetousness toward wealth, he did not deem it permissible to take it. Thus, we say: Taking it is only obligatory for one whose soul lacks covetousness toward it.

L26338–26340 The proof of this is his own report about himself that he petitioned the Prophet (peace be upon him and his family) and was granted his request, then petitioned again and was granted, then petitioned once more and was granted—as recorded in certain narrations—until the Prophet addressed him in the manner he had previously done. It has been transmitted to us through ʿAbd al-Razzāq's chain from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyib: "The Prophet (peace be upon him and his family) bestowed upon Ḥakīm ibn Ḥizām a gift during Ḥunayn, which he deemed insufficient, so the Prophet increased it." The narrator then cited the aforementioned ḥadīth, and this exemplifies the pinnacle of spiritual refinement. It has been

فِي الدِّينِ، إِذْ لَوْ كَانَ ذَلِكَ لَمَا عَلِمْنَا صَحِيحَ الدِّينِ مِنْ سَقِيمِهِ فِيهِ وَلَا مَا يَلْزَمُنَا مِمَّا لَا يَلْزَمُنَا، وَمَعَاذَ اللَّهِ مِنْ هَذَا - فَبَطَلَ التَّعَلُّقُ بِهَذَا الْخَبَرِ جُمْلَةً.

وَأَمَّا الْآخَرُ «لَا أَقْبَلُ بَعْدَ يَوْمِي هَذَا مِنْ أَحَدٍ هَدِيَّةً» فَرِوَايَةُ سَلَمَةَ بْنِ الْفَضْلِ الْأَبْرَشِ - وَهُوَ سَاقِطٌ مُطْرَحٌ - فَبَطَلَ التَّعَلُّقُ بِهِ جُمْلَةً.

وَأَمَّا حَدِيثُ الصَّعْبِ بْنِ جَثَّامَةَ فَقَدْ بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - السَّبَبَ الَّذِي مِنْ أَجْلِهِ رَدَّهُ وَهُوَ كَوْنُهُمْ مُحْرِمِينَ، وَهَذَا بَعْضُ الْأَحْوَالِ الَّتِي عَمَّهَا حَدِيثُ عُمَرَ، فَهُوَ مُسْتَثْنًى مِنْهُ، وَكَذَلِكَ نَقُولُ: إِنَّ الْمُحْرِمَ إِذَا أُهْدِيَ لَهُ صَيْدٌ فَهُوَ مُخَيَّرٌ فِي قَبُولِهِ وَرَدِّهِ، وَهَكَذَا رُوِّينَا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ أَنَّهُمَا كَانَا يَقْبَلَانِ الْهَدَايَا وَيَرُدَّانِ الصَّيْدَ إِنْ أُهْدِيَ لَهُمَا وَهُمَا مُحْرِمَانِ.

وَأَمَّا حَدِيثُ حَكِيمٍ - فَبَيِّنٌ جِدًّا؛ لِأَنَّهُ لَمَّا سَمِعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ فِيمَنْ أَخَذَ الْمَالَ بِإِشْرَافِ نَفْسٍ مَا قَالَ مِنْ أَنَّهُ «لَا يُبَارَكُ لَهُ فِيهِ» وَعَلِمَ مِنْ نَفْسِهِ الْإِشْرَافَ إِلَى الْمَالِ لَمْ يَسْتَجِزْ أَخْذَهُ وَهَكَذَا نَقُولُ: إِنَّهُ إِنَّمَا يَلْزَمُ أَخْذُهُ مَنْ كَانَ غَيْرَ مُشْرِفِ النَّفْسِ إِلَيْهِ.

وَبُرْهَانُ ذَلِكَ -: إِخْبَارُهُ عَنْ نَفْسِهِ أَنَّهُ سَأَلَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَعْطَاهُ، ثُمَّ سَأَلَهُ فَأَعْطَاهُ، ثُمَّ سَأَلَهُ فَأَعْطَاهُ - كَذَا جَاءَ فِي بَعْضِ الرِّوَايَاتِ حَتَّى خَاطَبَهُ بِمَا خَاطَبَهُ بِهِ. وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «أَعْطَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَكِيمَ بْنَ حِزَامٍ يَوْمَ حُنَيْنٍ عَطَاءً فَاسْتَقَلَّهُ، فَزَادَهُ» ، ثُمَّ ذَكَرَ الْحَدِيثَ الْمَذْكُورَ، وَهَذَا غَايَةُ إِشْرَافِ النَّفْسِ؛ وَرُوِّينَا مِنْ طَرِيقِ

narrated to us through the chain of Abū Dāwūd al-Ṭayālisī, **who narrated to us** from Ibn Abī Dhīʾb, from Muslim ibn Jundub, from Ḥakīm ibn Ḥizām, who said: “I asked the Messenger of Allah—peace and blessings be upon him and his family—**and I pressed him earnestly in my request**. He said: **’I find no objection to your asking, O Ḥakīm. Truly, this wealth is sweet and fresh.”’**

أَبِي دَاوُد الطَّيَالِسِيّ نَا ابْنُ أَبِي ذِئْبٍ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ عَنْ حَكِيمِ بْنِ حِزَامٍ قَالَ: «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَلْحَفْتُ فِي الْمَسْأَلَةِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا أَنْكَرَ مَسْأَلَتَكَ يَا حَكِيمُ إنَّ هَذَا الْمَالَ حُلْوٌ خَضِرٌ» .

L26341 He mentioned Hadith.

وَذَكَرَ الْحَدِيثَ.

L26342 This is a clear clarification, and it is not permissible to attribute anything other than this to Ḥakim—may Allah be pleased with him.

فَهَذَا بَيَانٌ لَائِحٌ، وَلَا يَجُوزُ أَنْ يُظَنَّ بِحَكِيمٍ - رَضِيَ اللَّهُ عَنْهُ - غَيْرُ هَذَا.

L26343 The statement of Abī Dharr is correct because whatever a person gives while seeking compensation in return is forbidden for him to take. One is only obligated to take what is given without any invalid condition. It has been narrated to us through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Salamah ibn Kuhayl, from Dharr ibn ʿAbd Allāh al-Marhabī, from ʿAbd Allāh ibn Masʿūd that a man asked him, saying: “I have a neighbor who consumes usury, and he persistently invites me.” Ibn Masʿūd replied: “Its disgrace is upon you, and its sin is on you.” Sufyān said: “If you identify it by its essence, then do not consume it.” Abū Muḥammad said: Sufyān spoke the truth: consuming is not the same as taking. This is because it is known that the specific item is forbidden, as one has the ability, when taking it, to fulfill what Allāh has obligated upon him by delivering it to its rightful people and removing it from wrongful gains. However, one cannot do that in the case of consumption. Therefore, he is obligated to avoid consuming it.

وَأَمَّا قَوْلُ أَبِي ذَرٍّ فَصَحِيحٌ؛ لِأَنَّ مَا أَعْطَى الْمَرْءُ وَطَلَبَ عِوَضًا مِنْهُ فَحَرَامٌ عَلَيْهِ أَخْذُهُ، وَإِنَّمَا يَلْزَمُ أَخْذُ مَا أُعْطِيَ دُونَ شَرْطٍ فَاسِدٍ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ ذَرِّ بْنِ عَبْدِ اللَّهِ الْمَرْهَبِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّ رَجُلًا سَأَلَهُ فَقَالَ: لِي جَارٌ يَأْكُلُ الرِّبَا، وَأَنَّهُ لَا يَزَالُ يَدْعُونِي. فَقَالَ لَهُ ابْنُ مَسْعُودٍ: مُهَنَّاهُ لَك، وَإِثْمُهُ عَلَيْك، قَالَ سُفْيَانُ: إنْ عَرَفْتَهُ بِعَيْنِهِ فَلَا تَأْكُلْهُ. قَالَ أَبُو مُحَمَّدٍ: صَدَقَ سُفْيَانُ الْأَكْلُ غَيْرُ الْأَخْذِ، لِمَا عُرِفَ أَنَّ عَيْنَهُ حَرَامٌ؛ لِأَنَّهُ يَقْدِرُ فِي أَخْذِهِ عَلَى أَنْ يُؤَدِّيَ فِيهِ مَا افْتَرَضَهُ اللَّهُ تَعَالَى عَلَيْهِ مِنْ إيصَالِهِ إلَى أَهْلِهِ وَإِزَالَتِهِ عَنْ الْمَظَالِمِ، وَلَا يَقْدِرُ عَلَى ذَلِكَ فِي الْأَكْلِ، فَفَرَضَ عَلَيْهِ اجْتِنَابَ أَكْلِهِ.

L26344 And through the chain of ʿAbd al-Razzāq from Maʿmar from Abū Isḥāq al-Sabīʿī from al-Zubayr—the son of al-Khirrīt—from Salmān al-Fārisī, who said: If you have a friend who is a tax collector, or a neighbor who is a tax collector, or a relative who is a tax collector, then if he invites you to a meal, accept it, for it is his hospitality toward you, and he alone bears the sin.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ الزُّبَيْرِ - هُوَ ابْنُ الْخِرِّيتِ - عَنْ سَلْمَانَ الْفَارِسِيِّ قَالَ: إذَا كَانَ لَك صَدِيقٌ عَامِلٌ، أَوْ جَارٌ عَامِلٌ، أَوْ ذُو قَرَابَةٍ عَامِلٌ، فَدَعَاك إلَى طَعَامٍ فَاقْبَلْهُ، فَإِنَّهُ مُهَنَّاهُ لَك وَإِثْمُهُ عَلَيْهِ.

L26345 ʿAbd al-Razzāq reported from Maʿmar, who said: Adī ibn Arṭāʾa—the governor of Basra—would send trays of *tharīd* to al-Ḥasan daily. Al-Ḥasan would eat from them and feed his companions. Maʿmar said: Adī sent

tharīd to al-Ḥasan, al-Shaʿbī, and Ibn Sīrīn. Al-Ḥasan and al-Shaʿbī accepted it, while Ibn Sīrīn refused it.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: كَانَ عَدِيُّ بْنُ أَرْطَاةَ - هُوَ عَامِلُ الْبَصْرَةِ - يَبْعَثُ إِلَى الْحَسَنِ كُلَّ يَوْمٍ بِجِفَانِ ثَرِيدٍ فَيَأْكُلُ الْحَسَنُ مِنْهَا وَيُطْعِمُ أَصْحَابَهُ قَالَ: وَبَعَثَ عَدِيٌّ إِلَى الْحَسَنِ، وَالشَّعْبِيِّ، وَابْنِ سِيرِينَ، فَقَبِلَ الْحَسَنُ، وَالشَّعْبِيُّ، وَرَدَّ ابْنُ سِيرِينَ.

L26346 Al-Hasan was asked about the food of the money-changers, so he replied: Allah, the Exalted, has already informed you that the Jews and the Christians eat usury, and He has made their food permissible for you.

قَالَ: وَسُئِلَ الْحَسَنُ عَنْ طَعَامِ الصَّيَارِفَةِ؟ فَقَالَ: قَدْ أَخْبَرَكُمْ اللَّهُ تَعَالَى عَنْ الْيَهُودِ، وَالنَّصَارَى أَنَّهُمْ يَأْكُلُونَ الرِّبَا وَأَحَلَّ لَكُمْ طَعَامَهُمْ.

L26347–26349 And with him [the chain goes] to Ma'mar, from Mansur ibn al-Mu'tamir: I said to Ibrahim al-Nakha'i, "Our chief acts tyrannically and commits injustices, then he calls me, but I do not respond to him." Ibrahim said, "The devil has presented this matter to sow enmity." The officials would oppress and take, then supplicate and be answered. I said to him: "I stayed with an official who accommodated me and gave me a gift." He said: "Accept it." I asked: "But he deals in usury?" He replied: "Accept it as long as you do not see it with your own eyes."

وَبِهِ إِلَى مَعْمَرٍ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ قُلْت لِإِبْرَاهِيمَ النَّخَعِيِّ: عَرِيفٌ لَنَا يَهْمِطُ وَيُصِيبُ مِنْ الظُّلْمِ فَيَدْعُونِي فَلَا أُجِيبُهُ فَقَالَ إبْرَاهِيمُ: الشَّيْطَانُ عَرَضَ بِهَذَا لِيُوقِعَ عَدَاوَةً، وَقَدْ كَانَ الْعُمَّالُ يَهْمِطُونَ وَيُصِيبُونَ ثُمَّ يَدْعُونَ فَيُجَابُونَ، قُلْت لَهُ: نَزَلْتُ بِعَامِلٍ فَنَزَلَنِي وَأَجَازَنِي، قَالَ: اقْبَلْ، قُلْت: فَصَاحِبُ رِبًا؟ فَقَالَ: اقْبَلْ مَا لَمْ تَرَهُ بِعَيْنِهِ.

L26350 Ali said: "And thus, we have attained those who are relied upon for their knowledge—and success is by Allah, the Exalted."

قَالَ عَلِيٌّ: وَهَكَذَا أَدْرَكْنَا مَنْ يُوثَقُ بِعِلْمِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26351 The Issue of Bribery and Its Ruling

[مَسْأَلَة الرشوة وَحُكْمهَا]

L26352 Issue 1638: Bribery is impermissible. It refers to what a person gives to have a judgment passed in his favor based on falsehood, to secure a governorship, or to have someone wronged for his benefit. In these actions, both the giver and the taker commit sin.

١٦٣٨ - مَسْأَلَةٌ: وَلَا تَحِلُّ الرِّشْوَةُ: وَهِيَ مَا أَعْطَاهُ الْمَرْءُ لِيُحْكَمَ لَهُ بِبَاطِلٍ، أَوْ لِيُوَلِّيَ وِلَايَةً، أَوْ لِيُظْلَمَ لَهُ إنْسَانٌ - فَهَذَا يَأْثَمُ الْمُعْطِي وَالْآخِذُ.

L26353 As for one who is denied their right and gives to ward off injustice from himself, this is permissible for the giver while the taker is sinful. In both aspects, the wealth given remains the property of its original owner as it was, like usurped property with no distinction. Among these instances is that which is given to the people of the abode of disbelief for ransoming captives and in every necessity. All this is unanimously agreed upon except regarding the ownership of the people of the abode of disbelief over what

فَأَمَّا مَنْ مُنِعَ مِنْ حَقِّهِ فَأَعْطَى لِيَدْفَعَ عَنْ نَفْسِهِ الظُّلْمَ فَذَلِكَ مُبَاحٌ لِلْمُعْطِي، وَأَمَّا الْآخِذُ فَآثِمٌ، وَفِي كِلَا الْوَجْهَيْنِ فَالْمَالُ الْمُعْطَى بَاقٍ عَلَى مِلْكِ صَاحِبِهِ الَّذِي أَعْطَاهُ كَمَا كَانَ، كَالْغَصْبِ وَلَا فَرْقَ - وَمِنْ جُمْلَةِ هَذَا مَا أُعْطِيهِ أَهْلَ دَارِ الْكُفْرِ فِي فِدَاءِ الْأَسْرَى، وَفِي كُلِّ ضَرُورَةٍ، وَكُلُّ هَذَا مُتَّفَقٌ عَلَيْهِ، إلَّا مِلْكَ أَهْلِ دَارِ الْكُفْرِ مَا أَخَذُوهُ

they take as ransom for captives and similar matters. Some have asserted they own it, but this is invalid as it is a view unsupported by Quran, Sunnah, analogical reasoning, or deductive analysis. Our position here aligns with that of Al-Shāfiʿī, Abū Sulaymān, and others.

L26354 The proof for the validity of our stance: Allah's statement, the Exalted: "Do not consume your wealth among yourselves wrongfully, except through trade by mutual consent" [An-Nisāʾ: 29]. Thus we ask those who oppose us: Did the disbelievers take what they seized from us in ransom and other matters rightfully or wrongfully? If they say "wrongfully," but if they say otherwise, they disbelieve. This suffices as proof, for it is an address to all jinn and mankind, binding the religion as an obligation upon them.[37]

L26355 The Messenger of Allah (peace be upon him) said: "Indeed, your lives and your property are sacred to you."

L26356 If it is said: Why did you permit giving wealth to repel oppression, when you yourselves have reported via Abu Hurairah's narration that a man came to the Messenger of Allah (peace be upon him) and said: "O Messenger of Allah, if a man comes seeking to take my wealth?" He replied: "Do not give him your wealth." The man asked: "What if he fights me?" He said: "Fight him." The man asked: "What if he kills me?" He answered: "Then you are a shahīd." The man asked: "What if I kill him?" He responded: "Then he is in the Fire."

L26357 And by the transmitted report: "May Allah curse the bribe-giver and the bribe-taker."

L26358–26359 Abū Muḥammad said: The report of cursing the briber was narrated by al-Ḥārith ibn ʿAbd al-Raḥmān—and he is not strong—and moreover, the giver compelled by necessity to repel oppression is not a briber. As for the report concerning combat, this is our position: Whoever is capable of repelling oppression from himself is not permitted to give even a penny or anything beyond that for that purpose. As for the incapable, Allāh the Exalted says: {Allah does not burden a soul beyond its capacity} [al-Baqarah:286]. The

[37] **Qur'an references (L26354):** Qur'an 4:29 (An-Nisa).

فِي فِدَاءِ الْأَسِيرِ وَغَيْرِ ذَلِكَ، فَإِنَّ قَوْمًا قَالُوا: قَدْ مَلَكُوهُ - وَهَذَا بَاطِلٌ، لِأَنَّهُ قَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا نَظَرٌ، وَقَوْلُنَا فِي هَذَا هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمَا.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَنَسْأَلُ مَنْ خَالَفَنَا: أَبِحَقٍّ أَخَذَ الْكُفَّارُ مَا أَخَذُوا مِنَّا فِي الْفِدَاءِ وَغَيْرِهِ أَمْ بِبَاطِلٍ؟ فَمِنْ قَوْلِهِمْ: بِالْبَاطِلِ، وَلَوْ قَالُوا غَيْرَ ذَلِكَ كَفَرُوا، وَفِي هَذَا كِفَايَةٌ، لِأَنَّهُ خِطَابٌ لِجَمِيعِ الْجِنِّ وَالْإِنْسِ، وَلِلُزُومِ الدِّينِ لَهُمْ.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَإِنْ قِيلَ: لِمَ أَبَحْتُمْ إِعْطَاءَ الْمَالِ فِي دَفْعِ الظُّلْمِ، وَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، قَالَ: «جَاءَ رَجُلٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنْ جَاءَ رَجُلٌ يُرِيدُ أَخْذَ مَالِي؟ قَالَ: فَلَا تُعْطِهِ مَالَكَ، قَالَ: أَرَأَيْتَ إِنْ قَاتَلَنِي؟ قَالَ: قَاتِلْهُ، قَالَ: أَرَأَيْتَ إِنْ قَتَلَنِي؟ قَالَ: فَأَنْتَ شَهِيدٌ، قَالَ: أَرَأَيْتَ إِنْ قَتَلْتُهُ؟ قَالَ: فَهُوَ فِي النَّارِ» .

وَبِالْخَبَرِ الْمَأْثُورِ «لَعَنَ اللَّهُ الرَّاشِيَ وَالْمُرْتَشِيَ» .

قَالَ أَبُو مُحَمَّد: خَبَرُ لَعْنِهِ الرَّاشِي إِنَّمَا رَوَاهُ الْحَارِثُ بْنُ عَبْدِ الرَّحْمَنِ وَلَيْسَ بِالْقَوِيِّ - وَأَيْضًا - فَإِنَّ الْمُعْطِيَ فِي ضَرُورَةِ دَفْعِ الظُّلْمِ لَيْسَ رَاشِيًا. وَأَمَّا الْخَبَرُ فِي الْمُقَاتَلَةِ فَهَكَذَا نَقُولُ: مَنْ قَدَرَ عَلَى دَفْعِ الظُّلْمِ عَنْ نَفْسِهِ لَمْ يَحِلَّ لَهُ إِعْطَاءُ فَلْسٍ فَمَا فَوْقَهُ فِي ذَلِكَ، وَأَمَّا مَنْ عَجَزَ فَاللَّهُ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

Prophet (peace be upon him) said: “When I command you with a matter, do of it what you are able.” Thus, the obligation of combat and defense is lifted from him, and his giving in that situation enters the category of compulsion. The Messenger of Allāh (peace and blessings be upon him and his family) said: “My nation is pardoned for mistakes, forgetfulness, and what they are compelled to do.” We have previously mentioned this with its chain of transmission in earlier parts of this *diwan* of ours. And all praise is due to Allāh, Lord of the worlds.[38]

L26360 It has been authentically reported from the Messenger of Allah—peace and blessings be upon him and his family—through the narration of Abu Musa al-Ash‘ari: “Feed the hungry and free the captive.” This is a general principle applicable to every captive without right, whether in the custody of any disbeliever or believer.

L26361 It has been narrated to us through the chain of Abd al-Razzaq, from Sufyan al-Thawri and Ma’mar. Ma’mar reported from al-Hasan al-Basri, while Sufyan reported from Ibrahim al-Nakha’i. Then al-Hasan and Ibrahim concurred, both stating: “Whatever you give as expedient compliance to safeguard your wealth and blood, you shall surely be rewarded for it.” And with Allah the Exalted is success.

L26362 Issue 1639: As for one who assists another in a just cause or defends him against oppression without stipulating any payment for that, and the recipient then presents him with a reward - this is commendable, and we do not disapprove of it. For it constitutes gratitude toward the benefactor and represents a gift given willingly. We know of no Quranic verse or Sunnah prohibiting this. It has been reported to us that ʿAlī and Ibn Masʿūd forbade such acts, but we are unaware of any definitive proof that prohibits it. And with Allah, the Most High, is success.

The issue of excessive questioning.

L26363–26364

L26365 Issue: It is impermissible to ask repeatedly except in cases of necessity due to poverty or for one who has undertaken a financial liability. The

[38] **Qur’an references (L26359):** Qur’an 2:286 (Al-Baqarah); Qur’an 37:182 (As-Saffat).

وَقَالَ - عَلَيْهِ السَّلَامُ -: «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» فَسَقَطَ عَنْهُ فَرْضُ الْمُقَاتَلَةِ وَالدِّفَاعِ، وَصَارَ فِي حَدِّ الْإِكْرَاهِ عَلَى مَا أَعْطَى فِي ذَلِكَ. وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِيمَا سَلَفَ مِنْ دِيوَانِنَا هَذَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ طَرِيقِ أَبِي مُوسَى الْأَشْعَرِيِّ: «أَطْعِمُوا الْجَائِعَ وَفُكُّوا الْعَانِيَ» وَهَذَا عُمُومٌ لِكُلِّ عَانٍ عِنْدَ كُلِّ كَافِرٍ أَوْ مُؤْمِنٍ بِغَيْرِ حَقٍّ.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ قَالَ: مَعْمَرٌ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَقَالَ سُفْيَانُ: عَنْ إبْرَاهِيمَ النَّخَعِيِّ، ثُمَّ اتَّفَقَ الْحَسَنُ، وَإِبْرَاهِيمُ، قَالَا جَمِيعًا: مَا أَعْطَيْت مُصَانَعَةً عَلَى مَالِك وَدَمِك، فَإِنَّك فِيهِ مَأْجُورٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

١٦٣٩ - مَسْأَلَةٌ: وَأَمَّا مَنْ نَصَرَ آخَرَ فِي حَقٍّ، أَوْ دَفَعَ عَنْهُ ظُلْمًا، وَلَمْ يَشْتَرِطْ عَلَيْهِ فِي ذَلِكَ عَطَاءً، فَأَهْدَى إلَيْهِ مُكَافَأَةً، فَهَذَا حَسَنٌ لَا نَكْرَهُهُ، لِأَنَّهُ مِنْ جُمْلَةِ شُكْرِ الْمُنْعِمِ، وَهَدِيَّةٌ بِطِيبِ نَفْسٍ، وَمَا نَعْلَمُ قُرْآنًا وَلَا سُنَّةً فِي الْمَنْعِ مِنْ ذَلِكَ - وَقَدْ رُوِّينَا عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ الْمَنْعَ مِنْ هَذَا، وَلَا نَعْلَمُ بُرْهَانًا يَمْنَعُ مِنْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة السُّؤَال تكثرا]

one compelled by necessity is divinely obligated to ask for what suffices to sustain himself and his dependents from essentials they cannot do without, including food, shelter, clothing, and basic necessities. If he fails to do so, he is committing an injustice against himself. If he dies in that state, he has committed suicide.

مَسْأَلَةٌ: وَلَا يَحِلُّ السُّؤَالُ تَكَثُّرًا إِلَّا لِضَرُورَةٍ فَاقَةٍ، أَوْ لِمَنْ تَحَمَّلَ حَمَالَةً، فَالْمُضْطَرُّ فُرِضَ عَلَيْهِ أَنْ يَسْأَلَ مَا يَقُوتُهُ هُوَ وَأَهْلُهُ مِمَّا لَا بُدَّ لَهُمْ مِنْهُ، مِنْ: أَكْلٍ، وَسُكْنَى، وَكِسْوَةٍ، وَمَعُونَةٍ، فَإِنْ لَمْ يَفْعَلْ فَهُوَ ظَالِمٌ، فَإِنْ مَاتَ فِي تِلْكَ الْحَالِ فَهُوَ قَاتِلُ نَفْسِهِ.

L26366 As for one who seeks without excess, then it is not disliked.

وَأَمَّا مَنْ طَلَبَ غَيْرَ مُتَكَثِّرٍ فَلَيْسَ مَكْرُوهًا.

L26367 Similarly, there is no blame upon one who seeks authority. It was narrated to us through the chain of Muslim: Abu al-Tahir narrated to me, Abdullah ibn Wahb narrated to me, al-Layth—that is, ibn Sa'd—narrated to me, from 'Ubaydullah ibn Abi Ja'far, from Hamzah ibn 'Abdullah ibn 'Umar, from his father, that the Prophet—peace and blessings be upon him and his family—said: "A man will persist in begging from people until he comes on the Day of Resurrection with no piece of flesh on his face."[39]

وَكَذَلِكَ مَنْ سَأَلَ سُلْطَانًا فَلَا حَرَجَ فِي ذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو الطَّاهِرِ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ وَهْبٍ أَخْبَرَنِي اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ حَمْزَةَ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَا يَزَالُ الرَّجُلُ يَسْأَلُ النَّاسَ حَتَّى يَأْتِيَ يَوْمَ الْقِيَامَةِ لَيْسَ فِي وَجْهِهِ مُزْعَةُ لَحْمٍ» .

L26368 From the narration in Muslim's *Ṣaḥīḥ*: Abu Kurayb reported to us, from Ibn Fudayl, from 'Imarah ibn al-Qa'qa', from Abu Zur'ah, from Abu Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said, "Whoever asks people for their wealth to increase his possessions is merely grasping embers [of Hellfire]. Let him take little or let him take much."[40]

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو كُرَيْبٍ نَا ابْنُ فُضَيْلٍ عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ عَنْ أَبِي زُرْعَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ سَأَلَ النَّاسَ أَمْوَالَهُمْ تَكَثُّرًا فَإِنَّمَا يَسْأَلُ جَمْرًا فَلْيَسْتَقِلَّ أَوْ لِيَسْتَكْثِرْ» .

L26369 From the path of Muslim: Yahya ibn Yahya narrated to us, Hammad ibn Zayd from Harun ibn Ri'ab, who narrated to me from Kinana ibn Nu'aym al-Adawi, from Qabisa ibn al-Mukhariq al-Hilali, that the Messenger of Allah—may Allah bless him and his family and grant him peace—said to him: "O Qabisa, begging is unlawful except for one of three: a man who assumes a financial liability, for whom begging becomes permissible until he obtains it, then he desists; a man struck by a calamity that devours his wealth, for whom begging becomes permissible until he attains a sufficient means of livelihood—or he said: a stability of livelihood; and a man afflicted by poverty until he provides sustenance for three discerning people from his tribe. Then they say, 'So-

وَمِنْ طَرِيقِ مُسْلِمٍ نَا يَحْيَى بْنُ يَحْيَى نَا حَمَّادُ بْنُ زَيْدٍ عَنْ هَارُونَ بْنِ رِئَابٍ حَدَّثَنِي كِنَانَةُ بْنُ نُعَيْمٍ الْعَدَوِيُّ عَنْ قَبِيصَةَ بْنِ الْمُخَارِقِ الْهِلَالِيِّ، «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ: يَا قَبِيصَةُ إنَّ الْمَسْأَلَةَ لَا تَحِلُّ إلَّا لِأَحَدِ ثَلَاثَةٍ: رَجُلٌ تَحَمَّلَ حَمَالَةً فَحَلَّتْ لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَهَا ثُمَّ يُمْسِكُ، وَرَجُلٌ أَصَابَتْهُ جَائِحَةٌ اجْتَاحَتْ مَالَهُ فَحَلَّتْ لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَ قَوَامًا مِنْ عَيْشٍ، أَوْ قَالَ سِدَادًا مِنْ عَيْشٍ، وَرَجُلٌ أَصَابَتْهُ فَاقَةٌ حَتَّى يَقُومَ ثَلَاثَةٌ مِنْ ذَوِي الْحِجَى مِنْ قَوْمِهِ فَيَقُولُونَ: لَقَدْ أَصَابَتْ فُلَانًا فَاقَةٌ، فَحَلَّتْ

[39] **Hadith references (L26367):** Mishkat al-Masabih 1839.

[40] **Hadith references (L26368):** Sahih Muslim 1041; Mishkat al-Masabih 1838.

and-so has indeed been afflicted by poverty,' making begging permissible for him until he attains a sufficient means of livelihood—or he said: a stability of livelihood. Whatever lies beyond these, O Qabisa, is forbidden wealth; one who eats it eats what is forbidden."

L26370–26372 Through the chain of Aḥmad ibn Shuʿayb: I am Maḥmūd ibn Ghaylān; he said: Wakiʿ narrated to us: Sufyān narrated to us from ʿAbd al-Malik ibn ʿUmayr. On the authority of Zayd ibn 'Uqbah from Samurah ibn Jundub, who said: The Messenger of Allah—may Allah's peace and blessings be upon him—said: "Begging is a toil by which a man wears down his face, except when a man asks someone in authority or seeks something indispensable in a matter."

L26373 So this is the exact wording of what we have said, letter by letter, and all praise is due to Allah.

L26374 Through the method of rational deduction: We have mentioned in the "Book of Zakāt" within this compilation of ours the obligation that those possessing surplus wealth must support those who have no wealth with them, sustaining themselves and their dependents from it. Since this is established, the needy individual is merely claiming his obligatory right and his binding debt—which the ruler must adjudicate and legally mandate for him. He may take it by whatever means he can if it is withheld from him, and there is no disgrace upon him in that.

L26375 As for the ruler, nothing may be requested from his personal wealth. Rather, the wealth of the Muslims is under his custodianship. Thus, there is no sin upon a Muslim in requesting from the wealth of the Muslims, of whom he is one.

L26376 As for moderate asking, we mentioned in the *Book of Ḥajj* the statement of the Messenger of Allah—peace and blessings be upon him—to Abū Qatādah and his companions concerning the donkey they slaughtered unlawfully: "Do you have any of it with you?" I said, "Yes," so I handed him the foreleg, and he devoured it voraciously while in the state of *iḥrām*. And his statement—peace and blessings be upon him—in the narration of Abū Saʿīd al-Khudrī,

لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَ قَوَامًا مِنْ عَيْشٍ، أَوْ قَالَ: سَدَادًا مِنْ عَيْشٍ - فَمَا سِوَاهُنَّ مِنْ الْمَسْأَلَةِ يَا قَبِيصَةُ سُحْتٌ يَأْكُلُهَا صَاحِبُهَا سُحْتًا» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مَحْمُودُ بْنُ غَيْلَانَ قَالَ: نا وَكِيعٌ نَا سُفْيَانُ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ زَيْدِ بْنِ عُقْبَةَ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمَسْأَلَةُ كَدٌّ يَكُدُّ الرَّجُلُ بِهَا وَجْهَهُ، إِلَّا أَنْ يَسْأَلَ الرَّجُلُ ذَا سُلْطَانٍ، أَوْ فِي الْأَمْرِ لَا بُدَّ لَهُ مِنْهُ» .

فَهَذَا نَصُّ مَا قُلْنَا حَرْفًا بِحَرْفٍ - وَلِلَّهِ الْحَمْدُ.

وَمِنْ طَرِيقِ النَّظَرِ: أَنَّنَا قَدْ ذَكَرْنَا فِي " كِتَابِ الزَّكَاةِ " مِنْ دِيوَانِنَا هَذَا وُجُوبَ قِيَامِ ذَوِي الْفَضْلِ مِنْ الْمَالِ بِمَنْ لَا مَالَ مَعَهُ، يَقُومُ مِنْهُ بِنَفْسِهِ وَعِيَالِهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَالْمُحْتَاجُ إنَّمَا يَسْأَلُ حَقَّهُ الْوَاجِبَ، وَدَيْنَهُ اللَّازِمَ، الَّذِي عَلَى الْحَاكِمِ أَنْ يَحْكُمَ لَهُ بِهِ، وَلَهُ أَخْذُهُ كَيْفَ قَدَرَ إنْ مَنَعَهُ، فَلَا غَضَاضَةَ عَلَيْهِ فِي ذَلِكَ.

وَأَمَّا السُّلْطَانُ فَلَيْسَ يُسْأَلُ مِنْ مَالِهِ شَيْءٌ، إنَّمَا بِيَدِهِ أَمْوَالُ الْمُسْلِمِينَ، فَلَا حَرَجَ عَلَى الْمُسْلِمِ أَنْ يَسْأَلَ مِنْ أَمْوَالِ الْمُسْلِمِينَ الَّذِينَ هُوَ أَحَدُهُمْ.

وَأَمَّا سُؤَالُ غَيْرِ الْمُتَكَثِّرِ فَقَدْ ذَكَرْنَا فِي " كِتَابِ الْحَجِّ «قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَبِي قَتَادَةَ وَأَصْحَابِهِ فِي الْحِمَارِ الَّذِي عَقَرُوهُ: مَعَكُمْ مِنْهُ شَيْءٌ؟ فَقُلْتُ: نَعَمْ: فَنَاوَلْتُهُ الْعَضُدَ فَأَكَلَهَا حَتَّى نَفِدَهَا، وَهُوَ مُحْرِمٌ.» وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي

who was guarding a flock of sheep: “Divide them among yourselves and allocate a share for me with you.”

حَدِيثِ أَبِي سَعِيدٍ الْخُدْرِيِّ الَّذِي رَقِيَ عَلَى قَطِيعٍ مِنْ الْغَنَمِ: «اقْتَسِمُوا وَاضْرِبُوا لِي بِسَهْمٍ مَعَكُمْ»

The juridical issue of giving a gift to a non-Muslim.

[مَسْأَلَةٌ إعْطَاءُ الْكَافِرِ الْهِبَةَ]

L26377

L26378 1641 - Issue: Giving to a disbeliever is permissible, and accepting what he gave is like accepting what a Muslim gave. It was narrated to us via Al-Bukhari’s chain: Sahl ibn Bakkār reported to us, from Wuhaib (who is Ibn Khālid), from ʿAmr ibn Yaḥyā, from ʿAbbās al-Sāʿidī, from Abū Ḥumayd al-Sāʿidī, who said: “We campaigned with the Messenger of Allah—peace and blessings be upon him—at Tabūk, and the king of Ayla gifted him a white mule and clothed him in a burd.”

١٦٤١ - مَسْأَلَةٌ: وَإِعْطَاءُ الْكَافِرِ مُبَاحٌ، وَقَبُولُ مَا أَعْطَى هُوَ كَقَبُولِ مَا أَعْطَى الْمُسْلِمُ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نَا سَهْلُ بْنُ بَكَّارَ نَا وُهَيْبٌ - هُوَ ابْنُ خَالِدٍ - عَنْ عَمْرِو بْنِ يَحْيَى عَنْ عَبَّاسٍ السَّاعِدِيِّ عَنْ أَبِي حُمَيْدٍ السَّاعِدِيِّ قَالَ: «غَزَوْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَبُوكَ وَأَهْدَى مَلِكُ أَيْلَةَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَغْلَةً بَيْضَاءَ وَكَسَاهُ بُرْدًا» .

L26379–26381 And from the chain of Al-Bukhari: Ubayd ibn Ismāʿīl narrated to us, Abu Usāmah narrated to us, from Hishām ibn ʿUrwah, from his father. From Asma’ bint Abi Bakr, who narrated: My mother came to me while she was a polytheist. I sought the verdict of the Messenger of Allah (peace be upon him), and he said: Maintain ties with your mother.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عُبَيْدُ بْنُ إسْمَاعِيلَ نَا أَبُو أُسَامَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ «أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ قَالَتْ: قَدِمَتْ أُمِّي عَلَيَّ - وَهِيَ مُشْرِكَةٌ - فَاسْتَفْتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: صِلِي أُمَّكَ» .

L26382 And through the chain of Muslim: Qutaybah narrated to us from Mālik from Samī, the freed slave of Abū Bakr, from Abū Ṣāliḥ al-Sammān (the oil seller) from Abū Hurayrah, who said: The Messenger of Allāh - peace and blessings of Allāh be upon him - said: “For every living creature there is a reward.”

وَمِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ عَنْ مَالِكٍ عَنْ سُمَيٍّ مَوْلَى أَبِي بَكْرٍ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «فِي كُلِّ كَبِدٍ رَطْبَةٍ أَجْرٌ» .

L26383 If it is said: Where do you stand regarding what you narrated through the chain of Ibn al-Shikhīr from ʿIyāḍ ibn Ḥimār, “that he offered a gift to the Messenger of Allah (peace be upon him), so he said, ’Have you embraced Islam?’ I replied, ’No.’ He said, ’I have been forbidden from the meat offerings of polytheists.’”

فَإِنْ قِيلَ: فَأَيْنَ أَنْتُمْ عَمَّا رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ الشِّخِّيرِ عَنْ عِيَاضِ بْنِ حِمَارٍ «أَنَّهُ أَهْدَى إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَدِيَّةً، فَقَالَ: أَسْلَمْتَ؟ قُلْتُ لَا، قَالَ: إنِّي نُهِيتُ عَنْ زَبْدِ الْمُشْرِكِينَ» .

L26384 And through the narration of Al-Ḥasan from ‘Iyāḍ ibn Ḥimār, a similar account is reported, where he stated: “So he refused to accept it.” Al-Ḥasan

remarked, “Is the scum of the polytheists their contribution?” We said: This ruling is abrogated by the report of Abū Ḥumayd which we mentioned, as it occurred in Tabūk, while ‘Iyāḍ’s conversion to Islam preceded Tabūk. And with Allāh the Exalted is success.

The Issue of Charity from Illicit Wealth

L26385

L26386 1642 - Issue: Charity from unlawful wealth is not accepted; rather, one thereby incurs additional sin, due to the saying of the Messenger of Allah—peace be upon him: “Indeed, your blood and your wealth are sacred to you.”

L26387–26388 Whenever he acts upon what is forbidden, he has indeed added to his sins, and the more sins he commits, the greater his guilt becomes. Allah, the Most High, said: “Whoever does evil will be recompensed for it” (Quran 4:123).[41]

Is it permissible for anyone to reproachfully remind others of a good deed he has performed?

L26389

L26390 1643 – Issue: It is not permissible for anyone to remind others of favors for the good deeds they have done, except for one whose acts of benevolence are abundant and who is treated with harm; he may enumerate his good deeds. Allah the Exalted said: *“Do not invalidate your acts of charity by reminders of your generosity and causing harm”* [Al-Baqarah 2:264].[42]

L26391 It was narrated to us through the chain of Shu’bah—I heard Sulayman (he is al-A’mash)—from Sulayman ibn Mushir from Kharashah ibn al-Hurr from Abu Dharr, who said: The Messenger of Allah—peace and blessings be upon him—said, “Three are those whom Allah will neither address on the Day of Resurrection, nor regard them, nor purify them, and for them awaits agonizing punishment: the habitual boaster of favors, the one who lets his

[41] **Qur’an references (L26388):** Qur’an 4:123 (An-Nisa).
[42] **Qur’an references (L26390):** Qur’an 2:264 (Al-Baqarah).

وَمِنْ طَرِيقِ الْحَسَنِ عَنْ عِيَاضِ بْنِ حِمَارٍ مِثْلُهُ، وَقَالَ: فَأَبَى أَنْ يَقْبَلَهَا - قَالَ الْحَسَنُ: زَبْدُ الْمُشْرِكِينَ رِفْدُهُمْ؟ قُلْنَا: هَذَا مَنْسُوخٌ بِخَبَرِ أَبِي حُمَيْدٍ الَّذِي ذَكَرْنَا، لِأَنَّهُ كَانَ فِي تَبُوكَ، وَكَانَ إِسْلَامُ عِيَاضٍ قَبْلَ تَبُوكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الصَّدَقَة مِنْ مَال حرام]

١٦٤٢ - مَسْأَلَةٌ: لَا تُقْبَلُ صَدَقَةٌ مِنْ مَالٍ حَرَامٍ بَلْ يَكْتَسِبُ بِذَلِكَ إِثْمًا زَائِدًا لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَكُلَّمَا تَصَرَّفَ فِي الْحَرَامِ فَقَدْ زَادَ مَعْصِيَةً وَإِذَا زَادَ مَعْصِيَةً زَادَ إِثْمًا قَالَ اللَّهُ تَعَالَى: {مَنْ يَعْمَلْ سُوءًا يُجْزَ بِهِ} [النساء: ١٢٣] .

[مَسْأَلَة هَلْ يَحِلّ لِأَحَدٍ أَنْ يمن بِمَا فعل مِنْ خير]

١٦٤٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنَّ يَمُنَّ بِمَا فَعَلَ مِنْ خَيْرٍ إِلَّا مَنْ كَثُرَ إِحْسَانُهُ وَعُومِلَ بِالْمُسَاءَةِ، فَلَهُ أَنْ يُعَدِّدَ إِحْسَانَهُ قَالَ اللَّهُ عَزَّ وَجَلَّ: {لا تُبْطِلُوا صَدَقَاتِكُمْ بِالْمَنِّ وَالأَذَى} [البقرة: ٢٦٤] .

رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ سَمِعْت سُلَيْمَانَ - هُوَ الْأَعْمَشُ - عَنْ سُلَيْمَانَ بْنِ مُسْهِرٍ عَنْ خَرَشَةَ بْنِ الْحُرِّ عَنْ أَبِي ذَرٍّ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ثَلَاثَةٌ لَا يُكَلِّمُهُمْ اللَّهُ يَوْمَ الْقِيَامَةِ، وَلَا يَنْظُرُ إلَيْهِمْ وَلَا يُزَكِّيهِمْ، وَلَهُمْ عَذَابٌ أَلِيمٌ: الْمَنَّانُ بِمَا أَعْطَى، وَالْمُسْبِلُ إزَارَهُ، وَالْمُنَفِّقُ سِلْعَتَهُ بِالْحَلِفِ الْكَاذِبَةِ» .

garment hang below the ankles, and the merchant who promotes his goods through false oaths.”[43][44]

L26392 And through the chain of Muslim: Shurayh ibn Yunus narrated to us, Ismail ibn Ja’far narrated to us from Amr ibn Yahya ibn Umara from Abbad ibn Tamim from Abdullah ibn Zayd: “When the Messenger of Allah (peace be upon him) conquered Hunayn, he distributed the spoils and gave to those whose hearts were to be reconciled. News reached him that the Ansar wished to receive what the people had received. The Messenger of Allah (peace be upon him) stood and addressed them, saying: ’O assembly of Ansar! Did I not find you astray, and Allah guided you through me? Destitute, and Allah enriched you through me? Divided, and Allah united you through me?’ They said: ’Allah and His Messenger have been most gracious in bestowing favor.’ He said: ’Will you not answer me? If you wished, you could say such-and-such and mention such-and-such matters’—referring to things which ’Amr mentioned he could not recall—’and speak of such circumstances.’ This is the basis for permitting the enumeration of favors. And with Allah the Exalted is success.”[45]

L26393 Legal rulings on hibah (gift) by women, orphans, slaves, those deceived in sales, the sick, and their charitable acts (ṣadaqāt).

L26394 Issue 1644: The gift of a married woman, a virgin under her father’s guardianship, a female orphan, a slave, a person defrauded in sales, a terminally ill person, or a person with a non-terminal illness - their gifts and charitable acts are treated like those of free individuals and women who have neither husbands nor fathers. All these are equivalent to the gifts of a healthy person.

L26395 We have indeed mentioned the proof for this in the preceding sections of our treatise.

وَمِنْ طَرِيقِ مُسْلِمٍ نَا شُرَيْحُ بْنُ يُونُسَ نَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ عَمْرِو بْنِ يَحْيَى بْنِ عُمَارَةَ عَنْ عَبَّادِ بْنِ تَمِيمٍ عَنْ عَبْدِ اللَّهِ بْنِ زَيْدٍ «لَمَّا فَتَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُنَيْنًا قَسَّمَ الْغَنَائِمَ فَأَعْطَى الْمُؤَلَّفَةَ قُلُوبُهُمْ فَبَلَغَهُ أَنَّ الْأَنْصَارَ يُحِبُّونَ أَنْ يُصِيبُوا مَا أَصَابَ النَّاسُ فَقَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَطَبَهُمْ فَقَالَ: يَا مَعْشَرَ الْأَنْصَارِ أَلَمْ أَجِدْكُمْ ضُلَّالًا فَهَدَاكُمْ اللَّهُ بِي، وَعَالَةً فَأَغْنَاكُمْ اللَّهُ بِي، وَمُتَفَرِّقِينَ فَجَمَعَكُمْ اللَّهُ بِي؟ وَيَقُولُونَ: اللَّهُ وَرَسُولُهُ أَمَنُّ؟ فَقَالَ: أَلَا تُجِيبُونَنِي، أَمَا إِنَّكُمْ لَوْ شِئْتُمْ أَنْ تَقُولُوا كَذَا، وَكَانَ مِنْ الْأَمْرِ كَذَا» - أَشْيَاءُ ذَكَرَ عَمْرٌو أَنَّهُ لَا يَحْفَظُهَا - فَهَذَا مَوْضِعُ إبَاحَةِ تَعْدِيدِ الْإِحْسَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هِبَة الْمَرْأَة واليتيم وَالْعَبْد والمخدوع فِي الْبَيْع والمريض وصدقاتهم]

١٦٤٤ - مَسْأَلَةٌ: وَهِبَةُ الْمَرْأَةِ ذَاتِ الزَّوْجِ، وَالْبِكْرِ ذَاتِ الْأَبِ، وَالْيَتِيمَةِ، وَالْعَبْدِ، وَالْمَخْدُوعِ فِي الْبُيُوعِ، وَالْمَرِيضِ مَرَضَ مَوْتِهِ، أَوْ مَرَضَ غَيْرَ مَوْتِهِ، وَصَدَقَاتِهِمْ: كَهِبَاتِ الْأَحْرَارِ، وَاللَّوَاتِي لَا أَزْوَاجَ لَهُنَّ، وَلَا آبَاءَ كَهِبَاتِ الصَّحِيحِ وَلَا فَرْقَ.

وَقَدْ ذَكَرْنَا بُرْهَانَ ذَلِكَ فِيمَا سَلَفَ مِنْ كِتَابِنَا.

[43] **Hadith references (L26391):** Sunan Ibn Majah 2208; Sahih Muslim 106a; Sunan an-Nasai 4458.

[44] **Qur’an references (L26391):** Qur’an 2:174 (Al-Baqarah); Qur’an 3:77 (Ali ’Imran).

[45] **Hadith references (L26392):** Sahih Muslim 1061.

وَجُمْلَةُ ذَلِكَ: أَنَّ اللَّهَ تَعَالَى نَدَبَ جَمِيعَ الْبَالِغِينَ الْمُمَيِّزِينَ إلَى الصَّدَقَةِ، وَفِعْلِ الْخَيْرِ، وَإِنْقَاذِ نَفْسِهِ مِنْ النَّارِ، وَكُلُّ مَنْ ذَكَرْنَا مُتَوَعَّدٌ بِلَا خِلَافٍ مِنْ أَحَدٍ " فَلَا يَحِلُّ مَنْعُهُمْ مِنْ الْقُرْبِ إلَّا بِنَصٍّ، وَلَا نَصَّ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26396–26398 In summary, this means: Allah, the Exalted, has exhorted all discerning adults to give charity and to perform [...] Doing good, saving oneself from the Fire, and all those we have mentioned are unanimously threatened without exception. Thus, it is impermissible to prevent them from acts of devotion except through textual evidence, and no such evidence exists regarding this matter—and success comes from Allah, the Most High.

[مَسْأَلَة صَدَقَة التَّطَوُّع عَلَى الغني]

L26399

The Issue of Voluntary Alms Given to the Wealthy

١٦٤٥ - مَسْأَلَةٌ: وَالصَّدَقَةُ لِلتَّطَوُّعِ عَلَى الْغَنِيِّ جَائِزَةٌ وَعَلَى الْفَقِيرِ، وَلَا تَحِلُّ لِأَحَدٍ مِنْ بَنِي هَاشِمٍ، وَالْمُطَّلِبِ ابْنَيْ عَبْدِ مَنَافٍ، وَلَا لِمَوَالِيهِمْ، حَاشَ " الْحَبْسِ " فَهُوَ حَلَالٌ لَهُمْ، وَلَا تَحِلُّ صَدَقَةُ التَّطَوُّعِ عَلَى مَنْ أُمُّهُ مِنْهُمْ إذَا لَمْ يَكُنْ أَبُوهُ مِنْهُمْ.

L26400 Issue 1645: Voluntary charity is permissible to give to both the wealthy and the poor. However, it is not lawful for any of the descendants of Hāshim, nor for al-Muṭṭalib—one of the two sons of ʿAbd Manāf—or their clients to receive it, except for the ḥabs (endowment), which is permissible for them. It is also unlawful to give voluntary charity to someone whose mother is from them if his father is not from them.

وَأَمَّا الْهِبَةُ، وَالْهَدِيَّةُ، وَالْعَطِيَّةُ، وَالْإِبَاحَةُ، وَالْمَنْحَةُ، وَالْعُمْرَى، وَالرُّقْبَى: فَكُلُّ ذَلِكَ حَلَالٌ لِبَنِي هَاشِمٍ، وَالْمُطَّلِبِ وَمَوَالِيهِمْ - هَذَا كُلُّهُ لَا خِلَافَ فِيهِ حَاشَ دُخُولِ بَنِي الْمُطَّلِبِ فِيهِمْ، وَحَاشَ دُخُولِ الْمَوَالِي فِيهِمْ، وَحَاشَ جَوَازِ صَدَقَةِ التَّطَوُّعِ لَهُمْ، فَإِنَّ قَوْمًا أَجَازُوهَا لَهُمْ.

L26401 As for gifts, presents, bestowals, permissibility, usufructuary grants, ʿumrā (lifetime usufruct), and ruqbā (reversionary usufruct)—all of these are permissible for Banū Hāshim, al-Muṭṭalib, and their clients. There is no disagreement about any of this, except for the inclusion of Banū al-Muṭṭalib among them, the inclusion of clients among them, and the permissibility of voluntary alms for them, since a group of people have permitted it for them.

رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نَا شُعْبَةُ نَا الْحَكَمُ - هُوَ ابْنُ عُتَيْبَةَ - عَنْ ابْنِ أَبِي رَافِعٍ - هُوَ عُبَيْدُ اللَّهِ - عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَعْمَلَ رَجُلًا مِنْ بَنِي مَخْزُومٍ عَلَى الصَّدَقَةِ فَأَرَادَ أَبُو رَافِعٍ أَنْ يَتْبَعَهُ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إنَّ الصَّدَقَةَ لَا تَحِلُّ لَنَا، وَإِنَّ مَوْلَى الْقَوْمِ مِنْهُمْ» .

L26402 It has been narrated to us through the chain of Yahya ibn Sa'id al-Qattan who narrated from Shu'bah, who narrated from al-Hakam—who is Ibn 'Utaybah—who narrated from Ibn Abi Rafi'—who is 'Ubaydullah—who narrated from his father: "The Messenger of Allah—peace be upon him—appointed a man from Banu Makhzum in charge of charity. Abu Rafi' then sought to follow him, and the Messenger of Allah—peace be upon him—said to him: 'Charity is not lawful for us, and the freed slave of a people is from them.'"

فَهَذَا عُمُومٌ لِكُلِّ صَدَقَةٍ. وَمِنْ طَرِيقِ أَبِي دَاوُد نَا مُسَدَّدٌ نَا هُشَيْمٌ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَخْبَرَنِي جُبَيْرُ بْنُ مُطْعِمٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى

L26403 This is a generality for all charity. Through the chain of Abu Dawud: Musaddad narrated to us, Hushaym narrated to us from Muhammad ibn Ishaq from al-Zuhri from Sa'id ibn al-Musayyab, who informed me that Jubayr ibn Muṭ'im reported: "The Messenger of Allah (may Allah bless him and grant

him peace) said to him: 'We and the Banu al-Muṭṭalib do not separate during the Age of Ignorance nor during Islam, and indeed we and they are one and the same,' and he interlaced his fingers."[46]

L26404–26406 If it is said: The statement of the Messenger of Allah (peace be upon him)—"Every act of kindness is charity"—has been authentically established. If you adhere to the apparent meaning of this report, you would have to prevent them from every act of goodness—a position which no one advocates, not even you. Otherwise, do not prevent them except from what is agreed upon: that it is impermissible for them to receive, which applies solely to obligatory charity. We respond: His statement (peace be upon him)—"Every act of kindness is charity"—has been specified by his grant to Banu Hashim. Like the camel that the Prophet (peace and blessings be upon him) granted to Ali from the nafl (additional share) beyond the khums (fifth), from the maghanim (spoils of war), and all his other gifts—which belonged to them—thus this ruling is established by its evidence.

L26407 We found that every acknowledged act of kindness – even if termed ṣadaqah (charity) – has another specific designation: such as loans, gifts, presents, granting usufruct, assuming debt liability, hosting guests, temporary livestock grants, and all other terms denoting righteous acts. We found voluntary charity has no designation except "ṣadaqah," while it is authentically established that ṣadaqah is forbidden for the family of Muḥammad (may God bless him and his household and grant peace) and their freed slaves and affiliates. Thus it becomes imperative that voluntary charity is forbidden for them, as this constitutes the ṣadaqah bearing no name other than "charity." There is no disagreement regarding the prohibition of obligatory charity upon them, which is zakāh.

L26408 If it is said: Indeed, you have narrated through the chain of Abū Dāwūd: Muḥammad ibn ʿUbayd al-Muḥāribī narrated to us; Muḥammad ibn Fuḍayl from al-Aʿmash, from Ḥabīb ibn Abī Thābit, from Kurayb—client of Ibn ʿAbbās—from Ibn ʿAbbās, who said: "The Messenger of Allah—peace and

[46] **Hadith references (L26403):** Sunan Abi Dawud 2980; Mishkat al-Masabih 4027.

اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: إنَّا وَبَنُو الْمُطَّلِبِ لَا نَفْتَرِقُ فِي جَاهِلِيَّةٍ وَلَا إسْلَامٍ، وَإِنَّمَا نَحْنُ وَهُمْ شَيْءٌ وَاحِدٌ وَشَبَّكَ بَيْنَ أَصَابِعِهِ» .

فَإِنْ قِيلَ: قَدْ صَحَّ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ مَعْرُوفٍ صَدَقَةٌ» فَإِنْ أَخَذْتُمْ بِظَاهِرِ هَذَا الْخَبَرِ فَامْنَعُوهُمْ مِنْ كُلِّ بِرٍّ - وَهَذَا مَا لَا يَقُولُهُ أَحَدٌ وَلَا أَنْتُمْ، وَإِلَّا فَلَا تَمْنَعُوهُمْ إلَّا مَا اُتُّفِقَ عَلَيْهِ: أَنَّهُ لَا يَحِلُّ لَهُمْ وَهُوَ صَدَقَةُ الْفَرْضِ فَقَطْ. قُلْنَا: قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «كُلُّ مَعْرُوفٍ صَدَقَةٌ» قَدْ خَصَّهُ عَطَاؤُهُ لِبَنِي هَاشِمٍ، كَالْبَعِيرِ الَّذِي أَعْطَى عَلِيًّا مِنْ النَّفْلِ مِنْ الْخُمُسِ، وَمِنْ الْمَغْنَمِ، وَسَائِرِ هِبَاتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَهُمْ، فَوَجَبَ خُرُوجُ ذَلِكَ بِدَلِيلِهِ.

وَوَجَدْنَا كُلَّ مَعْرُوفٍ وَإِنْ كَانَ يَقَعُ عَلَيْهِ اسْمُ صَدَقَةٍ فَلَهُ اسْمٌ آخَرُ يَخُصُّهُ: كَالْقَرْضِ، وَالْهِبَةِ، وَالْهَدِيَّةِ، وَالْإِبَاحَةِ، وَالْحُمَالَةِ، وَالضِّيَافَةِ، وَالْمِنْحَةِ، وَسَائِرِ أَسْمَاءِ وُجُوهِ الْبِرِّ. وَوَجَدْنَا الصَّدَقَةَ التَّطَوُّعَ لَيْسَ لَهَا اسْمٌ غَيْرَ " الصَّدَقَةِ " وَقَدْ صَحَّ أَنَّ الصَّدَقَةَ مُحَرَّمَةٌ عَلَى آلِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَمَوَالِيهِمْ، فَوَجَبَ ضَرُورَةً أَنْ تَكُونَ الصَّدَقَةُ التَّطَوُّعُ حَرَامًا عَلَيْهِمْ؛ لِأَنَّهَا هِيَ الصَّدَقَةُ الَّتِي لَا اسْمَ لَهَا غَيْرَ " الصَّدَقَةِ " وَلَا خِلَافَ فِي تَحْرِيمِ الصَّدَقَةِ الْمَفْرُوضَةِ عَلَيْهِمْ وَهِيَ الزَّكَاةُ.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي دَاوُد نَا مُحَمَّدُ بْنُ عُبَيْدٍ الْمُحَارِبِيُّ نَا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ الْأَعْمَشِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «بَعَثَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي إبِلٍ أَعْطَاهُ إيَّاهَا مِنْ الصَّدَقَةِ» .

blessings be upon him and his family—sent me regarding camels he had given them to me from the _zakat_."

L26409 We said: This is correct, and it cannot be except one of two interpretations. The first—which is the apparent meaning of the narration—is that Ibn Abbas was the one giving those camels from an obligatory charity incumbent upon him. Thus, the Prophet—peace and blessings be upon him—sent him with them to the place where he collected the camels of charity.

قُلْنَا: هَذَا صَحِيحٌ، وَلَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ -: أَحَدُهُمَا - وَهُوَ ظَاهِرُ الْخَبَرِ أَنَّ ابْنَ عَبَّاسٍ هُوَ الْمُعْطِي لِتِلْكَ الْإِبِلِ مِنْ صَدَقَةٍ لَازِمَةٍ لَهُ، فَبَعَثَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهَا إلَى حَيْثُ يَجْمَعُ إبِلَ الصَّدَقَةِ.

L26410 The second point is that even if it were valid—though this is not mentioned in the narration—that the Prophet (peace and blessings be upon him) gave those camels to Ibn Abbas, this act would have been abrogated by the prohibition of charity to them. For the prohibition of charity to them constitutes the established abrogator that lifts the original and the original state without doubt—the state of permitting charity for them like all other people. Whoever claims that the abrogated can return as an abrogator has lied, unless clear textual evidence explicitly testifies to it.

وَالثَّانِي - أَنَّهُ حَتَّى لَوْ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هُوَ أَعْطَى تِلْكَ الْإِبِلَ لِابْنِ عَبَّاسٍ - وَلَيْسَ ذَلِكَ فِي الْخَبَرِ - لَكَانَ ذَلِكَ مَنْسُوخًا بِتَحْرِيمِ الصَّدَقَةِ عَلَيْهِمْ؛ لِأَنَّ تَحْرِيمَ الصَّدَقَةِ عَلَيْهِمْ هُوَ الرَّافِعُ الْمَعْهُودُ الْأَصْلِ وَلِلْحَالِ الْأَوَّلِ بِلَا شَكٍّ مِنْ إبَاحَةِ الصَّدَقَةِ لَهُمْ كَسَائِرِ النَّاسِ، وَمَنْ ادَّعَى عَوْدَ الْمَنْسُوخِ نَاسِخًا فَقَدْ كَذَبَ إلَّا أَنْ يَشْهَدَ لَهُ نَصٌّ بَيِّنٌ بِذَلِكَ.

L26411 As for the wealthy person: It has been narrated to us via the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Hishām ibn ʿUrwah, from his father, from ʿAdī ibn al-Khiyār, that two men narrated to him they asked the Prophet (ṣallā Allāhu ʿalayhi wa ālihi wa sallam) about charity. He said: "If you two wish, and there is no share in it for a wealthy person nor for an able-bodied person capable of earning."

وَأَمَّا الْغَنِيُّ: فَقَدْ رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَدِيِّ بْنِ الْخِيَارِ «أَنَّ رَجُلَيْنِ حَدَّثَاهُ أَنَّهُمَا سَأَلَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ الصَّدَقَةِ فَقَالَ: إنَّ شِئْتُمَا، وَلَا حَظَّ فِيهَا لِغَنِيٍّ وَلَا لِقَوِيٍّ مُكْتَسِبٍ» .

L26412 We said: This report and every text conveyed in such wording refers exclusively to "the obligatory alms" which are forbidden for the wealthy to receive, except those whom the Quranic text specifies as exceptions among them: {those employed to collect them, those whose hearts are to be reconciled, for freeing slaves, those in debt, in the cause of Allah, and the wayfarer} [Quran 9:60], these alone.[47]

قُلْنَا: هَذَا الْخَبَرُ وَكُلُّ مَا جَاءَ بِهَذَا اللَّفْظِ فَإِنَّمَا هُوَ عَلَى " الصَّدَقَةِ الْمَفْرُوضَةِ " الَّتِي حُرِّمَتْ عَلَى الْأَغْنِيَاءِ إلَّا مَنْ خَصَّهُ النَّصُّ مِنْهُمْ: مِنْ {وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ} [التوبة: ٦٠] فَقَطْ.

L26413–26414 The evidence for this is what we have been narrated through the chain of Ahmad ibn Shu'ayb, who informed me that Imran ibn Bakkar narrated to me, that Ali ibn Ayyash informed us, that Shu'ayb—who is Ibn Abi Hamzah—

بُرْهَانُ ذَلِكَ - مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي عِمْرَانُ بْنُ بَكَّارَ حَدَّثَنِي عَلِيُّ بْنُ عَيَّاشٍ نَا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ - حَدَّثَنِي أَبُو الزِّنَادِ حَدَّثَنِي عَبْدُ الرَّحْمَنِ

[47] **Qur'an references (L26412):** Qur'an 9:60 (At-Tawbah).

narrated to me, that Abu al-Zinad narrated to me, that Abd al-Rahman al-A'raj narrated to me, that he heard Abu Hurayrah relating from the Messenger of Allah—peace be upon him and his household—mentioning a hadith containing: "A man declared, 'I shall certainly give charity,' so he placed it in a thief's hand. In the morning, people were saying, 'Charity was given to a thief!' He said, 'O Allah, praise be to You. I shall certainly give charity.' He then took his charity and placed it in a fornicator's hand. In the morning, people were saying, 'Charity was given to a fornicator last night!' He said, 'O Allah, praise be to You. I shall certainly give charity.' He then took his charity and placed it in a wealthy man's hand. In the morning, people were saying, 'Charity was given to a wealthy man last night!' He said, 'O Allah, praise be to You: concerning the thief, the fornicator, and the wealthy man.' He was later approached and told, 'As for your charity, it has been accepted.'" And he mentioned the report.

الْأَعْرَجِ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يُحَدِّثُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَ حَدِيثًا فِيهِ «قَالَ رَجُلٌ: لَأَتَصَدَّقَنَّ بِصَدَقَةٍ، فَوَضَعَهَا فِي يَدِ سَارِقٍ، فَأَصْبَحُوا يَتَحَدَّثُونَ تُصُدِّقَ عَلَى سَارِقٍ فَقَالَ: اللَّهُمَّ لَكَ الْحَمْدُ لَأَتَصَدَّقَنَّ بِصَدَقَةٍ، فَخَرَجَ بِصَدَقَتِهِ فَوَضَعَهَا فِي يَدِ زَانِيَةٍ، فَأَصْبَحُوا يَتَحَدَّثُونَ تُصُدِّقَ اللَّيْلَةَ عَلَى زَانِيَةٍ، فَقَالَ: اللَّهُمَّ لَكَ الْحَمْدُ لَأَتَصَدَّقَنَّ بِصَدَقَةٍ، فَخَرَجَ بِصَدَقَتِهِ فَوَضَعَهَا فِي يَدِ غَنِيٍّ، فَأَصْبَحُوا يَتَحَدَّثُونَ تُصُدِّقَ اللَّيْلَةَ عَلَى غَنِيٍّ، فَقَالَ: اللَّهُمَّ لَكَ الْحَمْدُ عَلَى سَارِقٍ، وَعَلَى زَانِيَةٍ، وَعَلَى غَنِيٍّ، فَأُتِيَ فَقِيلَ لَهُ: أَمَّا صَدَقَتُكَ فَقَدْ تُقُبِّلَتْ» - وَذَكَرَ الْخَبَرَ.

L26415 So this is a clarification regarding the permissibility of charity to the wealthy, the righteous, and the sinful.

فَهَذَا بَيَانٌ فِي جَوَازِ الصَّدَقَةِ عَلَى الْغَنِيِّ، وَالصَّالِحِ، وَالطَّالِحِ.

L26416 The issue of a slave donating from his master's wealth in a manner that does not cause corruption.

[مَسْأَلَة الْعَبْد يتصدق مِنْ مَال سيدَهْ بِمَا لَا يفسد]

L26417 1646 - Issue: A slave may give charity from his master's property without causing waste. We have appended the hadith concerning the slave's charity which we previously mentioned: "The Messenger of Allah (peace and blessings of Allah be upon him) would accept a slave's invitation."

١٦٤٦ - مَسْأَلَةٌ: وَلِلْعَبْدِ أَنْ يَتَصَدَّقَ مِنْ مَالِ سَيِّدِهِ بِمَا لَا يُفْسِدُ، وَاسْتَدْرَكْنَا فِي تَصَدُّقِ الْعَبْدِ الْخَبَرَ الَّذِي قَدْ ذَكَرْنَاهُ، «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُجِيبُ دَعْوَةَ الْمَمْلُوكِ» .

L26418 It has been narrated to us through the route of Ahmad ibn Shuʿayb: narrated to us Qutaybah, narrated to us Hatim—who is Ibn Ismaʿil—from Yazid ibn Abi ʿUbayd, who said: I heard ʿUmayr, the servant of Ābi al-Lahm, say: "My master ordered me to cut meat into strips for drying. A poor man came to me, so I fed him some. When my master learned of that, he beat me. I went to the Messenger of Allah (peace be upon him), and he summoned him. He asked: 'Why did you beat him?' He replied: 'He fed my food without my permission.' The Messenger of Allah (peace be upon him) said: 'The reward is shared between you two.'"

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا قُتَيْبَةُ نَا حَاتِمٌ - هُوَ ابْنُ إِسْمَاعِيلَ - عَنْ يَزِيدَ بْنِ أَبِي عُبَيْدٍ قَالَ: سَمِعْت عُمَيْرًا مَوْلَى آبِي اللَّحْمِ قَالَ: «أَمَرَنِي مَوْلَايَ أَنْ أُقَدِّدَ لَحْمًا فَجَاءَنِي مِسْكِينٌ فَأَطْعَمْتُهُ، فَعَلِمَ بِذَلِكَ مَوْلَايَ فَضَرَبَنِي، فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَعَاهُ فَقَالَ: لِمَ ضَرَبْتَهُ؟ فَقَالَ: يُطْعِمُ طَعَامِي بِغَيْرِ أَنْ آمُرَهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: الْأَجْرُ بَيْنَكُمَا» .

وَمِنْ طَرِيقِ مُسْلِمٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَابْنُ نُمَيْرٍ، وَزُهَيْرُ بْنُ حَرْبٍ كُلُّهُمْ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ مُحَمَّدِ بْنِ زَيْدٍ عَنْ عُمَيْرٍ مَوْلَى آبِي اللَّحْمِ قَالَ «كُنْتُ مَمْلُوكًا فَسَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَأَتَصَدَّقُ مِنْ مَالِ مَوَالِيَّ شَيْئًا؟ قَالَ: نَعَمْ، وَالْأَجْرُ بَيْنَكُمَا نِصْفَانِ» قَالَ أَبُو مُحَمَّدٍ: لَا يَخْلُو مَالُ الْعَبْدِ مِنْ أَنْ يَكُونَ لَهُ كَمَا نَقُولُ نَحْنُ، أَوْ يَكُونَ لِسَيِّدِهِ كَمَا يَقُولُونَ، فَإِنْ كَانَ مَالُ فَصَدَقَةُ الْمَرْءِ مِنْ مَالِهِ فِعْلٌ حَسَنٌ مَنْدُوبٌ إلَيْهِ، وَإِنْ كَانَ لِسَيِّدِهِ فَهَذَا نَصٌّ جَلِيٌّ بِإِبَاحَةِ الصَّدَقَةِ لَهُ مِنْهُ - فَلْيُعْضَدُوا بِالْجَنْدَلِ.

L26419–26421 And via Muslim's chain of transmission: Abu Bakr ibn Abi Shaybah, Ibn Numayr, and Zuhayr ibn Harb—all of them reported to us from Hafs ibn Ghiyath, from Muhammad ibn Zayd, from Umayr, the freed slave of Abi al-Lahm, who said: "I was a slave, so I asked..." The Messenger of Allah—peace and blessings be upon him—was asked, "May I give charity from the wealth of my clients?" He replied, "Yes, and the reward is divided into two equal shares between you both." Abu Muhammad said: The slave's wealth is not free from either belonging to him as we hold or belonging to his master as others claim. If the wealth is his own, then a person's charity from his property is a virtuous and recommended act. If it belongs to his master, this constitutes an explicit text permitting charity from it—let them be reinforced with stones.

وَقَدْ بَيَّنَّا أَنَّ قَوْله تَعَالَى: {عَبْدًا مَمْلُوكًا لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٥] لَيْسَ بِضَرُورَةِ الْعَقْلِ وَالْحِسِّ فِي كُلِّ مَمْلُوكٍ، لِأَنَّا نَرَاهُمْ لَا يَعْجِزُونَ عَنْ شَيْءٍ مِمَّا يَعْجِزُ عَنْهُ الْحُرُّ - فَصَحَّ أَنَّهُ تَعَالَى إنَّمَا عَنَى بَعْضَ الْعَبِيدِ مِمَّنْ هَذِهِ صِفَتُهُ، كَمَا قَالَ تَعَالَى: {وَضَرَبَ اللَّهُ مَثَلا رَجُلَيْنِ أَحَدُهُمَا أَبْكَمُ لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٦] وَلَيْسَ كُلُّ أَبْكَمَ كَذَلِكَ، فَصَحَّ أَنَّهُ تَعَالَى أَرَادَ مِنْ الْبُكْمِ مَنْ هَذِهِ صِفَتُهُ - وَيَلْزَمُهُمْ عَلَى هَذَا أَنْ يُسْقِطُوا عَنْهُ الصَّلَاةَ، وَالْوُضُوءَ وَالْغُسْلَ، وَالصِّيَامَ، إذَا كَانَ عِنْدَهُمْ لَا يَقْدِرُ عَلَى شَيْءٍ.

L26422 We have clarified that the statement of Allah the Exalted: {an owned slave incapable of anything} [16:75] does not represent a necessity of reason and sensory perception regarding every owned slave, for we observe that they are not incapable of the same things that a free person is incapable of. Thus, it is valid that He the Exalted intended only certain slaves characterized by this description—as He said: {And Allah presents an example of two men: one of them is mute, incapable of anything} [16:76], though not every mute person is such. Therefore, it is valid that He intended among the mute those possessing this attribute. Consequently, it becomes incumbent upon them by this reasoning to exempt such a person from prayer, ablution, ritual purification (ghusl), and fasting if in their view he is incapable of anything.[48]

فَإِنْ قَالُوا: هَذِهِ أَعْمَالُ أَبْدَانٍ.

L26423 If they say: These are physical acts.

قُلْنَا: قَدْ تَرَكْتُمْ احْتِجَاجَكُمْ بِظَاهِرِ الْآيَةِ بَعْدُ وَأَتَيْتُمْ بِدَعْوَى فِي الْفَرْقِ بَيْنَ أَعْمَالِ الْأَبْدَانِ وَأَعْمَالِ الْأَمْوَالِ بِلَا بُرْهَانٍ وَالْحَجُّ عَمَلُ بَدَنٍ فَأَلْزِمُوهُ إيَّاهُ. فَإِنْ قَالُوا: قَدْ يُجْبَرُ بِالْمَالِ. قُلْنَا فَأَسْقِطُوا عَنْهُ الصَّوْمَ بِهَذَا الدَّلِيلِ السَّخِيفِ، لِأَنَّهُ يُجْبَرُ بِالْمَالِ مِنْ عِتْقِ الْمُكَفِّرِ وَإِطْعَامِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26424 We said: You have already abandoned your argument based on the apparent meaning of the verse and instead advanced a claim regarding the distinction between physical acts and financial obligations without proof—though Hajj is a physical act—so impose Hajj upon him. If they say: "He may be compelled via wealth," we reply: Then exempt him from fasting by this flimsy evidence, since he is compelled via wealth through freeing an expiatory slave or feeding him. And success comes only from Allah, the Exalted.

[48] **Qur'an references (L26422):** Qur'an 16:75 (An-Nahl); Qur'an 16:76 (An-Nahl).

Permissibility

The Issue of Permissibility in Uncertain Matters

Permissibility 1647 - An Issue: Permissibility applies to unspecified matters, unlike gifts, presents, charity, umra, ruqba, waqf, and other such matters. This is exemplified by food to which people are invited, where they are permitted to eat it, though how much each individual will consume is unknown.

This is explicitly established from the era of the Messenger of Allah—may Allah bless him and grant him peace—and his injunction to respond to invitations and partake in their meals, as per the command of the Messenger of Allah—may Allah bless him and grant him peace—that whoever wishes to cut a portion when sacrificing the ritual animal.

And like his command (peace and blessings be upon him) to the one entrusted with the sacrificial offering: if it becomes unfit, to slaughter it ritually and leave it for the people to take.

And similar to this — and success is with Allah, the Most High.

The jurisprudential issue of a person eating from the house of his father's, mother's, son's, and the like.

1648. Issue: It is permissible for a person to eat from the household of his father, mother, son, daughter, brother, sister (whether two full sisters, paternal half-siblings, or maternal half-siblings), his child's child, grandfather, grandmother (however they are related), paternal uncle, paternal aunt (however they are related), maternal uncle, maternal aunt (however they are related), his friend, or what he possesses the keys to – whether the aforementioned individuals are pleased or displeased, whether they grant permission or not. But he may not consume all of it. Proof of this is Allah's statement in the Quranic text: "From your households or the households of your fathers" [24:61] – this text is as we stated, for "from" denotes partiality. The Prophet

[الْإِبَاحَةُ]

[مَسْأَلَةٌ الْإِبَاحَةُ فِي الْمَجْهُولِ]

الْإِبَاحَةُ ١٦٤٧ - مَسْأَلَةٌ: وَالْإِبَاحَةُ جَائِزَةٌ فِي الْمَجْهُولِ، بِخِلَافِ الْعَطِيَّةِ، وَالْهَدِيَّةِ وَالصَّدَقَةِ، وَالْعُمْرَى، وَالرُّقْبَى، وَالْحَبْسِ، وَغَيْرِ ذَلِكَ، وَذَلِكَ كَطَعَامٍ يُدْعَى إلَيْهِ قَوْمٌ يُبَاحُ لَهُمْ أَكْلُهُ، وَلَا يُدْرَى كَمْ يَأْكُلُ كُلُّ وَاحِدٍ.

وَهَذَا مَنْصُوصٌ مِنْ عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمْرُهُ بِإِجَابَةِ الدَّعْوَةِ وَالْأَكْلِ فِيهَا وَكَأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ شَاءَ أَنْ يَقْتَطِعَ إذْ نَحَرَ الْهَدْيَ.

وَكَأَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْمُرْسَلَ بِالْهَدْيِ إذَا عَطِبَ أَنْ يَنْحَرَهُ، وَيُخَلِّيَ بَيْنَهُ وَبَيْنَ النَّاسِ.

وَنَحْوُ هَذَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمَرْءِ يَأْكُلُ مِنْ بَيْتِ والده ووالدته وأبنه وَغَيْرِ ذَلِكَ]

١٦٤٨ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمَرْءِ أَنْ يَأْكُلَ مِنْ بَيْتِ وَالِدِهِ، وَوَالِدَتِهِ، وَابْنِهِ، وَابْنَتِهِ، وَأَخِيهِ، وَأُخْتِهِ، شَقِيقَتَيْنِ، أَوْ لِأَبٍ أَوْ لِأُمٍّ، وَوَلَدِ وَلَدِهِ، وَجَدِّهِ، وَجَدَّتِهِ، كَيْفَ كَانَا، وَعَمِّهِ، وَعَمَّتِهِ، كَيْفَ كَانَا، وَخَالِهِ، وَخَالَتِهِ، كَيْفَ كَانَا، وَصَدِيقِهِ، وَمَا مَلَكَ مَفَاتِحَهُ، سَوَاءٌ رَضِيَ مَنْ ذَكَرْنَا أَوْ سَخِطَ، أَذِنُوا، أَوْ لَمْ يَأْذَنُوا، وَلَيْسَ لَهُ أَنْ يَأْكُلَ الْكُلَّ. بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى فِي نَصِّ الْقُرْآنِ وقَوْله تَعَالَى: {مِنْ بُيُوتِكُمْ أَوْ بُيُوتِ

(peace be upon him) said: “A person’s child is from his earnings, and the finest thing one of you eats is from his earnings.”[49]

Usufruct.

Issue: A grant is permissible only for animals that are milked.

Grant 1649 – A legal ruling: The grant is permissible and applies exclusively to milking animals. A person may grant to whomever they choose the use of any female animals they own for milking.

And a house whose residency he permits, an animal he grants the right to ride, land he grants for cultivation, and a slave who serves him—whatever the grantee acquires from all of that belongs to him, with the grantor having no claim to it. The grantor retains the right to reclaim the specific asset he granted whenever he wishes—whether he specified a term or not, whether it was formalized by witnesses or not—for it is unlawful to appropriate anyone’s property without their free consent except by explicit textual evidence, and no such evidence exists regarding this matter. His specification of the term constitutes a designated period.

We have stated in the chapter on vows and oaths of this book that fulfilling a promise is not obligatory, which has made it unnecessary to repeat the discussion here.

The legal rulings for acts described by the terms “cultivation,” “providing residence,” “impoverishment,” “granting usufruct,” “sealing,” “employing servants,” “divestment of rights,” and “assigning ownership” are equivalent to the ruling of a temporary grant of usufruct in all the cases we have mentioned—entirely equivalent, without any distinction.

This entire position is the view of Abū Ḥanīfah, al-Shāfiʿī, Dāwūd, and all their adherents. Cultivation pertains to land, wherein a person permits

[49] **Qur’an references (L26433):** Qur’an 24:61 (An-Nur).

آبَائِكُمْ} [النور: ٦١] نَصُّ مَا قُلْنَا، لِأَنَّ " مِنْ " لِلتَّبْعِيضِ - وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «إِنَّ وَلَدَ أَحَدِكُمْ مِنْ كَسْبِهِ، وَإِنَّ أَطْيَبَ مَا أَكَلَ أَحَدُكُمْ مِنْ كَسْبِهِ» .

[الْمِنْحَةُ]

[مَسْأَلَةٌ الْمِنْحَةُ جَائِزَةٌ فِي الْمُحْتَلَبَاتِ فَقَطْ]

الْمِنْحَةُ ١٦٤٩ - مَسْأَلَةٌ: وَالْمِنْحَةُ جَائِزَةٌ، وَهِيَ فِي الْمُحْتَلَبَاتِ فَقَطْ، يَمْنَحُ الْمَرْءُ مَا يَشَاءُ مِنْ إِنَاثِ حَيَوَانِهِ مَنْ شَاءَ لِلْحَلْبِ.

وَكَدَارٍ يُبِيحُ سُكْنَاهَا، وَدَابَّةٍ يَمْنَحُ رُكُوبَهَا، وَأَرْضٍ يَمْنَحُ ازْدِرَاعَهَا، وَعَبْدٍ يَخْدُمُهُ، فَمَا حَازَهُ الْمَمْنُوحُ مِنْ كُلِّ ذَلِكَ فَهُوَ لَهُ، لَا طَلَبَ لِلْمَانِحِ فِيهَا، وَلِلْمَانِحِ أَنْ يَسْتَرِدَّ عَيْنَ مَا مَنَحَ مَتَى شَاءَ - سَوَاءٌ عَيَّنَ مُدَّةً أَوْ لَمْ يُعَيِّنْ، أَشْهَدَ أَوْ لَمْ يُشْهِدْ، لِأَنَّهُ لَا يَحِلُّ مَالُ أَحَدٍ بِغَيْرِ طِيبِ نَفْسِهِ إِلَّا بِنَصٍّ، وَلَا نَصَّ فِي هَذَا، وَتَعْيِينُهُ الْمُدَّةَ: عِدَّةٌ.

وَقَدْ ذَكَرْنَا أَنَّ " الْوَعْدَ " لَا يَلْزَمُ الْوَفَاءُ بِهِ فِي " بَابِ النُّذُورِ، وَالْأَيْمَانِ " مِنْ كِتَابِنَا هَذَا، فَأَغْنَى عَنْ إِعَادَتِهِ.

وَالْإِزْرَاعُ، وَالْإِسْكَانُ، وَالْإِفْقَارُ، وَالْإِمْتَاعُ، وَالْإِطْرَاقُ، وَالْإِخْدَامُ، وَالْإِعْرَاءُ، وَالتَّصْيِيرُ: حُكْمُ مَا وَقَعَ بِهَذِهِ الْأَلْفَاظِ كَحُكْمِ الْمِنْحَةِ فِي كُلِّ مَا ذَكَرْنَا، سَوَاءٌ بِسَوَاءٍ وَلَا فَرْقَ.

another to cultivate that land for a specified period they stipulate or for the duration of the grantor's life. Residency applies to houses, dwellings, and commercial premises, as we have mentioned.

وَهَذَا كُلُّهُ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَدَاوُد، وَجَمِيعِ أَصْحَابِهِمْ. فَالْإِزْرَاعُ يَكُونُ فِي الْأَرْضِ، يَجْعَلُ الْمَرْءُ لِآخَرَ أَنْ يَزْرَعَ هَذِهِ الْأَرْضَ مُدَّةً يُسَمِّيهَا، أَوْ طُولَ حَيَاتِهِ - وَالْإِسْكَانُ يَكُونُ فِي الْبُيُوتِ، وَفِي الدُّورِ، وَالدَّكَاكِينِ كَمَا ذَكَرْنَا.

L26441–26442 Deprivation (al-ifqār) pertains to riding animals. Coupling (al-iṭrāq) pertains to breeding males placed upon females. Servitude (al-ikhdām) pertains to male and female slaves. Usufruct (al-imtāʿ) pertains to trees bearing fruit, garments, all furnishings, and likewise transformation (al-taṣyīr). Similarly, the stipulated reward (al-juʿl) and date-stripping (al-iʿrāʾ) pertain to palm tree yields. In all these cases, once the assignee has taken possession, the owner of the principal property holds no right of reclaim. For whatever the assignee has not taken possession of, the owner retains the right to reclaim his property's principal and prevent the assignee from claiming what was designated for him.

وَالْإِفْقَارُ: يَكُونُ فِي الدَّوَابِّ الَّتِي تُرْكَبُ. وَالْإِطْرَاقُ: يَكُونُ فِي الْفُحُولِ تُحْمَلُ عَلَى الْإِنَاثِ. وَالْإِخْدَامُ: يَكُونُ فِي الرَّقِيقِ الذُّكُورِ وَالْإِنَاثِ. وَالْإِمْتَاعُ: يَكُونُ فِي الْأَشْجَارِ ذَوَاتِ الْحَمْلِ، وَفِي الثِّيَابِ، وَفِي جَمِيعِ الْأَثَاثِ، وَكَذَلِكَ التَّصْيِيرُ. وَكَذَلِكَ الْجُعْلُ - وَالْإِعْرَاءُ: يَكُونُ فِي حَمْلِ النَّخْلِ، فَكُلُّ هَذَا مَا قَبَضَهُ الْمَجْعُولُ لَهُ ذَلِكَ، فَلَا رُجُوعَ لِصَاحِبِ الرَّقَبَةِ فِيهِ، وَمَا لَمْ يَقْبِضْهُ الْمَجْعُولُ لَهُ كُلُّ ذَلِكَ، فَلِصَاحِبِ الرَّقَبَةِ اسْتِرْجَاعُ رَقَبَةِ مَالِهِ، وَمَنْعُ الْمَجْعُولِ لَهُ مِمَّا جَعَلَ لَهُ.

L26443 It was narrated to us through the chain of Mālik from Abū al-Zinād from al-Aʿraj from Abū Hurayrah that the Messenger of Allah—peace and blessings of Allah be upon him—said: "How excellent is the loaned gift of a prime lactating she-camel—a loan—and a prime ewe milked in the evening with a vessel and in the morning with a vessel."

رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: نِعْمَ الْمَنِيحَةُ اللِّقْحَةُ الصَّفِيُّ مِنْحَةً، وَالشَّاةُ الصَّفِيُّ تَرُوحُ بِإِنَاءٍ وَتَغْدُو بِإِنَاءٍ» .

L26444 And we have mentioned his saying—peace and blessings be upon him—"Whoever has land, let him cultivate it or allow his brother to use it."

وَقَدْ ذَكَرْنَا قَوْلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «مَنْ كَانَتْ لَهُ أَرْضٌ فَلْيَزْرَعْهَا أَوْ لِيَمْنَحْهَا أَخَاهُ» .

L26445 Through the chain of al-Bukhārī: ʿAbdullāh ibn Yūsuf narrated to us, Ibn Wahb narrated to us, Yūnus ibn Yazīd narrated to us from Ibn Shihāb from Anas ibn Mālik, who said: The Emigrants came to Medina from Mecca with nothing in their possession, while the Helpers were the people of land and estates. The Helpers—may Allah be pleased with them—divided with them on the condition that they would give them the produce of their wealth every year and undertake their labor and expenses.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا عَبْدُ اللَّهِ بْنِ يُوسُفَ نَا ابْنُ وَهْبٍ نَا يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَدِمَ الْمُهَاجِرُونَ الْمَدِينَةَ مِنْ مَكَّةَ وَلَيْسَ بِأَيْدِيهِمْ شَيْءٌ، وَكَانَ الْأَنْصَارُ أَهْلَ الْأَرْضِ وَالْعَقَارِ، فَقَاسَمَهُمْ الْأَنْصَارُ - رَضِيَ اللَّهُ عَنْهُمْ - عَلَى أَنْ يُعْطُوهُمْ ثِمَارَ أَمْوَالِهِمْ كُلَّ عَامٍ، وَيَكْفُوهُمْ الْعَمَلَ وَالْمُؤْنَةَ.

L26446 Umm Sulaym, the mother of Anas ibn Mālik, gave the Messenger of Allah—

peace and blessings be upon him—date clusters. The Messenger of Allah—peace and blessings be upon him—then gave them to Umm Ayman, his freed bondwoman and mother of Usāmah ibn Zayd. When the Messenger of Allah—peace and blessings be upon him—completed the expedition to Khaybar, the Emigrants returned to the Helpers the temporary grants of fruits they had provided them. The Prophet—peace be upon him—restored Umm Sulaym's date clusters to her, and he—peace and blessings be upon him—gave Umm Ayman, in their place, a portion from his date-palm orchard.

«وَكَانَتْ أُمُّ سُلَيْمٍ أُمُّ أَنَسِ بْنِ مَالِكٍ أَعْطَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِذَاقًا فَأَعْطَاهُنَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُمَّ أَيْمَنَ مَوْلَاتَهُ أُمَّ أُسَامَةَ بْنَ زَيْدٍ، فَلَمَّا فَرَغَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ خَيْبَرَ رَدَّ الْمُهَاجِرُونَ إِلَى الْأَنْصَارِ مَنَائِحَهُمْ الَّتِي كَانُوا مَنَحُوهُمْ مِنْ ثِمَارِهِمْ، فَرَدَّ - عَلَيْهِ السَّلَامُ - إِلَى أُمِّ سُلَيْمٍ عِذَاقَهَا، وَأَعْطَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أُمَّ أَيْمَنَ مَكَانَهُنَّ مِنْ حَائِطِهِ» .

L26447–26449 As for revoking [the divorce] during the waiting period whenever he wishes, he has not relinquished ownership of the original asset nor the manumission. Therefore, it is not permissible to take anything from his wealth except... His soul is content with it. As long as he remains content with what Allah the Exalted causes to occur in his wealth, it is permissible for him. But if Allah the Exalted causes something to occur in his wealth with which his soul is not content, then it is his wealth, forbidden for others, according to his saying - peace and blessings be upon him: "Your blood and your wealth are sacred to you." The soul's contentment occurs when the thing comes into being, not before its creation. And with Allah the Exalted is success.

وَأَمَّا الِارْتِجَاعُ مَتَى شَاءَ، فَإِنَّهُ لَمْ يَهَبْ الْأَصْلَ، وَلَا الرَّقَبَةَ، فَلَا يَجُوزُ مِنْ مَالِهِ إِلَّا مَا طَابَتْ بِهِ نَفْسُهُ، فَمَا دَامَ طَيِّبَ النَّفْسِ فِيمَا يُحْدِثُ اللَّهُ تَعَالَى فِي مَالِهِ فَهُوَ جَائِزٌ عَلَيْهِ، فَإِذَا أَحْدَثَ اللَّهُ تَعَالَى شَيْئًا فِي مَالِهِ لَمْ تَطِبْ بِهِ نَفْسُهُ فَهُوَ مَالُهُ، حَرَامٌ عَلَى غَيْرِهِ، بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَإِنَّمَا طِيبُ النَّفْسِ حِينَ وُجُودِ الشَّيْءِ، لَا قَبْلَ خَلْقِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The life grant and the contingent reversionary grant.

[الْعُمْرَى وَالرُّقْبَى]

Issue: The *'umrā* and *ruqbā* are valid and absolute grants.

[مَسْأَلَةٌ الْعُمْرَى وَالرُّقْبَى هِبَةٌ صَحِيحَةٌ تَامَّةٌ]

L26452 The 'Umra and Ruqba (1650) - Issue: 'Umra and Ruqba are valid and complete donations. The donor in 'Umra and the grantor in Ruqba retain ownership of the donated property as part of their estate, just like the rest of their possessions. They may sell it if they wish, and it is inherited from them. The property does not return to the donor of 'Umra or his heirs—regardless of whether he stipulated its reversion or not—and any such stipulation holds no legal validity.

الْعُمْرَى وَالرُّقْبَى ١٦٥٠ - مَسْأَلَةٌ: الْعُمْرَى، وَالرُّقْبَى: هِبَةٌ صَحِيحَةٌ تَامَّةٌ، يَمْلِكُهَا الْمُعْمِرُ وَالْمُرْقِبُ، كَسَائِرِ مَالِهِ، يَبِيعُهَا إِنْ شَاءَ، وَتُورَثُ عَنْهُ، وَلَا تَرْجِعُ إِلَى الْمُعْمِرِ وَلَا إِلَى وَرَثَتِهِ - سَوَاءٌ اشْتَرَطَ أَنْ تَرْجِعَ إِلَيْهِ أَوْ لَمْ يَشْتَرِطْ - وَشَرْطُهُ لِذَلِكَ لَيْسَ بِشَيْءٍ.

L26453 The 'Umra is when one says: "This house, this land, or this item is 'Umra for you," or "I have granted you this as 'Umra," or "It is yours for your lifetime,"

or says: “for your life,” or says: “ruqba for you,” or “I have granted you this as ruqba”—all these formulations are equivalent.

وَالْعُمْرَى هِيَ أَنْ يَقُولَ: هَذِهِ الدَّارُ، وَهَذِهِ الْأَرْضُ، أَوْ هَذَا الشَّيْءُ عُمْرَى لَك، أَوْ قَدْ أَعْمَرْتُكَ إيَّاهَا، أَوْ هِيَ لَك عُمْرُك - أَوْ قَالَ: حَيَاتُك، أَوْ قَالَ: رُقْبَى لَك، أَوْ قَدْ أَرْقَبْتُكهَا - كُلُّ ذَلِكَ سَوَاءٌ.

L26454 This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, their companions, and some of our companions; it is also the view of a group of the Salaf—as narrated to us via Wakīʿ, from Sharīk, from ʿAbd Allāh ibn Muḥammad ibn al-Ḥanafiyyah, from his father, who reported: ʿAlī ibn Abī Ṭālib said: “The *ʿumra* is irrevocable, and whoever was given a choice has thereby divorced.”

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَصْحَابِهِمْ وَبَعْضِ أَصْحَابِنَا، وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نَا شَرِيكٌ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ ابْنِ الْحَنَفِيَّةِ عَنْ أَبِيهِ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: الْعُمْرَى بَتَاتٌ، وَمَنْ خُيِّرَ فَقَدْ طَلَّقَ.

L26455 Narrated via the chain of ʿAbd al-Razzāq from Maʿmar, from ʿAmr ibn Dīnār, from Ṭāwus, from Ḥujr al-Madari, from Zayd ibn Thābit, who said, “The ʿumrā (usufruct grant for a lifetime) belongs to the heirs.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ حُجْرٌ الْمَدَرِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: الْعُمْرَى لِلْوَارِثِ.

L26456 And through the chain of Maʿmar from Ayyub al-Sakhtiyani from Nafi’: A man asked Ibn Umar about one who gave his son a camel during the father’s lifetime. Ibn Umar said: “It belongs to the son - both during the father’s life and upon his death.”

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ سَأَلَ رَجُلٌ ابْنَ عُمَرَ عَمَّنْ أَعْطَى ابْنًا لَهُ بَعِيرًا حَيَاتَهُ؟ فَقَالَ ابْنُ عُمَرَ: هُوَ لَهُ حَيَاتُهُ وَمَوْتُهُ.

L26457 From the narration of Abd al-Razzaq from Sufyan al-Thawri from Abu al-Zubayr from Tawus from Ibn Abbas, who said: Whoever is granted something as ʿumra (a lifetime grant), it belongs to him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: مَنْ أُعْمِرَ شَيْئًا فَهُوَ لَهُ.

L26458 Via Ibn Abi Shaybah, who narrated to us from Yahya ibn Sa‘id, from Sufyan al-Thawri, from Abu al-Zubayr, from Tawus, from Ibn Abbas, who said: “The ʿumrā and ruqbā are the same.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا يَحْيَى بْنُ سَعِيدٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: الْعُمْرَى، وَالرُّقْبَى سَوَاءٌ.

L26459–26461 From the chain of Wakiʿ, who narrated from Shuʿbah, from Ibn Najīḥ, from Mujāhid, who said that ʿAlī ibn Abī Ṭālib said: “Al-ʿUmrā and al-Ruqbā are equivalent.” It has also been authentically reported from Jābir ibn ʿAbd Allāh in one of his two opinions: “Whoever is granted something as ʿumra, it belongs to them perpetually”—and from Shurayḥ, Qatādah, ʿAṭāʾ ibn Abī Rabāḥ, Mujāhid, Ṭāwūs, and Ibrāhīm an-Nakhaʿī.

وَمِنْ طَرِيقِ وَكِيعٍ نَا شُعْبَةُ عَنْ ابْنِ نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: الْعُمْرَى، وَالرُّقْبَى سَوَاءٌ وَصَحَّ أَيْضًا عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ فِي أَحَدِ قَوْلَيْهِ: مَنْ أُعْمِرَ شَيْئًا

فَهُوَ لَهُ أَبَدًا - وَعَنْ شُرَيْحٍ، وَقَتَادَةَ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَمُجَاهِدٍ، وَطَاوُسٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ.

L26462 رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا هُشَيْمٌ نَا الْمُغِيرَةُ بْنُ مِقْسَمٍ قَالَ: سَأَلْت إبْرَاهِيمَ النَّخَعِيَّ عَمَّنْ أَسْكَنَ آخَرَ دَارًا حَيَاتَهُ فَمَاتَ الْمُسْكِنُ وَالْمُسْكَنُ قَالَ: تَرْجِعُ إلَى وَرَثَةِ الْمُسْكِنِ فَقُلْت: أَلَيْسَ يُقَالُ: مَنْ مَلَكَ شَيْئًا حَيَاتَهُ فَهُوَ لِوَرَثَتِهِ مِنْ بَعْدِهِ فَقَالَ إبْرَاهِيمُ: إنَّمَا ذَلِكَ فِي الْعُمْرَى وَأَمَّا السُّكْنَى وَالْغَلَّةُ، وَالْخِدْمَةُ، فَإِنَّهَا تَرْجِعُ إلَى صَاحِبِهَا وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالْأَوْزَاعِيِّ، وَوَكِيعٍ، وَأَحَدُ قَوْلَيْ الزُّهْرِيِّ، إلَّا أَنَّ عَطَاءً، وَالزُّهْرِيَّ قَالَا: إنْ جَعَلَ الْعُمْرَى بَعْدَ الْمُعَمَّرِ فِي وَجْهٍ مِنْ وُجُوهِ الْبِرِّ، أَوْ لِإِنْسَانٍ آخَرَ غَيْرَ نَفْسِهِ: نَفَذَ ذَلِكَ كَمَا جَعَلَهُ.

It was narrated to us through the chain of Al-Ḥajjāj ibn Al-Minhāl, who reported from Hushaym, who reported from Al-Mughīrah ibn Miqsam, who said: I asked Ibrāhīm Al-Nakhaʿī about one who granted another person residence in a house for his lifetime, then both the grantor and grantee died. He said: "The house reverts to the grantor's heirs." I said: "Is it not said: 'Whoever owns something during his lifetime, it belongs to his heirs after him'?" Ibrāhīm replied: "That applies specifically to the lifetime grant of residence (ʿumrā). As for the lifetime usufruct of residence (suknā), usufructuary benefits, and servitude rights, these revert to their original owner." This is the view of Sufyān Al-Thawrī, Al-Ḥasan ibn Ḥayyān, Al-Awzāʿī, Wakīʿ, and one of the two opinions of Al-Zuhrī. However, ʿAṭāʾ and Al-Zuhrī said: "If the lifetime grant of residence (ʿumrā) is stipulated to take effect after the designated beneficiary's death for a purpose among acts of benevolence or for another person besides oneself, it is executed as stipulated."

L26463–26465 وَقَالَتْ طَائِفَةٌ: الْعُمْرَى: هِبَةٌ صَحِيحَةٌ إذَا أَعْمَرَهَا لَهُ وَلِعَقِبِهِ، فَأَمَّا إنْ لَمْ يَقُلْ: لَهُ وَلِعَقِبِهِ، فَهِيَ رَاجِعَةٌ إلَى الْمُعَمِّرِ، أَوْ إلَى وَرَثَتِهِ إذَا مَاتَ الْمُعَمَّرُ - وَهُوَ قَوْلٌ صَحَّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَأَحَدُ قَوْلَيْ الزُّهْرِيِّ - وَبِهِ يَقُولُ أَبُو ثَوْرٍ، وَبَعْضُ أَصْحَابِنَا وَقَالَتْ طَائِفَةٌ: الْعُمْرَى رَاجِعَةٌ إلَى الْمُعَمِّرِ، أَوْ إلَى وَرَثَتِهِ عَلَى كُلِّ حَالٍ، فَإِنْ قَالَ: أَعْمَرْتُكَ هَذَا بِشَيْءٍ لَك وَلِعَقِبِك: كَانَتْ كَذَلِكَ، فَإِذَا انْقَرَضَ الْمُعَمَّرُ وَعَقِبُهُ: رَجَعَتْ إلَى الْمُعَمِّرِ، أَوْ إلَى وَرَثَتِهِ - وَهُوَ قَوْلٌ رُوِيَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ - وَهُوَ قَوْلُ مَالِك، وَاللَّيْثِ قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ ذَهَبَ مَذْهَبَ مَالِكٍ، فَوَجَدْنَاهُمْ يَذْكُرُونَ قَوْلَ اللَّهِ تَعَالَى: {هُوَ أَنْشَأَكُمْ مِنَ الأَرْضِ وَاسْتَعْمَرَكُمْ فِيهَا} [هود: ٦١] وَقَالَ تَعَالَى: {إِنَّا نَحْنُ نَرِثُ الأَرْضَ وَمَنْ عَلَيْهَا} [مريم: ٤٠] قَالُوا: فَكَانَ كَذَلِكَ

A group said: The *ʿumra* is a valid gift if one grants it "for himself and his descendants." If he does not state "for himself and his descendants," it reverts to the grantor or to the grantor's heirs upon the grantor's death. This is an authentic opinion transmitted from Jābir ibn ʿAbd Allāh, ʿUrwah ibn al-Zubayr, and one of the two positions of al-Zuhrī. Abū Thawr and some of our associates uphold this. Another group said: The *ʿumra* invariably reverts to the grantor or his heirs. If the grantor states, "I grant you this as property for yourself and your descendants," it remains with them accordingly. When the grantor and his descendants cease to exist, it reverts to the grantor or his heirs. This is an opinion narrated from al-Qāsim ibn Muḥammad and Yaḥyā ibn Saʿīd al-Anṣārī, and it is the view of Mālik and al-Layth. Abū Muḥammad said: We examined the proofs advanced by adherents of Mālik's school and found them citing Allāh's verse: *{He originated you from the earth and entrusted you to develop it}* [Hūd 11:61], and His saying: *{Indeed, We alone will inherit the earth and all upon it}* [Maryam 19:40]. They argued that this principle applies universally to all recipients of an *ʿumra*. They

كُلُّ مَنْ أُعْمِرَ عُمْرَى وَذَكَرُوا الْخَبَرَ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» وَادَّعُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ بَلَغَنِي عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ " أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ كَانَتْ تَعْمُرُ بَنِي أَخِيهَا حَيَاتَهُمْ، فَإِذَا انْقَرَضَ أَحَدُهُمْ قَبَضَتْ مَسْكَنَهُ، فَوَرِثْنَا نَحْنُ ذَلِكَ كُلَّهُ الْيَوْمَ عَنْهَا، مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا أَصْلًا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا خَبَرُ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - فَبَاطِلٌ، وَهَذِهِ آفَةُ الْمُرْسَلِ، وَالَّذِي لَا شَكَّ فِيهِ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ الْقَاسِمِ، وَأَبَاهُ الْقَاسِمَ، وَجَدَّهُ مُحَمَّدًا، لَمْ يَرِثُوا عَائِشَةَ، وَلَا صَارَ إلَيْهِمْ بِالْمِيرَاثِ عَنْهَا قِيمَةُ خَرْدَلَةٍ؛ لِأَنَّ مُحَمَّدًا قُتِلَ فِي حَيَاتِهَا قَبْلَ مَوْتِهَا بِنَحْوِ عِشْرِينَ سَنَةً، وَإِنَّمَا وَرِثَهَا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ فَقَطْ؛ لِأَنَّهُ كَانَ ابْنَ شَقِيقِهَا، فَحَجَبَ الْقَاسِمَ بْنَ مُحَمَّدٍ، وَقَدْ ذَكَرْنَا ذَلِكَ فِي " بَابِ هِبَةِ الْمُشَاعِ " قَبْلَ هَذَا الْبَابِ بِأَوْرَاقٍ وَلَوْ صَحَّ ذَلِكَ عَنْهَا لَكَانَ قَدْ خَالَفَهَا ابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ، وَجَابِرٌ، وَزَيْدُ بْنُ ثَابِتٍ، وَعَلِيُّ بْنُ أَبِي طَالِبٍ عَلَى مَا أَوْرَدْنَا آنِفًا. وَأَمَّا «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» فَخَبَرٌ فَاسِدٌ؛ لِأَنَّهُ إمَّا عَنْ كَثِيرِ بْنِ زَيْدٍ - وَهُوَ هَالِكٌ - وَإِمَّا مُرْسَلٌ، ثُمَّ لَوْ صَحَّ لَكَانُوا أَوَّلَ مُخَالِفِينَ لَهُ؛ لِأَنَّهُمْ يُبْطِلُونَ مِنْ شُرُوطِ النَّاسِ أَكْثَرَ مِنْ أَلْفِ شَرْطٍ: كَمَنْ بَاعَ بِشَرْطِ أَنْ يُقِيلَهُ إلَى يَوْمَيْنِ.

also referenced the prophetic report: *"Muslims honor their stipulations."* They claimed what we narrated through Ibn Wahb's chain: It reached me from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq that ʿĀ'ishah, the Mother of the Believers, would provide dwellings for her nephews during their lifetimes. When one of them died, she would seize his residence. We inherited all of this from her today, and we know of no right for them to any of it whatsoever—and all of it constitutes no valid evidence for them. As for the report about ʿĀ'ishah (may Allah be pleased with her), it is false. This is a flaw of the Mursal narration. What is certain is that ʿAbd al-Raḥmān ibn al-Qāsim, his father al-Qāsim, and his grandfather Muḥammad did not inherit from ʿĀ'ishah, nor did even the value of a mustard seed pass to them through inheritance from her, for Muḥammad was killed in her lifetime nearly twenty years before her death. Only ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Abī Bakr inherited from her, as he was the son of her full brother, which precluded al-Qāsim ibn Muḥammad from inheritance. We mentioned this earlier in the "Chapter on the Gift of Undivided Shares" several pages before this chapter. Even if this report about her were authentic, it would contradict her according to Ibn ʿAbbās, Ibn ʿUmar, Jābir, Zayd ibn Thābit, and ʿAlī ibn Abī Ṭālib, as we cited previously. As for "Muslims are bound by their conditions," it is a corrupt narration—either from Kathīr ibn Zayd (a rejected narrator) or a Mursal report. Even if authentic, they would be the first to oppose it, for they invalidate over a thousand conditions set by people, such as one who sells on the condition that the buyer may cancel the sale within two days.[50]

وَكَمَنْ بَاعَ أَمَةً بِشَرْطِ أَنْ لَا يَبِيعَهَا.

L26466 Similarly, one who sells a female slave on the condition that he not sell her.

وَكَمَنْ بَاعَ بِخِيَارٍ إلَى عِشْرِينَ سَنَةً.

L26467 Similarly, one who sells with an option up to twenty years.

وَكَمَنْ نَكَحَ عَلَى أَنْ تُنْفِقَ هِيَ عَلَيْهِ - وَغَيْرُ ذَلِكَ.

L26468 Similarly, one who marries on the condition that she provides for him financially - and other such matters.

[50] **Qur'an references (L26463):** Qur'an 11:61 (Hud); Qur'an 19:40 (Maryam).

فَكَيْفَ وَهَذَا الشَّرْطُ - يَعْنِي رُجُوعَ الْعُمْرَى إلَى الْمُعَمِّرِ أَوْ إلَى وَرَثَتِهِ -: شَرْطٌ قَدْ جَاءَتْ السُّنَّةُ نَصًّا بِإِبْطَالِهِ، كَمَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى - وَاحْتِجَاجُهُمْ بِالْآيَةِ هَاهُنَا أَبْعَدُ شَيْءٍ مِنْ التَّوْفِيقِ لِوُجُوهٍ -: أَوَّلُهَا - أَنَّهُمْ قَاسُوا حُكْمَ النَّاسِ عَلَى حُكْمِ اللَّهِ تَعَالَى فِيهِمْ وَهَذَا بَاطِلٌ؛ لِأَنَّ اللَّهَ تَعَالَى يَقْتُلُ النَّاسَ وَلَا مَلَامَةَ عَلَيْهِ، وَيُجِيعُهُمْ، وَيُعَذِّبُهُمْ بِالْمَرَضِ، وَلَا مَلَامَةَ عَلَيْهِ، وَلَا يَجُوزُ عِنْدَ أَحَدٍ قِيَاسُ الْمَخْلُوقِ عَلَى الْخَالِقِ.

L26469 How then, when this condition—meaning the reversion of the ’umra to the donor or his heirs—is a condition that the Sunnah has explicitly invalidated, as we will mention after this, Allah willing, and their reliance on the verse here is the furthest from being valid for the following reasons: First, they applied qiyās by equating human judgment to Allah the Exalted’s judgment concerning them. This is invalid, for Allah causes people to die with no blame upon Him, causes them to hunger, and afflicts them with illness with no blame upon Him. No one considers it permissible to draw an analogy between the created and the Creator.

وَثَانِيهَا - أَنَّهُمْ مَوَّهُوا وَقَلَبُوا لَنَا الْآيَةَ، لِأَنَّنَا لَمْ نُنَازِعْهُمْ فِيمَنْ أَعْمَرَ آخَرَ مَالًا لَهُ وَلَمْ يَقُلْ اللَّهُ تَعَالَى قَدْ أَعْمَرْتُكُمْ الْأَرْضَ إنَّمَا قَالَ: إنَّهُ اسْتَعْمَرَنَا فِيهَا، بِمَعْنَى أَنَّهُ عَمَّرَنَا بِالْبَقَاءِ فِيهَا مُدَّةً، وَلَيْسَ هَذَا مِنْ الْعُمْرَى فِي وِرْدٍ وَلَا صَدْرٍ.

L26470–26472 And secondly, they obfuscated and distorted the verse to our detriment, for we never contested them regarding one who authorized another to manage his property, yet they... [text cut off]. Allah, the Exalted, says: “I have caused you to inhabit the earth.” Indeed, He only said: “He has enabled us to inhabit it,” meaning He has made us dwell therein for a duration. This bears no relation to the lifelong usufruct (al-ʿumrā) in Islamic law, whether in its commencement or conclusion.

وَثَالِثُهَا - أَنَّ هَذِهِ الْآيَةَ لَوْ جَعَلْنَاهَا حُجَّةً عَلَيْهِمْ، لَكَانَ ذَلِكَ أَوْضَحَ مِمَّا مَوَّهُوا بِهِ وَهُوَ أَنَّ اللَّهَ تَعَالَى - بِلَا شَكٍّ - أَبَاحَ لَنَا بَيْعَ مَا مَلَكْنَا مِنْ الْأَرْضِ، وَجَعَلَهَا لِوَرَثَتِنَا بَعْدَنَا، وَهَذَا هُوَ قَوْلُنَا فِي الْعُمْرَى لَا قَوْلُهُمْ، فَظَهَرَ فَسَادُ مَا يَأْتُونَ بِهِ عَلَانِيَةً، وَبَطَلَ هَذَا الْقَوْلُ يَقِينًا، وَهَذَا مِمَّا خَالَفُوا فِيهِ كُلَّ مَا صَحَّ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَجُمْهُورِ الْعُلَمَاءِ، وَمُرْسَلَاتٍ كَثِيرَةٍ.

L26473 The third point is that if we were to cite this verse as evidence against them, it would be clearer than the arguments they fraudulently embellish. For Allah the Exalted—undoubtedly—has permitted us to sell the land we own and decreed it for our heirs after us. This is our position on the *ʿumrā* [grant], not theirs. Thus, the invalidity of what they openly present becomes evident, and this claim is definitively nullified. This is among the matters in which they have opposed all that is authentically established from the Companions—may Allah be pleased with them—the majority of scholars, and many *mursal* [disconnected] reports.

ثُمَّ نَظَرْنَا فِي الْقَوْلِ الثَّانِي الَّذِي هُوَ قَوْلُ عُرْوَةَ، وَأَبِي ثَوْرٍ، فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرٍ قَالَ: إنَّمَا الْعُمْرَى الَّتِي أَجَازَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَقُولَ: هِيَ لَك وَلِعَقِبِك، فَأَمَّا إذَا قَالَ: هِيَ لَك مَا عِشْتَ، فَإِنَّهَا تَرْجِعُ إلَى صَاحِبِهَا.

L26474 Then we examined the second opinion, that of Urwah and Abi Thawr, and found them citing as evidence what was narrated to us through the transmission of Abd al-Razzaq from Ma’mar from al-Zuhri from Abu Salamah ibn Abd al-Rahman ibn Awf from Jabir, who said: “The ʿUmra permitted by the Messenger of Allah (may Allah bless him and grant him peace) refers to when one states: ’This is for you and your offspring.’ But if he says: ’It is for you as long as you live,’ then it reverts to its owner.”

L26475 Abu Muhammad said: We have found no valid argument for them other

than this, nor do they possess any proof within it. For what is authentically transmitted from the Messenger of Allah - peace be upon him - is solely the statement: "The *ʿumrā* which the Messenger of Allah - peace be upon him - validated is when one declares: 'It is for you and your descendants.'" As for the remaining wording in the narration, it constitutes the speech of Jabir. No authority lies with anyone apart from the Messenger of Allah - peace be upon him. In this matter, Ibn Abbas, Ibn Umar, and others opposed Jabir, as we previously mentioned. This narration therefore only specifies the ruling of *ʿumrā* when the grantor states: "It is for you and your descendants" - nothing beyond this. The ruling for cases where this declaration is absent remains unaddressed in this narration, necessitating its derivation from other sources. Success comes solely from Allah, the Exalted.

L26476–26478 Thus, this opinion also falls away, leaving only our position: We found the narration transmitted via Muslim—Muḥammad ibn Nāfiʿ from Ibn Abī Fudayk, from Ibn Abī Dhiʾb, from Ibn Shihāb, from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, from Jābir ibn ʿAbd Allāh—that the Messenger of Allah, peace and blessings be upon him, said: "Whoever is granted an ʿumrā for himself and his progeny, it becomes a permanent grant for him. The giver may not impose any condition or reservation of rights therein." Abū Salama explained: "Because he gave a gift that became subject to inheritance laws, and thus the inheritance laws invalidated his stipulation." Additionally, via the chain of Abū Dāwūd—Aḥmad ibn Abī al-Ḥawārī from al-Walīd (Ibn Muslim), from... Al-Awzaʿī narrated from al-Zuhrī, from ʿUrwah ibn al-Zubayr, from Jābir ibn ʿAbd Allāh that the Prophet - peace and blessings of Allah be upon him - said: «Whoever is granted a life estate (ʿumrā), it belongs to him and his descendants. It shall be inherited by those who inherit him from among his descendants.»[51]

L26479 Through the chain of Ahmad ibn Shuʿayb: Ismāʿīl—he is Ibn ʿUlayyah—narrated to us from Muḥammad—he is Ibn ʿAmr ibn ʿAlqamah—from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Hurayrah, that the Messenger of Allah (peace and blessings be upon him) said: "There is no ʿumrā; whoever is granted something as ʿumrā, it belongs to him."

قَالَ أَبُو مُحَمَّد: لَمْ نَجِدْ لَهُمْ حُجَّةً غَيْرَ هَذَا، وَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ الْمُسْنَدَ مِنْهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا هُوَ «أَنَّ الْعُمْرَى الَّتِي أَجَازَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَقُولَ هِيَ لَكَ وَلِعَقِبِكَ» وَأَمَّا بَاقِي لَفْظِ الْخَبَرِ فَمِنْ كَلَامِ جَابِرٍ - وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَالَفَ جَابِرًا هَاهُنَا ابْنُ عَبَّاسٍ وَابْنُ عُمَرَ، وَغَيْرُهُمَا كَمَا ذَكَرْنَا قَبْلُ فَإِنَّمَا فِي هَذَا الْخَبَرِ حُكْمُ الْعُمْرَى إِذَا قَالَ الْمُعَمِّرُ: " هِيَ لَك وَلِعَقِبِك " فَقَطْ وَبَقِيَ حُكْمُهُ إِذَا لَمْ يَقُلْ هَذَا الْكَلَامُ لَا ذِكْرَ لَهُ فِي هَذَا الْخَبَرِ، فَوَجَبَ طَلَبُهُ مِنْ غَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا، فَلَمْ يَبْقَ إلَّا قَوْلُنَا -: فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ نَافِعٍ نَا ابْنُ أَبِي فُدَيْكٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أُعْمِرَ عُمْرَى لَهُ وَلِعَقِبِهِ فَهِيَ لَهُ بَتْلَةً وَلَا يَجُوزُ لِلْمُعْطِي فِيهَا شَرْطٌ وَلَا ثُنْيَا» قَالَ أَبُو سَلَمَةَ: لِأَنَّهُ أَعْطَى عَطَاءً وَقَعَتْ فِيهِ الْمَوَارِيثُ، فَقَطَعَتْ الْمَوَارِيثُ شَرْطَهُ. وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ أَبِي الْحَوَارِيِّ نا الْوَلِيدُ - هُوَ ابْنُ مُسْلِمٍ - عَنْ الْأَوْزَاعِيِّ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أُعْمِرَ عُمْرَى فَهِيَ لَهُ وَلِعَقِبِهِ يَرِثُهَا مَنْ يَرِثُهُ مِنْ عَقِبِهِ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إسْمَاعِيلُ - هُوَ ابْنُ عُلَيَّةَ - عَنْ مُحَمَّدٍ - هُوَ ابْنُ عَمْرِو بْنِ عَلْقَمَةَ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا عُمْرَى فَمَنْ أُعْمِرَ شَيْئًا فَهُوَ لَهُ» .

[51] **Hadith references (L26476):** Sunan Abi Dawud 3551; Sunan an-Nasai 3740.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ عَلْقَمَةَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ مِثْلَهُ مُرْسَلًا. وَمِنْ طَرِيقِ أَبِي دَاوُد نا النُّفَيْلِيّ - هُوَ عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ - قَالَ: قَرَأْت عَلَى مَعْقِلٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ حُجْرٌ الْمَدَرِيّ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أُعْمِرَ شَيْئًا فَهُوَ لِمُعْمَرِهِ حَيَاتَهُ وَمَمَاتَهُ وَلَا تُرْقِبُوا فَمَنْ أُرْقِبَ شَيْئًا فَهُوَ سَبِيلُهُ» .

L26480 From the transmission of Saʿīd ibn Manṣūr: Abū Muʿāwiyah narrated from Muḥammad ibn ʿAmr ibn ʿAlqamah, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf - a similar narration transmitted as mursal. From the transmission of Abū Dāwūd: al-Nufaylī - he being ʿAbdullāh ibn Muḥammad - narrated, stating: I recited to Maʿqil, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ḥujrun al-Madārī, from Zayd ibn Thābit, who said: The Messenger of Allah - peace and blessings be upon him - declared: "Whoever grants a lifelong usufruct (ʿumrā), the property belongs to the grantor for the recipient's lifetime and after their death. Do not establish reversionary grants (ruqba), for whoever institutes such a grant, the property follows its due course."

قَالَ عَلِيٌّ: هَكَذَا رُوِّينَاهُ بِضَمِّ الْمِيمِ الْأُولَى مِنْ " مُعْمَرٍ " وَفَتْحِ الْمِيمِ الثَّانِيَةِ.

L26481 Ali said: Thus we have narrated it with a ḍammah on the first mīm of "Muʿmar" and a fatḥah on the second mīm.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُرْقِبُوا وَلَا تَعْمُرُوا فَمَنْ أُرْقِبَ شَيْئًا فَهُوَ لِوَرَثَتِهِ» .

L26482 Via the narration of Aḥmad ibn Shuʿayb, Muḥammad ibn ʿAbdillāh ibn Yazīd al-Muqrī reported to us from Sufyān ibn ʿUyaynah from Ibn Jurayj from ʿAṭāʾ ibn Abī Rabāḥ from Jābir ibn ʿAbdillāh that the Messenger of Allāh—peace and blessings be upon him—said: "Do not make irqab or ʿumra. Whoever is given something as irqab, it belongs to his legal heirs."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَحْمَدُ بْنُ حَرْبٍ نا أَبُو مُعَاوِيَةَ عَنْ حَجَّاجٍ - هُوَ ابْنُ مُحَمَّدٍ - عَنْ أَبِي الزُّبَيْرِ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ " رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعُمْرَى لِمَنْ أُعْمِرَهَا وَالرُّقْبَى لِمَنْ أُرْقِبَهَا وَالْعَائِدُ فِي هِبَتِهِ كَالْعَائِدِ فِي قَيْئِهِ» .

L26483 Through the chain of Aḥmad ibn Shuʿayb: Aḥmad ibn Ḥarb narrated to us from Abū Muʿāwiyah from Ḥajjāj [Ibn Muḥammad] from Abū al-Zubayr from Ṭāwūs from Ibn ʿAbbās, who said: The Messenger of Allah (peace be upon him) stated, "Usufruct (al-ʿUmrā) belongs to its recipient, revocable grant (al-Ruqbā) belongs to its recipient, and the retractor of his gift is like the retractor of his vomit."

فَهَذِهِ آثَارٌ مُتَوَاتِرَةٌ، زَائِدَةٌ عَلَى مَا فِي رِوَايَةِ مَعْمَرٍ فَلَمْ يَسَعْ أَحَدًا الْخُرُوجُ عَنْهَا، وَلَيْسَ هَذَا الْحُكْمُ إلَّا فِي الْإِعْمَارِ وَالْإِرْقَابِ كَمَا جَاءَ النَّصُّ.

L26484–26485 These are mass-transmitted narrations surpassing even what is in Maʿmar's narration, leaving no room for anyone to deviate from them. This ruling applies exclusively to lifelong usufruct contracts (ʿimārah) and long-term leaseholds (irqāb), as stated in the explicit text.

وَأَمَّا الْإِسْكَانُ فَيُخْرِجُهُ مَتَى شَاءَ؛ لِأَنَّهَا عِدَّةٌ فِيمَا لَمْ يُجْزِهِ مِنْ السُّكْنَى بَعْدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26486 As for the provision of housing, he may revoke it at his discretion, for it constitutes the prescribed period regarding housing that has not yet sufficed him afterward. And with Allah alone is success, the Exalted.

L26487–26488 **ʿĀriyyah (Gratuitous Loan): Issue: The ʿāriyyah is permis-**

sible.

[الْعَارِيَّةُ] [مَسْأَلَةٌ الْعَارِيَّةُ جَائِزَةٌ]

L26489 ١٦٥١ - مَسْأَلَةٌ: وَالْعَارِيَّةُ جَائِزَةٌ، وَفِعْلٌ حَسَنٌ، وَهِيَ فَرْضٌ فِي بَعْضِ الْمَوَاضِعِ، وَهِيَ إبَاحَةُ مَنَافِعِ بَعْضِ الشَّيْءِ، كَالدَّابَّةِ لِلرُّكُوبِ، وَالثَّوْبِ لِلِّبَاسِ، وَالْفَأْسِ لِلْقَطْعِ، وَالْقِدْرِ لِلطَّبْخِ، وَالْمِقْلَى لِلْقَلْوِ، وَالدَّلْوِ، وَالْحَبْلِ، وَالرَّحَى لِلطَّحْنِ، وَالْإِبْرَةِ لِلْخِيَاطَةِ، وَسَائِرِ مَا يُنْتَفَعُ بِهِ - وَلَا يَحِلُّ شَيْءٌ مِنْ ذَلِكَ إلَى أَجَلٍ مُسَمًّى، لَكِنْ يَأْخُذُ مَا أَعَارَ مَتَى شَاءَ، وَمَنْ سَأَلَهَا إيَّاهُ مُحْتَاجًا: فَفَرَضَ عَلَيْهِ إعَارَتَهُ إيَّاهُ إذَا وَثِقَ بِوَفَائِهِ، فَإِنْ لَمْ يَأْمَنْهُ عَلَى إضَاعَةِ مَا يَسْتَعِيرُ أَوْ عَلَى جَحْدِهِ فَلَا يُعِرْهُ شَيْئًا. أَمَّا كَوْنُهَا فَرْضًا كَمَا ذَكَرْنَا، فَلِقَوْلِ اللَّهِ تَعَالَى: {فَوَيْلٌ لِلْمُصَلِّينَ} [الماعون: ٤] {الَّذِينَ هُمْ عَنْ صَلاتِهِمْ سَاهُونَ} [الماعون: ٥] {الَّذِينَ هُمْ يُرَاءُونَ} [الماعون: ٦] {وَيَمْنَعُونَ الْمَاعُونَ} [الماعون: ٧] فَتَوَعَّدَ عَزَّ وَجَلَّ مَنْ مَنَعَ الْمَاعُونَ بِالْوَيْلِ -: رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا حَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَاصِمِ بْنِ بَهْدَلَةَ عَنْ زِرِّ بْنِ حُبَيْشٍ عَنْ ابْنِ مَسْعُودٍ فِي قَوْلِهِ تَعَالَى: {وَيَمْنَعُونَ الْمَاعُونَ} [الماعون: ٧] قَالَ: هُوَ الْعَوَارِيُّ: الْقِدْرُ، وَالدَّلْوُ، وَالْمِيزَانُ

Issue 1651: The loan-for-use (ʿāriyya) is permissible and a virtuous act, and it is obligatory (fard) in certain situations. It entails permitting the use of an item's benefits, such as lending an animal for riding, a garment for wearing, an axe for cutting, a pot for cooking, a frying pan for frying, a bucket, a rope, a millstone for grinding, a needle for sewing, and all other items that yield benefit. It is impermissible to lend any of these for a fixed term, but the lender may reclaim the loaned item whenever they wish. If someone in need requests such a loan, it becomes obligatory to lend it to them provided one is confident they will return it. If there is concern they may squander the borrowed item or deny the loan, nothing should be lent.

As for its being obligatory as mentioned, this is based on Allah's words: "So woe to those who pray" (107:4), "Who are heedless of their prayer" (107:5), "Those who show off" (107:6), "And withhold loaned essentials" (107:7). Thus the Almighty has threatened with woe those who withhold maʿūn (loaned essentials).

We have reported through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Ḥajjāj ibn al-Minhāl narrated to us, Ḥammād ibn Salamah narrated to us from ʿĀṣim ibn Bahdalah from Zirr ibn Ḥubaysh from Ibn Masʿūd regarding the verse "And withhold loaned essentials" (107:7). He said: "It refers to loaned items: the cooking pot, the bucket, and the measuring scale."[52]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ التَّيْمِيِّ عَنْ الْحَارِثِ بْنِ سُوَيْدٍ عَنْ ابْنِ مَسْعُودٍ قَالَ: الْمَاعُونُ مَا تَعَاوَرَهُ النَّاسُ بَيْنَهُمْ: الْفَأْسُ، وَالْقِدْرُ، وَأَشْبَاهُهُ.

L26490 Narrated through Ibn Abi Shaybah: Abu Mu'awiyah narrated to us from al-A'mash, from Ibrahim al-Taymi, from al-Harith ibn Suwayd, from Ibn Mas'ud, who said: "Al-Ma'un refers to what people pass around among themselves: the axe, the cooking pot, and the like."

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ جَابِرِ بْنِ صُبْحٍ حَدَّثَتْنِي أُمُّ شَرَاحِيلَ قَالَتْ: قَالَتْ أُمُّ عَطِيَّةَ: اذْهَبِي إلَى فُلَانَةَ فَأَقْرِئِيهَا السَّلَامَ وَقُولِي لَهَا: إنَّ أُمَّ عَطِيَّةَ تُوصِيكِ بِتَقْوَى اللَّهِ

L26491–26493 And via the transmission of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Jābir ibn Ṣubḥ, Umm Sharāḥīl reported to me... Umm ʿAtiyyah said: "Go to so-and-so, convey greetings of peace to her, and tell her: Umm ʿAtiyyah enjoins you to

[52] **Qur'an references (L26489):** Qur'an 107:4 (Al-Ma'un); Qur'an 107:5 (Al-Ma'un); Qur'an 107:6 (Al-Ma'un); Qur'an 107:7 (Al-Ma'un).

fear Allah, the Mighty and Majestic, and not to withhold the utensils." She said: I asked: "What are the utensils?" She replied: "Are you unaware? They are the implements people borrow and lend among themselves."

عَزَّ وَجَلَّ وَلَا تَمْنَعِي الْمَاعُونَ قَالَتْ: فَقُلْت: مَا الْمَاعُونُ؟ فَقَالَتْ لِي: هَبِلْتِ، هِيَ الْمِهْنَةُ يَتَعَاطَاهَا النَّاسُ بَيْنَهُمْ

L26494 And from the transmission of Yaḥyā ibn Saʿīd as well, and ʿAbd al-Raḥmān ibn Mahdī – Ibn Mahdī said: via Sufyān al-Thawrī, while Yaḥyā said: via Shuʿbah – then they both agreed via Abū Isḥāq al-Sabīʿī via Saʿīd ibn ʿIyāḍ from the companions of the Messenger of Allah (peace be upon him), they said: *Al-maʿūn* is refusing to lend the cooking pot, the axe, and the bucket.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ أَيْضًا، وَعَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، قَالَ ابْنُ مَهْدِيٍّ: عَنْ سُفْيَانَ الثَّوْرِيِّ، وَقَالَ يَحْيَى: عَنْ شُعْبَةَ، ثُمَّ اتَّفَقَا عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ سَعِيدِ بْنِ عِيَاضٍ عَنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالُوا: الْمَاعُونُ مَنْعُ الْقِدْرِ وَالْفَأْسِ، وَالدَّلْوِ.

L26495 From the transmissions of Ibn ʻUlayyah and Sufyan al-Thawri—both transmitting from Ibn Abi Najih from Mujahid from Ibn Abbas regarding the interpretation of {الْمَاعُونَ} [الماعون: ٧] mentioned in the verse. Ibn ʻAtiyyah stated in his narration: "Household goods," while Sufyan stated in his narration: "It is borrowed items"—but the essence is one.[53]

وَمِنْ طَرِيقِ ابْنِ عُلَيَّةَ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ فِي تَفْسِيرِ {الْمَاعُونَ} [الماعون: ٧] الْمَذْكُورِ فِي الْآيَةِ قَالَ ابْنُ عَطِيَّةَ فِي رِوَايَتِهِ: مَتَاعُ الْبَيْتِ، وَقَالَ سُفْيَانُ فِي رِوَايَتِهِ: هِيَ الْعَارِيَّةُ - وَالْمَعْنَى وَاحِدٌ.

L26496 We have also narrated it from ʿAlī ibn Abī Ṭālib via the chain of Ibn Abī Shaybah from Ibn ʿUlayyah from Layth from Abī Isḥāq, and all of these individuals are authoritative in the Arabic language.

وَرُوِّينَاهُ أَيْضًا: عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ ابْنِ عُلَيَّةَ عَنْ لَيْثٍ عَنْ أَبِي إِسْحَاقَ، وَهَؤُلَاءِ كُلُّهُمْ حُجَّةٌ فِي اللُّغَةِ.

L26497 We have been narrated from Ibn Umar: "It is the wealth whose right is withheld" - and this aligns with what we have mentioned - and this is the opinion of Ikrimah, Ibrahim, and others besides them. We do not know of any contrary opinion to this among the Companions - may Allah be pleased with them.

وَرُوِّينَا عَنْ ابْنِ عُمَرَ: هُوَ الْمَالُ يُمْنَعُ حَقُّهُ - وَهُوَ مُوَافِقٌ لِمَا ذَكَرْنَا - وَهُوَ قَوْلُ عِكْرِمَةَ، وَإِبْرَاهِيمَ وَغَيْرِهِمَا، وَمَا نَعْلَمُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافًا لِهَذَا

L26498 If it is said: "It has been reported from Ali—may Allah be pleased with him—that the ruling pertains to Zakat," we respond: Yes, but he did not state that it is not the ʿāriyah (loan). Furthermore, it has also been reported from him that it is the ʿāriyah.

فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهَا الزَّكَاةُ قُلْنَا: نَعَمْ، وَلَمْ يَقُلْ لَيْسَتْ الْعَارِيَّةُ - ثُمَّ قَدْ جَاءَ عَنْهُ، أَنَّهَا الْعَارِيَّةُ.

L26499 Therefore, it is obligatory to combine his two statements.

فَوَجَبَ جَمْعُ قَوْلَيْهِ.

[53] **Qur'an references (L26495):** Qur'an 107:7 (Al-Ma'un).

L26500 If it is said: It is narrated from Ibn Abbas, “Its people have not yet come,” via the chain of Layth from Mujahid.

فَإِنْ قِيلَ: قَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ " لَمْ يَأْتِ أَهْلُهَا بَعْدُ " مِنْ طَرِيقِ لَيْثٍ عَنْ مُجَاهِدٍ.

L26501 We said: Yes, and this does not contradict what is authentically reported from him through Mujahid, for the meaning of his statement “the people [of that time] have not yet come” is that people today exchange gifts and do not withhold, and a time will come when they will withhold giving. Ibn Abbas’s statement cannot be interpreted in any way whatsoever other than this interpretation—and success is from Allah, the Exalted. As for prohibiting that for a specified period, it is because it is a condition not found in the Book of Allah, the Exalted, and thus it is invalid.

قُلْنَا: نَعَمْ، وَهَذَا غَيْرُ مُخَالِفٍ لِمَا صَحَّ عَنْهُ مِنْ طَرِيقِ مُجَاهِدٍ؛ لِأَنَّ مَعْنَى قَوْلِهِ " لَمْ يَأْتِ أَهْلُهَا بَعْدُ " أَيْ إِنَّ النَّاسَ الْيَوْمَ يَتَبَاذَلُونَ وَلَا يَمْنَعُونَ وَسَيَأْتِي زَمَانٌ يَمْنَعُونَهُ، وَلَا يَحْتَمِلُ أَلْبَتَّةَ قَوْلُ ابْنِ عَبَّاسٍ إِلَّا هَذَا الْوَجْهَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَأَمَّا مَنْعُ ذَلِكَ لِمُدَّةٍ مُسَمَّاةٍ؛ فَلِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

L26502 Similarly, whoever lends land for building upon it or a wall for construction may take it back by demolishing the structure whenever he wishes, without being obligated to compensate. This is based on the statement of Allah’s Messenger—peace and blessings of Allah be upon him: “Your blood and your wealth are sacred and protected for you.” If someone wastes borrowed property, denies it, or is not deemed trustworthy in that regard, it has been authentically established from the Prophet—peace and blessings of Allah be upon him—that he prohibited the waste of wealth, and Allah the Exalted forbade cooperation in sin and aggression. Therefore, it is impermissible to assist such a person in that—and success comes from Allah the Exalted.

وَكَذَلِكَ مَنْ أَعَارَ أَرْضًا لِلْبِنَاءِ فِيهَا، أَوْ حَائِطًا لِلْبِنَاءِ عَلَيْهِ، فَلَهُ أَخْذُهُ بِهَدْمِ بِنَائِهِ مَتَى أَحَبَّ بِلَا تَكْلِيفِ عِوَضٍ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَأَنَّ مَنْ أَضَاعَ مَا يَسْتَعِيرُ أَوْ جَحَدَهُ وَلَمْ يُؤْمَنْ ذَلِكَ مِنْهُ فَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النَّهْيُ عَنْ إضَاعَةِ الْمَالِ وَنَهَى اللَّهُ تَعَالَى عَنْ التَّعَاوُنِ عَلَى الْإِثْمِ وَالْعُدْوَانِ، فَلَا يَجُوزُ عَوْنُهُ عَلَى ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْعَارِيَّةُ غَيْرُ مَضْمُونَةٍ إنْ تَلِفَتْ مِنْ غَيْرِ تَعَدِّي الْمُسْتَعِيرِ]

L26503–26504 **In the case of a commodate loan (ʿāriyyah), the lender bears no liability for the item if it is lost or destroyed without transgression or negligence by the borrower.**

مَسْأَلَةٌ: وَالْعَارِيَّةُ غَيْرُ مَضْمُونَةٍ إنْ تَلِفَتْ مِنْ غَيْرِ تَعَدِّي الْمُسْتَعِيرِ، وَسَوَاءٌ مَا غُيِّبَ عَلَيْهِ مِنْ الْعَوَارِيِّ وَمَا لَمْ يَغِبْ عَلَيْهِ مِنْهَا.

L26505 Issue: A loaned item is not subject to compensation if it perishes without the borrower’s misconduct, and it makes no difference whether it was out of his possession or remained in his possession.

فَإِنْ ادَّعَى عَلَيْهِ أَنَّهُ تَعَدَّى، أَوْ أَضَاعَهَا حَتَّى تَلِفَتْ، أَوْ عَرَضَ فِيهَا عَارِضٌ، فَإِنْ قَامَتْ بِذَلِكَ بَيِّنَةٌ أَوْ أَقَرَّ: ضَمِنَ بِلَا خِلَافٍ، وَإِنْ لَمْ تَقُمْ بَيِّنَةٌ وَلَا أَقَرَّ -: لَزِمَتْهُ الْعَيْنُ وَبَرِئَ؛ لِأَنَّهُ مُدَّعًى عَلَيْهِ وَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ.

L26506 If a claim is made against him that he exceeded his rights, caused its loss through negligence leading to destruction, or an impediment arose concerning it, then if conclusive evidence is established for that or he confesses, he is held liable without disagreement. If no conclusive evidence is established and he does not confess, the specific item remains incumbent upon him and

he is absolved, for he is the defendant, and the Messenger of Allah—may Allah bless him and grant him peace—ruled that the oath is required from the defendant.

وَأَمَّا تَضْمِينُهَا: فَإِنَّ النَّاسَ اخْتَلَفُوا -: فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا.

L26507 As for its indemnification, the scholars disagreed: a group upheld the opinion we have mentioned.

وَقَالَتْ طَائِفَةٌ: هِيَ مَضْمُونَةٌ عَلَى كُلِّ حَالٍ بِأَيِّ وَجْهٍ تَلِفَتْ.

L26508 A group has stated: It is subject to compensation in all cases, regardless of the manner in which it perished.

وَقَالَتْ طَائِفَةٌ: لَا يَضْمَنُ إِلَّا أَنْ يَشْتَرِطَ الْمُعِيرُ ضَمَانَهَا فَيَضْمَنُ حِينَئِذٍ.

L26509 A group said: One is not liable unless the gratuitous lender stipulates liability for it, in which case he is liable.

وَقَالَتْ طَائِفَةٌ: لَا ضَمَانَ عَلَى الْمُسْتَعِيرِ غَيْرِ الْمُغِلِّ - يَعْنِي الْمُتَّهَمَ -.

L26510 A group held that there is no liability upon a borrower except for an embezzler—that is, one accused of misappropriation.

وَقَالَ قَائِلٌ: أَمَّا مَا غَيَّبَ عَلَيْهِ كَالْحُلِيِّ وَالثِّيَابِ وَنَحْوِ ذَلِكَ، فَيَضْمَنُ جُمْلَةً - وَقَدْ رُوِيَ عَنْهُ أَنَّهُ قَالَ: إِنْ قَامَتْ لَهُ بَيِّنَةٌ بِأَنَّهَا تَلِفَتْ مِنْ غَيْرِ فِعْلِهِ فَلَا ضَمَانَ عَلَيْهِ، وَإِنْ لَمْ تَقُمْ بَيِّنَةٌ فَهُوَ ضَامِنٌ.

L26511 A jurist said: As for what is concealed from him such as jewelry, garments, and the like, he is liable for their entirety. It has been reported from him that he said: If evidence establishes that they perished without his action, there is no liability upon him; but if no evidence is established, he is liable.

وَأَمَّا مَا ظَهَرَ كَالْحَيَوَانِ وَنَحْوِهِ: فَلَا ضَمَانَ فِيهِ مَا لَمْ يَتَعَدَّ. قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلُ مَالِكٍ، وَمَا نَعْلَمُ لَهُ فِيهِ سَلَفًا إِلَّا عُثْمَانَ الْبَتِّيَّ وَحْدَهُ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا إِلَّا أَنَّهُمْ قَالُوا: نَتَّهِمُ الْمُسْتَعِيرَ فِيمَا غَابَ.

L26512 As for apparent items such as animals and similar property, there is no liability unless the borrower acts negligently. Abū Muḥammad said: This is Mālik's opinion, and we know of no predecessor who held this view before him except ʿUthmān al-Battī alone. We find no valid basis for their argument whatsoever except their statement: "We suspect the borrower concerning hidden defects."

فَقُلْنَا: لَيْسَ بِالتُّهَمَةِ تُسْتَحَلُّ أَمْوَالُ النَّاسِ، لِأَنَّهَا ظَنٌّ، وَاَللَّهُ تَعَالَى قَدْ أَنْكَرَ اتِّبَاعَ الظَّنِّ، فَقَالَ تَعَالَى: {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

L26513 We said: People's wealth is not deemed lawful through baseless accusation, for it is mere assumption. Allah the Exalted has rejected following assumptions, as He said: "They follow nothing but assumption, and indeed, assumption avails nothing against the truth." [An-Najm: 28][1]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

L26514 The Messenger of Allah—peace be upon him—said: "Beware of suspicion, for indeed suspicion is the most false of tales."

L26515 And it is incumbent upon you, when you act upon suspicion, to hold the

[1] **Qur'an references (L26513):** Qur'an 53:28 (An-Najm).

accused financially liable and not to hold liable one who is not accused, as Shurayh says. And it is incumbent upon you to hold the trustee liable for the deposited item also due to this suspicion—for the invalidity of this argument is too evident to necessitate expending more effort refuting it than we have already provided. And success comes only from God, the Exalted. Some of them said: "We have analogized it to collateral."

وَيَلْزَمُكُمْ إِذَا أَعْمَلْتُمُ الظَّنَّ أَنْ تُضَمِّنُوا الْمُتَّهَمَ، وَلَا تُضَمِّنُوا مِنْ لَا يُتَّهَمُ، كَمَا يَقُولُ شُرَيْحٌ. وَيَلْزَمُكُمْ أَنْ تُضَمِّنُوا الْوَدِيعَةَ أَيْضًا بِهَذِهِ التُّهْمَةِ - وَفَسَادُ هَذَا الْقَوْلِ أَظْهَرُ مِنْ أَنْ يُتَكَلَّفَ الرَّدُّ عَلَيْهِ بِأَكْثَرَ مِمَّا أَوْرَدْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَقَالَ بَعْضُهُمْ: قِسْنَاهُ عَلَى الرَّهْنِ.

L26516 So we said: This is an analogy of error upon error, and an argument for your statement by your own statement—and both are errors.

فَقُلْنَا: هَذَا قِيَاسٌ لِلْخَطَأِ عَلَى الْخَطَأِ، وَحُجَّةٌ لِقَوْلِكُمْ بِقَوْلِكُمْ، وَكِلَاهُمَا خَطَأٌ.

L26517–26518 Some of them said: When the Salaf differed regarding liability for the loan for use, we reconciled their opinions by adopting a middle position. We said to them: From this very dispute, we asked you - on what basis did you act thus? You inclined toward this invalid categorization, despite there being no possible avenue for evidence whatsoever - neither from the Quran, nor from the Sunnah, nor from a weak narration, nor analogy, nor a Companion's opinion, nor any view supported by valid reasoning - thus this opinion falls.

وَقَالَ بَعْضُهُمْ: لَمَّا اخْتَلَفَ السَّلَفُ فِي تَضْمِينِ الْعَارِيَّةِ تَوَسَّطْنَا قَوْلَهُمْ قُلْنَا لَهُمْ: وَمِنْ هَذَا سَأَلْنَاكُمْ مِنْ أَيْنَ فَعَلْتُمْ هَذَا؟ وَمِلْتُمْ إِلَى هَذَا التَّقْسِيمِ الْفَاسِدِ - وَلَا سَبِيلَ إِلَى دَلِيلٍ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ - فَسَقَطَ هَذَا الْقَوْلُ.

L26519 As for those who say: There is no liability on a borrower except in the case of al-mughilli, nor on a trustee except in the case of al-mughilli, this is the opinion of Shurayh. We have transmitted it via the transmission of Abd al-Razzaq: I heard Hisham ibn Hassan narrate this opinion from Muhammad ibn Sirin, who narrated it from Shurayh. He said: "Al-mughilli refers to the accused (the one under suspicion)." This position is invalidated by what invalidates Malik's view, because Malik founded it upon suspicion, which is a corrupt assumption.

وَأَمَّا مَنْ قَالَ: لَا ضَمَانَ عَلَى الْمُسْتَعِيرِ غَيْرَ الْمُغِلِّ، وَلَا عَلَى الْمُسْتَوْدَعِ غَيْرَ الْمُغِلِّ، فَهُوَ قَوْلُ شُرَيْحٍ، رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ: سَمِعْتُ هِشَامَ بْنَ حَسَّانَ يَذْكُرُ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ هَذَا الْقَوْلَ، وَقَالَ: الْمُغِلُّ: الْمُتَّهَمُ - وَهُوَ يَبْطُلُ بِمَا بَطَلَ بِهِ قَوْلُ مَالِكٍ؛ لِأَنَّهُ بَنَاهُ عَلَى التُّهَمَةِ، وَهُوَ ظَنٌّ فَاسِدٌ.

L26520 As for those who said, "There is no liability upon the borrower in a loan for use unless [the lender] stipulates liability upon him"—this is the opinion of Qatādah and ʿUthmān al-Battī. It was narrated through our chain from ʿAbd al-Razzāq, from Maʿmar, from Qatādah.

وَأَمَّا مَنْ قَالَ: لَا ضَمَانَ عَلَى الْمُسْتَعِيرِ إِلَّا أَنْ يَشْتَرِطَ عَلَيْهِ الضَّمَانَ فَهُوَ قَوْلُ قَتَادَةَ، وَعُثْمَانَ الْبَتِّيِّ، رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ.

L26521 Abū Muḥammad said: This is invalid, as it is a condition not found in the Book of Allah Almighty, thus invalid. It was incumbent upon the Ḥanafīs and Mālikīs—who permit invalid conditions based on the fabricated report "Muslims are bound by their stipulations"—to adopt Qatādah's position here. Yet there is no burden on them of contradiction. Therefore, this opinion too

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، فَهُوَ بَاطِلٌ، وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ الْمُجِيزِينَ لِلشُّرُوطِ الْفَاسِدَةِ بِالْخَبَرِ الْمَكْذُوبِ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» أَنْ يَقُولُوا بِقَوْلِ قَتَادَةَ هَاهُنَا، وَلَكِنْ لَا مُؤْنَةَ عَلَيْهِمْ مِنَ التَّنَاقُضِ -

is invalidated, and there remains only the view of those who guarantee it in totality or our own position. We therefore examined the stance of those who guarantee it in totality.

فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا، وَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ ضَمِنَهَا جُمْلَةً، أَوْ قَوْلُنَا -: فَنَظَّرْنَا فِي قَوْلِ مَنْ ضَمِنَهَا جُمْلَةً.

L26522 We found the narration transmitted through Abd al-Razzaq, who narrated to us from Ibn Uyaynah (i.e., Sufyan) from Amr ibn Dinar, from Ibn Abi Mulaikah and from Abd al-Rahman ibn al-Sa'ib. Ibn Abi Mulaikah narrated from Ibn Abbas, and Ibn al-Sa'ib narrated from Abu Hurairah. Both said collectively: "A loaned item incurs liability [for compensation]."

فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ عُيَيْنَةَ - هُوَ سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ السَّائِبِ، قَالَ ابْنُ أَبِي مُلَيْكَةَ: عَنِ ابْنِ عَبَّاسٍ، وَقَالَ ابْنُ السَّائِبِ: عَنْ أَبِي هُرَيْرَةَ، قَالَا جَمِيعًا: الْعَارِيَّةُ تُغْرَمُ.

L26523 And via the transmission of Ibn Wahb from men among the people of knowledge, that Ibn 'Umar held liable for the 'ariyah (gratuitously loaned item).

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنِ ابْنِ عُمَرَ أَنَّهُ كَانَ يَضْمَنُ الْعَارِيَّةَ.

L26524 Reported by Abd al-Razzaq, from Ma'mar, from Ibn Tawus, from his father, who said regarding the legal ruling of Mu'adh ibn Jabal: A gratuitously loaned item must be returned.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ فِي قَضِيَّةِ مُعَاذِ بْنِ جَبَلٍ: الْعَارِيَّةُ مُؤَدَّاةٌ.

L26525 Shuraih used to hold the borrower liable for the commodate loan. Al-Hasan also imposed liability for it, but later retracted this ruling. It is reliably established that Masruq held the same position, as did Ata ibn Abi Rabah.

وَكَانَ شُرَيْحٌ يُضَمِّنُ الْعَارِيَّةَ، وَضَمَّنَهَا الْحَسَنُ، ثُمَّ رَجَعَ عَنْ ذَلِكَ، وَصَحَّ عَنْ مَسْرُوقٍ أَيْضًا، وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ.

L26526–26527 Ibn Wahb mentioned it from Yaḥyā ibn Saʿīd al-Anṣārī and Rabīʿah, and they both mentioned that it was the opinion of their scholars who attained it through study and used to issue rulings. He also mentioned it from Sulaymān ibn Sayyār, ʿUmar ibn ʿAbd al-ʿAzīz, and Makhūl.

وَذَكَرَهُ ابْنُ وَهْبٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ، وَذَكَرَا: أَنَّهُ قَوْلُ عُلَمَائِهِمْ الَّذِينَ أَدْرَكُوا بِهِ وَكَانُوا يَقْضُونَ. وَذَكَرَهُ أَيْضًا عَنْ سُلَيْمَانَ بْنِ سَيَّارٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَمَكْحُولٍ.

L26528 Al-Zuhri said: The judges' opinions were unanimous on that, since they observed the evils of the people. Al-Shāfiʿī, Aḥmad ibn Ḥanbal, and their companions hold this view. They cited as evidence the statement of Allah, the Exalted: {Indeed, Allah commands you to render trusts to their rightful owners} [An-Nisāʾ: 58].[2]

وَقَالَ الزُّهْرِيُّ: أَجْمَعَ رَأْيُ الْقُضَاةِ عَلَى ذَلِكَ، إِذْ رَأَوْا شُرُورَ النَّاسِ - وَبِهَذَا يَقُولُ الشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمَا، وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا} [النساء: ٥٨] .

L26529 We said to them: Apply this verse to impose liability on the deposit, for 'Umar and others indeed held it liable. Yes, he is commanded to restore it

فَقُلْنَا لَهُمْ: فَضَمَّنُوا بِهَذِهِ الْآيَةِ الْوَدِيعَةَ فَقَدْ ضَمَّنَهَا عُمَرُ، وَغَيْرُهُ، وَنَعَمْ، هُوَ مَأْمُورٌ بِأَدَائِهَا مَا دَامَ قَادِرًا عَلَى أَدَائِهَا، فَإِنْ عَجَزَ عَنْ ذَلِكَ، فَاللَّهُ تَعَالَى يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا

[2] **Qur'an references (L26528):** Qur'an 4:58 (An-Nisa).

وُسْعَهَا} [البقرة: ٢٨٦] فَإِذْ لَيْسَ فِي وُسْعِهِ أَدَاؤُهَا فَهُوَ غَيْرُ مُكَلَّفٍ ذَلِكَ، وَلَيْسَ فِي هَذِهِ الْآيَةِ تَضْمِينٌ، لِأَنَّ أَدَاءَ الْغَرَامَةِ هُوَ غَيْرُ أَدَاءِ الْأَمَانَةِ، فَلَا مُتَعَلَّقَ لَكُمْ بِهَذِهِ الْآيَةِ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهَا أَدَاءُ غَيْرِهَا، وَلَا ضَمَانُهَا، وَاحْتَجُّوا بِمَا جَاءَ فِي أَدْرَاعِ صَفْوَانَ بْنِ أُمَيَّةَ، وَبِمَا رُوِيَ «الْعَارِيَّةُ مُؤَدَّاةٌ وَالزَّعِيمُ غَارِمٌ» وَكِلَاهُمَا: لَا يَصِحُّ -: أَمَّا خَبَرُ دُرُوعِ صَفْوَانَ، فَإِنَّا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَّامٍ نا يَزِيدُ بْنُ هَارُونَ نا شَرِيكٌ - هُوَ ابْنُ عَبْدِ اللَّهِ الْقَاضِي - عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ أُمَيَّةَ بْنِ صَفْوَانَ بْنِ أُمَيَّةَ عَنْ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَعَارَ مِنْهُ يَوْمَ حُنَيْنٍ أَدْرَاعًا، فَقَالَ: غَصْبٌ يَا مُحَمَّدُ فَقَالَ: بَلْ عَارِيَّةٌ مَضْمُونَةٌ» شَرِيكٌ مُدَلِّسٌ لِلْمُنْكَرَاتِ إِلَى الثِّقَاتِ، وَقَدْ رَوَى الْبَلَايَا وَالْكَذِبَ الَّذِي لَا شَكَّ فِيهِ عَنِ الثِّقَاتِ.

as long as he is capable. If he becomes incapable, Allah the Exalted says: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286]. Since restoring it is beyond his capacity, he is not obligated, and this verse contains no liability, because fulfilling the penalty differs from restoring the deposit. Thus, you have no grounds to cite this verse at all, as it neither addresses restoring anything else nor liability for it. They cited the incident of Ṣafwān ibn Umayyah's armor and the report: "The gratuitously loaned item must be restored, and the guarantor is liable." Both are invalid. As for the report about Ṣafwān's armor, we narrated it through Ahmad ibn Shu'ayb's chain: from 'Abd al-Raḥmān ibn Muḥammad ibn Sallām, from Yazīd ibn Hārūn, from Sharik ibn 'Abdullāh the judge, from 'Abd al-'Azīz ibn Rufay', from Umayyah ibn Ṣafwān ibn Umayyah: "The Messenger of Allah—peace and blessings be upon him—borrowed armor from him during Ḥunayn. Ṣafwān said: 'Is this seizure, O Muḥammad?' He replied: 'No, it is a guaranteed loan.'" Sharik was a mudallis—one who concealed flaws in transmission—attributing rejected reports to reliable narrators. He transmitted fabrications and undeniable falsehoods from trustworthy sources.[3]

وَمِنْ طَرِيقِ الْحَارِثِ بْنِ أَبِي أُسَامَةَ نا يَحْيَى بْنُ أَبِي بُكَيْرٍ نا نَافِعٌ عَنْ «صَفْوَانَ بْنِ أُمَيَّةَ أَنَّهُ اسْتَعَارَ مِنْهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِلَاحًا فَقَالَ: مَضْمُونَةٌ؟ قَالَ: مَضْمُونَةٌ» .

L26530 And from the chain of Al-Harith ibn Abi Usamah: Yahya ibn Abi Bukayr narrated to us, via Nafi', from Safwan ibn Umayyah that the Prophet (peace and blessings be upon him) borrowed weapons from him. He asked, "Is it guaranteed?" He replied, "It is guaranteed."

الْحَارِثُ مَتْرُوكٌ، وَيَحْيَى بْنُ أَبِي بُكَيْرٍ لَمْ يُدْرِكْ نَافِعًا، وَأَعْلَى مَنْ عِنْدَهُ شُعْبَةُ، وَلَا نَعْلَمُ لِنَافِعٍ سَمَاعًا مِنْ صَفْوَانَ أَصْلًا، وَالَّذِي لَا شَكَّ فِيهِ: فَإِنَّ صَفْوَانَ مَاتَ أَيَّامَ عُثْمَانَ قَبْلَ الْفِتْنَةِ. وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ أَنَسِ بْنِ عِيَاضٍ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ: «أَنَّ صَفْوَانَ بْنَ أُمَيَّةَ أَعَارَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِلَاحًا فَقَالَ: أَعَارِيَّةٌ مَضْمُونَةٌ أَمْ غَصْبٌ؟ فَقَالَ: بَلْ عَارِيَّةٌ مَضْمُونَةٌ» - هَذَا مُنْقَطِعٌ، لِأَنَّ مُحَمَّدَ بْنَ عَلِيٍّ لَمْ يُدْرِكْ صَفْوَانَ وَلَا وُلِدَ إِلَّا بَعْدَ مَوْتِهِ بِدَهْرٍ.

L26531–26533 Al-Harith is disregarded (as a narrator), and Yahya ibn Abi Bukayr did not meet Nafi'. The highest chain from him is via Shu'bah. We know of no instance where Nafi' heard from Safwan whatsoever. As for that which is beyond doubt: Safwan died during 'Uthman's era before the civil strife. Through the chain of Ibn Wahb from Anas ibn 'Iyad from Ja'far ibn Muhammad from his father: "Safwan ibn Umayyah lent weapons to Allah's Messenger (peace be upon him), asking: 'Is this a loan with liability or unlawful seizure?' He replied: 'Rather...' [narration ends here]." The ruling regarding a secured commodity loan has an interrupted chain of narration, for

[3] **Qur'an references (L26529):** Qur'an 2:286 (Al-Baqarah).

Muḥammad ibn ʿAlī neither met Ṣafwān nor was he born except long after his death.

L26534 And through the chain of Musaddad, Abu al-Ahwas narrated from Abd al-Aziz ibn Rufayʿ from Ata ibn Abi Rabah from some members of the family of Safwan ibn Umayyah: "The Messenger of Allah—peace and blessings be upon him—borrowed weapons from Safwan. Safwan asked: 'Is this a loan or a seizure?' He replied: 'Rather, a loan.' Then they lost a shield from them. The Messenger of Allah—peace and blessings be upon him—said: 'If you wish, we will compensate you for it.' Safwan said: 'O Messenger of Allah, there is in my heart faith that was not present on that day.'"

وَمِنْ طَرِيقِ مُسَدَّدٍ نا أَبُو الْأَحْوَصِ نا عَبْدُ الْعَزِيزِ بْنُ رُفَيْعٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ نَاسٍ مِنْ آلِ صَفْوَانَ بْنِ أُمَيَّةَ «اسْتَعَارَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ صَفْوَانَ سِلَاحًا، فَقَالَ صَفْوَانُ: أَعَارِيَةٌ أَمْ غَصْبٌ؟ قَالَ: بَلْ عَارِيَةٌ، فَفَقَدُوا مِنْهَا دِرْعًا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ شِئْتَ غَرِمْنَاهَا لَكَ فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّهُ فِي قَلْبِي مِنَ الْإِيمَانِ مَا لَمْ يَكُنْ يَوْمَئِذٍ»

L26535 This is from people who were not named.

هَذَا عَنْ نَاسٍ لَمْ يُسَمُّوا.

L26536 Through the chain of Aḥmad ibn Shuʿayb: Aḥmad ibn Sulaymān narrated to us, ʿUbaydullāh ibn Mūsā narrated to us, Isrāʾīl narrated from ʿAbd al-ʿAzīz ibn Rufayʿ from Ibn Abī Mulaykah from ʿAbd al-Raḥmān ibn Ṣafwān ibn Umayyah: "The Messenger of Allah (peace and blessings of Allah be upon him) borrowed shields from Ṣafwān ibn Umayyah, and some of them were lost. The Messenger of Allah (peace and blessings of Allah be upon him) said: 'If you wish, we shall compensate you for them.' He replied: 'No, O Messenger of Allah.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَحْمَدُ بْنُ سُلَيْمَانَ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى نا إِسْرَائِيلُ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ صَفْوَانَ بْنِ أُمَيَّةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَعَارَ مِنْ صَفْوَانَ بْنِ أُمَيَّةَ دُرُوعًا فَهَلَكَ بَعْضُهَا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ شِئْتَ غَرِمْنَاهَا لَكَ قَالَ: لَا يَا رَسُولَ اللَّهِ»

L26537 Israel is a weak narrator. Furthermore, in the Prophet's statement—peace and blessings be upon him—"If you wish, we will compensate you for it," even if it were authentic, there is no explicit clarification obligating compensation unless this wording alone existed here. As for prohibited wealth, it is impermissible for a judge to permit it without clear, unequivocal evidence.

إِسْرَائِيلُ ضَعِيفٌ ثُمَّ لَيْسَ فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «إِنْ شِئْتَ غَرِمْنَاهَا لَكَ» لَوْ صَحَّ بَيَانٌ بِوُجُوبِ غَرِمِهَا إِذَا لَمْ يَكُنْ هَاهُنَا غَيْرَ هَذَا اللَّفْظِ، وَالْأَمْوَالِ الْمُحَرَّمَةِ لَا يَجُوزُ الْقَضَاءُ بِإِبَاحَتِهَا بِغَيْرِ بَيَانٍ جَلِيٍّ.

L26538 From the chain of Ibn Wahb on the authority of Ibn Jurayj, Yunus, and Ubayd Allah ibn Umar: Ibn Jurayj reported from Ata; Yunus reported from Rabi'ah; and Ibn Umar reported from al-Zuhri. Al-Zuhri mentioned Safwan's coats of mail, "and that the Prophet—peace be upon him—said: 'Rather willingly, and they remain under our guarantee.'" This is *mursal*.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ ابْنِ جُرَيْجٍ، وَيُونُسَ، وَعُبَيْدِ اللَّهِ بْنِ عُمَرَ، قَالَ ابْنُ جُرَيْجٍ: عَنْ عَطَاءٍ، وَقَالَ يُونُسُ: عَنْ رَبِيعَةَ، وَقَالَ ابْنُ عُمَرَ عَنِ الزُّهْرِيِّ فَذَكَرَ دُرُوعَ صَفْوَانَ، «وَأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: بَلْ طَوْعًا، وَهِيَ عَلَيْنَا ضَامِنَةٌ» - هَذَا مُرْسَلٌ.

L26539–26540 From the path of Ibn Wahb, from Maslamah ibn Ali, from some schol-

ars that it reached him: “Among the conditions stipulated by the Prophet—peace and blessings of Allah be upon him—upon the people of Yemen was that if a calamity or event occurred in their land, they were to provide the Yemeni messengers with thirty camels, thirty horses, and thirty suits of armor—and they were liable for these items until they returned them.” This narration’s weakness is disputed, being interrupted and transmitted from unnamed sources, while Maslamah ibn Ali is deemed unreliable.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَسْلَمَةَ بْنِ عَلِيٍّ عَنْ بَعْضِ أَهْلِ الْعِلْمِ أَنَّهُ بَلَغَهُ «أَنَّ فِي شَرْطِ أَهْلِ الْيَمَنِ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنْ كَانَ بِأَرْضِ الْيَمَنِ كَوْنٌ أَوْ حَدَثٌ أَنْ يُعْطُوا رُسُلَ الْيَمَنِ: ثَلَاثِينَ بَعِيرًا وَثَلَاثِينَ فَرَسًا، وَثَلَاثِينَ دِرْعًا؛ وَهُمْ ضَامِنُونَ لَهَا حَتَّى يَرُدُّوهَا» هَذَا مُرَدَّدٌ فِي الضَّعْفِ مُنْقَطِعٌ، وَعَمَّنْ لَمْ يُسَمَّ، وَمَسْلَمَةُ بْنُ عَلِيٍّ سَاقِطٌ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ: «شَرَطَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ نَجْرَانَ عَارِيَّةً: ثَلَاثِينَ فَرَسًا، وَثَلَاثِينَ دِرْعًا، وَثَلَاثِينَ رُمْحًا، فَإِنْ ضَاعَ مِنْهَا شَيْءٌ فَهُوَ ضَامِنٌ عَلَى رُسُلِهِ» ، شَهِدَ الْمُغِيرَةُ بْنُ شُعْبَةَ، وَأَبُو سُفْيَانَ بْنُ حَرْبٍ، وَالْأَقْرَعُ بْنُ حَابِسٍ - هَذَا مُنْقَطِعٌ، لَمْ يُدْرِكْ عَمْرٌو مِنْ هَؤُلَاءِ أَحَدًا وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ هُشَيْمٍ عَنْ حُصَيْنٍ مُرْسَلٌ.

From the path of Sa’id ibn Mansur: Sufyan narrated to us from Amr ibn Dinar: “Allah’s Messenger—peace and blessings of Allah be upon him—imposed as a loan (of items) upon the people of Najran: thirty horses, thirty suits of armor, and thirty spears. If any item were lost, the messengers would bear liability for it.” Al-Mughirah ibn Shu’bah, Abu Sufyan ibn Harb, and al-Aqra’ ibn Habis attested to this. This chain is interrupted, as Amr never met any of these witnesses. We also transmitted it through Hushaym’s path from Husayn as a mursal narration.

L26541 It has been narrated to us through the chain of Ibn Abi Shaybah: Jarīr ibn ʻAbd al-Ḥamīd → ʻAbd al-ʻAzīz ibn Rufayʻ → Iyās ibn ʻAbd Allāh ibn Ṣafwān: “When the Messenger of Allah—peace and blessings be upon him—prepared for Ḥunayn, he asked Ṣafwān: ‘Do you have any weapons?’ He replied: ‘As a loan (ʻāriyyah) or seized property (ghaṣb)?’ The Prophet said: ‘No, as a loan.’ He then lent him thirty to forty sets of armor. When the polytheists were defeated, Ṣafwān’s armor was gathered, but some were missing. The Messenger of Allah—peace and blessings be upon him—said to him: ‘We have lost some of your armor. Should we compensate you?’ He replied: ‘No, O Messenger of Allah—today my heart holds [faith] it did not before.’” This is a mursal narration (with an incomplete chain) like the previous one, and it clarifies that loans are not subject to liability in legal rulings.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ إيَاسِ بْنِ عَبْدِ اللَّهِ بْنِ صَفْوَانَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا أَرَادَ حُنَيْنًا قَالَ لِصَفْوَانَ: هَلْ عِنْدَكَ مِنْ سِلَاحٍ؟ قَالَ: عَارِيَّةً أَمْ غَصْبًا؟ قَالَ: لَا، بَلْ عَارِيَّةً، فَأَعَارَهُ مَا بَيْنَ الثَّلَاثِينَ إلَى الْأَرْبَعِينَ دِرْعًا، فَلَمَّا هُزِمَ الْمُشْرِكُونَ جُمِعَتْ دُرُوعُ صَفْوَانَ، فَفُقِدَ مِنْهَا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّا قَدْ فَقَدْنَا مِنْ أَدْرَاعِكَ أَدْرَاعًا، فَهَلْ نَغْرَمُ لَكَ؟ فَقَالَ: لَا يَا رَسُولَ اللَّهِ إنَّ فِي قَلْبِي الْيَوْمَ مَا لَمْ يَكُنْ» فَهَذَا مُرْسَلٌ كَتِلْكَ، وَهُوَ يُبَيِّنُ أَنَّهَا غَيْرُ مَضْمُونَةٍ فِي الْحُكْمِ.

L26542–26544 They adduced as proof what we have narrated through the chain of Ibn Abi Shaybah, who narrated to us from Isma’il ibn ’Ayyash, from Shurahbil ibn Muslim. I heard Abū Umāmah al-Bāhilī say: “I heard the Prophet (peace be upon him) say during the Farewell Pilgrimage: The loaned item must be

returned, the debt is to be repaid, and the guarantor is liable for the debt." Ismāʿīl ibn ʿAyyāsh is a weak narrator.

وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا إِسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ شُرَحْبِيلَ بْنِ مُسْلِمٍ سَمِعْت أَبَا أُمَامَةَ الْبَاهِلِيَّ قَالَ «سَمِعْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَجَّةِ الْوَدَاعِ يَقُولُ: الْعَارِيَّةُ مُؤَدَّاةٌ، وَالدَّيْنُ مَقْضِيٌّ، وَالزَّعِيمُ غَارِمٌ» إسْمَاعِيلُ بْنُ عَيَّاشٍ ضَعِيفٌ.

L26545 And it has also been narrated to us: "A loaned item must be returned," through the chain of Aḥmad ibn Shuʿayb from ʿAbdullāh ibn al-Ṣabbāḥ, from al-Muʿtamir ibn Sulaymān, who reported to us: I heard al-Ḥajjāj ibn al-Furāfiṣah—Muḥammad ibn al-Walīd narrated to me from Abū ʿĀmir al-Hawzanī, from Abū Umāmah, from the Prophet, peace and blessings of Allah be upon him. Al-Ḥajjāj ibn al-Furāfiṣah is unknown.

وَرُوِّينَا أَيْضًا «الْعَارِيَّةُ مُؤَدَّاةٌ» مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ عَبْدِ اللَّهِ بْنِ الصَّبَّاحِ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ سَمِعْت الْحَجَّاجَ بْنَ الْفُرَافِصَةِ حَدَّثَنِي مُحَمَّدُ بْنُ الْوَلِيدِ عَنْ أَبِي عَامِرٍ الْهَوْزَنِيِّ عَنْ أَبِي أُمَامَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحَجَّاجُ بْنُ الْفُرَافِصَةِ مَجْهُولٌ.

L26546 From the chain of Aḥmad ibn Shuʿayb: ʿAmr ibn Manṣūr narrated to us, al-Haytham ibn Khārijah narrated to us, al-Jarrāḥ ibn Malīḥ narrated to us. Ḥātim ibn Ḥurayth al-Ṭāʾī reported to me: "I heard Abū Umāmah narrate from the Prophet (may God's peace and blessings be upon him)." Ḥātim ibn Ḥurayth is unverified.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نا الْهَيْثَمُ بْنُ خَارِجَةَ نا الْجَرَّاحُ بْنُ مَلِيحٍ حَدَّثَنِي حَاتِمُ بْنُ حُرَيْثٍ الطَّائِيُّ سَمِعْتُ أَبَا أُمَامَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَاتِمُ بْنُ حُرَيْثٍ مَجْهُولٌ.

L26547 Narrated via Ibn Wahb, from Ibn Lahi'ah, from 'Abdullah ibn Hayyan al-Laythi, from a man among them who said: I heard the Messenger of Allah - peace be upon him - say: "The loaned item must be duly fulfilled, and the temporarily loaned asset must be returned." Ibn Lahi'ah is weak.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ عَبْدِ اللَّهِ بْنِ حَيَّانَ اللَّيْثِيِّ عَنْ رَجُلٍ مِنْهُمْ قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «الْعَارِيَّةُ مُؤَدَّاةٌ، وَالْمِنْحَةُ مَرْدُودَةٌ» ابْنُ لَهِيعَةَ لَا شَيْءَ.

L26548 Through the chain of Al-Bazzar: Abdullah ibn Shabib narrated to us, Ishaq ibn Muhammad Al-Farawi narrated to us, Abdullah ibn Umar narrated to us, Zayd ibn Aslam narrated to us, from Ibn Umar, from the Prophet (peace be upon him): "A loaned item is to be returned." Al-Farawi is weak, and Abdullah ibn Umar (he is Al-Umari the Junior) is weak.

وَمِنْ طَرِيقِ الْبَزَّارِ نا عَبْدُ اللَّهِ بْنُ شَبِيبٍ نا إِسْحَاقُ بْنُ مُحَمَّدٍ الْفَرْوِيُّ نا عَبْدُ اللَّهِ بْنُ عُمَرَ نا زَيْدُ بْنُ أَسْلَمَ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْعَارِيَّةُ مُؤَدَّاةٌ» الْفَرْوِيُّ ضَعِيفٌ، وَعَبْدُ اللَّهِ بْنُ عُمَرَ - هُوَ الْعُمَرِيُّ الصَّغِيرُ - ضَعِيفٌ.

L26549–26550 Furthermore, if these terms were valid, the only implication would be that they are to be performed. Thus, we say: Their performance is obligatory, whereas guarantee is distinct from performance. There is nothing in them

ثُمَّ لَوْ صَحَّتْ هَذِهِ الْأَلْفَاظُ لَمَا كَانَ فِيهَا إلَّا أَنَّهَا مُؤَدَّاةٌ، وَهَكَذَا نَقُولُ: إنَّ أَدَاءَهَا فَرْضٌ، وَالتَّضْمِينُ غَيْرُ الْأَدَاءِ، وَلَيْسَ فِيهِ أَنَّهَا مَضْمُونَةٌ أَصْلًا - فَبَطَلَ تَعَلُّقُهُمْ بِشَيْءٍ مِنْهَا.

to suggest they are guaranteed at all—hence, their reliance on any part of them is invalidated.

L26551 They mentioned what was narrated to us through the chain of Shuʿbah from Qatādah from Samurah ibn Jundub from the Prophet—peace and blessings be upon him—"Upon the hand is what it has taken until it delivers it." This chain is disconnected, for Qatādah did not meet Samurah.

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «عَلَى الْيَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ» - وَهَذَا مُنْقَطِعٌ، لِأَنَّ قَتَادَةَ لَمْ يُدْرِكْ سَمُرَةَ.

L26552 We have transmitted it through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from al-Ḥasan, from Samurah ibn Jundub, who said: The Messenger of Allah—peace and blessings be upon him—stated: "Upon the hand is what it has taken until it restores it." Al-Ḥasan did not hear directly from Samurah. Even if the narration were authentic, it specifies nothing beyond fulfillment, and this is our doctrine. Fulfillment differs from compensation in both linguistic usage and legal judgment. Were they to construe this wording as implying compensation, they would thereby be obligated to enforce compensation for pawned items and deposits, since these involve what the hand has physically custody of. Yet certain groups among the Companions and subsequent scholars have asserted compensation in such cases, thus exposing their inconsistency.

وَرُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «عَلَى الْيَدِ مَا أَخَذَتْ حَتَّى تُؤَدِّيَهُ» الْحَسَنُ لَمْ يَسْمَعْ مِنْ سَمُرَةَ ثُمَّ لَوْ صَحَّ فَلَيْسَ فِيهِ إلَّا الْأَدَاءُ، وَهَكَذَا نَقُولُ، وَالْأَدَاءُ غَيْرُ الضَّمَانِ فِي اللُّغَةِ وَالْحُكْمِ، وَيَلْزَمُهُمْ إذَا حَمَلُوا هَذَا اللَّفْظَ عَلَى الضَّمَانِ أَنْ يُضَمِّنُوا بِذَلِكَ الْمَرْهُونَ وَالْوَدَائِعَ، لِأَنَّهَا مِمَّا قَبَضَتْ الْيَدُ، وَكُلُّ هَذَا قَدْ قَالَ بِتَضْمِينِهِ طَوَائِفُ مِنْ الصَّحَابَةِ فَمَنْ بَعْدَهُمْ فَظَهَرَ تَنَاقُضُهُمْ.

L26553 We have been narrated through the chain of Aḥmad ibn Shuʿayb, who narrated from Ibrāhīm ibn al-Mustamir, who narrated from Ḥibbān ibn Hilāl, who narrated from Hammām ibn Yaḥyā, who narrated from Qatādah, from ʿAṭāʾ ibn Abī Rabāḥ, from Ṣafwān ibn Yaʿlā ibn Umayyah, from his father, who said: The Messenger of Allah (peace and blessings be upon him and his family) said to me: "When my envoys come to you, give them thirty armors and thirty camels." I said: "O Messenger of Allah, is this a loan with liability or a loan to be returned?" He said: "Rather, it is a loan to be returned." This is a ḥasan hadith, and there is no authentic report among all that has been narrated concerning loans for use other than this. As for what is besides it, it does not merit attention. The hadith distinguished between liability and return, obligating in the loan for use only the return without liability - thus invalidating all the textual proofs they relied upon.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ نا حِبَّانُ بْنُ هِلَالٍ نا هَمَّامُ بْنُ يَحْيَى نا قَتَادَةُ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ صَفْوَانَ بْنِ يَعْلَى بْنِ أُمَيَّةَ عَنْ أَبِيهِ قَالَ: قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «إذَا أَتَتْك رُسُلِي فَأَعْطِهِمْ ثَلَاثِينَ دِرْعًا وَثَلَاثِينَ بَعِيرًا فَقُلْتُ: يَا رَسُولَ اللَّهِ أَعَارِيَةٌ مَضْمُونَةٌ أَمْ عَارِيَةٌ مُؤَدَّاةٌ؟ قَالَ: بَلْ عَارِيَةٌ مُؤَدَّاةٌ» فَهَذَا حَدِيثٌ حَسَنٌ لَيْسَ فِي شَيْءٍ مِمَّا رُوِيَ فِي الْعَارِيَةِ خَبَرٌ يَصِحُّ غَيْرُهُ، وَأَمَّا مَا سِوَاهُ فَلَا يُسَاوِي الِاشْتِغَالَ بِهِ وَقَدْ فَرَّقَ فِيهِ بَيْنَ الضَّمَانِ، وَالْأَدَاءِ، وَأَوْجَبَ فِي الْعَارِيَةِ الْأَدَاءَ فَقَطْ دُونَ الضَّمَانِ - فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ مِنْ النُّصُوصِ.

L26554 They said: We found that every instance of wealth transferred between

وَقَالُوا: وَجَدْنَا كُلَّ مَا يَقْبِضُهُ بَعْضُ النَّاسِ مِنْ بَعْضٍ مِنْ الْأَمْوَالِ يَنْقَسِمُ ثَلَاثَةَ أَقْسَامٍ -: أَحَدُهَا - قِسْمٌ مَنْفَعَةٌ لِلدَّافِعِ دُونَ الْمَدْفُوعِ إلَيْهِ، كَالْوَدِيعَةِ، وَالْوَكَالَةِ - فَهَذَا غَيْرُ مَضْمُونٍ، فَوَاجِبٌ أَنْ يَكُونَ كُلُّ مَا فِي هَذَا الْبَابِ كَذَلِكَ وَثَانِيهَا - قِسْمٌ مَنْفَعَتُهُ لِلدَّافِعِ وَالْمَدْفُوعِ إلَيْهِ مَعًا، كَالْقِرَاضِ، وَقَدْ اتَّفَقْنَا عَلَى أَنَّهُ غَيْرُ مَضْمُونٍ، فَوَجَبَ أَنْ يَكُونَ الرَّهْنُ وَكُلُّ مَا فِي هَذَا الْبَابِ كَذَلِكَ.

L26555 وَثَالِثُهَا - مَا مَنْفَعَتُهُ الْمَدْفُوعُ إلَيْهِ دُونَ الدَّافِعِ كَالْقَرْضِ، وَقَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّهُ مَضْمُونٌ فَوَجَبَ أَنْ تَكُونَ الْعَارِيَّةُ وَكُلُّ مَا فِي هَذَا الْبَابِ كَذَلِكَ.

L26556–26557 قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، إلَّا أَنَّهُ مِنْ الْمَلِيحِ الْمُمَوَّهِ مِنْ مَقَايِيسِهِمْ وَأَنَّهُمْ لَيَسْفِكُونَ الدِّمَاءَ، وَيُبِيحُونَ الْفُرُوجَ، وَالْأَمْوَالَ وَالْأَبْشَارَ بِأَقَلَّ مِنْ هَذَا، كَقِيَاسِهِمْ فِي الصَّدَاقِ، وَفِي جَلْدِ الشَّارِبِ قِيَاسًا عَلَى الْقَاذِفِ، وَالْقَوَدِ لِلْكَافِرِ مِنْ الْمُؤْمِنِ، وَفَاعِلُ فِعْلِ قَوْمِ لُوطٍ، وَسَائِرِ قِيَاسِهِمْ، إلَّا أَنَّنَا نُعَارِضُ هَذَا الْقِيَاسَ بِمِثْلِهِ، وَهُوَ أَنَّ الْعَارِيَّةَ دَفْعُ مَالٍ بِغَيْرِ عِوَضٍ، كَالْوَدِيعَةِ.

L26558 وَأَيْضًا - فَإِنَّ مَا بَلِيَ فِي اللِّبَاسِ وَفِيمَا اُسْتُعِيرَتْ لَهُ فَنَقَصَ مِنْهَا بِلَا تَعَدٍّ فَلَا ضَمَانَ فِيهِ، فَكَذَلِكَ سَائِرُ النَّقْصِ - وَهَذَا كُلُّهُ وَسَاوِسُ، نَعُوذُ بِاَللَّهِ مِنْ الْحُكْمِ بِهَا فِي دِينِهِ.

L26559 قَالَ عَلِيٌّ: فَبَقِيَ قَوْلُنَا، فَوَجَدْنَاهُ قَدْ رُوِيَ عَنْ عُمَرَ، وَعَلِيٍّ، كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ ابْنِ صَالِحِ بْنِ حَيٍّ عَنْ عَبْدِ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْعَارِيَّةُ لَيْسَتْ بَيْعًا وَلَا مَضْمُونَةً إنَّمَا هُوَ مَعْرُوفٌ إلَّا أَنْ يُخَالِفَ فَيَضْمَنَ، وَهَذَا صَحِيحٌ عَنْ عَلِيٍّ.

people divides into three categories: 1. A category where the benefit belongs solely to the transferor, not the recipient—such as custodianship (wadīʿah) or agency (wakālah). This category entails no liability, making it obligatory that all analogous cases follow the same ruling. 2. A category where both transferor and recipient share the benefit—such as profit-sharing partnership (qirāḍ). We have consensus that this entails no liability, thus pledges (rahn) and all analogous cases under this category must likewise be deemed non-liable.

The third category is that whose benefit is directed to the recipient rather than the provider, such as a loan. Sound consensus has been established that it is subject to liability, and thus it necessarily follows that the commodatum and all matters in this category must likewise be treated.

Abu Muhammad said: This is analogy, and all analogy is invalid, except that it is among their specious and deceptive analogies, and indeed they shed blood, permit private parts, wealth, and scourging for less than this, such as their analogy regarding the dowry, in flogging the drinker by analogy to the slanderer, retaliation for a disbeliever from a believer, the one who commits the act of the people of Lot, and the rest of their analogies. However, we counter this analogy with its like: the gratuitous loan is the transfer of wealth without compensation, like a deposit.

Furthermore, if something directly related to clothing or borrowed for that purpose is reduced in it without transgression, there is no liability for it, just as with all other losses. And all of this is evil whisperings; we seek refuge with Allah from applying such [whisperings] in matters of His religion.

Ali said: Our statement remained, and we found that our position had been narrated from Umar and Ali, as it was transmitted to us through the chain of Ibn Abi Shaybah—Wakīʿ narrating from Ibn Ṣāliḥ ibn Ḥayy, from ʿAbd al-Aʿlā, from Muḥammad ibn al-Ḥanafiyyah, from ʿAlī ibn Abī Ṭālib—who said: A loaned item is neither a sale nor subject to liability. It is merely an act of benevolence unless the borrower violates [the terms], in which case liability applies. This is an authentic report from Ali.

L26560 And from the narration of Abd al-Razzaq: Qays ibn al-Rabiʿ narrated to us from al-Ḥajjāj ibn Arṭāh, from Hilāl al-Wazzān, from ʿAbdullāh ibn ʿUqaym, who reported that ʿUmar ibn al-Khaṭṭāb said: "A gratuitous loan (ʿāriyyah) is equivalent to a trust (wadiʿah), and no liability is incurred for it unless [the borrower] transgresses [the terms]." This is the opinion of Ibrāhīm al-Nakhaʿī, ʿUmar ibn ʿAbd al-ʿAzīz, al-Zuhrī, and others – and this is the opinion of Abū Sulaymān. Abū Muḥammad said: Allāh the Exalted states: "Do not consume one another's wealth unjustly, except through trade by mutual consent" (Quran al-Nisā' 4:29).[4]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا قَيْسُ بْنُ الرَّبِيعِ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ هِلَالٍ الْوَزَّانِ عَنْ عَبْدِ اللَّهِ بْنِ عُكَيْمٍ قَالَ عُمَرُ بْنُ الْخَطَّابِ: الْعَارِيَّةُ بِمَنْزِلَةِ الْوَدِيعَةِ، وَلَا ضَمَانَ فِيهَا، إلَّا أَنْ يَتَعَدَّى - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَالزُّهْرِيِّ، وَغَيْرِهِمْ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ قَالَ أَبُو مُحَمَّدٍ: قَوْلُ اللَّهِ تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ} [النساء: ٢٩] .

L26561 The Messenger of Allah (peace and blessings be upon him) said: "Indeed, your blood and wealth are inviolable for you."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L26562 It has been established that the borrower's property is prohibited unless obligated by a text of the Qur'an or Sunnah, and no text from either has ever obligated such. Allah the Exalted said: "There is no blame upon those who do good" [Qur'an 9:91], and He said: "Blame lies only upon those who wrong people and act unjustly in the land without right" [Qur'an 42:42].[5]

فَصَحَّ أَنَّ مَالَ الْمُسْتَعِيرِ مُحَرَّمٌ إلَّا أَنْ يُوجِبَهُ نَصُّ قُرْآنٍ أَوْ سُنَّةٍ، وَلَمْ يُوجِبْهُ قَطُّ نَصٌّ مِنْهُمَا - وَقَالَ اللَّهُ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] : وَقَالَ تَعَالَى: {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الأَرْضِ بِغَيْرِ الْحَقِّ} [الشورى: ٤٢] .

L26563 The borrower, as long as he does not transgress nor neglect [his responsibility], is a doer of good. Thus, there is no recourse against him according to the text of the Quran. Since liability is established through certainty, no financial obligation falls upon him—and success is from Allah, the Exalted.

وَالْمُسْتَعِيرُ مَا لَمْ يَتَعَدَّ وَلَا ضَيَّعَ: مُحْسِنٌ فَلَا سَبِيلَ عَلَيْهِ بِنَصِّ الْقُرْآنِ، وَالْغُرْمُ سَبِيلٌ بِيَقِينٍ فَلَا غُرْمَ عَلَيْهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26564–26565 Hospitality is a religious obligation incumbent upon the Bedouin and the urban dweller, the jurist and the ignorant.

[الضِّيَافَةُ] [مَسْأَلَةُ الضِّيَافَةِ فَرْضٌ عَلَى الْبَدْوِيِّ وَالْحَضَرِيِّ وَالْفَقِيهِ وَالْجَاهِلِ]

L26566 Issue 1653: Hospitality is obligatory upon the Bedouin, the city dweller, the scholar, and the unlearned alike: a day and a night as benevolence and a gift, then three days as hospitality with no extension. If the host exceeds this, his hospitality is not binding, but if he continues to host, it is commendable. If he withholds the obligatory hospitality, the guest may take it by force, by

١٦٥٣ - مَسْأَلَةُ: الضِّيَافَةِ فَرْضٌ عَلَى الْبَدْوِيِّ، وَالْحَضَرِيِّ، وَالْفَقِيهِ، وَالْجَاهِلِ: يَوْمٌ وَلَيْلَةٌ: مَبَرَّةٌ وَاتْحَافٌ، ثُمَّ ثَلَاثَةُ أَيَّامٍ: ضِيَافَةٌ وَلَا مَزِيدَ، فَإِنْ زَادَ فَلَيْسَ قِرَاهُ لَازِمًا، وَإِنْ تَمَادَى عَلَى قِرَاهُ: فَحَسَنٌ - فَإِنْ مَنَعَ الضِّيَافَةَ الْوَاجِبَةَ فَلَهُ أَخْذُهَا مُغَالَبَةً، وَكَيْفَ أَمْكَنَهُ، وَيُقْضَى لَهُ بِذَلِكَ -: رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا الْقَعْنَبِيُّ عَنْ مَالِكٍ عَنْ سَعِيدِ بْنِ أَبِي

[4] **Qur'an references (L26560):** Qur'an 4:29 (An-Nisa).
[5] **Qur'an references (L26562):** Qur'an 9:91 (At-Tawbah); Qur'an 42:42 (Ash-Shuraa).

whatever means possible, and the judge shall rule in his favor. We narrate through Abū Dāwūd's chain: Al-Qaʿnabī reported from Mālik, from Saʿīd ibn Abī Saʿīd al-Maqburī, from Abū Shurayḥ al-Kaʿbī that Allah's Messenger—peace and blessings be upon him—said: "Whoever believes in Allah and the Last Day, let him honor his guest. His due is a day and a night, and hospitality lasts three days. What exceeds that is charity. It is not lawful for him to linger with his host until he causes him hardship."[6]

سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي شُرَيْحٍ الْكَعْبِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلْيُكْرِمْ ضَيْفَهُ، جَائِزَتُهُ يَوْمُهُ وَلَيْلَتُهُ، وَالضِّيَافَةُ ثَلَاثَةُ أَيَّامٍ، وَمَا بَعْدَ ذَلِكَ فَهُوَ صَدَقَةٌ، وَلَا يَحِلُّ لَهُ أَنْ يَثْوِيَ عِنْدَهُ حَتَّى يُحْرِجَهُ» .

L26567 Abu Dawud reported from al-Harith ibn Miskin, from Ashhab, from Malik concerning the Prophet's statement (peace be upon him), "The hospitality period is a day and a night." Malik said: [The host] gifts him, honors him, and grants him exclusive hospitality for a day and a night, extending to three days.

قَالَ أَبُو دَاوُد عَنْ الْحَارِثِ بْنِ مِسْكِينٍ عَنْ أَشْهَبَ عَنْ مَالِكٍ فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «جَائِزَتُهُ يَوْمٌ وَلَيْلَةٌ» -: قَالَ مَالِكٌ: يُتْحِفُهُ وَيُكْرِمُهُ وَيَخُصُّهُ يَوْمًا وَلَيْلَةً وَثَلَاثَةَ أَيَّامٍ ضِيَافَةً.

L26568 Through the chain of Muḥammad ibn Jaʿfar Ghundar, who narrated from Manṣūr ibn al-Muʿtamir, from al-Shaʿbī, from al-Muqaddam Abū Karīmah: "He heard the Prophet—peace and blessings of Allah be upon him—say: 'Hosting a guest for one night is an incumbent duty upon every Muslim. If the guest remains in the host's courtyard until morning, it becomes a debt upon the guest. If the host wishes, he may demand repayment, and if he wishes, he may forgo it.'"

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ غُنْدَرٍ نا مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ الشَّعْبِيِّ عَنْ الْمُقَدَّمِ أَبِي كَرِيمَةَ " أَنَّهُ سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَيْلَةُ الضَّيْفِ حَقٌّ وَاجِبٌ عَلَى مَنْ كَانَ مُسْلِمًا، فَإِنْ أَصْبَحَ بِفِنَائِهِ فَهُوَ دَيْنٌ عَلَيْهِ، إِنْ شَاءَ اقْتَضَى وَإِنْ شَاءَ تَرَكَ» .

L26569–26570 And from the path of Shuʿbah from Abu Ishaq al-Sabiʿi—from Abu al-Ahwas, who is Awf ibn Malik ibn Awf al-Jushami—from his father, who said: I said, "O Messenger of Allah, a man I stayed with as a guest, but he did not honor me, nor host me, nor provide for me. Then he stayed with me as a guest—should I repay him?" He said, "Rather, host him."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ «عَنْ أَبِي الْأَحْوَصِ - هُوَ عَوْفُ بْنُ مَالِكِ بْنِ عَوْفٍ الْجُشَمِيُّ - عَنْ أَبِيهِ قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ رَجُلٌ نَزَلْتُ بِهِ فَلَمْ يُكْرِمْنِي وَلَمْ يُضِفْنِي وَلَمْ يَقْرِنِي ثُمَّ نَزَلَ بِي أَجْزِيهِ؟ قَالَ: بَلْ أَقْرِهِ» .

L26571 And through the chain of Imam Muslim: Muḥammad ibn Rumḥ reported to us, al-Layth—that is, ibn Saʿd—reported to us, from Yazīd ibn Abī Ḥabīb, from Abū al-Khayr, from ʿUqbah ibn ʿĀmir, who said: We said, "O Messenger of Allah, you send us and we stay with people who do not host us. What do you advise?" The Messenger of Allah—peace and blessings be upon him—said: "If you stay with people and they provide what is fitting for guests,

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الْخَيْرِ «عَنْ عُقْبَةَ بْنِ عَامِرٍ، قُلْنَا: يَا رَسُولَ اللَّهِ إِنَّكَ تَبْعَثُنَا فَنَنْزِلُ بِقَوْمٍ فَلَا يَقْرُونَنَا فَمَا تَرَى؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنْ نَزَلْتُمْ بِقَوْمٍ فَأَمَرُوا بِمَا يَنْبَغِي لِلضَّيْفِ فَاقْبَلُوا، فَإِنْ لَمْ يَفْعَلُوا فَخُذُوا مِنْهُمْ حَقَّ الضَّيْفِ الَّذِي يَنْبَغِي لَهُمْ» .

[6] **Qur'an references (L26566):** Qur'an 65:2 (At-Talaq).

accept it. If they do not, take from them the guest's right that is required of them."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَطَعَامُ الْوَاحِدِ يَكْفِي الِاثْنَيْنِ، وَطَعَامُ الِاثْنَيْنِ يَكْفِي الْأَرْبَعَةَ، وَطَعَامُ الْأَرْبَعَةِ يَكْفِي الثَّمَانِيَةَ» . وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إِسْمَاعِيلَ نا الْمُعْتَمِرُ - هُوَ ابْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِيهِ نا أَبُو عُثْمَانَ - هُوَ النَّهْدِيُّ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ «أَنَّ أَصْحَابَ الصُّفَّةِ كَانُوا نَاسًا فُقَرَاءَ، وَأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ مَنْ كَانَ عِنْدَهُ طَعَامُ اثْنَيْنِ فَلْيَذْهَبْ بِثَالِثٍ، وَمَنْ كَانَ عِنْدَهُ طَعَامُ أَرْبَعَةٍ فَلْيَذْهَبْ بِخَامِسٍ، وَمَنْ كَانَ عِنْدَهُ طَعَامُ خَمْسَةٍ، فَلْيَذْهَبْ بِسَادِسٍ، أَوْ كَمَا قَالَ وَأَنَّ أَبَا بَكْرٍ جَاءَ بِثَلَاثَةٍ وَانْطَلَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِعَشْرَةٍ» .

L26572 From the chain of ʿAbd al-Razzāq: Maʿmar narrated to us from Ayyūb al-Sikhtiyānī from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him—said: "The food of one suffices two, the food of two suffices four, and the food of four suffices eight." From the chain of al-Bukhārī: Mūsā ibn Ismāʿīl narrated to us: al-Muʿtamir—who is Ibn Sulaymān al-Taymī—narrated to us from his father from Abū ʿUthmān—who is al-Nahdī—from ʿAbd al-Raḥmān ibn Abī Bakr al-Ṣiddīq: "The Companions of the Ṣuffah were destitute people. The Prophet—peace and blessings of Allāh be upon him—said: 'Whoever has food for two, let him take a third person; whoever has food for four, let him take a fifth person; whoever has food for five, let him take a sixth person'—or as he said—and that Abū Bakr came with three, while the Messenger of Allāh—peace and blessings of Allāh be upon him—departed with ten."

فَهَذَا نَصُّ إِيجَابِ الضِّيَافَةِ عَلَى أَهْلِ الْعِلْمِ وَالْحَاضِرَةِ، وَهَذِهِ أَخْبَارٌ مُتَوَاتِرَةٌ عَنْ جَمَاعَةٍ مِنْ الصَّحَابَةِ لَا يَحِلُّ لِأَحَدٍ مُخَالَفَتُهَا.

L26573 Thus, this is the explicit text regarding the obligation of hospitality upon the people of knowledge and urban dwellers, and these are mutawātir (widely transmitted) narrations from a group of the Companions [of the Prophet]; it is not permissible for anyone to oppose them.

رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ شُعْبَةَ عَنْ أَبِي عَوْفٍ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الثَّقَفِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى " أَنَّ نَاسًا مِنْ الْأَنْصَارِ سَافَرُوا فَأَرْمَلُوا فَمَرُّوا بِحَيٍّ مِنْ الْعَرَبِ فَسَأَلُوهُمْ الْقِرَى فَأَبَوْا عَلَيْهِمْ، فَسَأَلُوهُمْ الشِّرَاءَ فَأَبَوْا فَضَبَطُوهُمْ فَأَصَابُوا مِنْهُمْ فَأَتَتْ الْأَعْرَابُ عُمَرَ بْنَ الْخَطَّابِ فَأَشْفَقَتْ الْأَنْصَارُ، فَقَالَ عُمَرُ تَمْنَعُونَ ابْنَ السَّبِيلِ؟ مَا يَخْلُفُ اللَّهُ تَعَالَى فِي ضُرُوعِ الْإِبِلِ بِاللَّيْلِ وَالنَّهَارِ، ابْنُ السَّبِيلِ أَحَقُّ بِالْمَاءِ مِنْ الثَّاوِي عَلَيْهِ " فَهَذَا فِعْلُ الصَّحَابَةِ وَحُكْمُ عُمَرَ بِحَضْرَتِهِمْ، لَا مُخَالِفَ لَهُ مِنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26574–26576 It was narrated to us through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān from Shuʿbah from Abī ʿAwf from Muḥammad ibn ʿUbaydillāh al-Thaqqafī. From Abd al-Rahman ibn Abi Layla: Some people from the Ansar traveled and were left destitute. They passed by a tribe of Arabs and requested hospitality, but they refused. They then asked to purchase provisions, but they again refused. The tribe confined them and took from them by force. When the Bedouins came to Umar ibn al-Khattab to complain, the Ansar became fearful. Umar said, "Do you withhold aid from a wayfarer? Allah does not withhold the sustenance He provides through camels' udders, day and night. The wayfarer has a greater right to water than the resident." This exemplifies the conduct of the Companions and Umar's ruling in their presence, with none among them contesting his judgment—and by Allah, the Exalted, comes all success.

وَرُوِّينَا عَنْ مَالِكٍ: لَا ضِيَافَةَ عَلَى أَهْلِ الْحَاضِرَةِ، وَلَا عَلَى الْفُقَهَاءِ - وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

L26577 It has been narrated to us from Mālik: Hospitality is not incumbent upon urban dwellers or jurists—and this opinion is utterly corrupt—and with Allah, the Exalted, lies all success.

[الْأَحْبَاسُ] [مَسْأَلَةٌ أَحْكَام الْوَقْفُ]

L26578–26579

Endowments (Ahbas): A Question on the Rulings of Waqf

١٦٥٤ - مَسْأَلَةٌ: وَالتَّحْبِيسُ - وَهُوَ الْوَقْفُ - جَائِزٌ فِي الْأُصُولِ مِنْ الدُّورِ وَالْأَرَضِينَ بِمَا فِيهَا مِنْ الْغِرَاسِ وَالْبِنَاءِ إنْ كَانَتْ فِيهَا، وَفِي الْأَرْحَاءِ، وَفِي الْمَصَاحِفِ، وَالدَّفَاتِرِ.

L26580 Issue 1654: Endowment (ḥabs) - which constitutes waqf - is permissible for principal assets among dwellings and lands, including any vegetation and buildings within them if present, and in mills, in copies of the Qur'an, and in registers.

وَيَجُوزُ أَيْضًا فِي الْعَبِيدِ، وَالسِّلَاحِ، وَالْخَيْلِ، فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ فِي الْجِهَادِ فَقَطْ، لَا فِي غَيْرِ ذَلِكَ - وَلَا يَجُوزُ فِي شَيْءٍ غَيْرِ مَا ذَكَرْنَا أَصْلًا، وَلَا فِي بِنَاءٍ دُونَ الْقَاعَةِ.

L26581 It is also permissible to use slaves, weapons, and horses in the path of Allah, may He be exalted and glorified, specifically for jihad and nothing else. It is not permissible at all for anything other than what we have mentioned, nor in any building other than a mosque.

وَجَائِزٌ لِلْمَرْءِ أَنْ يَحْبِسَ عَلَى مَنْ أَحَبَّ، أَوْ عَلَى نَفْسِهِ، ثُمَّ عَلَى مَنْ شَاءَ - وَخَالَفَنَا فِي هَذَا قَوْمٌ -: فَطَائِفَةٌ أَبْطَلَتْ الْحَبْسَ مُطْلَقًا وَهُوَ قَوْلُ شُرَيْحٍ، وَرُوِيَ عَنْ أَبِي حَنِيفَةَ، وَطَائِفَةٌ قَالَتْ: لَا حَبْسَ إلَّا فِي سِلَاحٍ، أَوْ كُرَاعٍ، رُوِيَ ذَلِكَ عَنْ ابْنِ مَسْعُودٍ، وَعَلِيٍّ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ -

L26582 It is permissible for a person to endow property for those he loves, or for himself, and thereafter for whomever he wishes - though some have opposed our position in this matter. One group invalidated endowments absolutely, which is the opinion of Shurayh, reported also from Abu Hanifah. Another group maintained: "No endowment is valid except for weapons or livestock" - this being transmitted from Ibn Mas'ud, Ali, and Ibn Abbas (may Allah be pleased with them).

وَطَائِفَةٌ أَجَازَتْ الْحَبْسَ فِي كُلِّ شَيْءٍ، وَفِي الثِّيَابِ، وَالْعَبِيدِ، وَالْحَيَوَانِ، وَالدَّرَاهِمِ، وَالدَّنَانِيرِ - وَهُوَ قَوْلُ مَالِكٍ.

L26583 A school permitted ḥabs in all things, including clothing, slaves, animals, *dirhams*, and *dinars*—this is the position of Mālik.

وَأَتَى أَبُو حَنِيفَةَ بِقَوْلٍ خَالَفَ فِيهِ كُلَّ مَنْ تَقَدَّمَ وَالسُّنَّةَ وَالْمَعْقُولَ فَقَالَ: الْحَبْسُ جَائِزٌ فِي الصِّحَّةِ، وَفِي الْمَرَضِ، إلَّا أَنَّ لِلْمُحْبِسِ إبْطَالَهُ مَتَى شَاءَ، وَبَيْعَهُ وَارْتِجَاعَهُ بِنَقْضِ الْحَبْسِ الَّذِي عَقَدَ فِيهِ، وَلَا يَجُوزُ بَعْدَ الْمَوْتِ أَيْضًا، وَهَذَا أَشْهَرُ أَقْوَالِهِ - وَرُوِيَ عَنْهُ: أَنَّهُ لَا يَجُوزُ إلَّا بَعْدَ الْمَوْتِ، ثُمَّ اخْتَلَفُوا عَنْهُ أَيَجُوزُ لِلْوَرَثَةِ إبْطَالُهُ - وَهَذَا هُوَ الْأَشْهَرُ عَنْهُ

L26584 Abu Hanifah advanced an opinion contradicting all predecessors, the Sunnah, and rational principles, stating: Endowment is permissible during health and illness, except that the endower may nullify it at will, sell it, or reclaim it by revoking the endowment he established. It is also not permissible after death. This is his most renowned position. A narration attributes to him that endowment is only permissible after death. There is disagreement reported from him regarding whether heirs may annul it—this being the most well-known opinion from him—or whether it is not permissible for them to

annul it. The mere mention of this opinion suffices to demonstrate its invalidity, for no Sunnah supports it, no analogy substantiates it, no predecessor is known to have held it, and its differentiation is flawed—thus, it collapses entirely.

L26585–26587 As for the statement narrated from Ali, Ibn Masʿud, and Ibn Abbas, it has not been authenticated as originating from any of them. Among them: As for Ibn Masʿud, we have transmitted from him through the chain of Sufyān ibn ʿUyaynah from Muṭarrif ibn Ṭarīf from an unnamed man from al-Qāsim—who is the son of ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd—from Ibn Masʿūd that he said: "There is no detention except for weapons or livestock." This narration is rejected because it comes from an unnamed man, and because al-Qāsim's father did not memorize a single word from his own father—as he was six years old when his father died. How then could his son [have transmitted anything]? We find no basis for this narration from Ibn ʿAbbās whatsoever, nor from ʿAlī. Rather, we categorically assert that this is a lie falsely ascribed to ʿAlī, for his detention in Yanbuʿ and other locations is more renowned than the sun, while falsehoods are abundant. Perhaps those who adopt this position rely on the authenticated report that the Prophet—may God bless him and his family—would allocate his surplus provisions beyond basic sustenance to weapons and livestock.

L26588 Abu Muhammad said: It is said: Yes. If it is soundly established from the Prophet (peace be upon him and his family) that the endowment applies to assets other than warhorses and weapons, then upholding this opinion becomes obligatory—as that has been confirmed as sound. Thus, this opinion is likewise invalidated.

L26589 As for those who invalidated endowments entirely: Abd al-Malik ibn Habib reported from al-Waqidi, who said: "There is no Companion of the Messenger of Allah—peace and blessings be upon him and his family—except that he dedicated land as an endowment, except Abd al-Rahman ibn Awf, for he disliked endowments." This is a narration by unreliable individuals, as the additions within it exacerbated its weakness, and perhaps before it, the position was stronger.

- أَمْ لَا يَجُوزُ؟ وَهَذَا قَوْلٌ يَكْفِي إِيرَادُهُ مِنْ فَسَادِهِ، لِأَنَّهُ لَمْ تَأْتِ بِهِ سُنَّةٌ، وَلَا أَيَّدَهُ قِيَاسٌ، وَلَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ، وَتَفْرِيقٌ فَاسِدٌ - فَسَقَطَ جُمْلَةً.

وَأَمَّا الْقَوْلُ الْمَرْوِيُّ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ: فَإِنَّهُ لَمْ يَصِحَّ عَنْ أَحَدٍ مِنْهُمْ -: أَمَّا ابْنُ مَسْعُودٍ فَرُوِّيناهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ عَنْ رَجُلٍ عَنْ الْقَاسِمِ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: لَا حَبْسَ إِلَّا فِي سِلَاحٍ أَوْ كُرَاعٍ - وَهَذِهِ رِوَايَةٌ سَاقِطَةٌ، لِأَنَّهَا عَنْ رَجُلٍ لَمْ يُسَمَّ؛ وَلِأَنَّ وَالِدَ الْقَاسِمِ لَا يَحْفَظُ عَنْ أَبِيهِ كَلِمَةً، وَكَانَ لَهُ إِذْ مَاتَ أَبُوهُ سِتُّ سِنِينَ فَكَيْفَ وَلَدَهُ؟ وَلَا نَعْرِفُهَا عَنْ ابْنِ عَبَّاسٍ أَصْلًا، وَلَا عَنْ عَلِيٍّ، بَلْ نَقْطَعُ عَلَى أَنَّهَا كَذِبٌ عَلَى عَلِيٍّ، لِأَنَّ إِيقَافَهُ يَنْبُعَ، وَغَيْرَهَا: أَشْهَرُ مِنْ الشَّمْسِ، وَالْكَذِبُ كَثِيرٌ، وَلَعَلَّ مَنْ ذَهَبَ إِلَى هَذَا يَتَعَلَّقُ بِأَنَّهُ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ كَانَ يَجْعَلُ مَا فَضَلَ عَنْ قُوتِهِ فِي السِّلَاحِ وَالْكُرَاعِ.

قَالَ أَبُو مُحَمَّد: فَيُقَالُ: نَعَمْ، وَإِنْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِيقَافُ غَيْرِ الْكُرَاعِ، وَالسِّلَاحِ -: وَجَبَ الْقَوْلُ بِهِ أَيْضًا، وَقَدْ صَحَّ ذَلِكَ، فَبَطَلَ أَيْضًا هَذَا الْقَوْلُ.

وَأَمَّا مَنْ أَبْطَلَ الْحَبْسَ جُمْلَةً: فَإِنَّ عَبْدَ الْمَلِكِ بْنَ حَبِيبٍ رَوَى عَنْ الْوَاقِدِيِّ قَالَ: مَا مِنْ أَحَدٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَّا وَقَدْ أَوْقَفَ وَحَبَسَ أَرْضًا، إِلَّا عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ فَإِنَّهُ كَانَ يَكْرَهُ الْحَبْسَ - وَهَذِهِ رِوَايَةُ أَخْبَاثٍ فَإِنَّهَا زَادَتْ مَا جَاءَتْ فِيهِ ضَعْفًا وَلَعَلَّهُ قَبْلَهُ كَانَ أَقْوَى.

L26590 As for Mālik and those who adopted his school, they argued that they analogized matters without textual evidence to those with textual evidence.

وَأَمَّا مَالِكٌ وَمَنْ قَلَّدَهُ: فَإِنَّهُمْ احْتَجُّوا بِأَنَّهُمْ قَاسُوا عَلَى مَا جَاءَ فِيهِ النَّصُّ مَا لَا نَصَّ فِيهِ.

L26591 Abu Muhammad said: All analogy is entirely invalid, so how then, when the text itself nullifies it? For endowing a thing for someone other than its owner and stipulating that it cannot be inherited, sold, or gifted are conditions not found in the Book of Allah, the Exalted and Glorious.

قَالَ أَبُو مُحَمَّد: وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، فَكَيْفَ وَالنَّصُّ يُبْطِلُهُ؛ لِأَنَّ إِيقَافَ الشَّيْءِ لِغَيْرِ مَالِكٍ مِنْ النَّاسِ، وَاشْتِرَاطُ الْمَنْعِ مِنْ أَنْ يُورَثَ، أَوْ يُبَاعَ، أَوْ يُوهَبَ: شُرُوطٌ لَيْسَتْ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ.

L26592 The Messenger of Allah (may Allah bless him and his family and grant him peace) said: "Whoever stipulates a condition not found in the Book of Allah, it is not binding upon him even if he stipulates it a hundred times. Every condition not in the Book of Allah is void." Thus, it is established that none of these conditions are permissible except only that which the Messenger of Allah (peace be upon him) explicitly declared permissible - and that [which he permitted] exists in the Book of Allah the Exalted.

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَلَيْسَ لَهُ وَإِنْ شَرَطَ مِائَةَ مَرَّةٍ كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» ، فَصَحَّ أَنَّهُ لَا يَجُوزُ مِنْ هَذِهِ الشُّرُوطِ إِلَّا مَا نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى جَوَازِهِ فَقَطْ، فَكَانَ ذَلِكَ فِي كِتَابِ اللَّهِ تَعَالَى.

L26593 Due to the statement of Allāh, the Almighty and Majestic: "He does not speak out of [his own] inclination; it is only a revelation inspired" [53:3-4].[7]

لِقَوْلِهِ عَزَّ وَجَلَّ: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤]

L26594–26596 And [due to] His saying, the Exalted: "that you may judge between the people by what Allah has revealed to you" [an-Nisā' 4:105]. Especially dinars and dirhams, and anything that has no benefit except through the destruction of its substance or transferring it from one ownership to another – this revokes and invalidates the *waqf*.[8]

وَلِقَوْلِهِ تَعَالَى: {لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ} [النساء: ١٠٥] لَا سِيَّمَا الدَّنَانِيرُ، وَالدَّرَاهِمُ، وَكُلُّ مَا لَا مَنْفَعَةَ فِيهِ، إِلَّا بِإِتْلَافِ عَيْنِهِ، أَوْ إِخْرَاجِهَا عَنْ مِلْكٍ إِلَى مِلْكٍ، فَهَذَا هُوَ نَقْضُ الْوَقْفِ وَإِبْطَالُهُ.

L26597 They may cite as evidence what has been authentically reported from the Messenger of Allah (peace and blessings of Allah be upon him and his family): "When a person dies, his deeds cease except for three things: a perpetual charity, beneficial knowledge, or a righteous child who supplicates for him."

وَيُمْكِنُ أَنْ يَحْتَجُّوا بِمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثِ أَشْيَاءَ: مِنْ صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ» .

L26598 Thus, there is no valid argument for them in this matter, for there is no

[7] **Qur'an references (L26593):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm).
[8] **Qur'an references (L26594):** Qur'an 4:105 (An-Nisa).

فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ الصَّدَقَةَ الْجَارِيَةَ لَا شَكَّ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَعْنِ بِهَا إِلَّا مَا أَجَازَهُ مِنْ الصَّدَقَاتِ، لَا كُلَّ مَا يَظُنُّهُ الْمَرْءُ صَدَقَةً، كَمَنْ تَصَدَّقَ بِمُحَرَّمٍ، أَوْ شَرَطَ فِي صَدَقَتِهِ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ.

doubt that he—peace and blessings be upon him—only meant by "ongoing charity" what he permitted as valid charitable acts, not everything a person might assume to be charity, such as one who donates something forbidden by Islamic law or imposes a condition in his charity not stipulated in the Book of Allah, the Exalted and Glorious.

L26599 فَصَحَّ أَنَّ الصَّدَقَةَ الْجَارِيَةَ، الْبَاقِي أَجْرُهَا بَعْدَ الْمَوْتِ -: إمَّا صَدَقَةٌ مُطْلَقَةٌ فِيمَا تَجُوزُ الصَّدَقَةُ بِهِ مِمَّا صَحَّ مِلْكُ الْمُتَصَدَّقِ بِهِ عَلَيْهِ، وَلَمْ يَشْتَرِطْ فِيهَا شَرْطًا مُفْسِدًا.

It is established that perpetual charity—whose reward persists after death—is an absolute charity pertaining to what is permissible to donate, from that which the recipient has valid ownership of, and wherein no invalidating condition has been stipulated.

L26600 وَإِمَّا صَدَقَةٌ مَوْقُوفَةٌ فِيمَا يَجُوزُ الْوَقْفُ فِيهِ.

Alternatively, it may be a charitable donation (ṣadaqah) constituted as an endowment (waqf), pertaining to matters in which establishing an endowment is legally permissible.

L26601 فَصَحَّ أَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ حُجَّةٌ فِيمَا يُخْتَلَفُ فِيهِ مِنْ الصَّدَقَاتِ، أَيَجُوزُ أَمْ لَا؟ كَمَنْ تَصَدَّقَ بِصَدَقَةٍ لَمْ يُجْزِهَا الْمُتَصَدَّقُ عَلَيْهِ، وَكَمَنْ تَصَدَّقَ فِي وَصِيَّتِهِ عَلَى وَارِثٍ أَوْ بِأَكْثَرَ مِنْ الثُّلُثِ.

It has been established that this report contains no valid evidence regarding the disputed matters of alms - whether it is permissible or not - such as one who gives alms that the recipient does not accept, or one who designates in his will to give alms to an heir or more than one-third.

L26602 وَلَا بِمُحَرَّمٍ: كَمَنْ تَصَدَّقَ بِخَمْرٍ، أَوْ خِنْزِيرٍ.

Nor with something forbidden, such as one who gives wine or a pig in charity.

L26603 وَإِنَّمَا فِيهِ: أَنَّ الصَّدَقَةَ الْجَائِزَةَ الْمُتَقَبَّلَةَ يَبْقَى أَجْرُهَا بَعْدَ الْمَوْتِ فَقَطْ.

The ruling here is that the reward of the valid and accepted sadaqah persists exclusively after death.

L26604 فَبَطَلَ هَذَا الْقَوْلُ جُمْلَةً لِتَعَرِّيهِ مِنْ الْأَدِلَّةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

This statement has been rendered entirely invalid because it is completely stripped of evidences—and success is by Allah, the Exalted.

L26605 قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ لَمْ يَرَ الْحَبْسَ جُمْلَةً: بِمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ أَبِي عَوْنٍ - هُوَ مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ الثَّقَفِيُّ - قَالَ: قَالَ لِي شُرَيْحٌ: جَاءَ مُحَمَّدٌ بِإِطْلَاقِ - الْحَبْسِ.

Abu Muhammad said: Those who did not consider imprisonment permissible at all cited as evidence what was narrated to us through the chain of Sufyan ibn Uyaynah from Mis'ar ibn Kidam from Abu Awn—who is Muhammad ibn Ubaydullah al-Thaqafi—who said: Shuraih told me, "Muhammad introduced the release from imprisonment."

L26606 And based on what we have narrated through the chain of Sufyān ibn ʿUyaynah from ʿAṭāʾ ibn al-Sāʾib, that he heard Shurayḥ when he was asked about

someone who died and designated his house as an endowment, and he said: "There is no endowment against the obligatory shares decreed by Allah."

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ أَنَّهُ سَمِعَ شُرَيْحًا وَسُئِلَ فِيمَنْ مَاتَ وَجَعَلَ دَارِهِ حَبْسًا فَقَالَ: لَا حَبْسَ عَنْ فَرَائِضِ اللَّهِ.

L26607–26609 Ali said: This is a disconnected chain; rather, the sound view is contrary to it, which is that Muhammad - peace be upon him and his family - explicitly established the waqf in the text - as we will mention after this, if Allah the Exalted wills. How then [can this be reconciled], given that... The wording indicates that imprisonment had existed, and Muḥammad—peace and blessings be upon him and his family—came to abolish it. This claim is baseless and known with certainty, for the Arabs during their pre-Islamic era of ignorance did not recognize the imprisonment over which two parties disputed. Rather, it is a Sharīʿa term and Islamic law brought by Muḥammad—peace and blessings be upon him and his family—just as he brought prayer, zakāh, and fasting. Were it not for him (peace and blessings be upon him), we would have known nothing of these religious ordinances or others. Thus, this claim is entirely invalid.

قَالَ عَلِيٌّ: هَذَا مُنْقَطِعٌ، بَلْ الصَّحِيحُ خِلَافُهُ، وَهُوَ أَنَّ مُحَمَّدًا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَاءَ بِإِثْبَاتِ الْحَبْسِ نَصًّا - عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى - فَكَيْفَ، وَهَذَا اللَّفْظُ يَقْتَضِي أَنَّهُ قَدْ كَانَ الْحَبْسُ، وَقَدْ جَاءَ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِإِبْطَالِهِ - وَهَذَا بَاطِلٌ يُعْلَمُ بِيَقِينٍ، لِأَنَّ الْعَرَبَ لَمْ تَعْرِفْ فِي جَاهِلِيَّتِهَا الْحَبْسَ الَّذِي اخْتَلَفَا فِيهِ، إنَّمَا هُوَ اسْمٌ شَرِيعِيٌّ، وَشَرْعٌ إسْلَامِيٌّ: جَاءَ بِهِ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَمَا جَاءَ بِالصَّلَاةِ، وَالزَّكَاةِ، وَالصِّيَامِ، وَلَوْلَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا عَرَفْنَا شَيْئًا مِنْ هَذِهِ الشَّرَائِعِ، وَلَا غَيْرِهَا، فَبَطَلَ هَذَا الْكَلَامُ جُمْلَةً.

L26610 As for his statement, "There is no withholding from Allah's prescribed shares," this is a corrupt assertion, for they do not disagree about the permissibility of gifting, charity during one's lifetime, and bequests after death. All these acts negate the heirs' entitlement to what they would have inherited—had such acts not been present—according to Allah's prescribed shares. Thus, by this claim, it is necessary to invalidate every gift and every bequest, as they prevent Allah's ordained shares in inheritance.

وَأَمَّا قَوْلُهُ " لَا حَبْسَ عَنْ فَرَائِضِ اللَّهِ " فَقَوْلٌ فَاسِدٌ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي جَوَازِ الْهِبَةِ، وَالصَّدَقَةِ فِي الْحَيَاةِ، وَالْوَصِيَّةِ بَعْدَ الْمَوْتِ، وَكُلُّ هَذِهِ مُسْقِطَةٌ لِفَرَائِضِ الْوَرَثَةِ عَمَّا لَوْ لَمْ تَكُنْ فِيهِ لَوَرِثُوهُ عَلَى فَرَائِضِ اللَّهِ عَزَّ وَجَلَّ، فَيَجِبُ بِهَذَا الْقَوْلِ إبْطَالُ كُلِّ هِبَةٍ، وَكُلِّ وَصِيَّةٍ، لِأَنَّهَا مَانِعَةٌ مِنْ فَرَائِضِ اللَّهِ تَعَالَى بِالْمَوَارِيثِ.

L26611 If they say, "Are these divine legislations brought by the text?" we reply, "Imprisonment too is a divine legislation established by the text. Without such textual basis, it would not be permissible."

فَإِنْ قَالُوا: هَذِهِ شَرَائِعُ جَاءَ بِهَا النَّصُّ؟ قُلْنَا: وَالْحَبْسُ شَرِيعَةٌ جَاءَ بِهَا النَّصُّ، وَلَوْلَا ذَلِكَ لَمْ يَجُزْ.

L26612 They cited as evidence what we have narrated through the chain of Al-ʻUqaylī: narrated to us Rawḥ ibn al-Faraj, narrated to us Yaḥyā ibn Bukayr, narrated to us Ibn Lahīʻah, from his brother ʻĪsā, from ʻIkrimah, from Ibn ʻAbbās: "When Sūrah al-Nisā' was revealed, the Messenger of Allah—peace and blessings be upon him and his family—said: 'There is no imprisonment after Sūrah al-Nisā'."

وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْعُقَيْلِيِّ نا رَوْحُ بْنُ الْفَرَجِ نا يَحْيَى بْنُ بُكَيْرٍ نا ابْنُ لَهِيعَةَ عَنْ أَخِيهِ عِيسَى عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: «لَمَّا نَزَلَتْ سُورَةُ النِّسَاءِ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا حَبْسَ بَعْدَ سُورَةِ النِّسَاءِ» .

L26613 Abū Muḥammad said: This is a spurious ḥadīth, and Ibn Lahīʿah is unreliable—there is no good in him—and his brother is likewise. The evidence for its fabrication is that Sūrah al-Nisā'—or part of it—was revealed after Uḥud, that is, the inheritance verse. Moreover, the Companions were restricted by the instruction of the Messenger of Allah—peace and blessings be upon him and his family—after Khaybar and after the revelation of the inheritance rulings in Sūrah al-Nisā'.

قَالَ أَبُو مُحَمَّدٍ: هَذَا حَدِيثٌ مَوْضُوعٌ، وَابْنُ لَهِيعَةَ لَا خَيْرَ فِيهِ، وَأَخُوهُ مِثْلُهُ - وَبَيَانُ وَضْعِهِ: أَنَّ " سُورَةَ النِّسَاءِ " أَوْ بَعْضَهَا نَزَلَتْ بَعْدَ أُحُدٍ - يَعْنِي آيَةَ الْمَوَارِيثِ - وَحَبَسَ الصَّحَابَةَ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَعْدَ خَيْبَرَ وَبَعْدَ نُزُولِ الْمَوَارِيثِ فِي " سُورَةِ النِّسَاءِ ".

L26614 And this is a widely transmitted tradition through successive generations.

وَهَذَا أَمْرٌ مُتَوَاتِرٌ جِيلًا بَعْدَ جِيلٍ.

L26615 If this report were authentic, it would be abrogated by the uninterrupted detention—through his knowledge, peace and blessings be upon him—until his death.

وَلَوْ صَحَّ هَذَا الْخَبَرُ لَكَانَ مَنْسُوخًا بِاتِّصَالِ الْحَبْسِ بِعِلْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَى أَنْ مَاتَ.

L26616–26618 They also mentioned: What we have narrated via Ibn Wahb's chain—Sufyan ibn ʿUyaynah reported to us from ʿAmr ibn Dinar and from Muhammad and ʿAbdullah, the two sons of Abu Bakr ibn Muhammad ibn ʿAmr ibn Hazm—all of them from Abu Bakr ibn Muhammad, who said: "'Abdullah ibn Zayd ibn ʿAbd Rabbihi said to the Messenger of Allah—peace and blessings be upon him—'O Messenger of Allah, this walled garden of mine is charity, and it is dedicated to Allah and His Messenger.' Then his parents came and said, 'O Messenger of Allah, its maintenance was...'" The Messenger of Allah (peace and blessings be upon him) restored our livelihood. Then they both died, so their son inherited their estate.

وَذَكَرُوا أَيْضًا: مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ، وَمُحَمَّدٍ، وَعَبْدِ اللَّهِ ابْنَيْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، كُلُّهُمْ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدٍ قَالَ «إنَّ عَبْدَ اللَّهِ بْنَ زَيْدِ بْنِ عَبْدِ رَبِّهِ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا رَسُولَ اللَّهِ إنَّ حَائِطِي هَذَا صَدَقَةٌ وَهُوَ إلَى اللَّهِ وَرَسُولِهِ، فَجَاءَ أَبَوَاهُ فَقَالَا: يَا رَسُولَ اللَّهِ، كَانَ قِوَامُ عَيْشِنَا فَرَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ مَاتَا فَوَرِثَهُمَا ابْنُهُمَا»

L26619 Some of them added "mawqūfah," and this is an incorrect addition, for there is no proof for them in it due to several aspects:

زَادَ بَعْضُهُمْ " مَوْقُوفَةٌ " وَهِيَ زِيَادَةٌ غَيْرُ صَحِيحَةٍ وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -:

L26620 The first reason is that it is broken; because Abu Bakr never met Abdullah ibn Zayd.

أَوَّلُهَا - أَنَّهُ مُنْقَطِعٌ، لِأَنَّ أَبَا بَكْرٍ لَمْ يَلْقَ عَبْدَ اللَّهِ بْنَ زَيْدٍ قَطُّ.

L26621 The second is that it constitutes the essential provision for one's livelihood, and no one may give charity from the essential provision for their livelihood. Rather, it is invalid if done. Thus, this narration—if authentic—would serve as evidence for us against them, in agreement with our position and contrary to theirs, which permits charity with that which does not leave a person self-sufficient thereafter.

وَالثَّانِي - أَنَّ فِيهِ أَنَّهُ قِوَامُ عَيْشِهِمْ، وَلَيْسَ لِأَحَدٍ أَنْ يَتَصَدَّقَ بِقِوَامِ عَيْشِهِ، بَلْ هُوَ مَفْسُوخٌ إنْ فَعَلَهُ، فَهَذَا الْخَبَرُ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ وَمُوَافِقًا لِقَوْلِنَا، وَمُخَالِفًا لِقَوْلِهِمْ فِي إجَازَتِهِمْ الصَّدَقَةَ بِمَا لَا يَبْقَى لِلْمَرْءِ بَعْدَهُ غِنًى.

L26622 The third is that the term “mawqūfah” (a narration attributed to a companion, not the Prophet) has been exclusively attributed to individuals devoid of virtue.

وَالثَّالِثُ - أَنَّ لَفْظَةَ " مَوْقُوفَةٌ " إِنَّمَا انْفَرَدَ بِهَا مَنْ لَا خَيْرَ فِيهِ.

L26623 They have embellished with reports similar to this. None of them mentions the endowment (waqf). Rather, in them is “charity,” and this we do not deny.

وَمَوَّهُوا بِأَخْبَارٍ نَحْوِ هَذَا، لَيْسَ فِي شَيْءٍ مِنْهَا ذِكْرَ الْوَقْفِ، وَإِنَّمَا فِيهَا " صَدَقَةٌ " وَهَذَا لَا نُنْكِرُهُ.

L26624 And some of them said: Shurayh did not know [the ruling on] imprisonment. If this were valid, it would not be permissible to appoint as a judge someone who does not know such a matter.

وَقَالَ بَعْضُهُمْ: قَدْ كَانَ شُرَيْحٌ لَا يَعْرِفُ الْحَبْسَ - وَلَوْ كَانَ صَحِيحًا لَمْ يَجُزْ أَنْ يَسْتَقْضِيَ مَنْ لَا يَعْرِفُ مِثْلَ هَذَا.

L26625 Abu Muhammad said: If the one who said this had felt shame, it would have been better for him. Why do they not say this about every matter wherein they opposed Shurayḥ? What objection is there to Shurayḥ’s ignorance of one Sunnah and a thousand Sunnahs? By Allah, the abrogation of placing the hands together in prayer escaped Ibn Mas‘ud’s knowledge, the grandmother’s inheritance escaped Abu Bakr’s knowledge, and the obligation to take jizyah from the Zoroastrians for years and expel disbelievers from the Arabian Peninsula until the final year of his caliphate escaped ‘Umar’s knowledge. Were such matters to be traced, they would amount to more than a thousand Sunnahs that escaped the knowledge of those far greater than Shurayḥ.

قَالَ أَبُو مُحَمَّد: لَوْ اسْتَحْيَا قَائِلُ هَذَا لَكَانَ خَيْرًا لَهُ، وَهَلَّا قَالُوا هَذَا فِي كُلِّ مَا خَالَفُوا فِيهِ شُرَيْحًا، وَأَيُّ نَكِرَةٍ فِي جَهْلِ شُرَيْحٍ سُنَّةً وَأَلْفَ سُنَّةً، وَاَللَّهِ لَقَدْ غَابَ عَنْ ابْنِ مَسْعُودٍ نَسْخُ التَّطْبِيقِ، وَلَقَدْ غَابَ عَنْ أَبِي بَكْرٍ مِيرَاثُ الْجَدَّةِ، وَلَقَدْ غَابَ عَنْ عُمَرَ أَخْذُ الْجِزْيَةِ مِنْ الْمَجُوسِ سِنِينَ، وَإِجْلَاءُ الْكُفَّارِ مِنْ جَزِيرَةِ الْعَرَبِ إلَى آخِرِ عَامٍ مِنْ خِلَافَتِهِ، وَبِمِثْلِ هَذَا لَوْ تُتُبِّعَ لَبَلَغَ أَزِيدَ مِنْ أَلْفِ سُنَّةٍ غَابَتْ عَمَّنْ هُوَ أَجَلُّ مِنْ شُرَيْحٍ.

L26626 If no one were appointed as a judge except those from whom no Sunnah is hidden and from whose awareness no Quranic ruling ever absents itself—even for an hour of their life—then none after the Messenger of Allah (peace be upon him) could have attained full competence, issued a judgment, or given a legal ruling. Yet those who are ignorant are excused, and those who are knowledgeable are envied.

وَلَوْ لَمْ يُسْتَقْضَ إلَّا مَنْ لَا تَخْفَى عَلَيْهِ سُنَّةٌ، وَلَا تَغِيبُ عَنْ ذِكْرِهِ سَاعَةً مِنْ دَهْرِهِ حُكْمٌ مِنْ أَحْكَامِ الْقُرْآنِ -: مَا اسْتَقْصَى أَحَدٌ، وَلَا قَضَى وَلَا أَفْتَى: أَحَدٌ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكِنْ مَنْ جَهِلَ عُذِرَ وَمِنْ عَلِمَ غُبِطَ.

L26627 They said: If charity involves proceeds that are the objective of the endowment, selling them is permissible; thus this ruling is more appropriate in principle.

وَقَالُوا: الصَّدَقَةُ بِالثَّمَرَةِ الَّتِي هِيَ الْغَرَضُ مِنْ الْحَبْسِ يَجُوزُ فِيهَا الْبَيْعُ، فَذَلِكَ فِي الْأَصْلِ أَوْلَى.

L26628 Ali said: This is analogy, and all analogy is invalid. Moreover, it is a corrupt analogy, for the textual ruling establishes a distinction between them, as we will clarify—God Almighty willing—regarding the endowment and retention

قَالَ عَلِيٌّ: هَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ هُوَ قِيَاسٌ فَاسِدٌ، لِأَنَّ النَّصَّ وَرَدَ بِالْفَرْقِ بَيْنَهُمَا كَمَا نَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى مِنْ إيقَافِ الْأَصْلِ وَحَبْسِهِ وَتَسْبِيلِ الثَّمَرَةِ،

of the principal asset and the charitable dedication of its usufruct. Thus, this constitutes an objection from them against the Messenger of God—peace and blessings be upon him—not against others, and these people are contemptible.

فَهَذَا اعْتِرَاضٌ مِنْهُمْ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا عَلَى غَيْرِهِ، وَالْقَوْمُ مَخَاذِيلُ.

L26629–26630 They said: Since endowments are transferred out of ownership to someone other than the owner, this becomes invalid, analogous to one who states: "I have withdrawn my house from my ownership."

وَقَالُوا: لَمَّا كَانَتْ الْأَحْبَاسُ تُخْرَجُ إلَى غَيْرِ مَالِكٍ: بَطَلَ ذَلِكَ، كَمَنْ قَالَ: أَخْرَجْتُ دَارِي عَنْ مِلْكِي.

L26631 Abu Muhammad said: These are whispered temptations, for detention is not a transfer to a non-owner, but rather for the sake of the Owner—who is Allah, the Exalted—akin to the manumission of a slave, with no distinction.

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ وَسَاوِسُ، لِأَنَّ الْحَبْسَ لَيْسَ إخْرَاجًا إلَى غَيْرِ مَالِك، بَلْ إلَى أَجْلِ الْمَالِكِينَ - وَهُوَ اللَّهُ تَعَالَى - كَعِتْقِ الْعَبْدِ وَلَا فَرْقَ.

L26632 Then they contradicted themselves by permitting the endowment of mosques and cemeteries while transferring both to a non-owner. They allowed establishing endowments after death in their most well-known opinions. At this point, they clarified their position by stating: "The mosque constitutes a transfer to those who pray within it."

ثُمَّ قَدْ تَنَاقَضُوا فَأَجَازُوا تَحْبِيسَ الْمَسْجِدِ، وَالْمَقْبَرَةِ، وَإِخْرَاجَهُمَا إلَى غَيْرِ مَالِكٍ، وَأَجَازُوا الْحَبْسَ بَعْدَ الْمَوْتِ فِي أَشْهَرِ أَقْوَالِهِمْ، فَبَلَّحُوا عِنْدَ هَذِهِ فَقَالُوا: الْمَسْجِدُ إخْرَاجٌ إلَى الْمُصَلِّينَ فِيهِ.

L26633 So we said: You are mistaken, for they do not thereby own it, and their prayer therein is like their prayer on their path in an owned open space - there is no distinction.

فَقُلْنَا: كَذَبْتُمْ، لِأَنَّهُمْ لَا يَمْلِكُونَ بِذَلِكَ، وَصَلَاتُهُمْ فِيهِ كَصَلَاتِهِمْ فِي طَرِيقِهِمْ فِي فَضَاءٍ مُتَمَلَّكٍ وَلَا فَرْقَ.

L26634 They said: "It has indeed exited my ownership to a non-owner, with no distinction, because this statement is analogous to the endowment in your school's framework during life. Thus, its analogy must apply upon death, with no difference."

وَقَالُوا: إنَّمَا خَرَجَتْ عَنْ مِلْكِي إلَى غَيْرِ مَالِكٍ وَلَا فَرْقَ، لِأَنَّ هَذَا الْقَوْلُ نَظِيرُ الْحَبْسِ عِنْدَكُمْ فِي الْحَيَاةِ، فَوَجَبَ أَنْ يَكُونَ نَظِيرُهُ فِي الْمَوْتِ وَلَا فَرْقَ.

L26635 They said: Since alms are not valid unless they are taken into possession, and because the religious endowment (waqf) has no owner, it must be nullified.

وَقَالُوا: لَمَّا كَانَتْ الصَّدَقَاتُ لَا تَجُوزُ إلَّا حَتَّى تُحَازَ، وَكَانَ الْحَبْسُ لَا مَالِكَ لَهُ: وَجَبَ أَنْ يَبْطُلَ.

L26636 So we said: This is arguing for an error with another error, and we have invalidated your claim that charity is not valid until it is taken possession of. We clarified that this was an opinion from 'Umar and 'Uthmān—may Allah be pleased with them—which others such as Ibn Mas'ūd and 'Alī—may Allah be pleased with them—opposed them in it. How can this be, when the endowment is transferred to the possession of Allah, the Exalted and

فَقُلْنَا: هَذَا احْتِجَاجٌ لِلْخَطَأِ بِالْخَطَأِ، وَقَدْ أَبْطَلْنَا قَوْلَكُمْ: أَنَّ الصَّدَقَةَ لَا تَصِحُّ حَتَّى تُقْبَضَ، وَبَيَّنَّا أَنَّهُ رَأْيٌ مِنْ عُمَرَ، وَعُثْمَانَ - رَضِيَ اللَّهُ عَنْهُمَا - قَدْ خَالَفَهُمَا غَيْرُهُمَا فِيهِ، كَابْنِ

مَسْعُودٍ، وَعَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا -، فَكَيْفَ وَالْحَبْسُ خَارِجٌ إلَى قَبْضِ اللَّهِ عَزَّ وَجَلَّ لَهُ، الَّذِي هُوَ وَارِثُ الْأَرْضِ وَمَنْ عَلَيْهَا وَكُلُّ شَيْءٍ بِيَدِهِ وَفِي قَبْضَتِهِ.

Glorious, who is the Inheritor of the earth and all upon it, and everything is in His hand and under His grasp?

وَقَدْ أَجَازَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَدَقَةَ أَبِي طَلْحَةَ لِلَّهِ تَعَالَى دُونَ أَنْ يَذْكُرَ مُتَصَدَّقًا عَلَيْهِ، ثُمَّ أَمَرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يَجْعَلَهَا فِي أَقَارِبِهِ وَبَنِي عَمِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26637 The Messenger of Allah—peace and blessings be upon him—approved Abu Talhah's charity to Allah the Exalted without specifying a recipient. Then he—peace and blessings be upon him—commanded him to allocate it to his relatives and the sons of his paternal uncles. With Allah the Exalted lies all success.

وَمِنْ عَجَائِبِ الدُّنْيَا الْمُخْزِيَةِ لَهُمْ: احْتِجَاجُهُمْ فِي هَذَا بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَاقَ الْهَدْيَ فِي الْحُدَيْبِيَةِ وَقَلَّدَهَا، وَهَذَا يَقْتَضِي إيجَابَهُ لَهُ، ثُمَّ صَرَفَهَا عَمَّا أَوْجَبَهَا لَهُ وَجَعَلَهَا لِلْإِحْصَارِ، وَلِذَلِكَ أَبْدَلَهَا عَامًا ثَانِيًا.

L26638 Among the shameful marvels for them is their argument in this matter: that the Messenger of Allah—peace and blessings be upon him—led the sacrificial animal at Ḥudaybiyyah and garlanded it, which would necessitate making it obligatory upon him. Then he diverted it from what he had made obligatory upon himself and designated it for prevention from completing the pilgrimage. For that reason, he substituted it in the following year.

قَالَ أَبُو مُحَمَّد: أَوَّلُ ذَلِكَ كَذِبُهُمْ فِي قَوْلِهِمْ، وَهَذَا يَقْتَضِي إيجَابَهُ لَهُ وَمَا اقْتَضَى ذَلِكَ قَطُّ إيجَابَهُ، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَنُصَّ عَلَى أَنَّهُ صَارَ التَّطَوُّعُ بِذَلِكَ وَاجِبًا، بَلْ أَبَاحَ رُكُوبَ الْبَدَنَةِ الْمُقَلَّدَةِ.

L26639–26641 Abu Muhammad said: The first of that is their falsehood in their statements, and this necessitates imposing its obligation upon him and what it necessitates. That is by no means an obligation, because the Prophet (peace and blessings be upon him) did not explicitly state that voluntary worship thereby becomes obligatory; rather, he permitted riding the sacrificial camel marked with a garland.

وَمِنْ الْمُحَالِ أَنْ تَكُونَ وَاجِبَةً لِوَجْهٍ مَا خَارِجَةً بِذَلِكَ عَنْ مَالِهِ بَاقِيَةً فِي مَالِهِ.

L26642 It is impossible for the obligation to be obligatory in any respect, thereby separating it from his wealth while remaining within his wealth.

ثُمَّ كَذَبُوا فِي قَوْلِهِمْ: إنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَبْدَلَهُ مِنْ قَابِلٍ.

L26643 Then they lied by claiming that he—peace and blessings be upon him—had replaced it in the following year.

فَمَا صَحَّ هَذَا قَطُّ.

L26644 Thus, this was never authentic.

وَمِنْ الْمُحَالِ أَنْ يُبَدِّلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هَدْيًا وَضَعَهُ فِي حَقٍّ فِي وَاجِبٍ ثُمَّ أَيُّ شَبَهٍ بَيْنَ هَدْيٍ تَطَوُّعٍ يُنْحَرُ عَنْ وَاجِبٍ فِي الْإِحْصَارِ عَنْ أَصْحَابِهِ، وَعَنْ نَفْسِهِ الْمُقَدَّسَةِ فِي حَبْسٍ.

L26645 It is inconceivable that he—peace and blessings be upon him—would alter a sacrificial rite he established as an obligatory duty. Furthermore, what resemblance could exist between a voluntary sacrifice offered **for** his companions to fulfill an obligation **due to** their prevention, and a sacrifice offered **for** his sacred self in confinement?

L26646 Is he not ashamed, given the extent of his knowledge and intellect, to speak about the religion of Allah the Almighty and Majestic?

أَمَا يَسْتَحْيِي مِنْ هَذَا مِقْدَارَ عِلْمِهِ وَعَقْلِهِ أَنْ يَتَكَلَّمَ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ.

L26647 Then we say to them: You assert that he may establish an endowment (ḥabs) and subsequently retract it, and you have analogized this to the aforementioned sacrificial offering. Inform us: Does he retain the right to retract the sacrificial offering after obligating it and sell it in this manner without any cause, or not? If they respond "No," we reply: This contradicts your position regarding the endowment, since you permit retracting it without cause, thereby exposing the fallacy of your invalid and baseless analogy. We further ask them: Why did you not classify it under deferred manumission (tadbīr), which you deem irrevocable? Or why did you not analogize your ruling on deferred manumission to your ruling on the endowment? But Allah the Exalted has decreed for you nothing but opposition to the truth in both matters.

ثُمَّ نَقُولُ لَهُمْ: أَنْتُمْ تَقُولُونَ: إِنَّ لَهُ أَنْ يَحْبِسَ ثُمَّ يَفْسَخَهُ، وَقِسْتُمُوهُ عَلَى الْهَدْيِ الْمَذْكُورِ، فَأَخْبِرُونَا: هَلْ لَهُ رُجُوعٌ فِي الْهَدْيِ بَعْدَ أَنْ يُوجِبَهُ فَيَبِيعَهُ هَكَذَا بِلَا سَبَبٍ أَمْ لَا؟ فَمِنْ قَوْلِهِمْ: لَا، فَنَقُولُ لَهُمْ: فَهَذَا خِلَافُ قَوْلِكُمْ فِي الْحَبْسِ إِذْ أَجَزْتُمُ الرُّجُوعَ فِيهِ بِلَا سَبَبٍ، وَظَهَرَ هَوَسُ قِيَاسِكُمُ الْفَاسِدِ الْبَارِدِ، وَيُقَالُ لَهُمْ: هَلَّا قَسَّمْتُمُوهُ عَلَى التَّدْبِيرِ الَّذِي لَا يَجُوزُ فِيهِ الرُّجُوعُ عِنْدَكُمْ، أَوْ هَلَّا قِسْتُمْ قَوْلَكُمْ فِي التَّدْبِيرِ عَلَى قَوْلِكُمْ فِي الْحَبْسِ، لَكِنْ أَبَى اللَّهُ تَعَالَى لَكُمْ إِلَّا خِلَافَ الْحَقِّ فِي كِلَا الْوَجْهَيْنِ.

L26648 Abu Muhammad said: All of this constitutes the argument of those who categorically reject endowments. As for Abu Hanifah's position, all of this contradicts his view, for he permits the endowment, then permits its revocation by the endower and his heirs after him, while also permitting its implementation. This is unreasonable. They neglected their own evidence from the principle "A Muslim is bound by his stipulations" and the Quranic injunction {Fulfill [your] contracts} [al-Mā'idah 5:1].[9]

قَالَ أَبُو مُحَمَّد: وَكُلُّ هَذَا فَإِنَّمَا مِنْ احْتِجَاجِ مَنْ لَا يَرَى الْحَبْسَ جُمْلَةً وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَكُلُّ هَذَا خِلَافٌ لَهُ، لِأَنَّهُ يُجِيزُ الْحَبْسَ، ثُمَّ يُجِيزُ نَقْضَهُ الْمُحْبَسَ، وَلِوَرَثَتِهِ بَعْدَهُ، وَيُجِيزُ إِمْضَاءَهُ وَهَذَا لَا يُعْقَلُ، وَنَسُوا احْتِجَاجَهُمْ بِ «الْمُسْلِمِ عِنْدَ شَرْطِهِ» وَ {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] .

L26649–26651 Abū Muḥammad said: Since all these statements have been invalidated, let us present the evidence for the correctness of our view—by the ability and power of Allah, the Exalted. It has been narrated to us through the chain of al-Bukhārī: from Musaddad, from Yazīd ibn Zurai', from Ibn 'Awn, from Nāfi', from 'Umar, who said: "'Umar acquired land in Khaybar and came to the Prophet—peace and blessings be upon him—and said: 'I have acquired land unlike any property I have ever owned in value. What do you command me to do with it?' He replied: 'If you wish, you may withhold its principal and donate it as a waqf.' So he endowed it as a waqf." Umar: "That its corpus cannot be sold."

قَالَ أَبُو مُحَمَّد: فَإِذْ قَدْ بَطَلَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا فَلْنَذْكُرْ الْبُرْهَانَ عَلَى صِحَّةِ قَوْلِنَا بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ -: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ نا يَزِيدُ بْنُ زُرَيْعٍ نا ابْنُ عَوْنٍ عَنْ نَافِعٍ عَنْ عُمَرَ قَالَ «أَصَابَ عُمَرُ أَرْضًا بِخَيْبَرَ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ: أَصَبْتُ أَرْضًا لَمْ أُصِبْ قَطُّ مَالًا أَنْفَسَ مِنْهُ فَكَيْفَ تَأْمُرُ بِهِ؟ فَقَالَ: إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا فَتَصَدَّقَ بِهَا عُمَرُ: أَنَّهُ لَا يُبَاعُ أَصْلُهَا»

[9] **Qur'an references (L26648):** Qur'an 5:1 (Al-Ma'idah).

وَلَا تُورَثُ -: فِي الْفُقَرَاءِ وَالْقُرْبَى، وَالرِّقَابِ، وَفِي سَبِيلِ اللَّهِ، وَالضَّيْفِ، وَابْنِ السَّبِيلِ، لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ، أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ ".

L26652 It is not inherited—for the poor, close relatives, slaves, in the cause of Allah, guests, and wayfarers. The administrator incurs no blame for consuming from it fairly or feeding a companion without hoarding it.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا سَعِيدُ بْنُ عَبْدِ الرَّحْمَنِ الْمَكِّيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ «قَالَ عُمَرُ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ الْمِائَةَ سَهْمٍ الَّتِي بِخَيْبَرَ لَمْ أُصِبْ مَالًا قَطُّ هُوَ أَعْجَبُ إِلَيَّ مِنْهَا، وَقَدْ أَرَدْتُ أَنْ أَتَصَدَّقَ بِهَا فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - احْبِسْ أَصْلَهَا وَسَبِّلْ ثَمَرَتَهَا» .

L26653 From the path of Ahmad ibn Shu'ayb: Sa'id ibn 'Abd al-Rahman al-Makki narrated to us, from Sufyan ibn 'Uyaynah, from 'Ubayd Allah ibn 'Umar, from Nafi', from Ibn 'Umar, who said: "Umar said to the Prophet (peace and blessings of Allah be upon him), 'The one hundred shares in Khaybar—I have never acquired any wealth dearer to me than them, and I intended to give them as ṣadaqah.' The Prophet (peace and blessings of Allah be upon him) said to him: 'Retain its principal and endow its yield as charity.'"

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ حَامِدِ بْنِ يَحْيَى الْبَلْخِيِّ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ مِثْلُهُ وَفِيهِ «احْبِسِ الْأَصْلَ وَسَبِّلِ الثَّمَرَةَ» .

L26654 And we have also narrated it through the chain of Ḥāmid ibn Yaḥyā al-Balkhī, from Sufyān ibn ʿUyaynah, from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar: a similar narration, and in it is "Retain the principal and dedicate the proceeds as charity in perpetuity."

وَحَبَسَ عُثْمَانُ بِئْرَ رُومَةَ عَلَى الْمُسْلِمِينَ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَنْقُلُ ذَلِكَ الْخَلَفُ عَنِ السَّلَفِ، جِيلًا بَعْدَ جِيلٍ، وَهِيَ مَشْهُورَةٌ بِالْمَدِينَةِ.

L26655 Uthman restricted access to the Well of Ruma for the Muslims with the knowledge of the Messenger of Allah (peace and blessings be upon him and his family), as later generations transmit this from earlier ones, generation after generation—and it is famous in Medina.

وَكَذَلِكَ صَدَقَاتُهُ - عَلَيْهِ السَّلَامُ - بِالْمَدِينَةِ مَشْهُورَةٌ كَذَلِكَ.

L26656 Similarly, his charitable acts—peace be upon him—in Medina are similarly well-known.

وَقَدْ تَصَدَّقَ عُمَرُ فِي خِلَافَتِهِ بِثَمْغٍ، وَهِيَ عَلَى نَحْوِ مِيلٍ مِنَ الْمَدِينَةِ وَتَصَدَّقَ بِمَالِهِ وَكَانَ يَغُلُّ مِائَةَ وَسْقٍ بِوَادِي الْقُرَى كُلُّ ذَلِكَ حَبْسًا، وَقْفًا، لَا يُبَاعُ وَلَا يُشْتَرَى، أَسْنَدَهُ إِلَى حَفْصَةَ، ثُمَّ إِلَى ذَوِي الرَّأْيِ مِنْ أَهْلِهِ.

L26657 During his caliphate, 'Umar donated Thamgh - located approximately one mile from Medina - and his wealth in Wadi al-Qura, which produced a yield of one hundred wasqs. All of this was designated ḥabs (endowment) and waqf (perpetual trust), neither to be sold nor purchased. He entrusted its administration first to Ḥafṣa, then to those of sound judgment among his household.

وَحَبَسَ عُثْمَانُ، وَطَلْحَةُ، وَالزُّبَيْرُ، وَعَلِيُّ بْنُ أَبِي طَالِبٍ، وَعَمْرُو بْنُ الْعَاصِ: دُورَهُمْ عَلَى بَنِيهِمْ، وَضَيَاعًا مَوْقُوفَةً.

L26658 Uthman, Talhah, al-Zubayr, Ali ibn Abi Talib, and Amr ibn al-'Aṣ endowed their estates for their sons and designated their agricultural lands as waqf.

L26659–26660 Similarly, Ibn Umar, Fatimah the daughter of the Prophet—peace and bless-

ings be upon him and his family—and the rest of the Companions: the entirety of their charitable deeds in Medina are more renowned than the sun. No one is unaware of them.

وَكَذَلِكَ ابْنُ عُمَرَ، وَفَاطِمَةُ بِنْتُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَسَائِرِ الصَّحَابَةِ جُمْلَةُ صَدَقَاتِهِمْ بِالْمَدِينَةِ أَشْهَرُ مِنْ الشَّمْسِ، لَا يَجْهَلُهَا أَحَدٌ.

L26661 Abdullah ibn Amr ibn al-As established al-Waḥṭ as a waqf for his sons.

وَأَوْقَفَ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ " الْوَهْطَ " عَلَى بَنِيهِ.

L26662 We have abbreviated the chains of narration due to the renown of the matter.

اخْتَصَرْنَا الْأَسَانِيدَ لِاشْتِهَارِ الْأَمْرِ.

L26663 And via the transmission of Muslim: Zuhayr ibn Harb narrated to us, Ali ibn Hafs narrated to us, Warqa' narrated from Abu al-Zinad from al-A'raj from Abu Hurayrah, as part of a ḥadīth, that the Messenger of Allah (may Allah bless him and his family and grant him peace) said: "As for Khalid, he has reserved his armor and military equipment in the way of Allah."

وَمِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا عَلِيُّ بْنُ حَفْصٍ نا وَرْقَاءُ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «وَأَمَّا خَالِدٌ فَقَدْ احْتَبَسَ أَدْرَاعَهُ وَأَعْتَادَهُ فِي سَبِيلِ اللَّهِ» فِي حَدِيثٍ.

L26664 From the chain of Muḥammad ibn Bakr al-Baṣrī: Abū Dāwūd narrated to us, al-Ḥasan ibn al-Ṣabbāḥ narrated to us, Shabābah (he is Ibn Sawwār) narrated to us, from Warqāʾ, from Abū al-Zinād, from al-Aʿraj, from Abū Hurayrah, who said: The Prophet—peace and blessings of Allah be upon him and his family—said, "As for Khālid, he has reserved his suits of armor and his slaves in the cause of Allah," in a hadith.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ بَكْرٍ الْبَصْرِيِّ نا أَبُو دَاوُد نا الْحَسَنُ بْنُ الصَّبَّاحِ نا شَبَابَةُ - هُوَ ابْنُ سَوَّارٍ - عَنْ وَرْقَاءَ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ " قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «وَأَمَّا خَالِدٌ فَقَدْ احْتَبَسَ أَدْرَاعَهُ وَأَعْبُدَهُ فِي سَبِيلِ اللَّهِ» فِي حَدِيثٍ.

L26665 Abu Muhammad said: Al-aʿtād is the plural of ʿatīdin – which means "horse" – the speaker said.

قَالَ أَبُو مُحَمَّدٍ: الْأَعْتَادُ جَمْعُ عَتِدٍ - وَهُوَ الْفَرَسُ - قَالَ الْقَائِلُ

L26666 Their insights lie upon their shoulders... while my insight races with preparedness and woe.

رَاحُوا بَصَائِرُهُمْ عَلَى أَكْتَافِهِمْ ... وَبَصِيرَتِي تَعْدُو بِهَا عَتِدٌ وَأَى

L26667 Al-Aʿbudu is the plural of ʿabd, and both terms are correct. It is therefore impermissible to restrict usage to one of them while excluding the other.

وَالْأَعْبُدُ جَمْعُ عَبْدٍ، وَكِلَا اللَّفْظَيْنِ صَحِيحٌ، فَلَا يَجُوزُ الِاقْتِصَارُ عَلَى أَحَدِهِمَا دُونَ الْآخَرِ

L26668 From the chain of Muslim: From Qutaybah ibn Saʿīd, from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Mālik ibn Aws ibn al-Ḥadathān, from ʿUmar ibn al-Khaṭṭāb, who said: "The Messenger of Allah (may Allah bless him and grant him peace) used to spend on his family a year's provision, and whatever remained, he would place in horses and weaponry for the cause of Allah, the Almighty and Majestic."

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُنْفِقُ عَلَى أَهْلِهِ قُوتَ سَنَةٍ وَمَا بَقِيَ يَجْعَلُهُ فِي الْكُرَاعِ وَالسِّلَاحِ فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ» .

الْكُرَاعُ: الْخَيْلُ فَقَطْ.

L26669 Al-Kurāʿ: horses exclusively.

وَالسِّلَاحُ فِي لُغَةِ الْعَرَبِ: السُّيُوفُ، وَالرِّمَاحُ، وَالْقِسِيُّ، وَالنَّبْلُ، وَالدُّرُوعُ، وَالْجَوَاشِنُ، وَمَا يُدَافَعُ بِهِ: كَالطَّبَرْزِينِ، وَالدَّبُّوسِ، وَالْخِنْجَرِ، وَالسَّيْفِ بِحَدٍّ وَاحِدٍ، وَالدَّرَقِ، وَالتِّرَاسِ.

L26670 In the Arabic language, “weapons” (al-silāḥ) encompass swords, spears, bows, arrows, shields, chainmail, and tools used for defense: such as curved war axes, maces, daggers, single-edged swords, small round shields, and large shields.

وَلَا يَقَعُ اسْمُ السِّلَاحِ عَلَى سَرْجٍ، وَلَا لِجَامٍ، وَلَا مِهْمَازٍ.

L26671–26672 The name “weapon” does not apply to a saddle, a bridle, or a spur.

وَكَانَ - عَلَيْهِ السَّلَامُ - يَكْتُبُ إلَى الْوُلَاةِ وَالْأَشْرَافِ إذَا أَسْلَمُوا بِكُتُبٍ فِيهَا السُّنَنُ وَالْقُرْآنُ بِلَا شَكٍّ، فَتِلْكَ الصُّحُفُ لَا يَجُوزُ تَمَلُّكُهَا لِأَحَدٍ، لَكِنَّهَا لِلْمُسْلِمِينَ كَافَّةً يَتَدَارَسُونَهَا مَوْقُوفَةً لِذَلِكَ، فَهَذَا هُوَ الَّذِي يَجُوزُ فِيهِ الْحَبْسُ فَقَطْ، وَأَمَّا مَا لَمْ يَأْتِ فِيهِ نَصٌّ فَلَا يَجُوزُ تَحْبِيسُهُ لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26673 He (peace be upon him) would write to governors and nobles upon their acceptance of Islam, sending them writings containing the Sunnah and the Quran without doubt. These writings may not be owned by any individual; rather, they belong to all Muslims collectively as a *waqf* endowed for that purpose. Therefore, *ḥabs* is permissible only in this specific case. As for matters not explicitly addressed by a textual ruling, endowing them as *ḥabs* is impermissible due to the reasons we have mentioned—and with Allah, the Most High, lies all success.

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُ مَنْ لَا يَتَّقِي اللَّهَ تَعَالَى: أَنَّ صَدَقَةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إنَّمَا جَازَتْ لِأَنَّهُ كَانَ لَا يُورَثُ وَأَنَّ صَدَقَاتِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إنَّمَا جَازَتْ لِأَنَّ الْوَرَثَةَ لَمْ يَرُدُّوهَا، وَأَنَّ يُونُسَ بْنَ عَبْدِ الْأَعْلَى رُوِيَ عَنْ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنْ زِيَادِ بْنِ سَعْدٍ عَنْ الزُّهْرِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: لَوْلَا أَنِّي ذَكَرْتُ صَدَقَتِي لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَرَدَدْتُهَا

L26674 Among the wonders of this world is the claim made by those who lack piety toward Allah Almighty—that the charity of Allah’s Messenger (peace be upon him and his family) was only permissible because he could not be inherited from, and that the charities of the Companions (may Allah be pleased with them) were only permissible because the heirs did not object to them. It was narrated by Yunus ibn ʿAbd al-Aʿlā from Ibn Wahb, from Mālik, from Ziyād ibn Saʿd, from al-Zuhrī, that ʿUmar ibn al-Khaṭṭāb said: “Had I not mentioned my charity to Allah’s Messenger (peace be upon him and his family), I would have reclaimed it.”

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُهُمْ إنَّ صَدَقَةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا جَازَتْ؛ لِأَنَّهُ لَا يُورَثُ - فَقَدْ كَذَبُوا؛ بَلْ لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - جَعَلَهَا صَدَقَةً، فَلِذَلِكَ صَارَتْ صَدَقَةً هَكَذَا -: رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا يُوسُفُ بْنُ عَدِيٍّ نا أَبُو الْأَحْوَصِ - هُوَ سَلَّامُ بْنُ سُلَيْمٍ - عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَمْرِو بْنِ

L26675 Abū Muḥammad said: As for their statement that the charity of the Messenger of Allāh—peace and blessings of Allāh be upon him—was permissible solely because he is not inherited from, they have lied. Rather, it is because he—peace and blessings of Allāh be upon him—designated it as a charitable endowment, and thus it became a charitable endowment in this manner. We have been narrated through the chain of Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Yūsuf ibn ʿAdiyy, from Abū al-Aḥwaṣ—who is Sallām ibn Su-

laym—from Abū Isḥāq al-Sabīʿī, from ʿAmr ibn al-Ḥārith—the brother of Juwayriyah, the Mother of the Believers—who said: "The Messenger of Allāh—peace and blessings of Allāh be upon him—left no dinar, dirham, male slave, or female slave, except his white she-mule and a piece of land he designated as a charitable endowment."

الْحَارِثِ - هُوَ أَخُو جُوَيْرِيَةَ أُمِّ الْمُؤْمِنِينَ - قَالَ «مَا تَرَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دِينَارًا، وَلَا دِرْهَمًا، وَلَا عَبْدًا، وَلَا أَمَةً، إِلَّا بَغْلَتَهُ الْبَيْضَاءَ، وَأَرْضًا جَعَلَهَا صَدَقَةً» .

L26676 As for his statement that he—peace and blessings be upon him—was not inherited: then yes, and this does not obligate giving his land as charity; rather, it should be sold and the proceeds given as charity. Thus, the invalidity of their statement has become evident.

وَأَمَّا قَوْلُه: إنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُورَثْ - فَنَعَمْ، وَهَذَا لَا يُوجِبُ الصَّدَقَةَ بِأَرْضِهِ، بَلْ تُبَاعُ فَيُتَصَدَّقُ بِالثَّمَنِ -: فَظَهَرَ فَسَادُ قَوْلِهِمْ.

L26677 As for their claim that the endowments of the Companions—may Allah be pleased with them—were permissible solely because the legal inheritors approved them, they have lied. Indeed, ʿUmar left his two sons Zayd and his sister while the two sons were very young, as did ʿUthmān, ʿAlī, and others. If endowments were impermissible, it would not have been lawful to leave the minors' shares to persist as endowments.

وَأَمَّا قَوْلُهُمْ: إنَّمَا جَازَتْ صَدَقَاتُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؛ لِأَنَّ الْوَرَثَةَ أَجَازُوهَا - فَقَدْ كَذَبُوا، وَلَقَدْ تَرَكَ عُمَرُ ابْنَيْهِ زَيْدًا وَأُخْتَه صَغِيرَيْنِ جِدًّا، وَكَذَلِكَ عُثْمَانُ، وَعَلِيٌّ، وَغَيْرُهُمْ، فَلَوْ كَانَ الْحَبْسُ غَيْرَ جَائِزٍ لَمَا حَلَّ تَرْكُ أَنْصِبَاءِ الصِّغَارِ تَمْضِي حَبْسًا.

L26678–26680 As for the report they attributed to Mālik—it is rejected, a calamity of calamities, and undoubtedly a lie. We do not know who transmitted it from Yūnus, nor is it recognized among Mālik's narrations. Suppose, for argument's sake, we heard it from al-Zuhrī... Since it was necessary to be occupied with this matter, we conclusively state that he heard it from those in whom there is no good, such as Sulaymān ibn Arqam and his ilk.

وَأَمَّا الْخَبَرُ الَّذِي ذَكَرُوهُ عَنْ مَالِكٍ - فَمُنْكَرٌ وَبَلِيَّةٌ مِنْ الْبَلَايَا، وَكَذِبٌ بِلَا شَكٍّ، وَلَا نَدْرِي مَنْ رَوَاهُ عَنْ يُونُسَ وَلَا هُوَ مَعْرُوفٌ مِنْ حَدِيثِ مَالِكٍ وَهَبْكَ لَوْ سَمِعْنَاهُ مِنْ الزُّهْرِيِّ لَمَا وَجَبَ أَنْ يُتَشَاغَلَ بِهِ وَلَقَطَعْنَا بِأَنَّهُ سَمِعَهُ مِمَّنْ لَا خَيْرَ فِيهِ، كَسُلَيْمَانَ بْنِ أَرْقَمَ، وَضُرَبَائِهِ.

L26681 We declare and affirm with certainty that ʿUmar—may Allah be pleased with him—did not regret accepting the command of Allah's Messenger—peace be upon him—nor the choice the Prophet made for him regarding immobilizing his land as an endowment and allocating its yield for public benefit. Allah the Exalted says: "It is not for any believing man or woman—when Allah and His Messenger have decreed a matter—to have any choice in their affair." [al-Aḥzāb: 36].[10]

وَنَحْنُ نَبُتُّ وَنَقْطَعُ بِأَنَّ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَنْدَمْ عَلَى قَبُولِهِ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا اخْتَارَهُ لَهُ فِي تَحْبِيسِ أَرْضِهِ وَتَسْبِيلِ ثَمَرَتِهَا وَاَللَّهُ تَعَالَى يَقُولُ: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] .

L26682 I wish I knew to what purpose 'Umar would have directed that charity had he

وَلَيْتَ شِعْرِي إلَى أَيِّ شَيْءٍ كَانَ يَصْرِفُ عُمَرُ تِلْكَ الصَّدَقَةَ لَوْ تَرَكَ مَا أَمَرَهُ بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهَا.

[10] **Qur'an references (L26681):** Qur'an 33:36 (Al-Ahzab).

abandoned what the Prophet (peace and blessings be upon him) commanded him regarding it.

L26683 Far be it from Umar for this.

L26684 They compounded a calamity by likening this to the regret of Abdullah ibn Amr ibn al-As when he failed to accept the command of the Messenger of Allah (peace and blessings be upon him) concerning fasting three days each month.

L26685 Abū Muḥammad said: I wish I knew—where have their intellects gone? Does ʻAbdullāh regret anything except what truly deserves regret: his abandonment of the matter which the Messenger of Allah—may Allah bless him and his family and grant him peace—first advised him, while he adhered to the final counsel? This contradicts their attribution to ʻUmar—through those whom Allah has not blessed in their lineage—of his outright aversion to the Messenger of Allah's command. We do not know to what end? Thus, the falsehood of these deprived ones' claims has become utterly clear—and all praise belongs to Allah.

L26686 As for our statement: It is permissible for a person to dedicate as a charitable endowment for himself and for whomever he wills, based on the Prophet's saying—may Allah bless him and his family and grant him peace—: "Begin with yourself and then give charity to her [yourself]."

L26687 He said to Umar, "Give the fruit as charity." Thus, this confirms the permissibility of giving charity for himself and for whomever he wishes (and this is the opinion of Abu Yusuf and others), and success is by Allah, the Most High.

L26688 An issue: Relinquishing possession does not invalidate the restricted holding [of property].

L26689 Issue 1655: Failure to take possession does not invalidate the waqf. If the endower utilizes it without having dedicated it as a public endowment (sabil) for himself, he remains liable for it - equivalent to usurpation. This is permitted only when it preserves the endower's sufficiency. The ruling applies

حَاشَ لِعُمَرَ مِنْ هَذَا.

وَزَادُوا طَامَّةً، وَهِيَ أَنْ شَبَّهُوا هَذَا بِتَنَدُّمِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ إِذْ لَمْ يَقْبَلْ أَمْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي صَوْمِ ثَلَاثَةِ أَيَّامٍ مِنْ كُلِّ شَهْرٍ.

قَالَ أَبُو مُحَمَّدٍ: لَيْتَ شِعْرِي أَيْنَ ذَهَبَتْ عُقُولُهُمْ؟ وَهَلْ يَنْدَمُ عَبْدُ اللَّهِ إِلَّا عَلَى مَا يَحِقُّ التَّنَدُّمَ عَلَيْهِ مِنْ تَرْكِهِ الْأَمْرَ الَّذِي أَشَارَ بِهِ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوَّلَ مَرَّةٍ وَوَقَفَ عِنْدَ الْمَشُورَةِ الْأَخِيرَةِ - وَهَذَا ضِدُّ مَا نَسَبُوا إِلَى عُمَرَ مِمَّا وَضَعَهُ عَلَيْهِ مَنْ لَا يُسْعِدُ اللَّهَ جَدُّهُ مِنْ رَغْبَتِهِ عَنْ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جُمْلَةً لَا نَدْرِي إِلَى مَاذَا؟ فَوَضَحَ فَسَادُ قَوْلِ هَؤُلَاءِ الْمَحْرُومِينَ جُمْلَةً - وَلِلَّهِ الْحَمْدُ.

وَأَمَّا قَوْلُنَا: جَائِزٌ أَنْ يُسَبِّلَ الْمَرْءُ عَلَى نَفْسِهِ وَعَلَى مَنْ شَاءَ، فَلِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «ابْدَأْ بِنَفْسِكَ فَتَصَدَّقَ عَلَيْهَا» .

وَقَالَ لِعُمَرَ «تَصَدَّقْ بِالثَّمَرَةِ» فَصَحَّ بِهَذَا جَوَازُ صَدَقَتِهِ عَلَى نَفْسِهِ، وَعَلَى مَنْ شَاءَ - وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَغَيْرُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة لَا يُبْطِلُ الْحَبْسَ تَرْكُ الْحِيَازَةِ]

١٦٥٥ - مَسْأَلَةٌ: وَلَا يُبْطِلُ الْحَبْسَ تَرْكُ الْحِيَازَةِ، فَإِنْ اسْتَغَلَّهُ الْمُحْبِسُ وَلَمْ يَكُنْ سَبَّلَهُ عَلَى نَفْسِهِ فَهُوَ مَضْمُونٌ عَلَيْهِ، كَالْغَصْبِ، وَلَا يَحِلُّ إِلَّا فِيمَا أَبْقَى غِنًى وَهُوَ جَائِزٌ فِي

to both jointly-owned and exclusive properties, whether divisible or indivisible. The evidence for this has been previously detailed in our discussion on "Gifts and Charitable Donations." All abundant praise belongs to Allah.

The issue of equality between children is an obligation in matters of imprisonment.

1656: Issue: Equal treatment among children is obligatory in ḥabs endowment, based on the Messenger of Allah's (peace be upon him) statement: "Be just among your children." If a parent designates it exclusively for some of his children, the ḥabs is valid, and all the children share in the revenue and residence alongside the specifically designated child.

The proof of this is that they are two fundamentally distinct actions based on the explicit wording of the Messenger of Allah's (peace be upon him) speech.

One of them is the immobilization of the principal asset. Through the prescribed verbal formula, this dedication is valid as an act for Allah, the Exalted, because it derives from the endower's property.

The second is endowment (waqf) and almsgiving. If inequity occurs in their administration, it is rectified, and the original property remains an endowment (ḥabs) for Allah Almighty as long as the descendants are alive. When the person designated in the endowment dies, it reverts to his successors after him, and the remaining descendants are excluded from it, because the favoritism becomes void. And success is from Allah, the Exalted.

Issue: He endows his house or land but does not designate it as a public endowment for anyone's benefit.

1657 - Issue: If someone restricts his house or land and does not dedicate it to anyone, he may dedicate the revenue to whomever he wishes for as long as he lives, in accordance with the saying of the Messenger of Allah—may Allah bless him and his family and grant him peace—"Dedicate the produce." He retains this right for as long as he lives. If he dies without doing so, the

الْمُشَاعِ وَغَيْرِ الْمُشَاعِ - فِيمَا يَنْقَسِمُ وَفِيمَا لَا يَنْقَسِمُ - وَالْحُجَّةُ فِي ذَلِكَ قَدْ ذَكَرْنَاهَا فِي كَلَامِنَا فِي " الْهِبَاتِ وَالصَّدَقَاتِ " وَلِلَّهِ الْحَمْدُ كَثِيرًا.

[مَسْأَلَةُ التَّسْوِيَةُ بَيْنَ الْوَلَدِ فَرْضٌ فِي الْحَبْسِ]

١٦٥٦ - مَسْأَلَةٌ: وَالتَّسْوِيَةُ بَيْنَ الْوَلَدِ فَرْضٌ فِي الْحَبْسِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «اعْدِلُوا بَيْنَ أَبْنَائِكُمْ» فَإِنْ خَصَّ بِهِ بَعْضَ بَنِيهِ، فَالْحَبْسُ صَحِيحٌ وَيَدْخُلُ سَائِرُ الْوَلَدِ فِي الْغَلَّةِ وَالسُّكْنَى مَعَ الَّذِي خَصَّهُ.

بُرْهَانُ ذَلِكَ: أَنَّهُمَا فِعْلَانِ مُتَغَايِرَانِ بِنَصِّ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

أَحَدُهُمَا - تَحْبِيسُ الْأَصْلِ، فَبِاللَّفْظِ تَحْبِيسُهُ يَصِحُّ لِلَّهِ تَعَالَى بِأَنَّنَا عَنْ مَالِ الْمُحْبِسِ.

وَالثَّانِي - التَّسْبِيلُ وَالصَّدَقَةُ، فَإِنْ وَقَعَ فِيهَا حِيفَ رُدَّ وَلَمْ يَبْطُلْ خُرُوجُ الْأَصْلِ مُحْبَسًا لِلَّهِ عَزَّ وَجَلَّ مَا دَامَ الْوَلَدُ أَحْيَاءَ، فَإِذَا مَاتَ الْمَخْصُوصُ بِالْحَبْسِ رَجَعَ إلَى مَنْ عَقِبَ عَلَيْهِ بَعْدَهُ، وَخَرَجَ سَائِرُ الْوَلَدِ عَنْهُ؛ لِأَنَّ الْمُحَابَاةَ قَدْ بَطَلَتْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ حَبَسَ دَارِهِ أَوْ أَرْضَهُ وَلَمْ يُسَبِّلْ عَلَى أَحَدٍ]

١٦٥٧ - مَسْأَلَةٌ: وَمَنْ حَبَسَ دَارِهِ أَوْ أَرْضَهُ، وَلَمْ يُسَبِّلْ عَلَى أَحَدٍ، فَلَهُ أَنْ يُسَبِّلَ الْغَلَّةَ مَا دَامَ حَيًّا عَلَى مَنْ شَاءَ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «وَسَبِّلْ الثَّمَرَةَ» فَلَهُ ذَلِكَ مَا بَقِيَ، فَإِنْ مَاتَ وَلَمْ يَفْعَلْ كَانَتْ الْغَلَّةُ لِأَقَارِبِهِ وَأَوْلَى النَّاسِ بِهِ حِينَ مَوْتِهِ.

revenue belongs to his relatives and those most entitled to him at the time of his death.

L26698 Similarly, if someone dedicates a sabil or establishes an endowment for a discontinued purpose, then when the sabil's beneficiary dies, the endowment reverts to the closest relatives of the founder at the time of reversion.

وَكَذَلِكَ مَنْ سَبَّلَ وَحَبَسَ عَلَى مُنْقَطِعٍ فَإِذَا مَاتَ الْمُسَبَّلُ عَلَيْهِ عَادَ الْحَبْسُ عَلَى أَقْرَبِ النَّاسِ بِالْمُحَبِّسِ يَوْمَ الْمَرْجِعِ.

L26699 The proof of that is what we have narrated through Mālik from Isḥāq ibn ʿAbdullāh ibn Abī Ṭalḥah, who heard Anas ibn Mālik say: "Abū Ṭalḥah was the wealthiest of the Anṣār in Medina in terms of date palms. He said: 'O Messenger of Allah, Allah the Almighty says: *'You will never attain righteousness until you spend from what you love'* [3:92]. The most beloved of my possessions to me is Bayruḥā, and it is a ṣadaqah for Allah. I hope for its virtue and splendor in the sight of Allah. Place it, O Messenger of Allah, where Allah has shown you.' The Messenger of Allah (may Allah bless him and his family and grant him peace) said in the course of his speech: 'Indeed, I deem it proper that you allocate it to your relatives.' So Abū Ṭalḥah distributed it among his kinsmen and paternal cousins."[11]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِك عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ سَمِعَ أَنَسَ بْنَ مَالِك يَقُولُ «كَانَ أَبُو طَلْحَةَ أَكْبَرَ أَنْصَارِي الْمَدِينَةِ مَالًا مِنْ نَخْلٍ فَقَالَ: يَا رَسُولَ اللَّهِ، إنَّ اللَّهَ - عَزَّ وَجَلَّ - يَقُولُ: {لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ} [آل عمران: ٩٢] وَإِنَّ أَحَبَّ أَمْوَالِي إلَيَّ بَيْرُحَاءُ، وَإِنَّهَا صَدَقَةٌ لِلَّهِ عَزَّ وَجَلَّ أَرْجُو بِرَّهَا، وَزُخْرَهَا، عِنْدَ اللَّهِ، فَضَعْهَا يَا رَسُولَ اللَّهِ حَيْثُ أَرَاك اللَّهُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي كَلَامٍ ثُمَّ إنِّي أَرَى أَنْ تَجْعَلَهَا فِي الْأَقْرَبِينَ - فَقَسَمَهَا أَبُو طَلْحَةَ فِي أَقَارِبِهِ وَبَنِي عَمِّهِ»

[Issue: He endowed as a waqf for his descendants and the descendants of his descendants, or for Zaid and his descendants.]

[مَسْأَلَة حَبَسَ عَلَى عَقِبِهِ وَعَلَى عَقِبِ عَقِبِهِ أَوْ عَلَى زَيْدٍ وَعَقِبِهِ]

L26701 Issue 1658: If someone establishes an endowment for their progeny and their progeny's progeny, or for Zayd and his progeny, this includes daughters and sons but excludes the sons of daughters if they do not trace their paternal lineage back to the donor. This is based on the statement of Allah's Messenger—peace and blessings be upon him and his family—: "The descendants of Hashim and the descendants of ʿAbd al-Muṭṭalib are indeed one entity." He allocated to them from the kin's share but did not grant it to ʿUthmān or others—though ʿUthmān's paternal grandmother was a daughter of ʿAbd al-Muṭṭalib—because ʿUthmān was not included among the descendants of Hashim, as his paternal lineage did not trace back to the donor,

١٦٥٨ - مَسْأَلَةٌ: وَمَنْ حَبَسَ عَلَى عَقِبِهِ وَعَلَى عَقِبِ عَقِبِهِ، أَوْ عَلَى زَيْدٍ وَعَقِبِهِ، فَإِنَّهُ يَدْخُلُ فِي ذَلِكَ الْبَنَاتُ وَالْبَنُونَ، وَلَا يَدْخُلُ فِي ذَلِكَ بَنُو الْبَنَاتِ إذَا كَانُوا مِمَّنْ لَا يَخْرُجُ بِنَسَبِ آبَائِهِ إلَى الْمُحَبِّسِ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «إنَّمَا بَنُو هَاشِمٍ وَبَنُو عَبْدِ الْمُطَّلِبِ شَيْءٌ وَاحِدٌ» وَأَعْطَاهُمْ مِنْ سَهْمِ ذِي الْقُرْبَى: وَلَمْ يُعْطِ عُثْمَانَ، وَلَا غَيْرَهُ - وَجَدَّةُ عُثْمَانَ بِنْتُ عَبْدِ الْمُطَّلِبِ - فَلَمْ يَدْخُلْ فِي بَنِي هَاشِمٍ، إذْ لَمْ يَخْرُجْ

[11] **Qur'an references (L26699):** Qur'an 3:92 (Ali 'Imran).

despite his maternal lineage through his mother Arwā bint al-Bayḍāʾ ibn ʿAbd al-Muṭṭalib tracing back to him. He granted al-ʿAbbās and his mother Numayriyyah [a share]. And success comes only from Allah, the Exalted.

A juridical question regarding the establishment of a waqf with the condition that it be sold in case of necessity.

L26702–26703

L26704 Issue: If someone establishes a waqf and stipulates that it be sold when needed, the waqf is valid due to the transfer to God Almighty by this wording as we explained. However, the stipulation is void because it constitutes a condition not stipulated in the Book of God, and they are two distinct legal acts - except if one declares: "I do not establish this waqf except on the condition that it be sold." In this case, he has not validly endowed anything, for any waqf that only becomes binding through a void condition is not established at all, as any waqf contingent on a void condition is fundamentally invalid. Success comes solely from God Almighty.

بِنَسَبِ أَبِيهِ إِلَيْهِ، وَإِنْ كَانَ خَارِجًا بِنَسَبِ أُمِّهِ إِلَيْهِ - وَهِيَ أَرْوَى بِنْتُ الْبَيْضَاءِ بْنِ عَبْدِ الْمُطَّلِبِ - أَعْطَى الْعَبَّاسَ وَأُمَّهُ نُمَرِيَّةُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة حَبَسَ وَشَرَطَ أَنْ يُبَاعَ إنْ اُحْتِيجَ]

مَسْأَلَةٌ: وَمَنْ حَبَسَ وَشَرَطَ أَنْ يُبَاعَ إنْ اُحْتِيجَ صَحَّ الْحَبْسُ، لِمَا ذَكَرْنَا مِنْ خُرُوجِهِ بِهَذَا اللَّفْظِ إلَى اللَّهِ تَعَالَى، وَبَطَلَ الشَّرْطُ، لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى، وَهُمَا فِعْلَانِ مُتَغَايِرَانِ، إلَّا أَنْ يَقُولَ: لَا أَحْبِسُ هَذَا الْحَبْسَ إلَّا بِشَرْطِ أَنْ يُبَاعَ -: فَهَذَا لَمْ يَحْبِسْ شَيْئًا، لِأَنَّ كُلَّ حَبْسٍ لَمْ يَنْعَقِدْ إلَّا عَلَى بَاطِلٍ فَلَمْ يَنْعَقِدْ أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

AL-MUHALLA

كِتَابُ الْعِتْقِ وَأُمَّهَاتِ الْأَوْلَادِ

The Book of Manumission and Mothers of Children

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

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[كِتَابُ الْعِتْقِ وَأُمَّهَاتِ الْأَوْلَادِ] [مَسْأَلَةٌ الْعِتْقُ فِعْلٌ حَسَنٌ فَلَا يَحِلُّ لِلْمَرْءِ أَنْ يَعْتِقَ عَبْدَهُ أَوْ أَمَتَهُ إِلَّا لِلَّهِ]

[The Book of Manumission and Mothers of Children (Ummahāt al-Awlād)] [Issue: Manumission is a virtuous act, so it is impermissible for one to manumit their enslaved man or woman except for the sake of Allah.]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْعِتْقِ، وَأُمَّهَاتِ الْأَوْلَادِ ١٦٦٠ - مَسْأَلَةٌ: الْعِتْقُ فِعْلٌ حَسَنٌ، لَا خِلَافَ فِي ذَلِكَ.

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Manumission and Mothers of Children. 1660 - Issue: Manumission is a virtuous act; there is no disagreement on this.

١٦٦١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمَرْءِ أَنْ يَعْتِقَ عَبْدَهُ أَوْ أَمَتَهُ إِلَّا لِلَّهِ عَزَّ وَجَلَّ لَا لِغَيْرِهِ، وَلَا يَجُوزُ أَخْذُ مَالٍ عَلَى الْعِتْقِ، إِلَّا فِي الْكِتَابَةِ خَاصَّةً، لِمَجِيءِ النَّصِّ بِهَا.

Issue 1661: It is not permissible for a person to emancipate his male or female slave except for Allah, the Mighty and Majestic, and not for other than Him. It is also impermissible to take property in exchange for emancipation, except specifically in the case of manumission by written contract (kitābah), because the scriptural text has stipulated it.

وَقَالَ بَعْضُ الْقَائِلِينَ: إِنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ لِلشَّيْطَانِ -: نَفَذَ ذَلِكَ

And some of those who hold this opinion said: If he says to his slave, "You are free for the devil," that takes effect.

قَالَ أَبُو مُحَمَّد: وَهَذَا خِلَافُ قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَمَنْ كَانَ يَرْجُوا لِقَاءَ رَبِّهِ فَلْيَعْمَلْ عَمَلا صَالِحًا وَلا يُشْرِكْ بِعِبَادَةِ رَبِّهِ أَحَدًا} [الكهف: ١١٠]

Abu Muhammad said: And this contradicts the statement of Allah, the Mighty and Majestic: "So whoever hopes to meet his Lord, let him do a righteous deed and not associate anyone in the worship of his Lord" [Al-Kahf: 110].[1]

وَقَالَ عَزَّ وَجَلَّ: {وَمَا أُمِرُوا إِلا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ} [البينة: ٥]

The Almighty, the Exalted, has said: {They were commanded only to worship Allah, devoting their faith sincerely to Him} [Al-Bayyinah: 5].[2]

وَالْعِتْقُ عِبَادَةٌ فَإِذَا كَانَتْ لِلَّهِ تَعَالَى خَالِصَةً جَازَتْ، وَإِذَا كَانَتْ لِشَرِيكٍ مَعَهُ تَعَالَى أَوْ لِغَيْرِهِ مَحْضًا: بَطَلَتْ، لِأَنَّهَا وَقَعَتْ بِخِلَافِ مَا أَمَرَ اللَّهُ تَعَالَى - ثُمَّ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَوَجَبَ رَدُّ هَذَا الْعِتْقِ وَإِبْطَالُهُ.

Manumission is an act of worship. If it is sincerely dedicated to Allah the Exalted alone, it is valid. But if it is performed for an associate with Him the Exalted or solely for the sake of another, it becomes invalid, for it contravenes what Allah the Exalted has commanded. Then [this ruling is affirmed] by the statement of the Messenger of Allah (peace and blessings be upon him): "Whoever performs a deed not in accordance with our command, it is rejected." Thus, this manumission must be deemed invalid and nullified.[3]

[1] **Qur'an references (L26710):** Qur'an 18:110 (Al-Kahf).

[2] **Qur'an references (L26711):** Qur'an 98:5 (Al-Bayyinah).

[3] **Hadith references (L26712):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

L26713 We have been narrated through the path of Shuʿbah from Al-ʻAlā' ibn ʻAbd al-Raḥmān from Abū Hurayrah, who said: "The Messenger of Allah (peace be upon him) narrated from Allah, the Exalted, that He said: 'I am the Most Sufficient of partners to be disassociated from shirk. Whoever performs a deed in which he associates another with Me, I am free from him. Let him seek his reward from whom he associated with Me.'"

L26714 ## The Legal Ruling on Manumission in Property He Currently Owns

L26715–26717 Issue 1662: Whoever says, "If you own so-and-so's slave, he is free," or says, "If you purchase him, he..." If free, or if he says: "If you sell my male slave, he is free," or says something similar regarding a female slave owned by another or a female slave he owns—then if he subsequently owned the male slave and the female slave, purchased the two, or sold the two, the two were not emancipated through any of that.

L26718 As for the invalidity of that concerning another's male slave and another's female slave: because of what we have transmitted via the chain of Muslim—Zuhayr ibn Harb reported to me: Ismāʿīl ibn Ibrāhīm (he is Ibn ʿUlayyah) narrated to us; Ayyūb (he is al-Sikhtiyānī) narrated from Abū Qilābah, from Abū al-Muhallab, from ʿImrān ibn al-Ḥuṣayn, who said: The Messenger of Allah—peace and blessings be upon him and his family—said: "There is no fulfillment for a vow in disobedience, nor for what the slave does not own."[4]

L26719 As for the invalidity of this ruling concerning his male slave and female slave, it is because when he sells them, his ownership over them becomes void, and there is no validity to his contractual stipulation regarding what he no longer possesses. It has been narrated to us via Ḥammād ibn Salamah: Ziyād al-Aʿlam narrated to us from al-Ḥasan al-Baṣrī regarding one who said to another, "If you sell this slave of mine to you, he is free," and then he sold him. Al-Ḥasan ruled: "He is not free." He further stated: "If the other party had said, 'If I purchase him from you, he is free,' and then bought him from him, he would still not be free."

[4] **Hadith references (L26718):** Sahih Muslim 1641a; Mishkat al-Masabih 3428.

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللَّهِ تَعَالَى أَنَّهُ يَقُولُ: " أَنَا أَغْنَى الشُّرَكَاءِ عَنْ الشِّرْكِ فَمَنْ عَمِلَ عَمَلًا أَشْرَكَ فِيهِ غَيْرِي فَأَنَا مِنْهُ بَرِيءٌ، وَلْيَلْتَمِسْ ثَوَابَهُ مِنْهُ» .

[مَسْأَلَة الْعِتْق فِي مَالًا يَمْلِك]

١٦٦٢ - مَسْأَلَةٌ: وَمَنْ قَالَ: إنْ مَلَكْت عَبْدَ فُلَانٍ فَهُوَ حُرٌّ، أَوْ قَالَ: إنْ اشْتَرَيْته فَهُوَ حُرٌّ، أَوْ قَالَ: إنْ بِعْت عَبْدِي فَهُوَ حُرٌّ، أَوْ قَالَ: شَيْئًا مِنْ ذَلِكَ فِي أَمَةٍ لِسِوَاهُ أَوْ أَمَةٍ لَهُ ثُمَّ مَلَكَ الْعَبْدَ وَالْأَمَةَ، أَوْ اشْتَرَاهُمَا " أَوْ بَاعَهُمَا: لَمْ يُعْتَقَا بِشَيْءٍ مِنْ ذَلِكَ.

أَمَّا بُطْلَانُ ذَلِكَ فِي عَبْدِ غَيْرِهِ، وَأَمَةِ غَيْرِهِ: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي زُهَيْرُ بْنُ حَرْبٍ نا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ عُلَيَّةَ - نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةٍ، وَلَا فِيمَا لَا يَمْلِكُ الْعَبْدُ» .

وَأَمَّا بُطْلَانُ ذَلِكَ فِي عَبْدِهِ وَأَمَتِهِ، فَلِأَنَّهُ إذْ بَاعَهُمَا فَقَدْ بَطَلَ مِلْكُهُ عَنْهُمَا، وَلَا وَفَاءَ لِعَقْدِهِ فِيمَا لَا يَمْلِكُهُ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا زِيَادٌ الْأَعْلَمُ عَنْ الْحَسَنِ الْبَصْرِيِّ فِيمَنْ قَالَ لِآخَرَ: إنْ بِعْت غُلَامِي هَذَا مِنْك فَهُوَ حُرٌّ فَبَاعَهُ مِنْهُ قَالَ الْحَسَنُ: لَيْسَ بِحُرٍّ - ثُمَّ قَالَ: وَلَوْ قَالَ الْآخَرُ: إنْ اشْتَرَيْته مِنْك فَهُوَ حُرٌّ، ثُمَّ اشْتَرَاهُ مِنْهُ فَلَيْسَ بِحُرٍّ -

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا - وَاخْتَلَفَ الْحَاضِرُونَ فِي ذَلِكَ -: فَقَالَ الشَّافِعِيُّ: إِنْ قَالَ إِنْ بِعْت غُلَامِي فَهُوَ حُرٌّ، فَبَاعَهُ فَهُوَ حُرٌّ.

This is the opinion of Abū Sulaymān and our companions—and those present differed regarding that—then Al-Shāfiʿī said: If someone says, “If I sell my slave, he is free,” and then sells him, the slave is free.

فَإِنْ قَالَ: إِنْ اشْتَرَيْت غُلَامَ فُلَانٍ فَهُوَ حُرٌّ فَاشْتَرَاهُ فَلَيْسَ بِحُرٍّ.

If someone declares, “If you purchase so-and-so’s male slave, then he is free,” and he subsequently buys him, the slave is not emancipated.

وَاحْتَجَّ بَعْضُ أَصْحَابِهِ لِقَوْلِهِ هَذَا بِأَنَّهُ إذَا بَاعَهُ فَهُوَ فِي مِلْكِهِ بَعْدُ، مَا لَمْ يَتَفَرَّقَا، فَلِذَلِكَ عَتَقَ.

Some of his companions argued in support of this statement of his that if he sells the slave, the slave is still in his ownership as long as they have not physically separated, and therefore he became manumitted.

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا بَيْعَ بَيْنَهُمَا حَتَّى يَتَفَرَّقَا» فَصَحَّ أَنَّهُ لَمْ يَبِعْهُ بَعْدُ، فَإِذَا تَفَرَّقَا فَحِينَئِذٍ بَاعَهُ، وَلَا عِتْقَ لَهُ فِي مِلْكِ غَيْرِهِ.

Abu Muhammad said: This is invalid because the Messenger of Allah—peace and blessings be upon him and his family—said: “There is no sale between them until they part ways.” Thus, it is established that he has not yet sold it. When they separate, then he has sold it. Nor is there emancipation for a slave while in another’s ownership.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ بِعَكْسِ قَوْلِ الشَّافِعِيِّ، وَهُوَ أَنَّهُمَا قَالَا: إنْ قَالَ: إنْ بِعْت عَبْدِي فَهُوَ حُرٌّ.

Abu Hanifah and Sufyan held the opposite view to al-Shafi’i’s, asserting: If one declares, “If I sell my slave, then he is free.”

فَبَاعَهُ، لَمْ يَكُنْ حُرًّا بِذَلِكَ.

So he sold it, but by that, he was not made free.

فَإِنْ قَالَ: إنْ اشْتَرَيْت عَبْدَ فُلَانٍ فَهُوَ حُرٌّ.

If he says, “If you bought the slave of so-and-so, then he is free.”

فَاشْتَرَاهُ فَهُوَ حُرٌّ.

So he bought him, then the latter is free.

وَقَالَ مَالِكٌ: مَنْ قَالَ: إنْ بِعْت عَبْدِي فَهُوَ حُرٌّ.

And Mālik said: Whoever says, “If I sell my slave, then he becomes free.”

فَبَاعَهُ فَهُوَ حُرٌّ - وَإِنْ قَالَ: إنْ اشْتَرَيْت عَبْدَ فُلَانٍ فَهُوَ حُرٌّ.

So if he sold him, he is free; and if he says, “If you purchase so-and-so’s slave, the slave is free.”

فَاشْتَرَاهُ فَهُوَ حُرٌّ.

He purchased him, and he is free.

فَلَوْ قَالَ: إنْ بِعْت عَبْدِي فَهُوَ حُرٌّ، وَقَالَ آخَرُ: إنْ اشْتَرَيْت عَبْدَ فُلَانٍ فَهُوَ حُرٌّ.

If someone were to say, “If you sell my slave, then he is free,” and another were to say, “If you buy so-and-so’s slave, then he is free.”

L26733 Then he sold him to him, so the manumission is incumbent upon the seller, not the buyer.

ثُمَّ بَاعَهُ مِنْهُ فَإِنَّهُ يُعْتَقُ عَلَى الْبَائِعِ لَا عَلَى الْمُشْتَرِي.

L26734 It has been reported to us that this opinion was narrated from Ibrāhīm al-Nakhaʿī and al-Ḥasan as well—and this constitutes a contradiction from him. Both positions would necessitate emancipating the slave according to his own position by their statement. Some followers from his school said: He is pledged [as collateral] by the seller's oath.

وَقَدْ رُوِّينَا هَذَا الْقَوْلَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ أَيْضًا - وَهَذَا تَنَاقُضٌ مِنْهُ، وَكِلَاهُمَا يَلْزَمُهُ عِتْقُهُ عِنْدَهُ بِقَوْلِهِمَا، فَقَالَ بَعْضُ مُقَلِّدِيهِ: هُوَ مُرْتَهَنٌ بِيَمِينِ الْبَائِعِ.

L26735 Abu Muhammad said: This is obfuscation, for the Hanafi scholar counters him, saying: "Rather, it is pledged against the buyer's oath" – and another counters him, saying: "Rather, it is pledged against the oaths of both of them together," thus the slave is manumitted upon both of them jointly.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَمْوِيهٌ، لِأَنَّهُ يُعَارِضُهُ الْحَنَفِيُّ فَيَقُولُ: بَلْ هُوَ مُرْتَهَنٌ بِيَمِينِ الْمُشْتَرِي - وَيُعَارِضُهُ آخَرُ فَيَقُولُ: بَلْ هُوَ مُرْتَهَنٌ بِيَمِينِهِمَا جَمِيعًا فَيُعْتَقُ عَلَيْهِمَا جَمِيعًا.

L26736 Hammad ibn Abi Sulaiman said: Emancipation becomes obligatory upon the purchaser, while the seller buys a slave with the price and emancipates him—this is an astonishing wonder! How can he possibly permit selling it to one who vowed its emancipation, then obligates him to emancipate in what was not vowed for emancipation? This is the nature of opinion in religion—and we praise Allah for His immense favor.

وَقَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ: يُعْتَقُ عَلَى الْمُشْتَرِي، وَيَشْتَرِي الْبَائِعُ بِالثَّمَنِ عَبْدًا فَيَعْتِقُهُ - وَهَذَا عَجَبٌ عَجِيبٌ لَيْتَ شِعْرِي كَيْفَ يَجُوزُ عِنْدَهُ بَيْعُهُ لِمَنْ نَذَرَ عِتْقَهُ ثُمَّ يَلْزَمُهُ عِتْقًا فِيمَا لَمْ يُنْذَرْ عِتْقُهُ، وَهَذِهِ صِفَةُ الرَّأْيِ فِي الدِّينِ - وَنَحْمَدُ اللَّهَ عَلَى عَظِيمِ نِعْمَتِهِ.

[مَسْأَلَة الْعِتْق بِشَرْطٍ أَوْ بِمَالٍ]

The Ruling on Manumission with a Condition or with Property.

L26737

١٦٦٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ عِتْقٌ بِشَرْطٍ أَصْلًا، وَلَا بِإِعْطَاءِ مَالٍ إلَّا فِي " الْكِتَابَةِ " فَقَطْ، وَلَا بِشَرْطِ خِدْمَةٍ، وَلَا بِغَيْرِ ذَلِكَ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ» .

L26738 1663 - Issue: It is impermissible to manumit a slave under any condition whatsoever, nor through monetary payment except exclusively in contractual manumission (kitabah), nor by stipulating service, nor any other stipulation. This is based on the statement of Allah's Messenger - peace and blessings be upon him: "Every condition not stipulated in the Book of Allah, the Exalted, is invalid."

فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا سَعِيدُ بْنُ جُمْهَانَ نا سَفِينَةُ أَبُو عَبْدِ الرَّحْمَنِ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: " قَالَتْ لِي أُمُّ سَلَمَةَ: أُرِيد أَنْ أُعْتِقَكَ وَأَشْتَرِطَ عَلَيْك أَنْ تَخْدِمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا عِشْت

L26739 If someone mentions what has been narrated to us through the chain of Hammad ibn Salamah - who narrated from Sa'id ibn Jumhan, who narrated from Safinah Abu Abd al-Rahman, the freed servant of the Messenger of Allah (peace and blessings be upon him and his family) - who said: "Umm Salamah said to me: 'I wish to set you free on the condition that you serve the Messenger of Allah (peace and blessings be upon him and his family) for

as long as **he** lives.' I replied: 'Even if you do not stipulate this, I would never leave the Messenger of Allah (peace and blessings be upon him and his family) until I die.' He said: She then freed me and stipulated that I serve the Messenger of Allah (peace and blessings be upon him and his family) for as long as **he** lived."

قُلْت: إنْ لَمْ تَشْتَرِطِي عَلَيَّ لَمْ أُفَارِقْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى أَمُوتَ، قَالَ: فَأَعْتَقَتْنِي وَاشْتَرَطَتْ عَلَيَّ أَنْ أَخْدِمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا عَاشَ ".

L26740–26742 It has also been narrated to us through the chain of ʿAbd al-Wārith ibn Saʿīd, from Saʿīd ibn Jumhān, from Safīnah. Now Saʿīd ibn Jumhān is not recognized for his reliability in transmission—indeed, it is stated that his narrations cannot be upheld as evidence—moreover, even if this report were authentic... There is nothing in it that the Messenger of God—may God bless him and his family and grant him peace—acknowledged that matter and sanctioned it. The Hanafis, the Malikis, and the Shafi'is do not permit emancipation on the condition that one serve so-and-so as long as he lives: thus they have contradicted this report.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ جُمْهَانَ عَنْ سَفِينَةَ، فَسَعِيدُ بْنُ جُمْهَانَ غَيْرُ مَشْهُورٍ بِالْعَدَالَةِ، بَلْ مَذْكُورٌ أَنَّهُ لَا يَقُومُ حَدِيثُهُ - ثُمَّ لَوْ صَحَّ فَلَيْسَ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَرَفَ ذَلِكَ فَأَقَرَّهُ، وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: لَا يُجِيزُونَ الْعِتْقَ بِشَرْطِ أَنْ يَخْدُمَ فُلَانًا مَا عَاشَ - فَقَدْ خَالَفُوا هَذَا الْخَبَرَ.

L26743 It has been narrated to us through the chain of Ibn Wahb from ʿAbdullāh ibn ʿUmar from Sālim ibn ʿAbdullāh ibn ʿUmar, who said: ʿUmar ibn al-Khaṭṭāb emancipated every slave owned by the caliphal authority who performed two units (rakʿahs) of prayer, and he stipulated upon some of them to serve his successors for two or three years, if they wished to extend [the service].

رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِي بَكْرٍ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: أَعْتَقَ عُمَرُ بْنُ الْخَطَّابِ كُلَّ مَنْ صَلَّى سَجْدَتَيْنِ مِنْ رَقِيقِ الْإِمَارَةِ، وَاشْتَرَطَ عَلَى بَعْضِهِمْ خِدْمَةَ مَنْ بَعْدَهُ إنْ أَحَبَّ سَنَتَيْنِ أَوْ ثَلَاثًا.

L26744 From the narration of Abd al-Razzaq through Ibn Jurayj: Ayyub ibn Musa informed me, from Nafi', from Abdullah ibn Umar, who said: "Umar ibn al-Khattab emancipated every captive taken by the Arabs who prayed. He conclusively decreed their emancipation, stipulating to them: 'You shall serve the Caliph after me for three years,' and stipulating for them: 'The Caliph after me will maintain you with provisions equivalent to what I provided you.' Then al-Khiyar purchased his service for those three years from Uthman in exchange for Abu Farwa, thereby freeing al-Khiyar from bondage, while Uthman took possession of Abu Farwa."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَيُّوبُ بْنُ مُوسَى أَخْبَرَنِي نَافِعٌ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ أَعْتَقَ كُلَّ مَنْ صَلَّى مِنْ سَبْيِ الْعَرَبِ، فَبَتَّ عِتْقَهُمْ، وَشَرَطَ عَلَيْهِمْ: أَنَّكُمْ تَخْدُمُونَ الْخَلِيفَةَ بَعْدِي ثَلَاثَ سَنَوَاتٍ، وَشَرَطَ لَهُمْ: أَنَّهُ يَصْحَبُكُمْ بِمِثْلِ مَا كُنْتُ أَصْحَبُكُمْ بِهِ - فَابْتَاعَ الْخِيَارُ خَدَمَتَهُ تِلْكَ الثَّلَاثَ سَنَوَاتٍ مِنْ عُثْمَانَ بِأَبِي فَرْوَةَ وَخَلَّى سَبِيلَ الْخِيَارِ، وَقَبَضَ أَبَا فَرْوَةَ.

L26745 And through him to Ibn Jurayj from Musa ibn Uqbah from Nafi' from Ibn 'Umar that he emancipated a male slave of his while stipulating that the slave would work for him for two years. The slave worked for him for part of a year, then he said to him: "I have relinquished for you what I stipulated upon you - you are free, and there is no obligation of work upon you."

وَبِهِ إِلَى ابْنِ جُرَيْجٍ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ أَعْتَقَ غُلَامًا لَهُ وَشَرَطَ عَلَيْهِ أَنَّ لَهُ عَمَلَهُ سَنَتَيْنِ، فَعَمِلَ لَهُ بَعْضَ سَنَةٍ، ثُمَّ قَالَ لَهُ: قَدْ تَرَكْت لَك الَّذِي اشْتَرَطْت عَلَيْك فَأَنْتَ حُرٌّ، وَلَيْسَ عَلَيْك عَمَلٌ.

L26746 And through the chain of Sufyān ibn ʻUyaynah from ʻAmr ibn Dīnār, who said: "After his death, ʻAlī ibn Abī Ṭālib had a piece of land donated as charity, freed some of his slaves, and stipulated that they work on the land for five years."

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ تَصَدَّقَ بَعْدَ مَوْتِهِ بِأَرْضٍ لَهُ، وَأَعْتَقَ بَعْضَ رَقِيقِهِ، وَشَرَطَ عَلَيْهِمْ أَنْ يَعْمَلُوا فِيهَا خَمْسَ سِنِينَ.

L26747 From the path of Ibn Abi Shaybah, from ʻAbbād from Ḥajjāj from al-Qāsim ibn ʻAbd al-Raḥmān from al-Mughīrah ibn Saʻd ibn al-Akhram from his father: A man came to Ibn Masʻūd and said, "I freed this female slave, but I stipulated that she must serve me as a slave serves her master, except for sexual intercourse. When she became defiant, she said, 'I am free.'" Ibn Masʻūd replied, "She has no right to that. Take hold of her neck and go with her, for the stipulation you imposed remains binding."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبَّادٌ عَنْ حَجَّاجٍ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الْمُغِيرَةِ بْنِ سَعْدِ بْنِ الْأَخْرَمِ عَنْ أَبِيهِ أَنَّ رَجُلًا أَتَى ابْنَ مَسْعُودٍ فَقَالَ: إنِّي أَعْتَقْت أَمَتِي هَذِهِ وَاشْتَرَطْت عَلَيْهَا أَنْ تَلِيَ مِنِّي مَا تَلِي الْأَمَةُ مِنْ سَيِّدِهَا إلَّا الْفَرْجَ، فَلَمَّا غَلُظَتْ رَقَبَتُهَا قَالَتْ: إنِّي حُرَّةٌ فَقَالَ ابْنُ مَسْعُودٍ: لَيْسَ ذَلِكَ لَهَا، خُذْ بِرَقَبَتِهَا فَانْطَلِقْ بِهَا فَلَكَ مَا اشْتَرَطْت عَلَيْهَا.

L26748–26750 Abū Muḥammad said: The Ḥanafīs, Mālikīs, and Shāfiʻīs differ from all these narrated precedents, for all of them stipulate manumission conditional upon service after emancipation and extending indefinitely—a practice they do not permit. They recognize no dissenting opinion from the Companions [on this matter], yet they honor such precedents when they conform to their principles. Their opinion, as for us, there is no authoritative evidence in the opinion of anyone other than the Messenger of Allah (peace and blessings be upon him and his family).

قَالَ أَبُو مُحَمَّد: الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: مُخَالِفُونَ لِجَمِيعِ هَذِهِ الْآثَارِ، لِأَنَّ فِي جَمِيعِهَا الْعِتْقَ بِشَرْطِ الْخِدْمَةِ بَعْدَ الْعِتْقِ، وَإِلَى غَيْرِ أَجَلٍ - وَهُمْ لَا يُجِيزُونَ هَذَا، وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إذَا وَافَقَ رَأْيَهُمْ، وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L26751 It has been narrated to us from Saʻīd ibn al-Musayyib: "Whoever frees his slave and stipulated his service, the slave is emancipated and his stipulation becomes invalid." We have narrated this through Ibn Abī Shaybah's chain: from Abū Khālid al-Aḥmar, from Yaḥyā ibn Saʻīd, from Saʻīd ibn al-Musayyib.

وَرُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: مَنْ أَعْتَقَ عَبْدَهُ وَاشْتَرَطَ خِدْمَتَهُ عَتَقَ وَبَطَلَ شَرْطُهُ -: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي خَالِدٍ الْأَحْمَرِ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ ابْنِ الْمُسَيِّبِ.

L26752 And from the route of Ibn Abī Shaybah from ʿAbbād ibn al-ʿAwwām, from

Yaḥyā ibn Saʿīd al-Taymī, from his father, from Shurayḥ - the same is narrated similarly.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ عَبَّادِ بْنِ الْعَوَّامِ عَنْ يَحْيَى بْنِ سَعِيدٍ التَّيْمِيِّ عَنْ أَبِيهِ عَنْ شُرَيْحٍ مِثْلَهُ.

L26753 They permitted manumission in exchange for the payment of wealth, but this is not recorded, to the best of our knowledge, from any of the Companions, may Allah be pleased with them, outside the context of kitābah.

وَأَجَازُوا الْعِتْقَ عَلَى إعْطَاءِ مَالٍ، وَلَا يُحْفَظُ هَذَا فِيمَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي غَيْرِ الْكِتَابَةِ.

L26754 If they say: "We have applied analogy (qiyās) to that based on the writing (al-kitābah)."

فَإِنْ قَالُوا: قِسْنَا ذَلِكَ عَلَى الْكِتَابَةِ.

L26755 We said: You have contradicted yourselves, for you do not permit the surety nor the payment after manumission in the *kitābah*, yet you permit all of that in manumission in exchange for payment.

قُلْنَا: نَاقَضْتُمْ، لِأَنَّكُمْ لَا تُجِيزُونَ فِي الْكِتَابَةِ الضَّمَانَ وَلَا الْأَدَاءَ بَعْدَ الْعِتْقِ، وَتُجِيزُونَ كُلَّ ذَلِكَ فِي الْعِتْقِ عَلَى مَالٍ.

L26756 You do not permit in *kitābah* that the payment period being unspecified, yet you permit this in manumission conditional upon payment – thus you have nullified your analogy. How then, when all analogy is wholly invalid?

وَلَا تُجِيزُونَ فِي الْكِتَابَةِ أَنْ يَكُونَ أَمَدُ أَدَاءِ الْمَالِ مَجْهُولًا، وَتُجِيزُونَ ذَلِكَ فِي الْعِتْقِ عَلَى مَالٍ - فَقَدْ أَبْطَلْتُمْ قِيَاسَكُمْ، فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؟ .

L26757 Furthermore, they have peculiar cases in this matter:- As for Abū Ḥanīfah, he said: "Whoever says to his slave: 'You are free on the condition that you serve me for four years,' and the slave accepted that, he became free, then died immediately."

ثُمَّ لَهُمْ فِي هَذَا غَرَائِبُ -: فَأَمَّا أَبُو حَنِيفَةَ فَإِنَّهُ قَالَ: مَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ عَلَى أَنْ تَخْدُمَنِي أَرْبَعَ سِنِينَ، فَقَبِلَ الْعَبْدُ ذَلِكَ فَعَتَقَ ثُمَّ مَاتَ مِنْ سَاعَتِهِ.

L26758 On one occasion, he said: "From his wealth [is owed] the value of his servitude for four years" (this being the opinion of Al-Shāfiʿī), then he retracted and said: "From his wealth [is owed] the value required to emancipate him."

فَمَرَّةً قَالَ: فِي مَالِهِ قِيمَةُ خِدْمَتِهِ أَرْبَعُ سِنِينَ - وَهُوَ قَوْلُ الشَّافِعِيِّ - ثُمَّ رَجَعَ فَقَالَ: فِي مَالِهِ قِيمَةُ رَقَبَتِهِ.

L26759 He said: Whoever says to his slave, "You are free upon a thousand dirhams," or "upon the condition that a debt of a thousand dirhams is incumbent upon you," the choice lies with the slave to accept or reject this. If he accepts it during the same meeting, he becomes free, and the amount becomes a debt he incurs. If he does not accept, no manumission occurs and no financial obligation is imposed upon him.

قَالَ: وَمَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ عَلَى أَلْفِ دِرْهَمٍ، أَوْ عَلَى أَنَّ عَلَيْك أَلْفَ دِرْهَمٍ، فَالْخِيَارُ لِلْعَبْدِ فِي قَبُولِ ذَلِكَ أَوْ رَدِّهِ، فَإِنْ قَبِلَ ذَلِكَ فِي الْمَجْلِسِ فَهُوَ حُرٌّ، وَالْمَالُ دَيْنٌ عَلَيْهِ، وَإِنْ لَمْ يَقْبَلْ فَلَا عِتْقَ لَهُ وَلَا مَالَ عَلَيْهِ.

L26760 If the master says to the slave, "When you have paid me one thousand

dirhams, you are free," the master retains the right to sell him as long as the slave has not paid the amount. Once the slave pays it, he is manumitted.

قَالَ: فَإِنْ قَالَ لَهُ: إِذَا أَدَّيْت إِلَيَّ أَلْفَ دِرْهَمٍ فَأَنْتَ حُرٌّ، فَلَهُ بَيْعُهُ مَا لَمْ يُؤَدِّهَا، فَإِذَا أَدَّاهَا فَهُوَ حُرٌّ.

L26761 Mālik said: If someone says to his slave, "You are free provided that one thousand dirhams are incumbent upon you," the slave is not legally bound to pay them, nor does he attain freedom except by paying them. If he pays them, he shall be free.

وَقَالَ مَالِكٌ: مَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ عَلَى أَنَّ عَلَيْك أَلْفَ دِرْهَمٍ: لَمْ يَلْزَمْ الْعَبْدَ أَدَاؤُهَا وَلَا حُرِّيَّةَ لَهُ إلَّا بِأَدَائِهَا، فَإِذَا أَدَّاهَا فَهُوَ حُرٌّ.

L26762–26764 He said: So if he said, "If you bring me a thousand dirhams, then you are free, and whenever you bring me a thousand dirhams, then you are..." A free person: the master may not sell him until the authority has formally held him liable on the master's behalf, nor demand payment in installments from him. If he becomes insolvent, the authority shall declare him so, and his master has the right to sell him.

قَالَ: فَلَوْ قَالَ: إنْ جِئْتَنِي بِأَلْفِ دِرْهَمٍ فَأَنْتَ حُرٌّ، وَمَتَى مَا جِئْتَنِي بِأَلْفِ دِرْهَمٍ فَأَنْتَ حُرٌّ -: فَلَيْسَ لَهُ أَنْ يَبِيعَهُ حَتَّى يَتَلَوَّمَ لَهُ السُّلْطَانُ وَلَا يُنَجِّمُ عَلَيْهِ، فَإِنْ عَجَزَ عَجَّزَهُ السُّلْطَانُ وَكَانَ لِسَيِّدِهِ بَيْعُهُ.

L26765 He said: If he were to say to his male slave: "You are free this very moment, and upon you are a thousand dirhams," he becomes free and owes the sum. Ibn al-Qāsim, his associate, said: He becomes free and owes nothing.

قَالَ: فَلَوْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ السَّاعَةَ وَعَلَيْك أَلْفُ دِرْهَمٍ: فَهُوَ حُرٌّ وَالْمَالُ عَلَيْهِ - قَالَ ابْنُ الْقَاسِمِ صَاحِبُهُ: هُوَ حُرٌّ وَلَا شَيْءَ عَلَيْهِ.

L26766 Abu Muhammad said: This is the correct view because he did not condition freedom upon liability; rather, he enacted it outright without any stipulation, then obligated him with what he is not liable for. Therefore, it is void.

قَالَ أَبُو مُحَمَّد: وَهَذَا هُوَ الصَّحِيحُ؛ لِأَنَّهُ لَمْ يُعَلِّقْ الْحُرِّيَّةَ بِالْغُرْمِ، بَلْ أَمْضَاهَا بَتْلَةً بِغَيْرِ شَرْطٍ، ثُمَّ أَلْزَمَهُ مَا لَا يَلْزَمُهُ، فَهُوَ بَاطِلٌ.

L26767 But if only I knew how long the Sultan would procrastinate in fulfilling it for him—an hour, two hours, a day, two days, a week, two weeks, a year, or two years? Any specified time limit in this matter is definitively invalid, for it is an unsubstantiated claim. The ruling here is: If he phrased his statement as a manumission contingent on a specified condition, it becomes binding since he owns him. Whenever the slave fulfills the stipulated condition, he is entitled to that freedom as long as he remains under his ownership. The master may sell him before the manumission becomes obligatory, for he remains his slave. These are opinions unattributed to their predecessors, and they ascribed to the slave a legal right of choice despite the absence of

وَلَكِنْ لَيْتَ شِعْرِي كَمْ يَتَلَوَّمُ لَهُ السُّلْطَانُ، أَسَاعَةً أَمْ سَاعَتَيْنِ أَمْ يَوْمًا أَمْ يَوْمَيْنِ أَمْ جُمُعَةً أَمْ جُمُعَتَيْنِ أَمْ حَوْلًا أَمْ حَوْلَيْنِ؟ وَكُلُّ حَدٍّ فِي هَذَا فَهُوَ بَاطِلٌ بِيَقِينٍ؛ لِأَنَّهُ دَعْوَى بِلَا بُرْهَانٍ - وَالْقَوْلُ فِي هَذَا: أَنَّهُ إنْ أَخْرَجَ كَلَامَهُ مَخْرَجَ الْعِتْقِ بِالصِّفَةِ فَهُوَ لَازِمٌ؛ لِأَنَّهُ مَلَكَهُ فَمَتَى مَا جَاءَهُ بِمَا قَالَ فَهُوَ حُرٌّ لَهُ ذَلِكَ مَا بَقِيَ عِنْدَهُ، وَلِلسَّيِّدِ بَيْعُهُ قَبْلَ أَنْ يَسْتَحِقَّ الْعِتْقَ؛ لِأَنَّهُ عَبْدُهُ - وَهَذِهِ أَقْوَالٌ لَا تُحْفَظُ عَمَّنْ قَبْلَهُمْ، وَجَعَلَ خِيَارًا لِلْعَبْدِ حَيْثُ لَا دَلِيلَ عَلَى أَنَّ لَهُ الْخِيَارَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

evidence supporting such a right. And success comes only from Allah, the Most High.

The Issue of Manumission by Vow

Issue 1664: If someone declares, "I am obligated to Allah, the Exalted, to free a slave," the obligation becomes binding on him.

And whoever declares, "If such-and-such occurs (a matter which does not entail disobedience), then this slave of mine is free," and if that thing occurs, then he is free. We have mentioned this in "The Book of Vows."

As for one who vows a slave, it is a vow that does not entail freeing what one does not own, and it remains binding as we have detailed in the "Book of Vows." An explicit text exists regarding this matter: Mu'āwiyah ibn al-Ḥakam said to the Messenger of Allah—peace be upon him—"I am obligated to a slave for Allah's sake—should I free her?" The Prophet—peace be upon him—asked her, "Where is Allah?" She pointed toward the sky, whereupon he said, "She is a believer; free her." This constitutes a clear explicit text establishing the binding obligation to free the slave upon one who pledges it for Allah, the Exalted—and by Him, the Almighty and Majestic, we are strengthened.

The issue of manumitting a fetus independently of its mother.

Issue 1665: It is not permissible to free a fetus separately from its mother once the soul has been breathed into it (before birth), nor to gift it independently of her.

It is permissible to emancipate it [the fetus] before the soul is breathed into it, and by that emancipation its mother becomes free even if the emancipator did not intend to free her. It is fundamentally impermissible to transfer ownership of the fetus [as property] without emancipating her.

If he emancipates her—while she is pregnant—then: If the soul has not yet entered her fetus, the fetus is free unless he explicitly excludes it. If he

[مَسْأَلَة الْعِتْق بالنذر]

١٦٦٤ - مَسْأَلَةٌ: وَمَنْ قَالَ: لِلَّهِ تَعَالَى عَلَيَّ عِتْقُ رَقَبَةٍ: لَزِمَتْهُ

وَمَنْ قَالَ: إنْ كَانَ أَمْرُ كَذَا - مِمَّا لَا مَعْصِيَةَ فِيهِ - فَعَبْدِي هَذَا حُرٌّ، فَكَانَ ذَلِكَ الشَّيْءُ فَهُوَ حُرٌّ، وَقَدْ ذَكَرْنَا هَذَا فِي " كِتَابِ النُّذُورِ ".

وَأَمَّا مَنْ نَذَرَ رَقَبَةً فَهُوَ نَذْرٌ لَا عِتْقَ فِيمَا لَا يَمْلِكُ، فَهُوَ لَازِمٌ لِمَا ذَكَرْنَاهُ فِي " كِتَابِ النُّذُورِ " وَقَدْ جَاءَ فِي هَذَا نَصٌّ وَهُوَ «قَوْلُ مُعَاوِيَةَ بْنِ الْحَكَمِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ عَلَيَّ لِلَّهِ رَقَبَةً أَفَأُعْتِقُهَا؟ فَسَأَلَهَا - عَلَيْهِ السَّلَامُ -: أَيْنَ اللَّهُ؟ فَأَشَارَتْ إلَى السَّمَاءِ فَقَالَ: هِيَ مُؤْمِنَةٌ، فَأَعْتِقْهَا» فَهَذَا نَصٌّ جَلِيٌّ عَلَى لُزُومِ الرَّقَبَةِ لِمَنْ الْتَزَمَهَا لِلَّهِ تَعَالَى - وَبِهِ عَزَّ وَجَلَّ نَتَأَيَّدُ.

[مَسْأَلَة عِتْق الْجَنِين دُون أُمِّهِ]

١٦٦٥ - مَسْأَلَةٌ: وَلَا يَجُوزُ عِتْقُ الْجَنِينِ دُونَ أُمِّهِ إذَا نُفِخَ فِيهِ الرُّوحُ قَبْلَ أَنْ تَضَعَهُ أُمُّهُ، وَلَا هِبَتُهُ دُونَهَا.

وَيَجُوزُ عِتْقُهُ قَبْلَ أَنْ يُنْفَخَ فِيهِ الرُّوحُ وَتَكُونُ أُمُّهُ بِذَلِكَ الْعِتْقِ حُرَّةً وَإِنْ لَمْ يُرِدْ عِتْقَهَا، وَلَا تَجُوزُ هِبَتُهُ أَصْلًا دُونَهَا.

excludes it, she becomes free while the fetus retains enslaved status. If the soul has already entered the fetus: If he includes the fetus in her emancipation when freeing her, then it becomes free. If he neither includes it in her emancipation nor excludes it, or if he explicitly excludes it, she becomes free while the fetus retains enslaved status.

فَإِنْ أَعْتَقَهَا - وَهِيَ حَامِلٌ - فَإِنْ كَانَ جَنِينُهَا لَمْ يُنْفَخْ فِيهِ الرُّوحُ، فَهُوَ حُرٌّ، إِلَّا أَنْ يَسْتَثْنِيَهُ فَإِنْ اسْتَثْنَاهُ فَهِيَ حُرَّةٌ، وَهُوَ غَيْرُ حُرٍّ وَإِنْ كَانَ قَدْ نُفِخَ فِيهِ الرُّوحُ فَإِنْ أَتْبَعَهَا إِيَّاهُ إِذْ أَعْتَقَهَا فَهُوَ حُرٌّ، وَإِنْ لَمْ يَتْبَعْهَا إِيَّاهُ، أَوْ اسْتَثْنَاهُ: فَهِيَ حُرَّةٌ، وَهُوَ غَيْرُ حُرٍّ.

L26777 Likewise, the ruling concerning a gift when one gives it is exactly the same, with no difference.

وَكَذَلِكَ الْقَوْلُ فِي الْهِبَةِ إِذَا وَهَبَهَا سَوَاءٌ سَوَاءٌ وَلَا فَرْقَ.

L26778 The period for ensoulment is the full completion of four months of pregnancy.

وَحَدُّ نَفْخِ الرُّوحِ فِيهِ: تَمَامُ أَرْبَعَةِ أَشْهُرٍ مِنْ حَمْلِهَا.

L26779 The proof of the validity of our statement—the words of Allah, the Almighty and Majestic: “We have certainly 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 clinging clot into a lump of flesh, then We created the lump of flesh into bones, then We covered the bones with flesh, then We developed him into another creation. So blessed is Allah, the Best of Creators” (23:14).[5]

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {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] .

L26780 Through the chain of Imam Muslim: al-Ḥasan ibn ʿAlī al-Ḥulwānī narrated to us; Abū Tawbah (who is al-Rabīʿ ibn Nāfiʿ) narrated to us; Muʿāwiyah – meaning ibn Sallām – narrated to us that he heard Abū Salām narrate to us from Abū Asmāʾ al-Raḥabī: Thawbān, the freed slave of the Messenger of Allah (peace and blessings of Allah be upon him), reported to him that he heard the Messenger of Allah (peace and blessings of Allah be upon him) say: “The man’s semen is white, and the woman’s fluid is yellow. When they combine and the man’s semen prevails over the woman’s fluid, they bear a male child by Allah’s permission. If the woman’s fluid prevails over the man’s semen, they bear a female child by Allah’s permission.” And he recounted the full ḥadīth.[6]

وَمِنْ طَرِيقِ مُسْلِمٍ نا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نا أَبُو تَوْبَةَ - هُوَ الرَّبِيعُ بْنُ نَافِعٍ - نا مُعَاوِيَةُ - يَعْنِي ابْنَ سَلَّامٍ - أَنَّهُ سَمِعَ أَبَا سَلَّامٍ نا أَبُو أَسْمَاءَ الرَّحَبِيُّ: أَنَّ ثَوْبَانَ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدَّثَهُ " أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَاءُ الرَّجُلِ أَبْيَضُ، وَمَاءُ الْمَرْأَةِ أَصْفَرُ، فَإِذَا اجْتَمَعَا فَعَلَا مَنِيُّ الرَّجُلِ مَنِيَّ الْمَرْأَةِ أَذْكَرَا بِإِذْنِ اللَّهِ وَإِذَا عَلَا مَنِيُّ الْمَرْأَةِ مَنِيَّ الرَّجُلِ آنَثَا بِإِذْنِ اللَّهِ» وَذَكَرَ الْحَدِيثَ.

L26781 Through the narrations of Shu‘bah and Sufyān—both narrating from al-A‘mash—Zayd ibn Wahb reported from ‘Abdullāh ibn Mas‘ūd, who said: The

وَمِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ، كِلَاهُمَا عَنْ الْأَعْمَشِ نا زَيْدُ بْنُ وَهْبٍ نا عَبْدُ اللَّهِ بْنُ مَسْعُودٍ قَالَ: حَدَّثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «أَنَّ خَلْقَ أَحَدِكُمْ يُجْمَعُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا ثُمَّ يَكُونُ عَلَقَةً مِثْلَ ذَلِكَ ثُمَّ يَكُونُ مُضْغَةً مِثْلَ ذَلِكَ ثُمَّ يُبْعَثُ

[5] **Qur’an references (L26779):** Qur’an 23:12 (Al-Mu’minun); Qur’an 23:13 (Al-Mu’minun); Qur’an 23:14 (Al-Mu’minun).

[6] **Hadith references (L26780):** Sahih Muslim 315a.

Messenger of Allah (peace and blessings be upon him and his family) narrated to us: “Verily the creation of one of you is gathered in his mother’s womb for forty days, then he becomes a clinging clot for a like period, then a lump of flesh for a like period. Then Allah sends an angel to him who is commanded with four words: he writes his provision, his deeds, his lifespan, then he is written as wretched or blessed. Then Allah breathes the soul into him.” And he mentioned the ḥadīth [in brief].

اللَّهُ إِلَيْهِ مَلَكًا فَيُؤْمَرُ بِأَرْبَعِ كَلِمَاتٍ فَيَكْتُبُ رِزْقَهُ وَعَمَلَهُ وَأَجَلَهُ ثُمَّ يَكْتُبُ شَقِيٌّ أَوْ سَعِيدٌ ثُمَّ يَنْفُخُ فِيهِ الرُّوحَ» وَذَكَرَ الْحَدِيثَ.

L26782–26783 These texts necessitate all that we have stated—thus, it is confirmed that until the completion of 120 nights, the mother’s fluid, the clot, and the lump of flesh from her inner contents are like the rest of what is in her womb. Therefore, he is subsidiary to her, for he is part of her. His exception applies in all cases, as he separates from her, just as milk separates.

فَهَذِهِ النُّصُوصُ تُوجِبُ كُلَّ مَا قُلْنَا - فَصَحَّ أَنَّهُ إلَى تَمَامِ الْمِائَةِ وَالْعِشْرِينَ لَيْلَةً مَاءً مِنْ مَاءِ أُمِّهِ وَلَحْمَةً وَمُضْغَةً مِنْ حَشْوَتِهَا كَسَائِرِ مَا فِي جَوْفِهَا، فَهُوَ تَبَعٌ لَهَا، لِأَنَّهُ بَعْضُهَا وَلَهُ اسْتِثْنَاؤُهُ فِي كُلِّ حَالٍ، لِأَنَّهُ يُزَايِلُهَا كَمَا يُزَايِلُهَا اللَّبَنُ.

L26784 And since this is the case, if a part thereof is emancipated, then the emancipation of all of it becomes required, for the reason we will explain later, God willing.

وَإِذْ هُوَ كَذَلِكَ فَإِذَا أُعْتِقَ فَقَدْ أُعْتِقَ بَعْضُهَا، فَوَجَبَ بِذَلِكَ عِتْقُ جَمِيعِهَا، لِمَا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L26785 It is impermissible to gift without specifying its details because it is unknown, and gifting an unspecified item is not allowed, as we have explained in *Kitāb al-Hibāt*.

وَلَا يَجُوزُ هِبَتُهُ دُونَهَا، لِأَنَّهُ مَجْهُولٌ، وَلَا تَجُوزُ هِبَةُ الْمَجْهُولِ عَلَى مَا ذَكَرْنَا فِي " كِتَابِ الْهِبَاتِ ".

L26786 As for when the soul is breathed into it, it becomes distinct from her, for Allah the Exalted designated it {another creation} [23:14]. At that stage, it may be male while she is female, two while she is one, or black or white while she differs from it in physical form and moral disposition, and in [divinely decreed] felicity and wretchedness. Given this reality, neither gifting nor emancipating it independently of her is permissible, as it remains undetermined. One may only draw near to Allah the Exalted through that which satisfies the soul, and the soul cannot possibly be content except with what is defined in characteristics and extent. If he emancipates her, this emancipation does not apply to it since it is distinct from her. The same ruling applies if he gifts her. However, if he subsumes her offspring under her in emancipation, gifting, or charity, this is valid. For people during the era of Allah’s Messenger—peace and blessings be upon him—under his knowledge and afterward, consistently emancipated pregnant enslaved women, enacted

وَأَمَّا إذَا نُفِخَ فِيهِ الرُّوحُ فَهُوَ غَيْرُهَا، لِأَنَّ اللَّهَ تَعَالَى سَمَّاهُ {خَلْقًا آخَرَ} [المؤمنون: ١٤] وَهُوَ حِينَئِذٍ قَدْ يَكُونُ ذَكَرًا وَهِيَ أُنْثَى، وَيَكُونُ اثْنَيْنِ وَهِيَ وَاحِدَةٌ، وَيَكُونُ أَسْوَدَ أَوْ أَبْيَضَ وَهِيَ بِخِلَافِهِ فِي خَلْقِهِ وَخُلُقِهِ، وَفِي السَّعَادَةِ وَالشَّقَاءِ، فَإِذْ هُوَ كَذَلِكَ فَلَا تَجُوزُ هِبَتُهُ وَلَا عِتْقُهُ دُونَهَا، لِأَنَّهُ مَجْهُولٌ، وَلَا يَجُوزُ التَّقَرُّبُ إلَى اللَّهِ تَعَالَى إلَّا بِمَا تَطِيبُ النَّفْسُ عَلَيْهِ، وَلَا يُمْكِنُ أَلْبَتَّةَ طِيبُ النَّفْسِ إلَّا فِي مَعْلُومِ الصِّفَةِ وَالْقَدْرِ، فَإِنْ أَعْتَقَهَا فَلَا عِتْقَ لَهُ، لِأَنَّهُ غَيْرُهَا فَإِنْ وَهَبَهَا فَكَذَلِكَ، فَإِنْ أَتْبَعَهَا حَمْلَهَا فِي الْعِتْقِ وَالْهِبَةِ وَالصَّدَقَةِ: جَازَ ذَلِكَ، لِأَنَّهُ لَمْ يَزَلْ النَّاسُ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِعِلْمِهِ وَبَعْدَهُ يَعْتِقُونَ الْحَوَامِلَ وَيَنْفُذُونَ عِتْقَ حَمْلِهَا وَيَهَبُونَ كَذَلِكَ وَيَبِيعُونَهَا كَذَلِكَ، وَيَمْتَلِكُونَهَا

the emancipation of their offspring, similarly gifted them, sold them similarly, acquired them through inheritance division likewise, gave charity, presented offerings, and sacrificed female livestock—thereby subsuming their offspring under their legal status. And success comes from Allah alone.[7]

بِالْقِسْمَةِ كَذَلِكَ، وَيَتَصَدَّقُونَ وَيُهْدُونَ وَيُضَحُّونَ بِإِنَاثِ الْحَيَوَانِ فَيَتْبَعُونَ أَحْمَالَهَا لَهَا فَتَكُونُ فِي حُكْمِهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L26787 It has been narrated to us through Ibn Abi Shaybah, who reported to us from Qurrah ibn Sulayman, from Muhammad ibn Fadalah, from his father, from Ibn Umar regarding one who emancipated his female slave while excluding what was in her womb. He said: "The child [in her womb] remains his property."

رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا قُرَّةُ بْنُ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ فَضَالَةَ عَنْ أَبِيهِ عَنْ ابْنِ عُمَرَ فِيمَنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا قَالَ: لَهُ ثُنْيَاهُ.

L26788 And through the chain of Muḥammad ibn ʿAbd al-Malik ibn Ayman, ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to us: My father narrated to us, ʿAbd al-Raḥmān ibn Mahdī narrated to us, ʿAbbād ibn ʿAbbād al-Muhallabī narrated to us from ʿUbaydullāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar that he freed a female slave of his and excepted what was in her womb.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا عَبَّادُ بْنُ عَبَّادٍ الْمُهَلَّبِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ أَعْتَقَ أَمَةً لَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا.

L26789 And with this, ʿUbaydullāh ibn ʿUmar says — this *isnad* is like the sun from its beginning to its end.

وَبِهِ يَقُولُ عُبَيْدُ اللَّهِ بْنُ عُمَرَ - هَذَا إسْنَادٌ كَالشَّمْسِ مِنْ أَوَّلِهِ إلَى آخِرِهِ.

L26790 Via the transmission of Yaḥyā ibn Saʿīd al-Qaṭṭān, narrated to us from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn, who said regarding one who manumits his female slave while excepting what is in her womb: "That is for him."

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا هِشَامُ بْنُ حَسَّانٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ قَالَ فِي الَّذِي يَعْتِقُ أَمَتَهُ وَيَسْتَثْنِي مَا فِي بَطْنِهَا قَالَ: ذَلِكَ لَهُ.

L26791–26792 And through the chain of Abd al-Razzaq from Ibn Jurayj from Ata ibn Abi Rabah concerning one who emancipates his female slave while excepting what is in her womb, he ruled: That is valid for him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ فِيمَنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا قَالَ: لَهُ ذَلِكَ.

L26793 And through the chain of transmission of Abu Thawr: Asbat narrated to us from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, who said: "Whoever establishes a mukataba with his female slave and excludes what is in her womb, there is no objection to it."

وَمِنْ طَرِيقِ أَبِي ثَوْرٍ نا أَسْبَاطُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ كَاتَبَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا فَلَا بَأْسَ بِذَلِكَ.

L26794 If he emancipates her while excepting what is in her womb, then the two exceptions belong to him.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ يَمَانٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا أَعْتَقَهَا وَاسْتَثْنَى مَا فِي بَطْنِهَا فَلَهُ ثُنْيَاهُ.

[7] **Qur'an references (L26786):** Qur'an 23:14 (Al-Mu'minun).

L26795 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Jābir, from al-Shaʿbī, who said: Whoever emancipates his female slave and excepts what is in her womb, then the exception belongs to him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ قَالَ: مَنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا فَذَلِكَ لَهُ.

L26796 From the transmission of Ibn Abī Shaybah via Ḥarammī ibn ʿUmārah ibn Abī Ḥafṣah, who narrated from Shuʿbah, saying: I asked al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān about that—meaning one who manumitted his female slave but excepted what was in her womb—and they both said: "That belongs to him."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَرَمِيُّ بْنُ عُمَارَةَ بْنُ أَبِي حَفْصَةَ نا شُعْبَةُ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ ذَلِكَ؟ - يَعْنِي: عَمَّنْ أَعْتَقَ أَمَتَهُ وَاسْتَثْنَى مَا فِي بَطْنِهَا - فَقَالَا جَمِيعًا: ذَلِكَ لَهُ.

L26797 It has also been narrated from Abū Hurayrah—and this is the opinion of Abū Thawr, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Al-Awzāʿī, Al-Ḥasan ibn Ṣāliḥ, Ibn al-Mundhir, Abū Sulaymān, and our companions.

وَقَدْ رُوِيَ أَيْضًا عَنْ أَبِي هُرَيْرَةَ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَابْنِ الْمُنْذِرِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L26798 Al-Ḥasan al-Baṣrī, al-Zuhrī, Qatādah, and Rabīʿah said: If he manumits her, then her child is free, and he is not permitted to exclude the child.

وَقَالَ الْحَسَنُ الْبَصْرِيُّ، وَالزُّهْرِيُّ، وَقَتَادَةُ، وَرَبِيعَةُ: إذَا أَعْتَقَهَا فَوَلَدُهَا حُرٌّ وَلَيْسَ لَهُ أَنْ يَسْتَثْنِيَهُ.

L26799 It has been reported from Saʿīd ibn al-Musayyab (though not reliably attributed to him) - and it is the opinion of Abū Ḥanīfah, Sufyān, Mālik, and al-Shāfiʿī.

وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ - وَلَمْ يَصِحَّ عَنْهُ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L26800 Rabīʿah said: If he frees what is in his female slave's womb without freeing her, the child belongs to him. If she gives birth, it is possible that the child will be emancipated. He retains the right to sell her before delivery, causing both her and her offspring to become enslaved, thereby voiding the emancipation. Similarly, if he dies: she and what is in her womb remain slaves, and the child's emancipation is invalid.

وَقَالَ رَبِيعَةُ: إنْ أَعْتَقَ مَا فِي بَطْنِ أَمَتِهِ دُونَهَا فَهُوَ لَهُ، فَإِنْ وَلَدَتْهُ فَعَسَى أَنْ يُعْتَقَ، وَلَهُ بَيْعُهَا قَبْلَ أَنْ تَضَعَ، وَتُرَقَّ هِيَ وَمَا وَلَدَتْ، وَيَبْطُلُ عِتْقُهُ، وَكَذَلِكَ إنْ مَاتَ: فَهِيَ وَمَا فِي بَطْنِهَا رَقِيقٌ لَا عِتْقَ لَهُ.

L26801 Malik said: If a man manumits what is in the womb of his female slave, and if he dies while his creditors demand repayment, the female slave is sold and what is in her womb remains a slave with no manumission valid for it. But if she is not sold until she delivers, the child is free.

وَقَالَ مَالِكٌ: إنْ أَعْتَقَ مَا فِي بَطْنِ أَمَتِهِ فَإِنْ مَاتَ وَقَامَ غُرَمَاؤُهُ بِيعَتْ وَكَانَ مَا فِي بَطْنِهَا رَقِيقًا وَلَا عِتْقَ لَهُ، فَإِنْ لَمْ تُبَعْ حَتَّى وَضَعَتْ فَهُوَ حُرٌّ.

L26802 Abū Ḥanīfah and al-Shāfiʿī said: If a man emancipates what is in the womb of his female slave, it is free and will never be enslaved.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: إنْ أَعْتَقَ مَا فِي بَطْنِ أَمَتِهِ فَهُوَ حُرٌّ، وَلَا يُرَقُّ أَبَدًا.

قَالَ أَبُو مُحَمَّد: هَذَا مِمَّا خَالَفُوا فِيهِ ابْنَ عُمَرَ، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ هَذَا.

L26803–26804 Abu Muhammad said: This is among the matters in which they opposed Ibn Umar, and no opponent from the Companions is known to have disagreed with him, yet they revere this.

وَأَمَّا قَوْلُ رَبِيعَةَ، وَمَالِكٍ، فَفِي غَايَةِ التَّنَاقُضِ، وَلَا يَخْلُو عِتْقُهُ لِجَنِينِ أَمَتِهِ مِنْ أَنْ يَكُونَ عِتْقًا أَوْ لَا يَكُونَ عِتْقًا، فَإِنْ كَانَ عِتْقًا لَا يَحِلُّ اسْتِرْقَاقُهُ - بِيعَتْ أُمُّهُ أَوْ لَمْ تُبَعْ - وَإِنْ كَانَ لَيْسَ عِتْقًا فَلَا يَجُوزُ أَنْ يَصِحَّ لَهُ عِتْقٌ وَإِنْ وَضَعَتْهُ بِقَوْلٍ " لَيْسَ عِتْقًا " وَنَسُوا هَاهُنَا احْتِجَاجَهُمْ بِ «الْمُسْلِمِينَ عِنْدَ شُرُوطِهِمْ» وَبِ {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] .

L26805 As for the opinion of Rabīʿah and Mālik, it is utterly contradictory. The manumission for the fetus of his enslaved woman cannot escape being either manumission or not. If it constitutes manumission, it is impermissible to enslave him—whether his mother is sold or not. If it does not constitute manumission, then his manumission cannot be deemed valid even if she delivers him, by their assertion that "it is not manumission." They have neglected here their own argument based on "Muslims are bound by their conditions" and "Fulfill [your] covenants" [Al-Mā'idah 5:1].[8]

وَهَذَا قَوْلٌ لَا يُؤَيِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قَوْلُ أَحَدٍ قَبْلَ رَبِيعَةَ، وَمَالِكٍ، وَلَا غَيْرُهُمَا، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ، بَلْ هُوَ مُخَالِفٌ لِكُلِّ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26806 This is an opinion not supported by the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor the statement of anyone before Rabīʿah and Mālik, nor other than them both, nor analogical reasoning, nor sound judgment. Rather, it contradicts all of that—and success is from Allah, the Exalted.

وَعَهِدْنَاهُمْ يَحْتَجُّونَ فِي بَعْضِ الْمَوَاضِعِ بِشَيْءٍ لَا يُعْرَفُ مَخْرَجُهُ " كُلُّ ذَاتِ رَحِمٍ فَوَلَدُهَا بِمَنْزِلَتِهَا " وَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا، فَيَقُولُونَ فِي وَلَدِ الْغَارَةِ، وَالْمُسْتَحَقَّةِ: هِيَ أَمَةٌ وَوَلَدُهَا حُرٌّ.

L26807 We have observed them invoking in some instances a principle of unknown origin: "Every possessor of a womb—her child shares her status," though they are the foremost in opposing this. They assert regarding the child of a captive taken in a raid and a concubine: "She is a slave, yet her child is free."

وَقَالَ بَعْضُهُمْ: لَمْ نَجِدْ قَطُّ امْرَأَةً حُرَّةً يَكُونُ جَنِينُهَا مَمْلُوكًا.

L26808 And some of them said, "We have never encountered a free woman whose fetus is held in ownership."

فَقُلْنَا: وَلَا وَجَدْتُمْ قَطُّ امْرَأَةً مَمْلُوكَةً وَوَلَدُهَا حُرٌّ، وَقَدْ قَضَيْتُمْ بِذَلِكَ فِي أُمِّ الْوَلَدِ، وَلَا وَجَدَ الْحَنَفِيُّونَ قَطُّ حُكْمَ الْآبِقِ، وَجَعْلَهُ فِي غَيْرِ الْآبِقِ، وَلَا وَجَدَ الْمَالِكِيُّونَ قَطُّ امْرَأَةً مُتَزَوِّجَةً بِزَيْدٍ تَرِثُ عُمَرَ بِالزَّوْجِيَّةِ وَهِيَ فِي عِصْمَةِ زَيْدٍ، وَلَا وَجَدَ الشَّافِعِيُّونَ قَطُّ حُكْمَ الْمُصَرَّاةِ فِي غَيْرِ الْمُصَرَّاةِ - وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26809 We said: Nor have you ever encountered a female slave whose child is free, though you have ruled such in the case of the umm al-walad. Nor have the Hanafis ever applied the ruling of the runaway slave to other than runaway slaves. Nor have the Malikis ever encountered a woman married to Zayd inheriting from 'Umar by marital right while still under Zayd's marriage bond. Nor have the Shafi'is ever applied the ruling on milk-withheld animals

[8] **Qur'an references (L26805):** Qur'an 5:1 (Al-Ma'idah).

beyond their designated case - this constitutes confusion without parallel. And success comes only from Allah, the Exalted.

L26810 **The issue of manumitting a limb, a tenth, or a part of the slave.**

L26811 1666 - Issue: If someone frees a part—any part—of his female slave or male slave, or frees a tenth of either, or a specifically designated portion in this manner: the entire male slave and the entire female slave shall be emancipated. Likewise, if he frees a nail, hair, or anything similar, as we have narrated through the chain of Ahmad ibn Shuʿayb: ʿAbdah ibn Sulaymān al-Ṣaffār al-Baṣrī reported to us from Suwayd, who reported from Zuhayr ibn Muʿāwiyah, who reported from ʿUbayd Allāh—the son of ʿUmar—from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allah—peace and blessings be upon him and his family—said: "Whoever frees any portion of their slave must emancipate the entirety of the slave if they possess wealth equivalent to the slave's value. If they lack such wealth, the slave shall be freed proportionally according to the owner's share."

L26812–26814 From the transmission of Aḥmad ibn Shuʿayb: I am Muḥammad ibn al-Muthannā; Abū al-Walīd (al-Ṭayālisī) narrated to us, [saying]: Hammām (Ibn Yaḥyā) narrated to us from Qatādah, from Abī al-Malīḥ al-Hudhalī, from his father: "That a man from Hudhayl..." He manumitted a partial share of a slave, and the Messenger of Allah (may Allah bless him and his family and grant him peace) approved his manumission, saying: "Allah has no partner." These are two authentic chains of narration. By this statement, what we mentioned in the preceding issue is established: that whoever manumits the fetus of his enslaved woman before the soul is breathed into it, she is thereby freed because it is a part of her and belongs to her.

L26815 We have been narrated through the chain of Muḥammad ibn al-Muthannā, who narrated to us: Ḥafṣ ibn Ghiyāth, who narrated to us: Layth ibn Abī Sulaym, from ʿĀṣim, from Ibn ʿAbbās, that he said regarding a man who told his female slave, "Your private part is free": She is free. Whether he freed a small portion or a large portion of it, she is free.

[مَسْأَلَة عِتْق عُضْو أَوْ عَشْر أَوْ جُزْء الْعَبْد]

١٦٦٦ - مَسْأَلَةٌ: وَمَنْ أَعْتَقَ عُضْوًا أَيَّ عُضْوٍ كَانَ مِنْ أَمَتِهِ أَوْ مِنْ عَبْدِهِ، أَوْ أَعْتَقَ عُشْرَهُمَا، أَوْ جُزْءًا مُسَمًّى كَذَلِكَ: عَتَقَ الْعَبْدُ كُلُّهُ وَالْأَمَةُ كُلُّهَا، وَكَذَلِكَ لَوْ أَعْتَقَ ظُفْرًا أَوْ شَعْرًا أَوْ غَيْرَ ذَلِكَ، لِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَبْدَةُ بْنُ سُلَيْمَانَ الصَّفَّارُ الْبَصْرِيُّ نا سُوَيْد نا زُهَيْرُ بْنُ مُعَاوِيَةَ نا عُبَيْدُ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ شَيْئًا مِنْ مَمْلُوكِهِ فَعَلَيْهِ عِتْقُهُ كُلُّهُ إنْ كَانَ لَهُ مَالٌ يَبْلُغُ ثَمَنَهُ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ عَتَقَ مِنْهُ نَصِيبُهُ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو الْوَلِيدِ - وَهُوَ الطَّيَالِسِيُّ - نا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ أَبِي الْمَلِيحِ الْهُذَلِيِّ عَنْ أَبِيهِ: «أَنَّ رَجُلًا مِنْ هُذَيْلٍ أَعْتَقَ شِقْصًا مِنْ مَمْلُوكٍ فَأَجَازَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عِتْقَهُ، وَقَالَ: لَيْسَ لِلَّهِ شَرِيكٌ» ، وَهَذَانِ إسْنَادَانِ صَحِيحَانِ وَوَجَبَ بِهَذَا الْقَوْلِ مَا ذَكَرْنَاهُ فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ أَنَّ مَنْ أَعْتَقَ جَنِينَ أَمَتِهِ قَبْلَ أَنْ يُنْفَخَ فِيهِ الرُّوحُ عَتَقَتْ هِيَ بِذَلِكَ؛ لِأَنَّهُ بَعْضُهَا وَشَيْءٌ مِنْهَا.

رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا حَفْصُ بْنُ غِيَاثٍ نا لَيْثُ بْنُ أَبِي سُلَيْمٍ عَنْ عَاصِمٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي رَجُلٍ قَالَ لِخَادِمِهِ: فَرْجُك حُرٌّ قَالَ: هِيَ حُرَّةٌ أَعْتَقَ مِنْهَا قَلِيلًا أَوْ كَثِيرًا فَهِيَ حُرَّةٌ.

L26816 Through the chain of Abu ʻUbayd: Abu Muʻawiyah narrated to us from Ismaʻil ibn Muslim from al-Hasan al-Basri, who said: If one manumits a single hair or a finger of his slave, then the slave has been emancipated.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَبُو مُعَاوِيَةَ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا أَعْتَقَ مِنْ غُلَامِهِ شَعْرَةً، أَوْ أُصْبُعًا: فَقَدْ عَتَقَ.

L26817 Narrated by ʻAbd al-Razzāq from Maʻmar from Qatādah, who said: Whoever says to his slave, “Your finger is free,” “Your nail is free,” or “A limb of yours is free,” the entirety of the slave is freed.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: مَنْ قَالَ لِعَبْدِهِ: أُصْبُعُك حُرٌّ أَوْ ظُفْرُك أَوْ عُضْوٌ مِنْك حُرٌّ: عَتَقَ كُلُّهُ.

L26818 From the narration of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Jābir, from al-Shaʿbī, who said: Whoever frees a limb of their slave, the entire slave is freed. His inheritance is the inheritance of a free person, and his testimony is the testimony of a free person. This is the opinion of Mālik, al-Layth, Ibn Abī Laylā, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, and Zufar. However, Mālik retracted this opinion, stating: If one bequeaths that nine-tenths of their slave be freed, the part he explicitly designates is freed, and the remainder is not freed.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ قَالَ: مَنْ أَعْتَقَ مِنْ عَبْدِهِ عُضْوًا: عَتَقَ كُلُّهُ، مِيرَاثُهُ مِيرَاثُ حُرٍّ، وَشَهَادَتُهُ شَهَادَةُ حُرٍّ - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ، وَابْنِ أَبِي لَيْلَى، وَالْحَسَنِ بْنِ حَيٍّ، وَالشَّافِعِيِّ وَزُفَرَ، إلَّا أَنَّ مَالِكًا - نَاقَضَ فَقَالَ: إنْ أَوْصَى بِأَنْ يُعْتَقَ مِنْ عَبْدِهِ تِسْعَةُ أَعْشَارِهِ: عَتَقَ مَا سَمَّى، وَلَا يُعْتَقُ بِذَلِكَ سَائِرُهُ.

L26819 Abu Hanifa and his companions—excluding Zufar—said: The obligation to manumit a slave does not arise by mentioning any body part except when mentioning the manumission of the neck, the face, the spirit, the soul, the body, or the physical body. Whichever of these is declared free, the entire slave is manumitted.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ حَاشَ زُفَرَ: لَا يَجِبُ الْعِتْقُ بِذِكْرِ شَيْءٍ مِنْ الْأَعْضَاءِ إلَّا فِي ذِكْرِهِ عِتْقَ الرَّقَبَةِ، أَوْ الْوَجْهِ، أَوْ الرُّوحِ، أَوْ النَّفْسِ، أَوْ الْجَسَدِ، أَوْ الْبَدَنِ، فَأَيُّ هَذِهِ أَعْتَقَ أُعْتِقَ جَمِيعُهُ

L26820 There is disagreement regarding his opinion on whether emancipating a slave by specifying the head or genitals results in emancipation. They argued that such terms are used figuratively to denote the entire body, as he said: “Because ’the face’ is used in linguistic convention to represent the whole.” This is among the matters in which Abū Ḥanīfah opposed the established Sunnah and a Companion whose opinion none of the other Companions are known to have opposed. They attach great importance to this principle when it aligns with their position, while we know of no predecessor to Abū Ḥanīfah in this division before his time.

وَاخْتَلَفَ عَنْهُ فِي عِتْقِهِ: الرَّأْسَ، أَوْ الْفَرْجَ، أَيُعْتَقُ بِذَلِكَ أَمْ لَا؟ وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ هَذِهِ أَلْفَاظٌ يُعَبَّرُ بِهَا عَنْ الْجَمِيعِ، قَالَ: لِأَنَّهُ يُعَبَّرُ " بِالْوَجْهِ " عَنْ الْجَمِيعِ فِي اللُّغَةِ، وَهَذَا مِمَّا خَالَفَ فِيهِ أَبُو حَنِيفَةَ السُّنَّةَ الثَّابِتَةَ، وَصَاحِبًا لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُعَظِّمُونَ هَذَا إذَا وَافَقَهُمْ، وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ فِي هَذَا التَّقْسِيمِ مُتَقَدِّمًا قَبْلَهُ.

L26821 Aḥmad and Isḥāq said: If one declares, “Your toenail is free,” such a statement does not necessitate manumission—not because it is legally distinct from its

وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: إنْ قَالَ: ظُفْرُك حُرٌّ، لَمْ يَجِبْ الْعِتْقُ بِذَلِكَ، لَا لِأَنَّهُ يُبَايِنُ حَامِلَهُ - وَكُلُّ هَذَا لَا شَيْءَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

bearer (for all of this is invalid)—and success is solely from Allah, the Most High.

The Legal Issue of Freeing a Jointly Owned Slave

L26822

Issue 1667 - If a person owns an enslaved man or woman co-owned with another and emancipates his entire share, or, If he manumits part of a slave or manumits him entirely, the entire slave becomes emancipated upon his declaration. If he possesses wealth sufficient to cover the value of the co-owner's share at the time of declaring manumission for the portion he manumitted, he must pay it to the co-owner. If he lacks such wealth, the male or female slave becomes obligated to earn the value of the share belonging to the non-manumitting co-owner according to their capacity. The co-owner has no claim beyond this, nor does he retain the right to manumit. The right of patronage (walāʾ) belongs exclusively to the first emancipator. The total value is assessed, then the proportion of the non-manumitted share is determined. The emancipated slave cannot claim reimbursement from his emancipator for what he earned toward this purpose (whether he acquires wealth or not). Regarding this matter, people hold fourteen opinions. Rabīʿah said: "Whoever manumits his share of a slave jointly owned with another, his manumission does not take effect." Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us, stating: From Muḥammad ibn ʿAbd Allāh ibn Abī Dulaym, from Muḥammad ibn Waḍḍāḥ, from Saḥnūn, from Ibn Wahb, from Yūnus ibn Zayd, from Rabīʿah. Yūnus said: "I asked him about a slave jointly owned by two partners where one manumitted his share. Rabīʿah replied: 'His manumission is revoked.' He did not distinguish between cases where the emancipator acted with his co-owner's permission or without it."

L26823–26825

L26826

Al-Ṭaḥāwī narrated this from him, from Aḥmad ibn Abī ʿImrān, from Muḥammad ibn Simāʿata, from Abī Yūsuf: that Rabīʿah said this to him.

L26827

Bukayr ibn al-Ashajj said regarding two parties between whom there is a slave, and one of them wishes to emancipate him or enter into a contractual manumission (kitābah): "Indeed, the two of them must mutually assess his

[مَسْأَلَة عِتْق الْعَبْد الْمُشْتَرَك]

١٦٦٧ - مَسْأَلَة: وَمَنْ مَلَكَ عَبْدًا أَوْ أَمَةً بَيْنَهُ وَبَيْنَ غَيْرِهِ فَأَعْتَقَ نَصِيبَهُ كُلَّهُ، أَوْ بَعْضَهُ، أَوْ أَعْتَقَهُ كُلَّهُ: عَتَقَ جَمِيعُهُ حِينَ يَلْفِظُ بِذَلِكَ - فَإِنْ كَانَ لَهُ مَالٌ يَفِي بِقِيمَةِ حِصَّةِ مَنْ يُشْرِكُهُ حِينَ لَفَظَ بِعِتْقِ مَا أَعْتَقَ مِنْهُ أَدَّاهَا إِلَى مَنْ يُشْرِكُهُ - فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ يَفِي بِذَلِكَ كُلِّفَ الْعَبْدُ أَوْ الْأَمَةُ أَنْ يَسْعَى فِي قِيمَةِ حِصَّةِ مَنْ لَمْ يَعْتِقْ عَلَى حَسَبِ طَاقَتِهِ، لَا شَيْءَ لِلشَّرِيكِ غَيْرُ ذَلِكَ، وَلَا لَهُ، أَنْ يَعْتِقَ، وَالْوَلَاءُ لِلَّذِي أَعْتَقَ أَوَّلًا، وَإِنَّمَا يُقَوَّمُ كُلُّهُ ثُمَّ يُعْرَفُ مِقْدَارَ حِصَّةِ مَنْ لَمْ يَعْتِقْ وَلَا يَرْجِعُ الْعَبْدُ الْمُعْتَقُ عَلَى مَنْ أَعْتَقَهُ بِشَيْءٍ مِمَّا سَعَى فِيهِ - حَدَثَ لَهُ مَالٌ أَوْ لَمْ يَحْدُثْ - وَلِلنَّاسِ فِي هَذَا أَرْبَعَةَ عَشَرَ قَوْلًا -: قَالَ رَبِيعَةُ: مَنْ أَعْتَقَ حِصَّةً لَهُ مِنْ عَبْدٍ بَيْنَهُ وَبَيْنَ آخَرَ لَمْ يَنْفُذْ عِتْقُهُ -: حَدَّثَنَا بِذَلِكَ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ قَالَ: نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي دُلَيْمٍ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا سَحْنُونَ نا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ زَيْدٍ عَنْ رَبِيعَةَ قَالَ يُونُسُ سَأَلْته عَنْ عَبْدٍ بَيْنَ اثْنَيْنِ فَأَعْتَقَ أَحَدُهُمَا نَصِيبَهُ مِنْ الْعَبْدِ فَقَالَ رَبِيعَةُ: عِتْقُهُ مَرْدُودٌ لَمْ يَخُصَّ بِذَلِكَ مَنْ أَعْتَقَ بِإِذْنِ شَرِيكِهِ أَوْ بِغَيْرِ إذْنِهِ.

وَرَوَى ذَلِكَ عَنْهُ الطَّحَاوِيَّ عَنْ أَحْمَدَ بْنِ أَبِي عِمْرَانَ عَنْ مُحَمَّدِ بْنِ سِمَاعَةَ عَنْ أَبِي يُوسُفَ: أَنَّ رَبِيعَةَ قَالَ لَهُ ذَلِكَ.

وَقَالَ بُكَيْرُ بْنُ الْأَشَجِّ فِي اثْنَيْنِ بَيْنَهُمَا عَبْدٌ فَأَرَادَ أَحَدُهُمَا أَنْ يَعْتِقَ أَوْ يُكَاتِبَ: فَإِنَّمَا يَتَقَاوَمَانِهِ -: رُوِّينَا ذَلِكَ عَنْ ابْنِ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ.

value." This was narrated to us from Ibn Wahb, from Makhramah ibn Bukayr, from his father.

وَقَالَتْ طَائِفَةٌ: يَنْفُذُ عِتْقُ مَنْ أَعْتَقَ، وَيَبْقَى مَنْ لَمْ يَعْتِقْ عَلَى نَصِيبِهِ يَفْعَلُ فِيهِ مَا شَاءَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ، وَسَعِيدِ بْنِ مَنْصُورٍ، قَالَا جَمِيعًا: نا أَبُو مُعَاوِيَةَ - هُوَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ - عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ، قَالَ: كَانَ بَيْنِي وَبَيْنَ الْأَسْوَدِ وَأُمِّنَا غُلَامٌ شَهِدَ الْقَادِسِيَّةَ وَأَبْلَى فِيهَا فَأَرَادُوا عِتْقَهُ وَكُنْتُ صَغِيرًا فَذَكَرَ ذَلِكَ الْأَسْوَدُ لِعُمَرَ، فَقَالَ: أَعْتِقُوا أَنْتُمْ وَيَكُونُ عَبْدُ الرَّحْمَنِ عَلَى نَصِيبِهِ حَتَّى يَرْغَبَ فِي مِثْلِ مَا رَغِبْتُمْ فِيهِ أَوْ يَأْخُذَ نَصِيبَهُ؟ قَالَ سَعِيدُ بْنُ مَنْصُورٍ مَكَانَ " أَعْتِقُوا أَنْتُمْ ": " أَعْتِقُوا إنْ شِئْتُمْ " لَمْ يَخْتَلِفَا فِي غَيْرِ ذَلِكَ، وَهَذَا إسْنَادٌ كَالذَّهَبِ الْمَحْضِ.

L26828 A group held the view that the emancipation by those who emancipated takes effect, while the share of the one who did not emancipate remains in his possession, which he may dispose of as he wishes. This is as we have reported through the transmission of Ibn Abī Shaybah and Saʿīd ibn Manṣūr, both of whom narrated: Abū Muʿāwiyah—Muḥammad ibn Khāzim al-Ḍarīr—narrated to us from al-Aʿmash, from Ibrāhīm ibn ʿAbd al-Raḥmān ibn Yazīd, who said: "A slave jointly owned by me, al-Aswad, and our mother had fought at al-Qādisiyyah and distinguished himself there. They wished to emancipate him, while I was a minor. Al-Aswad mentioned this to ʿUmar, who said: 'Emancipate if you wish, and the share of ʿAbd al-Raḥmān shall remain until he chooses to act as you have acted or takes his portion.'" Saʿīd ibn Manṣūr's version states "emancipate if you wish" instead of "you emancipate," with no other differences between the two narrations. This chain of transmission is sound.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ النَّخَعِيِّ عَنْ الْأَسْوَدِ، قَالَ: كَانَ لِي وَلِإِخْوَتِي غُلَامٌ أَبْلَى يَوْمَ الْقَادِسِيَّةِ فَأَرَدْت عِتْقَهُ لِمَا صَنَعَ، فَذَكَرْت ذَلِكَ لِعُمَرَ فَقَالَ: أَتُفْسِدُ عَلَيْهِمْ نَصِيبَهُمْ؟ حَتَّى يَبْلُغُوا، فَإِنْ رَغِبُوا فِيمَا رَغِبْت فِيهِ وَإِلَّا لَمْ تُفْسِدْ عَلَيْهِمْ نَصِيبَهُمْ.

L26829–26831 From the chain of Saʿīd ibn Manṣūr: Jarīr narrated to us from Manṣūr from al-Nakhaʿī from al-Aswad, who said: "I and my brothers had a slave who distinguished himself on the day of al-Qādisiyyah. I intended to emancipate him for his deed, so I mentioned this to ʿUmar." He said: "Do you deprive them of their share until they reach puberty? If they desire what you have desired, then [act]; otherwise, do not deprive them of their share."

قَالَ أَبُو مُحَمَّد: لَوْ رَأَى التَّضْمِينَ لَمْ يَكُنْ ذَلِكَ إفْسَادًا لِنَصِيبِهِمْ -: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ فِي عَبْدٍ بَيْنَ شَرِيكَيْنِ أَعْتَقَ أَحَدُهُمَا نَصِيبَهُ، فَأَرَادَ الْآخَرُ أَنْ يَجْلِسَ عَلَى حَقِّهِ مِنْ الْعَبْدِ، وَقَالَ الْعَبْدُ: نا أَقْضِي قِيمَتِي فَقَالَ عَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ: سَيِّدُهُ أَحَقُّ بِمَا بَقِيَ يَجْلِسُ عَلَيْهِ إنْ شَاءَ

L26832 Abu Muhammad said, "If he had ruled on compensation, that would not have invalidated their share of ownership." From the chain of Abd al-Razzaq via Ibn Jurayj: I asked Ata about a slave jointly owned by two partners, where one freed his share, and the other sought to assert his right over the remaining portion of the slave. The slave said, "I will pay my value." Ata and Amr ibn Dinar said, "His master has the strongest claim to what remains; he may assert it over him, if he wishes."

L26833 And from the transmission of ʿAbd al-Razzāq from Maʿmar: that he said regarding a slave co-owned by two men—when one manumits his share,

then the other manumits afterward—his clientage and inheritance rights are shared between them. This is also the opinion of al-Zuhrī, as Maʿmar said.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ: أَنَّهُ قَالَ فِي عَبْدٍ بَيْنَ رَجُلَيْنِ أَعْتَقَ أَحَدُهُمَا نَصِيبَهُ ثُمَّ أَعْتَقَ الْآخَرُ بَعْدُ: فَوَلَاؤُهُ وَمِيرَاثُهُ بَيْنَهُمَا - وَهُوَ قَوْلُ الزُّهْرِيِّ أَيْضًا، قَالَ مَعْمَرٌ.

L26834 From the narration of Ibn Wahb, via ʻUqbah ibn Nāfiʻ, from Rabīʻah regarding a slave jointly owned by three partners: one emancipated his share, another contracted manumission for his share, and the third retained his share in slavery. When the slave died, the one who contracted manumission must return what he had received from the slave, and all that the slave left behind is divided between him and the one who retained his share in slavery, and they divide it between themselves.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عُقْبَةَ بْنِ نَافِعٍ عَنْ رَبِيعَةَ فِي عَبْدٍ بَيْنَ ثَلَاثَةٍ: أَعْتَقَ أَحَدُهُمْ نَصِيبَهُ، وَكَاتَبَ الْآخَرُ نَصِيبَهُ، وَتَمَسَّكَ الْآخَرُ بِالرِّقِّ - ثُمَّ مَاتَ الْعَبْدُ، فَإِنَّ الَّذِي كَاتَبَ يَرُدُّ مَا أَخَذَ مِنْهُ، وَيَكُونُ جَمِيعُ مَا تَرَكَ بَيْنَهُ وَبَيْنَ الَّذِي تَمَسَّكَ بِالرِّقِّ يَقْتَسِمَانِهِ.

L26835 A group held that the manumission enacted by one who emancipates takes effect in his share, with no liability toward his co-owner unless the enslaved person is a strikingly beautiful female sought for intercourse—in which case he must compensate for the harm caused to his co-owner. This is the opinion of Uthman al-Batti. Another group maintained that the co-owner holds the choice: if he wishes, he may manumit; if he wishes, he may demand compensation from the emancipator—as narrated through Abd al-Razzaq's chain from Maʻmar, from Abu Hamza Maimun, from al-Nakhaʻi: "A man manumitted his share in a slave while his co-owners were orphans—what should be done?" Umar ibn al-Khattab ruled: "Wait until they reach maturity. If they choose to manumit, let them manumit; if they choose compensation, let it be granted." However, this attribution to Umar is invalid, for the authentic report from him is what we previously mentioned. This narration through Abu Hamza Maimun is baseless.

وَقَالَتْ طَائِفَةٌ: يَنْفُذُ عِتْقُ الَّذِي أَعْتَقَ فِي نَصِيبِهِ، وَلَا يَلْزَمُهُ شَيْءٌ لِشَرِيكِهِ إِلَّا أَنْ تَكُونَ جَارِيَةً رَائِعَةً إِنَّمَا تُلْتَمَسُ لِلْوَطْءِ، فَإِنَّهُ يَضْمَنُ لِلضَّرَرِ الَّذِي أَدْخَلَ عَلَى شَرِيكِهِ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ -: وَقَالَتْ طَائِفَةٌ: شَرِيكُهُ بِالْخِيَارِ إِنْ شَاءَ أَعْتَقَ وَإِنْ شَاءَ ضَمِنَ الْمُعْتِقُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي حَمْزَةَ عَنِ النَّخَعِيِّ: أَنَّ رَجُلًا أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ وَلَهُ شُرَكَاءُ يَتَامَى؟ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: يَنْتَظِرُ بِهِمْ حَتَّى يَبْلُغُوا، فَإِنْ أَحَبُّوا أَنْ يَعْتِقُوا أَعْتَقُوا، وَإِنْ أَحَبُّوا أَنْ يُضْمَنَ لَهُمْ ضُمِنَ - وَهَذَا لَا يَصِحُّ عَنْ عُمَرَ، إِنَّمَا الصَّحِيحُ عَنْهُ مَا ذَكَرْنَا آنِفًا، لِأَنَّ هَذِهِ الرِّوَايَةَ عَنْ أَبِي حَمْزَةَ مَيْمُونٍ - وَلَيْسَ بِشَيْءٍ.

L26836 Then the chain is interrupted because Ibrahim was not born until many years after Umar's death, but this opinion has been reported from Sufyan al-Thawri and al-Layth.

ثُمَّ مُنْقَطِعَةٌ، لِأَنَّ إِبْرَاهِيمَ لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ عُمَرَ بِسِنِينَ كَثِيرَةٍ، إِلَّا أَنَّ الْقَوْلَ بِهَذَا قَدْ رُوِيَ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ.

L26837–26839 A group held that if someone manumits their share in a male or female slave, their co-owner has two options: either to manumit their share—with patronage shared between them—or to require the slave to work for the value of their share. Once the slave fulfills this payment, they are freed and patronage remains shared between them, regardless of whether the manumitter is in-

وَقَالَتْ طَائِفَةٌ: مَنْ أَعْتَقَ نَصِيبًا لَهُ فِي عَبْدٍ أَوْ أَمَةٍ، فَشَرِيكُهُ بَيْنَ خِيَارَيْنِ: إِنْ شَاءَ أَعْتَقَ نَصِيبَهُ وَيَكُونُ الْوَلَاءُ بَيْنَهُمَا، وَإِنْ شَاءَ اسْتَسْعَى الْعَبْدَ فِي قِيمَةِ حِصَّتِهِ، فَإِذَا أَدَّاهَا عَتَقَ وَالْوَلَاءُ بَيْنَهُمَا - سَوَاءٌ كَانَ فِي كِلَا الْأَمْرَيْنِ الْمُعْتِقُ مُعْسِرًا أَوْ مُوسِرًا، وَلَهُ إِنْ كَانَ

solvent or solvent in both cases. If solvent, the co-owner has a third option: to assume liability for the value of his share to the manumitter, whereupon the manumitter returns. The guarantor liable for the slave concerning what his co-owner (who did not emancipate) guaranteed. When the slave fulfills the guaranteed obligation, he is emancipated, and the right of patronage in this case is specifically and solely for the one who emancipated his share of the slave.

مُوسِرًا خِيَارٌ فِي وَجْهٍ ثَالِثٍ -: وَهُوَ إِنْ شَاءَ ضَمِنَ لِلْمُعْتِقِ قِيمَةَ حِصَّتِهِ وَيَرْجِعُ الْمُعْتِقُ الْمُضَمَّنُ عَلَى الْعَبْدِ بِمَا ضَمِنَهُ شَرِيكُهُ الَّذِي لَمْ يَعْتِقْ، فَإِذَا أَدَّاهَا الْعَبْدُ عَتَقَ، وَالْوَلَاءُ فِي هَذَا الْوَجْهِ خَاصَّةً لِلَّذِي أَعْتَقَ حِصَّتَهُ فَقَطْ.

L26840 He said: If someone emancipates an umm walad (a slave woman who bore her master a child) jointly owned by him and another, there is no liability upon him toward his co-owner—whether the emancipator is wealthy or indigent.

قَالَ: فَإِنْ أَعْتَقَ أُمَّ وَلَدٍ بَيْنَهُ وَبَيْنَ آخَرَ: فَلَا ضَمَانَ عَلَيْهِ لِشَرِيكِهِ، وَلَا عَلَيْهِ أَيْضًا مُوسِرًا كَانَ الْمُعْتِقُ أَوْ مُعْسِرًا.

L26841 He said: If one partner decrees posthumous manumission (tadbeer) for a jointly owned slave, the other partner may choose: either retain his share as an enslaved person in its original state while the first partner's share remains under tadbeer; decree tadbeer for his own share as well; or hold the slave liable to pay the value of the partner's share from him (the slave) as a mudabbar (a slave under tadbeer), whereby he gains freedom upon payment. The partner who initiated the tadbeer is likewise liable for the value of his share as a mudabbar, having no recourse to claim liability from his co-owner. Alternatively, he may directly free his share. If he does so, the partner who decreed tadbeer may hold the emancipating partner liable for the value of his share as a mudabbar—this being the opinion of Abu Hanifa (founder of the Hanafi school). We know of no scholar in Islam who preceded him in distinguishing between solvent and insolvent parties in this manner, nor in addressing such ambiguities. The most remarkable of these rulings concerns an umm walad (mother of her master's child) co-owned by two partners. None of his direct companions followed him in this, except later scholars in their respective times and religious contexts alone.

قَالَ: فَإِنْ دَبَّرَ عَبْدًا بَيْنَهُ وَبَيْنَ آخَرَ فَشَرِيكُهُ بِالْخِيَارِ، إِنْ شَاءَ احْتَبَسَ نَصِيبَهُ رَقِيقًا كَمَا هُوَ، وَيَكُونُ نَصِيبُ شَرِيكِهِ مُدَبَّرًا، وَإِنْ شَاءَ دَبَّرَ نَصِيبَهُ أَيْضًا وَإِنْ شَاءَ ضَمِنَ الْعَبْدُ قِيمَةَ حِصَّتِهِ مِنْهُ مُدَبَّرًا، وَإِذَا أَدَّاهَا عَتَقَ، وَضَمِنَ الشَّرِيكُ الَّذِي دَبَّرَ الْعَبْدَ أَيْضًا قِيمَةَ حِصَّتِهِ مُدَبَّرًا، وَلَا سَبِيلَ لَهُ إِلَى شَرِيكِهِ فِي تَضْمِينٍ وَإِنْ شَاءَ أَعْتَقَ نَصِيبَهُ، فَإِنْ فَعَلَ كَانَ لِشَرِيكِهِ الَّذِي دَبَّرَ أَنْ يُضَمِّنَ الشَّرِيكَ الْمُعْتِقَ قِيمَةَ نَصِيبِهِ مُدَبَّرًا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَمَا نَعْلَمُ أَحَدًا مِنْ أَهْلِ الْإِسْلَامِ سَبَقَهُ إِلَى هَذَا التَّقْسِيمِ بَيْنَ الْمُوسِرِ وَالْمُعْسِرِ، وَلَا إِلَى هَذِهِ الْوَسَاوِسِ وَأَعْجَبُهَا: أُمُّ وَلَدٍ بَيْنَ اثْنَيْنِ، وَلَا نَعْلَمُ أَحَدًا مِنْ أَصْحَابِهِ اتَّبَعَهُ عَلَيْهِ، إِلَّا الْمُتَأَخِّرِينَ فِي أَزْمَانِهِمْ وَأَدْيَانِهِمْ فَقَطْ.

L26842 A group said: Whoever frees his share in a jointly owned slave must guarantee the value of his partner's share, whether the partner is wealthy or indigent - as we have reported through the chain of Ibn Abi Shaybah: Yazeed ibn Harun narrated to us, from Hajjaj (meaning Ibn Artah), from Abd al-Rahman ibn al-Aswad and Ibrahim al-Nakha'i, both of whom reported from

وَقَالَتْ طَائِفَةٌ: مَنْ أَعْتَقَ شِرْكًا لَهُ فِي مَمْلُوكٍ ضَمِنَ قِيمَةَ حِصَّةِ شَرِيكِهِ مُوسِرًا كَانَ أَوْ مُعْسِرًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ حَجَّاجٍ - هُوَ ابْنُ أَرْطَاةَ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَسْوَدِ، وَإِبْرَاهِيمَ النَّخَعِيِّ، كِلَاهُمَا عَنِ الْأَسْوَدِ، قَالَ:

al-Aswad, who said: “There was a slave jointly owned between me and my brothers, and I intended to free him.” Abd al-Rahman stated in his narration: “I came to Ibn Mas‘ud and mentioned this to him. He said: ’Do not harm your partners’ share and thereby become liable to pay, but wait until the slave reaches maturity.’” Ibrahim stated in his narration, replacing “Ibn Mas‘ud” with “Umar” in his report, and both narrators agreed on all other points.

كَانَ بَيْنِي وَبَيْنَ إِخْوَتِي غُلَامٌ فَأَرَدْت أَنْ أَعْتِقَهُ، قَالَ عَبْدُ الرَّحْمَنِ فِي رِوَايَتِهِ: فَأَتَيْت ابْنَ مَسْعُودٍ فَذَكَرْت ذَلِكَ لَهُ؟ فَقَالَ: لَا تُفْسِدُ عَلَى شُرَكَائِك فَتَضْمَنُ، وَلَكِنْ تَرَبَّصْ حَتَّى يَشِبُّوا، وَقَالَ إِبْرَاهِيمُ فِي رِوَايَتِهِ مَكَانَ " ابْنِ مَسْعُودٍ ": " عُمَرَ " وَاتَّفَقَا فِيمَا عَدَا ذَلِكَ.

L26843 From the narration of Ibn Abi Shaybah: Azhar al-Samman narrated to us from Abdullah ibn Awn from Muhammad ibn Sirin: that a slave jointly owned by two men was emancipated by one of them. Umar ibn al-Khattab wrote: “He is responsible for the highest appraisal value.” This is invalid because al-Hajjaj ibn Artat is weak, and the other chain is mursal (with a missing link). However, we have narrated this through the narration of Ibn Abi Shaybah: Muhammad ibn Mubashshir narrated to us from Hisham ibn Urwah from his father regarding a slave jointly owned by two men, one of whom emancipated his share. He said: “He is financially responsible for his partner’s share.” This is also the opinion of Zufar ibn al-Hudhayl.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَزْهَرُ السَّمَّانُ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ عَبْدًا بَيْنَ رَجُلَيْنِ أَعْتَقَهُ أَحَدُهُمَا، فَكَتَبَ عُمَرُ بْنُ الْخَطَّابِ: أَنْ يَقُومَ عَلَيْهِ أَعْلَى الْقِيمَةِ - وَهَذَا لَا شَيْءَ، لِأَنَّ الْحَجَّاجَ بْنَ أَرْطَاةَ هَالِكٌ، وَالْآخَرَ مُرْسَلٌ، إلَّا أَنَّ هَذَا قَدْ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ مُبَشِّرٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ فِي عَبْدٍ بَيْنَ اثْنَيْنِ أَعْتَقَ أَحَدُهُمَا نَصِيبَهُ قَالَ: هُوَ ضَامِنٌ لِنَصِيبِ صَاحِبِهِ - وَهُوَ أَيْضًا قَوْلُ زُفَرَ بْنِ الْهُذَيْلِ.

L26844–26846 A group of scholars held that if one of the two partners emancipates his share, the slave must enter into a contractual obligation to work for their freedom, regardless of which partner emancipated them. Whether wealthy or insolvent: As we have narrated through the chain of Abd al-Razzaq from Ibn Jurayj from Ata: If a slave is jointly owned by two men and one of them emancipates his share without his partner’s consent, the remaining portion of the slave is assessed. The slave is then emancipated using the wealth of the one who emancipated his share. This slave is compelled to work to repay the debt incurred by the owner for emancipating his share of the slave. I asked him: “Is the slave compelled to work whether the emancipator was insolvent or wealthy?” He replied: “Yes, as they asserted.”

وَقَالَتْ طَائِفَةٌ: إنْ أَعْتَقَ أَحَدُ الشَّرِيكَيْنِ نَصِيبَهُ اسْتَسْعَى الْعَبْدُ سَوَاءٌ كَانَ الْمُعْتِقُ مُوسِرًا أَوْ مُعْسِرًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: إنْ كَانَ عَبْدٌ بَيْنَ رَجُلَيْنِ فَأَعْتَقَ أَحَدُهُمَا نَصِيبَهُ بِغَيْرِ أَمْرِ شَرِيكِهِ أُقِيمَ مَا بَقِيَ مِنْهُ، ثُمَّ عَتَقَ فِي مَالِ الَّذِي أَعْتَقَهُ، ثُمَّ اسْتَسْعَى هَذَا الْعَبْدُ بِمَا غَرِمَ فِيمَا أَعْتَقَ عَلَيْهِ مِنْ الْعَبْدِ فَقُلْت لَهُ: يَسْتَسْعِي الْعَبْدُ كَانَ مُفْلِسًا أَوْ غَنِيًّا؟ قَالَ: نَعَمْ، زَعَمُوا.

L26847 Ibn Jurayj said: This is ʿAṭāʾ’s initial opinion. He later returned to the view I had mentioned from him before.

قَالَ ابْنُ جُرَيْجٍ: هَذَا أَوَّلُ قَوْلِ عَطَاءٍ، ثُمَّ رَجَعَ إلَى مَا ذَكَرْت عَنْهُ قَبْلُ.

L26848 A group said: If a master emancipates his share in a slave while bankrupt, and the slave seeks to redeem himself by paying his value, he is most entitled

to this if he fulfills it. This is narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿUbayd Allāh ibn Abī Yazīd in his statement.

وَقَالَتْ طَائِفَةٌ: إِنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ - وَهُوَ مُفْلِسٌ - فَأَرَادَ الْعَبْدُ أَخْذَ نَفْسِهِ بِقِيمَتِهِ، فَهُوَ أَوْلَى بِذَلِكَ إِنْ نَفَّذَ -: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ قَوْلَهُ.

L26849 A group of scholars opined that if a slave co-owned by two individuals is partially manumitted when one of them frees his share, the remaining portion must be emancipated through the public treasury (Bayt al-Mal) of the Muslims. This is reported from Ibn Sirīn.

وَقَالَتْ طَائِفَةٌ: فِي عَبْدٍ بَيْنَ اثْنَيْنِ أَعْتَقَ أَحَدُهُمَا نَصِيبَهُ: أَنَّ بَاقِيهِ يُعْتَقُ مِنْ بَيْتِ مَالِ الْمُسْلِمِينَ -: رُوِيَ ذَلِكَ عَنِ ابْنِ سِيرِينَ.

L26850 A group holds that whoever manumits their share in a male slave or female slave must compensate the remaining owners to complete the manumission.

وَقَالَتْ طَائِفَةٌ: مَنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ أَوْ أَمَةٍ.

L26851 If he is solvent, the shares of his co-owners are appraised against him, and he must pay their value. The entire slave is manumitted only after this appraisal, not before. If a co-owner wishes to free his share, he may do so, but he is forbidden to retain ownership of that portion, enter into a *mukataba* contract (gradual emancipation), sell it, or declare it for posthumous emancipation. If the responsible party neglects the appraisal until either the manumitter or the slave dies, the appraisal becomes invalid, and full ownership reverts to whoever asserts the right to keep the slave enslaved. If the one who manumitted his share is insolvent, the portion he freed remains emancipated, while the rest remains enslaved. The owner of the remaining share may sell that enslaved portion if he wishes, retain it as property, enter into a *mukataba* contract, gift it, or declare it for posthumous emancipation. The ruling applies equally whether the manumitter gains solvency after the manumission or remains insolvent.

فَإِنْ كَانَ مُوسِرًا قُوِّمَ عَلَيْهِ حِصَصُ شُرَكَائِهِ وَأَغْرَمَهَا لَهُمْ، وَأُعْتِقَ كُلُّهُ بَعْدَ التَّقْوِيمِ لَا قَبْلَهُ، وَإِنْ شَاءَ الشَّرِيكُ أَنْ يَعْتِقَ حِصَّتَهُ فَلَهُ ذَلِكَ، وَلَيْسَ لَهُ أَنْ يُمْسِكَهُ رَقِيقًا، وَلَا أَنْ يُكَاتِبَهُ، وَلَا أَنْ يَبِيعَهُ، وَلَا أَنْ يُدَبِّرَهُ، فَإِنْ غَفَلَ عَنِ التَّقْوِيمِ حَتَّى مَاتَ الْمُعْتِقُ أَوْ الْعَبْدُ بَطَلَ التَّقْوِيمُ، وَمَالُهُ كُلُّهُ لِمَنْ تَمَسَّكَ بِالرِّقِّ، فَإِنْ كَانَ الَّذِي أَعْتَقَ نَصِيبَهُ مُعْسِرًا فَقَدْ عَتَقَ مِنْهُ مَا أَعْتَقَ وَالْبَاقِي رَقِيقٌ يَبِيعُهُ الَّذِي هُوَ لَهُ إِنْ شَاءَ، أَوْ يُمْسِكُهُ رَقِيقًا، أَوْ يُكَاتِبُهُ، أَوْ يَهَبُهُ، أَوْ يُدَبِّرُهُ، وَسَوَاءٌ أَيْسَرَ الْمُعْتِقُ بَعْدَ عِتْقِهِ أَوْ لَمْ يُوسِرْ.

L26852 If a male or female slave is jointly owned by three individuals, and one of them manumits his share while insolvent, then another manumits his share while solvent, no valuation is imposed on the solvent [second] manumitter or the insolvent [first] manumitter, and the slave remains partially emancipated according to the unmanumitted shares. If both manumitters are solvent, valuation is assessed solely against the one who manumitted first. If both manumit simultaneously while solvent, the share of the remaining co-owners

فَإِنْ كَانَ عَبْدٌ أَوْ أَمَةٌ بَيْنَ ثَلَاثَةٍ فَأَعْتَقَ أَحَدُهُمْ نَصِيبَهُ وَهُوَ مُعْسِرٌ ثُمَّ أَعْتَقَ الْآخَرُ وَهُوَ مُوسِرٌ لَمْ يُقَوَّمْ عَلَيْهِ وَلَا عَلَى الْمُعْتِقِ وَبَقِيَ بِحَسَبِهِ، فَإِنْ كَانَ كِلَاهُمَا مُوسِرًا قُوِّمَ عَلَى الَّذِي أَعْتَقَ أَوَّلًا فَقَطْ، فَلَوْ أَعْتَقَ الِاثْنَانِ مَعًا وَكَانَا غَنِيَّيْنِ قُوِّمَتْ حِصَّةُ الْبَاقِينَ عَلَيْهِمَا،

فَمَرَّةً قَالَ: بِنِصْفَيْنِ، وَمَرَّةً قَالَ: عَلَى قَدْرِ حِصَصِهِمَا، فَإِنْ كَانَ أَحَدُهُمَا غَائِبًا لَمْ يُنْتَظَرْ، لَكِنْ يُقَوَّمُ عَلَى الْحَاضِرِ - وَهَذَا قَوْلُ مَالِكٍ، وَمَا نَعْلَمُ هَذَا الْقَوْلَ لِأَحَدٍ قَبْلَهُ.

is valued against them. In some cases, Mālik ruled it should be divided into two equal halves, and in others, according to their respective shares. If one of them is absent, there is no waiting; rather, valuation is assessed against the present owner. This is the opinion of Mālik, and we do not know of anyone holding this view before him.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ الَّذِي أَعْتَقَ مُوسِرًا قُوِّمَ عَلَيْهِ حِصَّةُ مِنْ شِرْكِهِ وَهُوَ حُرٌّ كُلُّهُ حِينَ عَتَقَ الَّذِي أَعْتَقَ نَصِيبَهُ، وَلَيْسَ لِمَنْ يُشْرِكُهُ أَنْ يَعْتِقُوا وَلَا أَنْ يُمْسِكُوا، فَإِنْ كَانَ الْمُعْتِقُ مُعْسِرًا فَقَدْ عَتَقَ مَا عَتَقَ وَبَقِيَ سَائِرُهُ مَمْلُوكًا يَتَصَرَّفُ فِيهِ مَالِكُهُ كَمَا يَشَاءُ - وَهُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: إِنْ كَانَ الْمُعْتِقُ مُوسِرًا ضُمِنَ بَاقِي قِيمَتِهِ، لَا يُبَاعُ لَهُ فِي ذَلِكَ دَارُهُ، قَالَ إِسْحَاقُ: وَلَا خَادِمُهُ - وَسَكَتَا عَنْ الْمُعْسِرِ، فَمَا سَمِعْنَا عَنْهُمَا فِيهِ لَفْظَةً.

L26853–26855 A group held the opinion that if the emancipator was financially capable, the value of his co-ownership share would be determined and he must pay it, whereby the entire slave would become free upon emancipating his share. The co-owners may neither emancipate their shares nor retain them. If the emancipator was insolvent, only the share he emancipated becomes free, while the remainder stays enslaved, and the owner of the remaining portion may manage it as he wishes. This is one of his two opinions. Al-Shāfiʿī, and Aḥmad and Isḥāq said: If the manumitter is solvent, he is liable for the remaining portion of the slave's value. His house is not sold for that purpose. Isḥāq said: "Nor his servant." The two scholars did not address the insolvent manumitter, and we have not heard a single word from them on this matter.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ الْمُعْتِقُ لِنَصِيبِهِ مُوسِرًا قُوِّمَ عَلَيْهِ حِصَّةُ مِنْ شِرْكِهِ وَعَتَقَ كُلُّهُ، فَإِنْ كَانَ الْمُعْتِقُ لِنَصِيبِهِ مُعْسِرًا اسْتَسْعَى الْعَبْدَ فِي قِيمَةِ حِصَّةِ مَنْ لَمْ يَعْتِقْ وَعَتَقَ كُلُّهُ.

L26856 A group stated: If the one manumitting his share is solvent, a portion of his co-owner's share is assessed against him, and the slave is freed in full. If the one manumitting his share is insolvent, the slave is compelled to labor for the value of the share belonging to the one who did not manumit, and the slave is freed in full.

ثُمَّ اخْتَلَفَ هَؤُلَاءِ: أَيَكُونُ حُرًّا مُذْ يَعْتِقُ الْأَوَّلُ نَصِيبَهُ وَلَا يَكُونُ لِلْآخَرِ تَصَرُّفٌ بِعِتْقٍ وَلَا بِغَيْرِهِ؟ أَمْ لَا يُعْتَقُ إِلَّا بِالْأَدَاءِ؟ وَلِمَنْ يَكُونُ وَلَاؤُهُ إِنْ أُعْتِقَ بِاسْتِسْعَائِهِ؟ وَهَلْ يَرْجِعُ عَلَى الَّذِي أَعْتَقَ بَعْضَهُ أَوَّلًا بِمَا سَعَى فِيهِ أَمْ لَا؟ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا أَشْعَثُ بْنُ سَوَّارٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَقُولُ: إِذَا أَعْتَقَ نَصِيبًا لَهُ فِي عَبْدٍ فَعَلَى الَّذِي أَعْتَقَ أَنْصِبَاءُ شُرَكَائِهِ إِنْ كَانَ مُوسِرًا، وَإِنْ كَانَ مُعْسِرًا اسْتَسْعَى الْعَبْدَ.

L26857 Then they differed: Does he become free from when the first emancipates his share, with the other having no right to dispose of him through emancipation or otherwise? Or is emancipation only valid upon fulfillment? To whom does his patronage belong if he is emancipated through compelled labor? And may the one who initially emancipated part of him seek reimbursement for what he labored to earn, or not? — It has been narrated to us through the chain of Saʿīd ibn Manṣūr, from Hushaym, from Ashʿath ibn Sawwār, from Nāfiʿ, from Ibn ʿUmar, that he used to say: If someone emancipates his share in a slave, the emancipator is responsible for purchasing the shares of his partners if he is financially capable. If he is impoverished, the emancipator must compel the slave to work [for his freedom].

L26858 From the chain of Saʿīd ibn Manṣūr: Abū Muʿāwiyah narrated to us, Ḥajjāj narrated to us from ʿAmr ibn Shuʿayb from Saʿīd ibn al-Musayyab, who said: Thirty of the Companions of the Messenger of Allah—peace and blessings be upon him—would hold liable a man who emancipated a slave jointly owned between him and his co-owner, requiring him to pay compensation if he was solvent, and they would compel the slave to labor for the co-owner if he was impoverished.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا حَجَّاجٌ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كَانَ ثَلَاثُونَ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُضَمِّنُونَ الرَّجُلَ إِذَا أَعْتَقَ الْعَبْدَ بَيْنَهُ وَبَيْنَ صَاحِبِهِ إِذَا كَانَ مُوسِرًا وَيَسْتَسْعُونَهُ إِذَا كَانَ مُعْسِرًا.

L26859 From the chain of al-Ṭaḥāwī through Rawḥ ibn al-Faraj from Yaḥyā ibn Bukayr from al-Layth ibn Saʿd: Abū al-Zinād and Ibn Abī Laylā were asked about a person who frees their share of a co-owned slave. They cited either compensating for the manumission if the manumitter was solvent, or obligating the slave to work to pay the value of the co-owner's share if the manumitter was insolvent. They said: "We heard that ʿUmar ibn al-Khaṭṭāb spoke regarding certain aspects of this."

وَمِنْ طَرِيقِ الطَّحَاوِيِّ عَنْ رَوْحِ بْنِ الْفَرَجِ عَنْ يَحْيَى بْنِ بُكَيْرٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ: سُئِلَ أَبُو الزِّنَادِ، وَابْنُ أَبِي لَيْلَى: عَمَّنْ أَعْتَقَ نَصِيبَهُ مِنْ عَبْدٍ بَيْنَهُ وَبَيْنَ آخَرَ؟ فَذَكَرَا تَضْمِينَ الْعِتْقِ إِنْ كَانَ مُوسِرًا، أَوْ اسْتِسْعَاءَ الْعَبْدِ إِنْ كَانَ الْمُعْتِقُ مُعْسِرًا، فَقَالَا: سَمِعْنَا أَنَّ عُمَرَ بْنَ الْخَطَّابِ تَكَلَّمَ بِبَعْضِ ذَلِكَ.

L26860 From the chain of ʿAbd al-Razzāq: Sufyān al-Thawrī narrated to us, on the authority of Usāmah ibn Zayd, who heard Sulaymān ibn Yasār say: "If someone manumits a share in a slave, he must pay its value if he possesses wealth. If he lacks wealth, he must require the slave to labor for the remainder of its value." I asked Sulaymān: "What if the slave is a minor?" He replied: "Thus the Sunnah has come."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ نا أُسَامَةُ بْنُ زَيْدٍ: أَنَّهُ سَمِعَ سُلَيْمَانَ بْنَ يَسَارٍ يَقُولُ: إِذَا أَعْتَقَ شِقْصًا فِي عَبْدٍ فَإِنَّهُ يَضْمَنُهُ بِقِيمَتِهِ إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ اسْتَسْعَى الْعَبْدَ فِي بَقِيَّتِهِ فَقُلْت لِسُلَيْمَانَ: أَرَأَيْت إِنْ كَانَ الْعَبْدُ صَغِيرًا؟ قَالَ: كَذَلِكَ جَاءَتْ السُّنَّةُ

L26861–26863 Through the chain of Muḥammad ibn al-Muthannā: Muʿammal ibn Ismāʿīl narrated to us, Sufyān al-Thawrī narrated to us from Usāmah ibn Zayd from Sulaymān ibn Yasār, who said: "Whoever frees a fractional share in a slave, the slave is fully emancipated as a binding obligation upon him from his wealth. If he does not..." If he has wealth sufficient to require the slave to labor for its remainder, Usāma said: I asked Sulaymān, "From whom [is this narrated]?" He replied, "The Sunnah has enacted this."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُؤَمَّلُ بْنُ إِسْمَاعِيلَ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: مِنْ أَعْتَقَ شِقْصًا مِنْ عَبْدٍ فَإِنَّهُ يُعْتَقُ عَلَيْهِ مِنْ مَالِهِ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ اسْتَسْعَى الْعَبْدَ فِي بَقِيَّتِهِ، قَالَ أُسَامَةُ: فَقُلْت لِسُلَيْمَانَ: عَمَّنْ؟ قَالَ: جَرَتْ بِهِ السُّنَّةُ.

L26864 And through the chain of Ibn Abī Shaybah, who narrated to us from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī regarding a slave co-owned by two men: If one of them frees his portion, he said, "The emancipator is liable to pay compensa-

tion if he possesses wealth. If he lacks wealth, the slave is compelled to work for their emancipation."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الْعَبْدِ يَكُونُ بَيْنَ الرَّجُلَيْنِ: يَعْتِقُ أَحَدُهُمَا نَصِيبَهُ قَالَ: يَضْمَنُ إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ اسْتَسْعَى الْعَبْدُ.

L26865 Narrated via the chain of Abd al-Razzaq from Sufyan al-Thawri from Hammad ibn Abi Sulayman that he would say: If he possessed from the wealth the full share of his partner, he guaranteed liability for him, and there was no compulsory labor imposed upon the slave. But if there was a deficiency of a dirham or more from it, the slave would labor, and no liability fell upon the manumitter.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُ كَانَ يَقُولُ: إِنْ كَانَ لَهُ مِنْ الْمَالِ تَمَامُ نَصِيبِ صَاحِبِهِ ضَمِنَ لَهُ، وَلَيْسَ عَلَى الْعَبْدِ سِعَايَةٌ، فَإِنْ نَقَصَ مِنْهُ دِرْهَمٌ فَمَا فَوْقَهُ سَعَى الْعَبْدُ، وَلَيْسَ عَلَى الْمُعْتِقِ ضَمَانٌ.

L26866 From the chain of Saʿīd ibn Manṣūr: He narrated to us from Hushaym, who narrated to us from Yūnus and Ismāʿīl ibn Sālim. Yūnus said [narrating] from al-Ḥasan, and Ismāʿīl said [narrating] from al-Shaʿbī. They both stated: If the emancipator is wealthy, he must cover the shares owed to his co-owners, but if he is impoverished, the enslaved person is compelled to work toward self-manumission (istisʿā').

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ، وَإِسْمَاعِيلُ بْنُ سَالِمٍ، قَالَ يُونُسُ عَنْ الْحَسَنِ، وَقَالَ إِسْمَاعِيلُ: عَنْ الشَّعْبِيِّ، قَالَا جَمِيعًا: إِنْ كَانَ الْمُعْتِقُ مُوسِرًا ضَمِنَ أَنْصِبَاءَ أَصْحَابِهِ، وَإِنْ كَانَ مُعْسِرًا اسْتَسْعَى الْعَبْدَ.

L26867 From the narration of Abd al-Razzaq via Ma'mar via Qatadah: Whoever emancipates their share in a slave, the value of their portion is assessed against them on the day of emancipation. The owner cannot claim compensation for what he incurred because of it, and the slave remains unemancipated until he fulfills the service imposed on him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ مَنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ فَإِنَّهُ يُقَوَّمُ عَلَيْهِ يَوْمَ أَعْتَقَهُ وَلَا يَتْبَعُهُ السَّيِّدُ بِمَا غَرِمَ عَنْهُ وَالْعَبْدُ غَيْرُ مُعْتَقٍ حَتَّى يُتِمَّ أَدَاءَ مَا اسْتَسْعَى فِيهِ.

L26868 And through the narration of Abd al-Razzaq from Ibn Jurayj, he said: The manumitter must necessarily compel the slave to work for emancipation if he is insolvent regarding his share, but he need not compel him if he is solvent—and the slave is fully emancipated, meaning this applies to the one who manumitted his share in the slave.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: يَسْتَسْعِي الْعَبْدَ وَلَا بُدَّ، إِنْ كَانَ الْمُعْتِقُ لِنَصِيبِهِ مُعْسِرًا، وَلَا يَسْتَسْعِي إِنْ كَانَ مُوسِرًا وَيُعْتَقُ كُلُّهُ - يَعْنِي عَلَى الَّذِي أَعْتَقَ نَصِيبَهُ مِنْهُ.

L26869 From the chain of Ibn Wahb via Yunus ibn Yazid, from Al-Zuhri regarding one who emancipates their share of a co-owned slave: Al-Zuhri said, "The slave's value is assessed against the emancipator and taken from the emancipator's wealth if the emancipator possesses wealth. If the slave lacks wealth, the slave is compelled to work."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ فِيمَنْ أَعْتَقَ نَصِيبَهُ مِنْ عَبْدٍ بَيْنَهُ وَبَيْنَ غَيْرِهِ؟ قَالَ الزُّهْرِيُّ: يَقُومُ الْعَبْدُ بِمَالِهِ عَلَى الْمُعْتِقِ فِي مَالِ الْمُعْتِقِ إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لِلْعَبْدِ مَالٌ اُسْتُسْعِيَ.

وَرُوِيَ عَنْ أَبِي الزِّنَادِ، وَابْنِ أَبِي لَيْلَى: أَنَّهُمَا قَالَا فِي عَبْدٍ بَيْنَ ثَلَاثَةٍ أَعْتَقَ اثْنَانِ نَصِيبَهُمَا مِنْهُ؟ فَقَالَا: نَرَى أَنْ يَضْمَنَا عَتَاقَهُ جَمِيعًا، فَإِنْ لَمْ يَكُنْ لَهُمَا مَالٌ قُوِّمَ الْعَبْدُ قِيمَةَ عَدْلٍ فَسَعَى الْعَبْدُ فِيهَا فَأَدَّاهَا.

L26870 It has been narrated from Abu al-Zinad and Ibn Abi Layla that they issued a ruling regarding a slave jointly owned by three individuals, two of whom emancipated their shares. They said: "We hold that the two must be liable for emancipating the entire slave. If they have no wealth, the slave shall be appraised at a fair valuation. He must then work to earn its value and pay it."

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَابْنِ شُبْرُمَةَ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَقَدْ ذَكَرْنَاهُ عَنْ ثَلَاثِينَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L26871 This is the opinion of Sufyan al-Thawri, Ibn Shubrumah, al-Awzaʿi, al-Ḥasan ibn Ḥayyin, Abu Yusuf, and Muhammad ibn al-Hasan. We have mentioned it from thirty of the Companions (may Allah be pleased with them).

وَعَنْ ابْنِ عُمَرَ، وَبَعْضُهُ عَنْ عُمَرَ، وَقَالَ سُلَيْمَانُ بْنُ يَسَارٍ: وَهُوَ السُّنَّةُ، وَقَالَهُ سَعِيدُ بْنُ الْمُسَيِّبِ، وَسُلَيْمَانُ بْنُ يَسَارٍ، وَالزُّهْرِيُّ، وَأَبُو الزِّنَادِ، وَالنَّخَعِيُّ، وَالشَّعْبِيُّ، وَالْحَسَنُ، وَحَمَّادٌ، وَقَتَادَةُ، وَابْنُ جُرَيْجٍ.

L26872–26874 Narrated from Ibn ʿUmar, and part of it is from ʿUmar. Sulaymān ibn Yasār said, "This is the Sunnah," and he said it. Sa'id ibn al-Musayyib, Sulayman ibn Yasar, al-Zuhri, Abu al-Zinad, al-Nakha'i, al-Sha'bi, al-Hasan, Hammad, Qatada, and Ibn Jurayj.

وَأَمَّا هَلْ يَكُونُ حُرًّا حِينَ يَعْتِقُ الْأَوَّلُ بَعْضَهُ أَمْ لَا؟ فَإِنَّ أَبَا يُوسُفَ، وَمُحَمَّدَ بْنَ الْحَسَنِ، وَالْأَوْزَاعِيَّ، وَالْحَسَنَ بْنَ حَيٍّ قَالُوا: هُوَ حُرٌّ سَاعَةَ يَلْفِظُ بِعِتْقِهِ، وَقَالَ قَتَادَةُ، هُوَ عَبْدٌ حَتَّى يُؤَدِّيَ إلَى مَنْ لَمْ يَعْتِقْ حَقَّهُ.

L26875 As for whether the slave becomes free when the first owner emancipates a portion of him or not: Abū Yūsuf, Muḥammad ibn al-Ḥasan, al-Awzāʿī, and al-Ḥasan ibn Ḥayyin said: "He becomes free the moment the owner formally declares his manumission." Qatādah said: "He remains a slave until he fulfills the right of the owner(s) who did not emancipate [their share]."

وَأَمَّا مَنْ يَكُونُ وَلَاؤُهُ: فَإِنَّ حَمَّادَ بْنَ أَبِي سُلَيْمَانَ، وَالْحَسَنَ الْبَصْرِيَّ، كِلَاهُمَا قَالَ: إنْ كَانَ لِلْمُعْتِقِ مَالٌ فَضَمِنَهُ فَالْوَلَاءُ كُلُّهُ لَهُ وَإِنْ عَتَقَ بِالِاسْتِسْعَاءِ فَالْوَلَاءُ بَيْنَهُمَا - وَهُوَ قَوْلُ سُفْيَانَ.

L26876 As for whose patronage applies: both Ḥammād ibn Abī Sulaymān and al-Ḥasan al-Baṣrī stated: If the manumitter possesses wealth and covers the financial obligation, the patronage wholly reverts to him. But if emancipation occurs through manumission by written contract (istis'ā'), the patronage is divided between them—and this is the opinion of Sufyān.

وَقَالَ إبْرَاهِيمُ، وَالشَّعْبِيُّ، وَابْنُ شُبْرُمَةَ، وَالثَّوْرِيُّ، وَابْنُ أَبِي لَيْلَى، وَكُلُّ مَنْ قَالَ: هُوَ حُرٌّ حِينَ عَتَقَ بَعْضُهُ: أَنَّ وَلَاءَهُ كُلَّهُ لِلَّذِي أَعْتَقَ بَعْضَهُ: عَتَقَ عَلَيْهِ، أَوْ بِالِاسْتِسْعَاءِ.

L26877 Ibrahim, al-Sha'bi, Ibn Shubrumah, al-Thawri, Ibn Abi Layla, and all who maintained that a slave becomes free when part of him is manumitted held that his complete allegiance belongs to the one who manumitted a portion of him, whether through compulsory manumission or via istisʿāʾ.

L26878 As for his recourse or recourse against him: Ibn Layla and Ibn Shubruma both stated that the manumitter cannot seek recourse for what he paid on

behalf of the slave, but the slave - if he enters into a mukataba - may seek recourse against the one who initiated his manumission to recover what he paid.

وَأَمَّا رُجُوعُهُ، أَوْ الرُّجُوعُ عَلَيْهِ: فَإِنَّ ابْنَ لَيْلَى، وَابْنَ شُبْرُمَةَ، قَالَا جَمِيعًا: لَا يَرْجِعُ الْمُعْتِقُ بِمَا أَدَّى عَلَى الْعَبْدِ، وَيَرْجِعُ الْعَبْدُ إذَا اسْتَسْعَى بِمَا أَدَّى عَلَى الَّذِي ابْتَدَأَ عِتْقَهُ.

L26879 Abu Yusuf and others said: Neither party has the right to rescind against the other party.

وَقَالَ أَبُو يُوسُفَ، وَغَيْرُهُ: لَا رُجُوعَ لِأَحَدِهِمَا عَلَى الْآخَرِ.

L26880 Abu Muhammad said: When they differed as we have mentioned, it is obligatory to examine the evidence adduced by each school of thought.

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ يُنْظَرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ.

L26881 We found the opinion of Rabīʿah to resemble the opinion of Abū Ḥanīfah in his prohibition of the gifting of undivided shares, charity with undivided shares, the leasing of undivided shares, and the pledging of undivided shares.

فَوَجَدْنَا قَوْلَ رَبِيعَةَ يُشْبِهُ قَوْلَ أَبِي حَنِيفَةَ فِي مَنْعِهِ مِنْ هِبَةِ الْمُشَاعِ وَمِنْ الصَّدَقَةِ بِالْمُشَاعِ، وَمِنْ إجَارَةِ الْمُشَاعِ، وَرَهْنِ الْمُشَاعِ.

L26882 The statement of al-Ḥasan and Judge ʿAbd al-Malik ibn Yaʿlā concerning the prohibition of selling mushaʿ (undivided jointly owned property) and mortgaging mushaʿ; they argue for this prohibition with the same arguments and evidence cited by those mentioned earlier.

وَقَوْلُ الْحَسَنِ، وَعَبْدِ الْمَلِكِ بْنِ يَعْلَى الْقَاضِي فِي الْمَنْعِ مِنْ بَيْعِ الْمُشَاعِ، وَرَهْنِ الْمُشَاعِ، وَيَحْتَجُّ لَهُ بِمَا احْتَجَّ بِهِ مَنْ ذَكَرْنَا.

L26883 None of this holds any validity, for both scriptural evidence and legal reasoning contradict all such claims. As for the scriptural evidence: we have cited it and will, God the Most High willing, do so.

وَلَيْسَ كُلُّ ذَلِكَ بِشَيْءٍ؛ لِأَنَّ النَّصَّ وَالنَّظَرَ يُخَالِفُ كُلَّ ذَلِكَ -: أَمَّا النَّصُّ: فَقَدْ ذَكَرْنَاهُ وَنَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى.

L26884 As for consideration: every person has the strongest claim to their property unless prevented by textual evidence. Indeed, Allah the Exalted has encouraged emancipation, gifts, and charity, enjoined the pledge, permitted sale and leasing. All of that is permissible in all cases, provided there is no textual prohibition against any of it.

وَأَمَّا النَّظَرُ: فَكُلُّ أَحَدٍ أَحَقُّ بِمَالِهِ مَا لَمْ يَمْنَعْهُ مِنْهُ نَصٌّ، وَقَدْ حَضَّ اللَّهُ تَعَالَى عَلَى الْعِتْقِ، وَالْهِبَةِ، وَالصَّدَقَةِ، وَأَمَرَنَا بِالرَّهْنِ، وَأَبَاحَ الْبَيْعَ، وَالْإِجَارَةَ، فَكُلُّ ذَلِكَ جَائِزٌ عَلَى كُلِّ حَالٍ مَا لَمْ يَمْنَعْ النَّصُّ مِنْ شَيْءٍ مِنْ ذَلِكَ.

L26885 This could plausibly be argued: because it is inherently impossible for a human being to exist partly free and partly enslaved.

وَقَدْ يُمْكِنُ أَنْ يُحْتَجَّ بِذَلِكَ: بِأَنَّهُ لَا يُمْكِنُ أَنْ يَكُونَ إنْسَانٌ بَعْضُهُ حُرٌّ وَبَعْضُهُ عَبْدٌ.

L26886–26887 They replied, “Just as a woman cannot be partially divorced and partially a wife.”

فَقُلْنَا: وَمَا الْمَانِعُ مِنْ ذَلِكَ؟ فَقَالُوا: كَمَا لَا تَكُونُ امْرَأَةٌ بَعْضُهَا مُطَلَّقَةٌ، وَبَعْضُهَا زَوْجَةٌ.

L26888 So we said: This is an analogy, and all of it is invalid.

فَقُلْنَا: هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L26889 Then it necessarily follows from this that they must hold: If this occurs, the

entire slave is emancipated, just as they rule in the case of a woman when he divorced a part of her.

ثُمَّ يَلْزَمُ عَلَى هَذَا أَنْ يَقُولُوا: إذَا وَقَعَ هَذَا أُعْتِقَ كُلُّهُ، كَمَا يَقُولُونَ فِي الْمَرْأَةِ إذَا طَلَّقَ بَعْضَهَا.

L26890 They said: "This causes harm to the business partner," and the Prophet said: "No harm [may be inflicted] and no harmful retaliation [is permitted]."

وَقَالُوا: هَذَا ضَرَرٌ عَلَى الشَّرِيكِ، وَقَدْ جَاءَ " لَا ضَرَرَ وَلَا ضِرَارَ ".

L26891 So we said: The separation of ownership is also harmful—therefore, prohibit it. The greatest harm is preventing a Muslim from manumitting his share.

فَقُلْنَا: افْتِرَاقُ الْمِلْكِ أَيْضًا ضَرَرٌ فَامْنَعُوا مِنْهُ، وَأَعْظَمُ الضَّرَرِ مَنْعُ الْمُؤْمِنِ مِنْ عِتْقِ حِصَّتِهِ.

L26892 As for those who assert the doctrine of mutual equivalence, this is erroneous because no definitive textual proof establishes it, nor is it permissible to forcibly dispossess anyone of their property unless a scriptural evidence obligates them to do so—thereby dismissing this opinion as well.

وَأَمَّا مَنْ قَالَ بِالتَّقَاوُمِ فَخَطَأٌ، لِأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ، وَلَا يَجُوزُ أَنْ يُجْبَرَ أَحَدٌ عَلَى إخْرَاجِ مِلْكِهِ عَنْ يَدِهِ إلَّا أَنْ يُوجِبَ ذَلِكَ عَلَيْهِ نَصٌّ - فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا.

L26893 As for the well-known opinion transmitted from Umar ibn al-Khattab, Ata, al-Zuhri, Amr ibn Dinar, and Rabi'ah: We found among their proofs what was narrated to us through the chain of Sa'id ibn Mansur (who narrated from Sufyan - that is, Ibn Uyaynah - from Amr ibn Dinar from Muhammad ibn Amr ibn Sa'id ibn al-As): "The sons of Sa'id ibn al-As had a slave whom they all emancipated except one man. The slave went to the Messenger of Allah (may Allah's peace and blessings be upon him) to seek his intercession with the man. The man then gifted his share to the Messenger of Allah (may Allah's peace and blessings be upon him), who emancipated him. He would thereafter say: 'I am the freedman of the Messenger of Allah (may Allah's peace and blessings be upon him),' and his name was Rafi' Abū al-Bahā'."

وَأَمَّا الْقَوْلُ الْمَأْثُورُ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَطَاءٍ، وَالزُّهْرِيِّ، وَعَمْرِو بْنِ دِينَارٍ، وَرَبِيعَةَ -: فَوَجَدْنَا مِنْ حُجَجِهِمْ مَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُحَمَّدِ بْنِ عَمْرِو بْنِ سَعِيدِ بْنِ الْعَاصِ: «أَنَّ بَنِي سَعِيدِ بْنِ الْعَاصِ كَانَ لَهُمْ غُلَامٌ فَأَعْتَقُوهُ كُلُّهُمْ إلَّا رَجُلٌ وَاحِدٌ، فَذَهَبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْتَشْفِعُ بِهِ عَلَى الرَّجُلِ فَوَهَبَ الرَّجُلُ نَصِيبَهُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَعْتَقَهُ، فَكَانَ يَقُولُ: أَنَا مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاسْمُهُ رَافِعٌ أَبُو الْبَهَاءِ» .

L26894 Abu Muhammad said: This is an interrupted chain because Muhammad ibn 'Amr ibn Sa'id did not mention his informant. Then, if it were authentic, it would align with the established principle—the principle that everyone has the fullest authority over their property. However, this was abrogated by the Prophet's command (peace be upon him) that emancipation is required of the affluent and that [the enslaved] be required to work for their freedom if the emancipator is insolvent. Thus, this ruling undoubtedly nullifies what preceded it.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُنْقَطِعٌ، لِأَنَّ مُحَمَّدَ بْنَ عَمْرِو بْنِ سَعِيدٍ لَمْ يَذْكُرْ مَنْ حَدَّثَهُ - ثُمَّ لَوْ صَحَّ لَكَانَ ذَلِكَ عَلَى مَعْهُودِ الْأَصْلِ، وَالْأَصْلُ أَنَّ كُلَّ أَحَدٍ أَمْلَكُ بِمَالِهِ، ثُمَّ نُسِخَ ذَلِكَ بِأَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُعْتَقَ عَلَى الْمُوسِرِ وَيُسْتَسْعَى إنْ كَانَ الْمُعْتِقُ مُعْسِرًا - فَبَطَلَ بِهَذَا الْحُكْمِ مَا كَانَ قَبْلَ ذَلِكَ بِلَا شَكٍّ.

L26895 They said: It is a statement authentically reported from 'Umar, and no

opposition to it from any of the Companions has been reliably established.

وَقَالُوا: هُوَ قَوْلٌ صَحَّ عَنْ عُمَرَ وَلَمْ يَصِحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُ.

L26896 So we said: They countered the Hanafis and Malikis with this - those who abandon Sunnah practices over matters less significant than this, as they did regarding "the two parties to a sale retaining the right to rescind as long as they have not parted ways," and regarding the emancipation of Safiyya and the Prophet's (peace be upon him) act of making her emancipation her dower, and entitling a woman irrevocably divorced three times to inheritance during a terminal illness (on the deathbed).

فَقُلْنَا: عَارَضُوا بِهَذَا الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ الَّذِينَ يَتْرُكُونَ السُّنَنَ لِأَقَلَّ مِنْ هَذَا، كَمَا فَعَلُوا فِي " الْبَيِّعَيْنِ بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا " وَفِي عِتْقِ صَفِيَّةَ وَجَعْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عِتْقَهَا صَدَاقَهَا، وَتَوْرِيثِ الْمُطَلَّقَةِ ثَلَاثًا فِي مَرَضِ الْمَوْتِ.

L26897 As for us, there is no authoritative evidence in our view for anyone's statement except that of the Messenger of Allah (peace be upon him).

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L26898–26900 And they mentioned what was transmitted to us via the transmission path of Aḥmad ibn Shuʿayb: Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Ḥakam reported to us... Muhammad ibn Jaʿfar Ghundar narrated to us: Shuʿbah narrated to us from Khalid al-Ḥadhāʾ from Abū Bishr—who is al-Walīd ibn Muslim al-ʿAnbarī—from Ibn al-Thalab from his father: "A man freed his partial share of a co-owned slave, and the Messenger of Allāh—peace and blessings be upon him—did not hold him liable." This is from Ibn al-Thalab—and he is undocumented.

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي بِشْرٍ - هُوَ الْوَلِيدُ بْنُ مُسْلِمٍ الْعَنْبَرِيُّ - عَنْ ابْنِ الثَّلْبِ عَنْ أَبِيهِ " رَجُلًا أَعْتَقَ نَصِيبًا لَهُ مِنْ مَمْلُوكٍ فَلَمْ يَضْمَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " فَهَذَا عَنْ ابْنِ الثَّلْبِ - وَهُوَ مَجْهُولٌ.

L26901 He said: Allah, the Exalted, said, *"No soul bears the burden of another"* [Al-An'ām 6:164], and there is no difference between emancipating their share of a slave and selling their share.[9]

وَقَالَ: قَالَ اللَّهُ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَلَا فَرْقَ بَيْنَ عِتْقِ نَصِيبِهِ وَبَيْنَ بَيْعِ نَصِيبِهِ.

L26902 We said: Yes, but the Sunnah has more right to be followed. He—peace and blessings be upon him—explains the Quran. Allah, the Exalted, has said: "that you may make clear to the people what has been sent down to them" [al-Nahl: 44].[10]

قُلْنَا: نَعَمْ، وَلَكِنَّ السُّنَّةَ أَوْلَى أَنْ تُتَّبَعَ، وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - يُفَسِّرُ الْقُرْآنَ، قَالَ تَعَالَى: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

L26903 You have judged by al-ʿāqilah and did not invalidate it through this verse.

وَقَدْ حَكَمْتُمْ بِالْعَاقِلَةِ وَلَمْ تُبْطِلُوهَا بِهَذِهِ الْآيَةِ.

L26904 You have judged by the right of shufʿah but did not state: "Every person is most entitled to his right."

وَحَكَمْتُمْ بِالشُّفْعَةِ وَلَمْ تَقُولُوا: كُلُّ أَحَدٍ أَمْلَكُ بِحَقِّهِ.

[9] **Qur'an references (L26901):** Qur'an 6:164 (Al-An'am).
[10] **Qur'an references (L26902):** Qur'an 16:44 (An-Nahl).

وَقَالُوا: لَوْ ابْتَدَأَ عِتْقَ نَصِيبِ شَرِيكِهِ لَمْ يَنْفُذْ، فَكَذَلِكَ، بَلْ أَحْرَى أَنْ لَا يَنْفُذَ إِذَا لَمْ يَعْتِقْهُ، لَكِنْ أَعْتَقَ نَصِيبَ نَفْسِهِ، وَقَدْ جَاءَ لَا عِتْقَ قَبْلَ مِلْكٍ.

L26905 They said: If the manumission of his partner's share were initiated, it would not take effect. Thus, similarly, it is even more likely that it would not take effect if he does not manumit him. However, he manumitted his own share, and it has been narrated that there is no manumission prior to ownership.

فَقُلْنَا: هَذَا كُلُّهُ كَمَا ذَكَرْتُمْ، وَكُلُّهُ لَا يُعَارَضُ بِهِ النَّصُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا تُضْرَبُ السُّنَنُ بَعْضُهَا بِبَعْضٍ.

L26906 So we said: All of this is as you have mentioned, and none of it is used to oppose the text from the Messenger of Allah, may Allah bless him and grant him peace, nor should established practices be pitted against one another.

وَقَالُوا: لَوْ أَعْتَقَا مَعًا لَجَازَ، فَصَحَّ أَنَّ كُلَّ أَحَدٍ أَمْلَكُ بِحَقِّهِ؟

L26907 They said: If they both emancipated a slave together, it would be permissible. Does this validate that each individual has greater authority over their own right?

قُلْنَا: نَعَمْ، وَلَيْسَ هَذَا بِمُشْبِهٍ لِعِتْقِهِ بَعْدَ عِتْقِ شَرِيكِهِ؛ لِأَنَّ لَهُ أَنْ يَبِيعَ مَعَ عِتْقِ شَرِيكِهِ مَعًا، وَأَنْ يَهَبَ، وَلَيْسَ لَهُ عِنْدَ بَعْضِ مَنْ قَالَ بِهَذَا الْقَوْلِ أَنْ يَبِيعَ بَعْدَ عِتْقِ شَرِيكِهِ، وَلَا أَنْ يَهَبَ، وَلَهُ ذَلِكَ عِنْدَ بَعْضِهِمْ وَكُلُّ هَذَا فَيُمْكِنُ أَنْ يُشْغَبَ بِهِ لَوْ لَمْ تَأْتِ السُّنَّةُ بِخِلَافِ ذَلِكَ، وَأَمَّا وَقَدْ جَاءَ مَا يَخُصُّ هَذَا كُلَّهُ فَلَا يَحِلُّ خِلَافُ أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L26908 We said: Yes, and this is not analogous to his emancipating [the slave] after his co-owner's emancipation, for he may sell the slave simultaneously alongside his co-owner's emancipation or gift him. According to some proponents of this view, he may not sell the slave after his co-owner's emancipation nor gift him, though others among them permit this. All of this could have provoked dispute had the Sunnah not provided a ruling contrary to this. However, since definitive guidance addressing all these matters has been established, it is impermissible to oppose the command of the Prophet (peace and blessings of Allah be upon him).

قَالَ أَبُو مُحَمَّدٍ: هَذَا مِمَّا تَنَاقَضَ فِيهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، فَخَالَفُوا صَاحِبًا لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُ، وَخَالَفُوا أَثَرَيْنِ مُرْسَلَيْنِ، وَهُمْ يَقُولُونَ بِالْمُرْسَلِ، وَخَالَفُوا الْقِيَاسَ.

L26909 Abū Muḥammad said: This is among the matters wherein the Ḥanafīs and Mālikīs contradicted themselves. They contradicted a Companion whom none of the other Companions are authentically reported to have contradicted, contradicted two mursal narrations even though they themselves uphold the mursal, and contradicted analogical reasoning.

فَأَمَّا أَبُو حَنِيفَةَ: فَلَمْ يَتَعَلَّقْ بِشَيْءٍ أَصْلًا.

L26910 As for Abū Ḥanīfah, he did not base his rulings on any foundational source whatsoever.

وَأَمَّا مَالِكٌ: فَتَعَلَّقَ بِحَدِيثٍ نَاقِصٍ عَنْ غَيْرِهِ، وَقَدْ جَاءَ غَيْرُهُ بِالزِّيَادَةِ عَلَيْهِ

L26911 As for Mālik, he relied on an incomplete hadith from others, while others have supplemented it with additions.

L26912–26914 As for the statement of Uthman al-Batti regarding his specification [of the ruling] to the beautiful slave girl, it is an opinion entirely unsupported by evidence. His reasoning is invalid because the harm incurred upon them

through the co-ownership arrangement preventing intercourse remains entirely the same, with no additional harm arising from emancipating some of them and no distinction. Both of them (the women) may marry, and there is no difference, thus this argument is invalid.

وَأَمَّا قَوْلُ عُثْمَانَ الْبَتِّيِّ فِي تَخْصِيصِهِ الْجَارِيَةَ الرَّائِعَةَ، فَقَوْلٌ لَا دَلِيلَ عَلَيْهِ أَصْلًا وَاسْتِدْلَالُهُ فَاسِدٌ، لِأَنَّ الضَّرَرَ الدَّاخِلَ عَلَيْهِمْ بِالشَّرِكَةِ الْمَانِعَةِ مِنَ الْوَطْءِ هُوَ بِعَيْنِهِ وَلَا زِيَادَةَ دَاخِلَةٌ عَلَيْهِمْ فِي عِتْقِ بَعْضِهَا وَلَا فَرْقَ، وَكِلْتَاهُمَا يُمْكِنُ أَنْ تَتَزَوَّجَ وَلَا فَرْقَ، فَبَطَلَ هَذَا الْقَوْلُ.

L26915 As for the statement of Zufar: The evidence supporting him is what we have transmitted through the chain of Ahmad ibn Shu'ayb, who narrated to us from 'Amr ibn 'Uthman, who narrated to us from al-Walid ibn Muslim, from Hafs ibn Ghaylan, from Sulayman ibn Musa, from Nafi', from 'Ata'. Nafi' reported from 'Ata', who narrated from Ibn 'Umar, while 'Ata' also reported from Jabir. The narrations of Jabir and Ibn 'Umar then converge in their report from the Messenger of Allah—peace and blessings of Allah be upon him—who said: "Whoever frees a slave in whom he has partners, and possesses the means to compensate them, the slave is emancipated. He must pay his partners the value of their shares as recompense for his error in jointly owning the slave with them. The slave bears no obligation."

وَأَمَّا قَوْلُ زُفَرَ: فَإِنَّ الْحُجَّةَ لَهُ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ عُثْمَانَ نا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ حَفْصِ بْنِ غَيْلَانَ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ نَافِعٍ، عَنْ عَطَاءٍ، قَالَ نَافِعٌ: عَنِ ابْنِ عُمَرَ، وَقَالَ عَطَاءٌ: عَنْ جَابِرٍ، ثُمَّ اتَّفَقَ جَابِرٌ، وَابْنُ عُمَرَ: عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَعْتَقَ عَبْدًا وَلَهُ فِيهِ شُرَكَاءُ وَلَهُ وَفَاءٌ فَهُوَ حُرٌّ وَيَضْمَنُ نَصِيبَ شُرَكَائِهِ بِقِيمَةٍ لِمَا أَسَاءَ مِنْ مُشَارَكَتِهِمْ وَلَيْسَ عَلَى الْعَبْدِ شَيْءٌ» .

L26916 And according to what was narrated to us through the chain of Sa'īd ibn Manṣūr—Hushaym narrated to us, who narrated from Yaḥyā ibn al-Anṣārī, from Nāfi', from Ibn 'Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: "Any man who has a share in a slave and emancipates his portion of the slave must complete his emancipation with a fair valuation."

وَبِمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يَحْيَى بْنُ الْأَنْصَارِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَيُّمَا رَجُلٍ كَانَ لَهُ نَصِيبٌ فِي عَبْدٍ فَأَعْتَقَ نَصِيبَهُ فَعَلَيْهِ أَنْ يُكْمِلَ عِتْقَهُ بِقِيمَةِ عَدْلٍ» .

L26917 Abu Muhammad said: The first [ruling] pertains specifically to one who has the capacity to fulfill obligations, and he did not address those lacking such capacity. Moreover, this is transmitted through Hafs ibn Ghaylān—whom we do not recognize—and he is more plausibly an unknown narrator whose reliability is disregarded.

قَالَ أَبُو مُحَمَّدٍ: الْأَوَّلُ - إِنَّمَا فِيهِ حُكْمُ مَنْ لَهُ وَفَاءٌ، وَلَمْ يَذْكُرْ فِيهِ مَنْ لَا وَفَاءَ عِنْدَهُ - وَأَيْضًا فَهُوَ مِنْ طَرِيقِ حَفْصِ بْنِ غَيْلَانَ - وَلَا نَعْرِفُهُ - وَأَخْلَقَ بِهِ أَنْ يَكُونَ مَجْهُولًا لَا يُعْتَدُّ بِهِ.

L26918 From the chain of Shu'bah from Qatādah from al-Naḍr ibn Anas from Bashīr ibn Nahīk from Abū Hurayrah—that the Messenger of Allah (peace and blessings of Allah be upon him) said regarding a slave jointly owned by two men, if one emancipates his share? He said: "He is liable to guarantee and must secure his full manumission."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ عَنِ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي الْمَمْلُوكِ بَيْنَ الرَّجُلَيْنِ فَيَعْتِقُ أَحَدُهُمَا؟ قَالَ: يَضْمَنُ وَعَلَيْهِ خَلَاصُهُ» .

وَأَمَّا الثَّانِي، وَالثَّالِثُ - فَصَحِيحَانِ، إِلَّا أَنَّهُ قَدْ جَاءَ خَبَرٌ آخَرُ بِزِيَادَةٍ عَلَيْهِمَا، فَأَخْذُ الزِّيَادَةِ أَوْلَى وَلَوْ لَمْ يَأْتِ إِلَّا هَذَانِ الْخَبَرَانِ لَمَا تَعَدَّيْنَاهُمَا.

L26919 As for the second and third, they are authentic. However, another narration has been transmitted with an addition to them, so accepting the addition takes precedence. Had only these two narrations come, we would not have gone beyond them.

وَقَالُوا: جَنَى عَلَى شُرَكَائِهِ فَوَجَبَ تَضْمِينُهُ.

L26920 They said: He caused harm to his partners, thereby obligating him to compensate them.

قَالَ أَبُو مُحَمَّد: مَا جَنَى شَيْئًا، بَلْ أَحْسَنَ وَتَقَرَّبَ إِلَى اللَّهِ عَزَّ وَجَلَّ، وَلَكِنْ عَهْدُنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَجْعَلُونَ خَبَرَ الْمُعْتِقِ نَصِيبَهُ حُجَّةً لِقَوْلِهِمْ الْفَاسِدِ فِي أَنَّ الْمُعْتَدِيَ لَا يَضْمَنُ إِلَّا قِيمَةَ مَا أَفْسَدَ، لَا مِثْلَ مَا أَفْسَدَ، فَإِذْ هُوَ عِنْدَهُمْ إِفْسَادٌ - وَهُمْ أَصْحَابُ تَعْلِيلٍ وَقِيَاسٍ، فَالْوَاجِبُ عَلَيْهِمْ أَنْ يَقُولُوا بِقَوْلِ زُفَرَ هَذَا، وَإِلَّا فَقَدْ أَبْطَلُوا تَعْلِيلَهُمْ، وَنَقَضُوا قِيَاسَهُمْ، وَأَفْسَدُوا احْتِجَاجَهُمْ وَتَرَكُوا مَا أَصَّلُوا، وَهَذِهِ صِفَاتٌ شَائِعَةٌ فِي أَكْثَرِ أَقْوَالِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَسَقَطَ هَذَا الْقَوْلُ أَيْضًا.

L26921–26922 Abū Muḥammad said: He incurred no liability; rather, he acted righteously and drew nearer to God, the Mighty and Majestic. Yet our experience with the Ḥanafīs and Mālikīs shows they employ the report of the manumitter's share as evidence for their corrupt opinion that the perpetrator is only liable for the value of the unlawful damage he caused, not the equivalent of what he damaged. Since this constitutes unlawful damage in their view—and they are adherents of causal reasoning and analogy—they are obliged to adopt this opinion of Ẓufar. Otherwise, they invalidate their causal reasoning, nullify their analogy, undermine their arguments, and abandon their foundational principles. These traits are widespread in most of their opinions—and success is from God, the Exalted. Thus, this opinion too is invalidated.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ قَوْلٌ لَمْ يَتَعَلَّقْ بِقُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا أَحَدٍ نَعْلَمُهُ قَبْلَهُ، وَلَا بِقِيَاسٍ، وَلَا بِرَأْيٍ سَدِيدٍ، وَلَا احْتِيَاطٍ، بَلْ هُوَ مُخَالِفٌ لِكُلِّ ذَلِكَ.

L26923 As for the statement of Abū Ḥanīfah, it is fundamentally unsound, for it is an opinion not anchored in the Qur'ān, nor an authentic Sunnah, nor a weak narration, nor the view of a Companion, nor a Follower, nor anyone we know of before him, nor analogical reasoning, nor sound opinion, nor precaution. Rather, it contravenes all of these.

وَمَا وَجَدْنَاهُمْ مَوَّهُوا إِلَّا بِكَذِبٍ فَاضِحٍ مِنْ دَعْوَاهُمْ: أَنَّ قَوْلَهُمْ مُوَافِقٌ لِقَوْلِ عُمَرَ، وَكَذَبُوا كَمَا يَرَى كُلُّ ذِي فَهْمٍ مِمَّا أَوْرَدْنَا.

L26924 We found them deceiving only through a blatant lie in their claim: that their statement agrees with Umar's. They lied, as anyone with understanding can see from what we have presented.

وَحَكَمُوا بِالِاسْتِسْعَاءِ، وَخَالَفُوا حَدِيثَ الِاسْتِسْعَاءِ فِي إِجَازَتِهِمْ الَّذِي لَمْ يَعْتِقْ أَنْ يَعْتِقَ، وَأَنْ يَضْمَنَ فِي حَالِ إِعْسَارِ الشَّرِيكِ، وَأَجَازُوا لَهُ أَنْ يَعْتِقَ، وَمَنَعُوهُ أَنْ يَحْتَبِسَ.

L26925 They ruled according to istis'a (manumission under shared ownership), contradicting the hadith on istis'a by permitting the emancipation of a slave whose manumission was incomplete and holding him liable in the event of the co-owner's financial incapacity. They allowed his emancipation but prohibited his withholding.

L26926 Then they imposed absurd conditions upon the mukatab—according to

them, the mukatab might default and be re-enslaved, while the mustaʿsā would not be re-enslaved in their view, along with other matters where they persisted in blatant falsehoods without deviation.

ثُمَّ أَتَوْا بِمَقَايِيسَ سَخِيفَةٍ عَلَى الْمُكَاتَبِ، وَالْمُكَاتَبُ عِنْدَهُمْ قَدْ يَعْجِزُ فَيُرَقُّ، وَلَا يُرَقُّ عِنْدَهُمْ الْمُسْتَسْعَى، وَغَيْرُ ذَلِكَ مِمَّا لَمْ يُفَارِقُوا فِيهِ الْكَذِبَ الْبَارِدَ

L26927 If they say: Indeed, every section of our statement is found in a hadith from the hadiths.

فَإِنْ قَالُوا: إنَّ كُلَّ فَصْلٍ مِنْ قَوْلِنَا مَوْجُودٌ فِي حَدِيثٍ مِنْ الْأَحَادِيثِ.

L26928 We said: There exists specifically in this very issue a contrary position as well. From where did you derive what you adopted and abandon what you discarded so arbitrarily? Moreover, no legal right is found in any of the transmitted precedents regarding imposing liability on the affluent person or abstaining from it, nor any recourse for the affluent person against the slave, nor any liability imposed on the slave at all during the wealth of the one who emancipated him (and with Allah alone is success)—while all remaining opinions lack any foundational basis whatsoever.

قُلْنَا: وَمَوْجُودٌ أَيْضًا خِلَافُهُ بِعَيْنِهِ فِي هَذِهِ الْقَضِيَّةِ، فَمِنْ أَيْنَ أَخَذْتُمْ مَا أَخَذْتُمْ وَتَرَكْتُمْ مَا تَرَكْتُمْ هَكَذَا مُطَارَفَةً؟ وَأَيْضًا - فَلَا يُوجَدُ فِي شَيْءٍ مِنْ الْآثَارِ خِيَارٌ فِي تَضْمِينِ الْمُوسِرِ أَوْ تَرْكِ تَضْمِينِهِ، وَلَا رُجُوعَ الْمُوسِرِ عَلَى الْعَبْدِ، وَلَا تَضْمِينَ الْعَبْدِ فِي حَالِ يَسَارِ الَّذِي أَعْتَقَهُ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَسَائِرُ الْأَقْوَالِ لَا مُتَعَلَّقَ لَهَا أَصْلًا

L26929 As for the statement of Mālik and al-Shāfiʿī: We found them citing the narration transmitted through the chain of Muslim: Muḥammad ibn ʿAbd Allāh ibn Numayr narrated to us, his father narrated to us, ʿUbayd Allāh ibn ʿUmar narrated from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allāh (peace be upon him) said: "Whoever frees their share of a jointly owned slave must free the entire slave if they possess wealth sufficient to cover his full value. If they lack such wealth, from him what was freed is freed."[11]

وَأَمَّا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ: فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا أَبِي نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ شِرْكًا لَهُ مِنْ مَمْلُوكٍ فَعَلَيْهِ عِتْقُهُ كُلُّهُ إنْ كَانَ لَهُ مَالٌ يَبْلُغُ ثَمَنَهُ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ عَتَقَ مِنْهُ مَا عَتَقَ» .

L26930–26931 Abū Muḥammad said: We know no valid argument for them in this matter whatsoever, and it is an authentic report. However, another report exists containing an addition that must not be disregarded. Some of them ventured to insert into this report the phrase "and whatever peeled off from it peeled off"—a statement that is falsely attributed and fabricated. We know of no narrator for it, whether reliable or unreliable. It is impermissible to engage with such a report. There is no indication in the Prophet's statement—peace and blessings be upon him—"otherwise, whatever was freed from it was freed" that establishes any ruling regarding the insolvent debtor whatsoever. This matter is entirely unaddressed in the report. There is no doubt

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا وَهُوَ خَبَرٌ صَحِيحٌ، إلَّا أَنَّهُ قَدْ جَاءَ خَبَرٌ آخَرُ بِزِيَادَةٍ عَلَيْهِ لَا يَحِلُّ تَرْكُهَا، وَقَدْ أَقْدَمَ بَعْضُهُمْ فَزَادَ فِي هَذَا الْخَبَرِ «وَرَقَّ مِنْهُ مَا رَقَّ» وَهِيَ مَوْضُوعَةٌ مَكْذُوبَةٌ، وَلَا نَعْلَمُ أَحَدًا رَوَاهَا، لَا ثِقَةٌ وَلَا ضَعِيفٌ، وَلَا يَجُوزُ الِاشْتِغَالُ بِمَا هَذِهِ صِفَتُهُ، وَلَيْسَ فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - " وَإِلَّا فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ " دَلِيلٌ عَلَى حُكْمِ الْمُعْسِرِ أَصْلًا، وَإِنَّمَا هُوَ مَسْكُوتٌ عَنْهُ فِي هَذَا الْخَبَرِ، وَلَا شَكَّ فِي أَنَّهُ قَدْ " عَتَقَ مِنْهُ مَا عَتَقَ " وَبَقِيَ حُكْمُ الْمُعْسِرِ فَوَجَبَ طَلَبُهُ مِنْ غَيْرِ

[11] **Hadith references (L26929):** Sahih Muslim 1501d.

that “whatever was freed from it was freed,” but the legal status of the insolvent debtor remains, necessitating its derivation from sources other than this report. Some have claimed that the phrase “otherwise, whatever was freed from it was freed” originates from Nāfiʿ’s own words. We do not consider this, as it is an assertion without evidence. Nevertheless, it is appropriate to seek the additional text. If it is confirmed as authentic, it becomes obligatory to adopt it—and in Allah the Exalted we seek strength.

هَذَا الْخَبَرَ عَلَى أَنَّهُ قَدْ قِيلَ: إِنَّ لَفْظَةَ «وَإِلَّا فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ» إِنَّمَا هُوَ مِنْ كَلَامِ نَافِعٍ، وَلَسْنَا نَلْتَفِتُ إِلَى هَذَا، لِأَنَّهُ دَعْوَى بِلَا دَلِيلٍ، لَكِنْ يَنْبَغِي طَلَبُ الزِّيَادَةِ، فَإِذَا وُجِدَتْ صَحِيحَةً وَجَبَ الْأَخْذُ بِهَا - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

L26932 There remained nothing but our opinion—so we found the proof for it in what was transmitted to us through Muslim ibn al-Hajjaj, who reported from Amr an-Naqid and Isma‘il—that is, Ibn Ulayyah—both of whom reported from Sa‘id ibn Abi Arubah from Qatadah from al-Nadr ibn Anas from Bashir ibn Nahik from Abu Hurairah, who said: The Messenger of Allah (peace be upon him) said: “Whoever frees a share he owns in a slave, his redemption is to be from his wealth if he possesses wealth. If he has no wealth, the slave is compelled to work without being overburdened.”[12]

فَلَمْ يَبْقَ إِلَّا قَوْلُنَا - فَوَجَدْنَا الْحُجَّةَ لَهُ مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا عَمْرٌو النَّاقِدُ، وَإِسْمَاعِيلُ - هُوَ ابْنُ عُلَيَّةَ - كِلَاهُمَا عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ شِقْصًا لَهُ فِي عَبْدٍ فَخَلَاصُهُ فِي مَالِهِ إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ اُسْتُسْعِيَ الْعَبْدُ غَيْرَ مَشْقُوقٍ عَلَيْهِ» .

L26933 From the path of Abū Dāwūd: Muslim—he is Ibn Ibrāhīm al-Kashshī—narrated to us; Abān—he is Ibn Yazīd al-ʿAṭṭār—narrated to us; Qatādah narrated to us from al-Naḍr ibn Anas ibn Mālik, who narrated from Bashīr ibn Nahīk from Abū Hurayrah, who said: The Messenger of Allāh—peace and blessings be upon him—said: “Whoever frees a share in a slave must manumit him entirely if he has sufficient means. Otherwise, the slave must work to earn his freedom without undue hardship.”

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُسْلِمٌ - هُوَ ابْنُ إِبْرَاهِيمَ الْكَشِّيُّ - نا أَبَانُ - هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - نا قَتَادَةُ نا النَّضْرُ بْنُ أَنَسِ بْنِ مَالِكٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ شِقْصًا فِي مَمْلُوكٍ فَعَلَيْهِ أَنْ يُعْتِقَهُ كُلَّهُ إِنْ كَانَ لَهُ مَالٌ وَإِلَّا اُسْتُسْعِيَ الْعَبْدُ غَيْرَ مَشْقُوقٍ عَلَيْهِ» .

L26934 And from the path of al-Bukhārī: Aḥmad ibn Abī Rajāʾ and Abū al-Nuʿmān—who is Muḥammad ibn al-Faḍl ʿĀrim—reported to us. Aḥmad said: Yaḥyā ibn Ādam reported to us, Jarīr ibn Ḥāzim reported to us that he heard Qaṭādah. Abū al-Nuʿmān said: Jarīr ibn Ḥāzim reported to us from Qaṭādah. Then they both concurred in reporting from al-Naḍr ibn Anas from Bashīr ibn Nahīk from Abū Hurayrah from the Prophet—peace and blessings of Allah be upon him—who said: “Whoever emancipates a share in a slave, the entire slave is freed if he has the means. Otherwise, the slave is to work to pay their value

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَحْمَدُ بْنُ أَبِي رَجَاءٍ، وَأَبُو النُّعْمَانِ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - قَالَ أَحْمَدُ: نا يَحْيَى بْنُ آدَمَ نا جَرِيرُ بْنُ حَازِمٍ سَمِعْتُ قَتَادَةَ، وَقَالَ أَبُو النُّعْمَانِ: نا جَرِيرُ بْنُ حَازِمٍ عَنْ قَتَادَةَ ثُمَّ اتَّفَقَا عَنِ النَّضْرِ بْنِ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَعْتَقَ شِقْصًا فِي عَبْدٍ عَتَقَ كُلُّهُ إِنْ كَانَ لَهُ مَالٌ وَإِلَّا اُسْتُسْعِيَ غَيْرَ مَشْقُوقٍ عَلَيْهِ» وَقَدْ سَمِعَ قَتَادَةُ هَذَا الْخَبَرَ مِنَ النَّضْرِ بْنِ أَنَسٍ.

[12] **Hadith references (L26932):** Sahih Muslim 1503a.

without being overburdened." Qaṭādah directly heard this narration from al-Naḍr ibn Anas.

كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ نا أَبُو هِشَامٍ نا أَبَانُ بْنُ يَزِيدَ الْعَطَّارُ نا قَتَادَةُ نا النَّضْرُ بْنُ أَنَسٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَعْتَقَ شَقِيصًا لَهُ مِنْ عَبْدٍ فَإِنَّ عَلَيْهِ أَنْ يُعْتِقَ بَقِيَّتَهُ إِنْ كَانَ لَهُ مَالٌ وَإِلَّا اُسْتُسْعِيَ الْعَبْدُ غَيْرَ مَشْقُوقٍ عَلَيْهِ» وَهَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ فَلَا يَجُوزُ الْخُرُوجُ عَنْ الزِّيَادَةِ الَّتِي فِيهِ؟ فَقَالَ قَوْمٌ: قَدْ رَوَى هَذَا الْخَبَرَ: شُعْبَةُ، وَهَمَّامٌ، وَهِشَامٌ الدَّسْتُوَائِيُّ فَلَمْ يَذْكُرُوا مَا ذَكَرَ ابْنُ أَبِي عَرُوبَةَ.

L26935–26936 As we have been narrated through the chain of Ahmad ibn Shu'ayb—Muhammad ibn 'Abdullāh ibn al-Mubārak—Abū Hishām—Abān ibn Yazīd al-'Aṭṭār—Qatādah—al-Naḍr ibn Anas—Bashīr ibn Nahīk—Abū Hurayrah, that the Messenger of Allah (peace and blessings of Allah be upon him) said: "Whoever frees their partial ownership of a slave must emancipate the remaining portion if they possess wealth. Otherwise, the slave should be required to work for the remainder of their freedom without hardship imposed on them." This is a report of utmost authenticity. Is it impermissible to ignore the additional details therein? A group said: This report has been narrated by Shu'bah, Hammām, and Hishām al-Dastuwā'ī, yet they omitted what Ibn Abī 'Arūbah mentioned.

قَالَ أَبُو مُحَمَّدٍ: فَكَانَ مَاذَا؟ وَابْنُ أَبِي عَرُوبَةَ ثِقَةٌ، فَكَيْفَ وَقَدْ وَافَقَهُ عَلَيْهِ جَرِيرٌ، وَأَبَانُ، وَهُمَا ثِقَتَانِ.

L26937 Abu Muhammad said: What then? Ibn Abi 'Arubah is a reliable narrator. How is that possible, given that Jarir and Aban, both reliable narrators, have indeed concurred with him on it?

فَإِنْ قِيلَ: فَإِنَّ هَمَّامًا قَالَ فِي هَذَا الْحَدِيثِ: فَكَانَ قَتَادَةُ يَقُولُ: إنْ لَمْ يَكُنْ لَهُ مَالٌ اُسْتُسْعِيَ الْعَبْدُ؟ قُلْنَا: صَدَقَ هَمَّامٌ، قَالَ قَتَادَةُ مُفْتِيًا بِمَا رَوَى، وَصَدَقَ ابْنُ أَبِي عَرُوبَةَ، وَجَرِيرٌ، وَأَبَانُ، وَمُوسَى بْنُ خَلَفٍ، وَغَيْرُهُمْ، فَأَسْنَدُوهُ عَنْ قَتَادَةَ، وَلَوْ لَمْ يَصِحَّ حَدِيثُ قَتَادَةَ هَذَا لَكَانَ حَدِيثُ ابْنِ عُمَرَ، وَأَبِي هُرَيْرَةَ بِالتَّضْمِينِ: جُمْلَةً زَائِدَةً عَلَى مَا تَعَلَّقَ بِهِ مَالِكٌ مِنْ رِوَايَةِ نَافِعٍ، فَكَانَ يَكُونُ الْقَوْلُ مَا ذَهَبَ إلَيْهِ زُفَرُ بْنُ الْهُذَيْلِ، وَهَذَا لَا مُخْلَصَ لَهُ عَنْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26938 If it is said: "But Hammam stated in this hadith: Qatada would say, 'If he possesses no wealth, is the slave obligated to work to repay the debt?'" We respond: Hammam spoke truthfully. Qatada issued a juristic ruling based on his narration, and Ibn Abi 'Arubah, Jarir, Aban, Musa ibn Khalaf, and others were truthful, since they narrated it through an authentic chain from Qatada. Even if Qatada's hadith were not authenticated, the hadiths of Ibn 'Umar and Abu Hurairah concerning compensatory liability would constitute an addition beyond what Malik derived from Nafi''s narration. Thus, the valid opinion would align with Zufar ibn al-Hudhayl's position, and there is no way to avoid this conclusion—and success comes solely from Allah, the Exalted.

وَأَمَّا قَوْلُنَا: إنَّهُ حُرٌّ سَاعَةَ يُعْتَقُ بَعْضُهُ، فَإِنَّ بَعْضَ الرُّوَاةِ قَالَ " ثُمَّ يُعْتَقُ " وَكَانَ فِي رِوَايَةِ جَرِيرِ بْنِ حَازِمٍ الَّتِي ذَكَرْنَا " عَتَقَ كُلُّهُ " فَكَانَتْ هَذِهِ زِيَادَةً لَا يَجُوزُ تَرْكُهَا، فَإِذْ قَدْ عَتَقَ كُلُّهُ فَوَلَاؤُهُ لِلَّذِي عَتَقَ عَلَيْهِ.

L26939 As for our statement that he is free at the moment when a portion of him is manumitted, some narrators said "thereafter the remaining portion is manumitted." Yet in the narration of Jarīr ibn Ḥāzim which we cited, it states "all of him has been manumitted." This constitutes an addition that

must not be disregarded. Since all of him has indeed been manumitted, his allegiance belongs to the one upon whom his manumission was effected.

L26940 As for one of them seeking recourse against the other—it is invalid, because the Messenger of Allah—peace and blessings be upon him—imposed expiation on the manumitter during his financial capacity and imposed it on the manumitted slave in the event of the manumitter's financial insolvency, without mentioning any right of reimbursement. Thus, it is not permissible for anyone to rule based on recourse in this matter.

L26941 Ali said: If he has property that does not suffice for the full value of the enslaved person, no compensation is imposed on the emancipator. Rather, the enslaved person is obligated to work to compensate for their value, and this is in accordance with the explicit wording of the report.

L26942 Hammad holds this opinion—and with Allah alone is all success.

L26943 ## The issue of manumitting a part of a male slave.

L26944–26946 Issue 1668: If someone frees a portion of their slave, the entire slave is emancipated without requiring istis'a (labor to secure the remaining freedom), even if the owner stipulated [such a condition] in a will. If someone frees a portion of his slave, he must free the part he stipulated to free and the remaining part of the slave. The enslaver is compelled to seek payment for the surplus value beyond the stipulated portion through the slave's work, as we have earlier explained.

L26947 If a person bequeaths the emancipation of his slave but the third of his estate cannot bear it, the portion covered by the third is emancipated. The remainder is emancipated, and the slave must work to compensate the heirs for what exceeds the third. The remaining portion is not emancipated through his third, because whatever the deceased did not bequeath belongs to the heirs. Thus, the heirs are entitled to compensation for the portion exceeding the third—as the deceased has no remaining wealth—so the slave must work to compensate them. It has been narrated to us via Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from

وَأَمَّا رُجُوعُ أَحَدِهِمَا عَلَى الْآخَرِ - فَبَاطِلٌ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلْزَمَ الْغَرَامَةَ لِلْمُعْتِقِ فِي يَسَارِهِ وَأَلْزَمَهَا الْعَبْدَ الْمُعْتَقَ فِي إعْسَارِ الْمُعْتِقِ وَلَمْ يَذْكُرْ رُجُوعًا، فَلَا يَجُوزُ لِأَحَدٍ الْقَضَاءُ بِرُجُوعٍ فِي ذَلِكَ.

قَالَ عَلِيٌّ: فَإِنْ كَانَ لَهُ مَالٌ لَا يَفِي بِجَمِيعِ قِيمَةِ الْعَبْدُ فَلَا غَرَامَةَ عَلَى الْمُعْتِقِ لَكِنْ يُسْتَسْعَى الْعَبْدَ، وَهَذَا مُقْتَضَى لَفْظِ الْخَبَرِ.

وَبِهِ يَقُولُ حَمَّادٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة عِتْق بَعْض الْعَبْد]

١٦٦٨ - مَسْأَلَةٌ: وَمَنْ أَعْتَقَ بَعْضَ عَبْدِهِ فَقَدْ عَتَقَ كُلُّهُ بِلَا اسْتِسْعَاءٍ، وَلَوْ أَوْصَى بِعِتْقِ بَعْضِ عَبْدِهِ أَعْتَقَ مَا أَوْصَى بِهِ وَأَعْتَقَ بَاقِيهِ وَاسْتُسْعِيَ فِي قِيمَةِ مَا زَادَ عَلَى مَا أَوْصَى بِعِتْقِهِ لِمَا ذَكَرْنَا قَبْلُ.

فَلَوْ أَوْصَى بِعِتْقِ عَبْدِهِ فَلَمْ يَحْمِلْهُ ثُلُثُهُ أُعْتِقَ مِنْهُ مَا حَمَلَ الثُّلُثُ، وَأُعْتِقَ بَاقِيهِ وَاسْتُسْعِيَ لِوَرَثَتِهِ فِيمَا زَادَ عَلَى الثُّلُثِ، وَلَا يُعْتَقُ فِي ثُلُثِهِ؛ لِأَنَّ مَا لَمْ يُوصِ بِهِ الْمَيِّتُ فَهُوَ لِلْوَرَثَةِ، فَالْوَرَثَةُ شُرَكَاؤُهُ فِيمَا أَعْتَقَ - وَلَا مَالَ لِلْمَيِّتِ -: فَوَجَبَ أَنْ يُسْتَسْعَى لَهُمْ -: رُوِّينَا عَنْ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدِ بْنِ سَلَمَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ: مَنْ أَعْتَقَ ثُلُثَ مَمْلُوكِهِ فَهُوَ حُرٌّ كُلُّهُ لَيْسَ لِلَّهِ شَرِيكٌ وَرُوِّينَاهُ مِنْ طَرِيقِ

Khālid ibn Salama, from ʿUmar ibn al-Khaṭṭāb: "Whoever emancipates a third of his slave, the entire slave is freed, for Allah has no partner." It has also been narrated via the chain of Yaḥyā ibn Saʿīd al-Anṣārī, ʿAṭāʾ ibn Abī Rabāḥ, and Nāfiʿ, the freedman of Ibn ʿUmar, through Ibn Wahb: "Whoever emancipates part of his slave during health or illness, it is emancipated against his estate."

يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ مِنْ طَرِيقِ ابْنِ وَهْبٍ: مَنْ أَعْتَقَ بَعْضَ عَبْدِهِ فِي صِحَّةٍ أَوْ مَرَضٍ عَتَقَ عَلَيْهِ فِي مَالِهِ.

L26948 It has been narrated through the chains of Ibn Umar, al-Hakam, al-Sha'bi, and Ibrahim al-Nakha'i: Whoever frees his slave during his illness, the manumission is taken from his third of the estate. If it exceeds the third, the slave must work to pay the heirs for the excess, and full emancipation is granted.

وَرُوِيَ مِنْ طَرِيقِ ابْنِ عُمَرَ، وَالْحَكَمِ، وَالشَّعْبِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ: مَنْ أَعْتَقَ عَبْدَهُ فِي مَرَضِهِ فَمِنْ ثُلُثِهِ، فَإِنْ زَادَ عَلَى الثُّلُثِ اُسْتُسْعِيَ لِلْوَرَثَةِ وَعَتَقَ كُلُّهُ.

L26949 Abu Hanifah said: If one manumits a share of their slave while in sound health, the share manumitted is freed, and the slave is required to work for the remainder. Upon fulfilling this, they are fully manumitted.

وَقَالَ أَبُو حَنِيفَةَ: إِنْ أَعْتَقَ بَعْضَ عَبْدِهِ فِي صِحَّتِهِ عَتَقَ مِنْهُ مَا أَعْتَقَ وَاسْتُسْعِيَ لَهُ فِي بَاقِيهِ فَإِذَا أَدَّى عَتَقَ.

L26950 Abu Hanifah said: If someone bequeaths the manumission of part of a slave, the portion specified in the bequest is freed, and the slave must work to pay off the remaining value to the heirs. When he fulfills this, he is manumitted. A similar ruling has been comprehensively reported from Ali.

وَقَالَ أَبُو حَنِيفَةَ: فَإِنْ أَوْصَى بِعِتْقِ بَعْضِهِ عَتَقَ مِنْهُ مَا أَوْصَى بِعِتْقِهِ وَسَعَى لِلْوَرَثَةِ فِي الْبَاقِي، فَإِذَا أَدَّى عَتَقَ - وَرُوِيَ نَحْوُ هَذَا عَنْ عَلِيٍّ جُمْلَةً.

L26951 Malik said: If a person frees a portion of a slave while in good health, the entire slave is emancipated. If he frees the slave during an illness, the remaining part is emancipated provided it does not exceed one-third of the estate, and the rest remains enslaved. If he bequeaths the emancipation of a portion of his slave, only what he specified in the bequest is emancipated. A similar ruling is narrated from Masʿūd.

وَقَالَ مَالِكٌ: إِنْ أَعْتَقَ بَعْضَ عَبْدٍ فِي صِحَّتِهِ أُعْتِقَ عَلَيْهِ كُلُّهُ، فَإِنْ أَعْتَقَهُ فِي مَرَضِهِ أُعْتِقَ عَلَيْهِ بَاقِيهِ مَا حُمِلَ مِنْهُ الثُّلُثُ وَيَبْقَى الْبَاقِي رَقِيقًا، فَإِنْ أَوْصَى بِعِتْقِ بَعْضِ عَبْدِهِ لَمْ يُعْتَقْ مِنْهُ إِلَّا مَا أَوْصَى بِهِ فَقَطْ - وَرُوِيَ نَحْوُهُ عَنْ مَسْعُودٍ.

L26952 From the chain of Ibn Abi Shaybah: Hafs narrated to us from Ash'ath from al-Hasan, who said: 'Ali ibn Abi Talib stated: A man may emancipate whichever male slave he wishes - and there is no authoritative argument regarding anyone below the Messenger of Allah (may Allah's peace and blessings be upon him) - and they have differed in opinion as we have mentioned.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ عَنْ أَشْعَثَ عَنْ الْحَسَنِ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: يُعْتِقُ الرَّجُلُ مَا شَاءَ مِنْ غُلَامِهِ - وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ اخْتَلَفُوا كَمَا ذَكَرْنَا.

[مَسْأَلَة مِنْ مُلْك ذَا رَحِم محرم مِنْهُ]

L26953 **A legal issue pertaining to ownership by a mahram relative through kinship.**

L26954–26956 Issue 1699: If someone acquires ownership of a relative within the prohib-

ited degree of marriage, that relative becomes free immediately upon being owned. If he acquires partial ownership of such a relative, He is not obligated to emancipate anyone except his parents and grandparents (paternal and maternal) exclusively. All of them are emancipated at his expense if he possesses wealth sufficient to cover their value. If he lacks such wealth, they must work toward their emancipation.

١٦٦٩ - مَسْأَلَةٌ: وَمَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ سَاعَةَ يَمْلِكُهُ، فَإِنْ مَلَكَ بَعْضَهُ لَمْ يُعْتَقْ عَلَيْهِ، إِلَّا الْوَالِدَيْنِ خَاصَّةً، وَالْأَجْدَادَ وَالْجَدَّاتِ فَقَطْ، فَإِنَّهُمْ يُعْتَقُونَ عَلَيْهِ كُلُّهُمْ - إِنْ كَانَ لَهُ مَالٌ يَحْمِلُ قِيمَتَهُمْ فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ يَحْمِلُ قِيمَتَهُمْ اسْتُسْعُوا.

L26957 They are all his descendants through a mother, grandmother, grandfather, or father.

وَهُمْ كُلُّ مَنْ: وَلَدَهُ مِنْ جِهَةِ أُمٍّ أَوْ جَدَّةٍ أَوْ جَدٍّ أَوْ أَبٍ.

L26958 And every person's heirs include: their own children, whether male or female; uncles and aunts—even if of a higher degree—whether through the mother's or father's lineage; and similarly, sisters and brothers.

وَكُلُّ مَنْ: وَلَدَهُ هُوَ مِنْ جِهَةِ وَلَدٍ أَوْ ابْنَةٍ، وَالْأَعْمَامُ، وَالْعَمَّاتُ - وَإِنْ عَلَوْا كَيْفَ كَانُوا لِأُمٍّ أَوْ لِأَبٍ، وَالْأَخَوَاتُ وَالْإِخْوَةُ كَذَلِكَ.

L26959 And whoever is reached by the birth of a brother or sister, in any manner it was.

وَمَنْ نَالَتْهُ وِلَادَةُ أَخٍ أَوْ أُخْتٍ بِأَيِّ جِهَةٍ كَانَتْ.

L26960 And whoever has wealth and has a father, mother, grandfather, or grandmother - if their master intends to sell them - is compelled to purchase them at their highest price and emancipate them. But if he refuses, the master is not compelled to sell.

وَمَنْ كَانَ لَهُ مَالٌ وَلَهُ أَبٌ أَوْ أُمٌّ أَوْ جَدٌّ أَوْ جَدَّةٌ أُجْبِرَ عَلَى ابْتِيَاعِهِمْ بِأَغْلَى قِيمَتِهِمْ وَعِتْقِهِمْ إِذَا أَرَادَ سَيِّدُهُمْ بَيْعَهُمْ، فَإِنْ أَبَى لَمْ يُجْبَرِ السَّيِّدُ عَلَى الْبَيْعِ

L26961 If he owned a blood relative who is not a mahram, or a mahram established without blood relation—such as through in-law ties or intercourse by a father or son—he is not obligated to manumit them and may sell them if he wishes.

وَإِنْ مَلَكَ ذَا رَحِمٍ غَيْرَ مَحْرَمَةٍ أَوْ مَلَكَ ذَا مَحْرَمٍ بِغَيْرِ رَحِمٍ - لَكِنْ بِصِهْرٍ أَوْ وَطْءِ أَبٍ أَوِ ابْنٍ - لَمْ يَلْزَمْهُ عِتْقُهُمْ وَلَهُ بَيْعُهُمْ إِنْ شَاءَ.

L26962 A group of scholars held: None is manumitted except one's own child—whether through the father's or mother's side (of the emancipator)—or one whom he has fathered through such lineage, or a brother or sister—but only these categories.

وَقَالَتْ طَائِفَةٌ: لَا يَعْتِقُ إِلَّا مَنْ وَلَدَهُ، مِنْ جِهَةِ أَبٍ أَوْ أُمٍّ، أَوْ مَنْ وَلَدَهُ هُوَ كَذَلِكَ، أَوْ أَخٌ أَوْ أُخْتٌ فَقَطْ.

L26963 Neither the paternal uncle nor paternal aunt manumits; neither the maternal uncle nor maternal aunt manumits; nor the child of a brother or sister - and this is the view of Mālik.

وَلَا يَعْتِقُ الْعَمُّ وَلَا الْعَمَّةُ، وَلَا الْخَالُ وَلَا الْخَالَةُ، وَلَا مَنْ وَلَدَ الْأَخُ أَوِ الْأُخْتُ - وَهُوَ قَوْلُ مَالِكٍ.

L26964 It is authentically established from Yaḥyā ibn Saʿīd al-Anṣārī, and narrated—though unauthentically—from Rabīʿah, Makhūl, and Mujāhid. However, the

statement “whoever is other than these [scholars] does not effect valid manumission” is neither authentically established nor narrated from them.

وَصَحَّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرُوِيَ عَنْ رَبِيعَةَ، وَمَكْحُولٍ، وَمُجَاهِدٍ، وَلَمْ يَصِحَّ عَنْهُمْ، وَلَا رُوِيَ عَنْهُمْ: أَنَّ مَنْ عَدَا هَؤُلَاءِ لَا يَعْتِقُ.

L26965 A group of scholars maintained: No one is manumitted except those descended through paternal or maternal lineage, and one’s own offspring are similarly manumitted. No one beyond these is manumitted: neither a brother nor anyone else. This is the opinion of al-Shāfiʿī.

وَقَالَتْ طَائِفَةٌ: لَا يَعْتِقُ إِلَّا مَنْ وَلَدَهُ مِنْ جِهَةِ أَبٍ أَوْ أُمٍّ، وَمَنْ وَلَدُهُ هُوَ كَذَلِكَ، وَلَا يَعْتِقُ غَيْرُ هَؤُلَاءِ، لَا أَخٌ وَغَيْرُهُ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

L26966 And Abu Sulayman said: No one may manumit a slave belonging to another.

وَقَالَ أَبُو سُلَيْمَانَ: لَا يَعْتِقُ أَحَدٌ عَلَى أَحَدٍ.

L26967 Al-Awzaʿī said: He must free every kin—whether a mahram or not—even paternal and maternal cousins, for he is obligated to free them, though he may compel them to work through a contractual obligation.

وَقَالَ الْأَوْزَاعِيُّ: يَعْتِقُ كُلُّ ذِي رَحِمٍ مَحْرَمَةٍ كَانَتْ أَوْ غَيْرَ مَحْرَمَةٍ حَتَّى ابْنُ الْعَمِّ وَابْنُ الْخَالِ فَإِنَّهُمَا يَعْتِقَانِ عَلَيْهِ وَيَسْتَسْعِيهِمَا.

L26968 Abū Muḥammad said: We do not know of Al-Shāfiʿī’s statement being reported from anyone before him. If they mention that it was narrated from Ibrāhīm that when the parent owns the child, the child is manumitted.

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ قَوْلَ الشَّافِعِيِّ عَنْ أَحَدٍ قَبْلَهُ، فَإِنْ ذَكَرُوا: أَنَّهُ رُوِيَ عَنْ إِبْرَاهِيمَ أَنَّهُ إِذَا مَلَكَ الْوَالِدُ وَالْوَلَدَ عَتَقَ.

L26969–26970 We said: Yes, and this has also been authentically established from him concerning every blood relative. There is no indication in his statement, “When a parent acquires ownership of a child, the child is emancipated,” that others besides these two cannot emancipate. We know of no argument for this except the claim of consensus regarding the emancipation of those we mentioned, and this is a false claim. For no opinion is recorded from even twenty of the Companions and Followers — though they number in the thousands — on this issue. Where then is the consensus? If they argue: Allah the Exalted said, “And show kindness to parents” [Al-Baqarah: 83].[13]

قُلْنَا: نَعَمْ، وَقَدْ صَحَّ عَنْهُ هَذَا أَيْضًا فِي كُلِّ ذِي رَحِمٍ وَلَيْسَ فِي قَوْلِهِ " إِذَا مَلَكَ الْوَالِدُ الْوَلَدَ عَتَقَ " أَنَّ غَيْرَهُمَا لَا يُعْتِقُ، وَلَا نَعْلَمُ لَهُ حُجَّةً إِلَّا دَعْوَى الْإِجْمَاعِ عَلَى عِتْقِ مَنْ ذَكَرْنَا، وَهَذِهِ دَعْوَى كَاذِبَةٌ فَمَا يُحْفَظُ فِي هَذِهِ الْمَسْأَلَةِ قَوْلٌ عَنْ عِشْرِينَ مِنْ صَاحِبٍ وَتَابِعٍ - وَهُمْ أُلُوفٌ - فَأَيْنَ الْإِجْمَاعُ؟ فَإِنْ قَالُوا: قَالَ اللَّهُ تَعَالَى: {وَبِالْوَالِدَيْنِ إِحْسَانًا} [البقرة: ٨٣]

L26971 We said: Complete the verse {and to the kindred} [An-Nisā: 36]. Thus, this opinion was invalidated.[14]

قُلْنَا: أَتِمُّوا الْآيَةَ {وَبِذِي الْقُرْبَى} [النساء: ٣٦] فَسَقَطَ هَذَا الْقَوْلُ

L26972 The Malikis invoked as proof the statement of Allah, the Exalted, concerning

وَاحْتَجَّ الْمَالِكِيُّونَ بِقَوْلِ اللَّهِ تَعَالَى فِي الْوَالِدَيْنِ: {وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ} [الإسراء: ٢٤] .

[13] **Qur’an references (L26970):** Qur’an 2:83 (Al-Baqarah).
[14] **Qur’an references (L26971):** Qur’an 4:36 (An-Nisa).

parents: “And lower to them the wing of humility out of mercy” [Al-Isrā’: 24].[15]

L26973 They said: It is not possible to lower the wing and show humility to both of them despite their enslaved status.

L26974 They said: As for the child, indeed Allah the Exalted says: “It is not befitting for the Most Merciful to take a child” [19:92] “Indeed, everyone in the heavens and the earth will come to the Most Merciful as a servant” [19:93].[16]

L26975 They said: It is therefore established that slavery and birth cannot coexist.

L26976 They said, “As for the brother [Aaron], the Most High says concerning Moses, peace and prayers be upon him, ‘I have no control except over myself and my brother’ [Al-Ma’idah 5:25].”[17]

L26977 They said: Just as he does not own himself, so too does he not own his brother.

L26978 And it is reported through the chain of Zakariyya ibn Yahya al-Saji: Ahmad ibn Muhammad reported to us, Sulayman ibn Dawud reported to us, from Hafs ibn Sulayman—the Quran reciter—from Muhammad ibn Abi Layla, from ‘Ata’, from Ibn Abbas: “Allah’s Messenger (peace be upon him) had a freed slave named Salih who purchased his enslaved brother. Allah’s Messenger (peace be upon him) said: ’He is emancipated the moment you owned him.”’

L26979 Abu Muhammad said: This is a defective narration, for Ḥafṣ ibn Sulaymān is rejected, and Ibn Abī Laylā has poor memory. Even if it were authentic, it would not entail the enslavement of anyone other than the brother.

L26980 As for their argument citing the statement of Allah, the Most High: “I have control only over myself and my brother” [5:25], it is a distortion of the words’ proper contexts and a vulgar confusion.[18]

قَالُوا: وَلَا يُمْكِنُ خَفْضُ الْجَنَاحِ وَالذُّلِّ لَهُمَا مَعَ اسْتِرْقَاقِهِمَا.

قَالُوا: وَأَمَّا الْوَلَدُ: فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَمَا يَنْبَغِي لِلرَّحْمَنِ أَنْ يَتَّخِذَ وَلَدًا} [مريم: ٩٢] {إِنْ كُلُّ مَنْ فِي السَّمَاوَاتِ وَالأَرْضِ إِلا آتِي الرَّحْمَنِ عَبْدًا} [مريم: ٩٣] .

قَالُوا: فَوَجَبَ أَنَّ الرِّقَّ، وَالْوِلَادَةَ لَا يَجْتَمِعَانِ.

قَالُوا: وَأَمَّا الْأَخُ: فَقَدْ قَالَ تَعَالَى عَنْ مُوسَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: {إِنِّي لا أَمْلِكُ إِلا نَفْسِي وَأَخِي} [المائدة: ٢٥] .

قَالُوا: فَكَمَا لَا يَمْلِكُ نَفْسَهُ كَذَلِكَ لَا يَمْلِكُ أَخَاهُ.

وَبِمَا رُوِّينَا مِنْ طَرِيقِ زَكَرِيَّا بْنِ يَحْيَى السَّاجِيِّ نا أَحْمَدُ بْنُ مُحَمَّد نا سُلَيْمَانُ بْنُ دَاوُد نا حَفْصُ بْنُ سُلَيْمَانَ - هُوَ الْقَارِئُ - عَنْ مُحَمَّدِ بْنِ أَبِي لَيْلَى عَنْ عَطَاءٍ عَنِ ابْنِ عَبَّاسٍ «كَانَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَوْلًى يُقَالُ لَهُ صَالِحٌ اشْتَرَى أَخًا لَهُ مَمْلُوكًا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: قَدْ عَتَقَ حِينَ مَلَكْتَهُ» .

قَالَ أَبُو مُحَمَّد: وَهَذَا أَثَرٌ فَاسِدٌ، لِأَنَّ حَفْصَ بْنَ سُلَيْمَانَ سَاقِطٌ، وَابْنَ أَبِي لَيْلَى سِيءُ الْحِفْظِ، وَلَوْ صَحَّ لَمْ يَكُنْ فِيهِ إرْقَاقُ مَنْ عَدَا الْأَخِ.

وَأَمَّا احْتِجَاجُهُمْ بِقَوْلِ اللَّهِ تَعَالَى: {إِنِّي لا أَمْلِكُ إِلا نَفْسِي وَأَخِي} [المائدة: ٢٥] فَتَحْرِيفٌ لِلْكَلِمِ عَنْ مَوَاضِعِهِ وَتَخْلِيطٌ سَمِجٌ.

[15] **Qur’an references (L26972):** Qur’an 17:24 (Al-Isra).
[16] **Qur’an references (L26974):** Qur’an 19:92 (Maryam); Qur’an 19:93 (Maryam).
[17] **Qur’an references (L26976):** Qur’an 5:25 (Al-Ma’idah).
[18] **Qur’an references (L26980):** Qur’an 5:25 (Al-Ma’idah).

وَلَوْ كَانَ هَذَا يَحْتَجُّ بِهِ مَنْ يَرَى أَنَّ الْأَخَ يُمْلَكُ لَكَانَ أَدْخَلَ فِي الشُّبْهَةِ؛ لِأَنَّ فِيهِ إثْبَاتُ الْمِلْكِ عَلَى الْأَخِ وَالنَّفْسِ، وَمِنْ الْمُحَالِ أَنْ يَقَعَ لِأَحَدٍ مِلْكُ رِقٍّ عَلَى نَفْسِهِ، وَلَيْسَ مُحَالًا مِلْكُ أَخِيهِ وَأَبِيهِ، وَلَا يَجُوزُ قِيَاسُ الْأَخِ عَلَى النَّفْسِ؛ لِأَنَّ الْإِنْسَانَ يَصْرِفُ نَفْسَهُ فِي الطَّاعَةِ أَوْ الْمَعْصِيَةِ بِقَدَرِ اللَّهِ تَعَالَى وَيَمْلِكُ نَفْسَهُ فِي ذَلِكَ، كَمَا قَالَ مُوسَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّهُ يَمْلِكُ نَفْسَهُ فِي الْجِهَادِ، وَلَا يَصْرِفُ أَخَاهُ كَذَلِكَ وَلَا يُطِيعُهُ، فَفَسَدَ هَذَا الْقِيَاسُ الْبَارِدُ الَّذِي لَمْ يُسْمَعْ قَطُّ بِأَسْخَفَ مِنْهُ.

L26981–26983 If this were cited as evidence by those who hold that a brother can be owned, it would have introduced into doubt because it contains... Affirming ownership over a brother and oneself [is valid], but it is categorically impossible for anyone to claim ownership of enslavement over themselves. However, ownership over one's brother or father is not impossible. It is impermissible to analogize a brother to oneself, for a person directs himself in obedience or disobedience by the divine decree of Allah—Exalted is He—and exercises ownership over himself in such matters, as Moses—peace and blessings be upon him—declared regarding his ownership over himself in jihad. Yet he cannot direct his brother in this manner, nor can he obey him. Thus, this feeble analogy—whose absurdity is unparalleled—is rendered invalid.

وَأَمَّا قَوْلُ اللَّهِ تَعَالَى: {وَمَا يَنْبَغِي لِلرَّحْمَنِ أَنْ يَتَّخِذَ وَلَدًا} [مريم: ٩٢] {إِنْ كُلُّ مَنْ فِي السَّمَاوَاتِ وَالأَرْضِ إِلا آتِي الرَّحْمَنِ عَبْدًا} [مريم: ٩٣] فَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُسْتَدَلَّ مِنْ هَذَا عَلَى عِتْقِ الِابْنِ وَلَا عَلَى أَنَّهُ لَا يُمْلَكُ؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يَدُلَّ عَلَى ذَلِكَ بِهَذِهِ الْآيَةِ، وَلَيْسَ فِيهَا إلَّا الْخَبَرَ عَنْهُمْ بِمَا هُمْ عَلَيْهِ مِنْ أَنَّهُمْ عَبِيدٌ لَا أَوْلَادٌ، وَلَوْ كَانَ مَا قَالُوهُ لَوَجَبَ عِتْقُ الزَّوْجَةِ وَالشَّرِيكِ - إذَا مُلِكَا - لِأَنَّ اللَّهَ تَعَالَى انْتَفَى عَنْ الْوَلَدِ سَوَاءً سَوَاءً، وَأَخْبَرَ أَنَّ الْكُلَّ عَبِيدُهُ وَلَا فَرْقَ فَسَقَطَ احْتِجَاجُهُمْ جُمْلَةً، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L26984 As for Allah the Most High's statement: {It is not befitting for the Most Merciful to take a son} [19:92] {There is absolutely none in the heavens and earth except that they come to the Most Merciful as servants} [19:93], it is entirely impermissible to derive from this any proof for the manumission of a son nor to claim he cannot be owned. For Allah the Most High did not indicate this through the verse, which contains nothing but the report about them being His servants—not sons. Had their argument been valid, it would necessitate the manumission of a wife and partner if owned, since Allah the Most High categorically denied taking a son and declared all are His servants without distinction. Thus their entire argument collapses, and success is through Allah the Most High.[19]

وَأَمَّا مَنْ قَالَ: لَا يَعْتِقُ أَحَدٌ عَلَى أَحَدٍ فَإِنَّهُمْ ذَكَرُوا مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَجْزِي وَلَدٌ وَالِدًا إلَّا أَنْ يَجِدَهُ مَمْلُوكًا فَيَشْتَرِيَهُ فَيُعْتِقَهُ» .

L26985 As for those who said, "No one can manumit [a slave] on behalf of another," they referenced what is authentically reported from the Messenger of Allah—peace and blessings be upon him: "A child cannot compensate for his father unless he finds him enslaved, purchases him, and frees him."[20]

قَالَ أَبُو مُحَمَّدٍ: هَذَا حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ} [لقمان: ١٤] فَافْتَرَضَ عَزَّ وَجَلَّ شُكْرَ الْأَبَوَيْنِ وَجَزَاؤُهُمَا هُوَ مِنْ شُكْرِهِمَا، فَجَزَاؤُهُمَا فَرْضٌ، فَإِذْ هُوَ فَرْضٌ، وَجَزَاؤُهُمَا لَا يَكُونُ إلَّا بِالْعِتْقِ فَعِتْقُهُمَا فَرْضٌ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ مَا ذَكَرْنَا.

L26986 Abu Muhammad said: This is an argument against them, for Allah the Exalted says: "Be grateful to Me and to your parents" [Luqman: 14]. Thus, Allah, the Almighty and Majestic, has obligated gratitude to parents, and their repayment itself is an act of gratitude owed to them. Therefore, repaying

[19] **Qur'an references (L26984):** Qur'an 19:92 (Maryam); Qur'an 19:93 (Maryam).

[20] **Hadith references (L26985):** Sahih Muslim 1510a; Jami at-Tirmidhi 1906; Riyad as-Salihin 313.

them is obligatory. Since this is obligatory, and their repayment can only be fulfilled through manumission, their manumission becomes obligatory. We know of no argument for them other than what we have mentioned.[21]

ثُمَّ نَظَرْنَا: فِيمَا احْتَجَّ بِهِ الْأَوْزَاعِيُّ فَوَجَدْنَا مِنْ حُجَّتِهِ قَوْلَ اللَّهِ تَعَالَى {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى} [النساء: ٣٦] .

L26987 Then we considered the arguments of al-Awzāʿī and found in his argument the statement of Allah, the Exalted: "Worship Allah and associate nothing with Him, and show goodness to parents and to near relatives" [An-Nisāʾ 4:36].[22]

قَالَ عَلِيٌّ: وَهَذَا لَا يُوجِبُ الْعِتْقَ، لِأَنَّ الْإِحْسَانَ فُرِضَ إلَى الْعَبِيدِ، وَلَا يَقْتَضِي ذَلِكَ عِتْقَهُمْ فَرْضًا، وَلَوْ وَجَبَ ذَلِكَ فِي ابْنِ الْعَمِّ، وَابْنِ الْخَالِ لَوَجَبَ فِي كُلِّ مَمْلُوكٍ، لِأَنَّ النَّاسَ يَجْتَمِعُونَ فِي أَبٍ بَعْدَ أَبٍ إلَى آدَمَ - عَلَيْهِ السَّلَامُ -، وَلَا يَجُوزُ أَنْ يَخُصَّ بِهَذَا ابْنَ الْعَمِّ، وَابْنَ الْخَالِ: دُونَ ابْنِ ابْنِ الْعَمِّ وَابْنِ ابْنِ الْخَالِ، وَهَكَذَا صَعَدًا، فَبَطَلَ هَذَا الْقَوْلُ بِيَقِينٍ.

L26988 Ali said: This does not necessitate manumission, for benevolent treatment was prescribed toward slaves, yet this does not entail their manumission as a religious obligation. If this were required for paternal cousins or maternal cousins, it would necessarily extend to every slave, since people share lineage through successive fathers back to Adam—peace be upon him. It is impermissible to restrict this specifically to paternal cousins and maternal cousins: to the exclusion of a paternal cousin's son or maternal cousin's son, and so on continuously ascending the lineage. Thus, this claim is conclusively invalidated.

ثُمَّ نَظَرْنَا فِي قَوْلِنَا فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عِيسَى بْنُ مُحَمَّدٍ - هُوَ أَبُو عُمَيْرٍ الرَّمْلِيُّ - وَعِيسَى بْنُ يُونُسَ الْفَاخُورِيُّ عَنْ ضَمْرَةَ بْنِ سَعِيدٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ عَتَقَ» فَهَذَا خَبَرٌ صَحِيحٌ كُلُّ رُوَاتِهِ ثِقَاتٌ تَقُومُ بِهِ الْحُجَّةُ - وَقَدْ تَعَلَّلَ فِيهِ الطَّوَائِفُ الْمَذْكُورَةُ بِأَنَّ ضَمْرَةَ انْفَرَدَ بِهِ وَأَخْطَأَ فِيهِ.

L26989–26991 Then we examined our statement and found what was narrated to us through the chain of Ahmad ibn Shuʿayb, who narrated to us. Isa ibn Muhammad—he is Abu Umayr al-Ramli—and Isa ibn Yunus al-Fakhuri narrated from Damrah ibn Sa'id from Sufyan al-Thawri from Abdullah ibn Dinar from Ibn Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: "Whoever possesses a mahram relative, he must free [them]." This is a sound report; all its narrators are trustworthy, and it constitutes valid evidence. However, the aforementioned groups criticized it by arguing that Damrah was the sole narrator of this hadith and made an error in its transmission.

فَقُلْنَا: فَكَانَ مَاذَا إذَا انْفَرَدَ بِهِ؟ وَمَتَى لَحِقْتُمْ بِالْمُعْتَزِلَةِ فِي أَنْ لَا تَقْبَلُوا مَا رَوَاهُ الْوَاحِدُ عَنْ الْوَاحِدِ، وَكَمْ خَبَرٌ انْفَرَدَ بِهِ رَاوِيهِ فَقَبِلْتُمُوهُ، وَلَيْتَكُمْ لَا تَقْبَلُونَ مَا انْفَرَدَ بِهِ مَنْ لَا خَيْرَ فِيهِ، كَابْنِ لَهِيعَةَ، وَجَابِرٍ الْجُعْفِيِّ، وَغَيْرِهِ.

L26992 So we said: What would be the case if he were the sole narrator of it? When did you align with the Mu'tazila in not accepting what a single narrator transmits from another single narrator? How many reports transmitted solely by its narrator have you accepted? If only you would not accept what

[21] **Qur'an references (L26986):** Qur'an 31:14 (Luqman).
[22] **Qur'an references (L26987):** Qur'an 4:36 (An-Nisa).

is narrated solely by those lacking merit, such as Ibn Lahīʿah, Jābir al-Juʿfī, and others.

L26993 As for the claim that he erred in it, it is invalid because it is a claim without evidence. This is a position the Ḥanafīs accepted and upheld, and they did not consider Ḍamrah's sole narration of it a defect. Then they cited the report we have narrated through the chain of Ibn Wahb from al-Layth ibn Saʿd from ʿUbayd Allāh ibn Abī Jaʿfar from Bukayr ibn al-Ashajj from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allāh—peace and blessings of Allāh be upon him—said, "Whoever frees a slave who possesses wealth, his wealth belongs to him unless the master explicitly excepts it." They claimed that ʿUbayd Allāh ibn Abī Jaʿfar alone narrated it and erred in it. Woe to the Muslims when the Mālikīs and Shāfiʿīs deemed this report authentic, acted upon it, and did not regard ʿUbayd Allāh ibn Abī Jaʿfar's sole narration of it or the assertion of those who claimed he erred in it as grounds for rejection and abandonment. Yet the Ḥanafīs considered ʿUbayd Allāh ibn Abī Jaʿfar's sole narration of this report and the assertion of those who claimed he erred in it as grounds for abandoning and rejecting it, while they did not view Ḍamrah's sole narration of that report or the assertion of those who claimed he erred in it as grounds for similarly discarding it. Could there be any greater proof of trifling with the religion and lack of vigilance toward Allāh the Exalted than this? We seek refuge in Allāh from misguidance through following whims.

فَأَمَّا دَعْوَى أَنَّهُ أَخْطَأَ فِيهِ فَبَاطِلٌ؛ لِأَنَّهَا دَعْوَى بِلَا بُرْهَانٍ وَهَذَا مَوْضِعٌ قَبِلَهُ الْحَنَفِيُّونَ وَقَالُوا بِهِ، وَلَمْ يَرَوْا انْفِرَادَ ضَمْرَةَ بِهِ عِلَّةً، ثُمَّ أَتَوْا إِلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ اللَّيْثِ بْنِ سَعْدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لَهُ، إِلَّا أَنْ يَسْتَثْنِيَهُ السَّيِّدُ» فَقَالُوا انْفَرَدَ بِهِ عُبَيْدُ اللَّهِ بْنُ أَبِي جَعْفَرٍ وَأَخْطَأَ فِيهِ، فَيَا لِلْمُسْلِمِينَ إِذَا رَأَى الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ هَذَا الْخَبَرَ صَحِيحًا وَعَمِلُوا بِهِ، وَلَمْ يَرَوْا انْفِرَادَ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ بِهِ وَقَوْلُ مَنْ قَالَ: إِنَّهُ خَطَأٌ فِيهِ حُجَّةٌ فِي رَدِّهِ وَتَرْكِهِ، وَرَأَى الْحَنَفِيُّونَ انْفِرَادَ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ بِهَذَا الْخَبَرِ وَقَوْلُ مَنْ قَالَ: إِنَّهُ أَخْطَأَ فِيهِ حُجَّةٌ فِي تَرْكِهِ وَرَدِّهِ، وَلَمْ يَرَوْا انْفِرَادَ ضَمْرَةَ بِذَلِكَ الْخَبَرِ وَقَوْلُ مَنْ قَالَ: إِنَّهُ أَخْطَأَ فِيهِ حُجَّةٌ فِي تَرْكِهِ وَرَدِّهِ، فَهَلْ مِنَ الدَّلِيلِ عَلَى التَّلَاعُبِ بِالدِّينِ وَقِلَّةِ الْمُرَاقَبَةِ لِلَّهِ تَعَالَى أَكْثَرُ مِنْ هَذَا؟ وَنَعُوذُ بِاللَّهِ مِنَ الضَّلَالِ بِاتِّبَاعِ الْهَوَى.

L26994 This report has also been transmitted to us through the chain of Ḥammād ibn Salamah from ʻĀṣim al-Aḥwal and Qatādah from al-Ḥasan al-Baṣrī from Samurah ibn Jundub: "The Messenger of Allah—peace and blessings of Allah be upon him—said: 'Whoever owns a slave who is a mahram relative through kinship, he is free.'" The Ḥanafī scholars authenticated this report and deemed it a valid proof. They stated: "The assertion that al-Ḥasan did not hear directly from Samurah does not invalidate it, as an interrupted chain may still serve as proof." They then cited a mursal report transmitted to us through Ibn Abī Shaybah's chain: Muḥammad ibn Bishr narrated to us from Saʿīd ibn Abī ʻArūbah from Qatādah from al-Ḥasan from Samurah ibn Jundub: "The Messenger of Allah—peace and blessings of Allah be upon him—

وَقَدْ رُوِّينَا هَذَا الْخَبَرَ أَيْضًا: مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَاصِمٍ الْأَحْوَلِ وَقَتَادَةَ عَنِ الْحَسَنِ الْبَصْرِيِّ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ» فَصَحَّحَ الْحَنَفِيُّونَ هَذَا الْخَبَرَ وَرَأَوْهُ حُجَّةً وَقَالُوا: لَا يَضُرُّهُ مَا قِيلَ: أَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ سَمُرَةَ، وَالْمُنْقَطِعُ تَقُومُ بِهِ الْحُجَّةُ، ثُمَّ أَتَوْا إِلَى مُرْسَلٍ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بِشْرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ:

said: ’The liability period for slaves is three.’” They argued: “Al-Ḥasan’s direct hearing from Samurah is unverified, making it an interrupted chain that cannot serve as proof.”

«عُهْدَةُ الرَّقِيقِ ثَلَاثٌ» فَقَالُوا: لَمْ يَصِحَّ سَمَاعُ الْحَسَنِ مِنْ سَمُرَةَ، وَهُوَ مُنْقَطِعٌ لَا تَقُومُ بِهِ حُجَّةٌ.

L26995–26997 The Malikis overturned this practice, deeming Al-Ḥasan’s narration from Samurah regarding liability for slaves as valid evidence—unaffected by the objection that Al-Ḥasan did not hear directly from Samurah—since an interrupted chain suffices to establish legal proof. They did not consider… The report concerning the emancipation of a mahram relative constitutes proof, for Al-Ḥasan did not hear anything from Samurah, and a disconnected chain cannot establish proof. Is this not sufficient for one who uses reason and advises himself¿‘ Abū Muḥammad said: ”Thus all opinions are invalidated except our view—praise be to Allah—and this is the position held by the majority of the early scholars, as transmitted through Al-Khushanī’s chain: narrated by Muḥammad ibn Bashshār, narrated by Abū ʿĀṣim (Al-Ḍaḥḥāk ibn Makhlad), narrated by Abū ʿAwānah, from Al-Ḥakam ibn ʿUtaybah, from Ibrāhīm Al-Nakhaʿī, from Al-Aswad ibn Yazīd, from ʿUmar ibn Al-Khaṭṭāb, who said: ’Whoever owns a mahram relative as a slave, he is free.’“

وَقَلَبَ الْمَالِكِيُّونَ هَذَا الْعَمَلَ فَرَأَوْا رِوَايَةَ الْحَسَنِ عَنْ سَمُرَةَ فِي عُهْدَةِ الرَّقِيقِ حُجَّةً لَا يَضُرُّهُ مَا قِيلَ: مِنْ أَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ سَمُرَةَ، وَالْمُنْقَطِعُ تَقُومُ بِهِ الْحُجَّةُ، وَلَمْ يَرَوْا خَبَرَ عِتْقِ ذِي الرَّحِمِ الْمَحْرَمَةِ حُجَّةً؛ لِأَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ سَمُرَةَ شَيْئًا، وَالْمُنْقَطِعُ لَا تَقُومُ بِهِ الْحُجَّةُ وَفِي هَذَا كِفَايَةٌ لِمَنْ عَقَلَ وَنَصَحَ نَفْسَهُ؟ قَالَ أَبُو مُحَمَّدٍ: فَبَطَلَتْ الْأَقْوَالُ إلَّا قَوْلَنَا - وَلِلَّهِ الْحَمْدُ - وَبِهِ يَقُولُ جُمْهُورُ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا أَبُو عَاصِمٍ - هُوَ الضَّحَّاكُ ابْنُ مَخْلَدٍ - نا أَبُو عَوَانَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ فَهُوَ حُرٌّ.

L26998 From him to Bindār: from Ghundar, from Shuʿbah, and Sufyān al-Thawrī narrated. Shuʿbah reported from Ghaylān while Sufyān reported from Salamah ibn Kuhayl—both of them transmitting from al-Mustawrid—he is Ibn al-Aḥnaf—that a man came to ʿAbdullāh ibn Masʿūd and said: “My uncle gave me in marriage to his slave girl, yet he now seeks to claim my child as his slave.” Ibn Masʿūd responded: “He possesses no right to that.”

وَبِهِ إلَى بُنْدَارَ نا غُنْدَرٌ نا شُعْبَةُ، وَسُفْيَانُ الثَّوْرِيُّ، قَالَ شُعْبَةُ عَنْ غَيْلَانَ وَقَالَ سُفْيَانُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، كِلَاهُمَا عَنْ الْمُسْتَوْرِدِ - هُوَ ابْنُ الْأَحْنَفِ - أَنَّ رَجُلًا أَتَى عَبْدَ اللَّهِ بْنَ مَسْعُودٍ فَقَالَ لَهُ: إنَّ عَمِّي زَوَّجَنِي جَارِيَةً لَهُ، وَإِنَّهُ يُرِيدُ أَنْ يَسْتَرِقَّ وَلَدِي؟ فَقَالَ لَهُ ابْنُ مَسْعُودٍ: لَيْسَ لَهُ ذَلِكَ.

L26999 From the transmission of ʿAbd al-Raḥmān ibn Mahdī, from Ḥammād ibn Zayd, from Ibn Shubrumata, from al-Ḥārith al-‘Uklī, from Ibrāhīm al-Nakhaʿī, who said: Whoever owns a blood relative, that relative is free. This is the opinion of Ibn Shubrumata.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ ابْنِ شُبْرُمَةَ عَنْ الْحَارِثِ الْعُكْلِيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ مَلَكَ ذَا رَحِمٍ فَهُوَ حُرٌّ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ.

L27000 Via the chain of ʿAbd al-Razzāq: Maʿmar narrated to us from Qaṭādah, from al-Ḥasan and Jābir ibn Zayd, who both said: “Whoever acquires a kinsman as a slave must manumit them.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ عَنْ الْحَسَنِ، وَجَابِرِ بْنِ زَيْدٍ قَالَا جَمِيعًا: مَنْ مَلَكَ ذَا رَحِمٍ عَتَقَ.

L27001 Through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Ismail ibn Umayyah, from Ata, who said: When a brother, sister, paternal aunt, and maternal aunt are owned, they are manumitted.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ عَطَاءٍ قَالَ: إذَا مُلِكَ الْأَخُ، وَالْأُخْتُ، وَالْعَمَّةُ، وَالْخَالَةُ عَتَقُوا.

L27002 And through the chain of Waki‘ from Shu‘bah from al-Ḥakam ibn ‘Utaybah and Ḥammād ibn Abī Sulaymān, they both said: Anyone who owns a slave possessing a prohibited degree of kinship emancipates them.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَا جَمِيعًا: كُلُّ مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ عَتَقَ.

L27003 It has also been soundly reported from Qatādah—and this is the opinion of al-Zuhrī, Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, al-Layth ibn Saʿd, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, all of his companions, ʿAbdullāh ibn Wahb, and others.

وَصَحَّ أَيْضًا عَنْ قَتَادَةَ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَاللَّيْثِ بْنِ سَعْدٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ وَأَبِي حَنِيفَةَ، وَجَمِيعِ أَصْحَابِهِ، وَعَبْدِ اللَّهِ بْنِ وَهْبٍ وَغَيْرِهِمْ.

L27004 This is among the matters in which the Mālikīs have opposed the majority of scholars and two Companions—for whom no opposing Companion is known among the Companions—while they censure others over lesser matters when it aligns with their doctrine.

وَهَذَا مِمَّا خَالَفَ فِيهِ الْمَالِكِيُّونَ جُمْهُورَ الْعُلَمَاءِ وَصَاحِبَيْنِ لَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ مُخَالِفٌ، وَهُمْ يُشَنِّعُونَ بِأَقَلَّ مِنْ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L27005–27006 It has been narrated to us through al-Ḥasan’s chain of transmission that ʿAbd al-Razzāq reported from Hishām ibn Ḥassān from al-Ḥasan: “If someone owns his brother through milk kinship, he is emancipated.”

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْحَسَنِ مَا رَوَاهُ عَبْدُ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانٍ عَنْ الْحَسَنِ: مَنْ مَلَكَ أَخَاهُ مِنْ الرَّضَاعَةِ عَتَقَ.

L27007 And narrated through ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, from ʿAlqamah: That Ibn Masʿūd deemed it reprehensible for a man to sell his slave girl who had breastfed the man’s child.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ: أَنَّ ابْنَ مَسْعُودٍ مَقَتَ رَجُلًا أَرَادَ أَنْ يَبِيعَ جَارِيَةً لَهُ أَرْضَعَتْ وَلَدَهُ.

L27008 Abū Muḥammad said: We know of no proof for this except that the Ḥanafīs, Mālikīs, and Shāfiʿīs—being proponents of analogy by their claim—must apply the analogy to the foster mother, foster father, foster child, and foster

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ لِهَذَا حُجَّةً إلَّا أَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ وَالشَّافِعِيِّينَ: أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، فَكَانَ يَلْزَمُهُمْ أَنْ يَقِيسُوا الْأُمَّ مِنْ الرَّضَاعِ، وَالْأَبَ مِنْ الرَّضَاعِ، وَالْوَلَدِ

brother through breastfeeding, equating all of that with lineage. This is especially compelling given the statement of Allah's Messenger—peace and blessings be upon him: "What becomes unlawful through breastfeeding is what becomes unlawful through lineage." This principle is sounder than any analogy they have advanced.

مِنْ الرَّضَاعِ، وَالْأَخِ مِنْ الرَّضَاعِ: عَلَى كُلِّ ذَلِكَ مِنْ النَّسَبِ، لَا سِيَّمَا مَعَ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «يَحْرُمُ مِنْ الرَّضَاعِ مَا يَحْرُمُ مِنْ النَّسَبِ» فَهَذَا أَصَحُّ مِنْ كُلِّ قِيَاسٍ قَالُوا بِهِ.

L27009 Abu Muhammad said: Then we reconsidered and found in their arguments that they claimed: Verily, the Sunnah necessitates that those related through breastfeeding are also prohibited, and this is unavoidable due to what we have transmitted through Muslim's chain: Muhammad ibn Rumḥ reported from al-Layth, from Yazīd ibn Abī Ḥabīb, from ʿIrāk ibn Mālik, from ʿUrwah, from ʿĀ'ishah, the Mother of the Believers, that the Messenger of Allah (peace and blessings be upon him) said: "What is prohibited by kinship is prohibited by breastfeeding."

قَالَ أَبُو مُحَمَّد: ثُمَّ اسْتَدْرَكْنَا فَرَأَيْنَا مِنْ حُجَّتِهِمْ أَنْ قَالُوا: إنَّ السُّنَّةَ تُوجِبُ أَنْ يُعْتَقَ ذَوُو الْمَحَارِمِ مِنْ الرَّضَاعِ أَيْضًا وَلَا بُدَّ: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عِرَاكِ بْنِ مَالِكٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَحْرُمُ مِنْ الرَّضَاعَةِ مَا يَحْرُمُ مِنْ النَّسَبِ» .

L27010 Via Muslim's chain: Haddāb ibn Khālid → Hammām → Qatādah → Jābir ibn Yazīd → Ibn ʿAbbās, who reported that the Prophet (peace and blessings of Allah be upon him) said: 'What is forbidden due to breastfeeding is what is forbidden due to kinship.'

وَمِنْ طَرِيقِ مُسْلِمٍ نا هَدَّابُ بْنُ خَالِدٍ نا هَمَّامٌ نا قَتَادَةُ عَنْ جَابِرِ بْنِ يَزِيدَ عَنْ ابْنِ عَبَّاسٍ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يَحْرُمُ مِنْ الرَّضَاعَةِ مَا يَحْرُمُ مِنْ الرَّحِمِ» .

L27011 We established that "prohibition arises from uterine and lineal kinship" necessitates the perpetuity of marital prohibitions for every individual bound by forbidden ties of kinship. It is therefore imperative and inevitable that this perpetuity equally applies to kinship through nursing, without exception.

وَوَجَدْنَا " يَحْرُمُ مِنْ الرَّحِمِ، وَمِنْ النَّسَبِ " تَمَادِي مِلْكِ كُلِّ ذِي رَحِمٍ مَحْرَمَةٍ وَذِي نَسَبٍ مَحْرَمٍ، فَوَجَبَ وَلَا بُدَّ أَنْ يَحْرُمَ تَمَادِي الْمِلْكِ فِيمَنْ يَمُتُّ بِالرَّضَاعَةِ كَذَلِكَ وَلَا بُدَّ.

L27012 We examined this argument and found it to be baseless. The first point is that ownership of a mahram relative is not prohibited; rather, it is legally sound, based on the statement of Allah's Messenger (peace be upon him): "Whoever owns a mahram relative, he becomes free." The Prophet (peace be upon him) thereby validated ownership upon him and enjoined emancipation, for if the ownership were not valid, his emancipation would not be valid.

فَنَظَرْنَا فِي هَذَا الِاحْتِجَاجِ فَوَجَدْنَاهُ شَغَبِيًّا -: أَوَّلُ ذَلِكَ - أَنَّ مِلْكَ ذِي الرَّحِمِ الْمَحْرَمَةِ لَيْسَ حَرَامًا، بَلْ هُوَ صَحِيحٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ» فَأَوْقَعَ الْمِلْكَ عَلَيْهِ ثُمَّ أَلْزَمَ الْعِتْقَ، وَلَوْلَا صِحَّةَ مِلْكِهِ لَمْ يَصِحَّ عِتْقُهُ.

L27013–27014 Then we found their assertion: "The claim that prolonging ownership of mahram relatives is prohibited is erroneous, for if the sole consideration here were merely the prohibition of prolonged ownership, manumission

would neither be obligatory nor unavoidable. Rather, one could gift the slave, thereby relinquishing ownership, or donate him, thereby nullifying their claim that prolonged ownership is prohibited. The correct position is that they should state: 'Manumission becomes obligatory immediately upon ownership without interval or delay.'" The Prophet صلى الله عليه وسلم did not say: "What is obligatory in breastfeeding is what is obligatory in lineage and kinship." Had he said this, manumission would indeed be obligatory as they claimed. Rather, he said: "What is prohibited through breastfeeding is what is prohibited through lineage and kinship." This confirms that only marriage and sexual enjoyment are prohibited, thus rendering both forbidden. As for one who owns some of the mahram relatives but does not own such a mahram relative, manumission is not incumbent upon them, since the explicit textual proof does not mandate it.

ثُمَّ وَجَدْنَا قَوْلَهُمْ: إنَّ تَمَادِيَ مِلْكِ ذِي الرَّحِمِ الْمَحْرَمَةِ يَحْرُمُ خَطَأً، لِأَنَّهُ لَوْ لَمْ يَكُنْ هَاهُنَا إلَّا تَحْرِيمَ تَمَادِي الْمِلْكِ لَكَانَ الْعِتْقُ لَا يَجِبُ وَلَا بُدَّ، بَلْ كَانَ لَهُ أَنْ يَهَبَهُ فَيَسْقُطُ مِلْكُهُ عَنْهُ، أَوْ أَنْ يَتَصَدَّقَ بِهِ فَيَبْطُلُ بِهَذَا مَا قَالُوا مِنْ أَنَّ تَمَادِيَ الْمِلْكِ يَحْرُمُ، وَكَانَ الْحَقُّ أَنْ يَقُولُوا: إنَّ الْعِتْقَ يَجِبُ عَقِيبَ الْمِلْكِ بِلَا فَصْلٍ وَلَا مُهْلَةٍ، وَلَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: إنَّهُ يَجِبُ فِي الرَّضَاعِ مَا يَجِبُ فِي النَّسَبِ، وَمَا يَجِبُ فِي الرَّحِمِ، وَلَوْ قَالَ هَذَا لَوَجَبَ الْعِتْقُ كَمَا قَالُوا وَإِنَّمَا قَالَ: «يَحْرُمُ مِنْ الرَّضَاعِ مَا يَحْرُمُ مِنْ النَّسَبِ وَمِنْ الرَّحِمِ» فَصَحَّ أَنَّهُ إنَّمَا يَحْرُمُ النِّكَاحُ وَالتَّلَذُّذُ فَقَطْ، فَهُوَ حَرَامٌ فِيهِمَا مَعًا، وَأَمَّا مَنْ مَلَكَ بَعْضَ ذِي الرَّحِمِ الْمَحْرَمَةِ فَلَمْ يَمْلِكْ ذَا رَحِمٍ مَحْرَمَةٍ فَلَيْسَ عَلَيْهِ عِتْقُهُ، إذْ لَمْ يُوجِبْ النَّصُّ ذَلِكَ.

L27015 As for our statement regarding parents differing from that ruling, it is due to what has been narrated to us through Muslim's chain of transmission: Abū Bakr ibn Abī Shaybah and Zuhayr ibn Ḥarb both narrated to us from Jarīr ibn Ḥāzim—who is Ibn Ḥāzim—from Suhayl ibn Abī Ṣāliḥ from his father from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said, "No child can fully repay a parent unless he finds him enslaved, purchases him, and emancipates him." In his narration, Abū Bakr used "his parent," while they concurred on the remainder.[1]

وَأَمَّا قَوْلُنَا فِي الْوَالِدَيْنِ بِخِلَافِ ذَلِكَ، فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَزُهَيْرُ بْنُ حَرْبٍ، قَالَا جَمِيعًا: نا جَرِيرٌ - هُوَ ابْنُ حَازِمٍ - عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَجْزِي وَلَدٌ وَالِدًا إلَّا أَنْ يَجِدَهُ مَمْلُوكًا فَيَشْتَرِيَهُ فَيَعْتِقَهُ» قَالَ أَبُو بَكْرٍ فِي رِوَايَتِهِ " وَالِدَهُ " وَاتَّفَقَا فِي غَيْرِ ذَلِكَ.

L27016 From Muḥammad ibn al-Muthannā, from Muʿammal ibn Ismāʿīl al-Ḥimyarī, from Sufyān al-Thawrī, from Suhayl ibn Abī Ṣāliḥ, from his father, from Abū Hurayrah, who said: The Messenger of Allah (peace be upon him) said, "A child cannot repay his parents unless he were to find them or one of them enslaved, buy them, and free them."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُؤَمَّلُ بْنُ إسْمَاعِيلَ الْحِمْيَرِيُّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَجْزِي وَلَدٌ وَالِدَيْهِ إلَّا أَنْ يَجِدَهُمَا أَوْ أَحَدَهُمَا مَمْلُوكًا فَيَشْتَرِيَهُ فَيَعْتِقَهُ» .

L27017 The term "parent" applies to the grandfather and grandmother unless a spe-

[1] **Hadith references (L27015):** Sahih Muslim 1510a; Jami at-Tirmidhi 1906; Riyad as-Salihin 313.

cific scriptural ruling excludes them. He is obliged to purchase him at the rate applicable to the enslaved person required for obligatory manumission. The free person and the enslaved person are equal in all the aforementioned rulings, due to the general scope of the Prophet's statement (peace and blessings be upon him): "Whoever owns a blood-related mahram, they are free." Thus, the child of an enslaved man by his enslaved woman is free, despite the father's enslavement.

وَاسْمُ " الْوَالِدِ " يَقَعُ عَلَى الْجَدِّ وَالْجَدَّةِ، مَا لَمْ يَخُصَّهُمَا نَصٌّ، وَيَلْزَمُهُ أَنْ يَشْتَرِيَهُ بِمَا يَشْتَرِي بِهِ الرَّقَبَةَ الْوَاجِبَةَ لِلْعِتْقِ، وَالْحُرُّ وَالْعَبْدُ سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا، لِعُمُومِ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ» فَوَلَدُ الْعَبْدِ مِنْ أَمَتِهِ حُرٌّ عَلَى أَبِيهِ.

L27018 It has been narrated to us through ʿAbd al-Razzāq, from Ibn Jurayj: I asked ʿAṭāʾ, "Is an orphan required to spend on his mother from his wealth if she is in need?" He said, "Yes." I asked, "If his mother is an enslaved woman, can she be emancipated through his wealth?" He said, "Yes. He is strongly urged to emancipate her if they do not make use of her services and do not depend on him."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْتُ لِعَطَاءٍ: الْيَتِيمُ أُمُّهُ مُحْتَاجَةٌ أَنْ يُنْفِقَ عَلَيْهَا مِنْ مَالِهِ؟ قَالَ: نَعَمْ، قُلْتُ: فَإِنْ كَانَتْ أُمُّهُ أَمَةً أَتُعْتَقُ فِيهِ؟ قَالَ: نَعَمْ، يُكْرَهُ عَلَى إعْتَاقِهَا إنْ لَمْ يَتَمَتَّعُوا بِهَا وَيَحْتَاجُوهُ.

L27019 [Issue regarding the manumission of one who is dependent on the price of his slave, its yield, or its labor.]

[مَسْأَلَةُ عِتْقُ مَنْ هُوَ مُحْتَاجٌ إلَى ثَمَنِ مَمْلُوكِهِ أَوْ غَلَّتِهِ أَوْ خِدْمَتِهِ]

L27020–27022 Issue 1670: The emancipation by one who is in need of the price of his slave, its produce, or service is invalid. If he emancipates him, it is rejected, except in one case: when he owns a mahram by blood relation as... We have mentioned that emancipation is effected upon him by the aforementioned ruling, whether he is minor or major, insane or rational, absent or present, and he becomes free at that moment through whichever means he chooses—whether through the ruler's judgment or without it—based on what we have transmitted through al-Bukhārī's chain: ʿĀṣim ibn ʿAlī narrated to us from Ibn Abī Dhiʾb, from Muḥammad ibn al-Munkadir, from Jābir ibn ʿAbd Allāh: "A man emancipated his slave when the owner had no property other than him, so the Messenger of God (peace be upon him) nullified it, and Nuʿaym ibn al-Naḥḥām purchased him from him."

١٦٧٠ - مَسْأَلَةٌ: وَلَا يَصِحُّ عِتْقُ مَنْ هُوَ مُحْتَاجٌ إلَى ثَمَنِ مَمْلُوكِهِ أَوْ غَلَّتِهِ أَوْ خِدْمَتِهِ، فَإِنْ أَعْتَقَهُ فَهُوَ مَرْدُودٌ، إلَّا فِي وَجْهٍ وَاحِدٍ، وَهُوَ مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ كَمَا ذَكَرْنَا، فَإِنَّهُ يُعْتَقُ عَلَيْهِ بِالْحُكْمِ الْمَذْكُورِ، صَغِيرًا كَانَ أَوْ كَبِيرًا، مَجْنُونًا أَوْ عَاقِلًا، غَائِبًا أَوْ حَاضِرًا، وَهُوَ حُرٌّ سَاعَةَ ذَلِكَ مِنْ حَيْثُ شَاءَ بِحُكْمِ السُّلْطَانِ وَبِغَيْرِ حُكْمِ السُّلْطَانِ -: لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَاصِمُ بْنُ عَلِيٍّ نا ابْنُ أَبِي ذِئْبٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا أَعْتَقَ عَبْدًا لَهُ لَيْسَ لَهُ مَالٌ غَيْرُهُ فَرَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَابْتَاعَهُ مِنْهُ نُعَيْمُ بْنُ النَّحَّامِ» .

L27023 If it is said: This is the ḥadīth of the mudabbir himself, narrated by ʿAṭāʾ, ʿAmr ibn Dīnār, and Abū al-Zubayr—all of whom narrated from Jābir—and they stated that he had designated him as a mudabbir.

فَإِنْ قِيلَ: هَذَا حَدِيثُ الْمُدَبَّرِ نَفْسِهِ، رَوَاهُ: عَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ، وَأَبُو الزُّبَيْرِ، كُلُّهُمْ عَنْ جَابِرٍ، فَذَكَرُوا أَنَّهُ كَانَ دَبَّرَهُ

قُلْنَا: لَوْ لَمْ يُمْكِنْ أَنْ يَكُونَا خَبَرَيْنِ فِي عَبْدَيْنِ لَكَانَ مَا قُلْتُمْ حَقًّا، وَأَمَّا إِذْ فِي الْمُمْكِنِ أَنْ يَكُونَا خَبَرَيْنِ فِي عَبْدَيْنِ يَبْتَاعُهُمَا مَعًا نُعَيْمُ بْنُ النَّحَّامِ، فَلَا يَحِلُّ الْقَطْعُ بِأَنَّهُمَا خَبَرٌ وَاحِدٌ، فَيَكُونُ مَنْ قَالَ ذَلِكَ كَاذِبًا، قَافِيًا مَا لَا عِلْمَ لَهُ بِهِ.

L27024 We said: If it were not possible for them to be two reports concerning two slaves, then what you have said would be valid. However, since it is possible for them to be two reports regarding two slaves that Nu'aym ibn al-Nahḥām buys together, it is not permissible to definitively assert that they are a single report. Thus, whoever claims that would be lying, fabricating what he has no knowledge of.

وَأَمَّا مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ، فَمَا يُبَالِي أَعْتَقَهُ أَوْ لَمْ يَعْتِقْهُ، وَلَيْسَ هُوَ الَّذِي أَعْتَقَهُ، بَلْ هُوَ حُرٌّ وَلَا بُدَّ.

L27025 As for one who owns a mahram relative within the prohibited degree of marriage, it matters not whether he emancipates him or not. It is not he who emancipates him; rather, he is necessarily free without exception.

وَمَنْ أَعْتَقَ شِقْصًا لَهُ فِي عَبْدٍ وَهُوَ مُحْتَاجٌ إِلَيْهِ، وَلَا غِنًى بِهِ عَنْهُ فَهُوَ بَاطِلٌ وَإِذْ هُوَ بَاطِلٌ فَلَمْ يَعْتِقْهُ، فَلَيْسَ لَهُ الْحُكْمُ الَّذِي ذَكَرْنَا قَبْلُ - وَقَدْ قَالَ مَالِكٌ: مَنْ أَعْتَقَ وَالِدَيْنِ مُحِيطٌ بِمَالِهِ رُدَّ عِتْقُهُ - وَلَا نَصَّ لَهُ فِي ذَلِكَ.

L27026 Whoever frees his share in a slave while he is in need of the slave and cannot do without him, this act is invalid. Since it is invalid, he has not freed him, and thus the ruling we previously mentioned [regarding valid manumission] does not apply. Imam Malik said: "If someone frees a slave while both parents depend on his wealth, his manumission must be revoked," but there is no explicit textual basis in Malik's works for this.

[مَسْأَلَة عِتْق مِنْ لَا يَبْلُغ والسكران وَالْمَجْنُون والمكره وَغَيْر ذَلِكَ]

The issue of manumission by those who have not reached puberty, the intoxicated, the insane, the coerced, and other such cases.

١٦٧١ - مَسْأَلَةٌ: وَلَا يَجُوزُ عِتْقُ مَنْ لَا يَبْلُغُ وَلَا عِتْقُ مَنْ لَا يَعْقِلُ مِنْ سَكْرَانَ أَوْ مَجْنُونٍ، وَلَا عِتْقَ مُكْرَهٍ، وَلَا مَنْ لَمْ يَنْوِ الْعِتْقَ، لَكِنْ أَخْطَأَ لِسَانُهُ، إِلَّا أَنَّ هَذَا وَحْدَهُ إِنْ قَامَتْ عَلَيْهِ بَيِّنَةٌ وَلَمْ يَكُنْ لَهُ إِلَّا الدَّعْوَى قُضِيَ عَلَيْهِ بِالْعِتْقِ، وَأَمَّا بَيْنَهُ وَبَيْنَ اللَّهِ تَعَالَى فَلَا يَلْزَمُهُ، لِقَوْلِ اللَّهِ تَعَالَى: {لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَصَحَّ أَنَّ السَّكْرَانَ لَا يَعْلَمُ مَا يَقُولُ، وَمَنْ لَا يَعْلَمُ مَا يَقُولُ لَمْ يَلْزَمْهُ مَا يَقُولُ، حَتَّى لَوْ كَفَرَ بِكَلَامٍ لَا يَدْرِي مَا هُوَ لَمْ يَلْزَمْهُ.

L27027 L27028 Issue 1671: It is impermissible to emancipate one who has not reached puberty, nor one who lacks mental capacity—including a drunk or insane person. Nor is the emancipation of a coerced person valid, nor that of one who did not intend emancipation but whose tongue erred unintentionally. However, in this specific case alone, if conclusive proof is established and he has no evidence except his claim, a judgment of emancipation may be issued. Yet between him and Allah, the Exalted, it is not binding on him, due to Allah's statement: "Do not approach prayer while you are intoxicated until you know what you are saying" (4:43). Thus, it is confirmed that a drunk person does not know what he says, and whoever does not know what he says is not bound by his words—even if he utters disbelief without understanding its meaning, it is not binding on him.[2]

[2] **Qur'an references (L27028):** Qur'an 4:43 (An-Nisa).

L27029 They were not commanded except to worship Allah, making their religion sincerely for Him as upright monotheists (ḥunafāʾ) [Al-Bayyinah: 5].[3]

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

L27030 And due to the statement of Allah's Messenger (peace be upon him): "Actions are but by intentions, and every person will have what they intended." The insane, the intoxicated, the coerced, and one whose tongue errs have no intention. None of these individuals, in their utterance of manumission, has sincerely devoted their religion to Allah; therefore, it is invalid.

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» وَالْمَجْنُونُ وَالسَّكْرَانُ وَالْمُكْرَهُ لَا نِيَّةَ لَهُمْ، وَكَذَلِكَ مَنْ أَخْطَأَ لِسَانُهُ، وَلَيْسَ مِنْ هَؤُلَاءِ أَحَدٌ أَخْلَصَ لِلَّهِ الدِّينَ بِمَا نَطَقَ بِهِ مِنْ الْعِتْقِ، فَهُوَ بَاطِلٌ.

L27031–27032 It is authentically reported from the Messenger of Allah, peace be upon him: "The pen is lifted from three categories: from the child until he reaches puberty, from the insane until he regains sanity, and from the one who is asleep until he awakens."

وَصَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنْ الصَّبِيِّ حَتَّى يَبْلُغَ، وَالْمَجْنُونِ حَتَّى يُفِيقَ، وَالنَّائِمِ حَتَّى يَسْتَيْقِظَ» .

L27033 It is authentically reported from him (may the prayers and peace of Allah be upon him) that he said: "My Ummah has been pardoned from mistakes, forgetfulness, and what they are compelled to do."

وَصَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ قَالَ: «عُفِيَ لِأُمَّتِي عَنْ الْخَطَأِ وَالنِّسْيَانِ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» .

L27034 Abu Hanifah and Malik said: The emancipation by an intoxicated person is permissible. They have no valid proof at all, except their statement: "He brought this upon himself through disobedience?" We responded: "Yes - so what? How can it be obligatory that if one brought this upon himself through disobedience, he should be bound by what God Almighty has never imposed? What would you say about one who fought a highway robber and was struck on the head by a blow that impaired his intellect - would you deem his emancipation valid?" Yet they do not apply this ruling, though he similarly brought it upon himself.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: عِتْقُ السَّكْرَانِ جَائِزٌ - وَلَا حُجَّةَ لَهُمْ أَصْلًا، إلَّا أَنَّهُمْ قَالُوا: هُوَ أَدْخَلَ عَلَى نَفْسِهِ ذَلِكَ بِالْمَعْصِيَةِ؟ فَقُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ إذَا أَدْخَلَ عَلَى نَفْسِهِ ذَلِكَ بِالْمَعْصِيَةِ أَنْ يَلْزَمَهُ مَا لَمْ يُلْزِمْهُ اللَّهُ تَعَالَى قَطُّ؟ وَمَا تَقُولُونَ فِيمَنْ حَارَبَ قَاطِعًا لِلطَّرِيقِ فَأَصَابَتْهُ ضَرْبَةٌ فِي رَأْسِهِ خَبَلَتْ عَقْلَهُ، أَتُجِيزُونَ عَتَاقَهُ؟ وَهُمْ لَا يَفْعَلُونَ هَذَا، وَهُوَ أَدْخَلَهُ عَلَى نَفْسِهِ.

L27035 And regarding one who committed adultery in disobedience to God the Exalted, then needlessly cut the flesh of his lower legs and cauterized his forearms—do you permit him to pray while sitting or not? For he brought that upon himself through disobedience.

وَعَمَّنْ تَزَنَّكَ عَاصِيًا لِلَّهِ تَعَالَى فَقَطَعَ لَحْمَ سَاقَيْهِ وَكَوَى ذِرَاعَيْهِ عَبَثًا أَتُجِيزُونَ لَهُ الصَّلَاةَ جَالِسًا أَمْ لَا؟ لِأَنَّهُ أَدْخَلَ عَلَى نَفْسِهِ ذَلِكَ بِالْمَعْصِيَةِ

L27036 As for someone traveling on a journey who cannot find water and fears the prayer time will lapse—should he perform tayammum or not? They use all of this to invalidate this unsound principle.

وَعَمَّنْ سَافَرَ فِي قَطْعِ الطَّرِيقِ فَلَمْ يَجِدْ مَاءً وَخَافَ ذَهَابَ الْوَقْتِ أَيَتَيَمَّمُ أَمْ لَا؟ وَكُلُّ هَذَا يَنْقُضُونَ فِيهِ هَذَا الْأَصْلَ الْفَاسِدَ.

[3] **Qur'an references (L27029):** Qur'an 98:5 (Al-Bayyinah).

L27037 Abu Hanifah said: The manumission performed under coercion is permissible.

وَقَالَ أَبُو حَنِيفَةَ: عِتْقُ الْمُكْرَهِ جَائِزٌ.

L27038 Malik and al-Shāfiʿī said: He is not obligated. Moreover, we know of no fundamental argument for the Ḥanafīs whatsoever, except certain unsound narrations specific to divorce. Emancipation is not analogous to divorce, and the juristic analogy is invalid.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: لَا يَلْزَمُهُ - وَمَا نَعْلَمُ لِلْحَنَفِيِّينَ حُجَّةً أَصْلًا، إِلَّا آثَارًا فَاسِدَةً فِي الطَّلَاقِ خَاصَّةً وَلَيْسَ الْعَتَاقُ مِنْ الطَّلَاقِ وَالْقِيَاسُ بَاطِلٌ.

L27039 Some of them argued using the maxim “Three: their seriousness is seriousness, and their jesting is seriousness,” and some of them cited manumission in this context - and this is a fabricated report.

وَاحْتَجَّ بَعْضُهُمْ «بِثَلَاثٍ جَدُّهُنَّ جَدٌّ وَهَزْلُهُنَّ جَدٌّ» فَذَكَرَ بَعْضُهُمْ فِي ذَلِكَ الْعَتَاقَ - وَهُوَ خَبَرٌ مَكْذُوبٌ.

L27040 Furthermore, even if it were valid, they would have no argument here whatsoever, for we do not agree with them concerning those who jest and emancipate; we only agree with them concerning those who are compelled and emancipate. Yet this report - despite its inauspiciousness and spuriousness - contains no mention of compulsion. Moreover, they do not permit the sale by a compelled person, nor their legal admission, nor their gift - this constitutes an evident contradiction, and its full treatment follows in the subsequent section.

ثُمَّ لَوْ صَحَّ لَمْ تَكُنْ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا؛ لِأَنَّنَا لَسْنَا مَعَهُمْ فِيمَنْ هَزَلَ فَأَعْتَقَ، إِنَّمَا نَحْنُ مَعَهُمْ فِيمَنْ أُكْرِهَ فَأَعْتَقَ، وَلَيْسَ فِي هَذَا الْخَبَرِ - عَلَى نَحْسِهِ وَوَضْعِهِ - ذِكْرُ إِكْرَاهٍ - ثُمَّ لَا يُجِيزُونَ بَيْعَ الْمُكْرَهِ، وَلَا إِقْرَارَهُ، وَلَا هِبَتَهُ -: وَهَذَا تَنَاقُضٌ ظَاهِرٌ، وَتَمَامُهَا فِي الَّتِي بَعْدَهَا.

L27041 And with Allah, the Exalted, is success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Ruling on Deferred Manumission

[مَسْأَلَة الْعِتْق إِلَى أَجَل]

L27042–27043

L27044 Issue: If a person manumits a slave contingent upon a specified term—whether near or distant—such as stating: “You are free tomorrow,” “until a year passes,” “after my death,” “when my father arrives,” “when so-and-so recovers consciousness,” “when rain falls,” or similar conditions, the manumission remains as stipulated. The owner retains the right to sell the slave before the term’s fulfillment. If he sells the slave and it subsequently returns to his ownership, the manumission contract becomes void. No manumission occurs upon the term’s arrival, and the owner has no recourse to revoke this contract whatsoever unless he removes the slave from his ownership. This conditional manumission constitutes either a testamentary bequest or a vow—both being valid contracts, as scriptural texts mandate their fulfill-

مَسْأَلَةٌ: وَمَنْ أَعْتَقَ إِلَى أَجَلٍ مُسَمًّى - قَرِيبٌ أَوْ بَعِيدٌ - مِثْلُ أَنْ يَقُولَ: أَنْتَ حُرٌّ غَدًا، أَوْ إِلَى سَنَةٍ، أَوْ إِلَى بَعْدَ مَوْتِي، أَوْ إِذَا جَاءَ أَبِي، أَوْ إِذَا أَفَاقَ فُلَانٌ، أَوْ إِذَا نَزَلَ الْمَطَرُ، أَوْ نَحْوُ هَذَا، فَهُوَ كَمَا قَالَ، وَلَهُ بَيْعُهُ مَا لَمْ يَأْتِ ذَلِكَ الْأَجَلُ، فَإِنْ بَاعَهُ ثُمَّ رَجَعَ إِلَى مِلْكِهِ فَقَدْ بَطَلَ ذَلِكَ الْعَقْدُ، وَلَا عِتْقَ لَهُ بِمَجِيءِ ذَلِكَ الْأَجَلِ، وَلَا رُجُوعَ لَهُ فِي عَقْدِهِ ذَلِكَ أَصْلًا، إِلَّا بِإِخْرَاجِهِ عَنْ مِلْكِهِ؛ لِأَنَّ هَذَا الْعِتْقَ إِمَّا وَصِيَّةٌ، وَإِمَّا نَذْرٌ، وَكِلَاهُمَا عَقْدٌ صَحِيحٌ قَدْ جَاءَ النَّصُّ بِالْوَفَاءِ بِهِمَا، فَلَوْ عَلَّقَ الْعِتْقَ بِمَعْصِيَةٍ، أَوْ بِغَيْرِ طَاعَةٍ وَلَا

ment. If the manumission is made contingent upon a sinful act or a matter neither pious nor sinful, it is invalid as it constitutes an invalid, prohibited, and forbidden contract. The Messenger of Allah—peace and blessings be upon him—said: "There is no fulfillment for a vow made in disobedience to Allah."

مَعْصِيَةَ: لَمْ يَجُزْ الْعِتْقُ، لِأَنَّهُ عَقْدٌ فَاسِدٌ مُحَرَّمٌ مَنْهِيٌّ عَنْهُ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا وَفَاءَ لِنَذْرٍ فِي مَعْصِيَةِ اللَّهِ»

L27045 It has been narrated to us from 'Ata' that if someone says to his slave, "You are free," the slave is not free until he says, "For the sake of Allah," and this is correct. This is because manumission is an act of worship to Allah the Exalted, a righteous deed, and an act of devotion to Him. Therefore, every act of worship or devotion that is not done sincerely for His sake is invalid and rejected, in accordance with the statement of the Prophet (peace and blessings of Allah be upon him): "Whoever performs a deed not in accordance with our teachings, it is rejected."[4]

وَقَدْ رُوِّينَا عَنْ عَطَاءٍ مَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ، لَمْ يَكُنْ حُرًّا حَتَّى يَقُولَ: لِلَّهِ، وَهَذَا حَقٌّ، لِأَنَّ الْعِتْقَ عِبَادَةٌ لِلَّهِ تَعَالَى، وَبِرٌّ وَقُرْبَةٌ إلَيْهِ تَعَالَى، فَكُلُّ عِبَادَةٍ وَقُرْبَةٍ لَمْ تَكُنْ لَهُ تَعَالَى مُخْلِصًا لَهُ بِهَا فَهِيَ بَاطِلٌ مَرْدُودَةٌ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L27046 And there have been reported unsound traditions—among them: "Whoever emancipates a playing slave, it is permissible." This is invalid, as it is a mursal narration from Al-Hasan, who claimed the Messenger of Allah (peace be upon him) said it without a chain.

وَقَدْ رُوِيَتْ آثَارٌ فَاسِدَةٌ -: مِنْهَا «مَنْ أَعْتَقَ لَاعِبًا فَقَدْ جَازَ» وَهُوَ بَاطِلٌ، لِأَنَّهُ مُرْسَلٌ عَنْ الْحَسَنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L27047 From a chain containing Ibrāhīm ibn Abī Yaḥyā—noted for falsehood—it is narrated from Ibn ʿUmar: "There are four conclusively sealed matters in which jesting is not permissible: divorce, marriage, emancipation, and vows." This narration is inauthentic because it is transmitted from Saʿīd ibn al-Musayyib from ʿUmar, while Saʿīd heard nothing from ʿUmar except his announcement of Nuʿmān ibn Muqrin's death.

وَمِنْ طَرِيقٍ فِيهَا إبْرَاهِيمُ بْنُ أَبِي يَحْيَى - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - وَرُوِيَ عَنْ ابْنِ عُمَرَ: أَرْبَعٌ مُقْفَلَاتٌ لَا يَجُوزُ فِيهِنَّ الْهَزْلُ: الطَّلَاقُ، وَالنِّكَاحُ، وَالْعَتَاقَةُ، وَالنَّذْرُ - وَهَذَا لَا يَصِحُّ، لِأَنَّهُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ، وَلَمْ يَسْمَعْ سَعِيدٌ مِنْ عُمَرَ شَيْئًا إلَّا نَعْيَهُ النُّعْمَانُ بْنُ مُقْرِنٍ.

L27048 Then, even if it were valid, they would have no basis for it, because its apparent meaning contradicts their assertion; rather, it aligns with our position, since jest is not permissible in marriage, divorce, manumission, or vows. Therefore, since it is impermissible in these matters, they do not take effect through it. This is the implication conveyed by the wording of the narration.

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ مُتَعَلَّقٌ، لِأَنَّ ظَاهِرَهُ خِلَافُ قَوْلِهِمْ، بَلْ مُوَافِقٌ لِقَوْلِنَا، لِأَنَّ الْهَزْلَ لَا يَجُوزُ فِي النِّكَاحِ، وَالطَّلَاقِ، وَالْعِتْقِ، وَالنَّذْرِ، فَإِذْ لَا يَجُوزُ فِيهَا فَهِيَ غَيْرُ وَاقِعَةٍ بِهِ، هَذَا مُقْتَضَى لَفْظِ الْخَبَرِ.

[4]**Hadith references (L27045):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

ثُمَّ لَوْ صَحَّ كَمَا يُرِيدُونَ فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L27049 Moreover, if it were valid as they intend, there would be no proof in anyone besides the Messenger of Allah (may the peace and blessings of Allah be upon him).

وَمِنْ طَرِيقٍ فِيهَا إبْرَاهِيمُ بْنُ عَمْرٍو - وَهُوَ ضَعِيفٌ - عَنْ عَبْدِ الْكَرِيمِ بْنِ أَبِي الْمُخَارِقِ وَهُوَ غَيْرُ ثِقَةٍ - عَنْ جَعْدَةَ بْنِ هُبَيْرَةَ عَنْ عُمَرَ: ثَلَاثٌ اللَّاعِبُ فِيهِنَّ وَالْجَادُّ سَوَاءٌ الطَّلَاقُ، وَالصَّدَقَةُ وَالْعِتْقُ.

L27050–27052 And from a path in which is Ibrāhīm ibn ʿAmr - and he is weak - from ʿAbd al-Karīm ibn Abī al-Mukhāriq. He is not credible – on the authority of Jaʿdah ibn Hubayrah, on the authority of ʿUmar: Three matters apply equally to the playful and the serious: divorce, charity, and manumission.

ثُمَّ هُمْ مُخَالِفُونَ لِهَذَا، لِأَنَّهُمْ لَا يُجِيزُونَ صَدَقَةَ الْمُكْرَهِ عَلَيْهَا - فَبَعْضُ كَلَامٍ رُوِيَ عَنْ عُمَرَ حُجَّةٌ، وَبَعْضُهُ لَيْسَ حُجَّةً، هَذَا اللَّعِبُ بِالدِّينِ.

L27053 Furthermore, they contradict this; because they do not permit coerced charity. Thus, some of the statements narrated from ʿUmar are authoritative evidence, while others are not—this is playing with religion.

وَمِنْ طَرِيقِ الْحَسَنِ عَنْ أَبِي الدَّرْدَاءِ -: ثَلَاثٌ اللَّاعِبُ فِيهِنَّ كَالْجَادِّ: النِّكَاحُ، وَالطَّلَاقُ، وَالْعَتَاقُ - هَذَا مُرْسَلٌ، وَلَمْ يُدْرِكْ الْحَسَنُ أَبَا الدَّرْدَاءِ

L27054 And through the chain of Al-Ḥasan from Abū al-Dardāʾ: “Three matters where a joker is treated as serious: marriage, divorce, and manumission.” This is a *mursal* report (with an interrupted chain), as Al-Ḥasan did not meet Abū al-Dardāʾ.

وَمِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يَحْيَى عَنْ عَلِيٍّ: ثَلَاثٌ لَا لَعِبَ فِيهِنَّ -: النِّكَاحُ، وَالطَّلَاقُ، وَالْعَتَاقُ، - جَابِرٌ كَذَّابٌ، ثُمَّ لَوْ صَحَّ لَكَانَ ظَاهِرُهُ مُوَافِقًا لِقَوْلِنَا لَا لِقَوْلِهِمْ، وَهُوَ إبْطَالُ اللَّعِبِ فِيهِنَّ فَإِذَا بَطَلَ مَا وَقَعَ مِنْهَا بِاللَّعِبِ.

L27055 Through the chain of Jābir al-Juʿfī from ʿAbd Allāh ibn Yaḥyā from ʿAlī: “Three matters where jesting is invalid – marriage, divorce, and manumission” – Jābir is a compulsive liar –. Furthermore, even if the narration were authentic, its apparent meaning would align with our position rather than theirs, since it [the narration’s apparent meaning] invalidates jesting in these matters, thereby nullifying any such act done jokingly.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ بَلَغَنِي أَنَّ مَرْوَانَ أَخَذَ مِنْ عَلِيٍّ: أَرْبَعٌ لَا رُجُوعَ فِيهِنَّ إلَّا بِالْوَفَاءِ -: النِّكَاحُ، وَالطَّلَاقُ، وَالْعَتَاقُ، وَالنَّذْرُ وَنَعَمْ، كُلُّ هَذِهِ إذَا وَقَعَتْ كَمَا أَمَرَ اللَّهُ تَعَالَى فِي دِينِ الْإِسْلَامِ فَالْوَفَاءُ بِهَا فَرْضٌ، وَأَمَّا إذَا وَقَعَتْ كَمَا أَمَرَ إبْلِيسُ، فَلَا وَلَا كَرَامَةَ لِلْآمِرِ وَالْمُطِيعِ - ثُمَّ لَيْسَ فِي شَيْءٍ مِنْهَا ذِكْرٌ لِلْإِكْرَاهِ عَلَى الْعِتْقِ وَجَوَازُهُ، فَوَضَحَ بُطْلَانُ قَوْلِهِمْ بِلَا شَكٍّ.

L27056 And through the narration of Sufyān ibn ʿUyaynah, it reached me that Marwān related from ʿAli: “Four matters permit no retraction except through fulfillment [of their conditions]: marriage, divorce, emancipation, and vows. Yes, all of these—if carried out as Allah the Exalted has ordained in the religion of Islam—then fulfilling them is obligatory. But if carried out as Iblīs has commanded, they are not [valid], and there is no honor for the one commanding or the obedient.” Furthermore, none of these rulings mention compulsion in emancipation **and** its permissibility. Thus, the falsity of their claim is indisputably clear.

L27057 As for our statement: he has the right to his sale as long as the term has not

arrived, this is because he is a slave as long as he has not attained freedom, {and Allah has permitted sale} [Al-Baqarah 2:275]. Distinguishing between the aforementioned specified periods is invalid, because that term may arrive while the slave is deceased, or the master is deceased.[5]

L27058 As for our statement that if he transfers ownership of the slave and the slave subsequently returns to his possession, emancipation is not required upon the arrival of that term: this is because the contract becomes nullified by the slave's exit from his ownership. Allah the Exalted said: "No bearer of burdens shall bear another's burden" [6:164]. Any contract rightfully nullified cannot be reinstated unless there exists explicit textual evidence authorizing its revival, and no textual evidence exists for restoring this contract after its nullification.[6]

L27059–27061 As for our statement: he cannot revoke any part of this through verbal declaration, except by removing it from his ownership alone - this is because all such contracts are sound, and Allah the Exalted has commanded their fulfillment. Since this is the case, no one may permissibly nullify them. Since there is no textual evidence at all specifying the manner of invalidating it in that regard, there exists no right whatsoever to annul a valid contract fundamentally, except where textual evidence has been established - and with Allah the Exalted lies all success.

The issue of manumitting the slave who is a Bookī.

L27062

L27063 1673 - Issue: It is permissible for a Muslim to manumit his Kitabi slave in the abode of Islam and the land of war—whether he acquired ownership there or in the abode of Islam—due to the saying of the Messenger of Allah, peace and blessings be upon him: "In every moist liver there is a reward."

L27064 And due to his general encouragement—peace and blessings be upon him—toward freeing slaves as a whole, though freeing a believing slave yields

[5]**Qur'an references (L27057):** Qur'an 2:275 (Al-Baqarah).
[6]**Qur'an references (L27058):** Qur'an 6:164 (Al-An'am).

وَأَمَّا قَوْلُنَا: لَهُ بَيْعُهُ مَا لَمْ يَأْتِ الْأَجَلُ، فَلِأَنَّهُ عَبْدٌ مَا لَمْ يَسْتَحِقَّ الْحُرِّيَّةَ {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] وَالتَّفْرِيقُ بَيْنَ الْآجَالِ الْمَذْكُورَةِ بَاطِلٌ، لِأَنَّهُ قَدْ يَجِيءُ ذَلِكَ الْأَجَلُ وَالْعَبْدُ مَيِّتٌ، أَوْ السَّيِّدُ مَيِّتٌ.

وَأَمَّا قَوْلُنَا: إنَّهُ إنْ أَخْرَجَهُ عَنْ مِلْكِهِ ثُمَّ عَادَ إلَى مِلْكِهِ لَمْ يَلْزَمْهُ الْعِتْقُ بِمَجِيءِ ذَلِكَ الْأَجَلِ، فَلِأَنَّهُ قَدْ بَطَلَ الْعَقْدُ بِخُرُوجِهِ عَنْ مِلْكِهِ، قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] وَكُلُّ شَيْءٍ بَطَلَ بِحَقٍّ فَلَا يَجُوزُ أَنْ يَعُودَ، إلَّا أَنْ يَأْتِيَ نَصٌّ بِعَوْدَتِهِ وَلَا نَصَّ فِي عَوْدَةِ هَذَا الْعَقْدِ بَعْدَ بُطْلَانِهِ.

وَأَمَّا قَوْلُنَا: لَا رُجُوعَ لَهُ فِي شَيْءٍ مِنْ ذَلِكَ بِالْقَوْلِ، إلَّا بِإِخْرَاجِهِ مِنْ مِلْكِهِ فَقَطْ، فَلِأَنَّهَا كُلَّهَا عُقُودٌ صِحَاحٌ أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهَا، وَمَا كَانَ هَكَذَا فَلَا يَحِلُّ لِأَحَدٍ إبْطَالُهُ، إذْ لَمْ يَأْتِ نَصٌّ بِكَيْفِيَّةِ إبْطَالِهِ فِي ذَلِكَ أَصْلًا، فَلَيْسَ لَهُ نَقْضُ عَقْدٍ صَحِيحٍ أَصْلًا، إلَّا حَيْثُ جَاءَ نَصٌّ بِذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةُ عِتْقِ الْعَبْدِ الْكِتَابِيِّ]

١٦٧٣ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمُسْلِمِ عِتْقُ عَبْدِهِ الْكِتَابِيِّ فِي أَرْضِ الْإِسْلَامِ وَأَرْضِ الْحَرْبِ - مَلَكَهُ هُنَالِكَ أَوْ فِي دَارِ الْإِسْلَامِ - لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِي كُلِّ ذِي كَبِدٍ رَطْبَةٍ أَجْرٌ» .

وَلِحَضِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى الْعِتْقِ جُمْلَةً، إلَّا أَنَّ عِتْقَ الْمُؤْمِنِ أَعْظَمُ أَجْرًا، وَكَذَلِكَ عِتْقُ الْكَافِرِ لِعَبْدِهِ الْكَافِرِ جَائِزٌ، وَقَدْ ذَكَرْنَا «قَوْلَ حَكِيمٍ لِرَسُولِ اللَّهِ - صَلَّى

greater reward. Similarly, it is permissible for a disbeliever to free his disbelieving slave. We have mentioned "the statement of Ḥakīm to the Messenger of Allah (peace and blessings be upon him): 'O Messenger of Allah, what is your view regarding deeds I used to engage in as devotional acts during the pre-Islamic era, such as freeing slaves and giving charity?' The Messenger of Allah (peace and blessings be upon him) replied: 'You have embraced Islam along with the merit of the good you previously performed,'" thus he deemed the freeing of a disbelieving slave as a virtuous act.

L27065 If the freed slave embraces Islam, his Muslim master inherits from him. Similarly, if the manumitter and the freed slave embrace Islam, the manumitter inherits from the freed slave, because allegiance belongs to the manumitter universally. The Prophet, peace and blessings be upon him, said: "Allegiance belongs to the one who manumits." If one of them is Muslim and the other is a non-Muslim, they do not inherit from each other due to the difference in religion.

L27066 ## The Question of the Slave's Conversion to Islam

L27067 1674. Issue: If a dhimmi (a non-Muslim subject) or a ḥarbī (a non-Muslim residing outside Islamic jurisdiction) has a disbelieving slave, and both embrace Islam simultaneously, the slave remains his property as before. However, if the slave converts to Islam even an instant before his master does, he becomes free the moment he accepts Islam, and no bond of patronage (walā') is owed to anyone. This is based on Allah's statement: "Allah will never give the disbelievers any means of dominance over the believers" (Quran 4:141), and slavery constitutes the most severe form of such subjugation.[7]

L27068 Our opponents have concurred with us that if one departs from the abode of war, he becomes free. Yet we are unaware of any ruling pertaining to such a departure—neither by explicit textual evidence nor by juristic reasoning.

L27069 If it is said: Did the Messenger of Allah (peace be upon him) free those who came to him from among the male slaves of the disbelievers?

اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا رَسُولَ اللَّهِ أَرَأَيْتَ أَشْيَاءَ كُنْتُ أَتَحَنَّثُ بِهَا فِي الْجَاهِلِيَّةِ مِنْ عَتَاقَةٍ وَصَدَقَةٍ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَسْلَمْتَ عَلَى مَا أَسْلَفْتَ مِنْ خَيْرٍ» فَجَعَلَ عِتْقَ الْعَبْدِ الْكَافِرِ خَيْرًا.

فَإِنْ أَسْلَمَ الْمُعْتَقُ وَرِثَهُ سَيِّدُهُ الْمُسْلِمُ، وَكَذَلِكَ لَوْ أَسْلَمَ الْمُعْتِقُ وَالْمُعْتَقُ؛ لِأَنَّ الْوَلَاءَ لِلْمُعْتِقِ عُمُومًا، قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «الْوَلَاءُ لِمَنْ أَعْتَقَ» فَإِنْ كَانَ أَحَدُهُمَا مُسْلِمًا وَالْآخَرُ كَافِرًا لَمْ يَتَوَارَثَا، لِاخْتِلَافِ الدِّينِ.

[مَسْأَلَة إسلام الْعَبْد]

١٦٧٤ - مَسْأَلَةٌ: فَإِنْ كَانَ لِلذِّمِّيِّ أَوْ الْحَرْبِيِّ عَبْدٌ كَافِرٌ فَأَسْلَمَا مَعًا فَهُوَ عَبْدُهُ، كَمَا كَانَ، فَلَوْ أَسْلَمَ الْعَبْدُ قَبْلَ سَيِّدِهِ بِطَرْفَةِ عَيْنٍ فَهُوَ حُرٌّ سَاعَةَ يُسْلِمُ، وَلَا وَلَاءَ عَلَيْهِ لِأَحَدٍ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] وَالرِّقُّ أَعْظَمُ السَّبِيلِ.

وَقَدْ وَافَقَنَا الْمُخَالِفُونَ لَنَا عَلَى أَنَّهُ إنْ خَرَجَ مِنْ دَارِ الْحَرْبِ فَهُوَ حُرٌّ، وَمَا نَدْرِي لِلْخُرُوجِ فِي ذَلِكَ حُكْمًا، لَا بِنَصٍّ وَلَا بِنَظَرٍ.

فَإِنْ قِيلَ: أَعْتَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ خَرَجَ إلَيْهِ مِنْ عَبِيدِ الْكُفَّارِ.

[7] **Qur'an references (L27067):** Qur'an 4:141 (An-Nisa).

L27070–27071 We said: This is our argument. What evidence do you have that he emancipated him through departure, and he—peace and blessings be upon him—never said that at all.

قُلْنَا: هَذِهِ حُجَّتُنَا، وَمِنْ أَيْنَ لَكُمْ أَنَّهُ بِالْخُرُوجِ أَعْتَقَهُ - وَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ ذَلِكَ.

L27072 Then they say: If the slave of a disbeliever embraces Islam, is he to be sold? We responded: Why do you sell him? Is it because the disbeliever's ownership of him is impermissible? Or due to a text cited about his sale, even if the disbeliever's ownership of him is permissible? There is no way to find a text regarding that.

ثُمَّ يَقُولُونَ: إِنْ أَسْلَمَ عَبْدُ الْكَافِرِ بِيعَ عَلَيْهِ؟ فَقُلْنَا: لِمَاذَا تَبِيعُونَهُ؟ أَلِأَنَّهُ لَا يَجُوزُ مِلْكُهُ لَهُ؟ أَمْ لِنَصٍّ وَرَدَ فِي بَيْعِهِ - وَإِنْ كَانَ مِلْكُهُ لَهُ جَائِزًا؟ وَلَا سَبِيلَ إِلَى نَصٍّ فِي ذَلِكَ.

L27073 If they argue: Because the ownership rightfully belongs to him, it is invalid.

فَإِنْ قَالُوا: لِأَنَّ مِلْكَهُ لَهُ لَا يَجُوزُ.

L27074 We said: Since his ownership of it is not permissible, his ownership over him is undoubtedly nullified; otherwise, your statements are confused and contradictory. And since his ownership over him has been nullified, and no ownership by another has yet been established upon him, then he is undoubtedly a free person, for this is the attribute of a free person.

قُلْنَا: فَإِذْ لَا يَحِلُّ مِلْكُهُ لَهُ فَقَدْ بَطَلَ مِلْكُهُ عَنْهُ بِلَا شَكٍّ، وَإِلَّا فَكَلَامُكُمْ مُخْتَلِطٌ مُتَنَاقِضٌ، وَإِذْ قَدْ بَطَلَ مِلْكُهُ عَنْهُ، وَلَمْ يَقَعْ عَلَيْهِ بَعْدُ مِلْكٌ لِغَيْرِهِ، فَهُوَ بِلَا شَكٍّ حُرٌّ، إِذْ هَذِهِ صِفَةُ الْحُرِّ.

L27075 If his ownership of it is permissible, then your selling it to him is an act of oppression, nullity, and injustice.

وَإِنْ كَانَ مِلْكُهُ لَهُ جَائِزًا فَبَيْعُكُمْ إِيَّاهُ ظُلْمٌ وَبَاطِلٌ وَجَوْرٌ.

L27076 What is the distinction between your ruling to keep him under the disbeliever's ownership until he is sold - and perhaps he cannot have him sold except after a year - and your prohibition of his ownership persisting indefinitely? There is no way to establish such a distinction - and in Allah the Exalted we seek support. As for the lapse of patronage over him, this is because he was not emancipated, for there is no patronage except for the emancipator or for those mandated by the scriptural ruling.

وَمَا الْفَرْقُ بَيْنَ مَا قَضَيْتُمْ بِهِ مِنْ إِبْقَائِهِ فِي مِلْكِ الْكَافِرِ حَتَّى يُبَاعَ؟ وَلَعَلَّهُ لَا يَسْتَبِيعُ إِلَّا بَعْدَ سَنَةٍ - وَبَيْنَ مَنْعِكُمْ مِنْ مِلْكِهِ مُتَمَادِيًا؟ وَهَذَا مَا لَا سَبِيلَ لَهُ إِلَى وُجُودِ فَرْقٍ فِي ذَلِكَ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ - وَأَمَّا سُقُوطُ الْوَلَاءِ عَنْهُ، فَلِأَنَّهُ لَمْ يُعْتَقْ، وَلَا وَلَاءَ إِلَّا لِلْمُعْتِقِ، أَوْ لِمَنْ أَوْجَبَهُ النَّصُّ.

L27077 And with Allah, the Most High, is the success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27078 The issue of the manumission of a child born from fornication.

[مَسْأَلَة عِتْق وَلَد الزِّنَا]

L27079 Issue 1675: The emancipation of a child born of fornication is permissible because he constitutes an owned slave. There exist reports to the contrary regarding this matter, but they are inadmissible as evidence due to their inau-

١٦٧٥ - مَسْأَلَةٌ: وَعِتْقُ وَلَدِ الزِّنَى جَائِزٌ، لِأَنَّهُ رَقَبَةٌ مَمْلُوكَةٌ، وَقَدْ جَاءَتْ أَخْبَارٌ بِخِلَافِ ذَلِكَ لَا حُجَّةَ فِيهَا، لِأَنَّهَا لَا تَصِحُّ -: مِنْهَا - عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

thenticity. Among these is a narration from the Messenger of Allah (peace be upon him) through the chain of Aḥmad ibn Shuʿayb: al-ʿAbbās ibn Muḥammad al-Dūrī narrated from al-Faḍl ibn Dukayn, who narrated from Isrāʾīl, from Zayd ibn Jubayr, from Abū Yazīd al-Ḍabbī, from Maymūnah, the freedwoman of the Messenger of Allah (peace be upon him), who reported: "The Prophet (peace be upon him) was asked about a child born of fornication. He replied: 'There is no good in him. Two deeds—striving through them, or he said, preparing through them—are more beloved to me than emancipating a child born of fornication.'" Isrāʾīl is a weak narrator, and I do not know Abū Yazīd al-Ḍabbī.

L27080–27081 Narrations from the Companions are considered disconnected, and scholars have disagreed about them. No one other than the Messenger of Allah—may Allah bless him and grant him peace—holds definitive authority, and the dissenting scholars have concurred with us in this matter.

L27082 **Issue: The master said, "One of these two slaves of mine is free."**

L27083 1676 - Issue: Whoever says: "One of these two slaves of mine is free."

L27084 Neither of them is free, and both remain slaves as they were. Neither is tasked with emancipating the other, for the master did not specifically emancipate this one, so he is not free since his master did not free him. Nor did the master specifically emancipate the other one either, so he likewise is not free since his master did not free him. Thus both remain slaves, as neither master emancipated them. This matter is of the utmost clarity, and it is impermissible to dispossess an owner of his property through baseless assumption.

L27085 **The legal issue concerning one who imposed a hadd punishment on his slave undeservedly or slapped him.**

L27086 1677 - Issue: If a legally responsible adult slaps the cheek of his male slave or female slave with the inner palm, both are immediately emancipated. Similarly, if he strikes them or imposes a punishment for an offense they did

مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا الْعَبَّاسُ بْنُ مُحَمَّدٍ الدُّورِيُّ نا الْفَضْلُ بْنُ دُكَيْنٍ نا إِسْرَائِيلُ عَنْ زَيْدِ بْنِ جُبَيْرٍ عَنْ أَبِي يَزِيدَ الضَّبِّيِّ عَنْ مَيْمُونَةَ مَوْلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ وَلَدِ الزِّنَى؟ فَقَالَ: لَا خَيْرَ فِيهِ، فَعْلَانِ أُجَاهِدُ بِهِمَا - أَوْ قَالَ أُجَهِّزُ بِهِمَا - أَحَبُّ إِلَيَّ مِنْ أَنْ أُعْتِقَ وَلَدَ الزِّنَى» إِسْرَائِيلُ ضَعِيفٌ، وَأَبُو يَزِيدَ الضَّبِّيُّ لَا أَعْرِفُهُ.

وَعَنْ الصَّحَابَةِ مُرْسَلَةٌ، وَقَدْ اخْتَلَفُوا فِيهِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ وَافَقَنَا الْمُخَالِفُونَ هَاهُنَا.

[مَسْأَلَة قَالَ السَّيِّد أَحَد عبدي هَذيْنِ حُرّ]

١٦٧٦ - مَسْأَلَةٌ: وَمَنْ قَالَ: أَحَدُ عَبْدَيَّ هَذَيْنِ حُرٌّ.

فَلَيْسَ مِنْهُمَا حُرٌّ وَكِلَاهُمَا عَبْدٌ كَمَا كَانَ، وَلَا يُكَلَّفُ عِتْقَ أَحَدِهِمَا، فَإِنَّهُ لَمْ يَعْتِقْ هَذَا بِعَيْنِهِ فَلَيْسَ حُرًّا، إذْ لَمْ يَعْتِقْهُ سَيِّدُهُ، وَلَا أَعْتَقَ هَذَا الْآخَرَ أَيْضًا بِعَيْنِهِ، فَلَيْسَ أَيْضًا حُرًّا، إذْ لَمْ يَعْتِقْهُ سَيِّدُهُ، فَكِلَاهُمَا لَمْ يَعْتِقْهُ سَيِّدُهُ، فَكِلَاهُمَا عَبْدٌ - وَهَذَا فِي غَايَةِ الْبَيَانِ، وَلَا يَجُوزُ إخْرَاجُ مِلْكِهِ عَنْ يَدِهِ بِالظَّنِّ الْكَاذِبِ

[مَسْأَلَة مَنْ ضَرَبَ غُلَامًا لَهُ حَدًّا لَمْ يَأْتِهِ أَوْ لَطَمَهُ]

not commit, both are freed by this act. No slave is emancipated against the owner's will - neither due to mutilation nor for any reason other than those specified.

١٦٧٧ - مَسْأَلَةٌ: وَمَنْ لَطَمَ خَدَّ عَبْدِهِ أَوْ خَدَّ أَمَتِهِ بِبَاطِنِ كَفِّهِ فَهُمَا حُرَّانِ سَاعَتَئِذٍ إِذَا كَانَ اللَّاطِمُ بَالِغًا مُمَيِّزًا. وَكَذَلِكَ إِنْ ضَرَبَهُمَا أَوْ حَدَّهُمَا حَدًّا لَمْ يَأْتِيَاهُ فَهُمَا حُرَّانِ بِذَلِكَ. وَلَا يُعْتَقُ عَلَيْهِ مَمْلُوكٌ لَا بِمُثْلَةٍ وَلَا بِغَيْرِ مَا ذَكَرْنَا.

L27087 If the one who slaps requires the service of the slapped male slave or female slave and cannot do without him or her, he may continue to employ them. When he no longer needs them, they become free at that moment. This is based on what was transmitted through the chain of Muḥammad ibn al-Muthannā, who reported from Muḥammad ibn Jaʿfar Ghundar and ʿAbd al-Raḥmān ibn Mahdī. Ghundar stated: Shuʿbah narrated to us, while ʿAbd al-Raḥmān reported from Sufyān al-Thawrī. Their chains then converged, both narrating from Firas ibn Yaḥyā, who said: I heard Dhakwān—Abū Ṣāliḥ al-Sammān—relate from Zādhān Abū ʿUmar, who said: Ibn ʿUmar summoned his male slave and noticed a mark on his back. He asked: "Did I cause you pain?" The slave replied: "No." Ibn ʿUmar declared: "You are free." He then added: "I heard the Messenger of Allah—peace and blessings be upon him—say: 'Whoever strikes a slave with a prescribed punishment (ḥadd) they did not incur, or slaps them, must expiate this by emancipating them.'"[8]

فَإِنْ كَانَ اللَّاطِمُ مُحْتَاجًا إِلَى خِدْمَةِ الْمَمْلُوكِ الْمَلْطُومِ أَوْ الْأَمَةِ كَذَلِكَ، وَلَا غِنَى لَهُ عَنْهُ أَوْ عَنْهَا - اسْتَخْدَمَهُ أَوْ اسْتَخْدَمَهَا - فَإِذَا اسْتَغْنَى عَنْهُ أَوْ عَنْهَا - فَهِيَ أَوْ هُوَ حُرَّانِ حِينَئِذٍ. لِمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، قَالَ غُنْدَرٌ: نا شُعْبَةُ، وَقَالَ عَبْدُ الرَّحْمَنِ: عَنْ سُفْيَانَ الثَّوْرِيِّ - ثُمَّ اتَّفَقَ سُفْيَانُ، وَشُعْبَةُ، كِلَاهُمَا عَنْ فِرَاسِ بْنِ يَحْيَى قَالَ: سَمِعْتُ ذَكْوَانَ - هُوَ أَبُو صَالِحٍ السَّمَّانُ - يُحَدِّثُ عَنْ زَاذَانَ أَبِي عُمَرَ قَالَ: «دَعَا ابْنُ عُمَرَ غُلَامًا لَهُ فَرَأَى بِظَهْرِهِ أَثَرًا فَقَالَ لَهُ: أَوْجَعْتُكَ؟ قَالَ: لَا، قَالَ: فَأَنْتَ عَتِيقٌ، ثُمَّ قَالَ: إِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: مَنْ ضَرَبَ غُلَامًا لَهُ حَدًّا لَمْ يَأْتِهِ، أَوْ لَطَمَهُ، فَإِنَّ كَفَّارَتَهُ أَنْ يُعْتِقَهُ» .

L27088–27089 The term "laṭm" in Arabic applies exclusively to striking the cheek with the inner palm, while striking the back of the head is termed "ṣafʿ." The narration transmitted by Shuʿbah and Sufyān constitutes an addition to what Abū ʿAwānah reported from Firās from Dhakwān from Ibn ʿUmar, yet it remains a single ḥadīth. Additions from reliable narrators cannot be rejected. Through Muslim's chain: Muḥammad ibn ʿAbdillāh ibn Numayr reported from his father from Sufyān al-Thawrī from Salamah ibn Kuhayl from Muʿāwiyah ibn Suwayd ibn Muqrin from his father, who said: "During the era of the Messenger of Allah (peace be upon him), we—Banū Muqrin—possessed only one servant. When one of us struck her with the inner palm, the Prophet (peace be upon him) was informed and said: 'Free her.' They replied: 'They have no servant other than her.' He said: 'Let them retain her in service, and

اللَّطْمُ لَا يَقَعُ فِي اللُّغَةِ إِلَّا بِبَاطِنِ الْكَفِّ عَلَى الْخَدِّ فَقَطْ، وَهُوَ فِي الْقَفَا الصَّفْعُ. وَحَدِيثُ شُعْبَةَ، وَسُفْيَانَ زَائِدٌ عَلَى مَا رَوَاهُ أَبُو عَوَانَةَ عَنْ فِرَاسٍ عَنْ ذَكْوَانَ عَنْ ابْنِ عُمَرَ، وَهُوَ حَدِيثٌ وَاحِدٌ، وَزِيَادَةُ الْعَدْلِ لَا يَجُوزُ رَدُّهَا. وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا أَبِي نا سُفْيَانُ الثَّوْرِيُّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ «عَنْ مُعَاوِيَةَ بْنِ سُوَيْدِ بْنِ مُقْرِنٍ عَنْ أَبِيهِ قَالَ: كُنَّا بَنِي مُقْرِنَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَيْسَ لَنَا إِلَّا خَادِمٌ وَاحِدٌ فَلَطَمَهَا أَحَدُنَا، فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَعْتِقُوهَا،

[8] **Hadith references (L27087):** Sahih Muslim 1657b; Mishkat al-Masabih 3352; Riyad as-Salihin 1605.

فَقَالَ: لَيْسَ لَهُمْ خَادِمٌ غَيْرُهَا، قَالَ: فَلْيَسْتَخْدِمُوهَا فَإِذَا اسْتَغْنَوْا فَلْيُخَلُّوا سَبِيلَهَا» فَهَذَا أَمْرٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَحِلُّ لِأَحَدٍ مُخَالَفَتُهُ.

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي مَسْعُودٍ الْبَدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَآهُ يَضْرِبُ غُلَامًا لَهُ فَقَالَ لَهُ: اعْلَمْ أَبَا مَسْعُودٍ لَلَّهُ أَقْدَرُ عَلَيْكَ مِنْكَ عَلَيْهِ؟ فَقَالَ: يَا رَسُولَ اللَّهِ هُوَ حُرٌّ لِوَجْهِ اللَّهِ تَعَالَى ثُمَّ قَالَ أَمَا لَوْ لَمْ تَفْعَلْ لَلَفَحَتْكَ النَّارُ أَوْ لَمَسَّتْكَ النَّارُ» . قُلْنَا: لَيْسَ فِي هَذَا أَمْرٌ بِعِتْقِهِ وَإِنَّمَا فِيهِ أَنَّهُ أَتَى ذَنْبًا بِضَرْبِهِ اسْتَحَقَّ عَلَيْهِ النَّارَ، فَلَمَّا أَعْتَقَهُ كَانَتْ حَسَنَةً أَذْهَبَتْ تِلْكَ السَّيِّئَةَ، كَمَا لَوْ فَعَلَ حَسَنَةً أُخْرَى تُوَازِيهَا أَوْ تُرْبِي عَلَيْهَا، قَالَ اللَّهُ عَزَّ وَجَلَّ {إِنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ} [هود: ١١٤] .

وَأَمَّا أَمْرُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِعِتْقِهِ، فَقَدْ قَالَ تَعَالَى: {فَلْيَحْذَرِ الَّذِينَ يُخَالِفُونَ عَنْ أَمْرِهِ أَنْ تُصِيبَهُمْ فِتْنَةٌ أَوْ يُصِيبَهُمْ عَذَابٌ أَلِيمٌ} [النور: ٦٣] . فَمَنْ لَزِمَهُ أَمْرٌ فَلَمْ يُنَفِّذْهُ وَجَبَ إِنْفَاذُهُ عَلَيْهِ لِقَوْلِ اللَّهِ تَعَالَى {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] .

وَقَالَ مَالِكٌ: يُعْتَقُ بِالْمُثْلَةِ، وَقَالَهُ اللَّيْثُ، وَالْأَوْزَاعِيُّ، إِلَّا أَنَّ مَالِكًا رَأَى وَلَاءَهُ لِسَيِّدِهِ الْمُمَثِّلِ بِهِ، وَقَالَ اللَّيْثُ: لَا وَلَاءَ لَهُ، لَكِنْ لِجَمَاعَةِ الْمُسْلِمِينَ - وَرُوِيَ هَذَا أَيْضًا عَنْ رَبِيعَةَ، وَالزُّهْرِيِّ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ - وَصَحَّ عَنْ قَتَادَةَ، وَعَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ أَعْتَقَ أَمَةً أُقْعِدَتْ عَلَى مَقْلَى فَأَحْرَقَتْ عَجُزَهَا - وَهُوَ غَيْرُ صَحِيحٍ عَنْ عُمَرَ - لِأَنَّهُ مِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ: أَنَّ عُمَرَ، وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْمَلِكِ الْعَرْزَمِيِّ عَنْ رَجُلٍ مِنْهُمْ: أَنَّ عُمَرَ، وَمِنْ

when they no longer require her, they must release her.'" This constitutes a command from the Messenger of Allah (peace be upon him), which it is impermissible for anyone to oppose.

L27090 If it is said: You have narrated via the transmission chain of Abu Mas'ud al-Badri that the Messenger of Allah—peace and blessings be upon him—saw him striking his slave and said: "Know, O Abu Mas'ud, that Allah has greater power over you than you have over him?" He replied: "O Messenger of Allah, he is free for the sake of Allah's Countenance, the Exalted." Then the Prophet said: "Had you not done so, the Fire would have scorched you or seized you." We respond: This does not entail a command to emancipate him. Rather, it indicates that he committed a sin by striking him, thereby deserving the Fire. When he freed him, it became a righteous act that expiated that evil deed, just as if he had performed another virtuous deed equivalent to it or surpassing it. Allah the Exalted says: {Indeed, righteous deeds obliterate misdeeds} [Hud 11:114].[9]

L27091 As for his command—peace and blessings be upon him—regarding manumission, Allah the Exalted has said: "Let those who oppose his command beware, lest a trial strike them or a painful punishment befall them" [24:63]. Thus, whoever is obligated by a command and fails to fulfill it must carry it out upon him due to the statement of Allah, the Exalted: "Be upholders of justice, witnesses for Allah" [4:135].[10]

L27092–27096 Malik said: Emancipation is mandated in cases of mutilation, and Al-Layth and Al-Awzāʿī held the same view, except that Malik maintained the emancipated slave's clientage belongs to his master who mutilated him, while Al-Layth said: There is no clientage for him; rather, it belongs to the Muslim community - and this was also narrated. From Rabiʿah, al-Zuhrī, and Yaḥyā ibn Saʿīd al-Anṣārī – with authentic reports from Qatādah and the Companions (may Allah be pleased with them) – regarding ʿUmar ibn al-Khaṭṭāb's alleged emancipation of a female slave forced onto a heated pan that burned her buttocks. This attribution to ʿUmar is unsound, as it comes: 1. Via

[9] **Qur'an references (L27090):** Qur'an 11:114 (Hud).
[10] **Qur'an references (L27091):** Qur'an 24:63 (An-Nur); Qur'an 4:135 (An-Nisa).

طَرِيقِ مَالِكٍ: أَنَّ عُمَرَ، وَمِنْ طَرِيقِ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ: أَنَّ عُمَرَ، فَالْأَوَّلُ: مُرْسَلٌ، لِأَنَّ أَبَا قِلَابَةَ لَمْ يُدْرِكْ عُمَرَ. وَالثَّانِي: مُنْقَطِعٌ، وَعَنْ ضَعِيفٍ، وَعَنْ مَجْهُولٍ. وَالثَّالِثُ: مُنْقَطِعٌ، أَيْنَ مَالِكٌ مِنْ عُمَرَ؟ وَالرَّابِعُ: مُنْقَطِعٌ فِي مَوْضِعَيْنِ، لِأَنَّ مَخْرَمَةَ لَمْ يَسْمَعْ مِنْ أَبِيهِ شَيْئًا، وَسُلَيْمَانُ لَمْ يُدْرِكْ عُمَرَ. وَقَدْ صَحَّ خِلَافُ هَذَا عَنْ غَيْرِ عُمَرَ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: سَأَلَ حَيَّانُ الْعَبْدِيُّ عَطَاءَ بْنَ أَبِي رَبَاحٍ عَمَّنْ شَجَّ عَبْدَهُ أَوْ كَسَرَهُ؟ فَقَالَ عَطَاءٌ: لِيَكْسُهُ ثَوْبًا أَوْ لِيُعْطِهِ شَيْئًا، فَقَالَ حَيَّانُ: هَكَذَا أَخْبَرَنِي جَابِرُ بْنُ زَيْدٍ - وَهُوَ أَبُو الشَّعْثَاءِ - عَنِ ابْنِ عَبَّاسٍ فِيمَنْ فَقَأَ عَيْنَ عَبْدِهِ؟ قَالَ ابْنُ عَبَّاسٍ: أَحَبُّ إِلَيَّ أَنْ يُعْتِقَهُ، فَهَذَا ثَابِتٌ عَنِ ابْنِ عَبَّاسٍ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَقَوْلُنَا هَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ. وَاحْتَجَّ مَنْ رَأَى الْعِتْقَ بِالْمُثْلَةِ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنِ الْمُثَنَّى بْنِ الصَّبَّاحِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ: «أَنَّ زِنْبَاعًا خَصَى عَبْدًا لَهُ وَجَدَعَ أُذُنَيْهِ وَأَنْفَهُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: مَنْ مُثِّلَ بِهِ أَوْ حُرِّقَ بِالنَّارِ فَهُوَ حُرٌّ، وَهُوَ مَوْلَى اللَّهِ وَرَسُولِهِ ثُمَّ أَعْتَقَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -» . وَقَالَ ابْنُ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ: كَانَ زِنْبَاعٌ يَوْمَئِذٍ كَافِرًا - وَهَذَا مَمْلُوءٌ مِمَّا لَا خَيْرَ فِيهِ: يَحْيَى بْنُ أَيُّوبَ، وَالْمُثَنَّى بْنُ الصَّبَّاحِ، وَابْنُ لَهِيعَةَ، ثُمَّ هُوَ صَحِيفَةٌ - وَالْعَجَبُ أَنَّ مَالِكًا يُخَالِفُهُ، لِأَنَّهُ يَرَى الْوَلَاءَ لِلْمُعْتِقِ. وَمِنْ طَرِيقٍ جَيِّدَةٍ إِلَى مَعْمَرٍ، وَابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَجُلًا جَبَّ عَبْدَهُ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اذْهَبْ فَأَنْتَ حُرٌّ» وَهَذِهِ صَحِيفَةٌ.

Maʿmar from Ayyūb from Abū Qilābah (mursal, as Abū Qilābah never met ʿUmar). 2. Via Sufyān al-Thawrī from ʿAbd al-Malik al-ʿArzamī from an unnamed source (munqaṭiʿ, weak, and involving an unknown narrator). 3. Via Mālik (munqaṭiʿ – how could Mālik link to ʿUmar?). 4. Via Makhramah ibn Bukayr from his father from Sulaymān ibn Yasār (munqaṭiʿ at two points: Makhramah never heard from his father, and Sulaymān never met ʿUmar).

Authentic contrary reports exist from others, such as via ʿAbd al-Razzāq from Ibn Jurayj: Ḥayyān al-ʿAbdī asked ʿAṭāʾ ibn Abī Rabāḥ about injuring a slave. ʿAṭāʾ ruled: "Provide clothing or compensation." Ḥayyān cited Jābir ibn Zayd's report from Ibn ʿAbbās regarding eye-gouging: "I would most prefer emancipation." While this is soundly attributed to Ibn ʿAbbās, no definitive proof exists except from the Prophet (peace and blessings upon him).

Our position aligns with Abū Ḥanīfah, al-Shāfiʿī, and Abū Sulaymān. Proponents of emancipation for mutilation cite the report via Ibn Wahb from Yaḥyā ibn Ayyūb from al-Muthannā ibn al-Ṣabbāḥ from ʿAmr ibn Shuʿayb from his father from his grandfather: Zinbāʿ, then a disbeliever, castrated and disfigured his slave. The Prophet (peace and blessings upon him) declared: "Whoever is mutilated or burned becomes free – a freed client of Allah and His Messenger." He then emancipated him.

Ibn Lahīʿah via Yazīd ibn Abī Ḥabīb added: "Zinbāʿ was a disbeliever then." This narration is replete with that which... There is no good in it: Yahya ibn Ayyub, Al-Muthanna ibn Al-Sabbah, and Ibn Lahi'ah—then this is a manuscript. It is surprising that Malik opposes it, for he holds that al-walā' (right of patronage) belongs to the emancipator. From a sound chain to Ma'mar and Ibn Jurayj, from 'Amr ibn Shu'ayb, from his father, from his grandfather: "A man cut off a limb of his slave, so the Messenger of Allah—peace be upon him—said to him [the man], 'Go, for you are free.'" And this is a manuscript.

L27097 From the path of Al-Bazzār: Muḥammad ibn Al-Muthannā narrated to us, Muḥammad ibn Al-Ḥārith narrated to us, Muḥammad ibn ʿAbd al-Raḥmān ibn Al-Baylamānī narrated to us from his father from Ibn ʿUmar from the Messenger of Allah—peace and blessings be upon him—who said: "There is no right of pre-emption for an absent person nor for a minor. The right of pre-emption is as immediate as untying a knot. Whoever mutilates his slave, the slave is emancipated and becomes a freedman of Allah and His Messenger. People are bound by their stipulations provided they conform to truth." Ibn Al-Baylamānī is weak and rejected; his narration is not authoritative. Among the marvels of this world is the Mālikīs' reliance on this document of ʿAmr ibn Shuʿayb concerning the emancipation of a mutilated slave, though the document itself contradicts this very narration by assigning patronage to the master—despite the slave being emancipated against the master's will. The explicit text states: "He is a freedman of Allah the Exalted and His Messenger." They granted the right of pre-emption to the absent, making it a proof for their desired rulings but rejecting it otherwise. They cited Ibn Al-Baylamānī's narration on emancipating one who mutilates his slave yet opposed it regarding pre-emption. The Ḥanafīs and Shāfiʿīs did not consider ʿAmr ibn Shuʿayb's narration here authoritative, as it contradicted Abū Ḥanīfah's and Al-Shāfiʿī's opinions. Yet when it aligned with their views, they deemed it sound and authoritative—like his narration regarding the mother of a minor: "You have greater right to him unless you remarry," or that "a mukatab remains a slave as long as a dirham remains upon him," or rejecting the testimony of a prejudiced witness for his brother and a dependent's testimony for the household while accepting it for others. The Mālikīs frequently rejected ʿAmr ibn Shuʿayb's narrations from his father and grandfather when they contradicted Mālik's opinions. We seek refuge in Allah from such tampering with the religion.

وَمِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ الْحَارِثِ نا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنُ الْبَيْلَمَانِيِّ عَنْ أَبِيهِ عَنِ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا شُفْعَةَ لِغَائِبٍ، وَلَا لِصَغِيرٍ، وَالشُّفْعَةُ كَحَلِّ الْعِقَالِ - مَنْ مَثَّلَ بِمَمْلُوكِهِ فَهُوَ حُرٌّ، وَهُوَ مَوْلَى اللَّهِ وَرَسُولِهِ - وَالنَّاسُ عَلَى شُرُوطِهِمْ مَا وَافَقُوا الْحَقَّ» وَابْنُ الْبَيْلَمَانِيِّ ضَعِيفٌ مَطْرَحٌ لَا يُحْتَجُّ بِرِوَايَتِهِ. وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُ الْمَالِكِيِّينَ لِصَحِيفَةِ عَمْرِو بْنِ شُعَيْبٍ هَذِهِ فِي عِتْقِ الْمُمَثَّلِ بِهِ، وَهُوَ قَدْ خَالَفَ هَذَا الْخَبَرَ نَفْسَهُ إِذْ جَعَلَ الْوَلَاءَ لِسَيِّدِهِ وَلَيْسَ هُوَ الَّذِي أَعْتَقَهُ بَلْ أُعْتِقَ عَلَيْهِ عَلَى رَغْمِهِ، وَنَصُّ الْخَبَرِ «أَنَّهُ مَوْلَى اللَّهِ تَعَالَى وَرَسُولِهِ» . وَجَعَلُوا الشُّفْعَةَ لِلْغَائِبِ، فَصَارَ حُجَّةً فِيمَا اشْتَهَوْا وَلَمْ يَكُنْ حُجَّةً فِيمَا لَمْ يَشْتَهُوا، وَاحْتَجُّوا مِنْ خَبَرِ ابْنِ الْبَيْلَمَانِيِّ بِعِتْقِ مَنْ مَثَّلَ بِمَمْلُوكِهِ وَخَالَفُوهُ فِي الشُّفْعَةِ وَلَمْ يَرَ الْحَنَفِيُّونَ، وَلَا الشَّافِعِيُّونَ خَبَرَ عَمْرِو بْنِ شُعَيْبٍ هَاهُنَا حُجَّةً إِذْ خَالَفَهُ رَأْيُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، فَإِذَا وَافَقَهُمْ صَارَ حِينَئِذٍ صَحِيحًا وَحُجَّةً. كَرِوَايَتِهِ فِي أُمِّ الصَّغِيرِ أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي. وَالْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ. وَرَدُّ شَهَادَةِ ذِي الْغَمْرِ لِأَخِيهِ، وَشَهَادَةُ الْقَانِعِ لِأَهْلِ الْبَيْتِ، وَإِجَازَتُهَا لِغَيْرِهِمْ. وَقَدْ رَدَّ الْمَالِكِيُّونَ رِوَايَةَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ كَثِيرًا إِذَا خَالَفَتْ رَأْيَ مَالِكٍ - وَنَعُوذُ بِاللَّهِ مِنْ مِثْلِ هَذَا اللَّعِبِ بِالدِّينِ.

L27098–27100 Among the wonders of the world is the claim of the Ḥanafīs that the Prophet—peace and blessings of Allah be upon him—only said this as a recommended act. Abū Muḥammad said: This is an absolute lie, for the report states: "You are free; whoever is mutilated [in kind] is free." And why did you not say the same regarding his statement - may Allah's peace and blessings

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُ الْحَنَفِيِّينَ إِنَّمَا قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا عَلَى النَّدْبِ. قَالَ أَبُو مُحَمَّدٍ: هَذَا كَذِبٌ بَحْتٌ، لِأَنَّ فِي الْخَبَرِ «أَنْتَ حُرٌّ، مَنْ مُثِّلَ بِهِ فَهُوَ حُرٌّ» وَهَلَّا

be upon him -: «Whoever owns a relative who is a mahram to him, he is freed,» and the wording is the same.

قُلْتُمْ مِثْلَ هَذَا فِي قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ عَلَيْهِ فَهُوَ حُرٌّ» وَاللَّفْظُ وَاحِدٌ.

L27101 They said: "It has reached us that the Messenger of Allah (peace and blessings of Allah be upon him) gave him its value." We replied: "Even if we grant you that this is confirmed (though it is undeniably a lie), then manumit him and give him his value. Rather, this constitutes another fresh contradiction from you regarding what you yourselves authenticated, while you criticize Al-Shafi'i for mentioning what he reported: that the number of times the Prophet (peace and blessings of Allah be upon him) said 'Allahu Akbar' over Hamzah reached him, and his dispatch to kill Abu Sufyan. These are two renowned accounts narrated by the authors of the Maghazi, i.e., military campaigns. Yet you did not censure Muhammad ibn Al-Hasan for this lie in which no one else participated with you. Moreover, he fabricated it baselessly to his detriment, not for his benefit."

وَقَالُوا: بَلَغَنَا أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ قِيمَتَهُ؟ قُلْنَا: هَبْكُمْ قَدْ صَحَّ لَكُمْ ذَلِكَ - وَهُوَ الْكَذِبُ بِلَا شَكٍّ - فَأَعْتِقُوهُ ثُمَّ أَعْطُوهُ قِيمَتَهُ، بَلْ هَذَا خِلَافٌ آخَرُ جَدِيدٌ مِنْكُمْ لِمَا صَحَّحْتُمْ وَأَنْتُمْ تُنْكِرُونَ عَلَى الشَّافِعِيِّ مَا ذَكَرَ: أَنَّهُ بَلَغَهُ مِنْ عَدَدِ تَكْبِيرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى حَمْزَةَ، وَبَعْثَتِهِ لِقَتْلِ أَبِي سُفْيَانَ، وَهُمَا حِكَايَتَانِ مَشْهُورَتَانِ قَدْ ذَكَرَهُمَا أَصْحَابُ الْمَغَازِي، وَلَمْ تَعِيبُوا عَلَى مُحَمَّدِ بْنِ الْحَسَنِ هَذِهِ الْكِذْبَةَ الَّتِي لَمْ يُشَارِكْهُ فِيهَا أَحَدٌ، ثُمَّ عَمِلَهَا أَيْضًا بَارِدَةً عَلَيْهِ لَا لَهُ.

L27102 They said: Perhaps Umar emancipated him for reasons other than mutilation. This is a brazenly disgraceful assertion, for the explicit report concerning Umar states: "She complained to him that he burned her, so he emancipated her and lashed him, saying: 'Woe to you! Could you find no punishment except torturing her with the punishment of Allah [in the Hereafter]?'" They also cited what was narrated to us through Ma'mar's chain via an unnamed man from Al-Hasan: "A man ignited fire on his slave's face. He came to Umar ibn al-Khattab who emancipated him. Later, captives were brought to Umar and he gave him a replacement slave." Al-Hasan said: "They would emancipate and impose penalties"—meaning he imposed a penalty on him in place of the emancipated slave? We responded: This chain is broken in two places: an unnamed transmitter from Al-Hasan, then Al-Hasan narrating from Umar—though he was born only two years before Umar's death. Even if we were to concede its authenticity, then act accordingly! Glory be to Allah! They consider what they cite as evidence from Umar that is not authentically established—such as his imposition of eighty lashes for wine consumption, his collection of zakat from horses, and his ruling to grant inheritance rights to a thrice-divorced woman during terminal illness—as

وَقَالُوا: لَعَلَّ عُمَرَ أَعْتَقَهُ لِغَيْرِ الْمُثْلَةِ. فَمُجَاهَرَةٌ قَبِيحَةٌ، لِأَنَّ نَصَّ الْخَبَرِ عَنْ عُمَرَ " أَنَّهَا شَكَتْ إِلَيْهِ أَنَّهُ أَحْرَقَهَا فَأَعْتَقَهَا وَجَلَدَهُ، وَقَالَ لَهُ: وَيْحَكَ أَمَا وَجَدْتَ عُقُوبَةً إِلَّا أَنْ تُعَذِّبَهَا بِعَذَابِ اللَّهِ ". وَذَكَرُوا أَيْضًا: مَا رُوِّينَا مِنْ طَرِيقِ مَعْمَرٍ عَنْ رَجُلٍ عَنْ الْحَسَنِ: أَشْعَلَ رَجُلٌ وَجْهَ عَبْدِهِ نَارًا فَأَتَى عُمَرَ بْنَ الْخَطَّابِ فَأَعْتَقَهُ، ثُمَّ أُتِيَ عُمَرُ بِسَبْيٍ فَأَعْطَاهُ عَبْدًا، قَالَ الْحَسَنُ: كَانُوا يُعْتِقُونَ وَيُعَاقِبُونَ - يَعْنِي يُعْطِيه لِمَا أَعْتَقَهُ عَقَبَةَ مَكَانِهِ؟ فَقُلْنَا: هَذَا مَكْسُورٌ فِي مَوْضِعَيْنِ. رَجُلٌ لَمْ يُسَمَّ عَنْ الْحَسَنِ، ثُمَّ الْحَسَنِ عَنْ عُمَرَ، وَلَمْ يُولَدْ إِلَّا قَبْلَ مَوْتِ عُمَرَ بِسَنَتَيْنِ، ثُمَّ هَبْك أَنَّهُ صَحَّ فَافْعَلُوا كَذَلِكَ، وَيَا سُبْحَانَ اللَّهِ يَكُونُ مَا احْتَجُّوا فِيهِ بِعُمَرَ مِمَّا لَمْ يَصِحَّ عَنْهُ مِنْ أَنَّهُ جَلَدَ فِي الْخَمْرِ ثَمَانِينَ حَدًّا، وَأَنَّهُ أَخَذَ الزَّكَاةَ مِنْ الْخَيْلِ، وَوَرَّثَ الْمُطَلَّقَةَ ثَلَاثًا فِي الْمَرَضِ: حُجَّةً، وَلَا يَكُونُ مَا جَاءَ عَنْ عُمَرَ مِنْ عِتْقِ الْمُمَثَّلِ بِهِ حُجَّةً هَذَا التَّحَكُّمُ بِالْبَاطِلِ فِي دِينِ اللَّهِ تَعَالَى. وَيَجْعَلُ الْمَالِكِيُّونَ مَا

valid proofs. Yet they do not consider what is reported from Umar regarding emancipation in cases of mutilation as proof. This is arbitrary falsehood in Allah's religion! The Malikis treat Umar's reported ruling here as proof, but do not treat his judgments in the report of Al-Dahhak, Abd al-Rahman ibn Awf, and all other matters wherein they opposed him as proof.

رُوِيَ عَنْ عُمَرَ فِي هَذَا حُجَّةً، وَلَا يَجْعَلُونَ حُكْمَهُ فِي حَدِيثِ الضَّحَّاكِ، وَعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَسَائِرِ مَا خَالَفُوهُ فِيهِ حُجَّةً.

L27103–27105

We also mentioned what has been narrated to us through the chain of al-Bazzār from Ibrāhīm ibn ʿAbd Allāh from Saʿīd ibn Abī Maryam from Ibn Lahīʿah from Yazīd ibn Abī Ḥabīb that Rabīʿah ibn Laqīṭ narrated to them that ʿAbd Allāh ibn Sandar... He narrated from his father that he was a slave of Zinbāʿ ibn Salāmah, who castrated and mutilated him. He came to the Messenger of Allah (peace and blessings of Allah be upon him), and they informed him. The Prophet sternly rebuked Zinbāʿ and emancipated him.» Ibn Lahīʿah is unreliable. According to the Ḥanafīs, he is now considered weak, though he was deemed trustworthy in narrating ablution with nabīdh. Woe to the shameless! From the chain of al-ʿUqaylī: Muḥammad ibn Khuzaymah narrated to us: ʿAbdullāh ibn Ṣāliḥ, the scribe of al-Layth, narrated to us from al-Layth from ʿAmr ibn ʿĪsā al-Qurashī al-Asadī from Ibn Jurayj from ʿAṭāʾ from Ibn ʿAbbās: A slave girl came to ʿUmar after her master had burned her private part. She said, "My master accused me and forced me to sit on fire until he burned my private part." ʿUmar asked her, "Did he witness this act?" She replied, "No." He asked, "Did you confess to him?" She said, "No." ʿUmar ordered, "Bring him to me." When the man was brought, ʿUmar said, "Do you dare to administer Allah's punishment? By the One in whose hand is my soul, had I not heard the Messenger of Allah (peace and blessings of Allah be upon him) say, 'Retaliation is not taken from a master's wealth for a slave, nor from a parent for a child,' I would have exacted retribution from you on her behalf." He then exposed him publicly and flogged him with one hundred lashes. He declared to her, "Go. You are free for the sake of Allah Almighty, a freed person of Allah and His Messenger. I testify that I heard the Messenger of Allah (peace and blessings of Allah be upon him) say, 'Whoever is burned with fire or mutilated is emancipated, becoming a freed person of Allah and His Messenger.'" ʿAbdullāh ibn Ṣāliḥ is weak, and ʿAmr ibn ʿĪsā is unknown.

وَذَكَرْنَا أَيْضًا مَا رُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ عَنْ إِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ عَنْ سَعِيدِ بْنِ أَبِي مَرْيَمَ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ رَبِيعَةَ بْنَ لَقِيطٍ حَدَّثَهُمْ «أَنَّ عَبْدَ اللَّهِ بْنَ سَنْدَرٍ حَدَّثَهُ عَنْ أَبِيهِ أَنَّهُ كَانَ عَبْدًا لِزِنْبَاعِ بْنِ سَلَامَةَ وَأَنَّهُ خَصَاهُ وَجَدَعَهُ فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرُوهُ فَأَغْلَظَ الْقَوْلَ لِزِنْبَاعٍ وَأَعْتَقَهُ» - فَابْنُ لَهِيعَةَ لَا شَيْءَ، وَالْآنَ صَارَ عِنْدَ الْحَنَفِيِّينَ ضَعِيفًا، وَكَانَ ثِقَةً فِي رِوَايَةِ الْوُضُوءِ بِالنَّبِيذِ، أَلَا تَبًّا لِمَنْ لَا يَسْتَحْيِ؟ وَمِنْ طَرِيقِ الْعُقَيْلِيُّ نا مُحَمَّدُ بْنُ خُزَيْمَةَ نا عَبْدُ اللَّهِ بْنُ صَالِحٍ كَاتِبُ اللَّيْثِ عَنْ اللَّيْثِ عَنْ عَمْرِو بْنِ عِيسَى الْقُرَشِيِّ الْأَسَدِيِّ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ جَاءَتْ جَارِيَةٌ إلَى عُمَرَ وَقَدْ أَحْرَقَ سَيِّدُهَا فَرْجَهَا فَقَالَتْ: إنَّ سَيِّدِي اتَّهَمَنِي فَأَقْعَدَنِي عَلَى النَّارِ حَتَّى أَحْرَقَ فَرْجِي فَقَالَ لَهَا عُمَرُ: هَلْ رَأَى ذَلِكَ عَلَيْك؟ قَالَتْ: لَا، قَالَ: فَاعْتَرَفْت لَهُ؟ قَالَتْ: لَا، قَالَ عُمَرُ: عَلَيَّ بِهِ، فَأُتِيَ بِهِ، فَقَالَ لَهُ: أَتُعَذِّبُ بِعَذَابِ اللَّهِ؟ وَالَّذِي نَفْسِي بِيَدِهِ لَوْ لَمْ أَسْمَعْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يُقَادُ مَمْلُوكٌ مِنْ مَالِكٍ وَلَا وَلَدٌ مِنْ وَالِدٍ» لَأَقَدْتُهَا مِنْك، ثُمَّ بَرَزَهُ فَضَرَبَهُ مِائَةَ سَوْطٍ، ثُمَّ قَالَ: اذْهَبِي فَأَنْتِ حُرَّةٌ لِوَجْهِ اللَّهِ تَعَالَى، وَأَنْتِ مَوْلَاةُ اللَّهِ وَرَسُولِهِ، أَشْهَدُ لَسَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ حُرِّقَ بِالنَّارِ، أَوْ مُثِّلَ بِهِ فَهُوَ حُرٌّ، وَهُوَ مَوْلَى اللَّهِ وَرَسُولِهِ -» عَبْدُ اللَّهِ بْنُ صَالِحٍ ضَعِيفٌ، وَعَمْرُو بْنُ عِيسَى مَجْهُولٌ.

وَالْعَجَبُ كُلُّ الْعَجَبِ أَنَّ الْمَالِكِيِّينَ احْتَجُّوا بِهَذَا الْخَبَرِ فِي عِتْقِ الْمُمَثَّلِ بِهِ، وَفِي أَنْ لَا يُقَادَ مَمْلُوكٌ مِنْ مَالِكٍ، وَرَأَوْهُ حَقًّا فِي ذَلِكَ، وَخَالَفُوهُ فِي الْقَوَدِ مِنَ الْحَرْقِ بِالنَّارِ، وَقَدْ رَآهُ عُمَرُ حَقًّا إِلَّا فِي السَّيِّدِ لِعَبْدِهِ، وَالْوَالِدِ لِوَلَدِهِ، وَفِي أَنَّ الْوَلَاءَ لِغَيْرِ الْمُمَثَّلِ. وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ رَأَوْهُ حُجَّةً فِي أَنَّ الْوَلَدَ لَا يُقَادُ لَهُ مِنْ وَالِدِهِ، وَالْعَبْدَ لَا يُقَادُ لَهُ مِنْ سَيِّدِهِ، وَلَمْ يُجِيزُوا خِلَافَهُ، ثُمَّ لَمْ يَرَوْهُ حُجَّةً فِي جَلْدِهِ فِي التَّعْزِيرِ مِائَةً، وَلَا فِي عِتْقِ الْمُمَثَّلِ بِهِ، فَيَا سُبْحَانَ اللَّهِ، أَيُّ دِينٍ يَبْقَى مَعَ هَذَا الْعَمَلِ.

L27106 The utmost wonder is that the Mālikīs cited this report as evidence for emancipating the one subjected to retaliatory mutilation and for prohibiting *qisas* against a master for his slave, considering this a valid ruling. Yet they contradicted it regarding *qisas* for burning with fire, though ʿUmar deemed it rightful—except when a master acts against his slave or a parent against their child—and concerning the right of patronage belonging to someone other than the mutilated party. The Ḥanafīs and Shāfiʿīs viewed it as proof that a child cannot claim *qisas* against a parent nor a slave against a master, and they prohibited opposing this ruling. Yet they did not consider it evidence for imposing one hundred lashes in *taʿzīr* or for emancipating the mutilated party. Glory be to God! What religion endures with such practices?

ثُمَّ عَجَبٌ آخَرُ: أَنَّهُمْ كُلَّهُمْ رَأَوْا مَا رُوِيَ فِي خَبَرِ أَبِي قَتَادَةَ إِذْ عَقَرَ الْحِمَارَ وَهُوَ مُحِلٌّ وَأَصْحَابُهُ مُحْرِمُونَ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَفِيكُمْ مَنْ أَشَارَ إِلَيْهِ، أَوْ أَعَانَهُ؟ قَالُوا: لَا، قَالَ: فَكُلُوا» حُجَّةً فِي مَنْعِ أَكْلِ مَنْ صِيدَ مِنْ أَجْلِهِ وَهُوَ مُحْرِمٌ، وَلَمْ يَرَوْا قَوْلَ عُمَرَ هَاهُنَا " هَلْ رَأَى ذَلِكَ عَلَيْكَ؟ أَوْ اعْتَرَفَتْ لَهُ؟ " حُجَّةً فِي أَنْ لَا يُعْتَقَ الْمُمَثَّلُ بِهِ إِذَا عُرِفَ زِنَاهُ بِإِقْرَارٍ أَوْ مُعَايَنَةٍ، وَلَوْ صَحَّ عَنْ عُمَرَ لَكَانَ قَدْ خَالَفَهُ ابْنُ عَبَّاسٍ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجُّوا كَمَا تَرَى بِهَذِهِ الْعُفُونَاتِ الْفَاسِدَةِ وَتَرَكُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ نا أَبِي عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَتَلَ عَبْدَهُ قَتَلْنَاهُ وَمَنْ جَدَعَ عَبْدَهُ جَدَعْنَاهُ وَمَنْ خَصَى عَبْدَهُ خَصَيْنَاهُ» فَالْآنَ صَارَ الْحَسَنُ عَنْ سَمُرَةَ صَحِيفَةً، وَلَمْ يَصِرْ حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ كَوْنَهُ صَحِيفَةً إِذَا اشْتَهَوْا مَا فِيهَا.

L27107–27109 Then another astonishment: that they all considered what was narrated in the report of Abū Qatādah when he slaughtered the donkey while he was not in a state of ritual consecration and his companions were in iḥrām—from the statement of the Messenger of Allah, peace and blessings be upon him: “Is there anyone among you who directed him to it or assisted him?” They said: “No.” He said: “Then eat”—as evidence to prohibit consuming game hunted for the sake of someone in iḥrām. Yet they did not consider ʿUmar’s statement here, “Did he witness this act against you, or did you confess to him?” as evidence that the slave designated for exemplary manumission should not be freed if her adultery is known through a confession. Or direct observation. Even if it were authentically established from Umar, Ibn Abbas would have opposed him, for no one’s authority supersedes that of the Messenger of Allah—peace and blessings be upon him. Abu Muhammad said: They argued—as is evident—with these rotten, corrupt things, abandoning what we narrated through the chain of Abu Dawud: from Muhammad ibn al-Muthanna, from Muadh ibn Hisham al-Dastuwā’ī, from his father, from Qatadah, from al-Hasan, from Samurah ibn Jundub, from the Prophet—peace and blessings be upon him: “Whoever kills his slave, we killed him; whoever mutilates his slave, we mutilated him; and whoever castrates his slave, we castrated him.” Now al-Hasan’s narration from Samurah has become a

written document, whereas the hadith of Amr ibn Shu'ayb was not treated as a written document when they desired what was in it.

L27110 The Malikis considered the Ḥadīth of al-Ḥasan from Samurah as evidence regarding responsibility—and sufficient for us is Allah, and He is the best Trustee. Since nothing authentically established from the Prophet (peace and blessings of Allah be upon him) exists on this matter, one who mutilates his slave is not obligated to free him, for neither Allah the Exalted nor His Messenger (peace and blessings of Allah be upon him) has imposed that obligation. Only what Allah the Exalted has ordained is obligatory in this regard, as He says: "So whoever transgresses against you, transgress against him in like manner as he transgressed against you" [Al-Baqarah: 194]. And as He the Exalted says: "And violations of sanctity [call for] retaliation" [Al-Baqarah: 194]. And as He the Exalted says: "The recompense for an evil is an evil like it" [Ash-Shūrā: 40]. And with Allah alone is success.[11]

L27111 **Issue: He manumitted a slave who possesses property.**

L27112 1678 - Issue: If someone emancipates a slave who possesses property, the property belongs to him unless the master seizes it before emancipating him, in which case it then belongs to the master. As we have reported through the chain of Ibn Abī Shaybah: Ghundar narrated to us from Hishām al-Dastuwā'ī from Abū al-Zubayr from ʿAbdullāh ibn Abī Mulaykah: that ʿĀ'ishah, the Mother of the Believers, said to a woman who asked her after emancipating her slave: "If you emancipate him without stipulating his property, his property is his." A similar ruling is narrated from Ibn ʿUmar. It is authentically reported from al-Ḥasan and ʿAṭāʾ regarding a slave whose master contracted a kitābah with him while he owned property and had a child from his umm walad (concubine): that his property and umm walad remain his, his children are free persons, and the same applies if the slave is emancipated. We have reported through the chain of al-Ḥajjāj ibn al-Minhāl: Ziyād al-Aʿlam said: from al-Ḥasan; and Qays ibn Saʿd said: from ʿAṭāʾ. And through the chain

[11] **Qur'an references (L27110):** Qur'an 2:194 (Al-Baqarah); Qur'an 42:40 (Ash-Shuraa).

وَقَدْ رَأَى الْمَالِكِيُّونَ حَدِيثَ الْحَسَنِ عَنْ سَمُرَةَ حُجَّةً فِي الْعُهْدَةِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ. فَلَمَّا لَمْ يَصِحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا شَيْءٌ كَانَ مَنْ مَثَّلَ بِعَبْدِهِ لَا يَجِبُ عَلَيْهِ عِتْقُهُ، إِذْ لَمْ يُوجِبْ عَلَيْهِ ذَلِكَ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا يَجِبُ فِي ذَلِكَ مَا أَوْجَبَهُ اللَّهُ تَعَالَى إِذْ يَقُولُ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] . وَإِذْ يَقُولُ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] . وَإِذْ يَقُولُ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة أَعْتَقَ عَبْدًا وَلَهُ مَالٌ]

١٦٧٨ - مَسْأَلَةٌ: وَمَنْ أَعْتَقَ عَبْدًا وَلَهُ مَالٌ فَمَالُهُ لَهُ إِلَّا أَنْ يَنْتَزِعَهُ السَّيِّدُ قَبْلَ عِتْقِهِ إِيَّاهُ، فَيَكُونُ حِينَئِذٍ لِلسَّيِّدِ. كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا غُنْدَرٌ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ لِامْرَأَةٍ سَأَلَتْهَا وَقَدْ أَعْتَقَتْ عَبْدَهَا: إِذَا أَعْتَقْتِيهِ وَلَمْ تَشْتَرِطِي مَالَهُ فَمَالُهُ لَهُ. وَمِثْلُهُ: عَنِ ابْنِ عُمَرَ، وَصَحَّ عَنِ الْحَسَنِ، وَعَطَاءٍ: فِي عَبْدٍ كَاتَبَهُ مَوْلَاهُ وَلَهُ مَالٌ وَوَلَدٌ مِنْ سُرِّيَّةٍ لَهُ، أَنَّ مَالَهُ وَسُرِّيَّتَهُ لَهُ، وَوَلَدَهُ أَحْرَارٌ، وَالْعَبْدُ إِذَا أُعْتِقَ كَذَلِكَ. رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ زِيَادٍ الْأَعْلَمِ، وَقَيْسِ بْنِ سَعْدٍ، قَالَ زِيَادٌ: عَنِ الْحَسَنِ، وَقَالَ قَيْسٌ: عَنْ عَطَاءٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ إِذَا أُعْتِقَ الْعَبْدُ فَمَالُهُ لَهُ.

of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī: If a slave is emancipated, his property belongs to him.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ مَضَتْ السُّنَّةُ إذَا أُعْتِقَ الْعَبْدُ يَتْبَعُهُ مَالُهُ.

L27113 And via the transmission of Mālik from Al-Zuhrī: The Sunnah has established that when a slave is emancipated, his wealth follows him as his rightful property.

وَرُوِيَ أَيْضًا: عَنْ الْقَاسِمِ، وَسَالِمٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ، وَأَبِي الزِّنَادِ، وَمُحَمَّدِ بْنِ عَبْدِ الْقَارِي وَمَكْحُولٍ مِثْلُ قَوْلِ الزُّهْرِيِّ، قَالَ يَحْيَى: عَلَى هَذَا أَدْرَكْت النَّاسَ، وَقَالَ رَبِيعَةُ، وَأَبُو الزِّنَادِ، سَوَاءٌ عَلِمَ سَيِّدُهُ مَالَهُ أَوْ جَهِلَهُ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ. وَقَالَ مَالِكٌ: مَالُ الْعَبْدِ الْمُعْتَقِ لَهُ، وَأَمَّا أَوْلَادُهُ فَلِسَيِّدِهِ، وَكَذَلِكَ حَمْلُ أُمِّ وَلَدِهِ - وَلَوْ أَنَّهُ بَعْدَ عِتْقِهِ أَرَادَ عِتْقَ أُمِّ وَلَدِهِ لَمْ يَقْدِرْ لِأَنَّ حَمْلَهَا رَقِيقٌ. وَقَالَ: هِيَ السُّنَّةُ الَّتِي لَا اخْتِلَافَ فِيهَا، أَنَّ الْعَبْدَ إذَا أُعْتِقَ يَتْبَعُهُ مَالُهُ وَلَمْ يَتْبَعْهُ وَلَدُهُ، وَاحْتَجَّ بِأَنَّ الْعَبْدَ وَالْمُكَاتَبَ إذَا فَلَّسَا أَوْ جُرِحَا أُخِذَ مَالُهُمَا وَأُمَّهَاتُ أَوْلَادِهِمَا، وَلَمْ يُؤْخَذْ أَوْلَادُهُمَا، وَأَنَّ الْعَبْدَ إذَا بِيعَ وَاشْتَرَطَ الْمُبْتَاعُ مَالَهُ كَانَ لَهُ، وَلَمْ يَدْخُلْ وَلَدُهُ فِي الشَّرْطِ.

L27114–27115 It is also narrated from Al-Qāsim, Sālim, Yaḥyā ibn Saʿīd al-Anṣārī, Rabīʿah, Abū al-Zinād, Muḥammad ibn ʿAbd al-Qārī, and Makhūl—similar to the statement of al-Zuhrī. Yaḥyā said: "This is the prevailing custom I observed among the people." Rabīʿah and Abū al-Zinād said: "It makes no difference whether his master knew of his property or was unaware of it"—which is the opinion of Abū Sulaymān. Mālik said: "The property of an emancipated slave belongs to him, while his children belong to his master. Similarly, the fetus of the master's *umm walad* belongs to the master. Even if after his emancipation he wished to emancipate the master's *umm walad*, he could not do so because her fetus remains enslaved." He said: "This is the established practice about which there is no disagreement: when a slave is emancipated, his property follows him, but his children do not follow him." He argued that when a slave or *mukātab* becomes bankrupt or is injured, their property and their *ummahāt awlād* are seized, but their children are not seized. Similarly, if a slave is sold and the buyer stipulates possession of his property, it is granted, but his children are not encompassed by the stipulation.

قَالَ أَبُو مُحَمَّدٍ: مَا رَأَيْنَا حُجَّةً أَفْقَرَ إلَى حُجَّةٍ مِنْ هَذِهِ، وَإِنَّ الْعَجَبَ مِنْ هَذِهِ السُّنَّةُ الَّتِي لَا يُعْرَفُ لَهَا رَاوٍ مِنْ النَّاسِ، لَا مِنْ طَرِيقٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ. وَالْخِلَافُ فِيهَا أَشْهَرُ مِنْ ذَلِكَ. كَمَا ذَكَرْنَا عَنْ عَطَاءٍ، وَالْحَسَنِ، بَلْ إنَّمَا رُوِيَ مِثْلُ قَوْلِ مَالِكٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى، وَعَمْرِو بْنِ دِينَارٍ، وَالنَّخَعِيِّ. وَقَدْ أَجْمَعَتْ الْأُمَّةُ، وَمَالِكٌ مَعَهُمْ فِي جُمْلَتِهِمْ، وَهَؤُلَاءِ: عَلَى أَنَّ وَلَدَ الْأَمَةِ مَمْلُوكٌ لِسَيِّدِ أُمِّهِ إلَّا أَنْ يَكُونَ وَلَدَ الرَّجُلِ مِنْ أَمَتِهِ الصَّحِيحَةِ الْمِلْكِ، فَإِنَّهُ حُرٌّ، وَالْفَاسِدَةِ الْمِلْكِ، فَإِنَّهُ عِنْدَ بَعْضِهِمْ حُرٌّ، وَعَلَى أَبِيهِ قِيمَتُهُ أَوْ فِدَاؤُهُ. وَلَا

L27116 Abū Muḥammad said: We have never seen an argument more impoverished of proof than this. What astonishes is this Sunnah for which no human narrator is known—neither through a sound nor unsound chain. The disagreement concerning it is more evident than that, as we related from ʿAṭāʾ and al-Ḥasan. Rather, only statements resembling Mālik's view were narrated from Sulaymān ibn Mūsā, ʿAmr ibn Dīnār, and al-Nakhaʿī. The Ummah—with Mālik among their collective—alongside these scholars, has unanimously agreed that the child of a slave woman is owned by her master unless he is the child of a man from his lawfully owned slave woman, in which case he is free. If born from invalid ownership, he is considered free according to some scholars, with the father liable for his value or ransom. The

mother of the male slave's child cannot escape two scenarios: either she belongs to him—making her child his property (whether free or enslaved, with her emancipation contingent on ownership)—or she belongs to his master. No one may lawfully have intercourse with another's slave woman except through marriage; otherwise, it constitutes adultery, and the child is not attributed (to the father) if it is known she is another's slave. There is no third possibility. There is no validity in falsehood, and this contradictory discourse—whose parts nullify each other—extends beyond the scenario of a slave woman owned by a slave, whom the master may not lawfully approach unless he seizes her, rendering her child the property of his father's master. This is an astonishing absurdity without parallel or basis. Thus, this opinion is invalidated by its manifest corruption. More astonishing still is prohibiting a free man from emancipating his umm walad—his own slave—due to her fetus, while they permit emancipating the fetus without its mother when both belong to one owner. What then prevents emancipating the mother without the fetus when they belong to two owners?

تَخْلُو أُمُّ وَلَدِ الْعَبْدِ مِنْ أَنْ تَكُونَ لَهُ، فَوَلَدُهَا لَهُ إمَّا حُرٌّ، وَإِمَّا مَمْلُوكٌ فَتُعْتَقُ عَلَيْهِ بِالْمِلْكِ، أَوْ لَا تُعْتَقُ، وَإِمَّا أَنْ تَكُونَ لِسَيِّدِهِ فَلَا يَحِلُّ لِأَحَدٍ وَطْءُ أَمَةِ غَيْرِهِ إلَّا بِالزَّوَاجِ، وَإِلَّا فَهُوَ زِنًا، وَالْوَلَدُ غَيْرُ لَاحِقٍ إذَا عَلِمَ أَنَّهَا أَمَةُ غَيْرِهِ، وَلَا سَبِيلَ إلَى ثَالِثٍ، وَلَيْسَ فِي الْبَاطِلِ، وَالْكَلَامُ الْمُتَنَاقِضُ الَّذِي يُفْسِدُ بَعْضُهُ بَعْضًا أَكْثَرُ مِنْ أَنْ تَكُونَ أَمَةً لِلْعَبْدِ لَا يَحِلُّ لِلسَّيِّدِ وَطْؤُهَا إلَّا أَنْ يَنْتَزِعَهَا، وَيَكُونُ وَلَدُهَا لِسَيِّدِ أَبِيهِ مَمْلُوكًا، هَذَا عَجَبٌ لَا نَظِيرَ لَهُ - وَلَا أَصْلَ لَهُ. فَبَطَلَ هَذَا الْقَوْلُ لِظُهُورِ فَسَادِهِ. وَأَعْجَبُ مِنْهُ مَنْعُهُ عِتْقَ أُمِّ وَلَدِهِ وَهُوَ حُرٌّ وَهِيَ أَمَتُهُ مِنْ أَجْلِ جَنِينِهَا، وَهُمْ يُجِيزُونَ عِتْقَ الْجَنِينِ دُونَ أُمِّهِ وَهُمَا لِوَاحِدٍ، فَمَا الْمَانِعُ مِنْ عِتْقِ أُمِّهِ دُونَهُ وَهُمَا لِاثْنَيْنِ.

L27117–27118 Al-Awzaʿī said: Whatever a man gives to a slave woman who bore him a child during his lifetime becomes hers upon his death and is not counted as part of the estate's third portion. If one manumits his slave while the slave owns property, whatever is in the slave's possession that the master has ascertained belongs to the slave. But whatever remains in the slave's possession undisclosed to the master belongs to the master. This categorization lacks valid evidence to substantiate it and is therefore invalid.

وَقَالَ الْأَوْزَاعِيّ: كُلُّ مَا أَعْطَى الْمَرْءُ أُمَّ وَلَدِهِ فِي حَيَاتِهِ فَهُوَ لَهَا إذَا مَاتَ لَا يُعَدُّ مِنْ الثُّلُثِ، وَمَنْ أَعْتَقَ عَبْدَهُ وَلَهُ مَالٌ فَمَا كَانَ بِيَدِ الْعَبْدِ مِمَّا اطَّلَعَ عَلَيْهِ سَيِّدُهُ فَهُوَ لِلْعَبْدِ، وَمَا كَانَ بِيَدِ الْعَبْدِ وَلَمْ يَطَّلِعْ عَلَيْهِ السَّيِّدُ فَهُوَ لِلسَّيِّدِ - وَهَذَا تَقْسِيمٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ فَهُوَ بَاطِلٌ.

L27119 A group said: The property of the freed slave belongs to his manumitter (master) - this being the opinion of Abū Ḥanīfah, Sufyān, and al-Shāfiʿī. They all stated: The mukatab (slave under a contract of manumission), the slave promised freedom by will, the freed slave, the gifted slave, the slave given as charity, and the umm al-walad (mother of the master's child) after her master's death - all their property belongs to the manumitter or his heirs. Al-Ḥasan ibn Ḥayy said: The property of the freed slave and the mukatab belongs to their master. Ibn Shubrumah said: The property of the freed slave and that of the umm al-walad belongs to the master and his heirs.

وَقَالَتْ طَائِفَةٌ: مَالُ الْمُعْتَقِ لِسَيِّدِهِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَسُفْيَانَ، وَالشَّافِعِيِّ، قَالُوا كُلُّهُمْ: الْمُكَاتَبُ، وَالْمُوصَى بِعِتْقِهِ، وَالْمُعْتَقُ، وَالْمَوْهُوبُ، وَالْمُتَصَدَّقُ بِهِ، وَأُمُّ الْوَلَدِ يَمُوتُ سَيِّدُهَا: فَمَالُهُمْ كُلُّهُمْ لِلْمُعْتَقِ، أَوْ لِوَرَثَتِهِ. وَقَالَ الْحَسَنُ بْنُ حَيٍّ: مَالُ الْمُعْتَقِ وَالْمُكَاتَبِ لِسَيِّدِهِمَا. وَقَالَ ابْنُ شُبْرُمَةَ: مَالُ الْمُعْتَقِ - وَأُمِّ الْوَلَدِ: لِلسَّيِّدِ وَلِوَرَثَتِهِ.

L27120 Ahmad and Ishaq said: The property of the freed slave reverts to his master.

وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: مَالُ الْمُعْتَقِ لِسَيِّدِهِ - وَرُوِيَ هَذَا الْقَوْلُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَصَحَّ عَنْ قَتَادَةَ. وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي خَالِدٍ الْأَحْمَرِ عَنْ عِمْرَانَ بْنِ عُمَيْرٍ عَنْ أَبِيهِ: أَنَّهُ كَانَ عَبْدًا لِابْنِ مَسْعُودٍ فَأَعْتَقَهُ، وَقَالَ: أَمَا إنَّ مَالَك لِي، ثُمَّ قَالَ: هُوَ لَك. وَصَحَّ نَحْوُهُ عَنْ أَنَسِ بْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ. فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ قَالَ: مَالُ الْمُعْتَقِ لِسَيِّدِهِ، فَوَجَدْنَاهُمْ يَذْكُرُونَ مَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا جَعْفَرُ بْنُ مُحَمَّدٍ نا مُحَمَّدُ بْنُ سَابِقٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الْأَعْلَى بْنِ أَبِي الْمُسَاوِرِ حَدَّثَنِي «عِمْرَانُ بْنُ عُمَيْرٍ عَنْ أَبِيهِ قَالَ لِي ابْنُ مَسْعُودٍ: أُرِيدُ أَنْ أُعْتِقَكَ وَأَدَعَ مَالَكَ فَأَخْبِرْنِي بِمَالِكَ فَإِنِّي سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: مَنْ أَعْتَقَ عَبْدًا فَمَالُهُ لِلَّذِي أَعْتَقَهُ» . وَمِنْ طَرِيقِ الْعُقَيْلِيِّ نا عَبْدُ الرَّحْمَنِ بْنُ الْفَضْلِ نا مُحَمَّدُ بْنُ إسْمَاعِيلَ نا إسْحَاقُ بْنُ إبْرَاهِيمَ بْنِ عِمْرَانَ الْمَسْعُودِيُّ مَوْلَاهُمْ سَمِعَ عَمَّهُ يُونُسَ بْنَ عِمْرَانَ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: قَالَ ابْنُ مَسْعُودٍ " سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ أَعْتَقَ مَمْلُوكًا فَلَيْسَ لِلْمَمْلُوكِ مِنْ مَالِهِ شَيْءٌ» .

This opinion was reported from Al-Hakam ibn Utaybah and authenticated from Qatadah. We received a narration via Abd al-Razzaq from Sufyan al-Thawri from Abu Khalid al-Ahmar from Imran ibn Umayr from his father: He had been a slave of Ibn Mas'ud who freed him, saying: "Know that your property is mine," then added: "It is yours." A similar account was authenticated from Anas ibn Sirin through Anas ibn Malik. We analyzed the evidence presented by those who argued that the freed slave's property belongs to his master, finding they cite the narration we received via Qasim ibn Asbagh: Ja'far ibn Muhammad narrated to us, Muhammad ibn Sabiq narrated to us, Sufyan al-Thawri narrated to us from Abd al-A'la ibn Abi al-Musawir: "Imran ibn Umayr reported to me from his father, who said: Ibn Mas'ud told me, 'I intend to free you while retaining your property. Disclose your possessions to me, for I heard Allah's Messenger (peace be upon him) state: "Whoever frees a slave, his property belongs to the emancipator."'" Another chain via Al-Uqayli: Abd al-Rahman ibn al-Fadl narrated to us, Muhammad ibn Isma'il narrated to us, Ishaq ibn Ibrahim ibn Imran al-Mas'udi - their freedman - heard his uncle Yunus ibn Imran from Al-Qasim ibn Abd al-Rahman, who said: Ibn Mas'ud declared, "I heard Allah's Messenger (peace be upon him) proclaim: 'Whoever frees a slave, the slave has no claim to his property.'"

هَذَانِ لَا شَيْءَ؛ لِأَنَّ عَبْدَ الْأَعْلَى بْنَ أَبِي الْمُسَاوِرِ ضَعِيفٌ جِدًّا - وَالْآخَرُ مُنْقَطِعٌ؛ لِأَنَّ الْقَاسِمَ لَا يَحْفَظُ أَبُوهُ عَنْ ابْنِ مَسْعُودٍ شَيْئًا فَكَيْفَ هُوَ. وَقَالُوا: قَدْ صَحَّ أَنَّ الْعَبْدَ إذَا بِيعَ فَمَالُهُ لِلسَّيِّدِ، إلَّا أَنْ يَشْتَرِطَهُ الْمُبْتَاعُ فَعِتْقُهُ كَذَلِكَ، وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ. ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الْبَيْعَ نَقْلُ مِلْكٍ فَلَا يُشْبِهُ الْعِتْقَ الَّذِي هُوَ إسْقَاطُ الْمِلْكِ جُمْلَةً، وَالْقِيَاسُ عِنْدَ مَنْ قَالَ بِهِ إنَّمَا هُوَ عَلَى مَا يُشْبِهُ لَا عَلَى مَا لَا يُشْبِهُ. وَقَالُوا: مَالُ الْعَبْدِ لِلسَّيِّدِ قَبْلَ الْعِتْقِ فَكَذَلِكَ بَعْدَ الْعِتْقِ. فَقُلْنَا: هَذَا بَاطِلٌ مَا هُوَ لَهُ قَبْلَ الْعِتْقِ، إلَّا أَنْ يَنْتَزِعَهُ، وَقَدْ أَوْضَحْنَا الْحُجَّةَ فِي أَنَّ الْعَبْدَ يَمْلِكُ وَيَكْفِي مِنْ ذَلِكَ قَوْله تَعَالَى:

L27121–27122 These two are baseless because ʿAbd al-Aʿlā ibn Abī al-Musāwir is extremely weak, and the other is disconnected because al-Qāsim's father did not narrate anything from Ibn Masʿūd—how then could he [be so]? They said: It is established that when a slave is sold, his wealth belongs to the master unless the buyer stipulates [otherwise]; his emancipation follows the same rule. This is analogy, and all analogy is entirely invalid. Even if analogy were valid, this instance would be invalid, for sale is a transfer of ownership, unlike emancipation, which is a total relinquishment of ownership. Analogy, according to its proponents, applies only to similar cases, not dissimilar ones. They said: The slave's wealth belongs to the master before emancipation; thus, it remains so afterward. We replied: This is invalid. What the master owned before emancipation does not remain his afterward unless he seizes it by

force. We have clarified the evidence that a slave can own property. Sufficient evidence for this is Allah's statement regarding female slaves: "Marry them with their guardians' permission and give them their dowries" (4:25). This directive includes free men and slaves. And His statement: "Marry the unmarried among you and the righteous of your male and female slaves. If they are poor, Allah will enrich them from His bounty" (24:32). Thus, it is established that the female slave's dowry belongs to her by Allah's command, to be given to her. It is established that the slave is commanded to pay the dowry; if he did not own property, he would not be obligated to do so. There is no valid marriage without a dowry, whether stipulated in the contract or afterward. Allah has promised them sufficiency, so they are like all other people. Success is from Allah, the Exalted.[12]

فِي الْإِمَاءِ {فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ} [النساء: ٢٥] فَدَخَلَ فِي هَذَا الْخِطَابِ: الْحُرُّ، وَالْعَبْدُ. وَقَوْله تَعَالَى: {وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢] . فَصَحَّ أَنَّ صَدَاقَ الْأَمَةِ لَهَا بِأَمْرِ اللَّهِ تَعَالَى يَدْفَعُهُ إلَيْهَا. وَصَحَّ أَنَّ الْعَبْدَ مَأْمُورٌ بِإِيتَاءِ الصَّدَاقِ، فَلَوْلَا أَنَّهُ يَمْلِكُ مَا كُلِّفَ ذَلِكَ، وَلَا نِكَاحَ إلَّا بِصَدَاقٍ، إنْ لَمْ يُذْكَرْ فِي الْعَقْدِ فَبَعْدَ الْعَقْدِ، وَوَعَدَهُمْ اللَّهُ بِالْغِنَى فَهُمْ كَسَائِرِ النَّاسِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27123 If the slave's wealth belongs to the master, it remains after emancipation as it was before emancipation. Then we found what was transmitted to us through the chain of Abū Dāwūd: Aḥmad ibn Ṣāliḥ narrated to us, Ibn Wahb narrated to us, al-Layth ibn Saʿd narrated to us from ʿUbayd Allāh ibn Abī Jaʿfar from Bukayr ibn al-Ashajj from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said: «Whoever emancipates a slave possessing wealth, the slave's wealth belongs to the master unless the master stipulates retaining it.» This is a chain of transmission of the highest soundness; it is impermissible to deviate from it. If it is objected: "It has been claimed that ʿUbayd Allāh erred in this narration?" We respond: Only those who allege error on ʿUbayd Allāh's part—without proof or evidence—have themselves erred.[13]

فَإِذْ مَالُهُ لَهُ فَهُوَ بَعْدَ الْعِتْقِ كَمَا كَانَ قَبْلَ الْعِتْقِ. ثُمَّ وَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ صَالِحٍ نا ابْنُ وَهْبٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ عَبْدًا وَلَهُ مَالٌ فَمَالُ الْعَبْدِ لَهُ إلَّا أَنْ يَشْتَرِطَهُ السَّيِّدُ» . فَهَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ لَا يَجُوزُ الْخُرُوجُ عَنْهُ. فَإِنْ قِيلَ: قَدْ قِيلَ: إنَّ عُبَيْدَ اللَّهِ أَخْطَأَ فِيهِ؟ قُلْنَا: إنَّمَا أَخْطَأَ مَنْ ادَّعَى الْخَطَأَ عَلَى عُبَيْدِ اللَّهِ بِلَا بُرْهَانٍ وَلَا دَلِيلٍ.

L27124–27125 It is astonishing that the Ḥanafīs - who rejected the view of the Ahl al-Ḥadīth stating "Ḍamrah erred in his narration from Sufyān: 'Whoever acquires a mahram relative, he is free'" and declared "One may not allege error against a reliable narrator without proof" - then clung to the very statements of those same authorities here by asserting "'Ubayd Allāh erred." Meanwhile, the Mālikīs clung to their statement "Ḍamrah erred" while disregarding their

وَالْعَجَبُ مِنْ الْحَنَفِيِّينَ الَّذِينَ لَمْ يَرَوْا قَوْلَ أَصْحَابِ الْحَدِيثِ " أَخْطَأَ ضَمْرَةُ فِي حَدِيثِهِ عَنْ سُفْيَانَ: مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ ". وَقَالُوا: لَا يَجُوزُ أَنْ يَدَّعِيَ الْخَطَأَ عَلَى الثِّقَةِ بِلَا بُرْهَانٍ ثُمَّ تَعَلَّقُوا بِقَوْلِ أُولَئِكَ أَنْفُسِهِمْ هَاهُنَا أَخْطَأَ عُبَيْدُ اللَّهِ، وَتَعَلَّقَ الْمَالِكِيُّونَ بِقَوْلِهِمْ: أَخْطَأَ ضَمْرَةُ، وَلَمْ يَلْتَفِتُوا إلَى قَوْلِهِمْ: أَخْطَأَ عُبَيْدُ اللَّهِ، فَهَلْ فِي التَّلَاعُبِ بِالدِّينِ أَكْثَرُ مِنْ هَذَا الْعَمَلِ؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

[12] **Qur'an references (L27122):** Qur'an 4:25 (An-Nisa); Qur'an 24:32 (An-Nur).

[13] **Hadith references (L27123):** Sunan Abi Dawud 3962.

declaration "'Ubayd Allāh erred." Could there be greater tampering with religion than this conduct? We seek protection from Allah.

L27126 As for the Shāfiʿīs: they rejected both reports and adopted, in several instances, the error that is beyond doubt—and success is from Allah, the Most High.

L27127 **The issue of emancipating the slave of the minor child and the orphan by the father or the guardian.**

L27128 Issue 1679: It is impermissible at all for a father to emancipate the slave of his minor child, nor for a guardian to emancipate the slave of his orphan ward. Such acts are invalid if performed, based on Allah the Most High's statement: *"No soul bears another's burden"* (6:164), and the Messenger of Allah's declaration—peace and blessings be upon him—: *"Your blood and your wealth are inviolable to you."* Allah the Most High has never permitted a father to take so much as a particle from the wealth of his minor child—let alone that of an adult. Success comes solely from Allah the Most High. This constitutes the position of al-Shāfiʿī and Abū Sulaymān. Mālik held: "He may emancipate the slave of a minor but not that of an adult." This view is utterly baseless, as no evidence supports it from either the Quran or the Sunnah. Success comes solely from Allah the Most High.[14]

L27129 **The issue of the emancipation of the male slave and the umm al-walad (mother of the child) by their master.**

L27130–27132 1680 - Issue: The manumission of a male slave and an umm walad by their own male slave is permissible. The allegiance (walā') belongs to them, accompanying them wherever they reside. The inheritance from manumission belongs to the closest kin among the free agnates of the slave or to the Muslim public treasury. If he is manumitted and then dies, the inheritance goes to his own heirs, to the manumitter, or to the agnates of both, since we have previously established the validity of a slave's legal capacity to own property. As an owner, he is recommended to perform virtuous acts such as charity,

[14] **Qur'an references (L27128):** Qur'an 6:164 (Al-An'am).

وَأَمَّا الشَّافِعِيُّونَ: فَرَدُّوا الْخَبَرَيْنِ مَعًا، وَأَخَذُوا فِي عِدَّةِ مَوَاضِعَ بِالْخَطَأِ الَّذِي لَا شَكَّ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ عِتْقِ عَبْدِ الْوَلَدِ الصَّغِيرِ واليتيم مِنْ قِبَلِ الْأَبِ أَوْ الْوَصِيِّ]

١٦٧٩ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلْأَبِ عِتْقُ عَبْدِ وَلَدِهِ الصَّغِيرِ وَلَا لِلْوَصِيِّ عِتْقُ عَبْدِ يَتِيمِهِ أَصْلًا - وَهُوَ مَرْدُودٌ إنْ فَعَلَا لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] ، وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» ، وَمَا أَبَاحَ اللَّهُ تَعَالَى قَطُّ لِلْأَبِ مِنْ مَالِ وَلَدِهِ الصَّغِيرِ دُونَ الْكَبِيرِ قَدْرَ ذَرَّةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ. وَقَالَ مَالِكٌ: يُعْتِقُ عَبْدَ صَغِيرٍ وَلَا يُعْتِقُ عَبْدَ كَبِيرٍ - وَهَذَا فِي غَايَةِ الْفَسَادِ، إذْ لَا دَلِيلَ عَلَيْهِ مِنْ قُرْآنٍ وَلَا سُنَّةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ عِتْقُ الْعَبْدِ وَأُمِّ الْوَلَدِ لِعَبْدِهِمَا]

١٦٨٠ - مَسْأَلَةٌ: وَعِتْقُ الْعَبْدِ، وَأُمِّ الْوَلَدِ، لِعَبْدِهِمَا جَائِزٌ، وَالْوَلَاءُ لَهُمَا، يَدُورُ مَعَهُمَا حَيْثُ دَارَا، وَمِيرَاثُ الْعِتْقِ لِأَوْلَى النَّاسِ بِالْعَبْدِ مِنْ أَحْرَارِ عَصَبَتِهِ، أَوْ لِبَيْتِ مَالِ الْمُسْلِمِينَ. فَإِذَا أُعْتِقَ فَإِنْ مَاتَ فَالْمِيرَاثُ لَهُ، أَوْ لِمَنْ أَعْتَقَهُ، أَوْ لِعَصَبَتِهِمَا؛ لِأَنَّنَا قَدْ بَيَّنَّا صِحَّةَ الْمِلْكِ لِلْعَبْدِ وَإِذْ هُوَ مَالِكٌ فَهُوَ مَنْدُوبٌ إلَى فِعْلِ الْخَيْرِ مِنْ الصَّدَقَةِ، وَالْعِتْقِ، وَسَائِرِ أَعْمَالِ الْبِرِّ. وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «الْوَلَاءُ لِمَنْ أَعْتَقَ» . وَنَصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى أَنَّ الْعَبْدَ لَا يَرِثُ، عَلَى مَا نَذْكُرُهُ فِي " كِتَابِ

manumission, and all forms of righteous deeds. The Messenger of Allah—peace and blessings be upon him and his family—said: "Allegiance belongs to the manumitter." He—peace and blessings—also explicitly stated that a slave does not inherit, as we shall detail in the "Book of Inheritance," Allah the Exalted willing, and in the section on "the contracted slave (mukātab)" following this—by the power and strength of Allah the Exalted, thus it... The inheritance is allocated to the free person from their agnates, and not to the master of the slave, for the master holds no right of patronage over the slave nor over anyone through him. When the slave is emancipated, the inheritance becomes validly established for him or for those entitled through him - and success is from Allah, the Exalted.

الْمَوَارِيثِ " إِنْ شَاءَ اللَّهُ تَعَالَى، وَفِي " الْمُكَاتَبِ " بَعْدَ هَذَا - بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ، فَهُوَ لِلْحُرِّ مِنْ عَصَبَتِهِ، وَلَيْسَ لِسَيِّدِ الْعَبْدِ، لِأَنَّهُ لَا وَلَاءَ لَهُ عَلَى الْعَبْدِ، وَلَا عَلَى أَحَدٍ بِسَبَبِهِ، فَإِذَا عَتَقَ صَحَّ الْمِيرَاثُ لَهُ، أَوْ لِمَنْ يَجِبُ لَهُ مِنْ أَجْلِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة وَطِئَ أَمَةً لَهُ حَامِلًا مِنْ غَيْرِهِ]

[Issue: He had intercourse with his female slave while she was pregnant by another man]

١٦٨١ - مَسْأَلَةٌ: وَمَنْ وَطِئَ أَمَةً لَهُ حَامِلًا مِنْ غَيْرِهِ فَجَنِينُهَا حُرٌّ - أَمْنَى فِيهَا أَوْ لَمْ يُمْنِ - لِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ نا شُعْبَةُ عَنْ يَزِيدَ بْنِ حُمَيْرٍ: سَمِعْت عَبْدَ الرَّحْمَنِ بْنَ جُبَيْرِ بْنِ نُفَيْرٍ يُحَدِّثُ عَنْ أَبِيهِ عَنْ أَبِي الدَّرْدَاءِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَى عَلَى امْرَأَةٍ مُجِحٍّ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَعَلَّ صَاحِبَ هَذِهِ أَنْ يَكُونَ يُلِمُّ بِهَا، لَقَدْ هَمَمْتُ أَنْ أَلْعَنَهُ لَعْنَةً تَدْخُلُ مَعَهُ فِي قَبْرِهِ كَيْفَ يُوَرِّثُهُ، وَهُوَ لَا يَحِلُّ لَهُ، وَكَيْفَ يَسْتَرِقُّهُ وَهُوَ لَا يَحِلُّ لَهُ» . وَهَذَا خَبَرٌ صَحِيحٌ لَا يَحِلُّ لِأَحَدٍ خِلَافُهُ، فَإِذَا لَمْ يَحِلَّ لَهُ أَنْ يَسْتَرِقَّهُ فَهُوَ حُرٌّ بِلَا شَكٍّ، وَهُوَ غَيْرُ لَاحِقٍ بِهِ، وَبِهِ قَالَ طَائِفَةٌ مِنْ السَّلَفِ. كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي أَبُو الْأَسْوَدِ الْمَعَافِرِيُّ عَنْ يَحْيَى بْنِ جُبَيْرٍ الْمَعَافِرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: مَنْ كَانَ يُؤْمِنُ بِاَللَّهِ وَالْيَوْمِ الْآخِرِ فَلَا يَسْقِ مَاءَهُ وَلَدَ غَيْرِهِ فَإِنْ هُوَ فَعَلَ ذَلِكَ وَغَلَبَ الشَّقَاءُ عَلَيْهِ فَلْيُعْتِقْهُ، وَلْيُوصِ لَهُ مِنْ مَالِهِ. وَبِهِ إلَى ابْنِ وَهْبٍ عَنْ غَوْثِ بْنِ سُلَيْمَانَ الْحَضْرَمِيِّ عَنْ مُحَمَّدِ بْنِ

L27133

L27134

1681 - Issue: If a man has intercourse with his pregnant slave who is carrying another's child, her fetus is free—whether he ejaculates or not—based on what we have narrated through the chain of Abū Dāwūd al-Ṭayālisī: Shuʿbah reported from Yazīd ibn Ḥimyar, who said: I heard ʿAbd al-Raḥmān ibn Jubayr ibn Nufayr narrating from his father, from Abū al-Dardāʾ, that the Messenger of Allah—peace and blessings be upon him—encountered a heavily pregnant woman and said: "Perhaps the father of this child is having intercourse with her. I resolved to curse him with a condemnation that would enter the grave with him. How can the child inherit him when it is unlawful? How can he enslave the child when it is unlawful?" This is a sound report that none may contradict. If enslaving the child is impermissible, then the child is undoubtedly free and not legally affiliated with him as offspring. This is the view of a group of early scholars, as we have narrated through the chain of Ibn Wahb: Abū al-Aswad al-Maʿāfirī informed me from Yaḥyā ibn Jubayr al-Maʿāfirī, from ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ, who said: "Whoever believes in Allah and the Last Day should not let his semen reach another's child. If he does so despite being overcome by sin, he must emancipate the child and bequeath to them from his wealth." Through Ibn Wahb, from Ghawth ibn Sulaymān al-Ḥaḍramī, from Muḥammad ibn Saʿīd al-Dimashqī: Sulaymān ibn Ḥabīb al-Muḥāribī informed me regarding a pregnant slave

whom her master has intercourse with. He said: “The authorities ruled that the fetus should be emancipated.” Ibn Wahb said: Al-Layth ibn Saʿd stated: “I hold this opinion”—which is also the view of Makhūl, al-Awzāʿī, Abū ʿUbayd, Abū Sulaymān, our companions, and some Shāfiʿī scholars. Abū Muḥammad said: Sulaymān ibn Ḥabīb served as judge for ʿUmar ibn ʿAbd al-ʿAzīz in Syria, and Ghawth ibn Sulaymān was judge of Egypt. This ruling is one that the Mālikīs, Ḥanafīs, and majority of Shāfiʿīs abandoned—a position with no known opposition from the Companions, may Allah be pleased with them.

L27135 **The issue of manumission by one whose debt has exceeded their wealth.**

L27136–27138 1682 - Issue: If someone’s debt encompasses all their wealth, then if they are not in need of their slave, emancipating the slave is permissible in that case; otherwise, it is not. Malik said: It is not permissible to emancipate someone whose debt encompasses their wealth. Abu Hanifah said: Al-Shafiʿi agrees with our opinion, except that they both permitted his manumission under all circumstances. The proof for the validity of our opinion is that one who owns nothing and borrows wealth may consume from it without dispute, use it for marriage expenses, or purchase a female slave to have relations with her. This confirms that he possesses what he borrowed and that it constitutes wealth from his possessions. Thus, he may give charity from it provided he retains enough to remain self-sufficient afterward, for manumission is a form of righteousness. Indeed, Allah provides for His servants if they are poor, enriching them from His bounty. This differs from bequeathing manumission by someone whose wealth is encumbered by debt, for the deceased has no means whereby Allah the Exalted might grant him wealth in this world that He did not provide him during his lifetime. The Messenger of Allah—peace and blessings be upon him and his family—used to borrow, and success comes from Allah, the Exalted.

L27139 **The issue of selling the male *mudabbar* and female *mudabbara*, and the gift to both of them.**

سَعِيدٍ الدِّمَشْقِيِّ أَخْبَرَنِي سُلَيْمَانُ بْنُ حَبِيبٍ الْمُحَارِبِيُّ عَنْ الْأَمَةِ الْحَامِلِ يَطَؤُهَا سَيِّدُهَا؟ قَالَ: رَأَتْ الْوُلَاةُ أَنْ يُعْتِقَ ذَلِكَ الْحَمْلُ. قَالَ ابْنُ وَهْبٍ: قَالَ اللَّيْثُ بْنُ سَعْدٍ: وَإِنِّي أَرَى ذَلِكَ - وَهُوَ قَوْلُ مَكْحُولٍ، وَالْأَوْزَاعِيِّ، وَأَبِي عُبَيْدٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَبَعْضِ الشَّافِعِيِّينَ. قَالَ أَبُو مُحَمَّدٍ: سُلَيْمَانُ بْنُ حَبِيبٍ قَاضِي عُمَرَ بْنِ عَبْدِ الْعَزِيزِ بِالشَّامِ، وَغَوْثُ بْنُ سُلَيْمَانَ قَاضِي مِصْرَ - وَهَذَا مِمَّا تَرَكَ فِيهِ الْمَالِكِيُّونَ - وَالْحَنَفِيُّونَ، وَجُمْهُورُ الشَّافِعِيِّينَ: صَاحِبًا لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

[مَسْأَلَة عِتْق مِنْ أحاط الدّين بماله]

١٦٨٢ - مَسْأَلَةٌ: وَمَنْ أَحَاطَ الدَّيْنُ بِمَالِهِ كُلِّهِ، فَإِنْ كَانَ لَهُ غِنًى عَنْ مَمْلُوكِهِ جَازَ عِتْقُهُ فِيهِ، وَإِلَّا فَلَا. وَقَالَ مَالِكٌ: لَا يَجُوزُ عِتْقُ مَنْ أَحَاطَ الدَّيْنُ بِمَالِهِ وَقَالَ أَبُو حَنِيفَةَ: وَالشَّافِعِيُّ بِقَوْلِنَا، إلَّا أَنَّهُمَا أَجَازَا عِتْقَهُ بِكُلِّ حَالٍ، بُرْهَانُ صِحَّةِ قَوْلِنَا. أَنَّ مَنْ لَا شَيْءَ لَهُ فَاسْتَقْرَضَ مَالًا - فَإِنَّ لَهُ أَنْ يَأْكُلَ مِنْهُ بِلَا خِلَافٍ، وَأَنْ يَتَزَوَّجَ مِنْهُ، وَأَنْ يَبْتَاعَ جَارِيَةً يَطَؤُهَا، فَقَدْ صَحَّ أَنَّهُ قَدْ مَلَكَ مَا اسْتَقْرَضَ، وَأَنَّهُ مَالٌ مِنْ مَالِهِ، فَلَهُ أَنْ يَتَصَدَّقَ مِنْهُ بِمَا يَبْقَى لَهُ بَعْدَهُ غِنًى، وَالْعِتْقُ نَوْعٌ مِنْ أَنْوَاعِ الْبِرِّ، وَقَدْ يَرْزُقُ اللَّهُ عِبَادَهُ إنْ يَكُونُوا فُقَرَاء يُغْنِهِمْ اللَّهُ مِنْ فَضْلِهِ. وَهَذَا بِخِلَافِ الْوَصِيَّةِ بِالْعِتْقِ مِمَّنْ أَحَاطَ الدَّيْنُ بِمَالِهِ؛ لِأَنَّ الْمَيِّتَ لَا سَبِيلَ إلَى أَنْ يَرْزُقَ اللَّهُ تَعَالَى مَالًا فِي الدُّنْيَا لَمْ يَرْزُقْهُ إيَّاهُ فِي حَيَاتِهِ، وَقَدْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَسْتَقْرِضُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة بَيْع المدبر والمدبرة وَالْهِبَة لَهُمَا]

L27140 1683 - Issue: A mudabbar is a male slave whose manumission is bequeathed, and a mudabbara is a female slave under the same condition. Selling them is lawful, and gifting them is likewise lawful. We have already discussed this in the Book of Sales, obviating the need to repeat it. Those who prohibit this have no valid evidence except a fabricated ḥadīth, the defect of which we clarified in that context. And success is through Allah, the Exalted.

١٦٨٣ - مَسْأَلَةٌ: وَالْمُدَبَّرُ عَبْدٌ مُوصَى بِعِتْقِهِ، وَالْمُدَبَّرَةُ كَذَلِكَ، وَبَيْعُهُمَا حَلَالٌ، وَالْهِبَةُ لَهُمَا كَذَلِكَ، وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْبُيُوعِ " فَأَغْنَى عَنْ إعَادَتِهِ وَلَا حُجَّةَ لِمَنْ مَنَعَ مِنْ ذَلِكَ إلَّا حَدِيثٌ مَوْضُوعٌ قَدْ بَيَّنَّا عِلَّتَهُ هُنَالِكَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة حَمَلَتْ مِنْ سَيِّدِهَا فَأَسْقَطَتْ شَيْئًا يُدْرَى أَنَّهُ وَلَدٌ أَوْ وَلَدَتْهُ]

A jurisprudential matter wherein a female slave conceived by her master and either aborted something verified to be a child or gave birth to it.

L27141

L27142–27144 1684. Issue: Any female slave who conceives by her master and miscarries a discernible fetus or delivers it becomes prohibited from sale, gift, pledge, charitable donation, or loan. Her master retains the right to have intercourse with her and utilize her during his lifetime. Upon his death, she is emancipated from his principal estate. All her possessions remain hers if emancipated, though her master may reclaim them during his lifetime. If she bears a child through fornication, coercion, or an invalid marriage due to ignorance with someone other than her master, her child shares her legal status: if she is emancipated, they are emancipated. Abū Muḥammad said: People have differed regarding this. We have been narrated through Saʿd ibn Manṣūr, from Abū ʿAwānah, from al-Mughīrah, from al-Shaʿbī, from ʿUbaydah al-Salmānī, who said: ʿAlī addressed the people, stating: "'Umar ibn al-Khaṭṭāb consulted me concerning the mothers of the master's children. Both ʿUmar and I held the view to emancipate them." ʿUmar upheld this ruling during his lifetime, as did ʿUthmān throughout his lifetime. When I assumed leadership, I chose to return them to slavery. ʿUbaydah remarked: "The collective opinion of ʿUmar and ʿAlī is more preferable to me than ʿAlī's opinion alone." Abū Muḥammad said: If this was preferable to ʿUbaydah, it was not preferable to ʿAlī ibn Abī Ṭālib. Indeed, there exists a stark and irreconcilable difference between the two men. Where then are those who argue based on the widespread opinion of a prominent companion, claiming it constitutes consensus? Could any prevalence surpass the rulings of ʿUmar during his remaining lifetime and ʿUthmān throughout his lifetime regarding a univer-

١٦٨٤ - مَسْأَلَةٌ: وَكُلُّ مَمْلُوكَةٍ حَمَلَتْ مِنْ سَيِّدِهَا فَأَسْقَطَتْ شَيْئًا يُدْرَى أَنَّهُ وَلَدٌ، أَوْ وَلَدَتْهُ: فَقَدْ حَرُمَ بَيْعُهَا وَهِبَتُهَا وَرَهْنُهَا وَالصَّدَقَةُ بِهَا وَقَرْضُهَا، وَلِسَيِّدِهَا وَطْؤُهَا وَاسْتِخْدَامُهَا مُدَّةَ حَيَاتِهِ، فَإِذَا مَاتَ فَهِيَ حُرَّةٌ مِنْ رَأْسِ مَالِهِ، وَكُلُّ مَالِهَا فَلَهَا إذَا عَتَقَتْ، وَلِسَيِّدِهَا انْتِزَاعُهُ فِي حَيَاتِهِ، فَإِنْ وَلَدَتْ مِنْ غَيْرِ سَيِّدِهَا بِزِنًا، أَوْ إكْرَاهٍ، أَوْ نِكَاحٍ بِجَهْلٍ: فَوَلَدُهَا بِمَنْزِلَتِهَا إذَا أُعْتِقَتْ عَتَقُوا. قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ النَّاسُ فِي هَذَا. فَرُوِّينَا مِنْ طَرِيقِ سَعْدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ الشَّعْبِيِّ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: خَطَبَ عَلِيٌّ النَّاسَ، فَقَالَ: شَاوَرَنِي عُمَرُ بْنُ الْخَطَّابِ فِي أُمَّهَاتِ الْأَوْلَادِ، فَرَأَيْت أَنَا وَعُمَرُ أَنْ أُعْتِقَهُنَّ - فَقَضَى بِهِ عُمَرُ حَيَاتَهُ، وَعُثْمَانُ حَيَاتَهُ، فَلَمَّا وُلِّيت رَأَيْت أَنْ أَرِقَّهُنَّ، قَالَ عَبِيدَةُ: فَرَأْيُ عُمَرَ، وَعَلِيٍّ فِي الْجَمَاعَةِ أَحَبُّ إلَيَّ مِنْ رَأْيِ عَلِيٍّ وَحْدَهُ. قَالَ أَبُو مُحَمَّدٍ: إنْ كَانَ أَحَبَّ إلَى عَبِيدَةَ، فَلَمْ يَكُنْ أَحَبَّ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ، وَإِنَّ بَيْنَ الرَّجُلَيْنِ لَبَوْنًا بَائِنًا، فَأَيْنَ الْمُحْتَجُّونَ بِقَوْلِ الصَّاحِبِ الْمُشْتَهِرِ الْمُنْتَشِرِ وَأَنَّهُ إجْمَاعٌ، أَفَيَكُونُ اشْتِهَارًا أَعْظَمَ، وَانْتِشَارًا أَكْثَرَ مِنْ حُكْمِ عُمَرَ بَاقِي خِلَافَتِهِ، وَعُثْمَانَ جَمِيعَ خِلَافَتِهِ، فِي أَمْرٍ فَاشٍ عَامٍّ، ظَاهِرٍ مُطْبَقٍ، وَعَلِيٌّ مُوَافِقٌ لَهُمَا عَلَى ذَلِكَ وَقَدْ رُوِّينَا عَنْ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ

sally prevalent, openly applied matter—with ʿAlī concurring with them? We have been narrated from Waki‘, who narrated from Sufyan al-Thawri, from Salamah ibn Kuhayl, from Zayd ibn Wahb, who said: ‘Umar sold ummahāt al-awlād, then revoked their sales until he revoked them while pregnant due to concealment. There is no possibility for a ruling to spread more widely than this spread, given its public enforcement and these well-documented chains of transmission. Yet ‘Ali ibn Abi Talib did not consider this consensus; rather, he opposed it. If this were consensus, then according to the principles of these ignorant ones, ‘Ali would have opposed the consensus—far be it from him to do so! For whoever knowingly opposes consensus is a disbeliever. Moreover, they do not advocate claiming consensus regarding what was never authentically established from ‘Umar—that he imposed eighty lashes for wine. The disagreement on this matter from ‘Umar and those after him is clearer than the sun.

Through the chain of ‘Abd al-Razzaq, from Ibn Jurayj, who informed us that Abu al-Zubayr reported hearing Jabir ibn ‘Abdullah say: “We used to sell ummahāt al-awlād while the Messenger of Allah—peace and blessings be upon him and his family—was alive among us, and we saw no harm in it.” Ibn Jurayj said: ‘Abd al-Rahman ibn al-Walid informed me that Abu Ishaq al-Sabi‘i informed him that Abu Bakr al-Siddiq sold ummahāt al-awlād during his caliphate, and ‘Umar did so in the first half of his caliphate—and he mentioned the hadith.

Ibn Jurayj said: ‘Ata’ informed me that he learned ‘Ali ibn Abi Talib wrote in his covenant: “I left nineteen concubines. Whichever had a child was valued as part of her child’s share from me, and whichever had no child was freed.” I asked Muhammad ibn ‘Ali ibn al-Husayn ibn ‘Ali: “Was this during ‘Ali’s caliphate?” He replied: “Yes.”

Through the chain of al-Khushani Muhammad ibn ‘Abd al-Salam, from Muhammad ibn Bashshar Bundar, from Muhammad ibn Ja‘far Ghundar, from Shu‘bah, from al-Hakam ibn ‘Utaybah, from Zayd ibn Wahb, who said: I went to ‘Umar ibn al-Khattab to ask him about the umm al-walad. He said: “She is your property; sell her if you wish, or gift her if you wish.” Then I went to Ibn Mas‘ud, where two men were with him. They asked him, and

عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ زَيْدِ بْنِ وَهْبٍ قَالَ: بَاعَ عُمَرُ أُمَّهَاتِ الْأَوْلَادِ ثُمَّ رَدَّهُنَّ حَتَّى رَدَّهُنَّ حَبَالَى مِنْ تَسَتُّرٍ - فَلَا سَبِيلَ إِلَى أَنْ يَفْشُوَ حُكْمٌ أَكْثَرَ مِنْ هَذَا الْفَشْوِ بِمِثْلِ هَذَا الْحُكْمِ الْمُعْلَنِ وَالْأَسَانِيدِ الْمُثِيرَةِ، ثُمَّ لَمْ يَرَ عَلِيُّ بْنُ أَبِي طَالِبٍ ذَلِكَ إِجْمَاعًا، بَلْ خَالَفَهُ فَإِنْ كَانَ ذَلِكَ إِجْمَاعًا فَعَلَى أُصُولِ هَؤُلَاءِ الْجُهَّالِ قَدْ خَالَفَ عَلِيٌّ الْإِجْمَاعَ. وَحَاشَا لَهُ مِنْ ذَلِكَ، فَمُخَالِفُ الْإِجْمَاعِ عَالِمًا بِأَنَّهُ إِجْمَاعٌ كَافِرٌ، ثُمَّ لَا يَسْتَحِبُّونَ دَعْوَى الْإِجْمَاعِ عَلَى مَا لَمْ يَصِحَّ قَطُّ عَنْ عُمَرَ مِنْ أَنَّهُ فَرَضَ فِي الْخَمْرِ ثَمَانِينَ حَدًّا وَالْخِلَافُ فِيهِ مِنْ عُمَرَ وَمِمَّنْ بَعْدَ عُمَرَ أَشْهَرُ مِنَ الشَّمْسِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «كُنَّا نَبِيعُ أُمَّهَاتِ الْأَوْلَادِ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَيٌّ فِينَا - لَا نَرَى بِذَلِكَ بَأْسًا» . قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ الْوَلِيدِ أَنَّ أَبَا إِسْحَاقَ السَّبِيعِيَّ أَخْبَرَهُ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَانَ يَبِيعُ أُمَّهَاتِ الْأَوْلَادِ فِي إِمَارَتِهِ وَعُمَرُ فِي نِصْفِ إِمَارَتِهِ، وَذَكَرَ الْحَدِيثَ. قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَطَاءٌ أَنَّهُ بَلَغَهُ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَتَبَ فِي عَهْدِهِ: إِنِّي تَرَكْتُ تِسْعَ عَشْرَةَ سُرِّيَّةً فَأَيَّتُهُنَّ مَا كَانَتْ ذَاتَ وَلَدٍ قُوِّمَتْ فِي حِصَّةِ وَلَدِهَا بِمِيرَاثِهِ مِنِّي وَأَيَّتُهُنَّ لَمْ تَكُنْ ذَاتَ وَلَدٍ فَهِيَ حُرَّةٌ؟ فَسَأَلْتُ مُحَمَّدَ بْنَ عَلِيِّ بْنِ الْحُسَيْنِ بْنِ عَلِيٍّ: أَذَلِكَ فِي عَهْدِ عَلِيٍّ؟ قَالَ: نَعَمْ. وَمِنْ طَرِيقِ الْخُشَنِيِّ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ زَيْدِ بْنِ وَهْبٍ قَالَ: انْطَلَقْتُ إِلَى عُمَرَ بْنِ الْخَطَّابِ أَسْأَلُهُ عَنْ أُمِّ الْوَلَدِ؟ قَالَ: مَالُكَ، إِنْ شِئْتَ بِعْتَ وَإِنْ شِئْتَ وَهَبْتَ. ثُمَّ انْطَلَقْتُ إِلَى ابْنِ مَسْعُودٍ فَإِذَا مَعَهُ رَجُلَانِ فَسَأَلَاهُ؟ فَقَالَ لِأَحَدِهِمَا مَنْ أَقْرَأَكَ؟ قَالَ: أَقْرَأَنِيهَا أَبُو عَمْرَةَ، وَأَبُو حَكِيمٍ

he said to one: “Who instructed you in this?” He replied: “Abu ʻAmrah and Abu Hakim al-Muzani instructed me.” The other said: “‘Umar ibn al-Khattab instructed me.” Ibn Masʻud wept and said: “He instructed you? ʻUmar instructed you? He was a fortress of Islam—people entered [the faith] through him and did not abandon it. When ʻUmar was struck down, the fortress was breached, and people strayed from the straight path of Islam.” Zayd said: I asked him about the umm al-walad, and he replied: “She is freed from her child’s share.”

L27145–27146 Abu Muhammad said: This is a chain of transmission of the utmost authenticity, and after the death of Umar, as you see. So where are those who claim consensus in matters less significant than this? Indeed, even in matters devoid of merit—those that are unfounded.

L27147–27149 From the path of Abd al-Razzaq from Ibn Jurayj, Ata ibn Abi Rabah narrated to us that Ibn al-Zubayr settled Umm Hayya—the umm walad of Muhammad ibn Suhayb, whose son was called Khalid—in her son’s property and assigned her a share from his inheritance. Ata said: Ibn Abbas stated, “The umm walad is not emancipated until her master explicitly pronounces her freedom”—which is the opinion of Zayd ibn Thabit. This is also the view of Abu Sulayman, Abu Bakr, and a group of our companions. There is another opinion attributed to Umar. We transmitted it through Ibn Sirin from Abu al-Ajfa Hirm ibn Nasib and Malik ibn Amir al-Hamdani, both narrating from Umar ibn al-Khattab regarding the umm walad? He said, “If she remains chaste and embraces Islam, she is freed. But if she apostatizes and commits immorality, she is kept enslaved.” This was also narrated from Umar ibn Abd al-Aziz, who sold an umm walad who had apostatized—though Abu al-Hasan ibn al-Mughallis and some of our companions hesitated on this matter. The invalidation of her sale was narrated from al-Shaʻbi, al-Nakhaʻi, Ata, Mujahid, al-Hasan, Salim ibn Abdullah, Yahya ibn Saʻid al-Ansari, al-Zuhri, Abu al-Zinad, and Rabiʻa. This is the opinion of Abu Hanifa, Malik, Sufyan, al-Awzaʻi, al-Hasan ibn Hayy, Ibn Shubruma, al-Shafiʻi, Abu Ubayd, Ahmad, Ishaq, Abu Abdullah ibn Salar, and a group of our companions. Abu Muhammad said: As for the hadith of Jabir, it holds no proof even if its chain is authentic, for it does not state that the Messenger of Allah (peace and bless-

الْمُزَنِيِّ، وَقَالَ الْآخَرُ: أَقْرَأَنِيهَا عُمَرُ بْنُ الْخَطَّابِ، فَبَكَى ابْنُ مَسْعُودٍ وَقَالَ: أَقْرَأَكُمَا؟ أَقْرَأَكَ عُمَرُ؟ فَإِنَّهُ كَانَ حِصْنًا حَصِينًا يَدْخُلُ النَّاسُ فِيهِ وَلَا يَخْرُجُونَ مِنْهُ؟ فَلَمَّا أُصِيبَ عُمَرُ انْثَلَمَ الْحِصْنُ، فَخَرَجَ النَّاسُ مِنْ الْإِسْلَامِ قَالَ زَيْدٌ: وَسَأَلْته عَنْ أُمِّ الْوَلَدِ؟ فَقَالَ: تُعْتَقُ مِنْ نَصِيبِ وَلَدِهَا.

قَالَ أَبُو مُحَمَّد: هَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ، وَبَعْدَ مَوْتِ عُمَرَ كَمَا تَرَى، فَأَيْنَ مُدَّعُو الْإِجْمَاعِ فِي أَقَلَّ مِنْ هَذَا؟ نَعَمْ، وَفِيمَا لَا خَيْرَ فِيهِ مِمَّا لَا يَصِحُّ

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ نا عَطَاءُ بْنُ أَبِي رَبَاحٍ أَنَّ ابْنَ الزُّبَيْرِ أَقَامَ أُمَّ حُيَيِّ أُمَّ وَلَدِ مُحَمَّدِ بْنِ صُهَيْبٍ يُقَالُ لِابْنِهَا: خَالِدٌ، فَأَقَامَهَا ابْنُ الزُّبَيْرِ فِي مَالِ وَلَدِهَا وَجَعَلَهَا فِي نَصِيبِهِ. قَالَ عَطَاءٌ: وَقَالَ ابْنُ عَبَّاسٍ: لَا تُعْتَقُ أُمُّ الْوَلَدِ حَتَّى يَلْفِظَ سَيِّدُهَا بِعِتْقِهَا - وَهُوَ قَوْلُ زَيْدِ بْنِ ثَابِتٍ. وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَبُو بَكْرٍ، وَجَمَاعَةٌ مِنْ أَصْحَابِنَا. وَعَنْ عُمَرَ قَوْلٌ آخَرُ. رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ سِيرِينَ عَنْ أَبِي الْعَجْفَاءِ هَرِمِ بْنِ نَسِيبٍ، وَمَالِكِ بْنِ عَامِرٍ الْهَمْدَانِيِّ، كِلَاهُمَا عَنْ عُمَرَ بْنِ الْخَطَّابِ فِي أُمِّ الْوَلَدِ؟ قَالَ: إذَا عَفَتْ وَأَسْلَمَتْ عَتَقَتْ، وَإِنْ كَفَرَتْ وَفَجَرَتْ أُرِقَّتْ. وَرُوِيَ هَذَا أَيْضًا: عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ بَاعَ أُمَّ وَلَدٍ ارْتَدَّتْ - وَتَوَقَّفَ فِيهَا أَبُو الْحَسَنِ بْنُ الْمُغَلِّسِ، وَبَعْضُ أَصْحَابِنَا. وَرُوِيَ إبْطَالُ بَيْعِهَا عَنْ الشَّعْبِيِّ، وَالنَّخَعِيِّ، وَعَطَاءٍ، وَمُجَاهِدٍ، وَالْحَسَنِ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَالزُّهْرِيِّ، وَأَبِي الزِّنَادِ، وَرَبِيعَةَ. وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَسُفْيَانَ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ وَابْنِ شُبْرُمَةَ، وَالشَّافِعِيِّ، وَأَبِي عُبَيْدٍ، وَأَحْمَدَ،

ings be upon him) knew of it. Indeed, those who accept musnad reports must adhere to the statement of Abu Saʿid al-Khudri: "We used to give Zakat al-Fitr as one saʿ of food—one saʿ of barley, one saʿ of dates, one saʿ of dried yogurt, or one saʿ of raisins—while the Messenger of Allah (peace and blessings be upon him) was alive," and the statement of Ibn Umar: "We, during the lifetime of the Messenger of Allah (peace and blessings be upon him)—..." Allah's Messenger—peace and blessings be upon him and his family—maintains an enduring status. We state: Abu Bakr, then Umar, then Uthman. Thereafter, we refrain from further comparison—and he considers this position evidentiary. To regard Jabir's statement as proof is valid; otherwise, one is being frivolous. Abu Muhammad said: As for those below the rank of Allah's Messenger—peace and blessings be upon him and his family—upon him be peace and blessings—no authority equates to his. We therefore examined: Has an authentic prohibition from him—peace and blessings be upon him—been transmitted regarding this matter, compelling us to adhere to it? If not, we proceed. We discovered the narration conveyed through Qasim ibn Asbagh's chain: Musʿab ibn Muhammad reported from Ubayd Allah ibn Umar—al-Raqqi—from Abd al-Karim al-Jazari, from Ikrimah, from Ibn Abbas, who said: When Mariyah bore Ibrahim, Allah's Messenger—peace and blessings be upon him and his family—declared: "Her child has emancipated her." This is a sound report with entirely reliable narrators.

وَإِسْحَاقَ، وَأَبِي عَبْدِ اللَّهِ بْنِ سَالَارٍ، وَطَائِفَةٍ مِنْ أَصْحَابِنَا. قَالَ أَبُو مُحَمَّد: أَمَّا حَدِيثُ جَابِرٍ فَلَا حُجَّةَ فِيهِ وَإِنْ كَانَ غَايَةً فِي صِحَّةِ السَّنَدِ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ بِذَلِكَ - وَلَقَدْ كَانَ يَلْزَمُ مَنْ يَرَى مُسْنَدًا قَوْلُ أَبِي سَعِيدٍ الْخُدْرِيِّ: «كُنَّا نُخْرِجُ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَيٌّ - صَدَقَةَ الْفِطْرِ صَاعًا مِنْ طَعَامٍ، صَاعًا مِنْ شَعِيرٍ، صَاعًا مِنْ تَمْرٍ، صَاعًا مِنْ أَقِطٍ، صَاعًا مِنْ زَبِيبٍ» ، وَقَوْلُ ابْنِ عُمَرَ: كُنَّا وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَيٌّ نَقُولُ: أَبُو بَكْرٍ، ثُمَّ عُمَرُ، ثُمَّ عُثْمَانُ، ثُمَّ نَتْرُكُ فَلَا نُفَاضِلُ - وَيَرَى هَذَا حُجَّةً. أَنْ يَرَى قَوْلَ جَابِرٍ هَذَا حُجَّةً، وَإِلَّا فَهُوَ مُتَلَاعِبٌ.

قَالَ أَبُو مُحَمَّد: وَأَمَّا مَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَنَظَرْنَا: هَلْ صَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي ذَلِكَ مَنْعٌ فَنَقِفُ عِنْدَهُ، وَإِلَّا فَلَا؟ فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُصْعَبُ بْنُ مُحَمَّدٍ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ - هُوَ الرَّقِّيُّ - عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «لَمَّا وَلَدَتْ مَارِيَةُ إبْرَاهِيمَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَعْتَقَهَا وَلَدُهَا» فَهَذَا خَبَرٌ جَيِّدُ السَّنَدِ كُلُّ رُوَاتِهِ ثِقَةٌ.

L27150 We have heard Allah the Exalted say: {Indeed, We created the human being from a mingled sperm-drop to test him} [Al-Insān: 2]. And the Messenger of Allah—may Allah bless him and his family and grant him peace—informed us, as narrated in the sixth issue at the beginning of the "Book of Manumission" in this collection of ours, that Allah the Exalted creates the human being from the semen of his father and the ovum of his mother. Thus, it is confirmed that he is part of her and part of his father.[15]

وَسَمِعْنَا اللَّهَ تَعَالَى يَقُولُ: {إِنَّا خَلَقْنَا الْإِنْسَانَ مِنْ نُطْفَةٍ أَمْشَاجٍ نَبْتَلِيهِ} [الإنسان: ٢] وَأَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَمَا رُوِّينَا فِي الْمَسْأَلَةِ السَّادِسَةِ فِي صَدْرِ " كِتَابِ الْعِتْقِ " مِنْ دِيوَانِنَا هَذَا: أَنَّ الْإِنْسَانَ يَخْلُقُهُ اللَّهُ تَعَالَى مِنْ مَنِيِّ أَبِيهِ وَمَنِيِّ أُمِّهِ، فَصَحَّ أَنَّهُ بَعْضُهَا وَبَعْضُ أَبِيهِ.

L27151 We have been narrated through the chain of Ibn Ayman: Abdullah ibn Ah-

[15] **Qur'an references (L27150):** Qur'an 76:2 (Al-Insan).

mad ibn Hanbal narrated to us, Abu Sa'eed—the client of Banu Hashim (he is Abdurrahman ibn Abdullah ibn Ubaid)—narrated to us, Hammam ibn Yahya narrated from Qatadah from Abi Al-Malih from his father (his father is Abu Usamah ibn Umayr) who said: A man from Hudhayl manumitted his partial share in a slave. The Prophet—peace and blessings be upon him and his family—said: "He is wholly free, for Allah has no partner." Since a child constitutes part of the father and part of the mother, and the authentic narration from the Prophet—peace and blessings be upon him and his family—states: "Whoever acquires ownership of a mahram relative, they become free," it became incumbent upon the father to emancipate him, so that no one may own him. This obligation entails that a portion of the enslaved person is free, and if a portion is free, all becomes free. As the Prophet—peace and blessings be upon him and his family—did not divorce Ibrahim's mother (may Allah be pleased with her) and continued to lawfully have conjugal relations with her after childbirth, it is established that she remained permissible for intimacy and disposition. Allah the Exalted says: _"There has certainly been for you in the Messenger of Allah an excellent model"_ (33:21).[16]

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبُو سَعِيدٍ مَوْلَى بَنِي هَاشِمٍ - هُوَ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ عُبَيْدٍ - نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ أَبِي الْمَلِيحِ عَنْ أَبِيهِ - هُوَ أَبُو أُسَامَةَ بْنُ عُمَيْرٍ - قَالَ: أَعْتَقَ رَجُلٌ مِنْ هُذَيْلٍ شِقْصًا لَهُ مِنْ مَمْلُوكٍ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «هُوَ حُرٌّ كُلُّهُ لَيْسَ لِلَّهِ شَرِيكٌ» . وَلَمَّا كَانَ الْوَلَدُ بَعْضَ أَبِيهِ وَبَعْضَ أُمِّهِ، وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ فَهُوَ حُرٌّ» فَوَجَبَ أَنْ يُعْتَقَ عَلَى أَبِيهِ، وَأَنْ لَا يَمْلِكَهُ أَحَدٌ، فَلِمَا وَجَبَ ذَلِكَ وَجَبَ أَنَّ بَعْضَهَا حُرٌّ، وَإِذْ بَعْضُهَا حُرٌّ فَكُلُّهَا حُرٌّ. وَلَمَّا لَمْ يَبِنْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أُمَّ إبْرَاهِيمَ - رَضِيَ اللَّهُ عَنْهَا - عَنْ نَفْسِهِ وَلَمْ يَزَلْ يَسْتَبِيحُهَا بَعْدَ الْوِلَادَةِ صَحَّ أَنَّهَا بَاقِيَةٌ عَلَى إبَاحَةِ الْوَطْءِ وَالتَّصَرُّفِ، قَالَ اللَّهُ تَعَالَى {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] .

L27152–27153 It has been established that the emancipation mentioned concerning the umm al-walad (mother of the child) prevents only her removal from ownership. This is a self-evident and decisive proof—and to Allah, exalted be He, belongs all praise—though it does not justify the Hanafis' reliance on it, for among their corrupt principles is that if a narrator transmits a report and then contradicts it, this indicates the invalidity of that report. Ibn Abbas—the narrator of the report concerning Umm Ibrahim (peace be upon her)—held the permissibility of selling ummahat al-awlad (mothers of children). Thus, he contradicted what he narrated. According to their corrupt principles, this serves as evidence for prohibiting their sale, since Ali, Ibn al-Zubayr, Ibn Abbas, and Ibn Mas'ud after Umar permitted their sale. All their deceptive arguments here are newly invented fabrications.

وَصَحَّ أَنَّ الْعِتْقَ الْمَذْكُورَ فِي أُمِّ الْوَلَدِ لَا يَمْنَعُ إلَّا مِنْ إخْرَاجِهَا عَنْ الْمِلْكِ فَقَطْ، وَهَذَا بُرْهَانٌ ضَرُورِيٌّ قَاطِعٌ - وَلِلَّهِ تَعَالَى الْحَمْدُ - إلَّا أَنَّهُ لَا يُسَوِّغُ لِلْحَنَفِيِّينَ الِاحْتِجَاجَ بِهِ؛ لِأَنَّ مِنْ أُصُولِهِمْ الْفَاسِدَةِ: أَنَّ مَنْ رَوَى خَبَرًا ثُمَّ خَالَفَهُ فَهُوَ دَلِيلٌ عَلَى سُقُوطِ ذَلِكَ الْخَبَرِ - وَابْنُ عَبَّاسٍ هُوَ رَاوِي خَبَرِ أُمِّ إبْرَاهِيمَ - عَلَيْهَا السَّلَامُ - وَهُوَ يَرَى بَيْعَ أُمَّهَاتِ الْأَوْلَادِ. فَقَدْ تَرَكَ مَا رَوَى، وَمَا يَثْبُتُ عَلَى أُصُولِهِمْ الْفَاسِدَةِ دَلِيلٌ عَلَى الْمَنْعِ مِنْ بَيْعِهِنَّ؛ لِأَنَّ عَلِيًّا، وَابْنَ الزُّبَيْرِ، وَابْنَ عَبَّاسٍ، وَابْنَ مَسْعُودٍ بَعْدَ عُمَرَ: أَبَاحُوا بَيْعَهُنَّ، وَكُلُّ مَا مَوَّهُوا بِهِ هَاهُنَا فَكَذِبٌ ابْتَدَعُوهُ. وَأَمَّا قَوْلُنَا: إنَّهَا يَحْرُمُ إخْرَاجُهَا عَنْ مِلْكِهِ إلَى مِلْكِ غَيْرِهِ، مِمَّا يُدْرَى أَنَّهُ وَلَدٌ، فَإِنَّ النَّصَّ مِنْ الْقُرْآنِ وَالسُّنَّةِ وَرَدَ بِأَنَّهُ أَوَّلُ مَا يَكُونُ نُطْفَةً، ثُمَّ عَلَقَةً،

[16] **Qur'an references (L27151):** Qur'an 33:21 (Al-Ahzab).

As for our statement that it is prohibited to transfer her from his ownership to another's when a child is confirmed, the textual evidence from the Quran and Sunnah indicates that the child first exists as a nutfah (sperm-drop), then an ʻalaqah (clinging clot), then a mudghah (lump of flesh), then bones clothed with flesh, after which the soul is breathed into it. The term "nutfah" applies to semen; thus, the nutfah is not a child. There is no distinction between the nutfah entering the womb and exiting immediately afterward, or exiting similarly within forty days—as long as it remains a nutfah. Once it transitions from being a nutfah to an ʻalaqah, it becomes a formed child. Allah, exalted be He, said: "From a mudghah, formed and unformed" (*al-Ḥajj* 22:5). The "unformed" refers to what has not yet transitioned from being a nutfah, from which no child has yet been created. The "formed" refers to what has advanced beyond the term "nutfah" and its defining characteristics, having been fashioned by Allah, mighty and majestic, into an ʻalaqah as stated in the Quran. At that stage, it is a formed child. Thus, whether miscarried or retained, it constitutes a child—and this is a clear scriptural ruling. By Allah's help alone is success attained.[17]

ثُمَّ مُضْغَةً، ثُمَّ عِظَامًا مَكْسُوَّةً لَحْمًا، ثُمَّ يُنفَخُ فِيهِ الرُّوحُ. وَالنُّطْفَةُ: اسْمٌ يَقَعُ عَلَى الْمَاءِ، فَالنُّطْفَةُ لَيْسَتْ وَلَدًا، وَلَا فَرْقَ بَيْنَ وُقُوعِ النُّطْفَةِ فِي الرَّحِمِ وَخُرُوجِهَا إثْرَ ذَلِكَ، وَبَيْنَ خُرُوجِهَا كَذَلِكَ إلَى أَرْبَعِينَ يَوْمًا - مَا دَامَتْ نُطْفَةً - فَإِذَا خَرَجَتْ عَنْ أَنْ تَكُونَ نُطْفَةً إلَى أَنْ تَكُونَ عَلَقَةً، فَهِيَ حِينَئِذٍ وَلَدٌ مُخَلَّقٌ. وَقَالَ تَعَالَى {مِنْ مُضْغَةٍ مُخَلَّقَةٍ وَغَيْرِ مُخَلَّقَةٍ} [الحج: ٥] فَغَيْرُ " الْمُخَلَّقَةِ " هِيَ الَّتِي لَمْ تَنْتَقِلْ عَنْ أَنْ تَكُونَ نُطْفَةً، وَلَا خُلِقَ مِنْهَا وَلَدٌ بَعْدُ، " وَالْمُخَلَّقَةُ " هِيَ الْمُنْتَقِلَةُ عَنْ اسْمِ " النُّطْفَةِ " وَحَدِّهَا وَصِفَتِهَا إلَى أَنْ خَلَقَهَا عَزَّ وَجَلَّ " عَلَقَةً " كَمَا فِي الْقُرْآنِ، فَهِيَ حِينَئِذٍ وَلَدٌ مُخَلَّقٌ، فَهِيَ بِسُقُوطِهِ أَوْ بِبَقَائِهِ: أَوْ وَلَدٌ - وَهَذَا نَصٌّ بَيِّنٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27154–27156 As for the husband appropriating her property—whether the husband is healthy or ill—this is based on Allah's decree: "Those who guard their private parts" [23:5], "except from their spouses or those their right hands possess, for they are free from blame" [23:6], "But whoever seeks beyond that, they are the transgressors" [23:7]. The umm al-walad (a slave who bears her master's child) is indisputably not a wife. Thus, she necessarily falls under the category of those their right hands possess, so we may lawfully take what our right hands possess. If it is asked: How can a freed woman remain among those our right hands possess? We reply: As Allah the Exalted and His Messenger—peace and blessings be upon him—have explicitly legislated, not as debased minds and those who legislate through their false opinions desire. We have no knowledge except what our Lord, Mighty and Majestic, has taught us. You claim that a mukatab (a slave contracted for emancipation) is neither a slave who may be sold or employed, nor may the female mukatab be lawfully approached sexually, and that he remains a slave in... [text incomplete]. All its

وَأَمَّا انْتِزَاعُهُ مَالَهَا - صَحِيحًا كَانَ أَوْ مَرِيضًا - فَلِقَوْلِ اللَّهِ تَعَالَى {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] وَأُمُّ الْوَلَدِ لَيْسَتْ زَوْجَةً بِلَا خِلَافٍ، فَهِيَ ضَرُورَةً مِمَّا مَلَكَتْ أَيْمَانُنَا، فَلَنَا أَخْذُ مَا مَلَكَتْ أَيْمَانُنَا. فَإِنْ قِيلَ: كَيْفَ تَكُونُ مُعْتَقَةٌ حُرَّةٌ مِمَّا مَلَكَتْ أَيْمَانُنَا؟ قُلْنَا: كَمَا نَصَّ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى ذَلِكَ، لَا كَمَا اشْتَهَتْ الْعُقُولُ الْفَاسِدَةُ، وَالشَّارِعَةُ بِآرَائِهَا الزَّائِفَةِ، وَلَا عِلْمَ لَنَا إلَّا مَا عَلَّمَنَا رَبُّنَا عَزَّ وَجَلَّ، وَقَدْ قُلْتُمْ: إنَّ الْمُكَاتَبَ لَا عَبْدٌ فَيُبَاعُ وَيُسْتَخْدَمُ، وَلَا تُوطَأُ الْمُكَاتَبَةُ، وَعَبْدٌ فِي جَمِيعِ أَحْكَامِهِ، وَلَا حُرَّةٌ فَتُطْلَقُ، وَحُرَّةٌ فِي الْمَنْعِ مِنْ بَيْعِهَا وَوَطْئِهَا، فَأَيُّ فَرْقٍ بَيْنَ مَا قُلْتُمُوهُ بِآرَائِكُمْ فَجَوَّزْتُمُوهُ، فَلَمَّا وَجَدْتُمُوهُ

[17] **Qur'an references (L27153):** Qur'an 22:5 (Al-Hajj).

rulings: no free woman is to be divorced, nor is she to be prevented—for she is free to prevent her sale or coerced intercourse. What difference is there between what you have asserted by your own opinions—thus deeming it permissible—and when you found it [ordained] by Allah the Exalted and His Messenger (peace be upon him), only to reject it? Is this not the destructive obsession that brings ruin in this world and the Hereafter?[18]

L27157 As for her child by someone other than her master, it is as we stated regarding the initial stage of its existence - part of her. Thus, its ruling aligns with her ruling. It is established by our prior explanation that her sale becomes prohibited only if she was under the ownership of one legally barred from owning her child at the onset of her pregnancy. Similarly, if she conceived while his wife who is owned by another, then came under his ownership before the child became alive, she becomes an umm walad (mother of a child) by our earlier reasoning. However, if he only acquired her after the child became separate from her, with no part of her ever attaining freedom, she remains without entitlement to emancipation and may be sold. Should he sell her while the embryo in her womb remains at the nutfah (fertilized ovum) stage, the sale holds valid if it exits her womb still as nutfah, since this constitutes unformed matter. But if it develops into a mudghah (chewed clot) formed in Allah's knowledge, the sale becomes invalid and nullified, for he sold her while part of her was a formed mudghah - deemed a child from conception until birth, thus establishing her as umm walad. Success comes solely from Allah, the Exalted.

L27158 **The jurisprudential issue regarding the manumission of the fetus before the blowing of the soul into it.**

L27159 1685 - Issue: If a free man marries another's slave woman, then dies while she is pregnant, and she is subsequently emancipated - thereby freeing the fetus before ensoulment - the child does not inherit from his father. This is because the child only became entitled to freedom after the father's death,

[18] **Qur'an references (L27154):** 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).

لِلَّهِ تَعَالَى وَلِرَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْكَرْتُمُوهُ، أَلَا هَذَا هُوَ الْهَوَسُ الْمُهْلِكُ فِي الْعَاجِلَةِ وَالْآجِلَةِ؟

وَأَمَّا وَلَدُهَا مِنْ غَيْرِ سَيِّدِهَا فَهُوَ كَمَا قُلْنَا فِي أَوَّلِ أَمْرِهِ بَعْضُهَا، فَحُكْمُهُ كَحُكْمِهَا، وَصَحَّ بِمَا ذَكَرْنَا أَنَّهَا لَا يَحْرُمُ بَيْعُهَا إِلَّا بِأَنْ تَكُونَ فِي حِينِ أَوَّلِ حَمْلِهَا فِي مِلْكِ مَنْ لَا يَحِلُّ لَهُ تَمَلُّكُ وَلَدِهِ، وَكَذَلِكَ لَوْ حَمَلَتْ مِنْهُ وَهِيَ زَوْجَةٌ لَهُ مِلْكٌ لِغَيْرِهِ، ثُمَّ مَلَكَهَا قَبْلَ أَنْ يَصِيرَ الْوَلَدُ حَيًّا، فَإِنَّهَا أُمُّ وَلَدٍ لِمَا ذَكَرْنَاهُ، فَأَمَّا لَوْ لَمْ يَمْلِكْهَا إِلَّا مَنْ نُفِخَ الرُّوحُ فِيهِ، فَصَارَ غَيْرَهَا، فَلَمْ يَكُنْ بَعْضَهَا حُرًّا قَطُّ، فَلَا حُرِّيَّةَ لَهَا، وَلَهُ بَيْعُهَا، فَلَوْ بَاعَهَا وَالَّذِي فِي رَحِمِهَا نُطْفَةٌ بَعْدُ فَإِنَّهُ إِنْ خَرَجَتْ عَنْ رَحِمِهَا - وَهِيَ نُطْفَةٌ بَعْدُ - فَهُوَ بَيْعٌ صَحِيحٌ؛ لِأَنَّهَا نُطْفَةٌ غَيْرُ مُخَلَّقَةٍ، فَإِنْ صَارَتْ مُضْغَةً فَالْبَيْعُ فَاسِدٌ مَرْدُودٌ؛ لِأَنَّهُ بَاعَهَا وَبَعْضُهَا مُضْغَةٌ مُخَلَّقَةٌ فِي عِلْمِ اللَّهِ تَعَالَى مِنْهُ، فَهِيَ مِنْ أَوَّلِ وُقُوعِهَا إِلَى خُرُوجِهَا وَلَدٌ فَهِيَ أُمُّ وَلَدٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ عِتْقِ الْجَنِينِ قَبْلَ نَفْخِ الرُّوحِ فِيهِ]

١٦٨٥ - مَسْأَلَةٌ: فَلَوْ أَنَّ حُرًّا تَزَوَّجَ أَمَةً لِغَيْرِهِ ثُمَّ مَاتَ وَهِيَ حَامِلٌ ثُمَّ أُعْتِقَتْ فَعَتَقَ الْجَنِينُ قَبْلَ نَفْخِ الرُّوحِ فِيهِ لَمْ يَرِثْ أَبَاهُ؛ لِأَنَّهُ لَمْ يَسْتَحِقَّ الْعِتْقَ إِلَّا بَعْدَ مَوْتِ أَبِيهِ، وَكَانَ حِينَ مَوْتِ أَبِيهِ مَمْلُوكًا لَا يَرِثُ، فَلَوْ مَاتَ لَهُ بَعْدَ أَنْ عَتَقَ مَنْ يَرِثُهُ بِرَحِمٍ أَوْ وَلَاءٍ وَرِثَهُ إِنْ خَرَجَ حَيًّا؛ لِأَنَّهُ كَانَ حِينَ مَوْتِ الْمَوْرُوثِ حُرًّا.

having been a slave (owned property) at the time of the father's death and thus ineligible to inherit. However, if after emancipation the child (now free) has someone [the deceased] from whom he inherits through kinship or clientage, he inherits from him if born alive, since he was free at the precise moment of the deceased's death.

L27160 If a Christian man dies and leaves his wife pregnant, and she converts to Islam after his death—whether before the soul is breathed into the fetus or after—the child becomes Muslim by his mother's conversion. However, he does not inherit from his father, because he did not attain the legal status of Islam that enables inheritance (as inheritor or inherited) except after his father's death, given their differing religions. Thus, the child is born as a Muslim, adhering to a religion other than his father's and not under the legal status of the religion under which, had he persisted, he would have inherited from his father. Similarly, if a Christian man dies and leaves his wife pregnant after the soul has been breathed into the fetus, and another Christian man acquires ownership of her, enslaves her, and she gives birth while under his ownership, the child does not inherit from his father. This is because he is born into slavery—a state that precludes inheritance—for the fetus is only entitled to inheritance if it remains free and adheres to the religion of the deceased from whom it inherits, from the moment of the deceased's death until it is born alive.

L27161–27163 Similarly, if a man died leaving his umm walad (a slave woman who bore him a child) pregnant, and her entitlement was confirmed after his death, then the fetus was emancipated by virtue of her emancipation. For his lineage is established, but he does not inherit from his father, because his father died free while he was enslaved and did not meet the legal condition for inheritance (through freedom) at the time of his father's death. He only inherits through freedom after his father's death. If a decedent of his dies after he is freed, he inherits provided he was born alive due to what we previously mentioned. Success comes only from Allah, the Exalted.

فَلَوْ مَاتَ نَصْرَانِيٌّ وَتَرَكَ امْرَأَتَهُ حَامِلًا فَأَسْلَمَتْ بَعْدَهُ قَبْلَ نَفْخِ الرُّوحِ فِيهِ أَوْ بَعْدَ نَفْخِ الرُّوحِ فِيهِ: فَهُوَ مُسْلِمٌ بِإِسْلَامِ أُمِّهِ، وَلَا يَرِثُ أَبَاهُ؛ لِأَنَّهُ لَمْ يَصِرْ لَهُ حُكْمُ الْإِسْلَامِ الَّذِي يَرِثُ بِهِ وَيُورَثُ لَهُ أَوْ لَا يَرِثُ بِهِ وَلَا يُورَثُ بِهِ لِاخْتِلَافِ الدِّينَيْنِ إِلَّا بَعْدَ مَوْتِ أَبِيهِ، فَخَرَجَ إِلَى الدُّنْيَا مُسْلِمًا عَلَى غَيْرِ دِينِ أَبِيهِ، وَعَلَى غَيْرِ حُكْمِ الدِّينِ الَّذِي لَوْ تَمَادَى عَلَيْهِ لَوَرِثَ أَبَاهُ. وَكَذَلِكَ لَوْ أَنَّ نَصْرَانِيًّا مَاتَ وَتَرَكَ امْرَأَتَهُ حَامِلًا قَدْ نُفِخَ فِيهِ الرُّوحُ فَتَمَلَّكَهَا نَصْرَانِيٌّ آخَرُ فَاسْتَرَقَّهَا فَوَلَدَتْ فِي مِلْكِهِ لَمْ يَرِثْ أَبَاهُ، لِأَنَّهُ لَمْ يَخْرُجْ إِلَى الدُّنْيَا إِلَّا مَمْلُوكًا لَا يَرِثُ - وَإِنَّمَا يَسْتَحِقُّ الْجَنِينُ الْمِيرَاثَ بِبَقَائِهِ حُرًّا عَلَى دِينِ مَوْرُوثِهِ مِنْ حِينِ يَمُوتُ الْمَوْرُوثُ إِلَى أَنْ يُولَدَ حَيًّا.

وَكَذَلِكَ لَوْ أَنَّ امْرَأً تَرَكَ أُمَّ وَلَدِهِ حَامِلًا فَاسْتُحِقَّتْ بَعْدَهُ ثُمَّ أُعْتِقَ الْجَنِينُ بِعِتْقِهَا، فَإِنَّ نَسَبَهُ لَاحِقٌ، وَلَا يَرِثُ أَبَاهُ؛ لِأَنَّ أَبَاهُ مَاتَ حُرًّا وَهُوَ مَمْلُوكٌ وَلَمْ يَنْتَقِلْ إِلَى الْحَالِ الَّتِي يُورَثُ بِهَا وَيَرِثُ مِنَ الْحُرِّيَّةِ إِلَّا بَعْدَ مَوْتِ أَبِيهِ فَلَوْ مَاتَ لَهُ مَوْرُوثٌ بَعْدَ أَنْ عَتَقَ وَرِثَهُ إِنْ وُلِدَ حَيًّا لِمَا ذَكَرْنَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.