AL-MUHALLA

كِتَابُ الْكِتَابَةِ

The Book of Manumission Contracts (Kitabah)

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

Return to the reading collection

[كِتَابُ الْكِتَابَةِ] [مَسْأَلَةٌ مَنْ كَانَ لَهُ مَمْلُوكٌ مُسْلِمٌ أَوْ مُسْلِمَةٌ فَدَعَا أَوْ دَعَتْ إِلَى الْكِتَابَةِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلِّمْ تَسْلِيمًا

كِتَابُ الْكِتَابَةِ ١٦٨٦ - مَسْأَلَةٌ: مَنْ كَانَ لَهُ مَمْلُوكٌ مُسْلِمٌ أَوْ مُسْلِمَةٌ فَدَعَا أَوْ دَعَتْ إِلَى الْكِتَابَةِ فُرِضَ عَلَى السَّيِّدِ الْإِجَابَةُ إِلَى ذَلِكَ وَيُجْبِرُهُ السُّلْطَانُ عَلَى ذَلِكَ بِمَا يُدْرَى أَنَّ الْمَمْلُوكَ الْعَبْدَ أَوْ الْأَمَةَ يُطِيقُهُ مِمَّا لَا حَيْفَ فِيهِ عَلَى السَّيِّدِ، لَكِنْ مِمَّا يُكَاتَبُ عَلَيْهِ مِثْلُهُمَا - وَلَا يَجُوزُ كِتَابَةُ عَبْدٍ كَافِرٍ أَصْلًا. بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى {وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] . وَاخْتَلَفَ النَّاسُ فِي الْخَيْرِ. فَقَالَتْ طَائِفَةٌ: الْمَالُ، وَقَالَتْ طَائِفَةٌ: الدِّينُ. فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا مَوْضُوعَ كَلَامِ الْعَرَبِ الَّذِي بِهِ نَزَلَ الْقُرْآنُ قَالَ تَعَالَى: {بِلِسَانٍ عَرَبِيٍّ مُبِينٍ} [الشعراء: ١٩٥] أَنَّهُ تَعَالَى لَوْ أَرَادَ الْمَالَ لَقَالَ: إِنْ عَلِمْتُمْ لَهُمْ خَيْرًا، أَوْ عِنْدَهُمْ خَيْرًا، أَوْ مَعَهُمْ خَيْرًا، لِأَنَّ بِهَذِهِ الْحُرُوفِ يُضَافُ الْمَالُ إلَى مَنْ هُوَ لَهُ فِي لُغَةِ الْعَرَبِ، وَلَا يُقَالُ أَصْلًا فِي فُلَانٍ مَالٌ، فَلَمَّا قَالَ تَعَالَى: {إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور: ٣٣] عَلِمْنَا أَنَّهُ تَعَالَى لَمْ يَرِدْ " الْمَالَ "، فَصَحَّ أَنَّهُ " الدِّينُ " وَلَا خَيْرَ فِي دِينِ الْكَافِرِ - وَكُلُّ مُسْلِمٍ عَلَى أَدِيمِ الْأَرْضِ فَقَدْ عَلِمْنَا أَنَّ فِيهِ الْخَيْرَ بِقَوْلِهِ: لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ، وَأَنْ لَا دِينَ إلَّا الْإِسْلَامُ، وَهَذَا أَعْظَمُ مَا يَكُونُ مِنْ الْخَيْرِ، وَكُلُّ خَيْرٍ بَعْدَ هَذَا فَتَابِعٌ لِهَذَا - وَهَذَا قَوْلٌ رُوِيَ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -: أَنَّهُ سَأَلَهُ عَبْدٌ مُسْلِمٌ أَكَاتِبُ وَلَيْسَ لِي مَالٌ؟ فَقَالَ لَهُ عَلِيٌّ: نَعَمْ، فَصَحَّ أَنَّ الْخَيْرَ عِنْدَهُ لَمْ يَكُنْ " الْمَالَ ".

L27164–27165 **[Book of Manumission] [Issue: If someone owns a Muslim male slave or a Muslim female slave, and the slave, whether male or female, requests manumission]**

L27166 In the name of Allah, the Most Gracious, the Most Merciful. And may Allah bless Muhammad and his family, and grant him peace in great abundance.

L27167 The Book of Kitābah 1686 - Issue: If one owns a Muslim male or female slave who requests a kitābah, it becomes obligatory upon the master to respond. The ruler compels the master through terms verified to be within the slave's capacity—whether male or female—from what is customarily stipulated for their counterparts, without undue hardship on the master. However, it is fundamentally impermissible to grant kitābah to a non-Muslim slave.

The proof is Allah's statement: *"As for those seeking kitābah from those your right hands possess, grant it to them if you discern good in them, and give them from Allah's wealth which He has bestowed upon you"* (24:33). People differed regarding the meaning of "good." Some groups said it refers to wealth, while others said it refers to religion.

Examining this, we found that according to the linguistic norms of the Arabs—the tongue in which the Qur'an was revealed, as Allah says: *"In a clear Arabic language"* (26:195)—had He intended "wealth," He would have said: *"If you recognize good for them,"* *"with them,"* or *"in their possession."* For in Arabic, these prepositions denote wealth's attribution. It is never said that wealth is "in" someone. Thus, when Allah says: *"If you discern good in them,"* we knew He did not mean "wealth." Therefore, the correct meaning is "religion," and there is no good in the religion of a disbeliever.

Every Muslim upon the earth is known to possess this good through the declaration: *"There is no deity but Allah, Muhammad is the Messenger of Allah,"* and that there is no religion except Islam. This constitutes the greatest good, and all other goods are subordinate to it.

This view is narrated from ʿAlī—may Allah be pleased with him—when a Muslim slave asked him: *"May I seek kitābah though I have no wealth?"* ʿAlī replied: *"Yes."* This confirms that "good" in his view was not "wealth."[1]

L27168–27169 And through the chain of ʿAbd al-Razzāq from Hishām ibn Ḥassān from Muḥammad ibn Sīrīn from ʿUbaydah al-Salmānī regarding the statement of Allah the Exalted: {"So write a contract of manumission with them if you know any good in them"} [24:33], he said: "If they establish prayer." And through the chain of Sufyān—he is al-Thawrī—from Yūnus from al-Ḥasan, he said: {"If you know any good in them"} [24:33], he said: "Religion and trustworthiness." And through the chain of Ḥammād ibn Salamah from Yūnus from al-Ḥasan concerning this verse, he said: "Islam and fulfillment." It is reported from Ibn ʿAbbās that it refers to wealth—and this is the opinion of ʿAṭāʾ, Ṭāwus, Mujāhid, and Abū Razīn.[2]

L27170 And a group said both matters—this being the opinion of Saʿīd ibn Abī al-Ḥasan, the brother of al-Ḥasan al-Baṣrī, and the opinion of al-Shāfiʿī—except that he contradicted himself in his legal rulings.

L27171 As for the Ḥanafīs and Mālikīs: God's stipulated condition here was nullified, devoid of meaning. Glory be to Him Who caused His condition to be disregarded in their framework while their own corrupt conditions became binding. This is because they permit the manumission contract of a disbeliever who has no wealth - undoubtedly outside the verse, as it contains no good whatsoever, and outside the statements of all predecessors. This is among matters where they diverged from those Companions from whom opinions have been preserved - may Allah be pleased with them. Among the curiosities of the world is the argument of some who said: "We analogized one devoid of good to one possessing good." ʿAlī remarked: "Has any analogy more foolish than this ever been heard? They only applied analogy to what resembles the original case, not to what bears no resemblance. Why didn't they analogize those with financial capability in the marriage of slave women to those lacking such capability?"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ فِي قَوْلِ اللَّهِ تَعَالَى: {فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور: ٣٣] قَالَ: إِنْ أَقَامُوا الصَّلَاةَ. وَمِنْ طَرِيقِ سُفْيَانَ - هُوَ الثَّوْرِيُّ - عَنْ يُونُسَ عَنْ الْحَسَنِ قَالَ: {إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور: ٣٣] قَالَ: دِينٌ وَأَمَانَةٌ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ عَنْ الْحَسَنِ فِي هَذِهِ الْآيَةِ قَالَ: الْإِسْلَامُ وَالْوَفَاءُ - وَجَاءَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ الْمَالُ - وَهُوَ قَوْلُ عَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَأَبِي رَزِينٍ.

وَقَالَتْ طَائِفَةٌ: كِلَا الْأَمْرَيْنِ - وَهُوَ قَوْلُ سَعِيدِ بْنِ أَبِي الْحَسَنِ أَخِي الْحَسَنِ الْبَصْرِيِّ - وَهُوَ قَوْلُ الشَّافِعِيِّ، إلَّا أَنَّهُ نَاقَضَ فِي مَسَائِلِهِ.

وَأَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: فَكَانَ شَرْطُ اللَّهِ هَاهُنَا مُلْغًى، لَا مَعْنَى لَهُ، فَسُبْحَانَ مَنْ جَعَلَ شَرْطَهُ عِنْدَهُمْ ضَائِعًا، وَشُرُوطَهُمْ الْفَاسِدَةَ عِنْدَهُمْ لَازِمَةً، وَذَلِكَ أَنَّهُمْ يُبِيحُونَ كِتَابَةَ الْكَافِرِ الَّذِي لَا مَالَ لَهُ، وَهُوَ بِلَا شَكٍّ خَارِجٌ عَنْ الْآيَةِ، لِأَنَّهُ لَا خَيْرَ فِيهِ أَصْلًا، وَخَارِجٌ عَنْ قَوْلِ كُلِّ مَنْ سَلَفَ، وَهَذَا مِمَّا فَارَقُوا فِيهِ مَنْ حُفِظَ عَنْهُ قَوْلٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. وَمِنْ طَرَائِفِ الدُّنْيَا: احْتِجَاجُ بَعْضِهِمْ بِأَنْ قَالَ: قِسْنَا مَنْ لَا خَيْرَ فِيهِ عَلَى مَنْ فِيهِ خَيْرٌ. قَالَ عَلِيٌّ: فَهَلْ سُمِعَ بِأَسْخَفَ مِنْ هَذَا الْقِيَاسِ؟ وَإِنَّمَا قَالُوا بِالْقِيَاسِ فِيمَا يُشْبِهُ الْمَقِيسَ عَلَيْهِ لَا فِيمَا لَا يُشْبِهُ. وَهَلَّا قَاسُوا مَنْ يَسْتَطِيعُ " الطَّوْلَ " فِي نِكَاحِ الْأَمَةِ عَلَى مَنْ لَا يَسْتَطِيعُهُ؟

[1] **Qur'an references (L27167):** Qur'an 24:33 (An-Nur); Qur'an 26:195 (Ash-Shu'ara).
[2] **Qur'an references (L27169):** Qur'an 24:33 (An-Nur).

وَهَلَّا قَاسُوا بِهِ غَيْرَ السَّائِمَةِ فِي الزَّكَاةِ عَلَى السَّائِمَةِ؟ وَهَلَّا قَاسُوا غَيْرَ السَّارِقِ عَلَى السَّارِقِ، وَغَيْرَ الْقَاتِلِ عَلَى الْقَاتِلِ؟ وَهَذِهِ حَمَاقَةٌ لَا نَظِيرَ لَهَا. وَقَالَ بَعْضُهُمْ: لَمْ يَذْكُرْ فِي الْآيَةِ إِلَّا مَنْ فِيهِ خَيْرٌ، وَبَقِيَ حُكْمُ مَنْ لَا خَيْرَ فِيهِ، فَأَجَزْنَا كِتَابَتَهُ بِالْأَخْبَارِ الَّتِي فِيهَا ذِكْرُ الْكِتَابَةِ جُمْلَةً؟ فَقُلْنَا لَهُمْ: فَأَبِيحُوا بِمِثْلِ هَذَا الدَّلِيلِ أَكْلَ كُلِّ مُخْتَلَفٍ فِيهِ لِقَوْلِهِ تَعَالَى: {كُلُوا وَاشْرَبُوا} [البقرة: ٦٠] وَهَذَا بَاطِلٌ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» . وَيَلْزَمُكُمْ أَنْ تُجِيزُوا كِتَابَةَ الْمَجْنُونِ، وَالصَّغِيرِ: بِعُمُومِ تِلْكَ الْأَحَادِيثِ. وَأَيْضًا: فَإِنَّهُ لَا يَكُونُ مُكَاتَبًا إِلَّا مَنْ أَبَاحَ اللَّهُ تَعَالَى مُكَاتَبَتَهُ أَوْ أَمَرَ بِهَا. وَأَيْضًا: فَلَمْ يَأْتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَثَرٌ قَطُّ فِي الْمُكَاتَبِ إِلَّا وَفِيهِ بَيَانٌ أَنَّهُ مُسْلِمٌ - وَأَمْرُ اللَّهِ تَعَالَى بِالْمُكَاتَبَةِ وَبِكُلِّ مَا أَمَرَ بِهِ فَرْضٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَقُولَ لَهُ اللَّهُ تَعَالَى: افْعَلْ أَمْرًا كَذَا، فَيَقُولُ هُوَ: لَا أَفْعَلُ إِلَّا أَنْ يَقُولَ لَهُ تَعَالَى: إِنْ شِئْتَ فَافْعَلْ وَإِلَّا فَلَا.

L27172–27173 Why did they not analogize non-grazing livestock to grazing livestock concerning zakah? Why did they not extend the ruling for thieves to those who are not thieves, and for killers to those who are not killers? This is unmatched stupidity. Some said: "The verse mentions only those possessing good, leaving the ruling for those devoid of good. Thus, we justified contractual emancipation through narrations that mention emancipation collectively." We replied: "Then by this logic, permit consuming every disputed matter based on His saying: {Eat and drink} [Al-Baqarah: 60]." This is invalidated by the Prophet's (peace be upon him) statement: "Every condition not in Allah's Book is void." You would have to permit contractual emancipation for the insane and minors by the general scope of those narrations. Moreover, none becomes a *mukatab* except those whom Allah has permitted to be contracted or commanded it. Furthermore, no narration from the Prophet (peace be upon him) regarding the *mukatab* exists except with clarification that he is Muslim. Allah's command to enact *mukataba*—like every command of His—is a binding obligation. It is impermissible for anyone, when Allah commands an act, to respond: "I will not do it," unless He says: "Do it if you wish, otherwise not."[3][4]

وَرُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا غُنْدَرٌ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّ سِيرِينَ سَأَلَهُ الْمُكَاتَبَةَ؟ فَأَبَى عَلَيْهِ، فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: وَاَللَّهِ لَتُكَاتِبَنَّهُ، وَتَنَاوَلَهُ بِالدِّرَّةِ، فَكَاتَبَهُ. وَبِهِ إِلَى عَلِيِّ بْنِ عَبْدِ اللَّهِ نا رَوْحُ بْنُ عُبَادَةَ نا ابْنُ جُرَيْجٍ قُلْت لِعَطَاءٍ: أَوَاجِبٌ عَلَيَّ إِذَا عَلِمْت لَهُ مَالًا أَنْ أُكَاتِبَهُ؟ قَالَ: مَا أَرَاهُ إِلَّا وَاجِبًا، قَالَ ابْنُ جُرَيْجٍ: وَقَالَ لِي أَيْضًا عَمْرُو بْنُ دِينَارٍ: قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَطَاءٌ: أَنَّ مُوسَى بْنَ أَنَسِ بْنِ مَالِكٍ أَخْبَرَهُ أَنَّ سِيرِينَ أَبَا مُحَمَّدِ بْنِ سِيرِينَ سَأَلَ أَنَسَ بْنَ مَالِكٍ الْكِتَابَةَ؟ وَكَانَ كَثِيرَ الْمَالِ فَأَبَى، فَانْطَلَقَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَاسْتَأْذَنَهُ فَقَالَ عُمَرُ لِأَنَسٍ: كَاتِبْهُ؟ فَأَبَى، فَضَرَبَهُ عُمَرُ بِالدِّرَّةِ وَقَالَ: كَاتِبْهُ، وَيَتْلُو {فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ

L27174–27176 It was narrated to us through the chain of Ismāʿīl ibn Isḥāq, from ʿAlī ibn ʿAbd Allāh, from Ghundar, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from Anas ibn Mālik: that Sirin requested him for a contract for self-ransom, but he refused. ʿUmar ibn al-Khaṭṭāb said to him: "By Allah, you must enter into the contract with him," and he struck him with the whip. Thus, Anas contracted with him.

Via the same chain through ʿAlī ibn ʿAbd Allāh, from Rawḥ ibn ʿUbādah, from Ibn Jurayj: I asked ʿAṭāʾ: "Is it obligatory upon me—if I know the enslaved person possesses wealth—to contract with them?" He replied: "I deem it compulsory." Ibn Jurayj said: ʿAmr ibn Dīnār also told me: Ibn Jurayj said: ʿAṭāʾ informed me that Mūsā ibn Anas ibn Mālik reported to him: that Sirin, father of Muḥammad ibn Sirin, requested Anas ibn Mālik

[3] **Hadith references (L27173):** Sunan Ibn Majah 2521.
[4] **Qur'an references (L27173):** Qur'an 2:60 (Al-Baqarah).

for the contract. Though Sirin had abundant wealth, Anas refused. Sirin then went to ʿUmar ibn al-Khaṭṭāb and sought his intervention. ʿUmar said to Anas: "Contract with him!" but he refused. ʿUmar struck him with the whip and said: "Contract with him!" while reciting: {"Then contract with them if you know of good in them"} [24:33]. Thus, Anas entered into the contract.

Via the same chain through Ibn al-Madīnī, from Saʿīd ibn ʿĀmir, from Juwayriyyah ibn Asmāʾ, from Muslim ibn Abī Maryam, from a slave owned by ʿUthmān ibn ʿAffān: he mentioned a ḥadīth in which he sought help from al-Zubayr, and they entered together to [...] He stood before Uthman and said: "O Commander of the Faithful, has so-and-so entered into a kitabah contract with him?" Uthman frowned and said: "Yes. Were it not that it is in the Book of Allah the Exalted, I would not have done that."[5]

L27177 He mentioned the report narrated from Masruq and al-Dahhak. Ishaq ibn Rahawayh said: "The master's granting of the mukataba is obligatory if the enslaved person requests it, and I fear the master would be sinning if he refuses to do so, nor does the judge compel the master to do so." Abu Sulayman and our companions affirm the obligation of this ruling and the judge's authority to enforce it. This is supported by Umar and Uthman's view of its obligation. Umar enforced it and imposed penalties on those who refused. Al-Zubair was present when Uthman interpreted the Quranic verse as denoting obligation, and no criticism was directed at this. When Anas ibn Malik was reminded of the verse, he hastened to resume granting the mukataba and abandoned his refusal. This confirms that no dissent is recorded among the Companions (may Allah be pleased with them) on this matter. The Hanafis, Malikis, and Shafi'is opposed this position, claiming it is not obligatory. They attempted to obscure the issue with flawed arguments, such as citing Quranic verses indicating permissibility rather than obligation, like {When you have completed your rites, then hunt} [5:2] and {When the prayer is concluded, disperse freely in the land} [62:10].[6]

L27178 This provides no valid proof for them, for had there not been other explicit

فِيهِمْ خَيْرًا} [النور: ٣٣] فَكَاتَبَهُ أَنَسٌ. وَبِهِ إِلَى ابْنِ الْمَدِينِيِّ نا سَعِيدُ بْنُ عَامِرٍ نا جُوَيْرِيَةُ بْنُ أَسْمَاءَ عَنْ مُسْلِمِ بْنِ أَبِي مَرْيَمَ عَنْ عَبْدٍ كَانَ لِعُثْمَانَ بْنِ عَفَّانَ فَذَكَرَ حَدِيثًا وَفِيهِ: أَنَّهُ اسْتَعَانَ بِالزُّبَيْرِ فَدَخَلَ مَعَهُ عَلَى عُثْمَانَ، فَقَامَ بَيْنَ يَدَيْهِ قَائِمًا وَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ فُلَانٌ كَاتَبَهُ؟ فَقَطَّبَ ثُمَّ قَالَ: نَعَمْ. وَلَوْلَا أَنَّهُ فِي كِتَابِ اللَّهِ تَعَالَى مَا فَعَلْت ذَلِكَ

وَذَكَرَ الْخَبَرَ وَرُوِيَ عَنْ مَسْرُوقٍ وَالضَّحَّاكِ، وَقَالَ إِسْحَاقُ بْنُ رَاهْوَيْهِ: مُكَاتَبَتُهُ وَاجِبَةٌ إِذَا طَلَبَهَا، وَأَخْشَى أَنْ يَأْثَمَ إِنْ لَمْ يَفْعَلْ ذَلِكَ، وَلَا يُجْبِرُهُ الْحَاكِمُ عَلَى ذَلِكَ - وَبِإِيجَابِ ذَلِكَ، وَجَبْرِ الْحَاكِمِ عَلَيْهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. فَهَذَا عُمَرُ، وَعُثْمَانُ يَرَيَانِهَا وَاجِبَةً، وَيُجْبِرُ عُمَرُ عَلَيْهَا وَيَضْرِبُ فِي الِامْتِنَاعِ مِنْ ذَلِكَ، وَالزُّبَيْرُ يَسْمَعُ حَمَلَ عُثْمَانُ الْآيَةَ عَلَى الْوُجُوبِ فَلَا يُنْكِرُ عَلَى ذَلِكَ، وَأَنَسُ بْنُ مَالِكٍ لَمَّا ذُكِّرَ بِالْآيَةِ سَارَعَ إِلَى الرُّجُوعِ إِلَى الْمُكَاتَبَةِ وَتَرَكَ امْتِنَاعَهُ. فَصَحَّ أَنَّهُ لَا يُعْرَفُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -. وَخَالَفَ ذَلِكَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فَقَالُوا لَيْسَتْ وَاجِبَةً، وَمَوَّهُوا فِي ذَلِكَ بِتَشْغِيبَاتٍ، مِنْهَا: أَنَّهُمْ ذَكَرُوا آيَاتٍ مِنْ الْقُرْآنِ عَلَى النَّدْبِ مِثْلَ {وَإِذَا حَلَلْتُمْ فَاصْطَادُوا} [المائدة: ٢] ، {فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ} [الجمعة: ١٠] .

[5] **Qur'an references (L27174):** Qur'an 24:33 (An-Nur).

texts, these two matters would have been obligatory (fard). However, since the Messenger of Allah—peace be upon him—exited the ritual state (ihram) of his Hajj and Umrah without hunting, the command regarding that became recommended. When the Messenger of Allah—peace be upon him—urged remaining in the prayer area and encouraged it, dispersal became recommended. If they possess a text clarifying that the command to enforce the *kitabah* contract (for self-manumission) is a recommendation, would we not adopt their position? Otherwise, those who misplace the Quran's words have lied. The existence of a specific or abrogated command does not necessitate that every Quranic command is abrogated or specific. They argued: Since there is no disagreement that the owner may sell his slave if the slave requests the *kitabah* contract, we know the command for it is a recommendation. Abu Muhammad said: This is a weak distortion. Indeed, he may sell his slave—even after contracting the *kitabah* with him—as long as the slave has not fulfilled the terms, and he may sell the equivalent unpaid portion until emancipation is achieved through fulfillment. Yet they assert that if one vows to free his slave upon his father's arrival, he may sell the slave before his father arrives—thereby nullifying his vow, which he was religiously obligated to fulfill if he had not sold him. They also said: We find no basis in the foundational legal principles (*usul*) compelling anyone to enter a contract regarding property they own.

وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَوْلَا نُصُوصٌ أُخَرُ جَاءَتْ لَكَانَ هَذَانِ الْأَمْرَانِ فَرْضًا، لَكِنْ لَمَّا حَلَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ حَجِّهِ وَعُمْرَتِهِ وَلَمْ يَصْطَدْ صَارَ الْأَمْرُ بِذَلِكَ نَدْبًا - وَلَمَّا حَضَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْقُعُودِ فِي مَوْضِعِ الصَّلَاةِ وَرَغَّبَ فِي ذَلِكَ كَانَ الِانْتِشَارُ نَدْبًا. فَإِنْ كَانَ عِنْدَهُمْ نَصٌّ يُبَيِّنُ أَنَّ الْأَمْرَ بِالْكِتَابَةِ نَدْبٌ صِرْنَا إلَيْهِمْ؟ وَإِلَّا فَقَدْ كَذَبَ مُحَرِّفُ الْقُرْآنِ عَنْ مَوْضِعِ كَلِمَاتِهِ، وَلَيْسَ إذَا وُجِدَ أَمْرٌ مَخْصُوصٌ أَوْ مَنْسُوخٌ وَجَبَ أَنْ يَكُونَ كُلُّ أَمْرٍ فِي الْقُرْآنِ مَنْسُوخًا أَوْ مَخْصُوصًا. وَقَالُوا: لَمَّا لَمْ يَخْتَلِفُوا فِي أَنَّ لَهُ بَيْعَهُ إذَا طَلَبَ مِنْهُ الْكِتَابَةَ عَلِمْنَا أَنَّ الْأَمْرَ بِهَا نَدْبٌ. قَالَ أَبُو مُحَمَّد: وَهَذَا تَمْوِيهٌ بَارِدٌ، نَعَمْ، وَلَهُ بَيْعُهُ، وَإِنْ كَاتَبَهُ مَا لَمْ يُؤَدِّ، وَلَهُ بَيْعُ مَا قَابَلَ مِنْهُ مَا لَمْ يُؤَدِّ حَتَّى يَتِمَّ عِتْقُهُ بِالْأَدَاءِ. وَهُمْ يَقُولُونَ فِيمَنْ نَذَرَ عِتْقَ عَبْدِهِ إنْ قَدِمَ أَبُوهُ: أَنَّ لَهُ بَيْعَهُ مَا لَمْ يَقْدَمْ أَبُوهُ - وَفِي ذَلِكَ بُطْلَانُ نَذْرِهِ الْمُفْتَرَضِ عَلَيْهِ الْوَفَاءُ بِهِ لَوْ لَمْ أَبِعْهُ. وَقَالُوا: لَمْ نَجِدْ فِي الْأُصُولِ أَنْ يُجْبَرَ أَحَدٌ عَلَى عَقْدٍ فِيمَا يَمْلِكُ؟

L27179–27180 So we said, "What was the outcome?" You have never once found in the foundational sources that anyone is compelled to refrain from selling his female slave, and she is freed from his estate upon his death—yet you have ruled precisely this regarding the umm al-walad (the enslaved mother of her master's child).

فَقُلْنَا: فَكَانَ مَاذَا؟ وَلَا وَجَدْتُمْ قَطُّ فِي الْأُصُولِ أَنْ يُجْبَرَ أَحَدٌ عَلَى الِامْتِنَاعِ مِنْ بَيْعِ أَمَتِهِ، وَتَخْرُجُ حُرَّةً مِنْ رَأْسِ مَالِهِ إنْ مَاتَ، وَقَدْ قُلْتُمْ بِذَلِكَ فِي أُمِّ الْوَلَدِ.

L27181 Have you ever found [a valid] fasting of an isolated month besides Ramadan, yet they invalidate its fasting on that basis? There is no difference between one who says: "I will not accept divine law—until I find an analogous case for it," and one who says: "I will not accept it until I find two analogous cases."

وَلَا وَجَدْتُمْ قَطُّ صَوْمَ شَهْرٍ مُفْرَدٍ إلَّا رَمَضَانَ، فَأَبْطَلُوا صَوْمَهُ بِذَلِكَ؟ وَلَا فَرْقَ بَيْنَ مَنْ قَالَ: لَا آخُذُ بِشَرِيعَةٍ - حَتَّى أَجِدَ لَهَا نَظِيرًا، وَبَيْنَ مَنْ قَالَ: لَا آخُذُ بِهَا حَتَّى أَجِدَ لَهَا نَظِيرَيْنِ.

[6] **Qur'an references (L27177):** Qur'an 5:2 (Al-Ma'idah); Qur'an 62:10 (Al-Jumu'ah).

وَقَدْ وَجَدْنَا: الْمُفْلِسَ يُجْبَرُ عَلَى بَيْعِ مَالِهِ فِي أَدَاءِ مَا عَلَيْهِ. وَوَجَدْنَا: الشَّفِيعَ يُجْبِرُ الْمُشْتَرِيَ عَلَى تَصْيِيرِ مِلْكِهِ إِلَيْهِ. وَقَالُوا: لَوْ كَانَ ذَلِكَ وَاجِبًا عَلَى السَّيِّدِ إِذَا طَلَبَهُ الْعَبْدُ لَوَجَبَ أَيْضًا أَنْ يَكُونَ وَاجِبًا عَلَى الْعَبْدِ إِذَا طَلَبَهُ السَّيِّدُ - وَهَذَا أَسْخَفُ مَا أَتَوْا بِهِ، لِأَنَّ النَّصَّ جَاءَ بِذَلِكَ إِذَا طَلَبَهَا الْعَبْدُ، وَلَمْ يَأْتِ بِهَا إِذَا طَلَبَهَا السَّيِّدُ، فَإِنْ كَانَ هَذَا عِنْدَهُمْ قِيَاسًا صَحِيحًا فَلْيَقُولُوا: إِنَّهُ لَمَّا كَانَ الزَّوْجُ إِذَا أَرَادَ أَنْ يُطَلِّقَ امْرَأَتَهُ كَانَ لَهُ أَنْ يُطَلِّقَهَا، فَكَذَلِكَ أَيْضًا لِلْمَرْأَةِ إِذَا أَرَادَتْ طَلَاقَهُ أَنْ يَكُونَ لَهَا أَنْ تُطَلِّقَهُ. وَلَمَّا كَانَ لِلشَّفِيعِ أَخْذُ الشِّقْصِ وَإِنْ كَرِهَ الْمُشْتَرِي - كَانَ لِلْمُشْتَرِي أَيْضًا إِلْزَامُهُ إِيَّاهُ - وَإِنْ كَرِهَ الشَّفِيعُ. وَهَذِهِ وَسَاوِسُ سَخِرَ الشَّيْطَانُ بِهِمْ فِيهَا، وَشَوَاذٌّ سَبَّبَ لَهُمْ مِثْلَ هَذِهِ الْمَضَاحِكِ فِي الدِّينِ، فَاتَّبَعُوهُ عَلَيْهَا، وَلَا نَدْرِي بِأَيِّ نَصٍّ أَمْ بِأَيِّ عَقْلٍ وَجَبَ هَذَا الَّذِي يَهْذِرُونَ بِهِ؟ وَقَالُوا: كَانَ الْأَصْلُ أَنْ لَا تَجُوزَ الْكِتَابَةُ، لِأَنَّهَا عَقْدُ غَرَرٍ، وَمَا كَانَ هَكَذَا فَسَبِيلُهُ إِذْ جَاءَ بِهِ نَصٌّ - أَنْ يَكُونَ نَدْبًا، لِأَنَّهُ إِطْلَاقٌ مِنْ حَظْرٍ؟ فَقُلْنَا: كَذَبْتُمْ بَلْ الْأَصْلُ لِأَنَّهُ لَا يَلْزَمُ شَيْءٌ مِنْ الشَّرِيعَةِ، وَلَا يَجُوزُ الْقَوْلُ بِهِ حَتَّى يَأْمُرَ اللَّهُ تَعَالَى بِهِ، فَإِذَا أَمَرَ بِهِ عَزَّ وَجَلَّ فَسَبِيلُهُ أَنْ يَكُونَ فَرْضًا، يَعْصِي مَنْ أَبَى قَبُولَهُ، هَذَا هُوَ الْحَقُّ الَّذِي لَا تَخْتَلِفُ الْعُقُولُ فِيهِ، وَمَا جَاءَ قَطُّ نَصٌّ وَلَا مَعْقُولٌ بِأَنَّ الْأَمْرَ بَعْدَ التَّحْرِيمِ لَا يَكُونُ إِلَّا نَدْبًا، بَلْ قَدْ كَانَتْ الصَّلَاةُ إِلَى بَيْتِ الْمَقْدِسِ فَرْضًا، وَإِلَى الْكَعْبَةِ مَحْظُورَةً مُحَرَّمَةً، ثُمَّ جَاءَ الْأَمْرُ بِالصَّلَاةِ إِلَى الْكَعْبَةِ بَعْدَ الْحَظْرِ، فَكَانَ فَرْضًا.

L27182 We have established that an insolvent debtor is compelled to sell his property to pay what he owes. We have also established that the preemption right holder compels the purchaser to surrender ownership to him. They argued: "If this obligation were incumbent upon the master when demanded by the slave, it would equally obligate the slave when demanded by the master." This is the most preposterous argument they devised, for the explicit text stipulates this only when demanded by the slave, not the master. Were this analogy valid in their view, let them consequently assert: "Just as a husband may divorce his wife at will, the wife too should divorce him at will. And just as the preemptor may seize the share despite the buyer's objection, the buyer should equally impose it on the preemptor against his will." These are delusions Satan has mocked them with—anomalous rulings that spawned such religious absurdities they blindly follow. By what text or rational principle could this drivel they spout be deemed obligatory?

They further contended: "The fundamental principle prohibits contractual manumission (kitābah) as a speculative transaction. Had a text sanctioned it, it would merely be recommended as an exemption from prohibition." We countered: "You are gravely mistaken! The true principle is that no ruling becomes legally binding until ordained by Allah Almighty. When He commands it, compliance becomes obligatory—disobeyed only by the recalcitrant. This is the unambiguous truth, undisputed by sound reasoning. No text or logic dictates that post-prohibition injunctions are merely recommended. Consider how prayer toward Jerusalem was once obligatory while prayer toward the Kaaba was strictly forbidden. When the command shifted to the Kaaba after prohibition, it became obligatory."

وَقَالُوا: لَوْ كَانَتْ الْكِتَابَةُ إِذَا طَلَبَهَا الْعَبْدُ فَرْضًا لَوَجَبَ أَنْ يُجْبَرَ السَّيِّدُ عَلَيْهَا، وَإِنْ أَرَادَهَا الْعَبْدُ بِدِرْهَمٍ. وَهَذَا قَوْلٌ فَاسِدٌ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْمُرْ قَطُّ بِإِجَابَةِ الْعَبْدِ إِلَى مَا أَرَادَ أَنْ يُكَاتَبَ عَلَيْهِ، وَإِنَّمَا أُمِرَ بِإِجَابَتِهِ إِلَى الْكِتَابَةِ ثُمَّ تَرَكَ الْمُكَاتَبَةَ مُجْمَلَةً بَيْنَ السَّيِّدِ وَالْعَبْدِ،

L27183–27185 They argued: "If the emancipation contract (kitābah) were obligatory whenever the slave requests it, the master would have to be compelled to it – even if the slave offers a dirham for his freedom." This is an invalid view, for Allah the Exalted has never commanded compliance with the slave's demand to... He wished to enter into a contract of manumission, and the master was commanded to accept his request for the contract. The terms of the con-

tract were left undefined between the master and the slave because Allah's command, {So contract with them} (24:33), entails the participation of two parties. Allah also said, {Allah does not burden any soul beyond its capacity} (2:286), thus it is obligatory not to impose upon the slave what exceeds his capacity. The Messenger of Allah, peace be upon him, prohibited the squandering of wealth, so it is obligatory not to require the master to waste his wealth. These two texts establish that the obligations binding both parties must be within the slave's capacity without undue hardship, and must not involve unfair loss to the master nor squandering of his wealth. They concur with us that the master may impose the kharāj (land tax) on his slave and compel him to pay it, yet they do not permit the master to demand what the slave cannot bear, nor compel the slave to pay what the master disapproves of—even if the slave could provide more without hardship. This ruling applies specifically to the contract of manumission. Similarly, if a man marries without stipulating a dowry, he is compelled to pay a dowry equivalent to her peers, and she is compelled to accept it; neither may stipulate terms arbitrarily. The Ḥanafīs upheld the obligation of demanding service and enforcing it. Why, then, do they not confront their own stance with analogous objections—such as if the slave says, "I will pay only one dirham over sixty years," while the party entitled to the service demands, "You must pay one hundred thousand dinars immediately"?[7]

L27186 The Mālikīs have mandated the kharāj on conquered land as an obligation permitting no alternative, yet they neither clarified what it is nor specified its quantity. How many cases exist where the Shāfiʿīs imposed obligations without defining their measures—such as their statement: "Prayer is invalidated by excessive action but not by slight action"—an obligation without defined limits. They prescribed mut'ah as an obligation without setting boundaries for it, and similar instances from them are exceedingly numerous. Thus, all they have obscured with specious arguments is rendered invalid—and success is with Allah, the Exalted.

L27187 ## The Issue of What It Is Permissible to Write On

لِأَنَّ قَوْله تَعَالَى: {فَكَاتِبُوهُمْ} [النور: ٣٣] فِعْلٌ مِنْ فَاعِلَيْنِ، وَقَالَ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] فَوَجَبَ أَنْ لَا يُكَلَّفَ الْعَبْدَ مَا لَيْسَ فِي وُسْعِه. وَنَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ إضَاعَةِ الْمَالِ، فَوَجَبَ أَنْ لَا يُكَلَّفَ السَّيِّدَ إضَاعَةَ مَالِهِ. وَصَحَّ بِهَذَيْنِ النَّصَّيْنِ: أَنَّ اللَّازِمَ لَهُمَا مَا أَطَاقَهُ الْعَبْدُ بِلَا حَرَجٍ، وَمَا لَا غَبْنَ فِيهِ عَلَى السَّيِّدِ، وَلَا إضَاعَةَ لِمَالِهِ وَقَدْ وَافَقُونَا عَلَى أَنَّ لِلسَّيِّدِ تَكْلِيفَ عَبْدِهِ الْخَرَاجَ وَإِجْبَارَهُ عَلَيْهِ، وَلَمْ يَكُنْ ذَلِكَ عِنْدَهُمْ مُجِيزًا أَنْ يُكَلِّفَهُ مِنْ ذَلِكَ مَا لَا يُطِيقُ، وَلَا إجَابَةُ الْعَبْدِ إلَى أَدَاءِ مَا لَا يَرْضَى السَّيِّدُ بِهِ مِمَّا هُوَ قَادِرٌ بِلَا مَشَقَّةٍ عَلَى أَكْثَرَ مِنْهُ، وَهَذَا هُوَ الْحُكْمُ فِي الْكِتَابَةِ بِعَيْنِهِ وَكَذَلِكَ مَنْ تَزَوَّجَ وَلَمْ يَذْكُرْ صَدَاقًا، فَإِنَّهُ يُجْبَرُ عَلَى أَدَاءِ صَدَاقِ مِثْلِهَا، وَتُجْبَرُ عَلَى قَبُولِهِ، وَلَا تُعْطَى بِرَأْيِهَا، وَلَا يُعْطِي هُوَ بِرَأْيِهِ. وَقَدْ رَأَى الْحَنَفِيُّونَ الِاسْتِسْعَاءَ وَالْقَضَاءَ بِهِ وَاجِبًا، فَهَلَّا عَارَضُوا أَنْفُسَهُمْ بِمِثْلِ هَذِهِ الْمُعَارَضَةِ فَقَالُوا: إنْ قَالَ الْعَبْدُ: لَا أُؤَدِّي إلَّا دِرْهَمًا فِي سِتِّينَ سَنَةً، وَقَالَ الْمُسْتَسْعَى لَهُ: لَا تُؤَدِّي إلَّا مِائَةَ أَلْفِ دِينَارٍ مِنْ يَوْمِهِ.

وَقَدْ أَوْجَبَ الْمَالِكِيُّونَ الْخَرَاجَ عَلَى الْأَرْضِ الْمُفْتَتَحَةِ فَرْضًا لَا يَجُوزُ غَيْرُهُ، ثُمَّ لَمْ يُبَيِّنُوا مَا هُوَ وَلَا مِقْدَارَهُ. وَكَمْ قِصَّةٍ قَالَ فِيهَا الشَّافِعِيُّونَ بِإِيجَابِ فَرْضٍ حَيْثُ لَا يَحُدُّونَ مِقْدَارَهُ، كَقَوْلِهِمْ: الصَّلَاةُ تَبْطُلُ بِالْعَمَلِ الْكَثِيرِ، وَلَا تَبْطُلُ بِالْعَمَلِ الْيَسِيرِ، فَهَذَا فَرْضٌ غَيْرُ مَحْدُودٍ. وَأَوْجَبُوا الْمُتْعَةَ فَرْضًا ثُمَّ لَمْ يَحُدُّوا فِيهَا حَدًّا، وَمِثْلُ هَذَا لَهُمْ كَثِيرٌ جِدًّا فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَا تَجُوز عَلَيْهِ الْكِتَابَة]

[7] **Qur'an references (L27183):** Qur'an 2:286 (Al-Baqarah); Qur'an 24:33 (An-Nur).

L27188 1687 - Issue: Contractual manumission is permissible for property that is permissible to own, for work to be performed within a specified term or without a specified term—whether payable immediately or as a deferred liability—and for payment in one installment, two installments, or more.

L27189–27192 We used to say previously: It is not valid except upon two installments or more, until we found what Ahmad ibn Muhammad al-Talamanki narrated to us. He said: Ibn Mufarrij narrated to us, Ibrahim ibn Ahmad ibn Firas narrated to us, Ahmad ibn Muhammad ibn Salim al-Naysaburi narrated to us, Ishaq ibn Rahawayh narrated to us, Yahya ibn Adam narrated to us, Ibn Idris - who is Abdullah - narrated to us, Muhammad ibn Ishaq narrated from Asim ibn Umar ibn Qatadah - who is the son of al-Nu'man al-Dhafari - from Muhammad ibn Labid from Ibn Abbas: "Salman al-Farisi narrated to me," mentioning a lengthy hadith that included: "A man from Banu Qurayzah came and purchased me," then he related an account containing: "I embraced Islam and slavery preoccupied me until I missed the Battle of Badr. Then the Messenger of Allah - peace be upon him - said to me: 'Write a manumission contract?' I requested this from my master, and I persisted with him until he contracted me to cultivate three hundred palm trees for him and pay forty ouqiyahs of gold. I informed the Messenger of Allah - peace be upon him - of this. He told me: 'Go and dig their trenches. When you wish to plant them, do not plant them until you come to me and notify me, so I may plant them with my own hand.' He said: 'I began digging with my companions' help until I prepared three hundred planting trenches. Every man brought palm shoots to assist me. Then the Messenger of Allah - peace be upon him - came and planted them with his hand, smoothing their soil and blessing them until completion. By Him in whose hand Salman's soul lies, not a single one perished, while the gold obligation remained. When a companion brought the Messenger of Allah - peace be upon him - a gold piece resembling an egg from mines, he said: 'What of the destitute Persian under a manumission contract? Summon him.' I came, whereupon he said: 'Take this to settle your debt.' I asked: 'How can this suffice for my debt, O Messenger of Allah?' He replied: 'Allah will discharge your debt.' By Him in whose hand my soul rests, I weighed forty ouqiyahs from it and

١٦٨٧ - مَسْأَلَةٌ: وَالْكِتَابَةُ جَائِزَةٌ عَلَى مَالٍ جَائِزٍ تَمَلُّكُهُ، وَعَلَى عَمَلٍ فِيهِ إِلَى أَجَلٍ مُسَمًّى، وَإِلَى غَيْرِ أَجَلٍ مُسَمًّى، لَكِنْ حَالًّا أَوْ فِي الذِّمَّةِ، وَعَلَى نَجْمٍ وَنَجْمَيْنِ وَأَكْثَرَ.

وَكُنَّا قَبْلُ نَقُولُ: لَا تَجُوزُ إِلَّا عَلَى نَجْمَيْنِ فَصَاعِدًا حَتَّى وَجَدْنَا مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ قَالَ: نا ابْنُ مُفَرِّجٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ سَالِمٍ النَّيْسَابُورِيُّ نا إِسْحَاقُ بْنُ رَاهْوَيْهِ نا يَحْيَى بْنُ آدَمَ نا ابْنُ إِدْرِيسَ - هُوَ عَبْدُ اللَّهِ - نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ عَاصِمِ بْنِ عُمَرَ بْنِ قَتَادَةَ - هُوَ ابْنُ النُّعْمَانَ الظَّفَرِيُّ - عَنْ مُحَمَّدِ بْنِ لَبِيدٍ عَنْ ابْنِ عَبَّاسٍ: «حَدَّثَنِي سَلْمَانُ الْفَارِسِيُّ، فَذَكَرَ حَدِيثًا طَوِيلًا، وَفِيهِ: فَقَدِمَ رَجُلٌ مِنْ بَنِي قُرَيْظَةَ فَابْتَاعَنِي، ثُمَّ ذَكَرَ خَبَرًا وَفِيهِ: فَأَسْلَمْتُ وَشَغَلَنِي الرِّقُّ حَتَّى فَاتَتْنِي بَدْرٌ، ثُمَّ قَالَ لِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: كَاتِبْ؟ فَسَأَلْتُ صَاحِبِي ذَلِكَ، فَلَمْ أَزَلْ بِهِ حَتَّى كَاتَبَنِي عَلَى أَنْ أُحْيِيَ لَهُ ثَلَاثَمِائَةِ نَخْلَةٍ، وَبِأَرْبَعِينَ أُوقِيَّةً مِنْ ذَهَبٍ: فَأَخْبَرْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ؟ فَقَالَ لِي: اذْهَبْ فَفَقِّرْ لَهَا، فَإِذَا أَرَدْتَ أَنْ تَضَعَهَا فَلَا تَضَعْهَا حَتَّى تَأْتِيَنِي فَتُؤْذِنَنِي فَأَكُونَ أَنَا الَّذِي أَضَعُهَا بِيَدِي؟ قَالَ: فَقُمْتُ بِتَفْقِيرِي وَأَعَانَنِي أَصْحَابِي حَتَّى فَقَرْتُ لَهَا سَرَبَهَا ثَلَاثَمِائَةِ سَرْبَةٍ، وَجَاءَ كُلُّ رَجُلٍ بِمَا أَعَانَنِي بِهِ مِنَ النَّخْلِ، ثُمَّ جَاءَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَعَلَ يَضَعُهُ بِيَدِهِ وَيُسَوِّي عَلَيْهَا تُرَابَهَا وَيُبَرِّكُ حَتَّى فَرَغَ مِنْهَا، فَوَالَّذِي نَفْسُ سَلْمَانَ بِيَدِهِ مَا مَاتَتْ مِنْهَا وَدِيَةٌ، وَبَقِيَتْ الذَّهَبُ فَبَيْنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ أَتَاهُ رَجُلٌ مِنْ أَصْحَابِهِ بِمِثْلِ الْبَيْضَةِ مِنْ ذَهَبٍ أَصَابَهَا مِنْ بَعْضِ الْمَعَادِنِ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: مَا فَعَلَ الْفَارِسِيُّ الْمِسْكِينُ الْمُكَاتَبُ؟ اُدْعُوهُ لِي؟ فَدُعِيتُ فَجِئْتُ، فَقَالَ: اذْهَبْ بِهَذِهِ

paid my due." He said: "Salman was emancipated, fought at the Trench, and participated in all subsequent battles with the Messenger of Allah - peace be upon him." Al-Shafi'i said: "The manumission contract is only valid upon two installments due to agreement on its validity thus." Abu Muhammad said: "No place remains for personal reasoning when the narration is sound." If asked: "Why claim a slave becomes free upon Islam while his master remains disbelieving - yet Salman remained enslaved?" We respond: "We only affirm this based on the Messenger's - peace be upon him - freeing Muslim slaves from the people of Ta'if who came to him, and Allah's decree: 'Allah will never grant disbelievers authority over believers' (4:141)." The city of Ta'if after the Battle of the Trench for an extended period, and the account of Salman, are consistent with the established foundational principle. Thus, the abrogation of the permissibility of a disbeliever having legal ownership of a believer was validated through the revelation of the verse, while the remainder of the ruling remains as it originally stood, and success is from Allah, the Most High.[8]

فَأَدَّهَا بِمَا عَلَيْكَ مِنْ الْمَالِ؟ فَقُلْتُ: وَأَيْنَ تَقَعُ هَذِهِ يَا رَسُولَ اللَّهِ مِمَّا عَلَيَّ؟ فَقَالَ: إنَّ اللَّهَ سَيُؤَدِّي عَنْكَ مَا عَلَيْكَ مِنْ الْمَالِ، قَالَ: فَوَالَّذِي نَفْسِي بِيَدِهِ لَقَدْ وَزَنْتُ لَهُ مِنْهَا أَرْبَعِينَ أُوقِيَّةً حَتَّى أَوْفَيْتُهُ الَّذِي عَلَيَّ، قَالَ: فَأُعْتِقَ سَلْمَانُ، وَشَهِدَ الْخَنْدَقَ، وَبَقِيَّةَ مَشَاهِدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» وَقَالَ الشَّافِعِيُّ: لَا تَجُوزُ الْكِتَابَةُ إلَّا عَلَى نَجْمَيْنِ لِلاتِّفَاقِ عَلَى جَوَازِهَا كَذَلِكَ. قَالَ أَبُو مُحَمَّد: لَا حَظَّ لِلنَّظَرِ مَعَ صِحَّةِ الْخَبَرِ. فَإِنْ قِيلَ: لِمَ قُلْتُمْ إنَّ الْعَبْدَ إذَا أَسْلَمَ وَسَيِّدُهُ كَافِرٌ فَهُوَ حُرٌّ - وَهَذَا سَلْمَانُ أَسْلَمَ وَسَيِّدُهُ كَافِرٌ وَلَمْ يُعْتَقْ بِذَلِكَ؟ قُلْنَا: لَمْ نَقُلْ بِهَذَا إلَّا لِعِتْقِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ خَرَجَ إلَيْهِ مُسْلِمًا مِنْ عَبِيدِ أَهْلِ الطَّائِفِ. وَلِقَوْلِ اللَّهِ تَعَالَى: {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] وَالطَّائِفُ بَعْدَ الْخَنْدَقِ بِدَهْرٍ، وَقِصَّةُ سَلْمَانَ، مُوَافِقَةٌ لِمَعْهُودِ الْأَصْلِ فَصَحَّ بِنُزُولِ الْآيَةِ نَسْخُ جَوَازِ تَمَلُّكِ الْكَافِرِ لِلْمُؤْمِنِ، وَبَقِيَ سَائِرُ الْخَبَرِ عَلَى مَا فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Kitābah for a Slave Who Has Not Reached Puberty

[مَسْأَلَة كِتَابَة مَمْلُوك لَمْ يَبْلُغ]

L27193

L27194 Issue 1688: It is not permissible to write a kitabah contract for a slave who has not reached maturity, because the Prophet—peace and blessings be upon him—stated that "the pen is lifted from the child until he reaches maturity." Abu Hanifah said: "The writing of his kitabah contract is permissible," and this contradicts the Sunnah.

١٦٨٨ - مَسْأَلَةٌ: وَلَا تَجُوزُ كِتَابَةُ مَمْلُوكٍ لَمْ يَبْلُغْ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَ بِأَنَّ الْقَلَمَ مَرْفُوعٌ عَنْ الصَّبِيِّ حَتَّى يَبْلُغَ. قَالَ أَبُو حَنِيفَةَ: كِتَابَتُهُ جَائِزَةٌ، وَهَذَا خِلَافُ السُّنَّةِ.

L27195 It is impermissible for someone to enter into a *mukataba* contract with another person's slave, based on Allah's statement, exalted is He: *"No soul earns except against itself"* [6:164]. Thus, no one is held liable for another's deeds except where permitted by the Qur'an and the Sunnah. A testamentary

وَلَا يَجُوزُ أَنْ يُكَاتِبَ عَبْدَ غَيْرِهِ لِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] فَلَا يَجُوزُ عَمَلُ أَحَدٍ عَلَى غَيْرِهِ، إلَّا حَيْثُ أَجَازَهُ الْقُرْآنُ وَالسُّنَّةُ. وَلَا

[8] **Qur'an references (L27190):** Qur'an 4:141 (An-Nisa).

guardian may not enter into a *mukataba* for a slave owned by an orphan, nor may a father do so for his minor son's slave, because this action is not addressed in the verse and because it disregards the minor's interest, as the minor is capable of retaining his earnings without transferring ownership.[9]

L27196 **A juridical issue concerning an enslaved person under a mukataba contract who has not paid any portion of the agreed sum.**

L27197–27199 1689 - Issue: A mukatab (a slave contracted for manumission) remains a slave until he pays any portion [of his contract]. When he pays part of his kitabah (manumission contract), he initiates emancipation, attaining freedom proportionate to his payment while the remainder remains enslaved. The emancipated portion follows rulings for free persons regarding prescribed punishments (ḥudūd), inheritance, blood money, and other matters. The enslaved portion follows rulings for slaves regarding blood money, inheritance, prescribed punishments, and other matters. This continues perpetually until emancipation is completed through full payment. This derives from our narration through Ahmad ibn Shu'ayb's chain: Muhammad ibn 'Isa al-Dimashqi narrated to us; Yazid ibn Harun narrated to us; Hammad ibn Salamah narrated from Qatadah and Ayyub al-Sikhtiyani. Qatadah reported: From Khilas ibn 'Amr from 'Ali ibn Abi Talib. Ayyub reported: From 'Ikrimah from Ibn 'Abbas. Both narrate from Allah's Messenger—peace be upon him and his family—who said: "The mukatab is emancipated proportionally to his payment, prescribed punishments apply to him proportionally to what has been emancipated of him, and he inherits proportionally to his emancipated share." Through Abu Dawud's chain: 'Uthman ibn Abi Shaybah narrated to us; Ya'la ibn 'Ubayd al-Tanafisi narrated to us; Hajjaj the Weaver (son of Abi 'Uthman) narrated from Yahya ibn Abi Kathir from 'Ikrimah from Ibn 'Abbas, who said: The Messenger of Allah (may Allah's blessings and peace be upon him and his family) decreed regarding a *mukatab* [a slave under a manumission contract] who kills someone: he pays from the portion he has fulfilled of his *mukataba* contract the *diyah* of a free person, and from

[9] **Qur'an references (L27195):** Qur'an 6:164 (Al-An'am).

تَجُوزُ كِتَابَةُ الْوَصِيِّ غُلَامَ يَتِيمِهِ، وَلَا مُكَاتَبَةُ الْأَبِ غُلَامَ ابْنِهِ الصَّغِيرِ، لِأَنَّهُ غَيْرُ الْمُخَاطَبِ فِي الْآيَةِ، وَلِأَنَّهُ لَيْسَ نَظَرًا لِلصَّغِيرِ، إِذْ هُوَ قَادِرٌ عَلَى أَخْذِ كَسْبِهِ بِغَيْرِ إِخْرَاجِهِ عَنْ مِلْكِهِ.

[مَسْأَلَة مُكَاتَبَة عَبْد لَمْ يؤد شَيْئًا]

١٦٨٩ - مَسْأَلَةٌ: وَالْمُكَاتَبُ عَبْدٌ مَا لَمْ يُؤَدِّ شَيْئًا، فَإِذَا أَدَّى شَيْئًا مِنْ كِتَابَتِهِ فَقَدْ شَرَعَ فِيهِ الْعِتْقَ، وَالْحُرِّيَّةَ بِقَدْرِ مَا أَدَّى، وَبَقِيَ سَائِرُهُ مَمْلُوكًا، وَكَانَ لِمَا عَتَقَ مِنْهُ حُكْمُ الْحُرِّيَّةِ فِي الْحُدُودِ، وَالْمَوَارِيثِ، وَالدِّيَاتِ وَغَيْرِ ذَلِكَ وَكَانَ لِمَا بَقِيَ مِنْهُ حُكْمُ الْعَبِيدِ فِي الدِّيَاتِ، وَالْمَوَارِيثِ، وَالْحُدُودِ، وَغَيْرِ ذَلِكَ وَهَكَذَا أَبَدًا حَتَّى يَتِمَّ عِتْقُهُ بِتَمَامِ أَدَائِهِ. لِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عِيسَى الدِّمَشْقِيُّ نا يَزِيدُ بْنُ هَارُونَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ، وَأَيُّوبَ السِّخْتِيَانِيِّ، قَالَ قَتَادَةُ: عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ أَيُّوبُ: عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ، كِلَاهُمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، أَنَّهُ قَالَ: «الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى، وَيُقَامُ عَلَيْهِ الْحَدُّ بِقَدْرِ مَا أُعْتِقَ مِنْهُ، وَيَرِثُ بِقَدْرِ مَا أُعْتِقَ مِنْهُ» . وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا يَعْلَى بْنُ عُبَيْدٍ الطَّنَافِسِيُّ نا حَجَّاجٌ الصَّوَّافُ - هُوَ ابْنُ أَبِي عُثْمَانَ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي الْمُكَاتَبِ يَقْتُلُ يُودِي مَا أَدَّى مِنْ مُكَاتَبَتِهِ دِيَةَ الْحُرِّ، وَمِمَّا بَقِيَ دِيَةَ الْمَمْلُوكِ» . وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ النَّسَائِيِّ نا سُلَيْمَانُ بْنُ سَلَمٍ الْبَلْخِيِّ، وَعُبَيْدُ اللَّهِ بْنُ سَعِيدٍ قَالَ سُلَيْمَانُ: نا النَّضْرُ بْنُ شُمَيْلٍ، وَقَالَ عُبَيْدُ اللَّهِ: نا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ، ثُمَّ اتَّفَقَ

مُعَاذٌ، وَالنَّضْرُ، كِلَاهُمَا يَقُولُ: نا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «يُودِي الْمُكَاتَبُ بِقَدْرِ مَا عَتَقَ مِنْهُ دِيَةَ الْحُرِّ وَبِقَدْرِ مَا رُقَّ مِنْهُ دِيَةَ الْعَبْدِ» .

the remaining portion, the *diyah* of a slave. Through the chain of Ahmad ibn Shuʿayb al-Nasa'i: Sulayman ibn Salam al-Balkhi and ʿUbaydullah ibn Sa'id narrated. Sulayman said: al-Nadr ibn Shumayl narrated to us. ʿUbaydullah said: Muʿadh ibn Hisham al-Dastuwa'i narrated to us. Then their chains of narration converged—Muʿadh and al-Nadr—both stating: Hisham al-Dastuwa'i narrated to us from Yahya ibn Abi Kathir from ʿIkrimah from Ibn Abbas that the Messenger of Allah (may Allah's blessings and peace be upon him and his family) said: "The *mukatab* pays the *diyah* of a free person according to the portion of his manumission, and the *diyah* of a slave according to the portion still in bondage."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ نا أَبُو هِشَامٍ - هُوَ الْمُغِيرَةُ بْنُ سَلَمَةَ الْمَخْزُومِيُّ - نا وُهَيْبُ بْنُ خَالِدٍ عَنْ أَيُّوبَ عَنْ عِكْرِمَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ النَّبِيِّ - عَلَيْهِ السَّلَامُ - قَالَ: «يُودِي الْمُكَاتَبُ بِقَدْرِ مَا أَدَّى» وَهَذَا أَثَرٌ صَحِيحٌ لَا يَضُرُّهُ قَوْلُ مَنْ قَالَ: إنَّهُ أَخْطَأَ فِيهِ، بَلْ هُوَ الَّذِي أَخْطَأَ؛ لِأَنَّهُ مِنْ رِوَايَةِ الثِّقَاتِ الْأَثْبَاتِ.

L27200 From the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn ʿAbd Allāh ibn al-Mubārak narrated to us; Abū Hishām—who is al-Mughīrah ibn Salamah al-Makhzūmī—narrated to us; Wuḥayb ibn Khālid narrated from Ayyūb from ʿIkrimah from ʿAlī ibn Abī Ṭālib from the Prophet—peace be upon him—who said: "The *mukātab* pays in proportion to what he has paid." This is an authentic narration. The claim of those who deem it erroneous does not harm it, for they are the ones who erred, as it derives from the narration of trustworthy, well-established narrators.

وَمِنْ عَجَائِبِ الدُّنْيَا عَيْبُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ لَهُ بِأَنَّ حَمَّادَ بْنَ زَيْدٍ أَرْسَلَهُ عَنْ أَيُّوبَ عَنْ عِكْرِمَةَ، وَأَنَّ ابْنَ عُلَيَّةَ رَوَاهُ عَنْ أَيُّوبَ عَنْ عِكْرِمَةَ عَنْ عَلِيٍّ أَنَّهُ قَالَ: يُودِي الْمُكَاتَبُ بِقَدْرِ مَا أَدَّى - فَأَوْقَفَهُ عَلَى عَلِيٍّ. قَالَ أَبُو مُحَمَّدٍ: أَلَيْسَ هَذَا مِنْ عَجَائِبِ الدُّنْيَا يَكُونُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ عِنْدَ كُلِّ كَلِمَةٍ يَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ، وَلَا فَرْقَ، فَإِذَا وَجَدُوا مُسْنَدًا يُخَالِفُ هَوَى أَبِي حَنِيفَةَ، وَرَأْيَ مَالِكٍ: جَعَلُوا إرْسَالَ مَنْ أَرْسَلَهُ عَيْبًا يَسْقُطُ بِهِ إسْنَادُ مَنْ أَسْنَدَهُ، وَيَكُونُ الشَّافِعِيُّونَ لَا يَخْتَلِفُونَ فِي أَنَّ الْمُسْنَدَ لَا يَضُرُّهُ إرْسَالُ مَنْ أَرْسَلَهُ، فَإِذَا وَجَدُوا مَا يُخَالِفُ رَأْيَ صَاحِبِهِمْ كَانَ ذَلِكَ يَضُرُّ أَشَدَّ الضَّرَرِ، أَيَرَوْنَ اللَّهَ غَافِلًا عَنْ هَذَا الْعَمَلِ فِي الدِّينِ؟ وَقَدْ أَسْنَدَهُ حَمَّادُ بْنُ سَلَمَةَ، وَوُهَيْبُ بْنُ

L27201–27203 Among the wonders of the world is the criticism by the Hanafis, Malikis, and Shafi'is of the narration that Hammad ibn Zayd transmitted it as *mursal* (disconnected) from Ayyub from Ikrimah, and that Ibn ʿUlayyah narrated it from Ayyub from Ikrimah from ʿAli that he said: "The *mukatab* pays in proportion to what he has paid," thereby attributing it to ʿAli. Abu Muhammad said: Is this not among the wonders of the world? The Hanafis and Malikis, whenever they encounter a statement, say: "A *mursal* (disconnected) narration is equivalent to a *musnad* (connected) one; there is no difference." Yet when they find a *musnad* narration contradicting Abu Hanifah's inclination or Malik's opinion, they treat the disconnection by those who transmitted it as a flaw that invalidates the chain of those who connected it. As for the Shafi'is, they do not differ in holding that a *musnad* narration is not harmed by the disconnection of those who transmitted it. But when they find something contradicting their imam's opinion, it causes the utmost harm. Do they think Allah is unaware of this conduct in matters

of religion? Yet this narration was narrated with a connected chain (*musnad*) by Hammad ibn Salamah, Wuhaib ibn Khalid, Yahya ibn Abi Kathir, and Qatadah from Khilas from ʻAli. Is there any among them who, if not superior to Hammad, is not inferior to him? How, then, can they dismiss it when Hammad ibn Zayd also narrated it with a connected chain, as narrated to us through the path of Ahmad ibn Shuʻayb... Al-Qasim ibn Zakariya narrated from Sa'id ibn Amr, who narrated from Hammad ibn Zayd, from Ayyub and Yahya ibn Abi Kathir—both from Ikrimah—from Ibn Abbas: "A mukatab was killed during the time of Allah's Messenger (peace and blessings be upon him), and he (peace and blessings be upon him) ordered that he pay what he had paid as the blood money of a free person, and what remained unpaid as that of a slave." As for their mention of Ibn Ulayyah's interruption of the chain at Ali, this strengthens the report, for it reflects a legal opinion from Ali based on his narration. If only I knew from where those who claim that when a reliable narrator transmits a report through his equal, while another interrupts the chain or transmits it discontinuously—asserting this as a flaw in the hadith—derive this view! This is unsupported by textual evidence, rational analysis, or sound reasoning. The proof stands firm that obedience is unconditionally due to the fully-chained (musnad) narration, thereby invalidating all contrary claims—praise be to Allah, the Exalted. They said: "You have narrated through Ahmad ibn Shu'ayb, from Humayd ibn Mas'adah, from Sufyan, from Khalid—the cobbler—from Ikrimah, from Ali ibn Abi Talib regarding the mukatab: 'If he pays half, he is considered in debt.'" And through Ibn Abi Shaybah, from Wakīʻ, from Ali ibn Al-Mubarak, from Yahya ibn Abi Kathir, from Ikrimah, from Ibn Abbas: "The legal penalty for the mukatab is that of a slave." This constitutes their disregard of what they themselves narrated. Abu Muhammad said: We responded: Suppose they disregarded what they narrated—what then? The decisive evidence lies in what they transmitted from the Prophet (peace and blessings be upon him), not in their personal statements. We have compiled a substantial section detailing their contradictions on this matter. Moreover, if this discrepancy—according to their premise—necessitates weakness in what they narrated, let them dissociate from those who take opposing positions, for such weakness would apply only to reports contradicting their own narrations—and they are

خَالِدٍ، وَيَحْيَى بْنُ أَبِي كَثِيرٍ، وَقَتَادَةُ عَنْ خِلَاسٍ عَنْ عَلِيٍّ، وَمَا مِنْهُمْ أَحَدٌ إِنْ لَمْ يَكُنْ فَوْقَ حَمَّادٍ لَمْ يَكُنْ دُونَهُ؟ فَكَيْفَ وَقَدْ أَسْنَدَهُ حَمَّادُ بْنُ زَيْدٍ كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا الْقَاسِمُ بْنُ زَكَرِيَّا نا سَعِيدُ بْنُ عَمْرٍو نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ، وَيَحْيَى بْنِ أَبِي كَثِيرٍ، كِلَاهُمَا عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ مُكَاتَبًا قُتِلَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَمَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يُودِيَ مَا أَدَّى دِيَةَ الْحُرِّ وَمَا لَا دِيَةَ الْمَمْلُوكِ» . وَأَمَّا مَا ذَكَرُوهُ مِنْ إِيقَافِ ابْنِ عُلَيَّةَ لَهُ عَلَى عَلِيٍّ فَهُوَ قُوَّةٌ لِلْخَبَرِ، لِأَنَّهُ فُتْيَا مِنْ عَلِيٍّ بِمَا رَوَى، وَلَيْتَ شِعْرِي مِنْ أَيْنَ وَقَعَ لِمَنْ وَقَعَ أَنَّ الْعَدْلَ إِذَا أَسْنَدَ الْخَبَرَ عَنْ مِثْلِهِ، وَأَوْقَفَهُ آخَرُ، أَوْ أَرْسَلَهُ آخَرُ: أَنَّ ذَلِكَ عِلَّةٌ فِي الْحَدِيثِ - وَهَذَا لَا يُوجِبُهُ نَصٌّ وَلَا نَظَرٌ وَلَا مَعْقُولٌ، وَالْبُرْهَانُ قَدْ صَحَّ بِوُجُوبِ الطَّاعَةِ لِلْمُسْنَدِ دُونَ شَرْطٍ، فَبَطَلَ مَا عَدَا هَذَا - وَلِلَّهِ تَعَالَى الْحَمْدُ. وَقَالُوا: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا حُمَيْدُ بْنُ مَسْعَدَةَ نا سُفْيَانُ عَنْ خَالِدٍ - هُوَ الْحَذَّاءُ - عَنْ عِكْرِمَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْمُكَاتَبِ إِذَا أَدَّى النِّصْفَ فَهُوَ غَرِيمٌ. وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ حَدُّ الْمُكَاتَبِ حَدُّ الْمَمْلُوكِ، وَهَذَا تَرْكٌ مِنْهُمَا لِمَا رَوَيَا. قَالَ أَبُو مُحَمَّدٍ: فَقُلْنَا: هَبْكَ أَنَّهُمَا تَرَكَا مَا رَوَيَا، فَكَانَ مَاذَا؟ إِنَّمَا الْحُجَّةُ فِيمَا رَوَيَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا فِي قَوْلِهِمَا. وَقَدْ أَفْرَدْنَا جُزْءًا ضَخْمًا لِمَا تَنَاقَضُوا فِيهِ مِنْ هَذَا الْبَابِ، وَأَيْضًا: فَإِنْ كَانَ هَذَا الِاخْتِلَافُ يُوجِبُ عِنْدَهُمْ الْوَهَنَ فِيمَا رَوَيَا، فَانْفَصَلُوا مِمَّنْ عَكَسَ ذَلِكَ، فَقَالَ: بَلْ ذَلِكَ يُوجِبُ الْوَهَنَ فِيمَا رُوِيَ عَنْهُمَا مِمَّا هُوَ خِلَافٌ لِمَا رَوَيَا وَحَاشَا لَهُمَا مِنْ ذَلِكَ. قَالَ عَلِيٌّ: فَكَيْفَ وَقَدْ يَتَأَوَّلُ الرَّاوِي فِيمَا رَوَى وَقَدْ يَنْسَاهُ؟ فَكَيْفَ وَلَيْسَ فِيمَا ذَكَرْنَا عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ

خِلَافٌ لِمَا رَوَيَاهُ. أَمَّا قَوْلُ عَلِيٍّ: إِذَا أَدَّى النِّصْفَ فَهُوَ غَرِيمٌ، فَلَيْسَ مُخَالِفًا لِلْمَشْهُورِ عَنْهُ مِنْ تَوْرِيثِ مَنْ بَعْضُهُ حُرٌّ بِمَا فِيهِ مِنَ الْحُرِّيَّةِ دُونَ مَا فِيهِ مِنَ الرِّقِّ - وَلَا لِمَا رُوِيَ مِنْ حُكْمِ الْمُكَاتَبِ، لِأَنَّهُ لَمْ يَقُلْ فِيهِ: لَيْسَ بَاقِيهِ عَبْدًا، وَلَا قَالَ فِيهِ: لَيْسَ مَا قَابَلَ مَا أَدَّى حُرًّا، لَكِنْ أَخْبَرَ: أَنَّهُ لَا يَعْجِزُ، لَكِنْ يُتْبَعُ بِبَاقِي الْكِتَابَةِ فَقَطْ، فَلَا خِلَافَ فِي هَذَا لِمَا رَوَى.

far above such inconsistency. Ali said: How could this be, when a narrator might interpret his report or forget it? Where is the contradiction between what we cited from Ali and Ibn Abbas and what they narrated? As for Ali's statement: "If he pays half, he is considered in debt," it does not conflict with his established ruling that one partially free inherits based on the proportion of freedom, not enslavement—nor does it oppose the rulings on the mukatab, for he did not negate the slave status of the unpaid portion nor affirm the free status of the paid portion. He merely stated: "He is not incapable, but must fulfill the remainder of the contract." Thus, no contradiction exists with what was narrated.

وَأَمَّا قَوْلُ ابْنِ عَبَّاسٍ: حَدُّ الْمُكَاتَبِ حَدُّ مَمْلُوكٍ، فَإِنَّمَا يُحْمَلُ عَلَى أَنَّهُ أَرَادَ مَا لَمْ يُؤَدِّ شَيْئًا مِنْ كِتَابَتِهِ، وَمَا قَابَلَ مِنْهُ، إِذَا أَدَّى الْبَعْضَ مَا لَمْ يُؤَدِّ - فَهَذَا صَحِيحٌ، وَبِهِ نَقُولُ، فَبَطَلَ هَذْرُهُمْ، وَدَعْوَاهُمُ الْكَاذِبَةُ: أَنَّهُمَا - رَضِيَ اللَّهُ عَنْهُمَا - خَالَفَا مَا رَوَيَا، وَبَطَلَ أَنْ يَكُونَ لَهُمْ كَدْحٌ فِي الْخَبَرِ. وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ - فَرُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعُثْمَانَ، وَجَابِرٍ، وَأُمَّهَاتِ الْمُؤْمِنِينَ: الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ - وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْهُمْ، لِأَنَّهُ عَنْ عُمَرَ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ - عَنِ ابْنِ أَبِي مُلَيْكَةَ مُرْسَلٌ. وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الْعَرْزَمِيِّ - وَهُوَ مِثْلُهُ أَوْ دُونَهُ - ثُمَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ مُرْسَلٌ. وَمِنْ طَرِيقِ سُلَيْمَانَ التَّيْمِيِّ: أَنَّ عُمَرَ. وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنْ عُمَرَ وَعُثْمَانَ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَالَّتِي عَنْ أُمَّهَاتِ الْمُؤْمِنِينَ: هُوَ مِنْ طَرِيقِ عُمَرَ بْنِ قَيْسِ بْنِ سَنْدَلٍ - وَهُوَ ضَعِيفٌ. وَهُوَ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ مِنْ طَرِيقِ أَبِي مَعْشَرٍ الْمَدَنِيِّ - وَهُوَ ضَعِيفٌ لَكِنَّهُ صَحَّ عَنْ زَيْدِ بْنِ ثَابِتٍ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَابْنِ عُمَرَ - وَهُوَ مَأْثُورٌ عَنْ طَائِفَةٍ مِنَ التَّابِعِينَ، مِنْهُمْ: عُرْوَةُ بْنُ الزُّبَيْرِ، وَسُلَيْمَانُ بْنُ يَسَارٍ، وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ، وَقَتَادَةَ.

As for the statement of Ibn Abbas: "The penalty for a mukatab is that of an enslaved person," this is understood to mean he intended this applies only when the mukatab has not paid any portion of his manumission contract or fulfilled what he has committed to pay. If he has paid part but not all of what is owed - this is valid, and this is our position. Thus, their baseless assertions and false claim that the two of them - may Allah be pleased with them - contradicted what they narrated is invalidated, and their laborious effort in the report becomes baseless. This is a matter on which people have disagreed. It is reported from Umar ibn al-Khaṭṭāb, Uthman, Jabir, and the Mothers of the Believers - may Allah be pleased with them: "The mukatab retains the legal status of an enslaved person as long as one dirham remains unpaid." However, none of these reports are authenticated. The report from Umar comes through Al-Ḥajjāj ibn Arṭāh - who is rejected [as a narrator] - from Ibn Abī Mulaykah as a mursal report (a report with an interrupted chain). Another chain through Muḥammad ibn Ubaydillāh al-Arzamī - who is comparable to him or weaker - then from Saʿīd ibn al-Musayyab: that Umar [held this view] as a mursal report. From the chain of Sulaymān al-Taymī: that Umar [said this]. From the chain of Ibn Wahb through scholars among the people of knowledge: from Umar, Uthman, Jabir ibn Abdillāh. The report attributed to the Mothers of the Believers comes through Umar ibn Qays ibn Sandal - who is weak. The report from Umm Salamah, the Mother of the Believers - may Allah be pleased with her - is through Abū Maʿshar al-Madanī - who is weak. However, it is authentically established from Zayd

L27204–27205

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَالْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَابْنِ شُبْرُمَةَ، وَابْنِ أَبِي لَيْلَى، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ. وَقَالَتْ طَائِفَةٌ: الْمُكَاتَبُونَ عَلَى شُرُوطِهِمْ: صَحَّ ذَلِكَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ. وَقَالَتْ طَائِفَةٌ: هُوَ حُرٌّ سَاعَةَ الْعَقْدِ بِالْكِتَابَةِ. وَهُوَ قَوْلٌ رُوِيَ عَنِ ابْنِ عَبَّاسٍ وَلَمْ نَجِدْ لَهُ إِسْنَادًا إِلَيْهِ.

ibn Thābit, Āishah the Mother of the Believers - may Allah be pleased with her - and Ibn Umar. This is transmitted from a group of the Successors, including Urwah ibn al-Zubayr, Sulaymān ibn Yasār, and is authentically reported from Saʿīd ibn al-Musayyab, al-Zuhrī, and Qatādah. This is the position of Abū Ḥanīfah, Mālik, al-Shāfiʿī, al-Awzāʿī, Sufyān al-Thawrī, Ibn Shubrumah, Ibn Abī Laylā, Aḥmad, Isḥāq, Abū Thawr, and Abū Sulaymān. Another group held: "Mukatabs are bound by their stipulated terms" - this being authentically reported from Jabir ibn Abdillāh. Another group said: "He becomes free at the moment of formalizing the manumission contract." This is an opinion attributed to Ibn Abbas, but we found no verified chain of transmission linking it to him.

وَقَالَتْ طَائِفَةٌ: إِذَا أَدَّى نِصْفَ مُكَاتَبَتِهِ فَهُوَ غَرِيمٌ. رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ جَابِرِ بْنِ سَمُرَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إِذَا أَدَّى الْمُكَاتَبُ الشَّطْرَ فَهُوَ غَرِيمٌ.

L27206 A group of scholars held: If a mukātab pays half of his mukātabah, he is a debtor. This was narrated to us through ʿAbd al-Razzāq from Maʿmar from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd from al-Qāsim ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd from Jābir ibn Samurah: that ʿUmar ibn al-Khaṭṭāb said: When a mukātab pays half, he becomes a debtor.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ الرَّحْمَنِ بِهَذَا الْإِسْنَادِ نَفْسِهِ، قَالَ عُمَرُ: إِذَا أَدَّى الشَّطْرَ فَلَا رِقَّ عَلَيْهِ. وَقَدْ ذَكَرْنَا فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا قَوْلَ عَلِيٍّ بِمِثْلِ ذَلِكَ وَهُمَا إِسْنَادَانِ جَيِّدَانِ. وَصَحَّ عَنْ شُرَيْحٍ: إِذَا أَدَّى الْمُكَاتَبُ النِّصْفَ فَلَا رِقَّ عَلَيْهِ وَهُوَ غَرِيمٌ. رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ. وَقَالَتْ طَائِفَةٌ: إِذَا أَدَّى الْمُكَاتَبُ الثُّلُثَ فَهُوَ غَرِيمٌ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنِ ابْنِ مَسْعُودٍ. إِذَا أَدَّى الْمُكَاتَبُ ثُلُثَ كِتَابَتِهِ فَهُوَ غَرِيمٌ. وَقَالَتْ طَائِفَةٌ: إِذَا أَدَّى الرُّبُعَ فَهُوَ غَرِيمٌ. رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ كَانَ يُقَالُ: إِذَا أَدَّى الْمُكَاتَبُ

L27207–27208 From the chain of Sufyān ibn ʿUyaynah via ʿAbd al-Raḥmān with this same isnād, ʿUmar stated: "If he fulfills half [of his obligation], enslavement no longer applies to him." We previously cited ʿAlī's identical ruling on this very issue, and both chains of transmission are strong. It is authentically established from Shurayḥ: "If the mukātab fulfills half [of his obligation], enslavement no longer applies to him, and he becomes a debtor." This was narrated via the chain of Sufyān ibn ʿUyaynah from Ismāʿīl ibn Abī Khālid from al-Shaʿbī from Shurayḥ.

A school of jurists held: "If the mukātab fulfills one-third, he becomes a debtor." This was narrated via the chain of Abū Bakr ibn Abī Shaybah from Ḥafṣ ibn Ghiyāth from al-Aʿmash from Ibrāhīm al-Nakhaʿī from Ibn Masʿūd: "If the mukātab fulfills one-third of his manumission contract, he becomes a debtor."

Another school held: "If he fulfills one-quarter, he becomes a debtor." This was narrated via the chain of Wakīʿ from Sufyān from Manṣūr from Ibrāhīm,

who reported: “It was said: If the mukātab fulfills one-quarter, he becomes a debtor.”

Yet another school held: “If he fulfills three-quarters of the manumission contract, he becomes a debtor.” This was narrated via the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ based on his personal opinion, and he added: “This has not been reported to me from anyone.”

L27209 A group held that if a mukatab pays his value, he becomes a debtor among the debtors. This was transmitted to us through the chain of Hammad ibn Salama from Qatada, from al-Hasan, who reported that Ibn Masʿud said this. Another narration through Sufyan ibn ʿUyayna from Ismaʿil ibn Abi Khalid states: Al-Shaʿbi told me, “Shurayh’s opinion is like Ibn Masʿud’s: if the mukatab pays his value, he is considered a debtor among the debtors.” Abu Muhammad remarked: This chain is sound, for al-Shaʿbi accompanied Shurayh, and Shurayh accompanied Ibn Masʿud. This ruling does not contradict what is reported from the same chain stating that paying half the kitaba renders him a debtor, because it is possible that both statements coexist without contradiction. This would mean he holds that if the mukatab pays the lesser of his value or half the kitaba—whichever of the two he pays—he attains debtor status.

L27210–27212 And via the chain of Shuʿbah from al-Mughīrah ibn Miqsam from al-Nakhaʿī: If the mukatab fulfills the price of his freedom, they may not enslave him. A group held the view (as we have narrated through ʿAbd al-Razzāq’s chain from ʿIkrimah ibn ʿAmmār from Yaḥyā ibn Abī Kathīr) that Ibn ʿAbbās said: “If the mukatab still owes five awāq, five dhawd [herds of camels], or...” Five wasqs: he is a debtor – this is invalid because the chain is interrupted, and Ikrimah ibn Ammar is weak. A group held an opinion similar to our view. We were narrated through Ahmad ibn Shuʿayb: Zakariyya ibn Ishaq narrated to us, Ismaʿil ibn Ulayyah narrated to us from Ayyub al-Sikhtiyānī from Ikrimah from Ali: “The mukatab (a slave contracted for manumission) pays according to what he has paid.”

L27213–27215 From the narration of Muhammad ibn al-Muthanna: Abd al-Rahman ibn

الرُّبُعَ فَهُوَ غَرِيمٌ. وَقَالَتْ طَائِفَةٌ: إِذَا أَدَّى ثَلَاثَةَ أَرْبَاعِ الْكِتَابَةِ فَهُوَ غَرِيمٌ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ مِنْ رَأْيِهِ قَالَ: وَلَمْ يَبْلُغْنِي عَنْ أَحَدٍ.

وَقَالَتْ طَائِفَةٌ: إِذَا أَدَّى قِيمَتَهُ فَهُوَ غَرِيمٌ. رُوِّينَا ذَلِكَ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ أَنَّ ابْنَ مَسْعُودٍ قَالَهُ. وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ قَالَ: قَالَ لِي الشَّعْبِيُّ: قَوْلُ شُرَيْحٍ مِثْلُ قَوْلِ ابْنِ مَسْعُودٍ: إِذَا أَدَّى الْمُكَاتَبُ قِيمَتَهُ فَهُوَ غَرِيمٌ مِنَ الْغُرَمَاءِ. قَالَ أَبُو مُحَمَّدٍ: هَذَا إِسْنَادٌ جَيِّدٌ، لِأَنَّ الشَّعْبِيَّ صَحِبَ شُرَيْحًا، وَشُرَيْحٌ صَحِبَ ابْنَ مَسْعُودٍ، وَلَيْسَ هَذَا مُخَالِفًا لِمَا رُوِيَ مِنْ هَذِهِ الطَّرِيقِ نَفْسِهَا، إِذَا أَدَّى نِصْفَ الْكِتَابَةِ فَهُوَ غَرِيمٌ، لِأَنَّهُ قَدْ يُمْكِنُ أَنَّ الْقَوْلَيْنِ مَعًا، وَلَا يَتَمَانَعَانِ، وَهُوَ أَنْ يَكُونَ يَرَى إِنْ أَدَّى الْأَقَلَّ مِنْ قِيمَتِهِ، أَوْ مِنْ نِصْفِ الْكِتَابَةِ فَهُوَ غَرِيمٌ، أَيَّهُمَا أَدَّى فَهُوَ غَرِيمٌ.

وَمِنْ طَرِيقِ شُعْبَةَ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنِ النَّخَعِيِّ: إِذَا أَدَّى الْمُكَاتَبُ ثَمَنَ رَقَبَتِهِ فَلَيْسَ لَهُمْ أَنْ يَسْتَرِقُّوهُ. وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عِكْرِمَةَ بْنِ عَمَّارٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، قَالَ: قَالَ ابْنُ عَبَّاسٍ إِذَا بَقِيَ عَلَى الْمُكَاتَبِ خَمْسُ أَوَاقٍ أَوْ خَمْسُ ذَوْدٍ أَوْ خَمْسَةُ أَوْسُقٍ فَهُوَ غَرِيمٌ - وَهَذَا لَا يَصِحُّ، لِأَنَّهُ مُنْقَطِعٌ، وَعِكْرِمَةُ بْنُ عَمَّارٍ ضَعِيفٌ. وَقَالَتْ طَائِفَةٌ بِمِثْلِ قَوْلِنَا. رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا زَكَرِيَّا بْنُ إِسْحَاقَ نا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ عَلِيٍّ يُؤَدِّي الْمُكَاتَبُ بِقَدْرِ مَا أَدَّى.

Mahdi narrated from Sufyan al-Thawri from Tariq ibn Abd al-Rahman from al-Sha'bi, who said: Ali ibn Abi Talib said regarding the mukatab: "He is emancipated proportionally [based on payments]." From the narration of Abd al-Razzaq: Ma'mar narrated from Ayyub al-Sikhtiyani from Ikrimah from Ali, who said: "The mukatab is emancipated proportionally to what he has paid." From the narration of Waki': al-Mas'udi narrated from al-Hakam ibn 'Utaybah from Ali ibn Abi Talib, who said: "Emancipation suffices for the mukatab from the first stipulated installment." Abu Muhammad said: "All these statements: we know of no evidence for any of them. However, even if these opinions are not stronger than Malik's stipulations permitting a wife to give charity from her husband's wealth, his rulings on what he absolves in cases of crop loss and what he does not, or Abu Hanifah's stipulations invalidating prayer due to exposure of a free woman's head, abdomen, or thigh if a quarter of each is exposed—as for the invalid conditions they argue for using 'Muslims are bound by their conditions,' these are not weaker. Rather, these opinions have merit, as most are from the Companions—may Allah be pleased with them. However, those who say, 'The mukatab remains a slave as long as a single dirham is owed,' argue with what we have narrated through the path of Amr ibn Shu'ayb from his father from his grandfather from the Prophet—peace be upon him: 'The mukatab is a slave as long as a single dirham remains owed.'" From the path of Abd al-Baqi ibn Qani'—a fabricator—from Musa ibn Zakariyya from Abbas ibn Muhammad. From Ahmad ibn Yunus from Hushaym from Ja'far ibn Iyas from Ibn 'Umar from the Messenger of Allah — peace and blessings be upon him: "A mukatab remains a slave as long as a single dirham remains owed by him." This is undoubtedly a fabricated report. It is not known at all from the narration of 'Abbas ibn Muhammad, nor from Ahmad ibn Yunus, nor from the narration of Hushaym, nor from the narration of Ja'far, nor from the narration of Nafi', nor from the narration of Ibn 'Umar. Rather, it is known only as a statement of Ibn 'Umar. The narrations of all these individuals are more famous than the sun itself, and we do not know who Musa ibn Zakariya is either. As for the narration of 'Amr ibn Shu'ayb, it is a scroll, though it is defective due to conflicting transmissions. It has been narrated to us via the chain of Abu Dawud: Muhammad ibn al-Muthanna narrated to us via 'Abd al-Samad ibn

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ، قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ فِي الْمُكَاتَبِ: يُعْتَقُ بِالْحِسَابِ.
وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ عَلِيٍّ، قَالَ: الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى. وَمِنْ طَرِيقِ وَكِيعٍ نا الْمَسْعُودِيُّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، قَالَ: تُجْزِي الْعَتَاقَةُ فِي الْمُكَاتَبِ مِنْ أَوَّلِ نَجْمٍ. قَالَ أَبُو مُحَمَّدٍ: وَجَمِيعُ هَذِهِ الْأَقْوَالِ لَا نَعْلَمُ لِشَيْءٍ مِنْهَا حُجَّةً، إلَّا أَنَّهَا كُلَّهَا عَلَى كُلِّ حَالٍ إنْ لَمْ تَكُنْ أَقْوَى مِنْ تَحْدِيدِ مَالِكٍ مَا أَبَاحَ لِذَاتِ الزَّوْجِ الصَّدَقَةَ بِهِ، وَمَا أَسْقَطَ مِنْ الْجَائِحَةِ، وَمَا لَمْ يُسْقِطْ. وَمِنْ تَحْدِيدِ أَبِي حَنِيفَةَ مَا تَبْطُلُ بِهِ الصَّلَاةُ مِمَّا يَنْكَشِفُ مِنْ رَأْسِ الْحُرَّةِ، أَوْ مِنْ بَطْنِهَا، أَوْ مِنْ فَخِذِهَا مِنْ رُبُعِ كُلِّ ذَلِكَ. وَمِنْ الشُّرُوطِ الْفَاسِدَةِ الَّتِي يَحْتَجُّونَ لَهَا " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ " فَلَيْسَتْ أَضْعَفَ، بَلْ لِهَذِهِ مَزِيَّةٌ؛ لِأَنَّ أَكْثَرَهَا مِنْ أَقْوَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، إلَّا أَنَّ مَنْ قَالَ: الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ، فَاحْتَجُّوا بِمَا رُوِّينَا مِنْ طَرِيقِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ» . وَمِنْ طَرِيقِ عَبْدِ الْبَاقِي بْنِ قَانِعٍ - رَاوِي الْكَذِبِ - عَنْ مُوسَى بْنِ زَكَرِيَّا عَنْ عَبَّاسِ بْنِ مُحَمَّدٍ عَنْ أَحْمَدَ بْنَ يُونُسَ عَنْ هُشَيْمٍ عَنْ جَعْفَرِ بْنِ إيَاسٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ» . وَهَذَا خَبَرٌ مَوْضُوعٌ بِلَا شَكٍّ، لَمْ يُعْرَفْ قَطُّ مِنْ حَدِيثِ عَبَّاسِ بْنِ مُحَمَّدٍ، وَلَا مِنْ أَحْمَدَ بْنَ يُونُسَ، وَلَا مِنْ حَدِيثِ هُشَيْمٍ، وَلَا مِنْ حَدِيثِ جَعْفَرٍ، وَلَا مِنْ حَدِيثِ نَافِعٍ، وَلَا مِنْ حَدِيثِ ابْنِ عُمَرَ، إنَّمَا هُوَ مَعْرُوفٌ مِنْ

‘Abd al-Warith, via Hammam ibn Yahya, from ‘Abbas al-Jurairi, from ‘Amr ibn Shu‘ayb, from his father, from his grandfather: “The Prophet — peace and blessings be upon him — said: ’Any slave who contracts to pay one hundred ounces and pays all but ten ounces remains a slave. Any slave who contracts to pay one hundred dinars and pays all but ten dinars remains a slave.”’

قَوْلِ ابْنِ عُمَرَ، وَأَحَادِيثُ هَؤُلَاءِ كُلُّهُمْ أَشْهَرُ مِنْ الشَّمْسِ، وَلَا نَدْرِي مَنْ مُوسَى بْنُ زَكَرِيَّا أَيْضًا. وَأَمَّا حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ فَصَحِيفَةٌ، عَلَى أَنَّهُ مُضْطَرِبٌ فِيهِ. قَدْ رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ الْمُثَنَّى حَدَّثَنِي عَبْدُ الصَّمَدِ - هُوَ ابْنُ عَبْدِ الْوَارِثِ - نا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - نا عَبَّاسٌ الْجُرَيْرِيُّ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَيُّمَا عَبْدٍ كَاتَبَ عَلَى مِائَةِ أُوقِيَّةٍ فَأَدَّاهَا إلَّا عَشْرَ أَوَاقٍ فَهُوَ عَبْدٌ، وَأَيُّمَا عَبْدٌ كَاتَبَ عَلَى مِائَةِ دِينَارٍ فَأَدَّاهَا إلَّا عَشَرَةَ دَنَانِيرَ فَهُوَ عَبْدٌ» .

L27216 From the narration of Ibn Jurayj through ‘Ata’ al-Khurasani from ‘Abdullah ibn ‘Amr ibn al-‘As: Whoever enters into a mukatabah contract with a slave for one hundred dirhams and fulfills all but ten dirhams, the slave remains a slave; or for one hundred okiyyahs (a silver weight) and fulfills all but one okiyyah, the slave remains a slave. This ‘Ata’—al-Khurasani—did not hear anything from ‘Abdullah ibn ‘Amr ibn al-‘As nor from any of the Companions except Anas alone. The greatest astonishment is directed at those who discredit the narration of ‘Ali and Ibn ‘Abbas—despite its utmost authenticity—by alleging inconsistency in it, even though they have lied. Yet they cite this flaw as evidence, despite the evident inconsistency in their own argument, as you can see.

وَمِنْ طَرِيقِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ: مَنْ كَاتَبَ مُكَاتَبًا عَلَى مِائَةِ دِرْهَمٍ فَقَضَاهَا إلَّا عَشَرَةَ دَرَاهِمَ فَهُوَ عَبْدٌ، أَوْ عَلَى مِائَةِ أُوقِيَّةٍ فَقَضَاهَا إلَّا أُوقِيَّةً فَهُوَ عَبْدٌ. عَطَاءٌ هَذَا - الْخُرَاسَانِيُّ - لَمْ يَسْمَعْ مِنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ شَيْئًا، وَلَا مِنْ أَحَدٍ مِنْ الصَّحَابَةِ، إلَّا مِنْ أَنَسٍ وَحْدَهُ. وَالْعَجَبُ كُلُّهُ مِمَّنْ يُعَلِّلُ خَبَرَ عَلِيٍّ، وَابْنِ عَبَّاسٍ - وَهُوَ فِي غَايَةِ الصِّحَّةِ - بِأَنَّهُ اضْطَرَبَ فِيهِ - وَقَدْ كَذَبَ - ثُمَّ يَحْتَجُّ بِهَذِهِ الْعَوْرَةِ، وَقَدْ اضْطَرَبَ فِيهَا كَمَا تَرَى

L27217 If they say: This is the statement of the Mother of the Believers, ‘Ā’ishah—and would Allah the Exalted ever violate the sanctity of the Messenger of Allah’s privacy (peace be upon him) by permitting entry to one forbidden to approach his wives? We respond: You are correct. Allah the Exalted only prohibited free men from entering upon them. As for the mukātab: so long as he has not paid any portion, he remains a slave. While even a single fals remains owed, he is not free—rather, part of him is free and part is enslaved. The wives were never prohibited from anyone of this description.

فَإِنْ قَالُوا: هُوَ قَوْلُ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ، وَمَا كَانَ اللَّهُ تَعَالَى لِيَهْتِكَ سِتْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِدُخُولِ مَنْ لَا يَحِلُّ دُخُولُهُ عَلَى أَزْوَاجِهِ؟ قُلْنَا: صَدَقْتُمْ، وَإِنَّمَا حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِنَّ دُخُولَ الْأَحْرَارِ عَلَيْهِنَّ فَقَطْ، وَالْمُكَاتَبُ مَا لَمْ يُؤَدِّ شَيْئًا فَهُوَ عَبْدٌ، وَمَا دَامَ يَبْقَى عَلَيْهِ فَلْسٌ فَلَيْسَ حُرًّا، لَكِنَّ بَعْضَهُ حُرٌّ وَبَعْضَهُ عَبْدٌ، وَلَمْ يُنْهَيْنَ قَطُّ عَمَّنْ هَذِهِ صِفَتُهُ.

L27218–27219 If it is said: “It is the opinion of the majority?” We reply: “What does that matter? How many cases have you opposed the majority in? Indeed,

فَإِنْ قِيلَ: هُوَ قَوْلُ الْجُمْهُورِ؟ قُلْنَا: فَكَانَ مَاذَا؟ وَكَمْ قِصَّةٍ خَالَفْتُمْ فِيهَا الْجُمْهُورَ؟ نَعَمْ، وَأَتَيْتُمْ بِقَوْلٍ لَا يُعْرَفُ أَحَدٌ قَالَهُ قَبْلَ مَنْ قَلَّدْتُمُوهُ دِينَكُمْ. وَهَذَا الشَّافِعِيُّ خَالَفَ جُمْهُورَ الْعُلَمَاءِ فِي بُطْلَانِ الصَّلَاةِ بِتَرْكِ الصَّلَاةِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي التَّشَهُّدِ الْأَخِيرِ، وَفِي تَحْدِيدِ الْقُلَّتَيْنِ، وَفِي تَنْجِيسِ الْمَاءِ بِمَا يَمُوتُ فِيهِ مِنْ الذُّبَابِ، وَفِي نَجَاسَةِ الشَّعْرِ، وَفِي أَزْيَدَ مِنْ مِائَةِ قَضِيَّةٍ. وَهَذَا أَبُو حَنِيفَةَ خَالَفَ فِي زَكَاةِ الْبَقَرِ جُمْهُورَ الْعُلَمَاءِ. وَخَالَفَ فِي قَوْلِهِ: إنَّ الْخُلْطَةَ لَا تُغَيِّرُ الزَّكَاةَ جُمْهُورَ الْعُلَمَاءِ. وَخَالَفَ فِي وَضْعِهِ فِي الذَّهَبِ أَوْقَاصًا جُمْهُورَ الْعُلَمَاءِ - وَفِي أَزْيَدَ مِنْ أَلْفِ قَضِيَّةٍ.

you have adopted a view not known to have been stated by any of those you follow in your religion. And this Al-Shāfiʿī opposed the majority of scholars regarding the invalidity of prayer due to omitting blessings upon the Messenger of Allah—peace and blessings be upon him and his family and grant him peace—in the final Tashahhud, the definition of the two qullahs (a water measure), the impurity of water containing a dead fly, the impurity of hair, and in over a hundred rulings. And this Abū Ḥanīfah opposed the majority of scholars concerning zakāh on cows. He opposed them in his view that shared ownership does not alter zakāh obligations. He opposed them in establishing specific measures (awqāṣ) for gold, and in over a thousand rulings."

L27220 وَهَذَا مَالِكٌ خَالَفَ فِي إيجَابِ الزَّكَاةِ فِي السَّائِمَةِ جُمْهُورَ الْعُلَمَاءِ. وَفِي الْحَامِلِ، وَالْمُرْضِعِ تُفْطِرَانِ، وَفِي أَنَّ الْعُمْرَةَ تَطَوُّعٌ - وَفِي مِئِينَ مِنْ الْقَضَايَا، فَالْآنَ صَارَ أَكْثَرُ مَنْ رُوِيَ عَنْهُ - وَلَا يَبْلُغُونَ عَشَرَةً حُجَّةً لَا يَجُوزُ خِلَافُهَا، وَقَدْ خَالَفَهُمْ غَيْرُهُمْ مِنْ نُظَرَائِهِمْ. وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا رِوَايَةَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَحَدِيثِهِ «لَا يَجُوزُ لِامْرَأَةٍ أَمْرٌ فِي مَالِهَا، وَلَا عَطِيَّةٌ، إذَا مَلَكَ زَوْجُهَا عِصْمَتَهَا» وَأَنَّ الدِّيَةَ عَلَى أَهْلِ الْبَقَرِ مِائَتَا بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَا شَاةٍ، وَفِي إحْرَاقِ رَحْلِ الْغَالِّ وَغَيْرِ ذَلِكَ - وَهَذَا لَعِبٌ وَعَبَثٌ فِي الدِّينِ.

Malik disagreed with the majority of scholars concerning the obligation of zakāh on grazing livestock, and regarding pregnant and nursing women who must break their fast, and that ʿUmrah is a supererogatory act, alongside hundreds of legal rulings. Now, most of those from whom narrations are reported—not reaching ten in number—have become a decisive proof that cannot be opposed, yet others among their scholarly peers have opposed them. Many are the cases in which they contradicted the narration of ʿAmr ibn Shuʿayb from his father from his grandfather from the Prophet (peace be upon him), such as his ḥadīth: "A woman has no authority to manage her property or make gifts once her husband possesses marital authority over her," and that the blood-money for owners of cattle is two hundred cows, and for owners of sheep two thousand sheep, and regarding burning the saddle [as punishment] for one who steals from war spoils and other such matters. This constitutes trivialization and mockery in religion.

فَإِنْ قَالُوا: قَدْ صَحَّ أَنَّ الْمُكَاتَبَ كَانَ عَبْدًا فَهُوَ كَذَلِكَ؟ فَقُلْنَا: نَعَمْ، مَا لَمْ يَأْتِ نَصٌّ بِخِلَافِ هَذَا فَيُوقَفُ عِنْدَهُ، وَقَدْ صَحَّ النَّصُّ بِخِلَافِ هَذَا، وَبِشُرُوعِ الْحُرِّيَّةِ فِيهِ.

L27221 If they say, "It has been established that the *mukātab* was a slave—so he remains as such?" We reply: Yes, provided no text contradicts this; but if such a text exists, it must be upheld. Indeed, a sound text has contradicted this, with the initiation of freedom for him.

L27222 Our companions cited as evidence the sale of Bareerah—while she was a mukatabah (a slave contracted for self-manumission). We responded: "Yes, though she had not fulfilled any part of her kitabah." This is as narrated in

the Hadith, and this is our position. Thus their claim is invalidated, and our view stands confirmed—all praise, abundant and limitless, be to Allah, Lord of the worlds.[10]

وَاحْتَجَّ أَصْحَابُنَا بِبَيْعِ بَرِيرَةَ - وَهِيَ مُكَاتَبَةٌ؟ فَقُلْنَا: نَعَمْ، وَلَمْ تَكُنْ أَدَّتْ مِنْ كِتَابَتِهَا شَيْئًا، هَكَذَا فِي الْحَدِيثِ وَبِهَذَا نَقُولُ، فَبَطَلَ قَوْلُهُمْ وَصَحَّ قَوْلُنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ كَثِيرًا.

L27223 **The legal question regarding two enslaved persons jointly entering into a mukataba (manumission contract) under one agreement.**

[مَسْأَلَة مُكَاتَبَة مملوكين مَعًا كِتَابَة وَاحِدَة]

L27224 1690 - Issue: It is not permissible to draft a single contract for two slaves, whether they are strangers or mahrams.

١٦٩٠ - مَسْأَلَةٌ: وَلَا تَجُوزُ كِتَابَةُ مَمْلُوكَيْنِ مَعًا كِتَابَةً وَاحِدَةً، سَوَاءٌ كَانَا أَجْنَبِيَّيْنِ أَوْ ذَوَيْ رَحِمٍ مَحْرَمَةٍ.

L27225–27226 The proof of this is that it is unknown, as it is not known what obligation arises from it for each individual among them or from them, and this is invalid. Furthermore, its condition stipulates that neither of the two may be emancipated except through the other's fulfillment. His emancipation being a condition is not found in the Book of Allah the Exalted, thus rendering it invalid. Allah Almighty said: "No soul earns except against itself, nor does any bearer bear another's burden" [6:164]. It is therefore confirmed to be a contract contradicting the Quran, making it impermissible. Emancipation cannot be effected through it under any circumstance—whether they fulfill or not. This is the position held by our companions.[11]

بُرْهَانُ ذَلِكَ. أَنَّهَا مَجْهُولَةٌ لَا يُدْرَى مَا يَلْزَمُ مِنْهَا كُلَّ وَاحِدٍ مِنْهُمَا أَوْ مِنْهُمْ وَهَذَا بَاطِلٌ - وَأَيْضًا: فَإِنَّ شَرْطَهُ أَنْ لَا يُعْتَقَ مِنْهُمَا وَاحِدٌ إِلَّا بِأَدَاءِ الْآخَرِ، وَعِتْقُهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ، قَالَ اللَّهُ عَزَّ وَجَلَّ {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَصَحَّ أَنَّهُ عَقْدٌ مُخَالِفٌ لِلْقُرْآنِ فَلَا يَجُوزُ وَلَا يَقَعُ بِهِ عِتْقٌ أَصْلًا - أَدَّيَا أَوْ لَمْ يُؤَدِّيَا - وَهُوَ قَوْلُ أَصْحَابِنَا.

L27227 **The Issue of Selling a Slave Who Has Contracted for Freedom and Their Contract of Manumission.**

[مَسْأَلَة بَيْع الْمُكَاتَب وَالْمُكَاتَبَة]

L27228 Issue 1691: The sale of a mukatab (a slave contracted for manumission) and a mukataba (female mukatab) is permissible whenever the master wishes, provided they have not paid any part of their manumission contract. Similarly, intercourse with the female mukatab is permissible as long as she has not paid any portion of her contract. Whether she becomes pregnant or not, she remains bound by her contract. If the mukatab is sold, the contract is nullified. If they return to the master's ownership, no contract remains valid

١٦٩١ - مَسْأَلَةٌ: وَبَيْعُ الْمُكَاتَبِ، وَالْمُكَاتَبَةِ مَا لَمْ يُؤَدِّيَا شَيْئًا مِنْ كِتَابَتِهِمَا جَائِزٌ مَتَى شَاءَ السَّيِّدُ، وَكَذَلِكَ وَطْءُ الْمُكَاتَبَةِ جَائِزٌ مَا لَمْ تُؤَدِّ شَيْئًا مِنْ كِتَابَتِهَا، فَإِنْ حَمَلَتْ أَوْ لَمْ تَحْمِلْ فَهِيَ عَلَى مُكَاتَبَتِهَا، فَإِذَا بِيعَ بَطَلَتْ الْكِتَابَةُ فَإِنْ عَادَ إِلَى مِلْكِهِ فَلَا كِتَابَةَ لَهُمَا إِلَّا بِعَقْدٍ مُجَدَّدٍ - إِنْ طَلَبَهُ الْعَبْدُ أَوْ الْأَمَةُ - فَإِنْ أَدَّيَا شَيْئًا مِنْ الْكِتَابَةِ - قَلَّ أَوْ كَثُرَ - حَرُمَ وَطْؤُهَا جُمْلَةً، وَجَازَ بَيْعُ مَا قَابَلَ مِنْهُمَا مَا لَمْ يُؤَدِّيَا. فَإِنْ بَاعَ ذَلِكَ الْجُزْءَ بَطَلَتْ الْكِتَابَةُ

[10] **Qur'an references (L27222):** Qur'an 37:182 (As-Saffat).
[11] **Qur'an references (L27226):** Qur'an 6:164 (Al-An'am).

for them unless a newly specified contract is established—should the male or female slave request it. If they have paid any part of the contract, however minimal, intercourse with her becomes entirely prohibited. The sale of the portion corresponding to their unpaid obligations remains permissible. Selling that portion nullifies the contract specifically for it, while emancipation remains valid for the portion they have paid. If the sold portion returns to the seller's ownership at any time, the contract is not reinstated for it, nor is there any recourse to the original contract whatsoever, except through relinquishment of ownership.

فِيهِ خَاصَّةً وَصَحَّ الْعِتْقُ فِيمَا قَابَلَ مِنْهُمَا مَا أَدَّيَا، فَإِنْ عَادَ الْجُزْءُ الْمَبِيعُ إِلَى مِلْكِ الْبَائِعِ يَوْمًا مَا لَمْ تَعُدْ فِيهِ الْكِتَابَةُ وَلَا الرُّجُوعُ فِي الْكِتَابَةِ أَصْلًا، بِغَيْرِ الْخُرُوجِ مِنْ الْمِلْكِ.

L27229 Similarly, if the master dies, the equivalent of what both the mukatab and mukataba had paid becomes free, while the remainder remains enslaved to the heirs, with the kitaba contract nullified for that portion. If they had not yet paid anything, the entire kitaba contract is nullified, and they remain enslaved to the heirs. Likewise, if the mukatab or mukataba dies without having paid anything, both die as slaves, and all their property belongs to the master. If they had paid part of the kitaba contract, the equivalent of what they paid is free. The portion of their estate equivalent to the amount paid becomes an inheritance for the free individuals from their heirs, while the portion corresponding to the unpaid amount from what they left belongs to the master. The remainder of the kitaba contract is nullified.

وَكَذَلِكَ إِنْ مَاتَ السَّيِّدُ فَإِنَّ مَا قَابَلَ مِمَّا أَدَّيَا حُرٌّ وَمَا بَقِيَ رَقِيقٌ لِلْوَرَثَةِ قَدْ بَطَلَتْ فِيهِ الْكِتَابَةُ، فَإِنْ كَانَا لَمْ يَكُونَا أَدَّيَا شَيْئًا بَعْدُ فَقَدْ بَطَلَتْ الْكِتَابَةُ كُلُّهَا، وَهُمَا رَقِيقٌ لِلْوَرَثَةِ. وَكَذَلِكَ إِنْ مَاتَ الْمُكَاتَبُ أَوْ الْمُكَاتَبَةُ وَلَمْ يَكُونَا أَدَّيَا شَيْئًا، فَقَدْ مَاتَا مَمْلُوكَيْنِ، وَمَالُهُمَا كُلُّهُ لِلسَّيِّدِ، فَإِنْ كَانَا قَدْ أَدَّيَا مِنْ الْكِتَابَةِ فَمَا قَابَلَ مِنْهُمَا مَا أَدَّيَا فَهُوَ حُرٌّ، وَيَكُونُ مَا قَابَلَ ذَلِكَ الْجُزْءَ مِمَّا تَرَكَا مِيرَاثًا لِلْأَحْرَارِ مِنْ وَرَثَتِهِمَا، وَيَكُونُ مَا قَابَلَ مَا لَمْ يُؤَدِّيَا مِمَّا تَرَكَا لِلسَّيِّدِ، وَقَدْ بَطَلَ بَاقِي الْكِتَابَةِ، وَمَا حَمَلَتْ بِهِ الْمُكَاتَبَةُ قَبْلَ الْكِتَابَةِ أَوْ بَعْدَهَا، إِلَى أَنْ يَتِمَّ لَهُ مِائَةٌ وَعِشْرُونَ لَيْلَةً مُذْ حَمَلَتْ بِهِ، فَحُكْمُهُ حُكْمُهَا حَتَّى يَتِمَّ لَهُ الْعَدَدُ الْمَذْكُورُ، فَمَا عَتَقَ مِنْهَا بِالْأَدَاءِ عَتَقَ مِنْهُ. فَإِذَا نُفِخَ فِيهِ الرُّوحُ فَقَدْ اسْتَقَرَّ أَمْرُهُ وَلَا يَزِيدُ قِيمَةُ الْعِتْقِ فِيهِ بَعْدُ بِأَدَائِهَا.

Regarding the child she carries, whether conceived before or after the kitaba contract, until 120 nights pass since conception, its status follows hers until this period is completed. Whatever portion of her is freed through payment frees the equivalent portion of the child. Once the soul is breathed into it (ensoulment), the child's status is irrevocably established, and the value of its manumission does not increase further through her subsequent payments.

L27230 The proof of this is what we have mentioned in the preceding issue concerning the ruling of the Messenger of Allah—peace and blessings be upon him—that the *mukatab* is emancipated proportionally to what he has paid and remains in bondage for the unpaid portion. This necessitates everything we have mentioned. Since he remains a slave as long as he has not fulfilled his payment, it is permissible for a person to sell his slave or to have sexual

بُرْهَانُ ذَلِكَ مَا ذَكَرْنَاهُ فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ مِنْ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ الْمُكَاتَبَ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى، وَيُرَقُّ بِقَدْرِ مَا لَمْ يُؤَدِّ فَهَذَا يُوجِبُ كُلَّ مَا ذَكَرْنَا، وَإِذْ هُوَ عَبْدٌ مَا لَمْ يُؤَدِّ، فَبَيْعُ الْمَرْءِ عَبْدَهُ وَوَطْؤُهُ أَمَتَهُ حَلَالٌ لَهُ، وَمَا عَلِمْنَا فِي دِينِ اللَّهِ تَعَالَى مَمْلُوكًا مَمْنُوعًا مِنْ بَيْعِهِ.

intercourse with his female slave. We know of no slave in the religion of Allah the Exalted who is prohibited from being sold.

L27231–27232 The Hanafis and Malikis prohibited the sale of the mukatab (a slave under contract for freedom) and sexual intercourse with them, yet we know of no valid proof for their position whatsoever—neither from the Quran, the Sunnah, analogical reasoning, nor rational deduction. Rather, their view contradicts all these sources. This is particularly evident in their reliance on the baseless argument that a mukatab remains a slave as long as a single dirham is owed. If he (the mukatab) is a slave, what prevents his sale? And if she is a slave, what prohibits intercourse with her? Allah the Exalted states: *"Those who guard their chastity, except with their spouses or those their right hands possess—for then they are blameless"* (23:5-6). The situation must be one of two possibilities: either she is among those his right hand possesses, making intercourse lawful, or she is not—in which case she is either free or another's slave. No other scenario is conceivable in Allah's religion or by the nature of rational thought. If only they had applied this objection to themselves instead of raising it against the Messenger of Allah—peace be upon him—concerning his marriage to the Mother of the Believers, Ṣafiyya, when he established her emancipation as her dowry. They would have argued: "This marriage is invalid—either he married her while she was his slave, which is impermissible, or he married her as a free woman without a dowry." Such an approach would have spared them from the sin in the latter scenario and from the ridicule of their preposterous argument in the former.[12]

L27233 Their response is: That he—peace and blessings be upon him—only married her when she was free, with a valid dowry that he duly fulfilled and gave to her, as his Lord, Exalted and Majestic, commanded him, and this was her complete emancipation before marriage if he marries her. The *mukātab* necessarily falls under one of four categories without a fifth: Either he is free from the moment of the contract, as mentioned by some Companions—may Allah be pleased with them—and they do not hold this view; or he is a

وَمَنَعَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ مِنْ الْبَيْعِ وَالْوَطْءِ، وَمَا نَعْلَمُ لَهُمْ فِي ذَلِكَ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قِيَاسٍ، وَلَا مَعْقُولٍ، بَلْ قَوْلُهُمْ خِلَافُ ذَلِكَ كُلِّهِ، لَا سِيَّمَا احْتِجَاجُهُمْ لِقَوْلِهِمْ الْفَاسِدِ بِمَا لَمْ يَصِحَّ مِنْ أَنَّ الْمُكَاتَبَ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ، فَإِذْ هُوَ عَبْدٌ، فَمَا الْمَانِعُ مِنْ بَيْعِهِ، وَإِذْ هِيَ أَمَةٌ فَمَا الْمَانِعُ مِنْ وَطْئِهَا، وَاَللَّهُ تَعَالَى يَقُولُ {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] فَلَا تَخْلُو مِنْ أَنْ تَكُونَ مِمَّا مَلَكَتْ يَمِينُهُ فَوَطْؤُهَا لَهُ حَلَالٌ، أَوْ مِمَّا لَا تَمْلِكُ يَمِينُهُ، فَهِيَ إمَّا حُرَّةٌ وَإِمَّا أَمَةٌ لِغَيْرِهِ، لَا يُعْقَلُ فِي دِينِ اللَّهِ تَعَالَى وَفِي طَبِيعَةِ الْعُقُولِ إلَّا هَذَا. وَلَوْ أَنَّهُمْ اعْتَرَضُوا بِهَذَا عَلَى أَنْفُسِهِمْ مَكَانَ اعْتِرَاضِهِمْ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَزَوُّجِهِ أُمَّ الْمُؤْمِنِينَ صَفِيَّةَ، وَجَعَلَ عِتْقَهَا صَدَاقَهَا، فَقَالُوا: لَا يَخْلُو مِنْ أَنْ يَكُونَ تَزَوَّجَهَا وَهِيَ مَمْلُوكَةٌ لَهُ، فَلَا يَجُوزُ ذَلِكَ، أَوْ يَكُونَ تَزَوَّجَهَا وَهِيَ حُرَّةٌ فَهَذَا نِكَاحٌ بِلَا صَدَاقٍ، لَكَانَ أَسْلَمَ لَهُمْ مِنْ الْإِثْمِ فِي الْأُخْرَى، وَمِنْ السُّخْرِيَةِ بِهَذَا الْقَوْلِ السَّخِيفِ فِي الْأُولَى.

وَجَوَابُهُمْ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا تَزَوَّجَهَا إلَّا وَهِيَ حُرَّةٌ بِصَدَاقٍ صَحِيحٍ، قَدْ حَصَلَتْ عَلَيْهِ وَآتَاهَا إيَّاهُ، كَمَا أَمَرَهُ رَبُّهُ عَزَّ وَجَلَّ، وَهُوَ عِتْقُهَا التَّامُّ قَبْلَ الزَّوَاجِ إنْ تَزَوَّجَتْهُ. وَلَا يَخْلُو الْمُكَاتَبُ ضَرُورَةً مِنْ أَحَدِ أَقْسَامٍ أَرْبَعَةٍ لَا خَامِسَ لَهَا: إمَّا أَنْ يَكُونَ حُرًّا مِنْ حِينِ الْعَقْدِ كَمَا ذُكِرَ عَنْ بَعْضِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُمْ لَا يَقُولُونَ بِهَذَا - أَوْ يَكُونَ عَبْدًا كَمَا يَقُولُونَ أَوْ يَكُونَ عَبْدًا مَا لَمْ يُؤَدِّ فَإِذَا أَدَّى شَرَعَ فِيهِ الْعِتْقُ

[12] **Qur'an references (L27232):** 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).

slave, as they assert; or he is a slave until he fulfills the payment, after which emancipation is initiated, making part of him free and partly enslaved—as we ourselves hold; or he is neither free nor a slave, nor partially free nor partially enslaved, which is impossible and inconceivable.

فَكَانَ بَعْضُهُ حُرًّا وَبَعْضُهُ مَمْلُوكًا - كَمَا نَقُولُ نَحْنُ - أَوْ يَكُونَ لَا حُرًّا وَلَا عَبْدًا، وَلَا بَعْضُهُ حُرٌّ، وَلَا بَعْضُهُ عَبْدٌ، وَهَذَا مُحَالٌ لَا يُعْقَلُ.

L27234 Since he is considered a slave in their view, the sale of a slave and intercourse with a female slave are permissible unless a text prevents that, and there is no text here that prohibits this fundamentally. Rather, the authentic text and definitive consensus affirm the permissibility of selling a *mukatab* who has not paid anything.

فَإِذْ هُوَ عِنْدَهُمْ عَبْدٌ فَبَيْعُ الْعَبْدِ وَوَطْءُ الْأَمَةِ حَلَالٌ مَا لَمْ يَمْنَعْ مِنْ ذَلِكَ نَصٌّ، وَلَا نَصَّ هَاهُنَا مَانِعًا مِنْ ذَلِكَ أَصْلًا، بَلْ قَدْ جَاءَ النَّصُّ الصَّحِيحُ، وَالْإِجْمَاعُ الْمُتَيَقَّنُ عَلَى جَوَازِ بَيْعِ الْمُكَاتَبِ الَّذِي لَمْ يُؤَدِّ شَيْئًا.

L27235–27237 As it was narrated to us through the chain of Al-Bukhārī: Qutaybah narrated to us, Al-Layth narrated to us—Ibn Sa'd—from Ibn Shihāb from 'Urwah ibn Al-Zubayr that 'Ā'ishah, the Mother of the Believers, informed him that Barirah came seeking her assistance concerning her kitābah while she had not fulfilled anything of her kitābah. 'Ā'ishah said to her: "Return to your family. If they agree that I settle your kitābah on your behalf, with your patronage rights belonging to me, I shall do so." Barirah mentioned this to her family, but they refused and said: "If..." If she wishes to seek reward through you, let her do so, but the right of patronage shall belong to us. She mentioned this to the Messenger of Allah (peace be upon him), and he said to her: "Purchase and emancipate, for the right of patronage belongs solely to the one who emancipates." She said: Then the Messenger of Allah (peace be upon him) stood and declared: "Why do people stipulate conditions not ordained in Allah's Book? Whoever stipulates a condition not in Allah's Book, it holds no validity for him—even if he stipulates it a hundred times. Allah's stipulation is most rightful and binding."

كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ «أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَخْبَرَتْهُ أَنَّ بَرِيرَةَ جَاءَتْ تَسْتَعِينُهَا فِي كِتَابَتِهَا وَلَمْ تَكُنْ قَضَتْ مِنْ كِتَابَتِهَا شَيْئًا فَقَالَتْ لَهَا عَائِشَةُ: ارْجِعِي إِلَى أَهْلِكِ فَإِنْ أَحَبُّوا أَنْ أَقْضِيَ عَنْكِ كِتَابَتَكِ وَيَكُونَ وَلَاؤُكِ لِي فَعَلْتُ فَذَكَرَتْ ذَلِكَ بَرِيرَةُ لِأَهْلِهَا فَأَبَوْا وَقَالُوا: إِنْ شَاءَتْ أَنْ تَحْتَسِبَ عَلَيْكِ فَلْتَفْعَلْ وَيَكُونُ وَلَاؤُكِ لَنَا فَذَكَرَتْ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ابْتَاعِي فَأَعْتِقِي فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ قَالَتْ: ثُمَّ قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَا بَالُ النَّاسِ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ تَعَالَى مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَلَيْسَ لَهُ وَإِنْ اشْتَرَطَ مِائَةَ مَرَّةٍ. شَرْطُ اللَّهِ أَحَقُّ وَأَوْثَقُ» .

L27238 From the path of Muslim: Abū Kurayb Muḥammad ibn al-'Alā' narrated to us, Abū Usāmah narrated to us, Hishām ibn 'Urwah—meaning from his father—narrated to us. 'Ā'ishah, the Mother of the Believers, informed me, saying: "Barirah came to me and said: 'My family contracted a *kitābah* with me for nine awāq over nine years—one ūqiyyah each year. Will you assist me?' I replied: 'If your family agrees that I pay them the total sum at once, emancipate you, and have your *walā'* transferred to me, I will do it.' She mentioned this to her family, but they said: 'No, unless the *walā'*

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ نا أَبُو أُسَامَةَ نا هِشَامُ بْنُ عُرْوَةَ - يَعْنِي عَنْ أَبِيهِ - أَخْبَرَتْنِي عَائِشَةُ أُمُّ الْمُؤْمِنِينَ قَالَتْ: «دَخَلَتْ عَلَيَّ بَرِيرَةُ فَقَالَتْ: إِنَّ أَهْلِي كَاتَبُونِي عَلَى تِسْعِ أَوَاقٍ فِي تِسْعِ سِنِينَ فِي كُلِّ سَنَةٍ أُوقِيَّةٌ فَأَعِينِينِي؟ فَقَالَتْ لَهَا: إِنْ شَاءَ أَهْلُكِ أَنْ أَعُدَّهَا لَهُمْ عَدَّةً وَاحِدَةً وَأُعْتِقَكِ وَيَكُونُ وَلَاؤُكِ لِي فَعَلْتُ؟ فَذَكَرَتْ ذَلِكَ

remains with us.' She returned and told me, so I rebuked her and said: 'By Allah, then no!' The Messenger of Allah (peace be upon him) heard this and questioned me. I informed him, and he said: 'Purchase her, emancipate her, and stipulate that the *walā'* remains with them, for *walā'* belongs to the emancipator.' I did so. Later, the Messenger of Allah (peace be upon him) delivered an evening sermon. He praised Allah as He deserves, then said: 'Why do some people stipulate conditions not found in Allah's Book? Any condition not in Allah's Book is void, even if it were a hundred conditions. Allah's Book holds greater claim, and Allah's stipulation is more binding.'" The narrator then mentioned the remainder of the ḥadīth.

لأَهْلِهَا فَقَالُوا: لَا إِلَّا أَنْ يَكُونَ الْوَلَاءُ لَهُمْ؟ قَالَتْ: فَأَتَتْنِي فَذَكَرَتْ ذَلِكَ فَانْتَهَرْتُهَا فَقُلْتُ: لَاهَا اللَّهِ إِذًا، فَسَمِعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ فَسَأَلَنِي فَأَخْبَرْتُهُ، فَقَالَ: اشْتَرِيهَا فَأَعْتِقِيهَا وَاشْتَرِطِي لَهُمُ الْوَلَاءَ فَإِنَّ الْوَلَاءَ لِمَنْ أَعْتَقَ؟ ففَعَلْتُ، ثُمَّ خَطَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَشِيَّةً فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ بِمَا هُوَ أَهْلُهُ ثُمَّ قَالَ: مَا بَالُ أَقْوَامٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ، مَا كَانَ مِنْ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ وَإِنْ كَانَ مِائَةَ شَرْطٍ كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L27239–27241

From Malik's chain via Hisham ibn Urwah from his father from Umm al-Mu'minin Aisha in a similar account. From Al-Bukhari's chain: Abu Nu'aym—Al-Fadl ibn Dukayn—narrated to us from Abdul Wahid ibn Ayman who reported: My father Ayman said: "I visited Aisha the Mother of the Believers and asked her: 'I was owned by Utbah ibn Abi Lahab. When he died, his sons inherited me and sold me to Ibn Abi Amr al-Makhzumi who emancipated me, but Utbah's sons stipulated the patronage.' Aisha replied: 'Barirah came to me as a mukatabah and said: "Purchase me and emancipate me." I agreed. She said: "They will not sell me unless they stipulate my patronage." I said: "I have no need for that." When the Prophet—peace be upon him—heard of this, he told me: "Buy her and emancipate her." Then I related the account.'" From Abu Dawud's chain: Musa ibn Isma'il narrated to us from Hammad ibn Salamah from Khalid al-Khaddā' from Ikrimah from Ibn Abbas: "Mughith, a slave, said: 'O Messenger of Allah...'" "Intercede for her?" So the Messenger of Allah—peace and blessings be upon him—said to her: "O Barirah, fear Allah, for he is your husband and the father of your child." She said: "O Messenger of Allah, are you commanding me to do that?" He said: "No, I am merely an intercessor." At that moment, Mughīth's tears were flowing down his cheek? Then the Messenger of Allah—peace and blessings be upon him—said to Al-ʿAbbās: "Do you not marvel at Mughīth's love for Barirah and her hatred of him?"

وَمِنْ طَرِيقِ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ أُمِّ الْمُؤْمِنِينَ عَائِشَةَ نَحْوَهُ. وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - نا عَبْدُ الْوَاحِدِ بْنُ أَيْمَنَ حَدَّثَنِي «أَبِي أَيْمَنُ قَالَ: دَخَلْتُ عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَقُلْتُ لَهَا: كُنْتُ لِعُتْبَةَ بْنِ أَبِي لَهَبٍ وَمَاتَ وَوَرِثَهُ بَنُوهُ وَإِنَّهُمْ بَاعُونِي مِنْ ابْنِ أَبِي عَمْرٍو الْمَخْزُومِيِّ فَأَعْتَقَنِي وَاشْتَرَطَ بَنُو عُتْبَةَ الْوَلَاءَ؟ فَقَالَتْ عَائِشَةُ: دَخَلَتْ عَلَيَّ بَرِيرَةُ وَهِيَ مُكَاتَبَةٌ فَقَالَتْ: اشْتَرِينِي فَاعْتِقِينِي؟ فَقُلْتُ: نَعَمْ، فَقَالَتْ: لَا يَبِيعُونَنِي حَتَّى يَشْتَرِطُوا وَلَائِي، فَقُلْتُ: لَا حَاجَةَ لِي بِذَلِكَ، فَسَمِعَ بِذَلِكَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ بَلَغَهُ فَقَالَ لِعَائِشَةَ: اشْتَرِيهَا وَأَعْتِقِيهَا» فَذَكَرْت الْخَبَرَ. وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادٌ - هُوَ ابْنُ سَلَمَةَ - عَنْ خَالِدٍ - هُوَ الْحَذَّاءُ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ مُغِيثًا كَانَ عَبْدًا فَقَالَ: يَا رَسُولَ اللَّهِ اشْفَعْ إِلَيْهَا؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَا بَرِيرَةُ اتَّقِي اللَّهَ فَإِنَّهُ زَوْجُكِ وَأَبُو وَلَدِكِ، قَالَتْ: يَا رَسُولَ اللَّهِ تَأْمُرُنِي بِذَلِكَ؟ قَالَ: لَا، إِنَّمَا أَنَا شَافِعٌ،

فَكَانَتْ دُمُوعُهُ تَسِيلُ عَلَى خَدِّهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْعَبَّاسِ: أَلَا تَعْجَبُ مِنْ حُبِّ مُغِيثٍ بَرِيرَةَ وَبُغْضِهَا إِيَّاهُ؟» .

L27242 From the narration of Sa'īd ibn Manṣūr: Hushaym narrated to us from Khālid, from 'Ikrimah, from Ibn 'Abbās, who said: When Barirah was given the choice, I saw her husband trailing her through Madīnah's alleyways, tears streaming down his beard. Al-'Abbās petitioned the Prophet (peace be upon him) to intercede for him with her. The Messenger of Allāh (peace be upon him) said to her: "He is your husband and the father of your child." She responded: "Do you command me to him, O Messenger of Allāh?" He replied: "I am merely an intercessor." She declared: "If you are an intercessor, I have no need for him," and she chose herself. He was known as Al-Mughīth, a slave of the family of Al-Mughīrah from Banū Makhzūm. The Messenger of Allāh (peace be upon him) then said to Al-'Abbās: "Does it not astonish you: the intensity of Barirah's aversion to her husband, and the intensity of her husband's love for her?"

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا خَالِدٌ عَنْ عِكْرِمَةَ «عَنْ ابْنِ عَبَّاسٍ قَالَ: لَمَّا خُيِّرَتْ بَرِيرَةُ رَأَيْتُ زَوْجَهَا يَتْبَعُهَا فِي سِكَكِ الْمَدِينَةِ وَدُمُوعُهُ تَسِيلُ عَلَى لِحْيَتِهِ، فَكَلَّمَ لَهُ الْعَبَّاسُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَطْلُبَ إِلَيْهَا، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: زَوْجُكِ وَأَبُو وَلَدِكِ فَقَالَتْ: أَتَأْمُرُنِي بِهِ يَا رَسُولَ اللَّهِ؟ قَالَ: إِنَّمَا أَنَا شَافِعٌ، فَقَالَتْ فَإِنْ كُنْتَ شَافِعًا فَلَا حَاجَةَ لِي فِيهِ، وَاخْتَارَتْ نَفْسَهَا، وَكَانَ يُقَالُ لَهُ: الْمُغِيثُ، وَكَانَ عَبْدًا لِآلِ الْمُغِيرَةِ مِنْ بَنِي مَخْزُومٍ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْعَبَّاسِ: أَلَا تَعْجَبُ مِنْ شِدَّةِ بُغْضِ بَرِيرَةَ لِزَوْجِهَا وَمِنْ شِدَّةِ حُبِّ زَوْجِهَا لَهَا؟»

L27243 This is a well-known, widely transmitted report narrated from the Prophet—peace and blessings of Allah be upon him—by ʿĀ'ishah, the Mother of the Believers; Barrīrah; and Ibn ʿAbbās. It was transmitted from Ibn ʿAbbās by ʿIkrimah; from Barrīrah by ʿUrwah; from the Mother of the Believers by al-Qāsim ibn Muḥammad, ʿUrwah ibn al-Zubayr, ʿAmrah, and Ayman. It was transmitted from Ayman by his son ʿAbd al-Wāḥid; from ʿAmrah by Yaḥyā ibn Sa'īd al-Anṣārī; from al-Qāsim by his son ʿAbd al-Raḥmān; from ʿUrwah by al-Zuhrī, his son Hishām, and Yazīd ibn Rūmān. It was transmitted from these individuals by numerous transmitters and Imams—so many in number that it became a universally transmitted and mass-transmitted (mutawātir) report leaving no room for opposition. This pertains to the sale of a slave under a contractual manumission agreement (mukātab) before they have paid anything.

فَهَذَا خَبَرٌ ظَاهِرٌ فَاشٍ، رَوَاهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَائِشَةُ أُمُّ الْمُؤْمِنِينَ، وَبَرِيرَةُ، وَابْنُ عَبَّاسٍ. وَرَوَاهُ عَنْ ابْنِ عَبَّاسٍ عِكْرِمَةُ، وَعَنْ بَرِيرَةَ عُرْوَةُ، وَعَنْ أُمِّ الْمُؤْمِنِينَ الْقَاسِمُ بْنُ مُحَمَّدٍ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَعَمْرَةُ، وَأَيْمَنُ. وَرَوَاهُ عَنْ أَيْمَنَ ابْنُهُ عَبْدُ الْوَاحِدِ، وَعَنْ عَمْرَةَ: يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ وَعَنْ الْقَاسِمِ: ابْنُهُ عَبْدُ الرَّحْمَنِ، وَعَنْ عُرْوَةَ: الزُّهْرِيُّ، وَهِشَامٌ ابْنُهُ، وَيَزِيدُ بْنُ رُومَانَ. وَرَوَاهُ عَنْ هَؤُلَاءِ النَّاسُ، وَالْأَئِمَّةُ الَّذِينَ يَكْثُرُ عَدَدُهُمْ، فَصَارَ نَقْلَ كَافَّةٍ وَتَوَاتُرٍ لَا تَسَعُ مُخَالَفَتُهُ - وَهَذَا بَيْعُ الْمُكَاتَبِ قَبْلَ أَنْ يُؤَدِّيَ شَيْئًا.

L27244–27246 There is no doubt to every person with sound perception that none remained in Medina unaware of this matter, for it was a transaction conducted between the Mother of the Believers and a group of Companions, who were the freed-

وَلَا شَكَّ عِنْدَ كُلِّ ذِي حِسٍّ سَلِيمٍ أَنَّهُ لَمْ يَبْقَ بِالْمَدِينَةِ مَنْ لَمْ يَعْرِفْ ذَلِكَ؛ لِأَنَّهَا صَفْقَةٌ جَرَتْ بَيْنَ أُمِّ الْمُؤْمِنِينَ وَطَائِفَةٍ مِنْ الصَّحَابَةِ وَهُمْ مَوَالِي بَرِيرَةَ. ثُمَّ خَطَبَ النَّاسَ

men of Barīrah. Then Allah's Messenger—peace be upon him—addressed the people in a sermon about her sale at a time other than the appointed sermon hour, and nothing could be more widely known than this. Moreover, her husband's act of walking behind her weeping through Medina's alleyways further amplified the matter's fame among... The children, women, and vulnerable – it has become evident beyond doubt that this constitutes a consensus among all the Companions, as it is entirely impermissible to even suspect that a single Companion would oppose the command of Allah's Messenger – peace and blessings be upon him – in which he stressed this matter with utmost emphasis.

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَمْرِ بَيْعِهَا خُطْبَةً فِي غَيْرِ وَقْتِ الْخُطْبَةِ وَلَا يَكُونُ شَيْءٌ أَشْهَرَ مِنْ هَذَا. ثُمَّ كَانَ مِنْ مَشْيِ زَوْجِهَا يَبْكِي خَلْفَهَا فِي أَزِقَّةِ الْمَدِينَةِ مَا زَادَ الْأَمْرَ شُهْرَةً عِنْدَ الصِّبْيَانِ وَالنِّسَاءِ وَالضُّعَفَاءِ، فَلَاحَ يَقِينًا أَنَّهُ إجْمَاعٌ مِنْ جَمِيعِ الصَّحَابَةِ، إذْ لَا يَجُوزُ أَلْبَتَّةَ أَنْ يُظَنَّ بِصَاحِبٍ خِلَافُ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أَكَّدَ فِيهِ هَذَا التَّأْكِيدَ.

L27247 This is the certain consensus: there is no giving of a sa' of wheat as charity among Banū al-Ḥārith ibn al-Khazraj at approximately a mile from Medina; nor [consensus] regarding 'Umar's imposition of forty lashes added to the discretionary punishment (taʿzīr) for drinking wine, though authentic reports confirm his own contradiction of this, as do reports from other Companions before and after him. They cannot provide us with any prohibition from a Companion against selling a mukātab before he fulfills his obligation. Only that obscure report attributed to Ibn 'Abbās remains, for which we find no chain of transmission.

وَهَذَا هُوَ الْإِجْمَاعُ الْمُتَيَقَّنُ لَا إعْطَاءُ صَاعٍ مِنْ حِنْطَةٍ صَدَقَةً فِي بَنِي الْحَارِثِ بْنِ الْخَزْرَجِ عَلَى نَحْوِ مِيلٍ مِنْ الْمَدِينَةِ، وَلَا جَلْدُ عُمَرَ أَرْبَعِينَ جَلْدَةً زَائِدَةً عَلَى سَبِيلِ التَّعْزِيرِ فِي الْخَمْرِ قَدْ صَحَّ عَنْهُ خِلَافُهَا، وَعَنْ غَيْرِهِ مِنْ الصَّحَابَةِ قَبْلَهُ وَبَعْدَهُ. وَلَا سَبِيلَ لَهُمْ إلَى أَنْ يُوجِدُونَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ الْمَنْعَ مِنْ بَيْعِ الْمُكَاتَبِ قَبْلَ أَنْ يُؤَدِّيَ إلَّا تِلْكَ الْقَوْلَةَ الْخَامِلَةَ الَّتِي لَا نَعْلَمُ لَهَا سَنَدًا عَنْ ابْنِ عَبَّاسٍ.

L27248 Abu Muhammad said: They argued obstinately at this point, whereupon a faction among them asserted: "Her manumission contract was sold." We retorted: "You have contrived a lie on the spot, and the hadith itself refutes your claim, for the Mother of the Believers purchased her and emancipated her, with the patronage rights vested in her." Some of them contended: "She defaulted?" We countered: "You have contrived a lie on the spot, while the hadith confirms that this incident occurred in Medina when al-ʿAbbās and his son ʿAbdullāh were present there, that the contractual obligation lasted nine years with an annual payment of one silver ounce, and that she had still not paid anything by then."

قَالَ أَبُو مُحَمَّد: فَبَلَّحُوا عِنْدَ هَذِهِ، فَقَالَتْ مِنْهُمْ عُصْبَةٌ: إنَّمَا بِيعَتْ كِتَابَتُهَا. فَقُلْنَا: كَذَبْتُمْ كَذِبًا مُفْتَعَلًا لِلْوَقْتِ، وَفِي الْخَبَرِ تَكْذِيبُكُمْ بِأَنَّ أُمَّ الْمُؤْمِنِينَ اشْتَرَتْهَا وَأَعْتَقَتْهَا، وَكَانَ الْوَلَاءُ لَهَا. وَقَالَ بَعْضُهُمْ: إنَّهَا عَجَزَتْ؟ فَقُلْنَا: كَذَبْتُمْ كَذِبًا مُفْتَعَلًا مِنْ وَقْتِهِ، وَفِي الْخَبَرِ: أَنَّ هَذِهِ الْقِصَّةَ كَانَتْ بِالْمَدِينَةِ، وَالْعَبَّاسُ، وَابْنُهُ عَبْدُ اللَّهِ بِهَا، وَأَنَّ الْكِتَابَةَ كَانَتْ لِتِسْعِ سِنِينَ فِي كُلِّ سَنَةٍ أُوقِيَّةٌ، وَأَنَّهَا لَمْ تَكُنْ بَعْدُ أَدَّتْ شَيْئًا.

L27249 There is no disagreement among any of the scholars and ḥadīth narrators that al-ʿAbbās and ʿAbdullāh neither entered Medina nor resided in it except after the Conquest of Mecca. The Prophet—may Allah bless him and grant him peace—lived only two years and four months in Medina after the

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ وَالرِّوَايَةِ فِي أَنَّ الْعَبَّاسَ، وَعَبْدَ اللَّهِ لَمْ يَدْخُلَا الْمَدِينَةَ وَلَا سَكَنَاهَا، إلَّا بَعْدَ فَتْحِ مَكَّةَ، وَلَمْ يَعِشْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُذْ

Conquest. So where is its weakness, and where is the fulfillment of their stars' destinies? Blessed be Allah—how easily these people forge falsehoods in matters of religion! We seek refuge with Allah from tribulation.

L27250–27252 It has been narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj: I said to Ata, "A slave boy whom you entered into a manumission contract with—did you sell him as chattel or contract him and he failed to fulfill it?" Ata said, "He remains a slave belonging to the purchaser." Amr ibn Dinar also affirmed this. I said to Ata, "If he completes his contractual obligations and gains freedom?" Ata said, "He becomes the client of the purchaser." I said to Ata, "How can that be, when the contract itself constitutes manumission?" Ata said, "No! It is not true manumission. It is merely said regarding the contracted slave that he is inheritable. Thus, the inheritor cannot sell him except with the consent of the agnatic heirs of the original contractor." Amr ibn Dinar likewise affirmed this. Ibn Jurayj said, "I told Ata, 'My brothers authorized me to sell him.'" Why did the sons of my father not grant permission, while the sons of my grandfather did? ʿAṭāʾ said: It suffices that his agnate heir at that time grants you permission. ʿAṭāʾ added: As for a mukātab whom you contracted and then sold as a slave while debt remains upon him, you need not seek anyone's permission concerning him. If he defaults, he becomes the property of the purchaser, and if he is freed, he becomes the client of the purchaser. This is the position of ʿAṭāʾ and ʿAmr ibn Dīnār, who permit selling a mukātab's person as a slave in the absence of default, and Ibn Jurayj did not oppose them. What is truly astonishing is that some scholars permit selling the mukātab's contract—which is unlawful, being a sale involving uncertainty—while prohibiting the sale of his person before he fulfills his obligation, though this is unequivocally lawful. They further assert: If he fulfills his obligation and is freed, his patronage belongs to the seller of his contract, but if he defaults, he becomes a slave owned by the purchaser of his contract. This is an unprecedented and incoherent ruling, for it is a sale (not a sale combined with transferring ownership of the slave to someone unrelated to the transaction), and all of this is invalid.

L27253 Some of them argued to prohibit his sale by citing Allah Almighty's statement: "Fulfill the contracts" [Al-Mā'idah: 1]. Abū Muḥammad said: This

دَخَلَ الْمَدِينَةَ بَعْدَ الْفَتْحِ إِلَّا عَامَيْنِ وَأَرْبَعَةَ أَشْهُرٍ، فَأَيْنَ عَجْزُهَا وَأَيْنَ حُلُولُ نُجُومِهَا؟ تَبَارَكَ اللَّهُ مَا أَسْهَلَ الْكَذِبَ عَلَى هَؤُلَاءِ الْقَوْمِ فِي الدِّينِ. نَعُوذُ بِاللَّهِ مِنْ الْبَلَاءِ؟

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: غُلَامٌ كَاتَبْتَهُ فَبِعْته رَقَبَةً أَوْ كَاتَبْته فَعَجَزَ؟ قَالَ عَطَاءٌ: هُوَ عَبْدٌ لِلَّذِي ابْتَاعَهُ. وَقَالَهُ أَيْضًا: عَمْرُو بْنُ دِينَارٍ، قُلْت لِعَطَاءٍ: فَقَضَى كِتَابَتَهُ فَعَتَقَ؟ قَالَ عَطَاءٌ: هُوَ مَوْلَى لِلَّذِي ابْتَاعَهُ؟ قُلْت لِعَطَاءٍ: كَيْفَ وَالْكِتَابَةُ عِتْقٌ؟ قَالَ عَطَاءٌ: كَلَّا، لَيْسَتْ عِتْقًا، إنَّمَا يُقَالُ فِي الْمُكَاتَبِ يُورَثُ فَلَا يَبِيعُهُ الَّذِي وَرِثَهُ إلَّا بِإِذْنِ عَصَبَةِ الَّذِي كَاتَبَهُ. وَقَالَهُ أَيْضًا: عَمْرُو بْنُ دِينَارٍ، قَالَ ابْنُ جُرَيْجٍ: قُلْت لِعَطَاءٍ: أَذِنَ لِي فِي بَيْعِهِ إخْوَتِي بَنُو أَبِي وَلَمْ يَأْذَنْ بَنُو جَدِّيّ؟ قَالَ عَطَاءٌ: حَسْبُك أَنْ يَأْذَنَ لَك وَارِثُهُ مِنْ عَصَبَتِهِ يَوْمَئِذٍ، قَالَ عَطَاءٌ: وَأَمَّا مُكَاتَبٌ أَنْتَ كَاتَبْته فَبِعْته رَقَبَةً وَالَّذِي عَلَيْهِ: فَلَا تَسْتَأْذِنْ فِيهِ أَحَدًا، فَإِنْ عَجَزَ فَهُوَ لِلَّذِي ابْتَاعَهُ، وَإِنْ عَتَقَ فَهُوَ مَوْلَى الَّذِي ابْتَاعَهُ. فَهَذَا عَطَاءٌ، وَعَمْرُو بْنُ دِينَارٍ: يُجِيزَانِ بَيْعَ رَقَبَةِ الْمُكَاتَبِ بِلَا عَجْزٍ، وَلَمْ يُخَالِفْهُمَا ابْنُ جُرَيْجٍ. وَالْعَجَبُ كُلُّهُ مِنْ إجَازَةِ بَعْضِهِمْ بَيْعَ كِتَابَةِ الْمُكَاتَبِ - وَهُوَ حَرَامٌ - لِأَنَّهُ بَيْعُ غَرَرٍ، وَمَنَعُوا مِنْ بَيْعِ رَقَبَتِهِ قَبْلَ أَنْ يُؤَدِّيَ - وَهُوَ حَلَالٌ طَلْقٌ -. ثُمَّ قَالُوا: إنْ أَدَّى فَعَتَقَ فَوَلَاؤُهُ لِبَائِعِ كِتَابَتِهِ، وَإِنْ عَجَزَ فَهُوَ رَقِيقٌ لِلْمُشْتَرِي كِتَابَتُهُ - وَهَذَا تَخْلِيطٌ لَا نَظِيرَ لَهُ لِأَنَّهُ بَيْعٌ، لَا بَيْعٌ وَتَمْلِيكٌ لِلرَّقَبَةِ لِمَنْ لَمْ يَشْتَرِهَا - وَكُلُّ ذَلِكَ بَاطِلٌ.

وَاحْتَجَّ بَعْضُهُمْ فِي مَنْعِ بَيْعِهِ بِقَوْلِ اللَّهِ تَعَالَى {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] . قَالَ أَبُو مُحَمَّد: وَهَذَا عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّهُمْ يَرَوْنَ تَعْجِيزَهُ إنْ عَجَزَ، وَإِبْطَالَ كِتَابَتِهِ، وَنَسَوْا قَوْلَ اللَّهِ تَعَالَى {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] . فَقَالُوا: الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ؟ فَقُلْنَا: فَأَجِيزُوا شَرْطَهُ عَلَى الْمُكَاتَبَةِ وَطْئَهَا، كَمَا فَعَلَ سَعِيدُ بْنُ الْمُسَيِّبِ وَغَيْرُهُ، فَقَالُوا: هَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى؟ فَقُلْنَا: وَالتَّعْجِيزُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى وَلَا فَرْقَ. ثُمَّ لَمْ يَخْتَلِفُوا فِيمَنْ عَقَدَ عَلَى نَفْسِهِ لِلَّهِ عَزَّ وَجَلَّ عِتْقَ غُلَامِهِ هَذَا - إنْ أَفَاقَ أَبُوهُ أَوْ قَدِمَ غَائِبُهُ - فَإِنَّ لَهُ بَيْعَهُ مَا لَمْ يَقْدَمْ الْغَائِبُ، وَمَا لَمْ يُفِقْ الْأَبُ فَهَلَّا مَنَعُوا مِنْ هَذَا بِ {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] . فَإِنْ قَالُوا: قَدْ لَا يَسْتَحِقُّ الْعِتْقَ بِمَوْتِ الْأَبِ الْمَرِيضِ، وَالْغَائِبِ؟ قُلْنَا: وَقَدْ لَا يَسْتَحِقُّ الْمُكَاتَبُ الْعِتْقَ عِنْدَكُمْ بِالْعَجْزِ وَلَا فَرْقَ، فَكَيْفَ وَلَيْسَ قَوْله تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] مَانِعًا مِنْ الْبَيْعِ، وَإِنَّمَا هُوَ مَانِعٌ مِنْ أَنْ يُبْطِلَ عَقْدَهُ قَاصِدًا إلَيْهِ بِالْإِبْطَالِ، فَقَطْ.

argument is against them, not in their favor, for they hold that incapacitation invalidates the contract and annuls his *mukātabah* agreement, while disregarding Allah's words: "Fulfill the contracts" [Al-Mā'idah: 1]. They asked: "Are Muslims bound by their stipulations?" We replied: "Then permit the stipulation he imposes on the *mukātabah* contract allowing intercourse with her (the enslaved woman under the contract)—as did Saʿīd ibn al-Musayyab and others." They retorted: "This stipulation is not in the Book of Allah Almighty." We countered: "The stipulation of incapacitation is likewise absent from the Book of Allah Almighty, with no distinction between them." Moreover, they unanimously agreed that if someone pledges to Allah—Exalted and Majestic—to free his slave upon the father's recovery or the absent person's return, he retains the right to sell him as long as the absent one has not arrived and the father has not recovered. Why then do they not prohibit this in such cases based on "Fulfill the contracts" [Al-Mā'idah: 1]? If they argue: "He may not deserve manumission if the ailing father dies or the absent one fails to return," we respond: "Similarly, the *mukātab* may not deserve manumission in your view due to incapacitation—there is no difference." How then can they claim Allah's words "Fulfill the contracts" [Al-Mā'idah: 1] prohibit the sale, when it merely prohibits intentionally nullifying the contract through deliberate means?[13]

وَأَمَّا وَطْءُ الْمُكَاتَبَةِ: فَإِنَّنَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ نا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ التَّنُّورِيُّ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: إذَا كَاتَبَ الرَّجُلُ أَمَتَهُ وَاشْتَرَطَ أَنْ يَغْشَاهَا حَتَّى يُؤَدِّيَ مُكَاتَبَتَهَا فَلَا بَأْسَ بِذَلِكَ - وَبِهِ يَقُولُ أَبُو ثَوْرٍ.

L27254 Regarding intercourse with a _mukataba_ female slave: It has been narrated to us through the chain of Aḥmad ibn Ḥanbal, from ʿAbd al-Ṣamad ibn ʿAbd al-Wārith al-Tannūrī, from Yaḥyā ibn Saʿīd al-Anṣārī, from Saʿīd ibn al-Musayyib, who said: If a man enters into a _mukataba_ contract with his female slave and stipulates that he may have intercourse with her until he fulfills her _mukataba_, there is no harm in that. This is also the opinion of Abū Thawr.

وَالْعَجَبُ: أَنَّ الْمَانِعِينَ مِنْ وَطْئِهَا اخْتَلَفُوا، فَقَالَ الْحَكَمُ بْنُ عُتَيْبَةَ: إنْ حَمَلَتْ بَطَلَتْ الْكِتَابَةُ وَهِيَ أُمُّ وَلَدٍ. وَقَالَ الزُّهْرِيُّ: يُجْلَدُ مِائَةً، فَإِنْ حَمَلَتْ فَهِيَ أُمُّ وَلَدٍ. قَالَ عَلِيٌّ: لَيْتَ

L27255–27256 The astonishing thing is that those who prohibit intercourse with her differed. Al-Hakam ibn ʻUtaybah said: "If she conceives, the manumission contract is voided and she becomes an *umm walad*." Al-Zuhri said: "He is to be lashed one hundred times, and if she conceives, she becomes an *umm walad*." ʻAli remarked: "Would that I knew how one could be lashed

[13] **Qur'an references (L27253):** Qur'an 5:1 (Al-Ma'idah).

a hundred times for intercourse with a woman who, if she conceives, would become the *umm walad* of his child! This is indeed astonishing! It is either lawful marriage or adultery—there is no third possibility."

شَعْرِي كَيْفَ يُجْلَدُ مِائَةً فِي وَطْئِهِ مَنْ تَكُونُ أُمَّ وَلَدِهِ إنْ حَمَلَتْ؟ إنَّ هَذَا لَعَجَبٌ، وَإِنَّمَا هُوَ فِرَاشٌ أَوْ عِهْرٌ وَلَا ثَالِثَ.

L27257 Qatadah said: He is to be lashed ninety-nine lashes, and she is subject to the same ruling if she consents to him. Sufyan al-Thawri said: There is no penalty upon him if he has intercourse with her, nor upon her. If she becomes pregnant, she may choose either to continue with the *kitabah* (contract of manumission) or to become an *umm walad* (mother of her master's child), which nullifies the *kitabah*.

وَقَالَ قَتَادَةُ: يُجْلَدُ مِائَةَ سَوْطٍ غَيْرَ سَوْطٍ، وَهِيَ كَذَلِكَ إنْ طَاوَعَتْهُ. وَقَالَ سُفْيَانُ الثَّوْرِيُّ: لَا شَيْءَ عَلَيْهِ إنْ وَطِئَهَا وَلَا عَلَيْهَا، فَإِنْ حَمَلَتْ فَهِيَ بِالْخِيَارِ بَيْنَ التَّمَادِي عَلَى الْكِتَابَةِ، وَبَيْنَ أَنْ تَكُونَ أُمَّ وَلَدٍ وَتُبْطِلُ الْكِتَابَةَ.

L27258 Abu Hanifah and Malik held the same opinion as Sufyan, except they added: "If she persists in the manumission contract, she may take from him the dower appropriate to women of her standing to assist her in her manumission contract," though Malik further stipulated: "He shall be subject to disciplinary punishment." Abu Muhammad said: "I wish I knew by what legal principle she takes a dower from him. Is she his wife, thereby entitled to a dower for this invalid union? Or is she a prostitute? Yet Allah's Messenger—peace be upon him—forbade the dower of prostitution. Or is she his slave, lawful to him yet having no right to a dower? Or is she forbidden due to a specific state, such as menstruation or fasting? Anything beyond this is illogical confusion." Al-Shafi'i said: "They shall both receive discretionary punishment, and she is entitled to the dower appropriate to women of her standing, and she is his umm walad (mother of his child)"—a self-contradictory position as we have previously explained.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، كَقَوْلِ سُفْيَانَ، إلَّا أَنَّهُ زَادَ " إنْ تَمَادَتْ عَلَى الْكِتَابَةِ أَخَذَتْ مِنْهُ مَهْرَ مِثْلِهَا فَاسْتَعَانَتْ بِهِ فِي كِتَابَتِهَا " إلَّا أَنَّ مَالِكًا زَادَ " أَنَّهُ يُؤَدَّبُ ". قَالَ أَبُو مُحَمَّدٍ: لَيْتَ شِعْرِي لِأَيِّ مَعْنًى تَأْخُذُ مِنْهُ مَهْرًا أَهِيَ زَوْجَةٌ لَهُ فَيَكُونُ لَهَا مَهْرُ هَذَا الْبَاطِلِ أَمْ هِيَ بَغْيٌ؟ فَقَدْ حَرَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَهْرَ الْبَغْيِ، أَمْ هِيَ مِلْكُ يَمِينِهِ فَهِيَ حَلَالٌ وَلَا مَهْرَ لَهَا؟ أَمْ هِيَ مُحَرَّمَةٌ بِصِفَةٍ، كَالْحَائِضِ، أَوْ الصَّائِمَةِ، وَمَا عَدَا ذَلِكَ فَتَخْلِيطٌ لَا يُعْقَلُ؟ وَقَالَ الشَّافِعِيُّ: يُعَزَّرَانِ وَلَهَا مَهْرُ مِثْلِهَا، وَهِيَ أُمُّ وَلَدِهِ - وَهَذَا تَنَاقُضٌ كَمَا ذَكَرْنَا.

L27259 And the wonder is their argument in prohibiting intercourse with her by saying: "She has exited his possession and come under her own control, like a mortgaged woman." ʿAlī said: "This is a lie. She does not exit his possession nor his ownership except through repayment alone. A claim does not establish proof. The mortgaged woman is lawful to her master, and whoever prohibits intercourse with her is in error." This is arguing falsehood with falsehood, claims with claims, and their statements with their statements.

وَالْعَجَبُ مِنْ احْتِجَاجِهِمْ فِي الْمَنْعِ مِنْ وَطْئِهَا بِأَنْ قَالُوا: قَدْ خَرَجَتْ مِنْ يَدِهِ وَصَارَتْ فِي يَدِ نَفْسِهَا، كَالْمَرْهُونَةِ. قَالَ عَلِيٌّ: هَذَا كَذِبٌ، مَا خَرَجَتْ عَنْ يَدِهِ، وَلَا عَنْ مِلْكِهِ، إلَّا بِالْأَدَاءِ فَقَطْ، وَالدَّعْوَى لَا تَقُومُ بِهَا حُجَّةٌ، وَالْمَرْهُونَةُ حَلَالٌ لِسَيِّدِهَا، وَالْمَانِعُ مِنْ وَطْئِهَا مُخْطِئٌ - وَهَذَا احْتِجَاجٌ لِلْبَاطِلِ بِالْبَاطِلِ، وَلِلدَّعْوَى بِالدَّعْوَى، وَلِقَوْلِهِمْ بِقَوْلِهِمْ.

L27260 They said: His ownership has been nullified from her benefits, and intercourse with her is among her benefits. Abu Muhammad said: This is false.

Rather, his ownership has been nullified from her person, and ownership of her person is among her benefits. The correct ruling here is that her benefits are indisputably his. Therefore, nothing is excluded from his ownership of both her person and benefits except what scriptural evidence explicitly excludes, and there is no scriptural proof prohibiting him from intercourse with her as long as she has not fulfilled her obligation.

وَقَالُوا: قَدْ سَقَطَ مِلْكُهُ عَنْ مَنَافِعِهَا وَوَطْؤُهَا مِنْ مَنَافِعِهَا. قَالَ أَبُو مُحَمَّد: هَذَا كَذِبٌ، بَلْ سَقَطَ مِلْكُهُ عَنْ رَقَبَتِهَا، وَمِلْكُ رَقَبَتِهَا مِنْ مَنَافِعِهَا، وَإِنَّمَا الْحَقُّ هَاهُنَا أَنَّ مَنَافِعَهَا لَهُ بِلَا خِلَافٍ، فَلَا يَخْرُجُ عَنْ مِلْكِهِ مِنْهُمَا إِلَّا مَا أَخْرَجَهُ النَّصُّ، وَلَا نَصَّ فِي مَنْعِهِ مِنْ وَطْئِهَا مَا لَمْ تُؤَدِّ.

L27261–27262 Some of them said: Intercourse with her is akin to destroying part of her—and this is the height of folly—for if it were equivalent to destroying part of her, it would indeed be unlawful for him before the *kitabah*, just as it is forbidden for him to destroy part of her, with no distinction. As for our statement, "If ownership reverts to him, the *kitabah* does not revive," this is because any contract invalidated rightfully cannot be restored except through initiating a new contract or by an explicit text mandating its revival after annulment, and there is no such text here. If they pay any portion, emancipation is enacted for them proportionally to what they paid. It is unlawful to sell a free person, nor to sell a portion of a free person, nor to have intercourse with one partially free, for she is not fully under his right-hand possession at that point—rather, part of her is his right-hand possession and part is not. Intercourse cannot be divided, and fundamentally unlawful intercourse is entirely prohibited. If he commits this, he is a fornicator (*zinā*) subject to the *ḥadd* penalty, and the child is not attributed to him in lineage—this being the opinion of al-Ḥasan al-Baṣrī. He may sell his share in either of them that remains under his right-hand possession, based on our earlier mention of the permissibility of selling one's owned portion.

وَقَالَ بَعْضُهُمْ: وَطْؤُهَا كَإِتْلَافِ بَعْضِهَا - وَهَذَا غَايَةُ السُّخْفِ - وَلَئِنْ كَانَ كَإِتْلَافِ بَعْضِهَا إِنَّهُ لَحَرَامٌ عَلَيْهِ قَبْلَ الْكِتَابَةِ، كَمَا يَحْرُمُ عَلَيْهِ إِتْلَافُ بَعْضِهَا وَلَا فَرْقَ. وَأَمَّا قَوْلُنَا " إِنْ عَادَ إِلَى مِلْكِهِ لَمْ تَعُدْ الْكِتَابَةُ " فَلِأَنَّ كُلَّ عَقْدٍ بَطَلَ بِحَقٍّ فَلَا يَرْجِعُ إِلَّا بِابْتِدَاءِ عَقْدِهِ، أَوْ بِأَنْ يُوجِبَ عَوْدَتَهُ بَعْدَ بُطْلَانِهِ نَصٌّ، وَلَا نَصَّ هَاهُنَا. وَأَمَّا إِذَا أَدَّيَا شَيْئًا فَقَدْ شُرِعَ الْعِتْقُ فِيهِمَا بِمِقْدَارِ مَا أَدَّيَا، وَلَا يَحِلُّ بَيْعُ حُرٍّ وَلَا بَيْعُ جُزْءِ حُرٍّ، وَلَا وَطْءُ مَنْ بَعْضُهَا حُرٌّ، لِأَنَّهَا لَيْسَتْ مِلْكَ يَمِينِهِ حِينَئِذٍ، بَلْ بَعْضُهَا مِلْكُ يَمِينِهِ وَبَعْضُهَا غَيْرُ مِلْكِ يَمِينِهِ وَالْوَطْءُ لَا يَنْقَسِمُ، وَلَا يَحِلُّ وَطْءٌ حَرَامٌ أَصْلًا، فَإِنْ فَعَلَ فَهُوَ زَانٍ فَعَلَيْهِ الْحَدُّ، وَالْوَلَدُ غَيْرُ لَاحِقٍ - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ - وَلَهُ بَيْعُ مَا فِي مِلْكِهِ مِنْهُمَا، وَلِمَا ذَكَرْنَا مِنْ جَوَازِ بَيْعِ الْمَرْءِ حِصَّتَهُ الَّتِي فِي مِلْكِهِ.

L27263 As for our statement, "If the master dies, the kitabah is invalidated, or the equivalent of what remains unpaid is nullified," this is based on Allah's saying, exalted is He: {No soul earns except against itself} [6:164]. It is authentically established from the Messenger of Allah—peace and blessings be upon him and his family—that the initiation of manumission for the mukatab occurs through payment, while the remainder of him remains enslaved. Therefore, if the master dies, the portion freed through payment becomes irrevocably free, and what remains enslaved is owned by the heirs, the legatees, or the

وَأَمَّا قَوْلُنَا " إِنْ مَاتَ السَّيِّدُ بَطَلَتْ الْكِتَابَةُ، أَوْ مَا قَابَلَ مَا لَمْ يُؤَدِّ مِنْهُ " فَلِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - شُرُوعُ الْعِتْقِ فِي الْمُكَاتَبِ بِالْأَدَاءِ، وَبَقَاءُ سَائِرِهِ رَقِيقًا، فَإِذَا مَاتَ السَّيِّدُ فَمَا عَتَقَ بِالْأَدَاءِ حُرٌّ لَا يَجُوزُ أَنْ يَعُودَ رَقِيقًا، وَمَا بَقِيَ رَقِيقًا فَقَدْ مَلَكَهُ: الْوَرَثَةُ، وَالْمُوصَى لَهُمْ، أَوْ الْغُرَمَاءُ. وَلَا يَجُوزُ عَقْدُ الْمَيِّتِ فِي مَالِ غَيْرِهِ وَقَدْ ذَكَرْنَا قَبْلُ قَوْلَ

creditors. It is impermissible to enforce the contract of a deceased person on another's property. We previously mentioned Al-Sha'bi's statement that a deceased person has no binding stipulations. These proponents argue that they inherit the kitabah—but this is invalid according to their own principles, as the kitabah in their view is neither a debt nor an established, obligatory property. Thus, their claim that it is inherited is invalidated.[14]

الشَّعْبِيِّ لَيْسَ لِمَيِّتٍ شَرْطٌ وَقَالَ هَؤُلَاءِ: إِنَّمَا يَرِثُونَ الْكِتَابَةَ - وَهَذَا بَاطِلٌ عَلَى أُصُولِهِمْ؛ لِأَنَّ الْكِتَابَةَ عِنْدَهُمْ لَيْسَتْ دَيْنًا وَلَا مَالًا مُسْتَقِرًّا وَاجِبًا، فَبَطَلَ قَوْلُهُمْ: إِنَّهَا تُورَثُ.

L27264–27266 Regarding the death of the mukatab (a slave contracted to purchase their freedom), there exist ancient and modern differing opinions. A group stated that all his wealth belongs to his master. This was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah from Maʿbad al-Juhanī, who said: ʿUmar ibn al-Khaṭṭāb ruled concerning a mukatab who dies leaving free children and possessing wealth greater than the remaining amount owed, that all his wealth belongs to his master. From ʿAbd al-Razzāq from Sufyān al-Thawrī from Ṭāriq from al-Shaʿbī from Zayd ibn Thābit: he said regarding a mukatab who dies leaving free heirs, "All his wealth belongs to his master." Another chain from ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ from Ibn ʿUmar states his opinion regarding what he left behind. The mukatab (a slave who has contracted to purchase their freedom through a kitābah agreement) entirely belongs to his master—this is the view of Umar ibn Abd al-Aziz, Qatadah, al-Nakha'i, al-Shafi'i, Ahmad ibn Hanbal, Abu Sulayman, and their followers. Another group held a differing opinion, as transmitted through Hammad ibn Salmah and Abd al-Razzaq. Hammad narrated: Simak ibn Harb reported to us from Qabus ibn Mukhariq ibn Sulaym, from his father. Abd al-Razzaq transmitted from Ibn Jurayj, from Ata', then both concurred in narrating from Ali regarding a mukatab who died and had free children: "The remainder of his kitābah is paid from his estate, and whatever remains becomes an inheritance for his children." Through Abd al-Razzaq's transmission from Sufyan ibn Uyaynah and al-Mu'tamir ibn Sulayman, both of whom narrated from Isma'il ibn Abi Khalid, who reported from al-Sha'bi, it is stated: Ibn Mas'ud would rule that if a mukatab died leaving property, the remainder of his kitābah contract would be paid from it, and any surplus would be returned to his free children. Shuraih likewise ruled ac-

وَأَمَّا مَوْتُ الْمُكَاتَبِ: فَفِيهِ خِلَافٌ قَدِيمٌ، وَحَدِيثٌ. فَقَالَتْ طَائِفَةٌ: مَالُهُ كُلُّهُ لِسَيِّدِهِ، رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ مَعْبَدٍ الْجُهَنِيِّ، قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الْمُكَاتَبِ يَمُوتُ وَلَهُ وَلَدٌ أَحْرَارٌ، وَلَهُ مَالٌ أَكْثَرُ مِمَّا بَقِيَ عَلَيْهِ: أَنَّ مَالَهُ كُلَّهُ لِسَيِّدِهِ. وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ طَارِقٍ عَنْ الشَّعْبِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ فِي الْمُكَاتَبِ يَمُوتُ وَلَهُ وَرَثَةٌ: إنَّ مَالَهُ كُلَّهُ لِسَيِّدِهِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عُمَرَ قَالَ فِيمَا تَرَكَ الْمُكَاتَبُ: هُوَ كُلُّهُ لِسَيِّدِهِ - وَهُوَ قَوْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَقَتَادَةَ، وَالنَّخَعِيِّ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ. وَقَالَتْ طَائِفَةٌ: غَيْرَ هَذَا، كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَعَبْدِ الرَّزَّاقِ، قَالَ حَمَّادٌ: نا سِمَاكُ بْنُ حَرْبٍ عَنْ قَابُوسِ بْنِ مُخَارِقِ بْنِ سُلَيْمٍ عَنْ أَبِيهِ، وَقَالَ عَبْدُ الرَّزَّاقِ: عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، ثُمَّ اتَّفَقَا عَنْ عَلِيٍّ فِي مُكَاتَبٍ مَاتَ وَلَهُ وَلَدٌ أَحْرَارٌ قَالَ: يُؤَدِّي مِمَّا تَرَكَ مَا بَقِيَ مِنْ كِتَابَتِهِ، وَيَصِيرُ مَا بَقِيَ مِيرَاثًا لِوَلَدِهِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ، وَالْمُعْتَمِرِ بْنِ سُلَيْمَانَ، كِلَاهُمَا عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: كَانَ ابْنُ مَسْعُودٍ يَقُولُ فِي الْمُكَاتَبِ إذَا مَاتَ وَتَرَكَ مَالًا: أَدَّى عَنْهُ بَقِيَّةَ كِتَابَتِهِ، وَمَا فَضَلَ رُدَّ عَلَى وَلَدِهِ إنْ كَانَ لَهُ وَلَدٌ أَحْرَارٌ - وَبِهِ كَانَ يَقْضِي شُرَيْحٌ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ مَعْبَدٍ الْجُهَنِيِّ: أَنَّ مُعَاوِيَةَ قَالَ

[14] **Qur'an references (L27263):** Qur'an 6:164 (Al-An'am).

cording to this. Through Abd al-Razzaq's transmission from Ma'mar, from Qatadah, from Ma'bad al-Juhani: Mu'awiyah ruled regarding a mukatab who died leaving free children and property: "His master receives the remainder of his kitābah contract, and whatever remains belongs to his free children." This is also the view of Ma'bad. Al-Hasan al-Basri, Ibn Sirin, al-Nakha'i, and al-Sha'bi held that whatever remains after fulfilling the kitābah contract belongs to his legal heirs. This is likewise the view of Amr ibn Dinar.

فِي مُكَاتَبٍ مَاتَ وَلَهُ وَلَدٌ أَحْرَارٌ وَمَالٌ: أَنْ يُعْطَى سَيِّدُهُ بَقِيَّةَ كِتَابَتِهِ، وَيَكُونُ مَا بَقِيَ لِوَلَدِهِ الْأَحْرَارِ - وَبِهِ يَقُولُ مَعْبَدٌ. وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَابْنِ سِيرِينَ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ: إِنَّ ذَلِكَ لِوَرَثَتِهِ بَعْدَ أَدَاءِ كِتَابَتِهِ - وَهُوَ قَوْلُ عَمْرِو بْنِ دِينَارٍ.

L27267 From the path of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: If a mukatab has children included in his kitābah and children not included in his kitābah, he must fulfill the remaining portion of his kitābah. Thereafter, all his children inherit the remainder of his wealth, which is divided according to their prescribed shares. This is the opinion of Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, and Isḥāq ibn Rāhwayh.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إِذَا كَانَ لِلْمُكَاتَبِ أَوْلَادٌ مَعَهُ فِي كِتَابَتِهِ، وَأَوْلَادٌ لَيْسُوا مَعَهُ فِي كِتَابَتِهِ: فَإِنَّهُ يُؤَدِّي مَا بَقِيَ مِنْ كِتَابَتِهِ، ثُمَّ يَقْسِمُ وَلَدُهُ جَمِيعًا مَا بَقِيَ مِنْ مَالِهِ عَلَى فَرَائِضِهِمْ. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L27268 Another group held a differing opinion, as transmitted from Mālik and those who followed his school: If a mukātab had included in his contract his mother, father, grandfather, grandmother, sons, daughters, sons of his sons, grandsons through daughters, brothers, sisters, or wives—or some of those mentioned—under a single contract that includes himself and those named, and if he had free children, free siblings, or free parents, then upon his death, if he left property, the remaining portion of his contract must be fulfilled from his estate. Those we mentioned from among those included in the contract with him inherit the remaining amount according to the division of inheritance shares.

وَقَالَتْ طَائِفَةٌ: غَيْرَ هَذَا، كَمَا رُوِّينَا عَنْ مَالِكٍ وَمَنْ قَلَّدَهُ: أَنَّ الْمُكَاتَبَ إِنْ كَانَ مَعَهُ فِي كِتَابَتِهِ أُمُّهُ وَأَبُوهُ وَالْجَدُّ، وَالْجَدَّةُ وَبَنُوهُ وَبَنَاتُهُ، وَبَنُو بَنِيهِ وَبَنُو بَنَاتِهِ، وَإِخْوَتُهُ وَأَخَوَاتُهُ، وَزَوْجَاتُهُ أَوْ بَعْضُ مَنْ ذَكَرْنَا، وَقَدْ كَانَ كَاتَبَ عَلَى نَفْسِهِ وَعَلَى مَنْ ذَكَرْنَا كِتَابَةً وَاحِدَةً، وَكَانَ لَهُ أَوْلَادٌ أَحْرَارٌ، وَإِخْوَةٌ أَحْرَارٌ، وَأَبَوَانِ حُرَّانِ، فَمَاتَ وَتَرَكَ مَالًا، فَإِنَّهُ يُؤَدِّي مَا بَقِيَ مِنْ كِتَابَتِهِ، وَيَرِثُ مَنْ ذَكَرْنَا مِمَّنْ كَانَ مَعَهُ فِي الْكِتَابَةِ مَا بَقِيَ عَلَى قِسْمَةِ الْمَوَارِيثِ.

L27269–27270 A free father does not, by principle, inherit from him, nor a free mother, nor free children, nor free brothers—whether any one of these was party to the *kitābah* contract [of manumission] or not.

وَلَا يَرِثُهُ أَبٌ حُرٌّ، وَلَا أُمٌّ حُرَّةٌ، وَلَا أَوْلَادٌ أَحْرَارٌ، وَلَا إِخْوَةٌ أَحْرَارٌ، أَصْلًا، كَانَ مَعَهُ فِي الْكِتَابَةِ أَحَدٌ مِنْ هَؤُلَاءِ أَوْ لَمْ يَكُنْ.

L27271 He said: If among those included in the manumission contract are relatives for whom manumission is not obligatory on the owner upon acquiring them—such as paternal uncles, paternal cousins, and nephews—they have no share, and the entire estate belongs to their master. He expressed differing views regarding the husband and wife: at times stating they inherit

قَالَ: فَإِنْ كَانَ مَعَهُ فِي الْكِتَابَةِ مَنْ لَا يُعْتَقُ عَلَى الْمَرْءِ إِذَا مَلَكَهُ، كَالْعَمِّ وَابْنِ الْعَمِّ، وَابْنِ الْأَخِ، فَلَا شَيْءَ لَهُمْ، وَالْمَالُ كُلُّهُ لِسَيِّدِهِ. وَاخْتَلَفَ قَوْلُهُ فِي الزَّوْجِ وَالزَّوْجَةِ: فَمَرَّةً قَالَ: يَرِثَانِ إِذَا كَانَا مَعَهُ فِي كِتَابَةٍ وَاحِدَةٍ - وَمَرَّةً قَالَ: لَا يَرِثَانِهِ. وَلَمْ يَخْتَلِفْ قَوْلُهُ: أَنَّهُمَا لَا

if included in the same contract, while at other times asserting they do not inherit from him. He maintained without variation that they do not inherit if excluded from the contract. We know of no one among Allah's creation before him who held this view. This is the harshest ruling we have ever heard of, contradicting the Qur'an, the Sunnah, rational principles, and the positions of every recognized scholar. Another group stated—as narrated to us via the chain of Al-Ḥajjāj ibn Minḥāl from Abū ʿAwānah from Al-Mughīrah ibn Miqsam from Ibrāhīm al-Nakhaʿī and al-Shaʿbī, both reporting from ʿAlī ibn Abī Ṭālib—who said: "The mukātab inherits proportionally to what he has paid, is barred from inheriting others proportionally to what he has paid, and is emancipated proportionally to what he has paid." Through another chain from ʿAbd al-Razzāq from Maʿmar from Qatādah: ʿAlī ibn Abī Ṭālib said concerning the mukātab: "He inherits proportionally to what he has paid, is lashed for hadd offenses proportionally to what he has paid, and his outstanding debt corresponds to what he has paid." Through another chain from Sufyān ibn ʿUyaynah from Ibn Abī Najīḥ from Mujāhid: ʿAlī ibn Abī Ṭālib said: "The mukātab is emancipated proportionally to what he has paid."

L27272–27274 From the route of Al-Ḥajjāj ibn al-Minhāl: Abū ʿAwāna narrated to us from al-Aʿmash from Ibrāhīm al-Nakhaʿī that he was asked about the mukātab. He replied: "When he pays the ransom for his freedom, he becomes a debtor. If he dies, the remainder of his mukātaba agreement is paid on his behalf. His child inherits a share proportionate to the portion of freedom already earned, while his patron-owners inherit according to the portion still owed." Abū Muḥammad said: "As for Mālik's opinion, its weakness is too well-known to require discussion. It suffices that no precedent exists before him, nor is it supported by any scriptural proof, defective narration, analogical reasoning, or rational basis." Some argued: "Since the mukātab is governed neither by the rulings applicable to slaves nor those of free persons, his inheritance necessitates a distinct ruling – differing from the inheritance principles of both slaves and free people." ʿAlī said: "We responded: Then apply this same logic to his liability for ḥudūd (fixed penalties), devise novel penalties for him, and say..." Similarly, in his blood money, and state the same regarding the umm al-walad. How can this stand when your foundational

يَرِثَانِ إِذَا لَمْ يَكُونَا مَعَهُ فِي الْكِتَابَةِ - وَلَا نَعْلَمُ هَذَا الْقَوْلَ عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُ، وَهَذِهِ فَرِيضَةُ مَا سُمِعَ بِأَطَمَّ مِنْهَا، وَهِيَ خِلَافُ الْقُرْآنِ، وَالسُّنَنِ، وَالْمَعْقُولِ، وَقَوْلُ كُلِّ أَحَدٍ يُعْرَفُ قَوْلُهُ. وَقَالَتْ طَائِفَةٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، كِلَاهُمَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، قَالَ: الْمُكَاتَبُ يَرِثُ بِقَدْرِ مَا أَدَّى، وَيُحْجَبُ بِقَدْرِ مَا أَدَّى، وَيُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْمُكَاتَبِ: إِنَّهُ يَرِثُ بِقَدْرِ مَا أَدَّى، وَيُجْلَدُ الْحَدَّ بِقَدْرِ مَا أَدَّى، وَيَكُونُ دَيْنُهُ بِقَدْرِ مَا أَدَّى. وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: الْمُكَاتَبُ يُعْتَقُ مِنْهُ بِقَدْرِ مَا أَدَّى.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّهُ سُئِلَ عَنْ الْمُكَاتَبِ؟ فَقَالَ: إِذَا أَدَّى قِيمَةَ رَقَبَتِهِ فَهُوَ غَرِيمٌ، وَإِنْ مَاتَ أَدَّى عَنْهُ بَقِيَّةَ مُكَاتَبَتِهِ، وَوَرِثَ وَلَدُهُ بِقَدْرِ مَا عَتَقَ مِنْهُ، وَوَرِثَ مَوَالِيهِ بِقَدْرِ مَا رُقَّ مِنْهُ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَتَخَاذُلُهُ أَشْهَرُ مِنْ أَنْ يُشْتَغَلَ بِهِ، وَيَكْفِي مِنْهُ أَنْ لَا يُعْرَفَ عَنْ أَحَدٍ قَبْلَهُ، وَأَنَّهُ لَمْ يَأْتِ بِهِ نَصٌّ، وَلَا رِوَايَةٌ فَاسِدَةٌ، وَلَا قِيَاسٌ، وَلَا يُعْقَلُ. وَقَالَ بَعْضُهُمْ: لَمَّا كَانَ الْمُكَاتَبُ لَيْسَ لَهُ حُكْمُ الْعَبِيدِ، وَلَا حُكْمُ الْأَحْرَارِ: وَجَبَ أَنْ يَكُونَ لِمِيرَاثِهِ حُكْمٌ آخَرُ غَيْرَ حُكْمِ الْعَبِيدِ فِي مِيرَاثِهِمْ، وَغَيْرَ حُكْمِ الْأَحْرَارِ. قَالَ عَلِيٌّ: فَقُلْنَا: فَقُولُوا هَكَذَا فِي حُدُودِهِ، وَأَخْرِجُوا لَهُ حُدُودًا طَرِيفَةً، وَقُولُوا كَذَلِكَ فِي دِيَتِهِ، وَقُولُوا بِمِثْلِ هَذَا فِي أُمِّ الْوَلَدِ، فَكَيْفَ وَأَصْلُكُمْ هَذَا بَاطِلٌ، وَدَعْوَى كَاذِبَةٌ، وَلَا فَرْقَ عِنْدَكُمْ بَيْنَهُ وَبَيْنَ

premise is void—a false claim—and you make no distinction between him and an enslaved person except that his master does not seize his property, does not make use of his services, and does not prevent him from managing affairs and earning a livelihood only? Just as there is no distinction between the umm al-walad and an enslaved woman except that she is never sold, never gifted, and never returned to the rulings of slavery. They also said: "This wealth was established as an endowment for the emancipation of all of them—does this mean it belongs to them?" We replied: "Then distribute it equally among them by this reasoning. Do not divide it according to inheritance shares, and include everyone bound by the manumission contract under this same rationale." In sum, we cannot fathom how any soul could find ease in accepting this claim given its grave corruption, while its very foundation is invalid.

الْعَبْدِ، إِلَّا أَنَّ سَيِّدَهُ، لَا يَنْتَزِعُ مَالَهُ، وَلَا يَسْتَخْدِمُهُ، وَلَا يَمْنَعُهُ مِنْ التَّصَرُّفِ وَالتَّكَسُّبِ فَقَطْ، كَمَا أَنَّهُ لَا فَرْقَ بَيْنَ أُمِّ الْوَلَدِ، وَالْأَمَةِ، إِلَّا أَنَّهَا لَا تُبَاعُ أَبَدًا، وَلَا تُوهَبُ أَبَدًا، وَلَا تَعُودُ إِلَى حُكْمِ الرِّقِّ أَبَدًا. وَقَالُوا أَيْضًا: هَذَا الْمَالُ كَانَ مَوْقُوفًا لِعِتْقِ جَمِيعِهِمْ، فَكَانَ كَأَنَّهُ لَهُمْ؟ فَقُلْنَا: فَاجْعَلُوهُ بَيْنَهُمْ عَلَى السَّوَاءِ بِهَذَا الدَّلِيلِ، وَلَا تَقْسِمُوهُ قِسْمَةَ الْمَوَارِيثِ، وَأَدْخِلُوا فِيهِ كُلَّ مَنْ مَعَهُ فِي الْكِتَابَةِ بِهَذَا الدَّلِيلِ. وَبِالْجُمْلَةِ فَمَا نَدْرِي كَيْفَ انْشَرَحَتْ نَفْسُ أَحَدٍ لِقَبُولِ هَذَا الْقَوْلِ عَلَى شِدَّةِ فَسَادِهِ، مَعَ أَنَّ أَصْلَهُ فَاسِدٌ.

L27275 It is not permissible for one to enter into a single contract of manumission covering oneself and another, as this constitutes a condition absent from the Book of Allah the Almighty, rendering it void - and with Allah the Exalted is success. Regarding Abu Hanifah's opinion: it is evidently also erroneous, for they concede that the mukatab remains a slave while any dirham is owed. Since this is so, he dies a slave, and as one who dies a slave, freedom cannot apply to a deceased person. Thus the invalidity of their position becomes wholly apparent. They do not dispute that if a master tells his slave: "You are free when the sun passes its zenith today," and the slave dies a minute before midday, he dies a slave - his heirs do not inherit him, and all his property belongs to his master. As for those who say that all his property belongs to his master, they build this upon the premise that he remains a slave while any dirham is owed - a position whose falsity we have already demonstrated through the ruling of Allah's Messenger (peace be upon him) that emancipation is established for the mukatab proportionally to what he has paid, and he inherits according to the portion of his emancipation. This confirms that the emancipated portion assumes the legal status of a free person while the remainder retains the status of a slave regarding inheritance and all other matters - and with Allah the Exalted is success.

وَلَا يَجُوزُ أَنْ يُكَاتِبَ أَحَدٌ عَلَى نَفْسِهِ وَغَيْرِهِ كِتَابَةً وَاحِدَةً؛ لِأَنَّهُ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، فَهُوَ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ: فَخَطَأٌ ظَاهِرٌ أَيْضًا، لِأَنَّهُمْ مُقِرُّونَ بِأَنَّ الْمُكَاتَبَ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ، فَإِذْ هُوَ كَذَلِكَ، فَإِنَّمَا مَاتَ عَبْدًا، وَإِذَا مَاتَ عَبْدًا فَلَا يُمْكِنُ أَنْ تَقَعَ الْحُرِّيَّةُ عَلَى مَيِّتٍ بَعْدَ مَوْتِهِ، فَظَهَرَ فَسَادُ قَوْلِهِمْ جُمْلَةً. وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِعَبْدِهِ: أَنْتَ حُرٌّ إِذَا زَالَتْ الشَّمْسُ مِنْ يَوْمِنَا هَذَا، فَمَاتَ الْعَبْدُ قَبْلَ زَوَالِ الشَّمْسِ بِدَقِيقَةٍ، فَإِنَّهُ مَاتَ عَبْدًا، وَلَا تَرِثُهُ وَرَثَتُهُ وَمَالُهُ كُلُّهُ لِسَيِّدِهِ. وَأَمَّا مَنْ قَالَ: مَالُهُ كُلُّهُ لِسَيِّدِهِ، فَإِنَّمَا بَنَوْا عَلَى أَنَّهُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ - وَهَذَا قَوْلٌ قَدْ بَيَّنَّا بُطْلَانَهُ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْمُكَاتَبَ يَشْرَعُ فِيهِ الْعِتْقُ بِقَدْرِ مَا أَدَّى وَيَرِثُ بِقَدْرِ مَا عَتَقَ مِنْهُ فَصَحَّ أَنَّ لِذَلِكَ الْبَعْضِ حُكْمَ الْحُرِّ وَلِبَاقِيهِ حُكْمَ الْعَبْدِ فِي الْمِيرَاثِ وَفِي كُلِّ شَيْءٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27276 As for the fetus of the mukatabah, as long as the soul has not been breathed

into it, it remains part of her, as we previously established, and thus follows her legal rulings. However, once the soul is breathed into it, it becomes a distinct entity. Allah the Exalted says: {Then We fashioned him into a new creation} [23:14]. At that stage, it is male while she is female, or it is a female different from her. In such cases, neither it nor she is subject to the mother's legal rulings. Allah the Exalted says: {No soul bears blame except against itself} [6:164]. If it is asked: Why do you not permit the full emancipation of the entire mukatab, given that a portion of him is free by the statement of Allah's Messenger - peace and blessings be upon him -: "Whoever frees their share in a slave, the entire slave is freed," and why do you instead obligate him to perform required labor for manumission based on that narration?[15]

L27277–27278 We said: It is not permissible to contradict the narrations of the Messenger of Allah—may Allah bless him and grant him peace—by opposing some with others, nor to abandon his ruling for another of his rulings. Rather, all his rulings are obligatory to follow, and all his speech is truth to be heeded and obeyed. He—peace be upon him—commanded the emancipation of one for whom a portion has been emancipated, either by the emancipator of that portion if he possesses wealth, or through istisʿā' (working to earn emancipation). He—peace be upon him—assigned the mukatab a distinct ruling: emancipating a portion while leaving another portion in bondage. We accepted all that we were commanded and did not set any part of it against another—all praise is due to Allah, the Exalted. Whoever presumes to instruct the Messenger of Allah—may Allah bless him and grant him peace—in religion is a fool. Both these rulings have been subject to valid disagreement among earlier and later scholars, and both are transmitted via ahad reports from reliable narrators. Thus, none is more deserving of acceptance than the other—and success is granted by Allah, the Exalted.

L27279 **The legal question regarding a kitabah contract (manumission agreement) conditioned on service alone.**

L27280 Issue 1692: A manumission contract (kitābah) is invalid when conditional upon service alone, nor upon work following emancipation, nor upon any

[15] **Qur'an references (L27276):** Qur'an 23:14 (Al-Mu'minun); Qur'an 6:164 (Al-An'am).

وَأَمَّا حَمْلُ الْمُكَاتَبَةِ فَإِنَّهُ مَا لَمْ تُنفَخْ فِيهِ الرُّوحُ فَهُوَ بَعْضُهَا كَمَا قَدَّمْنَا فَلَهُ حُكْمُهَا وَأَمَّا إذَا نُفِخَ فِيهِ الرُّوحُ فَهُوَ غَيْرُهَا قَالَ تَعَالَى {ثُمَّ أَنْشَأْنَاهُ خَلْقًا آخَرَ} [المؤمنون: ١٤] وَهُوَ عِنْدَ ذَلِكَ ذَكَرٌ وَهِيَ أُنْثَى، أَوْ أُنْثَى غَيْرِهَا، فَلَيْسَ لَهُ وَلَا لَهَا حُكْمُ الْأُمِّ قَالَ اللَّهُ تَعَالَى {وَلَا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] . فَإِنْ قِيلَ: فَهَلَّا أَجَزْتُمْ عِتْقَ جَمِيعِ الْمُكَاتَبِ إذْ بَعْضُهُ حُرٌّ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أَعْتَقَ شِقْصًا لَهُ فِي مَمْلُوكٍ عَتَقَ كُلُّهُ» وَأَوْجَبْتُمْ الِاسْتِسْعَاءَ بِذَلِكَ الْخَبَرِ؟

قُلْنَا: لَا يَحِلُّ ضَرْبُ أَحَادِيثِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْضِهَا بِبَعْضٍ، وَلَا أَنْ يُتْرَكَ حُكْمُهُ بِحُكْمٍ لَهُ آخَرَ، بَلْ كُلُّ أَحْكَامِهِ فَرْضٌ اتِّبَاعُهَا، وَكُلُّ كَلَامِهِ حَقٌّ مَسْمُوعٌ لَهُ وَمُطَاعٌ، وَهُوَ - عَلَيْهِ السَّلَامُ - أَمَرَ بِعِتْقِ مَنْ أُعْتِقَ بَعْضُهُ، إمَّا عَلَى مُعْتِقِ بَعْضِهِ إنْ كَانَ لَهُ مَالٌ، وَإِمَّا بِالِاسْتِسْعَاءِ، وَهُوَ - عَلَيْهِ السَّلَامُ - خَصَّ الْمُكَاتَبَ بِحُكْمٍ آخَرَ - وَهُوَ عِتْقُ بَعْضِهِ وَبَقَاءُ بَعْضِهِ رَقِيقًا - فَقَبِلْنَا كُلَّ مَا أُمِرْنَا بِهِ، وَلَمْ نُعَارِضْ بَعْضَهُ بِبَعْضٍ - وَلِلَّهِ تَعَالَى الْحَمْدُ، وَمَنْ تَعَاطَى تَعْلِيمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّينَ فَهُوَ أَحْمَقُ، وَكِلَا هَذَيْنِ الْحُكْمَيْنِ قَدْ صَحَّ فِيهِمَا اخْتِلَافُ مَنْ سَلَفَ وَخَلَفَ، وَكِلَاهُمَا نَقْلُ الْآحَادِ الثِّقَاتِ، فَلَيْسَ بَعْضُهَا أَوْلَى بِالْقَبُولِ مِنْ بَعْضٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْكِتَابَة عَلَى شَرْط خدمة فَقَطْ]

condition not supported by a textual source whatsoever. Such contracts under all such conditions are void due to the saying of Allah's Messenger - peace and blessings be upon him and his household -: "Every condition not in the Book of Allah is invalid."[16]

Legal case concerning the kitābah contract (manumission contract) to no specified term.

L27281

L27282 1693. Issue: If someone enters into a mukataba contract without a specified term, he remains bound by his contract as long as the master lives and remains the owner. When he fulfills the stipulated payment, he is emancipated, for this constitutes the attribute of his mukataba contract and its binding conditions, which may not be violated. If someone enters into a mukataba contract with a specified term—whether a single installment, two, or more—and the installment's due time arrives without payment, people have differed on this matter. Narrated to us from ʿAbd al-Razzāq, from Ibn Jurayj, from Abū al-Zubayr, who heard Jābir ibn ʿAbd Allāh say regarding a mukatab who pays an initial portion of his contract then defaults: "He reverts to enslavement; his master has the greater right to the stipulated condition." Ibn Jurayj added: Ismāʿīl ibn Umayyah informed me, from Nāfiʿ, who reported that Ibn ʿUmar enforced this ruling—specifically, he returned his own mukatab to enslavement after the latter defaulted upon paying half of his contracted amount.

L27283 From the transmission of al-Ḥajjāj ibn Arṭaʾah, from Ḥuṣayn ibn ʿAbd al-Raḥmān, from al-Shaʿbī, that ʿAlī said: If the *mukatab* defaults and defers an installment to another, he is returned to slavery.

L27284–27285 We have been narrated from Abu Ayyub al-Ansari that he contracted a manumission agreement with Aflah, then reconsidered and requested him to annul the contract without him having defaulted. Aflah consented to this, so he reverted him to slavery and subsequently manumitted him outright. This was reported by Makhramah ibn Bukayr from his father, who deemed

[16] **Hadith references (L27280):** Sunan Ibn Majah 2521.

١٦٩٢ - مَسْأَلَةٌ: وَلَا تَحِلُّ الْكِتَابَةُ عَلَى شَرْطِ خِدْمَةٍ فَقَطْ، وَلَا عَلَى عَمَلٍ بَعْدَ الْعِتْقِ وَلَا عَلَى شَرْطٍ لَمْ يَأْتِ بِهِ نَصٌّ أَصْلًا، وَالْكِتَابَةُ بِكُلِّ ذَلِكَ بَاطِلٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

[مَسْأَلَة الْكِتَابَة إلَى غَيْر أَجَل مُسَمًّى]

١٦٩٣ - مَسْأَلَةٌ: وَمَنْ كُوتِبَ إلَى غَيْرِ أَجَلٍ مُسَمًّى فَهُوَ عَلَى كِتَابَتِهِ مَا عَاشَ السَّيِّدُ وَمَا لَمْ يَخْرُجْ عَنْ مِلْكِ السَّيِّدِ فَمَتَى أَدَّى مَا كَاتَبَ عَلَيْهِ عَتَقَ، لِأَنَّ هَذِهِ صِفَةُ كِتَابَتِهِ وَعَقْدِهِ فَلَا يَجُوزُ تَعَدِّيهِ، وَمَنْ كُوتِبَ إلَى أَجَلٍ مُسَمًّى نَجْمٍ وَاحِدٍ أَوْ نَجْمَيْنِ فَصَاعِدًا، فَحَلَّ وَقْتُ النَّجْمِ وَلَمْ يُؤَدِّ، فَقَدْ اخْتَلَفَ النَّاسُ فِي ذَلِكَ. فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي الْمُكَاتَبِ يُؤَدِّي صَدْرًا مِنْ كِتَابَتِهِ ثُمَّ يَعْجِزُ؟ قَالَ: يُرَدُّ عَبْدًا، سَيِّدُهُ أَحَقُّ بِشَرْطِهِ الَّذِي شَرَطَ. قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي إسْمَاعِيلُ بْنُ أُمَيَّةَ أَنَّ نَافِعًا أَخْبَرَهُ أَنَّ ابْنَ عُمَرَ فَعَلَ ذَلِكَ. يَعْنِي أَنَّهُ رَدَّ مُكَاتَبًا لَهُ فِي الرِّقِّ، إذْ عَجَزَ بَعْدَ أَنْ أَدَّى نِصْفَ كِتَابَتِهِ.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ الشَّعْبِيِّ أَنَّ عَلِيًّا قَالَ: إذَا عَجَزَ الْمُكَاتَبُ فَأَدْخَلَ نَجْمًا فِي نَجْمٍ رُدَّ فِي الرِّقِّ.

وَرُوِّينَا عَنْ أَبِي أَيُّوبَ الْأَنْصَارِيِّ أَنَّهُ كَاتَبَ أَفْلَحَ ثُمَّ بَدَا لَهُ فَسَأَلَهُ إبْطَالَ الْكِتَابَةِ دُونَ أَنْ يَعْجِزَ؟ فَأَجَابَهُ إلَى ذَلِكَ فَرَدَّهُ عَبْدًا ثُمَّ أَعْتَقَهُ بَتْلًا. وَقَدْ ذَكَرَ ذَلِكَ مَخْرَمَةُ بْنُ بُكَيْرٍ عَنْ أَبِيهِ: أَنَّهُ لَا بَأْسَ بِهِ. وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

it permissible. This is the position of Abu Hanifah, Malik, al-Shafi'i, and Abu Sulayman. These scholars maintained: Declaring the mukatab's incapacity is valid between him and his master without state authority, except Malik held a differing opinion that incapacity may only be declared through judicial ruling. Those who permitted declaring incapacity then differed. We have been narrated through Hammad ibn Salamah and Ibn Abi 'Aroubah—both from Qatadah from Khulas ibn 'Amr from 'Ali ibn Abi Talib—who said: When the mukatab becomes incapable, he is compelled to labor for two years. Ibn Abi 'Aroubah added: If he fulfills it, otherwise he is reverted to slavery. This is the view of al-Hasan al-Basri and 'Ata ibn Abi Rabah. Jabir and Ibn 'Umar did not endorse a grace period—rather, Ibn 'Umar re-enslaved him at the time it was mentioned that he defaulted. This is the opinion of Abu Sulayman and the scholars of our school. We have been narrated through 'Abd al-Razzaq from Sufyan al-Thawri from Tariq ibn 'Abd al-Rahman from al-Sha'bi that 'Ali ibn Abi Talib said regarding an incapable mukatab: He is proportionally emancipated according to what he has paid. Ibn Abi Layla, al-Hakam ibn 'Utaybah, al-Hasan ibn Hayy, Abu Yusuf, and Ahmad ibn Hanbal said: He is not re-enslaved until he fails two consecutive installments. Al-Awza'i said: If he becomes incapable, he must complete two months of labor. Abu Hanifah and al-Shafi'i said: If he becomes incapable, he must complete three days of labor only, then is re-enslaved. Malik said: The authority grants him a grace period commensurate with what it deems appropriate.

L27286 It has been conveyed to us through the chain of Ḥammād ibn Salamah from ʿAmr ibn Dīnār, who reported: Jābir ibn Zayd stated: If an enslaved person under a manumission contract becomes incapable [of payment], he must be compelled to work. We previously mentioned the rulings of ʿUmar ibn al-Khaṭṭāb, ʿAlī ibn Abī Ṭālib, and Shurayḥ: When he pays half of his manumission sum, he cannot be re-enslaved and becomes a liable debtor—this is authentically transmitted from them. Ibn Masʿūd maintained: When he pays one-third of his manumission sum, he becomes a liable debtor. Ibrāhīm held: When he pays one-quarter of his manumission sum, he becomes a liable debtor. ʿAṭāʾ ruled: When he pays three-quarters of his manumission sum, he becomes a liable debtor.

وَقَالَ هَؤُلَاءِ: تَعْجِيزُ الْمُكَاتَبِ جَائِزٌ بَيْنَهُ وَبَيْنَ سَيِّدِهِ دُونَ السُّلْطَانِ، إِلَّا أَنَّ لِمَالِكٍ قَوْلًا، أَنَّهُ لَا يَجُوزُ التَّعْجِيزُ إِلَّا بِحُكْمِ السُّلْطَانِ. ثُمَّ اخْتَلَفَ الْقَائِلُونَ بِتَعْجِيزِهِ. رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَابْنِ أَبِي عَرُوبَةَ كِلَاهُمَا عَنْ قَتَادَةَ عَنْ خِلَاصِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا عَجَزَ الْمُكَاتَبُ اسْتُسْعِيَ حَوْلَيْنِ - زَادَ ابْنُ أَبِي عَرُوبَةَ فَإِنْ أَدَّى، وَإِلَّا رُدَّ فِي الرِّقِّ - وَبِهَذَا يَقُولُ الْحَسَنُ الْبَصْرِيُّ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ - وَلَمْ يَقُلْ جَابِرٌ، وَلَا ابْنُ عُمَرَ بِالتَّلَوُّمِ، بَلْ أَرَقَّهُ ابْنُ عُمَرَ سَاعَةَ ذَكَرَ أَنَّهُ عَجَزَ - وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ طَارِقِ بْنِ عَبْدِ الرَّحْمَنِ عَنِ الشَّعْبِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْمُكَاتَبِ يَعْجِزُ: إِنَّهُ يُعْتَقُ بِالْحِسَابِ - يَعْنِي بِحِسَابِ مَا أَدَّى. وَقَالَ ابْنُ أَبِي لَيْلَى، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو يُوسُفَ، وَأَحْمَدُ بْنُ حَنْبَلٍ: لَا يُرَقُّ حَتَّى يَتَوَالَى عَلَيْهِ نَجْمَانِ لَا يُؤَدِّيهِمَا. وَقَالَ الْأَوْزَاعِيُّ: إِذَا عَجَزَ اُسْتُوْفِيَ بِهِ شَهْرَانِ. وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: إِذَا عَجَزَ اسْتُوْفِيَ بِهِ ثَلَاثَةُ أَيَّامٍ فَقَطْ ثُمَّ يُرَقُّ - وَقَالَ مَالِكٌ: يَتَلَوَّمُ لَهُ السُّلْطَانُ بِقَدْرِ مَا يَرَى.

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قَالَ جَابِرُ بْنُ زَيْدٍ: إِذَا عَجَزَ الْمُكَاتَبُ اسْتُسْعِيَ، وَقَدْ ذَكَرْنَا قَبْلُ قَوْلَ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَشُرَيْحٍ إِذَا أَدَّى النِّصْفَ فَلَا رِقَّ عَلَيْهِ، وَهُوَ غَرِيمٌ - وَهُوَ صَحِيحٌ عَنْهُمْ. وَقَوْلَ ابْنِ مَسْعُودٍ: إِذَا أَدَّى ثُلُثَ كِتَابَتِهِ فَهُوَ غَرِيمٌ. وَقَوْلَ إِبْرَاهِيمَ: إِذَا أَدَّى رُبُعَ كِتَابَتِهِ فَهُوَ غَرِيمٌ. وَقَوْلَ عَطَاءٍ: إِذَا أَدَّى ثَلَاثَةَ أَرْبَاعِ كِتَابَتِهِ فَهُوَ غَرِيمٌ.

L27287–27288 The statement of Ibn Mas’ud and Shurayh: “If he pays its value, he is a debtor”—and this is a sound opinion from them. Abu Muhammad said: “We do not know of any valid evidence for these opinions. The most astonishing to me is the view of those who limit the grace period to three days or two months, or those who defer it to the ruler’s judgment. What if the ruler grants him only an hour’s respite, while deeming it fit to grant him fifty years?” Then we say to all of them: “The manumission-by-payment contract cannot escape being either a binding debt or an emancipation with a stipulation—not a debt. There is absolutely no third possibility, neither in religious law nor in reason. If it is an emancipation with a stipulation, then when the term arrives and he fails to fulfill it, he has not met the stipulation upon which his emancipation depends. Thus, his contract is nullified, he gains no emancipation, and no respite is permissible for him—not even the twinkling of an eye: like one who says to his servant, ’If my father arrives today, you are free,’ yet his father arrives after sunset—so no emancipation occurs.” This is the view of our school’s scholars—and it is the opinion of Jabir and Ibn Umar.

وَقَوْلَ ابْنِ مَسْعُودٍ وَشُرَيْحٍ: إِذَا أَدَّى قِيمَتَهُ فَهُوَ غَرِيمٌ - وَهُوَ قَوْلٌ صَحِيحٌ عَنْهُمَا. قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لِشَيْءٍ مِنْ هَذِهِ الْأَقْوَالِ حُجَّةً، وَأَعْجَبُهَا قَوْلُ مَنْ حَدَّ التَّلَوُّمَ ثَلَاثَةَ أَيَّامٍ أَوْ بِشَهْرَيْنِ، وَمَنْ جَعَلَ ذَلِكَ إلَى السُّلْطَانِ أَفَرَأَيْت إنْ لَمْ يَتَلَوَّمْ لَهُ السُّلْطَانُ إلَّا سَاعَةً، إذْ رَأَى أَنْ يَتَلَوَّمَ لَهُ خَمْسِينَ عَامًا. ثُمَّ نَقُولُ لِجَمِيعِهِمْ: لَا تَخْلُو الْكِتَابَةُ مِنْ أَنْ تَكُونَ دَيْنًا لَازِمًا، أَوْ تَكُونَ عِتْقًا بِصِفَةٍ لَا دَيْنًا، وَلَا سَبِيلَ إلَى ثَالِثٍ أَصْلًا، لَا فِي الدِّيَانَةِ وَلَا فِي الْمَعْقُولِ. فَإِنْ كَانَتْ عِتْقًا بِصِفَةٍ فَالْوَاجِبُ أَنَّهُ سَاعَةَ يَحِلُّ الْأَجَلُ فَلَا يُؤَدِّيهِ، فَلَمْ يَأْتِ بِالصِّفَةِ الَّتِي لَا عِتْقَ لَهُ إلَّا بِهَا - فَقَدْ بَطَلَ عَقْدُهُ وَلَا عِتْقَ لَهُ، وَلَا يَجُوزُ التَّلَوُّمُ عَلَيْهِ طَرْفَةَ عَيْنٍ، كَمَنْ قَالَ لِغُلَامِهِ: إنْ قَدِمَ أَبِي يَوْمِي هَذَا فَأَنْتَ حُرٌّ فَقَدِمَ أَبُوهُ بَعْدَ غُرُوبِ الشَّمْسِ فَلَا عِتْقَ لَهُ. وَهَذَا قَوْلُ أَصْحَابِنَا - وَهُوَ قَوْلُ جَابِرٍ، وَابْنِ عُمَرَ.

L27289 They have contradicted themselves in the ugliest contradiction, prohibiting its sale even if he has not paid anything. This confirms that in their view, it is neither manumission by stipulated condition nor an obligatory debt, leaving no way to invalidate it. As it was narrated to us from Jābir ibn Zayd, we reflected upon this matter. We found the Messenger of Allah—may Allah bless him and his family and grant him peace—having ruled that manumission begins in it proportionally to what he paid. Thus, it is conclusively established that this constitutes an obligatory debt reduced by the amount paid, as with all debts, and that it is fundamentally not manumission by stipulated condition. For partial fulfillment of the *kitabah* does not constitute the stipulated condition upon which manumission was mutually contracted. Since this is so, Allah the Exalted has stated: “And if one is in hardship, let there be deferment until ease” [Al-Baqarah: 280], and He said: “Fulfill all covenants” [Al-Mā’idah: 1]. Thus, fulfilling the *kitabah* contract becomes obligatory, verbal retraction being wholly impermissible.

وَقَدْ تَنَاقَضُوا أَقْبَحَ تَنَاقُضٍ، وَمَنَعُوا مِنْ بَيْعِهِ - وَإِنْ لَمْ يُؤَدِّ شَيْئًا -. فَصَحَّ أَنَّهَا لَيْسَتْ عِنْدَهُمْ عِتْقًا بِصِفَةٍ، أَوْ يَكُونَ دَيْنًا وَاجِبًا، فَلَا سَبِيلَ إلَى إبْطَالِهِ. كَمَا رُوِّينَا عَنْ جَابِرِ بْنِ زَيْدٍ فَنَظَرْنَا فِي ذَلِكَ. فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ حَكَمَ بِشُرُوعِ الْعِتْقِ فِيهِ بِقَدْرِ مَا أَدَّى. فَصَحَّ يَقِينًا أَنَّهَا دَيْنٌ وَاجِبٌ يَسْقُطُ مِنْهُ بِقَدْرِ مَا أَدَّى مِنْهُ كَسَائِرِ الدُّيُونِ وَأَنَّهُ لَيْسَ عِتْقًا بِصِفَةٍ أَصْلًا، لِأَنَّ أَدَاءَ بَعْضِ الْكِتَابَةِ لَيْسَ هُوَ الصِّفَةَ الَّتِي تَعَاقَدَا الْعِتْقَ عَلَيْهَا، فَإِذْ هِيَ كَذَلِكَ فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠] وَقَالَ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] فَوَجَبَ الْوَفَاءُ بِعَقْدِ الْكِتَابَةِ، وَأَنَّهُ لَا يَجُوزُ الرُّجُوعُ فِيهَا بِالْقَوْلِ أَصْلًا - وَوَجَبَتْ النَّظِرَةُ إلَى الْمَيْسَرَةِ وَلَا بُدَّ.

Granting deferment until ease is attained remains obligatory and inevitable and necessary.[17]

L27290–27292 If it is said: Since this is a debt as you claim, why do you not rule on it—even if the slave or master dies, or the slave ceases to be owned—as you rule in all other debts? We respond: We do not do so because this is not an unconditional debt. Rather, it is a debt that is valid as long as ownership persists and becomes void with the termination of ownership. This is because the debt is only incumbent upon the master on the condition that he emancipates the slave upon its payment by the slave, and on the condition that... He becomes free only by fulfilling it—this is what the Quran has conveyed, and the Sunnah has explained it from the Messenger of Allah (peace be upon him and his family). If the master dies, the validity of the emancipation is invalidated, thus the condition imposed on him is invalidated, and the condition attached to the slave is invalidated, as there is no means to complete it ever. If the slave dies, his existence is invalidated, the condition attached to his emancipation is invalidated, and the master's debt is invalidated, since the debt could only be valid through him. If the slave ceases to be his property, his act of emancipating another's slave is similarly invalidated, thus invalidating any debt owed to him that depended on what has been invalidated, with no way to fulfill it. And with Allah, the Exalted, is success.

L27293 **The issue of determining the number and description of the subject matter of the kitāb contract.**

L27294 1694 - Issue: The manumission contract is valid only if the master states to the slave: "If you pay me this amount in this specified manner, you are free." If the payment involves a stipulated term or additional terms specified, this must be stated. The proof for this is that the slave is the master's property and thus cannot claim freedom unless the master verbally declares manumission for him; otherwise, it is invalid, as no scriptural text or consensus [Ijma] mandates this.

L27295 **The legal issue of a manumission contract stipulating an**

فَإِنْ قِيلَ: فَإِذْ هِيَ دَيْنٌ كَمَا تَقُولُ، فَهَلَّا حَكَمْتُمْ بِهِ - وَإِنْ مَاتَ الْعَبْدُ أَوْ السَّيِّدُ، أَوْ خَرَجَ عَنْ مِلْكِهِ - كَمَا حَكَمْتُمْ فِي سَائِرِ الدُّيُونِ؟ قُلْنَا: لَمْ نَفْعَلْ؛ لِأَنَّ ذَلِكَ لَيْسَ دَيْنًا مُطْلَقًا، وَإِنَّمَا هُوَ دَيْنٌ يَصِحُّ بِثَبَاتِ الْمِلْكِ، وَيَبْطُلُ بِبُطْلَانِ الْمِلْكِ، لِأَنَّهُ إنَّمَا وَجَبَ لِلسَّيِّدِ بِشَرْطِ أَنْ يُعْتِقَهُ بِأَدَائِهِ عَلَى الْعَبْدِ بِشَرْطِ أَنْ يَكُونَ بِأَدَائِهِ حُرًّا فَقَطْ - بِهَذَا جَاءَ الْقُرْآنُ، وَفَسَّرَتْهُ السُّنَّةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -. فَإِذَا مَاتَ السَّيِّدُ فَقَدْ بَطَلَ وُجُودُ الْمُعْتِقِ، فَبَطَلَ الشَّرْطُ الَّذِي كَانَ عَلَيْهِ، وَبَطَلَ الشَّرْطُ عَنْ الْعَبْدِ، إذْ لَا سَبِيلَ إلَى تَمَامِهِ أَبَدًا. وَإِذَا مَاتَ الْعَبْدُ فَقَدْ بَطَلَ وُجُودُهُ، وَبَطَلَ الشَّرْطُ الَّذِي كَانَ لَهُ مِنْ الْعِتْقِ، فَبَطَلَ دَيْنُ السَّيِّدِ، إذْ لَا سَبِيلَ إلَى مَا كَانَ يَسْتَحِقُّ ذَلِكَ الدَّيْنَ إلَّا بِهِ، وَإِنْ خَرَجَ عَنْ مِلْكِهِ فَكَذَلِكَ أَيْضًا قَدْ بَطَلَ عِتْقُهُ فِي عَبْدِ غَيْرِهِ، فَبَطَلَ مَا كَانَ لَهُ مِنْ الدَّيْنِ مِمَّا لَا يَجِبُ لَهُ إلَّا بِمَا قَدْ بَطَلَ، وَلَا سَبِيلَ إلَيْهِ -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة تَحْدِيد عَدَد وصفة الشَّيْءِ الْمُكَاتَب عَلَيْهِ]

١٦٩٤ - مَسْأَلَةٌ: وَلَا تَصِحُّ الْكِتَابَةُ إلَّا بِأَنْ يَقُولَ لَهُ: إذَا أَدَّيْت إلَيَّ هَذَا الْعَدَدَ عَلَى هَذِهِ الصِّفَةِ فَأَنْتَ حُرٌّ، فَإِنْ كَانَ إلَى أَجَلٍ مُسَمًّى أَوْ أَكْثَرَ ذَكَرَ ذَلِكَ. بُرْهَانُ ذَلِكَ أَنَّ الْعَبْدَ مِلْكٌ لِلسَّيِّدِ، فَلَا يَسْتَحِقُّ عِتْقًا إلَّا حَتَّى يَلْفِظَ سَيِّدُهُ لَهُ بِالْعِتْقِ، وَإِلَّا فَلَا؛ لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ نَصٌّ وَلَا إجْمَاعٌ.

[مَسْأَلَة الْكِتَابَة عَلَى مجهول الْعَدَد]

[17] **Qur'an references (L27289):** Qur'an 2:280 (Al-Baqarah); Qur'an 5:1 (Al-Ma'idah).

unspecified number [of payments].

L27296 1965. Issue: It is not permissible to conclude a manumission contract for an unspecified quantity, nor for an undefined quality, nor for items whose ownership is unlawful such as wine, pork, or similar. No valid emancipation occurs through any of these means at all, nor through an invalid contract. This is the position of Abū Sulaymān and our school's jurists, because all such arrangements involve prohibited gharar. Allāh the Exalted states: "Allāh does not rectify the deeds of corrupters" [Yūnus 10:81], and the Messenger of Allāh said: "Whoever performs an act inconsistent with our teachings, it is rejected. Every condition not established in Allāh's Book is void." By necessity, every person of sound discernment knows that a contract gains no validity except through the validity of what is itself invalid, thus it remains invalid. Al-Shāfiʿī held: An invalid manumission contract may be annulled if unfulfilled, but if fulfilled, the enslaved person is freed. Abū Muḥammad responded: This constitutes the essence of corruption, as falsehood cannot attain validity through its completion. Allāh the Exalted declares: "So that He might establish the truth and nullify falsehood" [al-Anfāl 8:8].[18]

L27297–27298 The Messenger of Allah (peace and blessings be upon him and his family) said: "There is no right for an unjust basis." Malik said: If a *kitābah* contract is concluded with an invalid condition, the condition becomes void while the contract remains valid. Ali said: This represents the utmost error, for it compels both parties to an obligation they never undertook, nor has Allah the Exalted commanded them to uphold. They only agreed to the *kitābah* on this condition; otherwise, no contract would exist between them. Thus, either their condition is valid—making their contract valid—or if the condition is void, no contract exists here whatsoever. Abu Hanifah said: Whoever contracts *kitābah* for an undescribed garment, under its undefined condition, for carrion, or for something of indeterminate quantity, it constitutes a void contract granting no emancipation even if he fulfills [the terms]. But if one contracts *kitābah* for a measured quantity of wine or a specified pig, and fulfills it, the slave is emancipated but must pay their value to the master. Ali said: Nothing more vile or corrupt than this distinction has

[18] **Qur'an references (L27296):** Qur'an 10:81 (Yunus); Qur'an 8:8 (Al-Anfal).

١٩٦٥ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْكِتَابَةُ عَلَى مَجْهُولِ الْعَدَدِ، وَلَا عَلَى مَجْهُولِ الصِّفَةِ، وَلَا بِمَا لَا يَحِلُّ مِلْكُهُ، كَالْخَمْرِ وَالْخِنْزِيرِ وَغَيْرِ ذَلِكَ. وَلَا يَصِحُّ بِشَيْءٍ مِنْ ذَلِكَ عِتْقٌ أَصْلًا، وَلَا بِكِتَابَةٍ فَاسِدَةٍ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا، لِأَنَّ كُلَّ ذَلِكَ غَرَرٌ مُحَرَّمٌ، وَقَالَ اللَّهُ تَعَالَى: {إِنَّ اللَّهَ لا يُصْلِحُ عَمَلَ الْمُفْسِدِينَ} [يونس: ٨١] وَقَالَ رَسُولُ اللَّهِ: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ وَكُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَبِالضَّرُورَةِ يَدْرِي كُلُّ ذِي تَمْيِيزٍ صَحِيحٍ أَنَّ مَا عَقَدَا لَا صِحَّةَ لَهُ إلَّا بِصِحَّةِ مَا لَا صِحَّةَ لَهُ فَلَا صِحَّةَ لَهُ. وَقَالَ الشَّافِعِيُّ: الْكِتَابَةُ الْفَاسِدَةُ تُفْسَخُ مَا لَمْ يُؤَدِّهَا فَإِذَا أَدَّاهَا عَتَقَ. قَالَ أَبُو مُحَمَّد: هَذَا عَيْنُ الْفَسَادِ وَلَا يَجُوزُ أَنْ يَصِحَّ الْبَاطِلُ بِتَمَامِهِ، وَقَدْ قَالَ تَعَالَى: {لِيُحِقَّ الْحَقَّ وَيُبْطِلَ الْبَاطِلَ} [الأنفال: ٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ» . وَقَالَ مَالِكٌ: إذَا عُقِدَتْ الْكِتَابَةُ بِشَرْطٍ فَاسِدٍ بَطَلَ الشَّرْطُ وَصَحَّتْ الْكِتَابَةُ. قَالَ عَلِيٌّ: هَذَا غَايَةُ الْخَطَأِ، لِأَنَّهُ يُلْزِمُهُمَا عَقْدًا لَمْ يَلْتَزِمَاهُ قَطُّ، وَلَا أَمَرَ اللَّهُ تَعَالَى بِإِلْزَامِهِمَا إيَّاهُ، وَإِنَّمَا تَرَاضَيَا الْكِتَابَةَ بِهَذَا الشَّرْطِ، وَإِلَّا فَلَا كِتَابَةَ بَيْنَهُمَا، فَإِمَّا أَنْ يَصِحَّ شَرْطُهُمَا فَتَصِحَّ كِتَابَتُهُمَا، وَإِمَّا أَنْ يَبْطُلَ الشَّرْطُ فَلَا كِتَابَةَ هَاهُنَا أَصْلًا. وَقَالَ أَبُو حَنِيفَةَ: مَنْ كَاتَبَ عَلَى ثَوْبٍ غَيْرِ مَوْصُوفٍ أَوْ عَلَى حُكْمِهِ، أَوْ عَلَى مَيْتَةٍ، أَوْ عَلَى مَا لَا يُعْرَفُ لَهُ مِقْدَارٌ، فَهِيَ كِتَابَةٌ بَاطِلٌ، وَلَا عِتْقَ لَهُ وَإِنْ أَدَّى، وَإِنْ كَاتَبَ عَلَى خَمْرٍ مَحْدُودَةٍ، أَوْ عَلَى خِنْزِيرٍ مَوْصُوفٍ، فَإِنْ أَدَّى ذَلِكَ عَتَقَ، وَعَلَيْهِ قِيمَتُهُ لِمَوْلَاهُ. قَالَ عَلِيٌّ: مَا سُمِعَ بِأَنْتَنَ مِنْ هَذَا التَّقْسِيمِ، وَلَا بِأَفْسَدَ مِنْهُ، وَهُمْ يَقُولُونَ: مَنْ بَاعَ سِلْعَةً بِثَمَنٍ إلَّا أَنَّهُمَا لَمْ يُسَمِّيَا ذَلِكَ الثَّمَنَ وَلَا

ever been heard. They assert that if someone sells merchandise for a price they did not specify or determine, the sale is invalid. Yet if the purchaser takes possession of the goods while they are with him and emancipates the slave, the emancipation stands. Their argument here is more reprehensible than their doctrine, for they permit contracts involving wine and pigs between *dhimmis*, thereby debasing themselves by emulating *dhimmis*—though Allah the Exalted has never set disbelievers as exemplars or guides. Herein lie clear signs of evil; we seek refuge in Allah from abandonment. How could such practices be permitted among *dhimmis* since Muhammad's prophethood (peace and blessings be upon him and his family), when no precedent exists for these assertions nor do they possess any grounding for them?

عَرَفَاهُ، فَهُوَ بَيْعٌ فَاسِدٌ، وَإِنْ قَبَضَ الْمُشْتَرِي السِّلْعَةَ وَهِيَ مَعَهُ وَأَعْتَقَهُ - جَازَ عِتْقُهُ. وَكَانَتْ حُجَّتُهُمْ هَاهُنَا أَقْبَحَ مِنْ قَوْلِهِمْ؛ لِأَنَّهُمْ قَالُوا: الْعُقُودُ عَلَى الْخَمْرِ وَالْخِنْزِيرِ جَائِزَةٌ بَيْنَ أَهْلِ الذِّمَّةِ، فَلَقَدْ أَنْزَلُوا أَنْفُسَهُمْ حَيْثُ لَمْ يُنْزِلْهُمْ مِنَ الِائْتِسَاءِ بِأَهْلِ الذِّمَّةِ الْكُفَّارِ، وَمَا جَعَلَ اللَّهُ تَعَالَى قَطُّ أَهْلَ الْكُفْرِ أُسْوَةً، وَلَا قُدْوَةً، وَإِنَّ فِي هَذِهِ لَدَلَائِلَ سُوءٍ نَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ، فَكَيْفَ وَمَا أَحَلَّ ذَلِكَ بَيْنَ أَهْلِ الذِّمَّةِ مُذْ بُعِثَ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَمَا نَعْلَمُ لَهُمْ فِي هَذِهِ الْأَقْوَالِ سَلَفًا وَلَا لَهُمْ فِيهَا مُتَعَلَّقٌ بِشَيْءٍ؟

L27299 **The issue of writing concerning items whose sale is impermissible.**

[مَسْأَلَة الْكِتَابَة بِمَا لَا يَحِلّ بَيْعه]

L27300 1696. Issue: Contractual manumission (kitābah) is permissible with items whose sale remains impermissible even when ownership becomes lawful, such as a dog, a cat, water, fruit that has not yet reached edible maturity, or ears of grain that have not yet hardened. This is because all the mentioned items are lawful to own, to gift, or to use as a bridal gift, and contractual manumission (kitābah) is not a sale. And success comes only from Allah, the Exalted.

١٦٩٦ - مَسْأَلَةٌ: وَالْكِتَابَةُ جَائِزَةٌ بِمَا لَا يَحِلُّ بَيْعُهُ إِذَا حَلَّ مِلْكُهُ، كَالْكَلْبِ، وَالسِّنَّوْرِ، وَالْمَاءِ، وَالثَّمَرَةِ الَّتِي لَمْ يَبْدُ صَلَاحُهَا، وَالسُّنْبُلِ الَّذِي لَمْ يَشْتَدَّ؛ لِأَنَّ كُلَّ مَا ذَكَرْنَا مَالٌ حَلَالٌ تَمَلُّكُهُ، وَهِبَتُهُ، وَإِصْدَاقُهُ، وَالْكِتَابَةُ لَيْسَتْ بَيْعًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27301 **The juridical ruling regarding a master confiscating property belonging to his Mukatab [an enslaved person bound by a contractual manumission agreement].**

[مَسْأَلَة نزع السَّيِّد شَيْئًا مِنْ مَال مُكَاتَبه]

L27302–27304 1697. Issue: It is not permissible for a master to seize anything from the property of his *mukatab* from the time the *mukātabah* contract is established. If the master sells the *mukatab* before he fulfills his obligation, or sells from his property an amount offsetting what remains unpaid, then the property belongs to the seller unless the buyer stipulates ownership upon purchasing him in full. As for selling part of it, the property remains his and stays with him. It has been narrated to us via Ḥammād ibn Salamah,

١٦٩٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلسَّيِّدِ أَنْ يَنْتَزِعَ شَيْئًا مِنْ مَالِ مُكَاتَبِهِ مُذْ يُكَاتِبُهُ، فَإِنْ بَاعَهُ قَبْلَ أَنْ يُؤَدِّيَ، أَوْ بَاعَ مِنْهُ مَا قَابَلَ مَا لَمْ يُؤَدِّ: فَمَالُهُ لِلْبَائِعِ، إِلَّا أَنْ يَشْتَرِطَهُ الْمُبْتَاعُ إِذَا بَاعَهُ كُلَّهُ، وَأَمَّا فِي بَيْعِ بَعْضِهِ فَمَالُهُ لَهُ وَمَعَهُ. رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ، وَقَيْسٍ، قَالَ زِيَادٌ: عَنِ الْحَسَنِ، وَقَالَ قَيْسٌ: عَنْ عَطَاءٍ، ثُمَّ اتَّفَقَا جَمِيعًا: أَنَّ

who narrated from Ziyād al-Aʿlam and Qays. Ziyād said: From al-Ḥasan. Qays reported from ʿAṭāʾ—then the two of them fully agreed—that when a master enters into a *mukātabah* contract with his slave who possesses wealth, a female slave, and children: his wealth belongs to him, his female slave belongs to him, and his children are free—just as if the slave were emancipated. Among those who upheld our opinion are Mālik and Abū Sulaymān. Abū Ḥanīfah said: His wealth belongs to his master. Sufyān al-Thawrī said: The wealth belongs to the master unless the mukātab stipulates it. Al-Awzāʿī said: Whatever the master acknowledged of the slave's wealth belongs to the slave, and whatever he did not acknowledge belongs to the master. Abū Muḥammad said: The slave's wealth belongs to him, though the master is permitted to confiscate it by virtue of the textual ruling. Once the *mukātabah* is established, there is no disagreement that his earnings belong to him exclusively—for if the master could seize them, his emancipation would never be finalized. Thus, it is confirmed that the legal status during the *mukātabah* differs from the status preceding it, and all his wealth is uniformly subject to the ruling that the master cannot claim it, as no textual evidence addresses this for the mukātab.

الْعَبْدَ إِذَا كَاتَبَهُ مَوْلَاهُ وَلَهُ مَالٌ وَسُرِّيَّةٌ وَوَلَدٌ: أَنَّ مَالَهُ لَهُ، وَسُرِّيَّتَهُ لَهُ، وَوَلَدُهُ أَحْرَارٌ - وَكَذَلِكَ الْعَبْدُ إِذَا عَتَقَ. وَمِمَّنْ قَالَ بِقَوْلِنَا: مَالِكٌ، وَأَبُو سُلَيْمَانَ. وَقَالَ أَبُو حَنِيفَةَ: مَالُهُ لِسَيِّدِهِ - وَقَالَ سُفْيَانُ الثَّوْرِيُّ: الْمَالُ لِلسَّيِّدِ إِلَّا أَنْ يَشْتَرِطَهُ الْمُكَاتَبُ - وَقَالَ الْأَوْزَاعِيُّ: مَا عَرَفَهُ السَّيِّدُ مِنْ مَالِ الْعَبْدِ فَهُوَ لِلْعَبْدِ، وَمَا لَمْ يَعْرِفْهُ فَهُوَ لِلسَّيِّدِ. قَالَ أَبُو مُحَمَّدٍ: مَالُ الْعَبْدِ لَهُ، وَجَائِزٌ لِلسَّيِّدِ انْتِزَاعُهُ بِالنَّصِّ، فَإِذَا كُوتِبَ فَلَا خِلَافَ أَنَّ كَسْبَهُ لَهُ، لَا لِلسَّيِّدِ - وَلَوْ كَانَ لِلسَّيِّدِ انْتِزَاعُهُ لَمْ يَتِمَّ عِتْقُهُ أَبَدًا. فَصَحَّ أَنَّ حَالَ الْكِتَابَةِ غَيْرُ حَالِهِ قَبْلَهَا، وَكَانَ مَالُهُ كُلُّهُ حُكْمًا وَاحِدًا فِي أَنَّهُ لَيْسَ لِلسَّيِّدِ أَخْذُهُ، إِذْ لَمْ يَأْتِ بِذَلِكَ فِي الْمُكَاتَبِ نَصٌّ.

[مَسْأَلَة وَلَد الْمُكَاتَب مِنْ أمته حُرّ]

The issue of the child born to a *mukātab* (a slave under a manumission contract) from his female slave is free.

Issue 1698: The child of a mukatab born to his female slave is free. Likewise, if he (the master) owns a mahram relative of the mukatab, he may enter into a kitabah contract or grant manumission due to the textual evidences that apply to all that we have mentioned - for Allah the Exalted has not distinguished a mukatab from others - and with Allah the Exalted is success.

١٦٩٨ - مَسْأَلَةٌ: وَوَلَدُ الْمُكَاتَبِ مِنْ أَمَتِهِ حُرٌّ، وَكَذَلِكَ لَوْ مَلَكَ ذَا رَحِمٍ مَحْرَمَةٍ مِنْهُ، وَلَهُ أَنْ يُكَاتِبَ أَوْ يُعْتِقَ لِلنُّصُوصِ الْوَارِدَةِ فِي كُلِّ مَا ذَكَرْنَا - وَلَمْ يَخُصَّ اللَّهُ تَعَالَى مُكَاتَبًا مِنْ غَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Question of Liability for Diacritical Dots in Script.

[مَسْأَلَة ضمان نجوم الْكِتَابَة]

1699. Issue: When the fixed term (al-najm) or the manumission contract (al-kitābah) becomes due and obligatory, guaranteeing the debt through a third party is permissible. This is the opinion of al-Zuhrī, because it constitutes an asset whose obligation to the master has been validated, being a binding debt; thus, guaranteeing it is permissible. If something was sold by the slave

١٦٩٩ - مَسْأَلَةٌ: وَإِذَا حَلَّ النَّجْمُ، أَوْ الْكِتَابَةُ وَوَجَبَتْ، فَضَمَانُهَا مِنْ أَجْنَبِيٍّ جَائِزٌ، وَهُوَ قَوْلُ الزُّهْرِيِّ، لِأَنَّهُ مَالٌ قَدْ صَحَّ وُجُوبُهُ لِلسَّيِّدِ، وَهُوَ دَيْنٌ لَازِمٌ، فَضَمَانُهُ جَائِزٌ. وَلَوْ بِيعَ مِنْ الْعَبْدِ مَا لَمْ يُؤَدِّ كَانَ مَا وَجَبَ عَلَيْهِ بَعْدُ دَيْنًا يُتْبَعُ بِهِ، وَأَمَّا قَبْلَ حُلُولِ

before fulfilling the obligation, what subsequently becomes obligatory upon him remains a debt enforceable against him. However, this is not permissible before the fixed term becomes due, because the obligation has not yet been established - as the slave might die before the obligation takes effect, or the master might die, in which case the obligation does not become binding on the slave.

The Issue of the Dissolution of the Mukatab and Remission of Debt for Him, Subject to a Condition

1700 - Issue: It is not permissible to cut off the mukatab, nor to reduce his owed amount on the condition that he accelerates payment, because these are conditions not stipulated in the Book of Allah, the Exalted and Glorified. This also applies to selling what has not been taken possession of and what is uncertain whether it exists in the world or not. Malik and Abu Hanifah said: Cutting off the mukatab is permissible with a portion of the owed amount or through tradeable commodities. It is authentically reported from Ibn Umar that cutting off the mukatab is only permissible through tradeable commodities. Thus, they opposed Ibn Umar's position, and no dissenting opinion from the Companions is known regarding this matter.

Al-Shafi'i agreed with the statement of Ibn Umar, and there is no proof except in a definitive text—. Guidance is from Allah, the Most High, and by Him we are strengthened.

The Issue of Contractual Manumission Involving Partial Ownership of an Enslaved Person.

1701 - Issue: It is not permissible to write a mukataba contract for a portion of a slave nor for a share jointly owned in a slave with others, because Allah the Exalted says: "As for those who seek a mukataba from what your right hands possess, write the contract with them if you recognize good in them" [24:33]. A portion of a slave does not qualify as what the right hand of its share-owner possesses, nor can it be termed his lawful possession or counted among what his right hand possesses. Whoever says this has certainly lied. If both co-owners jointly agree to grant a mukataba to their shared male

النَّجْمِ فَلَا؛ لِأَنَّهُ لَمْ يَجِبْ بَعْدُ - وَلَعَلَّهُ يَمُوتَ قَبْلَ وُجُوبِهِ، أَوْ يَمُوتُ السَّيِّدُ فَلَا يَجِبُ عَلَى الْعَبْدِ.

[مَسْأَلَة مقاطعة الْمُكَاتَب والوضع عَنْهُ بِشَرْطٍ]

١٧٠٠ - مَسْأَلَةٌ: وَلَا تَجُوزُ مُقَاطَعَةُ الْمُكَاتَبِ، وَلَا أَنْ يُوضَعَ عَنْهُ بِشَرْطِ أَنْ يُعَجِّلَ؛ لِأَنَّهُمَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، وَبَيْعُ مَا لَمْ يَقْبِضْ وَمَا لَا يَدْرِي أَهُوَ فِي الْعَالَمِ أَمْ لَا؟ وَقَالَ مَالِكٌ: وَأَبُو حَنِيفَةَ: مُقَاطَعَةُ الْمُكَاتَبِ جَائِزَةٌ بِبَعْضِ مَا عَلَيْهِ، وَبِالْعُرُوضِ. وَصَحَّ عَنْ ابْنِ عُمَرَ: أَنَّهُ لَا يَجُوزُ مُقَاطَعَتُهُ إِلَّا بِالْعُرُوضِ. فَخَالَفَا ابْنَ عُمَرَ، وَلَا يُعْلَمُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ.

وَقَالَ الشَّافِعِيُّ بِقَوْلِ ابْنِ عُمَرَ، وَلَا حُجَّةَ إِلَّا فِي نَصٍّ -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، وَبِهِ نَتَأَيَّدُ.

[مَسْأَلَة مُكَاتَبَة بَعْض عَبْد]

١٧٠١ - مَسْأَلَةٌ: وَلَا تَجُوزُ كِتَابَةُ بَعْضِ عَبْدٍ وَلَا كِتَابَةُ شِقْصٍ لَهُ فِي عَبْدٍ مَعَ غَيْرِهِ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور: ٣٣] وَلَيْسَ بَعْضُ الْعَبْدِ مِمَّا مَلَكَتْ يَمِينُ مَالِكِ بَعْضِهِ، وَلَا يُقَالُ فِيهِ: إنَّهُ مِلْكُ يَمِينِهِ أَصْلًا، وَلَا أَنَّهُ مِمَّا مَلَكَتْ يَمِينُهُ، وَمَنْ قَالَ ذَلِكَ فَقَدْ كَذَبَ بِيَقِينٍ. فَلَوْ

اتَّفَقَ الشَّرِيكَانِ مَعًا عَلَى كِتَابَةِ عَبْدِهِمَا أَوْ أَمَتِهِمَا مَعًا بِلَا فَصْلٍ جَازَ ذَلِكَ، لِأَنَّهُمَا حِينَئِذٍ مُخَاطَبُونَ بِالْآيَةِ بِخِلَافِ الْوَاحِدِ، لِأَنَّهُ يُقَالُ لِسَادَاتِ الْمُشْتَرَكِ - وَإِنْ كَانُوا جَمَاعَةً: هَذَا الْعَبْدُ مِلْكُ يَمِينِكُمْ، وَمِمَّا مَلَكَتْ أَيْمَانُكُمْ، فَكَانَ فِعْلُهُمَا هَذَا دَاخِلًا فِي أَمْرِ اللَّهِ تَعَالَى مَعَ صِحَّةِ خَبَرِ بَرِيرَةَ وَأَنَّهَا مُكَاتَبَةٌ لِجَمَاعَةٍ، هَكَذَا فِي نَصِّ الْخَبَرِ.

or female slave without dividing their shares, this is permissible, for they are thereby subject to the ruling of the verse, unlike a sole owner, as it is declared to the joint masters, even if they are a group: "This slave is the lawful possession of your right hands and among what your right hands possess." Thus, their joint action complies with Allah's command, aligning with the authentic narration of Barirah, who was granted a mukataba by a group, as explicitly stated in the text of the hadith.[19]

[مَسْأَلَة تَعْجِيل نجوم الْكِتَابَة]

The Issue of Accelerating Installments in Deferred Contracts (Kitābah)

١٧٠٢ - مَسْأَلَةٌ: وَإِنْ كَانَتْ الْكِتَابَةُ نَجْمَيْنِ فَصَاعِدًا، أَوْ إلَى أَجَلٍ، فَأَرَادَ الْعَبْدُ تَعْجِيلَهَا كُلَّهَا، أَوْ تَعْجِيلَ بَعْضِهَا قَبْلَ أَجَلِهِ: لَمْ يَلْزَمْ السَّيِّدَ قَبُولُ ذَلِكَ، وَلَا عِتْقَ الْعَبْدِ، وَهِيَ إلَى أَجَلِهَا، وَكُلُّ نَجْمٍ مِنْهَا إلَى أَجَلِهِ. لِقَوْلِ اللَّهِ تَعَالَى {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] . وَلَيْتَ شِعْرِي أَيْنَ مَنْ خَالَفَنَا عَنْ احْتِجَاجِهِمْ بِـ «الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ» . وَقَالَ مَالِكٌ: يُجْبَرُ عَلَى قَبْضِ ذَلِكَ وَتَعْجِيلِ الْعِتْقِ لِلْمُكَاتَبِ.

Issue 1702: If the kitābah stipulates two installments or more, or specifies a fixed term, and the enslaved person seeks to hasten payment of the entire sum or part of it before its due date, the master is not obligated to accept this. The enslaved person remains unemancipated, with the contract valid until its term, and each installment remains due at its specified term. This is based on Allah's command: "Fulfill your covenants" (Quran 5:1). I wonder where those who oppose us find grounds for their argument, given the principle that "Muslims are bound by their stipulations." Mālik held that the master must be compelled to accept receiving that payment and hasten the emancipation of the mukātab.[20]

وَقَالَ الشَّافِعِيُّ: إنْ كَانَتْ الْكِتَابَةُ دَرَاهِمَ أَوْ دَنَانِيرَ أُجْبِرَ السَّيِّدُ عَلَى قَبُولِهَا، وَإِنْ كَانَتْ عُرُوضًا لَمْ يُجْبَرْ. قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ الشَّافِعِيِّ: فَتَقْسِيمٌ فَاسِدٌ، لَا دَلِيلَ عَلَيْهِ لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ نَعْلَمُهُ قَبْلَهُ، وَلَا قِيَاسٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِلَا شَكٍّ. وَقَدْ يَكُونُ لِلسَّيِّدِ غَرَضٌ فِي تَأْجِيلِ الدَّرَاهِمِ وَالدَّنَانِيرِ وَمَنْفَعَةٌ ظَاهِرَةٌ مِنْ خَوْفٍ لَحِقَهُ أَوْ رَجَاءِ ارْتِفَاعِ سِعْرٍ لِدَيْنِهِ مِنْهُمَا، كَمَا فِي الْعُرُوضِ وَلَا فَرْقَ.

Al-Shāfiʿī said: If the kitābah contract stipulates dirhams or dinars, the master is compelled to accept it, but if it stipulates commodities, he is not compelled. Abū Muḥammad said: As for Al-Shāfiʿī's statement, this constitutes an invalid categorization unsupported by evidence from the Qur'an, the Sunnah, any weak narration, the opinion of anyone we know who preceded him, or analogical reasoning. Whatever rests on such foundations is undoubtedly void. The master may have an objective in deferring dirhams or dinars and an apparent benefit arising from a fear he has encountered or hope for increased value in debts owed through them, just as with commodities - and there is no distinction.

[19] **Qur'an references (L27314):** Qur'an 24:33 (An-Nur).
[20] **Qur'an references (L27316):** Qur'an 5:1 (Al-Ma'idah).

وَأَمَّا الْمَالِكِيُّونَ: فَإِنَّهُمْ أَوْهَمُوا أَنَّهُمْ يَحْتَجُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ الْجَهْمِ نا الْوَزَّانُ نا عَلِيٌّ نا مُعَاذٌ الْعَنْبَرِيُّ نا عَلِيُّ بْنُ سُوَيْدِ بْنِ مَنْجُوفٍ نا أَنَسُ بْنُ سِيرِينَ عَنْ أَبِيهِ قَالَ: كَاتَبَنِي أَنَسُ بْنُ مَالِكٍ عَلَى عِشْرِينَ أَلْفًا، فَكُنْت فِي مِفْتَحِ تُسْتَرَ فَاشْتَرَيْت رَثَّةً فَرَبِحْت فِيهَا، فَأَتَيْت أَنَسًا بِجَمِيعِ مُكَاتَبَتِي، فَأَبَى أَنْ يَقْبَلَهَا إلَّا نُجُومًا، فَأَتَيْت عُمَرَ فَذَكَرْت ذَلِكَ لَهُ؟ فَقَالَ: أَرَادَ أَنَسٌ الْمِيرَاثَ، وَكَتَبَ إلَى أَنَسٍ: أَنْ اقْبَلْهَا، فَقَبِلَهَا. وَهَذَا أَحْسَنُ مَا رُوِيَ فِيهِ عَنْ عُمَرَ وَسَائِرُهَا مُنْقَطِعٌ. وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ أَنَّ أَبَاهُ كَاتَبَ عَبْدًا لَهُ فَلَمَّا فَرَغَ مِنْ كِتَابَتِهِ أَتَاهُ الْعَبْدُ بِمَالِهِ كُلِّهِ، فَأَبَى الْحَارِثُ أَنْ يَأْخُذَهُ وَقَالَ: لِي شَرْطِي، فَرَفَعَ ذَلِكَ إلَى عُثْمَانَ، فَقَالَ لَهُ عُثْمَانُ: هَلُمَّ الْمَالَ فَاجْعَلْهُ فِي بَيْتِ الْمَالِ فَتُعْطِيه مِنْهُ فِي كُلِّ حِلٍّ مَا يَحِلُّ، فَأَعْتَقَ الْعَبْدَ. قَالَ أَبُو مُحَمَّدٍ: هَذَا عَجِيبٌ جِدًّا إذْ رَأَى عُمَرُ، وَعُثْمَانُ إجَابَةَ السَّيِّدِ إلَى كِتَابَةِ عَبْدِهِ إذَا طَلَبَهَا الْعَبْدُ، وَخَالَفَهُ أَنَسٌ، وَاحْتَجَّ عُمَرُ، وَعُثْمَانُ بِالْقُرْآنِ كَانَ قَوْلُ أَنَسٍ حُجَّةً، وَكَانَ قَوْلُ عُمَرَ، وَعُثْمَانَ لَيْسَ بِحُجَّةٍ، وَإِذَا وَافَقَ قَوْلُ عُمَرَ، وَعُثْمَانَ رَأْيَ مَالِكٍ، خَالَفَهُمَا أَنَسٌ، وَالْحَارِثُ بْنُ هِشَامٍ، وَهُمَا صَاحِبَانِ، وَالْقُرْآنُ: صَارَ قَوْلُ عُمَرَ، وَعُثْمَانَ حُجَّةً، وَلَمْ يَكُنْ قَوْلُ أَنَسٍ حُجَّةً " إنَّ هَذَا لَعَجَبٌ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ ".

L27318–27320 As for the Malikis, they gave the impression that they base their argument on the narration transmitted via Ibn al-Jahm's chain—from al-Wazzān, from Ali, from Muʿādh al-ʿAnbarī, from Ali ibn Suwayd ibn Manjūf, from Anas ibn Sīrīn, from his father. He said: Anas ibn Malik entered into a contract of manumission with me for twenty thousand. While participating in the conquest of Tustar, I purchased inferior goods and profited from them. I brought the full amount of my contractual obligation to Anas, but he refused to accept it except through fixed installments. I approached Umar and informed him of this matter. He remarked: "Anas sought to retain inheritance rights," then wrote to Anas: "Accept the payment," which he subsequently did. This constitutes the most reliable narration from Umar regarding this issue, while other chains of transmission are discontinuous. Through the narration of Ibn Wahb from Ibn Lahīʿa, from Yazīd ibn Abī Ḥabīb, from Ibn Shihāb, from Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām: His father had established a manumission contract with his slave. When the slave fulfilled his contractual obligations and presented all his wealth, al-Ḥārith refused to accept it, insisting: "My stipulated conditions remain binding." The case was brought before Uthmān, who ruled: "Deposit the wealth into the public treasury and disburse it to him in legally valid installments." Thereupon, al-Ḥārith freed the slave.

Abū Muḥammad (Ibn Hazm) observed: "This is profoundly perplexing, for while Umar and Uthmān upheld the master's obligation to accept the slave's request for contractual manumission – citing Quranic authority – Anas opposed this. Yet Anas's opinion was deemed legally authoritative over theirs. When Umar and Uthmān's position aligned with the Quranic ruling, Anas and al-Ḥārith ibn Hishām – both being Companions – contradicted them. Thus the Quran affirmed the authority of Umar and Uthmān's position, rendering Anas's opinion non-authoritative. 'This is truly astonishing – sufficient for us is Allah, and what an excellent Trustee!'"

فَإِنْ مَوَّهُوا بِتَعْظِيمِ أَمْرِ الْعِتْقِ؟ قُلْنَا: أَيْنَ كُنْتُمْ عَنْ هَذَا التَّعْظِيمِ؟ إذْ لَمْ تُوجِبُوا الْكِتَابَةَ فَرْضًا لِعِتْقِ الْعَبْدِ إذَا طَلَبَهَا؟ وَالْقُرْآنُ يُوجِبُ ذَلِكَ، وَعُمَرُ، وَعُثْمَانُ، وَغَيْرُهُمَا. وَأَيْنَ

L27321 If they attempt to embellish their stance by emphasizing the importance of manumission, we respond: Where was this emphasis when you neglected to mandate written contracts for slaves seeking freedom? The Quran requires this, as do Umar, Uthman, and others. Where was this emphasis when you

reduced the mukātab slave to bondage over an unpaid dinar or dirham he could not afford? You hastened to nullify all he had paid, granting no delay beyond three days - some of you even for a minor matter - while claiming to be people of juridical reasoning. What distinction exists between a slave demanding immediate payment of all dues to hasten freedom while the master insists on his Quranic, Sunnah-based, and consensus-approved condition - thereby forcing the master against his wishes - and a master demanding immediate fulfillment of the entire contract to hasten manumission when the slave is capable but insists on adhering to its installments, yet you do not compel him? Is there greater inconsistency, unjust imposition, and contradiction than this?

كُنْتُمْ عَنْ هَذَا التَّعْظِيمِ إِذْ رَدَدْتُمْ الْمُكَاتَبَ رَقِيقًا مِنْ أَجْلِ دِينَارٍ أَوْ دِرْهَمٍ بَقِيَ عَلَيْهِ لَمْ يَقْدِرْ عَلَيْهِ؟ فَبَادَرْتُمْ وَأَبْطَلْتُمْ كُلَّ مَا أَعْطَى وَلَمْ تُؤَجِّلُوهُ إِلَّا ثَلَاثَةَ أَيَّامٍ، وَبَعْضُكُمْ أَيْضًا: أَمْرًا يَسِيرًا، وَأَنْتُمْ بِزَعْمِكُمْ أَصْحَابُ نَظَرٍ، فَأَيُّ فَرْقٍ بَيْنَ طَلَبِ الْعَبْدِ تَعْجِيلَ جَمِيعِ مَا عَلَيْهِ لِيَتَعَجَّلَ الْعِتْقَ وَالسَّيِّدُ يَأْبَى إِلَّا شَرْطَهُ الْجَائِزَ بِالْقُرْآنِ، وَالسُّنَّةِ، وَالْإِجْمَاعِ: فَتُجْبِرُونَ السَّيِّدَ عَلَى مَا لَا يُرِيدُ، وَبَيْنَ أَنْ يُرِيدَ السَّيِّدُ تَعْجِيلَ الْكِتَابَةِ كُلِّهَا لِيَتَعَجَّلَ عِتْقُ الْعَبْدِ وَالْعَبْدُ قَادِرٌ عَلَى ذَلِكَ، إِلَّا أَنَّهُ يَأْبَى إِلَّا الْجَرْيَ عَلَى نُجُومِهِ فَلَا تُجْبِرُونَهُ عَلَى ذَلِكَ، فَهَلْ فِي التَّخَاذُلِ وَالتَّحَكُّمِ بِالْبَاطِلِ وَالْمُنَاقَضَةِ أَكْثَرُ مِنْ هَذَا؟ .

[مَسْأَلَةٌ عَلَى السَّيِّدِ أَنْ يُعْطِيَ الْمُكَاتَبَ مَالًا مِنْ عِنْدِ نَفْسِهِ]

L27322 **It is a jurisprudential ruling that obliges the master to provide the mukatab with a sum of money from his own resources.**

١٧٠٣ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى السَّيِّدِ أَنْ يُعْطِيَ الْمُكَاتَبَ مَالًا مِنْ عِنْدِ نَفْسِهِ مَا طَابَتْ بِهِ نَفْسُهُ، مِمَّا يُسَمَّى مَالًا فِي أَوَّلِ عَقْدٍ لِلْكِتَابَةِ، وَيُجْبَرُ السَّيِّدُ عَلَى ذَلِكَ.

L27323–27325 Issue 1703: It is obligatory upon the master to provide the mukatab with whatever money from his own possession. He became content with it, from that which is termed property at the beginning of the *kitabah* contract, and the master is compelled to do so.

فَلَوْ مَاتَ قَبْلَ أَنْ يُعْطِيَهُ كُلِّفَ الْوَرَثَةُ ذَلِكَ مِنْ رَأْسِ الْمَالِ مَعَ الْغُرَمَاءِ.

L27326 If he dies before giving it to him, the heirs are obligated to fulfill this from the estate's principal assets after settling debts with the creditors.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] فَهَذَا أَمْرٌ لَا يَجُوزُ تَعَدِّيهِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، إِلَّا أَنَّ الشَّافِعِيَّ تَنَاقَضَ، فَرَأَى قَوْلَ اللَّهِ تَعَالَى: {فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا} [النور: ٣٣] عَلَى النَّدْبِ - وَرَأَى وَقَوْله تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] عَلَى الْوُجُوبِ - وَهَذَا تَحَكُّمٌ، وَكِلَا الْأَمْرَيْنِ لَمْ يَجِدْ فِيهِ عَدَدًا مَا أَحَدُهُمَا: مَوْكُولٌ

L27327 The proof of this is Allah's statement, the Exalted: {So enter into a manumission contract with them if you discern capability in them, and give them from the wealth of Allah which He has granted you} [An-Nur: 33]. This is an inviolable command—a view held by Al-Shafi'i and Abu Sulayman. However, Al-Shafi'i contradicted himself by interpreting Allah's command {So enter into a manumission contract with them if you discern capability in them} [An-Nur: 33] as recommended (nadb), while interpreting His command {and give them from the wealth of Allah which He has granted you} [An-Nur: 33] as obligatory (wājib). This is an unjustified distinction, as neither command specifies a quantitative stipulation to differentiate them: one is deferred to the master's discretion, and the other is deferred to both the master and

the enslaved person according to customary fairness—free from oppression, hardship, or undue burden on either.[21]

L27328 Abū Ḥanīfah and Mālik said: Both rulings are recommended acts, for the statement of the Exalted—"And give them from the wealth of Allah which He has bestowed upon you" [an-Nūr: 33]—constitutes a directive for the slaveowner and others.[22]

L27329 Abū Muḥammad said: This is erroneous. As for their statement "Both matters are recommended," it is impermissible to interpret Allah's command "Do" as meaning "Do not do if you wish"—no one derives this meaning from such wording. This constitutes diverting Allah's speech from its proper context unless another text has been reported to that effect.

L27330 As for their assertion that "this is a command for the slave master and others," it is invalid as it is grammatically linked to His injunction: {Then grant them a manumission contract} [An-Nur: 33].[23]

L27331 Thus, it was necessarily established that those commanded to document for themselves are the ones instructed to present from Allah's wealth. No one can understand from this command anything other than this. Consequently, the invalidity of their statement and their arbitrary control of the legal claim without evidence became evident.

L27332 We have been narrated this statement: He urged al-Sayyid and others toward it from Buraydah al-Aslamī through a chain containing al-Ḥasan ibn Wāqid—who is a weak narrator—and no one's authority constitutes proof except the Messenger of Allah, may Allah's peace and blessings be upon him.

L27333 A group said: It was commanded that the master and others do this, so they deemed it obligatory. As narrated through the chain of Sa'īd ibn Manṣūr, who reported from Hushaym, from Yūnus and al-Mughīrah. Yūnus reported from

إِلَى السَّيِّدِ، وَالْآخَرُ: مَوْكُولٌ إِلَيْهِ وَإِلَى الْعَبْدِ بِالْمَعْرُوفِ، مِمَّا لَا حَيْفَ فِيهِ وَلَا مَشَقَّةَ، وَلَا حَرَجَ عَلَيْهِمَا.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: كِلَا الْأَمْرَيْنِ نَدْبٌ قَوْله تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] أَمْرٌ لِلسَّيِّدِ وَلِغَيْرِهِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَطَأٌ. أَمَّا قَوْلُهُمْ " كِلَا الْأَمْرَيْنِ نَدْبٌ " فَلَا يَحِلُّ أَنْ يُحْمَلَ قَوْلَ اللَّهِ تَعَالَى: افْعَلُوا، عَلَى: لَا تَفْعَلُوا إنْ شِئْتُمْ - وَلَا يَفْهَمُ هَذَا الْمَعْنَى أَحَدٌ مِنْ هَذَا اللَّفْظِ - وَهَذِهِ إحَالَةٌ لِكَلَامِ اللَّهِ تَعَالَى عَنْ مَوَاضِعِهِ إلَّا بِنَصٍّ آخَرَ وَرَدَ بِذَلِكَ.

وَأَمَّا قَوْلُهُمْ " إنَّهُ أَمْرٌ لِلسَّيِّدِ وَغَيْرِهِ " فَبَاطِلٌ، لِأَنَّهُ مَعْطُوفٌ عَلَى قَوْلِهِ: {فَكَاتِبُوهُمْ} [النور: ٣٣] .

فَصَحَّ ضَرُورَةً أَنَّ الْمَأْمُورِينَ بِالْكِتَابَةِ لَهُمْ: هُمْ الْمَأْمُورُونَ بِإِتْيَانِهِمْ مِنْ مَالِ اللَّهِ، لَا يَفْهَمُ أَحَدٌ مِنْ هَذَا الْأَمْرِ غَيْرَ هَذَا - فَظَهَرَ فَسَادُ قَوْلِهِمْ وَتَحَكُّمُهُمْ بِالدَّعْوَى بِلَا دَلِيلٍ.

وَرُوِّينَا هَذَا الْقَوْلَ: أَنَّهُ حَثَّ عَلَيْهِ السَّيِّدَ وَغَيْرَهُ عَنْ بُرَيْدَةَ الْأَسْلَمِيِّ مِنْ طَرِيقٍ فِيهَا الْحَسَنُ بْنُ وَاقِدٍ - وَهُوَ ضَعِيفٌ - وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

وَقَالَتْ طَائِفَةٌ: أَمَرَ بِذَلِكَ السَّيِّدَ وَغَيْرَهُ، فَهَؤُلَاءِ رَأَوْهُ وَاجِبًا. كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ عَنْ يُونُسَ، وَالْمُغِيرَةِ، قَالَ يُونُسُ: عَنْ الْحَسَنِ وَقَالَ الْمُغِيرَةُ: عَنْ إبْرَاهِيمَ ثُمَّ اتَّفَقَا فِي قَوْلِ اللَّهِ تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] قَالَ: أَمَرَ اللَّهُ تَعَالَى مَوْلَاهُ وَالنَّاسَ أَنْ يُعِينُوا الْمُكَاتَبَ.

[21] **Qur'an references (L27327):** Qur'an 24:33 (An-Nur).
[22] **Qur'an references (L27328):** Qur'an 24:33 (An-Nur).
[23] **Qur'an references (L27330):** Qur'an 24:33 (An-Nur).

al-Ḥasan, while al-Mughīrah reported from Ibrāhīm. Then they concurred regarding Allah's statement: {And give them from the wealth of Allah which He has given you} [24:33]. He said: Allah, the Exalted, commanded his master and the people to assist the *mukatab*.[24]

L27334–27335 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Abd al-A'la, who narrated to us: Abu Abd al-Rahman al-Sulami said, "I witnessed him enter into a mukataba contract with his slave for four thousand, then he reduced a thousand from the debt at the conclusion of the installment periods." Then he said: I heard Ali ibn Abi Talib state: "And give them from the wealth of Allah which He has given you" [24:33] - meaning a quarter of what you stipulate in the mukataba contract with them.[25]

L27336 From the chain of Ismail ibn Ishaq al-Qadi, from Ali ibn Abdullah (Ibn al-Madini), from Mu'tamir ibn Sulayman, from Layth ibn Abi Sulaym, from Mujahid concerning Allah's saying: *"And give them from the wealth of Allah which He has granted you"* [An-Nur: 33]. He said: "A quarter of the manumission contract." It has also been narrated to us that it is a tenth of the manumission contract.[26]

L27337 It was narrated to us through the chain of ʻAbd al-Razzāq from Maʻmar from Qatādah regarding the statement of Allah the Exalted: {And give them from the wealth of Allah which He has given you} [al-Nur: 33]. He said: It is the tenth left for him from his kitābah.[27]

L27338 Among those who held it obligatory is what we have narrated via the chain of Waki': Abu Shabib reported to us from Ikrimah from Ibn Abbas that Umar ibn al-Khattab entered into a mukātabah contract with a mukātab of his named Abu Umayyah. When his installment became due, he came to him with his installment. Umar said to him: "O Abu Umayyah, go and seek assistance with it." He replied: "O Commander of the Faithful, what if this were the final installment?" Umar said: "Perhaps I will not live to see it."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْأَعْلَى نا أَبُو عَبْدِ الرَّحْمَنِ السُّلَمِيُّ وَشَهِدْته كَاتَبَ عَبْدًا لَهُ عَلَى أَرْبَعَةِ آلَافٍ فَحَطَّ عَنْهُ أَلْفًا فِي آخِرِ نُجُومِهِ - ثُمَّ قَالَ: سَمِعْت عَلِيَّ بْنَ أَبِي طَالِبٍ يَقُولُ: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] الرُّبُعَ مِمَّا تُكَاتِبُوهُمْ عَلَيْهِ.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ فِي قَوْله تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] قَالَ: رُبُعُ الْكِتَابَةِ - وَرُوِّينَا أَيْضًا فِي أَنَّهُ عُشْرُ الْكِتَابَةِ.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] قَالَ: هُوَ الْعُشْرُ يُتْرَكُ لَهُ مِنْ كِتَابَتِهِ.

وَمِمَّنْ قَالَ: إنَّهُ وَاجِبٌ كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا أَبُو شَبِيبٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَاتَبَ مَوْلًى لَهُ يُقَالُ لَهُ: أَبُو أُمَيَّةَ، فَجَاءَهُ بِنَجْمِهِ حِينَ هَلَّ؟ فَقَالَ لَهُ عُمَرُ: يَا أَبَا أُمَيَّةَ اذْهَبْ فَاسْتَعِنْ بِهِ، فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ لَوْ كَانَ هَذَا فِي آخِرِ نَجْمٍ؟ فَقَالَ عُمَرُ: لِعَلِّي لَا أُدْرِكُهُ، قَالَ عِكْرِمَةُ ثُمَّ قَرَأَ: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣]

[24] **Qur'an references (L27333):** Qur'an 24:33 (An-Nur).
[25] **Qur'an references (L27335):** Qur'an 24:33 (An-Nur).
[26] **Qur'an references (L27336):** Qur'an 24:33 (An-Nur).
[27] **Qur'an references (L27337):** Qur'an 24:33 (An-Nur).

Ikrimah then recited: “And give them from the wealth of Allah which He has bestowed upon you” [24:33].[28]

L27339 From the narration of Al-Ḥajjāj ibn Al-Minhāl: Al-Mubārak ibn Faḍālah narrated to us – my mother narrated to me from my father from my grandfather ʻUbaydullāh Al-Jaḥdarī, who said. Al-Mubārak added: And Maymūn ibn Jābān narrated to me from his uncle from his grandfather, who said: I asked ʻUmar ibn Al-Khaṭṭāb about contractual manumission. He said to me: “How much are you offering?” I said: “One hundred ūqiyya.” He said: “He did not ask me for more,” then said: “Draw up the contract with me.” He sent to Ḥafṣah, the Mother of the Believers: “I have contracted my slave and wish to advance him a portion from my wealth. Send me two hundred dirhams until something comes to me.” She sent them to him. ʻUmar took them with his right hand and recited: *“Those who seek a contract from among those your right hands possess – contract them if you recognize good in them, and give them from Allah’s wealth which He has granted you”* (24:33). He said: “Take them – may Allah bless them.”[29]

L27340–27342 Abu Muhammad said: It was indeed more akin to the principles of religion and more conducive to soundness for the Hanafi scholars to adopt Ali’s position on this issue and to assert: Such matters should not be resolved through juristic opinion on their part, given that which they themselves uphold. Exposing [body parts] incites mockery and distances one from God Almighty. It is rationally established that if a quarter of a free woman’s thigh, calf, stomach, arm, or head becomes uncovered during prayer, it invalidates the prayer. If less than a quarter is exposed, the prayer does not become invalid, especially as we have transmitted through the chain of Isḥāq ibn Rāhwayh from ʿAbd al-Razzāq, who narrated from Ibn Jurayj from ʿAṭāʾ ibn al-Sāʾib from Ḥabīb ibn Abī Thābit from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who reported from the Prophet—peace and blessings of God be upon him and his household—regarding the verse, “And give them from the wealth

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا الْمُبَارَكُ بْنُ فَضَالَةَ حَدَّثَتْنِي أُمِّيّ عَنْ أَبِي عَنْ جَدِّي عُبَيْدِ اللَّهِ الْجَحْدَرِيِّ قَالَ الْمُبَارَكُ: وَحَدَّثَنِي مَيْمُونُ بْنُ جَابَانَ عَنْ عَمِّي عَنْ جَدِّي، قَالَ: سَأَلْت عُمَرَ بْنَ الْخَطَّابِ الْمُكَاتَبَةَ؟ قَالَ لِي: كَمْ تَعْرِضُ؟ قُلْت: مِائَةَ أُوقِيَّةٍ، قَالَ: فَمَا اسْتَزَادَنِي، قَالَ: فَكَاتِبْنِي وَأَرْسَلَ إلَى حَفْصَةَ أُمِّ الْمُؤْمِنِينَ إنِّي كَاتَبْت غُلَامِي، وَأَرَدْت أَنْ أُعَجِّلَ لَهُ طَائِفَةً مِنْ مَالِي فَأَرْسِلِي إلَيَّ بِمِائَتَيْ دِرْهَمٍ إلَى أَنْ يَأْتِيَنِي شَيْءٌ؟ فَأَرْسَلَتْ بِهَا إلَيْهِ، فَأَخَذَهَا عُمَرُ بِيَمِينِهِ وَقَرَأَ: {وَالَّذِينَ يَبْتَغُونَ الْكِتَابَ مِمَّا مَلَكَتْ أَيْمَانُكُمْ فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] خُذْهَا بَارَكَ اللَّهُ فِيهَا

قَالَ أَبُو مُحَمَّدٍ: لَقَدْ كَانَ أَشْبَهَ بِأُمُورِ الدِّينِ، وَأَدْخَلَ فِي السَّلَامَةِ أَنْ يَقُولَ الْحَنَفِيُّونَ بِقَوْلِ عَلِيٍّ فِي هَذِهِ الْمَسْأَلَةِ، وَأَنْ يَقُولُوا: مِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ مِنْهُمْ، حَيْثُ يَقُولُونَ مَا يُضْحِكُ الثَّكَالَى، وَيُبْعِدُ مِنْ اللَّهِ تَعَالَى، وَمِنْ الْمَعْقُولِ: أَنَّهُ إنْ انْكَشَفَ فِي نَحْوِ الْحُرَّةِ فِي الصَّلَاةِ، أَوْ مِنْ السَّاقِ، أَوْ مِنْ الْبَطْنِ، أَوْ مِنْ الذِّرَاعِ، أَوْ مِنْ الرَّأْسِ الرُّبُعُ: بَطَلَتْ الصَّلَاةُ، فَإِنْ انْكَشَفَ أَقَلُّ لَمْ تَبْطُلْ الصَّلَاةُ، لَا سِيَّمَا وَقَدْ رُوِّينَا مِنْ طَرِيقِ إسْحَاقَ بْنِ رَاهْوَيْهِ عَنْ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] قَالَ: رُبُعُ الْكِتَابَةِ» .

[28] **Qur’an references (L27338):** Qur’an 24:33 (An-Nur).
[29] **Qur’an references (L27339):** Qur’an 24:33 (An-Nur).

of God which He has granted you" [24:33]: the Prophet explained it as "a quarter of the stipulated amount in the contract."[30]

L27343 From the transmission of al-Dabarī via ʿAbd al-Razzāq: Ibn Jurayj reported to us, narrating from ʿAṭāʾ ibn al-Sāʾib, who reported from ʿAbdullāh ibn Ḥabīb—who is Abū ʿAbd al-Raḥmān al-Sulamī—who reported from ʿAlī ibn Abī Ṭālib, that the Prophet—peace and blessings of Allah be upon him and his family—said regarding the verse {And give them from the wealth of Allah which He has given you} [24:33]: "A quarter of the manumission contract." ʿAlī said: If it is asked, "Why did you not act upon this ḥadīth?" We replied: Because Ibn Jurayj only heard from ʿAṭāʾ ibn al-Sāʾib after ʿAṭāʾ's mental confusion.[31]

L27344 It was narrated to us through the route of Al-ʻUqayli: Ibrāhīm ibn Muḥammad reported to us, Sulaymān ibn Ḥarb reported to us, Abū An-Nuʻmān reported from Yaḥyā ibn Saʻīd Al-Qaṭṭān, who said: "Ibn As-Sāʾib's memory later weakened, and Ḥammād ibn Zayd heard from him before his memory deteriorated."

L27345 From the path of Al-ʿUqaylī: Muḥammad ibn Ismāʿīl narrated to us: Al-Ḥasan ibn ʿAlī al-Ḥulwānī narrated to us: ʿAlī (that is, Ibn al-Madīnī) said: Yaḥyā ibn Saʿīd al-Qaṭṭān would not transmit the ḥadīth of ʿAṭāʾ ibn al-Sāʾib except from Shuʿbah and Sufyān.

L27346 Abū Muḥammad said: His confusion was confirmed, so it is not permissible to cite from his narrations except what has been verified to have occurred before his confusion. Those we mentioned did not narrate from him except mawqūf reports stopping at ʿAlī (may Allah be pleased with him). As for them, when a report conforms to their opinion, they do not scrutinize it for defects—even if it is fabricated. Since this report has been invalidated, there remains no authoritative proof for the proponents of this position.

L27347–27349 Those who maintained that it is recommended based their argument on

[30] **Qur'an references (L27340):** Qur'an 24:33 (An-Nur).

[31] **Qur'an references (L27343):** Qur'an 24:33 (An-Nur).

وَمِنْ طَرِيقِ الدَّبَرِيِّ عَنْ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءُ بْنُ السَّائِبِ أَنَّ عَبْدَ اللَّهِ بْنَ حَبِيبٍ - هُوَ أَبُو عَبْدِ الرَّحْمَنِ السُّلَمِيُّ - أَخْبَرَهُ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - {وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ} [النور: ٣٣] قَالَ: رُبُعُ الْكِتَابَةِ» ، قَالَ عَلِيٌّ: فَإِنْ قِيلَ: فَلِمْ لَمْ تَأْخُذُوا بِهَذَا الْحَدِيثِ؟ قُلْنَا: لِأَنَّ ابْنَ جُرَيْجٍ لَمْ يَسْمَعْ مِنْ عَطَاءِ بْنِ السَّائِبِ إِلَّا بَعْدَ اخْتِلَاطِ عَطَاءٍ.

وَرُوِّينَا مِنْ طَرِيقِ الْعُقَيْلِيُّ نا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ نا سُلَيْمَانُ بْنُ حَرْبٍ نا أَبُو النُّعْمَانِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ قَالَ: تَغَيَّرَ حِفْظُ ابْنِ السَّائِبِ بَعْدُ وَحَمَّادُ بْنُ زَيْدٍ سَمِعَ مِنْهُ قَبْلَ أَنْ يَتَغَيَّرَ.

وَمِنْ طَرِيقِ الْعُقَيْلِيِّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ نا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نا عَلِيٌّ - هُوَ ابْنُ الْمَدِينِيِّ - قَالَ: كَانَ يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ لَا يَرْوِي حَدِيثَ عَطَاءِ بْنِ السَّائِبِ إِلَّا عَنْ شُعْبَةَ، وَسُفْيَانَ

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ اخْتِلَاطُهُ، فَلَا يَحِلُّ أَنْ يُحْتَجَّ مِنْ حَدِيثِهِ إِلَّا بِمَا صَحَّ أَنَّهُ كَانَ قَبْلَ اخْتِلَاطِهِ، وَهَؤُلَاءِ الَّذِي ذَكَرْنَا لَمْ يَرْوِ أَحَدٌ مِنْهُمْ عَنْهُ إِلَّا مَوْقُوفًا عَلَى عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - وَأَمَّا هُمْ فَإِذَا وَافَقَ الْخَبَرُ رَأْيَهُمْ لَمْ يُعَلِّلُوهُ - وَإِنْ كَانَ مَوْضُوعًا - فَإِذْ قَدْ سَقَطَ هَذَا الْخَبَرُ فَلَا حُجَّةَ لِأَهْلِ هَذِهِ الْمَقَالَةِ.

وَاحْتَجَّ الْقَائِلُونَ بِأَنَّهُ عَلَى النَّدْبِ بِحَدِيثِ كِتَابَةِ سَلْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَبِحَدِيثِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ جُوَيْرِيَةَ أُمَّ الْمُؤْمِنِينَ وَقَعَتْ فِي سَهْمِ ثَابِتِ بْنِ قَيْسٍ أَوْ ابْنِ عَمٍّ

the narration regarding Salman's contractual manumission agreement—may Allah be pleased with him—and the narration from Aisha, the Mother of the Believers, that Juwayriyah, another Mother of the Believers, became part of Thabit ibn Qays's share of war spoils. "Or his paternal cousin contracted her in kitābah. She came to the Messenger of Allah—may Allah bless him and his family and grant him peace—seeking his aid. He—peace and blessings be upon him—said to her: 'Or [shall I do] better than that? I will discharge your kitābah and marry you.'"

لَهُ فَكَاتَبَهَا فَأَتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَسْتَعِينُهُ فَقَالَ لَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَوْ خَيْرٌ مِنْ ذَلِكَ أَقْضِ عَنْكِ كِتَابَتَكِ وَأَتَزَوَّجُكِ»

L27350 They said: He did not mention in these two narrations the mukatab's handing over of his wealth.

قَالُوا: فَلَمْ يَذْكُرْ فِي هَذَيْنِ الْخَبَرَيْنِ إيتَاءَ مَالِ الْمُكَاتَبِ.

L27351 Ali said: "They have no valid argument regarding any of this. As for the narration about Salman, his owner was a Jew who was not a dhimmi, but rather a hostile aggressor upon whom the legal rulings of Islam do not apply. Thus, they have no basis to rely on this."

قَالَ عَلِيٌّ: لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْ هَذَا. أَمَّا خَبَرُ سَلْمَانَ فَإِنَّ مَالِكَهُ كَانَ يَهُودِيًّا غَيْرَ ذِمِّيٍّ، بَلْ مُنَابِذٌ لَا تَجْرِي عَلَيْهِ أَحْكَامُ الْإِسْلَامِ، فَلَا مُتَعَلَّقَ لَهُمْ بِهَذَا.

L27352 The most astonishing thing is their argumentation regarding matters where there is no mention of the giving of wealth, and their opposition to what the Messenger of God—peace and blessings be upon him and his family—explicitly permitted in the reviving of three hundred palm trees and forty ounces of gold without stipulated deadlines or physical possession, while they themselves reject any of this. Glory be to Him who unleashed their tongues to utter these grave matters that decency and religious scruple ought to restrain people from.

وَأَعْجَبُ شَيْءٍ احْتِجَاجُهُمْ بِهِ فِيمَا لَيْسَ فِيهِ لَهُ ذِكْرٌ مِنْ إيتَاءِ الْمَالِ، وَمُخَالَفَتُهُمْ لَهُ فِيمَا أَجَازَهُ فِيهِ نَصًّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ إحْيَاءِ ثَلَاثمِائَةِ نَخْلَةٍ، وَأَرْبَعِينَ أُوقِيَّةً مِنْ ذَهَبٍ إلَى غَيْرِ أَجَلٍ مُسَمًّى، وَلَا مَقْبُوضَةً، وَهُمْ لَا يُجِيزُونَ شَيْئًا مِنْ هَذَا، فَسُبْحَانَ مَنْ أَطْلَقَ أَلْسِنَتَهُمْ بِهَذِهِ الْعَظَائِمِ الَّتِي يَجِبُ أَنْ يَرْدَعَ عَنْهَا الْحَيَاءُ، وَأَنْ يَرْدَعَ عَنْهَا الدِّينُ.

L27353 As for the report concerning Juwayriyah, it does not specify on what terms he entered into the *kitābah* contract with her, nor whether it was for a fixed term or indefinite. This necessarily entails that it constitutes a proof for the permissibility of *kitābah* contracts to indefinite terms. All contracts they invalidated because they did not stipulate the payment of money do not state that she was not given the money, leaving them no basis for their argument. How can this hold when the *kitābah* undoubtedly remained incomplete? None of the scholars ever claimed that Juwayriyah, the Mother of the Believers, was a freed slave of Thābit or his cousin. Rather, it is authentically established that the Messenger of Allah—may Allah bless him

وَأَمَّا خَبَرُ جُوَيْرِيَةَ: فَلَيْسَ فِيهِ عَلَى مَاذَا كَاتَبَهَا، وَلَا هَلْ كَاتَبَ إلَى أَجَلٍ أَمْ إلَى غَيْرِ أَجَلٍ، فَيَلْزَمُ عَلَى هَذَا أَنْ يَكُونَ حُجَّةً فِي إجَازَةِ الْكِتَابَةِ إلَى غَيْرِ أَجَلٍ، وَكُلُّ كِتَابَةٍ أَفْسَدُوهَا إذْ لَمْ يَذْكُرُوا فِيهَا إيتَاءَ الْمَالِ، فَلَيْسَ فِيهِ: أَنَّهَا لَمْ تُؤْتَ الْمَالَ، فَلَا مُتَعَلَّقَ لَهُمْ بِهِ، فَكَيْفَ وَهِيَ كِتَابَةٌ لَمْ تَتِمَّ بِلَا شَكٍّ، لِأَنَّهُ لَمْ يَقُلْ أَحَدٌ مِنْ أَهْلِ الْعِلْمِ: أَنَّ جُوَيْرِيَةَ أُمَّ الْمُؤْمِنِينَ

and his family and grant him peace—manumitted her, married her, and made her emancipation her dower.

كَانَتْ مَوْلَاةً لِثَابِتٍ، وَلَا لِابْنِ عَمِّهِ، بَلْ قَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَعْتَقَهَا وَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا» .

L27354 So all that they have embellished is nullified—and all praise is due to Allah, Lord of all the worlds.

فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L27355 They said: If it had been an obligation, it would have been defined in measure.

وَقَالُوا: لَوْ كَانَ فَرْضًا لَكَانَ مَحْدُودَ الْقَدْرِ.

L27356 Abu Muhammad said: So we asked, "From where have you said this? And what prevents Allah the Exalted from ordaining for us a grant that He entrusts to our choice? For whatever thing we give, we would have fulfilled what is required of us."

قَالَ أَبُو مُحَمَّد: فَقُلْنَا: مِنْ أَيْنَ قُلْتُمْ هَذَا؟ وَمَا الْمَانِعُ مِنْ أَنْ يَفْرِضَ اللَّهُ تَعَالَى عَلَيْنَا عَطَاءً يَكِلُهُ إلَى اخْتِيَارِنَا؟ وَأَيُّ شَيْءٍ أَعْطَيْنَاهُ كُنَّا قَدْ أَدَّيْنَا مَا عَلَيْنَا.

L27357 Why did you [scholars] not say this concerning temporary marriage (*mut'ah*), which the Ḥanafīs and Shāfiʿīs regarded as a *farḍ* (obligation) - despite it being unrestricted in amount? And why did the Mālikīs not say this about the *kharāj* tax levied on lands conquered by force - which, in their view, is a *farḍ* (obligation) not fixed in amount?

وَهَلَّا قُلْتُمْ هَذَا فِي الْمُتْعَةِ الَّتِي رَآهَا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ فَرْضًا - وَهِيَ غَيْرُ مَحْدُودَةِ الْقَدْرِ؟ وَهَلَّا قَالَ هَذَا الْمَالِكِيُّونَ فِي الْخَرَاجِ الْمَضْرُوبِ عَلَى الْأَرْضِ الْمُفْتَتَحَةِ عَنْوَةً - وَهُوَ عِنْدَهُمْ فَرْضٌ غَيْرُ مَحْدُودِ الْقَدْرِ؟

L27358–27359 Glory be to the One who, in their own eyes and presumption, caused them to scrutinize Allah the Exalted's rulings regarding what they do not scrutinize in themselves when legislating within religion through their opinions—just as they asserted regarding that in which they imposed arbitration as a binding duty from the kharaj (land tax)—which is of unspecified amount?—!

وَكَمَا قَالُوا فِيمَا أَوْجَبُوا فِيهِ الْحُكُومَةَ فَرْضًا مِنْ الْخَرَاجِ - وَهُوَ غَيْرُ مَحْدُودِ الْقَدْرِ؟ فَسُبْحَانَ مَنْ جَعَلَ لَهُمْ عِنْدَ أَنْفُسِهِمْ وَفِي ظَنِّهِمْ: أَنْ يَتَعَقَّبُوا عَلَى اللَّهِ تَعَالَى حُكْمَهُ بِمَا لَا يَتَعَقَّبُونَهُ عَلَى أَنْفُسِهِمْ فِيمَا يُشَرِّعُونَهُ فِي الدِّينِ بِآرَائِهِمْ -.

L27360 Sufficient for us is Allah, and what an excellent Disposer of Affairs!

وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L27361 The Book of Writing has been completed, and all praise is due to Allah, the Lord of the worlds.

تَمَّ كِتَابُ الْكِتَابَةِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.



AL-MUHALLA

كِتَابُ صُحْبَةِ مِلْكِ الْيَمِينِ

The Book of Treatment of Those under One’s Ownership

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

Return to the reading collection

[كِتَابُ صُحْبَةِ مِلْكِ الْيَمِينِ] [مَسْأَلَةٌ لَا يَقُولُ السَّيِّدُ لِغُلَامِهِ هَذَا عَبْدِي وَلَا لِمَمْلُوكَتِهِ هَذِهِ أَمَتِي]

L27362–27363 **The Book on the Companionship of Those under One's Ownership A legal issue: The master should not say to his young male slave, "This is my slave," nor to his female slave, "This is my female slave."**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَآلِهِ وَصَحْبِهِ كِتَابُ صُحْبَةِ مِلْكِ الْيَمِينِ

١٧٠٤ - مَسْأَلَةٌ: لَا يَجُوزُ لِلسَّيِّدِ أَنْ يَقُولَ لِغُلَامِهِ: هَذَا عَبْدِي، وَلَا لِمَمْلُوكَتِهِ: هَذِهِ أَمَتِي، لَكِنْ يَقُولُ: غُلَامِي، وَفَتَايَ، وَمَمْلُوكِي، وَمَمْلُوكَتِي وَخَادِمِي، وَفَتَاتِي.

L27364 In the name of Allah, the Most Gracious, the Most Merciful. May Allah send blessings upon our master Muḥammad, his household, and his companions. *The Book on the Association with Those Whom Your Right Hand Possesses* 1704 – A legal ruling: It is not permissible for a master to say to his young male servant, "This is my slave," nor to his female servant, "This is my female slave." Instead, he should say: "my young male servant," "my young man," "my owned male," "my owned female," "my servant," or "my girl."

وَلَا يَجُوزُ لِلْعَبْدِ أَنْ يَقُولَ: هَذَا رَبِّي، أَوْ مَوْلَايَ، أَوْ رَبَّتِي.

L27365 It is not permissible for a servant to say: "This is my Lord," "my Master," or "my Lady."

وَلَا يَقُلْ أَحَدٌ لِمَمْلُوكٍ: هَذَا رَبُّك، وَلَا رَبَّتُك، لَكِنْ يَقُولُ: سَيِّدِي.

L27366 And do not say to a slave: "This is your owner" or "your female owner," but say: "My master."

وَجَائِزٌ أَنْ يَقُولَ الْمَرْءُ لِآخَرَ: هَذَا عَبْدُك، وَهَذَا عَبْدُ فُلَانٍ، وَأَمَةُ فُلَانٍ، وَمَوْلَى فُلَانٍ؛ لِأَنَّ النَّهْيَ لَمْ يَرِدْ إلَّا فِيمَا ذَكَرْنَا فَقَطْ.

L27367 It is permissible for a person to say to another: "This is your slave," "This is the slave of so-and-so," "This is the female slave of so-and-so," and "This is the client of so-and-so," because the prohibition applies only to what we have mentioned.

وَجَائِزٌ أَنْ يَقُولَ: هَؤُلَاءِ عَبِيدُك، وَعِبَادُك، وَإِمَاؤُك. رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إسْمَاعِيلَ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «لَا يَقُلْ أَحَدُكُمْ: عَبْدِي، وَأَمَتِي، وَلَا يَقُولَنَّ الْمَمْلُوكُ: رَبِّي، وَرَبَّتِي، وَلْيَقُلْ الْمَالِكُ: فَتَايَ، وَفَتَاتِي، وَلْيَقُلْ الْمَمْلُوكُ: سَيِّدِي، وَسَيِّدَتِي، فَإِنَّكُمْ: الْمَمْلُوكُونَ، وَالرَّبُّ: اللَّهُ عَزَّ وَجَلَّ» .

L27368 It is permissible to say: "These are your male slaves, your servants, and your female slaves." It has been reported to us through the chain of Abū Dāwūd: Mūsā ibn Ismāʿīl narrated to us, Ḥammād ibn Salamah narrated to us from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn from Abū Hurayrah from the Messenger of Allah—peace be upon him and his family—that he said: "Let none of you say: 'My male slave' or 'My female slave,' and let not the slave say: 'My lord' or 'My lady.' Rather, let the owner say: 'My lad' and 'My lass,' and let the slave say: 'My master' and 'My mistress,' for you are all owned ones, and the Lord is Allah, the Almighty and Majestic."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يُحَدِّثُ عَنْ رَسُولِ اللَّهِ قَالَ: «لَا يَقُلْ أَحَدُكُمْ: أَطْعِمْ رَبَّكَ - اسْقِ رَبَّكَ، وَضِّئْ رَبَّكَ، وَلَا يَقُلْ

L27369–27371 From the chain of ʿAbd al-Razzāq, Maʿmar reported to us from Hammām ibn Munabbih that he heard Abū Hurairah narrating from The Messenger of Allah said: "Let none of you say: 'Feed your master,' 'Give drink to your

master,' 'Provide water for your master's ablution,' nor should any of you say: 'My master.' Instead, say: 'My liege.' Do not say: 'My master,' nor should any of you say: 'My male slave,' 'My female slave.' Rather say: 'My young man,' 'My young woman,' 'My attendant.'"

أَحَدُكُمْ: رَبِّي، وَلْيَقُلْ: سَيِّدِي، وَلَا يَقُلْ: مَوْلَايَ، وَلَا يَقُلْ أَحَدُكُمْ: عَبْدِي أَمَتِي، وَلْيَقُلْ: فَتَايَ، فَتَاتِي، غُلَامِي» .

L27372 Via Muslim's chain: Abū Kurayb → Abū Muʿāwiyah → al-Aʿmash → Abū Ṣāliḥ → Abū Hurayrah → the Prophet (may Allah bless him and his family and grant him peace), who said: "A servant should not say to his master: 'My Mawlā,' for your Mawlā is Allah." Abū Muḥammad remarked: This narration includes an additional prohibition against saying "My Mawlā," with the prohibition itself being the addition, while the transmitted ruling pertains to lifting the permissibility. Via Abū Dāwūd's chain: Ibn al-Sarḥ → Ibn Wahb → ʿAmr (Ibn al-Ḥārith), who reported that Abū Yūnus, the freedman of Abū Hurayrah, narrated this report from him. The chain is thus ascribed to Abū Hurayrah through Hammām ibn Munabbih, Abū Ṣāliḥ, Ibn Sīrīn, and ʿAbd al-Raḥmān (father of al-Alāʾ). Among those who transmitted from Abū Hurayrah concerning his legal opinions is Abū Yūnus, his servant, and no dissenter among the Companions is known regarding this.

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو كُرَيْبٍ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «وَلَا يَقُلْ الْعَبْدُ لِسَيِّدِهِ: مَوْلَايَ، فَإِنَّ مَوْلَاكُمْ اللَّهُ» قَالَ أَبُو مُحَمَّد: فِي هَذِهِ الرِّوَايَةِ زِيَادَةُ النَّهْيِ عَنْ قَوْلِ: مَوْلَايَ، وَالنَّهْيُ هُوَ الزَّائِدُ، وَالْوَارِدُ بِرَفْعِ الْإِبَاحَةِ. وَمِنْ طَرِيقِ أَبِي دَاوُد نا ابْنُ السَّرْحِ نا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو - هُوَ ابْنُ الْحَارِثِ - أَنَّ أَبَا يُونُسَ مَوْلَى أَبِي هُرَيْرَةَ حَدَّثَهُ عَنْ أَبِي هُرَيْرَةَ بِهَذَا الْخَبَرِ، فَأَسْنَدَهُ عَنْ أَبِي هُرَيْرَةَ: هَمَّامُ بْنُ مُنَبِّهٍ، وَأَبُو صَالِحٍ، وَابْنُ سِيرِينَ، وَعَبْدُ الرَّحْمَنِ وَالِدُ الْعَلَاءِ - وَرَوَى عَنْ أَبِي هُرَيْرَةَ مِنْ فُتْيَاهُ: أَبُو يُونُسَ غُلَامُهُ وَلَا يُعْلَمُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ.

L27373 And Allah, the Mighty and Majestic, has said: _"And marry the unmarried among you, and marry the righteous among your male and female slaves. If they are poor, Allah will enrich them from His bounty"_ (An-Nur 24:32).[1]

وَقَالَ اللَّهُ عَزَّ وَجَلَّ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢]

L27374 If someone argues by citing the statement of Joseph—peace be upon him—"Indeed, my Lord has made my dwelling excellent" [Yusuf: 23] and his saying, "Mention me to your Lord" [Yusuf: 42], then that was one divine law, and this is another; that was one expression, and this is another. This remained permissible in our view and within our Sharia until the Messenger of Allah—may Allah bless him and his family and grant him peace—prohibited such practices.[2]

فَإِنْ احْتَجَّ مُحْتَجٌّ بِقَوْلِ يُوسُفَ - عَلَيْهِ السَّلَامُ - {إِنَّهُ رَبِّي أَحْسَنَ مَثْوَايَ} [يوسف: ٢٣] وَقَوْلِهِ: {اذْكُرْنِي عِنْدَ رَبِّكَ} [يوسف: ٤٢] فَتِلْكَ شَرِيعَةٌ، وَهَذِهِ أُخْرَى، وَتِلْكَ لُغَةٌ، وَهَذِهِ أُخْرَى، وَقَدْ كَانَ هَذَا مُبَاحًا عِنْدَنَا وَفِي شَرِيعَتِنَا حَتَّى نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ ذَلِكَ.

L27375 Indeed, Yusuf—peace be upon him—said: "Take me in death as a Muslim

وَقَدْ قَالَ يُوسُفُ - عَلَيْهِ السَّلَامُ -: {تَوَفَّنِي مُسْلِمًا وَأَلْحِقْنِي بِالصَّالِحِينَ} [يوسف: ١٠١] وَقَدْ نُهِينَا عَنْ تَمَنِّي الْمَوْتِ.

[1] **Qur'an references (L27373):** Qur'an 24:32 (An-Nur).
[2] **Qur'an references (L27374):** Qur'an 12:23 (Yusuf); Qur'an 12:42 (Yusuf).

and join me with the righteous" (Yusuf 12:101), and indeed we have been prohibited from wishing for death.[3]

The Issue of the Enslaved Person's Clothing and Sustenance

L27376

L27377 1705 - Issue: It is obligatory upon the master to clothe his male slave and female slave from what he wears—even a single garment—and to feed them from what he eats, even a morsel. He must provide them sufficient sustenance and clothe them according to customary standards, equivalent to how someone of their status is clothed and fed, and he must not burden them with what they cannot bear.

L27378–27379 It has been narrated to us through the transmission route of Al-Bukhārī: Adam ibn Abī Iyās narrated to us, Shuʿbah narrated to us, Wāṣil al-Aḥdab narrated to us: I heard Maʿrūr ibn Suwayd say: "I saw Abū Dharr al-Ghifārī wearing a set of garments, and his servant was also wearing a set of garments. We asked him about that, and he replied: 'The Messenger of God (may God's peace and blessings be upon him and his family) said to him: "Your brothers are your servants whom God the Exalted has placed under your authority. Whoever has a brother under his authority must feed him from what he eats, clothe him from what he wears, and not burden them with what overwhelms them. If you do burden them with what overwhelms them, then assist them."'"

L27380 Through the chain of Muslim: Hārūn ibn Maʿrūf and Muḥammad ibn ʿAbbād both reported: Ḥātim ibn Ismāʿīl narrated from Yaʿqūb ibn Mujāhid, Abū Ḥazrah, from ʿUbādah ibn al-Walīd ibn ʿUbādah ibn al-Ṣāmit that he encountered Abū al-Yusr wearing a cloak and a Maʿāfirī cloak, while his enslaved attendant likewise wore a cloak and a Maʿāfirī cloak. He questioned him about this, and Abū al-Yusr replied: "My two eyes have seen, my two ears have heard, and my heart has preserved the words of Allah's Messenger—peace and blessings be upon him—when he said: 'Feed them from what you eat and clothe them from what you wear.'"

[مَسْأَلَة كِسْوَة المملوك وطعامه]

١٧٠٥ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى السَّيِّدِ أَنْ يَكْسُوَ مَمْلُوكَهُ، وَمَمْلُوكَتَهُ، مِمَّا يَلْبَسُ - وَلَوْ شَيْئًا - وَأَنْ يُطْعِمَهُ مِمَّا يَأْكُلُ وَلَوْ لُقْمَةً - وَأَنْ يُشْبِعَهُ وَيَكْسُوَهُ بِالْمَعْرُوفِ، مِثْلَ مَا يُكْسَى وَيُطْعَمُ مِثْلُهُ، أَوْ مِثْلُهَا، وَأَنْ لَا يُكَلِّفَهُ مَا لَا يُطِيقُ.

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا آدَم بْنُ أَبِي إيَاسٍ نا شُعْبَةُ نا وَاصِلٌ الْأَحْدَبُ سَمِعْتُ «الْمَعْرُورَ بْنَ سُوَيْد قَالَ: رَأَيْتُ أَبَا ذَرٍّ الْغِفَارِيَّ وَعَلَيْهِ حُلَّةٌ، وَعَلَى غُلَامِهِ حُلَّةٌ، فَسَأَلْنَاهُ عَنْ ذَلِكَ؟ فَقَالَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لَهُ: إخْوَانُكُمْ خَوَلُكُمْ جَعَلَهُمْ اللَّهُ تَعَالَى تَحْتَ أَيْدِيكُمْ فَمَنْ كَانَ أَخُوهُ تَحْتَ يَدِهِ فَلْيُطْعِمْهُ مِمَّا يَأْكُلُ، وَلْيُلْبِسْهُ مِمَّا يَلْبَسُ، وَلَا تُكَلِّفُوهُمْ مَا يَغْلِبُهُمْ، فَإِنْ كَلَّفْتُمُوهُمْ مَا يَغْلِبُهُمْ فَأَعِينُوهُمْ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا هَارُونُ بْنُ مَعْرُوفٍ، وَمُحَمَّدُ بْنُ عَبَّادٍ، قَالَا جَمِيعًا: نا حَاتِمُ بْنُ إسْمَاعِيلَ عَنْ يَعْقُوبَ بْنِ مُجَاهِدٍ أَبِي حَزْرَةَ «عَنْ عُبَادَةَ بْنِ الْوَلِيدِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ أَنَّهُ سَمِعَ أَبَا الْيَسَرِ وَقَدْ لَقِيَهُ وَعَلَيْهِ بُرْدَةٌ وَمَعَافِرِيٌّ، وَعَلَى غُلَامِهِ بُرْدَةٌ وَمَعَافِرِيٌّ، فَقَالَ لَهُ فِي ذَلِكَ، فَقَالَ لَهُ أَبُو الْيَسَرِ: بَصَرَ عَيْنَايَ هَاتَانِ، وَسَمِعَ أُذُنَايَ هَاتَانِ، وَوَعَاهُ قَلْبِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهُوَ يَقُولُ: أَطْعِمُوهُمْ مِمَّا تَأْكُلُونَ وَاكْسُوهُمْ مِمَّا تَكْسُونَ» .

[3] **Qur'an references (L27375):** Qur'an 12:101 (Yusuf).

L27381 Abu al-Yusr said: “So, whenever I gave him from worldly possessions, it was lighter for me than him taking from my good deeds on the Day of Judgment.”

قَالَ أَبُو الْيُسْرِ: فَكَانَ إِذَا أَعْطَيْته مِنْ مَتَاعِ الدُّنْيَا أَهْوَنَ عَلَيَّ مِنْ أَنْ يَأْخُذَ مِنْ حَسَنَاتِي يَوْمَ الْقِيَامَةِ.

L27382 It has been narrated to us that a similar ruling is attributed to Abū Bakr al-Ṣiddīq, and there is no dissenter against them among the Companions—may Allah be pleased with them—whatsoever.

وَرُوِّينَا مِثْلَ هَذَا عَنْ أَبِي بَكْرٍ الصِّدِّيقِ، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَصْلًا.

L27383 ## The Jurisprudential Issue of Naming the Boy and Children

[مَسْأَلَة تَسْمِيَة الْغُلَام والأولاد]

L27384 Issue 1706: It is not permissible for anyone to name his male slave Aflaḥ, nor Yasar, nor Nāfiʿ, nor Najīḥ, nor Rabāḥ—but he may name his sons these names.

١٧٠٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يُسَمِّيَ غُلَامَهُ: أَفْلَحَ، وَلَا يَسَارَ، وَلَا نَافِعَ، وَلَا نَجِيحَ، وَلَا رَبَاحَ - وَلَهُ أَنْ يُسَمِّيَ أَوْلَادَهُ بِهَذِهِ الْأَسْمَاءِ.

L27385 It is permissible for one to name his slaves with all kinds of names, such as Najāḥ, Munajjaḥ, Nufayʿ, Rubayḥ, Yasīr, Fulayḥ, and others, without avoiding any name. It was narrated to us through Muslim’s chain: Yahyā ibn Yahyā narrated to us that he heard al-Muʿtamir ibn Sulaymān relate that he heard al-Rukayn ibn al-Rabīʿ ibn ʿUmaylah narrate from his father from Samurah ibn Jundub, who said: “The Messenger of Allah—peace be upon him and his household—forbade us from naming our slaves four names: Aflaḥ, Rabāḥ, Yasār, and Nāfiʿ.”

وَلَهُ أَنْ يُسَمِّيَ مَمَالِيكَهُ بِسَائِرِ الْأَسْمَاءِ، مِثْلِ: نَجَاحٍ، وَمُنَجَّحٍ، وَنُفَيْعٍ، وَرُبَيْحٍ، وَيَسِيرٍ، وَفُلَيْحٍ، وَغَيْرِ ذَلِكَ، لَا تُحَاشِ شَيْئًا. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى: أَنَّهُ سَمِعَ الْمُعْتَمِرَ بْنَ سُلَيْمَانَ يُحَدِّثُ أَنَّهُ سَمِعَ الرُّكَيْنَ بْنَ الرَّبِيعِ بْنِ عُمَيْلَةَ يُحَدِّثُ عَنْ أَبِيهِ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ: «نَهَانَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ نُسَمِّيَ رَقِيقَنَا بِأَرْبَعَةِ أَسْمَاءَ: أَفْلَحَ، وَرَبَاحَ، وَيَسَارَ، وَنَافِعَ» .

L27386–27387 From the path of Muslim: Aḥmad ibn ʿAbd Allāh ibn Yūnus narrated to us from Zuhayr ibn Muʿāwiyah from Manṣūr ibn al-Muʿtamir from Hilāl ibn Yasāf from al-Rabīʿ ibn ʿUmaylah from Samurah ibn Jundub, who said: The Messenger of Allah (peace be upon him) said: “Do not name your boy Yasar (Ease), Rabāḥ (Profit), Najīḥ (Successful), or Aflaḥ (Prosperous). For if you say, ‘Is there Yasar (Ease)?’ he will reply, ‘No.’ These are only four, so do not add beyond what I have mentioned.”[4]

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ يُونُسَ نا زُهَيْرُ بْنُ مُعَاوِيَةَ، نا مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ هِلَالِ بْنِ يَسَافٍ عَنْ الرَّبِيعِ بْنِ عُمَيْلَةَ عَنْ سَمُرَةَ بْنِ جُنْدُبٍ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تُسَمِّيَنَّ غُلَامَك يَسَارًا، وَلَا رَبَاحًا، وَلَا نَجِيحًا، وَلَا أَفْلَحَ، فَإِنَّك تَقُولُ: أَثَمَّ هُوَ؟ فَيَقُولُ: لَا إنَّمَا هُنَّ أَرْبَعٌ، فَلَا تَزِيدُنَّ عَلَيَّ» .

L27388 Ali said: We have narrated it through various chains. Abu Muhammad said: A group opposed this and rejected it by saying: It has been authentically established through the chain of Jabir that the Prophet—peace and blessings

قَالَ عَلِيٌّ: وَرُوِّينَاهُ مِنْ طُرُقٍ قَالَ أَبُو مُحَمَّدٍ فَخَالَفَ قَوْمٌ هَذَا وَدَفَعُوهُ بِأَنْ قَالُوا: قَدْ صَحَّ يَقِينًا مِنْ طَرِيقِ جَابِرٍ أَنَّهُ قَالَ: «أَرَادَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يَنْهَى أَنْ يُسَمَّى

[4] **Hadith references (L27387):** Sunan Abi Dawud 4958.

be upon him—intended to prohibit naming with Ya'la, Barakah, Aflah, Nāfi', Yāsār, and similar names. Then I saw him remain silent about it afterward, then he passed away—may God's peace and blessings be upon him and his family—without prohibiting that. Later, Umar ibn al-Khattab intended to prohibit it but then refrained.

بِ يَعْلَى وَبَرَكَةَ، وَأَفْلَحَ وَنَافِعٍ، وَيَسَارٍ، وَبِنَحْوِ ذَلِكَ - ثُمَّ رَأَيْتُهُ سَكَتَ بَعْدُ عَنْهَا، ثُمَّ قُبِضَ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَمْ يَنْهَ عَنْ ذَلِكَ» ، ثُمَّ أَرَادَ عُمَرُ بْنُ الْخَطَّابِ أَنْ يَنْهَى عَنْ ذَلِكَ، ثُمَّ تَرَكَهُ.

L27389 Abu Muhammad said: The one who lacks knowledge is not a proof against the one who knows. Jabir relates what he knew because he did not hear the specific prohibition, while Samurah relates what he knew because he heard the prohibition. The affirmer has more right than the denier, for he possesses additional knowledge absent in Jabir. Adopting Jabir's narration would necessitate declaring Samurah a liar—we seek refuge in Allah from this! How then, when many of the names Jabir mentioned were never prohibited at all? Thus, it becomes clear that Samurah's narration does not contradict the majority of Jabir's report. For Jabir stated that the Prophet (peace and blessings be upon him) did not prohibit the names he listed—and he was truthful—while Samurah stated that the Prophet (peace and blessings be upon him) prohibited some of them—and he was likewise truthful.

قَالَ أَبُو مُحَمَّد: لَيْسَ مَنْ لَمْ يَعْلَمْ حُجَّةً عَلَى مَنْ عَلِمَ، جَابِرٌ يَقُولُ مَا عِنْدَهُ، لِأَنَّهُ لَمْ يَسْمَعْ النَّهْيَ، وَسَمُرَةُ يَقُولُ مَا عِنْدَهُ، لِأَنَّهُ سَمِعَ النَّهْيَ، وَالْمُثْبِتُ أَوْلَى مِنْ النَّافِي، لِأَنَّ عِنْدَهُ عِلْمًا زَائِدًا لَمْ يَكُنْ عِنْدَ جَابِرٍ، وَلَا يُمْكِنُ الْأَخْذُ بِحَدِيثِ جَابِرٍ إلَّا بِتَكْذِيبِ سَمُرَةَ، وَمَعَاذَ اللَّهِ مِنْ هَذَا، فَكَيْفَ وَكَثِيرٌ مِنْ الْأَسْمَاءِ الَّتِي ذَكَرَهَا جَابِرٌ لَمْ يَنْهَ عَنْهَا أَصْلًا؟ فَصَحَّ أَنَّ حَدِيثَ سَمُرَةَ لَيْسَ مُخَالِفًا لِأَكْثَرِ مَا فِي حَدِيثِ جَابِرٍ، لِأَنَّ جَابِرًا ذَكَرَ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَنْهَ عَنْ تِلْكَ الْأَسْمَاءِ الَّتِي ذَكَرَ، وَصَدَقَ - وَذَكَرَ سَمُرَةُ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - نَهَى عَنْ بَعْضِهَا، وَصَدَقَ.

L27390 They said: It has been reported that the Messenger of God—may God bless him and his family and grant him peace—had a black servant named Rabāḥ who controlled entry to him. The matter of jizya on the Magians was unknown to ʿUmar, and this precedent is more widely recognized than the prohibition of these names. What then prevents the prohibition of these names from being unknown to Jābir and a group with him, when the prohibition of leasing land was unknown to Ibn ʿUmar—until it reached him late in his life, leading him to retract it—though this prohibition is more renowned than these names?

وَقَالُوا: قَدْ رُوِيَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ لَهُ غُلَامٌ أَسْوَدُ اسْمُهُ: رَبَاحٌ، يَأْذَنُ عَلَيْهِ - وَقَدْ غَابَ عَنْ عُمَرَ أَمْرُ جِزْيَةِ الْمَجُوسِ - وَهُوَ أَشْهَرُ مِنْ النَّهْيِ عَنْ هَذِهِ الْأَسْمَاءِ، فَمَا الْمَانِعُ مِنْ أَنْ يَغِيبَ عَنْ جَابِرٍ، وَطَائِفَةٍ مَعَهُ: النَّهْيُ عَنْ هَذِهِ الْأَسْمَاءِ، وَقَدْ غَابَ عَنْ ابْنِ عُمَرَ النَّهْيُ عَنْ كَرْيِ الْأَرْضِ - ثُمَّ بَلَغَهُ فِي آخِرِ عُمُرِهِ فَرَجَعَ إلَيْهِ - وَهُوَ أَشْهَرُ مِنْ هَذِهِ الْأَسْمَاءِ

L27391–27393 As for the name Rabaah given to the Messenger of Allah's servant—may Allah bless him and his family and grant him peace—it was solely narrated by 'Ikrimah ibn 'Ammar. And it is weak—thus there is no proof in it. Even if it were authentic, it would conform to the established principle, and the prohibition would be an additional legal ruling that it is not permissible to contravene. They said: The Prophet's statement—peace and blessings be upon him and his family—"Then you say: Is he there? And he says:

وَأَمَّا تَسْمِيَةُ غُلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَبَاحًا: فَإِنَّمَا انْفَرَدَ بِهِ عِكْرِمَةُ بْنُ عَمَّارٍ وَهُوَ ضَعِيفٌ - فَلَا حُجَّةَ فِيهِ وَلَوْ صَحَّ لَكَانَ مُوَافِقًا لِمَعْهُودِ الْأَصْلِ، وَكَانَ النَّهْيُ شَرْعًا زَائِدًا لَا يَحِلُّ الْخُرُوجُ عَنْهُ؟ وَقَالُوا: قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: " فَإِنَّك تَقُولُ: أَثَمَّ هُوَ؟ فَيَقُولُ: لَا " بَيَانٌ بِالْعِلَّةِ فِي ذَلِكَ، وَهِيَ عِلَّةٌ مَوْجُودَةٌ فِي: خِيرَةَ

No," is an explanation of the effective cause for that. This cause exists in Khayrah, Khayr, Saʿd, Saʿīd, Mahmūd, and many names. Thus, it would also be obligatory to prohibit these names according to you. We replied: This is the principle of the proponents of analogy, not our principle. We only apply what God Almighty and His Messenger—peace and blessings be upon him—have established as a cause for a ruling in the specific case mentioned in the text alone. We do not extend it to what is not explicitly stated.

L27394 Our proof for the validity of this position is that had he - peace and blessings be upon him - intended to make this a legal cause applicable to all names, he would not have been incapable of doing so through a more concise expression than the wording he actually employed. This constitutes the ruling of clarification. As for what they attribute to him - peace and blessings be upon him - that he intended numerous matters but undertook to mention some of them, suspended the legal ruling upon them, specified the cause therein, and omitted the rest: this constitutes the ruling of deceptive concealment and failure to fully convey - and we seek refuge in God from such attribution.

L27395 You have no evidence for the validity of your claim except the claim itself and the false assumption.

L27396 They said: Indeed, Ibn ʿUmar named his servant Nāfiʿ, and Abū Ayyūb named his servant Aflaḥ in the presence of the Companions. We replied: By your own admission, Abū Ayyūb was unaware of the obligation of ghusl following penetration, and Ibn ʿUmar was unaware of the ruling concerning land irrigation and other matters. Which is more reprehensible—ignorance of such rulings or ignorance of the prohibition regarding a specific name? Thus, all their disputations are invalidated, and no one possesses any proof against the Messenger of Allah—peace and blessings be upon him and his family.

L27397 The book on the companionship of those whom your right hands possess is hereby concluded, and all praise belongs to Allah, Lord of the worlds. May Allah bless Muhammad, His servant and Messenger, and grant him abundant peace.

وَخَيْر، وَسَعْد وَسَعِيد، وَمَحْمُود، وَأَسْمَاءَ كَثِيرَة: فَيَجِبُ الْمَنْعُ مِنْهَا عِنْدَكُمْ أَيْضًا؟ قُلْنَا: هَذَا أَصْلُ أَصْحَابِ الْقِيَاسِ، لَا أَصْلُنَا، وَإِنَّمَا نَجْعَلُ نَحْنُ مَا جَعَلَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - سَبَبًا لِلْحُكْمِ فِي الْمَكَانِ الَّذِي وَرَدَ فِيهِ النَّصُّ فَقَطْ، لَا نَتَعَدَّاهُ إِلَى مَا لَمْ يُنَصَّ عَلَيْهِ

بُرْهَانُنَا عَلَى صِحَّةِ ذَلِكَ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَوْ أَرَادَ أَنْ يَجْعَلَ ذَلِكَ عِلَّةً فِي سَائِرِ الْأَسْمَاءِ لَمَا عَجَزَ عَنْ ذَلِكَ بِأَخْصَرَ مِنْ هَذَا اللَّفْظِ الَّذِي أَتَى بِهِ: فَهَذَا حُكْمُ الْبَيَانِ، وَالَّذِي يَنْسُبُونَهُ إِلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ أَنَّهُ أَرَادَ أَشْيَاءَ كَثِيرَةً فَتَكَلَّفَ ذِكْرَ بَعْضِهَا، وَعَلَّقَ الْحُكْمَ عَلَيْهِ، وَأَخْبَرَ بِالسَّبَبِ فِي ذَلِكَ، وَسَكَتَ عَنْ غَيْرِ ذَلِكَ: هُوَ حُكْمُ التَّلْبِيسِ، وَعَدَمِ التَّبْلِيغِ، وَمَعَاذَ اللَّهِ مِنْ هَذَا.

وَلَا دَلِيلَ لَكُمْ عَلَى صِحَّةِ دَعْوَاكُمْ إِلَّا الدَّعْوَى فَقَطْ، وَالظَّنُّ الْكَاذِبُ.

وَقَالُوا: قَدْ سَمَّى ابْنُ عُمَرَ غُلَامَهُ: نَافِعًا، وَسَمَّى أَبُو أَيُّوبَ غُلَامَهُ: أَفْلَحَ بِحَضْرَةِ الصَّحَابَةِ؟ قُلْنَا: قَدْ غَابَ بِإِقْرَارِكُمْ عَنْ أَبِي أَيُّوبَ وُجُوبُ الْغُسْلِ مِنْ الْإِيلَاجِ، وَغَابَ عَنْ ابْنِ عُمَرَ حُكْمُ كَرْيِ الْأَرْضِ، وَغَيْرِ ذَلِكَ، فَأَيُّمَا أَشْنَعُ؟ مَغِيبُ مِثْلِ هَذَا، أَوْ مَغِيبُ النَّهْيِ عَنْ اسْمٍ مِنْ الْأَسْمَاءِ: فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ، وَلَا حُجَّةَ فِي أَحَدٍ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

تَمَّ كِتَابُ صُحْبَةِ مِلْكِ الْيَمِينِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ عَبْدِهِ وَرَسُولِهِ وَسَلَّمَ تَسْلِيمًا كَثِيرًا.



AL-MUHALLA

كِتَابُ الْمَوَارِيثِ

The Book of Inheritance

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

Return to the reading collection

[كِتَابُ الْمَوَارِيثِ] [مَسْأَلَةٌ أَوَّلُ مَا يَخْرُجُ مِنْ رَأْسِ الْمَالِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلَّمَ.

كِتَابُ الْمَوَارِيثِ ١٧٠٧ - مَسْأَلَةٌ: أَوَّلُ مَا يَخْرُجُ مِنْ رَأْسِ الْمَالِ: دَيْنُ الْغُرَمَاءِ، فَإِنْ فَضَلَ مِنْهُ شَيْءٌ كُفِّنَ مِنْهُ الْمَيِّتُ، وَإِنْ لَمْ يَفْضُلْ مِنْهُ شَيْءٌ كَانَ كَفَنُهُ عَلَى مَنْ حَضَرَ مِنْ الْغُرَمَاءِ أَوْ غَيْرِهِمْ، لِمَا قَدْ ذَكَرْنَا فِي " كِتَابِ الْجَنَائِزِ " مِنْ دِيوَانِنَا هَذَا.

وَعُمْدَةُ ذَلِكَ قَوْله تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١]

وَأَنَّ مُصْعَبَ بْنَ عُمَيْرٍ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يُوجَدْ لَهُ إلَّا ثَوْبٌ وَاحِدٌ، فَكُفِّنَ فِيهِ، وَلِأَنَّ تَكْلِيفَ الْغُرَمَاءِ خَاصَّةً أَنْ يَكُونَ الْكَفَنُ نَاقِصًا مِنْ حُقُوقِهِمْ: ظُلْمٌ لَهُمْ - وَهَذَا وَاجِبٌ عَلَى كُلِّ مَنْ حَضَرَ مِنْ الْمُسْلِمِينَ وَالْغُرَمَاءُ مِنْ جُمْلَتِهِمْ.

[مَسْأَلَةَ فَضَلَتْ فَضْلَةٌ مِنْ الْمَالِ كَانَتْ الْوَصِيَّةُ فِي الثُّلُثِ فَمَا دُونَهُ]

١٧٠٨ - مَسْأَلَةٌ: فَإِنْ فَضَلَتْ فَضْلَةٌ مِنْ الْمَالِ: كَانَتْ الْوَصِيَّةُ فِي الثُّلُثِ فَمَا دُونَهُ، لَا يَتَجَاوَزُ بِهَا الثُّلُثَ عَلَى مَا نَذْكُرُ فِي " كِتَابِ الْوَصَايَا " مِنْ دِيوَانِنَا هَذَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، وَكَانَ لِلْوَرَثَةِ مَا بَقِيَ لِقَوْلِ اللَّهِ تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١]

[مَسْأَلَةَ مِنْ يَرِث مِنْ الرجال]

١٧٠٩ - مَسْأَلَةٌ: وَلَا يَرِثُ مِنْ الرِّجَالِ إلَّا الْأَبُ، وَالْجَدُّ أَبُو الْأَبِ، وَأَبُو الْجَدِّ الْمَذْكُورِ، وَهَكَذَا مَا وُجِدَ.

The Book of Inheritance. Issue: The first deduction from the principal estate.

In the name of Allah, the Most Gracious, the Most Merciful. And may Allah send blessings upon Muhammad and his family and grant him peace.

Book of Inheritance 1707 - Issue: The first to be disbursed from the estate is the debt owed to creditors. If any surplus remains, the deceased is shrouded from it. If no surplus remains, the responsibility for his shroud falls upon those present among the creditors or others, as we have mentioned in "The Book of Funerals" within this *diwan* of ours.

The foundation of this is His statement, the Most High, Exalted is He: "after a will he makes or a debt" (4:11).[1]

And that Mus'ab ibn Umayr—may Allah be pleased with him—had nothing but a single garment, so he was shrouded in it. For burdening the creditors specifically by making the shroud a deficiency in their rights is an injustice toward them. Instead, providing the shroud is an obligation incumbent upon every Muslim present, and the creditors are included among them.

A case where an excess remained from the estate, the bequest having been within the third or less.

Issue 1708: If surplus property remains, the will shall be made up to a third or less of the estate without exceeding the third, as we will mention - God Almighty and Majestic willing - in the "Book of Wills" within this Diwan of ours. The remainder belongs to the heirs, in accordance with Allah the Exalted's statement: after any will that was made or debt Quran 4:11.[2]

An issue of those who inherit from the men.

Issue 1709: No one inherits from male relatives except the father, the paternal grandfather, the grandfather's father, and so on in the lineage.

[1] **Qur'an references (L27402):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).
[2] **Qur'an references (L27405):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

وَلَا يَرِثُ مَعَ الْأَبِ جَدٌّ، وَلَا مَعَ الْجَدِّ أَبُو جَدٍّ، وَلَا مَعَ أَبِي الْجَدِّ جَدُّ جَدٍّ - وَلَا يَرِثُ جَدٌّ مِنْ قِبَلِ الْأُمِّ، وَلَا جَدٌّ مِنْ قِبَلِ جَدَّةٍ، وَلَا الْأَخُ الشَّقِيقُ أَوْ لِلْأَبِ فَقَطْ، أَوْ لِلْأُمِّ فَقَطْ، وَابْنُ الْأَخِ الشَّقِيقِ، وَابْنُ الْأَخِ لِلْأَبِ.

L27408 A grandfather does not inherit alongside the father, nor does a great-grandfather inherit alongside the grandfather, nor does the father of the great-grandfather inherit alongside the great-grandfather. A grandfather from the mother's side does not inherit, nor does a grandfather on the grandmother's side. A full brother does not inherit, a paternal half-brother or a maternal half-brother: the son of a full brother does not inherit, nor does the son of a paternal half-brother.

وَلَا يَرِثُ ابْنُ أَخٍ لِأُمٍّ، وَالِابْنُ، وَابْنُ الِابْنِ، وَابْنُ ابْنِ الِابْنِ، وَهَكَذَا مَا وُجِدَ، وَالْعَمُّ شَقِيقُ الْأَبِ، وَأَخُو الْأَبِ لِأَبِيهِ.

L27409–27410 A son of a maternal brother does not inherit, while the son, the son's son, the son's son's son, and so on as far as the line continues, the paternal uncle (the father's full brother), and the father's paternal brother do inherit.

وَلَا يَرِثُ أَخُو الْأَبِ لِأُمِّهِ، وَابْنُ الْعَمِّ الشَّقِيقِ، وَابْنُ الْعَمِّ أَخُو الْأَبِ لِأَبِيهِ، وَعَمُّ الْأَبِ الشَّقِيقِ، أَوْ الْأَبِ وَهَكَذَا مَا عَلَا، وَأَبْنَاؤُهُمْ الذُّكُورُ وَالزَّوْجُ وَالْمُعْتِقُ وَمُعْتِقُ الْمُعْتَقِ، وَهَكَذَا مَا عَلَا، لَا يَرِثُ مِنْ الرِّجَالِ غَيْرُ مَنْ ذَكَرْنَا - وَلَا خِلَافَ فِي أَنَّ هَؤُلَاءِ يَرِثُونَ.

L27411 The following do not inherit: the paternal half-brother through the mother, the son of the full paternal uncle, the son of the father's full brother, the grandfather's full brother, and those ascending in their categories; their male children, the husband, the emancipator, the emancipator's patron, and those ascending in their categories. No male inherits except those we have not mentioned here. There is no disagreement that these do not inherit.

وَلَا يَرِثُ مِنْ النِّسَاءِ إلَّا الْأُمُّ، وَالْجَدَّةُ، وَالِابْنَةُ، وَابْنَةُ الِابْنِ، وَابْنَةُ ابْنِ الِابْنِ، وَهَكَذَا مَا وُجِدَتْ.

L27412 From the women, only the mother, grandmother, daughter, daughter of the son, daughter of the son's son, and so on—as long as they exist—inherit.

وَلَا تَرِثُ ابْنَةُ ابْنَةٍ، وَلَا ابْنُ ابْنَةٍ، وَالْأُخْتُ الشَّقِيقَةُ، أَوْ لِلْأَبِ، أَوْ لِلْأُمِّ، وَالزَّوْجَةُ، وَالْمُعْتِقَةُ، وَمُعْتَقَةُ الْمُعْتِقَةِ، وَهَكَذَا مَا عَلَا.

L27413 A daughter of a daughter does not inherit, nor does a son of a daughter. The full sister, or the paternal sister, or the maternal sister, the wife, the emancipated female slave, the emancipated female slave's emancipated female slave, and so on for ascending relatives.

وَلَا يَرِثُ ابْنُ أُخْتٍ، وَلَا بِنْتُ أُخْتٍ، وَلَا ابْنَةُ أَخٍ، وَلَا ابْنَةُ عَمٍّ، وَلَا عَمَّةٌ، وَلَا خَالَةٌ، وَلَا خَالٌ، وَلَا جَدٌّ لِأُمٍّ، وَلَا ابْنَةُ ابْنَةٍ، وَلَا ابْنُ ابْنَةٍ، وَلَا بِنْتُ أَخٍ لِأُمٍّ، وَلَا ابْنُ أَخٍ لِأُمٍّ.

L27414 The son of a sister does not inherit, nor the daughter of a sister, nor the daughter of a brother, nor the daughter of a paternal uncle, nor a paternal aunt, nor a maternal aunt, nor a maternal uncle, nor a grandfather through the mother, nor the daughter of a daughter, nor the son of a daughter, nor the daughter of a uterine brother, nor the son of a uterine brother.

L27415 There is no disagreement that those we have mentioned do not inherit.

وَلَا خِلَافَ فِي أَنَّ مَنْ ذَكَرْنَا لَا يَرِثُ، وَلَا يَرِثُ مَعَ الْأَبِ جَدٌّ، وَلَا تَرِثُ مَعَ الْأُمِّ جَدَّةٌ، وَلَا يَرِثُ أَخٌ، وَلَا أُخْتٌ مَعَ ابْنٍ ذَكَرٍ، وَلَا مَعَ أَبٍ.

A grandfather does not inherit in the presence of the father, nor does a grandmother inherit in the presence of the mother. Neither a brother nor a sister inherits in the presence of a male son nor in the presence of a father.

وَلَا يَرِثُ ابْنُ أَخٍ مَعَ أَخٍ شَقِيقٍ، أَوْ لِأَبٍ، وَلَا يَرِثُ أَخٌ لِأُمٍّ مَعَ أَبٍ، وَلَا مَعَ ابْنٍ، وَلَا مَعَ ابْنَةٍ، وَلَا مَعَ جَدٍّ.

L27416 A son of a brother does not inherit alongside a full brother or a paternal half-brother, nor does a maternal half-brother inherit alongside a father, son, daughter, or grandfather.

وَلَا يَرِثُ عَمٌّ مَعَ أَبٍ، وَلَا مَعَ جَدٍّ، وَلَا مَعَ أَخٍ شَقِيقٍ، أَوْ لِأَبٍ، وَلَا مَعَ ابْنِ أَخٍ شَقِيقٍ، أَوْ لِأَبٍ - وَإِنْ سَفَلَ.

L27417 A paternal uncle does not inherit alongside a father, a grandfather, a full brother or a paternal half-brother, nor alongside the son of a full brother or the son of a paternal half-brother - even if the son is further removed in lineage.

بُرْهَانُ هَذَا كُلِّهِ. نُصُوصُ الْقُرْآنِ، وَقَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ وُهَيْبٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «أَلْحِقُوا الْفَرَائِضَ بِأَصْحَابِهَا، فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» وَكُلُّ مَنْ ذَكَرْنَا أَيْضًا: فَلَا اخْتِلَافَ فِيهِ أَصْلًا، وَأَخَّرْنَا الَّذِي فِيهِ اخْتِلَافٌ لِنَتَكَلَّمَ عَلَيْهِ إنْ شَاءَ اللَّهُ تَعَالَى فِي أَبْوَابِهِ.

L27418 The proof of all this lies in the explicit texts of the Quran and the statement of the Prophet—peace and blessings be upon him and his family—which we have narrated through Wuhaib's chain from Tawus from Ibn Abbas from the Messenger of Allah—peace and blessings be upon him and his family: "Assign the fixed shares to their rightful recipients. Whatever remains after allocating the shares belongs to the nearest male relative." All that we have mentioned also contains absolutely no disagreement. We have deferred the matter involving disagreement to discuss it, God, the Exalted, willing, within its designated chapters.

[مَسْأَلَة أَوَّلُ مَا يُخْرَجُ مِمَّا تَرَكَهُ الْمَيِّتُ]

Jurisprudential Issue: The first liability to be settled from what the deceased left behind.

إنْ تَرَكَ شَيْئًا مِنْ الْمَالِ، قَلَّ أَوْ كَثُرَ: دُيُونُ اللَّهِ تَعَالَى، إنْ كَانَ عَلَيْهِ مِنْهَا شَيْءٌ: كَالْحَجِّ، وَالزَّكَاةِ، وَالْكَفَّارَاتِ، وَنَحْوِ ذَلِكَ، ثُمَّ إنْ بَقِيَ شَيْءٌ أُخْرِجَ مِنْهُ دُيُونُ الْغُرَمَاءِ إنْ كَانَ عَلَيْهِ دَيْنٌ فَإِنْ فَضَلَ شَيْءٌ كُفِّنَ مِنْهُ الْمَيِّتُ، وَإِنْ لَمْ يَفْضُلْ مِنْهُ شَيْءٌ كَانَ كَفَنُهُ عَلَى مَنْ حَضَرَ مِنْ الْغُرَمَاءِ، أَوْ غَيْرِهِمْ - فَإِنْ فَضَلَ بَعْدَ الْكَفَنِ شَيْءٌ: نَفَذَتْ وَصِيَّةُ الْمَيِّتِ فِي ثُلُثِ مَا بَقِيَ، وَيَكُونُ لِلْوَرَثَةِ مَا بَقِيَ بَعْدَ الْوَصِيَّةِ.

L27419–27420 L27421 If he leaves any estate, whether little or much, the debts owed to God Almighty—such as the Ḥajj, Zakāt, expiations, and similar obligations—are settled first if he owed any. Then, if anything remains from it, the debts of creditors are paid if he owed any. If anything remains after that, the deceased is shrouded from it. If nothing remains from it, his shrouding becomes the responsibility of those present among the creditors or others. If anything remains after the shrouding, the deceased's bequest is executed within a third of what remains, and the heirs receive what remains after the bequest.

L27422 The proof for this is the statement of Allah the Exalted in the verses of inheritance: {After any bequest he may have made or any debt} [An-Nisa: 11], and the Messenger of Allah—peace and blessings be upon him and his progeny—said: "The debt owed to Allah is more entitled to be settled. Fulfill Allah's right, for it is most deserving of fulfillment." We have mentioned this with its chains of transmission in the "Book of Fasting, the Zakat, and the Hajj" from this compendium of ours, rendering its repetition superfluous. The verse encompasses debts owed to Allah the Exalted and debts owed to creation, while the established Sunnah has clarified that the debt owed to Allah the Exalted takes precedence over debts owed to creation.[3]

L27423 As for the shrouding, we have previously discussed it in *The Book of Funerals*. It is authentically established that nothing was found for Ḥamza and Muṣʿab ibn ʿUmayr—may Allah be pleased with them both—except a cloak each, a cloak each, so they were shrouded in both.

L27424 A group held that the burial shroud takes precedence over debts. Abū Muḥammad said: This is erroneous, for the textual evidence establishes the priority of debts as we have recited. Since all the deceased's wealth rightfully belongs to the creditors by explicit Quranic decree, it would be unjust to exclusively burden the creditors with providing the shroud from their wealth without drawing from the wealth of others present. This obligation lacks foundation in the Quran, Sunnah, consensus, analogy, independent legal reasoning, precautionary principle, or any established source. The ruling holds that if the deceased left no wealth whatsoever, the responsibility for his shroud falls upon every Muslim present, in accordance with the injunction of Allah's Messenger (peace be upon him and his family): "Whoever assumes responsibility for shrouding a fellow believer must ensure its adequacy." Thus, providing an adequate shroud becomes an obligatory duty upon all present at the deceased's side. This ruling applies universally to creditors and others present alike.

L27425–27427 There is no disagreement that a will does not take effect except after half [the debt] is settled for the creditors, as per the saying of the Messenger of Allah—

[3] **Qur'an references (L27422):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى فِي آيَاتِ الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى، اقْضُوا اللَّهَ فَهُوَ أَحَقُّ بِالْوَفَاءِ») وَقَدْ ذَكَرْنَا ذَلِكَ بِأَسَانِيدِهِ فِي " كِتَابِ الصِّيَامِ، وَالزَّكَاةِ، وَالْحَجِّ " مِنْ دِيوَانِنَا هَذَا، فَأَغْنَى عَنْ إعَادَتِهِ فَالْآيَةُ تَعُمُّ دُيُونَ اللَّهِ تَعَالَى وَدُيُونَ الْخَلْقِ، وَالسُّنَنُ الثَّابِتَةُ بَيَّنَتْ أَنَّ دَيْنَ اللَّهِ تَعَالَى مُقَدَّمٌ عَلَى دُيُونِ الْخَلْقِ.

وَأَمَّا الْكَفَنُ فَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الْجَنَائِزِ وَصَحَّ " أَنَّ حَمْزَةَ، وَالْمُصْعَبَ بْنَ عُمَيْرٍ - رَضِيَ اللَّهُ عَنْهُمَا -: لَمْ يُوجَدْ لَهُمَا شَيْءٌ، إلَّا شَمْلَةٌ شَمْلَةٌ فَكُفِّنَا فِيهِمَا ".

وَقَالَ قَوْمٌ: الْكَفَنُ مُقَدَّمٌ عَلَى الدُّيُونِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، لِأَنَّ النَّصَّ جَاءَ بِتَقْدِيمِ الدَّيْنِ كَمَا تَلَوْنَا، فَإِذْ قَدْ صَارَ الْمَالُ كُلُّهُ لِلْغُرَمَاءِ بِنَصِّ الْقُرْآنِ فَمِنْ الظُّلْمِ أَنْ يُخَصَّ الْغُرَمَاءُ بِإِخْرَاجِ الْكَفَنِ مِنْ مَالِهِمْ دُونَ مَالِ سَائِرِ مَنْ حَضَرَ، إذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا قِيَاسٌ، وَلَا نَظَرٌ، وَلَا احْتِيَاطٌ، لَكِنَّ حُكْمَهُ أَنَّهُ لَمْ يَتْرُكْ شَيْئًا أَصْلًا، وَمَنْ لَمْ يَتْرُكْ شَيْئًا فَكَفَنُهُ عَلَى كُلِّ مَنْ حَضَرَ مِنْ الْمُسْلِمِينَ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ وَلِيَ كَفَنَ أَخِيهِ أَنْ يُحْسِنَهُ» فَصَارَ إحْسَانُ الْكَفَنِ فَرْضًا عَلَى كُلِّ مَنْ حَضَرَ الْمَيِّتَ، فَهَذَا عُمُومٌ لِلْغُرَمَاءِ وَغَيْرِهِمْ مِمَّنْ حَضَرَ.

وَلَا خِلَافَ فِي أَنَّ الْوَصِيَّةَ لَا تَنْفُذُ إلَّا بَعْدَ انْتِصَافِ الْغُرَمَاءِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَمَالُ الْمَيِّتِ قَدْ صَارَ فِي

peace and blessings of Allah be upon him and his family. “Your blood and your wealth are inviolable to you.” Thus, the deceased’s property now enters into the domain of Allah’s rights or becomes due to creditors upon his death - whether entirely or partially. Therefore, he is forbidden to adjudicate over the wealth of others. Only rulings pertaining to his own remaining property are enforceable. This validates that testamentary bequests apply solely to what remains after debts.

The Issue of Inheritance of the Two Daughters and the Two Sisters

Issue 1711: If a person dies leaving two full sisters or two paternal sisters, or more than two of either type, while leaving no child, no full brother, no paternal brother, nor any heir from the categories we have mentioned who would reduce their share, then they are entitled to two-thirds of what he left - whether two sisters or more - shared equally among them.

Similarly, if someone leaves two daughters or more and does not leave a male child or any heir who would diminish their share, they are entitled to two-thirds of the estate as well.

The proof of that is the statement of Allah, the Mighty and Majestic: “If a man perishes without a child while having a sister, then hers is half of what he left; and he inherits her if she has no child. If there are two sisters, then theirs is two-thirds of what he left” [An-Nisa: 176].[4]

From the narration of Ahmad ibn Shu’ayb, from Isma’il ibn Mas’ud al-Jahdari, from Khalid ibn al-Harith (who is al-Hujaymi), from Hisham (who is al-Dastuwa’i), from Abu al-Zubayr, from Jabir ibn Abdullah, who said: “I fell ill while I had seven sisters of mine. The Messenger of Allah—peace and blessings be upon him and his family—came to me, blew upon my face, and I regained consciousness. I said: ’O Messenger of Allah, shall I bequeath two-thirds to my sisters?’ Then he left me. Then he returned to me and said: ’I do not perceive that you will die from this illness of yours. Indeed Allah

[4]**Qur’an references (L27431):** Qur’an 4:176 (An-Nisa).

حُقُوقِ اللَّهِ تَعَالَى، أَوْ لِلْغُرَمَاءِ بِمَوْتِه - كُلِّه أَوْ بَعْضِه - فَحَرَامٌ عَلَيْهِ الْحُكْمُ فِي مَالِ غَيْرِه، وَإِنَّمَا يَنْفُذُ حُكْمُهُ فِي مَالِهِ الَّذِي يَتَخَلَّفُ، فَصَحَّ بِهَذَا أَنَّ الْوَصِيَّةَ فِيمَا يَبْقَى بَعْدَ الدَّيْنِ.

[مَسْأَلَة مِيرَاث البنتين والأختين]

١٧١١ - مَسْأَلَةٌ: وَمَنْ مَاتَ وَتَرَكَ أُخْتَيْنِ شَقِيقَتَيْنِ أَوْ لِأَبٍ، أَوْ أَكْثَرَ مِنْ أُخْتَيْنِ كَذَلِكَ أَيْضًا، وَلَمْ يَتْرُكْ وَلَدًا، وَلَا أَخًا شَقِيقًا، وَلَا لِأَبٍ، وَلَا مَنْ يَحُطُّهُنَّ مِمَّا نَذْكُرُ فَلَهُمَا ثُلُثَا مَا تَرَكَ أَوْ لَهُنَّ - عَلَى السَّوَاءِ -.

وَكَذَلِكَ مَنْ تَرَكَ ابْنَتَيْنِ فَصَاعِدًا وَلَمْ يَتْرُكْ وَلَدًا ذَكَرًا وَلَا مَنْ يَحُطُّهُنَّ: فَلَهُمَا أَوْ لَهُنَّ ثُلُثَا مَا تَرَكَ أَيْضًا.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ} [النساء: ١٧٦].

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إِسْمَاعِيلُ بْنُ مَسْعُودٍ الْجَحْدَرِيُّ نا خَالِدُ بْنُ الْحَارِثِ - هُوَ الْهُجَيْمِيُّ - نا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - نا أَبُو الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «اشْتَكَيْت وَعِنْدِي سَبْعُ أَخَوَاتٍ لِي فَدَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَنَفَخَ فِي وَجْهِي فَأَفَقْتُ، فَقُلْتُ: يَا رَسُولَ اللَّهِ، أَلَا أُوصِي لِأَخَوَاتِي بِالثُّلُثَيْنِ - ثُمَّ خَرَجَ وَتَرَكَنِي، ثُمَّ رَجَعَ إِلَيَّ فَقَالَ: إِنِّي لَا أَرَاك مَيِّتًا مِنْ وَجَعِك هَذَا، وَإِنَّ اللَّهَ قَدْ

has revealed and clarified the portion for your sisters—He has ordained two-thirds for them.”’ Jabir would subsequently say: “This verse was revealed regarding: ’They ask you for a ruling; say: Allah gives you a ruling concerning the *kalalah*’ [Surah An-Nisa 4:176].” There exists no disagreement regarding this.[5]

أَنْزَلَ فَبَيَّنَ الَّذِي لِأَخَوَاتِكَ: فَجَعَلَ لَهُنَّ الثُّلُثَيْنِ - فَكَانَ جَابِرٌ يَقُولُ: أُنْزِلَتْ هَذِهِ الْآيَةُ فِي: {يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلالَةِ} [النساء: ١٧٦] » وَهَذَا لَا خِلَافَ فِيهِ.

L27433–27435 As for two daughters, there is no disagreement concerning three or more that they are entitled to two-thirds, provided the deceased has no male child. If there is no one present to reduce their shares, and this is the statement of Allah, the Exalted: “But if there are daughters, more than two, then they are entitled to two-thirds of what he left.” [An-Nisāʾ: 11][6]

وَأَمَّا الْبِنْتَانِ فَلَا خِلَافَ فِي الثَّلَاثِ فَصَاعِدًا، وَلَا وَلَدَ لِلْمَيِّتِ ذَكَرًا فِي أَنَّ لَهُنَّ الثُّلُثَيْنِ إِذَا لَمْ يَكُنْ هُنَالِكَ مَنْ يَحُطُّهُنَّ، وَهُوَ قَوْلُ اللَّهِ تَعَالَى، {فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ} [النساء: ١١]

L27436 As for two daughters, it has been reported from Ibn Abbas that they are only entitled to half, just as (is the case) for a single daughter, and the reference in case of dispute is the clarification of the Messenger of Allah (peace and blessings be upon him).

وَأَمَّا الْبِنْتَانِ فَقَدْ رُوِيَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ لَيْسَ لَهُمَا إِلَّا النِّصْفُ كَمَا لِلْوَاحِدَةِ - وَالْمَرْجُوعُ إِلَيْهِ عِنْدَ التَّنَازُعِ هُوَ بَيَانُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L27437 As we have been narrated through the chain of Musaddad, who narrated to us from Bishr ibn al-Mufaḍḍal, who narrated to us from ʿAbdullāh ibn Muḥammad ibn ʿAqīl, from Jābir ibn ʿAbdullāh, who said: “We set out with the Messenger of Allah, peace and blessings be upon him, until we came to a woman from the Anṣār in the markets—she was the grandmother of Khārijah ibn Zayd ibn Thābit—and he mentioned a ḥadīth in which the woman came with her two daughters and said: ’O Messenger of Allah, these are the daughters of Saʿd ibn al-Rabīʿ, who was killed with you on the day of Uḥud. Their uncle seized their wealth and left them nothing—he took everything. What do you rule, O Messenger of Allah? By Allah, they will never marry unless they have wealth!’ The Messenger of Allah, peace and blessings be upon him, said: ’Allah will judge concerning that.’ He said: Then Sūrat al-Nisāʾ was revealed with the verse: *Allah instructs you concerning your children* [4:11]. The Messenger of Allah, peace and blessings be upon him, said: ’Call the woman and their uncle for me.’ He then said to their uncle: ’Give them two-thirds, give their mother one-eighth, and what remains is yours.’”[7]

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسَدَّدٍ نا بِشْرُ بْنُ الْمُفَضَّلِ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَتَّى جِئْنَا امْرَأَةً مِنْ الْأَنْصَارِ فِي الْأَسْوَاقِ - وَهِيَ جَدَّةُ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ - فَذَكَرَ حَدِيثًا وَفِيهِ: فَجَاءَتْ الْمَرْأَةُ بِابْنَتَيْنِ لَهَا فَقَالَتْ: يَا رَسُولَ اللَّهِ هَاتَانِ بِنْتَا سَعْدِ بْنِ الرَّبِيعِ، قُتِلَ مَعَكَ يَوْمَ أُحُدٍ وَقَدْ اسْتَفَى عَمُّهُمَا مَالَهُمَا فَلَمْ يَدَعْ لَهُمَا مَالًا إِلَّا أَخَذَهُ، فَمَا تَرَى يَا رَسُولَ اللَّهِ؟ فَوَاَللَّهِ لَا يُنْكَحَانِ أَبَدًا إِلَّا وَلَهُمَا مَالٌ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: يَقْضِي اللَّهُ فِي ذَلِكَ، قَالَ: وَنَزَلَتْ سُورَةُ النِّسَاءِ {يُوصِيكُمُ اللَّهُ فِي أَوْلادِكُمْ} [النساء: ١١] الْآيَةَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ادْعُوا لِي الْمَرْأَةَ وَصَاحِبَهَا فَقَالَ لِعَمِّهِمَا: أَعْطِهِمَا الثُّلُثَيْنِ وَأَعْطِ أُمَّهُمَا الثُّمُنَ، وَمَا بَقِيَ فَلَكَ» .

[5] **Qur’an references (L27432):** Qur’an 4:176 (An-Nisa).
[6] **Qur’an references (L27433):** Qur’an 4:11 (An-Nisa).
[7] **Qur’an references (L27437):** Qur’an 4:11 (An-Nisa).

وَقَدْ ثَبَتَ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَعْطَى الِابْنَةَ النِّصْفَ، وَابْنَةَ الِابْنِ السُّدُسَ تَكْمِلَةَ الثُّلُثَيْنِ وَقَدْ ادَّعَى أَصْحَابُ الْقِيَاسِ أَنَّ الثُّلُثَيْنِ إنَّمَا وَجَبَ لِلْبِنْتَيْنِ قِيَاسًا عَلَى الْأُخْتَيْنِ، قَالُوا: وَالْبِنْتَانِ أَوْلَى بِذَلِكَ مِنْ الْأُخْتَيْنِ.

L27438 It has been established that he—may Allah's blessings and peace be upon him and his family—assigned the daughter a half, and the granddaughter a sixth, thus completing the two-thirds. The adherents of qiyas argued that the two-thirds obligation applies specifically to two daughters by analogy to two sisters, stating: "Two daughters are more entitled to that than two sisters."

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، لِأَنَّهُ إنْ كَانَ ذَلِكَ لِأَنَّ الْبِنْتَيْنِ أَحَقُّ مِنْ الْأُخْتَيْنِ فَوَاجِبٌ أَنْ يَزِيدُوهُمَا مِنْ أَجْلِ أَنَّهُمَا أَوْلَى وَأَقْرَبُ، فَيُخَالِفُوا الْقُرْآنَ، أَوْ يُبْطِلُوا قِيَاسَهُمْ.

L27439 Abu Muhammad said: This is null and void, because if [the ruling] is based on the two daughters having a stronger entitlement than the two sisters, it would require granting them a larger share due to their greater right and closer relation—thereby contradicting the Quran or invalidating their *Qiyas*.

وَأَيْضًا فَإِنَّهُمْ - نَعْنِي هَؤُلَاءِ الْمُحْتَجِّينَ بِهَذَا الْقِيَاسِ - لَا يَخْتَلِفُونَ فِي عَشْرِ بَنَاتٍ وَأُخْتٍ لِأَبٍ: أَنَّ لِلْأُخْتِ الثُّلُثَ كَامِلًا، وَلِكُلِّ وَاحِدَةٍ مِنْ الْبَنَاتِ خُمُسُ الثُّلُثِ - فَقَدْ أَعْطُوا الْأُخْتَ الْوَاحِدَةَ أَكْثَرَ مِمَّا أَعْطُوا أَرْبَعَ بَنَاتٍ، فَأَيْنَ قَوْلُهُمْ: إنَّ الْبَنَاتِ أَحَقُّ مِنْ الْأَخَوَاتِ؟ وَهَذَا مِنْهُمْ تَخْلِيطٌ فِي الدِّينِ، وَلَيْسَتْ الْمَوَارِيثُ عَلَى قَدْرِ التَّفَاضُلِ فِي الْقَرَابَةِ، إنَّمَا هِيَ كَمَا جَاءَتْ النُّصُوصُ فَقَطْ.

L27440 Moreover, they—we refer to those who cite this analogy as proof—do not dispute the ruling concerning ten daughters and a paternal sister: that the sister receives the full third, while each daughter receives one-fifth of that third. Thus, they have granted the single sister a greater portion than four daughters combined. Where then is their assertion that daughters hold greater entitlement than sisters? This constitutes a muddling of religion on their part. Inheritance allocations are not based on degrees of precedence in kinship ties—they are only as the revealed texts have established.

وَلَا خِلَافَ فِيمَنْ تَرَكَ جَدَّهُ أَبَا أُمِّهِ، وَابْنَ بِنْتِهِ، وَبِنْتَ أَخِيهِ، وَابْنَ أُخْتِهِ، وَخَالَهُ وَخَالَتَهُ، وَعَمَّتَهُ وَابْنَ عَمٍّ لَهُ لَا يَلْتَقِي مَعَهُ إلَّا إلَى عِشْرِينَ جَدًّا: أَنَّ هَذَا الْمَالَ كُلَّهُ لِهَذَا الِابْنِ الْعَمِّ الْبَعِيدِ، وَلَا شَيْءَ لِكُلِّ مَنْ ذَكَرْنَا، وَأَيْنَ قَرَابَتُهُ مِنْ قَرَابَتِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27441–27443 There is no disagreement that if someone excludes their maternal grandfather, their daughter's son, their brother's daughter, their sister's son, their maternal uncle and aunt, their paternal aunt, and a paternal cousin whose closest common ancestor is twenty generations removed—all of the estate belongs to this heir. The distant paternal cousin is not entitled to anything, nor does any of those we have mentioned receive anything. How far is his kinship from theirs! And with Allah alone is success.

١٧١٢ - مَسْأَلَةٌ: فَإِنْ تَرَكَ أُخْتًا شَقِيقَةً، وَأُخْتًا وَاحِدَةً لِلْأَبِ أَوْ اثْنَتَيْنِ لِلْأَبِ أَوْ أَكْثَرَ مِنْ ذَلِكَ: فَلِلشَّقِيقَةِ النِّصْفُ، وَلِلَّتِي لِلْأَبِ، أَوْ اللَّوَاتِي، لِلْأَبِ: السُّدُسُ فَقَطْ؛ لِأَنَّ اللَّهَ عَزَّ وَجَلَّ أَعْطَى الْأُخْتَ النِّصْفَ، وَأَعْطَى الْأُخْتَيْنِ فَصَاعِدًا الثُّلُثَيْنِ.

L27444 1712 - Issue: If he leaves behind a full sister and one paternal sister, two paternal sisters, or more than that: the full sister receives half, and the paternal sister(s) receive only a sixth. This is because Allah, the Mighty and Majestic, granted the sister half, and granted two sisters or more two-thirds.

L27445 Thus, it is established that paternal sisters or full sisters - even if numerous

- have no share except two-thirds exclusively. When the full sister becomes entitled to half by indisputable consensus, provided that a non-full sister does not share in it, only a sixth remains. This sixth is allocated to the paternal sister or paternal sisters.

فَصَحَّ أَنَّهُ لَيْسَ لِلْأَخَوَاتِ اللَّوَاتِي لِلْأَبِ، أَوْ اللَّوَاتِي لِلْأَبِ وَالْأُمِّ - وَإِنْ كَثُرْنَ - إِلَّا الثُّلُثَانِ فَقَطْ، وَإِذَا وَجَبَ لِلشَّقِيقَةِ النِّصْفُ بِالْإِجْمَاعِ الْمُتَيَقَّنِ فِي أَنْ لَا يُشَارِكَهَا فِيهِ الَّتِي لَيْسَتْ شَقِيقَةً، فَلَمْ يَبْقَ إِلَّا السُّدُسُ، فَهُوَ لِلَّتِي لِلْأَبِ، أَوْ اللَّوَاتِي لِلْأَبِ.

L27446 Issue 1713: A full sister or paternal half-sister does not inherit alongside a son, daughter, son's son (however low), or son's daughter (however low). The remainder after the shares of the daughter and the son's daughter is allocated to the agnates, such as a brother, brother's son, paternal uncle, paternal uncle's son, patron and his agnates. However, if the deceased has no agnate, the remainder is given to the full sister. If no full sister exists, it is given to the paternal half-sister. The same applies to the sisters accordingly. This is the opinion of Isḥāq ibn Rāhwayh, and this is the position we uphold.

١٧١٣ - مَسْأَلَةٌ: وَلَا تَرِثُ أُخْتٌ شَقِيقَةٌ وَلَا غَيْرُ شَقِيقَةٍ مَعَ ابْنٍ ذَكَرٍ وَلَا مَعَ ابْنَةٍ أُنْثَى، وَلَا مَعَ ابْنِ ابْنٍ وَإِنْ سَفَلَ، وَلَا مَعَ بِنْتِ ابْنٍ وَإِنْ سَفَلَتْ، وَالْبَاقِي بَعْدَ نَصِيبِ الْبِنْتِ وَبِنْتِ الِابْنِ لِلْعَصَبَةِ كَالْأَخِ، وَابْنِ الْأَخِ، وَالْعَمِّ، وَابْنِ الْعَمِّ، وَالْمُعْتَقِ وَعَصَبَتِهِ، إِلَّا أَنْ لَا يَكُونَ لِلْمَيِّتِ عَاصِبٌ، فَيَكُونُ حِينَئِذٍ مَا بَقِيَ لِلْأُخْتِ الشَّقِيقَةِ، أَوْ لِلَّتِي لِلْأَبِ إِنْ لَمْ يَكُنْ هُنَالِكَ شَقِيقَةٌ، وَلِلْأَخَوَاتِ كَذَلِكَ - وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ - وَبِهِ نَأْخُذُ.

L27447 And here are two opinions other than this.

وَهُنَا قَوْلَانِ غَيْرَ هَذَا.

L27448 One of the two rulings—that sisters are residual heirs (ʿaṣabah) alongside daughters, and that the aforementioned sister or sisters inherit the remainder after the daughter, granddaughter (through a son), two daughters, two granddaughters (through a son), or beyond—is the opinion of Mālik, Abū Ḥanīfah, al-Shāfiʿī, and Aḥmad. Authentic narrations are reported from Ibn Masʿūd, Zayd ibn Thābit, and Ibn al-Zubayr regarding this matter, though these narrations offer no substantiation for their position.

أَحَدُهُمَا - أَنَّ الْأَخَوَاتِ عَصَبَةُ الْبَنَاتِ، وَأَنَّ الْأُخْتَ الْمَذْكُورَةَ أَوْ الْأَخَوَاتِ الْمَذْكُورَاتِ يَأْخُذْنَ مَا فَضَلَ عَنْ الِابْنَةِ، أَوْ بِنْتِ الِابْنِ، أَوْ مَا فَضَلَ عَنْ الْبِنْتَيْنِ أَوْ بِنْتَيْ الِابْنِ فَصَاعِدًا - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ وَأَحْمَدَ - وَصَحَّ عَنْ ابْنِ مَسْعُودٍ وَزَيْدٍ، وَابْنِ الزُّبَيْرِ فِي ذَلِكَ رِوَايَاتٌ لَا مُتَعَلَّقَ لَهُمْ بِهَا.

L27449 It has been authentically established regarding the sister and the daughter, as narrated by Muʿādh, Abū Mūsā, and Salmān—and it has likewise been narrated from ʿUmar in the same manner.

وَصَحَّ فِي الْأُخْتِ وَالْبِنْتِ عَنْ مُعَاذٍ، وَأَبِي مُوسَى، وَسَلْمَانَ - وَقَدْ رُوِيَ عَنْ عُمَرَ كَذَلِكَ أَيْضًا.

L27450 The second is that a sister does not inherit fundamentally alongside a daughter or a daughter of a son. This is authentically reported from Ibn Abbas; it is the first opinion of Ibn al-Zubayr and the position of Abū Sulaymān.

وَالثَّانِي - أَنَّهُ لَا تَرِثُ أُخْتٌ أَصْلًا مَعَ ابْنَةٍ، وَلَا مَعَ ابْنَةِ ابْنٍ - وَصَحَّ عَنْ ابْنِ عَبَّاسٍ - وَهُوَ أَوَّلُ قَوْلِ ابْنِ الزُّبَيْرِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

وَاحْتَجَّ مَنْ رَأَى الْأَخَوَاتِ عَصَبَةَ الْبَنَاتِ بِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ عَنْ أَبِي قَيْسٍ الْأَوْدِيِّ - هُوَ عَبْدُ الرَّحْمَنِ بْنِ ثَرْوَانَ - عَنْ الْهُذَيْلِ بْنِ شُرَحْبِيلَ قَالَ: سُئِلَ أَبُو مُوسَى عَنْ ابْنَةٍ وَابْنَةِ ابْنٍ وَأُخْتٍ؟ فَقَالَ: لِلِابْنَةِ النِّصْفُ، وَلِلْأُخْتِ النِّصْفُ - «فَسُئِلَ ابْنُ مَسْعُودٍ وَأُخْبِرَ بِقَوْلِ أَبِي مُوسَى؟ فَقَالَ: لَقَدْ ضَلَلْتُ إذًا وَمَا أَنَا مِنْ الْمُهْتَدِينَ، أَقْضِي فِيهَا بِمَا قَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِلِابْنَةِ النِّصْفُ، وَلِابْنَةِ الِابْنِ السُّدُسُ تَكْمِلَةَ الثُّلُثَيْنِ، وَمَا بَقِيَ فَلِلْأُخْتِ» .

L27451–27453 Those who hold the view that sisters become agnates alongside daughters argued based on what was transmitted to us through the narration chain of Shu'bah and Sufyān from Abī Qays al-Awdī - who is 'Abd al-Raḥmān ibn Tharwān - from al-Hudhayl ibn Shuraḥbīl, who said: Abū Mūsā was asked about a daughter, a son's daughter, and a sister? He replied: "The daughter is entitled to half, and the sister is entitled to half." Then Ibn Mas'ūd was asked... Was he not informed of Abū Mūsā's opinion? He said: "Then I have surely gone astray and am not among the rightly guided! I will judge this matter as the Prophet (peace be upon him and his family) ruled: the daughter receives half, the son's daughter receives one-sixth to complete the two-thirds, and what remains belongs to the paternal sister."[8]

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ لَمْ يُوَرِّثْ أُخْتًا مَعَ ابْنَةٍ وَلَا مَعَ ابْنَةِ ابْنٍ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ} [النساء: ١٧٦]

L27454 Abu Muhammad said: Those who do not grant inheritance to a sister alongside a daughter or a granddaughter have argued based on Allah Almighty's statement: {If a person dies leaving no child and has a sister, she shall receive half of what he left, and he (the brother) inherits her estate if she leaves no child} [An-Nisa: 176].[9]

وَاسْمُ الْوَلَدِ يَقَعُ عَلَى الِابْنَةِ، وَبِنْتِ الِابْنِ، كَمَا يَقَعُ عَلَى الِابْنِ وَابْنِ الِابْنِ فِي اللُّغَةِ وَفِي الْقُرْآنِ - وَالْعَجَبُ مِنْ مُجَاهَرَةِ بَعْضِ الْقَائِلِينَ هَاهُنَا: إنَّمَا عَنَى وَلَدًا ذَكَرًا - وَهَذَا إقْدَامٌ عَلَى اللَّهِ تَعَالَى بِالْبَاطِلِ، وَقَوْلٌ عَلَيْهِ بِمَا لَا يَعْلَمُ، بَلْ بِمَا يَعْلَمُ أَنَّهُ بَاطِلٌ.

L27455 The term "child" applies to the daughter and the son's daughter, just as it applies to the son and the son's son in the Arabic language and in the Qur'an. How astonishing that some of those who claim here brazenly state: "It specifically meant a male child!" This constitutes a presumptuous falsehood toward Allah the Exalted – attributing to Him what they do not know, nay, what they know to be baseless.

وَلَيْتَ شِعْرِي أَيُّ فَرْقٍ بَيْنَ قَوْلِهِ تَعَالَى: {إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ} [النساء: ١٧٦] وَبَيْنَ قَوْلِهِ تَعَالَى: {وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُمْ} [النساء: ١٢] وَقَوْلِهِ تَعَالَى: {وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبُعُ مِمَّا تَرَكْنَ} [النساء: ١٢] وَقَوْلِهِ تَعَالَى: {وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ} [النساء: ١١] فَلَمْ يَخْتَلِفُوا

L27456 Would that I knew what distinction exists between Allah's decree: {If a man dies leaving no child and has a sister...} [4:176], the verse stating: {And for them is a fourth of what you leave if you have no child. But if you have a child, then for them is an eighth...} [4:12], His statement: {And for you is half of what your wives leave if they have no child. But if they have a child, then for you is a fourth...} [4:12], and the verse: {For the parents, a sixth each of what he leaves if he has a child. But if he has no child and his parents are his heirs, then his mother receives a third. If he has siblings,

[8] **Qur'an references (L27451):** Qur'an 6:56 (Al-An'am).
[9] **Qur'an references (L27454):** Qur'an 4:176 (An-Nisa).

his mother is allotted a sixth...} [4:11]. They unanimously agreed regarding all these verses that "the child"—regardless of being male or female, or a child's descendant—entails the same ruling. Then they concluded in the case of the sister's inheritance that "the child" specifically denotes male offspring, as indicated by the verses: {Their testimony will be recorded, and they will be questioned} [43:19] and {If they testify, do not bear witness with them} [6:150].[10]

L27457 Those who do not grant inheritance to a sister alongside a daughter or a son's daughter also argued based on what is established from the Messenger of Allah—peace and blessings be upon him and his family—through the chain of Wuhaib, from Abdullah ibn Tawus, from his father, from Ibn Abbas: "Assign the prescribed shares to their entitled recipients. What remains after allocating the prescribed shares belongs to the closest male agnate."

L27458 Abu Muhammad said: The jurists are unanimously agreed that their inclusion of the sister in inheritance along with the daughter and the son's daughter is based solely on residual shares, not a specified portion. This is because they rule in cases involving a daughter, a husband, a mother, a full sister, a paternal sister, or sisters of analogous categories: the daughter receives half, the husband receives a quarter, the mother receives a sixth, and the sister or sisters receive nothing except half of the sixth, i.e., one-twelfth of the estate.

L27459–27460 Then if the case remains as it is, and there are two daughters; neither the sister nor the sisters inherit anything. And it has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf: It was said to Ibn ʿAbbās, "What if a man leaves his daughter and his sister from his father and mother?" Ibn ʿAbbās replied, "His daughter receives half, his sister receives half, and the sister is not entitled to anything from the remainder, which goes to his male agnates." The questioner said, "'Umar ruled otherwise, giving the daughter half and the sister half." Ibn ʿAbbās responded, "Do you yourselves know better than Allah?" Maʿmar said, "I mentioned this to Ibn Ṭāwūs, who replied, 'My

[10] **Qur'an references (L27456):** Qur'an 4:176 (An-Nisa); Qur'an 4:12 (An-Nisa); Qur'an 4:11 (An-Nisa); Qur'an 43:19 (Az-Zukhruf); Qur'an 6:150 (Al-An'am).

فِي جَمِيعِ هَذِهِ الْآيَاتِ: أَنَّ الْوَلَدَ سَوَاءٌ كَانَ ذَكَرًا أَوْ أُنْثَى، أَوْ وَلَدَ الْوَلَدِ كَذَلِكَ فَالْحُكْمُ وَاحِدٌ. ثُمَّ بَدَا لَهُمْ فِي مِيرَاثِ الْأُخْتِ أَنَّ الْوَلَدَ إِنَّمَا أُرِيدَ بِهِ الذَّكَرَ وَ {سَتُكْتَبُ شَهَادَتُهُمْ وَيُسْأَلُونَ} [الزخرف: ١٩] {فَإِنْ شَهِدُوا فَلا تَشْهَدْ مَعَهُمْ} [الأنعام: ١٥٠] .

وَاحْتَجَّ أَيْضًا مَنْ لَمْ يُوَرِّثْ أُخْتًا مَعَ ابْنَةٍ، وَلَا مَعَ ابْنَةِ ابْنٍ: بِالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ طَرِيقِ وُهَيْبٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ: «أَلْحِقُوا الْفَرَائِضَ بِأَصْحَابِهَا فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» .

قَالَ أَبُو مُحَمَّدٍ: وَهُمْ مُجْمِعُونَ عَلَى أَنَّ تَوْرِيثَهُمْ الْأُخْتَ مَعَ الْبِنْتِ، وَبِنْتَ الِابْنِ إِنَّمَا هُوَ بِالتَّعْصِيبِ، لَا بِفَرْضٍ مُسَمًّى، لِأَنَّهُمْ يَقُولُونَ فِي بِنْتٍ، وَزَوْجٍ، وَأُمٍّ، وَأُخْتٍ شَقِيقَةٍ أَوْ لِأَبٍ، أَوْ أَخَوَاتٍ كَذَلِكَ: إِنَّ لِلْبِنْتِ النِّصْفَ وَلِلزَّوْجِ الرُّبُعَ، وَلِلْأُمِّ السُّدُسَ، وَلَيْسَ لِلْأُخْتِ أَوْ الْأَخَوَاتِ - إِلَّا نِصْفُ السُّدُسِ.

فَإِنْ كَانَتْ الْمَسْأَلَةُ بِحَالِهَا، وَكَانَتْ ابْنَتَانِ: لَمْ تَرِثْ الْأُخْتُ وَلَا الْأَخَوَاتُ شَيْئًا -: وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: قِيلَ لِابْنِ عَبَّاسٍ: مَنْ تَرَكَ ابْنَتَهُ، وَأُخْتَه لِأَبِيهِ، وَأُمِّهِ؟ فَقَالَ ابْنُ عَبَّاسٍ: لِابْنَتِهِ النِّصْفُ، وَلِلْأُخْتِ النِّصْفُ، وَلَيْسَ لِأُخْتِهِ شَيْءٌ مِمَّا بَقِيَ، وَهُوَ لِعَصَبَتِهِ، فَقَالَ لَهُ السَّائِلُ: إِنَّ عُمَرَ قَضَى بِغَيْرِ ذَلِكَ، جَعَلَ لِلِابْنَةِ النِّصْفَ، وَلِلْأُخْتِ النِّصْفَ؟ فَقَالَ ابْنُ عَبَّاسٍ: أَأَنْتُمْ أَعْلَمُ أَمْ اللَّهُ؟ قَالَ مَعْمَرٌ: فَذَكَرْت ذَلِكَ لِابْنِ طَاوُسٍ قَالَ لِي ابْنُ طَاوُسٍ:

أَخْبَرَنِي أَبِي أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: قَالَ اللَّهُ تَعَالَى: {إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ} [النساء: ١٧٦] قَالَ ابْنُ عَبَّاسٍ: فَقُلْتُمْ أَنْتُمْ: لَهَا النِّصْفُ وَإِنْ كَانَ لَهُ وَلَدٌ.

father informed me that he heard Ibn ʿAbbās say: Allah the Exalted stated, {If a person dies leaving no child and has a sister, she shall have half of what he leaves} [Quran 4:176].' Ibn ʿAbbās said, 'Yet you claim she receives half even if he has a child!'"[11]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ حَدَّثَنِي سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - حَدَّثَنِي مُصْعَبُ بْنُ عَبْدِ اللَّهِ بْنِ الزِّبْرِقَانِ عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: أَمْرٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى: وَلَا فِي قَضَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَسَتَجِدُونَهُ فِي النَّاسِ كُلِّهِمْ: مِيرَاثُ الْأُخْتِ مَعَ الْبِنْتِ؟ قَالَ أَبُو مُحَمَّد: هَذَا يُرِيكَ أَنَّ ابْنَ عَبَّاسٍ لَمْ يَرَ مَا فَشَا فِي النَّاسِ وَاشْتَهَرَ فِيهِمْ حُجَّةً، وَأَنَّهُ لَمْ يَرَ الْقَوْلَ بِهِ إِذَا لَمْ يَكُنْ فِي الْقُرْآنِ، وَلَا فِي سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَتَكَلَّمَ أَصْحَابُنَا فِي أَبِي قَيْسٍ.

From the path of Ismāʿīl ibn Isḥāq: ʿAlī ibn ʿAbd Allāh—he is Ibn al-Madīnī—informed us: Sufyān—he is Ibn ʿUyaynah—narrated to me: Muṣʿab ibn ʿAbd Allāh ibn al-Zibriqān, from Ibn Abī Mulaykah, from Ibn ʿAbbās, who said: "A matter not in the Book of Allah the Exalted nor in the judgment of the Messenger of Allah—may Allah bless him and his family and grant him peace—yet you will encounter it widespread among all people: How is the sister's inheritance alongside the daughter determined?" Abū Muḥammad said: "This demonstrates that Ibn ʿAbbās did not regard what proliferated among the people and became prevalent among them as proof, nor did he consider the opinion regarding it valid if it was absent from the Quran or the Sunnah of the Messenger of Allah—may Allah bless him and his family and grant him peace. Our companions discussed the case of Abū Qays."

L27461

قَالَ عَلِيٌّ: أَبُو قَيْسٍ ثِقَةٌ مَا نَعْلَمُ أَحَدًا جَرَحَهُ بِجُرْحَةٍ يَجِبُ بِهَا إِسْقَاطُ رِوَايَتِهِ، فَالْوَاجِبُ الْأَخْذُ بِمَا رَوَى - وَبِحَدِيثِ ابْنِ عَبَّاسٍ الْمُسْنَدِ الَّذِي ذَكَرْنَا.

Ali said: "Abu Qays is trustworthy; we do not know of anyone who has impugned him with a discreditation necessitating the rejection of his narrations. Therefore, it is obligatory to accept what he has narrated—and the musnad (well-attested) hadith of Ibn Abbas that we mentioned."

L27462

فَوَجَبَ بِذَلِكَ إِذَا كَانَ لِلْمَيِّتِ عَاصِبٌ أَنْ يَكُونَ مَا فَضَلَ عَنْ فَرِيضَةِ الِابْنَةِ، أَوِ الْبِنْتَيْنِ، أَوْ بِنْتِ الِابْنِ، أَوْ بِنْتَيِ الِابْنِ لِلْعَصَبَةِ؛ لِأَنَّهُ أَوْلَى رَجُلٍ ذَكَرٍ، وَلَيْسَتِ الْأُخْتُ هَاهُنَا مِنْ أَصْحَابِ الْفَرَائِضِ الَّذِينَ أُمِرْنَا بِإِلْحَاقِ فَرَائِضِهِمْ بِهِمْ - وَهَذَا وَاضِحٌ لَا إِشْكَالَ فِيهِ.

Therefore, if the deceased has agnatic heirs, it is obligatory that the remainder after the fixed share of the daughter, two daughters, the son's-daughter, or two son's-daughters belongs to the agnatic heirs. This is because they are the nearest male relatives, and the sister here is not among those entitled to fixed shares to whom we are commanded to allocate their shares. This is clear, and there is no ambiguity in it.

L27463

فَإِنْ لَمْ يَكُنْ لِلْمَيِّتِ رَجُلٌ عَاصِبٌ أَصْلًا أَخَذْنَا بِحَدِيثِ أَبِي قَيْسٍ وَجَعَلْنَا الْأُخْتَ عَصَبَةً كَمَا فِي نَصِّهِ وَلَمْ نُخَالِفْ شَيْئًا مِنَ النُّصُوصِ.

If the deceased has no male agnate (asabah) whatsoever, we adhere to the hadith of Abu Qays and treat the sister as an agnate in accordance with its explicit wording, without contravening any of the authoritative texts.

L27464

[11] **Qur'an references (L27460):** Qur'an 4:176 (An-Nisa).

L27465–27467 The emancipated slave, along with the deceased's own male descendants or male agnatic relatives, are unambiguously male individuals; thus, they take precedence over the sisters if the deceased has a daughter or a son's daughter. Ali said: There is nothing in any of the narrations from the aforementioned Companions indicating that they granted inheritance rights to the sister alongside the daughter in the presence of a male agnate. Thus, it is nullified for them to have any basis for a claim to any part of it. And success is from Allah, the Exalted.

وَالْمُعْتَقُ، وَمَنْ تَنَاسَلَ مِنْهُ مِنْ الذُّكُورِ أَوْ عَصَبَتِهِ مِنْ الذُّكُورِ هُمْ بِلَا شَكٍّ مِنْ الرِّجَالِ الذُّكُورِ: فَهُمْ أَوْلَى مِنْ الْأَخَوَاتِ إذَا كَانَ لِلْمَيِّتِ ابْنَةٌ أَوْ ابْنَةُ ابْنٍ قَالَ عَلِيٌّ: لَيْسَ فِي شَيْءٍ مِنْ الرِّوَايَاتِ عَنْ الصَّحَابَةِ الْمَذْكُورِينَ: أَنَّهُمْ وَرَّثُوا الْأُخْتَ مَعَ الْبِنْتِ مَعَ وُجُودِ عَاصِبٍ ذَكَرٍ، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ فِي شَيْءٍ مِنْهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of the Mother's Inheritance

[مَسْأَلَة مِيرَاث الْأُمّ]

L27468

L27469 Issue 1714: The mother's share in the presence of a male child, a female child, a son of the son, or a daughter of the son – even if they are distant descendants – is one-sixth only, because this is the text of the Qur'an, as we mentioned earlier. And success is from Allah, the Most High.

١٧١٤ - مَسْأَلَةٌ: وَالْأُمُّ مَعَ الْوَلَدِ الذَّكَرِ أَوْ الْأُنْثَى، أَوْ ابْنِ الِابْنِ، أَوْ بِنْتِ الِابْنِ - وَإِنْ سَفَلَ: السُّدُسُ فَقَطْ؛ لِأَنَّهُ نَصُّ الْقُرْآنِ، كَمَا ذَكَرْنَا آنِفًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27470 1715 - Issue: If the deceased has a brother, two brothers, two sisters, a sister, or a brother and a sister, and he has neither a child nor a male lineal descendant, his mother receives one-third of the estate.

١٧١٥ - مَسْأَلَةٌ: وَإِنْ كَانَ لِلْمَيِّتِ أَخٌ، أَوْ أَخَوَانِ، أَوْ أُخْتَانِ أَوْ أُخْتٌ، أَوْ أَخٌ، وَأُخْتٌ - وَلَا وَلَدَ لَهُ وَلَا وَلَدَ وَلَدٍ ذَكَرٍ. فَلِأُمِّهِ الثُّلُثُ.

L27471 If he has three of the siblings—whether all male, all female, or some male and some female—his mother receives one-sixth, in accordance with the verse of Allah the Exalted: *"But if he has siblings, then his mother receives one-sixth"* [An-Nisāʾ 11]. This is the view of Ibn ʿAbbās.[12]

فَإِنْ كَانَ لَهُ ثَلَاثَةٌ مِنْ الْإِخْوَةِ ذُكُورٍ أَوْ إنَاثٍ، أَوْ بَعْضُهُمْ ذَكَرٌ، وَبَعْضُهُمْ أُنْثَى: فَلِأُمِّهِ السُّدُسُ، لِقَوْلِ اللَّهِ تَعَالَى: {فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ} [النساء: ١١] وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ.

L27472 Another scholar held that the mother's share reverts to one-sixth in the presence of two siblings. There is no disagreement that her portion does not revert from one-third to one-sixth due to a single brother or sister, nor about its reversion to one-sixth with three siblings - as we have mentioned. The sole disagreement pertains to whether her share reverts to one-sixth in the presence of two siblings.

وَقَالَ غَيْرُهُ: بِاثْنَيْنِ مِنْ الْإِخْوَةِ تُرَدُّ الْأُمُّ إلَى السُّدُسِ، وَلَا خِلَافَ فِي أَنَّهَا لَا تُرَدُّ عَنْ الثُّلُثِ إلَى السُّدُسِ بِأَخٍ وَاحِدٍ، وَلَا بِأُخْتٍ وَاحِدَةٍ، وَلَا فِي أَنَّهَا تُرَدُّ إلَى السُّدُسِ بِثَلَاثَةٍ مِنْ الْإِخْوَةِ - كَمَا ذَكَرْنَا - إنَّمَا الْخِلَافُ فِي رَدِّهَا إلَى السُّدُسِ بِاثْنَيْنِ مِنْ الْإِخْوَةِ.

L27473–27475 Yusuf ibn Abdullah al-Namari narrated to us, saying: Yusuf ibn Muhammad

[12] **Qur'an references (L27471):** Qur'an 4:11 (An-Nisa).

ibn Umar ibn Amrus al-Astaji narrated to us from Abu al-Tahir Muhammad ibn Ja'far ibn Ibrahim al-Sa'idi, who narrated to us from Yahya ibn Ayyub ibn Badi al-Allaf, who narrated to us from Ahmad ibn Salih al-Misri, who narrated to us from Muhammad ibn Isma'il ibn Abi Fudayk, who narrated to us from the jurist Muhammad ibn Abd al-Rahman ibn Abi Dhib—he is Abu al-Harith—from Shu'bah, the freed slave of Ibn Abbas, from Abdullah ibn Abbas: He entered upon Uthman ibn Affan and said to him, "Two brothers do not diminish the mother's entitlement to one-sixth. Allah the Exalted said, {If he has brothers} [An-Nisa 4:11], and two brothers, according to the linguistic convention of your people, are not considered 'brothers' (in the plural form)?" Uthman replied, "Can I abolish a precedent established before me, which people have inherited and which has prevailed across the lands?" Abu Muhammad commented: As for Ibn Abbas, he presented Uthman with the Quranic evidence and linguistic argument, and Uthman did not deny this at all. There is no doubt that had Uthman possessed a Sunnah from the Prophet—peace and blessings be upon him—or linguistic proof on this matter, he would have opposed Ibn Abbas with it. Rather, he clung to a precedent established before him, which people had inherited and which had prevailed across the lands. Regarding the garrison towns, ʿUthmān considered this conclusive evidence, while Ibn ʿAbbās did not. The ultimate authority in matters of dispute is the Qur'an and the Sunnah, and their explicit texts affirm the validity of Ibn ʿAbbās's position.[13]

حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ قَالَ: نا يُوسُفُ بْنُ مُحَمَّدِ بْنِ عُمَرَ بْنِ عَمْرُوسٍ الْأَسْتَجِيُّ عَنْ أَبِي الطَّاهِرِ مُحَمَّدِ بْنِ جَعْفَرِ بْنِ إِبْرَاهِيمَ السَّعِيدِيِّ نا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِيٍّ الْعَلَّافُ نا أَحْمَدُ بْنُ صَالِحٍ الْمِصْرِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ أَبِي فُدَيْكٍ نا الْفَقِيهُ مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي ذِئْبٍ - هُوَ أَبُو الْحَارِثِ - عَنْ شُعْبَةَ مَوْلَى ابْنِ عَبَّاسٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبَّاسٍ: أَنَّهُ دَخَلَ عَلَى عُثْمَانَ بْنِ عَفَّانَ فَقَالَ لَهُ: إِنَّ الْأَخَوَيْنِ لَا يَرُدَّانِ الْأُمَّ إِلَى السُّدُسِ، إِنَّمَا قَالَ اللَّهُ تَعَالَى: {فَإِنْ كَانَ لَهُ إِخْوَةٌ} [النساء: ١١] وَالْأَخَوَانِ فِي لِسَانِ قَوْمِكَ لَيْسُوا بِإِخْوَةٍ؟ فَقَالَ عُثْمَانُ: لَا أَسْتَطِيعُ أَنْ أَنْقُضَ أَمْرًا كَانَ قَبْلِي، تَوَارَثَهُ النَّاسُ وَمَضَى فِي الْأَمْصَارِ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا ابْنُ عَبَّاسٍ فَقَدْ وَقَّفَ عُثْمَانَ عَلَى الْقُرْآنِ وَاللُّغَةِ، فَلَمْ يُنْكِرْ عُثْمَانُ ذَلِكَ أَصْلًا، وَلَا شَكَّ فِي أَنَّهُ لَوْ كَانَ عِنْدَ عُثْمَانَ فِي ذَلِكَ سُنَّةٌ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ حُجَّةٌ مِنَ اللُّغَةِ لَعَارَضَ ابْنَ عَبَّاسٍ بِهَا مَا فَعَلَ، بَلْ تَعَلَّقَ بِأَمْرٍ كَانَ قَبْلَهُ، تَوَارَثَهُ النَّاسُ وَمَضَى فِي الْأَمْصَارِ، فَعُثْمَانُ رَأَى هَذَا حُجَّةً، وَابْنُ عَبَّاسٍ لَمْ يَرَهُ حُجَّةً، وَالْمَرْجُوعُ إِلَيْهِ عِنْدَ التَّنَازُعِ هُوَ الْقُرْآنُ، وَالسُّنَّةُ، وَنَصُّهُمَا يَشْهَدُ بِصِحَّةِ قَوْلِ ابْنِ عَبَّاسٍ.

L27476 There are many cases in which they opposed Uthman and Umar, such as their assessment of diyah [blood money] using cattle, sheep, and fine robes, their reduction of it within the Sanctuary, and their ruling that children born to women captured in raids become slaves belonging to the master of their mothers - a ruling applied very frequently.

وَكَمْ قَضِيَّةٍ خَالَفُوا فِيهَا عُثْمَانَ، وَعُمَرَ: كَتَقْوِيمِهِمَا الدِّيَةَ بِالْبَقَرِ وَالْغَنَمِ، وَالْحُلَلِ، وَإِضْعَافِهَا فِي الْحَرَمِ - وَالْقَضَاءِ بِوَلَدِ الْغَارَةِ رَقِيقًا لِسَيِّدِ أُمِّهِمْ فِي كَثِيرٍ جِدًّا.

L27477 And whoever claims such a matter as Ijma - considering the one who opposes Ijma to be a disbeliever according to their view - then by their claim, Ibn Abbas would be a disbeliever, for he opposed the Ijma. God forbid this!

وَمَنْ ادَّعَى مِثْلَ هَذَا إِجْمَاعًا - وَمُخَالِفُ الْإِجْمَاعِ - عِنْدَهُمْ كَافِرٌ: فَابْنُ عَبَّاسٍ عَلَى قَوْلِهِمْ كَافِرٌ، إِذْ خَالَفَ الْإِجْمَاعَ وَمَعَاذَ اللَّهِ مِنْ هَذَا، بَلْ مُكَفِّرُهُ أَحَقُّ بِالْكُفْرِ وَأَوْلَى.

[13] **Qur'an references (L27473):** Qur'an 4:11 (An-Nisa).

Rather, the one who declares him a disbeliever is more deserving of disbelief and more worthy.

L27478 As for an error committed while intending to seek what is right, it is not absolved from anyone after the Messenger of Allah (ﷺ).

L27479 Some of them said: Does the term “brothers” apply to two brothers? ʿAlī said: This is erroneous, for ʿUthmān and Ibn ʿAbbās—both being authorities in the language—agreed in opposing this, and the structure of the language contradicts this claim. This is because the structure of the dual form in the Arabic language, through which Allah the Exalted addressed us through the words of His Prophet (peace and blessings be upon him), differs from the structure of the plural with three or more. Therefore, it is not permissible for anyone to say, “The two men stood (qāmū),” nor “The two women stood (qumna).”

L27480 They argued for this position by citing Allah’s statement: {As for the thief—male or female—cut off their hands} [Al-Mā’idah: 38]. This, however, provides no proof for their claim, for each of them has two hands, and the ruling necessitates cutting them one after another for successive offenses.[14]

L27481 They cited the words of Allah, the Exalted: {For indeed, your two hearts have inclined} [At-Tahrim: 4], but this holds no proof for them, because in the Arabic language, whenever any two entities are involved, the plural form is used to refer to them. As the rajaz poet states:[15]

L27482 Two monstrous hurlings, twice cast, their forms like the surfaces of two shields.

L27483 Therefore, this is a strictly defined chapter that must not be exceeded.

L27484 They cited as evidence the statement of Allah, the Exalted: “The news of the disputants when they climbed over the prayer chamber” (38:21), “When they entered upon David, and he was alarmed by them. They said, ’Do not fear. We are two disputants—one party among us has wronged the other”’ (38:22), up to His statement, the Exalted: “’Indeed, this is my brother. He

[14] **Qur’an references (L27480):** Qur’an 5:38 (Al-Ma’idah).
[15] **Qur’an references (L27481):** Qur’an 66:4 (At-Tahrim).

وَأَمَّا الْخَطَأُ مَعَ قَصْدِ الْحَقِّ فَلَا يُرْفَعُ عَنْ أَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَقَالَ بَعْضُهُمْ: الْأَخَوَانِ يَقَعُ عَلَيْهِمَا اسْمُ إِخْوَةٍ؟ قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّ عُثْمَانَ، وَابْنَ عَبَّاسٍ: حُجَّةٌ فِي اللُّغَةِ، وَقَدْ اجْتَمَعَا عَلَى خِلَافِ هَذَا، وَبِنْيَةُ اللُّغَةِ مُكَذِّبَةٌ لِهَذَا الْقَوْلِ، لِأَنَّ بِنْيَةَ التَّثْنِيَةِ فِي اللُّغَةِ الْعَرَبِيَّةِ الَّتِي بِهَا خَاطَبَنَا اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - غَيْرُ بِنْيَةِ الْجَمْعِ بِالثَّلَاثَةِ فَصَاعِدًا، فَلَا يَجُوزُ لِأَحَدٍ أَنْ يَقُولَ: الرَّجُلَانِ قَامُوا، وَلَا الْمَرْأَتَانِ قُمْنَ.

وَاحْتَجُّوا فِي هَذَا بِقَوْلِهِ تَعَالَى: {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ لِكُلِّ وَاحِدٍ مِنْهُمَا يَدَيْنِ، وَالْوَاجِبُ قَطْعُهُمَا مَرَّةً بَعْدَ مَرَّةٍ.

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {فَقَدْ صَغَتْ قُلُوبُكُمَا} [التحريم: ٤] وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ فِي لُغَةِ الْعَرَبِ إِنَّ كُلَّ اثْنَيْنِ مِنْ اثْنَيْنِ فَإِنَّهُ يُخْبَرُ عَنْهُمَا بِلَفْظِ الْجَمْعِ، قَالَ الرَّاجِزُ:

وَمَهْمَهَيْنِ قَذَفَيْنِ مَرَّتَيْنِ ... ظَهْرَاهُمَا مِثْلَ ظُهُورِ التُّرْسَيْنِ

فَهَذَا بَابٌ مَضْبُوطٌ لَا يُتَعَدَّى

وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {نَبَأُ الْخَصْمِ إِذْ تَسَوَّرُوا الْمِحْرَابَ} [ص: ٢١] {إِذْ دَخَلُوا عَلَى دَاوُدَ فَفَزِعَ مِنْهُمْ قَالُوا لا تَخَفْ خَصْمَانِ بَغَى بَعْضُنَا عَلَى بَعْضٍ} [ص: ٢٢] إِلَى قَوْلِهِ تَعَالَى: {إِنَّ هَذَا أَخِي لَهُ تِسْعٌ وَتِسْعُونَ نَعْجَةً وَلِيَ نَعْجَةٌ وَاحِدَةٌ} [ص: ٢٣] وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَا نُكْرَةَ فِي دُخُولِهِمَا وَمَعَهُمَا غَيْرُهُمَا.

has ninety-nine ewes, and I have one ewe"' (38:23). This provides no proof for their position, because there is no indefiniteness in the entry of the two disputants, and there were others with them besides the two of them.[16]

وَذَكَرُوا قَوْلَ اللَّهِ تَعَالَى: {عَسَى اللَّهُ أَنْ يَأْتِيَنِي بِهِمْ جَمِيعًا} [يوسف: ٨٣] وَهَذَا عَلَيْهِمْ، لَا لَهُمْ؛ لِأَنَّهُمْ كَانُوا ثَلَاثَةً: يُوسُفُ، وَأَخُوهُ الْأَصْغَرُ الْمُحْتَبَسُ عَنْ الصُّوَاعِ، وَكَبِيرُهُمْ الَّذِي قَالَ {فَلَنْ أَبْرَحَ الأَرْضَ حَتَّى يَأْذَنَ لِي أَبِي} [يوسف: ٨٠] .

L27485 They mentioned the statement of Allah the Exalted: {"May Allah bring them all to me"} [Yusuf 12:83], and this applies to their detriment, not their benefit; for they were three: Joseph, his youngest brother detained over the measuring cup, and their eldest brother who declared {"I shall never depart this land until my father grants me permission"} [Yusuf 12:80].[17]

وَقَدْ اتَّفَقُوا عَلَى أَنَّ مَنْ أَقَرَّ لِآخَرَ بِدَرَاهِمَ أَنَّهُ يُقْضَى عَلَيْهِ بِثَلَاثَةٍ، لَا بِدِرْهَمَيْنِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27486–27487 They have unanimously agreed that whoever acknowledges owing another person dirhams must be judged liable to pay three dirhams, not two dirhams. And success is from Allah, the Most High.

وَقَالَ بَعْضُهُمْ: قَالَ اللَّهُ تَعَالَى: {وَإِنْ كَانُوا إِخْوَةً رِجَالا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ} [النساء: ١٧٦] قَالَ: وَالْحُكْمُ فِي الْأُخْتِ، وَالْأَخِ هَكَذَا، فَصَحَّ أَنَّ الْأَخَ وَالْأُخْتَ فِي قَوْلِ اللَّهِ تَعَالَى: {فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلأُمِّهِ السُّدُسُ} [النساء: ١١] كَذَلِكَ أَيْضًا.

L27488 Some of them said: Allah the Exalted stated: {And if they are siblings - both men and women - then the male receives a share equal to that of two females} [An-Nisa' 4:176]. He said: The ruling concerning the sister and the brother applies in this manner. Thus, it is established that the brother and the sister in His statement: {If he has siblings, then his mother is entitled to one-sixth} [An-Nisa' 4:11] are treated similarly.[18]

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْآيَتَانِ فَحَقٌّ، وَأَمَّا هَذَا الِاسْتِدْلَال فَفِي غَايَةِ الْفَسَادِ لِأَنَّ اللَّهَ تَعَالَى قَالَ: {فَلِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ} [النساء: ١٧٦] وَهَذَا جَلِيٌّ مِنْ النَّصِّ فِي حُكْمِ الْأَخِ، وَالْأُخْتِ فَقَطْ.

L27489 Abū Muḥammad said: As for the two verses, they are valid. But as for this inferential reasoning, it is utterly corrupt, because Allah, the Most High, said: "For the male a share equivalent to that of two females" [4:176]. This is evident from the explicit text concerning the ruling specific to the brother and the sister alone.[19]

فَإِنْ أَوْجَدْنَا مِثْلَ ذَلِكَ فِي حَجْبِ الْأُمِّ فَهُوَ قَوْلُهُ، وَإِلَّا فَهُوَ مُبْطَلٌ مُدَّعًى بِلَا بُرْهَانٍ.

L27490 If we find a similar instance in the mother's exclusion [from inheritance], then it is his [the scholar's] ruling; otherwise, it is invalidated—a claim without proof.

وَقَالَ بَعْضُهُمْ: وَجَدْنَا كُلَّ مَا يَتَغَيَّرُ فِيهِ حُكْمُ الْفَرْضِ فِيمَا بَعْدَ الْوَاحِدِ يَسْتَوِي فِيهِ الِاثْنَانِ، مَا زَادَ عَلَيْهِمَا كَالْبِنْتَيْنِ مِيرَاثُهُمَا كَمِيرَاثِ الثَّلَاثِ، وَكَالْأُخْتَيْنِ مِيرَاثُهُمَا كَمِيرَاثِ الثَّلَاثِ، وَكَالْإِخْوَةِ لِلْأُمِّ إِنَّمَا هُوَ الثُّلُثُ لِلِاثْنَيْنِ كَمَا هُوَ لِلثَّلَاثِ فَوَجَبَ أَنْ يَكُونَ حَجْبُ

L27491 Some of them said: We found that in every case where the ruling of the oblig-

[16] **Qur'an references (L27484):** Qur'an 38:21 (Sad); Qur'an 38:22 (Sad); Qur'an 38:23 (Sad).
[17] **Qur'an references (L27485):** Qur'an 12:83 (Yusuf); Qur'an 12:80 (Yusuf).
[18] **Qur'an references (L27488):** Qur'an 4:176 (An-Nisa); Qur'an 4:11 (An-Nisa).
[19] **Qur'an references (L27489):** Qur'an 4:176 (An-Nisa).

atory share changes beyond one [heir], two are treated equivalently. What applies to two or more—such as two daughters whose inheritance equals that of three; two sisters whose inheritance equals that of three; and maternal brothers where the third is allocated to two just as to three—must logically entail that the mother's exclusion by two be equivalent to her exclusion by three. Ali said: We responded: This has never been established as you claim, for it is a ruling from you, not from God the Exalted. All that God the Exalted has decreed is truth, and whatever you assert without His declaration is falsehood and void. Present proof for the validity of this analogy—otherwise, it is invalid. And success comes from God alone.

الْأُمِّ بِالِاثْنَيْنِ كَحَجْبِهَا بِالثَّلَاثِ؟ قَالَ عَلِيٌّ: فَقُلْنَا: مَا وَجَبَ هَذَا قَطُّ كَمَا تَقُولُ، لِأَنَّهُ حُكْمٌ مِنْك لَا مِنْ اللَّهِ تَعَالَى، وَكُلُّ مَا قَالَ اللَّهُ تَعَالَى فَحَقٌّ، وَكُلُّ مَا قُلْت أَنْتَ مِمَّا لَمْ يَقُلْهُ عَزَّ وَجَلَّ فَكَذِبٌ، وَبَاطِلٌ، فَهَاتِ بُرْهَانًا عَلَى صِحَّةِ تَشْبِيهِك هَذَا؟ وَإِلَّا فَهُوَ بَاطِلٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27492 The mother is entitled by the explicit text of the Quran: one-third. Allah, the Exalted, does not reduce her share to one-sixth except by the presence of a child of the deceased or siblings of the deceased. Is it permissible to withhold from her what Allah, the Exalted, has ordained for her except with certainty from a reported Sunnah? There is no Sunnah in that matter, nor scholarly consensus—and success is from Allah, the Exalted.

وَقَدْ وَجَبَ لِلْأُمِّ بِنَصِّ الْقُرْآنِ: الثُّلُثُ وَلَمْ يَحُطَّهَا اللَّهُ تَعَالَى إلَى السُّدُسِ إلَّا بِوَلَدٍ لِلْمَيِّتِ، أَوْ بِأَنْ يَكُونَ لَهُ إخْوَةٌ فَلَا يَجُوزُ مَنْعُهَا مِمَّا أَوْجَبَهُ اللَّهُ تَعَالَى لَهَا، إلَّا بِيَقِينٍ مِنْ سُنَّةٍ وَارِدَةٍ؟ وَلَا سُنَّةَ فِي ذَلِكَ وَلَا إجْمَاعَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27493 Issue 1716: If a deceased man leaves behind a wife and both parents, or if a deceased woman leaves behind a husband and both parents: the husband receives half, the wife receives one-quarter, and the mother receives one-third of the complete capital. The father receives one-sixth when the deceased is his daughter, one-third when the deceased is his son, and one-quarter of one-third.

١٧١٦ - مَسْأَلَةٌ: فَإِنْ كَانَ الْمَيِّتُ تَرَكَ زَوْجَةً وَأَبَوَيْنِ، أَوْ مَاتَتْ امْرَأَةٌ وَتَرَكَتْ زَوْجًا وَأَبَوَيْنِ: فَلِلزَّوْجِ النِّصْفُ، وَلِلزَّوْجَةِ الرُّبُعُ، وَلِلْأُمِّ الثُّلُثُ مِنْ رَأْسِ الْمَالِ كَامِلًا - وَلِلْأَبِ مِنْ ابْنَتِهِ السُّدُسُ، وَمِنْ ابْنِهِ الثُّلُثُ، وَرُبُعُ الثُّلُثِ.

L27494–27495 A group has stated that the mother is entitled to only a third of what remains after deducting the inheritance shares of the husband or the wife in both scenarios. This is an opinion we have transmitted authentically from Umar ibn al-Khattab, Uthman, and Ibn Masud regarding the cases of the wife with both parents and the husband with both parents. It is authentically transmitted from Zaid, and we have transmitted it from Ali though it was not authenticated from him. This is the view of al-Harith al-Aʿwar, al-Hasan, Sufyan al-Thawri, Malik, Abu Hanifah, al-Shafi'i, their respective companions, and Ibrahim al-Nakha'i.

وَقَالَتْ طَائِفَةٌ: لَيْسَ لِلْأُمِّ فِي كِلْتَيْهِمَا إلَّا ثُلُثُ مَا بَقِيَ بَعْدَ مِيرَاثِ الزَّوْجِ، وَالزَّوْجَةِ - وَهَذَا قَوْلٌ رُوِّينَاهُ صَحِيحًا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعُثْمَانَ، وَابْنِ مَسْعُودٍ فِي الزَّوْجَةِ وَالْأَبَوَيْنِ، وَالزَّوْجِ وَالْأَبَوَيْنِ - وَصَحَّ عَنْ زَيْدٍ، وَرُوِّينَاهُ عَنْ عَلِيٍّ وَلَمْ يَصِحَّ عَنْهُ - وَهُوَ قَوْلُ الْحَارِثِ الْأَعْوَرِ، وَالْحَسَنِ، وَسُفْيَانَ الثَّوْرِيِّ، وَمَالِكٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمْ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ.

L27496 Here is another opinion we have narrated through the chain of al-Ḥajjāj ibn

al-Minhāl, who reported to us from Ḥammād ibn Salamah, who reported to us from Ayyūb al-Sikhtiyānī: That Muḥammad ibn Sīrīn said regarding a man who left behind his wife and parents: “The wife receives a quarter, the mother receives a third of the entire estate, and what remains belongs to the father.” He also said regarding a woman who left behind her husband and parents: “The husband receives half, the mother receives a third of what remains, and the father receives what remains.”

وَهَا هُنَا قَوْلٌ آخَرُ رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا أَيُّوبُ السِّخْتِيَانِيُّ: أَنَّ مُحَمَّدَ بْنَ سِيرِينَ قَالَ فِي رَجُلٍ تَرَكَ امْرَأَتَهُ وَأَبَوَيْهِ: لِلْمَرْأَةِ الرُّبُعُ، وَلِلْأُمِّ ثُلُثُ جَمِيعِ الْمَالِ، وَمَا بَقِيَ فَلِلْأَبِ وَقَالَ فِي امْرَأَةٍ تَرَكَتْ زَوْجَهَا وَأَبَوَيْهَا: لِلزَّوْجِ النِّصْفُ، وَلِلْأُمِّ ثُلُثُ مَا بَقِيَ، وَلِلْأَبِ مَا بَقِيَ

L27497 He said: If the father’s share exceeds the mother’s by any amount, the mother is allotted one-third.

- قَالَ: إذَا فَضَلَ الْأَبُ الْأُمَّ بِشَيْءٍ فَإِنَّ لِلْأُمِّ الثُّلُثَ.

L27498 As for the opinion we uphold: We have narrated it through the chain of Abd al-Razzaq from Sufyan al-Thawri from Abd al-Rahman ibn Abdullah al-Isbahani from Ikrimah and from Ibn Abbas, that Ibn Abbas said concerning a husband and two parents: The husband is allotted half, and the mother is allotted one-third from the entirety of the estate.

وَأَمَّا الْقَوْلُ الَّذِي قُلْنَا بِهِ: فَرُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ الْأَصْبَهَانِيِّ عَنْ عِكْرِمَةَ وَعَنْ ابْنِ عَبَّاسٍ: أَنَّهُ قَالَ فِي زَوْجٍ وَأَبَوَيْنِ: لِلزَّوْجِ النِّصْفُ، وَلِلْأُمِّ الثُّلُثُ مِنْ جَمِيعِ الْمَالِ.

L27499 From the path of Al-Ḥajjāj ibn Al-Minhāl: Abū ʻAwānah narrated from Al-Aʻmash, from Ibrāhīm Al-Nakhaʻī, who said: ʻAlī ibn Abī Ṭālib said: “The mother receives one-third of the entire estate in the case of [a wife and both parents] or [a husband and both parents].” It was also narrated from Muʻādh ibn Jabal — and it is the opinion of Shurayḥ. This is also the opinion held by Abū Sulaymān.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: لِلْأُمِّ ثُلُثُ جَمِيعِ الْمَالِ. فِي امْرَأَةٍ وَأَبَوَيْنِ، وَزَوْجٍ وَأَبَوَيْنِ - وَرُوِيَ أَيْضًا عَنْ مُعَاذِ بْنِ جَبَلٍ - وَهُوَ قَوْلُ شُرَيْحٍ - وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ أَهْلُ الْقَوْلِ بِأَنَّ لِلْأُمِّ ثُلُثَ مَا بَقِيَ بِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِيهِ عَنْ الْمُسَيَّبِ بْنِ رَافِعٍ قَالَ قَالَ ابْنُ مَسْعُودٍ: مَا كَانَ اللَّهُ لِيَرَانِي أُفَضِّلُ أُمًّا عَلَى أَبٍ.

L27500 Abu Muhammad said: The proponents of the opinion that the mother is entitled to a third of the residual estate argued, citing what has been narrated to us through the chain narrated by Waki‘ from Sufyan al-Thawri, from his father, from al-Musayyib ibn Rafi‘, who said: Ibn Mas‘ud said, “Allah would not see me give preference to a mother over a father.”

وَبِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ فُضَيْلِ بْنِ عَمْرٍو الْعَقِيمِيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: خَالَفَ ابْنُ عَبَّاسٍ أَهْلَ الصَّلَاةِ فِي زَوْجٍ، وَأَبَوَيْنِ.

L27501 And according to what has been narrated to us through the chain of Waki‘ from Sufyan from Fudayl ibn ‘Amr al-‘Aqimi from Ibrahim al-Nakha‘i, who said: Ibn ‘Abbas diverged from the majority opinion regarding the inheritance shares of a spouse and two parents.

وَقَالُوا: مَعْنَى قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ} [النساء: ١١] أَيْ مِمَّا يَرِثُهُ أَبَوَاهُ. مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا، وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ. أَمَّا قَوْلُ ابْنِ مَسْعُودٍ، فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا نُكْرَةَ فِي تَفْضِيلِ الْأُمِّ عَلَى الْأَبِ: فَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّ رَجُلًا سَأَلَهُ فَقَالَ: «يَا رَسُولَ اللَّهِ مَنْ أَحَقُّ بِحُسْنِ صُحْبَتِي؟ فَقَالَ لَهُ رَسُولُ اللَّهِ: أُمُّكَ، قَالَ: ثُمَّ مَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: أُمُّكَ، قَالَ ثُمَّ مَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: أُمُّكَ، قَالَ: ثُمَّ مَنْ يَا رَسُولَ اللَّهِ؟ قَالَ: ثُمَّ أَبُوكَ» فَفَضَّلَ الْأُمَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى الْأَبِ فِي حُسْنِ الصُّحْبَةِ - وَقَدْ سَوَّى اللَّهُ تَعَالَى بَيْنَ الْأَبِ وَالْأُمِّ بِإِجْمَاعِنَا وَإِجْمَاعِهِمْ فِي الْمِيرَاثِ إذَا كَانَ لِلْمَيِّتِ وَلَدٌ فَ {وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ} [النساء: ١١] فَمِنْ أَيْنَ تَمْنَعُونَ مِنْ تَفْضِيلِهَا عَلَيْهِ إذَا أَوْجَبَ ذَلِكَ نَصٌّ؟ .

L27502–27504 They said: The meaning of Allah’s statement, the Almighty and Majestic: {And his parents inherit him, so his mother is entitled to one-third} [Quran 4:11] refers to **from** what his parents inherit from him. We know of no valid argument they possess beyond this, and none of this provides any argument for them. As for Ibn Mas‘ud’s statement, no argument can be derived from anyone besides the Messenger of Allah—peace and blessings of Allah be upon him—nor is there any objection to preferring... The mother over the father: It has been authentically reported from the Messenger of Allah—peace and blessings be upon him and his family—that a man asked him, saying, “O Messenger of Allah, who is most deserving of my dutiful kindness?” The Messenger of Allah replied, “Your mother.” He asked, “Then who, O Messenger of Allah?” He said, “Your mother.” He asked again, “Then who, O Messenger of Allah?” He said, “Your mother.” He asked once more, “Then who, O Messenger of Allah?” He said, “Then your father.” Thus, the Prophet—peace and blessings be upon him and his family—favored the mother over the father in dutiful kindness. Allah the Exalted has equalized between the father and mother by our consensus and theirs in inheritance when the deceased has a child, as {for each of the parents is one-sixth} [An-Nisa: 11]. How then can you deny her being favored over him when an explicit text mandates it?[1]

L27505 Moreover, these very individuals who cite Ibn Mas’ud’s statement as evidence are the first to contradict him in this matter, as narrated to us through

[1] **Qur’an references (L27502):** Qur’an 4:11 (An-Nisa).

Abd al-Razzaq from Sufyan al-Thawri from al-A'mash from Ibrahim al-Nakha'i, who said: "Umar ibn al-Khattab and Abdullah ibn Mas'ud did not prefer the mother to the grandfather."

ثُمَّ إِنَّ هَؤُلَاءِ الْمُحْتَجِّينَ بِقَوْلِ ابْنِ مَسْعُودٍ هَذَا أَوَّلُ مُخَالِفِينَ لَهُ فِي ذَلِكَ كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ، وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ لَا يُفَضِّلَانِ أُمًّا عَلَى جَدٍّ.

L27506 Abu Muhammad said: Those who equivocate by citing Ibn Mas'ud's opinion contradict him and contradict Umar, for they give precedence to the mother over the grandfather, and they give precedence to females over males in certain inheritance cases. They state regarding a woman who dies leaving her husband, her mother, two full brothers, and a uterine sister: "The uterine sister receives a full sixth, while the two full brothers receive a sixth divided between them, each taking half of the sixth." They further assert their views in the case of a woman who dies leaving her husband, or [a case where she dies] leaving her full sister and a paternal brother: "The brother inherits nothing—whereas if he were replaced by a sister, she would receive a sixth, adjusted through ʿawl for her." Thus, they do not deny giving precedence to females over males.

قَالَ أَبُو مُحَمَّدٍ: وَالْمُمَوِّهُونَ بِقَوْلِ ابْنِ مَسْعُودٍ هَذَا يُخَالِفُونَهُ، وَيُخَالِفُونَ عُمَرَ، فَيُفَضِّلُونَ الْأُمَّ عَلَى الْجَدِّ، وَهُمْ يُفَضِّلُونَ الْأُنْثَى عَلَى الذَّكَرِ فِي بَعْضِ الْمَوَارِيثِ. فَيَقُولُونَ فِي امْرَأَةٍ مَاتَتْ وَتَرَكَتْ زَوْجَهَا، وَأُمَّهَا، وَأَخَوَيْنِ شَقِيقَيْنِ، وَأُخْتَهَا لِأُمٍّ: إنَّ لِلْأُخْتِ لِلْأُمِّ السُّدُسَ كَامِلًا، وَلِلذَّكَرَيْنِ الْأَخَوَيْنِ الشَّقِيقَيْنِ السُّدُسَ بَيْنَهُمَا، لِكُلِّ وَاحِدٍ مِنْهُمَا نِصْفُ السُّدُسِ. وَيَقُولُونَ بِآرَائِهِمْ فِي امْرَأَةٍ مَاتَتْ وَتَرَكَتْ زَوْجَهَا، أَوْ أُخْتَهَا شَقِيقَتَهَا وَأَخًا لِأَبٍ: إنَّ الْأَخَ لَا يَرِثُ شَيْئًا - فَلَوْ كَانَ مَكَانَهُ أُخْتٌ: فَلَهَا السُّدُسُ، يُعَالُ لَهَا بِهِ، فَهُمْ لَا يُنْكِرُونَ تَفْضِيلَ الْأُنْثَى عَلَى الذَّكَرِ

L27507 Then they obscure by condemning the preference of the mother over the father where Allah the Exalted has made it obligatory.

ثُمَّ يُمَوِّهُونَ بِتَشْنِيعِ تَفْضِيلِ الْأُمِّ عَلَى الْأَبِ حَيْثُ أَوْجَبَهُ اللَّهُ تَعَالَى.

L27508 As for Ibrāhīm's statement that "Ibn ʿAbbās differed with the people of prayer concerning a spouse and parents," if differing with the people of prayer constitutes disbelief or transgression, then let them consider what they are entering into. The one who criticizes Ibn ʿAbbās in this matter is more liable to these two charges than Ibn ʿAbbās himself.

وَأَمَّا قَوْلُ إبْرَاهِيمَ: خَالَفَ ابْنَ عَبَّاسٍ أَهْلَ الصَّلَاةِ فِي زَوْجٍ وَأَبَوَيْنِ، فَإِنْ كَانَ خِلَافُ أَهْلِ الصَّلَاةِ كُفْرًا أَوْ فِسْقًا فَلْيَنْظُرُوا فِيمَا يَدْخُلُونَ؟ وَالْمُعَرِّضُ بِابْنِ عَبَّاسٍ فِي هَذَا أَحَقُّ بِهَاتَيْنِ الصِّفَتَيْنِ مِنْ ابْنِ عَبَّاسٍ.

L27509 The astonishment concerning this report is: how is it permissible for this Ibrahim to say this when he narrates from Ali ibn Abi Talib, given the concurrence of Ibn Abbas in that matter as we have presented?

وَالْعَجَبُ مِنْ هَذِهِ الرِّوَايَةِ كَيْفَ يَجُوزُ أَنْ يَقُولَ هَذَا إبْرَاهِيمُ وَهُوَ يَرْوِي عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ. مُوَافَقَةَ ابْنِ عَبَّاسٍ فِي ذَلِكَ كَمَا أَوْرَدْنَا؟

L27510–27511 We did not find the opinions of the opposing scholars authentically transmitted from anyone except Zayd alone. Though narrations are reported from ʿAlī and Ibn Masʿūd, none are authenticated from them. The opinions of ʿU-

mar, ʿUthmān, and Ibn Masʿūd could potentially be interpreted in alignment with Ibn Sīrīn's position. It is impermissible to argue in weakening these narrations that they contradict the people of prayer. Thus, their attempts to obscure through this are invalidated. All praise is due to Allah, the Most High.

وَمَا وَجَدْنَا قَوْلَ الْمُخَالِفِينَ يَصِحُّ عَنْ أَحَدٍ إِلَّا عَنْ زَيْدٍ وَحْدَهُ، وَرُوِيَ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ وَلَمْ يَصِحَّ عَنْهُمَا - وَقَدْ يُمْكِنُ أَنْ يُخَرَّجَ قَوْلُ عُمَرَ، وَعُثْمَانَ، وَابْنِ مَسْعُودٍ عَلَى قَوْلِ ابْنِ سِيرِينَ - وَلَيْسَ يُقَالُ فِي إِضْعَافِ هَذِهِ الرِّوَايَاتِ: خَالَفَ أَهْلَ الصَّلَاةِ - فَبَطَلَ مَا مَوَّهُوا بِهِ مِنْ هَذَا - وَلِلَّهِ تَعَالَى الْحَمْدُ.

L27512 As for their statement concerning Allah's words, exalted is He: {And his parents inherit him, so his mother is entitled to one-third} [An-Nisāʾ 4:11]—meaning that from what his parents inherit—it is invalid, and an addition in the Qur'ān; it is not permissible to uphold it.[2]

وَأَمَّا قَوْلُهُمْ فِي قَوْلِ اللَّهِ تَعَالَى: {وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ} [النساء: ١١] أَيْ مِمَّا يَرِثُهُ أَبَوَاهُ: فَبَاطِلٌ، وَزِيَادَةٌ فِي الْقُرْآنِ لَا يَجُوزُ الْقَوْلُ بِهَا.

L27513 The proof for that is what we have narrated through the chain of Muhammad ibn al-Muthannā via ʿAbd al-Raḥmān ibn Mahdī via Sufyān al-Thawrī from ʿAbd al-Raḥmān ibn al-Iṣbahānī from ʿIkrimah, who said: Ibn ʿAbbās sent me to Zayd ibn Thābit to inquire about [the inheritance of] a husband and two parents. Zayd replied: "The husband receives half, and the mother receives one-third of the remainder." Ibn ʿAbbās asked: "Do you state this by your own opinion or find it in the Book of God Almighty?" Zayd answered: "I state it by my opinion, and I do not grant the mother precedence over the father in shares."

بُرْهَانُ ذَلِكَ مَا رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَصْبَهَانِيِّ عَنْ عِكْرِمَةَ، قَالَ: أَرْسَلَنِي ابْنُ عَبَّاسٍ إِلَى زَيْدِ بْنِ ثَابِتٍ أَسْأَلُهُ عَنْ زَوْجٍ وَأَبَوَيْنِ؟ فَقَالَ: لِلزَّوْجِ النِّصْفُ وَلِلْأُمِّ ثُلُثُ مَا بَقِيَ، فَقَالَ ابْنُ عَبَّاسٍ: أَتَقُولُهُ بِرَأْيِكَ أَمْ تَجِدُهُ فِي كِتَابِ اللَّهِ تَعَالَى؟ قَالَ زَيْدٌ: أَقُولُهُ بِرَأْيِي، وَلَا أُفَضِّلُ أُمًّا عَلَى أَبٍ.

L27514 Ali said: If Zayd had derived any basis from the verse, he would not have said, "I say it by my opinion: I do not prioritize a mother's share over a father's," but rather would have said, "I say it by the Book of Allah, the Almighty and Majestic."

قَالَ عَلِيٌّ: فَلَوْ كَانَ لِزَيْدٍ بِالْآيَةِ مُتَعَلَّقٌ مَا قَالَ: أَقُولُهُ بِرَأْيِي لَا أُفَضِّلُ أُمًّا عَلَى أَبٍ، وَلَقَالَ: بَلْ أَقُولُهُ بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ

L27515 Abu Muhammad said: Opinion is not a proof, and the explicit text of the Quran necessitates the validity of Ibn Abbas's statement through the words of the Almighty: {Then to his mother belongs a third} [An-Nisa: 11]. This is a general ruling that cannot be particularized.[3]

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ الرَّأْيُ حُجَّةً، وَنَصُّ الْقُرْآنِ يُوجِبُ صِحَّةَ قَوْلِ ابْنِ عَبَّاسٍ بِقَوْلِهِ تَعَالَى: {فَلِأُمِّهِ الثُّلُثُ} [النساء: ١١] فَهَذَا عُمُومٌ لَا يَجُوزُ تَخْصِيصُهُ.

L27516 The astonishment lies in their unanimous agreement with us regarding His statement, the Exalted: *"If he has siblings, then his mother is entitled to a

وَالْعَجَبُ أَنَّهُمْ مُجْمِعُونَ مَعَنَا عَلَى قَوْلِهِ تَعَالَى: {فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ} [النساء: ١١] أَنَّ ذَلِكَ مِنْ رَأْسِ الْمَالِ، لَا مِمَّا يَرِثُهُ الْأَبَوَانِ، ثُمَّ يَقُولُونَ هَاهُنَا فِي قَوْلِهِ تَعَالَى:

[2] **Qur'an references (L27512):** Qur'an 4:11 (An-Nisa).
[3] **Qur'an references (L27515):** Qur'an 4:11 (An-Nisa).

sixth”* [4:11]—that this is taken from the principal estate, not from the share allocated to the parents. Yet here, concerning His statement, the Exalted: *“then his mother is entitled to a third”* [4:11], they assert the intended meaning refers to the parents’ portion. This constitutes an arbitrary interpretation of the Quran and a brazen act of ascribing to Allah—the Exalted—what He did not say. We seek refuge in Allah from such [methods].[4]

{فَلِأُمِّهِ الثُّلُثُ} [النساء: ١١] إِنَّ الْمُرَادَ بِهِ مَا يَرِثُ الْأَبَوَانِ - وَهَذَا تَحَكُّمٌ فِي الْقُرْآنِ وَإِقْدَامٌ عَلَى تَقْوِيلِ اللَّهِ تَعَالَى مَا لَمْ يَقُلْ - وَنَعُوذُ بِاللَّهِ مِنْ هَذَا.

L27517 As for the statement of Ibn Sīrīn: he was correct in one case but erred in the other, because he differentiated between the textual ruling in the two matters, while the text was established in a single manner in all cases. And success is from Allah, the Exalted.

وَأَمَّا قَوْلُ ابْنِ سِيرِينَ: فَأَصَابَ فِي الْوَاحِدَةِ وَأَخْطَأَ فِي الْأُخْرَى، لِأَنَّهُ فَرَّقَ بَيْنَ حُكْمِ النَّصِّ فِي الْمَسْأَلَتَيْنِ، وَإِنَّمَا جَاءَ النَّصُّ مَجِيئًا وَاحِدًا عَلَى كُلِّ حَالٍ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27518 The Issue of Inheritance of the Two Spouses

[مَسْأَلَة مِيرَاث الزَّوْجَيْنِ]

L27519 Issue 1717: The husband is entitled to half if the wife has neither a child (male or female) nor a grandchild (male or female) from a male child - even if distant - whether the child is from that husband or another.

١٧١٧ - مَسْأَلَةٌ: وَلِلزَّوْجِ النِّصْفُ إِذَا لَمْ يَكُنْ لِلزَّوْجَةِ وَلَدٌ ذَكَرٌ أَوْ أُنْثَى وَلَا وَلَدُ وَلَدٍ ذَكَرٍ أَوْ أُنْثَى، مِنْ وَلَدٍ ذَكَرٍ وَإِنْ سَفَلَ - سَوَاءٌ كَانَ الْوَلَدُ مِنْ ذَلِكَ الزَّوْجِ أَوْ مِنْ غَيْرِهِ.

L27520–27521 If the woman has a male child or a female child, a son’s son, or a son’s daughter—even if they are of lower generations as mentioned—then the husband receives only a quarter.

فَإِنْ كَانَ لِلْمَرْأَةِ ابْنٌ ذَكَرٌ أَوْ أُنْثَى، أَوْ ابْنُ ابْنٍ ذَكَرٍ، أَوْ بِنْتُ ابْنٍ ذَكَرٍ - وَإِنْ سَفَلَ كَمَا ذَكَرْنَا. فَلَيْسَ لِلزَّوْجِ إِلَّا الرُّبُعُ.

L27522 The wife is entitled to a quarter if the husband has no son, daughter, male son’s son, male son’s daughter, or male son’s son’s daughter—even if such descendants are generations removed—whether they are from her or another wife.

وَلِلزَّوْجَةِ الرُّبُعُ إِنْ لَمْ يَكُنْ لِلزَّوْجِ ابْنٌ ذَكَرٌ وَلَا أُنْثَى، وَلَا ابْنُ ابْنٍ ذَكَرٍ أَوْ بِنْتُ ابْنٍ ذَكَرٍ، أَوْ بِنْتُ ابْنِ ابْنٍ ذَكَرٍ وَإِنْ سَفَلَ مَنْ ذَكَرْنَا - سَوَاءٌ مِنْ تِلْكَ الزَّوْجَةِ كَانَ الْوَلَدُ الْمَذْكُورُ، أَوْ مِنْ غَيْرِهَا.

L27523 If the husband has a child or a male grandchild—as we mentioned—the wife is entitled only to one-eighth, whether there is one, two, three, or four wives: they share in the fourth or the eighth.

فَإِنْ كَانَ لِلزَّوْجِ وَلَدٌ، أَوْ وَلَدُ وَلَدٍ ذَكَرٍ - كَمَا ذَكَرْنَا - فَلَيْسَ لِلزَّوْجَةِ إِلَّا الثُّمُنُ، وَسَوَاءٌ كَانَتْ زَوْجَةً وَاحِدَةً، أَوْ اثْنَتَانِ، أَوْ ثَلَاثٌ، أَوْ أَرْبَعٌ: هُنَّ شُرَكَاءُ فِي الرُّبُعِ، أَوْ الثُّمُنِ.

L27524 The proof of that is the text of the preserved Quran, and there is absolutely

[4] **Qur’an references (L27516):** Qur’an 4:11 (An-Nisa).

no disagreement on this fundamental matter. The offspring of daughters hold no legal entitlement to any of that. With certainty, everyone knows that in the era of Allah's Messenger—peace and blessings be upon him and his family—there were deceased individuals who left grandsons from daughters, yet the transmission of all narrators became consistent—era after era—that they neither inherited nor were excluded, as if they never existed. This contrasts with the transmitted rulings on marriage contracts and intercourse—era after era, without disagreement—which apply universally to grandsons from daughters and grandsons from sons, and contrasts likewise with the obligation of rights, manumission, and maintenance mandated by the texts.

L27525 **Issue: There is no ʿawl (proportional adjustment) in any of the prescribed inheritance shares.**

L27526 1718 - Issue: There is no reduction (ʿawl) in any of the prescribed inheritance shares. This occurs when the estate includes individuals entitled to specified shares that the estate cannot accommodate. Examples include: a husband or wife; a consanguine sister and a uterine sister; two consanguine sisters or two paternal sisters and two uterine brothers; a husband or wife, both parents, and a daughter; or two daughters. The apparent ruling in these cases is that the shares are a half, a half, and a third; or a half, a half, and two-thirds; or a half, a half, and one-sixth, and similar configurations.

L27527 The people differed. Some said: Each heir should reduce a portion from their prescribed share until the estate can be divided among them. They based this method on combining their full shares, then dividing the estate proportionally according to the total. For example: a husband entitled to half, a mother entitled to one-sixth, two full sisters entitled to two-thirds, and two maternal sisters entitled to one-third. Their collective shares would thus amount to half, one-sixth, two-thirds, and one-third - though this holds no validity within the real-world structure.

L27528–27530 They said: The husband is allocated half, amounting to three out of six parts, and the mother one-sixth, amounting to one out of six parts. Thus, these are

بُرْهَانُ ذَلِكَ نَصُّ الْقُرْآنِ الْمَحْفُوظِ، وَلَا خِلَافَ فِي هَذَا أَصْلًا، وَلَا حُكْمَ لِوَلَدِ الْبَنَاتِ فِي شَيْءٍ مِنْ ذَلِكَ، وَبِيَقِينٍ يَدْرِي كُلُّ أَحَدٍ أَنَّهُ قَدْ كَانَ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمْوَاتٌ تَرَكُوا بَنِي بَنَاتٍ، فَاتَّسَقَ نَقْلُ الْجَمِيعِ - عَصْرًا بَعْدَ عَصْرٍ أَنَّهُمْ لَمْ يَرِثُوا، وَلَا حُجِبُوا، بَلْ كَأَنَّهُمْ لَمْ يَكُونُوا، بِخِلَافِ التَّحْرِيمِ فِي عَقْدِ النِّكَاحِ وَالْوَطْءِ الْمَنْقُولِ - عَصْرًا بَعْدَ عَصْرٍ - بِلَا خِلَافٍ أَنَّهُ عَلَى الْعُمُومِ فِي بَنِي الْبَنَاتِ، وَبَنِي الْبَنِينَ، وَبِخِلَافِ وُجُوبِ الْحَقِّ، وَالْعِتْقِ، وَالنَّفَقَةِ الَّتِي أَوْجَبَتْهُ النُّصُوصُ.

[مَسْأَلَة لَا عَوْلَ فِي شَيْءٍ مِنْ مَوَارِيثِ الْفَرَائِضِ]

١٧١٨ - مَسْأَلَةٌ: وَلَا عَوْلَ فِي شَيْءٍ مِنْ مَوَارِيثِ الْفَرَائِضِ وَهُوَ أَنْ يَجْتَمِعَ فِي الْمِيرَاثِ ذَوُو فَرَائِضَ مُسَمَّاةٍ لَا يَحْتَمِلُهَا الْمِيرَاثُ، مِثْلُ: زَوْجٍ أَوْ زَوْجَةٍ، وَأُخْتٍ شَقِيقَةٍ وَأُخْتٍ لِأُمٍّ، أَوْ أُخْتَيْنِ شَقِيقَتَيْنِ أَوْ لِأَبٍ، وَأَخَوَيْنِ لِأُمٍّ، أَوْ زَوْجٍ أَوْ زَوْجَةٍ وَأَبَوَيْنِ وَابْنَةٍ، أَوْ ابْنَتَيْنِ فَإِنَّ هَذِهِ فَرَائِضَ ظَاهِرُهَا أَنَّهُ يَجِبُ النِّصْفُ وَالنِّصْفُ وَالثُّلُثُ، أَوْ نِصْفٌ وَنِصْفٌ وَثُلُثَانِ، أَوْ نِصْفٌ وَنِصْفٌ وَسُدُسٌ، وَنَحْوُ هَذَا.

فَاخْتَلَفَ النَّاسُ. فَقَالَ بَعْضُهُمْ: يَحُطُّ كُلُّ وَاحِدٍ مِنْ فَرْضِهِ شَيْئًا حَتَّى يَنْقَسِمَ الْمَالُ عَلَيْهِمْ، وَرَتَّبُوا ذَلِكَ عَلَى أَنْ يَجْمَعُوا سِهَامَهُمْ كَامِلَةً، ثُمَّ يُقْسَمُ الْمَالُ بَيْنَهُمْ عَلَى مَا اجْتَمَعَ، مِثْلُ: زَوْجٍ وَأُمٍّ وَأُخْتَيْنِ شَقِيقَتَيْنِ وَأُخْتَيْنِ لِأُمٍّ، فَهَذِهِ: ثُلُثَانِ وَثُلُثٌ وَنِصْفٌ وَسُدُسٌ - وَلَا يَصِحُّ هَذَا فِي بِنْيَةِ الْعَالَمِ.

four shares. For the two consanguine sisters, two-thirds is allocated - being four out of six shares, making eight total shares. For the two uterine sisters through the mother, one-third is allocated - being two out of six shares, making ten total shares. The estate is divided among them into ten shares: The husband entitled to half receives three out of ten shares, which is less than one-third. The mother entitled to one-sixth receives one out of ten shares, being one-tenth. The two consanguine sisters entitled to two-thirds receive four out of ten shares, constituting two-fifths. The two uterine sisters through the mother entitled to one-third receive two out of ten shares, being one-fifth. This methodology applies similarly to all analogous cases.

قَالُوا: فَيُجْعَلُ لِلزَّوْجِ النِّصْفُ وَهُوَ ثَلَاثَةٌ مِنْ سِتَّةٍ، وَلِلْأُمِّ السُّدُسُ وَهُوَ وَاحِدٌ مِنْ سِتَّةٍ، فَهَذِهِ أَرْبَعَةُ سِهَامٍ، وَلِلشَّقِيقَتَيْنِ الثُّلُثَانِ، وَهُمَا أَرْبَعَةٌ مِنْ سِتَّةٍ، فَهَذِهِ ثَمَانِيَةٌ، وَلِلْأُخْتَيْنِ لِلْأُمِّ الثُّلُثُ، وَهُوَ اثْنَانِ مِنْ سِتَّةٍ - فَهَذِهِ عَشَرَةٌ، يُقْسَمُ الْمَالُ بَيْنَهُمْ عَلَى عَشَرَةِ أَسْهُمٍ، فَلِلزَّوْجِ الَّذِي لَهُ النِّصْفُ ثَلَاثَةٌ مِنْ عَشَرَةٍ، فَهُوَ أَقَلُّ مِنْ الثُّلُثِ. وَلِلْأُمِّ الَّتِي لَهَا السُّدُسُ وَاحِدٌ مِنْ عَشَرَةٍ وَهُوَ الْعُشْرُ. وَلِلشَّقِيقَتَيْنِ اللَّتَيْنِ لَهُمَا الثُّلُثَانِ أَرْبَعَةٌ مِنْ عَشَرَةٍ، فَذَلِكَ خُمُسَانِ. وَلِلْأُخْتَيْنِ لِلْأُمِّ اللَّتَيْنِ لَهُمَا الثُّلُثُ اثْنَانِ مِنْ عَشَرَةٍ، فَهُوَ الْخُمُسُ - وَهَكَذَا فِي سَائِرِ هَذِهِ الْمَسَائِلِ.

L27531 This is an opinion first stated by Zayd ibn Thabit, endorsed by Umar ibn al-Khattab, and this [opinion] is authentically reported from him. It has been narrated from Ali and Ibn Mas'ud without an isnad, and was mentioned from al-Abbas though unsoundly attributed. It is authentically reported from Shuraih and a small group of the Successors.

وَهُوَ قَوْلٌ أَوَّلُ مَنْ قَالَ بِهِ زَيْدُ بْنُ ثَابِتٍ، وَوَافَقَهُ عَلَيْهِ عُمَرُ بْنُ الْخَطَّابِ وَصَحَّ عَنْهُ هَذَا، وَرُوِيَ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ غَيْرَ مُسْنَدٍ، وَذُكِرَ عَنْ الْعَبَّاسِ وَلَمْ يَصِحَّ، وَصَحَّ عَنْ شُرَيْحٍ، وَنَفَرٍ مِنْ التَّابِعِينَ يَسِيرٍ.

L27532 And with this say Abu Hanifah, Malik, Al-Shafi'i, Ahmad, and the companions of these scholars. When their opinions unite on a matter, the easiest thing for them is to proclaim consensus. If they cannot achieve this, they incur no hardship in claiming that it represents the majority opinion, that opposition to it constitutes an isolated view, and that their opponents indeed grieve for them regarding their entanglement in these false claims. We seek refuge in Allah from the likes of such a claim.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُ هَؤُلَاءِ الْقَوْمِ إذَا اجْتَمَعَ رَأْيُهُمْ عَلَى شَيْءٍ كَانَ أَسْهَلُ شَيْءٍ عَلَيْهِمْ دَعْوَى الْإِجْمَاعِ، فَإِنْ لَمْ يُمْكِنْهُمْ ذَلِكَ لَمْ تَكُنْ عَلَيْهِمْ مُؤْنَةٌ مِنْ دَعْوَى: أَنَّهُ قَوْلُ الْجُمْهُورِ، وَأَنَّ خِلَافَهُ شُذُوذٌ، وَأَنَّ خُصُومَهُمْ لَيَرْثُونَ لَهُمْ مِنْ تَوَرُّطِهِمْ فِي هَذِهِ الدَّعَاوَى الْكَاذِبَةِ - نَعُوذُ بِاَللَّهِ مِنْ مِثْلِهَا.

L27533 By Allah, I would not dare ascribe to anyone a statement unverified as having been uttered by that person except one who trivializes falsehood, presumes to propagate it, is stripped of moral reliability.

وَأَيْمُ اللَّهِ لَا أَقْدَمُ عَلَى أَنْ يُنْسَبَ إلَى أَحَدٍ قَوْلٌ لَمْ يَثْبُتْ عِنْدَهُ أَنَّ ذَلِكَ الْمَرْءَ قَالَهُ إلَّا مُسْتَسْهِلُ الْكَذِبِ، مَقْدِمٌ عَلَيْهِ سَاقِطُ الْعَدَالَةِ.

L27534 As for us, if a statement is verified to us from an individual, we attribute it to him. But if we narrate it and it is not verified to us, we say: "It was reported from so-and-so." If no statement is reported to us from him, we do

not attribute to him any statement that has not been transmitted to us from him. We neither spread falsehoods nor mention it—neither to our detriment nor to our benefit.

وَأَمَّا نَحْنُ فَإِنْ صَحَّ عِنْدَنَا عَنْ إِنْسَانٍ أَنَّهُ قَالَ قَوْلًا نَسَبْنَاهُ إِلَيْهِ، وَإِنْ رُوِّينَاهُ وَلَمْ يَصِحَّ عِنْدَنَا، قُلْنَا: رُوِيَ عَنْ فُلَانٍ، فَإِنْ لَمْ يُرْوَ لَنَا عَنْهُ قَوْلٌ لَمْ نَنْسُبْ إِلَيْهِ قَوْلًا لَمْ يَبْلُغْنَا عَنْهُ، وَلَا نَتَكَثَّرُ بِالْكَذِبِ، وَلَمْ نَذْكُرْهُ لَا عَلَيْنَا وَلَا لَنَا.

L27535 We have narrated it through the chain of Saʿīd ibn Manṣūr ← ʿAbd al-Raḥmān ibn Abī al-Zināد ← his father ← Khārijah ibn Zayd ibn Thābit ← his father: that he was the first to implement *ʿawl* in inheritance allocations, and the maximum extent to which he applied *ʿawl* reached two-thirds of the principal of the prescribed share.

رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ عَنْ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ عَنْ أَبِيهِ: أَنَّهُ أَوَّلُ مَنْ عَالَ فِي الْفَرَائِضِ، وَأَكْثَرُ مَا بَلَغَ بِالْعَوْلِ مِثْلُ ثُلُثَيْ رَأْسِ الْفَرِيضَةِ.

L27536 Abu Muhammad said: This suffices to invalidate this claim, for it is an innovation not enacted by any Sunnah of the Messenger of Allah—peace and blessings be upon him. Rather, it is a precaution taken by some of the predecessors—may Allah be pleased with them—who saw it, and they intended good through it.

قَالَ أَبُو مُحَمَّدٍ: هَذَا يَكْفِي مِنْ إِبْطَالِ هَذَا الْقَوْلِ أَنَّهُ مُحْدَثٌ لَمْ تَمْضِ بِهِ سُنَّةٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا هُوَ احْتِيَاطٌ مِمَّنْ رَآهُ مِنْ السَّلَفِ - رِضْوَانُ اللَّهِ عَلَيْهِمْ -، قَصَدُوا بِهِ الْخَيْرَ.

L27537–27538 He upheld the first opinion: ʿAbdullāh ibn ʿAbbās, as transmitted through Wakīʿ (who informed us), via Ibn Jurayj reporting from ʿAṭāʾ from Ibn ʿAbbās, who said: “The fixed inheritance shares do not undergo *ʿawl*.”

وَقَالَ بِالْقَوْلِ الْأَوَّلِ: عَبْدُ اللَّهِ بْنُ عَبَّاسٍ كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ الْفَرَائِضَ لَا تَعُولُ

L27539 And via the chain of Saʿīd ibn Manṣūr, Sufyān—he is Ibn ʿUyaynah—narrated to us from ʿAmr ibn Dīnār, who said: Ibn ʿAbbās said: A prescribed share does not undergo ʿawl.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قَالَ ابْنُ عَبَّاسٍ: لَا تَعُولُ فَرِيضَةٌ.

L27540 From the chain of Saʿīd ibn Manṣūr: Sufyān ibn ʿUyaynah narrated to us, Muḥammad ibn Isḥāq narrated to us from al-Zuhrī, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd, from Ibn ʿAbbās, who said: “Do you not see the one who enumerated the grains of ʿĀlij’s sand, yet apportioned the estate as a half, another half, and a third? It is nothing but two halves, three thirds, and four quarters!”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: أَتَرَوْنَ الَّذِي أَحْصَى رَمْلَ عَالِجٍ عَدَدًا جَعَلَ فِي مَالٍ نِصْفًا وَنِصْفًا وَثُلُثًا، إِنَّمَا هُوَ نِصْفَانِ، وَثَلَاثَةُ أَثْلَاثٍ، وَأَرْبَعَةُ أَرْبَاعٍ.

L27541 From the path of Ismāʿīl ibn Isḥāq al-Qāḍī, narrated to us ʿAlī ibn ʿAbdullāh—he is Ibn al-Madīnī—narrated to us Yaʿqūb ibn Ibrāhīm ibn Saʿd ibn Ibrāhīm

ibn ʿAbd al-Raḥmān ibn ʿAwf, narrated to us my father from Muḥammad ibn Isḥāq, who narrated to me from Ibn Shihāb al-Zuhrī from ʿUbaydullāh ibn ʿAbdullāh ibn ʿUtbah ibn Masʿūd, who said: "I went out, along with Zufar ibn Aws, to Ibn ʿAbbās. We conversed in his presence until the discussion turned to the fixed shares of inheritance. Ibn ʿAbbās remarked: 'Glory be to Allah, the Almighty. Do you not see that the One who enumerated the sand of a vast desert in number decreed in an estate a half, a half, and a third? The two halves already account for the entire estate—so where is the place of the third?' Zufar said to him: 'O Ibn ʿAbbās, who was the first to apply *ʿawl* to the inheritance shares?' He replied: 'Umar ibn al-Khaṭṭāb. When conflicting shares converged before him, and some overlapped with others—and he was a man of piety—he declared: 'By Allah, I do not know which of you Allah, exalted and glorified, has prioritized nor which He has deferred. I find no solution more comprehensive than to distribute this estate among you according to the allotted shares.'"

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نا أَبِي عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ حَدَّثَنِي ابْنُ شِهَابٍ الزُّهْرِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: خَرَجْت أَنَا، وَزُفَرُ بْنُ أَوْسٍ إلَى ابْنِ عَبَّاسٍ فَتَحَدَّثْنَا عِنْدَهُ حَتَّى عَرَضَ ذِكْرُ فَرَائِضِ الْمَوَارِيثِ فَقَالَ ابْنُ عَبَّاسٍ: سُبْحَانَ اللَّهِ الْعَظِيمِ أَتَرَوْنَ الَّذِي أَحْصَى رَمْلَ عَالِجٍ عَدَدًا جَعَلَ فِي مَالٍ نِصْفًا وَنِصْفًا وَثُلُثًا: النِّصْفَانِ قَدْ ذَهَبَا بِالْمَالِ، أَيْنَ مَوْضِعُ الثُّلُثِ؟ فَقَالَ لَهُ زُفَرُ: يَا ابْنَ الْعَبَّاسِ مَنْ أَوَّلُ مَنْ أَعَالَ الْفَرَائِضَ؟ فَقَالَ: عُمَرُ بْنُ الْخَطَّابِ، لَمَّا الْتَقَتْ عِنْدَهُ الْفَرَائِضُ، وَدَافَعَ بَعْضُهَا بَعْضًا، وَكَانَ امْرَأً وَرِعًا، فَقَالَ: وَاَللَّهِ مَا أَدْرِي أَيُّكُمْ قَدَّمَ اللَّهُ عَزَّ وَجَلَّ وَلَا أَيُّكُمْ أَخَّرَ، فَمَا أَجِدُ شَيْئًا هُوَ أَوْسَعُ مِنْ أَنْ أَقْسِمَ بَيْنَكُمْ هَذَا الْمَالَ بِالْحِصَصِ،

L27542 He applied to every rightful claimant the proportional reduction (ʿawl) that affected them. Ibn Abbas said: "By Allah, if those whom Allah Almighty had prioritized were prioritized, no fixed share would have been subject to reduction." Zufar said to him: "Which shares, O Ibn Abbas, has Allah Almighty prioritized?" He replied: "Every fixed share that Allah has not lowered from one fixed share except to another fixed share—these are the ones He prioritized. As for what He deferred: whenever a fixed share deviates from its ordained portion, it receives only what remains. That is what He deferred."

فَأَدْخَلَ عَلَى كُلِّ ذِي حَقٍّ مَا دَخَلَ عَلَيْهِ مِنْ الْعَوْلِ. قَالَ ابْنُ عَبَّاسٍ: وَأَيْمُ اللَّهِ لَوْ قَدَّمَ مَنْ قَدَّمَ اللَّهُ عَزَّ وَجَلَّ مَا عَالَتْ فَرِيضَةٌ؟ فَقَالَ لَهُ زُفَرُ: وَأَيُّهَا يَا ابْنَ عَبَّاسٍ قَدَّمَ اللَّهُ عَزَّ وَجَلَّ؟ قَالَ: كُلُّ فَرِيضَةٍ لَمْ يُهْبِطْهَا اللَّهُ عَزَّ وَجَلَّ عَنْ فَرِيضَةٍ إلَّا إلَى فَرِيضَةٍ، فَهَذَا مَا قَدَّمَ، وَأَمَّا مَا أَخَّرَ فَكُلُّ فَرِيضَةٍ إذَا زَالَتْ عَنْ فَرْضِهَا لَمْ يَكُنْ لَهَا إلَّا مَا بَقِيَ، فَذَلِكَ الَّذِي أَخَّرَ.

L27543–27544 In the prior case, the husband is entitled to half. If a condition arises that removes this entitlement, he reverts to a quarter, and nothing can take that portion from him.

فَأَمَّا الَّذِي قَدَّمَ، فَالزَّوْجُ لَهُ النِّصْفُ، فَإِنْ دَخَلَ عَلَيْهِ مَا يُزِيلُهُ رَجَعَ إلَى الرُّبُعِ لَا يُزَايِلُهُ عَنْهُ شَيْءٌ.

L27545 The wife is entitled to a quarter. If the quarter ceases to apply, she is entitled to an eighth; nothing deprives her of it.

وَالزَّوْجَةُ لَهَا الرُّبُعُ، فَإِنْ زَالَتْ عَنْهُ صَارَتْ إلَى الثُّمُنِ لَا يُزَايِلُهَا عَنْهُ شَيْءٌ.

L27546 The mother is entitled to a third. If her third is reduced due to the presence of any of the prescribed shares entering upon her, she then receives a sixth, and nothing diminishes it further. These are the prescribed shares ordained by Allah, the Almighty.

وَالْأُمُّ لَهَا الثُّلُثُ فَإِنْ زَالَتْ عَنْهُ بِشَيْءٍ مِنْ الْفَرَائِضِ وَدَخَلَ عَلَيْهَا صَارَتْ إلَى السُّدُسِ لَا يُزَايِلُهَا عَنْهُ شَيْءٌ، فَهَذِهِ الْفَرَائِضُ الَّتِي قَدَّمَ اللَّهُ عَزَّ وَجَلَّ.

L27547 The fixed share for daughters is half [for one] and two-thirds [for multiple]. As for sisters, they are entitled to the same unless the fixed shares [of other heirs] remove their entitlement, in which case they have no right except to what remains.

وَالَّتِي أَخَّرَ: فَرِيضَةُ الْأَخَوَاتِ وَالْبَنَاتِ لَهُنَّ النِّصْفُ فَمَا فَوْقَ ذَلِكَ، وَالثُّلُثَانِ، فَإِذَا أَزَالَتْهُنَّ الْفَرَائِضُ عَنْ ذَلِكَ لَمْ يَكُنْ لَهُنَّ إلَّا مَا يَبْقَى.

L27548 When what Allah, the Mighty and Majestic, has advanced and what He has postponed are combined, precedence is given to those who were granted priority, and they are awarded their right in full. If anything remains, it belongs to those whose rights were postponed, but if nothing remains, there is nothing for him. Zufar said to him, "What prevented you, O Ibn Abbas, from advising him with this opinion?" Ibn Abbas replied, "I held back out of reverence for him."

فَإِذَا اجْتَمَعَ مَا قَدَّمَ اللَّهُ عَزَّ وَجَلَّ وَمَا أَخَّرَ: بُدِئَ بِمَنْ قَدَّمَ وَأُعْطِيَ حَقَّهُ كَمَلًا، فَإِنْ بَقِيَ شَيْءٌ كَانَ لِمَنْ أَخَّرَ، وَإِنْ لَمْ يَبْقَ شَيْءٌ فَلَا شَيْءَ لَهُ؟ فَقَالَ لَهُ زُفَرُ: فَمَا مَنَعَك يَا ابْنَ عَبَّاسٍ أَنْ تُشِيرَ عَلَيْهِ بِهَذَا الرَّأْيِ؟ قَالَ ابْنُ عَبَّاسٍ: هِبْتُهُ.

L27549 Ibn Shihab said: "By Allah, had a just Imam not come before him, his judgment would have been guided by scrupulousness, and he would have proceeded with a matter that had already been settled. No two scholars among the people of knowledge ever disagreed with Ibn Abbas regarding the opinion he expressed."

قَالَ ابْنُ شِهَابٍ: وَاَللَّهِ لَوْلَا أَنَّهُ تَقَدَّمَهُ إمَامٌ عَادِلٌ لَكَانَ أَمْرُهُ عَلَى الْوَرَعِ فَأَمْضَى أَمْرًا مَضَى مَا اخْتَلَفَ عَلَى ابْنِ عَبَّاسٍ مِنْ أَهْلِ الْعِلْمِ اثْنَانِ فِيمَا قَالَ.

L27550 And by the saying of Ibn Abbas: This is stated by 'Ata', Muhammad ibn Ali ibn Abi Talib, Muhammad ibn Ali ibn al-Husayn, Abu Sulayman, all our jurists, and others.

وَبِقَوْلِ ابْنِ عَبَّاسٍ هَذَا يَقُولُ عَطَاءٌ وَمُحَمَّدُ بْنُ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَمُحَمَّدُ بْنُ عَلِيِّ بْنِ الْحُسَيْنِ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا، وَغَيْرُهُمْ.

L27551 Abu Muhammad said: We examined the evidence relied upon by proponents of ʿawl (proportional reduction) and found the reasoning that ʿUmar (may Allah be pleased with him) had cited: that he could not determine whom Allah the Exalted had advanced or postponed.

قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ ذَهَبَ إلَى الْعَوْلِ فَوَجَدْنَا مَا ذَكَرَهُ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - مِنْ أَنَّهُ لَمْ يَعْرِفْ مَنْ قَدَّمَ اللَّهُ تَعَالَى، وَلَا مَنْ أَخَّرَ.

L27552–27554 The later scholars among them further asserted: None of them holds greater entitlement to diminution than others. Thus, it becomes mandatory to treat them like creditors and beneficiaries of bequests when the assets are inadequate to cover their entitlements. The obligation is therefore to apply the

زَادَ الْمُتَأَخِّرُونَ مِنْهُمْ أَنْ قَالُوا: لَيْسَ بَعْضُهُمْ أَوْلَى بِالْحَطِيطَةِ مِنْ بَعْضٍ فَالْوَاجِبُ أَنْ يَكُونُوا كَالْغُرَمَاءِ، وَالْمُوصَى لَهُمْ، يَضِيقُ الْمَالُ عَنْ حُقُوقِهِمْ، فَالْوَاجِبُ أَنْ يُعَمُّوا

diminution universally. They accused those who invalidated the ʿawl of inconsistency, confined to a single issue, while others stated it only in another matter: “They possess no valid argument whatsoever beyond what we have cited, nor any proof in any part of it.” As for ʿUmar’s statement—may Allah be pleased with him—“I do not know whom Allah the Almighty has elevated or deferred,” he spoke truthfully. Likewise, he refrained from ruling on matters unclear to him. However, we stand upon certainty and coolness of certainty that Allah the Exalted did not... He obligates us with what has not become clear to us. If it was unclear to Umar, it was not unclear to Ibn Abbas. The obscurity of a ruling to one unaware of it is not a proof against those who know it. Indeed, Umar (may Allah be pleased with him) lacked knowledge of the permissibility of excessive dowries, the time of the death of the Messenger of Allah (peace and blessings be upon him and his family), what constitutes kalāla, and many other matters. Yet this did not diminish the validity of the knowledge held by those who knew them.

L27555 As for their likening this to creditors and legatees, it is invalid and a corrupt analogy. For if the property—according to their overblown claims—were sufficient for creditors and legatees, and if after proportional division (tahass) the debtor’s property were perpetually divided among creditors and legatees until fully distributed, the case of proportional reduction (ʿawl) would still differ entirely. Indeed, all that Allah the Exalted has created in this world, Paradise, Hell, and the Throne cannot accommodate more than two halves, three thirds, four fourths, six sixths, or eight eighths. Thus, it is absurd to claim that Allah Almighty would impose upon us the impossible or what is beyond human capacity, nor is it conceivable that He would demand from us regarding the resolution or deliverance from this matter what He has not clarified for us how to implement.

L27556 As for their statement, “None of them is more entitled to remission than others,” it is a correct statement if supplemented with what it lacks—namely, that there is no text or legal necessity requiring the remission of some of them to the exclusion of others.

L27557 And it is also said to them in this ruling: You are not permitted to diminish

بِالْخَطِيطَةِ، وَادَّعَوْا عَلَى مَنْ أَبْطَلَ الْعَوْلَ تَنَاقُضًا فِي مَسْأَلَةٍ وَاحِدَةٍ فَقَطْ، وَقَالَ بَعْضُهُمْ فِي مَسْأَلَةٍ أُخْرَى فَقَطْ: مَا لَهُمْ حُجَّةٌ أَصْلًا غَيْرَ مَا ذَكَرْنَا، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ. أَمَّا قَوْلُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - " مَا أَدْرِي أَيُّهُمْ قَدَّمَ اللَّهُ عَزَّ وَجَلَّ وَلَا أَيُّهُمْ أَخَّرَ " فَصَدَقَ:، وَمِثْلُهُ لَمْ يَدَعْ مَا لَمْ يَتَبَيَّنْ لَهُ، إِلَّا أَنَّا عَلَى يَقِينٍ وَثَلْجٍ مِنْ أَنَّ اللَّهَ تَعَالَى لَمْ يُكَلِّفْنَا مَا لَمْ يَتَبَيَّنْ لَنَا، فَإِنْ كَانَ خَفِيَ عَلَى عُمَرَ فَلَمْ يَخْفَ عَلَى ابْنِ عَبَّاسٍ، وَلَيْسَ مَغِيبُ الْحُكْمِ عَمَّنْ غَابَ عَنْهُ حُجَّةً عَلَى مَنْ عَلِمَهُ، وَقَدْ غَابَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - عِلْمُ جَوَازِ كَثْرَةِ الصَّدَاقِ، وَمَوْتُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَمَا الْكَلَالَةُ، وَأَشْيَاءُ كَثِيرَةٌ، فَمَا كَدَحَ ذَلِكَ فِي عِلْمِ مَنْ عَلِمَهَا.

وَأَمَّا تَشْبِيهُهُمْ ذَلِكَ بِالْغُرَمَاءِ وَالْمُوصَى لَهُمْ، فَبَاطِلٌ وَتَشْبِيهٌ فَاسِدٌ، لِأَنَّ الْمَالَ لَوْ اتَّسَعَ عَلَى مَا هَوَّلُوا وَسِعَ الْغُرَمَاءَ وَالْمُوصَى لَهُمْ، وَلَوُجِدَ بَعْدَ التَّحَاصِّ مَالُ الْغَرِيمِ يُقْسَمُ عَلَى الْغُرَمَاءِ وَالْمُوصَى لَهُمْ أَبَدًا، حَتَّى يَسَعَهُمْ، وَلَيْسَ كَذَلِكَ أَمْرُ الْعَوْلِ، فَإِنَّ كُلَّ مَا خَلَقَ اللَّهُ تَعَالَى فِي الدُّنْيَا وَالْجَنَّةِ وَالنَّارِ وَالْعَرْشِ لَا يَتَّسِعُ لِأَكْثَرَ مِنْ: نِصْفَيْنِ، أَوْ ثَلَاثَةِ أَثْلَاثٍ، أَوْ أَرْبَعَةِ أَرْبَاعٍ، أَوْ سِتَّةِ أَسْدَاسٍ، أَوْ ثَمَانِيَةِ أَثْمَانٍ، فَمِنَ الْبَاطِلِ أَنْ يُكَلِّفَنَا اللَّهُ عَزَّ وَجَلَّ الْمُحَالَ وَمَا لَيْسَ فِي الْوُسْعِ، وَمِنَ الْبَاطِلِ أَنْ يُكَلِّفَنَا مِنَ الْمَخْرَجِ مِنْ ذَلِكَ وَالْمُخَلِّصِ مِنْهُ مَا لَمْ يُبَيِّنْ عَنَّا كَيْفَ نَعْمَلُ فِيهِ

وَأَمَّا قَوْلُهُمْ " لَيْسَ بَعْضُهُمْ أَوْلَى بِالْخَطِيطَةِ مِنْ بَعْضٍ " فَكَلَامٌ صَحِيحٌ إِنْ زِيدَ فِيهِ مَا يَنْقُصُ مِنْهُ، وَهُوَ أَنْ لَا يُوجِبَ حَطَّ بَعْضِهِمْ دُونَ بَعْضٍ نَصٌّ أَوْ ضَرُورَةٌ.

any heir's share from what Allah, the Exalted, has assigned through your precaution or conjecture—except by explicit textual evidence or necessity.

وَيُقَالُ لَهُمْ هَاهُنَا أَيْضًا: وَلَا لَكُمْ أَنْ تَحُطُّوا أَحَدًا مِنْ الْوَرَثَةِ مِمَّا جَعَلَ اللَّهُ تَعَالَى بِاحْتِيَاطِك وَظَنِّك، لَكِنْ بِنَصٍّ أَوْ ضَرُورَةٍ.

L27558 As for their claim of contradiction against those who prohibit on the basis of ʿawl in the issue they mentioned, we will mention it, God willing, the Exalted, and maintain that there was no contradiction whatsoever in it.

وَأَمَّا دَعْوَاهُمْ التَّنَاقُضِ مِنْ الْمَانِعِينَ بِالْعَوْلِ فِي الْمَسْأَلَةِ الَّتِي ذَكَرُوا فَسَنَذْكُرُهَا إنْ شَاءَ اللَّهُ تَعَالَى وَنَرَى أَنَّهُمْ لَمْ يَتَنَاقَضُوا فِيهَا أَصْلًا.

L27559 Since all the arguments they raised have been refuted, it is therefore obligatory to examine the proofs cited by those who invalidate the application of ʿawl. We find that Ibn Abbas - in the narration we transmitted through ʿUbayd Allāh ibn ʿAbd Allāh - structured a systematic argument on this matter that none can challenge. The first element of this is his report stating that ʿUmar was the first to apply ʿawl to inheritance shares while admitting he did not comprehend Allah's intended ruling in this matter. This establishes that it was an opinion not preceded by any Sunnah - and this suffices to refute this view.

فَإِذْ قَدْ بَطَلَ كُلُّ مَا شَغَبُوا بِهِ فَالْوَاجِبُ أَنْ نَنْظُرَ فِيمَا احْتَجَّ بِهِ الْمُبْطِلُونَ لِلْعَوْلِ. فَوَجَدْنَا ابْنَ عَبَّاسٍ فِي الْخَبَرِ الَّذِي قَدْ أَوْرَدْنَا مِنْ طَرِيقِ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ عَنْهُ قَدْ انْتَظَمَ بِالْحُجَّةِ فِي ذَلِكَ بِمَا لَا يَقْدِرُ أَحَدٌ عَلَى الِاعْتِرَاضِ فِيهِ، وَأَوَّلُ ذَلِكَ إخْبَارُهُ بِأَنَّ عُمَرَ أَوَّلُ مَنْ عَالَ الْفَرَائِضَ بِاعْتِرَافِهِ؛ أَنَّهُ لَمْ يَعْرِفْ مُرَادَ اللَّهِ تَعَالَى فِي ذَلِكَ، فَصَحَّ أَنَّهُ رَأْيٌ لَمْ يَتَقَدَّمْهُ سُنَّةٌ - وَهَذَا يَكْفِي فِي رَدِّ هَذَا الْقَوْلِ.

L27560 As for Ibn Abbas, he described that his position on this matter is the explicit text of the Quran, hence it is the truth. He clarified that the discussion of ʿawl (proportional adjustment of shares) only occurs in a prescribed share involving both parents, a husband and a wife, sisters, and daughters only, or a subset of these heirs.

وَأَمَّا ابْنُ عَبَّاسٍ: فَإِنَّهُ وَصَفَ أَنَّ قَوْلَهُ فِي ذَلِكَ هُوَ نَصُّ الْقُرْآنِ، فَهُوَ الْحَقُّ، وَبَيَّنَ أَنَّ الْكَلَامَ فِي الْعَوْلِ لَا يَقَعُ إلَّا فِي فَرِيضَةٍ فِيهَا أَبَوَانِ وَزَوْجٌ وَزَوْجَةٌ وَأَخَوَاتٌ وَبَنَاتٌ فَقَطْ، أَوْ بَعْضُهُمْ.

L27561–27562 Abu Muhammad said: No one possessing a sound mind would doubt that Allah the Exalted never intended to impose obligations that wealth cannot accommodate. We have found three decisive arguments necessitating the validity of Ibn Abbas's opinion. The first of these—which Ibn Abbas himself mentioned—is giving precedence to those from whom Allah the Exalted has never reduced a specified obligation over those from whom He has reduced a specified obligation, to the extent that nothing remains for the latter except what is left.

قَالَ أَبُو مُحَمَّد: وَلَا يَشُكُّ ذُو مُسْكَةِ عَقْلٍ فِي أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ إعْطَاءَ فَرَائِضَ لَا يَسَعُهَا الْمَالُ، وَوَجَدْنَا ثَلَاثَ حُجَجٍ قَاطِعَةٍ مُوجِبَةٍ صِحَّةَ قَوْلِ ابْنِ عَبَّاسٍ. إحْدَاهَا - الَّتِي ذَكَرَ مِنْ تَقْدِيمِ مَنْ لَمْ يَحُطَّهُ اللَّهُ تَعَالَى قَطُّ عَنْ فَرْضٍ مُسَمًّى، عَلَى مَنْ حَطَّهُ عَنْ الْفَرْضِ الْمُسَمَّى إلَى أَنْ لَا يَكُونَ لَهُ إلَّا مَا بَقِيَ.

L27563 The second is that by rational necessity we know those whom Allah the Exalted has mandated their inheritance unconditionally—when they and the deceased are both free persons sharing one religion—and those entirely un-

وَالثَّانِيَةُ - أَنَّهُ بِضَرُورَةِ الْعَقْلِ عَرَفْنَا أَنَّ تَقْدِيمَ مَنْ أَوْجَبَ اللَّهُ تَعَالَى مِيرَاثَهُ عَلَى كُلِّ حَالٍ، وَمَنْ لَا يَمْنَعُهُ مِنْ الْمِيرَاثِ مَانِعٌ أَصْلًا، إذَا كَانَ هُوَ وَالْمَيِّتُ حُرَّيْنِ عَلَى دِينٍ

hindered by any fundamental barrier must take precedence over those who may or may not inherit. For it is impermissible to deny those whom Allah has never barred from inheritance what He has ordained for them; by rational necessity we know that contingent heirs cannot inherit except after those who must inherit without fail.

وَاحِدٍ، عَلَى مَنْ قَدْ يَرِثُ وَقَدْ لَا يَرِثُ، لِأَنَّ مَنْ لَمْ يَمْنَعْهُ اللَّهُ تَعَالَى قَطُّ مِنَ الْمِيرَاثِ لَا يَحِلُّ مَنْعُهُ مِمَّا جَعَلَ اللَّهُ تَعَالَى لَهُ، وَكُلُّ مَنْ قَدْ يَرِثُ وَقَدْ لَا يَرِثُ، فَبِالضَّرُورَةِ نَدْرِي أَنَّهُ لَا يَرِثُ إِلَّا بَعْدَ مَنْ يَرِثُ وَلَا بُدَّ.

L27564 We have decreed that the spouses and parents inherit perpetually in all circumstances.

وَوَجَدْنَا الزَّوْجَيْنِ وَالْأَبَوَيْنِ يَرِثُونَ أَبَدًا عَلَى كُلِّ حَالٍ.

L27565 We hold that the sisters may inherit and may not inherit.

وَوَجَدْنَا الْأَخَوَاتِ قَدْ يَرِثْنَ وَقَدْ لَا يَرِثْنَ.

L27566 We have determined that daughters do not inherit except after the inheritance of those who inherit alongside them.

وَوَجَدْنَا الْبَنَاتِ لَا يَرِثْنَ إِلَّا بَعْدَ مِيرَاثِ مَنْ يَرِثُ مَعَهُنَّ.

L27567 The third principle is that we examine those we have mentioned. If we find the estate sufficient to fulfill its prescribed shares, we are certain that Allah the Almighty intended them for those very shares as explicitly designated for them in the Quran. But if we find the estate insufficient to fulfill their prescribed shares, we examine them one by one. For anyone among those mentioned whom we determine—through a consensus so certain it is self-evident to all Muslims—to lack entitlement to what Allah the Almighty designated in the Quran for that specific share, we are absolutely certain that Allah the Exalted never intended him to inherit what is stipulated therein. Thus, we assign him only what was unanimously agreed upon for him. If no agreement exists for him to receive anything, we assign him nothing, as it is conclusively established that he has no entitlement under the Quranic stipulations.

وَالثَّالِثَةُ - أَنْ نَنْظُرَ فِيمَنْ ذَكَرْنَا فَإِنْ وَجَدْنَا الْمَالَ يَتَّسِعُ لِفَرَائِضِهِنَّ أَيْقَنَّا أَنَّ اللَّهَ عَزَّ وَجَلَّ أَرَادَهُمْ فِي تِلْكَ الْفَرِيضَةِ نَفْسِهَا بِمَا سُمِّيَ لَهُمْ فِيهَا فِي الْقُرْآنِ، وَإِنْ وَجَدْنَا الْمَالَ لَا يَتَّسِعُ لِفَرَائِضِهِمْ نَظَرْنَا فِيهِمْ وَاحِدًا وَاحِدًا، فَمَنْ وَجَدْنَا مِمَّنْ ذَكَرْنَا قَدْ اتَّفَقَ جَمِيعُ أَهْلِ الْإِسْلَامِ اتِّفَاقًا مَقْطُوعًا بِهِ مَعْلُومًا بِالضَّرُورَةِ عَلَى أَنَّهُ لَيْسَ لَهُ فِي تِلْكَ الْفَرِيضَةِ مَا ذَكَرَ اللَّهُ عَزَّ وَجَلَّ فِي الْقُرْآنِ أَيْقَنَّا قَطْعًا أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْهُ قَطُّ فِيمَا نَصَّ عَلَيْهِ فِي الْقُرْآنِ فَلَمْ نُعْطِهِ إِلَّا مَا اتُّفِقَ لَهُ عَلَيْهِ فَإِنْ لَمْ يَتَّفِقْ لَهُ عَلَى شَيْءٍ لَمْ نُعْطِهِ شَيْئًا، لِأَنَّهُ قَدْ صَحَّ أَنْ لَا مِيرَاثَ لَهُ فِي النُّصُوصِ فِي الْقُرْآنِ.

L27568 And whoever we found among those we mentioned, about whom the Muslims have disagreed—a group said: “For him is what Allah the Exalted has named for him in the Quran.”

وَمَنْ وَجَدْنَا مِمَّنْ ذَكَرْنَا قَدْ اخْتَلَفَ الْمُسْلِمُونَ فِيهِ. فَقَالَتْ طَائِفَةٌ: لَهُ مَا سَمَّى اللَّهُ تَعَالَى لَهُ فِي الْقُرْآنِ.

L27569 A faction has stated: He is entitled only to a portion of what is specified in the Qur’an. It is indisputably obligatory that judgment be rendered in his favor according to the Quranic stipulations, and no heed must be paid to those who contradict the text, as they have not produced another textual proof to substantiate their claim.

وَقَالَتْ طَائِفَةٌ: لَيْسَ لَهُ إِلَّا بَعْضُ الْمُسَمَّى فِي الْقُرْآنِ، وَجَبَ وَلَا بُدَّ يَقِينًا أَنْ يُقْضَى لَهُ بِالْمَنْصُوصِ فِي الْقُرْآنِ، وَأَنْ لَا يُلْتَفَتَ إِلَى قَوْلِ مَنْ قَالَ بِخِلَافِ النَّصِّ، إِذْ لَمْ يَأْتِ فِي تَصْحِيحِ دَعْوَاهُ بِنَصٍّ آخَرَ.

وَهَذَا غَايَةُ الْبَيَانِ، وَلَا سَبِيلَ إِلَى شُذُوذِ شَيْءٍ عَنْ هَذِهِ الْقَضِيَّةِ؛ لِأَنَّ الْأَبَوَيْنِ، وَالزَّوْجَيْنِ فِي مَسَائِلِ الْعَوْلِ كُلِّهَا يَقُولُ الْمُبْطِلُونَ لِلْعَوْلِ: إِنَّ الْوَاجِبَ لَهُمْ مَا سَمَّاهُ اللَّهُ تَعَالَى لَهُمْ فِي الْقُرْآنِ - وَقَالَ الْقَائِلُونَ بِالْعَوْلِ: لَيْسَ لَهُمْ إِلَّا بَعْضُهُ، فَوَجَبَ الْأَخْذُ بِنَصِّ الْقُرْآنِ لَا بِقَوْلِ مَنْ خَالَفَهُ.

L27570–27572 This is the height of exposition, and there is no possibility for any anomaly to arise regarding this ruling; because the two parents And regarding both spouses in all issues of ʿawl - those who invalidate ʿawl say: "What is obligatory for them is what Allah the Exalted has specified for them in the Quran." Those who uphold ʿawl say: "They have nothing but a reduced portion of it." Thus, it is obligatory to adhere to the Quranic text, not to the opinion of those who oppose it.

وَأَمَّا الْأَخَوَاتُ وَالْبَنَاتُ: فَقَدْ أَجْمَعَ الْقَائِلُونَ بِالْعَوْلِ وَالْمُبْطِلُونَ لِلْعَوْلِ، وَلَيْسَ فِي أَهْلِ الْإِسْلَامِ لِهَاتَيْنِ الطَّائِفَتَيْنِ ثَالِثٌ لَهُمَا، وَلَا يُمْكِنُ أَنْ يُوجَدَ لَهُمَا ثَالِثٌ، إِذْ لَيْسَ فِي الْمُمْكِنِ إِلَّا إِثْبَاتٌ أَوْ نَفْيٌ: عَلَى أَنَّهُ لَا يَجِبُ فِي جَمِيعِ مَسَائِلِ الْعَوْلِ لَهُنَّ مَا جَاءَ فِي نَصِّ الْقُرْآنِ، لَكِنْ إِمَّا بَعْضُ ذَلِكَ، وَإِمَّا لَا شَيْءَ فَكَانَ إِجْمَاعُهُمْ حَقًّا بِلَا شَكٍّ، وَكَانَ مَا اخْتَلَفُوا فِيهِ لَا تَقُومُ بِهِ حُجَّةٌ، إِذْ لَمْ يَأْتِ بِهِ نَصٌّ، فَوَجَبَ إِذْ لَا حَقَّ لَهُنَّ بِالنَّصِّ أَنْ لَا يُعْطَوْا إِلَّا مَا صَحَّ الْإِجْمَاعُ لَهُنَّ بِهِ، فَإِنْ لَمْ يُجْمَعْ لَهُنَّ عَلَى شَيْءٍ وَقَدْ خَرَجْنَ بِالْإِجْمَاعِ وَبِالضَّرُورَةِ عَنْ النَّصِّ، فَلَا يَجُوزُ أَنْ يُعْطِينَ شَيْئًا بِغَيْرِ نَصٍّ وَلَا إِجْمَاعٍ - وَهَذَا بَيَانٌ لَا إِشْكَالَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27573 As for the sisters and daughters: those who affirm *ʿawl* and those who reject it have unanimously agreed—there being no third position among Muslims for these two groups, nor any possibility of a third, since only affirmation or negation is possible—that they are not entitled in all cases of *ʿawl* to the full share specified in the Quranic text. Rather, their entitlement is either partial or nonexistent. Thus, their consensus is undoubtedly valid, while their disagreement concerns matters lacking textual evidence. Since they have no established right through the text, it becomes obligatory to grant them only what consensus validates. If no consensus exists regarding their entitlement—and their claim has been dismissed by consensus and necessarily excluded from the textual ruling—it is impermissible to grant them anything without textual or consensual basis. This explanation is unambiguous. Success comes from God Almighty.

وَأَمَّا الْمَسْأَلَةُ الَّتِي ادَّعَوْا عَلَيْنَا فِيهَا التَّنَاقُضَ، فَهِيَ: زَوْجٌ، وَأُمٌّ، وَأُخْتَانِ لِأَبٍ، وَأُخْتَانِ لِأُمٍّ - وَمَسْأَلَةٌ أُخْرَى ادَّعَوْا فِيهَا التَّنَاقُضَ عَلَى بَعْضِنَا دُونَ بَعْضٍ، وَهِيَ: زَوْجٌ، وَأُمٌّ، وَأُخْتَانِ لِأُمٍّ، فَقَالُوا فِي هَذِهِ الْمَسْأَلَةِ كُلُّ هَؤُلَاءِ أُولُو فَرْضٍ مُسَمًّى، لَا يَرِثُ مِنْهُمْ أَحَدٌ بِغَيْرِ الْفَرْضِ الْمُسَمَّى فِي شَيْءٍ مِنْ الْفَرَائِضِ، وَلَيْسَ هَاهُنَا مَنْ يَرِثُ مَرَّةً بِفَرْضٍ مُسَمًّى فَتُقَدِّمُوهُ، وَمَرَّةً مَا بَقِيَ فَتُسْقِطُوهُ أَوْ تُؤَخِّرُوهُ.

L27574 As for the issue in which they alleged contradiction against us, it is: a husband, a mother, two paternal sisters, and two maternal sisters. Another issue in which they alleged contradiction against some among us to the exclusion of others is: a husband, a mother, and two maternal sisters. They stated regarding this issue that all these are fixed-share heirs; none of them inherits except by the designated fixed share within the system of prescribed shares. There is no heir here who inherits once by a fixed share which you would prioritize him, and another instance by the remainder which you would exclude him or postpone him.

L27575 They said regarding the mother and full sisters, or [sisters] through the father alone, or through the mother alone, among those who may sometimes inherit

and sometimes inherit nothing: “From where do you derive the exclusion of some and inclusion of others?” Abu Muhammad said: As for the case involving the husband, the mother, the two paternal sisters, and the two maternal sisters, there is absolutely no contradiction in it. This is because the two paternal sisters may inherit a specified share on some occasions, while on others they inherit only what remains—if anything remains. They are not entitled to anything unless there is a specific text for them or a consensus.

وَقَالُوا فِي الْأُمِّ وَالْأَخَوَاتِ الشَّقَائِقِ، أَوْ لِلْأَبِ فَقَطْ، أَوْ لِلْأُمِّ فَقَطْ، مِمَّنْ قَدْ يَرِثُ وَقَدْ لَا يَرِثُ شَيْئًا: فَمِنْ أَيْنَ لَكُمْ إِسْقَاطُ بَعْضٍ وَإِثْبَاتُ بَعْضٍ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَسْأَلَةُ: الزَّوْجِ، وَالْأُمِّ، وَالْأُخْتَيْنِ لِلْأَبِ، وَالْأُخْتَيْنِ لِلْأُمِّ. فَلَا تَنَاقُضَ فِيهَا أَصْلًا، لِأَنَّ الْأُخْتَيْنِ لِلْأَبِ قَدْ يَرِثَانِ بِفَرْضٍ مُسَمًّى مَرَّةً، وَقَدْ لَا يَرِثَانِ إِلَّا مَا بَقِيَ - إِنْ بَقِيَ شَيْءٌ -: فَلَا يُعْطَيَانِ مَا لَمْ يَأْتِ بِهِ نَصٌّ لَهُمَا، وَلَا اتِّفَاقٌ.

L27576 The mother is entitled here solely to a sixth, as the deceased has brothers. Therefore, the husband receives half by the explicit ruling, the mother a sixth by the Quranic injunction—this totals two-thirds. The two uterine sisters are entitled to a third as stipulated in the text.

وَلَيْسَ لِلْأُمِّ هَاهُنَا إِلَّا السُّدُسُ؛ لِأَنَّ لِلْمَيِّتِ إِخْوَةً، فَوَجَبَ لِلزَّوْجِ النِّصْفُ بِالنَّصِّ، وَلِلْأُمِّ السُّدُسُ بِالنَّصِّ، فَذَلِكَ الثُّلُثَانِ، وَلِلْأُخْتَيْنِ لِلْأُمِّ الثُّلُثُ بِالنَّصِّ.

L27577–27579 Furthermore, there is unanimous consensus on their entitlement to inheritance in this prescribed share, with no disagreement from anyone, while the reduction of their share is disputed. Thus, it is obligatory to grant them inheritance based on the scriptural evidence and consensus, and the reduction [of their share] is invalidated by the contrary legal claim. According to the text and confirmed by certain consensus: God, the Exalted, did not grant the two sisters (in the case of the father) the two-thirds share in this prescribed portion. There is no textual ruling for them beyond this, nor has consensus agreed on anything to be given to them. Since they have no inheritance by text or consensus, it is fundamentally impermissible to grant them inheritance.

وَأَيْضًا: فَهَؤُلَاءِ كُلُّهُمْ مُجْمِعٌ عَلَى تَوْرِيثِهِمْ فِي هَذِهِ الْفَرِيضَةِ بِلَا خِلَافٍ مِنْ أَحَدٍ، وَمُخْتَلَفٌ فِي حَطِّهِمْ فَوَجَبَ تَوْرِيثُهُمْ بِالنَّصِّ وَالْإِجْمَاعِ، وَبَطَلَ حَطُّهُمْ بِالدَّعْوَى الْمُخَالِفَةِ لِلنَّصِّ، وَصَحَّ بِالْإِجْمَاعِ الْمُتَيَقَّنِ: أَنَّ اللَّهَ تَعَالَى لَمْ يُعْطِ الْأُخْتَيْنِ لِلْأَبِ فِي هَذِهِ الْفَرِيضَةِ الثُّلُثَيْنِ، وَلَا نَصَّ لَهُمَا بِغَيْرِهِ، وَلَمْ يُجْمِعْ لَهُمَا عَلَى شَيْءٍ يُعْطَيَانِهِ، فَإِذْ لَا مِيرَاثَ لَهُمَا بِالنَّصِّ وَلَا بِالْإِجْمَاعِ: فَلَا يَجُوزُ تَوْرِيثُهُمَا أَصْلًا.

L27580 As for the issue of the husband, the mother, and the two sisters through the mother: it does not apply to Abū Sulaymān and his adherents—those who lower the mother’s share to one-sixth due to two brothers.

وَأَمَّا مَسْأَلَةُ: الزَّوْجِ، وَالْأُمِّ، وَالْأُخْتَيْنِ لِلْأُمِّ: فَإِنَّهَا لَا تَلْزَمُ أَبَا سُلَيْمَانَ وَمَنْ وَافَقَهُ مِمَّنْ يَحُطُّ الْأُمَّ إِلَى السُّدُسِ بِالِاثْنَيْنِ مِنْ الْإِخْوَةِ.

L27581 As for us and those who adhere to Ibn Abbas’s opinion—that the reduction to one-sixth does not occur unless there are three or more brothers—our response (and with Allah, the Exalted, is success) is that the husband and the mother inherit in all respects and under all circumstances.

وَأَمَّا نَحْنُ وَمَنْ أَخَذَ بِقَوْلِ ابْنِ عَبَّاسٍ فِي أَنْ لَا يَحُطَّ إِلَى السُّدُسِ إِلَّا بِثَلَاثَةٍ مِنْ الْإِخْوَةِ فَصَاعِدًا؟ فَجَوَابُنَا فِيهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. أَنَّ الزَّوْجَ وَالْأُمَّ يَرِثَانِ بِكُلِّ وَجْهٍ، وَفِي كُلِّ حَالٍ.

L27582 As for the two maternal sisters, they may inherit or may not inherit. It is impermissible to withhold inheritance from those we are certain Allah the Exalted has obligated to inherit in all circumstances forever. Nor is it permissible to entitle those whose inheritance is uncertain except after granting it to those we are certain must inherit, and after they have received their full share decreed by Allah the Exalted. If any surplus remains thereafter, those who might not inherit receive it. If no surplus remains, they receive nothing, for the obligated party has no choice but this—otherwise they would contradict the Quran through baseless claims. The husband receives half by Quranic decree, the mother one-third by Quranic decree, leaving only one-sixth. The maternal sisters have no share beyond this, as nothing remains for them except this portion—and success comes solely from Allah the Exalted.

وَأَمَّا الْأُخْتَانِ لِلْأُمِّ، فَقَدْ يَرِثَانِ وَقَدْ لَا يَرِثَانِ، فَلَا يَجُوزُ مَنْعُ مَنْ نَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى أَوْجَبَ لَهُ الْمِيرَاثَ فِي كُلِّ حَالٍ وَأَبَدًا، وَلَا يَجُوزُ تَوْرِيثُ مَنْ قَدْ يَرِثُ وَقَدْ لَا يَرِثُ إِلَّا بَعْدَ تَوْرِيثِ مَنْ نَحْنُ عَلَى يَقِينٍ مِنْ وُجُوبِ تَوْرِيثِهِ وَبَعْدَ اسْتِيفَائِهِ مَا نَصَّ اللَّهُ تَعَالَى لَهُ عَلَيْهِ، فَإِنْ فَضَلَ عَنْهُ شَيْءٌ أَخَذَهُ الَّذِي قَدْ لَا يَرِثُ، وَإِنْ لَمْ يَفْضُلْ شَيْءٌ لَمْ يَكُنْ لَهُ شَيْءٌ، إِذْ لَيْسَ فِي وُسْعِ الْمُكَلَّفِ إِلَّا هَذَا، أَوْ مُخَالَفَةُ الْقُرْآنِ بِالدَّعْوَى بِلَا بُرْهَانٍ: فَلِلزَّوْجِ النِّصْفُ بِالْقُرْآنِ، وَلِلْأُمِّ الثُّلُثُ بِالْقُرْآنِ، فَلَمْ يَبْقَ إِلَّا السُّدُسُ، فَلَيْسَ لِلْإِخْوَةِ لِلْأُمِّ غَيْرُهُ، إِذْ لَمْ يَبْقَ لَهُمْ سِوَاهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of the Inheritance of the Brother or the Uterine Siblings.

[مَسْأَلَة مِيرَاث الأخ أَوْ الْأُخُوَّة لِأُمّ]

L27584 1719 - Issue: If a person dies leaving a male or female child, or male descendants of male children likewise, or leaving a father or paternal grandfather, while also leaving a maternal brother, a maternal sister, a maternal brother, or maternal siblings: then the mother's child inherits nothing at all. If the deceased leaves none of the aforementioned heirs: the maternal brother receives only one-sixth, and the maternal sister receives only one-sixth. If there exists both a maternal sister and maternal brother: they share one-third equally, with no preference given to males over females. Similarly, if they are multiple: the one-third is divided equally among them by law. The same applies if they are entitled to one-sixth in cases requiring recalculation due to over-subscription of shares ('awl), without differentiation.

١٧١٩ - مَسْأَلَةٌ: وَإِنْ مَاتَ وَتَرَكَ وَلَدًا ذَكَرًا أَوْ أُنْثَى، أَوْ وَلَدَ وَلَدٍ ذَكَرٍ كَذَلِكَ، أَوْ تَرَكَ أَبًا أَوْ جَدًّا لِأَبٍ، وَتَرَكَ أَخًا لِأُمٍّ، أَوْ أُخْتًا لِأُمٍّ، أَوْ أَخًا لِأُمٍّ، أَوْ إِخْوَةً لِأُمٍّ: فَلَا مِيرَاثَ لِوَلَدِ الْأُمِّ أَصْلًا، فَإِنْ لَمْ يَتْرُكْ أَحَدًا مِمَّنْ ذَكَرْنَا: فَلِلْأَخِ لِلْأُمِّ السُّدُسُ فَقَطْ، وَلِلْأُخْتِ لِلْأُمِّ السُّدُسُ فَقَطْ، فَإِنْ كَانَ أُخْتًا وَأَخًا لِأُمٍّ: فَلَهُمَا الثُّلُثُ بَيْنَهُمَا عَلَى السَّوَاءِ، لَا يُفَضَّلُ الذَّكَرُ عَلَى الْأُنْثَى، وَكَذَلِكَ إِنْ كَانُوا جَمَاعَةً: فَالثُّلُثُ بَيْنَهُمْ شَرْعًا سَوَاءً، وَكَذَلِكَ إِنْ وَجَبَ لَهُمْ السُّدُسُ فِي مَسْأَلَةِ الْعَوْلِ وَلَا فَرْقَ.

L27585 The proof of that is the statement of Allah, the Exalted: {If a man is inherited as kalala (leaving no parents or children) or a woman, and he leaves a brother or a sister, then each of them is entitled to a sixth. If they are more than that, they share in a third} [An-Nisa: 12].[5]

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوِ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ} [النساء: ١٢].

[5] **Qur'an references (L27585):** Qur'an 4:12 (An-Nisa).

وَهَذَا قَوْلُنَا، وَقَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ، إِلَّا رِوَايَتَيْنِ رُوِيَتَا عَنْ ابْنِ عَبَّاسٍ. إِحْدَاهُمَا: أَنَّ الْإِخْوَةَ لِلْأُمِّ يَقْسِمُونَ الثُّلُثَ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ. وَالثَّانِيَةُ: أَنَّ الْأَخَ لِلْأُمِّ وَالْأُخْتَ لِلْأُمِّ يَرِثَانِ مَعَ الْأَبِ. فَأَمَّا الْمَسْأَلَةُ الْأُولَى: فَلَا نَقُولُ بِهَا، لِأَنَّهَا خِلَافُ قَوْلِ اللَّهِ تَعَالَى: {فَهُمْ شُرَكَاءُ فِي الثُّلُثِ} [النساء: ١٢] وَلَقَدْ كَانَ يَلْزَمُ الْقَائِلِينَ بِالْقِيَاسِ أَنْ يَقُولُوا بِهَذِهِ الْقَوْلَةِ قِيَاسًا عَلَى مِيرَاثِ الْإِخْوَةِ لِلْأَبِ، أَوْ الْأَشِقَّاءِ، وَبِاَللَّهِ لَوْ صَحَّ شَيْءٌ مِنْ الْقِيَاسِ لَكَانَتْ هَذِهِ الْمَسْأَلَةُ أَوْلَى بِالصِّحَّةِ مِنْ كُلِّ مَا حَكَمُوا فِيهِ بِالْقِيَاسِ، وَأَيْنَ هَذَا الْقِيَاسُ مِنْ قِيَاسِهِمْ مِيرَاثَ الْبِنْتَيْنِ عَلَى مِيرَاثِ الْأُخْتَيْنِ، وَسَائِرِ تِلْكَ الْمَقَايِيسِ الْفَاسِدَةِ؟

L27586–27587 This is our position, and the position of Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad, Abū Sulaymān, and others besides them, except for two narrations reported from Ibn ʿAbbās. The first: that uterine siblings divide the third, with the male receiving a share equal to that of two females. The second: that a maternal brother and maternal sister both inherit alongside the father. As for the first issue: we do not uphold it, for it contradicts Allah's statement: "They are partners in the third" (Quran 4:12). Indeed, it was incumbent upon those who endorse analogy to adopt this position by analogizing it to the inheritance of paternal siblings or full siblings (from both parents). By Allah, were analogy valid, this issue would be more deserving of validity than all the rulings they established through analogy. How does this analogy compare to their analogy of the inheritance of two daughters to that of two sisters, and all those other invalid analogies?[6]

وَأَمَّا الْمَسْأَلَةُ الثَّانِيَةُ: فَلَمْ تَصِحَّ عَنْ ابْنِ عَبَّاسٍ إِلَّا فِي السُّدُسِ الَّذِي حَطَّهُ الْإِخْوَةُ مِنْ مِيرَاثِ الْأُمِّ فَرَدُّوهَا إِلَى السُّدُسِ عَنْ الثُّلُثِ فَقَطْ، وَالْمَشْهُورُ عَنْهُ خِلَافُهَا - وَلَمْ نَقُلْ بِهَا: لِأَنَّ اللَّهَ تَعَالَى سَمَّى هَذَا التَّوْرِيثَ " كَلَالَةً " فَوَجَبَ أَنْ تَعْرِفَ مَا " الْكَلَالَةُ " وَمَا أَرَادَ اللَّهُ تَعَالَى بِهَذِهِ اللَّفْظَةِ، وَلَا يَجُوزُ أَنْ يُخْبَرَ عَنْ مُرَادِ اللَّهِ عَزَّ وَجَلَّ إِلَّا بِنَصٍّ ثَابِتٍ، أَوْ إجْمَاعٍ مُتَيَقَّنٍ، وَإِلَّا فَهُوَ افْتِرَاءٌ عَلَى اللَّهِ تَعَالَى. فَوَجَدْنَا: مَنْ يَرِثُهُ إِخْوَةٌ أَوْ أَخَوَانِ أَوْ أَخٌ: إمَّا شَقِيقٌ، وَإِمَّا لِأَبٍ، وَإِمَّا لِأُمٍّ - وَلَا وَلَدَ لَهُ وَلَا ابْنَةَ، وَلَا وَلَدَ ابْنِ ذَكَرٍ - وَإِنْ سَفَلَ - وَلَا أَبَ وَلَا جَدَّ لِأَبٍ - وَإِنْ عَلَا - فَهُوَ كَلَالَةٌ، مِيرَاثُهُ كَلَالَةٌ بِإِجْمَاعٍ مَقْطُوعٍ عَلَيْهِ مِنْ كُلِّ مُسْلِمٍ.

L27588 As for the second issue: the only valid report from Ibn Abbas pertains to the sixth portion which the brothers reduced from the mother's inheritance, restoring it to a sixth instead of a third exclusively. The well-known opinion from him contradicts this—and we do not adhere to it—because Allah the Exalted designated this inheritance "kalāla," necessitating comprehension of what "kalāla" denotes and what Allah the Exalted intended by this term. It is impermissible to assert Allah's intent except through an established textual proof or a definitive consensus; otherwise, it constitutes fabrication against Allah the Exalted. We affirm that the one who is inherited by brothers—whether two or one, whether full, paternal, or maternal—while having no son or daughter, no male-line descendant through a son (even if distant), no father, and no paternal ancestor (even if higher in lineage)—is "kalāla." His inheritance is "kalāla" by a definitively established consensus among all Muslims.

وَوَجَدْنَا أَنَّ مَنْ نَقَصَ مِنْ هَذِهِ الصِّفَاتِ شَيْءٌ فَقَدْ اُخْتُلِفَ فِيهِ: أَهُوَ كَلَالَةٌ أَمْ لَا؟ فَلَمْ يَجُزْ أَنْ يُقْطَعَ عَلَى مُرَادِ اللَّهِ تَعَالَى إِلَّا بِالْإِجْمَاعِ الْمُتَيَقَّنِ الثَّابِتِ - إذَا لَمْ نَجِدْ نَصًّا

L27589–27591 We have found that whoever lacks any of these conditions becomes subject to disagreement: is he considered a kalāla or not? It is therefore impermissible to conclusively determine Allah's intended ruling except through a

[6] **Qur'an references (L27587):** Qur'an 4:12 (An-Nisa).

definitively established consensus—when no explanatory text is found. This necessitates that brothers do not inherit in principle, except when all the aforementioned heirs are absent—unless a sound text mandates inheritance for some of them, in which case it is strictly adhered to. This applies only in two specific instances: the full brother, or a paternal brother with a daughter and upwards, and a sister similarly with him and upwards, provided the daughters have not received their full Qur'anic entitlement. Two-thirds. The second case: the sister likewise shares alongside the daughter or daughters, but only when there is no male agnate of the deceased. And success is from Allah, the Most High.

The Question of the Inheritance of the Male

Issue 1720: If one leaves behind a son and a daughter; a son and two or more daughters; a daughter and one or more sons; or two sons and two or more daughters - then the son receives two shares and the daughter one share. This is the explicit ruling of the Quran and a certain consensus.

Issue 1721: The brother and sister—whether full siblings, siblings through the father only, or ascendants—the male [among them] likewise also receives a share equivalent to that of two females. This is the explicit text of the Quran and a definitive scholarly consensus.

The issue of inheritance pertaining to full siblings and paternal half-siblings.

1722 - Issue: If there are one or more full brothers, and one or more full sisters, or if there are no sisters with him, the paternal half-brother does not inherit here, nor does the paternal half-sister inherit anything.

And this is the exact wording of the Messenger of Allah—may Allah bless him and grant him peace—: "Whatever the fixed shares leave unallocated goes to the closest male agnate," and there is also a definitive consensus. The closest relative through the mother, when their lineage through the father is equal, takes precedence over one unrelated through the mother, by evident necessity of reason.

مُفَسِّرًا - فَوَجَبَ بِهَذَا أَنْ لَا يَرِثَ الْإِخْوَةُ كَيْفَ كَانُوا، إِلَّا حَيْثُ يُعْدَمُ كُلُّ مَنْ ذَكَرْنَا، إِلَّا أَنْ يُوجِبَ مِيرَاثَ بَعْضِهِمْ نَصٌّ صَحِيحٌ فَيُوقَفُ عِنْدَهُ، وَلَيْسَ ذَلِكَ إِلَّا فِي مَوْضِعَيْنِ فَقَطْ: وَهُوَ الْأَخُ الشَّقِيقُ، أَوْ لِلْأَبِ مَعَ الِابْنَةِ فَصَاعِدًا، وَأُخْتٌ مِثْلُهُ مَعَهُ فَصَاعِدًا، مَا لَمْ يَسْتَوْفِ الْبَنَاتُ الثُّلُثَيْنِ. وَالْمَوْضِعُ الثَّانِي: الْأُخْتُ كَذَلِكَ مَعَ الْبِنْتِ، أَوْ الْبَنَاتِ حَيْثُ لَا عَاصِبَ لِلْمَيِّتِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مِيرَاث الذَّكَرَ]

١٧٢٠ - مَسْأَلَةٌ: وَمَنْ تَرَكَ ابْنًا وَابْنَةً، أَوْ ابْنًا وَابْنَتَيْنِ فَصَاعِدًا، أَوْ ابْنَةً وَابْنًا فَأَكْثَرَ، أَوْ اثْنَيْنِ وَبِنْتَيْنِ فَأَكْثَرَ: فَلِلذَّكَرِ سَهْمَانِ، وَلِلْأُنْثَى سَهْمٌ. هَذَا نَصُّ الْقُرْآنِ، وَإِجْمَاعٌ مُتَيَقَّنٌ.

١٧٢١ - مَسْأَلَةٌ: وَالْأَخُ، وَالْأُخْتُ الْأَشِقَّاءُ أَوْ لِلْأَبِ فَقَطْ فَصَاعِدًا - كَذَلِكَ أَيْضًا لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ - وَهَذَا نَصُّ الْقُرْآنِ، وَإِجْمَاعٌ مُتَيَقَّنٌ.

[مَسْأَلَة مِيرَاث الْأُخُوَّة الْأَشِقَّاء والأخوة لِأَب]

١٧٢٢ - مَسْأَلَةٌ: فَإِنْ كَانَ أَخٌ شَقِيقٌ وَاحِدٌ فَأَكْثَرُ، وَمَعَهُ أُخْتٌ شَقِيقَةٌ فَأَكْثَرُ، أَوْ لَا أُخْتَ مَعَهُ: لَمْ يَرِثْ هَاهُنَا الْأَخُ لِلْأَبِ، وَلَا الْأُخْتُ لِلْأَبِ شَيْئًا.

وَهَذَا نَصُّ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» وَإِجْمَاعٌ مُتَيَقَّنٌ أَيْضًا، وَالْأَقْرَبُ بِالْأُمِّ وَقَدْ اسْتَوَيَا فِي الْأَبِ أَوْلَى مِمَّنْ لَمْ يَقْرُبْ بِالْأُمِّ بِضَرُورَةِ الْحِسِّ.

L27598 Issue 1723: If someone leaves behind a full sister and a paternal brother or paternal brothers, the full sister receives half, and the paternal brother or paternal brothers receive the remainder—even if they are numerous. This is a certain consensus and the explicit text of the Quran and the Sunnah.

١٧٢٣ - مَسْأَلَةٌ: وَمَنْ تَرَكَ أُخْتًا شَقِيقَةً، وَأَخًا لِأَبٍ، أَوْ إِخْوَةً ذُكُورًا لِأَبٍ: فَلِلشَّقِيقَةِ النِّصْفُ، وَلِلْأَخِ لِلْأَبِ أَوْ الْإِخْوَةِ مِنْ الْأَبِ: مَا بَقِيَ - وَإِنْ كَثُرُوا - وَهَذَا إجْمَاعٌ مُتَيَقَّنٌ، وَنَصُّ الْقُرْآنِ وَالسُّنَّةِ.

L27599 If he leaves two or more full sisters, a full brother, or paternal brothers: then the two or more full sisters are entitled to two-thirds, and the remainder is for the full brother or paternal brothers, as we have stated.

فَإِنْ تَرَكَ أُخْتَيْنِ شَقِيقَتَيْنِ فَصَاعِدًا، أَوْ أَخًا، أَوْ إِخْوَةً لِأَبٍ: فَلِلشَّقِيقَتَيْنِ فَصَاعِدًا الثُّلُثَانِ، وَمَا بَقِيَ: فَلِلْأَخِ، أَوْ الْإِخْوَةِ لِلْأَبِ، كَمَا قُلْنَا.

L27600 Issue 1724: If the deceased leaves a full sister and a paternal sister or paternal sisters, the full sister is entitled to half, while the paternal sister or sisters—even if numerous—receive only a sixth. This derives from Allah's decree: "But if there are two full sisters, they shall have two-thirds of what he leaves" (Quran 4:176). Thus, the Almighty has restricted paternal sisters—regardless of their number—to a sixth, while the verse specifies two-thirds exclusively for full sisters when they are two.[7]

١٧٢٤ - مَسْأَلَةٌ: فَإِنْ تَرَكَ أُخْتًا شَقِيقَةً، وَأُخْتًا لِأَبٍ، أَوْ أَخَوَاتٍ لِلْأَبِ: فَلِلشَّقِيقَةِ النِّصْفُ، وَلِلَّتِي لِلْأَبِ أَوْ اللَّوَاتِي لِلْأَبِ: السُّدُسُ فَقَطْ - وَإِنْ كَثُرْنَ - لِقَوْلِ اللَّهِ تَعَالَى: {فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ} [النساء: ١٧٦] فَلَمْ يَجْعَلْ تَعَالَى لِلْأَخَوَاتِ وَإِنْ كَثُرْنَ إلَّا الثُّلُثَيْنِ.

L27601 If he also leaves a uterine sister, she is entitled to a sixth share as the fifth allocated portion. The same ruling applies if there is a uterine brother.

فَإِنْ تَرَكَ أَيْضًا أُخْتًا لِأُمٍّ: كَانَ لَهَا سُدُسٌ خَامِسٌ وَكَذَلِكَ لَوْ كَانَ أَخًا لِأُمٍّ.

L27602 If there are two uterine brothers, two uterine sisters, a uterine brother, a uterine sister, or many uterine siblings, the remaining third belongs to the two of them, them, or them (female). This is an explicit textual ruling as we have cited and a definitive consensus.

فَإِنْ كَانَ أَخَوَانِ لِأُمٍّ، أَوْ أُخْتَانِ لِأُمٍّ، أَوْ أَخًا، أَوْ أُخْتًا، أَوْ إِخْوَةً كَثِيرًا لِأُمٍّ: فَالثُّلُثُ الْبَاقِي لَهُمَا أَوْ لَهُمْ أَوْ لَهُنَّ - وَهَذَا نَصٌّ كَمَا أَوْرَدْنَا، وَإِجْمَاعٌ مُتَيَقَّنٌ.

L27603–27604 If he leaves behind two full sisters, paternal sisters, and a paternal cousin or paternal uncle, then the two full sisters receive two-thirds. The paternal uncle or cousin receives the remainder, while those related through the father receive nothing. This is established by explicit textual evidence and certain consensus, except for something mentioned from al-Ḥasan al-Baṣrī: that the remaining third belongs to those related through the father, and he did not state this when a male agnate exists.

فَإِنْ تَرَكَ شَقِيقَتَيْنِ وَأَخَوَاتٍ لِأَبٍ، وَابْنَ عَمٍّ أَوْ عَمًّا، فَلِلشَّقِيقَتَيْنِ: الثُّلُثَانِ " وَلِلْعَمِّ، أَوْ لِابْنِ الْعَمِّ مَا بَقِيَ، وَلَا شَيْءَ لِلَّوَاتِي لِلْأَبِ - وَهَذَا دَلِيلُ النَّصِّ وَإِجْمَاعٌ مُتَيَقَّنٌ إلَّا شَيْئًا ذُكِرَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّ الثُّلُثَ الْبَاقِيَ لِلَّوَاتِي لِلْأَبِ، وَلَمْ يَقُلْ ذَلِكَ حَيْثُ يُوجَدُ عَاصِبٌ ذَكَرٌ.

L27605 Similarly, if he leaves two full sisters, two uterine sisters, paternal sisters,

[7] **Qur'an references (L27600):** Qur'an 4:176 (An-Nisa).

a paternal sister, or paternal brothers, the two full sisters or more receive two-thirds, and the two uterine sisters or more receive one-third. Nothing is given to the paternal sister, the paternal sisters, or the paternal brothers. This is the evidence of the explicit text, as we mentioned, and a certain and conclusive consensus.

وَكَذَلِكَ لَوْ تَرَكَ أُخْتَيْنِ شَقِيقَتَيْنِ، وَأُخْتَيْنِ لِأُمٍّ، وَأَخَوَاتٍ أَوْ أُخْتًا لِأَبٍ، أَوْ إِخْوَةً لِأَبٍ، فَلِلشَّقِيقَتَيْنِ فَصَاعِدًا: الثُّلُثَانِ، وَلِلِبْنَتَيْنِ لِلْأُمِّ فَصَاعِدًا الثُّلُثُ - وَلَا شَيْءَ لِلْأُخْتِ لِلْأَبِ، وَلَا لِلْأَخَوَاتِ لِلْأَبِ، وَلَا لِلْإِخْوَةِ لِلْأَبِ - وَهَذَا دَلِيلُ النَّصِّ، كَمَا ذَكَرْنَا، وَإِجْمَاعٌ مُتَيَقَّنٌ مَقْطُوعٌ بِهِ.

L27606 1725 - Issue: If he leaves behind a full sister and paternal brothers and sisters, the full sister receives half. The remainder is distributed among the paternal brothers and sisters, provided the sisters' obligatory share is a sixth, which they cannot exceed at all, and the remainder goes to the male alone.

١٧٢٥ - مَسْأَلَةٌ: وَلَوْ تَرَكَ أُخْتًا شَقِيقَةً وَإِخْوَةً وَأَخَوَاتٍ لِلْأَبِ، فَلِلشَّقِيقَةِ: النِّصْفُ، وَمَا بَقِيَ بَيْنَ الْإِخْوَةِ وَالْأَخَوَاتِ لِلْأَبِ، مَا لَمْ يَتَجَاوَزْ مَا يَجِبُ لِلْأَخَوَاتِ السُّدُسُ وَلَا يَزِدْنَ عَلَى السُّدُسِ أَصْلًا، وَيَكُونُ الْبَاقِي لِلذَّكَرِ وَحْدَهُ.

L27607 If there are two full sisters, a paternal sister or sisters, and an agnatic brother: two-thirds is allocated to the two full sisters, the residual portion to the agnatic brother, and nothing is granted to the paternal sister or the paternal sisters.

فَإِنْ كَانَتَا شَقِيقَتَيْنِ، وَأُخْتًا أَوْ أَخَوَاتٍ لِأَبٍ، وَأَخًا لِأَبٍ: فَالثُّلُثَانِ لِلشَّقِيقَتَيْنِ، وَالْبَاقِي لِلْأَخِ الذَّكَرِ، وَلَا شَيْءَ لِلْأُخْتِ لِلْأَبِ، وَلَا لِلْأَخَوَاتِ لِلْأَبِ.

L27608 We have been narrated via the chain of Sa'īd ibn Manṣūr: Abū Shihāb narrated to us from Al-A'mash, from Abū Al-Ḍuḥā—who is Muslim ibn Ṣubayḥ—from Masrūq ibn Al-Ajda', who said: Ibn Mas'ūd used to rule regarding full sisters (from the same father and mother) and paternal brothers and sisters (from the same father): "The full sisters receive two-thirds, and the residue of the estate is allocated to the males, to the exclusion of the females."

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو شِهَابٍ عَنْ الْأَعْمَشِ عَنْ أَبِي الضُّحَى - هُوَ مُسْلِمُ بْنُ صُبَيْحٍ - عَنْ مَسْرُوقِ بْنِ الْأَجْدَعِ قَالَ: كَانَ ابْنُ مَسْعُودٍ يَقُولُ فِي أَخَوَاتٍ لِأَبٍ وَأُمٍّ، وَإِخْوَةٍ وَأَخَوَاتٍ لِأَبٍ: لِلْأَخَوَاتِ مِنْ الْأَبِ وَالْأُمِّ: الثُّلُثَانِ، وَسَائِرُ الْمَالِ لِلذُّكُورِ دُونَ الْإِنَاثِ.

L27609 From him to Sa'eed: Abu Mu'awiyah narrated to us, Al-A'mash narrated to us, from Ibrāhīm, from Masrūq: that Masrūq used to adhere to ʿAbdullāh's ruling concerning full siblings (from the same father and mother)—assigning the remaining portion of the two-thirds to the males, excluding the females. He then traveled to Medina and returned intending to divide it equally between them. ʿAlqamah said to him: "What made you retract from ʿAbdullāh's opinion? Did you meet anyone more firmly established in your heart than him?" He replied: "No, but I met Zayd ibn Thābit and found him among those deeply rooted in knowledge."

وَبِهِ إِلَى، سَعِيدٍ نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إبْرَاهِيمَ عَنْ مَسْرُوقٍ: أَنَّهُ كَانَ يَأْخُذُ بِقَوْلِ عَبْدِ اللَّهِ فِي أَخَوَاتٍ لِأَبٍ وَأُمٍّ: فَجَعَلَ مَا بَقِيَ مِنْ الثُّلُثَيْنِ لِلذُّكُورِ دُونَ الْإِنَاثِ، فَخَرَجَ إلَى الْمَدِينَةِ فَجَاءَ وَهُوَ يَرَى أَنْ يُشْرِكَ بَيْنَهُمْ، فَقَالَ لَهُ عَلْقَمَةُ: مَا رَدَّك عَنْ قَوْلِ

عَبْدِ اللَّهِ، أَلَقِيت أَحَدًا هُوَ أَثْبَتُ فِي نَفْسِك مِنْهُ؟ قَالَ: لَا، وَلَكِنْ لَقِيت زَيْدَ بْنَ ثَابِتٍ فَوَجَدْته فِي الرَّاسِخِينَ فِي الْعِلْمِ.

L27610–27612 From the chain of Waki‘: Sufyān narrated from Ma‘bad ibn Khālid from Masrūq from ‘Abdullāh ibn Mas‘ūd that he said concerning two sisters (from the same father and mother) and paternal siblings: “The two sisters from the same father and mother receive two-thirds. So whatever...” What remains is for males, excluding females. ʿĀ’ishah shared the remainder between them, allocating what was left after two-thirds to the male, equivalent to the share of two females.

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ عَنْ مَعْبَدِ بْنِ خَالِدٍ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ: أَنَّهُ قَالَ فِي أُخْتَيْنِ لِأَبٍ وَأُمٍّ، وَإِخْوَةٍ وَأَخَوَاتٍ لِأَبٍ: إنَّ لِلَّتَيْنِ لِلْأَبِ وَالْأُمِّ: الثُّلُثَيْنِ، فَمَا بَقِيَ فَلِلذُّكُورِ دُونَ الْإِنَاثِ - وَأَنَّ عَائِشَةَ شَرَّكَتْ بَيْنَهُمْ، فَجَعَلَتْ مَا بَقِيَ بَعْدَ الثُّلُثَيْنِ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ.

L27613 From the path of Waki‘, who narrated from Sufyān, who narrated from al-A‘mash, who narrated from Ibrāhīm al-Nakha‘ī, who said: Masrūq said, “I saw Zayd ibn Thābit and the people of Medina collectively dividing shares among themselves.” Al-A‘mash said: Ibn Mas‘ūd would rule regarding a full sister and paternal brothers: “This sister receives half.” He would then assess: if apportioning shares with the male heirs would result in her share exceeding a sixth, he would not increase her share beyond a sixth. But if her share would fall below a sixth, he would divide the inheritance with them. Other companions of Muḥammad (peace be upon him and his family) would say: “This sister receives half, and whatever remains is allocated to the male heirs, each male receiving a share equivalent to that of two females.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: قَالَ مَسْرُوقٌ رَأَيْت زَيْدَ بْنَ ثَابِتٍ وَأَهْلَ الْمَدِينَةِ يُشْرِكُونَ بَيْنَهُمْ، قَالَ الْأَعْمَشُ: وَكَانَ ابْنُ مَسْعُودٍ يَقُولُ فِي أُخْتٍ لِأَبٍ وَأُمٍّ، وَإِخْوَةٍ لِأَبٍ: لِهَذِهِ النِّصْفُ، ثُمَّ يَنْظُرُ: فَإِنْ كَانَ إذَا قَاسَمَ بِهَا الذُّكُورَ أَصَابَهَا أَكْثَرُ مِنْ السُّدُسِ لَمْ يُزِدْهَا عَلَى السُّدُسِ، وَإِذَا أَصَابَهَا أَقَلُّ مِنْ السُّدُسِ: قَاسَمَ بِهَا - وَكَانَ غَيْرُهُ مِنْ أَصْحَابِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُونَ: لِهَذِهِ النِّصْفُ، وَمَا بَقِيَ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ.

L27614 And via Waki‘’s narration, Isma‘il ibn Abi Khalid reported to us from Hakim ibn Jabir, who narrated from Zayd ibn Thabit that he said regarding it: This is among the rulings of the people of pre-Islamic ignorance: that men inherit to the exclusion of women.

وَمِنْ طَرِيقِ وَكِيعٍ نا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ حَكِيمِ بْنِ جَابِرٍ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ فِيهَا: هَذَا مِنْ قَضَاءِ أَهْلِ الْجَاهِلِيَّةِ: أَنْ يَرِثَ الرِّجَالُ دُونَ النِّسَاءِ.

L27615 Ali said: Alqamah and Abu Thawr adhere to the opinion of Ibn Mas’ud, and there were conflicting reports about Abu Sulayman’s stance on it.

قَالَ عَلِيٌّ: بِقَوْلِ ابْنِ مَسْعُودٍ يَقُولُ عَلْقَمَةُ، وَأَبُو ثَوْرٍ، وَاخْتَلَفَ فِيهِ عَلَى أَبِي سُلَيْمَانَ.

L27616 Abu Muhammad said: Those who differed with Ibn Mas’ud argued based on the apparent meaning of Allah’s statement, Exalted is He: “If they are

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ خَالَفَ ابْنَ مَسْعُودٍ بِظَاهِرِ قَوْلِ اللَّهِ تَعَالَى: {وَإِنْ كَانُوا إِخْوَةً رِجَالا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الأُنْثَيَيْنِ} [النساء: ١٧٦]

siblings, men and women, the male is entitled to a portion equal to that of two females." [Quran 4:176][8]

وَبِمَا ذَكَرْنَا مِنْ أَنَّهُ قَوْلُ سَائِرِ أَصْحَابِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهُ مِنْ قَضَاءِ أَهْلِ الْجَاهِلِيَّةِ.

L27617 And since, as we have mentioned, it is the position of all of Muhammad's companions (peace be upon him) and that it originates from the rulings of the people of Jāhiliyyah.

قَالَ عَلِيٌّ: لَيْسَ قَضَاءُ أَهْلِ الْجَاهِلِيَّةِ مَا أَوْجَبَهُ الْقُرْآنُ، وَقَدْ صَحَّ الْإِجْمَاعُ عَلَى تَوْرِيثِ الْعَمِّ، وَابْنِ الْعَمِّ، وَابْنِ الْأَخِ: دُونَ الْعَمَّةِ، وَبِنْتِ الْعَمِّ، وَبِنْتِ الْأَخِ - فَهَلْ هَذَا مِنْ قَضَاءِ أَهْلِ الْجَاهِلِيَّةِ.

L27618 Ali said: The rulings of the people of pre-Islamic ignorance are not what the Quran has obligated. Consensus has been established regarding inheritance for the paternal uncle, paternal uncle's son, and brother's son, to the exclusion of the paternal aunt, paternal uncle's daughter, and brother's daughter. Is this among the rulings of the people of pre-Islamic ignorance?

وَأَمَّا قَوْلُ الْأَعْمَشِ: إِنَّ سَائِرَ أَصْحَابِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى خِلَافِ هَذَا.

L27619 As for the statement of al-Aʿmash: "Indeed, all the Companions of Muhammad (peace and blessings of Allah be upon him) disagree with this."

فَنَقُولُ لِلْمُحْتَجِّ بِهَذَا: هَبْكَ صَحَّ لَك ذَلِكَ - وَهُوَ لَا يَصِحُّ - عَنْ سِتَّةٍ مِنْهُمْ، أَهَذَا حُجَّةٌ عِنْدَك، لِأَنَّهُ إجْمَاعٌ أَمْ لِمَاذَا؟ فَإِنْ قَالَ: لَيْسَ إجْمَاعًا، قُلْنَا لَهُ: فَمَا لَيْسَ إجْمَاعًا وَلَا نَصًّا: فَلَا حُجَّةَ فِيهِ، وَإِنْ كَانَ هُوَ إجْمَاعًا؟ قُلْنَا: فَمُخَالِفُ الْإِجْمَاعِ: كَافِرٌ أَوْ فَاسِقٌ، فَانْظُرْ فِيمَ تَدْخُلُ، وَبِمَاذَا تَصِفُ ابْنَ مَسْعُودٍ؟ وَاَللَّهِ إنَّ الْمُعَرِّضَ بِهِ فِي ذَلِكَ لَهُوَ الْمُسْتَحِقُّ لِهَاتَيْنِ الصِّفَتَيْنِ، لَا ابْنُ مَسْعُودٍ الْمَقْطُوعُ لَهُ بِالْجَنَّةِ، وَالْعِلْمِ، وَالدِّينِ، وَالْإِيمَانِ.

L27620–27622 So we say to the one advancing this argument: Suppose you deem this valid for yourself—though it is invalid—[even if it were] from six of them, would this constitute proof in your view because it is consensus, or why? If he says, "It is not consensus," we reply: What is neither consensus nor a definitive text is not a valid proof. But if it is consensus, we say: Is one who opposes consensus a disbeliever or a sinner? Reflect on what you are entering into and by what means. Are you describing Ibn Masʿūd? By Allah, the one who alludes to him in this matter is truly the one deserving of such accusations - not Ibn Masʿūd, who is irrevocably granted Paradise, knowledge, righteous practice, and faith.

وَأَمَّا الْآيَةُ: فَهِيَ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ اللَّهَ تَعَالَى إنَّمَا قَالَ ذَلِكَ فِيمَا يَرِثُهُ الْإِخْوَةُ وَالْأَخَوَاتُ بِالتَّعْصِيبِ، لَا فِيمَا وَرِثَهُ الْأَخَوَاتُ بِالْفَرْضِ الْمُسَمَّى، وَالنَّصُّ قَدْ صَحَّ بِأَنْ لَا يَرِثَ الْأَخَوَاتُ بِالْفَرْضِ الْمُسَمَّى أَكْثَرَ مِنْ الثُّلُثَيْنِ.

L27623 As for the verse: it is a proof against them, because Allah the Exalted only stated this regarding what brothers and sisters inherit through taʿṣīb, not what sisters inherit through the prescribed share. The text establishes that sisters do not inherit through the prescribed share more than two-thirds.

وَقَدْ أَجْمَعَ الْمُخَالِفُونَ لَنَا: عَلَى أَنَّ مَنْ تَرَكَ أُخْتًا شَقِيقَةً، وَعَشْرَ أَخَوَاتٍ لِأَبٍ، وَعَمًّا أَوْ ابْنَ عَمٍّ، أَوْ ابْنَ أَخٍ: فَإِنَّهُ لَيْسَ لِلْأَخَوَاتِ لِلْأَبِ إلَّا السُّدُسُ فَقَطْ، وَالْبَاقِي لِمَنْ ذَكَرْنَا.

L27624 Our opponents have unanimously agreed that if someone leaves behind a full sister, ten paternal half-sisters, and a paternal uncle, paternal cousin, or

[8] **Qur'an references (L27616):** Qur'an 4:176 (An-Nisa).

son of a brother, the paternal half-sisters receive only one-sixth, with the remainder going to the paternal uncle, paternal cousin, or son of a brother.

L27625 They unanimously agreed that if one leaves two full sisters, ten paternal half-sisters, a paternal uncle, a paternal cousin, or a nephew, the paternal half-sisters do not inherit anything whatsoever. How, then, is it established that they inherit alongside a brother, yet they do not inherit alongside a paternal uncle, paternal cousin, or nephew? The Messenger of Allah (peace be upon him) said: "Assign the ordained shares to their rightful recipients. Whatever remains after the ordained shares belongs to the nearest male relative." In this case, the ordained shares are solely the following: half for one full sister; two-thirds for two full sisters; or half for one full sister with a sixth allocated exclusively to the paternal half-sister(s). Thus, it is established that the remainder belongs to the nearest male relative. This is a matter in which they opposed both the explicit text and analogical reasoning. And with Allah, the Exalted, lies all success.

L27626 ## The Legal Case of Inheritance Pertaining to the Son and the Son's Son

L27627 Legal Ruling 1726: No one inherits alongside the son except the following only: daughters, the father, the mother, the grandfather, the grandmother, the husband, and the wife.

L27628 The child of a free woman and the child of a slave woman are equal in inheritance if their mother was the umm walad (mother of the father's child), and the child was free, and if their mother was a slave belonging to someone other than his father. All of this falls under the general scope of the Quran and a definitive scholarly consensus.

L27629 Issue 1727: Grandsons do not inherit anything alongside the male son—whether their father or paternal uncle existed.

L27630–27631 The sons of a full brother or paternal half-brother cannot inherit if a full brother or paternal half-brother is present—and this is the verbatim text of the Prophet's statement (peace be upon him) in his saying: "then to the nearest male kin"—alongside a definitively established consensus.

وَأَجْمَعُوا عَلَى أَنَّهُ لَوْ تَرَكَ أُخْتَيْنِ شَقِيقَتَيْنِ، وَعَشْرَ أَخَوَاتٍ لِأَبٍ، وَعَمًّا أَوْ ابْنَ عَمٍّ، أَوْ ابْنَ أَخٍ: أَنَّ اللَّوَاتِي لِلْأَبِ لَا يَرِثْنَ شَيْئًا أَصْلًا، فَمِنْ أَيْنَ وَجَبَ أَنْ يَرِثْنَ مَعَ الْأَخِ، وَلَا يَرِثْنَ مَعَ الْعَمِّ، وَلَا مَعَ ابْنِ الْعَمِّ، وَلَا مَعَ ابْنِ الْأَخِ؟ وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَلْحِقُوا الْفَرَائِضَ بِأَصْحَابِهَا، فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» وَالْفَرَائِضُ فِي هَذِهِ الْمَسْأَلَةِ إنَّمَا هُوَ النِّصْفُ لِلشَّقِيقَةِ، أَوْ الثُّلُثَانِ لِلشَّقِيقَتَيْنِ، أَوْ النِّصْفُ لِلشَّقِيقَةِ، وَالسُّدُسُ لِلَّتِي لِلْأَبِ أَوْ اللَّوَاتِي لِلْأَبِ فَقَطْ، فَصَحَّ أَنَّ الْبَاقِيَ لِأَوْلَى رَجُلٍ ذَكَرٍ، وَهَذَا مِمَّا خَالَفُوا فِيهِ النَّصَّ وَالْقِيَاسَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مِيرَاث الأبن وأبن الأبن]

١٧٢٦ - مَسْأَلَةٌ: وَلَا يَرِثُ مَعَ الِابْنِ الذَّكَرِ أَحَدٌ إلَّا الْبَنَاتُ، وَالْأَبُ وَالْأُمُّ، وَالْجَدُّ وَالْجَدَّةُ، وَالزَّوْجُ وَالزَّوْجَةُ، فَقَطْ.

وَوَلَدُ الْحُرَّةِ وَالْأَمَةِ سَوَاءٌ فِي الْمِيرَاثِ إذَا كَانَتْ أُمُّهُ أُمَّ وَلَدِ أَبِيهِ، وَكَانَ الْوَلَدُ حُرًّا، وَإِنْ كَانَتْ أُمُّهُ أَمَةً لِغَيْرِ أَبِيهِ، وَهَذَا كُلُّهُ عُمُومُ الْقُرْآنِ وَإِجْمَاعٌ مُتَيَقَّنٌ.

١٧٢٧ - مَسْأَلَةٌ: وَلَا يَرِثُ بَنُو الِابْنِ مَعَ الِابْنِ الذَّكَرِ شَيْئًا - أَبَاهُمْ كَانَ أَوْ عَمَّهُمْ.

وَلَا يَرِثُ بَنُو الْأَخِ الشَّقِيقِ أَوْ لِلْأَبِ مَعَ أَخٍ شَقِيقٍ أَوْ لِأَبٍ - وَهَذَا نَصُّ كَلَامِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قَوْلِهِ: «فَلِأَوْلَى رَجُلٍ ذَكَرٍ» وَإِجْمَاعٌ مُتَيَقَّنٌ.

L27632 Issue: If someone leaves behind a daughter and male sons of a son, his daughter is entitled to half, and the residue is allocated to the male sons of the son.

١٧٢٨ - مَسْأَلَةٌ: وَمَنْ تَرَكَ ابْنَةً، وَبَنِي ابْنٍ ذُكُورًا: فَلِابْنَتِهِ النِّصْفُ وَلِبَنِي الِابْنِ الذُّكُورِ مَا بَقِيَ.

L27633 If he leaves two daughters or more, and male sons of a son, two-thirds are allocated to the daughters, and the remainder goes to the sons of the son. If he leaves no daughter nor son, but leaves a daughter of a son, she receives half. If there are two daughters of a son, they receive two-thirds. If he leaves daughters of a son and sons of a son, the estate is distributed among them, with to the male being equivalent to the share of two females.

فَإِنْ تَرَكَ ابْنَتَيْنِ فَصَاعِدًا، وَبَنِي ابْنٍ ذُكُورًا فَلِلْبِنْتَيْنِ الثُّلُثَانِ، وَمَا بَقِيَ فَلِبَنِي الِابْنِ - فَإِنْ لَمْ يَتْرُكْ ابْنَةً، وَلَا وَلَدًا، وَتَرَكَ بِنْتَ ابْنٍ، فَلَهَا النِّصْفُ، فَإِنْ كَانَتَا اثْنَتَيْنِ، فَلَهُمَا الثُّلُثَانِ، فَإِنْ تَرَكَ بَنَاتِ ابْنٍ وَبَنِي ابْنٍ: فَالْمَالُ بَيْنَهُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ.

L27634 If he leaves a daughter along with a son's daughter, two son's daughters, or son's daughters, the daughter receives half. The son's daughter, two son's daughters, or son's daughters receive only a sixth - even if numerous - with the remainder going to the agnatic heir.

فَإِنْ تَرَكَ ابْنَةً وَابْنَةَ ابْنٍ، أَوْ بِنْتَيْ ابْنٍ، أَوْ بَنَاتِ ابْنٍ: فَلِابْنَةِ النِّصْفُ وَلِبِنْتِ الِابْنِ، أَوْ لِبِنْتَيْ الِابْنِ، أَوْ لِبَنَاتِ الِابْنِ: السُّدُسُ فَقَطْ - وَإِنْ كَثُرْنَ - وَالْبَاقِي لِلْعَاصِبِ.

L27635 If he leaves two daughters and granddaughters through a son, along with an uncle and a paternal male cousin, or a brother, or a brother's son: then two-thirds belong to the two daughters. The remainder goes to the uncle, the paternal male cousin, the brother, or the brother's son—while the granddaughters through a son receive nothing. All of this is based on explicit textual ruling and definitive scholarly consensus, except for one issue which we will now discuss, God Almighty willing.

فَإِنْ تَرَكَ ابْنَتَيْنِ وَبَنَاتِ ابْنٍ وَعَمًّا وَابْنَ عَمٍّ، أَوْ أَخًا، أَوْ ابْنَ أَخٍ: فَلِلْبِنْتَيْنِ الثُّلُثَانِ، وَيَكُونُ مَا بَقِيَ لِلْعَمِّ، أَوْ لِابْنِ الْعَمِّ، أَوْ لِلْأَخِ، أَوْ لِابْنِ الْأَخِ - وَلَا شَيْءَ لِبَنَاتِ الِابْنِ، وَهَذَا كُلُّهُ نَصٌّ وَإِجْمَاعٌ مُتَيَقَّنٌ، إِلَّا فِي مَسْأَلَةٍ وَاحِدَةٍ نَذْكُرُهَا إِنْ شَاءَ اللَّهُ تَعَالَى الْآنَ.

L27636 1729 - Issue: If someone leaves behind a daughter and grandsons/granddaughters (through a son, both male and female), the daughter receives half. Then it is examined: if the daughters of the son would receive a sixth or less through proportional distribution, they take the lesser amount. But if their calculated share exceeds a sixth, they do not receive more than a sixth.

١٧٢٩ - مَسْأَلَةٌ: وَمَنْ تَرَكَ ابْنَةً وَبَنِي ابْنٍ ذُكُورًا وَإِنَاثًا: فَلِلْبِنْتِ النِّصْفُ - ثُمَّ يَنْظُرُ: فَإِنْ وَقَعَ لِبَنَاتِ الِابْنِ بِالْمُقَاسَمَةِ السُّدُسُ فَأَقَلُّ قَاسَمْنَ، وَإِنْ وَقَعَ لَهُنَّ أَكْثَرُ لَمْ يَزِدْنَ عَلَى السُّدُسِ.

L27637 If he leaves two daughters and male grandchildren through a son, the two daughters receive two-thirds, and the remainder is allocated to the male descendants of the son.

فَإِنْ تَرَكَ ابْنَتَيْنِ وَبَنِي ابْنٍ ذُكُورًا وَإِنَاثًا: فَلِلْبِنْتَيْنِ الثُّلُثَانِ، وَالْبَاقِي لِذُكُورِ وَلَدِ الْوَلَدِ دُونَ الْإِنَاثِ.

L27638 If he leaves a daughter, a son's daughter, and male descendants of the son's son, the daughter receives half, the son's daughter receives a sixth - the same applies if there are more son's daughters - with the remainder going

to the male descendants of the child to the exclusion of females. This is the opinion of Ibn Mas'ūd, 'Alqamah, Abī Thawr, and Abī Sulaymān. Others held: Rather, the male descendant among the child's descendants shares the inheritance with females of his kinship level, and the child's descendants also share the inheritance with their paternal aunts, with the male receiving twice the share of the female.

L27639–27640 This is an error, and the argument here mirrors the argument concerning paternal brothers and sisters alongside a sister and the full sisters—same, same, letter for letter—. And success is with Allah alone, the Most High, through divine facilitation.

The Case of the Grandmother's Inheritance Rights

L27641

L27642 Issue 1730: The grandmother inherits one-third in cases where the mother inherits one-third, provided the deceased has no mother, and she inherits one-sixth in cases where the mother inherits one-sixth, provided the deceased has no mother.

L27643 The grandmother inherits along with her son—the father of the deceased—when he is alive, just as she would inherit if he were not alive.

L27644 Every grandmother inherits if there is no mother or a grandmother closer in kinship than herself. If they [the grandmothers] are of the same degree, they share the aforementioned inheritance.

L27645 The same ruling applies to what we have mentioned regarding the mother of the mother, the mother of the father, the mother of the mother's mother, the mother of the father's mother, the mother of the father's father, the mother of the mother's father, and so on perpetually. This is a matter over which people have differed: It is reported from Abū Bakr that he only granted inheritance to one grandmother, specifically only the mother of the mother. It is also reported from him and others that he granted inheritance to two grandmothers specifically: the mother of the mother along with her female ancestors, and the mother of the father along with her female ancestors.

فَإِنْ تَرَكَ ابْنَةً، وَبِنْتَ ابْنٍ، وَبَنِي ابْنِ ابْنٍ: فَلِلْبِنْتِ النِّصْفُ، وَلِبِنْتِ الِابْنِ السُّدُسُ، وَكَذَلِكَ لَوْ كُنَّ أَكْثَرَ - وَالْبَاقِي لِذُكُورِ وَلَدِ الْوَلَدِ دُونَ الْإِنَاثِ - وَهُوَ قَوْلُ ابْنِ مَسْعُودٍ، وَعَلْقَمَةَ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ: وَقَالَ آخَرُونَ: بَلْ يُقَاسِمُ الذَّكَرُ مِنْ وَلَدِ الْوَلَدِ مَنْ فِي دَرَجَتِهِ مِنْ الْإِنَاثِ وَيُقَاسِمُ أَيْضًا وَلَدُ الْوَلَدِ عَمَّاتِهِ، لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ.

وَهَذَا خَطَأٌ، وَالْحُجَّةُ فِيهِ كَالْحُجَّةِ فِي الْإِخْوَةِ وَالْأَخَوَاتِ لِلْأَبِ مَعَ الْأُخْتِ وَالْأَخَوَاتِ الشَّقَائِقِ، سَوَاءً سَوَاءً، حَرْفًا حَرْفًا -. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ مِيرَاثِ الْجَدَّةِ]

١٧٣٠ - مَسْأَلَةٌ: وَالْجَدَّةُ تَرِثُ الثُّلُثَ إذَا لَمْ يَكُنْ لِلْمَيِّتِ أُمٌّ حَيْثُ تَرِثُ الْأُمُّ الثُّلُثَ، وَتَرِثُ السُّدُسَ حَيْثُ تَرِثُ الْأُمُّ السُّدُسَ، إذَا لَمْ يَكُنْ لِلْمَيِّتِ أُمٌّ.

وَتَرِثُ الْجَدَّةُ وَابْنُهَا أَبُو الْمَيِّتِ حَيٌّ، كَمَا تَرِثُ لَوْ لَمْ يَكُنْ حَيًّا.

وَكُلُّ جَدَّةٍ تَرِثُ إذَا لَمْ يَكُنْ هُنَالِكَ أُمٌّ أَوْ جَدَّةٌ أَقْرَبُ مِنْهَا فَإِنْ اسْتَوَيْنَ فِي الدَّرَجَةِ اشْتَرَكْنَ فِي الْمِيرَاثِ الْمَذْكُورِ.

وَسَوَاءٌ فِيمَا ذَكَرْنَا أُمُّ الْأُمِّ، وَأُمُّ الْأَبِ، وَأُمُّ أُمِّ الْأُمِّ، وَأُمُّ أُمِّ الْأَبِ، وَأُمُّ أَبِي الْأَبِ، وَأُمُّ أَبِي الْأُمِّ، وَهَكَذَا أَبَدًا. وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ: فَرُوِيَ عَنْ أَبِي بَكْرٍ أَنَّهُ لَمْ يُوَرِّثْ إلَّا جَدَّةً وَاحِدَةً، وَهِيَ أُمُّ الْأُمِّ فَقَطْ - وَرُوِيَ عَنْهُ، وَعَنْ غَيْرِهِ، تَوْرِيثُ جَدَّتَيْنِ فَقَطْ، وَهُمَا: أُمُّ الْأُمِّ وَأُمَّهَاتُهَا، وَأُمُّ الْأَبِ وَأُمَّهَاتُهَا.

وَقَالَتْ طَائِفَةٌ: بِتَوْرِيثِ ثَلَاثِ جَدَّاتٍ، وَهُمَا اللَّتَانِ ذَكَرْنَا، وَأُمُّ أَبِ الْأَبِ وَأُمَّهَاتُهَا - وَرُوِيَ عَنْ طَائِفَةٍ: تَوْرِيثُ كُلِّ جَدَّةٍ إِلَّا جَدَّةً مِنْ قِبَلِ أَبِي أُمٍّ، أَوْ مِنْ قِبَلِ أَبِي جَدَّةٍ.

L27646 A school of thought has opined that three grandmothers are entitled to inheritance: the two previously mentioned, the mother of the paternal grandfather, and her mothers. It has been reported from a school of thought that every grandmother is entitled to inheritance except a grandmother related through the mother's father or through the grandmother's father.

وَقَالَ بَعْضُهُمْ: لَا تَرِثُ الْجَدَّةُ وَالْجَدَّتَانِ وَالْأَكْثَرُ إِلَّا السُّدُسَ فَقَطْ.

L27647 And some of them said: A grandmother, two grandmothers, and more [than two] inherit nothing but a sixth exclusively.

وَقَالَ بَعْضُهُمْ: إِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأُمِّ أَقْرَبَ انْفَرَدَتْ بِالسُّدُسِ وَلَمْ تَرِثْ مَعَهَا الَّتِي مِنْ قِبَلِ الْأَبِ، فَإِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأَبِ مُسَاوِيَةً لِلَّتِي مِنْ قِبَلِ الْأُمِّ أَوْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأُمِّ أَبْعَدَ اشْتَرَكَا فِي السُّدُسِ.

L27648 Some of them said: If the one from the mother's side is closer in degree, she exclusively receives the one-sixth share, and the female relative from the father's side does not inherit alongside her. If the female relative from the father's side is equal in proximity to the one from the mother's side, or if the one from the mother's side is farther in degree, they share the one-sixth share between them.

وَقَالَتْ طَائِفَةٌ: لَا تَرِثُ الْجَدَّةُ مَا دَامَ ابْنُهَا الَّذِي صَارَتْ بِهِ جَدَّةً حَيًّا.

L27649 A group said: The grandmother does not inherit as long as her son (through whom she became a grandmother) remains alive.

بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ} [النساء: ١١] وَقَالَ تَعَالَى: {كَمَا أَخْرَجَ أَبَوَيْكُمْ مِنَ الْجَنَّةِ} [الأعراف: ٢٧] فَجَعَلَ آدَمَ وَامْرَأَتَهُ - عَلَيْهِمَا السَّلَامُ - أَبَوَيْنَا، فَهَذَا نَصُّ الْقُرْآنِ.

L27650 The proof of that is Allah, the Most High's statement: {And his parents inherited from him, so his mother is entitled to one-third} [An-Nisā': 11]. And Allah, the Most High, said: {As He brought your parents out of Paradise} [Al-Aʿrāf: 27]. Thus, He made Adam and his wife—peace be upon them—our parents. This is the Quran's explicit text.[9]

وَقَدْ جَسَرَ قَوْمٌ عَلَى الْكَذِبِ هَاهُنَا فَادَّعَوْا الْإِجْمَاعَ عَلَى أَنَّ لَيْسَ لِلْجَدَّةِ إِلَّا السُّدُسُ - وَهَذَا مِنْ تِلْكَ الْجَسَرَاتِ - كَتَبَ إِلَيَّ عَلِيُّ بْنُ إِبْرَاهِيمَ التَّبْرِيزِيُّ الْأَزْدِيُّ، قَالَ: نا أَبُو الْحُسَيْنِ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْمَعْرُوفُ بِابْنِ اللَّبَّانِ نا دِعْلِجُ بْنُ أَحْمَدَ نا الْجَارُودِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ نا أَبُو نُعَيْمٍ الْفَضْلُ بْنُ دُكَيْنٍ عَنْ شَرِيكٍ عَنْ لَيْثٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ، قَالَ: الْجَدَّةُ بِمَنْزِلَةِ الْأُمِّ إِذَا لَمْ تَكُنْ أُمٌّ - وَقَالَ طَاوُسٌ: الْجَدَّةُ بِمَنْزِلَةِ الْأُمِّ تَرِثُ مَا تَرِثُ الْأُمُّ - وَمَا وَجَدْنَا إِيجَابَ السُّدُسِ لِلْجَدَّةِ إِلَّا مُرْسَلًا عَنْ أَبِي بَكْرٍ،

L27651–27653 Some people have audaciously lied here by falsely claiming scholarly consensus that the grandmother receives nothing but a sixth. This is among those instances—ʿAlī ibn Ibrāhīm al-Tabrīzī al-Azdī wrote to me, stating: Abū al-Ḥusayn Muḥammad ibn ʿAbdullāh, known as Ibn al-Labbān, narrated to us; Dilj ibn Aḥmad narrated to us; al-Jārūdī narrated to us; Muḥammad ibn Ismāʿīl al-Ṣāʾigh narrated to us; Abū Nuʿaym al-Faḍl ibn Dukayn narrated to us from Sharīk from Layth from Ṭāwūs from Ibn ʿAbbās, who said: "The grandmother holds the legal status of the mother when there is no mother." Ṭāwūs said: "The grandmother holds the status of the mother, inheriting what the mother inherits." We have not found the obligation of the sixth share for the grandmother except as mursal transmissions from Abū Bakr, ʿUmar, Ibn

[9] **Qur'an references (L27650):** Qur'an 4:11 (An-Nisa); Qur'an 7:27 (Al-A'raf).

Masʿūd, ʿAlī, and Zayd—only five. So where is the consensus? Abū Muḥammad said: This is especially true for those who assign the grandfather the inheritance of the father, for they have contradicted by failing to assign the grandmother the inheritance of the mother.

وَعُمَرَ، وَابْنِ مَسْعُودٍ، وَعَلِيٍّ، وَزَيْدٍ: خَمْسَةٌ فَقَطْ، فَأَيْنَ الْإِجْمَاعُ؟ قَالَ أَبُو مُحَمَّدٍ: لَا سِيَّمَا مَنْ وَرَّثَ الْجَدَّ مِيرَاثَ الْأَبِ فَإِنَّهُ نَاقَضَ، إذْ لَمْ يُوَرِّثْ الْجَدَّةَ مِيرَاثَ الْأُمِّ.

L27654 If it is said: The report of Mansur from Ibrahim al-Nakha'i—"The Messenger of Allah—peace be upon him—allocated the sixth to three grandmothers"—we have transmitted it through the narrational paths of Sufyan al-Thawri, Hammad ibn Zayd, and Jarir ibn Abdul-Hamid, all of them narrating from Mansur, who reported from Ibrahim in this manner.

فَإِنْ قِيلَ: إنَّ خَبَرَ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ «أَطْعَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَلَاثَ جَدَّاتٍ السُّدُسَ» رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ، وَحَمَّادِ بْنِ زَيْدٍ، وَجَرِيرِ بْنِ عَبْدِ الْحَمِيدِ، كُلُّهُمْ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ كَذَلِكَ.

L27655 The narration of Mālik from al-Zuhrī from ʿUthmān ibn Isḥāq ibn Kharshah from Qabīṣah ibn Dhuʾayb: that al-Mughīrah ibn Shuʿbah and Muḥammad ibn Salamah testified before Abū Bakr al-Ṣiddīq that the Messenger of Allāh (peace be upon him) granted the grandmother one-sixth.

وَخَبَرُ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ عُثْمَانَ بْنِ إسْحَاقَ بْنِ خَرَشَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ: أَنَّ الْمُغِيرَةَ بْنَ شُعْبَةَ، وَمُحَمَّدَ بْنَ سَلَمَةَ شَهِدَا عِنْدَ أَبِي بَكْرٍ الصِّدِّيقِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى الْجَدَّةَ السُّدُسَ» .

L27656 The narration of Ibn Wahb from someone who heard ʻAbd al-Wahhab ibn Mujahid ibn Jabr relate from ʻAli ibn Abi Talib: "The Messenger of Allah—peace and blessings be upon him—apportioned a sixth share to two grandmothers if there was no mother or someone of lower priority. If there is only one grandmother, she receives the sixth."

وَخَبَرُ ابْنِ وَهْبٍ عَمَّنْ سَمِعَ عَبْدَ الْوَهَّابِ بْنَ مُجَاهِدِ بْنِ جَبْرٍ يُحَدِّثُ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْعَمَ جَدَّتَيْنِ السُّدُسَ، إذَا لَمْ تَكُنْ أُمٌّ، أَوْ شَيْءٌ دُونَهُمَا، فَإِنْ لَمْ تُوجَدْ إلَّا وَاحِدَةٌ: فَلَهَا السُّدُسُ» .

L27657 The report of Abū Dāwūd al-Sijistānī: Muḥammad ibn ʿAbd al-ʿAzīz ibn Abī Rizmah informed me: My father informed me: ʿUbaydullāh al-ʿAtakī narrated to us from Ibn Buraidah from his father: "The Prophet—peace and blessings of Allah be upon him—allocated a sixth share to the grandmother if there was no mother beneath her."

وَخَبَرُ أَبِي دَاوُد السِّجِسْتَانِيِّ نا مُحَمَّدُ بْنُ عَبْدِ الْعَزِيزِ بْنِ أَبِي رُزْمَةَ أَخْبَرَنِي أَبِي نا عُبَيْدُ اللَّهِ الْعَتَكِيُّ عَنْ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لِلْجَدَّةِ السُّدُسَ إذَا لَمْ يَكُنْ دُونَهَا أُمٌّ» .

L27658 A similar narration was reported from Ibn Abbas. They said: "It is inconceivable that this be ascribed to Ibn Abbas while contradicting him."

وَرُوِيَ نَحْوُ هَذَا عَنْ ابْنِ عَبَّاسٍ. قَالُوا: وَمِنْ الْمُحَالِ أَنْ يَكُونَ هَذَا عَنْ ابْنِ عَبَّاسٍ وَيُخَالِفُهُ.

L27659 We said: None of this is valid in any respect. The ḥadīth of Qabīṣa is disconnected, as he did not meet Abū Bakr, nor did he hear it from al-Mughīra nor from Muḥammad, and the narration of Ibrāhīm is mursal.

قُلْنَا: هَذَا كُلُّهُ لَا يَصِحُّ مِنْهُ شَيْءٌ. حَدِيثُ قَبِيصَةَ مُنْقَطِعٌ، لِأَنَّهُ لَمْ يُدْرِكْ أَبَا بَكْرٍ، وَلَا سَمِعَهُ مِنْ الْمُغِيرَةِ وَلَا مُحَمَّدٍ، وَخَبَرُ إبْرَاهِيمَ مُرْسَلٌ.

L27660–27661 If these two [cases] were valid, there would be no disagreement in our opinion, because we hold that the mother inherits the sixth in cases where she inherits the sixth alongside the child and siblings.

ثُمَّ لَوْ صَحَّا لَمَا كَانَ فِيهِ خِلَافٌ لِقَوْلِنَا؛ لِأَنَّنَا نَقُولُ بِتَوْرِيثِهَا السُّدُسَ مِنْ حَيْثُ تَرِثُ الْأُمُّ السُّدُسَ مَعَ الْوَلَدِ وَالْإِخْوَةِ.

L27662 As for the narration of Buraidah, then ʿAbdullāh al-ʿAtakī is unknown (majhūl).

وَأَمَّا خَبَرُ بُرَيْدَةَ فَعَبْدُ اللَّهِ الْعَتَكِيُّ مَجْهُولٌ.

L27663 The narration of ʿAlī invalidates all of them because Ibn Wahb did not name the intermediary who transmitted it to him from ʿAbd al-Wahhāb. Furthermore, ʿAbd al-Wahhāb's narration is invalid and discarded.

وَخَبَرُ عَلِيٍّ أَفْسَدَهَا كُلَّهَا؛ لِأَنَّ ابْنَ وَهْبٍ لَمْ يُسَمِّ مَنْ أَخْبَرَهُ بِهِ عَنْ عَبْدِ الْوَهَّابِ، وَأَيْضًا فَعَبْدُ الْوَهَّابِ هَالِكٌ سَاقِطٌ.

L27664 Furthermore, there is no valid transmission received by Mujāhid from ʿAlī, and the narration from Ibn ʿAbbās has an unknown chain of transmission. Even if it were authentic, it would align with what we mentioned: that the grandmother is entitled to a sixth in cases where the mother is entitled to a sixth.

وَأَيْضًا فَلَا سَمَاعَ يَصِحُّ لِمُجَاهِدٍ مِنْ عَلِيٍّ وَالرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ لَا يُعْرَفُ مَخْرَجُهَا، وَلَوْ صَحَّتْ لَكَانَ كَمَا ذَكَرْنَا مِنْ أَنَّ لَهَا السُّدُسَ حَيْثُ لِلْأُمِّ السُّدُسُ.

L27665 Why do they not invoke their established doctrine here—as they do when aligning with their taqlīd—by stating: "Ibn ʿAbbās only abandoned a transmitted ruling due to a consideration he deemed stronger in his judgment. As for us, had an authentic ruling from the Messenger of Allah—peace and blessings be upon him—contrary to our opinion been established here, we would have adopted it. But no such ruling has been authentically established at all."

وَهَلَّا قَالُوا هَاهُنَا بِقَوْلِهِمْ الْمَعْهُودِ إذَا وَافَقَ تَقْلِيدَهُمْ: إنَّ ابْنَ عَبَّاسٍ لَمْ يَتْرُكْ مَا رُوِيَ إلَّا لِأَمْرٍ هُوَ أَقْوَى فِي نَفْسِهِ، وَأَمَّا نَحْنُ فَلَوْ صَحَّ هَاهُنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمٌ بِخِلَافِ قَوْلِنَا لَقُلْنَا بِهِ، وَلَكِنَّهُ لَمْ يَصِحَّ أَصْلًا.

L27666 If they say: You have narrated in the mentioned report of Qabīṣah that the grandmother came to Abū Bakr and said: "My son's son or my daughter's son has died, and I have been informed that I have a right in the Book of Allah?" Abū Bakr replied: "I find no right for you in the Book, nor have I heard the Messenger of Allah—peace and blessings be upon him—decree anything for you. I will ask the people." We respond: Al-Ṣiddīq—may Allah be pleased with him—merely reported the existence of this ruling and his

فَإِنْ قَالُوا: قَدْ رَوَيْتُمْ فِي حَدِيثِ قَبِيصَةَ الْمَذْكُورِ: جَاءَتْ الْجَدَّةُ إلَى أَبِي بَكْرٍ قَالَتْ: إنَّ ابْنَ ابْنِي، أَوْ ابْنَ ابْنَتِي مَاتَ، وَقَدْ أُخْبِرْتُ أَنَّ لِي فِي كِتَابِ اللَّهِ حَقًّا؟ فَقَالَ أَبُو بَكْرٍ: مَا أَجِدُ لَك فِي الْكِتَابِ حَقًّا، وَمَا سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْضِي لَك بِشَيْءٍ وَسَأَسْأَلُ النَّاسَ؟ قُلْنَا: إنَّمَا أَخْبَرَ الصِّدِّيقُ - رَضِيَ اللَّهُ عَنْهُ - عَنْ وُجُودِهِ

وَسَمَاعِهِ وَصَدَقَ، وَقَدْ رَوَيْتُمْ فِي هَذَا الْخَبَرِ: أَنَّ الْمُغِيرَةَ وَمُحَمَّدَ بْنَ سَلَمَةَ سَمِعَا فِي ذَلِكَ مَا لَمْ يَسْمَعْ، فَرَجَعَ هُوَ - رَضِيَ اللَّهُ عَنْهُ - إلَى مَا سَمِعَا مِمَّا لَمْ يَسْمَعْ هُوَ؟ فَأَيُّ غَرِيبَةٍ فِي أَنْ لَا يَجِدَ أَيْضًا فِي الْكِتَابِ فِي ذِكْرِهِ حِينَئِذٍ مَا يَجِدُ غَيْرُهُ وَقَدْ مَنَعَ عُمَرُ مِنْ التَّزَيُّدِ عَلَى مِقْدَارِ مَا فِي الصَّدَاقِ، فَلَمَّا ذُكِّرَ بِالْقُرْآنِ رَجَعَ، وَمِثْلُ هَذَا لَهُمْ كَثِيرٌ.

hearing of it, and he spoke truthfully. You have narrated in this report that al-Mughīrah and Muḥammad ibn Salamah heard regarding this matter what he himself had not heard, so he—may Allah be pleased with him—relied on what they had heard from sources he had not personally heard. What is strange then about him likewise not finding in the Book—specifically regarding its mention at that time—what others found? For ʿUmar—may Allah be pleased with him—had prohibited exceeding the stipulated amount in dowries, but when reminded of the Quran, he retracted. They have many similar instances like this.

وَقَدْ وَجَدْنَا نَصًّا: أَنَّ الْجَدَّةَ أَحَدُ الْأَبَوَيْنِ فِي الْقُرْآنِ، وَمِيرَاثُ الْأَبَوَيْنِ فِي الْقُرْآنِ، فَمِيرَاثُهَا فِي الْقُرْآنِ، وَلَيْسَ فِي كُلِّ وَقْتٍ يَذْكُرُ الْإِنْسَانُ مَا فِي حِفْظِهِ، وَنَسِيَ آدَمُ، فَنَسِيَ بَنُوهُ، فَهَذَا مِيرَاثُ الْجَدَّةِ بِنَصِّ الْقُرْآنِ؟ وَلَيْسَ لِمُخَالِفِنَا مُتَعَلَّقٌ أَصْلًا، لَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا إجْمَاعٍ مُتَيَقَّنٍ، وَلَا قِيَاسٍ، وَلَا نَظَرٍ؟ وَمَا كَانَ هَكَذَا فَهُوَ مَقْطُوعٌ بِأَنَّهُ بَاطِلٌ، قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١]

L27667 We have found an explicit text: that the grandmother is one of the parents in the Qur'an, and the inheritance of parents is in the Qur'an, so her inheritance is in the Qur'an. A person does not always mention what they have retained, for Adam forgot, so his children forgot. Is this then the grandmother's inheritance by explicit Qur'anic text? Our opponent has no valid basis whatsoever—neither from the Qur'an, nor the Sunnah, nor certain consensus, nor analogy, nor reasoned opinion. Whatever is thus is decisively invalid. Allah the Exalted said: "Say, 'Produce your proof if you are truthful'" (Qur'an 2:111).[10]

وَلَا مَعْنَى لِكَثْرَةِ الْقَائِلِينَ بِالْقَوْلِ وَقِلَّتِهِمْ، وَقَدْ أَفْرَدْنَا أَجْزَاءَ ضَخْمَةً فِيمَا خَالَفَ فِيهِ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ جُمْهُورَ الْعُلَمَاءِ، وَفِيمَا قَالَهُ كُلُّ وَاحِدٍ مِنْهُمْ مِمَّا لَا يُعْرَفُ أَحَدٌ قَالَ بِهِ قَبْلَهُ، وَقَطَعَهُ فِيمَا خَالَفَ فِيهِ كُلُّ وَاحِدٍ مِنْهُمْ الْإِجْمَاعَ الْمُتَيَقَّنَ الْمَقْطُوعَ بِهِ، وَلَمْ يَأْتِ قَطُّ نَصٌّ وَلَا إجْمَاعٌ وَلَا نَظَرٌ صَحِيحٌ بِتَرْجِيحِ مَا كَثُرَ الْقَائِلُونَ بِهِ عَلَى مَا قَلَّ الْقَائِلُونَ بِهِ.

L27668–27670 There is no significance to the multitude or fewness of those who uphold an opinion, for we have singled out extensive volumes regarding matters in which disagreement occurred. Abu Hanifah, Malik, and al-Shafiʿi constitute the majority of scholars. In matters where each expressed a view unknown to have been held by anyone before them, they affirmed conclusively when opposing an irrefutable, certain consensus. Never has there been a scriptural text, consensus, or sound reasoning to prioritize opinions held by many over those held by few.

فَهَذَا مِيرَاثُ الْجَدَّةِ.

L27671 Therefore, this is the share of the grandmother.

وَأَمَّا: كَمْ جَدَّةً تَرِثُ؟ فَإِنَّ طَائِفَةً قَالَتْ: لَا تَرِثُ إلَّا جَدَّةٌ وَاحِدَةٌ، وَهِيَ أُمُّ الْأُمِّ.

L27672 As for the question "How many grandmothers inherit?" a group held that only one grandmother inherits, and she is the mother of the mother.

[10] **Qur'an references (L27667):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

وَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ نا الْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ: أَنَّ رَجُلًا مَاتَ وَتَرَكَ جَدَّتَيْهِ: أُمَّ أُمِّهِ، وَأُمَّ أَبِيهِ، فَأَتَوْا أَبَا بَكْرٍ الصِّدِّيقَ، فَأَعْطَى أُمَّ أُمِّهِ السُّدُسَ دُونَ أُمِّ الْأَبِ؟ فَقَالَ لَهُ عَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ - وَكَانَ بَدْرِيًّا - لَقَدْ وَرَّثْتَ الَّتِي لَوْ كَانَتْ هِيَ الْمَيِّتَةَ مَا وَرِثَ مِنْهَا شَيْئًا، وَتَرَكَتْ امْرَأَةً لَوْ كَانَتْ هِيَ الْمَيِّتَةَ وَرِثَ مَالَهَا كُلَّهُ، فَأَشْرَكَ بَيْنَهُمَا فِي السُّدُسِ.

L27673 We have been narrated through the chain of Yaḥyā ibn Saʿīd al-Anṣārī, from al-Qāsim ibn Muḥammad ibn Abī Bakr: A man died, leaving two grandmothers—the mother of his mother and the mother of his father. They came to Abū Bakr al-Ṣiddīq, and he granted the mother of the mother one-sixth, excluding the mother of the father. ʿAbd al-Raḥmān ibn Sahl—a Badr participant—said to him, "You have given inheritance to one who, if she were the deceased, none would inherit from her. Yet she left a woman [i.e., the grandmother] whose heir would inherit all her wealth if she were the deceased." Consequently, Abū Bakr made both grandmothers share the one-sixth.

وَرُوِّينَاهُ مِنْ طَرِيقِ هُشَيْمٍ، وَابْنِ عُيَيْنَةَ، كِلَاهُمَا عَنْ يَحْيَى بْنِ سَعِيدٍ، وَدَخَلَ حَدِيثُ أَحَدِهِمَا فِي الْآخَرِ، وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَأَبِي الزِّنَادِ: أَنَّ أَبَا بَكْرٍ وَرَّثَ الْجَدَّةَ أُمَّ الْأُمِّ السُّدُسَ، فَلَمَّا كَانَ عُمَرُ بْنُ الْخَطَّابِ جَاءَتْهُ الْجَدَّةُ أُمُّ الْأَبِ، فَقَالَ لَهَا: مَا لَكِ فِي كِتَابِ اللَّهِ شَيْءٌ، وَسَوْفَ أَسْأَلُ لَكِ النَّاسَ؟ قَالَ: فَلَمْ يَجِدْ أَحَدًا يُخْبِرُهُ شَيْئًا؟ فَقَالَ غُلَامٌ مِنْ بَنِي حَارِثَةَ: لِمَ لَا تُوَرِّثُهَا يَا أَمِيرَ الْمُؤْمِنِينَ وَهِيَ لَوْ تَرَكَتْ الدُّنْيَا وَمَا فِيهَا وَرِثَهَا، وَهَذِهِ لَوْ تَرَكَتْ الدُّنْيَا وَمَا فِيهَا لَمْ يَرِثْهَا ابْنُ ابْنَتِهَا، فَوَرَّثَهَا عُمَرُ بْنُ الْخَطَّابِ وَقَالَ: إِنَّ اللَّهَ لَيَجْعَلُ فِي الْجَدَّاتِ خَيْرًا كَثِيرًا.

L27674 We have narrated it through the chain of Hushaym and Ibn ʿUyaynah, both of whom narrated from Yahya ibn Saʿid, with the narration of one of them incorporated into the other. And through the chain of Ibn Wahb from ʿAbd al-Jabbar ibn ʿUmar from Yahya ibn Saʿid al-Ansari and Abi al-Zinad: that Abu Bakr granted the grandmother—the mother of the mother—the sixth as inheritance. When Umar ibn al-Khattab assumed authority, the grandmother—the mother of the father—came to him. He said to her: "You have no entitlement in the Book of Allah, but I will ask the people on your behalf." He said that he found no one who could inform him of anything. Then a youth from Banu Harithah said: "Why do you not grant her a share, O Commander of the Faithful? For if she were to leave this world and all within it, her heirs would inherit her, whereas if this one were to leave the world and all within it, her daughter's son would not inherit her." Thus, Umar ibn al-Khattab granted her a share and said: "Truly, Allah has placed abundant good in grandmothers."

فَهَذَا أَبُو بَكْرٍ، وَعُمَرُ: جَعَلَا الْمِيرَاثَ لِلْجَدَّةِ الَّتِي لِلْأُمِّ دُونَ أُمِّ الْأَبِ.

L27675 Thus, Abu Bakr and Umar ruled that inheritance is granted to the maternal grandmother instead of the paternal grandmother.

فَإِنْ قِيلَ: قَدْ رَجَعَا عَنْ ذَلِكَ؟ قُلْنَا: قَدْ قَالَا بِهِ، وَلَا حُجَّةَ إِلَّا فِي إِجْمَاعٍ مُتَيَقَّنٍ، فَلَا إِجْمَاعَ مُتَيَقَّنٌ مَعَكُمْ أَصْلًا - وَقَدْ قَالَ بِذَلِكَ عُمَرُ بَعْدَ أَبِي بَكْرٍ كَمَا تَرَوْنَ.

L27676 If it is said: "Have they retracted from that?" We respond: "They have indeed stated it, and there is no proof except in a definitive consensus. Therefore, there is no definitive consensus with you at all - and Umar after Abu Bakr held that opinion, as you see."

L27677–27679 Ali reports that Umar ruled throughout his lifetime to prohibit the sale of *umm al-walad*, and Ali agreed with him, as did Uthman throughout his lifetime. But when Ali assumed leadership, he opposed this and did not

consider what had preceded from what we have mentioned as a consensus. This is far from being a scholarly consensus, and lying against the entire Ummah is more disgraceful and sinful than lying against a single individual. There is no good in any of that, and conjectural statements are lies—we seek refuge in Allah from it.

وَهَذَا عَلِيٌّ يُخْبِرُ بِأَنَّ عُمَرَ قَضَى مُدَّةَ حَيَاتِهِ بِمَنْعِ بَيْعِ أُمِّ الْوَلَدِ، وَعَلِيٌّ مَعَهُ يُوَافِقُهُ، وَعُثْمَانُ أَيْضًا مُدَّةَ حَيَاتِهِ، فَلَمَّا وَلِيَ عَلِيٌّ خَالَفَ ذَلِكَ، وَلَمْ يَرَ مَا سَلَفَ مِمَّا ذَكَرْنَا إِجْمَاعًا - فَهَذَا أَبْعَدُ مِنْ أَنْ يَكُونَ إِجْمَاعًا، وَالْكَذِبُ عَلَى جَمِيعِ الْأُمَّةِ أَشَدُّ عَارًا وَإِثْمًا مِنَ الْكَذِبِ عَلَى وَاحِدٍ، وَكُلُّ ذَلِكَ لَا خَيْرَ فِيهِ، وَالْقَوْلُ بِالظَّنِّ كَذِبٌ - نَعُوذُ بِاللَّهِ مِنْهُ.

L27680 A group held that only two grandmothers inherit exclusively: 1. **The maternal grandmother**: the mother of the mother, her mother, the mother of her mother, the mother of her mother's mother, and so on perpetually—mother after mother exclusively. 2. **The paternal grandmother**: the mother of the father, her mother, the mother of her mother, the mother of her mother's mother, and so on perpetually—likewise mother after mother exclusively. They do not grant inheritance to the grandfather's mother at all.

وَقَالَتْ طَائِفَةٌ: لَا يَرِثُ إِلَّا جَدَّتَانِ فَقَطْ: أُمُّ الْأُمِّ وَأُمُّهَا، وَأُمُّ أُمِّهَا، وَأُمُّ أُمِّ أُمِّهَا، وَهَكَذَا أَبَدًا: أُمًّا فَأُمًّا فَقَطْ. وَأُمُّ الْأَبِ وَأُمُّهَا، وَأُمُّ أُمِّهَا، وَأُمُّ أُمِّ أُمِّهَا، وَهَكَذَا: أُمًّا فَأُمًّا فَقَطْ، وَلَا يُوَرِّثُونَ أُمَّ جَدٍّ أَصْلًا.

L27681 And this is the view of Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām, al-Zuhrī, Rabīʿah, Ibn Abī Dhiʾb, Mālik, al-Shāfiʿī, Abū Thawr, and Abū Sulaymān.

وَهُوَ قَوْلُ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، وَالزُّهْرِيِّ، وَرَبِيعَةَ، وَابْنِ أَبِي ذِئْبٍ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ.

L27682 A group said: Only three grandmothers inherit. As we have been narrated through ʿAbd al-Razzāq, who said: Yaḥyā narrated to me from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī that Saʿd ibn Abī Waqqāṣ said to Ibn Masʿūd: "Do you resent me that witr is performed with one unit, while you grant inheritance to three grandmothers? Do you not then grant inheritance to Ḥawwā, the wife of Adam?"

وَقَالَتْ طَائِفَةٌ: يَرِثُ ثَلَاثُ جَدَّاتٍ فَقَطْ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ حَدَّثَنِي يَحْيَى عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّ سَعْدَ بْنَ أَبِي وَقَّاصٍ، قَالَ لِابْنِ مَسْعُودٍ: أَتَغْضَبُ عَلَيَّ أَنْ أُوتِرَ بِوَاحِدَةٍ، وَأَنْتَ تُوَرِّثُ ثَلَاثَ جَدَّاتٍ؟ أَفَلَا تُوَرِّثُ حَوَّاءُ امْرَأَةَ آدَمَ.

L27683 It was transmitted to us through the chain of Ibn Wahb from ʿAbd al-Jabbār ibn ʿUmar, Maslamah ibn ʿAlī, and Ibn Abī al-Zinād. Maslamah said: from Zayd ibn Wāqid, from Makhūl. ʿAbd al-Jabbār and Ibn Abī al-Zinād both said: from Abī al-Zinād, from Khārijah ibn Zayd ibn Thābit. Thereafter, Khārijah and Makhūl were in agreement that Zayd ibn Thābit ruled three grandmothers inherit: two from the mother's side and one from the father's side.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ، وَمَسْلَمَةَ بْنِ عَلِيٍّ، وَابْنِ أَبِي الزِّنَادِ، قَالَ مَسْلَمَةُ: عَنْ زَيْدِ بْنِ وَاقِدٍ عَنْ مَكْحُولٍ، وَقَالَ عَبْدُ الْجَبَّارِ، وَابْنُ أَبِي الزِّنَادِ، كِلَاهُمَا: عَنْ أَبِي الزِّنَادِ عَنْ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ، ثُمَّ اتَّفَقَ خَارِجَةُ، وَمَكْحُولٌ: أَنَّ زَيْدَ بْنَ ثَابِتٍ وَرَّثَ ثَلَاثَ جَدَّاتٍ: اثْنَتَيْنِ مِنْ قِبَلِ الْأُمِّ، وَوَاحِدَةً مِنْ قِبَلِ الْأَبِ.

L27684 From the chain of Hammad ibn Salamah via Dawud ibn Abi Hind and Humayd, who both said together: Indeed Zayd ibn Thabit stated: Three grandmothers inherit - the two paternal grandmothers and the maternal grandmother on her mother's side - and this has also been narrated from Ali ibn Abi Talib.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدَ، وَحُمَيْدٍ، قَالَا جَمِيعًا: إِنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: يَرِثْنَ ثَلَاثُ جَدَّاتٍ: جَدَّتَا الْأَبِ، وَجَدَّةُ الْأُمِّ لِأُمِّهَا - وَقَدْ رُوِيَ أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ.

L27685 Via the chain of Sa'id ibn Mansur: Abu Mu'awiyah reported to us → Al-A'mash reported from Ibrahim, who said: "They assigned inheritance shares to three grandmothers: two paternal grandmothers (the father's mother and his paternal grandmother) and one maternal grandmother."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ، قَالَ: كَانُوا يُوَرِّثُونَ مِنْ الْجَدَّاتِ ثَلَاثًا: جَدَّتَيْنِ مِنْ قِبَلِ الْأَبِ، وَوَاحِدَةً مِنْ قِبَلِ الْأُمِّ

L27686 Narrated via ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ashʿath—who is Ibn Sawwār—from al-Shaʿbī, who said: "Four grandmothers approached Masrūq, and he granted inheritance rights to three of them while excluding the maternal great-grandmother."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ هُوَ ابْنُ سَوَّارٍ عَنْ الشَّعْبِيِّ قَالَ: جِئْنَ أَرْبَعُ جَدَّاتٍ إِلَى مَسْرُوقٍ، فَوَرَّثَ ثَلَاثًا، وَأَلْغَى أُمَّ أَبِي الْأُمِّ.

L27687 And through the chain of Abd al-Razzaq from Ma'mar from Qatadah: If there are four grandmothers, the mother of the father's mother is excluded, and the three inherit a sixth divided equally among them - this is the position upheld by al-Awzaʿī and Ahmad ibn Hanbal.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: إِذَا كُنَّ الْجَدَّاتُ أَرْبَعًا: طُرِحَتْ أُمُّ أَبِي الْأُمِّ، وَوَرِثَ الثَّلَاثُ السُّدُسَ أَثْلَاثًا بَيْنَهُنَّ - وَبِهِ يَقُولُ الْأَوْزَاعِيِّ، وَأَحْمَدُ بْنُ حَنْبَلٍ.

L27688–27689 A group said: Four grandmothers inherit, as has been narrated to us via the chain of Hammad ibn Salamah from Laith ibn Abi Sulaym from Tawus from Ibn Abbas that he would grant inheritance to the four grandmothers.

وَقَالَتْ طَائِفَةٌ: تَرِثُ أَرْبَعُ جَدَّاتٍ، كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يُوَرِّثُ الْجَدَّاتِ الْأَرْبَعَ.

L27690 From the chain of al-Ḥajjāj ibn al-Minhāl, Ḥammād ibn Zayd narrated to us from Ayyūb al-Sakhtiyānī, from al-Ḥasan al-Baṣrī and Ibn Sīrīn: that they both granted inheritance to four grandmothers.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَابْنِ سِيرِينَ: أَنَّهُمَا كَانَا يُوَرِّثَانِ أَرْبَعَ جَدَّاتٍ.

L27691 A group maintained that every grandmother inherits except a grandmother between whom and the deceased intervenes a maternal grandfather - this being the opinion of Sufyān al-Thawrī, Abū Ḥanīfah, and their adherents.

وَقَالَتْ طَائِفَةٌ: تَرِثُ كُلُّ جَدَّةٍ إِلَّا جَدَّةٌ بَيْنَهَا وَبَيْنَ الْمَيِّتِ أَبُو أُمٍّ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِمَا.

L27692 It was narrated to us through the chain of Saʿīd ibn Manṣūr, who reported to us from Khālid ibn ʿAbdullāh, from Dāwūd ibn Abī Hind, from al-Shaʿbī,

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدُ بْنُ عَبْدِ اللَّهِ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ قَالَ: إِنَّمَا طُرِحَتْ أُمُّ أَبِي الْأُمِّ، لِأَنَّ أَبَا الْأُمِّ لَا يَرِثُ.

who said: “The mother of the maternal grandfather was excluded because the maternal grandfather does not inherit.”

وَقَالَتْ طَائِفَةٌ: تَرِثُ كُلُّ جَدَّةٍ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ، وَأَبِي سَهْلٍ - هُوَ مُحَمَّدُ بْنُ سَالِمٍ - كِلَاهُمَا عَنِ الشَّعْبِيِّ، قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ يُوَرِّثُ مَا قَرُبَ مِنَ الْجَدَّاتِ وَمَا بَعُدَ -

L27693 A group held that every grandmother is entitled to inheritance. As reported via the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī, from Ashʿath and Abū Sahl (who is Muḥammad ibn Sālim), both narrating from al-Shaʿbī, who said: “‘Abdullāh ibn Masʿūd would entitle grandmothers to inherit – those proximate and remote –”

وَقَدْ رُوِيَ هَذَا أَيْضًا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ عَبَّاسٍ، وَزَيْدِ بْنِ ثَابِتٍ.

L27694 This has also been narrated from Ali ibn Abī Ṭālib, Ibn Abbas, and Zayd ibn Thābit.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَشْعَثُ بْنُ سَوَّارٍ نا الشَّعْبِيُّ قَالَ: جِئْنَ إِلَى مَسْرُوقٍ أَرْبَعُ جَدَّاتٍ يَتَسَاءَلْنَ؟ فَأَلْغَى أُمَّ أَبِي الْأُمِّ، قَالَ أَشْعَثُ: فَأَخْبَرْت بِذَلِكَ ابْنَ سِيرِينَ، فَقَالَ: أَوْهَمَ أَبُو عَائِشَةَ، يُوَرَّثْنَ جَمِيعًا.

L27695 Through the chain of Saʿīd ibn Manṣūr: Ashʿath ibn Sawwār narrated to us from al-Shaʿbī, who said: “Four grandmothers came to Masrūq inquiring among themselves.” He excluded the mother of the father’s mother. Ashʿath said: I informed Ibn Sīrīn of this, and he responded: “Abū ʿĀʾishah erred - they are all entitled to inheritance.”

قَالَ أَبُو مُحَمَّدٍ: أَبُو عَائِشَةَ: كُنْيَةُ مَسْرُوقٍ، وَهُوَ قَوْلُ جَابِرِ بْنِ زَيْدٍ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَالْحَسَنِ، كُلُّ هَؤُلَاءِ رُوِيَ عَنْهُمْ تَوْرِيثُ أُمِّ أَبِي الْأُمِّ، وَغَيْرِهَا.

L27696 Abu Muhammad said: Abu Aisha was the kunya of Masruq. This is the opinion of Jabir ibn Zayd, Ata ibn Abi Rabah, and al-Hasan. It has been reported from all of them that they affirmed the inheritance rights of the mother of the father’s mother, along with other relatives.

قَالَ عَلِيٌّ: فَنَظَرْنَا فِي هَذِهِ الْأَقْوَالِ فَوَجَدْنَا حُجَّةَ مَنْ لَمْ يُوَرِّثْ إِلَّا جَدَّةً وَاحِدَةً، وَهِيَ أُمُّ الْأُمِّ وَأُمُّهَا ثُمَّ أُمُّهَا، هَكَذَا فَقَطْ أَنْ يَقُولَ: هَذِهِ الْمُجْتَمَعُ عَلَى تَوْرِيثِهَا - وَلَا يَصِحُّ أَثَرٌ بِخِلَافِ ذَلِكَ.

L27697 Ali said: We examined these opinions and found the evidence of those who do not grant inheritance except to one grandmother—specifically the mother’s mother, her mother, then her mother, exclusively—to be valid, as there is consensus on the entitlement of these grandmothers to inheritance, with no authentic report contradicting this.

فَإِنْ قِيلَ: قَدْ رَجَعَ أَبُو بَكْرٍ عَنْ ذَلِكَ؟ قُلْنَا: نَعَمْ، وَعُمَرُ قَدْ قَالَ بِهِ بَعْدَ أَبِي بَكْرٍ.

L27698 If it is asked, “Did Abū Bakr recant his stance on that?” our response is: Yes, and ʿUmar upheld it after Abū Bakr.

فَإِنْ قِيلَ: فَقَدْ رَجَعَ؟ قُلْنَا: فَكَانَ مَاذَا؟ إِذَا وُجِدَ الْخِلَافُ، وَوَسِعَ الْآخَرَ مَا وَسِعَ الْأَوَّلَ مِنَ الِاجْتِهَادِ وَالِاسْتِدْلَالِ، وَلَيْسَتْ الْحُجَّةُ الَّتِي احْتَجَّ بِهَا عَلَيْهِمَا - رَضِيَ اللَّهُ

L27699–27701 If it is said, “He has retracted?” We reply, “What does that signify?” When disagreement exists, and the latter has the same scope for ijtihād (independent legal reasoning) and istidlāl (inferential reasoning) as the former, the evidence he advanced against them both—may Allah be pleased with them—does not constitute a decisive proof. By the principle of return (radd), the maternal grandmother inherits others but cannot receive inheritance with

no disagreement, while the paternal aunt receives inheritance but does not inherit others with no disagreement.

عَنْهُمَا - بِمُوجَبِهِ رُجُوعًا، لِأَنَّ أُمَّ الْأُمِّ تَرِثُ وَلَا تُورَثُ بِلَا خِلَافٍ، وَالْعَمَّةُ تُورَثُ وَلَا تَرِثُ بِلَا خِلَافٍ.

L27702 Now, Umar had retracted his permanent prohibition on the husband marrying the [already] married woman during her waiting period, permitting him to marry her. Yet Malik did not retract his initial opinion despite Umar's retraction of his own ruling.

وَهَذَا عُمَرُ قَدْ رَجَعَ عَنْ تَحْرِيمِ الْمَنْكُوحَةِ فِي الْعِدَّةِ عَلَى نَاكِحِهَا فِي الْأَبَدِ، وَأَبَاحَ لَهُ نِكَاحَهَا، فَلَمْ يَرْجِعْ مَالِكٌ عَنْ قَوْلِهِ الْأَوَّلِ لِرُجُوعِ عُمَرَ عَنْهُ.

L27703 As for ʿAlī, he retracted his prohibition on the sale of ummahat al-awlad (mothers of the master's children), but Abū Ḥanīfah, Mālik, and al-Shāfiʿī did not retract their positions due to his retraction. The retraction of one who retracts is not a proof, just as the opinion of one who asserts [a view] is not a proof - unless the statement or retraction is validated as a proof.

وَهَذَا عَلِيٌّ قَدْ رَجَعَ عَنْ مَنْعِهِ بَيْعَ أُمَّهَاتِ الْأَوْلَادِ، وَلَمْ يَرْجِعْ: أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ لِرُجُوعِهِ، وَلَيْسَ رُجُوعُ مَنْ رَجَعَ حُجَّةً، كَمَا أَنَّ قَوْلَ مَنْ قَالَ لَيْسَ حُجَّةً، إلَّا أَنْ يُصَحِّحَ الْقَوْلَ أَوْ الرُّجُوعَ حُجَّةً.

L27704 They also stated: Consensus has been established that only one among grandfathers may inherit—being the father of the father, then the father of the father's father, then the father of the father's father's father—in this precise manner only. Thus, it becomes obligatory that only one among grandmothers may inherit—being the mother of the mother, then the mother of the mother's mother, then the mother of the mother's mother's mother—in this precise manner only.

وَقَالُوا أَيْضًا: قَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّهُ لَا يَرِثُ مِنْ الْأَجْدَادِ إلَّا وَاحِدٌ، وَهُوَ أَبُ الْأَبِ، وَأَبُوهُ، وَأَبُو أَبِيهِ - هَكَذَا فَقَطْ، فَالْوَاجِبُ أَنْ لَا يَرِثَ مِنْ الْجَدَّاتِ إلَّا وَاحِدَةٌ، وَهِيَ أُمُّ الْأُمِّ، وَأُمُّهَا وَأُمُّ أُمِّهَا، وَهَكَذَا فَقَطْ.

L27705 Abū Muḥammad said: These are two inescapable arguments for the proponents of analogical reasoning, as the first is one they frequently cite, and the second constitutes the soundest analogical reasoning possible. This opinion is linked to the ḥadīth of Ibn Buraidah from his father, that the Prophet—peace and blessings of Allah be upon him—assigned the grandmother a sixth share only when there was no mother below her. This is indicated by the mention of the mother below her in other contexts, whereas here he specified only a grandmother [as inheriting] when there is a mother below her.

قَالَ أَبُو مُحَمَّد: هَاتَانِ حُجَّتَانِ لَازِمَتَانِ لِأَهْلِ الْقِيَاسِ، لِأَنَّ الْأُولَى كَثِيرًا مَا يَحْتَجُّونَ بِهَا، وَالثَّانِيَةُ أَصَحُّ مَا يُمْكِنُ أَنْ يَكُونَ مِنْ الْقِيَاسِ، وَقَدْ يَتَعَلَّقُ لِهَذَا الْقَوْلِ بِحَدِيثِ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى الْجَدَّةَ السُّدُسَ إذَا لَمْ يَكُنْ دُونَهَا أُمٌّ، بِدَلِيلِ ذِكْرِ الْأُمِّ الَّتِي دُونَهَا، فَلَمْ يَذْكُرْ هَاهُنَا إلَّا جَدَّةً تَكُونُ دُونَهَا أُمٌّ.

L27706 We have mentioned this report earlier along with its rationale, and these two do not bind us, for we do not prevent adopting a disputed opinion when necessitating proof requires it. Rather, we mandate adopting it in such cases. Were it not for the necessitating proof requiring inheritance for

وَقَدْ ذَكَرْنَا هَذَا الْخَبَرَ آنِفًا وَعِلَّتَهُ وَلَا يَلْزَمَانِنَا، لِأَنَّنَا لَا نَمْنَعُ مِنْ الْأَخْذِ بِقَوْلٍ مُخْتَلَفٍ فِيهِ إذَا أَوْجَبَهُ بُرْهَانٌ، بَلْ نُوجِبُ الْأَخْذَ بِهِ حِينَئِذٍ، وَلَوْلَا الْبُرْهَانُ الْمُوجِبُ لِتَوْرِيثِ كُلِّ

every grandmother, this opinion would be the only one impermissible to contradict, as it is established by consensus with certainty free from doubt, while other opinions remain disputed. We do not uphold analogy, and by Allah the Most High is success.

جَدَّةٍ لَكَانَ هَذَا الْقَوْلُ هُوَ الَّذِي لَا يَجُوزُ الْقَوْلُ بِسِوَاهُ، لِأَنَّهُ الْمُجْتَمَعُ عَلَيْهِ بِيَقِينٍ لَا شَكَّ فِيهِ وَمَا عَدَاهُ فَمُخْتَلَفٌ فِيهِ، وَنَحْنُ لَا نَقُولُ بِالْقِيَاسِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27707 As for those who only recognize two grandmothers as heirs, we are unaware of any valid evidence for their position, except that some of them have claimed consensus on the matter—and this is baseless, as we have already stated.

وَأَمَّا مَنْ لَمْ يُوَرِّثْ إلَّا جَدَّتَيْنِ فَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، إلَّا أَنَّ بَعْضَهُمْ ادَّعَى الْإِجْمَاعَ عَلَى ذَلِكَ - وَهَذَا بَاطِلٌ كَمَا أَوْرَدْنَا.

L27708 If they cling to the report of Mujāhid that the Prophet—peace be upon him—assigned two grandmothers a sixth share, we respond: This is a weak report, and it does not indicate that he—peace and blessings be upon him—prevented them from inheriting more. Indeed, a more sound report exists: that he—peace and blessings be upon him—granted inheritance to three grandmothers.

فَإِنْ تَعَلَّقُوا بِخَبَرِ مُجَاهِدٍ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْعَمَ جَدَّتَيْنِ السُّدُسَ. قُلْنَا: هَذَا خَبَرٌ فَاسِدٌ وَلَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَنَعَ مِنْ تَوْرِيثِ أَكْثَرَ - وَقَدْ جَاءَ خَبَرٌ أَحْسَنُ مِنْهُ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَرَّثَ ثَلَاثَ جَدَّاتٍ.

L27709–27711 The statement of Saʿd, "Do you not make Hawwa, Adam's wife, inherit?" is not evidence, for there is no disagreement concerning the obligation of... If Eve, the wife of Adam, were alive and there were no mother or grandmother below her in lineage, her inheritance [would apply], because every deceased person among Adam's descendants has a mother, his mother has a mother, and the mother of his mother has a mother - this chain continues with absolute certainty up to Eve's daughter. She would thus incontrovertibly be a grandmother on the maternal side via the mother's mother and her maternal ancestors. Consequently, this legal objection is invalidated, leaving no basis whatsoever for this claim.

وَلَيْسَ قَوْلُ سَعْدٍ: أَلَا تُوَرِّثُ حَوَّاءَ امْرَأَةَ آدَمَ حُجَّةً، لِأَنَّهُ لَا خِلَافَ فِي وُجُوبِ تَوْرِيثِ حَوَّاءَ امْرَأَةِ آدَمَ لَوْ كَانَتْ حَيَّةً، وَلَمْ تَكُنْ دُونَهَا أُمٌّ وَلَا جَدَّةٌ، لِأَنَّ كُلَّ مَيِّتٍ فِي الْعَالَمِ مِنْ بَنِي آدَمَ فَلَهُ أُمٌّ، وَلِأُمِّهِ أُمٌّ، وَلِأُمِّ أُمِّهِ أُمٌّ، هَكَذَا قَطْعًا بِيَقِينٍ إلَى بِنْتِ حَوَّاءَ، فَهِيَ جَدَّةٌ مِنْ قِبَلِ أُمِّ الْأُمِّ وَأُمَّهَاتِهَا بِيَقِينٍ، فَبَطَلَ هَذَا الِاعْتِرَاضُ، وَلَمْ يَبْقَ لِهَذَا الْقَوْلِ مُتَعَلَّقٌ أَصْلًا.

L27712 It is utterly astonishing that Mālik and al-Shāfiʿī, in their statements on inheritance laws, followed Zayd ibn Thābit yet opposed him regarding the granting of inheritance to three grandmothers without any basis. Moreover, Saʿd's objection to Ibn Masʿūd granting inheritance to three grandmothers does not necessarily mean that Saʿd granted inheritance to two grandmothers. Rather, it is possible that he grants inheritance only to a single grandmother. Thus, this opinion is invalidated with certainty.

وَالْعَجَبُ كُلُّ الْعَجَبِ: مِنْ أَنَّ مَالِكًا، وَالشَّافِعِيَّ، فِي أَقْوَالِهِمَا فِي الْفَرَائِضِ مُقَلِّدِينَ لِزَيْدِ بْنِ ثَابِتٍ، وَزَيْدٌ يُوَرِّثُ ثَلَاثَ جَدَّاتٍ فَخَالَفُوهُ بِلَا مَعْنًى، وَلَيْسَ إنْكَارُ سَعْدٍ عَلَى ابْنِ مَسْعُودٍ تَوْرِيثَ ثَلَاثِ جَدَّاتٍ مُوجِبًا أَنَّ سَعْدًا كَانَ يُوَرِّثُ جَدَّتَيْنِ، بَلْ قَدْ يُمْكِنُ أَنْ يَكُونَ لَا يُوَرِّثُ إلَّا جَدَّةً وَاحِدَةً، فَبَطَلَ هَذَا الْقَوْلُ بِيَقِينٍ.

L27713 As for those who only recognize inheritance rights for three grandmothers,

we know of no supporting evidence for their stance except the narration from Ibrāhīm stating that Allah's Messenger—peace and blessings be upon him—assigned a sixth share to three grandmothers. However, this is a mursal narration lacking a complete chain of transmission, which does not explicitly state that he—peace and blessings be upon him—prohibited recognizing inheritance rights for more than three. Therefore, their reliance on this narration becomes baseless, and it fundamentally cannot constitute any valid proof for their position.

وَأَمَّا مَنْ لَمْ يُوَرِّثْ إِلَّا ثَلَاثَ جَدَّاتٍ، فَمَا نَعْلَمُ لَهُمْ مُتَعَلَّقًا إِلَّا خَبَرُ إِبْرَاهِيمَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْعَمَ ثَلَاثَ جَدَّاتٍ السُّدُسَ، وَهَذَا مُرْسَلٌ، لَيْسَ فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَنَعَ مِنْ تَوْرِيثِ أَكْثَرَ، فَبَطَلَ تَعَلُّقُهُمْ بِهِ، وَبَطَلَ أَنْ يَكُونَ لَهُمْ حُجَّةٌ أَصْلًا.

L27714 As for those who do not grant inheritance except to four grandmothers, we know of no established basis for their position, thus it is invalidated because it lacks valid proof.

وَأَمَّا مَنْ لَمْ يُوَرِّثْ إِلَّا أَرْبَعَ جَدَّاتٍ، فَمَا نَعْلَمُ لَهُمْ مُتَعَلَّقًا أَصْلًا، فَبَطَلَ لِتَعَرِّيهِ مِنْ الْحُجَّةِ.

L27715 As for those who grant inheritance to every grandmother except a grandmother whose lineage to the deceased is mediated by a maternal grandfather, they have no valid argument whatsoever - except for Al-Sha'bi's statement that the relative through whom lineage is established does not inherit. It should be said to them: What, then, is the ruling? When a Muslim dies leaving a disbelieving father alongside a Muslim grandfather, or a Muslim uncle, or a Muslim cousin, there is no disagreement that all those we mentioned inherit, while the one through whom they establish lineage does not. Inheritances are determined solely by textual injunctions (Quran and Sunnah), not by proximity of relation nor through establishing lineage. Neither the freedwoman nor the insane person may contract marriage. Their agnatic relative may arrange marriages for the freedwoman's female dependents, the insane person's agnate may marry off the latter's daughter and sister, while the relative through whom both of them establish lineage cannot contract marriage.

وَأَمَّا مَنْ وَرَّثَ كُلَّ جَدَّةٍ إِلَّا جَدَّةً بَيْنَهَا وَبَيْنَ الْمَيِّتِ أَبُو أُمٍّ، فَلَا حُجَّةَ لَهُمْ أَصْلًا، إِلَّا مَا قَالَ الشَّعْبِيُّ: مِنْ أَنَّ الَّذِي تُدْلِي بِهِ لَا يَرِثُ؟ فَيُقَالُ لَهُمْ: فَكَانَ مَاذَا؟ هَذَا الْمُسْلِمُ يَمُوتُ لَهُ أَبٌ كَافِرٌ، وَجَدٌّ مُسْلِمٌ، أَوْ عَمٌّ مُسْلِمٌ، أَوْ ابْنُ عَمٍّ مُسْلِمٌ، فَلَا خِلَافَ فِي أَنَّ كُلَّ مَنْ ذَكَرْنَا يَرِثُ، وَأَنَّ الَّذِي يُدْلِي بِهِ لَا يَرِثُ. إِنَّمَا الْمَوَارِيثُ بِالنُّصُوصِ لَا بِالْقُرْبِ، وَلَا بِالْإِدْلَاءِ، وَهَذِهِ الْمَرْأَةُ الْمُعْتَقَةُ لَا تَكُونُ وَلِيًّا فِي النِّكَاحِ، وَلَا الْمَجْنُونُ، فَلَا يَنْكِحَانِ، وَعَاصِبُهُمَا يَنْكِحُ مَوْلَاتَهَا، وَعَاصِبُ الْمَجْنُونِ يَنْكِحُ ابْنَتَهُ وَأُخْتَهُ، وَالَّذِي يُدْلِيَانِ بِهِ لَا يَنْكِحُ.

L27716 Perhaps they may claim a consensus regarding their assertion of depriving the grandmother—the maternal great-grandmother—of inheritance, but this is not unprecedented among their audacious acts. Indeed, we have seen their falsehood in citing the statements of Ibn Sīrīn and others, rendering this claim invalid because it lacks evidence.

وَلَعَلَّهُمْ أَنْ يَدَّعُوا إِجْمَاعًا عَلَى مَا يَقُولُونَ مِنْ مَنْعِ الْجَدَّةِ أُمِّ أَبِي الْأُمِّ الْمِيرَاثَ، فَمَا هَذَا بِبِدْعٍ مِنْ جَسَارَاتِهِمْ، فَقَدْ رَأَيْنَا كَذِبَهُمْ بِقَوْلِ ابْنِ سِيرِينَ وَغَيْرِهِ - فَبَطَلَ هَذَا الْقَوْلُ لِتَعَرِّيهِ مِنْ الْحُجَّةِ.

L27717–27719 As for whoever assigns inheritance rights to all grandmothers, his argument

is what we presented earlier: that the grandmother is a mother [i.e., a female ancestor], and one of the two parents (father or mother) is established by the Quran's explicit text. The inheritance of parents is clarified through the Quran's explicit text. Thus, it is impermissible to deprive the two parents of inheritance except... By a sound text or a definitive consensus, then the definitive consensus is validated through transmission encompassing the entirety of successive eras, era after era, to the Prophet—peace and blessings of Allah be upon him.

وَأَمَّا مَنْ وَرَّثَ كُلَّ جَدَّةٍ، فَإِنَّ حُجَّتَهُ مَا صَدَّرْنَا قَبْلُ مِنْ أَنَّ الْجَدَّةَ أُمٌّ، وَأَحَدُ الْأَبَوَيْنِ بِنَصِّ الْقُرْآنِ، وَمِيرَاثُ الْأَبَوَيْنِ مُبَيَّنٌ بِنَصِّ الْقُرْآنِ، فَلَمْ يَجُزْ أَنْ يُحْرَمَ الْأَبَوَانِ الْمِيرَاثَ إِلَّا بِنَصٍّ صَحِيحٍ، أَوْ إِجْمَاعٍ مُتَيَقَّنٍ، فَصَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ بِنَقْلِ كَوَافِّ الْأَعْصَارِ، عَصْرًا بَعْدَ عَصْرٍ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L27720 That he—peace and blessings be upon him—never granted inheritance to a daughter's son through sonship, nor a daughter's son through sonship. Therefore, the inheritance of any grandfather where the deceased is his daughter's son is invalidated, and the inheritance of a grandfather who is a father and the father of a father only remains. There is no textual or consensus-based evidence to prevent the grandmother from inheriting on that basis, thus her inheritance is affirmed as obligatory by the Quranic text. And success comes from Allah, the Most High.

عَلَى أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُوَرِّثْ قَطُّ مِنِ ابْنِ بِنْتٍ بِالْبُنُوَّةِ، وَلَا ابْنِ بِنْتٍ بِالْبُنُوَّةِ، فَسَقَطَ مِيرَاثُ كُلِّ جَدٍّ يَكُونُ الْمَيِّتُ مِنْهُ ابْنَ بِنْتٍ، وَبَقِيَ مِيرَاثُ الْجَدِّ الَّذِي هُوَ أَبٌ وَأَبُو أَبٍ فَقَطْ، وَلَمْ يَأْتِ نَصٌّ وَلَا إِجْمَاعٌ بِمَنْعِ الْجَدَّةِ مِنَ الْمِيرَاثِ بِذَلِكَ، فَبَقِيَ مِيرَاثُهَا بِنَصِّ الْقُرْآنِ وَاجِبًا. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27721 We found the report of Qabīṣah ibn Dhuʾayb that "the Messenger of Allah—peace and blessings be upon him—granted the grandmother a sixth share" to align with this opinion, because it generalized and did not specify one grandmother over another. Therefore, it is incumbent upon those who uphold the mursal report to affirm this view, as it is more general than the other mentioned reports.

وَوَجَدْنَا خَبَرَ قَبِيصَةَ بْنِ ذُؤَيْبٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى الْجَدَّةَ السُّدُسَ» مُوَافِقًا لِهَذَا الْقَوْلِ؛ لِأَنَّهُ عَمَّ، وَلَمْ يَخُصَّ جَدَّةً مِنْ جَدَّةٍ، فَيَلْزَمُ مَنْ قَالَ بِالْمُرْسَلِ أَنْ يَقُولَ بِهَذَا؛ لِأَنَّهُ أَعَمُّ مِنْ سَائِرِ الْأَخْبَارِ الْمَذْكُورَةِ.

L27722 As for us, we rely solely on the text of the Quran that we have mentioned, and all other statements are invalidated with absolute certainty, for they lack textual evidence or consensus. And success comes from Allah, the Most High.

وَأَمَّا نَحْنُ فَلَا نَعْتَمِدُ إِلَّا عَلَى نَصِّ الْقُرْآنِ الَّذِي ذَكَرْنَا فَقَطْ، وَبَطَلَتْ سَائِرُ الْأَقْوَالِ بِيَقِينٍ لَا مِرْيَةَ فِيهِ، لِتَعَرِّيهَا مِنْ حُجَّةِ نَصٍّ أَوْ إِجْمَاعٍ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L27723 As for the hierarchy of grandmothers in proximity, a group of scholars said: "We do not concern ourselves with which grandmother is closer or farther in inheritance—they are equal." As we have narrated through the chain of ʿAbd al-Razzāq from Maʿmar from al-Ḥajjāj ibn Arṭāh from al-Shaʿbī, who said: "Ibn Masʿūd used to treat both grandmothers equally—whether one was closer or not." It was also narrated from him: "Grandmothers are not

وَأَمَّا تَفَاضُلُ الْجَدَّاتِ فِي الْقُرْبِ فَإِنَّ طَائِفَةً قَالَتْ: لَا نُبَالِي أَيُّ الْجَدَّاتِ أَقْرَبُ، وَلَا أَيَّتُهُنَّ أَبْعَدُ فِي الْمِيرَاثِ سَوَاءٌ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنِ الشَّعْبِيِّ قَالَ: كَانَ ابْنُ مَسْعُودٍ يُسَاوِي بَيْنَ الْجَدَّتَيْنِ - كَانَتْ إِحْدَاهُمَا أَقْرَبَ

أَوْ لَمْ تَكُنْ أَقْرَبَ - وَرُوِيَ عَنْهُ أَيْضًا: لَا يَحْجُبُ الْجَدَّاتِ إِلَّا الْأُمُّ، وَيَرِثْنَ - وَإِنْ كَانَ بَعْضُهُنَّ أَقْرَبَ مِنْ بَعْضٍ - إِلَّا أَنْ تَكُونَ إِحْدَاهُنَّ أُمَّ الْأُخْرَى فَتَرِثُ الِابْنَةُ دُونَ أُمِّهَا.

L27724 وَقَوْلٌ آخَرُ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ قَالَ: كَانَ ابْنُ مَسْعُودٍ يُوَرِّثُ مَا قَرُبَ مِنْ الْجَدَّاتِ وَمَا بَعُدَ مِنْهُنَّ، جَعَلَ لَهُنَّ السُّدُسَ إِذَا كُنَّ مِنْ مَكَانَيْنِ شَتَّى، فَإِذَا كُنَّ مِنْ مَكَانٍ وَاحِدٍ وَرَّثَ الْقُرْبَى.

L27725 وَقَوْلٌ ثَالِثٌ: قَالَهُ الْحَسَنُ بْنُ حَيٍّ، وَزُفَرُ بْنُ الْهُذَيْلِ، وَهُوَ إِنْ كَانَتْ إِحْدَى الْجَدَّتَيْنِ جَدَّةً مِنْ جِهَتَيْنِ، وَكَانَتْ الْأُخْرَى جَدَّةً مِنْ جِهَةٍ وَاحِدَةٍ: فَلِلَّتِي مِنْ جِهَتَيْنِ ثُلُثَا السُّدُسِ، وَلِلَّتِي مِنْ جِهَةٍ وَاحِدَةٍ ثُلُثُ السُّدُسِ.

L27726–27727 مِثَالُ ذَلِكَ: امْرَأَةٌ تَزَوَّجَ ابْنُ ابْنِهَا ابْنَةَ ابْنَتِهَا فَوُلِدَ لَهُمَا وَلَدٌ، فَمَاتَ أَبَوَاهُ وَجَدَّتَاهُ وَلَمْ يَتْرُكْ إِلَّا هَذِهِ الْمَرْأَةَ الَّتِي هِيَ أُمُّ أَبِي أَبِيهِ وَأُمُّ أُمِّ أُمِّهِ، فَهِيَ جَدَّةٌ مِنْ جِهَتَيْنِ - وَجَدَّةٌ أُخْرَى هِيَ أُمُّ أُمِّ أَبِيهِ، فَهِيَ جَدَّةٌ مِنْ جِهَةٍ وَاحِدَةٍ.

L27728 وَقَوْلٌ رَابِعٌ: وَهُوَ أَنَّهُ إِنْ كَانَتْ الْجَدَّةُ الَّتِي مِنْ جِهَةِ الْأُمِّ أَبْعَدَ مِنْ الَّتِي مِنْ قِبَلِ الْأَبِ اشْتَرَكَتَا فِي الْمِيرَاثِ جَمِيعًا، وَكَذَلِكَ إِنْ كَانَتَا سَوَاءً، فَإِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأُمِّ أَقْرَبَ مِنْ الَّتِي مِنْ قِبَلِ الْأَبِ: كَانَ الْمِيرَاثُ كُلُّهُ لِلَّتِي مِنْ قِبَلِ الْأُمِّ، وَلَا شَيْءَ لِلَّتِي مِنْ قِبَلِ الْأَبِ. كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: إِذَا كَانَتْ الْجَدَّةُ مِنْ قِبَلِ الْأُمِّ أَقْرَبَ فَهِيَ أَحَقُّ بِهِ، فَإِنْ كَانَتْ أَبْعَدَ فَهُمَا سَوَاءٌ.

excluded except by the mother, and they inherit, even if some are closer than others, unless one grandmother is the mother of the other, in which case the daughter inherits instead of her mother."

Another opinion: As transmitted to us through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī, from Ashʿath, from al-Shaʿbī, who said: Ibn Masʿūd would grant inheritance to the nearer and the more remote of the grandmothers. He designated a sixth share for them if they belonged to two different places. But if they were from a single place, he granted inheritance to the closest relative.

A third opinion, stated by Al-Ḥasan ibn Ḥayy and Zufar ibn al-Hudhayl, holds that if one grandmother is related through two sides and the other through one side, the grandmother connected through two sides receives two-thirds of the sixth, while the grandmother connected through one side receives one-third of the sixth.

An example of this is a woman whose son's son marries her daughter's daughter, and they have a child. When the child's parents and both grandmothers die, leaving only this woman—who is the great-grandmother (mother of the father's father) and the great-grandmother (mother of the mother's mother)—she is a great-grandmother from two sides. Another great-grandmother is the mother of the father's mother, making her a great-grandmother from one side.

The fourth opinion is that if the grandmother from the mother's side is more distant than the one from the father's side, they both share the inheritance jointly. Similarly, if they are equally distant, they both share the inheritance jointly. But if the grandmother from the mother's side is closer than the one from the father's side, the entire inheritance belongs to the grandmother from the mother's side, and the grandmother from the father's side is entitled to nothing. As narrated through the chain of transmission from ʿAbd al-Razzāq, who narrated from Maʿmar, from Qatādah, from Saʿīd ibn al-Musayyab, from Zayd ibn Thābit, who said: "If the grandmother from the mother's side is closer, she has greater right to it. If she is more distant, they share equally."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ، وَحُمَيْدٍ عَنْ (أَهْلِ الْمَدِينَةِ) ، قَالُوا: إِذَا كَانَتْ جَدَّتَانِ مِنْ قِبَلِ الْأُمِّ وَمِنْ قِبَلِ الْأَبِ، فَإِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأُمِّ أَقْرَبَ فَهِيَ أَحَقُّ بِالسُّدُسِ، وَإِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأَبِ أَقْرَبَ فَالسُّدُسُ بَيْنَهُمَا.

L27729 And through the narration of Ḥammād ibn Salamah from Yaḥyā ibn Saʿīd and Ḥumayd, from (the people of Medina), they said: If there are two grandmothers - one from the mother's side and one from the father's side - then if the maternal grandmother is closer in kinship, she is exclusively entitled to the sixth. But if the paternal grandmother is closer in kinship, the sixth is divided between both of them.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ قَالَ: أَدْرَكْت خَارِجَةَ بْنَ زَيْدٍ، وَطَلْحَةَ بْنَ عَبْدِ اللَّهِ بْنِ عَوْفٍ، وَسُلَيْمَانَ بْنَ يَسَارٍ، يَقُولُونَ: إذَا كَانَتْ جَدَّتَانِ مِنْ قِبَلِ الْأَبِ وَمِنْ قِبَلِ الْأُمِّ، فَإِنْ كَانَتْ الَّتِي مِنْ قِبَلِ الْأُمِّ أَقْرَبَ فَهِيَ أَحَقُّ بِالسُّدُسِ، وَإِنْ كَانَتْ أَبْعَدَ: فَهُمَا سَوَاءٌ. وَهُوَ قَوْلُ عَطَاءٍ - وَبِهِ يَقُولُ مَالِكٌ، وَالْأَوْزَاعِيُّ، وَرُوِيَ عَنْ الشَّافِعِيِّ.

L27730 And through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Abū al-Zinād, who said: I encountered Khārijah ibn Zayd, Ṭalḥah ibn ʿAbd Allāh ibn ʿAwf, and Sulaymān ibn Yasār, who stated: If there are two grandmothers - one from the father's side and one from the mother's side - then if the one from the mother's side is closer, she is more entitled to the sixth. If she is more distant, they are equal. This is the opinion of ʿAṭāʾ, and according to this position speak Mālik, al-Awzāʿī, while it is narrated from al-Shāfiʿī.

وَقَوْلٌ خَامِسٌ: وَهُوَ أَيَّتُهُنَّ كَانَتْ أَقْرَبَ فَهِيَ أَحَقُّ بِالْمِيرَاثِ. كَمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ، وَمَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ، فَذَكَرَ تَوْرِيثَ أَبِي بَكْرٍ لِلْجَدَّةِ مِنْ قِبَلِ الْأَبِ أَوْ مِنْ قِبَلِ الْأُمِّ، وَفِيهِ: فَلَمَّا كَانَتْ خِلَافَةُ عُمَرَ جَاءَتْ الْجَدَّةُ الَّتِي يُخَالِفُهَا، فَقَالَ عُمَرُ: إنَّمَا كَانَ الْقَضَاءُ فِي غَيْرِك، وَلَكِنْ إذَا اجْتَمَعْتُمَا فَالسُّدُسُ بَيْنَكُمَا، وَأَيُّكُمَا خَلَتْ بِهِ فَهُوَ لَهَا

L27731 The fifth opinion is that whichever of them is closer in relation has the greater right to inheritance. As we have reported through the narration of Sufyan and Maʿmar from Al-Zuhri from Qabisah ibn Dhu'ayb, who mentioned Abu Bakr's ruling to assign inheritance to a grandmother from the father's side or the mother's side. The narration states: During Umar's caliphate, a grandmother whose claim was disputed came to him. Umar said: "The judicial decision was only concerning someone other than you. However, if two of you are present together, the sixth share is allocated between you both. Whichever of you is the only one present to claim it, it belongs to her."

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ هُوَ الثَّوْرِيُّ - عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ عَمَّارِ بْنِ أَبِي عَمَّارٍ عَنْ زَيْدِ بْنِ ثَابِتٍ: أَنَّهُ كَانَ يُوَرِّثُ الْقُرْبَى مِنْ الْجَدَّاتِ.

L27732 From the chain of Waki', who narrated to us from Sufyan (al-Thawri), from Humaid al-Tawil, from 'Ammar ibn Abi 'Ammar, from Zayd ibn Thabit: that he used to grant inheritance to relatives on the grandmothers' side.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُحَمَّدُ بْنُ سَالِمٍ عَنْ الشَّعْبِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ وَزَيْدَ بْنَ ثَابِتٍ كَانَا يَجْعَلَانِ السُّدُسَ لِلْقُرْبَى مِنْهُمَا - يَعْنِي الْجَدَّتَيْنِ.

L27733–27734 And via the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us, from Muḥammad ibn Sālim, from al-Shaʿbī: that ʿAlī ibn Abī Ṭālib and Zayd ibn Thābit would assign the sixth share to close relatives from both of them—meaning the two grandmothers.

L27735 From the path of Al-Ḥajjāj ibn Al-Minḥāl, narrated to us Ḥammād ibn Zayd from Ayyūb Al-Sikhtiyānī from Muḥammad ibn Sīrīn regarding grandmothers. He said: If there is one grandmother, one-sixth is allotted to her. If there are two, the one-sixth is divided between them. If there are three, the one-sixth is divided among them. If there are four, the one-sixth is divided among them. Whichever of them is closest in kinship has priority among them. It is merely a discretionary share.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ فِي الْجَدَّاتِ قَالَ: إنْ كَانَتْ وَاحِدَةً فَالسُّدُسُ لَهَا، وَإِنْ كَانَتْ اثْنَتَيْنِ فَالسُّدُسُ بَيْنَهُمَا فَإِنْ كُنَّ ثَلَاثًا فَالسُّدُسُ بَيْنَهُنَّ، وَإِنْ كُنَّ أَرْبَعًا فَالسُّدُسُ بَيْنَهُنَّ، وَأَيَّتُهُنَّ كَانَتْ أَقْرَبَ فَهِيَ أَحَقُّ، إنَّمَا هِيَ طُعْمَةٌ.

L27736 And this is also the view of al-Ḥasan al-Baṣrī, Makḥūl, Abū Ḥanīfah and his disciples, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Sharīk, and Dāwūd—this opinion being the better-known of the two attributed to al-Shāfiʿī.

وَبِهِ يَقُولُ الْحَسَنُ الْبَصْرِيُّ، وَمَكْحُولٌ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَشَرِيكٌ، وَدَاوُد - وَهُوَ أَشْهَرُ قَوْلَيْ الشَّافِعِيِّ.

L27737 Abu Muhammad said: As for the second opinion we mentioned from Ibn Mas'ud, the third we mentioned from Zufar, and the fourth preferred by Malik—these are opinions for which there is no evidence to validate any of them: neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of a companion whom no one opposes, nor consensus, nor deductive reasoning, nor analogy, nor an opinion with a valid basis.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْقَوْلُ الثَّانِي الَّذِي ذَكَرْنَا عَنْ ابْنِ مَسْعُودٍ، وَالْقَوْلُ الثَّالِثُ الَّذِي ذَكَرْنَا عَنْ زُفَرَ، وَالرَّابِعُ الَّذِي اخْتَارَهُ مَالِكٌ: فَأَقْوَالٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا: لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ لَا مُخَالِفَ لَهُ، وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ نَظَرٍ، وَلَا قِيَاسٍ وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ.

L27738 The astonishment lies in the Malikis' *taqlid* of the opinion of the first Zayd in this matter, to the exclusion of the opinion of the second Zayd. This is truly perplexing. Thus, only the first opinion and this other opinion remain. We found among the arguments of those who upheld the first opinion the assertion that a grandmother is a mother; therefore, all of them are mothers, and all of them are heirs.

وَالْعَجَبُ مِنْ تَقْلِيدِ الْمَالِكِيِّينَ لِقَوْلِ زَيْدٍ فِي ذَلِكَ دُونَ قَوْلِ زَيْدٍ الثَّانِي، فَهَذَا عَجَبٌ جِدًّا، فَلَمْ يَبْقَ إلَّا الْقَوْلُ الْأَوَّلُ، وَهَذَا الْآخَرُ. فَوَجَدْنَا مِنْ حُجَّةِ مَنْ ذَهَبَ إلَى الْقَوْلِ الْأَوَّلِ أَنْ يَقُولَ: الْجَدَّةُ أُمٌّ، فَكُلُّهُنَّ أُمٌّ، وَكُلُّهُنَّ وَارِثَةٌ.

L27739 Ali said: We found the argument for the other opinion to be that the inheritance of the father and mother has been validly established by the Quran. Thus, the first mother found and the first father found are those whose inheritance is obligatory. It is impermissible to bypass them and proceed to a mother or father more distant than them, since no textual ruling has established such an obligation whatsoever—and this is the truth—and with Allah the Exalted lies all success.

قَالَ عَلِيٌّ: وَوَجَدْنَا حُجَّةَ الْقَوْلِ الْآخَرِ أَنَّ مِيرَاثَ الْأَبِ وَالْأُمِّ قَدْ صَحَّ بِالْقُرْآنِ، فَأَوَّلُ أُمٍّ تُوجَدُ، وَأَوَّلُ أَبٍ يُوجَدُ، فَمِيرَاثُهُمَا وَاجِبٌ، وَلَا تَجُوزُ تَعْدِيَتُهُمَا إلَى أُمٍّ وَلَا إلَى أَبٍ أَبْعَدَ مِنْهُمَا، إذْ لَمْ يُوجِبْ ذَلِكَ نَصٌّ أَصْلًا - وَهَذَا هُوَ الْحَقُّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27740 As for whether the grandmother (the father's mother) inherits while the

father is alive: a group held that she does not inherit. It was narrated to us through Abd al-Razzaq, from Sufyan al-Thawri, from Muhammad ibn Salim, from al-Shaʿbi, who said: Ali ibn Abi Talib and Zayd ibn Thabit did not grant the grandmother an inheritance share when the father is alive.

وَأَمَّا هَلْ تَرِثُ الْجَدَّةُ أُمُّ الْأَبِ وَالْأَبُ حَيٌّ؟ فَطَائِفَةٌ قَالَتْ: لَا تَرِثُ. رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَمَّدِ بْنِ سَالِمٍ عَنْ الشَّعْبِيِّ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ، وَزَيْدُ بْنُ ثَابِتٍ لَا يُوَرِّثَانِ الْجَدَّةَ مَعَ ابْنِهَا.

L27741 And through him to ʿAbd al-Razzāq from Maʿmar from al-Zuhrī: that ʿUthmān ibn ʿAffān did not entitle the grandmother to inheritance if her son is alive. Al-Zuhrī said: And the people are upon it.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ لَمْ يُوَرِّثْ الْجَدَّةَ إنْ كَانَ ابْنُهَا حَيًّا - قَالَ الزُّهْرِيُّ: وَالنَّاسُ عَلَيْهِ.

L27742–27743 Through the chain of narration of ʿAbd al-Razzāq from Maʿmar from Qatāda from Saʿīd ibn al-Musayyab that Zayd ibn Thābit held the opinion that the grandmother - the father's mother - does not receive inheritance rights while her son is alive.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ زَيْدَ بْنَ ثَابِتٍ كَانَ لَا يُوَرِّثُ الْجَدَّةَ أُمَّ الْأَبِ وَابْنُهَا حَيٌّ.

L27744 And through the chain of Ibn Wahb, from someone he trusted, from Saʿīd ibn al-Musayyib, who said: Ibn Masʿūd stated regarding a grandmother whose son is alive: "Her [inheritance] share is barred by the son through whom her lineage is established [when he is alive]."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَمَّنْ يَثِقُ بِهِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَالَ ابْنُ مَسْعُودٍ فِي الْجَدَّةِ وَابْنُهَا حَيٌّ: مَنَعَهَا الَّذِي بِهِ تُمُّتُّ.

L27745 From the narration chain of Saʿīd ibn Manṣūr: Ḥammād ibn Zayd narrated to us from Kathīr ibn Shinẓīr from ʿAṭāʾ that Zayd ibn Thābit said: A man precludes his mother [from her share] just as a mother precludes her own mother from receiving the sixth—Kathīr ibn Shinẓīr opines she receives nothing—and the ḥadīth of Ibn Wahb is mursal. This has been narrated from Saʿd ibn Abī Waqqāṣ and al-Zubayr ibn al-ʿAwwām.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ كَثِيرِ بْنِ شِنْظِيرٍ عَنْ عَطَاءٍ أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: يَحْجُبُ الرَّجُلُ أُمَّهُ كَمَا تَحْجُبُ الْأُمُّ أُمَّهَا مِنْ السُّدُسِ - كَثِيرٌ لَا شَيْءَ - وَحَدِيثُ ابْنِ وَهْبٍ مُرْسَلٌ - وَرُوِيَ هَذَا عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ، وَالزُّبَيْرِ بْنِ الْعَوَّامِ.

L27746 This is the position of Saʿīd ibn al-Musayyib, Ṭawūs, and al-Shaʿbī—a view also held by Sufyān, al-Awzāʿī, Mālik, and Abū Ḥanīfah. Al-Shāfiʿī adheres to it as well, and it is narrated from Dāwūd.

وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَطَاوُسٍ، وَالشَّعْبِيِّ - وَبِهِ يَقُولُ سُفْيَانُ، وَالْأَوْزَاعِيُّ، وَمَالِكٌ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَرُوِيَ عَنْ دَاوُد.

L27747 The second opinion is that she inherits. As narrated to us through the chain of Saʿīd ibn Manṣūr—Sufyān narrated to us from Ibn Abī Laylā from al-Shaʿbī, who said: Ibn Masʿūd said: "The first grandmother to inherit in Islam did so through her son."

وَالْقَوْلُ الثَّانِي: أَنَّهَا تَرِثُ. كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، نا سُفْيَانُ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ قَالَ: قَالَ ابْنُ مَسْعُودٍ: إنَّ أَوَّلَ جَدَّةٍ وَرِثَتْ فِي الْإِسْلَامِ كَانَتْ مَعَ ابْنِهَا.

قَالَ أَبُو مُحَمَّدٍ: أَقَلُّ مَا فِي هَذَا أَنْ يُرَادَ خِلَافُ أَبِي بَكْرٍ.

وَمِنْ طَرِيقِ وَكِيعٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ قَالَ: مَاتَ ابْنٌ لِحَسَكَةَ الْحَبَطِيِّ فَتَرَكَ حَسَكَةَ وَأُمًّا لِحَسَكَةَ، فَكَتَبَ أَبُو مُوسَى الْأَشْعَرِيُّ إِلَى عُمَرَ فِي ذَلِكَ؟ فَكَتَبَ إِلَيْهِ عُمَرُ: وَرِّثْهَا مَعَ ابْنِهَا السُّدُسَ

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ ابْنِ مَسْعُودٍ: أَنَّهُ وَرَّثَ الْجَدَّةَ مَعَ ابْنِهَا، قَالَ وَكِيعٌ: وَنَا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: لَا يَحْجُبُ الْجَدَّاتِ إِلَّا الْأُمُّ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا سَلَمَةُ بْنُ عَلْقَمَةَ عَنْ حُمَيْدِ بْنِ هِلَالٍ الْعَدَوِيِّ عَنْ رَجُلٍ مِنْهُمْ: أَنَّ رَجُلًا مِنْهُمْ مَاتَ وَتَرَكَ أُمَّ أَبِيهِ، وَأُمَّ أُمِّهِ، وَأَبُوهُ حَيٌّ فَوُلِّيت تَرِكَتَهُ، فَأَعْطَيْت السُّدُسَ أُمَّ أُمِّهِ، وَتَرَكْت أُمَّ أَبِيهِ؟ فَقِيلَ لِي: كَانَ يَنْبَغِي لَك أَنْ تُشَرِّكَ بَيْنَهُمَا؟ فَأَتَيْت عِمْرَانَ بْنَ الْحُصَيْنِ فَسَأَلْته؟ فَقَالَ: أَشْرِكْ بَيْنَهُمَا فِي السُّدُسِ؟ فَفَعَلْت

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ كَثِيرِ بْنِ شِنْظِيرٍ عَنْ الْحَسَنِ، وَابْنِ سِيرِينَ أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ وَرَّثَ أُمَّ حَسَكَةَ مِنْ ابْنِ حَسَكَةَ وَحَسَكَةُ حَيٌّ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ بِلَالِ بْنِ أَبِي بُرْدَةَ أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ كَانَ يُوَرِّثُ الْجَدَّةَ مَعَ ابْنِهَا - وَقَضَى بِذَلِكَ بِلَالٌ - وَهُوَ أَمِيرٌ عَلَى الْبَصْرَةِ - وَهُوَ قَوْلُ عَامِرِ بْنِ وَاثِلَةَ.

L27748 Abu Muhammad said: At the very least, this signifies Abu Bakr's difference of opinion.

L27749 And through the route of Waki', Ḥammād ibn Salamah narrated from ʿUbayd Allāh ibn Ḥumayd ibn ʿAbd al-Raḥmān from his father, who said: A son of Ḥasakah al-Ḥabṭī died, leaving behind Ḥasakah and the mother of Ḥasakah. Abū Mūsā al-Ashʿarī wrote to ʿUmar concerning this, so ʿUmar wrote to him: "Grant her a sixth of the inheritance alongside her son."

L27750 And via the chain of Waki', it was narrated by Sufyan al-Thawri from Isma'il ibn Abi Khalid from Abu 'Amr al-Shaybani from Ibn Mas'ud that he granted the grandmother inheritance alongside her son. Waki' said: And it was narrated by al-A'mash from Ibrahim al-Nakha'i from Ibn Mas'ud, who said: "Grandmothers are not excluded from inheritance except by the mother."

L27751 From the chain of Saʿīd ibn Manṣūr: Hushaym reported to us from Salamah ibn ʿAlqamah from Ḥumayd ibn Hilāl al-ʿAdawī from a man among them: A man from them died, leaving his paternal grandmother, his maternal grandmother, and his father alive. I was appointed to manage his estate, so I gave the sixth share to his maternal grandmother and excluded his paternal grandmother. It was said to me: "Should you not have made them share equally?" I then went to ʿImrān ibn al-Ḥuṣayn and asked him. He said: "Make them share the sixth between them?" So I did.

L27752 From the transmission of Saʿīd ibn Manṣūr: Ḥammād ibn Zayd narrated to us from Kathīr ibn Shinẓīr from al-Ḥasan and Ibn Sīrīn that Abū Mūsā al-Ashʿarī granted Umm Ḥasakah inheritance rights from the son of Ḥasakah while Ḥasakah was still alive.

L27753–27754 And through the chain of ʿAbd al-Razzāq from Maʿmar from Bilāl ibn Abī Burdah: Abū Mūsā al-Ashʿarī used to grant inheritance rights to the grandmother alongside her son – and Bilāl issued this ruling while he was the governor of Basra – and this is the opinion of ʿĀmir ibn Wāthilah.

L27755 From ʿAbd al-Razzāq, who reported to us from Hishām ibn Ḥassān and Maʿmar. Hishām said: from Anas ibn Sīrīn, and Maʿmar said: from Ayyūb

al-Sikhtiyānī from Muḥammad ibn Sīrīn. Anas and Muḥammad subsequently agreed that Shurayḥ used to grant inheritance to the grandmother alongside her son while the son was alive.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا هِشَامُ بْنُ حَسَّانَ، وَمَعْمَرٌ، قَالَ هِشَامٌ: عَنْ أَنَسِ بْنِ سِيرِينَ، وَقَالَ مَعْمَرٌ: عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، ثُمَّ اتَّفَقَ أَنَسٌ، وَمُحَمَّدٌ: عَلَى أَنَّ شُرَيْحًا كَانَ يُوَرِّثُ الْجَدَّةَ مَعَ ابْنِهَا وَهُوَ حَيٌّ.

L27756 And from the chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Abū al-Shaʿthāʾ Jābir ibn Zayd, who said: The grandmother inherits alongside her son.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ قَالَ: تَرِثُ الْجَدَّةُ مَعَ ابْنِهَا.

L27757 Through the chain of Sa’id ibn Mansur, who narrated from both Khalid and Mansur—and both of them narrated from Anas ibn Sirin—[it is reported that] he said: I witnessed Shurayh when a case was brought to him concerning a man who left two grandmothers—the mother of his mother and the mother of his father—while his father was alive. He joined the two grandmothers in sharing the sixth portion.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدٌ، وَمَنْصُورٌ، كِلَاهُمَا عَنْ أَنَسِ بْنِ سِيرِينَ قَالَ: شَهِدْت شُرَيْحًا أَتَى فِي رَجُلٍ تَرَكَ جَدَّتَيْهِ: أُمَّ أُمِّهِ، وَأُمَّ أَبِيهِ، وَأَبُوهُ حَيٌّ: فَأَشْرَكَ بَيْنَ جَدَّتَيْهِ فِي السُّدُسِ.

L27758 From the transmission of Saʿīd ibn Manṣūr: Hushaym narrated to us, Ḥumayd narrated to us, from al-Ḥasan and Ibn Sīrīn regarding the grandmother: They both ruled that she inherits alongside her son. Thus, they are as you see: the position of Abū Bakr, ʿUmar, Abū Mūsā al-Ashʿarī, Ibn Masʿūd, ʿImrān ibn al-Ḥuṣayn, ʿĀmir ibn Wāthila, Jābir ibn Zayd, Shurayḥ, al-Ḥasan, and Ibn Sīrīn.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا حُمَيْدٌ عَنْ الْحَسَنِ، وَابْنِ سِيرِينَ فِي الْجَدَّةِ: أَنَّهُمَا كَانَا يُوَرِّثَانِهَا مَعَ ابْنِهَا، فَهُمْ كَمَا تَرَى: خِلَافَةُ أَبِي بَكْرٍ، وَعُمَرَ، وَأَبِي مُوسَى الْأَشْعَرِيِّ، وَابْنِ مَسْعُودٍ، وَعِمْرَانَ بْنِ الْحُصَيْنِ، وَعَامِرِ بْنِ وَاثِلَةَ، وَجَابِرِ بْنِ زَيْدٍ، وَشُرَيْحٍ، وَالْحَسَنِ، وَابْنِ سِيرِينَ.

L27759 This is the opinion of ʿUrwah ibn al-Zubayr, Sulaymān ibn Yasār, Muslim ibn Yasār, ʿAṭāʾ ibn Abī Rabāḥ, al-Musayyib, Sawwār ibn ʿAbd Allāh, ʿUbayd Allāh ibn al-Ḥasan, Sharīk ibn ʿAbd Allāh, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhwayh, and the jurists of Basra - and it was also narrated from Dāwūd. We found the proponents of the first opinion citing as evidence the report we mentioned through Ibn Wahb’s chain from one who heard ʿAbd al-Wahhāb ibn Mujāhid ibn Jabr narrate from his father from ʿAlī: “The Messenger of Allah (peace be upon him) granted the two grandmothers one-sixth when there was no mother or any closer in degree than them.”

وَهُوَ قَوْلُ عُرْوَةَ بْنِ الزُّبَيْرِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَمُسْلِمِ بْنِ يَسَارٍ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، وَالْمُسَيِّبِ، وَسَوَّارِ بْنِ عَبْدِ اللَّهِ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَشَرِيكِ بْنِ عَبْدِ اللَّهِ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَفُقَهَاءِ الْبَصْرَةِ - وَرُوِيَ عَنْ دَاوُد أَيْضًا. فَوَجَدْنَا أَهْلَ الْقَوْلِ الْأَوَّلِ يَحْتَجُّونَ بِالْخَبَرِ الَّذِي ذَكَرْنَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَمَّنْ سَمِعَ عَبْدَ الْوَهَّابِ بْنِ مُجَاهِدِ بْنِ جَبْرٍ عَنْ أَبِيهِ عَنْ عَلِيٍّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْعَمَ جَدَّتَيْنِ السُّدُسَ إذَا لَمْ تَكُنْ أُمٌّ، أَوْ شَيْءٌ دُونَهُمَا» .

L27760 Abū Muḥammad said: This is a poor disconnected report between Ibn Wahb and ʿAbd al-Wahhāb. Furthermore, ʿAbd al-Wahhāb is abandoned. Moreover, there is no authentic hearing by Mujāhid from ʿAlī. Additionally, it contains no explicit mention of the father.

قَالَ أَبُو مُحَمَّد: هَذَا خَبَرُ سُوءٍ مُنْقَطِعٌ مَا بَيْنَ ابْنِ وَهْبٍ، وَعَبْدِ الْوَهَّابِ، ثُمَّ عَبْدُ الْوَهَّابِ مَتْرُوكٌ، ثُمَّ لَا يَصِحُّ لِمُجَاهِدٍ سَمَاعٌ مِنْ عَلِيٍّ، ثُمَّ لَيْسَ فِيهِ بَيَانٌ بِذِكْرِ الْأَبِ.

L27761 They also said: When the father is barred, it becomes obligatory that the mother be barred as well.

وَقَالُوا أَيْضًا: لَمَّا حَجَبَ أَبَاهُ وَجَبَ أَنْ يَحْجُبَ أُمَّهُ.

L27762–27764 Ali said: And this is analogy, and all analogy is invalid. Then, even if it were valid, this would be the utmost corruption from it. This is because the son only excludes his father because the son is a closer residuary heir than the father, while the grandmother does not inherit as a residuary heir but rather through a fixed share. Therefore, his legal category differs from hers.

قَالَ عَلِيٌّ: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ فَاسِدٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ غَايَةَ الْفَسَادِ، لِأَنَّهُ إِنَّمَا يَحْجُبُ أَبَاهُ بِأَنَّهُ عَاصِبٌ أَوْلَى مِنْهُ، وَالْجَدَّةُ لَا تَرِثُ بِالتَّعْصِيبِ إِنَّمَا تَرِثُ بِالسَّهْمِ، فَبَابُهُ غَيْرُ بَابِهَا.

L27765 Then they are countered by being told: Just as the mother is not excluded, so too the grandmother is not excluded; and just as the maternal grandmother is not excluded, so too the paternal grandmother is not excluded.

ثُمَّ يُعَارَضُونَ بِأَنْ يُقَالَ لَهُمْ: كَمَا لَا تُحْجَبُ الْأُمُّ كَذَلِكَ لَا تُحْجَبُ الْجَدَّةُ، وَكَمَا لَا تُحْجَبُ أُمُّ الْأُمِّ كَذَلِكَ لَا تُحْجَبُ أُمُّ نَفْسِهِ.

L27766 They said: Just as the mother excludes her mother, does the father similarly exclude his mother? We responded: This is analogy, and all analogy is invalid. Moreover, even if analogy were valid, this particular case would still be invalid, for the mother only excludes her mother because she is a closer mother than her (the grandmother), whereas the father does not share this characteristic.

وَقَالُوا: كَمَا تَحْجُبُ الْأُمُّ أُمَّهَا كَذَلِكَ يَحْجُبُ الْأَبُ أُمَّهُ؟ قُلْنَا: هَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ بَاطِلًا؛ لِأَنَّ الْأُمَّ إِنَّمَا حَجَبَتْ أُمَّهَا لِأَنَّهَا أُمٌّ أَقْرَبُ مِنْهَا، وَلَيْسَ الْأَبُ كَذَلِكَ.

L27767 Then it is said to them: Just as the mother does not exclude the grandfather - indeed, she excludes only the grandmothers - similarly, the father does not exclude the grandmothers; he excludes only the grandfather.

ثُمَّ يُقَالُ لَهُمْ: كَمَا لَا تَحْجُبُ الْأُمُّ الْجَدَّ - وَإِنَّمَا تَحْجُبُ الْجَدَّاتِ - كَذَلِكَ لَا يَحْجُبُ الْأَبُ الْجَدَّاتِ، وَإِنَّمَا يَحْجُبُ الْجَدَّ فَقَطْ.

L27768 They said: “The one through whom she establishes her relation excludes her”—but this is baseless, as it is a statement not mandated by the Quran or the Sunnah. We have encountered a paternal grandmother whose relation is through a father who is a slave, yet he does not exclude her according to them, even though she establishes her relation through him.

وَقَالُوا: حَجَبَهَا الَّذِي تُدْلِي بِهِ - وَهَذَا لَيْسَ بِشَيْءٍ؛ لِأَنَّهُ قَوْلٌ لَمْ يُوجِبْهُ قُرْآنٌ وَلَا سُنَّةٌ، وَقَدْ وَجَدْنَا الْجَدَّةَ مِنَ الْأَبِ يَكُونُ الْأَبُ عَبْدًا فَلَا يَحْجُبُهَا عِنْدَهُمْ وَهِيَ تُدْلِي بِهِ.

L27769 If they say: “Does he exclude her from inheritance only if he receives a share as an heir?” We reply: This is an addition not necessitated by any proof from

فَإِنْ قَالُوا: إِنَّمَا يَحْجُبُهَا إِذَا وَرِثَ؟ قُلْنَا: هَذِهِ زِيَادَةٌ لَمْ يُوجِبْهَا بُرْهَانُ قُرْآنٍ وَلَا سُنَّةٍ، فَهِيَ لَا شَيْءَ، إِنَّمَا هِيَ دَعْوَى لَا نُوَافِقُكُمْ عَلَيْهَا، فَهِيَ سَاقِطَةٌ مَا لَمْ يُوجِبْهَا قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ.

the Quran or the Sunnah, thus it holds no validity. It is merely a claim with which we do not concur; it is invalid unless mandated by the Quran, the Sunnah, or Ijma.

وَقَالُوا: مِيرَاثُهَا مَعَ وُجُودِ الْأَبِ مُخْتَلَفٌ فِيهِ؟ قُلْنَا: نَعَمْ، فَإِنْ لَمْ يُوجِبْ مِيرَاثَهَا بُرْهَانٌ، وَإِلَّا فَلَا مِيرَاثَ لَهَا.

L27770 "They said: 'Is her inheritance disputed when the father is present?' We replied: 'Yes. If there is no evidence mandating her inheritance, she receives none; otherwise, she does.'"

قَالَ أَبُو مُحَمَّد: فَسَقَطَ هَذَا الْقَوْلُ، إِذْ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَبَقِيَ أَنْ نُثْبِتَ صِحَّةَ قَوْلِنَا بِحَوْلِ اللَّهِ وَقُوَّتِهِ فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. قَدْ جَاءَ نَصُّ الْقُرْآنِ بِإِيجَابِ مِيرَاثِ الْأَبَوَيْنِ سَوَاءً، فَوَجَبَ بِالْقُرْآنِ مِيرَاثُ الْأَبِ وَالْجَدِّ، وَأَبِي الْجَدِّ، وَجَدِّ الْجَدِّ مَعَ الْأُمِّ، لِأَنَّهُمْ أَبَوَانِ، وَوَجَبَ مِيرَاثُ الْجَدَّةِ مَعَ الْجَدَّةِ كَمَا قُلْنَا، وَمَعَ الْأَبِ، لِأَنَّهُمَا أَبَوَانِ، فَلَيْسَ مِيرَاثُ الْأَبِ أَوْلَى مِنْ مِيرَاثِ الْأُمِّ وَأُمِّهَا أُمِّهِ - وَهَذَا نَصٌّ لَا يَسَعُ خِلَافُهُ.

L27771 Abu Muhammad said: This opinion is dismissed, as there is no proof of its validity. It remains for us to establish the validity of our claim by Allah's might and power. Thus, we say—and with Allah, the Exalted, is success—the Quranic text explicitly mandates the equal inheritance of both parents. Therefore, by the Quran, the inheritance of the father, grandfather, great-grandfather, and great-great-grandfather alongside the mother is obligatory, as they are parents. Likewise, the inheritance of the grandmother alongside another grandmother, as we stated, and alongside the father is obligatory, because they are parents. Thus, the father's inheritance is not more entitled than the inheritance of the mother and her mother (the maternal grandmother) alongside his mother (the paternal grandmother). This is an explicit text that leaves no room for disagreement.

وَكَتَبَ إِلَيَّ أَبُو الْحَسَنِ عَلِيُّ بْنُ إِبْرَاهِيمَ التَّبْرِيزِيُّ نا أَبُو الْحُسَيْنِ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْبَصْرِيُّ الْمَعْرُوفُ بِابْنِ اللَّبَّانِ نا أَحْمَدُ بْنُ كَامِلِ بْنِ شَجَرَةَ الْقَاضِي نا أَحْمَدُ بْنُ عُبَيْدِ اللَّهِ نا يَزِيدُ بْنُ هَارُونَ نا مُحَمَّدُ بْنُ سَالِمٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، رَفَعَهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ وَرَّثَ جَدَّةً وَابْنُهَا حَيٌّ» .

L27772–27774 Abu al-Hasan Ali ibn Ibrahim al-Tabrizi wrote to me: Abu al-Husayn Muhammad ibn Abdullah al-Basri, known as Ibn al-Labban, narrated; Ahmad ibn Kamil ibn Shajarah al-Qadi narrated; Ahmad ibn Ubayd Allah narrated. Yazīd ibn Hārūn narrated to us: Muḥammad ibn Sālim narrated to us from al-Shaʿbī, from Masrūq, from ʿAbd Allāh ibn Masʿūd, who attributed it to the Prophet (ﷺ), that he assigned a grandmother a share of inheritance even though her son [the father of the deceased] was alive.

L27775 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from al-Ashʿath—who is Ibn ʿAbd al-Malik al-Ḥumrānī—from Ibn Sīrīn, who said: "The first grandmother to be allocated a share by the Messenger of Allah (peace and blessings be upon him) was the paternal grandmother, in the presence of her son as an heir."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَشْعَثِ - هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيُّ - عَنْ ابْنِ سِيرِينَ قَالَ: «أَوَّلُ جَدَّةٍ أَطْعَمَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُمُّ أَبٍ مَعَ ابْنِهَا» .

L27776 From the chain of Al-Ḥajjāj ibn Al-Minhāl: Abū Yaḥyā Bakr ibn Muḥammad Al-Ḍarīr (the Blind) informed us from Al-Ashʿath ibn ʿAbd al-Malik from Al-Ḥasan al-Baṣrī, who said: "The first grandmother to be granted the sixth share during the time of the Messenger of Allah (peace be upon him) [was one] while her son was alive."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو يَحْيَى بَكْرُ بْنُ مُحَمَّدٍ الضَّرِيرُ عَنْ الْأَشْعَثِ بْنِ عَبْدِ الْمَلِكِ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: «أَوَّلُ جَدَّةٍ أُطْعِمَتْ السُّدُسَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَابْنُهَا حَيٌّ» .

L27777 Ali said: Our agreed position with the Hanafis and Malikis is that they hold: "The musnad and the mursal are equivalent." These two are mursal narrations, yet a valid musnad narration exists; let them take both into account.

قَالَ عَلِيٌّ: عَهْدُنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَقُولُونَ: الْمُسْنَدُ وَالْمُرْسَلُ سَوَاءٌ، وَهَذَانِ مُرْسَلَانِ وَمُسْنَدٌ صَالِحٌ، فَلْيَأْخُذُوا بِهِمَا.

L27778 If they say: "Perhaps her son was the uncle of the deceased?" We reply: The legal ruling is not subject to "perhaps," but her son is either the father or the uncle. Whichever of the two she inherited along with him, restricting [the ruling] to the uncle is impermissible, as it constitutes a false claim, a judgment based on conjecture, and a weak interpretation of the text—for there is no relevance here to the uncle's life or death. And success comes only from Allah, the Exalted.

فَإِنْ قَالُوا: لَعَلَّ ابْنَهَا كَانَ عَمَّ الْمَيِّتِ؟ قُلْنَا: لَا يَرِدُ الدِّينُ بِ " لَعَلَّ " لَكِنَّ ابْنَهَا هُوَ الْأَبُ وَالْعَمُّ، أَيُّهُمَا كَانَتْ وَرِثَتْ مَعَهُ، وَتَخْصِيصُ الْعَمِّ بِذَلِكَ لَا يَجُوزُ، لِأَنَّهُ دَعْوَى كَاذِبَةٌ، وَقَطْعٌ بِالظَّنِّ، وَتَفْسِيرٌ بَارِدٌ لِلْخَبَرِ، لِأَنَّهُ لَا فَائِدَةَ هَاهُنَا فِي حَيَاةِ الْعَمِّ وَلَا فِي مَوْتِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[فَصْلٌ فِي الحجب]

L27779 **Chapter on Exclusion**

فَصْلٌ

L27780 Chapter

قَالَ أَبُو مُحَمَّدٍ: وَلَا خِلَافَ فِي أَنَّ الْأَبَ لَا يَحْجُبُ أُمَّ الْأُمِّ، وَلَا أُمَّ أُمِّ الْأُمِّ فَصَاعِدًا، وَقَدْ قَالَ بَعْضُ التَّابِعِينَ: إنَّ الْجَدَّ أَبَا الْأَبِ يَحْجُبُ جَدَّةَ الْأَبِ أُمَّ أُمِّهِ - وَهَذَا قَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27781 Abu Muhammad said: There is no dispute that the father does not exclude the maternal grandmother from inheritance, nor the maternal great-grandmother and those above her in the maternal line. Some of the Tabi'in said: The paternal grandfather excludes from inheritance his own maternal grandmother (the mother of his mother) – and this is an opinion unsupported by evidence. And by Allah, the Exalted, is all success.

L27782 Issue 1731: Neither male siblings nor female siblings - whether they are

full siblings, paternal half-siblings, or maternal half-siblings - inherit in the presence of the grandfather (the father's father), nor in the presence of the great-grandfather [father of the aforementioned grandfather], nor in the presence of the great-great-grandfather [grandfather of his grandfather]. The aforementioned grandfather assumes the status of a father when the father is absent, and each one of them excludes his own father from inheritance.

١٧٣١ - مَسْأَلَةٌ وَلَا تَرِثُ الْإِخْوَةُ الذُّكُورُ وَلَا الْإِنَاثُ، أَشِقَّاءَ كَانُوا أَوْ لِأَبٍ، أَوْ لِأُمٍّ مَعَ الْجَدِّ أَبِي الْأَبِ، وَلَا مَعَ أَبِي الْجَدِّ الْمَذْكُورِ، وَلَا مَعَ جَدِّ جَدِّهِ، وَالْجَدُّ الْمَذْكُورُ أَبٌ إِذَا لَمْ يَكُنْ الْأَبُ، وَكُلُّ وَاحِدٍ مِنْهُمْ يَحْجُبُ أَبَاهُ.

L27783 People have considerable disagreement regarding the paternal grandfather. A group abstained from ruling on it – as we have reliably reported through the strongest chain to Shu'bah from Yaḥyā ibn Sa'īd al-Taymī – of the Rabāb clan – who said: I heard al-Sha'bī narrating from Ibn 'Umar from 'Umar, who said: "Three things I wish the Messenger of Allah (peace and blessings be upon him) had not departed until he clarified for us a definitive ruling concerning them: the paternal grandfather, kalāla, and certain types of riba."

وَلِلنَّاسِ فِي الْجَدِّ اخْتِلَافٌ كَثِيرٌ، فَطَائِفَةٌ تَوَقَّفَتْ فِيهِ -: كَمَا رُوِّينَا بِأَصَحِّ طَرِيقٍ إِلَى شُعْبَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ التَّيْمِيِّ - تَيْمِ الرَّبَابِ - قَالَ: سَمِعْت الشَّعْبِيَّ يُحَدِّثُ عَنْ ابْنِ عُمَرَ عَنْ عُمَرَ، قَالَ: ثَلَاثٌ وَدِدْت أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُقْبَضْ حَتَّى يُبَيِّنَ لَنَا فِيهِنَّ أَمْرًا يُنْتَهَى إلَيْهِ: الْجَدُّ، وَالْكَلَالَةُ، وَأَبْوَابٌ مِنْ أَبْوَابِ الرِّبَا.

L27784–27785 Abu Muhammad said: The absence of the Messenger of Allah—peace and blessings of Allah be upon him—clarifying through the Quran or his Sunnah the rulings concerning the grandfather, kalāla, and riba, as reported from Umar—may Allah be pleased with him—does not entail that such clarification was absent from the rest of the Companions—may Allah be pleased with them. Far is it from Allah that He would impose a religious ruling upon His servants while its clarification remains hidden from all Muslims. Were this so, such a ruling would stand abolished, an obligatory law rendered void, and the religion would be deficient. Yet none of the jurists whom the critics—promoting such a matter—follow in their religious practice, like Abu Hanifa, Malik, and Al-Shafi'i, except that they affirmed: The rulings of the grandfather, riba, and kalāla have indeed been clarified to them—whether through explicit Quranic text, Sunnah, juristic reasoning, or analogy.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ مَغِيبُ بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقُرْآنِ أَوْ بِسُنَّتِهِ لِحُكْمٍ: الْجَدِّ، وَالْكَلَالَةِ، وَالرِّبَا، عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِمُوجِبٍ أَنَّ ذَلِكَ الْبَيَانَ غَابَ عَنْ غَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَحَاشَ لِلَّهِ مِنْ أَنْ يَكُونَ لَهُ حُكْمٌ فِي الدِّينِ افْتَرَضَهُ عَلَى عِبَادِهِ، ثُمَّ غَابَ بَيَانُهُ عَنْ جَمِيعِ أَهْلِ الْإِسْلَامِ، إذَا كَانَ يَكُونُ ذَلِكَ حُكْمًا مِنْ الدِّينِ قَدْ بَطَلَ، وَشَرِيعَةً لَازِمَةً قَدْ سَقَطَتْ، وَلَكَانَ الدِّينُ نَاقِصًا - وَلَيْسَ أَحَدٌ مِنْ الْفُقَهَاءِ الَّذِينَ قَلَّدَهُ - الْمُشَنِّعُونَ بِمِثْلِ هَذَا - دِينُهُمْ كَأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ إلَّا وَهُمْ قَالُوا: بِأَنَّ حُكْمَ الْجَدِّ، وَالرِّبَا، وَالْكَلَالَةِ، قَدْ تَبَيَّنَ لَهُمْ: إمَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ، أَوْ نَظَرٍ أَوْ قِيَاسٍ.

L27786 If a denier rejects this, he cannot refute their statements in all such matters regarding obligations and prohibitions. If their assertion is not based on the clarity of what they have declared, then they would have ruled in religion

فَإِنْ أَنْكَرَ هَذَا مُنْكِرٌ لَمْ يَقْدِرْ عَلَى إنْكَارِ أَقْوَالِهِمْ فِي كُلِّ ذَلِكَ بِالْإِيجَابِ وَالتَّحْرِيمِ، فَإِنْ كَانَ قَوْلُهُمْ ذَلِكَ لَا عَنْ أَنَّهُ يَتَبَيَّنُ لَهُمْ مَا قَالُوهُ مِنْ ذَلِكَ فَقَدْ حَكَمُوا فِي الدِّينِ بِالْهَوَى، وَنَحْنُ نُجِلُّهُمْ عَنْ هَذَا - وَلِلَّهِ الْأَمْرُ مِنْ قَبْلُ وَمِنْ بَعْدُ.

by personal whims—and we hold them too esteemed for such conduct. To Allah belongs the command, before and after.[11]

L27787 From the narration of Hammad ibn Zayd, narrated to us by Ayyub al-Sakhtiyānī, from Humayd ibn Hilal, who said: I asked Sa'id ibn al-Musayyib about an inheritance share involving a grandfather. He replied: "Why are you approaching this—or do you intend by this? Indeed, Umar ibn al-Khattab said: 'The boldest among you in rulings concerning the grandfather is the boldest among you regarding the Hellfire. Only one who dares regarding the grandfather is one who dares regarding the Hellfire.'"

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ حُمَيْدِ بْنِ هِلَالٍ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ فَرِيضَةٍ فِيهَا جَدٌّ؟ فَقَالَ: مَا تَصْنَعُ إلَى هَذَا - أَوْ تُرِيدُ إلَى هَذَا - إنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: أَجْرَؤُكُمْ عَلَى الْجَدِّ أَجْرَؤُكُمْ عَلَى النَّارِ، وَإِنَّمَا يَجْتَرِئُ عَلَى الْجَدِّ مَنْ يَجْتَرِئُ عَلَى النَّارِ.

L27788 Through the chain of Ayyub ibn Sulayman: From Abdullah ibn al-Mubarak, Abd al-A'la, and Abd al-Razzaq—all of whom narrated from Ma'mar, from al-Zuhri, from Abu Salama ibn Abd al-Rahman ibn Awf: That Umar ibn al-Khattab said at the time of his death: "Take note of three things from me: I did not adjudicate anything regarding the grandfather's share in inheritance, I did not state anything concerning *kalāla*, and I did not appoint a successor." These were his words at the time of his death—may Allah be pleased with him.

وَمِنْ طَرِيقِ أَيُّوبَ بْنِ سُلَيْمَانَ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ، وَعَبْدُ الْأَعْلَى، وَعَبْدُ الرَّزَّاقِ، كُلُّهُمْ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ عِنْدَ مَوْتِهِ: احْفَظُوا عَنِّي ثَلَاثًا -: إنِّي لَمْ أَقْضِ فِي الْجَدِّ شَيْئًا، وَلَمْ أَقُلْ فِي الْكَلَالَةِ شَيْئًا، وَلَمْ أَسْتَخْلِفْ أَحَدًا - فَهَذَا قَوْلُهُ عِنْدَ مَوْتِهِ - رَضِيَ اللَّهُ عَنْهُ -.

L27789 From the narration of Waki': I, Sufyan al-Thawri, [narrate] from Abu Ishaq al-Sabi'i, from 'Ubayd ibn 'Amr al-Khariqi, that a man asked 'Ali ibn Abi Talib, "What is the ruling for a fixed share?" He replied, "Bring it forth if there is no grandfather in it."

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عُبَيْدِ بْنِ عَمْرٍو الْخَارِقِيِّ: أَنَّ رَجُلًا سَأَلَ عَلِيَّ بْنَ أَبِي طَالِبٍ عَنْ فَرِيضَةٍ؟ فَقَالَ: هَاتِهَا إنْ لَمْ يَكُنْ فِيهَا جَدٌّ.

L27790 From the narration of Abd al-Razzaq, from Ma'mar, from Ayyub al-Sikhtiyānī, from Nafi', who said: Ibn Umar said, "Those among you most daring toward the seeds of Hellfire are those most daring in disputes."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ قَالَ قَالَ ابْنُ عُمَرَ: أَجْرَؤُكُمْ عَلَى جَرَاثِيمِ جَهَنَّمَ أَجْرَؤُكُمْ عَلَى الْجَدِّ.

L27791–27792 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʿī: He asked Shuraih about a legal inheritance case involving a grandfather and a brother. Repeatedly, he gave him no answer at all, saying: "The authority overseeing him states nothing about the grandfather."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ: أَنَّهُ سَأَلَ شُرَيْحًا عَنْ فَرِيضَةٍ فِيهَا جَدٌّ وَأَخٌ؟ فَلَمْ يُجِبْهُ فِيهَا بِشَيْءٍ مَرَّةً بَعْدَ مَرَّةٍ، وَقَالَ لَهُ: الَّذِي يَقِفُ عَلَى رَأْسِهِ: إنَّهُ لَا يَقُولُ فِي الْجَدِّ شَيْئًا.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: مَنْ سَرَّهُ أَنْ يَقْتَحِمَ جَرَاثِيمَ جَهَنَّمَ فَلْيَقْضِ بَيْنَ الْجَدِّ وَالْإِخْوَةِ.

[11] **Qur'an references (L27786):** Qur'an 30:4 (Ar-Rum).

From Sa‘īd ibn Jubayr: Whoever desires to recklessly throw himself into the lowest depths of Hellfire, let him judge between the grandfather and the brothers.

These individuals—Umar, Ali, Ibn Umar, Shurayh, and Sa‘id ibn Jubayr—entirely refrained from ruling on the grandfather’s share, as established through reliable chains of transmission. To this position Muhammad ibn al-Hasan, the companion of Abu Hanifah, reverted in his final rulings.

A group maintained that the grandfather has no fixed share alongside the brothers; rather, it is according to what the caliph decrees therein.

It was narrated to us through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: I, Ismāʿīl ibn Abī Uways, from ʿAbd al-Raḥmān ibn Abī al-Zinād, from his father, who said: Khārijah ibn Zayd ibn Thābit informed me from his father, who said: Indeed, the grandfather - being the father of the father - along with the paternal brothers, none would judge between them except the Commander of the Faithful. The brothers would sometimes be numerous and sometimes few, yet there was no ordained share that we recognize as legislated for them. However, when the Commander of the Faithful was approached for a legal verdict concerning them, he would issue a legal opinion among them according to the approach he deemed suitable, proportionate to the number of brothers - whether abundant or scarce.

Abu Muhammad said: We were narrated through the chain of Sa’id ibn Mansur - Hushaym - Mughirah - al-Haytham ibn Badr - Shu’bah ibn al-Taw’am al-Dabbi, who said: “We came to Ibn Mas’ud concerning an inheritance case involving a grandfather and brothers.” He mentioned the differing legal rulings regarding it. We asked him about this matter, whereupon Ibn Mas’ud responded: “We only judge according to the judicial precedents of our leaders.”

And it has been conveyed to us through the chain of Hammad ibn Salamah: from Hisham ibn Urwah, from Urwah ibn al-Zubayr, from Marwan ibn al-Hakam, who said: Uthman ibn Affan told me: “Umar said to me: ’I have reached a legal opinion concerning the grandfather. If you deem it worthy

فَهَؤُلَاءِ: عُمَرُ، وَعَلِيٌّ، وَابْنُ عُمَرَ، وَشُرَيْحٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، تَوَقَّفُوا فِي الْجَدِّ جُمْلَةً بِأَسَانِيدَ ثَابِتَةٍ - وَإِلَى هَذَا رَجَعَ مُحَمَّدُ بْنُ الْحَسَنِ صَاحِبُ أَبِي حَنِيفَةَ فِي آخِرِ أَقْوَالِهِ.

وَقَالَتْ طَائِفَةٌ: لَيْسَ لِلْجَدِّ شَيْءٌ مَعْلُومٌ مَعَ الْإِخْوَةِ، إِنَّمَا هُوَ عَلَى حَسَبِ مَا يَقْضِي فِيهِ الْخَلِيفَةُ.

رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي أَنَا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ قَالَ: أَخْبَرَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ عَنْ أَبِيهِ قَالَ: إِنَّ الْجَدَّ أَبَا الْأَبِ مَعَهُ الْإِخْوَةُ مِنْ الْأَبِ لَمْ يَكُنْ يَقْضِي بَيْنَهُمْ إِلَّا أَمِيرُ الْمُؤْمِنِينَ، يَكْثُرُ الْإِخْوَةُ حِينًا وَيَقِلُّونَ حِينًا، فَلَمْ يَكُنْ بَيْنَهُمْ فَرِيضَةٌ نَعْلَمُهَا مَفْرُوضَةً إِلَّا أَنَّ أَمِيرَ الْمُؤْمِنِينَ كَانَ إِذَا أُتِيَ يُسْتَفْتَى فِيهِمْ، يُفْتِي بَيْنَهُمْ بِالْوَجْهِ الَّذِي يَرَى فِيهِمْ، عَلَى قَدْرِ كَثْرَةِ الْإِخْوَةِ وَقِلَّتِهِمْ.

قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مُغِيرَةُ أَنَا الْهَيْثَمُ بْنُ بَدْرٍ عَنْ شُعْبَةَ بْنِ التَّوْأَمِ الضَّبِّيِّ قَالَ: أَتَيْنَا ابْنَ مَسْعُودٍ فِي فَرِيضَةٍ فِيهَا جَدٌّ وَإِخْوَةٌ فَذَكَرَ اخْتِلَافَ حُكْمِهِ فِيهَا، قَالَ - فَقُلْنَا لَهُ فِي ذَلِكَ؟ فَقَالَ ابْنُ مَسْعُودٍ: إِنَّمَا نَقْضِي بِقَضَاءِ أَئِمَّتِنَا.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ مَرْوَانَ بْنِ الْحَكَمِ قَالَ: قَالَ لِي عُثْمَانُ بْنُ عَفَّانَ، قَالَ لِي عُمَرُ: إِنِّي قَدْ رَأَيْت فِي الْجَدِّ رَأْيًا،

to follow, then follow it.'" Uthman responded: "If we follow your opinion, it is indeed sound. And if we follow the opinion of your predecessor, then how excellent his judgment was!"

فَإِنْ رَأَيْتُمْ أَنْ نَتَّبِعُوهُ فَاتَّبِعُوهُ؟ فَقَالَ عُثْمَانُ: إِنْ نَتَّبِعْ رَأْيَك فَإِنَّهُ رُشْدٌ، وَإِنْ نَتَّبِعْ رَأْيَ الشَّيْخِ قَبْلَك فَنِعْمَ ذُو الرَّأْيِ كَانَ.

L27799 Through the chain of ʿAbd al-Razzāq: I [Ibn Jurayj] said: Hishām ibn ʿUrwah informed me from his father, who narrated to him from Marwān ibn al-Ḥakam, that this statement of ʿUthmān to ʿUmar occurred after ʿUmar had been stabbed.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ: أَخْبَرَنِي هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ: أَنَّهُ حَدَّثَهُ عَنْ مَرْوَانَ بْنِ الْحَكَمِ أَنَّ قَوْلَ عُثْمَانَ هَذَا لِعُمَرَ كَانَ بَعْدَ أَنْ طُعِنَ عُمَرُ.

L27800–27801 So Umar, Uthman, and Zayd ibn Thabit do not issue any definitive ruling regarding it.

فَهَؤُلَاءِ عُمَرُ، وَعُثْمَانُ، وَزَيْدُ بْنُ ثَابِتٍ لَا يَقْطَعُونَ فِيهِ بِشَيْءٍ.

L27802 As for the narration from ʿUmar and ʿUthmān, it is of the utmost authenticity. As for Zayd, there is no way to find a better chain of transmission than this in anything narrated from him regarding the grandfather's inheritance, except his statement in "al-Kharqā'" concerning a sister, a mother, and two grandfathers: "The grandfather receives two shares, the sister receives one share, and the mother receives a third," for this is established through a more reliable chain than this one. A group held that the grandfather does not inherit alongside brothers. It was narrated to us via the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: I, Ismāʿīl ibn Abī Uways, narrated from ʿAbd al-Raḥmān ibn Abī al-Zinād, from his father, who reported from Khārijah ibn Zayd ibn Thābit, from his father: When ʿUmar sought counsel regarding the inheritance of the grandfather and brothers, Zayd said, "My view at the time was that brothers have a greater right to their brother's inheritance than the grandfather," and he mentioned the narration.

أَمَّا الرِّوَايَةُ عَنْ عُمَرَ، وَعُثْمَانَ فَفِي غَايَةِ الصِّحَّةِ، وَأَمَّا عَنْ زَيْدٍ فَلَا سَبِيلَ إِلَى أَنْ يُوجَدَ عَنْهُ أَحْسَنُ مِنْ هَذَا الْإِسْنَادِ فِي شَيْءٍ مِمَّا رُوِيَ عَنْهُ فِي الْجَدِّ إِلَّا قَوْلُهُ فِي " الْخَرْقَاءِ " فِي أُخْتٍ، وَأُمٍّ وَجَدَّانِ: لِلْجَدِّ سَهْمَانِ، وَلِلْأُخْتِ سَهْمٌ، وَلِلْأُمِّ الثُّلُثُ، فَإِنَّهُ ثَابِتٌ عَنْهُ بِأَحْسَنَ مِنْ هَذَا الْإِسْنَادِ. وَقَالَتْ طَائِفَةٌ: لَيْسَ لِلْجَدِّ مَعَ الْإِخْوَةِ مِيرَاثٌ -: رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي أَنَا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ: أَخْبَرَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ عَنْ أَبِيهِ: أَنَّ عُمَرَ لَمَّا اسْتَشَارَ فِي مِيرَاثِ الْجَدِّ، وَالْإِخْوَةِ؟ قَالَ زَيْدٌ: وَكَانَ رَأْيِي يَوْمَئِذٍ أَنَّ الْإِخْوَةَ أَحَقُّ بِمِيرَاثِ أَخِيهِمْ مِنْ الْجَدِّ - وَذَكَرَ الْخَبَرَ.

L27803 From the narration of Hammad ibn Salama: "I [heard] from Dawud ibn Abi Hind, from Shahr ibn Hawshab, from Abd al-Rahman ibn Ghunm, that Umar ibn al-Khattab discussed the grandfather with him." Abd al-Rahman ibn Ghunm said: "Beneath the grandfather lies another branch of kinship; those deriving from it have greater entitlement to it"—referring to the father. This statement of Abd al-Rahman entails that the brothers are more entitled to the inheritance than the grandfather.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ شَهْرِ بْنِ حَوْشَبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غُنْمٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ ذَاكَرَهُ الْجَدَّ؟ فَقَالَ عَبْدُ الرَّحْمَنِ بْنُ غَنْمٍ إِنَّ دُونَ الْجَدِّ شَجَرَةً أُخْرَى، فَمَا خَرَجَ مِنْهَا فَهُوَ أَحَقُّ بِهِ - يَعْنِي الْأَبَ - وَقَوْلُ عَبْدِ الرَّحْمَنِ هَذَا يُوجِبُ أَنَّ الْإِخْوَةَ أَحَقُّ بِالْمِيرَاثِ مِنْ الْجَدِّ.

L27804 And these three opinions refute the claim of those who argue by his opin-

وَهَذِهِ الْأَقْوَالُ الثَّلَاثَةُ تُكَذِّبُ قَوْلَ مَنْ احْتَجَّ بِقَوْلِهِ فِي تَوْرِيثِ الْجَدِّ مَعَ الْإِخْوَةِ بِالْإِجْمَاعِ.

ion—through _ijma_—regarding the inclusion of the grandfather in inheritance alongside the brothers.

L27805 A group of scholars held that the grandfather divides the inheritance with the brothers into thirteen shares, making himself the thirteenth among them. This view is narrated from ʿImrān ibn al-Ḥuṣayn and Abū Mūsā al-Ashʿarī.

وَقَالَتْ طَائِفَةٌ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى اثْنَيْ عَشَرَ، فَيَكُونُ هُوَ ثَالِثَ عَشَرَ لَهُمْ، رُوِيَ ذَلِكَ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ، وَأَبِي مُوسَى الْأَشْعَرِيِّ.

L27806 A group said: The grandfather divides the inheritance with the brothers in the case of up to seven brothers, thus entitling him to an eighth share alongside them. As written to me by Ali ibn Ibrahim al-Tabrizi, who narrated: Muhammad ibn Abdullah ibn al-Labban narrated to us, stating: I [received it from] al-Qadi Ahmad ibn Kamal ibn Shajara, who stated: I [received it from] Ahmad ibn Ubaydullah, who stated: I [received it from] Yazid ibn Harun, on the authority of Qays ibn al-Rabi', on the authority of Firas, on the authority of al-Sha'bi, who said: Ibn Abbas wrote from Basra to Ali ibn Abi Talib regarding seven brothers and a grandfather. Ali wrote to him: Divide the estate equally among them, erase my letter, and do not preserve it permanently.

وَقَالَتْ طَائِفَةٌ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى سَبْعَةِ إِخْوَةٍ فَيَكُونُ لَهُ الثُّمُنُ مَعَهُمْ: كَمَا كَتَبَ إِلَيَّ عَلِيُّ بْنُ إِبْرَاهِيمَ التَّبْرِيزِيُّ قَالَ: نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ اللَّبَّانِ أَنَا الْقَاضِي أَحْمَدُ بْنُ كَامِلِ بْنِ شَجَرَةَ أَنَا أَحْمَدُ بْنُ عُبَيْدِ اللَّهِ أَنَا يَزِيدُ بْنُ هَارُونَ عَنْ قَيْسِ بْنِ الرَّبِيعِ عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ قَالَ: كَتَبَ ابْنُ عَبَّاسٍ مِنْ الْبَصْرَةِ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فِي سَبْعَةِ إِخْوَةٍ وَجَدٍّ، فَكَتَبَ إِلَيْهِ عَلِيٌّ اقْسِمْ الْمَالَ بَيْنَهُمْ سَوَاءً، وَامْحُ كِتَابِي وَلَا تُخَلِّدْهُ.

L27807–27809 A group said: The grandfather apportions with the brothers up to six shares, thus receiving a seventh alongside them—we were narrated this through a chain connected to this before him, extending to Qays ibn al-Rabiʿ from Abū Isḥāq al-Shaybānī from al-Shaʿbī. He said: Ibn ʿAbbās wrote to ʿAlī concerning six brothers and a grandfather? ʿAlī wrote to him: "Give him a seventh." From the chain of Wakīʿ - who narrated to us: From Sufyān al-Thawrī, from Firās, from al-Shaʿbī - who said: Ibn ʿAbbās wrote to ʿAlī concerning six brothers and a grandfather. ʿAlī wrote to him: "Make him like one of them, and erase my letter."

وَقَالَتْ طَائِفَةٌ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى سِتَّةٍ، فَيَكُونُ لَهُ السُّبْعُ مَعَهُمْ -: رُوِّينَا ذَلِكَ بِالْإِسْنَادِ الْمُتَّصِلِ بِهَذَا قَبْلَهُ إِلَى قَيْسِ بْنِ الرَّبِيعِ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ، قَالَ كَتَبَ ابْنُ عَبَّاسٍ إِلَى عَلِيٍّ فِي سِتَّةِ إِخْوَةٍ وَجَدٍّ؟ فَكَتَبَ إِلَيْهِ عَلِيٌّ: أَنْ أَعْطِهِ سُبْعًا، وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ قَالَ: كَتَبَ ابْنُ عَبَّاسٍ إِلَى عَلِيٍّ فِي سِتَّةِ إِخْوَةٍ وَجَدٍّ فَكَتَبَ إِلَيْهِ عَلِيٌّ: اجْعَلْهُ كَأَحَدِهِمْ، وَامْحُ كِتَابِي.

L27810 A group said: The grandfather divides the inheritance with the brothers down to a sixth, then his share is not reduced below the sixth even if they are numerous. This was reported to us through the chain of Saʿīd ibn Manṣūr, who reported from Ḥushaym, from ʿAwf (the son of Abī Jamīlah) from al-Ḥasan al-Baṣrī, who said: ʿUmar ibn al-Khaṭṭāb wrote to one of his governors: "Grant the grandfather half when there is one brother, a third when there are two brothers, a fourth with three brothers, a fifth with four broth-

وَقَالَتْ طَائِفَةٌ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى السُّدُسِ ثُمَّ لَا يَنْقُصُ مِنْ السُّدُسِ وَإِنْ كَثُرُوا -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ - أَنَا عَوْفٌ - هُوَ ابْنُ أَبِي جَمِيلَةَ - عَنْ الْحَسَنِ الْبَصْرِيِّ، قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى عَامِلٍ لَهُ أَنْ أَعْطِ الْجَدَّ مَعَ

ers, and a sixth with five brothers. If they exceed this number, do not reduce his share below a sixth."

الْأَخِ الشَّطْرَ، وَمَعَ الْأَخَوَيْنِ الثُّلُثَ، وَمَعَ الثَّلَاثَةِ الرُّبُعَ، وَمَعَ الْأَرْبَعَةِ الْخُمُسَ، وَمَعَ الْخَمْسَةِ السُّدُسَ، فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَلَا تَنْقُصْهُ مِنَ السُّدُسِ.

L27811 From the chain of Saʿīd ibn Manṣūr: Abū Muʿāwiyah narrated to us: Al-Aʿmash narrated to us from Ibrāhīm al-Nakhaʿī from ʿUbayd ibn Naḍlah, who said: "Umar ibn al-Khaṭṭāb and ʿAbdullāh ibn Masʿūd would apportion the grandfather either a sixth or a share alongside the brothers, whichever was more beneficial to him than sharing with the brothers." This is a chain of the highest authenticity.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُبَيْدِ بْنِ نَضْلَةَ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ يُقَاسِمَانِ الْجَدَّ مَعَ الْإِخْوَةِ مَا بَيْنَهُ وَبَيْنَ أَنْ يَكُونَ السُّدُسُ خَيْرًا لَهُ مِنْ مُقَاسَمَةِ الْإِخْوَةِ - وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ.

L27812 From the narration of Hammad ibn Salamah, from Humaid, from al-Hasan al-Basri: Ali ibn Abi Talib would entitle the grandfather to the sixth of the inheritance when there were five brothers. If there were more than five brothers, he was granted the sixth, without anything being deducted from it.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنِ الْحَسَنِ الْبَصْرِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يُوَرِّثُ الْجَدَّ مَعَ خَمْسَةِ إِخْوَةٍ السُّدُسَ، فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَلَهُ السُّدُسُ لَا يُنْقَصُ مِنْهُ شَيْئًا.

L27813 And through the transmission of Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn Bashshār Bundār, from Abū Dāwūd—that is, al-Ṭayālisī—from Shuʿbah, from ʿAmr ibn Murrah, from ʿAbd Allāh ibn Salamah, that ʿAlī ibn Abī Ṭālib would treat the grandfather as a brother until he became the sixth [brother].

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - نا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَبْدِ اللَّهِ بْنِ سَلَمَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَجْعَلُ الْجَدَّ أَخًا حَتَّى يَكُونَ سَادِسًا.

L27814–27816 From the narration of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, who said: ʿAlī ibn Abī Ṭālib would assign each entitled heir their prescribed share. He did not grant inheritance to a maternal sister or maternal brother alongside the grandfather at all. He did not make a paternal brother share with another paternal brother, the mother, and the grandfather. If there was a full sister, a paternal brother, and a grandfather, he would assign the sister half, and the remaining portion he would give to the grandfather and the brother, dividing it equally between them into two halves. If the number of brothers increased, he would make the grandfather share with them until receiving a sixth [of the estate] became more advantageous to him than apportionment. If the sixth was more

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ يُعْطِي كُلَّ صَاحِبِ فَرِيضَةٍ فَرِيضَتَهُ، وَلَا يُوَرِّثُ أُخْتًا لِأُمٍّ، وَلَا أَخًا لِأُمٍّ، مَعَ الْجَدِّ شَيْئًا، وَلَا يُقَاسِمُ بِالْأَخِ لِأَبٍ مَعَ الْأَخِ لِأَبٍ، وَالْأُمِّ، وَالْجَدِّ شَيْئًا - وَإِذَا كَانَتْ أُخْتٌ لِأَبٍ وَأُمٍّ، وَأَخٌ لِأَبٍ، وَجَدٌّ: أَعْطَى الْأُخْتَ النِّصْفَ، وَمَا بَقِيَ أَعْطَاهُ الْجَدَّ وَالْأَخَ بَيْنَهُمَا بِنِصْفَيْنِ، فَإِنْ كَثُرَ الْإِخْوَةُ شَرَكَهُ مَعَهُمْ حَتَّى يَكُونَ السُّدُسُ خَيْرًا لَهُ مِنَ الْمُقَاسَمَةِ، فَإِنْ كَانَ السُّدُسُ خَيْرًا لَهُ أَعْطَاهُ السُّدُسَ -: وَبِقَوْلِ

beneficial to him, he would assign him the sixth. This opinion of ʿAlī is upheld by al-Mughīrah ibn Miqsam, ʿUbāydah al-Salmānī, Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Laylā (the judge), and al-Ḥasan ibn Ḥayy. And Sharik al-Qadi, Hushaym ibn Bashir, al-Hasan ibn Ziyad al-Lu'lu'i, and some students of Abu Hanifah.

عَلِيٍّ هَذَا يَقُولُ الْمُغِيرَةُ بْنُ مِقْسَمٍ، وَعَبِيدَةُ السَّلْمَانِيُّ، وَمُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى الْقَاضِي، وَالْحَسَنُ بْنُ حَيٍّ؛ وَشَرِيكٌ الْقَاضِي، وَهُشَيْمُ بْنُ بَشِيرٍ، وَالْحَسَنُ بْنُ زِيَادٍ اللُّؤْلُؤِيُّ، وَبَعْضُ أَصْحَابِ أَبِي حَنِيفَةَ.

L27817 A group said: The grandfather is entitled to a third alongside the brothers in all cases - as has been narrated to us through the chain of Abd al-Razzaq from Ma'mar, from Qatadah, that Umar consulted Ali about the grandfather. Ali replied: He [the grandfather] is entitled to a third in all cases.

وَقَالَتْ طَائِفَةٌ: لِلْجَدِّ مَعَ الْإِخْوَةِ الثُّلُثُ عَلَى كُلِّ حَالٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ عَلِيًّا شَاوَرَهُ عُمَرُ فِي الْجَدِّ؟ فَقَالَ عَلِيٌّ: لَهُ الثُّلُثُ عَلَى كُلِّ حَالٍ.

L27818 A group held—as narrated to us through Waki''s chain from Sufyan al-Thawri, from al-A'mash, from Ibrahim al-Nakha'i, who said: Ibn Mas'ud would apportion shares between the grandfather and brothers up to a third [for the grandfather], giving each heir with a prescribed share their due entitlement. He did not grant maternal brothers any inheritance when present with the grandfather, nor would he apportion shares to paternal brothers alongside full siblings and the grandfather. When the heirs included a full sister, a paternal brother, and a grandfather, he would assign half to the full sister and half to the grandfather—excluding the paternal brother entirely. This opinion is maintained by Masruq, 'Alqamah, al-Aswad, and 'Ubaydah al-Salmani in some of his rulings, and is also transmitted from Shurayh, others, and some followers of Abu Hanifah.

وَقَالَتْ طَائِفَةٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ ابْنُ مَسْعُودٍ يُقَاسِمُ بِالْجَدِّ الْإِخْوَةَ إلَى الثُّلُثِ وَيُعْطِي كُلَّ صَاحِبِ فَرِيضَةٍ فَرِيضَتَهُ، وَلَا يُوَرِّثُ الْإِخْوَةَ مِنْ الْأُمِّ مَعَ الْجَدِّ شَيْئًا، وَلَا يُقَاسِمُ بِالْإِخْوَةِ مِنْ الْأَبِ الْإِخْوَةَ مِنْ الْأَبِ وَالْأُمِّ مَعَ الْجَدِّ - وَإِذَا كَانَتْ أُخْتٌ لِأَبٍ وَأُمٍّ، وَأَخٌ لِأَبٍ، وَجَدٌّ: أَعْطَى الْأُخْتَ لِلْأَبِ وَالْأُمِّ النِّصْفَ، وَالْجَدَّ النِّصْفَ - وَبِهِ يَقُولُ مَسْرُوقٌ، وَعَلْقَمَةُ، وَالْأَسْوَدُ، وَعَبِيدَةُ السَّلْمَانِيُّ فِي بَعْضِ أَقْوَالِهِ وَرُوِيَ أَيْضًا عَنْ شُرَيْحٍ وَغَيْرِهِ، وَعَنْ بَعْضِ أَصْحَابِ أَبِي حَنِيفَةَ.

L27819 A group said—as reported to us through the chain of Ibn Wahb—each of them (Malik and Al-Layth ibn Sa'd) informed me that Yahya ibn Sa'id al-Ansari narrated to both of them that it reached him that Mu'awiyah ibn Abi Sufyan wrote to Zayd ibn Thabit inquiring about the grandfather's share. He wrote back: "You wrote to me asking about the grandfather—and Allah knows best—and that was among matters judged only by the rulers—meaning the caliphs. I observed the two caliphs before you granting him: half when there is one brother, a third when there are two brothers. If the brothers are numerous, the two caliphs did not reduce his share below a third."

وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ: أَخْبَرَنِي مَالِكٌ، وَاللَّيْثُ بْنُ سَعْدٍ: أَنَّ يَحْيَى بْنَ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - حَدَّثَهُمَا: أَنَّهُ بَلَغَهُ أَنَّ مُعَاوِيَةَ بْنَ أَبِي سُفْيَانَ كَتَبَ إلَى زَيْدِ بْنِ ثَابِتٍ يَسْأَلُهُ عَنْ الْجَدِّ؟ فَكَتَبَ إلَيْهِ: إنَّك كَتَبْت إلَيَّ تَسْأَلُنِي عَنْ الْجَدِّ - وَاَللَّهُ أَعْلَمُ - وَذَلِكَ مِمَّا لَمْ يَكُنْ يَقْضِي فِيهِ إلَّا الْأُمَرَاءُ - يَعْنِي الْخُلَفَاءَ - وَقَدْ حَضَرْت الْخَلِيفَتَيْنِ قَبْلَك يُعْطِيَانِهِ: النِّصْفَ مَعَ الْأَخِ الْوَاحِدِ، وَالثُّلُثَ مَعَ الِاثْنَيْنِ، فَإِنْ كَثُرَ الْإِخْوَةُ لَمْ يُنْقِصَاهُ مِنْ الثُّلُثِ.

L27820 From the path of Waki‘: Sufyan al-Thawri reported from Mansur from Ibrahim al-Nakha‘i, who said: “Umar wrote to Ibn Mas‘ud: ’We feared we may have wronged the grandfather. Therefore, grant him a share alongside the brothers.’ So he granted him.” It is narrated through the path of Hammad ibn Zayd, Isma‘il ibn Ulayyah, and Husaym from Abu al-Mu‘alla al-‘Attar from Ibrahim al-Nakha‘i that ‘Alqamah said: “Ibn Mas‘ud ruled: ’The grandfather shares with the brothers in the third.’” Ubaydah al-Salmani told me: “Ibn Mas‘ud said: ’The grandfather shares with the brothers up to the sixth.’” Ibrahim said: “I mentioned this to Ubaydah ibn Nudaylah. He replied: ’Both spoke truthfully. Ibn Mas‘ud came from Umar while Umar was saying: ”The grandfather shares with the brothers up to the sixth,“ so Ibn Mas‘ud adopted this opinion. Later, when Ibn Mas‘ud revisited Umar, he discovered Umar had revised his opinion, declaring: ”The grandfather shares with the brothers in the third.“”

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَتَبَ عُمَرُ إِلَى ابْنِ مَسْعُودٍ: إِنَّا قَدْ خَشِينَا أَنْ نَكُونَ قَدْ أَجْحَفْنَا بِالْجَدِّ فَأَعْطِهِ الثُّلُثَ مَعَ الْإِخْوَةِ؟ فَأَعْطَاهُ - وَرُوِيَ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ، وَإِسْمَاعِيلَ بْنِ عُلَيَّةَ، وَهُشَيْمٍ عَنْ أَبِي الْمُعَلَّى الْعَطَّارِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ عَلْقَمَةُ: قَالَ ابْنُ مَسْعُودٍ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ فِي الثُّلُثِ، وَقَالَ لِي عَبِيدَةُ السَّلْمَانِيُّ: قَالَ ابْنُ مَسْعُودٍ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى السُّدُسِ، قَالَ إِبْرَاهِيمُ: فَذَكَرْت ذَلِكَ لِعُبَيْدَةَ بْنِ نُضَيْلَةَ؟ فَقَالَ: صَدَقَا جَمِيعًا، إِنَّ ابْنَ مَسْعُودٍ قَدِمَ مِنْ عِنْدِ عُمَرَ، وَعُمَرُ يَقُولُ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى السُّدُسِ، فَكَانَ ابْنُ مَسْعُودٍ يَقُولُ بِهِ، ثُمَّ رَجَعَ إِلَى عُمَرَ، فَإِذَا عُمَرُ قَدْ رَجَعَ، فَقَالَ: يُقَاسِمُ الْجَدُّ الْإِخْوَةَ إِلَى الثُّلُثِ.

L27821–27822 From the chain of Al-Ḥajjāj ibn Al-Minhāl: Hushaym narrated to us through Al-Mughīrah - he being Ibn Miqsam - from Al-Haytham ibn Badr Al-Asadī, who reported from Shuʿbah ibn Al-Tawʾam: “A brother of ours died during ʿUmar’s rule, leaving his brothers and his grandfather. We approached Ibn Masʿūd, who granted the grandfather a sixth share alongside the brothers. Later, another brother died during ʿUthmān’s reign, leaving his brothers and his grandfather. We went to Ibn Masʿūd again, and he awarded the grandfather a third share with the brothers. We questioned him: ’You gave our grandfather a sixth in the first case, yet now a third?’ He responded: ’We rule only by the judgments of our leaders.’”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هُشَيْمٌ أَنَا الْمُغِيرَةُ - هُوَ ابْنُ مِقْسَمٍ - عَنْ الْهَيْثَمِ بْنِ بَدْرٍ الْأَسَدِيِّ أَخْبَرَنِي شُعْبَةُ بْنُ التَّوْأَمِ قَالَ: تُوُفِّيَ أَخٌ لَنَا فِي عَهْدِ عُمَرَ وَتَرَكَ إِخْوَتَهُ وَجَدَّهُ؟ فَأَتَيْنَا ابْنَ مَسْعُودٍ: فَأَعْطَى الْجَدَّ مَعَ الْإِخْوَةِ السُّدُسَ، ثُمَّ تُوُفِّيَ أَخٌ لَنَا آخَرُ فِي عَهْدِ عُثْمَانَ وَتَرَكَ إِخْوَتَهُ وَجَدَّهُ؟ فَأَتَيْنَا ابْنَ مَسْعُودٍ: فَأَعْطَى الْجَدَّ مَعَ الْإِخْوَةِ الثُّلُثَ؟ فَقُلْنَا لَهُ: إِنَّك أَعْطَيْت جَدَّنَا فِي أَخِينَا الْأَوَّلِ السُّدُسَ، وَأَعْطَيْته الْآنَ الثُّلُثَ؟ فَقَالَ: إِنَّمَا نَقْضِي بِقَضَاءِ أَئِمَّتِنَا.

L27823 From the path of Sa’id ibn Mansur: Hushaym narrated to us, [saying:] Mutarrif (ibn Tarif) reported from al-Sha’bi, who said: Umar wrote to Abu Musa al-Ash’ari: “We used to grant the grandfather a sixth alongside the brothers - and we can only think that we have treated him unjustly. When this letter of mine reaches you, grant the grandfather half if there is one brother, a third if there are two brothers. If they exceed this number, do not reduce his share below a third.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - عَنْ الشَّعْبِيِّ قَالَ: كَتَبَ عُمَرُ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ: إِنَّا كُنَّا أَعْطَيْنَا الْجَدَّ مَعَ الْإِخْوَةِ السُّدُسَ - وَلَا أَحْسَبُنَا إِلَّا قَدْ أَجْحَفْنَا بِهِ - فَإِذَا أَتَاك كِتَابِي هَذَا فَأَعْطِ الْجَدَّ مَعَ الْأَخِ الشَّطْرَ، وَمَعَ الْأَخَوَيْنِ الثُّلُثَ، فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَلَا تُنْقِصْهُ مِنْ الثُّلُثِ.

وَقَالَتْ طَائِفَةٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ، وَعُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ وَقَبِيصَةُ بْنُ ذُؤَيْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى: أَنَّ الْجَدَّ يُقَاسِمُ الْإِخْوَةَ لِلْأَبِ وَالْأُمِّ، وَالْإِخْوَةَ لِلْأُمِّ مَا كَانَتْ الْمُقَاسَمَةُ خَيْرًا لَهُ مِنْ ثُلُثِ الْمَالِ، فَإِنْ كَثُرَ الْإِخْوَةُ أَعْطَى الْجَدَّ الثُّلُثَ، وَكَانَ مَا بَقِيَ لِلْإِخْوَةِ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ، وَإِنَّ بَنِي الْأَبِ وَالْأُمِّ أَوْلَى بِذَلِكَ مِنْ بَنِي الْأَبِ ذُكُورِهِمْ وَنِسَائِهِمْ، غَيْرَ أَنَّ بَنِي الْأَبِ يُقَاسِمُونَ الْجَدَّ وَبَيْنَ الْأَبِ وَالْأُمِّ، فَيَرُدُّونَ عَلَيْهِ، وَلَا يَكُونُ لِبَنِي الْأَبِ شَيْءٌ مَعَ بَنِي الْأَبِ وَالْأُمِّ إِلَّا أَنْ يَكُونَ بَنُو الْأَبِ يَرُدُّونَ عَلَى بَنَاتِ الْأَبِ وَالْأُمِّ فَإِنْ بَقِيَ شَيْءٌ بَعْدَ فَرَائِضِ بَنَاتِ الْأَبِ وَالْأُمِّ، فَهُوَ لِلْإِخْوَةِ مِنْ الْأَبِ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ.

L27824 A group said: As we have been narrated through Ibn Wahb's transmission from Yunus ibn Yazid from Ibn Shihab, who informed me that Sa'id ibn al-Musayyab, 'Ubayd Allah ibn 'Abd Allah ibn 'Utbah ibn Mas'ud, and Qabisah ibn Dhu'ayb reported that 'Umar ibn al-Khattab ruled: The grandfather shares with the full siblings from both parents and the maternal siblings, provided this division benefits him more than receiving a third of the estate. If the siblings are numerous, the grandfather receives a third, with the remainder allocated to the full siblings - males receiving twice the share of females. The children of both parents hold priority over paternal siblings (both males and females), except that paternal siblings share with the grandfather alongside the full siblings from both parents, thereby reducing his portion. Paternal siblings inherit nothing alongside the children of both parents unless they compensate the daughters from both parents [for any shortfall in their shares]. Whatever remains after fulfilling the prescribed portions of the daughters from both parents is allocated to the paternal siblings, with males receiving twice the share of females.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ قَالَ: كَانَ زَيْدُ بْنُ ثَابِتٍ يُشْرِكُ الْجَدَّ مَعَ الْإِخْوَةِ وَالْأَخَوَاتِ إلَى الثُّلُثِ، فَإِذَا بَلَغَ الثُّلُثَ أَعْطَاهُ الثُّلُثَ، وَكَانَ لِلْإِخْوَةِ وَالْأَخَوَاتِ مَا بَقِيَ، وَيُقَاسِمُ الْأَخُ لِلْأَبِ، ثُمَّ يَرُدُّ عَلَى أَخِيهِ، وَيُقَاسِمُ بِالْإِخْوَةِ مِنْ الْأَبِ أَوْ الْأَخَوَاتُ مِنْ الْأَبِ الْإِخْوَةَ وَالْأَخَوَاتِ مِنْ الْأَبِ وَالْأُمِّ - وَلَا يُوَرِّثُهُمْ شَيْئًا، فَإِذَا كَانَ الْأَخُ لِلْأَبِ وَالْأُمِّ أَعْطَاهُ النِّصْفَ، وَإِذَا كَانَ أَخَوَاتٌ وَجَدٌّ أَعْطَاهُ مَعَ الْأَخَوَاتِ الثُّلُثَ، وَلَهُنَّ الثُّلُثَانِ - وَإِنْ كَانَتَا أُخْتَيْنِ أَعْطَاهُمَا النِّصْفَ وَلَهُ النِّصْفُ، وَلَا يُعْطِي أَخًا لِأُمٍّ مَعَ الْجَدِّ شَيْئًا.

L27825 From the narration of 'Abd al-Razzāq, from Sufyān al-Thawrī, from al-A'mash, from Ibrāhīm, who said: Zayd ibn Thābit would combine the grandfather with the brothers and sisters up to one-third of the estate. When the grandfather's share reached one-third, he allocated him the third, leaving the remainder for the brothers and sisters. He would make the paternal brother compete with the full brother, then return to the brother. He would make paternal brothers or sisters compete with full siblings (from both parents) while excluding the paternal siblings entirely from inheritance. If there was a full brother, he assigned him half. When sisters and a grandfather existed, he allocated the grandfather one-third of the estate and the sisters two-thirds. If there were two sisters, he gave them half and the grandfather half. He did not assign any share to a maternal brother in the presence of the grandfather.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا قَوْلٌ رُوِيَ كَمَا تَسْمَعُونَ عَنْ عُمَرَ، وَزَيْدٍ -: وَبِهِ يَقُولُ الْأَوْزَاعِيِّ، وَسُفْيَانُ الثَّوْرِيُّ، وَمَالِكٌ، وَعُبَيْدُ اللَّهِ بْنُ الْحُسَيْنِ، وَأَبُو ثَوْرٍ، وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ

L27826–27827 Abū Muḥammad said: This is a statement transmitted as you have heard from 'Umar and Zayd ibn Thābit—a position upheld by al-Awzā'ī, Sufyān al-Thawrī, Mālik, 'Ubayd Allāh ibn al-Ḥusayn, Abū Thawr, Abū Yūsuf, Muḥammad ibn al-Ḥasan, al-Ḥasan al-Lu'lu'ī, al-Shāfi'ī, Aḥmad ibn Ḥanbal, and Abū

ʿUbayd. Later, Muḥammad ibn al-Ḥasan fully reverted to the position of tawqīf, while al-Luʾluʾī reverted to the opinion we earlier attributed to ʿAlī. It has been narrated to us that Zayd ibn Thābit retracted from this view, adopting instead the reduction of the grandfather's share from that [prior amount]—as transmitted through the chain of Ayyūb ibn Sulaymān, narrated by ʿAbd al-Wārith (Ibn Saʿīd al-Tannūrī), from Isḥāq ibn Suwayd, who heard ʿAbd Allāh ibn Buraydah, from Abū ʿIyāḍ, from Zayd ibn Thābit, who said: "I visited ʿUmar on the night of his death and told him: 'I concluded that the grandfather's share should be reduced.'" And he mentioned the report.

الْحَسَنِ، وَالْحَسَنُ اللُّؤْلُؤِيُّ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو عُبَيْدٍ - ثُمَّ رَجَعَ مُحَمَّدُ بْنُ الْحَسَنِ إِلَى التَّوْقِيفِ جُمْلَةً، وَرَجَعَ اللُّؤْلُؤِيُّ إِلَى الْقَوْلِ الَّذِي ذَكَرْنَا عَنْ عَلِيٍّ - وَقَدْ رُوِّينَا عَنْ زَيْدٍ أَنَّهُ رَجَعَ عَنْ هَذَا إِلَى أَنْ يُنْقَصَ الْجَدُّ عَنْ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَيُّوبَ بْنِ سُلَيْمَانَ نا عَبْدُ الْوَارِثِ - هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - عَنْ إِسْحَاقَ بْنِ سُوَيْدٍ: أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ بُرَيْدَةَ أَنَّهُ سَمِعَ أَبَا عِيَاضٍ أَنَّهُ سَمِعَ زَيْدَ بْنَ ثَابِتٍ يَقُولُ: دَخَلْت عَلَى عُمَرَ فِي اللَّيْلَةِ الَّتِي قُبِضَ فِيهَا فَقُلْت لَهُ: إِنِّي رَأَيْت أَنْ أَنْتَقِصَ الْجَدَّ - وَذَكَرَ الْخَبَرَ.

As for ʿUthmān, Abū Mūsā al-Ashʿarī, and Ibn Masʿūd, the only position L27828 transmitted from them is that the grandfather shares the inheritance proportionally with the brothers, strictly limited to one-third, with no reduction from that third itself. No additional rulings on this matter are reported from them.

وَأَمَّا عُثْمَانُ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَابْنُ مَسْعُودٍ، فَلَيْسَ عَنْهُمْ إلَّا أَنْ يُقَاسِمَ الْجَدُّ الْإِخْوَةَ إلَى الثُّلُثِ فَقَطْ، وَلَا يُحَطُّ مِنْ الثُّلُثِ - وَلَيْسَ عَنْهُمْ هَذِهِ الزِّيَادَاتُ.

A group held that a brother does not inherit anything alongside the grandfa- L27829 ther—neither a full brother, nor a brother through the father, nor a brother through the mother—and the grandfather's inheritance is precisely the same, exactly equal to the father's inheritance, provided there is no inheriting father present. As transmitted to us through the chain of Hammad ibn Salamah: I [Hammad] narrate from Hisham ibn Urwah, from his father, from Marwan ibn al-Hakam, who said: Uthman ibn Affan told me, "Umar said to me: 'I have formed an opinion regarding the grandfather. If you all deem it fit to follow it, then do so.'" Uthman replied to him, "If we follow your opinion, it is sound guidance. But if we follow the opinion of the elder before you, what an excellent holder of judgment he was!" Marwan added, "Abu Bakr would treat the grandfather as a father."

وَقَالَتْ طَائِفَةٌ: لَا يَرِثُ مَعَ الْجَدِّ أَخٌ شَيْئًا، لَا شَقِيقٌ، وَلَا لِأَبٍ، وَلَا لِأُمٍّ - وَمِيرَاثُ الْجَدِّ كَمِيرَاثِ الْأَبِ، سَوَاءً سَوَاءً، إذَا لَمْ يَكُنْ هُنَالِكَ أَبٌ وَارِثٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ مَرْوَانَ بْنِ الْحَكَمِ، قَالَ: قَالَ لِي عُثْمَانُ بْنُ عَفَّانَ: إنَّ عُمَرَ قَالَ لِي: إنِّي قَدْ رَأَيْت فِي الْجَدِّ رَأْيًا فَإِنْ رَأَيْتُمْ أَنْ نَتَّبِعُوهُ فَاتَّبِعُوهُ: فَقَالَ لَهُ عُثْمَانُ: إنْ نَتَّبِعْ رَأْيَك فَإِنَّهُ رُشْدٌ، وَإِنْ نَتَّبِعْ رَأْيَ الشَّيْخِ قَبْلَك فَنِعْمَ ذُو الرَّأْيِ كَانَ قَالَ: وَكَانَ أَبُو بَكْرٍ يَجْعَلُهُ أَبًا.

From the chain of Al-Bukhari: Abu Ma'mar narrated to us, from Abd al- L27830 Warith—he is Ibn Sa'id al-Tannuri—from Ayyub—he is al-Sikhtiyānī—from Ikrimah, from Ibn Abbas, who said: Regarding the statement of the Messenger of Allah (peace and blessings of Allah be upon him), "If I were to take a close friend from this nation, I would have taken him as a close friend, but

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو مَعْمَرٍ نا عَبْدُ الْوَارِثِ - هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - نا أَيُّوبُ - هُوَ السِّخْتِيَانِيُّ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: أَمَّا الَّذِي قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ كُنْت مُتَّخِذًا خَلِيلًا مِنْ هَذِهِ الْأُمَّةِ لَاتَّخَذْتُهُ خَلِيلًا وَلَكِنَّ خُلَّةَ

the bond of Islam is superior (or he said: better)," verily Allah designated him as a father (or he said: decreed him to be a father)—referring to the grandfather in matters of inheritance.

الْإِسْلَامِ أَفْضَلُ أَوْ قَالَ: خَيْرٌ» ، فَإِنَّهُ أَنْزَلَهُ أَبًا، أَوْ قَالَ: قَضَاهُ أَبًا " يَعْنِي الْجَدَّ فِي الْمِيرَاثِ.

L27831–27833 And from the chain of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā narrated to us, [saying:] ʿAbd al-Raḥmān ibn Mahdī narrated to us. It was narrated to us by Sufyan al-Thawri from Abu Ishaq al-Shaybani from Kurdus from Abu Musa al-Ash'ari that Abu Bakr al-Siddiq considered the grandfather as a father.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ كُرْدُوسٍ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَانَ يَجْعَلُ الْجَدَّ أَبًا.

L27834 From the narration of Abū Dāwūd al-Ṭayālisī: Shuʿbah narrated from Khālid al-Ḥadhdhā', from Abū Naḍrah, from Abū Saʿīd al-Khudrī, that Abū Bakr al-Ṣiddīq considered the grandfather as a father.

وَمِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ نا شُعْبَةُ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَانَ يَجْعَلُ الْجَدَّ أَبًا.

L27835 From the narration of Abd al-Razzaq, who narrated to us from Ibn Jurayj, who said: I heard Ibn Abi Mulaykah relate that Ibn al-Zubayr wrote to the people of Iraq that the Prophet—peace and blessings of Allah be upon him—said: "If I were to take a close companion besides Allah until I meet Him, I would have taken Abu Bakr as a close companion." Ibn al-Zubayr thus considered the grandfather to be treated as a father.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: سَمِعْت ابْنَ أَبِي مُلَيْكَةَ يُحَدِّثُ أَنَّ ابْنَ الزُّبَيْرِ كَتَبَ إِلَى أَهْلِ الْعِرَاقِ أَنَّ الَّذِي قَالَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ كُنْت مُتَّخِذًا خَلِيلًا حَتَّى أَلْقَى اللَّهَ سِوَى اللَّهِ، لَاتَّخَذْتُ أَبَا بَكْرٍ خَلِيلًا - فَكَانَ يَجْعَلُ الْجَدَّ أَبًا» .

L27836 And through the chain of Saʿīd ibn Manṣūr who narrated to us from Abū Muʿāwiyah al-Ḍarīr from Abū Isḥāq al-Shaybānī from Saʿīd ibn Abī Burdah from his father Abū Burdah ibn Abī Mūsā al-Ashʿarī: that ʿUmar ibn al-Khaṭṭāb wrote to Abū Mūsā al-Ashʿarī: "Designate the grandfather as a father, for Abū Bakr indeed decreed the grandfather as a father."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ الضَّرِيرُ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ عَنْ أَبِيهِ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ: أَنْ اجْعَلْ الْجَدَّ أَبًا، فَإِنَّ أَبَا بَكْرٍ جَعَلَ الْجَدَّ أَبًا.

L27837 And through the chain of Saʿīd ibn Manṣūr, who narrated to us: Khālid ibn ʿAbd Allāh, Layth ibn Abī Sulaym, ʿAṭā'—that Abū Bakr, ʿUmar, ʿUthmān, and Ibn ʿAbbās considered the grandfather a father.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا خَالِدُ بْنُ عَبْدِ اللَّهِ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَطَاءٍ: أَنَّ أَبَا بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَابْنُ عَبَّاسٍ كَانُوا يَجْعَلُونَ الْجَدَّ أَبًا.

L27838 Ibn Abbas said: My grandson inherits from me to the exclusion of my brother, and I do not inherit from my grandson to the exclusion of his brother.

وَقَالَ ابْنُ عَبَّاسٍ: يَرِثُنِي ابْنُ ابْنِي دُونَ أَخِي وَلَا أَرِثُ ابْنَ ابْنِي دُونَ أَخِيهِ.

L27839 From the chain of Saʿīd ibn Manṣūr, who narrated to us: Sufyān—he is Ibn ʿUyaynah—from ʿAmr ibn Dīnār from ʿAṭā' from Ibn ʿAbbās, who said: "The

grandfather is a father." He recited: {And I have followed the religion of my forefathers Ibrāhīm, Isḥāq, and Yaʿqūb} [Yūsuf: 38].[12]

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: الْجَدُّ أَبٌ، وَقَرَأَ: {وَاتَّبَعْتُ مِلَّةَ آبَائِي إِبْرَاهِيمَ وَإِسْحَاقَ وَيَعْقُوبَ} [يوسف: ٣٨] .

L27840 And through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Ismāʿīl ibn Abī Uways reported to us, saying: ʿAbd al-Raḥmān ibn Abī al-Zinād narrated to me from his father, who informed me: Khārijah ibn Zayd ibn Thābit reported from his father that ʿUmar ibn al-Khaṭṭāb—when he sought consultation regarding an inheritance between the grandfather and the brothers, while ʿUmar at that time held the view that the grandfather had a stronger right to the inheritance of his grandson than the deceased's brothers—and Khārijah's father mentioned the remainder of the narration.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ أَخْبَرَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ لَمَّا اسْتَشَارَ فِي مِيرَاثٍ بَيْنَ الْجَدِّ وَالْإِخْوَةِ وَعُمَرُ يَرَى يَوْمَئِذٍ أَنَّ الْجَدَّ أَوْلَى بِمِيرَاثِ ابْنِ ابْنِهِ مِنْ إِخْوَتِهِ - وَذَكَرَ بَاقِيَ الْخَبَرِ.

L27841–27842 From Ayyub ibn Sulayman, from Abd al-Warith - who is Ibn Sa'id al-Tannuri - from Ishaq ibn Suwayd, who heard Abdullah ibn Buraidah, who heard Abu Iyad, who heard Zayd ibn Thabit say: He entered upon Umar ibn al-Khattab on the night of his demise and said: "I have considered reducing the grandfather's share of inheritance." Umar replied: "If I were to diminish anyone's right for another's sake, I would diminish the brothers' share in favor of the grandfather. Do not the sons of Abdullah ibn Umar inherit me instead of my brothers? Why then should I not inherit them instead of their brothers? If I survive until morning, I shall certainly issue a ruling on this matter." He said: Umar died that very night.

وَمِنْ طَرِيقِ أَيُّوبَ بْنِ سُلَيْمَانَ أَنَا عَبْدُ الْوَارِثِ - هُوَ ابْنُ سَعِيدٍ التَّنُّورِيُّ - عَنْ إِسْحَاقَ بْنِ سُوَيْدٍ: أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ بُرَيْدَةَ أَنَّهُ سَمِعَ أَبَا عِيَاضٍ: أَنَّهُ سَمِعَ زَيْدَ بْنَ ثَابِتٍ يَقُولُ: إِنَّهُ دَخَلَ عَلَى عُمَرَ بْنِ الْخَطَّابِ فِي اللَّيْلَةِ الَّتِي قُبِضَ فِيهَا فَقَالَ لَهُ زَيْدٌ: إِنِّي قَدْ رَأَيْت أَنْ أَنْتَقِصَ الْجَدَّ؟ فَقَالَ لَهُ عُمَرُ: لَوْ كُنْت مُنْتَقِصًا أَحَدًا لِأَحَدٍ لَانْتَقَصْت الْإِخْوَةَ لِلْجَدِّ، أَلَيْسَ بَنُو عَبْدِ اللَّهِ بْنِ عُمَرَ يَرِثُونَنِي دُونَ إِخْوَتِي، فَمَا بَالِي لَا أَرِثُهُمْ دُونَ إِخْوَتِهِمْ، لَئِنْ أَصْبَحْت لَأَقُولَنَّ فِيهِ؟ قَالَ: فَمَاتَ مِنْ لَيْلَتِهِ.

L27843 So this is the final opinion of Umar—may Allah be pleased with him—and its chain of transmission is of utmost soundness.

فَهَذَا آخِرُ قَوْلِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَإِسْنَادُهُ فِي غَايَةِ الصِّحَّةِ.

L27844 Narrated through the chain of Ḥammād ibn Salamah: I, Layth ibn Abī Sulaym, narrate from Ṭāwūs that ʿUthmān ibn ʿAffān and Ibn Masʿūd both said: The grandfather is equivalent to the father.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا لَيْثُ بْنُ أَبِي سُلَيْمٍ عَنْ طَاوُسٍ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ، وَابْنَ مَسْعُودٍ قَالَا جَمِيعًا: الْجَدُّ بِمَنْزِلَةِ الْأَبِ.

L27845 And from the chain of ʿAbd al-Razzāq, who said: Ibn Jurayj said: "ʿAṭāʾ informed me that ʿAlī ibn Abī Ṭālib used to regard the grandfather as a father."

[12] **Qur'an references (L27839):** Qur'an 12:38 (Yusuf).

ʿAbd al-Razzāq said: “And I heard Ibn Jurayj say: ’I heard Ibn Abī Mulaikah narrate that Ibn al-Zubayr used to consider the grandfather equivalent to a father.”’

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ قَالَ: قَالَ ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَجْعَلُ الْجَدَّ أَبًا قَالَ عَبْدُ الرَّزَّاقِ: وَسَمِعْت ابْنَ جُرَيْجٍ يَقُولُ: سَمِعْت ابْنَ أَبِي مُلَيْكَةَ يُحَدِّثُ أَنَّ ابْنَ الزُّبَيْرِ كَانَ يَجْعَلُ الْجَدَّ أَبًا.

L27846 From the chain of Sa’id ibn Mansur: Hammad ibn Zayd reported to us from Kathir ibn Shinẓīr, who said, “I heard al-Hasan say: ’If I were appointed to manage people’s affairs, I would reduce the grandfather’s share to that of a father.”’

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ كَثِيرِ بْنِ شِنْظِيرٍ قَالَ: سَمِعْت الْحَسَنَ يَقُولُ: لَوْ وُلِّيت مِنْ أَمْرِ النَّاسِ لَأَنْزَلْت الْجَدَّ أَبًا.

L27847 From the chain of Abd al-Razzaq from Ma’mar from Qatadah: That he used to issue fatwas that the grandfather is a father.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: أَنَّهُ كَانَ يُفْتِي بِأَنَّ الْجَدَّ أَبٌ.

L27848 So these are among the Companions—may Allah be pleased with them—Abu Bakr, Umar, Uthman, Ali, Ibn Masʿud, Abu Musa al-Ashʿariyy, Ibn Abbas, and Ibn al-Zubayr.

فَهَؤُلَاءِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ وَعَلِيٌّ، وَابْنُ مَسْعُودٍ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ.

L27849 It has also been reported from ʿĀ’ishah, the Mother of the Believers, Abī al-Dardā’, Ubayy ibn Kaʿb, Muʿādh ibn Jabal, and Abī Hurayrah.

وَرُوِيَ أَيْضًا - عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَأَبِي الدَّرْدَاءِ، وَأُبَيِّ بْنِ كَعْبٍ، وَمُعَاذِ بْنِ جَبَلٍ، وَأَبِي هُرَيْرَةَ.

L27850 And from the Followers: Tāwūs, ʿAṭā’, Ubayd Allāh ibn ʿUtbah ibn Masʿūd, al-Ḥasan, Jābir ibn Zayd, Qatādah, ʿUthmān al-Battī, Shurayḥ, al-Shaʿbī, and a group besides them. And after them: Abū Ḥanīfah, Nuʿaym ibn Ḥammād, al-Muzanī, Abū Thawr, Isḥāq ibn Rāhuyah; Dāwūd ibn ʿAlī, all our companions, and a group besides them.

وَمِنْ التَّابِعِينَ: طَاوُسٍ، وَعَطَاءٌ، وَعُبَيْدُ اللَّهِ بْنُ عُتْبَةَ بْنِ مَسْعُودٍ، وَالْحَسَنُ، وَجَابِرُ بْنُ زَيْدٍ، وَقَتَادَةُ، وَعُثْمَانُ الْبَتِّيُّ، وَشُرَيْحٌ، وَالشَّعْبِيُّ، وَجَمَاعَةٌ سِوَاهُمْ. وَمِنْ بَعْدِهِمْ: أَبُو حَنِيفَةَ، وَنُعَيْمُ بْنُ حَمَّادٍ، وَالْمُزَنِيُّ، وَأَبُو ثَوْرٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: وَدَاوُد بْنُ عَلِيٍّ، وَجَمِيعُ أَصْحَابِنَا، وَجَمَاعَةٌ غَيْرُهُمْ.

L27851 And he narrated it from Abu Bakr al-Siddīq: ʿUmar, ʿUthmān, Ibn Abbas, Ibn al-Zubayr, Abū Mūsā al-Ashʿarī, Abū Saʿīd al-Khudrī, and others.

وَرَوَاهُ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ: عُمَرُ، وَعُثْمَانُ، وَابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ، وَأَبُو مُوسَى الْأَشْعَرِيُّ، وَأَبُو سَعِيدٍ الْخُدْرِيِّ، وَغَيْرُهُمْ -.

L27852–27853 The chains of transmission that we have mentioned are established without any doubt.

وَثَبَتَتْ الْأَسَانِيدُ الَّتِي ذَكَرْنَا بِلَا شَكٍّ.

It was narrated from ʿUmar by Abū Burdah ibn Abī Mūsā: that ʿUmar wrote regarding this matter to his [Abū Burdah's] father - constituting a sound chain of transmission. It was also narrated from him [ʿUmar] by Zayd ibn Thābit.

It was narrated from Ibn Abbas: ʿIkrimah, ʿAṭā, Tāwus, Saʿīd ibn Jubayr, and others.

And Ibn Abi Mulaykah narrated it from Ibn al-Zububayr—all of these accounts through the most rigorously verified chains of transmission.

It has been narrated from Uthman, Ali, and Ibn Masʿud through chains of transmission superior to all that has been narrated from them—and from Zaid, that which the opponents have adopted.

Abu Muhammad said: Two issues have come up regarding which they hold views that must be mentioned here.

A juristic problem concerning Al-Kharqāʾ, involving a mother, a sister, and a grandfather.

1732 - An issue termed "Al-Kharqā'" (a specific inheritance case): involving a mother, sister, and grandfather. We were narrated from Al-Bazzar, who reported from Abū al-Zinbāʿ Rawḥ ibn al-Faraj al-Miṣrī. Al-Bazzar remarked: "It is said there is none in Egypt more trustworthy or truthful than Rawḥ ibn al-Faraj." ʿAmr ibn Khālid reported: ʿĪsā ibn Yūnus narrated to me, stating: I, ʿAbbād ibn Mūsā, report from al-Shaʿbī, who said: "Al-Ḥajjāj summoned me and asked: 'What is your ruling regarding a grandfather, mother, and sister?' I answered: 'Five Companions of Allah's Messenger (peace be upon him) differed on this: Ibn Masʿūd, ʿAlī, ʿUthmān, Zayd, and Ibn ʿAbbās.' Al-Ḥajjāj pressed: 'What precisely did Ibn ʿAbbās rule?' I said: 'He equated the grandfather with a father, granted the sister nothing, and allotted the mother a third.' He asked: 'Ibn Masʿūd's view?' I replied: 'He divided the estate into six: three shares for the sister, two for the grandfather, and two for the mother (as her third).' He inquired: 'The Commander of the Faithful ʿUthmān's ruling?' I responded: 'He split it into equal thirds.' He questioned: 'And Abū Turāb - ʿAlī's verdict?' I said: 'He divided it into six: three for the sister, two for the mother, and one for the grandfather.' He asked: 'Zayd's

وَرَوَاهُ عَنْ عُمَرَ: أَبُو بُرْدَةَ بْنُ أَبِي مُوسَى: أَنَّهُ كَتَبَ بِذَلِكَ إِلَى أَبِيهِ وَهُوَ إِسْنَادٌ ثَابِتٌ - وَرَوَاهُ أَيْضًا عَنْهُ زَيْدُ بْنُ ثَابِتٍ.

وَرَوَاهُ عَنْ ابْنِ عَبَّاسٍ: عِكْرِمَةُ، وَعَطَاءٌ، وَطَاوُسٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَغَيْرُهُمْ.

وَرَوَاهُ عَنْ ابْنِ الزُّبَيْرِ: ابْنُ أَبِي مُلَيْكَةَ - كُلُّ ذَلِكَ بِأَصَحِّ إِسْنَادٍ.

وَرُوِيَ عَنْ عُثْمَانَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ بِأَسَانِيدَ هِيَ أَحْسَنُ مِنْ كُلِّ مَا رُوِيَ عَنْهُمْ - وَعَنْ زَيْدٍ مِمَّا أَخَذَ بِهِ الْمُخَالِفُونَ.

قَالَ أَبُو مُحَمَّدٍ: وَجَاءَتْ مَسْأَلَتَانِ لَهُمْ فِيهَا أَقْوَالٌ يَجِبُ ذِكْرُهَا هَاهُنَا.

[مَسْأَلَةُ الْخَرْقَاءُ وَهِيَ أُمٌّ وَأُخْتٌ وَجَدٌّ]

١٧٣٢ - مَسْأَلَةٌ وَهِيَ " الْخَرْقَاءُ " وَهِيَ: أُمٌّ، وَأُخْتٌ، وَجَدٌّ -: وَرُوِّينَا عَنْ الْبَزَّارِ نا أَبُو الزِّنْبَاعِ رَوْحُ بْنُ الْفَرَجِ الْمِصْرِيُّ، قَالَ الْبَزَّارُ: يُقَالُ: لَيْسَ بِمِصْرَ أَوْثَقُ وَأَصْدَقُ مِنْهُ نا عَمْرُو بْنُ خَالِدٍ نا عِيسَى بْنُ يُونُسَ أَنَا عَبَّادُ بْنُ مُوسَى عَنْ الشَّعْبِيِّ قَالَ: بَعَثَ إِلَيَّ الْحَجَّاجُ فَقَالَ: مَا تَقُولُ فِي جَدٍّ، وَأُمٍّ، وَأُخْتٍ؟ قُلْت: اخْتَلَفَ فِيهَا خَمْسَةٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْنُ مَسْعُودٍ، وَعَلِيٌّ، وَعُثْمَانُ، وَزَيْدٌ، وَابْنُ عَبَّاسٍ، قَالَ الْحَجَّاجُ: فَمَا قَالَ فِيهَا ابْنُ عَبَّاسٍ - إنْ كَانَ لَمُتْقَنًا -؟ قُلْت: جَعَلَ الْجَدَّ أَبًا، وَلَمْ يُعْطِ الْأُخْتَ شَيْئًا، وَأَعْطَى الْأُمَّ الثُّلُثَ؟ قَالَ: فَمَا قَالَ فِيهَا ابْنُ مَسْعُودٍ؟ قُلْت: جَعَلَهَا مِنْ سِتَّةٍ: أَعْطَى الْأُخْتَ ثَلَاثَةً، وَأَعْطَى الْجَدَّ اثْنَيْنِ، وَأَعْطَى الْأُمَّ الثُّلُثَ، قَالَ: فَمَا قَالَ فِيهَا أَمِيرُ الْمُؤْمِنِينَ - يَعْنِي عُثْمَانَ -؟ قُلْت: جَعَلَهَا أَثْلَاثًا، قَالَ: فَمَا قَالَ فِيهَا أَبُو تُرَابٍ يَعْنِي

approach?’ I answered: ‘He apportioned nine shares: three to the mother, four to the grandfather, and two to the sister.’ Al-Ḥajjāj concluded: ‘Direct the judge to rule on this as the Commander of the Faithful ʿUthmān ruled.’”

عَلِيًّا قُلْت: جَعَلَهَا مِنْ سِتَّةٍ: أَعْطَى الْأُخْتَ ثَلَاثَةً، وَأَعْطَى الْأُمَّ اثْنَيْنِ، وَأَعْطَى الْجَدَّ سَهْمًا، قَالَ: فَمَا قَالَ فِيهَا زَيْدٌ؟ قُلْت: جَعَلَهَا مِنْ تِسْعَةٍ: أَعْطَى الْأُمَّ ثَلَاثَةً، وَأَعْطَى الْجَدَّ أَرْبَعَةً، وَأَعْطَى الْأُخْتَ: اثْنَيْنِ قَالَ الْحَجَّاجُ: مُرْ الْقَاضِي يُمْضِيهَا عَلَى مَا أَمْضَاهَا عَلَيْهِ أَمِيرُ الْمُؤْمِنِينَ - يَعْنِي عُثْمَانَ -.

L27861 And through the chain of Waki‘ who reported to us: Sufyān al-Thawrī narrated from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī from ʿUmar ibn al-Khaṭṭāb regarding a sister, a mother, and a grandfather. He said: The sister receives half, the mother receives a sixth, and what remains belongs to the grandfather.

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ فِي أُخْتٍ، وَأُمٍّ، وَجَدٍّ، قَالَ: لِلْأُخْتِ النِّصْفُ، وَلِلْأُمِّ السُّدُسُ، وَمَا بَقِيَ فَلِلْجَدِّ.

L27862 Abū Muḥammad said: “This conforms to the statement of Ibn Masʿūd - may Allah be pleased with him.”

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُوَافِقٌ لِقَوْلِ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ -.

L27863–27864 From the narration of Saʿīd ibn Manṣūr, who narrated to us from Hushaym, from ʿUbaydah, from al-Shaʿbī, who said: Al-Ḥajjāj sent for me and asked, “What do you say regarding an inheritance case presented to me involving a mother, a grandfather, and a sister?” I replied, “What did the Commander say about it?” He informed me of his statement, and I said, “This is the judgment of Abū Turāb”—meaning ʿAlī ibn Abī Ṭālib—“and seven of the Companions of the Messenger of Allah (peace and blessings be upon him) spoke on it.” ʿUmar and Ibn Masʿūd said: “The sister receives half, the mother a sixth, and the grandfather a third.” ʿAlī said: “The mother receives a third, the sister half, and the grandfather a sixth.” ʿUthmān ibn ʿAffān said: “The mother receives a third, the sister a third, and the grandfather a third.” Al-Ḥajjāj remarked, “This is invalid.” Zayd said: “The mother receives three, the grandfather four, and the sister two shares.” Ibn ʿAbbās and Ibn al-Zubayr said: “The mother receives a third, the grandfather takes the remainder, and the sister receives nothing.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ عَنْ عُبَيْدَةَ عَنْ الشَّعْبِيِّ قَالَ: أَرْسَلَ إلَيَّ الْحَجَّاجُ فَقَالَ لِي: مَا تَقُولُ فِي فَرِيضَةٍ أُتِيت بِهَا: أُمٌّ، وَجَدٌّ، وَأُخْتٌ؟ فَقُلْت: مَا قَالَ فِيهَا الْأَمِيرُ؟ فَأَخْبَرَنِي بِقَوْلِهِ، فَقُلْت: هَذَا قَضَاءُ أَبِي تُرَابٍ يَعْنِي عَلِيَّ بْنَ أَبِي طَالِبٍ - وَقَالَ فِيهَا سَبْعَةٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ عُمَرُ، وَابْنُ مَسْعُودٍ: لِلْأُخْتِ النِّصْفُ، وَلِلْأُمِّ السُّدُسُ، وَلِلْجَدِّ الثُّلُثُ، وَقَالَ عَلِيٌّ: لِلْأُمِّ الثُّلُثُ وَلِلْأُخْتِ النِّصْفُ، وَلِلْجَدِّ السُّدُسُ، وَقَالَ عُثْمَانُ بْنُ عَفَّانَ: لِلْأُمِّ الثُّلُثُ، وَلِلْأُخْتِ الثُّلُثُ، وَلِلْجَدِّ الثُّلُثُ، فَقَالَ الْحَجَّاجُ: لَيْسَ هَذَا بِشَيْءٍ، وَقَالَ زَيْدٌ: لِلْأُمِّ ثَلَاثَةٌ، وَلِلْجَدِّ أَرْبَعَةٌ، وَلِلْأُخْتِ سَهْمَانِ، وَقَالَ ابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ: لِلْأُمِّ الثُّلُثُ، وَلِلْجَدِّ مَا بَقِيَ، وَلَيْسَ لِلْأُخْتِ شَيْءٌ.

[مَسْأَلَة الْأَكْدَرِيَّة]

The Juridical Case of Al-Akdariyyah

L27866 Issue 1733: Al-Akdariyyah refers to a case in inheritance law where the

heirs are a mother, grandfather, sister, and husband.

١٧٣٣ - مَسْأَلَةٌ " وَالْأَكْدَرِيَّةُ " وَهِيَ أُمٌّ، وَجَدٌّ، وَأُخْتٌ، وَزَوْجٌ.

L27867 It has been narrated to us via the path of Sa'īd ibn Manṣūr, from whom Hushaym reported to us, from al-Mughīrah, from Ibrāhīm al-Nakha'ī, who said: 'Alī stated: "The husband receives three shares, the mother two shares, the grandfather one share, and the sister three shares." Ibn Mas'ūd said: "The husband receives three shares, the mother one share, the grandfather one share, and the sister three shares." Zayd ibn Thābit said: "The husband receives three shares, the mother two shares, the grandfather one share, and the sister three shares. Multiply all shares by three, resulting in twenty-seven shares: the husband receives nine from this total, the mother six. This leaves twelve shares: the grandfather receives eight from these, and the sister four." Ibn 'Abbās said: "The husband receives half, the mother a third, the grandfather receives what remains, and the sister receives nothing."

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: قَالَ عَلِيٌّ: لِلزَّوْجِ ثَلَاثَةُ أَسْهُمٍ، وَلِلْأُمِّ سَهْمَانِ، وَلِلْجَدِّ سَهْمٌ، وَلِلْأُخْتِ ثَلَاثَةُ أَسْهُمٍ، وَقَالَ ابْنُ مَسْعُودٍ: لِلزَّوْجِ ثَلَاثَةُ أَسْهُمٍ، وَلِلْأُمِّ سَهْمٌ، وَلِلْجَدِّ سَهْمٌ، وَلِلْأُخْتِ ثَلَاثَةُ أَسْهُمٍ، وَقَالَ زَيْدُ بْنُ ثَابِتٍ: لِلزَّوْجِ ثَلَاثَةُ أَسْهُمٍ وَلِلْأُمِّ سَهْمَانِ، وَلِلْجَدِّ سَهْمٌ، وَلِلْأُخْتِ ثَلَاثَةُ أَسْهُمٍ، تَضْرِبُ جَمِيعَ السِّهَامِ فِي ثَلَاثَةٍ فَتَكُونُ سَبْعَةً وَعِشْرِينَ سَهْمًا: لِلزَّوْجِ مِنْ ذَلِكَ تِسْعَةُ أَسْهُمٍ، وَلِلْأُمِّ سِتَّةٌ، تَبْقَى اثْنَا عَشَرَ سَهْمًا: لِلْجَدِّ مِنْهَا ثَمَانِيَةٌ، وَلِلْأُخْتِ أَرْبَعَةٌ، وَقَالَ ابْنُ عَبَّاسٍ لِلزَّوْجِ النِّصْفُ، وَلِلْأُمِّ الثُّلُثُ، وَلِلْجَدِّ مَا بَقِيَ، وَلَيْسَ لِلْأُخْتِ شَيْءٌ.

L27868–27869 It was narrated to us through Sufyān ibn 'Uyaynah, who said: "They narrated to me from Ismā'īl ibn Abī Khālid, from al-Sha'bī, who said: His narrator, Zayd ibn Thābit (meaning Qabīṣah ibn Dhu'ayb), reported that he (i.e., Zayd ibn Thābit) did not issue any ruling regarding 'al-Akdariyyah'."

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ قَالَ: حَدَّثُونِي عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: حَدَّثَنِي رَاوِيهِ زَيْدِ بْنِ ثَابِتٍ - يَعْنِي قَبِيصَةَ بْنَ ذُؤَيْبٍ - أَنَّهُ لَمْ يَقُلْ فِي " الْأَكْدَرِيَّةِ " شَيْئًا - يَعْنِي زَيْدَ بْنَ ثَابِتٍ -.

L27870 From the narration of Ghundar: Shu'bah reported to us, "I heard Abū Isḥāq al-Sabī'ī say: 'We consulted 'Ubaydah al-Salmānī about a case involving a husband, a mother, a grandfather, and a sister?' He said: The husband receives half, the sister receives a sixth, the mother receives a sixth, and the grandfather receives a sixth."

وَمِنْ طَرِيقِ غُنْدَرٍ نا شُعْبَةُ سَمِعْت أَبَا إِسْحَاقَ السَّبِيعِيَّ يَقُولُ: أَتَيْنَا عَبِيدَةُ السَّلْمَانِيَّ فِي زَوْجٍ، وَأُمٍّ، وَجَدٍّ، وَأُخْتٍ؟ فَقَالَ: لِلزَّوْجِ النِّصْفُ، وَلِلْأُخْتِ السُّدُسُ، وَلِلْأُمِّ السُّدُسُ، وَلِلْجَدِّ السُّدُسُ.

L27871 An issue concerning a grandfather, a daughter, and a sister or brothers.

[مَسْأَلَة فِي جَدّ وابنة وأخت أَوْ أخوة]

L27872 Issue 1734: It has been narrated to us through the chain of Abd al-Razzaq from Sufyan al-Thawri from al-A'mash from Ibrahim from Masruq from Ibn Mas'ud that he ruled on a case involving a grandfather, a daughter, and a sister: The inheritance is from four shares - two shares for the daughter,

١٧٣٤ - مَسْأَلَةٌ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ عَنْ مَسْرُوقٍ عَنْ ابْنِ مَسْعُودٍ: أَنَّهُ قَالَ فِي جَدٍّ، وَابْنَةٍ، وَأُخْتٍ: هِيَ مِنْ أَرْبَعَةٍ:

one share for the grandfather, and one share for the sister. If there are two sisters, the inheritance is from eight shares - four shares for the daughter, two shares for the grandfather, and two shares divided between the two sisters. If there are three sisters, the inheritance is from ten shares - five shares for the daughter, two shares for the grandfather, and three shares distributed among the three sisters.

L27873 **Issue of paternal nephews assuming their fathers' legal positions alongside the grandfather.**

L27874 1735 - An issue: It was narrated to us through the chain of Al-Ḥajjāj ibn al-Minhāl, who narrated to us from Abū ʿAwānah, from Ismāʿīl ibn Abī Khālid, from Al-Shaʿbī, who said: "'Alī ibn Abī Ṭālib would assign the nephews alongside the grandfather in their fathers' positions"—meaning the positions of their fathers—"and I have not found anyone among the people who stated it except ʿAlī."

L27875 Abu Muhammad said: We have only presented these legal questions to make their contradiction to our earlier arguments clear, and to show the adherent of *taqlid* that none of them are more valid than another – and success is from Allah, the Exalted.

L27876 **The transmitted narrations concerning the grandfather.**

L27877–27879 Issue 1736: It was reported to us through the chain of Ahmad ibn Shu'ayb: [He said] I received from Mu'awiyah ibn Salih, Muhammad ibn 'Isa, and Sulayman ibn Salam al-Balkhi. Muhammad ibn 'Isa (Ibn al-Tabba') narrated to us from Hushaym. Mu'awiyah said: 'Abdullah ibn Sawwar al-'Anbari narrated to me, who narrated from Wuhaib (Ibn Khalid). Then the narrations of Hushaym and Wuhaib concurred, both transmitting from Yunus (Ibn 'Ubayd) through al-Hasan, from Ma'qil ibn Yasar: "The Messenger of Allah - peace and blessings be upon him - allocated one-sixth to the grandfather." Mu'awiyah added in his narration: "We do not know with whom." Sulayman al-Balkhi said: I am al-Nadr (Ibn Shumayl) - I was informed by Yunus (meaning Ibn Abi Ishaq) through Abu Ishaq al-Sabi'i, from 'Amr ibn Maymun: "Umar gathered the Companions of the Messenger of Allah - peace and

لِلْبِنْتِ سَهْمَانِ، وَلِلْجَدِّ سَهْمٌ، وَلِلْأُخْتِ سَهْمٌ - فَإِنْ كَانَتَا أُخْتَيْنِ فَمِنْ ثَمَانِيَةٍ: لِلْبِنْتِ أَرْبَعَةٌ، وَلِلْجَدِّ سَهْمَانِ، وَلِلْأُخْتَيْنِ بَيْنَهُمَا سَهْمَانِ - فَإِنْ كُنَّ ثَلَاثَةَ أَخَوَاتٍ، فَمِنْ عَشْرَةٍ: لِلْبِنْتِ خَمْسَةُ أَسْهُمٍ، وَلِلْجَدِّ سَهْمَانِ وَلِلْأَخَوَاتِ ثَلَاثَةُ أَسْهُمٍ بَيْنَهُنَّ.

[مَسْأَلَة نُزُول بَنِي الأخ منازل أبائهم مَعَ الْجَدّ]

١٧٣٥ - مَسْأَلَةٌ رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ إِسْمَاعِيلَ ابْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ يُنْزِلُ بَنِي الْأَخِ مَعَ الْجَدِّ مَنَازِلَهُمْ - يَعْنِي مَنَازِلَ آبَائِهِمْ - وَلَمْ أَجِدْ أَحَدًا مِنْ النَّاسِ يَقُولُهُ غَيْرَهُ.

قَالَ أَبُو مُحَمَّدٍ: إنَّمَا أَوْرَدْنَا هَذِهِ الْمَسَائِلَ لِتَلُوحَ مُنَاقَضَتُهَا لِمَا ذَكَرْنَا قَبْلَهَا، وَلِنُرِيَ الْمُقَلِّدَ أَنَّهُ لَيْسَ بَعْضُهَا أَوْلَى مِنْ بَعْضٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[الْآثَارُ الْوَارِدَةُ فِي الْجَدِّ]

١٧٣٦ - مَسْأَلَةٌ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُعَاوِيَةُ بْنُ صَالِحٍ، وَمُحَمَّدُ بْنُ عِيسَى، وَسُلَيْمَانُ بْنُ سَلَمٍ الْبَلْخِيُّ، قَالَ مُحَمَّدُ بْنُ عِيسَى - هُوَ ابْنُ الطَّبَّاعِ - نا هُشَيْمٌ، وَقَالَ مُعَاوِيَةُ: حَدَّثَنِي عَبْدُ اللَّهِ بْنُ سَوَّارٍ الْعَنْبَرِيُّ نا وُهَيْبٌ - هُوَ ابْنُ خَالِدٍ - ثُمَّ اتَّفَقَ هُشَيْمٌ، وَوُهَيْبٌ، كِلَاهُمَا عَنْ يُونُسَ - هُوَ ابْنُ عُبَيْدٍ - عَنْ الْحَسَنِ عَنْ مَعْقِلِ بْنِ يَسَارٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَى الْجَدَّ السُّدُسَ» قَالَ مُعَاوِيَةُ فِي حَدِيثِهِ: لَا نَدْرِي مَعَ مَنْ، وَقَالَ سُلَيْمَانُ الْبَلْخِيّ: أَنَا النَّضْرُ - هُوَ ابْنُ شُمَيْلٍ - أَخْبَرَنِي يُونُسُ - يَعْنِي

blessings be upon him - concerning the matter...” Regarding the grandfather, he adjured them: “Who has heard anything from the Messenger of Allah—peace and blessings be upon him—concerning the grandfather?” Ma‘qil ibn Yāsar al-Muzanī replied: “I heard the Messenger of Allah—peace and blessings be upon him—presented a fixed share involving a grandfather, and he allocated a third or a sixth.” ‘Umar said to him: “What was the fixed share?” He answered: “I do not know”—and Ma‘qil related the report.

ابْنَ أَبِي إِسْحَاقَ - عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَمْرِو بْنِ مَيْمُونٍ: أَنَّ عُمَرَ جَمَعَ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي شَأْنِ الْجَدِّ فَنَشَدَهُمْ: مَنْ سَمِعَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجَدِّ شَيْئًا؟ فَقَالَ مَعْقِلُ بْنُ يَسَارٍ الْمُزَنِيُّ: سَمِعْتُ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَى بِفَرِيضَةٍ فِيهَا جَدٌّ، فَأَعْطَى ثُلُثًا أَوْ سُدُسًا» ، فَقَالَ لَهُ عُمَرُ: مَا الْفَرِيضَةُ؟ فَقَالَ: لَا أَدْرِي - وَذَكَرَ الْخَبَرَ. .

L27880 And through the chain of Abū Dāwūd: Muḥammad ibn Kathīr narrated to us, Hammām ibn Yaḥyā narrated to us, from Qatādah, from al-Ḥasan, from ʿImrān ibn al-Ḥuṣayn: “A man came to the Messenger of Allāh (peace be upon him) and said: ’My grandson has died—what is my share of his inheritance?’ He replied: ’One-sixth.’ When the man turned to leave, he called him back and said: ’For you is another one-sixth.’ When he turned away again, he called him back and said: ’Indeed, the additional one-sixth is a gift of kindness.’”

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ كَثِيرٍ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ رَجُلًا أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إنَّ ابْنَ ابْنِي مَاتَ فَمَا لِي مِنْ مِيرَاثِهِ؟ قَالَ: السُّدُسُ، فَلَمَّا أَدْبَرَ دَعَاهُ، فَقَالَ: لَك سُدُسٌ آخَرُ، فَلَمَّا أَدْبَرَ دَعَاهُ، فَقَالَ: إنَّ السُّدُسَ الْآخَرَ طُعْمَةٌ» .

L27881 Abū Muḥammad said: There is discussion concerning al-Ḥasan’s transmission from ʿImrān - and this finds its most appropriate application in the case of two daughters and a grandfather. For the two daughters, two-thirds is a prescribed and specified share. For the grandfather in the presence of descendants generally, one-sixth is a prescribed and specified portion. He receives the remaining sixth by ʿaṣabah (agnatic right), as he is the closest male agnate mentioned.

قَالَ أَبُو مُحَمَّد: فِي سَمَاعِ الْحَسَنِ مِنْ عِمْرَانَ كَلَامٌ - وَهَذَا يَخْرُجُ أَحْسَنَ خُرُوجٍ فِي ابْنَتَيْنِ وَجَدٍّ: فَلِلْبِنْتَيْنِ الثُّلُثَانِ فَرِيضَةً مُسَمَّاةً، وَلِلْجَدِّ مَعَ الْوَلَدِ عُمُومًا السُّدُسُ فَرْضًا مُسَمًّى، وَلَهُ السُّدُسُ الْآخَرُ بِالتَّعْصِيبِ؛ لِأَنَّهُ أَوْلَى رَجُلٍ ذُكِرَ.

L27882 From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Isa (he is Ibn Isa al-Hannat, the grain merchant), from al-Sha‘bi: “Umar publicly inquired among the people regarding the grandfather’s share. A man stood up and said: ’I witnessed the Messenger of Allah (peace and blessings of Allah be upon him) assign him a third.’ He asked: ’Who supports this?’ The man replied: ’I do not know.’ A man said: ’I heard the Messenger of Allah (peace and blessings of Allah be upon him) assign him a sixth.’ He asked: ’Who supports this?’ The man replied: ’I do not know.’”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عِيسَى - هُوَ ابْنُ عِيسَى الْحَنَّاطُ - عَنْ الشَّعْبِيِّ: «أَنَّ عُمَرَ نَشَدَ النَّاسَ فِي الْجَدِّ؟ فَقَامَ رَجُلٌ فَقَالَ: رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ الثُّلُثَ، قَالَ: مَنْ مَعَهُ؟ قَالَ: لَا أَدْرِي، فَقَالَ رَجُلٌ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْطَاهُ السُّدُسَ» ، قَالَ: مَنْ مَعَهُ؟ قَالَ: لَا أَدْرِي.

L27883 From the transmission of Saʿīd ibn Manṣūr, [who reported:] Abū Maʿshar

narrated to us from ʿĪsā ibn Abī ʿĪsā al-Ḥannāṭ that ʿUmar ibn al-Khaṭṭāb asked the people: “Which of you heard the Messenger of Allah—peace be upon him—mention anything regarding the grandfather?” A man responded: “He assigned him a sixth of the estate.” Another said: “He assigned him a third of the estate.” Another said: “He assigned him half of the estate.” Another said: “He assigned him the entire estate.” None of them could definitively state alongside which [other] heirs this allocation was to be applied.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مَعْشَرٍ عَنْ عِيسَى بْنِ أَبِي عِيسَى الْخَنَّاطِ أَنَّ «عُمَرَ بْنَ الْخَطَّابِ سَأَلَ النَّاسَ: أَيُّكُمْ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي الْجَدِّ شَيْئًا؟ فَقَالَ لَهُ رَجُلٌ: أَعْطَاهُ سُدُسَ مَالِهِ، وَقَالَ آخَرُ: أَعْطَاهُ ثُلُثَ مَالِهِ، وَقَالَ آخَرُ: أَعْطَاهُ نِصْفَ مَالِهِ، وَقَالَ آخَرُ: أَعْطَاهُ الْمَالَ كُلَّهُ» - لَيْسَ مِنْهُمْ أَحَدٌ يَدْرِي مَعَ مَنْ مِنْ الْوَرَثَةِ.

L27884 Through the chain of Saʿīd ibn Manṣūr, Yaʿqūb ibn ʿAbd al-Raḥmān narrated to us from ʿAbd al-Raḥmān ibn Ḥarmalah from Saʿīd ibn al-Musayyib, who said: The Messenger of Allāh—peace and blessings be upon him—said, “The boldest among you in dividing the grandfather’s share is likewise the boldest among you in facing the Fire.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا يَعْقُوبُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَرْمَلَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَجْرَؤُكُمْ عَلَى قَسْمِ الْجَدِّ أَجْرَؤُكُمْ عَلَى النَّارِ» .

L27885–27887 Abu Muhammad said: This is Yaʿqūb ibn ʿAbd al-Raḥmān ibn Muḥammad al-Qāriʾ from Banū al-Hawn ibn Khuzaymah, an ally of Banū Zuhrah—a reliable narrator whose father was also reliable. We currently know of no share for the paternal grandfather beyond these [portions], which include only a sixth, a third, a half, and the entirety. According to this, we hold the opinion: The paternal grandfather is entitled to a sixth when inheriting alongside a male child, and with [...] Daughters receive one-third, and a single daughter receives half. If there is no child, mother, grandmother, husband, wife, or father, the entire estate belongs to him.

قَالَ أَبُو مُحَمَّدٍ: هَذَا يَعْقُوبُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ مُحَمَّدٍ الْقَارِئُ مِنْ بَنِي الْهَوْنِ بْنِ خُزَيْمَةَ حَلِيفٌ لِبَنِي زُهْرَةَ ثِقَةٌ ابْنُ ثِقَةٍ مَا نَعْلَمُ الْآنَ فِي الْجَدِّ أَثَرًا غَيْرَ هَذِهِ وَلَيْسَ فِيهَا إلَّا سُدُسٌ، وَثُلُثٌ، وَنِصْفٌ، وَكُلٌّ، وَبِهَا نَقُولُ: فَلِلْجَدِّ مَعَ الْوَلَدِ الذَّكَرِ السُّدُسُ، وَمَعَ الْبَنَاتِ الثُّلُثُ، وَمَعَ الْبِنْتِ النِّصْفُ - وَإِذَا لَمْ يَكُنْ وَلَدٌ، وَلَا أُمٌّ، وَلَا جَدَّةٌ، وَلَا زَوْجٌ، وَلَا زَوْجَةٌ، وَلَا أَبٌ: فَلَهُ الْكُلُّ.

L27888 Abu Muhammad said: When they differed as we mentioned, it became necessary for us to examine the evidence for each opinion to discern the truth and follow it by Allah’s power and favor. We found that those who hesitated regarding inheritance might cite the *mursal* report of Sa’id, which we mentioned three or four lines [of text] above. However, it holds no authority because it is a *mursal* report. Far be it from Allah that His Messenger, sent to clarify, would neglect to clarify what he was commanded to clarify, then threaten in that [act] that one is bold toward the Fire. Whatever he did not clarify to us is not binding upon us at all. Everything he obligated upon

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي حُجَّةِ كُلِّ قَوْلٍ مِنْهَا لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ بِحَوْلِ اللَّهِ تَعَالَى وَمَنِّهِ، فَوَجَدْنَا مَنْ تَوَقَّفَ فِي مِيرَاثِهِ يُمْكِنُ أَنْ يَحْتَجَّ بِمُرْسَلِ سَعِيدٍ الَّذِي أَوْرَدْنَا قَبْلَ هَذَا الْمَكَانِ بِثَلَاثَةِ أَسْطَارٍ أَوْ أَرْبَعَةٍ وَهُوَ لَا حُجَّةَ فِيهِ؛ لِأَنَّهُ مُرْسَلٌ، وَحَاشَ لِلَّهِ أَنْ يَكُونَ رَسُولُهُ الْمَبْعُوثُ بِالْبَيَانِ لَا يُبَيِّنُ مَا أُمِرَ بِبَيَانِهِ ثُمَّ يَتَوَعَّدُ فِيهَا بِأَنَّهُ

us, he clarified to us. When we affirm what he clarified, we do not act with boldness toward the Fire; rather, we tread the path to Paradise.

L27889 The grandfather is not exempt from either having an inheritance or not having one. If he has no inheritance, then the one withholding it is virtuous. If he does have an inheritance, granting him his rightful share is an obligation, and it is impermissible to withhold it from him. Therefore, determining the ruling in either case is an obligatory duty: one must either grant it or withhold it. It is inconceivable that the determination of the ruling regarding his inheritance could be an obligation—such that abandoning it constitutes disobedience to Allah the Exalted—while [Allah] threatens with Hellfire for fulfilling what He has ordained upon us. Rather, this is a flaw in the transmitter. By Allah, the Messenger of Allah—peace and blessings be upon him—certainly never uttered these words while reciting the words of his Lord the Exalted: "This day I have perfected for you your religion" [Al-Māʾidah: 3].[13]

L27890 "The right guidance has become clear from misguidance" (2:256).[14]

L27891 However, when Saʿīd attributed it to the Prophet—peace and blessings of Allah be upon him—it caused ambiguity. In reality, it is a mawqūf narration from ʿAlī and a narration from ʿUmar. There is a Sahih narration from Ibn ʿUmar as we cited previously, or the error originates from someone other than Saʿīd who attributed it to the Prophet—peace and blessings of Allah be upon him.

L27892 The preserved narration from Saʿīd's chain is that it is from ʿUmar as we cited before, or that Saʿīd heard it from someone who had a lapse regarding it—it must be one of the two. Thus, this statement is invalidated.

L27893 Then we examined the opinion of Zayd and ʻAbd al-Raḥmān ibn Ghanm—who denied the grandfather inheritance when brothers are present—and found their argument to be that they said: "We found the inheritance of the

جَرِيءٌ عَلَى النَّارِ، وَمَا لَمْ يُبَيِّنْهُ عَلَيْنَا فَلَا يَلْزَمُنَا أَصْلًا، وَكُلُّ مَا أَلْزَمَنَا فَقَدْ بَيَّنَهُ عَلَيْنَا، وَإِذَا قُلْنَا مَا بَيَّنَهُ عَلَيْنَا فَمَا اجْتَرَأْنَا عَلَى النَّارِ، بَلْ سَلَكْنَا فِي طَرِيقِ الْجَنَّةِ.

وَلَا يَخْلُو الْجَدُّ مِنْ أَنْ يَكُونَ لَهُ مِيرَاثٌ، أَوْ لَا يَكُونَ لَهُ مِيرَاثٌ، فَإِنْ كَانَ لَا مِيرَاثَ لَهُ، فَمَانِعُهُ مُحْسِنٌ، وَإِنْ كَانَ لَهُ مِيرَاثٌ فَإِعْطَاؤُهُ حَقَّهُ فَرْضٌ، لَا يَحِلُّ مَنْعُهُ مِنْهُ، فَالْجُرْأَةُ عَلَى أَحَدِهِمَا فَرْضٌ وَاجِبٌ، وَلَا بُدَّ مِنْ إِعْطَائِهِ أَوْ مِنْ مَنْعِهِ، فَمِنَ الْمُحَالِ أَنْ تَكُونَ الْجُرْأَةُ فِي حُكْمِهِ فِي الْمِيرَاثِ فَرْضًا، يَعْصِي اللَّهَ تَعَالَى مَنْ تَرَكَهَا، ثُمَّ يَتَوَعَّدُ عَلَى فِعْلِ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا بِالنَّارِ، وَلَكِنَّ هَذَا عَيْبُ الْمُرْسَلِ، وَاَللَّهِ - قَطْعًا - مَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ هَذَا الْكَلَامَ وَهُوَ يَتْلُو كَلَامَ رَبِّهِ تَعَالَى: {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] .

وَ {قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ} [البقرة: ٢٥٦] .

وَلَكِنْ سَعِيدٌ إِذْ أَضَافَهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْهَمَ، وَإِنَّمَا هُوَ مَوْقُوفٌ عَلَى عَلِيٍّ وَعَنْ عُمَرَ، وَصَحِيحٌ عَنِ ابْنِ عُمَرَ كَمَا أَوْرَدْنَا قَبْلُ، أَوْ وَهْمٌ مِنْ دُونِ سَعِيدٍ فَأَضَافَهُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَإِنَّمَا الْمَحْفُوظُ مِنْ طَرِيقِ سَعِيدٍ: أَنَّهُ عَنْ عُمَرَ كَمَا أَوْرَدْنَا قَبْلُ أَوْ سَمِعَهُ سَعِيدٌ مِمَّنْ وَهَمَ فِيهِ، لَا بُدَّ مِنْ أَحَدِهِمَا - فَسَقَطَ هَذَا الْقَوْلُ.

ثُمَّ نَظَرْنَا فِي قَوْلِ زَيْدٍ، وَعَبْدِ الرَّحْمَنِ بْنِ غُنْمٍ - اللَّذَيْنِ مَنَعَاهُ الْمِيرَاثَ مَعَ الْإِخْوَةِ - فَوَجَدْنَا حُجَّتَهُمْ أَنْ قَالُوا: وَجَدْنَا مِيرَاثَ الْإِخْوَةِ مَنْصُوصًا فِي الْقُرْآنِ، وَلَمْ نَجِدْ لِلْجَدِّ

[13] **Qur'an references (L27889):** Qur'an 5:3 (Al-Ma'idah).
[14] **Qur'an references (L27890):** Qur'an 2:256 (Al-Baqarah).

brothers textually specified in the Quran, and we did not find any inheritance for the grandfather mentioned in the Quran. We observed the grandfather adducing his parentage to the deceased's father, while the brothers adduce their parentage through the deceased's father, thus they are closer in kinship than him."

مِيرَاثًا فِي الْقُرْآنِ، وَوَجَدْنَا الْجَدَّ يُدْلِي بِوِلَادَتِهِ لِأَبِي الْمَيِّتِ، وَوَجَدْنَا الْإِخْوَةَ يُدْلُونَ بِوِلَادَةِ أَبِي الْمَيِّتِ: فَهُمْ أَقْرَبُ مِنْهُ.

L27894–27895 We have been narrated through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from ʿĪsā al-Ḥannāṭ from al-Shaʿbī: that ʿUmar asked Zayd about the grandfather's entitlement. Zayd offered him an analogy of a tree from which branches emerged. Al-Shaʿbī said: "He mentioned something I do not remember precisely, then allocated him a third." Sufyān said: "It reached me that he said: 'O Commander of the Faithful, consider a tree producing branches like clusters. From one branch emerge two sub-branches. Should the first branch hold precedence over the second when both originate from the same primary branch?'" He then asked ʿAlī, who proposed another analogy: "A valley through which a flood flowed, treating him as a brother between himself and six others." Thus, ʿAlī granted him a sixth.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عِيسَى الْحَنَّاطِ عَنْ الشَّعْبِيِّ: أَنَّ عُمَرَ سَأَلَ زَيْدًا عَنْ الْجَدِّ؟ فَضَرَبَ لَهُ زَيْدٌ مَثَلًا: شَجَرَةً خَرَجَتْ لَهَا أَغْصَانٌ، قَالَ الشَّعْبِيُّ: فَذَكَرَ شَيْئًا لَا أَحْفَظُهُ، فَجَعَلَ لَهُ الثُّلُثَ، قَالَ سُفْيَانُ: بَلَغَنِي أَنَّهُ قَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ شَجَرَةٌ أَنْبَتَتْ كَالشُّعَبِ مِنْهَا غُصْنٌ، فَالشُّعَبُ مِنْ الْغُصْنِ غُصْنَانِ، فَمَا جُعِلَ الْغُصْنُ الْأَوَّلُ أَوْلَى مِنْ الْغُصْنِ الثَّانِي - وَقَدْ خَرَجَ الْغُصْنَانِ جَمِيعًا مِنْ الْغُصْنِ الْأَوَّلِ؟ ثُمَّ سَأَلَ عَلِيًّا؟ فَضَرَبَ لَهُ مَثَلًا: وَادِيًا سَالَ فِيهِ سَيْلٌ، فَجَعَلَهُ أَخًا فِيمَا بَيْنَهُ وَبَيْنَ سِتَّةٍ: فَأَعْطَاهُ السُّدُسَ.

L27896 From the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Ismāʿīl ibn Abī Uways reported to us, saying: ʿAbd al-Raḥmān ibn Abī al-Zinād narrated to me from his father, who was informed by Khārijah ibn Zayd ibn Thābit from his father that when ʿUmar ibn al-Khaṭṭāb sought counsel regarding an inheritance case between a grandfather and brothers, Zayd said: "My opinion at that time was that the brothers were more entitled to their brother's inheritance than the grandfather?" Now ʿUmar held the view that the grandfather was more entitled to the inheritance of his son's son than the brothers. We engaged in a vigorous debate—I and ʿUmar—and I presented an analogy to him, saying: "If a tree branched from its root a limb, then two twigs branched from that limb—would not the limb unite the two twigs and nourish them, rather than the root? Do you not see, O Commander of the Faithful, that one twig is closer to its brother than to the root?" Zayd continued: "I repeated this to him and offered such analogies, but he persisted in his stance that the grandfather was more entitled than the brothers, saying: 'By Allah, if I were to judge this for some of them, I would grant the entire inheritance

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا إِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ أَخْبَرَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ لَمَّا اسْتَشَارَ فِي مِيرَاثٍ بَيْنَ الْجَدِّ وَالْإِخْوَةِ؟ قَالَ زَيْدٌ: وَكَانَ رَأْيِي يَوْمَئِذٍ أَنَّ الْإِخْوَةَ أَحَقُّ بِمِيرَاثِ أَخِيهِمْ مِنْ الْجَدِّ؟ وَعُمَرُ يَوْمَئِذٍ يَرَى الْجَدَّ أَوْلَى بِمِيرَاثِ ابْنِ ابْنِهِ مِنْ إِخْوَتِهِ فَتَحَاوَرْت - أَنَا وَعُمَرُ مُحَاوَرَةً شَدِيدَةً، فَضَرَبْت لَهُ فِي ذَلِكَ مَثَلًا، فَقُلْت: لَوْ أَنَّ شَجَرَةً تَشَعَّبَ مِنْ أَصْلِهَا غُصْنٌ، ثُمَّ تَشَعَّبَ مِنْ ذَلِكَ الْغُصْنِ خُوطَانِ ذَلِكَ الْغُصْنُ يَجْمَعُ الْخُوطَيْنِ دُونَ الْأَصْلِ وَيَغْذُوهُمَا، أَلَا تَرَى يَا أَمِيرَ الْمُؤْمِنِينَ أَنَّ أَحَدَ الْخُوطَيْنِ أَقْرَبُ إلَى أَخِيهِ مِنْهُ إلَى الْأَصْلِ؟ قَالَ زَيْدٌ: فَأَنَا أُعِيدُ لَهُ، وَأَضْرِبُ لَهُ هَذِهِ الْأَمْثَالَ، وَهُوَ يَأْبَى إلَّا أَنَّ الْجَدَّ أَوْلَى مِنْ الْإِخْوَةِ وَيَقُولُ: وَاَللَّهِ لَوْ أَنِّي قَضَيْته لِبَعْضِهِمْ لَقَضَيْت بِهِ

to the grandfather. Yet perhaps I will not deprive anyone's rightful share, for they may all have valid claims.'" On that occasion, ʿAlī ibn Abī Ṭālib and Ibn ʿAbbās presented an analogy to ʿUmar, implying: "If a flood flowed and a channel diverged from it, then two streams diverged from that channel..." Abū Muḥammad remarked: "As for those who claim the brothers' inheritance is textually stipulated in the Quran while the grandfather's is not—this is false. Rather, the grandfather's inheritance is textually stipulated in the Quran through Allah's words: {O children of Adam, let not Satan tempt you as he removed your parents from Paradise} [7:27], thereby making us children of Adam—peace be upon him—and him our father, though he is our most distant ancestor. Thus, the grandfather is a father. Allah also said: {And for his parents, to each one of them is a sixth} [4:11]."[15]

لِلْجَدِّ كُلِّهِ، وَلَكِنِّي لَعَلِّي لَا أُخَيِّبُ سَهْمَ أَحَدٍ، وَلَعَلَّهُمْ أَنْ يَكُونُوا كُلُّهُمْ ذَوِي حَقٍّ، وَضَرَبَ عَلِيُّ بْنُ أَبِي طَالِبٍ، وَابْنُ عَبَّاسٍ يَوْمَئِذٍ لِعُمَرَ مَثَلًا، مَعْنَاهُ: لَوْ أَنَّ سَيْلًا سَالَ فَفَلَّجَ مِنْهُ خَلِيجٌ، ثُمَّ خَلَجَ مِنْ ذَلِكَ الْخَلِيجِ شُعْبَتَانِ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَنْ قَالَ: مِيرَاثُ الْإِخْوَةِ مَنْصُوصٌ فِي الْقُرْآنِ وَلَيْسَ مِيرَاثُ الْجَدِّ مَنْصُوصًا فِي الْقُرْآنِ فَبَاطِلٌ، بَلْ مِيرَاثُ الْجَدِّ مَنْصُوصٌ فِي الْقُرْآنِ بِقَوْلِهِ تَعَالَى: {يَا بَنِي آدَمَ لا يَفْتِنَنَّكُمُ الشَّيْطَانُ كَمَا أَخْرَجَ أَبَوَيْكُمْ مِنَ الْجَنَّةِ} [الأعراف: ٢٧] فَجَعَلَنَا بَنِينَ لِآدَمَ - عَلَيْهِ السَّلَامُ - وَجَعَلَهُ أَبًا لَنَا - وَهُوَ أَبْعَدُ جَدٍّ لَنَا - فَالْجَدُّ أَبٌ، وَقَالَ تَعَالَى: {وَلأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ} [النساء: ١١]

L27897 "His parents inherit him, and to his mother belongs the third [of the estate]." [An-Nisa: 11][16]

{وَوَرِثَهُ أَبَوَاهُ فَلأُمِّهِ الثُّلُثُ} [النساء: ١١] .

L27898–27899 As for the grandfather establishing his parentage through the deceased's father, and the brothers establishing their parentage through the deceased's father for themselves and the deceased—they are closer—inheritance is not determined by proximity or remoteness. For instance, the daughter's son is closer than a paternal cousin whose lineage converges with the deceased's only after more than twenty forefathers, yet he inherits nothing alongside that cousin. Similarly, this paternal aunt is closer than a paternal cousin but inherits nothing alongside him. How then, when the grandfather is closer because his parentage as the father of the deceased's father preceded the parentage of the deceased's father to the deceased's brothers? The son's child is a part of the grandfather, making the grandfather closer to him than his brother. Thus, this claim is invalidated with certainty.

وَأَمَّا كَوْنُ الْجَدِّ يُدْلِي بِوِلَادَتِهِ لِأَبِي الْمَيِّتِ، وَكَوْنُ الْإِخْوَةِ يُدْلُونَ بِوِلَادَةِ أَبِي الْمَيِّتِ لَهُمْ وَلِلْمَيِّتِ، فَهُمْ أَقْرَبُ، فَلَيْسَتْ الْمَوَارِيثُ بِالْقُرْبِ وَلَا بِالْبُعْدِ، فَهَذَا ابْنُ الْبِنْتِ أَقْرَبُ مِنْ ابْنِ الْعَمِّ الَّذِي لَا يَلْتَقِي مَعَ الْمَيِّتِ إلَّا إلَى أَزْيَدَ مِنْ عِشْرِينَ أَبًا، وَهُوَ لَا يَرِثُ مَعَ ابْنِ الْعَمِّ الْمَذْكُورِ شَيْئًا، وَهَذِهِ الْعَمَّةُ أَقْرَبُ مِنْ ابْنِ الْعَمِّ، وَلَا تَرِثُ مَعَهُ شَيْئًا، فَكَيْفَ وَالْجَدُّ أَقْرَبُ، لِأَنَّ وِلَادَتَهُ لِأَبِي الْمَيِّتِ كَانَتْ قَبْلَ وِلَادَةِ أَبِي الْمَيِّتِ لِإِخْوَةِ الْمَيِّتِ، فَوَلَدُ الِابْنِ هُوَ بَعْضُ الْجَدِّ، فَالْجَدُّ أَقْرَبُ إلَيْهِ مِنْ أَخِيهِ -: فَبَطَلَ هَذَا الْقَوْلُ بِيَقِينٍ -.

L27900 And success is by Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27901 Abū Muḥammad said: This is analogical systematization, this is juristic com-

[15] **Qur'an references (L27896):** Qur'an 7:27 (Al-A'raf); Qur'an 4:11 (An-Nisa).
[16] **Qur'an references (L27897):** Qur'an 4:11 (An-Nisa).

parison, this is analogical exemplification, this is establishing legal causation, and this is the qiyas through which its practitioners argue to validate qiyas. Reflect and derive lessons. Exalted is God above the notion that Zayd, ʿAlī, or Ibn ʿAbbās—may God be pleased with them—would ever articulate such theological absurdities.

L27902 Has any possessor of sound reason ever seen two branches diverging from a single branch of a tree, or two streams splitting from a channel of a river, that would necessitate a ruling in the grandfather's inheritance alongside siblings—excluding him in favor of them alone, or excluding them in favor of him alone? How then if we were to impose a sixth, quarter, third, exclusion, or proportional division? By Allah, neither Zaid, nor Ali, nor Ibn Abbas ever uttered any of these confused notions. This is the defect of mursal narrations and the reports of weak transmitters. Sufyan: Did Zaid and Ali say to Umar, "By Allah, this is an unfounded leap!"? As for Isa al-Hannat and Abd al-Rahman ibn Abi al-Zinad—by Allah, these two are men whose narrations are disfavored and only accepted if accompanied by a credible narrator. Allah suffices us, and He is the finest trustee.

L27903 Then we examined the stance of those who claim: "The grandfather has no prescribed share; rather, it is determined by what the Commander of the Faithful allocates in proportion to the fewness or abundance of brothers." We found this position utterly invalid, for if the grandfather lacks a binding prescribed share, it is impermissible to appropriate the brothers' property and assign it to him—particularly when among them may be minors, the mentally incapacitated, coerced individuals, or absentees.

L27904 And He, the Exalted, has said: "Do not consume your wealth among yourselves wrongfully" [Al-Baqarah 188].[17]

L27905 And he – peace and blessings be upon him – said: "Indeed, your blood and wealth are sacred and forbidden to violate upon yourselves."

L27906 And the Most High said: "For men is a share of what the parents and near

[17] **Qur'an references (L27904):** Qur'an 2:188 (Al-Baqarah).

قَالَ أَبُو مُحَمَّد: هَذَا التَّنْظِيرُ، وَهَذَا التَّشْبِيهُ، وَهَذَا التَّمْثِيلُ، وَهَذَا التَّعْلِيلُ وَهَذَا الْقِيَاسُ بِهِ يَحْتَجُّ أَهْلُ الْقِيَاسِ فِي إثْبَاتِ الْقِيَاسِ، فَانْظُرُوا وَاعْتَبِرُوا، وَحَاشَ لِلَّهِ أَنْ يَقُولَ زَيْدٌ، أَوْ عَلِيٌّ، أَوْ ابْنُ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ - هَذِهِ الْفَضَائِحَ.

وَهَلْ رَأَى قَطُّ ذُو مَسْكَةِ عَقْلٍ أَنَّ غُصْنَيْنِ تَفَرَّعَا مِنْ غُصْنٍ مِنْ شَجَرَةٍ، أَوْ جَدْوَلَيْنِ تَشَعَّبَا مِنْ خَلِيجٍ مِنْ نَهْرٍ يُوجِبُ حُكْمًا فِي مِيرَاثِ الْجَدِّ مَعَ الْإِخْوَةِ بِانْفِرَادِهِ دُونَهُمْ، أَوْ بِانْفِرَادِهِمْ دُونَهُ، فَكَيْفَ إنْ صِرْنَا إلَى إيجَابِ سُدُسٍ، أَوْ رُبُعٍ، أَوْ ثُلُثٍ، أَوْ مُعَادَةٍ، أَوْ مُقَاسَمَةٍ، وَاَللَّهِ مَا قَالَ قَطُّ زَيْدٌ، وَلَا عَلِيٌّ، وَلَا ابْنُ عَبَّاسٍ: شَيْئًا مِنْ هَذِهِ التَّخَالِيطِ، وَهَذَا آفَةُ الْمُرْسَلِ، وَرِوَايَةُ الضُّعَفَاءِ سُفْيَانُ: أَنَّ زَيْدًا، وَعَلِيًّا، قَالَا لِعُمَرَ؟ بِاَللَّهِ إنَّ هَذِهِ لَطَفْرَةٌ وَاسِعَةٌ، وَعِيسَى الْحَنَّاطُ، وَعَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ: هُمَا وَاَللَّهِ المرءان يُرْغَبُ عَنْ رِوَايَتِهِمَا، وَلَا يُقْبَلَانِ إلَّا مَعَ عَدْلٍ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: لَيْسَ لِلْجَدِّ فَرْضٌ مَعْلُومٌ، إنَّمَا هُوَ عَلَى قَدْرِ مَا يَرَاهُ أَمِيرُ الْمُؤْمِنِينَ عَلَى حَسَبِ قِلَّةِ الْإِخْوَةِ وَكَثْرَتِهِمْ، فَوَجَدْنَاهُ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ إذَا لَمْ يَكُنْ لِلْجَدِّ فَرْضٌ لَازِمٌ، فَحَرَامٌ أَخْذُ مَالِ الْإِخْوَةِ وَإِعْطَاؤُهُ إيَّاهُ، وَقَدْ يَكُونُ فِيهِمْ الصَّغِيرُ، وَالْمَجْنُونُ، وَالْكَارِهُ، وَالْغَائِبُ.

وَقَدْ قَالَ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

وَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

وَقَالَ تَعَالَى: {لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيباً مَفْرُوضًا} [النساء: ٧] .

relatives leave, and for women is a share of what they leave, from what little thereof or much—an ordained share." [An-Nisa: 7][18]

فَإِذْ لِكُلِّ وَارِثٍ نَصِيبٌ مَفْرُوضٌ - مِمَّا قَلَّ أَوْ كَثُرَ - فَحَرَامٌ أَخْذُ شَيْءٍ مِنْهُ وَإِعْطَاؤُهُ لِغَيْرِهِ بِغَيْرِ نَصٍّ وَارِدٍ فِي ذَلِكَ، وَلَمْ نَجِدْ لِهَذَا الْقَوْلِ حُجَّةً أَصْلًا إلَّا الَّتِي سَلَفَتْ قَبْلُ مِمَّا قَدْ أَبْطَلْنَاهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L27907–27908 Since each heir has a prescribed share - whether the estate is small or large - it is forbidden to take anything from it and give it to another without textual evidence pertaining to this. We have found no valid proof whatsoever for this opinion except what was previously mentioned, which we have already invalidated - and success comes only from Allah, the Exalted.

ثُمَّ نَظَرْنَا فِي الْأَقْوَالِ الْبَاقِيَةِ مِنْ مُقَاسَمَةِ الْجَدِّ الْإِخْوَةَ إلَى اثْنَيْ عَشَرَ، أَوْ إلَى ثَمَانِيَةٍ، أَوْ إلَى سَبْعَةٍ، أَوْ إلَى سِتَّةٍ، أَوْ إلَى ثَلَاثَةٍ -: فَوَجَدْنَاهَا كُلَّهَا عَارِيَةً مِنْ الدَّلِيلِ، لَا يُوجِبُ شَيْئًا مِنْهَا، لَا قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا رِوَايَةٌ ضَعِيفَةٌ، وَلَا دَلِيلُ إجْمَاعٍ، وَلَا نَظَرٍ، وَلَا قِيَاسٍ.

L27909 Then we examined the remaining opinions concerning the division between the grandfather and the siblings into twelfths, eighths, sevenths, sixths, or thirds. We found them all bare of evidence. None of them is supported by the Quran, nor by authentic Sunnah, nor by weak narrations, nor by evidence of consensus, nor by speculative reasoning, nor by analogy.

ثُمَّ وَجَدْنَا أَكْثَرَهَا لَا يَصِحُّ - عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى.

L27910 Then we found that most of them are not sound, as we will clarify, if Allah, the Exalted, wills.

أَمَّا الرِّوَايَةُ عَنْ عِمْرَانَ، وَأَبِي مُوسَى - رَضِيَ اللَّهُ عَنْهُمَا -، فَغَيْرُ مَعْرُوفَةٍ - يَعْنِي فِي مُقَاسَمَةِ الْجَدِّ اثْنَيْ عَشَرَ أَخًا لَهُ سَهْمٌ كَسَهْمِ كُلِّ وَاحِدٍ مِنْهُمْ.

L27911 As for the narration from ʿImrān and Abū Mūsā—may Allah be pleased with them both—it is not well-known. That is, in the collateral division concerning the grandfather's share alongside his twelve brothers, the grandfather's share is equal to that of each one of them.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -: أَنَّهُ يُقَاسِمُهُمْ إلَى سَبْعَةٍ فَيَكُونُ لَهُ الثُّمُنُ، فَفِيهَا قَيْسُ بْنُ الرَّبِيعِ، وَقَدْ تُكُلِّمَ فِيهِ.

L27912 As for the narration attributed to ʿAlī—may Allah be pleased with him—that he distributed the inheritance among seven heirs, so he receives an eighth: this narration is transmitted through Qays ibn al-Rabīʿ, who is a disparaged narrator.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فِي الْمُقَاسَمَةِ بَيْنَ الْجَدِّ وَسِتَّةِ إخْوَةٍ فَيَكُونُ لَهُ السُّبْعُ فَصَحِيحَةٌ إلَى الشَّعْبِيِّ، ثُمَّ لَا يَصِحُّ لِلشَّعْبِيِّ سَمَاعٌ مِنْ عَلِيٍّ أَصْلًا، وَلَمْ يَذْكُرْ مَنْ أَخْبَرَهُ عَنْ عَلِيٍّ.

L27913 As for the narration attributed to Ali regarding the division by shares between the grandfather and six brothers—where he receives a seventh portion—it is authentic up to Al-Sha'bi. However, Al-Sha'bi had no valid transmission from Ali at all, nor did he identify the person who narrated it from Ali.

L27914 As for the narration from Umar, Ali, and Ibn Masʿud concerning the grand-

[18] **Qur'an references (L27906):** Qur'an 4:7 (An-Nisa).

father's apportionment of the inheritance with the brothers, whereby he receives a sixth [of the estate], it is authentically established from them through the chain of Ibrāhīm from ʿUbayd ibn Naḍla, who narrated from Umar and Ibn Masʿud.

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ فِي مُقَاسَمَةِ الْجَدِّ الْإِخْوَةَ إِلَى خَمْسَةٍ، فَيَكُونُ لَهُ السُّدُسُ، فَهِيَ ثَابِتَةٌ عَنْهُمْ مِنْ طَرِيقِ إِبْرَاهِيمَ عَنْ عُبَيْدِ بْنِ نَضْلَةَ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ.

L27915 From ʿAmr ibn Murrah, from ʿAbdullāh ibn Salamah, from ʿAlī.

وَمِنْ طَرِيقِ عَمْرِو بْنِ مُرَّةَ عَنْ عَبْدِ اللَّهِ بْنِ سَلَمَةَ عَنْ عَلِيٍّ.

L27916 As for the narration attributed to Ali that the grandfather receives a third under all circumstances, it is not authentic because its chain is disconnected at Qatadah: for Qatadah was not born except after the death of Ali, may Allah be pleased with him.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ لِلْجَدِّ الثُّلُثُ عَلَى كُلِّ حَالٍ فَلَا تَصِحُّ؛ لِأَنَّهَا مُنْقَطِعَةٌ عَنْ قَتَادَةَ: أَنَّ عَلِيًّا، وَقَتَادَةَ: لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -.

L27917 And regarding the narration from ʿUmar, ʿUthman, and Ibn Masʿud: it is the grandfather sharing with the brothers up to a third. Indeed, this narration came through Yahya ibn Saʿid al-Ansari: that ʿUmar and ʿUthman [did so], and that Zayd wrote to Muʿawiyah—even though Yahya did not meet any of these individuals.

وَأُمَّا الرِّوَايَةُ عَنْ عُمَرَ، وَعُثْمَانَ، وَابْنِ مَسْعُودٍ: بِمُقَاسَمَةِ الْجَدِّ الْإِخْوَةَ إِلَى الثُّلُثِ، فَإِنَّمَا جَاءَتْ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ عُمَرَ، وَعُثْمَانَ، وَأَنَّ زَيْدًا كَتَبَ إِلَى مُعَاوِيَةَ - وَلَمْ يُدْرِكْ يَحْيَى أَحَدًا مِنْ هَؤُلَاءِ.

L27918 Through the chain of Ibrāhīm: that ʿUmar—and this chain is disconnected (munqaṭiʿ).

وَمِنْ طَرِيقِ إِبْرَاهِيمَ: أَنَّ عُمَرَ - وَهَذَا مُنْقَطِعٌ.

L27919–27920 And from the chain of Abū al-Muʿallā al-ʿAṭṭār: from Ibrāhīm, from ʿAlqamah; from ʿUbayd ibn Naḍlah, from ʿUmar; and from Ibn Masʿūd.

وَمِنْ طَرِيقِ أَبِي الْمُعَلَّى الْعَطَّارِ عَنْ إِبْرَاهِيمَ عَنْ عَلْقَمَةَ، وَعُبَيْدِ بْنِ نَضْلَةَ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ.

L27921 Narrated through the path of al-Haytham ibn Badr from Shu'bah ibn at-Tawwam, from Ibn Masʿud, ʿUmar, and ʿUthman.

وَمِنْ طَرِيقِ الْهَيْثَمِ بْنِ بَدْرٍ عَنْ شُعْبَةَ بْنِ التَّوْأَمِ عَنْ ابْنِ مَسْعُودٍ، وَعُمَرَ، وَعُثْمَانَ.

L27922 And via the chain of Isra'il from Jabir al-Ju'fi from al-Sha'bi from Masruq from Umar and Ibn Mas'ud - Isra'il is weak; Jabir is rejected; and al-Haytham ibn Badr is unknown.

وَمِنْ طَرِيقِ إِسْرَائِيلَ عَنْ جَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عُمَرَ وَابْنِ مَسْعُودٍ - إِسْرَائِيلُ ضَعِيفٌ - وَجَابِرٌ سَاقِطٌ - وَالْهَيْثَمُ بْنُ بَدْرٍ مَجْهُولٌ.

L27923 As for Abu al-Muʿalla al-ʿAttar, he is Yahya ibn Maymun, an Egyptian: he is reliable, and the narration is through a sound chain of transmission; to it Ibn Masʿud and ʿUmar reverted.

وَأَمَّا أَبُو الْمُعَلَّى الْعَطَّارُ، فَهُوَ يَحْيَى بْنُ مَيْمُونٍ مِصْرِيٌّ: لَا بَأْسَ بِهِ، فَهِيَ مِنْ طَرِيقٍ جَيِّدَةٍ، وَإِلَيْهَا رَجَعَ ابْنُ مَسْعُودٍ، وَعُمَرُ.

L27924 As for the detailed lengthy narration transmitted from ʿUmar and Zayd ibn Thābit, it is entirely inauthentic because the chain is broken from ʿUmar. It is only Saʿīd ibn al-Musayyib, Qabīṣa ibn Dhuʾayb, and ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah who narrate that ʿUmar—and there is no valid hearing established for ʿUbayd Allāh or Qabīṣa from ʿUmar at all, nor for Saʿīd from ʿUmar except his announcement of al-Nuʿmān ibn Muqrin's death from the pulpit alone. ʿUmar—may Allāh be pleased with him—died when Saʿīd was eight years old.

وَأَمَّا الرِّوَايَةُ بِالتَّفْصِيلِ الطَّوِيلِ عَنْ عُمَرَ، وَزَيْدِ بْنِ ثَابِتٍ: فَلَا تَصِحُّ أَلْبَتَّةَ، لِأَنَّهُ مُنْقَطِعٌ عَنْ عُمَرَ، إِنَّمَا هُوَ سَعِيدُ بْنُ الْمُسَيِّبِ، وَقَبِيصَةُ بْنُ ذُؤَيْبٍ وَعُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ: أَنَّ عُمَرَ - وَلَا يَصِحُّ سَمَاعُ لِعُبَيْدِ اللَّهِ وَلَا لِقَبِيصَةَ مِنْ عُمَرَ أَصْلًا، وَلَا لِسَعِيدٍ عَنْ عُمَرَ، إِلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقْرِنٍ عَلَى الْمِنْبَرِ فَقَطْ، مَاتَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - وَلِسَعِيدٍ ثَمَانِ سِنِينَ.

L27925 From the narration of Zayd ibn Ibrāhīm: Zayd—while Ibrāhīm never met Zayd ibn Thābit—did not transmit from anyone who heard him, or from ʿAbd al-Raḥmān ibn Abī al-Zinād through his father from Khārija ibn Zayd from his father Zayd. ʿAbd al-Raḥmān is considered extremely weak and rejected in transmission. There is no way to establish a chain from Zayd except through these two paths—excluding those omitted from them (if found)—and nothing is authentically transmitted from Zayd regarding this matter except his statement about a mother, grandfather, and sister alone, for this comes through al-Shaʿbī from him—and al-Shaʿbī did meet him.

وَمِنْ طَرِيقِ زَيْدِ بْنِ إِبْرَاهِيمَ: أَنَّ زَيْدًا - وَلَمْ يَلْقَ إِبْرَاهِيمُ قَطُّ زَيْدَ بْنَ ثَابِتٍ - وَلَا أَخْبَرَ مِمَّنْ سَمِعَهُ، أَوْ عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ عَنْ خَارِجَةَ بْنِ زَيْدٍ عَنْ أَبِيهِ زَيْدٍ - وَعَبْدُ الرَّحْمَنِ فِي غَايَةِ الضَّعْفِ، وَالتَّرْكِ، وَلَا سَبِيلَ إِلَى أَنْ يُوجَدَ عَنْ زَيْدٍ مِنْ غَيْرِ هَاتَيْنِ الطَّرِيقَيْنِ إِلَّا مَنْ أُسْقِطَ مِنْهُمَا - إِنْ وُجِدَتْ - وَلَا يَصِحُّ عَنْ زَيْدٍ فِي هَذَا شَيْءٌ، إِلَّا قَوْلُهُ فِي أُمٍّ، وَجَدٍّ، وَأُخْتٍ، فَقَطْ، لِأَنَّهُ عَنِ الشَّعْبِيِّ عَنْهُ، وَالشَّعْبِيُّ قَدْ لَقِيَهُ.

L27926 It has been narrated to us from al-Shaʿbī, from Qabīṣah ibn Dhuʾayb, that Zayd did not say anything regarding *al-Akdariyyah*.

وَقَدْ رُوِّينَا عَنِ الشَّعْبِيِّ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ أَنَّ زَيْدًا لَمْ يَقُلْ فِي " الْأَكْدَرِيَّةِ " شَيْئًا.

L27927 It has been narrated to us from ʿAbd al-Razzāq, who reported from Sufyān al-Thawrī, Maʿmar, and Hishām ibn Ḥusām. Sufyān and Maʿmar both narrated from Ayyūb al-Sakhtiyānī from Muḥammad ibn Sīrīn, while Hishām reported from Muḥammad ibn Sīrīn. Then they all concurred: Ibn Sīrīn said, "I asked ʿUbaydah al-Salmānī about a prescribed share involving a grandfather." ʿUbaydah replied, "I have memorized from ʿUmar ibn al-Khaṭṭāb regarding it one hundred distinct rulings." Ibn Sīrīn said, "I then asked ʿUbaydah, 'From ʿUmar?'" He responded, "From ʿUmar."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، وَهِشَامِ بْنِ حُسَامٍ، قَالَ سُفْيَانُ، وَمَعْمَرٌ، كِلَاهُمَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، وَقَالَ هِشَامٌ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، ثُمَّ اتَّفَقُوا كُلُّهُمْ، قَالَ ابْنُ سِيرِينَ: سَأَلْت عُبَيْدَةَ السَّلْمَانِيَّ عَنْ فَرِيضَةٍ فِيهَا جَدٌّ؟ فَقَالَ عَبِيدَةُ لَقَدْ حَفِظْت عَنْ عُمَرَ بْنِ الْخَطَّابِ فِيهَا مِائَةَ قَضِيَّةٍ مُخْتَلِفَةٍ، قَالَ ابْنُ سِيرِينَ: فَقُلْت لِعُبَيْدَةَ عَنْ عُمَرَ؟ قَالَ: عَنْ عُمَرَ.

L27928–27930 Ali said: No chain of transmission more authentic than this can exist. It is astonishing how someone objects to it and rejects it, saying: "It is impossible for him to issue a hundred rulings in this matter"—yet Allah the Exalted has

قَالَ عَلِيٌّ: لَا سَبِيلَ إِلَى وُجُودِ إِسْنَادٍ أَصَحَّ مِنْ هَذَا وَالْعَجَبُ مِمَّنْ يَعْتَرِضُ عَلَيْهِ وَيُنْكِرُهُ، وَيَقُولُ: مُحَالٌ أَنْ يَقْضِيَ فِيهَا مِائَةَ قَضِيَّةٍ، وَمَا جَعَلَ اللَّهُ تَعَالَى قَطُّ هَذَا مُحَالًا، إِذْ قَدْ

never made this impossible. For one may revert from one opinion to another, then return to the first opinion, and then go back to the second repeatedly. Thus, they are all distinct cases, even if there are only two opinions. Then the invalid, absurd, and inconceivable becomes validated through requiring division between the grandfather and siblings into six or into three parts—due to two branches diverging from a branch of a tree, or two streams branching from a tributary of a river.

L27931 Be amazed at these calamities and these baseless assertions against the Companions—may Allah be pleased with them—in matters of religion! Be amazed at the denial of truth and the validation of falsehood that is utterly evident! Abū Muḥammad said: If they claim that Zayd's statement is transmitted through mass-narration, they lie. This opinion only gained prominence when Mālik, Sufyān, al-Awzāʿī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, and al-Shāfiʿī coincided in endorsing it. It spread among their imitators, though its origin is weak, its derivation invalid, and its source entirely unsound. Those who adopted this view relied on disconnected reports—except al-Shāfiʿī, for most of his disciples acknowledged that he diverged from his own principles in inheritance laws, uncritically imitating what was narrated from Zayd. His statements indicate his superficial grasp of inheritance laws. Otherwise, let them produce a single Follower who held this view, as we find it only among these scholars! Abū Muḥammad said: Some obscured the matter by claiming, "A narration states: 'The most proficient in inheritance in my community is Zayd ibn Thābit.'" We respond: This is unreliable. It was either disconnectedly transmitted or via Aḥmad ibn ʿUmar ibn Anas al-ʿUdhri, who said: ʿAlī ibn Makkī ibn ʿĪsā al-Murādī and Abū al-Wafāʾ ʿAbd al-Salām ibn Muḥammad ibn ʿAlī al-Shīrāzī narrated to us. Makkī said: Aḥmad ibn Abī ʿImrān al-Harawī narrated to us: Abū Ḥāmid Aḥmad ibn ʿAlī ibn Ḥasanawayh al-Muqrī in Nīsābūr narrated to us: Abū ʿĪsā Muḥammad ibn ʿĪsā al-Tirmidhī narrated to us: Sufyān ibn Wakīʿ narrated to us: Ḥumayd ibn ʿAbd al-Raḥmān narrated from Dāwūd ibn ʿAbd al-Raḥmān al-ʿAṭṭār from Maʿmar from Qatādah from Anas from the Messenger of Allah—peace and blessings be upon

يَرْجِعُ مِنْ قَوْلٍ إِلَى قَوْلٍ، ثُمَّ إِلَى الْقَوْلِ الْأَوَّلِ، ثُمَّ يَعُودُ إِلَى الثَّانِي مِرَارًا، فَهِيَ كُلُّهَا قَضَايَا مُخْتَلِفَةٌ، وَإِنْ لَمْ تَكُنْ إِلَّا قَوْلَيْنِ، ثُمَّ يُصَحَّحُ الْبَاطِلُ الْمُحَالُ الَّذِي لَا يُعْقَلُ مِنْ إِيجَابِ الْمُقَاسَمَةِ بَيْنَ الْجَدِّ وَالْإِخْوَةِ إِلَى سِتَّةٍ، أَوْ إِلَى ثَلَاثَةٍ مِنْ أَجْلِ غُصْنَيْنِ تَشَعَّبَا مِنْ غُصْنٍ مِنْ شَجَرَةٍ - أَوْ مِنْ أَجْلِ جَدْوَلَيْنِ مِنْ خَلِيجٍ مِنْ نَهْرٍ.

فَاعْجَبُوا لِهَذِهِ الْمَصَائِبِ، وَلِهَذِهِ الْإِطْلَاقَاتِ عَلَى الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي الدِّينِ، وَاعْجَبُوا لِإِنْكَارِ الْحَقِّ، وَتَحْقِيقِ الْبَاطِلِ الَّذِي لَا خَفَاءَ بِهِ؟ قَالَ أَبُو مُحَمَّدٍ: فَإِنْ ادَّعَوْا أَنَّ قَوْلَ زَيْدٍ مَنْقُولٌ عَنْهُ نَقْلَ التَّوَاتُرِ كَذَبُوا، وَإِنَّمَا اشْتَهَرَتْ تِلْكَ الْمَقَالَةُ لَمَّا اتَّفَقَ أَنْ قَالَ بِهَا مَالِكٌ، وَسُفْيَانُ، وَالْأَوْزَاعِيُّ وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ - اشْتَهَرَتْ عِنْدَ مَنْ قَلَّدَهُمْ فَانْتَشَرَتْ عَنْ مُقَلِّدِيهِمْ، وَأَصْلُهَا وَاهٍ، وَمَخْرَجُهَا سَاقِطٌ، وَمَنْبَعُهَا لَا يَصِحُّ أَصْلًا، وَإِنَّمَا هَؤُلَاءِ الَّذِينَ أَخَذُوا بِهَذِهِ الْقَوْلَةِ كَانُوا يَقُولُونَ بِالْمُرْسَلِ، حَاشَ الشَّافِعِيَّ، فَقَدْ أَقَرَّ أَكْثَرُ أَصْحَابِهِ أَنَّهُ فَارَقَ أَصْلَهُ فِي الْفَرَائِضِ، فَقَلَّدَ مَا رُوِيَ عَنْ زَيْدٍ، وَأَقْوَالُهُ تَدُلُّ عَلَى أَنَّهُ كَانَ قَلِيلَ الْبَصَرِ بِالْفَرَائِضِ، وَإِلَّا فَلْيَأْتُونَا عَنْ أَحَدٍ مِنَ التَّابِعِينَ قَالَ بِهَا كَمَا وَجَدْنَاهَا عَنْ هَؤُلَاءِ؟ قَالَ أَبُو مُحَمَّدٍ: وَمَوَّهَ بَعْضُهُمْ بِأَنْ قَالَ: قَدْ رُوِيَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: أَفْرَضُ أُمَّتِهِ: زَيْدُ بْنُ ثَابِتٍ» ؟ قُلْنَا: هَذِهِ رِوَايَةٌ لَا تَصِحُّ، إِنَّمَا جَاءَتْ إِمَّا مُرْسَلَةً، وَإِمَّا مِمَّا حَدَّثَنَا بِهِ أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ، قَالَ: أَنَا عَلِيُّ بْنُ مَكِّيِّ بْنِ عَيْسُونَ الْمُرَادِيُّ، وَأَبُو الْوَفَا عَبْدُ السَّلَامِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الشِّيرَازِيُّ -: قَالَ مَكِّيٌّ: نا أَحْمَدُ بْنُ أَبِي عِمْرَانَ الْهَرَوِيُّ نا أَبُو حَامِدٍ أَحْمَدُ بْنُ عَلِيِّ بْنِ حَسْنَوَيْهِ الْمُقْرِي بِنَيْسَابُورَ نا أَبُو عِيسَى مُحَمَّدُ بْنُ عِيسَى التِّرْمِذِيُّ نا سُفْيَانُ بْنُ وَكِيعٍ نا حُمَيْدُ بْنُ

him—who said: “The most proficient in inheritance among them is Zayd ibn Thābit, and the most skilled in recitation is Ubayy ibn Kaʿb.”[19]

عَبْدِ الرَّحْمَنِ عَنْ دَاوُد بْنِ عَبْدِ الرَّحْمَنِ الْعَطَّارِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ أَنَسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَهُ، وَفِيهِ: «وَأَفْرَضُهُمْ زَيْدُ بْنُ ثَابِتٍ، وَأَقْرَؤُهُمْ أُبَيّ بْنُ كَعْبٍ» .

L27932–27934 And Abū al-Wafā said: I am ʿAbdullāh ibn Muḥammad ibn Aḥmad ibn Jaʿfar al-Saqaṭī, narrated by Ismāʿīl ibn Muḥammad ibn Ismāʿīl al-Ṣaffār. Aḥmad ibn Muḥammad ibn Ghālib narrated to us: ʿUbayd Allāh ibn Muʿādh al-ʿAnbarī narrated to us: Bishr ibn al-Mufaḍḍal narrated to us, on the authority of Khālid al-Ḥadhdhāʾ, on the authority of Abī Qilābah, on the authority of Anas, on the authority of the Prophet (peace and blessings of Allāh be upon him). He mentioned it, and in it is: “The most proficient in recitation among them is Ubayy, and the most expert in inheritance laws is Zayd.”

وَقَالَ أَبُو الْوَفَا: أَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ جَعْفَرٍ السَّقَطِيُّ نا إِسْمَاعِيلُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ الصَّفَّارُ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ غَالِبٍ نا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ نا بِشْرُ بْنُ الْمُفَضَّلِ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَهُ، وَفِيهِ: «وَأَقْرَؤُهُمْ أُبَيٌّ وَأَفْرَضُهُمْ زَيْدٌ» .

L27935 Ismail ibn Muhammad al-Saffar said: Al-Hasan ibn al-Fadl ibn al-Samh narrated to us, Muhammad ibn Abi Ghalib narrated to us, Hushaym narrated from al-Kawthar from Nafi’ from Ibn Umar from the Prophet (peace be upon him). He mentioned it, and in it: “The most proficient in recitation among them is Ubayy, the most expert in statutory shares among them is Zayd, and the most decisive in legal judgment among them is Ali.”

قَالَ إِسْمَاعِيلُ بْنُ مُحَمَّدٍ الصَّفَّارُ: ونا الْحَسَنُ بْنُ الْفَضْلِ بْنِ السَّمْحِ نا مُحَمَّدُ بْنُ أَبِي غَالِبٍ نا هُشَيْمٌ عَنِ الْكَوْثَرِ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَهُ، وَفِيهِ: «وَإِنَّ أَقْرَأَهَا لأُبَيٌّ، وَإِنَّ أَفْرَضَهَا لَزَيْدٌ، وَإِنَّ أَقْضَاهَا لَعَلِيٌّ» .

L27936 Abu Muhammad said: These are obscure chains of transmission because Ahmad ibn Abī ʿImrān and Abū Ḥāmid ibn Ḥasanawayh are unknown – and Ismāʿīl al-Ṣaffār is like them both. As for Aḥmad ibn Muḥammad ibn Ghālib: if he is Khalīl’s disciple, he is ruined and accused; but if he is another, he is unknown.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَسَانِيدُ مُظْلِمَةٌ؛ لأَنَّ أَحْمَدَ بْنَ أَبِي عِمْرَانَ، وَأَبَا حَامِدِ بْنِ حَسْنَوَيْهِ مَجْهُولَانِ - وَإِسْمَاعِيلُ الصَّفَّارُ مِثْلُهُمَا، وَأَحْمَدُ بْنُ مُحَمَّدِ بْنِ غَالِبٍ - إِنْ كَانَ غُلَامَ خَلِيلٍ فَهُوَ هَالِكٌ مُتَّهَمٌ - وَإِنْ كَانَ غَيْرَهُ فَهُوَ مَجْهُولٌ.

L27937 al-Ḥasan ibn al-Faḍl, Muḥammad ibn Abī Ghālib, and Kawthar are of unknown status.

وَالْحَسَنُ بْنُ الْفَضْلِ، وَمُحَمَّدُ بْنُ أَبِي غَالِبٍ، وَالْكَوْثَرُ: مَجْهُولُونَ.

L27938 Then, even if it were valid, they would have no argument in it, because the fact that he is “the most learned among them” does not necessitate following his opinion, just as they do not deem obligatory - despite these reports stating Ubayy ibn Kaʿb was the most proficient reciter and Ali the foremost judge -

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ لَهُمْ فِيهَا حُجَّةٌ؛ لأَنَّهُ لَا يُوجِبُ كَوْنُهُ «أَفْرَضَهُمْ» أَنْ يُقَلِّدَ قَوْلَهُ، كَمَا لَمْ يَجِبْ عِنْدَهُمْ مَا فِي هَذِهِ الْأَخْبَارِ مِنْ أَنَّ أُبَيَّ بْنَ كَعْبٍ أَقْرَؤُهُمْ، وَعَلِيًّا أَقْضَاهُمْ أَنْ

[19] **Hadith references (L27931):** Jami at-Tirmidhi 3790.

to restrict themselves to Ubayy's recitation to the exclusion of other readings, nor to Ali's judicial rulings to the exclusion of others' judgments, while they themselves acknowledge that the Companions opposed Zayd on this matter.

يَقْتَصِرُوا عَلَى قِرَاءَةِ أُبَيٍّ دُونَ سَائِرِ الْقِرَاءَاتِ، وَلَا عَلَى أَقْضِيَةِ عَلِيٍّ دُونَ أَقْضِيَةِ غَيْرِهِ - وَهُمْ يُقِرُّونَ أَنَّ الصَّحَابَةَ خَالَفُوا زَيْدًا فِي هَذِهِ الْمَسْأَلَةِ.

L27939 The Malikis have opposed him regarding the inheritance obligations of grandmothers, as we mentioned in their transmission from Zayd through a similar case they have relied upon: he used to grant inheritance rights to three grandmothers, while they grant rights only to two grandmothers. Thus Zayd is sometimes upheld as an authoritative proof and sometimes not recognized as authoritative proof—this is playing games with religion.

ثُمَّ الْمَالِكِيُّونَ قَدْ خَالَفُوهُ فِي فَرَائِضِ الْجَدَّةِ، كَمَا ذَكَرْنَا فِي رِوَايَتِهِمْ عَنْ زَيْدٍ بِمِثْلِ هَذِهِ الَّتِي تَعَلَّقُوا بِهَا: أَنَّهُ كَانَ يُوَرِّثُ ثَلَاثَ جَدَّاتٍ، وَهُمْ لَا يُوَرِّثُونَ إِلَّا جَدَّتَيْنِ، فَمَرَّةً يَكُونُ زَيْدٌ حُجَّةً، وَمَرَّةً لَا يَكُونُ حُجَّةً - هَذَا هُوَ التَّلَاعُبُ بِالدِّينِ.

L27940–27942 Moreover, in those weak narrations they cling to, there lies a clear demonstration that Zayd only expressed that opinion based on personal reasoning—not any transmitted Sunnah. Even if authentically ascribed to him, his view would hold no superiority over others' opinions, and they cannot deny this fundamentally. How then, when conflicting reports from Zayd (as we presented) show divergent statements attributed to him? All this suffices to prove their falsehood and that their statement they blindly imitated from Zayd cannot validly be attributed to him. Abū Muḥammad said: We seek refuge with Allah for Zayd and ʻUmar from having uttered this opinion—the most contradictory of all positions known to us—for it stipulates: If a woman dies leaving behind a husband, mother, full sister, and grandfather, the husband receives three of six shares, the mother two of six, and the grandfather one of six. Then the shares are reduced through ʻawl: the sister's portion becomes three out of nine shares. The grandfather takes the sixth share rightfully his, then combines it with... The sister and grandfather combine her obligated half and his share. The grandfather then takes two-thirds of the combined amount, and the sister takes one-third of it.

وَأَيْضًا: فَإِنَّ فِي تِلْكَ الرِّوَايَاتِ الْوَاهِيَاتِ الَّتِي تَعَلَّقُوا بِهَا بَيَانًا جَلِيًّا بِأَنَّ زَيْدًا إِنَّمَا قَالَ ذَلِكَ بِرَأْيِهِ لَا عَنْ سُنَّةٍ عِنْدَهُ، فَلَوْ صَحَّتْ عَنْهُ لَمَا كَانَ رَأْيُهُ أَوْلَى مِنْ رَأْيِ غَيْرِهِ، وَهُمْ لَا يَقْدِرُونَ عَلَى إِنْكَارِ هَذَا أَصْلًا، فَكَيْفَ وَقَدْ جَاءَ الِاخْتِلَافُ عَنْ زَيْدٍ كَمَا أَوْرَدْنَا بِأَقْوَالٍ عَنْهُ مُخْتَلِفَةٍ، وَيَكْفِي مِنْ هَذَا كُلِّهِ أَنَّهَا بَاطِلٌ، وَأَنَّ قَوْلَتَهُمْ الَّتِي قَلَّدُوا فِيهَا زَيْدًا لَا تَصِحُّ عَنْهُ؟ قَالَ أَبُو مُحَمَّدٍ: نَعِيذُ اللَّهَ زَيْدًا وَعُمَرَ مِنْ أَنْ يَقُولَا تِلْكَ الْقَوْلَةَ الَّتِي لَا نَعْلَمُ فِي الْأَقْوَالِ أَشَدَّ تَخَاذُلًا مِنْهَا، لِأَنَّ فِيهَا: أَنَّ الْمَرْأَةَ تَمُوتُ وَتَتْرُكُ: زَوْجًا، وَأُمًّا، وَأُخْتًا شَقِيقَةً، وَجَدًّا: أَنَّ لِلزَّوْجِ ثَلَاثَةً مِنْ سِتَّةٍ، وَلِلْأُمِّ اثْنَيْنِ مِنْ سِتَّةٍ، وَلِلْجَدِّ وَاحِدًا مِنْ سِتَّةٍ، ثُمَّ يُعَالُ لِلْأُخْتِ بِثَلَاثَةٍ مِنْ سِتَّةٍ: صَارَتْ تِسْعَةً فَيَأْخُذُ الْجَدُّ السُّدُسَ الَّذِي وَجَبَ لَهُ، ثُمَّ يَضُمُّهُ إِلَى النِّصْفِ الَّذِي وَجَبَ لِلْأُخْتِ فَيَخْلِطَانِهِ، ثُمَّ يَأْخُذُ الْجَدُّ ثُلُثَيْ مَا اجْتَمَعَ، وَالْأُخْتُ ثُلُثَ مَا اجْتَمَعَ.

L27943 How astonishing! If the three shares allocated to the sister have indeed become rightfully hers, then the grandfather has not been given a single fils from them. How can the sister's rightful share be seized and given to one who has no entitlement - the grandfather - when perhaps she is a minor,

فَيَا لَلْعَجَبِ إِنْ كَانَتْ الْأَسْهُمُ الثَّلَاثَةُ الَّتِي عِيلَ بِهَا لِلْأُخْتِ قَدْ وَجَبَتْ لِلْأُخْتِ، فَلَمْ يُعْطَ الْجَدُّ مِنْهَا فَلْسًا، وَكَيْفَ يُنْتَزَعُ حَقُّ الْأُخْتِ وَيُعْطَى لِمَنْ لَا يَجِبُ لَهُ - وَهُوَ الْجَدُّ - وَلَعَلَّهَا صَغِيرَةٌ، أَوْ مَجْنُونَةٌ، أَوْ غَائِبَةٌ، أَوْ كَارِهَةٌ؟ فَهُوَ ظُلْمٌ وَأَكْلُ مَالٍ بِالْبَاطِلِ.

mentally incapacitated, absent, or unwilling? This constitutes injustice and unlawful seizure of wealth.

وَإِنْ كَانَتْ الثَّلَاثَةُ الْأَسْهُمِ الَّتِي عِيلَ بِهَا لِلْأُخْتِ لَمْ تَجِبْ لَهَا فَلِأَيِّ شَيْءٍ أَخَذُوهَا مِنْ يَدِ الزَّوْجِ وَالْأُمِّ؟ وَقَالُوا: هَذَا سَهْمُ الْأُخْتِ وَهَذَا هُوَ الْكَذِبُ، فَلَا شَكَّ أَنْ يَقُولُوا: هُوَ سَهْمُهَا وَلَيْسَ هُوَ سَهْمَهَا؟ وَهَذَا ظُلْمٌ لِلزَّوْجِ وَلِلْأُمِّ، وَأَكْلُ مَالٍ بِالْبَاطِلِ.

L27944 If the three shares reduced by ʿawl that were allocated to the sister were not rightfully hers, why did they take them from the share held by the husband and the mother? They said: “This is the sister’s share”—and this is the lie. Undoubtedly, they claim: “It is her share,” when it is not her share? This is injustice toward the husband and the mother, and wrongful consumption of wealth through falsehood.

ثُمَّ يَقُولُونَ فِي أُخْتٍ شَقِيقَةٍ، وَأَخٍ لِأَبٍ، وَجَدٍّ: أَنَّ الشَّقِيقَةَ تَقُولُ لِلْجَدِّ: هَذَا أَخِي؟ لَا بُدَّ لَهُ مِنْ أَنْ يَقْتَسِمَ الْمَالَ مَعِي وَمَعَكَ، لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ؟ فَيَقُولُ الْجَدُّ: كَلَّا، إِنَّمَا هُوَ أَخٌ لِلْمَيِّتِ لِأَبٍ، لَا يُقَاسِمُكَ أَصْلًا، إِمَّا أَنْتِ ذَاتُ فَرْضٍ مُسَمًّى؟ فَتَقُولُ لَهُ الْأُخْتُ: مَا عَلَيْكَ مِنْ هَذَا هُوَ أَخُونَا؟ فَيُقْسَمُ الْمَالُ عَلَى رَغْمِ أَنْفِ الْجَدِّ، لَهُ الْخُمُسَانِ، وَلِلْأَخِ لِلْأَبِ الْخُمُسَانِ، وَلِلْأُخْتِ الشَّقِيقَةِ الْخُمُسُ - فَإِذَا أَخَذَ الْجَدُّ سَهْمَهُ وَوَلَّى خَاسِئًا قَالَتْ الْأُخْتُ لِأَخِيهَا: مَكَانَكَ، خَلِّ يَدَكَ عَنْ الْمَالِ، إِنَّمَا أَقَمْتُكَ لِأُزِيلَ عَنْ يَدِ جَدِّنَا مَا كَانَ يَحْصُلُ لَهُ، وَأَنَا أَوْلَى بِهَذَا مِنْكَ؟ فَيُنْتَزَعُ مِنْ يَدِ الْأَخِ مِمَّا أَعْطَوْهُ عَلَى أَنَّهُ حَظُّهُ مِنْ الْمِيرَاثِ خُمُسًا وَنِصْفَ خُمُسٍ، فَتَأْخُذُهُ الْأُخْتُ، فَيَحْصُلُ لَهَا النِّصْفُ، وَلِلْجَدِّ الْخُمُسَانِ، وَلِلْأُخْتِ لِلْأَبِ نِصْفُ الْخُمُسِ، فَإِنْ كَانَتَا أُخْتَيْنِ شَقِيقَتَيْنِ، وَأَخًا لِأَبٍ، وَجَدًّا؟ فَعَلَنَا كَذَلِكَ، فَإِذَا وُلِّيَ الْجَدُّ انْتَزَعَ مَا بِيَدِ الْأُخْتِ لِلْأَبِ كُلِّهِ، وَأَخَذَهُ الْأُخْتَانِ.

L27945 Then they say regarding a full sister, paternal half-brother, and grandfather: The full sister says to the grandfather, “Is this not my brother? He must divide the wealth with me and you - the male receiving twice the female’s share?” The grandfather replies, “No. He is merely the deceased’s paternal half-brother. He does not share with you at all. You are entitled to a fixed portion.” The sister retorts, “What is that to you? Is he not our brother?” The wealth is then divided against the grandfather’s will: two-fifths for him, two-fifths for the paternal half-brother, and one-fifth for the full sister. When the grandfather takes his share and departs disgraced, the sister tells her brother: “Stay put. Do not touch the wealth. I only brought you in to strip our grandfather of what he would have claimed, for am I not more entitled to this than you?” The brother’s portion—one-fifth plus half a fifth—is then seized from his hand as his inheritance share, and the sister takes it. Thus she ends up with half, the grandfather retains two-fifths, and the paternal half-brother receives half of a fifth. If there are two full sisters, a paternal half-brother, and a grandfather, the same applies. When the grandfather assumes authority, he seizes everything from the paternal half-brother’s possession, and the two full sisters take it.

فَانْظُرُوا فِي هَذِهِ الْأُعْجُوبَةِ لَئِنْ كَانَ لِلْأَخِ لِلْأَبِ حَقٌّ وَاجِبٌ فَمَا يَحِلُّ انْتِزَاعُهُ مِنْهُ - وَإِنْ كَانَ لَا حَقَّ لَهُ - فَمَا يَحِلُّ أَنْ يُقَامَ وَلِيجَةً لِيُعْطِيَ بِالِاسْمِ مَا لَا يَأْخُذُهُ فِي الْحَقِيقَةِ، وَإِنَّمَا يَأْخُذُهُ غَيْرُهُ.

L27946 Consider this remarkable case collectively: if the paternal brother has an established right, it is impermissible to strip him of it—and if he holds no right, it is unlawful to institute a legal stratagem granting him nominally what he cannot acquire in reality, for it is another who rightfully takes possession.

L27947 They further state regarding two daughters, a husband, a grandfather, and either two full sisters, one full sister, or a full brother: that the two daughters receive two-thirds, the husband receives one-fourth, the grandfather receives one-sixth—with a proportional reduction (ʿawl) applied to his share—and nothing is allocated to the brother, the sister, the brothers, or the sisters.

ثُمَّ يَقُولُونَ فِي ابْنَتَيْنِ، وَزَوْجٍ، وَأُخْتَيْنِ شَقِيقَتَيْنِ أَوْ أُخْتٍ شَقِيقَةٍ، أَوْ أَخٍ شَقِيقٍ، وَجَدٍّ: أَنَّ لِلْبِنْتَيْنِ الثُّلُثَيْنِ وَلِلزَّوْجِ الرُّبْعَ، وَلِلْجَدِّ السُّدُسَ، يُعَالُ لَهُ بِهِ، وَلَا شَيْءَ لِلْأَخِ، وَلَا لِلْأُخْتِ، وَلَا لِلْإِخْوَةِ، وَلَا لِلْأَخَوَاتِ.

L27948–27949 At times, they exercise juristic caution for the grandfather by seizing from the sister what they deem to be her prescribed portion and returning most of it to him.

فَمَرَّةً يَحْتَاطُونَ لِلْجَدِّ فَيَنْتَزِعُونَ مِنْ يَدِ الْأُخْتِ مَا يَقُولُونَ أَنَّهُ فَرْضُهَا، وَيَرُدُّونَ أَكْثَرَهُ عَلَى الْجَدِّ.

L27950 And at times, they grant inheritance to the grandfather and entirely exclude the brothers.

وَمَرَّةً يُوَرِّثُونَ الْجَدَّ وَيَمْنَعُونَ الْإِخْوَةَ جُمْلَةً.

L27951 At times, they take preemptive steps to safeguard the sister's share by exploiting a legal loophole, feigning the inclusion of an heir in the inheritance while deliberately excluding him. Instead, they grant the inheritance to the sister and deprive the grandfather.

وَمَرَّةً يَحْتَاطُونَ لِلْأُخْتِ فَيُقِيمُونَ وَلِيجَةً يُظْهِرُونَ أَنَّهُمْ يُوَرِّثُونَهُ وَهُمْ لَا يُوَرِّثُونَهُ، إِنَّمَا يُعْطُونَهُ لِلْأُخْتِ وَيَحْرِمُونَ الْجَدَّ.

L27952 These are deceitful acts from which Allah the Exalted has purified Zayd, and we bear witness by Allah's testimony that Zayd never said them at all, nor did Umar. By Allah, Zayd and Umar—may Allah be pleased with them both—were more fearful of Allah the Exalted and more knowledgeable than to ever say this.

هَذِهِ مُخَاتَلَاتٌ قَدْ نَزَّهَ اللَّهُ تَعَالَى زَيْدًا عَنْهَا، وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ: أَنَّ زَيْدًا مَا قَالَهَا قَطُّ، وَلَا عُمَرُ، كَانَ - وَاَللَّهِ - زَيْدٌ، وَعُمَرُ - رَضِيَ اللَّهُ عَنْهُمَا - أَخْوَفَ لِلَّهِ تَعَالَى وَأَعْلَمَ مِنْ أَنْ يَقُولَا هَذَا -.

L27953 Allah is sufficient for us, and excellent is the Trustee!

وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L27954 Ali said: Since all these opinions have been invalidated with certainty, free from ambiguity, nothing remains except the view of those who held that he is a father who does not inherit alongside him those who do not inherit alongside the father. This is a view authenticated from Abū Bakr al-Ṣiddīq, ʿUmar, Ibn ʿAbbās, and Ibn al-Zubayr.

قَالَ عَلِيٌّ: فَإِذْ قَدْ بَطَلَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا بِيَقِينٍ لَا إِشْكَالَ فِيهِ؟ فَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ قَالَ: إِنَّهُ أَبٌ لَا يَرِثُ مَعَهُ مَنْ لَا يَرِثُ مَعَ الْأَبِ، وَهُوَ قَوْلٌ قَدْ صَحَّ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ، وَعَنْ عُمَرَ، وَابْنِ عَبَّاسٍ، وَابْنِ الزُّبَيْرِ.

L27955 And it has been reported from Uthmān, Alī, and Ibn Masʿūd with chains of transmission that—if not better than the chains of the differing opinions they cited from ʿUmar, Uthmān, Alī, Ibn Masʿūd, and Zayd—are certainly not inferior to them.

وَجَاءَتْ عَنْ عُثْمَانَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ بِأَسَانِيدَ إِنْ لَمْ تَكُنْ أَحْسَنَ مِنْ أَسَانِيدِ الْأَقْوَالِ الْمُخْتَلِفَةِ الَّتِي تَعَلَّقُوا بِهَا عَنْ عُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ، وَزَيْدٍ: لَمْ تَكُنْ دُونَهَا.

فَمَنْ أَعْجَبُ مِمَّنْ تَرَكَ رِوَايَةً صَحَّتْ عَنْ طَائِفَةٍ مِنْ الصَّحَابَةِ، وَرُوِيَتْ عَنْ جُمْهُورِهِمْ، وَجُمْهُورِ التَّابِعِينَ لِرِوَايَةٍ فَاسِدَةٍ لَمْ تَصِحَّ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَإِنَّمَا جَاءَتْ عَنْ بَعْضِهِمْ بِاخْتِلَافٍ عَنْ الَّذِي رُوِيَتْ عَنْهُ أَيْضًا نَفْسِهِ، وَرُجُوعٍ مِنْ قَوْلٍ إلَى قَوْلٍ؟ وَالْعَجَبُ أَنَّهُمْ أَصْحَابُ تَشْنِيعٍ بِاتِّبَاعِ الْجُمْهُورِ، وَهُمْ هَاهُنَا قَدْ خَالَفُوا الْجُمْهُورَ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ وَهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَهُمْ قَدْ أَجْمَعُوا عَلَى أَنْ يُعْطَى الْجَدُّ مَعَ الْبَنِينَ الذُّكُورِ، وَالْبَنَاتِ مَا يُعْطَى الْأَبُ مَعَهُمْ.

L27956 Who is more astonishing than one who abandons a narration authenticated from a group of the Companions - reported by the majority of the Companions themselves and the majority of the Followers - in favor of an unsound narration never authenticated from any Companion, which only came from some of them with discrepancies even from the very one it was narrated from, coupled with retraction from one opinion to another? The astonishment lies in their being people who publicly condemn following the majority, yet here they have opposed the majority of the Companions and the Followers. While claiming to be people of analogical reasoning, they have unanimously agreed that the grandfather receives the same share as the father would when alongside male sons and daughters.

وَأَجْمَعُوا عَلَى تَوْرِيثِ الْجَدِّ مَعَ الْبَنِينَ الذُّكُورِ، وَعَلَى أَنَّ الْإِخْوَةَ لَا يَرِثُونَ مَعَهُ هُنَالِكَ شَيْئًا.

L27957 They have unanimously agreed that the grandfather inherits alongside the male sons, and that brothers do not inherit anything in such cases.

وَأَجْمَعُوا عَلَى أَنْ لَا يُوَرِّثُوا الْإِخْوَةَ لِلْأُمِّ مَعَ الْجَدِّ شَيْئًا، كَمَا لَا يَرِثُونَ مَعَ الْأَبِ - وَلَيْسَ هَذَا إجْمَاعًا فِي الْأَصْلِ، فَقَدْ جَاءَ عَنْ ابْنِ عَبَّاسٍ تَوْرِيثُهُمْ مَعَ الْأَبِ وَمَعَ الْجَدِّ.

L27958–27959 They unanimously agreed that maternal siblings are not entitled to inherit alongside the grandfather, just as they are not entitled alongside the father. However, this is not a foundational consensus, for it is narrated that Ibn Abbas ruled that they inherit in the presence of the father as well as the grandfather (separately).

وَأَجْمَعُوا عَلَى أَنْ لَا يُوَرِّثُوا بَنِي الْأَخِ مَعَ الْجَدِّ، كَمَا لَا يُوَرِّثُونَهُمْ مَعَ الْأَبِ - وَلَيْسَ هَذَا إجْمَاعًا فِي الْأَصْلِ: فَقَدْ جَاءَ عَنْ عَلِيٍّ تَوْرِيثُهُمْ مَعَ الْجَدِّ.

L27960 They unanimously agreed that paternal nephews do not inherit alongside the grandfather, just as they do not inherit alongside the father. Yet this is not an original consensus, for it is reported that Ali granted them inheritance alongside the grandfather.

وَأَجْمَعُوا عَلَى أَنْ لَا يُوَرِّثُوا الْأَعْمَامَ مَعَ الْجَدِّ، كَمَا لَا يَرِثُونَ مَعَ الْأَبِ.

L27961 They unanimously agreed not to grant inheritance to paternal uncles alongside the grandfather, just as they do not inherit alongside the father.

وَأَجْمَعُوا عَلَى ابْنِ الابْنِ أَنَّهُ يَرِثُ مِيرَاثَ الابْنِ إذَا لَمْ يَكُنْ ابْنٌ، وَلَا يَرِثُ إخْوَةُ الْجَدِّ مِنْهُ شَيْئًا مَعَهُمْ - ثُمَّ لَمْ يَقِيسُوا عَلَى هَذِهِ الْوُجُوهِ كُلِّهَا تَوْرِيثَ الْجَدِّ مِنْ ابْنِ ابْنِهِ دُونَ إخْوَتِهِ، وَلَا قَاسُوهُ عَلَى الْأَبِ إذَا لَمْ يَكُنْ أَبٌ.

L27962 They unanimously agreed that the grandson inherits the son's share when no son exists, and the grandfather's brothers inherit nothing from him alongside them. Yet they did not apply analogy to all these cases to establish the grandfather's inheritance from his grandson to the exclusion of his brothers, nor did they analogize it to the father's ruling in the absence of a father.

L27963 They unanimously agreed that the father holds authority in prohibiting marriage to those he married (stepmothers) and their daughters, as well as

blood relatives. Did they not excel in qiyās, nor follow taqlīd, nor adhere to rational inquiry, nor base their ruling on textual evidence? Abū Muḥammad said: What we rely upon in this matter is Allah's statement: "For each parent is a sixth of what he left if he had children. But if he had no children and his parents inherit from him, then his mother receives a third. If he had siblings, then his mother receives a sixth" [Quran 4:11].[20]

وَأَجْمَعُوا عَلَى أَنَّهُ أَبٌ فِي تَحْرِيمِ مَا نَكَحَ، وَفِي تَحْرِيمِ الْقَرَائِبِ، فَلَا الْقِيَاسَ أَحْسَنُوا، وَلَا التَّقْلِيدَ اتَّبَعُوا، وَلَا النَّظَرَ الْتَزَمُوا، وَلَا بِالنَّصِّ أَخَذُوا؟ قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَعْتَمِدُ عَلَيْهِ فِي هَذَا هُوَ قَوْلُ اللَّهِ تَعَالَى: {وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ} [النساء: ١١] .

L27964 And His statement, the Exalted: {O children of Adam, let not Satan tempt you as he expelled your parents from Paradise} [Al-Aʿrāf: 27]. Thus, it is established that the grandfather is a father, and that the son's son is a son. Therefore, the grandfather is entitled to the inheritance of the father, because he is a father, and the son's son is entitled to the inheritance of the son, because he is a son—and that suffices. Indeed, astonishment is immense at one who is unaware of this—and sufficient is Allah for us, and how excellent is He as the Disposer of Affairs.[21]

وقَوْله تَعَالَى: {يَا بَنِي آدَمَ لا يَفْتِنَنَّكُمُ الشَّيْطَانُ كَمَا أَخْرَجَ أَبَوَيْكُمْ مِنَ الْجَنَّةِ} [الأعراف: ٢٧] فَصَحَّ أَنَّ الْجَدَّ أَبٌ، وَأَنَّ ابْنَ الِابْنِ ابْنٌ، فَلَهُ مِيرَاثُ الْأَبِ؛ لِأَنَّهُ أَبٌ، وَلِابْنِ الِابْنِ مِيرَاثُ الِابْنِ؛ لِأَنَّهُ ابْنٌ وَكَفَى - وَإِنَّ الْعَجَبَ لَيَعْظُمُ مِمَّنْ خَفِيَ عَلَيْهِ هَذَا - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L27965 Ali said: Some of them advanced a baseless claim, asserting that the narration stating Abū Bakr designated the grandfather as holding the status of a father does not clarify that this pertains to inheritance. He added: Had this been the case, Umar would not have opposed him—despite Umar's profound reverence for Abū Bakr.

قَالَ عَلِيٌّ: وَقَدْ أَتَى بَعْضُهُمْ بِآبِدَةٍ، وَهِيَ أَنْ قَالَ: لَيْسَ مَا رُوِيَ مِنْ أَنَّ أَبَا بَكْرٍ جَعَلَ الْجَدَّ أَبًا: بَيَانَ أَنَّ ذَلِكَ فِي الْمِيرَاثِ، قَالَ: وَلَوْ كَانَ ذَلِكَ مَا خَالَفَهُ عُمَرُ عَلَى تَعْظِيمِهِ أَبَا بَكْرٍ.

L27966 They mentioned what was narrated to us through Shuʿbah's chain: ʿĀṣim al-Aḥwal reported to us from al-Shaʿbī that Abū Bakr said regarding "al-Kalālah": "Shall I judge concerning it? If it is correct, then it is from Allah, and if it is an error, then it is from me and from Satan—and Allah is free from it. Is it not those besides the child and the parent?" Then ʿUmar said: "Would I feel ashamed before Allah to oppose Abū Bakr?"

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ نا عَاصِمٌ الْأَحْوَلُ عَنِ الشَّعْبِيِّ: أَنَّ أَبَا بَكْرٍ قَالَ فِي " الْكَلَالَةِ " أَقْضِي فِيهَا؟ فَإِنْ يَكُنْ صَوَابًا فَمِنَ اللَّهِ، وَإِنْ يَكُنْ خَطَأً فَمِنِّي وَمِنَ الشَّيْطَانِ، وَاللَّهُ مِنْهُ بَرِيءٌ: هُوَ مَا دُونَ الْوَلَدِ وَالْوَالِدِ؟ فَقَالَ عُمَرُ: إِنِّي لَأَسْتَحْيِي مِنَ اللَّهِ أَنْ أُخَالِفَ أَبَا بَكْرٍ؟

L27967–27968 Abū Muḥammad said: All of this stems from shameful public persistence. The first point is that this narration is disconnected—how could al-Shaʿbī

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ مِنَ الْمُجَاهَرَةِ الْقَبِيحَةِ -: أَوَّلُ ذَلِكَ: أَنَّ هَذِهِ رِوَايَةٌ مُنْقَطِعَةٌ، أَيْنَ الشَّعْبِيُّ مِنْ عُمَرَ؟ وَاللَّهِ مَا وُلِدَ إِلَّا بَعْدَ مَوْتِ عُمَرَ بِأَزْيَدَ مِنْ عَشَرَةِ أَعْوَامٍ - ثُمَّ إِنَّهَا

[20] **Qur'an references (L27963):** Qur'an 4:11 (An-Nisa).
[21] **Qur'an references (L27964):** Qur'an 7:27 (Al-A'raf).

have heard from ʿUmar? By Allah, he was not born until over ten years after ʿUmar's death. Moreover, it is undeniably a false narration, for ʿUmar's disagreement with Abū Bakr is more evident than the sun. His reverence for him does not preclude opposition. Furthermore, there is the report we conveyed through the most authentic chain from ʿUthmān ibn ʿAffān—may Allah be pleased with him—who said ʿUmar told him: "I have formed a view regarding the grandfather's share." ʿUthmān replied: "If we follow your view, it is an opinion of sound judgment. But if we follow the view of the elder before you, how excellent were those people of sound judgment!" ʿUthmān added: "Abū Bakr used to consider the grandfather as a father." Marvel at this blindness, at the worship of whims, and at the brazen persistence in falsehood! Does ʿUthmān's statement admit of any meaning other than that Abū Bakr regarded the grandfather as a father in inheritance?

L27969 It is authentically established that ʿUmar differed from Abū Bakr regarding "Al-Kalālah" itself, the failure to appoint a successor, and numerous other judicial cases—we seek refuge in Allah from being deprived of His support.

L27970 Moreover, if what he said were correct, then ʿUmar would not have contradicted him—for it is authentically established from ʿUmar that he held the opinion that the grandfather is considered a father in inheritance, as we cited. Thus, he did not oppose Abu Bakr if he agreed with him on that matter. Rather, it was the last opinion he held—and to which he reverted, as we mentioned—so is it not the first and last of ʿUmar's opinions, supported by a sound chain of transmission without any interpolation? Abu Muhammad said: Among our proofs in this matter is also that Allah—Exalted is He—did not mention the inheritance of siblings at all in the Quran, nor the inheritance of sisters except in the two verses of *Kalālah*. Therefore, it is necessarily established by the text of the Quran that no sibling or sister inherits except in the inheritance of *Kalālah*, and it is obligatory that the inheritance of *Kalālah* be derived only from a textual ruling or a consensus rooted in the text: We have found that those who inherit him are siblings—whether males, females, or both; full siblings, paternal siblings, or maternal siblings—when the deceased has no male child, no male grandchild, no daughter, no father,

رِوَايَةٌ بَاطِلَةٌ بِلَا شَكٍّ، لِأَنَّ مُخَالَفَةَ عُمَرَ لِأَبِي بَكْرٍ أَشْهَرُ مِنْ الشَّمْسِ، وَلَيْسَ تَعْظِيمُهُ إيَّاهُ بِمُوجِبٍ أَنْ لَا يُخَالِفَهُ -: وَأَوَّلُ ذَلِكَ: الْخَبَرُ الَّذِي أَوْرَدْنَا بِأَصَحِّ إسْنَادٍ مِنْ طَرِيقِ عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ قَالَ لَهُ عُمَرُ: إنِّي قَدْ رَأَيْت فِي الْجَدِّ رَأْيًا، فَقَالَ لَهُ عُثْمَانُ: إنْ نَتَّبِعْ رَأْيَك فَإِنَّهُ رَأْيُ رُشْدٍ، وَإِنْ نَتَّبِعْ رَأْيَ الشَّيْخِ قَبْلَك، فَنِعْمَ ذَوِي الرَّأْيِ كَانَ قَالَ عُثْمَانُ: وَكَانَ أَبُو بَكْرٍ يَجْعَلُهُ أَبًا فَاعْجَبُوا لِهَذَا الْعَمَى، وَلِعِبَادَةِ الْهَوَى وَالْمُجَاهَرَةِ بِالْكَذِبِ، وَانْظُرُوا هَلْ يَحْتَمِلُ هَذَا الْقَوْلُ مِنْ عُثْمَانَ شَيْئًا غَيْرَ أَنَّ أَبَا بَكْرٍ كَانَ يَجْعَلُ الْجَدَّ أَبًا فِي الْمِيرَاثِ.

وَقَدْ صَحَّ خِلَافُ عُمَرَ لِأَبِي بَكْرٍ فِي " الْكَلَالَةِ " نَفْسِهَا، وَفِي تَرْكِ الِاسْتِخْلَافِ وَفِي قَضَايَا كَثِيرَةٍ جِدًّا - نَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

ثُمَّ لَوْ صَحَّ مَا قَالَ لَكَانَ لَمْ يُخَالِفْهُ عُمَرُ، لِأَنَّهُ قَدْ صَحَّ عَنْ عُمَرَ: الْقَوْلُ بِأَنَّ الْجَدَّ أَبٌ فِي الْمِيرَاثِ كَمَا أَوْرَدْنَا، فَلَمْ يُخَالِفْ أَبَا بَكْرٍ إذَا وَافَقَهُ فِي ذَلِكَ، بَلْ هُوَ آخِرُ قَوْلٍ قَالَهُ - وَإِلَيْهِ رَجَعَ كَمَا أَوْرَدْنَا، فَهُوَ أَوَّلُ أَقْوَالِ عُمَرَ وَآخِرُ أَقْوَالِهِ بِإِسْنَادٍ صَحِيحٍ لَا دَاخِلَةَ فِيهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَمِنْ بَرَاهِينِنَا أَيْضًا فِي هَذِهِ الْمَسْأَلَةِ: أَنَّ اللَّهَ - تَعَالَى - لَمْ يَذْكُرْ فِي الْقُرْآنِ مِيرَاثَ الْإِخْوَةِ أَلْبَتَّةَ، وَلَا مِيرَاثَ الْأَخَوَاتِ إلَّا فِي آيَتَيْ " الْكَلَالَةِ " فَوَجَبَ ضَرُورَةً بِنَصِّ الْقُرْآنِ أَنْ لَا يَرِثَ أَخٌ، وَلَا أُخْتٌ، إلَّا فِي مِيرَاثِ الْكَلَالَةِ، وَوَجَبَ أَنْ لَا يُؤْخَذَ مِيرَاثُ الْكَلَالَةِ، إلَّا مِنْ نَصٍّ أَوْ إجْمَاعٍ رَاجِعٍ إلَى النَّصِّ -: فَوَجَدْنَا مَنْ وَرِثَهُ إخْوَةٌ ذُكُورٌ أَوْ إنَاثٌ، أَوْ كِلَاهُمَا - أَشِقَّاءُ، أَوْ لِأَبٍ أَوْ لِأُمٍّ - وَلَمْ يَكُنْ لِلْمَيِّتِ وَلَدٌ ذَكَرٌ،

nor paternal grandfather. This is an indisputable consensus among the entire Ummah that it constitutes the inheritance of *Kalālah*.

وَلَا وَلَدُ وَلَدٍ ذَكَرٌ، وَلَا ابْنَةٌ، وَلَا أَبٌ، وَجَدٌّ لِأَبٍ، فَإِنَّهُ إِجْمَاعٌ مَقْطُوعٌ عَلَيْهِ مِنْ جَمِيعِ الْأُمَّةِ، عَلَى أَنَّهُ مِيرَاثُ كَلَالَةٍ.

L27971–27973 We found the predecessors differing in opinion **if** the deceased has any of those we mentioned—some of them say: "**This constitutes** an inheritance **of** *kalāla*," while others say: "It is not an inheritance **of** *kalāla*." Thus, **submission** to the definitively established consensus is obligatory, and what is disputed must be abandoned, as there is no explicit text **according to** those who differ on this matter. Consequently, it is obligatory that there be no inheritance whatsoever to a brother. Nor for a sister—as long as the deceased has any of the aforementioned heirs—unless an explicit ruling necessitates an exception, in which case such an exception is stipulated by this other text. This applies exclusively to a full brother, to the father alongside the daughter, the two daughters or more, or to the sister alongside the daughter, the two daughters or more—provided no male agnate exists there—and success is from Allah, the Most High.

وَوَجَدْنَا السَّلَفَ مُخْتَلِفِينَ - إِذَا كَانَ لِلْمَيِّتِ أَحَدٌ مِمَّنْ ذَكَرْنَا - فَبَعْضُهُمْ يَقُولُ: هُوَ مِيرَاثُ كَلَالَةٍ، وَبَعْضُهُمْ يَقُولُ: لَيْسَ مِيرَاثَ كَلَالَةٍ، فَوَجَبَ الِانْقِيَادُ لِلْإِجْمَاعِ الْمُتَيَقَّنِ، وَتَرْكُ مَا اُخْتُلِفَ فِيهِ، إِذْ لَا نَصَّ عِنْدَ الْمُخْتَلِفِينَ فِي ذَلِكَ، فَوَجَبَ أَنْ لَا مِيرَاثَ أَلْبَتَّةَ لِأَخٍ، وَلَا لِأُخْتٍ - مَا دَامَ لِلْمَيِّتِ أَحَدٌ مِمَّنْ ذَكَرْنَا - إِلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ فَيُسْتَثْنَى مِنْ هَذَا النَّصِّ الْآخَرِ، وَلَيْسَ ذَلِكَ إِلَّا فِي الْأَخِ الذَّكَرِ الشَّقِيقِ، أَوْ لِلْأَبِ مَعَ الِابْنَةِ وَالْبِنْتَيْنِ فَصَاعِدًا، وَفِي الْأُخْتِ مَعَ الْبِنْتِ وَالْبِنْتَيْنِ فَصَاعِدًا - إِذَا لَمْ يَكُنْ هُنَالِكَ عَاصِبٌ ذَكَرٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

The First Issue in Inheritance

[مَسْأَلَة الْأُولَى بِالْمِيرَاثِ]

L27974

L27975 1737 – A question: Abū Muḥammad said: If someone dies and leaves behind a paternal half-brother and a son of a full brother, the paternal half-brother is more entitled to the inheritance by consensus, because he is the nearest male agnate. The son of the full brother is more entitled to the inheritance than the son of the paternal half-brother, as there is consensus that he is the nearest male agnate.

١٧٣٧ - مَسْأَلَةٌ قَالَ أَبُو مُحَمَّدٍ: وَمَنْ مَاتَ وَتَرَكَ: أَخًا لِأَبٍ، وَابْنَ أَخٍ شَقِيقٍ: فَالْأَخُ لِلْأَبِ أَحَقُّ بِالْمِيرَاثِ بِلَا خِلَافٍ، لِأَنَّهُ أَوْلَى رَجُلٍ ذُكِرَ، وَابْنُ الْأَخِ الشَّقِيقِ أَوْلَى بِالْمِيرَاثِ مِنْ ابْنِ الْأَخِ لِلْأَبِ، لِأَنَّهُ أَوْلَى رَجُلٍ ذُكِرَ بِلَا خِلَافٍ.

L27976 If the deceased leaves behind a paternal cousin and a paternal uncle, the paternal uncle takes precedence over the paternal cousin. The son of a full paternal uncle takes precedence over the son of a paternal half-uncle. If the deceased leaves two paternal cousins: one whose father was a full brother of the deceased's father, and the other whose father was a paternal half-brother of the deceased's father, but this latter cousin himself is a uterine brother of the deceased, then the entire estate belongs to the paternal cousin who is the uterine brother.

فَلَوْ تَرَكَ: ابْنَ عَمٍّ، وَعَمًّا، فَالْعَمُّ أَوْلَى مِنْ ابْنِ الْعَمِّ، وَابْنُ الْعَمِّ الشَّقِيقِ أَوْلَى مِنْ ابْنِ الْعَمِّ لِلْأَبِ - فَإِنْ تَرَكَ ابْنَيْ عَمٍّ، أَحَدُهُمَا: كَانَ أَبُوهُ شَقِيقَ أَبِي الْمَيِّتِ، وَالْآخَرُ: كَانَ أَبُوهُ أَخَا أَبِي الْمَيِّتِ لِأَبِيهِ، إِلَّا أَنَّ هَذَا هُوَ أَخُو الْمَيِّتِ لِأُمِّهِ، فَالْمَالُ كُلُّهُ لِابْنِ الْعَمِّ الَّذِي هُوَ أَخٌ لِلْأُمِّ.

وَهُوَ قَوْلُ ابْنِ مَسْعُودٍ، وَشُرَيْحٍ؛ لِأَنَّهُمْ قَدْ أَجْمَعُوا فِي ابْنَيْ عَمَّيْنِ، أَحَدُهُمَا: ابْنُ شَقِيقِ أَبِي الْمَيِّتِ، وَالْآخَرُ: ابْنُ أَخِي أَبِي الْمَيِّتِ لِأَبِيهِ: أَنَّ ابْنَ شَقِيقِ أَبِي الْمَيِّتِ أَوْلَى، لِاسْتِوَائِهِ مَعَ أَبِي الْمَيِّتِ فِي وِلَادَةِ جَدِّ الْمَيِّتِ، دُونَ ابْنِ الْعَمِّ الْآخَرِ، وَبِالْحِسِّ يَدْرِي كُلُّ أَحَدٍ أَنَّهُمَا قَدْ اسْتَوَيَا فِي وِلَادَةِ جَدِّ الْمَيِّتِ أَبِي أَبِيهِ، وَانْفَرَدَ أَحَدُهُمَا بِوِلَادَةِ جَدِّ الْمَيِّتِ لِأَبِيهِ وَأَبِي الْمَيِّتِ، وَانْفَرَدَ الْآخَرُ بِوِلَادَةِ أُمِّ الْمَيِّتِ لَهُ، وَلَا يُخَيَّلُ عَلَى أَحَدٍ أَنَّ وِلَادَةَ الْأُمِّ أَقْرَبُ مِنْ وِلَادَةِ الْجَدَّةِ، فَهُوَ أَوْلَى رَجُلٍ ذُكِرَ - فَإِنْ تَرَكَتْ: ابْنَيْ عَمٍّ، أَحَدُهُمَا: زَوْجٌ، فَالنِّصْفُ لِلزَّوْجِ بِالزَّوْجِيَّةِ، وَمَا بَقِيَ فَبَيْنَ الِابْنَيْ عَمٍّ سَوَاءً؟ .

L27977 This is the opinion of Ibn Masʿūd and Shurayḥ, for they unanimously ruled regarding two male cousins: one being the son of the deceased's father's full brother, and the other being the son of the deceased's father's paternal uncle. They held that the son of the deceased's father's full brother is more entitled, due to his equality in lineage with the deceased's father through their shared descent from the grandfather of the deceased—unlike the other cousin. Anyone with sense understands that both share lineage through the deceased's paternal grandfather (the father of his father). One cousin exclusively shares lineage traced to the deceased's grandfather through both his own father and the deceased's father, while the other exclusively shares lineage through the deceased's mother. No one could imagine that maternal lineage holds closer proximity than paternal lineage. Thus, the former is the most entitled male heir specified. If she leaves two male cousins, one being her husband, half the estate is allocated to the husband by spousal right, and the remainder is divided equally between the two cousins.

[مَسْأَلَة مِيرَاث المعتق]

١٧٣٨ - مَسْأَلَةٌ وَالرَّجُلُ، وَالْمَرْأَةُ إِذَا أَعْتَقَ أَحَدُهُمَا عَبْدًا أَوْ أَمَةً: وَرِثَ مَالَ الْمُعْتَقِ إِنْ مَاتَ وَلَمْ يَكُنْ لَهُ مَنْ يَحُطُّ بِمِيرَاثِهِ، أَوْ مَا فَضَلَ عَنْ ذَوِي السِّهَامِ.

وَكَذَلِكَ يَرِثُ مَنْ تَنَاسَلَ مِنْهُ مِنْ نَسْلِ الذُّكُورِ مِنْ وَلَدِهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» فَعَمَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَمْ يَخُصَّ.

«وَأَعْتَقَتْ ابْنَةُ حَمْزَةَ عَبْدًا فَمَاتَ وَتَخَلَّفَ ابْنَةً، فَأَعْطَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ابْنَتَهُ النِّصْفَ، وَبِنْتَ حَمْزَةَ النِّصْفَ» - وَكَذَلِكَ يَرِثُ مَنْ أَعْتَقَ مَنْ أَعْتَقَتْ - وَهَكَذَا مَنْ سَفَلَ.

The Issue of the Emancipated Slave's Inheritance

L27978

L27979 Issue 1738: If a man or a woman emancipates a male or female slave, the emancipated slave inherits the emancipator's estate upon the emancipator's death if there is no heir who diminishes the inheritance by his share, or what remains after the shares of those entitled to fixed shares.

L27980 Likewise, descendants from his male lineage inherit, according to the statement of Allah's Messenger (peace and blessings be upon him): "Guardianship (walā') belongs solely to the one who manumits." Thus, he generalized the ruling (peace and blessings be upon him) and did not specify exceptions.

L27981 The daughter of Hamza emancipated a male slave, and he died, leaving behind a daughter. The Prophet—peace be upon him—awarded half to the slave's daughter and half to the daughter of Hamza. Likewise, the male emancipator inherits from the one whom the female emancipated, and the same applies to the emancipator's descendants.

L27982–27984 1739. Issue: If a woman manumitted a slave and then died, leaving sons and male agnate relatives consisting of brothers or sons... Brothers (even if

lower in lineage), uncles, or paternal cousins (even if distant and lower in lineage): the inheritance of the emancipator belongs to her agnatic relatives, not her children, unless her children are themselves her agnatic relatives—such as children born to an umm walad by her master—or unless they are from her paternal cousins with no one closer to her among her grandfather's descendants or her father's sons than them.

١٧٣٩ - مَسْأَلَةٌ وَمَا أَعْتَقَتْ الْمَرْأَةُ ثُمَّ مَاتَتْ، وَلَهَا بُنُونَ وَعُصْبَةٌ مِنْ إخْوَةٍ، أَوْ بَنِي إخْوَةٍ - وَإِنْ سَفَلُوا - أَوْ أَعْمَامٍ، أَوْ بَنِي أَعْمَامٍ - وَإِنْ بَعُدُوا وَسَفَلُوا -: فَمِيرَاثُ مَنْ أَعْتَقَتْ لِعُصْبَتِهَا لَا لِوَلَدِهَا، إلَّا أَنْ يَكُونَ وَلَدُهَا عُصْبَتَهَا، كَأَوْلَادِ أُمِّ الْوَلَدِ مِنْ سَيِّدِهَا، أَوْ يَكُونُوا مِنْ بَنِي عَمِّهَا لَا أَحَدَ مِنْ بَنِي جَدِّهَا، وَلَا مِنْ بَنِي أَبِيهَا: أَقْرَبُ إلَيْهَا مِنْهُمْ.

L27985 Others said: Rather, the inheritance belongs to her child, and this is an issue regarding which people differed. It was narrated to us via the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī: that ʿAlī ibn Abī Ṭālib and al-Zubayr ibn al-ʿAwwām disputed before ʿUmar regarding a client belonging to Ṣafiyyah bint ʿAbd al-Muṭṭalib. ʿUmar ruled that ʿAlī was responsible for the blood money, and that the inheritance belonged to al-Zubayr.

وَقَالَ آخَرُونَ: بَلْ الْمِيرَاثُ لِوَلَدِهَا، وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ، وَالزُّبَيْرَ بْنَ الْعَوَّامِ: اخْتَصَمَا إلَى عُمَرَ فِي مَوْلَى لِصَفِيَّةَ بِنْتِ عَبْدِ الْمُطَّلِبِ؟ فَقَضَى عُمَرُ بِالْعَقْلِ عَلَى عَلِيٍّ، وَبِالْمِيرَاثِ لِلزُّبَيْرِ.

L27986 And through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Misʿar ibn Kidām from ʿAbdullāh ibn Rabāḥ from ʿAbdullāh ibn Maʿqil from ʿAlī ibn Abī Ṭālib, who said: "Walā' (clientage) is a branch of lineage. Whoever acquires the walā' acquires the inheritance."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ عَبْدِ اللَّهِ بْنِ رَبَاحٍ عَنْ عَبْدِ اللَّهِ بْنِ مَعْقِلٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْوَلَاءُ شُعْبَةٌ مِنْ النَّسَبِ، مَنْ أَحْرَزَ الْوَلَاءَ أَحْرَزَ الْمِيرَاثَ.

L27987 And from the chain of Al-Ḥajjāj ibn Al-Minhāl: Ḥammād ibn Zayd narrated to us, Ayyūb Al-Sakhtiyānī narrated to us, from Muḥammad ibn Sīrīn, that he would say: The most deserving among them of walā' (patronage rights) is the most deserving of inheritance.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ زَيْدٍ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ يَقُولُ: أَحَقُّهُمْ بِالْوَلَاءِ أَحَقُّهُمْ بِالْمِيرَاثِ.

L27988 Ali said: "The most entitled to patronage are her male agnates—those to whom the clients trace their lineage. Thus, they would declare: 'We are the clients of Banu Asad if she is of the Asadi women,' and they do not claim affiliation with Banu Tamim if her child is of Tamim descent."

قَالَ عَلِيٌّ: الْأَحَقُّ بِالْوَلَاءِ هُمْ عُصْبَتُهَا الَّذِينَ إلَيْهِمْ يَنْتَمِي الْمَوَالِي، فَيَقُولُونَ: نَحْنُ مَوَالِي بَنِي أَسَدٍ إنْ كَانَتْ هِيَ أَسْدِيَةً، وَلَا يَنْتَمُونَ إلَى بَنِي تَمِيمٍ إنْ كَانَ وَلَدُهَا مِنْ تَمِيمٍ.

L27989 Abu Muhammad said: We hold here to the opinion of Ali. Those who affirmed the opinion of Umar are: Al-Shaʿbi, 'Ata', Ibn Abi Layla, Abu Hanifa, Malik, Al-Shafiʿi, and their companions.

قَالَ أَبُو مُحَمَّدٍ: بِقَوْلِ عَلِيٍّ هَاهُنَا نَقُولُ، وَقَالَ بِقَوْلِ عُمَرَ: الشَّعْبِيُّ، وَعَطَاءٌ، وَابْنُ أَبِي لَيْلَى، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ.

L27990 Abu Muhammad said: The proof for the validity of our statement is the

statement of the Messenger of Allah (peace be upon him): “The ally of the people is one of them.”

قَالَ أَبُو مُحَمَّدٍ: بُرْهَانُ صِحَّةُ قَوْلِنَا -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَوْلَى الْقَوْمِ مِنْهُمْ» .

L27991 The Prophet, peace and blessings be upon him, said: “What the fixed shares do not leave belongs to the nearest male relative.” If a woman is from Mudar and her sons are from the Yemeni tribe, her agnatic kin are undoubtedly from Mudar.

وَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «مَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ» وَإِذَا كَانَتْ الْمَرْأَةُ مِنْ مُضَرَ وَبَنُوهَا مِنْ الْيَمَنِ: فَمَوَالِيهَا مِنْ مُضَرَ، بِلَا شَكٍّ.

L27992 It is impossible for a Yemeni man to inherit a Mudari man by agnatic right; rather, he is inherited by someone from his own tribe (Mudar). And it is impossible for a Yemeni man to have priority over a Mudari man in inheritance.

وَمِنْ الْمُحَالِ أَنْ يَكُونَ رَجُلٌ يَمَانِيٌّ يَرِثُ مُضَرِّيًا بِالتَّعْصِيبِ، بَلْ يَرِثُهُ الَّذِي هُوَ مِنْهُمْ، وَمِنْ الْمُحَالِ أَنْ يَكُونَ رَجُلٌ يَمَانِيٌّ أَوْلَى بِرَجُلٍ مُضَرِيٍّ.

L27993–27994 It is astonishing that they assert: If her offspring die out, their inheritance reverts to the agnates of their mother from Mudar, not to the agnates of the freedwoman’s children. Has anything more astonishing than this ever been heard? How can they inherit patronage rights from their mother when their own agnates do not inherit it from them? This impossibility is glaringly obvious, for if nothing is inherited from them in the end, how could they have inherited it initially?

وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: إنْ انْقَرَضَ وَلَدُهَا عَادَ مِيرَاثُهُمْ إلَى عُصْبَةِ أُمِّهِمْ مِنْ مُضَرَ، لَا إلَى عُصْبَةِ أَبْنَاءِ الْمُعْتَقَةِ، فَهَلْ سُمِعَ بِأَعْجَبَ مِنْ هَذَا؟ وَكَيْفَ يَرِثُونَ عَنْ أُمِّهِمْ وَلَاءً لَا يَرِثُهُ عَنْهُمْ عُصْبَتُهُمْ، إنَّ هَذَا الْمُحَالَ ظَاهِرٌ، وَإِذَا لَمْ يُورَثُ عَنْهُمْ آخِرًا فَمِنْ الْمُحَالِ أَنْ يَرِثُوهُ هُمْ أَوَّلًا.

L27995 We do not know of anything they have contested more vehemently than their assertion: “Just as they inherit their mother’s wealth, so too do they inherit the clientage of her patron - which she herself would have inherited were she alive.”

وَمَا نَعْلَمُ لَهُمْ شَيْئًا شَغَبُوا بِهِ أَكْثَرَ مِنْ أَنْ قَالُوا: كَمَا يَرِثُونَ مَالَ أُمِّهِمْ كَذَلِكَ يَرِثُونَ وَلَاءَ مَوْلَاهَا الَّذِي لَوْ كَانَتْ حَيَّةً لَوَرِثَتْهُ هِيَ.

L27996 Ali said: This is invalid, for whoever inherits the wealth does not inherit the rights of clientage. They do not dispute with us that if a woman dies possessing property and clients, leaving behind her husband, her sister, and her male paternal cousins, then all her inheritance belongs to her husband and sister, with no entitlement for them to the rights of clientage over her clients. And that the rights of clientage over her clients belong to her male paternal cousins, who receive nothing from her estate.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ لَيْسَ مَنْ يَرِثُ الْمَالَ يَرِثُ الْوَلَاءَ، وَهُمْ لَا يَخْتَلِفُونَ مَعَنَا فِي أَنَّ امْرَأَةً لَوْ مَاتَتْ وَلَهَا مَالٌ وَمَوَالٍ، وَتَرَكَتْ: زَوْجَهَا، وَأُخْتَهَا، وَبَنِي عَمِّهَا: فَإِنَّ جَمِيعَ مِيرَاثِهَا لِزَوْجِهَا وَأُخْتِهَا، وَلَا حَقَّ لَهُمَا فِي وَلَاءِ مَوَالِيهَا، وَأَنَّ وَلَاءَ مَوَالِيهَا لِبَنِي عَمِّهَا الَّذِينَ لَا يَأْخُذُونَ مِنْ مَالِهَا شَيْئًا.

L27997 Similarly, if a woman dies leaving behind a husband, two daughters, a mother, and sons of a son (grandsons), the entire estate belongs to the hus-

band, the two daughters, and the mother, while the grandsons receive nothing. According to their view, the clientage of her patrons passes to the grandsons, and those who inherited the estate do not receive anything from this clientage. Thus, the invalidity of their argument becomes evident, and their claim is nullified, as it is stripped of any proof—and success is from Allah, the Most High. If they deceptively cite the ruling of ʿUmar, ʿUmar himself ruled in this very case that the male agnatic relatives of her son inherit the clientage of her patrons through her son, while her siblings do not inherit it. Yet they opposed ʿUmar in this, arbitrarily asserting falsehood—and success is from Allah, the Most High.

L27998 Issue: A child born to a male slave by a free woman is not inherited by the one who emancipated his father afterward. A person only inherits from an ensouled fetus conceived after the emancipator freed the father.

L27999 The proof of this is the statement of Allah's Messenger—may Allah bless him and grant peace—: "The right of patronage belongs to the emancipator." This newborn is created free, and no right of patronage over him exists for anyone. It is therefore impermissible for patronage to arise over him after his freedom in favor of one who did not emancipate him. Nor was such patronage established over him previously except through explicit textual evidence, and there is no explicit text regarding this.

وَكَذَلِكَ: امْرَأَةٌ مَاتَتْ وَتَرَكَتْ: زَوْجًا، وَبِنْتَيْنِ، وَأُمًّا، وَبَنِي ابْنٍ -: فَإِنَّ الْمَالَ كُلَّهُ لِلزَّوْجِ وَالْبِنْتَيْنِ وَالْأُمِّ، وَلَا يَأْخُذُ مِنْهُ بَنُو الِابْنِ شَيْئًا، وَأَنَّ وَلَاءَ مَوَالِيهَا عِنْدَهُمْ لِبَنِي الِابْنِ، وَلَا يَرِثُ مِنْهُ الَّذِينَ وَرِثُوا الْمَالَ شَيْئًا -: فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ، وَبَطَلَ قَوْلُهُمْ، إِذْ عُرِّيَ مِنْ بُرْهَانٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. فَإِنْ مَوَّهُوا بِقَضَاءِ عُمَرَ: فَقَدْ قَضَى عُمَرُ فِي هَذِهِ الْمَسْأَلَةِ نَفْسِهَا بِأَنَّ عُصْبَةَ وَلَدِهَا يَرِثُونَ وَلَاءَ مَوَالِيهَا عَنْ وَلَدِهَا، وَلَا يَرِثُهُ إِخْوَتُهَا -: فَقَدْ خَالَفُوا عُمَرَ فِي ذَلِكَ تَحَكُّمًا بِالْبَاطِلِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

١٧٤٠ - مَسْأَلَةٌ وَمَا وُلِدَ لِلْمَمْلُوكِ مِنْ حُرَّةٍ فَإِنَّهُ لَا يَرِثُهُ مَنْ أَعْتَقَ أَبَاهُ بَعْدَ ذَلِكَ، وَإِنَّمَا يَرِثُ الْمَرْءُ مَا نُفِخَ فِيهِ الرُّوحُ مِنْ حَمْلٍ بَعْدَ أَنْ أَعْتَقَ أَبَاهُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْوَلَاءُ لِمَنْ أَعْتَقَ» وَهَذَا الْمَوْلُودُ خُلِقَ حُرًّا، وَلَا وَلَاءَ عَلَيْهِ لِأَحَدٍ، فَلَا يَجُوزُ أَنْ يَحْدُثَ عَلَيْهِ بَعْدَ حُرِّيَّتِهِ وَلَاءٌ لِمَنْ لَمْ يُعْتِقْهُ، وَلَا كَانَ ذَلِكَ الْوَلَاءُ عَلَيْهِ قَبْلُ إِلَّا بِنَصٍّ، وَلَا نَصَّ فِي ذَلِكَ.

L28000–28001 As for one who is ensouled after the patronage bond had been irrevocably established over his father, he never comes into existence except with that bond established over him. Thus, his inheritance belongs to his patron (mawlā).

وَأَمَّا مَنْ نُفِخَ فِيهِ الرُّوحُ بَعْدَ ثَبَاتِ الْوَلَاءِ عَلَى أَبِيهِ فَإِنَّهُ لَمْ يَكُنْ قَطُّ مَوْجُودًا إِلَّا وَالْوَلَاءُ عَلَيْهِ ثَابِتٌ - فَمِيرَاثُهُ لِمَوْلَاهُ.

L28002 And it has been narrated to us from Al-Sha'bi: There is no clientage [owed] except to the one who has conferred a favor [i.e., the patron].

وَقَدْ رُوِّينَا عَنْ الشَّعْبِيِّ: لَا وَلَاءَ إِلَّا لِذِي نِعْمَةٍ.

L28003 1741 – Issue: If a child is born to a freed male slave and a freed female slave, both belonging to others, his patronage belongs to the one who emancipated his father or grandfathers—and there is no disagreement on this ruling.

١٧٤١ - مَسْأَلَةٌ وَمَا وُلِدَ لِمَوْلًى مِنْ مَوْلَاةٍ لِآخَرِينَ فَوَلَاؤُهُ لِمَنْ أَعْتَقَ، أَبَاهُ، أَوْ أَجْدَادَهُ - وَهَذَا لَا خِلَافَ فِيهِ.

L28004 A child born to a freedwoman from an Arab man has no patronage right over him belonging to the patrons of his mother, and there is consensus on this matter.

وَمَا وَلَدَتْ الْمَوْلَاةُ مِنْ عَرَبِيٍّ فَلَا وَلَاءَ عَلَيْهِ لِمَوَالِي أُمِّهِ، وَهَذَا لَا خِلَافَ فِيهِ.

L28005 And what a female client bears from an enslaved spouse, or from fornication, or coercion, or a ḥarbī, or if she has performed li'ān against him—some scholars have stated: his patronage belongs to the patrons of his mother. We do not uphold this view; rather, no patronage obligation binds him to anyone. This is because no textual proof or consensus exists imposing patronage upon him. Indeed, they have unanimously agreed upon all we mentioned: that the patronage established over his mother holds no legal validity if his father was a client or an Arab—thereby exposing their inconsistency. And success is attained through Allah, the Exalted.

وَمَا وَلَدَتْ الْمَوْلَاةُ مِنْ زَوْجٍ مَمْلُوكٍ، أَوْ مِنْ زِنًى، أَوْ مِنْ إكْرَاهٍ، أَوْ حَرْبِيٍّ، أَوْ لَاعَنَتْ عَلَيْهِ، فَقَدْ قَالَ قَوْمٌ: وَلَاؤُهُ لِمَوَالِي أُمِّهِ - وَلَا نَقُولُ بِهَذَا، بَلْ لَا وَلَاءَ عَلَيْهِ لِأَحَدٍ؛ لِأَنَّهُ لَمْ يَأْتِ بِإِيجَابِ الْوَلَاءِ عَلَيْهِ نَصٌّ، وَلَا إجْمَاعٌ، بَلْ قَدْ أَجْمَعُوا عَلَى كُلِّ مَا ذَكَرْنَا مِنْ أَنَّهُ لَا حُكْمَ لِلْوَلَاءِ الْمُنْعَقِدِ عَلَى أُمِّهِ إنْ كَانَ أَبُوهُ مَوْلًى، أَوْ عَرَبِيًّا - فَظَهَرَ تَنَاقُضُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: The slave neither inherits nor is inherited.

L28006

[مَسْأَلَةٌ الْعَبْدُ لَا يَرِثُ وَلَا يُورَثُ]

L28007 1742. Issue: A slave does not inherit, nor is he inherited. All his wealth belongs to his master. This is a matter on which there is no disagreement, and a definitive text exists regarding it, which we will mention hereafter, Allah, the Exalted, willing.

١٧٤٢ - مَسْأَلَةٌ وَالْعَبْدُ لَا يَرِثُ، وَلَا يُورَثُ: مَالُهُ كُلُّهُ لِسَيِّدِهِ، هَذَا مَا لَا خِلَافَ فِيهِ، وَقَدْ جَاءَ بِهِ نَصٌّ نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى.

L28008 It has been reported from some of the Companions that a slave may be sold, then emancipated, then inherit from his former master. Since this ruling is not mandated by the Quran or the Sunnah, it is impermissible to adopt this view.

وَرُوِّينَا عَنْ بَعْضِ الصَّحَابَةِ: أَنَّهُ يُبَاعُ فَيُعْتَقُ فَيَرِثُ - وَهَذَا لَا يُوجِبُهُ قُرْآنٌ وَلَا سُنَّةٌ، فَلَا يَجُوزُ الْقَوْلُ بِهِ.

The Issue of the Mukatab's Inheritance

[مَسْأَلَة مِيرَاث الْمُكَاتَب]

L28009

L28010 Issue 1743: If a mukatab (a slave contracted to purchase their freedom) pays part of his mukatabah and dies, his heirs inherit from him only according to the portion he paid. If a person from whom he inherits dies, he (the mukatab) inherits from them only according to the portion he paid. Any surplus beyond what he (the mukatab) inherited belongs to the remaining heirs, and any surplus remaining after his heirs' inheritance belongs to his master.

١٧٤٣ - مَسْأَلَةٌ وَالْمُكَاتَبُ إِذَا أَدَّى شَيْئًا مِنْ مُكَاتَبَتِهِ فَمَاتَ، أَوْ مَاتَ لَهُ مُورِثٌ وَرِثَ مِنْهُ وَرَثَتُهُ بِقَدْرِ مَا أَدَّى فَقَطْ، وَوَرِثَ هُوَ أَيْضًا بِمِقْدَارِ مَا أَدَّى فَقَطْ، وَيَكُونُ مَا فَضَلَ عَمَّا وَرِثَ لِسَائِرِ الْوَرَثَةِ، وَيَكُونُ مَا فَضَلَ عَنْ وَرَثَتِهِ لِسَيِّدِهِ.

L28011 This is a matter regarding which people have differed. We have mentioned in the chapter *al-Mukātab* and have also cited the authentic narrations from the Prophet (peace and blessings be upon him) concerning this matter, rendering repetition unnecessary.

وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ، وَقَدْ ذَكَرْنَا فِي " كِتَابِ الْمُكَاتَبِ " وَذَكَرْنَا مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ فَأَغْنَى عَنْ إعَادَتِهِ.

L28012 Whoever dies partially free and partially enslaved: the one entitled to patronage rights inherits from the estate proportionally to their share in the clientage relationship, and the remainder belongs to the owner of the enslaved portion, regardless of whether the latter takes their share from the deceased's earnings.

وَمَنْ مَاتَ وَبَعْضُهُ حُرٌّ وَبَعْضُهُ عَبْدٌ: فَلِلَّذِي لَهُ الْوَلَاءُ مِمَّا تَرَكَ بِمِقْدَارِ مَا لَهُ فِيهِ مِنْ الْوَلَاءِ وَالْبَاقِي لِلَّذِي لَهُ الرِّقُّ - سَوَاءٌ كَانَ يَأْخُذُ حِصَّتَهُ مِنْ كَسْبِهِ.

L28013–28015 During his lifetime or if he had not been taking it—because what remains after what he used to take is property wholly belonging to the *mukatab*: he may consume it, use it to marry, take a concubine, settle his debts from it, and give it as charity, for it is his wealth—and this refers to what the entitled party did not take from it. The remainder—if he dies, it becomes property he leaves behind. The one asserting ownership through slavery no longer has the right to claim it now, as a right has been established in it for the party entitled to a partial allegiance over him.

فِي حَيَاتِهِ أَوْ لَمْ يَكُنْ يَأْخُذُهُ - لِأَنَّ الْبَاقِيَ بَعْدَ مَا كَانَ يَأْخُذُ: مِلْكٌ لِجَمِيعِ الْمُكَاتَبِ يَأْكُلُهُ، وَيَتَزَوَّجُ فِيهِ، وَيَتَسَرَّى، وَيَقْضِي مِنْهُ دُيُونَهُ، وَيَتَصَدَّقُ بِهِ، فَهُوَ مَالُهُ - وَهُوَ مَا لَمْ يَأْخُذْهُ الَّذِي لَهُ فِيهِ بَقِيَّةٌ - فَإِذَا مَاتَ فَهُوَ مَالٌ يُخَلِّفُهُ، لَيْسَ لِلَّذِي تَمَسَّكَ بِالرِّقِّ أَنْ يَأْخُذَهُ الْآنَ، إذْ قَدْ وَجَبَ فِيهِ حَقٌّ لِلَّذِي لَهُ فِيهِ بَعْضُ الْوَلَاءِ.

L28016 People have differed regarding this. Mālik held that all his property belongs to the one who holds any portion of ownership over him [as a slave]. This is the opinion of al-Zuhrī and one of the two opinions of al-Shāfiʿī.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ مَالِكٌ: مَالُهُ كُلُّهُ لِلَّذِي لَهُ فِيهِ شَيْءٌ مِنْ الرِّقِّ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L28017 Qatadah said: All of his inheritance belongs to the one who has a share in shared manumission therein.

وَقَالَ قَتَادَةُ: مِيرَاثُهُ كُلُّهُ لِلَّذِي لَهُ فِيهِ شُعْبَةُ الْعِتْقِ.

L28018 Abū Ḥanīfah said: He must pay from his wealth the value of the slavery liability therein, and his heirs inherit the remainder. If the enslaved person is not manumitted through this payment, then all his wealth belongs to the party asserting the slavery claim.

L28019 Some scholars of Al-Shafi'i's school said that his wealth belongs to the Muslim treasury (Bayt al-Māl).

L28020 Al-Shāfiʿī said in one of his statements: "He is inherited [a share] proportionate to the measure of manumission involved, but he himself does not inherit through that same measure."

L28021 Our statement regarding that which we have mentioned is the opinion of Ali ibn Abi Talib, Ibn Mas'ud, Ibrahim al-Nakha'i, Uthman al-Batti, al-Sha'bi, Sufyan al-Thawri, Ahmad ibn Hanbal, Dawud, all of his companions, and one of the opinions of al-Shafi'i.

L28022 ## The Issue of Inheritance for a Child of Zina.

L28023 Issue 1744: A child born of illicit intercourse inherits from his mother, and his mother inherits from him. She has motherhood rights over him encompassing filial piety, financial support, prohibition of marriage, and all other rulings pertaining to mothers. However, the man from whose sperm he was created does not inherit from him, nor does the child inherit from the biological father. The child has no rights based on paternity against him—neither in filial piety, financial support, marriage prohibition, nor anything else. The child remains a stranger to him, and we know of no disagreement on this matter except regarding the prohibition of marriage alone.

L28024 The proof of the validity of what we have stated is the statement of Allah's Messenger—may Allah's blessings and peace be upon him—"The child belongs to the bed, and the stone is for the adulterer," and his statement—upon him be blessings and peace—"The child belongs to the owner of the bed, and the stone is for the adulterer."

L28025 Thus, the child is ascribed to the marital bed – which is the mother – and

وَقَالَ أَبُو حَنِيفَةَ: يُؤَدِّي مِنْ مَالِهِ قِيمَةَ مَا فِيهِ مِنْ الرِّقِّ وَيَرِثُ الْبَاقِيَ وَرَثَتُهُ - وَإِنْ لَمْ يُرَقَّ بِذَلِكَ: فَمَالُهُ كُلُّهُ لِلْمُتَمَسِّكِ بِالرِّقِّ.

وَقَالَ بَعْضُ أَصْحَابِ الشَّافِعِيِّ: مَالُهُ لِبَيْتِ مَالِ الْمُسْلِمِينَ.

وَقَالَ الشَّافِعِيُّ فِي أَحَدِ أَقْوَالِهِ: إنَّهُ يُورَثُ بِمِقْدَارِ مَا فِيهِ مِنْ الْعِتْقِ، وَلَا يَرِثُ هُوَ بِذَلِكَ الْمِقْدَارِ.

وَقَوْلُنَا فِي ذَلِكَ الَّذِي ذَكَرْنَا هُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ مَسْعُودٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَعُثْمَانَ الْبَتِّيِّ، وَالشَّعْبِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ وَدَاوُد، وَجَمِيعِ أَصْحَابِهِ، وَأَحَدِ أَقْوَالِ الشَّافِعِيِّ.

[مَسْأَلَة مِيرَاث وَلَد الزِّنَا]

١٧٤٤ - مَسْأَلَةٌ وَوَلَدُ الزِّنَى يَرِثُ أُمَّهُ، وَتَرِثُهُ أُمُّهُ، وَلَهَا عَلَيْهِ حَقُّ الْأُمُومِيَّةِ مِنْ: الْبِرِّ، وَالنَّفَقَةِ، وَالتَّحْرِيمِ، وَسَائِرِ حُكْمِ الْأُمَّهَاتِ -: وَلَا يَرِثُهُ الَّذِي تَخَلَّقَ مِنْ نُطْفَتِهِ، وَلَا يَرِثُهُ هُوَ، وَلَا لَهُ عَلَيْهِ حَقُّ الْأُبُوَّةِ لَا فِي بِرٍّ، وَلَا فِي نَفَقَةٍ، وَلَا فِي تَحْرِيمٍ، وَلَا فِي غَيْرِ ذَلِكَ، وَهُوَ مِنْهُ أَجْنَبِيٌّ وَلَا نَعْلَمُ فِي هَذَا خِلَافًا إلَّا فِي التَّحْرِيمِ فَقَطْ.

بُرْهَانُ صِحَّةِ مَا قُلْنَا -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَيْضًا «الْوَلَدُ لِصَاحِبِ الْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» .

to its owner – the husband or the master (in cases of enslavement) – and nothing is granted to the fornicator except exclusion.

فَأَلْحَقَ الْوَلَدَ بِالْفِرَاشِ - وَهِيَ الْأُمُّ - وَبِصَاحِبِهِ - وَهُوَ الزَّوْجُ، أَوْ السَّيِّدُ - وَلَمْ يَجْعَلْ لِلْعَاهِرِ إِلَّا الْحَجَرَ.

L28026–28027 Whoever declares something forbidden in matters of paternity where he has no right has acted contradictorily. And success is from Allah, the Most High.

وَمَنْ جَعَلَ تَحْرِيمًا بِمَا لَا حَقَّ لَهُ فِي الْأُبُوَّةِ فَقَدْ نَاقَضَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مِيرَاث المولدون فِي أَرْض الشِّرْك]

L28028 **The jurisprudential issue regarding the inheritance of those born in polytheistic territories.**

١٧٤٥ - مَسْأَلَةٌ وَالْمَوْلُودُونَ فِي أَرْضِ الشِّرْكِ يَتَوَارَثُونَ كَمَا يَتَوَارَثُ مَنْ وُلِدَ فِي أَرْضِ الْإِسْلَامِ بِالْبَيِّنَةِ أَوْ بِإِقْرَارِهِمْ إِنْ لَمْ تَكُنْ بَيِّنَةٌ - سَوَاءٌ أَسْلَمُوا وَأَقَرُّوا مَكَانَهُمْ، أَوْ تَحَمَّلُوا، أَوْ سُبُوا فَأُعْتِقُوا.

L28029 1745 - Issue: Those born in the land of polytheism inherit in the same manner as those born in the land of Islam—through clear evidence or, in its absence, their acknowledgment—whether they embrace Islam and legally acknowledge [their status], assume responsibility [as guarantors], or are taken captive and later freed.

وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَرُوِّينَا عَنْ عُمَرَ، وَعُثْمَانَ: أَنَّهُ لَا يَرِثُ أَحَدٌ بِوِلَادَةِ الشِّرْكِ.

L28030 This is an issue regarding which people have differed: It has been transmitted to us from ʻUmar and ʻUthmān that no one may inherit by virtue of being born to polytheist parents.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَدْرَكْت الصَّالِحِينَ يَذْكُرُونَ: أَنَّ فِي السُّنَّةِ: أَنَّ وِلَادَةَ الْعَجَمِ مِمَّنْ وُلِدَ فِي أَرْضِ الشِّرْكِ ثُمَّ تَحَمَّلَ: أَنْ لَا يَتَوَارَثُوا.

L28031 And from Yaḥyā ibn Saʿīd al-Anṣārī: I encountered the righteous people mentioning that the Sunnah states: “The offspring of non-Arabs born in the land of polytheism, who subsequently migrated, do not inherit from one another.”

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَعَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ، وَأَبِي بَكْرِ بْنِ سُلَيْمَانَ بْنِ أَبِي خَيْثَمَةَ، وَأَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ: لَا يُورَثُ أَحَدٌ بِوِلَادَةِ الْأَعَاجِمِ إِلَّا أَحَدٌ وُلِدَ فِي الْعَرَبِ.

L28032 From Umar ibn Abd al-Aziz, Urwah ibn al-Zubayr, Amr ibn Uthman ibn Affan, Abu Bakr ibn Sulayman ibn Abi Khaythama, and Abu Bakr ibn Abd al-Rahman ibn al-Harith ibn Hisham: No one is entitled to inheritance rights by virtue of being born to non-Arabs, except one born into Arab lineage.

وَلَا نَعْلَمُ يَصِحُّ عَنْ عُمَرَ، وَعُثْمَانَ: شَيْءٌ مِنْ هَذَا، لِأَنَّهَا مُنْقَطِعَةٌ عَنْ مَالِكٍ عَنْ الثِّقَةِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ ..

L28033 We do not know of any authentic report from ʻUmar or ʻUthmān regarding this matter, as the chain is disconnected (munqatiʿ) from Mālik from the trustworthy narrator from Saʿīd ibn al-Musayyab: that ʻUmar...

وَمِنْ طَرِيقٍ فِيهَا علي بن زيد بن جدعان - ضعيف - وأبان بن عثمان - لم يدرك عمر -: أن عمر؛ ومحمد

L28034 And from a chain containing Ali ibn Zayd ibn Jud’an—who is weak—and Aban ibn Uthman—who did not meet Umar—: that Umar; and Muhammad

ibn Abd al-Rahman ibn Thawban: that Umar and Uthman—though this chain is weaker; and al-Zuhri: that Umar and Uthman—and Umar's child Abdullah and the Mother of the Believers Hafsah only inherited due to birth during the era of polytheism.

وَمِنْ طَرِيقٍ فِيهَا عَلِيُّ بْنُ زَيْدِ بْنِ جُدْعَانَ - وَهُوَ ضَعِيفٌ - وَأَبَانُ بْنُ عُثْمَانَ: أَنَّ عُمَرَ - وَلَمْ يُدْرِكْ أَبَانُ عُمَرَ - وَمُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ: أَنَّ عُمَرَ، وَعُثْمَانَ - وَهَذَا أَبْعَدُ - وَالزُّهْرِيُّ: أَنَّ عُمَرَ، وَعُثْمَانَ - وَمَا وَرِثَ عُمَرُ وَلَدُهُ عَبْدَ اللَّهِ، وَأُمَّ الْمُؤْمِنِينَ حَفْصَةَ إِلَّا بِوِلَادَةِ الشِّرْكِ.

L28035 A group said, as reported to us through the chain of Abd al-Razzaq, who narrated to us from Ma'mar, from Sufyan al-Thawri, from Mujalid, from al-Sha'bi, from Shurayh: that Umar ibn al-Khattab wrote to him: "Do not grant inheritance to the child of disputed lineage except upon clear evidence."

وَقَالَتْ طَائِفَةٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُجَالِدٍ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إِلَيْهِ: أَنْ لَا يُوَرِّثَ الْحَمِيلَ إِلَّا بِبَيِّنَةٍ.

L28036 Via the chain of Abd al-Razzaq, who narrated to us from Ma'mar: Asim ibn Sulayman informed me, saying: Umar ibn Abd al-Aziz decreed that contractual allies should not inherit one another in a state of disbelief. Al-Hasan and Ibn Sirin censured him for this, stating, "What prevents them from inheriting if they have been reconciled and clear evidence is established?"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ: أَخْبَرَنِي عَاصِمُ بْنُ سُلَيْمَانَ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْ لَا يَتَوَارَثَ الْحُلَفَاءُ فِي وِلَادَةِ الْكُفْرِ؟ فَعَابَ ذَلِكَ عَلَيْهِ الْحَسَنُ، وَابْنُ سِيرِينَ، وَقَالُوا: مَا شَأْنُهُمْ أَنْ لَا يَتَوَارَثُوا إِذَا عُوفُوا وَقَامَتْ الْبَيِّنَةُ.

L28037–28038 And through the narration of Hammad ibn Salamah, from Habib ibn al-Shahid, from Ibn Sirin and al-Hasan, both stated together: When clear evidence is established, the fetus is entitled to inherit.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَبِيبِ بْنِ الشَّهِيدِ عَنِ ابْنِ سِيرِينَ، وَالْحَسَنِ، قَالَا جَمِيعًا: إِذَا قَامَتْ الْبَيِّنَةُ وَرِثَ الْحَمِيلُ.

L28039 And through the narration of Ḥammād ibn Salamah from al-Ḥajjāj and Ḥammād ibn Abī Sulaymān (or one of them) from al-Shaʿbī and al-Nakhaʿī, they both stated: The unborn child does not inherit except by conclusive evidence. This is the position of al-Thawrī, Abū Ḥanīfah, Abū Sulaymān, and the companions of the latter two.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنِ الْحَجَّاجِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، أَوْ أَحَدِهِمَا عَنِ الشَّعْبِيِّ، وَالنَّخَعِيِّ، قَالَا جَمِيعًا: لَا يُورَثُ الْحَمِيلُ إِلَّا بِبَيِّنَةٍ - وَهُوَ قَوْلُ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L28040 A group has stated that agnatic heirs inherit through testimony or through admission if there is no testimony, as has been reported to us through the chain of Muḥammad ibn ʿAbd al-Salām al-Khushanī: Muḥammad ibn al-Muthannā reported to us, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī, who said: ʿUmar ibn al-Khaṭṭāb stated, "Every lineage upon which kinship ties are maintained in Islam is an heir who both inherits and can be inherited from."

وَقَالَتْ طَائِفَةٌ: يَتَوَارَثُ الْحُلَفَاءُ بِالْبَيِّنَةِ أَوْ بِالْإِقْرَارِ إِنْ لَمْ تَكُنْ بَيِّنَةٌ، كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: كُلُّ نَسَبٍ يُتَوَاصَلُ عَلَيْهِ فِي الْإِسْلَامِ فَهُوَ وَارِثٌ مَوْرُوثٌ.

L28041 And through the chain of Ghundar from Shu’bah from Al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān, they both concurred—the uterine relative inherits.

وَمِنْ طَرِيقِ غُنْدَرٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَا جَمِيعًا: الْخَمِيلُ يُورَثُ.

L28042 From the chain of Ghundar, from Shuʿbah, from al-Mughīrah ibn Miqsam al-Ḍabbī, from Ibrāhīm al-Nakhaʿī, who said regarding the uterine brother: If conclusive legal proof is established that he maintained kinship ties with him as with a brother and observed the same inheritance prohibitions toward him as toward a brother, he would inherit from him.

وَمِنْ طَرِيقِ غُنْدَرٍ عَنْ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ الضَّبِّيِّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي الْخَمِيلِ: إذَا قَامَتْ الْبَيِّنَةُ أَنَّهُ كَانَ يَصِلُ مِنْهُ مَا يَصِلُ مِنْ أَخِيهِ، وَيَحْرِمُ مِنْهُ مَا يَحْرِمُ مِنْ أَخِيهِ: وَرِثَهُ.

L28043 From the narration of Abu Dawud al-Tayalisi through Shu’bah, from al-A’mash, who said: “My father was a milk brother, so Masruq granted him inheritance.” Through another chain from ’Abd al-Rahman ibn Udhaynah: he established inheritance rights for a milk brother based on the testimony of one man and one woman affirming he was his brother, and the testimony of another woman who heard him declare: “He is my brother.”

وَمِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ شُعْبَةَ عَنْ الْأَعْمَشِ قَالَ: كَانَ أَبِي خَمِيلًا فَوَرَّثَهُ مَسْرُوقٌ - وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ أُذَيْنَةَ أَنَّهُ وَرَّثَ خَمِيلًا بِشَهَادَةِ رَجُلٍ وَامْرَأَةٍ أَنَّهُ كَانَ أَخَاهُ - وَبِشَهَادَةِ امْرَأَةٍ أُخْرَى أَنَّهَا سَمِعَتْهُ يَقُولُ: هُوَ أَخِي.

L28044 And via the route of ʿAbd al-Razzāq, from Isrāʾīl ibn Yūnus, from Ashʿath ibn Abī al-Shaʿthāʾ: He said: I brought a lawsuit before Shurayḥ concerning a freedwoman affiliated with the tribe who died leaving considerable wealth. A man came to contest her agnatic heirs, presenting evidence that she would say, “My brother?” Thereupon Shurayḥ awarded him the inheritance.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إسْرَائِيلَ بْنِ يُونُسَ عَنْ أَشْعَثَ بْنِ أَبِي الشَّعْثَاءِ: أَنَّهُ قَالَ: خَاصَمْت إلَى شُرَيْحٍ فِي مَوْلَاةٍ لِلْحَيِّ مَاتَتْ عَنْ مَالٍ كَثِيرٍ، فَجَاءَ رَجُلٌ فَخَاصَمَ مَوَالِيَهَا، وَجَاءَ بِالْبَيِّنَةِ أَنَّهَا كَانَتْ تَقُولُ: أَخِي؟ فَوَرَّثَهُ شُرَيْحٌ.

L28045 Al-Shafi’i said: If evidence is established, the client inherits—whether clientage was incumbent on the deceased or not. But if there is only an acknowledgment, then the one not bound by clientage inherits through it, and the one bound by clientage does not inherit through it.

وَقَالَ الشَّافِعِيُّ: إذَا قَامَتْ الْبَيِّنَةُ وَرِثَ الْخَمِيلُ - كَانَ عَلَيْهِ وَلَاءٌ أَوْ لَمْ يَكُنْ - فَإِنْ لَمْ يَكُنْ إلَّا إقْرَارٌ فَقَطْ وَرِثَ بِهِ مَنْ لَا وَلَاءَ عَلَيْهِ، وَلَا يُورَثُ بِهِ مَنْ عَلَيْهِ وَلَاءٌ.

L28046 Mālik said: An illegitimate child does not inherit through testimony at all, unless the people of a city embraced Islam and then some of them testified for others in a manner that necessitates inheritance—in such cases, they inherit from one another based on that.

وَقَالَ مَالِكٌ: لَا يَرِثُ الْخَمِيلُ بِبَيِّنَةٍ أَصْلًا، إلَّا أَنْ يَكُونَ أَهْلُ مَدِينَةٍ أَسْلَمُوا فَشَهِدَ بَعْضُهُمْ لِبَعْضٍ بِمَا يُوجِبُ الْمِيرَاثَ فَإِنَّهُمْ يَتَوَارَثُونَ بِذَلِكَ.

L28047–28048 Abū Muḥammad said: As for the statements of Mālik and al-Shāfiʿī—we know of none before them who formulated this classification. These two opinions contradict the Qur’ān, the prophetic traditions, and foundational

principles through Mālik's omission of adjudication based on clear evidence of justice in that matter, contrary to all other rulings.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ - فَلَا نَعْلَمُ أَحَدًا قَبْلَهُمَا قَسَّمَ هَذَا التَّقْسِيمَ، وَهُمَا قَوْلَانِ مُخَالِفَانِ لِلْقُرْآنِ، وَالسُّنَنِ، وَالْأُصُولِ، فِي إِسْقَاطِ مَالِكٍ الْحُكْمَ بِبَيِّنَةِ الْعَدْلِ فِي ذَلِكَ، بِخِلَافِ جَمِيعِ الْأَحْكَامِ.

L28049 The distinction made by Al-Shāfiʿī and Mālik between those bound by clientage and those not bound by it, and between the people of Medina who embrace Islam or are captured and subsequently embrace Islam. We hold that acknowledgment of births necessitating inheritance is indispensable. We do not know of any validity for parentage at all except through such acknowledgment. Thus, no one's filiation is valid unless acknowledged by the fathers that he was born, or by two brothers who come forward as traveling witnesses, and their inheritance is obligatory.

وَتَفْرِيقُ الشَّافِعِيِّ، وَمَالِكٍ بَيْنَ مَنْ عَلَيْهِ وَلَاءٌ وَبَيْنَ مَنْ لَا وَلَاءَ عَلَيْهِ، وَبَيْنَ أَهْلِ الْمَدِينَةِ يُسْلِمُونَ، أَوْ يُسْبَوْنَ فَيُسْلِمُوا، وَوَجَدْنَا الْإِقْرَارَ بِالْمَوَالِيدِ الْمُوجِبَةِ لِلْمَوَارِيثِ: لَا نَعْلَمُ أَلْبَتَّةَ صِحَّةَ الْمَوَالِيدِ إِلَّا بِهِ، فَمَا تَصِحُّ بُنُوَّةُ أَحَدٍ إِلَّا بِإِقْرَارِ الْآبَاءِ أَنَّهُ وُلِدَ، أَوْ بِإِقْرَارِ أَخَوَيْنِ يَقْدُمَانِ مُسَافِرَيْنِ وَيَجِبُ مِيرَاثُهُمَا.

L28050 With this acknowledgment, the disbelievers from the Dhimmis inherit from one another when they embrace Islam according to our school. Thus, there is no valid basis for distinguishing between any of these matters. Through this acknowledgment, the emigrants during the time of the Messenger of Allah—peace and blessings be upon him—inherited from the Arab tribes and others. Therefore, differentiating between these rulings is an evident error—and success is from Allah, the Exalted.

وَبِهَذَا الْإِقْرَارِ يَتَوَارَثُ أَهْلُ الْكُفْرِ إِذَا أَسْلَمُوا عِنْدَنَا مِنْ أَهْلِ الذِّمَّةِ، فَالتَّفْرِيقُ بَيْنَ كُلِّ ذَلِكَ لَا وَجْهَ لَهُ، وَبِالْإِقْرَارِ تَوَارَثَ الْمُهَاجِرُونَ فِي عَصْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَحْيَاءِ الْعَرَبِ وَغَيْرِهِمْ، فَالتَّفْرِيقُ بَيْنَ ذَلِكَ خَطَأٌ لَا خَفَاءَ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مِيرَاث الْمُسْلِم الْكَافِر والكافر الْمُسْلِم]

The legal issue concerning the inheritance of a Muslim from a non-Muslim and a non-Muslim from a Muslim.

١٧٤٦ - مَسْأَلَةٌ وَلَا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا الْكَافِرُ الْمُسْلِمَ - الْمُرْتَدُّ وَغَيْرُ الْمُرْتَدِّ سَوَاءٌ - إِلَّا أَنَّ الْمُرْتَدَّ مُذْ يَرْتَدُّ فَكُلُّ مَا ظَفِرَ بِهِ مِنْ مَالِهِ فَلِبَيْتِ مَالِ الْمُسْلِمِينَ - رَجَعَ إِلَى الْإِسْلَامِ أَوْ مَاتَ مُرْتَدًّا، أَوْ قُتِلَ مُرْتَدًّا، أَوْ لَحِقَ بِدَارِ الْحَرْبِ - وَكُلُّ مَنْ لَمْ يَظْفَرْ بِهِ مِنْ مَالِهِ حَتَّى قُتِلَ أَوْ مَاتَ مُرْتَدًّا: فَلِوَرَثَتِهِ مِنْ الْكُفَّارِ، فَإِنْ رَجَعَ إِلَى الْإِسْلَامِ فَهُوَ لَهُ، أَوْ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ إِنْ مَاتَ مُسْلِمًا.

Issue 1746: A Muslim does not inherit from a non-Muslim, nor does a non-Muslim inherit from a Muslim—whether the non-Muslim is an apostate or a disbeliever who never apostatized. However, from the moment one apostatizes, any of their property seized thereafter belongs to the Muslim public treasury, whether they return to Islam, die as apostates, are killed as apostates, or flee to the abode of war. Any of their property not seized before their death or execution as apostates goes to their non-Muslim heirs. If they return to Islam, the property reverts to them; if they die as Muslims, it goes to their Muslim heirs.

L28053 It has been narrated to us through the chain of Sufyān ibn 'Uyaynah from

رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ عَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَرِثُ الْكَافِرُ الْمُسْلِمَ وَلَا الْمُسْلِمُ الْكَافِرَ» وَهَذَا عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ شَيْءٌ.

al-Zuhrī from ʾAlī ibn al-Ḥusayn from ʾAmr ibn ʾUthmān ibn ʾAffān from Usāmah ibn Zayd from the Prophet—peace and blessings of Allah be upon him—who said: "The disbeliever does not inherit from the Muslim, nor does the Muslim inherit from the disbeliever." This is a general ruling, and nothing from it may be particularized.

فَإِنْ قِيلَ: إنَّكُمْ تَقُولُونَ: إنْ مَاتَ عَبْدٌ نَصْرَانِيٌّ، أَوْ مَجُوسِيٌّ، أَوْ يَهُودِيٌّ - وَسَيِّدُهُ مُسْلِمٌ - فَمَالُهُ لِسَيِّدِهِ؟ قُلْنَا: نَعَمْ، لَا بِالْمِيرَاثِ، لَكِنْ لِأَنَّ لِلسَّيِّدِ أَخْذَهُ فِي حَيَاتِهِ فَهُوَ لَهُ بَعْدَ وَفَاتِهِ وَالْعَبْدُ لَا يُورَثُ بِالْخَبَرِ الَّذِي جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مِيرَاثِ الْمُكَاتَبِ فَلَمْ يَجْعَلْ لِلْجُزْءِ الْمَمْلُوكِ مِيرَاثًا - لَا لَهُ وَلَا مِنْهُ -.

L28054 If it is said: "Do you claim that if a Christian, Zoroastrian, or Jewish slave dies—while his master is Muslim—his property belongs to his master?" We answer: Yes, not through inheritance, but because the master retains ownership of it during the slave's lifetime, thus it remains with him after the slave's death. The slave is not subject to inheritance, according to the prophetic report transmitted about the inheritance of a mukatab (a slave under manumission contract), wherein no inheritance rights were established for the master's share—neither does it inherit nor can it be inherited from.

وَاخْتَلَفَ النَّاسُ فِي بَعْضِ هَذَا -: فَرُوِّينَا عَنْ مُعَاذِ بْنِ جَبَلٍ، وَمُعَاوِيَةَ، وَيَحْيَى بْنِ يَعْمُرَ، وَإِبْرَاهِيمَ، وَمَسْرُوقٍ: تَوْرِيثَ الْمُسْلِمِ مِنْ الْكَافِرِ، وَلَا يَرِثُ الْكَافِرُ الْمُسْلِمَ -: وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ، وَهُوَ عَنْ مُعَاوِيَةَ ثَابِتٌ.

L28055–28057 People have differed concerning some of this—: It has been narrated to us from Mu'adh ibn Jabal, Mu'awiyah, Yahya ibn Ya'mur, Ibrāhīm al-Nakhaʿī, and Masruq regarding the permissibility of a Muslim inheriting from a disbeliever, while a disbeliever does not inherit from a Muslim. This is the opinion of Ishaq ibn Rahawayh, and it is firmly established from Mu'awiyah.

كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّ مُعَاوِيَةَ كَانَ يُوَرِّثُ الْمُسْلِمَ مِنْ الْكَافِرِ، وَلَا يُوَرِّثُ الْكَافِرَ مِنْ الْمُسْلِمِ.

L28058 As we have been narrated through the chain of Ḥammād ibn Salmah: reported from Dāwūd ibn Abī Hind, from al-Shaʿbī, from Masrūq, that Muʿāwiyah granted Muslims inheritance rights from disbelievers but denied disbelievers inheritance rights from Muslims.

قَالَ مَسْرُوقٌ: مَا حَدَثَ فِي الْإِسْلَامِ قَضَاءٌ أَعْجَبُ إلَيَّ مِنْهُ؟ وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ إلَّا أَنْ يَكُونَ مُسْلِمٌ أَعْتَقَ كَافِرًا فَإِنَّهُ يَرِثُهُ - وَاحْتَجَّ لِهَذَا الْقَوْلِ بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَرِثُ الْمُسْلِمُ النَّصْرَانِيَّ إلَّا أَنْ يَكُونَ عَبْدَهُ أَوْ أَمَتَهُ» .

L28059 Masruq said: "No legal ruling has occurred in Islam more astonishing to me than this." Ahmad ibn Hanbal said: "A Muslim does not inherit from a disbeliever, nor does a disbeliever inherit from a Muslim, unless a Muslim manumits a disbeliever, in which case he inherits from him." He cited as evidence for this opinion what was narrated to us through Ibn Wahb's chain from Muhammad ibn ʻAmr, from Ibn Jurayj, from Abu al-Zubayr, from Jabir, who said: The Messenger of Allah—peace and blessings be upon him—said: "A Muslim does not inherit from a Christian unless he is his male slave or female slave."

L28060 Abu Muhammad said: Abu al-Zubayr's narration from Jabir constitutes

tadlis (deliberate omission of a narrator's identity to conceal a weak link) if he does not explicitly state "I heard," "I," or "we." Even if the narration were authentic, its chain includes no narrators except his own male slave or female slave. Neither a freed male slave nor a freed female slave may be referred to as "male slave" or "female slave."

قَالَ أَبُو مُحَمَّد: أَبُو الزُّبَيْرِ عَنْ جَابِرٍ مَا لَمْ يَقُلْ " سَمِعْت، أَوْ أَنَا، أَوْ أَرِنَا " تَدْلِيسٌ، وَلَوْ صَحَّ فَلَيْسَ فِيهِ: إلَّا عَبْدُهُ، أَوْ أَمَتُهُ، وَلَا يُسَمَّى الْمُعْتَقُ، وَلَا الْمُعْتَقَةُ: عَبْدًا، وَلَا أَمَةً.

L28061 They differed regarding the inheritance of the apostate. It is authentically established from Ali ibn Abi Talib that it belongs to his Muslim heirs—as we were transmitted through the chain of Al-Hajjaj ibn Al-Minhal, who narrated to us: Abu Mu'awiyah al-Darir from al-A'mash from Abi Amr al-Shaybani—that he assigned the apostate's inheritance to their Muslim heirs. A similar narration is reported from Ibn Mas'ud, but it has not been authenticated.

وَاخْتَلَفُوا فِي مِيرَاثِ الْمُرْتَدِّ: فَصَحَّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو مُعَاوِيَةَ الضَّرِيرُ عَنْ الْأَعْمَشِ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ جَعَلَ مِيرَاثَ الْمُرْتَدِّ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ - وَرُوِيَ مِثْلُهُ عَنْ ابْنِ مَسْعُودٍ، وَلَمْ يَصِحَّ.

L28062 From Waki', from Sufyan al-Thawri, from Musa ibn Abi Kathir, who said: I asked Sa'id ibn al-Musayyib about the apostate: Do his sons inherit from him? He replied: "Muslims inherit from apostates, but apostates do not inherit from Muslims. His wife observes a waiting period of three qurū'. If he is killed, his wife observes a waiting period of four months and ten days."

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مُوسَى بْنِ أَبِي كَثِيرٍ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ الْمُرْتَدِّ هَلْ يَرِثُ الْمُرْتَدَّ بَنُوهُ؟ فَقَالَ: نَرِثُهُمْ وَلَا يَرِثُونَنَا، قَالَ: وَتَعْتَدُّ امْرَأَتُهُ ثَلَاثَةَ قُرُوءٍ، فَإِنْ قُتِلَ: فَأَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L28063 And through the narration of Sufyān al-Thawrī from ʿAmr ibn ʿUbayd, who narrated from al-Ḥasan, he said: The Muslims would validate the inheritance of the apostate for his family when he was killed.

وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: كَانَ الْمُسْلِمُونَ يُطَيِّبُونَ مِيرَاثَ الْمُرْتَدِّ لِأَهْلِهِ إذَا قُتِلَ.

L28064 It has been narrated that the transfer of inheritance of the property of one killed for apostasy is to his Muslim heirs, as narrated from ʿUmar ibn ʿAbd al-ʿAzīz, al-Shaʿbī, al-Ḥakam ibn ʿUtaybah, al-Awzāʿī, and Isḥāq ibn Rāhawayh.

وَرُوِيَ تَوْرِيثُ مَالِ الْمَقْتُولِ عَلَى الرِّدَّةِ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَالشَّعْبِيِّ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَالْأَوْزَاعِيِّ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L28065–28067 Sufyan al-Thawri said: Any wealth that remained in his ownership until he committed apostasy belongs to his Muslim legal heirs. Whatever he acquires after his apostasy belongs to all Muslims. Abu Hanifah said: If he returns to Islam, his wealth remains his. If he is executed for apostasy or flees to the land of war, whatever he acquired after apostasy belongs to all Muslims, while what he owned beforehand belongs to his Muslim heirs. The judge must decree the emancipation of his slaves designated for eventual emancipation and the mothers of his children. If he returns to the land of Islam as a Muslim,

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: مَا كَانَ مِنْ مَالِهِ فِي مِلْكِهِ إلَى أَنْ ارْتَدَّ فَلِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ، وَمَا كَسَبَ بَعْدَ رِدَّتِهِ فَلِجَمِيعِ الْمُسْلِمِينَ - وَقَالَ أَبُو حَنِيفَةَ: إنْ رَاجَعَ الْإِسْلَامَ فَمَالُهُ فَإِنْ قُتِلَ عَلَى الرِّدَّةِ أَوْ لَحِقَ بِدَارِ الْحَرْبِ فَمَا كَسَبَ بَعْدَ الرِّدَّةِ فَلِجَمِيعِ الْمُسْلِمِينَ، وَمَا كَانَ لَهُ قَبْلَ الرِّدَّةِ فَلِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ، وَيَقْضِي الْقَاضِي بِعِتْقِ مُدَبِّرِيهِ، وَأُمَّهَاتِ أَوْلَادِهِ،

فَإِنْ رَجَعَ إِلَى أَرْضِ الْإِسْلَامِ مُسْلِمًا أَخَذَ مَا وَجَدَ مِنْ مَالِهِ بِأَيْدِي وَرَثَتِهِ، وَلَا يَرْجِعُ عَلَيْهِمْ بِشَيْءٍ مِمَّا أَكَلُوهُ، أَوْ أَتْلَفُوهُ، وَكُلُّ مَا حَمَلَ مِنْ مَالِهِ إِلَى أَرْضِ الْحَرْبِ فَهُوَ لِجَمِيعِ الْمُسْلِمِينَ إِذَا ظُفِرَ بِهِ، لَا لِوَرَثَتِهِ، فَلَوْ رَجَعَ مِنْ أَرْضِ الْحَرْبِ إِلَى أَرْضِ الْإِسْلَامِ فَأَخَذَ مَالًا مِنْ مَالِهِ فَنَهَضَ بِهِ إِلَى أَرْضِ الْحَرْبِ فَظُفِرَ بِهِ، فَهُوَ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ، فَلَوْ كَانَتْ لَهُ أَمَتَانِ إِحْدَاهُمَا مُسْلِمَةٌ، وَالْأُخْرَى كَافِرَةٌ، فَوَلَدَتَا مِنْهُ لِأَكْثَرَ مِنْ سِتَّةِ أَشْهُرٍ - مُذْ ارْتَدَّ - فَأَقَرَّ بِهِمَا لَحِقَا بِهِ جَمِيعًا، وَوَرِثَهُ ابْنُ الْمُسْلِمَةِ، وَلَمْ يَرِثْهُ ابْنُ الذِّمِّيَّةِ.

he reclaims whatever portion of his wealth remains in the possession of his heirs, but cannot claim restitution for anything they consumed or destroyed. All property he transports from his wealth to the land of war becomes forfeit to all Muslims if captured, not to his heirs. If he returns from the land of war to the land of Islam, takes possession of his wealth, then transports it to the land of war where it is captured, such wealth belongs to his Muslim heirs. If he had two female slaves—one Muslim and the other a non-Muslim—and both bore him children more than six months since his apostasy, with his acknowledgment of parentage, both children are legally recognized as his offspring. Only the child of the Muslim slave inherits from him, while the child of the dhimmi woman does not.

L28068 قَالَ: وَلَا يَرِثُ الْمُرْتَدُّ - مُذْ يَرْتَدُّ - إِلَى أَنْ يُقْتَلَ أَوْ يَمُوتَ، أَوْ يُسْلِمَ أَحَدٌ مِنْ وَرَثَتِهِ الْمُسْلِمِينَ، وَلَا الْكُفَّارِ أَصْلًا.

He said: The apostate does not inherit—from the moment he apostatizes—until he is killed, dies, or one of his Muslim heirs embraces Islam, nor do non-Muslims inherit anything at all.

L28069 وَقَالَتْ طَائِفَةٌ: مِيرَاثُهُ لِبَيْتِ مَالِ الْمُسْلِمِينَ: - كَمَا رُوِّينَا عَنْ ابْنِ وَهْبٍ عَنْ الثِّقَةِ عِنْدَهُ عَنْ عَبَّادِ بْنِ كَثِيرٍ عَنْ أَبِي إِسْحَاقَ الْهَمْدَانِيِّ عَنْ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مِيرَاثُ الْمُرْتَدِّ فِي بَيْتِ مَالِ الْمُسْلِمِينَ وَبِهِ يَقُولُ رَبِيعَةُ، وَابْنُ أَبِي لَيْلَى، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ.

A group said: His inheritance belongs to the treasury of the Muslims - as we reported from Ibn Wahb, from a reliable narrator according to him, from Abbad ibn Kathir, from Abu Ishaq al-Hamdani, from al-Harith, from Ali ibn Abi Talib, who said: "The inheritance of the apostate goes to the treasury of the Muslims." This is the view of Rabi'ah, Ibn Abi Layla, al-Shafi'i, and Abu Thawr.

L28070 وَقَالَ مَالِكٌ: إِنْ قُتِلَ، أَوْ مَاتَ، أَوْ لَحِقَ بِدَارِ الْحَرْبِ، فَهُوَ فِي بَيْتِ مَالِ الْمُسْلِمِينَ، فَإِنْ رَجَعَ إِلَى الْإِسْلَامِ فَمَالُهُ لَهُ، فَإِنْ ارْتَدَّ عِنْدَ مَوْتِهِ، فَإِنْ اُتُّهِمَ: إِنَّمَا ارْتَدَّ لِيَمْنَعَ وَرَثَتَهُ؟ فَمَالُهُ لِوَرَثَتِهِ - هَذَا مَعَ قَوْلِهِ: إِنَّ مَنْ ارْتَدَّ عِنْدَ مَوْتِهِ لَمْ تَرِثْهُ امْرَأَتُهُ؛ لِأَنَّهُ لَا يُتَّهَمُ أَحَدٌ بِأَنَّهُ يَرْتَدُّ لِيَمْنَعَ أَخْذَ الْمِيرَاثِ.

Malik said: If he is killed, dies, or joins the territory of war, his property belongs to the Muslim public treasury. If he returns to Islam, his property is restored to him. If he apostatizes at the time of his death and is suspected of having apostatized to prevent the taking of inheritance, then his property belongs to his heirs. This is in accordance with his view that if someone apostatizes at the time of death, his wife does not inherit from him, because no one is suspected of apostatizing to prevent the taking of inheritance.

L28071 وَقَالَ أَبُو سُلَيْمَانَ: مِيرَاثُ الْمُرْتَدِّ إِنْ قُتِلَ لِوَرَثَتِهِ مِنْ الْكُفَّارِ.

Abu Sulaiman said: If an apostate is killed, his estate belongs to his heirs among the disbelievers.

L28072 وَقَالَ أَشْهَبُ: مَالُ الْمُرْتَدِّ - مُذْ يَرْتَدُّ - لِبَيْتِ مَالِ الْمُسْلِمِينَ.

Ashhab said: The property of the apostate—from the moment he apostatizes—belongs to the *Bayt al-Mal* of the Muslims.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ: فَظَاهِرُ الِاضْطِرَابِ وَالتَّنَاقُضِ كَمَا ذَكَرْنَا، وَحُكْمٌ بِالتُّهَمَةِ؟ وَهُوَ الظَّنُّ الْكَاذِبُ الَّذِي حَرَّمَ الْقُرْآنُ وَالسُّنَّةُ الْحُكْمَ بِهِ، وَأَمَّا قَوْلُ سُفْيَانَ: فَتَقْسِيمٌ فَاسِدٌ لَا دَلِيلَ عَلَيْهِ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ.

L28073 Abu Muhammad said: As for Malik's statement, it exhibits apparent inconsistency and contradiction as we have mentioned—a ruling based on suspicion? That is the false presumption which the Quran and Sunnah prohibited ruling by it. As for Sufyan's statement, it constitutes an invalid division unsupported by any evidence from the Quran, Sunnah, analogical reasoning, or opinion of a companion.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ - فَوَسَاوِسُ كَثِيرَةٌ فَاحِشَةٌ -: مِنْهَا: تَفْرِيقُهُ بَيْنَ الْمُرْتَدِّ وَسَائِرِ الْكُفَّارِ.

L28074–28076 As for the statement of Abū Ḥanīfah—numerous shameful whisperings—Among them is his distinction between the apostate and the rest of the disbelievers.

وَمِنْهَا: تَوْرِيثُهُ وَرَثَتَهُ عَلَى حُكْمِ الْمَوَارِيثِ وَهُوَ حَيٌّ بَعْدُ.

L28077 Among these rulings is his causing his heirs to inherit according to the rules of inheritance while he is still alive.

وَمِنْهَا: قَضَاؤُهُ لَهُ إِنْ رَجَعَ بِمَا وَجَدَ، لَا بِمَا اسْتَهْلَكُوا - وَلَا يَخْلُو مِنْ أَنْ يَكُونَ وَجَبَ لِلْوَرَثَةِ مَا قَضَوْا لَهُمْ بِهِ، أَوْ لَمْ يَجِبْ لَهُمْ، وَلَا سَبِيلَ إِلَى ثَالِثٍ.

L28078 Among them is his ruling in his favor if he bases [compensation] on what is established, not what they consumed. This cannot but result in either the heirs being obligated to what was ruled for them, or not being obligated – with no possibility of a third alternative.

فَإِنْ كَانَ وَجَبَ لَهُمْ؟ فَلِأَيِّ شَيْءٍ يَنْتَزِعُهُ مِنْ أَيْدِيهِمْ - وَهَذَا ظُلْمٌ وَبَاطِلٌ وَجَوْرٌ.

L28079 If it was their due, then why does he seize it from their hands? This is oppression, falsehood, and tyranny.

وَإِنْ كَانَ لَمْ يَجِبْ لَهُمْ؟ فَلِأَيِّ شَيْءٍ اسْتَحَلُّوا أَنْ يَقْضُوا لَهُمْ بِهِ حَتَّى أَكَلُوهُ، وَوَرِثَ عَنْهُمْ، وَتَحَكَّمُوا فِيهِ، وَلَئِنْ كَانَ رَجَعَ إِلَى الْمُرَاجِعِ إِلَى الْإِسْلَامِ؟ فَمَا الَّذِي خُصَّ بِرُجُوعِهِ إِلَيْهِ مَا وَجَدَ دُونَ مَا لَمْ يَجِدْ؟ وَإِنْ كَانَ لَمْ يَرْجِعْ إِلَيْهِ، فَبِأَيِّ شَيْءٍ قَضَوْا لَهُ بِهِ؟ إِنَّ هَذَا لَضَلَالٌ لَا خَفَاءَ بِهِ وَأَعْجَبُ شَيْءٍ اعْتِرَاضُ هَؤُلَاءِ النَّوْكَى عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي نِكَاحِهِ أُمَّ الْمُؤْمِنِينَ صَفِيَّةَ، وَجَعْلِهِ عِتْقَهَا صَدَاقَهَا بِقَوْلِهِمْ السَّخِيفِ: لَا يَخْلُو مِنْ أَنْ يَكُونَ تَزَوَّجَهَا وَهِيَ أَمَةٌ، فَهَذَا لَا يَجُوزُ، أَوْ تَزَوَّجَهَا وَهِيَ حُرَّةٌ مُعْتَقَةٌ - فَهَذَا نِكَاحٌ بِلَا صَدَاقٍ، مَعَ إِجَازَتِهِمْ لِأَبِي حَنِيفَةَ هَذِهِ الْحَمَاقَاتِ،

L28080 If it had not been obligatory for them, then why did they deem it permissible to adjudicate in their favor until they consumed it, it was inherited from them, and exercised dominion over it? If the one returning had returned to Islam, why was his return specifically applied to what was established rather than what was not? If he had not returned to Islam, by what justification did they rule in his favor? Verily, this is manifest misguidance. Most astounding is the objection of these fools against the Messenger of Allah (peace and blessings of Allah be upon him) concerning his marriage to Umm al-Mu'minīn Ṣafiyyah and his making her emancipation her dowry, through their frivolous claim: "Either he married her while she was a slave—which is impermissible—or he married her as an emancipated woman, a marriage without a dowry"—despite their endorsement of such follies and contradictions by Abū Ḥanīfah. The Messenger of Allah (peace and blessings of Allah be upon him) only married Ṣafiyyah (may Allah be pleased with her) when

she was an emancipated woman, with a valid and complete dowry, his act of emancipating her.

وَالْمُنَاقَضَاتِ، وَمَا تَزَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - صَفِيَّةَ - رَضِيَ اللَّهُ عَنْهَا - إِلَّا وَهِيَ حُرَّةٌ مُعْتَقَةٌ بِصَدَاقٍ قَدْ صَحَّ لَهَا وَتَمَّ، وَهُوَ عِتْقُهُ لَهَا.

L28081 Then, Abu Hanifah's distinction between property left in the land of Islam, property he carried with him to the land of disbelief, and property he abandoned but later retrieved and transported - this is a compounded fabrication of his own making - and we seek refuge in Allah from such confounding. Yet these corrupt rulings are not preserved from anyone before Abu Hanifah, nor from anyone other than him except those who strayed through blind imitation of him.

ثُمَّ تَفْرِيقُ أَبِي حَنِيفَةَ بَيْنَ مَالٍ تَرَكَهُ فِي أَرْضِ الْإِسْلَامِ، أَوْ مَالٍ حَمَلَهُ مَعَ نَفْسِهِ إِلَى أَرْضِ الْكُفْرِ، وَمَالٍ تَرَكَهُ ثُمَّ رَجَعَ فِيهِ فَحَمَلَهُ - فَهَذَا مِنْ الْمُضَاعَفِ نَسْجُهُ - وَنَعُوذُ بِاَللَّهِ مِنْ التَّخْلِيطِ - مَعَ أَنَّ هَذِهِ الْأَحْكَامَ الْفَاسِدَةَ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ، وَلَا عَنْ أَحَدٍ غَيْرِهِ قَبْلَ مَنْ ضَلَّ بِتَقْلِيدِهِ.

L28082 As for those among the early scholars who claimed that his inheritance belongs to his Muslim heirs, this view has no basis except clinging to the apparent meaning of inheritance verses and the claim that He the Exalted did not distinguish between a believer and a disbeliever. They should be told: The Sunnah has clarified that, yet you yourselves denied the mukatab his inheritance while the Quran entitles him to it, as does the Sunnah. You prohibited the killer from inheriting based on an unreliable narration, and barred Muslims from inheriting from other disbelievers—even though some early scholars themselves upheld this view. This constitutes arbitrary judgment with no basis, thus rendering their reliance on the Quran invalid.

وَأَمَّا مَنْ قَالَ مِنْ السَّلَفِ: بِأَنَّ مِيرَاثَهُ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ؟ فَلَا حُجَّةَ لِهَذَا الْقَوْلِ إِلَّا التَّعَلُّقُ بِظَاهِرِ آيَاتِ الْمَوَارِيثِ، وَأَنَّهُ تَعَالَى لَمْ يَخُصَّ مُؤْمِنًا مِنْ كَافِرٍ؟ فَيُقَالُ لَهُمْ: لَقَدْ بَيَّنَتْ السُّنَّةُ ذَلِكَ، وَأَنْتُمْ قَدْ مَنَعْتُمْ الْمُكَاتَبَ مِنْ الْمِيرَاثِ وَالْقُرْآنُ يُوجِبُهُ لَهُ، وَالسُّنَّةُ كَذَلِكَ، وَمَنَعْتُمْ الْقَاتِلَ بِرِوَايَةٍ لَا تَصِحُّ، وَمَنَعْتُمْ سَائِرَ الْكُفَّارِ مِنْ أَنْ يَرِثَهُمْ الْمُسْلِمُونَ؟ وَقَدْ قَالَ بِذَلِكَ بَعْضُ السَّلَفِ؟ وَهَذَا تَحَكُّمٌ لَا وَجْهَ لَهُ، فَبَطَلَ تَعَلُّقُهُمْ بِالْقُرْآنِ فِي ذَلِكَ.

L28083–28085 Abū Muḥammad said: The position we state is what we previously mentioned. Our demonstrative evidence for this -: that every Whatever is seized from his wealth is the property of a disbeliever with no covenant of protection for him. The Exalted has said: _"And He caused you to inherit their land, their homes, and their wealth"_ [Al-Aḥzāb: 27]. The wealth of a disbeliever is not prohibited except by a covenant of protection, and this one has no such covenant. If he returns to Islam, he does so only when his ownership of it—whether for him or from him—has been nullified, and it becomes assigned to the Muslims. Thus, he has no right to it except as one of the Muslims.[1]

قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَقُولُ بِهِ فَهُوَ الَّذِي ذَكَرْنَا قَبْلُ، بُرْهَانُنَا عَلَى ذَلِكَ -: أَنَّ كُلَّ مَا ظُفِرَ بِهِ مِنْ مَالِهِ فَهُوَ مَالُ كَافِرٍ، لَا ذِمَّةَ لَهُ، وَقَدْ قَالَ تَعَالَى: {وَأَوْرَثَكُمْ أَرْضَهُمْ وَدِيَارَهُمْ وَأَمْوَالَهُمْ} [الأحزاب: ٢٧] وَلَا يُحَرَّمُ مَالُ كَافِرٍ إِلَّا بِالذِّمَّةِ، وَهَذَا لَا ذِمَّةَ لَهُ، فَإِنْ رَجَعَ إِلَى الْإِسْلَامِ فَلَمْ يَرْجِعْ إِلَّا وَقَدْ بَطَلَ مِلْكُهُ لَهُ، أَوْ عَنْهُ، وَوَجَبَ لِلْمُسْلِمِينَ، فَلَا حَقَّ لَهُ فِيهِ إِلَّا كَأَحَدِ الْمُسْلِمِينَ.

L28086 As for the property of his that has not been seized, it remains established

[1] **Qur'an references (L28083):** Qur'an 33:27 (Al-Ahzab).

and valid in his ownership as long as Muslims have not seized it. There is no distinction between him and the rest of the people of war who have no pledge of security in this matter.

L28087 If he dies or is killed, it belongs exclusively to his heirs who are disbelievers, based on the verse of Allah the Exalted: "And those who disbelieve are allies of one another" [Al-Anfal: 73]. The general verses of inheritance apply to Muslims and disbelievers, and nothing is exempted from their ruling except what is excluded by an authentic Sunnah text.[2]

L28088 If they are under the *dhimmah*, he must surrender to them whoever he captures, for they have acquired ownership of him through inheritance.

L28089 And if they are combatants, what is seized is taken for the Muslims whenever it is obtained.

L28090 If he embraces Islam, it is his, and his heirs from among the Muslims inherit it from him, as with the rest of the Muslims.

L28091 This is the ruling of the Quran and the Sunnahs, and the dictate of consensus—and all praise is due to Allah, Lord of the worlds.

L28092 1747 - Issue: If someone for whom an heir has died while both [the inheritor and heir] were disbelievers, then if the surviving inheritor embraces Islam, their inheritance is taken according to the Sunnah of Islam. The inheritances of Dhimmis are not divided except by the division ordained by Allah the Exalted in the Quran for inheritances.

L28093 The proof of this -: the word of Allah, the Most High: "And whoever seeks a religion other than Islam, it will never be accepted of him" [Al-Imran: 85].[3]

L28094 And the statement of the Exalted One: {Is it the judgment of the Jahiliyyah they desire? And who is better than Allah in judgment?} [Al-Ma'idah: 50].[4]

L28095 And I do not marvel at one who abandons the judgment of the Quran—

وَأَمَّا مَا لَمْ يُظْفَرْ بِهِ مِنْ مَالِهِ فَهُوَ بَاقٍ عَلَى مَا قَدْ ثَبَتَ وَصَحَّ مِنْ مِلْكِهِ لَهُ مَا لَمْ يَظْفَرْ الْمُسْلِمُونَ بِهِ، لَا فَرْقَ بَيْنَهُ وَبَيْنَ سَائِرِ أَهْلِ الْحَرْبِ الَّذِينَ لَا ذِمَّةَ لَهُمْ فِي ذَلِكَ.

فَإِنْ مَاتَ أَوْ قُتِلَ فَهُوَ لِوَرَثَتِهِ الْكُفَّارِ خَاصَّةً، لِقَوْلِ اللَّهِ تَعَالَى: {وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [الأنفال: ٧٣] وَآيَاتُ الْمَوَارِيثِ الْعَامَّةِ لِلْمُسْلِمِينَ وَالْكُفَّارِ، فَلَا يَخْرُجُ عَنْ حُكْمِهَا إِلَّا مَا أَخْرَجَهُ نَصُّ سُنَّةٍ صَحِيحٌ.

فَإِنْ كَانُوا ذِمَّةً سَلَّمَ إِلَيْهِمْ مَنْ ظَفِرَ بِهِ؛ لِأَنَّهُمْ قَدْ مَلَكُوهُ بِالْمِيرَاثِ.

وَإِنْ كَانُوا حَرْبِيِّينَ أُخِذَ لِلْمُسْلِمِينَ مَتَى ظُفِرَ بِهِ.

فَإِنْ أَسْلَمَ فَهُوَ لَهُ يَرِثُهُ عَنْهُ وَرَثَتُهُ مِنْ الْمُسْلِمِينَ كَسَائِرِ الْمُسْلِمِينَ.

وَهَذَا حُكْمُ الْقُرْآنِ وَالسُّنَنِ، وَمُوجَبُ الْإِجْمَاعِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

١٧٤٧ - مَسْأَلَةٌ وَمَنْ مَاتَ لَهُ مَوْرُوثٌ وَهُمَا كَافِرَانِ، ثُمَّ أَسْلَمَ الْحَيُّ أُخِذَ مِيرَاثُهُ عَلَى سُنَّةِ الْإِسْلَامِ - وَلَا تُقَسَّمُ مَوَارِيثُ أَهْلِ الذِّمَّةِ إِلَّا عَلَى قَسْمِ اللَّهِ تَعَالَى الْمَوَارِيثَ فِي الْقُرْآنِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ} [آل عمران: ٨٥] .

وقَوْله تَعَالَى: {أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُونَ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا} [المائدة: ٥٠] .

[2] **Qur'an references (L28087):** Qur'an 8:73 (Al-Anfal).
[3] **Qur'an references (L28093):** Qur'an 3:85 (Ali 'Imran).
[4] **Qur'an references (L28094):** Qur'an 5:50 (Al-Ma'idah).

while acknowledging it to be the truth and the ruling of Allah, the Most High—and adjudicates by the rulings of disbelief—while acknowledging it to be the judgment of the accursed Satan, manifest misguidance, and that which it is unlawful to act upon. Verily, this is an astounding wonder!

وَلَا أَعْجَبُ مِمَّنْ يَدَعُ حُكْمَ الْقُرْآنِ - وَهُوَ يُقِرُّ أَنَّهُ الْحَقُّ، وَأَنَّهُ حُكْمُ اللَّهِ تَعَالَى - وَيَحْكُمُ بِحُكْمِ الْكُفْرِ - وَهُوَ يُقِرُّ أَنَّهُ حُكْمُ الشَّيْطَانِ الرَّجِيمِ، وَأَنَّهُ الضَّلَالُ الْمُبِينُ، وَالَّذِي لَا يَحِلُّ الْعَمَلُ بِهِ؟ إِنَّ هَذَا لَعَجَبٌ عَجِيبٌ.

L28096–28098 It has been transmitted to us by way of Ibn Wahb from ʿAmr ibn al-Ḥārith from Saʿīd ibn Abī Hilāl—Zayd ibn Aslam. He was informed that a Jewish woman came to Umar ibn al-Khattab and said: "My son has died, and the Jews claim I have no right to his inheritance." Umar summoned them and said: "Will you not give this woman her right?" They replied: "We find no right for her in our scripture." He asked: "In the Torah?" They said: "Yes, in the Doubled." He asked: "What is the Doubled?" They answered: "A book written by groups of learned and wise scholars." Umar rebuked them and said: "Go and give her her right."

رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ سَعِيدِ بْنِ أَبِي هِلَالٍ: أَنَّ زَيْدَ بْنَ أَسْلَمَ حَدَّثَهُ أَنَّ يَهُودِيَّةً جَاءَتْ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَتْ: إِنَّ ابْنِي هَلَكَ، فَزَعَمَتْ الْيَهُودُ أَنَّهُ لَا حَقَّ لِي فِي مِيرَاثِهِ؟ فَدَعَاهُمْ عُمَرُ فَقَالَ: أَلَا تُعْطُونَ هَذِهِ حَقَّهَا؟ فَقَالُوا: لَا نَجِدُ لَهَا حَقًّا فِي كِتَابِنَا؟ فَقَالَ: أَفِي التَّوْرَاةِ؟ قَالُوا: بَلَى، فِي الْمُثَنَّاةِ قَالَ: وَمَا الْمُثَنَّاةُ؟ قَالُوا: كِتَابٌ كَتَبَهُ أَقْوَامٌ عُلَمَاءُ حُكَمَاءُ؟ فَسَبَّهُمْ عُمَرُ وَقَالَ: اذْهَبُوا فَأَعْطُوهَا حَقَّهَا.

L28099 Through the narration of Ibn Wahb, from Ibn Lahīʿah, from Yazīd ibn Abī Ḥabīb, that ʿUmar ibn ʿAbd al-ʿAzīz wrote to Ḥayyān ibn Shurayḥ: "Ensure that the inheritances of the Dhimmīs are in accordance with the shares ordained by Allah, the Mighty and Majestic."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ إِلَى حَيَّانَ بْنِ شُرَيْحٍ: أَنْ اجْعَلْ مَوَارِيثَ أَهْلِ الذِّمَّةِ عَلَى فَرَائِضِ اللَّهِ عَزَّ وَجَلَّ.

L28100 Abu Hanifah said: The inheritance of dhimmis is divided according to the rulings of their religion unless they seek adjudication by our Islamic law.

وَقَالَ أَبُو حَنِيفَةَ: مَوَارِيثُ أَهْلِ الذِّمَّةِ مَقْسُومَةٌ عَلَى أَحْكَامِ دِينِهِمْ، إِلَّا أَنْ يَتَحَاكَمُوا إِلَيْنَا.

L28101 Malik said: The division of inheritances for the People of the Book follows the rulings of their own religion—whether any heir embraced Islam before the division or not. As for those who are not People of the Book: if one of their heirs embraces Islam after the division, he has no right to anything other than what he received. If one of them embraces Islam before the division, the division is made according to the rulings of Islam. Al-Shāfiʿī and Abū Sulaymān held the same opinion as us.

وَقَالَ مَالِكٌ: تَقْسِيمُ مَوَارِيثِ أَهْلِ الْكِتَابِ عَلَى حُكْمِ دِينِهِمْ - سَوَاءٌ أَسْلَمَ أَحَدُ الْوَرَثَةِ قَبْلَ الْقَسْمِ أَوْ لَمْ يُسْلِمْ - وَأَمَّا غَيْرُ أَهْلِ الْكِتَابِ فَمَنْ أَسْلَمَ مِنْهُمْ مِنْ الْوَرَثَةِ بَعْدَ الْقِسْمَةِ فَلَيْسَ لَهُ غَيْرُ مَا أَخَذَ، وَمَنْ أَسْلَمَ مِنْهُمْ قَبْلَ الْقِسْمَةِ: قَسَمَ عَلَى حُكْمِ الْإِسْلَامِ - وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ كَقَوْلِنَا.

L28102 Abu Muhammad said: As for Malik's division, it is utterly corrupt because he did not uphold the distinction that was mentioned—neither the Qur'an, the Sunnah, a weak narration, evidence, consensus, the statement of a Companion, analogy, nor an opinion with a valid basis. We do not know of this division from anyone before Malik.

قَالَ أَبُو مُحَمَّد: أَمَّا تَقْسِيمُ مَالِكٍ: فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَمْ يُوجِبْ الْفَرْقَ الَّذِي ذُكِرَ: قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا دَلِيلٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ، وَمَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَ مَالِكٍ.

L28103 As for the statement of Abū Ḥanīfah and that in which Mālik agreed with him: we have already invalidated it. What greater outrage exists than appointing disbelievers, Jews, and Christians as arbiters over a Muslim? This is truly astonishing! We have never known their ruling in a case between a Muslim and a dhimmi except that it must inevitably be judged by Islamic law—except in this case. For they mandated that a Muslim be judged by the law of Satan in the religion of the Jews and Christians—especially if all the heirs embraced Islam. By my life! Their division of inheritance according to the rulings of "Dakrīz the Visigoth" and "Hilāl the Jew" is truly astounding! We seek refuge in Allah from this. Yet they cite as evidence in this matter two narrations weaker than both, relying on their own chains of transmission—if these align with their adherence to precedent—as narrated to us via Abū Dāwūd: Ḥajjāj ibn Yaʿqūb narrated to us; Mūsā ibn Dāwūd narrated to us; Muḥammad ibn Muslim al-Ṭā'ifī narrated to us from ʿAmr ibn Dīnār from Abū al-Shaʿthā' from Ibn ʿAbbās, who said: The Prophet—peace and blessings of Allah be upon him—stated, "Every division established in the pre-Islamic era remains valid under pre-Islamic rules. But whatever [property] existed at the advent of Islam that had not yet been divided must be divided according to Islamic law."

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ وَمَا وَافَقَهُ فِيهِ مَالِكٌ: فَقَدْ ذَكَرْنَا إبْطَالَهُ، وَمَا فِي الشُّنْعَةِ أَعْظَمُ مِنْ تَحْكِيمِ الْكُفْرِ وَالْيَهُودِ وَالنَّصَارَى عَلَى مُسْلِمٍ؟ إنَّ هَذَا لَعَجَبٌ؟ وَمَا عَهِدْنَا قَوْلَهُمْ فِي حُكْمٍ بَيْنَ مُسْلِمٍ وَذِمِّيٍّ إلَّا أَنَّهُ يُحْكَمُ فِيهِ وَلَا بُدَّ بِحُكْمِ الْإِسْلَامِ إلَّا هَاهُنَا، فَإِنَّهُمْ أَوْجَبُوا أَنْ يُحْكَمَ عَلَى الْمُسْلِمِ بِحُكْمِ الشَّيْطَانِ فِي دِينِ الْيَهُودِ وَالنَّصَارَى، لَا سِيَّمَا إنْ أَسْلَمَ الْوَرَثَةُ كُلُّهُمْ، فَلَعَمْرِي إنَّ اقْتِسَامَهُمْ مِيرَاثَهُمْ بِقَوْلِ " دكريز الْقُوطِيِّ " " وَهِلَالٍ الْيَهُودِيِّ " لَعَجَبٌ، نَعُوذُ بِاَللَّهِ مِنْهُ، عَلَى أَنَّهُ قَدْ جَاءَ فِي هَذَا أَثَرَانِ يَحْتَجُّونَ بِأَضْعَفَ مِنْهُمَا، وَبِإِسْنَادِهِمَا نَفْسِهِ، إذَا وَافَقَ تَقْلِيدَهُمْ - وَهُوَ كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا حَجَّاجُ بْنُ يَعْقُوبَ نا مُوسَى بْنُ دَاوُد نا مُحَمَّدُ بْنُ مُسْلِمٍ الطَّائِفِيُّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ عَنْ ابْنِ عَبَّاسٍ قَالَ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ قَسْمٍ قُسِمَ فِي الْجَاهِلِيَّةِ فَهُوَ عَلَى قِسْمَةِ الْجَاهِلِيَّةِ وَإِنَّ مَا أَدْرَكَ إسْلَامٌ وَلَمْ يُقْسَمْ فَهُوَ عَلَى قَسْمِ الْإِسْلَامِ» .

L28104–28105 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, ʿAmr ibn Shuʿayb said: "The Messenger of Allah—peace and blessings of Allah be upon him—ruled that whatever was divided during the pre-Islamic era is upon the division of the pre-Islamic era, and whatever Islam came upon that had not been divided is upon the division of Islam."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ عَمْرُو بْنُ شُعَيْبٍ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ كُلَّ مَا قُسِمَ فِي الْجَاهِلِيَّةِ فَهُوَ عَلَى قِسْمَةِ الْجَاهِلِيَّةِ، وَأَنَّ مَا أَدْرَكَ الْإِسْلَامُ، وَلَمْ يُقْسَمْ فَهُوَ عَلَى قِسْمَةِ الْإِسْلَامِ» .

L28106 Ali said: Muhammad ibn Muslim is weak, and the second is mursal; we do not rely on these two. Our proof is only what we mentioned previously. And by Allah, the Most High, is success.

قَالَ عَلِيٌّ: مُحَمَّدُ بْنُ مُسْلِمٍ ضَعِيفٌ، وَالثَّانِي مُرْسَلٌ، وَلَا نَعْتَمِدُ عَلَيْهِمَا، إنَّمَا حُجَّتُنَا مَا ذَكَرْنَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Jurisprudential Issue of Inheritance for a Born Child

1748 - Issue: If one is born after the death of the person from whom they inherit and emerges alive—whether wholly or partially (the smallest or largest part of it)—then dies after its exit is fully completed (whether it sneezed or not), provided its life is confirmed with certainty through movement of an eye, hand, respiration, or any sign establishing life, it inherits and can be inherited from. The first cry holds no legal significance.

And this is the opinion of Abū Ḥanīfah, Sufyān al-Thawrī, al-Awzāʿī, and Abī Sulaymān.

The evidence for that is the word of Allah, the Exalted: “He instructs you concerning your children” [An-Nisāʾ 4:11].[5]

And this is a boy without a doubt.

If it is said: “Why do you not entitle him to inherit even if he was born dead despite having life in the womb?” We reply: Had we been certain of his life, we would have entitled him to inherit. However, movement might be caused by gas—while the fetus is dead—or the pregnancy might collapse, and it becomes known that it was not a fetus but rather an abnormality. Thus, we are only certain of his life if we witness him alive.

Al-Shafiʿi said: He neither inherits nor is inherited from until he is born alive.

This is an assertion without proof of its validity.

A group maintained that he does not inherit nor can he be inherited from, even if he was breastfed and took milk, unless he let out a loud cry at birth - this being the opinion of Mālik. His followers cited as evidence in support of his opinion the report that ʿUmar would assign a share for a child only if he let out a loud cry at birth.

And from Ibn Umar: When a rooster crows, prayer should be performed at that time.

[مَسْأَلَة مِيرَاث الْمَوْلُود]

١٧٤٨ - مَسْأَلَةٌ وَمَنْ وُلِدَ بَعْدَ مَوْتِ مَوْرُوثِهِ فَخَرَجَ حَيًّا كُلُّهُ - أَوْ بَعْضُهُ أَقَلُّهُ أَوْ أَكْثَرُهُ - ثُمَّ مَاتَ بَعْدَ تَمَامِ خُرُوجِهِ - عَطَسَ أَوْ لَمْ يَعْطِسْ - وَصَحَّتْ حَيَاتُهُ بِيَقِينٍ بِحَرَكَةِ عَيْنٍ، أَوْ يَدٍ، أَوْ نَفْسٍ، أَوْ بِأَيِّ شَيْءٍ صَحَّتْ، فَإِنَّهُ يَرِثُ وَيُورَثُ، وَلَا مَعْنَى لِلِاسْتِهْلَالِ.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَأَبِي سُلَيْمَانَ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يُوصِيكُمُ اللَّهُ فِي أَوْلادِكُمْ} [النساء: ١١] .

وَهَذَا وَلَدٌ بِلَا شَكٍّ.

فَإِنْ قِيلَ: هَلَّا وَرَّثْتُمُوهُ وَإِنْ وُلِدَ مَيِّتًا بِحَيَاتِهِ فِي الْبَطْنِ؟ قُلْنَا: لَوْ أَيْقَنَّا حَيَاتَهُ لَوَرَّثْنَاهُ، وَقَدْ تَكُونُ لِحَرَكَةِ رِيحٍ - وَالْجَنِينُ مَيِّتٌ - وَقَدْ يَنْفُشُ الْحَمْلُ، وَيُعْلَمُ أَنَّهُ لَيْسَ حَمْلًا وَإِنَّمَا كَانَ عِلَّةً، فَإِنَّمَا نُوقِنُ حَيَاتَهُ إذَا شَاهَدْنَاهُ حَيًّا.

وَقَالَ الشَّافِعِيُّ: لَا يَرِثُ وَلَا يُورَثُ حَتَّى يَخْرُجَ حَيًّا كُلُّهُ.

وَهَذَا قَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ.

وَقَالَتْ طَائِفَةٌ لَا يَرِثُ وَلَا يُورَثُ وَإِنْ رَضَعَ وَأَكَلَ مَا لَمْ يَسْتَهِلَّ صَارِخًا - وَهُوَ قَوْلُ مَالِكٍ، وَاحْتَجَّ لَهُ مُقَلِّدُوهُ بِمَا رُوِيَ مِنْ أَنَّ عُمَرَ كَانَ يَفْرِضُ لِلصَّبِيِّ إذَا اسْتَهَلَّ صَارِخًا.

وَعَنْ ابْنِ عُمَرَ: إذَا صَاحَ صُلِّيَ عَلَيْهِ.

[5] **Qur’an references (L28110):** Qur’an 4:11 (An-Nisa).

L28117 It is narrated from Ibn Abbas: If the newborn cries at birth, he inherits and is inherited from.

وَعَنْ ابْنِ عَبَّاسٍ: إذَا اسْتَهَلَّ الصَّبِيُّ وَرِثَ وَوُرِّثَ.

L28118 On the authority of ʿAbd al-Razzāq through Ibn Jurayj: Abu al-Zubayr informed me that he heard Jābir ibn ʿAbdullāh say regarding the newborn whose cry is heard: "He inherits if his voice is heard."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي الْمَنْفُوسِ: يَرِثُ إذَا سُمِعَ صَوْتُهُ.

L28119 Narrated by Wakiʿ, from Sufyan al-Thawri, from ʿAbdullah ibn Sharik al-ʿĀmirī, from Bishr ibn Ghālib, who said: Al-Ḥasan ibn ʿAlī was asked, "When does the newborn's entitled share become obligatory?" He replied, "When it cries out."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ شَرِيكٍ الْعَامِرِيِّ عَنْ بِشْرِ بْنِ غَالِبٍ، قَالَ: سُئِلَ الْحَسَنُ بْنُ عَلِيٍّ: مَتَى يَجِبُ سَهْمُ الْمَوْلُودِ؟ قَالَ: إذَا اسْتَهَلَّ.

L28120–28121 It is authentically narrated from Ibrāhīm al-Nakhaʿī: When a child cries at birth, his liability for blood money (ʿaql) is incurred, and he becomes eligible for inheritance.

وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: إذَا اسْتَهَلَّ الصَّبِيُّ وَجَبَ عَقْلُهُ وَمِيرَاثُهُ.

L28122 It has been authentically reported from Shurayh that he did not grant inheritance to a child who did not cry (as a sign of live birth). This has also been narrated from al-Qāsim ibn Muḥammad, Ibn Sīrīn, al-Shaʿbī, al-Ḥasan al-Basrī, al-Zuhrī, and Qatādah.

وَصَحَّ عَنْ شُرَيْحٍ: أَنَّهُ لَمْ يُوَرِّثْ مَنْ لَمْ يَسْتَهِلَّ وَرُوِيَ أَيْضًا: عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَابْنِ سِيرِينَ، وَالشَّعْبِيِّ، وَالْحَسَنِ، وَالزُّهْرِيِّ، وَقَتَادَةَ

L28123 And it is the opinion of Malik - and it has also been reported from Abū Ḥanīfah.

- وَهُوَ قَوْلُ مَالِكٍ - وَرُوِيَ أَيْضًا عَنْ أَبِي حَنِيفَةَ.

L28124 Abu Muhammad said: Those who blindly adopt this opinion cited as evidence the authentic report from the Messenger of Allah—peace and blessings of Allah be upon him: "There is no child born except that Satan pierces it, so it shrieks loudly from Satan's piercing—except the son of Mary and his mother." He then mentioned the remainder of the report.[6]

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ قَلَّدَ هَذَا الْقَوْلَ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا مِنْ مَوْلُودٍ يُولَدُ إلَّا نَخَسَهُ الشَّيْطَانُ فَيَسْتَهِلُّ صَارِخًا مِنْ نَخْسَةِ الشَّيْطَانِ إلَّا ابْنَ مَرْيَمَ وَأُمَّهُ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L28125 And by the authentically transmitted report from him—peace and blessings be upon him—that he said: "The newborn's cry when it occurs is an incitement from Satan."

وَبِالْخَبَرِ الثَّابِتِ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ قَالَ «صِيَاحُ الْمَوْلُودِ حِينَ يَقَعُ نَزْغَةٌ مِنْ الشَّيْطَانِ» .

L28126 And according to what has been narrated to us through the chain of Muḥammad ibn Isḥāq from Yazīd ibn ʿAbdullāh ibn Qusayṭ from Abū Hurayrah from

وَبِمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا اسْتَهَلَّ الْمَوْلُودِ وَرِثَ» .

[6] **Hadith references (L28124):** Sahih Muslim 2366a.

the Prophet (peace be upon him), who said: “If a newborn utters a cry, he is entitled to inheritance.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا يَحْيَى بْنُ مُوسَى الْبَلْخِيّ نا شَبَابَةُ بْنُ سَوَّارٍ نا الْمُغِيرَةُ بْنُ مُسْلِمٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الصَّبِيُّ إذَا اسْتَهَلَّ وَرِثَ وَصُلِّيَ عَلَيْهِ» .

L28127 From the chain of Ahmad ibn Shuʿayb: Yahyā ibn Mūsā al-Balkhī reported to us: Shabābah ibn Sawwār narrated to us: al-Mughīrah ibn Muslim narrated to us, from Abū al-Zubayr, from Jābir, from the Prophet - peace and blessings be upon him - who said: “If an infant cries after birth, he is entitled to inheritance, and the funeral prayer should be offered for him.”

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ حَدَّثَ عَنْ أَبِي الْأَحْوَصِ مُحَمَّدِ بْنِ الْهَيْثَمِ نا مُحَمَّدُ بْنُ أَبِي السَّرِيِّ الْعَسْقَلَانِيُّ عَنْ بَقِيَّةَ عَنْ الْأَوْزَاعِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا اسْتَهَلَّ الْمَوْلُودُ صُلِّيَ عَلَيْهِ وَوَرِثَ وَلَا يُصَلَّى عَلَيْهِ حَتَّى يَسْتَهِلَّ» .

L28128 And from the chain of Muhammad ibn Abd al-Malik ibn Ayman, who narrated from Abu al-Ahwas Muhammad ibn al-Haytham; Muhammad ibn Abi al-Sarri al-Asqalani reported to us from Baqiyyah, from al-Awza’i, from Abu al-Zubayr, from Jabir, from the Prophet (peace be upon him): “When a newborn utters a cry, prayer is offered for him, he inherits, and prayer is not offered for him until he utters a cry.”

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ حَدَّثَنِي طَلْقٌ عَنْ نَافِعِ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إذَا اسْتَهَلَّ الْمَوْلُودُ وَجَبَتْ دِيَتُهُ وَمِيرَاثُهُ وَصُلِّيَ عَلَيْهِ إنْ مَاتَ» .

L28129 From the chain of ʿAbd al-Malik ibn Ḥabīb, Ṭalq narrated to me from Nāfiʿ ibn Yazīd from Ibn Shihāb from Saʿīd ibn al-Musayyab that the Messenger of Allah—peace and blessings be upon him—said: “When a newborn utters a cry, his diyah becomes due, his inheritance becomes due, and the funeral prayer is performed for him if he dies.”

قَالَ ابْنُ حَبِيبٍ: وَحَدَّثَنِيهِ أَيْضًا: مُطَرِّفٌ عَنْ ابْنِ أَبِي حَازِمٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L28130 Ibn Habib said: And he also narrated to me: Muṭarrif from Ibn Abī Ḥāzim from ʿAmr ibn Shuʿayb from his father from his grandfather from the Prophet—peace and blessings of God be upon him.

قَالُوا وَهُوَ قَوْلُ عُمَرَ، وَابْنِ عُمَرَ وَالْحُسَيْنِ، وَابْنِ عَبَّاسٍ، وَجَابِرٍ وَأَبِي هُرَيْرَةَ: سِتَّةٌ مِنْ الصَّحَابَةِ، وَجَمَاعَةٍ مِنْ التَّابِعِينَ، لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ -: هَذَا كُلُّ مَا شَغَبُوا بِهِ، وَمَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا، وَكُلُّهُ إمَّا لَا شَيْءَ وَإِمَّا لَا حُجَّةَ لَهُمْ فِيهِ.

L28131–28133 They said—and this is the opinion of ‘Umar, Ibn ‘Umar, al-Ḥusayn, Ibn ‘Abbās, Jābir, and Abū Hurayrah: six in total. From the Companions, and a group of the Followers, with no dissenter known among them: this is all they have protested against, and we know of nothing else from them besides this. All of it is either nothing or there is no argument for them in it.

أَمَّا الْخَبَرُ الصَّحِيحُ: فَيَنْبَغِي لَهُمْ أَنْ يَسْتَغْفِرُوا اللَّهَ تَعَالَى مِنْ تَمْوِيهِهِمْ بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ شَيْءٌ؟ هَلْ ذَكَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ شَيْئًا مِنْ حُكْمِ الْمِيرَاثِ

L28134 As for the authentic report: Should they not seek Allah’s forgiveness, the Exalted, for obscuring it by attributing to it what is entirely unrelated? Did the Messenger of Allah—peace and blessings be upon him—mention anything

بِنَصٍّ أَوْ بِدَلِيلٍ؟ أَمَّا هَذَا تَقْوِيلٌ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا لَمْ يَقُلْ؟ وَهَلْ فِي ذَلِكَ الْخَبَرِ إِلَّا أَنَّ كُلَّ مَوْلُودٍ فَإِنَّ الشَّيْطَانَ يَنْخُسُهُ؟ وَهَذَا حَقٌّ نُؤْمِنُ بِهِ، وَمَا خُولِفُوا قَطُّ فِي هَذَا، ثُمَّ فِيهِ «أَنَّهُ يَسْتَهِلُّ صَارِخًا مِنْ نَخْسَةِ الشَّيْطَانِ» هَذَا فَبِضَرُورَةِ الْحِسِّ وَالْمُشَاهَدَةِ نَدْرِي يَقِينًا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِنَّمَا عَنِي بِذَلِكَ مَنْ اسْتَهَلَّ مِنْهُمْ، وَبَقِيَ حُكْمُ مَنْ لَمْ يَسْتَهِلَّ؟ فَنَقُولُ لَهُمْ: أَخْبِرُونَا أَيُوجَدُ مَوْلُودٌ يَخْرُجُ حَيًّا وَلَا يَسْتَهِلُّ؟ أَمْ لَا يُوجَدُ أَصْلًا؟ فَإِنْ قَالُوا: لَا يُوجَدُ أَصْلًا كَابَرُوا الْعِيَانَ وَأَنْكَرُوا الْمُشَاهَدَةَ، فَهَذَا مَوْجُودٌ كَثِيرٌ لَا يَسْتَهِلُّ إِلَّا بَعْدَ أَزْيَدَ مِنْ سَاعَةٍ زَمَانِيَّةٍ، وَرُبَّمَا لَمْ يَسْتَهِلَّ حَتَّى يَمُوتَ؟ ثُمَّ نَقُولُ لَهُمْ: فَإِذْ لَا يُوجَدُ هَذَا أَبَدًا فَكَلَامُكُمْ وَكَلَامُنَا فِيهَا عَنَاءٌ، وَبِمَنْزِلَةِ مَنْ تَكَلَّمَ فِيمَنْ يُولَدُ مِنَ الْفَمِ وَنَحْوِ ذَلِكَ مِنَ الْمُحَالِّ؟ فَإِنْ قَالُوا: بَلْ قَدْ يُوجَدُ هَذَا؟ قُلْنَا لَهُمْ: فَأَخْبِرُونَا الْآنَ أَتَقُولُونَ: إِنَّهُ لَيْسَ مَوْلُودًا؟ فَهَذِهِ حَمَاقَةٌ وَمُكَابَرَةٌ لِلْعِيَانِ، أَمْ تَقُولُونَ: إِنَّ الشَّيْطَانَ لَمْ يَنْخُسْهُ، فَتُكَذِّبُوا رَسُولَ اللَّهِ؟ وَهَذَا كَمَا تَرَوْنَ؟ أَمْ تَقُولُونَ: إِنَّهُ نَخَسَهُ فَلَمْ يَسْتَهِلَّ؟ فَهَذَا قَوْلُنَا، وَرَجَعْتُمْ إِلَى الْحَقِّ مِنْ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ذَكَرَ فِي هَذَا الْخَبَرِ: مَنْ يَسْتَهِلُّ دُونَ مَنْ لَا يَسْتَهِلُّ، وَلَا بُدَّ مِنْ أَحَدِ هَذِهِ الثَّلَاثِ، إِلَّا أَنَّهُ بِكُلِّ حَالٍ لَيْسَ فِي هَذَا الْخَبَرِ شَيْءٌ مِنْ حُكْمِ الْمَوَارِيثِ، فَبَطَلَ احْتِجَاجُهُمْ بِهِ - وَهَكَذَا الْقَوْلُ فِي الْخَبَرِ الْآخَرِ سَوَاءً سَوَاءً.

in it regarding inheritance rulings through explicit text or evidence? Is this not attributing to him—peace and blessings be upon him—what he did not say? Does that report contain anything beyond the fact that every newborn is prodded by Satan? This is a truth we affirm, and they have never been opposed in this. Then it states, "He utters a first cry due to Satan's prod." By necessity of sense and observation, we know with certainty that he—peace and blessings be upon him—referred only to those who uttered a first cry, leaving the ruling for those who did not. We say to them: Inform us—is there any newborn who emerges alive yet does not utter a first cry? Or does this never occur? If they say it never occurs, they persistently deny plain evidence and reject what is witnessed, for this is frequently found: a newborn does not utter a first cry until after more than an hour passes, and perhaps does not cry until dying. We then say: If this never occurs, your discourse and ours concerning it is futile, akin to discussing one born from the mouth or similar impossibilities. If they say, "But this does occur," we say: Now inform us—do you claim it is not a newborn? This is folly and denial of plain evidence. Or do you say Satan did not prod it, thereby contradicting the Messenger of Allah—as you see? Or do you say he prodded it but it did not utter a cry? This is our position, and you thereby revert to the truth that he—peace and blessings be upon him—referred in this report only to those who cried, excluding those who did not. One of these three is inevitable. Yet in any case, this report contains nothing of inheritance rulings, invalidating their argument—and the same applies without exception to the other report.

وَأَمَّا حَدِيثُ ابْنِ قُسَيْطٍ عَنْ أَبِي هُرَيْرَةَ، فَلَيْسَ فِيهِ إِلَّا: أَنَّهُ إِذَا اسْتَهَلَّ وَرِثَ، وَهَكَذَا نَقُولُ، وَلَيْسَ فِيهِ: أَنَّهُ إِذَا لَمْ يَسْتَهِلَّ لَمْ يَرِثْ، فَإِقْحَامُهُ فِيهِ: كَذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L28135 As for the Hadith of Ibn Qusayṭ from Abū Hurayrah, it contains nothing except: "If the newborn utters a cry (after birth), he inherits," and this is our established ruling. It does not state: "If he does not utter a cry, he does not inherit." Inserting this into the Hadith constitutes a lie against the Messenger of Allah—peace and blessings be upon him—thereby nullifying their argument.

L28136 Additionally, the term "istihlāl" in the Arabic language signifies visibility.

One says, “The crescent moon has istahalla (begun to appear),” meaning “it became visible.” Thus, the meaning is: when the newborn emerges, he inherits. This is our view.

L28137–28138 As for the report of Abū al-Zubayr from Jābir, Abū al-Zubayr did not state that he heard it; therefore, he is a *mudallis* (practitioner of *tadlīs*).

L28139 In the hadith of Al-Awzāʿī: Baqiyyah—and he is weak.

L28140 The two narrations of ʿAbd al-Malik ibn Ḥabīb are mursal (disconnected), and ʿAbd al-Malik—rejected.

L28141 Thus, their reliance on these traditions ceased.

L28142 As for their assertion that it is the position of six Companions with no opposition from among them known—how many such cases exist where they opposed positions held by groups of Companions, with no dissent from within those groups recorded? These include retributive equivalence (qisas) for a slap, leading prayer while seated, and numerous other matters. There is no conclusive proof for anyone apart from the Messenger of Allah (peace and blessings be upon him).

L28143 Moreover, the reports mentioned from the Companions only state that if the child cries at birth, the child inherits—and we do not disagree with them on that—but they do not state that if the child does not cry at birth, no one inherits from them. Thus, there is no proof for them in these reports.

L28144 Then we ask them about a newborn who did not cry out, though he moved, breastfed, and blinked, then was intentionally killed. Is retaliation (qisas), blood money, or only ghurra required? If they say: “Retaliation (qisas) or blood money applies,” they contradict their own stance—for they would be compelled to acknowledge he was a living child, so why then deny him inheritance? If they say: “Only ghurra applies,” they abandon their position—and success comes from Allah, the Exalted.

L28145 **The Issue of the Presence of the Deceased’s Relatives in Inheritance**

وَأَيْضًا: فَإِنَّ لَفْظَةَ " الِاسْتِهْلَالِ " فِي اللُّغَةِ هُوَ الظُّهُورُ، تَقُولُ اسْتَهَلَّ الْهِلَالُ بِمَعْنَى ظَهَرَ، فَيَكُونُ مَعْنَاهُ: إذَا ظَهَرَ الْمَوْلُودُ وَرِثَ، وَهُوَ قَوْلُنَا.

وَأَمَّا خَبَرُ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ، فَلَمْ يَقُلْ أَبُو الزُّبَيْرِ: إنَّهُ سَمِعَهُ، فَهُوَ مُدَلِّسٌ.

وَفِي حَدِيثِ الْأَوْزَاعِيِّ: بَقِيَّةُ وَهُوَ ضَعِيفٌ.

وَحَدِيثَا: عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ مُرْسَلَانِ، وَعَبْدُ الْمَلِكِ - هَالِكٌ.

فَسَقَطَ تَعَلُّقُهُمْ بِهَذِهِ الْآثَارِ.

وَأَمَّا قَوْلُهُمْ: إنَّهُ قَوْلُ سِتَّةٍ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، فَكَمْ قِصَّةً مِثْلَ هَذِهِ قَدْ خَالَفُوا فِيهَا طَوَائِفَ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، كَالْقِصَاصِ فِي اللَّطْمَةِ، وَإِمَامَةِ الْجَالِسِ وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَأَيْضًا: فَالْآثَارُ الْمَذْكُورَةُ عَنْ الصَّحَابَةِ إنَّمَا فِيهَا: أَنَّهُ إذَا اسْتَهَلَّ وَرِثَ - وَلَمْ نُخَالِفْهُمْ فِي ذَلِكَ، وَلَيْسَ فِيهَا إذَا لَمْ يَسْتَهِلَّ لَمْ يُورَثْ - فَلَا حُجَّةَ لَهُمْ فِيهَا.

ثُمَّ نَسْأَلُهُمْ عَنْ مَوْلُودٍ وُلِدَ فَلَمْ يَسْتَهِلَّ، إلَّا أَنَّهُ تَحَرَّكَ، وَرَضَعَ، وَطَرَفَ بِعَيْنِهِ، ثُمَّ قَتَلَهُ قَاتِلٌ عَمْدًا، أَيَجِبُ فِيهِ قِصَاصٌ أَوْ دِيَةٌ أَمْ لَيْسَ فِيهِ إلَّا غُرَّةٌ؟ فَإِنْ قَالُوا: فِيهِ الْقَوَدُ أَوْ الدِّيَةُ: نَقَضُوا قَوْلَهُمْ، وَأَوْجَبُوا أَنَّهُ وَلَدٌ حَيٌّ فَلِمَ مَنَعُوهُ الْمِيرَاثَ؟ وَإِنْ قَالُوا: لَيْسَ فِيهِ إلَّا غُرَّةٌ تَرَكُوا قَوْلَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ حُضُورِ قَرَابَةِ الْمَيِّتِ الْمِيرَاثَ]

L28146 1749 - Issue: When the inheritance is divided and there are present relatives of the deceased, relatives of the heirs, orphans, or the poor, it is made obligatory upon the adult heirs, the guardian of the minors, and the agent of the absent heir to give each of the aforementioned parties from that which their souls are content with, provided it does not harm the heirs. The judge compels them to fulfill this if they refuse.

١٧٤٩ - مَسْأَلَةٌ وَإِذَا قُسِّمَ الْمِيرَاثُ فَحَضَرَ قَرَابَةُ الْمَيِّتِ، أَوْ لِلْوَرَثَةِ، أَوْ يَتَامَى، أَوْ مَسَاكِينُ: فَفُرِضَ عَلَى الْوَرَثَةِ الْبَالِغِينَ، وَعَلَى وَصِيِّ الصِّغَارِ، وَعَلَى وَكِيلِ الْغَائِبِ: أَنْ يُعْطُوا كُلَّ مَنْ ذَكَرْنَا مَا طَابَتْ بِهِ أَنْفُسُهُمْ مِمَّا لَا يُجْحِفُ بِالْوَرَثَةِ، وَيُجْبِرُهُمْ الْحَاكِمُ عَلَى ذَلِكَ إنْ أَبَوْا.

L28147 Due to the saying of Allah the Exalted: {And when relatives, orphans, and the needy are present at the division, provide for them from it and speak to them kindly speech} [An-Nisa: 8], and the command of Allah the Exalted is an obligation which it is impermissible to oppose—this being the opinion of a group among the Salaf—as narrated to us through the chain of Yahya ibn Sa'id al-Qattan, who narrated to us from Shu'bah, from Qatadah, from Yunus ibn Jubayr, from Hittan ibn 'Abdullah, who said: Abu Musa al-Ash'ari allocated a portion to me in accordance with the verse of Allah the Exalted {And when relatives, orphans, and the needy are present at the division...} [An-Nisa: 8].[7]

لِقَوْلِ اللَّهِ تَعَالَى: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلا مَعْرُوفًا} [النساء: ٨] وَأَمْرُ اللَّهِ تَعَالَى فَرْضٌ لَا يَحِلُّ خِلَافُهُ - وَهُوَ قَوْلُ طَائِفَةٍ: مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ حِطَّانَ بْنِ عَبْدِ اللَّهِ، قَالَ: قَسَمَ لِي بِهَا أَبُو مُوسَى الْأَشْعَرِيُّ فِي قَوْله تَعَالَى {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى} [النساء: ٨] الْآيَةَ.

L28148–28149 And through the chain of al-Bukhārī: Abū al-Nuʿmān - he is Muḥammad ibn al-Faḍl ʿĀrim - narrated to us: Abū ʿAwānah narrated to us from Abī Bishr from Saʿīd ibn Jubayr from Ibn ʿAbbās, who said: They presume that this verse has been abrogated: _"And when relatives are present at the division"_ [4:8]. But no, by Allah! It has not been abrogated. Rather, it concerns matters people have neglected. There are two types of guardians: a guardian who inherits - that is the one granted provision - and a guardian who does not inherit. That is the one who must speak with fairness, saying: "I have no authority to grant you anything."[8]

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو النُّعْمَانِ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - نا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: يَزْعُمُونَ: أَنَّ هَذِهِ الْآيَةَ نَسَخَتْ: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى} [النساء: ٨] فَلَا وَاَللَّهِ مَا نَسَخَتْ وَلَكِنَّهَا مِمَّا تَهَاوَنَ النَّاسُ بِهَا، هُمَا وَالِيَانِ: وَالٍ يَرِثُ، وَذَاكَ الَّذِي يُرْزَقُ، وَوَالٍ لَا يَرِثُ، فَذَلِكَ الَّذِي يَقُولُ بِالْمَعْرُوفِ، يَقُولُ: لَا أَمْلِكُ لَك أَنْ أُعْطِيَك.

L28150 From the chain of Ismail ibn Ishaq al-Qadi: Mahmud ibn Khidash narrated to us from Abbad ibn al-Awwam from Hajjaj from Ata ibn Abi Rabah from Abd al-Rahman ibn Abi Bakr al-Siddiq that he said regarding the words of Allah Almighty, {When close relatives, orphans, and the needy are present at

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا مَحْمُودُ بْنُ خِدَاشٍ نا عَبَّادُ بْنُ الْعَوَّامِ نا حَجَّاجٌ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّهُ قَالَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ، {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] قَالَ: هِيَ وَاجِبَةٌ يُعْمَلُ بِهَا وَقَدْ أَعْطَيْت بِهَا.

[7] **Qur'an references (L28147):** Qur'an 4:8 (An-Nisa).
[8] **Qur'an references (L28149):** Qur'an 4:8 (An-Nisa).

the division [of inheritance], provide for them from it} [An-Nisa: 8]. He said: It is an obligation to be acted upon, and I have given by it.[9]

L28151 From the path of Ismāʿīl ibn Isḥāq: Yaḥyā ibn Khalaf narrated to us, Abū ʿĀṣim—that is, Al-Ḍaḥḥāk ibn Makhled—narrated to us, Ibn Jurayj narrated to us: ʿAbdullāh ibn Abī Mulaykah informed me that Asmāʾ bint ʿAbd al-Raḥmān ibn Abī Bakr al-Ṣiddīq and Al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq together informed him that ʿAbdullāh ibn ʿAbd al-Raḥmān ibn Abī Bakr al-Ṣiddīq distributed the inheritance of his father ʿAbd al-Raḥmān while ʿĀʾisha was alive at that time. He ensured no poor person or relative in the household was left without receiving a share, and he recited: {And when relatives and orphans and the needy are present at the division, then provide for them out of it} [Quran 4:8]. He then mentioned the remainder of the ḥadīth.[10]

L28152 It is also authentically established from Urwah ibn al-Zubayr, Ibn Sirin, Humaid ibn Abd al-Rahman al-Himyari, Yahya ibn Yaʿmur, al-Shaʿbi, al-Nakhaʿī, Hasan, al-Zuhri, Abu al-Aliyah, al-Ala' ibn Badr, Saʿid ibn Jubayr, and Mujahid.

L28153 It has been narrated from ʻAṭāʾ—and this is the saying of Abū Sulaymān.

L28154 It has been reported that it is not obligatory, as narrated from Ibn Abbas, Saʿid ibn al-Musayyab, Abu Malik, and Zayd ibn Aslam. This view is also held by Malik, Abu Hanifah, and al-Shafiʿi. We do not know of any valid evidence whatsoever for the proponents of this view. Rather, it is a mere assertion without proof. Nor does anyone interpret the imperative "Do!" to mean "If you wish, you may refrain from doing it."

L28155 The mere existence among us of verses for which evidence has established that they are abrogated, specified, or recommended does not justify declaring regarding what lacks such proof: "This is recommended," "This is abrogated,"

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا يَحْيَى بْنُ خَلَفٍ نا أَبُو عَاصِمٍ - هُوَ الضَّحَّاكُ بْنُ مَخْلَدٍ - نا ابْنُ جُرَيْجٍ: أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي مُلَيْكَةَ أَنَّ أَسْمَاءَ بِنْتَ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، وَالْقَاسِمَ بْنَ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ أَخْبَرَاهُ: أَنَّ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَسَمَ مِيرَاثَ أَبِيهِ عَبْدِ الرَّحْمَنِ، وَعَائِشَةُ يَوْمَئِذٍ حَيَّةٌ، فَلَمْ يَدَعْ فِي الدَّارِ مِسْكِينًا، وَلَا ذَا قَرَابَةٍ إِلَّا أَعْطَاهُمْ، وَتَلَا: {وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ} [النساء: ٨] وَذَكَرَ بَاقِيَ الْحَدِيثِ.

وَصَحَّ أَيْضًا: عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، وَابْنِ سِيرِينَ، وَحُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيِّ، وَيَحْيَى بْنِ يَعْمُرَ، وَالشَّعْبِيِّ، وَالنَّخَعِيِّ، وَالْحَسَنِ، وَالزُّهْرِيِّ، وَأَبِي الْعَالِيَةِ، وَالْعَلَاءِ بْنِ بَدْرٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَمُجَاهِدٍ.

وَرُوِيَ عَنْ عَطَاءٍ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

وَرُوِيَ أَنَّهَا لَيْسَتْ بِوَاجِبَةٍ: عَنِ ابْنِ عَبَّاسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي مَالِكٍ، وَزَيْدِ بْنِ أَسْلَمَ - وَبِهِ يَقُولُ مَالِكٌ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَمَا نَعْلَمُ لِأَهْلِ هَذَا الْقَوْلِ حُجَّةً أَصْلًا، بَلْ هُوَ دَعْوَى مُجَرَّدَةٌ، وَمَا يَفْهَمُ أَحَدٌ مِنْ: افْعَلْ -: إِنْ شِئْتَ فَلَا تَفْعَلْ.

وَلَيْسَ وُجُودُنَا آيَاتٍ قَامَ الْبُرْهَانُ عَلَى أَنَّهَا مَنْسُوخَةٌ، أَوْ مَخْصُوصَةٌ، أَوْ أَنَّهَا نَدْبٌ، بِمُوجِبٍ أَنْ يُقَالَ فِيمَا لَا دَلِيلَ بِذَلِكَ فِيهِ: هَذَا نَدْبٌ، أَوْ هَذَا مَنْسُوخٌ، أَوْ هَذَا مَخْصُوصٌ، فَيَكُونُ قَوْلًا بِالْبَاطِلِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[9] **Qur'an references (L28150):** Qur'an 4:8 (An-Nisa).
[10] **Qur'an references (L28151):** Qur'an 4:8 (An-Nisa).

or “This is specified”—thereby making such a statement falsehood. And with Allah alone is success.

L28156–28157 And is this not among the matters in which they opposed the majority of the Salaf (may Allah be pleased with them)? The Book of Inheritance Shares is completed.

An Issue Concerning the Inheritance of the Maternal Uncle

L28158

L28159 1750 - A supplementary issue: There is no valid textual evidence concerning the inheritance of the maternal uncle. Whatever remains after the shares of the fixed-share heirs (those entitled to prescribed portions), where there is no residual heir, freed slave, or freed slave who is a residual heir, belongs to the public interests of the Muslims. None of this is returned to a shareholding heir or non-shareholder among the Distant Kindred, as neither the Quran, the Sunnah, nor consensus mandates such restitution.

L28160 If the distant relatives are poor, they are given according to the degree of their poverty, and the remainder is allocated to the welfare of the Muslim community.

L28161 All praise is due to Allah, Lord of the worlds, and may Allah bless Muhammad and his family and grant him peace abundantly.

وَهَذَا مِمَّا خَالَفُوا فِيهِ جُمْهُورَ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ تَمَّ كِتَابُ الْفَرَائِضِ.

[مَسْأَلَةُ مِيرَاثِ الْخَالِ]

١٧٥٠ - مَسْأَلَةٌ مُسْتَدْرَكَةٌ: وَلَا يَصِحُّ نَصٌّ فِي مِيرَاثِ الْخَالِ، فَمَا فَضَلَ عَنْ سِهَامِ ذَوِي السِّهَامِ، وَذَوِي الْفَرَائِضِ، وَلَمْ يَكُنْ هُنَالِكَ عَاصِبٌ، وَلَا مُعْتَقٌ وَلَا عَاصِبُ مُعْتَقٌ: فَفِي مَصَالِحِ الْمُسْلِمِينَ، لَا يُرَدُّ شَيْءٌ مِنْ ذَلِكَ عَلَى ذِي سَهْمٍ، وَلَا عَلَى غَيْرِ ذِي سَهْمٍ مِنْ ذَوِي الْأَرْحَامِ، إِذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إِجْمَاعٌ.

فَإِنْ كَانَ ذَوُو الْأَرْحَامِ فُقَرَاءَ أُعْطُوا عَلَى قَدْرِ فَقْرِهِمْ، وَالْبَاقِي فِي مَصَالِحِ الْمُسْلِمِينَ.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلَّمَ تَسْلِيمًا.



AL-MUHALLA

كِتَابُ الْوَصَايَا

The Book of Bequests

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

Return to the reading collection

The Book of Bequests Issue: A bequest is obligatory upon everyone who leaves wealth.

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Bequests. Issue 1751: The writing of a will is an obligation upon everyone who leaves property behind, based on what we have narrated through Malik's chain from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allah (peace and blessings be upon him) stated, "It is not permissible for a Muslim who has something to bequeath to spend two nights unless his written will is ready with him." Ibn ʿUmar added, "No night has passed since I heard the Messenger of Allah (peace and blessings be upon him) say this without my will being with me."

It has been narrated to us that the obligation of bequest is established through the chain of Ibn al-Mubārak from ʿAbd Allāh ibn ʿAwn from Nāfiʿ from Ibn ʿUmar, from his statement.

And through the chain of Abd al-Razzaq from al-Hasan ibn Ubayd Allah, who said: Talha and al-Zubayr were strict concerning wills—this being the opinion of Abdullah ibn Abi Awfa, Talha ibn Mutarrif, Tawus, al-Shaʿbi, and others—and it is the opinion of Abu Sulayman and all our companions.

A group of people said: It is not obligatory, arguing that this report was transmitted by Yaḥyā ibn Saʿīd al-Qaṭṭān from ʿUbayd Allāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar from the Prophet—peace and blessings of Allāh be upon him—and in it, he said: "He has something he wishes to bequeath."

They said: Did he defer the matter to his own discretion? They said: Indeed, the Messenger of Allah—peace and blessings be upon him—did not make a will. They narrated that Ibn Umar—the narrator of the tradition—did not make a will, that Hatib ibn Abi Balta'ah in Umar's presence did not make a will, that Ibn Abbas said regarding one who left eight hundred dirhams: "It is insignificant—there is no will in it," that Ali forbade those leaving only from seven hundred to nine hundred from making a will, and that Aisha, the

[كِتَابُ الْوَصَايَا] [مَسْأَلَةٌ الْوَصِيَّةُ فَرْضٌ عَلَى كُلِّ مَنْ تَرَكَ مَالًا]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الْوَصَايَا ١٧٥١ - مَسْأَلَةٌ الْوَصِيَّةُ فَرْضٌ عَلَى كُلِّ مَنْ تَرَكَ مَالًا، لِمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا وَوَصِيَّتُهُ عِنْدَهُ مَكْتُوبَةٌ» قَالَ ابْنُ عُمَرَ: مَا مَرَّتْ عَلَيَّ لَيْلَةٌ مُذْ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ ذَلِكَ إِلَّا وَعِنْدِي وَصِيَّتِي.

وَرُوِّينَا إيجَابَ الْوَصِيَّةِ مِنْ طَرِيقِ ابْنِ الْمُبَارَكِ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ مِنْ قَوْلِهِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحَسَنِ بْنِ عُبَيْدِ اللَّهِ قَالَ: كَانَ طَلْحَةُ، وَالزُّبَيْرُ يُشَدِّدَانِ فِي الْوَصِيَّةِ - وَهُوَ قَوْلُ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى، وَطَلْحَةَ بْنِ مُطَرِّفٍ، وَطَاوُسٍ، وَالشَّعْبِيِّ، وَغَيْرِهِمْ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَجَمِيعِ أَصْحَابِنَا.

وَقَالَ قَوْمٌ: لَيْسَتْ فَرْضًا، وَاحْتَجُّوا: بِأَنَّ هَذَا الْخَبَرَ رَوَاهُ يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ «لَهُ شَيْءٌ يُرِيدُ أَنْ يُوصِيَ فِيهِ» .

قَالُوا: فَرَدَّ الْأَمْرَ إلَى إرَادَتِهِ؟ وَقَالُوا: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُوصِ، وَرَوَوْا: أَنَّ ابْنَ عُمَرَ - وَهُوَ رَاوِي الْخَبَرِ - لَمْ يُوصِ، وَأَنَّ حَاطِبَ بْنَ أَبِي بَلْتَعَةَ بِحَضْرَةِ عُمَرَ لَمْ يُوصِ، وَأَنَّ ابْنَ عَبَّاسٍ قَالَ فِيمَنْ تَرَكَ ثَمَانِمِائَةِ دِرْهَمٍ: قَلِيلٌ، لَيْسَ فِيهَا وَصِيَّةٌ،

Mother of the Believers, said regarding one who left four hundred dinars: "In this lies a surplus beyond his children's needs."

وَأَنَّ عَلِيًّا نَهَى مَنْ لَمْ يَتْرُكْ إلَّا مِنْ السَّبْعِمِائَةِ إلَى التِّسْعِمِائَةِ عَنْ الْوَصِيَّةِ، وَأَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَالَتْ فِيمَنْ تَرَكَ أَرْبَعَمِائَةِ دِينَارٍ: فِي هَذَا فَضْلٌ عَنْ وَلَدِهِ.

L28170 From al-Nakhaʿī: The bequest is not an obligation.

وَعَنْ النَّخَعِيِّ لَيْسَتْ الْوَصِيَّةُ فَرْضًا.

L28171 This is the opinion of Abu Hanifah, Malik, and Al-Shafi'i.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L28172 Abu Muhammad said: None of this constitutes valid evidence for their position in any respect. As for the one who added in his narration "he intends to bequeath," verily Malik ibn Anas narrated it as we presented without this wording, but with the precise wording of binding declaration alone.

قَالَ أَبُو مُحَمَّد: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ -: أَمَّا مَنْ زَادَ فِي رِوَايَتِهِ " يُرِيدُ أَنْ يُوصِيَ " فَإِنَّ مَالِكَ بْنَ أَنَسٍ رَوَاهُ كَمَا أَوْرَدْنَا بِغَيْرِ هَذَا اللَّفْظِ، لَكِنْ بِلَفْظِ الْإِيجَابِ فَقَطْ.

L28173 And ʿAbdullāh ibn Numayr and ʿAbdah ibn Sulaymān narrated it from ʿUbaydullāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar, as narrated by Mālik.

وَرَوَاهُ عَبْدُ اللَّهِ بْنُ نُمَيْرٍ، وَعَبْدَةُ بْنُ سُلَيْمَانَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، كَمَا رَوَاهُ مَالِكٌ.

L28174 And it was narrated by Yunus ibn Yazid from Nafi', from Ibn 'Umar, as Malik narrated it.

وَرَوَاهُ يُونُسُ بْنُ يَزِيدَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ كَمَا رَوَاهُ مَالِكٌ.

L28175 It was narrated by Ibn Wahb from 'Amr ibn al-Ḥārith, from Sālim ibn 'Abdullāh ibn 'Umar, from his father, from the Prophet (peace be upon him) - as narrated by Mālik and Yūnus from Nāfiʿ - and both narrations are authentic.

وَرَوَاهُ ابْنُ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا رَوَاهُ مَالِكٌ، وَيُونُسُ عَنْ نَافِعٍ - وَكِلَا الرِّوَايَتَيْنِ صَحِيحٌ.

L28176 When the two are valid, the will is indeed obligatory according to the narration of Mālik, and he is unequivocally required to intend it. And success lies with Allah, the Exalted.

فَإِذْ هُمَا صَحِيحَانِ فَقَدْ وَجَبَتْ الْوَصِيَّةُ بِرِوَايَةِ مَالِكٍ، وَوَجَبَ عَلَيْهِ أَنْ يُرِيدَهَا وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28177–28178 As for their claim that the Messenger of Allah—peace and blessings of Allah be upon him—did not leave a will, his will had already been made beforehand, encompassing all he left through his definitive and certain statement: "We, the community of prophets, are not inherited from; whatever we leave is charity." This is undoubtedly a valid will, for he bequeathed as charity all

وَأَمَّا قَوْلُهُمْ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُوصِ فَقَدْ كَانَتْ تَقَدَّمَتْ وَصِيَّتُهُ بِجَمِيعِ مَا تَرَكَ بِقَوْلِهِ الثَّابِتِ يَقِينًا «إنَّا مَعْشَرَ الْأَنْبِيَاءِ لَا نُورَّثُ، مَا تَرَكْنَا صَدَقَةٌ»

that he left upon his death. The narration negating the will is authentically established only in refuting the will that al-Rāfiḍah attribute solely to Ali.

L28179 As for what they reported—that Ibn ʻUmar did not leave a will—this is false, since it was only narrated via the chain of transmission of Ashhal ibn Ḥātim, who is a weak transmitter.

L28180 And from the transmission of Ibn Lahiʿah—who is unreliable—the established reports from him are those Mālik narrated from Nāfiʿ concerning his affirmation of the will's obligation, and that he never spent a night after hearing this report from the Prophet—peace be upon him—without having his will written down and kept with him.

L28181 As for the ḥadīth of Ḥāṭib and ʻUmar, it is transmitted through Ibn Lahīʿah's narration, which is too weak to warrant consideration.

L28182 As for the report of Ibn Abbas, in its chain is Laith ibn Abi Sulaim—and he is weak—.

L28183 As for the ḥadīth of ʻAlī, it establishes the minimum threshold [for theft] as being between seven hundred to nine hundred dirhams, but the scholars in question do not uphold this - and there is no clarification in the ḥadīth of the Mother of the Believers [ʻĀ'ishah] regarding what they claimed.

L28184 Then, even if all of that were valid, there would be no decisive argument in it, because some Companions opposed them, as we have cited. When disagreement occurs, the opinion of one group is no more valid than that of another, and the obligation in such a case is to refer to the Quran and the Sunnah. Both impose the obligation of the bequest. As for the Sunnah, it is as we have cited; as for the Quran, it is as we will cite—God Almighty willing?

L28185 **Issue: He died without leaving a will.**

L28186 1752 - Issue: If someone dies without leaving a will, it is obligatory to give charity on their behalf with whatever is feasible - this being necessary

وَهَذِهِ وَصِيَّةٌ صَحِيحَةٌ بِلَا شَكٍّ، لِأَنَّهُ أَوْصَى بِصَدَقَةِ كُلِّ مَا يَتْرُكُ إذَا مَاتَ، وَإِنَّمَا صَحَّ الْأَثَرُ بِنَفْيِ الْوَصِيَّةِ الَّتِي تَدَّعِيهَا الرَّافِضَةُ إلَى عَلِيٍّ فَقَطْ.

وَأَمَّا مَا رَوَوْا مِنْ أَنَّ ابْنَ عُمَرَ لَمْ يُوصِ، فَبَاطِلٌ؛ لِأَنَّ هَذَا إنَّمَا رُوِيَ مِنْ طَرِيقِ أَشْهَلَ بْنِ حَاتِمٍ - وَهُوَ ضَعِيفٌ -.

وَمِنْ طَرِيقِ ابْنِ لَهِيعَةَ - وَهُوَ لَا شَيْءَ - وَالثَّابِتُ عَنْهُ مَا رَوَاهُ مَالِكٌ عَنْ نَافِعٍ مِنْ إيجَابِهِ الْوَصِيَّةَ، وَأَنَّهُ لَمْ يَبِتْ لَيْلَتَهُ مُذْ سَمِعَ هَذَا الْخَبَرَ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا وَوَصِيَّتُهُ عِنْدَهُ مَكْتُوبَةٌ.

وَأَمَّا حَدِيثُ حَاطِبٍ وَعُمَرَ: فَمِنْ رِوَايَةِ ابْنِ لَهِيعَةَ، وَهِيَ أَسْقَطُ مِنْ أَنْ يُشْتَغَلَ بِهَا.

وَأَمَّا خَبَرُ ابْنِ عَبَّاسٍ: فَفِيهِ لَيْثُ بْنُ أَبِي سُلَيْمٍ - وَهُوَ ضَعِيفٌ -.

وَأَمَّا حَدِيثُ عَلِيٍّ فَإِنَّهُ حَدُّ الْقَلِيلِ بِمَا بَيْنَ السَّبْعِمِائَةِ إلَى التِّسْعِمِائَةِ وَهُمْ لَا يَقُولُونَ بِهَذَا - وَلَيْسَ فِي حَدِيثِ أُمِّ الْمُؤْمِنِينَ بَيَانٌ بِمَا ادَّعَوْا.

ثُمَّ لَوْ صَحَّ كُلُّ ذَلِكَ لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ قَدْ عَارَضَهُمْ صَحَابَةٌ، كَمَا أَوْرَدْنَا، وَإِذَا وَقَعَ التَّنَازُعُ لَمْ يَكُنْ قَوْلُ طَائِفَةٍ أَوْلَى مِنْ قَوْلِ أُخْرَى، وَالْفَرْضُ حِينَئِذٍ هُوَ الرُّجُوعُ إلَى الْقُرْآنِ وَالسُّنَّةِ، وَكِلَاهُمَا يُوجِبُ فَرْضَ الْوَصِيَّةِ، أَمَّا السُّنَّةُ: فَكَمَا أَوْرَدْنَا، وَأَمَّا الْقُرْآنُ: فَكَمَا نُورِدُ - إنْ شَاءَ اللَّهُ تَعَالَى؟

[مَسْأَلَة مَاتَ وَلَمْ يُوصِ]

- because the obligation of the will is binding, as we previously mentioned. Thus, it is established that something from their wealth must be expended after death. Since this is the case, their ownership ceases over what must be expended from their wealth. There is no fixed measure for this except what the heirs or executor determine from that which entails no harm to the heirs. This is the view held by a group of early scholars, supported by an authentic narration from the Prophet—peace and blessings be upon him.

١٧٥٢ - مَسْأَلَةٌ فَمَنْ مَاتَ وَلَمْ يُوصِ: فَفُرِضَ أَنْ يَتَصَدَّقَ عَنْهُ بِمَا تَيَسَّرَ وَلَا بُدَّ، لِأَنَّ فَرْضَ الْوَصِيَّةِ وَاجِبٌ، كَمَا أَوْرَدْنَا، فَصَحَّ أَنَّهُ قَدْ وَجَبَ أَنْ يَخْرُجَ شَيْءٌ مِنْ مَالِهِ بَعْدَ الْمَوْتِ، فَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ سَقَطَ مِلْكُهُ عَمَّا وَجَبَ إخْرَاجُهُ مِنْ مَالِهِ، وَلَا حَدَّ فِي ذَلِكَ إلَّا مَا رَآهُ الْوَرَثَةُ، أَوْ الْوَصِيُّ مِمَّا لَا إجْحَافَ فِيهِ عَلَى الْوَرَثَةِ - وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ، وَقَدْ صَحَّ بِهِ أَثَرٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L28187–28189 It has been narrated to us through the chain of Mālik, from Hishām ibn ʿUrwah, from his father, from ʿĀ'ishah, the Mother of the Believers, that a man said to the Prophet (may Allah's peace and blessings be upon him): "My mother's soul was snatched suddenly. Had she been able to express her wishes, she would have donated. Shall I donate on her behalf, O [...]" "The Messenger of Allah?" The Messenger of Allah (peace and blessings be upon him) said: "Yes," so charity was given on her behalf. This establishes the obligating of charity for one who did not leave a will, and his command (peace and blessings be upon him) constitutes an obligation.

كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ رَجُلًا قَالَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ أُمِّي افْتُلِتَتْ نَفْسُهَا وَإِنَّهَا لَوْ تَكَلَّمَتْ تَصَدَّقَتْ، أَفَأَتَصَدَّقُ عَنْهَا يَا رَسُولَ اللَّهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: نَعَمْ، فَتَصَدَّقَ عَنْهَا» فَهَذَا إيجَابُ الصَّدَقَةِ عَمَّنْ لَمْ يُوصِ، وَأَمْرُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: فَرْضٌ.

L28190 From the chain of Muslim ibn al-Ḥajjāj: Qutaybah narrated to us, from Ismāʿīl ibn Jaʿfar, from al-ʿAlāʾ ibn ʿAbd al-Raḥmān, from his father, from Abū Hurayrah: "A man said to the Messenger of Allah, 'My father died without leaving a will. Will it atone for his sins if I give charity for him?' He (prayers and peace be upon him) said: 'Yes.'"

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا قُتَيْبَةُ نا إسْمَاعِيلُ - هُوَ ابْنُ جَعْفَرٍ - عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ: «أَنَّ رَجُلًا قَالَ لِرَسُولِ اللَّهِ إنَّ أَبِي مَاتَ وَلَمْ يُوصِ، فَهَلْ يُكَفِّرُ عَنْهُ أَنْ أَتَصَدَّقَ عَنْهُ؟ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: نَعَمْ» .

L28191 This establishes the obligation of making a will and necessitates giving charity on behalf of one who did not leave a will - for expiation applies only to sins. The Prophet (peace and blessings be upon him) clarified that the one who neglected it requires that expiation be performed for that by giving charity on his behalf. This is a matter that admits no disagreement from anyone.

فَهَذَا إيجَابٌ لِلْوَصِيَّةِ، وَلِأَنْ يُتَصَدَّقَ عَمَّنْ لَمْ يُوصِ وَلَا بُدَّ، لِأَنَّ التَّكْفِيرَ لَا يَكُونُ إلَّا فِي ذَنْبٍ، فَبَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَنَّ تَرْكَ الْوَصِيَّةِ يَحْتَاجُ فَاعِلُهُ إلَى أَنْ يُكَفِّرَ عَنْهُ ذَلِكَ، بِأَنْ يَتَصَدَّقَ عَنْهُ، وَهَذَا مَا لَا يَسَعُ أَحَدًا خِلَافُهُ.

L28192 And through the chain of ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Yaḥyā ibn Saʿīd al-Anṣārī from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, who said: ʿAbd al-Raḥmān ibn Abī Bakr died in his sleep, so ʿĀ'ishah,

the Mother of the Believers, manumitted on his behalf a long-held possession from his possessions.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: مَاتَ عَبْدُ الرَّحْمَنِ بْنُ أَبِي بَكْرٍ فِي مَنَامٍ لَهُ فَأَعْتَقَتْ عَنْهُ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ تِلَادًا مِنْ تِلَادِهِ.

L28193 This clarifies that, according to her view—may Allah be pleased with her—making a will is an obligation, and that righteousness toward one who did not leave a will is also obligatory. For had this not been the case, she would not have disbursed from his estate what was not obligated to be given.

فَهَذَا يُوَضِّحُ أَنَّ الْوَصِيَّةَ عِنْدَهَا - رَضِيَ اللَّهُ عَنْهَا -: فَرْضٌ، وَأَنَّ الْبِرَّ عَمَّنْ لَمْ يُوصِ: فَرْضٌ، إذْ لَوْلَا ذَلِكَ مَا أَخْرَجَتْ مِنْ مَالِهِ مَا لَمْ يُؤْمَرْ بِإِخْرَاجِهِ.

L28194 From Abd al-Razzaq: Ibn Jurayj narrated from Ibrahim ibn Maysarah that he heard Tawus saying, “There is no Muslim who dies without leaving a will, but his family is most entitled—or deserving—to make a will on his behalf.” Ibn Jurayj said, “I presented this to Ibn Tawus and asked, ’Is it so?’ He replied, ’Yes.’”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ عَنْ إبْرَاهِيمَ بْنِ مَيْسَرَةَ أَنَّهُ سَمِعَ طَاوُسًا يَقُولُ: مَا مِنْ مُسْلِمٍ يَمُوتُ لَمْ يُوصِ إلَّا وَأَهْلُهُ أَحَقُّ، أَوْ مُحِقُّونَ أَنْ يُوصُوا عَنْهُ قَالَ ابْنُ جُرَيْجٍ فَعَرَضْت عَلَى ابْنِ طَاوُسٍ هَذَا وَقُلْت: أَكَذَلِكَ؟ فَقَالَ: نَعَمْ.

L28195 What is astonishing is that certain scholars say, “The *mursal* is like the *musnad*.”

وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ.

L28196 It has been reported to us from Abd al-Razzaq from Ibn Juraij, Sufyan, and Ma’mar, all of them from Abdullah ibn Tawus from his father: “A man said: ’O Messenger of Allah, my mother has died without leaving a bequest. Should I make a bequest on her behalf?’ He replied: ’Yes.’”

وَقَدْ رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، وَسُفْيَانَ، وَمَعْمَرٍ، كُلُّهُمْ: عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ: «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ إنَّ أُمِّي تُوُفِّيَتْ وَلَمْ تُوصِ، أَفَأُوصِي عَنْهَا؟ فَقَالَ: نَعَمْ» .

L28197–28199 And via the chain of Ma’mar from Yahya ibn Abi Kathir from Abi Bakr ibn Abd al-Rahman ibn al-Harith ibn Hisham. That the Messenger of Allah—may the peace and blessings of Allah be upon him—freed a female slave on behalf of a woman who died without leaving a will and donated her belongings as charity on her behalf.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ " «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْتَقَ عَنْ امْرَأَةٍ مَاتَتْ وَلَمْ تُوصِ وَلِيدَةً وَتَصَدَّقَ عَنْهَا بِمَتَاعٍ» .

L28200 And is there no mursal better than these two? So they opposed them due to their corrupt opinion.

وَلَا مُرْسَلَ أَحْسَنُ مِنْ هَذَيْنِ؟ فَخَالَفُوهُمَا، لِرَأْيِهِمَا الْفَاسِدِ

L28201 **The Ruling on Testamentary Bequests to Kin**

[مَسْأَلَة الْوَصِيَّة لِلْأَقَارِبِ]

L28202 Issue 1753: It is obligatory for every Muslim to bequeath to relatives who do not inherit - whether due to enslavement, disbelief, the presence of those who preclude them from inheritance, or because they themselves do not inherit. They must bequeath to them whatever their soul is content with, as no fixed measure applies in this matter. If they fail to do so, these relatives must inevitably be given what the heirs or the executor deem appropriate.

١٧٥٣ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مُسْلِمٍ أَنْ يُوصِيَ لِقَرَابَتِهِ الَّذِينَ لَا يَرِثُونَ، إمَّا لِرِقٍّ، وَإِمَّا لِكُفْرٍ، وَإِمَّا لِأَنَّ هُنَالِكَ مَنْ يَحْجُبُهُمْ عَنْ الْمِيرَاثِ أَوْ لِأَنَّهُمْ لَا يَرِثُونَ فَيُوصِي لَهُمْ بِمَا طَابَتْ بِهِ نَفْسُهُ، لَا حَدَّ فِي ذَلِكَ، فَإِنْ لَمْ يَفْعَلْ أُعْطُوا وَلَا بُدَّ مَا رَآهُ الْوَرَثَةُ، أَوْ الْوَصِيُّ.

L28203 If his parents, or one of them, are disbelievers or a slave, it is also obligatory upon him to bequeath to them or to one of them if the other is not as such. If he does not do so, the parent(s) must necessarily be given from his wealth, then he may bequeath as he wishes thereafter.

فَإِنْ كَانَ وَالِدَاهُ، أَوْ أَحَدُهُمَا عَلَى الْكُفْرِ، أَوْ مَمْلُوكًا فَفَرْضٌ عَلَيْهِ أَيْضًا أَنْ يُوصِيَ لَهُمَا، أَوْ لِأَحَدِهِمَا إنْ لَمْ يَكُنْ الْآخَرُ كَذَلِكَ، فَإِنْ لَمْ يَفْعَلْ أُعْطِيَ، أَوْ أُعْطِيَا مِنْ الْمَالِ وَلَا بُدَّ، ثُمَّ يُوصِي فِيمَا شَاءَ بَعْدَ ذَلِكَ.

L28204 If he bequeaths to three of his aforementioned relatives, it suffices.

فَإِنْ أَوْصَى لِثَلَاثَةٍ مِنْ أَقَارِبِهِ الْمَذْكُورِينَ أَجْزَأَهُ.

L28205 And the closest relatives: they are those who share a common paternal ancestor with the deceased through whom lineage is recognized when traced. Similarly, on the maternal side: it refers to those who share a common paternal ancestor with the mother through whom lineage is recognized. For these are considered relatives in the linguistic sense, and it is impermissible to designate others as “relatives” without proof.

وَالْأَقْرَبُونَ: هُمْ مَنْ يَجْتَمِعُونَ مَعَ الْمَيِّتِ فِي الْأَبِ الَّذِي بِهِ يُعْرَفُ إذَا نُسِبَ، وَمِنْ جِهَةِ أُمِّهِ كَذَلِكَ أَيْضًا: هُوَ مَنْ يَجْتَمِعُ مَعَ أُمِّهِ فِي الْأَبِ الَّذِي يُعْرَفُ بِالنِّسْبَةِ إلَيْهِ؛ لِأَنَّ هَؤُلَاءِ فِي اللُّغَةِ أَقَارِبُ، وَلَا يَجُوزُ أَنْ يُوقَعَ عَلَى غَيْرِ هَؤُلَاءِ اسْمُ أَقَارِبَ بِلَا بُرْهَانٍ.

L28206 The proof of that is the statement of Allah, the Most High: “Prescribed for you when death approaches any of you, if he leaves wealth, is to make a bequest for parents and relatives in fairness—a duty rightfully incumbent upon the God-fearing. Then whoever alters it after hearing it, the sin falls solely on those who alter it. Indeed, Allah is All-Hearing, All-Knowing.” [Al-Baqarah: 180-181]. This is an obligation, as you hear. Thus, parents and inheriting relatives are excluded from receiving the bequest, while those among them who do not inherit remain bound by this obligation.[1]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ - فَمَنْ بَدَّلَهُ بَعْدَمَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى الَّذِينَ يُبَدِّلُونَهُ إِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ} [البقرة: ١٨٠ - ١٨١] فَهَذَا فَرْضٌ كَمَا تَسْمَعُ، فَخَرَجَ مِنْهُ الْوَالِدَانِ، وَالْأَقْرَبُونَ الْوَارِثُونَ، وَبَقِيَ مَنْ لَا يَرِثُ مِنْهُمْ عَلَى هَذَا الْفَرْضِ.

L28207 And since it is an obligatory right due to them, an obligatory portion from his wealth has become incumbent upon them to disburse to those entitled

[1] **Qur’an references (L28206):** Qur’an 2:180 (Al-Baqarah); Qur’an 2:181 (Al-Baqarah).

to it if the wealth owner was wronged and did not command its disbursal. If he bequeaths to those whom he was commanded to bequeath, and he is not prohibited from bequeathing to others, he has fulfilled what he was commanded to do, and he may thereafter bequeath as he wishes.

وَإِذْ هُوَ حَقٌّ لَهُمْ وَاجِبٌ فَقَدْ وَجَبَ لَهُمْ مِنْ مَالِهِ جُزْءٌ مَفْرُوضٌ إِخْرَاجُهُ لِمَنْ وَجَبَ لَهُ إِنْ ظُلِمَ هُوَ، وَلَمْ يَأْمُرْ بِإِخْرَاجِهِ، وَإِذَا أَوْصَى لِمَنْ أَمَرَ بِهِ فَلَمْ يَنْهَ عَنْ الْوَصِيَّةِ لِغَيْرِهِمْ، فَقَدْ أَدَّى مَا أُمِرَ بِهِ - وَلَهُ أَنْ يُوصِيَ بَعْدَ ذَلِكَ بِمَا أَحَبَّ.

L28208 And whoever bequeaths to three close relatives has indeed bequeathed to the close relatives - this being the view of a group from the Salaf. It has been narrated to us through the chain of Abd al-Razzaq from Ma'mar and Ibn Jurayj, both of whom narrate from Abdullah ibn Tawus from his father, who said: Whoever bequeaths to a people, naming them while leaving his close relatives in need, the bequest was seized from them and was returned to his close relatives. If there are no poor among his family, then it is given to the poor regardless of their identity.

وَمَنْ أَوْصَى لِثَلَاثَةٍ أَقْرِبِينَ فَقَدْ أَوْصَى لِلْأَقْرَبِينَ - وَهَذَا قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ، كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ، قَالَ: مَنْ أَوْصَى لِقَوْمٍ وَسَمَّاهُمْ وَتَرَكَ ذَوِي قَرَابَتِهِ مُحْتَاجِينَ انْتُزِعَتْ مِنْهُمْ وَرُدَّتْ عَلَى ذَوِي قَرَابَتِهِ، فَإِنْ لَمْ يَكُنْ فِي أَهْلِهِ فُقَرَاءُ فَلِأَهْلِ الْفَقْرِ مَنْ كَانُوا.

L28209–28210 From the chain of Abd al-Razzaq, who narrated to us from Ma'mar, from Qatadah, from al-Hasan, who said: If one bequeaths a third to non-relatives, they may receive a third of that third, and two-thirds of the third are returned to his relatives.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ عَنْ الْحَسَنِ، قَالَ: إذَا أَوْصَى فِي غَيْرِ أَقَارِبِهِ بِالثُّلُثِ: جَازَ لَهُمْ ثُلُثُ الثُّلُثِ، وَرُدَّ عَلَى قَرَابَتِهِ: ثُلُثَا الثُّلُثِ.

L28211 And through the chain of Al-Ḥajjāj ibn al-Minhāl: Abū Hilāl narrated from Qatādah, from Saʿīd ibn al-Musayyab, who said regarding one who bequeaths to three non-relatives: "Two-thirds go to the kinship heirs, and one-third goes to the three non-relatives he designated in the will."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو هِلَالٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ فِيمَنْ أَوْصَى لِثَلَاثَةٍ فِي غَيْرِ قَرَابَتِهِ، فَقَالَ: لِلْقَرَابَةِ الثُّلُثَانِ، وَلِمَنْ أَوْصَى لَهُ الثُّلُثُ.

L28212 Through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī (the Judge), from ʿAlī ibn ʿAbdullāh—known as Ibn al-Madīnī—from Abū Muʿāwiyah al-Ḍarīr (the Blind), from al-Aʿmash, from Masrūq, who said: "Allah has apportioned among you and perfected the distribution. Whoever prefers his own opinion over that of Allah, the Exalted and Glorious, will go astray. Make bequests to relatives who are not heirs, then leave the wealth as Allah has apportioned it."

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا أَبُو مُعَاوِيَةَ الضَّرِيرُ نا الْأَعْمَشُ عَنْ مَسْرُوقٍ: أَنَّهُ قَالَ: إنَّ اللَّهَ قَسَمَ بَيْنَكُمْ فَأَحْسَنَ الْقِسْمَةَ، وَإِنَّهُ مَنْ يَرْغَبُ بِرَأْيِهِ عَنْ رَأْيِ اللَّهِ عَزَّ وَجَلَّ يَضِلُّ، أَوْصِ لِقَرَابَتِك مِمَّنْ لَا يَرِثُ، ثُمَّ دَعْ الْمَالَ عَلَى مَا قَسَمَهُ اللَّهُ عَلَيْهِ.

L28213 And through the chain of Ismāʿīl: Sulaymān ibn Ḥarb narrated to us, Ḥammād ibn Salamah narrated to us, from ʿAṭāʾ ibn Abī Maymūnah, who said: I asked Sālim ibn Yasār and al-ʿAlāʾ ibn Ziyād about the statement of Allah, the Almighty and Majestic: {If he leaves good, the bequest is for the parents

وَمِنْ طَرِيقِ إسْمَاعِيلَ نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَطَاءِ بْنِ أَبِي مَيْمُونَةَ قَالَ: سَأَلْت سَالِمَ بْنَ يَسَارٍ، وَالْعَلَاءَ بْنَ زِيَادٍ عَنْ قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {إِنْ تَرَكَ خَيْرًا

and the near relatives} [al-Baqarah: 180]. They called for the *Mushaf* and recited this verse, then said: “It pertains to the relatives.”[2]

الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ} [البقرة: ١٨٠] فَدَعَوَا بِالْمُصْحَفِ فَقَرَآ هَذِهِ الآيَةَ، فَقَالَا: هِيَ لِلْقَرَابَةِ.

L28214 From the transmission of Ismāʿīl: ʿAlī ibn ʿAbd Allāh reported to us: Muʿādh ibn Hishām al-Dastuwāʾī reported to us: My father narrated to me from Qatādah from ʿAbd al-Malik ibn Yaʿlā: He held the opinion regarding one who bequeaths to a non-heir while having relatives who are not his heirs: Two-thirds of the one-third (of the estate) is assigned to the relatives, and one-third of the one-third is assigned to the one he designated in his will.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ: حَدَّثَنِي أَبِي عَنْ قَتَادَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ يَعْلَى: أَنَّهُ كَانَ يَقُولُ فِيمَنْ يُوصِي لِغَيْرِ ذِي الْقُرْبَى وَلَهُ ذُو قَرَابَةٍ مِمَّنْ لَا يَرِثُهُ: أَنَّهُ يُجْعَلُ ثُلُثَا الثُّلُثِ لِذَوِي الْقَرَابَةِ وَثُلُثُ الثُّلُثِ لِمَنْ أَوْصَى لَهُ بِهِ.

L28215 And from the chain of Ismāʾīl: Muḥammad ibn ʾUbayd narrated to us, Muḥammad ibn Thawr narrated to us from Maʾmar from Qaṭādah concerning Allah the Exalted’s statement: {If one leaves property, the will is to be made for the parents and close relatives} [Al-Baqarah: 180]. He said: “The obligation for parents was abrogated from this ruling, while the ruling for relatives who do not inherit remains.”[3]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا مُحَمَّدُ بْنُ عُبَيْدٍ نا مُحَمَّدُ بْنُ ثَوْرٍ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى: {إِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالأَقْرَبِينَ} [البقرة: ١٨٠] قَالَ: نُسِخَ مِنْهَا الْوَالِدَانِ، وَتُرِكَ الأَقَارِبُ مِمَّنْ لَا يَرِثُ.

L28216 Through the chain of Ismail, al-Ḥajjāj ibn al-Minhāl narrated to us from Ḥammād ibn Salamah, from Iyās ibn Muʿāwiyah, who said: “It is for the relatives”—meaning the will.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ إِيَاسِ بْنِ مُعَاوِيَةَ قَالَ: هِيَ لِلْقَرَابَةِ - يَعْنِي الْوَصِيَّةَ -.

L28217 Ishāq and Abū Sulaymān maintain that it is obligatory to make a will for relatives who do not inherit.

وَبِوُجُوبِ الْوَصِيَّةِ لِلْقَرَابَةِ الَّذِينَ لَا يَرِثُونَ يَقُولُ إِسْحَاقُ، وَأَبُو سُلَيْمَانَ.

L28218 Others said: This is not an obligation; rather, one may bequeath to those outside their kinship.

وَقَالَ آخَرُونَ: لَيْسَ ذَلِكَ فَرْضًا، بَلْ لَهُ أَنْ يُوصِيَ لِغَيْرِ ذِي قَرَابَتِهِ.

L28219 This is the opinion of al-Zuhrī, Sālim ibn ʿAbd Allāh ibn ʿUmar, Sulaymān ibn Yasār, ʿAmr ibn Dīnār, and Muḥammad ibn Sīrīn.

وَهُوَ قَوْلُ الزُّهْرِيِّ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَعَمْرِو بْنِ دِينَارٍ، وَمُحَمَّدِ بْنِ سِيرِينَ.

L28220–28221 This is the opinion of Abū Ḥanīfa, al-Awzāʿī, Sufyān al-Thawrī, Imām Mālik, and al-Shāfiʿī.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالأَوْزَاعِيُّ، وَسُفْيَانَ الثَّوْرِيِّ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L28222 They argued using the ḥadīth of the man who bequeathed the emancipation of six slaves, though he owned no property besides them. The Messenger

[2] **Qur’an references (L28213):** Qur’an 2:180 (Al-Baqarah).
[3] **Qur’an references (L28215):** Qur’an 2:180 (Al-Baqarah).

of Allah—peace and blessings be upon him—drew lots among them, freeing two and leaving four in bondage. They said: "This is a testamentary bequest for non-relatives."

وَاحْتَجُّوا بِحَدِيثِ الَّذِي أَوْصَى بِعِتْقِ السِّتَّةِ الْأَعْبُدِ، وَلَا مَالَ لَهُ غَيْرُهُمْ، فَأَقْرَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَهُمْ فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً فَقَالُوا: هَذِهِ وَصِيَّةٌ لِغَيْرِ الْأَقَارِبِ.

L28223 Abu Muhammad said: This affords them no argument, for it does not specify that it occurred after the revelation of the aforementioned verse. We do not dispute their claim that before its revelation, one could bequeath to whomever they wished. Thus, this narration corresponds to the abrogated situation—definitively and unquestionably annulled with absolute certainty. Therefore, the ruling of this narration is undoubtedly abrogated, and the verse unequivocally abolishes its ruling.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّهُ لَيْسَ فِيهِ بَيَانُ أَنَّهُ كَانَ بَعْدَ نُزُولِ الْآيَةِ الْمَذْكُورَةِ، وَنَحْنُ لَا نُخَالِفُهُمْ فِي أَنَّ قَبْلَ نُزُولِهَا كَانَ لِلْمَرْءِ أَنْ يُوصِيَ لِمَنْ شَاءَ، فَهَذَا الْخَبَرُ مُوَافِقٌ لِلْحَالِ الْمَنْسُوخَةِ الْمُرْتَفِعَةِ بِيَقِينٍ لَا شَكَّ فِيهِ قَطْعًا - فَحُكْمُ هَذَا الْخَبَرِ مَنْسُوخٌ بِلَا شَكٍّ وَالْآيَةُ رَافِعَةٌ لِحُكْمِهِ نَاسِخَةٌ لَهُ بِلَا شَكٍّ.

L28224 Whoever claims regarding the abrogating text that it has reverted to being abrogated, and regarding the abrogated text that it has reverted to being abrogating, without an established and transmitted text as evidence for such a claim, has indeed uttered falsehood, pursued what he has no knowledge of, ascribed to Allah the Exalted what he does not know, abandoned certainty, and judged based on speculation. This is prohibited by the text of the Qur'an.

وَمَنْ ادَّعَى فِي النَّاسِخِ أَنَّهُ عَادَ مَنْسُوخًا، وَفِي الْمَنْسُوخِ أَنَّهُ عَادَ نَاسِخًا بِغَيْرِ نَصٍّ ثَابِتٍ وَارِدٍ بِذَلِكَ، فَقَدْ قَالَ الْبَاطِلَ وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَقَالَ عَلَى اللَّهِ تَعَالَى مَا لَا يَعْلَمُ وَتَرَكَ الْيَقِينَ وَحَكَمَ بِالظُّنُونِ، وَهَذَا مُحَرَّمٌ بِنَصِّ الْقُرْآنِ.

L28225 And we say: Indeed, Allah, the Exalted, said: "as a clarification for all things" [An-Nahl: 89]. Therefore, we decisively affirm, resolve, and bear witness that there is no means to abrogate an abrogator or reinstate an abrogated without a clarification conveyed to us regarding that. Were anything other than this permissible, we would be in uncertainty about our religion, and we would not discern what Allah, the Exalted, has commanded us to do from what He has prohibited us from doing. Far be it from Allah! Thus, the falsity of their obfuscation through this report has become evident to us.[4]

وَنَحْنُ نَقُولُ: إِنَّ اللَّهَ تَعَالَى قَالَ: {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩] فَنَحْنُ نَقْطَعُ وَنَبُتُّ وَنَشْهَدُ أَنَّهُ لَا سَبِيلَ إلَى نَسْخِ نَاسِخٍ، وَرَدِّ حُكْمٍ مَنْسُوخٍ دُونَ بَيَانٍ وَارِدٍ لَنَا بِذَلِكَ، وَلَوْ جَازَ غَيْرُ هَذَا لَكُنَّا مِنْ دِينِنَا فِي لَبْسٍ، وَلَكُنَّا لَا نَدْرِي مَا أَمَرَنَا اللَّهُ تَعَالَى بِهِ مِمَّا نَهَانَا عَنْهُ، حَاشَا لِلَّهِ مِنْ هَذَا - فَظَهَرَ لَنَا بُطْلَانُ تَمْوِيهِهِمْ بِهَذَا الْخَبَرِ.

L28226 Moreover, it is not stated therein that the man was a pure-blooded member of the Ansar with relatives who do not inherit from him. Since this is not specified, it is possible he was an ally without male progeny or any relatives. Thus, they have no proof in this matter, and it is impermissible to make

وَأَيْضًا: فَلَيْسَ فِيهِ أَنَّ ذَلِكَ الرَّجُلَ كَانَ صَلِيبَةً مِنْ الْأَنْصَارِ، وَكَانَ لَهُ قَرَابَةٌ لَا يَرِثُونَ، فَإِذْ لَيْسَ ذَلِكَ فِيهِ فَمُمْكِنٌ أَنْ يَكُونَ حَلِيفًا أَتِيًّا لَا قَرَابَةَ لَهُ، فَلَا حُجَّةَ لَهُمْ فِيهِ، وَلَا يَحِلُّ الْقَطْعُ بِالظَّنِّ، وَلَا تَرْكُ الْيَقِينِ لَهُ.

[4] **Qur'an references (L28225):** Qur'an 16:89 (An-Nahl).

definitive judgments based on speculation nor to discard certainty in favor of conjecture.

L28227–28229 The most astonishing aspect is their argument in this matter, citing that ʿAbd al-Raḥmān ibn ʿAwf bequeathed a garden to the Mothers of the Believers, which was sold for four hundred thousand dirhams—and to the participants of Badr, one hundred dinars for each individual among them—and that ʿUmar bequeathed four thousand dirhams, reiterating, four thousand dirhams, to every wife who bore him a child—and that ʿĀ'ishah, the Mother of the Believers, bequeathed her estate to the family of Abū Yūnus, her freed slave. Abū Muḥammad said: This is indeed among the reprehensible acts of doctrinal deception in religion. Would that I knew: What in any of this justifies abstaining from bequeathing to one's relatives? Do any of these reports state that they—may Allah be pleased with them—did not bequeath to their relatives? If they say: "This is not mentioned in them," we reply: Nor is it mentioned that they bequeathed a third or less, and perhaps they... They bequeathed more than a third—and all of these are abominations (we seek refuge with Allah from the likes of these)—and we ask Him for protection and guidance.

وَأَعْجَبُ شَيْءٍ احْتِجَاجُهُمْ فِي هَذَا بِأَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ أَوْصَى لِأُمَّهَاتِ الْمُؤْمِنِينَ بِحَدِيقَةٍ بِيعَتْ بِأَرْبَعِمِائَةِ أَلْفِ دِرْهَمٍ - وَلِأَهْلِ بَدْرٍ بِمِائَةِ دِينَارٍ، مِائَةُ دِينَارٍ لِكُلِّ وَاحِدٍ مِنْهُمْ - وَأَنَّ عُمَرَ أَوْصَى لِكُلِّ أُمِّ وَلَدٍ لَهُ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ، أَرْبَعَةِ آلَافِ دِرْهَمٍ - وَأَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَوْصَتْ لِآلِ أَبِي يُونُسَ مَوْلَاهَا بِمَتَاعِهَا؟ قَالَ أَبُو مُحَمَّدٍ: إنَّ هَذَا لَمِنْ قَبِيحِ التَّدْلِيسِ فِي الدِّينِ، وَلَيْتَ شِعْرِي: أَيُّ شَيْءٍ فِي هَذَا مِمَّا يُبِيحُ أَنْ لَا يُوصِيَ لِقَرَابَتِهِ؟ وَهَلْ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ أَنَّهُمْ - رَضِيَ اللَّهُ عَنْهُمْ - لَمْ يُوصُوا لِقَرَابَتِهِمْ؟ فَإِنْ قَالُوا: لَمْ يُذْكَرْ هَذَا فِيهِ؟ قُلْنَا: وَلَا ذُكِرَ فِيهِ أَنَّهُمْ أَوْصَوْا بِالثُّلُثِ فَأَقَلَّ، وَلَعَلَّهُمْ أَوْصَوْا بِأَكْثَرَ مِنْ الثُّلُثِ - وَهَذِهِ كُلُّهَا فَضَائِحُ، نَعُوذُ بِاَللَّهِ مِنْ مِثْلِهَا - وَنَسْأَلُهُ الْعِصْمَةَ وَالتَّوْفِيقَ.

The Issue of Bequest to an Heir

[مَسْأَلَة الْوَصِيَّة لوارث]

L28230

L28231 1754. Issue: A bequest is absolutely impermissible to an heir. If one bequeaths to a non-heir who becomes an heir upon the testator's death, the bequest to him is void. If one bequeaths to an heir who later ceases to be an heir, the bequest is not permissible for him, since it was invalid when established. This ruling holds whether the heirs consent or not, for the community transmitted that the Messenger of Allah (peace be upon him) said: "There is no bequest for an heir."

١٧٥٤ - مَسْأَلَةٌ: وَلَا تَحِلُّ الْوَصِيَّةُ لِوَارِثٍ أَصْلًا، فَإِنْ أَوْصَى لِغَيْرِ وَارِثٍ فَصَارَ وَارِثًا عِنْدَ مَوْتِ الْمُوصِي: بَطَلَتْ الْوَصِيَّةُ لَهُ، فَإِنْ أَوْصَى لِوَارِثٍ ثُمَّ صَارَ غَيْرَ وَارِثٍ لَمْ تَجُزْ لَهُ الْوَصِيَّةُ، لِأَنَّهَا إذْ عَقَدَهَا كَانَتْ بَاطِلًا، وَسَوَاءٌ جَوَّزَ الْوَرَثَةُ ذَلِكَ أَوْ لَمْ يُجَوِّزُوا؛ لِأَنَّ الْكَوَافَّ نَقَلَتْ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا وَصِيَّةَ لِوَارِثٍ» .

L28232 Since God the Exalted has prohibited that, the heirs have no right to permit what God has nullified through the words of the Messenger of God—may God bless him and grant him peace—unless they voluntarily offer a gift for it of their own accord, for it is their property. This is the view of al-Muzanī and Abū Sulaymān.

فَإِذْ قَدْ مَنَعَ اللَّهُ تَعَالَى مِنْ ذَلِكَ فَلَيْسَ لِلْوَرَثَةِ أَنْ يُجِيزُوا مَا أَبْطَلَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا أَنْ يَبْتَدِئُوا هِبَةً لِذَلِكَ مِنْ عِنْدِ أَنْفُسِهِمْ، فَهُوَ مَالُهُمْ - وَهَذَا قَوْلُ الْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ.

L28233 If it is said: You have narrated through the chain of Ibn Wahb from ʿAbd Allāh ibn Samʿān, ʿAbd al-Jalīl ibn Ḥumayd al-Yaḥṣubī, Yaḥyā ibn Ayyūb, and ʿAmr ibn Qays Sandal. ʿUmar ibn Qays said: From ʿAṭāʾ ibn Abī Rabāḥ, while the others said: "I am ʿAbd Allāh ibn ʿAbd al-Raḥmān ibn Abī Ḥusayn." Then ʿAṭāʾ and ʿAbd Allāh concurred: "The Messenger of Allah—peace and blessings be upon him—said during the year of the Conquest in his sermon: 'No bequest is permissible to an heir unless the heirs consent.'" ʿAṭāʾ added in his narration: "If they approve it, they have no right to retract?"' We reply: This is a *mursal* report, and it stands as a scandalous example among *mursal* reports, for the four narrators mentioned by Ibn Wahb are all rejected, and their convergence is truly astonishing.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ سَمْعَانَ، وَعَبْدِ الْجَلِيلِ بْنِ حُمَيْدٍ الْيَحْصُبِيِّ، وَيَحْيَى بْنِ أَيُّوبَ، وَعَمْرِو بْنِ قَيْسٍ سَنْدَلٍ، قَالَ عُمَرُ بْنُ قَيْسٍ: عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَقَالَ الْآخَرُونَ: أَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي حُسَيْنٍ، ثُمَّ اتَّفَقَ عَطَاءٌ، وَعَبْدُ اللَّهِ: أَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ عَامَ الْفَتْحِ فِي خُطْبَتِهِ: لَا تَجُوزُ وَصِيَّةٌ لِوَارِثٍ إِلَّا أَنْ يَشَاءَ الْوَرَثَةُ» - زَادَ عَطَاءٌ فِي حَدِيثِهِ: «وَإِنْ أَجَازُوا فَلَيْسَ لَهُمْ أَنْ يَرْجِعُوا» ؟ قُلْنَا: هَذَا مُرْسَلٌ، ثُمَّ هُوَ مِنَ الْمُرْسَلِ فَضِيحَةٌ، لِأَنَّ الْأَرْبَعَةَ الَّذِينَ ذَكَرَهُمُ ابْنُ وَهْبٍ كُلُّهُمْ مُطَّرَحٌ، وَإِنَّ فِي اجْتِمَاعِهِمْ لَأُعْجُوبَةً.

L28234 Our understanding regarding the Hanafis and Malikis is that they assert: "The *mursal* is like the *musnad*, and the *musnad* like the *mursal*," and they do not concern themselves with weak [narrations]. Why then did they not adopt this *mursal*? Yet this is among the matters in which they contradicted each other.

وَعَهْدُنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ يَقُولُونَ: إِنَّ الْمُرْسَلَ كَالْمُسْنَدِ، وَالْمُسْنَدَ كَالْمُرْسَلِ، وَلَا يُبَالُونَ بِضَعِيفٍ، فَهَلَّا أَخَذُوا بِهَذَا الْمُرْسَلِ؟ وَلَكِنَّ هَذَا مِمَّا تَنَاقَضُوا فِيهِ.

L28235 Abu Hanifah said: They may revoke after his death.

وَقَالَ أَبُو حَنِيفَةَ: لَهُمْ أَنْ يَرْجِعُوا بَعْدَ مَوْتِهِ.

L28236 Mālik said: They may not rescind unless they are under his surety (kafālah), in which case they may do so.

وَقَالَ مَالِكٌ: لَا رُجُوعَ لَهُمْ إِلَّا أَنْ يَكُونُوا فِي كَفَالَتِهِ، فَلَهُمْ أَنْ يَرْجِعُوا.

L28237 The ruling on a bequest involving more than one-third [of the estate].

[مَسْأَلَة الْوَصِيَّة بِأَكْثَرَ مِنْ الثُّلُث]

L28238–28240 Issue 1755: It is not permissible to bequeath more than a third - whether the deceased has an heir or not; whether the heirs approved or did not approve - as established through multiple chains of transmission from Sa'd ibn Abi Waqqās that he said: "The Messenger of Allah - may Allah bless him and his family and grant him peace - visited me..." "I said, 'Shall I bequeath all my wealth?' He said, 'No.' I said, 'What about half?' He said, 'No.' I said, 'What about a third?' He said, 'Yes, and a third is already much.'"

١٧٥٥ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْوَصِيَّةُ بِأَكْثَرَ مِنَ الثُّلُثِ - كَانَ لَهُ وَارِثٌ أَوْ لَمْ يَكُنْ لَهُ وَارِثٌ، أَجَازَ الْوَرَثَةُ، أَوْ لَمْ يُجِيزُوا -: صَحَّ مِنْ طُرُقٍ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ أَنَّهُ قَالَ: «عَادَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقُلْتُ: أُوصِي بِمَالِي كُلِّهِ؟ قَالَ: لَا، قُلْتُ: فَالنِّصْفُ؟ قَالَ: لَا، قُلْتُ: فَالثُّلُثُ؟ قَالَ: نَعَمْ، وَالثُّلُثُ كَثِيرٌ» .

L28241 The report states that "a man from the Ansar, upon his death, bequeathed

that six slaves be emancipated, as he owned no other property. The Messenger of Allah (peace be upon him and his family) summoned them, drew lots among them, freed two, and kept four enslaved."

وَالْخَبَرُ بِأَنَّ «رَجُلًا مِنْ الْأَنْصَارِ أَوْصَى عِنْدَ مَوْتِهِ بِعِتْقِ سِتَّةِ أَعْبُدٍ لَا مَالَ لَهُ غَيْرُهُمْ، فَدَعَاهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَقْرَعَ بَيْنَهُمْ، فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً» .

L28242 Malik said: If his bequest exceeds the third by a small amount such as two dirhams or similar, the bequest is permissible in all such cases. This [opinion of Malik] contradicts the transmitted textual evidence and constitutes an error in restricting the ruling to the explicitly mentioned amount while disregarding what exceeds or falls short of it. Moreover, this excess—whether minor or significant—must inherently belong to either the testator's rightful share or the heirs' rightful share. If it belongs to the testator's share, the excess beyond the third is also his rightful portion and must be upheld. If it belongs to the heirs' share, the testator has no lawful right to exercise authority over their property.

وَقَالَ مَالِكٌ: إنْ زَادَتْ وَصِيَّتُهُ عَنْ الثُّلُثِ بِيَسِيرٍ كَالدِّرْهَمَيْنِ، وَنَحْوِ ذَلِكَ جَازَتْ الْوَصِيَّةُ فِي كُلِّ ذَلِكَ - وَهَذَا خِلَافُ الْخَبَرِ، وَخَطَأٌ فِي تَحْدِيدِهِ مَا ذُكِرَ دُونَ مَا زَادَ وَمَا نَقَصَ، وَلَا تَخْلُو تِلْكَ الزِّيَادَةُ - قَلَّتْ أَوْ كَثُرَتْ - مِنْ أَنْ تَكُونَ مِنْ حَقِّ الْمُوصِي أَوْ حَقِّ الْوَرَثَةِ، فَإِنْ كَانَتْ مِنْ حَقِّ الْمُوصِي فَمَا زَادَ عَلَى ذَلِكَ فَمِنْ حَقِّهِ أَيْضًا، فَيَنْبَغِي أَنْ يُنَفَّذَ، وَإِنْ كَانَتْ مِنْ حَقِّ الْوَرَثَةِ فَلَا يَحِلُّ لِلْمُوصِي أَنْ يَحْكُمَ فِي مَالِهِمْ.

L28243 A group said: Whoever has no heir is entitled to bequeath all his wealth.

وَقَالَتْ طَائِفَةٌ: مَنْ لَا وَارِثَ لَهُ فَلَهُ أَنْ يُوصِيَ بِمَالِهِ كُلِّهِ.

L28244 This has been authentically reported from Ibn Masʿūd and others, as we have narrated through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Abū Isḥāq al-Sabīʿī from Abū Maysarah ʿAmr ibn Shuraḥbīl, who said: ʿAbdullāh ibn Masʿūd said to me: "You are among the people of the tribe in Kufah most likely to face a situation where one of you may die without leaving agnates or kin. Therefore, if such a situation arises, he should not hesitate to give his wealth to the poor and needy."

صَحَّ ذَلِكَ عَنْ ابْنِ مَسْعُودٍ، وَغَيْرِهِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي مَيْسَرَةَ عَمْرِو بْنِ شُرَحْبِيلَ قَالَ: قَالَ لِي عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: إنَّكُمْ مِنْ أَحْرَى حَيٍّ بِالْكُوفَةِ أَنْ يَمُوتَ أَحَدُكُمْ فَلَا يَدَعُ عَصَبَةً وَلَا رَحِمًا فَلَا يَمْنَعُهُ إذَا كَانَ ذَلِكَ أَنْ يَضَعَ مَالَهُ فِي الْفُقَرَاءِ وَالْمَسَاكِينِ.

L28245 And through the chain of Sufyān ibn ʿUyaynah, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, from Masrūq, who said regarding the case of one who has no patron through manumission: He may allocate his wealth as he deems fit. If the deceased does not do so, it goes to the public treasury [Bayt al-Mal].

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّهُ قَالَ فِيمَنْ لَيْسَ لَهُ مَوْلَى عَتَاقَةٍ: أَنَّهُ يَضَعُ مَالَهُ حَيْثُ يَشَاءُ فَإِنْ لَمْ يَفْعَلْ فَهُوَ فِي بَيْتِ الْمَالِ.

L28246–28248 And through the chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sakhtiyānī, from Ibn Sīrīn, from ʿUbaydah al-Salmānī. He said: If a person dies with no outstanding contractual obligations to anyone or surviving agnates who inherit, he should bequeath his entire estate to whoever he wishes.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: إذَا مَاتَ وَلَيْسَ عَلَيْهِ عَقْدٌ لِأَحَدٍ وَلَا عَصَبَةَ يَرِثُونَ فَإِنَّهُ يُوصِي بِمَالِهِ كُلِّهِ حَيْثُ شَاءَ.

Through the chain of Ḥammād ibn Salamah: Abū al-ʿĀliyah al-Riyāḥī - his female owner Sā'ibah emancipated him. When he neared death, he willed all his wealth to others instead of her. Did she litigate this? The court ruled she inherited. This constitutes the position of al-Ḥasan al-Baṣrī, Abū Ḥanīfah, his disciples, Sharik al-Qāḍī, and Isḥāq ibn Rāhūyah.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَّ أَبَا الْعَالِيَةَ الرِّيَاحِيَّ أَعْتَقَتْهُ مَوْلَاتُهُ سَائِبَةً، فَلَمَّا احْتُضِرَ أَوْصَى بِمَالِهِ كُلِّهِ لِغَيْرِهَا، فَخَاصَمَتْ فِي ذَلِكَ؟ فَقُضِيَ لَهَا بِالْمِيرَاثِ - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَشَرِيكٍ الْقَاضِي، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

Malik, Ibn Shubrumah, al-Awzāʿī, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, Aḥmad, and Abū Sulaymān said: He may not bequeath more than a third—whether he has an heir or not.

وَقَالَ مَالِكٌ، وَابْنُ شُبْرُمَةَ، وَالْأَوْزَاعِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ: لَيْسَ لَهُ أَنْ يُوصِيَ بِأَكْثَرَ مِنْ الثُّلُثِ - كَانَ لَهُ وَارِثٌ أَوْ لَمْ يَكُنْ.

Abu Muhammad said: Those who permit it argued in support of that by citing the statement of the Messenger of Allah—may Allah's peace and blessings be upon him—to Sa'd: "A third, and a third is much. Indeed, if you leave your heirs wealthy, it is better than leaving them destitute, begging from people."[5]

قَالَ أَبُو مُحَمَّد: احْتَجَّ الْمُجِيزُونَ لِذَلِكَ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِسَعْدٍ: «الثُّلُثُ وَالثُّلُثُ كَثِيرٌ إنَّكَ إنْ تَدَعْ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ» .

They said: The Messenger of Allah—peace and blessings be upon him—established the effective cause for restricting bequests to a third as being to ensure the sufficiency of the heirs. Thus, if one has no heirs, the effective cause is lifted, and he may bequeath as he pleases. They said: This is the view of Ibn Masʿūd, and none among the Companions are known to have opposed him. They said: Since the wealth of one without heirs rightfully belongs to the Muslims—being ownerless property—and since none hold a rightful claim to it, its owner may dispose of it as he wills. They said: Just as the Imam may dispose of it after the owner's death as he deems fit, so too may the owner. We know of no contentious argument they advance beyond this, and none of it holds any valid proof for them.

قَالُوا: فَإِنَّمَا جَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْعِلَّةَ فِي أَنْ لَا يُتَجَاوَزَ الثُّلُثُ فِي الْوَصِيَّةِ أَنْ يُغْنِيَ الْوَرَثَةَ فَإِذَا لَمْ تَكُنْ لَهُ وَرَثَةٌ فَقَدْ ارْتَفَعَتْ الْعِلَّةُ فَلَهُ أَنْ يُوصِيَ بِمَا شَاءَ؟ وَقَالُوا: هُوَ قَوْلُ ابْنِ مَسْعُودٍ وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ؟ وَقَالُوا: فَلَمَّا كَانَ مَالُ مَنْ لَا وَارِثَ لَهُ إنَّمَا يَسْتَحِقُّهُ الْمُسْلِمُونَ، لِأَنَّهُ مَالٌ لَا يُعْرَفُ لَهُ رَبٌّ، فَإِذْ هُوَ هَكَذَا وَلَمْ يَكُنْ فِيهِ لِأَحَدٍ حَقٌّ فَلِصَاحِبِهِ أَنْ يَضَعَهُ حَيْثُ شَاءَ؟ وَقَالُوا: كَمَا لِلْإِمَامِ أَنْ يَضَعَهُ بَعْدَ مَوْتِهِ حَيْثُ شَاءَ فَكَذَلِكَ لِصَاحِبِهِ؟ مَا نَعْلَمُ لَهُمْ شَيْئًا يَشْغَبُونَ بِهِ غَيْرَ هَذَا وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ

[5] **Hadith references (L28251):** Sunan an-Nasai 3627; Sunan an-Nasai 3628; Jami at-Tirmidhi 2116.

أَمَّا قَوْلُهُمْ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الْعِلَّةَ فِي أَنْ لَا يُتَجَاوَزَ الثُّلُثُ غِنَى الْوَرَثَةِ فَبَاطِلٌ مِنْ قَوْلِهِمْ؟ مَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ إنَّ أَمْرِي بِأَنْ لَا يُتَجَاوَزَ الثُّلُثُ فِي الْوَصِيَّةِ؟ إنَّمَا هُوَ لِغِنَى الْوَرَثَةِ؟ إنَّمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «الثُّلُثُ وَالثُّلُثُ كَثِيرٌ» ؟ فَهَذِهِ قَضِيَّةٌ قَائِمَةٌ بِنَفْسِهَا، وَحُكْمٌ فَصْلٌ غَيْرُ مُتَعَلِّقٍ بِمَا بَعْدَهُ ثُمَّ ابْتَدَأَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَضِيَّةً أُخْرَى مُبْتَدَأَةً قَائِمَةً بِنَفْسِهَا، غَيْرَ مُتَعَلِّقَةٍ بِمَا قَبْلَهَا، فَقَالَ «إنَّكَ إنْ تَدَعْ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ» .

L28253 As for their claim that the Messenger of Allah—peace and blessings be upon him—made the wealth of the heirs the reason for not exceeding one-third in bequests, this is invalid. Did he—peace and blessings be upon him—ever say that his command to avoid exceeding one-third in bequests is solely for the heirs' affluence? He—peace and blessings be upon him—merely stated: "One-third, and one-third is much." This is an independent ruling, a decisive ruling unrelated to subsequent matters. Then he—peace and blessings be upon him—introduced another independent ruling, newly established and self-contained, unconnected to the prior context, stating: "Leaving your heirs wealthy is better than leaving them destitute, begging people for sustenance."[6]

بُرْهَانُ صِحَّةِ هَذَا الْقَوْلِ -: أَنَّهُ لَا يَحِلُّ أَنْ يُنْسَبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ عَلَّلَ عِلَّةً فَاسِدَةً مُنْكَرَةً حَاشَ لَهُ مِنْ ذَلِكَ.

L28254 The proof for the validity of this statement is that it is impermissible to attribute to the Messenger of Allah—may Allah bless him and grant him peace—that he posited an invalid and reprehensible rationale; far is he from that.

وَنَحْنُ نَجِدُ مَنْ لَهُ عَشَرَةٌ مِنْ الْوَرَثَةِ فُقَرَاءُ وَلَمْ يَتْرُكْ إلَّا دِرْهَمًا وَاحِدًا فَإِنَّ لَهُ بِإِقْرَارِهِمْ أَنْ يُوصِيَ بِثُلُثِهِ، وَلَا يَتْرُكُ لَهُمْ مَا يُغْنِيهِمْ مِنْ جُوعٍ غَدَاءً وَاحِدًا، وَلَا عَشَاءً وَاحِدًا.

L28255–28256 We find someone who has ten of the heirs as poor and has left behind only a single dirham. In such a case, he has the right, upon their acknowledgment, to bequeath a third of it, and he does not leave them sufficient to alleviate their hunger—not even a single lunch or dinner.

وَنَحْنُ نَجِدُ مَنْ لَا يَتْرُكُ وَارِثًا إلَّا وَاحِدًا غَنِيًّا مُوسِرًا مُكْثِرًا وَلَا يُخَلِّفُ إلَّا دِرْهَمًا وَاحِدًا، فَلَيْسَ لَهُ عِنْدَهُمْ وَلَا عِنْدَنَا أَنْ يُوصِيَ إلَّا بِثُلُثِهِ، وَلَيْسَ لَهُ غِنًى فِيمَا يَدَعُ لَهُ؟ وَلَوْ كَانَتْ الْعِلَّةُ مَا ذَكَرُوا لَكَانَ مَنْ تَرَكَ ابْنًا وَاحِدًا، وَتَرَكَ ثَلَاثَمِائَةِ أَلْفِ دِينَارٍ يَكُونُ لَهُ أَنْ يُوصِيَ بِالنِّصْفِ؛ لِأَنَّ لَهُ فِيمَا يَبْقَى غِنَى الْأَبَدِ، فَلَوْ كَانَتْ الْعِلَّةُ غِنَى الْوَرَثَةِ لَرُوعِيَ مَا يُغْنِيهِمْ عَلَى حَسَبِ كَثْرَةِ الْمَالِ وَقِلَّتِهِ - وَهَذَا بَاطِلٌ عِنْدَ الْجَمِيعِ.

L28257 We find a scenario where one leaves no heir except a single wealthy, affluent, and prosperous individual, yet bequeaths only one dirham. According to neither their position nor ours does he have the right to will except a third of it. Is there not sufficiency for him in what he leaves behind? Had the legal rationale been as they asserted, one who leaves a single son and three hundred thousand dinars would be entitled to will half, since what remains provides perpetual sufficiency. If the rationale were the heirs' sufficiency, consideration would be given to what suffices them relative to the wealth's abundance or scarcity—yet this position is null and void according to all jurists.

فَصَحَّ أَنَّ الَّذِي قَالُوا بَاطِلٌ، وَأَنَّ الشَّرِيعَةَ فِي ذَلِكَ إنَّمَا هُوَ تَحْدِيدُ الثُّلُثِ فَمَا دُونَهُ فَقَطْ - قَلَّ الْمَالُ أَوْ كَثُرَ، كَانَ فِيهِ لِلْوَرَثَةِ غِنًى أَوْ لَمْ يَكُنْ -.

L28258 Thus, it is established that what they claimed is invalid, and that the legisla-

[6] **Hadith references (L28253):** Sahih al-Bukhari 2742; Sunan an-Nasai 3627; Sunan an-Nasai 3628.

tive ruling in this matter is solely the restriction to a third or less—whether the estate is small or large, whether the heirs have sufficiency in it or not.

L28259 As for their statement: "It is the opinion of Ibn Masʿūd, and no opposing view is known from the Companions"—they may well be refuting the Mālikīs and Shāfiʿīs with this legal reasoning, those who advance proofs against them using similar reasoning, introducing it outside its intended framework, and perpetually bandying it about.

وَأَمَّا قَوْلُهُمْ: إِنَّهُ قَوْلُ ابْنِ مَسْعُودٍ وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، فَلَعَلَّهُمْ يَقْرَعُونَ بِهَذِهِ الْعِلَّةِ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، الَّذِينَ يَحْتَجُّونَ عَلَيْهِمْ بِمِثْلِهَا، وَيُورِدُونَهَا عَلَيْهِمْ فِي غَيْرِ مَا وُضِعَ وَيَتَقَاذَفُونَ لَهَا أَبَدًا.

L28260 As for us, we do not consider any proof valid except textual evidence from the Quran or the Sunnah of the Messenger of Allah—peace and blessings be upon him—and success comes only from Allah, the Exalted.

وَأَمَّا نَحْنُ فَلَا نَرَى حُجَّةً إلَّا فِي نَصِّ قُرْآنٍ أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28261 As for their assertion that the Muslim community takes the wealth of one who has no heir because it has no rightful owner—since no one becomes entitled to it upon his death, and thus the original owner retains the strongest claim to it—they have merely restated their claim and presented their own assertion as proof for itself. This is the point we contest, for their position is invalid. Rather, we and our wealth belong to Allah, the Exalted. It is impermissible for anyone to act regarding their own person or any wealth except with what Allah has authorized its owner [to do]. Your wealth is solely the wealth of Allah, the Almighty and Majestic.

وَأَمَّا قَوْلُهُمْ: إنَّمَا يَأْخُذُ الْمُسْلِمُونَ مَالَ مَنْ لَا وَارِثَ لَهُ؛ لِأَنَّهُ لَا رَبَّ لَهُ، فَإِذْ لَا يَسْتَحِقُّهُ بِمَوْتِهِ أَحَدٌ فَصَاحِبُهُ أَحَقُّ بِهِ؛ فَمَا زَادُونَا عَلَى تَكْرَارِ قَوْلِهِمْ، وَأَنْ جَعَلُوا دَعْوَاهُمْ حُجَّةً لِدَعْوَاهُمْ، وَفِي هَذَا نَازَعْنَاهُمْ، وَلَيْسَ كَمَا قَالُوا، لَكِنْ نَحْنُ وَأَمْوَالُنَا لِلَّهِ تَعَالَى وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَصَرَّفَ فِي نَفْسِهِ، وَلَا فِي مَالٍ إلَّا بِمَا أَذِنَ اللَّهُ لَهُ فِيهِ مَالِكُهُ، وَمَالُك مَالِهِ عَزَّ وَجَلَّ فَقَطْ.

L28262 Had Allah the Exalted not freed our hands over our wealth as He wills, we would have no legal authority over it, just as we have no legal discretion where He has not permitted us to manage it.

وَلَوْلَا أَنَّ اللَّهَ تَعَالَى أَطْلَقَ أَيْدِينَا عَلَى أَمْوَالِنَا فِيمَا شَاءَ لَمَا جَازَ لَنَا فِيهَا حُكْمٌ، كَمَا لَا يَجُوزُ لَنَا فِيهَا حُكْمٌ، حَيْثُ لَمْ يُبِحْ اللَّهُ تَعَالَى لَنَا التَّصَرُّفَ فِيهَا.

L28263 If it were not that Allah the Exalted permitted us to make a will after death, it would not be permissible for us to bequeath anything. Thus, Allah the Exalted permitted up to a third, and that is permissible, but He did not permit more than that; therefore, it is not permitted.

وَلَوْلَا أَنَّ اللَّهَ تَعَالَى أَذِنَ لَنَا فِي الْوَصِيَّةِ بَعْدَ الْمَوْتِ لَمَا جَازَ لَنَا أَنْ نُوصِيَ بِشَيْءٍ، فَأَبَاحَ اللَّهُ تَعَالَى الثُّلُثَ فَمَا دُونَهُ فَكَانَ ذَلِكَ مُبَاحًا وَلَمْ يُبِحْ أَكْثَرَ فَهُوَ غَيْرُ مُبَاحٍ.

L28264–28266 As for their assertion, "If the Imam may allocate it as he wills, does his companion not have greater right?"—this is a weak argument and flawed analogical reasoning (Qiyas). The ruling is invalid. Scholars state regarding one who leaves behind a wife but no blood relatives, patron, or male agnatic heirs: one-fourth of the estate is allotted to the wife, the Imam distributes the

وَأَمَّا قَوْلُهُمْ كَمَا لِلْإِمَامِ أَنْ يَضَعَهُ حَيْثُ يَشَاءُ فَصَاحِبُهُ أَوْلَى؟ فَكَلَامٌ بَارِدٌ، وَقِيَاسٌ فَاسِدٌ، وَهُمْ يَقُولُونَ فِيمَنْ تَرَكَ زَوْجَةً وَلَمْ يَتْرُكْ ذَا رَحِمٍ وَلَا مَوْلًى وَلَا عَاصِبًا: أَنَّ

remaining three-fourths as he deems fit, and the deceased is not permitted to bequeath more than one-third of the estate.

الرُّبُعَ لِلزَّوْجَةِ، وَأَنَّ الثَّلَاثَةَ الْأَرْبَاعِ يَضَعُهَا الْإِمَامُ حَيْثُ يَشَاءُ وَأَنَّهُ لَيْسَ لَهُ أَنْ يُوصِيَ بِأَكْثَرَ مِنْ الثُّلُثِ.

L28267 Why do they not analogize here? Just as the Imam may allocate three-fourths [of a share] as he deems fit, so too may the wealth owner. Yet this is the measure of their analogy - reflect upon it carefully.

فَهَلَّا قَاسُوا هَاهُنَا كَمَا لِلْإِمَامِ أَنْ يَضَعَ الثَّلَاثَةَ الْأَرْبَاعِ حَيْثُ يَشَاءُ، فَكَذَلِكَ صَاحِبُ الْمَالِ - وَلَكِنَّ هَذَا مِقْدَارُ قِيَاسِهِمْ فَتَأَمَّلُوهُ.

L28268 As for when the heirs consent to more than a third, then ʿAṭāʾ, al-Ḥasan, al-Zuhrī, Rabīʿah, Ḥammād ibn Abī Sulaymān, ʿAbd al-Malik ibn Yaʿlā, Muḥammad ibn Abī Laylā, and al-Awzāʿī said: If the heirs consent, their consent is irrevocable, and they did not specify any restriction on the validity of the one who consented during illness.

وَأَمَّا إذَا أَذِنَ الْوَرَثَةُ فِي أَكْثَرَ مِنْ الثُّلُثِ، فَإِنَّ عَطَاءً، وَالْحَسَنَ، وَالزُّهْرِيَّ، وَرَبِيعَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ، وَعَبْدَ الْمَلِكِ بْنَ يَعْلَى، وَمُحَمَّدَ بْنَ أَبِي لَيْلَى، وَالْأَوْزَاعِيَّ قَالُوا: إذَا أَذِنَ الْوَرَثَةُ فَلَا رُجُوعَ لَهُمْ، وَلَمْ يَخُصُّوا إذْنًا فِي صِحَّةِ مَنْ أَذِنَ فِي مَرَضٍ.

L28269 Shuraih, Tawus, al-Hakam ibn Utaybah, al-Nakha'i, al-Sha'bi, Sufyan al-Thawri, al-Hasan al-Basri, Abu Hanifah, al-Shafi'i, Abu Thawr, and Ahmad ibn Hanbal said: If the heirs permitted him during his illness, at the time of his death, or while he was healthy to bequeath more than a third, it is not enforceable against them, and they retain the right to retract [their consent] once he dies.

وَقَالَ شُرَيْحٌ، وَطَاوُسٌ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَالنَّخَعِيُّ وَالشَّعْبِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ: إذَا أَذِنُوا لَهُ فِي مَرَضِهِ أَوْ عِنْدَ مَوْتِهِ أَوْ فِي صِحَّتِهِ: بِأَنْ يُوصِيَ بِأَكْثَرَ مِنْ الثُّلُثِ لَمْ يَلْزَمْهُمْ، وَلَهُمْ الرُّجُوعُ إذَا مَاتَ.

L28270 A group said: That is not permissible at all, as we have narrated through the chain of Wakiʿ from al-Masʿūdī—he is Abū ʿUmayṣ ʿUtbah ibn ʿAbdullāh ibn ʿUtbah ibn ʿAbdullāh ibn Masʿūd—from Abū ʿAwn—he is Muḥammad ibn ʿUbaydullāh al-Thaqafī—from al-Qāsim ibn ʿAbd al-Raḥmān that a man sought formal consent from his heirs to bequeath more than a third. They permitted him, but when he died, they retracted. Ibn Masʿūd was asked, and he said to them: That nakirah (reprehensible matter) is impermissible.

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ ذَلِكَ أَصْلًا كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ الْمَسْعُودِيِّ - هُوَ أَبُو عُمَيْسٍ عُتْبَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِي عَوْنٍ - هُوَ مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ الثَّقَفِيُّ - عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا اسْتَأْمَرَ وَرَثَتَهُ فِي أَنْ يُوصِيَ بِأَكْثَرَ مِنْ الثُّلُثِ؟ فَأَذِنُوا لَهُ، فَلَمَّا مَاتَ رَجَعُوا، فَسُئِلَ ابْنُ مَسْعُودٍ، فَقَالَ لَهُمْ ذَلِكَ النَّكِرَةُ لَا يَجُوزُ.

L28271 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Dawud from Ikrimah from Ibn Abbas, he said: Causing harm in a will is among the major sins. Then Ibn Abbas recited: "These are Allah's limits, so do

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ دَاوُد عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: الضِّرَارُ فِي الْوَصِيَّةِ مِنْ الْكَبَائِرِ، ثُمَّ قَرَأَ ابْنُ عَبَّاسٍ، {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ} [البقرة: ٢٢٩] .

not transgress them. And whoever transgresses Allah's limits..." [Al-Baqarah 2:229].[7]

L28272–28274 And through the chain of Abd al-Razzaq from Ma'mar from Ash'ath ibn Abdullah from Shahr ibn Hawshab from Abu Hurayrah as a musnad narration: "Verily, a man may perform the deeds of the people of righteousness for seventy years, but when he makes his will, he acts unjustly in it, and thus his deeds are sealed with the worst of his actions, so he enters Hell. And verily, a man may perform the deeds of the people of wickedness for seventy years, yet he acts justly in his will, and thus his deeds are sealed with the best of his actions, so he enters Paradise." Then Abu Hurayrah said: "Read, if you will: 'These are the limits set by Allah' [Al-Baqarah 2:229]—up to His saying—'a humiliating punishment' [Al-Baqarah 2:90]." Abu Muhammad said: We cited it solely for the statement of Abu Hurairah alone.[8]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَشْعَثَ بْنِ عَبْدِ اللَّهِ عَنْ شَهْرِ بْنِ حَوْشَبٍ عَنْ أَبِي هُرَيْرَةَ مُسْنَدًا «أَنَّ الرَّجُلَ لَيَعْمَلُ بِعَمَلِ أَهْلِ الْخَيْرِ سَبْعِينَ سَنَةً فَإِذَا أَوْصَى جَارَ فِي وَصِيَّتِهِ، فَيُخْتَمُ لَهُ بِشَرِّ عَمَلِهِ فَيَدْخُلُ النَّارَ - وَإِنَّ الرَّجُلَ لَيَعْمَلُ بِعَمَلِ أَهْلِ الشَّرِّ سَبْعِينَ سَنَةً فَيَعْدِلُ فِي وَصِيَّتِهِ، فَيُخْتَمُ لَهُ بِخَيْرِ عَمَلِهِ فَيَدْخُلُ الْجَنَّةَ» - ثُمَّ يَقُولُ أَبُو هُرَيْرَةَ: اقْرَءُوا إِنْ شِئْتُمْ {تِلْكَ حُدُودُ اللَّهِ} [البقرة: ٢٢٩]- إِلَى قَوْلِهِ - {عَذَابٌ مُهِينٌ} [البقرة: ٩٠] قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا أَوْرَدْنَاهُ لِقَوْلِ أَبِي هُرَيْرَةَ فَقَطْ.

L28275 And through the chain of Abd al-Razzaq from Ma'mar from al-Zuhri from Urwah ibn al-Zubayr, who said: The living heirs may nullify the unfair bequest of the testator as they nullify the unfair bequest of the testator in his will. These three Companions—with none among the Companions (may Allah be pleased with them) known to have opposed them—invalidated whatever contradicted the Sunnah regarding wills, neither permitting it nor requiring the heirs' consent. This is the position of al-Muzani, Abu Sulayman, and our fellow scholars.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: يَرُدُّ عَنْ حَيْفِ النَّاحِلِ الْحَيُّ مَا يَرُدُّ مِنْ حَيْفِ النَّاحِلِ فِي وَصِيَّتِهِ، فَهَؤُلَاءِ ثَلَاثَةٌ مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ أَبْطَلُوا مَا خَالَفَ السُّنَّةَ فِي الْوَصِيَّةِ، وَلَمْ يُجِيزُوهُ، وَلَمْ يَشْتَرِطُوا رِضَا الْوَرَثَةِ - وَهُوَ قَوْلُ الْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L28276 Mālik said: If he sought their permission while he was in good health and they permitted him, they may revoke [the permission] after his death. If he sought their permission during his deathbed illness and they permitted him, they cannot revoke—unless they are his household dependents whom he financially supports, in which case they may revoke.

وَقَالَ مَالِكٌ: إِنْ اسْتَأْذَنَهُمْ فِي صِحَّتِهِ فَأَذِنُوا لَهُ فَلَهُمْ الرُّجُوعُ إِذَا مَاتَ، وَإِنْ اسْتَأْذَنَهُمْ فِي مَرَضِ مَوْتِهِ فَأَذِنُوا لَهُ فَلَا رُجُوعَ لَهُمْ، إِلَّا أَنْ يَكُونُوا فِي عِيَالِهِ وَنَفَقَتِهِ فَلَهُمْ الرُّجُوعُ.

L28277 Abu Muhammad said: As for Mālik's statement—we do not know of anyone before him who held this view, nor do we know of any foundational evidence for it. The estate—whether in whole or in part—must either belong to its

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ: فَلَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، وَلَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا - وَلَا يَخْلُو الْمَالُ كُلُّهُ أَوْ بَعْضُهُ مِنْ أَنْ يَكُونَ لِمَالِكِهِ فِي صِحَّتِهِ وَفِي مَرَضِهِ، أَوْ يَكُونَ كُلُّهُ أَوْ بَعْضُهُ لِوَرَثَتِهِ فِي صِحَّتِهِ وَمَرَضِهِ فَإِنْ كَانَ الْمَالُ لِصَاحِبِهِ فِي صِحَّتِهِ وَمَرَضِهِ فَلَا إِذْنَ لِلْوَرَثَةِ فِيهِ - وَمِنْ الْمُحَالِ الْبَاطِلِ جَوَازُ إِذْنِهِمْ فِيمَا لَا حَقَّ لَهُمْ فِيهِ، وَفِيمَا هُوَ حَرَامٌ عَلَيْهِمْ،

[7] **Qur'an references (L28271):** Qur'an 2:229 (Al-Baqarah).

[8] **Qur'an references (L28272):** Qur'an 2:187 (Al-Baqarah); Qur'an 2:229 (Al-Baqarah); Qur'an 4:13 (An-Nisa); Qur'an 2:90 (Al-Baqarah).

owner during his sound health and illness, or belong wholly or partially to his heirs during their sound health and illness. If the estate belongs to its owner during his health and illness, then the heirs hold no authority over it. It is utterly absurd and invalid to validate their permission regarding matters they have no legitimate claim to—matters that are inherently forbidden for them. Were they to steal a single dinar from it, the thief among them would warrant amputation. Moreover, should one of them die before the sick person's death, their share would pass to their own heirs. No rational basis exists for claiming any portion of the sick person's estate belongs to an heir prior to the death of the testator, for the reasons we have outlined. Thus, this assertion is definitively invalid.

حَتَّى لَوْ سَرَقُوا مِنْهُ دِينَارًا لَوَجَبَ الْقَطْعُ عَلَى مَنْ سَرَقَهُ مِنْهُمْ - وَقَدْ يَمُوتُ أَحَدُهُمْ قَبْلَ مَوْتِ الْمَرِيضِ فَيَرِثُهُ، وَلَا سَبِيلَ إلَى أَنْ يَقُولَ أَحَدٌ: إنَّ شَيْئًا مِنْ مَالِ الْمَرِيضِ لِوَارِثِهِ قَبْلَ مَوْتِ الْمَوْرُوثِ لِمَا ذَكَرْنَا، فَبَطَلَ هَذَا الْقَوْلُ بِيَقِينٍ.

L28278 As for those who deem their permission valid, they cite as evidence the words of Allah, Mighty and Majestic: "Fulfill the covenants" (Q. 5:1), and this is a covenant they have bound themselves to, so they must discharge it.[9]

وَأَمَّا مَنْ أَجَازَ إذْنَهُمْ فَإِنَّهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَهَذَا عَقْدٌ قَدْ الْتَزَمُوهُ فَعَلَيْهِمْ الْوَفَاءُ بِهِ.

L28279 Abū Muḥammad said: It would necessarily follow for those who validate manumission before ownership and divorce before marriage—that they must affirm the binding authority of this ruling. Yet they contradicted themselves regarding this matter.

قَالَ أَبُو مُحَمَّدٍ: وَلَقَدْ كَانَ يَلْزَمُ مَنْ أَجَازَ الْعِتْقَ قَبْلَ الْمِلْكِ، وَالطَّلَاقَ قَبْلَ النِّكَاحِ: أَنْ يَقُولَ بِإِلْزَامِهِمْ هَذَا الْإِذْنَ، وَلَكِنَّهُمْ تَنَاقَضُوا فِي ذَلِكَ.

L28280 Ali said: "As for us, we say: Every contract not established by the Quran or the Sunnah through explicit command or permission is invalid. Indeed, Allah, the Exalted, has commanded the honoring only of contracts that He has explicitly ordained through textual proof or explicitly permitted through textual proof."

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَنَقُولُ: كُلُّ عَقْدٍ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ بِالْأَمْرِ بِهِ أَوْ بِإِبَاحَتِهِ فَهُوَ بَاطِلٌ، وَإِنَّمَا أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِالْعُقُودِ الَّتِي أَمَرَ بِهَا نَصًّا أَوْ أَبَاحَهَا نَصًّا.

L28281 As for one who makes a vow to commit a sin, Allah the Exalted has never permitted fulfilling such a pledge—rather, He has prohibited it. This applies to one who vows to commit adultery, drink alcohol, or exceed the one-third share [in bequests], which constitutes a prohibited transgression. Therefore, any commitment made in [seeking] permission regarding that which Allah the Exalted has not permitted is invalid and forbidden. Thus, this assertion is invalidated.

وَأَمَّا مَنْ عَقَدَ مَعْصِيَةً فَمَا أَذِنَ اللَّهُ تَعَالَى قَطُّ فِي الْوَفَاءِ بِهَا، بَلْ حَرَّمَ عَلَيْهِ ذَلِكَ، كَمَنْ عَقَدَ عَلَى نَفْسِهِ أَنْ يَزْنِيَ، أَوْ يَشْرَبَ الْخَمْرَ - وَالزِّيَادَةُ عَلَى الثُّلُثِ مَعْصِيَةٌ مَنْهِيٌّ عَنْهَا، فَالْعَقْدُ فِي الْإِذْنِ مِنْ ذَلِكَ فِيمَا لَمْ يَأْذَنْ اللَّهُ تَعَالَى فِيهِ بَاطِلٌ مُحَرَّمٌ - فَسَقَطَ هَذَا الْقَوْلُ.

[9] **Qur'an references (L28278):** Qur'an 5:1 (Al-Ma'idah).

وَأَمَّا مَنْ أَجَازَ لِلْوَرَثَةِ أَنْ يُجِيزُوا ذَلِكَ بَعْدَ الْمَوْتِ خَطَأً ظَاهِرًا، لِأَنَّ الْمَالَ حِينَئِذٍ صَارَ لِلْوَرَثَةِ، فَحُكْمُ الْمُوصِي فِيمَا اسْتَحَقُّوهُ بِالْمِيرَاثِ بَاطِلٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَيْسَ لَهُمْ إِجَازَةُ الْبَاطِلِ، لَكِنْ إِنْ أَحَبُّوا أَنْ يُنَفِّذُوا ذَلِكَ مِنْ مَالِهِمْ بِاخْتِيَارِهِمْ فَلَهُمْ ذَلِكَ وَلَهُمْ حِينَئِذٍ أَنْ يَجْعَلُوا الْأَجْرَ لِمَنْ شَاءُوا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

As for those who permit the heirs to validate such acts after death, this is a clear error, for the wealth at that point becomes the property of the heirs. Therefore, the testator's ruling regarding what they have rightfully acquired by inheritance is invalid, based on the statement of Allah's Messenger (peace and blessings be upon him): "Your blood, your wealth, and your honor are inviolable to you." Thus, they may not validate invalid matters. However, if they wish to voluntarily fulfill this from their own wealth, they may do so, and at that point, they may designate the reward to whomever they wish—and success is from Allah, the Exalted.

وَهَذَا مِمَّا خَالَفُوا فِيهِ ثَلَاثَةً مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ.

This is among the matters in which they differed from three Companions, with no dissent against them known from the other Companions.

[مَسْأَلَةٌ أَوْصَى بِأَكْثَرَ مِنْ ثُلُثِ مَالِهِ ثُمَّ حَدَثَ لَهُ مَالٌ]

Issue: A case where one bequeathed more than a third of their wealth, then additional wealth came into their possession.

١٧٥٦ - مَسْأَلَةٌ: وَمَنْ أَوْصَى بِأَكْثَرَ مِنْ ثُلُثِ مَالِهِ، ثُمَّ حَدَثَ لَهُ مَالٌ لَمْ يَجُزْ مِنْ وَصِيَّتِهِ إِلَّا مِقْدَارُ ثُلُثِ مَا كَانَ لَهُ حِينَ الْوَصِيَّةِ، لِأَنَّ مَا زَادَ عَلَى ذَلِكَ عَقَدَهُ عَقْدًا حَرَامًا لَا يَحِلُّ كَمَا ذَكَرْنَا وَمَا كَانَ بَاطِلًا فَلَا يَجُوزُ أَنْ يَصِحَّ فِي ثَانٍ، إذْ لَمْ يُعْقَدْ وَلَا مُحَالَ أَكْثَرُ مِنْ عَقْدٍ لَمْ يَصِحَّ حُكْمُهُ إذْ عُقِدَ، ثُمَّ يَصِحُّ حُكْمُهُ إذْ لَمْ يُعْقَدْ.

1756. Issue: If someone bequeaths more than a third of their estate and later acquires new wealth, only a third of what they owned at the time of the bequest is permissible from their will. This is because anything exceeding that constitutes a forbidden contract, which is impermissible as we have explained. What is void cannot become valid afterward, since it was never contracted. It is impossible for the ruling of a contract that was invalid when contracted to subsequently become valid when not contracted.

فَلَوْ أَوْصَى بِثُلُثِهِ فَأَقَلَّ، ثُمَّ نَقَصَ مَالُهُ حَتَّى لَمْ يَحْتَمِلْ وَصِيَّتَهُ، ثُمَّ زَادَ لَمْ يُنَفَّذْ مِنْ وَصِيَّتِهِ إِلَّا مِقْدَارُ ثُلُثِ مَا رَجَعَ إلَيْهِ مِنْ مَالِهِ، لِأَنَّ وَصِيَّتَهُ بِمَا زَادَ عَلَى ثُلُثِ مَا رَجَعَ إلَيْهِ مَالُهُ قَدْ بَطَلَتْ، وَمَا بَطَلَ فَلَا سَبِيلَ إلَى عَوْدَتِهِ دُونَ أَنْ تَبْتَدِئَ إعَادَتُهُ بِعَقْدٍ آخَرَ، إذْ قَدْ بَطَلَ الْعَقْدُ الْأَوَّلُ.

If he bequeaths a third or less of his estate, then his wealth diminishes until it cannot sustain his bequest, and later increases, only the amount equivalent to a third of the wealth that returned to him is executed from the bequest. This is because the portion of his bequest exceeding a third of the wealth restored to him has been invalidated. Once invalidated, there is no way to reinstate it without initiating its restoration through a new contract, as the original contract has been nullified.

فَلَوْ أَوْصَى بِأَكْثَرَ مِنْ ثُلُثِ مَالِهِ عَامِدًا وَلَهُ مَالٌ لَمْ يَعْلَمْ بِهِ لَمْ يُنَفَّذْ إلَّا فِي مِقْدَارِ ثُلُثِ مَا عَلِمَ فَقَطْ، لِأَنَّهُ عَقَدَ مَا زَادَ عَلَى ذَلِكَ عَقْدَ مَعْصِيَةٍ، فَهُوَ بَاطِلٌ.

If someone intentionally bequeaths more than a third of their wealth while possessing unknown property, only the measure equivalent to a third of what they were aware of is executed. This is because the excess beyond that is bound as a sinful act, hence invalid.

فَلَوْ قَالَ فِي كُلِّ مَا ذَكَرْنَا: إنْ رَزَقَنِي اللَّهُ مَالًا فَإِنِّي أُوصِي مِنْهُ بِكَذَا، أَوْ قَالَ أُوصِي إذَا مَاتَ أَنْ يُخْرَجَ عَنْهُ ثُلُثُ مَا يَتَخَلَّفُ، أَوْ جُزْءًا مُشَاعًا أَقَلَّ مِنْ الثُّلُثِ - أَوْ قَالَ: فَيَخْرُجُ مِمَّا يَتَخَلَّفُ كَذَا وَكَذَا: فَهَذَا جَائِزٌ وَتُنَفَّذُ وَصِيَّتُهُ مِنْ كُلِّ مَا كَسَبَهُ قَبْلَ مَوْتِهِ وَبَعْدَ تِلْكَ الْوَصِيَّةِ، بِأَيِّ وَجْهٍ كَسَبَهُ، أَوْ بِأَيِّ وَجْهٍ صَحِيحٍ مَلَكَهُ، بِمِيرَاثٍ أَوْ غَيْرِهِ، عَلِمَ بِهِ أَوْ لَمْ يَعْلَمْ؛ لِأَنَّهُ عَقَدَ عَقْدًا صَحِيحًا فِيمَا يَتَخَلَّفُهُ، وَلَمْ يَخُصَّ بِوَصِيَّتِهِ مَا يَمْلِكُ حِينَ الْوَصِيَّةِ، وَقَدْ عَقَدَ وَصِيَّتَهُ عَقْدًا صَحِيحًا لَمْ يَتَعَدَّ فِيهِ مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، فَهِيَ وَصِيَّةٌ صَحِيحَةٌ كَمَا ذَكَرْنَا.

L28289 If he stated in each case we have mentioned: “If God provides me with wealth, I will bequeath from it such-and-such,” or said: “I bequeath that when I die, a third of what remains shall be taken from it,” or an undivided share less than a third—or said: “Then such-and-such shall be taken from what remains”—this is permissible. His will is fulfilled from everything he acquired before his death and after that will, regardless of how he acquired it or by what valid means he came to own it, whether through inheritance or otherwise, whether he was aware of it or not. This is because he executed a valid undertaking concerning what he would leave behind, without restricting his will to what he owned at the time of its creation. He established his will through a valid declaration without transgressing what God Almighty has commanded. Thus, it is a valid will as we have mentioned.

فَلَوْ أَوْصَى بِثُلُثِ مَالِهِ - وَمَالُهُ يَحْتَمِلُهُ - وَلَهُ مَالٌ لَمْ يَعْلَمْ بِهِ، ثُمَّ نَقَصَ مَالُهُ الَّذِي عَلِمَ أَوْ لَمْ يَنْقُصْ، فَوَصِيَّتُهُ نَافِذَةٌ فِيمَا عَلِمَ وَفِيمَا لَمْ يَعْلَمْ؛ لِأَنَّهُ عَقَدَهَا عَقْدًا صَحِيحًا تَامًّا مِنْ حِينِ عَقَدَهُ إلَى حِينِ مَاتَ، وَلَا تَدْخُلُ دِيَتُهُ إنْ قُتِلَ خَطَأً فِيمَا تُنَفَّذُ مِنْهُ وَصَايَاهُ؛ لِأَنَّهَا لَمْ تَجِبْ لَهُ قَطُّ، وَلَا مَلَكَهَا قَطُّ، وَإِنَّمَا وَجَبَتْ بَعْدَ مَوْتِهِ لِوَرَثَتِهِ فَقَطْ - وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ، وَزِيَادٍ الْأَعْلَمِ، قَالَ الْحَجَّاجُ: عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ زِيَادٌ الْأَعْلَمُ: عَنْ الْحَسَنِ، ثُمَّ اتَّفَقَ عَلِيٌّ، وَالْحَسَنُ فِيمَنْ أَوْصَى بِثُلُثِ مَالِهِ، ثُمَّ قُتِلَ خَطَأً: أَنَّهُ يَدْخُلُ ثُلُثُ دِيَتِهِ فِي ثُلُثِهِ، وَإِنْ كَانَ اسْتَفَادَ مَالًا وَلَمْ يَكُنْ شَعَرَ بِهِ: دَخَلَ ثُلُثُهُ فِي وَصِيَّتِهِ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالْأَوْزَاعِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ - وَبِهِ قَالَ أَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، حَاشَ الدِّيَةَ فَلَا تَدْخُلُ وَصِيَّتُهُ فِيهَا.

L28290–28292 If he bequeaths a third of his wealth—while his estate can bear it and he possesses assets he was unaware of—then whether his known wealth diminishes or remains unchanged, his will applies to what he knew of and what he did not, for he established it as a legally sound and complete contract. From the time he contracted his will until his death, his diyah (blood money) – if he is killed unintentionally – does not enter the portion from which his bequests are executed. This is because it was never owed to him personally nor did he ever own it, as it becomes due solely to his heirs after his death. This is the view of a group of the Salaf, as narrated through Ḥammād ibn Salamah from al-Ḥajjāj ibn Arṭāh and Ziyād al-Aʿlam. Al-Ḥajjāj narrated from Abū Isḥāq al-Sabīʿī, from al-Ḥārith, from ʿAlī ibn Abī Ṭālib. Ziyād al-Aʿlam narrated from al-Ḥasan. Both ʿAlī and al-Ḥasan agreed regarding one who bequeaths a third of his property and is later killed unintentionally: a third of his diyah enters into his third. If he acquired property without being aware of it, a third of it enters into his bequest. This ruling is endorsed by Ibrāhīm al-Nakhaʿī, al-Awzāʿī, Abū Ḥanīfah, his companions, Abū Thawr, Aḥmad ibn Ḥanbal, and Isḥāq – with the exception of the diyah, which his bequest does not include.

L28293 Others said: His will applies only regarding what he knew of his wealth, not regarding what he was unaware of. This was reported from Abān ibn

ʿUthmān, ʿUmar ibn ʿAbd al-ʿAzīz, Makhūl, Yaḥyā ibn Saʿīd al-Anṣārī, and Rabīʿah.

وَقَالَ آخَرُونَ: لَا تَدْخُلُ وَصِيَّتُهُ إِلَّا فِيمَا عَلِمَ مِنْ مَالِهِ، لَا فِيمَا لَمْ يَعْلَمْ بِهِ - رُوِيَ ذَلِكَ عَنْ أَبَانَ بْنِ عُثْمَانَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَمَكْحُولٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ.

L28294 Mālik also held the same view, except regarding what he anticipated without knowing its measure - such as profit from wealth he awaited or produce whose quantity he did not know - for indeed his bequests encompass these. We know of no one before him who made this division, nor do we know of any evidence for it whatsoever.

وَقَالَ مَالِكٌ كَذَلِكَ، إِلَّا فِيمَا رَجَاهُ وَلَمْ يَعْلَمْ قَدْرَهُ، كَرِبْحِ مَالٍ يَنْتَظِرُهُ، أَوْ غَلَّةٍ لَا يَدْرِي مَبْلَغَهَا، فَإِنَّ وَصَايَاهُ تَدْخُلُ فِيهَا - وَمَا نَعْلَمُ هَذَا التَّقْسِيمَ عَنْ أَحَدٍ قَبْلَهُ، وَلَا نَعْلَمُ لَهُ حُجَّةً أَصْلًا

L28295 The proof for the validity of our position is Allah's statement in the verse of inheritance: {after any bequest he may have ordained or any debt} [An-Nisā' 4:11]. Thus, the Almighty has mandated inheritance from all his wealth - whether he knew of it or not - while similarly ordaining that bequests and debts have priority over inheritance. Therefore, differentiating between them without evidence is void. Only what from the bequest is intended for what Allah has forbidden becomes invalid. We know of no foundational argument from our opponents whatsoever - indeed, they have opposed a Companion in this matter for whom no opposition from the Companions is known.[10]

وَبُرْهَانُ صِحَّةِ قَوْلِنَا: - قَوْلُ اللَّهِ تَعَالَى فِي آيَةِ الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَأَوْجَبَ عَزَّ وَجَلَّ الْمِيرَاثَ فِي كُلِّ مَا عَلِمَ بِهِ مِنْ مَالِهِ أَوْ لَمْ يَعْلَمْ، وَأَوْجَبَ الْوَصِيَّةَ وَالدَّيْنَ مُقَدَّمَيْنِ كَذَلِكَ عَلَى الْمَوَارِيثِ، فَالْمُفَرَّقُ بَيْنَ ذَلِكَ مُبْطِلٌ بِلَا دَلِيلٍ، وَإِنَّمَا يَبْطُلُ مِنَ الْوَصِيَّةِ مَا قَصَدَ بِهِ مَا نَهَى اللَّهُ تَعَالَى عَنْهُ فَقَطْ، وَمَا نَعْلَمُ لِمُخَالِفِينَا حُجَّةً أَصْلًا - وَقَدْ خَالَفُوا فِي ذَلِكَ صَاحِبًا لَا يُعْرَفُ لَهُ مِنَ الصَّحَابَةِ مُخَالِفٌ.

L28296 If they say: "The narration regarding that from Ali is not valid because its chain includes Al-Hajjaj and Al-Harith?" we reply: And the narration from Aban ibn Uthman is not valid because it is transmitted through Abd al-Hakam ibn Abdullah (who is weak); nor is it valid from Umar ibn Abd al-Aziz, as it comes through Yazid ibn Iyad (who is known for lying); nor from Makhul because its chain contains Maslamah ibn Ali (who is weak); nor from Rabi'ah and Yahya ibn Sa'id since their narration derives from an anonymous narrator. And success comes from Allah, the Exalted.

فَإِنْ قَالُوا: إِنَّ الرِّوَايَةَ فِي ذَلِكَ عَنْ عَلِيٍّ لَا تَصِحُّ، لِأَنَّ فِيهَا الْحَجَّاجَ، وَالْحَارِثَ؟ قُلْنَا: وَالرِّوَايَةُ عَنْ أَبَانَ بْنِ عُثْمَانَ لَا تَصِحُّ، لِأَنَّهَا عَنْ عَبْدِ الْحَكَمِ بْنِ عَبْدِ اللَّهِ - وَهُوَ ضَعِيفٌ - وَلَا تَصِحُّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، لِأَنَّهَا عَنْ يَزِيدَ بْنِ عِيَاضٍ - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - وَلَا تَصِحُّ عَنْ مَكْحُولٍ، لِأَنَّهَا عَنْ مَسْلَمَةَ بْنِ عَلِيٍّ - وَهُوَ ضَعِيفٌ - وَلَا عَنْ رَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ، لِأَنَّهَا عَمَّنْ لَمْ يُسَمَّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Legal Ruling on a Bequest to a Deceased Person

[مَسْأَلَة الْوَصِيَّة لميت]

L28297–28298

L28299 Issue: It is not permissible to bequeath anything to a deceased person, be-

[10] **Qur'an references (L28295):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

cause the deceased cannot own anything. Furthermore, if a testator bequeaths property to a living person and then dies, the bequest to that person is invalidated.

L28300 If a bequest is made to both a living and deceased person, half of the bequest is permissible for the living, and the half for the deceased is void.

L28301 Similarly, if he bequeaths to two living persons and then one of them dies, the survivor is entitled to half, and the deceased's share becomes void. This is the opinion of Ali ibn Abi Talib and others.

L28302 Malik said: If the testator knew that the one to whom he bequeathed was deceased, then it belongs to the heirs of the deceased. Then if he did not know, it belongs to the heirs of the testator.

L28303 Ali said: This is a corrupt division without proof. If it is argued: "If he bequeathed to someone while on his deathbed, does that mean he intended it for his heirs?" We respond: This is void. Had he intended the bequest for his heirs, he could have stated that. Imputing to him words he did not utter constitutes ruling by conjecture, and ruling by conjecture is impermissible.

L28304 **The Jurisprudential Issue of Bequest to a Dhimmi.**

L28305 1758 - Issue: A will for a *Dhimmi* is permissible, and no scholarly dissent is recorded on this matter. The Messenger of Allah (peace be upon him) said, "There is a reward for every living being."

L28306 **The Issue of the Bequest of What Cannot Be Fulfilled for the One to Whom It Was Bequeathed**

L28307 1759 - Issue: A bequest is not valid for anything that cannot be executed for the beneficiary, nor for what is bequeathed at the time of the testator's death. Examples include: bequeathing maintenance for a person over a specified period; manumitting a slave after he serves someone for a specified period—whether short or long; assuming responsibility for his garden during the newly established period; the mule of his household; or similar cases. All such

مَسْأَلَةٌ: وَلَا تَجُوزُ الْوَصِيَّةُ لِمَيِّتٍ، لِأَنَّ الْمَيِّتَ لَا يَمْلِكُ شَيْئًا، فَمَنْ أَوْصَى لِحَيٍّ ثُمَّ مَاتَ بَطَلَتْ الْوَصِيَّةُ لَهُ.

فَإِنْ أَوْصَى لِحَيٍّ وَلِمَيِّتٍ جَازَ نِصْفُهَا لِلْحَيِّ وَبَطَلَ نِصْفُ الْمَيِّتِ.

وَكَذَلِكَ لَوْ أَوْصَى لِحَيَّيْنِ ثُمَّ مَاتَ أَحَدُهُمَا جَازَ لِلْحَيِّ فِي النِّصْفِ وَبَطَلَتْ حِصَّةُ الْمَيِّتِ - وَهُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ وَغَيْرِهِ.

وَقَالَ مَالِكٌ: إنْ كَانَ عَلِمَ الْمُوصِي بِأَنَّ الَّذِي أَوْصَى لَهُ مَيِّتٌ فَهُوَ لِوَرَثَةِ الْمَيِّتِ، فَإِنْ كَانَ لَمْ يَعْلَمْ فَهُوَ لِوَرَثَةِ الْمُوصِي.

قَالَ عَلِيٌّ: هَذَا تَقْسِيمٌ فَاسِدٌ بِلَا بُرْهَانٍ -: فَإِنْ قِيلَ: إذَا أَوْصَى لَهُ وَهُوَ مَيِّتٌ فَإِنَّمَا أَرَادَ أَنْ يَكُونَ لِوَرَثَتِهِ؟ قُلْنَا: هَذَا بَاطِلٌ، وَلَوْ أَرَادَ الْوَصِيَّةَ لِوَرَثَتِهِ لَقَدَرَ عَلَى أَنْ يَقُولَ ذَلِكَ، فَتَقْوِيلُهُ مَا لَمْ يَقُلْ حُكْمٌ بِالظَّنِّ، وَالْحُكْمُ بِالظَّنِّ لَا يَحِلُّ.

[مَسْأَلَةُ الْوَصِيَّةِ لِلذِّمِّيِّ]

١٧٥٨ - مَسْأَلَةٌ: وَالْوَصِيَّةُ لِلذِّمِّيِّ جَائِزَةٌ، وَلَا نَعْلَمُ فِي هَذَا خِلَافًا، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِي كُلِّ ذِي كَبِدٍ رَطْبَةٍ أَجْرٌ» .

[مَسْأَلَةُ الْوَصِيَّةُ بِمَا لَا يُنَفَّذُ لِمَنْ أَوْصَى لَهُ بِهَا]

١٧٥٩ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْوَصِيَّةُ بِمَا لَا يُنَفَّذُ لِمَنْ أَوْصَى لَهُ بِهَا، أَوْ فِيمَا أَوْصَى بِهِ سَاعَةَ مَوْتِ الْمُوصِي -: مِثْلُ أَنْ يُوصِيَ بِنَفَقَةٍ عَلَى إنْسَانٍ مُدَّةً مُسَمَّاةً، أَوْ بِعِتْقِ عَبْدٍ بَعْدَ أَنْ يَخْدُمَ فُلَانًا مُدَّةً مُسَمَّاةً قَلَّتْ أَوْ كَثُرَتْ، أَوْ يَحْمِلُ بُسْتَانَهُ فِي الْمُسْتَأْنَفِ، أَوْ بَغْلَةَ

bequests are invalid, and none of them are executed. This is a matter where scholars have differed. It has been narrated to us through Ibn Wahb's chain from al-Layth ibn Saʿd, from Yazīd ibn Abī Ḥabīb, from Ibn Shihāb, regarding one who bequeaths sheep to another during his lifetime: it is permissible. The beneficiary may claim their milk, wool, and offspring during his [the beneficiary's] lifetime, as he tends to them and oversees them. However, he may only consume from the flock to the extent its owner would consume from the livestock. Likewise, he may take from their offspring what he would take from their mothers.

دَارِهِ، وَمَا أَشْبَهَ ذَلِكَ: فَهَذَا كُلُّهُ بَاطِلٌ لَا يُنَفَّذُ مِنْهُ شَيْءٌ، وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ ابْنِ شِهَابٍ: أَنَّهُ قَالَ فِيمَنْ أَوْصَى لِآخَرَ بِغَنَمٍ حَيَاتَهُ أَنَّهُ جَائِزٌ، وَيَكُونُ لِلْمُوصِي لَهُ مِنْ الْغَنَمِ أَلْبَانُهَا وَأَصْوَافُهَا وَأَوْلَادُهَا مُدَّةَ حَيَاتِهِ؛ لِأَنَّهُ يَعْمَلُ فِيهَا وَيَقُومُ عَلَيْهَا، وَلَيْسَ لَهُ أَنْ يَأْكُلَ مِنْهَا إلَّا بِقَدْرِ مَا كَانَ رَبُّهَا يَأْكُلُ مِنْ عُرُوضِهَا، وَكَذَلِكَ يُصِيبُ مِنْ أَوْلَادِهَا مَا يُصِيبُ مِنْ أُمَّهَاتِهَا.

L28308–28310 Abu Muhammad said: This is a clearly erroneous view. The first reason for this is that he granted him its wool, milk, and offspring for the duration of his life, since he is responsible for its upkeep. Thus, this constitutes a lease, and a lease involving an unspecified element for an unspecified duration. It is invalid and impermissible; consuming wealth wrongfully is invalid; and any condition not in the Book of Allah Almighty is invalid. He has no right to consume from the actual sheep except what the testator used to consume from them. This is utterly void because it is undefined, as it was possible for him to consume much from them in a year, possible to consume nothing, and possible to consume little. This too constitutes wrongful consumption of wealth. The testator had the right to sell them, gift them, or sell from them. Why did he not grant the legatee the right to sell from them or gift them as the testator could? Otherwise, what distinguishes consumption through eating from consumption through sale or gift? Ali said: What suffices here is that the legatee either owns the sheep bequeathed to him for the duration of his lifetime or does not own them - there being no third category. If he owns them, he may sell all or any portion he wills, gift them likewise, or consume them likewise.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلٌ ظَاهِرُ الْخَطَأِ، أَوَّلُ ذَلِكَ: أَنْ جَعَلَ لَهُ أَصْوَافَهَا وَأَلْبَانَهَا وَأَوْلَادَهَا مُدَّةَ حَيَاتِهِ؛ لِأَنَّهُ يَقُومُ عَلَيْهَا فَهَذِهِ إجَارَةٌ إذًا، وَالْإِجَارَةُ بِمَجْهُولٍ عَلَى مُدَّةٍ مَجْهُولَةٍ بَاطِلٌ لَا يَحِلُّ، وَأَكْلُ مَالٍ بِالْبَاطِلِ، وَشَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ - ثُمَّ لَمْ يَجْعَلْ لَهُ أَنْ يَأْكُلَ مِنْ أَعْيَانِ الْغَنَمِ إلَّا مَا كَانَ يَأْكُلُ الْمُوصِي مِنْهَا، وَهَذَا فِي غَايَةِ الْبُطْلَانِ؛ لِأَنَّهُ مَجْهُولٌ، وَقَدْ كَانَ يُمْكِنُ أَنْ يَأْكُلَ مِنْهَا الْكَثِيرَ فِي الْعَامِ وَيُمْكِنُ أَنْ لَا يَأْكُلَ مِنْهَا شَيْئًا وَيُمْكِنُ أَنْ يَأْكُلَ مِنْهَا قَلِيلًا - فَهَذَا أَيْضًا أَكْلُ مَالٍ بِالْبَاطِلِ، وَقَدْ كَانَ لِلْمُوصِي أَنْ يَبِيعَهَا، وَيَهَبَهَا، وَيَبِيعَ مِنْهَا، فَهَلَّا جَعَلَ لِلْمُوصَى لَهُ أَنْ يَبِيعَ مِنْهَا، وَأَنْ يَهَبَ كَمَا كَانَ لِلْمُوصِي، وَإِلَّا فَمَا الْفَرْقُ بَيْنَ الِاسْتِهْلَاكِ بِالْأَكْلِ وَبَيْنَ الِاسْتِهْلَاكِ بِالْبَيْعِ أَوْ الْهِبَةِ؟ قَالَ عَلِيٌّ: وَيَكْفِي مِنْ هَذَا أَنَّ الْمُوصَى لَهُ لَا يَخْلُو مِنْ أَنْ يَكُونَ مَلَكَ الْغَنَمَ الَّتِي أَوْصَى لَهُ بِهَا مُدَّةَ حَيَاتِهِ، أَوْ لَمْ يَمْلِكْهَا، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ -: فَإِنْ كَانَ مَلَكَهَا فَلَهُ أَنْ يَبِيعَهَا كُلَّهَا أَوْ مَا شَاءَ مِنْهَا وَأَنْ يَهَبَهَا كَذَلِكَ، وَأَنْ يَأْكُلَهَا كَذَلِكَ.

L28311 If he does not own her, it is not permissible for him to use any part of her, nor her wool, milk, or offspring, because she is the property of another. The

Messenger of Allah (peace be upon him) said: “Your blood and your wealth are inviolable to you.”

وَإِنْ كَانَ لَمْ يَمْلِكْهَا لَمْ يَحِلَّ لَهُ أَكْلُ شَيْءٍ مِنْهَا، وَلَا مِنْ أَصْوَافِهَا وَلَا مِنْ أَلْبَانِهَا وَأَوْلَادِهَا، لِأَنَّهَا مَالُ غَيْرِهِ وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L28312 There is no doubt—by the explicit text of the Quran—that whatever the deceased leaves behind, which was unquestionably not bequeathed, is the property of the heirs. Since it is their property, it is impermissible for the testator to exercise any legal authority over the heirs’ property.

وَلَا شَكَّ - بِنَصِّ الْقُرْآنِ - فِي أَنَّ مَا يُخَلِّفُهُ الْمَيِّتُ مِمَّا لَمْ يُوصَ بِهِ قَطْعًا فَهُوَ مِلْكٌ لِلْوَرَثَةِ، وَإِذْ هُوَ مِلْكُهُمْ فَلَا يَحِلُّ لِلْمُوصِي حُكْمٌ فِي مَالِ الْوَرَثَةِ -.

L28313 And with Allah, the Exalted, is all success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28314 It is narrated on the authority of Abd al-Razzaq from Ma’mar concerning one who bequeaths a third of his wealth to Zaid and assigns maintenance (until the legatee’s death) to another person: half of the third is allocated to the legatee entitled to maintenance.

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ فِيمَنْ أَوْصَى لِزَيْدٍ بِثُلُثِ مَالِهِ وَلِآخَرَ بِنَفَقَتِهِ حَتَّى يَمُوتَ: أَنَّهُ يُوقَفُ لِلْمُوصَى لَهُ بِالنَّفَقَةِ نِصْفُ الثُّلُثِ.

L28315 Abu Muhammad said: This is an error because he may live only a day or less, and he may live for decades - thus this is uncertain, so it is invalid as it is not known what was bequeathed to him.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ لِأَنَّهُ قَدْ لَا يَعِيشُ إلَّا يَوْمًا أَوْ أَقَلَّ، وَقَدْ يَعِيشُ عَشَرَاتِ أَعْوَامٍ - فَهَذَا مَجْهُولٌ، فَهُوَ بَاطِلٌ لَا يُعْرَفُ بِمَاذَا أَوْصَى لَهُ.

L28316 It has been narrated to us from Sufyān al-Thawrī concerning a person who stipulates in his will that his slave should enter a *kitābah* contract for one thousand dirhams when the slave’s value is one thousand dirhams or more. In this case, he has not made any bequest for the slave. But if he stipulates a *kitābah* for less than the slave’s value, the shortfall from his actual value constitutes a bequest for him.

وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ فِيمَنْ أَوْصَى أَنْ يُكَاتَبَ عَبْدُهُ بِأَلْفِ دِرْهَمٍ وَقِيمَتُهُ أَلْفُ دِرْهَمٍ أَوْ أَكْثَرُ؟ فَلَمْ يُوصِ لَهُ بِشَيْءٍ، فَإِنْ أَوْصَى أَنْ يُكَاتَبَ بِأَقَلَّ مِنْ قِيمَتِهِ فَإِنَّ مَا نَقَصَ مِنْ قِيمَتِهِ وَصِيَّةٌ لَهُ.

L28317–28319 Ali said: This is an error, and a bequest for manumission by contractual agreement (mukātaba) in its entirety is void because the enslaved person is emancipated upon the death [of the master]. If the testator’s bequest pertains to the property of the heirs, his bequest through a mukataba contract for the heirs’ slave is invalid, because the slave is the property of the heirs.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ وَالْوَصِيَّةُ بِالْمُكَاتَبَةِ جُمْلَةً بَاطِلٌ؛ لِأَنَّ الْعَبْدَ خَارِجٌ بِمَوْتِ الْمُوصِي إلَى مِلْكِ الْوَرَثَةِ فَوَصِيَّتُهُ بِمُكَاتَبَةِ عَبْدِ الْوَرَثَةِ بَاطِلٌ؛ لِأَنَّهُ مَالُ الْوَرَثَةِ.

L28320 Al-Awzāʿī said regarding a man who had three children and a slave, and he bequeathed that the slave should serve one of his children—whom he named

and specified—for a year, after which the slave is free: He must serve all his children for one year each, and then he is free.

وَقَالَ الْأَوْزَاعِيّ فِيمَنْ لَهُ ثَلَاثَةُ أَوْلَادٍ وَعَبْدٌ فَأَوْصَى بِأَنْ يَخْدُمَ ذَلِكَ الْعَبْدُ وَاحِدًا مِنْ أَوْلَادِهِ - سَمَّاهُ وَعَيَّنَهُ - سَنَةً ثُمَّ الْعَبْدُ حُرٌّ: فَإِنَّهُ يَخْدُمُ أَوْلَادَهُ كُلَّهُمْ سَنَةً ثُمَّ هُوَ حُرٌّ.

L28321 Ali said: This is an error, because it is a judgment contrary to what the testator stipulated. He neither executed the will nor invalidated it. It cannot but be either valid or invalid. If it was valid, then he has invalidated the valid, and if it was invalid, then he has approved the invalid.

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ، لِأَنَّهُ حُكْمٌ بِغَيْرِ مَا أَوْصَى بِهِ الْمُوصِي، فَلَا هُوَ أَنْفَذَ وَصِيَّتَهُ وَلَا هُوَ أَبْطَلَهَا، وَلَا يَخْلُو مِنْ أَنْ تَكُونَ صَحِيحَةً أَوْ فَاسِدَةً، فَإِنْ كَانَتْ صَحِيحَةً فَقَدْ أَبْطَلَ الصَّحِيحَ، وَإِنْ كَانَتْ فَاسِدَةً فَقَدْ أَجَازَ الْفَاسِدَ.

L28322 If he were to say: "It combined corruption and validity, so I validated the valid and nullified the corrupt," we would reply: "Rather, you validated the corrupt—which is his emancipation of the slave who is the property of his sons and their slave—for the Messenger of Allah (peace be upon him) said: 'Your blood and your wealth are sacred to you.'"

فَإِنْ قَالَ: جَمَعَتْ فَسَادًا وَصِحَّةً فَأَجَزْت الصَّحِيحَ وَأَبْطَلْت الْفَاسِدَ؟ قُلْنَا لَهُ: بَلْ أَجَزْت الْفَاسِدَ - وَهُوَ عِتْقُهُ مِلْكَ بَنِيهِ وَعَبْدَهُمْ - وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L28323 Layth ibn Sa'd affirmed the permissibility of the bequests we mentioned but ruled impermissibility in the case of one who bequeaths a third of his estate to a person and to another for lifelong maintenance, holding that the third is divided into two halves between them.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ بِجَوَازِ الْوَصِيَّةِ بِكُلِّ مَا ذَكَرْنَا: أَنَّهُ لَا يَجُوزُ - وَقَالَ فِيمَنْ أَوْصَى لِإِنْسَانٍ بِثُلُثِهِ، وَلِآخَرَ بِالنَّفَقَةِ مَا عَاشَ: أَنَّ الثُّلُثَ بَيْنَهُمَا بِنِصْفَيْنِ.

L28324 Abu Muhammad said: This is an error, for it contradicts what the testator stipulated.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَطَأٌ، لِأَنَّهُ غَيْرُ مَا أَوْصَى بِهِ الْمُوصِي.

L28325 It is not permissible for what the testator has bequeathed to be redirected to other than what he bequeathed except by an explicit text, and there is no explicit text concerning what al-Layth stated.

وَلَا يَجُوزُ أَنْ يُحَالَ مَا أَوْصَى بِهِ الْمُوصِي إلَى غَيْرِ مَا أَوْصَى بِهِ إلَّا بِنَصٍّ، وَلَا نَصَّ بِمَا قَالَ اللَّيْثُ.

L28326 Uthman al-Batti ruled regarding one who bequeaths a monthly expenditure of ten dirhams for Zaid and one hundred dirhams for Amr: their shares are proportionally divided. A multiplier of 100 is applied for the legatee entitled to 100 dirhams, and a multiplier of 10 for the legatee entitled to 10 dirhams. Each is given his proportionate share, and the remainder is allocated to the legatee designated for 100 dirhams. In the second month, the 10-dirham legatee is assigned a multiplier of 20, while the 100-dirham legatee retains a multiplier of 100. The 10-dirham legatee's share is calculated using a mul-

وَقَالَ عُثْمَانُ الْبَتِّيُّ فِيمَنْ أَوْصَى لِزَيْدٍ بِنَفَقَةِ عَشَرَةِ دَرَاهِمَ كُلَّ شَهْرٍ، وَلِعَمْرٍو بِمِائَةِ دِرْهَمٍ كُلَّ شَهْرٍ فَإِنَّهُمَا يَتَحَاصَّانِ، وَيُضْرَبُ بِمِائَةٍ لِلْمُوصَى لَهُ بِمِائَةٍ، وَيُضْرَبُ بِعَشَرَةٍ لِلْمُوصَى لَهُ بِعَشَرَةٍ فَيُعْطَى حِصَّتَهُ، وَيُعْطَى الْبَاقِيَ الَّذِي أَوْصَى لَهُ بِالْمِائَةِ، فَإِذَا كَانَ فِي الشَّهْرِ الثَّانِي ضَرَبَ الْمُوصَى لَهُ بِعَشَرَةٍ بِعِشْرِينَ، وَضَرَبَ صَاحِبُ الْمِائَةِ بِمِائَةٍ، وَحُسِبَ صَاحِبُ الْعَشَرَةِ بِعَشَرَةٍ، وَحُسِبَ لَهُ مَا أَخَذَ فِي الشَّهْرِ الْأَوَّلِ، وَكَذَلِكَ يُقْسَمُ بَيْنَهُمَا كُلَّ شَهْرٍ.

tiplier of 10, accounting for what he received in the first month. Likewise, the allocation between them is divided every month in this manner.

L28327 Abu Muhammad said: And this is a speech that cannot be comprehended by reason, nor can its origin be known.

L28328 Abu Hanifah said regarding one who bequeathed the service of his slave so-and-so for a year – intending his emancipation thereafter, though the slave was his sole property – that the slave must serve the beneficiary one day and the heirs two days. When three years have elapsed under this arrangement, he is to be freed.

L28329 Abu Muhammad said: We hold that, according to a juristic opinion, he must strive within two-thirds of its value for the heirs.

L28330–28331 Ali said: "His statement is invalid."

L28332 He said: If someone bequeaths to another the right of residence in his house when he owns no other property besides it, the legatee may reside in one-third of the house, and the heirs may reside in two-thirds of it. The legatee may neither rent out the house, nor rent out the slave bequeathed for his service, nor remove him from that city unless the legatee resides in another city - in which case he may relocate the slave to his own city.

L28333 Ali said: This is extremely invalid, as it contravenes the deceased's stipulation in the bequest regarding the right to reside in the entire house, for he only granted residence in a third of it. The value of the right to reside in a third of the house is unquestionably less than the third of the deceased, since the entire house is property left behind by the deceased. If this bequest is considered valid according to him, why did he not execute all of it, because it is unquestionably less than the third?

L28334 Additionally, there is no distinction between the beneficiary being in another country and his moving to another country. If the slave belongs to the testator, the beneficiary may manage the bequeathed property as he wishes. If the slave does not belong to the testator, the bequest of his service is invalid.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَلَامٌ لَا يُعْقَلُ وَلَا يُدْرَى مُنْبَعِثُهُ.

وَقَالَ أَبُو حَنِيفَةَ فِيمَنْ أَوْصَى بِخِدْمَةِ عَبْدِهِ فُلَانًا سَنَةً ثُمَّ يُعْتَقُ وَلَا مَالَ لَهُ غَيْرُهُ: فَإِنَّهُ يَخْدُمُ الْمُوصَى لَهُ يَوْمًا وَالْوَرَثَةَ يَوْمَيْنِ، فَإِذَا مَضَتْ لَهُ ثَلَاثُ سِنِينَ هَكَذَا أُعْتِقَ.

قَالَ أَبُو مُحَمَّدٍ: نَرَى أَنَّهُ فِي قَوْلٍ أَنَّهُ يَسْعَى فِي ثُلُثَيْ قِيمَتِهِ لِلْوَرَثَةِ.

قَالَ عَلِيٌّ: وَقَوْلُهُ هَذَا فَاسِدٌ.

قَالَ: وَمَنْ أَوْصَى لِآخَرَ بِسُكْنَى دَارِهِ وَلَا مَالَ لَهُ غَيْرُهَا سَكَنَ الْمُوصَى لَهُ بِثُلُثِ الدَّارِ وَسَكَنَ الْوَرَثَةُ بِثُلُثَيْهَا، وَلَيْسَ لَهُ أَنْ يُؤَاجِرَهَا، وَلَا أَنْ يُؤَاجِرَ الْعَبْدَ الْمُوصَى لَهُ بِخِدْمَتِهِ، وَلَا أَنْ يُخْرِجَهُ عَنْ ذَلِكَ الْبَلَدِ إِلَّا أَنْ يَكُونَ الْمُوصَى لَهُ فِي بَلَدٍ آخَرَ، فَلَهُ أَنْ يُخْرِجَهُ إِلَى بَلَدِهِ.

قَالَ عَلِيٌّ: وَهَذَا فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ خَالَفَ عَهْدَ الْمَيِّتِ فِي الْوَصِيَّةِ بِسُكْنَى جَمِيعِ الدَّارِ، فَلَمْ يَجْعَلْ لَهُ إِلَّا سُكْنَى ثُلُثِهَا فَقَطْ، وَقِيمَةُ سُكْنَى ثُلُثِ الدَّارِ أَقَلُّ مِنْ ثُلُثِ الْمَيِّتِ بِلَا شَكٍّ، لِأَنَّ جَمِيعَ الدَّارِ مَالٌ تَخَلَّفَهُ، فَإِذْ هَذِهِ الْوَصِيَّةُ عِنْدَهُ جَائِزَةٌ، فَهَلَّا أَنْفَذَ لَهُ جَمِيعَهَا لِأَنَّهَا أَقَلُّ مِنْ الثُّلُثِ بِلَا شَكٍّ.

وَأَيْضًا: فَلَا فَرْقَ بَيْنَ كَوْنِ الْمُوصَى لَهُ فِي بَلَدٍ آخَرَ وَبَيْنَ رَحِيلِهِ إلَى بَلَدٍ آخَرَ، فَإِنْ كَانَ الْعَبْدُ لِلْمُوصِي فَلِلْمُوصَى لَهُ التَّصَرُّفُ فِيمَا أَوْصَى لَهُ بِهِ حَيْثُ شَاءَ، وَإِنْ كَانَ لَيْسَ هُوَ لِلْمُوصِي فَالْوَصِيَّةُ بِخِدْمَتِهِ بَاطِلٌ.

L28335 Abu Hanifa said: If someone bequeaths the produce of his orchard to Zayd, and there is existing produce in it at the time of the testator's death, the beneficiary has no right except to that specific produce alone. But if there is no produce in it when he dies, the beneficiary is entitled to one-third of the produce for as long as he lives.

قَالَ أَبُو حَنِيفَةَ: وَمَنْ أَوْصَى بِغَلَّةِ بُسْتَانِهِ لِزَيْدٍ وَفِيهِ غَلَّةٌ ظَاهِرَةٌ إذْ مَاتَ الْمُوصِي فَلَيْسَ لِلْمُوصَى لَهُ إلَّا تِلْكَ الْغَلَّةُ بِعَيْنِهَا فَقَطْ، فَلَوْ لَمْ يَكُنْ فِيهَا غَلَّةٌ إذْ مَاتَ فَلَهُ ثُلُثُهَا أَبَدًا مَا عَاشَ.

L28336 Abū Muḥammad said: This too is invalid - a distinction without evidence. Why on earth did they not limit him to merely the first evident yield that appears after the testator's death? Then he would have no right to subsequent yields, just as they ruled regarding the evident yield.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ أَيْضًا، وَفَرْقٌ بِلَا بُرْهَانٍ، وَهَلَّا جَعَلُوا لَهُ أَوَّلَ غَلَّةٍ تَظْهَرُ بَعْدَ مَوْتِ الْمُوصِي فَقَطْ، ثُمَّ لَا شَيْءَ لَهُ فِي الْمُسْتَأْنَفِ كَمَا قَالُوا فِي الْغَلَّةِ الظَّاهِرَةِ.

L28337 If they say, "We applied that according to general applicability," we reply: "Why did you not apply his will also to general applicability when he dies while produce exists in the orchard?" If one were to reverse their reasoning by granting him the orchard's produce indefinitely when he dies with manifest produce present, yet deny it if he dies with no produce in the orchard except the first crop that later appears, there is no legitimate difference between these two judgments.

فَإِنْ قَالُوا: حَمَلْنَا ذَلِكَ عَلَى الْعُمُومِ؟ قُلْنَا لَهُمْ: وَهَلَّا حَمَلْتُمْ وَصِيَّتَهُ أَيْضًا عَلَى الْعُمُومِ إذَا مَاتَ وَفِي الْبُسْتَانِ غَلَّةٌ وَلَوْ أَنَّ عَاكِسًا عَكَسَ قَوْلَهُمْ فَأَعْطَاهُ غَلَّةَ الْبُسْتَانِ أَبَدًا إذَا مَاتَ وَفِيهِ غَلَّةٌ ظَاهِرَةٌ، وَلَمْ يُعْطِهِ إذَا مَاتَ وَلَا غَلَّةَ فِي الْبُسْتَانِ إلَّا أَوَّلُ غَلَّةٍ تَظْهَرُ: مَا كَانَ بَيْنَ الْحُكْمَيْنِ بِالْبَاطِلِ فَرْقٌ.

L28338 Abu Hanifah said: A bequest granting the right of residence in a dwelling or the services rendered by a slave is valid only if made to a specifically named individual. If one bequeaths such to the Poor and the Needy, it is invalid.

قَالَ أَبُو حَنِيفَةَ: وَإِنَّمَا تَجُوزُ الْوَصِيَّةُ بِسُكْنَى الدَّارِ وَخِدْمَةِ الْعَبْدِ، إذَا أَوْصَى بِهِ لِإِنْسَانٍ بِعَيْنِهِ - قَالَ: فَلَوْ أَوْصَى بِذَلِكَ لِلْفُقَرَاءِ، وَالْمَسَاكِينِ: لَمْ يَجُزْ ذَلِكَ.

L28339–28341 Ali said: There is no greater calamity than the fact that if one bequeaths to a disbeliever or a sinner, it is permissible, yet if one bequeaths to the poor among the Muslims, it is impermissible. Ugh! How detestable this ruling is! Abu Hanifa said: If someone bequeaths to Zaid provision for as long as he lives, and the heirs permit this, the entire estate is set aside for him, and he shares proportionally with the other legatees—unless the legatees specify that his provision is to come from the One-Third. In that case, only

قَالَ عَلِيٌّ: لَيْسَ فِي الْمُصِيبَةِ أَكْثَرُ مِنْ هَذَا أَنْ يَكُونَ إنْ أَوْصَى لِكَافِرٍ أَوْ لِفَاسِقٍ: جَازَ، فَإِنْ أَوْصَى لِفُقَرَاءِ الْمُسْلِمِينَ لَمْ يَجُزْ - أُفٍّ لِهَذَا الْقَوْلِ قَالَ أَبُو حَنِيفَةَ: وَلَوْ أَوْصَى لِزَيْدٍ بِالنَّفَقَةِ مَا عَاشَ؟ فَإِنْ جَوَّزَ الْوَرَثَةُ ذَلِكَ وُقِفَ لَهُ جَمِيعُ الْمَالِ كُلِّهِ، وَتَحَاصَّ هُوَ وَسَائِرُ

the One-Third is specifically set aside for him, and the legatees also share proportionally.

الْمُوصَى لَهُمْ، إِلَّا أَنْ يُعَيِّنَ الْمُوصَى لَهُمْ أَنْ يُنْفَقَ عَلَيْهِ مِنَ الثُّلُثِ، فَيُوقَفَ لَهُ الثُّلُثُ خَاصَّةً، وَيُحَاصُّ أَيْضًا الْمُوصَى لَهُمْ.

L28342 Abu Yusuf said: A lifespan of one hundred years is established for him, then one-third [of his estate] is allocated as an exclusive waqf to be spent on his maintenance for the remaining years of the hundred-year period. If he lives beyond that period, he is to be granted maintenance until the one-third is depleted.

وَقَالَ أَبُو يُوسُفَ: يُجْعَلُ لَهُ عُمْرُ مِائَةِ سَنَةٍ، ثُمَّ يُوقَفُ لَهُ الثُّلُثُ خَاصَّةً مَا يُنْفَقُ عَلَيْهِ فِيمَا بَقِيَ لَهُ مِنْ مِائَةِ سَنَةٍ، فَإِنْ عَاشَ أَكْثَرَ أُعْطِيَ النَّفَقَةَ أَيْضًا حَتَّى يَفْرُغَ الثُّلُثُ.

L28343 Abu Muhammad said: These are baseless whispers, and prices fluctuate in widely varying ways, so how could it be possible to assess such folly?

قَالَ أَبُو مُحَمَّد: وَهَذِهِ وَسَاوِسُ لَا تُعْقَلُ، وَالْأَسْعَارُ تَخْتَلِفُ اخْتِلَافًا مُتَبَايِنًا، فَكَيْفَ يُقْدَرُ عَلَى هَذَا الْجُنُونِ.

L28344 Abu Hanifah permitted bequeathing a slave's lifelong service to one person and the slave's ownership to another. He ruled that maintenance and clothing for the slave are incumbent upon the beneficiary of the service, and he held that anything gifted to the slave belongs to the owner of the slave's person.

وَأَجَازَ أَبُو حَنِيفَةَ أَنْ يُوصِيَ لِإِنْسَانٍ بِخِدْمَةِ عَبْدٍ مَا عَاشَ، وَلِآخَرَ بِرَقَبَةِ ذَلِكَ الْعَبْدِ، وَرَأَى النَّفَقَةَ، وَالْكِسْوَةَ عَلَى الَّذِي أَوْصَى لَهُ بِالْخِدْمَةِ، وَرَأَى مَا وُهِبَ لِلْعَبْدِ لِلَّذِي لَهُ الرَّقَبَةُ.

L28345 Ali said: This is also invalid. How can it be permissible to oblige the legatee assigned to service to cover expenses for someone other than his slave and his clothing? Truly, this is indeed astonishing.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ أَيْضًا، وَمِنْ أَيْنَ أَسْتَحِلُّ أَنْ يُلْزِمَ الْمُوصَى لَهُ بِالْخِدْمَةِ نَفَقَةَ غَيْرِ عَبْدِهِ وَكِسْوَتَهُ؟ إِنَّ هَذَا لَعَجَبٌ.

L28346 Muhammad ibn al-Hussein said: If someone bequeaths the freeing of his slave one month after his death, and he dies and the month elapses, the slave is not freed unless a new act of manumission is performed. This is because if the slave commits a wrongdoing before the completion of the month, the heirs may hand him over due to his offense.

وَقَالَ مُحَمَّدُ بْنُ الْحُسَيْنِ: مَنْ أَوْصَى بِعِتْقِ عَبْدِهِ بَعْدَ مَوْتِهِ بِشَهْرٍ فَمَاتَ وَمَضَى شَهْرٌ لَمْ يُعْتَقْ إِلَّا بِتَجْدِيدِ عِتْقٍ لِأَنَّهُ لَوْ جَنَى جِنَايَةً قَبْلَ تَمَامِ الشَّهْرِ كَانَ لِلْوَرَثَةِ أَنْ يُسَلِّمُوهُ بِجِنَايَتِهِ.

L28347 Ali said: "When he has vested ownership of it to the heirs as he said, how can their slave be emancipated without their consent? All of this is undeniably invalid."

قَالَ عَلِيٌّ: فَإِذْ مَلَّكَهُ لِلْوَرَثَةِ كَمَا قَالَ، فَكَيْفَ يُعْتَقُ عَبْدُهُمْ بِغَيْرِ رِضَاهُمْ، وَهَذَا كُلُّهُ لَا خَفَاءَ بِفَسَادِهِ.

L28348 Mālik said: Whoever bequeaths the service of his slave, the produce of his garden, the occupancy of his house, or the provision of upkeep for a person—

all of this is permissible. If one bequeaths his slave's service to Zayd for as long as the slave lives, and the right to his manumission to ʿAmr, this is valid.

وَقَالَ مَالِكٌ: مَنْ أَوْصَى بِخِدْمَةِ عَبْدِهِ، أَوْ بِغَلَّةِ بُسْتَانِهِ، أَوْ بِسُكْنَى دَارِهِ، أَوْ بِنَفَقَتِهِ عَلَى إِنْسَانٍ فَكُلُّ ذَلِكَ جَائِزٌ، فَلَوْ أَوْصَى بِخِدْمَةِ عَبْدِهِ مَا عَاشَ لِزَيْدٍ، وَبِرَقَبَتِهِ لِعَمْرٍو فَهُوَ جَائِزٌ.

L28349 He said: If the legatee to whom the slave's service is bequeathed were to gift or sell that service to the slave, the slave would be emancipated then and there, and the heirs have no right to intervene in that matter.

قَالَ: فَلَوْ أَنَّ الْمُوصَى لَهُ بِخِدْمَةِ الْعَبْدِ وَهَبَ لِذَلِكَ الْعَبْدِ مَا أَوْصَى لَهُ بِهِ مِنْ خِدْمَتِهِ، أَوْ بَاعَهَا مِنْهُ: عَتَقَ الْعَبْدُ سَاعَتِئِذٍ، وَلَا مَدْخَلَ لِلْوَرَثَةِ فِي ذَلِكَ.

L28350 Ali said: This contradicts his well-known positions that if the legatee does not accept the will, it reverts to inheritance - and this is a contradiction in his statements.

قَالَ عَلِيٌّ: وَهَذَا خِلَافُ أَقْوَالِهِ الْمَعْهُودَةِ مِنْ أَنَّ الْوَصِيَّةَ إِذَا لَمْ يَقْبَلْهَا الْمُوصَى لَهُ بِهَا رَجَعَتْ مِيرَاثًا - وَهَذَا تَنَاقُضٌ مِنْ قَوْلِهِ.

L28351–28352 And it is also – contrary to what the testator has bequeathed.

وَهُوَ أَيْضًا - خِلَافُ مَا أَوْصَى بِهِ الْمُوصِي.

L28353 The most objectionable [opinion] is his statement: "If the heirs emancipate him, their emancipation is invalid," thereby nullifying the owners' act of emancipation through their own acknowledgment, while permitting his emancipation contrary to the testator's explicit stipulation to free him.

وَأَطْرَفُ شَيْءٍ قَوْلُهُ فَإِنْ أَعْتَقَهُ الْوَرَثَةُ لَمْ يَنْفُذْ عِتْقُهُمْ، فَأَبْطَلَ عِتْقَ مَالِكِيهِ بِإِقْرَارِهِ، وَأَجَازَ عِتْقَهُ بِخِلَافِ وَصِيَّةِ الْمُوصِي بِعِتْقِهِ.

L28354 Malik said: "The legatee granted the service of a slave or the right to residence in a house may lease it. However, if the will stipulates that the slave serves the testator's son for as long as the son lives, after which the slave becomes free, this [service] may not be leased, as the intent was custody?" Abu Muhammad said: "This constitutes contradictory reasoning and contradicts what the testator stipulated regarding residence and service."

وَقَالَ مَالِكٌ: لِلْمُوصَى لَهُ بِخِدْمَةِ الْعَبْدِ أَوْ بِسُكْنَى الدَّارِ: أَنْ يُؤَاجِرَهَا، قَالَ: إِلَّا أَنْ يُوصِيَ بِأَنْ يَخْدُمَ ابْنَهُ مَا عَاشَ، ثُمَّ هُوَ حُرٌّ - فَهَذَا لَا يُؤَاجَرُ، لِأَنَّهُ قَصَدَ بِهِ قَصْدَ الْحَضَانَةِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَنَاقُضٌ وَخِلَافُ مَا أَوْصَى بِهِ الْمُوصِي مِنْ السُّكْنَى وَالْخِدْمَةِ.

L28355 Mālik said: If someone bequeaths to him the service of his slave for a year, and the testator owns no property besides the slave, the heirs have the option to either grant him the slave's service for a year—after which the slave returns to them—or give him a third of all the property the testator left as property. ʿAlī said: This is openly contrary to the bequest.

قَالَ مَالِكٌ: وَلَوْ أَوْصَى لَهُ بِخِدْمَةِ عَبْدِهِ سَنَةً وَلَيْسَ لِلْمُوصِي مَالٌ غَيْرُهُ، فَالْوَرَثَةُ بِالْخِيَارِ بَيْنَ أَنْ يُسَلِّمُوا لَهُ خِدْمَةَ الْعَبْدِ سَنَةً ثُمَّ يَرْجِعُ إِلَيْهِمْ، وَبَيْنَ أَنْ يُعْطُوهُ ثُلُثَ جَمِيعِ مَا تَرَكَهُ الْمُوصِي مِلْكًا؟ قَالَ عَلِيٌّ: وَهَذَا خِلَافُ الْوَصِيَّةِ جِهَارًا.

L28356 Malik said concerning one who is bequeathed lifelong sustenance: his lifespan is calculated as seventy years, and the amount to be spent on him is

allocated for the remaining period of his life up to seventy years. Whatever surplus remains is returned to other bequests or to the heirs.

وَقَالَ مَالِكٌ فِيمَنْ أُوصِيَ لَهُ بِالنَّفَقَةِ مَا عَاشَ: حُسِبَ لَهُ عُمْرُ سَبْعِينَ سَنَةً، وَوُقِفَ لَهُ مَا يُنْفَقُ عَلَيْهِ فِيمَا بَقِيَ مِنْ عُمْرِهِ إِلَى تَمَامِ السَّبْعِينَ، فَمَا فَضَلَ رُدَّ عَلَى سَائِرِ الْوَصَايَا أَوْ عَلَى الْوَرَثَةِ.

L28357 Ali said: "And this is a grave error—the first aspect of this error is his specification of seventy years."

قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ فَاحِشٌ -: أَوَّلُ ذَلِكَ تَخْصِيصُهُ سَبْعِينَ سَنَةً.

L28358 Then the view [states]: An endowment is designated to provide for his maintenance for the remainder of his life, up to the completion of seventy years, and prices may vary excessively.

ثُمَّ قَوْلُ: يُوقَفُ لَهُ مَا يُنْفَقُ عَلَيْهِ مَا بَقِيَ مِنْ عُمْرِهِ إِلَى تَمَامِ سَبْعِينَ، وَالْأَسْعَارُ تَخْتَلِفُ اخْتِلَافًا فَاحِشًا.

L28359 Moreover, maintenance is not a fixed amount, because it includes non-essential items such as spices, meat, and the like – things that extend beyond basic necessities.

ثُمَّ النَّفَقَةُ أَيْضًا - شَيْءٌ غَيْرُ مَحْدُودٍ، لِأَنَّهُ يَدْخُلُ فِي النَّفَقَةِ مَا يُسْتَغْنَى عَنْهُ كَالتَّوَابِلِ وَاللَّحْمِ وَغَيْرِ ذَلِكَ.

L28360 None of these statements are derived from the Quran, the Sunnah, any weak narration, the statements of anyone before them, analogical reasoning, or sound reason. Rather, they contradict all of that.

وَكُلُّ هَذِهِ الْأَقْوَالِ فَلَيْسَ شَيْءٌ مِنْهَا عَنْ قُرْآنٍ وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ قَبْلَهُمْ، وَلَا قِيَاسٍ وَلَا مَعْقُولٍ، بَلْ هِيَ مُخَالِفَةٌ لِكُلِّ ذَلِكَ.

L28361 Al-Shafi'i said: It is permissible to bequeath the service of a slave, the right to reside in a house, and the yield of an orchard and land. He also permitted the legatee granted the right to reside in the house to rent it out – and this constitutes an alteration of the bequest.

وَقَالَ الشَّافِعِيُّ: تَجُوزُ الْوَصِيَّةُ بِخِدْمَةِ الْعَبْدِ، وَبِسُكْنَى الدَّارِ، وَبِغَلَّةِ الْبُسْتَانِ وَالْأَرْضِ، وَأَجَازَ لِلْمُوصَى لَهُ بِسُكْنَى الدَّارِ أَنْ يُؤَاجِرَهَا - وَهَذَا تَبْدِيلٌ لِلْوَصِيَّةِ.

L28362 And he permitted the bequest of a slave's service to Zaid and of his manumission to Amr.

وَأَجَازَ الْوَصِيَّةَ بِخِدْمَةِ عَبْدٍ لِزَيْدٍ وَبِرَقَبَتِهِ لِعَمْرٍو.

L28363 He ruled regarding one who bequeaths to another person the service of their slave for one year—while possessing no property besides that slave—that only what does not exceed one-third of the estate from this bequest is permissible.

وَقَالَ فِيمَنْ أَوْصَى لِإِنْسَانٍ بِخِدْمَةِ عَبْدِهِ سَنَةً وَلَا مَالَ لِلْمُوصِي غَيْرُ ذَلِكَ الْعَبْدِ: أَنَّهُ يَجُوزُ مِنْ ذَلِكَ مَا حَمَلَ الثُّلُثَ فَقَطْ.

L28364–28365 Abu Thawr said: All of that is permissible, and the heirs may sell the slave. The buyer is required to fully fulfill the service stipulated by the testator and to permit the legatee to whom the slave's service is bequeathed to take him out to any country he wishes.

وَقَالَ أَبُو ثَوْرٍ: بِجَوَازِ كُلِّ ذَلِكَ، وَأَنَّ لِلْوَرَثَةِ بَيْعَ الْعَبْدِ، وَيُشْتَرَطُ عَلَى الْمُشْتَرِي تَمَامُ الْخِدْمَةِ لِلْمُوصِي بِهَا، وَأَنْ يُخْرِجَهُ الْمُوصَى لَهُ بِخِدْمَتِهِ إِلَى أَيِّ بَلَدٍ شَاءَ.

L28366 Abu Muhammad said: Those we mentioned agreed on the permissibility of bequeathing a slave's service, an orchard's produce, and the right to reside in a house. Sawwār ibn ʿAbdullāh and ʿUbaydullāh ibn al-Ḥasan - the two al-Anbarīs - along with Isḥāq ibn Rāhawayh, agreed with them.

قَالَ أَبُو مُحَمَّد: فَاتَّفَقَ مَنْ ذَكَرْنَا عَلَى جَوَازِ الْوَصِيَّةِ بِخِدْمَةِ الْعَبْدِ، وَغَلَّةِ الْبُسْتَانِ، وَسُكْنَى الدَّارِ - وَوَافَقَهُمْ عَلَى ذَلِكَ سَوَّارُ بْنُ عَبْدِ اللَّهِ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ الْعَنْبَرِيَّانِ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L28367 Ibn Abī Laylā, Abū Sulaymān, and all the jurists of our school held that none of that is permissible.

وَقَالَ ابْنُ أَبِي لَيْلَى، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا: لَا يَجُوزُ شَيْءٌ مِنْ ذَلِكَ

L28368 Ali said: Those who permitted that argued that just as leasing is permissible regarding the usufructs of all such things, similarly bequeathing the usufructs of all such things is permissible - and we know of nothing else they have besides this. This constitutes analogical reasoning, and analogical reasoning is invalid. Moreover, this actually constitutes evidence against them rather than for them, because leasing is only permissible regarding what the lessor owns the corpus of, not what he holds no ownership over. The house, the slave, and the garden become transferrable upon the owner's death, either passing to what he bequeathed concerning all such things, or to the heirs' ownership. It is inevitable that one of these two must occur.

قَالَ عَلِيٌّ: احْتَجَّ مَنْ أَجَازَ ذَلِكَ بِأَنَّهُ كَمَا تَجُوزُ الْإِجَارَةُ فِي مَنَافِعِ كُلِّ ذَلِكَ فَكَذَلِكَ تَجُوزُ الْوَصِيَّةُ بِمَنَافِعِ كُلِّ ذَلِكَ - وَمَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا، وَهُوَ قِيَاسٌ وَالْقِيَاسُ بَاطِلٌ، ثُمَّ هُوَ أَيْضًا حُجَّةٌ عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّ الْإِجَارَةَ إنَّمَا تَجُوزُ فِيمَا مَلَكَ الْمُؤَاجِرُ رَقَبَتَهُ، لَا فِيمَا لَا مِلْكَ لَهُ فِيهِ، وَالدَّارُ، وَالْعَبْدُ، وَالْبُسْتَانُ مُتَنَقِّلَةٌ بِمَوْتِ الْمَالِكِ لَهَا إلَى مَا أَوْصَى فِيهِ بِكُلِّ ذَلِكَ، أَوْ إلَى مِلْكِ الْوَرَثَةِ، لَا بُدَّ مِنْ أَحَدِهِمَا.

L28369 And this, by their admission, is transferred to the ownership of the heirs. A person's bequest over what is owned by another is invalid and impermissible, just as his leasing of what is owned by another is impermissible. Leasing is specifically usufructs arising within one's own ownership, whereas a bequest involves usufructs that arise in the ownership of someone other than the testator—and this is forbidden.

وَهَذَا بِإِقْرَارِهِمْ مُنْتَقِلٌ إلَى مِلْكِ الْوَرَثَةِ وَوَصِيَّةُ الْمَرْءِ فِي مِلْكِ غَيْرِهِ بَاطِلٌ، لَا تَحِلُّ كَمَا أَنَّ إجَارَتَهُ لِمِلْكِ غَيْرِهِ لَا تَحِلُّ، وَالْإِجَارَةُ إنَّمَا هِيَ مَنَافِعُ حَدَثَتْ فِي مِلْكِهِ، وَالْوَصِيَّةُ هِيَ فِي مَنَافِعَ تَحْدُثُ فِي مِلْكِ غَيْرِ الْمُوصِي، وَهَذَا حَرَامٌ.

L28370 Abu Muhammad said: Allah, the Most High, stated: {After any bequest he [may have] made or debt} [An-Nisa: 11]. Thus, He did not assign to the heirs except what remains after the debt and the bequest—[11]

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَلَمْ يَجْعَلْ عَزَّ وَجَلَّ لِلْوَرَثَةِ إلَّا مَا فَضَلَ عَنْ الدَّيْنِ وَالْوَصِيَّةِ -.

L28371 It has been established by the Quran's text that whatever the testator bequeaths never enters the heirs' ownership; rather, upon the testator's death, it transfers to the bequest according to the Quran's text.

فَصَحَّ بِنَصِّ الْقُرْآنِ أَنَّ مَا أَوْصَى بِهِ الْمُوصِي فَلَمْ يَقَعْ قَطُّ عَلَيْهِ مِلْكُ الْوَرَثَةِ لَكِنْ خَرَجَ بِمَوْتِ الْمُوصِي إلَى الْوَصِيَّةِ بِنَصِّ الْقُرْآنِ.

L28372 It has been established by the Quranic text that what the heirs are entitled

[11] **Qur'an references (L28370):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

to is excluded from the will, thereby confirming that the testator has no right to make a bequest over it at all.

L28373 The Messenger of Allah—peace and blessings be upon him—said: "Indeed, your blood and your wealth are sacred and forbidden for you to violate."

L28374 It is conclusively affirmed that property owned exclusively by the heirs ceases to be part of the deceased's estate. Since the deceased holds no ownership over it, his bequests concerning it—whether for manumission, maintenance, or other purposes—are null, void, and revoked. Success is from Allah, the Exalted.

L28375 **The issue of the testamentary will concerning household belongings.**

L28376–28378 1760 - Issue: If someone bequeaths the contents of his house to his umm walad or to others besides her, the beneficiary of the bequest is entitled solely to that which... It is customary to ascribe to the house: the carpets spread within it, the curtains, the mattress used for sitting, what is slept on, what is used to cover oneself in it or as a pillow, the vessels for drinking and eating, the dining table, the nails fixed in it, the napkins, the ablution basin, and the pitcher.

L28379 Excluded from this are items not attributed to the house, such as clothing for wear, raised items, benches, bedding not used within the house, dirhams and dinars, jewelry, storage units, and other similar things—because only what is understood from the testator's explicit wording is applied in such matters.

L28380 And by Allah, the Exalted, do we seek aid.

L28381 **The Legal Ruling on a Will Containing a Sinful Directive**

L28382 Issue 1761: It is not permissible to execute a will that entails an act of disobedience—neither from a Muslim nor from a disbeliever—such as one

وَصَحَّ بِنَصِّ الْقُرْآنِ أَنَّ مَا مَلَكَهُ الْوَرَثَةُ فَهُوَ خَارِجٌ عَنْ الْوَصِيَّةِ، فَثَبَتَ أَنَّهُ لَا وَصِيَّةَ فِيهِ لِلْمُوصِي أَصْلًا.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَصَحَّ يَقِينًا أَنَّ مَا مَلَكَهُ الْوَرَثَةُ فَقَطْ سَقَطَ عَنْهُ مِلْكُ الْمَيِّتِ، وَإِذْ لَا مِلْكَ لَهُ عَلَيْهِ فَوَصَايَاهُ فِيهِ بِعِتْقٍ أَوْ بِنَفَقَةٍ أَوْ بِغَيْرِ ذَلِكَ بَاطِلٌ، مَرْدُودٌ مَفْسُوخٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةَ الْوَصِيَّةِ بمتاع الْبَيْتِ]

١٧٦٠ - مَسْأَلَةٌ: وَمَنْ أَوْصَى بِمَتَاعِ بَيْتِهِ لِأُمِّ وَلَدِهِ، أَوْ لِغَيْرِهَا، فَإِنَّمَا لِلْمُوصَى لَهُ بِذَلِكَ مَا الْمَعْهُودُ أَنْ يُضَافَ إلَى الْبَيْتِ مِنْ الْفُرُشِ الْمَبْسُوطَةِ فِيهِ، وَالْمُعَلَّقِ، وَالْفِرَاشِ الَّذِي يُقْعَدُ عَلَيْهِ، وَالَّذِي يُنَامُ عَلَيْهِ وَبِمَا يَتَغَطَّى فِيهِ، وَيَتَوَسَّدُهُ، وَالْآنِيَةِ الَّتِي يُشْرَبُ فِيهَا وَيُؤْكَلُ، وَالْمَائِدَةِ، وَالْمَسَامِيرِ الْمُسَمَّرَةِ فِيهِ، وَالْمَنَادِيلِ، وَالطَّسْتِ، وَالْإِبْرِيقِ.

وَلَا يَدْخُلُ فِي ذَلِكَ مَا لَا يُضَافُ إلَى الْبَيْتِ مِنْ ثِيَابِ اللِّبَاسِ، وَالْمَرْفُوعَةِ، وَالتُّخُوتِ، وَوِطَاءٍ لَا يُسْتَعْمَلُ فِي الْبَيْتِ، وَدَرَاهِمَ وَدَنَانِيرَ، وَحُلِيٍّ، وَخِزَانَةٍ، وَغَيْرِ ذَلِكَ؛ لِأَنَّهُ إنَّمَا يُسْتَعْمَلُ فِي ذَلِكَ مَا يُفْهَمُ مِنْ لُغَةِ الْمُوصِي -.

وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةَ الْوَصِيَّةِ بمعصية]

who bequeaths to build a church or the like, due to the statement of Allah, the Exalted: “And do not cooperate in sin and transgression” (Quran 5:2).[12]

١٧٦١ - مَسْأَلَةٌ: وَلَا تَحِلُّ وَصِيَّةٌ فِي مَعْصِيَةٍ - لَا مِنْ مُسْلِمٍ وَلَا مِنْ كَافِرٍ - كَمَنْ أَوْصَى بِبُنْيَانِ كَنِيسَةٍ أَوْ نَحْوِ ذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L28383 And His saying, the Exalted: “And judge between them by what Allah has revealed” [Al-Ma’idah 5:49]. Thus, whoever allows them to enforce rulings contrary to Islam while he is able to stop them has indeed aided them in sin and transgression.[13]

وقَوْله تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] فَمَنْ تَرَكَهُمْ يُنَفِّذُونَ خِلَافَ حُكْمِ الْإِسْلَامِ وَهُوَ قَادِرٌ عَلَى مَنْعِهِمْ فَقَدْ أَعَانَهُمْ عَلَى الْإِثْمِ وَالْعُدْوَانِ.

L28384 A Jurisprudential Issue Regarding the Woman’s Testament

[مَسْأَلَةٌ وَصِيَّةُ الْمَرْأَةِ]

L28385 Issue 1762: The will of a never-married woman under her father’s guardianship, an adult woman with a husband, and a previously married woman with a husband is valid, just like the will of a man, whether the father or husband has consented or objected.

١٧٦٢ - مَسْأَلَةٌ: وَوَصِيَّةُ الْمَرْأَةِ الْبِكْرِ ذَاتِ الْأَبِ، وَذَاتِ الزَّوْجِ الْبَالِغَةِ، وَالثَّيِّبِ ذَاتِ الزَّوْجِ: جَائِزَةٌ، كَوَصِيَّةِ الرَّجُلِ، أَحَبَّ الْأَبُ أَوْ الزَّوْجُ أَوْ كَرِهَا.

L28386 There is no validity to the permission of both of them in this matter, for Allah the Almighty and Majestic’s command regarding the bequest was a universal command for the believers, encompassing both men and women. He did not exclude anyone in it: “And your Lord is never forgetful” [19:64]. We know of no disagreement from anyone regarding this.[14]

وَلَا مَعْنَى لِإِذْنِهِمَا فِي ذَلِكَ لِأَنَّ أَمْرَ اللَّهِ تَعَالَى بِالْوَصِيَّةِ جَاءَ عَامًّا لِلْمُؤْمِنِينَ، وَهُوَ يَعُمُّ الرِّجَالَ وَالنِّسَاءَ، وَلَمْ يَخُصَّ عَزَّ وَجَلَّ فِيهِ أَحَدًا مِنْ أَحَدٍ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَمَا نَعْلَمُ فِي ذَلِكَ خِلَافًا مِنْ أَحَدٍ

L28387 And with Allah, the Exalted, is all divine enablement.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28388 The Issue of the Bequest to the Slave.

[مَسْأَلَةُ الْوَصِيَّةِ لِلْعَبْدِ]

L28389 Issue 1763: It is permissible for a person to bequeath specified property or a portion of his wealth to his own slave or to the slave of his heir. However, the testator’s slave is not emancipated through such a bequest. The heir may reclaim from his own slave whatever was bequeathed to him. If the testator bequeaths to his slave the latter’s freedom, the bequest is invalid, the slave

١٧٦٣ - مَسْأَلَةٌ: وَوَصِيَّةُ الْمَرْءِ لِعَبْدِهِ بِمَالٍ مُسَمًّى أَوْ بِجُزْءٍ مِنْ مَالِهِ: جَائِزٌ، وَكَذَلِكَ لِعَبْدِ وَارِثِهِ، وَلَا يُعْتَقُ عَبْدُ الْمُوصِي بِذَلِكَ، وَلِوَارِثِ الْمُوصِي أَنْ يَنْتَزِعَ مِنْ عَبْدِهِ نَفْسِهِ مَا أَوْصَى لَهُ فَلَوْ أَوْصَى لِعَبْدِهِ بِرَقَبَتِهِ، فَالْوَصِيَّةُ بَاطِلٌ، وَلَا يُعْتَقُ الْعَبْدُ بِذَلِكَ - وَلَا شَيْءَ

[12] **Qur’an references (L28382):** Qur’an 5:2 (Al-Ma’idah).
[13] **Qur’an references (L28383):** Qur’an 5:49 (Al-Ma’idah).
[14] **Qur’an references (L28386):** Qur’an 19:64 (Maryam).

is not emancipated by it, and he has no claim to anything. If the testator bequeaths a third of his wealth to his slave, the slave shall receive a third of the remaining estate after deducting the slave's value from the testator's property, and the slave is not emancipated by this bequest.

L28390–28392 And the people have differed regarding this—Al-Ḥasan, Ibn Sīrīn, Abū Ḥanīfah, and Mālik said, Al-Shāfiʿī holds that if someone allocates a third of their wealth to emancipate their slave, the slave is freed from that third. If anything remains of the third, it is likewise given to them.

L28393 Similarly, if he bequeaths to him an undivided share in his estate less than a third, he is to be manumitted and granted the remaining portion of that share.

L28394 Then they disagreed—if the third (of the estate) does not cover his (the slave's) value—so al-Ḥasan, Ibn Sīrīn, and Abū Ḥanīfah said: "The portion of the slave that the third covers is emancipated, then the remainder of him is emancipated, and he must work to redeem the value of what exceeds the third."

L28395 Mālik and al-Shāfiʿī said: As much as can be manumitted with one-third [of the estate] is freed, and the rest [of the enslaved individuals] remain in bondage.

L28396 Similarly, according to those we mentioned, if one bequeaths the manumission of himself (as a slave) or himself (manumission), or if he bequeaths a specified item from his wealth, items measured by volume, by weight, or by count, then Abū Ḥanīfa, Sufyān al-Thawrī, and Isḥāq ibn Rāhawayh ruled the bequest invalid. This resembles the opinion of al-Shāfiʿī.

L28397 And Mālik said: The bequest is valid, and the heir has no right to contest it.

L28398 Al-Awzāʿī said: A bequest to a slave is null and void under all circumstances.

L28399 As we have stated, Abu Thawr and Abu Sulayman said.

لَهُ - فَلَوْ أَوْصَى لِعَبْدِهِ بِثُلُثِ مَالِهِ أُعْطِيَ ثُلُثَ سَائِرِ مَا يَبْقَى مِنْ مَالِ الْمُوصِي بَعْدَ إِخْرَاجِ الْعَبْدِ عَنْ مَالِهِ، وَلَا يُعْتَقُ بِذَلِكَ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ الْحَسَنُ، وَابْنُ سِيرِينَ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: مَنْ أَوْصَى لِعَبْدِهِ بِثُلُثِ مَالِهِ أُعْتِقَ الْعَبْدُ مِنْ الثُّلُثِ، فَإِنْ فَضَلَ مِنْ الثُّلُثِ شَيْءٌ أُعْطِيَهُ أَيْضًا.

وَكَذَلِكَ إِنْ أَوْصَى لَهُ بِجُزْءٍ مَشَاعٍ فِي مَالِهِ أَقَلَّ مِنْ الثُّلُثِ فَيُعْتَقُ، وَيُعْطَى مَا فَضَلَ مِنْ ذَلِكَ الْجُزْءِ.

ثُمَّ اخْتَلَفُوا - إِنْ لَمْ يَحْمِلْهُ الثُّلُثُ - فَقَالَ الْحَسَنُ، وَابْنُ سِيرِينَ، وَأَبُو حَنِيفَةَ: يُعْتَقُ مِنْهُ مَا حَمَلَ الثُّلُثُ، ثُمَّ يُعْتَقُ بَاقِيهِ، وَيَسْتَسْعِي فِي قِيمَةِ مَا فَضَلَ مِنْهُ عَنْ الثُّلُثِ.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يُعْتَقُ مِنْهُ مَا يَحْمِلُ الثُّلُثُ وَيَبْقَى سَائِرُهُ رَقِيقًا.

وَكَذَلِكَ أَيْضًا عِنْدَ مَنْ ذَكَرْنَا إِنْ أَوْصَى لَهُ بِرَقَبَتِهِ أَوْ بِنَفْسِهِ -: فَلَوْ أَوْصَى لَهُ بِشَيْءٍ مُعَيَّنٍ مِنْ مَالِهِ، أَوْ بِمَكِيلٍ، أَوْ مَوْزُونٍ، أَوْ مَعْدُودٍ، فَإِنَّ أَبَا حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيَّ، وَإِسْحَاقَ بْنَ رَاهْوَيْهِ قَالُوا: الْوَصِيَّةُ بَاطِلٌ - وَيُشْبِهُ أَنْ يَكُونَ هَذَا قَوْلَ الشَّافِعِيِّ.

وَقَالَ مَالِكٌ: الْوَصِيَّةُ نَافِذَةٌ، وَلَيْسَ لِلْوَارِثِ أَنْ يَنْتَزِعَ ذَلِكَ.

وَقَالَ الْأَوْزَاعِيِّ: الْوَصِيَّةُ لِلْعَبْدِ بَاطِلَةٌ بِكُلِّ حَالٍ.

وَقَالَ أَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ كَمَا قُلْنَا.

قَالَ أَبُو مُحَمَّد: أَمَّا مَنْ جَوَّزَ الْوَصِيَّةَ لِلْمَمْلُوكِ بِرَقَبَتِهِ فَبَاطِلٌ، وَكَذَلِكَ مَنْ أَجَازَ أَنْ يُوهِبَ لِلْمَمْلُوكِ نَفْسَهُ، أَوْ رَقَبَتَهُ، أَوْ يَتَصَدَّقُ عَلَيْهِ بِهَا، أَوْ أَنْ يُمَلِّكَهَا، وَأَوْجَبَ لَهُ الْعِتْقَ بِذَلِكَ.

L28400 Abu Muhammad said: As for those who permit bequeathing a slave's manumission [i.e., freedom], this is invalid. Similarly, those who permit gifting a slave himself, his manumission, giving his freedom as alms (ṣadaqah), granting him ownership of his freedom, or thereby making his emancipation obligatory—this is invalid.

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَمْ يَأْتِ نَصٌّ قُرْآنٍ وَلَا سُنَّةٌ قَطُّ بِأَنَّ الْمَرْءَ يَمْلِكُ رِقَّ نَفْسِهِ، فَإِذْ لَمْ يَأْتِ بِذَلِكَ قُرْآنٌ وَلَا سُنَّةٌ، وَهُوَ فِي الْعَقْلِ مَمْنُوعٌ؛ لِأَنَّ الْمِلْكَ يَقْتَضِي مَالِكًا وَمَمْلُوكًا وَقَدْ جَاءَتْ النُّصُوصُ بِإِبَاحَةِ فَرْجِ الْمَمْلُوكَةِ، وَبِحُسْنِ الْوَصَاةِ بِمَا مَلَكْنَا - فَصَحَّ أَنَّ الْمَمْلُوكَ غَيْرُ الْمَالِكِ بِيَقِينٍ.

L28401 The proof of this is that neither a Quranic text nor a Sunnah has ever provided that a person owns the enslavement of himself. Since neither the Quran nor the Sunnah has affirmed this, and it is logically prohibited—because ownership inherently necessitates an owner and an owned person—while the texts have permitted sexual access to female slaves and exhorted excellent care of those under our ownership, it is conclusively established with certainty that the owned person cannot be the owner.

وَأَيْضًا - فَلَوْ أَنَّ الْمَمْلُوكَ جَازَ أَنْ يَمْلِكَ نَفْسَهُ لَكَانَ حِينَئِذٍ لَا بُدَّ ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -:

L28402 Moreover, if it were permissible for a slave to own himself, this would necessarily and inevitably result in one of two scenarios, with no third alternative.

إمَّا أَنْ يُعْتِقَ بِمِلْكِهِ لَهُ نَفْسَهُ

L28403 He may emancipate himself through his ownership for himself.

وَإِمَّا أَنْ لَا يُعْتِقَ بِذَلِكَ.

L28404 Or that manumission is not effected by that.

فَإِنْ قَالُوا: يُعْتِقُ وَلَا بُدَّ؟ قُلْنَا: وَمِنْ أَيْنَ قُلْتُمْ هَذَا وَلَا نَصَّ فِي ذَلِكَ.

L28405–28406 If they were to say, "He is to be emancipated without fail?" we would respond: "From where have you derived this, when there is no explicit textual evidence whatsoever for that?"

فَإِنْ قَالُوا: قِيَاسًا عَلَى مَنْ يُعْتَقُ عَلَيْهِ مِنْ ذَوِي رَحِمِهِ فَهُوَ أَوْلَى بِذَلِكَ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّهُ لَا خِلَافَ فِي افْتِرَاقِ حُكْمِ الْمَرْءِ فِي نَفْسِهِ، وَحُكْمِهِ فِي ذَوِي رَحِمِهِ، وَأَنَّهُ يَجُوزُ لَهُ فِي نَفْسِهِ مَا لَا يَجُوزُ لَهُ فِي ذَوِي رَحِمِهِ، فَلِلْمَرْءِ أَنْ يُؤَاجِرَ نَفْسَهُ لِلْخِدْمَةِ، وَلَيْسَ لَهُ أَنْ يُؤَاجِرَ ذَا رَحِمِهِ لِلْخِدْمَةِ - فَبَطَلَ هَذَا الْقِيَاسُ الْفَاسِدُ عَلَى كُلِّ حَالٍ.

L28407 If they say: "By analogy to one upon whom emancipation is required due to his blood relatives, would he not be most entitled to this?" We reply: "All analogy is inherently invalid. Moreover, even were analogy valid, this case would constitute the very essence of invalidity. For there is no disagreement that a person's legal ruling concerning himself differs from his ruling concerning his blood relatives, and that what is permissible for him regarding himself is impermissible regarding his relatives. A person may contract himself for service, but he may not contract his blood relative for service. Thus, this invalid analogy is nullified in all circumstances."

L28408 Furthermore, if his manumission were obligatory due to that, it would un-

doubtedly be valid, for if he acquired ownership of his own person, his master's ownership over him would cease completely, and the slave would become the one manumitting himself.

L28409 The Messenger of Allah - peace and blessings be upon him - said: Indeed, clientage belongs solely to the one who manumitted.

L28410 Therefore, the legal bond of patronage (walā') in this matter cannot belong to the master, and his walā' must belong to himself, for he is the one who was emancipated upon himself. This contradicts your juristic opinion.

L28411 And if you say, "He is not emancipated by that?" it would necessitate that you permit him to sell himself—yet you do not uphold this. Thus, the contradiction of your statement and its invalidity have become evident beyond doubt.

L28412 Divine success is with Allah, the Exalted.

L28413 If they say: Allah, the Exalted, has stated—quoting Moses, peace be upon him, and approving him—"My Lord, I have control over none but myself and my brother" [Al-Mā'idah 5:25].[15]

L28414 We said: Allah, the Mighty and Majestic, spoke the truth, and Musa—peace and blessings be upon him—spoke the truth. He who distorts words from their proper contexts has lied. Indeed, Musa—peace and blessings be upon him—never meant by sensory necessity, without any disagreement from anyone, the ownership of his own enslavement or the enslavement of his brother—peace be upon them both. Whoever asserts this has committed disbelief, descended into foolishness, and displayed brazenness. Rather, he undoubtedly meant without doubt or dispute: the right to act in the affairs of his Lord, the Mighty and Majestic—and this is a truth no rational person would deny. Who is weaker in argument and more grossly ignorant than one who cites a verse contrary to its explicit wording and intended meaning? Truly, this is a grave matter—we seek refuge in Allah from the likes of it.

ثُمَّ لَوْ وَجَبَ عِتْقُهُ بِذَلِكَ لَكَانَ بِلَا شَكٍّ إذْ مَلَكَ رِقَّ نَفْسِهِ فَقَدْ سَقَطَ مِلْكُ سَيِّدِهِ عَنْهُ جُمْلَةً، وَصَارَ الْعَبْدُ هُوَ الْمُعْتِقُ لِنَفْسِهِ.

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» .

فَبَطَلَ أَنْ يَكُونَ الْوَلَاءُ فِي ذَلِكَ لِلسَّيِّدِ، وَوَجَبَ أَنْ يَكُونَ وَلَاؤُهُ لِنَفْسِهِ لِأَنَّهُ هُوَ الَّذِي أُعْتِقَ عَلَى نَفْسِهِ، وَهَذَا خِلَافُ قَوْلِكُمْ.

وَإِنْ قُلْتُمْ: لَا يُعْتَقُ بِذَلِكَ؟ لَزِمَكُمْ أَنْ تُجِيزُوا لَهُ أَنْ يَبِيعَ نَفْسَهُ، وَأَنْتُمْ لَا تَقُولُونَ بِهَذَا - فَوَضَحَ تَنَاقُضُ قَوْلِكُمْ وَفَسَادُهُ بِلَا شَكٍّ -.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ قَالُوا: قَدْ قَالَ اللَّهُ تَعَالَى حَاكِيًا عَنْ مُوسَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَمُصَوِّبًا لَهُ أَنَّهُ: {قَالَ رَبِّ إِنِّي لا أَمْلِكُ إِلا نَفْسِي وَأَخِي} [المائدة: ٢٥]

قُلْنَا: صَدَقَ اللَّهُ عَزَّ وَجَلَّ وَصَدَقَ مُوسَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَكَذَبَ مَنْ يُحَرِّفُ الْكَلِمَ عَنْ مَوَاضِعِهِ إنَّ مُوسَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَعْنِ قَطُّ بِلَا خِلَافٍ مِنْ أَحَدٍ وَبِضَرُورَةِ الْحِسِّ مِلْكَ رِقِّ نَفْسِهِ وَرِقِّ أَخِيهِ - عَلَيْهِمَا السَّلَامُ -، وَمَنْ قَالَ هَذَا فَقَدْ كَفَرَ وَسَخُفَ وَتَوَقَّحَ مَا شَاءَ، وَإِنَّمَا عَنَى بِلَا شَكٍّ وَلَا خِلَافٍ: مِلْكَ التَّصَرُّفِ فِي أَمْرِ رَبِّهِ عَزَّ وَجَلَّ - وَهَذَا حَقٌّ لَا يُنْكِرُهُ ذُو عَقْلٍ، فَمَنْ أَضْعَفُ قَوْلًا وَأَفْحَشُ جَهْلًا مِمَّنْ يَحْتَجُّ بِآيَةٍ فِي خِلَافِ نَصِّهَا وَمَعْنَاهَا، إنَّ هَذَا لَأَمْرٌ عَظِيمٌ - نَعُوذُ بِاَللَّهِ مِنْ مِثْلِهِ.

[15] **Qur'an references (L28413):** Qur'an 5:25 (Al-Ma'idah).

فَإِذْ قَدْ بَطَلَ أَنْ يَمْلِكَ أَحَدٌ رِقَّ نَفْسِهِ فَقَدْ بَطَلَ تَمْلِيكُهُ ذَلِكَ، وَإِذْ بَطَلَ تَمْلِيكُهُ ذَلِكَ فَقَدْ بَطَلَ أَنْ يَكُونَ لَهُ حُكْمٌ نَافِذٌ غَيْرُ الْإِنْكَارِ وَالْإِبْطَالِ، وَصَحَّ قَوْلُنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28415–28417 Since it is invalid for anyone to own the enslavement of oneself, his act of transferring such ownership is likewise invalidated. And since this transfer of ownership is invalidated... It is thus invalid for it to have any binding ruling other than rejection and annulment, and our position is affirmed—and all praise is due to Allah, the Lord of all worlds.

وَأَمَّا إِبْطَالُ الْأَوْزَاعِيِّ الْوَصِيَّةَ لِلْعَبْدِ جُمْلَةً فَخَطَأٌ ظَاهِرٌ، لِأَنَّ اللَّهَ تَعَالَى أَمَرَ بِالْوَصِيَّةِ جُمْلَةً وَلَمْ يَخُصَّ الْعَبْدَ مِنْ الْحُرِّ.

L28418 As for Al-Awza'i's absolute invalidation of bequests to slaves altogether, this constitutes a manifest error, since Allah the Exalted commanded bequests as a general obligation and did not single out the slave in contrast to the free person.

قَالَ تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] فَكُلُّ وَصِيَّةٍ جَائِزَةٌ إِلَّا وَصِيَّةً مَنَعَ مِنْهَا نَصُّ قُرْآنٍ أَوْ سُنَّةٍ.

L28419 He, the Exalted, said: {After any bequest he may make or debt} [An-Nisā': 11]. Thus, every will is valid except one prohibited by an explicit ruling from the Qur'an or the Sunnah.[16]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «فِي كُلِّ ذِي كَبِدٍ رَطْبَةٍ أَجْرٌ» .

L28420 The Messenger of Allah—peace be upon him and his family—said, "There is reward for every living creature with a moist liver."

فَإِنْ قِيلَ: الْعَبْدُ لَا يَمْلِكُ؟

L28421 If it is said: Does the slave not own?

قُلْنَا: بَلْ يَمْلِكُ لِأَنَّ اللَّهَ تَعَالَى أَجَازَ لِلْعَبْدِ النِّكَاحَ، وَأَمَرَ بِإِنْكَاحِ الْإِمَاءِ وَكَلَّفَ النَّاكِحَ جُمْلَةً النَّفَقَةَ وَالْإِسْكَانَ وَالصَّدَاقَ، وَلَا يُكَلَّفُ ذَلِكَ إِلَّا مَالِكٌ، وَكُلُّ ذَلِكَ فَرْضٌ عَلَى كُلِّ نَاكِحٍ، قَالَ تَعَالَى: {فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ} [النساء: ٢٥] فَأَمَرَ تَعَالَى بِإِعْطَاءِ الْأَمَةِ مَهْرَهَا - فَصَحَّ أَنَّهُ لَهَا مِلْكٌ صَحِيحٌ.

L28422 We said: Rather, he possesses legal capacity because Allah the Exalted permitted the male slave to marry, enjoined the marrying of female slaves, and obligated the marrying party to provide, in full, maintenance, housing, and dower. None is charged with this except one holding rightful authority, and all of this constitutes an obligatory duty upon every marrying individual. The Exalted said: *"Marry them with their guardians' permission and give them their bridal dues"* [4:25]. Thus, the Exalted commanded granting the female slave her rightful dower—thereby establishing that she possesses valid ownership rights over it.[17]

وَقَالَ تَعَالَى: {وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢] وَهَذَا نَصٌّ ظَاهِرٌ.

L28423 And He, the Exalted, said: {Marry off those without spouses among you, and the righteous from your male slaves and female slaves. If they are poor, Allah will enrich them from His bounty.} [An-Nur: 32] And this is an explicit text.[18]

[16] **Qur'an references (L28419):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).
[17] **Qur'an references (L28422):** Qur'an 4:25 (An-Nisa).
[18] **Qur'an references (L28423):** Qur'an 24:32 (An-Nur).

فَصَحَّ أَنَّ مِلْكَ الْعَبِيدِ وَالْإِمَاءِ لِلْمَالِ وَكَوْنَهُمْ أَغْنِيَاءَ وَفُقَرَاءَ كَالْأَحْرَارِ.

فَإِنْ ذَكَرُوا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {عَبْدًا مَمْلُوكًا لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٥] .

قُلْنَا: لَمْ يَقُلْ اللَّهُ تَعَالَى: إنَّ هَذِهِ صِفَةُ كُلِّ مَمْلُوكٍ، إنَّمَا ذَكَرَ مَنْ هَذِهِ صِفَتُهُ مِنْ الْمَمَالِيكِ، وَقَدْ قَالَ تَعَالَى: {رَجُلَيْنِ أَحَدُهُمَا أَبْكَمُ لا يَقْدِرُ عَلَى شَيْءٍ} [النحل: ٧٦] أَفَتَرَوْنَ كُلَّ أَبْكَمَ؟ فَوَاجِبٌ لَا يَمْلِكُ الْمَالَ أَصْلًا، وَلَا فَرْقَ بَيْنَ النَّصَّيْنِ؟ وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: أَنَّ اللَّهَ تَعَالَى لَمْ يَقُلْ عَبْدًا مَمْلُوكًا لَا يُمْكِنُ أَنْ يَمْلِكَ مَالًا، إنَّمَا قَالَ: لَا يَقْدِرُ عَلَى شَيْءٍ، وَاَللَّهُ تَعَالَى لَا يَقُولُ إلَّا الْحَقَّ وَنَحْنُ نَرَى الْعَبِيدَ يَقْدِرُونَ عَلَى أَشْيَاءَ كَقُدْرَةِ الْأَحْرَارِ، أَوْ أَكْثَرَ، فَيَقْدِرُونَ عَلَى الصَّلَاةِ، وَالصِّيَامِ، وَالطَّهَارَةِ، وَالْجِمَاعِ، وَالْحَرَكَةِ، وَحَمْلِ الْأَثْقَالِ، وَالْقِتَالِ، وَالْغَزْوِ.

فَصَحَّ أَنَّ اللَّهَ تَعَالَى لَمْ يَعْنِ قَطُّ بِتِلْكَ الْآيَةِ: مِلْكَ الْمَالِ، وَإِنَّمَا عَنَى عَبْدًا لَا يَقْدِرُ عَلَى شَيْءٍ لِضَعْفِ جِسْمِهِ جُمْلَةً - فَبَطَلَ تَمْوِيهُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَمِنْ الْعَجَائِبِ إبْطَالُهُمْ مِلْكَ الْعَبْدِ لِشَيْءٍ مِنْ الْأَمْوَالِ، ثُمَّ مَلَّكُوهُ مَا لَا يَمْلِكُ وَهُوَ رَقَبَتُهُ.

وَأَمَّا إجَازَةُ أَبِي حَنِيفَةَ الْوَصِيَّةَ لِلْمَمْلُوكِ بِالْجُزْءِ الْمَشَاعِ فِي الْمَالِ وَإِبْطَالُهُ الْوَصِيَّةَ لَهُ بِالشَّيْءِ الْمُعَيَّنِ، أَوْ الْمَكِيلِ الْمُعَيَّنِ، أَوْ الْمَوْزُونِ، أَوْ الْمَعْدُودِ: خَطَأٌ، لَا خَفَاءَ بِهِ، وَفَرْقٌ لَا بُرْهَانَ لَهُ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَاقِطَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ.

L28424 Thus, it is established that ownership of male and female slaves is wealth, and their wealth or poverty is akin to that of free individuals.

L28425 If they cite the words of Allah, the Mighty and Sublime: “an owned slave unable to do anything” [An-Nahl 16:75].[19]

L28426 We said: Allah, the Exalted, did not state that this is the attribute of every slave; rather, He mentioned those among the owned slaves who possess this attribute. He, the Exalted, said: *“Two men, one of whom is mute and has no power over anything”* [Qur’an 16:76]. Do you then consider every mute person? Thus, it would necessarily follow that such a person cannot own property at all, and there is no difference between the two texts? The proof of the validity of our statement—that Allah, the Exalted, did not say “a slave who is owned and cannot own property”; rather, He said: *“has no power over anything”*. Allah, the Exalted, speaks only the truth, and we observe that slaves are capable of acts just as free people are, or even more. They are capable of prayer, fasting, purification, sexual intercourse, movement, carrying heavy loads, fighting, and military expeditions.[20]

L28427 Thus, it is established that Allah the Exalted never intended by that verse the ownership of wealth, but rather intended a slave who is wholly incapable of anything due to the weakness of his body as a whole—thus their deception has been invalidated. And divine facilitation is from Allah, the Exalted.

L28428–28429 Among the astonishing matters is their invalidation of the slave’s ownership of any property, then they grant him ownership of what he cannot own - and that is his neck.

L28430 As for Abū Ḥanīfah’s validation of bequeathing an undivided share in property to a slave and his invalidation of bequeathing a specific object, a specified measured amount, a weighed amount, or a counted item to him: this is an undeniably erroneous distinction, entirely devoid of any proof whatsoever—neither from the Quran, nor the Sunnah, nor a weak narration, nor the statement of a Companion, nor a follower (Tābiʿūn), nor analogy, nor well-founded opinion.

[19] **Qur’an references (L28425):** Qur’an 16:75 (An-Nahl).
[20] **Qur’an references (L28426):** Qur’an 16:76 (An-Nahl).

وَقَدْ عَلِمَ كُلُّ ذِي حِسٍّ سَلِيمٍ: أَنَّ مَنْ أَوْصَى لِعَبْدِهِ بِثُلُثِ مَالِهِ فَإِنَّ الشَّيْءَ الْمُوصَى بِهِ هُوَ غَيْرُ الْإِنْسَانِ الْمُوصَى لَهُ بِذَلِكَ الشَّيْءِ، فَصَحَّ يَقِينًا أَنَّهُ لَمْ يُوصِ لَهُ مِنْ رَقَبَتِهِ بِشَيْءٍ وَإِنَّمَا أَوْصَى لَهُ بِجُزْءٍ مِنْ مَالِهِ لَا تَدْخُلُ فِيهِ رَقَبَتُهُ.

L28431 Every person of sound perception knows that whoever bequeaths to his slave a third of his wealth, the thing bequeathed is distinct from the human being to whom it is bequeathed. Thus, it is conclusively valid that he did not bequeath anything from his own person, but rather bequeathed to him a portion of his wealth which does not include his own person.

وَأَمَّا قَوْلُ مَالِكٍ: أَنَّ الْوَصِيَّةَ جَائِزَةٌ، وَلَيْسَ لِلْوَارِثِ أَنْ يَنْتَزِعَهُ مِنْهُ: فَخَطَأٌ فَاحِشٌ، وَقَوْلٌ لَا نَعْلَمُ أَحَدًا قَالَهُ قَبْلَهُ، وَقَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ.

L28432 As for Mālik's ruling that the bequest is permissible and that the heir has no right to forcibly seize it from the testator: this constitutes an egregious error, a position unknown to have been held by any predecessor, and an assertion devoid of evidentiary support for its validity.

فَإِنْ قِيلَ: إِنَّهُ إِذَا انْتَزَعَهُ مِنْهُ صَارَتْ الْوَصِيَّةُ لِلْوَارِثِ؟ قُلْنَا: هَذَا بَاطِلٌ، مَا صَارَتْ قَطُّ وَصِيَّةً لِوَارِثٍ، لَكِنْ هِيَ وَصِيَّةٌ لِغَيْرِ وَارِثٍ، ثُمَّ أَخَذَهَا الْوَارِثُ بِحَوْلِهِ، كَمَا يُجِيزُ مَالِكٌ: الْوَصِيَّةَ لِزَوْجِ الِابْنَةِ الْفَقِيرِ الَّذِي لَا شَيْءَ لَهُ ثُمَّ تَأْخُذُهُ الْوَارِثَةُ فِي صَدَاقِهَا، وَفِي نَفَقَتِهَا، وَكِسْوَتِهَا.

L28433 If it is said: If he seizes it from him, does the bequest then become directed to the heir? We respond: This is invalid, as it never constitutes a valid bequest to an heir. Rather, it remains a bequest to a non-heir, which the heir subsequently acquires by his own capacity, just as Mālik permits a bequest to the daughter's destitute husband—who possesses nothing—after which the female heir takes it for her dower, her maintenance, and her clothing.

وَكَمَا أَجَازَ أَيْضًا - الْوَصِيَّةَ لِغَرِيمِ الْوَارِثِ الْعَدِيمِ، ثُمَّ يَأْخُذُهُ الْوَارِثُ فِي دَيْنِهِ، فَأَيُّ فَرْقٍ بَيْنَ الْأَمْرَيْنِ؟ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L28434 Just as it is also permissible to bequeath to the creditor of an insolvent heir, where the heir then applies it toward his debt, what difference is there between the two cases? And with Allah, the Most High, is success.

[مَسْأَلَة وَصِيَّة مِنْ لَمْ يَبْلُغ مِنْ الرجال وَالنِّسَاء]

A jurisprudential ruling on the will of prepubescent individuals among men and women.

١٧٦٤ - مَسْأَلَةٌ: وَلَا تَجُوزُ وَصِيَّةُ مَنْ لَمْ يَبْلُغْ مِنْ الرِّجَالِ وَالنِّسَاءِ أَصْلًا.

L28435 Issue 1764: The will of a person who has not reached puberty from among men and women is not valid at all.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ عَنْ أُمِّهِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَجَازَ لَهَا وَصِيَّةَ غُلَامٍ لَمْ يَحْتَلِمْ بِبِئْرِ جُشَمَ، قَالَ عَمْرُو بْنُ سُلَيْمٍ: فَبِعْتُهَا أَنَا بِثَلَاثِينَ أَلْفَ دِرْهَمٍ.

L28436 People have differed regarding this—it was narrated to us through the chain of Mālik from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm from his father from ʿAmr ibn Sulaym al-Zurqī from his mother: that ʿUmar ibn al-Khaṭṭāb permitted her to retain a prepubescent male servant at Bi'r Jusham. ʿAmr ibn Sulaym said: "I sold him for thirty thousand dirhams."

وَبِابْنِ وَهْبٍ، عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ، عَنْ

L28437 And via Ibn Wahb, through some men among the people of knowledge, from

Ibn Masʿud: that he deemed the bequest of a minor valid, stating, “Whoever fulfills the right, we validate it.” It is also narrated—though unauthenticated—from Aban ibn ʻUthman: that he permitted the bequest of a nine-year-old girl up to a third.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنِ ابْنِ مَسْعُودٍ: أَنَّهُ أَجَازَ وَصِيَّةَ الصَّبِيِّ، وَقَالَ: مَنْ أَصَابَ الْحَقَّ أَجَزْنَا، وَرُوِيَ - وَلَمْ يَصِحَّ - عَنْ أَبَانَ بْنِ عُثْمَانَ: أَنَّهُ أَجَازَ وَصِيَّةَ جَارِيَةٍ بِنْتِ تِسْعِ سِنِينَ بِالثُّلُثِ.

L28439–28440 And from Jābir al-Juʿfī, from al-Shaʿbī: Whoever fulfills what is rightfully due—whether small or large—we uphold his will.

وَعَنْ جَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ: مَنْ أَصَابَ الْحَقَّ - مِنْ صَغِيرٍ أَوْ كَبِيرٍ - أَجَزْنَا وَصِيَّتَهُ.

L28441 From Ibn Samʿān, from Al-Zuhrī: If a young male or female understands prayer, his or her will is valid even if they have not experienced puberty. The ruling applies equally to both.

وَعَنِ ابْنِ سَمْعَانَ عَنِ الزُّهْرِيِّ: إِذَا عَرَفَ الصَّلَاةَ جَازَتْ وَصِيَّتُهُ وَإِنْ لَمْ يَحْتَلِمْ - الْغُلَامُ وَالْجَارِيَةُ سَوَاءٌ.

L28442 It is authentically reported from Shurayh, ʿAbdullāh ibn ʿUtbah ibn Masʿūd, and Ibrāhīm al-Nakhaʿī that the will of minors is permissible if they meet the requisite conditions [of maturity].

وَصَحَّ عَنْ شُرَيْحٍ، وَعَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ: إِجَازَةُ وَصِيَّةِ الصَّغِيرَيْنِ إِذَا أَصَابَا الْحَقَّ.

L28443 Al-Layth ibn Saʿd said according to the opinion of al-Zuhri.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ كَقَوْلِ الزُّهْرِيِّ.

L28444 Malik permitted a person who has attained nine years of age or older to make a will.

وَأَجَازَ مَالِكٌ وَصِيَّةَ مَنْ بَلَغَ تِسْعَ سِنِينَ فَصَاعِدًا.

L28445 Another opinion—authenticated from ʿUmar ibn ʿAbd al-ʿAzīz—states that the will of one who has not reached puberty is valid if close to one-third [of the estate], but we do not opine that it may reach one-third.

وَقَوْلٌ آخَرُ - صَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ مَنْ لَمْ يَبْلُغِ الْحُلُمَ فَإِنَّ وَصِيَّتَهُ تَجُوزُ فِي قُرْبِ الثُّلُثِ، وَلَا نَرَى أَنْ تَبْلُغَ الثُّلُثَ.

L28446 And it has been narrated to us through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who narrated from him [the Prophet].

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْهُ.

L28447 A third opinion: Al-Qāḍī ʿUbayd Allāh ibn al-Ḥasan al-ʿAnbarī said: It is that when the two minors reach an age corresponding to the average at which boys begin to experience wet dreams (as a sign of puberty), their bequest becomes valid.

وَقَوْلٌ ثَالِثٌ: قَالَ الْقَاضِي عُبَيْدُ اللَّهِ بْنُ الْحَسَنِ الْعَنْبَرِيُّ: وَهُوَ أَنَّهُ إِذَا بَلَغَ الصَّغِيرَانِ سِنًّا مِنْ وَسَطِ مَا يَحْتَلِمُ لَهُ الْغِلْمَانُ: جَازَتْ وَصِيَّتُهُمَا.

L28448 The fourth opinion is that the will of one who has not experienced nocturnal emission is not valid, and likewise a woman’s will is not valid until she experiences nocturnal emission or menstruates—as reported to us through the transmission of ʿAbd al-Razzāq from Ibrāhīm ibn Abī Yaḥyā from al-

وَقَوْلٌ رَابِعٌ: وَهُوَ أَنَّ وَصِيَّةَ مَنْ لَمْ يَحْتَلِمْ لَا تَجُوزُ، وَكَذَلِكَ الْمَرْأَةُ مَا لَمْ تَحْتَلِمْ أَوْ تَحِضْ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ أَبِي يَحْيَى عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ

Ḥajjāj ibn Arṭāḥ from ʿAṭāʾ from Ibn ʿAbbās: “The will of a prepubescent boy is not valid until he experiences nocturnal emission”—and this is established from al-Ḥasan al-Baṣrī and Ibrāhīm al-Nakhaʿī as well. It is also the opinion of Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their companions.

عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ: لَا تَجُوزُ وَصِيَّةُ الْغُلَامِ حَتَّى يَحْتَلِمَ - وَصَحَّ هَذَا عَنْ الْحَسَنِ الْبَصْرِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ أَيْضًا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L28449 Abu Muhammad said: As for ‘Ubayd Allah ibn al-Hasan’s specification of puberty as the midpoint of the age range at which boys experience nocturnal emissions, ‘Umar ibn ‘Abd al-‘Aziz’s rejection of the notion that puberty occurs at one-third of a presumed age, and his allowance of ages close to that, along with Malik’s specification for a boy aged nine and above—these are opinions with no basis whatsoever. We know of no one who defined this age before Malik.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا تَحْدِيدُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ بِبُلُوغِ مَنْ هِيَ وَسَطُ مَا يَحْتَلِمُ لَهَا الْغِلْمَانُ - وَمَنْعُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مِنْ بُلُوغِ الثُّلُثِ، وَإِجَازَتُهُ مَا قَرُبَ مِنْ ذَلِكَ - وَتَخْصِيصُ مَالِكٍ ابْنَ تِسْعٍ فَصَاعِدًا -: فَأَقْوَالٌ لَا مُتَعَلَّقَ لَهَا بِشَيْءٍ أَصْلًا، وَمَا نَعْلَمُ أَحَدًا حَدَّ ذَلِكَ قَبْلَ مَالِكٍ.

L28450 And perhaps some of his followers may say: “It is authenticated that the Prophet (peace be upon him) consummated the marriage with ʿĀ’ishah, the Mother of the Believers, when she was nine years of age?”

وَلَعَلَّ بَعْضَ مُقَلِّدِيهِ يَقُولُ: صَحَّ أَنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ بِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ وَهِيَ بِنْتُ تِسْعِ سِنِينَ» ؟

L28451–28452 Then we say to him: Yes, and it is established that he (peace and blessings be upon him) married her when she was a six-year-old girl, so validate the will of a six-year-old son based on that.

فَنَقُولُ لَهُ: نَعَمْ، وَصَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - تَزَوَّجَهَا وَهِيَ بِنْتُ سِتِّ سِنِينَ، فَأَجِيزُوا وَصِيَّةَ ابْنِ سِتِّ سِنِينَ بِذَلِكَ -.

L28453 And all of this has no bearing whatsoever on the will at all.

وَهَذَا كُلُّهُ لَا مَدْخَلَ لَهُ فِي الْوَصِيَّةِ أَصْلًا.

L28454 As for those who permit the bequest made by the two minors when they met the rightful criteria, they cite as evidence the statement of Allah, the Exalted: “And do good” [Surah al-Ḥajj 22:77].[21]

وَأَمَّا مَنْ أَجَازَ وَصِيَّةَ الصَّغِيرَيْنِ إذَا أَصَابَا الْحَقَّ، فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] .

L28455 They said: This is a general principle. The Almighty stated concerning inheritance: *“After any bequest he bequeaths or debt”* [4:11]. This is a general principle. There is an established narration from the Prophet (peace and blessings be upon him) when a woman asked him: “Does the minor have

قَالُوا: وَهَذَا عُمُومٌ، وَقَالَ تَعَالَى فِي الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] وَهَذَا عُمُومٌ، وَبِالثَّابِتِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ «سَأَلَتْهُ الْمَرْأَةُ عَنْ الصَّغِيرِ أَلَهُ حَجٌّ؟ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: نَعَمْ، وَلَكِ أَجْرٌ»

[21] **Qur’an references (L28454):** Qur’an 22:77 (Al-Hajj).

to perform Hajj?" He (peace and blessings be upon him) replied: "Yes, and you (the woman) will have a reward."[22]

L28456 And we found him urging prayer and fasting, so the bequest is likewise enjoined.

L28457 They said: The spendthrift and the minor are prohibited from their wealth during their lifetimes, and the will of the spendthrift is valid. Does the same apply to the minor?

L28458 They said: This is the ruling of ʿUmar in the presence of the Companions—may Allah be pleased with them—and the narration from Ibn ʿAbbās contrary to that is invalid, as its chain includes weak transmitters: Ibrāhīm ibn Abī Yaḥyā and al-Ḥajjāj ibn Arṭāh. Such a ruling cannot be established through independent reasoning—they have no valid objection beyond what we have stated.

L28459 None of this applies to Mālik and those who followed his opinion in any respect, for they singled out those below nine without proof, thereby opposing all of that.

L28460 Abū Muḥammad said: All of it—they have no authoritative proof for any part of it—as for the saying of Allah, the Exalted: {Perform acts of righteousness} [Al-Ḥajj: 77].[23]

L28461 His statement, Exalted is He: {after a bequest he has made or debt} [Quran 4:11].[24]

L28462 For indeed, one who has not reached puberty is not addressed by any of the Sharia's rulings—neither obligations, prohibitions, nor recommended acts—nor included in this discourse. However, Allah the Exalted has graced him by accepting his deeds, which are physical acts of righteousness, without obligating him to them.

L28463 It has been authentically reported from the Messenger of Allah (peace be

وَوَجَدْنَاهُ يَحُضُّ عَلَى الصَّلَاةِ وَالصِّيَامِ فَالْوَصِيَّةُ كَذَلِكَ.

وَقَالُوا: السَّفِيهُ، وَالصَّغِيرُ مَمْنُوعَانِ مِنْ أَمْوَالِهِمَا فِي حَيَاتِهِمَا، وَوَصِيَّةُ السَّفِيهِ: جَائِزَةٌ، فَالصَّغِيرُ كَذَلِكَ؟

وَقَالُوا: هَذَا حُكْمُ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ بِخِلَافِ ذَلِكَ لَا تَصِحُّ، لِأَنَّهَا عَنْ هَالِكِينَ: إبْرَاهِيمُ بْنُ أَبِي يَحْيَى، وَالْحَجَّاجُ بْنُ أَرْطَاةَ، وَمِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ - مَا لَهُمْ شُبْهَةٌ غَيْرَ مَا ذَكَرْنَا -.

وَكُلُّ ذَلِكَ لَا مُتَعَلَّقَ لِمَالِكٍ وَمَنْ قَلَّدَهُ بِشَيْءٍ مِنْهُ، لِأَنَّهُمْ خَصُّوا مَنْ دُونَ التِّسْعِ بِلَا؛ بُرْهَانٍ، فَخَالَفُوا كُلَّ ذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ -: أَمَّا قَوْله تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] .

وقَوْله تَعَالَى: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] .

فَإِنَّ مَنْ لَمْ يَبْلُغْ غَيْرُ مُخَاطَبٍ بِشَيْءٍ مِنْ الشَّرَائِعِ، لَا بِفَرْضٍ وَلَا بِتَحْرِيمٍ وَلَا بِنَدْبٍ، وَلَا دَاخِلًا فِي هَذَا الْخِطَابِ، لَكِنَّ اللَّهَ تَعَالَى تَفَضَّلَ عَلَيْهِ بِقَبُولِ أَعْمَالِهِ الَّتِي هِيَ أَعْمَالُ الْبِرِّ بِبَدَنِهِ دُونَ أَنْ يُلْزِمَهُ ذَلِكَ.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْقَلَمَ مَرْفُوعٌ عَنْ الصَّبِيِّ حَتَّى يَبْلُغَ فَصَحَّ أَنَّهُ غَيْرُ مُخَاطَبٍ، فَبَطَلَ التَّعْلِيقُ بِالْآيَتَيْنِ الْمَذْكُورَتَيْنِ.

[22] **Qur'an references (L28455):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).
[23] **Qur'an references (L28460):** Qur'an 22:77 (Al-Hajj).
[24] **Qur'an references (L28461):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

upon him) that the pen is lifted [from recording deeds] for a child until he attains maturity. Thus, it is established that he is not held accountable, thereby invalidating the conditional ruling derived from the two aforementioned verses.

L28464–28465 As for his statement—peace and blessings be upon him—regarding the minor: "Does he have Hajj?" Then yes, it is valid. This does not entail extending it to seeking closeness through wealth or giving the wealth as charity—neither in his lifetime nor in his bequest after death. Thus, their reliance on this narration is invalidated, and success comes solely from Allah, the Most High.

وَأَمَّا قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي الصَّغِيرِ لَهُ حَجٌّ؟ فَنَعَمْ، هُوَ حَقٌّ، وَلَيْسَ فِي ذَلِكَ إطْلَاقُهُ عَلَى التَّقَرُّبِ بِالْمَالِ وَالصَّدَقَةِ بِهِ، لَا فِي حَيَاتِهِ وَلَا فِي وَصِيَّتِهِ بَعْدَ وَفَاتِهِ، فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28466 Analogy is invalid. Moreover, even if analogy were valid, this instance would epitomize invalidity itself, for they did not analogize charity performed by a minor during his lifetime to Hajj performed on his behalf. Therefore, analogizing bequests involving wealth to charity involving wealth would be more appropriate—if analogy were valid—than analogizing bequests to Hajj and prayer.

وَالْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّهُمْ لَمْ يَقِيسُوا الصَّدَقَةَ فِي الْحَيَاةِ مِنْ الصَّغِيرِ عَلَى الْحَجِّ مِنْهُ، فَقِيَاسُ الْوَصِيَّةِ بِالْمَالِ عَلَى الصَّدَقَةِ بِالْمَالِ أَوْلَى أَنْ يَكُونَ لَوْ كَانَ الْقِيَاسُ حَقًّا مِنْ قِيَاسِ الْوَصِيَّةِ عَلَى الْحَجِّ وَالصَّلَاةِ.

L28467 As for their claim that minors are urged to pray and fast, and thus the same applies to the will—this too is baseless, for it is a corrupt analogy, as we have explained.

وَأَمَّا قَوْلُهُمْ: إنَّ مَنْ لَمْ يَبْلُغْ يُحَضُّ عَلَى الصَّلَاةِ، وَالصِّيَامِ فَكَذَلِكَ الْوَصِيَّةُ - فَبَاطِلٌ أَيْضًا لِأَنَّهُ قِيَاسٌ فَاسِدٌ كَمَا ذَكَرْنَا.

L28468 As for their claim that minors and prodigals are restricted from managing their wealth, yet the will of a prodigal is valid—likewise the minor—this is among the most flawed of their arguments, for we do not concede that a rational Muslim could ever be considered a prodigal. Glory be to Allah, far above that! The term "prodigal" applies only to a disbeliever or an insane person lacking discernment. Rather, we affirm to them: A minor and a foolish person lacking discernment are both restricted from managing their wealth, and the will of a foolish person lacking discernment is invalid—thus the same applies to a minor. This constitutes a sounder analogy than theirs, as the initial premise is universally agreed upon.

وَأَمَّا قَوْلُهُمْ: إنَّ الصَّغِيرَ، وَالسَّفِيهَ مَمْنُوعَانِ مِنْ مَالِهِمَا، وَوَصِيَّةُ السَّفِيهِ جَائِزَةٌ فَكَذَلِكَ الصَّغِيرُ - فَهَذَا مِنْ أَفْسَدِ مَا شَغَبُوا بِهِ، لِأَنَّنَا لَا نُسَاعِدُهُمْ عَلَى أَنَّ مُسْلِمًا يَعْقِلُ يَكُونُ سَفِيهًا أَصْلًا، حَاشَ لِلَّهِ مِنْ ذَلِكَ، إنَّمَا السَّفِيهُ الْكَافِرُ، أَوْ الْمَجْنُونُ الَّذِي لَا يُمَيِّزُ - لَكِنْ نَقُولُ لَهُمْ: إنَّ الصَّغِيرَ وَالْأَحْمَقَ الَّذِي لَا يُمَيِّزُ: مَمْنُوعَانِ مِنْ مَالِهِمَا، وَوَصِيَّةُ الْأَحْمَقِ الَّذِي لَا يُمَيِّزُ لَا تَجُوزُ، فَالصَّغِيرُ كَذَلِكَ - فَهَذَا قِيَاسٌ أَصَحُّ مِنْ قِيَاسِهِمْ؛ لِأَنَّ الْقَضِيَّةَ الْأُولَى مُتَّفَقٌ عَلَيْهَا -.

L28469 And by Allah, the Exalted, is the success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا قَوْلُهُمْ: إنَّهُ فِعْلُ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَمِثْلُهُ لَا يُقَالُ بِالرَّأْيِ؟ فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L28470 As for their statement: "Indeed, it is the action of ʿUmar in the presence of the Companions—may Allah be pleased with them—and such a matter is not determined by independent reasoning." Therefore, no one besides the Messenger of Allah—may Allah bless him and grant him peace—holds conclusive proof.

ثُمَّ إنَّهَا لَا تَصِحُّ عَنْ عُمَرَ، وَلَا عَنْ ابْنِ مَسْعُودٍ، لِأَنَّ أُمَّ عَمْرِو بْنِ سُلَيْمٍ مَجْهُولَةٌ، وَعَمْرُو بْنُ سُلَيْمٍ لَمْ يُدْرِكْ عُمَرَ، وَلَا يُدْرَى مَنْ رَوَاهُ عَنْ ابْنِ مَسْعُودٍ، وَقَدْ خَالَفَهُمَا ابْنُ عَبَّاسٍ، وَالرِّوَايَةُ عَنْهُمْ كُلِّهِمْ فِي ذَلِكَ لَا تَصِحُّ.

L28471 Furthermore, it is not authentically transmitted from Umar nor from Ibn Mas'ud, because the mother of 'Amr ibn Sulaym is unknown, and 'Amr ibn Sulaym did not meet Umar. It is also unknown who narrated it from Ibn Mas'ud. Moreover, Ibn Abbas contradicted both of them, and the narrations from all of them on this matter are inauthentic.

وَكَمْ قَضِيَّةٍ خَالَفُوا فِيهَا عُمَرَ بْنَ الْخَطَّابِ لَا يُعْرَفُ لَهُ فِيهَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28472 Countless are the issues in which they opposed Umar ibn al-Khattab, yet no dissenter from the Companions—may Allah be pleased with them—is known to have opposed him therein. Thus, all their clamorous objections are rendered void. And success is by Allah, the Most High.

فَلَمَّا بَطَلَ كُلُّ مَا احْتَجُّوا بِهِ وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَلا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَامًا وَارْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلا مَعْرُوفًا} [النساء: ٥] {وَابْتَلُوا الْيَتَامَى حَتَّى إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ} [النساء: ٦] فَصَحَّ بِنَصِّ الْقُرْآنِ أَنَّ الْمَجْنُونَ، وَالصَّغِيرَ: مَمْنُوعَانِ مِنْ أَمْوَالِهِمَا حَتَّى يَعْقِلَ الْأَحْمَقُ، وَيَبْلُغَ الصَّغِيرُ - فَصَحَّ أَنَّهُ لَا يَجُوزُ لَهُمَا حُكْمٌ فِي أَمْوَالِهِمَا أَصْلًا، وَتَخْصِيصُ الْوَصِيَّةِ فِي ذَلِكَ خَطَأٌ.

L28473–28475 When all their arguments were invalidated, we find that Allah, the Exalted, says: "And do not entrust the foolish with your properties which Allah has made a means of sustenance for you, but provide for them from it, clothe them, and address them with gracious words" [An-Nisa: 5]. "And test the orphans until they reach marriageable age; then if you perceive in them sound judgment, deliver their property to them" [An-Nisa: 6]. Thus, by the explicit text of the Qur'an, the insane person and the minor are prohibited from their wealth until the prodigal attains understanding and the minor reaches maturity. Therefore, it is established that they have no legal authority over their wealth whatsoever, and specifying the will in this context is erroneous.[25]

وَكَذَلِكَ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ» فَذَكَرَ فِيهِمْ الصَّغِيرَ حَتَّى يَبْلُغَ - فَصَحَّ أَنَّهُ غَيْرُ مُخَاطَبٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28476 Similarly, it has been authentically reported from the Prophet (may Allah's blessings and peace be upon him) that he said: "The pen is lifted from three," and he mentioned among them the minor until he reaches puberty. Thus, it is established that he is not held accountable. And success is from Allah, the Exalted.

[مَسْأَلَة وَصِيَّة الْعَبْد]

[25] **Qur'an references (L28473):** Qur'an 4:5 (An-Nisa); Qur'an 4:6 (An-Nisa).

The Issue of a Slave's Will.

Issue 1765: A slave's will is fundamentally invalid, for Allah the Exalted established wills only in the context of inheritance, and a slave is not inherited. Thus he falls outside those affirmed through wills in the Quran. The Messenger of Allah - peace and blessings be upon him and his family - stated regarding wills: "Whoever has something to bequeath..." None may bequeath anything except those permitted by the text, and a slave has nothing to bequeath. Whatever he possesses, when he dies, passes to his master; it is not inherited from him.

As for one who is part-free and part-enslaved, his will is equivalent to that of a free person, because he inherits; thus, he is included in the general obligation imposed on those commanded to make a will. And divine success is from Allah, the Exalted.

The Issue of Bequests That the Third Cannot Sustain

1766 - Issue: If someone bequeaths what a third [of their estate] cannot bear, execution begins with what the testator first mentioned in their statement—regardless of its nature—until the third is fulfilled. Once the third is fulfilled, the remainder of the bequest is invalidated.

If the matter was concisely stated [to mean] their mutual allocation of shares in the will—and this is an issue on which people have differed—it is reported from Ibn ʿUmar and ʿAṭāʾ al-Khurāsānī.

It has been authentically narrated by Masrūq, Shurayḥ, al-Ḥasan al-Baṣrī, Ibrāhīm al-Nakhaʿī, Saʿīd ibn al-Musayyib, al-Zuhrī, Qatādah, Sufyān al-Thawrī, and Isḥāq ibn Rāhawayh that manumission takes precedence over all bequests.

Another opinion: We narrated it through Saʿīd ibn Manṣūr, from Jarīr, from al-Mughīrah, from Ibrāhīm al-Nakhaʿī, who said: "Manumission is only prioritized first when the slave is owned by him and he specifies the slave by name. But if he says: 'Free a slave on my behalf,' then the freeing

١٧٦٥ - مَسْأَلَةٌ: وَلَا تَجُوزُ وَصِيَّةُ الْعَبْدِ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا جَعَلَ الْوَصِيَّةَ حَيْثُ الْمَوَارِيثُ وَالْعَبْدُ لَا يُورَثُ فَهُوَ غَيْرُ دَاخِلٍ فِيمَنْ أَقَرَّ بِالْوَصِيَّةِ فِي الْقُرْآنِ وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي وَصِيَّةٍ " مَنْ لَهُ شَيْءٌ يُوصِي فِيهِ " وَلَيْسَ لِأَحَدٍ شَيْءٌ يُوصِي فِيهِ إلَّا مَنْ أَبَاحَ لَهُ النَّصُّ ذَلِكَ، وَلَيْسَ لِلْعَبْدِ شَيْءٌ يُوصِي فِيهِ، إنَّمَا لَهُ شَيْءٌ إذَا مَاتَ صَارَ لِسَيِّدِهِ لَا يُورَثُ عَنْهُ.

فَأَمَّا مَنْ بَعْضُهُ حُرٌّ وَبَعْضُهُ عَبْدٌ فَوَصِيَّتُهُ كَوَصِيَّةِ الْحُرِّ، لِأَنَّهُ يُورَثُ فَهُوَ دَاخِلٌ فِي عُمُومِ الْمَأْمُورِينَ بِالْوَصِيَّةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْوَصِيَّة بِمَا لَا يتحمله الثُّلُث]

١٧٦٦ - مَسْأَلَةٌ: وَمَنْ أَوْصَى بِمَا لَا يَحْمِلُهُ ثُلُثُهُ بُدِئَ بِمَا بَدَأَ بِهِ الْمُوصِي فِي الذِّكْرِ أَيَّ شَيْءٍ كَانَ حَتَّى يَتِمَّ الثُّلُثُ، فَإِذَا تَمَّ بَطَلَ سَائِرُ الْوَصِيَّةِ.

فَإِنْ كَانَ أَجْمَلَ الْأَمْرَ تَخَاصُّوا فِي الْوَصِيَّةِ، وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَرُوِيَ عَنْ ابْنِ عُمَرَ، وَعَطَاءٍ الْخُرَاسَانِيِّ.

وَصَحَّ عَنْ مَسْرُوقٍ، وَشُرَيْحٍ، وَالْحَسَنِ الْبَصْرِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ: أَنَّهُ يُبْدَأُ بِالْعِتْقِ عَلَى جَمِيعِ الْوَصَايَا.

of this slave and the remainder of the bequest are considered equal." This is the opinion of al-Shaʿbī.

وَقَوْلٌ آخَرُ: رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إنَّمَا يُبْدَأُ بِالْعِتْقِ إذَا كَانَ مَمْلُوكًا لَهُ سَمَّاهُ بِاسْمِهِ، فَأَمَّا إذَا قَالَ: أَعْتِقُوا عَنِّي نَسَمَةً، فَالنَّسَمَةُ وَسَائِرُ الْوَصِيَّةِ سَوَاءٌ - وَهُوَ قَوْلُ الشَّعْبِيِّ.

L28485–28486 We have transmitted it through the chain of Saʿīd ibn Manṣūr, who said: Ashʿath ibn Sawwār narrated to us from al-Shaʿbī. Hushaym said: "I heard Ibn Abī Laylā and Ibn Shubrumah both stating it."

وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قَالَ: نا أَشْعَثُ بْنُ سَوَّارٍ عَنْ الشَّعْبِيِّ قَالَ هُشَيْمٌ: وَسَمِعْت ابْنَ أَبِي لَيْلَى، وَابْنَ شُبْرُمَةَ يَقُولَانِهِ.

L28487 A third opinion is that bequests—whether manumission or other obligations—are subject to proportional allocation. We have transmitted this via al-Ḥajjāj ibn al-Minhāl, who narrated to us from Ḥammād ibn Salamah, who narrated to us from Ḥammād ibn Zayd. Ibn Salamah stated: "I, Qays, narrate from ʿAṭāʾ ibn Abī Rabāḥ," while Ibn Zayd stated: "I, Ayyūb al-Sikhtiyānī, narrate from Muḥammad ibn Sīrīn." Then ʿAṭāʾ and Ibn Sīrīn agreed regarding someone who bequeaths manumission and other obligations exceeding a third: the third is divided among them by shares.

وَقَوْلٌ ثَالِثٌ: وَهُوَ أَنَّهُ تَتَحَاصُّ الْوَصَايَا، الْعِتْقُ وَغَيْرُهُ سَوَاءٌ -: رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا حَمَّادُ بْنُ زَيْدٍ، قَالَ ابْنُ سَلَمَةَ: أَنَا قَيْسٌ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَقَالَ ابْنُ زَيْدٍ: أَنَا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، ثُمَّ اتَّفَقَ عَطَاءٌ، وَابْنُ سِيرِينَ فِيمَنْ أَوْصَى بِعِتْقٍ وَأَشْيَاءَ، فَزَادَتْ عَلَى الثُّلُثِ: أَنَّ الثُّلُثَ بَيْنَهُمْ بِالْحِصَصِ.

L28488 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us: Muṭarrif ibn Ṭarīf narrated to us, from Ibrāhīm al-Nakhaʿī, who said: "One must begin with manumission." Al-Shāfiʿī held the opinion: "With the shares."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: يُبْدَأُ بِالْعَتَاقَةِ، وَقَالَ الشَّافِعِيُّ: بِالْحِصَصِ.

L28489 From the chain of Saʿīd ibn Manṣūr: Hushaym said: "Yūnus ibn ʿUbayd narrated from al-Ḥasan that he said: 'Begin with manumission.'" He then added afterward: "By shares." This is the position of Aḥmad ibn Ḥanbal, Abū Thawr, and one of the two opinions of Ibn Shubruma. Ibn Shubruma further stated: "The slave must labor toward self-manumission through what remains from the bequest."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قَالَ هُشَيْمٌ: أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ أَنَّهُ قَالَ: يُبْدَأُ بِالْعِتْقِ، ثُمَّ قَالَ بَعْدَ ذَلِكَ: بِالْحِصَصِ - وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي ثَوْرٍ، وَأَحَدُ قَوْلَيْ ابْنِ شُبْرُمَةَ، وَزَادَ: أَنَّهُ يَسْتَسْعِي فِي الْعِتْقِ فِيمَا فَضَلَ عَنْ الْوَصِيَّةِ.

L28490 As for later jurists: Al-Layth ibn Saʿd stated that priority is given to the *mudabbar*—a slave designated for gradual emancipation—and the one unconditionally emancipated during terminal illness. If the third portion of the estate cannot cover both, their claims are proportionally reduced. Thereafter, priority goes to those whom the testator explicitly bequeathed to emancipate, provided the slave was owned by him at the time of the bequest. Finally,

وَأَمَّا الْمُتَأَخِّرُونَ: فَإِنَّ اللَّيْثَ بْنَ سَعْدٍ قَالَ: يُبْدَأُ بِالْمُدَبَّرِ وَالْمُعْتَقِ بَتْلًا فِي الْمَرَضِ وَيَتَحَاصَّانِ إنْ لَمْ يَحْمِلْهُمَا الثُّلُثُ، ثُمَّ مَنْ بَعْدَهُمَا بِمَنْ أَوْصَى بِعِتْقِهِ بِعَيْنِهِ، وَهُوَ فِي مِلْكِهِ حِينَ الْوَصِيَّةِ، ثُمَّ يُتَحَاصُّ الْعِتْقُ الْمُوصَى بِهِ جُمْلَةً مَعَ سَائِرِ الْوَصَايَا

emancipation bequests made collectively are proportionally reduced alongside all other bequests.

L28491 Al-Hasan ibn Ḥayy said: Begin with unconditional manumission (batlan) during terminal illness. Thereafter, remaining manumission and all other bequests are treated equally; they are proportionally divided among all of that.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: يُبْدَأُ بِالْمُعْتَقِ بَتْلًا فِي الْمَرَضِ، ثُمَّ الْعِتْقُ وَسَائِرُ الْوَصَايَا سَوَاءٌ، يُتَحَاصُّ فِي كُلِّ ذَلِكَ.

L28492 Abu Hanifah said: Priority begins with gratuitous transactions during terminal illness, followed by outright emancipation during the illness if emancipation occurs after the gratuitous transaction. If emancipation is granted during the illness and then a gratuitous transaction is made, both are proportionally reduced. If a gratuitous transaction is made during the illness, followed by emancipation, and then another gratuitous transaction, the seller who made the first gratuitous transaction receives half of the [bequeathable] third. The remaining half of the [bequeathable] third is divided between the one emancipated outright during the illness and the one who made the last gratuitous transaction during the illness. This takes precedence over all bequests, whether it is mentioned first or last in the statement.

وَقَالَ أَبُو حَنِيفَةَ: يُبْدَأُ بِالْمُحَابَاةِ فِي الْمَرَضِ، ثُمَّ بَعْدَهُ بِالْعِتْقِ بَتْلًا فِي الْمَرَضِ إِذَا كَانَ الْعِتْقُ بَعْدَ الْمُحَابَاةِ، فَإِنْ أُعْتِقَ فِي مَرَضِهِ ثُمَّ حَابَى تَحَاصَّا جَمِيعًا، فَإِنْ حَابَى فِي مَرَضِهِ ثُمَّ أُعْتِقَ، ثُمَّ حَابَى، فَلِلْبَائِعِ الْمُحَابِي أَوَّلًا نِصْفُ الثُّلُثِ، وَيَكُونُ نِصْفُ الثُّلُثِ الْبَاقِي بَيْنَ الْمُعْتَقِ فِي الْمَرَضِ بَتْلًا وَبَيْنَ الْمُحَابِي فِي الْمَرَضِ آخِرًا - فَهَذَا يُقَدَّمُ عَلَى جَمِيعِ الْوَصَايَا، سَوَاءٌ قُدِّمَ فِي ذَلِكَ فِي الذِّكْرِ أَوْ آخِرِهِ.

L28493–28495 If he bequeaths, alongside that, Ḥajj, manumission, ṣadaqah, and bequests to individuals explicitly named, the third (or what remains thereof) is divided between those explicitly named in the bequests and other acts of worship. Whatever is allocated to those explicitly named in the bequests. He handed it over to them, and they divided it among themselves. What has been determined for all the heirs begins with what the testator first stipulated in his statement. Once that is fulfilled, there is nothing left for what remains.

فَإِنْ أَوْصَى مَعَ ذَلِكَ بِحَجٍّ وَعِتْقٍ وَصَدَقَةٍ وَوَصَايَا لِقَوْمٍ بِأَعْيَانِهِمْ: قُسِمَ الثُّلُثُ، أَوْ مَا بَقِيَ مِنْهُ بَيْنَ الْمُوصَى لَهُمْ بِأَعْيَانِهِمْ وَبَيْنَ سَائِرِ الْقُرَبِ، فَمَا وَقَعَ لِلْمُوصَى لَهُمْ بِأَعْيَانِهِمْ دُفِعَ إِلَيْهِمْ وَتَحَاصُّوا فِيهِ، وَمَا وَقَعَ لِسَائِرِ الْقُرَبِ بُدِئَ بِمَا بَدَأَ بِهِ الْمُوصِي فِي الذِّكْرِ، فَإِذَا تَمَّ فَلَا شَيْءَ لِمَا بَقِيَ.

L28496 Abu Yusuf and Muhammad ibn al-Hasan, the judge, said: In illness, manumission is invariably prioritized over muḥābāh [deathbed gifts] during that illness, followed by the [rules of] muḥābāh.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ الْقَاضِي يُبْدَأُ بِالْعِتْقِ فِي الْمَرَضِ أَبَدًا عَلَى الْمُحَابَاةِ فِي الْمَرَضِ ثُمَّ الْمُحَابَاةُ.

L28497 If he bequeaths unconditional manumission, or the manumission of a slave in his possession, a specified amount of wealth in the cause of Allah the Almighty and Majestic, charity, in Hajj, and to a specific person, all these are apportioned. Whatever is allocated to the specifically designated legatee is

فَإِنْ أَوْصَى بِعِتْقٍ مُطْلَقٍ، أَوْ بِعِتْقِ عَبْدٍ فِي مِلْكِهِ، وَبِمَالٍ مُسَمًّى فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ، وَبِصَدَقَةٍ، وَفِي الْحَجِّ، وَلِإِنْسَانٍ بِعَيْنِهِ: تَحَاصَّ كُلُّ ذَلِكَ، فَمَا وَقَعَ لِلْمُوصَى لَهُ

بِعَيْنِهِ أَخَذَهُ، وَسَائِرُ ذَلِكَ يُبْدَأُ بِمَا بَدَأَ بِهِ الْمُوصِي بِذِكْرِهِ أَوَّلًا فَأَوَّلًا، فَإِذَا تَمَّ الثُّلُثُ فَلَا شَيْءَ لِمَا بَقِيَ.

granted to them. The remainder is allocated starting with the bequest the testator mentioned first, proceeding in the order they were first mentioned. Once the third has been allocated, nothing is allocated to the remaining bequests.

وَقَالَ زُفَرُ بْنُ الْهُذَيْلِ: إِنْ أُعْتِقَ بَتْلًا فِي مَرَضِهِ، ثُمَّ حَابَى فِي مَرَضِهِ بُدِئَ بِالْعِتْقِ، وَإِنْ حَابَى فِي مَرَضِهِ ثُمَّ أُعْتِقَ بُدِئَ بِالْمُحَابَاةِ، ثُمَّ سَائِرُ الْوَصَايَا، سَوَاءٌ مَا أَوْصَى بِهِ مِنْ الْقُرَبِ وَمَا أَوْصَى بِهِ لِإِنْسَانٍ بِعَيْنِهِ: كُلُّ ذَلِكَ بِالْحِصَصِ، لَا يُقَدَّمُ مِنْهُ شَيْءٌ عَلَى شَيْءٍ.

L28498 Zufar ibn al-Hudhayl said: If a slave is unconditionally emancipated during the testator's terminal illness, and he subsequently makes an excessive bequest during that illness, the emancipation takes precedence. If he first makes an excessive bequest during his illness and later emancipates a slave, the excessive bequest is prioritized, followed by the remaining bequests. This applies equally whether he bequeaths for charitable acts or to a specific individual: all are distributed proportionally, with no portion given priority over another.

وَقَالَ مَالِكٌ: يُبْدَأُ بِالْمُحَابَاةِ فِي الْمَرَضِ، ثُمَّ بِالْعِتْقِ بَتْلًا فِي الْمَرَضِ، وَالْمُدَبَّرِ فِي الصِّحَّةِ، وَيَتَحَاصَّانِ، ثُمَّ عِتْقِ مَنْ أَوْصَى بِعِتْقِهِ وَهُوَ فِي مِلْكِهِ، وَعِتْقِ مَنْ سَمَّاهُ وَأَوْصَى بِأَنْ يُبْتَاعَ فَيُعْتَقَ بِعَيْنِهِ، وَيَتَحَاصَّانِ، ثُمَّ سَائِرُ الْوَصَايَا، وَيَتَحَاصُّ مَعَ مَا أَوْصَى بِهِ مِنْ عِتْقِ غَيْرِ مُعَيَّنٍ.

L28499 Begin with deathbed compensatory gifts during illness, then [prioritize] unconditional manumission during illness and posthumous manumission established during health - these two are subject to pro rata reduction. Next comes the manumission of those he bequeathed to free while they remained under his ownership, and the manumission of a named individual whom he instructed to be purchased and freed specifically - these two are also subject to pro rata reduction. Thereafter follow all other bequests, including those for the manumission of unspecified individuals, all subject to pro rata reduction collectively.

وَقَدْ رُوِيَ عَنْهُ: أَنَّ الْمُدَبَّرَ يَبْدَأُ أَبَدًا عَلَى الْعِتْقِ بَتْلًا فِي الْمَرَضِ.

L28500 It has been reported from him that the emancipation of a mudabbar—a slave designated for posthumous freedom—begins perpetually as irrevocable emancipation upon declaration during illness.

وَقَالَ الشَّافِعِيُّ: إذَا أَعْتَقَ فِي الْمَرَضِ عَبْدًا بَتْلًا بُدِئَ بِمَنْ أَعْتَقَ أَوَّلًا فَأَوَّلًا، وَلَا يَتَحَاصُّونَ فِي ذَلِكَ، وَيُرَقُّ مَنْ لَمْ يَحْمِلْهُ الثُّلُثُ، أَوْ يُرَقُّ مِنْهُ مَا يَحْمِلُهُ الثُّلُثُ.

L28501 Al-Shāfiʿī said: If someone manumits an unshared slave during [their final] illness, priority is given to the earliest manumission, followed by subsequent ones in chronological order. They do not share liability proportionally in this matter. Those whose manumission cannot be validated by the third of the estate are re-enslaved, or only the portion [of the slave] validated by the third of the estate is manumitted, and the remainder is re-enslaved.

وَالْهِبَةُ فِي الْمَرَضِ مُبَدَّاةٌ عَلَى جَمِيعِ الْوَصَايَا بِالْعِتْقِ وَغَيْرِهِ.

L28502 A gift given during illness is treated as equivalent in all bequests, whether for manumission or other purposes.

وَقَالَ مَرَّةً أُخْرَى: يَتَحَاصُّ فِي الْمُحَابَاةِ فِي الْمَرَضِ وَسَائِرِ الْوَصَايَا عَلَى السَّوَاءِ، قَالَ: وَقَدْ قِيلَ: إنَّ الْمُحَابَاةَ فِي الْبَيْعِ فِي الْمَرَضِ مَفْسُوخٌ، لِأَنَّهُ وَقَعَ عَلَى غَرَرٍ.

L28503 He said on another occasion: Preferential treatment in bequests during illness and all other bequests are divided equally. He said: It has been stated that preferential treatment in a sale during illness is annulled because it involves *gharar* (uncertainty).

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَزُفَرَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَاللَّيْثِ، وَالْحَسَنِ بْنِ حَيٍّ: فَظَاهِرَةُ الْخَطَأِ؛ لِأَنَّهَا دَعَاوَى وَآرَاءٌ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى نَعْلَمُهُ قَبْلَهُمْ، وَلَا قِيَاسٍ وَلَا رَأْيٍ سَدِيدٍ.

L28504 Abu Muhammad said: As for the statements of Abu Hanifa, Abu Yusuf, Muhammad ibn al-Hasan, Zufar, Malik, al-Shafi'i, al-Layth, and al-Hasan ibn Ḥayy, their positions are manifestly erroneous, for they are mere claims and opinions without evidence - neither derived from the Qur'an, nor from a weak narration, nor from any statement within Allah's creation that we recognize from before their time, nor from analogical reasoning, nor from sound personal judgment.

وَلَيْسَ لِأَحَدٍ أَنْ يُمَوِّهَ هَاهُنَا بِكَثْرَةِ الْقَائِلِينَ؛ لِأَنَّهُمْ كُلُّهُمْ مُخْتَلِفُونَ كَمَا تَرَى، وَأَفْسَدُهَا كُلِّهَا قَوْلُ أَبِي حَنِيفَةَ، ثُمَّ قَوْلُ مَالِكٍ لِكَثْرَةِ تَنَاقُضِهِمَا، وَتَفَاسُدِ أَقْسَامِهِمَا، وَهِيَ أَقْوَالٌ تُؤَدِّي إلَى تَبْدِيلِ الْوَصِيَّةِ بَعْدَ مَا سَمِعْت، وَفِي هَذَا مَا فِيهِ.

L28505–28506 No one should be permitted to obscure the matter here by citing the multitude of proponents, for they all contradict one another, as you see. The most corrupt of all these is the opinion of Abū Ḥanīfah, then that of Mālik, due to the abundance of their contradictions and the corruption of their divisions. These are opinions that lead to altering the testament after what you have heard, and this entails inherent issues.

ثُمَّ نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - قَوْلًا جَامِعًا فِي إبْطَالِ مَا اتَّفَقَ عَلَيْهِ الْمَذْكُورُونَ مِنْ تَبْدِيَةِ الْعِتْقِ بَتْلًا فِي الْمَرَضِ، وَالْمُحَابَاةِ فِي الْمَرَضِ، فَنَقُولُ لَهُمْ: يَا هَؤُلَاءِ أَخْبِرُونَا عَنْ

L28507 Then we say—and success is by Allah, the Exalted—a comprehensive statement invalidating what the mentioned parties have agreed upon regarding declaring the nullification of manumission during terminal illness and favoritism in transactions during illness. We say to them: O you, inform us

قَضَاءِ الْمَرِيضِ فِي عِتْقِه، وَهِبَتِه، وَمُحَابَاتِه فِي بَيْعِه، أَهُوَ كُلُّهُ وَصِيَّةٌ، أَمْ لَيْسَ وَصِيَّةً؟ وَلَا بُدَّ مِنْ أَحَدِهِمَا؟ فَإِنْ قَالُوا: لَيْسَ شَيْءٌ مِنْهُ وَصِيَّةً؟ قُلْنَا: صَدَقْتُمْ، وَهَذَا قَوْلُنَا، وَإِذَا لَمْ يَكُنْ وَصِيَّةً فَلَا مَدْخَلَ لَهُ فِي الثُّلُثِ أَصْلًا؛ لِأَنَّ الثُّلُثَ بِالسُّنَّةِ الْمُسْنَدَةِ مَقْصُورٌ عَلَى الْوَصَايَا، فَقَدْ أَبْطَلْتُمْ إِذْ جَعَلْتُمْ ذَلِكَ فِي الثُّلُثِ؟ فَإِنْ قَالُوا: بَلْ كُلُّ ذَلِكَ وَصِيَّةٌ؟ قُلْنَا لَهُمْ: مِنْ أَيْنَ وَقَعَ لَكُمْ تَبْدِيَةُ ذَلِكَ عَلَى سَائِرِ الْوَصَايَا، وَإِبْطَالُ مَا أَوْصَى بِهِ الْمُسْلِمُ، وَتَبْدِيلُهُ بَعْدَ مَا سَمِعْتُمُوهُ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {فَمَنْ بَدَّلَهُ بَعْدَمَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى الَّذِينَ يُبَدِّلُونَهُ} [البقرة: ١٨١]

about the legal ruling concerning the sick person's acts of manumission, gifting, and preferential treatment in sales. Is all this considered a will, or is it not a will? One of these two possibilities must apply. If they say: "None of it constitutes a will," we respond: You have spoken truthfully—this being our own position. If it is not a will, then it has no relation to the third [of the estate] whatsoever, for the third by established Sunnah applies exclusively to wills. Thus you have invalidated [your stance] by including such matters within the third. If they say: "Rather, all of that constitutes a will," we respond: How did you justify applying this ruling to all other wills, thereby invalidating what a Muslim has bequeathed and altering it after hearing it? Allah the Exalted said: *"Whoever alters it after hearing it, the sin thereof lies upon those who alter it"* (al-Baqarah 2:181).[1]

L28508 وَاعْلَمُوا: أَنَّهُ لَا مُتَعَلَّقَ لَهُمْ بِمَنْ رُوِيَ عَنْهُ تَبْدِيَةُ الْعِتْقِ مِنْ ابْنِ عُمَرَ، وَمَسْرُوقٍ، وَشُرَيْحٍ، وَالزُّهْرِيِّ، وَقَتَادَةَ - ثُمَّ عَنِ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَالْحَسَنِ، فِي أَحَدِ أَقْوَالِهِمْ؛ لِأَنَّهُ لَمْ يَأْتِ قَطُّ عَنْ أَحَدٍ مِنْ هَؤُلَاءِ، وَلَا مِنْ غَيْرِهِمْ تَبْدِيَةُ الْعِتْقِ فِي الْمَرَضِ فِي الثُّلُثِ، وَالْمُحَابَاةِ فِي الْمَرَضِ فِي الثُّلُثِ، عَلَى سَائِرِ الْوَصَايَا، إِنَّمَا جَاءَ عَمَّنْ ذَكَرْنَا تَبْدِيَةُ الْعِتْقِ عَلَى سَائِرِ الْوَصَايَا.

L28508 Know that there is no valid basis to attribute [the doctrine] to those from whom it is narrated - such as Ibn Umar, Masruq, Shuraih, al-Zuhri, and Qatadah - nor to al-Nakhaʿi, al-Shaʿbi, and al-Hasan in one of their statements, regarding the explicit declaration of emancipation superseding all other bequests during illness within the third [of the estate] or favoritism in bequests during illness concerning the third. This is because no evidence has ever been transmitted from any of these individuals nor others establishing that emancipation during illness within the third [portion] or preferential bequests during illness within the third take priority over other bequests. Rather, reports about the explicit declaration of emancipation superseding all other bequests only originate from those we have mentioned.

وَعَنِ النَّخَعِيِّ، وَالشَّعْبِيِّ فِي أَحَدِ قَوْلَيْهِمَا: تَبْدِيَةُ عِتْقِ مَنْ أَوْصَى بِعِتْقِه بِاسْمِه وَعَيَّنَهُ - وَهُوَ فِي مِلْكِ الْمُوصِي - عَلَى سَائِرِ الْوَصَايَا - فَقَدْ خَالَفَ الْمَذْكُورُونَ كُلَّ مَنْ ذَكَرْنَا بِآرَاءٍ مُخْتَرَعَةٍ فِي غَايَةِ الْفَسَادِ.

L28509 And from Al-Nakhaʿī and Al-Shaʿbī in one of their two opinions: Prioritizing the emancipation of someone the testator designated by name for manumission—while still owned by the testator—over all other bequests. Indeed, these two scholars have contradicted all others we mentioned with fabricated opinions that are utterly invalid.

فَإِنْ قَالُوا: وَقَعَ ذَلِكَ لَنَا، لِأَنَّ الْعِتْقَ فِي الْمَرَضِ، وَالْمُحَابَاةَ فِي الْمَرَضِ: أَوْكَدُ مِنْ سَائِرِ الْوَصَايَا؟ قُلْنَا: هَذَا بَاطِلٌ مِنْ وَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ دَعْوَى كَاذِبَةٌ لَا دَلِيلَ عَلَى صِحَّتِهَا، وَمِنْ أَيْنَ وَجَبَ أَنْ تَكُونَ مُحَابَاةُ النَّصْرَانِيِّ فِي بَيْعِ ثَوْبٍ حَرِيرٍ، أَوْ خِلْيَعٍ

L28510–28512 If they argue, "This has occurred in our case because manumission during illness and favoritism during illness carry greater weight than other bequests?" We respond: This is invalid for two reasons. First, it is a false claim with

[1] **Qur'an references (L28507):** Qur'an 2:181 (Al-Baqarah).

no evidence to support its validity. And from where is it obligatory to show partiality in sale to a Christian for a silk garment, or to a depraved libertine for selling apples to transport it—considering this more binding than bequeathing in Allah's cause at critical frontiers, or than freeing an upright Muslim, a similarly upright Muslim woman, or Muslim minors from enemy captivity, fearing for them religious corruption and personal disgrace? Verily, this is astonishing—nothing like it is astounding! These are scandalous claims exposed as false. If they argue: "Manumission during illness entitles the freed slave, as does preferential treatment," we respond: If both are entitled, why then restrict them to a third of the estate? What is this confused reasoning? At times they merit entitlement, at times not—and this suffices to demonstrate the corruption of those assertions, which epitomize ultimate corruption. We praise Allah the Exalted for delivering us from ruling by such in His religion and concerning His servants.

مَاجِنٍ فِي بَيْعِ تُفَّاحٍ لِنَقْلِهِ: أَوْكَدُ مِنَ الْوَصِيَّةِ فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ فِي ثُغُورٍ مُهِمَّةٍ، وَمِنْ فَكِّ مُسْلِمٍ فَاضِلٍ، أَوْ مُسْلِمَةٍ كَذَلِكَ، أَوْ صِغَارٍ مُسْلِمِينَ مِنْ أَسْرِ الْعَدُوِّ، وَنَخَافُ عَلَيْهِمْ الْفِتْنَةَ فِي الدِّينِ، وَالْفَضِيحَةَ فِي النَّفْسِ، إِنَّ هَذَا لَعَجَبٌ مَا مِثْلُهُ عَجَبٌ؟ وَدَعَاوَى فَاحِشَةٌ مَفْضُوحَةٌ بِالْكَذِبِ؟ فَإِنْ قَالُوا: الْعِتْقُ فِي الْمَرَضِ قَدْ اسْتَحَقَّهُ الْمُعْتَقُ، وَكَذَلِكَ الْمُحَابَاةُ؟ قُلْنَا: فَإِنْ كَانَا قَدْ اسْتَحَقَّاهُ فَلِمَ تَرُدَّانِهِمَا إِلَى الثُّلُثِ إِذًا، وَمَا هَذَا التَّخْلِيطُ؟ تَارَةً يَسْتَحِقُّ ذَلِكَ، وَتَارَةً لَا يَسْتَحِقُّ - وَفِي هَذَا كِفَايَةٌ فِي فَسَادِ تِلْكَ الْأَقْوَالِ الَّتِي هِيَ النِّهَايَةُ فِي الْفَسَادِ - وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى تَخْلِيصِهِ إِيَّانَا مِنَ الْحُكْمِ بِهَا فِي دِينِهِ، وَعَلَى عِبَادِهِ.

L28513 And there remains only the opinion of those who held that emancipation as a whole takes precedence over all other bequests. This is the opinion from the predecessors we mentioned, as well as Sufyān and Isḥāq.

وَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ قَالَ بِتَقْدِيمِ الْعِتْقِ جُمْلَةً عَلَى سَائِرِ الْوَصَايَا؟ وَهُوَ قَوْلُ مَنْ ذَكَرْنَا مِنَ الْمُتَقَدِّمِينَ، وَقَوْلُ سُفْيَانَ، وَإِسْحَاقَ.

L28514 Abu Muhammad said: These individuals cited as evidence the authentic narration from the Messenger of Allah—peace be upon him—in his statement: "Whoever frees a slave, Allah will liberate from the Fire a corresponding limb of his body for each limb of the slave's, even his private part with the slave's private part from the Fire."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ هَؤُلَاءِ بِمَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ: «وَمَنْ أَعْتَقَ رَقَبَةً أَعْتَقَ اللَّهُ بِكُلِّ عُضْوٍ مِنْهَا عُضْوًا مِنْ أَعْضَائِهِ مِنَ النَّارِ، حَتَّى فَرْجُهُ بِفَرْجِهِ» .

L28515–28517 They said: Among the proofs confirming the affirmation of manumission is that "the Messenger of Allah—may Allah bless him and grant him peace—enforced a partner's manumission over his co-owner's share." They cited a report narrated by Bishr ibn Mūsā from ʿAbdullāh ibn Yazīd al-Muqri from Ḥaywah ibn Shurayḥ from Yaḥyā ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyab, who said: "It is an established Sunnah that manumission takes priority in wills." They said: This is the opinion of Ibn ʿUmar—a Companion for whom no opposing stance from other Companions is recorded. They said: This is the position of the majority of scholars. Some stated: Manumission cannot be annulled, while all other transactions are subject to

وَقَالُوا: مِنَ الدَّلِيلِ عَلَى تَأْكِيدِ الْعِتْقِ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْفَذَ عِتْقَ الشَّرِيكِ فِي حِصَّةِ شَرِيكِهِ» - وَذَكَرُوا خَبَرًا رَوَاهُ بِشْرُ بْنُ مُوسَى عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي عَنْ حَيْوَةَ بْنِ شُرَيْحٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، قَالَ: مَضَتْ السُّنَّةُ أَنْ يُبْدَأَ بِالْعَتَاقِ فِي الْوَصِيَّةِ؟ وَقَالُوا: هُوَ قَوْلُ ابْنِ عُمَرَ، وَهُوَ صَاحِبٌ لَا يُعْرَفُ لَهُ مِنَ الصَّحَابَةِ مُخَالِفٌ؟ وَقَالُوا: هُوَ قَوْلُ جُمْهُورِ الْعُلَمَاءِ؟ وَقَالَ بَعْضُهُمْ: الْعِتْقُ لَا يَلْحَقُهُ الْفَسْخُ، وَسَائِرُ الْأَشْيَاءِ يَلْحَقُهَا الْفَسْخُ؟ وَقَالَ بَعْضُهُمْ: لَوْ أَنَّ امْرَأً أَعْتَقَ عَبْدَ

annulment. Others said: If a man manumits another's slave while a second party sells him, and when this reaches the master, he upholds both acts, the manumission remains valid and the sale becomes void. Similarly, if one appoints an agent to manumit his slave and another to sell him, with both acts occurring simultaneously, the manumission prevails and the sale is invalid. ʿAlī remarked: As for these two rulings—they constitute a vindication of error through misguidance and delusion. Wrongfully? Rather, the master cannot ratify a manumission that occurred without his permission, nor a sale that occurred without his authorization: because all such acts are prohibited by the explicit text of the Quran, the Sunnah, and scholarly consensus.

غَيْرِهِ وَبَاعَهُ آخَرُ، فَبَلَغَ ذَلِكَ السَّيِّدَ، فَأَجَازَ الْأَمْرَيْنِ جَمِيعًا، أَنَّهُ يَجُوزُ الْعِتْقُ، وَيَبْطُلُ الْبَيْعُ - وَلَوْ أَنَّ امْرَأً وَكَّلَ رَجُلًا بِعِتْقِ عَبْدِهِ، وَوَكَّلَ آخَرَ بِبَيْعِهِ فَوَقَعَ الْبَيْعُ وَالْعِتْقُ مِنَ الْوَكِيلَيْنِ مَعًا: أَنَّ الْعِتْقَ نَافِذٌ، وَالْبَيْعَ بَاطِلٌ؟ قَالَ عَلِيٌّ: أَمَّا هَاتَانِ الْقَضِيَّتَانِ - فَهُوَ نَصْرٌ مِنْهُمْ لِلْخَطَأِ بِالضَّلَالِ، وَلِلْوَهْمِ بِالْبَاطِلِ، بَلْ لَيْسَ لِلسَّيِّدِ إِجَازَةُ عِتْقٍ وَقَعَ بِغَيْرِ إِذْنِهِ، وَلَا إِجَازَةُ بَيْعٍ وَقَعَ بِغَيْرِ أَمْرِهِ؛ لِأَنَّ كُلَّ ذَلِكَ حَرَامٌ بِنَصِّ الْقُرْآنِ، وَالسُّنَّةِ، وَالْإِجْمَاعِ.

L28518 Allah, the Exalted, said: "No soul earns except against itself." [Al-An'ām 6:164].[2]

قَالَ اللَّهُ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L28519 The Messenger of Allah—peace and blessings be upon him—said: "Indeed, your blood and wealth are inviolable upon you."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L28520 Whoever deems the forbidden permissible, their legalization is invalid and their statement rejected. Yet if one desires to enact the emancipation of their slave, let them personally pronounce it with their own explicit wording. If they wish to sell them, let them likewise sell them through their own direct declaration - this being absolutely necessary.

فَمَنْ أَحَلَّ الْحَرَامَ فَتَحْلِيلُهُ بَاطِلٌ، وَقَوْلُهُ مَرْدُودٌ، لَكِنْ إِنْ أَحَبَّ إِنْفَاذَ عِتْقِ عَبْدِهِ فَلْيُعْتِقْهُ هُوَ بِلَفْظِهِ مُبْتَدِئًا وَإِنْ أَحَبَّ بَيْعَهُ فَلْيَبِعْهُ كَذَلِكَ مُبْتَدِئًا وَلَا بُدَّ.

L28521 Appointing an agent to perform manumission is invalid, as neither the Qur'an nor the Sunnah provides authorization for it.

وَالتَّوْكِيلُ فِي الْعِتْقِ: لَا يَجُوزُ؛ لِأَنَّهُ لَمْ يَأْتِ بِإِجَازَتِهِ قُرْآنٌ، وَلَا سُنَّةٌ.

L28522 As for appointing an agent in sale transactions, this is permissible according to the Sunnah. Whoever appoints an agent to manumit his slave, the manumission is not executed at all. And whoever appoints an agent to sell his slave, this is permissible.

وَأَمَّا التَّوْكِيلُ فِي الْبَيْعِ: فَجَائِزٌ بِالسُّنَّةِ، فَمَنْ وَكَّلَ بِعِتْقِ عَبْدِهِ لَمْ يُنَفَّذْ عِتْقُهُ أَصْلًا، وَمَنْ وَكَّلَ فِي بَيْعِهِ: جَازَ ذَلِكَ.

L28523 As for their statement: "Manumission is not subject to annulment, while all other matters are subject to annulment"—they have lied. Every valid contract, whether manumission or otherwise, cannot be annulled unless the Quran or Sunnah provides a basis for its revocation. Valid manumission can indeed be annulled, such as when one manumits a Christian slave who subsequently

وَأَمَّا قَوْلُهُمْ: الْعِتْقُ لَا يَلْحَقُهُ فَسْخٌ وَسَائِرُ الْأَشْيَاءِ يَلْحَقُهَا فَسْخٌ: فَقَدْ كَذَبُوا، وَكُلُّ عَقْدٍ مِنْ عِتْقٍ أَوْ غَيْرِهِ وَقَعَ صَحِيحًا فَلَا يَجُوزُ فَسْخُهُ، إِلَّا أَنْ يَأْتِيَ بِإِيجَابِ فَسْخِهِ قُرْآنٌ، أَوْ سُنَّةٌ، وَالْعِتْقُ الصَّحِيحُ قَدْ يُفْسَخُ، وَذَلِكَ مَنْ أَعْتَقَ عَبْدًا نَصْرَانِيًّا ثُمَّ إِنَّ ذَلِكَ الْعَبْدَ

[2] **Qur'an references (L28518):** Qur'an 6:164 (Al-An'am).

flees to the abode of war, takes captives, and divides spoils. In this case, the initial manumission is annulled according to our position and theirs. Thus, the falsity of their entire argument becomes evident.

L28524 As for their claim that it represents the majority opinion of scholars, scholars of equal stature have opposed them—such as ʻAṭāʼ, Ibn Sīrīn, Al-Shaʻbī, and Al-Ḥasan. The majority's view holds no decisive proof, for neither the Qur'ān nor the Sunnah has affirmed this, and whatever lacks such basis cannot be deemed valid in matters of religion.

L28525 As for their claim that this is the opinion of Ibn ʻUmar and that no opposing view is reported from the Companions, the narration attributed to Ibn ʻUmar is invalid as it comes through Ashʻath ibn Sawwār—a weak narrator. Allah the Exalted has not commanded that disputes be referred except to His words and the words of His Messenger—peace and blessings be upon him—not to the words of a Companion or anyone else. Whoever refers disputes to other than the words of Allah the Exalted and the words of His Messenger—may Allah bless him and grant him peace—has transgressed the boundaries of Allah: "And whoever transgresses the limits of Allah has indeed wronged his own soul" [Quran 65:1].[3]

L28526 He, the Exalted, said: "If you dispute over something, then refer it back to Allah and the Messenger, if you believe in Allah and the Last Day." [An-Nisa 4:59][4]

L28527–28529 As for the narration from Sa'id ibn al-Musayyib that "the Sunnah has been established that emancipation is to be initiated in the will," this... It is neither authenticated nor is it mursal either. Whoever attributes something like this to the Messenger of Allah—peace and blessings be upon him—has indeed lied against him, and whoever intentionally lies against him, let him prepare his abode in the Fire. Saʻīd—may Allah have mercy on him—did not state that this was the saying of the Messenger of Allah—peace and blessings be

[3] **Qur'an references (L28525):** Qur'an 65:1 (At-Talaq).
[4] **Qur'an references (L28526):** Qur'an 4:59 (An-Nisa).

النَّصْرَانِيَّ لَحِقَ بِدَارِ الْحَرْبِ فَسَبَى وَقَسَمَ، فَإِنَّ عِتْقَهُ الْأَوَّلَ يُفْسَخُ عِنْدَنَا وَعِنْدَهُمْ - فَظَهَرَ فَسَادُ قَوْلِهِمْ كُلُّهُ.

وَأَمَّا قَوْلُهُمْ: إِنَّهُ قَوْلُ جُمْهُورِ الْعُلَمَاءِ، فَقَدْ خَالَفَهُمْ مَنْ لَيْسَ دُونَهُمْ، كَعَطَاءٍ، وَابْنِ سِيرِينَ، وَالشَّعْبِيِّ، وَالْحَسَنِ، وَلَيْسَ قَوْلُ الْجُمْهُورِ حُجَّةً؛ لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَمَا كَانَ هَكَذَا فَلَا يُعْتَمَدُ عَلَيْهِ فِي الدِّينِ.

وَأَمَّا قَوْلُهُمْ: إِنَّهُ قَوْلُ ابْنِ عُمَرَ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنَ الصَّحَابَةِ، فَإِنَّهُ عَنِ ابْنِ عُمَرَ لَا يَصِحُّ؛ لِأَنَّهُ مِنْ رِوَايَةِ أَشْعَثِ بْنِ سَوَّارٍ - وَهُوَ ضَعِيفٌ - وَلَمْ يَأْمُرِ اللَّهُ تَعَالَى بِالرَّدِّ عِنْدَ التَّنَازُعِ إِلَّا إِلَى كَلَامِهِ، وَكَلَامِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا إِلَى كَلَامِ صَاحِبٍ وَلَا غَيْرِهِ، فَمَنْ رَدَّ عِنْدَ التَّنَازُعِ إِلَى غَيْرِ كَلَامِ اللَّهِ تَعَالَى وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ تَعَدَّى حُدُودَ اللَّهِ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

قَالَ تَعَالَى: {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ} [النساء: ٥٩]

وَأَمَّا الرِّوَايَةُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مَضَتْ السُّنَّةُ أَنْ يُبْدَأَ بِالْعَتَاقِ فِي الْوَصِيَّةِ، فَهَذَا غَيْرُ مُسْنَدٍ، وَلَا مُرْسَلٌ أَيْضًا، وَمَنْ أَضَافَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلَ هَذَا فَقَدْ كَذَبَ عَلَيْهِ، وَمَنْ كَذَبَ عَلَيْهِ مُتَعَمِّدًا فَلْيَتَبَوَّأْ مَقْعَدَهُ مِنَ النَّارِ، وَلَمْ يَقُلْ سَعِيدٌ - رَحِمَهُ اللَّهُ - إِنَّ هَذَا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُكْمُهُ وَقَدْ يَقُولُ ابْنُ الْمُسَيِّبِ وَغَيْرُهُ: مِثْلَ هَذَا فِي قَوْلِ صَاحِبٍ.

upon him—nor his ruling. Ibn al-Musayyib and others have said something like this regarding the statement of a Companion.

وَمِنْ أَعْجَبْ مِمَّنْ لَا يَرَى قَوْلَ ابْنِ عَبَّاسٍ بِأَصَحِّ طَرِيقٍ إِلَيْهِ فِي قِرَاءَةِ أُمِّ الْقُرْآنِ فِي الصَّلَاةِ عَلَى الْجَنَازَةِ أَنَّهَا السُّنَّةُ حُجَّةً، ثُمَّ يَرَى قَوْلَ سَعِيدِ بْنِ الْمُسَيِّبِ لِذَلِكَ: حُجَّةً، وَحَتَّى لَوْ أَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: إِنَّ هَذَا حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَوْلُهُ لَكَانَ مُرْسَلًا، لَا حُجَّةَ فِيهِ.

L28530 And among the more astonishing is one who does not consider Ibn Abbas' statement - transmitted through the most authentic chain - that reciting the Mother of the Quran in funeral prayer is the Sunnah, a proof, yet deems Sa'id ibn al-Musayyib's statement on this matter a proof. Even if Sa'id ibn al-Musayyib were to say: "This is the ruling of Allah's Messenger - peace and blessings be upon him - and his saying," it would be mursal (a narratively disconnected report), containing no proof within it.

وَأَمَّا احْتِجَاجُهُمْ فِي تَأْكِيدِ الْعِتْقِ بِالْخَبَرِ الثَّابِتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَنْ أَعْتَقَ رَقَبَةً، وَإِنْفَاذُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عِتْقَ الشَّرِيكِ فِي حِصَّةِ شَرِيكِهِ: فَهُمَا سُنَّتَا حَقٍّ بِلَا شَكٍّ، وَلَيْسَ فِيهِمَا إِلَّا فَضْلُ الْعِتْقِ وَالْحُكْمُ فِيهِ فَقَطْ، وَلَمْ يُخَالِفُونَا فِي شَيْءٍ مِنْ هَذَا.

L28531 As for their argument in confirming emancipation through the authenticated report from the Prophet—peace and blessings be upon him—regarding one who frees a slave, and his enforcement of the co-owner's emancipation of his portion from his partner's share: these are two established Sunnahs without doubt. They pertain solely to the merit of emancipation and its ruling alone, and they did not differ with us in any aspect of this.

وَلَيْسَ فِي هَذَيْنِ الْخَبَرَيْنِ: أَنَّ الْعِتْقَ أَوْكَدُ مِمَّا سِوَاهُ مِنَ الْقُرَبِ أَصْلًا، وَمَنِ ادَّعَى ذَلِكَ فِيهِمَا فَقَدْ كَذَبَ وَقَالَ الْبَاطِلَ، بَلْ قَدْ جَاءَ نَصُّ الْقُرْآنِ بِالتَّسْوِيَةِ بَيْنَ الْعِتْقِ وَالْإِطْعَامِ لِمِسْكِينٍ قَالَ تَعَالَى: {وَمَا أَدْرَاكَ مَا الْعَقَبَةُ} [البلد: ١٢] {فَكُّ رَقَبَةٍ} [البلد: ١٣] {أَوْ إِطْعَامٌ فِي يَوْمٍ ذِي مَسْغَبَةٍ} [البلد: ١٤] {يَتِيمًا ذَا مَقْرَبَةٍ} [البلد: ١٥] {أَوْ مِسْكِينًا ذَا مَتْرَبَةٍ} [البلد: ١٦]

L28532 There is nothing in these two narrations indicating that manumission is fundamentally more emphasized than other acts of devotion. Whoever claims this about them has lied and uttered falsehood. Rather, the Quranic text explicitly equates manumission with feeding a needy person, as the Exalted states: {And what can make you know what the difficult pass is?} [Surah al-Balad:12] {It is the freeing of a neck} [Surah al-Balad:13] {Or feeding on a day of severe hunger} [Surah al-Balad:14] {An orphan of close relationship} [Surah al-Balad:15] {Or a needy person in desolation} [Surah al-Balad:16].[5]

وَكَذَلِكَ فِي كَفَّارَةِ الْأَيْمَانِ، وَهَذِهِ كَفَّارَةُ حَلْقِ الرَّأْسِ فِي الْحَجِّ لِمَنْ بِهِ أَذًى مِنْهُ لَوْ أَعْتَقَ فِيهِ أَلْفَ رَقَبَةٍ مَا أَجْزَأَهُ، وَإِنَّمَا يُجْزِيهِ صِيَامٌ أَوْ صَدَقَةٌ أَوْ نُسُكٌ، أَفَتَرَى هَذَا دَلِيلًا عَلَى فَضْلِ النُّسُكِ عَلَى الْعِتْقِ حَاشَ لِلَّهِ مِنْ هَذَا؟ إِنَّمَا هِيَ أَحْكَامٌ يُطَاعُ لَهَا وَلَا يُزَادُ فِيهَا

L28533 Similarly, in the expiation of oaths, and this is the expiation for shaving the head during Hajj for one who has an ailment in it. Even if he were to free a thousand slaves for this act, it would not suffice him; rather, what suffices him is fasting, charity, or sacrifice. Do you think this indicates the superiority of sacrifice over manumission? Far be it from Allah, such a thing! These are rulings to be obeyed without adding anything extraneous to them.

[5] **Qur'an references (L28532):** Qur'an 90:12 (Al-Balad); Qur'an 90:13 (Al-Balad); Qur'an 90:14 (Al-Balad); Qur'an 90:15 (Al-Balad); Qur'an 90:16 (Al-Balad).

Moreover, the authentic text has explicitly established that some acts of worship are superior to manumission with an unequivocal clarity, refuting their claim regarding the asserted primacy of manumission over all other acts of devotion.

مَا لَيْسَ فِيهَا - ثُمَّ قَدْ جَاءَ النَّصُّ الصَّحِيحُ بِأَنَّ بَعْضَ الْقُرَبِ أَفْضَلُ مِنْ الْعِتْقِ بِبَيَانٍ لَا إشْكَالَ فِيهِ يُكَذِّبُ دَعْوَاهُمْ فِي تَأْكِيدِ الْعِتْقِ عَلَى سَائِرِ الْقُرَبِ.

L28534 Abdullah ibn Yusuf informed us via Ahmad ibn Fath, Abdul Wahhab ibn Isa, Ahmad ibn Muhammad, Ahmad ibn Ali, Muslim ibn Al-Hajjaj, Muhammad ibn Ja'far ibn Ziyad, Ibrahim ibn Sa'd from Ibn Shihab from Sa'id ibn Al-Musayyab from Abu Hurairah, who said: "The Messenger of Allah (Peace and blessings of Allah be upon him and his family) was asked, 'Which deed is most virtuous?' He replied, 'Faith in Allah and His Messenger.' It was said, 'Then what?' He said, 'Jihad in the cause of Allah.' It was said, 'Then what?' He said, 'A righteous Hajj.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ جَعْفَرِ بْنِ زِيَادٍ نا إبْرَاهِيمُ بْنُ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَيُّ الْأَعْمَالِ أَفْضَلُ؟ قَالَ: إيمَانٌ بِاَللَّهِ وَرَسُولِهِ، قِيلَ: ثُمَّ مَاذَا؟ قَالَ: الْجِهَادُ فِي سَبِيلِ اللَّهِ، قِيلَ: ثُمَّ مَاذَا؟ قَالَ: حَجٌّ مَبْرُورٌ» .

L28535–28536 Abdullah ibn Rabee'ah narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: **I am** Ahmad ibn Yahya ibn al-Wazir ibn Sulayman—he said: I heard Ibn Wahb say: Amr ibn al-Harith informed me from Bukayr—Ibn al-Ashajj—that he heard Kurayb, the freed slave of Ibn Abbas, say: "I heard Maymunah bint al-Harith—the Mother of the Believers—say: 'I manumitted a female slave during the time of the Messenger of Allah (peace be upon him and his family). I mentioned that to the Messenger of Allah (peace be upon him and his family), and he said: "Had you given **to** your maternal uncles, it would have been greater **in** your reward.""'

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ يَحْيَى بْنِ الْوَزِيرِ بْنِ سُلَيْمَانَ قَالَ: سَمِعْت ابْنَ وَهْبٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرٍ - هُوَ ابْنُ الْأَشَجِّ - أَنَّهُ سَمِعَ كُرَيْبًا مَوْلَى بْنِ عَبَّاسٍ يَقُولُ: سَمِعْت مَيْمُونَةَ بِنْتَ الْحَارِثِ - هِيَ أُمُّ الْمُؤْمِنِينَ - تَقُولُ: «أَعْتَقْتُ وَلِيدَةً فِي زَمَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرْتُ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: لَوْ أَعْطَيْتِ أَخْوَالَكِ كَانَ أَعْظَمَ لِأَجْرِكِ» ".

L28537 This is an unequivocal text through which Allah, the Exalted, dispenses with the need for reckless indulgence in lies or laboriously asserting falsehood by means of false conjecture. All praise is due to Allah, Lord of the worlds.

فَهَذَا نَصٌّ جَلِيٌّ يُغْنِي اللَّهُ تَعَالَى بِهِ عَنْ تَقَحُّمِ الْكَذِبِ وَتَكَلُّفِ الْقَوْلِ بِالْبَاطِلِ بِالظَّنِّ الْكَاذِبِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28538 Then, even if it were valid for them that manumission is superior to every act of devotion, how can they justify invalidating all that the testator devoted to God Most High, favoring manumission—which is more immediate in benefit? This is an impermissible arbitrary ruling. Those who uphold this view must necessarily affirm what is authentically transmitted from 'Aṭā' and Ibn Jurayj, as we have narrated through 'Abd al-Razzāq's chain from Ibn Jurayj, who said:

ثُمَّ لَوْ صَحَّ لَهُمْ أَنَّ الْعِتْقَ أَفْضَلُ مِنْ كُلِّ قُرْبَةٍ، فَمِنْ أَيْنَ لَهُمْ إبْطَالُ سَائِرِ مَا تَقَرَّبَ بِهِ الْمُوصِي إلَى اللَّهِ تَعَالَى إيثَارًا لِلْعِتْقِ الَّذِي هُوَ أَقْرَبُ؟ وَهَذَا تَحَكُّمٌ لَا يَجُوزُ، وَيَلْزَمُ مَنْ قَالَ بِهَذَا أَنْ يَقُولَ بِمَا صَحَّ عَنْ عَطَاءٍ، وَابْنِ جُرَيْجٍ، الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ

I asked ʻAṭāʾ, "If someone bequeaths something for a purpose, and I consider another purpose better?" He replied, "Act in the manner most beneficial to the poor or in God's cause. If you deem another course superior, pursue it, provided no person is named by name." Ibn Jurayj said: Later, ʻAṭāʾ retracted this and stated, "His instruction must be carried out." Ibn Jurayj remarked, "Yet his first statement remains more preferable to me."

عَنْ ابْنِ جُرَيْجٍ، قَالَ: قُلْت لِعَطَاءٍ: أَوْصَى إنْسَانٌ فِي أَمْرٍ فَرَأَيْتُ غَيْرَهُ خَيْرًا مِنْهُ؟ قَالَ: فَافْعَلْ الَّذِي هُوَ خَيْرٌ لِلْمَسَاكِينِ، أَوْ فِي سَبِيلِ اللَّهِ فَرَأَيْتَ خَيْرًا مِنْ ذَلِكَ فَافْعَلْ الَّذِي هُوَ خَيْرٌ مَا لَمْ يُسَمِّ إنْسَانًا بِاسْمِهِ، قَالَ ابْنُ جُرَيْجٍ: ثُمَّ رَجَعَ عَطَاءٌ عَنْ ذَلِكَ فَقَالَ: لِيُنَفَّذْ قَوْلُهُ - قَالَ ابْنُ جُرَيْجٍ: وَقَوْلُهُ الْأَوَّلُ أَعْجَبُ إلَيَّ.

L28539 Abū Muḥammad said: Whoever nullifies any part of what a Muslim has bequeathed while prioritizing manumission has indeed followed the path of ʻAṭāʾ's initial opinion and the view of Ibn Jurayj, except that they combined this with an additional, repugnant contradiction.

قَالَ أَبُو مُحَمَّد: مَنْ أَبْطَلَ شَيْئًا مِمَّا أَوْصَى بِهِ الْمُسْلِمُ إيثَارًا لِلْعِتْقِ فَقَدْ سَلَكَ سَبِيلَ قَوْلِ عَطَاءٍ الْأَوَّلِ، وَقَوْلِ ابْنِ جُرَيْجٍ، إلَّا أَنَّهُمْ جَمَعُوا إلَى ذَلِكَ تَنَاقُضًا قَبِيحًا زَائِدًا.

L28540 Ali said: Since the opinion of those who advocate prioritizing some bequests over others has been invalidated, only our view remains, or the view of those who advocate proportional division in all such cases. We examined this matter and found that those who do that have opposed the testator's bequests and lack any textual basis from the Quran or Sunnah. This is impermissible.

قَالَ عَلِيٌّ: فَإِذْ قَدْ بَطَلَ قَوْلُ مَنْ يَرَى تَبْدِيَةَ بَعْضِ الْوَصَايَا عَلَى بَعْضٍ، فَلَمْ يَبْقَ إلَّا قَوْلُنَا، أَوْ قَوْلُ مَنْ رَأَى التَّحَاصَّ فِي كُلِّ ذَلِكَ -: فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا مَنْ فَعَلَ ذَلِكَ قَدْ خَالَفَ مَا أَوْصَى بِهِ الْمُوصِي أَيْضًا بِغَيْرِ نَصٍّ، مِنْ قُرْآنٍ، أَوْ سُنَّةٍ، وَهَذَا لَا يَجُوزُ.

L28541 If they say: "But you too have contradicted what the testator enjoined?" We reply: Our contradiction of what he enjoined is not akin to your contradiction. For you have contradicted his injunction without any explicit textual basis—neither from the Quran nor the Sunnah—whereas we have contradicted it by the authority of the explicit text of the Quran and the Sunnah. This is the truth that admits no alternative.

فَإِنْ قَالُوا: وَأَنْتُمْ قَدْ خَالَفْتُمْ أَيْضًا مَا أَوْصَى بِهِ الْمُوصِي؟ قُلْنَا: خِلَافُنَا لِمَا أَوْصَى غَيْرُ خِلَافِكُمْ؛ لِأَنَّكُمْ قَدْ خَالَفْتُمُوهُ بِغَيْرِ نَصٍّ، مِنْ قُرْآنٍ وَلَا سُنَّةٍ، وَنَحْنُ خَالَفْنَاهُ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، وَهَذَا هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ غَيْرُهُ.

L28542–28543 Abū Muḥammad said: Since this assertion is likewise devoid of proof, it became incumbent upon us to present evidence validating our position. Thus we declare—and by Allah's Exalted guidance—: We find Allah the Exalted stating: "Obey Allah and obey the Messenger" [Surah al-Nisāʾ 4:59]. It is authentically established that the Messenger of Allah—peace and blessings of Allah be upon him—did not permit bequests beyond one-third. Therefore, it is conclusively established that whoever bequeaths a third or less is obeying

قَالَ أَبُو مُحَمَّد: فَلَمَّا عُرِّيَ هَذَا الْقَوْلُ أَيْضًا مِنْ الْبُرْهَانِ لَزِمَنَا أَنْ نَأْتِيَ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ} [النساء: ٥٩] وَصَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُجِزْ الْوَصِيَّةَ إلَّا بِالثُّلُثِ فَأَقَلَّ، فَصَحَّ يَقِينًا أَنَّ مَنْ أَوْصَى بِثُلُثِهِ فَأَقَلَّ: أَنَّهُ مُطِيعٌ لِلَّهِ تَعَالَى، فَوَجَبَ إنْفَاذُ طَاعَةِ اللَّهِ عَزَّ وَجَلَّ.

Allah the Exalted, making it obligatory to carry out obedience to Allah, the Almighty, the Majestic.[6]

L28544 We have determined that one who bequeaths more than a third is disobedient to Allah the Almighty if he intentionally does so with knowledge and deliberate intent, or if he acted mistakenly out of ignorance, the sin is forgiven for him, though his action remains invalid without exception. It is impermissible to enforce acts of disobedience against Allah the Almighty or to ratify an error.

L28545 Allah, the Exalted, said: "That He may make the truth prevail and abolish falsehood" [Al-Anfāl: 8].[7]

L28546 We have found that when a testator bequeaths for a certain purpose a portion less than a third, it becomes obligatory to execute all that he has bequeathed, as we mentioned. If he exceeds a third, the excess is invalid and it is impermissible to execute it. Thus, the text of our statement is confirmed as valid, letter by letter, as Allah, the Exalted, and His Messenger have commanded (peace and blessings be upon him).

L28547 If someone were to ask: "Who has said this before you?" We would reply: If he is a Hanafi, a Maliki, or someone who espoused opinions akin to theirs in this issue before Malik and Abu Hanifa—except that there is a distinction between the two matters: their positions are not supported by any explicit text nor analogy, while our statement is precisely what Allah the Exalted and His Messenger—peace and blessings be upon him—have commanded.

L28548 In this matter, there is only a statement from ten of the Successors and one Companion—may Allah be pleased with them—though they numbered tens of thousands. Where then are the statements of the rest? How could this be when Abū Ḥanīfah and Al-Shāfiʿī—as we mentioned in some of their positions—held the view of initiating what the testator began? We do not say this to glorify anyone other than the Messenger of Allah—peace and

وَوَجَدْنَا مَنْ أَوْصَى بِأَكْثَرَ مِنْ الثُّلُثِ عَاصِيًا لِلَّهِ عَزَّ وَجَلَّ إنْ تَعَمَّدَ ذَلِكَ عَلَى عِلْمٍ وَقَصْدٍ، وَإِمَّا مُخْطِئًا مَعْفُوًّا عَنْهُ الْإِثْمُ إنْ كَانَ جَهِلَ ذَلِكَ، وَفِعْلُهُ بَاطِلٌ بِكُلِّ حَالٍ، وَلَا يَحِلُّ إنْفَاذُ مَعْصِيَةِ اللَّهِ عَزَّ وَجَلَّ، وَلَا إمْضَاءُ الْخَطَأِ.

قَالَ اللَّهُ تَعَالَى: {لِيُحِقَّ الْحَقَّ وَيُبْطِلَ الْبَاطِلَ} [الأنفال: ٨] .

وَوَجَدْنَا الْمُوصِيَ إذَا أَوْصَى فِي وَجْهٍ مَا بِمِقْدَارٍ مَا دُونَ الثُّلُثِ فَقَدْ وَجَبَ إنْفَاذُ كُلِّ مَا أَوْصَى بِهِ، كَمَا ذَكَرْنَا، فَإِذَا زَادَ عَلَى الثُّلُثِ كَانَتْ الزِّيَادَةُ بَاطِلًا لَا يَحِلُّ إنْفَاذُهُ - فَصَحَّ نَصُّ قَوْلِنَا حَرْفًا حَرْفًا كَمَا أَمَرَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -

فَإِنْ قَالَ قَائِلٌ: وَمَنْ قَالَ هَذَا قَبْلَكُمْ؟ قُلْنَا لَهُ: إنْ كَانَ حَنِيفِيًّا أَوْ مَالِكِيًّا وَمَنْ قَالَ قَبْلَ مَالِكٍ وَأَبِي حَنِيفَةَ بِأَقْوَالِهِمَا فِي هَذِهِ الْمَسْأَلَةِ إلَّا أَنَّ بَيْنَ الْأَمْرَيْنِ فَرْقًا، وَهُوَ أَنَّ أَقْوَالَهُمَا لَا يُوَافِقُهُمَا نَصٌّ وَلَا قِيَاسٌ، وَقَوْلُنَا هُوَ نَفْسُ مَا أَمَرَ بِهِ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

وَإِنَّمَا فِي هَذِهِ الْمَسْأَلَةِ قَوْلُ عَنْ عَشَرَةٍ مِنْ التَّابِعِينَ، وَوَاحِدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُمْ عَشَرَاتُ أُلُوفٍ، فَأَيْنَ أَقْوَالُ سَائِرِهِمْ؟ فَكَيْفَ وَقَدْ قَالَ بِتَبْدِيَةِ مَا ابْتَدَأَ بِهِ الْمُوصِي أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، كَمَا ذَكَرْنَا فِي بَعْضِ أَقْوَالِهِمَا، وَمَا نَقُولُ هَذَا مُتَكَثِّرِينَ بِأَحَدٍ غَيْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا مُسْتَوْحِشِينَ إلَى سِوَاهُ، وَلَكِنْ لِنُرِيَ الْمُخَالِفَ فَسَادَ اعْتِرَاضِهِ، وَفَاحِشَ انْتِقَاضِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[6] **Qur'an references (L28543):** Qur'an 4:59 (An-Nisa); Qur'an 24:54 (An-Nur); Qur'an 47:33 (Muhammad).

[7] **Qur'an references (L28545):** Qur'an 8:8 (Al-Anfal).

blessings be upon him—nor to feel estranged toward any besides him. Rather, it is to show the opponent the corruption of his objection and the blatant shamefulness of his refutation. And success comes only from Allah, the Exalted.

L28549 Abū Muḥammad said: If the testator did not specify anything initially, but merely declared, "So-and-so, so-and-so, and so-and-so are each to be given such-and-such," and the third portion cannot accommodate those amounts, then they must receive proportional reductions. This is because they are entitled only to the third, thus what Allah the Exalted has permitted is permissible for them, and what He has invalidated is invalid for them. The same applies to all other charitable acts—and with Allah the Exalted is success.

L28550–28551 Then perform the funeral prayer for one who died having failed to pay Zakah or perform Hajj.

L28552 Chapter 1767 - Issue: Abū Muḥammad said: We have mentioned in the "Book of Zakāt" within this work of ours, in its "Book of Ḥajj," and in its "Book of Bankruptcy" that whoever dies—whether they neglected or did not neglect—[the obligations of] zakāt, the obligatory Ḥajj or his Umrah, a vow, expiation for ẓihār, expiation for killing, expiation for an oath, intentional sexual intercourse during Ramadan's daytime, or some essential rites of Ḥajj, then all such debts to Allah the Almighty and Majestic must be settled from the principal of his estate. Nothing is allocated to the creditors until all debts owed to Allah are fully discharged. If anything then remains, it goes to the creditors, followed by the will's execution, then the inheritance, as Allah the Almighty and Majestic has commanded. We have cited as evidence the statement of Allah's Messenger—peace and blessings be upon him and his family—"Fulfill what is owed to Allah, for He is most deserving of fulfillment, and the debt owed to Allah is most worthy of being settled."

L28553 We mentioned there the statement of Al-Ḥasan and Ṭāwūs through the most authentic chain of narration from them: that the Hajj of Islam and the Zakat of wealth are equivalent to a debt.

L28554 The statement of al-Zuhrī: Zakāh is taken from the principal wealth of the

قَالَ أَبُو مُحَمَّد: فَإِنْ لَمْ يَبْدَأْ الْمُوصِي بِشَيْءٍ، لَكِنْ قَالَ فُلَانٌ وَفُلَانٌ وَفُلَانٌ: يُعْطَى كُلُّ وَاحِدٍ مِنْهُمْ كَذَا وَكَذَا، فَلَمْ يَحْمِلْ الثُّلُثُ ذَلِكَ، فَهَاهُنَا يَتَحَاصُّونَ وَلَا بُدَّ؛ لِأَنَّهُ لَيْسَ لَهُمْ إلَّا الثُّلُثُ فَيَجُوزُ لَهُمْ مَا أَجَازَهُ اللَّهُ تَعَالَى، وَيَبْطُلُ لَهُمْ مَا أَبْطَلَهُ اللَّهُ تَعَالَى، وَكَذَلِكَ سَائِرُ الْقُرَبِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[فَصْلٌ فِيمَنْ مَاتَ وَقَدْ فرط فِي زَكَاةٍ أَوْ فِي حَجٍّ]

فَصْلٌ ١٧٦٧ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: قَدْ ذَكَرْنَا فِي " كِتَابِ الزَّكَاةِ " مِنْ كِتَابِنَا هَذَا، وَفِي " كِتَابِ الْحَجِّ " مِنْهُ، وَفِي " كِتَابِ التَّفْلِيسِ " مِنْهُ أَنَّ كُلَّ مَنْ مَاتَ وَقَدْ فَرَّطَ: فِي زَكَاةٍ، أَوْ فِي حَجِّ الْإِسْلَامِ، أَوْ عُمْرَتِهِ، أَوْ فِي نَذْرٍ، أَوْ فِي كَفَّارَةِ ظِهَارٍ، أَوْ قَتْلٍ، أَوْ يَمِينٍ، أَوْ تَعَمَّدَ وَطْءً فِي نَهَارِ رَمَضَانَ، أَوْ بَعْضِ لَوَازِمِ الْحَجِّ أَوْ لَمْ يُفَرِّطْ، فَإِنَّ كُلَّ ذَلِكَ مِنْ رَأْسِ مَالِهِ لَا شَيْءَ لِلْغُرَمَاءِ حَتَّى يَقْضِيَ دُيُونَ اللَّهِ تَعَالَى كُلَّهَا، ثُمَّ إنْ فَضَلَ شَيْءٌ فَلِلْغُرَمَاءِ، ثُمَّ الْوَصِيَّةُ، ثُمَّ الْمِيرَاثُ، كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، وَذَكَرْنَا الْحُجَّةَ فِي ذَلِكَ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «اقْضُوا اللَّهَ فَهُوَ أَحَقُّ بِالْوَفَاءِ فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» .

وَذَكَرْنَا هُنَالِكَ قَوْلَ الْحَسَنِ، وَطَاوُسٍ بِأَصَحِّ طَرِيقٍ عَنْهُمَا: أَنَّ حَجَّةَ الْإِسْلَامِ، وَزَكَاةَ الْمَالِ هُمَا بِمَنْزِلَةِ الدَّيْنِ.

deceased, and all obligations [owed by the deceased] are deducted from the entirety of the wealth—this is the opinion of al-Shāfiʿī, Aḥmad ibn Ḥanbal, Abū Sulaymān, and others.

وَقَوْلُ الزُّهْرِيِّ: إِنَّ الزَّكَاةَ تُؤْخَذُ مِنْ رَأْسِ مَالِ الْمَيِّتِ وَكُلُّ شَيْءٍ وَاجِبٌ فَهُوَ مِنْ جَمِيعِ الْمَالِ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

L28555 And the statement of Abu Huraira: Indeed, the Hajj and the vow are to be fulfilled on behalf of the deceased.

وَقَوْلُ أَبِي هُرَيْرَةَ: إِنَّ الْحَجَّ وَالنَّذْرَ يُقْضَيَانِ عَنْ الْمَيِّتِ.

L28556 And the statement of Ibn Abbas regarding the obligation to perform Hajj concerning those among the deceased who did not fulfill it.

وَقَوْلُ ابْنِ عَبَّاسٍ بِإِيجَابِ الْحَجِّ عَمَّنْ لَمْ يَحُجَّ مِنْ الْمَوْتَى.

L28557 Similarly, the opinion of Ṭāwus, al-Ḥasan al-Baṣrī, and ʿAṭāʾ is that this is taken from the principal estate, even if not bequeathed – and this is the view of Ibn al-Musayyab, ʿAbd al-Raḥmān ibn Abī Laylā, al-Awzāʿī, al-Ḥasan ibn Ḥayyin, Muḥammad ibn Abī Laylā, Sufyān al-Thawrī, al-Shāfiʿī, Abū Thawr, Aḥmad, Isḥāq, Abū Sulaymān, and their companions.

وَكَذَلِكَ قَوْلُ طَاوُسٍ، وَالْحَسَنِ الْبَصْرِيِّ، وَعَطَاءٍ، وَأَنَّ ذَلِكَ مِنْ رَأْسِ الْمَالِ وَإِنْ لَمْ يُوصِ بِذَلِكَ - وَهُوَ قَوْلُ ابْنِ الْمُسَيِّبِ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَمُحَمَّدِ بْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L28558 However, Al-Shafiʿī once stated: "The debts owed to God the Exalted and those owed to people are to be prorated," while on another occasion he affirmed the position we have mentioned. We know of no one among the Successors who maintained that zakāt should only be discharged from one-third of the estate if one bequeaths it, except Rabīʿah.

إِلَّا أَنَّ الشَّافِعِيَّ مَرَّةً قَالَ: تَتَحَاصَّ دُيُونُ اللَّهِ تَعَالَى وَدُيُونُ النَّاسِ، وَمَرَّةً قَالَ كَمَا قُلْنَا، وَمَا نَعْلَمُ أَحَدًا قَالَ بِأَنْ لَا تَخْرُجَ الزَّكَاةُ إِلَّا مِنْ الثُّلُثِ إِنْ أَوْصَى بِهَا مِنْ التَّابِعِينَ، إِلَّا رَبِيعَةُ.

L28559 It remains to mention the opinions of Abū Ḥanīfa and Mālik on this issue: Abū Ḥanīfa said: If a Muslim stipulates bequests—including obligatory Zakāt and the obligatory Hajj of Islam—these obligatory duties are fulfilled first from the third (of the estate), whether he mentioned them first or last. The mentioned duties are distributed proportionally, then as we have previously detailed regarding his opinions on bequests.

وَبَقِيَ أَنْ نَذْكُرَ أَقْوَالَ أَبِي حَنِيفَةَ، وَمَالِكٍ فِي هَذِهِ الْمَسْأَلَةِ -: قَالَ أَبُو حَنِيفَةَ: إِنْ أَوْصَى الْمُسْلِمُ بِوَصَايَا: مِنْهَا زَكَاةٌ وَاجِبَةٌ، وَحَجَّةُ الْإِسْلَامِ أَنَّهُ يُبْدَأُ فِي الثُّلُثِ بِهَذِهِ الْفُرُوضِ - سَوَاءٌ ذَكَرَهَا أَوَّلًا أَوْ آخِرًا - وَتَتَحَاصَّ الْفُرُوضُ الْمَذْكُورَةُ، ثُمَّ كَمَا ذَكَرْنَا مِنْ أَقْوَالِهِ فِي الْوَصَايَا.

L28560–28561 Abu Yusuf said: One begins with zakah, then the obligatory Hajj. On another occasion, he affirmed Abu Hanifah's opinion, who said: After zakah and the obligatory Hajj comes what the deceased bequeathed regarding emancipation for oath expiation, expiation for hunting violations, and compensation for ritual harm. These are prioritized according to the order specified in his will, followed by voluntary acts.

وَقَالَ أَبُو يُوسُفَ: يُبْدَأُ بِالزَّكَاةِ، ثُمَّ بِحَجَّةِ الْإِسْلَامِ، وَمَرَّةً قَالَ كَقَوْلِ أَبِي حَنِيفَةَ، قَالَ: ثُمَّ بَعْدَ الزَّكَاةِ وَالْحَجَّةِ الْمَفْرُوضَةِ مَا أَوْصَى بِهِ مِنْ عِتْقٍ فِي كَفَّارَةِ يَمِينٍ، وَكَفَّارَةِ جَزَاءِ صَيْدٍ، وَفِدْيَةِ الْأَذَى: يُبْدَأُ بِمَا بَدَأَ بِهِ بِذِكْرِهِ مِنْ ذَلِكَ فِي وَصِيَّتِهِ، ثُمَّ التَّطَوُّعِ.

L28562 Muhammad ibn al-Hasan said: One should begin with the Hajj obligation in Islam and Zakat, following the sequence the testator initiated by mentioning them in his will.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يُبْدَأُ مِنْ حَجَّةِ الْإِسْلَامِ وَمِنْ الزَّكَاةِ بِمَا بَدَأَ الْمُوصِي بِذِكْرِهِ فِي وَصِيَّتِهِ.

L28563 Malik said: Priority begins with absolute manumission during illness and tadbir (deferred manumission) during health, followed by neglected obligatory Zakat payments, then the manumission of specific slaves he instructed to be freed - whether directly manumitted by bequest or requiring purchase before emancipation. Next comes granting a kitabah contract if he bequeathed contractual self-purchase for his slave, followed by Hajj, and finally acknowledging debts in favor of those for whom such acknowledgment holds no legal validity.

وَقَالَ مَالِكٌ: يُبْدَأُ بِالْعِتْقِ الْبَتِّ فِي الْمَرَضِ، وَالتَّدْبِيرِ فِي الصِّحَّةِ، ثُمَّ بَعْدَهُمَا الزَّكَاةُ الْمَفْرُوضَةُ الَّتِي فَرَّطَ فِيهَا، ثُمَّ عِتْقِ عَبْدٍ بِعَيْنِهِ أَوْصَى بِعِتْقِهِ، وَعِتْقِ عَبْدٍ بِعَيْنِهِ أَوْصَى بِأَنْ يُشْتَرَى فَيُعْتَقَ، ثُمَّ الْكِتَابَةِ إذَا أَوْصَى بِأَنْ يُكَاتَبَ عَبْدُهُ، ثُمَّ الْحَجِّ، ثُمَّ إقْرَارِهِ بِالدَّيْنِ لِمَنْ لَا يَجُوزُ لَهُ إقْرَارُهُ بِهِ.

L28564 He said: Priority is given to the zakah he bequeathed, beginning with what he stipulated regarding the freeing of a slave for expiation of ẓihār, or unintentional killing, or proportionally allocating the freeing of a slave between ẓihār and unintentional killing. Then comes what he stipulated regarding expiation for oaths. He said: Priority is given to feeding the poor for what he bequeathed concerning neglected fulfillment of vowed Ramadan fasts he had pledged to observe.

قَالَ: وَيُبْدَأُ بِالزَّكَاةِ الَّتِي أَوْصَى بِهَا عَلَى مَا أَوْصَى بِهِ مِنْ عِتْقِ رَقَبَةٍ عَنْ ظِهَارٍ، أَوْ قَتْلٍ خَطَإٍ، أَوْ يَتَخَاصُّ رَقَبَةَ الظِّهَارِ مَعَ رَقَبَةِ قَتْلِ الْخَطَإِ، ثُمَّ مَا أَوْصَى بِهِ مِنْ كَفَّارَةِ الْأَيْمَانِ - قَالَ: وَيُبْدَأُ بِالْإِطْعَامِ عَمَّا أَوْصَى بِهِ مِمَّا فَرَّطَ فِيهِ مِنْ قَضَاءِ رَمَضَانَ عَلَى النَّذْرِ.

L28565 Abū Muḥammad said: In these statements lies an admonition for those who reflect and a sign for those who contemplate—as for Abū Ḥanīfa's opinion, it is the most consistent due to his error and the least contradictory. However, it should be said to him: If the obligatory zakāh, the Hajj obligation of Islam, and all other religious duties—when neglected and disowned at the time of death—are treated as equivalent to bequests, then why have you prioritized them over other bequests? If he replies: "Because they are more binding," it is said to him: How do they become more binding in your view when you have removed them from the ruling of obligations—which it is impermissible to neglect—to the ruling of bequests? Thus, the binding nature is invalidated by your erroneous opinion, and they must be treated like all other bequests without distinction. Alternatively, all such obligations must remain outside the ruling of bequests, persisting under the ruling of obligations that cannot be neglected. Then why have you made them subject to the third of the

قَالَ أَبُو مُحَمَّدٍ: فِي هَذِهِ الْأَقْوَالِ عِبْرَةٌ لِمَنْ اعْتَبَرَ، وَآيَةٌ لِمَنْ تَدَبَّرَ -: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَهُوَ أَطْرَدُهَا لِخَطَئِهِ، وَأَقَلُّهَا تَنَاقُضًا، لَكِنْ يُقَالُ لَهُ: إنْ كَانَتْ الزَّكَاةُ الْمَفْرُوضَةُ، وَحَجَّةُ الْإِسْلَامِ، وَسَائِرُ الْفُرُوضِ، إذَا فَرَّطَ فِيهَا وَتَبَرَّأَ مِنْ ذَلِكَ عِنْدَ مَوْتِهِ -: يَجْرِي كُلُّ ذَلِكَ مَجْرَى الْوَصَايَا، فَلِأَيِّ شَيْءٍ قَدَّمْتَهَا عَلَى سَائِرِ الْوَصَايَا، فَإِنْ قَالَ: لِأَنَّهَا أَوْكَدُ، قِيلَ لَهُ: وَمِنْ أَيْنَ صَارَتْ أَوْكَدَ عِنْدَك وَأَنْتَ قَدْ أَخْرَجْتَهَا عَنْ حُكْمِ الْفَرْضِ الَّذِي لَا يَحِلُّ إضَاعَتُهُ إلَى حُكْمِ الْوَصَايَا - فَبَطَلَ التَّأْكِيدُ عَلَى قَوْلِك الْفَاسِدِ، وَوَجَبَ أَنْ يَكُونَ كَسَائِرِ الْوَصَايَا وَلَا فَرْقَ، وَيَكُونُ كُلُّ ذَلِكَ خَارِجًا عَنْ حُكْمِ الْوَصَايَا، وَبَاقِيًا عَلَى

estate if he bequeaths them? What is this confusion and mixing of falsehood into the religion of Allāh, the Almighty?

حُكْمِ الْفَرْضِ الَّذِي لَا يَسَعُ تَعْطِيلُهُ، فَلِمَ جَعَلْتَهَا مِنْ الثُّلُثِ إنْ أَوْصَى بِهَا أَيْضًا؟ وَمَا هَذَا الْخَبْطُ وَالتَّخْلِيطُ بِالْبَاطِلِ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ.

L28566 As for the statement of Abū Yūsuf: Is there a perpetual issue in his prioritization of zakat over hajj? If he argues: "Zakat is a financial obligation while hajj is a physical duty," it is countered: Then why did you include it within bequests? Why did you not prohibit bequeathing it, as Ayyūb al-Sikhtiyānī, al-Qāsim ibn Muḥammad, and al-Nakhaʿī prohibited from that—and this is also reported from Ibn ʿUmar?

وَأَمَّا قَوْلُ أَبِي يُوسُفَ: فَآبِدَةٌ فِي تَقْدِيمِهِ الزَّكَاةَ عَلَى الْحَجِّ؟ فَإِنْ قَالَ: الزَّكَاةُ حَقٌّ فِي الْمَالِ، وَالْحَجُّ عَلَى الْبَدَنِ؟ قِيلَ: فَلِمَ أَدْخَلْته فِي الْوَصَايَا إذًا؟ وَهَلَّا مَنَعْت مِنْ الْوَصِيَّةِ بِهِ كَمَا مَنَعَ مِنْ ذَلِكَ أَيُّوبُ السِّخْتِيَانِيُّ، وَالْقَاسِمُ بْنُ مُحَمَّدٍ، وَالنَّخَعِيُّ - وَرُوِيَ أَيْضًا عَنْ ابْنِ عُمَرَ.

L28567–28568 If it is said: What about the textual evidence concerning this matter? The response is: That text obligates that it is taken from the principal of the estate—contradicting your invalid opinion—and this very point confronts Muḥammad ibn al-Ḥasan regarding his prioritization of this ruling over other bequests. As for Mālik's opinion: it is the most contradictory in extremeness, the most aberrant, and the most profoundly invalid. This is because he prioritized some obligatory shares over others without proof, prioritized certain voluntary acts above some obligatory shares without evidence, rendering the entire position fundamentally disconnected from any form of legal proofs—even though it is a view unattested among any of God's creation before him. We refer to that hierarchy he devised. The most outrageous aspect is his statement "acknowledgment for one who has no right to acknowledgment." How can what he concedes to be impermissible be deemed permissible? Is this not an astounding wonder? ʿAlī said: If someone objects: Were your opinion valid, anyone wishing to deprive their heirs of their wealth could achieve this by allocating obligatory shares and then bequeathing them upon death? We respond: If one deliberately does this, he bears the sin. His disobedience does not nullify God's rights, for the Almighty has not commanded the forfeiture of His rights due to such pretexts.

فَإِنْ قِيلَ: لِلنَّصِّ الْوَارِدِ فِي ذَلِكَ؟ قِيلَ: فَذَلِكَ النَّصُّ يُوجِبُ أَنَّهُ مِنْ رَأْسِ الْمَالِ - وَهُوَ خِلَافُ قَوْلِك الْفَاسِدِ - وَهَذَا نَفْسُهُ يَدْخُلُ عَلَى مُحَمَّدِ بْنِ الْحَسَنِ فِي تَقْدِيمِهِ ذَلِكَ عَلَى سَائِرِ الْوَصَايَا؟ وَأَمَّا قَوْلُ مَالِك: فَأَفْحَشُهَا تَنَاقُضًا، وَأَوْحَشُهَا وَأَشَدُّهَا فَسَادًا؛ لِأَنَّهُ قَدَّمَ بَعْضَ الْفَرَائِضِ عَلَى بَعْضٍ بِلَا بُرْهَانٍ، فَقَدَّمَ بَعْضَ التَّطَوُّعِ عَلَى بَعْضِ الْفَرَائِضِ بِلَا بُرْهَانٍ، وَصَارَ كُلُّهُ لَا مُتَعَلَّقَ لَهُ بِشَيْءٍ مِنْ وُجُوهِ الْأَدِلَّةِ أَصْلًا، مَعَ أَنَّهُ قَوْلٌ لَا يُعْرَفُ عَنْ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُ؟ نَعْنِي: ذَلِكَ التَّرْتِيبَ الَّذِي رَتَّبَ - وَأَطْرَفُ شَيْءٍ قَوْلُهُ " إقْرَارُهُ لِمَنْ لَا يَجُوزُ لَهُ إقْرَارُهُ " فَكَيْفَ يَجُوزُ مَا هُوَ مُقِرٌّ أَنَّهُ لَا يَجُوزُ؟ إنَّ هَذَا لَعَجَبٌ عَجِيبٌ؟ قَالَ عَلِيٌّ: فَإِنْ قَالَ قَائِلٌ: لَوْ كَانَ قَوْلُكُمْ لَمَا شَاءَ أَحَدٌ أَنْ يَحْرِمَ وَرَثَتَهُ مَالَهُ إلَّا قَدَرَ عَلَى ذَلِكَ، بِأَنْ يَضَعَ فُرُوضَهُ، ثُمَّ يُوصِي بِهَا عِنْدَ مَوْتِهِ؟ قُلْنَا لَهُ: إنْ تَعَمَّدَ ذَلِكَ فَعَلَيْهِ إثْمُهُ، وَلَا تَسْقُطُ عَنْهُ مَعْصِيَتُهُ حُقُوقَ اللَّهِ تَعَالَى؛ إذْ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِإِسْقَاطِ حُقُوقِهِ مِنْ أَجْلِ مَا ذَكَرْتُمْ.

L28569 Then we say to them: Why do you not argue against yourselves with this very proof when you said, "People's debts are taken from the principal wealth?"

We say to you: If this were the case, no one would seek to disinherit their heirs unless they affirmed its validity for whomever they wish by that which exhausts his entire wealth. This would then become apparent after his death, and there is no distinction.

L28570–28572 And it is also said to you: If your claim were valid, would anyone ever wish to nullify the rights of Allah Almighty and the rights of those entitled to charities? Would this not demean his heirs unless they were capable of that? Moreover, their objection through this aforementioned argument is utterly corrupt, for it nullifies Allah Almighty's commandments and His ordained obligations. Should they cite what we have narrated through Abd al-Razzaq's chain from Maʿmar from Qatadah—that the Prophet (peace be upon him) said: "Let me not find a man who withholds Allah's due until death approaches him and he begins to scatter his wealth here and there"—we respond: This is a fabricated ḥadīth, for it has never been supported by a chain of narration. Even if it were authentic, it would not serve as evidence for them, as it does not indicate the annulment of Allah's rights due to one's withholding until death. Rather, it censures him for that. Whoever does it exclusively—indeed, it is undeniably a reprehensible act—and the rights of Allah the Exalted are inevitably enforced in his wealth—and success comes solely from Allah the Exalted.

L28573 ## Does the testator have the right to revoke all that he has bequeathed?

L28574 Issue 1768: It is permissible for a testator to revoke any bequest he has made, except for a testamentary bequest to manumit a slave he owned at the time of the bequest. In such a case, he may not revoke it whatsoever unless he removes the slave from his ownership through a gift, sale, or other methods of transferring ownership.

L28575 As for one who bequeaths that a slave be emancipated on his behalf, he may revoke this. People have differed regarding this matter—: It has been narrated to us via the narration of al-Ḥajjāj ibn al-Minhāl, from Hammām ibn Yaḥyā, from Qatādah, from ʿAmr ibn Shuʿayb, from ʿAbdullāh ibn Abī

ثُمَّ نَقُولُ لَهُمْ: هَلَّا احْتَجَجْتُمْ عَلَى أَنْفُسِكُمْ بِهَذَا الِاحْتِجَاجِ نَفْسِهِ إِذْ قُلْتُمْ: إِنَّ دُيُونَ النَّاسِ مِنْ رَأْسِ الْمَالِ؟ فَنَقُولُ لَكُمْ: لَوْ كَانَ هَذَا لَمَا شَاءَ أَحَدٌ أَنْ يَحْرِمَ وَرَثَتَهُ إِلَّا أَقَرَّ فِي صِحَّتِهِ لِمَنْ شَاءَ بِمَا يَسْتَوْعِبُ مَالَهُ، ثُمَّ يَظْهَرُ ذَلِكَ بَعْدَ مَوْتِهِ وَلَا فَرْقَ.

وَيُقَالُ لَكُمْ أَيْضًا: لَوْ كَانَ قَوْلُكُمْ لَمَا شَاءَ أَحَدٌ أَنْ يُبْطِلَ حُقُوقَ اللَّهِ تَعَالَى وَحُقُوقَ أَهْلِ الصَّدَقَاتِ؟ وَيُهَنِّي ذَلِكَ وَرَثَتَهُ إِلَّا قَدَرَ عَلَى ذَلِكَ؟ ثُمَّ إِنَّ اعْتِرَاضَهُمْ بِذَلِكَ الْمَذْكُورِ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ إِبْطَالٌ لِأَوَامِرِ اللَّهِ تَعَالَى وَفَرَائِضِهِ، فَإِنْ ذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا أَعْرِفَنَّ امْرَأً بَخِلَ بِحَقِّ اللَّهِ حَتَّى إِذَا حَضَرَهُ الْمَوْتُ أَخَذَ يُدَغْدِغُ مَالَهُ هَاهُنَا وَهَا هُنَا» ؟ قُلْنَا: هَذَا حَدِيثٌ بَاطِلٌ، لِأَنَّهُ لَمْ يُسْنَدْ قَطُّ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ سُقُوطُ حُقُوقِ اللَّهِ تَعَالَى مِنْ أَجْلِ بُخْلِهِ بِهِ إِلَى أَنْ يَمُوتَ؟ إِنَّمَا فِيهِ إِنْكَارُ ذَلِكَ عَلَى مَنْ فَعَلَهُ فَقَطْ، وَنَعَمْ، فَهُوَ مُنْكَرٌ بِلَا شَكٍّ، وَحُقُوقُ اللَّهِ تَعَالَى نَافِذَةٌ فِي مَالِهِ وَلَا بُدَّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ للموصي أَنْ يرجع فِي كُلّ مَا أَوْصَى بِهِ]

١٧٦٨ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمُوصِي أَنْ يَرْجِعَ فِي كُلِّ مَا أَوْصَى بِهِ إِلَّا الْوَصِيَّةُ بِعِتْقِ مَمْلُوكٍ لَهُ يَمْلِكُهُ حِينَ الْوَصِيَّةِ فَإِنَّهُ لَيْسَ لَهُ أَنْ يَرْجِعَ فِيهِ أَصْلًا إِلَّا بِإِخْرَاجِهِ إِيَّاهُ عَنْ مِلْكِهِ بِهِبَةٍ أَوْ بَيْعٍ أَوْ غَيْرِ ذَلِكَ مِنْ وُجُوهِ التَّمْلِيكِ.

وَأَمَّا مَنْ أَوْصَى بِأَنْ يُعْتَقَ عَنْهُ رَقَبَةً فَلَهُ أَنْ يَرْجِعَ فِي ذَلِكَ وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ عَمْرِو بْنِ

Rabīʿah that ʿUmar ibn al-Khaṭṭāb said: "Allah decrees in the testator's will what He wills, and the essence of the will is its finality."

شُعَيْبٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: يُحْدِثُ اللَّهُ فِي وَصِيَّتِهِ مَا شَاءَ، وَمَلَاكُ الْوَصِيَّةِ آخِرُهَا.

L28576 It has been authentically reported from Ṭāwus, ʿAṭāʾ, Abī al-Shaʿthāʾ Jābir ibn Zayd, Qatādah, and al-Zuhrī that the testator may retract his will, whether it pertained to manumission or otherwise-.

وَصَحَّ عَنْ طَاوُسٍ، وَعَطَاءٍ، وَأَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ، وَقَتَادَةَ، وَالزُّهْرِيِّ: أَنَّ لِلْمُوصِي أَنْ يَرْجِعَ فِي وَصِيَّتِهِ عِتْقًا كَانَ أَوْ غَيْرَهُ -.

L28577 This is the opinion of Abū Ḥanīfah, Mālik, and al-Shāfiʿī.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L28578 Others held a contrary opinion: We have been narrated from Ibrāhīm al-Nakhaʿī concerning someone who bequeaths that if he dies, a male slave of his should be emancipated. He said: "Is it not his right to return him to slavery? Emancipation is not like other bequests."

وَقَالَ آخَرُونَ: بِخِلَافِ ذَلِكَ -: رُوِّينَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ أَوْصَى إِنْ مَاتَ أَنْ يُعْتَقَ غُلَامٌ لَهُ؟ فَقَالَ: أَلَيْسَ لَهُ أَنْ يَرُدَّهُ فِي الرِّقِّ، وَلَيْسَ الْعِتْقُ كَسَائِرِ الْوَصِيَّةِ.

L28579 Through the chain of ʿAbd al-Razzāq and al-Ḍaḥḥāk ibn Makhlad, both narrating from Sufyān al-Thawrī via Abū Isḥāq al-Shaybānī via al-Shaʿbī, who stated: Every testator is permitted to retract their testamentary provisions except in the case of emancipation.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، وَالضَّحَّاكِ بْنِ مَخْلَدٍ، كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ قَالَ: كُلُّ صَاحِبِ وَصِيَّةٍ يَرْجِعُ فِيهَا إِلَّا الْعَتَاقَةَ.

L28580 It is reported via the chain of Abd al-Razzaq, from Maʿmar, from Ibn Shubrumah and other scholars of Kufa, that they said: Every testator can revoke his will except in matters of manumission—and this is the opinion of Sufyan al-Thawri.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ شُبْرُمَةَ وَغَيْرِهِ مِنْ عُلَمَاءِ أَهْلِ الْكُوفَةِ، قَالُوا: كُلُّ صَاحِبِ وَصِيَّةٍ يَرْجِعُ فِيهَا إِلَّا الْعَتَاقَةَ - وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ.

L28581 Abu Muhammad said: Those who permit retracting manumission in bequests argued that this rests on the opinion of a Companion with no known opposition among the Companions, and that they analogized it to all other bequests. We know of nothing else they relied upon besides this, and all of it provides them with no valid basis.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْمُجِيزُونَ لِلرُّجُوعِ فِي الْعِتْقِ فِي الْوَصِيَّةِ بِأَنَّهُ قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ، وَبِأَنَّهُمْ قَاسُوهُ عَلَى سَائِرِ الْوَصَايَا - مَا نَعْلَمُ لَهُمْ شَيْئًا تَعَلَّقُوا بِهِ غَيْرَ هَذَا، وَكُلُّهُ لَا مُتَعَلَّقَ لَهُمْ بِهِ

L28582–28584 As for their assertion: "This is the opinion of a Companion with no known opposition from other Companions?" — there is no valid proof in anyone's statement apart from the Messenger of Allah (peace and blessings be upon him and his family). Moreover, there may be cases where they opposed ʿUmar, yet no opposition to this [Companion's opinion] is known. A differing

أَمَّا قَوْلُهُمْ: إنَّهُ قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ؟ فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَرُبَّ قَضِيَّةٍ خَالَفُوا فِيهَا عُمَرَ وَلَا يُعْرَفُ

لَهُ مُخَالِفٌ فِي ذَلِكَ مِنْ الصَّحَابَةِ كَقَوْلِهِ فِي الْيَرْبُوعِ يُصِيبُهُ الْمُحْرِمُ بِعَنَاقٍ، وَفِي الْأَرْنَبِ بِجَدْيٍ وَسَائِرِ ذَلِكَ مِمَّا قَدْ تَقَصَّيْنَاهُ فِي مَوَاضِعِهِ.

opinion among the Companions regarding that, such as the Prophet's statement concerning the jerboa - that a pilgrim who kills it must offer a female kid as expiation, and concerning the rabbit a male kid, and all of that being among what we have detailed in its respective places.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ عَلَى ذَلِكَ.

L28585 And all praise is due to Allah, Lord of the worlds, for this.

وَأَمَّا قِيَاسُهُمْ لِذَلِكَ عَلَى سَائِرِ الْوَصَايَا فَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ لَا يُجِيزُونَ الرُّجُوعَ فِي التَّدْبِيرِ، وَلَا بَيْعَ الْمُدَبَّرِ، وَهَذِهِ وَصِيَّةٌ بِالْعِتْقِ فِي كُلِّ حَالٍ؛ لِأَنَّهُ عِتْقٌ لِمَا لَا يَجِبُ إلَّا بِالْمَوْتِ، وَلَا يَخْرُجُ إلَّا مِنْ الثُّلُثِ وَهَذِهِ صِفَةُ سَائِرِ الْوَصَايَا.

L28586 As for their analogy of this matter to other bequests, the entire analogy is invalid. Even if analogy were valid, this would be the very essence of invalidity within it, because Ḥanafīs and Mālikīs do not permit retracting a *tadbīr* (manumission upon death) or selling a *mudabbar* (a slave designated for posthumous manumission). This constitutes a bequest of manumission in all circumstances, as it is manumission that only takes effect upon death and is solely deducted from one-third of the estate. This is the attribute of all other bequests.

وَأَعْجَبُ شَيْءٍ تَبْدِيئُهُمْ الْعِتْقَ عَلَى سَائِرِ الْوَصَايَا وَتَأْكِيدُهُمْ إيَّاهُ، وَتَغْلِيظُهُمْ فِيهِ، ثُمَّ سَوَّوْهُ هَاهُنَا بِسَائِرِ الْوَصَايَا؟ فَاعْجَبُوا لِهَذِهِ الْآرَاءِ وَهَذِهِ الْمَقَايِيسِ؟ وَالشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ لَا يُجِيزُ الرُّجُوعَ فِي التَّدْبِيرِ، وَهُوَ عِنْدَهُ وَصِيَّةٌ بِالْعِتْقِ - وَهَذَا تَنَاقُضٌ لَا خَفَاءَ بِهِ، وَقِيَاسُ الْوَصِيَّةِ بِالْعِتْقِ عَلَى الْوَصِيَّةِ بِالْعِتْقِ أَوْلَى مِنْ قِيَاسِ الْوَصِيَّةِ بِالْعِتْقِ عَلَى الْوَصِيَّةِ بِغَيْرِ الْعِتْقِ، وَكُلُّهُمْ لَا يُجِيزُ الرُّجُوعَ فِي الْعِتْقِ بِالصِّفَةِ الْبَتَّةَ وَالْوَصِيَّةُ بِالْعِتْقِ عِتْقٌ بِصِفَةٍ فَعَادَ قِيَاسُهُمْ عَلَيْهِمْ فَإِذْ قَدْ بَطَلَ قَوْلُهُمْ فَعَلَيْنَا بِعَوْنِ اللَّهِ تَعَالَى أَنْ نَأْتِيَ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا.

L28587 The most astonishing matter is their prioritization of emancipation above all other bequests, their emphasis upon it, and their severity regarding it, yet here they equate it with other bequests? Marvel then at these opinions and these standards! Al-Shāfiʿī in one of his two rulings does not permit revocation in manumission via *tadbīr*—which he deems a bequest of emancipation—and this constitutes a contradiction utterly evident. Analogizing one bequest of emancipation to another holds greater validity than analogizing a bequest of emancipation to a bequest of non-emancipation. All scholars categorically prohibit revocation in stipulated emancipation, while a bequest of emancipation itself constitutes stipulated emancipation—thus their analogy recoils upon them. Since their claim is invalidated, we must, by God Almighty's aid, present proof for the validity of our position.

فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: قَالَ اللَّهُ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ} [المائدة: ١] وَكَانَ عَهْدُهُ بِعِتْقِهِ عَبْدَهُ إنْ مَاتَ عَقْدًا مَأْمُورًا بِالْوَفَاءِ بِهِ، وَمَا هَذِهِ صِفَتُهُ فَلَا يَحِلُّ الرُّجُوعُ فِيهِ.

L28588 We say—and with Allah, the Exalted, is all success—Allah the Exalted said: {O you who have believed, fulfill contracts} [Al-Mā'idah: 1]. A person's covenant to free his slave if he dies is a contract commanded to be fulfilled, and any agreement characterized as such may not lawfully be reneged upon.[8]

[8] **Qur'an references (L28588):** Qur'an 5:1 (Al-Ma'idah).

L28589 As for other bequests, they are merely promises, and a promise is not binding to fulfill as we clarified in the chapter on vows within this volume. And praise be to Allah, Lord of the worlds.

L28590 As for the bequest stipulating that an unspecified slave be freed on his behalf, it is merely a directive and a notion of a good deed. Did he not carry it out? That is permissible for him, and it is not a contract—and success comes from Allah, the Exalted.

L28591–28593 As for when he transfers it out of his ownership, he has done what is permissible for him. Once it enters the ownership of another, his contract over it becomes void, based on the statement of Allah, the Exalted: _"No soul bears the burden of another"_ [Al-An'ām 6:164]. If it returns to his ownership, the contract is not reinstated, because what is nullified by a mandatory cause cannot be revived except by textual evidence, and no such text exists. In the event of the contract's revocation, if he removes part of the property from his ownership, the contract is invalidated in the portion where his ownership has ceased, while remaining valid for the portion that remains in his ownership.[9]

L28594 ## The issue of bequest to the *umm al-walad*.

L28595 Issue 1769: If someone bequeaths to the mother of his child (umm walad) as long as she remains unmarried, the bequest is invalid, unless he establishes an endowment (waqf) for her from his real estate. If she becomes married, she has no right to it, but the endowment is redirected to another category of charitable causes. Such an arrangement is permissible.

L28596 People have differed regarding this—it has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī concerning one who bequeaths land to the mothers of his children for them to consume its usufruct: "If they marry, does it belong to the heirs?" He replied: "His bequest is valid according to his stipulated condition."

[9] **Qur'an references (L28591):** Qur'an 6:164 (Al-An'am).

وَأَمَّا سَائِرُ الْوَصَايَا فَإِنَّمَا هِيَ مَوَاعِيدُ، وَالْوَعْدُ لَا يَلْزَمُ إِنْفَاذُهُ عَلَى مَا ذَكَرْنَا فِي " بَابِ النَّذْرِ " مِنْ هَذَا الدِّيوَانِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا الْوَصِيَّةُ بِأَنْ يُعْتِقَ عَنْهُ رَقَبَةً غَيْرَ مُعَيَّنَةٍ، فَإِنَّمَا هُوَ أَمْرٌ وَهَمٌّ بِحَسَنَةٍ فَلَمْ يُنَفِّذْهَا؟ فَلَهُ ذَلِكَ، وَلَيْسَ عَقْدًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا إِذَا أَخْرَجَهُ عَنْ مِلْكِهِ فَقَدْ فَعَلَ مَا هُوَ مُبَاحٌ لَهُ، فَإِذْ صَارَ فِي مِلْكِ غَيْرِهِ فَقَدْ بَطَلَ عَقْدُهُ فِيهِ: لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَإِنْ عَادَ إِلَى مِلْكِهِ لَمْ يَرْجِعْ الْعَقْدُ، لِأَنَّ مَا بَطَلَ بِوَاجِبٍ فَلَا يَعُودُ إِلَّا بِنَصٍّ وَلَا نَصَّ فِي عَوْدَتِهِ، فَلَوْ أَخْرَجَ بَعْضَهُ عَنْ مِلْكِهِ، بَطَلَ الْعَقْدُ فِيمَا سَقَطَ مِلْكُهُ عَنْهُ، وَبَقِيَ الْعَقْدُ فِيمَا بَقِيَ فِي مِلْكِهِ.

[مَسْأَلَة الْوَصِيَّة لِأُمِّ الْوَلَد]

١٧٦٩ - مَسْأَلَةٌ: وَمَنْ أَوْصَى لِأُمِّ وَلَدِهِ مَا لَمْ تُنْكَحْ فَهُوَ بَاطِلٌ، إِلَّا أَنْ يَكُونَ يُوقِفُ عَلَيْهَا وَقْفًا مِنْ عَقَارِهِ، فَإِنْ نَكَحَتْ فَلَا حَقَّ لَهَا فِيهِ، لَكِنْ يَعُودُ الْوَقْفُ إِلَى وَجْهٍ آخَرَ مِنْ وُجُوهِ الْبِرِّ، فَهَذَا جَائِزٌ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِيمَنْ أَوْصَى لِأُمَّهَاتِ أَوْلَادِهِ بِأَرْضٍ يَأْكُلْنَهَا فَإِنْ نَكَحْنَ فَهِيَ لِلْوَرَثَةِ؟ قَالَ: تَجُوزُ وَصِيَّتُهُ عَلَى شَرْطِهِ.

وَقَالَ أَبُو حَنِيفَةَ: إنْ أَوْصَى لِأُمِّ وَلَدِهِ بِمَالٍ سَمَّاهُ عَلَى أَنْ لَا تَتَزَوَّجَ أَبَدًا؟ قَالَ: إنْ تَزَوَّجَتْ فَلَا شَيْءَ لَهَا - وَهُوَ قَوْلُ مَالِكٍ.

L28597 Abu Hanifa was asked: If a man bequeaths to his *umm walad* [an enslaved woman who bore him a child] a specified property on the condition that she never marries—what is the ruling? He said: If she marries, she is entitled to nothing. This is also the opinion of Malik.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ خَطَأٌ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَهَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ.

L28598 Abū Muḥammad said: All of this is invalid, as it contradicts the statement of the Messenger of Allah (peace be upon him): "Every condition not in the Book of Allah is invalid." Since this is a condition not in the Book of Allah, it is therefore invalid.[10]

وَأَيْضًا: فَإِنَّهُ لَا يَعْلَمُ هَلْ يَسْتَحِقُّ هَذِهِ الْوَصِيَّةَ أَمْ لَا إلَّا بِمَوْتِهَا، وَهِيَ بَعْدَ الْمَوْتِ لَا تَمْلِكُ شَيْئًا وَلَا تَسْتَحِقُّهُ.

L28599 Moreover, he cannot ascertain whether he is entitled to this bequest until her death, for after death she retains no ownership nor has any valid claim to it.

وَأَيْضًا - فَلَا يَخْلُو مِنْ أَنْ تَكُونَ مَلَكَتْ مَا أَوْصَى لَهَا بِهِ أَوْ لَمْ تَمْلِكْهُ؟ فَإِنْ كَانَتْ مَلَكَتْهُ فَلَا يَجُوزُ إزَالَةُ مِلْكِهَا عَنْ يَدِهَا بَعْدَ صِحَّتِهِ بِغَيْرِ نَصٍّ فِي ذَلِكَ، وَإِنْ كَانَتْ لَمْ تَمْلِكْهُ فَلَا يَحِلُّ أَنْ تُعْطَى مَا لَيْسَ لَهَا؟ وَلَا بُدَّ مِنْ أَحَدِ الْوَجْهَيْنِ.

L28600 Moreover, does it not necessarily entail that she either owns what was bequeathed to her or does not? If she owned it, it is impermissible to remove her ownership after its validation without an explicit textual basis. If she did not own it, how can it be lawful to grant her what is not rightfully hers? One of these two scenarios must inevitably apply.

وَأَمَّا إدْخَالُهَا فِي الْوَقْفِ بِصِفَةٍ فَهَذَا جَائِزٌ، لِأَنَّهُ تَسْبِيلُ وُقُوفٍ فِيهِ عِنْدَ حَدِّ الْمُسَبَّلِ، وَلَيْسَ تَمْلِيكًا لِرَقَبَةِ الْوَقْفِ -.

L28601 As for incorporating it into the endowment as a condition, this is permissible because it entails dedicating endowments within the confines of the endowed property, and it does not entail ownership of the endowment's corpus.

وَلَا يَجُوزُ أَنْ يُؤْخَذَ مِنْهَا مَا اسْتَحَقَّتْ مِنْ غَلَّةِ الْوَقْفِ قَبْلَ أَنْ تَتَزَوَّجَ، لِأَنَّهَا قَدْ مَلَكَتْهُ، فَلَوْ أَوْصَى بِذَلِكَ كَانَتْ وَصِيَّتُهُ بِذَلِكَ بَاطِلًا.

L28602 It is not permissible to take from her what she rightfully deserves from the proceeds of the endowment before she marries, because she has acquired ownership of it. Therefore, if someone bequeaths such a directive, his bequest concerning it would be invalid.

[مَسْأَلَة الْوَصِيَّة بِالْعِتْقِ]

The Issue of Manumission by Bequest

مَسْأَلَةٌ: وَمَنْ أَوْصَى بِعِتْقِ رَقِيقٍ لَهُ لَا يَمْلِكُ غَيْرَهُمْ، أَوْ كَانُوا أَكْثَرَ مِنْ ثَلَاثَةٍ؟ لَمْ يُنَفَّذْ مِنْ ذَلِكَ شَيْءٌ إلَّا بِالْقُرْعَةِ فَمَنْ خَرَجَ سَهْمُهُ صَحَّ فِيهِ الْعِتْقُ، سَوَاءٌ مَاتَ الْعَبْدُ بَعْدَ الْمُوصِي وَقَبْلَ الْقُرْعَةِ، أَوْ عَاشَ إلَى حِينِ الْقُرْعَةِ.

L28603–28604

Issue: What is the ruling if someone bequeaths the emancipation of slaves he owns—when he owns no others besides them, or if they exceed three in number? **Ruling:** None of that is executed except by drawing lots. Whichever slave's lot is drawn, their emancipation is valid—whether

L28605

[10] **Hadith references (L28598):** Sunan Ibn Majah 2521.

the slave died after the testator's death but before the drawing of lots, or survived until the time of the drawing.

وَمَنْ خَرَجَ سَهْمُهُ كَانَ بَاقِيًا عَلَى الرِّقِّ سَوَاءٌ مَاتَ قَبْلَ الْقُرْعَةِ أَوْ عَاشَ إلَيْهَا؟ فَإِنْ شَرَعَ السَّهْمُ فِي بَعْضِ مَمْلُوكٍ عَتَقَ مِنْهُ مَا حَمَلَ الثُّلُثُ بِلَا اسْتِسْعَاءٍ، وَعَتَقَ بَاقِيهِ وَاسْتَسْعَى لِلْوَرَثَةِ فِي قِيمَةِ مَا بَقِيَ مِنْهُ بَعْدَ الثُّلُثِ.

L28606 Does the person whose lot is drawn remain enslaved, regardless of whether they died before the drawing or lived until it? If the lot applies to a portion of a slave, the part equivalent to one-third of their value is freed without *istis'a* (manumission through labor), and the remainder is freed while the slave must compensate the heirs through *istis'a* for the value exceeding the third portion.

فَلَوْ سَمَّاهُمْ بِأَسْمَائِهِمْ بُدِئَ بِالَّذِي سَمَّى أَوَّلًا فَأَوَّلًا، فَإِذَا تَمَّ الثُّلُثُ رَقَّ الْبَاقُونَ - فَلَوْ شَرَعَ الْعِتْقُ فِي بَعْضِ مَمْلُوكٍ أُعْتِقَ كُلُّهُ وَاسْتَسْعَى لِلْوَرَثَةِ فِيمَا زَادَ مِنْهُ عَلَى الثُّلُثِ، فَلَوْ أَعْتَقَ جُزْءًا مُسَمًّى مِنْ كُلِّ مَمْلُوكٍ مِنْهُمْ بِاسْمِهِ أُعْتِقَ ذَلِكَ الْجُزْءُ - إنْ كَانَ الثُّلُثُ فَأَقَلَّ - وَأُعْتِقَ بَاقِيهِمْ، وَاسْتَسْعُوا فِيمَا زَادَ عَلَى الثُّلُثِ أَوْ فِيمَا زَادَ عَلَى مَا أَوْصَى بِهِ مِمَّا هُوَ دُونَ الثُّلُثِ.

L28607 If he names them by their names, the process begins with the one named first in sequence. When the third [of the estate] is completed, the remaining [slaves] return to slavery. If emancipation is initiated for part of a slave, the entire slave is freed and must undertake istis'ā for the heirs regarding what exceeds the third. If he frees an explicitly designated portion of each slave by their names—provided it constitutes the third or less—that portion is emancipated, and the remainder of their [shares] is freed. They must undertake istis'ā for what exceeds the third or for what exceeds what he bequeathed from what is below the third.

فَإِنْ أَعْتَقَ مِنْ كُلِّ وَاحِدٍ مِنْهُمْ بِاسْمِهِ أَوْ جُمْلَةً أَكْثَرَ مِنْ الثُّلُثِ أُقْرِعَ بَيْنَهُمْ إنْ أَجْمَلَهُمْ فَإِذَا تَمَّ الثُّلُثُ رَقَّ الْبَاقُونَ إلَّا أَنْ يَشْرَعَ الْعِتْقُ فِي وَاحِدٍ مِنْهُمْ فَيُعْتَقُ وَيَسْتَسْعِي فِيمَا زَادَ عَلَى الثُّلُثِ، وَيُبْدَأُ بِالْأَوَّلِ فَالْأَوَّلِ - إنْ سَمَّاهُمْ بِأَسْمَائِهِمْ - فَإِذَا تَمَّ الثُّلُثُ رَقَّ الْبَاقُونَ، إلَّا مَنْ شَرَعَ فِيهِ الْعِتْقُ، فَإِنَّهُ يَسْتَسْعِي فِيمَا زَادَ مِنْهُ عَلَى الثُّلُثِ.

L28608 If he frees from each one of them by their names or collectively more than a third of his estate, lots are drawn among them if he referred to them collectively. Once the third is fulfilled, the remainder remain enslaved unless manumission is initiated for one of them, in which case he is freed and must work to pay off the excess beyond the third. If he named them individually, the process begins with the first, then the next. When the third is fulfilled, the others remain enslaved except the one for whom manumission was initiated, for he must work to pay off the excess beyond the third.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: أَنَّهُ إذَا أَعْتَقَ فِي وَصِيَّتِهِ الثُّلُثَ مِنْ كُلِّ وَاحِدٍ مِنْهُمْ فَأَقَلَّ، فَإِنَّهُ لَمْ يَتَعَدَّ مَا أَمَرَهُ اللَّهُ تَعَالَى إذْ لَهُ أَنْ يُوصِيَ بِالثُّلُثِ فَيُنَفَّذُ قَوْلُهُ.

L28609 The proof for the validity of our position is that if he emancipates in his will one-third or less of each individual slave, he has not transgressed what Allah the Exalted commanded him, for he is permitted to bequeath one-third, and thus his stipulation is enacted.

L28610 It has been authentically reported from the Prophet—peace and blessings of Allah be upon him—as we cited in the "Book of Emancipation" from this compilation of ours with its chain of transmission, regarding one who frees

his share in a slave: the slave becomes entirely free, and he must work to compensate for the share of his co-owner. Here, the heirs are co-owners alongside the testator. Thus, all the slaves were emancipated by the decree of Allah the Exalted as conveyed through His Messenger—peace be upon him—and they must work to compensate for the share of the heirs.

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا أَوْرَدْنَاهُ فِي " كِتَابِ الْعِتْقِ " مِنْ دِيوَانِنَا هَذَا بِإِسْنَادِهِ فِيمَنْ أَعْتَقَ شِرْكًا لَهُ فِي مَمْلُوكٍ فَإِنَّهُ حُرٌّ كُلُّهُ وَيَسْتَسْعِي فِي حِصَّةِ شَرِيكِهِ وَالْوَرَثَةُ هَاهُنَا شُرَكَاءُ لِلْمُوصِي، فَقَدْ عَتَقَ الْمَمَالِيكُ كُلُّهُمْ بِحُكْمِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَيَسْتَسْعُونَ فِي حِصَّةِ الْوَرَثَةِ -.

L28611 And with Allah, the Most High, lies the success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28612–28614 As for when he manumits all of them in his will, explicitly naming them by their names, or manumits in his will more than a third of his estate for each one of them, explicitly naming them by their names—every Muslim knows with certainty that the first one who named them did not transgress in this matter nor oppose the truth. Rather, he bequeathed as was permitted to him, making it a righteous bequest. and piety, and so on until the third [of the estate] is completed. Thus, executing his will becomes obligatory due to its validity, and the manumitted slaves—who were partners of the testator when the will became obligatory—must work to compensate the heirs for the shares [of slaves] that the heirs themselves did not manumit.

وَأَمَّا إذَا أَعْتَقَ فِي وَصِيَّتِهِ جَمِيعَهُمْ وَسَمَّاهُمْ بِأَسْمَائِهِمْ، أَوْ أَعْتَقَ فِي وَصِيَّتِهِ أَكْثَرَ مِنْ ثُلُثِ كُلِّ وَاحِدٍ مِنْهُمْ وَسَمَّاهُمْ بِأَسْمَائِهِمْ؟ فَالْيَقِينُ يَدْرِي كُلُّ مُسْلِمٍ أَنَّ أَوَّلَ مَنْ سُمِّيَ مِنْهُمْ، فَإِنَّهُ لَمْ يَجُرْ فِي ذَلِكَ، وَلَا خَالَفَ الْحَقَّ، بَلْ أَوْصَى كَمَا أُبِيحَ لَهُ فَهِيَ وَصِيَّةُ بِرٍّ وَتَقْوَى، وَهَكَذَا حَتَّى يَتِمَّ الثُّلُثُ، فَوَجَبَ تَنْفِيذُ وَصِيَّتِهِ لِصِحَّتِهَا، وَأَنْ يَسْتَسْعِيَ الْمُعْتَقُونَ فِي حِصَصِ الْوَرَثَةِ الَّذِينَ هُمْ شُرَكَاءُ الْمُوصِي حِينَ وُجُوبِ الْوَصِيَّةِ وَلَمْ يُعْتِقُوا حِصَصَهُمْ.

L28615 The testator's bequest exceeding a third of his estate is invalid, and he is sinful—contravening what is right if he knew [the ruling], or mistaken while merely contravening what is right, yet excused if he was unaware. The invalid [act] is mere transgression, or [both] sin and transgression—void and impermissible to enforce. Allah the Exalted says: *"Cooperate in righteousness and piety, and do not cooperate in sin and transgression"* (*al-Mā'idah* 5:2).[11]

وَكَانَ الْمُوصِي فِي وَصِيَّتِهِ فِيمَا زَادَ عَلَى ثُلُثِهِ مُبْطِلًا عَاصِيًا، مُخَالِفًا لِلْحَقِّ إنْ كَانَ عَالِمًا، أَوْ مُخْطِئًا مُخَالِفًا لِلْحَقِّ فَقَطْ، مَعْفُوًّا عَنْهُ إنْ كَانَ غَيْرَ عَالِمٍ، وَالْبَاطِلُ عُدْوَانٌ فَقَطْ، أَوْ إثْمٌ وَعُدْوَانٌ سَاقِطٌ لَا يَحِلُّ إنْفَاذُهُ - قَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢]

L28616 Therefore, nullification of what exceeds one-third becomes obligatory, as we have mentioned, and success is from Allah, the Most High.

فَوَجَبَ إبْطَالُ مَا زَادَ عَلَى الثُّلُثِ كَمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28617 If he vaguely states their emancipation in his will, or ambiguously includes freeing what exceeds one-third of each of them, every Muslim inherently knows by necessity and observable reality that he conflated bequeathing

وَأَمَّا إذَا أَجْمَلَ فِي وَصِيَّتِهِ عِتْقَهُمْ، أَوْ أَجْمَلَ عِتْقَ مَا زَادَ عَلَى الثُّلُثِ مِنْ كُلِّ وَاحِدٍ مِنْهُمْ فِي وَصِيَّتِهِ، فَبِالضَّرُورَةِ وَالْمُشَاهَدَةِ يَدْرِي كُلُّ مُسْلِمٍ أَنَّهُ خَلَطَ الْوَصِيَّةَ بِعِتْقِ مَنْ

[11] **Qur'an references (L28615):** Qur'an 5:2 (Al-Ma'idah).

لَا يَجُوزُ لَهُ أَنْ يُوصِيَ بِعِتْقِهِ، مَعَ الْوَصِيَّةِ بِعِتْقِ مَنْ لَا يَحِلُّ لَهُ أَنْ يُوصِيَ بِعِتْقِهِ، وَلَا يَدْرِي غَيْرُ اللَّهِ تَعَالَى أَيُّهُمْ الْمُسْتَحِقُّ لِلْعِتْقِ، وَأَيُّهُمْ لَا، فَصَارُوا جُمْلَةً فِيهَا حَقٌّ لِلَّهِ تَعَالَى فِي أَحْرَارٍ، أَوْ فِي حُرٍّ لَا يُعْرَفُ بِعَيْنِهِ، وَفِيهَا حَقٌّ لِلْوَرَثَةِ فِي رَقِيقٍ لَا يُعْرَفُ بِعَيْنِهِ، فَلَا بُدَّ مِنْ الْقِسْمَةِ لِيُمَيَّزَ حَقُّ اللَّهِ تَعَالَى مِنْ حَقِّ الْوَرَثَةِ، كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ أَنْ يُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ، وَلَا سَبِيلَ إلَى تَمْيِيزِ الْحُقُوقِ وَالْأَنْصِبَاءِ فِي الْقِسْمَةِ إلَّا بِالْقُرْعَةِ، فَوَجَبَ الْإِقْرَاعُ بَيْنَهُمْ، فَأَيُّهُمْ خَرَجَ عَلَيْهِ سَهْمُ الْعِتْقِ عَلِمْنَا أَنَّهُ الَّذِي اسْتَحَقَّ الْعِتْقَ بِمَوْتِ الْمُوصِي، وَأَنَّهُ هُوَ حَقُّ اللَّهِ تَعَالَى مِنْ تِلْكَ الْجُمْلَةِ - مَاتَ قَبْلَ الْقُرْعَةِ أَوْ لَمْ يَمُتْ - وَأَيُّهُمْ خَرَجَ عَلَيْهِ سَهْمُ الرِّقِّ عَلِمْنَا أَنَّهُ لَمْ يُوصِ فِيهِ الْمُوصِي وَصِيَّةً جَائِزَةً، وَأَنَّهُ هُوَ حَقُّ الْوَرَثَةِ مِنْ تِلْكَ الْجُمْلَةِ قَدْ مَلَكُوهُ بِمَوْتِ الْمُوصِي - مَاتَ قَبْلَ الْقُرْعَةِ أَوْ لَمْ يَمُتْ.

emancipation for those he lacked permission to free with those it was unlawful for him to free. No one knows except Allah, the Exalted, which of them rightfully deserves emancipation and which does not. Thus, they form a collective containing a right due to Allah, the Exalted, pertaining to those to be freed—or a specific individual to be freed though unidentified—and a right due to the heirs pertaining to slaves remaining unidentified. Division becomes obligatory to distinguish Allah's right from the heirs' right, as Allah, the Exalted, commanded that each entitled party receive its due. There is no way to differentiate these rights and shares in division except by lottery. Therefore, conducting the lottery among them is obligatory. Whomever the emancipation lot falls upon, we know they are rightfully entitled to emancipation upon the testator's death—whether the slave died before the lottery or not—and that this constitutes Allah's right within that collective. Whomever the enslavement lot falls upon, we know the testator's stipulation for their emancipation was invalid, and that they constitute the heirs' right within that collective—owned by them upon the testator's death, whether the slave died before the lottery or not.

فَإِنْ شَرَعَ الْعِتْقُ فِي مَمْلُوكٍ أُعْتِقَ وَاسْتَسْعَى فِيمَا زَادَ مِنْهُ عَلَى مَا عَتَقَ بِالْقُرْعَةِ؛ لِأَنَّ الْوَرَثَةَ شُرَكَاءُ الْمُوصِي فِيهِ، وَهَكَذَا كُلُّ مَا أَوْصَى فِيهِ بِالثُّلُثِ فَأَقَلَّ مِنْ حَيَوَانٍ أَوْ عَقَارٍ أَوْ مَتَاعٍ.

L28618 If manumission is initiated for a slave, he is emancipated and required to work for the unemancipated portion of himself, determined by lot, because the heirs are co-owners with the testator in him. Similarly, this applies to every case wherein a third or less of an animal, real estate, or movable property owned by the testator is bequeathed.

وَلَا بُدَّ مِنْ تَمْيِيزِ حَقِّ الْوَصِيَّةِ مِنْ حَقِّ الْوَرَثَةِ، وَلَا يَكُونُ ذَلِكَ إلَّا بِتَعْدِيلِ الْقِيمَةِ وَالْقُرْعَةِ، وَقَدْ جَاءَ أَيْضًا فِي هَذَا أَثَرٌ صَحِيحٌ، يُؤَكِّدُ مَا قُلْنَا، وَلَوْ لَمْ يَأْتِ لَكَانَ الْحُكْمُ مَا وَصَفْنَا لِمَا ذَكَرْنَا مِنْ وُجُوبِ تَمْيِيزِ حَقِّ الْوَصِيَّةِ مِنْ حَقِّ الْوَرَثَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28619 It is essential to distinguish the right of the bequest from the right of the heirs, and this can only be achieved by equitable adjustment of the value and casting lots. There is also an authentic report in this matter that confirms what we have stated. Even if it had not been reported, the ruling would still be as we described, due to what we mentioned of the necessity of distinguishing the right of the bequest from the right of the heirs—and success is from Allah, the Most High.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - وَابْنُ أَبِي عُمَرَ، كِلَاهُمَا عَنْ الثَّقَفِيِّ - هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ

L28620–28622 It has been narrated to us through the chain of Muslim, who informed us: Isḥāq ibn Ibrāhīm (who is Ibn Rāhawayh) and Ibn Abī ʿUmar, Both of them reported from al-Thaqafi—he was ʿAbd al-Wahhāb ibn ʿAbd al-Majīd—from

Ayyūb al-Sikhtiyānī from Abī Qilābah from Abī al-Muhallab from ʻImrān ibn al-Huṣayn: "A man on his deathbed willed the emancipation of six slaves he owned, as he had no wealth other than them. The Prophet—peace and blessings of Allāh be upon him—summoned them, divided them into thirds, then cast lots among them. He emancipated two and enslaved four, rebuking him sternly."

أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ «أَنَّ رَجُلًا أَوْصَى عِنْدَ مَوْتِهِ فَأَعْتَقَ سِتَّةَ مَمْلُوكِينَ لَهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ فَدَعَا بِهِمِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَزَّأَهُمْ أَثْلَاثًا ثُمَّ أَقْرَعَ بَيْنَهُمْ فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً، وَقَالَ لَهُ قَوْلًا شَدِيدًا» .

L28623 People have differed regarding this matter, and we say: We have not found any of the Companions—may Allah be pleased with them—nor any of the Followers—may Allah have mercy on them—permitting a bequest of manumission exceeding one-third by any amount, except for Ata alone. He held regarding one who bequeaths the manumission of one-third of a slave they own if they have no other property besides him: the entire slave is to be freed, and the slave is required to work off the value of the remaining two-thirds for the heirs.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، وَنَقُولُ -: إِنَّنَا لَمْ نَجِدْ لِأَحَدٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا لِأَحَدٍ مِنَ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ - فِي الْوَصِيَّةِ بِالْعِتْقِ، فِيمَا هُوَ أَكْثَرُ مِنَ الثُّلُثِ شَيْئًا، إِلَّا لِعَطَاءٍ وَحْدَهُ: فِيمَنْ أَوْصَى بِعِتْقِ ثُلُثِ عَبْدٍ لَهُ لَا مَالَ لَهُ غَيْرُهُ، فَإِنَّهُ يُعْتَقُ كُلُّهُ، وَيَسْتَسْعِي لِلْوَرَثَةِ فِي قِيمَةِ ثُلُثَيْهِ.

L28624 And through the chain of Ibn Abī Shaybah: I, Hushaym, [relate] from Ismāʿīl ibn Sālim from al-Shaʿbī, who said: "Whoever bequeaths the emancipation of his slave, it is to be fulfilled from the third [of his estate]. If it exceeds a third, [the executor] must strive to fulfill the surplus—and this is our view. As for the others, we have only found that they permitted emancipation from the third at death. We are among those who do not apply the explicit texts of narrations explicitly in a way that diverts them from their proper contexts—and Allāh the Exalted has already protected us from such—and all praise is due to Allāh in abundance for His blessings."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا هُشَيْمٌ عَنْ إِسْمَاعِيلَ بْنِ سَالِمٍ عَنِ الشَّعْبِيِّ قَالَ: مَنْ أَوْصَى بِعِتْقِ مَمْلُوكٍ لَهُ فَهُوَ مِنَ الثُّلُثِ، فَإِنْ كَانَ أَكْثَرَ مِنَ الثُّلُثِ سَعَى فِيمَا زَادَ - وَهُوَ قَوْلُنَا - وَأَمَّا سَائِرُهُمْ فَإِنَّمَا وَجَدْنَا عَنْهُمْ مَنْ أَعْتَقَ مِنْ ثُلُثِهِ عِنْدَ مَوْتِهِ، وَنَحْنُ مَنْ لَا يُعْطِي نُصُوصَ الرِّوَايَاتِ نَصًّا مِمَّا يُحَرِّفُهَا عَنْ مَوَاضِعِهَا - وَقَدْ أَعَاذَنَا اللَّهُ تَعَالَى مِنْ ذَلِكَ - وَالْحَمْدُ لِلَّهِ عَلَى نِعَمِهِ كَثِيرًا.

L28625 They may legitimately adopt a position in matters of bequests that differs from their stance regarding one who manumits at the time of death. Whoever bars them from this view has blindly adhered to what he possesses no knowledge of, incurred Allah's prohibition upon himself in this matter, and trivialized falsehood alongside issuing definitive judgments based on speculation.

وَقَدْ يُمْكِنُ لَهُمْ فِي الْوَصِيَّةِ قَوْلٌ غَيْرُ قَوْلِهِمْ فِيمَنْ أَعْتَقَ عِنْدَ مَوْتِهِ، وَمَنْ مَنَعَ مِنْ ذَلِكَ عَنْهُمْ، فَقَدْ قَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَأَوْقَعَ نَهْيَ اللَّهِ تَعَالَى لَهُ عَنْ ذَلِكَ، وَاسْتَسْهَلَ الْكَذِبَ وَالْقَطْعَ بِالظَّنِّ.

L28626 As for us, we relate only what has been transmitted to us, nor do we narrate what we have not heard, nor do we report what has not reached us. Far be it from Allah to be attributed such a perilous status in this world and the

وَأَمَّا نَحْنُ فَلَا نُورِدُ إِلَّا مَا رُوِّينَا، وَلَا نَحْكِي مَا لَمْ نَسْمَعْ، وَلَا نُخْبِرُ بِمَا لَمْ يَبْلُغْنَا وَحَاشَ لِلَّهِ مِنْ هَذَا الرُّتْبَةِ الْمُهْلِكَةِ فِي الدُّنْيَا وَالْآخِرَةِ، وَسَنَذْكُرُ الرِّوَايَاتِ الَّتِي بَلَغَتْنَا فِي ذَلِكَ

- إِنْ شَاءَ اللَّهُ تَعَالَى - إِثْرَ تَمَامِ هَذِهِ الْمَسْأَلَةِ " فِي مَسْأَلَةِ حُكْمِ الْمَرِيضِ وَمَنْ حَضَرَهُ الْمَوْتُ فِي مَالِهِ " وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Hereafter. We shall mention the narrations that have reached us concerning this—Allah, the Exalted, willing—after concluding this issue: the ruling pertaining to the sick person and those nearing death regarding their wealth. And success is attained only through Allah, the Exalted.

فَإِذْ الْأَمْرُ كَمَا ذَكَرْنَا فَلْنَذْكُرْ مَا وَجَدْنَا عَنْ الْمُتَأَخِّرِينَ الْمُصَرِّحِينَ بِمَا قَالُوا فِي حُكْمِ الْوَصِيَّةِ بِعِتْقٍ أَكْثَرَ مِنْ الثُّلُثِ -: قَالَ أَبُو حَنِيفَةَ: مَنْ أَوْصَى بِعِتْقِ مَمَالِيكَ لَهُ لَا يَمْلِكُ غَيْرَهُمْ وَكَانُوا أَكْثَرَ مِنْ الثُّلُثِ أُعْتِقُوا كُلُّهُمْ، وَاسْتَسْعُوا جَمِيعُهُمْ فِيمَا زَادَ مِنْ قِيمَتِهِمْ عَلَى مِقْدَارِ ثُلُثِ الْمُوصِي.

L28627 Since the matter is as we have mentioned, let us mention what we have found from the later jurists who explicitly stated their position regarding the ruling on bequeathing manumission exceeding a third. Abu Hanifa said: If someone bequeaths the manumission of all his slaves and owns nothing else, and they are more than a third, they are all to be freed, and they are obligated to compensate through labor collectively for the excess of their value beyond the amount of the testator's third.

وَقَالَ مَالِكٌ: مَنْ أَوْصَى بِعِتْقِ جُزْءٍ مِنْ عَبْدِهِ لَمْ يُعْتَقْ مِنْهُ إِلَّا مَا أَوْصَى بِعِتْقِهِ مِنْهُ فَقَطْ وَرَقَّ بَاقِيهِ - سَوَاءٌ حَمَلَهُ الثُّلُثُ كُلُّهُ أَوْ قَصُرَ عَنْهُ -.

L28628–28629 Malik said: Whoever stipulates in their will the manumission of a share in their slave, only the portion they stipulated for manumission is freed, while the remainder remains in slavery - whether the third [of the estate] fully covers it or falls short.

فَإِنْ لَمْ يَحْمِلْ الثُّلُثُ مَا أَوْصَى بِعِتْقِهِ لَمْ يُعْتَقْ مِنْهُ إِلَّا مَا حَمَلَ الثُّلُثُ مِمَّا أَوْصَى بِعِتْقِهِ مِنْهُ وَرَقَّ سَائِرُهُ.

L28630 If the one-third [of the estate] does not suffice to emancipate all the slaves he instructed to free, only the number proportionate to the one-third [from those he designated] is emancipated, while the remainder remain in slavery.

فَإِنْ أَوْصَى بِعِتْقِ عَبِيدِهِ أَوْ دَبَّرَهُمْ فَإِنَّهُ يُعْتَقُ مِنْ كُلِّ وَاحِدٍ مِنْهُمْ مَا حَمَلَهُ الثُّلُثُ فَقَطْ وَيُرَقُّ سَائِرُهُ.

L28631 If he bequeaths the manumission of his slaves or decrees their deferred manumission, only the portion of each slave that the third [of the estate] can bear is freed, while the remainder is retained in servitude.

فَلَوْ دَبَّرَ فِي صِحَّتِهِ أَوْ فِي مَرَضِهِ بُدِئَ بِالْأَوَّلِ فَالْأَوَّلِ عَلَى رُتْبَةِ تَدْبِيرِهِ لَهُمْ، فَإِذَا تَمَّ الثُّلُثُ رَقَّ الْبَاقُونَ وَرَقَّ بَاقِي مَنْ لَمْ يَحْمِلْ الثُّلُثُ جَمِيعَهُ.

L28632 If he were to enact a stipulation of posthumous emancipation (tadbeer) while he is healthy or during illness, the process would commence with the first [slave] and proceed sequentially in the order he stipulated for them. When the third [of the estate] is fully allocated, the remaining [slaves] would be emancipated, and those whose full emancipation exceeds the third's capacity would likewise be emancipated.

وَقَالَ الشَّافِعِيُّ: مَنْ أَوْصَى بِعِتْقِ رَقِيقٍ لَهُ لَا يَحْمِلُهُمْ الثُّلُثُ قُوِّمُوا ثُمَّ أُقْرِعَ بَيْنَهُمْ فَأُعْتِقَ مِنْهُمْ مَا حَمَلَهُ الثُّلُثُ وَرَقَّ سَائِرُهُمْ، وَيُرَقُّ بَاقِي مَنْ لَمْ يَحْمِلْ الثُّلُثُ جَمِيعَهُ.

L28633 Al-Shafi'i said: If someone bequeaths to free his slaves, and the third [of the estate] cannot cover them all, they are appraised. Then lots are drawn among them, and those whom the third can cover are freed, while the rest remain enslaved, including those whom the third, in its entirety, could not cover.

L28634 Abu Muhammad said: As for the statement of Imam al-Shafiʿi, he confined himself to the report of ʿImrān ibn al-Ḥuṣayn that we cited, omitting the report of al-istisʿāʾ. We have already mentioned the latter with its chain of transmission in the *Book of Manumission* within this compendium of ours. It is impermissible to disregard any of the firmly established sunnahs.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ الشَّافِعِيِّ - فَاقْتَصَرَ عَلَى خَبَرِ عِمْرَانَ بْنِ الْحُصَيْنِ الَّذِي ذَكَرْنَا وَتَرَكَ خَبَرَ الِاسْتِسْعَاءِ، وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي " كِتَابِ الْعِتْقِ " مِنْ دِيوَانِنَا هَذَا وَلَا يَجُوزُ تَرْكُ شَيْءٍ مِنْ السُّنَنِ الثَّابِتَةِ.

L28635 As for Mālik's opinion, it contradicts all the established Sunnahs pertaining to this matter: he neither adopts the hadith of the lottery narrated by ʿImrān, nor adopts the hadiths of Abū Hurayrah and Ibn ʿUmar regarding the valuation imposed on one who manumits his co-owned portion of a slave, nor accepts that the testator is a partner with the heirs in the slave who was manumitted, nor [acknowledges] the istisʿāʾ (self-redemption through labor)—and this position is entirely impermissible.

وَأَمَّا قَوْلُ مَالِك - فَمُخَالِفٌ لِجَمِيعِ السُّنَنِ الْوَارِدَةِ فِي ذَلِكَ لَا بِحَدِيثِ الْقُرْعَةِ الَّذِي رَوَاهُ عِمْرَانُ أَخَذَ، وَلَا بِحَدِيثِ أَبِي هُرَيْرَةَ، وَابْنِ عُمَرَ، فِي التَّقْوِيمِ عَلَى مَنْ أَعْتَقَ شِرْكًا لَهُ فِي مَمْلُوكٍ أَخَذَ، وَالْمُوصِي شَرِيكٌ لِلْوَرَثَةِ فِي الْعَبْدِ الَّذِي أُعْتِقَ، وَفِي الِاسْتِسْعَاءِ - وَهَذَا لَا يَجُوزُ أَلْبَتَّةَ.

L28636 As for Abū Ḥanīfah, he confined himself to the ḥadīth of istisʿāʾ and opposed the report of ʿImrān ibn Ḥuṣayn—and it is impermissible to abandon any of the established Sunnahs.

وَأَمَّا أَبُو حَنِيفَةَ: فَاقْتَصَرَ عَلَى حَدِيثِ الِاسْتِسْعَاءِ وَخَالَفَ خَبَرَ عِمْرَانَ بْنِ الْحُصَيْنِ - وَلَا يَجُوزُ تَرْكُ شَيْءٍ مِنْ السُّنَنِ الثَّابِتَةِ.

L28637 They relied on invalid arguments to reject the report of ʿImrān ibn al-Ḥuṣayn, including their claim: "If the lottery had been applied as ʿAlī ruled in Yemen regarding the child claimed by three claimants—attaching him to the one whose share was determined—it would have been abrogated afterward, and the Muslims unanimously agreed to abandon it."

وَاعْتَلُّوا فِي رَدِّ خَبَرِ عِمْرَانَ بْنِ الْحُصَيْنِ بِأَشْيَاءَ فَاسِدَةٍ -: مِنْهَا أَنَّهُمْ قَالُوا: لَوْ كَانَتْ الْقُرْعَةُ تُسْتَعْمَلُ كَمَا قَضَى بِهَا عَلِيٌّ بِالْيَمَنِ فِي الْوَلَدِ الَّذِي ادَّعَاهُ ثَلَاثَةُ رِجَالٍ فَأَلْحَقَهُ بِالَّذِي خَرَجَ سَهْمُهُ عَلَيْهِ - ثُمَّ نُسِخَ ذَلِكَ، وَأَجْمَعَ الْمُسْلِمُونَ عَلَى تَرْكِهِ.

L28638–28640 Abu Muhammad said: "And indeed, they have lied; that was never abrogated. How could the Muslims be united in abandoning it?" Ali—may Allah be pleased with him—had issued this ruling in Yemen, and the Prophet—peace and blessings be upon him—approved and knew it, and died—peace and blessings be upon him—approximately three months later. So who is the one who abrogated that? May Allah's curse be upon every consensus that contradicts Ali ibn Abi Talib and the Companions in his presence.

قَالَ أَبُو مُحَمَّد: وَقَدْ كَذَبُوا، مَا نُسِخَ ذَلِكَ قَطُّ، وَكَيْفَ يُجْمِعُ الْمُسْلِمُونَ عَلَى تَرْكِهِ وَقَدْ قَضَى بِهِ عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ - بِالْيَمَنِ، وَأَقَرَّهُ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَعَلِمَهُ، وَمَاتَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَى نَحْوِ ثَلَاثَةِ أَشْهُرٍ؟ فَمَنْ ذَا الَّذِي نَسَخَ ذَلِكَ؟ وَلَعْنَةُ اللَّهِ عَلَى كُلِّ إجْمَاعٍ يَخْرُجُ عَنْهُ عَلِيُّ بْنُ أَبِي طَالِبٍ وَمَنْ بِحَضْرَتِهِ مِنْ الصَّحَابَةِ.

L28641 We did not find any rejection from any of the Companions—may Allah be pleased with them—nor from the Successors regarding ʿAlī's action in that matter and his ruling. Who then is more deceitful than the proponents of these claims? The full extent of astonishment lies in their opposition to ʿAlī's

وَمَا وَجَدْنَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا مِنْ التَّابِعِينَ إنْكَارًا لِفِعْلِ عَلِيٍّ فِي ذَلِكَ وَحُكْمِهِ، فَمَنْ أَكْذَبُ مِنْ أَصْحَابِ هَذِهِ الدَّعَاوَى؟ وَالْعَجَبُ كُلُّهُ فِي مُخَالَفَتِهِمْ

ruling—established through the knowledge of Allah's Messenger (peace and blessings be upon him), sound and verified—while they themselves adopt in this very issue a morally corrupt and invalid narration falsely attributed to ʿUmar (may Allah be pleased with him) concerning the attribution of a child to two parents—a practice invalidated by the Quran, the Sunnah, and rational judgment.

حُكْمَ عَلِيٍّ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ ثَابِتٌ صَحِيحٌ وَأَخْذُهُمْ فِي الْمَسْأَلَةِ نَفْسِهَا بِرِوَايَةٍ فَاسِدَةٍ لَا تَصِحُّ، نُسِبَتْ إلَى عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ إلْحَاقِهِ الْوَلَدَ بِأَبَوَيْنِ - وَالْقُرْآنُ وَالسُّنَّةُ وَالْمَعْقُولُ يُبْطِلُ ذَلِكَ.

L28642 They said: Indeed, whoever adopts the report of ʿImrān ibn al-Ḥuṣayn concerning the lottery has contradicted him regarding one who initiates manumission by freeing the first [slave] each time in his will. So they have lied. We did not contradict ʿImrān's report, for his report does not mention that he began by specifying their names individually in the will. Rather, its wording establishes that his manumission of them through the will applies collectively as a single act? Thus, we did not transgress the wording of the report to include what is absent from it.

وَقَالُوا: إنَّ مَنْ أَخَذَ بِحَدِيثِ عِمْرَانَ بْنِ الْحُصَيْنِ فِي الْقُرْعَةِ قَدْ خَالَفَهُ فِيمَنْ بَدَأَ بِعِتْقِ الْأَوَّلِ فَالْأَوَّلِ فِي وَصِيَّتِهِ، فَكَذَبُوا، مَا خَالَفْنَا خَبَرَ عِمْرَانَ لِأَنَّهُ لَيْسَ فِي خَبَرِ عِمْرَانَ: أَنَّهُ بَدَأَ بِالْوَصِيَّةِ بِأَسْمَائِهِمْ اسْمًا اسْمًا، وَإِنَّمَا لَفْظُهُ أَنَّهُ يَقْتَضِي عِتْقَهُ لَهُمْ بِالْوَصِيَّةِ جُمْلَةً وَاحِدَةً؟ فَلَمْ نَتَعَدَّ لَفْظَ الْخَبَرِ إلَى مَا لَيْسَ فِيهِ.

L28643 They said: We found the narration of Imrān ibn al-Ḥuṣayn inconsistent. At times, Abū Qilābah narrated it from Abū al-Muhallab from Imrān, and at other times he narrated from Abū Zayd that there was a man from the Anṣār? Abū Muḥammad retorted: "So what? None would resort to this excuse except one lacking in shame." Abū Qilābah narrated it from Abū Zayd - who is unknown [majhul status] - thus it cannot be used as evidence.

وَقَالُوا: وَجَدْنَا حَدِيثَ عِمْرَانَ بْنِ الْحُصَيْنِ مُضْطَرِبًا فِيهِ، فَمَرَّةً رَوَاهُ أَبُو قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ، وَمَرَّةً رَوَاهُ عَنْ أَبِي زَيْدٍ: أَنَّ رَجُلًا مِنْ الْأَنْصَارِ؟ قَالَ أَبُو مُحَمَّد: فَكَانَ مَاذَا؟ وَمَا يَتَعَلَّلُ بِهَذَا إلَّا قَلِيلُ الْحَيَاءِ -: رَوَاهُ أَبُو قِلَابَةَ عَنْ أَبِي زَيْدٍ - وَهُوَ مَجْهُولٌ - فَلَمْ يَحْتَجَّ بِهِ.

L28644 And it was narrated from Abu al-Muhallab from Imran ibn al-Husayn, where it was provided with an *isnād* and authenticated, so we acted upon it.

وَرَوَاهُ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ فَأُسْنِدَ وَثَبَتَ، فَأَخَذْنَا بِهِ.

L28645 Any irregularity in a scholar's narration of a single report transmitted via ten chains—some authentic and others defective—[must be evaluated]. For every report on earth is relayed by both reliable and unreliable narrators. Thus, the reliable transmission is accepted, and the rest are discarded.

وَأَيُّ نَكِرَةٍ فِي رِوَايَةِ رَجُلٍ مِنْ أَهْلِ الْعِلْمِ خَبَرًا وَاحِدًا مِنْ عَشْرِ طُرُقٍ، مِنْهَا صَحِيحٌ وَمِنْهَا مَدْخُولٌ، وَكُلُّ خَبَرٍ فِي الْأَرْضِ فَإِنَّهُ يَنْقُلُهُ الثِّقَةُ وَغَيْرُ الثِّقَةِ، فَيُؤْخَذُ نَقْلُ الثِّقَةِ وَيُتْرَكُ مَا عَدَاهُ.

L28646 They said: We found that one who emancipates his slaves through a will had ownership over a third of all of them. Since this is established, a third of each individual among them has been rightfully emancipated. Therefore, is it not permissible for those who have been emancipated to be re-enslaved?

وَقَالُوا: وَجَدْنَا مُعْتِقَ عَبِيدِهِ بِالْوَصِيَّةِ قَدْ كَانَ مَالِكًا لِثُلُثِ جَمِيعِهِمْ، وَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ عَتَقَ ثُلُثُ كُلِّ وَاحِدٍ مِنْهُمْ بِالْحَقِّ، فَلَا يَجُوزُ أَنْ يُرَقَّ مَنْ وَقَعَ عَلَيْهِ الْعِتْقُ؟

فَقُلْنَا: صَدَقْتُمْ إِلَّا أَنَّ هَذَا الْمُوصِيَ بِعِتْقِ جَمِيعِهِمْ، لَمْ يُعْتِقْ قَطُّ ثُلُثَ كُلِّ وَاحِدٍ مِنْهُمْ، إِنَّمَا أَعْتَقَهُمْ جُمْلَةً، فَكَانَ فِعْلُهُ ذَلِكَ جَامِعًا لِبَاطِلٍ وَحَقٍّ، فَلَمْ يُمْكِنْ إِنْفَاذُ ذَلِكَ وَمَعْرِفَتُهُ إِلَّا بِالْقُرْعَةِ، وَمَا وَقَعَ الْعِتْقُ قَطُّ عَلَى جَمِيعِهِمْ، لَكِنْ عَلَى بَعْضِهِمْ دُونَ بَعْضٍ، فَلَمْ يَكُنْ بُدٌّ مِنْ الْقُرْعَةِ فِي تَمْيِيزِ ذَلِكَ.

L28647–28648 We said: You are correct, except that this testator who stipulated the emancipation of all his slaves did not allocate a third [of his estate] for each individual's emancipation. Rather, he emancipated them collectively. Thus, his action conflated invalid and valid elements, making it impossible to implement or determine [validity] except through drawing lots. Emancipation never applied to all of them, but only to some to the exclusion of others. Therefore, there was no recourse but to draw lots in distinguishing this matter.

وَنَسْأَلُهُمْ هَاهُنَا: عَمَّنْ أَوْصَى بِجَمِيعِ غَنَمِهِ، وَلَا مَالَ لَهُ غَيْرُهَا، أَوْ بِجَمِيعِ خَيْلِهِ وَلَا مَالَ لَهُ غَيْرُهَا، أَوْ بِجَمِيعِ عَبِيدِهِ فِي أَهْلِ الْجِهَادِ فِي الثُّغُورِ وَلَا مَالَ لَهُ غَيْرُهُمْ، أَيُنَفِّذُونَ ذَلِكَ بِرَغْمِ الْوَرَثَةِ فَيَنْسَلِخُوا عَنْ الْإِسْلَامِ؟ أَمْ يُبْطِلُونَ وَصِيَّتَهُ فَيَفْسُقُوا؟ أَمْ يَقْسِمُونَ الثُّلُثَ لِلْوَصِيَّةِ وَالثُّلُثَيْنِ لِوَرَثَتِهِ بِالْقُرْعَةِ؟ وَهَذَا الَّذِي أَنْكَرُوا.

L28649 We ask them here: concerning one who bequeaths all his sheep while having no other wealth besides them, or all his horses with no other property apart from these, or all his slaves among those engaged in jihad in the frontier regions possessing no assets beyond them—would the executors enforce this against the heirs' wishes, thereby causing them to strip themselves of Islam? Or would they invalidate his will, thus becoming sinful? Or would they allocate one-third to the bequest through drawing lots [qurʿa] while granting two-thirds to his heirs? Yet this is what they rejected.

وَقَالُوا: لَمَّا تَسَاوَوْا كُلُّهُمْ فِي السَّبَبِ الْمُوجِبِ لِلْعِتْقِ دُونَ تَفَاضُلٍ لَمْ يَجُزْ أَنْ يُحَابِيَ بِإِنْفَاذِهِ بَعْضَهُمْ دُونَ بَعْضٍ؟ فَقُلْنَا: كَذَبْتُمْ مَا اسْتَوَوْا قَطُّ فِي السَّبَبِ الْمُوجِبِ لِلْعِتْقِ؛ لِأَنَّ ذَلِكَ السَّبَبَ هُوَ الْوَصِيَّةُ بِعِتْقِهِمْ، وَقَدْ وَقَعَتْ فِي بَعْضِهِمْ بِحَقٍّ وَجَبَ تَنْفِيذُهُ، وَفِي بَعْضِهِمْ بِحَرَامٍ لَا يَحِلُّ تَنْفِيذُهُ - وَهُوَ مَا زَادَ عَلَى الثُّلُثِ - فَلَمْ يَكُنْ بُدٌّ فِي تَمْيِيزِ ذَلِكَ مِنْ الْقُرْعَةِ.

L28650 They said: Since they all equally share the cause necessitating manumission without distinction, how can it be permissible to favor some over others in executing it? We replied: You have lied! They were never equal in the cause necessitating manumission, for that cause is the testamentary will to free them. The will rightfully applies to some, mandating its execution, and unlawfully to others—specifically the portion exceeding one-third of the estate—which cannot lawfully be executed. Thus, there was no alternative but to distinguish between them through casting lots.

وَقَالُوا: يُحْتَمَلُ أَنْ يَكُونَ قَوْلُ عِمْرَانَ «فَأَعْتَقَ اثْنَيْنِ» أَيْ شَائِعَيْنِ فِي الْجَمِيعِ، كَمَا يَقُولُ «فِي كُلِّ أَرْبَعِينَ شَاةً شَاةٌ» يَعْنِي شَائِعَةً فِي الْجَمِيعِ - وَذَكَرُوا أَخْبَارًا لَا تَصِحُّ فِيهَا - فَأَعْتَقَ الثُّلُثَ؟ فَقُلْنَا: جَمَعْتُمْ فِي هَذَا الْكَذِبَ وَالْمُجَاهَرَةَ بِهِ؛ لِأَنَّ فِي حَدِيثِ عِمْرَانَ «وَأَرَقَّ

L28651 They said: It is plausible that ʿImrān's statement "so he freed two" refers to two shared among all, just as one says "for every forty sheep, one sheep" meaning one distributed among all. They cited unreliable reports in this matter—so did he free a third? We responded: You have combined falsehood and bold assertion in this, for ʿImrān's ḥadīth states "and he freed four," thereby invalidating what you sought to insert into the report. Never has the sheep been distributed among the forty; rather, it is one unspecified in

identity. Whichever ones he gives from what fulfills the obligation, he has discharged his duty.

أَرْبَعَةً» فَبَطَلَ مَا رُمْتُمْ إِلْحَامَهُ فِي الْخَبَرِ - وَمَا كَانَتْ الشَّاةُ قَطُّ شَائِعَةً فِي الْأَرْبَعِينَ، بَلْ وَاحِدَةٌ بِغَيْرِ عَيْنِهَا، أَيُّهَا أَعْطَى مِمَّا فِيهِ وَفَاءٌ: فَقَدْ أَدَّى مَا عَلَيْهِ.

L28652 They said: This is a ruling from the Prophet - peace and blessings of Allah be upon him - and not a general term encompassing what falls under it? We respond: Why do you not say this to yourselves when you deem the sermon obligatory in Friday prayer - though it is an action, not a general term - and when you permit ablution with nabidh based on a fabricated report, which is furthermore an action and not a general term? Their statement can only imply attributing restriction to the Prophet - peace and blessings of Allah be upon him and his family - and this is sheer disbelief.

وَقَالُوا: هَذَا قَضَاءٌ مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ عُمُومَ اسْمٍ يَتَنَاوَلُ مَا تَحْتَهُ؟ فَنَقُولُ لَهُمْ: هَلَّا قُلْتُمْ هَذَا لِأَنْفُسِكُمْ إذْ جَعَلْتُمْ الْخُطْبَةَ فَرْضًا فِي الْجُمُعَةِ - وَهُوَ فِعْلٌ لَا عُمُومُ اسْمٍ - وَإِذْ قَضَيْتُمْ بِجَوَازِ الْوُضُوءِ بِالنَّبِيذِ فِي خَبَرٍ مَكْذُوبٍ ثُمَّ هُوَ فِعْلٌ وَلَيْسَ عُمُومَ اسْمٍ - لَا يَحْتَمِلُ قَوْلُهُمْ هَذَا إلَّا تَجْوِيرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهَذَا كُفْرٌ مُجَرَّدٌ.

L28653 And they said, “Is this from the category of gambling and games of chance?”

وَقَالُوا: هَذَا مِنْ بَابِ الْقِمَارِ، وَالْمَيْسِرِ؟

L28654–28655 Abu Muhammad said: This is sheer, manifest disbelief. Whoever attributes to the Prophet—peace and blessings be upon him—that he judged by gambling and games of chance, we disavow him. Is this not sufficient? Allah the Exalted said: *“But no, by your Lord, they will not believe until they make you judge in what disputes arise between them, then find no uneasiness in their hearts regarding your verdict, and surrender in full submission”* [al-Nisā’ 4:65]. We have made him—peace and blessings be upon him—the judge in what arises between us, then found no uneasiness in our hearts regarding his decree, and surrendered in full submission. But they did not make him judge in what arose among them, then found uneasiness in their hearts regarding his decree, and did not surrender in submission—destruction upon them and banishment![12]

قَالَ أَبُو مُحَمَّد: وَهَذَا كُفْرٌ مَكْشُوفٌ مُجَرَّدٌ مَنْ نَسَبَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ حَكَمَ بِالْقِمَارِ، وَالْمَيْسِرِ، وَنَحْنُ بَرَاءٌ مِنْهُ وَكَفَى؟ قَالَ اللَّهُ تَعَالَى: {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا} [النساء: ٦٥] فَنَحْنُ حَكَّمْنَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيمَا شَجَرَ بَيْنَنَا، ثُمَّ لَمْ نَجِدْ فِي أَنْفُسِنَا حَرَجًا مِمَّا قَضَى وَسَلَّمْنَا تَسْلِيمًا، وَهُمْ لَمْ يُحَكِّمُوهُ فِيمَا شَجَرَ بَيْنَهُمْ، ثُمَّ وَجَدُوا فِي أَنْفُسِهِمْ الْحَرَجَ مِمَّا قَضَى، وَلَمْ يُسَلِّمُوا تَسْلِيمًا - فَتَبًّا لَهُمْ وَسُحْقًا.

L28656 They said: “This is from Aḥādīth, and it is not permissible to use them to challenge the *Usūl*?” We replied: “This is more untenable than what you have presented. We know of no foundational principles in the religion except the Quran and its elucidation: that which has been authentically established from the Prophet, peace be upon him, whether through a trustworthy

وَقَالُوا: هَذَا مِنْ أَخْبَارِ الْآحَادِ، وَلَا يَجُوزُ أَنْ يُعْتَرَضَ بِهِ عَلَى الْأُصُولِ؟ فَقُلْنَا: هَذَا أَبْرَدُ مِمَّا أَتَيْتُمْ بِهِ، وَمَا عَلِمْنَا فِي الدِّينِ أُصُولًا إلَّا الْقُرْآنَ وَبَيَانَهُ، مِمَّا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَوَاءٌ بِنَقْلِ ثِقَةٍ عَنْ مِثْلِهِ مُسْنَدًا، أَوْ بِنَقْلِ تَوَاتُرٍ - وَأَمَّا فَرْقُكُمْ فَضَلَالٌ وَدَعْوَى كَاذِبَةٌ، وَإِفْكٌ مُطَّرَحٌ {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١]

[12] **Qur’an references (L28655):** Qur’an 4:65 (An-Nisa).

narration from one like him in a connected chain, or through *mutawātir* transmission. As for your distinction, it is misguidance, a false claim, and a rejected falsehood. *Say, 'Produce your proof, if you should be truthful'*" [Al-Baqarah 2:111].[13]

فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28657 Thus, all that they have camouflaged with it is nullified—and praise be to Allah, Lord of the worlds.

١٧٧١ - مَسْأَلَةٌ: وَمَنْ أَوْصَى بِعِتْقِ مَمْلُوكٍ لَهُ أَوْ مَمَالِيكَ، وَعَلَيْهِ دَيْنٌ لِلَّهِ تَعَالَى أَوْ لِلنَّاسِ، فَإِنْ كَانَ ذَلِكَ الدَّيْنُ مُحِيطًا بِمَالِهِ كُلِّهِ: بَطَلَ كُلُّ مَا أَوْصَى بِهِ مِنْ الْعِتْقِ جُمْلَةً، وَبِيعُوا فِي الدَّيْنِ.

L28658 1771 - Issue: If a person bequeaths the manumission of a slave he owns or multiple slaves, and he owes a debt to God Almighty or to others, then if that debt encompasses his entire wealth, all the manumission he bequeathed is completely invalidated, and the slaves are to be sold to settle the debt.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى فِي الْمَوَارِيثِ: {مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ} [النساء: ١١] وَحَكَمَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّ الْوَصِيَّةَ لَا تَجُوزُ فِي أَكْثَرَ مِنْ الثُّلُثِ فِيمَا يُخَلِّفُهُ الْمُوصِي، وَأَنَّ لِلْوَرَثَةِ الثُّلُثَيْنِ، أَوْ مَا فَضَلَ عَنْ الْوَصِيَّةِ إنْ كَانَتْ أَقَلَّ مِنْ الثُّلُثِ.

L28659 The proof of this is Allah the Exalted's statement concerning inheritance: {After any bequest he bequeaths or debt} [An-Nisā' 4:11]. Allah the Exalted has decreed through His Messenger—upon him be peace and blessings—that a bequest may not exceed one-third of what the testator leaves behind, and that the heirs are entitled to two-thirds [if the bequest equals one-third] or to what remains after fulfilling the bequest, should it amount to less than one-third.[14]

فَصَحَّ ضَرُورَةً: أَنَّ الْوَصِيَّةَ لَا تَكُونُ إلَّا بَعْدَ أَدَاءِ الدَّيْنِ وَاجِبًا لِلْغُرَمَاءِ - فَصَحَّ أَنَّ مَنْ أَحَاطَ الدَّيْنُ بِجَمِيعِ مَا تَرَكَ، فَإِنَّهُ لَمْ يَتْخَلَّفْ مَا لَا يُوصِي فِيهِ، وَأَنَّ مَا تَخَلَّفَهُ انْتَقَلَ إلَى مِلْكِ الْغُرَمَاءِ إثْرَ مَوْتِهِ بِلَا فَصْلٍ، وَلَيْسَ لِأَحَدٍ أَنْ يُوصِيَ فِي مَالِ غَيْرِهِ: فَبَطَلَتْ الْوَصِيَّةُ لِذَلِكَ.

L28660 Thus, it is necessarily confirmed that a will cannot take effect except after the payment of debts as an obligation to creditors. Therefore, it is confirmed that if debt envelops all that one leaves behind, nothing remains in which one cannot make a bequest, and whatever remains transfers to the ownership of the creditors immediately after death without delay. And no one has the right to bequeath in another's property: thus, the will is invalidated for this reason.

وَهَذَا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L28661 This is the opinion of Mālik, al-Shāfiʿī, Abū Sulaymān, and their companions.

وَقَالَ أَبُو حَنِيفَةَ: يَسْعَى فِي قِيمَتِهِ لِلْغُرَمَاءِ وَيَعْتِقُ - وَهَذَا بَاطِلٌ لِمَا ذَكَرْنَا.

L28662 Abu Hanifah said: He must work to pay its value to the creditors and the slave is freed - and this is invalid due to what we have mentioned.

L28663–28664 They attempted to obscure their argument by citing a report containing no

[13] **Qur'an references (L28656):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).
[14] **Qur'an references (L28659):** Qur'an 4:11 (An-Nisa); Qur'an 4:12 (An-Nisa).

mention of the will. The report merely states that a man - while indebted and possessing no property other than his slave - manumitted a slave near his death, whereupon the Prophet (peace and blessings of Allah be upon him) ordered that the slave work to pay the slave's value. Even if this report were authentic, it would provide no valid evidence for their claim whatsoever, for it does not address the ruling on wills. Rather, it addresses the ruling concerning one who manumits during his lifetime close to his death.

L28665 If they say: "The matter is equal in both cases?" We respond: This is invalid because it is analogical reasoning, and all such reasoning is invalid. Moreover, even if analogical reasoning were valid, this instance would constitute the very essence of invalidity, for there exists an underlying cause connecting bequests and the actions of the living - as we shall mention hereafter, if Allah the Exalted wills. How could this be acceptable when it is a fabricated narration that is unsound? It has been narrated to us through the chain of Sa'īd ibn Manṣūr - narrated to us Hushaym, who said: Ḥajjāj (that is, Ibn Arṭā'ah) - from al-'Alā' ibn Badr - from Abū Yaḥyā al-Makkī: that the Messenger of Allah - peace and blessings be upon him - : This narration contains four defects - one of which suffices:

L28666 The first is that it is a mursal ḥadīth, and a mursal ḥadīth cannot serve as valid evidence.

L28667 The second is reported through Al-Ḥajjāj ibn Arṭā'ah, who is discarded.

L28668 And the third report: from al-'Alā' ibn Badr, who is heretical and abandoned.

L28669 And the fourth of them: that it is narrated from Abū Yaḥyā al-Makkī, who is unknown.

L28670 It is not permissible to adopt in the religion of Allah, the Exalted, that which bears such a description.

L28671 Abu Muhammad said: If one bequeaths the emancipation of a slave or slaves they own while owing a debt exceeding their estate, and a surplus from the slave's value remains beyond the debt—even if minimal—the designated slave(s) shall be emancipated. The emancipated slave must labor to repay the

وَمَوَّهُوا فِي الِاحْتِجَاجِ بِخَبَرٍ لَيْسَ فِيهِ لِلْوَصِيَّةِ ذِكْرٌ، وَإِنَّمَا فِيهِ «أَنَّ رَجُلًا أَعْتَقَ عِنْدَ مَوْتِهِ عَبْدًا وَعَلَيْهِ دَيْنٌ وَلَيْسَ لَهُ مَالٌ غَيْرُهُ فَأَمَرَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَسْعَى فِي قِيمَتِهِ» وَهَذَا خَبَرٌ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ أَصْلًا؛ لِأَنَّهُ لَيْسَ فِيهِ: حُكْمُ الْوَصِيَّةِ، إنَّمَا فِيهِ حُكْمُ مَنْ أَعْتَقَ فِي حَيَاتِهِ عِنْدَ مَوْتِهِ.

فَإِنْ قَالُوا: الْأَمْرُ سَوَاءٌ فِي كِلَا الْأَمْرَيْنِ؟ قُلْنَا: هَذَا بَاطِلٌ لِأَنَّهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ بَيْنَ الْوَصِيَّةِ وَبَيْنَ فِعْلِ الْحَيِّ عِلَّةً تَجْمَعُ بَيْنَهُمَا - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى - فَكَيْفَ وَهُوَ خَبَرٌ مَكْذُوبٌ لَا يَصِحُّ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا حَجَّاجٌ - هُوَ ابْنُ أَرْطَاةَ - عَنْ الْعَلَاءِ بْنِ بَدْرٍ عَنْ أَبِي يَحْيَى الْمَكِّيِّ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: وَهَذَا فِيهِ أَرْبَعُ فَضَائِحَ -: إحْدَاهَا يَكْفِي -:

أَوَّلُهَا: أَنَّهُ مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ.

وَثَانِيهَا: أَنَّهُ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ وَهُوَ مُطْرَحٌ.

وَثَالِثُهَا: عَنْ الْعَلَاءِ بْنِ بَدْرٍ وَهُوَ هَالِكٌ مَتْرُوكٌ.

وَرَابِعُهَا: أَنَّهُ عَنْ أَبِي يَحْيَى الْمَكِّيِّ وَهُوَ مَجْهُولٌ.

وَلَا يَحِلُّ الْأَخْذُ فِي دِينِ اللَّهِ تَعَالَى بِمَا هَذِهِ صِفَتُهُ.

creditors. Thereafter, one-third of the slave's remaining value is emancipated without requiring labor, and the slave must labor to fulfill the heirs' right.

قَالَ أَبُو مُحَمَّدٍ: فَلَوْ أَوْصَى بِعِتْقِ مَمْلُوكٍ لَهُ أَوْ مَمَالِيكَ - وَعَلَيْهِ دَيْنٌ لَا يُحِيطُ بِمَا تَرَكَ - وَكَانَ يَفْضُلُ مِنْ الْمَمْلُوكِ فَضْلَةٌ عَنْ الدَّيْنِ - وَإِنْ قَلَّتْ - أُعْتِقَ مَنْ أَوْصَى بِعِتْقِهِ، وَيَسْعَى لِلْغُرَمَاءِ فِي دَيْنِهِمْ، ثُمَّ عَتَقَ مِنْهُ ثُلُثُ مَا بَقِيَ بِلَا اسْتِسْعَاءٍ وَاسْتَسْعَى لِلْوَرَثَةِ فِي حَقِّهِمْ.

L28672 The proof of that is: The Messenger of Allah—may Allah bless him and grant him peace—commanded the enforcement of emancipation for one who manumits his share in a slave, and that the emancipated slave must labor to compensate the emancipator's co-owner. This slave whose emancipation is bequeathed (as an obligation for the testator)—in whom the testator holds a right, and whom the creditors and heirs co-own—is emancipated but must labor to pay off their shares.

بُرْهَانُ ذَلِكَ -: أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِإِنْفَاذِ عِتْقِ مَنْ أَعْتَقَ شِرْكًا لَهُ فِي مَمْلُوكٍ، وَأَنْ يَسْتَسْعِيَ الْمَمْلُوكُ الْمُعْتَقُ لِشَرِيكِ مُعْتِقِهِ، وَهَذَا الْمُوصَى بِعِتْقِهِ لِلْمُوصِي فِيهِ حَقٌّ - وَقَدْ شَرِكَهُ الْغُرَمَاءُ وَالْوَرَثَةُ - فَيُعْتَقُ وَيَسْعَى.

L28673–28674 If there are multiple [enslaved individuals], lots are drawn among them. Whoever is selected for the debt remains enslaved, and whoever is selected for the bequest is freed, while the rest remain enslaved—unless an emancipation process is initiated for an enslaved person, in which case the remaining part of their emancipation is completed through working to earn manumission, as detailed in the preceding case.

فَإِنْ كَانُوا أَكْثَرَ مِنْ وَاحِدٍ أُقْرِعَ بَيْنَهُمْ، فَمَنْ خَرَجَ لِلدَّيْنِ رَقَّ، وَمَنْ خَرَجَ لِلْوَصِيَّةِ عَتَقَ، وَرَقَّ الْبَاقُونَ، إلَّا أَنْ يَشْرَعَ بَيْنَهُمْ لِلْعِتْقِ فِي مَمْلُوكٍ فَيُعْتَقَ مَا بَقِيَ مِنْهُ بِالِاسْتِسْعَاءِ لِمَا ذَكَرْنَا فِي الْمَسْأَلَةِ الَّتِي قَبْلَ هَذِهِ.

L28675 And by Allah, the Exalted, is all success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28676 The Book of Bequests has been completed. All praise is due to Allah, Lord of the worlds, and may Allah send blessings upon Muhammad and his family.

تَمَّ " كِتَابُ الْوَصَايَا " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ

AL-MUHALLA

كِتَابُ فِعْلِ الْمَرِيضِ أَوْ الْمَوْقُوفِ لِلْقَتْلِ أَوْ الْحَامِلِ أَوْ الْمُسَافِرِ فِي أَمْوَالِهِمْ

The Book of Disposals of Property in Illness and Other Special Circumstances

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

Return to the reading collection

[كِتَابُ فِعْلِ الْمَرِيضِ أَوْ الْمَوْقُوفِ لِلْقَتْلِ أَوْ الْحَامِلِ أَوْ الْمُسَافِرِ فِي أَمْوَالِهِمْ]

The Book of the Acts of the Sick, Those Detained for Execution, Pregnant Women, or Travelers Regarding Their Wealth.

كِتَابُ فِعْلِ الْمَرِيضِ مَرَضًا يَمُوتُ مِنْهُ أَوْ الْمَوْقُوفِ لِلْقَتْلِ، أَوْ الْحَامِلِ، أَوْ الْمُسَافِرِ فِي أَمْوَالِهِمْ ١٧٧٢ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: كُلُّ مَنْ ذَكَرْنَا فَكُلُّ مَا أَنْفَذُوا فِي أَمْوَالِهِمْ مِنْ هِبَةٍ أَوْ صَدَقَةٍ أَوْ مُحَابَاةٍ فِي بَيْعٍ أَوْ هَدِيَّةٍ - أَوْ إقْرَارٍ: كَانَ كُلُّ ذَلِكَ لِوَارِثٍ، أَوْ لِغَيْرِ وَارِثٍ، أَوْ إقْرَارٍ بِوَارِثٍ، أَوْ عِتْقٍ - أَوْ قَضَاءِ بَعْضِ غُرَمَائِهِ دُونَ بَعْضٍ - كَانَ عَلَيْهِمْ دَيْنٌ أَوْ لَمْ يَكُنْ - فَكُلُّهُ نَافِذٌ مِنْ رُءُوسِ أَمْوَالِهِمْ، كَمَا قَدَّمْنَا فِي الْأَصِحَّاءِ الْآمِنِينَ الْمُقِيمِينَ، وَلَا فَرْقَ فِي شَيْءٍ أَصْلًا، وَوَصَايَاهُمْ كَوَصَايَا الْأَصِحَّاءِ وَلَا فَرْقَ.

L28679 The Book on the Actions of a Terminally Ill Person, One Condemned to Execution, a Pregnant Woman, or a Traveler Regarding Their Assets 1772 - An Issue: Abu Muhammad said: All those we have mentioned - whatever they dispose of concerning their assets, whether a formal gift (hiba), charity, a preferential sale, a casual gift (hadiyya), an acknowledgment (whether in favor of an heir, a non-heir, or acknowledgment of an heir), manumission, or settling some debts to the exclusion of others - whether they had debts or not - all such actions are valid from their principal assets, as we previously established for healthy, unthreatened, and resident individuals. There is absolutely no distinction in any matter whatsoever. Their wills are treated like those of sound individuals, with no difference.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَافْعَلُوا الْخَيْرَ} [الحج: ٧٧] وَحَضُّهُ عَلَى الصَّدَقَةِ وَإِحْلَالُهُ الْبَيْعَ وَقَوْله تَعَالَى: {وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] وَلَمْ يَخُصَّ عَزَّ وَجَلَّ صَحِيحًا مِنْ مَرِيضٍ، وَلَا حَامِلًا مِنْ حَائِلٍ، وَلَا آمِنًا مِنْ خَائِفٍ، وَلَا مُقِيمًا مِنْ مُسَافِرٍ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L28680 The evidence for that is: the statement of Allah, the Exalted: "And do good" [Al-Hajj: 77], His encouragement toward charity, His making trade lawful, and His saying, the Exalted: "And do not neglect bounty among yourselves" [Al-Baqarah: 237]. He, the Almighty and Majestic, has not distinguished between the healthy and the sick, the pregnant and the barren, the secure and the fearful, nor the resident and the traveler: "And your Lord is never forgetful" [Maryam: 64].[1]

وَلَوْ أَرَادَ اللَّهُ تَعَالَى تَخْصِيصَ شَيْءٍ مِنْ ذَلِكَ لَبَيَّنَهُ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَإِذْ لَمْ يَفْعَلْ فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ الصَّادِقَةِ: إنَّهُ تَعَالَى مَا أَرَادَ قَطُّ تَخْصِيصَ أَحَدٍ مِمَّنْ ذَكَرْنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28681 Had Allah the Exalted intended to specify anything from that, He would have clarified it through the speech of His Messenger—peace and blessings be upon him. Since He did not do so, we bear witness by Allah's truthful testimony—the Almighty and Majestic: Indeed, He, the Exalted, never intended to specify any of those we have mentioned—and all praise is due to Allah, Lord of the worlds.

وَقَدْ اخْتَلَفَ النَّاسُ فِي ذَلِكَ - فَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ أَبَا بَكْرٍ نَحَلَهَا جَادَ عِشْرِينَ وَسْقًا مِنْ مَالِهِ بِالْغَابَةِ، فَلَمَّا حَضَرَتْهُ

L28682 People have differed regarding that matter. It has been narrated to us through the chain of Mālik, from al-Zuhrī, from ʿUrwah, from ʿĀ'ishah, the

[1] **Qur'an references (L28680):** Qur'an 2:237 (Al-Baqarah); Qur'an 19:64 (Maryam); Qur'an 22:77 (Al-Hajj).

Mother of the Believers, that Abū Bakr gifted her twenty wasqs from his property at al-Ghābah as a legal grant. When death approached him, he said to her: “I had gifted you twenty wasqs from my property at al-Ghābah as a legal grant. If you had formally established possession of it and taken control of it, it would have been yours. But today, it is the heir’s property. Divide it in accordance with the Book of Allah, the Most High.”

الْوَفَاةُ قَالَ لَهَا: إِنِّي كُنْت نَحَلْتُك جَادَ عِشْرِينَ وَسْقًا مِنْ مَالِي بِالْغَابَةِ، فَلَوْ كُنْت جَدَدْتِيهِ وَحُزْتِيهِ كَانَ لَك، وَإِنَّمَا هُوَ الْيَوْمَ مَالُ الْوَارِثِ، فَاقْتَسِمُوهُ عَلَى كِتَابِ اللَّهِ تَعَالَى.

L28683–28684 Via the chain of Ibn Abī Shaybah: Wakīʿ narrated to us from Hishām al-Dastawā’ī, from Qatādah, from al-Ḥasan, from Ibn Masʿūd, regarding one who frees a slave during his deathbed illness when he owns no other property except the slave: “One-third of the slave is to be emancipated.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ ابْنِ مَسْعُودٍ فِيمَنْ أَعْتَقَ عَبْدًا فِي مَرَضِ مَوْتِهِ لَيْسَ لَهُ مَالٌ غَيْرُهُ قَالَ: يُعْتَقُ ثُلُثُهُ

L28685 And through him to Ibn Abi Shaybah: Hafs reported to us from Hajjaj - he is Ibn Artah - from al-Qasim ibn Abd al-Rahman ibn Abd Allah ibn Mas’ud, who said: A woman freed a slave girl when the woman had no property other than the slave girl. Ibn Mas’ud said: She is to work to compensate for her value.

- وَبِهِ إلَى ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ عَنْ حَجَّاجٍ - هُوَ ابْنُ أَرْطَاةَ - عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: أَعْتَقَتْ امْرَأَةٌ جَارِيَةً لَيْسَ لَهَا مَالٌ غَيْرُهَا، فَقَالَ ابْنُ مَسْعُودٍ: تَسْعَى فِي ثَمَنِهَا.

L28686 And through the narration of Abd al-Razzaq from Ma’mar from Abd al-Rahman ibn Abdullah from al-Qasim ibn Abd al-Rahman, he said: A man bought a female slave during his illness and manumitted her at his death. The sellers came to claim her purchase price but found no property. They brought the case to Ibn Mas’ud, who told her: “Strive to earn your purchase price.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: اشْتَرَى رَجُلٌ جَارِيَةً فِي مَرَضِهِ فَأَعْتَقَهَا عِنْدَ مَوْتِهِ، فَجَاءَ الَّذِينَ بَاعُوهَا يَطْلُبُونَ ثَمَنَهَا، فَلَمْ يَجِدُوا لَهَا مَالًا، فَرَفَعُوا ذَلِكَ إلَى ابْنِ مَسْعُودٍ فَقَالَ لَهَا: اسْعَيْ فِي ثَمَنِك.

L28687 From the narration of Ibn Abi Shaybah, Hafs narrated to us from Hajjaj ibn Arta’ah from Qatadah from Al-Hasan who said: Ali was asked about a man who freed his slave upon his death while he had no property other than the slave and had debt. He replied: The slave is freed and is obligated to work to pay the value [to the creditors].

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصٌ عَنْ حَجَّاجِ بْنِ أَرْطَاةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ قَالَ: سُئِلَ عَلِيٌّ عَمَّنْ أَعْتَقَ عَبْدًا لَهُ عِنْدَ مَوْتِهِ وَلَيْسَ لَهُ مَالٌ غَيْرُهُ وَعَلَيْهِ دَيْنٌ؟ قَالَ: يُعْتَقُ وَيَسْعَى فِي الْقِيمَةِ.

L28688 As for those after them, it is authentically transmitted from Qatādah that if a person who owes debt and owns no other property emancipates his slave at death, the slave becomes free and must labor to pay his value. If no debt exists, the slave is compelled to work off two-thirds of his value. This ruling is likewise established through Ibrāhīm.

وَأَمَّا مَنْ بَعْدَهُمْ فَصَحَّ عَنْ قَتَادَةَ أَنَّ مَنْ أَعْتَقَ مَمْلُوكًا لَهُ عِنْدَ مَوْتِهِ لَيْسَ لَهُ غَيْرُهُ، وَعَلَيْهِ دَيْنٌ، فَإِنَّهُ حُرٌّ وَيَسْعَى فِي ثَمَنِهِ، فَإِنْ لَمْ يَكُنْ عَلَيْهِ دَيْنٌ اسْتَسْعَى فِي ثُلُثَيْ ثَمَنِهِ - وَصَحَّ هَذَا أَيْضًا عَنْ إبْرَاهِيمَ.

L28689 It has been authentically reported from Ata ibn Abi Rabah and Ubaidullah ibn Abi Yazid that if a person manumits a third of his slave on his deathbed, the manumission was upheld within the third of his estate, and the entire slave is thereby freed.

وَصَحَّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَعُبَيْدِ اللَّهِ بْنِ أَبِي يَزِيدَ مَنْ أَعْتَقَ عِنْدَ مَوْتِهِ ثُلُثَ عَبْدٍ لَهُ أُقِيمَ فِي ثُلُثِهِ وَعَتَقَ كُلُّهُ.

L28690 It is authentically reported from Al-Shaʿbi: “Whoever frees the child of his male slave upon the master’s death, it is valid, and the child is legally obligated to work toward two-thirds of his value.” It is also authentically reported from him: “Whoever frees his male slave upon the master’s death and has no property other than the slave, he is appraised at a just valuation and must work to cover his full value.”

وَصَحَّ عَنْ الشَّعْبِيِّ مَنْ أَعْتَقَ وَلَدَ عَبْدِهِ عِنْدَ مَوْتِهِ نَفَذَ وَاسْتَسْعَى فِي ثُلُثَيْ قِيمَتِهِ - وَصَحَّ عَنْهُ أَيْضًا: مَنْ أَعْتَقَ عَبْدَهُ عِنْدَ مَوْتِهِ، وَلَيْسَ لَهُ مَالٌ غَيْرُهُ، فَإِنَّهُ يُقَوَّمُ قِيمَةَ عَدْلٍ، ثُمَّ يَسْعَى فِي قِيمَتِهِ.

L28691–28693 It is authentically reported from Shuraih regarding one who manumits his enslaved person at the time of his death while possessing no property other than him, that one-third of the enslaved person is emancipated. He is required to labor as compensation for two-thirds of its value—a similar ruling is also reported from al-Ḥasan, also from ʿAṭāʾ, and Sulaymān ibn Musā—.

وَصَحَّ عَنْ شُرَيْحٍ فِيمَنْ أَعْتَقَ مَمْلُوكًا لَهُ عِنْدَ مَوْتِهِ، لَا مَالَ لَهُ غَيْرُهُ، أَنَّهُ يُعْتَقُ ثُلُثُهُ، وَيَسْتَسْعِي فِي ثُلُثَيْ قِيمَتِهِ - وَعَنْ الْحَسَنِ أَيْضًا مِثْلُ هَذَا - وَعَنْ عَطَاءٍ أَيْضًا، وَسُلَيْمَانَ بْنِ مُوسَى.

L28694 And this is the opinion of Abū Ḥanīfah, Sufyān al-Thawrī, Ibn Shubrumah, ʿUthmān al-Battī, Sawwār Ibn ʿAbd Allāh, and ʿUbayd Allāh Ibn al-Ḥasan.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَابْنُ شُبْرُمَةَ، وَعُثْمَانُ الْبَتِّيُّ، وَسَوَّارُ بْنُ عَبْدِ اللَّهِ، وَعُبَيْدُ اللَّهِ بْنُ الْحَسَنِ

L28695 Another opinion: We have transmitted it through the chain of Saʿīd ibn Manṣūr, who narrated from Hushaym, who narrated from Yūnus—meaning Ibn ʿUbayd—from Al-Ḥasan, Ibrāhīm, and Al-Shaʿbī: They held that if the emancipator has no debt, one-third of the slave’s freedom is granted and the slave must work to redeem the remaining two-thirds. If the debt owed exceeds the value of the slave intended for emancipation, the slave is sold unless the debt is less than his value by at least one dirham. In such a case, the service obligation applies.

وَقَوْلٌ آخَرُ: رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ - هُوَ ابْنُ عُبَيْدٍ - عَنْ الْحَسَنِ، وَإِبْرَاهِيمَ وَالشَّعْبِيِّ: إنَّهُمْ كَانُوا يَقُولُونَ: إذَا لَمْ يَكُنْ عَلَى الْمُعْتَقِ دَيْنٌ أُعْتِقَ الثُّلُثُ وَاسْتَسْعَى فِي الثُّلُثَيْنِ، فَإِنْ كَانَ عَلَيْهِ دَيْنٌ أَكْثَرُ مِنْ قِيمَةِ الْمَمْلُوكِ الْمُعْتَقِ بِيعَ، إلَّا أَنْ يَكُونَ الدَّيْنُ أَقَلَّ مِنْ قِيمَتِهِ بِدِرْهَمٍ وَاحِدٍ فَمَا سِوَاهُ، فَإِذَا كَانَ كَذَلِكَ وَقَعَتْ السِّعَايَةُ.

L28696 A third opinion: We have transmitted it through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: Dāwūd ibn Abī ʿĀṣim informed me, stating: I heard Saʿīd ibn al-Musayyib being asked about one who died leaving nothing except a slave whom he emancipated. Saʿīd said: Indeed, a third of him belongs to him [the deceased]. The slave is appraised at his value, then compelled to work to pay off the two-thirds. He works one day for himself and two days for them.

وَقَوْلٌ ثَالِثٌ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي دَاوُد بْنُ أَبِي عَاصِمٍ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ سُئِلَ عَمَّنْ مَاتَ وَلَيْسَ لَهُ إلَّا غُلَامٌ فَأَعْتَقَهُ؟ فَقَالَ سَعِيدٌ: إنَّمَا لَهُ ثُلُثُهُ، فَيُقَوَّمُ الْعَبْدُ قِيمَتَهُ، فَيُسْتَسْعَى فِي الثُّلُثَيْنِ، فَلَهُ مِنْ نَفْسِهِ يَوْمٌ وَلَهُمْ يَوْمَانِ.

L28697 A fourth opinion: We have transmitted it through the chain of ʿAbd al-Razzāq, on the authority of Maʿmar, on the authority of Ayyūb al-Sikhtiyānī: ʿUmar ibn ʿAbd al-ʿAzīz wrote a decree regarding one who owed a debt and possessed nothing but a slave whom he manumitted at the time of the debtor's death—that the slave is to be sold and the debt settled.

وَقَوْلٌ رَابِعٌ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِيمَنْ عَلَيْهِ دَيْنٌ، وَلَيْسَ لَهُ إلَّا عَبْدٌ فَأَعْتَقَهُ عِنْدَ مَوْتِهِ أَنَّهُ يُبَاعُ وَيُقْضَى الدَّيْنُ.

L28698 A fifth opinion: We have reported it through the chain of Ibn Wahb from al-Layth ibn Saʿīd from Yaḥyā ibn Saʿīd al-Anṣārī, who said: I encountered a freed slave of Saʿīd ibn Bakr who emancipated a third of his slaves – approximately twenty. He presented their case to Abān ibn ʿUthmān, who divided them into three parts, conducted a lottery among them, and emancipated one-third of them.

وَقَوْلٌ خَامِسٌ: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعِيدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: أَدْرَكْت مَوْلًى لِسَعِيدِ بْنِ بَكْرٍ أَعْتَقَ ثُلُثَ رَقِيقٍ لَهُ نَحْوَ عِشْرِينَ، فَرَفَعَ أَمْرَهُمْ إلَى أَبَانَ بْنِ عُثْمَانَ، فَقَسَّمَهُمْ أَثْلَاثًا، فَأَقْرَعَ بَيْنَهُمْ فَأَعْتَقَ ثُلُثَهُمْ.

L28699 It has been authentically established from Ibn Jurayj that manumitting a third of them is valid by means of lottery and valuation. It is reported from Makhul that manumitting a third of them by means of lottery based on their number without valuation—and it makes no difference whether those manumitted have the lowest or highest market value among them—their manumission is executed.

وَصَحَّ عَنْ ابْنِ جُرَيْجٍ عَتْقُ ثُلُثِهِمْ بِالْقُرْعَةِ وَالْقِيمَةِ. وَعَنْ مَكْحُولٍ عِتْقُ ثُلُثِهِمْ بِالْقُرْعَةِ بِالْعَدَدِ دُونَ تَقْوِيمٍ - وَسَوَاءٌ خَرَجَ فِي الْعِتْقِ أَقَلُّهُمْ قِيمَةً أَوْ أَكْثَرُهُمْ - يَنْفُذُ عِتْقُهُ.

L28700 So these are the statements of the predecessors.

فَهَذِهِ أَقْوَالُ الْمُتَقَدِّمِينَ.

L28701 As for the later jurists: We have mentioned Abū Ḥanīfah's view that he does not accept drawing lots (qurʿah) at all, nor partial retention of labor (irqāq). Instead, one-third [of ownership] is emancipated without requiring labor for self-manumission (istisʿāʾ), and two-thirds are emancipated through such labor.

وَأَمَّا الْمُتَأَخِّرُونَ: فَقَدْ ذَكَرْنَا قَوْلَ أَبِي حَنِيفَةَ أَنَّهُ لَا يَرَى الْقُرْعَةَ أَصْلًا، وَلَا الْإِرْقَاقَ، لَكِنْ يُعْتَقُ الثُّلُثُ بِلَا اسْتِسْعَاءٍ، وَيُعْتَقُ الثُّلُثَانِ بِالِاسْتِسْعَاءِ.

L28702–28703 Mālik said: If he manumitted slaves outright during his illness, he man-

umitted one-third by means of lot and valuation while two-thirds became enslaved, whether he manumitted them in a single utterance or manumitted them individually by name.

وَقَالَ مَالِكٌ: إِنْ أَعْتَقَ فِي مَرَضِهِ بَتًّا أَعْتَقَ الثُّلُثَ بِالْقُرْعَةِ وَالْقِيمَةِ، وَرَقَّ الثُّلُثَانِ، سَوَاءٌ أَعْتَقَهُمْ فِي كَلِمَةٍ وَاحِدَةٍ أَوْ أَعْتَقَهُمْ وَاحِدًا بَعْدَ وَاحِدٍ بِأَسْمَائِهِمْ

L28704 Al-Shāfiʿī said: If someone manumits during his terminal illness slaves he owns absolutely—and they were more than three in number—then if he manumits them individually by their names, one after another, those named first are emancipated successively. When the third (of the total value) is reached through this valuation, the remainder revert to slavery. If the manumission starts with one, the rest remain enslaved. But if he manumits them in a single utterance, their value is assessed, then lots are drawn among them: a third are emancipated and two-thirds remain enslaved, as we have also mentioned.

وَقَالَ الشَّافِعِيُّ: مَنْ أَعْتَقَ فِي مَرَضِهِ الَّذِي يَمُوتُ مِنْهُ عَبِيدًا لَهُ بَتْلًا - وَكَانُوا أَكْثَرَ مِنْ ثَلَاثَةٍ - فَإِنْ كَانَ أَعْتَقَهُمْ بِأَسْمَائِهِمْ وَاحِدًا وَاحِدًا -: أَعْتَقَ مَنْ سَمَّى أَوَّلًا فَأَوَّلًا، فَإِذَا تَمَّ الثُّلُثُ بِالْقِيمَةِ رَقَّ الْبَاقُونَ، وَإِنْ شَرَعَ الْعِتْقُ فِي وَاحِدٍ كَانَ بَاقِيهِ رَقِيقًا - وَإِنْ كَانَ أَعْتَقَهُمْ فِي كَلِمَةٍ وَاحِدَةٍ قُوِّمُوا، ثُمَّ أَقْرَعَ بَيْنَهُمْ فَأُعْتِقَ الثُّلُثُ وَرَقَّ الثُّلُثَانِ، كَمَا ذَكَرْنَا أَيْضًا

L28705 These are legal opinions concerning manumission during illness.

فَهَذِهِ أَقْوَالٌ فِي الْعِتْقِ فِي الْمَرَضِ.

L28706 As for matters other than manumission: We have been narrated through the chain of Abd al-Razzaq from Sufyan al-Thawri from Jabir al-Ju'fi from al-Sha'bi concerning a man who buys and sells while terminally ill. He said: It falls under the third, even if he survives for ten years.

وَأَمَّا مَا سِوَى الْعِتْقِ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ الشَّعْبِيِّ فِي الرَّجُلِ يَبِيعُ وَيَشْتَرِي وَهُوَ مَرِيضٌ قَالَ: هُوَ فِي الثُّلُثِ وَإِنْ مَكَثَ عَشْرَ سِنِينَ.

L28707 Al-Sha'bī maintained that any action performed by a pregnant woman during her pregnancy constituted a bequest from the third.

قَالَ الشَّعْبِيُّ: وَكَانَ يَرَى مَا صَنَعَتْ الْحَامِلُ فِي حَمْلِهَا وَصِيَّةً مِنْ الثُّلُثِ.

L28708 From the transmission of Saʿīd ibn Manṣūr: I narrate from Hushaym and Jarīr, both of whom reported from al-Mughīrah from al-Shaʿbī. In his narration, Jarīr said: "If a man gives a gift when he places his foot in the stirrup to depart on travel, it is a bequest valid under travel circumstances." In his narration, Hushaym said: "If a traveler places his foot in the stirrup, any disposition he makes regarding any matter is considered part of the third."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ، وَجَرِيرٌ، كِلَاهُمَا عَنْ الْمُغِيرَةِ عَنْ الشَّعْبِيِّ، قَالَ جَرِيرٌ فِي رِوَايَتِهِ: إذَا أَعْطَى الرَّجُلُ الْعَطِيَّةَ حِينَ يَضَعُ رِجْلَهُ فِي الْغَرْزِ لِلسَّفَرِ فَهُوَ وَصِيَّةٌ مِنْ السَّفَرِ، وَقَالَ هُشَيْمٌ فِي رِوَايَتِهِ: إذَا وَضَعَ الْمُسَافِرُ رِجْلَهُ فِي الْغَرْزِ فَمَا صَنَعَ فِي شَيْءٍ فَهُوَ مِنْ الثُّلُثِ.

L28709 Through the chain of ʿAbd al-Razzāq from Ibn Jurayj, ʿAṭāʾ said to me: Whatever a pregnant woman does during her pregnancy is a will.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ لِي عَطَاءٌ: مَا صَنَعَتْ الْحَامِلُ فِي حَمْلِهَا فَهُوَ وَصِيَّةٌ.

قُلْت لِعَطَاءٍ: أَرَأْيٌ أَمْ شَيْءٌ سَمِعْتَهُ؟ قَالَ: بَلْ سَمِعْنَاهُ.

L28710 I said to ʿAṭāʾ: “Is it an opinion or something you have heard?” He replied: “Rather, we heard it.”

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، قَالَ: مَا صَنَعَتْ الْحَامِلُ فِي حَمْلِهَا فَهُوَ وَصِيَّةٌ، وَقَالَ مَعْمَرٌ: وَأَخْبَرَنِي مَنْ سَمِعَ عِكْرِمَةَ يَقُولُ مِثْلَ ذَلِكَ.

L28711 Through him to Abd al-Razzaq, from Ma’mar, from Qatadah, who said: Whatever a pregnant woman does regarding her pregnancy is a will. Ma’mar said: Someone who heard Ikrimah informed me that he said the same thing.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ سَمِعَ الْقَاسِمَ بْنَ مُحَمَّدٍ يَقُولُ: مَا أَعْطَتْ الْحَامِلُ فَثُلُثُهُ لِزَوْجِهَا، أَوْ لِبَعْضِ مَنْ يَرِثُهَا فِي غَيْرِ الثُّلُثِ، وَذَلِكَ إذَا لَمْ تَكُنْ مَرِيضَةً.

L28712 From the narration of Ibn Wahb via ʿAmr ibn al-Ḥārith via Yaḥyā ibn Saʿīd al-Anṣārī, who heard al-Qāsim ibn Muḥammad say: “If a pregnant woman gives [a gift], a third of it then belongs to her husband or to some heirs outside the third [allotted for discretionary gifts], provided she is not ill.”

وَبِهِ إلَى ابْنِ وَهْبٍ عَنْ يُونُسَ عَنْ ابْنِ شِهَابٍ قَالَ جَابِرٌ: لِلْحَامِلِ مَا أَعْطَتْ مَا لَمْ يُخَفْ عَلَيْهَا.

L28713 Through him (the narrator) to Ibn Wahb, from Yunus, from Ibn Shihāb, who reported that Jābir said: “The pregnant woman is entitled to what was given to her [as mahr], as long as there is no fear for her.”

قَالَ يُونُسُ: وَقَالَ رَبِيعَةُ: يَجُوزُ عَطَاؤُهَا مَا لَمْ تَثْقُلْ أَوْ يَحْضُرْهَا نِفَاسٌ.

L28714 Yunus said: Rabi’ah said, “It is permissible to grant her as long as she is neither heavily pregnant nor experiencing postpartum bleeding.”

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَابْنِ حُجَيْرَةَ الْخَوْلَانِيِّ مِثْلَ ذَلِكَ. وَقَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ أَنَّهُ قَالَ فِي مَسْجُونٍ فِي قَتْلٍ أَوْ فِي جُرْحٍ أَوْ خَرَجَ إلَى صَفٍّ أَوْ يُعَذَّبُ. أَنَّهُ لَا يَجُوزُ لَهُ مِنْ مَالِهِ إلَّا مَا يَجُوزُ لِلْمُوصِي.

L28715–28716 Ibn Wahb said: Learned men from the people of knowledge informed me on the authority of Saʿīd ibn al-Musayyib, Yaḥyā ibn Saʿīd al-Anṣārī, and Ibn Ḥujayrah al-Khawlānī in a similar manner. Ibn Wahb added: Yūnus informed me on the authority of Ibn Shihāb that he ruled regarding one imprisoned for homicide or injury, or who joined the battle line, or is tortured: He is not permitted to use any of his wealth except for that which a testator is lawfully permitted to bequeath.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ مُحَمَّدِ بْنِ أَبَانَ عَنْ النَّخَعِيِّ قَالَ: الْحَامِلُ إذَا ضَرَبَهَا الطَّلْقُ فَوَصِيَّتُهَا - يَعْنِي أَنَّ فِعْلَهَا - مِنْ الثُّلُثِ.

L28717 From the narration of Saʿīd ibn Manṣūr, from Muḥammad ibn Abān, from al-Nakhaʿī, who said: When a pregnant woman experiences labor pains, her will—meaning her act (of bequeathing)—is to be fulfilled from one-third of her estate.

وَرُوِيَ عَنْ الْحَسَنِ، وَمَكْحُولٍ: أَنَّ فِعْلَ الْحَامِلِ مِنْ رَأْسِ مَالِهَا.

L28718 It has been narrated from Al-Ḥasan and Makhūl that the pregnant woman’s liability is discharged from her own capital.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مَا أَعْطَاهُ الْغَازِي فَمِنْ الثُّلُثِ.

L28719 From Sa’id ibn al-Musayyib: Whatever is given to the warrior comes from the third.

وَقَالَ مَكْحُولٌ: مِنْ رَأْسِ مَالِهِ مَا لَمْ تَقَعْ الْمُسَايَفَةُ.

وَعَنْ الْحَسَنِ فِي الْمَحْبُوسِ: أَنَّ فِعْلَهُ مِنْ الثُّلُثِ وَقَالَ فِي رَاكِبِ الْبَحْرِ، وَمَنْ كَانَ فِي بَلَدٍ وَقَدْ وَقَعَ فِيهِ الطَّاعُونُ: إنَّ عَطِيَّتَهُ مِنْ رَأْسِ مَالِهِ.

وَقَالَ مَكْحُولٌ كَذَلِكَ فِي رَاكِبِ الْبَحْرِ مَا لَمْ يَهِجْ الْبَحْرُ.

فَهَذِهِ أَقْوَالُ السَّلَفِ الْمُتَقَدِّمِ.

أَمَّا فِي الْعِتْقِ فَرُوِيَ فِيهِ مَا ذَكَرْنَا - عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ

وَصَحَّ عَنْ قَتَادَةَ، وَعَطَاءٍ، وَعُبَيْدِ اللَّهِ بْنِ يَزِيدَ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ وَشُرَيْحٍ، وَالْحَسَنِ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَأَبَانَ بْنِ عُثْمَانَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عِتْقَ الْمَرِيضِ مِنْ الثُّلُثِ.

ثُمَّ اخْتَلَفُوا فِي الْحُكْمِ فِي ذَلِكَ كَمَا ذَكَرْنَا.

وَأَمَّا غَيْرُ الْعِتْقِ فَكَمَا ذَكَرْنَا فِي الْمُسَافِرِ عَنْ الشَّعْبِيِّ.

وَفِي الْغَازِي عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ - وَخَالَفَهُمَا إبْرَاهِيمُ، وَمَكْحُولٌ مَا لَمْ تَقَعْ الْمُسَايَفَةُ.

وَفِي الْمَرِيضِ عَنْ الشَّعْبِيِّ، وَفِي الْحَامِلِ عَنْ عَطَاءٍ، وَذَكَرَ أَنَّهُ سَمِعَهُ.

وَعَنْ قَتَادَةَ، وَعِكْرِمَةَ - وَخَالَفَهُمْ الْقَاسِمُ بْنُ مُحَمَّدٍ، وَمَكْحُولٌ، وَالزُّهْرِيُّ وَقَالَ النَّخَعِيُّ: إذَا ضَرَبَهَا الطَّلْقُ - وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَابْنِ حُجَيْرَةَ.

L28720 And Makhul said: It is from his capital, provided the deferred sale has not occurred.

L28721 And from Al-Hasan regarding the detained person: his bequest is to be taken from one-third of his wealth. He said concerning a sea traveler, and similarly for one residing in a land afflicted by plague: their charitable gifts should come from their principal wealth.

L28722 And Makḥūl likewise said regarding the seafarer: as long as the sea does not become agitated.

L28723 Thus, these are the sayings of the early Salaf.

L28724 As for the ruling in manumission, what we have mentioned is narrated concerning it - from ʿAlī and Ibn Masʿūd.

L28725 It has been authentically reported from Qatādah, ʿAṭāʾ, ʿUbayd Allāh ibn Yazīd, al-Nakhaʿī, al-Shaʿbī, Shurayḥ, al-Ḥasan, ʿUmar ibn ʿAbd al-ʿAzīz, Abān ibn ʿUthmān, and Saʿīd ibn al-Musayyab that a sick person's act of manumission is drawn from one-third of the estate.

L28726 Then they differed concerning the ruling in that, as we mentioned.

L28727 As for matters other than manumission, it is as we mentioned regarding the traveler from Al-Shaʿbi.

L28728 According to Saʿīd ibn al-Musayyab concerning the combatant in jihad, Ibrāhīm and Makhūl disagreed with both opinions unless close sword combat had ensued.

L28729 Concerning the sick person, it is reported from Ash-Shaʿbi; and concerning the pregnant woman, from ʿAta. He mentioned that he heard it.

L28730 From Qatādah and ʿIkrimah—while Al-Qāsim ibn Muḥammad, Makhūl, and Al-Zuhrī disagreed with them—Al-Nakhaʿī said: "When labor pains strike her." It was also narrated from Saʿīd ibn al-Musayyib and Ibn Ḥujayrah.

L28731–28732 It is authentically reported from Rabiʿah regarding what is not burdensome.

Concerning the imprisoned person, from Al-Ḥasan and Al-Zuhrī, and Iyās ibn Muʿāwiyah opposed both of them.

وَصَحَّ عَنْ رَبِيعَةَ مَا لَمْ نَثْقُلْ، وَفِي الْمَسْجُونِ عَنْ الْحَسَنِ وَالزُّهْرِيِّ وَخَالَفَهُمَا إيَاسُ بْنُ مُعَاوِيَةَ،

L28733 And from Makḥūl regarding the rider of the sea when the sea becomes terrifying.

وَعَنْ مَكْحُولٍ فِي رَاكِبِ الْبَحْرِ إذَا هَالَ الْبَحْرُ.

L28734 A differing opinion regarding that has been reported from some of the predecessors: As we have been narrated through the chain of Hammad ibn Salamah, from Yunus ibn ʻUbayd, from Muhammad ibn Sirin: A woman saw in her sleep, in what a sleeper sees, that she would die within three days. She devoted herself to learning the remaining portion of the Quran she had yet to learn, arranged her wealth while she was in good health. When the third day arrived, she visited her neighbors and began saying, "O so-and-so, I entrust you to Allah and send you greetings of peace." They started telling her, "You are not dying today; you are not dying, Allah willing." But she died. Her husband asked Abu Musa al-Ashʻari. He said to him, "What kind of woman was your wife?" He replied, "I do not know anyone more deserving to enter Paradise than her, except the martyr. However, she did what she did while she was in good health." Abu Musa said, "Is she as you say: she did what she did while she was in good health?" Abu Musa did not object to his statement.

وَرُوِيَ خِلَافُ ذَلِكَ عَنْ بَعْضِ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ امْرَأَةً رَأَتْ فِي مَنَامِهَا فِيمَا يَرَى النَّائِمُ: أَنَّهَا تَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ فَأَقْبَلَتْ عَلَى مَا بَقِيَ عَلَيْهَا مِنْ الْقُرْآنِ فَتَعَلَّمَتْهُ، وَشَذَّبَتْ مَالَهَا وَهِيَ صَحِيحَةٌ، فَلَمَّا كَانَ الْيَوْمُ الثَّالِثُ دَخَلَتْ عَلَى جَارَاتِهَا فَجَعَلَتْ تَقُولُ: يَا فُلَانَةُ اسْتَوْدَعْتُكِ اللَّهَ وَأَقْرَأُ عَلَيْكِ السَّلَامَ فَجَعَلْنَ يَقُلْنَ لَهَا: لَا تَمُوتِينَ الْيَوْمَ، لَا تَمُوتِينَ إنْ شَاءَ اللَّهُ فَمَاتَتْ فَسَأَلَ زَوْجُهَا أَبَا مُوسَى الْأَشْعَرِيَّ؟ فَقَالَ لَهُ أَبُو مُوسَى: أَيُّ امْرَأَةٍ كَانَتْ امْرَأَتُك؟ قَالَ: مَا أَعْلَمُ أَحَدًا أَحْرَى أَنْ يَدْخُلَ الْجَنَّةَ مِنْهَا إلَّا الشَّهِيدَ، وَلَكِنَّهَا فَعَلَتْ مَا فَعَلَتْ وَهِيَ صَحِيحَةٌ فَقَالَ أَبُو مُوسَى: هِيَ كَمَا تَقُولُ فَعَلَتْ مَا فَعَلَتْ وَهِيَ صَحِيحَةٌ؟ فَلَمْ يَرُدَّهُ أَبُو مُوسَى.

L28735 And from the chain of Hammad ibn Salamah via Ayyub al-Sikhtiyani, Ubayd Allah ibn Umayr via Nafi', and Yahya ibn Sa'id al-Ansari: A man saw in his dream that he would die by three days, so he divorced his wives one divorce each and divided his wealth. Umar ibn al-Khattab said to him: "Did Satan come to you in your sleep and inform you that you would die by three days, so you divorced your wives and divided your wealth? Revoke them! If you die, I will stone your grave as Abu Righal's grave is stoned!" He then returned his wealth and wives. Umar said to him: "I do not think you will remain except briefly." He died on the third day.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَعُبَيْدِ اللَّهِ بْنِ عُمَيْرٍ عَنْ نَافِعٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ رَجُلًا رَأَى فِيمَا يَرَى النَّائِمُ: أَنَّهُ يَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ، فَطَلَّقَ نِسَاءَهُ تَطْلِيقَةً تَطْلِيقَةً، وَقَسَّمَ مَالَهُ فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: أَجَاءَك الشَّيْطَانُ فِي مَنَامِك فَأَخْبَرَك أَنَّك تَمُوتُ إلَى ثَلَاثَةِ أَيَّامٍ، فَطَلَّقْت نِسَاءَك وَقَسَمْت مَالَك رُدَّهُ وَلَوْ مِتّ لَرَجَمْت قَبْرَك كَمَا يُرْجَمُ قَبْرُ أَبِي رِغَالَ؟ فَرَدَّ مَالَهُ وَنِسَاءَهُ، وَقَالَ لَهُ عُمَرُ: مَا أَرَاك تَلْبَثُ إلَّا يَسِيرًا؟ قَالَ: فَمَاتَ فِي الْيَوْمِ الثَّالِثِ

L28736 From the narration of Ibn Abi Shaybah: Ali ibn Mushir reported to us, Ismail

ibn Abi Khalid reported to us from Al-Sha'bi from Masruq: He was asked about a man who emancipated a slave for Allah's sake during his illness while possessing no other property. Masruq said: "I approve it - it is something Allah the Exalted has decreed; I do not reject it." Shurayh said: "I validate one-third of the emancipation and require him to work off the remaining two-thirds." Al-Sha'bi remarked: "Masruq's opinion is preferable to me for formal legal verdicts, and Shurayh's for judicial rulings."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ: أَنَّهُ سُئِلَ عَمَّنْ أَعْتَقَ عَبْدًا لِلَّهِ فِي مَرَضِهِ لَيْسَ لَهُ مَالٌ غَيْرُهُ؟ قَالَ مَسْرُوقٌ: أُجِيزُهُ، شَيْءٌ جَعَلَهُ اللَّهُ تَعَالَى، لَا أَرُدُّهُ، وَقَالَ شُرَيْحٌ: أُجِيزُ ثُلُثَهُ وَاسْتَسْعِيهِ فِي ثُلُثَيْهِ، قَالَ الشَّعْبِيُّ: قَوْلُ مَسْرُوقٍ أَحَبُّ إلَيَّ فِي الْفُتْيَا، وَقَوْلُ شُرَيْحٍ أَحَبُّ إلَيَّ فِي الْقَضَاءِ.

L28737 From the chain of 'Abd al-Razzāq via Ma'mar, who said: 'Umar ibn 'Abd al-'Azīz wrote regarding a man who donates all his wealth: "If he allocates it to a rightful cause, no one has a stronger claim to his wealth than himself. But if he gives to some heirs while excluding others, he may not dispose of more than a third."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي الرَّجُلِ يَتَصَدَّقُ بِمَالِهِ كُلِّهِ قَالَ إذَا وَضَعَهُ فِي حَقٍّ فَلَا أَحَدَ أَحَقَّ بِمَالِهِ مِنْهُ، وَإِذَا أَعْطَى الْوَرَثَةَ بَعْضَهُمْ دُونَ بَعْضٍ فَلَيْسَ لَهُ إلَّا الثُّلُثُ.

L28738–28740 And via the chain of Abd al-Rahman ibn Mahdi, from Sufyan al-Thawri, from Ibn Abi Layla, from al-Hakam ibn ʿUtaibah. Ibrāhīm al-Nakhaʿī said: If a woman absolves her husband from her dowry during her illness, it is permissible. Sufyān said: It is impermissible.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ طَعَنَ إبْرَاهِيمُ النَّخَعِيُّ قَالَ: إذَا أَبْرَأَتْ الْمَرْأَةُ زَوْجَهَا فِي مَرَضِهَا مِنْ صَدَاقِهَا فَهُوَ جَائِزٌ، وَقَالَ سُفْيَانُ: لَا يَجُوزُ.

L28741 Abu Muhammad said: Thus, Abu Musa al-Ash'ari permits the act of one who is certain of death while in a state graver than that of a sick person—[specifically] a married woman whose husband does not consent to her disposal of all her wealth.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا أَبُو مُوسَى الْأَشْعَرِيُّ يُجِيزُ فِعْلَ مَنْ أَيْقَنَ بِالْمَوْتِ وَهُوَ فِي أَشَدِّ حَالٍ مِنْ الْمَرِيضِ - هِيَ أَيْضًا ذَاتُ زَوْجٍ غَيْرِ رَاضٍ بِمَا فَعَلَتْ فِي مَالِهَا كُلِّهِ.

L28742 Umar ibn al-Khattab rejected the action of one who was certain of death and did not permit anything similar—neither a third nor otherwise. Masruq, by the soundest method, implemented what a sick person did with his entire wealth to draw closer to Allah Almighty, and Al-Sha'bi leaned toward this position in his legal rulings.

وَهَذَا عُمَرُ بْنُ الْخَطَّابِ رَدَّ فِعْلَ مَنْ أَيْقَنَ بِالْمَوْتِ وَلَمْ يُجِزْ مِثْلَهُ لَا ثُلُثًا وَلَا غَيْرَهُ - وَهَذَا مَسْرُوقٌ بِأَصَحِّ طَرِيقٍ يُنَفِّذُ مَا فَعَلَهُ الْمَرِيضُ فِي مَالِهِ كُلِّهِ مُتَقَرِّبًا إلَى اللَّهِ عَزَّ وَجَلَّ، وَمَالَ إلَيْهِ الشَّعْبِيُّ فِي الْفُتْيَا.

L28743 And from Ibrahim is the permissibility of a sick person's action regarding his principal wealth.

وَعَنْ إبْرَاهِيمَ جَوَازُ فِعْلِ الْمَرِيضِ مِنْ رَأْسِ مَالِهِ.

L28744 As for the later opinions: Abu Hanifah stated that a sick person may not settle debts with some creditors over others. Regarding preferential treatment

in sales, gifts, charitable acts, or slave manumission—all such transactions are drawn from one-third of his estate, except that the manumitted slave becomes obligated to work to offset two-thirds of his value if the one-third does not suffice. He said: If the sick person recovers, all such actions become permissible from his principal wealth. He said: Similarly, a pregnant woman—whether experiencing labor pains or not—is treated as a healthy person concerning her entire wealth. A fighter stationed in the battlefront is deemed healthy regarding his entire wealth, whether he dies or survives. He said: One sentenced to execution for retribution or stoning for adultery is treated as a sick person; his transactions are only valid within one-third of his estate. He said: If a sick person purchases his son, and the transaction comes out of his one-third, the son is freed and inherits him. If it does not come out of his one-third, the son does not inherit him.

وَأَمَّا الْمُتَأَخِّرُونَ -: فَإِنَّ أَبَا حَنِيفَةَ قَالَ: لَيْسَ لِلْمَرِيضِ أَنْ يَقْضِيَ غُرَمَاءَهُ بَعْضَهُمْ دُونَ بَعْضٍ - وَأَمَّا مُحَابَاتُهُ فِي الْبَيْعِ، وَهِبَتُهُ، وَصَدَقَتُهُ، وَعِتْقُهُ - كُلُّ ذَلِكَ مِنْ الثُّلُثِ إلَّا أَنَّ الْمُعْتَقَ يُسْتَسْعَى فِي ثُلُثَيْ قِيمَتِهِ إنْ لَمْ يَحْمِلْهُ الثُّلُثُ، قَالَ: فَإِنْ أَفَاقَ مِنْ مَرَضِهِ: جَازَ ذَلِكَ كُلُّهُ مِنْ رَأْسِ مَالِهِ قَالَ: وَكَذَلِكَ الْحَامِلُ إذَا ضَرَبَهَا وَجَعُ الطَّلْقِ وَمَا لَمْ يَضْرِبْهَا: فَكَالصَّحِيحِ فِي جَمِيعِ مَالِهَا، وَالْوَاقِفُ فِي الصَّفِّ فَكَالصَّحِيحِ فِي جَمِيعِ مَالِهِ قُتِلَ أَوْ عَاشَ، قَالَ: وَالَّذِي يُقَدَّمُ لِلْقَتْلِ فِي قِصَاصٍ أَوْ رَجْمٍ فِي زِنًى كَالْمَرِيضِ لَا يَجُوزُ فِعْلُهُ إلَّا فِي الثُّلُثِ - قَالَ: فَإِنْ اشْتَرَى ابْنَهُ وَهُوَ مَرِيضٌ؟ فَإِنْ خَرَجَ مِنْ ثُلُثِهِ عَتَقَ وَوَرِثَهُ، وَإِنْ لَمْ يَخْرُجْ مِنْ ثُلُثِهِ لَمْ يَرِثْهُ.

L28745 Abu Yusuf and Muhammad ibn al-Hasan said: Rather, he inherits it, except that he must work to ensure the portion apportioned from its value is given to the heirs, and they take it.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: بَلْ يَرِثُهُ إلَّا أَنَّهُ يَسْعَى فِيمَا يَقَعُ مِنْ قِيمَتِهِ لِلْوَرَثَةِ فَيَأْخُذُونَهُ.

L28746 They all said: That applies only to a severe illness, such as persistent fever, diaphragmitis, abdominal diseases, and the like. As for leprosy, quartan fever, tuberculosis, and one whose illness comes and goes, their deeds are like those of a healthy person.

وَقَالُوا كُلُّهُمْ: إنَّمَا ذَلِكَ فِي الْمَرَضِ الْمُخِيفِ، كَحُمَّى الصَّالِبِ، وَالْبِرْسَامِ، وَالْبَطْنِ، وَنَحْوِ ذَلِكَ - وَأَمَّا الْجُذَامُ، وَحُمَّى الرُّبْعِ، وَالسُّلُّ، وَمَنْ يَذْهَبُ وَيَجِيءُ فِي مَرَضِهِ فَأَفْعَالُهُ كَالصَّحِيحِ.

L28747 Malik said: A terminally ill person may not repay some of their creditors to the exclusion of others.

وَقَالَ مَالِكٌ: لَيْسَ لِلْمَرِيضِ أَنْ يَقْضِيَ بَعْضَ غُرَمَائِهِ دُونَ بَعْضٍ.

L28748 They said: The pregnant woman, as long as she has not completed six months, is like one with full legal capacity. Once she completes the six months, her dispositions over her wealth are limited to one-third of her estate - this being the opinion of Imam al-Layth ibn Saʿd.

قَالُوا: وَالْحَامِلُ مَا لَمْ تَتِمَّ سِتَّةَ أَشْهُرٍ فَكَالصَّحِيحِ، فَإِذَا أَتَمَّتْهَا، فَأَفْعَالُهَا فِي مَالِهَا مِنْ الثُّلُثِ - وَهُوَ قَوْلُ اللَّيْثِ.

L28749–28751 He said: The sick person and the one crawling in battle - their charity (ṣadaqah) and showing them favor in selling. The gift of both and the manumission of both fall within the third [of the estate]. He also ruled regarding one who purchased his son during his illness. Concerning the nature of the

illness, the ruling corresponds to Abū Ḥanīfah's position: they are entirely equal, entirely equal.

قَالَ: وَالْمَرِيضُ، وَالزَّاحِفُ فِي الْقِتَالِ - صَدَقَتُهُمَا، وَمُحَابَاتُهُمَا فِي الْبَيْعِ وَهِبَتُهُمَا، وَعِتْقُهُمَا فِي الثُّلُثِ - وَقَالَ فِيمَنْ اشْتَرَى ابْنَهُ فِي مَرَضِهِ وَفِي صِفَةِ الْمَرَضِ كَقَوْلِ أَبِي حَنِيفَةَ سَوَاءً سَوَاءً.

L28752 Al-Shāfiʿī and Sufyān al-Thawrī said: A sick person may settle with some of his creditors but not others.

وَقَالَ الشَّافِعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ: لِلْمَرِيضِ أَنْ يَقْضِيَ غُرَمَاءَهُ بَعْضَهُمْ دُونَ بَعْضٍ.

L28753 They both unanimously held regarding the pregnant woman the same opinion as Abū Ḥanīfah - this being Al-Awzāʿī's view. Al-Shāfiʿī, Al-Thawrī, and Al-Awzāʿī held the opinion concerning the acts of the sick person in accordance with the views of Abū Ḥanīfah and Mālik, and similarly regarding the legal rulings pertaining to the sick person.

وَقَالَا جَمِيعًا فِي الْحَامِلِ كَقَوْلِ أَبِي حَنِيفَةَ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ. وَقَالَ الشَّافِعِيُّ، وَالثَّوْرِيُّ، وَالْأَوْزَاعِيُّ فِي أَفْعَالِ الْمَرِيضِ كَقَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَكَذَلِكَ فِي صِفَةِ الْمَرِيضِ.

L28754 He said regarding the captive: he is to be presented for execution; the combatant who charges into battle [is also subject to a ruling]; and those captives held by a group that kills captives. Their status is likened to the sick at one time and to the healthy at another, as they may be spared from execution.

وَقَالَ فِي الْأَسِيرِ يُقَدَّمُ لِلْقَتْلِ، وَالْمُقْتَحِمِ فِي الْقِتَالِ، وَمَنْ كَانَ فِي أَيْدِي قَوْمٍ يَقْتُلُونَ الْأَسْرَى مَرَّةً أَنَّهُمْ كَالْمَرِيضِ، وَمَرَّةً أُخْرَى أَنَّهُمْ كَالصَّحِيحِ، إذْ قَدْ يَسْلَمُونَ مِنْ الْقَتْلِ.

L28755 Al-Ḥasan ibn Ḥayy and Al-Thawrī said: When the two rows meet, their acts are like those of the sick person.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ، وَالثَّوْرِيُّ: إذَا الْتَقَى الصَّفَّانِ فَأَفْعَالُهُمْ كَالْمَرِيضِ

L28756 Ubaydullah ibn al-Ḥasan, Aḥmad, and Isḥāq said: A sick person's acts concerning their property are from one-third.

وَقَالَ عُبَيْدُ اللَّهِ بْنُ الْحَسَنِ، وَأَحْمَدُ، وَإِسْحَاقُ: أَفْعَالُ الْمَرِيضِ فِي مَالِهِ مِنْ الثُّلُثِ.

L28757 Abu Sulaiman stated: All acts of a sick person are drawn entirely from his own wealth, as if he were healthy. The same applies to a pregnant woman. All those we have mentioned - except for a sick person's act of manumission done alone - are from one-third of his estate, whether he recovers or dies.

وَقَالَ أَبُو سُلَيْمَانَ: أَفْعَالُ الْمَرِيضِ كُلُّهَا مِنْ رَأْسِ مَالِهِ كَالصَّحِيحِ، وَكَذَلِكَ الْحَامِلُ، وَكُلُّ مَنْ ذَكَرْنَا - حَاشَ عِتْقِ الْمَرِيضِ وَحْدَهُ - فَهُوَ مِنْ الثُّلُثِ أَفَاقَ أَوْ مَاتَ.

L28758 Abu Muhammad said: As for the position of Abu Hanifa and Malik regarding one who purchases his son during his terminal illness, this is a view we do not know to have been held by any scholar of Islam before them. Rather, Ali ibn Abi Talib stated that the son is purchased from his father's estate after death and inherits like the rest of the heirs. Truly, their position here contains an astonishing contradiction, for the purchase of his son must inevitably be either a bequest or not a bequest. If it were a bequest, the son should not

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ: فِيمَنْ يَشْتَرِي ابْنَهُ فِي مَرَضِهِ فَقَوْلٌ لَا نَعْلَمُهُ لِأَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ قَبْلَهُمَا، بَلْ قَدْ قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إنَّهُ يُشْتَرَى مِنْ مَالِ أَبِيهِ بَعْدَ الْمَوْتِ، وَيَرِثُ كَسَائِرِ الْوَرَثَةِ - وَإِنَّ فِي قَوْلِهِمَا هَذَا لَأُعْجُوبَةً، لِأَنَّهُ لَا يَخْلُو شِرَاؤُهُ لِابْنِهِ مِنْ أَنْ يَكُونَ وَصِيَّةً أَوْ لَا يَكُونَ وَصِيَّةً، فَإِنْ كَانَ وَصِيَّةً فَلَا يَجِبُ أَنْ

inherit at all—whether the bequest consumes a third [of the estate] or not—since it constitutes a bequest to an heir. If it is not a bequest, the son should inherit like the rest of the heirs without distinction. Their position here is indeed at the peak of corruption and opposition to the scriptural texts.

يَرِثَ أَصْلًا حَمَلَهُ الثُّلُثُ أَوْ لَمْ يَحْمِلْهُ؛ لِأَنَّهَا وَصِيَّةٌ لِوَارِثٍ، وَإِنْ كَانَ لَيْسَ وَصِيَّةً فَيَنْبَغِي أَنْ يَرِثَ كَسَائِرِ الْوَرَثَةِ وَلَا فَرْقَ، وَإِنَّ قَوْلَهُمَا هَاهُنَا لَفِي غَايَةِ الْفَسَادِ وَمُخَالَفَةِ النُّصُوصِ.

L28759 As for the opinion of Mālik and al-Layth concerning the pregnant woman, it is also a view we do not know to have been reported from anyone before them. The most astonishing thing is some of them citing as evidence for this opinion the words of God Almighty: "She carried a light pregnancy and went about with it, then when she became heavy [with it]" [Al-Aʿrāf: 189].[2]

وَأَمَّا قَوْلُ مَالِكٍ، وَاللَّيْثِ - فِي الْحَامِلِ فَقَوْلٌ أَيْضًا لَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُمَا وَأَطْرَفُ شَيْءٍ احْتِجَاجُ بَعْضِهِمْ لِهَذَا الْقَوْلِ بِقَوْلِ اللَّهِ تَعَالَى: {حَمَلَتْ حَمْلا خَفِيفًا فَمَرَّتْ بِهِ فَلَمَّا أَثْقَلَتْ} [الأعراف: ١٨٩] .

L28760 So we said: O you here, who among you can prove that the gestation period is six months?

فَقُلْنَا: يَا هَؤُلَاءِ، وَمَنْ لَكُمْ بِأَنَّ الْإِثْقَالَ هُوَ سِتَّةُ أَشْهُرٍ.

L28761 Then, suppose it is an encumbrance - not what preceded it - what would that result in? And on what basis is it obligatory to prevent her from disposing of all her property if she becomes burdensome?

ثُمَّ هَبْكُمْ أَنَّهُ إِثْقَالٌ، لَا مَا قَبْلَهُ، فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ مَنْعُهَا مِنَ التَّصَرُّفِ فِي جَمِيعِ مَالِهَا إِذَا أَثْقَلَتْ؟

L28762–28763 Similarly, their statement concerning differentiation between diseases has no foundation whatsoever, as it is not known from any Companion or Follower, nor found in any scriptural texts. Thus, their claim lacks any proof at all—neither from the Quran, nor the Sunnah, nor a weak narration, nor a Companion's view, nor analogy, nor juristic reasoning. Indeed, if a person were to allege that they oppose the consensus of all predecessors in these opinions, this would be nearer to truth than their own claim of contradicting consensus in matters where sound disagreement exists—as we have reported from Masrūq, al-Shaʿbī, and others.

وَكَذَلِكَ قَوْلُهُمْ فِي التَّفْرِيقِ بَيْنَ الْأَمْرَاضِ، فَإِنَّهُ لَا يُعْرَفُ عَنْ صَاحِبٍ وَلَا تَابِعٍ أَصْلًا، وَلَا فِي شَيْءٍ مِنَ النُّصُوصِ، فَحَصَلَ قَوْلُهُمْ لَا حُجَّةَ لَهُ أَصْلًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا نَظَرٍ، وَلَوْ أَنَّ امْرَأً ادَّعَى عَلَيْهِمْ خِلَافَ إِجْمَاعِ كُلِّ مَنْ تَقَدَّمَ فِي هَذِهِ الْأَقْوَالِ لَكَانَ أَقْرَبَ إِلَى الصِّدْقِ مِنْ دَعْوَاهُمْ خِلَافَ الْإِجْمَاعِ فِيمَا قَدْ صَحَّ فِيهِ الْخِلَافُ، كَمَا أَوْرَدْنَا عَنْ مَسْرُوقٍ، وَالشَّعْبِيِّ وَغَيْرِهِمَا

L28764 We do not know of any fundamental argument for them whatsoever, except that they said: "We analogize that to the testamentary will through qiyas."

وَمَا نَعْلَمُ لَهُمْ حُجَّةً أَصْلًا، إِلَّا أَنَّهُمْ قَالُوا: نَقِيسُ ذَلِكَ عَلَى الْوَصِيَّةِ.

L28765 We said: All analogical reasoning is invalid. Furthermore, even if it were valid, this instance from it would be the very essence of invalidity, for the ruling on bequests applies equally to the healthy and the sick—being imper-

فَقُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْوَصِيَّةَ مِنَ الصَّحِيحِ، وَالْمَرِيضِ سَوَاءٌ: لَا تَجُوزُ إِلَّا فِي الثُّلُثِ، فَيَلْزَمُ أَنْ يَكُونَ غَيْرُ الْوَصِيَّةِ أَيْضًا مِنَ الصَّحِيحِ وَالْمَرِيضِ سَوَاءً، فَهَذَا قِيَاسٌ أَصَحُّ مِنْ قِيَاسِهِمْ.

[2] **Qur'an references (L28759):** Qur'an 7:189 (Al-A'raf).

missible beyond one-third. This necessarily entails that matters other than bequests must also apply equally to the healthy and the sick. This constitutes analogical reasoning more sound than their analogical reasoning.

وَقَالُوا: نتَّهِمُهُ بِالْفِرَارِ بِمَالِهِ عَنْ الْوَرَثَةِ.

L28766 And they said: We accuse him of absconding with his wealth away from the heirs.

فَقُلْنَا: الظَّنُّ أَكْذَبُ الْحَدِيثِ، وَلَعَلَّهُ يَمُوتُ الْوَارِثُ قَبْلَهُ فَيَرِثُهُ الْمَرِيضُ فَهَذَا مُمْكِنٌ - وَأَيْضًا: فَإِذْ لَيْسَ إلَّا التُّهْمَةُ فَامْنَعُوا الصَّحِيحَ أَيْضًا مِنْ أَكْثَرِ ثُلُثِ مَالِهِ، وَاتَّهِمُوهُ أَيْضًا أَنَّهُ يَفِرُّ بِمَالِهِ عَنْ وَرَثَتِهِ، فَجَائِزٌ أَنْ يَمُوتَ وَيَرِثُوهُ كَمَا يَجُوزُ ذَلِكَ فِي الْمَرِيضِ، وَجَائِزٌ أَنْ يَمُوتَ الْوَارِثُ فَيَرِثَهُ الْمَرِيضُ كَمَا يَرِثُهُ الصَّحِيحُ وَلَا فَرْقَ، وَكَمْ مِنْ صَحِيحٍ يَمُوتُ قَبْلَ مَرِيضٍ.

L28767 So we said: Conjecture is the falsest of reports. Perhaps the heir may die before the sick person, and the sick person would then inherit from him, for this is possible. Moreover, since there is only suspicion, then prevent the healthy person too from disposing of more than a third of his wealth, and suspect him too of diverting his wealth away from his heirs. For it is possible that he dies and they inherit from him, just as that is possible in the case of the sick person. It is also possible that the heir dies, and the sick person inherits from him, just as the healthy person inherits from him, with no distinction. How many healthy people die before a sick person.

وَأَيْضًا: فَاتَّهِمُوا الشَّيْخَ الَّذِي قَدْ جَاوَزَ التِّسْعِينَ وَامْنَعُوهُ أَكْثَرَ مِنْ ثُلُثِهِ لِئَلَّا يَفِرَّ بِمَالِهِ عَنْ وَرَثَتِهِ.

L28768 Moreover, be wary of the elder who has surpassed ninety years of age and restrict him from bequeathing more than a third of his estate, lest he unjustly deprive his heirs of his property.

فَإِنْ قُلْتُمْ: قَدْ يَعِيشُ أَعْوَامًا؟ قُلْنَا: وَقَدْ يَبْرَأُ الْمَرِيضُ فَيَعِيشُ عَشَرَاتِ أَعْوَامٍ، وَإِذْ لَيْسَ إلَّا التُّهْمَةُ، فَلَا تَتَّهِمُوا مَنْ يَرِثُهُ وَلَدُهُ فَاجْعَلُوا فِعْلَهُ مِنْ رَأْسِ مَالِهِ، وَاتَّهِمُوا مَنْ يَرِثُهُ عَصَبَتُهُ فَلَا تُطْلِقُوا لَهُ الثُّلُثَ.

L28769 If you say: "He may live for years?" We reply: "A sick person may recover and live for decades. Since there is only suspicion, do not accuse the one whose heir is his child; instead, treat his expenses as part of his principal capital. But accuse the one whose heirs are his agnates, and do not grant him unrestricted access to the third portion."

فَإِنْ قَالُوا: هَذَا خِلَافُ النَّصِّ؟ قُلْنَا: وَفِعْلُكُمْ خِلَافُ النَّصِّ فِي التَّقَرُّبِ إلَى اللَّهِ تَعَالَى بِمَا يُحِبُّهُ الْمَرْءُ مِنْ مَالِهِ، قَالَ تَعَالَى: {أَنْفِقُوا مِمَّا رَزَقْنَاكُمْ} [البقرة: ٢٥٤] وَقَالَ تَعَالَى: {لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ} [آل عمران: ٩٢] .

L28770 If they say, "This contradicts the divine text?" We reply: "But your action contradicts the divine text in drawing near to Allah Almighty with what one cherishes of his wealth." He, the Exalted, said: "Spend from what We have provided you" [Al-Baqarah: 254]. And He, the Exalted, said: "You will never attain righteousness until you spend from what you love" [Āl ʿImrān: 92].[3]

وَالْمَرِيضُ أَحْوَجُ مَا كَانَ إلَى ذَلِكَ.

L28771 And the sick person is most in need of that when they are at their most needy.

[3]**Qur'an references (L28770):** Qur'an 2:254 (Al-Baqarah); Qur'an 3:92 (Ali 'Imran).

«وَسُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَفْضَلِ الصَّدَقَةِ؟ فَقَالَ: جُهْدُ الْمُقِلِّ» . فَإِنْ قَالُوا: قَدْ «سُئِلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَفْضَلِ الصَّدَقَةِ؟ فَقَالَ: أَنْ تَصَدَّقَ وَأَنْتَ صَحِيحٌ شَحِيحٌ تَخْشَى الْفَقْرَ وَتَأْمُلُ الْغِنَى لَا أَنْ تُمْهِلَ حَتَّى إذَا بَلَغَتْ الْحُلْقُومَ قُلْتَ: لِفُلَانٍ كَذَا وَلِفُلَانٍ كَذَا، أَلَا وَقَدْ كَانَ لِفُلَانٍ؟» .

L28772–28773 The Messenger of Allah—peace and blessings be upon him—was asked about the best charity. He replied: “The effort of one with meager means.” If they object: “The Prophet—peace and blessings be upon him—had indeed been asked about the best charity, and he said: ’To give charity while you are healthy yet attached to wealth, fearing poverty while hoping for affluence—not delaying until death approaches, when your soul reaches the throat and you declare: ”This is for so-and-so, and that is for so-and-so¡‘ But indeed, it had already belonged to so-and-so!”’”

قُلْنَا: نَعَمْ، هَذَا حَقٌّ صَحِيحٌ، وَإِنَّمَا فِيهِ تَفَاضُلُ الصَّدَقَةِ فَقَطْ، وَلَيْسَ فِيهِ مَنْعٌ مِنْ مَرَضٍ، وَأَيْقَنَ بِالْمَوْتِ مِنْ أَكْثَرَ مِنْ ثُلُثِ مَالِهِ أَصْلًا، لَا بِنَصٍّ، وَلَا بِدَلِيلٍ، وَلَا بِوَجْهٍ مِنْ الْوُجُوهِ.

L28774 We said: Yes, this is sound and correct, for it pertains solely to the superiority in charitable acts. It contains no prohibition related to illness, nor is there any basis for asserting that someone who gives more than a third of their wealth is certain of death—neither through explicit textual proof, nor evidence, nor any conceivable juristic rationale.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَسْأَلُهُمْ عَنْ مَالِ الْمَرِيضِ لِمَنْ أَلَهُ أَمْ لِلْوَرَثَةِ؟ فَإِنْ قَالُوا: بَلْ لَهُ كَمَا هُوَ لِلصَّحِيحِ.

L28775 Abu Muhammad said: Then we ask them about the wealth of a sick person—does it belong to him or to the heirs? If they say: Rather, it belongs to him just as it does for a healthy person.

قُلْنَا: فَلِمَ تَمْنَعُونَهُ مَالَهُ دُونَ أَنْ تَمْنَعُوا الصَّحِيحَ، وَهَذَا ظُلْمٌ ظَاهِرٌ.

L28776 We said: Why do you withhold his wealth from him, yet fail to withhold it from the legally competent person? This is manifest injustice.

وَلَوْ قَالُوا: بَلْ هُوَ لِلْوَرَثَةِ. لَقَالُوا الْبَاطِلَ؛ لِأَنَّ الْوَارِثَ لَوْ أَخَذَ مِنْهُ شَيْئًا لَقُضِيَ عَلَيْهِ بِرَدِّهِ، وَلَوْ وَطِئَ أَمَةَ الْمَرِيضِ لَحُدَّ، وَلَوْ كَانَ ذَلِكَ لَمَا حَلَّ لِلْمَرِيضِ أَنْ يَأْكُلَ مِنْهُ هُوَ وَمَنْ تَلْزَمُهُ نَفَقَتُهُ مِنْ غَيْرِ الْوَرَثَةِ.

L28777 If they were to say, “Rather, it belongs to the heirs,” they would be asserting falsehood, because if an heir were to take anything from it, a judgment would be passed against him to return it. If he were to have intercourse with the sick person’s slave woman, he would be subjected to the *ḥadd* punishment. If that were the case, it would not be lawful for the sick person himself, nor for those he is obligated to maintain (excluding the heirs), to consume from [the estate].

وَلَا نَدْرِي مِنْ أَيْنَ أَطْلَقُوا لِلْمَرِيضِ أَنْ يَأْكُلَ مِنْ مَالِهِ مَا شَاءَ، وَيَلْبَسَ مَا شَاءَ، وَيُنْفِقَ عَلَى مَنْ إلَيْهِ مِنْ عَبِيدٍ وَإِمَاءٍ.

L28778 We do not know from what source they granted the sick person unrestricted allowance to consume from his wealth whatever he wishes, wear what he desires, and spend on those under his responsibility from among his male and female slaves.

وَإِنْ أَتَى عَلَى جَمِيعِ الْمَالِ، وَمَنَعُوهُ مِنْ الصَّدَقَةِ بِأَكْثَرَ مِنْ الثُّلُثِ.

L28779 And if the bequest encroaches on the entire estate, and the heirs prevent him from exceeding a third of it in his bequest.

L28780–28782 Indeed, this is an astonishing marvel without parallel! Thus, the invalidity of this statement has become entirely evident, stripped of any attribution to a single Companion. Rather, it is found only among a small group of divergent Followers, some of whom contradicted others in their statements on the matter—such as their disagreement with al-Shaʿbī concerning a traveler's financial obligations and other matters. That is, moreover, Al-Shaʿbi presents a stronger argument than them, as it is authentically established from the Prophet, peace and blessings of Allah be upon him, that "Travel is a portion of punishment."

إِنَّ هَذَا لَعَجَبٌ لَا نَظِيرَ لَهُ؟ فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً وَتَعَرِّيهِ عَنْ أَنْ يُوجَدَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَإِنَّمَا وُجِدَ عَنْ نَفَرٍ يَسِيرٍ مِنْ التَّابِعِينَ مُخْتَلِفِينَ، وَقَدْ خَالَفُوا بَعْضُهُمْ فِي قَوْلِهِ فِي ذَلِكَ، كَخِلَافِهِمْ لِلشَّعْبِيِّ فِي فِعْلِ الْمُسَافِرِ فِي مَالِهِ وَغَيْرِ ذَلِكَ، عَلَى أَنَّ الشَّعْبِيَّ أَقْوَى حُجَّةً مِنْهُمْ، لِأَنَّهُ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «السَّفَرُ قِطْعَةٌ مِنْ الْعَذَابِ» .

L28783 It has also been narrated: "The traveler and his mount are upon scarcity except what Allah safeguards."

وَرُوِيَ أَيْضًا «الْمُسَافِرُ وَرَحْلُهُ عَلَى قَلَتٍ إلَّا مَا وَقَى اللَّهُ» .

L28784 And by Allah, the Exalted, is success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28785 Abu Muhammad said: We found them objecting with narrations in which they possess no valid evidence—it is necessary to draw attention to these by the grace of Allah the Exalted. Among them is the narration we previously mentioned several pages earlier in the chapter on commencing the payment of debts owed to Allah the Exalted from the principal wealth. It is a mursal narration transmitted through Qatādah: "May I never know of anyone who withholds Allah's rightful due until, when death approaches him, he begins frittering away his wealth here and there." Even if it were authentic, it would contain no evidence to prohibit disposing of the rightful portion in the wealth.

قَالَ أَبُو مُحَمَّد: وَوَجَدْنَاهُمْ يُشَنِّعُونَ بِآثَارٍ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهَا يَجِبُ التَّنْبِيهُ عَلَيْهَا بِحَوْلِ اللَّهِ تَعَالَى -: مِنْهَا - الْأَثَرُ الَّذِي قَدْ ذَكَرْنَاهُ قَبْلَ هَذَا بِأَوْرَاقٍ فِي بَابِ تَبْدِئَةِ دُيُونِ اللَّهِ تَعَالَى مِنْ رَأْسِ الْمَالِ وَهُوَ مُرْسَلٌ مِنْ طَرِيقِ قَتَادَةَ «لَا أَعْرِفَنَّ أَحَدًا بَخِلَ بِحَقِّ اللَّهِ حَتَّى إذَا حَضَرَهُ الْمَوْتُ أَخَذَ يُدَغْدِغُ مَالَهُ هَاهُنَا وَهَا هُنَا» ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ حُجَّةٌ فِي الْمَنْعِ مِنْ التَّصَرُّفِ بِالْحَقِّ فِي الْمَالِ.

L28786 Among them is what was narrated to us by Ḥumām, narrated by ʿAbbās ibn Aṣbagh, narrated by Muḥammad ibn ʿAbd al-Malik ibn Ayman, narrated by Yazīd ibn Muḥammad al-ʿUqaylī, narrated by Ḥafṣ ibn ʿUmar ibn Maymūn, from Thawr ibn Yazīd, from Makḥūl, from al-Ṣunābiḥī, from Abū Bakr al-Ṣiddīq—that the Prophet, peace and blessings of Allāh be upon him—said: "Allāh has given charity upon you with a third of your wealth at the time of your death as a mercy to you and an increase in your deeds and good works." Narrated by Muḥammad ibn Saʿīd ibn Nabāt, narrated by ʿAbd Allāh ibn Naṣr, narrated by Qāsim ibn Aṣbagh, narrated by Ibn Waḍḍāḥ, narrated by Mūsā ibn Muʿāwiyah, narrated by Wakīʿ, from Ṭalḥah ibn ʿAmr al-Makkī,

وَمِنْهَا: مَا حَدَّثَنَاهُ حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا يَزِيدُ بْنُ مُحَمَّدٍ الْعُقَيْلِيُّ نا حَفْصُ بْنُ عُمَرَ بْنِ مَيْمُونٍ عَنْ ثَوْرِ بْنِ يَزِيدَ عَنْ مَكْحُولٍ عَنْ الصُّنَابِحِيِّ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إنَّ اللَّهَ قَدْ تَصَدَّقَ عَلَيْكُمْ بِثُلُثِ أَمْوَالِكُمْ عِنْدَ مَوْتِكُمْ رَحْمَةً لَكُمْ وَزِيَادَةً فِي أَعْمَالِكُمْ وَحَسَنَاتِكُمْ» . نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ

from ʿAṭāʾ, from Abū Hurayrah—that the Prophet, peace and blessings of Allāh be upon him—said: "Allāh has given charity upon you with a third of your wealth."

نا وَكِيعٌ عَنْ طَلْحَةَ بْنِ عَمْرٍو الْمَكِّيِّ عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ اللَّهَ تَصَدَّقَ عَلَيْكُمْ بِالثُّلُثِ مِنْ أَمْوَالِكُمْ» .

L28787–28788 From the narration of Abd al-Razzaq via Ibn Jurayj: I heard Sulayman ibn Musa say: "I heard the Messenger of Allah - peace and blessings of Allah be upon him - declare: 'I have ordained a third of your wealth as an increase in your good deeds.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَمِعْت سُلَيْمَانَ بْنَ مُوسَى يَقُولُ: سَمِعْت " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «جَعَلْتُ لَكُمْ ثُلُثَ أَمْوَالِكُمْ زِيَادَةً فِي أَعْمَالِكُمْ» .

L28789 From the chain of Abd al-Razzaq, from Ma'mar, from Ayyub, from Abu Qilabah: "That the Prophet (peace be upon him) said, quoting Allah the Exalted: 'I have made a portion of your wealth available at your death to show you mercy by means of it.'" Abu Muhammad said: All of this provides them no valid basis whatsoever to rely on. As for the narration of Abu Bakr, it comes through the chain of Hafs ibn Umar al-Shami—and he is rejected.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ أَبِي قِلَابَةَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ عَنْ اللَّهِ تَعَالَى: جَعَلْتُ لَكَ طَائِفَةً مِنْ مَالِكَ عِنْدَ مَوْتِكَ أَرْحَمُكَ بِهِ» ". قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كُلُّهُ لَا مُتَعَلَّقَ لَهُمْ بِشَيْءٍ مِنْهُ أَصْلًا -: أَمَّا خَبَرُ أَبِي بَكْرٍ: فَمِنْ طَرِيقِ حَفْصِ بْنِ عُمَرَ الشَّامِيِّ وَهُوَ مَتْرُوكٌ.

L28790 As for the ḥadīth of Abū Hurayrah: It is transmitted through the chain of Ṭalḥah ibn ʿAmr - who is a foundational pillar of falsehood - while the other two chains are interrupted. Even if it were authentic, they would have no basis to rely upon it whatsoever, for it contains nothing except that Allah the Exalted has designated for us, at the time of our death, a third of our wealth. This is a sound meaning, which is undoubtedly the testamentary bequest that is never executed whatsoever except upon death. None of these narrations mention illness in the slightest - neither by explicit text nor by textual indication. Thus, their obfuscation through it is invalidated.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ: فَمِنْ طَرِيقِ طَلْحَةَ بْنِ عَمْرٍو وَهُوَ رُكْنٌ مِنْ أَرْكَانِ الْكَذِبِ وَالْآخَرَانِ مُرْسَلَانِ، ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ لَهُمْ بِهَا مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهَا إلَّا أَنَّ اللَّهَ تَعَالَى جَعَلَ لَنَا عِنْدَ مَوْتِنَا ثُلُثَ أَمْوَالِنَا، وَهَذَا مَعْنًى صَحِيحٌ وَهُوَ بِلَا شَكٍّ الْوَصِيَّةُ الَّتِي لَا تُنَفَّذُ أَلْبَتَّةَ إلَّا عِنْدَ الْمَوْتِ، وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ ذِكْرٌ لِلْمَرَضِ أَصْلًا، لَا بِنَصٍّ وَلَا بِدَلِيلٍ، فَبَطَلَ تَمْوِيهُهُمْ بِهَا.

L28791 And we ask them: Regarding someone who gave two-thirds of his wealth in charity while in sound health, then died suddenly immediately after that.

وَنَسْأَلُهُمْ: عَمَّنْ تَصَدَّقَ بِثُلُثَيْ مَالِهِ وَهُوَ صَحِيحٌ ثُمَّ مَاتَ بَغْتَةً إثْرَ ذَلِكَ.

L28792 Or if he emancipates all his enslaved persons in the same manner? According to their opinion, all such dispositions are validly deducted from his capital.

أَوْ أَعْتَقَ جَمِيعَ مَمَالِيكِهِ كَذَلِكَ أَيْضًا؟ فَمِنْ قَوْلِهِمْ: أَنَّ كُلَّ ذَلِكَ نَافِذٌ مِنْ رَأْسِ مَالِهِ.

L28793 We respond to them: You have contradicted all these reports because this act of charity and emancipation is performed at his death, as in the aforementioned reports. None of those reports indicate that he became certain he

فَنَقُولُ لَهُمْ: قَدْ خَالَفْتُمْ جَمِيعَ هَذِهِ الْآثَارِ لِأَنَّ هَذَا فِعْلُ الصَّدَقَةِ وَالْعِتْقِ عِنْدَ مَوْتِهِ كَمَا فِي الْآثَارِ الْمَذْكُورَةِ، وَلَيْسَ فِي شَيْءٍ مِنْ تِلْكَ الْآثَارِ أَنَّهُ أَيْقَنَ بِأَنَّهُ يَمُوتُ إِذَا أَعْتَقَ أَعْبُدَهُ، إِنَّمَا فِيهَا عِنْدَ مَوْتِهِ فَقَطْ - فَظَهَرَ خِلَافُهُمْ لِلْآثَارِ كُلِّهَا.

would die when he emancipated his male slaves; they only contain [the act] at his death. Thus, their contradiction to all the reports has become evident.

وَمِنْهَا - الْخَبَرُ الصَّحِيحُ مِنْ طَرِيقِ مَالِكٍ عَنْ الزُّهْرِيِّ عَنْ «عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ قَالَ جَاءَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَعُودُنِي مِنْ وَجَعٍ اشْتَدَّ بِي فَقُلْتُ: يَا رَسُولَ اللَّهِ قَدْ بَلَغَ بِي مِنْ الْوَجَعِ مَا تَرَى وَأَنَا ذُو مَالٍ وَلَا يَرِثُنِي إِلَّا ابْنَةٌ لِي أَفَأَتَصَدَّقُ بِثُلُثَيْ مَالِي. قَالَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا، قُلْت: فَالشَّطْرُ؟ قَالَ: لَا، ثُمَّ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: الثُّلُثُ، وَالثُّلُثُ كَثِيرٌ إِنَّك أَنْ تَذَرْ وَرَثَتَك أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ» .

L28794–28796 And among them is the authentic narration transmitted through Mālik from al-Zuhrī from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ from his father, who said: The Messenger of Allah—may the peace and blessings of Allah be upon him—came to visit me during an illness that had intensified upon me. I said: "O Messenger of Allah, my pain has reached the severity you witness, and I possess wealth with none to inherit from me except a daughter of mine. Shall I give two-thirds of my wealth as charity?" The Messenger of Allah—may the peace and blessings of Allah be upon him—said: "No." I asked: "Then half?" He said: "No." Then he—may the peace and blessings of Allah be upon him—said: One-third, and one-third is a lot. Indeed, it is better for you to leave your heirs wealthy than to leave them a burden, begging from others.

ثُمَّ ذَكَرَ الْحَدِيثَ وَفِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «قَالَ لِسَعْدٍ يَوْمَئِذٍ وَلَعَلَّك أَنْ تُخَلَّفَ حَتَّى يَنْتَفِعَ بِك أَقْوَامٌ وَيُضَرَّ بِك آخَرُونَ» .

L28797 Then he mentioned the ḥadīth, in which the Prophet—peace and blessings be upon him—said to Saʿd on that day: "And perhaps you will survive until peoples benefit through you and others are harmed through you."

وَهَكَذَا رَوَاهُ سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ بِإِسْنَادِهِ.

L28798 And thus Sufyān ibn ʿUyaynah narrated it from al-Zuhrī with his *isnad*.

وَبِلَفْظَةِ " الصَّدَقَةِ " فَقَالُوا: فَقَدْ مَنَعَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الصَّدَقَةِ فِي مَرَضِهِ بِأَكْثَرَ مِنْ الثُّلُثِ. قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوُجُوهٍ -: أَحَدُهَا: أَنَّنَا رُوِّينَا هَذَا الْخَبَرَ نَفْسَهُ مِنْ طَرِيقِ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ فَذَكَرَ هَذَا الْخَبَرَ وَفِيهِ «قَالَ سَعْدٌ: فَقُلْت: يَا رَسُولَ اللَّهِ أَفَأُوصِي بِثُلُثَيْ مَالِي قَالَ: لَا، قُلْتُ: فَبِشَطْرِ مَالِي؟ قَالَ: لَا، قُلْتُ: فَبِثُلُثِ مَالِي؟ قَالَ: الثُّلُثُ وَالثُّلُثُ كَثِيرٌ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L28799 And regarding the term "charity," they said: Indeed, the Messenger of Allah—peace and blessings be upon him—restricted him from giving charity during his [Saʿd's] illness to more than a third. Abu Muhammad said: This contains no valid proof for them due to several considerations. One of them is that we received this very report through the chain of Maʿmar from al-Zuhri from ʿAmir ibn Saʿd ibn Abi Waqqas from his father, who mentioned this report. In it: "Saʿd said: I asked, 'O Messenger of Allah, may I bequeath two-thirds of my wealth?' He replied, 'No.' I said, 'Half of my wealth?' He replied, 'No.' I said, 'A third of my wealth?' He replied, 'A third, and a third is already significant.'" He then mentioned the rest of the report.

وَرُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ قَالَ: نا إِبْرَاهِيمُ بْنُ سَعْدٍ، وَعَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ الْمَاجِشُونِ، كِلَاهُمَا عَنْ الزُّهْرِيِّ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ أَنَّهُ ذَكَرَ هَذَا الْخَبَرَ، وَفِيهِ " قَالَ: «قُلْتُ: أَفَأَتَصَدَّقُ بِمَالِي كُلِّهِ قَالَ: لَا، قُلْتُ: أَفَأُوصِي بِالشَّطْرِ؟ قَالَ: لَا، قُلْتُ: يَا رَسُولَ اللَّهِ فَبِمَ أُوصِي؟ قَالَ: الثُّلُثُ: وَالثُّلُثُ كَثِيرٌ»

L28800 We have transmitted it through the chain of Abū Dāwūd al-Ṭayālisī, who said: Ibrāhīm ibn Saʿd and ʿAbd al-ʿAzīz ibn Abī Salamah al-Mājishūn narrated to him—both of them transmitting from al-Zuhrī, from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ, from his father—that he mentioned this report, which states: "I asked, 'Shall I give all my wealth in charity?' He replied, 'No.' I asked, 'Shall I bequeath half?' He said, 'No.' I said, 'O Messenger of Allah, what then should I bequeath?' He responded, 'A third; a third is much.'"

وَذَكَرَ الْخَبَرَ، فَذَكَرُوا أَنَّهُ إِنَّمَا سَأَلَ سَعْدٌ عَنْ الْوَصِيَّةِ وَهُوَ خَبَرٌ وَاحِدٌ عَنْ مَقَامٍ وَاحِدٍ - فَصَحَّ أَنَّ لَفْظَةَ " الصَّدَقَةِ " الَّتِي رَوَاهَا: مَالِكٌ، وَسُفْيَانُ عَنْ الزُّهْرِيِّ إِنَّمَا مَعْنَاهَا الْوَصِيَّةُ.

L28801 He mentioned the report, and they related that Saʿd specifically inquired about the will—a single report pertaining to a specific circumstance. Thus, it was confirmed that the term "charity" as transmitted by Mālik and Sufyān on the authority of al-Zuhrī indeed denotes "the will."

كَمَا رَوَاهُ مَعْمَرٌ، وَعَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ الْمَاجِشُونِ - وَمَعْمَرٌ، وَعَبْدُ الْعَزِيزِ دُون مَالِكٍ - وَسُفْيَانَ، وَالزُّهْرِيِّ، وَغَيْرُهُ، فَكَيْفَ وَقَدْ وَافَقَ مَعْمَرٌ، وَعَبْدُ الْعَزِيزِ عَلَى لَفْظَةِ " أُوصِي " وَفِي هَذَا الْخَبَرِ جَمَاعَةُ الْإِثْبَاتِ.

L28802 As narrated by Maʿmar and ʿAbd al-ʿAzīz ibn Abī Salamah al-Mājishūn—Maʿmar and ʿAbd al-ʿAzīz (distinct from Mālik)—along with Sufyān, al-Zuhrī, and others. How [is this possible], when Maʿmar and ʿAbd al-ʿAzīz concurred on the wording "I bequeath"? And in this narration are a group of trustworthy transmitters.

كَمَا رُوِّينَاهُ عَنْ مُسْلِمِ بْنِ الْحَجَّاجِ عَنْ الْقَاسِمِ بْنِ زَكَرِيَّا عَنْ حُسَيْنِ بْنِ عَلِيٍّ الْجُعْفِيِّ عَنْ زَائِدَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ عَنْ مُصْعَبِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L28803–28805 As we have narrated it from Muslim ibn al-Ḥajjāj, from al-Qāsim ibn Zakariyyā, from Ḥusayn ibn ʿAlī al-Juʿfī. Narrated by Zāʾidah on the authority of ʿAbd al-Malik ibn Umayr, on the authority of Muṣʿab ibn Saʿd ibn Abī Waqqāṣ, on the authority of his father Saʿd ibn Abī Waqqāṣ.

وَعَنْ مُسْلِمٍ عَنْ ابْنِ أَبِي عُمَرَ الْمَكِّيِّ عَنْ عَبْدِ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ الثَّقَفِيِّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ سَعِيدٍ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيِّ عَنْ ثَلَاثَةٍ مِنْ وَلَدِ سَعْدٍ، كُلِّهِمْ عَنْ سَعْدٍ.

L28806 From Muslim from Ibn Abī ʿUmar al-Makkī from ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī from Ayyūb al-Sakhtiyānī from ʿAmr ibn Saʿīd from Ḥumayd ibn ʿAbd al-Raḥmān al-Ḥimyarī from three of Saʿd's children, all of whom narrate from Saʿd.

وَمِنْ طَرِيقِ الْبُخَارِيِّ عَنْ أَبِي نُعَيْمٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L28807 And through the chain of al-Bukhārī from Abū Nuʿaym from Sufyān al-Thawrī from Saʿd ibn Ibrāhīm from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ from his father.

L28808 Narrated via Al-Bukhārī's chain of transmission: Muḥammad ibn ʿAbd al-

Raḥīm from Zakariyyā ibn ʿAdiyy from Marwān ibn Muʿāwiyah al-Fazārī from Hāshim ibn Hāshim ibn ʿUtbah ibn Abī Waqqāṣ from ʿĀmir ibn Saʿd ibn Abī Waqqāṣ from his father.

وَمِنْ طَرِيقِ الْبُخَارِيِّ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحِيمِ عَنْ زَكَرِيَّا بْنِ عَدِيٍّ عَنْ مَرْوَانَ بْنِ مُعَاوِيَةَ الْفَزَارِيِّ عَنْ هَاشِمِ بْنِ هَاشِمِ بْنِ عُتْبَةَ بْنِ أَبِي وَقَّاصٍ عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L28809 Via the chain of Aḥmad ibn Shuʿayb, from Muḥammad ibn al-Muthannā, from al-Ḥajjāj ibn al-Minhāl, from Hammām ibn Yaḥyā, from Qatādah, from Yūnus ibn Jubayr, from Muḥammad ibn Saʿd ibn Abī Waqqāṣ, from his father.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ مُحَمَّدِ بْنِ الْمُثَنَّى عَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ عَنْ هَمَّامِ بْنِ يَحْيَى عَنْ قَتَادَةَ عَنْ يُونُسَ بْنِ جُبَيْرٍ عَنْ مُحَمَّدِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ عَنْ أَبِيهِ.

L28810 And via the route of Ahmad ibn Shu'ayb from Isḥāq ibn Rāhūyah from Jarīr ibn ʿAbd al-Ḥamīd from ʿAṭāʾ ibn al-Sāʾib from Abū ʿAbd al-Raḥmān al-Sulamī from Saʿd ibn Abī Waqqāṣ

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ إِسْحَاقَ بْنِ رَاهْوَيْهِ عَنْ جَرِيرِ بْنِ عَبْدِ الْحَمِيدِ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ.

L28811 And through the chain of Aḥmad ibn Shuʿayb, from Isḥāq ibn Rāhwayh, from Wakīʿ, from Hishām ibn ʿUrwah ibn al-Zubayr, from his father, from Saʿd ibn Abī Waqqāṣ—all of them explicitly state that Saʿd asked the Messenger of Allah (peace be upon him) about what he should bequeath.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ إِسْحَاقَ بْنِ رَاهْوَيْهِ عَنْ وَكِيعٍ عَنْ هِشَامِ بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ، كُلُّهُمْ يَذْكُرُ نَصًّا: أَنَّ سَعْدًا إنَّمَا سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَمَّا يُوصِي بِهِ.

L28812 The other perspective is that they are only prevented from giving charity exceeding one-third during the illness from which one dies, not an illness from which one recovers. It has been authentically established that the Messenger of Allah (peace be upon him) knew Saʿd would recover from that illness, as we narrate through the chain of Abū Dāwūd al-Sijistānī: ʿUthmān ibn Abī Shaybah reported to us, Jarīr reported from al-Aʿmash from Abū Wāʾil from Ḥudhayfah, who said: "The Messenger of Allah (peace be upon him) stood among us and omitted nothing related to the context of his stance until the Hour's arrival except what he informed us of. Those who memorized it did so, and those who forgot it did so. These companions of mine indeed knew it."

وَالْوَجْهُ الْآخَرُ: أَنَّهُمْ إنَّمَا يُمْنَعُونَ مِنْ الصَّدَقَةِ فِيمَا زَادَ عَلَى الثُّلُثِ فِي الْمَرَضِ الَّذِي يَمُوتُ مِنْهُ صَاحِبُهُ، لَا الَّذِي يَبْرَأُ مِنْهُ، وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ أَنَّ سَعْدًا سَيَبْرَأُ مِنْ ذَلِكَ الْمَرَضِ كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ الْأَعْمَشِ عَنْ أَبِي وَائِلٍ عَنْ حُذَيْفَةَ " قَالَ «قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِينَا فَمَا تَرَكَ شَيْئًا يَكُونُ فِي مَقَامِهِ ذَلِكَ حَتَّى إلَى قِيَامِ السَّاعَةِ إلَّا أَخْبَرَ بِهِ حَفِظَهُ مَنْ حَفِظَهُ وَنَسِيَهُ مَنْ نَسِيَهُ قَدْ عَلِمَهُ أَصْحَابِي هَؤُلَاءِ» .

L28813–28815 Abu Muhammad said: Saʿd ibn Abi Waqqas was the one who defeated the Persian armies on the Day of al-Qadisiyyah and conquered their lands. The city of Kisra is among what he foretold—peace and blessings be upon him—

and indeed, it stands as one of the greatest, most pivotal, and most comprehensive conquests in the history of Islam.

قَالَ أَبُو مُحَمَّد: وَسَعْدُ بْنُ أَبِي وَقَّاصٍ هُوَ هَزَمَ عَسَاكِرَ الْفُرْسِ يَوْمَ الْقَادِسِيَّةِ وَافْتَتَحَ مَدِينَةَ كِسْرَى فَهُوَ مِنْ جُمْلَةِ مَا أَخْبَرَ بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَلْ مِنْ أَكْبَرِ ذَلِكَ وَأَهَمِّهِ وَأَعَمِّهِ فَتْحًا فِي الْإِسْلَامِ.

L28816 And this is what he—peace be upon him—had forewarned of during that illness when he said to him, "You may linger so that some people benefit from you while others suffer harm because of you." And this contradicts their assertion.

وَهَذَا قَدْ أَنْذَرَ بِهِ - عَلَيْهِ السَّلَامُ - فِي ذَلِكَ الْمَرَضِ إِذْ قَالَ لَهُ: لَعَلَّك سَتُخَلَّفُ حَتَّى يَنْتَفِعَ بِك أَقْوَامٌ وَيُضَرَّ بِك آخَرُونَ - وَهَذَا خِلَافُ قَوْلِهِمْ.

L28817 The third consideration is that in the explicit text of the report we have just mentioned—transmitted through the chain of Ḥumayd ibn ʿAbd al-Raḥmān al-Ḥimyarī from three descendants of Saʿd, from Saʿd ibn Abī Waqqāṣ—it states: "The Messenger of Allah (peace and blessings be upon him) said to him on that day: 'Your giving of charity from your wealth is an act of *ṣadaqah*, your expenditure on your family is an act of *ṣadaqah*, and whatever your wife consumes from your wealth is an act of *ṣadaqah*.'"

وَالْوَجْهُ الثَّالِثُ أَنَّ فِي نَصِّ الْخَبَرِ الَّذِي ذَكَرْنَا الْآنَ إسْنَادُهُ مِنْ طَرِيقِ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيِّ عَنْ ثَلَاثَةٍ مِنْ وَلَدِ سَعْدٍ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ، «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ يَوْمَئِذٍ: إنَّ صَدَقَتَك مِنْ مَالِك صَدَقَةٌ وَإِنَّ نَفَقَتَك عَلَى عِيَالِك صَدَقَةٌ وَإِنَّ مَا تَأْكُلُ امْرَأَتُك مِنْ مَالِك صَدَقَةٌ» .

L28818 Ali said: All of this is by consensus among us, them, and all Muslims—that [the ruling] is from the sick person's capital, whether he dies or survives. Thus it is established with indubitable certainty that the charity of a sick person is taken from his capital, not from a third of it, by the explicit textual ruling of the Prophet (peace be upon him). Whatever contradicts this is invalidated with unambiguous certainty, and this narration has now become the most decisive evidence against them and the clearest proof for our position—and all praise is due to Allah, Lord of the worlds.

قَالَ عَلِيٌّ: وَهَذَا كُلُّهُ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ، وَمِنْ جَمِيعِ أَهْلِ الْإِسْلَامِ مِنْ رَأْسِ مَالِ الْمَرِيضِ - مَاتَ أَوْ عَاشَ - فَثَبَتَ يَقِينًا ضَرُورِيًّا: أَنَّ صَدَقَةَ الْمَرِيضِ خَارِجَةٌ مِنْ رَأْسِ مَالِهِ، لَا مِنْ ثُلُثِهِ بِنَصِّ حُكْمِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبَطَلَ مَا خَالَفَ هَذَا بِيَقِينٍ لَا إشْكَالَ فِيهِ، وَعَادَ هَذَا الْخَبَرُ أَعْظَمَ حُجَّةً عَلَيْهِمْ، وَأَوْضَحَ حُجَّةً لِقَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28819 As for the report regarding Abū Bakr's discretionary gift (nahl) to ʿĀ'ishah (may Allah be pleased with them), their citation of it constitutes the scandal of the age, for it contains no mention whatsoever of a deathbed gift—neither explicitly nor implicitly. Rather, he had granted her that gift during his good health, and its renewal was delayed due to his illness until his death (may Allah be pleased with him). How can this be cited when it is authentically established—may Allah be pleased with him—that he sought her consent to revoke that gift?

وَأَمَّا خَبَرُ أَبِي بَكْرٍ فِي نَحْلِهِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهُمَا - فَإِيرَادُهُمْ إيَّاهُ فَضِيحَةُ الدَّهْرِ، لِأَنَّهُ لَيْسَ فِيهِ مِنْ هِبَةِ الْمَرِيضِ ذِكْرٌ أَصْلًا، لَا بِنَصٍّ وَلَا بِدَلِيلٍ، وَإِنَّمَا كَانَ نَحَلَهَا ذَلِكَ فِي صِحَّتِهِ وَتَأَخَّرَ جِدَادُهَا لِذَلِكَ إلَى أَنْ مَاتَ - رَضِيَ اللَّهُ عَنْهُ - فَكَيْفَ وَقَدْ صَحَّ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ رَغِبَ إلَيْهَا فِي رَدِّ تِلْكَ النِّحْلَةِ بِرِضَاهَا.

فَكَيْفَ وَإِنَّمَا كَانَ وَعْدًا بِمَجْهُولٍ لَا يُدْرَى مِنْ كَمْ مِنْ نَخْلَةٍ تَجِدُ الْعِشْرِينَ وَسْقًا، وَلَا مِنْ أَيِّ تِلْكَ النَّخْلِ تَجِدُ؟ فَسَقَطَتْ الْأَقْوَالُ الْمَذْكُورَةُ بِيَقِينٍ لَا مِرْيَةَ فِيهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L28820 How then, when it was only an obligation tied to the unknown—it is not known from how many palm trees you would find the twenty *wasq*, nor from which of those palm trees you would find it? Thus, the aforementioned statements have been invalidated with certainty that admits no doubt—and all praise belongs to Allah, Lord of the worlds.

وَلَمْ يَبْقَ إِلَّا قَوْلُنَا، وَقَوْلُ أَبِي سُلَيْمَانَ: أَنَّ جَمِيعَ أَفْعَالِ الْمَرِيضِ مِنْ رَأْسِ مَالِهِ، إِلَّا الْعِتْقَ فَإِنَّهُ مِنْ الثُّلُثِ: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ ذَهَبَ إِلَى هَذَا.

L28821 No opinion remains except ours and that of Abū Sulaymān: all acts of a sick person are drawn from their capital, except manumission, which is taken from the third. We therefore examined the evidence cited by those who adopted this position.

فَوَجَدْنَا الْخَبَرَ الصَّحِيحَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَيُّوبَ السِّخْتِيَانِيِّ، وَمُحَمَّدِ بْنِ سِيرِينَ، كِلَاهُمَا: عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْمُهَلَّبِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ: «أَنَّ رَجُلًا مِنْ الْأَنْصَارِ أَعْتَقَ سِتَّةَ أَعْبُدٍ لَهُ عِنْدَ مَوْتِهِ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ فِيهِ قَوْلًا شَدِيدًا، ثُمَّ دَعَاهُمْ فَجَزَّأَهُمْ أَثْلَاثًا ثُمَّ أَقْرَعَ بَيْنَهُمْ، فَأَعْتَقَ اثْنَيْنِ وَأَرَقَّ أَرْبَعَةً» .

L28822–28824 We identified the authentic report narrated via the chain of Ayyub al-Sikhtiyānī and Muḥammad ibn Sīrīn, both of them from Abū Qilābah, from Abū al-Muhallab, from ʿImrān ibn al-Ḥuṣayn: that a man from the Anṣār emancipated six slaves of his at [text cut off]. Upon his death, he owned no property besides them. When this matter reached the Prophet (peace be upon him), he spoke harshly about it. He then summoned them, divided them into three equal parts, cast lots among them, freed two, and enslaved four.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ أَيُّوبَ، وَحَبِيبِ بْنِ الشَّهِيدِ، وَهِشَامِ بْنِ حَسَّانَ، وَيَحْيَى بْنِ عَتِيقٍ، كُلِّهِمْ: عَنْ ابْنِ سِيرِينَ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ كَمَا أَوْرَدْنَا.

L28825 We have also transmitted it: through the chain of Ayyūb, Ḥabīb ibn al-Shahīd, Hishām ibn Ḥassān, and Yaḥyā ibn ʿAṭīq—all of them: from Ibn Sīrīn, from ʿImrān ibn al-Ḥuṣayn, as we have presented.

وَسَمَاعُ ابْنِ سِيرِينَ مِنْ عِمْرَانَ صَحِيحٌ.

L28826 Ibn Sirin's hearing from ʿImran is authentic.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ عَوْفِ بْنِ أَبِي جَمِيلَةَ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ.

L28827 It was also narrated to us through the chain of ʿAwf ibn Abī Jamīlah from Ibn Sīrīn from Abū Hurayrah.

قَالَ أَبُو مُحَمَّدٍ: فَقُلْنَا: هَذَا خَبَرٌ صَحِيحٌ لَا تَحِلُّ مُخَالَفَتُهُ إِلَّا أَنَّهُ لَا يَحِلُّ لِلْحَنَفِيِّينَ، وَلَا لِلْمَالِكِيِّينَ - وَلَا لِلشَّافِعِيِّينَ: الْحُجَّةُ بِهِ أَصْلًا، فِيمَا عَدَا الْعِتْقِ؛ لِأَنَّهُ قِيَاسٌ، وَالْقِيَاسُ بَاطِلٌ كُلُّهُ.

L28828 Abu Muhammad said: We stated: This is an authentic report that may not be contravened. However, it is impermissible for the Ḥanafīs, nor the Mālikīs, nor the Shāfiʿīs to employ it as a foundational proof in any matter apart from manumission, for it constitutes analogy, and all analogy is wholly invalid.

L28829 Just as they did not differ regarding the prohibition of applying analogy to the established report concerning the valuation imposed on one who manu-

كَمَا لَمْ يَخْتَلِفُوا فِي أَنَّهُ لَا يَحِلُّ أَنْ يُقَاسَ عَلَى الْخَبَرِ الثَّابِتِ فِي التَّقْوِيمِ عَلَى مَنْ أَعْتَقَ شِرْكًا لَهُ فِي مَمْلُوكٍ وَأَنَّهُ لَا يَجُوزُ أَنْ يَتَعَدَّى بِهِ مَا جَاءَ فِيهِ مِنَ الْعِتْقِ خَاصَّةً: لَا إِلَى صَدَقَةٍ، وَلَا إِلَى إِنْفَاقٍ، وَلَا إِلَى إِصْدَاقٍ، وَلَا إِلَى غَيْرِ ذَلِكَ، لَا سِيَّمَا وَالْحَنَفِيُّونَ قَدْ خَالَفُوا نَصَّهُ فِيمَا جَاءَ فِيهِ، فَكَيْفَ يَحْتَجُّونَ بِهِ فِيمَا لَيْسَ فِيهِ مِنْهُ أَثَرٌ، وَهَذَا عَارٌ جِدًّا.

mits his shared portion in a slave, and that it is impermissible to extend this ruling beyond the specific case of manumission mentioned in the text—not to charity, nor to general maintenance, nor to dowry, nor to anything else—especially given that the Ḥanafīs themselves have contradicted its explicit ruling in the very matters it addresses, how then can they cite it as evidence in matters where no precedent of it exists? This constitutes a glaring contradiction.

L28830 وَأَمَّا أَصْحَابُنَا: فَلَيْسَ لَهُمْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ هَذَا الْخَبَرِ: أَنَّ الرَّجُلَ كَانَ مَرِيضًا، وَإِنَّمَا فِيهِ «عِنْدَ مَوْتِهِ» وَقَدْ يُفْجَأُ الْمَوْتُ الصَّحِيحَ فَيُوقِنُ بِهِ، فَلَا يَحِلُّ أَنْ يُقْحَمَ فِي الْخَبَرِ مَا لَيْسَ فِيهِ مِنْ ذِكْرِ الْمَرَضِ - فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

As for our scholarly companions, they have no valid proof in this matter, because there is nothing in any part of this narration indicating that the man was ill. It merely states “at the time of his death,” for death may suddenly come upon a healthy person, leading him to certainty of its occurrence. Therefore, it is impermissible to insert into the narration what is not mentioned therein—the mention of illness. Thus, their reliance upon it is invalidated.

L28831 وَأَيْضًا: فَقَدْ بَيَّنَّا قَبْلُ أَنَّ هَذَا الْعِتْقَ لِلسِّتَّةِ الْأَعْبُدِ إِنَّمَا كَانَ وَصِيَّةً -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الْوَهَّابِ الثَّقَفِيِّ عَنْ أَيُّوبَ بِالْإِسْنَادِ الْمَذْكُورِ، وَفِي هَذَا كِفَايَةٌ.

Moreover, we have previously clarified that this emancipation of the six slaves was indeed a bequest, as narrated to us through ʿAbd al-Wahhāb al-Thaqafī from Ayyūb with the mentioned chain, and this suffices.

L28832 وَوَجْهٌ ثَالِثٌ: هُوَ أَنَّهُ قَدْ بَيَّنَ ذَلِكَ الْخَبَرَ أَنَّهُ لَهُ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ، وَنَحْنُ نَقُولُ بِهَذَا حَقًّا، فَلَا يَجُوزُ لِأَحَدٍ عِتْقٌ فِي عَبْدٍ أَوْ عَبِيدٍ لَا مَالَ لَهُ غَيْرُهُ، يُنَفَّذُ مِنْ ذَلِكَ الْعِتْقِ مَا وَقَعَ فِيمَنْ بِهِ عَنْهُ غِنًى، وَيَبْطُلُ فِي مِقْدَارِ مَا لَا غِنًى بِهِ عَنْهُ.

A third perspective is that the report clarified there existed no property for him other than them, and we genuinely uphold this ruling. Thus, it is impermissible for one to enact manumission concerning a slave or slaves when possessing no other wealth. The portion of manumission applicable to those through whom sufficient means are provided shall be implemented, while it becomes void to the extent of that which does not furnish sufficiency through itself.

L28833 فَلَوْ صَحَّ أَنَّ ذَلِكَ الْفِعْلَ لَمْ يَكُنْ وَصِيَّةً لَكَانَ حَمْلُ الْحَدِيثِ عَلَى هَذَا الْوَجْهِ أَحَقَّ بِظَاهِرِهِ، وَأَوْلَى مِنْ حَمْلِهِ عَلَى أَنَّهُ - عَلَيْهِ السَّلَامُ - أَجَازَ لِلْمَرِيضِ ثُلُثَ مَالِهِ، إِذْ لَيْسَ فِي الْخَبَرِ دَلِيلٌ - عَلَى هَذَا أَصْلًا.

If it were established that this act was not a bequest, interpreting the hadith according to this perspective would be more appropriate to its apparent meaning and preferable to interpreting it as him (peace be upon him) permitting the sick person to dispose of a third of his wealth, since there is no evidence in the report supporting this whatsoever.

L28834–28835 فَبَطَلَ تَعَلُّقُ أَصْحَابِنَا بِهَذَا الْخَبَرِ جُمْلَةً، وَصَحَّ قَوْلُنَا - وَلِلَّهِ الْحَمْدُ.

Therefore, the reliance of our companions upon this report has been entirely voided, and our position is validated. All praise is due to Allah.

L28836 Similarly, the discarded report we narrated through the chain of Saʿīd ibn

Manṣūr—who reported to us: Hushaym informed us: I am Khālid, from Abī Qilābah—from a man of Banū ʻUdhrah: A man among them manumitted his slave upon his death, having no property other than him. This matter was presented to the Messenger of Allah—peace and blessings be upon him—so he manumitted one-third of the slave and commanded him to earn the remaining two-thirds. The ruling concerning this report—even if it were authentic—would align with the ruling regarding the report of ʻImrān. How then, when it is invalid? For it is mursal and narrated from an unknown individual whose identity is also undetermined.

L28837 As for what is narrated regarding that from Ali and Ibn Mas'ud, it is baseless and unauthenticated. This is because when Abdullah—may Allah be pleased with him—died, al-Qasim's father Abd al-Rahman was six years old. How, then, could al-Qasim—his son—have existed? Moreover, the narration comes either through al-Hajjaj ibn Arta'ah—who is abandoned (as a narrator)—or through Abd al-Rahman ibn Abdullah—who is unknown—both narrating from al-Qasim.

L28838 As for the narration attributed to ʿAlī: it is transmitted through the chain of al-Ḥajjāj ibn Arṭaḥ—who is discredited—moreover, it is mursal, since al-Ḥasan did not hear a single word from ʿAlī. Thus, it becomes invalid for there to exist a sound report from the Companions—may Allah be pleased with them—that contradicts our position. All praise is due to Allah, Lord of all creation.

L28839–28840 **The issue of a Muslim who spends two nights without having a pledge of allegiance incumbent upon him toward the Imam.**

L28841 The Book of Imamate 1773 - An Issue: It is not permissible for a Muslim to spend two nights without having a pledge of allegiance to the Imam upon his neck, based on what we have reported through the chain of Muslim, who said: Ubayd Allāh ibn Muʿādh al-ʿAnbarī narrated to us from his father, who narrated from ʿĀṣim ibn Muḥammad ibn Zayd ibn ʿAbd Allāh ibn ʿUmar ibn al-Khaṭṭāb from Nāfiʿ, who said: ʿUmar told me, "I heard Allah's Messenger

وَكَذَلِكَ الْخَبَرُ السَّاقِطُ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا خَالِدٌ عَنْ أَبِي قِلَابَةَ «عَنْ رَجُلٍ مِنْ بَنِي عُذْرَةَ أَنَّ رَجُلًا مِنْهُمْ أَعْتَقَ غُلَامًا لَهُ عِنْدَ مَوْتِهِ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ فَرُفِعَ ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَعْتَقَ مِنْهُ الثُّلُثَ وَاسْتَسْعَى فِي الثُّلُثَيْنِ» ، فَالْقَوْلُ فِي هَذَا الْخَبَرِ - وَلَوْ صَحَّ - كَالْقَوْلِ فِي خَبَرِ عِمْرَانَ، فَكَيْفَ وَهُوَ بَاطِلٌ؛ لِأَنَّهُ مُرْسَلٌ، وَعَنْ مَجْهُولٍ لَا يُدْرَى مَنْ هُوَ أَيْضًا.

وَأَمَّا مَا رُوِيَ فِي ذَلِكَ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ فَبَاطِلٌ لَا يَصِحُّ؛ لِأَنَّ الْقَاسِمَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ كَانَ لِأَبِيهِ إذْ مَاتَ عَبْدُ اللَّهِ - رَضِيَ اللَّهُ عَنْهُ - سِتُّ سِنِينَ فَكَيْفَ ابْنُهُ؟ ثُمَّ هُوَ أَيْضًا عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ - أَوْ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ - وَهُوَ مَجْهُولٌ - عَنْ الْقَاسِمِ.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ: فَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ - ثُمَّ هِيَ مُرْسَلَةٌ، لِأَنَّ الْحَسَنَ لَمْ يَسْمَعْ مِنْ عَلِيٍّ كَلِمَةً - فَبَطَلَ أَنْ يَصِحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُ قَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَةُ الْمُسْلِمِ يبيت ليلتين لَيْسَ فِي عنقه للإمام بيعة]

كِتَابُ الْإِمَامَةِ ١٧٧٣ - مَسْأَلَةٌ: لَا يَحِلُّ لِمُسْلِمٍ أَنْ يَبِيتَ لَيْلَتَيْنِ لَيْسَ فِي عُنُقِهِ لِإِمَامٍ بَيْعَةٌ لِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ قَالَ: نا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ نا أَبِي قَالَ: نا عَاصِمُ بْنُ مُحَمَّدِ بْنِ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ نَافِعٍ قَالَ: قَالَ لِي عُمَرُ " سَمِعْت

- peace and blessings be upon him - say: 'Whoever withdraws his hand from obedience will meet Allah on the Day of Resurrection without any proof, and whoever dies without having a pledge of allegiance upon his neck dies a death of Jahiliyyah.'"[4]

L28842 If it is said: Umar—may Allah be pleased with him—died and established the caliphate as a shura among six men: Uthman, Ali, Abd al-Rahman ibn Awf, Sa'd ibn Abi Waqqas, Talhah, and al-Zubayr—may Allah be pleased with them—and he commanded them to deliberate for three days regarding which of them should be appointed.

L28843 We said: Yes, and there is no disagreement in this matter regarding the command of the Messenger of Allah (peace and blessings of Allah be upon him) that we mentioned, because ʿUmar (may Allah be pleased with him) appointed one of them as his successor (a matter they agreed upon), so ʿUthmān thus became the caliph from the moment of ʿUmar's death. The people during those three days were in the same situation as someone distant from the caliph's city who did not know him by name or sight except after a period. Thus, he acknowledged his imamate and pledge of allegiance—even without knowing him by name, lineage, or sight—and success is from Allah, the Exalted.

L28844 **It is a juristic issue that the caliphate is not permissible except for a man from Quraysh.**

L28845 The caliphate is not permissible except for a man from Quraysh of pure Qurayshī lineage through both parents, being a descendant of Fihr ibn Malik through his fathers.

L28846–28847 It is not permissible for one who has not attained legal maturity—even if he is from Quraysh—nor for their ally, nor for their freed slave, nor for one whose mother is from them while his father is from others. It was reported to us through the chain of Muslim: Aḥmad ibn Yūnus narrated to us, stating: ʿĀṣim ibn Muḥammad ibn Zayd ibn ʿAbd Allāh ibn ʿUmar narrated from his father, who said: ʿAbd Allāh ibn ʿUmar said: The Messenger of Allah—peace

[4] **Hadith references (L28841):** Sahih Muslim 1851a.

رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ خَلَعَ يَدًا مِنْ طَاعَةٍ لَقِيَ اللَّهَ يَوْمَ الْقِيَامَةِ لَا حُجَّةَ لَهُ وَمَنْ مَاتَ وَلَيْسَ فِي عُنُقِهِ بَيْعَةٌ مَاتَ مِيتَةً جَاهِلِيَّةً» .

فَإِنْ قِيلَ: قَدْ مَاتَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - وَجَعَلَ الْخِلَافَةَ شُورَى فِي سِتَّةِ نَفَرٍ: عُثْمَانُ، وَعَلِيٌّ، وَعَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ، وَسَعْدُ بْنُ أَبِي وَقَّاصٍ، وَطَلْحَةُ، وَالزُّبَيْرُ - رَضِيَ اللَّهُ عَنْهُمْ - وَأَمَرَهُمْ أَنْ يَتَشَاوَرُوا ثَلَاثَةَ أَيَّامٍ فِي أَيِّهِمْ يُوَلَّى.

قُلْنَا: نَعَمْ، وَلَيْسَ فِي هَذَا خِلَافٌ لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا، لِأَنَّهُ - رَضِيَ اللَّهُ عَنْهُ - اسْتَخْلَفَ أَحَدَهُمْ - وَهُوَ الَّذِي يَتَّفِقُونَ عَلَيْهِ - فَعُثْمَانُ هُوَ الْخَلِيفَةُ مِنْ حِينِ مَوْتِ عُمَرَ وَالنَّاسُ تِلْكَ الثَّلَاثَةَ الْأَيَّامِ بِمَنْزِلَةِ مَنْ بَعُدَ عَنْ بَلَدِ الْخَلِيفَةِ فَلَمْ يَعْلَمْهُ بِاسْمِهِ وَلَا بِعَيْنِهِ إِلَّا بَعْدَ مُدَّةٍ فَهُوَ مُعْتَقِدٌ لِإِمَامَتِهِ وَبَيْعَتِهِ - وَإِنْ لَمْ يَعْلَمْهُ بِاسْمِهِ وَلَا بِنَسَبِهِ وَلَا بِعَيْنِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة لَا تَحِلُّ الْخِلَافَةُ إِلَّا لِرَجُلٍ مِنْ قُرَيْشٍ]

١٧٧٤ - مَسْأَلَةٌ: وَلَا تَحِلُّ الْخِلَافَةُ إِلَّا لِرَجُلٍ مِنْ قُرَيْشٍ صَلِيبَةً، مِنْ وَلَدِ فِهْرِ بْنِ مَالِكٍ مِنْ قِبَلِ آبَائِهِ.

وَلَا تَحِلُّ لِغَيْرِ بَالِغٍ - وَإِنْ كَانَ قُرَشِيًّا - وَلَا لِحَلِيفٍ لَهُمْ، وَلَا لِمَوْلًى لَهُمْ، وَلَا لِمَنْ أُمُّهُ مِنْهُمْ وَأَبُوهُ مِنْ غَيْرِهِمْ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَحْمَدُ بْنُ يُونُسَ قَالَ: نا عَاصِمُ بْنُ مُحَمَّدِ بْنِ زَيْدِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: قَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَزَالُ هَذَا الْأَمْرُ فِي قُرَيْشٍ مَا بَقِيَ مِنَ النَّاسِ اثْنَانِ» .

and blessings be upon him—said: “The authority of governance shall remain with Quraysh so long as two individuals remain among mankind.”[5]

L28848 And via the chain of Al-Bukhari: Abu al-Yaman narrated to us, from Shu’ayb—who is Ibn Abi Hamzah—who narrated from al-Zuhri: that Muhammad ibn Jubayr ibn Mut’im used to narrate from Mu’awiyah that he said: I heard the Messenger of Allah—peace be upon him—say: “Indeed, this authority rests with Quraysh. No one opposes them except that Allah cast him down upon his face, so long as they establish the religion.”

وَمِنْ طَرِيقِ الْبُخَارِيِّ، نا أَبُو الْيَمَانِ أَنَا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ عَنِ الزُّهْرِيِّ: أَنَّ مُحَمَّدَ بْنَ جُبَيْرِ بْنِ مُطْعِمٍ كَانَ يُحَدِّثُ عَنْ مُعَاوِيَةَ أَنَّهُ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّ هَذَا الْأَمْرَ فِي قُرَيْشٍ لَا يُعَادِيهِمْ أَحَدٌ إِلَّا أَكَبَّهُ اللَّهُ عَلَى وَجْهِهِ مَا أَقَامُوا الدِّينَ» .

L28849 Abu Muhammad said: The narration of Ibn Umar is more comprehensive than that of Muʿāwiyah. These two narrations—though phrased as reports—are in reality a sound and emphatic ruling. For if it were permissible for authority to exist outside the Quraysh, it would amount to a denial of the Prophet’s narration—peace and blessings be upon him—and this constitutes an act of disbelief by whoever permits it.

قَالَ أَبُو مُحَمَّدٍ: حَدِيثُ ابْنِ عُمَرَ أَعَمُّ مِنْ حَدِيثِ مُعَاوِيَةَ، وَهَذَانِ الْخَبَرَانِ - وَإِنْ كَانَا بِلَفْظِ الْخَبَرِ - فَهُمَا أَمْرٌ صَحِيحٌ مُؤَكَّدٌ، إِذْ لَوْ جَازَ أَنْ يُوجَدَ الْأَمْرُ فِي غَيْرِ قُرَيْشٍ لَكَانَ تَكْذِيبًا لِخَبَرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا كُفْرٌ مِمَّنْ أَجَازَهُ.

L28850 It is correct that whoever assumes the titles of authority and caliphate without being from Quraysh is neither a caliph, nor an imam, nor one of those in authority, nor does he possess any authority. Such a person is a transgressing sinner, disobedient to Allah the Exalted, as are all who aid him or are content with his authority, for they have transgressed the boundaries set by Allah the Exalted upon the tongue of the Messenger of Allah—may Allah’s peace and blessings be upon him.

فَصَحَّ أَنَّ مَنْ تَسَمَّى بِالْأَمْرِ وَالْخِلَافَةِ مِنْ غَيْرِ قُرَيْشٍ فَلَيْسَ خَلِيفَةً، وَلَا إمَامًا وَلَا مِنْ أُولِي الْأَمْرِ، وَلَا أَمْرَ لَهُ -: فَهُوَ فَاسِقٌ عَاصٍ لِلَّهِ تَعَالَى، هُوَ وَكُلُّ مَنْ سَاعَدَهُ أَوْ رَضِيَ أَمْرَهُ، لِتَعَدِّيهِمْ حُدُودَ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L28851 And whoever is an ally, a client, or one whose father is from other than Quraysh: he is not genealogically Quraysh by definitive proof. He is only ascribed to them due to his affiliation under their protection. Since he is not of Quraysh in reality, nor by any specific consideration, nor in an absolute sense, he has no rightful claim to leadership.

وَمَنْ كَانَ حَلِيفًا أَوْ مَوْلًى أَوْ أَبُوهُ مِنْ غَيْرِ قُرَيْشٍ: فَإِنَّهُ لَيْسَ مِنْ قُرَيْشٍ بِيَقِينِ الْحِسِّ وَإِنَّمَا نُسِبَ إلَيْهِمْ لِاسْتِضَافَتِهِ إلَيْهِمْ، وَإِذْ لَيْسَ مِنْ قُرَيْشٍ عَلَى الْحَقِيقَةِ، وَلَا عَلَى جِهَةٍ، وَلَا عَلَى الْإِطْلَاقِ، فَلَا حَقَّ لَهُ فِي الْأَمْرِ.

L28852 As for those who have not reached puberty and women, this is based on the Prophet’s statement—may Allah bless him and his family and grant him peace—“The pen is lifted from three,” wherein he mentioned “the child until he reaches puberty.”

وَأَمَّا مَنْ لَمْ يَبْلُغْ، وَالْمَرْأَةُ، فَلِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ» فَذَكَرَ «الصَّبِيَّ حَتَّى يَبْلُغَ» .

[5] **Hadith references (L28847):** Sahih Muslim 1820.

L28853 Because contracts in Islam are under the authority of the Caliph, there is no valid contract for a boy who has not reached puberty, nor can any contract be enforced against him.

وَلِأَنَّ عُقُودَ الْإِسْلَامِ إلَى الْخَلِيفَةِ - وَلَا عَقْدَ لِغُلَامٍ لَمْ يَبْلُغْ وَلَا عَقْدَ عَلَيْهِ.

L28854–28856 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Wuḥayb ibn Masarrata informed us: Ibn Waḍḍāḥ informed us: Abū Bakr ibn Abī Shaybah informed us. From Abu Dawud al-Tayalisi, from Uyaynah ibn Abd al-Rahman, from his father, from Abu Bakrah, who said: “I heard the Messenger of Allah (peace be upon him) say: ‘No community that entrusts its affairs to a woman as their leader will ever succeed.’”

وَقَدْ حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا وُهَيْبُ بْنُ مَسَرَّةَ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ عُيَيْنَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي بَكْرَةَ قَالَ " سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: «لَنْ يُفْلِحَ قَوْمٌ أَسْنَدُوا أَمْرَهُمْ إلَى امْرَأَةٍ» "

L28857 A jurisprudential question: It is impermissible for there to exist more than one imam in the world.

[مَسْأَلَة لَا يَحِلُّ أَنْ يَكُونَ فِي الدُّنْيَا إلَّا إمَامٌ وَاحِدٌ]

L28858 1775 - Issue: It is impermissible for there to exist in the world except a single Imam, and authority lies with the first to receive the pledge of allegiance. This is based on what we have narrated through Muslim’s transmission: Isḥāq ibn Ibrāhīm—who is Ibn Rāhwayh—and Zuhayr ibn Ḥarb both narrated to us from Jarīr, from al-Aʿmash, from Zayd ibn Wahb, from ʿAbd al-Raḥmān ibn ʿAbd Rabb al-Kaʿbah al-Ṣāʾidī, who said: I heard ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ say, “I heard the Messenger of Allah—peace and blessings be upon him and his family—say in a lengthy ḥadīth: ‘Whoever pledges allegiance to an Imam, giving him the clasp of his hand and the fruit of his heart, must obey him to the best of his ability. If another comes to dispute him, strike the neck of the other.’”

١٧٧٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ أَنْ يَكُونَ فِي الدُّنْيَا إلَّا إمَامٌ وَاحِدٌ، وَالْأَمْرُ لِلْأَوَّلِ بَيْعَةً -: لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - وَزُهَيْرُ بْنُ حَرْبٍ، كِلَاهُمَا سَمِعَ جَرِيرًا عَنْ الْأَعْمَشِ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ رَبِّ الْكَعْبَةِ الصَّائِدِيِّ أَنَّهُ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ عَمْرِو بْنَ الْعَاصِ يَقُولُ " إنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ فِي حَدِيثٍ طَوِيلٍ: «وَمَنْ بَايَعَ إمَامًا فَأَعْطَاهُ صَفْقَةَ يَدِهِ وَثَمَرَةَ قَلْبِهِ فَلْيُطِعْهُ إنْ اسْتَطَاعَ فَإِنْ جَاءَ آخَرُ يُنَازِعُهُ فَاضْرِبُوا عُنُقَ الْآخَرِ» .

L28859 And through the chain of Muslim: Uthman ibn Abi Shaybah narrated to me: Yunus ibn Abi Ya’fur narrated to us from his father from Arfajah ibn Shurayh, who said: I heard the Messenger of Allah - peace and blessings be upon him and his family - say: “Whoever comes to you while your affairs are united under one man, intending to break your staff or disperse your community, then kill him.”[6]

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا يُونُسُ بْنُ أَبِي يَعْفُورَ عَنْ أَبِيهِ عَنْ عَرْفَجَةَ - هُوَ ابْنُ شُرَيْحٍ - قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: «مَنْ أَتَاكُمْ وَأَمْرُكُمْ جَمِيعٌ عَلَى رَجُلٍ وَاحِدٍ يُرِيدُ أَنْ يَشُقَّ عَصَاكُمْ أَوْ يُفَرِّقَ جَمَاعَتَكُمْ فَاقْتُلُوهُ» .

L28860–28862 And from the transmission path of Muslim: Wahb ibn Baqiyyah al-Wasiti

[6] **Hadith references (L28859):** Sahih Muslim 1852c; Mishkat al-Masabih 3678.

narrated to me: Khalid ibn Abdullah [al-Tahhan] narrated to us from al-Jurayri, from Abu Naḍrah, from Abu Saʿid al-Khudri, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "If allegiance is pledged to his caliph, then kill the other one of the two."

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي وَهْبُ بْنُ بَقِيَّةَ الْوَاسِطِيُّ نا خَالِدُ بْنُ عَبْدِ اللَّهِ - هُوَ الطَّحَّانُ - عَنْ الْجُرَيْرِيِّ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا بُوِيعَ لِخَلِيفَتِهِ فَاقْتُلُوا الْآخَرَ مِنْهُمَا» .

L28863 And through him to Muslim: Muḥammad ibn Bashār informed us, Muḥammad ibn Jaʿfar informed us, Shuʿbah informed us from Furāt al-Qazzāz from Abū Ḥāzim, who said: I heard Abū Hurayrah narrating from the Prophet, peace and blessings be upon him and his family, that he said in his hadith: "There will be no prophet after me. There will be caliphs, and they will become numerous." They said, "What do you command us, O Messenger of God?" He said, "Fulfill the pledge to the first, then the first. Give them their due rights, for God will question them about what He entrusted to them."

وَبِهِ إلَى مُسْلِمٍ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ فُرَاتٍ الْقَزَّازِ عَنْ أَبِي حَازِمٍ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يُحَدِّثُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي حَدِيثِهِ: «أَنَّهُ لَا نَبِيَّ بَعْدِي وَسَتَكُونُ خُلَفَاءُ فَتَكْثُرُ قَالُوا: فَمَا تَأْمُرُنَا يَا رَسُولَ اللَّهِ؟ قَالَ: فُوا بِبَيْعَةِ الْأَوَّلِ فَالْأَوَّلِ، وَأَعْطُوهُمْ حَقَّهُمْ، فَإِنَّ اللَّهَ سَائِلُهُمْ عَمَّا اسْتَرْعَاهُمْ» .

Chapter on Enjoining Good and Forbidding Evil

[مَسْأَلَة الْأَمْرُ بِالْمَعْرُوفِ وَالنَّهْيُ عَنْ الْمُنْكَرِ]

L28865 1776. Issue: Enjoining good and forbidding evil is an obligatory duty upon every Muslim. If he can act with his hand, let him do so; if he cannot with his hand, then with his tongue; and if he cannot with his tongue, then with his heart—and that is obligatory. That is the weakest part of faith. If he does not do this, he has no faith.

١٧٧٦ - مَسْأَلَةٌ: وَالْأَمْرُ بِالْمَعْرُوفِ وَالنَّهْيُ عَنْ الْمُنْكَرِ فَرْضٌ عَلَى كُلِّ مُسْلِمٍ إنْ قَدَرَ بِيَدِهِ فَبِيَدِهِ وَإِنْ لَمْ يَقْدِرْ بِيَدِهِ فَبِلِسَانِهِ وَإِنْ لَمْ يَقْدِرْ بِلِسَانِهِ فَبِقَلْبِهِ وَلَا بُدَّ، وَذَلِكَ أَضْعَفُ الْإِيمَانِ، فَإِنْ لَمْ يَفْعَلْ فَلَا إيمَانَ لَهُ.

L28866 Whoever fears being killed, beaten, or losing wealth has an excuse permitting him only to denounce in his heart and to remain silent about enjoining good and forbidding evil.

وَمَنْ خَافَ الْقَتْلَ أَوْ الضَّرْبَ، أَوْ ذَهَابَ الْمَالِ، فَهُوَ عُذْرٌ يُبِيحُ لَهُ أَنْ يُغَيِّرَ بِقَلْبِهِ فَقَطْ وَيَسْكُتَ عَنْ الْأَمْرِ بِالْمَعْرُوفِ وَعَنْ النَّهْيِ عَنْ الْمُنْكَرِ فَقَطْ.

L28867 This does not permit him to assist—whether verbally or physically—in approving wrongdoing in any manner, based on the statement of Allah the Exalted: {If two factions of believers fight each other, reconcile between them. But if one aggresses against the other, fight the aggressing faction until it returns to Allah's command. If it returns, then reconcile between them with justice} [Al-Ḥujurāt: 9].[7]

وَلَا يُبِيحُ لَهُ ذَلِكَ: الْعَوْنُ بِلِسَانٍ، أَوْ بِيَدٍ عَلَى تَصْوِيبِ الْمُنْكَرِ أَصْلًا، لِقَوْلِ اللَّهِ تَعَالَى: {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ} [الحجرات: ٩] .

[7] **Qur'an references (L28867):** Qur'an 49:9 (Al-Hujurat).

L28868 And He, the Almighty and Majestic, has said: “Let there be among you a community calling to good, enjoining what is right, and forbidding what is wrong. And it is they who are the prosperous.” [Āl ʿImrān 3:104][8]

وَقَالَ عَزَّ وَجَلَّ: {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ} [آل عمران: ١٠٤] .

L28869–28871 And from the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to Muhammad ibn al-Muthanna and Muhammad ibn al-’Ala, Abu Kurayb. Ibn Abi Shaybah said: Waki’ narrated to us from Sufyan al-Thawri. Muhammad ibn al-Muthanna said: Muhammad ibn Ja’far narrated to us from Shu’bah. Then both Sufyan and Shu’bah concurred, each narrating from Qays ibn Muslim from Tariq ibn Shihab. Abu Kurayb said: Abu Mu’awiyah narrated to us from al-A’mash from Isma’il ibn Raja’ from his father. Then both Tariq and Raja’ concurred, each narrating from Abu Sa’id al-Khudri, who said: I heard the Messenger... Allah—peace and blessings of Allah be upon him—says: “Whoever among you witnesses a reprehensible act must change it with his hand. If he is unable, then with his tongue. If he is unable, then with his heart—and that is the weakest degree of faith.”[9]

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، لِمُحَمَّدِ بْنِ الْمُثَنَّى، وَمُحَمَّدِ بْنِ الْعَلَاءِ أَبُو كُرَيْبٍ قَالَ ابْنُ أَبِي شَيْبَةَ: نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَقَالَ مُحَمَّدُ بْنُ الْمُثَنَّى: نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ، ثُمَّ اتَّفَقَ سُفْيَانُ، وَشُعْبَةُ، كِلَاهُمَا عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ، وَقَالَ أَبُو كُرَيْبٍ: نا أَبُو مُعَاوِيَةَ نا الْأَعْمَشُ عَنْ إِسْمَاعِيلَ بْنِ رَجَاءٍ عَنْ أَبِيهِ، ثُمَّ اتَّفَقَ طَارِقٌ، وَرَجَاءُ، كِلَاهُمَا: عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ فَإِنْ لَمْ يَسْتَطِعْ فَبِقَلْبِهِ وَذَلِكَ أَضْعَفُ الْإِيمَانِ» .

L28872 From the chain of Muslim: ‘Amr al-Naqid, Abu Bakr ibn al-Nadr, and ‘Abd ibn Humayd (with his wording) narrated to us—all stating: Ya‘qub ibn Ibrahim ibn Sa‘d ibn Ibrahim ibn ‘Abd al-Rahman ibn ‘Awf narrated to us; from his father; from Salih ibn Kaysan; from al-Harith—that is, Ibn al-Fudayl al-Khitmi al-Ansari; from Ja‘far ibn ‘Abd Allah ibn al-Hakam; from ‘Abd al-Rahman ibn al-Miswar ibn Makhramah; from Abu Rafi‘, the freed slave of Allah’s Messenger (peace be upon him)—that ‘Abd Allah ibn Mas‘ud reported to him: “Allah’s Messenger (peace and blessings be upon him and his family) said: ’There is no prophet Allah sent to a nation before me except that he had devoted companions and followers from his community who adhered to his tradition and obeyed his command. Then after them arise untrustworthy successors who preach what they do not practice and act without being commanded. Whoever fights them physically is a believer; whoever opposes them with his tongue is a believer; and whoever rejects them in his heart is

وَمِنْ طَرِيقِ مُسْلِمٍ نا عَمْرٌو النَّاقِدُ، وَأَبُو بَكْرِ بْنُ النَّضْرِ، وَعَبْدُ بْنُ حُمَيْدٍ وَاللَّفْظُ لَهُ، قَالُوا كُلُّهُمْ: نا يَعْقُوبُ بْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نا أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ عَنِ الْحَارِثِ هُوَ ابْنُ الْفُضَيْلِ الْخِطْمِيُّ الْأَنْصَارِيُّ عَنْ جَعْفَرِ بْنِ عَبْدِ اللَّهِ بْنِ الْحَكَمِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْمِسْوَرِ بْنِ مَخْرَمَةَ عَنْ أَبِي رَافِعٍ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ حَدَّثَهُ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَا مِنْ نَبِيٍّ بَعَثَهُ اللَّهُ فِي أُمَّةٍ قَبْلِي إِلَّا كَانَ لَهُ مِنْ أُمَّتِهِ حَوَارِيُّونَ وَأَصْحَابٌ يَأْخُذُونَ بِسُنَّتِهِ وَيَقْتَدُونَ بِأَمْرِهِ ثُمَّ يَحْدُثُ مِنْ بَعْدِهِمْ خُلُوفٌ يَقُولُونَ مَا لَا يَفْعَلُونَ وَيَفْعَلُونَ مَا لَا يُؤْمَرُونَ فَمَنْ جَاهَدَهُمْ بِيَدِهِ فَهُوَ مُؤْمِنٌ وَمَنْ جَاهَدَهُمْ بِلِسَانِهِ فَهُوَ مُؤْمِنٌ وَمَنْ جَاهَدَهُمْ بِقَلْبِهِ فَهُوَ مُؤْمِنٌ لَيْسَ وَرَاءَ ذَلِكَ مِنَ الْإِيمَانِ حَبَّةُ خَرْدَلٍ» .

[8] **Qur’an references (L28868):** Qur’an 3:104 (Ali ’Imran).
[9] **Hadith references (L28869):** Sahih Muslim 49a; Riyad as-Salihin 184.

a believer. Beyond that, there remains not even a mustard seed's weight of faith.'"

L28873 Narrated by Muḥammad ibn Saʿīd ibn Nabāt, narrated by Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Baṣīr, narrated by Qāsim ibn Aṣbagh, narrated by Muḥammad ibn ʿAbd al-Salām al-Khushanī, narrated by Muḥammad al-Muthannā, narrated by ʿAbd al-Raḥmān ibn Mahdī, narrated by Sufyān al-Thawrī, narrated by Zubayd al-Yāmī, narrated by Saʿd ibn ʿUbaydah, narrated by ʿAlī ibn Abī Ṭālib, from the Prophet—may Allah's peace and blessings be upon him—who said: "No obedience is due to any created being in matters involving disobedience to Allah."

L28874 From the narration of Abī Dāwūd: Musaddad narrated to us from Yaḥyā ibn Saʿīd al-Qaṭṭān from ʿUbaydullāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar, who said: The Messenger of Allah (peace and blessings be upon him and his family and grant him peace) said: "Listening and obeying are obligatory for a Muslim in what he likes or dislikes, as long as he is not commanded to disobey [Allah]. If he is commanded to disobey, then there is no listening and no obeying."

L28875–28877 Via him to Abu Dawud, Yahya ibn Maʿin narrated to us, ʿAbd al-Samad ibn ʿAbd al-Warith narrated to us, Sulayman ibn al-Mughirah narrated to us. Humaid ibn Hilaal reported from Bishr ibn Asim from Uqbah ibn Malik from a man of his tribe, who said: "The Messenger of Allah (may blessings and peace be upon him and his family) sent out a detachment. I armed one of them with a sword. When they returned, he said: 'If only you had seen how the Messenger of Allah rebuked us! He said: "Were you incapable, after I sent a man who failed to execute my command, of replacing him with one who would execute my command?"'"

L28878 Abu Muhammad said: "Uqbah's status as a Companion is authenticated, and what is narrated from him is from a Companion—even if unnamed—for all Companions are deemed upright. Thus, when his companionship [with the Prophet] is confirmed, he is conclusively established as a just person (ʿadl),

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ زُبَيْدٍ الْيَامِيِّ عَنْ سَعْدِ بْنِ عُبَيْدَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا طَاعَةَ لِبَشَرٍ فِي مَعْصِيَةِ اللَّهِ»

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدٌ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «السَّمْعُ وَالطَّاعَةُ عَلَى الْمَرْءِ الْمُسْلِمِ فِيمَا أَحَبَّ أَوْ كَرِهَ مَا لَمْ يُؤْمَرْ بِمَعْصِيَةٍ فَإِذَا أُمِرَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ» .

وَبِهِ إِلَى أَبِي دَاوُد نا يَحْيَى بْنُ مَعِينٍ نا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ نا سُلَيْمَانُ بْنُ الْمُغِيرَةِ نا حُمَيْدُ بْنُ هِلَالٍ عَنْ بِشْرِ بْنِ عَاصِمٍ عَنْ عُقْبَةَ بْنِ مَالِكٍ عَنْ رَجُلٍ مِنْ رَهْطِهِ قَالَ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سَرِيَّةً فَسَلَحْتُ رَجُلًا مِنْهُمْ سَيْفًا فَلَمَّا رَجَعَ قَالَ: لَوْ رَأَيْتَ مَا لَامَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: أَعَجَزْتُمْ إِذْ بَعَثْتُ رَجُلًا فَلَمْ يَمْضِ لِأَمْرِي أَنْ تَجْعَلُوا مَكَانَهُ مَنْ يَمْضِي لِأَمْرِي» ".

قَالَ أَبُو مُحَمَّد: عُقْبَةُ صَحِيحُ الصُّحْبَةِ، وَالَّذِي رُوِيَ عَنْهُ صَاحِبٌ - وَإِنْ لَمْ يُسَمِّهِ - فَالصَّحَابَةُ كُلُّهُمْ عُدُولٌ، فَإِذَا ثَبَتَتْ صِحَّةُ صُحْبَتِهِ فَهُوَ عَدْلٌ مَقْطُوعٌ بِعَدَالَتِهِ، لِقَوْلِ اللَّهِ تَعَالَى: {مُحَمَّدٌ رَسُولُ اللَّهِ وَالَّذِينَ مَعَهُ أَشِدَّاءُ عَلَى الْكُفَّارِ} [الفتح: ٢٩] .

in accordance with Allah's decree: *{Muhammad is the Messenger of Allah, and those with him are resolute against the disbelievers}* [Al-Fatḥ: 29]."[10]

قَالَ عَلِيٌّ: وَكُلِّ مَنْ مَعَهُ مِنْ الصَّحَابَةِ وَأُمِّ الْمُؤْمِنِينَ وَطَلْحَةَ، وَالزُّبَيْرِ، وَكُلِّ مَنْ مَعَهُمْ مِنْ الصَّحَابَةِ، وَمُعَاوِيَةَ، وَكُلِّ مَنْ مَعَهُ مِنْ الصَّحَابَةِ، وَابْنِ الزُّبَيْرِ، وَالْحُسَيْنِ بْنِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْ جَمِيعِهِمْ - وَكُلِّ مَنْ قَامَ فِي الْحَرَّةِ مِنْ الصَّحَابَةِ، وَالتَّابِعِينَ، وَغَيْرِهِمْ.

L28879 Ali said: All those with him among the Companions, the Mother of the Believers, Talḥah, al-Zubayr, and their Companions, Muʿāwiyah and his Companions, Ibn al-Zubayr, al-Ḥusayn ibn ʿAli—along with all who took part in al-Ḥarrah among the Companions, the successors, and others—may Allah be pleased with all of them.

وَهَذَا الْأَحَادِيثُ نَاسِخَةٌ لِلْأَخْبَارِ الَّتِي فِيهَا خِلَافُ هَذَا، لِأَنَّ تِلْكَ مُوَافِقَةٌ لِمَا كَانَ عَلَيْهِ الدِّينُ قَبْلَ الْأَمْرِ بِالْقِتَالِ، وَلِأَنَّ الْأَمْرَ بِالْمَعْرُوفِ وَالنَّهْيَ عَنْ الْمُنْكَرِ بَاقٍ مُفْتَرَضٌ لَمْ يُنْسَخْ، فَهُوَ النَّاسِخُ لِخِلَافِهِ بِلَا شَكٍّ -.

L28880 These hadiths abrogate the reports that contradict this [ruling], because those [earlier reports] conform to the state of the religion prior to the command to fight, and because enjoining good and forbidding evil remain obligatory and have not been abrogated. Thus, it [enjoining good and forbidding evil] undoubtedly abrogates what contradicts it.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L28881 And success is by Allah, the Exalted.

[مَسْأَلَةُ صِفَةُ الْإِمَامِ]

An Issue: The Attribute of the Imam

١٧٧٧ - مَسْأَلَةٌ: وَصِفَةُ الْإِمَامِ أَنْ يَكُونَ مُجْتَنِبًا لِلْكَبَائِرِ، مُسْتَتِرًا بِالصَّغَائِرِ، عَالِمًا بِمَا يَخُصُّهُ، حَسَنُ السِّيَاسَةِ، لِأَنَّ هَذَا هُوَ الَّذِي كُلِّفَ - وَلَا مَعْنَى لِأَنْ يُرَاعَى أَنْ يَكُونَ غَايَةَ الْفَضْلِ، لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، فَإِنْ قَامَ عَلَى الْإِمَامِ الْقُرَشِيِّ مَنْ هُوَ خَيْرٌ مِنْهُ أَوْ مِثْلُهُ، أَوْ دُونَهُ: قُوتِلُوا كُلُّهُمْ مَعَهُ لِمَا ذَكَرْنَا قَبْلُ إلَّا أَنْ يَكُونَ جَائِرًا.

1777 - Issue: The qualifications of the Imam are that he must avoid major sins, be discreet about his minor sins, possess knowledge pertinent to his role, and exercise sound governance. This is because he is the one charged, and there is no basis to require him to epitomize absolute virtue, as neither the Quran nor the Sunnah stipulates this. If those who are superior, equal, or inferior to the Qurashi Imam rise against him, they must all be fought against in support of him for the reasons previously stated—unless it is permissible.

فَإِنْ كَانَ جَائِرًا فَقَامَ عَلَيْهِ مِثْلُهُ أَوْ دُونُهُ: قُوتِلَ مَعَهُ الْقَائِمُ، لِأَنَّهُ مُنْكَرٌ زَائِدٌ ظَهَرَ، فَإِنْ قَامَ عَلَيْهِ أَعْدَلُ مِنْهُ وَجَبَ أَنْ يُقَاتَلَ مَعَ الْقَائِمِ، لِأَنَّهُ تَغْيِيرُ مُنْكَرٍ.

L28884–28885 If it was permissible and someone of equal or lesser standing rose against him, the one who rose must be fought alongside, for it is an additional wrong that has become apparent. If someone more just than him rose against him, it is obligatory to fight alongside the one who rose, as this constitutes changing a wrong.

L28886 As for oppressors from non-Quraysh, it is not permissible to fight alongside

[10] **Qur'an references (L28878):** Qur'an 48:29 (Al-Fath).

any of them, for they are all people of evil—except if one of them is less oppressive, in which case fighting is done alongside him against someone more oppressive than him, based on what we have stated. Success is from Allah, the Exalted.

وَأَمَّا الْجَوَرَةُ مِنْ غَيْرِ قُرَيْشٍ فَلَا يَحِلُّ أَنْ يُقَاتَلَ مَعَ أَحَدٍ مِنْهُمْ؛ لِأَنَّهُمْ كُلُّهُمْ أَهْلُ مُنْكَرٍ، إِلَّا أَنْ يَكُونَ أَحَدُهُمْ أَقَلَّ جَوْرًا فَيُقَاتَلُ مَعَهُ مَنْ هُوَ أَجْوَرُ مِنْهُ، لِمَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.