

AL-MUHALLA

كِتَابُ النِّكَاحِ

The Book of Marriage

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

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The Book of Marriage

[كِتَابُ النِّكَاحِ]

L30127–30128

L30129 In the name of Allah, the Most Gracious, the Most Merciful. May Allah send blessings upon Muhammad and his family and grant him perfect peace. *The Book of Marriage* 1819 - **Issue**: It is obligatory upon every person capable of intercourse who finds the means to marry or take a concubine to fulfill one of these without fail. If he is unable to do so, he should fast abundantly.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ وَسَلَّمَ تَسْلِيمًا كِتَابُ النِّكَاحِ ١٨١٩ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ قَادِرٍ عَلَى الْوَطْءِ إنْ وَجَدَ مِنْ أَيْنَ يَتَزَوَّجُ أَوْ يَتَسَرَّى أَنْ يَفْعَلَ أَحَدَهُمَا وَلَا بُدَّ، فَإِنْ عَجَزَ عَنْ ذَلِكَ فَلْيُكْثِرْ مِنْ الصَّوْمِ.

L30130 The proof of this is what we have narrated through Bukhari's chain: ʻUmar ibn Hafs ibn Ghiyath reported to us, from his father, from Al-Aʻmash, from Ibrahim al-Nakhaʻi, from ʻAlqamah, who heard ʻAbdullah ibn Masʻud say: The Prophet, peace and blessings be upon him, said to us, "O young people, whoever among you can afford marriage, let him marry. Whoever cannot, let him take to fasting, for it is a restraint for him."[1]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي نا الْأَعْمَشُ نا إبْرَاهِيمُ النَّخَعِيُّ عَنْ عَلْقَمَةَ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ مَسْعُودٍ يَقُولُ: لَقَدْ قَالَ لَنَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمْ الْبَاءَةَ فَلْيَتَزَوَّجْ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ وِجَاءٌ» .

L30131–30133 And from the chain of Muslim: Muḥammad ibn Rāfiʻ narrated to us, Ḥujayn narrated to us, Muḥammad ibn al-Muthannā narrated to us, Layth (he is Ibn Saʻd) narrated to us, from ʻUqayl (he is Ibn Khālid) from Ibn Shihāb, who informed me that Saʻīd ibn al-Musayyab heard... Sa'd ibn Abi Waqqas said: "Uthman ibn Maẓʻūn sought to devote himself entirely to worship by abstaining from marriage, but the Messenger of Allah (peace and blessings be upon him and his family) forbade him." This is also narrated from a group of the Salaf (pious predecessors).

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا حُجَيْنٌ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلٍ - هُوَ ابْنُ خَالِدٍ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيِّبِ أَنَّهُ سَمِعَ سَعْدَ بْنَ أَبِي وَقَّاصٍ يَقُولُ: «أَرَادَ عُثْمَانُ بْنُ مَظْعُونٍ أَنْ يَتَبَتَّلَ فَنَهَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -» وَهُوَ قَوْلُ جَمَاعَةٍ مِنْ السَّلَفِ.

L30134 It was narrated to us via the route of Aḥmad ibn Shuʻayb: Muḥammad ibn ʿAbdillāh al-Balkhī narrated to us, from Abū Saʻīd, the client of Banī Hāshim, who narrated to us from Ḥuṣayn ibn Nāfiʻ al-Māzinī, who said: From al-Ḥasan al-Baṣrī, who reported from Saʻīd ibn Hishām ibn ʿĀmir that he asked Umm al-Muʾminīn (Mother of the Believers) ʿĀ'ishah—may Allah be pleased with her—about celibacy. She replied, "Do not do it. Have you not heard the statement of Allah the Exalted: *'And We have certainly sent messen-

رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْبَلْخِيُّ نا أَبُو سَعِيدٍ مَوْلَى بَنِي هَاشِمٍ نا حُصَيْنُ بْنُ نَافِعٍ الْمَازِنِيُّ قَالَ: نِي الْحَسَنُ الْبَصْرِيُّ عَنْ سَعِيدِ بْنِ هِشَامِ بْنِ عَامِرٍ أَنَّهُ سَأَلَ أُمَّ الْمُؤْمِنِينَ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - عَنْ التَّبَتُّلِ؟ فَقَالَتْ: لَا تَفْعَلْ أَمَا سَمِعْت قَوْلَ اللَّهِ تَعَالَى: {وَلَقَدْ أَرْسَلْنَا رُسُلا مِنْ قَبْلِكَ وَجَعَلْنَا لَهُمْ أَزْوَاجًا وَذُرِّيَّةً} [الرعد: ٣٨] فَلَا تَتَبَتَّلْ.

[1] **Hadith references (L30130):** Sahih al-Bukhari 5065; Sunan an-Nasai 3208.

gers before you and appointed for them wives and descendants’* [13:38]? Therefore, do not practice celibacy.”[2]

L30135 From Waki‘—who narrated from Sufyan Al-Thawri and Ibrahim ibn Maysarah, both of whom reported via Abdullah ibn Tawus from his father—that he said to a man: “You must marry, or I will surely say to you what ‘Umar said to Abu Al-Zawā’id: ’Nothing prevents you from marriage except incapacity or lewdness.’”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَإِبْرَاهِيمَ بْنِ مَيْسَرَةَ، كِلَاهُمَا عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ قَالَ لِرَجُلٍ: لَتَتَزَوَّجَنَّ أَوْ لَأَقُولَنَّ لَك مَا قَالَ عُمَرُ لِأَبِي الزَّوَائِدِ: مَا يَمْنَعُك مِنْ النِّكَاحِ إلَّا عَجْزٌ أَوْ فُجُورٌ.

L30136 Some people have cited as evidence in this disagreement the statement of Allah, the Exalted: {“and a leader and chaste”} [Āl ʿImrān: 39]. Abū Muḥammad said: This is no proof, for we did not command the chaste to marry; rather, we enjoined this on those capable of intercourse.[3]

وَقَدْ احْتَجَّ قَوْمٌ فِي الْخِلَافِ هَذَا بِقَوْلِ اللَّهِ تَعَالَى: {وَسَيِّدًا وَحَصُورًا} [آل عمران: ٣٩] ؟ قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ فِيهِ؛ لِأَنَّنَا لَمْ نَأْمُرْ الْحَصُورَ بِاتِّخَاذِ النِّسَاءِ، إنَّمَا أَمَرْنَا بِذَلِكَ مَنْ لَهُ قُوَّةٌ عَلَى الْجِمَاعِ.

L30137 They also embellished their argument with two reports—one of them being from the Prophet, peace and blessings of Allah be upon him: “The best among you regarding the two hundred is the unencumbered, adept one who has neither family nor children.”

وَمَوَّهُوا أَيْضًا بِخَبَرَيْنِ -: أَحَدُهُمَا - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «خَيْرُكُمْ فِي الْمِائَتَيْنِ الْخَفِيفُ الْحَاذِ الَّذِي لَا أَهْلَ لَهُ وَلَا وَلَدَ» .

L30138 The other: from the chain of Ḥudhayfah that he said, “If it is the year 105 AH, would it be better for one of you to raise a puppy than to raise a child?” Abū Muḥammad said: These two narrations are fabricated, as they are from the narration of Abū ʿIṣām Rawwād ibn al-Jarrāḥ al-ʿAsqalānī—and he is rejected in hadith—he is not cited as evidence.

وَالْآخَرُ: مِنْ طَرِيقِ حُذَيْفَةَ أَنَّهُ قَالَ «إذَا كَانَ سَنَةَ خَمْسٍ وَمِائَةٍ فَلَأَنْ يُرَبِّيَ أَحَدُكُمْ جَرْوَ كَلْبٍ خَيْرٌ مِنْ أَنْ يُرَبِّيَ وَلَدًا» ؟ قَالَ أَبُو مُحَمَّد: وَهَذَانِ خَبَرَانِ مَوْضُوعَانِ؛ لِأَنَّهُمَا مِنْ رِوَايَةِ أَبِي عِصَامٍ رَوَّادِ بْنِ الْجَرَّاحِ الْعَسْقَلَانِيِّ - وَهُوَ مُنْكَرُ الْحَدِيثِ - لَا يُحْتَجُّ بِهِ.

L30139 The clarification of their status is that if people were to adopt the aspects within them both that involve abandoning procreation, Islam, Jihad, and the Religion would be nullified, the people of disbelief would prevail—despite what these rulings entail of permitting the raising of dogs—thus the invalidity of the falsehood propagated by its proponents became undeniably evident. And success is from Allah, the Exalted.

وَبَيَانُ وَضْعِهِمَا: أَنَّهُ لَوْ اسْتَعْمَلَ النَّاسُ مَا فِيهِمَا مِنْ تَرْكِ النَّسْلِ لَبَطَلَ الْإِسْلَامُ، وَالْجِهَادُ، وَالدِّينُ، وَغَلَبَ أَهْلُ الْكُفْرِ مَعَ مَا فِيهِ مِنْ إبَاحَةِ تَرْبِيَةِ الْكِلَابِ، فَظَهَرَ فَسَادُ كَذِبِ رَوَّادٍ بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L30140–30141 Ali said: “That is not an obligation for women, based on the statement of

قَالَ عَلِيٌّ: وَلَيْسَ ذَلِكَ فَرْضًا عَلَى النِّسَاءِ، لِقَوْلِ اللَّهِ تَعَالَى عَزَّ وَجَلَّ: {وَالْقَوَاعِدُ مِنَ النِّسَاءِ اللاتِي لا يَرْجُونَ نِكَاحًا} [النور: ٦٠] .

[2] **Qur’an references (L30134):** Qur’an 13:38 (Ar-Ra’d).
[3] **Qur’an references (L30136):** Qur’an 3:39 (Ali ’Imran).

Allah, the Most High, the Exalted and Majestic: 'As for elderly women who no longer hope for marriage...' [An-Nur 24:60]."[4]

L30142 And for the authentic report from the Messenger of Allah—peace and blessings be upon him and his family—through the chain of Malik, from Abdullah ibn Abdullah ibn Jabir ibn Atik, from Atik ibn al-Harith ibn Atik, that Jabir ibn Atik informed him that the Messenger of Allah—peace and blessings be upon him and his family—said: "Martyrdom has seven types other than being killed in the cause of Allah." The Prophet—peace and blessings be upon him—listed among them: "And the woman who dies during pregnancy or childbirth is a martyr."

L30143 Abu Muhammad said: She is the one who dies during her postpartum period, and the one who dies as a virgin, not having been touched/had intercourse.

L30144 ## The issue of marrying more than four women.

L30145 1820: Issue: It is not permissible for anyone to marry more than four women, whether they are female slaves, free women, or a combination of both free women and female slaves.

L30146 The slave and the free person may make up [their fasts] whenever possible. The free person and the slave are equal in this matter, whether with necessity or without necessity.

L30147 It is more virtuous for the free man to exercise patience in abstaining from marrying the female slave.

L30148 The proof of that is the statement of Allah, the Exalted and Majestic: "Marry those women who seem good to you - two or three or four" [An-Nisa: 3][5]

L30149 Humaam from Abbas ibn Asbagh from Muhammad ibn Abd al-Malik ibn Ayman from Bakr ibn Hammad from Musaddad from Yazid from Ma'mar from al-Zuhri from Salim ibn Abd Allah ibn Umar from his father that Ghay-

وَلِلْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ جَابِرِ بْنِ عَتِيكٍ عَنْ عَتِيكِ بْنِ الْحَارِثِ بْنِ عَتِيكٍ أَنَّ جَابِرَ بْنَ عَتِيكٍ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «الشَّهَادَةُ سَبْعٌ سِوَى الْقَتْلِ فِي سَبِيلِ اللَّهِ فَذَكَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهَا: وَالْمَرْأَةُ تَمُوتُ بِجُمْعٍ شَهِيدَةٌ» .

قَالَ أَبُو مُحَمَّدٍ: وَهِيَ الَّتِي تَمُوتُ فِي نِفَاسِهَا، وَالَّتِي تَمُوتُ بِكْرًا لَمْ تُطْمَثْ.

[مَسْأَلَة التَّزَوُّج مِنْ أَكْثَر مِنْ أَرْبَعَة نِسْوَة]

١٨٢٠ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَزَوَّجَ أَكْثَرَ مِنْ أَرْبَعَةِ نِسْوَةٍ إمَاءٍ أَوْ حَرَائِرَ، أَوْ بَعْضُهُنَّ حَرَائِرُ وَبَعْضُهُنَّ إمَاءٌ.

وَيَتَسَرَّى الْعَبْدُ وَالْحُرُّ مَا أَمْكَنَهُمَا، الْحُرُّ وَالْعَبْدُ فِي ذَلِكَ سَوَاءٌ، بِضَرُورَةٍ وَبِغَيْرِ ضَرُورَةٍ.

وَالصَّبْرُ عَنْ تَزَوُّجِ الْأَمَةِ لِلْحُرِّ أَفْضَلُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ} [النساء: ٣] .

نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ بْنُ حَمَّادٍ نا مُسَدَّدٌ نا يَزِيدُ نا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّ غَيْلَانَ بْنَ سَلَمَةَ

[4]**Qur'an references (L30141):** Qur'an 24:60 (An-Nur).
[5]**Qur'an references (L30148):** Qur'an 4:3 (An-Nisa).

lan ibn Salamah embraced Islam while he had ten wives. The Messenger of Allah (peace be upon him and his family) said to him: “Choose four from among them.”

أَسْلَمَ وَعِنْدَهُ عَشْرُ نِسْوَةٍ، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «اخْتَرْ مِنْهُنَّ أَرْبَعًا» .

L30150–30151 If it is said: “Indeed, Ma‘mar erred in this ḥadīth and provided a chain of transmission for it?”

فَإِنْ قِيلَ: فَإِنَّ مَعْمَرًا أَخْطَأَ فِي هَذَا الْحَدِيثِ فَأَسْنَدَهُ؟

L30152 We said: Ma‘mar is trustworthy and reliable. Whoever claims he erred must furnish clear proof for that, and there is no way for him to do so.

قُلْنَا: مَعْمَرٌ ثِقَةٌ مَأْمُونٌ، فَمَنْ ادَّعَى عَلَيْهِ أَنَّهُ أَخْطَأَ فَعَلَيْهِ الْبُرْهَانُ بِذَلِكَ، وَلَا سَبِيلَ لَهُ إِلَيْهِ.

L30153 And also, there is no disagreement among the people of Islam that it is impermissible for anyone to marry more than four women. However, a group of the Rafidah—those for whom the contract of Islam is not valid—have opposed this ruling.

وَأَيْضًا -: فَلَمْ يَخْتَلِفْ فِي أَنَّهُ لَا يَحِلُّ لِأَحَدٍ زَوَاجُ أَكْثَرَ مِنْ أَرْبَعِ نِسْوَةٍ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ، وَخَالَفَ فِي ذَلِكَ قَوْمٌ مِنْ الرَّوَافِضِ لَا يَصِحُّ لَهُمْ عَقْدُ الْإِسْلَامِ.

L30154 The remaining aspects of this issue are: the marriage of the free man to the slave woman, how many wives the slave may marry, and whether the slave may own a concubine.

وَبَقِيَ مِنْ هَذِهِ الْمَسْأَلَةِ: نِكَاحُ الْحُرِّ الْأَمَةَ، وَكَمْ يَنْكِحُ الْعَبْدُ، وَهَلْ يَتَسَرَّى الْعَبْدُ؟

L30155 As for the marriage of a free man to a female slave, people have differed regarding this matter. It has been narrated from Ali—though unauthenticated—that it is not appropriate for a free man to marry a female slave when he possesses sufficient means to marry a free woman. If he does so, their marriage must be annulled.

فَأَمَّا نِكَاحُ الْحُرِّ الْأَمَةَ فَاخْتَلَفَ النَّاسُ فِي ذَلِكَ -: فَرُوِّينَا عَنْ عَلِيٍّ - وَلَمْ يَصِحَّ -: لَا يَنْبَغِي لِحُرٍّ أَنْ يَتَزَوَّجَ أَمَةً وَهُوَ يَجِدُ طَوْلًا يَتَزَوَّجُ بِهِ حُرَّةً، فَإِنْ فَعَلَ فُرِّقَ بَيْنَهُمَا.

L30156 From Ibn Abbas: Whoever possesses three hundred dirhams, Hajj becomes incumbent upon him and he is prohibited from marrying a bondwoman.

عَنْ ابْنِ عَبَّاسٍ: مَنْ مَلَكَ ثَلَاثَمِائَةِ دِرْهَمٍ وَجَبَ عَلَيْهِ الْحَجُّ، وَحَرُمَ عَلَيْهِ نِكَاحُ الْأَمَةِ.

L30157–30158 From Abu Hurairah and Ibn Abbas—though it is not authentically attributed to them—: “None fear marrying a female slave compared to adultery except a few.”

وَعَنْ أَبِي هُرَيْرَةَ، وَابْنِ عَبَّاسٍ - وَلَمْ يَصِحَّ عَنْهُمَا -: مَا إِنْ يَخَفْ نِكَاحَ الْأَمَةِ عَلَى الزِّنَا إِلَّا قَلِيلًا.

L30159 It is authentically narrated from Jabir ibn Abdullah: Whoever is capable of providing the dower of a free woman must not marry a slave woman, nor may a slave woman be married in precedence to a free woman, whereas a free woman may be married in precedence to a slave woman.

وَصَحَّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: مَنْ وَجَدَ صَدَاقَ حُرَّةٍ فَلَا يَنْكِحُ أَمَةً، وَلَا تُنْكَحُ الْأَمَةُ عَلَى الْحُرَّةِ، وَتُنْكَحُ الْحُرَّةُ عَلَى الْأَمَةِ.

L30160 From ‘Umar ibn al-Khaṭṭāb: Ya‘lā ibn Munabbih wrote to him inquiring

about a man married to two free wives and two female slaves. ‘Umar responded: “Divorce him from the two female slaves.”

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ كَتَبَ إِلَيْهِ يَعْلَى بْنُ مُنَبِّهٍ فِي رَجُلٍ تَحْتَهُ امْرَأَتَانِ حُرَّتَانِ، وَأَمَتَانِ مَمْلُوكَتَانِ؟ فَكَتَبَ إِلَيْهِ عُمَرُ: فَرِّقْ بَيْنَهُ وَبَيْنَ الْأَمَتَيْنِ.

L30161 From Ibn Abbas and Ibn Umar: They disliked a slave woman being married in addition to a free woman, thereby combining both as wives.

وَعَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ: أَنَّهُمَا كَرِهَا أَنْ تُنْكَحَ أَمَةٌ عَلَى حُرَّةٍ يَجْمَعُ بَيْنَهُمَا.

L30162 From Ibn Mas‘ud: A female slave is not to be married as a co-wife alongside a free woman, except [if the husband is] a male slave.

وَعَنْ ابْنِ مَسْعُودٍ: لَا تُنْكَحُ الْأَمَةُ عَلَى الْحُرَّةِ إِلَّا الْمَمْلُوكُ.

L30163 It is authentically reported that Ibn Abbas said: The marriage of a free woman while being married to a slave woman is the divorce of the slave woman. Al-Sha‘bi also states this view.

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ قَالَ: تَزْوِيجُ الْحُرَّةِ عَلَى الْأَمَةِ الْمَمْلُوكَةِ طَلَاقُ الْمَمْلُوكَةِ - وَبِهِ يَقُولُ الشَّعْبِيُّ.

L30164 It has been narrated to us from Mujāhid that he said: Among the concessions Allah, the Exalted, has granted this community is marrying a slave woman and a Christian woman, even if he is wealthy.

وَرُوِّينَا عَنْ مُجَاهِدٍ أَنَّهُ قَالَ: مِمَّا وَسَّعَ اللَّهُ تَعَالَى بِهِ عَلَى هَذِهِ الْأُمَّةِ نِكَاحُ الْأَمَةِ وَالنَّصْرَانِيَّةِ وَإِنْ كَانَ مُوسِرًا -.

L30165 And it was narrated to us from ʿAbd al-Razzāq that he said: “I asked Sufyān al-Thawrī about marriage to a slave woman.” He replied, “‘Alī saw no harm in it.”

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ قَالَ: سَأَلْت سُفْيَانَ الثَّوْرِيَّ عَنْ نِكَاحِ الْأَمَةِ؟ فَقَالَ: لَمْ يَرَ عَلِيٌّ بِهِ بَأْسًا.

L30166 Abū Muḥammad said: And this is the opinion of ʿUthmān al-Battī.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ.

L30167 Abu Hanifah said: It is permissible for a free Muslim with sufficient means and for a slave to marry a female slave, unless the free man has a free woman under his guardianship. He stated: If a free Muslim woman or a woman from the People of the Book is under his marital bond, it is entirely impermissible for him to marry a female slave—whether the free woman consents or not. If he does so, the marriage to the female slave is annulled. The same applies if he marries a female slave after having divorced his free wife three times, or fewer divorces, as long as she is in her waiting period.

وَقَالَ أَبُو حَنِيفَةَ: جَائِزٌ لِلْحُرِّ الْمُسْلِمِ وَاجِدِ الطَّوْلِ وَلِلْعَبْدِ أَنْ يَنْكِحَا الْأَمَةَ، إلَّا أَنْ يَكُونَ عِنْدَهُ حُرَّةٌ، قَالَ: فَإِنْ كَانَتْ فِي عِصْمَتِهِ حُرَّةٌ مُسْلِمَةٌ أَوْ كِتَابِيَّةٌ لَمْ يَجُزْ لَهُ نِكَاحُ الْأَمَةِ أَلْبَتَّةَ - لَا بِإِذْنِ الْحُرَّةِ وَلَا بِغَيْرِ إذْنِهَا - فَإِنْ فَعَلَ فُسِخَ نِكَاحُ الْأَمَةِ - وَكَذَلِكَ لَوْ تَزَوَّجَ أَمَةً وَقَدْ طَلَّقَ زَوْجَتَهُ الْحُرَّةَ ثَلَاثًا، أَوْ أَقَلَّ مَا دَامَتْ فِي عِدَّتِهَا.

L30168 It is permissible in his view to marry a free woman alongside a female slave, provided the total number of wives does not exceed four.

وَجَائِزٌ عِنْدَهُ نِكَاحُ الْحُرَّةِ عَلَى الْأَمَةِ مَا لَمْ يَتَجَاوَزْ بِالْجَمِيعِ أَرْبَعًا.

L30169 Malik said: It is not permissible for a free man to marry a slave woman

unless two conditions are simultaneously fulfilled: that he cannot afford the mahr of a free woman, and that he fears hardship [that may lead to sin]. If he marries the slave woman while already married to a free woman, the marriage to the slave woman is annulled.

وَقَالَ مَالِكٌ: لَا يَجُوزُ لِلْحُرِّ نِكَاحُ أَمَةٍ إِلَّا بِاجْتِمَاعِ الشَّرْطَيْنِ: أَنْ لَا يَجِدَ صَدَاقَ حُرَّةٍ، وَأَنْ يَخْشَى الْعَنَتَ، فَإِنْ تَزَوَّجَهَا عَلَى حُرَّةٍ فُسِخَ نِكَاحُ الْأَمَةِ.

L30170 Then he retracted from that and permitted marriage to a believing female slave, specifically for the poor man, the affluent free man, and the male slave.

ثُمَّ رَجَعَ عَنْ ذَلِكَ فَأَبَاحَ نِكَاحَ الْأَمَةِ الْمُؤْمِنَةِ خَاصَّةً لِلْفَقِيرِ وَلِلْمُوسِرِ الْحُرِّ وَالْعَبْدِ.

L30171–30172 If he is married to a free woman and then marries a slave woman while [still] married to her, the free woman is given the choice: she may remain with him or separate from him, as she decides.

قَالَ: فَإِنْ كَانَتْ عِنْدَهُ حُرَّةٌ فَتَزَوَّجَ أَمَةً عَلَيْهَا: خُيِّرَتْ الْحُرَّةُ، فَإِنْ شَاءَتْ أَقَامَتْ عِنْدَهُ، وَإِنْ شَاءَتْ فَارَقَتْهُ.

L30173 He said: If she consents to that, he may marry bondmaids to complete the total of four wives if he wishes, and the free woman has no choice to object thereafter.

قَالَ: فَإِنْ رَضِيَتْ بِذَلِكَ فَلَهُ أَنْ يَتَزَوَّجَ عَلَيْهَا تَمَامَ أَرْبَعٍ مِنْ الْإِمَاءِ إِنْ شَاءَ، وَلَا خِيَارَ لِلْحُرَّةِ بَعْدُ.

L30174 He said: A slave may marry a female slave in addition to a free woman.

قَالَ: وَيَتَزَوَّجُ الْعَبْدُ الْأَمَةَ عَلَى الْحُرَّةِ.

L30175 Al-Shafi'i said: It is not permissible for a free man who can afford the dowry for a free believing woman or a woman from the People of the Book to marry a slave woman. If he cannot afford a free woman and, along with that, fears dire difficulty, he may marry a single believing slave woman - no more than one.

قَالَ الشَّافِعِيُّ: لَا يَجُوزُ نِكَاحُ الْحُرِّ الْوَاجِدِ صَدَاقَ حُرَّةٍ مُؤْمِنَةٍ، أَوْ كِتَابِيَّةٍ لِأَمَةٍ، فَإِنْ لَمْ يَجِدْ طَوْلًا لِحُرَّةٍ - وَخَشِيَ مَعَ ذَلِكَ الْعَنَتَ - فَلَهُ نِكَاحُ أَمَةٍ مُؤْمِنَةٍ وَاحِدَةٍ، لَا أَكْثَرَ.

L30176 He once said: If a man cannot meet the dowry of a free Muslim woman but finds the dowry of a free Kitābī woman, he may marry a Muslim slave woman.

وَقَالَ مَرَّةً: إِنْ لَمْ يَجِدْ صَدَاقَ حُرَّةٍ مُسْلِمَةٍ وَوَجَدَ صَدَاقَ حُرَّةٍ كِتَابِيَّةٍ، فَلَهُ نِكَاحُ الْأَمَةِ الْمُسْلِمَةِ.

L30177 Abu Muhammad said: As for the opinion of Abu Hanifa, it wholly lacks evidence. Even if some of it agrees with certain early scholars, it contradicts the opinions of the rest. No one's opinion holds more validity than another's unless based on clear evidence from the Qur'an or Sunnah.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَهُوَ عَارٍ مِنْ الْأَدِلَّةِ جُمْلَةً، وَإِنْ كَانَ قَدْ وَافَقَ فِي بَعْضِهِ بَعْضَ السَّلَفِ فَقَدْ خَالَفَ قَوْلَ سَائِرِهِمْ، وَلَيْسَ قَوْلُ أَحَدٍ بِأَوْلَى مِنْ قَوْلِ غَيْرِهِ إِلَّا بِبَيَانِ قُرْآنٍ أَوْ سُنَّةٍ.

L30178 As for Mālik's first opinion and the other opinion of Al-Shāfiʿī, one might presume they derive from the Quran. However, their two well-known positions contradict the Quran. This is because Mālik's ruling forbidding a free

وَأَمَّا قَوْلُ مَالِكٍ الْأَوَّلُ، وَقَوْلُ الشَّافِعِيِّ الْآخَرُ، فَقَدْ يُظَنُّ أَنَّهُمَا تَعَلَّقَا بِالْقُرْآنِ، وَأَمَّا قَوْلَاهُمَا الْمَشْهُورَانِ عَنْهُمَا، فَخِلَافٌ لِلْقُرْآنِ؛ لِأَنَّ قَوْلَ مَالِكٍ فِي مَنْعِ الْحُرِّ نِكَاحَ الْأَمَةِ

man to marry a slave woman if he is already married to a free woman—while permitting it if he is not married to a free woman, even if he possesses sufficient means to marry a Muslim free woman with his resources—is neither mandated by the Quranic verse in any way nor supported by any established Sunnah. The exception would be if he [Mālik]—along with Abū Ḥanīfah—relied on what we have reported through Saʿīd ibn Manṣūr's chain: Ismāʿīl ibn Ibrāhīm narrated to us from someone who heard Al-Ḥasan say, "The Messenger of Allah—peace and blessings be upon him—forbade marrying a slave woman alongside a free woman." Yet this chain is severed at two points and is unsound.

بِأَنْ تَكُونَ عِنْدَهُ حُرَّةٌ، وَإِبَاحَتُهُ لَهُ نِكَاحَ الْأَمَةِ إِذَا لَمْ تَكُنْ عِنْدَهُ حُرَّةٌ، وَإِنْ كَانَ مُسْتَطِيعًا لِطَوْلٍ يَنْكِحُ بِهِ الْحُرَّةَ الْمُسْلِمَةَ لَيْسَ تَقْتَضِيهِ الْآيَةُ أَصْلًا، وَلَا جَاءَتْ بِهِ سُنَّةٌ قَطُّ، إِلَّا أَنْ يَتَعَلَّقَ هُوَ وَأَبُو حَنِيفَةَ بِمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ عَمَّنْ سَمِعَ الْحَسَنَ يَقُولُ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُنْكَحَ الْأَمَةُ عَلَى الْحُرَّةِ» فَهَذَا مُنْقَطِعٌ فِي مَوْضِعَيْنِ هَالِكٌ.

L30179 Moreover, there is no choice of the free woman in it, as Mālik mentioned.

وَأَيْضًا - فَلَيْسَ فِيهِ تَخْيِيرُ الْحُرَّةِ كَمَا ذَكَرَ مَالِكٌ.

L30180 As for granting the free woman the choice to remain with her free husband or separate from him if he marries a slave woman in addition to her, this is an unsound opinion with no evidence supporting its validity, and we know of no one who held it before him.

وَأَمَّا تَخْيِيرُهُ الْحُرَّةَ فِي الْبَقَاءِ تَحْتَ زَوْجِهَا الْحُرِّ، أَوْ فِرَاقِهِ إِذَا تَزَوَّجَ عَلَيْهَا أَمَةً فَقَوْلٌ فَاسِدٌ لَا دَلِيلَ عَلَى صِحَّتِهِ وَلَا نَعْلَمُ أَحَدًا قَالَ بِهِ قَبْلَهُ.

L30181 As for al-Shāfiʿī's prohibition on one who possesses the capacity to marry a free woman from the People of the Book marrying a slave woman, this is an opinion not necessitated by the verse. Thus, all these opinions are dismissed, as they conform neither to the Qur'an nor to any of the Sunnahs.

وَأَمَّا مَنْعُ الشَّافِعِيِّ مَنْ وَجَدَ طَوْلًا لِنِكَاحِ حُرَّةٍ كِتَابِيَّةٍ مِنْ نِكَاحِ الْأَمَةِ، فَقَوْلٌ لَا تَقْتَضِيهِ الْآيَةُ - فَسَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا، إِذْ لَيْسَتْ مُوَافِقَةً لِلْقُرْآنِ، وَلَا لِشَيْءٍ مِنَ السُّنَنِ.

L30182–30184 Abu Muhammad said: When the Salaf (may Allah be pleased with them) differed, the Quran is the ultimate recourse. He, the Almighty and Majestic, said: *"And whoever among you cannot afford to marry free believing women, then [let him marry] from those whom your right hands possess of believing slave girls. Allah knows best about your faith. You are of one another. So marry them with their guardians' permission and give them their dowries in fairness, as chaste women, neither fornicating nor taking secret lovers. When they become chaste, if they commit indecency, they shall suffer half the punishment prescribed for free believing women. This is for those among you who fear hardship. But to persevere is better for you."* [An-Nisa: 25][6]

قَالَ أَبُو مُحَمَّد: فَالْمَرْجُوعُ إِلَيْهِ إِذَا اخْتَلَفَ السَّلَفُ - رَضِيَ اللَّهُ عَنْهُمْ - هُوَ الْقُرْآنُ، قَالَ عَزَّ وَجَلَّ: {وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ بِالْمَعْرُوفِ مُحْصَنَاتٍ غَيْرَ مُسَافِحَاتٍ وَلَا مُتَّخِذَاتِ أَخْدَانٍ فَإِذَا أُحْصِنَّ فَإِنْ أَتَيْنَ بِفَاحِشَةٍ فَعَلَيْهِنَّ نِصْفُ مَا عَلَى الْمُحْصَنَاتِ مِنَ الْعَذَابِ ذَلِكَ لِمَنْ خَشِيَ الْعَنَتَ مِنْكُمْ وَأَنْ تَصْبِرُوا خَيْرٌ لَكُمْ} [النساء: ٢٥] .

L30185 We examined the implications of this verse and found within it the ruling

[6] **Qur'an references (L30182):** Qur'an 4:25 (An-Nisa).

for one who lacks the means and fears hardship—permitting him to marry a believing slave woman—while affirming that patience remains better for us. Having established this, we then considered the ruling for one who possesses the means and does not fear hardship, as well as the marriage of a Muslim to a Kitabi slave woman. We found no foundational reference to this in the verse whatsoever—neither explicit permission, prohibition, nor discouragement. Rather, it is entirely unaddressed. Consequently, it was impermissible for us to apply to this case the ruling for one who lacks the means and fears hardship or the ruling pertaining to the believing slave woman, as this would constitute a legal analogy to the verse's content—and such analogy is null and void. Similarly, we could not validly apply a ruling contradicting that for one lacking means and fearing hardship or the ruling of the believing slave woman, since neither is mentioned in the verse. Both approaches would transgress the verse's scope by inserting what is absent from it. It thus became incumbent upon us to seek the ruling for one who possesses the means and does not fear hardship. We found that Allah Almighty states: "This day, all good things have been made lawful to you. The food of the People of the Scripture is lawful to you, and your food is lawful to them. And [lawful to you are] chaste women from the believers and chaste women from those given the Scripture before you, provided you give them their dowries" (Al-Ma'idah 5:5).[7]

فَنَظَرْنَا فِي مُقْتَضَى هَذِهِ الْآيَةِ، فَوَجَدْنَا فِيهَا حُكْمَ مَنْ لَمْ يَجِدْ الطَّوْلَ وَخَشِيَ الْعَنَتَ، فَأَبَاحَ نِكَاحَ الْأَمَةِ الْمُؤْمِنَةِ لَهُ، وَأَنَّ الصَّبْرَ خَيْرٌ لَنَا، فَقُلْنَا بِذَلِكَ كُلِّهِ فَنَظَرْنَا فِي حُكْمِ مَنْ يَجِدْ الطَّوْلَ وَلَمْ يَخْشَ الْعَنَتَ، وَفِي نِكَاحِ الْمُسْلِمِ الْأَمَةَ الْكِتَابِيَّةَ فَلَمْ نَجِدْهُ فِيهِ أَصْلًا، لَا بِإِبَاحَةٍ، وَلَا بِمَنْعٍ، وَلَا بِكَرَاهَةٍ، بَلْ هُوَ مَسْكُوتٌ عَنْهُ فِيهَا جُمْلَةً، فَلَمْ يَجُزْ لَنَا أَنْ نَحْكُمَ لَهُ مِنْهَا بِحُكْمِ مَنْ لَمْ يَجِدْ الطَّوْلَ وَخَشِيَ الْعَنَتَ، وَبِحُكْمِ الْأَمَةِ الْمُؤْمِنَةِ؛ لِأَنَّهُ قِيَاسٌ عَلَى مَا فِي الْآيَةِ، وَالْقِيَاسُ بَاطِلٌ، وَلَمْ يَجُزْ لَنَا أَنْ نَحْكُمَ لَهُ مِنْهَا بِحُكْمٍ مُخَالِفٍ لِحُكْمِ مَنْ لَا يَجِدُ الطَّوْلَ وَيَخْشَى الْعَنَتَ، وَبِحُكْمِ الْأَمَةِ الْمُؤْمِنَةِ؛ لِأَنَّهُ لَيْسَ ذَلِكَ فِي الْآيَةِ، وَكِلَاهُمَا تَعَدٍّ لِمَا فِي الْآيَةِ وَإِقْحَامٌ فِيهَا لِمَا لَيْسَ فِيهَا، فَوَجَبَ أَنْ نَطْلُبَ حُكْمَ مَنْ يَجِدُ الطَّوْلَ وَلَا يَخْشَى الْعَنَتَ -: فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [المائدة: ٥] .

L30186 We find Allah, the Exalted, stating: "Marry the single [widowed/divorced] among you, and the righteous among your male servants and female servants. If they should be poor, Allah will enrich them from His bounty." [an-Nur 24:32][8]

وَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَأَنْكِحُوا الْأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ} [النور: ٣٢] .

L30187 In this verse there is a clear explanation regarding the permissibility of marriage to women of the Book in general, for the Exalted did not single out a free woman over a slave woman.

فَكَانَ فِي هَذِهِ الْآيَةِ بَيَانٌ جَلِيٌّ فِي إبَاحَةِ نِكَاحِ الْكِتَابِيَّاتِ جُمْلَةً لَمْ يَخُصَّ تَعَالَى حُرَّةً مِنْ أَمَةٍ.

L30188 In the other verse, there is a general permission for male slaves among the believers to marry, since the Exalted has not distinguished between a free

وَفِي الْآيَةِ الْأُخْرَى إبَاحَةُ نِكَاحِ الْعَبِيدِ مِنْ الْمُؤْمِنِينَ عُمُومًا، لَمْ يَخُصَّ تَعَالَى حُرَّةً مِنْ أَمَةٍ، وَإِبَاحَةُ إنْكَاحِ الْإِمَاءِ الْمُسْلِمَاتِ لَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ.

[7] **Qur'an references (L30185):** Qur'an 5:5 (Al-Ma'idah).
[8] **Qur'an references (L30186):** Qur'an 24:32 (An-Nur).

woman and a slave woman; and a permission for Muslim female slaves to marry, since the Exalted has not distinguished between a free man and a slave.

فَكَانَ فِي هَاتَيْنِ الْآيَتَيْنِ بَيَانُ نِكَاحِ الْمُسْلِمِ الْغَنِيِّ وَالْفَقِيرِ، وَالْعَبْدِ وَالْحُرِّ عُمُومًا، بِكُلِّ حَالٍ لِلْحُرَّةِ الْمُسْلِمَةِ وَلِلْكِتَابِيَّةِ، وَلِلْأَمَةِ الْمُسْلِمَةِ وَالْكِتَابِيَّةِ، وَلَمْ يَأْتِ قَطُّ فِي سُنَّةٍ، وَلَا فِي قُرْآنٍ تَحْرِيمُ شَيْءٍ مِنْ ذَلِكَ، وَلَا كَرَاهَةٌ: - فَصَحَّ وَلَنَا بِيَقِينٍ لَا إِشْكَالَ فِيهِ.

L30189–30191 These two verses generally explain the marriage rulings for the Muslim—the wealthy and the poor, the slave and the free—in comprehensive terms. In all cases—for the free Muslim woman, the Kitabi woman, the Muslim female slave, and the Kitabi female slave—there has never appeared in the Sunnah or the Quran any prohibition of anything from this matter, nor any reprehension. Thus, it is valid, and we hold with certainty that there is no ambiguity in it.

وَمِنْ عَجَائِبِ الدُّنْيَا إِبَاحَةُ مَالِكٍ نِكَاحَ الْحُرِّ وَاجِدِ الطَّوْلِ غَيْرِ خَائِفِ الْعَنَتِ نِكَاحَ الْأَمَةِ الْمُسْلِمَةِ، وَمَنْعُهُ إِيَّاهُ نِكَاحَ الْأَمَةِ الْكِتَابِيَّةِ، وَهَذَا تَحَكُّمٌ فِي التَّعَلُّقِ بِالْآيَةِ لَا يَجُوزُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L30192 Among the marvels of the world is Mālik's permission for a free man who is financially capable and unafraid of hardship [leading to sin] to marry a Muslim slave woman, while prohibiting him from marrying a slave woman from the People of the Book. This constitutes an impermissible arbitrary interpretation of the verse—and with Allāh the Exalted lies success.

وَكَذَلِكَ إِبَاحَتُهُ نِكَاحَ الْأَمَةِ عَلَى الْحُرَّةِ لِلْعَبْدِ، وَمَنْعُهُ الْحُرَّ مِنْ ذَلِكَ - وَهَذَا وَإِنْ كَانَ قَدْ رُوِيَ عَنْ مَسْرُوقٍ عَنْ ابْنِ مَسْعُودٍ - وَلَمْ يَصِحَّ عَنْهُ - فَقَدْ أَتَى عَنْ غَيْرِهِمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالتَّابِعِينَ خِلَافُ ذَلِكَ، وَتَرَكَ الْفَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ.

L30193 Similarly, he permitted the slave to marry a slave woman while married to a free woman, while prohibiting the free person from doing so. Though this has been narrated by Masruq from Ibn Mas'ud - and it is not authenticated from him - there are reports from other than these two among the Companions (may Allah be pleased with them) and the Followers contradicting this position. Moreover, he neglected to distinguish any element of the matter.

وَأَمَّا كَمْ يَنْكِحُ الْعَبْدُ -: فَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى آلِ طَلْحَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: يَنْكِحُ الْعَبْدُ اثْنَيْنِ.

L30194 As for how many a slave may marry: it has been narrated to us from 'Abd al-Razzāq from Sufyān ibn 'Uyaynah from Muḥammad ibn 'Abd al-Raḥmān, the client of the family of Ṭalḥah, from Sulaymān ibn Yasār from 'Abd Allāh ibn 'Utbah ibn Mas'ūd from 'Umar ibn al-Khaṭṭāb, who said: "A slave may marry two."

وَعَنْ ابْنِ جُرَيْجٍ: أُخْبِرْت أَنَّ عُمَرَ بْنَ الْخَطَّابِ سَأَلَ فِي النَّاسِ كَمْ يَنْكِحُ الْعَبْدُ؟ فَاتَّفَقُوا عَلَى أَنْ لَا يَزِيدَ عَلَى اثْنَيْنِ.

L30195 From Ibn Jurayj: I was informed that Umar ibn al-Khattab asked the people, "How many wives may a slave marry?" They agreed that he must not exceed two.

L30196 From 'Abd al-Razzāq, from Sufyān al-Thawrī and Ibn Jurayj, both of whom

said: Jaʿfar ibn Muḥammad narrated **to us** from his father that ʿAlī ibn Abī Ṭālib said: A slave may marry two women.

وَعَنْ عَبْدِ الرَّزَّاقِ: عَنْ سُفْيَانَ الثَّوْرِيِّ، وَابْنِ جُرَيْجٍ قَالَا: نا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: يَنْكِحُ الْعَبْدُ اثْنَتَيْنِ.

L30197 Muḥammad ibn Saʿīd ibn Nabāt narrated to us, Aḥmad ibn Aḥmad ibn ʿAbd al-Baṣīr narrated to us, Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us, Muḥammad ibn al-Muthannā narrated to us, ʿAbd al-Raḥmān ibn Muḥammad al-Muḥāribī narrated from Layth ibn Abī Sulaym from ʿAṭāʾ, who said: The Companions of Muḥammad (peace be upon him) unanimously agreed that a slave may not have more than two wives simultaneously. This is the opinion of al-Ḥasan, ʿAṭāʾ, Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, Sufyān al-Thawrī, al-Layth ibn Saʿd, and others.

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ أَحْمَدَ بْنِ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدٍ الْمُحَارِبِيُّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَطَاءٍ، قَالَ: أَجْمَعَ أَصْحَابُ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الْعَبْدَ لَا يَجْمَعُ مِنَ النِّسَاءِ فَوْقَ اثْنَتَيْنِ - وَهُوَ قَوْلُ الْحَسَنِ، وَعَطَاءٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَغَيْرِهِمْ -.

L30198 It has been authentically reported from Mujāhid and Al-Zuhrī: that he may marry four women.

وَصَحَّ عَنْ مُجَاهِدٍ، وَالزُّهْرِيِّ: أَنَّهُ يَتَزَوَّجُ أَرْبَعًا.

L30199 It has been reported from Al-Sha'bi—though not reliably transmitted from him—and from 'Ata' that he withheld judgment on that matter, and this is the position held by Malik and Abu Sulayman.

وَرُوِيَ عَنِ الشَّعْبِيِّ - وَلَمْ يَصِحَّ عَنْهُ - وَعَنْ عَطَاءٍ: أَنَّهُ تَوَقَّفَ فِي ذَلِكَ - وَبِهَذَا يَقُولُ مَالِكٌ، وَأَبُو سُلَيْمَانَ.

L30200–30201 Abu Muhammad said: This is among the matters in which the Malikis opposed positions held by the Companions—Companions for whom no dissenter is known among the Companions. And is this not something they glorify when it aligns with their desires?

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِمَّا خَالَفَ فِيهِ الْمَالِكِيُّونَ صَحَابَةً لَا يُعْرَفُ لَهُمْ مِنَ الصَّحَابَةِ مُخَالِفٌ - وَهَذَا مِمَّا يُعَظِّمُونَهُ إذَا وَافَقَ أَهْوَاءَهُمْ؟

L30202 Ali said: There is no authoritative evidence in the speech of anyone other than the speech of Allah, the Most High, and His Messenger (peace and blessings of Allah be upon him).

قَالَ عَلِيٌّ: لَا حُجَّةَ فِي كَلَامِ أَحَدٍ دُونَ كَلَامِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30203 And Allah the Most High has said: "Marry women of your choice, two or three or four." [An-Nisa: 3] He did not distinguish between a male slave and a free man, so they are equal in this matter - and with Allah alone is success.[9]

وَقَدْ قَالَ اللَّهُ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ} [النساء: ٣] فَلَمْ يَخُصَّ عَبْدًا مِنْ حُرٍّ، فَهُمَا سَوَاءٌ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30204 As for male slaves taking concubines - there is disagreement among people. It has been reported via the chain of Ḥammād ibn Salamah and Maʿmar, both

[9] **Qur'an references (L30203):** Qur'an 4:3 (An-Nisa).

of whom narrated from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar: that he would observe his male slaves taking concubines and he would not prohibit them.

وَأَمَّا تَسَرِّي الْعَبْدِ -: فَإِنَّ النَّاسَ اخْتَلَفُوا، فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَمَعْمَرٍ، كِلَاهُمَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ كَانَ يَرَى مَمَالِيكَهُ يَتَسَرَّوْنَ وَلَا يَنْهَاهُمْ.

L30205 Narrated by Wakiʿ from Sufyān al-Thawrī from ʿAmr ibn Dīnār from Abū Maʿbad from Ibn ʿAbbās: He said to his male slave concerning a female slave he owned: "Make her lawful for yourself by right of ownership."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي مَعْبَدٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ لِعَبْدٍ لَهُ فِي جَارِيَةٍ لَهُ: اسْتَحِلَّهَا بِمِلْكِ الْيَمِينِ.

L30206 No disagreement is known from any of the Companions regarding these two positions. This is the opinion of Ash-Shaʿbi, Ibrahim an-Nakhaʿi, Al-Hasan al-Basri, and ʿAta'—and this is authentically established from them. It is also the opinion of Malik and Abu Sulayman. We know of no disagreement among the Successors on this matter, except for an obscure narration from Ibrahim and Al-Hakam ibn ʿUtaybah, and a sound narration from Ibn Sirin that they disapproved of a slave taking a concubine, deeming it disliked but not prohibited. Abu Hanifah and Ash-Shafiʿi did not permit this.

وَلَا يُعْرَفُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافٌ لِهَذَيْنِ - وَهُوَ قَوْلُ الشَّعْبِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَالْحَسَنِ الْبَصْرِيِّ، وَعَطَاءٍ - وَصَحَّ ذَلِكَ عَنْهُمْ - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي سُلَيْمَانَ، وَمَا نَعْلَمُ خِلَافًا فِي ذَلِكَ مِنْ تَابِعٍ، إلَّا رِوَايَةً غَيْرَ مَشْهُورَةٍ عَنْ إبْرَاهِيمَ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَرِوَايَةً صَحِيحَةً عَنْ ابْنِ سِيرِينَ أَنَّهُمْ كَرِهُوا لِلْعَبْدِ أَنْ يَتَسَرَّى كَرَاهِيَةً، لَا مَنْعًا - وَلَمْ يُجِزْ ذَلِكَ أَبُو حَنِيفَةَ، وَلَا الشَّافِعِيُّ.

L30207 Abū Muḥammad said: They exaggerate the disagreement of a Companion for whom no opposing Companion is known, yet here they oppose Ibn ʿAbbās and Ibn ʿUmar—may Allah be pleased with them—with no opposing Companion known for either among the Companions. Thus, it became obligatory to refer back to the Qur'an and the Sunnah. We found Allah, the Mighty and Majestic, stating: *"And those who guard their private parts except from their spouses or those whom their right hands possess—for then they are free from blame"* [23:5-6]. He, the Exalted, made no distinction between free persons and slaves. We have discussed in preceding sections of our book the validity of a slave's ownership of property, making repetition superfluous. And success is from Allah, the Exalted.[10]

قَالَ أَبُو مُحَمَّد: وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ، وَقَدْ خَالَفُوا هَاهُنَا ابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ، وَلَا يُعْرَفُ لَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ فَوَجَبَ الرُّجُوعُ إلَى الْقُرْآنِ وَالسُّنَّةِ فَوَجَدْنَا اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] فَلَمْ يَخُصَّ تَعَالَى حُرًّا مِنْ عَبْدٍ، وَقَدْ تَكَلَّمْنَا فِيمَا خَلَا مِنْ كِتَابِنَا عَلَى صِحَّةِ مِلْكِ الْعَبْدِ لِمَالِهِ فَأَغْنَى عَنْ تَرْدَادِهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة نِكَاح الْكِتَابِيَّة]

L30208 **The Juridical Ruling on Marriage to a Kitābī Female.**

[10] **Qur'an references (L30207):** 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).

L30209 Issue 1821: It is permissible for a Muslim to marry a Kitabi woman (i.e., a Jewish woman, a Christian woman, or a Zoroastrian woman) through marriage.

١٨٢١ - مَسْأَلَةٌ: وَجَائِزٌ لِلْمُسْلِمِ نِكَاحُ الْكِتَابِيَّةِ، وَهِيَ الْيَهُودِيَّةُ، وَالنَّصْرَانِيَّةُ، وَالْمَجُوسِيَّةُ، بِالزَّوَاجِ.

L30210 It is not permissible for him to have intercourse with a non-Muslim female slave by right of ownership, nor is it permissible at all to marry a disbelieving woman who is not from the People of the Book.

وَلَا يَحِلُّ لَهُ وَطْءُ أَمَةٍ غَيْرِ مُسْلِمَةٍ بِمِلْكِ الْيَمِينِ، وَلَا نِكَاحُ كَافِرَةٍ غَيْرِ كِتَابِيَّةٍ أَصْلًا.

L30211–30212 Ali said: It was narrated to us from Ibn Umar that the prohibition against marrying women of the People of the Book is stated in general.

قَالَ عَلِيٌّ: رُوِّينَا عَنِ ابْنِ عُمَرَ: تَحْرِيمَ نِكَاحِ نِسَاءِ أَهْلِ الْكِتَابِ جُمْلَةً.

L30213 It was narrated to us as recorded by Al-Bukhārī: Qutaybah ibn Saʿīd narrated to us; Al-Layth ibn Saʿd narrated to us, from Nāfiʿ, that Ibn ʿUmar was asked about marrying a Jewish woman or a Christian woman. He said: "Allah the Exalted has forbidden polytheistic women to the believers, and I know of no act of polytheism greater than a woman declaring, 'Her Lord is Jesus,' while he is but a servant among the servants of Allah, the Mighty and Majestic."

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ سُئِلَ عَنْ نِكَاحِ الْيَهُودِيَّةِ، وَالنَّصْرَانِيَّةِ؟ فَقَالَ: إِنَّ اللَّهَ تَعَالَى حَرَّمَ الْمُشْرِكَاتِ عَلَى الْمُؤْمِنِينَ، وَلَا أَعْلَمُ مِنَ الْإِشْرَاكِ شَيْئًا أَكْثَرَ مِنْ أَنْ تَقُولَ الْمَرْأَةُ " رَبُّهَا عِيسَى " وَهُوَ عَبْدٌ مِنْ عِبَادِ اللَّهِ عَزَّ وَجَلَّ.

L30214 Abu Hanifah, Malik, and Al-Shafi'i permitted marriage to Jewish and Christian women, and sexual intercourse with enslaved Jewish and Christian women by right of ownership.

وَأَبَاحَ أَبُو حَنِيفَةَ، وَمَالِكٌ وَالشَّافِعِيُّ: نِكَاحَ الْيَهُودِيَّةِ، وَالنَّصْرَانِيَّةِ، وَوَطْءَ الْأَمَةِ الْيَهُودِيَّةِ، وَالنَّصْرَانِيَّةِ بِمِلْكِ الْيَمِينِ.

L30215 They entirely prohibited marriage to a Zoroastrian woman and sexual relations with her as a concubine. However, Malik forbade marriage to a Jewish female slave and a Christian female slave.

وَحَرَّمُوا نِكَاحَ الْمَجُوسِيَّةِ جُمْلَةً، وَوَطْأَهَا بِمِلْكِ الْيَمِينِ، إِلَّا أَنَّ مَالِكًا حَرَّمَ زَوَاجَ الْأَمَةِ الْيَهُودِيَّةِ، وَالنَّصْرَانِيَّةِ.

L30216 He permitted sexual relations with a Magian woman through those whom your right hands possess, and permitted compelling her toward Islam.

وَأَبَاحَ نِكَاحَ الْمَجُوسِيَّةِ بِمِلْكِ الْيَمِينِ - وَأَبَاحَ إِجْبَارَهَا عَلَى الْإِسْلَامِ.

L30217 Abū Muḥammad said: It is obligatory to rely on the Quran and the Sunnah. We find Allah the Exalted saying: "Do not marry polytheistic women until they believe" [Al-Baqarah 2:221]. If only this verse had been revealed, the ruling would be Ibn ʿUmar's view. However, we find Allah the Exalted stating: "This day, all pure things are made lawful for you. The food of the People of the Scripture is lawful for you, and your food is lawful for them. And [lawful are] chaste women from the believers and chaste women from those who were given the Scripture before you, provided you give them their bridal

قَالَ أَبُو مُحَمَّدٍ: فَوَجَبَ الرُّجُوعُ إِلَى الْقُرْآنِ، وَالسُّنَّةِ، وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَلا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ} [البقرة: ٢٢١] فَلَوْ لَمْ تَأْتِ إِلَّا هَذِهِ الْآيَةُ لَكَانَ الْقَوْلُ قَوْلَ ابْنِ عُمَرَ، لَكِنْ وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ

dues" [Al-Mā'idah 5:5]. Thus, the obligation was to obey both verses and to ensure neither of them is abandoned for the other.[11]

الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [المائدة: ٥] فَكَانَ الْوَاجِبُ الطَّاعَةَ لِكِلْتَا الْآيَتَيْنِ، وَأَنْ لَا تُتْرَكَ إِحْدَاهُمَا لِلْأُخْرَى.

L30218 We found that those who adopted the opinion of Ibn 'Umar have contradicted this verse, and this is impermissible. There is no way to obey both except by making the lesser an exception to the greater. Thus, it becomes obligatory to make an exception to the general prohibition against polytheistic women by permitting marriage to chaste women from the People of the Book, while the rest remain prohibited by the other verse: "Other than this, nothing is permissible."

وَوَجَدْنَا مَنْ أَخَذَ بِقَوْلِ ابْنِ عُمَرَ قَدْ خَالَفَ هَذِهِ الْآيَةَ، وَهَذَا لَا يَجُوزُ وَلَا سَبِيلَ إِلَى الطَّاعَةِ لَهُمَا إِلَّا بِأَنْ يُسْتَثْنَى الْأَقَلُّ مِنَ الْأَكْثَرِ، فَوَجَبَ اسْتِثْنَاءُ إِبَاحَةِ الْمُحْصَنَاتِ مِنْ أَهْلِ الْكِتَابِ بِالزَّوَاجِ مِنْ جُمْلَةِ تَحْرِيمِ الْمُشْرِكَاتِ، وَيَبْقَى سَائِرُ ذَلِكَ عَلَى التَّحْرِيمِ بِالْآيَةِ الْأُخْرَى: لَا يَجُوزُ غَيْرُ هَذَا.

L30219–30221 We have found that Mālik and al-Shāfiʿī prohibited the marriage of an enslaved Kitābī woman through wedlock based on the Quranic verse, because she is from... The phrase {And free and chaste women from among the believers and free and chaste women from among those who were given the Scripture} [Al-Ma'idah: 5], because al-iḥṣān denotes both freedom and chastity. Allah the Exalted said: {And Mary, the daughter of 'Imrān, who preserved her private part} [At-Taḥrīm: 12], meaning she preserved her chastity.[12]

وَوَجَدْنَا تَحْرِيمَ مَالِكٍ، وَالشَّافِعِيِّ، نِكَاحَ الْأَمَةِ الْكِتَابِيَّةِ بِالزَّوَاجِ لِلْآيَةِ؛ لِأَنَّهَا مِنْ جُمْلَةِ {وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ} [المائدة: ٥] لِأَنَّ الْإِحْصَانَ: الْحُرِّيَّةُ، وَالْإِحْصَانَ: الْعِفَّةُ، قَالَ اللَّهُ تَعَالَى: {وَمَرْيَمَ ابْنَتَ عِمْرَانَ الَّتِي أَحْصَنَتْ فَرْجَهَا} [التحريم: ١٢] أَيْ عَفَّتْ فَرْجَهَا.

L30222 It is not permissible for anyone to restrict Allah's statement, the Exalted, "And [lawful in marriage are] chaste women from those who were given the Scripture before you" (al-Mā'idah 5:5) to free women while excluding chaste female slaves, for this would entail attributing to Allah, the Exalted, what one has no knowledge of, legislating in the religion what He has not permitted, and making claims without proof—and this is impermissible.[13]

وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَخُصَّ بِقَوْلِهِ تَعَالَى: {وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ} [المائدة: ٥] الْحَرَائِرَ دُونَ الْعَفَائِفِ مِنَ الْإِمَاءِ، لِأَنَّهُ يَكُونُ قَائِلًا عَلَى اللَّهِ تَعَالَى مَا لَا عِلْمَ لَهُ بِهِ، وَشَارِعًا فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى وَمُدَّعِيًا بِلَا بُرْهَانٍ، وَهَذَا لَا يَحِلُّ.

L30223 Allah, the Exalted, said: "Say, 'Produce your evidence if you are truthful.'" [Al-Baqarah: 111][14]

قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] .

L30224 And He, the Exalted, said: *"And that you say against Allah what you do not

وَقَالَ تَعَالَى: {وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [البقرة: ١٦٩] .

[11] **Qur'an references (L30217):** Qur'an 2:221 (Al-Baqarah); Qur'an 5:5 (Al-Ma'idah).
[12] **Qur'an references (L30219):** Qur'an 5:5 (Al-Ma'idah); Qur'an 66:12 (At-Tahrim).
[13] **Qur'an references (L30222):** Qur'an 5:5 (Al-Ma'idah); Qur'an 42:21 (Ash-Shuraa).
[14] **Qur'an references (L30223):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

know”* [Al-Baqarah: 169].[15]

L30225 Therefore, whoever has no evidence to establish the soundness of his statement, there is no soundness to his statement.

L30226 We have previously established that their adherence to His Exalted statement *“from your believing young women”* [An-Nisā’: 25] merely indicates the permissibility of marrying believing young women exclusively. It contains neither a prohibition against marrying a young woman from the People of the Book nor a permission for her. Therefore, it is obligatory to seek this ruling from sources other than that verse—and it is imperative.[16]

L30227 We found their allowance of intercourse with a female slave from the People of the Book through rightful possession to be an insertion into the verse of what it does not contain, based on their opinions. For the Exalted only made an exception in the verse for the permissibility of marrying chaste women from the People of the Book specifically, as stated in His words: {when you have given them their bridal dues} [Al-Mā’idah 5:5], and maintained the prohibition on all other cases through His command to abstain from marrying polytheistic women until they believe. Neither the Quran nor any Sunnah of Allah’s Messenger—peace and blessings of Allah be upon him—ever permitted a female slave from the People of the Book through rightful possession. Thus, in this matter, they have wholly removed from the verse its permission for marriage with chaste women from the People of the Book—without distinguishing between free women and slaves—while inserting into it what is absent from both the verse and other sources: the permissibility of intercourse with a female slave from the People of the Book through rightful possession.[17]

L30228 Among those who held our view on this matter are a group of the Salaf—including Ibn ʿUmar, as we previously transmitted from him regarding the prohibition of disbelieving women and others in general. Thus, he excluded

فَمَنْ لَا بُرْهَانَ لَهُ عَلَى صِحَّةِ قَوْلِهِ فَلَا صِحَّةَ لِقَوْلِهِ.

وَقَدْ قَدَّمْنَا: أَنَّ تَعَلُّقَهُمْ بِقَوْلِهِ تَعَالَى: {مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ} [النساء: ٢٥] إِنَّمَا فِيهِ إِبَاحَةُ نِكَاحِ الْفَتَيَاتِ الْمُؤْمِنَاتِ فَقَطْ، وَلَيْسَ فِيهِ مَنْعٌ مِنْ نِكَاحِ الْفَتَاةِ الْكِتَابِيَّةِ، وَلَا إِبَاحَةٌ لَهَا، فَوَجَبَ طَلَبُهُ مِنْ غَيْرِ تِلْكَ الْآيَةِ وَلَا بُدَّ.

وَوَجَدْنَا إِبَاحَتَهُمْ وَطْءَ الْأَمَةِ الْكِتَابِيَّةِ بِمِلْكِ الْيَمِينِ إِقْحَامًا فِي الْآيَةِ مَا لَيْسَ فِيهَا بِآرَائِهِمْ؛ لِأَنَّهُ إِنَّمَا اسْتَثْنَى تَعَالَى فِي الْآيَةِ إِبَاحَةَ الْكِتَابِيَّاتِ بِالزَّوَاجِ خَاصَّةً بِقَوْلِهِ تَعَالَى: {إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [المائدة: ٥] وَأَبْقَى مَا عَدَا ذَلِكَ عَلَى التَّحْرِيمِ بِنَهْيِهِ تَعَالَى عَنْ نِكَاحِ الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ، وَلَمْ يَأْتِ قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِإِبَاحَةِ كِتَابِيَّةٍ بِمِلْكِ الْيَمِينِ، فَهُمْ فِي هَذِهِ الْقَضِيَّةِ مُخْرِجُونَ مِنْ هَذِهِ الْآيَةِ مَا فِيهَا مِنْ إِبَاحَةِ زَوَاجِ الْعَفَائِفِ مِنَ الْكِتَابِيَّاتِ جُمْلَةً لَمْ يَخُصَّ حُرَّةً مِنْ أَمَةٍ وَيُقْحِمُونَ فِيهَا مَا لَيْسَ فِيهَا، وَلَا فِي غَيْرِهَا مِنْ إِبَاحَةِ وَطْءِ الْأَمَةِ الْكِتَابِيَّةِ بِمِلْكِ الْيَمِينِ.

وَمِمَّنْ قَالَ بِقَوْلِنَا فِي ذَلِكَ جَمَاعَةٌ مِنَ السَّلَفِ -: مِنْهُمُ ابْنُ عُمَرَ، كَمَا رُوِّينَا قَبْلُ عَنْهُ مِنْ تَحْرِيمِ الْكَوَافِرِ وَغَيْرِهِنَّ جُمْلَةً، فَخَرَجَ مِنْ قَوْلِ مَا أَبَاحَهُ الْقُرْآنُ بِالزَّوَاجِ، وَبَقِيَ سَائِرُ قَوْلِهِ عَلَى الصِّحَّةِ.

[15] **Qur’an references (L30224):** Qur’an 2:169 (Al-Baqarah); Qur’an 7:33 (Al-A’raf).

[16] **Qur’an references (L30226):** Qur’an 4:25 (An-Nisa).

[17] **Qur’an references (L30227):** Qur’an 5:5 (Al-Ma’idah); Qur’an 60:10 (Al-Mumtahanah).

from his opinion what the Qur'an permitted through marriage, and the rest of his opinion remains valid.

L30229 And in it is the prohibition of a female slave without doubt among those whom their right hands possess. Reported to us by Muḥammad ibn Saʿīd ibn Nabāt from Aḥmad ibn ʿAbd al-Baṣīr from Qāsim ibn Aṣbagh from Muḥammad ibn ʿAbd al-Salām al-Khushanī from Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī from Sharīk from Abū Isḥāq al-Sabīʿī from Bakr ibn Māʿiz from al-Rabīʿ ibn Khaytham that he considered it reprehensible for a man to have intercourse with a polytheist woman until she embraces Islam.

وَفِيهِ تَحْرِيمُ الْأَمَةِ بِلَا شَكٍّ بِمِلْكِ الْيَمِينِ -: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا شَرِيكٌ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ بَكْرِ بْنِ مَاعِزٍ عَنْ الرَّبِيعِ بْنِ خَيْثَمَ أَنَّهُ كَانَ يَكْرَهُ أَنْ يَطَأَ الرَّجُلُ الْمُشْرِكَةَ حَتَّى تُسْلِمَ.

L30230–30231 Muhammad ibn Sa'id ibn Nabat narrated to us, Ahmad ibn 'Awn Allah narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn 'Abd al-Salam al-Khushani narrated to us, Muhammad ibn Bishar Bundar narrated to us, Muhammad ibn Ja'far Ghundar narrated to us, Shu'bah from Musa ibn Abi 'A'ishah, who said: I asked Sa'id ibn Jubayr and Murrah al-Hamdani – he is Murrah the Physician, the companion of 'Abd Allah ibn Mas'ud – about having intercourse with a female slave from the captives. They both agreed: "Do not have intercourse with her until she performs the ritual bath and prays."

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ مُوسَى بْنِ أَبِي عَائِشَةَ قَالَ: سَأَلْت سَعِيدَ بْنَ جُبَيْرٍ، وَمُرَّةَ الْهَمْدَانِيَّ هُوَ مُرَّةُ الطَّيِّبُ صَاحِبُ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ -: أَصَبْت الْأَمَةَ مِنْ السَّبْيِ فَقَالَا جَمِيعًا: لَا تَغْشَهَا حَتَّى تَغْتَسِلَ وَتُصَلِّيَ.

L30232 Muhammad ibn Sa'id ibn Nabat narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Qasim ibn Muhammad narrated to us, my grandfather Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Abd al-A'la—who is Ibn Abd al-A'la—narrated to us, Sa'id ibn Abi Arubah narrated from Qatadah from Mu'awiyah ibn Qurrah from Ibn Mas'ud, who said: "Nine female slaves I dislike having relations with: your female slave along with her mother; your female slave along with her sister; your female slave whom your father has had intercourse with; your female slave whom your son has had intercourse with; your female slave who is your paternal aunt through breastfeeding; a female slave who is your maternal aunt through breastfeeding; your female slave who has committed fornication; your female slave who is a polytheist; and your female slave who is pregnant by someone else."

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى - هُوَ ابْنُ عَبْدِ الْأَعْلَى - نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ عَنْ ابْنِ مَسْعُودٍ قَالَ: اثْنَتَا عَشْرَةَ مَمْلُوكَةً أَكْرَهُ غَشَيَانَهُنَّ: أَمَتُك وَأُمُّهَا، وَأَمَتُك وَأُخْتُهَا، وَأَمَتُك وَطِئَهَا أَبُوك، وَأَمَتُك وَطِئَهَا ابْنُك، وَأَمَتُك عَمَّتُك مِنْ الرَّضَاعَةِ، وَأَمَةٌ خَالَتُك مِنْ الرَّضَاعَةِ، وَأَمَتُك وَقَدْ زَنَتْ، وَأَمَتُك وَهِيَ مُشْرِكَةٌ، وَأَمَتُك وَهِيَ حُبْلَى مِنْ غَيْرِك.

L30233 From Hammam, from Ibn Mufarrij, from Ibn al-A'rabi, from al-Dabari, from Abd al-Razzaq, from Ja'far ibn Sulayman al-Duba'i, who informed me: Yunus ibn Ubayd reported that he heard al-Hasan al-Basri say: "We would fight alongside the Companions of the Messenger of Allah (peace and blessings be upon him and his family). When one of them acquired a female captive from booty obtained without battle and wished to have intercourse with her, he would instruct her to wash her garments, which she would do. Then he would teach her Islam, command her to pray, observe one menstrual cycle to ascertain her non-pregnancy, and then have intercourse with her."

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ جَعْفَرِ بْنِ سُلَيْمَانَ الضُّبَعِيِّ أَخْبَرَنِي يُونُسُ بْنُ عُبَيْدٍ أَنَّهُ سَمِعَ الْحَسَنَ الْبَصْرِيَّ يَقُولُ: كُنَّا نَغْزُو مَعَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَإِذَا أَصَابَ الْجَارِيَةَ أَحَدُهُمْ مِنَ الْفَيْءِ فَأَرَادَ أَنْ يُصِيبَهَا أَمَرَهَا فَغَسَلَتْ ثِيَابَهَا، ثُمَّ عَلَّمَهَا الْإِسْلَامَ، وَأَمَرَهَا بِالصَّلَاةِ، وَاسْتَبْرَأَهَا بِحَيْضَةٍ، ثُمَّ أَصَابَهَا.

L30234 And via his chain to ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: It is not permissible for a man who has purchased a polytheist female slave to have intercourse with her until she has performed the ritual bath, prayed, and experienced one menstrual cycle while under his care.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: لَا يَحِلُّ لِرَجُلٍ اشْتَرَى جَارِيَةً مُشْرِكَةً أَنْ يَطَأَهَا حَتَّى تَغْتَسِلَ وَتُصَلِّيَ وَتَحِيضَ عِنْدَهُ حَيْضَةً.

L30235–30237 If they mention what we have narrated through Muslim's chain: 'Abdullāh ibn 'Umar al-Qawārīrī narrated to us, Yazīd ibn Zuray' narrated to us, Sa'īd ibn Abī 'Arūbah narrated to us from Qatādah, from Ṣāliḥ Abū al-Khalīl - excluding Abū 'Alqamah al-Hāshimī. From Abu Sa'id al-Khudri: "That the Messenger of Allah—may Allah bless him and his family and grant him peace—sent an army to Awtaas during the Battle of Hunayn. They encountered an enemy, fought them, prevailed over them, and captured for them captives acquired as spoils. Some companions of the Messenger of Allah hesitated to consort with them due to their husbands who were polytheists. Thereupon, Allah the Exalted revealed: 'And married women are forbidden to you except those whom your right hands possess' [An-Nisa': 24], meaning they are lawful for you after their waiting period concludes."[18]

فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نا يَزِيدُ بْنُ زُرَيْعٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ صَالِحٍ أَبِي الْخَلِيلِ غَيْرِ أَبِي عَلْقَمَةَ الْهَاشِمِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَوْمَ حُنَيْنٍ بَعَثَ جَيْشًا إِلَى أَوْطَاسٍ فَلَقِيَ عَدُوًّا فَقَاتَلُوهُمْ، فَظَهَرُوا عَلَيْهِمْ وَأَصَابُوا لَهُمْ سَبَايَا، فَكَانَ نَاسٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَحَرَّجُوا مِنْ غَشَيَانِهِنَّ مِنْ أَجْلِ أَزْوَاجِهِنَّ الْمُشْرِكِينَ، فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] أَيْ فَهُنَّ لَكُمْ حَلَالٌ إِذَا انْقَضَتْ عِدَّتُهُنَّ» .

L30238 Thus, there is no valid argument for them in this matter due to two reasons - I am certain of both - that the captives of Awṭās were idolaters, not People of the Book, a point on which no two disagree. They do not dispute our position that relations with an idolatrous woman under lawful enslavement remain impermissible until she embraces Islam. For in this report - if their notification is valid - it merely indicates that their marital bond with

فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ -: أَقْطَعُهُمَا - أَنَّ سَبْيَ أَوْطَاسٍ كَانُوا وَثَنِيِّينَ لَا كِتَابِيِّينَ، لَا يَخْتَلِفُ فِي ذَلِكَ اثْنَانِ، وَهُمْ لَا يُخَالِفُونَنَا أَنَّ وَطْءَ الْوَثَنِيَّةِ بِمِلْكِ الْيَمِينِ لَا يَحِلُّ حَتَّى تُسْلِمَ - فَإِنَّمَا فِي هَذَا الْخَبَرِ - لَوْ صَحَّ إِعْلَامُهُمْ - أَنَّ عِصْمَتَهُنَّ مِنْ أَزْوَاجِهِنَّ قَدِ انْقَطَعَتْ إِذَا أَسْلَمْنَ - وَإِنْ كَانَ لَمْ يُذْكَرْ هَاهُنَا الْإِسْلَامُ - لَكِنْ ذَكَرَهُ تَعَالَى فِي قَوْلِهِ: {وَلا تَنْكِحُوا

[18] **Qur'an references (L30235):** Qur'an 4:24 (An-Nisa).

their husbands is severed if they embrace Islam, though embracing Islam is not explicitly mentioned here. Yet the Exalted has mentioned *it* in His statement: *{And do not marry polytheistic women until they believe}* [Al-Baqarah: 221], and it is obligatory to interpret Allah's statements in light of one another.[19]

L30239 The second aspect is that we have been narrated this report through the chain of Muslim as well. He said: Abu Bakr ibn Abi Shaybah, Muhammad ibn al-Muthanna, and Ibn Bashshar reported to us. They said: We narrate from 'Abd al-A'la - he is Ibn 'Abd al-A'la - from Sa'id - he is Ibn Abi 'Arubah - from Qatadah from Abu al-Khalil: that Abu 'Alqamah al-Hashimi narrated that Abu Sa'id al-Khudri reported to them that "the Messenger of Allah - may Allah bless him and his family and grant him peace - dispatched an expedition on the day of Hunayn," matching the meaning of the aforementioned hadith.

L30240 Thus, it has been established that Abū al-Khalīl did not hear it from Abū 'Alqamah, and therefore, the chain is interrupted.

L30241 They said: "Did we not find among women those whom it is permissible to marry but not permissible to have intercourse with through those whom your right hands possess?" We replied: "Suppose it were as you claim—what then? Did we find in the prescribed prayers three units other than Maghrib? Did we find in wealth anything subject to zakah except camels?" There is nothing baser than this absurd argument raised against the Qur'an and the Companions—may Allah be pleased with them. How can this be, when all free Muslim women are permissible to have intercourse with through marriage, but impermissible to have intercourse with through those whom your right hands possess?

L30242 Some of them said: Allah, the Exalted, said: {or those whom your right hands possess} [An-Nisa: 3], so He, the Exalted, spoke in general terms and did not specify, thus the kitabiyyah is included in that.[20]

L30243 So we said: They included under this general principle of permissibility

الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ} [البقرة: ٢٢١] وَوَاجِبٌ أَنْ يُضَمَّ كَلَامُ اللهِ تَعَالَى بَعْضُهُ إِلَى بَعْضٍ.

وَالْوَجْهُ الثَّانِي - أَنَّنَا رُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ مُسْلِمٍ أَيْضًا، فَقَالَ -: نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ، قَالُوا: أَنَا عَبْدُ الْأَعْلَى - هُوَ ابْنُ عَبْدِ الْأَعْلَى - عَنْ سَعِيدٍ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ أَبِي الْخَلِيلِ: أَنْ أَبَا عَلْقَمَةَ الْهَاشِمِيَّ حَدَّثَ أَنَّ أَبَا سَعِيدٍ الْخُدْرِيَّ حَدَّثَهُمْ «أَنَّ رَسُولَ اللهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَعَثَ يَوْمَ حُنَيْنٍ سَرِيَّةً» بِمَعْنَى الْحَدِيثِ الْمَذْكُورِ.

فَصَحَّ أَنَّ أَبَا الْخَلِيلِ لَمْ يَسْمَعْهُ مِنْ أَبِي عَلْقَمَةَ فَهُوَ مُنْقَطِعٌ.

وَقَالُوا: لَمْ نَجِدْ فِي النِّسَاءِ مَنْ يَحِلُّ نِكَاحُهَا وَلَا يَحِلُّ وَطْؤُهَا بِمِلْكِ الْيَمِينِ؟ فَقُلْنَا: هَبْكَ كَانَ كَمَا تَزْعُمُونَ فَكَانَ مَاذَا؟ وَلَا وَجَدْنَا فِي الْفَرَائِضِ فِي الصَّلَاةِ ثَلَاثَ رَكَعَاتٍ غَيْرَ الْمَغْرِبِ، وَلَا وَجَدْنَا فِي الْأَمْوَالِ شَيْئًا يُزَكَّى مِنْ غَيْرِهِ إِلَّا الْإِبِلَ؟ فَلَا أَبْرَدَ مِنْ هَذَا الِاحْتِجَاجِ السَّخِيفِ الْمُعْتَرَضِ بِهِ عَلَى الْقُرْآنِ، وَالصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَكَيْفَ وَالْحَرَائِرُ كُلُّهُنَّ مِنَ الْمُسْلِمَاتِ يَحِلُّ وَطْؤُهُنَّ بِالزَّوَاجِ، وَلَا يَحِلُّ وَطْؤُهُنَّ بِمِلْكِ الْيَمِينِ؟

وَقَالَ بَعْضُهُمْ: قَالَ اللَّهُ تَعَالَى: {أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ، فَدَخَلَتْ فِي ذَلِكَ الْكِتَابِيَّةُ.

فَقُلْنَا: فَأَدْخَلُوا بِهَذَا الْعُمُومِ فِي الْإِبَاحَةِ بِمِلْكِ الْيَمِينِ وَطْءَ الْحَائِضِ وَالْأُخْتِ مِنَ الرَّضَاعِ، وَالْأُمِّ مِنَ الرَّضَاعِ، وَأُمِّ الزَّوْجَةِ، وَالَّتِي وَطِئَهَا الْأَبُ، وَالْأُخْتَيْنِ بِمِلْكِ الْيَمِينِ.

[19] **Qur'an references (L30238):** Qur'an 2:221 (Al-Baqarah).
[20] **Qur'an references (L30242):** Qur'an 4:3 (An-Nisa).

through right-hand possession the act of intercourse with a menstruating woman, a sister through milk kinship, a mother through milk kinship, the wife's mother, the woman whom the father had intercourse with, and two sisters under right-hand possession.

فَإِنْ قَالُوا: قَدْ خَصَّ ذَلِكَ آيَاتٌ أُخَرُ؟ قُلْنَا: وَقَدْ خَصَّ الْكِتَابِيَّةَ آيَةٌ أُخْرَى.

L30244–30245 If they said: "Other verses have specified that?" We said: "Another verse has specified [the permissibility regarding] a woman from the People of the Book."

فَإِنْ ادَّعَوْا إِجْمَاعًا أَكْذَبَهُمْ قَوْلُ طَائِفَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَمَنْ بَعْدَهُمْ فِي الْأُخْتَيْنِ بِمِلْكِ الْيَمِينِ - فَظَهَرَ فَسَادُ قَوْلِهِمْ - بِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30246 If they claim consensus, the statement of a group of the Companions (may Allah be pleased with them) and those after them regarding two sisters in the context of right-hand possession exposes their claim as false. Thus, the invalidity of their argument is revealed. And success is from Allah, the Most High.

أَمَّا نِكَاحُ الْكَافِرَةِ غَيْرِ الْكِتَابِيَّةِ: فَلَا يُخَالِفُنَا الْحَاضِرُونَ فِي أَنَّهُ لَا يَحِلُّ وَطْؤُهُنَّ بِزَوَاجٍ وَلَا بِمِلْكِ يَمِينٍ.

L30247 As for marriage to disbelieving women who are not People of the Book: those present do not differ with us in that it is impermissible to have intercourse with them, neither through marriage nor through right-hand possession.

وَأَمَّا الْمَجُوسِيَّةُ - فَقَدْ ذَكَرْنَا فِي " كِتَابِ الْجِهَادِ " وَ " كِتَابِ التَّذْكِيَةِ " مِنْ كِتَابِنَا هَذَا أَنَّ الْمَجُوسَ أَهْلُ كِتَابٍ، وَإِذَا كَانُوا أَهْلَ كِتَابٍ فَنِكَاحُ نِسَائِهِمْ بِالزَّوَاجِ حَلَالٌ.

L30248 As for the Magians—we have mentioned in "the Book of Jihad" and "the Book of Ritual Slaughter" in this book of ours that the Magians are People of the Book, and if they are People of the Book, then marriage to their women through lawful wedlock is permissible.

وَالْحُجَّةُ فِي أَنَّهُمْ أَهْلُ كِتَابٍ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {فَإِذَا انْسَلَخَ الأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] فَلَمْ يُبِحْ لَنَا تَرْكَ قَتْلِهِمْ إِلَّا بِأَنْ يُسْلِمُوا فَقَطْ.

L30249 The evidence that they are People of the Book is the statement of Allah Almighty: {When the sacred months have passed, kill the polytheists wherever you find them, seize them, besiege them, and ambush them at every vantage point. But if they repent, establish prayer, and give zakat, then let them go free} [At-Tawbah: 5]. Thus, He did not permit us to refrain from killing them unless they embrace Islam alone.[21]

وَقَالَ تَعَالَى: {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] فَاسْتَثْنَى اللَّهُ عَزَّ وَجَلَّ أَهْلَ الْكِتَابِ خَاصَّةً بِإِعْفَائِهِمْ مِنْ

L30250 Allah the Exalted said: {Fight those who do not believe in Allah nor in the Last Day, nor prohibit what Allah and His Messenger have forbidden, nor adhere to the religion of truth—from among those given the Scripture—

[21] **Qur'an references (L30249):** Qur'an 9:5 (At-Tawbah).

until they pay the jizyah with their own hands while they are humbled.} [At-Tawbah: 29]. Thus, Allah Almighty specifically exempted the People of the Book—unlike the entirety of other mushrikūn, whom it is impermissible to spare unless they embrace Islam—by sparing them from execution through the obligation of jizyah along with humiliation.[22]

L30251 It is authentically reported that the Messenger of Allah (peace and blessings be upon him) took the jizyah from the Zoroastrians of Hajar.[23]

L30252 Among the absurd falsehoods is that the Messenger of Allah (peace be upon him and his family) would oppose his Lord's command unless he had clarified to us that they were not People of the Book, so that we would know at that time he acted by revelation. Should they cite the narration reported through Wakiʿ from Sufyan from Qays ibn Muslim from al-Hasan ibn Muhammad ibn ʿAlī ibn Abī Ṭālib who said: "The Messenger of Allah (peace be upon him and his family) wrote to the Magians of al-Hasa inviting them to Islam. Those who accepted Islam were accepted, while those who refused were subjected to jizyah on the condition that their slaughtered animals not be eaten and their women not be married."

L30253 Therefore, this is a mursal narration, and there is no authoritative evidence in it.

L30254–30255 The second point is that it does not contain [the assertion] that his statement "None of their slaughtered animals may be eaten, nor may a woman be married to them" is from the speech of the Messenger of Allah—peace and blessings be upon him and his family.

L30256 Among those who said that they are People of the Book are a group of the predecessors: Aḥmad ibn ʿUmar ibn Anas al-ʿUdhurī narrated to me, Abū Dharr al-Harawī narrated to us, ʿAbd ibn Aḥmad al-Anṣārī narrated to us, ʿAbd Allāh ibn Aḥmad ibn Ḥammawayh al-Sarakhsī narrated to us, Ibrāhīm ibn Khuraym narrated to us, ʿAbd ibn Ḥumayd narrated to us, al-Ḥasan ibn Mūsā narrated to us, Yaʿqūb ibn ʿAbd Allāh narrated to us, Jaʿfar ibn al-

الْقَتْلِ بِغُرْمِ الْجِزْيَةِ مَعَ الصِّغَارِ مِنْ جُمْلَةِ سَائِرِ الْمُشْرِكِينَ الَّذِينَ لَا يَحِلُّ إعْفَاؤُهُمْ إلَّا أَنْ يُسْلِمُوا.

وَقَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَذَ الْجِزْيَةَ مِنْ مَجُوسِ هَجَرَ» .

وَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يُخَالِفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمْرَ رَبِّهِ إلَّا لَوْ بَيَّنَ لَنَا أَنَّهُمْ غَيْرُ أَهْلِ كِتَابٍ، فَكُنَّا نَدْرِي حِينَئِذٍ أَنَّهُ فَعَلَ ذَلِكَ بِوَحْيٍ. فَإِنْ احْتَجُّوا بِمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ بْنِ مُحَمَّدِ بْنِ عَلِيٍّ قَالَ «كَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَى مَجُوسِ هَجَرَ يَعْرِضُ عَلَيْهِمْ الْإِسْلَامَ فَمَنْ أَسْلَمَ قُبِلَ وَمَنْ أَبَى ضُرِبَتْ عَلَيْهِ الْجِزْيَةُ عَلَى أَنْ لَا تُؤْكَلَ لَهُمْ ذَبِيحَةٌ وَلَا تُنْكَحَ لَهُمْ امْرَأَةٌ» .

فَهَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ.

وَثَانِيَةً أَنَّهُ لَيْسَ فِيهِ: أَنَّ قَوْلَهُ «لَا تُؤْكَلَ لَهُمْ ذَبِيحَةٌ وَلَا تُنْكَحَ لَهُمْ امْرَأَةٌ» هُوَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَمِمَّنْ قَالَ: إنَّهُمْ أَهْلُ كِتَابٍ جَمَاعَةٌ مِنْ السَّلَفِ: حَدَّثَنِي أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ بْنُ أَحْمَدَ الْأَنْصَارِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَّوَيْهِ السَّرَخْسِيُّ نا إبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا الْحَسَنُ بْنُ مُوسَى نا يَعْقُوبُ بْنُ عَبْدِ اللَّهِ نا جَعْفَرُ بْنُ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ بْنِ أَبْزَى قَالَ: لَمَّا هَزَمَ اللَّهُ تَعَالَى أَهْلَ الْأَسْفِيذَارِ انْصَرَفُوا فَجَاءَهُمْ - يَعْنِي عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - فَأَجْمَعُوا فَقَالُوا: بِأَيِّ شَيْءٍ تُجْرِي فِي الْمَجُوسِ

[22] **Qur'an references (L30250):** Qur'an 9:29 (At-Tawbah).
[23] **Hadith references (L30251):** Jami at-Tirmidhi 1586.

مِنْ الْأَحْكَامِ فَإِنَّهُمْ لَيْسُوا بِأَهْلِ كِتَابٍ، وَلَيْسُوا بِمُشْرِكِينَ مِنْ مُشْرِكِي الْعَرَبِ فَتُجْرِي فِيهِمْ الْأَحْكَامَ الَّتِي أَجْرَيْت فِي أَهْلِ الْكِتَابِ أَوْ الْمُشْرِكِينَ، فَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: بَلْ هُمْ أَهْلُ كِتَابٍ - وَذَكَرَ الْخَبَرَ بِطُولِهِ.

Mughīrah narrated to us from Ibrāhīm ibn Abzā, who said: When Allah the Exalted defeated the people of al-Asfidhār, they retreated. Then he—meaning ʿUmar ibn al-Khaṭṭāb, may Allah be pleased with him—came to them, and they gathered and said: "By what rulings do you apply to the Magians, for they are not People of the Book, nor are they polytheists from among the polytheists of the Arabs, so that you would apply to them the rulings you applied to the People of the Book or the polytheists?" ʿAlī ibn Abī Ṭālib said: "Rather, they are People of the Book"—and he mentioned the report in its entirety.

L30257 نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ عَبْدِ اللَّهِ الدَّانَاجِ قَالَ: سَمِعْت مَعْبَدًا الْجُهَنِيَّ يُحَدِّثُ الْحَسَنَ أَنَّ امْرَأَةَ حُذَيْفَةَ كَانَتْ مَجُوسِيَّةً، فَجَعَلَ الْحَسَنُ يَقُولُ: مَهْلًا، فَقَالَ: أَنَا وَاَللَّهِ دَخَلْت عَلَيْهَا حَتَّى كَلَّمْتهَا، فَقَالَ لَهَا: شابر دخت، قَالَ: فَحَدَّثَ بِهِ الْحَسَنُ بَعْدَ ذَلِكَ جَدَّهُ عَبْدَ اللَّهِ بْنَ رَبِيعٍ التَّيْمِيَّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ الْأَسَدِيُّ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ ثنا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَبْدِ اللَّهِ الدَّانَاجِ، وَأَبِي حَرَّةَ، قَالَ عَبْدُ اللَّهِ الدَّانَاجِ عَنْ مَعْبَدٍ الْجُهَنِيِّ، وَقَالَ أَبُو حُرَّةَ: عَنْ الْحَسَنِ، قَالَا جَمِيعًا: كَانَتْ امْرَأَةُ حُذَيْفَةَ مَجُوسِيَّةً.

Muhammad ibn Sa'id ibn Nabat narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Qasim ibn Muhammad narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Abd al-A'la narrated to us, Sa'id ibn Abi Arubah narrated from Abdullah al-Danaj, who said: I heard Ma'bad al-Juhani relate to al-Hasan that Hudhayfah's wife was a Zoroastrian. Al-Hasan persisted, saying, "Wait, wait!" So Ma'bad declared, "By Allah, I visited her and spoke to her directly." He said to her, "Shāber Dokht." Al-Danaj added that al-Hasan later conveyed this account to his grandfather, Abdullah ibn Rabi' al-Tamimi. Abdullah ibn Muhammad ibn Uthman al-Asadi narrated to us, Ahmad ibn Khalid narrated to us, Ali ibn Abd al-Aziz narrated to us, al-Hajjaj ibn al-Minhal narrated to us, Hammad ibn Salamah narrated from Abdullah al-Danaj and Abi Harrah. Abdullah al-Danaj reported from Ma'bad al-Juhani, while Abu Hurrah stated: From al-Hasan. They both affirmed: Hudhayfah's wife was a Zoroastrian.

L30258 نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ، قَالَ: يُعْرَضُ عَلَيْهَا الْإِسْلَامُ، فَإِنْ أَبَتْ، فَلْيُصِبْهَا إِنْ شَاءَ وَإِنْ كَانَتْ مَجُوسِيَّةً - وَلَكِنْ يُكْرِهُهَا عَلَى الْغُسْلِ مِنْ الْجَنَابَةِ.

Narrated by Ḥumām from Ibn Mufarrij from Ibn al-Aʿrābī from al-Dabarī from ʿAbd al-Razzāq, from Maʿmar, from ʿAbd Allāh ibn Ṭāwūs, from his father, who said: "She is presented with Islam. If she refuses, he may have intercourse with her if he wishes—even if she is a Zoroastrian—but he compels her to perform the ritual purification (ghusl) for major impurity."

L30259–30260 وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ يَزِيدَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: لَا بَأْسَ أَنْ يَطَأَ الرَّجُلُ جَارِيَتَهُ الْمَجُوسِيَّةَ.

And through him to ʿAbd al-Razzāq, from Ibrāhīm ibn Yazīd, from ʿAmr ibn Dīnār, from Saʿīd ibn al-Musayyab, who said: There is no objection to a man having sexual intercourse with his Majūsī concubine.

L30261 Abu Muhammad said: We have mentioned in *The Book of Tadhkiyah*

Saʿīd ibn al-Musayyib's ruling permitting the consumption of what a Magian slaughters. As for us—though we differ with Saʿīd and Ṭāwus regarding intercourse with a Magian female slave by right-hand possession—we cited them solely due to their permitting marriage contracts with Magian women.

L30262 And among those who permitted marriage to a Zoroastrian woman is Abu Thawr.

L30263 Abu Muhammad said: Among the clearest errors is that Allah the Exalted has commanded that no jizyah be accepted from a polytheist except from the People of the Book; that no polytheist woman be married except a woman of the Book; and that the meat slaughtered by a polytheist not be eaten unless it is from a person of the Book, then a distinction is made between these aforementioned rulings, prohibiting some and permitting others. And success is from Allah, the Exalted.

L30264 **The issue of a Muslim woman marrying a non-Muslim.**

L30265 1822 - Question: It is not permissible for a Muslim woman to marry a non-Muslim at all. Nor is it permissible for a non-Muslim to own a Muslim male slave. Nor is it permissible for a non-Muslim to own a Muslim female slave under any circumstances.

L30266 The proof of that is the statement of Allah, the Almighty, the Majestic: "Do not give in marriage to the male polytheists until they believe" [Al-Baqarah 2:221].[24]

L30267 Allah, the Exalted and Majestic, has said: "And never will Allah give the disbelievers a way [to prevail] over the believers." [An-Nisāʾ 4:141][25]

L30268 Abu Muhammad said: Slavery is the gravest path, and Allah Almighty has abolished it entirely in general terms. As for those who oppose us by permitting their sale when they embrace Islam under a disbeliever's ownership, we say to them: Consider your prolonged exposure of the female slave and

[24]**Qur'an references (L30266):** Qur'an 2:221 (Al-Baqarah).
[25]**Qur'an references (L30267):** Qur'an 4:141 (An-Nisa).

قَالَ أَبُو مُحَمَّد: وَقَدْ ذَكَرْنَا فِي " كِتَابِ التَّذْكِيَةِ " إبَاحَةَ سَعِيدِ بْنِ الْمُسَيِّبِ أَكْلَ مَا ذَبَحَهُ الْمَجُوسِيُّ وَنَحْنُ - وَإِنْ كُنَّا نُخَالِفُ سَعِيدًا، وَطَاوُسًا فِي وَطْءِ الْأَمَةِ الْمَجُوسِيَّةِ بِمِلْكِ الْيَمِينِ -: فَإِنَّمَا أَتَيْنَا بِهِمَا لِإِبَاحَتِهِمَا نِكَاحَ الْمَجُوسِيَّاتِ.

وَمِمَّنْ أَبَاحَ نِكَاحَ الْمَجُوسِيَّةِ أَبُو ثَوْرٍ.

قَالَ أَبُو مُحَمَّد: وَمِنْ أَبْيَنِ الْخَطَأِ أَنْ يَكُونَ اللَّهُ تَعَالَى أَمَرَ أَنْ لَا تُقْبَلَ جِزْيَةٌ مِنْ مُشْرِكٍ إلَّا مِنْ أَهْلِ الْكِتَابِ، وَلَا أَنْ تُنْكَحَ مُشْرِكَةٌ إلَّا الْكِتَابِيَّةُ وَأَنْ لَا تُؤْكَلَ ذَبِيحَةُ مُشْرِكٍ إلَّا كِتَابِيٌّ، ثُمَّ يُفَرَّقُ بَيْنَ الْأَحْكَامِ الْمَذْكُورَةِ، فَيُمْنَعُ مِنْ بَعْضِهَا وَيُبِيحُ بَعْضَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة نِكَاح المسلمة غَيْر الْمُسْلِم]

١٨٢٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِمُسْلِمَةٍ نِكَاحُ غَيْرِ مُسْلِمٍ أَصْلًا، وَلَا يَحِلُّ لِكَافِرٍ أَنْ يَمْلِكَ عَبْدًا مُسْلِمًا، وَلَا مُسْلِمَةً أَمَةً أَصْلًا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا} [البقرة: ٢٢١] .

وَقَالَ عَزَّ وَجَلَّ: {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] .

قَالَ أَبُو مُحَمَّد: وَالرِّقُّ أَعْظَمُ السَّبِيلِ وَقَدْ قَطَعَهَا اللَّهُ عَزَّ وَجَلَّ جُمْلَةً عَلَى الْعُمُومِ، وَمَنْ خَالَفَنَا فِي هَذَا بِبَيْعِهِمَا إذَا أَسْلَمَا فِي مِلْكِ الْكَافِرِ، فَنَقُولُ لَهُمْ: أَرَأَيْتُمْ طُولَ مُدَّةِ تَعْرِيضِكُمْ الْأَمَةَ وَالْعَبْدَ لِلْبَيْعِ إذَا أَسْلَمَا عِنْدَ الْكَافِرِ، وَقَدْ تَكُونُ تِلْكَ الْمُدَّةُ سَاعَةً، وَتَكُونُ سَنَةً، أَفِي

male slave to sale if they embrace Islam under a disbeliever – whether this period lasts an hour or a year. Are they within the disbeliever's ownership or not? There is no third possibility. If they are within his ownership, why do you prevent him from continuing his ownership over them when you have permitted it for a period? What proof do you have for this invalid distinction?

مِلْكِ الْكَافِرِ هُمَا أَمْ لَيْسَ فِي مِلْكِهِ؟ وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ -: فَإِنْ كَانَا فِي مِلْكِهِ، فَلِمَ تَمْنَعُونَهُ مِنْ اتِّصَالِ مِلْكِهِ عَلَيْهِمَا - وَقَدْ أَبَحْتُمُوهُ مُدَّةً - مَا - وَمَا بُرْهَانُكُمْ عَلَى هَذَا الْفَرْقِ الْفَاسِدِ؟

L30269 If you were to say: "The two are neither in that [state] nor in the ownership of another?" We would respond: "This is the attribute of freedom, and whoever bears this attribute may not be lawfully sold, nor may ownership be lawfully established over him."

وَإِنْ قُلْتُمْ: لَيْسَا فِي ذَلِكَ وَلَا فِي مِلْكِ غَيْرِهِ؟ قُلْنَا: هَذِهِ صِفَةُ الْحُرِّيَّةِ، وَمَنْ هَذِهِ صِفَتُهُ فَلَا يَحِلُّ بَيْعُهُ وَلَا إِحْدَاثُ مِلْكٍ عَلَيْهِ.

L30270–30272 If they say: Then we ask you about that which you sell to him due to harm that has afflicted him, or regarding a property right that has become obligatory upon him? We respond: It remains within the ownership of the purchaser, and his ownership of it is not prohibited, for if the harm affecting him were eliminated, he would not be barred from retaining it. His property is sold to settle the debt. If property other than a male or female slave is found in his possession, the two enslaved persons cannot be sold for his debt. This ruling does not apply to the disbeliever, because according to your school, a Muslim is prohibited from owning him.

فَإِنْ قَالُوا: فَإِنَّا نَسْأَلُكُمْ عَنْ الَّذِي تَبِيعُونَهُ لِضَرَرٍ أَضَرَّ بِهِ، أَوْ فِي حَقِّ مَالٍ وَجَبَ عَلَيْهِ؟ قُلْنَا: هُوَ فِي مِلْكِ الَّذِي يُبَاعُ عَلَيْهِ، وَلَيْسَ مِلْكُهُ لَهُ حَرَامًا لِأَنَّهُ لَوْ قُطِعَ ضَرَرُهُ عَنْهُ لَمْ يُبَعْ عَلَيْهِ، وَلَوْ وُجِدَ لَهُ مَالٌ غَيْرُ الْعَبْدِ أَوْ الْأَمَةِ لَمْ يُبَاعَا عَلَيْهِ، وَلَيْسَ كَذَلِكَ الْكَافِرُ؛ لِأَنَّهُ مَمْنُوعٌ عِنْدَكُمْ مِنْ تَمَلُّكِ الْمُسْلِمِ.

L30273 And with Allah, the Exalted, is the divine success.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30274 The Messenger of Allah—peace and blessings be upon him and his family—had freed every slave of the people of disbelief who emigrated to him as a Muslim. Thus, your restriction of this ruling to those who emigrated to us from them constitutes an arbitrary ruling without evidence, for the Messenger of Allah—peace and blessings be upon him and his family—did not say, "I only free you because of your emigration." Therefore, it is impermissible to attribute to him—peace and blessings be upon him and his family—what he did not say.

وَقَدْ أَعْتَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَنْ خَرَجَ إلَيْهِ مُسْلِمًا مِنْ عَبِيدِ أَهْلِ الْكُفْرِ فَتَخْصِيصُكُمْ بِذَلِكَ مَنْ خَرَجَ إلَيْنَا مِنْهُمْ تَحَكُّمٌ بِلَا دَلِيلٍ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقُلْ: إنَّمَا أُعْتِقُكُمْ لِخُرُوجِكُمْ، فَلَا يَجُوزُ أَنْ يَقُولَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا لَمْ يَقُلْ.

L30275 If it is said: Did Abu Bakr—may Allah be pleased with him—purchase Bilal—may Allah be pleased with him—from a disbeliever after his conversion to Islam? We say: That occurred in Makkah during the early period of Islam before the revelation of the aforementioned verse, just as the Prophet—peace

فَإِنْ قِيلَ: قَدْ اشْتَرَى أَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - بِلَالًا - رَضِيَ اللَّهُ عَنْهُ - مِنْ كَافِرٍ بَعْدَ إسْلَامِهِ؟ قُلْنَا: كَانَ ذَلِكَ بِمَكَّةَ فِي أَوَّلِ الْإِسْلَامِ قَبْلَ نُزُولِ الْآيَةِ الْمَذْكُورَةِ كَمَا أَنْكَحَ -

and blessings be upon him—married a daughter, may Allah be pleased with her, to Abi al-ʻAs ibn al-Rabiʻ, who was a disbeliever, and a daughter to ʻUqbah ibn Abi Lahab, before the revelation prohibiting such marriages.

L30276 It is confirmed that when a male and female slave embrace Islam while under the ownership of a non-Muslim, they become emancipated at the moment their Islam is perfected. Success comes solely from Allah, the Most High.

L30277 ## The Issue of the Walīmah (Wedding Feast) in Islamic Marriage

L30278 Issue 1823: It is obligatory for everyone who marries to host a wedding feast (walīmah) according to their means, whether modest or lavish.

L30279 The evidence for this is what we have narrated through the chain of Muslim from Yahya ibn Yahya, Qutaybah, and Abu al-Rabiʻ al-Ataki—all of whom reported from Hammad ibn Zayd, from Thabit al-Bunani, from Anas ibn Malik: "The Messenger of Allah—peace and blessings be upon him and his family—saw a trace of yellow on ʿAbd al-Rahman ibn ʿAwf and said, 'What is this?' He replied, 'O Messenger of Allah, I married a woman with a dowry of the weight of a date seed of gold.' The Messenger of Allah—peace and blessings be upon him and his family—then said to him, 'Hold a wedding feast, even if it is with a single sheep.'"

L30280–30281 From the transmission of Muslim: Abū Bakr ibn Shaybah narrated from ʻAffān ibn Muslim, who narrated from Ḥammād ibn Salamah, who narrated from Thābit al-Bunānī, who narrated from Anas ibn Mālik. He mentioned the marriage of the Messenger of Allāh, ṣallā Allāhu ʿalayhi wa-ālihi wa-sallam, to Ṣafiyyah, the Mother of the Believers. Anas said: "The Messenger of Allāh, ṣallā Allāhu ʿalayhi wa-ālihi wa-sallam, made her wedding feast consist of dates, dried curd, and clarified butter."

L30282 Through the chain of Al-Bukhari: Muḥammad ibn Yūnus narrated to us, Sufyān narrated to us from Manṣūr ibn Ṣafiyyah from the maidservant of Ṣafiyyah bint Shaybah, who said: "The Messenger of Allah (peace and blessings be upon him and his family) hosted a wedding feast (walīma) for one of his wives with two mudd measures of barley."

عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِنْتَهُ - رَضِيَ اللَّهُ عَنْهَا - مِنْ أَبِي الْعَاصِ بْنِ الرَّبِيعِ - وَهُوَ كَافِرٌ - وَمِنْ عُقْبَةَ بْنِ أَبِي لَهَبٍ قَبْلَ نُزُولِ تَحْرِيمِ ذَلِكَ.

فَصَحَّ أَنَّ الْعَبْدَ، وَالْأَمَةَ إذَا أَسْلَمَا - وَهُمَا فِي مِلْكِ كَافِرٍ - فَإِنَّهُمَا حُرَّانِ فِي حِينِ تَمَامِ إسْلَامِهِمَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْوَلِيمَةِ فِي النِّكَاحِ]

١٨٢٣ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مَنْ تَزَوَّجَ أَنْ يُولِمَ بِمَا قَلَّ أَوْ كَثُرَ.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ عَنْ يَحْيَى بْنِ يَحْيَى، وَقُتَيْبَةَ، وَأَبِي الرَّبِيعِ الْعَتَكِيِّ، كُلُّهُمْ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَأَى عَلَى عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَثَرَ صُفْرَةٍ، فَقَالَ: مَا هَذَا؟ فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي تَزَوَّجْتُ امْرَأَةً عَلَى وَزْنِ نَوَاةٍ مِنْ ذَهَبٍ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَوْلِمْ وَلَوْ بِشَاةٍ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ شَيْبَةَ نا عَفَّانُ بْنُ مُسْلِمٍ نا حَمَّادُ بْنُ سَلَمَةَ نا ثَابِتٌ الْبُنَانِيُّ عَنْ أَنَسِ بْنِ مَالِكٍ فَذَكَرَ نِكَاحَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - صَفِيَّةَ أُمَّ الْمُؤْمِنِينَ، قَالَ أَنَسٌ: «فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلِيمَتَهَا التَّمْرَ وَالْأَقِطَ وَالسَّمْنَ» .

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ يُونُسَ نا سُفْيَانُ عَنْ مَنْصُورِ بْنِ صَفِيَّةَ عَنْ أَمَةِ صَفِيَّةَ بِنْتِ شَيْبَةَ قَالَتْ: «أَوْلَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَلَى بَعْضِ نِسَائِهِ بِمُدَّيْنِ مِنْ شَعِيرٍ» .

This is the opinion of Abū Sulaymān and our companions [in the school].

وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

The case of someone invited to a wedding feast (walima) or a meal.

[مَسْأَلَة مَنْ دُعِيَ إِلَى وَلِيمَةٍ أَوْ طَعَامٍ]

1824. Legal ruling: It is obligatory upon everyone invited to a wedding feast or meal to accept, unless due to an excuse. If one is not fasting, it is obligatory for them to eat. If one is fasting, let them supplicate to Allah for the hosts. If silk is spread there, the house is unlawfully seized, the food is unlawfully seized, or visible wine is present, they should leave and not stay - as we have been narrated via the chain of Muslim ibn al-Hajjaj: Harun ibn Abdullah al-Ayli narrated to us, from Hajjaj ibn Muhammad, from Ibn Jurayj, from Musa ibn Uqbah, from Nafi, who said: I heard Abdullah ibn Umar say, "The Messenger of Allah - may Allah's blessings and peace be upon him and his family - said: 'Respond to the invitation when you are invited to it.'"

١٨٢٤ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى كُلِّ مَنْ دُعِيَ إِلَى وَلِيمَةٍ أَوْ طَعَامٍ أَنْ يُجِيبَ - إِلَّا مِنْ عُذْرٍ - فَإِنْ كَانَ مُفْطِرًا فَفَرْضٌ عَلَيْهِ أَنْ يَأْكُلَ، فَإِنْ كَانَ صَائِمًا فَلْيَدْعُ اللَّهَ لَهُمْ، فَإِنْ كَانَ هُنَالِكَ حَرِيرٌ مَبْسُوط، أَوْ كَانَتْ الدَّارُ مَغْصُوبَةً، أَوْ كَانَ الطَّعَامُ مَغْصُوبًا، أَوْ كَانَ هُنَاكَ خَمْرٌ ظَاهِرٌ: فَلْيَرْجِعْ وَلَا يَجْلِسْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا هَارُونُ بْنُ عَبْدِ اللَّهِ الْأَيْلِيُّ نا حَجَّاجُ بْنُ مُحَمَّدٍ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ عُمَرَ يَقُولُ: " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَجِيبُوا الدَّعْوَةَ إذَا دُعِيتُمْ لَهَا» .

Ibn Umar would accept invitations to wedding feasts and other occasions, and he would attend them while fasting.

وَكَانَ ابْنُ عُمَرَ يَأْتِي الدَّعْوَةَ فِي الْعُرْسِ وَغَيْرِهِ، وَكَانَ يَأْتِيهَا وَهُوَ صَائِمٌ.

From the chain of ʿAbd al-Razzāq: Maʿmar reported to us from Ayyūb al-Sikhtiyānī from Nāfiʿ that Ibn ʿUmar used to say from the Prophet—peace and blessings of Allah be upon him and his family—: "When one of you invites his brother, let him respond, whether it is a wedding or something similar."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ كَانَ يَقُولُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «إذَا دَعَا أَحَدُكُمْ أَخَاهُ فَلْيُجِبْهُ عُرْسًا كَانَ أَوْ نَحْوَهُ» .

Narrated by Muḥammad ibn Saʿīd ibn Nabāt, from Aḥmad ibn ʿAwn Allāh, from ʿAbd al-Raḥmān ibn Asad al-Kāzarūnī, from Abū Yaʿqūb al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Mujāhid, who said: One day, Ibn ʿUmar was invited to a meal. A man from the group said, "As for me, will you exempt me?" Ibn ʿUmar replied, "There is no exemption for you in this! Get up!"

ثنا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا عَبْدُ الرَّحْمَنِ بْنُ أَسَدٍ الْكَازَرُونِيُّ نا أَبُو يَعْقُوبَ الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُجَاهِدٍ قَالَ: إنَّ ابْنَ عُمَرَ دُعِيَ يَوْمًا إلَى طَعَامٍ، فَقَالَ رَجُلٌ مِنْ الْقَوْمِ: أَمَّا أَنَا فَأَعْفِنِي؟ فَقَالَ لَهُ ابْنُ عُمَرَ: لَا عَافِيَةَ لَك مِنْ هَذَا، فَقُمْ.

And through the chain of Muslim, Abū Bakr ibn Abī Shaybah narrated to

us: Ḥafṣ ibn Ghīyāth narrated to us, from Hishām, from Ibn Sīrīn, from Abū Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him and his family) said: “When one of you is invited, he should accept. If he is fasting, let him pray, and if he is not fasting, let him eat.”[26]

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ هِشَامٍ عَنْ ابْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «إِذَا دُعِيَ أَحَدُكُمْ فَلْيُجِبْ، فَإِنْ كَانَ صَائِمًا فَلْيُصَلِّ وَإِنْ كَانَ مُفْطِرًا فَلْيَطْعَمْ» .

L30292 It is authentically narrated from Abu Huraira that: “Whoever does not accept the invitation has indeed disobeyed Allah and His Messenger.”

وَصَحَّ عَنْ أَبِي هُرَيْرَةَ «مَنْ لَمْ يُجِبْ الدَّعْوَةَ فَقَدْ عَصَى اللَّهَ وَرَسُولَهُ» .

L30293 If it is said: “Some narrations state, ’When one of you is invited to a wedding feast, they must accept,’” we respond: Yes. However, the narrations we cited in them include elements other than the wedding itself alongside it, and the stipulation of justice—it is impermissible to disregard this principle.

فَإِنْ قِيلَ: قَدْ جَاءَ فِي بَعْضِ الْآثَارِ: «إِذَا دُعِيَ أَحَدُكُمْ إلَى وَلِيمَةِ عُرْسٍ فَلْيُجِبْ» ؟ قُلْنَا: نَعَمْ، لَكِنْ الْآثَارُ الَّتِي أَوْرَدْنَا فِيهَا زِيَادَةً غَيْرَ الْعُرْسِ مَعَ الْعُرْسِ، وَزِيَادَةَ الْعَدْلِ لَا يَحِلُّ تَرْكُهَا.

L30294–30296 If it is said: “You have indeed narrated via the chain of Sufyān from Abū al-Zubayr from Jābir from the Messenger...” Allah - may peace and blessings be upon him and his family - said: “When one of you is invited to a meal, he should respond. If he wishes, he may eat, and if he wishes, he may decline?”[27]

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ سُفْيَانَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إِذَا دُعِيَ أَحَدُكُمْ إلَى طَعَامٍ فَلْيُجِبْ، فَإِنْ شَاءَ طَعِمَ وَإِنْ شَاءَ تَرَكَ» .؟

L30297 We said: Yes, and Abu al-Zubayr did not mention in this narration that he heard it from Jabir, nor is it from al-Layth’s narration from him.

قُلْنَا: نَعَمْ، وَأَبُو الزُّبَيْرِ لَمْ يَذْكُرْ فِي هَذَا أَنَّهُ سَمِعَهُ مِنْ جَابِرٍ، وَلَا هُوَ مِنْ رِوَايَةِ اللَّيْثِ عَنْهُ.

L30298 We have been narrated from al-Layth that he exposed Abū al-Zubayr’s attribution of reports to Jābir that he had not actually heard from him. Al-Layth said: “I informed him about what I had taken from him—and this ḥadīth is not among what I informed him regarding it.” Thus, the validity of citing it as evidence was nullified.

وَقَدْ رُوِّينَا عَنْ اللَّيْثِ أَنَّهُ وَقَّفَ أَبَا الزُّبَيْرِ عَلَى مَا سَمِعَهُ مِنْ جَابِرٍ مِمَّا لَمْ يَسْمَعْهُ مِنْهُ، قَالَ اللَّيْثُ: فَأَعْلَمُ لِي عَلَى مَا أَخَذْته عَنْهُ - وَلَيْسَ هَذَا الْحَدِيثُ مِمَّا أَعْلَمُ لَهُ عَلَيْهِ، فَبَطَلَ الِاحْتِجَاجُ بِهِ.

L30299 Then, if it were valid, the report obligating eating would be an addition beyond this [ruling], and it is impermissible to abandon such an increase in justice—and success is from Allah, the Most High.

ثُمَّ لَوْ صَحَّ لَكَانَ الْخَبَرُ الَّذِي فِيهِ إيجَابُ الْأَكْلِ زَائِدًا عَلَى هَذَا، وَزِيَادَةُ الْعَدْلِ لَا يَحِلُّ تَرْكُهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَجُمْهُورُ الصَّحَابَةِ، وَالتَّابِعِينَ عَلَى مَا ذَكَرْنَا مِنْ إيجَابِ الدَّعْوَةِ.

[26] **Hadith references (L30291):** Sahih Muslim 1431; Hisn al-Muslim 185; Riyad as-Salihin 737.

[27] **Hadith references (L30294):** Sahih Muslim 1430a.

L30300 The majority of the Companions and the Followers affirm the obligation of the call, as we mentioned.

L30301 **Issue: A woman may not marry except with the permission of her guardian.**

L30302 1825 - Issue: It is not permissible for a woman—whether previously married or a virgin—to marry except with the permission of her guardian: the father, the brothers, the grandfather, the paternal uncles, or the paternal male cousins, even if they are distant, with priority granted successively to the nearest relative.

L30303 A woman's child is not her guardian unless he is her paternal cousin, provided there is no closer relative to her among her kin than him. This means the guardian may grant her permission to marry. If her guardians refuse to permit her marriage, the governing authority may marry her off.

L30304–30306 The proof of that is the statement of Allah, the Mighty and Majestic: "And marry the unmarried among you and the righteous among your male and female servants." [An-Nur: 32] And Allah's statement: "Do not marry off [women] to the polytheists until they believe" [Al-Baqarah: 221]. This is an address to the guardians, not to the women.[28]

L30307 It was narrated to us through the transmission of Ibn Wahb: Ibn Jurayj narrated to us from Sulayman ibn Musa from Ibn Shihab from Urwah ibn al-Zubayr from Aishah, the Mother of the Believers—may Allah be pleased with her—from the Prophet—peace and blessings of Allah be upon him and his family—who said: "A woman must not be married without her guardian. If she is married off [without her guardian], then her marriage is invalid"—repeating this three times—"If he has consummated the marriage, she is entitled to her dower for the intimacy he has had with her. If they dispute, then the ruling authority is the guardian for whoever has no guardian."

L30308–30310 And what was narrated to us by Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us: Ibn Mufarrij narrated to us; Muḥammad ibn Ayyūb al-Ṣamūṭ

[28] **Qur'an references (L30304):** Qur'an 24:32 (An-Nur); Qur'an 2:221 (Al-Baqarah).

[مَسْأَلَة لَا يَحِلُّ لِلْمَرْأَةِ نِكَاحٌ إِلَّا بأذن وليها]

١٨٢٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمَرْأَةِ نِكَاحٌ - ثَيِّبًا كَانَتْ أَوْ بِكْرًا - إِلَّا بِإِذْنِ وَلِيِّهَا الْأَبِ، أَوْ الْإِخْوَةِ، أَوْ الْجَدِّ، أَوْ الْأَعْمَامِ، أَوْ بَنِي الْأَعْمَامِ - وَإِنْ بَعُدُوا - وَالْأَقْرَبُ فَالْأَقْرَبُ أَوْلَى.

وَلَيْسَ وَلَدُ الْمَرْأَةِ وَلِيًّا لَهَا إِلَّا إِنْ كَانَ ابْنَ عَمِّهَا، لَا يَكُونُ فِي الْقَوْمِ أَقْرَبُ إِلَيْهَا مِنْهُ - وَمَعْنَى ذَلِكَ -: أَنْ يَأْذَنَ لَهَا فِي الزَّوَاجِ، فَإِنْ أَبَى أَوْلِيَاؤُهَا مِنْ الْإِذْنِ لَهَا: زَوَّجَهَا السُّلْطَانُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ جَلَّ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] وقَوْله تَعَالَى: {وَلا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا} [البقرة: ٢٢١] وَهَذَا خِطَابٌ لِلْأَوْلِيَاءِ لَا لِلنِّسَاءِ.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ نا ابْنُ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا تُنْكَحُ الْمَرْأَةُ بِغَيْرِ وَلِيِّهَا فَإِنْ نُكِحَتْ فَنِكَاحُهَا بَاطِلٌ - ثَلَاثَ مَرَّاتٍ - فَإِنْ أَصَابَهَا فَلَهَا مَهْرُهَا بِمَا أَصَابَ مِنْهَا، فَإِنْ اشْتَجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ» .

وَمَا حَدَّثَنَا بِهِ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيُّ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا أَبُو كَامِلٍ نا بِشْرُ بْنُ مَنْصُورٍ نا سُفْيَانُ الثَّوْرِيُّ

al-Raqqī narrated to us; Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār narrated to us; Abū Kāmil narrated to us; Bishr ibn Manṣūr narrated to us; Sufyān al-Thawrī narrated to us; from Abū Isḥāq al-Sabīʿī; from Abū Burdah ibn Abī Mūsā al-Ashʿarī; from his father; from... The Prophet (peace and blessings of Allah be upon him and his family) said: "There is no marriage except with a guardian."

عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا نِكَاحَ إِلَّا بِوَلِيٍّ» .

L30311 And with it to al-Bazzāz: Muḥammad ibn Mūsā al-Ḥarashī narrated to us; from Yazīd ibn Zurayʿ; from Shuʿbah ibn al-Ḥajjāj; from Abū Isḥāq as-Sabīʿī; from Abū Burdah ibn Abī Mūsā al-Ashʿarī; from his father—Abū Mūsā—from the Prophet, peace and blessings be upon him and his family: "No marriage except with a guardian."

وَبِهِ إِلَى الْبَزَّازِ نا مُحَمَّدُ بْنُ مُوسَى الْحَرَشِيُّ نا يَزِيدُ بْنُ زُرَيْعٍ نا شُعْبَةُ بْنُ الْحَجَّاجِ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ - هُوَ أَبُو مُوسَى - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا نِكَاحَ إِلَّا بِوَلِيٍّ» .

L30312–30313 A group of people objected to this ḥadīth of Umm al-Mu'minīn by noting that Ibn 'Ulayyah narrated from Ibn Jurayj: "Did he ask Al-Zuhrī about this ḥadīth?" But he did not recognize it. They said: Umm al-Mu'minīn—may Allah be pleased with her—this ḥadīth is narrated from her, though it is authentically established that she had married off the daughter of her brother 'Abd al-Raḥmān—while he was traveling in Syria near his return—without his permission. He did not validate it; rather, he rejected it when he learned of it. Yet 'Ā'ishah did not consider this to invalidate the marriage. Instead, she said to Al-Mundhir ibn Al-Zubayr—the one to whom she had married the daughter—"Place her matter in his hands," so he did. Then 'Abd al-Raḥmān ratified it.

فَاعْتَرَضَ قَوْمٌ عَلَى حَدِيثِ أُمِّ الْمُؤْمِنِينَ هَذَا بِأَنَّ ابْنَ عُلَيَّةَ رَوَى عَنْ ابْنِ جُرَيْجٍ أَنَّهُ سَأَلَ الزُّهْرِيَّ عَنْ هَذَا الْحَدِيثِ؟ فَلَمْ يَعْرِفْهُ - قَالُوا: وَأُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - رُوِيَ هَذَا الْحَدِيثُ عَنْهَا - وَقَدْ صَحَّ عَنْهَا أَنَّهَا كَانَتْ أَنْكَحَتْ بِنْتَ أَخِيهَا - عَبْدِ الرَّحْمَنِ وَهِيَ بِكْرٌ وَهُوَ مُسَافِرٌ بِالشَّامِ قَرِيبُ الْأَوْبَةِ - بِغَيْرِ أَمْرِهِ، فَلَمْ يُمْضِهِ، بَلْ أَنْكَرَ ذَلِكَ إِذْ بَلَغَهُ، فَلَمْ تَرَ عَائِشَةُ ذَلِكَ مُبْطِلًا لِذَلِكَ النِّكَاحِ، بَلْ قَالَتْ لِلَّذِي زَوَّجَتْهَا مِنْهُ - وَهُوَ الْمُنْذِرُ بْنُ الزُّبَيْرِ -: اجْعَلْ أَمْرَهَا إِلَيْهِ، فَفَعَلَ، فَأَنْفَذَهُ عَبْدُ الرَّحْمَنِ -.

L30314 They said: And Az-Zuhri is the one to whom this report is attributed.

قَالُوا: وَالزُّهْرِيُّ هُوَ الَّذِي رُوِيَ عَنْهُ هَذَا الْخَبَرُ.

L30315–30316 You [plural] have narrated via the chain of transmission of ʿAbd al-Razzāq, from Maʿmar, that he said to him: "Did you [singular] ask al-Zuhrī about a man who marries without a guardian?" He replied: "If he is her equal, they should not be separated."

قَدْ رَوَيْتُمْ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ أَنَّهُ قَالَ لَهُ: سَأَلْت الزُّهْرِيَّ عَنْ الرَّجُلِ يَتَزَوَّجُ بِغَيْرِ وَلِيٍّ؟ فَقَالَ: إنْ كَانَ كُفُؤًا لَهَا لَمْ يُفَرَّقْ بَيْنَهُمَا.

L30317 They said: So if this report were authentic, would not the contrary position of Aisha—who narrated it—and Az-Zuhri—who likewise narrated it—indicate evidence from its content for its abrogation?

قَالُوا: فَلَوْ صَحَّ هَذَا الْخَبَرُ لَدَلَّ خِلَافُ عَائِشَةَ الَّتِي رَوَتْهُ، وَالزُّهْرِيُّ الَّذِي رَوَاهُ لِمَا فِيهِ دَلِيلًا عَلَى نَسْخِهِ؟

L30318 We said: As for your statement, "Ibn Jurayj asked al-Zuhri about it, so why

did he not recognize it?" – Abu Sulayman Dawud ibn Babshadh ibn Dawud ibn Sulayman wrote to me: Narrated by ʻAbd al-Ghani ibn Saʻid al-Azdi the Preserver, on the authority of Hisham ibn Muhammad ibn Qurrah al-Ruʻayni, who said: Abu Jaʻfar al-Tahawi narrated, on the authority of Ahmad ibn ʻImran Abi Dawud, who said: Yahya ibn Maʻin narrated from Ibn ʻUlayyah, from Ibn Jurayj, that he asked al-Zuhri about this hadith, and he did not recognize it.

فَقُلْنَا: أَمَّا قَوْلُكُمْ: إِنَّ الزُّهْرِيَّ سَأَلَهُ عَنْهُ ابْنُ جُرَيْجٍ فَلَمْ يَعْرِفْهُ؟ فَإِنَّ أَبَا سُلَيْمَانَ دَاوُد بْنَ بَابْشَاذَ بْنِ دَاوُد بْنِ سُلَيْمَانَ كَتَبَ إِلَيَّ: نا عَبْدُ الْغَنِيِّ بْنُ سَعِيدٍ الْأَزْدِيُّ الْحَافِظُ نا هِشَامُ بْنُ مُحَمَّدِ بْنِ قُرَّةَ الرُّعَيْنِيُّ، قَالَ: نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ نا أَحْمَدُ بْنُ أَبِي دَاوُد عِمْرَانُ، قَالَ: نا يَحْيَى بْنُ مَعِينٍ عَنْ ابْنِ عُلَيَّةَ عَنْ ابْنِ جُرَيْجٍ: أَنَّهُ سَأَلَ الزُّهْرِيَّ عَنْ هَذَا الْحَدِيثِ؟ فَلَمْ يَعْرِفْهُ.

L30319 Abu Muhammad said: This is baseless due to two reasons. The first is what we narrated to al-Qāḍī Abū Bakr Ḥumām ibn Aḥmad, who said: ʿAbbās ibn Aṣbagh reported to us, Muḥammad ibn ʿAbd al-Malik ibn Ayman reported to us, Ghaylān reported to us, ʿAbbās reported to us, Yaḥyā ibn Maʿīn reported to us regarding this ḥadīth of Ibn Jarīr. ʿAbbās said: I asked him, "Indeed, Ibn ʿUlayyah says: 'Did Ibn Jurayj say to Sulaymān ibn Mūsā?'" He replied, "I forgot after him [Ibn Jurayj]." Then Ibn Maʿīn said: "None would say this except Ibn ʿUlayyah. Did Ibn ʿUlayyah present Ibn Jarīr's books to ʿAbd al-Majīd ibn ʿAbd al-ʿAzīz ibn Abī Rawwād, and he corrected them for him?"

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا شَيْءَ لِوَجْهَيْنِ -: أَحَدُهُمَا مَا حَدَّثَنَاهُ الْقَاضِي أَبُو بَكْرٍ حُمَامُ بْنُ أَحْمَدَ قَالَ: نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا غَيْلَانُ نا عَبَّاسٌ نا يَحْيَى بْنُ مَعِينٍ: حَدِيثُ ابْنِ جَرِيرٍ هَذَا - قَالَ عَبَّاسٌ: فَقُلْت لَهُ: إِنَّ ابْنَ عُلَيَّةَ يَقُولُ: قَالَ ابْنُ جُرَيْجٍ لِسُلَيْمَانَ بْنِ مُوسَى؟ فَقَالَ: نَسِيت بَعْدَهُ، فَقَالَ ابْنُ مَعِينٍ: لَيْسَ يَقُولُ هَذَا إِلَّا ابْنُ عُلَيَّةَ، وَابْنُ عُلَيَّةَ عَرَضَ كُتُبَ ابْنِ جَرِيرٍ عَلَى عَبْدِ الْمَجِيدِ بْنِ عَبْدِ الْعَزِيزِ بْنِ أَبِي رَوَّادٍ فَأَصْلَحَهَا لَهُ؟

L30320 Ibn Maʿīn said: There is nothing authentic in this matter except the *ḥadīth* of Sulaymān ibn Mūsā.

قَالَ ابْنُ مَعِينٍ: لَا يَصِحُّ فِي هَذَا إِلَّا حَدِيثُ سُلَيْمَانَ بْنِ مُوسَى.

L30321 Abu Muhammad said: It is established that the oral transmission of Ibn ʿUlayyah from Ibn Jurayj is compromised by insertion.

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ سَمَاعَ ابْنِ عُلَيَّةَ مِنْ ابْنِ جُرَيْجٍ مَدْخُولٌ.

L30322 Then, even if it were valid that al-Zuhrī rejected it and Sulaymān ibn Mūsā forgot it - we have been narrated through Muslim ibn al-Ḥajjāj: Ibn Numayr reported to us, saying: "'Abdah and Abū Muʿāwiyah [narrated] from Hishām ibn ʿUrwa from his father from ʿĀ'isha, the Mother of the Believers (may Allah be pleased with her), who said: 'The Prophet - peace and blessings of Allah be upon him and his family - heard a man reciting in the mosque and said: "May Allah have mercy on him. He has reminded me of a verse I had forgotten."'"

ثُمَّ لَوْ صَحَّ أَنَّ الزُّهْرِيَّ أَنْكَرَهُ، وَأَنَّ سُلَيْمَانَ بْنَ مُوسَى نَسِيَهُ -: فَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا ابْنُ نُمَيْرٍ قَالَ: قَالَ لِي عَبْدَةُ، وَأَبُو مُعَاوِيَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ، «كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَسْمَعُ قِرَاءَةَ رَجُلٍ فِي الْمَسْجِدِ فَقَالَ: - رَحِمَهُ اللَّهُ - لَقَدْ أَذْكَرَنِي آيَةً كُنْتُ أُنْسِيتُهَا» .

L30323–30325 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us from Wahb ibn Maysarah

from Ibn Waḍḍāḥ from Abū Bakr ibn Abī Shaybah from Wakīʿ from Sufyān from Salamah ibn Kuhayl from Dharr ibn ʿAbd Allāh al-Marhabī from Saʿīd ibn ʿAbd al-Raḥmān ibn Abzā from his father that the Prophet (may the peace and blessings of Allah be upon him and his family) prayed Fajr and omitted a verse. When he finished praying, he said: "Is Ubayy ibn Kaʿb among the people?" Ubayy ibn Kaʿb responded: "O Messenger of Allah, did you overlook such and such a verse, or was it abrogated?" The Prophet, peace and blessings be upon him, replied: "Rather, I was caused to forget it."

نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نَا وَهْبُ بْنُ مَيْسَرَةَ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ ذَرِّ بْنِ عَبْدِ اللَّهِ الْمَرْهَبِيِّ عَنْ سَعِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبْزَى عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - صَلَّى الْفَجْرَ فَأَغْفَلَ آيَةً، فَلَمَّا صَلَّى قَالَ: أَفِي الْقَوْمِ أُبَيُّ بْنُ كَعْبٍ؟ فَقَالَ لَهُ أُبَيُّ بْنُ كَعْبٍ: يَا رَسُولَ اللَّهِ أَغْفَلْتَ آيَةَ كَذَا، أَوَنُسِخَتْ؟ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: بَلْ أُنْسِيتُهَا» .

Abu Muhammad said: If it is established that the Messenger of Allah—may Allah bless him and his family and grant him peace—forgot a verse of the Quran, then who are al-Zuhrī, Sulaymān, and Yaḥyā to claim they would not forget? For the Exalted and Majestic has said: {We had certainly taken a covenant from Adam before, but he forgot} [Ta-Ha: 115]?[29]

L30326

قَالَ أَبُو مُحَمَّد: فَإِذَا صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَسِيَ آيَةً مِنْ الْقُرْآنِ، فَمَنْ الزُّهْرِيُّ، وَمَنْ سُلَيْمَانُ، وَمَنْ يَحْيَى حَتَّى لَا يَنْسَى؟ وَقَدْ قَالَ عَزَّ وَجَلَّ: {وَلَقَدْ عَهِدْنَا إِلَى آدَمَ مِنْ قَبْلُ فَنَسِيَ} [طه: ١١٥] .

However, Ibn Jurayj is trustworthy. When he narrates to us from Sulaymān ibn Mūsā—who is trustworthy—that he informed him of a musnad report from al-Zuhrī, the proof is established through it, whether they forgot it after conveying it and narrating it, or did not forget it.

L30327

لَكِنْ ابْنُ جُرَيْجٍ ثِقَةٌ، فَإِذَا رَوَى لَنَا عَنْ سُلَيْمَانَ بْنِ مُوسَى - وَهُوَ ثِقَةٌ - أَنَّهُ أَخْبَرَهُ عَنْ الزُّهْرِيِّ بِخَبَرٍ مُسْنَدٍ، فَقَدْ قَامَتْ الْحُجَّةُ بِهِ، سَوَاءٌ نَسَوْهُ بَعْدَ أَنْ بَلَّغُوهُ وَحَدَّثُوا بِهِ، أَوْ لَمْ يَنْسَوْهُ.

And Abu Hurairah forgot a ḥadīth: There is no contagion.

L30328

وَقَدْ نَسِيَ أَبُو هُرَيْرَةَ حَدِيثَ لَا عَدْوَى.

Al-Hasan forgot the hadith about one who killed his own slave.

L30329

وَنَسِيَ الْحَسَنُ حَدِيثَ مَنْ قَتَلَ عَبْدَهُ.

Abū Muḥammad, the client of Ibn ʿAbbās, forgot the ḥadīth concerning the *takbīr* after the prayer after they had narrated it. What then? None objects to this except an ignorant person or one who defends falsehood against the truth. We do not know in which Qur'an, which Sunnahs, or which rulings of the intellects they found that if someone narrates a ḥadīth and then forgets it, the validity of that ḥadīth is nullified. Are they not but engaged in a baseless false claim?

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وَنَسِيَ أَبُو مُحَمَّدٍ مَوْلَى ابْنِ عَبَّاسٍ حَدِيثَ التَّكْبِيرِ بَعْدَ الصَّلَاةِ بَعْدَ أَنْ حَدَّثُوا بِهَا، فَكَانَ مَاذَا؟ لَا يَعْتَرِضُ بِهَذَا إلَّا جَاهِلٌ، أَوْ مُدَافِعٌ لِلْحَقِّ بِالْبَاطِلِ، وَلَا نَدْرِي فِي أَيِّ الْقُرْآنِ، أَمْ فِي أَيِّ السُّنَنِ، أَمْ فِي أَيِّ حُكْمِ الْعُقُولِ وَجَدُوا؟ أَنَّ مَنْ حَدَّثَ بِحَدِيثٍ ثُمَّ نَسِيَهُ: أَنَّ حُكْمَ ذَلِكَ الْخَبَرِ يَبْطُلُ، مَا هُمْ إلَّا فِي دَعْوَى كَاذِبَةٍ بِلَا بُرْهَانٍ؟

[29] **Qur'an references (L30326):** Qur'an 20:115 (Taha).

L30331 As for their objection that it is authentically established from ʻĀ'ishah and al-Zuhrī—may Allah be pleased with them both—that they contradicted what they narrated in this matter, then what of it? Indeed, Allah, Mighty and Majestic, and His Messenger—peace and blessings be upon him and his family—have commanded us, and the rational proof has been established, obligating acceptance of what is authentically verified with us from the Messenger of Allah—peace and blessings be upon him and his family—and invalidating adherence to any opinion other than his—peace and blessings be upon him.

وَأَمَّا اعْتِرَاضُهُمْ بِأَنَّهُ صَحَّ عَنْ عَائِشَةَ، وَعَنْ الزُّهْرِيِّ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّهُمَا خَالَفَا مَا رَوَيَا مِنْ ذَلِكَ، فَكَانَ مَاذَا؟ إنَّمَا أَمَرَنَا اللَّهُ عَزَّ وَجَلَّ، وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَامَتْ حُجَّةُ الْعَقْلِ بِوُجُوبِ قَبُولِ مَا صَحَّ عِنْدَنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَبِسُقُوطِ اتِّبَاعِ قَوْلٍ مِنْ دُونِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L30332 We do not know where they found that one who opposes—through erroneous interpretation—what he narrated thereby invalidates what he narrated. We then invert their corrupt principle against them, stating: If it is confirmed that Umm al-Mu'minīn—may Allah be pleased with her—and al-Zuhrī—may Allah have mercy on him—narrated this report, and it was reported from them that they contradicted it, this would be evidence for the narration's invalidation due to their contradiction. Rather, the presumption regarding them is that they do not contradict what they narrated, and this is more valid. For abandoning their non-binding opinions in favor of adhering to their binding narrations is obligatory—not abandoning their binding narrations in favor of their non-binding opinions.

وَلَا نَدْرِي أَيْنَ وَجَدُوا: أَنَّ مَنْ خَالَفَ - بِاجْتِهَادِهِ مُخْطِئًا مُتَأَوِّلًا - مَا رَوَاهُ أَنَّهُ يَسْقُطُ بِذَلِكَ مَا رَوَاهُ، ثُمَّ نَعْكِسُ عَلَيْهِمْ أَصْلَهُمْ هَذَا الْفَاسِدَ، فَنَقُولُ: إذَا صَحَّ أَنَّ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَالزُّهْرِيَّ - رَحِمَهُ اللَّهُ - رَوَيَا هَذَا الْخَبَرَ، وَرُوِيَ عَنْهُمَا أَنَّهُمَا خَالَفَاهُ، فَهَذَا دَلِيلٌ عَلَى سُقُوطِ الرِّوَايَةِ بِأَنَّهُمَا خَالَفَاهُ، بَلْ بَلْ الظَّنُّ بِهِمَا أَنَّهُمَا لَا يُخَالِفَانِ مَا رَوَيَاهُ، وَهَذَا أَوْلَى، لِأَنَّ تَرْكَنَا مَا لَا يَلْزَمُنَا مِنْ قَوْلِهِمَا لِمَا يَلْزَمُنَا مِنْ رِوَايَتِهِمَا هُوَ الْوَاجِبُ، لَا تَرْكُ مَا يَلْزَمُنَا مِمَّا رَوَيَاهُ لِمَا لَا يَلْزَمُنَا مِنْ رَأْيِهِمَا.

L30333–30334 How then, when Dāwūd ibn Bābshādh wrote to me, stating: ʿAbd al-Ghanī ibn Saʿīd narrated to us: Hishām ibn Muḥammad ibn Qurrah narrated to us: Abū Jaʿfar al-Ṭaḥāwī narrated to us: al-Ḥasan ibn Ghulayb narrated to us: Yaḥyā ibn Sulaymān al-Juʿfī narrated to us: ʿAbd Allāh ibn Idrīs al-Awdī narrated from Ibn Jurayj from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq from his father from ʿĀ'ishah, the Mother of the Believers, that she arranged the marriage of a man from her brother's sons to a young girl from her brother's sons. She placed a curtain between them, then she spoke until nothing remained except the *nikāh*, whereupon she instructed a man to contract the marriage. She then said: "The *nikāh* is not for women." This was confirmed with certainty as her retraction of her initial action to what she had pointed out—that women's *nikāh* is not permissible.

فَكَيْفَ وَقَدْ كَتَبَ إلَيَّ دَاوُد بْنُ بَابْشَاذَ قَالَ: حَدَّثَنِي عَبْدُ الْغَنِيِّ بْنُ سَعِيدٍ نا هِشَامُ بْنُ مُحَمَّدِ بْنِ قُرَّةَ نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ نا الْحَسَنُ بْنُ غُلَيْبٍ نا يَحْيَى بْنُ سُلَيْمَانَ الْجُعْفِيُّ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا أَنْكَحَتْ رَجُلًا مِنْ بَنِي أَخِيهَا جَارِيَةً مِنْ بَنِي أَخِيهَا، فَضَرَبَتْ بَيْنَهُمْ سِتْرًا، ثُمَّ تَكَلَّمَتْ حَتَّى إذَا لَمْ يَبْقَ إلَّا النِّكَاحُ أَمَرَتْ رَجُلًا فَأَنْكَحَ، ثُمَّ قَالَتْ: لَيْسَ إلَى النِّسَاءِ النِّكَاحُ - فَصَحَّ يَقِينًا بِهَذَا رُجُوعُهَا عَنْ الْعَمَلِ الْأَوَّلِ إلَى مَا نَبَّهَتْ عَلَيْهِ مِنْ أَنَّ نِكَاحَ النِّسَاءِ لَا يَجُوزُ.

L30335 They objected regarding the narration of Abu Musa - "that some people sent

him?" We responded: What of that? If the report is authentically transmitted as traced back to the Messenger of Allah (peace and blessings be upon him and his family), it constitutes decisive proof that obligates us to accept it as an obligation. What does it matter whether someone sent him, or one who did not narrate it at all, or one who narrated it through another weak chain? All this is as if it never existed - and with Allah alone is success.

وَاعْتَرَضُوا فِي رِوَايَةِ أَبِي مُوسَى: أَنَّ قَوْمًا أَرْسَلُوهُ؟ فَقُلْنَا: فَكَانَ مَاذَا، إذَا صَحَّ الْخَبَرُ مُسْنَدًا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَدْ قَامَتْ الْحُجَّةُ بِهِ، وَلَزِمَنَا قَبُولُهُ فَرْضًا، وَلَا مَعْنَى لِمَنْ أَرْسَلَهُ، أَوْ لِمَنْ لَمْ يَرْوِهِ أَصْلًا، أَوْ لِمَنْ رَوَاهُ مِنْ طَرِيقٍ أُخْرَى ضَعِيفَةٍ؟ كُلُّ هَذَا كَأَنَّهُ لَمْ يَكُنْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30336 Abu Muhammad said: Among those who held a view similar to ours is a group of the Salaf—as has been narrated to us via the chain of Ibn Wahb: Amr ibn al-Harith narrated to me from Bukayr ibn al-Ashajj that he heard Sa'id ibn al-Musayyib say: 'Umar ibn al-Khattab said, "A woman may not be married except with the permission of her guardian, or the competent members of her family, or the ruler." And via the chain of Sufyan ibn 'Uyaynah from 'Amr ibn Dinar from 'Abd al-Rahman ibn Ma'bad: 'Umar ibn al-Khattab annulled the marriage of a woman who contracted a marriage without her guardian's permission.'

قَالَ أَبُو مُحَمَّد: وَمِمَّنْ قَالَ بِمِثْلِ قَوْلِنَا جَمَاعَةٌ مِنْ السَّلَفِ -: كَمَا رُوِّينَا: مِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ: أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا تُنْكَحُ الْمَرْأَةُ إلَّا بِإِذْنِ وَلِيِّهَا، أَوْ ذَوِي الرَّأْيِ مِنْ أَهْلِهَا، أَوْ السُّلْطَانِ. وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَعْبَدٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ رَدَّ نِكَاحَ امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا.

L30337 From the narration of Abd al-Razzaq via Ibn Jurayj: Abd al-Rahman ibn Jubayr ibn Shaybah informed me that Ikrimah ibn Khalid reported to him that a traveling party formed a group. A previously married woman entrusted her marital matter to a man from the group—who was not her guardian—and he married her to another man. When this reached Umar ibn al-Khattab, he lashed the groom and the one who conducted the marriage, and annulled her union.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ جُبَيْرِ بْنِ شَيْبَةَ أَنَّ عِكْرِمَةَ بْنَ خَالِدٍ أَخْبَرَهُ أَنَّ الطَّرِيقَ جَمَعَ رَكْبًا، فَجَعَلَتْ امْرَأَةٌ ثَيِّبٌ أَمْرَهَا إلَى رَجُلٍ مِنْ الْقَوْمِ غَيْرِ وَلِيٍّ فَأَنْكَحَهَا رَجُلًا، فَبَلَغَ ذَلِكَ عُمَرَ بْنَ الْخَطَّابِ، فَجَلَدَ النَّاكِحَ وَالْمُنْكِحَ وَرَدَّ نِكَاحَهَا.

L30338 Narrated through the chain of Muḥammad ibn Sīrīn from Abū Hurayrah: Women hold no authority in contracting marriage. There is no valid marriage except with a guardian. A woman cannot give herself in marriage, for it is the fornicatress who gives herself in marriage.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ سِيرِينَ عَنْ أَبِي هُرَيْرَةَ: لَيْسَ لِلنِّسَاءِ مِنْ الْعَقْدِ شَيْءٌ، لَا نِكَاحَ إلَّا بِوَلِيٍّ، لَا تُنْكِحُ الْمَرْأَةُ نَفْسَهَا، فَإِنَّ الزَّانِيَةَ تُنْكِحُ نَفْسَهَا.

L30339 And via the chain of Ḥammād ibn Salamah from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn: Ibn ʿAbbās said, "Prostitutes are women who marry themselves off without [the involvement of] guardians."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ ابْنَ عَبَّاسٍ قَالَ: الْبَغَايَا اللَّاتِي يَنْكِحْنَ أَنْفُسَهُنَّ بِغَيْرِ الْأَوْلِيَاءِ.

L30340–30341 And through the chain of ʿAbd al-Razzāq from ʿUbayd Allāh ibn ʿUmar from Nāfiʿ, he said: ʿUmar ibn al-Khaṭṭāb entrusted his daughter Ḥafṣa, the Mother

of the Believers (raḍiya Allāhu ʿanhā), with guardianship over his wealth, his daughters, and their marriage contracts. Thus, whenever Ḥafṣa wished to marry off a woman under her guardianship, she would instruct her brother ʿAbdullāh, and he would conduct the marriage.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ قَالَ: وَلَّى عُمَرُ بْنُ الْخَطَّابِ ابْنَتَهُ حَفْصَةَ أُمَّ الْمُؤْمِنِينَ مَالَهُ وَبَنَاتِهِ وَنِكَاحَهُنَّ فَكَانَتْ حَفْصَةُ أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - إِذَا أَرَادَتْ أَنْ تُزَوِّجَ امْرَأَةً أَمَرَتْ أَخَاهَا عَبْدَ اللَّهِ فَيُزَوِّجُ.

L30342 And similar to this has also been narrated to us from ʿĀ'ishah, the Mother of the Believers—may Allah be pleased with her—Ibn ʿUmar, ʿUmar ibn ʿAbd al-ʿAzīz, and Ibrāhīm al-Nakhaʿī.

وَرُوِّينَا نَحْوَ هَذَا أَيْضًا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَابْنِ عُمَرَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِبْرَاهِيمَ النَّخَعِيِّ.

L30343 It has been narrated to us from Al-Ḥajjāj ibn Al-Minhāl, from Abū Hilāl, who said: I asked Al-Ḥasan, "I asked Abū Saʿīd about a woman whose guardian is absent in Sijistān, while her guardian here has a guardian himself. Can the guardian of her guardian marry her off?" He replied: "No, but let them write to him." I said: "The suitor cannot wait." He responded: "He must wait." A man asked him: "For how long must he wait?" Al-Ḥasan said: "He must wait as long as the Companions of the Cave waited."

وَرُوِّينَا: عَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا أَبُو هِلَالٍ، قَالَ: سَأَلْت الْحَسَنَ؟ فَقُلْت: سَأَلْت أَبَا سَعِيدٍ عَنْ امْرَأَةٍ خَطَبَهَا رَجُلٌ وَوَلِيُّهَا غَائِبٌ بِسِجِسْتَانَ، وَلِوَلِيِّهَا هَاهُنَا وَلِيٌّ، أَيُزَوِّجُهَا وَلِيُّ وَلِيِّهَا؟ قَالَ: لَا، وَلَكِنْ اُكْتُبُوا إلَيْهِ، قُلْت لَهُ: إنَّ الْخَاطِبَ لَا يَصْبِرُ؟ قَالَ: فَلْيَصْبِرْ، قَالَ لَهُ رَجُلٌ: إلَى مَتَى يَصْبِرُ؟ قَالَ الْحَسَنُ: يَصْبِرُ كَمَا صَبَرَ أَهْلُ الْكَهْفِ.

L30344 And it is the statement of Jābir ibn Zayd and Makḥūl-.

وَهُوَ قَوْلُ جَابِرِ بْنِ زَيْدٍ، وَمَكْحُولٍ -.

L30345 This is the view of Ibn Shubrumah, Ibn Abī Laylā, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayyin, al-Shāfiʿī, Aḥmad, Isḥāqa, Abū ʿUbayd, and Ibn al-Mubārak.

وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَابْنِ أَبِي لَيْلَى وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي عُبَيْدٍ، وَابْنِ الْمُبَارَكِ.

L30346 There is an old and recent disagreement regarding this matter – as narrated by Muḥammad ibn Saʿīd ibn Nabāt → Aḥmad ibn ʿAwn Allāh → Qāsim ibn Aṣbagh → Muḥammad ibn ʿAbd al-Salām al-Khushanī → Muḥammad ibn Bashshār Bindār → Abū Dāwūd al-Ṭayālisī → Shuʿbah → Abū Isḥāq al-Shaybānī and Sufyān al-Thawrī. Abū Isḥāq said: "There was a woman among us called Baḥriyyah. Her mother married her off while her father was absent. When her father returned, he objected to this, so he referred the matter to ʿAlī, who validated it."

وَفِي ذَلِكَ خِلَافٌ قَدِيمٌ، وَحَدِيثٌ -: كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ بِنْدَارٌ نا أَبُو دَاوُد الطَّيَالِسِيُّ نا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، قَالَ أَبُو إِسْحَاقَ: كَانَتْ فِينَا امْرَأَةٌ يُقَالُ لَهَا: بَحْرِيَّةُ، زَوَّجَتْهَا أُمُّهَا، وَكَانَ أَبُوهَا غَائِبًا، فَلَمَّا قَدِمَ أَبُوهَا أَنْكَرَ ذَلِكَ، فَرَفَعَ ذَلِكَ إلَى عَلِيٍّ فَأَجَازَ ذَلِكَ -.

L30347 Shuʿbah said, "Sufyān al-Thawrī informed me that he heard Abū Qays report-

ing from Hudhayl ibn Shuraḥbīl from ʻAlī ibn Abī Ṭālib a similar narration."

قَالَ شُعْبَةُ: وَأَخْبَرَنِي سُفْيَانُ الثَّوْرِيُّ أَنَّهُ سَمِعَ أَبَا قَيْسٍ يُحَدِّثُ عَنْ هُذَيْلِ بْنِ شُرَحْبِيلَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ بِمِثْلِهِ.

L30348 And through the chain of Al-Ḥajjāj ibn Al-Minhāl, narrated to us Shuʿbah ibn Al-Ḥajjāj, who said: I was informed by Sulaymān Al-Shaybānī (who is Abū Isḥāq), who said: I heard Al-Qaʿqāʿ say: A man married a woman from our community named Baḥriyyah; her mother had contracted her marriage to him. Then her father came and objected to this, so they brought their dispute to ʿAlī ibn Abī Ṭālib, and he upheld it.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا شُعْبَةُ بْنُ الْحَجَّاجِ قَالَ: أَخْبَرَنِي سُلَيْمَانُ الشَّيْبَانِيُّ - هُوَ أَبُو إِسْحَاقَ - قَالَ: سَمِعْت الْقَعْقَاعَ، قَالَ: إنَّهُ تَزَوَّجَ رَجُلٌ امْرَأَةً مِنَّا يُقَالُ لَهَا: بَحْرِيَّةُ، زَوَّجَتْهَا إيَّاهُ أُمُّهَا، فَجَاءَ أَبُوهَا فَأَنْكَرَ ذَلِكَ، فَاخْتَصَمَا إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ، فَأَجَازَهُ.

L30349–30351 The well-known ḥadīth is from ʿĀʾishah, the Mother of the Believers, that she arranged the marriage of her brother ʿAbd al-Raḥmān's daughter. From al-Mundhir ibn al-Zubayr: While ʻAbd al-Rahman was absent in Syria. When he arrived, he rejected that. Thereupon, al-Mundhir referred her matter to him, and he ratified it.

وَالْخَبَرُ الْمَشْهُورُ: عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّهَا زَوَّجَتْ بِنْتَ أَخِيهَا عَبْدِ الرَّحْمَنِ مِنْ الْمُنْذِرِ بْنِ الزُّبَيْرِ، وَعَبْدِ الرَّحْمَنِ غَائِبٌ بِالشَّامِ، فَلَمَّا قَدِمَ أَنْكَرَ ذَلِكَ، فَجَعَلَ الْمُنْذِرُ أَمْرَهَا إلَيْهِ فَأَجَازَهُ.

L30352 It has been narrated to us that Umamah bint Abi al-ʿĀṣ ibn Abi al-Rabiʿ—her mother being Zaynab, daughter of the Messenger of Allah (peace and blessings be upon him and his family)—was proposed to by Mu'awiyah after the killing of Ali (may Allah be pleased with him). She had been married to Ali. She summoned al-Mughīrah ibn Nawfal ibn al-Harith ibn Abd al-Muttalib and placed her affairs in his hands, whereupon he married her himself. Marwan became angered and wrote of this to Mu'awiyah, who wrote back to him: "Leave him and her alone."

وَرُوِّينَا أَنَّ أُمَامَةَ بِنْتَ أَبِي الْعَاصِ بْنِ أَبِي الرَّبِيعِ، وَأُمُّهَا زَيْنَبُ بِنْتُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خَطَبَهَا مُعَاوِيَةُ بَعْدَ قَتْلِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - وَكَانَتْ تَحْتَ عَلِيٍّ، فَدَعَتْ بِالْمُغِيرَةِ بْنِ نَوْفَلِ بْنِ الْحَارِثِ بْنِ عَبْدِ الْمُطَّلِبِ فَجَعَلَتْ أَمْرَهَا إلَيْهِ فَأَنْكَحَهَا نَفْسَهُ، فَغَضِبَ مَرْوَانُ، وَكَتَبَ ذَلِكَ إلَى مُعَاوِيَةَ، فَكَتَبَ إلَيْهِ مُعَاوِيَةُ: دَعْهُ وَإِيَّاهَا.

L30353 It is authentically reported from Ibn Sirīn regarding a woman who has no guardian: she delegated her matter to a man, and he contracted her marriage. Ibn Sirīn said: "There is no harm in that. The believers are guardians of one another."

وَصَحَّ عَنْ ابْنِ سِيرِينَ فِي امْرَأَةٍ لَا وَلِيَّ لَهَا، فَوَلَّتْ رَجُلًا أَمْرَهَا، فَزَوَّجَهَا، قَالَ ابْنُ سِيرِينَ: لَا بَأْسَ بِذَلِكَ، الْمُؤْمِنُونَ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ.

L30354 From ʿAbd al-Razzāq, from Ibn Jurayj: He asked ʿAṭāʾ about a woman who married without her legal guardians' permission while they were present. He replied, "As for a woman who is legally competent to manage her own affairs, if the marriage is contracted with witnesses, it is permissible without the legal guardians' permission."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَنَّهُ سَأَلَ عَطَاءً عَنْ امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وُلَاتِهَا - وَهُمْ حَاضِرُونَ، فَقَالَ أَمَّا امْرَأَةٌ مَالِكَةٌ أَمْرَ نَفْسِهَا إذَا كَانَ بِشُهَدَاءَ، فَإِنَّهُ جَائِزٌ بِغَيْرِ أَمْرِ الْوُلَاةِ.

وَعَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ فِي امْرَأَةٍ زَوَّجَتْ ابْنَتَهَا بِغَيْرِ إذْنِ أَوْلِيَائِهَا، قَالَ: إنْ أَجَازَ الْوُلَاةُ ذَلِكَ إذَا عَلِمُوا، فَهَذَا جَائِزٌ - وَرُوِيَ نَحْوُ هَذَا عَنْ الْحَسَنِ أَيْضًا.

L30355 From Al-Qasim ibn Muhammad regarding a woman who contracted the marriage of her daughter without the permission of her legal guardians, he said: "If the legal guardians approve of that when they learn of it, then this is permissible." A similar report was also narrated from Al-Hasan.

قَالَ الْأَوْزَاعِيُّ إنْ كَانَ الزَّوْجُ كُفُؤًا وَلَهَا مِنْ أَمْرِهَا نَصِيبٌ، وَدَخَلَ بِهَا، لَمْ يَكُنْ لِلْوَلِيِّ أَنْ يُفَرِّقَ بَيْنَهُمَا.

L30356 Al-Awzāʿī said: If the husband is a suitable match, she has consented to the marriage, and it has been consummated, the guardian has no right to annul their union.

وَقَالَ أَبُو ثَوْرٍ: لَا يَجُوزُ أَنْ تُزَوِّجَ الْمَرْأَةُ نَفْسَهَا، وَلَا أَنْ تُزَوِّجَهَا امْرَأَةٌ وَلَكِنْ إنْ زَوَّجَهَا رَجُلٌ مُسْلِمٌ جَازَ، الْمُؤْمِنُونَ إخْوَةٌ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ.

L30357 Abu Thawr said: It is not permissible for a woman to marry herself off, nor for a woman to contract marriage on her behalf. However, if a Muslim man contracts the marriage for her, it is permissible. Believers are brothers; some of them are guardians for others.

قَالَ أَبُو سُلَيْمَانَ: أَمَّا الْبِكْرُ فَلَا يُزَوِّجُهَا إلَّا وَلِيُّهَا، وَأَمَّا الثَّيِّبُ فَتُوَلِّي أَمْرَهَا مَنْ شَاءَتْ مِنْ الْمُسْلِمِينَ وَيُزَوِّجُهَا، وَلَيْسَ لِلْوَلِيِّ فِي ذَلِكَ اعْتِرَاضٌ.

L30358 Abu Sulaiman said: As for the virgin, none may marry her off except her guardian. As for the previously married woman, she may entrust her matter to whomever she wishes among the Muslims, and he may marry her off. The guardian has no right to object to this.

وَقَالَ مَالِكٌ: أَمَّا الدَّنِيئَةُ، كَالسَّوْدَاءِ، أَوْ الَّتِي أَسْلَمَتْ، أَوْ الْفَقِيرَةُ، أَوْ النَّبَطِيَّةُ، أَوْ الْمُوَلَّاةُ، فَإِنْ زَوَّجَهَا الْجَارُ وَغَيْرُهُ - مِمَّنْ لَيْسَ هُوَ لَهَا بِوَلِيٍّ - فَهُوَ جَائِزٌ - وَأَمَّا الْمَرْأَةُ الَّتِي لَهَا الْمَوْضِعُ، فَإِنْ زَوَّجَهَا غَيْرُ وَلِيِّهَا فُرِّقَ بَيْنَهُمَا فَإِنْ أَجَازَ ذَلِكَ الْوَلِيُّ، أَوْ السُّلْطَانُ: جَازَ، فَإِنْ تَقَادَمَ أَمْرُهَا وَلَمْ يُفْسَخْ، وَوَلَدَتْ لَهُ الْأَوْلَادَ: لَمْ نَفْسَخْ.

L30359 Malik said: As for the low-status woman - such as a black woman, a female convert to Islam, a poor woman, a peasant woman, or a client woman - if a neighbor or others unqualified to act as her guardian marry her off, it is permissible. However, regarding the woman of established social standing, if someone other than her guardian arranges her marriage, they must be separated. If the guardian or legal authority approves it, the marriage becomes valid. If the matter becomes longstanding without annulment and she bears him children, we do not annul it.

وَقَالَ أَبُو حَنِيفَةَ، وَزُفَرُ، جَائِزٌ لِلْمَرْأَةِ أَنْ تُزَوِّجَ نَفْسَهَا كُفُؤًا، وَلَا اعْتِرَاضَ لِوَلِيِّهَا فِي ذَلِكَ، فَإِنْ زَوَّجَتْ نَفْسَهَا غَيْرَ كُفْءٍ، فَالنِّكَاحُ جَائِزٌ، وَلِلْأَوْلِيَاءِ أَنْ يُفَرِّقُوا بَيْنَهُمَا، وَكَذَلِكَ لِلْوَلِيِّ أَنْ يُخَاصِمَ فِيمَا حَطَّتْ مِنْ صَدَاقِ مِثْلِهَا.

L30360 Abu Hanifa and Zufar said: It is permissible for a woman to contract her own marriage to a socially equal match, and her guardian has no right to object to this. If she contracts her own marriage to a socially unequal match, the marriage remains valid, but the guardians have the right to annul the marriage. Similarly, the guardian may legally contest any reduction from the customary mahr for women of her social standing.

L30361–30362 Abū Yūsuf and Muḥammad ibn al-Ḥasan stated: "There is no marriage without a guardian." Then they held differing opinions. Abū Yūsuf said: "If a

woman marries without a guardian and the guardian validates it, it is valid. If the guardian refuses to validate it while the husband is of equivalent status, the judge validates it. The marriage is not valid until the judge validates it."

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: لَا نِكَاحَ إِلَّا بِوَلِيٍّ، ثُمَّ اخْتَلَفَا، فَقَالَ أَبُو يُوسُفَ: إِنْ تَزَوَّجَتْ بِغَيْرِ وَلِيٍّ فَأَجَازَهُ الْوَلِيُّ جَازَ، فَإِنْ أَبَى أَنْ يُجِيزَ وَالزَّوْجُ كُفُؤٌ أَجَازَهُ الْقَاضِي، وَلَا يَكُونُ جَائِزًا إِلَّا حَتَّى يُجِيزَهُ الْقَاضِي.

L30363 And Muḥammad ibn al-Ḥasan said: If the guardian does not ratify it, the judge shall initiate a new contract in the matter.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: إِنْ لَمْ يُجِزْهُ الْوَلِيُّ اسْتَأْنَفَ الْقَاضِي فِيهِ عَقْدًا جَدِيدًا.

L30364 Abu Muhammad said: As for the statement of Muhammad ibn al-Hasan and Abu Yusuf, it is manifestly contradictory and invalid, for they contradicted their own assertion that "there is no marriage without a guardian" since they permitted the guardian to sanction what they themselves declared invalid.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي يُوسُفَ: فَظَاهِرُ التَّنَاقُضِ وَالْفَسَادِ، لِأَنَّهُمَا نَقَضَا قَوْلَهُمَا " لَا نِكَاحَ إِلَّا بِوَلِيٍّ " إِذْ أَجَازَا لِلْوَلِيِّ إِجَازَةَ مَا أَخْبَرَا أَنَّهُ لَا يَجُوزُ.

L30365 Similarly, the position of Abū Ḥanīfah is likewise [rejected], for he permitted a woman to contract her own marriage to someone unqualified, then allowed the guardian to annul a valid contract. These are rulings having no connection to the Quran, nor to any Sunnah—whether authentic or weak—nor to a Companion's statement, nor to rational basis, analogy, or sound juristic reasoning. Such rulings are only acceptable if issued by the Messenger of Allah—peace and blessings be upon him—who speaks not from whim, but solely through revelation from the Creator, who "is not questioned about what He does" [21:23]. As for anyone other than him—peace be upon him—this constitutes a new religion, for which Allah will exact punishment on the Day of Resurrection.[30]

وَكَذَلِكَ قَوْلُ أَبِي حَنِيفَةَ، لِأَنَّهُ أَجَازَ لِلْمَرْأَةِ إِنْكَاحَ نَفْسِهَا مِنْ غَيْرِ كُفْءٍ ثُمَّ أَجَازَ لِلْوَلِيِّ فَسْخَ الْعَقْدِ الْجَائِزِ، فَهِيَ أَقْوَالٌ لَا مُتَعَلَّقَ لَهَا بِقُرْآنٍ، وَلَا بِسُنَّةٍ لَا صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا بِمَعْقُولٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ - وَهَذَا لَا يُقْبَلُ إِلَّا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِي لَا يَنْطِقُ عَنْ الْهَوَى، إِلَّا عَنْ الْوَحْيِ مِنْ الْخَالِقِ، الَّذِي {لا يُسْأَلُ عَمَّا يَفْعَلُ} [الأنبياء: ٢٣] وَأَمَّا مِنْ غَيْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَهُوَ دِينٌ جَدِيدٌ، يُعَذِّبُ اللَّهُ بِهِ فِي الْحَشْرِ.

L30366 As for the statement of Mālik: this is manifest corruption, for he differentiated between base [actions] and non-base [actions], and we have not known baseness except as acts of disobedience to Allah the Exalted.

وَأَمَّا قَوْلُ مَالِكٍ: فَظَاهِرُ الْفَسَادِ، لِأَنَّهُ فَرَّقَ بَيْنَ الدَّنِيَّةِ وَغَيْرِ الدَّنِيَّةِ، وَمَا عَلِمْنَا الدَّنَاءَةَ إِلَّا مَعَاصِيَ اللَّهِ تَعَالَى.

L30367 As for the black woman and the client-woman, Umm Ayman—may Allah be pleased with her—was indeed a black woman and a client-woman. By Allah, I swear that after his wives—peace and blessings be upon him—there is no woman in this nation held in higher esteem by Allah the Exalted and all the people of Islam than her.

وَأَمَّا السَّوْدَاءُ، وَالْمَوْلَاةُ: فَقَدْ كَانَتْ أُمُّ أَيْمَنَ - رَضِيَ اللَّهُ عَنْهَا - سَوْدَاءَ وَمَوْلَاةً، وَوَاللَّهِ مَا بَعْدَ أَزْوَاجِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي هَذِهِ الْأُمَّةِ امْرَأَةٌ أَعْلَى قَدْرًا عِنْدَ اللَّهِ تَعَالَى وَعِنْدَ أَهْلِ الْإِسْلَامِ كُلِّهِمْ مِنْهَا.

[30] **Qur'an references (L30365):** Qur'an 21:23 (Al-Anbya).

L30368 As for the poor woman: poverty is not baseness, for among the prophets (peace be upon them) were those destroyed by poverty—though they are truly the people of honor and exalted status—while Qarun, Pharaoh, and Haman possessed wealth so vast it became known—though they are truly the people of baseness and vileness.

وَأَمَّا الْفَقِيرَةُ: فَمَا الْفَقْرُ دَنَاءَةً، فَقَدْ كَانَ فِي الْأَنْبِيَاءِ - عَلَيْهِمْ الصَّلَاةُ وَالسَّلَامُ - الْفَقِيرُ الَّذِي أَهْلَكَهُ الْفَقْرُ - وَهُمْ أَهْلُ الشَّرَفِ وَالرِّفْعَةِ حَقًّا - وَقَدْ كَانَ قَارُونُ، وَفِرْعَوْنُ، وَهَامَانُ: مِنْ الْغِنَى بِحَيْثُ عُرِفَ - وَهُمْ أَهْلُ الدَّنَاءَةِ وَالرَّذَالَةِ حَقًّا -.

L30369 As for the peasant woman: many a peasant woman is not coveted by numerous Quraysh men due to her wealth and elevated worldly status, while many a leader's daughter has perished in poverty, hardship, and ruin.

وَأَمَّا النَّبَطِيَّةُ: فَرُبَّ نَبَطِيَّةٍ لَا يَطْمَعُ فِيهَا كَثِيرٌ مِنْ قُرَيْشٍ لِيَسَارِهَا، وَعُلُوِّ حَالِهَا فِي الدُّنْيَا، وَرُبَّ بِنْتِ خَلِيفَةٍ هَلَكَتْ فَاقَةً وَجَهْدًا وَضَيَاعًا.

L30370–30371 Then his statement, "They are to be separated, but if the matter is prolonged and she bears his children, they are not to be separated," is the epitome of error. The matter is either valid or invalid, with no third possibility. If it is valid, no one has the right to nullify what is valid — neither immediately after its establishment nor later. If it is invalid, it is perpetually rejected unless a text from the Qur'an or the Sunnah of the Messenger of Allah, peace and blessings be upon him and his family, is presented, in which case it must be adhered to.

ثُمَّ قَوْلُهُ " يُفَرَّقُ بَيْنَهُمَا فَإِنْ طَالَ الْأَمْرُ وَوَلَدَتْ مِنْهُ الْأَوْلَادَ لَمْ يُفَرَّقْ بَيْنَهُمَا " فَهَذَا عَيْنُ الْخَطَأِ، إنَّمَا هُوَ حَقٌّ أَوْ بَاطِلٌ، وَلَا سَبِيلَ إلَى ثَالِثٍ، فَإِنْ كَانَ حَقًّا فَلَيْسَ لِأَحَدٍ نَقْضُ الْحَقِّ إثْرَ عَقْدِهِ وَلَا بَعْدَ ذَلِكَ وَإِنْ كَانَ بَاطِلًا فَالْبَاطِلُ مَرْدُودٌ أَبَدًا، إلَّا أَنْ يَأْتِيَ نَصٌّ مِنْ قُرْآنٍ أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَيُوقَفُ عِنْدَهُ.

L30372 We do not know of anyone before Mālik or any other scholar who made this statement of his, except those who blindly followed him. It has no connection to the Quran, nor to an authentic Sunnah, nor to a weak narration, nor to the saying of a Companion, nor a Follower, nor to reason, nor analogy, nor to an opinion with a discernible rationale.

وَمَا نَعْلَمُ قَوْلَ مَالِكٍ هَذَا قَالَهُ أَحَدٌ قَبْلَهُ وَلَا غَيْرُهُ، إلَّا مَنْ قَلَّدَهُ، وَلَا مُتَعَلِّقَ لَهُ بِقُرْآنٍ، وَلَا بِسُنَّةٍ صَحِيحَةٍ، وَلَا بِأَثَرٍ سَاقِطٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا تَابِعٍ، وَلَا مَعْقُولٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ يُعْرَفُ.

L30373 As for the statement of Abū Thawr: The saying of the Messenger of Allah (peace and blessings be upon him)—"If they compete in claims, then the governing authority becomes the guardian for those without one"—prevents the woman's guardian from being any ordinary Muslim. This is because resolving disputes among all who have embraced Islam is impossible. Far be it from him to command adherence to an impossibility. Thus, it is established that he—peace and blessings be upon him—referred to a specific group who

وَأَمَّا قَوْلُ أَبِي ثَوْرٍ: فَإِنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «فَإِنْ اشْتَجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ» مَانِعٌ مِنْ أَنْ يَكُونَ وَلِيُّ الْمَرْأَةِ كُلَّ مُسْلِمٍ، لِأَنَّ مُرَاعَاةَ اشْتِجَارِ جَمِيعِ مَنْ أَسْلَمَ مِنْ النَّاسِ مُحَالٌ، وَحَاشَ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يَأْمُرَ بِمُرَاعَاةِ مُحَالٍ لَا يُمْكِنُ فَصَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَنَى قَوْمًا خَاصَّةً يُمْكِنُ أَنْ يَشْتَجِرُوا فِي نِكَاحِ الْمَرْأَةِ، لَا حَقَّ لِغَيْرِهِمْ فِي ذَلِكَ.

might conflict over authority regarding the woman's marriage, as others have no right whatsoever in that matter.[31]

L30374 The statement of the Prophet - peace and blessings be upon him - "The governing authority is the guardian of one who has no guardian" is a clear exposition of our position, for if he - peace and blessings be upon him - had intended every Muslim, his statement "one who has no guardian" would have been impossible and invalid. Far be it from him to do such a thing. Thus, it is established that they are the male agnates who exist as guardians for some women but do not exist for others.

L30375 As for the opinion of Abū Sulaymān, reliance was placed on the authenticated report from the Messenger of Allah—peace and blessings be upon him—from his saying: "The virgin's father seeks her permission, and the previously married woman has more authority over herself than her guardian."

L30376 Abu Muhammad said: Had nothing else besides this existed, it would be as Abu Sulaiman said. However, the statement of the Prophet – peace and blessings be upon him – "Any woman who marries without her guardian's permission, her marriage is null and void" is a general ruling encompassing every woman, whether previously married or a virgin.

L30377–30378 The clarification of this position is that the meaning of his declaration—peace and blessings be upon him—"A previously married woman has greater authority over herself than her guardian" signifies that the guardian's command concerning her is not executed without her consent, and she may only marry whom she chooses. If she wishes to marry, she may only do so with the permission of their guardian. Should he refuse, the Sultan will marry them despite the guardian's refusal.

L30379 As for those who do not recognize any validity for the guardian, they have cited Allah's words as evidence: "until she marries another husband" [Al-Baqarah 2:230] and His words: "When they have fulfilled their prescribed

[31] **Hadith references (L30373):** Sunan Ibn Majah 1879; Jami at-Tirmidhi 1102; Mishkat al-Masabih 3131.

قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ» بَيَانٌ جَلِيٌّ بِمَا قُلْنَا إذْ لَوْ أَرَادَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كُلَّ مُسْلِمٍ لَكَانَ قَوْلُهُ: «مَنْ لَا وَلِيَّ لَهُ» مُحَالًا بَاطِلًا، وَحَاشَ لَهُ مِنْ فِعْلِ ذَلِكَ، فَصَحَّ: أَنَّهُمْ الْعَصَبَةُ الَّذِينَ يُوجَدُونَ لِبَعْضِ النِّسَاءِ وَلَا يُوجَدُونَ لِبَعْضِهِنَّ.

وَأَمَّا قَوْلُ أَبِي سُلَيْمَانَ فَإِنَّمَا عُوِّلَ عَلَى الْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «الْبِكْرُ يَسْتَأْذِنُهَا أَبُوهَا وَالثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا» .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَوْ لَمْ يَأْتِ غَيْرُهُ لَكَانَ كَمَا قَالَ أَبُو سُلَيْمَانَ، لَكِنَّ قَوْلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ» عُمُومٌ لِكُلِّ امْرَأَةٍ ثَيِّبٍ أَوْ بِكْرٍ.

وَبَيَانُ هَذَا الْقَوْلِ: أَنَّ مَعْنَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «وَالثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا» أَنَّهُ لَا يَنْفُذُ فِيهَا أَمْرُهُ بِغَيْرِ إذْنِهَا، وَلَا تَنْكِحُ إلَّا مَنْ شَاءَتْ، فَإِذَا أَرَادَتْ النِّكَاحَ لَمْ يَجُزْ لَهَا إلَّا بِإِذْنِ وَلِيِّهِمَا، فَإِنْ أَبَى أَنْكَحَهُمَا السُّلْطَانُ عَلَى رَغْمِ أَنْفِ الْوَلِيِّ الْآبِيِّ.

وَأَمَّا مَنْ لَمْ يَرَ لِلْوَلِيِّ مَعْنًى فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] وَبِقَوْلِ اللَّهِ تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَلا جُنَاحَ عَلَيْكُمْ فِيمَا فَعَلْنَ فِي أَنْفُسِهِنَّ} [البقرة: ٢٣٤] .

waiting period, there is no blame on you for what they do regarding themselves" [Al-Baqarah 2:234].[32]

وَقَدْ قُلْنَا: إنَّ قَوْله تَعَالَى: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ} [النور: ٣٢] بَيَانٌ فِي أَنَّ نِكَاحَهُنَّ لَا يَكُونُ إلَّا بِإِذْنِ الْوَلِيِّ.

L30380 We have stated that the words of the Most High, "And marry those who are widowed or divorced among you" [24:32], indicate that their marriage is only valid with the permission of the guardian.[33]

وَاحْتَجُّوا بِأَنَّ أُمَّ حَبِيبَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - زَوَّجَهَا النَّجَاشِيُّ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ} [الأحزاب: ٦] فَهَذَا خَارِجٌ مِنْ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ» .

L30381 They argued that Umm Habībah, the Mother of the Believers (may Allah be pleased with her), was given in marriage by the Najāshī to the Messenger of Allah (peace be upon him). This provides no valid proof for their position, for Allah the Exalted states: "The Prophet is closer to the believers than their own selves, and his wives are their mothers" [Al-Aḥzāb: 6]. This case constitutes an exception to his ruling (peace be upon him): "Any woman who marries without her guardian's permission, her marriage is void."[34][35]

وَوَجْهٌ آخَرُ: وَهُوَ أَنَّ هَذَا الْقَوْلَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الزَّائِدُ عَلَى مَعْهُودِ الْأَصْلِ، لِأَنَّ الْأَصْلَ - بِلَا شَكٍّ - أَنْ تَنْكِحَ الْمَرْأَةُ مَنْ شَاءَتْ بِغَيْرِ وَلِيٍّ، فَالشَّرْعُ الزَّائِدُ هُوَ الَّذِي لَا يَجُوزُ تَرْكُهُ، لِأَنَّهُ شَرِيعَةٌ وَارِدَةٌ مِنْ اللَّهِ تَعَالَى، كَالصَّلَاةِ بَعْدَ أَنْ لَمْ تَكُنْ، وَالزَّكَاةِ بَعْدَ أَنْ لَمْ تَكُنْ وَسَائِرِ الشَّرَائِعِ، وَلَا فَرْقَ.

L30382 Another perspective is that this statement from the Messenger of Allah—peace and blessings be upon him—constitutes supplementary legislation beyond the established customary principle, for the original principle—without doubt—is that a woman may marry whomever she wishes without a guardian. The supplementary legislation is what must not be abandoned, because it is a divinely ordained legislation revealed by Allah, the Exalted, like prayer after it had not been prescribed, zakat after it had not been prescribed, and all other legislations, and there is no difference [between them].

وَاحْتَجُّوا بِخَبَرٍ فِيهِ: أَنَّ عُمَرَ بْنَ أَبِي سَلَمَةَ هُوَ زَوَّجَ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - مِنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L30383 They cited as evidence a narration stating that ʿUmar ibn Abī Salamah himself married Umm Salamah, the Mother of the Believers, may Allah be pleased with her, to the Prophet, peace be upon him and his family.

وَهَذَا خَبَرٌ إنَّمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ عُمَرَ بْنِ أَبِي سَلَمَةَ وَهُوَ مَجْهُولٌ.

L30384 And this is a report we have only transmitted through the chain of Ibn ʿUmar ibn Abī Salamah, and he is unknown.

ثُمَّ لَوْ صَحَّ لَكَانَ الْقَوْلُ فِيهِ كَالْقَوْلِ فِي حَدِيثِ أُمِّ حَبِيبَةَ سَوَاءً سَوَاءً، مَعَ أَنَّ عُمَرَ بْنَ أَبِي سَلَمَةَ كَانَ يَوْمَئِذٍ صَغِيرًا لَمْ يَبْلُغْ، هَذَا لَا خِلَافَ فِيهِ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ بِالْأَخْبَارِ، فَمِنْ الْبَاطِلِ أَنْ يَعْتَمِدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى عَقْدِ مَنْ لَا يَجُوزُ عَقْدُهُ.

L30385 Then, even if it were valid, the ruling concerning it would be the same as the ruling in the ḥadīth of Umm Ḥabībah—identical, identical—despite the fact

[32] **Qur'an references (L30379):** Qur'an 2:230 (Al-Baqarah); Qur'an 2:234 (Al-Baqarah).
[33] **Qur'an references (L30380):** Qur'an 24:32 (An-Nur).
[34] **Hadith references (L30381):** Jami at-Tirmidhi 1102; Mishkat al-Masabih 3131.
[35] **Qur'an references (L30381):** Qur'an 33:6 (Al-Ahzab).

that ʿUmar ibn Abī Salamah was at that time a minor who had not attained puberty. This is a matter upon which there is no disagreement among any of the scholars of reports. It is therefore baseless to claim that the Messenger of Allāh—peace and blessings of Allāh be upon him—would rely on the marriage contract of one whose contract is impermissible.

وَيَكْفِي فِي رَدِّ هَذَا كُلِّهِ مَا حَدَّثَنَاهُ يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمِ بْنِ خَلِيلٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا عَارِمٌ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ - نا حَمَّادُ بْنُ زَيْدٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: لَمَّا نَزَلَتْ فِي زَيْنَبَ بِنْتِ جَحْشٍ {فَلَمَّا قَضَى زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا} [الأحزاب: ٣٧] قَالَ: فَكَانَتْ تَفْخَرُ عَلَى نِسَاءِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَقُولُ: زَوَّجَكُنَّ أَهْلُوكُنَّ وَزَوَّجَنِي اللَّهُ عَزَّ وَجَلَّ مِنْ فَوْقِ سَبْعِ سَمَوَاتٍ.

L30386–30387 To refute all this, it suffices to cite what Yahyā ibn ʿAbd al-Raḥmān ibn Masʿūd narrated to us: Aḥmad ibn Duhaym ibn Khalīl narrated to us, Ibrāhīm ibn Ḥammād narrated to us, Ismāʿīl ibn Isḥāq narrated to us, ʿĀrim - who is Muḥammad ibn al-Faḍl - narrated to us, Ḥammād ibn Zayd narrated to us from Thābit al-Bunānī from Anas ibn Mālik, who said: When the verse regarding Zaynab bint Jaḥsh was revealed - "When Zayd had no further desire for her, We married her to you" (33:37) - she would boast to the Prophet's wives (may Allah's blessings and peace be upon him and his family), saying: "Your families married you off, while Allah the Exalted and Majestic married me from above the seven heavens."[36]

فَهَذَا إِسْنَادٌ صَحِيحٌ مُبَيِّنٌ أَنَّ جَمِيعَ نِسَائِهِ - عَلَيْهِ السَّلَامُ - إِنَّمَا زَوَّجَهُنَّ أَوْلِيَاؤُهُنَّ حَاشَ زَيْنَبَ - رَضِيَ اللَّهُ تَعَالَى عَنْهَا - فَإِنَّ اللَّهَ تَعَالَى زَوَّجَهَا مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L30388 Thus, this is a sound, clear chain of transmission that all his wives—peace be upon him—were married to him by their guardians, except Zaynab—may Allah the Exalted be pleased with her—for Allah the Exalted married her to him—peace and blessings be upon him.

وَصَحَّ بِهَذَا مَعْنَى قَوْلِ أُمِّ حَبِيبَةَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّ النَّجَاشِيَّ زَوَّجَهَا أَيْ تَوَلَّى أَمْرَهَا وَمَا تَحْتَاجُ إِلَيْهِ وَكَانَ الْعَقْدُ بِحَضْرَتِهِ، قَدْ كَانَ هُنَالِكَ أَقْرَبُ النَّاسِ إِلَيْهَا عُثْمَانُ بْنُ عَفَّانَ بْنِ أَبِي الْعَاصِ بْنِ أُمَيَّةَ، وَعَمْرٌو، وَخَالِدٌ، ابْنَا سَعْدِ بْنِ الْعَاصِ بْنِ أُمَيَّةَ، فَكَيْفَ يُزَوِّجُهَا النَّجَاشِيُّ - بِمَعْنَى يَتَوَلَّى عَقْدَ نِكَاحِهَا - وَهَؤُلَاءِ حُضُورٌ رَاضُونَ مَسْرُورُونَ آذِنُونَ فِي ذَلِكَ بِيَقِينٍ لَا شَكَّ فِيهِ؟ .

L30389 This validates the meaning of Umm Habibah's statement—may Allah be pleased with her—that the Negus officiated her marriage, meaning he undertook her affairs and what she required, with the marriage contract executed in his presence. At that time, her closest relatives present were Uthman ibn Affan ibn Abi al-As ibn Umayyah, and Amr and Khalid, the two sons of Sa'd ibn al-As ibn Umayyah. How could the Negus officiate her marriage—by conducting her marriage contract—when these individuals were present, consenting, joyful, and permitting it with certainty, free of any doubt?

وَأَمَّا تَزْوِيجُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْمَرْأَةَ بِتَعْلِيمِ سُورَةٍ مِنْ الْقُرْآنِ فَلَيْسَ فِي الْخَبَرِ أَنَّهُ كَانَ لَهَا وَلِيٌّ أَصْلًا فَلَا يُعْتَرَضُ عَلَى الْيَقِينِ بِالشُّكُوكِ.

L30390 As for his marriage—peace and blessings be upon him—to a woman with the teaching of a surah from the Quran as her dowry, the report does not

[36] **Qur'an references (L30387):** Qur'an 33:37 (Al-Ahzab).

indicate she had any wali at all; thus, certainty should not be contested with doubts.

وَهَكَذَا الْقَوْلُ فِي كُلِّ حَدِيثٍ ذَكَرُوهُ، كَخَبَرِ نِكَاحِ مَيْمُونَةَ أُمِّ الْمُؤْمِنِينَ وَإِنَّمَا جَعَلَتْ أَمْرَهَا إِلَى الْعَبَّاسِ فَزَوَّجَهَا مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L30391 Such is the ruling concerning every hadith they cited, like the report of the marriage of Maymunah, *the Mother of the Believers*, who entrusted her guardianship to al-Abbas, and he, as her guardian, married her to the Prophet, peace and blessings be upon him.

وَنِكَاحِ أَبِي طَلْحَةَ أُمَّ سُلَيْمٍ - رَضِيَ اللَّهُ عَنْهَا - عَلَى الْإِسْلَامِ فَقَطْ، أَنْكَحَهَا إِيَّاهُ أَنَسُ بْنُ مَالِكٍ، وَهُوَ صَغِيرٌ دُونَ عَشْرِ سِنِينَ.

L30392 The marriage of Abu Talhah to Umm Sulaym—may Allah be pleased with her—was contracted solely on the basis of her Islam. Anas ibn Malik gave her in marriage to him while he was still a child under ten years old.

فَهَذَا كُلُّهُ مَنْسُوخٌ بِإِبْطَالِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - النِّكَاحَ بِغَيْرِ وَلِيٍّ، وَسَائِرُ الْأَحَادِيثِ الَّتِي فِيهَا أَنَّ نِسَاءً أُنْكِحْنَ بِغَيْرِ إِذْنِ أَهْلِهِنَّ، فَرَدَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - نِكَاحَهُنَّ وَجَعَلَ إِلَيْهِنَّ إِجَازَةَ ذَلِكَ إِنْ شِئْنَ - فَكُلُّهَا أَخْبَارٌ لَا تَصِحُّ إِمَّا مُرْسَلَةٌ، وَإِمَّا مِنْ رِوَايَةِ عَلِيِّ بْنِ غُرَابٍ - وَهُوَ ضَعِيفٌ - فَظَهَرَ صِحَّةُ قَوْلِنَا.

L30393 All of this is abrogated by his invalidation—peace and blessings be upon him—of marriage without a guardian, along with all other hadiths stating that women were married without their guardians' consent, where he—peace and blessings be upon him—nullified their marriages and granted them ratification of that if they so chose. All these narrations are inauthentic, either mursal or transmitted through Ali ibn Ghurab—who is weak—thus demonstrating the validity of our position.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L30394 And by Allah, the Exalted, is the success.

وَأَمَّا قَوْلُنَا: إِنَّهُ لَا يَجُوزُ إِنْكَاحُ الْأَبْعَدِ مِنَ الْأَوْلِيَاءِ مَعَ وُجُودِ الْأَقْرَبِ، فَلِأَنَّ النَّاسَ كُلَّهُمْ يَلْتَقُونَ فِي أَبٍ بَعْدَ أَبٍ إِلَى آدَمَ - عَلَيْهِ السَّلَامُ - بِلَا شَكٍّ، فَلَوْ جَازَ إِنْكَاحُ الْأَبْعَدِ مَعَ وُجُودِ الْأَقْرَبِ لَجَازَ إِنْكَاحُ كُلِّ مَنْ عَلَى وَجْهِ الْأَرْضِ لِأَنَّهُ يَلْقَاهَا بِلَا شَكٍّ فِي بَعْضِ آبَائِهَا، فَإِنْ حَدُّوا فِي ذَلِكَ حَدًّا كُلِّفُوا الْبُرْهَانَ عَلَيْهِ، وَلَا سَبِيلَ إِلَيْهِ - فَصَحَّ يَقِينًا أَنَّهُ لَا حَقَّ مَعَ الْأَقْرَبِ لِلْأَبْعَدِ، ثُمَّ إِنْ عُدِمَ فَمَنْ فَوْقَهُ بَابٌ هَكَذَا أَبَدًا مَا دَامَ يُعْلَمُ لَهَا وَلِيٌّ عَاصِبٌ، كَالْمِيرَاثِ وَلَا فَرْقَ.

L30395–30397 As for our statement that the marriage effected by the more distant guardian among the guardians is not permissible while the closer guardian exists, this is because people... All of them trace back through successive fathers to Adam, peace be upon him, without doubt. If it were permissible for a more distant relative to give her in marriage while a closer relative exists, it would be permissible for anyone on earth to do so, since he would undoubtedly share a direct paternal ancestor with her among her forefathers. If they were to set a specific limit for this, they would be obligated to prove it, and there is no way to do so. Thus, it is definitively established that no right remains for the more distant relative in the presence of a closer one. Then, if the closer relative is absent, it passes to those above him—this principle continues indefinitely as long as she has a known agnatic guardian, as in inheritance, with no difference.

If the guardian is absent, it is obligatory to await him. If they say: “Does this harm her?” We reply: Necessity does not permit the exposure of private parts. The Malikis have concurred with us that if the absent husband possesses wealth from which maintenance is provided to the wife, she may not divorce him—even if his absence harms her due to the lack of intimacy and the loss of many of her affairs. The Hanafis have concurred with us that even if he has no wealth, she may not divorce him, for no harm is greater than the lack of maintenance.

وَأَمَّا إِنْ كَانَ الْوَلِيُّ غَائِبًا فَلَا بُدَّ مِنْ انْتِظَارِهِ، فَإِنْ قَالُوا: إِنَّ ذَلِكَ يَضُرُّ بِهَا؟ قُلْنَا: الضَّرُورَةُ لَا تُبِيحُ الْفُرُوجَ - وَقَدْ وَافَقَنَا الْمَالِكِيُّونَ عَلَى أَنَّهُ إِنْ كَانَ لِلزَّوْجِ الْغَائِبِ مَالٌ يُنْفَقُ مِنْهُ عَلَى الْمَرْأَةِ لَمْ تَطْلُقْ عَلَيْهِ - وَإِنْ أَضَرَّتْ غَيْبَتُهُ بِهَا فِي فَقْدِ الْجِمَاعِ وَضَيَاعِ كَثِيرٍ مِنْ أُمُورِهَا - وَوَافَقَنَا الْحَنَفِيُّونَ فِي أَنَّهُ وَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَإِنَّهَا لَا تَطْلُقُ عَلَيْهِ وَلَا ضَرَرَ أَضَرُّ مِنْ عَدَمِ النَّفَقَةِ.

Then we ask them about the definition of occultation in which they await the guardian, compared to the occultation where they do not await him. For they produce nothing but disgraceful statements and arguments devoid of comprehensible reasoning—and in Allah the Exalted we seek strength.

ثُمَّ نَسْأَلُهُمْ فِي حَدِّ الْغَيْبَةِ الَّتِي يَنْتَظِرُونَ الْوَلِيَّ فِيهَا مِنَ الْغَيْبَةِ الَّتِي لَا يَنْتَظِرُونَهُ فِيهَا، فَإِنَّهُمْ لَا يَأْتُونَ إِلَّا بِفَضِيحَةٍ، وَبِقَوْلٍ لَا يُعْقَلُ وَجْهُهُ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

The ruling on the father marrying off his minor daughter.

[مَسْأَلَة إِنْكَاحُ الْأَبِ ابْنَتَهُ الصَّغِيرَةَ]

Issue 1826: A father may marry off his minor virgin daughter - before she reaches puberty - without her consent, and she has no right to annul the marriage upon reaching puberty. If she is a thayyib (a woman whose prior marriage ended through her husband’s death or divorce), neither the father nor any other guardian may marry her off until she reaches puberty, nor does either of them have the right to grant consent before then.

١٨٢٦ - مَسْأَلَةٌ: وَلِلْأَبِ أَنْ يُزَوِّجَ ابْنَتَهُ الصَّغِيرَةَ الْبِكْرَ - مَا لَمْ تَبْلُغْ - بِغَيْرِ إِذْنِهَا، وَلَا خِيَارَ لَهَا إِذَا بَلَغَتْ فَإِنْ كَانَتْ ثَيِّبًا مِنْ زَوْجٍ مَاتَ عَنْهَا أَوْ طَلَّقَهَا لَمْ يَجُزْ لِلْأَبِ وَلَا لِغَيْرِهِ أَنْ يُزَوِّجَهَا حَتَّى تَبْلُغَ، وَلَا إِذْنَ لَهُمَا قَبْلَ أَنْ تَبْلُغَ.

When a virgin or a previously married woman attains puberty, neither her father nor anyone else may arrange her marriage without her consent. If such a marriage occurs, it is annulled irrevocably.

وَإِذَا بَلَغَتْ الْبِكْرُ وَالثَّيِّبُ لَمْ يَجُزْ لِلْأَبِ وَلَا لِغَيْرِهِ أَنْ يُزَوِّجَهَا إِلَّا بِإِذْنِهَا، فَإِنْ وَقَعَ فَهُوَ مَفْسُوخٌ أَبَدًا.

As for the non-virgin woman, she may marry whomever she chooses, even if the father objects.

فَأَمَّا الثَّيِّبُ فَتَنْكِحُ مَنْ شَاءَتْ، وَإِنْ كَرِهَ الْأَبُ.

As for the virgin, marriage is not permissible for her except by the conjunction of her consent and her father’s consent.

وَأَمَّا الْبِكْرُ فَلَا يَجُوزُ لَهَا نِكَاحٌ إِلَّا بِاجْتِمَاعِ إِذْنِهَا وَإِذْنِ أَبِيهَا.

As for the minor female who has no father, no one has the right to marry her off—whether out of necessity or not—until she reaches puberty. Nor does anyone have the right to marry off an insane woman until she regains

sanity and consents, except the father solely in the case of the one who has not reached puberty and is insane.

وَأَمَّا الصَّغِيرَةُ الَّتِي لَا أَبَ لَهَا فَلَيْسَ لِأَحَدٍ أَنْ يُنْكِحَهَا لَا مِنْ ضَرُورَةٍ وَلَا مِنْ غَيْرِ ضَرُورَةٍ حَتَّى تَبْلُغَ، وَلَا لِأَحَدٍ أَنْ يُنْكِحَ مَجْنُونَةً حَتَّى تُفِيقَ وَتَأْذَنَ، إلَّا الْأَبَ فِي الَّتِي لَمْ تَبْلُغْ وَهِيَ مَجْنُونَةٌ فَقَطْ.

L30406–30408 And in some of what we have mentioned there is a difference of opinion: Ibn Shubrumah said: It is not permissible for a father to marry off his minor daughter unless she has reached puberty and consented, and he held the view on the matter. Aisha (may Allah be pleased with her) [discussed matters] specific to the Prophet (peace and blessings of Allah be upon him and his family), such as the mawhubah (a woman given in marriage without dowry) and marrying more than four wives.

وَفِي بَعْضِ مَا ذَكَرْنَا خِلَافٌ -: قَالَ ابْنُ شُبْرُمَةَ: لَا يَجُوزُ إنْكَاحُ الْأَبِ ابْنَتَهُ الصَّغِيرَةَ إلَّا حَتَّى تَبْلُغَ وَتَأْذَنَ، وَرَأَى أَمْرَ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - خُصُوصًا لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، كَالْمَوْهُوبَةِ، وَنِكَاحُ أَكْثَرَ مِنْ أَرْبَعٍ.

L30409 Al-Ḥasan and Ibrāhīm al-Nakhaʿī said: A father's act of marrying off his minor daughter, his adult previously married daughter, or his virgin daughter—even if they two dislike it—is permissible for them two.

وَقَالَ الْحَسَنُ، وَإِبْرَاهِيمُ النَّخَعِيُّ: إنْكَاحُ الْأَبِ ابْنَتَهُ الصَّغِيرَةَ وَالْكَبِيرَةَ الثَّيِّبَ، وَالْبِكْرَ - وَإِنْ كَرِهَتَا - جَائِزٌ عَلَيْهِمَا.

L30410 As narrated through the chain of Saʿīd ibn Manṣūr → Hushaym → Manṣūr ibn al-Muʿtamir and ʿUbaydah: Manṣūr reported from al-Ḥasan, while ʿUbaydah reported from Ibrāhīm. Both jointly stated: Verily, the father's act of contracting marriage for his daughter - whether she is a virgin or previously married - is valid.

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مَنْصُورُ بْنُ الْمُعْتَمِرِ، وَعُبَيْدَةُ، قَالَ مَنْصُورٌ: عَنْ الْحَسَنِ، وَقَالَ عُبَيْدَةُ: عَنْ إبْرَاهِيمَ، قَالَا جَمِيعًا: إنَّ نِكَاحَ الْأَبِ ابْنَتَهُ بِكْرًا أَوْ ثَيِّبًا جَائِزٌ.

L30411 We have received a narration from Ibrāhīm conveying another opinion, as transmitted by Muḥammad ibn Saʿīd ibn Nabāt via Aḥmad ibn ʿAbd al-Raḥīm, via Qāsim ibn Aṣbagh, via Muḥammad ibn ʿAbd al-Salām al-Khushanī, via Muḥammad ibn al-Muthannā, via ʿAbd al-Raḥmān ibn Mahdī, via Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, who said: "A virgin's father does not seek her permission, whereas if a non-virgin woman has dependents, her father seeks her permission."

وَرُوِّينَا عَنْ إبْرَاهِيمَ قَوْلًا آخَرَ -: كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الرَّحِيمِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْبِكْرُ لَا يَسْتَأْمِرُهَا أَبُوهَا وَالثَّيِّبُ إنْ كَانَتْ فِي عِيَالٍ اسْتَأْمَرَهَا.

L30412 Mālik said: As for the virgin, her father does not seek her consent—whether she has attained puberty or not, whether she is a woman of mature age or not—and his act of marrying her off remains valid even if she objects. Similarly, if her husband has secluded with her without consummating the

وَقَالَ مَالِكٌ: أَمَّا الْبِكْرُ فَلَا يَسْتَأْمِرُهَا أَبُوهَا - بَلَغَتْ أَوْ لَمْ تَبْلُغْ، عَنَسَتْ أَوْ لَمْ تَعْنِسْ - وَيَنْفُذُ إنْكَاحُهُ لَهَا وَإِنْ كَرِهَتْ، وَكَذَلِكَ إنْ دَخَلَ بِهَا زَوْجُهَا إلَّا أَنَّهُ لَمْ يَطَأْهَا، فَإِنْ

marriage, then if she remains with him for a full year and has appeared in public gatherings, it is not permissible for the father to marry her off thereafter without her permission—even if her husband has not consummated the marriage.

بَقِيَتْ مَعَهُ سَنَةً وَشَهِدَتْ الْمَشَاهِدَ لَمْ تَجُزْ لِلْأَبِ أَنْ يُنْكِحَهَا بَعْدَ ذَلِكَ إلَّا بِإِذْنِهَا - وَإِنْ كَانَ زَوْجُهَا لَمْ يَطَأْهَا.

L30413 He said: As for a previously married woman, it is impermissible for her father or any other guardian to contract her marriage except with her explicit consent.

قَالَ: وَأَمَّا الثَّيِّبُ فَلَا يَجُوزُ إنْكَاحُ الْأَبِ وَلَا غَيْرِهِ عَلَيْهَا إلَّا بِإِذْنِهَا.

L30414 He said: The grandfather, unlike the father in the cases we have mentioned, must not marry off a virgin or any other woman without her consent, just like all other guardians.

قَالَ: وَالْجَدُّ بِخِلَافِ الْأَبِ فِيمَا ذَكَرْنَا، لَا يُزَوِّجُ الْبِكْرَ وَلَا غَيْرَهَا إلَّا بِإِذْنِهَا كَسَائِرِ الْأَوْلِيَاءِ.

L30415 His opinion differed concerning the minor virgin without a father: he permitted her brother to arrange her marriage on her behalf if acting in her best interest as her guardian according to Ibn Wahb's narration, whereas the narration of Ibn al-Qasim represents those who prohibited it.

وَاخْتَلَفَ قَوْلُهُ فِي الْبِكْرِ الصَّغِيرَةِ الَّتِي لَا أَبَ لَهَا فَأَجَازَ إنْكَاحَ الْأَخِ لَهَا إذَا كَانَ نَظَرًا لَهَا فِي رِوَايَةِ ابْنِ وَهْبٍ، وَمَنْ مَنَعَهُ رِوَايَةُ ابْنِ الْقَاسِمِ.

L30416 Abu Hanifa and Abu Sulaiman said: The father may contract the marriage of the minor girl as long as she has not reached puberty—whether she is a virgin or previously married. When she reaches puberty, she may marry whomever she wishes, and the father's permission is not required in that matter, as with all other guardians. He is not permitted to contract her marriage except with her consent—whether she is a virgin or previously married.

وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ يُنْكِحُ الْأَبُ الصَّغِيرَةَ مَا لَمْ تَبْلُغْ - بِكْرًا كَانَتْ أَوْ ثَيِّبًا - فَإِذَا بَلَغَتْ نَكَحَتْ مَنْ شَاءَتْ وَلَا إذْنَ لِلْأَبِ فِي ذَلِكَ كَسَائِرِ الْأَوْلِيَاءِ، وَلَا يَجُوزُ إنْكَاحُهُ لَهَا إلَّا بِإِذْنِهَا - بِكْرًا كَانَتْ أَوْ ثَيِّبًا.

L30417 Abu Hanifah said: "The grandfather is like the father in all of that."

وَقَالَ أَبُو حَنِيفَةَ: وَالْجَدُّ كَالْأَبِ فِي كُلِّ ذَلِكَ.

L30418–30419 Al-Shafi'i said: The father and the paternal grandfather—if the father has died—may marry off the minor virgin without her permission when she reaches puberty, and likewise the virgin of legal age.

وَقَالَ الشَّافِعِيُّ: يُزَوِّجُ الْأَبُ وَالْجَدُّ لِلْأَبِ إنْ كَانَ الْأَبُ قَدْ مَاتَ: الْبِكْرَ الصَّغِيرَةَ وَلَا إذْنَ لَهَا إذَا بَلَغَتْ، وَكَذَلِكَ الْبِكْرُ الْكَبِيرَةُ.

L30420 No one may marry off a non-virgin minor until she reaches puberty, regardless of whether her virginity was lost through coercion or consent, or whether the act was lawful or unlawful.

وَلَا يُزَوِّجُ الثَّيِّبَ الصَّغِيرَةَ أَحَدٌ حَتَّى تَبْلُغَ، سَوَاءٌ بِإِكْرَاهٍ ذَهَبَتْ عُذْرَتُهَا أَوْ بِرِضًا، بِحَرَامٍ أَوْ حَلَالٍ.

L30421 As for the mature woman who has been married before, neither her father, paternal grandfather, nor any other guardian may arrange her marriage

without her consent, and she has the right to marry whomever she wishes if she has reached puberty.

وَأَمَّا الثَّيِّبُ الْكَبِيرَةُ فَلَا يُزَوِّجُهَا الْأَبُ وَلَا الْجَدُّ وَلَا غَيْرُهُمَا إِلَّا بِإِذْنِهَا، وَلَهَا أَنْ تَنْكِحَ مَنْ شَاءَتْ إِذَا كَانَتْ بَالِغًا.

L30422 Abu Muhammad said: The proof for the permissibility of a father marrying off his young virgin daughter is Abu Bakr's (may Allah be pleased with him) giving Aisha (may Allah be pleased with her) in marriage to the Prophet (peace and blessings be upon him) when she was six years old. This is a well-known matter that dispenses with the need to cite chains of transmission (isnād). Whoever claims this is a special case, no heed is given to their claim, due to Allah's saying: {There has certainly been for you in the Messenger of Allah an excellent example for anyone whose hope is in Allah and the Last Day} [Al-Ahzab: 21]. Therefore, every action he (peace and blessings be upon him) performed is one we may emulate, unless a text explicitly states it is specific to him.[37]

قَالَ أَبُو مُحَمَّدٍ: الْحُجَّةُ فِي إِجَازَةِ إِنْكَاحِ الْأَبِ ابْنَتَهُ الصَّغِيرَةَ الْبِكْرَ إِنْكَاحُ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - وَهِيَ بِنْتُ سِتِّ سِنِينَ، وَهَذَا أَمْرٌ مَشْهُورٌ غَنِيٌّ عَنْ إِيرَادِ الْإِسْنَادِ فِيهِ، فَمَنْ ادَّعَى أَنَّهُ خُصُوصٌ لَمْ يُلْتَفَتْ لِقَوْلِهِ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِمَنْ كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الآخِرَ} [الأحزاب: ٢١] فَكُلُّ مَا فَعَلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلَنَا أَنْ نَتَأَسَّى بِهِ فِيهِ، إِلَّا أَنْ يَأْتِيَ نَصٌّ بِأَنَّهُ لَهُ خُصُوصٌ.

L30423 If someone were to say: "This is an action from him (peace and blessings be upon him) and not a statement, so on what basis have you particularized the virgin as opposed to the previously married woman, and the minor as opposed to the adult woman, and this is not from your foundational principles?"

فَإِنْ قَالَ قَائِلٌ: فَإِنَّ هَذَا فِعْلٌ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَيْسَ قَوْلًا، فَمِنْ أَيْنَ خَصَّصْتُمُ الْبِكْرَ دُونَ الثَّيِّبِ، وَالصَّغِيرَةَ دُونَ الْكَبِيرَةِ، وَلَيْسَ هَذَا مِنْ أُصُولِكُمْ؟

L30424 We said: Yes, we have confined ourselves to the minor virgin due to the report transmitted in Muslim's collection through the chain: Ibn Abi 'Umar narrated to us, Sufyan—Ibn 'Uyaynah—narrated to us from Ziyad ibn Sa'd from 'Abdullah ibn al-Fadl, who heard Nafi' ibn Jubayr report from Ibn 'Abbas that the Prophet—peace and blessings of Allah be upon him—said: "A previously married woman has greater authority over herself than her guardian, and a virgin's father seeks her permission concerning herself, and her consent is her silence."[38]

قُلْنَا: نَعَمْ، إِنَّمَا اقْتَصَرْنَا عَلَى الصَّغِيرَةِ الْبِكْرِ لِلْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ أَبِي عُمَرَ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ زِيَادِ بْنِ سَعْدٍ عَنْ عَبْدِ اللَّهِ بْنِ الْفَضْلِ سَمِعَ نَافِعَ بْنَ جُبَيْرٍ يُخْبِرُ عَنِ ابْنِ عَبَّاسٍ " أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ يَسْتَأْذِنُهَا أَبُوهَا فِي نَفْسِهَا وَإِذْنُهَا صُمَاتُهَا» .

L30425 Thus, the non-virgin woman—whether young or old—was excluded by the general scope of this narration. The adult virgin was likewise excluded by it, for seeking permission applies only to a sane adult, based on the authen-

فَخَرَجَتِ الثَّيِّبُ صَغِيرَةً كَانَتْ أَوْ كَبِيرَةً بِعُمُومِ هَذَا الْخَبَرِ، وَخَرَجَتِ الْبِكْرُ الْبَالِغُ بِهِ أَيْضًا، لِأَنَّ الِاسْتِئْذَانَ لَا يَكُونُ إِلَّا لِلْبَالِغِ الْعَاقِلِ لِلْأَثَرِ الثَّابِتِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ

[37] **Qur'an references (L30422):** Qur'an 33:21 (Al-Ahzab).
[38] **Hadith references (L30424):** Sahih Muslim 1421c; Mishkat al-Masabih 3127.

tically transmitted narration from the Prophet (peace and blessings be upon him) who said, “The pen is lifted concerning three,” including among them “a minor until they reach puberty.” The virgin without a father was also excluded by the explicit text mentioned, leaving only the minor virgin who has a father.

L30426 If it is asked: Why do you not permit the grandfather to arrange her marriage as you do the father?

L30427–30428 We said: Because of Allah the Exalted’s statement: {No soul bears sin except against itself} [Al-An’am: 164], it is impermissible to exclude anything from this general principle except what is established solely through the narration—and that is the nearest father. This aforementioned narration invalidates the view of al-Ḥasan and Ibrāhīm which we mentioned earlier.[39]

L30429 As for Mālik’s statement regarding the woman who remained with her husband for less than a year (without consummation), that her father may marry her off without her permission: if she completes a year with her husband and had participated in the sacred rites, he no longer has the right to contract her marriage except with her permission.

L30430 So it is in the utmost corruption, because it is an arbitrary judgment unsupported by the Quran, the Sunnah, a weak narration, any statement from predecessors whatsoever, analogy, or even a soundly reasoned opinion.

L30431 As for al-Shāfiʿī’s equating the minor girl subjected to unlawful intercourse with the non-virgin, this is a clear error. We would ask them: If she reaches puberty and then engages in fornication, is she considered a virgin or a non-virgin regarding the *ḥadd* punishment? Since they would say she is a virgin, the flaw in their argument becomes evident, and it is confirmed that she is legally treated as a virgin.

L30432 As for those who grant a previously married woman and a virgin who has reached the age of eligibility for marriage the right to marry whomever she wishes—even if her father objects—and those who grant the father the

عَلَيْهِ وَسَلَّمَ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ» فَذَكَرَ فِيهِمْ «الصَّغِيرِ حَتَّى يَبْلُغَ» فَخَرَجَ الْبِكْرُ الَّتِي لَا أَبَ لَهَا بِالنَّصِّ الْمَذْكُورِ أَيْضًا، فَلَمْ تَبْقَ إِلَّا الصَّغِيرَةُ الْبِكْرُ ذَاتُ الْأَبِ فَقَطْ.

فَإِنْ قِيلَ: فَلِمَ لَمْ تُجِيزُوا إِنْكَاحَ الْجَدِّ لَهَا كَالْأَبِ؟

قُلْنَا: لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَلَمْ يَجُزْ أَنْ يَخْرُجَ مِنْ هَذَا الْعُمُومِ إِلَّا مَا جَاءَ بِهِ الْخَبَرُ فَقَطْ، وَهُوَ الْأَبُ الْأَدْنَى، وَبِالْخَبَرِ الْمَذْكُورِ يَبْطُلُ قَوْلُ الْحَسَنِ، وَإِبْرَاهِيمَ الَّذِي ذَكَرْنَا آنِفًا.

وَأَمَّا قَوْلُ مَالِكٍ فِي الَّتِي بَقِيَتْ مَعَ زَوْجِهَا أَقَلَّ مِنْ سَنَةٍ - وَلَمْ يَطَأْهَا - أَنَّ أَبَاهَا يُزَوِّجُهَا بِغَيْرِ إِذْنِهَا، فَإِنْ أَتَمَّتْ مَعَ زَوْجِهَا سَنَةً وَشَهِدَتْ الْمَشَاهِدَ لَمْ يَكُنْ لَهُ أَنْ يُزَوِّجَهَا إِلَّا بِإِذْنِهَا.

فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ تَحَكُّمٌ لَا يَعْضُدُهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ ضَعِيفَةٌ، وَلَا قَوْلُ أَحَدٍ قَبْلَهُ جُمْلَةً، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ.

وَأَمَّا إِلْحَاقُ الشَّافِعِيِّ الصَّغِيرَةَ الْمَوْطُوءَةَ بِحَرَامٍ بِالثَّيِّبِ، فَخَطَأٌ ظَاهِرٌ، لِأَنَّا نَسْأَلُهُمْ إِنْ بَلَغَتْ فَزَنَتْ: أَبِكْرٌ هِيَ فِي الْحَدِّ أَمْ ثَيِّبٌ؟ فَمِنْ قَوْلِهِمْ: إِنَّهَا بِكْرٌ، فَظَهَرَ فَسَادُ قَوْلِهِمْ، وَصَحَّ أَنَّهَا فِي حُكْمِ الْبِكْرِ.

وَأَمَّا مَنْ جَعَلَ لِلثَّيِّبِ وَالْبِكْرِ إِذَا بَلَغَتْ أَنْ تَنْكِحَ مَنْ شَاءَتْ - وَإِنْ كَرِهَ أَبُوهَا - وَمَنْ جَعَلَ لِلْأَبِ أَنْ يُنْكِحَهَا - وَإِنْ كَرِهَتْ - فَكِلَاهُمَا خَطَأٌ بَيِّنٌ، لِلْأَثَرِ الثَّابِتِ الَّذِي ذَكَرْنَا

[39] **Qur’an references (L30428):** Qur’an 6:164 (Al-An’am).

آنِفًا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الثَّيِّبُ أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا وَالْبِكْرُ يَسْتَأْذِنُهَا أَبُوهَا» .

authority to contract her marriage—even if she objects—both of these views are clearly erroneous, due to the authentic report we previously cited from the Messenger of Allah—peace and blessings be upon him: "A previously married woman has more right over herself than her marriage guardian, and a virgin's father seeks her consent."[40]

فَفَرَّقَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْنَ الثَّيِّبِ وَالْبِكْرِ فَجَعَلَ لِلثَّيِّبِ أَنَّهَا أَحَقُّ بِنَفْسِهَا مِنْ وَلِيِّهَا، فَوَجَبَ بِذَلِكَ أَنَّهُ لَا أَمْرَ لِلْأَبِ فِي إنْكَاحِهَا، وَأَنَّهَا أَحَقُّ بِنَفْسِهَا مِنْهُ وَمِنْ غَيْرِهِ، وَجَعَلَ الْبِكْرَ بِخِلَافِ ذَلِكَ، وَأَوْجَبَ عَلَى الْأَبِ أَنْ يَسْتَأْمِرَهَا، فَصَحَّ أَنَّهُ لَا بُدَّ مِنْ اجْتِمَاعِ الْأَمْرَيْنِ: إذْنُهَا، وَاسْتِئْذَانُ أَبِيهَا، وَلَا يَصِحُّ لَهَا نِكَاحٌ وَلَا عَلَيْهَا إلَّا بِهِمَا جَمِيعًا.

L30433 He—peace and blessings be upon him—distinguished between the previously married woman and the virgin, ruling that the previously married woman has more right over herself than her guardian. Consequently, the father holds no authority in contracting her marriage, as she has more right over herself than him or anyone else. He decreed the opposite for the virgin, obligating the father to seek her permission. This establishes that both conditions must be met: her permission and her father's seeking of permission. No marriage is valid for her or imposed upon her unless both conditions are fulfilled together.

وقَوْله تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] مُوجِبٌ أَنْ لَا يَجُوزَ عَلَى الْبَالِغَةِ الْبِكْرِ إنْكَاحُ أَبِيهَا بِغَيْرِ إذْنِهَا، وَقَدْ جَاءَتْ بِهَذَا آثَارٌ صِحَاحٌ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْمَرْوَزِيُّ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُعَاوِيَةُ بْنُ صَالِحٍ نا الْحَكَمُ بْنُ مُوسَى نا شُعَيْبُ بْنُ إِسْحَاقَ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: «أَنَّ رَجُلًا زَوَّجَ ابْنَتَهُ وَهِيَ بِكْرٌ مِنْ غَيْرِ أَمْرِهَا، فَأَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَفَرَّقَ بَيْنَهُمَا» .

L30434 The statement of the Almighty: {No soul earns [a burden] except upon itself} [Al-Anʿam 6:164] establishes the impermissibility of a father marrying off his adult virgin daughter without her consent. Sound narrations have been transmitted regarding this: Abdullah ibn Rabiʿ reported from Muhammad ibn Muʿawiyah al-Marwazi (from Marw), who reported from Ahmad ibn Shuʿayb, who informed me through Muʿawiyah ibn Salih, from al-Hakam ibn Musa, who reported from Shuʿayb ibn Ishaq, from al-Awzaʿi, from ʿAta' ibn Abi Rabah, from Jabir ibn ʿAbdullah: "A man married off his daughter while she was a virgin without her consent. She came to the Prophet (peace and blessings be upon him and his family), and he annulled their marriage."[41]

قَالَ أَبُو مُحَمَّدٍ: مُعَاوِيَةُ بْنُ صَالِحٍ هَذَا هُوَ الْأَشْعَرِيُّ - ثِقَةٌ مَأْمُونٌ - لَيْسَ هُوَ الْأَنْدَلُسِيَّ الْحَضْرَمِيَّ، ذَلِكَ ضَعِيفٌ، وَهُوَ قَدِيمٌ.

L30435–30436 Abu Muhammad said: This Muawiyah ibn Salih is the Ash'ari - trustworthy and reliable - not the Andalusian Hadhrami, that one being weak, while he is the earlier figure.

وَبِهِ إلَى أَحْمَدَ بْنِ شُعَيْبٍ نَا مُحَمَّدُ بْنُ دَاوُد الْمِصِّيصِيُّ نا حُسَيْنُ بْنُ مُحَمَّدٍ نا جَرِيرُ بْنُ حَازِمٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ، «أَنَّ جَارِيَةً بِكْرًا أَتَتْ النَّبِيَّ - صَلَّى

L30437 And through him to Aḥmad ibn Shuʿayb; narrated to us Muḥammad ibn Dāwūd al-Miṣīṣī, narrated to us Ḥusayn ibn Muḥammad, narrated to us Jarīr

[40] **Hadith references (L30432):** Sahih Muslim 1421c; Mishkat al-Masabih 3127.
[41] **Qur'an references (L30434):** Qur'an 6:164 (Al-An'am).

ibn Ḥāzim, from Ayyūb al-Sakhtiyānī, from ʿIkrimah, from Ibn ʿAbbās: “An unmarried virgin came to the Prophet (may God’s blessings and peace be upon him and his family) and said, ’My father has married me off’ - while she was unwilling - so the Prophet (may God’s blessings and peace be upon him and his family) invalidated her marriage contract.”

اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ أَبِي زَوَّجَنِي - وَهِيَ كَارِهَةٌ - فَرَدَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نِكَاحَهَا» .

L30438 Abu ’Umar Ahmad ibn Qasim said: My father Qasim ibn Muhammad ibn Qasim narrated to me: My grandfather Qasim ibn Asbagh narrated to me: Muhammad ibn Ibrahim narrated to us: ’Imran narrated to us: Duhaym narrated to us: Ibn Abi Dhi’b narrated from Nafi’, who narrated from Ibn ’Umar, who said: “A man married off his never-married virgin daughter, and she disliked it, so she came to the Prophet (peace and blessings of Allah be upon him and his family), and he invalidated her marriage.”

نا أَبُو عُمَرَ أَحْمَدُ بْنُ قَاسِمٍ قَالَ: حَدَّثَنِي أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ قَالَ: حَدَّثَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ إِبْرَاهِيمَ نا عِمْرَانُ نا دُحَيْمٌ نا ابْنُ أَبِي ذِئْبٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، قَالَ: «إِنَّ رَجُلًا زَوَّجَ ابْنَتَهُ بِكْرًا فَكَرِهَتْ فَأَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَرَدَّ نِكَاحَهَا» .

L30439–30441 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us via Ibrahim ibn Ahmad al-Balkhi, via al-Farabri, via al-Bukhari, via Mu‘adh ibn Fadalah, via Hisham al-Dastuwa’i, via Yahya ibn Abi Kathir, via Abu Salama ibn Abd al-Rahman ibn Awf, that Abu Hurayra reported to them that the Prophet said: “A previously married woman is not to be wedded without her explicit consent.” A woman is not to be married until her consent is sought, and the virgin is not to be wed until her permission is explicitly asked. They said: “O Messenger of Allah, how is her permission expressed?” He replied: “Through her silence.”

نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيُّ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا مُعَاذُ بْنُ فَضَالَةَ نَا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّ أَبَا هُرَيْرَةَ حَدَّثَهُمْ أَنَّ النَّبِيَّ قَالَ: «لَا تُنْكَحُ الْأَيِّمُ حَتَّى تُسْتَأْمَرَ، وَلَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ، قَالُوا: يَا رَسُولَ اللَّهِ فَكَيْفَ إِذْنُهَا؟ قَالَ: أَنْ تَسْكُتَ» .

L30442 Abū Muḥammad said: The narrations here are numerous, and we have sufficiently addressed the matter herein. There is the ḥadīth of Khansāʾ bint Khidām concerning the invalidation of a father marrying off his previously married daughter without her consent.

قَالَ أَبُو مُحَمَّدٍ: الْآثَارُ هَاهُنَا كَثِيرَةٌ، وَفِيهِ ذَكَرْنَا كِفَايَةً، وَقَدْ جَاءَ فِي رَدِّ نِكَاحِ الْأَبِ ابْنَتَهُ الثَّيِّبَ بِغَيْرِ إِذْنِهَا حَدِيثُ خَنْسَاءَ بِنْتِ خِدَامٍ.

L30443 Ali said: Some of them claimed, “The Prophet—peace and blessings be upon him—married off his daughters without seeking their permission.” We replied: This is not known in any of the reports at all—it is purely a false assertion. Rather, there are *Mursal* traditions stating that he—peace and blessings be upon him—would ask for their permission.

قَالَ عَلِيٌّ: وَقَالَ بَعْضُهُمْ: «زَوَّجَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَنَاتِهِ وَلَمْ يَسْتَأْذِنْهُنَّ» . فَقُلْنَا: هَذَا لَا يُعْرَفُ فِي شَيْءٍ مِنْ الْآثَارِ أَصْلًا، وَإِنَّمَا هِيَ دَعْوَى كَاذِبَةٌ، بَلْ قَدْ جَاءَتْ آثَارٌ مُرْسَلَةٌ بِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَانَ يَسْتَأْمِرُهُنَّ.

L30444 In *al-Iṣāl*, we have exhaustively examined the objections raised by those who carelessly let loose their tongues regarding the narrations we cited—

objections devoid of substance, such as some people's transmission of these reports with wordings differing from what we transmitted, and similar matters. All of this is baseless, for variation in wording does not constitute a defect in the hadith. Rather, if all versions are transmitted by trustworthy narrators, it becomes obligatory to implement them all and rule according to what each wording necessitates. It is impermissible to abandon some in favor of others, since all constitute valid evidence, and obedience to every authentic report from the Prophet—peace and blessings be upon him—is an obligation incumbent upon all. To oppose any part of it constitutes disobedience to Allah, the Almighty. If some versions are transmitted by weak narrators, citing them as evidence against what trustworthy narrators have transmitted is outright misguidance.

وَقَدْ تَقَصَّيْنَا فِي " كِتَابِ الْإِيصَالِ " مَا اعْتَرَضَ بِهِ مَنْ لَا يُبَالِي مِمَّا أَطْلَقَ بِهِ لِسَانَهُ فِي الْآثَارِ الَّتِي أَوْرَدْنَاهَا، بِمَا لَا مَعْنَى لَهُ مِنْ رِوَايَةِ بَعْضِ النَّاسِ لَهَا بِلَفْظٍ مُخَالِفٍ لِلَّفْظِ الَّذِي رُوِّينَاهَا، وَنَحْوِ ذَلِكَ، وَكُلُّ ذَلِكَ لَا مَعْنَى لَهُ، لِأَنَّ اخْتِلَافَ الْأَلْفَاظِ لَيْسَ عِلَّةً فِي الْحَدِيثِ، بَلْ إِنْ كَانَ رَوَى جَمِيعَهَا الثِّقَاتُ وَجَبَ أَنْ تُسْتَعْمَلَ كُلُّهَا، وَيُحْكَمَ بِمَا اقْتَضَاهُ كُلُّ لَفْظٍ مِنْهَا، وَلَا يَجُوزُ تَرْكُ بَعْضِهَا لِبَعْضٍ، لِأَنَّ الْحُجَّةَ قَائِمَةٌ بِجَمِيعِهَا وَطَاعَةَ كُلِّ مَا صَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَرْضٌ عَلَى الْجَمِيعِ، وَمُخَالَفَةَ شَيْءٍ مِنْهُ مَعْصِيَةٌ لِلَّهِ عَزَّ وَجَلَّ، وَإِنْ كَانَ رَوَى بَعْضَهَا ضَعِيفٌ فَالِاحْتِجَاجُ بِهِ عَلَى مَا رَوَاهُ الثِّقَاتُ ضَلَالٌ.

L30445 A statement similar to ours has been transmitted from the Salaf: ʻAbdullāh ibn Rabīʻ narrated to us: ʻAbdullāh ibn Muḥammad ibn ʻUthmān narrated to us: Aḥmad ibn Khālid narrated to us: ʻAlī ibn ʻAbd al-ʻAzīz narrated to us: al-Ḥajjāj ibn al-Minhāl narrated to us: Ḥammād ibn Salamah narrated to us: Ayyūb al-Sikhtiyānī narrated from ʻIkrimah: When ʻUthmān ibn ʻAffān wished to arrange the marriage of one of his daughters, he would sit near her private chamber and inform her that so-and-so was seeking her hand in marriage.

وَقَدْ جَاءَ مِثْلُ قَوْلِنَا عَنْ السَّلَفِ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ عِكْرِمَةَ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ كَانَ إذَا أَرَادَ أَنْ يُنْكِحَ إحْدَى بَنَاتِهِ قَعَدَ إلَى خِدْرِهَا فَأَخْبَرَهَا أَنَّ فُلَانًا يَخْطُبُهَا.

L30446 From Humaam ibn Ahmad, from Ibn Mufarrij, from Ibn al-Aʻrābī, from al-Dabarī, from ʻAbd al-Razzāq, from Maʻmar, from Habib, from Nāfiʻ, who said: Ibn ʻUmar would consult his daughters concerning their marriage contracts.

نا حُمَامُ بْنُ أَحْمَدَ نَا ابْنُ مُفَرِّجٍ نَا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ حَبِيبٍ عَنْ نَافِعٍ قَالَ: كَانَ ابْنُ عُمَرَ يَسْتَأْمِرُ بَنَاتِهِ فِي نِكَاحِهِنَّ.

L30447–30448 And through him [in the chain] to ʻAbd al-Razzāq from Ibn Jurayj, who informed me that Ibn Ṭāwūs reported from his father, who said: Women must be consulted concerning their own marriages.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ قَالَ: تُسْتَأْمَرُ النِّسَاءُ فِي أَبْضَاعِهِنَّ -.

L30449 Ibn Tawus said: Men in this matter are equivalent to daughters; they are not compelled, though their situation is more severe.

قَالَ ابْنُ طَاوُسٍ: الرِّجَالُ فِي ذَلِكَ بِمَنْزِلَةِ الْبَنَاتِ لَا يُكْرَهُونَ وَأَشَدُّ شَأْنًا.

L30450 From him to ʻAbd al-Razzāq, from Sufyān al-Thawrī, from ʻĀṣim, from al-Shaʻbī, who said: The father must seek the consent of the never-married woman and the previously married woman.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمٍ عَنْ الشَّعْبِيِّ قَالَ: يَسْتَأْمِرُ الْأَبُ الْبِكْرَ وَالثَّيِّبَ.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ وَأَصْحَابِهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30451 This is the opinion of Sufyan al-Thawri, al-Awza'i, al-Ḥasan ibn Ḥayy, Abu Hanifah and his companions, Abu Sulayman, and our fellow scholars—and with Allah, the Exalted, is success.

وَمَا نَعْلَمُ لِمَنْ أَجَازَ عَلَى الْبِكْرِ الْبَالِغَةِ إنْكَاحَ أَبِيهَا لَهَا بِغَيْرِ إذْنِهَا مُتَعَلِّقًا أَصْلًا، إلَّا أَنْ قَالُوا: قَدْ ثَبَتَ جَوَازُ إنْكَاحِهِ لَهَا وَهِيَ صَغِيرَةٌ فَهِيَ عَلَى ذَلِكَ بَعْدَ الْكِبَرِ.

L30452 We do not know of any foundational principle invoked by those who permit a father to marry off his adult unmarried daughter without her consent, except their assertion: "It is established that he may marry her off while she is a minor, and this [marriage] remains valid after she reaches adulthood."

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا شَيْءَ لِوَجْهَيْنِ -: أَحَدُهُمَا - أَنَّ النَّصَّ فَرَّقَ بَيْنَ الصَّغِيرِ وَالْكَبِيرِ بِمَا ذَكَرْنَا مِنْ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ - فَذَكَرَ: الصَّغِيرِ حَتَّى يَكْبَرَ» .

L30453 Abu Muhammad said: This is invalid on two aspects. One of them is that the scriptural text differentiated between the minor and the adult through the statement we cited from the Prophet's saying (peace and blessings be upon him): "The pen has been lifted from three:" then he mentioned, among them: "the minor until he reaches adulthood."

وَالثَّانِي - أَنَّ هَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ فَاسِدٌ، وَإِذْ صَحَّحُوا قِيَاسَ الْبَالِغَةِ عَلَى غَيْرِ الْبَالِغَةِ فَلْيَلْزَمْهُمْ أَنْ يَقِيسُوا الْجَدَّ فِي ذَلِكَ عَلَى الْأَبِ، وَسَائِرَ الْأَوْلِيَاءِ عَلَى الْأَبِ أَيْضًا، وَإِلَّا فَقَدْ تَنَاقَضُوا فِي قِيَاسِهِمْ، وَيَكْفِي مِنْ ذَلِكَ النُّصُوصُ الَّتِي أَوْرَدْنَا فِي رَدِّ إنْكَاحِ الْبِكْرِ بِغَيْرِ إذْنِهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30454 The second is that this constitutes analogy, and all analogy is invalid. Since they validate the analogy of the adult woman to the non-adult female, they must consequently apply the analogy of the grandfather in this matter to the father, and all other guardians to the father as well. Otherwise, they have contradicted themselves in their analogical reasoning. The textual proofs we presented in rejecting the marriage of a previously unmarried woman without her consent suffice for this purpose. Success comes only from Allah, the Exalted.

قَالَ أَبُو مُحَمَّد: وَإِذَا بَلَغَتْ الْمَجْنُونَةُ - وَهِيَ ذَاهِبَةُ الْعَقْلِ - فَلَا إذْنَ لَهَا وَلَا أَمْرَ، فَهِيَ عَلَى ذَلِكَ لَا يُنْكِحُهَا الْأَبُ وَلَا غَيْرُهُ حَتَّى يُمْكِنَ اسْتِئْذَانُهَا الَّذِي أَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30455 Abu Muhammad said: If a mentally incapacitated woman—one whose intellect is absent—reaches puberty, she has neither the ability to consent nor the legal authority [to act]. In that state, neither her father nor anyone else may marry her off until her permission can be validly sought, as the Messenger of Allah (peace be upon him) mandated.

[مَسْأَلَة أنكاح الْأَب أبنه الصَّغِير]

The issue of the father's contracting of marriage for his minor son.

L30457 1827 - Issue: It is not permissible for the father or anyone else to contract a marriage for a minor male until he reaches puberty. If one does so, the marriage is permanently invalid. A group of scholars permit it—they have no proof except by analogy to the minor female.

١٨٢٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلْأَبِ وَلَا لِغَيْرِهِ إنْكَاحُ الصَّغِيرِ الذَّكَرِ حَتَّى يَبْلُغَ فَإِنْ فَعَلَ فَهُوَ مَفْسُوخٌ أَبَدًا، وَأَجَازَهُ قَوْمٌ - لَا حُجَّةَ لَهُمْ إلَّا قِيَاسُهُ عَلَى الصَّغِيرَةِ.

L30458 Ali said: All analogical reasoning is invalid, for if it were valid, there would exist another analogous reasoning of the same kind to contradict it. This is because they have unanimously agreed that when a male reaches puberty, neither his father nor anyone else has any right to intervene whatsoever in his marriage. In this matter, he differs from the female, for the father or others have a role in her case—either through consent, through arranging the marriage, or by considering equivalence (kafa'a) in the match. Thus, their legal rulings must likewise differ before puberty.

قَالَ عَلِيٌّ: وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ قَدْ عَارَضَ هَذَا الْقِيَاسَ قِيَاسٌ آخَرُ مِثْلُهُ، وَهُوَ أَنَّهُمْ قَدْ أَجْمَعُوا عَلَى أَنَّ الذَّكَرَ إذَا بَلَغَ لَا مَدْخَلَ لِأَبِيهِ وَلَا لِغَيْرِهِ فِي إنْكَاحِهِ أَصْلًا، وَأَنَّهُ فِي ذَلِكَ بِخِلَافِ الْأُنْثَى الَّتِي لَهُ فِيهَا مَدْخَلٌ: إمَّا بِإِذْنٍ، وَإِمَّا بِإِنْكَاحٍ، وَإِمَّا بِمُرَاعَاةِ الْكُفْءِ - فَكَذَلِكَ يَجِبُ أَنْ يَكُونَ حُكْمُهُمَا مُخْتَلِفَيْنِ قَبْلَ الْبُلُوغِ.

L30459–30460 Abu Muhammad said: The statement of Allah, the Mighty and Majestic: {No bearer of burdens shall bear the burden of another} [al-Anʿām 6:164] prohibits the validity of one person contracting on behalf of another unless a Quranic text or Sunnah requires its enforcement. There is no text or Sunnah regarding the permissibility of a father marrying off his minor son. A group of the Salaf held this opinion: It has been reported to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwūs from his father, who said: If parents marry off their two minors, they have the option to choose when they reach maturity. They do not inherit from one another if they die before that.[42]

قَالَ أَبُو مُحَمَّدٍ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] مَانِعٌ مِنْ جَوَازِ عَقْدِ أَحَدٍ عَلَى أَحَدٍ إلَّا أَنْ يُوجِبَ إنْفَاذَ ذَلِكَ نَصُّ قُرْآنٍ، أَوْ سُنَّةٍ، وَلَا نَصَّ، وَلَا سُنَّةَ فِي جَوَازِ إنْكَاحِ الْأَبِ لِابْنِهِ الصَّغِيرِ - وَقَدْ قَالَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: إذَا أَنْكَحَ الصَّغِيرَيْنِ أَبَوَاهُمَا فَهُمَا بِالْخِيَارِ إذَا كَبِرَا، وَلَا يَتَوَارَثَانِ إنْ مَاتَا قَبْلَ ذَلِكَ.

L30461 Through him to Ma'mar from Qatadah, who said: If the parents marry off two minors and die before the minors reach puberty, there is no inheritance between them. Ma'mar said: It makes no difference whether the parents or others married them off—and this is the view of Sufyan al-Thawri. Success comes only from Allah, the Exalted.

وَبِهِ إلَى مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: إذَا أَنْكَحَ الصَّبِيَّيْنِ أَبَوَاهُمَا فَمَاتَا قَبْلَ أَنْ يُدْرِكَا فَلَا مِيرَاثَ بَيْنَهُمَا، قَالَ مَعْمَرٌ: سَوَاءٌ أَنْكَحَهُمَا أَبَوَاهُمَا أَوْ غَيْرُهُمَا - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ إذَا أَسْلَمَتْ الْبِكْرُ وَلَمْ يُسْلِمْ أَبُوهَا أَوْ كَانَ مَجْنُونًا]

Issue: If a virgin embraces Islam, and her father either has not embraced Islam or is insane...

L30463 1828 - Issue: If a virgin embraces Islam and her father does not embrace

[42] **Qur'an references (L30460):** Qur'an 6:164 (Al-An'am).

Islam or is mentally incompetent, she is treated like a woman who has no father. This is because Allah the Exalted has severed guardianship between disbelievers and believers. He the Exalted said: {O you who have believed, do not take as allies a people upon whom Allah has become angry} [Al-Mumtaḥanah 60:13].[43]

L30464 Allah the Most High says: "The believing men and believing women are allies to one another" (Quran, At-Tawbah 9:71).[44]

L30465 The statement of the Messenger of Allah—may Allah bless him and grant him peace—regarding the insane is authentically reported: "The pen is lifted from three," among whom he mentioned "the insane until he regains sanity."

L30466 It has been authentically established that he is not legally responsible for seeking her consent nor for arranging her marriage. Rather, the Exalted and Glorious has directed this obligation to those of sound understanding. Therefore, she may marry whomever she wishes with the permission of another guardian from her guardians besides him, or the ruler.

L30467 Similarly, the woman whose father has embraced Islam while she herself has not—if he reaffirms Islam, she embraces Islam, or he regains legal capacity—she reverts to the legal authority of her father due to his authority over the matter of her marriage and obligation to obtain her consent.

L30468 As for the minor female slave—whether a virgin or previously married—if she has no father, her master is not permitted to marry her off, for this [ruling] applies exclusively to the father. Even if her father is free, he cannot marry her off without her master's permission, because by doing so he infringes upon her master's rights, as she is property owned by him. Allah the Exalted has said: "No bearer of burdens will bear the burden of another" [Al-An'ām 6:164].[45]

L30469–30471 The proof for what we have stated—that it is permissible for a master to marry off his female slave who has not reached puberty—is the statement of

: ١٨٢٨ - مَسْأَلَةٌ: وَإِذَا أَسْلَمَتْ الْبِكْرُ وَلَمْ يُسْلِمْ أَبُوهَا، أَوْ كَانَ مَجْنُونًا فَهِيَ فِي حُكْمِ الَّتِي لَا أَبَ لَهَا، لِأَنَّ اللَّهَ تَعَالَى قَطَعَ الْوِلَايَةَ بَيْنَ الْكُفَّارِ وَالْمُؤْمِنِينَ قَالَ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَتَوَلَّوْا قَوْمًا غَضِبَ اللَّهُ عَلَيْهِمْ} [الممتحنة: ١٣] .

وَقَالَ تَعَالَى: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] .

وَصَحَّ فِي الْمَجْنُونِ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ» فَذَكَرَ مِنْهُمْ «الْمَجْنُونِ حَتَّى يُفِيقَ» .

وَقَدْ صَحَّ أَنَّهُ غَيْرُ مُخَاطَبٍ بِاسْتِئْمَارِهَا وَلَا بِإِنْكَاحِهَا، وَإِنَّمَا خَاطَبَ عَزَّ وَجَلَّ أُولِي الْأَلْبَابِ، فَلَهَا أَنْ تَنْكِحَ مَنْ شَاءَتْ بِإِذْنِ غَيْرِهِ مِنْ أَوْلِيَائِهَا أَوْ السُّلْطَانِ.

وَكَذَلِكَ الَّتِي أَسْلَمَ أَبُوهَا وَلَمْ تُسْلِمْ هِيَ، فَإِنْ أَسْلَمَ أَوْ أَسْلَمَتْ أَوْ عَقَلَ: رَجَعَتْ إلَى حُكْمِ ذَاتِ الْأَبِ لِدُخُولِهِ فِي الْأَمْرِ بِإِنْكَاحِهَا وَاسْتِئْذَانِهَا.

وَالْأَمَةُ الصَّغِيرَةُ - بِكْرًا كَانَتْ أَوْ ثَيِّبًا - لَيْسَ لَهَا أَبٌ فَلَا يَجُوزُ لِسَيِّدِهَا إنْكَاحُهَا، لِأَنَّهُ لَمْ يَأْتِ ذَلِكَ إلَّا فِي الْأَبِ فَقَطْ، وَلَيْسَ لِأَبِيهَا وَإِنْ كَانَ حُرًّا إنْكَاحُهَا إلَّا بِإِذْنِ سَيِّدِهَا، لِأَنَّهُ بِذَلِكَ كَاسِبٌ عَلَى سَيِّدِهَا، إذْ هِيَ مَالٌ مِنْ مَالِهِ، وَقَدْ قَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

وَالْبُرْهَانُ عَلَى مَا قُلْنَا مِنْ أَنَّهُ يَجُوزُ لِلسَّيِّدِ إنْكَاحُ أَمَتِهِ الَّتِي لَمْ تَبْلُغْ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] وَالصَّغِيرُ لَا

[43] **Qur'an references (L30463):** Qur'an 60:13 (Al-Mumtahanah).
[44] **Qur'an references (L30464):** Qur'an 9:71 (At-Tawbah).
[45] **Qur'an references (L30468):** Qur'an 6:164 (Al-An'am).

Allah, the Almighty. Exalted is He: “And marry the unmarried among you and the righteous among your male slaves and female slaves” [An-Nur: 32]. A minor cannot be described as righteous in religious conduct nor counted among the righteous. Every Muslim is included among the righteous by the declaration: “There is no deity but Allah; Muhammad is the Messenger of Allah, peace be upon him.”[46]

Issue: The Minder’s Consent in Marriage [of Orphans]

L30472 C:AQ

L30473 Issue 1829: A testamentary guardian has no authorization whatsoever to arrange marriages—neither for a male nor a female—whether the two are minors or adults. This is because, as we have previously stated, regarding the two minors among males and females: a male minor cannot be married off by his father or anyone else, while a female minor can only be married off by her father alone. As for the two adults, they must necessarily be either insane or of sound mind.

L30474 If both guardians are insane, we have clarified that no one may contract the marriage for her—neither a father nor any other guardian.

L30475 As for the two sane adults, it is impermissible to appoint a guardian over them, as we have clarified in the “Book of Legal Incapacity,” thereby rendering its repetition unnecessary.

L30476 Among those who asserted that the executor has no authority in marriage are Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their associates. If a skeptic seeks to cast doubt by citing the report we transmitted through the chain of Wakīʿ—from Yaḥyā ibn ʿAbd al-Raḥmān ibn Abī Labībah, from his grandfather—who said: The Messenger of Allah, peace and blessings be upon him, declared, “Whoever prevents an orphan under his guardianship from marrying, thereby causing him to fornicate, the sin is shared between them both,” we reply: This is a mursal report, and no authoritative evidence lies in a mursal report.

L30477 Moreover, it is narrated by Yaḥyā ibn ʿAbd al-Raḥmān ibn Abī Labībah, who

[46] **Qur’an references (L30469):** Qur’an 24:32 (An-Nur).

يُوصَفُ بِصَلَاحٍ فِي دِينِهِ وَلَا يَدْخُلُ فِي الصَّالِحِينَ، وَكُلُّ مُسْلِمٍ فَهُوَ مِنْ الصَّالِحِينَ بِقَوْلِ: لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَة إذْن الْوَصِيّ فِي النِّكَاح]

١٨٢٩ - مَسْأَلَةٌ: وَلَا إذْنَ لِلْوَصِيِّ فِي إنْكَاحٍ أَصْلًا، لَا لِرَجُلٍ، وَلَا لِامْرَأَةٍ: صَغِيرَيْنِ كَانَا، أَوْ كَبِيرَيْنِ، لِأَنَّ الصَّغِيرَيْنِ مِنْ الرِّجَالِ وَالنِّسَاءِ قَدْ ذَكَرْنَا أَنَّ الذَّكَرَ مِنْهُمَا لَا يَجُوزُ أَنْ يُنْكِحَهُ أَبٌ وَلَا غَيْرُهُ وَأَنَّ الْأُنْثَى مِنْهُمَا لَا يَجُوزُ أَنْ يُنْكِحَهَا إلَّا الْأَبُ وَحْدَهُ، وَأَمَّا الْكَبِيرَانِ فَلَا يَخْلُوَانِ مِنْ أَنْ يَكُونَا مَجْنُونَيْنِ أَوْ عَاقِلَيْنِ.

فَإِنْ كَانَا مَجْنُونَيْنِ فَقَدْ بَيَّنَّا أَنَّهُ لَا يُنْكِحُهَا أَحَدٌ، لَا أَبٌ وَلَا غَيْرُهُ.

وَأَمَّا الْعَاقِلَانِ الْبَالِغَانِ فَلَا يَجُوزُ أَنْ يَكُونَ عَلَيْهِمَا وَصِيٌّ عَلَى مَا بَيَّنَّا فِي " كِتَابِ الْحَجْرِ " فَأَغْنَى عَنْ إعَادَتِهِ.

وَمِمَّنْ قَالَ: لَا مَدْخَلَ لِلْوَصِيِّ فِي الْإِنْكَاحِ: أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ - فَإِنْ مَوَّهَ مُمَوِّهٌ بِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَبِيبَةَ عَنْ جَدِّهِ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ مَنَعَ يَتِيمًا لَهُ النِّكَاحَ فَزَنَى فَالْإِثْمُ بَيْنَهُمَا» ؟ قُلْنَا: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ -.

وَأَيْضًا فَهُوَ مِنْ رِوَايَةِ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَبِيبَةَ وَهُوَ ضَعِيفٌ.

is weak.

L30478 Furthermore, there is no mention of the guardian in it—or it could mean the text intends the leader of the tribe unjustly preventing an orphan within his tribe from marrying.

L30479 **A legal issue: He stipulated that upon his death, his young virgin daughter or the adult one be married.**

L30480 1830 - Issue: If someone directs in his will that upon his death his unmarried minor daughter or adult daughter should be married, this constitutes an invalid bequest, and it is impermissible to enforce it.

L30481 The proof of this is: If a minor girl's father dies, she becomes an orphan, and the Quranic text stipulates that an orphan girl must not be married until her permission is sought. As for a woman who has reached puberty, her father has no right to marry her off during his lifetime without her consent—how then could he do so after his death?

L30482 It has been soundly established from the Messenger of Allah—peace and blessings be upon him—that he said: "When one of you dies, his deeds cease except for three." Such an act is not among those three—this is the opinion of Abu Hanifah, al-Shafi'i, Abu Sulayman, and their companions.

L30483–30484 **The issue of marriage with the wording hiba (gift) and other terms.**

L30485 Issue: Marriage is only permissible if contracted using the terms "marriage" (zawāj), "matrimony" (nikāḥ), "transfer of ownership" (tamlīk), or "enabling" (imkān).

L30486 It is impermissible to use the term *hibah*, any other term for the reason we have mentioned, or a term in a non-Arabic language that conveys the terms we have specified for one who speaks and is proficient in that language.

L30487 The proof of that is: the saying of Allah, the Exalted: "So marry what is

وَأَيْضًا: فَلَيْسَ فِيهِ لِلْوَصِيِّ ذِكْرٌ - وَقَدْ يَكُونُ أَرَادَ سَيِّدَ الْعَشِيرَةِ يَمْنَعُ يَتِيمًا مِنْ قَوْمِهِ النِّكَاحَ ظُلْمًا.

[مَسْأَلَة أَوْصَى إِذَا مَاتَ أَنْ تُزَوَّجَ ابْنَتُهُ الْبِكْرُ الصَّغِيرَةُ أَوْ الْبَالِـغُ]

١٨٣٠ - مَسْأَلَةٌ: وَمَنْ أَوْصَى إِذَا مَاتَ أَنْ تُزَوَّجَ ابْنَتُهُ الْبِكْرُ الصَّغِيرَةُ أَوْ الْبَالِـغُ فَهِيَ وَصِيَّةٌ فَاسِدَةٌ لَا يَجُوزُ إنْفَاذُهَا.

بُرْهَانُ ذَلِكَ -: أَنَّ الصَّغِيرَةَ إذَا مَاتَ أَبُوهَا صَارَتْ يَتِيمَةً وَقَدْ جَاءَ النَّصُّ بِأَنْ لَا تُنْكَحَ الْيَتِيمَةُ حَتَّى تُسْتَأْذَنَ، وَأَمَّا الْكَبِيرَةُ فَلَيْسَ لِأَبِيهَا أَنْ يُزَوِّجَهَا فِي حَيَاتِهِ بِغَيْرِ إذْنِهَا فَكَيْفَ بَعْدَ مَوْتِهِ.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا مَاتَ أَحَدُكُمْ انْقَطَعَ عَمَلُهُ إلَّا مِنْ ثَلَاثٍ» وَلَيْسَ مِنْ تِلْكَ الثَّلَاثِ - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

[مَسْأَلَة النِّكَاح بلفظ الْهِبَة وَغَيْرهَا]

مَسْأَلَةٌ: وَلَا يَجُوزُ النِّكَاحُ إلَّا بِاسْمِ الزَّوَاجِ أَوْ النِّكَاحِ، أَوْ التَّمْلِيكِ، أَوْ الْإِمْكَانِ.

وَلَا يَجُوزُ بِلَفْظِ الْهِبَةِ، وَبِلَفْظٍ غَيْرِهَا لِمَا ذَكَرْنَا، أَوْ بِلَفْظِ الْأَعْجَمِيَّةِ يُعَبَّرُ بِهِ عَنْ الْأَلْفَاظِ الَّتِي ذَكَرْنَا لِمَنْ يَتَكَلَّمُ بِتِلْكَ اللُّغَةِ وَيُحْسِنُهَا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ} [النساء: ٣] .

good for you of women” [An-Nisa: 3].[47]

L30488 His statement, the Exalted, is: “Marry off the unmarried [i.e., single, divorced, or widowed] among you, as well as the righteous ones among your male and female slaves.” [An-Nur: 32][48]

L30489 And the Almighty said: “So when Zaid had dissolved his marriage with her, We gave her to you in marriage” [Al-Ahzab: 37].[49]

L30490 And it was narrated to us through the narration of Al-Bukhārī: Saʿīd ibn Abī Maryam narrated to us, Abū Ghassān—Muḥammad ibn Muṭarrif Al-Madanī—narrated to us, Abū Ḥāzim narrated to me from Sahl ibn Saʿd Al-Sāʿidī: “A woman presented herself [in marriage] to the Prophet—peace be upon him—” then he mentioned the ḥadīth and the man who proposed to her. The Messenger of Allāh—peace be upon him—said to him: “We have given her to you in marriage for what you have memorized of the Qurʾān.”[50]

L30491 And through the chain of ʿAbd al-Razzāq from Maʿmar and Sufyān al-Thawrī, both of whom narrated from Abū Ḥāzim from Sahl ibn Saʿd al-Sāʿidī, he narrated the ḥadīth that the Prophet—peace be upon him—said to the man: “I have granted you authority over her in exchange for what you possess of the Quran.”

L30492 It has also been narrated to us through the chain of ʿAbd al-ʿAzīz ibn Abī Ḥāzim, from his father, from Sahl ibn Saʿd, who said regarding it: “I have entrusted her to you in marriage in exchange for what you possess of the Quran.”

L30493 Abu Muhammad said: If it is said that Sufyan ibn ’Uyaynah indeed narrated this hadith from Abu Hazim from Sahl, and he said in it: “I have given her in marriage to you.”

L30494 It was narrated by Za’idah, Hammad ibn Zayd, and ‘Abd al-‘Aziz ibn Muhammad al-Darawardi—all of them from Abu Hazim from Sahl. They stated in

وقَوْله تَعَالَى: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] .

وَقَالَ عَزَّ وَجَلَّ: {فَلَمَّا قَضَى زَيْدٌ مِنْهَا وَطَرًا زَوَّجْنَاكَهَا} [الأحزاب: ٣٧] .

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا أَبُو غَسَّانَ - هُوَ مُحَمَّدُ بْنُ مُطَرِّفٍ الْمَدَنِيُّ - حَدَّثَنِي أَبُو حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ «أَنَّ امْرَأَةً عَرَضَتْ نَفْسَهَا عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» فَذَكَرَ الْحَدِيثَ وَالرَّجُلَ الَّذِي خَطَبَهَا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَقَدْ أَنْكَحْنَاكَهَا بِمَا مَعَكَ مِنْ الْقُرْآنِ» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَكِلَاهُمَا عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ، فَذَكَرَ الْحَدِيثَ وَأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِلرَّجُلِ: «قَدْ مَلَّكْتُكَهَا بِمَا مَعَكَ مِنْ الْقُرْآنِ» .

وَرُوِّينَا أَيْضًا: مِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ أَبِي حَازِمٍ عَنْ أَبِيهِ عَنْ سَهْلِ بْنِ سَعْدٍ فَقَالَ فِيهِ «فَقَدْ مَلَّكْتُكَهَا بِمَا مَعَكَ مِنْ الْقُرْآنِ» .

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قِيلَ: فَقَدْ رَوَى هَذَا الْحَدِيثَ سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَبِي حَازِمٍ عَنْ سَهْلٍ فَقَالَ فِيهِ «قَدْ أَنْكَحْتُكَهَا» .

وَرَوَاهُ: زَائِدَةُ، وَحَمَّادُ بْنُ زَيْدٍ، وَعَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ، كُلُّهُمْ عَنْ أَبِي حَازِمٍ عَنْ سَهْلٍ، فَقَالُوا فِيهِ «فَقَدْ زَوَّجْتُكَهَا فَعَلِّمْهَا مِنْ الْقُرْآنِ» وَهُوَ مَوْطِنٌ وَاحِدٌ، وَرَجُلٌ وَاحِدٌ، وَامْرَأَةٌ وَاحِدَةٌ؟ قَالَ: نَعَمْ، كُلُّ ذَلِكَ صَحِيحٌ.

[47] **Qur’an references (L30487):** Qur’an 4:3 (An-Nisa).
[48] **Qur’an references (L30488):** Qur’an 24:32 (An-Nur).
[49] **Qur’an references (L30489):** Qur’an 33:37 (Al-Ahzab).
[50] **Hadith references (L30490):** Sunan an-Nasai 3250.

it: “I have given her to you in marriage, so teach her some of the Quran.” Is this one instance, involving a single man and woman? He said: “Yes, all of that is authentic.”

L30495–30496 It has been narrated to us through the chain of al-Bukhārī: From ʻAbdah (Ibn Sulaymān al-Ṣaffār), from ʻAbd al-Ṣamad (Ibn ʻAbd al-Wārith), from ʻAbdullāh ibn al-Muthannā, from Thumāmah ibn Anas ibn Mālik, from Anas ibn Mālik, from the Prophet—peace and blessings of Allah be upon him—“that when he spoke a word, he would repeat it three times so it might be understood.” Thus, it is confirmed that all these words were spoken by him—peace and blessings be upon him—teaching us what establishes the marriage contract. All praise is due to Allah, Lord of the worlds.

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدَةُ - هُوَ ابْنُ سُلَيْمَانَ الصَّفَّارُ - نا عَبْدُ الصَّمَدِ - هُوَ ابْنُ عَبْدِ الْوَارِثِ - نا عَبْدُ اللَّهِ بْنُ الْمُثَنَّى نَا ثُمَامَةُ بْنُ أَنَسِ بْنِ مَالِكٍ عَنْ أَنَسِ بْنِ مَالِكٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ كَانَ إذَا تَكَلَّمَ بِالْكَلِمَةِ أَعَادَهَا ثَلَاثًا حَتَّى تُفْهَمَ عَنْهُ» فَصَحَّ أَنَّهَا أَلْفَاظٌ كُلُّهَا قَالَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مُعَلِّمًا لَنَا مَا يَنْعَقِدُ بِهِ النِّكَاحُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L30497 Among those who held this opinion are Al-Shāfiʻī and Abū Sulaymān.

وَمِمَّنْ قَالَ بِهَذَا: الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

L30498 Abu Hanifah and Malik said: Marriage is contracted using the term “hiba.” Abu Muhammad said: This is extremely grave, for Allah the Exalted says: {And a believing woman if she gifts herself to the Prophet, if the Prophet wishes to marry her – solely for you, not for the believers} [Al-Ahzab: 50]. Thus, it is established that marriage contracted using the term “hiba” is invalid for anyone other than the Prophet – peace and blessings of Allah be upon him.[51]

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: إنَّ النِّكَاحَ يَنْعَقِدُ بِلَفْظِ " الْهِبَةِ " -: قَالَ أَبُو مُحَمَّد: وَهَذَا عَظِيمٌ جِدًّا، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَامْرَأَةً مُؤْمِنَةً إنْ وَهَبَتْ نَفْسَهَا لِلنَّبِيِّ إنْ أَرَادَ النَّبِيُّ أَنْ يَسْتَنْكِحَهَا خَالِصَةً لَكَ مِنْ دُونِ الْمُؤْمِنِينَ} [الأحزاب: ٥٠] فَصَحَّ أَنَّ النِّكَاحَ بِلَفْظِ " الْهِبَةِ " بَاطِلٌ لِغَيْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30499 What is astonishing is their statement: “A prohibited gift is only [valid] when it lacks a dowry.” This constitutes compounding misguidance, enforcing lies through domination, and making claims in matters of religion.

وَالْعَجَبُ قَوْلُهُمْ: إنَّ الْهِبَةَ الْمُحَرَّمَةَ إنَّمَا هِيَ إذَا كَانَتْ بِلَا صَدَاقٍ، فَكَانَ هَذَا زَائِدًا فِي الضَّلَالِ وَالتَّحَكُّمِ بِالْكَذِبِ، وَالدَّعَاوَى فِي الدِّينِ.

[51] **Qur’an references (L30498):** Qur’an 33:50 (Al-Ahzab).

L30500 It is astonishing that they applied general rulings to what was gifted, despite Allah the Exalted having stated it was for His Messenger—peace and blessings be upon him—to the exclusion of the believers. Yet when they came to what the Messenger of Allah—peace and blessings be upon him—ruled regarding permitting marriage with an iron ring as dower or teaching something from the Quran as dower, they restricted it as specific to him. Had they reversed their positions, they would have been correct. We ask Allah for protection.

L30501 **A marriage is not valid except through the witnessing of two or more just witnesses or by a general public announcement.**

L30502 Issue 1832: A marriage is not valid unless witnessed by two just witnesses or more, or through a public proclamation. If the two witnesses are kept secret, this does not invalidate the marriage.

L30503 Muhammad ibn Ismāʿīl al-ʿUdhri and Muhammad ibn ʿĪsā both said: Muhammad ibn ʿAlī al-Rāzī al-Muṭawwiʿī narrated to us on their authority, stating: Muhammad ibn ʿAbd Allāh al-Ḥākim al-Naysābūrī said: I heard Abū Bakr ibn Isḥāq al-Imām say: Abū ʿAlī al-Ḥāfiẓ narrated to me. Al-Ḥākim said: Then I asked Abū ʿAlī, and he narrated to me, stating: Isḥāq ibn Aḥmad ibn Isḥāq al-Raqqī narrated to us, from Abū Yūsuf Muhammad ibn Aḥmad ibn al-Ḥajjāj al-Raqqī, from ʿĪsā ibn Yūnus, from Ibn Jurayj, from Sulaymān ibn Mūsā, from al-Zuhrī, from ʿUrwah, from ʿĀ'ishah, who said: The Messenger of Allāh—peace be upon him—said, "If any woman marries without the permission of her guardian and two upright witnesses, then her marriage is invalid. If the husband has consummated the marriage, she is entitled to the mahr. If they dispute, the ruler is the guardian for one who has no guardian."

L30504–30505 Abu Muhammad said: "Nothing in this chapter is valid except this chain (sanad)"—referring to the mention of two upright legal witnesses—"and this is sufficient for its validity."

L30506 If it is asked: From where do you deem marriage permissible through widespread public announcement, with the testimony of one man and two

وَمِنْ الْعَجَبِ أَنْ أَتَوْا إلَى الْمَوْهُوبَةِ، وَقَدْ قَالَ اللَّهُ تَعَالَى إنَّهَا لِرَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ دُونِ الْمُؤْمِنِينَ فَجَعَلُوهُ عُمُومًا لِغَيْرِهِ، ثُمَّ أَتَوْا إلَى مَا حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ إبَاحَةِ النِّكَاحِ بِخَاتَمِ حَدِيدٍ، وَبِتَعْلِيمِ شَيْءٍ مِنْ الْقُرْآنِ فَجَعَلُوهُ خُصُوصًا لَهُ - فَلَوْ عَكَسُوا أَقْوَالَهُمْ لَأَصَابُوا - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

[مَسْأَلَة لَا يَتِمُّ النِّكَاحُ إلَّا بِإِشْهَادِ عَدْلَيْنِ فَصَاعِدًا أَوْ بِإِعْلَانٍ عَامٍّ]

١٨٣٢ - مَسْأَلَةٌ: وَلَا يَتِمُّ النِّكَاحُ إلَّا بِإِشْهَادِ عَدْلَيْنِ فَصَاعِدًا، أَوْ بِإِعْلَانٍ عَامٍّ، فَإِنْ اسْتَكْتَمَ الشَّاهِدَانِ لَمْ يَضُرَّ ذَلِكَ شَيْئًا.

نا مُحَمَّدُ بْنُ إسْمَاعِيلَ الْعُذْرِيُّ، وَمُحَمَّدُ بْنُ عِيسَى قَالَا: نا مُحَمَّدُ بْنُ عَلِيٍّ الرَّازِيّ الْمُطَّوِّعِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْحَاكِمُ النَّيْسَابُورِيُّ قَالَ: سَمِعْت أَبَا بَكْرِ بْنَ إسْحَاقَ الْإِمَامَ يَقُولُ: حَدَّثَنِي أَبُو عَلِيٍّ الْحَافِظُ قَالَ الْحَاكِمُ: ثُمَّ سَأَلْت أَبَا عَلِيٍّ فَحَدَّثَنِي قَالَ: نا إسْحَاقُ بْنُ أَحْمَدَ بْنِ إسْحَاقَ الرَّقِّيُّ نا أَبُو يُوسُفَ مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْحَجَّاجِ الرَّقِّيُّ نا عِيسَى بْنُ يُونُسَ نا ابْنُ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ وَلِيِّهَا وَشَاهِدَيْ عَدْلٍ فَنِكَاحُهَا بَاطِلٌ، وَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ، وَإِنْ اشْتَجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَّ لَهُ» .

قَالَ أَبُو مُحَمَّدٍ: لَا يَصِحُّ فِي هَذَا الْبَابِ شَيْءٌ، غَيْرُ هَذَا السَّنَدِ - يَعْنِي ذِكْرَ شَاهِدَيْ عَدْلٍ - وَفِي هَذَا كِفَايَةٌ لِصِحَّتِهِ.

just women, or with the testimony of four just women? We respond: As for the announcement, it is because whoever is truthful in a report is – regarding that specific report – undoubtedly a just and truthful person. Thus, when the marriage is publicly announced, the two announcers are without doubt truthful and just in this matter and beyond. Similarly, in the case of the man and two women, within them are two just witnesses without doubt, because when a man and woman are reported about, the masculine form is used grammatically.

فَإِنْ قِيلَ: فَمِنْ أَيْنَ أَجَزْتُمْ النِّكَاحَ بِالْإِعْلَانِ الْفَاشِي، وَبِشَهَادَةِ رَجُلٍ وَامْرَأَتَيْنِ عُدُولٍ، وَبِشَهَادَةِ أَرْبَعِ نِسْوَةٍ عُدُولٍ؟ قُلْنَا: أَمَّا الْإِعْلَانُ: فَلِأَنَّ كُلَّ مَنْ صَدَقَ فِي خَبَرٍ فَهُوَ فِي ذَلِكَ الْخَبَرِ عَدْلٌ صَادِقٌ بِلَا شَكٍّ، فَإِذَا أُعْلِنَ النِّكَاحُ، فَالْمُعْلِنَانِ لَهُ بِهِ بِلَا شَكٍّ صَادِقَانِ عَدْلَانِ فِيهِ فَصَاعِدًا، وَكَذَلِكَ الرَّجُلُ وَالْمَرْأَتَانِ فِيهِمَا شَاهِدَا عَدْلٍ بِلَا شَكٍّ، لِأَنَّ الرَّجُلَ وَالْمَرْأَةَ إذَا أُخْبِرَ عَنْهُمَا غَلَبَ التَّذْكِيرُ.

L30507 As for the four women, the ruling is based on the statement of the Messenger of Allah—peace and blessings be upon him—"The testimony of a woman is half that of a man," and we have mentioned this in the Book of Testimonies.

وَأَمَّا الْأَرْبَعُ النِّسْوَةِ فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «شَهَادَةُ الْمَرْأَةِ بِنِصْفِ شَهَادَةِ الرَّجُلِ» وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الشَّهَادَاتِ ".

L30508 And the praise is due to Allah, Lord of the worlds.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L30509 A group of scholars maintained: If the two witnesses are compelled to secrecy, it is a secret marriage (nikāḥ al-sirr), and it is void.

وَقَالَ قَوْمٌ: إذَا اُسْتُكْتِمَ الشَّاهِدَانِ فَهُوَ نِكَاحُ سِرٍّ، وَهُوَ بَاطِلٌ.

L30510 Abū Muḥammad said: This is erroneous for two reasons: the first is that there has never been an authenticated prohibition against secret marriage when two upright witnesses bear witness to it.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ لِوَجْهَيْنِ -: أَحَدُهُمَا - أَنَّهُ لَمْ يَصِحَّ قَطُّ نَهْيٌ عَنْ نِكَاحِ السِّرِّ إذَا شَهِدَ عَلَيْهِ عَدْلَانِ.

L30511 The second is that it is not a secret what five people know: the groom, the guardian, the bride, and the two witnesses. The poet said:

وَالثَّانِي - أَنَّهُ لَيْسَ سِرًّا مَا عَلِمَهُ خَمْسَةٌ: النَّاكِحُ، وَالْمُنْكِحُ، وَالْمُنْكَحَةُ، وَالشَّاهِدَانِ - قَالَ الشَّاعِرُ:

L30512 Behold, every secret that passes beyond two is widespread.

أَلَا كُلُّ سِرٍّ جَاوَزَ اثْنَيْنِ شَائِعُ

L30513 Another said:

وَقَالَ غَيْرُهُ:

L30514–30516 A secret that two conceal between them... And every secret except the two's spreads. The scholars who permitted marriage in which the two witnesses are concealed include Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their companions.

السِّرُّ يَكْتُمُهُ الِاثْنَانِ بَيْنَهُمَا ... وَكُلُّ سِرٍّ عَدَا الِاثْنَيْنِ مُنْتَشِرُ وَمَنْ أَبَاحَ النِّكَاحَ الَّذِي يُسْتَكْتَمُ فِيهِ الشَّاهِدَانِ: أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

The issue of marriage without stipulating a dower.

Issue 1833: Marriage is valid without mentioning a dowry, provided there is complete silence on the matter. However, if a condition is stipulated that no dowry is due, the marriage is irrevocably annulled forever.

The proof of this is the statement of Allah, Exalted and Majestic: “There is no blame on you if you divorce women whom you have neither had sexual intercourse with nor assigned a mahr to.” [Al-Baqarah: 236][1]

Allah, the Exalted and Majestic, validated the marriage in which no stipulations were imposed for the woman, since He validated divorce in such a marriage. For divorce is only valid after the validity of the marriage itself.

As for if a condition is stipulated that there shall be no mahr, then the marriage is annulled, due to the saying of the Messenger of Allah (peace be upon him): “Every condition not in the Book of Allah Almighty is void.” This is a condition not in the Book of Allah Almighty, therefore it is void.

Rather, its nullification is in the Book of Allah, the Almighty and Majestic. He, the Exalted, said: *“And give women their dowries as a free gift.”* [An-Nisa: 4] Since this is invalid, the mentioned marriage’s validity was not concluded except through validating what is invalid. Thus, it is a marriage devoid of legal validity—and with Allah alone is success.[2]

A legal case concerning a wife for whom no dower (mahr) was specified when she demands it.

Issue 1834: If a marriage contract is concluded without stipulating a dowry and the wife demands it, a dowry shall be determined for her. If she and her husband mutually agree on something permissible to own, that becomes her dowry, with no other dowry owed to her. If they disagree, she is entitled to

[1] **Qur’an references (L30519):** Qur’an 2:236 (Al-Baqarah).

[2] **Qur’an references (L30522):** Qur’an 4:4 (An-Nisa).

[مَسْأَلَة النِّكَاح بِغَيْرِ ذِكْر صَدَاق]

١٨٣٣ - مَسْأَلَةٌ: وَالنِّكَاحُ جَائِزٌ بِغَيْرِ ذِكْرِ صَدَاقٍ، لَكِنْ بِأَنْ يَسْكُتَ جُمْلَةً فَإِنْ اشْتَرَطَ فِيهِ أَنْ لَا صَدَاقَ عَلَيْهِ فَهُوَ نِكَاحٌ مَفْسُوخٌ أَبَدًا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً} [البقرة: ٢٣٦] .

فَصَحَّحَ اللَّهُ عَزَّ وَجَلَّ النِّكَاحَ الَّذِي لَمْ يُفْرَضْ فِيهِ لِلْمَرْأَةِ شَيْءٌ، إِذْ صَحَّحَ فِيهِ الطَّلَاقَ، وَالطَّلَاقُ لَا يَصِحُّ إِلَّا بَعْدَ صِحَّةِ النِّكَاحِ.

وَأَمَّا لَوْ اشْتَرَطَ فِيهِ أَنْ لَا صَدَاقَ فَهُوَ مَفْسُوخٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ» وَهَذَا شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ.

بَلْ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ إِبْطَالُهُ، قَالَ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] فَإِذْ هُوَ بَاطِلٌ فَالنِّكَاحُ الْمَذْكُورُ لَمْ تَنْعَقِدْ صِحَّتُهُ إِلَّا عَلَى تَصْحِيحِ مَا لَا يَصِحُّ، فَهُوَ نِكَاحٌ لَا صِحَّةَ لَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة إِذَا طَلَبَتْ الْمُنْكَحَةُ الَّتِي لَمْ يُفْرَضْ لَهَا صَدَاقٌ]

١٨٣٤ - مَسْأَلَةٌ: فَإِذَا طَلَبَتْ الْمُنْكَحَةُ الَّتِي لَمْ يُفْرَضْ لَهَا صَدَاقٌ قُضِيَ لَهَا بِهِ، فَإِنْ تَرَاضَتْ هِيَ وَزَوْجُهَا بِشَيْءٍ يَجُوزُ تَمَلُّكُهُ، فَهُوَ صَدَاقٌ، لَا صَدَاقَ لَهَا غَيْرُهُ، فَإِنْ اُخْتُلِفَ قُضِيَ لَهَا بِصَدَاقِ مِثْلِهَا - أَحَبَّ هُوَ أَوْ هِيَ، أَوْ كَرِهَتْ هِيَ أَوْ هُوَ.

the dowry equivalent to that of women of her status—regardless of whether the husband or wife approves or objects.

L30525 The proof of this is that there is no disagreement regarding the validity of what two parties mutually consent to from what is permissible to own. Rather, some have differed concerning specific quantities based on what we will clarify later—if Allah, the Exalted, wills—and their claim is invalid, which we will expound subsequently by the enabling power of Allah, the Exalted, and His strength.

L30526 As for the ruling obliging him [to pay] and her [to receive] a dower equivalent to her [social] standing, Allah—*ʿAzza wa Jall*—has indeed made the dower obligatory [upon him], and it is imperative to adjudicate its payment to her if she claims it.

L30527 It is not permissible for the husband to be bound by what the wife demands, for she may require of him what is beyond his capacity.

L30528–30530 Similarly, it is not permissible that she be obligated to return what he gave her, as he might give her a fals (a small coin), and there is no scriptural evidence obligating her. That being the case, nor by obliging him to provide what she demanded. Since these two arguments have been invalidated, nothing remains except a dowry equivalent to what is customary for women of her status. Therefore, this is the ruling that must be issued for her, and with Allah, the Exalted, lies all success.

L30531 **The issue of marriage with a dower less than the customary equivalent dower.**

L30532 Issue 1835: It is impermissible for a father to contract the marriage of his minor daughter for less than the dowry appropriate to her status. She is not legally bound by her father's ruling in this matter and must necessarily be granted the full dowry appropriate to her status.

L30533 The proof of that is, it is her right according to the words of Allah, the Almighty and Majestic: "And give women their bridal gifts freely" [An-Nisa: 4]. Therefore, since it is her right and part of her wealth, her father has no

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَا خِلَافَ فِي صِحَّةِ مَا يَتَرَاضَيَانِ بِهِ مِمَّا يَجُوزُ تَمَلُّكُهُ، وَإِنَّمَا خَالَفَ قَوْمٌ فِي بَعْضِ الْأَعْدَادِ عَلَى مَا نُبَيِّنُ بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ تَعَالَى - وَقَوْلُهُمْ سَاقِطٌ نُبَيِّنُهُ بَعْدُ، بِحَوْلِ اللَّهِ تَعَالَى وَقُوَّتِهِ.

وَأَمَّا الْقَضَاءُ عَلَيْهِ وَعَلَيْهَا بِمَهْرِ مِثْلِهَا، فَإِنَّهُ قَدْ أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ لَهَا الصَّدَاقَ، وَلَا بُدَّ مِنْ أَنْ يُقْضَى لَهَا بِهِ إِذَا طَلَبَتْهُ.

وَلَا يَجُوزُ أَنْ يَلْزَمَ مَا طَلَبَتْهُ هِيَ، إِذْ قَدْ تَطْلُبُ مِنْهُ مَا لَيْسَ فِي وُسْعِهِ.

وَكَذَلِكَ لَا يَجُوزُ أَنْ تُلْزَمَ هِيَ مَا أَعْطَاهَا، إِذْ قَدْ يُعْطِيهَا فَلْسًا، وَلَمْ يَأْتِ نَصٌّ بِإِلْزَامِهَا ذَلِكَ، وَلَا بِإِلْزَامِهِ مَا طَلَبَتْ، فَإِذْ قَدْ بَطَلَ هَذَانِ الْوَجْهَانِ فَلَمْ يَبْقَ إِلَّا صَدَاقُ مِثْلِهَا، فَهُوَ الَّذِي يُقْضَى لَهَا بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة التَّزْوِيج بِأَقَلّ مِنْ مَهْر الْمِثْل]

١٨٣٥ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلْأَبِ أَنْ يُزَوِّجَ ابْنَتَهُ الصَّغِيرَةَ بِأَقَلَّ مِنْ مَهْرِ مِثْلِهَا، وَلَا يَلْزَمُهَا حُكْمُ أَبِيهَا فِي ذَلِكَ وَتَبْلُغُ إِلَى مَهْرِ مِثْلِهَا وَلَا بُدَّ.

legal right over her wealth, in accordance with Allah's words: "No soul bears the burden of another" [Al-An'am: 164].[3]

L30534 It is not permissible to rule that the full dower of her peers be imposed upon her father unless he voluntarily undertakes it from his wealth, for Allah the Exalted says: "Do not devour your wealth among yourselves unjustly, except it be trade by mutual consent among you" [An-Nisa' 4:29].[4]

L30535 The dower—as per the explicit Quranic text—is an obligation upon the husband, not the father. Thus, a judicial ruling to enforce it against the father's wealth constitutes a ruling of injustice and oppression, and wrongfully consuming wealth is not permissible.

L30536 Our stance on that matter aligns with the position of al-Shāfiʿī, Abū Sulaymān, Abū Yūsuf, and Muḥammad ibn al-Ḥasan—while the following scholars held it permissible: Abū Ḥanīfah, Zufar, Mālik, and al-Layth.

L30537 **The ruling on a slave's marriage (male or female) without the master's permission.**

L30538 1836. It is not permissible for a male slave or female slave to marry except with their master's permission. Whichever of them marries without their master's consent while being aware of the established prohibition in this matter, the ḥadd punishment for zinā applies to the offender - he is a fornicator and she is a fornicatress. The child is not affiliated with the father in such a case.

L30539 The proof for that is what we have narrated through the chain of Abū Dāwūd—Aḥmad ibn Ḥanbal and ʿUthmān ibn Abī Shaybah (the wording being his) both narrating from Wakīʿ—who narrates from al-Ḥasan ibn Ṣāliḥ,

[3]**Qur'an references (L30533):** Qur'an 4:4 (An-Nisa); Qur'an 6:164 (Al-An'am).
[4]**Qur'an references (L30534):** Qur'an 4:29 (An-Nisa).

بُرْهَانُ ذَلِكَ -: أَنَّهُ حَقٌّ لَهَا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] فَإِذْ هُوَ حَقٌّ لَهَا، وَمِنْ جُمْلَةِ مَالِهَا، فَلَا حُكْمَ لِأَبِيهَا فِي مَالِهَا، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

وَلَا يَجُوزُ أَنْ يُقْضَى بِتَمَامِ مَهْرِ مِثْلِهَا عَلَى أَبِيهَا إِلَّا أَنْ يَضْمَنَهُ مُخْتَارًا لِذَلِكَ فِي مَالِهِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَالصَّدَاقُ - بِنَصِّ الْقُرْآنِ - عَلَى الزَّوْجِ لَا عَلَى الْأَبِ، فَالْقَضَاءُ بِهِ عَلَى الْأَبِ فِي مَالِهِ قَضَاءُ ظُلْمٍ وَجَوْرٍ، وَأَكْلُ مَالٍ بِالْبَاطِلِ لَا يَحِلُّ.

وَقَوْلُنَا فِي ذَلِكَ هُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ - وَأَجَازَ ذَلِكَ عَلَيْهَا: أَبُو حَنِيفَةَ، وَزُفَرُ، وَمَالِكٌ وَاللَّيْثُ.

[مَسْأَلَة نِكَاح الْعَبْد أَوْ الْأَمَة بِغَيْرِ إذْن السَّيِّد]

١٨٣٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْعَبْدِ وَلَا لِلْأَمَةِ أَنْ يَنْكِحَا إلَّا بِإِذْنِ سَيِّدِهِمَا، فَأَيُّهُمَا نَكَحَ بِغَيْرِ إذْنِ سَيِّدِهِ عَالِمًا بِالنَّهْيِ الْوَارِدِ فِي ذَلِكَ فَعَلَيْهِ حَدُّ الزِّنَا، وَهُوَ زَانٍ، وَهِيَ زَانِيَةٌ، وَلَا يَلْحَقُ الْوَلَدُ فِي ذَلِكَ.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ، وَعُثْمَانُ بْنُ أَبِي شَيْبَةَ - وَاللَّفْظُ لَهُ - كِلَاهُمَا عَنْ وَكِيعٍ نا الْحَسَنُ بْنُ صَالِحٍ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ

from ʿAbdullāh ibn Muḥammad ibn ʿAqīl, from Jābir, from ʿAbdullāh, who said: The Messenger of Allah—peace and blessings be upon him—stated, “Any slave who marries without his master’s permission is an adulterer.”

عَنْ جَابِرٍ عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا عَبْدٍ تَزَوَّجَ بِغَيْرِ إِذْنِ مَوْلَاهُ فَهُوَ عَاهِرٌ» .

L30540–30541 And via the chain of ʿAbd al-Razzāq: Narrated to us Ibn Jurayj from ʿAbd Allāh ibn Muḥammad ibn ʿAqīl, who said: I heard Jābir ibn ʿAbd Allāh say: The Messenger of Allāh (peace be upon him) said, “Any slave who marries without his master’s permission is an adulterer.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ قَالَ: سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ " قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا عَبْدٍ نَكَحَ بِغَيْرِ إِذْنِ سَيِّدِهِ فَهُوَ عَاهِرٌ» .

L30542 The term *al-ʿabd* (literally “male slave”) applies as a general designation, encompassing both males and females among those in bondage (ar-raqīq).

وَاسْمُ " الْعَبْدِ " وَاقِعٌ عَلَى الْجِنْسِ، فَالذُّكُورُ وَالْإِنَاثُ مِنْ الرَّقِيقِ دَاخِلُونَ تَحْتَ هَذَا الِاسْمِ.

L30543 Furthermore, it has been authentically reported from the Messenger of Allah (peace and blessings be upon him) that he said: “Indeed, your blood and your wealth are sacred to you.” The female slave is the property of her master; thus, she is forbidden to others except by marrying her to him, in accordance with the explicit wording of his statement (peace and blessings be upon him). This is also the view of a group of the Salaf. It has been narrated to us from Umar ibn al-Khattab: “If a male slave marries without the permission of his owners, his marriage is invalid.”

وَأَيْضًا: فَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَالْأَمَةُ مَالٌ لِسَيِّدِهَا فَهِيَ حَرَامٌ عَلَيْهِ إلَّا بِإِنْكَاحِهَا إيَّاهُ بِنَصِّ كَلَامِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَهُوَ قَوْلُ طَائِفَةٍ مِنْ السَّلَفِ -: رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ: إذَا نَكَحَ الْعَبْدُ بِغَيْرِ إذْنِ مَوَالِيهِ فَنِكَاحُهُ حَرَامٌ.

L30544 Via Abd al-Razzaq’s transmission: Ibn Jurayj narrated to us, stating that Musa ibn Uqbah informed him through Nafi: Ibn Umar regarded a slave’s marriage without his master’s permission as fornication. He held the slave liable to the hadd punishment, as well as the woman he married if he had intercourse with her and she knew he was a slave. Those who conducted her marriage contract would also be punished.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ يَرَى إنْكَاحَ الْعَبْدِ بِغَيْرِ إذْنِ سَيِّدِهِ زِنًى، وَيَرَى عَلَيْهِ الْحَدَّ، وَعَلَى الَّتِي نَكَحَ إذَا أَصَابَهَا إذَا عَلِمَتْ أَنَّهُ عَبْدٌ، وَيُعَاقَبُ الَّذِينَ أَنْكَحُوهَا.

L30545–30546 Through the chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Nāfiʿ: It is reported that Ibn ʿUmar confronted a slave of his who had married without his permission, separated the couple, invalidated the *mahr*, and imposed the *ḥadd* punishment upon him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ أَخَذَ عَبْدًا لَهُ نَكَحَ بِغَيْرِ إذْنِهِ فَفَرَّقَ بَيْنَهُمَا، وَأَبْطَلَ صَدَاقَهُ، وَضَرَبَهُ حَدًّا.

L30547 Through the narration of Ḥammād ibn Salamah from Ayyūb al-Sikhtiyānī

from Nāfiʿ from Ibn ʿUmar, who said: If a slave marries without his master's permission, he is flogged with the prescribed punishment (ḥadd), they are separated, the bridal gift (mahr) is returned to his master, and the witnesses who witnessed his marriage are subjected to discretionary punishment (taʿzīr). This is a rigorously authenticated report with a fully connected chain transmitted from Ibn ʿUmar—may Allah be pleased with them both.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إِذَا تَزَوَّجَ الْعَبْدُ بِغَيْرِ إِذْنِ سَيِّدِهِ جُلِدَ الْحَدَّ، وَفُرِّقَ بَيْنَهُمَا، وَرُدَّ الْمَهْرُ إِلَى مَوْلَاهُ وَعُزِّرَ الشُّهُودُ الَّذِينَ زَوَّجُوهُ وَهَذَا مُسْنَدٌ فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا -.

L30548 Via Sa'id ibn Mansur, it was narrated to us by Hushaym, who narrated to us from Mughira and 'Ubayda, from Ibrahim al-Nakha'i. Mughira stated in his narration from him: "When the master separates the two of them, whatever tangible property of his male slave he finds with her remains his (the master's) property. Whatever the male slave has consumed, there is no liability upon her." 'Ubayda stated in his narration from him: "Whatever she has consumed becomes a debt upon her." Hushaym said: "That is the opinion."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نَا مُغِيرَةُ، وَعُبَيْدَةُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ الْمُغِيرَةُ فِي رِوَايَتِهِ عَنْهُ: إِذَا فَرَّقَ الْمَوْلَى بَيْنَهُمَا فَمَا وَجَدَ عِنْدَهَا مِنْ عَيْنِ مَالِ غُلَامِهِ فَهُوَ لَهُ، وَمَا اسْتَهْلَكَهُ فَلَا شَيْءَ عَلَيْهَا، وَقَالَ عُبَيْدَةُ فِي رِوَايَتِهِ عَنْهُ؛ وَمَا اسْتَهْلَكَتْ فَهُوَ دَيْنٌ عَلَيْهَا، قَالَ هُشَيْمٌ: وَهُوَ الْقَوْلُ.

L30549 And via the chain of Shu'bah from al-Hakam ibn 'Utaybah and Hammad ibn Abi Sulayman: that they both ruled concerning a slave who marries without his master's permission: the marriage is annulled, the dowry is to be forfeited from her, and whatever portion she has consumed becomes a debt upon her.

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ: أَنَّهُمَا قَالَا فِي الْعَبْدِ يَتَزَوَّجُ بِغَيْرِ إِذْنِ سَيِّدِهِ: أَنَّهُ يُفَرَّقُ بَيْنَهُمَا، وَيُنْتَزَعُ الصَّدَاقُ مِنْهَا، وَمَا اسْتَهْلَكَتْهُ كَانَ دَيْنًا عَلَيْهَا.

L30550 From the transmission of Waki', from Sufyān al-Thawrī, from Firās, from ʿĀmir al-Shaʿbī regarding a woman married by an enslaved person without his master's permission, he said: "What she has not consumed is taken from her, and for what she has consumed, there is no liability."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ فِرَاسٍ عَنْ عَامِرٍ الشَّعْبِيِّ فِي الَّتِي يَتَزَوَّجُهَا الْعَبْدُ بِغَيْرِ إِذْنِ سَيِّدِهِ قَالَ: يُؤْخَذُ مِنْهَا مَا لَمْ تَسْتَهْلِكْهُ وَمَا اسْتَهْلَكَتْ فَلَا شَيْءَ.

L30551 Among those who held that it is impermissible, and that the master has no authority to permit it even if he were to do so, are Al-Awzaʿī and Al-Shāfiʿī.

وَمِمَّنْ قَالَ: لَا يَجُوزُ، وَلَا إِجَازَةَ فِيهِ لِلسَّيِّدِ لَوْ أَجَازَهُ - الْأَوْزَاعِيُّ، وَالشَّافِعِيُّ.

L30552 Abu Hanifah and Malik held that a slave's marriage without his master's permission is not unlawful intercourse (zinā); rather, if the master approves it, the marriage is valid without renewing the contract.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: إِنَّ نِكَاحَ الْعَبْدِ بِغَيْرِ إِذْنِ سَيِّدِهِ لَيْسَ زِنًى، بَلْ إِنْ أَجَازَهُ السَّيِّدُ جَازَ بِغَيْرِ تَجْدِيدِ عَقْدٍ.

L30553 They attempted to obscure this by arguing: "The report you cited stating he is a lecher contains no mention of intercourse, yet you claim one who refrains from intercourse isn't a lecher?" We responded: This report from Allah's Messenger (peace and blessings be upon him) is authentically established with the wording "when he marries," as we previously cited. The term "marries"

وَمَوَّهُوا فِي ذَلِكَ بِأَنْ قَالُوا: إِنَّ الْخَبَرَ الَّذِي احْتَجَجْتُمْ بِهِ أَنَّهُ عَاهِرٌ لَيْسَ فِيهِ: إِذَا وَطِئَهَا، وَأَنْتُمْ تَقُولُونَ: إِذَا لَمْ يَطَأْهَا فَلَيْسَ عَاهِرًا؟ قُلْنَا: قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

وَسَلَّمَ - هَذَا الْخَبَرُ بِلَفْظِ " إذَا نَكَحَ " كَمَا أَوْرَدْنَاهُ آنِفًا وَنَكَحَ فِي اللُّغَةِ الَّتِي خَاطَبَنَا اللَّهُ تَعَالَى بِهَا وَخَاطَبَنَا بِهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - " يَقَعُ عَلَى الْعَقْدِ وَيَقَعُ عَلَى الْوَطْءِ " فَلَا يَجُوزُ تَخْصِيصُ أَحَدِ الْمَعْنَيَيْنِ دُونَ الْآخَرِ - فَصَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا جَعَلَهُ زَانِيًا إذَا تَزَوَّجَ وَنَكَحَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

(nakaha) in the divine language by which Allah the Exalted addressed us, and by which the Prophet (peace and blessings be upon him) – upon him be peace and blessings – addressed us, applies both to the marriage contract and the sexual act. It is therefore impermissible to restrict it to one meaning while excluding the other. Thus, it is confirmed that the Prophet (peace and blessings be upon him) only designated him a fornicator if he contracted marriage and engaged in intercourse. And success is from Allah, the Most High.

وَالْعَجَبُ أَنَّهُمْ جَعَلُوا تَفْرِيقَ السَّيِّدِ - إنْ فَرَّقَ - طَلَاقًا، وَهَذَا خَطَأٌ فَاحِشٌ مِنْ وُجُوهٍ -: أَحَدُهَا أَنَّهُ لَا يَخْلُو عَقْدُ الْعَبْدِ عَلَى نَفْسِهِ بِغَيْرِ إذْنِ سَيِّدِهِ ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا -: إمَّا أَنْ يَكُونَ صَحِيحًا، وَإِمَّا أَنْ يَكُونَ بَاطِلًا.

L30554–30556 What is astonishing is that they deemed the husband's judicial separation – if he separates – as divorce, and this is a grave error from... Aspects: One of them is that a contract imposed on a slave without his master's permission is necessarily confined to one of two possibilities—there being no third—either it is valid or it is invalid.

فَإِنْ كَانَ صَحِيحًا فَلَا خِيَارَ لِلسَّيِّدِ فِي إبْطَالِ عَقْدٍ صَحِيحٍ.

L30557 If the contract is valid, the master has no right to annul a valid contract.

وَإِنْ كَانَ بَاطِلًا فَلَا يَجُوزُ لِلسَّيِّدِ تَصْحِيحُ الْبَاطِلِ.

L30558 If it is invalid, then it is not permissible for the owner to validate the invalid act.

وَمَا عَدَا هَذَا فَتَخْلِيطٌ، إلَّا أَنْ يَأْتِيَ بِهِ نَصٌّ فَيُوقَفَ عِنْدَهُ.

L30559 Anything beyond this is confusion, unless a text pertaining to it is brought forth, in which case one must adhere strictly to it.

وَيَكْفِي مِنْ هَذَا - أَنَّهُ قَوْلٌ لَمْ يُوجِبْ صِحَّتَهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ يُعْقَلُ، وَلَا تَصِحُّ فِي هَذَا رِوَايَةٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ غَيْرُ الَّتِي رُوِّينَا عَنْ ابْنِ عُمَرَ، وَجَاءَتْ رِوَايَةٌ لَا تَصِحُّ عَنْ عُمَرَ، وَعُثْمَانَ قَدْ خَالَفُوهَا أَيْضًا وَتَعَلَّقُوا بِرِوَايَةٍ وَاهِيَةٍ نُنَبِّهُ عَلَيْهَا - إنْ شَاءَ اللَّهُ تَعَالَى - لِئَلَّا يُمَوِّهَ بِهَا مُمَوِّهٌ، وَهِيَ -: مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ الْعُمَرِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، قَالَ: إذَا تَزَوَّجَ الْعَبْدُ بِغَيْرِ إذْنِ سَيِّدِهِ فَالطَّلَاقُ بِيَدِ السَّيِّدِ، وَإِذَا نَكَحَ بِإِذْنِ سَيِّدِهِ فَالطَّلَاقُ بِيَدِ الْعَبْدِ.

L30560 It suffices regarding this matter that it is an opinion whose validity is not necessitated by the Quran, nor the Sunnah, nor analogy, nor any opinion with a conceivable basis. No valid narration from any Companion exists on this matter except the one narrated from Ibn ʿUmar. An inauthentic narration has been reported from ʿUmar, and ʿUthman opposed it as well. Its proponents clung to a weak narration—which we will clarify, God Almighty willing—to prevent any deceiver from exploiting it. This refers to what was narrated to us through Waki‘ from al-ʿUmari from Nafi‘ from Ibn ʿUmar, who said: "If a slave marries without his master's permission, divorce rests with the master; if he marries with permission, divorce rests with the slave."

L30561 It was narrated to us through Sa‘īd ibn Manṣūr from Hushaym, who said: Ibn Abī Laylā narrated to us, along with al-Ḥajjāj - Ibn Arṭā'ah -, al-Mughīrah

- Ibn Miqsam -, Yūnus - Ibn ʿUbayd -, al-Ḥusayn - Ibn ʿAbd al-Raḥmān -, and Ismāʿīl ibn Abī Khālid. Ibn Abī Laylā and al-Ḥajjāj narrated from Nāfiʿ from Ibn ʿUmar. Al-Ḥajjāj additionally narrated from Ibrāhīm al-Nakhaʿī from Shurayḥ. Al-Mughīrah narrated from Ibrāhīm al-Nakhaʿī. Yūnus narrated from al-Ḥasan al-Baṣrī. Al-Ḥusayn and Ismāʿīl narrated from al-Shaʿbī. Thereafter, Ibn ʿUmar, Shurayḥ, Ibrāhīm, al-Ḥasan, and al-Shaʿbī agreed, stating: If a slave marries with his master's permission, the right of divorce belongs to him. But if he marries without his master's permission, the authority lies with the master—he may either keep the marriage or dissolve it.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ قَالَ: نا ابْنُ أَبِي لَيْلَى، وَالْحَجَّاجُ - هُوَ ابْنُ أَرْطَاةَ - وَالْمُغِيرَةُ - هُوَ ابْنُ مِقْسَمٍ - وَيُونُسُ - هُوَ ابْنُ عُبَيْدٍ - وَالْحُصَيْنُ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - وَإِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ، قَالَ ابْنُ أَبِي لَيْلَى، وَالْحَجَّاجُ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، وَقَالَ الْحَجَّاجُ أَيْضًا: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ شُرَيْحٍ، وَقَالَ الْمُغِيرَةُ: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ يُونُسُ: عَنِ الْحَسَنِ الْبَصْرِيِّ، وَقَالَ الْحُصَيْنُ، وَإِسْمَاعِيلُ: عَنِ الشَّعْبِيِّ، ثُمَّ اتَّفَقَ ابْنُ عُمَرَ، وَشُرَيْحٌ، وَإِبْرَاهِيمُ، وَالْحَسَنُ، وَالشَّعْبِيُّ، قَالُوا كُلُّهُمْ: إِذَا تَزَوَّجَ بِأَمْرِ مَوْلَاهُ فَالطَّلَاقُ بِيَدِهِ، وَإِذَا تَزَوَّجَ بِغَيْرِ أَمْرِهِ فَالْأَمْرُ إِلَى السَّيِّدِ إِنْ شَاءَ جَمَعَ وَإِنْ شَاءَ فَرَّقَ.

L30562 Abu Muhammad—: Al-Umari—he is Abdullah ibn Umar ibn Hafs—and he is weak in reliability.

قَالَ أَبُو مُحَمَّدٍ -: الْعُمَرِيُّ - هُوَ عَبْدُ اللَّهِ بْنُ عُمَرَ بْنِ حَفْصٍ - وَهُوَ ضَعِيفٌ.

L30563 Ibn Abi Laylā is of poor memory and weak [as a narrator]; Al-Ḥajjāj is doomed.

وَابْنُ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ ضَعِيفٌ - وَالْحَجَّاجُ هَالِكٌ.

L30564 Among the invalidity and falsehood is opposing the narrations of these [transmitters] from Nāfiʿ with the narrations of the likes of Ayyūb al-Sikhtiyānī, Mūsā ibn ʿUqbah, and Yūnus ibn ʿUbayd—all of whom narrated from Nāfiʿ.

وَمِنَ السُّقُوطِ وَالْبَاطِلِ أَنْ تُعَارَضَ بِرِوَايَةِ هَؤُلَاءِ عَنْ نَافِعٍ رِوَايَةُ مِثْلِ أَيُّوبَ السِّخْتِيَانِيِّ، وَمُوسَى بْنِ عُقْبَةَ، وَيُونُسَ بْنِ عُبَيْدٍ عَنْ نَافِعٍ.

L30565 The narration narrated by Shurayh is discarded because it is transmitted through Al-Ḥajjāj ibn Arṭāʾah.

وَالرِّوَايَةُ عَنْ شُرَيْحٍ سَاقِطَةٌ، لِأَنَّهَا عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ.

L30566–30567 As for Ibrahim and Al-Shaʿbi, the narration from them is authentic. However, Abu Hanifah and Malik disagreed with them regarding their opinion on the dowry, and we are not aware that they relied on anyone except Al-Hasan alone.

وَأَمَّا إِبْرَاهِيمُ، وَالشَّعْبِيُّ، فَالرِّوَايَةُ عَنْهُمَا صَحِيحَةٌ، إِلَّا أَنَّ أَبَا حَنِيفَةَ وَمَالِكًا خَالَفَاهُمَا فِي قَوْلِهِمَا فِي الْمَهْرِ، فَمَا نَعْلَمُهُمْ تَعَلَّقُوا إِلَّا بِالْحَسَنِ وَحْدَهُ.

L30568 The ruling on a woman marrying her female enslaved person or male enslaved person.

[مَسْأَلَة نِكَاح الْمَرْأَة أمتها أَوْ عبدها]

L30569 Issue 1837: A woman cannot act as a guardian in marriage. If she wishes to marry off her female slave or male slave, she must direct the closest male relative from her paternal agnates to grant her permission to marry them

off. If she has no agnate, the governing authority grants her permission to marry them off.

١٨٣٧ - مَسْأَلَةٌ: وَلَا تَكُونُ الْمَرْأَةُ وَلِيًّا فِي النِّكَاحِ، فَإِنْ أَرَادَتْ إنْكَاحَ أَمَتِهَا أَوْ عَبْدِهَا أَمَرَتْ أَقْرَبَ الرِّجَالِ إلَيْهَا مِنْ عَصَبَتِهَا أَنْ يَأْذَنَ لَهَا فِي النِّكَاحِ، فَإِنْ لَمْ يَكُنْ لَهَا عَاصِبٌ فَالسُّلْطَانُ يَأْذَنُ لَهَا فِي النِّكَاحِ.

L30570 The proof of that is the statement of Allah, the Mighty and Majestic: "Marry those among you who are without spouses, and the righteous ones from your bondmen and bondwomen" [An-Nur: 32].[5]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] .

L30571 It is therefore conclusively established that those commanded to marry male and female slaves are the same as those commanded to marry the unmarried (including widowed and divorced), as the directive is singular. The verse explicitly requires that the men tasked with marrying the unmarried, male slaves, and female slaves are the ones responsible for this duty.

فَصَحَّ يَقِينًا أَنَّ الْمَأْمُورِينَ بِإِنْكَاحِ الْعَبِيدِ وَالْإِمَاءِ هُمْ الْمَأْمُورُونَ بِإِنْكَاحِ الْأَيَامَى، لِأَنَّ الْخِطَابَ وَاحِدٌ، وَنَصَّ الْآيَةِ يُوجِبُ أَنَّ الْمَأْمُورِينَ بِذَلِكَ الرِّجَالُ فِي إنْكَاحِ الْأَيَامَى وَالْعَبِيدِ وَالْإِمَاءِ.

L30572 This establishes that a woman cannot fundamentally act as a guardian in anyone's marriage. However, her consent in this matter is indispensable – otherwise, it is impermissible – due to Allah Almighty's statement: {As for those among you who cannot afford to marry free believing women, let them marry from the believing women whom your right hands possess. Allah knows best about your faith – you are of one another in faith. So marry them with their guardians' permission} [An-Nisā' 4:25].[6]

فَصَحَّ بِهَذَا أَنَّ الْمَرْأَةَ لَا تَكُونُ وَلِيًّا فِي إنْكَاحِ أَحَدٍ أَصْلًا، لَكِنْ لَا بُدَّ مِنْ إذْنِهَا فِي ذَلِكَ وَإِلَّا فَلَا يَجُوزُ، لِقَوْلِ اللَّهِ تَعَالَى: {وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ وَاللَّهُ أَعْلَمُ بِإِيمَانِكُمْ بَعْضُكُمْ مِنْ بَعْضٍ فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ} [النساء: ٢٥] .

L30573 **The issue of coercing a male slave or female slave into marriage.**

[مَسْأَلَة إجْبَار الْعَبْد أَوْ الْأَمَة عَلَى النِّكَاح]

L30574 Issue 1838: It is not permissible for a master to compel his female slave or male slave to marry—neither to a non-mahram man nor a non-mahram woman, nor to force either of them to marry the other. If he does so, it is not a valid marriage.

١٨٣٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلسَّيِّدِ إجْبَارُ أَمَتِهِ أَوْ عَبْدِهِ عَلَى النِّكَاحِ، لَا مِنْ أَجْنَبِيٍّ وَلَا مِنْ أَجْنَبِيَّةٍ، وَلَا أَحَدِهِمَا مِنْ الْآخَرِ - فَإِنْ فَعَلَ فَلَيْسَ نِكَاحًا.

L30575 The proof of that is the statement of Allah, the Mighty and Majestic: {No soul earns except against itself} [Al-Anʿām 6:164].[7]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

[5] **Qur'an references (L30570):** Qur'an 24:32 (An-Nur).
[6] **Qur'an references (L30572):** Qur'an 4:25 (An-Nisa).
[7] **Qur'an references (L30575):** Qur'an 6:164 (Al-An'am).

L30576 The statement of the Messenger of Allah—may Allah bless him and grant him peace—which we have previously mentioned with its chain of transmission: "A virgin must not be married until her permission is sought, nor a previously married woman until her consent is obtained." This is the opinion of Al-Shāfiʿī and Abū Sulaymān.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ «لَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ وَلَا تُنْكَحُ الثَّيِّبُ حَتَّى تُسْتَأْمَرَ» وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L30577 Abu Hanifah stated in one of his two opinions: A master is not permitted to marry off his male slave except with the slave's consent, but he retains the right to marry off his female slave without her consent. This aligns with the opinion of al-Ḥasan ibn Ḥayyin.

وَقَالَ أَبُو حَنِيفَةَ فِي أَحَدِ قَوْلَيْهِ: لَا يُزَوِّجُ السَّيِّدُ عَبْدَهُ إِلَّا بِإِذْنِهِ، وَلَهُ أَنْ يُزَوِّجَ أَمَتَهُ بِغَيْرِ إِذْنِهَا - وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ.

L30578–30579 It is narrated from Sufyān al-Thawrī that he would give them in marriage without her permission.

وَرُوِيَ عَنْ سُفْيَانَ الثَّوْرِيِّ أَنَّهُ يُزَوِّجُهُمَا بِغَيْرِ إِذْنِهَا.

L30580 Abu Yusuf and Muhammad ibn al-Hasan said: He may marry off his female slave to his male slave even if both dislike it—and this has also been narrated from Abu Hanifa.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ: لَهُ أَنْ يُزَوِّجَ أَمَتَهُ مِنْ عَبْدِهِ وَإِنْ كَرِهَا جَمِيعًا - وَرُوِيَ هَذَا أَيْضًا عَنْ أَبِي حَنِيفَةَ.

L30581 Malik said: It is reprehensible for a man to compel his female slave or male slave into marriage. He should not marry off his female slave except with a dowry he delivers to her, thereby lawfully accessing her private part through it. He must not marry his distinguished female slave to his dark-skinned male slave who lacks appealing appearance unless it serves consideration of rectitude - intending thereby the youth's chastity, such as if he is his agent. If it is for the purpose of harming the female slave, it is impermissible.

وَقَالَ مَالِكٌ: يُكْرِهُ الرَّجُلُ أَمَتَهُ وَعَبْدَهُ عَلَى النِّكَاحِ، وَلَا يُنْكِحْ أَمَتَهُ إِلَّا بِمَهْرٍ يَدْفَعُهُ إِلَيْهَا فَيَسْتَحِلُّ بِهِ فَرْجَهَا، وَلَا يُزَوِّجْ أَمَتَهُ الْفَارِهَةَ مِنْ عَبْدِهِ الْأَسْوَدِ لَا مَنْظَرَ لَهُ إِلَّا أَنْ يَكُونَ عَلَى وَجْهِ النَّظَرِ وَالصَّلَاحِ يُرِيدُ بِهِ عِفَّةَ الْغُلَامِ، مِثْلُ أَنْ يَكُونَ وَكِيلَهُ، فَإِنْ كَانَ عَلَى وَجْهِ الضَّرَرِ بِالْجَارِيَةِ لَمْ يَجُزْ.

L30582 He said: A man is reprehensible for compelling his female slave manumitted over a term of years into marriage. Abū Muḥammad said: As for Mālik's statement, it is apparently contradictory, for he permitted a master to compel his female slave into marriage yet prohibited marrying her to a black man if harm would result for her, while permitting it if his agent intended to preserve her chastity through that. The first point is that these are claims without proof.

قَالَ: وَيُكْرِهُ الرَّجُلُ أَمَتَهُ الْمُعْتَقَةَ إِلَى سِنِينَ عَلَى النِّكَاحِ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَظَاهِرُ التَّنَاقُضِ، لِأَنَّهُ أَجَازَ إِكْرَاهَ السَّيِّدِ لِأَمَتِهِ عَلَى النِّكَاحِ، وَمَنَعَ مِنْ إِنْكَاحِهَا الْأَسْوَدَ إِذَا كَانَ فِيهِ ضَرَرٌ عَلَيْهَا، وَأَجَازَهُ إِنْ كَانَ وَكِيلَهُ وَأَرَادَ عِفَّتَهُ بِذَلِكَ -: فَأَوَّلُ ذَلِكَ: أَنَّهَا دَعَاوَى بِلَا بُرْهَانٍ.

L30583 Then there is the contradiction in his prohibition of her marrying him if there is harm to her, as no harm is greater than aversion. Otherwise, why would he specify the Black individual if not due to aversion toward him? For if he had considered harm alone, her marriage to a white Qurayshi and

ثُمَّ الْمُنَاقَضَةُ فِي مَنْعِهِ إِنْكَاحَهَا إِيَّاهُ إِذَا كَانَ فِيهِ ضَرَرٌ عَلَيْهَا، وَلَا ضَرَرَ أَعْظَمُ مِنَ الْكَرَاهَةِ، وَإِلَّا فَلِمَ خَصَّ الْأَسْوَدَ لَوْلَا الْكَرَاهَةُ لَهُ، إِذْ لَوْ رَاعَى الضَّرَرَ فَقَطْ لَاسْتَوَى

a Black individual would be equivalent when involving harm such as beating or deprivation of food, apart from aversion.

إنْكَاحُهَا مِنْ قُرَشِيٍّ أَبْيَضَ وَمِنْ أَسْوَدَ إذَا كَانَ فِي ذَلِكَ ضَرَرٌ مِنْ ضَرْبٍ أَوْ إجَاعَةٍ غَيْرِ الْكَرَاهَةِ.

L30584 As for those who differentiated between coercing a female slave (permitting it) and coercing a male slave (prohibiting it), they justified this by arguing that since divorce is under the male slave's authority, marriage is consequently under his authority, and since the master reserves the female slave's sexual access for himself, he may transfer the right to her sexual access to another.

وَأَمَّا مَنْ فَرَّقَ بَيْنَ إكْرَاهِ الْأَمَةِ فَأَجَازَهُ، وَبَيْنَ إكْرَاهِ الْعَبْدِ فَلَمْ يُجِزْهُ فَإِنَّهُمْ احْتَجُّوا بِأَنَّهُ لَمَّا كَانَ الطَّلَاقُ إلَى الْعَبْدِ كَانَ النِّكَاحُ إلَيْهِ، وَلَمَّا كَانَ لِلسَّيِّدِ احْتِبَاسُ بُضْعِ الْأَمَةِ لِنَفْسِهِ كَانَ لَهُ أَنْ يُمَلِّكَ بُضْعَهَا غَيْرَهُ.

L30585 Abu Muhammad said: This is an analogy, and all forms of analogy are invalid. Moreover, even if any part of it were valid, this would be the most absurd analogy on earth, for they did not agree that divorce rests in the slave's authority. Rather, Jabir and Ibn Abbas - both of them, along with others besides them - affirm: Divorce rests in the master's authority, not the slave's.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ شَيْءٌ مِنْهُ لَكَانَ هَذَا أَسْخَفَ قِيَاسٍ فِي الْأَرْضِ، لِأَنَّهُمْ لَمْ يُوَافِقُوا عَلَى أَنَّ الطَّلَاقَ بِيَدِ الْعَبْدِ، بَلْ جَابِرٌ، وَابْنُ عَبَّاسٍ، وَغَيْرُهُمَا يَقُولَانِ: الطَّلَاقُ بِيَدِ السَّيِّدِ لَا بِيَدِ الْعَبْدِ.

L30586 As for their analogy of granting ownership of the female slave's intercourse rights to another, just as he may withhold it for himself, this constitutes doubly absurd reasoning. For there is no disagreement that a man may retain exclusive rights to his wife's intercourse—could they possibly draw an analogy from this to grant her intercourse rights to another? Truly, this is astonishing.

وَأَمَّا قِيَاسُهُمْ تَمْلِيكَ بُضْعِ الْأَمَةِ لِغَيْرِهِ كَمَا لَهُ أَنْ يَحْبِسَهَا لِنَفْسِهِ فَسُخْفٌ مُضَاعَفٌ، لِأَنَّهُ لَا خِلَافَ أَنَّ لِلرَّجُلِ احْتِبَاسَ بُضْعِ زَوْجَتِهِ لِنَفْسِهِ أَفَتَرَاهُمْ يَقِيسُونَ عَلَى ذَلِكَ تَمْلِيكَ بُضْعِهَا لِغَيْرِهِ؟ إنَّ هَذَا لَعَجَبٌ.

L30587–30588 As for those who permit coercing the male slave and the female slave alike into marriage, they argued that Allah the Exalted has commanded the marrying off of male slaves and female slaves and did not stipulate the necessity of consent.

وَأَمَّا مَنْ أَجَازَ إكْرَاهَ الْعَبْدِ وَالْأَمَةِ سَوَاءً عَلَى النِّكَاحِ، احْتَجُّوا بِأَنَّ اللَّهَ تَعَالَى أَمَرَ بِإِنْكَاحِ الْعَبِيدِ وَالْإِمَاءِ وَلَمْ يَشْتَرِطْ رِضًا.

L30589 They mentioned what was narrated to us through ʿAbd al-Razzāq from Ibn Jurayj from Abū al-Zubayr, who heard Jābir ibn ʿAbd Allāh say regarding female and male slaves: "Their master has the right to unite them in marriage or separate them."

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي الْأَمَةِ وَالْعَبْدِ: لِسَيِّدِهِمَا أَنْ يَجْمَعَ بَيْنَهُمَا وَيُفَرِّقَ بَيْنَهُمَا.

L30590 And according to what we have reported via the route of Saʿīd ibn Manṣūr: Jarīr reported to us from Manṣūr from Ibrāhīm, who said: They would

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ قَالَ: كَانُوا يُكْرِهُونَ الْمَمْلُوكَ عَلَى النِّكَاحِ وَيُدْخِلُونَهُ عَلَى امْرَأَتِهِ الْبَيْتَ، وَيُغْلِقُونَ عَلَيْهِمَا الْبَابَ.

compel the male slave to marry, bring him into the house to his wife, and lock the door on them.

L30591 Abu Muhammad said: As for the statement of the Exalted regarding the marriage of slaves and female servants, He—Majestic and Exalted—has appended to His command to marry the unmarried among us without stipulating their consent. Thus, they must logically accept the marriage of a free previously married woman even if she dislikes it, if they persist in their corrupt foundational principle. If they further argue using His Exalted statement: {Then marry from what your right hands possess of believing young women} [4:25] until His words {So marry them with the permission of their guardians} [4:25]—without stipulating their consent—we reply: The Exalted has indeed said: {Then marry women that please you, two, three, or four} [4:3] without stipulating their consent. All this has been clarified by the Messenger of Allah—peace and blessings be upon him—in his ruling that a virgin is not to be married until her permission is sought, nor a previously married woman until she is asked for her consent, without distinguishing between free women and enslaved women: {He does not speak from whim} [53:3], {It is nothing but revelation inspired} [53:4], {Your Lord is never forgetful} [19:64], and {To make clear to people what was sent down to them} [16:44]. This constitutes the definitive clarification requiring no alternative, unlike incoherent opinions and invalid claims.[8]

L30592 As for the report of Jabir, they have no basis in it, because the meaning of his statement—may Allah be pleased with him—to their master, that he may unite them and separate them, is correct. The sound ruling is that their master may unite them by gifting her to him, and their master may separate them by seizing her from him, just as he seizes all his property and earnings.

L30593 As for the statement of Ibrahim: There is no conclusive proof for anyone below the Messenger of Allah (peace be upon him).

L30594 **The Issue of the Woman's Consent in Nikah (Marriage Contract).**

[8] **Qur'an references (L30591):** Qur'an 4:25 (An-Nisa); Qur'an 4:3 (An-Nisa); Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam); Qur'an 16:44 (An-Nahl).

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْله تَعَالَى: فِي إنْكَاحِ الْعَبِيدِ وَالْإِمَاءِ فَإِنَّهُ عَطَفَ عَزَّ وَجَلَّ عَلَى أَمْرِهِ بِالنِّكَاحِ الْأَيَامَى مِنَّا وَلَمْ يَشْتَرِطْ فِيهِنَّ رِضَاهُنَّ، فَلْيَلْزَمْهُمْ أَنْ يُجِيزُوا بِذَلِكَ إنْكَاحَ الْحُرَّةِ الثَّيِّبِ وَإِنْ كَرِهَتْ إنْ طَرَدُوا أَصْلَهُمْ الْفَاسِدَ. فَإِنْ شَغَبُوا أَيْضًا بِقَوْلِهِ تَعَالَى: {فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ} [النساء: ٢٥] إلَى قَوْله تَعَالَى {فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ} [النساء: ٢٥] وَلَمْ يَشْتَرِطْ رِضَاهُنَّ؟ قُلْنَا: وَقَدْ قَالَ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلاثَ وَرُبَاعَ} [النساء: ٣] وَلَمْ يَشْتَرِطْ رِضَاهُنَّ، وَكُلُّ هَذَا قَدْ بَيَّنَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنْ لَا تُنْكَحَ بِكْرٌ حَتَّى تُسْتَأْذَنَ وَلَا ثَيِّبٌ حَتَّى تُسْتَأْمَرَ وَلَمْ يَخُصَّ حُرَّةً مِنْ مَمْلُوكَةٍ: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَ {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَهَذَا هُوَ الْبَيَانُ الَّذِي لَا يُحْتَاجُ إلَى غَيْرِهِ، لَا كَالْآرَاءِ الْمُتَخَاذِلَةِ وَالدَّعَاوَى الْفَاسِدَةِ.

وَأَمَّا خَبَرُ جَابِرٍ: فَلَيْسَ لَهُمْ فِيهِ مُتَعَلَّقٌ، لِأَنَّ مَعْنَى قَوْلِهِ - رَضِيَ اللَّهُ عَنْهُ - لِسَيِّدِهِمَا أَنْ يَجْمَعَ بَيْنَهُمَا وَيُفَرِّقَ فَقَوْلٌ صَحِيحٌ لَهُ أَنْ يَجْمَعَ بَيْنَهُمَا بِأَنْ يَهَبَهَا لَهُ وَلَهُ أَنْ يُفَرِّقَ بَيْنَهُمَا بِأَنْ يَنْتَزِعَهَا مِنْهُ كَمَا يَنْتَزِعُ سَائِرَ مَالِهِ وَكَسْبِهِ.

وَأَمَّا قَوْلُ إبْرَاهِيمَ: فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[مَسْأَلَة إذْن الْمَرْأَة فِي النِّكَاح]

L30595 Issue 1839: A previously married woman's consent to marriage is only valid through her explicit statement indicating approval. A virgin's consent to marriage is only valid through her silence. If she remains silent, she has consented and the marriage becomes binding upon her. If she speaks to express consent, refusal, or anything at all, the marriage is not contracted upon her by this.

١٨٣٩ - مَسْأَلَةٌ: وَكُلُّ ثَيِّبٍ فَإِذْنُهَا فِي نِكَاحِهَا لَا يَكُونُ إِلَّا بِكَلَامِهَا بِمَا يُعْرَفُ بِهِ رِضَاهَا، وَكُلُّ بِكْرٍ فَلَا يَكُونُ إِذْنُهَا فِي نِكَاحِهَا إِلَّا بِسُكُوتِهَا، فَإِنْ سَكَتَتْ فَقَدْ أَذِنَتْ وَلَزِمَهَا النِّكَاحُ، فَإِنْ تَكَلَّمَتْ بِالرِّضَا أَوْ بِالْمَنْعِ أَوْ غَيْرِ ذَلِكَ، فَلَا يَنْعَقِدُ بِهَذَا نِكَاحٌ عَلَيْهَا.

L30596–30597 The evidence for this is what we previously mentioned from the statement of Allah's Messenger - peace be upon him - regarding the virgin: "Her permission is her silence," and what we transmitted through Muslim's narration: Ubaydullāh ibn Umar al-Qawārīrī narrated to me, from Khālid ibn al-Hārith, from Hishām [al-Dastuwā'ī], from Yahyā ibn Abī Kathīr, from Abū Salama [ibn Abd al-Rahmān ibn Awf], from Abū Hurayra that Allah's Messenger - peace be upon him - said: "A previously married woman is not to be wed until she is consulted, nor a virgin until her explicit permission is obtained." They asked: "O Messenger of Allah, how does she grant permission?" He replied: "Through her silence."[9]

بُرْهَانُ ذَلِكَ -: مَا ذَكَرْنَاهُ قَبْلُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْبِكْرِ «إِذْنُهَا صُمَاتُهَا» ، وَمَا رُوِّينَاهُ عَنْ مُسْلِمٍ: حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نَا خَالِدُ بْنُ الْحَارِثِ نا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ نَا أَبُو سَلَمَةَ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - نا أَبُو هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تُنْكَحُ الْأَيِّمُ حَتَّى تُسْتَأْمَرَ وَلَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ قَالُوا: يَا رَسُولَ اللَّهِ وَكَيْفَ إِذْنُهَا؟ قَالَ: أَنْ تَسْكُتَ» .

L30598 Abu Muhammad said: A group from the Khawalif held the view that if a virgin expresses consent verbally, the marriage becomes valid through this—contrary to the position of the Messenger of Allah (peace be upon him) and the Companions (may Allah be pleased with them). So glory be to the One who led them to assume their minds were sounder than those of the Companions of the Messenger of Allah (peace be upon him), and instilled in their hearts that they had attained an understanding and clarity which had escaped the Messenger of Allah (peace be upon him). We seek refuge in Allah from such a notion.

قَالَ أَبُو مُحَمَّدٍ: فَذَهَبَ قَوْمٌ مِنْ الْخَوَالِفِ إلَى أَنَّ الْبِكْرَ إنْ تَكَلَّمَتْ بِالرِّضَا فَإِنَّ النِّكَاحَ يَصِحُّ بِذَلِكَ خِلَافًا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، فَسُبْحَانَ الَّذِي أَوْهَمَهُمْ أَنَّهُمْ أَصَحُّ أَذْهَانًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَوْقَعَ فِي نُفُوسِهِمْ أَنَّهُمْ وَقَفُوا عَلَى فَهْمٍ وَبَيَانٍ غَابَ عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَعُوذُ بِاَللَّهِ عَنْ مِثْلِ هَذَا.

L30599 As for the Messenger of Allah (peace and blessings be upon him), he annulled the marriage, as you have heard, in the case of a virgin when consent was not sought and she remained silent, and permitted it when consent was sought and she remained silent, based on his statement (peace and blessings

فَأَمَّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّهُ أَبْطَلَ النِّكَاحَ كَمَا تَسْمَعُونَ عَنْ الْبِكْرِ مَا لَمْ تُسْتَأْذَنْ فَتَسْكُتَ، وَأَجَازَهُ إذَا اُسْتُأْذِنَتْ فَسَكَتَتْ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «لَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ وَإِذْنُهَا صُمَاتُهَا» .

[9] **Hadith references (L30597):** Sahih al-Bukhari 5136; Sahih Muslim 1419a; Mishkat al-Masabih 3126.

be upon him): "A virgin is not to be married until her consent is sought, and her consent is her silence."

L30600 As for the Companions, they—as we mentioned in the previously cited report—did not know what the virgin's permission was until they asked Allah's Messenger (peace and blessings be upon him) about it. Otherwise, their question would have been superfluous according to these people, and far be it from them to do such a thing. Thus, these people have noticed what the Companions of Allah's Messenger (peace and blessings be upon him) failed to notice, and what he himself (peace be upon him) did not alert about. This is as you can see.

L30601 We do not know of any of the Salaf from whom it was reported that a virgin's speech constitutes consent. Yet we have received narrations from Umar ibn al-Khattab, Ali, and others besides them both that her permission is silence.

L30602 Among the wonders of the world is Mālik's claim that a virgin spinster's consent is valid only through speech—despite contradicting the explicit wording of the Messenger of Allah's statement (peace be upon him)—for this is utterly corrupt, as he imposed an obligatory duty upon the spinster that he exempted others from. We would dearly like to be informed of the defined criterion at which a woman's obligatory duty transitions to the aforementioned obligation. And success comes only from Allah, the Exalted.

L30603–30604 The matters of the dower, maintenance, and clothing are decreed upon the husband for his wife.

L30605 Issue: The dowry, maintenance, and clothing are legally obligated for the woman upon her enslaved husband, just as they are obligated upon a free man, with no difference—it is the same whether she is free or enslaved. The dowry belongs to the enslaved woman, except that the master may claim it as with the rest of her property.

L30606 The proof of that is the statement of Allah, the Exalted and Majestic: {And give the women their bridal gifts as a gift} [An-Nisa: 4].[10]

وَأَمَّا الصَّحَابَةُ فَإِنَّهُمْ كَمَا أَوْرَدْنَا فِي الْخَبَرِ الْمَذْكُورِ آنِفًا لَمْ يَعْرِفُوا مَا إِذْنُ الْبِكْرِ حَتَّى سَأَلُوا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ، وَإِلَّا فَكَانَ سُؤَالُهُمْ عِنْدَ هَؤُلَاءِ فُضُولًا، وَحَاشَ لَهُمْ مِنْ ذَلِكَ، فَتَنَبَّهَ هَؤُلَاءِ لِمَا لَمْ يَتَنَبَّهْ لَهُ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا نَبَّهَ عَنْهُ - عَلَيْهِ السَّلَامُ -، وَهَذَا كَمَا تَرَوْنَ.

وَمَا عَلِمْنَا أَحَدًا مِنْ السَّلَفِ رُوِيَ عَنْهُ أَنَّ كَلَامَ الْبِكْرِ يَكُونُ رِضًا، وَقَدْ رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيٍّ، وَغَيْرِهِمَا: أَنَّ إذْنَهَا هُوَ السُّكُوتُ.

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُ مَالِكٍ: إنَّ الْعَانِسَ الْبِكْرَ لَا يَكُونُ إذْنُهَا إلَّا بِالْكَلَامِ - وَهَذَا مَعَ مُخَالَفَتِهِ لِنَصِّ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَفِي غَايَةِ الْفَسَادِ لِأَنَّهُ أَوْجَبَ فَرْضًا عَلَى الْعَانِسِ مَا أَسْقَطَهُ عَنْ غَيْرِهَا فَلَوَدِدْنَا أَنْ يُعَرِّفُونَا الْحَدَّ الَّذِي إذَا بَلَغَتْهُ الْمَرْأَةُ انْتَقَلَ فَرْضُهَا إلَى مَا ذُكِرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الصَّدَاقُ وَالنَّفَقَةُ وَالْكِسْوَةُ مَقْضِيٌّ بِهَا لِلْمَرْأَةِ عَلَى زَوْجِهَا]

مَسْأَلَةٌ: وَالصَّدَاقُ، وَالنَّفَقَةُ، وَالْكِسْوَةُ مَقْضِيٌّ بِهَا لِلْمَرْأَةِ عَلَى زَوْجِهَا الْمَمْلُوكِ كَمَا يُقْضَى بِهَا عَلَى الْحُرِّ وَلَا فَرْقَ سَوَاءٌ كَانَتْ حُرَّةً أَوْ أَمَةً وَالصَّدَاقُ لِلْأَمَةِ إلَّا أَنَّ لِلسَّيِّدِ أَنْ يَنْتَزِعَهُ كَسَائِرِ مَالِهَا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

[10] **Qur'an references (L30606):** Qur'an 4:4 (An-Nisa).

L30607 Allah the Exalted says regarding unmarried women: {So marry [such women] with the permission of their guardians and give them their due dowries} [An-Nisa: 25].[11]

وقَوْله تَعَالَى فِي الْأَيَامَى: {فَانْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ وَآتُوهُنَّ أُجُورَهُنَّ} [النساء: ٢٥] .

L30608 The Exalted addressed spouses generally, making no distinction between free and enslaved, and obligated—by the text of His speech, which none opposes except the forsaken—to give the bridal gift specifically to the enslaved wife, not to others.

فَخَاطَبَ تَعَالَى الْأَزْوَاجَ عُمُومًا، لَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ، وَأَوْجَبَ بِنَصِّ كَلَامِهِ - الَّذِي لَا يُعَارِضُهُ إِلَّا مَخْذُولٌ - إِيتَاءَ الصَّدَاقِ لِلْأَمَةِ لَا لِغَيْرِهَا.

L30609 Similarly, Allah the Almighty has obligated husbands to provide maintenance, clothing, and housing for their wives. If a slave or a free man is unable to fulfill the mahr (dower) – whether entirely or partially – or to provide maintenance and clothing – whether entirely or partially – the mahr remains a debt binding upon him, while the maintenance and clothing obligations are waived. The debt is to be collected from each of the following: the revenue generated by the slave's labor (kharāj) and his other earnings. This is the opinion of al-Shaʿbī.

وَكَذَلِكَ أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ النَّفَقَةَ، وَالْكِسْوَةَ، وَالْإِسْكَانَ عَلَى الْأَزْوَاجِ لِلزَّوْجَاتِ، فَإِنْ عَجَزَ الْعَبْدُ أَوْ الْحُرُّ عَنْ الصَّدَاقِ أَوْ بَعْضِهِ، وَعَنْ النَّفَقَةِ، وَالْكِسْوَةِ أَوْ بَعْضِهَا، فَالصَّدَاقُ دَيْنٌ عَلَيْهِ فِي ذِمَّتِهِ، وَالنَّفَقَةُ وَالْكِسْوَةُ سَاقِطَةٌ عَنْهُ، وَيُؤْخَذُ كُلٌّ مِنْ خَرَاجِ الْعَبْدِ وَمِنْ سَائِرِ كَسْبِهِ - وَهُوَ قَوْلُ الشَّعْبِيِّ.

L30610 It has been narrated to us through the chain of Saʿīd ibn Manṣūr, from Hushaym, from al-Shaybānī—who is Abū Isḥāq—from al-Shaʿbī, who said: A slave must prioritize his maintenance of his family over his obligations to his masters (meaning the maintenance of his wife).

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الشَّيْبَانِيُّ - هُوَ أَبُو إِسْحَاقَ - عَنْ الشَّعْبِيِّ قَالَ: يَبْدَأُ الْعَبْدُ بِنَفَقَتِهِ عَلَى أَهْلِهِ قَبْلَ الَّذِي عَلَيْهِ لِمَوَالِيهِ - يَعْنِي نَفَقَةَ امْرَأَتِهِ -.

L30611 Abu Hanifa and his companions said: If a slave marries with his master's permission, the dowry is incumbent upon the slave. If he consummates the marriage, it becomes obligatory to sell him for the dowry and maintenance; if the master redeems him, that is his right. If he surrenders him to the woman, the slave's ownership becomes established as hers by right as legal property, and the marriage is annulled.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إذَا تَزَوَّجَ الْعَبْدُ بِإِذْنِ مَوْلَاهُ فَالْمَهْرُ عَلَيْهِ فَإِنْ دَخَلَ بِهَا وَجَبَ بَيْعُهُ فِي الصَّدَاقِ وَفِي النَّفَقَةِ، فَإِنْ فَدَاهُ السَّيِّدُ فَذَلِكَ لَهُ، وَإِنْ أَسْلَمَهُ لِلْمَرْأَةِ وَجَبَتْ رَقَبَتُهُ لِلْمَرْأَةِ مِلْكًا وَانْفَسَخَ النِّكَاحُ.

L30612 They said: If he were to contract a marriage between his male slave and his female slave, there would be absolutely no requirement for a *mahr* in that case—neither before consummation nor after it.

قَالُوا: فَلَوْ أَنْكَحَ عَبْدَهُ أَمَتَهُ فَلَا يَحْتَاجُ فِي ذَلِكَ إلَى صَدَاقٍ أَصْلًا لَا قَبْلَ الدُّخُولِ وَلَا بَعْدَهُ.

L30613 Mālik said: The dowry is a liability of the slave, taken from his property if

وَقَالَ مَالِكٌ: الْمَهْرُ فِي ذِمَّةِ الْعَبْدِ وَيُؤْخَذُ مِنْ مَالِهِ إنْ وُهِبَ لَهُ وَلَا يُؤْخَذُ مِنْ خَرَاجِهِ، فَإِنْ لَمْ يُوجَدْ لَهُ مَالٌ وُهِبَ لَهُ، فَهُوَ دَيْنٌ فِي ذِمَّتِهِ إذَا أُعْتِقَ.

[11] **Qur'an references (L30607):** Qur'an 4:25 (An-Nisa).

gifted to him; it is not taken from his land revenue. If no gifted property is found for him, it remains a liability enforceable upon his emancipation.

وَقَالَ الْأَوْزَاعِيُّ: الْمَهْرُ فِي ذِمَّةِ الزَّوْجِ إِذَا أُعْتِقَ.

L30614 Al-Awzaʿī said: The dower is a debt upon the husband if he is manumitted.

وَقَالَ اللَّيْثُ: السَّيِّدُ ضَامِنٌ لِنَفَقَةِ الْمَرْأَةِ إِنْ لَمْ يَكُنْ لِلْعَبْدِ مَالٌ، فَإِنْ كَانَ لِلْعَبْدِ فَضْلُ مَالٍ أُخِذَتْ نَفَقَةُ امْرَأَتِهِ مِنْهُ، فَإِنْ لَمْ يَكُنْ لَهُ فَضْلُ مَالٍ عَنْ خَرَاجِهِ فُرِّقَ بَيْنَهُمَا.

L30615 Al-Layth said: The master is responsible for the maintenance of the slave's wife if the slave has no wealth. If the slave has surplus wealth, his wife's maintenance is drawn from it. If he has no surplus wealth beyond his land tax, they are separated.

وَقَالَ الشَّافِعِيُّ: الصَّدَاقُ فِي ذِمَّةِ الْعَبْدِ وَالنَّفَقَةُ عَلَيْهِ إِنْ كَانَ مَأْذُونًا لَهُ فِي التِّجَارَةِ.

L30616–30617 Al-Shafiʿi said: The mahr (bridal gift) is the responsibility of the slave, and maintenance is incumbent upon him if he is authorized to engage in trade.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: تَخْصِيصُ الشَّافِعِيِّ الْمَأْذُونَ لَهُ فِي التِّجَارَةِ لَا وَجْهَ لَهُ، وَقَدْ يَكْسِبُ الْمَالَ مِنْ غَيْرِ التِّجَارَةِ، لَكِنْ بِعَمَلٍ أَوْ مِنْ صَنِيعَةٍ.

L30618 Abu Muhammad—may Allah be pleased with him—said: Al-Shafiʿi's specification regarding the one authorized for trade has no valid basis, for the individual may acquire wealth through means other than trade, such as labor or a skilled profession.

وَأَمَّا قَوْلُ اللَّيْثِ: إِنْ لَمْ يَكُنْ لِلْعَبْدِ عَنْ خَرَاجِهِ فَضْلٌ فُرِّقَ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ فَخَطَأٌ، لِأَنَّهُ لَا يَخْفَى مِنَ الْعَبِيدِ مَنْ لَهُ فَضْلٌ عَنْ خَرَاجِهِ مِمَّنْ لَا فَضْلَ لَهُ عَنْهُ، لِأَنَّهُ إِذَا جَعَلَ الْخَرَاجَ لِلسَّيِّدِ لَا يُخْرِجُ مِنْهُ نَفَقَةَ الزَّوْجَةِ فَقَدْ صَارَ النِّكَاحُ لَغْوًا إِذَا تَيَقَّنَ أَنَّ الْفَسْخَ يَتْلُوهُ.

L30619 As for al-Layth's statement "If the slave has no surplus beyond his kharaj, separation is imposed between him and his wife" - this is erroneous, because it is evident among slaves who have surplus beyond their kharaj from those who do not. When the kharaj is assigned to the master without deducting the wife's maintenance from it, the marriage becomes invalid since it becomes certain that annulment will follow.

وَأَمَّا تَخْصِيصُ مَالِكٍ أَنْ تُؤْخَذَ النَّفَقَةُ وَالصَّدَاقُ مِنْ غَيْرِ خَرَاجِهِ، فَقَوْلٌ بِلَا بُرْهَانٍ، لِأَنَّ الْخَرَاجَ كَسَائِرِ كَسْبِ الْعَبْدِ لَا يَكُونُ لِلسَّيِّدِ فِيهِ حَقٌّ أَصْلًا، إِلَّا حَتَّى يَصِحَّ مِلْكُ الْعَبْدِ لَهُ بِإِجَازَتِهِ أَوْ بِبَيْعِهِ فِيهِ، فَإِذَا صَحَّ مِلْكُ الْعَبْدِ لَهُ كَانَ لِلسَّيِّدِ حِينَئِذٍ أَنْ يَأْخُذَهُ مِنْهُ، وَلَا شَكَّ فِي أَنَّ السَّيِّدَ لَمْ يَمْلِكْ قَطُّ مِنْ خَرَاجِ الْعَبْدِ فَلْسًا قَبْلَ أَنْ يَجِبَ لِلْعَبْدِ بِعِلْمِهِ أَوْ بِبَيْعِهِ فِيهِ، فَإِذَا صَارَ لِلْعَبْدِ فَلَيْسَ السَّيِّدُ أَوْلَى بِهِ مِنْ سَائِرِ مَنْ لَهُ عِنْدَ الْعَبْدِ حَقٌّ، كَالزَّوْجَةِ وَالْغُرَمَاءِ.

L30620 As for Mālik's specification that maintenance and dower are to be taken from sources other than the slave's *kharaj*, this is an assertion without proof. For the *kharaj*, like all other earnings of the slave, does not inherently belong to the master at all, unless the slave's ownership of it is validated through the master's acknowledgment or by the slave's sale of it. Once the slave's ownership is validated, the master has the right to take it from him. There is no doubt that the master never owned a single *fals* from the slave's *kharaj* before the slave's entitlement to it was established through the master's acknowledgment or by the slave's sale of it. Once it becomes the slave's property, the master has no greater claim to it than others who hold rights against the slave, such as the wife or creditors.

L30621 As for the statement of Abū Ḥanīfa, it is utterly corrupt, because he permitted a marriage without a dower—and this contradicts the Quran as we have demonstrated. Moreover, he treated the marriage ordained by Allah the Exalted—requiring the master's consent—and the lawful intercourse with his wife permitted by Allah the Exalted as a crime and a debt, imposing liability upon him for which the slave is sold or his freedom is forfeited. Undoubtedly, the slave's person is the master's property. By what justification, then, has he permitted her the master's property, which Allah the Exalted has forbidden to her?

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ أَجَازَ نِكَاحًا بِلَا صَدَاقٍ - وَهَذَا خِلَافُ الْقُرْآنِ كَمَا أَوْرَدْنَا ثُمَّ جَعَلَ نِكَاحَهُ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ بِرِضَا سَيِّدِهِ وَوَطْأَهُ لِامْرَأَتِهِ الَّتِي أَبَاحَ اللَّهُ تَعَالَى وَطْأَهُ لَهَا وَيَأْجُرُهُ عَلَيْهِ جِنَايَةً وَدَيْنًا يُبَاعُ فِيهِ أَوْ تُسَلَّمُ رَقَبَتُهُ - وَلَا شَكَّ فِي أَنَّ رَقَبَةَ الْعَبْدِ مِلْكٌ لِلسَّيِّدِ، فَبِأَيِّ شَيْءٍ أَبَاحَ لَهَا مَالَ السَّيِّدِ الَّذِي حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْهَا؟

L30622 Merely hearing this statement makes the effort to refute it unnecessary, though it is an assertion no one is known to have made before them.

وَهَذَا كَلَامٌ يُغْنِي سَمَاعُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ مَعَ أَنَّهُ قَوْلٌ لَا يُعْلَمُ أَحَدٌ قَالَهُ قَبْلَهُمْ.

L30623 Some of them have mentioned in that regard what we have narrated through the chain of narration of Waki' from Sufyan al-Thawri from Ibn Jurayj from 'Ata' from Ibn 'Abbas, who said: There is no harm in a man giving his female slave in marriage to his male slave without a mahr.

وَقَدْ ذَكَرَ بَعْضُهُمْ فِي ذَلِكَ مَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا بَأْسَ أَنْ يُزَوِّجَ الرَّجُلُ أَمَتَهُ عَبْدَهُ بِغَيْرِ مَهْرٍ.

L30624 Abu Muhammad said: This is an obfuscation by the one who presented this report, for Ibn Abbas only meant "without mention of the mahr," and this is permissible for all parties involved until she demands it or her heirs demand it, then it is awarded to her or to them as Allah the Exalted has ordained concerning that matter.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا تَمْوِيهٌ مِنَ الَّذِي أَوْرَدَ هَذَا الْخَبَرَ، لِأَنَّ ابْنَ عَبَّاسٍ إِنَّمَا عَنَى بِغَيْرِ ذِكْرِ مَهْرٍ، وَهَذَا جَائِزٌ لِكُلِّ أَحَدٍ حَتَّى إِذَا طَلَبَتْهُ أَوْ طَلَبَهُ وَرَثَتُهَا قُضِيَ لَهَا أَوْ لَهُمْ كَمَا أَمَرَ اللَّهُ تَعَالَى بِذَلِكَ.

L30625 [مَسْأَلَة كون الْمُسْلِم وليا للكافرة والكافر وليا للمسلمة]

L30625 The juristic question of whether a Muslim may act as a guardian for a non-Muslim woman, and whether a non-Muslim may act as a guardian for a Muslim woman.

L30626 1841 - Issue: A non-Muslim cannot be a guardian for a Muslim woman, nor can a Muslim be a guardian for a non-Muslim woman—the father and others are the same. A non-Muslim is a guardian for the non-Muslim woman who is his female ward; he may marry her to a Muslim or a non-Muslim.

١٨٤١ - مَسْأَلَةٌ: وَلَا يَكُونُ الْكَافِرُ وَلِيًّا لِلْمُسْلِمَةِ، وَلَا الْمُسْلِمُ وَلِيًّا لِلْكَافِرَةِ، الْأَبُ وَغَيْرُهُ سَوَاءٌ، وَالْكَافِرُ وَلِيٌّ لِلْكَافِرَةِ الَّتِي هِيَ وَلِيَّتُهُ يُنْكِحُهَا مِنَ الْمُسْلِمِ وَالْكَافِرِ.

L30627–30629 The proof of this is the statement of Allah, the Exalted: *And the believing men and believing women are allies of one another* (Quran 9:71). And He,

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] وَقَالَ تَعَالَى: {وَالَّذِينَ كَفَرُوا بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [الأنفال: ٧٣] .

the Exalted, said: “And those who disbelieve are protectors of one another” [Al-Anfal 73].[12]

L30630 This is the opinion of those whose statements we have preserved, except for Ibn Wahb, the companion of Malik, who said: “A Muslim may act as the guardian of his disbelieving daughter in arranging her marriage to a Muslim or a disbeliever” (and this is incorrect due to what we have previously stated), and success comes from Allah, the Exalted.

L30631 **Issue: Is it permissible for a woman’s guardian to contract her marriage on his own initiative without her consent?**

L30632 1842 - Issue: It is valid for a woman’s guardian to contract her marriage by his own authority if she consents to him as a spouse, provided there exists no guardianship-right-bearing male relative closer to her than him; otherwise, it is invalid. This is the opinion of Mālik and Abū Ḥanīfah.

L30633 Ash-Shafi’i and Abu Sulayman held the opinion that he himself should not give her in marriage on his own initiative.

L30634 They asserted that marriage requires a marrying party and a guardian (wali), and thus it is not permissible for the one entering the marriage to be the guardian himself.

L30635 The proponents of qiyās among them stated: Just as one cannot contract a sale on his own without a guardian, so too one cannot contract a marriage on his own without a guardian.

L30636 Ali said: They also cited as evidence what we have narrated it through the chain reported by Saʿīd ibn Manṣūr, narrated from Ḥushaym, from Muḥammad ibn Sālim, from al-Shaʿbī: that al-Mughīrah ibn Shuʿbah proposed to the daughter of his paternal uncle, ʿUrwah ibn Masʿūd. He sent a message to ʿAbdullāh ibn Abī ʿAqīl and said: “Will you marry her to me?” He replied: “I would not do so. You are the governor of this town and her paternal cousin.” Al-Mughīrah then sent to ʿUthmān ibn Abī al-ʿĀṣ, and he arranged her marriage to him.

وَهُوَ قَوْلُ مَنْ حَفِظْنَا قَوْلَهُ، إِلَّا ابْنَ وَهْبٍ صَاحِبَ مَالِكٍ قَالَ: إِنَّ الْمُسْلِمَ يَكُونُ وَلِيًّا لِابْنَتِهِ الْكَافِرَةِ فِي إِنْكَاحِهَا مِنَ الْمُسْلِمِ أَوْ مِنَ الْكَافِرِ - وَهَذَا خَطَأٌ لِمَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ لولي الْمَرْأَة أَنْ ينكحها مِنْ نَفْسه]

١٨٤٢ - مَسْأَلَةٌ: وَجَائِزٌ لِوَلِيِّ الْمَرْأَةِ أَنْ يُنْكِحَهَا مِنْ نَفْسِهِ إِذَا رَضِيَتْ بِهِ زَوْجًا وَلَمْ يَكُنْ أَحَدٌ أَقْرَبَ إِلَيْهَا مِنْهُ، وَإِلَّا فَلَا - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ.

وَذَهَبَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ إِلَى أَنْ لَا يُنْكِحَهَا هُوَ مِنْ نَفْسِهِ.

وَاحْتَجُّوا بِأَنَّ النِّكَاحَ يَحْتَاجُ إِلَى نَاكِحٍ وَمُنْكِحٍ، فَلَا يَجُوزُ أَنْ يَكُونَ النَّاكِحُ هُوَ الْمُنْكِحَ.

وَقَالَ أَصْحَابُ الْقِيَاسِ مِنْهُمْ: كَمَا لَا يَبِيعُ مِنْ نَفْسِهِ كَذَلِكَ لَا يُنْكِحُ مِنْ نَفْسِهِ.

قَالَ عَلِيٌّ: وَاحْتَجُّوا أَيْضًا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُحَمَّدُ بْنُ سَالِمٍ عَنِ الشَّعْبِيِّ: أَنَّ الْمُغِيرَةَ بْنَ شُعْبَةَ خَطَبَ بِنْتَ عَمِّهِ عُرْوَةَ بْنِ مَسْعُودٍ فَأَرْسَلَ إِلَى عَبْدِ اللَّهِ بْنِ أَبِي عَقِيلٍ فَقَالَ: زَوِّجْنِيهَا؟ فَقَالَ: مَا كُنْتُ لِأَفْعَلَ، أَنْتَ أَمِيرُ الْبَلَدِ، وَابْنُ عَمِّهَا؟ فَأَرْسَلَ الْمُغِيرَةُ إِلَى عُثْمَانَ بْنِ أَبِي الْعَاصِ فَزَوَّجَهَا مِنْهُ.

[12] **Qur’an references (L30627):** Qur’an 9:71 (At-Tawbah); Qur’an 8:73 (Al-Anfal).

قَالَ أَبُو مُحَمَّد: الْمُغِيرَةُ - هُوَ ابْنُ شُعْبَةَ بْنِ أَبِي عَامِرِ بْنِ مَسْعُودِ بْنِ مُغِيثِ بْنِ مَالِكِ بْنِ كَعْبِ بْنِ عَمْرِو بْنِ عَمْرِو بْنِ سَعْدِ بْنِ عَوْفِ بْنِ ثَقِيفٍ.

L30637 Abu Muhammad said: Al-Mughirah ibn Shu'bah ibn Abi Amir ibn Mas'ud ibn Mughith ibn Malik ibn Ka'b ibn 'Amr ibn 'Amr ibn Sa'd ibn 'Awf ibn Thaqif.

وَعُرْوَةُ بْنُ مَسْعُودِ بْنِ مُغِيثٍ الْمَذْكُورُ، وَعَبْدُ اللَّهِ بْنُ أَبِي عَقِيلِ بْنِ مَسْعُودِ بْنِ عَمْرِو بْنِ عَامِرِ بْنِ مُغِيثٍ الْمَذْكُورُ.

L30638 The aforementioned Urwah ibn Masʿūd ibn Mughīth, and ʿAbdullāh ibn Abī ʿAqīl ibn Masʿūd ibn ʿAmr ibn ʿĀmir ibn Mughīth (also aforementioned).

وَعُثْمَانُ بْنُ أَبِي الْعَاصِ - لَا يَجْتَمِعُ مَعَهُمْ إِلَّا فِي ثَقِيفٍ، لِأَنَّهُ مِنْ وَلَدِ جُشَمَ بْنِ ثَقِيفٍ.

L30639 Uthman ibn Abi al-As only meets with them among the Thaqif tribe, for he is from the offspring of Jusham of the Thaqif tribe.

ونا بِهَذَا أَيْضًا: مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ قَالَ: إِنَّ الْمُغِيرَةَ بْنَ شُعْبَةَ أَمَرَ رَجُلًا أَنْ يُزَوِّجَهُ امْرَأَةً - الْمُغِيرَةُ أَوْلَى بِهَا مِنْهُ.

L30640 And with this also: Muhammad ibn Sa'id ibn Nabat narrated to us: Ahmad ibn Abd al-Basir narrated to us, Qasim ibn Asbagh narrated to us, Muhammad ibn Abd al-Salam al-Khushani narrated to us, Muhammad ibn al-Muthanna narrated to us, Abd al-Rahman ibn Mahdi narrated to us, Sufyan al-Thawri narrated to us from Abd al-Malik ibn Umayr, who said: "Al-Mughirah ibn Shu'bah ordered a man to give him a woman in marriage - Al-Mughirah had a stronger right to her guardianship [in marriage] than he did."

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُهُمْ: إِنَّ النِّكَاحَ يَحْتَاجُ إِلَى نَاكِحٍ وَمُنْكِحٍ - فَنَعَمْ.

L30641–30642 Abu Muhammad said: As for their assertion that marriage necessitates a marrying party and a marriage guardian—this is correct.

وَأَمَّا قَوْلُهُمْ: إِنَّهُ لَا يَجُوزُ أَنْ يَكُونَ النَّاكِحُ هُوَ الْمُنْكِحَ - فَفِي هَذَا نَازَعْنَاهُمْ، بَلْ جَائِزٌ أَنْ يَكُونَ النَّاكِحُ هُوَ الْمُنْكِحَ، فَدَعْوَى كَدَعْوَى.

L30643 As for their claim that it is impermissible for the groom to be the guardian—we have contested them on this matter. Rather, it is permissible for the groom to act as the guardian. Thus, their claim is but a baseless assertion.

وَأَمَّا قَوْلُهُمْ: كَمَا لَا يَجُوزُ أَنْ يَبِيعَ مِنْ نَفْسِهِ، فَهِيَ جُمْلَةٌ لَا تَصِحُّ كَمَا ذَكَرُوا، بَلْ جَائِزٌ إِنْ وُكِّلَ بِبَيْعِ شَيْءٍ أَنْ يَبْتَاعَهُ لِنَفْسِهِ إِذَا لَمْ يُحَابِهَا بِشَيْءٍ.

L30644 As for their statement: "Just as it is impermissible for him to sell on his own behalf," this is an invalid statement as they claimed. Rather, it is permissible for an agent appointed to sell something to purchase it for himself, provided he does not show partiality to himself in any matter.

وَأَمَّا خَبَرُ الْمُغِيرَةِ فَلَا حُجَّةَ فِيمَنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30645 As for the report of Al-Mughira, there is no authoritative evidence regarding anyone below the status of the Messenger of Allah—peace and blessings be upon him.

L30646 It remains for us to present proof supporting the validity of our assertion. We found what we have narrated through the chain recorded in Sahih al-Bukhari: Musaddad informed us from ʻAbd al-Wārith ibn Saʻīd from Shuʻayb ibn al-Ḥabḥāb from Anas ibn Mālik: "The Messenger of Allah—may Allah bless him and grant him peace—emancipated Ṣafiyyah, married her, made her emancipation her dower, and hosted a wedding feast for her with ḥays."

فَبَقِيَ عَلَيْنَا أَنْ نَأْتِيَ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا، فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسَدَّدٌ عَنْ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ عَنْ شُعَيْبِ بْنِ الْحَبْحَابِ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْتَقَ صَفِيَّةَ وَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا وَأَوْلَمَ عَلَيْهَا بِحَيْسٍ» .

L30647 Abu Muhammad said: The Messenger of Allah (peace and blessings be upon him) married his freed female slaves himself, and his action constitutes the binding legal proof against all others.

قَالَ أَبُو مُحَمَّد: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَوَّجَ مَوْلَاتَهُ مِنْ نَفْسِهِ وَهُوَ الْحُجَّةُ عَلَى مَنْ سِوَاهُ.

L30648 Moreover, the Messenger of Allah—peace and blessings be upon him—said, "Any woman who marries without her guardian's permission—her marriage is invalid." Therefore, whoever personally gives a woman under his guardianship in marriage with her consent, then her marriage is valid, for it was with her guardian's permission. He—peace and blessings be upon him—did not stipulate that the guardian must necessarily be someone other than the groom. Since he—peace and blessings be upon him—did not prohibit it, it is permissible.

وَأَيْضًا: فَإِنَّمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ مَوْلَاهَا فَنِكَاحُهَا بَاطِلٌ» فَمَنْ أَنْكَحَ وَلِيَّتَهُ مِنْ نَفْسِهِ بِإِذْنِهَا فَقَدْ نُكِحَتْ بِإِذْنِ وَلِيِّهَا فَهُوَ نِكَاحٌ صَحِيحٌ، وَلَمْ يَشْتَرِطْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنْ يَكُونَ الْوَلِيُّ غَيْرَ النَّاكِحِ وَلَا بُدَّ، فَإِذْ لَمْ يَمْنَعْ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَهُوَ جَائِزٌ.

L30649 Allah, the Exalted, said: "And He has already detailed for you what He has forbidden to you" [Al-Anʻām 6:119].[13]

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

L30650 Therefore, this is among those matters whose prohibition has not been specified to us.

فَهَذَا مِمَّا لَمْ يُفَصِّلْ عَلَيْنَا تَحْرِيمَهُ.

L30651 And He, the Exalted, said: {And marry the unmarried women among you and the morally upright among your male and female servants} [An-Nur: 32]. Whoever arranges the marriage of an unmarried woman from his own kin with her consent has fulfilled what Allah, the Exalted, commanded him. He, the Almighty, has not prohibited the marriage arranger from being the one who marries her himself. Thus, it is established that this is obligatory—and success is from Allah, the Exalted.[14]

وَقَالَ تَعَالَى: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] فَمَنْ أَنْكَحَ أَيِّمَةً مِنْ نَفْسِهِ بِرِضَاهَا فَقَدْ فَعَلَ مَا أَمَرَهُ اللَّهُ تَعَالَى بِهِ، وَلَمْ يَمْنَعْ عَزَّ وَجَلَّ مِنْ أَنْ يَكُونَ الْمُنْكِحُ لِأَيِّمَةٍ هُوَ النَّاكِحَ لَهَا - فَصَحَّ أَنَّهُ الْوَاجِبُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة نِكَاح الزَّانِيَة]

[13] **Qur'an references (L30649):** Qur'an 6:119 (Al-An'am).
[14] **Qur'an references (L30651):** Qur'an 24:32 (An-Nur).

The Issue of Marrying a Woman Who Has Committed *zina*

L30652–30653

L30654 Issue: It is not permissible for a fornicatress to marry anyone—neither a fornicator nor a chaste person—until she repents. If she repents, then it becomes permissible for her to marry a chaste person at that time.

L30655 It is not permissible for a Muslim who has committed fornication to marry a Muslim woman—neither one who has committed fornication nor a chaste one—until he repents. Once he repents, it becomes lawful for him to marry a chaste Muslim woman at that point.

L30656 A Muslim who has committed zinā may marry a chaste woman from the People of the Book even if he has not repented. If any of the aforementioned circumstances occurs, the marriage is permanently invalidated. If a chaste man marries a chaste woman and then one or both of them commit illicit intercourse, the marriage is not annulled on account of that action.

L30657 A group of the Salaf held this view, as it was narrated to us via the chain of narrators of Abū Bakr ibn Abī Shaybah: Wakīʿ reported from ʿAmr ibn Marwān from ʿAbd al-Raḥmān al-Ṣuddāʾī from ʿAlī ibn Abī Ṭālib that a man came to him and said: "I desire my cousin and have had sexual relations with her." ʿAlī responded: "If it was a concealed act (i.e., intercourse), then it is impermissible. But if it was an outward act (i.e., kissing), then there is no harm."

L30658 From the transmission of Ibn Abī Shaybah: ʿAbdullāh ibn Idrīs al-Awdī reported to us from Layth ibn Abī Sulaym from Ibn Sābiṭ: that a man who had been subjected to ḥadd was brought to ʿAlī ibn Abī Ṭālib—he had married a woman not subjected to ḥadd?—so he annulled their marriage.

L30659 From the chain of Ismāʿīl ibn Isḥāq the Judge: ʿAlī ibn ʿAbdullāh reported to us, who reported from Yaḥyā ibn Saʿīd al-Qaṭṭān, who reported from Shuʿbah, who reported from Qatādah and al-Ḥakam ibn ʿUtaybah—both of whom reported from Sālim ibn Abī al-Jaʿd, who reported from his father, who reported from Ibn Masʿūd regarding the man who marries a woman

مَسْأَلَةٌ: وَلَا يَحِلُّ لِلزَّانِيَةِ أَنْ تَنْكِحَ أَحَدًا، لَا زَانِيًا وَلَا عَفِيفًا حَتَّى تَتُوبَ، فَإِذَا تَابَتْ حَلَّ لَهَا الزَّوَاجُ مِنْ عَفِيفٍ حِينَئِذٍ.

وَلَا يَحِلُّ لِلزَّانِي الْمُسْلِمِ أَنْ يَتَزَوَّجَ مُسْلِمَةً لَا زَانِيَةً وَلَا عَفِيفَةً حَتَّى يَتُوبَ، فَإِذَا تَابَ حَلَّ لَهُ نِكَاحُ الْعَفِيفَةِ الْمُسْلِمَةِ حِينَئِذٍ.

وَلِلزَّانِي الْمُسْلِمِ أَنْ يَنْكِحَ كِتَابِيَّةً عَفِيفَةً وَإِنْ لَمْ يَتُبْ، فَإِنْ وَقَعَ شَيْءٌ مِمَّا ذَكَرْنَا فَهُوَ مَفْسُوخٌ أَبَدًا، فَإِنْ نَكَحَ عَفِيفٌ عَفِيفَةً ثُمَّ زَنَى أَحَدُهُمَا أَوْ كِلَاهُمَا لَمْ يُفْسَخْ النِّكَاحُ بِذَلِكَ.

وَقَدْ قَالَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نَا وَكِيعٌ عَنْ عَمْرِو بْنِ مَرْوَانَ عَنْ عَبْدِ الرَّحْمَنِ الصُّدَائِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّ رَجُلًا أَتَى إلَيْهِ فَقَالَ: إنَّ لِي ابْنَةَ عَمٍّ أَهْوَاهَا، وَقَدْ كُنْت نِلْت مِنْهَا؟ فَقَالَ لَهُ عَلِيٌّ: إنْ كَانَ شَيْئًا بَاطِنًا - يَعْنِي الْجِمَاعَ - فَلَا، وَإِنْ كَانَ شَيْئًا ظَاهِرًا - يَعْنِي الْقُبْلَةَ - فَلَا بَأْسَ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ ابْنِ سَابِطٍ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِمَحْدُودٍ تَزَوَّجَ غَيْرَ مَحْدُودَةٍ؟ فَفَرَّقَ بَيْنَهُمَا.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا شُعْبَةُ نا قَتَادَةُ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، كِلَاهُمَا عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ أَبِيهِ عَنْ ابْنِ مَسْعُودٍ فِي الَّذِي يَتَزَوَّجُ الْمَرْأَةَ بَعْدَ أَنْ زَنَى بِهَا قَالَ ابْنُ مَسْعُودٍ: لَا يَزَالَانِ زَانِيَيْنِ.

after committing adultery with her. Ibn Masʿūd said: "They will perpetually remain two adulterers."

L30660 From him to ʿAlī ibn ʿAbd Allāh: Sufyān ibn ʿUyaynah and ʿAbd al-Razzāq narrated to us. ʿAbd al-Razzāq said: Maʿmar narrated to us. Then Sufyān and Maʿmar concurred in narration, both relating from al-Ḥakam ibn Abān that he asked Sālim ibn ʿAbd Allāh ibn ʿUmar about a man who fornicates with a woman then marries her. Sālim said: Ibn Masʿūd was asked about this, and he replied: "He is the One who accepts repentance from His servants" (Quran 42:25), citing the verse.[15]

L30661 Abu Muhammad said: His two opinions are in agreement, because he only permitted contracting marriage with her after repentance.

L30662 From Ibn Abī Shaybah, who narrated to us from Wakīʿ from Ismāʿīl ibn Abī Khālid from al-Shaʿbī, who said: ʿĀ'ishah, the Mother of the Believers—may Allah be pleased with her—said: "The two of them remain adulterers as long as they remain together," meaning: a man who marries a woman with whom he had committed adultery.

L30663–30664 Via the chain of Ibn Abi Shaybah: Asbat narrated from Mutarrif from Abu al-Jahm from al-Bara' ibn 'Azib regarding a man who fornicates with a woman then intends to contract marriage with her. He said: They will remain fornicators forever.

L30665 From the route of Ibn Abī Shaybah: ʿAbd al-Aʿlā reported to us from Saʿīd ibn Abī ʿArūbah from Qatādah from Jābir ibn ʿAbd Allāh, who said: "If they repent and reform, there is no harm" - meaning the man who commits zina with the woman and subsequently intends to marry her.

L30666 From the chain of Ismāʿīl ibn Isḥāq: ʿAbd al-Wāḥid ibn Ghiyāth narrated to us from Abū ʿAwānah, from Mūsā ibn al-Sā'ib, from Muʿāwiyah ibn Qurrah, from Ibn ʿUmar, that he was asked about a man who committed zinā with a woman: is it permissible for him to marry her? He said: If they repent and reform themselves.

L30667 Via the chain of Ismail, Hajjaj ibn al-Minhal and Sulayman ibn Harb both

وَبِهِ إِلَى عَلِيِّ بْنِ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ عُيَيْنَةَ وَعَبْدُ الرَّزَّاقِ، قَالَ عَبْدُ الرَّزَّاقِ: نا مَعْمَرٌ، ثُمَّ اتَّفَقَ سُفْيَانُ، ومَعْمَرٌ، قَالَا جَمِيعًا: نا الْحَكَمُ بْنُ أَبَانَ أَنَّهُ سَأَلَ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ الرَّجُلِ يَزْنِي بِالْمَرْأَةِ ثُمَّ يَنْكِحُهَا؟ فَقَالَ سَالِمٌ: سُئِلَ عَنْ ذَلِكَ ابْنُ مَسْعُودٍ فَقَالَ: {وَهُوَ الَّذِي يَقْبَلُ التَّوْبَةَ عَنْ عِبَادِهِ} [الشورى: ٢٥] الْآيَةَ.

قَالَ أَبُو مُحَمَّدٍ: الْقَوْلَانِ مِنْهُ مُتَّفِقَانِ، لِأَنَّهُ إِنَّمَا أَبَاحَ نِكَاحَهَا بَعْدَ التَّوْبَةِ.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: قَالَتْ عَائِشَةُ أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -: لَا يَزَالَانِ زَانِيَيْنِ مَا اصْطَحَبَا - يَعْنِي: الرَّجُلَ يَتَزَوَّجُ امْرَأَةً زَنَى بِهَا.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا أَسْبَاطٌ عَنْ مُطَرِّفٍ عَنْ أَبِي الْجَهْمِ عَنْ الْبَرَاءِ بْنِ عَازِبٍ فِي الرَّجُلِ يَفْجُرُ بِالْمَرْأَةِ ثُمَّ يُرِيدُ نِكَاحَهَا قَالَ: لَا يَزَالَانِ زَانِيَيْنِ أَبَدًا.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: إِذَا تَابَا وَأَصْلَحَا فَلَا بَأْسَ - يَعْنِي الرَّجُلَ يَزْنِي بِالْمَرْأَةِ ثُمَّ يُرِيدُ نِكَاحَهَا.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَبْدُ الْوَاحِدِ بْنُ غِيَاثٍ نا أَبُو عَوَانَةَ عَنْ مُوسَى بْنِ السَّائِبِ عَنْ مُعَاوِيَةَ بْنِ قُرَّةَ عَنْ ابْنِ عُمَرَ أَنَّهُ سُئِلَ عَنْ رَجُلٍ فَجَرَ بِامْرَأَةٍ أَيَتَزَوَّجُهَا؟ قَالَ: إِنْ تَابَا وَأَصْلَحَا.

[15] **Qur'an references (L30660):** Qur'an 42:25 (Ash-Shuraa).

narrated to us together. Hammad ibn Salamah narrated to us from Habib from Ata ibn Abi Rabah from Abu Hurairah, who said: A man who has been flogged must not marry anyone except a woman who has been flogged.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نا حَجَّاجُ بْنُ الْمِنْهَالِ، وَسُلَيْمَانُ بْنُ حَرْبٍ قَالَا جَمِيعًا: نا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَبِيبٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: لَا يَنْكِحُ الْمَجْلُودُ إِلَّا مَجْلُودَةً.

L30668 And through the chain of Ismail: Sulayman ibn Harb narrated to us, from Abu Hilal, from Qatadah, from Al-Hasan, who said: Umar ibn Al-Khattab said: "Indeed, I resolved to prevent anyone who commits fornication in Islam from marrying a free, chaste woman." Ubayy ibn Kaʿb said to him: "O Commander of the Faithful, idolatry is graver than that, yet it is accepted from him if he repents."

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نَا سُلَيْمَانُ بْنُ حَرْبٍ نا أَبُو هِلَالٍ نا قَتَادَةُ عَنْ الْحَسَنِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَقَدْ هَمَمْت أَنْ لَا أَدَعَ أَحَدًا أَصَابَ فَاحِشَةً فِي الْإِسْلَامِ يَتَزَوَّجُ مُحْصَنَةً، فَقَالَ لَهُ أُبَيّ بْنُ كَعْبٍ: يَا أَمِيرَ الْمُؤْمِنِينَ: الشِّرْكُ أَعْظَمُ مِنْ ذَلِكَ، فَقَدْ يُقْبَلُ مِنْهُ إذَا تَابَ.

L30669 And from the chain of Ismaʿil: ʿAli ibn ʿAbdullah narrated to us, Sufyan ibn ʿUyaynah narrated to us, saying: ʿUbaydullah ibn Abi Yazid said: I heard Ibn ʿAbbas say: **"An adulterer may only marry an adulteress"** [an-Nur: 3]. Ibn ʿAbbas said: This is a legal judgment concerning them. The same has been authentically reported from Ibrahim an-Nakhaʿi, Saʿid ibn al-Musayyib, Silah ibn Ashaym, ʿAtaʾ, Sulayman ibn Yasar, Makḥūl, az-Zuhri, Ibn Qusayt, Qatadah, and others. It has also been reported that the permissibility of their marriage was narrated from Abu Bakr, ʿUmar, Ibn ʿAbbas, and Ibn ʿUmar.[16]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نَا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ عُيَيْنَةَ قَالَ: قَالَ عُبَيْدُ اللَّهِ بْنُ أَبِي يَزِيدَ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: {الزَّانِي لا يَنْكِحُ إِلا زَانِيَةً} [النور: ٣] قَالَ: هُوَ حُكْمٌ بَيْنَهُمَا. وَصَحَّ مِثْلُ هَذَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَصِلَةَ بْنِ أَشْيَمَ وَعَطَاءٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَمَكْحُولٍ، وَالزُّهْرِيِّ، وَابْنِ قُسَيْطٍ، وَقَتَادَةَ، وَغَيْرِهِمْ - وَقَدْ جَاءَ إبَاحَةُ نِكَاحِهِمَا عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ.

L30670 Abu Muhammad said: The proof for our position is the verse of Allah, the Exalted and Glorious: "A fornicator shall not marry except a fornicatress or a polytheist, and a fornicatress shall not be married except by a fornicator or a polytheist. That is forbidden to the believers" [Surah An-Nur 24:3].[17]

قَالَ أَبُو مُحَمَّد: وَالْحُجَّةُ لِقَوْلِنَا هُوَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {الزَّانِي لا يَنْكِحُ إِلا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لا يَنْكِحُهَا إِلا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ} [النور: ٣] .

L30671–30673 Then some scholars said, "It was narrated from Sa'īd ibn al-Musayyab that he said: 'They allege that it was abrogated by the verse which...'" Marry off the unmarried among you, and the righteous among your male slaves and female slaves. [An-Nur: 32][18]

فَقَالَ قَوْمٌ: رُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: يَزْعُمُونَ أَنَّهَا نُسِخَتْ بِالْآيَةِ الَّتِي بَعْدَهَا {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] .

[16] **Qur'an references (L30669):** Qur'an 24:3 (An-Nur).
[17] **Qur'an references (L30670):** Qur'an 24:3 (An-Nur).
[18] **Qur'an references (L30671):** Qur'an 24:32 (An-Nur).

L30674 Abu Muhammad said: This is a claim without evidence. It is impermissible to declare regarding anything in the Qur'an or Sunnah, "This is abrogated," except with definitive certainty that leaves no doubt—not through unreliable conjecture. Rather, the obligation is to implement all scriptural texts in their entirety.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ دَعْوَى بِلَا بُرْهَانٍ، وَلَا يَجُوزُ أَنْ يُقَالَ فِي قُرْآنٍ، أَوْ سُنَّةٍ: هَذَا مَنْسُوخٌ إِلَّا بِيَقِينٍ يَقْطَعُ بِهِ، لَا بِظَنٍّ لَا يَصِحُّ وَإِنَّمَا الْفَرْضُ اسْتِعْمَالُ النُّصُوصِ كُلِّهَا.

L30675 The meaning of the words of Allah, the Exalted: "And marry the unmarried among you, whether widowed or divorced" [Surah an-Nur (24:32)].[19]

فَمَعْنَى قَوْله تَعَالَى: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ} [النور: ٣٢] .

L30676 And His statement, the Exalted: {Then marry what is lawful to you of the women, two} [An-Nisā': 3], except what has been forbidden to you of close relatives and others other than them—this is beyond doubt. The marriage of a fornicatress and the marriage of a fornicator to a believing woman is among what has been forbidden to us; thus, it is undoubtedly excluded from that general ruling, like the exception of the rest of what has been forbidden to us among the women.[20]

وقَوْله تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى} [النساء: ٣] إِلَّا مَا حُرِّمَ عَلَيْكُمْ مِنَ الْأَقَارِبِ وَغَيْرِهِنَّ، هَذَا مَا لَا شَكَّ فِيهِ، وَنِكَاحُ الزَّانِيَةِ وَنِكَاحُ الزَّانِي لِمُؤْمِنَةٍ مِمَّا حُرِّمَ عَلَيْنَا، فَهُوَ مُسْتَثْنًى مِنْ ذَلِكَ الْعُمُومِ بِلَا شَكٍّ كَاسْتِثْنَاءِ سَائِرِ مَا حُرِّمَ عَلَيْنَا مِنَ النِّسَاءِ.

L30677 Others said that the meaning of "yankiḥu" in this context is "to engage in sexual relations," not "to marry."

وَقَالَ آخَرُونَ: مَعْنَى يَنْكِحُ هَهُنَا: يَطَأُ، لَيْسَ مَعْنَاهُ: يَتَزَوَّجُ.

L30678 Abu Muhammad said: This is another claim without proof, and a specification of the verse based on false conjecture. Were their assertion valid, it would be forbidden for a husband to consummate the marriage with his wife if she committed adultery—yet this is something they do not say.

قَالَ أَبُو مُحَمَّد وَهَذِهِ دَعْوَى أُخْرَى بِلَا بُرْهَانٍ، وَتَخْصِيصٌ لِلْآيَةِ بِالظَّنِّ الْكَاذِبِ، وَلَوْ كَانَ مَا قَالُوهُ لَحُرِّمَ عَلَى الزَّوْجِ وَطْءُ زَوْجَتِهِ إِذَا زَنَتْ وَهَذَا لَا يَقُولُونَهُ.

L30679 If they say: "Intercourse with her is prohibited solely by zinā," we respond: This is an unwarranted specification without proof, a claim false with certainty, as there is no evidence for it. Such a claim is impermissible in the religion of Allah, the Almighty, particularly since it is an interpretation proven false with certainty. For we might find a male adulterer who coerces a chaste Muslim woman, thus committing zinā without a female adulterer. Far be it from Allah that we should assert what manifest evidence refutes.

فَإِنْ قَالُوا: إِنَّمَا حُرِّمَ وَطْؤُهَا بِالزِّنَا فَقَطْ؟ قُلْنَا: وَهَذِهِ زِيَادَةٌ فِي التَّخْصِيصِ بِلَا بُرْهَانٍ، وَدَعْوَى كَاذِبَةٌ بِيَقِينٍ، إِذْ لَا دَلِيلَ عَلَيْهَا، وَهَذَا لَا يَحِلُّ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ مَعَ أَنَّهُ تَفْسِيرٌ كَاذِبٌ بِيَقِينٍ، لِأَنَّنَا قَدْ نَجِدُ الزَّانِيَ يَسْتَكْرِهُ الْعَفِيفَةَ الْمُسْلِمَةَ فَيَكُونُ زَانِيًا بِغَيْرِ زَانِيَةٍ وَحَاشَ لِلَّهِ مِنْ أَنْ نَقُولَ مَا يَدْفَعُهُ الْعِيَانُ.

L30680 The narration from Abū Bakr and ʿUmar—may Allah be pleased with them—occurred in the presence of the Companions. As Yaḥyā ibn ʿAbd al-Raḥmān

وَإِنَّمَا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - بِحَضْرَةِ الصَّحَابَةِ، فَكَمَا حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ

[19] **Qur'an references (L30675):** Qur'an 24:32 (An-Nur).
[20] **Qur'an references (L30676):** Qur'an 4:3 (An-Nisa).

ibn Masʿūd narrated to us: Aḥmad ibn Duhaym narrated to us; Ibrāhīm ibn Ḥammād narrated to us; Ismāʿīl ibn Isḥāq, the judge, narrated to us; ʿAlī ibn ʿAbd Allāh—who is Ibn al-Madīnī—narrated to us; Yaḥyā ibn Zakariyyā ibn Abī Zāʾida narrated to us; Muḥammad ibn Isḥāq narrated from Nāfiʿ from Ibn ʿUmar, who said: While Abū Bakr al-Ṣiddīq was in the mosque, a man came and bombarded him with incoherent words—the man being in a state of shock. Abū Bakr said to ʿUmar, "Rise and attend to his case, for it is urgent." ʿUmar approached him, and the man said, "A guest I hosted committed zinā with my daughter!" ʿUmar struck his chest and said, "May Allah censure you! Did you not conceal your daughter's affair?" Abū Bakr then ordered both of them to be subjected to the *ḥadd* punishment. He then married one of them to the other and commanded them to be exiled for a year.

الْقَاضِي نا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيِّ - نا يَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ نَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: بَيْنَمَا أَبُو بَكْرٍ الصِّدِّيقُ فِي الْمَسْجِدِ إِذْ جَاءَ رَجُلٌ فَلَاثَ عَلَيْهِ لَوْثًا مِنْ كَلَامٍ - وَهُوَ دَهِشٌ - فَقَالَ أَبُو بَكْرٍ لِعُمَرَ: قُمْ فَانْظُرْ فِي شَأْنِهِ، فَإِنَّ لَهُ شَأْنًا. فَقَامَ إِلَيْهِ عُمَرُ، فَقَالَ لَهُ: إِنَّ ضَيْفًا ضَافَنِي فَزَنَى بِابْنَتِهِ؟ فَضَرَبَ عُمَرُ فِي صَدْرِهِ، وَقَالَ لَهُ: قَبَّحَكَ اللَّهُ، أَلَا سَتَرْتَ عَلَى ابْنَتِكَ، فَأَمَرَ بِهِمَا أَبُو بَكْرٍ فَضُرِبَا الْحَدَّ، ثُمَّ زَوَّجَ أَحَدَهُمَا الْآخَرَ، ثُمَّ أَمَرَ بِهِمَا أَنْ يُغَرَّبَا حَوْلًا.

L30681–30682 Abu Muhammad said: This contains no evidence for them, for the most apparent is that it was after their repentance, and it constitutes evidence against them, because in it is that Abu Bakr exiled them for a year, while the Hanafis do not recognize exile in adultery at all.

قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ الْأَظْهَرَ أَنَّهُ كَانَ بَعْدَ تَوْبَتِهِمَا وَهُوَ حُجَّةٌ عَلَيْهِمْ، لِأَنَّ فِيهِ أَنَّ أَبَا بَكْرٍ غَرَّبَهُمَا حَوْلًا، وَالْحَنَفِيُّونَ لَا يَرَوْنَ تَغْرِيبًا فِي الزِّنَا جُمْلَةً.

L30683 The Malikis do not hold the view of banishing a woman as a punishment for adultery.

وَالْمَالِكِيُّونَ لَا يَرَوْنَ تَغْرِيبَ الْمَرْأَةِ فِي الزِّنَا.

L30684 So this is the action of Abu Bakr and Umar, performed in the presence of the Companions (may Allah be pleased with them), differing from the rest of them.

فَهَذَا فِعْلُ أَبِي بَكْرٍ، وَعُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِخِلَافِهِمْ.

L30685 It has been narrated to us through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī, from ʿAlī ibn al-Madīnī, from Yazīd ibn Zurayʿ, from Ḥabīb—the teacher—who said: A man from Kufah came to ʿAmr ibn Shuʿayb and said: "Are you not amazed that al-Ḥasan claims the flogged fornicator may only marry someone like himself, interpreting this verse in light of that claim: {A fornicator may only marry a fornicatress or an idolatress} [24:3]?" ʿAmr ibn Shuʿayb replied: "Why are you amazed?"[21]

وَرُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا عَلِيُّ بْنُ الْمَدِينِيِّ نَا يَزِيدُ بْنُ زُرَيْعٍ نا حَبِيبٌ - هُوَ الْمُعَلِّمُ - قَالَ: جَاءَ رَجُلٌ مِنْ أَهْلِ الْكُوفَةِ إِلَى عَمْرِو بْنِ شُعَيْبٍ، فَقَالَ لَهُ: أَلَا تَعْجَبُ مِنَ الْحَسَنِ يَزْعُمُ أَنَّ الْمَجْلُودَ الزَّانِيَ لَا يَنْكِحُ إِلَّا مِثْلَهُ، يَتَأَوَّلُ بِذَلِكَ هَذِهِ الْآيَةَ {الزَّانِي لا يَنْكِحُ إِلا زَانِيَةً أَوْ مُشْرِكَةً} [النور: ٣] فَقَالَ لَهُ عَمْرُو بْنُ شُعَيْبٍ: وَمَا تَعْجَبُ؟

[21] **Qur'an references (L30685):** Qur'an 24:3 (An-Nur).

L30686 Sa'eed ibn Abi Sa'eed al-Maqburi narrated from Abu Hurairah that the Messenger of Allah—may the peace and blessings of Allah be upon him—said: "A fornicator who has been flogged should not marry except someone like him."

نا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَنْكِحُ الزَّانِي الْمَجْلُودُ إِلَّا مِثْلَهُ» .

L30687 Abdullah ibn Amr reported that Hammam narrated from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Bakr—the son of Hammad—from Musaddad, from al-Mu'tamir (the son of Sulayman al-Taymi), who said: I heard my father say: Al-Hadhrami ibn Lahiq narrated to me from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq, from Abdullah ibn Amr ibn al-As, that a man from the Muhajirun sought the permission of the Messenger of Allah (peace and blessings be upon him) regarding a woman named Umm Mahzul, or he brought her case to him. The Messenger of Allah (peace and blessings be upon him) said: "A fornicator may only marry a fornicatress or a polytheist." Then the verse was revealed: {The fornicatress may only be wed by a fornicator or a polytheist} [24:3].[22]

وَكَانَ عَبْدُ اللَّهِ بْنُ عَمْرٍو يُنَادِي بِهِ نِدَاءً -: نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرٌ - هُوَ ابْنُ حَمَّادٍ - نا مُسَدَّدٌ نا الْمُعْتَمِرُ - هُوَ ابْنُ سُلَيْمَانَ التَّيْمِيُّ - قَالَ: سَمِعْت أَبِي يَقُولُ: حَدَّثَنِي الْحَضْرَمِيُّ بْنُ لَاحِقٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَأْذَنَهُ رَجُلٌ مِنْ الْمُهَاجِرِينَ فِي امْرَأَةٍ يُقَالُ لَهَا: أُمُّ مَهْزُولٍ أَوْ ذَكَرَ لَهُ أَمْرَهَا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الزَّانِي لَا يَنْكِحُ إلَّا زَانِيَةً أَوْ مُشْرِكَةً، فَأُنْزِلَتْ {وَالزَّانِيَةُ لا يَنْكِحُهَا إلا زَانٍ أَوْ مُشْرِكٌ} [النور: ٣] » .

L30688 From the path of Abū Dāwūd: Mūsā ibn Ismāʿīl narrated to us, Abān narrated to us (Ibn Yazīd al-ʿAṭṭār) from Yaḥyā (Ibn Abī Kathīr), from Ibrāhīm ibn ʿAbd Allāh ibn Qāriẓ, from al-Sāʾib ibn Yazīd, from Rāfiʿ ibn Khadīj that the Messenger of Allah (peace and blessings of Allah be upon him) said in a ḥadīth: "The dower of a prostitute is impure."

وَمِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا أَبَانُ - هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ إبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ قَارِظٍ عَنْ السَّائِبِ بْنِ يَزِيدَ عَنْ رَافِعِ بْنِ خَدِيجٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي حَدِيثٍ: «وَمَهْرُ الْبَغِيِّ خَبِيثٌ» .

L30689–30691 Abū Muḥammad said: In religious law or in language, the payment for fornication is not termed a dowry. The dowry applies exclusively to marriage. When the Messenger of God (peace and blessings be upon him) prohibited the dowry for such a woman, he thereby prohibited her marriage, since a dowry is an essential requirement in marriage. There is no dispute over this. If she repents, her dowry is not deemed unlawful like that of a prostitute—thus it becomes lawful. Whoever claims otherwise... This one has indeed claimed that for which there is no proof, so it is invalid—and with Allah, the Exalted, is success.

قَالَ أَبُو مُحَمَّد: لَا يُسَمَّى فِي الدِّيَانَةِ، وَلَا فِي اللُّغَةِ أُجْرَةُ الزِّنَا مَهْرًا، إنَّمَا الْمَهْرُ فِي الزَّوَاجِ، فَإِذَا حَرَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَهْرَهَا فَقَدْ حَرَّمَ زَوَاجَهَا، إذْ لَا بُدَّ فِي الزَّوَاجِ مِنْ مَهْرٍ ضَرُورَةً، هَذَا لَا إشْكَالَ فِيهِ، فَإِذَا تَابَتْ فَلَيْسَ مَهْرُهَا مَهْرَ بَغِيٍّ فَهُوَ حَلَالٌ، وَمَنْ ادَّعَى غَيْرَ هَذَا، فَقَدْ ادَّعَى مَا لَا بُرْهَانَ لَهُ بِهِ، فَهُوَ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[22] **Qur'an references (L30687):** Qur'an 24:3 (An-Nur).

L30692 As for the case where a chaste man marries a chaste woman, and then one or both of them commit adultery, indeed we said: their marriage is not annulled. This is due to what we transmitted through the chain: Ahmad ibn Shuʿayb narrated to us from Isḥāq ibn Ibrāhīm – that is, Ibn Rāhwayh – who narrated from al-Naḍr ibn Shumayl, who narrated from Ḥammād ibn Salamah, who narrated from Hārūn ibn Riʾāb, from ʿAbd Allāh ibn ʿUbayd Allāh ibn ʿUmayr, from Ibn ʿAbbās: "A man said, 'O Messenger of God, I have a beautiful wife who does not repel the hand of any man who touches her.' He said, 'Divorce her.' The man said, 'I cannot endure being without her.' He said, 'Then keep her.'"

وَأَمَّا الَّتِي تَزَوَّجَهَا عَفِيفٌ وَهِيَ عَفِيفَةٌ ثُمَّ زَنَى أَحَدُهُمَا أَوْ كِلَاهُمَا، فَإِنَّمَا قُلْنَا: إِنَّهُ لَا يُفْسَخُ نِكَاحُهُمَا؟ لِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - نَا النَّضْرُ بْنُ شُمَيْلٍ نا حَمَّادُ بْنُ سَلَمَةَ نا هَارُونُ بْنُ رِئَابٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ اللَّهِ بْنِ عُمَيْرٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ، إِنَّ تَحْتِي امْرَأَةً جَمِيلَةً لَا تَرُدُّ يَدَ لَامِسٍ؟ قَالَ طَلِّقْهَا، قَالَ: إِنِّي لَا أَصْبِرُ عَنْهَا؟ قَالَ: فَأَمْسِكْهَا» .

L30693 Maʿiz, who was a muḥṣan (a married, free, adult Muslim), confessed to adultery. The Messenger of Allah (peace be upon him) inquired about him: "Is he a virgin or previously married?" It was said to him: "Rather, he is previously married." Thus, he ordered him to be stoned but did not annul his marriage.

وَقَدْ أَقَرَّ مَاعِزٌ بِالزِّنَا - وَهُوَ مُحْصَنٌ - فَسَأَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ أَبِكْرٌ أَمْ ثَيِّبٌ؟ فَقِيلَ لَهُ: بَلْ ثَيِّبٌ، فَأَمَرَ بِرَجْمِهِ وَلَمْ يَفْسَخْ نِكَاحَهُ.

L30694 There has been an ancient disagreement regarding this matter. It was reported through the chain of Ismail ibn Ishaq al-Qadi, from Al-Hajjaj ibn Minhal, from Hammad ibn Salamah, from Qatadah, that Ali ibn Abi Talib said concerning a man who commits fornication before consummating the marriage with his wife: he receives the prescribed flogging, the marriage is dissolved between him and his wife, and she is entitled to half the bridal gift (mahr). If she commits fornication, she is flogged, the marriage is dissolved between them, and she receives no bridal gift.

وَقَدْ جَاءَ فِي هَذَا خِلَافٌ قَدِيمٌ: - رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْبِكْرِ إِذَا زَنَى قَبْلَ أَنْ يَدْخُلَ بِأَهْلِهِ: جَلْدُ الْحَدِّ، فَيُفَرَّقُ بَيْنَهُ وَبَيْنَ أَهْلِهِ، وَلَهَا نِصْفُ الصَّدَاقِ، فَإِنْ زَنَتْ هِيَ جُلِدَتْ وَفُرِّقَ بَيْنَهُمَا وَلَا صَدَاقَ لَهَا.

L30695–30697 From the chain of Ibn Abi Shaybah: Abdullah ibn Idris al-Awdi—he is Abdullah—reported to us from Ash'ath from Abu al-Zubayr from Jabir ibn Abdullah, who said: "If a virgin commits fornication, she is to be lashed, separated from her husband, and deprived of all rights."

From the chain of Ibn Abi Shaybah: Abdah reported to us from Sa'id from Ali ibn Thabit from Nafi' from Ibn Umar, who said: "If any of you witnesses his wife or his umm walad committing fornication, he must never have sexual relations with her." This is the opinion of al-Hasan. And Ṭāwūs, al-Nakhaʿī,

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا ابْنُ إِدْرِيسَ الْأَوْدِيُّ - هُوَ عَبْدُ اللَّهِ - عَنْ أَشْعَثَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، قَالَ: الْبِكْرُ إِذَا زَنَتْ جُلِدَتْ وَفُرِّقَ بَيْنَهَا وَبَيْنَ زَوْجِهَا وَلَيْسَ لَهَا شَيْءٌ - وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدَةُ عَنْ سَعِيدٍ عَنْ عَلِيِّ بْنِ ثَابِتٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: إِذَا رَأَى أَحَدُكُمْ امْرَأَتَهُ عَلَى فَاحِشَةٍ أَوْ أُمَّ وَلَدِهِ فَلَا يَقْرَبَنَّهَا

Ḥammād ibn Abī Sulaymān, and others, but no one besides the Messenger of Allah (peace be upon him) holds conclusive authority.

- وَهُوَ قَوْلُ الْحَسَنِ، وَطَاوُسٍ، وَالنَّخَعِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَغَيْرِهِمْ وَلَكِنْ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30698 Here is a report that, if authenticated, we would have ruled by it: We have narrated it through the chain of Sa'īd ibn al-Musayyab from Basrah ibn Aktham: "A woman committed adultery, so the Messenger of Allah (peace and blessings be upon him) decreed her child to be a slave belonging to her husband." However, we do not know of Sa'īd having heard from Basrah, and some of them have said: "Naḍrah."

وَهَاهُنَا خَبَرٌ لَوْ صَحَّ لَقُلْنَا بِهِ -: رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ بَصْرَةَ بْنِ أَكْثَمَ «أَنَّ امْرَأَةً زَنَتْ، فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَدَهَا عَبْدًا لِزَوْجِهَا» وَلَا نَعْلَمُ لِسَعِيدٍ سَمَاعًا مِنْ بَصْرَةَ، وَقَدْ قَالَ بَعْضُهُمْ: نَضْرَةَ.

The Issue of Proposing Marriage to a Woman in ʿIddah

[مَسْأَلَة خِطْبَة الْمَرْأَة الْمُعْتَدَّة]

L30699

L30700 Issue 1844: It is impermissible for anyone to propose to a woman observing a waiting period following divorce or death. If he marries her before the completion of her waiting period, the marriage is permanently annulled—whether consummated or not, and regardless of the duration of the marriage. There is no mutual inheritance between them, no obligation for him to provide her maintenance, and no mahr due to her.

١٨٤٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَخْطُبَ امْرَأَةً مُعْتَدَّةً مِنْ طَلَاقٍ أَوْ وَفَاةٍ، فَإِنْ تَزَوَّجَهَا قَبْلَ تَمَامِ الْعِدَّةِ فُسِخَ أَبَدًا - دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ، طَالَتْ مُدَّتُهُ مَعَهَا أَوْ لَمْ تَطُلْ - وَلَا تَوَارُثَ بَيْنَهُمَا، وَلَا نَفَقَةَ لَهَا عَلَيْهِ، وَلَا صَدَاقَ وَلَا مَهْرَ لَهَا.

L30701 If one of the two [parties] is a legally responsible individual [muḥṣan], the prescribed punishment for adultery—stoning—applies to them. The same ruling applies if both are legally responsible individuals. The child is not legally recognized as his offspring if he [the man] holds this responsible status.

فَإِنْ كَانَ أَحَدُهُمَا عَالِمًا فَعَلَيْهِ حَدُّ الزِّنَا مِنَ الرَّجْمِ وَالْجَلْدِ، وَكَذَلِكَ إنْ عَلِمَا جَمِيعًا، وَلَا يُلْحَقُ الْوَلَدُ بِهِ إنْ كَانَ عَالِمًا.

L30702 If they are both unaware of the ruling, they incur no penalty. If one of them is unaware, there is no ḥadd punishment for the unaware party. If he is the one who was unaware, the child is legally ascribed to him. When the marriage is annulled and her waiting period concludes, he may marry her if she consents, as with any other person—unless the man divorced his wife, in which case he may take her back during her waiting period provided it was not a triple ṭalāq.

وَإِنْ كَانَا جَاهِلَيْنِ فَلَا شَيْءَ عَلَيْهِمَا، فَإِنْ كَانَ أَحَدُهُمَا جَاهِلًا، فَلَا حَدَّ عَلَى الْجَاهِلِ، فَإِنْ كَانَ هُوَ الْجَاهِلَ فَالْوَلَدُ بِهِ لَاحِقٌ، فَإِذَا فُسِخَ النِّكَاحُ وَتَمَّتْ عِدَّتُهَا فَلَهُ أَنْ يَتَزَوَّجَهَا إنْ أَرَادَتْ ذَلِكَ كَسَائِرِ النَّاسِ، إلَّا أَنْ يَكُونَ الرَّجُلُ طَلَّقَ امْرَأَتَهُ فَلَهُ أَنْ يَرْتَجِعَهَا فِي عِدَّتِهَا مِنْهُ مَا لَمْ يَكُنْ طَلَاقَ ثَلَاثٍ.

L30703 Similarly, if a man has a slave woman under him, consummates the marriage with her, and she is emancipated, she is given the choice to separate from him. If she chooses separation and the marriage is annulled, she must observe the waiting period ('iddah) based on pregnancy, purity periods be-

tween menstruation, or months. He alone—to the exclusion of all others—may propose to her during her waiting period from him. If she consents to him, he may marry her and have intercourse with her.

L30704 The proof of what we have asserted is the statement of Allah, the Almighty: "There is no blame upon you for what you allude to of proposing marriage to women or conceal within yourselves. Allah knows that you will mention them. But do not secretly arrange with them unless you speak a proper word. And do not resolve the marriage bond until the prescribed term has elapsed. And know that Allah knows what is within yourselves, so be mindful of Him." [Al-Baqarah: 235][23]

L30705 As for our statement that there is no inheritance, maintenance, clothing, or dowry under any circumstance—whether in ignorance or knowledge—this is because it is not her marriage. For Allah, the Exalted, has permitted marriage and has not permitted this contract without any disagreement. Since it is not a marriage, there is no inheritance, maintenance, or clothing, except in a marriage.

L30706–30707 As for attributing the child's lineage to the ignorant man, there is no disagreement regarding this matter.

L30708 As for the obligation of the prescribed punishment upon the scholar, it is because Allah the Exalted says: "And those who guard their private parts, except from their spouses or those whom their right hands possess - then indeed, they are not blameworthy. But whoever seeks beyond that, it is they who are the transgressors." [23:5], [23:6], [23:7][24]

L30709 This [woman] is neither a wife nor a slave woman he owns; therefore, he is a male fornicator.

L30710 The Messenger of Allah, peace and blessings be upon him, said: "The child

[23]**Qur'an references (L30704):** Qur'an 2:235 (Al-Baqarah).

[24]**Qur'an references (L30708):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

وَكَذَلِكَ الرَّجُلُ تَكُونُ تَحْتَهُ الْأَمَةُ وَيَدْخُلُ بِهَا فَتَعْتِقُ فَتُخَيَّرُ فَتَخْتَارُ فِرَاقَهُ وَيُفْسَخُ نِكَاحُهُ فَتَعْتَدُّ بِحَمْلٍ أَوْ بِالْأَطْهَارِ أَوْ بِالشُّهُورِ، فَلَهُ - وَحْدَهُ دُونَ سَائِرِ النَّاسِ - أَنْ يَخْطُبَهَا فِي عِدَّتِهَا مِنْهُ فَإِنْ رَضِيَتْ بِهِ فَلَهُ نِكَاحُهَا وَوَطْؤُهَا.

بُرْهَانُ مَا قُلْنَا: قَوْلُ اللَّهِ عَزَّ وَجَلَّ {وَلا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لا تُوَاعِدُوهُنَّ سِرًّا إِلا أَنْ تَقُولُوا قَوْلا مَعْرُوفًا وَلا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ} [البقرة: ٢٣٥] .

وَأَمَّا قَوْلُنَا: لَا تَوَارُثَ، وَلَا نَفَقَةَ، وَلَا كِسْوَةَ، وَلَا صَدَاقَ بِكُلِّ حَالٍ جَهْلًا أَوْ عِلْمًا، فَلِأَنَّهُ لَيْسَ نِكَاحَهَا، لِأَنَّ اللَّهَ تَعَالَى أَحَلَّ النِّكَاحَ وَلَمْ يُحِلَّ هَذَا الْعَقْدَ بِلَا خِلَافٍ مِنْ أَحَدٍ، فَإِذْ لَيْسَ نِكَاحًا فَلَا تَوَارُثَ، وَلَا كِسْوَةَ، وَلَا نَفَقَةَ، إِلَّا فِي نِكَاحٍ.

وَأَمَّا إِلْحَاقُ الْوَلَدِ بِالرَّجُلِ الْجَاهِلِ فَلَا خِلَافَ فِيهِ.

وَأَمَّا وُجُوبُ الْحَدِّ عَلَى الْعَالِمِ فَلِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] .

وَهَذِهِ لَيْسَتْ زَوْجًا وَلَا مِلْكَ يَمِينٍ فَهُوَ عَاهِرٌ.

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» .

belongs to the marriage bed, and for the adulterer is the stone."

L30711 He—peace and blessings be upon him—deemed it only as a lawful union or ʿihr. Since this is not a lawful union, it is ʿihr, and ʿihr is zina. The hadd punishment is incumbent upon the fornicator, while no hadd applies to the ignorant person who erred unintentionally, in accordance with Allah the Exalted's words: _"There is no blame upon you for that in which you have erred, but only for what your hearts have intended"_ [Al-Ahzab: 5].[25]

L30712 And due to the statement of the Exalted: {That I may warn you thereby and whoever it reaches} [Quran 6:19], and since this message has not reached him, there is nothing obligatory upon him.[26]

L30713 As for the freed female slave who is given the choice, it is because the Messenger of Allah, peace and blessings be upon him, said to her, "If you take him back [by revoking the divorce]," and we will mention this in its dedicated section, if Allah, the Exalted and Glorious, wills it.

L30714 As for our statement: "Indeed, the one who marries during the waiting period and consummates the marriage—whether ignorant of the ruling or aware of it—is to receive the prescribed punishment (ḥadd) and is not in a state of lawful wedlock (muḥṣan), whereas she is not subjected to the prescribed punishment due to her ignorance, or stoned if she was a virgin observing the waiting period after a death. He may lawfully marry her after the completion of the same waiting period during which he married her." This is because Allah, the Exalted, has enumerated all that He has forbidden to us regarding women in His verse: {Forbidden to you are your mothers, your daughters...} [Quran 4:23] through His statement: {But lawful to you is all beyond that...} [Quran 4:24]. He did not include the woman married during a waiting period with whom marriage was consummated—whether by initiating marriage during it or after its completion—among those initially prohibited. Since He, the Exalted, did not mention her—neither in this verse, nor elsewhere in the Quran, nor through the words of the Messenger of Allah (peace be upon him)—and Allah has explicitly permitted such

فَلَمْ يَجْعَلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَّا فِرَاشًا أَوْ عِهْرًا، وَهَذِهِ لَيْسَتْ فِرَاشًا فَهُوَ عِهْرٌ، وَالْعِهْرُ الزِّنَا، وَعَلَى الزَّانِي الْحَدُّ: وَلَا حَدَّ عَلَى الْجَاهِلِ الْمُخْطِئِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَلِقَوْلِهِ تَعَالَى: {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] وَهَذَا لَمْ يَبْلُغْهُ، فَلَا شَيْءَ عَلَيْهِ.

وَأَمَّا الْمُعْتَقَةُ تُخَيَّرُ: فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا «لَوْ رَاجَعْتِيهِ» وَسَنَذْكُرُهُ فِي بَابِهِ إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

وَأَمَّا قَوْلُنَا: إنَّ النَّاكِحَ فِي الْعِدَّةِ الْوَاطِئَ فِيهَا جَاهِلًا كَانَ أَوْ عَالِمًا فَحُدَّ وَكَانَ غَيْرَ مُحْصَنٍ وَلَمْ تُحَدَّ هِيَ لِجَهْلِهَا أَوْ لَمْ تُرْجَمْ، لِأَنَّهَا كَانَتْ بِكْرًا مُعْتَدَّةً مِنْ وَفَاةٍ فَلَهُ أَنْ يَتَزَوَّجَهَا بَعْدَ تَمَامِ عِدَّتِهَا الَّتِي تَزَوَّجَهَا فِيهَا، فَلِأَنَّ اللَّهَ عَزَّ وَجَلَّ ذَكَرَ لَنَا كُلَّ مَا حَرَّمَ عَلَيْنَا مِنْ النِّسَاءِ فِي قَوْله تَعَالَى: {حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ} [النساء: ٢٣] الْآيَةَ إلَى قَوْله تَعَالَى: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} [النساء: ٢٤] فَلَمْ يَذْكُرْ لَنَا الْمَنْكُوحَةَ فِي الْعِدَّةِ الْمَدْخُولَ بِهَا فِيهَا فِي جُمْلَةِ مَا حَرَّمَ عَلَيْنَا ابْتِدَاءَ النِّكَاحِ فِيهَا بَعْدَ تَمَامِ عِدَّتِهَا، فَإِذْ لَمْ يَذْكُرْهَا تَعَالَى، لَا فِي هَذِهِ الْآيَةِ وَلَا فِي غَيْرِهَا، وَلَا عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ أَحَلَّهَا اللَّهُ تَعَالَى فِي الْقُرْآنِ نَصًّا بِقَوْلِهِ عَزَّ وَجَلَّ: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ مُسَافِحِينَ} [النساء: ٢٤] وَقَوْلُنَا هَذَا هُوَ قَوْلُ الْحَسَنِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَأَبِي حَنِيفَةَ وَأَصْحَابِهِ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

[25] **Qur'an references (L30711):** Qur'an 33:5 (Al-Ahzab).
[26] **Qur'an references (L30712):** Qur'an 6:19 (Al-An'am).

unions in the Quran through His statement: {But lawful to you is all beyond that, [provided] you seek [marriage] with your wealth in lawful wedlock, not in fornication} [Quran 4:24]. This statement of ours aligns with the view of Al-Ḥasan, Ḥammād ibn Abī Sulaymān, Abū Ḥanīfah and his companions, Sufyān al-Thawrī, Al-Shāfiʿī, Abū Sulaymān, and their companions.[27]

وَقَالَ سَعِيدُ بْنُ الْمُسَيِّبِ وَرَبِيعَةُ، وَمَالِكٌ، وَاللَّيْثُ، وَالْأَوْزَاعِيُّ، لَا تَحِلُّ لَهُ أَبَدًا.

L30715 And Saʿīd ibn al-Musayyib, Rabīʿah, Mālik, al-Layth, and al-Awzāʿī have said: It is never permissible for him.

وَقَالَ مَالِكٌ، وَاللَّيْثُ: وَلَا بِمِلْكِ الْيَمِينِ، وَمَا لِمَنْ قَالَ هَذَا حُجَّةٌ أَصْلًا إِلَّا شَغْبَتَانِ -:

L30716–30717 Mālik and al-Layth said: "Nor by right-hand possession, and those who assert this have no proof at all except two contentious arguments—"

إِحْدَاهُمَا - أَنَّهُمْ قَالُوا: تَعَجَّلَ شَيْئًا قَبْلَ وَقْتِهِ فَوَاجِبٌ أَنْ يُحَرَّمَ عَلَيْهِ فِي الْأَبَدِ كَالْقَاتِلِ الْعَامِدِ يُمْنَعُ الْمِيرَاثَ.

L30718 One of the two [points] is that they said: "Whoever hastens something before its due time, it becomes obligatory to eternally forbid him from it—just as the intentional killer is barred from inheritance."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِنْ أَسْخَفِ قَوْلٍ يُسْمَعُ، قَبْلَ كُلِّ شَيْءٍ: مِنْ أَيْنَ وَضَحَ لَهُمْ تَحْرِيمُ الْمِيرَاثِ عَلَى الْقَاتِلِ؟ وَلَا نَصَّ يَصِحُّ فِيهِ وَلَا إِجْمَاعَ - قَدْ أَوْجَبَ الْمِيرَاثَ لِقَاتِلِ الْعَمْدِ: الزُّهْرِيُّ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَغَيْرُهُمَا.

L30719 Abu Muhammad said: This is among the most preposterous statements ever heard. First and foremost: From where did it become clear to them that the killer is prohibited from inheritance? There exists no valid textual proof nor any consensus - yet al-Zuhrī, Saʿīd ibn Jubayr, and others besides them two have ruled that inheritance is obligatory for the premeditated killer.

ثُمَّ مِنْ أَيْنَ لَهُمْ أَنَّ مَنْ تَعَجَّلَ شَيْئًا قَبْلَ وَقْتِهِ وَجَبَ أَنْ يُحَرَّمَ عَلَيْهِ أَبَدًا؟ وَأَيُّ نَصٍّ جَاءَ بِهَذَا؟ أَوْ أَيُّ عَقْلٍ دَلَّ عَلَيْهِ؟

L30720 Moreover, what basis do they have that whoever performs an act prematurely before its appointed time must be permanently prohibited from it? Which textual evidence supports this? Or which rational argument points to it?

ثُمَّ لَوْ صَحَّ لَهُمْ أَنَّ الْقَاتِلَ يُمْنَعُ مِنْ الْمِيرَاثِ فَمِنْ أَيْنَ لَهُمْ أَنَّ ذَلِكَ لِتَعَجُّلِهِ إيَّاهُ قَبْلَ وَقْتِهِ؟

L30721 Then, even if it were valid for them to assert that the killer is barred from inheritance, what basis do they have for claiming that this [exclusion] is due to his hastening of the death before its appointed time?

وَكُلُّ هَذَا كَذِبٌ وَظَنٌّ فَاسِدٌ وَتَخَرُّصٌ بِالْبَاطِلِ، وَيَلْزَمُهُمْ إنْ طَرَدُوا هَذَا الدَّلِيلَ السَّخِيفَ أَنْ يَقُولُوا فِيمَنْ غَصَبَ مَالَ مُوَرِّثِهِ: أَنْ يُحَرَّمَ عَلَيْهِ فِي الْأَبَدِ، لِأَنَّهُ اسْتَعْجَلَهُ قَبْلَ وَقْتِهِ.

L30722 All of this is falsehood, corrupt conjecture, and baseless fabrication. Were they to apply this absurd argument consistently, they would be compelled to rule that whoever usurps the property of his predecessor must be forbidden from it in perpetuity, for he hastened to take it before its due time.

[27] **Qur'an references (L30714):** Qur'an 4:23 (An-Nisa); Qur'an 4:24 (An-Nisa).

وَأَنْ يَقُولُوا فِي امْرَأَةٍ سَافَرَتْ فِي عِدَّتِهَا: أَنْ يُحَرَّمَ عَلَيْهَا السَّفَرُ أَبَدًا.

L30723 It is stated regarding a woman who traveled during her waiting period that she is forbidden from traveling for the entire duration of her waiting period.

وَمَنْ تَطَيَّبَ فِي إِحْرَامِهِ: أَنْ يُحَرَّمَ عَلَيْهِ الطِّيبُ أَبَدًا.

L30724 Whoever applies perfume while in the state of Ihram is permanently forbidden from using perfume forever.

وَأَنْ يَقُولُوا فِيمَنْ اشْتَهَى شَيْئًا وَهُوَ صَائِمٌ فِي رَمَضَانَ فَأَكَلَهُ، أَوْ وَطِئَ جَارِيَتَهُ أَوْ أَمَتَهُ - وَهُوَ صَائِمٌ فِي رَمَضَانَ - أَوْ وَهِيَ حَائِضٌ: أَنْ يُحَرَّمَ عَلَيْهِ ذَلِكَ الطَّعَامُ فِي الْأَبَدِ، وَتُحَرَّمَ تِلْكَ الْأَمَةُ أَوْ امْرَأَتُهُ فِي الْأَبَدِ، لِأَنَّهُ تَعَجَّلَ كُلَّ ذَلِكَ قَبْلَ وَقْتِهِ، وَالَّذِي يَلْزَمُهُمْ أَكْثَرُ مِنْ هَذَا.

L30725 And that they say regarding one who craves something while fasting in Ramadan and then consumes it; or who has intercourse with his female slave or female servant while fasting in Ramadan—or with his wife while she is menstruating: that this specific food should be permanently forbidden to him, and that this servant or his wife should be permanently forbidden to him, because he hastened all such matters before their designated times—though what is legally required of them exceeds even this.

وَالثَّانِيَةُ - رِوَايَةٌ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مُنْقَطِعَةٌ -: مِنْهَا: مَا حَدَّثَنَاهُ يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا صَالِحُ بْنُ مُسْلِمٍ قَالَ: قُلْت لِلشَّعْبِيِّ: رَجُلٌ طَلَّقَ امْرَأَتَهُ تَطْلِيقَةً فَجَاءَ آخَرُ فَتَزَوَّجَهَا فِي عِدَّتِهَا؟ فَقَالَ الشَّعْبِيُّ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: يُفَرَّقُ بَيْنَهَا وَبَيْنَ زَوْجِهَا، وَتُكْمِلُ عِدَّتَهَا الْأُولَى، وَتَأْتَنِفُ مِنْ هَذِهِ عِدَّةً جَدِيدَةً، وَيُجْعَلُ صَدَاقُهَا فِي بَيْتِ الْمَالِ، وَلَا يَتَزَوَّجُهَا أَبَدًا وَيَصِيرُ الْأَوَّلُ خَاطِبًا.

L30726–30728 The second—a discontinued narration from ʿUmar (may Allah be pleased with him)—includes the following: Among these narrations is what Yunus ibn ʿAbdullah reported to us, stating: Aḥmad ibn ʿAbdullah ibn ʿAbd al-Raḥīm reported to us, Aḥmad ibn Khālid reported to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī reported to us, Muḥammad ibn Bashshār reported to us, Yaḥyā ibn Saʿīd al-Qaṭṭān reported to us, Ṣāliḥ ibn Muslim said: I asked al-Shaʿbī, "A man divorced his wife once, then another man came and married her during her waiting period?" Al-Shaʿbī replied: ʿUmar ibn al-Khaṭṭāb said: "They are to be separated, and she must complete her waiting period." The first woman must observe a new waiting period from this [declaration]; her bridal gift is assigned to the public treasury, the man may never marry her again, and the first husband regains his status as a suitor.

وَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: يُفَرَّقُ بَيْنَهُمَا، وَتُكْمِلُ عِدَّتَهَا الْأُولَى، وَتَسْتَقْبِلُ مِنْ هَذَا عِدَّةً جَدِيدَةً وَلَهَا الصَّدَاقُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا، وَيَصِيرُ كِلَاهُمَا خَاطِبَيْنِ - قَدْ أَخْبَرْتُكَ بِقَوْلِ هَذَيْنِ، فَإِنْ أَخْبَرْتُكَ بِرَأْيٍ فَبُلْ عَلَيْهِ.

L30729 Ali ibn Abi Talib said: They are to be separated. She must complete her initial waiting period and then observe a new waiting period starting from this point. She is entitled to the mahr for the lawful intimacy he had with her, and both become suitors. I have informed you of the opinions of these two. But if I ever give you my own view, urinate on it.

وَجَاءَ هَذَا عَنْ عُمَرَ مِنْ طُرُقٍ لَيْسَ مِنْهَا شَيْءٌ يَتَّصِلُ، وَرُوِيَ خِلَافُهَا كَمَا ذَكَرْنَا عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ.

L30730 And this came from ʿUmar through chains—none of which are connected—while contrary reports have been narrated, as we mentioned, from ʿAlī and Ibn Masʿūd.

قَالَ أَبُو مُحَمَّدٍ: لَا عَجَبَ أَعْجَبُ مِنْ تَعَلُّقِ هَؤُلَاءِ الْقَوْمِ بِرِوَايَاتٍ مُنْقَطِعَةٍ عَنْ عُمَرَ قَدْ خَالَفَهُ عَلِيٌّ فِيهَا، فَمَنْ جَعَلَ قَوْلَ أَحَدِهِمَا أَوْلَى مِنْ الْآخَرِ بِلَا بُرْهَانٍ؟

L30731 Abu Muhammad said: There is no wonder more astonishing than the adherence of these people to interrupted narrations from Umar, which Ali contradicted in them. Who, then, would deem the statement of one of the two [Umar or Ali] more valid than the other's without evidence?

وَثَانِيَةٌ - أَنَّهُمْ قَدْ خَالَفُوا عُمَرَ فِيمَا صَحَّ عَنْهُ يَقِينًا مِنْ هَذِهِ الْقَضِيَّةِ إذْ جَعَلَ مَهْرَهَا فِي بَيْتِ الْمَالِ كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ، وَإِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ، كِلَاهُمَا عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّ امْرَأَةً نُكِحَتْ فِي عِدَّتِهَا فَفَرَّقَ بَيْنَهُمَا عُمَرُ، وَجَعَلَ مَهْرَهَا فِي بَيْتِ الْمَالِ، وَقَالَ: نِكَاحُهَا حَرَامٌ، وَمَهْرُهَا حَرَامٌ.

L30732 The second point is that they have opposed ʿUmar's definitive and authenticated ruling on this matter, for he placed her dowry in the public treasury. This is as narrated to us through Wakiʿ—from Zakariyyā ibn Abī Zāʾidah and Ismāʿīl ibn Abī Khālid, both of whom reported from al-Shaʿbī, from Masrūq—that a woman was married during her waiting period. ʿUmar consequently nullified the marriage, placed her dowry in the public treasury, and declared: "Her marriage is invalid, and her dowry is invalid."

نا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ نا أُبَيٌّ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ الْقَاسِمُ بْنُ سَلَّامٍ نا يَزِيدُ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ، أَوْ عَنْ عُبَيْدِ بْنِ نَضْلَةَ عَنْ مَسْرُوقٍ - شَكَّ دَاوُد فِي أَحَدِهِمَا - وَقَالَ: رُفِعَ إلَى عُمَرَ امْرَأَةٌ نُكِحَتْ فِي عِدَّتِهَا، فَقَالَ: لَوْ أَنَّكُمَا عَلِمْتُمَا لَرَجَمْتُكُمَا، فَضَرَبَهُمَا أَسْوَاطًا، وَفَرَّقَ بَيْنَهُمَا، وَجَعَلَ الْمَهْرَ فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ، وَقَالَ: لَا أُجِيزُ مَهْرًا لَا أُجِيزُ نِكَاحَهُ.

L30733 Yunus ibn Abdullah narrated: Abu Bakr ibn Ahmad ibn Khalid narrated: Ubayy narrated: Ali ibn Abd al-Aziz narrated: Abu Ubayd al-Qasim ibn Sallam narrated: Yazid narrated from Dawud ibn Abi Hind from al-Sha'bi from Masruq, or from Ubayd ibn Nadlah from Masruq—Dawud was uncertain about one of the two—and said: A woman who was married during her waiting period was brought to Umar. He said: "Had you two known, I would have stoned you both." He then flogged them, separated them, designated the dowry for the cause of Allah, the Mighty and Majestic, and said: "I do not accept the dowry of a marriage I do not validate."

قَالَ أَبُو مُحَمَّدٍ: عُبَيْدُ بْنُ نَضْلَةَ إمَامٌ ثِقَةٌ.

L30734 Abu Muhammad said: Ubayd ibn Naḍlah is a trustworthy authority.

وَمَسْرُوقٌ كَذَلِكَ، فَلَا نُبَالِي عَنْ أَيِّهِمَا رَوَاهُ - وَقَدْ ثَبَتَ دَاوُد بْنُ أَبِي هِنْدٍ عَلَى أَنَّهُ عَنْ أَحَدِهِمَا بِلَا شَكٍّ.

L30735 And Masruq is likewise. We do not care which of the two he narrated it from - for it has been established that Dawud ibn Abi Hind narrated it from one of them without any doubt.

قَالَ عَلِيٌّ: فَخَالَفُوهُ فِي جَعْلِ مَهْرِهَا فِي بَيْتِ الْمَالِ، وَهُوَ الثَّابِتُ عَنْ عُمَرَ، فَهَانَ عَلَيْهِمْ خِلَافُهُ فِي الْحَقِّ، وَاتَّبَعُوهُ فِيمَا لَا بُرْهَانَ عَلَى صِحَّتِهِ فِيمَا قَدْ خَالَفَهُ فِيهِ غَيْرُهُ مِنْ الصَّحَابَةِ كَمَا أَوْرَدْنَا.

L30736 Ali said: "They opposed Umar regarding placing her dowry in the treasury - a position firmly attributed to Umar. Thus, they belittled his dissent in matters of right, yet followed him in matters lacking proof of validity - ones in which other Companions had opposed him, as we previously mentioned."

L30737–30739 And the third point—which is that ʿUmar's retraction from that position

has been established—: as has been narrated to us via ʿAbd al-Razzāq, via Sufyān al-Thawrī, via Ismāʿīl ibn Abī Khālid from... Al-Sha'bi reported from Masruq from Umar, who said: "Her dower belongs to the public treasury, and the two [cases] cannot coexist—meaning the woman who was married during her waiting period and the man who married her consummated the marriage."

وَثَالِثَةً - وَهِيَ أَنَّهُ قَدْ صَحَّ رُجُوعُ عُمَرَ عَنْ ذَلِكَ -: كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عُمَرَ قَالَ: مَهْرُهَا فِي بَيْتِ الْمَالِ وَلَا يَجْتَمِعَانِ - يَعْنِي الَّتِي نُكِحَتْ فِي الْعِدَّةِ وَدَخَلَ بِهَا الَّذِي نَكَحَهَا. -

L30740 Sufyan said: Ash'ath reported to me, on the authority of Ash-Sha'bi, on the authority of Masruq, that Umar retracted from that, assigned her her dowry, and restored their union.

وَقَالَ سُفْيَانُ: فَأَخْبَرَنِي أَشْعَثُ عَنِ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّ عُمَرَ رَجَعَ عَنْ ذَلِكَ، وَجَعَلَ لَهَا مَهْرَهَا، وَجَعَلَهُمَا يَجْتَمِعَانِ.

L30741 What is more astonishing than their persistence in contradicting Umar's established position—that he would place her dowry in the public treasury—and in adhering to the claim that Umar had retracted from it? Their error suffices for both of them.

فَأَيُّ شَيْءٍ أَعْجَبُ مِنْ تَمَادِيهِمَا عَلَى خِلَافِ عُمَرَ فِي الثَّابِتِ عَنْهُ مِنْ أَنْ يَجْعَلَ مَهْرَهَا فِي بَيْتِ الْمَالِ، وَعَلَى قَوْلِهِ قَدْ رَجَعَ عُمَرُ عَنْهَا - وَكَفَى بِهِمَا خَطَأً.

L30742 Fourthly - It has been authentically reported from 'Umar, as narrated by Hummam from Ibn Mufarrij from Ibn al-A'rabi from al-Dabari from 'Abd al-Razzaq from Ibn Jurayj, who informed me that Abu al-Zubayr reported hearing Jabir ibn 'Abd Allah say: A woman came to 'Umar ibn al-Khattab in al-Jabiyah after marrying her slave. 'Umar harshly rebuked her, intended to stone her, and said: "No Muslim is lawful for you after him."

وَرَابِعَةً - أَنَّهُ قَدْ صَحَّ عَنْ عُمَرَ مَا حَدَّثَنَاهُ حُمَامٌ نَا ابْنُ مُفَرِّجٍ نَا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ جَاءَتْ امْرَأَةٌ إِلَى عُمَرَ بْنِ الْخَطَّابِ بِالْجَابِيَةِ نَكَحَتْ عَبْدَهَا فَانْتَهَرَهَا عُمَرُ وَهَمَّ أَنْ يَرْجُمَهَا وَقَالَ لَهَا: لَا يَحِلُّ لَكِ مُسْلِمٌ بَعْدَهُ.

L30743 This is the most authentic chain of transmission from Umar in the presence of the Companions, yet they did not turn to it and persisted in the error out of blind adherence to Malik's mistake after Umar had retracted from that error—and we ask Allah for well-being.

فَهَذَا أَصَحُّ سَنَدٍ عَنْ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ، وَلَمْ يَلْتَفِتُوا إِلَيْهِ وَلَجُّوا فِي الْخَطَأِ تَقْلِيدًا لِخَطَأِ مَالِكٍ بَعْدَ رُجُوعِ عُمَرَ عَنْهُ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L30744 Among the marvels of the world is their statement: "Whoever buys a female slave and finds her pregnant from a husband she previously had, and the husband dies after the buyer had intercourse with her, then she is never lawful for him—not even through ownership by right of possession."

وَمِنْ عَجَائِبِ الدُّنْيَا قَوْلُهُمْ: مَنْ اشْتَرَى أَمَةً فَوَجَدَهَا حَامِلًا مِنْ زَوْجٍ كَانَ لَهَا فَمَاتَ بَعْدَ أَنْ وَطِئَهَا، فَإِنَّهُ لَا تَحِلُّ لَهُ أَبَدًا، وَلَا بِمِلْكِ الْيَمِينِ.

L30745 They said: If a man marries a woman who has no husband, has intercourse with her, and she is later found to be pregnant resulting from adultery or

وَقَالُوا: مَنْ تَزَوَّجَ امْرَأَةً لَا زَوْجَ لَهَا فَدَخَلَ بِهَا فَوَطِئَهَا، ثُمَّ ظَهَرَ بِهَا حَمْلٌ مِنْ زِنًى أَوْ مِنْ غَصْبٍ كَانَ بِهَا قَبْلَ نِكَاحِهِ، فَإِنَّهَا لَا تَحِلُّ لَهُ أَبَدًا، مَا نَدْرِي لِمَاذَا؟

rape that occurred with her before his marriage, she is never permissible for him eternally. We do not understand the rationale for this?

وَقَالُوا: مَنْ تَزَوَّجَ أَمَةً أُعْتِقَتْ قَبْلَ أَنْ تُتِمَّ حَيْضَةً بَعْدَ عِتْقِهَا فَدَخَلَ بِهَا حُرِّمَتْ عَلَيْهِ فِي الْأَبَدِ - فَلَجُّوا هَذَا اللَّجَاجَ الْفَاسِدَ.

L30746 They said: Whoever marries a slave woman emancipated before she completes one menstrual period after her emancipation and consummates the marriage, she becomes permanently prohibited to him. They persisted in this baseless obstinacy.

ثُمَّ لَمْ يَلْبَثُوا أَنْ قَالُوا: مَنْ تَزَوَّجَ امْرَأَةً لَهَا زَوْجٌ قَائِمٌ حَيٌّ حَاضِرٌ أَوْ غَائِبٌ يَظُنَّانِ أَنَّهُ قَدْ مَاتَ أَوْ يُوقِنَانِ بِحَيَاتِهِ، فَدَخَلَ بِهَا فَوَطِئَهَا: أَنَّهَا لَا تُحَرَّمُ عَلَيْهِ فِي الْأَبَدِ، بَلْ لَهُ أَنْ يَتَزَوَّجَهَا إِنْ طَلَّقَهَا الزَّوْجُ أَوْ مَاتَ.

L30747 Then they soon stated: If a man marries a woman whose validly married husband is alive—whether present or absent—while they suspect he has died or are certain he is alive, and consummates the marriage, she is not perpetually prohibited to him. Rather, he may marry her again if the husband divorces her or dies.

وَهَذَا هُوَ الْمُسْتَعْجِلُ قَبْلَ الْوَقْتِ بِلَا شَكٍّ.

L30748 This, unquestionably, is the one who hastens [an act] before its prescribed time.

وَقَالُوا: مَنْ زَنَى بِامْرَأَةٍ لَمْ تُحَرَّمْ عَلَيْهِ فِي الْأَبَدِ، فَرَأَوْا الزِّنَا أَخَفَّ مِنْ زَوَاجِ الْجَاهِلِ فِي الْعِدَّةِ - وَرَأَوْا مَا لَا حَدَّ فِيهِ وَلَا إِثْمَ لِلْجَهَالَةِ أَغْلَظَ مِنْ الْحَرَامِ الْمُتَيَقَّنِ - فَهَلْ فِي الْعَجَبِ أَكْثَرُ مِنْ هَذَا؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L30749–30751 And they said: Whoever engages in unlawful sexual intercourse with a woman not permanently forbidden to him—they considered unlawful sexual intercourse to be less severe than marrying her. Those ignorant concerning the waiting period—they considered what entails neither a prescribed punishment nor a sin due to ignorance stricter than certainly unlawful acts—is there anything more astonishing than this? And we ask Allah for preservation.

[مَسْأَلَة مِنْ أنفسخ نِكَاحهَا بَعْد صِحَّته بِمَا يُوجِبُ فسخه]

A legal issue concerning the dissolution of her marriage after its validity due to grounds necessitating its dissolution.

١٨٤٥ - مَسْأَلَةٌ: وَمَنْ انْفَسَخَ نِكَاحُهُ بَعْدَ صِحَّتِهِ بِمَا يُوجِبُ فَسْخَهُ فَلَهَا الْمَهْرُ الْمُسَمَّى كُلُّهُ، فَإِنْ لَمْ يُسَمِّ لَهَا صَدَاقًا فَلَهَا مَهْرُ مِثْلِهَا دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ.

L30752 **A legal issue concerning the dissolution of her marriage after its validity due to grounds necessitating its dissolution.**

L30753 Issue 1845: If a marriage is annulled after its valid contract due to a reason necessitating annulment, she is entitled to the entire specified dower. If no dower was stipulated for her, she receives a customary dower commensurate with her status, whether the marriage was consummated or not.

L30754 The proof of this—: the statement of Allah, the Exalted: {And give women their bridal gifts as an obligation} [An-Nisa: 4]. Thus, the mahr is obligatory for her due to the contract's validity—whether he has consummated the

marriage or not. If it is dissolved, her right to the mahr remains, just as if he had died, with no distinction.[28]

L30755 Whoever claims that she is not entitled to anything in annulment before consummation except half the ṣadāq has based this claim on analogy to divorce before consummation. All analogy is invalid, and even if analogy were valid, this instance would still be invalid, because divorce is an act of the divorcer, while annulment is not his act. Thus, there is no similarity between annulment and divorce. Rather, annulment is more similar to death, as both occur without the husband's choice, whereas divorce only occurs by his choice.

L30756 Similarly, if someone waives the entire dowry in some cases of annulment when the annulment originates from the woman's side, his statement is invalid. This is a waiver of what Allah, the Exalted, has obligated without evidence—and success is from Allah, the Exalted.

L30757 **Juridical case: If the wife divorces [her husband] before consummation.**

L30758 Issue 1846: If a man divorces before entering seclusion with her, she is entitled to half the specified dower. This likewise applies if he entered seclusion but did not consummate the marriage - whether their cohabitation was prolonged or brief. This ruling governs every dower defined through unspecified description, such as countable items, weight, measure, described objects, or [dower] in a specifically designated location provided it exists validly. It applies uniformly whether the dower was specified in the marriage contract itself, whether they mutually agreed upon it afterward, or if no mutual agreement occurred. In such cases, she is granted the equivalent dower of her peers.

L30759 The proof of that is the statement of Allah, the Exalted and Majestic: {And

[28] **Qur'an references (L30754):** Qur'an 4:4 (An-Nisa).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] فَالصَّدَاقُ وَاجِبٌ لَهَا بِصِحَّةِ الْعَقْدِ - وَدَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ - فَإِذَا انْفَسَخَ فَحُقُّهَا فِي الصَّدَاقِ بَاقٍ، كَمَا لَوْ مَاتَ وَلَا فَرْقَ.

وَمَنْ ادَّعَى أَنَّهُ لَيْسَ لَهَا فِي الْفَسْخِ قَبْلَ الدُّخُولِ إِلَّا نِصْفُ الصَّدَاقِ فَإِنَّمَا قَالَهُ قِيَاسًا عَلَى الطَّلَاقِ قَبْلَ الدُّخُولِ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الطَّلَاقَ فِعْلُ الْمُطَلِّقِ، وَالْفَسْخَ لَيْسَ فِعْلَهُ، فَلَا تَشَابُهَ بَيْنَ الْفَسْخِ وَالطَّلَاقِ، بَلْ الْفَسْخُ بِالْمَوْتِ أَشْبَهُ، لِأَنَّهُمَا يَقَعَانِ بِغَيْرِ اخْتِيَارِ الزَّوْجِ، وَلَا يَقَعُ الطَّلَاقُ إِلَّا بِاخْتِيَارِهِ.

وَكَذَلِكَ مَنْ أَسْقَطَ جَمِيعَ الصَّدَاقِ فِي بَعْضِ وُجُوهِ الْفَسْخِ إِذَا جَاءَ الْفَسْخُ مِنْ قِبَلِهَا - فَقَوْلُهُ بَاطِلٌ، لِأَنَّهُ إِسْقَاطٌ لِمَا أَوْجَبَهُ اللَّهُ تَعَالَى بِلَا بُرْهَانٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة إذَا طَلَّقَتْ الْمَرْأَة قَبْل الدُّخُول]

١٨٤٦ - مَسْأَلَةٌ: وَمَنْ طَلَّقَ قَبْلَ أَنْ يَدْخُلَ بِهَا فَلَهَا نِصْفُ الصَّدَاقِ الَّذِي سُمِّيَ لَهَا - وَكَذَلِكَ لَوْ دَخَلَ بِهَا وَلَمْ يَطَأْهَا - طَالَ مُقَامُهُ مَعَهَا أَوْ لَمْ يَطُلْ - هَذَا فِي كُلِّ مَهْرٍ كَانَ بِصِفَةٍ غَيْرِ مُعَيَّنٍ، كَعَدَدٍ، أَوْ وَزْنٍ، أَوْ كَيْلٍ، أَوْ شَيْءٍ مَوْصُوفٍ، أَوْ فِي مَكَانٍ بِعَيْنِهِ إنْ وُجِدَ صَحِيحًا، وَسَوَاءٌ كَانَ تَزَوَّجَهَا بِصَدَاقٍ مُسَمًّى فِي نَفْسِ الْعَقْدِ أَوْ تَرَاضَيَا عَلَيْهِ بَعْدَ ذَلِكَ أَوْ لَمْ يَتَرَاضَيَا، فَقُضِيَ لَهَا بِمَهْرِ مِثْلِهَا.

if you divorce them before you have touched them, having already specified for them a mahr, then half of what you have specified} [Al-Baqarah: 237] the verse.[29]

L30760 Among the matters we have mentioned, there exists both ancient and modern disagreement concerning his entering into the marriage contract with her without consummation, the forfeiture of the mahr, the distinction between the mahr being stipulated within the contract versus mutual agreement on it post-contract, or a judicial ruling obligating him to pay it to her, and the legal equivalence between all these cases.

L30761–30763 As for the juristic disagreement concerning the distinction between the mahr being stipulated in the marriage contract, their mutual consent after the contract's conclusion, or a judicial ruling in her favor obligating him to pay it. Indeed, Abū Ḥanīfa and his companions said: She is only awarded half of the bridal gift if the bridal gift was fixed for her in the contract itself. However, if they mutually agreed upon it afterward, or disputed it and a ruling was issued obliging him to pay the dower equivalent to that of her peers, then in such a case, if he divorces her before consummation, she is entitled to nothing except the mut'ah (consolatory gift).

L30764 Malik, al-Shafi'i, Abu Sulayman, and their companions held that she is entitled to half in all such cases.

L30765 Abu Muhammad said: We adopt this view because Allah the Most High's statement, {then half of what you have stipulated} [Al-Baqarah: 237], applies generally to every dowry in a valid marriage—whether stipulated by the husband at the time of the contract or afterward. The Exalted and Glorious did not say: "then half of what you have stipulated in the contract itself." And whoever adds to this ruling is mistaken, one who nullifies, and a transgressor of Allah's boundaries, the Most High.[30]

L30766 As for the one upon whom the judge has imposed the dowry equivalent to women of her standing, even if he refuses what is obligated upon him in this matter, the ruling of Allah the Exalted through His truthful statement:

[29] **Qur'an references (L30759):** Qur'an 2:237 (Al-Baqarah).
[30] **Qur'an references (L30765):** Qur'an 2:237 (Al-Baqarah).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ} [البقرة: ٢٣٧] الْآيَةَ.

وَفِيمَا ذَكَرْنَا اخْتِلَافٌ قَدِيمٌ وَحَدِيثٌ فِي دُخُولِهِ بِهَا وَلَمْ يَطَأْهَا، وَفِي ضَيَاعِ الْمَهْرِ، وَفِي الْفَرْقِ بَيْنَ كَوْنِ الصَّدَاقِ مَفْرُوضًا فِي الْعَقْدِ وَبَيْنَ تَرَاضِيهِمَا عَلَيْهِ بَعْدَ الْعَقْدِ، أَوْ الْحُكْمِ لَهَا بِهِ عَلَيْهِ وَالتَّسْوِيَةِ بَيْنَ ذَلِكَ كُلِّهِ.

فَأَمَّا الِاخْتِلَافُ فِي الْفَرْقِ بَيْنَ كَوْنِ الصَّدَاقِ مَفْرُوضًا فِي الْعَقْدِ، وَبَيْنَ تَرَاضِيهِمَا بَعْدَ الْعَقْدِ، أَوْ الْحُكْمِ لَهَا بِهِ عَلَيْهِ فَإِنَّ أَبَا حَنِيفَةَ وَأَصْحَابَهُ قَالُوا: إنَّمَا يُقْضَى لَهَا بِنِصْفِ الصَّدَاقِ إذَا كَانَ الصَّدَاقُ مَفْرُوضًا لَهَا فِي نَفْسِ الْعَقْدِ - وَأَمَّا إنْ تَرَاضَيَا عَلَيْهِ بَعْدَ ذَلِكَ، أَوْ اخْتَلَفَا فِيهِ فَحُكِمَ عَلَيْهِ بِمَهْرِ مِثْلِهَا فَهَاهُنَا إنْ طَلَّقَهَا قَبْلَ الدُّخُولِ فَلَا شَيْءَ لَهَا إلَّا الْمُتْعَةُ.

وَقَالَ مَالِكٌ وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ: لَهَا النِّصْفُ فِي كُلِّ ذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا نَأْخُذُ، لِأَنَّ قَوْلَ اللَّهِ تَعَالَى: {فَنِصْفُ مَا فَرَضْتُمْ} [البقرة: ٢٣٧] عُمُومٌ لِكُلِّ صَدَاقٍ فِي نِكَاحٍ صَحِيحٍ فَرَضَهُ النَّاكِحُ فِي الْعَقْدِ أَوْ بَعْدَهُ، وَلَمْ يَقُلْ عَزَّ وَجَلَّ: فَنِصْفُ مَا فَرَضْتُمْ فِي نَفْسِ الْعَقْدِ - وَالزَّائِدُ لِهَذَا الْحُكْمِ مُخْطِئٌ مُبْطِلٌ مُتَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى.

وَأَمَّا الَّذِي فَرَضَ عَلَيْهِ الْحَاكِمُ صَدَاقَ مِثْلِهَا، فَإِنَّهُ وَإِنْ كَانَ قَدْ أَبَى مِنْ الْوَاجِبِ عَلَيْهِ فِي ذَلِكَ فَحُكْمُ اللَّهِ تَعَالَى عَلَيْهِ بِقَوْلِهِ الصَّادِقِ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] مُوجِبٌ عَلَيْهِ أَنْ يَفْرِضَ لَهَا أَحَدَ وَجْهَيْنِ، لَا بُدَّ لَهُ مِنْ أَحَدِهِمَا ضَرُورَةً: إمَّا مَا رَضِيَتْ،

{Give women their bridal gifts graciously} [An-Nisa: 4] necessitates that he must assign her one of two options. He is bound by necessity to one of them: either what she has consented to or the standard dowry for women of her standing. Whichever of the two becomes binding upon him—whether through his consent or a legally sound judgment—he has thereby assigned it to her. For by contracting the marriage, he has undoubtedly bound himself to it in the knowledge of Allah the Almighty, and the obligation toward her in his wealth is certain. We find no basis for any argument at all from those who oppose this ruling.[31]

وَإِمَّا مَهْرُ مِثْلِهَا، فَأَيُّهُمَا لَزِمَهُ بِرِضَاهُ أَوْ بِحُكْمٍ حَقٍّ فَقَدْ فَرَضَهُ لَهَا، إِذْ عَقَدَ نِكَاحَهَا يَقِينًا فِي عِلْمِ اللَّهِ عَزَّ وَجَلَّ، وَقَدْ وَجَبَ لَهَا فِي مَالِهِ - وَمَا نَعْلَمُ لِمَنْ خَالَفَ هَذَا حُجَّةً أَصْلًا.

L30767 And we bear witness by the testimony of Allah, the Most High: that had Allah intended His statement, "then half of what you have obligated" [Al-Baqarah 2:237], to pertain specifically to the marriage contract itself, He would have clarified it for us and not left it until Abu Hanifah elucidated it—and there is nothing of that sort.[32]

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى: أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ بِقَوْلِهِ: {فَنِصْفُ مَا فَرَضْتُمْ} [البقرة: ٢٣٧] فِي نَفْسِ الْعَقْدِ خَاصَّةً لَبَيَّنَهُ لَنَا وَلَمْ يُهْمِلْهُ حَتَّى يُبَيِّنَهُ لَنَا أَبُو حَنِيفَةَ، وَمَا هُنَالِكَ.

L30768 So then, there is no doubt in this, we have become certain that Allah, the Exalted, has willed in every circumstance.

فَإِذًا لَا شَكَّ فِي هَذَا فَقَدْ أَيْقَنَّا أَنَّ اللَّهَ تَعَالَى أَرَادَ بِكُلِّ حَالٍ.

L30769 As for one who has entered into seclusion with his wife but has not consummated the marriage—whether their cohabitation is prolonged or brief—people have differed regarding this matter. It has been reported to us through Abū ʿUbayd's transmission chain: Ismāʿīl ibn Ibrāhīm narrated from ʿAwf ibn Abī Jamīlah, from Zurārah ibn Awfā, who said: "The Rightly Guided Caliphs ruled that if he secures privacy by closing the door and drawing the curtain, the full mahr becomes obligatory."

وَأَمَّا مَنْ دَخَلَ بِزَوْجَتِهِ وَلَمْ يَطَأْهَا - طَالَ - مُقَامُهُ مَعَهَا أَوْ لَمْ يَطُلْ - فَإِنَّ النَّاسَ قَدْ اخْتَلَفُوا فِيهِ -: فَرُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ عَنْ عَوْفِ بْنِ أَبِي جَمِيلَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى قَالَ: قَضَى الْخُلَفَاءُ الرَّاشِدُونَ الْمَهْدِيُّونَ: أَنَّهُ إِذَا أَغْلَقَ الْبَابَ، وَأَرْخَى السِّتْرَ: فَقَدْ وَجَبَ الصَّدَاقُ.

L30770 And through the chain of Waki' from Musa ibn 'Ubaydah from Nafi' ibn Jubayr, who said: The Companions of the Messenger of Allah (peace and blessings be upon him) would say, "When he lowers the curtain or closes the door, the dower becomes obligatory."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مُوسَى بْنِ عُبَيْدَةَ عَنْ نَافِعِ بْنِ جُبَيْرٍ قَالَ: كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُونَ: إِذَا أَرْخَى السِّتْرَ، أَوْ أَغْلَقَ الْبَابَ: فَقَدْ وَجَبَ الصَّدَاقُ.

L30771–30772 From the chain of Abd al-Razzaq, through Yahya ibn Abi Kathir, from Salama ibn Abd al-Rahman ibn Awf, from Abu Hurayra, who said: Umar ibn al-

[31] **Qur'an references (L30766):** Qur'an 4:4 (An-Nisa).

[32] **Qur'an references (L30767):** Qur'an 2:237 (Al-Baqarah).

Khattab declared: “If you lower the curtain and bolt the doors, the dowry becomes obligatory.” This is an authentic narration from Umar.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: إِذَا أَرْخَيْت السِّتْرَ وَغَلَّقْت الْأَبْوَابَ فَقَدْ وَجَبَ الصَّدَاقُ - وَهَذَا صَحِيحٌ عَنْ عُمَرَ.

L30773 And through the chain of Abū ʻUbayd: From Yazīd—he is Ibn Hārūn—[who narrated] from Saʻīd ibn Abī ʻArūbah from Qatādah from Al-Ḥasan from Al-Aḥnaf ibn Qays from ʻUmar ibn Al-Khaṭṭāb and ʻAlī ibn Abī Ṭālib—may Allah be pleased with both of them—who both said: “When seclusion is established, the full dowry (mahr) is due.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا يَزِيدُ - هُوَ ابْنُ هَارُونَ - عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ الْأَحْنَفِ بْنِ قَيْسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَا جَمِيعًا: إذَا أُرْخِيَتْ السُّتُورُ: فَقَدْ وَجَبَ الصَّدَاقُ.

L30774 Via the narration of Abi ʼUbayd: Saʼid ibn ʼAbd al-Rahman al-Jumahi informed us from ʼUbayd Allah ibn ʼUmar from Nafiʼ from Ibn ʼUmar, who said: When the door is closed and the curtain is lowered, the dower becomes obligatory.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا سَعِيدُ بْنُ عَبْدِ الرَّحْمَنِ الْجُمَحِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إذَا أُغْلِقَ الْبَابُ وَأُرْخِيَ السِّتْرُ: فَقَدْ وَجَبَ الصَّدَاقُ.

L30775 Via the chain of Abū ʻUbayd: ʻAbd al-Raḥmān ibn Mahdī narrated to us from Sufyān al-Thawrī from Sulaymān ibn Yasār that al-Ḥārith ibn al-Ḥakam married a woman, made a statement while with her, then departed and separated from her. Marwān sent to Zayd ibn Thābit and relayed the story to him. Zayd said: “She is entitled to the mahr.” Marwān said: “He is above suspicion.” Zayd ibn Thābit responded: “Tell me – if she were to become pregnant, would you stone her?” He replied: “No.” Zayd said: “Yes, rather!”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّ الْحَارِثَ بْنَ الْحَكَمِ تَزَوَّجَ امْرَأَةً فَقَالَ عِنْدَهَا، ثُمَّ رَاحَ وَفَارَقَهَا، فَأَرْسَلَ مَرْوَانُ إلَى زَيْدِ بْنِ ثَابِتٍ فَقَصَّ عَلَيْهِ الْقِصَّةَ فَقَالَ زَيْدٌ: لَهَا الصَّدَاقُ، فَقَالَ مَرْوَانُ: إنَّهُ مِمَّنْ لَا يُتَّهَمُ، فَقَالَ زَيْدُ بْنُ ثَابِتٍ: أَرَأَيْت لَوْ حَمَلَتْ أَكُنْت تَرْجُمُهَا؟ قَالَ: لَا، فَقَالَ زَيْدٌ: بَلَى.

L30776 Abū ʻUbayd said: Abū al-Naḍr narrated to us from al-Layth ibn Saʻd, from Bukayr ibn ʻAbd Allāh ibn al-Ashajj, from Sulaymān ibn Yasār, from Zayd ibn Thābit in the same manner—and at its conclusion: “Therefore, charity is obligated from the woman in such a situation.”

قَالَ أَبُو عُبَيْدٍ: وَحَدَّثَنَاهُ أَبُو النَّضْرِ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ زَيْدِ بْنِ ثَابِتٍ مِثْلَهُ - وَفِي آخِرِهِ: فَلِذَلِكَ تُصَدَّقُ الْمَرْأَةُ فِي مِثْلِ هَذَا.

L30777 And through the chain of Abd al-Razzaq from Ibn Jurayj from Abd al-Karim from Ibn Masʼud, similar to the statement of Ali and Umar.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ عَنْ ابْنِ مَسْعُودٍ مِثْلُ قَوْلِ عَلِيٍّ، وَعُمَرَ.

L30778 From the chain of Hammad ibn Salamah, from al-Hajjaj ibn Artah, from

al-Rukayn ibn al-Rabi’, from Hanzalah: That al-Mughirah ibn Shu’bah ruled regarding the wife of an impotent man, separating them with the full mahr.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الرُّكَيْنِ بْنِ الرَّبِيعِ عَنْ حَنْظَلَةَ: أَنَّ الْمُغِيرَةَ بْنَ شُعْبَةَ قَضَى فِي امْرَأَةِ عِنِّينٍ فَرَّقَ بَيْنَهُمَا بِجَمِيعِ الصَّدَاقِ.

L30779 From the transmission of Ibn Wahb and other scholars: Anas ibn Malik said regarding a woman whose husband married her but did not consummate the marriage: “The dowry (mahr) is hers, she must observe the waiting period (ʿiddah), and he has no right to reclaim her.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ وَعَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ: أَنَّ أَنَسَ بْنَ مَالِكٍ قَالَ فِي الَّتِي دَخَلَ بِهَا زَوْجُهَا وَلَمْ يَطَأْهَا: إنَّ الصَّدَاقَ لَهَا وَعَلَيْهَا الْعِدَّةُ، وَلَا رَجْعَةَ لَهُ عَلَيْهَا.

L30780–30781 This is the statement of Ali ibn al-Husayn, and it was narrated from Sa’id ibn al-Musayyib.

وَهُوَ قَوْلُ عَلِيِّ بْنِ الْحُسَيْنِ، وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ.

L30782 It has been authentically reported from Sulayman ibn Yasar and Urwah ibn al-Zubayr that he ruled concerning it (the matter) in the case of a chronically impotent man (ʿinin).

وَصَحَّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَضَى بِهِ فِي عِنِّينٍ.

L30783 And it is narrated from ʿAbd al-Karīm, and he added: “Even if she is menstruating.”

وَعَنْ عَبْدِ الْكَرِيمِ وَزَادَ: وَإِنْ كَانَتْ حَائِضًا.

L30784 And from ‘Aṭā’ corresponds to the view of ‘Abd al-Karīm—this is also the position of Ibn Abī Laylā, al-Awzāʿī, and Sufyān al-Thawrī—unless she has congenital vaginal closure, whereby she is entitled to only half the bridal gift.

وَعَنْ عَطَاءٍ مِثْلُ قَوْلِ عَبْدِ الْكَرِيمِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، إلَّا أَنْ تَكُونَ " رَتْقَاءَ " فَلَا يَجِبُ لَهَا إلَّا نِصْفُ الصَّدَاقِ.

L30785 It has also been authentically reported from al-Layth ibn Saʿd, and this is the opinion of al-Zuhrī, Aḥmad, and Isḥāq.

وَصَحَّ أَيْضًا عَنْ اللَّيْثِ بْنِ سَعْدٍ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ.

L30786 It was narrated to us from Umar another statement: We narrated it through the chain of Abd al-Razzaq, from Ma’mar, from Yahya ibn Abi Kathir: that Umar ibn al-Khattab issued a verdict regarding a man who secluded himself with a woman without having intercourse with her, while the full dowry remained obligatory. He stated: When he secludes himself with her without locking a door or lowering a curtain.

وَرُوِّينَا عَنْ عُمَرَ قَوْلًا آخَرَ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي رَجُلٍ اخْتَلَى بِامْرَأَةٍ وَلَمْ يُخَالِطْهَا بِالصَّدَاقِ كَامِلًا، يَقُولُ: إذَا خَلَا بِهَا وَلَمْ يُغْلِقْ بَابًا وَلَا أَرْخَى سِتْرًا.

L30787 And from Ibrāhīm al-Nakhaʿī is another opinion: We have narrated it through the chain of Wakīʿ from Sufyān al-Thawrī from al-Mughīrah, who said: Ibrāhīm al-Nakhaʿī stated, “It was said: If he sees from her what is forbidden to others, she is entitled to the mahr.”

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَوْلٌ آخَرُ: رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ قَالَ: قَالَ إبْرَاهِيمُ النَّخَعِيُّ: كَانَ يُقَالُ: إذَا رَأَى مِنْهَا مَا يَحْرُمُ عَلَى غَيْرِهِ فَلَهَا الصَّدَاقُ.

L30788 Abū Ḥanīfah said: If he is secluded with her in her house—whether he has

intercourse or not—the entire mahr is owed to her, unless either of them is in a state of ritual consecration (iḥrām), either of them is ill, she is menstruating, or she is fasting during Ramaḍān. In all these cases, she is entitled only to half the mahr. If he is secluded with her while observing an obligatory fast as expiation for the oath of ẓihār, fulfilling a vow, or making up for a missed Ramaḍān fast, the full mahr is due, and she must observe the waiting period (ʿiddah). If he is secluded with her in a desert, a mosque, or on a roof without an enclosed room, she is entitled only to half the mahr.

وَقَالَ أَبُو حَنِيفَةَ: إِذَا خَلَا بِهَا فِي بَيْتِهَا - وَطِئَ أَوْ لَمْ يَطَأْ - فَالْمَهْرُ كُلُّهُ لَهَا إِلَّا أَنْ يَكُونَ أَحَدُهُمَا مُحْرِمًا، أَوْ أَحَدُهُمَا مَرِيضًا، أَوْ كَانَتْ هِيَ حَائِضًا، أَوْ صَائِمَةً فِي رَمَضَانَ، فَلَيْسَ لَهَا فِي كُلِّ ذَلِكَ إِلَّا نِصْفُ الْمَهْرِ - فَلَوْ خَلَا بِهَا وَهُوَ صَائِمٌ صِيَامَ فَرْضٍ فِي ظِهَارٍ، أَوْ نَذْرٍ، أَوْ قَضَاءِ رَمَضَانَ، فَعَلَيْهِ الصَّدَاقُ كُلُّهُ، وَعَلَيْهَا الْعِدَّةُ، فَلَوْ خَلَا بِهَا فِي صَحْرَاءَ، أَوْ فِي مَسْجِدٍ، أَوْ فِي سَطْحٍ لَا حُجْرَةَ عَلَيْهِ، فَلَيْسَ لَهَا إِلَّا نِصْفُ الصَّدَاقِ.

L30789 Abu Muhammad said: These are statements that have not once come from any of the Salaf, nor have they been conveyed by the Qur'an, the Sunnah, *qiyas*, or sound opinion.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ أَقْوَالٌ لَمْ تَأْتِ قَطُّ عَنْ أَحَدٍ مِنَ السَّلَفِ، وَلَا جَاءَ بِهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ.

L30790 Malik said: If he secludes with her, kisses her, or uncovers her, then divorces her, and they agree that he did not consummate the marriage, she is entitled to only half the mahr if the time was brief. If it was prolonged until her garments became worn out, she is entitled to the full mahr.

وَقَالَ مَالِكٌ: إِذَا خَلَا بِهَا فَقَبَّلَهَا أَوْ كَشَفَهَا ثُمَّ طَلَّقَهَا وَاتَّفَقَا عَلَى أَنَّهُ لَمْ يَطَأْهَا، فَإِنْ كَانَ ذَلِكَ قَرِيبًا فَلَيْسَ لَهَا إِلَّا نِصْفُ الصَّدَاقِ، فَإِنْ تَطَاوَلَ ذَلِكَ حَتَّى أَخْلَقَ ثِيَابَهَا، فَلَهَا الْمَهْرُ كُلُّهُ.

L30791 Abu Muhammad said: This is a statement not attributed to anyone before him. If only I knew the extent of this presumptuous excess that deviates from the Quran's ruling, and the extent of wear and tear in these garments.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلٌ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ، وَلَيْتَ شِعْرِي كَمْ حَدُّ هَذَا التَّطَاوُلِ النَّاقِلِ عَنْ حُكْمِ الْقُرْآنِ، وَمَا حَدُّ الْإِخْلَاقِ لِهَذِهِ الثِّيَابِ.

L30792–30793 Here is another statement, as we have narrated through the chain of Wakiʿ from al-Ḥasan ibn Ṣāliḥ ibn Ḥayy from Firās from ʿĀmir al-Shaʿbī from Ibn Masʿūd, who said: "She is entitled to half, even if he sat between her legs."

وَهَاهُنَا قَوْلٌ آخَرُ كَمَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنِ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ فِرَاسٍ عَنْ عَامِرٍ الشَّعْبِيِّ عَنِ ابْنِ مَسْعُودٍ قَالَ: لَهَا النِّصْفُ وَإِنْ جَلَسَ بَيْنَ رِجْلَيْهَا.

L30794 From the narration of Saʿīd ibn Manṣūr: Hushaym narrated to us, Layth—Ibn Abī Sulaym—narrated from Ṭāwūs from Ibn ʿAbbās that he would rule regarding a man whose wife had entered upon him, then divorced her while alleging he had not touched her: He must pay half the dowry.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ ثنا هُشَيْمٌ نا لَيْثٌ - هُوَ ابْنُ أَبِي سُلَيْمٍ - عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَقُولُ فِي رَجُلٍ دَخَلَتْ عَلَيْهِ امْرَأَتُهُ ثُمَّ طَلَّقَهَا، فَزَعَمَ أَنَّهُ لَمْ يَمَسَّهَا: عَلَيْهِ نِصْفُ الصَّدَاقِ.

L30795 Through the chain of Abd al-Razzaq from Ibn Jurayj, who informed me

from Layth from Tawus from Ibn Abbas, he said: The full *mahr* is not owed until he consummates the marriage, and she is owed half of it.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي لَيْثٌ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَا يَجِبُ الصَّدَاقُ وَافِيًا حَتَّى يُجَامِعَهَا وَلَهَا نِصْفُهُ.

L30796 Through the chain of Abu ʾUbayd, Hushaym narrated to us: Al-Mughirah ibn Miqsam reported from Al-Sha’bi from Shuraih, who said: “I have not heard Allah, the Almighty and Majestic, mention in His Book any door nor curtain [i.e., explicit rulings]—if the husband claims he did not touch her, she is entitled to half the dowry.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا هُشَيْمٌ أَنَا الْمُغِيرَةُ بْنُ مِقْسَمٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: لَمْ أَسْمَعْ اللَّهَ عَزَّ وَجَلَّ ذَكَرَ فِي كِتَابِهِ بَابًا وَلَا سِتْرًا إذَا زَعَمَ أَنْ لَمْ يَمَسَّهَا فَلَهَا نِصْفُ الصَّدَاقِ.

L30797 From the chain of Sa‘īd ibn Manṣūr, who narrated to us: Ismā‘īl ibn Abī Khālid reported from al-Sha‘bī that ‘Amr ibn Nāfi‘ divorced his wife after she had been brought into his household. He claimed he had not approached her, while she asserted he had. She sued him before Shurayḥ, who ordered ‘Amr to swear: “By Allah, besides whom there is no god, I did not approach her.” Shurayḥ then ruled against him, obliging him to pay her half of the mahr.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ: أَنَّ عَمْرَو بْنَ نَافِعٍ طَلَّقَ امْرَأَتَهُ وَكَانَتْ قَدْ أُدْخِلَتْ عَلَيْهِ، فَزَعَمَ أَنَّهُ لَمْ يَقْرَبْهَا، وَزَعَمَتْ أَنَّهُ قَرِبَهَا، فَخَاصَمَتْهُ إلَى شُرَيْحٍ، فَقَضَى شُرَيْحٌ بِيَمِينِ عَمْرٍو " بِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ مَا قَرِبْتُهَا " وَقَضَى عَلَيْهِ لَهَا بِنِصْفِ الصَّدَاقِ.

L30798 Abu Muhammad said: This divorced woman was the daughter of Yaḥyā ibn al-Jazzār.

قَالَ أَبُو مُحَمَّدٍ: كَانَتْ هَذِهِ الْمُطَلَّقَةُ بِنْتَ يَحْيَى بْنِ الْجَزَّارِ.

L30799 From the chain of Abu ʾUbayd: Mu’adh—he is Mu’adh al-ʾAnbari—narrated to us from ʾAbdullah ibn ʾAwn from Muhammad ibn Sirin that he did not consider closing doors or drawing curtains to hold any significance. From the chain of Waki’: from Zakariyya (Ibn Abi Za’idah) from al-Sha’bi that he said: “She receives half the mahr”—referring to the wife with whom he consummated the marriage—without stating that he had touched her.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُعَاذٌ - هُوَ مُعَاذٌ الْعَنْبَرِيُّ - عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ كَانَ لَا يَرَى إغْلَاقَ الْبَابِ وَلَا إرْخَاءَ السِّتْرِ شَيْئًا. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: لَهَا نِصْفُ الصَّدَاقِ - يَعْنِي الَّتِي دَخَلَ بِهَا - وَلَمْ يَقُلْ: أَنَّهُ مَسَّهَا.

L30800 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Ibn Ṭāwūs from his father, who said: “The full mahr is not obligatory until he has sexual intercourse with her, even if he secludes himself with her.” I said to him: “When the mahr becomes obligatory, does the ʿiddah [mandatory waiting period] also become obligatory?” He replied: “Would anyone dispute this?”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: لَا يَجِبُ الصَّدَاقُ وَافِيًا حَتَّى يُجَامِعَهَا، إنْ أَغْلَقَ عَلَيْهَا الْبَابَ، قُلْت لَهُ: فَإِذَا وَجَبَ الصَّدَاقُ وَجَبَتْ الْعِدَّةُ، قَالَ: أَوَ يَقُولُ أَحَدٌ غَيْرَ ذَلِكَ؟

L30801–30803 From the chain of Hammad ibn Salamah, via Muhammad ibn Ishaq, from Makhul, who said: The dower and waiting period only became obligatory through clear physical contact. A man married a maiden and intended to

travel. He came to her in her house while she was unattended and alone - none of his family members were present. He seized her and tried to have intercourse with her, but she resisted. He emitted semen without penetrating her. The semen flowed freely into her, and the pregnancy persisted within her until she became heavily pregnant with a male child. The matter was referred to ʿUmar ibn al-Khaṭṭāb, who sent for her husband and asked him? When he confirmed her account, ʿUmar declared: "If a man locks the door or lowers the curtain, the mahr becomes obligatory, and the ʿiddah is fully established."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مَكْحُولٍ قَالَ: لَا يَجِبُ الصَّدَاقُ وَالْعِدَّةُ إِلَّا بِالْمُلَامَسَةِ الْبَيِّنَةِ: تَزَوَّجَ رَجُلٌ جَارِيَةً فَأَرَادَ سَفَرًا فَأَتَاهَا فِي بَيْتِهَا مُخْلِيَةً لَيْسَ عِنْدَهَا أَحَدٌ مِنْ أَهْلِهِ، فَأَخَذَهَا فَعَالَجَهَا، فَمَنَعَتْ نَفْسَهَا، فَصَبَّ الْمَاءَ وَلَمْ يَفْتَرِعْهَا، فَسَاغَ الْمَاءُ فِيهَا، فَاسْتَمَرَّ بِهَا الْحَمْلُ، فَثَقُلَتْ بِغُلَامٍ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ، فَبَعَثَ إلَى زَوْجِهَا فَسَأَلَهُ؟ فَصَدَّقَهَا، فَعِنْدَ ذَلِكَ قَالَ عُمَرُ: مَنْ أَغْلَقَ الْبَابَ أَوْ أَرْخَى السِّتْرَ فَقَدْ وَجَبَ الصَّدَاقُ، وَكَمُلَتْ الْعِدَّةُ.

L30804 Abū Muḥammad said: This is the doctrine of al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and their followers.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L30805 Abu Muhammad said: As for the statements of Abu Hanifa and Malik, they contradict all the Companions we have mentioned, and we know of no foundational evidence for them at all nor any predecessors in their opinion. Therefore, nothing remains except the opinion of those who said: "If he closes a door or lowers a curtain, the dowry becomes obligatory." We found those who adhere to this opinion citing as evidence the words of Allah the Exalted: {And give the women their dowries as a free gift} [Quran 4:4].[33]

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ: فَمُخَالِفَانِ لِكُلِّ مَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ، وَلَا نَعْلَمُ لَهُمَا حُجَّةً أَصْلًا وَلَا سَلَفًا فِي قَوْلِهِمَا، فَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ: إنْ أَغْلَقَ بَابًا، أَوْ أَرْخَى سِتْرًا فَقَدْ وَجَبَ الصَّدَاقُ فَوَجَدْنَا مَنْ ذَهَبَ إلَى هَذَا الْقَوْلِ يَحْتَجُّونَ بِقَوْلِ اللَّهِ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

L30806 They said: The entire dowry is obligatory for her unless a consensus prevents her from receiving it.

قَالُوا: فَالصَّدَاقُ كُلُّهُ وَاجِبٌ لَهَا إلَّا أَنْ يَمْنَعَ مِنْهُ إجْمَاعٌ.

L30807 And as we have been narrated through the chain of Al-Bukhārī: ʻAmr ibn Zurārah narrated to us, Ismāʿīl—that is, Ibn ʻUlayyah—narrated to us from Ayyūb al-Sikhtiyānī from Saʿīd ibn Jubayr: that Ibn ʻUmar said to him, "The Messenger of Allāh—peace and blessings be upon him—separated the two brothers of Banū al-ʻAjlān," and he mentioned the ḥadīth. Ayyūb said: Then ʻAmr ibn Dīnār said to me, "There is something in the ḥadīth that I do not see you narrating." He said: The man said, "What about my property?" It was

وَكَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَمْرُو بْنُ زُرَارَةَ نا إسْمَاعِيلُ - هُوَ ابْنُ عُلَيَّةَ - عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّ ابْنَ عُمَرَ قَالَ لَهُ: «فَرَّقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ أَخَوَيْ بَنِي الْعَجْلَانِ» ، وَذَكَرَ الْحَدِيثَ، قَالَ أَيُّوبُ: فَقَالَ لِي عَمْرُو بْنُ دِينَارٍ: إنَّ فِي الْحَدِيثِ شَيْئًا لَا أَرَاك تُحَدِّثُهُ؟ قَالَ: قَالَ الرَّجُلُ: مَالِي؟ قَالَ: قِيلَ: لَا مَالَ لَك إنْ كُنْت صَادِقًا فَقَدْ دَخَلْت بِهَا.

[33] **Qur'an references (L30805):** Qur'an 4:4 (An-Nisa).

said: “You have no property if you are truthful, as you have consummated the marriage with her.”[34]

L30808 Abū Muḥammad said: There is no evidence in this, for ʻAmr ibn Dīnār did not mention who reported this to him, thus it becomes mursal; and there is no evidence in a mursal.

L30809 Moreover, it merely contains [someone] stating: “It was said,” but there is no mention that the Messenger of Allah—peace and blessings be upon him—uttered those words. Thus, it is invalidated in all aspects. However, ʻAmr ibn Dīnār narrated it with a chain of transmission, though he did not mention this wording. Rather, as transmitted from Hammām ibn Aḥmad, from ʻAbbās ibn Aṣbagh, from Muḥammad ibn ʻAbd al-Malik ibn Ayman, from Muḥammad ibn Ismāʻīl al-Tirmidhī, from al-Ḥumaydī, from Sufyān ibn ʻUyaynah, from ʻAmr ibn Dīnār, who said: I heard Saʻīd ibn Jubayr say: I heard Ibn ʻUmar say: I heard the Messenger of Allah—peace and blessings be upon him and his family—declare: “For the two parties in liʻān (mutual imprecation), your judgment lies with Allah. One of you is lying.” The man protested: “O Messenger of Allah, my wealth! My wealth!” The Prophet responded: “You have no right to her wealth. If you were truthful in your accusation against her, then it is by the lawful right you had to her intimacy.” And he related the ḥadīth.

L30810–30812 They said: “Does consummation legitimize access to her intimate part?” Abū Muḥammad responded: “This is confusion. Rather, at the time of the marriage contract, the legitimization of her intimate part becomes valid. Were it not [text breaks off]...” The Quranic text states that if he divorces her before consummating the marriage, only half of the dower is due; otherwise, the full dower would have been hers—just as the full dower is hers if either he or she dies. Thus, it is obligatory to abide by this ruling.

L30813 And likewise, the interpretation concerning the statement of the Exalted: {And give women their dowers as a free gift} [An-Nisa: 4] is that this other

قَالَ أَبُو مُحَمَّد: لَا حُجَّةَ فِي هَذَا لِأَنَّ عَمْرَو بْنَ دِينَارٍ لَمْ يَذْكُرْ مَنْ أَخْبَرَهُ بِهَذَا، فَحَصَلَ مُرْسَلًا، وَلَا حُجَّةَ فِي مُرْسَلٍ.

وَأَيْضًا: فَإِنَّمَا فِيهِ قَالَ: قِيلَ: وَلَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ ذَلِكَ - فَسَقَطَ مِنْ كُلِّ وَجْهٍ - وَقَدْ أَسْنَدَهُ عَمْرُو بْنُ دِينَارٍ وَلَمْ يَذْكُرْ فِيهِ هَذَا اللَّفْظَ لَكِنْ كَمَا نا حُمَامُ بْنُ أَحْمَدَ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا الْحُمَيْدِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا عَمْرُو بْنُ دِينَارٍ قَالَ: سَمِعْت سَعِيدَ بْنَ جُبَيْرٍ يَقُولُ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ «لِلْمُتَلَاعِنَيْنِ حِسَابُكُمَا عَلَى اللَّهِ، أَحَدُكُمَا كَاذِبٌ، فَقَالَ: يَا رَسُولَ اللَّهِ مَالِي مَالِي، قَالَ: لَا مَالَ لَكَ، إنْ كُنْت صَادِقًا عَلَيْهَا فَهُوَ بِمَا اسْتَحْلَلْتَ مِنْ فَرْجِهَا» وَذَكَرَ الْحَدِيثَ.

قَالُوا: فَالدُّخُولُ بِهَا اسْتِحْلَالٌ لِفَرْجِهَا؟ قَالَ أَبُو مُحَمَّد: هَذَا تَمْوِيهٌ، بَلْ حِينَ الْعَقْدِ لِلنِّكَاحِ يَصِحُّ اسْتِحْلَالُهُ لِفَرْجِهَا فَلَوْلَا نَصُّ الْقُرْآنِ بِأَنَّهُ إنْ لَمْ يَمَسَّهَا حَتَّى طَلَّقَهَا فَنِصْفُ الصَّدَاقِ فَقَطْ لَكَانَ الْكُلُّ لَهَا، كَمَا هُوَ لَهَا إنْ مَاتَ أَوْ مَاتَتْ، فَوَجَبَ الْوُقُوفُ عِنْدَ ذَلِكَ.

وَهَكَذَا الْقَوْلُ فِي قَوْلِهِ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] أَنَّ هَذِهِ الْآيَةَ الْأُخْرَى خَصَّتْهَا، فَلَمْ يُوجِبْ الطَّلَاقُ قَبْلَ الْمَسِّ إلَّا نِصْفَ الصَّدَاقِ.

[34] **Hadith references (L30807):** Sahih Muslim 1493d; Sunan Abi Dawud 2258; Sunan an-Nasai 3474.

verse specified it, so divorce before consummation does not obligate [the husband] except half of the dower.[35]

L30814 They also raised objections with a weak report we narrated through the chain of Abu Ubayd, who narrated to us from Abu Mu'awiyah and al-Qasim ibn Malik, who narrated from Jamil ibn Yazid al-Ta'i, who narrated from Zayd ibn Ka'b al-Ansari, who said: "The Messenger of Allah (peace and blessings be upon him) married a woman from Banu Ghifar. When he entered upon her, he noticed whiteness on her flank and said: 'Put on your clothes and return to your family.'"

وَشَغَبُوا أَيْضًا بِخَبَرٍ سَاقِطٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَبُو مُعَاوِيَةَ وَالْقَاسِمُ بْنُ مَالِكٍ عَنْ جَمِيلِ بْنِ يَزِيدَ الطَّائِيِّ عَنْ زَيْدِ بْنِ كَعْبٍ الْأَنْصَارِيِّ قَالَ «تَزَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - امْرَأَةً مِنْ بَنِي غِفَارٍ فَلَمَّا دَخَلَ عَلَيْهَا رَأَى بِكَشْحِهَا بَيَاضًا فَقَالَ: الْبَسِي عَلَيْكِ ثِيَابَكَ وَالْحَقِي بِأَهْلِكِ» .

L30815 Al-Qasim ibn Malik added in his narration: "And he decreed that she receive the full *mahr*."

زَادَ الْقَاسِمُ بْنُ مَالِكٍ فِي رِوَايَتِهِ: وَأَمَرَ لَهَا بِالصَّدَاقِ كَامِلًا.

L30816 Abū Muḥammad said: Jamil ibn Zayd is discarded—his narrations are abandoned, and he is untrustworthy. Even if the narration were authentic, it would not serve as proof for them, for the Prophet (peace and blessings be upon him) did not state that this is an obligation for her. Rather, it is a voluntary gesture from him, as Allah the Exalted said: *"Unless they relinquish it, or the husband in whose hand is the marriage bond relinquishes it"* [Al-Baqarah: 237]. Similarly, if she were to act generously by waiving all her rightful claim against him, she would have done well.[36]

قَالَ أَبُو مُحَمَّد: جَمِيلُ بْنُ زَيْدٍ سَاقِطٌ مَتْرُوكُ الْحَدِيثِ غَيْرُ ثِقَةٍ - ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ لَهَا وَاجِبٌ، بَلْ هُوَ تَفَضُّلٌ مِنْهُ، كَمَا قَالَ عَزَّ وَجَلَّ {إِلا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] كَمَا لَوْ تَفَضَّلَتْ هِيَ فَأَسْقَطَتْ عَنْهُ جَمِيعَ حَقِّهَا لَأَحْسَنَتْ.

L30817–30819 They also obscured with another rejected report: We narrated it as well through the chain of Abu 'Ubayd, narrated by Sa'id ibn Abi Maryam and 'Abd al-Ghaffar ibn Dawud. Sa'id said: From Yahya ibn Ayyub, and 'Abd al-Ghaffar said: From Ibn Lahi'ah. Then the chains of Yahya ibn Ayyub and Ibn Lahi'ah converged, both narrating from 'Ubayd Allah ibn Abi Ja'far, from... Safwan ibn Sulaym reported from Abdullah ibn Yazid, from Muhammad ibn Abd al-Rahman ibn Thawban, who said: The Messenger of Allah—peace and blessings be upon him—said, "Whoever uncovers a woman and gazes at her nakedness, the full mahr is owed."

وَمَوَّهُوا أَيْضًا بِخَبَرٍ آخَرَ سَاقِطٍ: رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ، وَعَبْدُ الْغَفَّارِ بْنُ دَاوُد، قَالَ سَعِيدٌ: عَنْ يَحْيَى بْنِ أَيُّوبَ وَقَالَ عَبْدُ الْغَفَّارِ: عَنْ ابْنِ لَهِيعَةَ، ثُمَّ اتَّفَقَ يَحْيَى بْنُ أَيُّوبَ، وَابْنُ لَهِيعَةَ، كِلَاهُمَا عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَشَفَ امْرَأَةً فَنَظَرَ إلَى عَوْرَتِهَا فَقَدْ وَجَبَ الصَّدَاقُ» .

L30820 And this provides no legal evidence for several reasons:

وَهَذَا لَا حُجَّةَ فِيهِ لِوُجُوهٍ -:

أَوَّلُهَا - أَنَّهُ مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ.

[35] **Qur'an references (L30813):** Qur'an 4:4 (An-Nisa).
[36] **Qur'an references (L30816):** Qur'an 2:237 (Al-Baqarah).

L30821 The first is that it is a *mursal*, and a *mursal* cannot serve as proof.

وَالثَّانِي - أَنَّهُ مِنْ طَرِيقِ يَحْيَى بْنِ أَيُّوبَ، وَابْنِ لَهِيعَةَ وَهُمَا ضَعِيفَانِ.

L30822 The second: that it is transmitted through Yaḥyā ibn Ayyūb and Ibn Lahīʿah, both of whom are weak.

وَالثَّالِثُ - أَنَّهُ لَيْسَ فِيهِ لِلدُّخُولِ ذِكْرٌ وَلَا أَثَرٌ، وَإِنَّمَا فِيهِ كَشْفُهَا وَالنَّظَرُ إلَى عَوْرَتِهَا، وَقَدْ يَفْعَلُ هَذَا بِغَيْرِ مَدْخُولٍ بِهَا، وَقَدْ لَا يَفْعَلُهُ فِي مَدْخُولٍ بِهَا فَهُوَ مُخَالِفٌ لِقَوْلِ جَمِيعِهِمْ.

L30823 The third [point] is that there is no mention of sexual intercourse in it, nor any indication thereof. It only involves uncovering her and gazing at her private parts. This may apply to someone who has not had intercourse, while it might not apply in the case of someone who has had intercourse. Thus, it contradicts the position held by all of them.

ثُمَّ لَيْسَ فِيهِ أَيْضًا: بَيَانُ أَنَّهُ فِي الْمُتَزَوِّجَةِ فَقَطْ، بَلْ ظَاهِرُهُ عُمُومٌ فِي كُلِّ زَوْجَةٍ وَغَيْرِهَا، فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ جُمْلَةً.

L30824 Furthermore, the text does not specify that it applies exclusively to a wife; rather, its evident meaning is general, applying to every wife and others besides her. Thus, their having any basis [for the claim] is entirely invalidated.

وَأَمَّا مَنْ تَعَلَّقَ بِأَنَّهَا لَوْ حَمَلَتْ لَحِقَ الْوَلَدُ وَلَمْ تُحَدَّ فَلَا حُجَّةَ لَهُمْ فِي هَذَا؛ لِأَنَّهُ لَمْ يَدْخُلْ بِهَا أَصْلًا، وَلَا عُرِفَ أَنَّهُ خَلَا بِهَا، لَكِنْ كَانَ اجْتِمَاعُهُ بِهَا سِرًّا مُمْكِنًا، فَحَمَلَتْ، فَالْوَلَدُ لَاحِقٌ، وَلَا حَدَّ فِي ذَلِكَ أَصْلًا لِأَنَّهَا فِرَاشٌ لَهُ حَلَالًا مُذْ يَقَعُ الْعَقْدُ، لَا مَعْنَى لِلدُّخُولِ فِي ذَلِكَ أَصْلًا، وَقَدْ تَحْمِلُ مِنْ غَيْرِ إيلَاجٍ، لَكِنْ بِتَشْفِيرٍ بَيْنَ الشَّفْرَيْنِ فَقَطْ - وَكُلُّ هَذَا لَا يُسَمَّى مَسًّا.

L30825 As for those who argue that if she becomes pregnant, the child is legally affiliated and no ḥadd punishment applies, they have no valid argument here. This is because he did not penetrate her at all, nor was it established that he secluded himself with her. However, if their private interaction was potentially concealed and she became pregnant, the child is legally affiliated, and no ḥadd punishment applies whatsoever. This is because she constitutes his lawful marital bed immediately upon the marriage contract's validity. Penetration holds no legal significance in this matter at all, as pregnancy may occur without penetration - merely through seminal emission between the labia exclusively. None of these scenarios is termed 'contact' (mass) in juristic terms.

فَإِنْ تَعَلَّقُوا بِمَنْ جَاءَ ذَلِكَ عَنْهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30826 If they cling to those among the Companions—may Allah be pleased with them—who reported such a ruling, there is no proof in anyone besides the Messenger of Allah—peace and blessings of Allah be upon him.

وَقَدْ اخْتَلَفُوا كَمَا ذَكَرْنَا فَوَجَبَ الرَّدُّ عِنْدَ التَّنَازُعِ إلَى الْقُرْآنِ وَالسُّنَّةِ، فَوَجَدْنَا الْقُرْآنَ لَمْ يُوجِبْ لَهَا بِعَدَمِ الْوَطْءِ إلَّا نِصْفَ الصَّدَاقِ.

L30827 They differed as we mentioned, so it is obligatory in cases of dispute to refer to the Quran and the Sunnah. We found that the Quran did not require for her, in the absence of intercourse, except half the dowry.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30828 And by Allah, the Most High, is divine success.

[مَسْأَلَة عدمت الْمَرْأَة الصَّدَاق بَعْد قبضها لَهُ]

١٨٤٧ - مَسْأَلَةٌ: فَإِنْ عُدِمَ الصَّدَاقُ بَعْدَ قَبْضِهَا لَهُ - بِأَيِّ وَجْهٍ - كَأَنْ تَلِفَ، أَوْ أَنْفَقَتْهُ: لَمْ يَرْجِعْ عَلَيْهَا بِشَيْءٍ، وَالْقَوْلُ قَوْلُهَا فِي ذَلِكَ مَعَ يَمِينِهَا، فَإِنْ وَطِئَهَا قَبْلَ الدُّخُولِ أَوْ بَعْدَهُ: فَلَهَا الْمَهْرُ كُلُّهُ.

قَالَ عَلِيٌّ: إِنْ كَانَ الْمَهْرُ شَيْئًا بِعَيْنِهِ فَتَلِفَ فِي يَدِ الزَّوْجِ، فَإِنْ كَانَتْ قَدْ طَلَبَتْهُ مِنْهُ فَمَنَعَهَا فَهُوَ غَاصِبٌ وَعَلَيْهِ ضَمَانُهُ كُلُّهُ لَهَا، أَوْ ضَمَانُ نِصْفِهِ إِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ، فَإِنْ كَانَ لَمْ يَمْنَعْهَا إِيَّاهُ فَهُوَ تَالِفٌ مِنْ مَالِ الْمَرْأَةِ، وَلَا ضَمَانَ عَلَى الزَّوْجِ فِيهِ، وَلَا فِي نِصْفِهِ، وَطِئَهَا أَوْ طَلَّقَهَا قَبْلَ الْوَطْءِ.

وَإِنْ كَانَ شَيْئًا يَصِفُهُ فَهُوَ ضَامِنٌ لَهُ بِكُلِّ حَالٍ، أَوْ لِنِصْفِهِ إِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ فَإِنْ كَانَتْ الْمَرْأَةُ قَدْ قَبَضَتْهُ، فَسَوَاءٌ كَانَ بِعَيْنِهِ أَوْ بِصِفَةٍ، فَإِنْ تَلِفَ عِنْدَهَا فَهُوَ مِنْ مُصِيبَةِ الزَّوْجِ إِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {فَنِصْفُ مَا فَرَضْتُمْ} [البقرة: ٢٣٧] .

فَإِنَّمَا أَوْجَبَ لَهُ الرُّجُوعَ إِنْ كَانَ قَدْ دَفَعَهُ إِلَيْهَا بِنِصْفِ مَا دَفَعَ، لَا بِنِصْفِ شَيْءٍ غَيْرِهِ، وَالَّذِي دَفَعَ إِلَيْهَا هُوَ الَّذِي فَرَضَ لَهَا، سَوَاءٌ كَانَ شَيْئًا بِعَيْنِهِ أَوْ شَيْئًا بِصِفَةٍ.

وَلَوْ لَمْ يَكُنْ الَّذِي دَفَعَ إِلَيْهَا هُوَ الَّذِي فَرَضَ لَهَا لَكَانَ لَا يَبْرَأُ أَبَدًا مِمَّا عَلَيْهِ - فَصَحَّ يَقِينًا أَنَّهُ إِذَا دَفَعَ إِلَيْهَا غَيْرَ مَا فَرَضَ لَهَا، أَوْ عَلَى الصِّفَةِ الَّتِي عَقَدَ مَعَهَا فَقَدْ دَفَعَ إِلَيْهَا مَا فَرَضَ لَهَا بِلَا شَكٍّ.

L30829 **Legal Issue: The woman lacked the mahr after having received it from the husband.**

L30830–30832 Issue 1847: If the dower ceases to exist after it has been given to her—in any manner, such as being destroyed, or... If she has spent it, she is not required to return anything, and her statement is accepted in that matter provided she swears an oath. If he has had intercourse with her before or after consummation, she is entitled to the entire dower (mahr).

L30833 Ali said: If the dowry is a specific item that perishes in the husband's possession, then if she demanded it from him and he withheld it from her, he becomes a usurper and bears full liability for it to her - or liability for half of it if he divorced her before consummation. If he did not withhold it from her, the loss is from the woman's property, and no liability falls upon the husband for its entirety or half, whether he consummated the marriage or divorced her before consummation.

L30834 If it is something he has described, he is liable for it in all cases—or for half of it if he divorces her before consummation. If the woman has taken possession of it, whether in its tangible form or as described, and it perishes while in her custody, this is a loss borne by the husband if he divorces her before consummation, as Allah the Exalted says: "Then half of what you stipulated" [Al-Baqarah 2:237].[37]

L30835 He is only obligated to reclaim if he gave her half of what he had given, not half of another thing. What he gave her is what he stipulated for her, whether it was a specific item or one described by its attributes.

L30836 Had it not been that the one who gave her [the payment] is the one who stipulated for her [the amount], he would never be absolved of what is incumbent upon him. Thus, it is conclusively established that if he gives her something other than what was stipulated for her, or according to the terms contracted with her, he has indeed given her what was stipulated for her without doubt.

[37] **Qur'an references (L30834):** Qur'an 2:237 (Al-Baqarah).

وَإِذَا دَفَعَ إِلَيْهَا مَا فَرَضَ لَهَا فَقَدْ قَبَضَتْ حَقَّهَا، فَإِنْ تَلِفَ فَلَمْ تَتَعَدَّ وَلَا ظَلَمَتْ فَلَا ضَمَانَ عَلَيْهَا فَإِنْ أَكَلَتْهُ أَوْ بَاعَتْهُ أَوْ وَهَبَتْهُ أَوْ لَبِسَتْهُ فَأَفْنَتْ أَوْ أَعْتَقَتْهُ إِنْ كَانَ مَمْلُوكًا، فَلَمْ تَتَعَدَّ فِي كُلِّ ذَلِكَ بَلْ أَحْسَنَتْ.

L30837 When he gives her what he stipulated for her, she has taken possession of her rightful due. If it perishes while she neither exceeded bounds nor wronged, there is no liability upon her. If she consumes it, sells it, gifts it, wears it until fully used up, or emancipates him if he was an enslaved person - provided she did not transgress in any of that but rather acted appropriately.

وَقَالَ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] فَلَا ضَمَانَ عَلَيْهَا، لِأَنَّهَا حَكَمَتْ فِي مَالِهَا وَحَقِّهَا، وَإِنَّمَا الضَّمَانُ عَلَى مَنْ أَكَلَ بِالْبَاطِلِ.

L30838 Allah Almighty says: {There is no cause [for blame] upon the doers of good} [At-Tawbah: 91], so there is no liability upon her, for she exercised judgment over her property and her right. Liability lies only upon those who consume wrongfully.[38]

قَالَ أَبُو مُحَمَّد: فَإِنْ بَقِيَ عِنْدَهَا النِّصْفُ فَهُوَ لَهُ، وَكَذَلِكَ لَوْ بَقِيَ بِيَدِهِ النِّصْفُ فَهُوَ لَهَا، فَلَوْ تَعَدَّتْ أَوْ تَعَدَّى عَلَيْهِ ضَمِنَ أَوْ ضَمِنَتْ.

L30839 Abu Muhammad said: If half remains with her, then it is his. Similarly, if half remains in his possession, then it is hers. Then if she oversteps or he oversteps against him, he or she must compensate.

وَقَالَ أَبُو حَنِيفَةَ: وَالشَّافِعِيُّ، فِي كُلِّ مَا هَلَكَ بِيَدِهَا مِنَ الصَّدَاقِ بِفِعْلِهَا أَوْ بِغَيْرِ فِعْلِهَا فَهِيَ ضَامِنَةٌ لَهُ قِيمَةَ نِصْفِهِ إِنْ طَلَّقَهَا قَبْلَ الْوَطْءِ - وَهَذَا قَوْلٌ فَاسِدٌ، لِمَا وَصَفْنَا مِنْ أَنَّهُ يُقْضَى لَهَا بِنِصْفِ غَيْرِ الَّذِي فَرَضَ لَهَا، وَهَذَا خِلَافُ الْقُرْآنِ، وَقَدْ قُلْنَا: إِنَّهَا لَمْ تَعْتَدَّ فَلَا ضَمَانَ عَلَيْهَا.

L30840 Abu Hanifah and al-Shafi'i said: Regarding anything from the dower that perishes while in her possession - whether through her action or otherwise - she bears financial responsibility for half its value if he divorces her before consummation. This is an invalid opinion due to the rationale we previously explained: that she would be required to pay half the value of what differs from the dower specified for her, which contradicts the Quran. We have stated: Since she committed no transgression, no financial responsibility falls upon her.

وَقَالَ مَالِكٌ: مَا تَلِفَ بِيَدِهَا مِنْ غَيْرِ فِعْلِهَا ثُمَّ طَلَّقَهَا قَبْلَ الدُّخُولِ فَلَا شَيْءَ لَهُ عَلَيْهَا.

L30841–30842 Malik said: If something perishes in her custody through no fault of hers, and he then divorces her before consummation, he has no recourse against her.

قَالَ: فَلَوْ أَكَلَتْهُ أَوْ وَهَبَتْهُ، أَوْ كَانَ مَمْلُوكًا فَأَعْتَقَتْهُ أَوْ بَاعَتْهُ، ثُمَّ طَلَّقَهَا قَبْلَ الدُّخُولِ: ضَمِنَتْ لَهُ نِصْفَ مَا أَخَذَتْ إِنْ كَانَ لَهُ مِثْلٌ، أَوْ نِصْفَ قِيمَتِهِ إِنْ كَانَ مِمَّا لَا مِثْلَ لَهُ، فَإِنْ كَانَتِ ابْتَاعَتْ بِذَلِكَ شُورَةً فَلَيْسَ لَهُ إِلَّا نِصْفُ الشَّيْءِ الَّذِي اشْتَرَتْ.

L30843 He said: If she consumed it, gifted it, freed a male slave, or sold one, then he divorces her before consummation, she is liable to compensate him with half of what she received if it has an equivalent, or half its value if it has no equivalent. If she purchased a replacement with it, he is only entitled to half of the item she acquired.

L30844 Abū Muḥammad said: These are manifest contradictions, for he differentiated between what she consumed, gifted, or emancipated and [between]

[38] **Qur'an references (L30838):** Qur'an 9:91 (At-Tawbah).

what perished without her action. There is no distinction between any of these matters, as in all such cases she is neither overstepping [her rights] nor committing injustice, and thus nothing is incumbent upon her.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ مُنَاقَضَاتٌ ظَاهِرَةٌ، لِأَنَّهُ فَرَّقَ بَيْنَ مَا أَكَلَتْ وَوَهَبَتْ وَأَعْتَقَتْ، وَبَيْنَ مَا تَلِفَ بِغَيْرِ فِعْلِهَا، وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ، لِأَنَّهَا فِي كُلِّ ذَلِكَ غَيْرُ مُتَعَدِّيَةٍ، وَلَا ظَالِمَةٍ، فَلَا شَيْءَ لَهُ عَلَيْهَا.

L30845 Then he distinguished between what she emancipated, consumed, and gifted, and what she purchased with it as a transaction. This is an opinion supported neither by proof from the Quran, nor an authentic Sunnah, nor a defective narration, nor the statement of a Companion, nor analogy.

ثُمَّ فَرَّقَ بَيْنَ مَا أَعْتَقَتْ وَأَكَلَتْ وَوَهَبَتْ، وَبَيْنَ مَا اشْتَرَتْ بِهِ شُورَةً - وَهَذَا قَوْلٌ لَا يُعَضِّدُهُ بُرْهَانٌ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ.

L30846 They alleged therein the practice of the people of Medina, and this is a corrupt argument, because if that were the practice of the imams who were in Medina—may Allah be pleased with them—then Allah the Exalted would save them from failing to command their officials in Iraq, Syria, and all other regions to uphold the truth—and this is a falsehood irrefutably established against those who alleged it about them.

وَادَّعَوْا فِي ذَلِكَ عَمَلَ أَهْلِ الْمَدِينَةِ، وَهَذَا احْتِجَاجٌ فَاسِدٌ، لِأَنَّهُ إِنْ كَانَ ذَلِكَ عَمَلَ الْأَئِمَّةِ الَّذِينَ كَانُوا بِالْمَدِينَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَيُعِيذُهُمْ اللَّهُ تَعَالَى مِنْ أَنْ لَا يَأْمُرُوا بِالْحَقِّ عُمَّالَهُمْ بِالْعِرَاقِ وَالشَّامِ وَسَائِرِ الْبِلَادِ - وَهَذَا بَاطِلٌ مَقْطُوعٌ بِهِ مِمَّنْ ادَّعَاهُ عَلَيْهِمْ.

L30847 If they claim that they did so, then the people of the garrison towns altered that; this was an invalid claim, and the jurists of the garrison towns were no more entitled to alter than the Successors of Medina.

فَإِنْ ادَّعَوْا أَنَّهُمْ فَعَلُوا فَبَدَّلَ ذَلِكَ أَهْلُ الْأَمْصَارِ كَانَتْ دَعْوَى فَاسِدَةً، وَلَمْ يَكُنْ فُقَهَاءُ الْأَمْصَارِ أَوْلَى بِالتَّبْدِيلِ مِنْ تَابِعِي الْمَدِينَةِ.

L30848 All of this is invalid, for God has protected all of them from that. Thus, it is established that it is ijtihad by every group that intended good through it—and with God, the Exalted, is success.

وَكُلُّ هَذَا بَاطِلٌ قَدْ أَعَاذَ اللَّهُ جَمِيعَهُمْ مِنْ ذَلِكَ فَصَحَّ أَنَّهُ اجْتِهَادٌ مِنْ كُلِّ طَائِفَةٍ قَصَدَتْ بِهِ الْخَيْرَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L30849 Issue: Does the husband have the right to cohabit with his wife before delivering her dower (ṣadāq)?

[مَسْأَلَة هَلْ لِلزَّوْجِ أَنْ يَدْخُل عَلَى الزَّوْجَة قَبْل أَنْ يرسل إلَيْهَا صَدَاقهَا]

L30850 Issue 1848: If a man marries whether he stipulates a mahr or not, he has the right to consummate the marriage with her - whether she consents or refuses - and she is awarded what he stipulated for her - whether he consents or refuses. He cannot be prevented from consummation for this reason. However, he is immediately granted the right to consummate, while

١٨٤٨ - مَسْأَلَةٌ: وَمَنْ تَزَوَّجَ فَسَمَّى صَدَاقًا أَوْ لَمْ يُسَمِّ: فَلَهُ الدُّخُولُ بِهَا - أَحَبَّتْ أَمْ كَرِهَتْ - وَيُقْضَى لَهَا بِمَا سَمَّى لَهَا - أَحَبَّ أَمْ كَرِهَ - وَلَا يُمْنَعُ مِنْ أَجْلِ ذَلِكَ مِنْ

she is awarded from him according to what is found available with him as mahr.

الدُّخُولِ بِهَا، لَكِنْ يُقْضَى لَهُ عَاجِلًا بِالدُّخُولِ، وَيُقْضَى لَهَا عَلَيْهِ حَسْبَمَا يُوجَدُ عِنْدَهُ بِالصَّدَاقِ.

L30851 If he did not specify anything for her, he is obligated to provide a dowry equivalent to women of her standing, unless they mutually agree on a greater or lesser amount — a point over which the predecessors differed. It has been narrated to us through ʿAbd al-Razzāq from Ibn Jurayj: Abū al-Zubayr informed me that he heard ʿIkrimah, the freedman of Ibn ʿAbbās, say: Ibn ʿAbbās said: When a man marries a woman and designates a dowry (mahr) for her, and he intends to consummate the marriage, he should cast to her his cloak or a ring if he has one.

فَإِنْ كَانَ لَمْ يُسَمِّ لَهَا شَيْئًا قُضِيَ عَلَيْهِ بِمَهْرِ مِثْلِهَا، إِلَّا أَنْ يَتَرَاضَيَا بِأَكْثَرَ أَوْ بِأَقَلَّ - وَهَذَا مَكَانٌ اخْتَلَفَ السَّلَفُ فِيهِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ: أَنَّهُ سَمِعَ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ يَقُولُ: قَالَ ابْنُ عَبَّاسٍ: إِذَا نَكَحَ الْمَرْأَةَ وَسَمَّى لَهَا صَدَاقًا فَأَرَادَ أَنْ يَدْخُلَ عَلَيْهَا فَلْيُلْقِ إِلَيْهَا رِدَاءَهُ، أَوْ خَاتَمًا إِنْ كَانَ مَعَهُ.

L30852–30853 Via Ibn Wahb, it was narrated to me by Yunus ibn Yazid al-Ayli through Nafiʾ, on the authority of Ibn Umar, who said: It is not proper for a man to have sexual intercourse with his wife until he presents to her something from his wealth that she is pleased with, such as clothing or maintenance.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي يُونُسُ بْنُ يَزِيدَ الْأَيْلِيُّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: لَا يَصْلُحُ لِلرَّجُلِ أَنْ يَقَعَ عَلَى الْمَرْأَةِ زَوْجِهِ حَتَّى يُقَدِّمَ إِلَيْهَا شَيْئًا مِنْ مَالِهَا مَا رَضِيَتْ بِهِ مِنْ كِسْوَةٍ أَوْ عَطَاءٍ.

L30854 Ibn Jurayj said: "ʿAṭāʾ, Saʿīd ibn al-Musayyib, and ʿAmr—that is, Ibn Dīnār—stated: 'He may not have physical contact with her until he sends her the mahr or its obligatory amount.'"

قَالَ ابْنُ جُرَيْجٍ: وَقَالَ عَطَاءٌ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَعَمْرٌو هُوَ بْنُ دِينَارٍ - لَا يَمَسَّهَا حَتَّى يُرْسِلَ إِلَيْهَا بِصَدَاقٍ أَوْ فَرِيضَةٍ.

L30855 'Aṭā' and 'Amr said: If he sends her a token of honor not part of the dower, or to her family, that suffices him and renders her permissible for him.

قَالَ عَطَاءٌ، وَعَمْرٌو: إِنْ أَرْسَلَ إِلَيْهَا بِكَرَامَةٍ لَهَا لَيْسَتْ مِنَ الصَّدَاقِ أَوْ إِلَى أَهْلِهَا فَحَسْبُهُ هُوَ يُحِلُّهَا لَهُ.

L30856 Sa'id ibn Jubayr said: "Provide for her, even if only a khimār."

وَقَالَ سَعِيدُ بْنُ جُبَيْرٍ: أَعْطِهَا وَلَوْ خِمَارًا.

L30857 Al-Zuhri said: It has been conveyed to us in the Sunnah that one should not consummate the marriage with his wife until he provides maintenance or clothes her. This is among what the Muslims have acted upon.

وَقَالَ الزُّهْرِيُّ: بَلَغَنَا فِي السُّنَّةِ أَنْ لَا يَدْخُلَ بِامْرَأَةٍ حَتَّى يُقَدِّمَ نَفَقَةً أَوْ يَكْسُوَ كِسْوَةً، ذَلِكَ مِمَّا عَمِلَ بِهِ الْمُسْلِمُونَ.

L30858 Mālik said: He should not consummate the marriage with her until he gives

her the prompt portion of her dowry. If she relinquishes it to him, he is required to assign her another portion, without fail.

وَقَالَ مَالِكٌ: لَا يَدْخُلْ عَلَيْهَا حَتَّى يُعْطِيَهَا مَهْرَهَا الْحَالَّ، فَإِنْ وَهَبَتْهُ لَهُ أُجْبِرَ عَلَى أَنْ يَفْرِضَ لَهَا شَيْئًا آخَرَ وَلَا بُدَّ.

L30859 Others held the view that it is permissible for him to consummate the marriage even if he did not give her anything - as we have transmitted through the chain of Abū Dāwūd: Muḥammad ibn Yaḥyā ibn Fāris al-Dhuhlī narrated to us; ʿAbd al-ʿAzīz ibn Yaḥyā al-Ḥarrānī narrated to us; Muḥammad ibn Salamah narrated from Abū ʿAbd al-Raḥīm from Zayd ibn Abī Unaysah from Yazīd ibn Abī Ḥabīb from Marthad ibn ʿAbd Allāh al-Yazanī (who is Abū al-Khayr) from ʿUqbah ibn ʿĀmir: "The Prophet (peace and blessings of Allāh be upon him) married a man to a woman with their mutual consent. The man consummated the marriage without stipulating a mahr or giving her anything. He was among those who witnessed al-Ḥudaybiyah, and those who witnessed it had a share in Khaybar. When death approached him, he said: 'The Messenger of Allāh (peace and blessings of Allāh be upon him) married me to so-and-so without stipulating a mahr or giving her anything. But I make you witnesses that I have given her my share in Khaybar from her mahr.' She took it and sold it for one hundred thousand [units]."

وَذَهَبَ آخَرُونَ إِلَى إِبَاحَةِ دُخُولِهِ عَلَيْهَا وَإِنْ لَمْ يُعْطِهَا شَيْئًا -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ يَحْيَى بْنُ فَارِسٍ الذُّهْلِيُّ نا عَبْدُ الْعَزِيزِ بْنُ يَحْيَى الْحَرَّانِيُّ نا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ أَبِي عَبْدِ الرَّحِيمِ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ مَرْثَدِ بْنِ عَبْدِ اللَّهِ الْيَزَنِيِّ - هُوَ أَبُو الْخَيْرِ - عَنْ عُقْبَةَ بْنِ عَامِرٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَوَّجَ رَجُلًا امْرَأَةً بِرِضَاهُمَا فَدَخَلَ بِهَا الرَّجُلُ وَلَمْ يَفْرِضْ لَهَا صَدَاقًا، وَلَمْ يُعْطِهَا شَيْئًا، وَكَانَ مِمَّنْ شَهِدَ الْحُدَيْبِيَةَ، وَكَانَ مَنْ شَهِدَهَا لَهُ سَهْمٌ بِخَيْبَرَ، فَحَضَرَتْهُ الْوَفَاةُ فَقَالَ إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَوَّجَنِي فُلَانَةَ وَلَمْ أَفْرِضْ لَهَا صَدَاقًا، وَلَمْ أُعْطِهَا شَيْئًا، وَلَكِنِّي أُشْهِدُكُمْ أَنِّي أَعْطَيْتُهَا مِنْ صَدَاقِهَا سَهْمِي بِخَيْبَرَ، قَالَ: فَأَخَذَتْهُ فَبَاعَتْهُ بِمِائَةِ أَلْفٍ» .

L30860–30861 It has been narrated to us via the chain of Wakīʿ, from Hishām al-Dastawā'ī, from Saʿīd ibn al-Musayyib, who said: The people of Medina differed regarding this matter. Some permitted it and saw no harm in it, while others disapproved of it. Saʿīd said: Whichever course he takes, there is no harm in it - referring to a man consummating the marriage with a woman he married without giving her anything.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ قَالَ: اخْتَلَفَ أَهْلُ الْمَدِينَةِ فِي ذَلِكَ، فَمِنْهُمْ مَنْ أَجَازَهُ وَلَمْ يَرَ بِهِ بَأْسًا، وَمِنْهُمْ مَنْ كَرِهَهُ، قَالَ سَعِيدٌ: وَأَيُّ ذَلِكَ فَعَلَ فَلَا بَأْسَ بِهِ - يَعْنِي دُخُولَ الرَّجُلِ بِالْمَرْأَةِ الَّتِي تَزَوَّجَ وَلَمْ يُعْطِهَا شَيْئًا.

L30862 Narrated by Waki' from Sufyan al-Thawri, from Mansur ibn al-Mu'tamir and Yunus ibn 'Ubayd: Mansur narrated from Ibrahim al-Nakha'i, and Yunus narrated from al-Hasan. They both concurred that there is no harm in a man consummating the marriage with his wife before giving her something.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَيُونُسَ بْنِ عُبَيْدٍ قَالَ مَنْصُورٌ: عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ يُونُسُ: عَنْ الْحَسَنِ، ثُمَّ اتَّفَقَا جَمِيعًا عَلَى أَنَّهُ لَا بَأْسَ بِأَنْ يَدْخُلَ الرَّجُلُ بِامْرَأَتِهِ قَبْلَ أَنْ يُعْطِيَهَا شَيْئًا.

L30863 And through the chain of Abd al-Razzaq from Ibn Jurayj from al-Zuhri regarding a man who marries a woman and specifies a dowry for her: Is it permissible for him to consummate the marriage without having given her

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ الزُّهْرِيِّ فِي الرَّجُلِ يَتَزَوَّجُ الْمَرْأَةَ وَيُسَمِّي لَهَا صَدَاقًا هَلْ يَدْخُلُ عَلَيْهَا وَلَمْ يُعْطِهَا شَيْئًا؟ فَقَالَ الزُّهْرِيُّ: قَالَ اللَّهُ عَزَّ وَجَلَّ {وَلا

anything? Al-Zuhri said: Allah, the Mighty and Majestic, has said, “There is no blame upon you for what you mutually agree to after the stipulated [obligation]” [An-Nisa: 24]. Thus, once the dowry is specified, there is no blame on him for consummating the marriage. The Sunnah has established that he should present her with some clothing or provisions beforehand.[39]

جُنَاحَ عَلَيْكُمْ فِيمَا تَرَاضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ} [النساء: ٢٤] فَإِذَا فَرَضَ الصَّدَاقَ فَلَا جُنَاحَ عَلَيْهِ فِي الدُّخُولِ عَلَيْهَا، وَقَدْ مَضَتْ السُّنَّةُ أَنْ يُقَدَّمَ لَهَا شَيْءٌ مِنْ كِسْوَةٍ أَوْ نَفَقَةٍ.

L30864 From the chain of Saʿīd ibn Manṣūr: Hushaym reported to us, from Ḥajjāj, from Abū Isḥāq al-Sabīʿī, that Kurayb ibn Abī Muslim—who was among the students of Ibn Masʿūd—married a woman with a dowry of four thousand dirhams and consummated the marriage before giving her anything from her dowry. This is the position held by Sufyān al-Thawrī, al-Shāfiʿī, Abū Sulaymān, and their followers.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ ثنا حَجَّاجٌ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ أَنَّ كُرَيْبَ بْنَ أَبِي مُسْلِمٍ - وَكَانَ مِنْ أَصْحَابِ ابْنِ مَسْعُودٍ - تَزَوَّجَ امْرَأَةً عَلَى أَرْبَعَةِ آلَافِ دِرْهَمٍ وَدَخَلَ بِهَا قَبْلَ أَنْ يُعْطِيَهَا مِنْ صَدَاقِهَا شَيْئًا - وَبِهَذَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L30865 Al-Awzaʿī said: They considered it preferable that he not have intercourse with her until he gives her something.

وَقَالَ الْأَوْزَاعِيُّ: كَانُوا يَسْتَحْسِنُونَ أَنْ لَا يَدْخُلَ بِهَا حَتَّى يُقَدِّمَ لَهَا شَيْئًا.

L30866 Al-Layth said: If he specifies a mahr for her, it is more preferable to me that he present her something. If he does not do so, I see no harm in it.

وَقَالَ اللَّيْثُ: إنْ سَمَّى لَهَا مَهْرًا فَأَحَبُّ إلَيَّ أَنْ يُقَدِّمَ لَهَا شَيْئًا، وَإِنْ لَمْ يَفْعَلْ لَمْ أَرَ بِهِ بَأْسًا.

L30867 Abū Ḥanīfah said: If her dower is deferred, he may consummate the marriage with her—whether she is willing or unwilling, whether the deferred term has fallen due or not. But if the dower is prompt, he may not consummate the marriage with her until he pays it to her. If he does consummate the marriage, she may withhold herself from him until he fulfills the entirety of her dower.

وَقَالَ أَبُو حَنِيفَةَ: إنْ كَانَ مَهْرُهَا مُؤَجَّلًا فَلَهُ أَنْ يَدْخُلَ بِهَا - أَحَبَّتْ أَمْ كَرِهَتْ حَلَّ الْأَجَلُ أَوْ لَمْ يَحِلَّ - فَإِنْ كَانَ الصَّدَاقُ نَقْدًا لَمْ يَجُزْ لَهُ أَنْ يَدْخُلَ بِهَا حَتَّى يُؤَدِّيَهُ إلَيْهَا، فَلَوْ دَخَلَ بِهَا فَلَهَا أَنْ تَمْنَعَ نَفْسَهَا مِنْهُ حَتَّى يُوَفِّيَهَا جَمِيعَ صَدَاقِهَا.

L30868 Abū Muḥammad said: As for the division proposed by Abū Ḥanīfa and Mālik, it is an unsubstantiated claim—neither from the Qur’an, nor the Sunnah, nor analogical reasoning, nor the statement of any predecessor, nor a sound opinion. Thus, there remains only the view of those who permit him to enter upon her even if he does not give her anything, or those who prohibit this.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا تَقْسِيمُ أَبِي حَنِيفَةَ، وَمَالِكٍ، فَدَعْوَى بِلَا بُرْهَانٍ: لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ مُتَقَدِّمٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ فَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ أَبَاحَ دُخُولَهُ عَلَيْهَا وَإِنْ لَمْ يُعْطِهَا شَيْئًا أَوْ مَنَعَ مِنْ ذَلِكَ.

L30869 We examined the argument of those who prohibited that and found them citing a Hadith in which “the Messenger of Allah (may Allah bless him and grant

[39] **Qur’an references (L30863):** Qur’an 4:24 (An-Nisa).

him peace) forbade Ali from entering with Fatimah (may Allah be pleased with them both) until he gives her something."

فَنَظَرْنَا فِي حُجَّةِ مَنْ مَنَعَ مِنْ ذَلِكَ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِحَدِيثٍ فِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَلِيًّا أَنْ يَدْخُلَ بِفَاطِمَةَ - رَضِيَ اللَّهُ عَنْهُمَا - حَتَّى يُعْطِيَهَا شَيْئًا» .

L30870–30871 Abū Muḥammad said: This is a narration that is not valid, for it only came through interrupted chains, or contains unknown or weak narrators—and we have thoroughly examined its chains and defects in *Kitāb al-Iṣāl*—except that all its characteristics are as described here. Nothing is valid except a narration.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ إِنَّمَا جَاءَ مِنْ طَرِيقٍ مُرْسَلَةٍ، أَوْ فِيهَا مَجْهُولٌ، أَوْ ضَعِيفٌ - وَقَدْ تَقَصَّيْنَا طُرُقَهَا وَعِلَلَهَا فِي " كِتَابِ الْإِيصَالِ " إِلَّا أَنَّ صِفَتَهَا كُلَّهَا مَا ذَكَرْنَا هَاهُنَا، لَا يَصِحُّ شَيْءٌ إِلَّا خَبَرٌ -:

L30872 From the path of Ahmad ibn Shuʿayb, from ʿAmr ibn Manṣūr, from Hishām ibn ʿAbd al-Malik al-Ṭayālisī, from Ḥammād ibn Zayd, from Ayyūb al-Sikhtiyānī, from ʿIkrimah, from Ibn ʿAbbās: "'Alī said: I married Fāṭimah, so I said: O Messenger of God, grant me a son. He said: Give her something. I said: I have nothing. He said: Where is your Ḥuṭamiyyah armor? I said: It is with me. He said: Then give it to her."

مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نا هِشَامُ بْنُ عَبْدِ الْمَلِكِ الطَّيَالِسِيُّ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ «أَنَّ عَلِيًّا قَالَ: تَزَوَّجْتُ فَاطِمَةَ فَقُلْتُ: يَا رَسُولَ اللَّهِ ابْنِ لِي؟ فَقَالَ: أَعْطِهَا شَيْئًا: فَقُلْتُ: مَا عِنْدِي شَيْءٌ، قَالَ: فَأَيْنَ دِرْعُكَ الْحُطَمِيَّةُ؟ قُلْتُ: هُوَ عِنْدِي، قَالَ: فَأَعْطِهَا إِيَّاهُ» .

L30873 Abu Muhammad said: This was only because it constituted her dowry, not to indicate that consummation is impermissible unless he gives her something. This matter has been explicitly clarified—as transmitted from Ahmad ibn Qasim, who said: From my father Qasim ibn Muhammad ibn Qasim, from my grandfather Qasim ibn Asbagh, from Ahmad ibn Zuhayr, from al-Hasan ibn Hammad, from Yahya ibn Ya'mur al-Aslami, from Sa'id ibn Abi 'Arubah, from Qatadah, from al-Hasan al-Basri, from Anas, who said: 'Ali ibn Abi Talib reported: "I came to the Messenger of Allah (peace and blessings be upon him) and said: 'O Messenger of Allah, you know my early embrace of Islam and sincere devotion—and I—I—?' He asked: 'What is it, O 'Ali?' I said: 'Will you marry me to Fatimah?' He inquired: 'What do you have?' I replied: 'My horse and my armor.' He said: 'As for your horse, you cannot do without it, but sell your armor.' I sold it for four hundred and eighty [dirhams] and brought the amount to him. I placed it in his lap, then he took a handful and said: 'O Bilal, buy us perfume with this.'" The remainder of the

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا كَانَ ذَلِكَ عَلَى أَنَّهُ صَدَاقُهَا، لَا عَلَى مَعْنَى أَنَّهُ لَا يَجُوزُ الدُّخُولُ إِلَّا حَتَّى يُعْطِيَهَا شَيْئًا، وَقَدْ جَاءَ هَذَا مُبَيَّنًا -: كَمَا نا أَحْمَدُ بْنُ قَاسِمٍ قَالَ: نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ قَالَ: حَدَّثَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا الْحَسَنُ بْنُ حَمَّادٍ نا يَحْيَى بْنُ يَعْمُرَ الْأَسْلَمِيُّ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ الْبَصْرِيِّ عَنْ أَنَسٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ «أَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُلْتُ: يَا رَسُولَ اللَّهِ قَدْ عَلِمْتَ قِدَمِي فِي الْإِسْلَامِ وَمُنَاصَحَتِي وَإِنِّي وَإِنِّي؟ قَالَ: وَمَا ذَاكَ يَا عَلِيُّ؟ قَالَ: تُزَوِّجُنِي فَاطِمَةَ؟ قَالَ: مَا عِنْدَكَ؟ قُلْتُ: عِنْدِي فَرَسِي وَدِرْعِي، قَالَ: أَمَّا فَرَسُكَ فَلَا بُدَّ لَكَ مِنْهَا، وَأَمَّا دِرْعُكَ فَبِعْهَا، قَالَ: فَبِعْتُهَا بِأَرْبَعِمِائَةٍ وَثَمَانِينَ فَأَتَيْتُهُ بِهَا فَوَضَعْتُهَا

hadith was mentioned. This account clarifies that the armor was mentioned solely in relation to the dowry, not as a condition for consummation, for this is undoubtedly a single incident.

فِي حِجْرِهِ، ثُمَّ قَبَضَ مِنْهَا قَبْضَةً وَقَالَ: يَا بِلَالُ أَبْغِنَا بِهَا طِيبًا» وَذَكَرَ بَاقِيَ الْحَدِيثِ - فَهَذَا بَيَانٌ أَنَّ الدِّرْعَ إنَّمَا ذُكِرَتْ فِي الصَّدَاقِ لَا مِنْ أَجْلِ الدُّخُولِ، لِأَنَّهَا قِصَّةٌ وَاحِدَةٌ بِلَا شَكٍّ.

L30874 Abu Muhammad said: A narration has been reported concerning this matter—as we have narrated through the chain of Abū Ubayd, from ʿUmar ibn ʿAbd al-Raḥmān, from Manṣūr ibn al-Muʿtamir, from Ṭalḥah ibn Muṣarrif, from Khaythamah ibn ʿAbd al-Raḥmān, from some Companions of the Messenger of Allah (peace and blessings be upon him)—"that a man married a woman, and the Prophet (peace and blessings be upon him) arranged her transfer to him before he had paid anything."

قَالَ أَبُو مُحَمَّد: وَقَدْ جَاءَ فِي هَذَا أَثَرٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عُمَرُ بْنُ عَبْدِ الرَّحْمَنِ نَا مَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ عَنْ خَيْثَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ بَعْضِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ رَجُلًا تَزَوَّجَ امْرَأَةً فَجَهَّزَهَا إلَيْهِ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَبْلَ أَنْ يَنْقُدَ شَيْئًا» .

L30875–30877 Ali said: Khaythama was among the senior companions of Ibn Masʿūd and a companion of ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with them). He added: Allah the Mighty and Majestic said, *"Except with their wives or those [slaves] whom their right hands rightfully possess, for indeed they are not to be blamed"* [al-Muʾminūn: 6]. There is no disagreement among any Muslim that from the time it is concluded [...] As for marriage, she is his wife. He is lawful for her, and she is lawful for him. Whoever prevents him from her until he gives her the mahr or other than it has indeed interposed a barrier between him and his wife without any explicit text from Allah the Exalted or His Messenger (peace and blessings be upon him). However, the truth is as we have stated: he must not be denied his right regarding her, nor must she be denied her right to her mahr. Rather, it is permitted to have conjugal relations with her—whether she consents or objects—and her mahr is to be taken from whatever is found of his possessions, whether he consents or objects.[40]

قَالَ عَلِيٌّ: خَيْثَمَةُ مِنْ أَكَابِرِ أَصْحَابِ ابْنِ مَسْعُودٍ وَصَحِبَ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ عَلِيٌّ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْمُسْلِمِينَ فِي أَنَّهُ مِنْ حِينِ يُعْقَدُ الزَّوَاجُ فَإِنَّهَا زَوْجَةٌ لَهُ " فَهُوَ حَلَالٌ لَهَا وَهِيَ حَلَالٌ لَهُ، فَمَنْ مَنَعَهَا مِنْهُ حَتَّى يُعْطِيَهَا الصَّدَاقَ أَوْ غَيْرَهُ فَقَدْ حَالَ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ بِلَا نَصٍّ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكِنَّ الْحَقَّ مَا قُلْنَا أَنْ لَا يُمْنَعَ حَقَّهُ مِنْهَا، وَلَا تُمْنَعَ هِيَ حَقَّهَا مِنْ صَدَاقِهَا، لَكِنْ يُطْلَقُ عَلَى الدُّخُولِ عَلَيْهَا - أَحَبَّتْ أَمْ كَرِهَتْ - وَيُؤْخَذُ مِمَّا يُوجَدُ لَهُ صَدَاقُهَا - أَحَبَّ أَمْ كَرِهَ.

L30878 It has been authentically reported from the Prophet (peace and blessings of Allah be upon him and his family) that he affirmed the correctness of the statement: "Grant every possessor of a right his rightful due." And success is from Allah, the Most High.

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - تَصْوِيبُ قَوْلِ الْقَائِلِ «أَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ» وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[40] **Qur'an references (L30875):** Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).

The issue of a marriage contract stipulating a voidable condition or a defective mahr.

1849. Issue: Every marriage contract established upon an invalid dowry or invalid condition - such as deferring the dowry to a specified or unspecified term, deferring part of it to such a term, stipulating wine, pork, what is lawfully ownable, a specific item owned by another, that he will not marry another besides her, that he will not take a concubine besides her, that he will not relocate her from her town or home, that he will not be absent beyond a duration such as such-and-such, that he must free his Umm Walad (enslaved woman who bore his child) so-and-so, that he must provide for her child, or similar conditions - is an irrevocably invalid and annulled marriage, even if she bears him children. They do not inherit from each other, and no maintenance, dowry, or ‘iddah is obligated.

Similarly, every invalid marriage—except the case of a woman who is ignorant [of the ruling] and marries without her guardian’s permission, and the husband consummates the marriage with her. If he specified a mahr for her, she is entitled to what he specified. If he did not specify a mahr for her, she is entitled to a mahr commensurate with her status. If he did not consummate the marriage, she has no right to anything.

If the invalid dowry and invalid conditions were mutually stipulated after the marriage contract—which was originally free of those invalid elements—had already been validly concluded, then the marriage remains valid and sound. The invalid dowry is annulled, and she is entitled to a mahr equivalent to that of her peers unless they mutually agree to a smaller or larger amount, in which case this is permissible. All stipulated conditions become void.

The proof of that is the statement of Allah’s Messenger—peace be upon him and his progeny—: “Every condition not in Allah’s Book is void.” None of these conditions are in the Book of Allah, the Almighty, the Majestic, thus they are void.[41]

[مَسْأَلَة نِكَاح عَقْدٍ عَلَى شَرْط فاسد أَوْ عَلَى صَدَاق فاسد]

١٨٤٩ - مَسْأَلَةٌ: وَكُلُّ نِكَاحٍ عُقِدَ عَلَى صَدَاقٍ فَاسِدٍ، أَوْ عَلَى شَرْطٍ فَاسِدٍ، مِثْلُ أَنْ يُؤَجَّلَ إِلَى أَجَلٍ مُسَمًّى أَوْ غَيْرِ مُسَمًّى، أَوْ بَعْضُهُ إِلَى أَجَلٍ كَذَلِكَ، أَوْ عَلَى خَمْرٍ، أَوْ عَلَى خِنْزِيرٍ، أَوْ عَلَى مَا يَحِلُّ مِلْكُهُ، أَوْ عَلَى شَيْءٍ بِعَيْنِهِ فِي مِلْكِ غَيْرِهِ، أَوْ عَلَى أَنْ لَا يَنْكِحَ عَلَيْهَا، أَوْ أَنْ لَا يَتَسَرَّى عَلَيْهَا، أَوْ أَنْ لَا يُرَحِّلَهَا عَنْ بَلَدِهَا، أَوْ عَنْ دَارِهَا، أَوْ أَنْ لَا يَغِيبَ مُدَّةً أَكْثَرَ مِنْ كَذَا، أَوْ عَلَى أَنْ يُعْتِقَ أُمَّ وَلَدِهِ فُلَانَةَ، أَوْ عَلَى أَنْ يُنْفِقَ عَلَى وَلَدِهَا، أَوْ نَحْوِ ذَلِكَ - فَهُوَ نِكَاحٌ فَاسِدٌ مَفْسُوخٌ أَبَدًا وَإِنْ وَلَدَتْ لَهُ الْأَوْلَادَ، وَلَا يَتَوَارَثَانِ وَلَا يَجِبُ فِيهِ نَفَقَةٌ، وَلَا صَدَاقٌ وَلَا عِدَّةٌ.

وَهَكَذَا كُلُّ نِكَاحٍ فَاسِدٍ، حَاشَا الَّتِي تَزَوَّجَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا جَاهِلَةً فَوَطِئَهَا، فَإِنْ كَانَ سَمَّى لَهَا مَهْرًا فَلَهَا الَّذِي سُمِّيَ لَهَا، وَإِنْ كَانَ لَمْ يُسَمِّ لَهَا مَهْرًا فَلَهَا عَلَيْهِ مَهْرُ مِثْلِهَا، فَإِنْ لَمْ يَكُنْ وَطِئَهَا فَلَا شَيْءَ لَهَا.

فَإِنْ كَانَ الصَّدَاقُ الْفَاسِدُ، وَالشُّرُوطُ الْفَاسِدَةُ إِنَّمَا تَعَاقَدَاهَا بَعْدَ صِحَّةِ عَقْدِ النِّكَاحِ خَالِيًا مِنْ كُلِّ ذَلِكَ فَالنِّكَاحُ صَحِيحٌ تَامٌّ، وَيُفْسَخُ الصَّدَاقُ، وَيُقْضَى لَهَا بِمَهْرِ مِثْلِهَا، إِلَّا أَنْ يَتَرَاضَيَا بِأَقَلَّ أَوْ أَكْثَرَ، فَذَلِكَ جَائِزٌ، وَتَبْطُلُ الشُّرُوطُ كُلُّهَا.

بُرْهَانُ ذَلِكَ -: قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» وَهَذِهِ كُلُّهَا شُرُوطٌ لَيْسَتْ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهِيَ بَاطِلَةٌ.

[41] **Hadith references (L30883):** Sunan Ibn Majah 2521.

L30884 Similarly, deferring the dowry or part of it [is invalid], for Allah the Exalted says: “And give women their dowries as a free gift” [An-Nisa’: 4]. Thus, whoever stipulates not to give her the dowry or part of it for a certain period has stipulated contrary to what Allah the Exalted has commanded in the Quran.[42]

وَكَذَلِكَ تَأْجِيلُ الصَّدَاقِ أَوْ بَعْضِه، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] فَمَنْ شَرَطَ أَنْ لَا يُؤْتِيَهَا صَدَاقَهَا أَوْ بَعْضَهُ - مُدَّةً مَا - فَقَدْ اشْتَرَطَ خِلَافَ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْقُرْآنِ.

L30885 And his statement—may the peace and blessings of Allah be upon him—“Whoever performs a deed not in accordance with our command, it is null and void.”[43]

وَقَوْلُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L30886–30887 Both reports are authentic and well-known, and we have previously cited them with their chains of transmission in earlier sections of this book. Whatever we have mentioned that does not conform to the command of the Messenger of Allah—peace and blessings be upon him—is invalid and rejected, by the explicit wording of his speech—peace and blessings be upon him—and by the necessity of reason. Every person of intellect knows that anything validated by an invalid premise is itself invalid. Therefore, any marriage contract conditioned upon the validity of the aforementioned stipulations has no validity. If the marriage has no validity, she is not a wife. If she is not a wife—then if the man was aware, the hadd punishment for fornication applies to him, and the child is not legally affiliated with him, for the Prophet—peace and blessings be upon him—said: “The child belongs to the marital bed, and stoning is for the fornicator.” There is only a marital bed or fornication. Since there is no marital bed here, it is fornication. In fornication, no child is legally affiliated [to the man], and the hadd punishment is obligatory.

وَالْخَبَرَانِ صَحِيحَانِ مَشْهُورَانِ وَقَدْ ذَكَرْنَاهُمَا بِأَسَانِيدِهِمَا فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا - وَكُلُّ مَا ذَكَرْنَا فَلَيْسَ عَلَيْهِ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ بَاطِلٌ مَرْدُودٌ بِنَصِّ كَلَامِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَبِضَرُورَةِ الْعَقْلِ، يَدْرِي كُلُّ ذِي عَقْلٍ أَنَّ كُلَّ مَا عُقِدَتْ صِحَّتُهُ بِصِحَّةِ مَا لَا يَصِحُّ، فَإِنَّهُ لَا يَصِحُّ، فَكُلُّ نِكَاحٍ عُقِدَ عَلَى أَنْ لَا صِحَّةَ لَهُ إِلَّا بِصِحَّةِ الشُّرُوطِ الْمَذْكُورَةِ فَلَا صِحَّةَ لَهُ فَإِذْ لَا صِحَّةَ لَهُ فَلَيْسَتْ زَوْجَةً، وَإِذْ لَيْسَتْ زَوْجَةً -: فَإِنْ كَانَ عَالِمًا فَعَلَيْهِ حَدُّ الزِّنَا وَلَا يَلْحَقُ بِهِ الْوَلَدُ لِأَنَّ النَّبِيَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ» فَلَيْسَ إِلَّا فِرَاشٌ أَوْ عِهْرٌ، فَإِذْ لَيْسَتْ فِرَاشًا فَهُوَ عِهْرٌ، وَالْعِهْرُ لَا يُلْحَقُ فِيهِ وَلَدٌ، وَالْحَدُّ فِيهِ وَاجِبٌ.

L30888 If he is ignorant, then no legal punishment (ḥadd) is imposed upon him, and the child is affiliated with him. This is because the Messenger of Allah (ﷺ) came with the truth, and people continued to embrace Islam while their marriages included both valid and invalid ones—such as marrying two sisters, contracting marriage with more than four, or marrying one’s father’s wife. Thus, the Prophet (ﷺ) annulled all such marriages, and the children were

فَإِنْ كَانَ جَاهِلًا فَلَا حَدَّ عَلَيْهِ وَالْوَلَدُ لَاحِقٌ بِهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَى بِالْحَقِّ، وَلَمْ تَزَلْ النَّاسُ يُسْلِمُونَ وَفِي نِكَاحِهِمْ الصَّحِيحُ وَالْفَاسِدُ، كَالْجَمْعِ بَيْنَ الْأُخْتَيْنِ، وَنِكَاحِ أَكْثَرَ مِنْ أَرْبَعٍ، وَامْرَأَةِ الْأَبِ، فَفَسَخَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كُلَّ ذَلِكَ وَأَلْحَقَ فِيهِ الْأَوْلَادَ، فَالْوَلَدُ لَاحِقٌ بِالْجَاهِلِ لِمَا ذَكَرْنَا.

[42] **Qur’an references (L30884):** Qur’an 4:4 (An-Nisa).

[43] **Hadith references (L30885):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

affiliated with them. Therefore, the child is affiliated with the ignorant one for the reasons stated above.

L30889 As for our exception—that a woman who was married without her guardian's permission has a null and void marriage—this is based on the established report we previously cited with its chain of transmission, from the Prophet's statement—peace and blessings be upon him: "Any woman who marries without her guardian's permission—her marriage is null and void," up to his saying—peace and blessings be upon him: "Then she is entitled to her dowry for what he has consummated with her." Another authenticated version states: "She is entitled to her dowry for what he has consummated with her."[44]

L30890 His statement—peace and blessings be upon him—"the Mahr is hers" specifies definiteness through the Arabic letters Alif and Lam (the definite article 'al-').

L30891 The statement of the Prophet—peace be upon him—"then she is entitled to her dowry"—through the grammatical attribution of the dowry to her, establishes these two textual proofs as obligating for her the agreed-upon, explicitly named dowry and a dowry that is due to her if no specified dowry exists, which is the dowry of her peers. It is impermissible to apply this ruling to every invalid marriage, for this constitutes analogy, and the entirety of analogy is invalid.

L30892 And His saying—peace and blessings be upon him—: "Indeed, your blood, your wealth, your honor, and your skins are sacred to you"—therefore it is established with certainty: that his wealth is forbidden to her except by an explicit text of the Qur'an or the Sunnah, *'And your Lord is never forgetful'* (Maryam 64).[45]

L30893–30894 We bear witness by the testimony of Allah, the Almighty, the Majestic, that if Allah, Exalted is He, had willed to assign a dowry for intercourse in an invalid marriage, He would have clarified it in His Book or upon the tongue of His Messenger—peace and blessings be upon him—just as He clarified it

وَأَمَّا اسْتِثْنَاؤُنَا الَّتِي نُكِحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ، فَلِلْخَبَرِ الثَّابِتِ الَّذِي ذَكَرْنَا قَبْلُ بِإِسْنَادِهِ مِنْ قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ» إِلَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فَالْمَهْرُ لَهَا بِمَا أَصَابَ مِنْهَا» وَصَحَّ أَيْضًا «فَلَهَا مَهْرُهَا بِمَا أَصَابَ مِنْهَا» .

فَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فَالْمَهْرُ لَهَا» تَعْرِيفٌ بِالْأَلِفِ وَاللَّامِ.

وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فَلَهَا مَهْرُهَا» إِضَافَةُ الْمَهْرِ إِلَيْهَا، فَهَذَانِ اللَّفْظَانِ يُوجِبَانِ لَهَا الْمَهْرَ الْمَعْهُودَ الْمُسَمَّى وَمَهْرًا يَكُونُ لَهَا إِنْ لَمْ يَكُنْ هُنَالِكَ مَهْرٌ مُسَمًّى وَهُوَ مَهْرُ مِثْلِهَا، وَلَا يَجُوزُ أَنْ يَحْكُمَ بِهَذَا لِكُلِّ نِكَاحٍ فَاسِدٍ، لِأَنَّهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَصَحَّ يَقِينًا: أَنَّ مَالَهُ حَرَامٌ عَلَيْهَا إِلَّا بِنَصِّ قُرْآنٍ، أَوْ سُنَّةٍ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَجْعَلَ فِي الْوَطْءِ فِي النِّكَاحِ الْفَاسِدِ مَهْرًا لَبَيَّنَهُ فِي كِتَابِهِ، أَوْ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا بَيَّنَ ذَلِكَ فِي الَّتِي نُكِحَتْ بِغَيْرِ إِذْنِ وَلِيِّهَا، وَلَمَا اقْتَصَرَ عَلَى هَذِهِ وَحْدَهَا دُونَ غَيْرِهَا تَلَبُّسًا عَلَى عِبَادِهِ، وَحَاشَا لِلَّهِ مِنْ هَذَا.

[44] **Hadith references (L30889):** Jami at-Tirmidhi 1102; Mishkat al-Masabih 3131.
[45] **Qur'an references (L30892):** Qur'an 19:64 (Maryam).

regarding the woman who was married without her guardian's permission. He would not have restricted this ruling to her case alone while excluding others, thereby causing confusion among His servants. Far be it from Allah to do such a thing.

L30895 If they say: Allah the Almighty has stated, {So whoever transgressed against you, then transgress against him in like manner as he transgressed against you} [Al-Baqarah: 194], and He the Exalted said, {Violations of sacred obligations are subject to retribution} [Al-Baqarah: 194]. Since intercourse in an invalid marriage constitutes transgression and a desecrated sanctity, is it then obligatory that he be transgressed against in his wealth in like manner, and that equivalent retribution be exacted from his wealth?[46]

فَإِنْ قَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] وَالْوَطْءُ فِي النِّكَاحِ الْفَاسِدِ اعْتِدَاءٌ وَحُرْمَةٌ مُنْتَهَكَةٌ، فَالْوَاجِبُ أَنْ يُعْتَدَى عَلَيْهِ فِي مَالِهِ بِمِثْلِ ذَلِكَ، وَأَنْ يَقْتَصَّ بِمِثْلِ ذَلِكَ فِي مَالِهِ؟

L30896 We said: The word of Allah, the Mighty and Majestic, is truth, while your deductions from it are the very essence of falsehood. For Allah, Exalted is He, has obligated that the aggressor be aggressed against, and that his inviolability be diminished in proportion to his violation of another's inviolability. Wealth is not equivalent to sexual honor unless a text is brought forth, at which point one must adhere strictly to it. Were this the case, it would obligate that whoever strikes or insults another must have their wealth diminished proportionally, and that their wealth itself be violated. It would also require one who commits adultery with a woman or sodomy with a boy to pay a dowry equivalent to hers or some penalty. These are the rulings of Satan, tyrannical officials, and immoral police—not the rulings of Allah, Exalted is He, nor those of His Messenger, may Allah's blessings and peace be upon him and his family. Indeed, the judgment of Allah, Exalted is He, and the judgment of His Messenger—may Allah's blessings and peace be upon him and his family—is that His prescribed limits shall not be transgressed. When He rules with a financial penalty, we rule by it; when He does not rule with it, we do not rule by it.

قُلْنَا: قَوْلُ اللَّهِ عَزَّ وَجَلَّ حَقٌّ، وَاسْتِنْتَاجُكُمْ مِنْهُ عَيْنُ الْبَاطِلِ؛ لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ أَنْ يُعْتَدَى عَلَى الْمُعْتَدِي، وَيُقَصَّ مِنْهُ حُرْمَتُهُ بِمِثْلِ مَا اعْتَدَى عَلَيْهِ فِي حُرْمَتِهِ، وَلَيْسَ الْمَالُ مِثْلًا لِلْفَرْجِ، إِلَّا أَنْ يَأْتِيَ بِهِ نَصٌّ فَيُوقَفُ عِنْدَهُ وَلَوْ كَانَ هَذَا لَوَجَبَ عَلَى مَنْ ضَرَبَ آخَرَ أَوْ شَتَمَهُ أَنْ يُقْتَصَّ مِنْ مَالِهِ مِثْلُ ذَلِكَ، وَأَنْ يُعْتَدَى عَلَيْهِ فِي مَالِهِ، وَلَوَجَبَ أَيْضًا عَلَى مَنْ زَنَى بِامْرَأَةٍ أَوْ لَاطَ بِغُلَامٍ مَهْرُ مِثْلِهَا أَوْ غَرَامَةٌ مَا، وَهَذِهِ أَحْكَامُ الشَّيْطَانِ، وَطُغَاةِ الْعُمَّالِ، وَفُسَّاقِ الشُّرَطِ، لَيْسَ أَحْكَامَ اللَّهِ تَعَالَى وَلَا أَحْكَامَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا حُكْمُ اللَّهِ تَعَالَى وَحُكْمُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ لَا تُتَعَدَّى حُدُودُهُ، فَإِذَا حَكَمَ بِغَرَامَةِ مَالٍ حَكَمْنَا بِهَا، وَإِذَا لَمْ يَحْكُمْ بِهَا لَمْ نَحْكُمْ بِهَا.

L30897 And with Allah, the Exalted, lies the divine success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L30898 We have mentioned the statement of ʿUmar ibn al-Khaṭṭāb (may Allah be pleased with him) as transmitted to us by Muḥammad ibn Saʿīd ibn Nabāt,

[46] **Qur'an references (L30895):** Qur'an 2:194 (Al-Baqarah).

who narrated from Ismāʿīl ibn Isḥāq al-Naṣrī, from ʿĪsā ibn Ḥabīb, from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Yazīd al-Muqrī, from his grandfather Muḥammad ibn ʿAbd Allāh, who narrated to us from Sufyān ibn ʿUyaynah, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, from Masrūq, that ʿUmar ibn al-Khaṭṭāb said: "If the marriage is unlawful, then the *mahr* is unlawful."

وَقَدْ ذَكَرْنَا قَوْلَ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - الَّذِي حَدَّثَنَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ النَّصْرِيُّ نا عِيسَى بْنُ حَبِيبٍ نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ ثنا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ " إِنْ كَانَ النِّكَاحُ حَرَامًا فَالصَّدَاقُ حَرَامٌ ".

L30899 We mentioned Ibn Umar's action to nullify the dower of the woman his slave married without his consent.

وَذَكَرْنَا فِعْلَ ابْنِ عُمَرَ فِي إِبْطَالِهِ صَدَاقَ الَّتِي تَزَوَّجَهَا عَبْدُهُ بِغَيْرِ إِذْنِهِ.

L30900 As narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, from Aḥmad ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Hammām ibn Yaḥyā, from Maṭar al-Warrāq, from Nāfiʿ: That when Ibn ʿUmar's slave married without his permission, he would flog him, separate the two, and say: "Have you made your private parts lawful?" while refusing to assign her a bridal gift.

كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ هَمَّامِ بْنِ يَحْيَى عَنْ مَطَرٍ الْوَرَّاقِ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ إِذَا تَزَوَّجَ عَبْدُهُ بِغَيْرِ إِذْنِهِ جَلَدَهُ وَفَرَّقَ بَيْنَهُمَا، وَقَالَ: أَبَحْتَ فَرْجَكَ؟ وَلَمْ يَجْعَلْ لَهَا صَدَاقًا.

L30901–30902 And through him to ʿAbd al-Raḥmān ibn Mahdī from Ḥammād ibn Zayd from ʿĀṣim al-Aḥwal, who said: I heard al-Ḥasan al-Baṣrī say regarding the free woman who marries a slave without his master's permission: She has made her private part lawful; she has no right to anything.

وَبِهِ إِلَى عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ عَاصِمٍ الْأَحْوَلِ قَالَ سَمِعْتُ الْحَسَنَ الْبَصْرِيَّ يَقُولُ فِي الْحُرَّةِ الَّتِي تَتَزَوَّجُ الْعَبْدَ بِغَيْرِ إِذْنِ سَيِّدِهِ: أَبَاحَتْ فَرْجَهَا، لَا شَيْءَ لَهَا.

L30903 And through him to Muhammad ibn al-Muthanna: From Abu Ahmad al-Zubayri, from Sufyan al-Thawri, from Dawud ibn Abi Hind, from al-Shaʿbi, who said: For any private part not made lawful, there is no bridal gift for it.

وَبِهِ إِلَى مُحَمَّدِ بْنِ الْمُثَنَّى نا أَبُو أَحْمَدَ الزُّبَيْرِيُّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ قَالَ: كُلُّ فَرْجٍ لَا يُحَلُّ فَلَا مَهْرَ لَهُ.

L30904 And through the narration of Abd al-Razzaq from Ibn Jurayj, who said: Ibn Abi Layla informed me on the authority of their jurists regarding the woman whom the slave marries without his master's permission? He said: Does the master take from her what his slave gave her as her bridal gift (mahr)? She hastened before knowing the matter.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي ابْنُ أَبِي لَيْلَى عَنْ فُقَهَائِهِمْ فِي الَّتِي يَنْكِحُهَا الْعَبْدُ بِغَيْرِ إِذْنِ سَيِّدِهِ؟ قَالَ: يَأْخُذُ السَّيِّدُ مِنْهَا مَا أَصْدَقَهَا غُلَامُهُ؟ عَجَّلَتْ قَبْلَ أَنْ تَعْلَمَ.

L30905 And with him to ʿAbd al-Razzāq from Maʿmar, from al-Zuhrī, from Su-

laymān ibn Yasār that he said: “Regarding the woman who marries during her waiting period: her bridal gift is allocated to the public treasury.”

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّهُ قَالَ: فِي الَّتِي تَنْكِحُ فِي عِدَّتِهَا: مَهْرُهَا فِي بَيْتِ الْمَالِ.

L30906 Through the chain of transmission of Waki‘ from Shu‘bah ibn al-Ḥajjāj, who said: I asked al-Ḥakam ibn ‘Utaybah and Ḥammād ibn Abī Sulaymān about a slave who marries a free woman without his master’s permission. They both said that they must be separated, she is not entitled to the mahr, and what she took must be taken from her.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ بْنِ الْحَجَّاجِ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ الْعَبْدِ يَتَزَوَّجُ الْحُرَّةَ بِغَيْرِ إذْنِ مَوْلَاهُ؟ فَقَالَا جَمِيعًا: يُفَرَّقُ بَيْنَهُمَا، وَلَا صَدَاقَ لَهَا، وَيُؤْخَذُ مِنْهَا مَا أَخَذَتْ.

L30907 And the like of this is from Ibrāhīm al-Nakha‘ī - and this is the opinion of Abū Sulaymān and our companions.

وَنَحْوُ هَذَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L30908 As for Mālik, he makes distinctions here that are unclear: such as marriages he deems invalid (fasid), which are annulled before consummation but attain legal effects after consummation.

وَأَمَّا مَالِكٌ: فَإِنَّهُ فَرَّقَ هَاهُنَا فُرُوقًا لَا تُفْهَمُ -: فَمِنْهَا: نِكَاحَاتٌ هِيَ عِنْدَهُ فَاسِدَةٌ تُفْسَخُ قَبْلَ الدُّخُولِ وَتَصِحُّ بَعْدَ الدُّخُولِ.

L30909 Among them are those that annul the marriage before consummation and also after consummation—such as cases involving close kinship. However, if they remain together for an extended period, the marriage is not annulled.

وَمِنْهَا: مَا يَفْسَخُهُ قَبْلَ الدُّخُولِ وَبَعْدَ الدُّخُولِ أَيْضًا مَا كَانَ مِنْ قُرْبٍ فَإِذَا طَالَ بَقَاؤُهُ مَعَهَا لَمْ يَفْسَخْهُ.

L30910 Among these are reasons that dissolve the marriage retroactively, whether before or after consummation—even if he remains with her for a prolonged period after consummation, as long as she has not borne him children. If she has borne him children, the marriage is not dissolved.

وَمِنْهَا: مَا يَفْسَخُهُ قَبْلَ الدُّخُولِ وَبَعْدَ الدُّخُولِ، وَإِنْ طَالَ بَقَاؤُهُ مَعَهَا مَا لَمْ تَلِدْ لَهُ أَوْلَادًا، فَإِنْ وَلَدَتْ لَهُ أَوْلَادًا لَمْ يَفْسَخْهُ.

L30911 Among the grounds for annulment are those that invalidate the marriage before and after consummation, even if his stay with her is prolonged and she has borne him male children.

وَمِنْهَا: مَا يَفْسَخُهُ قَبْلَ الدُّخُولِ وَبَعْدَهُ، وَإِنْ طَالَ بَقَاؤُهُ مَعَهَا وَوَلَدَتْ لَهُ الْأَوْلَادَ.

L30912 These are strange assertions whose origin no one knows, nor do we know anyone who made them before him or alongside him except those among his followers who imitated him. Every marriage in the world must necessarily be either valid or non-valid, with no third category possible. A valid marriage remains perpetually valid unless the Qur’an or Sunnah requires its dissolution, in which case it is dissolved after being valid once the condition specified in the textual ruling for dissolution arises.

وَهَذِهِ عَجَائِبُ لَا يَدْرِي أَحَدٌ مِنْ أَيْنَ قَالَهَا، وَلَا نَعْلَمُ أَحَدًا قَالَهَا قَبْلَهُ وَلَا مَعَهُ إلَّا مِنْ قَلَّدَهُ مَنْ الْمُنْتَمِينَ إلَيْهِ، وَلَا يَخْلُو كُلُّ نِكَاحٍ فِي الْعَالَمِ مِنْ أَنْ يَكُونَ صَحِيحًا أَوْ غَيْرَ صَحِيحٍ، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ، فَالصَّحِيحُ صَحِيحٌ أَبَدًا إلَّا أَنْ يُوجِبَ فَسْخَهُ قُرْآنٌ أَوْ سُنَّةٌ، فَيُفْسَخُ بَعْدَ صِحَّتِهِ مَتَى وَقَعَتْ الْحَالُ الَّتِي جَاءَ النَّصُّ بِفَسْخِهِ مَعَهَا.

وَأَمَّا الَّذِي لَيْسَ صَحِيحًا فَلَا يَصِحُّ أَبَدًا، لِأَنَّ الْفَرْجَ الْحَرَامَ لَا يُحِلُّهُ الدُّخُولُ بِهِ وَطْؤُهُ، وَلَا طُولُ الْبَقَاءِ عَلَى اسْتِحْلَالِهِ بِالْبَاطِلِ، وَلَا وِلَادَةُ الْأَوْلَادِ مِنْهُ، بَلْ هُوَ حَرَامٌ أَبَدًا.

L30913–30914 As for what is invalid, it never becomes valid, because illicit intercourse is not made lawful through engaging in it, persisting in wrongfully considering it permissible, or bearing children from it. Rather, it remains forever forbidden.

فَإِنْ قَالُوا: لَيْسَ بِحَرَامٍ؟ قُلْنَا: فَلِمَ فَسَخْتُمُ الْعَقْدَ عَلَيْهِ قَبْلَ الدُّخُولِ إِذًا وَهُوَ صَحِيحٌ غَيْرُ حَرَامٍ؟ وَهَذِهِ أُمُورٌ لَا نَدْرِي كَيْفَ يَنْشَرِحُ قَلْبُ مَنْ نَصَحَ نَفْسَهُ لِاعْتِقَادِهَا، أَوْ كَيْفَ يَنْطَلِقُ لِسَانُهُ بِنَصْرِهَا؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L30915 If they say, "It is not forbidden?" We reply: Then why did you dissolve the contract concerning it before consummation, when it is valid and not forbidden? These are matters beyond our comprehension—how the heart of one who persuades himself to embrace such beliefs finds comfort, or how his tongue so readily champions them. We ask Allah for protection.

وَأَمَّا كُلُّ عَقْدٍ صَحَّ ثُمَّ لَمَّا صَحَّ تَعَاقَدَا شُرُوطًا فَاسِدَةً فَإِنَّ الْعَقْدَ صَحِيحٌ لَازِمٌ، وَإِذْ هُوَ صَحِيحٌ لَازِمٌ فَلَا يَجُوزُ أَنْ يُبْطَلَ بِغَيْرِ قُرْآنٍ، أَوْ سُنَّةٍ - وَمُحَرِّمُ الْحَلَالِ كَمُحَلِّلِ الْحَرَامِ، وَلَا فَرْقَ، لَكِنْ تَبْطُلُ تِلْكَ الشُّرُوطُ الْفَاسِدَةُ أَبَدًا وَيُفْسَخُ حُكْمُ مَنْ حَكَمَ بِإِمْضَائِهَا، وَالْحَقُّ حَقٌّ، وَالْبَاطِلُ بَاطِلٌ، قَالَ اللَّهُ تَعَالَى {لِيُحِقَّ الْحَقَّ وَيُبْطِلَ الْبَاطِلَ وَلَوْ كَرِهَ الْمُجْرِمُونَ} [الأنفال: ٨] وَقَالَ تَبَارَكَ وَتَعَالَى {وَيُحِقُّ اللَّهُ الْحَقَّ بِكَلِمَاتِهِ} [يونس: ٨٢] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L30916 As for every valid contract where, after its validity, the parties stipulated invalid conditions, the contract remains valid and binding. Since it is valid and binding, it cannot be invalidated except by the Qur'an or the Sunnah—for one who prohibits what is lawful is like one who permits what is unlawful, with no distinction. However, those invalid conditions are perpetually void, and the ruling of anyone who judged by enforcing them is revoked. Truth remains truth, and falsehood remains falsehood. Allah, the Most High, said: "That He may establish the truth and abolish falsehood, even if the criminals detest it" (8:8). And He, Blessed and Exalted, said: "Allah establishes the truth through His words" (10:82). Success is through Allah, the Exalted.[47]

[مَسْأَلَة كُلُّ مَا جَازَ أَنْ يُتَمَلَّكَ بِالْهِبَةِ أَوْ بِالْمِيرَاثِ جَازَ أَنْ يَكُون صَدَاقًا]

L30917

The ruling is that anything permissible to be owned through gift or inheritance is valid as mahr.

١٨٥٠ - مَسْأَلَةٌ: وَكُلُّ مَا جَازَ أَنْ يُتَمَلَّكَ بِالْهِبَةِ أَوْ بِالْمِيرَاثِ فَجَائِزٌ أَنْ يَكُون صَدَاقًا وَأَنْ يُخَالَعَ بِهِ وَأَنْ يُؤَاجَرَ بِهِ سَوَاءٌ حَلَّ بَيْعُهُ أَوْ لَمْ يَحِلَّ كَالْمَاءِ، وَالْكَلْبِ، وَالسِّنَّوْرِ، وَالثَّمَرَةِ الَّتِي لَمْ يَبْدُ صَلَاحُهَا وَالسُّنْبُلِ قَبْلَ أَنْ يَشْتَدَّ، لِأَنَّ النِّكَاحَ لَيْسَ بَيْعًا، هَذَا مَا لَا يَشُكُّ فِيهِ ذُو حِسٍّ سَلِيمٍ.

L30918 1850. Issue: Anything that can be owned through gift or inheritance may validly serve as *mahr*, serve as compensation in a *khul'* divorce, or be leased—whether its sale is permissible or not. This includes water, dogs, cats, a fruit whose soundness has not yet become apparent, and ears of grain before they mature, for marriage is not a sale. This is something no rationally sound person would question.

وَقَدْ قَالَ بَعْضُ الْجَاهِلِينَ: لَا يَجُوزُ الصَّدَاقُ بِمَا لَا يَجُوزُ بَيْعُهُ، وَهَذَا حُكْمٌ فَاسِدٌ بِلَا بُرْهَانٍ، لَا مِنْ

L30919–30921 Some of the ignorant said: "A dowry is not permissible with what cannot be lawfully sold." This is a corrupt ruling without proof—neither from the

[47] **Qur'an references (L30916):** Qur'an 8:8 (Al-Anfal); Qur'an 10:82 (Yunus).

Qur'an, nor the Sunnah, nor an unsound narration, nor a Companion's statement, nor analogy, nor any rationally defensible opinion. What then did he sell? Or what did he purchase? Her very neck? But selling free persons is invalid. Or her private part? This is more evidently forbidden, yet he legitimized her private part through Allah's marriage contract—which was forbidden to him before wedlock—just as she legitimized his private part through Allah's marriage contract, which was forbidden to her before wedlock. Thus one private part for another, and human aspect for human aspect. Yet Allah obligated upon him alone the dowry for her, in addition to her legitimization of his private part. A sale is not thus—it is merely an object exchanged for another object, one being the price and the other the priced commodity, with no added obligation for either. Thus it becomes clear to every sound mind the corruption of those who equate marriage with sale. Moreover, a sale without price stipulation is invalid, while marriage without dowry stipulation remains valid and lawful. Strangely, they prohibit marriage with unripe fruit as dowry by analogy to sale, yet permit marriage with a male servant, house, or maid—even without specifying any attributes—while such sale is impermissible according to them... Nor [the sale of] summer, nor the sale of a house, nor the sale of an unspecified servant, nor [the sale of] an undescribed item—as you can see—and we seek refuge in Allah from negligence in error concerning matters of religion.

وَقَالَ بَعْضُ الْغَافِلِينَ: لَا يَحِلُّ الصَّدَاقُ بِمَا لَا يَجُوزُ بَيْعُهُ وَهَذَا حُكْمٌ فَاسِدٌ بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ، وَلَيْتَ شِعْرِي مَاذَا بَاعَ أَوْ مَاذَا اشْتَرَى أَرَقَبَتَهَا؟ فَبَيْعُ الْحُرِّ لَا يَجُوزُ أَمْ فَرْجَهَا؟ فَهَذَا أَبْيَنُ فِي الْحَرَامِ وَهُوَ قَدْ اسْتَحَلَّ بِكَلِمَةِ اللَّهِ تَعَالَى فَرْجَهَا الَّذِي كَانَ حَرَامًا عَلَيْهِ قَبْلَ النِّكَاحِ كَمَا اسْتَحَلَّتْ بِكَلِمَةِ اللَّهِ تَعَالَى فَرْجَهُ الَّذِي كَانَ حَرَامًا عَلَيْهَا قَبْلَ النِّكَاحِ فَفَرْجٌ بِفَرْجٍ وَبَشَرَةٌ بِبَشَرَةٍ، وَأَوْجَبَ اللَّهُ تَعَالَى عَلَيْهِ وَحْدَهُ الصَّدَاقَ لَهَا زِيَادَةً عَلَى اسْتِحْلَالِهَا فَرْجَهُ، وَلَيْسَ الْبَيْعُ هَكَذَا إنَّمَا هُوَ جِسْمٌ يُبَادَلُ بِجِسْمٍ، أَحَدُهُمَا ثَمَنٌ وَالْآخَرُ مَبِيعٌ مَثْمُونٌ لَا زِيَادَةَ هَاهُنَا لِأَحَدِهِمَا عَلَى الْآخَرِ، فَوَضَحَ لِكُلِّ ذِي عَقْلٍ سَلِيمٍ فَسَادُ قَوْلِ مَنْ شَبَّهَ النِّكَاحَ بِالْبَيْعِ، وَأَيْضًا فَإِنَّ الْبَيْعَ بِغَيْرِ ذِكْرِ ثَمَنٍ لَا يَحِلُّ وَالنِّكَاحُ بِغَيْرِ ذِكْرِ صَدَاقٍ حَلَالٌ صَحِيحٌ، وَالْعَجَبُ أَنَّهُمْ يَمْنَعُونَ النِّكَاحَ بِصَدَاقِ ثَمَرَةٍ لَمْ يَبْدُ صَلَاحُهَا قِيَاسًا عَلَى الْبَيْعِ ثُمَّ أَجَازُوا النِّكَاحَ بِوَصِيفٍ وَبَيْتٍ وَخَادِمٍ، وَهَكَذَا غَيْرُ مَوْصُوفٍ بِشَيْءٍ مِنْ ذَلِكَ، وَلَا يَحِلُّ عِنْدَهُمْ بَيْعُ وَصِيفٍ وَلَا بَيْعُ بَيْتٍ وَلَا بَيْعُ خَادِمٍ غَيْرِ مُعَيَّنٍ بِشَيْءٍ مِنْ ذَلِكَ وَلَا مَوْصُوفٍ وَهَذَا كَمَا تَرَى - وَنَعُوذُ بِاَللَّهِ مِنْ التَّهَوُّكِ فِي الْخَطَأِ فِي الدِّينِ.

Issue: Anything that has a half—whether the half is small or large in quantity—is valid as a mahr (dower).

[مَسْأَلَةٌ كُلُّ مَا لَهُ نِصْفٌ قَلَّ أَوْ كَثُرَ جَازَ أَنْ يَكُونَ صَدَاقًا]

L30922

1851 - Issue: It is permissible for the bridal gift (mahr) to consist of anything that can be divided into halves, whether minimal or substantial—even a single grain of wheat, a grain of barley, or similar items. Likewise, any lawful, specified service—such as teaching a portion of the Quran, imparting religious knowledge, construction, sewing, or other such acts—is valid if both parties mutually consent. Differences of opinion exist regarding this matter.

L30923

١٨٥١ - مَسْأَلَةٌ: وَجَائِزٌ أَنْ يَكُونَ صَدَاقًا كُلُّ مَا لَهُ نِصْفٌ قَلَّ أَوْ كَثُرَ وَلَوْ أَنَّهُ حَبَّةُ بُرٍّ أَوْ حَبَّةُ شَعِيرٍ أَوْ غَيْرُ ذَلِكَ، وَكَذَلِكَ كُلُّ عَمَلٍ حَلَالٍ مَوْصُوفٍ، كَتَعْلِيمِ شَيْءٍ مِنْ الْقُرْآنِ أَوْ مِنْ الْعِلْمِ أَوْ الْبِنَاءِ أَوْ الْخِيَاطَةِ أَوْ غَيْرِ ذَلِكَ إذَا تَرَاضَيَا بِذَلِكَ - وَوَرَدَ فِي هَذَا اخْتِلَافٌ.

L30924 It has been narrated to us via Waki‘, from Dawud ibn Yazid al-Awdi, from al-Sha‘bi, from ‘Ali—may Allah be pleased with him—who said: “There can be no mahr (bridal gift) less than ten.”

كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ دَاوُد بْنِ يَزِيدَ الْأَوْدِيِّ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: لَا يَكُونُ صَدَاقٌ أَقَلَّ مِنْ عَشَرَةٍ.

L30925 And through the chain of ʿAbd al-Razzāq, from Ḥasan—his companion—from Shurayk, from Dāwūd ibn Yazīd al-Awdī, from al-Shaʿbī, from ʿAlī ibn Abī Ṭālib (may Allah be pleased with him), who said: “The dowry must not be less than ten dirhams.” Through the same chain reaching back to the aforementioned Ḥasan, al-Mughīrah informed me from Ibrāhīm al-Nakhaʿī, who said: “I deem it reprehensible for the dowry to resemble the compensation of a prostitute; rather, ten and twenty dirhams.” This is the opinion of Abū Ḥanīfah and his companions.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ حَسَنٍ صَاحِبٍ لَهُ عَنْ شَرِيكٍ عَنْ دَاوُد بْنِ يَزِيدَ الْأَوْدِيِّ عَنْ الشَّعْبِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: لَا يَكُونُ الْمَهْرُ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ -: وَبِهِ إلَى حَسَنٍ الْمَذْكُورِ أَخْبَرَنِي الْمُغِيرَةُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: " أَكْرَهُ أَنْ يَكُونَ الْمَهْرُ مِثْلَ أَجْرِ الْبَغِيِّ، وَلَكِنْ الْعَشَرَةُ دَرَاهِمَ وَالْعِشْرُونَ " وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ.

L30926 And from Ibrāhīm, there are two narrations—other than this one—both authentic:

وَعَنْ إبْرَاهِيمَ رِوَايَتَانِ غَيْرُ هَذِهِ صَحِيحَتَانِ -:

L30927 One of them: We narrated it through the chain of Shubah from al-Ḥakam ibn ʿUtaybah from Ibrāhīm al-Nakhaʿī, who said: A man should not marry on less than forty.

إحْدَاهُمَا: رُوِّينَاهَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: لَا يَتَزَوَّجُ الرَّجُلُ عَلَى أَقَلَّ مِنْ أَرْبَعِينَ.

L30928 The second [narration]: We have narrated it via Al-Ḥajjāj ibn Al-Minhāl, who narrated to us from Abū ‘Awanah, from Al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʿī, who said: “The Sunnah regarding marriage is a raṭl of silver.”

وَالْأُخْرَى: رُوِّينَاهَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: السُّنَّةُ فِي النِّكَاحِ الرَّطْلُ مِنْ الْفِضَّةِ.

L30929 It was narrated to us through Shuʿbah from Abū Salamah al-Kūfī, who said: I heard al-Shaʿbī saying: They deemed it reprehensible for a man to marry [a woman] with a dowry of less than three uqiyahs.

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي سَلَمَةَ الْكُوفِيِّ قَالَ: سَمِعْت الشَّعْبِيَّ يَقُولُ: كَانُوا يَكْرَهُونَ أَنْ يَتَزَوَّجَ الرَّجُلُ عَلَى أَقَلَّ مِنْ ثَلَاثَةِ أَوَاقٍ.

L30930 And via the chain of Saʿīd ibn Manṣūr: Hushaym reported to us; Ḥusām ibn al-Miṣakk reported to us from Abū Maʿshar, from Saʿīd ibn Jubayr, that he used to prefer the dower to be fifty dirhams.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا حُسَامُ بْنُ الْمِصَكِّ عَنْ أَبِي مَعْشَرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّهُ كَانَ يُحِبُّ أَنْ يَكُونَ الصَّدَاقُ خَمْسِينَ دِرْهَمًا.

L30931 Abū Muḥammad said: As for the narration from al-Shaʿbī, it is discarded because it is transmitted from Abū Salama al-Kūfī—whose identity is unknown.

Even if it were authentic, it and the two reports from Ibrāhīm regarding the forty would state: either a dirham, an awqiyyah, or a dinar.

قَالَ أَبُو مُحَمَّد: أَمَّا الرِّوَايَةُ عَنْ الشَّعْبِيِّ فَسَاقِطَةٌ، لِأَنَّهَا عَنْ أَبِي سَلَمَةَ الْكُوفِيِّ - وَلَا يُدْرَى مَنْ هُوَ - وَلَوْ صَحَّتْ لَكَانَتْ هِيَ وَالرِّوَايَتَانِ عَنْ إبْرَاهِيمَ فِي الْأَرْبَعِينَ: إمَّا دِرْهَمًا، وَإِمَّا أُوقِيَّةً، وَإِمَّا دِينَارًا.

L30932 The narration attributed to Saʿīd ibn Jubayr constitutes a statement lacking substantiation, and anything of this kind is invalid.

وَالرِّوَايَةُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَوْلٌ بِلَا بُرْهَانٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ.

L30933–30934 As for the narration from Ibrāhīm regarding the ten dirhams, it is rejected because it is from Ḥasan, the companion of ʿAbd al-Razzāq, and no one knows who he is.

وَأَمَّا الرِّوَايَةُ عَنْ إبْرَاهِيمَ بِالْعَشَرَةِ دَرَاهِمَ فَسَاقِطَةٌ، لِأَنَّهَا عَنْ حَسَنٍ صَاحِبِ عَبْدِ الرَّزَّاقِ - وَلَا يَدْرِي أَحَدٌ مَنْ هُوَ.

L30935 The narration from ʿAlī—may Allah be pleased with him—is invalid, as it is transmitted from Dāwūd ibn Yazīd al-Awdī—who is deemed extremely weak. Al-Shaʿbī used to say: “If one observes his [Dāwūd’s] confusion, you will not die until you have three cauterizations on your head.” The narrator stated: “Thus, he did not die until he was cauterized three times on his head.”

وَالرِّوَايَةُ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - بَاطِلٌ، لِأَنَّهَا عَنْ دَاوُد بْنِ يَزِيدَ الْأَوْدِيِّ - وَهُوَ فِي غَايَةِ السُّقُوطِ، كَانَ الشَّعْبِيُّ يَقُولُ: إذَا رَأَى اخْتِلَاطَهُ لَا تَمُوتُ حَتَّى تَكُونَ فِي رَأْسِك ثَلَاثُ كَيَّاتٍ، قَالَ الرَّاوِي: فَمَا مَاتَ حَتَّى كُوِيَ فِي رَأْسِهِ ثَلَاثَ كَيَّاتٍ.

L30936 Then, it is *mursalah* because Al-Shaʿbī did not hear any ḥadīth from ʿAlī at all.

ثُمَّ هِيَ مُرْسَلَةٌ، لِأَنَّ الشَّعْبِيَّ لَمْ يَسْمَعْ مِنْ عَلِيٍّ قَطُّ حَدِيثًا.

L30937 They defended their baseless claim by citing two fabricated reports:

وَاحْتَجُّوا لِقَوْلِهِمْ هَذَا الْفَاسِدِ بِخَبَرَيْنِ مَوْضُوعَيْنِ -:

L30938 One of the two narrators—Haram ibn Uthman, from my two sons of Jabir ibn Abdullah, who narrated from their father—reported that the Prophet (peace be upon him) said: “There is no bridal gift less than ten dirhams.”

أَحَدُهُمَا - عَنْ حَرَامِ بْنِ عُثْمَانَ عَنْ ابْنَيْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ أَبِيهِمَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا صَدَاقَ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ» .

L30939 Another narration is transmitted via Baqiyyah from Mubashshir ibn ʿUbayd al-Ḥalabī from al-Ḥajjāj ibn Arṭāʾ from ʿAṭāʾ; and via ʿAmr ibn Dīnār from Jābir ibn ʿAbdullāh from the Messenger of Allah (peace be upon him): «There is no dowry less than ten dirhams.»

وَالْآخَرُ - عَنْ بَقِيَّةَ عَنْ مُبَشِّرِ بْنِ عُبَيْدٍ الْحَلَبِيِّ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ عَطَاءٍ، وَعَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا مَهْرَ دُونَ عَشَرَةِ دَرَاهِمَ» .

L30940 They said: Marriage constitutes the legalization of the private part (being an organ of hers) - thus it must only be permissible through what mandates the

severing of the hand. The Mālikīs have also cited this invalid jurisprudential subcategory as proof.

وَقَالُوا: النِّكَاحُ اسْتِبَاحَةُ فَرْجٍ - وَهُوَ عُضْوٌ مِنْهَا - فَوَجَبَ أَنْ لَا يَجُوزَ إِلَّا بِمَا تُقْطَعُ فِيهِ الْيَدُ - وَقَدْ احْتَجَّ الْمَالِكِيُّونَ بِهَذِهِ التَّشْعِيبَةِ السَّاقِطَةِ أَيْضًا.

L30941 Abu Muhammad said: They have no proof except what we have mentioned. The two mentioned hadiths are undoubtedly fabricated—the first: transmitted through Harām ibn Uthmān—who is in the utmost degree of disrepute; narrating from him is impermissible—and the second: through Mubashshir ibn Ubaid al-Halabī—who is a notorious fabricator known for forging lies against the Messenger of Allah, may Allah the Exalted bless him and his household and grant him peace—transmitting from al-Ḥajjāj ibn Arṭāh—who is rejected. Even if they were authentic, they would have contradicted them, for they permit marriage with a dowry of a dinar that does not equal ten dirhams.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لَهُمْ غَيْرُ مَا ذَكَرْنَا، وَالْحَدِيثَانِ الْمَذْكُورَانِ مَكْذُوبَانِ بِلَا شَكٍّ - أَحَدُهُمَا: مِنْ طَرِيقِ حَرَامِ بْنِ عُثْمَانَ - وَهُوَ فِي غَايَةِ السُّقُوطِ - لَا تَحِلُّ الرِّوَايَةُ عَنْهُ - وَالْآخَرُ: مِنْ طَرِيقِ مُبَشِّرِ بْنِ عُبَيْدٍ الْحَلَبِيِّ - وَهُوَ كَذَّابٌ مَشْهُورٌ بِوَضْعِ الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ سَاقِطٌ - وَلَوْ صَحَّ لَكَانُوا قَدْ خَالَفُوهُ، لِأَنَّهُمْ يُجِيزُونَ النِّكَاحَ عَلَى دِينَارٍ لَا يُسَاوِي عَشَرَةَ دَرَاهِمَ.

L30942 So all of that is rendered invalid - and praise be to Allah, Lord of the worlds.

فَبَطَلَ كُلُّ ذَلِكَ - وَالْحَمْدُ اللَّهِ رَبِّ الْعَالَمِينَ.

L30943–30945 As for their assertion—"It is an analogy to cutting off the thief's hand"—this is the most absurd analogy in the world, for there is no resemblance between marriage and theft. Furthermore, the hand is entirely severed while the genitalia are not severed. Marriage is obedience, theft is disobedience. Were they to draw an analogy between permitting the genitalia and permitting the back in the punishment for drinking wine, it would be ... He plunged into the disgraces of analogy and its absurdities, for both are concealed body parts not subject to amputation. In all cases, it has never been valid to mandate amputation for less than ten dirhams. Thus, it is certain falsehood built upon falsehood, and an error resembling an error - therefore, this corrupt assertion is invalidated.

وَأَمَّا قَوْلُهُمْ: إنَّهُ قِيَاسٌ عَلَى قَطْعِ يَدِ السَّارِقِ؟ فَهُوَ أَسْخَفُ قِيَاسٍ فِي الْعَالَمِ، لِأَنَّهُ لَا شَبَهَ بَيْنَ النِّكَاحِ وَالسَّرِقَةِ - وَأَيْضًا: فَإِنَّ الْيَدَ تُقْطَعُ أَلْبَتَّةَ وَالْفَرْجَ لَا يُقْطَعُ، وَالنِّكَاحَ طَاعَةٌ، وَالسَّرِقَةَ مَعْصِيَةٌ، وَلَوْ قَاسُوا إبَاحَةَ الْفَرْجِ عَلَى إبَاحَةِ الظَّهْرِ فِي حَدِّ الْخَمْرِ، لَكَانَ أَدْخَلَ فِي مَخَازِي الْقِيَاسِ وَسَخَافَاتِهِ، لِأَنَّ كِلَيْهِمَا عُضْوٌ مَسْتُورٌ لَا يُقْطَعُ، وَقَبْلُ وَبَعْدُ فَمَا صَحَّ قَطُّ أَنْ لَا قَطْعَ فِي أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ، فَهُوَ بَاطِلٌ مُتَيَقَّنٌ عَلَى بَاطِلٍ، وَخَطَأٌ مُشَبَّهٌ بِخَطَأٍ - فَسَقَطَ هَذَا الْقَوْلُ الْفَاسِدُ.

L30946 Mālik said: It should not be less than three dirhams, and they analogized it to the amputation of the hand as a punishment for theft. The discussion regarding the invalidity of this opinion was discussed earlier.

وَقَالَ مَالِكٌ: لَا يَكُونُ أَقَلَّ مِنْ ثَلَاثَةِ دَرَاهِمَ، وَقَاسُوهُ عَلَى قَطْعِ الْيَدِ، وَقَدْ مَضَى الْكَلَامُ فِي سُقُوطِ هَذَا الْقَوْلِ آنِفًا.

L30947 There has never come any text stating that there is no amputation for less than three dirhams. The authenticated text is solely: "There is no amputation except for a quarter of a dinar or more." Yet they do not consider the value

equivalent to a quarter dinar at all, neither in amputation nor in dowry. Thus, the invalidity of all they have said is now undeniably clear without any ambiguity.

وَمَا جَاءَ نَصٌّ قَطُّ بِأَنْ لَا قَطْعَ فِي أَقَلَّ مِنْ ثَلَاثَةِ دَرَاهِمَ، إنَّمَا صَحَّ النَّصُّ «لَا قَطْعَ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا» ، وَهُمْ لَا يُرَاعُونَ فِي الْقَطْعِ وَلَا فِي الصَّدَاقِ رُبْعَ دِينَارٍ فِي الْقِيمَةِ أَصْلًا، فَلَاحَ بُطْلَانُ كُلِّ مَا قَالُوهُ بِيَقِينٍ لَا إشْكَالَ فِيهِ.

L30948 The Malikis also obfuscated their position by stating that Allah, the Almighty and Majestic, said: "Whoever among you cannot afford to marry chaste believing women, then [let him marry] from your young believing bondwomen under your guardianship" [An-Nisa: 25].[48]

وَمَوَّهَ الْمَالِكِيُّونَ أَيْضًا بِأَنْ قَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ {وَمَنْ لَمْ يَسْتَطِعْ مِنْكُمْ طَوْلًا أَنْ يَنْكِحَ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ فَمِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مِنْ فَتَيَاتِكُمُ الْمُؤْمِنَاتِ} [النساء: ٢٥] .

L30949 They said: If the dowry were permissible whether small or large, would not every person possessing financial capacity marry a free, believing woman? Abū Muḥammad said: We do not know how to interpret this statement from its speaker, except that we have no doubt he was not accompanied by the presence of piety and fear of Allah Almighty in this matter. For they unanimously hold that the dowry of a married slave woman cannot be less than that of a free woman. How then can they distinguish after this between possessing financial capacity for marrying a free woman and possessing financial capacity for marrying a slave woman? We seek refuge in Allah from obfuscating His religion, the Mighty and Majestic, through what we know to be false while deliberately intending it.

قَالُوا: فَلَوْ جَازَ الصَّدَاقُ بِمَا قَلَّ أَوْ كَثُرَ لَكَانَ كُلُّ أَحَدٍ وَاجِدَ الطَّوْلِ لِحُرَّةٍ مُؤْمِنَةٍ؟ قَالَ أَبُو مُحَمَّدٍ: لَا نَدْرِي عَلَى مَا نَحْمِلُ هَذَا الْقَوْلَ مِنْ قَائِلِهِ، إلَّا أَنَّنَا لَا نَشُكُّ فِي أَنَّهُ لَمْ يَحْضُرْهُ فِيهِ مِنْ الْوَرَعِ وَتَقْوَى اللَّهِ تَعَالَى حَاضِرٌ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّهُ لَا يَجُوزُ أَنْ يَكُونَ صَدَاقُ الْأَمَةِ الْمُتَزَوِّجَةِ أَقَلَّ مِنْ صَدَاقِ الْحُرَّةِ، فَكَيْفَ يُفَرَّقُونَ بَعْدَ هَذَا بَيْنَ وُجُودِ الطَّوْلِ لِنِكَاحِ حُرَّةٍ، وَبَيْنَ وُجُودِ الطَّوْلِ لِنِكَاحِ أَمَةٍ - وَنَعُوذُ بِاَللَّهِ مِنْ التَّمْوِيهِ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ بِمَا نَدْرِي أَنَّهُ بَاطِلٌ قَاصِدِينَ إلَيْهِ عَمْدًا.

L30950 Some of them said: How can it be permissible for the dowry to be with whatever is little or much, while the mutʿah in divorce is only limited? We replied: Because Allah the Exalted did not set a limit for the dowry except what they mutually agree on, and He limited the mutʿah in divorce *according to the wealthy's capacity and the needy's capacity* (2:236). Thus, the distinction between the two matters is clearer than the sun in the view of those who do not transgress the limits set by Allah the Exalted.[49]

وَقَالَ بَعْضُهُمْ: كَيْفَ يَجُوزُ أَنْ يَكُونَ الصَّدَاقُ بِمَا قَلَّ أَوْ كَثُرَ وَلَا تَكُونُ الْمُتْعَةُ فِي الطَّلَاقِ إلَّا مَحْدُودَةً؟ قُلْنَا: لِأَنَّ اللَّهَ تَعَالَى لَمْ يَحُدَّ فِي الصَّدَاقِ حَدًّا إلَّا مَا تَرَاضَيَا بِهِ، وَحَدَّ فِي الْمُتْعَةِ فِي الطَّلَاقِ {عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ} [البقرة: ٢٣٦] فَالْفَرْقُ بَيْنَ الْأَمْرَيْنِ أَوْضَحُ مِنْ الشَّمْسِ عِنْدَ مَنْ لَا يَتَعَدَّى حُدُودَ اللَّهِ تَعَالَى.

L30951 The most astonishing thing is the statement of some who say: "Allah, the Exalted and Majestic, has magnified the matter of dowry, so it is not permis-

وَأَعْجَبُ شَيْءٍ قَوْلُ بَعْضِهِمْ: إنَّ اللَّهَ عَزَّ وَجَلَّ عَظَّمَ أَمْرَ الصَّدَاقِ، فَلَا يَجُوزُ أَنْ يَكُونَ قَلِيلًا؟ قُلْنَا: هَذَا الْعَجَبُ حَقًّا إنَّمَا عَظَّمَ اللَّهُ تَعَالَى أَمْرَ الصَّدَاقِ فِي إيجَابِ أَدَائِهِ، وَتَحْرِيمِ

[48] **Qur'an references (L30948):** Qur'an 4:25 (An-Nisa).
[49] **Qur'an references (L30950):** Qur'an 2:236 (Al-Baqarah).

sible for it to be small." We responded: "This is truly astonishing! Indeed, Allah the Most High magnified the matter of dowry solely by obligating its payment and forbidding taking it without her consent - and this principle applies to every rightful claim. Allah the Exalted and Majesty said: {Whoever does an atom's weight of good will see it} [Az-Zalzalah:7], {and whoever does an atom's weight of evil will see it} [Az-Zalzalah:8]."[50]

L30952–30953 It has been authentically reported from him—prayers and peace be upon him—"Ward off the Fire even with half a date," and no act is greater than warding off the Fire.

L30954 It has been authentically reported from the Prophet (peace be upon him): "Whoever swears a false oath upon my pulpit, the Fire is guaranteed for him, even if it were a twig of an arak tree." Yet the strangest thing is: how did they come to regard three dirhams as excessive, while three dirhams minus a single grain is deemed insignificant?

L30955 The confusion among these sects is too numerous to count except by the One who enumerates their very breaths—the Almighty, the Most High.

L30956 Abū Muḥammad said: Since the invalidity of their opinions—particularly Mālik's opinion—has become evident, for we do not know of it being attributed to any scholar before him.

L30957 The opinion of Abū Ḥanīfah has not been authentically reported from any scholar among the people of knowledge before him. Let us present proof for the validity of our opinion: Allāh, the Mighty and Majestic, said: "And give women their bridal gifts as a gracious gift" [Quran 4:4].[51]

L30958 Allah, the Exalted, says: "And give them their dues (mahr) in a proper manner" [Surah An-Nisa 4:25].[52]

L30959 And the Almighty said: "If you divorce them before consummating the

أَخْذِهِ بِغَيْرِ رِضَاهَا، وَهَذَا مَوْجُودٌ فِي كُلِّ حَقٍّ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ} [الزلزلة: ٧] {وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ} [الزلزلة: ٨] .

وَقَدْ صَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «اتَّقُوا النَّارَ وَلَوْ بِشِقِّ تَمْرَةٍ» وَلَا عَظِيمَ أَعْظَمُ مِنْ اتِّقَاءِ النَّارِ.

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ حَلَفَ عَلَى مِنْبَرِي بِيَمِينٍ آثِمَةٍ وَجَبَتْ لَهُ النَّارُ وَإِنْ كَانَ قَضِيبًا مِنْ أَرَاكٍ» ثُمَّ أَغْرَبُ شَيْءٍ مِنْ أَيْنَ وَقَعَ لَهُمْ أَنَّ ثَلَاثَةَ دَرَاهِمَ كَثِيرٌ، وَأَنَّ ثَلَاثَةَ دَرَاهِمَ غَيْرُ حَبَّةٍ قَلِيلٌ؟

وَتَخْلِيطُ هَذِهِ الطَّوَائِفِ أَكْثَرُ مِنْ أَنْ يُحْصِيَهُ إلَّا مُحْصِي أَنْفَاسِهِمْ عَزَّ وَجَلَّ.

قَالَ أَبُو مُحَمَّد: فَإِذْ قَدْ ظَهَرَ بُطْلَانُ أَقْوَالِهِمْ لَا سِيَّمَا قَوْلُ مَالِكٍ، فَإِنَّهُ لَا نَعْرِفُهُ عَنْ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ قَبْلَهُ.

وَقَوْلُ أَبِي حَنِيفَةَ لَمْ يَصِحَّ عَنْ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ قَبْلَهُ، فَلْنُورِدْ الْبُرْهَانَ عَلَى صِحَّةِ قَوْلِنَا -: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

وَقَالَ تَعَالَى: {وَآتُوهُنَّ أُجُورَهُنَّ بِالْمَعْرُوفِ} [النساء: ٢٥] .

وَقَالَ تَعَالَى: {وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً فَنِصْفُ مَا فَرَضْتُمْ} [البقرة: ٢٣٧] .

[50] **Qur'an references (L30951):** Qur'an 99:7 (Az-Zalzalah); Qur'an 99:8 (Az-Zalzalah).
[51] **Qur'an references (L30957):** Qur'an 4:4 (An-Nisa).
[52] **Qur'an references (L30958):** Qur'an 4:25 (An-Nisa).

marriage when you have already stipulated a bridal gift for them, then half of what you stipulated is due" [Al-Baqarah: 237].[53]

L30960 Allah, the Almighty and Majestic, did not mention the mahr in any part of His Book with a specific limit; rather, He referred to it in general terms: "And your Lord is never forgetful" (19:64). We testify by the testimony of Allah, the Almighty and Majestic, "in the life of this world and on the Day when the witnesses arise" (40:51), that if Allah, the Almighty and Majestic, had willed to establish for the mahr a minimum limit, He would not have neglected or overlooked it, leaving it to be clarified by Abu Hanifah and Malik. Allah suffices us, and He is the Best Trustee.[54]

فَلَمْ يَذْكُرْ اللَّهُ عَزَّ وَجَلَّ فِي شَيْءٍ مِنْ كِتَابِهِ الصَّدَاقَ فَجَعَلَ فِيهِ حَدًّا بَلْ أَجْمَلَهُ إِجْمَالًا: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ {فِي الْحَيَاةِ الدُّنْيَا وَيَوْمَ يَقُومُ الْأَشْهَادُ} [غافر: ٥١] أَنَّ اللَّهَ عَزَّ وَجَلَّ لَوْ أَرَادَ أَنْ يَجْعَلَ لِلصَّدَاقِ حَدًّا لَا يَكُونُ أَقَلَّ مِنْهُ لَمَا أَهْمَلَهُ وَلَا أَغْفَلَهُ حَتَّى يُبَيِّنَهُ لَهُ أَبُو حَنِيفَةَ، وَمَالِكٌ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L30961–30963 The established Sunnah from the Messenger of Allah (peace be upon him) as narrated to us through Al-Bukhari's chain: Abdullah ibn Yusuf narrated to us from Malik ibn Anas, and Abd al-Aziz ibn Abi Hazim narrated from his father from Sahl ibn Sa'd, who said: "A woman came to the Messenger of Allah (peace be upon him)" - then Sahl ibn Sa'd recounted the hadith, which includes: "A man stood up and said: 'Marry her to me if you have no intention to marry her.' The Prophet asked: 'Do you possess anything to give her as a dowry?' The man replied: 'I have nothing but my waistcloth.' The Prophet said: 'If you give her that, you will be left without a garment. Seek something else.' The man said: 'I find nothing.' The Prophet said: 'Seek even an iron ring.' He searched but found nothing. The Prophet then asked: 'Do you have anything from the Quran?'" He said: "Anything?" He replied: "Yes, Surah such-and-such and Surah such-and-such." He said: "We have married her to you with what you have of the Quran."

وَالسُّنَّةُ الثَّابِتَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ: نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا مَالِكُ بْنُ أَنَسٍ، وَعَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ عَنْ أَبِيهِ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: «جَاءَتْ امْرَأَةٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ الْحَدِيثَ، وَفِيهِ فَقَامَ الرَّجُلُ فَقَالَ: زَوِّجْنِيهَا إِنْ لَمْ يَكُنْ لَكَ بِهَا حَاجَةٌ؟ قَالَ: هَلْ عِنْدَكَ شَيْءٌ تُصْدِقُهَا؟ قَالَ: مَا عِنْدِي إِلَّا إِزَارِي، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ أَعْطَيْتَهَا إِيَّاهُ جَلَسْتَ لَا إِزَارَ لَكَ فَالْتَمِسْ شَيْئًا؟ قَالَ: مَا أَجِدُ شَيْئًا، قَالَ: الْتَمِسْ وَلَوْ خَاتَمًا مِنْ حَدِيدٍ؟ فَالْتَمَسَ فَلَمْ يَجِدْ شَيْئًا، فَقَالَ: أَمَعَكَ مِنْ الْقُرْآنِ شَيْءٌ؟ قَالَ: نَعَمْ سُورَةُ كَذَا وَسُورَةُ كَذَا، قَالَ: قَدْ زَوَّجْنَاكَهَا بِمَا مَعَكَ مِنْ الْقُرْآنِ» .

L30964 From the chain of al-Bukhārī: Yaḥyā narrated to us, from Wakīʿ, from Sufyān al-Thawrī, from Abū Ḥāzim, from Sahl ibn Saʿd, that the Messenger of Allāh (may Allāh bless him and grant him peace) said to a man: "Marry, even if [you give] a ring of iron."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِرَجُلٍ تَزَوَّجْ وَلَوْ بِخَاتَمٍ مِنْ حَدِيدٍ» .

L30965 From the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to us: Al-

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا الْحُسَيْنُ بْنُ عَلِيٍّ عَنْ زَائِدَةَ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: «جَاءَتْ امْرَأَةٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ:

[53] **Qur'an references (L30959):** Qur'an 2:237 (Al-Baqarah).
[54] **Qur'an references (L30960):** Qur'an 19:64 (Maryam); Qur'an 40:51 (Ghafir).

Husayn ibn Ali from Zā'idah from Abu Hazim from Sahl ibn Sa'd, who said: "A woman came to the Messenger of Allah (peace and blessings be upon him) and said, 'O Messenger of Allah, I have offered myself to you - do with me as you wish.' A young man present said, 'O Messenger of Allah, if you have no need for her, marry her to me.' He asked, 'Do you possess anything to give her?' The man replied, 'I know of nothing.' He said, 'Go and seek - perhaps you will find something, even an iron ring.' The man returned and said, 'I found nothing except this lower garment of mine.' He said, 'If you give her this lower garment, you will have nothing left to wear. Do you recite the Opening Chapter of the Qur'an (Surah Al-Fatihah)?' The man said, 'Yes.' He said, 'Go, for I have married her to you. Teach her from the Qur'an.'"

يَا رَسُولَ اللَّهِ قَدْ وَهَبْتُ نَفْسِي لَكَ فَاصْنَعْ فِي مَا شِئْتَ؟ فَقَالَ لَهُ شَابٌّ عِنْدَهُ: يَا رَسُولَ اللَّهِ إِنْ لَمْ يَكُنْ لَكَ بِهَا حَاجَةٌ فَزَوِّجْنِيهَا؟ قَالَ: أَوَعِنْدَكَ شَيْءٌ تُعْطِيهَا إِيَّاهُ؟ قَالَ: مَا أَعْلَمُهُ، قَالَ: فَانْطَلِقْ فَاطْلُبْ فَلَعَلَّكَ تَجِدُ شَيْئًا، وَلَوْ خَاتَمًا مِنْ حَدِيدٍ؟ فَأَتَاهُ فَقَالَ: مَا وَجَدْتُ شَيْئًا إِلَّا إِزَارِي هَذَا، قَالَ: إِزَارُكَ هَذَا إِنْ أَعْطَيْتَهَا إِيَّاهُ لَمْ يَبْقَ عَلَيْكَ شَيْءٌ، قَالَ: أَتَقْرَأُ أُمَّ الْقُرْآنِ؟ قَالَ: نَعَمْ، قَالَ: فَانْطَلِقْ فَقَدْ زَوَّجْتُكَهَا فَعَلِّمْهَا مِنْ الْقُرْآنِ» .

L30966 Humaam ibn Ahmad al-Qaadhi → Abdullah ibn Muhammad ibn Ali al-Bājiyy → Abdullah ibn Yunus al-Muradi → Baqī ibn Makhlad → Abu Bakr ibn Abi Shaybah → al-Hasan ibn Ali (al-Ju'fi) → Za'idah → Abu Hazim → Sahl ibn Sa'd al-Sa'idi: "The Prophet (peace be upon him) arranged the marriage of a man to a woman on the condition that he teach her a surah from the Quran."

نا حُمَامُ بْنُ أَحْمَدَ الْقَاضِي نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ الْمُرَادِيُّ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا الْحَسَنُ بْنُ عَلِيٍّ - هُوَ الْجُعْفِيُّ - عَنْ زَائِدَةَ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ السَّاعِدِيِّ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَوَّجَ رَجُلًا مِنْ امْرَأَةٍ عَلَى أَنْ يُعَلِّمَهَا سُورَةً مِنْ الْقُرْآنِ»

L30967 Abū Muḥammad said: The ḥadīth is well-known and transmitted through tawātur transmission from reliable chains of trustworthy narrators: We have also narrated it through the chains of Yaʿqūb ibn ʿAbd al-Raḥmān al-Qārī, ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī, Sufyān ibn ʿUyaynah, Ḥammād ibn Zayd, Maʿmar, Muḥammad ibn Muṭarrif, Fuḍayl ibn Sulaymān, and others—all of them from Abū Ḥāzim from Sahl ibn Saʿd from the Messenger of Allāh, peace and blessings be upon him.

قَالَ أَبُو مُحَمَّد: وَالْحَدِيثُ مَشْهُورٌ وَمَنْقُولٌ نَقْلَ التَّوَاتُرِ مِنْ طَرِيقِ الثِّقَاتِ -: رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ يَعْقُوبَ بْنِ عَبْدِ الرَّحْمَنِ الْقَارِي، وَعَبْدِ الْعَزِيزِ بْنِ مُحَمَّدٍ الدَّرَاوَرْدِيِّ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، وَحَمَّادِ بْنِ زَيْدٍ، وَمَعْمَرٍ، وَمُحَمَّدِ بْنِ مُطَرِّفٍ، وَفُضَيْلِ بْنِ سُلَيْمَانَ، وَغَيْرِهِمْ، كُلُّهُمْ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30968–30969 Abu Muhammad said: Then someone who did not fear Allah the Almighty nor feel shame in lying objected, saying: "The Messenger of Allah—peace and blessings of Allah be upon him—only required him to have an adorned iron ring equivalent to ten silver dirhams or three pure silver dirhams." This is a statement that would make bereaved women laugh and casts suspicion on its speaker, for it openly declares what never occurred—what Allah the Almighty never created in the world: that an iron ring weighing two dirhams

قَالَ أَبُو مُحَمَّد: فَاعْتَرَضَ مَنْ لَمْ يَتَّقِ اللَّهَ عَزَّ وَجَلَّ وَلَا اسْتَحْيَا مِنْ الْكَذِبِ فِي هَذَا فَقَالَ: إِنَّمَا كَلَّفَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَاتَمًا مِنْ حَدِيدٍ مُزَيَّنًا يُسَاوِي عَشَرَةَ دَرَاهِمَ مِنْ فِضَّةٍ، أَوْ ثَلَاثَةَ دَرَاهِمَ مِنْ فِضَّةٍ خَالِصَةٍ - فَقَوْلٌ يُضْحِكُ الثَّكْلَى وَيُسِيءُ الظَّنَّ بِقَائِلِهِ؛ لِأَنَّهَا مُجَاهَرَةٌ بِمَا لَمْ يَكُنْ قَطُّ، وَلَا خَلَقَهُ اللَّهُ عَزَّ وَجَلَّ قَطُّ فِي

could equal their claim, particularly not in Medina. Every person of discernment knows their hoes and shovels for digging earth, blades and axes for cutting wood, sickles for tending palms and harvesting crops, ploughshares for tilling, mattocks for planting, and their armor and spears—all are made of iron. How then did they deem it permissible to attribute this absurd lie to the Prophet—peace and blessings of Allah be upon him? We seek Allah's protection.

الْعَالَمِ أَنْ تَكُونَ حَلْقَةً مِنْ حَدِيدٍ وَزْنُهَا دِرْهَمَانِ تُسَاوِي مَا ذَكَرُوا وَلَا سِيَّمَا فِي الْمَدِينَةِ " وَقَدْ عَلِمَ كُلُّ ذِي حَظٍّ مِنْ التَّمْيِيزِ أَنَّ مُرُورَهُمْ وَمَسَاحِيَهُمْ لِحَفِيرِ الْأَرْضِ، وَشَوَافِرَهُمْ وَفُؤُوسَهُمْ لِقَطْعِ الْحَطَبِ، وَمَنَاجِلَهُمْ لِعَمَلِ النَّخْلِ، وَحَصَادِ الزَّرْعِ، وَسِكَكَهُمْ لِلْحَرْثِ، وَمَزَابِرَهُمْ لِلزَّرْجُونِ، وَدُرُوعَهُمْ وَرِمَاحَهُمْ، كُلُّ ذَلِكَ مِنْ حَدِيدٍ فَمِنْ أَيْنَ اسْتَحَلُّوا أَنْ يُخْبِرُوا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَذِهِ الْكِذْبَةِ السَّخِيفَةِ؟ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L30970 Indeed, whoever resorts to sheer impossibility in supporting his falsehood, his very action indicates evil traits concerning religion, modesty, and intellect.

وَإِنَّ مَنْ لَجَأَ إلَى الْمُحَالِ الْمُمْتَنِعِ فِي نَصْرِ بَاطِلِهِ، لَقَدْ يَدُلُّ فِعْلُهُ هَذَا عَلَى صِفَاتِ سُوءٍ فِي الدِّينِ، وَالْحَيَاءِ وَالْعَقْلِ.

L30971 They objected to the dowry being the teaching of the Quran based on a report: We transmitted it through the isnād of Ibn Abi Shaybah - Affān ibn Muslim narrated to us, Abān ibn Yazīd al-Aṭṭār narrated to us, Yaḥyā ibn Abī Kathīr narrated to me, from Zayd ibn Abī Salām, from Abū Rāshid al-Ḥubrānī, from Abd al-Raḥmān ibn Shibl al-Anṣārī, who said: I heard the Messenger of Allah (peace and blessings of Allah be upon him) say: "Recite the Quran, do not go to extremes regarding it, do not neglect it, do not exploit it for livelihood, and do not seek excessive gain through it."

وَاعْتَرَضُوا عَلَى أَنْ يَكُونَ الصَّدَاقُ تَعْلِيمَ الْقُرْآنِ بِخَبَرٍ: رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَفَّانُ بْنُ مُسْلِمٍ نا أَبَانُ بْنُ يَزِيدَ الْعَطَّارُ حَدَّثَنِي يَحْيَى بْنُ أَبِي كَثِيرٍ عَنْ زَيْدِ بْنِ أَبِي سَلَامٍ عَنْ أَبِي رَاشِدٍ الْحُبْرَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِبْلٍ الْأَنْصَارِيِّ سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «اقْرَءُوا الْقُرْآنَ وَلَا تَغْلُوا فِيهِ وَلَا تَجْفُوا عَنْهُ وَلَا تَأْكُلُوا بِهِ وَلَا تَسْتَكْثِرُوا بِهِ» .

L30972 And by the report we have narrated through the chain of Ubayy ibn Ka'b—that he taught a man the Qur'an, and the man gifted him a horse—the Messenger of Allah, may Allah bless him and grant him peace, said to Ubayy: "Do you wish to come to Allah on the Day of Resurrection with fire upon your neck?"

وَبِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ «أُبَيِّ بْنِ كَعْبٍ أَنَّهُ عَلَّمَ رَجُلًا الْقُرْآنَ فَأَهْدَى إلَيْهِ فَرَسًا، فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتُحِبُّ أَنْ تَأْتِيَ اللَّهَ فِي عُنُقِكَ يَوْمَ الْقِيَامَةِ نَارٌ» .

L30973 In some versions, "If you wish to be collared with a ring of fire, then go ahead and accept it," and in others, "A burning coal between your shoulders, to be hung around your neck or suspended [there]."

وَفِي بَعْضِ أَلْفَاظِهِ «إنْ كُنْتَ تُحِبُّ أَنْ تُطَوَّقَ طَوْقًا مِنْ نَارٍ فَاقْبَلْهَا» وَفِي بَعْضِهَا «جَمْرَةً بَيْنَ كَتِفَيْكَ تُقَلَّدُ بِهَا أَوْ تُعَلَّقُهَا» .

L30974–30976 Abū Muḥammad said: These are weak, inauthentic traditions. As for the ḥadīth "Do not eat with it," it is transmitted by Abū Rāshid al-Ḥubrānī – who

is unknown. Even if it were authentic, it would not serve as evidence for them, for eating is of two types: rightful eating and wrongful eating. Eating rightfully is praiseworthy, The Messenger of Allah (peace and blessings be upon him) and his companions—such as Musʿab Ibn ʻUmayr and others—went to Medina to teach the Ansar the Quran and Islam, and the Ansar spent on them.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ آثَارٌ وَاهِيَةٌ لَا تَصِحُّ -: أَمَّا حَدِيثُ «لَا تَأْكُلُوا بِهِ» فَرِوَايَةُ أَبِي رَاشِدٍ الْحُبْرَانِيِّ - وَهُوَ مَجْهُولٌ. ثُمَّ لَوْ صَحَّ لَمْ تَكُنْ لَهُمْ بِهِ حُجَّةٌ، لِأَنَّ الْأَكْلَ أَكْلَانِ: أَكْلٌ بِحَقٍّ، وَأَكْلٌ بِبَاطِلٍ، فَالْأَكْلُ بِحَقٍّ حَسَنٌ، وَقَدْ مَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابُهُ إلَى الْمَدِينَةِ - كَمُصْعَبِ بْنِ عُمَيْرٍ وَغَيْرِهِ - يُعَلِّمُونَ الْأَنْصَارَ الْقُرْآنَ وَالدِّينَ، وَيُنْفِقُ الْأَنْصَارُ عَلَيْهِمْ.

L30977 Allah, the Exalted, said: {They are the ones who say, "Do not spend on those who are with the Messenger of Allah until they disperse"} [Al-Munafiqun: 7]. Thus, Allah, the Mighty and Majestic, reproached most severely those who prohibited them from spending on the companions of the Messenger of Allah (peace be upon him).[55]

قَالَ اللَّهُ تَعَالَى: {هُمُ الَّذِينَ يَقُولُونَ لا تُنْفِقُوا عَلَى مَنْ عِنْدَ رَسُولِ اللَّهِ حَتَّى يَنْفَضُّوا} [المنافقون: ٧] فَأَنْكَرَ اللَّهُ عَزَّ وَجَلَّ عَلَى مَنْ نَهَاهُمْ عَنْ النَّفَقَةِ عَلَى أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَشَدَّ النَّكِيرِ.

L30978 As for the ḥadīth of Ubayy ibn Kaʿb: one of its chains of narration includes Al-Aswad ibn Thaʿlabah—a *majhūl* narrator (one of indeterminate reliability) whose identity is unknown.

وَأَمَّا حَدِيثُ أُبَيِّ بْنِ كَعْبٍ: فَإِنَّ أَحَدَ طُرُقِهِ فِي رِوَايَتِهِ الْأَسْوَدُ بْنُ ثَعْلَبَةَ - وَهُوَ مَجْهُولٌ - لَا يُدْرَى مَنْ هُوَ.

L30979 The other [narration] is via the chain of Abu Zayd ʻAbdullah ibn al-ʻAla'—an unknown narrator whose identity is undetermined.

وَالْأُخْرَى: مِنْ طَرِيقِ أَبِي زَيْدٍ عَبْدِ اللَّهِ بْنِ الْعَلَاءِ - وَهُوَ مَجْهُولٌ - لَا يُدْرَى مَنْ هُوَ.

L30980 And the third [narration]: via Baqiyyah—who is weak—therefore, all of them are rejected.

وَالثَّالِثَةُ: مِنْ طَرِيقِ بَقِيَّةَ - وَهُوَ ضَعِيفٌ - فَسَقَطَتْ كُلُّهَا.

L30981 The correct view is the opposite of this, namely what we transmitted through Al-Bukhārī's chain: Saydān ibn Muḍārib al-Bāhilī narrated to us; Abū Maʿshar al-Barrā' – who is Yūsuf ibn Yazīd – narrated; ʿUbayd Allāh ibn al-Akhnas Abū Mālik reported to me from Ibn Abī Mulaykah from Ibn ʿAbbās: "A man asked: 'O Messenger of Allah, may I take payment for the Book of Allah?' The Messenger of Allah – peace and blessings be upon him – replied: 'The most deserving thing for which you may take payment is the Book of Allah Almighty.'"

وَالصَّحِيحُ مِنْ ذَلِكَ ضِدُّ هَذَا، وَهُوَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا سَيْدَانُ بْنُ مُضَارِبٍ الْبَاهِلِيُّ نا أَبُو مَعْشَرٍ الْبَرَاءُ - هُوَ يُوسُفُ بْنُ يَزِيدَ - حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ الْأَخْنَسِ أَبُو مَالِكٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا قَالَ: يَا رَسُولَ اللَّهِ آخُذُ عَلَى كِتَابِ اللَّهِ أَجْرًا؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ أَحَقَّ مَا أَخَذْتُمْ عَلَيْهِ أَجْرًا كِتَابُ اللَّهِ عَزَّ وَجَلَّ» .

[55] **Qur'an references (L30977):** Qur'an 63:7 (Al-Munafiqun).

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عَبْدُ اللَّهِ بْنُ مُعَاذٍ نا أَبِي نا شُعْبَةُ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ الشَّعْبِيِّ عَنْ خَارِجَةَ بْنِ الصَّامِتِ عَنْ عَمِّهِ «أَنَّهُ رَقَى مَجْنُونًا بِأُمِّ الْقُرْآنِ فَأَعْطَاهُ أَهْلُهُ شَيْئًا، فَذَكَرَ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلْ، فَلَعَمْرِي مَنْ أَكَلَ بِرُقْيَةِ بَاطِلٍ، لَقَدْ أَكَلْتَ بِرُقْيَةِ حَقٍّ» .

L30982 From the chain of Abu Dawud, narrated by Abdullah ibn Mu'adh, from his father, from Shu'bah, from Abdullah ibn Abi al-Safar, from al-Sha'bi, from Kharijah ibn al-Samit, from his uncle: "He performed ruqyah with Umm al-Qur'an (the Opening of the Qur'an, Surah Al-Fatihah) over a mentally afflicted person, and the afflicted man's family gave him something in return. He mentioned this to the Messenger of Allah (peace be upon him), and the Messenger of Allah (peace be upon him) said to him: 'Eat. By my life, whoever eats through an invalid ruqyah – you have eaten through a valid ruqyah!'"

فَصَحَّ أَنَّ الْأَكْلَ بِالْقُرْآنِ فِي الْحَقِّ وَفِي تَعْلِيمِهِ حَقٌّ، وَأَنَّ الْحَرَامَ إنَّمَا هُوَ أَنْ يَأْكُلَ بِهِ رِيَاءً، أَوْ لِغَيْرِ اللَّهِ تَعَالَى.

L30983 Thus, it is established that benefiting from the Quran rightfully and teaching it are rightful acts, and what is forbidden is to benefit from it hypocritically or for other than Allah the Exalted.

وَمَوَّهُوا بِالْخَبَرِ السَّاقِطِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا أَبُو عَرْفَجَةَ الْفَاشِيُّ عَنْ أَبِي النُّعْمَانِ الْأَزْدِيُّ قَالَ «زَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - امْرَأَةً عَلَى سُورَةٍ مِنْ الْقُرْآنِ، ثُمَّ قَالَ: لَا يَكُونُ لِأَحَدٍ بَعْدَكَ مَهْرًا» .

L30984–30986 They obscured the invalid report transmitted via the chain of Saʿīd ibn Manṣūr: From Abū Muʿāwiyah, from Abū ʿArfajah al-Fāshī. Narrated by Abu Nuʿman al-Azdi, who said: "The Messenger of Allah (may Allah bless him and grant him peace) married a woman [to a man] for [teaching her] a surah from the Quran. Then he said: 'It shall not be a dowry for anyone after you.'"

فَهَذَا خَبَرٌ مَوْضُوعٌ، فِيهِ ثَلَاثُ عُيُوبٍ -:

L30987 Therefore, this is a fabricated report in which there are three defects:

أَوَّلُهَا - أَنَّهُ مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ، إذْ رَوَاهُ شُعْبَةُ عَنْ أَيُّوبَ.

L30988 The first issue is that it is a *mursal*, and there is no authoritative proof in a *mursal*, since it was narrated by Shu'bah from Ayyūb.

وَالثَّانِي - أَنَّ أَبَا عَرْفَجَةَ الْفَاشِيَّ مَجْهُولٌ لَا يَدْرِي أَحَدٌ مَنْ هُوَ.

L30989 The second point is that Abū ʿArfajah al-Fāshī is unverified as a narrator; no one knows his biographical status.

وَالثَّالِثُ - أَنَّ أَبَا النُّعْمَانِ الْأَزْدِيُّ مَجْهُولٌ أَيْضًا لَا يَعْرِفُهُ أَحَدٌ.

L30990 The third: Abu al-Nu'man al-Azdi is also unknown; no one recognizes him.

وَمَوَّهَ بَعْضُهُمْ بِالْخَبَرِ الَّذِي فِيهِ: أَنَّ أَبَا طَلْحَةَ تَزَوَّجَ أُمَّ سُلَيْمٍ - رَضِيَ اللَّهُ عَنْهُمَا - عَلَى أَنْ يُسْلِمَ، فَلَمْ يَكُنْ لَهَا مَهْرٌ غَيْرُهُ، وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِوَجْهَيْنِ -:

L30991 Some of them used the narration as a pretext - the report stating that Abū Ṭalḥa married Umm Sulaym (may Allah be pleased with them both) on the condition of his Islam, and that she had no mahr other than this - and this provides no valid evidence for their position due to two considerations:

L30992 One of them is that this occurred a period before the migration of the Messenger of Allah—may Allah bless him and grant him peace—because Abu

Talhah was an early convert to Islam, among the first of the Ansar to embrace Islam, and the obligation to give women their dower (sadaq) had not yet been revealed.

أَحَدُهُمَا: أَنَّ ذَلِكَ كَانَ قَبْلَ هِجْرَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمُدَّةٍ، لِأَنَّ أَبَا طَلْحَةَ قَدِيمُ الْإِسْلَامِ، مِنْ أَوَّلِ الْأَنْصَارِ إسْلَامًا، وَلَمْ يَكُنْ نَزَلَ إيجَابُ إيتَاءِ النِّسَاءِ صَدُقَاتِهِنَّ بِهِ.

L30993 The second point: The narration does not indicate that the Messenger of Allah — may Allah bless him and grant him peace — knew that. Some said, "This is specific to the Messenger of Allah — may Allah bless him and grant him peace."

الثَّانِي: أَنَّهُ لَيْسَ فِي ذَلِكَ الْخَبَرِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِمَ ذَلِكَ - وَقَالَ بَعْضُهُمْ: هَذَا خَاصٌّ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L30994 Abu Muhammad said: This is a lie—the proof thereof is the statement of Allah, the Mighty and Majestic: "There has certainly been for you in the Messenger of Allah an excellent example" [Al-Ahzab 33:21]. Thus, everything the Messenger of Allah—peace and blessings be upon him—did, the virtue, reward, and benevolence are ours when we emulate his actions. Whoever prevents this is mistaken, and whoever turns away from his Sunnah wrongs himself and is doomed—unless a Quranic text or an established Sunnah explicitly indicates that it is exclusive to the Messenger of Allah—peace and blessings be upon him—in which case it is impermissible to act upon it thereafter.[56]

قَالَ أَبُو مُحَمَّد: وَهَذَا كَذِبٌ - بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] فَكُلُّ مَا فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَالْفَضْلُ لَنَا وَالْأَجْرُ وَالْإِحْسَانُ فِي أَنْ نَفْعَلَ كَمَا فَعَلَ ائْتِسَاءً بِهِ، وَالْمَانِعُ مِنْ ذَلِكَ مُخْطِئٌ، وَالرَّاغِبُ عَنْ سُنَّتِهِ ظَالِمٌ لِنَفْسِهِ هَالِكٌ، إلَّا أَنْ يَأْتِيَ نَصُّ قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ بِأَنَّهُ خُصُوصِيٌّ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَحِلُّ أَنْ يُعْمَلَ بِهِ حِينَئِذٍ.

L30995 The entire wonder is that these people invoke his practice—peace and blessings be upon him—while he did not inform the believers it was specific to him, so they say, "It is specific to him." Then they come to the marriage of a gifted woman, though Allah the Almighty has explicitly stated it is exclusively for him—peace and blessings be upon him—to the exclusion of the believers, yet they say, "It is universally applicable to all." We seek refuge with Allah from what they have been afflicted with.

وَالْعَجَبُ كُلُّهُ أَنَّ هَؤُلَاءِ يَأْتُونَ إلَى مَا عَمِلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَمْ يُخْبِرْ الْمُؤْمِنِينَ أَنَّهُ خَاصٌّ لَهُ فَيَقُولُونَ: هُوَ خَاصٌّ لَهُ ثُمَّ يَأْتُونَ إلَى نِكَاحِ الْمَوْهُوبَةِ، وَقَدْ نَصَّ اللَّهُ عَزَّ وَجَلَّ عَلَى أَنَّهَا خَالِصَةٌ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - دُونَ الْمُؤْمِنِينَ فَيَقُولُونَ: هُوَ عَامٌّ لِكُلِّ أَحَدٍ - نَعُوذُ بِاَللَّهِ مِمَّا ابْتُلُوا بِهِ.

L30996 Some of them said: "Have you considered if he divorces her before consummation?"

وَقَالَ بَعْضُهُمْ: أَرَأَيْت إنْ طَلَّقَهَا قَبْلَ الدُّخُولِ؟

L30997–30999 So we said: If he has taught her the surah he assigned as her dower by instructing her in it, she has received her full dower and has no recourse against him, for this constitutes a consideration that has been fulfilled. But

فَقُلْنَا: إنْ كَانَ قَدْ عَلَّمَهَا السُّورَةَ الَّتِي أَصْدَقَهَا تَعْلِيمَهَا فَقَدْ اسْتَوْفَتْ صَدَاقَهَا، وَلَا سَبِيلَ لَهَا إلَيْهِ، لِأَنَّهُ عَرَضٌ قَدْ انْقَضَى - وَإِنْ كَانَ لَمْ يُعَلِّمْهَا إيَّاهُ فَعَلَيْهِ أَنْ يُعَلِّمَهَا نِصْفَهَا

[56] **Qur'an references (L30994):** Qur'an 33:21 (Al-Ahzab).

if he has failed to teach her the surah itself, he must instruct her in half of it. This alone is not forbidden for anyone—referring to teaching an unrelated woman—as the Mothers of the Believers themselves spoke to people.

فَقَطْ، وَهَذَا لَا يُحَرَّمُ عَلَى أَحَدٍ - يَعْنِي تَعْلِيمَ امْرَأَةٍ أَجْنَبِيَّةٍ - وَقَدْ كَلَّمَ أُمَّهَاتُ الْمُؤْمِنِينَ النَّاسَ.

L31000 Abu Muhammad said: A group of the Salaf held our opinion – we have been narrated through the chain of Wakiʿ from Sufyan al-Thawri, from Ismaʿil, from ʿAmr ibn Dinar, from Ibn ʿAbbas, who said: "If she were content with a miswak from an Arak tree, it would be a dower."

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ بِقَوْلِنَا طَائِفَةٌ مِنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَوْ رَضِيَتْ بِسِوَاكٍ مِنْ أَرَاكٍ لَكَانَ مَهْرًا.

L31001 Narrated by Waki', from Al-Hasan ibn Salih ibn Hayy, from Abu Harun al-Abdi, from Abu Sa'id al-Khudri, who said: "There is no blame on anyone to marry by giving a small or large portion of his wealth as dowry, provided they call witnesses and they mutually consent."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ أَبِي هَارُونَ الْعَبْدِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّهُ قَالَ: " لَيْسَ عَلَى أَحَدٍ جُنَاحٌ أَنْ يَتَزَوَّجَ بِقَلِيلِ مَالِهِ أَوْ كَثِيرِهِ إذَا اسْتَشْهَدُوا وَتَرَاضَوْا ".

L31002 It was narrated from 'Abdur-Rahman ibn Mahdi from Salih ibn Ruman from Abu az-Zubayr from Jabir ibn 'Abdullah who said: "Whoever gives as the dowry for a woman a full handful of parched barley flour or dates has rendered the marriage permissible."

وَرُوِيَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ صَالِحِ بْنِ رُومَانَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: " مَنْ أَعْطَى فِي صَدَاقِ امْرَأَةٍ مِلْءَ حَفْنَةٍ مِنْ سَوِيقٍ أَوْ تَمْرٍ فَقَدْ اسْتَحَلَّ ".

L31003 Narrated through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Humaid, from Anas ibn Malik: Abd al-Rahman ibn Awf said to the Messenger of Allah (peace and blessings of Allah be upon him), "I have married a woman from the Ansar." The Messenger of Allah (peace and blessings of Allah be upon him) asked him, "How much dowry did you give her?" He replied, "The weight of a date pit in gold." The Messenger of Allah (peace and blessings of Allah be upon him) then said, "Host a wedding banquet, even if with a single sheep."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حُمَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنْ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَزَوَّجْتُ امْرَأَةً مِنْ الْأَنْصَارِ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمْ سُقْتَ إلَيْهَا؟ قَالَ: وَزْنَ نَوَاةٍ مِنْ ذَهَبٍ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْلِمْ وَلَوْ بِشَاةٍ» .

L31004 Abd al-Razzaq said: Then Ismāʿīl ibn ʿAbdullāh narrated to me from Ḥumayd, from Anas, who said: That was two daniqs of gold.

قَالَ عَبْدُ الرَّزَّاقِ: فَأَخْبَرَنِي إسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ عَنْ حُمَيْدٍ عَنْ أَنَسٍ قَالَ: وَذَلِكَ دَانِقَانِ مِنْ ذَهَبٍ.

L31005 Abū Muḥammad said: The danīq is one-sixth of the Ṭabarī dirham—and it is the Andalusian dirham. Thus, two danīqs equal the weight of one-third of an Andalusian dirham, and the danīq is one-sixth of the mithqal of gold.

قَالَ أَبُو مُحَمَّدٍ: الدَّانِقُ: سُدْسُ الدِّرْهَمِ الطَّبَرِيِّ - وَهُوَ الْأَنْدَلُسِيُّ - فَالدَّانِقَانِ وَزْنُ ثُلُثِ دِرْهَمٍ أَنْدَلُسِيٍّ، وَهُوَ سُدْسُ الْمِثْقَالِ مِنْ الذَّهَبِ.

L31006 This is an authentic narration supported by a continuous chain.

وَهَذَا خَبَرٌ مُسْنَدٌ صَحِيحٌ.

L31007 If it is said: You have indeed narrated through the chain of Saʿīd ibn Manṣūr — narrated to us Abū Muʿāwiyah — narrated to us Ḥajjāj (who is Ibn Arṭāh) — narrated to us Qatādah — narrated to us Anas regarding the aforementioned date-seed that it was valued at three dirhams? We reply: Ḥajjāj is rejected, and the narration of ʿAbd al-Razzāq cannot be contradicted by Ḥajjāj's narration.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ نا حَجَّاجٌ - هُوَ ابْنُ أَرْطَاةَ - عَنْ قَتَادَةَ عَنْ أَنَسٍ فِي النَّوَاةِ الْمَذْكُورَةِ أَنَّهَا قُوِّمَتْ بِثَلَاثِ دَرَاهِمَ؟ قُلْنَا: حَجَّاجٌ سَاقِطٌ وَلَا يُعَارَضُ بِرِوَايَتِهِ رِوَايَةُ عَبْدِ الرَّزَّاقِ.

L31008 Narrated by Abd al-Razzaq from Ibn Jurayj from Ata: He said regarding the mahr (bridal gift), "The minimum acceptable amount is a ring or a garment he provides."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّهُ قَالَ فِي الصَّدَاقِ: أَدْنَى مَا يَكْفِي: خَاتَمُهُ، أَوْ ثَوْبٌ يُرْسِلُهُ.

L31009–31010 Ibn Jurayj said: "Amr ibn Dīnār and ʿAbd al-Karīm said: The minimum *mahr* is whatever is mutually agreed upon."

قَالَ ابْنُ جُرَيْجٍ: وَقَالَ عَمْرُو بْنُ دِينَارٍ، وَعَبْدُ الْكَرِيمِ: أَدْنَى الصَّدَاقِ مَا تَرَاضَوْا بِهِ.

L31011 And from the chain of Abd al-Razzaq, from Sufyan ibn Uyaynah, from Ayyub ibn Musa, from Yazid ibn Qusaiṭ, who said: I heard Sa'id ibn al-Musayyib say: If he gave her a whip as dowry, it would become permissible for him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ يَزِيدَ بْنِ قُسَيْطٍ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: لَوْ أَصْدَقَهَا سَوْطًا حَلَّتْ لَهُ.

L31012 Muhammad ibn Saʿīd ibn Nabāt narrated from Aḥmad ibn ʿAbd al-Baṣīr, who narrated from Qāsim ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Salām al-Khushanī, who narrated from Muḥammad ibn al-Muthannā, who narrated from Abū Aḥmad al-Zubayrī, who narrated from ʿAbd al-ʿAzīz ibn Abī Dāwūd, on the authority of Saʿīd ibn al-Musayyab, that he gave his daughter in marriage to his nephew. He was asked, "Did he pay the mahr?" He replied, "Two dirhams."

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو أَحْمَدَ الزُّبَيْرِيُّ نا عَبْدُ الْعَزِيزِ بْنُ أَبِي دَاوُد عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ زَوَّجَ ابْنَتَهُ ابْنَ أَخِيهِ، فَقِيلَ لَهُ: أَصْدَقَ؟ فَقَالَ: دِرْهَمَيْنِ.

L31013 From the chain of Sa'id ibn Mansur: Hushaym narrated to us that Yunus ibn 'Ubayd narrated from al-Hasan, who would say regarding the bridal gift: It is based on what the two parties mutually agree upon, whether small or large, and he does not fix any specific amount.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ بْنُ عُبَيْدٍ عَنِ الْحَسَنِ أَنَّهُ كَانَ يَقُولُ فِي الصَّدَاقِ: هُوَ عَلَى مَا تَرَاضَوْا عَلَيْهِ مِنْ قَلِيلٍ أَوْ كَثِيرٍ، وَلَا يُؤَقِّتُ شَيْئًا.

L31014 Sa'id said: Khalid ibn Abdallah—who is al-Tahhan—narrated to us from Yunus ibn Ubayd from al-Hasan, who said: Whatever they mutually consent to for him is the ṣadāq.

قَالَ سَعِيدٌ: نا خَالِدُ بْنُ عَبْدِ اللَّهِ - هُوَ الطَّحَّانُ - عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنِ الْحَسَنِ قَالَ: مَا تَرَاضَوْا بِهِ عَلَيْهِ فَهُوَ صَدَاقٌ.

L31015 And through the transmission of Sahnun from Abdullah ibn Wahb, Uthman ibn al-Hakam narrated to me from Yahya ibn Sa'id al-Ansari that he said: "The law permits a woman whatever she consents to, whether little or much."

وَمِنْ طَرِيقِ سَحْنُونَ عَنْ عَبْدِ اللَّهِ بْنِ وَهْبٍ أَخْبَرَنِي عُثْمَانُ بْنُ الْحَكَمِ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ: يُحِلُّ الْمَرْأَةَ مَا رَضِيَتْ بِهِ مِنْ قَلِيلٍ أَوْ كَثِيرٍ.

L31016 Ibn Wahb said: Scholars reported to me from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, Ibn Qusayṭ, and Rabīʿah ibn Abī ʿAbd al-Raḥmān that a dirham [as dowry] is permissible.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ، وَابْنِ قُسَيْطٍ، وَرَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ: أَنَّهُ يَجُوزُ مِنْ الصَّدَاقِ دِرْهَمٌ.

L31017 Abu Muhammad said: This is the opinion of Sufyan al-Thawri, al-Awzaʿi, al-Hasan ibn Ḥayy, al-Layth ibn Saʿd, Ibn Abi Layla, Ibn Wahb, the companion of Malik, al-Shafiʿi, Ahmad ibn Hanbal, Ishaq, Abu Thawr, Abu Sulayman, their disciples, and the majority of hadith scholars from earlier and later generations. And with Allah, the Exalted, is success.

قَالَ أَبُو مُحَمَّد: وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ وَاللَّيْثِ بْنِ سَعْدٍ، وَابْنِ أَبِي لَيْلَى، وَابْنِ وَهْبٍ صَاحِبِ مَالِك، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ وَإِسْحَاقَ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ، وَجُمْلَةُ أَصْحَابِ الْحَدِيثِ مِمَّنْ سَلَفَ وَخَلَفَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ أَعْتَقَ أَمَتَهُ عَلَى أَنْ يَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا]

A legal issue: A man freed his female slave on the condition that he marry her, stipulating her manumission as her dower.

١٨٥٢ - مَسْأَلَةٌ: وَمَنْ أَعْتَقَ أَمَتَهُ عَلَى أَنْ يَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا - لَا صَدَاقَ لَهَا غَيْرُهُ -: فَهُوَ صَدَاقٌ صَحِيحٌ، وَنِكَاحٌ صَحِيحٌ، وَسُنَّةٌ فَاضِلَةٌ.

L31019 Issue 1852: If someone frees their female slave on the condition of marrying her and makes her emancipation her mahr - there being no other mahr for her besides it - this constitutes a valid mahr, a valid marriage, and a virtuous Sunnah.

فَإِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ فَهِيَ حُرَّةٌ وَلَا يَرْجِعُ عَلَيْهَا بِشَيْءٍ، فَلَوْ أَبَتْ أَنْ تَتَزَوَّجَهُ بَطَلَ عِتْقُهَا وَهِيَ مَمْلُوكَةٌ كَمَا كَانَتْ.

L31020 If he divorces her before consummation, she is free, and he has no right to reclaim anything from her. If she refuses to marry him, her manumission is nullified, and she reverts to her former status as a slave.

وَفِي هَذَا خِلَافٌ مُتَأَخِّرٌ -: قَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَزُفَرُ بْنُ الْهُذَيْلِ، وَمَالِكٌ، وَابْنُ شُبْرُمَةَ، وَاللَّيْثُ: لَا يَجُوزُ أَنْ يَكُونَ عِتْقُ الْأَمَةِ صَدَاقَهَا.

L31021–31022 There is a later-period disagreement regarding this matter: Abū Ḥanīfah, Muḥammad ibn al-Ḥasan, Zufar ibn al-Hudhayl, Mālik, Ibn Shubrumah, and al-Layth stated: It is impermissible for the emancipation of a female slave to constitute her mahr.

L31023 Abū Ḥanīfah, Zufar, Muḥammad, and Mālik said: If the husband consum-

mates the marriage, she is entitled to a dower equivalent to women of her standing, and she retains her status as a free woman.

L31024 Then they disagreed regarding the case where she refuses to marry him: Abū Ḥanīfah and Muḥammad [al-Shaybānī] said: "She must compensate him with her value."

L31025 Malik and Zufar said: He has no claim over her.

L31026 Ali said: The proof for the validity of our position and the invalidity of these people's claim is the widely-known established report we have transmitted through numerous varied chains—among them: the chain of al-Bukhari, the chain of Abd al-Razzaq, and the chain of Hammad ibn Salama. Al-Bukhari said: Qutaybah narrated to us, Hammad ibn Zayd narrated to us from Thabit al-Bunani; Abd al-Razzaq narrated from Ma'mar from Qatadah; Hammad ibn Salama narrated from Abd al-Aziz ibn Suhayb. Then Thabit, Qatadah, and Abd al-Aziz all agreed, all reporting from Anas ibn Malik that the Messenger of Allah—peace and blessings be upon him—"emancipated Safiyyah and made her manumission her dowry."

L31027 Qatadah said in his narration: "Then He made."

L31028 Abū Muḥammad said: Those who contradict the sound opinion have objected to this report by arguing: The situation must entail one of two scenarios—either he married her while she was enslaved, which is indisputably invalid, or he married her after he had manumitted her. Would this then constitute a matrimonial contract without a dower?

L31029 Ali said: This is the most utterly foolish speech ever heard, due to multiple aspects.

L31030 The first is that it constitutes an objection against the Messenger of Allah (peace and blessings be upon him and his family), and this is apostasy from Islam.

L31031–31033 The second is that this constitutes a fallacious and invalid objection, for

قَالَ أَبُو حَنِيفَةَ، وَزُفَرُ، وَمُحَمَّدٌ، وَمَالِكٌ: إِنْ فَعَلَ فَلَهَا عَلَيْهِ مَهْرُ مِثْلِهَا وَهِيَ حُرَّةٌ.

ثُمَّ اخْتَلَفُوا إِنْ أَبَتْ أَنْ تَتَزَوَّجَهُ -: فَقَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدٌ: تَسْعَى لَهُ فِي قِيمَتِهَا.

وَقَالَ مَالِكٌ، وَزُفَرُ: لَا شَيْءَ لَهُ عَلَيْهَا.

قَالَ عَلِيٌّ: الْبُرْهَانُ عَلَى صِحَّةِ قَوْلِنَا وَبُطْلَانُ قَوْلِ هَؤُلَاءِ: الْخَبَرُ الْمَشْهُورُ الثَّابِتُ الَّذِي رُوِّينَاهُ مِنْ طُرُقٍ شَتَّى كَثِيرَةٍ -: مِنْهَا: مِنْ طَرِيقِ الْبُخَارِيِّ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، قَالَ الْبُخَارِيُّ: ثنا قُتَيْبَةُ ثنا حَمَّادُ بْنُ زَيْدٍ عَنْ ثَابِتٍ الْبُنَانِيِّ، وَقَالَ عَبْدُ الرَّزَّاقِ: عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَقَالَ حَمَّادُ بْنُ سَلَمَةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ، ثُمَّ اتَّفَقَ ثَابِتٌ، وَقَتَادَةُ، وَعَبْدُ الْعَزِيزِ كُلُّهُمْ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَعْتَقَ صَفِيَّةَ وَجَعَلَ عِتْقَهَا صَدَاقَهَا»

قَالَ قَتَادَةُ فِي رِوَايَتِهِ: «ثُمَّ جَعَلَ» .

قَالَ أَبُو مُحَمَّدٍ: فَاعْتَرَضَ مَنْ خَالَفَ الْحَقَّ عَلَى هَذَا الْخَبَرِ بِأَنْ قَالَ: لَا يَخْلُو أَنْ يَكُونَ تَزَوَّجَهَا وَهِيَ مَمْلُوكَةٌ، فَهَذَا لَا يَجُوزُ بِلَا خِلَافٍ، أَوْ يَكُونَ تَزَوَّجَهَا بَعْدَ أَنْ أَعْتَقَهَا فَهَذَا نِكَاحٌ بِلَا صَدَاقٍ؟ .

قَالَ عَلِيٌّ: هَذَا أَحْمَقُ كَلَامٍ سُمِعَ لِوُجُوهٍ:

أَوَّلُهَا - أَنَّهُ اعْتِرَاضٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهَذَا انْسِلَاخٌ مِنْ الْإِسْلَامِ.

we say to them: He married her only when she had become a free woman after the legal validation of her emancipation. This emancipation - which was validated for her on the condition that he marry her thereby, and which constitutes her dower - had indeed been granted to her. The one from whom she has received full payment—and there is no distinction between this case and one who gives a woman dirhams, then proposes to her and marries her based on those dirhams owed to him by her, and the scholars do not deny this.

وَالثَّانِي - أَنَّهُ اعْتِرَاضٌ مُمَوَّهٌ سَاقِطٌ، لِأَنَّا نَقُولُ لَهُمْ: مَا تَزَوَّجَهَا إِلَّا وَهِيَ حُرَّةٌ بَعْدَ صِحَّةِ الْعِتْقِ لَهَا، وَذَلِكَ الْعِتْقُ الَّذِي صَحَّ لَهَا بِشَرْطِ أَنْ يَتَزَوَّجَهَا بِهِ وَهُوَ صَدَاقُهَا، قَدْ أَتَاهَا إِيَّاهُ، وَاسْتَوْفَتْهُ - وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ مَنْ أَعْطَى امْرَأَةً دَرَاهِمَ ثُمَّ خَطَبَهَا فَتَزَوَّجَهَا عَلَى تِلْكَ الدَّرَاهِمِ الَّتِي لَهُ عِنْدَهَا، وَهُمْ لَا يُنْكِرُونَ هَذَا.

L31034 The third point: Had they posed this question to themselves regarding their corrupt rulings, would they not have reached the correct conclusion? Such as their judgment entitling a thrice-divorced woman to inheritance during terminal illness? We respond: This must fall into one of two scenarios—either you entitled her to inheritance while she remained his wife, or when she was no longer his wife, with no third possibility. If she was his wife, his lawful enjoyment through intimacy with her and gazing upon her private parts would have persisted as long as he was alive. Yet you absolutely and categorically forbid this.

وَالثَّالِثُ - أَنَّهُمْ لَوْ سَأَلُوا أَنْفُسَهُمْ هَذَا السُّؤَالَ فِي أَقْوَالِهِمْ الْفَاسِدَةِ لَأَصَابُوا؟ مِثْلُ تَوْرِيثِهِمْ الْمُطَلَّقَةَ ثَلَاثًا فِي الْمَرَضِ؟ فَنَقُولُ لَهُمْ: لَا يَخْلُو مِنْ أَنْ تَكُونُوا وَرَّثْتُمُوهَا وَهِيَ زَوْجَةٌ لَهُ، أَوْ وَهِيَ لَيْسَتْ بِزَوْجَةٍ لَهُ، وَلَا سَبِيلَ إلَى قَسَمٍ ثَالِثٍ -: فَإِنْ كَانَتْ زَوْجَتَهُ فَقَدْ كَانَ تَلَذُّذُهُ بِمُبَاشَرَتِهَا، وَنَظَرُهُ إلَى فَرْجِهَا حَلَالٌ لَهُ مَا دَامَ يَجْرِي فِيهِ الرُّوحُ، وَأَنْتُمْ تُحَرِّمُونَ عَلَيْهِ ذَلِكَ بَتْلًا قَطْعًا.

L31035 And if she is not his wife, nor his mother, nor his daughter, nor his grandmother, nor his granddaughter (through his son), nor his sister, nor a freed female slave (with established familial ties), nor a blood relative, then this is sheer injustice and giving wealth wrongfully.

وَإِنْ كَانَتْ لَيْسَتْ زَوْجًا لَهُ، وَلَا أُمًّا لَهُ، وَلَا بِنْتًا لَهُ، وَلَا جَدَّةً لَهُ، وَلَا بِنْتَ ابْنٍ لَهُ، وَلَا أُخْتًا، وَلَا مُعْتَقَةً، وَلَا ذَاتَ رَحِمٍ، فَهَذَا عَيْنُ الظُّلْمِ، وَإِعْطَاءُ الْمَالِ بِالْبَاطِلِ.

L31036 If they claim to follow the Companions, we say: We are more deserving of correctness, clear justification, and avoidance of objections against us, for here we have followed the Prophet—peace and blessings of Allah be upon him and his family—along with the Companions and additionally the Successors. How can this be when you have lied in your claim of following the Companions regarding the inheritance of a woman divorced thrice during illness, as we shall clarify—Allah, the Exalted, willing—in its chapter? The closest clarification is that no authentic report exists from Umar, while the well-known position of Uthman is that he did not consider it a valid divorce. What then of their ruling concerning the children of the woman granted freedom: that they are free and their compensatory value is incumbent upon their father?

فَإِنْ ادَّعَوْا اتِّبَاعَ الصَّحَابَةِ؟ قُلْنَا: نَحْنُ أَوْلَى بِالصَّوَابِ، وَبِوُضُوحِ الْعُذْرِ، وَبِتَرْكِ الِاعْتِرَاضِ عَلَيْنَا، إذْ إنَّمَا اتَّبَعْنَا هَاهُنَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالصَّحَابَةَ أَيْضًا، وَالتَّابِعِينَ زِيَادَةً، فَكَيْفَ وَقَدْ كَذَبْتُمْ فِي دَعْوَاكُمْ اتِّبَاعَ الصَّحَابَةِ فِي تَوْرِيثِ الْمُطَلَّقَةِ ثَلَاثًا فِي الْمَرَضِ، عَلَى مَا نُبَيِّنُهُ إنْ شَاءَ اللَّهُ تَعَالَى فِي بَابِهِ؟ وَأَقْرَبُ ذَلِكَ: أَنَّهُ لَمْ يَصِحَّ عَنْ عُمَرَ، وَالْمَشْهُورُ عَنْ عُثْمَانَ أَنَّهُ لَمْ يُعِدَّهُ طَلَاقًا، وَفِي قَوْلِهِمْ فِي وَلَدِ الْمُسْتَحَقَّةِ: إنَّهُمْ أَحْرَارٌ وَعَلَى أَبِيهِمْ قِيمَتُهُمْ؟

فَنَقُولُ لَهُمْ: لَا يَخْلُو مِنْ أَنْ يَكُونُوا أَحْرَارًا أَوْ عَبِيدًا، فَإِنْ كَانُوا أَحْرَارًا فَثَمَنُ الْحُرِّ حَرَامٌ كَالْمَيْتَةِ وَالدَّمِ، وَإِنْ كَانُوا عَبِيدًا فَبَيْعُ الْعَبِيدِ مِنْ غَيْرِ رِضَا سَيِّدِهِمْ حَرَامٌ إِلَّا بِنَصٍّ - وَمِثْلُ هَذَا لَهُمْ كَثِيرٌ جِدًّا؟ وَقَالَ بَعْضُهُمْ: الْعِتْقُ لَيْسَ مَالًا، فَهُوَ كَالطَّلَاقِ فِي أَنَّ الْعِتْقَ يَبْطُلُ بِهِ الرِّقُّ فَقَطْ، وَالطَّلَاقُ يَبْطُلُ بِهِ النِّكَاحُ فَقَطْ، فَلَوْ أَنَّهُ طَلَّقَهَا عَلَى أَنْ يَكُونَ طَلَاقُهَا مَهْرًا لَهَا بَعْدَ ذَلِكَ، فَكَذَلِكَ الْعِتْقُ.

L31037 We say to them: They must either be free individuals or slaves. If they are free, then the price of a free person is forbidden, like carrion and blood. If they are slaves, selling them without their master's consent is forbidden unless based on an explicit textual ruling—and are such cases not exceedingly common among them? Some of them said: Emancipation is not [considered] property, so it is akin to divorce in that emancipation nullifies slavery alone, just as divorce nullifies marriage alone. Thus, if he divorces her on the condition that the divorce itself serves as her dowry thereafter, the same applies to emancipation.

قَالَ أَبُو مُحَمَّد: وَهَذَا قَوْلٌ فِي غَايَةِ الْفَسَادِ وَالسَّخَافَةِ، لِأَنَّهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ - ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ قِيَاسَ أَصْلٍ عَلَى أَصْلٍ آخَرَ لَا يَجُوزُ عِنْدَهُمْ، وَلَا شَبَهَ بَيْنَ الطَّلَاقِ وَالْعِتْقِ، لِأَنَّ الْعِتْقَ يُبْطِلُ الرِّقَّ كَمَا قَالُوا، وَأَمَّا الطَّلَاقُ فَقَدْ كَذَبُوا فِي قَوْلِهِمْ إِنَّهُ يُبْطِلُ النِّكَاحَ، بَلْ لِلْمُطَلِّقِ الَّذِي وَطِئَهَا دُونَ الثَّلَاثِ أَنْ يَرْتَجِعَهَا - فَصَحَّ أَنَّهُ لَمْ يَبْطُلْ نِكَاحُهُ، بِخِلَافِ الْعِتْقِ الَّذِي لَا يَجُوزُ لَهُ ارْتِجَاعُهُ فِي الرِّقِّ.

L31038–31040 Abu Muhammad said: This opinion is at the peak of corruption and frivolity, because it is analogy, and all analogy is invalid. Moreover, even if analogy were valid, this would be the very essence of its invalidity, as analogizing one foundational principle to another is impermissible. According to them, there is no resemblance between divorce and manumission, for manumission abolishes enslavement as they asserted. As for divorce, they have lied in their claim that it invalidates marriage. Rather, the divorcer who has divorced her fewer than three times and has had intercourse with her may take her back. Thus, it is established as valid that his marriage has not been invalidated, unlike manumission, which does not permit him to reclaim [the freed person] into slavery.

وَأَيْضًا: فَإِنَّ الْعِتْقَ إِخْرَاجٌ عَنْ مِلْكِهِ، وَلَيْسَ الطَّلَاقُ كَذَلِكَ؟ فَبَطَلَ تَمْوِيهُهُمْ الْبَارِدُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. وَقَالَ بَعْضُهُمْ: هَذَا خَاصٌّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L31041 Furthermore, emancipation is the removal from his ownership, whereas divorce is not the same? Thus, their feeble obfuscation was invalidated—and all praise is due to Allah, Lord of the worlds. Some of them said: This is specific to the Messenger of Allah—may Allah's blessings and peace be upon him and his family.

قَالَ أَبُو مُحَمَّد: هَذَا كَذِبٌ، وَمُخَالَفَةٌ لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] فَكُلُّ فِعْلٍ فَعَلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَنَا الْفَضْلُ فِي الِائْتِسَاءِ بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا لَمْ يَأْتِ نَصٌّ بِأَنَّهُ خُصُوصٌ فَنَقِفُ عِنْدَهُ،

L31042 Abu Muhammad said: This is a lie and a contradiction to the words of Allah, Exalted and Majestic: "There has certainly been for you in the Messenger of Allah an excellent example" [Al-Ahzab: 21]. Thus, every action he performed—peace and blessings be upon him—is a virtuous example for us to follow, provided no text establishes it as being specific, in which case we desist. Had they applied this reasoning to themselves regarding their per-

mitting of the gifted matter that is unlawful for others—peace and blessings be upon him—they would have been correct.[1]

وَلَوْ قَالُوا هَذَا لِأَنْفُسِهِمْ فِي إِجَازَتِهِمْ الْمَوْهُوبَةَ الَّتِي لَا تَحِلُّ لِغَيْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَوَفَّقُوا.

L31043 Some of them said: You have indeed narrated what Dawud ibn Babshadh wrote to you about that. He said: Abd al-Ghani ibn Sa'id al-Hafiz narrated to us; Hisham ibn Muhammad ibn Qurrah narrated to us; Abu Ja'far al-Tahawi narrated to us; Ahmad ibn Dawud narrated to us; Ya'qub ibn Humayd—who is Ibn Kasib—narrated to us. He said: Hammad ibn Zayd narrated to us from Abdullah ibn Awn, who said: Nafi' wrote to me: "The Prophet—peace and blessings be upon him and his family—captured Juwayriyah during the raid of Banu al-Mustaliq, freed her, married her, and made her emancipation her mahr. Abdullah ibn Umar, who was in that army, informed me of that."

وَقَالَ بَعْضُهُمْ: قَدْ رَوَيْتُمْ فِي ذَلِكَ مَا كَتَبَ بِهِ إِلَيْكُمْ دَاوُد بْنُ بَابْشَاذَ قَالَ: نا عَبْدُ الْغَنِيِّ بْنُ سَعِيدٍ الْحَافِظُ نا هِشَامُ بْنُ مُحَمَّدِ بْنِ قُرَّةَ نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ نا أَحْمَدُ بْنُ دَاوُد، نا يَعْقُوبُ بْنُ حُمَيْدٍ - وَهُوَ ابْنُ كَاسِبٍ - قَالَ: نَا حَمَّادُ بْنُ زَيْدٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ قَالَ: كَتَبَ إِلَيَّ نَافِعٌ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَخَذَ جُوَيْرِيَةَ فِي غَزْوَةِ بَنِي الْمُصْطَلِقِ فَأَعْتَقَهَا وَتَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا أَخْبَرَنِي بِذَلِكَ عَبْدُ اللَّهِ بْنُ عُمَرَ كَانَ فِي ذَلِكَ الْجَيْشِ»

L31044 They said, "Ibn 'Umar does not hold that view"—so how could it be impossible for him to abandon what he narrated unless he possessed superior knowledge contradicting that [view]?

قَالُوا: وَابْنُ عُمَرَ لَا يَرَى ذَلِكَ، فَمُحَالٌ أَنْ يَتْرُكَ مَا رَوَى إِلَّا لِفَضْلِ عِلْمٍ عِنْدَهُ، بِخِلَافِ ذَلِكَ؟

L31045 Abu Muhammad said: If what they mentioned were valid—that Ibn Umar did not consider that view—it would not constitute a decisive proof (ḥujjah), for the authoritative proof Allah the Exalted has commanded us to follow is solely what they transmitted to us from the Messenger of Allah—peace and blessings be upon him and his family—not what any of them narrated as an opinion derived through personal juristic effort (ijtihad), even if correct. If such an opinion aligns with the definitive text (al-naṣṣ), the scholar receives two rewards; but if he erred in contradicting the text without intending opposition, he receives one reward.

قَالَ أَبُو مُحَمَّد: لَوْ صَحَّ مَا ذَكَرُوهُ: مِنْ أَنَّ ابْنَ عُمَرَ لَمْ يَرَ ذَلِكَ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّ الْحُجَّةَ الَّتِي أَمَرَنَا اللَّهُ تَعَالَى بِهَا وَبِاتِّبَاعِهَا، إِنَّمَا هِيَ مَا رَوَوْهُ لَنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا مَا رَوَاهُ مَنْ رَآهُ مِنْهُمْ بِرَأْيٍ اجْتَهَدَ فِيهِ وَأَصَابَ: إِنْ وَافَقَ النَّصَّ فَلَهُ أَجْرَانِ، أَوْ أَخْطَأَ إِنْ خَالَفَ النَّصَّ غَيْرَ قَاصِدٍ إِلَى خِلَافِهِ فَلَهُ أَجْرٌ وَاحِدٌ.

L31046–31048 In our book titled "Inflection in Uncovering Ambiguity," we have dedicated a substantial chapter to every... One of the two factions regarding what they contradicted each other in this place adopted the Companion's narration and opposed his opinion, the opinion he had used to oppose what he himself narrated.

وَقَدْ أَفْرَدْنَا فِي كِتَابِنَا الْمَوْسُومِ بِـ " الْإِعْرَابُ فِي كَشْفِ الِالْتِبَاسِ " بَابًا ضَخْمًا لِكُلِّ وَاحِدَةٍ مِنْ الطَّائِفَتَيْنِ فِيمَا تَنَاقَضُوا فِيهِ فِي هَذَا الْمَكَانِ، فَأَخَذُوا بِرِوَايَةِ الصَّاحِبِ وَخَالَفُوا رَأْيَهُ الَّذِي خَالَفَ بِهِ مَا رَوَى.

[1] **Qur'an references (L31042):** Qur'an 33:21 (Al-Ahzab).

L31049 What we know from Ibn ʻUmar is what we have narrated through the chain of Saʻīd ibn Manṣūr who narrated to us from Hushaym and Jarīr, both of whom reported from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʻī, who said: "Ibn ʻUmar used to say regarding a man who manumits a female slave and then marries her: 'He is like one who rides his she-camel.'" Ibrāhīm said: This view was most pleasing to our companions - that her manumission should serve as her dowry. For Ibn ʻUmar only disliked a man marrying someone he had manumitted when the manumission had been declared solely for Allah's sake, the Mighty and Majestic.

وَالَّذِي نَعْرِفُهُ عَنْ ابْنِ عُمَرَ فَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ، وَجَرِيرٌ كِلَاهُمَا عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: " إِنَّ ابْنَ عُمَرَ كَانَ يَقُولُ فِي الرَّجُلِ يُعْتِقُ الْجَارِيَةَ ثُمَّ يَتَزَوَّجُهَا كَالرَّاكِبِ بَدَنَتَهُ " قَالَ إِبْرَاهِيمُ: وَكَانَ أَعْجَبُ ذَلِكَ إِلَى أَصْحَابِنَا أَنْ يَجْعَلُوا عِتْقَهَا صَدَاقَهَا فَإِنَّمَا كَرِهَ ابْنُ عُمَرَ زَوَاجَ الْمَرْءِ مَنْ أَعْتَقَهَا لِلَّهِ عَزَّ وَجَلَّ فَقَطْ -.

L31050 So their weak scheme in this legal issue was nullified.

فَبَطَلَ كَيْدُهُمُ الضَّعِيفُ فِي هَذِهِ الْمَسْأَلَةِ.

L31051 Abu Muhammad said: The aforementioned report from Ibn Umar—Ibn Umar wrote it to Dawud ibn Bābshādh. Abd al-Ghani ibn Saʻid narrated to us, from Hisham ibn Muhammad ibn Qurrah, from Abu Jaʻfar al-Tahawi; then he mentioned the hadith that we mentioned earlier.

قَالَ أَبُو مُحَمَّدٍ: وَالْخَبَرُ الْمَذْكُورُ عَنِ ابْنِ عُمَرَ كَتَبَ بِهِ إِلَى دَاوُد بْنِ بَابْشَاذَ قَالَ: نَا عَبْدُ الْغَنِيِّ بْنُ سَعِيدٍ ثَنَا هِشَامُ بْنُ مُحَمَّدِ بْنِ قُرَّةَ نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ فَذَكَرَ الْحَدِيثَ الَّذِي ذَكَرْنَا آنِفًا.

L31052 Then he said: Indeed, Ibn ʻUmar has narrated this from the Messenger of Allah — peace be upon him — as we have mentioned.

ثُمَّ قَالَ: فَقَدْ رَوَى هَذَا ابْنُ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا ذَكَرْنَا.

L31053 Then he said: After him (the Prophet, peace and blessings be upon him) in a case like this: that he renews her dower. Sulaymān ibn Shuʻayb narrated to us regarding this, from Al-Khaṣīb (Ibn Nāṣiḥ), from Ḥammād ibn Salamah, from ʿUbayd Allāh, from Nāfiʿ, from Ibn ʿUmar - a similar report.

ثُمَّ قَالَ: هُوَ مِنْ بَعْدِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي مِثْلِ هَذَا: إِنَّهُ يُجَدِّدُ لَهَا صَدَاقًا -: نا بِذَلِكَ سُلَيْمَانُ بْنُ شُعَيْبٍ نا الْخَصِيبُ - هُوَ ابْنُ نَاصِحٍ - حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ مِثْلَ ذَلِكَ.

L31054 Abu Muhammad said: This is the exact wording of Al-Tahawi's statement, and he did not mention how Ibn Umar's statement was. Perhaps if he had cited it, it would have been contrary to Al-Tahawi's presumption. This hadith is not among those narrated by the trustworthy companions of Hammad ibn Salamah from him. Al-Khasib's status is unknown, and he is not prominent among the companions of Hammad ibn Salamah. Thus, it is a weak matter in every respect.

قَالَ أَبُو مُحَمَّدٍ: هَذَا نَصُّ كَلَامِ الطَّحَاوِيِّ، وَلَمْ يَذْكُرْ كَلَامَ ابْنِ عُمَرَ كَيْفَ كَانَ، وَلَعَلَّهُ لَوْ أَوْرَدَهُ لَكَانَ خِلَافًا لِظَنِّ الطَّحَاوِيِّ، وَهَذَا الْحَدِيثُ لَيْسَ مِمَّا رَوَاهُ أَصْحَابُ حَمَّادِ بْنِ سَلَمَةَ الثِّقَاتُ عَنْهُ، وَالْخَصِيبُ لَا يُدْرِي حَالُهُ وَلَيْسَ بِالْمَشْهُورِ فِي أَصْحَابِ حَمَّادِ بْنِ سَلَمَةَ، فَهُوَ أَمْرٌ ضَعِيفٌ مِنْ كُلِّ جِهَةٍ.

L31055 The first report is transmitted from Ibn ʿUmar, not from Juwayriyah; it is narrated by Yaʿqūb ibn Ḥumayd ibn Kāsib, and he is weak.

وَالْخَبَرُ الْأَوَّلُ مِنْ رِوَايَةِ ابْنِ عُمَرَ لَا مِنْ جُوَيْرِيَةَ هُوَ مِنْ رِوَايَةِ يَعْقُوبَ بْنِ حُمَيْدِ بْنِ كَاسِبٍ وَهُوَ ضَعِيفٌ.

L31056–31058 وَذَكَرُوا أَيْضًا: الْخَبَرَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ جَعْفَرِ بْنِ الزُّبَيْرِ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ جُوَيْرِيَةَ قَالَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّهَا وَقَعَتْ فِي سَهْمِ ثَابِتِ بْنِ قَيْسِ بْنِ الشَّمَّاسِ أَوْ ابْنِ عَمٍّ لَهُ، وَإِنَّهَا كَاتَبَتْهُ وَأَتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَسْتَعِينُهُ فِي كِتَابَتِهَا، وَإِنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لَهَا: أَوْ خَيْرٌ مِنْ ذَلِكَ، أَقْضِي عَنْكِ كِتَابَتَكِ وَأَتَزَوَّجُكِ»

L31059 قَالُوا: وَلَيْسَ هَذَا لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُؤَدِّيَ كِتَابَةَ مُكَاتَبَةٍ لِغَيْرِهِ وَيَتَزَوَّجَهَا بِذَلِكَ.

L31060 قَالَ أَبُو مُحَمَّدٍ: قَبْلَ كُلِّ شَيْءٍ فَإِنَّ هَذَا خَبَرٌ لَا تَقُومُ بِهِ حُجَّةٌ، إنَّمَا رُوِّينَاهُ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ مِنْ طَرِيقَيْنِ ضَعِيفَيْنِ -: أَحَدُهُمَا - مِنْ طَرِيقِ زِيَادِ بْنِ عَبْدِ اللَّهِ الْبَكَّائِيِّ. وَالْآخَرُ - مِنْ طَرِيقِ أَسَدِ بْنِ مُوسَى، وَكِلَاهُمَا ضَعِيفٌ.

L31061 ثُمَّ لَوْ صَحَّ لَكَانَ لَا يَخْلُو أَنَّ ثَابِتَ بْنَ قَيْسٍ وَهَبَهَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ عَرَفَ رَغْبَتَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهَا، وَلَمْ تَكُنْ أَدَّتْ مِنْ كِتَابَتِهَا بَعْدُ شَيْئًا، فَبَطَلَتْ الْكِتَابَةُ وَصَارَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ لَا يَجُوزُ أَنْ يُظَنَّ بِثَابِتٍ أَوْ بِصَاحِبٍ غَيْرِ هَذَا أَصْلًا.

They also mentioned: the report we have transmitted via the chain of Muḥammad ibn Isḥāq from Muḥammad ibn Jaʿfar ibn al-Zubayr from ʿUrwah from ʿĀʾishah, the Mother of the Believers, "that Juwayriyah said to the Messenger of Allah (may Allah bless him and grant him peace) that she..." She was assigned to the portion of Thabit ibn Qays ibn al-Shammas or his paternal cousin. She entered a *kitābah* agreement with him and came to the Messenger of Allah (peace and blessings be upon him) seeking his assistance regarding her *kitābah*. The Messenger of Allah (peace and blessings be upon him) said to her: "Or better than that: I will discharge your *kitābah* debt and marry you."

They said: This is not for anyone after the Messenger of Allah—may Allah bless him and grant him peace—to fulfill the *mukātabah* contract on behalf of another and thereby marry her by means of it.

Abu Muhammad said: First of all, this is a report that cannot stand as authoritative evidence. We have only transmitted it from Muhammad ibn Isḥāq through two weak chains—one through Ziyād ibn ʿAbdullāh al-Bakkāʾī and the other through Asad ibn Mūsā—both of whom are unreliable.

Then, if it were valid, it would necessarily mean that Thābit ibn Qays had gifted it to the Messenger of Allah—peace and blessings be upon him—since he knew of his eagerness for it, and the slave had not yet fulfilled any part of her kitābah obligation [to purchase her freedom]. Thus, the contract would be nullified, and it would become the property of the Messenger of Allah—peace and blessings be upon him—for it is impermissible to presume that Thābit or the owner acted contrary to this in the slightest.

Moreover, if that were not the case and she had persisted in her _kitābah_ (manumission contract) until she was freed by fulfilling it or by the Messenger of Allah (peace be upon him) fulfilling it on her behalf, she would have become

the client of Thābit. Yet no scholar has ever definitively asserted this, and there is no disagreement among the people of knowledge that she was never Thābit's client in the first place.

وَأَيْضًا - فَلَوْ لَمْ يَكُنْ ذَلِكَ وَتَمَادَتْ عَلَى كِتَابَتِهَا حَتَّى عَتَقَتْ بِأَدَائِهَا أَوْ بِأَدَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِيَّاهَا عَنْهَا لَكَانَتْ مَوْلَاةَ ثَابِتٍ، وَهَذَا لَمْ يَقُلْهُ أَحَدٌ قَطْعًا، وَلَا اخْتَلَفَ أَحَدٌ مِنْ أَهْلِ الْعِلْمِ فِي أَنَّهَا لَمْ تَكُنْ مَوْلَاةَ ثَابِتٍ أَصْلًا

L31063 The invalidity of what Asad and Ziyad narrated became evident, and their clinging to these fabricated narrations—which avail nothing toward the truth—was rendered futile.

فَوَضَحَ سُقُوطُ مَا رَوَاهُ أَسَدٌ، وَزِيَادٌ، وَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْمُلَفَّقَاتِ الَّتِي لَا تُغْنِي مِنْ الْحَقِّ شَيْئًا.

L31064 They also elaborated: Hammām ibn Aḥmad narrated from ʿAbbās ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated from Ismāʿīl ibn Isḥāq, who narrated from Yaḥyā ibn ʿAbd al-Ḥamīd al-Ḥimānī, who narrated from Abū Bakr ibn ʿAyyāsh, who narrated from Abū Ḥuṣayn, who narrated from Abū Burdah, who narrated from Abū Mūsā, who narrated from the Prophet, peace and blessings of Allah be upon him, who said: "If any man emancipates his bondwoman and then marries her with a new bridal gift, he will be granted two rewards."

وَمَوَّهُوا أَيْضًا: بِمَا حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ نا عَبَّاسُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا يَحْيَى بْنُ عَبْدِ الْحَمِيدِ الْحِمَّانِيُّ نا أَبُو بَكْرِ بْنُ عَيَّاشٍ نا أَبُو حُصَيْنٍ عَنْ أَبِي بُرْدَةَ عَنْ أَبِي مُوسَى عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «أَيُّمَا امْرِئٍ أَعْتَقَ أَمَتَهُ ثُمَّ تَزَوَّجَهَا بِمَهْرٍ جَدِيدٍ فَلَهُ أَجْرَانِ» .

L31065–31066 This is an unsound wording that Yahya al-Himmani (an extremely weak narrator) solely reported from Abu Bakr ibn 'Ayyash (a weak narrator).

فَهَذَا لَفْظُ سُوءٍ انْفَرَدَ بِهِ يَحْيَى الْحِمَّانِيُّ - وَهُوَ ضَعِيفٌ جِدًّا - عَنْ أَبِي بَكْرِ بْنِ عَيَّاشٍ - وَهُوَ ضَعِيفٌ.

L31067 The hadith is well-known from the narration of trustworthy narrators, and there is no new mahr in it at all.

وَالْخَبَرُ مَشْهُورٌ مِنْ رِوَايَةِ الثِّقَاتِ لَيْسَ فِيهِ بِمَهْرٍ جَدِيدٍ أَصْلًا.

L31068 Then, even if it were authentic, it would not constitute any evidence whatsoever, because it does not state that he may not marry her except with a new mahr. We do not prohibit him from stipulating another mahr for her; rather, all of that is permissible. This report - We have narrated it through various chains of transmission: among them a chain through Abd al-Razzaq from Sufyan al-Thawri from Salih ibn Hayyan from al-Sha'bi from Abu Burdah ibn Abi Musa al-Ash'ari from his father, who said: The Messenger of Allah (peace and blessings be upon him) said, "Whoever has a slave girl, teaches her excellent manners and educates her thoroughly, then frees her and subsequently marries her, will receive two rewards."

ثُمَّ لَوْ صَحَّ لَمْ تَكُنْ فِيهِ حُجَّةٌ أَصْلًا، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ لَا يَجُوزُ لَهُ نِكَاحُهَا إِلَّا بِمَهْرٍ جَدِيدٍ، وَنَحْنُ لَا نَمْنَعُ مِنْ أَنْ يَجْعَلَ لَهَا مَهْرًا آخَرَ، بَلْ كُلُّ ذَلِكَ جَائِزٌ - وَهَذَا الْخَبَرُ رُوِّينَاهُ مِنْ طُرُقٍ -: مِنْهَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ صَالِحِ بْنِ حَيَّانَ عَنْ الشَّعْبِيِّ عَنْ أَبِي بُرْدَةَ بْنِ أَبِي مُوسَى الْأَشْعَرِيِّ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَانَتْ لَهُ جَارِيَةٌ فَأَحْسَنَ أَدَبَهَا وَعَلَّمَهَا فَأَحْسَنَ تَعْلِيمَهَا ثُمَّ أَعْتَقَهَا فَتَزَوَّجَهَا فَلَهُ أَجْرَانِ اثْنَانِ» .

L31069 From the chain of Saʿīd ibn Manṣūr: Khālid ibn ʿAbdullāh narrated to us from Muṭarrif—who is Ibn Ṭarīf—from al-Shaʿbī, from Abū Burdah, from Abū Mūsā al-Ashʿarī: "The Messenger of Allah (peace be upon him and his family) said regarding one who emancipates his female slave and marries her: 'He will receive two rewards.' No new bridal gift (mahr) applies in any such case."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا خَالِدُ بْنُ عَبْدِ اللَّهِ نا مُطَرِّفٌ - هُوَ ابْنُ طَرِيفٍ - عَنْ الشَّعْبِيِّ عَنْ أَبِي بُرْدَةَ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ فِي الَّذِي يُعْتِقُ أَمَتَهُ ثُمَّ يَتَزَوَّجُهَا فَلَهُ أَجْرَانِ» لَيْسَ فِي شَيْءٍ مِنْ ذَلِكَ مَهْرٌ جَدِيدٌ.

L31070 Abu Umar informed us via the previously mentioned chain of narration leading to Muslim, who said: Yahya ibn Yahya narrated to us, Hushaym narrated to us from Salih ibn Salih al-Hamdani from al-Sha'bi, who said: I saw a man from Khurasan asking al-Sha'bi. He said: "O Abu Amr, those before us from the people of Khurasan say regarding a man who frees his female slave then marries her: 'He is like one who rides his sacrificial she-camel?'" Al-Sha'bi replied: "Abu Burdah—who is Amir ibn Abdullah ibn Qays, known as Abu Musa al-Ash'ari—narrated to us from his father that the Messenger of Allah—peace and blessings be upon him and his family—said: 'Three will receive a double reward: A man from the People of the Book who believed in his prophet, then lived to meet the Prophet—peace and blessings be upon him and his family—believed in him, followed him, and affirmed him; he receives a double reward. A slave who fulfills Allah's right over him and his master's right; he receives a double reward. And a man who had a female slave, nourished her and perfected her nourishment, taught her manners and perfected her discipline, then freed her and married her; he receives a double reward.'" Then al-Sha'bi said to the Khurasani man: "Take this report unreservedly, for people would travel for less than this to Medina." Muslim said: Abu Bakr ibn Abi Shaybah narrated to us from Abdah ibn Sulayman; Ibn Abi Umar narrated to us from Sufyan; and Abdullah ibn Muadh said: My father narrated to us from Shu'bah—all of them from Salih ibn Salih via this chain of narration in similar wording.

أَخْبَرَنَا أَبُو عُمَرَ بِالسَّنَدِ الْمُتَقَدِّمِ إِلَى مُسْلِمٍ قَالَ: نا يَحْيَى بْنُ يَحْيَى نا هُشَيْمٌ عَنْ صَالِحِ بْنِ صَالِحٍ الْهَمْدَانِيِّ عَنْ الشَّعْبِيِّ قَالَ: رَأَيْت رَجُلًا مِنْ خُرَاسَانَ يَسْأَلُ الشَّعْبِيَّ فَقَالَ: يَا أَبَا عَمْرٍو إنَّ مَنْ قَبْلَنَا مِنْ أَهْلِ خُرَاسَانَ يَقُولُونَ فِي الرَّجُلِ إذَا أَعْتَقَ أَمَتَهُ ثُمَّ تَزَوَّجَهَا: فَهُوَ كَالرَّاكِبِ بَدَنَتَهُ؟ فَقَالَ الشَّعْبِيُّ: حَدَّثَنَا أَبُو بُرْدَةَ - هُوَ عَامِرُ بْنُ عَبْدِ اللَّهِ بْنِ قَيْسٍ - هُوَ أَبُو مُوسَى الْأَشْعَرِيُّ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «ثَلَاثَةٌ يُؤْتَوْنَ أَجْرَهُمْ مَرَّتَيْنِ: رَجُلٌ مِنْ أَهْلِ الْكِتَابِ آمَنَ بِنَبِيِّهِ وَأَدْرَكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَآمَنَ بِهِ وَاتَّبَعَهُ وَصَدَّقَ بِهِ فَلَهُ أَجْرَانِ، وَعَبْدٌ مَمْلُوكٌ أَدَّى حَقَّ اللَّهِ عَلَيْهِ وَحَقَّ سَيِّدِهِ فَلَهُ أَجْرَانِ، وَرَجُلٌ كَانَتْ لَهُ أَمَةٌ فَغَذَّاهَا فَأَحْسَنَ غِذَاءَهَا ثُمَّ أَدَّبَهَا فَأَحْسَنَ أَدَبَهَا ثُمَّ أَعْتَقَهَا فَتَزَوَّجَهَا فَلَهُ أَجْرَانِ» ثُمَّ قَالَ الشَّعْبِيُّ لِلْخُرَاسَانِيِّ: خُذْ هَذَا الْخَبَرَ بِغَيْرِ شَيْءٍ فَقَدْ كَانَ الرَّجُلُ يَرْحَلُ فِيمَا دُونَ هَذَا إلَى الْمَدِينَةِ قَالَ مُسْلِمٌ: وَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدَةُ بْنُ سُلَيْمَانُ، وَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ، وَنَا عَبْدُ اللَّهِ بْنُ مُعَاذٍ قَالَ: حَدَّثَنِي أَبِي قَالَ: نا شُعْبَةُ، كُلُّهُمْ عَنْ صَالِحِ بْنِ صَالِحٍ بِهَذَا الْإِسْنَادِ نَحْوَهُ.

L31071–31072 Abu Muhammad said: All that they have raised by way of objections is nothing but falsehoods. A group among the Salaf who held our opinion—as has been narrated to us through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Abu Ishaq al-Sabi'i, from al-Harith, from Ali ibn Abi Talib—

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا شَغَبُوا بِهِ، إنَّمَا هُوَ أَبَاطِيلُ، وَمِمَّنْ قَالَ بِقَوْلِنَا مِنْ السَّلَفِ طَائِفَةٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ

who said regarding one who manumits his female slave then marries her, making her manumission her mahr: “He receives two rewards.” This has also been narrated from Ibn Mas’ud and Anas.

L31073 Through the chain of Saʿīd ibn Manṣūr: Hushaym informed us from Yaḥyā ibn al-Anṣārī, al-Mughīrah, Yūnus, who is Ibn ʿUbayd, and Jābir. Yaḥyā reported from Saʿīd ibn al-Musayyab, al-Mughīrah from Ibrāhīm, Yūnus from al-Ḥasan, and Jābir from al-Shaʿbī. All of them stated: It is permissible to make her manumission her bridal gift (mahr). Hushaym also narrated: ʿAbd al-Malik ibn Abī Sulaymān informed us from ʿAṭāʾ ibn Abī Rabāḥ, who would say: “If a man declares to his female slave, ‘I have freed you and thereby married you,’ she becomes his wife. But if he says, ‘I have freed you and will marry you,’ then he frees her: if she wishes, she may marry him, and if she prefers, she may decline.”

L31074 Al-Hasan disliked anything other than this, as it has been narrated to us through the chain of transmission of Abū Dāwūd al-Ṭayālisī, from Shuʿbah, from Manṣūr ibn Zādhān, from al-Ḥasan al-Baṣrī, that he disliked a man emancipating his female slave for the sake of Allah and then marrying her.

L31075 Abu Muhammad said: The like has been related from Anas ibn Malik, Ibn Masʿūd, Jābir ibn Zayd, and Ibrāhīm.

L31076 From the path of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm, who said: They disapproved of a man manumitting his female slave then marrying her, but they saw no harm in making her manumission her dowry. From the path of ʿAbd al-Razzāq, from Ibn Jurayj, from Yaḥyā ibn Saʿīd al-Anṣārī and ʿAbdullāh ibn Ṭāwūs. Yaḥyā reported from Saʿīd ibn al-Musayyib, while Ibn Ṭāwūs reported from his father. Both of them stated: There is no harm in making her manumission her dowry. Ṭāwūs said: That is good.

L31077 From the chain of Abd al-Razzaq, from Ma’mar, from Yahya ibn Abi Kathir, from Abu Salama ibn Abd al-Rahman ibn Awf, who said: “There is no objec-

عَنْ الْحَارِثِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِيمَنْ أَعْتَقَ أَمَتَهُ ثُمَّ تَزَوَّجَهَا وَجَعَلَ عِتْقَهَا صَدَاقَهَا؟ قَالَ: " لَهُ أَجْرَانِ " وَقَدْ رُوِيَ أَيْضًا عَنْ ابْنِ مَسْعُودٍ، وَأَنَسٍ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يَحْيَى بْنُ الْأَنْصَارِيِّ، وَالْمُغِيرَةُ وَيُونُسُ - هُوَ ابْنُ عُبَيْدٍ - وَجَابِرٌ، قَالَ يَحْيَى: عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَقَالَ الْمُغِيرَةُ: عَنْ إبْرَاهِيمَ، وَقَالَ يُونُسُ: عَنْ الْحَسَنِ، وَقَالَ جَابِرٌ: عَنْ الشَّعْبِيِّ، قَالُوا كُلُّهُمْ: لَا بَأْسَ بِأَنْ يَجْعَلَ عِتْقَهَا صَدَاقَهَا، قَالَ هُشَيْمٌ: وَنَا عَبْدُ الْمَلِكِ بْنُ أَبِي سُلَيْمَانَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ كَانَ يَقُولُ " إذَا قَالَ الرَّجُلُ لِأَمَتِهِ قَدْ أَعْتَقْتُكِ وَتَزَوَّجْتُكِ فَهِيَ امْرَأَتُهُ، وَإِنْ قَالَ: أَعْتَقْتُكِ وَأَتَزَوَّجُكِ فَأَعْتَقَهَا: إنْ شَاءَتْ تَزَوَّجَتْهُ، وَإِنْ شَاءَتْ لَمْ تَتَزَوَّجْهُ ".

وَكَانَ الْحَسَنُ يَكْرَهُ غَيْرَ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد الطَّيَالِسِيِّ عَنْ شُعْبَةَ عَنْ مَنْصُورِ بْنِ زَاذَانَ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَرِهَ أَنْ يُعْتِقَ الرَّجُلُ أَمَتَهُ لِوَجْهِ اللَّهِ ثُمَّ يَتَزَوَّجُهَا.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِيَ مِثْلُهُ عَنْ أَنَسِ بْنِ مَالِكٍ، وَابْنِ مَسْعُودٍ، وَجَابِرِ بْنِ زَيْدٍ، وَإِبْرَاهِيمَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ قَالَ: كَانُوا يَكْرَهُونَ أَنْ يُعْتِقَ أَمَتَهُ ثُمَّ يَتَزَوَّجُهَا وَلَا يَرَوْنَ بَأْسًا أَنْ يَجْعَلَ عِتْقَهَا صَدَاقَهَا. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَعَبْدِ اللَّهِ بْنِ طَاوُسٍ قَالَ يَحْيَى: عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَقَالَ ابْنُ طَاوُسٍ: عَنْ أَبِيهِ، قَالَا جَمِيعًا: لَا بَأْسَ أَنْ يَجْعَلَ عِتْقَهَا صَدَاقَهَا، قَالَ طَاوُسٍ: ذَلِكَ حَسَنٌ.

tion to a man emancipating his female slave and then marrying her, making her emancipation her mahr."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: لَا بَأْسَ أَنْ يُعْتِقَ الرَّجُلُ أَمَتَهُ فَيَتَزَوَّجُهَا وَيَجْعَلُ عِتْقَهَا صَدَاقَهَا.

L31078–31080 And through him (the preceding narrator) to Maʿmar, from Qatādah, who said: If a man emancipates his female slave and makes her emancipation her dowry, then divorces her before consummating the marriage, she is entitled to nothing. Ibn Jurayj said: If he divorces her, she is entitled to half her value—this is the opinion of ʿAṭāʾ.

وَبِهِ إِلَى مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: إِذَا أَعْتَقَ الرَّجُلُ أَمَتَهُ وَجَعَلَ عِتْقَهَا مَهْرَهَا ثُمَّ طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا فَلَا شَيْءَ لَهَا - وَابْنُ جُرَيْجٍ يَقُولُ: إِنْ طَلَّقَهَا سَعَتْ لَهُ فِي نِصْفِ قِيمَتِهَا - وَهُوَ قَوْلُ عَطَاءٍ.

L31081 Abū Muḥammad said: These are ʿAlī, Anas, Ibn Masʿūd, Saʿīd ibn al-Musayyib, Ibrāhīm, those whom Ibrāhīm met among his teachers, al-Shaʿbī, ʿAṭāʾ ibn Abī Rabāḥ, Ṭāwus, Abū Salama ibn ʿAbd al-Raḥmān, Qatāda, and others – and this is the opinion of Sufyān al-Thawrī, al-Awzāʿī, al-Ḥasan ibn Ḥayy, Abū Yūsuf the judge (who opposed his companions in this matter and held the correct view), al-Shāfiʿī, Aḥmad, Abū Thawr, and some of our companions. We know of no predecessors for the dissenters except that weak narration from Ibn ʿUmar – in which he did not clarify: What was its precise wording? Nor how the wording of Nāfiʿ (who reported that from him) was phrased, or the occasional references they cited:

قَالَ أَبُو مُحَمَّدٍ: فَهَؤُلَاءِ: عَلِيٌّ، وَأَنَسٌ، وَابْنُ مَسْعُودٍ، وَسَعِيدُ بْنُ الْمُسَيِّبِ وَإِبْرَاهِيمُ، وَمَنْ لَقِيَهُ إِبْرَاهِيمُ مِنْ شُيُوخِهِ، وَالشَّعْبِيُّ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ، وَطَاوُسٌ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَقَتَادَةُ، وَغَيْرُهُمْ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي يُوسُفَ الْقَاضِي - خَالَفَ فِي ذَلِكَ أَصْحَابَهُ وَوَفَّقَ - وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي ثَوْرٍ، وَبَعْضِ أَصْحَابِنَا، وَمَا نَعْلَمُ لِلْمُخَالِفِينَ، سَلَفًا إِلَّا تِلْكَ الرِّوَايَةَ السَّاقِطَةَ عَنْ ابْنِ عُمَرَ الَّتِي لَمْ يُبَيِّنْ فِيهَا كَيْفَ كَانَ لَفْظُهُ؟ وَلَا كَيْفَ كَانَ لَفْظُ نَافِعٍ الَّذِي ذَكَرَ ذَلِكَ عَنْهُ، وَشَيْئًا رُبَّمَا ذَكَرُوهُ -:

L31082 It was narrated to us via the chain of Saʿīd ibn Manṣūr, who said: Hushaym reported to us, from Yunus, from Ibn Sīrīn, that he [Ibn Sīrīn] preferred to include something when emancipating her—what was it?

رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قَالَ: نا هُشَيْمٌ نا يُونُسُ عَنِ ابْنِ سِيرِينَ أَنَّهُ كَانَ يُحِبُّ أَنْ يَجْعَلَ مَعَ عِتْقِهَا شَيْئًا مَا كَانَ؟

L31083 Abū Muḥammad said: This is merely Ibn Sīrīn's recommendation. Otherwise, this statement indicates that he permitted her emancipation to be her dowry alone—and success comes from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا هَذَا اسْتِحْبَابٌ مِنِ ابْنِ سِيرِينَ، وَإِلَّا فَهَذَا الْقَوْلُ يَدُلُّ عَلَى أَنَّهُ كَانَ يُجِيزُ أَنْ يَجْعَلَ عِتْقَهَا صَدَاقَهَا فَقَطْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L31084 As for our statement: If he divorces her before consummation, she owes him nothing, because what was obligated for her is her freedom—and that is a completed obligation and cannot be reclaimed—while imposing a liability

would entail obligating her [to pay] other than half of what was obligated for her, which is not permissible.

وَأَمَّا قَوْلُنَا: إِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ فَلَا شَيْءَ لَهُ عَلَيْهَا، لِأَنَّ الَّذِي فَرَضَ لَهَا هُوَ عِتْقُهَا - وَهُوَ شَيْءٌ قَدْ تَمَّ فَلَا يُسْتَدْرَكُ - وَتَكْلِيفُ الْغَرَامَةِ هُوَ إِيجَابُ غَيْرِ نِصْفِ مَا فَرَضَ لَهَا فَلَا يَجُوزُ.

L31085 If she does not marry him, then even if he is manumitted, the manumission remains incomplete—for it is valid only conditionally upon her marrying him, thereby constituting her dowry. If she does not marry him, there is no dowry for an unconcluded marriage, rendering the marriage void. But if she does marry him, the marriage becomes valid, and the manumission is thereby confirmed through the validity of the marriage upon which it was contingent—and success comes solely from Allah, the Most High.

وَأَمَّا إِنْ لَمْ تَتَزَوَّجْهُ فَإِنْ عَتَقَ لَمْ يَتِمَّ؛ إِنَّمَا هُوَ عِتْقٌ بِشَرْطِ أَنْ تَتَزَوَّجَهُ فَيَكُونُ صَدَاقُهَا، فَإِذَا لَمْ تَتَزَوَّجْهُ فَلَا صَدَاقَ لِنِكَاحٍ لَمْ يَتِمَّ فَهُوَ بَاطِلٌ، وَأَمَّا إِنْ تَزَوَّجَتْهُ فَقَدْ تَمَّ النِّكَاحُ، وَصَحَّ الْعِتْقُ لِصِحَّةِ النِّكَاحِ الَّذِي عَلَّقَ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا تُجْبَرُ الْمَرْأَةُ عَلَى أَنْ تَتَجَهَّزَ لِلزَّوْجِ بِشَيْءٍ]

A jurisprudential issue: A woman cannot be compelled to prepare or furnish anything for her husband.

L31086

١٨٥٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ تُجْبَرَ الْمَرْأَةُ عَلَى أَنْ تَتَجَهَّزَ إِلَيْهِ بِشَيْءٍ أَصْلًا، لَا مِنْ صَدَاقِهَا الَّذِي أَصْدَقَهَا، وَلَا مِنْ غَيْرِهِ مِنْ سَائِرِ مَالِهَا، وَالصَّدَاقُ كُلُّهُ لَهَا تَفْعَلُ فِيهِ كُلَّ مَا شَاءَتْ، لَا إِذْنَ لِلزَّوْجِ فِي ذَلِكَ، وَلَا اعْتِرَاضَ.

1853. Issue: It is impermissible to compel a woman to prepare herself to join him using anything whatsoever: neither from the dowry he has given her nor from any other part of her wealth. The entire dowry belongs to her; she may do with it as she wishes. The husband has no authority in this matter, nor any right to object.

L31087

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَغَيْرِهِمْ.

This is the opinion of Abū Ḥanīfah, Shāfiʿī, Abū Sulaymān, and others among them.

L31088

وَقَالَ مَالِكٌ: إِنْ أَصْدَقَهَا دَنَانِيرَ أَوْ دَرَاهِمَ أُجْبِرَتْ عَلَى أَنْ تَبْتَاعَ بِكُلِّ ذَلِكَ شُورَةً مِنْ ثِيَابٍ وَوِطَاءٍ وَحُلِيٍّ تَتَجَمَّلُ بِهِ لَهُ، وَلَا يَحِلُّ لَهُ أَنْ تَقْضِيَ مِنْهَا دَيْنًا عَلَيْهَا إِلَّا ثَلَاثَةَ دَنَانِيرَ فَأَقَلَّ، فَإِنْ أَصْدَقَهَا نِقَارَ ذَهَبٍ أَوْ نِقَارَ فِضَّةٍ فَهُوَ لَهَا، وَلَا تُجْبَرُ عَلَى أَنْ تَبْتَاعَ بِهَا شُورَةً أَصْلًا.

Malik said: If he gives her dinars or dirhams as her bridal gift, she is obligated to use all of it to purchase a selection of clothes, household furnishings, and jewelry to adorn herself with for him. It is not permissible for her to use any of it to pay off a debt she owes, except three dinars. If he reduces [the dowry] and gives her a measure of gold or a measure of silver as her dowry, it belongs to her, and she cannot be compelled to buy defective goods with it at all.

L31089–31091

فَإِنْ أَصْدَقَهَا حُلِيًّا أُجْبِرَتْ أَنْ تَتَحَلَّى بِهِ لَهُ، فَإِنْ أَصْدَقَهَا ثِيَابًا وَوِطَاءً أُجْبِرَتْ عَلَى أَنْ تَلْبَسَهَا بِحَضْرَتِهِ، وَلَمْ تَجِبْ لَهَا عَلَيْهِ كِسْوَةٌ حَتَّى تَمْضِيَ مُدَّةٌ تَخْلَقُ فِيهَا تِلْكَ الثِّيَابُ.

If he gives her jewelry as a dowry, she is compelled to adorn herself with it for him. If he gives her clothes and a mattress as a dowry, she is compelled

L31092

to wear the clothes in his presence. She is not entitled to clothing from him until a period has passed during which those clothes deteriorate from use.

فَإِنْ أَصْدَقَهَا خَادِمًا أُنْثَى أُجْبِرَتْ عَلَى أَنْ تَخْدُمَهَا وَلَمْ يَكُنْ لَهَا بَيْعُهَا.

L31093 If he gives her a female servant as a dowry, the servant is compelled to serve her, and the wife is not entitled to sell her.

وَإِنْ أَصْدَقَهَا عَبْدًا فَلَهَا أَنْ تَفْعَلَ فِيهِ مَا شَاءَتْ مِنْ بَيْعٍ أَوْ غَيْرِهِ. فَلَوْ أَصْدَقَهَا دَابَّةً، أَوْ مَاشِيَةً، أَوْ ضَيْعَةً، أَوْ دَارًا، أَوْ طَعَامًا لَمْ يَكُنْ لِلزَّوْجِ فِي كُلِّ ذَلِكَ رَأْيٌ، وَهُوَ لَهَا تَفْعَلُ فِيهِ مَا شَاءَتْ مِنْ بَيْعٍ أَوْ غَيْرِهِ وَلَيْسَ لِلزَّوْجِ أَنْ يَنْتَفِعَ بِشَيْءٍ مِنْ ذَلِكَ، وَلَا أَنْ يَنْظُرَ فِيهِ إِلَّا بِإِذْنِهَا إِنْ شَاءَتْ.

L31094 If he gives her an enslaved person as a dowry, she may do with it as she wishes through sale or otherwise. Should he give her a pack animal, livestock, an estate, a house, or food as a dowry, the husband has no say in any of these matters. It all belongs to her, and she may dispose of it through sale or otherwise as she chooses. The husband holds no right to derive benefit from any of these possessions, nor to interfere with them, unless she permits it if she so wishes.

قَالَ أَبُو مُحَمَّد: قَوْلُ مَالِكٍ هَذَا يَكْفِي مِنْ فَسَادِهِ عَظِيمُ تَنَاقُضِهِ، وَفَرَّقَهُ بَيْنَ مَا فَرَّقَ مِنْ ذَلِكَ بِلَا بُرْهَانٍ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ أَحَدٍ نَعْلَمُهُ قَبْلَهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ.

L31095 Abu Muhammad said: This statement of Malik suffices to demonstrate its corruption due to its immense contradictions. He differentiated between matters without a single proof from the Quran, the Sunnah, a weak narration, the statement of anyone whom we know preceded him, analogy, or an opinion with a valid basis.

وَأَطْرَفُ شَيْءٍ إِبَاحَتُهُ لَهَا قَضَاءَ الثَّلَاثَةِ دَنَانِيرَ وَالدِّينَارَيْنِ فِي دَيْنِهَا فَقَطْ، لَا أَكْثَرَ مِنْ ذَلِكَ، فَلَيْتَ شِعْرِي إِنْ كَانَ صَدَاقُهَا أَلْفَيْ دِينَارٍ، أَوْ كَانَ صَدَاقُهَا دِينَارًا وَاحِدًا كَيْفَ الْعَمَلُ فِي ذَلِكَ إِنَّ هَذَا الْعَجَبُ؟

L31096 The most astonishing thing is permitting her to repay only three dinars and two dinars of her debt – nothing beyond that. I wonder: If her dowry were two thousand dinars or merely one dinar, how would one proceed in such a case? Truly, this is astonishing!

قَالَ أَبُو مُحَمَّد: وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا} [النساء: ٤]

L31097 Abu Muhammad said: The proof for the correctness of our position is the statement of Allah Almighty: {Give women their dowries as a free gift. If they gladly give up any part of it to you of their own accord, then partake of it with good cheer and wholesomeness} [An-Nisa: 4].[2]

فَافْتَرَضَ اللَّهُ عَزَّ وَجَلَّ عَلَى الرِّجَالِ أَنْ يُعْطُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً، وَلَمْ يُبِحْ لِلرِّجَالِ مِنْهَا شَيْئًا إِلَّا بِطِيبِ أَنْفُسِ النِّسَاءِ، فَأَيُّ بَيَانٍ بَعْدَ هَذَا نَرْغَبُ؟ أَمْ كَيْفَ تَطِيبُ نَفْسُ مُسْلِمٍ عَلَى مُخَالَفَةِ هَذَا الْكَلَامِ لِرَأْيٍ فَاسِدٍ مُتَخَاذِلٍ مُتَنَافِرٍ لَا يُعْرَفُ لِقَائِلِهِ فِيهِ سَلَفٌ.

L31098 Allah, the Mighty and Majestic, has obligated men to give women their dowries as a gracious gift, and He has not permitted men to take anything from it except with the women's heartfelt consent. What further explanation could we seek after this? How could a Muslim's soul be content opposing

[2] **Qur'an references (L31097):** Qur'an 4:4 (An-Nisa).

this divine statement for a corrupt, feeble, incoherent opinion that has no precedent among the predecessors of the righteous early generations?

L31099 We have found that Allah, the Mighty and Majestic, has obligated for the wife rights in her husband's wealth—whether he likes it or dislikes it—which are the mahr, maintenance, clothing, and housing as long as the marriage lasts, and the mutʿah (compensation) if he divorces her. Yet He has granted the husband no right whatsoever in her wealth, neither a small amount nor a large one.

L31100–31101 There is nothing more absurd than their exempting the husband from providing clothing so long as she can clothe herself from her dowry, while not exempting him from maintenance so long as she can sustain herself from her dowry. Has anything more invalid than this corrupt distinction ever been heard? Some of them clamored by citing Allah's words, the Almighty: "Men are guardians of women by virtue of Allah's favoring some over others" [An-Nisāʾ 4:34]. We replied: Allah, the Almighty, has spoken truthfully. It is unlawful to distort words from their proper contexts, nor to attribute to Him, the Almighty, what He did not say, for this is among the greatest of major sins.[3]

L31102 This verse does not mention his responsibility over any of her wealth, nor his ruling according to his own opinion, nor his disposal of it.

L31103 The matter entails that he is responsible for her: he must house her where he resides, prevent her from leaving except for what is obligatory, and relocate her where he relocates.

L31104 Furthermore, had what you claimed been in the verse, you would have been the first to contradict it, for you have restricted some alms to the exclusion of others and the rest of its wealth. All of this is an arbitrary imposition of falsehood without proof.

L31105 They also objected, citing the authentic ḥadīth of the Messenger of Allah—may Allah bless him and his family and grant him peace—: "A woman is

[3] **Qur'an references (L31101):** Qur'an 4:34 (An-Nisa).

وَوَجَدْنَا اللَّهَ عَزَّ وَجَلَّ قَدْ أَوْجَبَ لِلْمَرْأَةِ حُقُوقًا فِي مَالِ زَوْجِهَا - أَحَبَّ أَمْ كَرِهَ - وَهِيَ الصَّدَاقُ، وَالنَّفَقَةُ، وَالْكِسْوَةُ، وَالْإِسْكَانُ، مَا دَامَتْ فِي عِصْمَتِهِ وَالْمُتْعَةُ إِنْ طَلَّقَهَا - وَلَمْ يَجْعَلْ لِلزَّوْجِ فِي مَالِهَا حَقًّا أَصْلًا، لَا مَا قَلَّ وَلَا مَا كَثُرَ.

وَلَا شَيْءَ أَطْرَفُ مِنْ إِسْقَاطِهِمْ عَنْ الزَّوْجِ الْكِسْوَةَ مَا دَامَ يُمْكِنُهَا أَنْ تَكْتَسِيَ مِنْ صَدَاقِهَا وَلَمْ يَسْقُطْ عَنْهُ النَّفَقَةُ مَا دَامَ يُمْكِنُهَا أَنْ تُنْفِقَ عَلَى نَفْسِهَا مِنْ صَدَاقِهَا؟ فَهَلْ سُمِعَ بِأَسْقَطَ مِنْ هَذَا الْفَرْقِ الْفَاسِدِ؟ وَشَغَبَ بَعْضُهُمْ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ} [النساء: ٣٤] ؟ فَقُلْنَا: صَدَقَ اللَّهُ عَزَّ وَجَلَّ، وَلَا يَحِلُّ تَحْرِيفُ الْكَلِمِ عَنْ مَوَاضِعِهِ، وَلَا أَنْ نَقُولَ عَلَيْهِ عَزَّ وَجَلَّ مَا لَمْ يَقُلْ، فَهَذَا مِنْ أَكْبَرِ الْكَبَائِرِ.

وَلَيْسَ فِي هَذِهِ الْآيَةِ ذِكْرٌ لِقِيَامِهِ عَلَى شَيْءٍ مِنْ مَالِهَا، وَلَا لِلْحُكْمِ بِرَأْيِهِ، وَلَا لِلتَّصَرُّفِ فِيهِ.

وَإِنَّمَا فِيهَا أَنَّهُ قَائِمٌ عَلَيْهَا يُسْكِنُهَا حَيْثُ يَسْكُنُ وَيَمْنَعُهَا مِنْ الْخُرُوجِ إلَى غَيْرِ الْوَاجِبِ، وَيُرَحِّلُهَا حَيْثُ يَرْحَلُ.

ثُمَّ لَوْ كَانَ فِي الْآيَةِ لَمَا ادَّعَيْتُمْ لَكُنْتُمْ أَوَّلَ مُخَالِفِينَ لَهَا، لِأَنَّكُمْ خَصَّصْتُمْ بَعْضَ الصَّدَقَاتِ دُونَ بَعْضٍ، وَدُونَ سَائِرِ مَالِهَا، كُلُّ ذَلِكَ تَحَكُّمٌ بِالْبَاطِلِ بِلَا بُرْهَانٍ.

وَشَغَبُوا أَيْضًا بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «تُنْكَحُ الْمَرْأَةُ لِأَرْبَعٍ: لِحُسْنِهَا، وَمَالِهَا، وَجَمَالِهَا، وَدِينِهَا - فَاظْفَرْ بِذَاتِ الدِّينِ تَرِبَتْ يَدَاكَ» .

married for four reasons: her beauty, her wealth, her lineage, and her religion. So strive to secure the one with religion—may your hands succeed!"

وَهَذَا عَجَبٌ جِدًّا لَا نَظِيرَ لَهُ -: أَوَّلُ ذَلِكَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَأْمُرْ أَنْ تُنْكَحَ لِمَالِهَا، وَلَا نَدَبَ إلَى ذَلِكَ، وَلَا صَوَّبَهُ، بَلْ إنَّمَا أَوْرَدَ ذَلِكَ إخْبَارًا عَنْ فِعْلِ النَّاسِ فَقَطْ، وَهَذِهِ أَفْعَالُ الطَّمَّاعِينَ الْمَذْمُومِ فِعْلُهُمْ فِي ذَلِكَ بَلْ فِي الْخَبَرِ نَفْسِهِ الْإِنْكَارُ لِذَلِكَ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «فَاظْفَرْ بِذَاتِ الدِّينِ» فَلَمْ يَأْمُرْ بِأَنْ تُنْكَحَ بِشَيْءٍ مِنْ ذَلِكَ إلَّا لِلدِّينِ خَاصَّةً، لَكِنَّ الْوَاجِبَ أَنْ تَنْكِحَ الْمَرْأَةُ الزَّوْجَ لِمَالِهِ، لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ لَهَا الصَّدَاقَ عَلَيْهِ وَالنَّفَقَةَ وَالْكِسْوَةَ.

L31106 This is a profoundly astonishing matter with no parallel. The first aspect of this is that the Messenger of Allah—peace and blessings be upon him—never commanded marriage for wealth, nor encouraged it, nor approved it. He merely cited this as a report of people's actions alone. These are the deeds of greedy individuals whose conduct in this regard is blameworthy. Indeed, the narration itself condemns this practice through his statement—peace and blessings be upon him—"Seek a devout woman." He did not sanction marriage for any reason except religion specifically. Yet some assert that a woman is married to a man for his wealth, claiming Allah the Exalted has obligated upon him her dowry, maintenance, and clothing.

وَقَدْ جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيَانُ النَّهْيِ عَنْ أَنْ تُنْكَحَ الْمَرْأَةُ لِمَالِهَا -: كَمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نَا ابْنُ مُفَرِّجٍ الْقَاضِي نا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيِّ نا الْبَزَّارُ نا سَلَمَةُ بْنُ شَبِيبٍ نا عَبْدُ اللَّهِ بْنُ يَزِيدَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَنْكِحُوا النِّسَاءَ لِحُسْنِهِنَّ فَلَعَلَّ حُسْنَهُنَّ يُرْدِيهِنَّ، وَلَا تَنْكِحُوهُنَّ لِأَمْوَالِهِنَّ فَلَعَلَّ أَمْوَالَهُنَّ يُطْغِيهِنَّ، وَانْكِحُوهُنَّ لِلدِّينِ، وَلَأَمَةٌ سَوْدَاءُ خَرْمَاءُ ذَاتُ دِينٍ أَفْضَلُ» .

L31107–31108 It has been reported from the Messenger of Allah (peace be upon him) regarding the explanation of the prohibition against marrying a woman for her wealth, as narrated to us by Aḥmad ibn Muḥammad al-Ṭalamankī, who narrated to us: Ibn Mufarrij al-Qāḍī narrated to us, who narrated to us: Muḥammad ibn Ayyūb al-Raqqī narrated to us, who narrated to us: al-Bazzār narrated to us, who narrated to us: Salamah ibn Shabīb narrated to us, who narrated to us: ʿAbdullāh ibn Yazīd, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, who said: The Messenger of Allah (peace be upon him) said, "Do not marry women for their beauty, for perhaps their beauty may lead to their ruin. Do not marry them for their wealth, for perhaps their wealth may corrupt them. Marry them for their religion, and a devout black slave woman with a slit ear is better."

ثُمَّ إنَّهُمْ أَوَّلُ مُخَالِفِينَ لِمَا مَوَّهُوا بِهِ، لِأَنَّهُ لَيْسَ فِي نِكَاحِ الْمَرْأَةِ لِمَالِهَا - لَوْ أُبِيحَ ذَلِكَ أَوْ نُدِبَ إلَيْهِ - شَيْءٌ مِمَّا أَتَوْا بِهِ مِنْ التَّخْلِيطِ فِي الْفَرْقِ بَيْنَ صَدَاقٍ فِضَّةٍ مَضْرُوبَةٍ، وَذَهَبٍ مَضْرُوبٍ، وَبَيْنَ سَبَائِكِ فِضَّةٍ وَذَهَبٍ غَيْرِ مَضْرُوبَةٍ، وَالْفَرْقُ بَيْنَ إصْدَاقِ ثِيَابٍ، وَوِطَاءٍ، وَجَوْهَرٍ، وَخَادِمٍ، وَبَيْنَ إصْدَاقِ حَرِيرٍ، وَقُطْنٍ، وَكَتَّانٍ، وَصُوفٍ، وَدَابَّةٍ، وَمَاشِيَةٍ،

L31109 Moreover, they are the first to contradict the very pretenses they disguised, for even if a woman's marriage for her wealth were permitted or encouraged, none of the confusion they introduced pertains to it—such as distinguishing between a dowry of minted silver and minted gold and unminted silver and gold ingots; differentiating between a dowry of garments, bedding, jewels, and a servant and one of silk, cotton, linen, wool, livestock, a slave, or food; or distinguishing between settling three dinars or less of her debt and settling more than that. Thus, the grave corruption in conflating these statements becomes evident—and success is from Allah, the Most High.

وَعَبْدٍ، وَطَعَامٍ، وَالْفَرْقُ بَيْنَ قَضَاءِ ثَلَاثَةِ دَنَانِيرَ مِنْ دَيْنِهَا فَأَقَلَّ، وَبَيْنَ قَضَائِهَا أَكْثَرَ مِنْ ذَلِكَ - فَوَضَحَ عَظِيمُ فَسَادِ تَخْلِيطِ هَذِهِ الْأَقْوَالِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L31110 They may equivocate using what we mention from what we have narrated via the isnad of al-Ḥajjāj ibn al-Minhāl: from Hammām ibn Yaḥyá, from Qatādah, from Jalāl ibn Abī al-Jalāl al-ʿAtakī, from his father: A man proposed to another for the hand of his daughter by an Arab wife, who married her to him. He then substituted her with another daughter of his—whose mother was non-Arab. When the groom consummated the marriage, he later realized the deception. He approached Muʿāwiyah and relayed the matter. Muʿāwiyah said: "This is a knotty problem—and none can resolve it but Abū Ḥasan!"—for ʿAlī was a sworn enemy of Muʿāwiyah. The man requested: "Permit me to approach him?" Muʿāwiyah consented. The man went to ʿAlī ibn Abī Ṭālib and said: "Peace be upon you, O ʿAlī." ʿAlī returned the greeting, and the man recounted the story. ʿAlī ruled that the girl's father must equip his daughter—whom he had wedded to him—with a dowry equivalent to what he had given for her sister, due to having had intercourse with her. He further commanded him not to approach his wife until her sister's waiting period had ended.

وَرُبَّمَا يُمَوِّهُونَ بِمَا نَذْكُرُهُ مِمَّا رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى نا قَتَادَةُ عَنْ جَلَالِ بْنِ أَبِي الْجَلَالِ الْعَتَكِيِّ عَنْ أَبِيهِ أَنَّ رَجُلًا خَطَبَ إلَى رَجُلٍ ابْنَتَهُ مِنْ امْرَأَةٍ عَرَبِيَّةٍ فَأَنْكَحَهَا إيَّاهُ فَبَعَثَ إلَيْهِ بِابْنَةٍ لَهُ أُخْرَى أُمُّهَا أَعْجَمِيَّةٌ، فَلَمَّا دَخَلَ بِهَا عَلِمَ بَعْدَ ذَلِكَ فَأَتَى مُعَاوِيَةَ فَقَصَّ عَلَيْهِ؟ فَقَالَ: مُعْضِلَةٌ وَلَا أَبَا حَسَنٍ - وَكَانَ عَلِيٌّ حَرْبًا لِمُعَاوِيَةَ - فَقَالَ الرَّجُلُ لِمُعَاوِيَةَ فَأْذَنْ لِي أَنْ آتِيَهُ؟ فَأَذِنَ لَهُ مُعَاوِيَةُ، فَأَتَى الرَّجُلُ عَلِيَّ بْنَ أَبِي طَالِبٍ فَقَالَ: السَّلَامُ عَلَيْك يَا عَلِيُّ، فَرَدَّ عَلَيْهِ السَّلَامَ، فَقَصَّ عَلَيْهِ الْقِصَّةَ؟ فَقَضَى عَلِيٌّ عَلَى أَبِي الْجَارِيَةِ بِأَنْ يُجَهِّزَ ابْنَتَهُ الَّتِي أَنْكَحَهَا إيَّاهُ بِمِثْلِ الصَّدَاقِ الَّذِي سَاقَ مِنْهَا لِأُخْتِهَا بِمَا أَصَابَ مِنْ فَرْجِهَا، وَأَمَرَهُ أَنْ لَا يَمَسَّ امْرَأَتَهُ حَتَّى تَنْقَضِيَ عِدَّةُ أُخْتِهَا.

L31111 Al-Hajjaj ibn al-Minhal said: Hushaym informed me, stating: Al-Mughirah informed me from Ibrāhīm al-Nakhaʿī that a man married a young woman, but another was brought to him instead. Ibrāhīm said: "The mahr he stipulated is owed to the woman with whom he consummated the marriage, and the one who deceived him must present his rightful wife to him with a mahr equivalent to hers."

قَالَ الْحَجَّاجُ بْنُ الْمِنْهَالِ: وَأَخْبَرَنِي هُشَيْمٌ قَالَ: أَخْبَرَنِي الْمُغِيرَةُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّ رَجُلًا تَزَوَّجَ جَارِيَةً فَأُدْخِلَ عَلَيْهِ غَيْرُهَا؟ فَقَالَ إبْرَاهِيمُ: لِلَّتِي دَخَلَ بِهَا الصَّدَاقُ الَّذِي سَاقَ، وَعَلَى الَّذِي غَرَّهُ أَنْ يَزِفَّ إلَيْهِ امْرَأَتَهُ بِمِثْلِ صَدَاقِهَا.

L31112–31113 Abu Muhammad said: All of this is upon them, not for them, for neither of these two reports indicates that the husband holds any right or interest in this matter. Rather, both texts establish that he must guarantee for the woman married to him—while another was escorted to him as a bride—her dowry, which he consumed for her, and which was given to another without right. Thus we say.

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ عَلَيْهِمْ لَا لَهُمْ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ هَذَيْنِ الْخَبَرَيْنِ أَنَّ لِلزَّوْجِ فِي ذَلِكَ حَقًّا وَلَا أَرَبًا، إنَّمَا فِيهِمَا أَنْ يَضْمَنَ لِلَّتِي زُوِّجَتْ مِنْهُ وَزُفَّ إلَيْهِ غَيْرُهَا صَدَاقَهَا الَّذِي اسْتَهْلَكَ لَهَا وَأُعْطِيَ لِغَيْرِهَا بِغَيْرِ حَقٍّ - وَهَكَذَا نَقُولُ.

L31114 Then, they differ from this narration reported from ʿAlī in two matters.

The first is that he assigned the woman who was escorted to him the dowry stipulated for her sister, whereas they do not hold this opinion. Instead, they rule that she is entitled to the dowry due to women of her equivalent status.

L31115 The second issue is Ali's instruction to him not to consummate the marriage with the woman with whom the marriage contract has been validly established until the waiting period of the other woman—who was formally married to him—has concluded. They do not endorse this view.

L31116 It is detestable, disgraceful, and sinful to engage in the deception of one who falsely suggests citing a narration as evidence while being the first to contradict it—and we seek refuge in Allah from disgrace—this is despite the fact that al-Jalāl ibn Abī al-Jalāl is not well-known.

L31117 And as informed to us by Ahmad ibn Qasim, from my father Qasim ibn Muhammad ibn Qasim, from my grandfather Qasim ibn Asbagh, from Ahmad ibn Zuhayr, from al-Hasan ibn Hammad, from Yahya ibn Ya'la, from Sa'id ibn Abi 'Arubah, from Qatadah, from al-Hasan, from Anas, who mentioned the story of Ali's proposal to Fatimah—may Allah be pleased with them both—and that Ali sold his armor for four hundred and eighty. He said: "I brought the money to the Messenger of Allah—peace and blessings of Allah be upon him—and placed it in his lap. He took a handful of it and said: 'O Bilal, buy us perfume with this,' and he commanded them to prepare her." He said: "A bed frame bound with palm-fiber ropes was made for us, a leather pillow stuffed with palm fiber, and the house was filled with sand."

L31118 Abu Muhammad said: This is a proof against them, for a handful of perfume, a bed fastened with a band, and a leather pillow stuffed with palm fiber do not collectively reach one-tenth of four hundred and eighty dirhams. Thus, the falsity of their claim becomes evident—and all praise is to Allah, Lord of the worlds.[4]

L31119 **The husband is obligated to clothe his wife.**

L31120–31122 1854 - Issue: The husband is obligated to provide clothing for the wife from

[4]**Qur'an references (L31118):** Qur'an 37:182 (As-Saffat).

ثُمَّ هُمْ يُخَالِفُونَ هَذِهِ الرِّوَايَةَ عَنْ عَلِيٍّ فِي مَوْضِعَيْنِ -: أَحَدُهُمَا - أَنَّهُ جَعَلَ لِلَّتِي زُفَّتْ إِلَيْهِ الصَّدَاقَ الَّذِي سُمِّيَ لِأُخْتِهَا، وَهُمْ لَا يَقُولُونَ بِهَذَا، بَلْ إِنَّمَا يَقْضُونَ لَهَا بِصَدَاقِ مِثْلِهَا.

وَالْمَوْضُوعُ الثَّانِي - أَمْرُ عَلِيٍّ لَهُ أَنْ لَا يَطَأَ الَّتِي صَحَّ نِكَاحُهُ مَعَهَا إِلَّا حَتَّى تَنْقَضِيَ عِدَّةُ الْأُخْرَى الَّتِي زُفَّتْ إِلَيْهِ، وَهُمْ لَا يَقُولُونَ بِهَذَا.

فَمِنْ الْمَقْتِ وَالْعَارِ وَالْإِثْمِ تَمْوِيهُ مَنْ يُوهِمُ أَنَّهُ يَحْتَجُّ بِأَثَرٍ هُوَ أَوَّلُ مَنْ يُخَالِفُهُ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ - هَذَا مَعَ أَنَّ الْجَلَالَ بْنَ أَبِي الْجَلَالِ غَيْرُ مَشْهُورٍ.

وَبِمَا أَخْبَرَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا الْحَسَنُ بْنُ حَمَّادٍ نا يَحْيَى بْنُ يَعْلَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ أَنَسٍ فَذَكَرَ خِطْبَةَ عَلِيٍّ فَاطِمَةَ - رَضِيَ اللَّهُ عَنْهُمَا - «وَأَنَّ عَلِيًّا بَاعَ دِرْعَهُ بِأَرْبَعِمِائَةٍ وَثَمَانِينَ قَالَ: فَأَتَيْتُ بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَضَعْتُهَا فِي حِجْرِهِ فَقَبَضَ مِنْهَا قَبْضَةً فَقَالَ: يَا بِلَالُ أَبْغِنَا بِهَا طِيبًا، وَأَمَرَهُمْ أَنْ يُجَهِّزُوهَا» قَالَ: فَجُعِلَ لَنَا سَرِيرٌ مَشْرُوطٌ بِالشَّرْطِ وَوِسَادَةٌ مِنْ أُدْمٍ حَشْوُهَا لِيفٌ وَمِلْءُ الْبَيْتِ كَثِيبًا.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا حُجَّةٌ عَلَيْهِمْ، لِأَنَّهُ لَا تَبْلُغُ قَبْضَةٌ فِي طِيبٍ، وَسَرِيرٌ مَشْرُوطٌ بِالشَّرِيطِ، وَوِسَادَةٌ مِنْ أُدْمٍ حَشْوُهَا لِيفٌ: عُشْرَ أَرْبَعِمِائَةِ دِرْهَمٍ وَثَمَانِينَ دِرْهَمًا - فَظَهَرَ فَسَادُ قَوْلِهِمْ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

[مَسْأَلَةٌ عَلَى الزَّوْجِ كِسْوَةُ الزَّوْجَةِ]

the time the marriage contract is concluded, along with her maintenance, what she uses to lie on, cover herself with, and spread out, and her housing as well—whether she is a minor or an adult, whether she has a father or... An orphan girl—whether wealthy or poor, whether invited to the establishment or not, whether she was disobedient or compliant, whether free or enslaved, whether assigned a dwelling with him or not.

L31123 The proof of this is what we have narrated through the chain of Abū Dāwūd: Mūsā ibn Ismāʿīl narrated to us, Ḥammād ibn Salamah narrated to us, Abū Qazaʿah al-Bāhilī narrated to us from Ḥakīm ibn Muʿāwiyah al-Qushayrī, who said: "I asked: 'O Messenger of God, what right does a wife have over her husband?' He replied: 'Feed her when you eat, clothe her when you clothe yourself, do not strike her face, do not revile her, and do not shun her except within the house.'"[5]

L31124 Abu Muhammad said: This Abu Qazaʿah (he is Suwayd ibn Hujayr) is reliable. Shuʿbah, Ibn Jurayj, Hammad ibn Salamah, his son is Qazaʿah, and others besides them transmitted from him.

L31125 From the chain of Muslim: Al-Hajjaj narrated to us, Ishaq ibn Ibrahim - who is Ibn Rahawayh - narrated to us from Hatim ibn Isma'il from Ja'far ibn Muhammad ibn Ali ibn al-Husayn from his father from Jabir ibn Abdullah: "The Messenger of Allah - peace and blessings of Allah be upon him - said in his sermon at Arafah on the Day of Arafah: 'Fear Allah concerning women, for you have taken them under Allah's trust and made their private parts lawful by the word of Allah, Exalted is He. You have the right over them that they do not permit anyone you dislike to tread your beds. If they do so, strike them without severity. They have the right over you to receive their provision and clothing in a fair manner.'"

L31126 The Messenger of Allah (peace be upon him) addressed all women, excluding none—not a rebellious woman, nor a young or old woman, nor a female slave

[5]**Hadith references (L31123):** Mishkat al-Masabih 3259.

١٨٥٤ - مَسْأَلَةٌ: وَعَلَى الزَّوْجِ كِسْوَةُ الزَّوْجَةِ - مُذْ يَعْقِدُ النِّكَاحَ - وَنَفَقَتُهَا، وَمَا تَتَوَطَّاهُ وَتَتَغَطَّاهُ وَتَفْتَرِشُهُ، وَإِسْكَانُهَا كَذَلِكَ أَيْضًا - صَغِيرَةً أَوْ كَبِيرَةً - ذَاتَ أَبٍ أَوْ يَتِيمَةً - غَنِيَّةً أَوْ فَقِيرَةً - دُعِيَ إلَى الْبِنَاءِ أَوْ لَمْ يُدْعَ نَشَزَتْ أَوْ لَمْ تَنْشِزْ - حُرَّةً كَانَتْ أَوْ أَمَةً - بُوِّئَتْ مَعَهُ بَيْتًا أَوْ لَمْ تُبَوَّأْ.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إسْمَاعِيلَ نا حَمَّادُ بْنُ سَلَمَةَ نا أَبُو قَزَعَةَ الْبَاهِلِيُّ " عَنْ حَكِيمِ بْنِ مُعَاوِيَةَ الْقُشَيْرِيِّ قَالَ «قُلْتُ: يَا رَسُولَ اللَّهِ مَا حَقُّ زَوْجَةِ أَحَدِنَا عَلَيْهِ؟ قَالَ: أَنْ تُطْعِمَهَا إذَا طَعِمْتُ وَتَكْسُوَهَا إذَا اكْتَسَيْتُ، وَلَا تَضْرِبْ الْوَجْهَ، وَلَا تُقَبِّحْ، وَلَا تَهْجُرْ إلَّا فِي الْبَيْتِ» .

قَالَ أَبُو مُحَمَّد: أَبُو قَزَعَةَ هَذَا - هُوَ سُوَيْدُ بْنُ حُجَيْرٍ - ثِقَةٌ، رَوَى عَنْهُ شُعْبَةُ، وَابْنُ جُرَيْجٍ، وَحَمَّادُ بْنُ سَلَمَةَ، وَابْنُهُ قَزَعَةُ، وَغَيْرُهُمْ.

وَمِنْ طَرِيقِ مُسْلِمٍ نا الْحَجَّاجُ نا إسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - عَنْ حَاتِمِ بْنِ إسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ أَبِيهِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي خُطْبَتِهِ فِي عَرَفَةَ يَوْمَ عَرَفَةَ: فَاتَّقُوا اللَّهَ فِي النِّسَاءِ فَإِنَّكُمْ أَخَذْتُمُوهُنَّ بِأَمَانِ اللَّهِ وَاسْتَحْلَلْتُمْ فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ تَعَالَى وَلَكُمْ عَلَيْهِنَّ أَنْ لَا يُوطِئْنَ فُرُشَكُمْ أَحَدًا تَكْرَهُونَهُ، فَإِنْ فَعَلْنَ ذَلِكَ فَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبَرِّحٍ وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ» .

فَعَمَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّ النِّسَاءِ وَلَمْ يَخُصَّ نَاشِزًا مِنْ غَيْرِهَا، وَلَا صَغِيرَةً وَلَا كَبِيرَةً، وَلَا أَمَةً مُبَوَّأَةً بَيْتًا مِنْ غَيْرِهَا {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

settled in a home. “He does not speak from [his own] desire” (53:3). “It is but a revelation revealed” (53:4). “Your Lord is never forgetful” (19:64).[6]

L31127–31129 From Yunus ibn Abdullah, from Ahmad ibn Abdullah ibn Abd al-Rahman, from Ahmad ibn Khalid, from Muhammad ibn Abd al-Salam al-Khushani, from Muhammad ibn Bashshār, from Yahya ibn Sa’id al-Qattan, from Ubaydullah ibn Umar who informed me on the authority of Nafi’, on the authority of Ibn Umar, who said: Umar ibn al-Khattab wrote to the commanders of the armies: “Look to...” Whoever’s absence is prolonged, they must send maintenance or ensure their return—and he mentioned the remainder of the narration, for ‘Umar did not exempt any woman from another—: Narrated by Muḥammad ibn Saʿīd ibn Nabāt from Aḥmad ibn ʿAwn Allāh from Qāsim ibn Aṣbagh from Muḥammad ibn ʿAbd al-Salām al-Khushaniyy from Muḥammad ibn Bashshār from Muḥammad ibn Jaʿfar Ghundar from Shuʿbah, who said: I asked al-Ḥakam ibn ʿUtaybah about a woman who left her husband’s house in anger—does she have maintenance? He replied: Yes.

نا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ أَخْبَرَنِي نَافِعٌ عَنِ ابْنِ عُمَرَ قَالَ: كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أُمَرَاءِ الْأَجْنَادِ: أَنْ انْظُرُوا إِلَى مَنْ طَالَتْ غَيْبَتُهُ أَنْ يَبْعَثُوا بِنَفَقَةٍ أَوْ يَرْجِعُوا - وَذَكَرَ بَاقِيَ الْخَبَرِ، فَلَمْ يَسْتَثْنِ عُمَرُ امْرَأَةً مِنِ امْرَأَةٍ -: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ قَالَ: سَأَلْتُ الْحَكَمَ بْنَ عُتَيْبَةَ عَنِ امْرَأَةٍ خَرَجَتْ مِنْ بَيْتِ زَوْجِهَا غَاضِبَةً هَلْ لَهَا نَفَقَةٌ؟ قَالَ: نَعَمْ.

L31130 Abū Muḥammad said: It has been narrated to us from about five of the Followers (Tābiʿīn) that there is no financial maintenance for a wife in a state of nushūz. This is a mistaken view—we are unaware of any valid evidence for its proponents.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا عَنْ نَحْوِ خَمْسَةٍ مِنَ التَّابِعِينَ: لَا نَفَقَةَ لِنَاشِزٍ - وَهَذَا قَوْلٌ خَطَأٌ مَا نَعْلَمُ لِقَائِلِهِ حُجَّةً.

L31131 If it is said: “Is maintenance [owed] in exchange for intercourse and obedience?” We reply: No. Rather, this statement is a lie, and you yourselves are the first to refute it. As for the Ḥanafīs and Shāfiʿīs, they obligate maintenance on the minor husband for the older wife, while there is neither intercourse nor obedience there.

فَإِنْ قِيلَ: إِنَّ النَّفَقَةَ بِإِزَاءِ الْجِمَاعِ، وَالطَّاعَةِ؟ قُلْنَا: لَا، بَلْ هَذَا الْقَوْلُ كَذِبٌ، وَأَوَّلُ مَنْ يُبْطِلُهُ أَنْتُمْ، أَمَّا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ فَيُوجِبُونَ النَّفَقَةَ عَلَى الزَّوْجِ الصَّغِيرِ عَلَى الْكَبِيرَةِ، وَلَا جِمَاعَ هُنَالِكَ وَلَا طَاعَةَ.

L31132 The Hanafis, Malikis, and Shafiʿis obligate the eunuch and the impotent to provide maintenance. There is no disagreement regarding the obligation of maintenance for the sick woman with whom sexual intercourse is impossible. Allah, the Exalted, has clarified the ruling for the disobedient wife, stating: *“As for those women whose defiance you fear, admonish them, refrain from

وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ: يُوجِبُونَ النَّفَقَةَ عَلَى " الْمَجْبُوبِ وَالْعِنِّينِ " وَلَا خِلَافَ فِي وُجُوبِ النَّفَقَةِ عَلَى الْمَرِيضَةِ الَّتِي لَا يُمْكِنُ جِمَاعُهَا، وَقَدْ بَيَّنَ اللَّهُ عَزَّ وَجَلَّ مَا عَلَى النَّاشِزِ فَقَالَ: {وَاللاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلا تَبْغُوا عَلَيْهِنَّ سَبِيلا} [النساء: ٣٤] .

[6] **Qur’an references (L31126):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm); Qur’an 19:64 (Maryam).

sharing beds with them, and strike them. If they obey you, then do not seek to harm them"* [Quran 4:34].[7]

فَأَخْبَرَ عَزَّ وَجَلَّ أَنَّهُ لَيْسَ عَلَى النَّاشِزِ إِلَّا الْهَجْرُ وَالضَّرْبُ، وَلَمْ يُسْقِطْ عَزَّ وَجَلَّ نَفَقَتَهَا وَلَا كِسْوَتَهَا - فَعَاقَبْتُمُوهُنَّ أَنْتُمْ بِمَنْعِهَا حَقَّهَا، وَهَذَا شَرْعٌ فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ، فَهُوَ بَاطِلٌ.

L31133 He, the Almighty and Majestic, declared that against the rebellious woman there is only abandonment and striking, and He did not nullify her maintenance nor her clothing. Yet you punish her by depriving her of her right, and this is a religious ruling which Allah has not permitted - thus it is invalid.

فَإِنْ قَالُوا: إِنَّهَا ظَالِمَةٌ بِنُشُوزِهَا؟ قُلْنَا: نَعَمْ، وَلَيْسَ كُلُّ ظَالِمٍ يَحِلُّ مَنْعُهُ مِنْ مَالِهِ إِلَّا أَنْ يَأْتِيَ بِذَلِكَ نَصٌّ، وَإِلَّا فَلَيْسَ هُوَ حُكْمُ اللَّهِ، هَذَا حُكْمُ الشَّيْطَانِ، وَظُلْمَةُ الْعُمَّالِ وَالشُّرْطِ.

L31134 If they say, "She is oppressive due to her marital disobedience?" We say: "Yes, but not every oppressor may be lawfully deprived of their wealth unless there is an explicit text regarding that. Otherwise, this is not the ruling of Allah; it is the ruling of Satan and the injustice of authorities and police."

وَالْعَجَبُ كُلُّهُ أَنَّهُمْ لَا يُسْقِطُونَ قَرْضًا أَقْرَضَتْهُ إِيَّاهُ مِنْ أَجْلِ نُشُوزِهَا؟ فَمَا ذَنْبُ نَفَقَتِهَا تَسْقُطُ دُونَ سَائِرِ حُقُوقِهَا إِنَّ هَذَا لَعَجَبٌ عَجِيبٌ؟

L31135 Is it not utterly astonishing that they do not cancel a loan she gave him because of her disobedience? What then is the fault of her maintenance that it alone is nullified without her other rights? Truly, this is a wonder most astounding!

وَقَالَ بِوُجُوبِ النَّفَقَةِ عَلَى الصَّغِيرَةِ: سُفْيَانُ الثَّوْرِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا.

L31136 Sufyan al-Thawri, Abu Sulayman, and our companions held the opinion that financial maintenance is obligatory upon guardians for the female minor.

وَمَا نَعْلَمُ لِمَنْ أَسْقَطَهَا حُجَّةً أَصْلًا، فَهُوَ بَاطِلٌ بِلَا شَكٍّ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] فَصَحَّ أَنَّ مَنْ لَا بُرْهَانَ لَهُ عَلَى صِحَّةِ قَوْلِهِ فَقَوْلُهُ بَاطِلٌ.

L31137–31139 We know of no valid argument whatsoever for those who abolish it; therefore, it is unquestionably null and void. Allah, the Exalted and Majestic, has said: "Say, 'Produce your proof, if you are truthful.'" [Al-Baqarah: 111] Thus, it is established that whoever lacks proof to substantiate their claim, their statement is invalid.[8]

وَقَالَ مَالِكٌ: لَا نَفَقَةَ عَلَى الزَّوْجِ إِلَّا حَتَّى يُدْعَى إِلَى الْبِنَاءِ.

L31140 Malik said: There is no maintenance obligation on the husband until he is called to consummate the marriage.

قَالَ أَبُو مُحَمَّد: هَذَا الْحُكْمُ دَعْوَى مُجَرَّدَةٌ لَا بُرْهَانَ عَلَى صِحَّتِهَا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ صَحِيحٍ.

L31141 Abu Muhammad said: This ruling is a baseless claim with no proof for its validity—neither from the Qur'an, nor from the Sunnah, nor the statement of a Companion, nor analogy, nor valid personal judgment.

[7] **Qur'an references (L31132):** Qur'an 4:34 (An-Nisa).
[8] **Qur'an references (L31137):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

L31142 We have clarified that the authentically established Sunnah is contrary to it; therefore, it is invalid. And success is from Allah, the Most High.

L31143 **A case where a man divorces his wife before consummating the marriage, having specified a mahr (dowry) to which she consented.**

L31144 Issue 1855: It is not permissible for the father of a virgin—whether she is a minor or an adult—or of a previously married woman, nor for any other relative or non-relative, to dispose of any portion of the daughter's or female relative's dowry. None of those mentioned may gift it—whether in whole or in part—to the husband, whether he divorces her or retains her, nor to anyone else. If they perform any such action, it is null, void, and irrevocably invalid forever.

L31145 She has the right to gift her mahr (bridal gift owed to her) or a portion of it to whomever she wishes, and neither the father nor the husband may object to this - provided she is of legal age, sound mind, and retains financial security after it [the gifting]. If these conditions are unmet, it is impermissible.

L31146 The meaning of Allah's statement, the Almighty: {But if you divorce them before you have touched them and you have already specified for them a mahr which they accepted, then [give them] half of what you specified—unless they forgo it or the husband waives it} [Al-Baqarah: 237] is that if a man divorces his wife before consummating the marriage—after having specified a mahr she accepted—she is entitled to half of the mahr designated for her, unless she forgoes it, taking nothing from her husband and relinquishing her rightful half, or unless the husband waives his right and gives her the full amount. Whichever of them does this is closer to piety.[9]

L31147 This is a matter regarding which the early scholars differed: A group held that "the one in whose hand is the marriage contract" refers to the husband, as we have said. It was narrated to us via the chain of al-Ḥajjāj ibn al-Minhāl → Jarīr ibn Ḥāzim → ʿĪsā ibn ʿĀṣim → Shurayḥ, who said: "'Alī ibn Abī Ṭālib asked me about *"the one in whose hand is the marriage contract"*

[9] **Qur'an references (L31146):** Qur'an 2:237 (Al-Baqarah).

وَقَدْ بَيَّنَّا أَنَّ السُّنَّةَ الثَّابِتَةَ جَاءَتْ بِخِلَافِهِ فَهُوَ سَاقِطٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَّقَهَا قَبْلَ أَنْ يَطَأَ وَقَدْ سَمَّى لَهَا صَدَاقًا رَضِيَتْهُ]

١٨٥٥ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَبِ الْبِكْرِ - صَغِيرَةً كَانَتْ أَوْ كَبِيرَةً - أَوْ الثَّيِّبِ، وَلَا لِغَيْرِهِ مِنْ سَائِرِ الْقَرَابَةِ أَوْ غَيْرِهِمْ: حُكْمٌ فِي شَيْءٍ مِنْ صَدَاقِ الِابْنَةِ، أَوْ الْقَرِيبَةِ، وَلَا لِأَحَدٍ مِمَّنْ ذَكَرْنَا أَنْ يَهَبَهُ، وَلَا شَيْئًا مِنْهُ، لَا لِلزَّوْجِ - طَلَّقَ أَوْ أَمْسَكَ - وَلَا لِغَيْرِهِ، فَإِنْ فَعَلُوا شَيْئًا مِنْ ذَلِكَ فَهُوَ مَفْسُوخٌ بَاطِلٌ مَرْدُودٌ أَبَدًا.

وَلَهَا أَنْ تَهَبَ صَدَاقَهَا أَوْ بَعْضَهُ لِمَنْ شَاءَتْ، وَلَا اعْتِرَاضَ لِأَبٍ وَلَا لِزَوْجٍ فِي ذَلِكَ - هَذَا إذْ كَانَتْ بَالِغَةً عَاقِلَةً بَقِيَ لَهَا بَعْدَهُ غِنًى وَإِلَّا فَلَا.

وَمَعْنَى قَوْلِهِ عَزَّ وَجَلَّ: {فَنِصْفُ مَا فَرَضْتُمْ إلا أَنْ يَعْفُونَ أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] إنَّمَا هُوَ أَنَّ الْمَرْأَةَ إذَا طَلَّقَهَا زَوْجُهَا قَبْلَ أَنْ يَطَأَهَا - وَقَدْ كَانَ سَمَّى لَهَا صَدَاقًا رَضِيَتْهُ - فَلَهَا نِصْفُ صَدَاقِهَا الَّذِي سُمِّيَ لَهَا، إلَّا أَنْ تَعْفُوَ هِيَ فَلَا تَأْخُذُ مِنْ زَوْجِهَا شَيْئًا مِنْهُ وَتَهَبُ لَهُ النِّصْفَ الْوَاجِبَ لَهَا، أَوْ يَعْفُوَ الزَّوْجُ فَيُعْطِيَهَا الْجَمِيعَ، فَأَيُّهُمَا فَعَلَ ذَلِكَ فَهُوَ أَقْرَبُ لِلتَّقْوَى.

وَهَذَا مَكَانٌ اخْتَلَفَ فِيهِ السَّلَفُ -: فَقَالَتْ طَائِفَةٌ: الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ هُوَ الزَّوْجُ كَمَا قُلْنَا -: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا جَرِيرُ بْنُ حَازِمٍ سَمِعْت عِيسَى بْنَ عَاصِمٍ

[Quran 2:237]? I replied: 'It is the guardian.' ʿAlī said: **'Rather, it is the husband.'"**[10]

يَقُولُ: سَمِعْت شُرَيْحًا يَقُولُ: سَأَلَنِي عَلِيُّ بْنُ أَبِي طَالِبٍ عَنْ {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] ؟ فَقُلْت: هُوَ الْوَلِيُّ، فَقَالَ عَلِيٌّ: بَلْ هُوَ الزَّوْجُ.

L31148 On the authority of Ḥammād ibn Salamah, from ʿAlī ibn Zayd, from ʿAmmār ibn Abī ʿAmmār, from Ibn ʿAbbās, who said: "He is the husband."

مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَلِيِّ بْنِ زَيْدٍ عَنْ عَمَّارِ بْنِ أَبِي عَمَّارٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: هُوَ الزَّوْجُ.

L31149–31151 And from the narration of Abd al-Razzaq from Ma'mar from Salih ibn Kaysan: that Nafi' ibn Jubayr ibn Mut'im married a woman and divorced her before consummating the marriage with her, so he completed the dowry for her and interpreted the words of Allah, the Mighty and Majestic: "The one in whose hand lies the bond of marriage" [Al-Baqarah: 237], referring to the husband.[11]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ صَالِحِ بْنِ كَيْسَانَ: أَنَّ نَافِعَ بْنَ جُبَيْرِ بْنِ مُطْعِمٍ تَزَوَّجَ امْرَأَةً فَطَلَّقَهَا قَبْلَ أَنْ يَبْنِيَ بِهَا فَأَكْمَلَ لَهَا الصَّدَاقَ وَتَأَوَّلَ قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] يَعْنِي الزَّوْجَ.

L31152 And from the transmission of Abd al-Razzaq from Ma'mar from Ayyub al-Sikhtiyānī from Muhammad ibn Sirin from Shurayh, who said: 'He is the husband.'

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ قَالَ: هُوَ الزَّوْجُ.

L31153 From Aḥmad ibn ʿUmar al-ʿUdhri, from Makkī ibn ʿĪsūn, from Aḥmad ibn ʿAbd Allāh ibn Ruzayq, from Aḥmad ibn ʿAmr ibn Jābir, from Muḥammad ibn Ḥammād al-Ṭahrānī, from ʿAbd al-Razzāq – from Qatādah and Ibn Abī Najīḥ. Qatādah said: From Saʿīd ibn al-Musayyib, while Ibn Abī Najīḥ said: From Mujāhid. Both Qatādah and Ibn Abī Najīḥ jointly affirmed that Saʿīd ibn al-Musayyib and Mujāhid stated regarding the verse *The one in whose hand is the knot of marriage* [2:237]: He is the husband.[12]

نا أَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ نا مَكِّيُّ بْنُ عِيسُونَ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ رُزَيْقٍ نا أَحْمَدُ بْنُ عَمْرِو بْنِ جَابِرٍ نا مُحَمَّدُ بْنُ حَمَّادٍ الطَّهْرَانِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ قَتَادَةَ، وَابْنِ أَبِي نَجِيحٍ، قَالَ قَتَادَةُ: عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَقَالَ ابْنُ أَبِي نَجِيحٍ: عَنْ مُجَاهِدٍ، قَالَا جَمِيعًا: سَعِيدُ بْنُ الْمُسَيَّبِ، وَمُجَاهِدٌ: {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] هُوَ الزَّوْجُ.

L31154 Mujāhid, Ṭāwus, and the people of Medina said: "He is the guardian." He said: "Thereupon I informed them of the statement of Saʿīd ibn Jubayr, and they withdrew their earlier view."

وَقَالَ مُجَاهِدٌ، وَطَاوُسٌ، وَأَهْلُ الْمَدِينَةِ: هُوَ الْوَلِيُّ، قَالَ: فَأَخْبَرْتهمْ بِقَوْلِ سَعِيدِ بْنِ جُبَيْرٍ فَرَجَعُوا عَنْ قَوْلِهِمْ.

L31155 From the chain of Ibn Abī Shaybah, it was narrated to me by 'Abd al-Wahhāb

[10] **Qur'an references (L31147):** Qur'an 2:237 (Al-Baqarah).
[11] **Qur'an references (L31149):** Qur'an 2:237 (Al-Baqarah).
[12] **Qur'an references (L31153):** Qur'an 2:237 (Al-Baqarah).

ibn ʻAbd al-Majīd al-Thaqafī, who informed us from ʻUbayd Allāh ibn ʻUmar, from Nāfiʻ - the freed slave of Ibn ʻUmar - that he said: "'The one in whose hand lies the knot of marriage' [Al-Baqarah 2:237] is the husband."[13]

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ حَدَّثَنِي عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ نَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ أَنَّهُ قَالَ: {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] الزَّوْجُ.

L31156 By the transmission of al-Ḥajjāj ibn al-Minhāl, on the authority of Abū ʿAwānah from Abū Bishr—he is Jaʿfar ibn Iyās ibn Abī Waḥshiyyah—from Saʿīd ibn Jubayr, who said: {The one in whose hand is the authority over the marriage bond} [Al-Baqarah: 237] refers to the husband.[14]

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ - هُوَ جَعْفَرُ بْنُ إِيَاسِ بْنِ أَبِي وَحْشِيَّةَ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ، قَالَ {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] هُوَ الزَّوْجُ.

L31157 Through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī, Ibrāhīm ibn Ḥamzah, ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī, ʿUmayr – the client of Ghafrah – who heard Muḥammad ibn Kaʿb al-Quraẓī say: "The one in whose hand is the knot of marriage" [Al-Baqarah: 237] refers to the husband.[15]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا إِبْرَاهِيمُ بْنُ حَمْزَةَ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ عُمَيْرٍ مَوْلَى غَفْرَةَ أَنَّهُ سَمِعَ مُحَمَّدَ بْنَ كَعْبٍ الْقُرَظِيَّ يَقُولُ: {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] هُوَ الزَّوْجُ.

L31158 Through the chain of Ismaʿīl: Muḥammad ibn Abī Bakr al-Muqaddamī narrated to us, Muʿtamir ibn Sulaymān al-Taymī narrated to us, from Layth, from ʿAṭāʾ ibn Abī Rabāḥ: "The one in whose hand is the marriage tie" [al-Baqarah 2:237]—he is the husband.[16]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نَا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْمُقَدَّمِيُّ نا مُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ لَيْثٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] هُوَ الزَّوْجُ.

L31159 From the chain of Qāsim ibn Aṣbagh: Muḥammad ibn ʿAbd al-Salām al-Khushanī reported to us, from Muḥammad ibn al-Muthannā, who reported to us, from ʿAbd al-Aʿlā, who reported to us, from Saʿīd ibn Abī ʿArūbah, from Qatādah, who said regarding "The one in whose hand is the knot of marriage" [Al-Baqarah 2:237]: "He is the husband."[17]

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ قَالَ {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] هُوَ الزَّوْجُ.

L31160 And through the chain of transmission of Ismāʿīl: ʿAlī ibn al-Madīnī narrated to us from Sufyān ibn ʿUyaynah, from Ibn Shubrumah, who said: It is the husband—and this is the position of al-Awzāʿī, Sufyān al-Thawrī, al-

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نَا عَلِيُّ بْنُ الْمَدِينِيِّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ شُبْرُمَةَ قَالَ: هُوَ الزَّوْجُ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

[13] **Qur'an references (L31155):** Qur'an 2:237 (Al-Baqarah).
[14] **Qur'an references (L31156):** Qur'an 2:237 (Al-Baqarah).
[15] **Qur'an references (L31157):** Qur'an 2:237 (Al-Baqarah).
[16] **Qur'an references (L31158):** Qur'an 2:237 (Al-Baqarah).
[17] **Qur'an references (L31159):** Qur'an 2:237 (Al-Baqarah).

Layth ibn Saʿd, Abū Ḥanīfah, al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and their companions.

وَقَالَتْ طَائِفَةٌ: هُوَ الْوَلِيُّ صَحَّ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ إنْ عَفَا وَلِيُّهَا {الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] وَضَنَّتْ جَازَ، وَإِنْ أَبَتْ.

L31161–31162 A group of scholars said: He is the guardian. This is authentically reported from Ibn Abbas—that if her guardian, "the one who holds the authority of marriage" [Al-Baqarah: 237], pardons [the matter] and she withholds [consent], it is permissible. But if she refuses, [it applies].[18]

وَصَحَّ أَيْضًا عَنْ جَابِرِ بْنِ زَيْدٍ كَانَ يَقُولُ: أَوْ يَعْفُوَ أَبُوهَا أَوْ أَخُوهَا إنْ كَانَ وُصُولًا وَإِنْ كَرِهَتْ الْمَرْأَةُ.

L31163 It is also authentically reported from Jabir ibn Zayd that he would say: "Either her father or her brother may pardon if he has the authority, even if the woman detests it."

وَصَحَّ أَيْضًا عَنْ عَطَاءٍ، وَعَلْقَمَةَ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَالْحَسَنِ الْبَصْرِيِّ، وَأَبِي الزِّنَادِ، وَعِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ.

L31164 It has also been authentically established from ʿAṭāʾ, ʿAlqamah, Ibrāhīm al-Nakhaʿī, al-Shaʿbī, al-Ḥasan al-Baṣrī, Abū al-Zināḍ, and ʿIkrimah, the freed slave of Ibn ʿAbbās.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ قَوْلًا لَمْ يَصِحَّ عَنْهُ لِأَنَّهُ مِنْ طَرِيقِ الْكَلْبِيِّ أَنَّهُ وَلِيُّ الْبِكْرِ جُمْلَةً - وَصَحَّ عَنْ الزُّهْرِيِّ قَوْلٌ آخَرُ وَهُوَ أَنَّهُ الْأَبُ جُمْلَةً. وَقَوْلٌ خَامِسٌ: رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ رَبِيعَةَ، وَزَيْدِ بْنِ أَسْلَمَ أَنَّهُ السَّيِّدُ يَعْفُو عَنْ صَدَاقِ أَمَتِهِ، وَالْأَبُ خَاصَّةً فِي ابْنَتِهِ الْبِكْرِ خَاصَّةً: يَجُوزُ عَقْدُهُ عَنْ صَدَاقِهَا - وَهُوَ قَوْلُ مَالِكٍ.

L31165 It has been reported to us from Ibn Abbas a statement not authenticated from him, as it comes through al-Kalbi's chain, stating that guardianship over the virgin rests entirely [with the designated guardian]. An authenticated report from al-Zuhri presents another view: that guardianship belongs entirely to the father. A fifth opinion is narrated through Malik from Rabi'ah and Zayd ibn Aslam: the master may waive the dowry of his female slave, while the father specifically holds authority over his virgin daughter specifically - he may conclude the marriage contract pertaining to her dowry. This is the opinion of Malik.

قَالَ أَبُو مُحَمَّد: فَنَظَرْنَا فِي هَذِهِ الْأَقْوَالِ -: فَوَجَدْنَا قَوْلَ رَبِيعَةَ، وَزَيْدِ بْنِ أَسْلَمَ، وَمَالِك أَظْهَرَهَا فَسَادًا وَأَبْعَدَهَا عَنْ مُقْتَضَى الْآيَةِ جُمْلَةً وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ بِقَوْلِهِ: {أَوْ يَعْفُوَ الَّذِي بِيَدِهِ عُقْدَةُ النِّكَاحِ} [البقرة: ٢٣٧] سَيِّدَ الْأَمَةِ وَوَالِدَ الْبِكْرِ خَاصَّةً لَمَا سَتَرَهُ وَلَا كَتَمَهُ فَلَمْ يُبَيِّنْهُ فِي كِتَابِهِ، وَلَا عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L31166 Abu Muhammad said: We examined these opinions—and found the view of Rabiʿah, Zayd ibn Aslam, and Malik to be the most manifestly flawed and entirely furthest from the dictate of the verse as a whole. We testify by the testimony of Allah, the Almighty, that had Allah the Exalted intended by His words {or the one in whose hand is the marriage tie} [Al-Baqarah 2:237] to mean specifically the master of the female slave and the father of the virgin, He would not have concealed it nor withheld it. He did not clarify this in His Book nor upon the tongue of His Messenger—peace be upon him.[19]

[18] **Qur'an references (L31162):** Qur'an 2:237 (Al-Baqarah).
[19] **Qur'an references (L31166):** Qur'an 2:237 (Al-Baqarah).

L31167 If it is said: “The marriage of the female slave and the virgin is not valid except through their contract?” We say: Yes, and it is also invalid except with the husband’s consent; otherwise, it is invalid. Thus, the husband holds the same authority regarding this matter as the master over a slave and the father over a virgin, equally. Therefore, whoever claims these two have greater entitlement to hold the marriage contract in their hands than the husband - despite the specification of the verse - without evidence from the Qur’an, nor a sound Sunnah, nor a weak narration, nor a Companion’s statement, nor analogy, nor an opinion with any valid basis - then this opinion is entirely invalidated. With its invalidation, al-Zuhrī’s opinion that “it is the father” also falls away completely. Similarly, the opinion authentically attributed to him that “he is the guardian of the virgin” is entirely invalidated.

فَإِنْ قِيلَ: هَذَانِ لَا يَصِحُّ نِكَاحُ الْأَمَةِ وَالْبِكْرِ إِلَّا بِعَقْدِهِمَا؟ قُلْنَا: نَعَمْ، وَلَا يَصِحُّ أَيْضًا إِلَّا بِرِضَا الزَّوْجِ وَإِلَّا فَلَا، فَلَهُ فِي ذَلِكَ كَالَّذِي لِلسَّيِّدِ، وَلِلْأَبِ سَوَاءً سَوَاءً، فَمَنْ جَعَلَهُمَا أَوْلَى بِأَنْ يَكُونَ بِأَيْدِيهِمَا عُقْدَةُ النِّكَاحِ مِنْ الزَّوْجِ مَعَ تَخْصِيصِ الْآيَةِ بِلَا بُرْهَانٍ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ؟ فَسَقَطَ هَذَا الْقَوْلُ جُمْلَةً وَسَقَطَ بِسُقُوطِهِ قَوْلُ الزُّهْرِيِّ: إنَّهُ الْأَبُ أَيْضًا جُمْلَةً - وَكَذَلِكَ سَقَطَ أَيْضًا الْقَوْلُ الَّذِي صَحَّ عَنْهُ أَنَّهُ وَلِيُّ الْبِكْرِ جُمْلَةً.

L31168–31170 Then we examined the opinion of those who assert that he is the guardian, and we found guardians to be of two types: the first includes those we mentioned—the father of the virgin woman and the master of the female slave. The authority of these two in establishing the validity of the marriage contract... The marriage contract rests with both [the husband and guardian], akin to the husband’s exclusive right to hold the marriage contract in his hand – their authority being entirely equal. The father’s legal guardianship over an unmarried woman ceases if he is a disbeliever and she is a believer, or if he is a believer and she is a disbeliever, or if he is insane. Likewise, the master’s authority over his female slave ceases if he is a minor or insane.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: إنَّهُ الْوَلِيُّ -: فَوَجَدْنَا الْأَوْلِيَاءَ قِسْمَيْنِ -: أَحَدُهُمَا: مَنْ ذَكَرْنَا مِنْ أَبِ الْبِكْرِ، وَسَيِّدِ الْأَمَةِ، فَكَانَ حَظُّ هَذَيْنِ فِي كَوْنِ عُقْدَةِ النِّكَاحِ بِأَيْدِيهِمَا كَحَظِّ الزَّوْجِ فِي كَوْنِ عُقْدَةِ النِّكَاحِ بِيَدِهِ سَوَاءً سَوَاءً، وَقَدْ يَسْقُطُ حُكْمُ الْأَبِ فِي الْبِكْرِ بِأَنْ يَكُونَ كَافِرًا - وَهِيَ مُؤْمِنَةٌ أَوْ هُوَ مُؤْمِنٌ وَهِيَ كَافِرَةٌ - أَوْ بِأَنْ يَكُونَ مَجْنُونًا - وَيَسْقُطُ أَيْضًا حُكْمُ السَّيِّدِ فِي أَمَتِهِ بِأَنْ يَكُونَ صَغِيرًا أَوْ مَجْنُونًا.

L31171 The second category comprises the remaining guardians whose opinions are disregarded. However, if they object, the matter is removed from their jurisdiction, and the ruler concludes her marriage. In such cases, the husband’s entitlement to hold the authority of concluding the marriage contract is more complete than the share of the aforementioned guardians.

وَالْقِسْمُ الثَّانِي: سَائِرُ الْأَوْلِيَاءِ الَّذِينَ لَا يُلْتَفَتُ إلَيْهِمْ، لَكِنْ إنْ أَبَوْا أُخْرِجَ الْأَمْرُ عَنْ أَيْدِيهِمْ وَعَقَدَ السُّلْطَانُ نِكَاحَهَا، فَهَؤُلَاءِ حَظُّ الزَّوْجِ فِي كَوْنِ عُقْدَةِ النِّكَاحِ بِيَدِهِ أَكْمَلُ مِنْ حَظِّ الْأَوْلِيَاءِ الْمَذْكُورِينَ.

L31172 We found the duration of the legal guardians to be unsettled, as you observe. Then, it is solely the contract. Then, they possess nothing at all under their control regarding the entirety of the marital bond. Rather, it rests with the husband: if he wishes, he may ratify it, and if he wishes, he may dissolve it through divorce.

فَوَجَدْنَا أَمَدَ الْأَوْلِيَاءِ مُضْطَرِبًا كَمَا تَرَى، ثُمَّ إنَّمَا هُوَ الْعَقْدُ فَقَطْ، ثُمَّ لَا شَيْءَ بِأَيْدِيهِمْ جُمْلَةً مِنْ عُقْدَةِ النِّكَاحِ، بَلْ هِيَ إلَى الزَّوْجِ إنْ شَاءَ أَمْضَاهَا وَإِنْ شَاءَ حَلَّهَا بِالطَّلَاقِ.

وَوَجَدْنَا أَمْرَ الزَّوْجِ ثَابِتًا فِي أَنَّ عُقْدَةَ كُلِّ نِكَاحٍ بِيَدِهِ، وَلَا تَصِحُّ إِلَّا بِإِرَادَتِهِ بِكُلِّ حَالٍ، وَلَا تَحِلُّ إِلَّا بِإِرَادَتِهِ، فَكَانَ أَحَقَّ بِإِطْلَاقِ هَذِهِ الصِّفَةِ عَلَيْهِ بِلَا شَكٍّ.

We determined the husband's authority to be firmly established, as the conclusion of every marriage contract lies in his hands. It is neither valid nor lawful except by his volition in all circumstances. Thus, he is unquestionably most deserving of being ascribed this attribute.

ثُمَّ الْبُرْهَانُ الْقَاطِعُ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤].

Furthermore, the conclusive proof is the saying of Allah, the Exalted and Majestic: "Every soul earns [sin] only against itself" (Quran 6:164).[20]

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَكَانَ عَفْوُ الْوَلِيِّ عَنْ مَالِ وَلِيِّهِ كَسْبًا عَلَى غَيْرِهِ فَهُوَ بَاطِلٌ، وَحُكْمًا فِي مَالِ غَيْرِهِ فَهُوَ حَرَامٌ - فَصَحَّ أَنَّهُ الزَّوْجُ الَّذِي يَفْعَلُ فِي مَالِ نَفْسِهِ مَا أَحَبَّ مِنْ عَفْوٍ أَوْ يَقْضِي بِحَقِّهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The statement of the Messenger of Allah—peace and blessings be upon him—"Indeed, your blood and your wealth are inviolable to you," establishes that a guardian's waiver of his ward's property is a gain over others' property—hence invalid—and a ruling over another's property—hence forbidden. Thus, it is confirmed that in contrast, the husband is the one who may act upon his own property as he wishes, whether by waiving a claim or asserting his right. And with Allah, the Exalted, is success.

[مَسْأَلَةُ نِكَاحُ الشِّغَارِ]

[The Issue of Shighār Marriage]

١٨٥٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ نِكَاحُ الشِّغَارِ: وَهُوَ أَنْ يَتَزَوَّجَ هَذَا وَلِيَّةَ هَذَا عَلَى أَنْ يُزَوِّجَهُ الْآخَرُ وَلِيَّتَهُ أَيْضًا، سَوَاءٌ ذَكَرَا فِي كُلِّ ذَلِكَ صَدَاقًا لِكُلِّ وَاحِدَةٍ مِنْهُمَا أَوْ لِإِحْدَاهُمَا دُونَ الْأُخْرَى، أَوْ لَمْ يَذْكُرَا فِي شَيْءٍ مِنْ ذَلِكَ صَدَاقًا، كُلُّ ذَلِكَ سَوَاءٌ يُفْسَخُ أَبَدًا، وَلَا نَفَقَةَ فِيهِ، وَلَا مِيرَاثَ، وَلَا صَدَاقَ وَلَا شَيْءَ مِنْ أَحْكَامِ الزَّوْجِيَّةِ، وَلَا عِدَّةَ.

Issue 1856: The *Shighār* marriage is impermissible. This refers to when one guardian marries his female ward to another guardian on the condition that the latter, in return, marries his female ward to the former. It makes no difference whether the two guardians stipulate a dowry for each of the two women, for only one of them, or do not stipulate a dowry in anything related to these cases. All these scenarios are equivalent: the marriage is permanently annulled. There is no financial obligation; no inheritance rights, no dowry, none of the rulings pertaining to marriage, and no waiting period.

فَإِنْ كَانَ عَالِمًا فَعَلَيْهِ الْحَدُّ كَامِلًا، وَلَا يَلْحَقُ بِهِ الْوَلَدُ، وَإِنْ كَانَ جَاهِلًا فَلَا حَدَّ عَلَيْهِ، وَالْوَلَدُ لَهُ لَاحِقٌ، وَإِنْ كَانَتْ هِيَ عَالِمَةً بِتَحْرِيمِ ذَلِكَ فَعَلَيْهَا الْحَدُّ، وَإِنْ كَانَتْ جَاهِلَةً فَلَا شَيْءَ عَلَيْهَا.

If he is knowledgeable, the full ḥadd applies to him, and the child is not attributed to him. If he is ignorant, no ḥadd applies to him, and the child is attributed to him. If she is knowledgeable of the prohibition of that act, the ḥadd applies to her. If she is ignorant, nothing is required of her.

Abu Muhammad said: The people have differed regarding this: Malik said:

[20] **Qur'an references (L31174):** Qur'an 6:164 (Al-An'am).

This marriage is not valid and is annulled, whether he has consummated it or not. Similarly, if he were to say, "I marry you to my daughter on the condition that you marry me to your daughter for one hundred dinars," there is no validity in that.

قَالَ أَبُو مُحَمَّد: وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَ مَالِكٌ: لَا يَجُوزُ هَذَا النِّكَاحُ وَيُفْسَخُ دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ، وَكَذَلِكَ لَوْ قَالَ: أُزَوِّجُك ابْنَتِي عَلَى أَنْ تُزَوِّجَنِي ابْنَتَك بِمِائَةِ دِينَارٍ، فَلَا خَيْرَ فِي ذَلِكَ.

L31182 Ibn al-Qasim said: It is not dissolved—this applies if he has consummated the marriage with her.

وَقَالَ ابْنُ الْقَاسِمِ: لَا يُفْسَخُ، هَذَا إنْ دَخَلَ بِهَا.

L31183 Al-Shafi'i said: This marriage is annulled if no dowry is specified. If the contracting parties stipulated a dowry for each of the two women, or for one of them but not the other, both marriages remain valid, but the stipulated dowries are void. Each woman is entitled to the dowry equivalent to women of her standing if he dies, consummates the marriage, or to half of that dowry if he divorces her before consummation.

وَقَالَ الشَّافِعِيُّ: يُفْسَخُ هَذَا النِّكَاحُ إذَا لَمْ يُسَمَّ فِي ذَلِكَ مَهْرٌ، فَإِنْ سَمَّيَا لِكُلِّ وَاحِدَةٍ مِنْهُمَا مَهْرًا، أَوْ لِإِحْدَاهُمَا دُونَ الْأُخْرَى ثَبَتَ النِّكَاحَانِ مَعًا، وَبَطَلَ الْمَهْرُ الَّذِي سَمَّيَا، وَكَانَ لِكُلِّ وَاحِدَةٍ مِنْهُمَا مَهْرُ مِثْلِهَا إنْ مَاتَ، أَوْ وَطِئَهَا، أَوْ نِصْفُ مَهْرِ مِثْلِهَا إنْ طَلَّقَ قَبْلَ الدُّخُولِ.

L31184 Al-Layth, Abu Hanifa, and his companions said: It is a valid marriage whether the two contracting parties specify a dowry for the wife, specify it for one scenario but not the other, omit mentioning a dowry entirely, or stipulate a condition. We clarified that no dowry is established in such cases. They said: In this situation, the woman is entitled to the dowry equivalent to women of her status.

وَقَالَ اللَّيْثُ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ: هُوَ نِكَاحٌ صَحِيحٌ ذَكَرَا لِكُلِّ وَاحِدَةٍ صَدَاقًا، أَوْ لِإِحْدَاهُمَا دُونَ الْأُخْرَى، أَوْ لَمْ يَذْكُرَا صَدَاقًا أَصْلًا، أَوْ اشْتِرَاطًا وَبَيَّنَّا أَنَّهُ لَا صَدَاقَ فِي ذَلِكَ، قَالُوا: وَلِكُلِّ وَاحِدَةٍ فِي هَذَا مَهْرُ مِثْلِهَا.

L31185 The apparent meaning of their statement is that if the two parties specify a mahr, they have no right except to what was specified.

وَالظَّاهِرُ مِنْ قَوْلِهِمْ: أَنَّهُمَا إنْ سَمَّيَا صَدَاقًا أَنَّهُ لَيْسَ لَهُمَا إلَّا الْمُسَمَّى.

L31186 Abu Muhammad said: What we have stated is the position of our companions, making it necessary to examine the matters they disagreed on. We found regarding this - as we reported through Muslim's chain: Abu Bakr ibn Abi Shaybah reported to us, Ibn Numayr reported to us from 'Ubayd Allah ibn 'Umar from Abu al-Zinad from al-A'raj from Abu Hurayrah, who said: "The Messenger of Allah (peace be upon him) prohibited shighâr. Shighâr refers to when a man says to another: 'Marry your daughter to me and I will marry my daughter to you,' or 'Marry your sister to me and I will marry my sister to you.'"

قَالَ أَبُو مُحَمَّد: وَالَّذِي قُلْنَا بِهِ هُوَ قَوْلُ أَصْحَابِنَا، فَوَجَبَ النَّظَرُ فِيمَا اخْتَلَفُوا فِيهِ، فَوَجَدْنَا فِي ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا ابْنُ نُمَيْرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِي الزِّنَادِ عَنْ الْأَعْرَجِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الشِّغَارِ، وَالشِّغَارُ: أَنْ يَقُولَ الرَّجُلُ لِلرَّجُلِ: زَوِّجْنِي ابْنَتَك وَأُزَوِّجُك ابْنَتِي، أَوْ زَوِّجْنِي أُخْتَك وَأُزَوِّجُك أُخْتِي»

L31187 We have also transmitted it with a connected and authentic chain through

Jābir, Ibn ʿUmar, Anas, and others. This was a prohibition from the Messenger of Allah—may the peace and blessings of Allah be upon him—thus invalidating the statements of anyone other than him.

وَقَدْ رُوِّينَاهُ أَيْضًا مُسْنَدًا صَحِيحًا مِنْ طَرِيقِ جَابِرٍ، وَابْنِ عُمَرَ، وَأَنَسٍ، وَغَيْرِهِمْ، فَكَانَ هَذَا تَحْرِيمًا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ قَوْلُ مَنْ سِوَاهُ.

L31188–31190 Thus we examined the statements of those who differed -: As for Ibn al-Qasim's assertion that it is valid after consummation - this is a statement whose invalidity we have previously demonstrated and its being entirely devoid of proof.

فَنَظَرْنَا فِي أَقْوَالِ مَنْ خَالَفَ -: فَأَمَّا قَوْلُ ابْنِ الْقَاسِمِ إنَّهُ يَصِحُّ بَعْدَ الدُّخُولِ، فَقَوْلٌ قَدْ تَقَدَّمَ تَبْيِينُنَا لِفَسَادِهِ وَتَعَرِّيهِ مِنْ الْبُرْهَانِ جُمْلَةً.

L31191 As for Abū Ḥanīfah, al-Shāfiʿī, and their companions, they maintained that this marriage is invalid solely due to the invalidity of its dowry—then they differed. Al-Shāfiʿī stated: The invalid dowry is annulled. Thus, each marriage contract serves as the dowry for the other, resulting in the annulment of both. He said: If the husband and the guardian stipulate a dowry for one of them, that marriage becomes valid, and the marriage of the other woman is valid because its dowry [for her] is valid.

وَأَمَّا أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا، فَإِنَّهُمْ قَالُوا: إنَّمَا فَسَدَ هَذَا النِّكَاحُ لِفَسَادِ صَدَاقِهِ فَقَطْ - ثُمَّ اخْتَلَفُوا -: فَقَالَ الشَّافِعِيُّ: وَالصَّدَاقُ الْفَاسِدُ يُفْسَخُ، فَكَانَ نِكَاحُ كُلِّ وَاحِدَةٍ مِنْهُمَا صَدَاقًا لِلْأُخْرَى، فَهُمَا مَفْسُوخَانِ - قَالَ: فَإِنْ سَمَّيَا لِإِحْدَاهُمَا صَدَاقًا صَحَّ ذَلِكَ النِّكَاحُ، وَصَحَّ نِكَاحُ الْأُخْرَى لِصِحَّةِ صَدَاقِهِ.

L31192 Abu Muhammad said: This was an invalid opinion, for if the contract stipulating the dower is valid, then the dower itself is valid. Therefore, there are no grounds to annul it and amend it with another dower.

قَالَ أَبُو مُحَمَّد: فَكَانَ هَذَا قَوْلًا فَاسِدًا، لِأَنَّهُ إنْ كَانَ هَذَا الْعَقْدُ الَّذِي سُمِّيَ فِيهِ الصَّدَاقُ صَحِيحًا فَهُوَ صَدَاقٌ صَحِيحٌ، فَلَا مَعْنَى لِفَسْخِهِ وَإِصْلَاحِهِ بِصَدَاقٍ آخَرَ إذًا.

L31193 If someone were to say, "Rather, it is invalid?" We respond: Then follow the opinion of Abū Ḥanīfah, who sanctions all of that and validates the dowry; otherwise, it is an evident contradiction.

فَإِنْ قَالَ قَائِلٌ: بَلْ هُوَ فَاسِدٌ؟ قُلْنَا: فَقُلْ بِقَوْلِ أَبِي حَنِيفَةَ الَّذِي يُجِيزُ كُلَّ ذَلِكَ وَيُصْلِحُ الصَّدَاقَ، وَإِلَّا فَهِيَ مُنَاقَضَةٌ ظَاهِرَةٌ.

L31194 Then we examined the statement of Abū Ḥanīfah and found it manifestly invalid due to its blatant contradiction of the ruling of the Messenger of Allah, may Allah bless him and grant him peace.

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، فَوَجَدْنَاهُ ظَاهِرَ الْفَسَادِ لِمُخَالَفَةِ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جِهَارًا.

L31195 Abu Muhammad said: The claim of al-Shafiʿi that the prohibition of shighar marriage was only due to the invalidity of the bridal gift (sadaq) in both [marriage contracts] is a false claim, for it attributes to the Messenger of Allah—peace be upon him—words he never spoke, and this is impermissible.

قَالَ أَبُو مُحَمَّد: وَدَعْوَى الشَّافِعِيِّ أَنَّهُ إنَّمَا نَهَى عَنْ الشِّغَارِ لِفَسَادِ الصَّدَاقِ فِي كِلَيْهِمَا دَعْوَى كَاذِبَةٌ، لِأَنَّهَا تَقْوِيلٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْ وَهَذَا لَا يَجُوزُ.

L31196 If they mention what we have narrated via the chain of Mālik from Nāfiʿ

from Ibn ʿUmar, who said: "Messenger of Allah (peace and blessings be upon him) prohibited *shighār*: *shighār* is when a man gives his daughter in marriage to another on condition that the latter gives his daughter in marriage to him, with no *mahr* stipulated for either marriage."

فَإِنْ ذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ الشِّغَارِ - وَالشِّغَارُ أَنْ يُزَوِّجَ الرَّجُلُ ابْنَتَهُ عَلَى أَنْ يُزَوِّجَهُ ابْنَتَهُ لَيْسَ بَيْنَهُمَا صَدَاقٌ» .

L31197 It was narrated via the chain of ʿAbd al-Razzāq from Maʿmar, from Thābit al-Bunānī and another with him—who is Yazīd al-Raqāshī—from Anas, who said: The Messenger of Allah—peace and blessings be upon him—said: "There is no *shighār* in Islam. *Shighār* is when a man exchanges his sister for another man's sister without stipulating a *mahr*." He then mentioned the remainder of the ḥadīth.

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ثَابِتٍ الْبُنَانِيِّ وَآخَرَ مَعَهُ - هُوَ يَزِيدُ الرَّقَاشِيُّ - عَنْ أَنَسٍ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا شِغَارَ فِي الْإِسْلَامِ وَالشِّغَارُ أَنْ يُبَدِّلَ الرَّجُلُ الرَّجُلَ أُخْتَهُ بِأُخْتِهِ بِغَيْرِ ذِكْرِ صَدَاقٍ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

L31198–31199 We said: As for these two reports, they are contrary to the opinion of Abū Ḥanīfah and his companions, like that which we have previously explained, and there is no difference [in judgment].

قُلْنَا: أَمَّا هَذَانِ الْخَبَرَانِ فَهُمَا خِلَافُ قَوْلِ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، كَالَّذِي قَدَّمْنَا وَلَا فَرْقَ.

L31200 As for Al-Shāfiʿī, he has no proof in these two narrations for two reasons:

وَأَمَّا الشَّافِعِيُّ فَلَا حُجَّةَ لَهُ فِي هَذَيْنِ الْخَبَرَيْنِ لِوَجْهَيْنِ -:

L31201 One of the two is that even if a dowry is mentioned for both or one of them, it completely nullifies that dowry under any circumstances. Since this is absent from these two reports, it contradicts their content.

أَحَدُهُمَا - أَنَّهُ وَإِنْ ذُكِرَ فِيهِمَا صَدَاقٌ أَوْ لِإِحْدَاهُمَا فَإِنَّهُ يُبْطِلُ ذَلِكَ الصَّدَاقَ جُمْلَةً بِكُلِّ حَالٍ، وَلَيْسَ هَذَا فِي هَذَيْنِ الْخَبَرَيْنِ فَقَدْ خَالَفَ مَا فِيهِمَا.

L31202 The other perspective—which we rely upon—is that these two narrations only entail the prohibition of Shighār (marriage exchange) in which the dowry is not mentioned at all. They do not address Shighār in which the dowry is mentioned—neither by prohibition nor by permission. Whoever asserts otherwise has indeed falsely claimed and ascribed to the Messenger of Allah—peace and blessings be upon him—what he never uttered. Consequently, it becomes obligatory to seek the ruling concerning Shighār in which the dowry is mentioned outside these two narrations. We found the narration of Abū Hurayrah and that of Jābir, both conveying the general principle of Shighār and clarifying that it denotes marriage in exchange for marriage. It was not stipulated in them—peace and blessings be upon him—that the dowry be mentioned nor omitted. Thus, Abū Hurayrah's narration supple-

وَالْوَجْهُ الْآخَرُ - وَهُوَ الَّذِي نَعْتَمِدُ عَلَيْهِ - وَهُوَ أَنَّ هَذَيْنِ الْخَبَرَيْنِ إِنَّمَا فِيهِمَا تَحْرِيمُ الشِّغَارِ الَّذِي لَمْ يُذْكَرْ فِيهَا الصَّدَاقُ فَقَطْ، وَلَيْسَ فِيهِ ذِكْرُ الشِّغَارِ الَّذِي ذُكِرَ فِيهِ الصَّدَاقُ - لَا بِتَحْرِيمٍ وَلَا بِإِجَازَةٍ - وَمَنْ ادَّعَى ذَلِكَ فَقَدْ ادَّعَى الْكَذِبَ وَقَوَّلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْهُ قَطُّ، فَوَجَبَ أَنْ نَطْلُبَ حُكْمَ الشِّغَارِ الَّذِي ذُكِرَ فِيهِ الصَّدَاقُ فِي غَيْرِ هَذَيْنِ الْخَبَرَيْنِ: فَوَجَدْنَا خَبَرَ أَبِي هُرَيْرَةَ، وَجَابِرٍ قَدْ وَرَدَا بِعُمُومِ الشِّغَارِ، وَبَيَانِ أَنَّهُ الزَّوَاجُ بِالزَّوَاجِ، وَلَمْ يُشْتَرَطْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهِمَا ذِكْرُ صَدَاقٍ وَلَا السُّكُوتُ

ments Ibn ʿUmar's narration, while Anas's narration constitutes an increase in generality—a generality it is not permissible to abandon.

L31203 Abu Muhammad said: It is indeed authentically reported from the Messenger of Allah (may the peace and blessings of Allah be upon him): «Every condition that is not in the Book of Allah is invalid.»[21]

L31204–31206 We found that in Shighar marriage - whether a dowry is mentioned therein or not - the two parties stipulated a condition not present in the Book of Allah the Almighty, thus it is invalid in all cases. It was narrated to us through the chain of Abu Dawud al-Sijistani: from Muhammad ibn Faris, from Ya'qub ibn Ibrahim ibn Sa'd ibn Ibrahim ibn 'Abd al-Rahman ibn 'Awf, from his father, from Muhammad ibn Ishaq, from 'Abd al-Rahman ibn Hurmuz al-A'raj, who said: "Al-'Abbas ibn al-'Abbas ibn 'Abd al-Muttalib gave his daughter in marriage to 'Abd al-Rahman ibn al-Hakam ibn Abi al-'As ibn Umayyah, and 'Abd al-Rahman gave [a female relative] in marriage to Al-'Abbas." His daughter [in marriage], and they had stipulated a dower (sadaq). Muʿāwiyah wrote to Marwān instructing him to separate them. Muʿāwiyah stated in his letter: "This is the *shighār* [marriage-by-exchange] that the Messenger of Allah—peace be upon him—forbade."

L31207 Abu Muhammad said: Thus, Mu'awiyah—in the presence of the Companions, with none among them known to oppose him—invalidated this marriage even if the two parties had mentioned the dowry in the contract, stating: "This is what the Messenger of Allah—peace be upon him—prohibited." Thus, the ambiguity is wholly resolved—and praise be to Allah, Lord of the worlds.[22]

L31208 The entire astonishment lies in the Hanafis' censure of the Companion's differing opinion—whom they assert had no known dissenter among the Companions, may Allah be pleased with them—as in their claim regarding the

عَنْهُ، فَكَانَ خَبَرُ أَبِي هُرَيْرَةَ زَائِدًا عَلَى خَبَرِ ابْنِ عُمَرَ، وَخَبَرُ أَنَسٍ زِيَادَةُ عُمُومٍ لَا يَحِلُّ تَرْكُهَا.

قَالَ أَبُو مُحَمَّد: وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

وَوَجَدْنَا الشِّغَارَ - ذُكِرَ فِيهِ صَدَاقٌ أَوْ لَمْ يُذْكَرْ - قَدْ اشْتَرَطَا فِيهِ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ بِكُلِّ حَالٍ. وَرُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نا مُحَمَّدُ بْنُ فَارِسٍ نا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ نا أَبِي عَنْ مُحَمَّدِ بْنِ إسْحَاقَ نا عَبْدُ الرَّحْمَنِ بْنُ هُرْمُزَ الْأَعْرَجُ قَالَ: «إنَّ الْعَبَّاسَ بْنَ الْعَبَّاسِ بْنِ عَبْدِ الْمُطَّلِبِ أَنْكَحَ ابْنَتَهُ عَبْدَ الرَّحْمَنِ بْنَ الْحَكَمِ بْنِ أَبِي الْعَاصِ بْنِ أُمَيَّةَ، وَأَنْكَحَهُ عَبْدُ الرَّحْمَنِ ابْنَتَهُ: وَكَانَا جَعَلَا صَدَاقًا، فَكَتَبَ مُعَاوِيَةُ إلَى مَرْوَانَ يَأْمُرُهُ بِالتَّفْرِيقِ بَيْنَهُمَا، وَقَالَ مُعَاوِيَةُ فِي كِتَابِهِ: هَذَا الشِّغَارُ الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

قَالَ أَبُو مُحَمَّد: فَهَذَا مُعَاوِيَةُ بِحَضْرَةِ الصَّحَابَةِ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ يَفْسَخُ هَذَا النِّكَاحَ - وَإِنْ ذَكَرَا فِيهِ الصَّدَاقَ - وَيَقُولُ: إنَّهُ الَّذِي نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَالْعَجَبُ كُلُّهُ مِنْ تَشْنِيعِ الْحَنَفِيِّينَ بِخِلَافِ الصَّاحِبِ الَّذِي يَدَّعُونَ أَنَّهُ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَدَعْوَاهُمْ ذَلِكَ فِي نَزْجِ زَمْزَمَ مِنْ زِنْجِيٍّ مَاتَ فِيهَا فَنَزَحَهَا ابْنُ الزُّبَيْرِ، وَغَيْرُ ذَلِكَ.

[21] **Hadith references (L31203):** Sunan Ibn Majah 2521.
[22] **Qur'an references (L31207):** Qur'an 37:182 (As-Saffat).

emptying of the Zamzam well due to a Zanji who died within it, whereupon Ibn al-Zubayr had it drained, along with other such instances.

L31209 Then, here, they paid no heed to what they had revered and forbade there.

ثُمَّ لَمْ يَلْتَفِتُوا هَاهُنَا إِلَى مَا عَظَّمُوهُ وَحَرَّمُوهُ هُنَالِكَ.

L31210 This is an authentic report because ʿAbd al-Raḥmān ibn Hurmuz was among those who lived during the era of Muʿāwiyah, narrated from Abū Hurayrah and others, and witnessed the implementation of this ruling in Medina. And success is from Allah, the Exalted.

وَهَذَا خَبَرٌ صَحِيحٌ، لِأَنَّ عَبْدَ الرَّحْمَنِ بْنَ هُرْمُزَ مِمَّنْ أَدْرَكَ أَيَّامَ مُعَاوِيَةَ وَرَوَى عَنْ أَبِي هُرَيْرَةَ وَغَيْرِهِ، وَشَاهَدَ هَذَا الْحُكْمَ بِالْمَدِينَةِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L31211 Especially in such a well-known incident between two great men from the nobles of Banu Hashim and Banu Umayya, as the postal service brought it from Syria to Medina. This is something none of Medina's people's scholars could remain unaware of, and the Companions present in Syria and Medina at that time were unquestionably more numerous than those alive during Ibn al-Zubayr's era.

لَا سِيَّمَا فِي مِثْلِ هَذِهِ الْقِصَّةِ الْمَشْهُورَةِ بَيْنَ رَجُلَيْنِ عَظِيمَيْنِ مِنْ عُظَمَاءِ بَنِي هَاشِمٍ، وَبَنِي أُمَيَّةَ يَأْتِي بِهِ الْبَرِيدُ مِنْ الشَّامِ إِلَى الْمَدِينَةِ، هَذَا مَا لَا يَخْفَى عَلَى أَحَدٍ مِنْ عُلَمَاءِ أَهْلِهَا وَالصَّحَابَةُ يَوْمَئِذٍ بِالشَّامِ وَالْمَدِينَةِ أَكْثَرُ عَدَدًا مِنْ الَّذِينَ كَانُوا أَحْيَاءً أَيَّامَ ابْنِ الزُّبَيْرِ بِلَا شَكٍّ.

L31212 We have been narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAṭāʾ was asked about two men - each arranged the marriage of his sister to the other by providing a minimal dowry, though if he wished, he could have given her more than that. He replied: "No, for shighār has been prohibited." I said to him: "But both have assigned dowries to them?" He said: "No, for each granted a concession to his counterpart regarding the dowry for his own benefit." I asked ʿAṭāʾ: "If one marries his daughter for such-and-such, and the other marries his daughter for such-and-such - each specifying his dowry, with both granting concessions to their brothers for their own benefit?" He said: "If they specify the dowry, there is no harm. But if they say: 'You provide the dowry, and I will provide the dowry,' then that is shighār." I asked: "What if each stipulates a dowry?" He replied: "No."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: سُئِلَ عَطَاءٌ عَنْ رَجُلَيْنِ أَنْكَحَ كُلُّ وَاحِدٍ مِنْهُمَا أُخْتَهُ بِأَنْ يُجَهِّزَ كُلُّ وَاحِدٍ مِنْهُمَا بِجِهَازٍ يَسِيرٍ لَوْ شَاءَ أَخَذَ لَهَا أَكْثَرَ مِنْ ذَلِكَ؟ فَقَالَ: لَا، نُهِيَ عَنْ الشِّغَارِ: فَقُلْت لَهُ: إنَّهُ قَدْ أَصْدَقَهَا كِلَاهُمَا؟ قَالَ: لَا، قَدْ أَرْخَصَ كُلُّ وَاحِدٍ مِنْهُمَا عَلَى صَاحِبِهِ مِنْ أَجْلِ نَفْسِهِ؟ فَقُلْت لِعَطَاءٍ: يُنْكِحُ هَذَا ابْنَتَهُ بِكَذَا وَهَذَا ابْنَتَهُ بِكَذَا بِصَدَاقٍ كِلَاهُمَا يُسَمِّي صَدَاقَهُ، وَكِلَاهُمَا أَرْخَصَ عَلَى أَخِيهِ مِنْ أَجْلِ نَفْسِهِ؟ قَالَ: إذَا سَمَّيَا صَدَاقًا فَلَا بَأْسَ، فَإِنْ قَالَ: جَهِّزْ وَأُجَهِّزُ؟ فَلَا ذَلِكَ الشِّغَارُ، قُلْت: فَإِنْ فَرَضَ هَذَا وَفَرَضَ هَذَا؟ قَالَ: لَا.

L31213–31215 Abu Muhammad said: ʿAṭāʾ differentiated between the two marriages where one is contracted in relation to the other—they both mentioned a mahr or... The two [spouses] did not acknowledge it, so he invalidated it. Since the two marriages are not contracted in relation to one another, he permitted

قَالَ أَبُو مُحَمَّد: فَفَرَّقَ عَطَاءٌ بَيْنَ النِّكَاحَيْنِ يُعْقَدُ أَحَدُهُمَا بِالْآخَرِ - ذَكَرَا صَدَاقًا أَوْ لَمْ يَذْكُرَا - فَأَبْطَلَهُ، وَبَيْنَ النِّكَاحَيْنِ لَا يَعْقِدُ أَحَدُهُمَا بِالْآخَرِ، فَأَجَازَهُ، وَهَذَا قَوْلُنَا، وَمَا نَعْلَمُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ خِلَافًا لِمَا ذَكَرْنَا.

[the latter]. This is our opinion, and we know of no disagreement from any companion or follower regarding what we have stated.

قَالَ أَبُو مُحَمَّد: فَإِنْ خَطَبَ أَحَدُهُمَا إلَى الْآخَرِ فَزَوَّجَهُ، ثُمَّ خَطَبَ الْآخَرُ إلَيْهِ فَزَوَّجَهُ، فَذَلِكَ جَائِزٌ مَا لَمْ يُشْتَرَطْ أَنْ يُزَوِّجَ أَحَدُهُمَا الْآخَرَ - فَهَذَا هُوَ الْحَرَامُ الْبَاطِلُ.

L31216 Abū Muḥammad said: If one of them proposes marriage to the other and the latter consents to the marriage as his guardian, then the second proposes to the first and the first consents to the marriage as his guardian, this is permissible as long as no condition is stipulated requiring one party to give the other in marriage—for that very act is forbidden and invalid.

وَالْعَجَبُ أَنَّ بَعْضَهُمْ احْتَجَّ بِأَنْ قَالَ: إنَّ هَذَا بِمَنْزِلَةِ النِّكَاحِ يُعْقَدُ عَلَى أَنْ يَكُونَ صَدَاقُهُ خَمْرًا أَوْ خِنْزِيرًا؟ فَقُلْنَا: نَعَمْ، وَكُلُّ مَفْسُوخٍ بَاطِلٌ أَبَدًا، لِأَنَّهُ عَقَدَ عَلَى أَنْ لَا صِحَّةَ لِذَلِكَ الْعَقْدِ إلَّا بِذَلِكَ الْمَهْرِ، وَذَلِكَ الْمَهْرُ بَاطِلٌ، فَالَّذِي لَا يَصِحُّ إلَّا بِصِحَّةِ بَاطِلٍ بَاطِلٌ، بِلَا شَكٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31217 What is astonishing is that some of them argued by saying: "Is this equivalent to a marriage contract established on the condition that its mahr be wine or pork?" We responded: Yes, and every void contract is invalid perpetually, because it was contracted on the stipulation that the validity of that contract depends exclusively on that mahr, while that mahr is invalid. Thus, that which cannot be valid except through the validity of something invalid is itself invalid, without doubt. And with Allah, the Most High, is success.

[مَسْأَلَةٌ نِكَاحٌ عَلَى شَرْطٍ]

An Issue of Marriage Upon a Condition

١٨٥٧ - مَسْأَلَةٌ: وَلَا يَصِحُّ نِكَاحٌ عَلَى شَرْطٍ أَصْلًا، حَاشَا الصَّدَاقَ الْمَوْصُوفَ فِي الذِّمَّةِ أَوْ الْمَدْفُوعَ، أَوْ الْمُعَيَّنَ، وَعَلَى أَنْ لَا يَضُرَّ بِهَا فِي نَفْسِهَا وَمَالِهَا: إمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ.

L31218

Issue 1857: No marriage contract is valid when contingent upon any condition whatsoever, except for stipulating the dowry - whether described as a debt, paid, or specified - and upon [the condition] that he does not harm her in her person or property: [this being] either keeping her with kindness or releasing her honorably.

L31219

وَأَمَّا بِشَرْطِ هِبَةٍ أَوْ بَيْعٍ أَوْ أَنْ لَا يَتَسَرَّى عَلَيْهَا، أَوْ أَنْ لَا يُرَحِّلَهَا، أَوْ غَيْرِ ذَلِكَ كُلِّهِ، فَإِنْ اشْتَرَطَ ذَلِكَ فِي نَفْسِ الْعَقْدِ فَهُوَ عَقْدٌ مَفْسُوخٌ، وَإِنْ اشْتَرَطَ ذَلِكَ بَعْدَ الْعَقْدِ فَالْعَقْدُ صَحِيحٌ وَالشُّرُوطُ كُلُّهَا بَاطِلٌ، سَوَاءٌ عَقَدَهَا بِعِتْقٍ أَوْ بِطَلَاقٍ أَوْ بِأَنْ أَمْرَهَا بِيَدِهَا، أَوْ أَنَّهَا بِالْخِيَارِ كُلُّ ذَلِكَ بَاطِلٌ.

L31220

As for stipulating a gift or sale, a condition that he will not take her as a concubine, that he will not relocate her, or any other such terms—if these are stipulated within the contract itself, the contract is annulled. If stipulated after the contract, the contract remains valid but all such conditions are invalid, whether he conditions them upon freeing a slave, divorce, granting her self-determination, or granting her a right of choice. All such stipulations are invalid.

وَكَذَلِكَ إنْ تَزَوَّجَهَا عَلَى حُكْمِهِ، أَوْ حُكْمِهَا، أَوْ حُكْمِ فُلَانٍ، فَكُلُّ هَذَا بَاطِلٌ - وَقَدْ أَجَازَ بَعْضُ النَّاسِ بَعْضَ هَذَا، وَرُوِّينَا عَنْ عَبْدِ

L31221

Similarly, if he marries her under his judgment, her judgment, or the judgment of so-and-so, all such contracts are invalid—though some scholars have permitted certain aspects of this. It was narrated to us via the chain of ʿAbd

وَكَذَلِكَ إِنْ تَزَوَّجَهَا عَلَى حُكْمِهِ، أَوْ عَلَى حُكْمِهَا، أَوْ عَلَى حُكْمِ فُلَانٍ، فَكُلُّ ذَلِكَ عَقْدٌ فَاسِدٌ - وَقَدْ أَجَازَ بَعْضَ ذَلِكَ قَوْمٌ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ ابْنِ سِيرِينَ: أَنَّ الْأَشْعَثَ تَزَوَّجَ امْرَأَةً عَلَى حُكْمِهَا ثُمَّ طَلَّقَهَا قَبْلَ أَنْ يَتَّفِقَا عَلَى صَدَاقٍ، فَجَعَلَ لَهَا عُمَرُ صَدَاقَ امْرَأَةٍ مِنْ نِسَائِهَا - وَهَذَا مُنْقَطِعٌ عَنْ عُمَرَ، لِأَنَّ ابْنَ سِيرِينَ لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -.

L31222 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ, who said: Whoever marries according to his ruling, the wife is entitled only to what the husband has ruled.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّهُ قَالَ: فَمَنْ تَزَوَّجَ عَلَى حُكْمِهِ: إِنَّهُ لَيْسَ لَهَا إِلَّا مَا حَكَمَ بِهِ الزَّوْجُ.

L31223 Abū Ḥanīfah, Mālik, and al-Awzāʿī said: If they agree on terms when marrying under her condition or his condition, the marriage is valid. If they disagree, Abū Ḥanīfah and al-Awzāʿī said: She is entitled to the dower of her peers.

وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ، وَالْأَوْزَاعِيُّ: إِنْ اتَّفَقَا عَلَى شَيْءٍ إِذَا تَزَوَّجَهَا عَلَى حُكْمِهَا أَوْ حُكْمِهِ جَازَ، فَإِنْ لَمْ يَتَّفِقَا قَالَ أَبُو حَنِيفَةَ، وَالْأَوْزَاعِيُّ: فَلَهَا مَهْرُ مِثْلِهَا.

L31224–31225 Mālik said: The marriage is annulled before consummation, and she is entitled to a dowry equivalent to hers after consummation. Abū Muḥammad said: This is an invalid condition, as it is indeterminate. It is possible for her to demand absolutely anything, and it is possible for him to stipulate nothing. Any condition of this kind – which is not in the Book of Allah Almighty – is void, and the marriage contract based on it is invalid and annulled.

وَقَالَ مَالِكٌ: يُفْسَخُ قَبْلَ الدُّخُولِ وَلَهَا مَهْرُ مِثْلِهَا بَعْدَ الدُّخُولِ. قَالَ أَبُو مُحَمَّد: هَذَا شَرْطٌ فَاسِدٌ، لِأَنَّهُ مَجْهُولٌ، قَدْ يُمْكِنُ أَنْ تَحْتَكِمَ هِيَ بِجَمِيعِ مَا فِي الْعَالَمِ، وَقَدْ يُمْكِنُ أَنْ يَحْتَكِمَ هُوَ بِلَا شَيْءٍ، فَمَا كَانَ هَكَذَا فَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ، وَالنِّكَاحُ عَلَيْهِ بَاطِلٌ مَفْسُوخٌ.

L31226 As for if they stipulate this after concluding the marriage contract, the contract remains valid, and she is entitled to the dowry equivalent to that of women of her standing, unless they mutually agree to a lesser or greater amount. Mālik's opinion that the marriage is annulled if they fail to agree is erroneous, as it invalidates a sound marriage without any command from Allah, the Exalted, or His Messenger—may Allah's peace and blessings be upon him.

فَأَمَّا إِنْ اشْتَرَطَا ذَلِكَ بَعْدَ عَقْدِ النِّكَاحِ فَالْعَقْدُ صَحِيحٌ، وَلَهَا مَهْرُ مِثْلِهَا، إِلَّا أَنْ يَتَرَاضَيَا بِأَقَلَّ أَوْ أَكْثَرَ. وَقَوْلُ مَالِكٍ يُفْسَخُ النِّكَاحُ إِنْ لَمْ يَتَّفِقَا: خَطَأٌ، لِأَنَّهُ فَسْخُ نِكَاحٍ صَحِيحٍ بِغَيْرِ أَمْرٍ مِنَ اللَّهِ تَعَالَى بِذَلِكَ وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L31227 It has been narrated to us through the chain of al-Bukhārī: He narrated to us: Ubayd Allāh ibn Mūsá, from Zakariyyā ibn Abī Zāʾidah, from Muḥammad ibn

Ibrāhīm ibn Abd al-Raḥmān ibn Awf, from Abī Salamah ibn Abd al-Raḥmān ibn Awf, from Abī Hurayrah, from the Prophet—peace and blessings of Allāh be upon him—who said: "It is not lawful for a woman to demand the divorce of her co-wife to take her share, for she has only what has been decreed for her." Whoever stipulates a condition that the Messenger of Allāh—peace and blessings of Allāh be upon him—has prohibited, such a condition is void. If a marriage is contracted based on it, the marriage is invalid.[23]

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عُبَيْدُ اللَّهِ بْنُ مُوسَى عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ لِامْرَأَةٍ تَسْأَلُ طَلَاقَ أُخْتِهَا لِتَسْتَفْرِغَ صَحْفَتَهَا فَإِنَّمَا لَهَا مَا قُدِّرَ لَهَا» فَمَنْ اشْتَرَطَ مَا نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ شَرْطٌ بَاطِلٌ، وَإِنْ عُقِدَ عَلَيْهِ نِكَاحٌ فَالنِّكَاحُ بَاطِلٌ.

L31228 Among these rulings is that one does not stipulate for her that he will not relocate her, so people differed regarding this. We have been narrated through Sa'īd ibn Manṣūr's chain: Ḥammād ibn Zayd reported to us from Ayyūb al-Sikhtiyānī, from Ismāʿīl ibn ʿAbd Allāh ibn Abī al-Muhājir, from ʿAbd al-Raḥmān ibn Ghanm: A man came to ʿUmar and informed him that he had married a woman and stipulated her house for her. ʿUmar said to him: "Her stipulation is binding for her." A man present with him said: "Men are doomed since women can divorce their husbands whenever they wish!" ʿUmar replied: "Muslims are bound by their stipulations at the junctures of their rights."

وَمِنْ ذَلِكَ أَنْ لَا يَشْتَرِطَ لَهَا أَنْ لَا يُرَحِّلَهَا فَاخْتَلَفَ النَّاسُ فِي ذَلِكَ -: فَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ إِسْمَاعِيلَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي الْمُهَاجِرِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غَنْمٍ: أَنَّهُ شَهِدَ عِنْدَ عُمَرَ رَجُلٌ أَتَاهُ فَأَخْبَرَهُ أَنَّهُ تَزَوَّجَ امْرَأَةً وَشَرَطَ لَهَا دَارَهَا؟ فَقَالَ لَهُ عُمَرُ: لَهَا شَرْطُهَا، فَقَالَ لَهُ رَجُلٌ عِنْدَهُ: هَلَكَتْ الرِّجَالُ إِذْ لَا تَشَاءُ امْرَأَةٌ تُطَلِّقُ زَوْجَهَا إِلَّا طَلَّقَتْهُ؟ فَقَالَ عُمَرُ: الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ عِنْدَ مَقَاطِعِ حُقُوقِهِمْ.

L31229–31231 And with him to Saʿīd: Sufyān—he is Ibn ʿUyaynah—narrated to us; ʿAbd al-Karīm al-Jazarī narrated to us from Abū ʿUbayd. When Muawiyah was approached about the matter, he consulted Amr ibn al-As, who said: "Her stipulation applies to her" - this being the view of al-Qasim ibn Muhammad, Salim ibn Abdullah, and Jabir ibn Zayd - and it is narrated from Shurayh.

وَبِهِ إِلَى سَعِيدٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - نَا عَبْدُ الْكَرِيمِ الْجَزَرِيُّ عَنْ أَبِي عُبَيْدٍ: أَنَّ مُعَاوِيَةَ أُتِيَ فِي ذَلِكَ فَاسْتَشَارَ عَمْرَو بْنَ الْعَاصِ؟ فَقَالَ: لَهَا شَرْطُهَا - وَهُوَ قَوْلُ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَجَابِرِ بْنِ زَيْدٍ - وَرُوِيَ عَنْ شُرَيْحٍ.

L31232 Others stated that such a stipulation is invalid - as transmitted to us through the chain of Saʿīd ibn Manṣūr: Ibn Wahb narrated to us, ʿAmr ibn al-Ḥārith narrated from Kathīr ibn Farqad from Saʿīd ibn ʿUbayd ibn al-Sabbāq - that a man married during the caliphate of ʿUmar ibn al-Khaṭṭāb, stipulating that he would not expel her. ʿUmar nullified the condition imposed by him and said: "A woman belongs with her husband."

وَقَالَ آخَرُونَ بِإِبْطَالِ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا ابْنُ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ كَثِيرِ بْنِ فَرْقَدٍ عَنْ سَعِيدِ بْنِ عُبَيْدِ بْنِ السَّبَّاقِ أَنَّ رَجُلًا تَزَوَّجَ عَلَى عَهْدِ عُمَرَ بْنِ الْخَطَّابِ، فَشَرَطَ لَهَا أَنْ لَا يُخْرِجَهَا، فَوَضَعَ عُمَرُ عَنْهُ الشَّرْطَ وَقَالَ: الْمَرْأَةُ مَعَ زَوْجِهَا.

[23] **Hadith references (L31227):** Sahih al-Bukhari 5152.

وَبِهِ إِلَى سُفْيَانَ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْمِنْهَالِ بْنِ عَمْرٍو عَنْ عَبَّادٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الرَّجُلِ يَتَزَوَّجُ الْمَرْأَةَ يَشْتَرِطُ لَهَا دَارَهَا؟ فَقَالَ: شَرْطُ اللَّهِ قَبْلَ شَرْطِهَا.

L31233 And through him to Sufyan, from Ibn Abi Layla, from Al-Minhal ibn Amr, from Abbad, from Ali ibn Abi Talib regarding a man who marries a woman and stipulates her house for her? He said: "Allah's stipulation comes before her stipulation."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، نا هُشَيْمٌ نا مُغِيرَةُ، وَيُونُسُ، قَالَ مُغِيرَةُ: عَنْ إِبْرَاهِيمَ، وَقَالَ يُونُسُ: عَنْ الْحَسَنِ، قَالَا جَمِيعًا: يَجُوزُ النِّكَاحُ وَيَبْطُلُ الشَّرْطُ. قَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ: يَبْطُلُ الشَّرْطُ إِلَّا أَنْ يَكُونَ مُعَلَّقًا بِطَلَاقٍ أَوْ بِعِتَاقٍ، أَوْ بِأَنْ يَكُونَ أَمْرُهَا بِيَدِهَا أَوْ بِتَخْيِيرِهَا.

L31234 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us from Mughīrah and from Yūnus. Mughīrah reported from Ibrāhīm, and Yūnus reported from al-Ḥasan. They both said: "The marriage is valid, but the condition is nullified." Abū Ḥanīfah and Mālik said: "The condition is nullified unless it is conditional upon divorce or emancipation, unless the authority lies with her, or unless she is granted the option."

قَالَ عَلِيٌّ: هَذَا قَوْلٌ لَمْ يَأْتِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، فَهُوَ خِلَافٌ لِكُلِّ مَا رُوِيَ عَنْهُمْ فِي ذَلِكَ.

L31235 Ali said: This is an opinion not attributed to any of the Companions, and it contradicts all that has been narrated from them regarding that matter.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ قَالَ بِإِلْزَامِ هَذِهِ الشُّرُوطِ -: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عِيسَى بْنُ حَمَّادٍ زُغْبَةُ، أَخْبَرَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ أَبِي الْخَيْرِ عَنْ عُقْبَةَ بْنِ عَامِرٍ الْجُهَنِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ أَحَقَّ الشُّرُوطِ أَنْ تُوفُوا بِهِ مَا اسْتَحْلَلْتُمْ بِهِ الْفُرُوجَ» .

L31236 Abū Muḥammad said: Those who affirmed the obligation of these conditions argued with what we have reported through the chain of Aḥmad ibn Shuʿayb—from ʿĪsā ibn Ḥammād Zughba—who informed us: Al-Layth ibn Saʿd reported to us from Yazīd ibn Abī Ḥabīb from Abū al-Khayr from ʿUqbah ibn ʿĀmir al-Juhanī from the Messenger of Allah—peace be upon him—who said: "The conditions most deserving to be fulfilled are those by which you have made lawful marital relations."[24]

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَبَرٌ صَحِيحٌ، وَلَا مُتَعَلَّقَ لَهُمْ بِهِ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ مَعَنَا، وَلَا مُسْلِمَ عَلَى ظَهْرِ الْأَرْضِ: فِي أَنَّهُ إِنْ شَرَطَ لَهَا أَنْ تَشْرَبَ الْخَمْرَ، أَوْ أَنْ تَأْكُلَ لَحْمَ الْخِنْزِيرِ، أَوْ أَنْ تَدَعَ الصَّلَاةَ، أَوْ أَنْ تَدَعَ صَوْمَ رَمَضَانَ، أَوْ أَنْ يُغَنِّيَ لَهَا، أَوْ أَنْ يَزْفِنَ لَهَا، وَنَحْوَ ذَلِكَ: أَنَّ كُلَّ ذَلِكَ كُلِّهِ بَاطِلٌ لَا يَلْزَمُهُ.

L31237–31239 Abu Muhammad said: This is an authentic narration, and they have no basis for it, because they do not disagree with us, nor is there any Muslim on the face of the earth who disagrees, concerning the stipulation that she drink wine or eat meat. consuming pork, abandoning prayer or fasting during Ramadan, singing for her [in a prohibited manner], dancing for her [in a prohibited manner], and other analogous acts: all such matters are invalid and not legally binding upon him.

L31240 It has been authentically established that the Messenger of Allah—may the peace and blessings of Allah be upon him—never intended in this hadith any

[24] **Hadith references (L31236):** Sunan Abi Dawud 2139.

condition that involves declaring lawful matters unlawful, declaring unlawful matters lawful, abolishing an obligation, or imposing a non-obligation, for all of that contradicts the commands of Allah the Exalted and the commands of His Messenger—may the peace and blessings of Allah be upon him.

فَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُرِدْ قَطُّ فِي هَذَا الْخَبَرِ شَرْطًا فِيهِ تَحْرِيمُ حَلَالٍ، أَوْ تَحْلِيلُ حَرَامٍ، أَوْ إسْقَاطُ فَرْضٍ، أَوْ إيجَابُ غَيْرِ فَرْضٍ، لِأَنَّ كُلَّ ذَلِكَ خِلَافٌ لِأَوَامِرِ اللَّهِ تَعَالَى، وَلِأَوَامِرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L31241 The woman's stipulation that he shall not marry, shall not take a concubine, shall not be away from her, or shall not relocate her from her home—all such stipulations constitute forbidding what is lawful. This is equivalent to permitting carrion and pork, in that all of this is contrary to the ruling of Allah Almighty.

وَاشْتِرَاطُ الْمَرْأَةِ أَنْ لَا يَتَزَوَّجَ، أَوْ أَنْ لَا يَتَسَرَّى، أَوْ أَنْ لَا يَغِيبَ عَنْهَا أَوْ أَنْ لَا يُرَحِّلَهَا عَنْ دَارِهَا - كُلُّ ذَلِكَ تَحْرِيمُ حَلَالٍ، وَهُوَ وَتَحْلِيلُ الْخِنْزِيرِ وَالْمَيْتَةِ سَوَاءٌ، فِي أَنَّ كُلَّ ذَلِكَ خِلَافٌ لِحُكْمِ اللَّهِ عَزَّ وَجَلَّ.

L31242 Thus, it is established that he—peace and blessings be upon him—intended only the condition of the valid dowry which Allah the Exalted has commanded us [to uphold], and it is that by which intimacy is made lawful, excluding all else.

فَصَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا أَرَادَ شَرْطَ الصَّدَاقِ الْجَائِزِ الَّذِي أَمَرَنَا اللَّهُ تَعَالَى بِهِ، وَهُوَ الَّذِي اسْتَحَلَّ بِهِ الْفَرْجَ لَا مَا سِوَاهُ.

L31243 As for making contingent upon any of that through divorce, manumission, giving her a choice, or empowering her to decide her affairs - all such stipulations are invalid, as explained in "The Book of Oaths" within this work regarding the statement of Allah's Messenger (peace and blessings be upon him): "Whoever takes an oath must swear only by Allah or remain silent."

وَأَمَّا تَعْلِيقُ ذَلِكَ كُلِّهِ بِطَلَاقٍ، أَوْ بِعِتَاقٍ، أَوْ تَخْيِيرِهَا، أَوْ تَمْلِيكِهَا أَمْرَهَا فَكُلُّ ذَلِكَ بَاطِلٌ لِمَا ذَكَرْنَا فِي " كِتَابِ الْأَيْمَانِ " مِنْ كِتَابِنَا هَذَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إلَّا بِاَللَّهِ» .

L31244 It is established that whoever swears by other than Allah the Exalted is not an oath-taker, nor is it an oath; it is null and void wherein there is nothing except seeking forgiveness from Allah the Exalted and repentance alone. And as for what we will mention after this—if Allah the Almighty and Majestic wills—regarding a man giving his wife the choice or granting her her affair: all of that is null and void, for Allah the Exalted has never obligated anything of that, nor has His Messenger obligated anything of that—peace and blessings be upon him.

فَصَحَّ أَنَّ مَنْ حَلَفَ بِغَيْرِ اللَّهِ تَعَالَى فَلَيْسَ حَالِفًا، وَلَا هِيَ يَمِينًا، وَهُوَ بَاطِلٌ لَيْسَ فِيهِ إلَّا اسْتِغْفَارُ اللَّهِ تَعَالَى وَالتَّوْبَةُ فَقَطْ، وَلِمَا نَذْكُرُهُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - مِنْ أَنَّ تَخْيِيرَ الرَّجُلِ امْرَأَتَهُ، أَوْ تَمْلِيكَهُ إيَّاهَا أَمْرَهَا: كُلُّ ذَلِكَ بَاطِلٌ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ قَطُّ شَيْئًا مِنْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L31245 It has been authentically reported from him—peace and blessings be upon him—that he said: "Whoever performs a deed not in accordance with our command, it is rejected." Thus, all of that is invalid. A woman does not have the choice to separate from her husband or remain with him except where Allah the Exalted has granted it in the case of an emancipated female slave.

وَصَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ قَالَ: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَكُلُّ ذَلِكَ بَاطِلٌ، وَلَا يَكُونُ لِلْمَرْأَةِ خِيَارٌ فِي فِرَاقِ زَوْجِهَا أَوْ الْبَقَاءِ مَعَهُ إلَّا حَيْثُ

جَعَلَهُ اللَّهُ تَعَالَى فِي الْمُعْتَقَةِ، وَلَا تَمْلِكُ الْمَرْأَةُ أَمْرَ نَفْسِهَا أَبَدًا - فَسَقَطَ كُلُّ مَا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A woman never possesses authority over her own affairs. Therefore, all that we have mentioned is nullified—and by Allah, the Exalted, is success.

L31246–31248 وَلَا يَجُوزُ النِّكَاحُ عَلَى أَنْ يَكُونَ الصَّدَاقُ وَصِيفًا غَيْرَ مَوْصُوفٍ، أَوْ خَادِمًا غَيْرَ مَوْصُوفَةٍ، أَوْ بَيْتًا غَيْرَ مَوْصُوفٍ وَلَا مَحْدُودٍ، وَكُلُّ ذَلِكَ يُبْطِلُ النِّكَاحَ إنْ عَقَدَ عَلَيْهِ، لِأَنَّهُ مَجْهُولٌ لَا يَعْرِفُ مَا هُوَ، فَلَمْ يَتَّفِقَا عَلَى صَدَاقٍ مَعْرُوفٍ، بَلْ عَلَى مَالَهَا أَنْ تَقُولَ: قِيمَةُ كُلِّ ذَلِكَ أَلْفُ دِينَارٍ، وَيَقُولَ هُوَ: بَلْ عَشَرَةُ دَنَانِيرَ، وَإِنْ تَعَاقَدَا ذَلِكَ بَعْدَ صِحَّةِ النِّكَاحِ، فَالنِّكَاحُ صَحِيحٌ، وَالصَّدَاقُ فَاسِدٌ، وَيَقْضِي لَهَا بِمَهْرِ مِثْلِهَا إنْ لَمْ يَتَرَاضَيَا عَلَى أَقَلَّ أَوْ أَكْثَرَ -: رُوِّينَا إجَازَةَ ذَلِكَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ.

It is not permissible to contract a marriage stipulating a dowry as an unspecified male servant, an unspecified female servant, or a house that is neither specified nor delimited. All such stipulations invalidate the marriage if the marriage is contracted based on such terms, because it constitutes an unknown dowry—they do not know what it is. Thus, the parties have not mutually agreed upon a customary dowry. Rather, she may claim: "The value of this is one thousand dinars," while he may say: "No, it is ten dinars." If they agree upon such terms after the marriage has been validly established, The marriage is valid and the dower is invalid. The judge must award her a dower commensurate with her status if they do not mutually agree on a lower or higher amount. It has been narrated to us from Ibrāhīm al-Nakhaʿī that the permissibility of this [ruling] is established.

L31249 وَصَحَّ عَنْ ابْنِ شُبْرُمَةَ أَنَّهُ قَالَ: مَنْ تَزَوَّجَ عَلَى وَصِيفٍ فَإِنَّهُ يُقَوَّمُ عَرَبِيٌّ وَهِنْدِيٌّ، وَحَبَشِيٌّ، وَتُجْمَعُ الْقِيَمُ وَيَقْضِي لَهَا بِمِثْلِهَا.

It is authentically reported from Ibn Shubrumah that he said: If someone marries while owning a male servant, an Arab, an Indian, and an Abyssinian are assessed; the values are totaled, and he must pay her their equivalent value.

L31250 قَالَ أَبُو حَنِيفَةَ: لَهَا فِي الْوَصِيفِ الْأَبْيَضِ خَمْسُونَ مِثْقَالًا، فَإِنْ أَعْطَاهَا وَصِيفًا يُسَاوِي خَمْسِينَ دِينَارًا مِنْ ذَهَبٍ لَمْ يَكُنْ لَهَا غَيْرُهُ، وَإِلَّا فَيَقْضِي عَلَيْهِ بِتَمَامِ خَمْسِينَ دِينَارًا مِنْ ذَهَبٍ، وَيَقْضِي لَهَا فِي الْبَيْتِ بِأَرْبَعِينَ دِينَارًا مِنْ ذَهَبٍ وَفِي الْخَادِمِ بِأَرْبَعِينَ دِينَارًا مِنْ ذَهَبٍ.

Abu Hanifah said: She is entitled to fifty mithqals of gold for the white male servant. If he provides her with a male servant valued at fifty gold dinars (and she has no other servant besides him), that suffices. Otherwise, the judge must order him to pay the full fifty gold dinars in gold. The judge must also award her forty gold dinars in gold for the house and forty gold dinars in gold for the servant.

L31251 قَالَ أَبُو مُحَمَّدٍ: فِي هَذَيْنِ الْقَوْلَيْنِ عَجَبٌ يُغْنِي إيرَادُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ، لِمَا فِيهِمَا مِنْ التَّحَكُّمِ الْبَارِدِ بِالرَّأْيِ الْفَاسِدِ فِي دِينِ اللَّهِ تَعَالَى.

Abū Muḥammad said: These two statements contain such astonishment that merely mentioning it renders laborious refutation unnecessary, due to the feeble arbitrariness and corrupt view inherent in them concerning the religion of Allah, the Exalted.

L31252 وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: لَهَا الْوَسَطُ مِنْ ذَلِكَ.

Mālik and al-Shāfiʿī said: She is entitled to the median value thereof.

Ali said: “This is another marvel! Would that I knew—what constitutes this fair value? For some items are valued at five hundred dinars, while others are not worth even twenty. Thus, the invalidity of these opinions becomes clear—and all praise is due to Allah, Lord of the worlds.”

قَالَ عَلِيٌّ: وَهَذَا عَجَبٌ آخَرُ، وَلَيْتَ شِعْرِي كَمْ هَذَا الْوَسَطُ؟ وَمِنْ الْوُصَفَاءِ مَا يُسَاوِي خَمْسَمِائَةِ دِينَارٍ، وَمِنْهُمْ مَنْ لَا يُسَاوِي عِشْرِينَ دِينَارًا، فَظَهَرَ فَسَادُ هَذِهِ الْآرَاءِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

The Issue of the Marriage of Mut’ah

[مَسْأَلَةُ نِكَاحُ الْمُتْعَةِ]

Issue 1858: Abu Muhammad said: Mut’ah marriage is not permissible. It refers to marriage for a specified term, which was lawful during the time of Allah’s Messenger (peace be upon him). Then Allah the Exalted abrogated it by the tongue of His Messenger (peace be upon him) with a definitive abrogation valid until the Day of Resurrection.

١٨٥٨ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: وَلَا يَجُوزُ نِكَاحُ الْمُتْعَةِ، وَهُوَ النِّكَاحُ إلَى أَجَلٍ، وَكَانَ حَلَالًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ نَسَخَهَا اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَسْخًا بَاتًّا إلَى يَوْمِ الْقِيَامَةِ.

A group of the Salaf (early Muslim generations)—may Allah be pleased with them—upheld its permissibility after the Messenger of Allah (peace and blessings be upon him). Among them were Companions such as Asmāʾ bint Abī Bakr al-Ṣiddīq, Jābir ibn ʿAbd Allāh, and Ibn Masʿūd.

وَقَدْ ثَبَتَ عَلَى تَحْلِيلِهَا بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَمَاعَةٌ مِنْ السَّلَفِ - رَضِيَ اللَّهُ عَنْهُمْ - مِنْهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَسْمَاءُ بِنْتُ أَبِي بَكْرٍ الصِّدِّيقِ، وَجَابِرُ بْنُ عَبْدِ اللَّهِ، وَابْنُ مَسْعُودٍ.

Ibn Abbas, Mu’awiyah ibn Abi Sufyan, Amr ibn Ḥurayth, Abu Sa’id al-Khudri, Salamah and Ma’bad, the two sons of Umayya ibn Khalaf.

وَابْنُ عَبَّاسٍ، وَمُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ، وَعَمْرُو بْنُ حُرَيْثٍ، وَأَبُو سَعِيدٍ الْخُدْرِيِّ، وَسَلَمَةُ، وَمَعْبَدٌ ابْنَا أُمَيَّةَ بْنِ خَلَفٍ

Jābir ibn ʿAbdullāh narrated it from all the Companions during the lifetime of the Messenger of Allah—may Allah bless him and grant him peace—the era of Abū Bakr, and the era of ʿUmar, until near the end of ʿUmar’s caliphate.

وَرَوَاهُ جَابِرُ بْنُ عَبْدِ اللَّهِ عَنْ جَمِيعِ الصَّحَابَةِ مُدَّةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُدَّةَ أَبِي بَكْرٍ، وَعُمَرَ إلَى قُرْبِ آخِرِ خِلَافَةِ عُمَرَ.

There has been a difference of opinion regarding Ibn al-Zubayr’s position on its permissibility, while there was hesitation from Ali concerning it.

وَاخْتُلِفَ فِي إبَاحَتِهَا عَنْ ابْنِ الزُّبَيْرِ، وَعَنْ عَلِيٍّ فِيهَا تَوَقُّفٌ.

From Umar ibn al-Khattab: He only rejected it when solely two just witnesses were not summoned, but permitted it with the testimony of two just witnesses.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ إنَّمَا أَنْكَرَهَا إذَا لَمْ يُشْهِدْ عَلَيْهَا عَدْلَانِ فَقَطْ، وَأَبَاحَهَا بِشَهَادَةِ عَدْلَيْنِ.

And among the Successors: Ṭāwūs, ʿAṭāʾ, Saʿīd ibn Jubayr, and the rest of

the jurists of Mecca, may Allah honor it.

وَمِنْ التَّابِعِينَ: طَاوُسٌ، وَعَطَاءٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَسَائِرُ فُقَهَاءِ مَكَّةَ أَعَزَّهَا اللَّهُ.

L31263 And indeed, we have traced the aforementioned narrations in our book titled “Al-Iṣāl”.

وَقَدْ تَقَصَّيْنَا الْآثَارَ الْمَذْكُورَةَ فِي كِتَابِنَا الْمَوْسُومِ بِ " الْإِيصَالُ "

L31264 The prohibition thereof has been authentically established from Ibn ʿUmar and from Ibn Abī ʿAmrata al-Anṣārī.

وَصَحَّ تَحْرِيمُهَا عَنْ ابْنِ عُمَرَ، وَعَنْ ابْنِ أَبِي عَمْرَةَ الْأَنْصَارِيِّ.

L31265 There were differing opinions reported from ʿAlī, ʿUmar, Ibn ʿAbbās, and Ibn al-Zubayr regarding it.

وَاخْتُلِفَ فِيهَا: عَنْ عَلِيٍّ، وَعُمَرَ، وَابْنِ عَبَّاسٍ، وَابْنِ الزُّبَيْرِ.

L31266 Among the later scholars who affirmed its prohibition and the invalidation of its contract are Abū Ḥanīfah, Mālik, al-Shāfiʿī, and Abū Sulaymān.

وَمِمَّنْ قَالَ بِتَحْرِيمِهَا وَفَسْخِ عَقْدِهَا مِنْ الْمُتَأَخِّرِينَ: أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ.

L31267–31268 And Zufar said: The contract remains valid while the stipulation is rendered void.

وَقَالَ زُفَرُ: يَصِحُّ الْعَقْدُ وَيَبْطُلُ الشَّرْطُ.

L31269 Abū Muḥammad said: The prohibition of *shighār* and *mawhūbah* has indeed been firmly established, yet they permit them—even though these are more evidently forbidden than *mutʿah*. But they pay no heed to the contradiction.

قَالَ أَبُو مُحَمَّد: لَقَدْ صَحَّ تَحْرِيمُ الشِّغَارِ، وَالْمَوْهُوبَةِ، فَأَبَاحُوهَا، وَهِيَ فِي التَّحْرِيمِ أَبْيَنُ مِنْ الْمُتْعَةِ وَلَكِنَّهُمْ لَا يُبَالُونَ بِالتَّنَاقُضِ.

L31270 And we confine ourselves from the evidence for its prohibition to the sound narration—which we have narrated through the chain of ʿAbd al-Razzāq from Maʿmar from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz from al-Rabīʿ ibn Sabrah al-Juhanī from his father, who said: “We traveled with the Messenger of Allah—peace and blessings of Allah be upon him—” then he mentioned the ḥadīth, which includes the Prophet’s statement: “I heard the Messenger of Allah—peace and blessings of Allah be upon him—on the pulpit delivering a sermon, saying: ’Whoever marries a woman for a specified term must give her what he has stipulated for her, and he must not reclaim anything from what he has given her, and he must part with her, for Allah has indeed forbidden it for you until the Day of Resurrection.”’

وَنَقْتَصِرُ مِنْ الْحُجَّةِ فِي تَحْرِيمِهَا عَلَى خَبَرٍ ثَابِتٍ - وَهُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ الرَّبِيعِ بْنِ سَبْرَةَ الْجُهَنِيِّ عَنْ أَبِيهِ قَالَ: " خَرَجْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " فَذَكَرَ الْحَدِيثَ وَفِيهِ فَقَالَ " سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمِنْبَرِ يَخْطُبُ وَيَقُولُ: «مَنْ كَانَ تَزَوَّجَ امْرَأَةً إلَى أَجَلٍ فَلْيُعْطِهَا مَا سَمَّى لَهَا، وَلَا يَسْتَرْجِعْ مِمَّا أَعْطَاهَا شَيْئًا، وَيُفَارِقْهَا، فَإِنَّ اللَّهَ قَدْ حَرَّمَهَا عَلَيْكُمْ إلَى يَوْمِ الْقِيَامَةِ» .

L31271 Abu Muhammad said: What He has prohibited until the Day of Resurrection—we are secure from its abrogation.

قَالَ أَبُو مُحَمَّدٍ: مَا حَرَّمَ إلَى يَوْمِ الْقِيَامَةِ فَقَدْ أَمِنَّا نَسْخَهُ.

L31272 As for Zufar’s statement, it is invalid because the contract was not validly

وَأَمَّا قَوْلُ زُفَرَ فَفَاسِدٌ، لِأَنَّ الْعَقْدَ لَمْ يَقَعْ إلَّا عَلَى أَجَلٍ مُسَمًّى.

concluded unless [it included] a specified term.

L31273 Whoever nullifies this condition and validates the contract thereby binds the two parties to a contract they never agreed to nor committed to at all, for every person of sound perception knows without doubt that a contract bound to a term is different from one without a term.

فَمَنْ أَبْطَلَ هَذَا الشَّرْطَ وَأَجَازَ الْعَقْدَ، فَإِنَّهُ أَلْزَمَهُمَا عَقْدًا لَمْ يَتَعَاقَدَاهُ قَطُّ، وَلَا الْتَزَمَاهُ قَطُّ، لِأَنَّ كُلَّ ذِي حِسٍّ سَلِيمٍ يَدْرِي بِلَا شَكٍّ أَنَّ الْعَقْدَ الْمَعْقُودَ إِلَى أَجَلٍ هُوَ غَيْرُ الْعَقْدِ الَّذِي هُوَ إِلَى غَيْرِ أَجَلٍ.

L31274 Thus, it is invalid to nullify a contract that the two parties have contracted and to obligate them to a contract they have not contracted. This is entirely impermissible unless commanded by the One who has enjoined upon us prayer, zakah, fasting, and Hajj—none besides Him. And success comes only from Allah, the Most High.

فَمِنْ الْبَاطِلِ إِبْطَالُ عَقْدٍ تَعَاقَدَاهُ وَإِلْزَامُهُمَا عَقْدًا لَمْ يَتَعَاقَدَاهُ، وَهَذَا لَا يَحِلُّ أَلْبَتَّةَ إِلَّا أَنْ يَأْمُرَنَا بِهِ الَّذِي أَمَرَنَا بِالصَّلَاةِ وَالزَّكَاةِ وَالصَّوْمِ وَالْحَجِّ، لَا أَحَدَ دُونَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ نِكَاحِ الْأُمِّ وَالْجَدَّةِ]

An issue regarding the ruling on marriage to the mother and grandmother.

L31275 1859 - Issue: It is not permissible to marry one's mother. Nor is it permissible to marry a grandmother, whether on the father's or mother's side, even if they are far removed.

١٨٥٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ نِكَاحُ الْأُمِّ، وَلَا الْجَدَّةِ مِنْ قِبَلِ الْأَبِ، أَوْ مِنْ قِبَلِ الْأُمِّ، وَإِنْ بَعُدَتَا.

L31277 nor the daughter, nor a daughter from the line of the daughter or from the line of the son, even if the two are of lower rank.

وَلَا الْبِنْتِ، وَلَا بِنْتٍ مِنْ قِبَلِ الْبِنْتِ، أَوْ مِنْ قِبَلِ الِابْنِ وَإِنْ سَفُلَتَا.

L31278 The marriage to a sister is invalid in any form, nor is marriage to a brother's daughter or a sister's daughter, even if they are of low status.

وَلَا نِكَاحُ الْأُخْتِ كَيْفَ كَانَتْ، وَلَا نِكَاحُ بِنْتِ أَخٍ، أَوْ بِنْتِ أُخْتٍ، وَإِنْ سَفُلَتَا.

L31279 Marriage to one's paternal or maternal aunt is forbidden, even if they are further removed.

وَلَا نِكَاحُ الْعَمَّةِ وَالْخَالَةِ وَإِنْ بَعُدَتَا.

L31280 Marriage to the husband's mother is invalid, as is marriage to his grandmothers, whether paternal or maternal, even if they are far removed in lineage.

وَلَا نِكَاحُ أُمِّ الزَّوْجِ، وَلَا جَدَّتِهَا، وَإِنْ بَعُدَتْ.

L31281 Nor the mother of the female slave whom he is permitted to have intercourse with, nor [is valid] the marriage to her grandmother, even if she is distant in lineage.

وَلَا أُمِّ الْأَمَةِ الَّتِي حَلَّ لَهُ وَطْؤُهَا، وَلَا نِكَاحُ جَدَّتِهَا وَإِنْ بَعُدَتْ.

L31282–31284 Abu Muhammad said: Allah, the Almighty and Majestic, declared: "Forbidden to you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, your brother's daughters, and your sister's daugh-

ters" [An-Nisa: 23]. To His saying, Exalted is He: "and the mothers of your wives" [Quran 4:23, An-Nisa].[25]

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالاتُكُمْ وَبَنَاتُ الأَخِ وَبَنَاتُ الأُخْتِ} [النساء: ٢٣] إِلَى قَوْله تَعَالَى {وَأُمَّهَاتُ نِسَائِكُمْ} [النساء: ٢٣] .

L31285 Ali said: The grandmother, whether she is the mother of a father, the mother of a grandfather, the mother of a grandfather's grandfather, the mother of the mother of a grandfather, the maternal grandmother, or the mother of a mother.

قَالَ عَلِيٌّ: وَالْجَدَّةُ كَيْفَ كَانَتْ أُمَّ أَبٍ، أَوْ أُمَّ جَدٍّ، أَوْ أُمَّ جَدِّ جَدٍّ، أَوْ أُمَّ أُمِّ جَدٍّ، أَوْ جَدَّةَ أُمٍّ، أَوْ أُمَّ أُمٍّ.

L31286 All of these are "mother." The Exalted stated: {as He brought your parents out of Paradise} [Al-A'rāf: 27]. A sister may be a full sister, a paternal sister, or a maternal sister.[26]

كُلُّ هَؤُلَاءِ " أُمٌّ " قَالَ تَعَالَى: {كَمَا أَخْرَجَ أَبَوَيْكُمْ مِنَ الْجَنَّةِ} [الأعراف: ٢٧] وَالْأُخْتُ تَكُونُ شَقِيقَةً، وَتَكُونُ لِأَبٍ، وَتَكُونُ لِأُمٍّ.

L31287 The daughter's daughter, the son's daughter, the daughter of the son of the daughter, and the daughter of the son's daughter.

وَبِنْتُ الْبِنْتِ، وَبِنْتُ الِابْنِ، وَبِنْتُ ابْنِ الْبِنْتِ، وَبِنْتُ بِنْتِ الِابْنِ.

L31288 And thus, how it was—all these 'daughter'—He, the Exalted and Glorious, said: "O sons of Adam" [Al-A'raf: 27].[27]

وَهَكَذَا كَيْفَ كَانَتْ، كُلُّ هَؤُلَاءِ " بِنْتٌ " قَالَ عَزَّ وَجَلَّ: {يَا بَنِي آدَمَ} [الأعراف: ٢٧]

L31289 The Prophet - may Allah bless him and grant him peace - said concerning menstruation: "This is something Allah has prescribed upon the daughters of Adam."

«وَقَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَيْضِ هَذَا شَيْءٌ كَتَبَهُ اللَّهُ عَلَى بَنَاتِ آدَمَ» .

L31290 The daughter of the brother's daughter and the daughter of the brother's son—all of them are daughters of a brother.

وَبِنْتُ بِنْتِ الْأَخِ، وَبِنْتُ ابْنِ الْأَخِ، كُلُّهُنَّ بَنَاتُ أَخٍ.

L31291 The daughter of the sister's daughter, the daughter of the sister's son—all these are juristically considered sister's daughters.

وَبِنْتُ بِنْتِ الْأُخْتِ، وَبِنْتُ ابْنِ الْأُخْتِ، كُلُّ هَؤُلَاءِ بِنْتُ أُخْتٍ.

L31292 The sister of the paternal grandfather (paternal grandaunt) and the sister of the paternal grandfather's grandfather (paternal great-great-grandaunt) are

وَأُخْتُ الْجَدِّ مِنْ الْأَبِ، وَأُخْتُ جَدِّ الْجَدِّ مِنْ الْأَبِ، كُلُّهُنَّ عَمَّةٌ.

[25] **Qur'an references (L31282):** Qur'an 4:23 (An-Nisa).
[26] **Qur'an references (L31286):** Qur'an 7:27 (Al-A'raf).
[27] **Qur'an references (L31288):** Qur'an 7:27 (Al-A'raf).

all classified as ‘عَمَّةٌ’ (paternal aunt, encompassing grandaunts and ascending generations in juristic usage).

وَأُخْتُ الْجَدِّ مِنْ الْأُمِّ، وَأُخْتُ الْجَدَّةِ مِنْ قِبَلِ الْأَبِ وَالْأُمِّ، كُلُّهُنَّ خَالَةٌ.

L31293 The sister of the maternal grandfather, and the sister of the grandmother from both the father’s and mother’s sides—all of them are maternal aunts (khālah).

وَالزَّوْجَةُ، وَالْأَمَةُ الَّتِي حَلَّ وَطْؤُهَا لِلرَّجُلِ، كُلُّهُنَّ مِنْ نِسَائِهِ.

L31294 The wife and the female slave with whom sexual relations are lawful for the man, all such women are among his women.

وَكُلُّ هَذَا لَا خِلَافَ فِيهِ بَيْنَ أَحَدٍ مِنْ الْمُسْلِمِينَ، إلَّا الْأَمَةَ وَابْنَتَهَا بِمِلْكِ الْيَمِينِ فَإِنَّ قَوْمًا أَحَلُّوهُمَا.

L31295 All Muslims unanimously agree on this without exception, except the female slave and her daughter under ownership by the right hand, for some have permitted both of them.

[مَسْأَلَةٌ كُلُّ مَا حَرُمَ مِنْ الْأَنْسَابِ حرم مِنْ الرَّضَاع]

L31296 An issue: All that is prohibited due to blood relations is likewise prohibited due to Islamic legal breastfeeding.

١٨٦٠ - مَسْأَلَةٌ: وَكُلُّ مَا حَرُمَ مِنْ الْأَنْسَابِ، وَالْحُرُمُ الَّتِي ذَكَرْنَا فَإِنَّهُ يَحْرُمُ بِالرَّضَاعِ، كَالْمَرْأَةِ الَّتِي تُرْضِعُ الرَّجُلَ فَهِيَ أُمُّه، وَأُمُّهَا جَدَّتُهُ، وَجَدَّاتُهَا مِنْ قِبَلِ أَبِيهَا وَأُمِّهَا كُلُّهُنَّ أُمٌّ لَهُ.

L31297 1860 - Issue: All marital prohibitions that apply due to lineage, and those we have mentioned, are likewise prohibited through breastfeeding. For instance, a woman who breastfeeds a man becomes his mother, her mother becomes his grandmother, and all her grandmothers from both her paternal and maternal sides become grandmothers to him.

وَكُلُّ مَنْ أَرْضَعَتْهُ فَهُنَّ أَخَوَاتُهُ وَإِخْوَتُهُ.

L31298 And all those whom she has breastfed are his sisters and brothers.

وَمَنْ تَنَاسَلَ مِنْهُمْ فَهُنَّ بَنَاتُ إخْوَتِهِ وَبَنَاتُ أَخَوَاتِهِ.

L31299 And whoever has offspring from them—their offspring are the daughters of his brothers and the daughters of his sisters.

وَعَمَّاتُ الَّتِي أَرْضَعَتْهُ وَخَالَاتُهَا خَالَاتُهُ كَمَا ذَكَرْنَا.

L31300 The paternal aunts of the woman who suckled him are his maternal aunts, and her maternal aunts are his maternal aunts, as we have mentioned.

وَعَمَّاتُ أَبِيهِ مِنْ الرَّضَاعَةِ عَمَّاتُهُ - وَهَكَذَا فِي كُلِّ شَيْءٍ.

L31301 The paternal aunts of one’s father through wet-nursing are considered his paternal aunts, and this ruling applies universally.

L31302 It was narrated to us via the chain of Mālik ibn Dīnār from Sulaymān ibn Yasār from ʿUrwah ibn al-Zubayr from ʿĀ’ishah, the Mother of the Believers, that the Messenger of Allah—peace be upon him—said: “What is prohibited by birth is prohibited by suckling.”

رُوِّينَا مِنْ طَرِيقِ مَالِكِ بْنِ دِينَارٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَا حَرَّمَتْهُ الْوِلَادَةُ حَرَّمَهُ الرَّضَاعُ» .

[مَسْأَلَةُ الْجَمْعِ فِي اسْتِبَاحَةِ الْوَطْءِ بَيْنَ الْأُخْتَيْنِ]

A legal issue regarding the permissibility of combining sexual relations with both sisters.

مَسْأَلَةٌ: وَلَا يَحِلُّ الْجَمْعُ فِي اسْتِبَاحَةِ الْوَطْءِ بَيْنَ الْأُخْتَيْنِ مِنْ وِلَادَةٍ أَوْ مِنْ رَضَاعٍ كَمَا ذَكَرْنَا لَا بِزَوَاجٍ وَلَا بِمِلْكِ يَمِينٍ، وَلَا إحْدَاهُمَا بِزَوَاجٍ، وَالْأُخْرَى بِمِلْكِ يَمِينٍ، وَلَا بَيْنَ الْعَمَّةِ وَبِنْتِ أَخِيهَا، وَلَا بَيْنَ الْخَالَةِ وَبِنْتِ أُخْتِهَا، كَمَا قُلْنَا فِي الْأُخْتَيْنِ سَوَاءً سَوَاءً.

Issue: It is impermissible to combine the legal sanctioning of sexual intercourse with two sisters - whether by birth or breastfeeding - as we have stated, neither through marriage nor ownership by the right hand, nor one through marriage and the other through ownership by the right hand. Likewise, it is impermissible between a paternal aunt and her brother's daughter, or between a maternal aunt and her sister's daughter, just as we have stated regarding two sisters - they are all equally, equally prohibited.

فَمَنْ اجْتَمَعَ فِي مِلْكِهِ أُخْتَانِ، أَوْ عَمَّةٌ وَبِنْتُ أَخِيهَا، أَوْ خَالَةٌ وَبِنْتُ أُخْتِهَا، فَهُمَا جَمِيعًا عَلَيْهِ حَرَامٌ، حَتَّى يُخْرِجَ إحْدَاهُمَا عَنْ مِلْكِهِ بِمَوْتٍ أَوْ بَيْعٍ أَوْ هِبَةٍ أَوْ غَيْرِ ذَلِكَ مِنْ الْوُجُوهِ، أَوْ حَتَّى تَزَوَّجَ إحْدَاهُمَا بِأَيِّ هَذِهِ الْوُجُوهِ كَانَ: حَلَّ لَهُ وَطْءُ الْبَاقِيَةِ.

If two sisters, a paternal aunt and her brother's daughter, or a maternal aunt and her sister's daughter come under a man's ownership, both are forbidden to him as long as they remain in his ownership. This prohibition persists until he removes one from his ownership through death, sale, gift, or similar lawful means, or until he marries one of them after she is no longer under his ownership. Only then does it become lawful for him to have intercourse with the remaining woman.

فَإِنْ رَجَعَتْ إلَى مِلْكِهِ الْأُخْرَى رَجَعَتْ حَرَامًا كَمَا كَانَتْ، وَبَقِيَتْ الْأُولَى حَلَالًا كَمَا كَانَتْ، فَإِنْ أَخْرَجَهَا عَنْ مِلْكِهِ أَوْ زَوَّجَهَا أَوْ مَاتَتْ: حَلَّتْ لَهُ الَّتِي كَانَتْ حَرَامًا عَلَيْهِ.

If the other woman returns to his ownership, she reverts to being forbidden as she was before, and the first woman remains permissible as she was. If he releases her from his ownership, gives her in marriage, or she dies, the woman who was forbidden to him becomes permissible.

وَكَذَلِكَ إنْ مَاتَتْ الزَّوْجَةُ أَوْ طَلَّقَهَا ثَلَاثًا، أَوْ قَبْلَ الدُّخُولِ: حَلَّ لَهُ زَوَاجُ الْأُخْرَى.

Similarly, if the wife dies, he divorces her three times, or before consummation, he is permitted to marry another woman.

وَكَذَلِكَ إنْ طَلَّقَهَا طَلَاقًا رَجْعِيًّا فَتَمَّتْ عِدَّتُهَا مِنْهُ.

Likewise, if he divorces her with a revocable divorce, then her waiting period from him is completed.

The proof of that is the statement of Allah, the Exalted in Might, the Majestic:

"And to marry two sisters simultaneously, except what has already occurred" [an-Nisāʾ 4:23].[28]

L31311 Abu Muhammad said: Its meaning is that He, the Exalted, forgave them for what had preceded in that regard, because He, the Exalted, sustained them despite it.

L31312 Ali said: People did not differ regarding the prohibition of being married to two sisters simultaneously, but they differed concerning union with both through right-hand possession. One group permitted cohabitation with both, while another group hesitated on the matter.

L31313 A group held: He may have intercourse with whichever of the two he wishes, and once he has intercourse with one, the other becomes forbidden to him.

L31314 It is authentically reported from Ibn Abbas and Ikrimah – as we have narrated through Abd al-Razzaq – who reported to us – from Ibn Jurayj, who informed me from Amr ibn Dinar – that Ikrimah, the client of Ibn Abbas, saw no harm in taking as concubines two sisters or a woman and her daughter, meaning through the right hand's possession.

L31315 Ikrimah reported that Ibn ʿAbbās would say: "Their kinship among themselves does not render them unlawful upon you; only the kinship between you and them does."

L31316–31317 Amr ibn Dinar said: Ibn Abbas was amazed by Ali's statement, "A verse forbade the two and a verse permitted the two," and he would say: "The verse {Except what your right hands possess} [An-Nisa: 24] is unrestricted."[29]

L31318 Ali said: Abu Sulaiman and our companions also hold this opinion.

L31319 Abu Muhammad said: This is the opinion of those who permitted them both, and the opinion of ʿAlī regarding reserving judgment.

L31320 It has been authentically reported from Umar—as we have narrated through

[28] **Qur'an references (L31310):** Qur'an 4:23 (An-Nisa).
[29] **Qur'an references (L31317):** Qur'an 4:24 (An-Nisa).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأَنْ تَجْمَعُوا بَيْنَ الأُخْتَيْنِ إِلا مَا قَدْ سَلَفَ} [النساء: ٢٣].

قَالَ أَبُو مُحَمَّدٍ: مَعْنَاهُ أَنَّهُ تَعَالَى غَفَرَ لَهُمْ مَا قَدْ سَلَفَ مِنْ ذَلِكَ، لِأَنَّهُ تَعَالَى أَبْقَاهُمْ عَلَيْهِ.

قَالَ عَلِيٌّ: لَمْ يَخْتَلِفِ النَّاسُ فِي تَحْرِيمِ الْجَمْعِ بَيْنَ الْأُخْتَيْنِ بِالزَّوَاجِ، وَاخْتَلَفُوا فِي الْجَمْعِ بَيْنَهُمَا بِمِلْكِ الْيَمِينِ، فَطَائِفَةٌ أَحَلَّتْهُمَا، وَطَائِفَةٌ تَوَقَّفَتْ فِي ذَلِكَ.

وَطَائِفَةٌ قَالَتْ: يَطَأُ أَيَّتَهُمَا شَاءَ، فَإِذَا وَطِئَهَا حَرُمَتْ عَلَيْهِ الْأُخْرَى.

فَصَحَّ عَنِ ابْنِ عَبَّاسٍ، وَعِكْرِمَةَ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ، أَنَّ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ كَانَ لَا يَرَى بَأْسًا أَنْ يَجْمَعَ بَيْنَ أُخْتَيْنِ، وَالْمَرْأَةِ وَابْنَتِهَا - يَعْنِي بِمِلْكِ الْيَمِينِ -.

وَأَخْبَرَهُ عِكْرِمَةُ أَنَّ ابْنَ عَبَّاسٍ كَانَ يَقُولُ: لَا تُحَرِّمُهُنَّ عَلَيْكَ قَرَابَةُ بَيْنَهُنَّ، إِنَّمَا يُحَرِّمُهُنَّ عَلَيْكَ الْقَرَابَةُ بَيْنَكَ وَبَيْنَهُنَّ.

قَالَ عَمْرُو بْنُ دِينَارٍ: وَكَانَ ابْنُ عَبَّاسٍ يَعْجَبُ مِنْ قَوْلِ عَلِيٍّ: حَرَّمَتْهُمَا آيَةٌ وَأَحَلَّتْهُمَا آيَةٌ، وَيَقُولُ: {إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] هِيَ مُرْسَلَةٌ.

قَالَ عَلِيٌّ: وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا.

وَقَالَ أَبُو مُحَمَّدٍ: فَهَذَا قَوْلُ مَنْ أَحَلَّهُمَا، وَقَوْلُ عَلِيٍّ فِي التَّوَقُّفِ.

the chain of Sa'eed ibn Mansoor who narrated to us from Sufyan (that is, Ibn 'Uyaynah)—who narrated from Az-Zuhri, from 'Ubaydullah ibn 'Abdullah ibn 'Utbah ibn Mas'ood, from his father, who said: "Umar was asked about the permissibility of simultaneous marriage to a mother and her daughter. He replied: 'I disapprove of permitting marriage to both of them at the same time.'"

وَصَحَّ عَنْ عُمَرَ - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ " سُئِلَ عُمَرُ عَنْ الْجَمْعِ بَيْنَ أُمٍّ وَابْنَتِهَا؟ فَقَالَ عُمَرُ: مَا أُحِبُّ أَنْ يُجِيزَهُمَا جَمِيعًا ".

L31321 Ibn 'Utbah said—and Abdullah ibn 'Utbah met 'Umar—: "I wish 'Umar had been stricter regarding that matter than he was." It is also narrated from 'Uthman—as transmitted through 'Abd al-Razzāq's chain from Ibn Jurayj, from Ibn Shihab, who reported: Qabisa ibn Dhu'ayb informed me [Ibn Shihab] that Niyār al-Aslamī sought 'Uthman's legal opinion concerning a woman and her sister being among those whom one's right hand possesses. 'Uthman replied: "One verse permitted marrying them [two sisters], and another verse forbade it. I would never condone such an act."

وَقَالَ ابْنُ عُتْبَةَ: فَوَدِدْتُ أَنَّ عُمَرَ كَانَ أَشَدَّ فِي ذَلِكَ مِمَّا هُوَ - عَبْدُ اللَّهِ بْنُ عُتْبَةَ أَدْرَكَ عُمَرَ - وَجَاءَ أَيْضًا عَنْ عُثْمَانَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي قَبِيصَةُ بْنُ ذُؤَيْبٍ أَنَّ نِيَارًا الْأَسْلَمِيَّ اسْتَفْتَى عُثْمَانَ فِي امْرَأَةٍ وَأُخْتِهَا بِمِلْكِ الْيَمِينِ؟ فَقَالَ عُثْمَانُ: أَحَلَّتْهُمَا آيَةٌ وَحَرَّمَتْهُمَا آيَةٌ أُخْرَى، وَلَمْ أَكُنْ لِأَفْعَلَ ذَلِكَ.

L31322 It has also been narrated to us that Ibn Abbas withheld judgment. Moreover, we have been narrated this [ruling] through Waki''s chain of narration—from Isra'il, from 'Abd al-'Aziz ibn Rafi'—who stated: "I asked Ibn al-Hanafiyyah about two enslaved sisters? He responded: 'A verse prohibited them, and another verse permitted them.'"

وَرُوِّينَا التَّوَقُّفَ أَيْضًا عَنْ ابْنِ عَبَّاسٍ، وَرُوِّيَنَاهُ أَيْضًا مِنْ طَرِيقِ وَكِيعٍ عَنْ إسْرَائِيلَ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ قَالَ " سَأَلْت ابْنَ الْحَنَفِيَّةِ عَنْ الْأُخْتَيْنِ الْمَمْلُوكَتَيْنِ؟ فَقَالَ: حَرَّمَتْهُمَا آيَةٌ وَأَحَلَّتْهُمَا آيَةٌ.

L31323 The third opinion – stated by Abū Ḥanīfah, Mālik, and al-Shāfi'ī.

وَالْقَوْلُ الثَّالِثُ - قَالَهُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ.

L31324 As for the opinion we hold: it is as narrated through the chain of 'Abd al-Razzāq from Sufyān al-Thawrī, from 'Abd al-Karīm al-Jazarī, from Maymūn ibn Mihrān, from Ibn 'Umar. He was asked about a female slave with whom her master engaged in sexual relations, then wished to engage in sexual relations with her sister. He replied: "It is not permissible until he removes her from his ownership."

وَأَمَّا الْقَوْلُ الَّذِي قُلْنَا بِهِ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ مَيْمُونِ بْنِ مِهْرَانَ عَنْ ابْنِ عُمَرَ أَنَّهُ سُئِلَ عَنْ الْأَمَةِ يَطَؤُهَا سَيِّدُهَا ثُمَّ يُرِيدُ أَنْ يَطَأَ أُخْتَهَا؟ قَالَ لَا، حَتَّى يُخْرِجَهَا عَنْ مِلْكِهِ.

L31325 Sufyan reported from several of his companions that they said: "If he marries a woman, there is no blame in [marrying] her sister afterward." Yet Ibn Umar deemed this reprehensible even if the marriage occurred.

وَقَالَ سُفْيَانُ عَنْ غَيْرِ وَاحِدٍ مِنْ أَصْحَابِهِ: إنَّهُمْ قَالُوا: إذَا زَوَّجَهَا فَلَا بَأْسَ بِأُخْتِهَا - وَكَانَ ابْنُ عُمَرَ يَكْرَهُ ذَلِكَ وَإِنْ زَوَّجَهَا.

L31326 Muhammad ibn Sa'id ibn Nabat narrated from Ahmad ibn 'Awn Allah,

from Qasim ibn Asbagh, from Muhammad ibn ’Abd al-Salam al-Khushani, from Muhammad ibn Bashshar Bundar, from Muhammad ibn Ja’far Ghundar, from Shu’bah, from al-Mughirah ibn Miqsam, from al-Sha’bi, who said: Someone asked Abdullah ibn Mas’ud: “Ibn ’Amir says there is no harm in having both female slave sisters together.” Ibn Mas’ud responded: “He must not approach either of them.”

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا شُعْبَةُ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ الشَّعْبِيِّ قَالَ: قِيلَ لِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ: إنَّ ابْنَ عَامِرٍ قَالَ: لَا بَأْسَ أَنْ يَجْمَعَ بَيْنَ الْأُخْتَيْنِ الْمَمْلُوكَتَيْنِ؟ فَقَالَ ابْنُ مَسْعُودٍ: لَا يَقْرَبَنَّ وَاحِدَةً مِنْهُمَا.

L31327–31328 Through this chain to Al-Mughīrah, from Ibrāhīm al-Nakhaʿī, who said: If a man owns two sister slave girls, he must not have intercourse with one of them until he removes the other from his ownership.

وَبِهِ إلَى الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا كَانَ عِنْدَ الرَّجُلِ مَمْلُوكَتَانِ أُخْتَانِ فَلَا يَغْشَيَنَّ وَاحِدَةً مِنْهُمَا حَتَّى يُخْرِجَ الْأُخْرَى عَنْ مِلْكِهِ.

L31329 Shuʿbah said: Al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān said: Whoever has two enslaved sisters must not have sexual intercourse with either of them nor ever approach them until he removes one of them from his ownership.

قَالَ شُعْبَةُ: وَقَالَ الْحَكَمُ بْنُ عُتَيْبَةَ، وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ: مَنْ عِنْدَهُ أُخْتَانِ مَمْلُوكَتَانِ لَا يَطَأُ وَاحِدَةً مِنْهُمَا، وَلَا يَقْرَبَنَّهَا حَتَّى يُخْرِجَ إحْدَاهُمَا عَنْ مِلْكِهِ.

L31330 And through the chain of Saʿīd ibn Manṣūr: Ḥammād ibn Zayd narrated to us from Ayyūb al-Sikhtiyānī from ʿAbdullāh ibn Abī Mulaykah that a man asked ʿĀ’ishah, the Mother of the Believers, about his elderly female slave whom he used to have intercourse with and who had a daughter. He inquired: “Is it lawful for me to have relations with her?” The Mother of the Believers responded: “I forbid you from having relations with her, and whoever obeys me.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ أَنَّ رَجُلًا سَأَلَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ عَنْ أَمَةٍ لَهُ قَدْ كَبُرَتْ وَكَانَ يَطَؤُهَا وَلَهَا ابْنَةٌ، أَيَحِلُّ لَهُ أَنْ يَغْشَاهَا؟ فَقَالَتْ لَهُ أُمُّ الْمُؤْمِنِينَ: أَنْهَاك عَنْهَا وَمَنْ أَطَاعَنِي.

L31331 Through the narration chain of Saʿīd ibn Manṣūr: I said to Sufyān ibn ʿUyaynah: Muṭarrif narrated to you from Abi al-Jahm from Abi al-Akhḍar from ʿAmmār, who said: “What is prohibited from free women is prohibited from slave women, except the number.” Sufyān said: “Yes.” We have also narrated it from ʿAlī.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قُلْت لِسُفْيَانَ بْنِ عُيَيْنَةَ: حَدَّثَك مُطَرِّفٌ عَنْ أَبِي الْجَهْمِ عَنْ أَبِي الْأَخْضَرِ عَنْ عَمَّارٍ، قَالَ: يَحْرُمُ مِنْ الْإِمَاءِ مَا يَحْرُمُ مِنْ الْحَرَائِرِ إلَّا الْعَدَدَ؟ قَالَ سُفْيَانُ: نَعَمْ - وَرُوِّينَاهُ أَيْضًا عَنْ عَلِيٍّ.

L31332 Abu Muhammad said: As for one who suspends judgment because the clarification did not become apparent to him, his ruling is to suspend judgment. As for one who deemed both permissible, he gave precedence to Allah’s statement—the Exalted—“except what your right hands possess” [An-Nisa: 24] over His statement—“and to marry two sisters simultaneously” [An-Nisa:

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ تَوَقَّفَ فَلَمْ يَلُحْ لَهُ الْبَيَانُ فَحُكْمُهُ التَّوَقُّفُ، وَأَمَّا مَنْ أَحَلَّهُمَا، فَإِنَّهُ غَلَّبَ قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {إلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] عَلَى قَوْله تَعَالَى: {وَأَنْ

23], thereby excepting what your right hands possess from this prohibition. They applied the same reasoning to His statement—"and your wives' mothers" [An-Nisa: 23].[30]

L31333 They have no argument other than this. We examined this matter and found that one of the two texts must necessarily be given precedence over the other by making an exception from it. As for what was said by those we mentioned, its meaning would be: "and to take two sisters in marriage simultaneously, and the mothers of your wives, except whom your right hands possess."

L31334 As for what we have stated, its meaning would be: except what your right hands possess, unless they are two sisters, or the mother of a woman lawful to you, or a paternal aunt and her brother's daughter, or a maternal aunt and her sister's daughter. Since one of the two exceptions must apply, and neither is more valid than the other except by necessary evidence—mere claim does not suffice—we inquired: Do those who prioritize the exception of ownership by the right hand regarding the prohibition of two sisters, a mother and her daughter, a paternal aunt and her brother's daughter, or a maternal aunt and her sister's daughter have any proof? We found none whatsoever, except that some of them said: We know that God Almighty has never forbidden us from simultaneously marrying two sisters, because this is impossible. It is impossible for God to address us with the impossible or forbid us from the impossible.

L31335–31336 Thus, it is established that the Almighty prohibited us only from a situation permitting the combination of both [in one framework]—and this is none other than marriage—since possessing both under right-hand ownership is permissible and lawful without disagreement.

L31337 We said: You are correct that He, the Exalted, forbids us from the impossible act of combining both in intercourse, but you erred in restricting His prohibition solely to marriage, for this is an unwarranted specification of the verse without proof. Rather, He forbade us from combining them through marriage, through legitimizing intercourse with whichever of them

[30] **Qur'an references (L31332):** Qur'an 4:24 (An-Nisa); Qur'an 4:23 (An-Nisa).

تَجْمَعُوا بَيْنَ الأُخْتَيْنِ} [النساء: ٢٣] فَخَصَّ مِلْكَ الْيَمِينِ مِنْ هَذَا النَّهْيِ، وَكَذَلِكَ فَعَلُوا فِي قَوْلِه تَعَالَى: {وَأُمَّهَاتُ نِسَائِكُمْ} [النساء: ٢٣] .

وَلَا حُجَّةَ لَهُمْ غَيْرُ هَذَا -: فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا النَّصَّيْنِ لَا بُدَّ مِنْ تَغْلِيبِ أَحَدِهِمَا عَلَى الْآخَرِ بِأَنْ يُسْتَثْنَى مِنْهُ -: أَمَّا كَمَا قَالَ مَنْ ذَكَرْنَا فَيَكُونُ مَعْنَاهُ: وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ، وَأُمَّهَاتُ نِسَائِكُمْ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ.

وَأَمَّا كَمَا قُلْنَا نَحْنُ فَيَكُونُ مَعْنَاهُ: إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ إِلَّا أَنْ تَكُونَا أُخْتَيْنِ، أَوْ أُمَّ امْرَأَةٍ حَلَّتْ لَكُمْ، أَوْ عَمَّةً وَبِنْتَ أَخِيهَا، أَوْ خَالَةً وَبِنْتَ أُخْتِهَا، فَإِذْ لَا بُدَّ مِنْ أَحَدِ الِاسْتِثْنَاءَيْنِ، وَلَيْسَ أَحَدُهُمَا أَوْلَى مِنَ الْآخَرِ إِلَّا بِبُرْهَانٍ ضَرُورِيٍّ، وَأَمَّا بِالدَّعْوَى فَلَا، فَطَلَبْنَا، هَلْ لِلْمُغَلِّبِينَ الْمُسْتَثْنِينَ مِلْكَ الْيَمِينِ مِنْ تَحْرِيمِ: الْأُخْتَيْنِ، وَالْأُمِّ وَابْنَتِهَا، وَالْعَمَّةِ وَبِنْتِ أَخِيهَا، وَالْخَالَةِ وَبِنْتِ أُخْتِهَا بُرْهَانٌ؟ فَلَمْ نَجِدْهُ أَصْلًا، إِلَّا أَنَّ بَعْضَهُمْ قَالَ: قَدْ عَلِمْنَا أَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَنْهَنَا قَطُّ عَنِ الْجَمْعِ بَيْنَ الْأُخْتَيْنِ فِي الْوَطْءِ، لِأَنَّهُ غَيْرُ مُمْكِنٍ، وَمُحَالٌ أَنْ يُخَاطِبَنَا اللَّهُ تَعَالَى بِالْمُحَالِ، أَوْ أَنْ يَنْهَانَا عَنِ الْمُحَالِ.

فَصَحَّ أَنَّهُ تَعَالَى إِنَّمَا نَهَانَا عَنْ مَعْنًى يُمْكِنُ جَمْعُهُمَا فِيهِ، وَلَيْسَ إِلَّا الزَّوَاجُ لِأَنَّ جَمْعَهُمَا فِي مِلْكِ الْيَمِينِ جَائِزٌ حَلَالٌ بِلَا خِلَافٍ؟

فَقُلْنَا: صَدَقْتُمْ أَنَّهُ تَعَالَى يَنْهَانَا عَنِ الْمُحَالِ مِنَ الْجَمْعِ بَيْنَهُمَا فِي الْوَطْءِ، وَأَخْطَأْتُمْ فِي تَخْصِيصِكُمْ بِنَهْيِهِ الزَّوَاجَ فَقَطْ، لِأَنَّهُ تَخْصِيصٌ لِلْآيَةِ بِلَا بُرْهَانٍ، بَلْ نَهَانَا عَنِ الْجَمْعِ بَيْنَهُمَا بِالزَّوَاجِ، وَبِاسْتِحْلَالِ وَطْءِ أَيَّتِهِمَا شَاءَ، وَبِالتَّلَذُّذِ مِنْهُمَا مَعًا، فَهَذَا مُمْكِنٌ، فَهَلُمُّوا دَلِيلًا عَلَى تَخْصِيصِكُمُ الزَّوَاجَ دُونَ مَا ذَكَرْنَا؟ فَلَمْ نَجِدْهُ عِنْدَهُمْ أَصْلًا، فَلَزِمَنَا أَنْ نَأْتِيَ

one wishes, and through taking pleasure from both together. This is possible, so present evidence for your restriction to marriage alone, excluding what we have mentioned. We found none whatsoever in their possession. Thus, we were compelled to provide proof for the validity of our exception; otherwise, it would be a claim and a claim. We then found the words of Allah, the Almighty: {except what your right hands possess} [Quran 4:24]. There is absolutely no disagreement among anyone in the entire community—with definitive certainty—that this exception does not apply to the general prohibition.[31]

بِبُرْهَانٍ عَلَى صِحَّةِ اسْتِثْنَائِنَا وَإِلَّا فَهِيَ دَعْوَى وَدَعْوَى -: فَوَجَدْنَا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا - قَطْعًا مُتَيَقَّنًا فِي أَنَّهُ لَيْسَ عَلَى عُمُومِهِ.

L31338 Rather, all of them have unanimously and definitively agreed that this ruling is exclusively designated, for there is no disagreement or doubt that the male slave is from lawful captives, and his treatment is forbidden and unlawful.

بَلْ كُلُّهُمْ مُجْمِعٌ قَطْعًا عَلَى أَنَّهُ مَخْصُوصٌ، لِأَنَّهُ لَا خِلَافَ وَلَا شَكَّ فِي أَنَّ الْغُلَامَ مِنْ مِلْكِ الْيَمِينِ، وَهُوَ حَرَامٌ لَا يَحِلُّ.

L31339 And that the mother through breastfeeding from among those whom the right hand possesses, and the sister through breastfeeding from among those whom the right hand possesses—there is consensus on the prohibition of both. Or a female slave owned by a man, whom his father has married, had intercourse with, and fathered a child by her: she is prohibited for the son.

وَأَنَّ الْأُمَّ مِنْ الرَّضَاعَةِ مِنْ مِلْكِ الْيَمِينِ، وَالْأُخْتَ مِنْ الرَّضَاعَةِ مِنْ مِلْكِ الْيَمِينِ، وَكِلْتَاهُمَا مُتَّفَقٌ عَلَى تَحْرِيمِهِمَا، أَوْ الْأَمَةَ يَمْلِكُهَا الرَّجُلُ قَدْ تَزَوَّجَهَا أَبُوهُ وَوَطِئَهَا، وَوَلَدَ لَهُ مِنْهَا: حَرَامٌ عَلَى الِابْنِ.

L31340 Then we examined the words of Allah, the Most High: “And to be married to two sisters at the same time” [An-Nisa: 23]. “And your wives’ mothers, and your stepdaughters under your guardianship from those wives with whom you have consummated the marriage” [An-Nisa: 23].[32]

ثُمَّ نَظَرْنَا فِي قَوْله تَعَالَى: {وَأَنْ تَجْمَعُوا بَيْنَ الأُخْتَيْنِ} [النساء: ٢٣] . {وَأُمَّهَاتُ نِسَائِكُمْ وَرَبَائِبُكُمُ اللاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللاتِي دَخَلْتُمْ بِهِنَّ} [النساء: ٢٣] .

L31341 And do not marry women who associate partners with Allah until they believe. (Al-Baqarah 221).[33]

{وَلا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ} [البقرة: ٢٢١] .

L31342 No textual proof or consensus has come indicating that it is specified save for the marriage of Kitabi women alone. Therefore, it is not permissible to specify a text without evidence for its specification. Since it is necessary to specify what fits this description or to specify another text about which

لَمْ يَأْتِ نَصٌّ وَلَا إجْمَاعٌ عَلَى أَنَّهُ مَخْصُوصٌ حَاشَا زَوَاجَ الْكِتَابِيَّاتِ فَقَطْ، فَلَا يَحِلُّ تَخْصِيصُ نَصٍّ لَا بُرْهَانَ عَلَى تَخْصِيصِهِ، وَإِذْ لَا بُدَّ مِنْ تَخْصِيصِ مَا هَذِهِ صِفَتُهَا، أَوْ تَخْصِيصُ نَصٍّ آخَرَ لَا خِلَافَ فِي أَنَّهُ مَخْصُوصٌ، فَتَخْصِيصُ الْمَخْصُوصِ هُوَ الَّذِي لَا يَجُوزُ غَيْرُهُ.

[31] **Qur’an references (L31337):** Qur’an 4:24 (An-Nisa).
[32] **Qur’an references (L31340):** Qur’an 4:23 (An-Nisa).
[33] **Qur’an references (L31341):** Qur’an 2:221 (Al-Baqarah).

there is no disagreement that it is specified, then specifying what is already specified is the only permissible course, with no alternative allowed.

وَبِهَذِهِ الْحُجَّةِ احْتَجَّ ابْنُ مَسْعُودٍ فِي هَذِهِ الْمَسْأَلَةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ نا سَلَمَةُ بْنُ عَلْقَمَةَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عُتْبَةَ بْنِ مَسْعُودٍ يَقُولُ: لَمْ يَزَالُوا بِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ حَتَّى أَغْضَبُوهُ - يَعْنِي فِي الْأُخْتَيْنِ بِمِلْكِ الْيَمِينِ - فَقَالَ ابْنُ مَسْعُودٍ: إِنَّ حَمْلَك مِمَّا مَلَكَتْ يَمِينُكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31343–31345 With this evidence, Ibn Mas‘ūd substantiated his position in this matter—as narrated to us through the chain of Sa‘īd ibn Manṣūr who reported to us: Ismā‘īl ibn Ibrāhīm reported to us, from Salamah ibn ‘Alqamah, from Muḥammad ibn Sīrīn, that he heard ‘Abdullāh ibn ‘Utbah ibn Mas‘ūd say: “They persistently pressed ‘Abdullāh ibn Mas‘ūd continually.” “Until they angered him—referring to the two sisters among those whom the right hand possesses—then Ibn Mas’ud said: ’Indeed, your lawful matters are with those whom your right hand possesses.’ And by Allah, the Exalted, is success.”

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَنْ أَبَاحَ لَهُ أَنْ يَطَأَ أَيَّ الْأُخْتَيْنِ الْمَمْلُوكَتَيْنِ لَهُ شَاءَ، وَحِينَئِذٍ تَحْرُمُ عَلَيْهِ الَّتِي لَمْ يَطَأْ، فَقَوْلٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَا يَخْلُو قَائِلُ هَذَا الْقَوْلِ مِنْ أَنْ يَقُولَ: إِنَّهُمَا قَبْلَ أَنْ يَطَأَ إِحْدَاهُمَا حَرَامٌ جَمِيعًا - فَهَذَا قَوْلُنَا، أَوْ إِنَّهُمَا جَمِيعًا حِينَئِذٍ حَلَالٌ، فَهَذَا قَوْلُ ابْنِ عَبَّاسٍ، وَعِكْرِمَةَ، وَمَنْ وَافَقَهُمَا وَكِلَا الْقَوْلَيْنِ خِلَافُ قَوْلِ هَذَا الْقَائِلِ، أَوْ يَقُولُ: إِنَّ إِحْدَاهُمَا بِغَيْرِ عَيْنِهَا حَلَالٌ لَهُ وَالْأُخْرَى حَرَامٌ، فَهَذَا بَاطِلٌ قَطْعًا لِوَجْهَيْنِ -: أَحَدُهُمَا - قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ} [البقرة: ٢٥٦] فَمُحَالٌ أَنْ يُحَرِّمَ اللَّهُ تَعَالَى عَلَيْنَا مَا لَمْ يُبَيِّنْهُ لَنَا، وَكَذَلِكَ قَوْله تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَلَا شَكَّ فِي أَنَّ مَا حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْنَا قَدْ فَصَّلَهُ لَنَا - وَهُمْ يَقُولُونَ: إِنَّ إِحْدَاهُمَا حَرَامٌ لَمْ يُفَصِّلْ لَنَا تَحْرِيمَهَا.

L31346 Abu Muhammad said: As for those who permit a man to have intercourse with whichever of the two enslaved sisters he owns that he wishes (thereby rendering the sister he did not have intercourse with forbidden to him), this is an utterly corrupt opinion. The proponent of this opinion cannot escape one of the following: either he must say that both sisters are entirely forbidden before he has intercourse with either of them—this being our position—or he must say that both remain permissible at that time (before intercourse occurs)—this being the position of Ibn Abbas, Ikrimah, and those who agree with them. Both of these positions contradict the claim of this proponent. Alternatively, he might say that one sister—without specifying which one—is permissible for him while the other is forbidden. This is absolutely invalid, decisively, for two reasons: First, Allah Almighty states: “The right path has become clearly distinct from error” (2:256). It is inconceivable that Allah would forbid us something He has not clarified. Similarly, His statement: “He has explicitly detailed for you what He has forbidden you” (6:119) leaves no doubt that whatever Allah has prohibited, He has fully specified. Yet these proponents claim one sister is forbidden without Allah having detailed this prohibition to us.[34]

وَالْوَجْهُ الثَّانِي - إِنَّ هَذَا التَّقْسِيمَ أَيْضًا بَاطِلٌ عَلَى مُقْتَضَى قَوْلِهِمْ، لِأَنَّهُمْ يُبِيحُونَ لَهُ وَطْءَ أَيَّتِهِمَا شَاءَ، وَهَذَا يَقْتَضِي تَحْلِيلَهُمَا جَمِيعًا، لَا تَحْرِيمَ إِحْدَاهُمَا، لِأَنَّهُ مِنَ الْمُحَالِ تَخْيِيرُ

L31347 The second aspect is that this division is also invalid according to the requirements of their own statements, because they permit him to have intercourse with whichever of the two he wishes. This necessitates declaring

[34] **Qur’an references (L31346):** Qur’an 2:256 (Al-Baqarah); Qur’an 6:119 (Al-An’am).

أَحَدٍ فِي حَرَامٍ وَحَلَالٍ، إِلَّا أَنْ يَأْتِيَ نَصُّ قُرْآنٍ أَوْ سُنَّةٍ بِذَلِكَ، فَيُوقَفُ عِنْدَهُ، وَأَمَّا بِالرَّأْيِ الْفَاسِدِ فَلَا.

فَصَحَّ قَوْلُنَا يَقِينًا وَبَطَلَ مَا سِوَاهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَالْخَبَرُ الْمَشْهُورُ مِنْ طَرِيقِ أَبِي هُرَيْرَةَ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَنْ «لَا يَجْمَعَ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا، وَالْمَرْأَةِ وَخَالَتِهَا» ، وَعَلَى هَذَا جُمْهُورُ النَّاسِ، إِلَّا عُثْمَانُ الْبَتِّيُّ فَإِنَّهُ أَبَاحَهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُجَاهِدُ بْنُ مُوسَى نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُنْكَحَ الْمَرْأَةُ عَلَى عَمَّتِهَا أَوْ عَلَى خَالَتِهَا» .

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ: وَنَا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عِرَاكِ بْنِ مَالِكٍ عَنْ أَبِي هُرَيْرَةَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُجْمَعَ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا، وَالْمَرْأَةِ وَخَالَتِهَا» .

[مَسْأَلَةٌ تَزَوَّجَ امْرَأَةَ أَخِيهِ الَّتِي مَاتَ أَخُوهُ عَنْهَا]

١٨٦٢ - مَسْأَلَةٌ: وَجَائِزٌ لِلْأَخِ أَنْ يَتَزَوَّجَ امْرَأَةَ أَخِيهِ الَّتِي مَاتَ أَخُوهُ عَنْهَا، أَوْ طَلَّقَهَا بَعْدَ انْقِضَاءِ عِدَّتِهَا، أَوْ إثْرَ طَلَاقِ الْأَخِ لَهَا إنْ لَمْ يَكُنْ وَطِئَهَا.

وَكَذَلِكَ لِلْعَمِّ وَلِلْخَالِ أَنْ يَتَزَوَّجَ أَيَّهُمَا كَانَ: امْرَأَةً مَاتَ عَنْهَا ابْنُ الْأَخِ أَوْ ابْنُ الْأُخْتِ، أَوْ طَلَّقَاهُمَا بَعْدَ تَمَامِ الْعِدَّةِ، أَوْ إثْرَ طَلَاقٍ لَمْ يَكُنْ قَبْلَهُ وَطْءٌ.

both entirely permissible, not prohibiting one of them, as it is impossible to present a choice between what is forbidden and permissible unless a text from the Qur'an or Sunnah exists concerning that matter, in which case one must adhere strictly to it. But as for relying on corrupt reasoning, this is impermissible.

L31348 Thus, our statement has been validated with certainty—and whatever is besides it has been nullified. All praise is to Allah, Lord of the worlds.

L31349 The well-known report transmitted via Abu Hurairah from the Prophet—peace be upon him—states: "Do not marry a woman together with her paternal aunt or maternal aunt." The majority of scholars uphold this ruling, except Uthman al-Batti who permitted it—narrated by Abdullah ibn Rabi' from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Mujahid ibn Musa from Sufyan ibn Uyaynah from Amr ibn Dinar from Abu Salamah ibn Abd al-Rahman from Abu Hurairah: "The Messenger of Allah—peace be upon him—forbade that a woman be taken in marriage along with her paternal aunt or maternal aunt."[35]

L31350–31351 Ahmad ibn Shuʿayb said: Qutaybah ibn Saʿīd narrated to us from al-Layth ibn Saʿd from Yazīd ibn Abī Ḥabīb from ʿIrāk ibn Mālik from Abū Hurayrah: "The Messenger of Allāh (may Allāh bless him and grant him peace) forbade simultaneously marrying a woman alongside her paternal aunt or maternal aunt."[36]

L31352 A juristic case concerning a man who married his brother's widow after the brother's death.

L31353 1862 - Issue: It is permissible for a brother to marry the wife of his brother if the brother died while married to her, or if he divorced her and her waiting period has been completed, or immediately after the brother divorces her provided the divorcing brother had not had sexual intercourse with her.

L31354 Similarly, it is permissible for the paternal uncle or the maternal uncle—whichever of them it may be—to marry a woman whose brother's son or

[35] **Hadith references (L31349):** Sunan an-Nasai 3299; Sunan an-Nasai 3293.
[36] **Hadith references (L31351):** Sunan an-Nasai 3289.

sister's son has died, whom either of them divorced after the completion of the ʿiddah, or whom they divorced following a separation that occurred without prior consummation.

وَكَذَلِكَ لِابْنِ الْأَخِ، وَلِابْنِ الْأُخْتِ أَنْ يَتَزَوَّجَا امْرَأَةَ الْعَمِّ، أَوْ الْخَالِ بَعْدَ مَوْتِهِمَا أَوْ طَلَاقِهِمَا بَعْدَ الْعِدَّةِ، أَوْ إثْرَ طَلَاقٍ لَمْ يَكُنْ قَبْلَهُ وَطْءٌ.

L31355 Similarly, the paternal nephew (son of a brother) and the maternal nephew (son of a sister) may marry the wife of their paternal uncle or maternal uncle after their death or their divorce (once the waiting period is observed) or after a divorce where no consummation preceded it.

هَذَا لَا نَصَّ فِي تَحْرِيمِهِ، وَكُلُّ مَا لَمْ يُفَصَّلْ لَنَا تَحْرِيمُهُ فَهُوَ حَلَالٌ.

L31356 There is no textual evidence prohibiting this, and anything whose prohibition has not been specified for us is permissible.

قَالَ عَزَّ وَجَلَّ: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} [النساء: ٢٤] بَعْدَ ذِكْرِهِ تَعَالَى مَا حَرَّمَ عَلَيْنَا مِنْ النِّسَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31357 He, the Almighty and Majestic, said: {And He has made lawful for you all else besides that} [An-Nisa: 24] after the Exalted One enumerated the women He prohibited among us — and with Allah alone is success, the Exalted.[37]

[مَسْأَلَةٌ لَا يَجُوزُ لِلْوَلَدِ زَوَاجُ امْرَأَةِ أَبِيهِ]

Issue: It is not permissible for the son to marry the wife of his father.

١٨٦٣ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلْوَلَدِ زَوَاجُ امْرَأَةِ أَبِيهِ، وَلَا مَنْ وَطِئَهَا بِمِلْكِ الْيَمِينِ أَبُوهُ وَحَلَّتْ لَهُ، وَلَا يَحِلُّ لَهُ وَطْؤُهَا، أَوْ التَّلَذُّذُ مِنْهَا بِزَوَاجٍ أَوْ بِمِلْكِ يَمِينٍ، وَلَهُ تَمَلُّكُهَا، إلَّا أَنَّهَا لَا تَحِلُّ لَهُ أَصْلًا.

L31358 Issue 1863: It is not permissible for a son to marry his father's wife, nor a woman his father lawfully had intercourse with through ownership. It is unlawful for him to engage in intercourse with her or derive pleasure from her via marital relations or ownership. While he may own her as a slave, she remains fundamentally prohibited to him in all respects.

وَكَذَلِكَ لَا يَحِلُّ لِلرَّجُلِ زَوَاجُ امْرَأَةٍ وَلَا وَطْؤُهَا بِمِلْكِ الْيَمِينِ إذَا كَانَتْ الْمَرْأَةُ مِمَّنْ حَلَّ لِوَلَدِهِ وَطْؤُهَا أَوْ التَّلَذُّذُ مِنْهَا بِزَوَاجٍ أَوْ بِمِلْكِ يَمِينٍ أَصْلًا.

L31359 "Similarly, it is not permissible for a man to marry a woman or to have intercourse with her through right-hand possession if the woman is among those whom his son is permitted to have intercourse with or derive sexual pleasure from—whether through marriage or right-hand possession—at all."

وَالْجَدُّ فِي كُلِّ مَا ذَكَرْنَا - وَإِنْ عَلَا مِنْ قِبَلِ الْأَبِ أَوْ الْأُمِّ - كَالْأَبِ وَلَا فَرْقَ.

L31360 The grandfather, in all the cases we have mentioned—whether on the father's or mother's side—is equivalent to the father, and no distinction is made.

وَابْنُ الِابْنِ وَابْنُ الِابْنَةِ - وَإِنْ سَفُلَا - كَالِابْنِ فِي كُلِّ مَا ذَكَرْنَا وَلَا فَرْقَ.

L31361 The son's son and the daughter's son—however far removed—are treated as the son in all that we have mentioned, without any distinction.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ عَقَدَ فِيهَا الرَّجُلُ زَوَاجًا فَلَا خِلَافَ فِي تَحْرِيمِهَا فِي الْأَبَدِ عَلَى أَبِيهِ وَأَجْدَادِهِ، وَعَلَى بَنِيهِ وَعَلَى مَنْ تَنَاسَلَ مِنْ بَنِيهِ وَبَنَاتِهِ أَبَدًا.

L31362 Abu Muhammad said: As for the woman with whom a man has contracted

[37] **Qur'an references (L31357):** Qur'an 4:24 (An-Nisa).

marriage, there is no disagreement regarding her permanent prohibition upon his father, grandfathers, sons, and the descendants of his sons and daughters forever.

وَأَمَّا مَنْ حَلَّتْ لِلرَّجُلِ بِمِلْكِ الْيَمِينِ، فَإِنْ وَطِئَهَا فَلَا نَعْلَمُ خِلَافًا فِي تَحْرِيمِهِ عَلَى مَنْ وَلَدَ، وَعَلَى مَنْ وَلَدَهُ - وَفِيمَا لَمْ يَطَأْهَا خِلَافٌ نَذْكُرُ مِنْهُ - إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - مَا تَيَسَّرَ لَنَا ذِكْرُهُ مِنْ ذَلِكَ -: ذَكَرَتْ طَائِفَةٌ أَنَّهَا تَحْرُمُ عَلَى وَلَدِهِ وَآبَائِهِ بِتَجْرِيدِهِ لَهَا فَقَطْ.

L31364–31366 As for a woman made lawful to a man through those whom his right hand possesses, if he has intercourse with her, we know of no disagreement regarding the prohibition upon his child and upon his parent. Concerning cases where he has not had intercourse with her, there exists disagreement—we shall mention, if Allah the Exalted wills, what we can conveniently recount of that matter— A group has stated that the prohibition is forbidden upon his child and fathers solely because he restricts it to her.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَزِيدَ بْنِ يَزِيدَ بْنِ جَابِرٍ عَنْ مَكْحُولٍ قَالَ: جَرَّدَ عُمَرُ بْنُ الْخَطَّابِ جَارِيَةً فَنَظَرَ إِلَيْهَا ثُمَّ نَهَى بَعْضَ وَلَدِهِ أَنْ يَقْرَبَهَا.

L31367 As reported to us via the chain of transmission of Abd al-Razzaq from Sufyan ibn Uyaynah from Yazid ibn Yazid ibn Jabir from Makhul, who said: Umar ibn al-Khattab uncovered a girl and looked at her, then forbade some of his sons from going near her.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ مَكْحُولٍ: أَنَّ عُمَرَ اشْتَرَى جَارِيَةً فَجَرَّدَهَا وَنَظَرَ إِلَيْهَا فَقَالَ لَهُ ابْنُهُ: أَعْطِنِيهَا، فَقَالَ: إِنَّهَا لَا تَحِلُّ لَكَ، إِنَّمَا يُحَرِّمُهَا عَلَيْكَ النَّظَرُ وَالتَّجْرِيدُ.

L31368 From the chain of Ḥammād ibn Salamah, al-Ḥajjāj ibn Arṭāʾ narrated to us from Makhūl: That ʿUmar purchased a slave girl, stripped her, and looked at her. His son said to him, “Give her to me.” He replied, “She is not lawful for you. Only the looking and stripping forbid her to you.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا فُضَيْلٌ عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانَ - عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إِنْ جَرَّدَهَا الْأَبُ حَرَّمَهَا عَلَى الِابْنِ، وَإِنْ جَرَّدَهَا الِابْنُ حَرَّمَهَا عَلَى الْأَبِ.

L31369 From the narration of Saʿīd ibn Manṣūr: Fudayl narrated to us from Hishām—that is, ibn Ḥassān—from al-Ḥasan al-Baṣrī, who said: If the father divorces her irrevocably, he renders her forbidden to the son; and if the son divorces her irrevocably, he renders her forbidden to the father.

قَالَ أَبُو مُحَمَّدٍ: هَذَا صَحِيحٌ عَنْ الْحَسَنِ، وَلَا يَصِحُّ عَنْ عُمَرَ، لِأَنَّهُ مِنْ طَرِيقِ مَكْحُولٍ - وَهُوَ مُنْقَطِعٌ.

L31370 Abu Muhammad said: This is authentic from al-Hasan, but it is not authentic from Umar, because it comes through Makhul’s chain, and it is disconnected.

وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُهَا إِلَّا اللَّمْسُ وَالنَّظَرُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ فُضَيْلٍ عَنْ هِشَامٍ عَنْ ابْنِ سِيرِينَ أَنَّ مَسْرُوقًا قَالَ فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ: إِنَّ جَارِيَتِي هَذِهِ لَمْ يُحَرِّمْهَا عَلَيْكُمْ إِلَّا اللَّمْسُ وَالنَّظَرُ قَالَ سَعِيدٌ: وَنَا أَبُو عَوَانَةَ عَنْ إِبْرَاهِيمَ

L31371 A group said: “Nothing prohibits her except touching and looking”—as narrated to us through Sa’id ibn Mansur’s chain from Fudayl, from Hisham, from Ibn Sirin, that Masruq said during his fatal illness: “This slave girl of mine—nothing prohibited her for you except touching and looking.” Sa’id said: Narrated to us by Abu ʿAwanah, from Ibrahim ibn Muhammad ibn

al-Muntashir, from his father, that Masruq said upon his death regarding a slave girl he owned: "I did nothing with her except what prohibited her for my children—touching and looking."

بْنِ مُحَمَّدِ بْنِ الْمُنْتَشِرِ عَنْ أَبِيهِ أَنَّ مَسْرُوقًا قَالَ عِنْدَ مَوْتِهِ عَنْ جَارِيَةٍ لَهُ: لَمْ أُصِبْ مِنْهَا إِلَّا مَا حَرَّمَهَا عَلَى وَلَدِي اللَّمْسَ وَالنَّظَرَ.

L31372 From the transmission of Saʿīd ibn Manṣūr, who narrated to us from Sufyān, who reported from Ibn Abī Najīḥ from Mujāhid, who said: A parent prohibits their child, and a child prohibits their parent, from kissing her, placing a hand on her genital area, placing his genital area on hers, or having sexual intercourse with her.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: يُحَرِّمُ الْوَالِدُ عَلَى وَلَدِهِ، وَالْوَلَدُ عَلَى وَالِدِهِ أَنْ يُقَبِّلَهَا أَوْ يَضَعَ يَدَهُ عَلَى فَرْجِهَا، أَوْ فَرْجَهُ عَلَى فَرْجِهَا أَوْ يُبَاشِرَهَا.

L31373 And through the chain of Saʿīd ibn Manṣūr, narrated by Jarīr from al-Mughīrah from Ibrāhīm, who said: They held that lustful kissing or touching would prohibit marriage to the mother and daughter—and this is the opinion of Ibn Abī Laylā, al-Shāfiʿī, and his companions.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ قَالَ: كَانُوا يَرَوْنَ أَنَّ الْقُبْلَةَ وَاللَّمْسَ يُحَرِّمُ: الْأُمَّ وَالْبِنْتَ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالشَّافِعِيِّ، وَأَصْحَابِهِ.

L31374 A group has said that it forbids children and parents from looking, as we have been narrated through the chain of Sa'id ibn Mansur: Abu Shihab narrated to us from Yahya ibn Sa'id—the Ansari—from al-Qasim ibn Muhammad, from 'Abdullah ibn Rabi'ah that his father Rabi'ah (who was a Badri companion) instructed in his will regarding a female slave of his that his sons should not approach her, saying: "I have not taken anything from her, except that I looked at her in a way I would dislike for them to look at her."

وَقَالَتْ طَائِفَةٌ: يُحَرِّمُهَا عَلَى الْوَلَدِ وَالْوَالِدِ النَّظَرُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا أَبُو شِهَابٍ عَنْ يَحْيَى بْنِ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَبْدِ اللَّهِ بْنِ رَبِيعَةَ أَنَّ أَبَاهُ رَبِيعَةَ - وَكَانَ بَدْرِيًّا - أَوْصَى بِجَارِيَةٍ لَهُ أَنْ لَا يَقْرَبَهَا بَنُوهُ وَقَالَ: لَمْ أُصِبْ مِنْهَا شَيْئًا إِلَّا أَنِّي نَظَرْتُ مَنْظَرًا أَكْرَهُ أَنْ يَنْظُرُوهُ مِنْهَا.

L31375–31376 Abu Muhammad said: This is an error from Abu Shihab. It is actually 'Abdullāh ibn 'Āmir ibn Rabī'ah. Thus we have narrated it through various chains - among them: from the path of Sa'īd ibn Manṣūr who narrated to us from Sufyān - he is Ibn 'Uyaynah - from Yaḥyá ibn Sa'īd al-Anṣārī, from al-Qāsim ibn Muḥammad, from 'Abdullāh and 'Abd al-Raḥmān - the sons of 'Āmir ibn Rabī'ah (their father was a participant in the Battle of Badr) - that he instructed regarding his female slave that they should sell her and not approach her intimately. It was as though he had looked into her and seen something he disliked, and he disliked that they might discover from her the same thing he had discovered.

قَالَ أَبُو مُحَمَّدٍ: هَذَا وَهْمٌ مِنْ أَبِي شِهَابٍ، إِنَّمَا هُوَ عَبْدُ اللَّهِ بْنُ عَامِرِ بْنِ رَبِيعَةَ كَذَا رُوِّينَاهُ مِنْ طُرُقٍ شَتَّى -: مِنْهَا - مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَبْدِ اللَّهِ، وَعَبْدِ الرَّحْمَنِ - ابْنَيْ عَامِرِ بْنِ رَبِيعَةَ - وَكَانَ أَبُوهُمَا بَدْرِيًّا - أَنَّهُ أَوْصَى بِجَارِيَةٍ لَهُ أَنْ يَبِيعُوهَا وَلَا يَقْرَبُوهَا كَأَنَّهُ اطَّلَعَ مِنْهَا مُطَّلَعًا كَرِهَ أَنْ يَطَّلِعُوا مِنْهَا عَلَى مِثْلِ مَا اطَّلَعَ.

L31377 A group held the opinion that touching with desire or looking at her private part with desire makes her forbidden, as we have narrated through the chain

of ʿAbd al-Razzāq from Abū Ḥanīfah from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī, who stated: “If a man kisses a woman out of desire, touches, or looks at her private part, she does not become lawful for his father or his son.”

وَذَهَبَتْ طَائِفَةٌ - إِلَى أَنَّ اللَّمْسَ لِشَهْوَةٍ، أَوْ النَّظَرَ إِلَى فَرْجِهَا لِشَهْوَةٍ يُحَرِّمُهَا، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: " إذَا قَبَّلَ الرَّجُلُ الْمَرْأَةَ مِنْ شَهْوَةٍ أَوْ مَسَّ أَوْ نَظَرَ إلَى فَرْجِهَا لَمْ تَحِلَّ لِأَبِيهِ، وَلَا لِابْنِهِ ".

L31378 And through the chain of ʿAbd al-Razzāq, from Maʿmar, from ʿAbd Allāh ibn Ṭāwūs, from his father, who said: If a man gazes at a woman’s genitalia with desire, she becomes unlawful for his father and his son - and this is the opinion of Abū Ḥanīfah.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: إذَا نَظَرَ الرَّجُلُ إلَى فَرْجِ امْرَأَةٍ مِنْ شَهْوَةٍ لَمْ تَحِلَّ لِأَبِيهِ، وَلَا لِابْنِهِ - وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ.

L31379 Malik said: If he gazes at any of her attractive features with desire—such as her leg, hair, chest, or other such parts—it becomes permanently forbidden for the child.

وَقَالَ مَالِكٌ: إذَا نَظَرَ إلَى شَيْءٍ مِنْ مَحَاسِنِهَا لِشَهْوَةٍ حَرُمَتْ فِي الْأَبَدِ عَلَى الْوَلَدِ، كَالسَّاقِ، وَالشَّعْرِ، وَالصَّدْرِ، وَغَيْرِ ذَلِكَ.

L31380 And Sufyan said: If he looks at her private part, she became forbidden in marriage to his son.

وَقَالَ سُفْيَانُ: إذَا نَظَرَ إلَى فَرْجِهَا حَرُمَتْ عَلَى وَلَدِهِ.

L31381 A scholarly faction—similar to our opinion—said, as was narrated to us through Abū ʿUbayd on the authority of Abū al-Yamān, from Abū Bakr ibn ʿAbd Allāh ibn Abī Maryam, from Makḥūl, who said: “Whichever of the two holds authority over her marriage contract, she becomes permanently forbidden to the other,” meaning the father and the son.

وَقَالَ طَائِفَةٌ: مِثْلُ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَبُو الْيَمَانِ عَنْ أَبِي بَكْرِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي مَرْيَمَ عَنْ مَكْحُولٍ قَالَ: أَيُّهُمَا مَلَكَ عُقْدَتَهَا فَقَدْ حَرُمَتْ عَلَى الْآخَرِ - يَعْنِي الْأَبَ وَالِابْنَ.

L31382 And through the chain of Abū ʿUbayd: ʿAbdullāh ibn Ṣāliḥ narrated to us from al-Layth ibn Saʿd from Yazīd ibn Abī Ḥabīb that Ibn Shihāb al-Zuhrī said: When a man contracts the marriage bond of a woman, she becomes forbidden to his father and son.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَبْدُ اللَّهِ بْنُ صَالِحٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ ابْنَ شِهَابٍ الزُّهْرِيَّ قَالَ: إذَا مَلَكَ الرَّجُلُ عُقْدَةَ الْمَرْأَةِ حَرُمَتْ عَلَى أَبِيهِ وَابْنِهِ.

L31383 Abu Muhammad said: Whoever owns the enslaved person thereby owns the contractual bond.

قَالَ أَبُو مُحَمَّدٍ: مَنْ مَلَكَ الرَّقَبَةَ فَقَدْ مَلَكَ الْعُقْدَةَ.

L31384–31386 Narrated to us Muḥammad ibn Saʿīd ibn Nabāt, Aḥmad ibn ʿAbd al-Baṣīr, Qāsim ibn Aṣbagh, Muḥammad ibn ʿAbd al-Salām al-Khushanī, Muḥammad ibn al-Muthannā, and ʿAbd al-Raḥmān ibn Muḥammad al-Muḥāribī, who said: I heard Laith ibn Abi Sulaym narrate from Al-Hakam ibn ’Utaybah, who said: **Whoever** owns a female slave who was owned by his father

وَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدٍ الْمُحَارِبِيُّ قَالَ: سَمِعْت لَيْثَ بْنَ

before him, **it has not been permissible** for him **to have access to her private part**.

أَبِي سُلَيْمٍ يَقُولُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: مَنْ مَلَكَ جَارِيَةً مَلَكَهَا أَبُوهُ قَبْلَهُ لَمْ يَحِلَّ لَهُ فَرْجُهَا.

L31387 A group held that only intercourse renders them unlawful for the son—as we have narrated via ʿAbd al-Razzāq's transmission from Maʿmar, from al-Ḥasan al-Baṣrī and Qatādah, both of whom said: "Nothing prohibits them for the son except intercourse," meaning fathers' female slaves in relation to the sons.

وَقَالَتْ طَائِفَةٌ: لَا يُحَرِّمُهَا عَلَى الْوَلَدِ إلَّا الْوَطْءُ فَقَطْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَقَتَادَةَ، قَالَا جَمِيعًا: لَا يُحَرِّمُهَا عَلَيْهِمْ إلَّا الْوَطْءُ - يَعْنِيَانِ إمَاءَ الْآبَاءِ عَلَى الْأَبْنَاءِ.

L31388 Abu Muhammad said: As for those who prohibit it due to touching with desire—excluding lesser acts—or due to looking exclusively at the genitalia—excluding lesser acts—or due to gazing at her appealing features with desire—excluding anything beyond that—these are baseless assertions; no evidence validates any of them. They are mere opinions unsupported by the Qur'an, the Sunnah, a weak narration, or Qiyas.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ حَرَّمَهَا بِالْمَسِّ لِلشَّهْوَةِ دُونَ مَا دُونَ ذَلِكَ، أَوْ بِالنَّظَرِ إلَى الْفَرْجِ خَاصَّةً دُونَ مَا دُونَ ذَلِكَ، أَوْ بِالنَّظَرِ إلَى مَحَاسِنِهَا لِشَهْوَةٍ دُونَ مَا عَدَا ذَلِكَ، فَأَقْوَالٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، إنَّمَا هِيَ آرَاءٌ مُجَرَّدَةٌ لَا يُؤَيِّدُهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَاقِطَةٌ، وَلَا قِيَاسٌ.

L31389 As for the validity of our statement—it is established by the narration transmitted to us by Aḥmad ibn Qāsim, who said: Qāsim ibn Muḥammad ibn Qāsim narrated to us, saying: My grandfather Qāsim ibn Aṣbagh narrated to us, from Aḥmad ibn Zuhayr, from ʿAbdullāh ibn Jaʿfar, from ʿAbdullāh ibn ʿAmr al-Raqqī, from Zayd ibn Abī Unaysah, from ʿAdī ibn Thābit, from Yazīd ibn al-Barāʾ, from his father al-Barāʾ ibn ʿĀzib, who said: "My uncle met me while he had a banner with him. I asked: 'Where are you heading?' He replied: 'The Messenger of Allāh—peace and blessings of Allāh be upon him—sent me to a man who married his father's wife, commanding me to strike his neck.'"

وَأَمَّا صِحَّةُ قَوْلِنَا -: فَلِلْخَبَرِ الَّذِي حَدَّثَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ نا قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ، قَالَ: نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا عَبْدُ اللَّهِ بْنُ جَعْفَرٍ نا عَبْدُ اللَّهِ بْنُ عَمْرٍو الرَّقِّيّ عَنْ زَيْدِ بْنِ أَبِي أُنَيْسَةَ عَنْ عَدِيِّ بْنِ ثَابِتٍ عَنْ يَزِيدَ بْنِ الْبَرَاءِ عَنْ أَبِيهِ «الْبَرَاءِ بْنِ عَازِبٍ قَالَ: لَقِيَنِي عَمِّي وَمَعَهُ رَايَةٌ، فَقُلْتُ: أَيْنَ تُرِيدُ؟ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى رَجُلٍ تَزَوَّجَ امْرَأَةَ أَبِيهِ فَأَمَرَنِي أَنْ أَضْرِبَ عُنُقَهُ» .

L31390 Abū Muḥammad said: A lawful female slave for a man is his wife - whether he has had sexual relations with her or not, whether he has looked at her or not. And Allah Almighty stated: "And the lawful spouses of your sons who are from your loins" [An-Nisāʾ: 23]. "Ḥalāʾil" is the plural of "ḥalīlah," and "ḥalīlah" follows the morphological pattern of faʿīlah (فَعِيلَة) derived from

قَالَ أَبُو مُحَمَّدٍ: الْأَمَةُ الْحَلَالُ لِلرَّجُلِ امْرَأَةٌ لَهُ وَطِئَهَا أَوْ لَمْ يَطَأْهَا، نَظَرَ إلَيْهَا، أَوْ لَمْ يَنْظُرْ إلَيْهَا، وَقَالَ اللَّهُ عَزَّ وَجَلَّ، {وَحَلائِلُ أَبْنَائِكُمُ الَّذِينَ مِنْ أَصْلابِكُمْ} [النساء: ٢٣] وَالْحَلَائِلُ جَمْعُ حَلِيلَةٍ، وَالْحَلِيلَةُ فَعِيلَةٌ مِنْ الْحَلَالِ، فَكُلُّ امْرَأَةٍ حَلَّتْ لِرَجُلٍ فَهِيَ حَلِيلَةٌ لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

"ḥalāl." Thus, every woman lawful for a man is his lawful spouse. Success comes only from Allah, the Exalted.[38]

A case where a man marries a woman who has a daughter or acquires her as a slave when she has a daughter.

1864. Issue: As for one who marries a woman who has a daughter or owns a female slave who has a daughter: If the daughter is under his care and he had seclusion with the mother—whether he had intercourse or not, provided he engaged in pleasurable seclusion—then her daughter is permanently forbidden to him. If he had seclusion with the mother while the daughter was not under his care, or if the daughter was under his care but he did not have seclusion with the mother, then marrying the daughter is permissible for him.

As for one who marries a woman who has a mother or owns a female slave lawful for him who has a mother, the mother is thereby forbidden to him forever and ever—whether he has had intercourse with the daughter in either scenario or not.

The proof of that is: the statement of Allah, the Most High: "And your stepdaughters in your care from your wives with whom you have had relations. But if you have not had relations with them, then there is no sin upon you." [An-Nisa: 23] Allah the Almighty and Majestic prohibits marriage to one's stepdaughter—whether the daughter of a wife or a female slave—only if there has been consummation with the stepdaughter herself and she is under his guardianship. Thus, she is forbidden only if both conditions are met, in accordance with His statement—Exalted is He—after enumerating the prohibited women: {And lawful to you are all besides that} [An-Nisāʾ: 24].[39]

And your Lord is never forgetful (Maryam 64).[40]

Her being in his custody divides into two parts: The first is her residing

[38] **Qur'an references (L31390):** Qur'an 4:23 (An-Nisa).
[39] **Qur'an references (L31394):** Qur'an 4:23 (An-Nisa); Qur'an 4:24 (An-Nisa).
[40] **Qur'an references (L31397):** Qur'an 19:64 (Maryam).

[مَسْأَلَةٌ تَزَوَّجَ امْرَأَةً وَلَهَا ابْنَةٌ أَوْ مَلَكَهَا وَلَهَا ابْنَةٌ]

١٨٦٤ - مَسْأَلَةٌ: وَأَمَّا مَنْ تَزَوَّجَ امْرَأَةً وَلَهَا ابْنَةٌ أَوْ مَلَكَهَا وَلَهَا ابْنَةٌ، فَإِنْ كَانَتْ الِابْنَةُ فِي حِجْرِهِ وَدَخَلَ بِالْأُمِّ مَعَ ذَلِكَ وَطِئَ أَوْ لَمْ يَطَأْ، لَكِنْ خَلَا بِهَا بِالتَّلَذُّذِ: لَمْ تَحِلَّ لَهُ ابْنَتُهَا أَبَدًا، فَإِنْ دَخَلَ بِالْأُمِّ وَلَمْ تَكُنِ الِابْنَةُ فِي حِجْرِهِ، أَوْ كَانَتْ الِابْنَةُ فِي حِجْرِهِ وَلَمْ يَدْخُلْ بِالْأُمِّ، فَزَوَاجُ الِابْنَةِ لَهُ حَلَالٌ.

وَأَمَّا مَنْ تَزَوَّجَ امْرَأَةً لَهَا أُمٌّ أَوْ مَلَكَ أَمَةً تَحِلُّ لَهُ وَلَهَا أُمٌّ فَالْأُمُّ حَرَامٌ عَلَيْهِ بِذَلِكَ أَبَدَ الْأَبَدِ - وَطِئَ فِي كُلِّ ذَلِكَ الِابْنَةَ أَوْ لَمْ يَطَأْهَا.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَرَبَائِبُكُمُ اللاتِي فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللاتِي دَخَلْتُمْ بِهِنَّ فَإِنْ لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلا جُنَاحَ عَلَيْكُمْ} [النساء: ٢٣] فَلَمْ يُحَرِّمْ اللَّهُ عَزَّ وَجَلَّ الرَّبِيبَةَ بِنْتَ الزَّوْجَةِ أَوْ الْأَمَةِ إلَّا بِالدُّخُولِ بِهَا، وَأَنْ تَكُونَ هِيَ فِي حِجْرِهِ، فَلَا تَحْرُمُ إلَّا بِالْأَمْرَيْنِ مَعًا، لِقَوْلِهِ تَعَالَى بَعْدَ أَنْ ذَكَرَ مَا حَرَّمَ مِنْ النِّسَاءِ: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} [النساء: ٢٤] .

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

وَكَوْنُهَا فِي حِجْرِهِ يَنْقَسِمُ قِسْمَيْنِ -: أَحَدُهُمَا: سُكْنَاهَا مَعَهُ فِي مَنْزِلِهِ، وَكَوْنُهُ كَافِلًا لَهَا.

with him in his home, and the second is his being a provider for her.

L31399 And the second:

وَالثَّانِي:

L31400 His oversight of her affairs constitutes guardianship, not agency, as each of these two aspects entails her being within his protective guardianship.

نَظَرُهُ إِلَى أُمُورِهَا نَحْوَ الْوِلَايَةِ لَا بِمَعْنَى الْوَكَالَةِ، فَكُلُّ وَاحِدٍ مِنْ هَذَيْنِ الْوَجْهَيْنِ يَقَعُ بِهِ عَلَيْهَا كَوْنُهَا فِي حِجْرِهِ.

L31401 As for her mother, the act of marriage renders her forbidden to him entirely. The words of Allah, the Almighty: {And your wives' mothers} [An-Nisa: 23] — He, the Exalted, has stated this prohibition in a universal, all-encompassing form, so it is impermissible to restrict or qualify it.[41]

وَأَمَّا أُمُّهَا فَيُحَرِّمُهَا عَلَيْهِ بِالْعَقْدِ جُمْلَةً: قَوْلُ اللَّهِ تَعَالَى: {وَأُمَّهَاتُ نِسَائِكُمْ} [النساء: ٢٣] فَأَجْمَلَهَا عَزَّ وَجَلَّ فَلَا يَجُوزُ تَخْصِيصُهَا.

L31402 In all of this, there is both ancient and modern disagreement: A school of thought maintained that the mother does not become forbidden unless the marriage with the daughter is consummated. As we have narrated through the chain of transmission from Ḥammād ibn Salamah, from Qatādah, from Khilāṣ, from ʿAlī ibn Abī Ṭālib: He was asked about a man who divorced his wife before consummating the marriage—may he marry her mother? ʿAlī replied: "They hold equal status, following the same principle. If he divorces the daughter before consummation, he may marry her mother; if he marries the mother and divorces her before consummation, he may marry her daughter." This is authentic from ʿAlī—may Allah be pleased with him.

وَفِي كُلِّ ذَلِكَ اخْتِلَافٌ قَدِيمٌ وَحَدِيثٌ -: ذَهَبَتْ طَائِفَةٌ إِلَى أَنَّ الْأُمَّ لَا تَحْرُمُ إِلَّا بِالدُّخُولِ بِالِابْنَةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ سُئِلَ فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ قَبْلَ أَنْ يَدْخُلَ بِهَا أَلَهُ أَنْ يَتَزَوَّجَ أُمَّهَا؟ فَقَالَ عَلِيٌّ: هُمَا بِمَنْزِلَةٍ وَاحِدَةٍ يَجْرِيَانِ مَجْرًى وَاحِدًا إِنْ طَلَّقَ الِابْنَةَ قَبْلَ الدُّخُولِ بِهَا تَزَوَّجَ أُمَّهَا، وَإِنْ تَزَوَّجَ أُمَّهَا طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا: تَزَوَّجَ ابْنَتَهَا، وَهَذَا صَحِيحٌ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ -.

L31403 Aḥmad ibn ʿUmar ibn Anas al-ʿUdhri narrated from Abū Dharr al-Harawī, from ʿAbdullāh ibn Aḥmad ibn Ḥamawayh al-Sarakhsī, from Ibrāhīm ibn Khuraym, from ʿAbd ibn Ḥumayd, from ʿAbd al-Razzāq, from Maʿmar, from Simāk ibn al-Faḍl - the judge of Ṣanʿā' - who said: Ibn al-Zubayr stated: "The stepdaughter and the mother are treated the same. There is no blame concerning them if he had not consummated the marriage with the woman."

نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ نا إِبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ سِمَاكِ بْنِ الْفَضْلِ - هُوَ قَاضِي صَنْعَاءَ - قَالَ: قَالَ ابْنُ الزُّبَيْرِ: الرَّبِيبَةُ، وَالْأُمُّ سَوَاءٌ لَا بَأْسَ بِهِمَا إِذَا لَمْ يَكُنْ دَخَلَ بِالْمَرْأَةِ.

L31404 And from the narration of Abd al-Razzaq from Ibn Jurayj: Abu Bakr ibn Hafs—the son of Umar ibn Sa'd ibn Abi Waqqas—informed me, from Muslim

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو بَكْرِ بْنُ حَفْصٍ - هُوَ ابْنُ عُمَرَ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ - عَنْ مُسْلِمِ بْنِ عُوَيْمِرٍ مِنْ بَنِي بَكْرِ بْنِ عَبْدِ مَنَاةَ مِنْ كِنَانَةَ أَنَّهُ

[41] **Qur'an references (L31401):** Qur'an 4:23 (An-Nisa).

أَخْبَرَهُ أَنَّهُ أَنْكَحَهُ أَبُوهُ امْرَأَةً بِالطَّائِفِ، قَالَ فَلَمْ أَمَسَّهَا حَتَّى تُوُفِّيَ عَمِّي عَنْ أُمِّهَا - وَأُمُّهَا ذَاتُ مَالٍ كَثِيرٍ - فَقَالَ لِي أَبِي: هَلْ لَك فِي أُمِّهَا؟ قَالَ: فَسَأَلْت ابْنَ عَبَّاسٍ، وَأَخْبَرْته الْخَبَرَ؟ فَقَالَ: انْكِحْ أُمَّهَا - وَذَكَرَ بَاقِيَ الْخَبَرِ.

ibn Uwaymir of Banu Bakr ibn Abd Manat of Kinanah, that he reported his father had married him off to a woman in Ta'if. He said: "I did not consummate the marriage until my uncle [acting as guardian] regarding her mother died—her mother possessed significant wealth." His father then asked him: "Would you consider marrying her mother?" He said: "I consulted Ibn Abbas and informed him of the situation." He replied: "Marry her mother"—and he mentioned the rest of the report.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نا ابْنُ أَبِي أُوَيْسٍ حَدَّثَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الْمَوَالِي عَنْ عَبْدِ الْحَكَمِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرْوَةَ أَنَّ رَجُلًا مِنْ بَنِي لَيْثٍ يُقَالُ لَهُ: ابْنُ الْأَجْدَعِ تَزَوَّجَ جَارِيَةً شَابَّةً فَهَلَكَتْ قَبْلَ أَنْ يَدْخُلَ بِهَا، فَخَطَبَ أُمَّهَا؟ فَقَالَتْ لَهُ: نَعَمْ، إنْ كُنْتُ أَحِلُّ لَك، فَجَاءَ نَاسًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمِنْهُمْ مَنْ أَرْخَصَ لَهُ - وَذَكَرَ بَاقِيَ الْخَبَرِ.

L31405–31406 From the chain of Ismail ibn Ishaq: Ibn Abi Uways narrated to us, from Abd al-Rahman ibn Abi al-Mawali, from Abd al-Hakam ibn Abdullah ibn Abi Farwah, that a man from Banu Layth named Ibn al-Ajda' married a young girl who died before he consummated the marriage. He then proposed to her mother. She said to him: "Yes, if I am lawful for you." He approached some Companions of the Messenger of Allah (peace be upon him), and among them were those who permitted him a concession—and the remainder of the report is mentioned.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي فَرْوَةَ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ ابْنِ مَسْعُودٍ: أَنَّ رَجُلًا مِنْ بَنِي شَمْخِ بْنِ فَزَارَةَ تَزَوَّجَ امْرَأَةً ثُمَّ رَأَى أُمَّهَا فَأَعْجَبَتْهُ فَاسْتَفْتَى ابْنَ مَسْعُودٍ فَأَفْتَاهُ أَنْ يُفَارِقَهَا ثُمَّ يَتَزَوَّجَ أُمَّهَا فَتَزَوَّجَهَا وَوَلَدَتْ لَهُ أَوْلَادًا - وَذَكَرَ بَاقِيَ الْخَبَرِ عَلَى مَا نُورِدُهُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى - وَبِهِ يَقُولُ مُجَاهِدٌ وَغَيْرُهُ.

L31407 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Abū Farwah, from Abū ʿAmr al-Shaybānī, from Ibn Masʿūd: A man from Banī Shamkh ibn Fazarah married a woman, then saw her mother and was captivated by her. He sought Ibn Masʿūd's legal ruling, who instructed him to divorce her and marry her mother. He married the mother, and she bore him children. The remainder of the report will be mentioned in accordance with what we shall relate subsequently (if Allah the Exalted wills)—and this is the opinion of Mujāhid and others.

وَطَائِفَةٌ قَالَتْ بِإِبَاحَةِ نِكَاحِ أُمِّ الزَّوْجَةِ الَّتِي لَمْ يَدْخُلْ بِهَا إذَا طَلَّقَ الِابْنَةَ وَلَمْ يُحِهْ إنْ مَاتَتْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ قَبْلَ أَنْ يَدْخُلَ بِهَا فَأَرَادَ أَنْ يَتَزَوَّجَ أُمَّهَا؟ قَالَ: إنْ طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا تَزَوَّجَ أُمَّهَا، وَإِنْ مَاتَتْ لَمْ يَتَزَوَّجْ أُمَّهَا.

L31408 A group held the view permitting marriage to the mother of a wife with whom he did not consummate the marriage if he divorces his daughter, but they did not permit marrying her mother in the case of the daughter's death - as narrated through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Sulaymān ibn Ḥarb → Ḥammād ibn Salamah → Qatādah → Saʿīd ibn al-Musayyab that Zayd ibn Thābit said regarding a man who divorced his wife before consummation and wished to marry her mother: "If he divorces her before consummation, he may marry her mother. But if she dies, he may not marry her mother."

L31409 And through the chain of Al-Ḥajjāj ibn Al-Minḥāl: Ḥammād ibn Salamah narrated to us from Qaṭādah from Saʿīd ibn Al-Musayyab that Zayd ibn Thābit said: If he divorces the daughter before consummating the marriage with her, he may marry her mother. If she dies, he does not marry her mother.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: إِنْ طَلَّقَ الِابْنَةَ قَبْلَ أَنْ يَدْخُلَ بِهَا تَزَوَّجَ أُمَّهَا، وَإِنْ مَاتَتْ لَمْ يَتَزَوَّجْ أُمَّهَا.

L31410 A group differentiated between the mother and the daughter—it has been reported to us from ʿUmar ibn al-Khaṭṭāb, Ibn ʿUmar, Zayd ibn Thābit, Ibn ʿAbbās, and a group of the Companions.

وَطَائِفَةٌ فَرَّقَتْ بَيْنَ الْأُمِّ وَالِابْنَةِ -: رُوِّينَا ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ عُمَرَ، وَزَيْدِ بْنِ ثَابِتٍ، وَابْنِ عَبَّاسٍ، وَطَائِفَةٍ مِنْ الصَّحَابَةِ.

L31411–31413 A group refrained from ruling on all of that, as reported in the narration transmitted through Ismāʿīl ibn Isḥāq al-Qāḍī—from Ibn Abī Uways, from ʿAbd al-Raḥmān ibn Abī al-Mawālī, from ʿAbd al-Ḥakam ibn ʿAbd Allāh ibn Abī Farwa: A man from Banū Layth named Ibn al-Ajdaʿ married a young woman who died before he consummated the marriage. He then proposed to her mother, and she said, "Yes, if I am lawful for you?" He asked some Companions of the Messenger of Allah—peace and blessings be upon him—among whom were those who permitted him and those who forbade him, saying: "Allah Almighty has firmly decreed regarding the mother and permitted regarding..." Regarding the stepdaughter, when they differed in opinion regarding his ruling, he wrote to Muʿāwiyah, informing him of the concessions granted by some scholars and the prohibitions upheld by others. Muʿāwiyah wrote back: "Your letter has reached me, and I have understood its content. I do not make lawful for you what Allah has forbidden to you, nor do I forbid you what Allah has made lawful for you. By my life, there are indeed many women"—and he did not add more than that. The man then brought Muʿāwiyah's letter and read it to the one who had consulted them. All of them said: "Muʿāwiyah has spoken the truth." Thereupon, he turned away from the woman and did not marry her.

وَطَائِفَةٌ تَوَقَّفَتْ فِي كُلِّ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا ابْنُ أَبِي أُوَيْسٍ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي الْمَوَالِي عَنْ عَبْدِ الْحَكَمِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرْوَةَ: أَنَّ رَجُلًا مِنْ بَنِي لَيْثٍ يُقَالُ لَهُ: ابْنُ الْأَجْدَعِ تَزَوَّجَ جَارِيَةً فَهَلَكَتْ وَلَمْ يَدْخُلْ بِهَا، فَخَطَبَ أُمَّهَا فَقَالَتْ: نَعَمْ، إِنْ كُنْتُ أَحِلُّ لَك؟ فَسَأَلَ نَاسًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمِنْهُمْ مَنْ أَرْخَصَ لَهُ وَمِنْهُمْ مَنْ نَهَاهُ وَقَالَ: إنَّ اللَّهَ عَزَّ وَجَلَّ قَدْ عَزَمَ فِي الْأُمِّ وَأَرْخَصَ فِي الرَّبِيبَةِ، فَلَمَّا اخْتَلَفُوا عَلَيْهِ كَتَبَ إلَى مُعَاوِيَةَ فَأَخْبَرَهُ إرْخَاصَ مَنْ أَرْخَصَ لَهُ وَنَهْيَ مَنْ نَهَاهُ؟ فَكَتَبَ إلَيْهِ مُعَاوِيَةُ: قَدْ جَاءَنِي كِتَابُك وَفَهِمْت الَّذِي فِيهِ، وَإِنِّي لَا أُحِلُّ لَك مَا حَرَّمَ اللَّهُ عَلَيْك، وَلَا أُحَرِّمُ عَلَيْك مَا أَحَلَّ اللَّهُ لَك، وَلَعَمْرِي إنَّ النِّسَاءَ كَثِيرٌ - وَلَمْ يَزِدْهُ عَلَى ذَلِكَ؟ فَجَاءَ بِكِتَابِ مُعَاوِيَةَ فَقَرَأَهُ الَّذِي سَأَلَهُمْ؟ فَكُلُّهُمْ قَالَ: صَدَقَ مُعَاوِيَةُ، قَالَ: فَانْصَرَفَ عَنْ الْمَرْأَةِ وَلَمْ يَتَزَوَّجْهَا.

L31414 Abu Muhammad said: The statement of Allah, Exalted and Majestic: "and your stepdaughters" [Quran 4:23] is syntactically linked to the aforementioned prohibitions; this is beyond doubt. And His statement, Exalted and Majestic: "those raised in your households" [Quran 4:23] is a descriptive

قَالَ أَبُو مُحَمَّدٍ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَرَبَائِبُكُمُ} [النساء: ٢٣] مَعْطُوفٌ عَلَى مَا حَرَّمَ، هَذَا مَا لَا شَكَّ فِيهِ - وَقَوْلُهُ عَزَّ وَجَلَّ: {اللاتِي فِي حُجُورِكُمْ} [النساء: ٢٣] نَعْتٌ لِلرَّبَائِبِ لَا يُمْكِنُ غَيْرُ ذَلِكَ أَلْبَتَّةَ.

clause qualifying the stepdaughters—no other interpretation is possible whatsoever.[42]

L31415 And His statement, the Exalted: {from the women with whom you have consummated marriage} [An-Nisa: 23] relates specifically to stepdaughters connected through marriage. Nothing else is permissible at all, for had it referred to His words, the Exalted: {and your wives' mothers} [An-Nisa: 23], the phrasing would have been "your wives' mothers who are among the women with whom you have consummated marriage"—and this is absurd in the wording.[43]

L31416 It is thereby confirmed that the exception applies specifically to "stepdaughters through marriage," and it is impermissible for it to extend to "mothers of the wives." And success comes only from Allah, the Exalted.

L31417 They also differed regarding the "stepdaughter." A group said: If he consummates the marriage with her mother, the daughter becomes forbidden to him, whether she was under his guardianship or not. It has been narrated to us from Jābir ibn ʿAbd Allāh: "If the mother dies before he has had intercourse with her, he may marry her daughter if he wishes." From the narration of Ḥammād ibn Salama, from Qatāda, from al-Ḥasan: ʿImrān ibn al-Ḥuṣayn was asked about a man who married a woman and divorced her before consummating the marriage. ʿImrān said: "Her mother is not lawful for him, whether he consummated the marriage with her or not. But if he divorces the mother before consummating the marriage, he may marry her daughter." This is the opinion of Abū Ḥanīfa, Mālik, and al-Shāfiʿī.

L31418–31420 A group held an opinion similar to our view - as we narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj: Ibrāhīm ibn ʿUbayd ibn Rifāʿah informed me, who was informed by Mālik ibn Aws ibn al-Ḥadathān al-Naṣrī, who said: "I had a wife who bore me a child, then she died. I grieved over her, so I met ʿAlī ibn Abī Ṭālib. He asked me: 'What is the matter with you?' I replied: 'My wife has died.' He inquired: 'Did she leave a daughter?' I said: 'Yes.' He asked: 'Was she under your guardianship?' I answered: 'No, she

وقَوْله تَعَالَى: {مِنْ نِسَائِكُمُ اللاتِي دَخَلْتُمْ بِهِنَّ} [النساء: ٢٣] مِنْ صِلَةِ الرَّبَائِبِ لَا يَجُوزُ غَيْرُ ذَلِكَ أَلْبَتَّةَ، إذْ لَوْ كَانَ رَاجِعًا إلَى قَوْله تَعَالَى: {وَأُمَّهَاتُ نِسَائِكُمْ} [النساء: ٢٣] لَكَانَ مَوْضِعُهُ أُمَّهَاتِ نِسَائِكُمْ مِنْ نِسَائِكُمْ اللَّاتِي دَخَلْتُمْ بِهِنَّ - وَهَذَا مُحَالٌ فِي الْكَلَامِ.

فَصَحَّ أَنَّ الِاسْتِثْنَاءَ فِي " الرَّبَائِبِ " خَاصَّةً، وَامْتَنَعَ أَنْ يَكُونَ رَاجِعًا إلَى " أُمَّهَاتِ النِّسَاءِ " وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَاخْتَلَفُوا أَيْضًا فِي " الرَّبِيبَةِ " فَقَالَتْ طَائِفَةٌ: إذَا دَخَلَ بِأُمِّهَا فَقَدْ حَرُمَتْ الْبِنْتُ عَلَيْهِ سَوَاءٌ كَانَتْ فِي حِجْرِهِ أَوْ لَمْ تَكُنْ -: رُوِّينَا عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ إنْ مَاتَتْ قَبْلَ أَنْ يَمَسَّهَا نَكَحَ ابْنَتَهَا إنْ شَاءَ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ أَنَّ عِمْرَانَ بْنَ الْحُصَيْنِ سُئِلَ عَنْ رَجُلٍ تَزَوَّجَ امْرَأَةً فَطَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا؟ فَقَالَ عِمْرَانُ: لَا تَحِلُّ لَهُ أُمُّهَا - دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ بِهَا - فَإِنْ طَلَّقَ الْأُمَّ قَبْلَ أَنْ يَدْخُلَ بِهَا تَزَوَّجَ ابْنَتَهَا - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ.

وَقَالَتْ طَائِفَةٌ بِمِثْلِ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إبْرَاهِيمُ بْنُ عُبَيْدِ بْنِ رِفَاعَةَ أَخْبَرَنِي مَالِكُ بْنُ أَوْسِ بْنِ الْحَدَثَانِ النَّصْرِيُّ قَالَ: كَانَ عِنْدِي امْرَأَةٌ قَدْ وَلَدَتْ لِي فَتُوُفِّيَتْ، فَوَجَدْت عَلَيْهَا، فَلَقِيت عَلِيَّ بْنَ أَبِي طَالِبٍ؟ فَقَالَ لِي: مَالَك؟ قُلْت: تُوُفِّيَتْ الْمَرْأَةُ، قَالَ: أَلَهَا ابْنَةٌ؟ قُلْت: نَعَمْ، قَالَ: كَانَتْ فِي حِجْرِك؟ قُلْت: لَا، هِيَ فِي الطَّائِفِ، قَالَ: فَانْكِحْهَا؟ قُلْت: وَأَيْنَ قَوْله تَعَالَى: {وَرَبَائِبُكُمُ اللاتِي

[42] **Qur'an references (L31414):** Qur'an 4:23 (An-Nisa).
[43] **Qur'an references (L31415):** Qur'an 4:23 (An-Nisa).

is in Ṭā’if.’ He said: ’Then marry her!’ I asked: ’What about Allah’s words: *”And your stepdaughters under your guardianship from your wives with whom you have consummated relations“* [4:23]?”’ He said: Indeed, she was not under your guardianship; rather, that applies only when she is under your guardianship.[44]

فِي حُجُورِكُمْ مِنْ نِسَائِكُمُ اللاتِي دَخَلْتُمْ بِهِنَّ} [النساء: ٢٣] قَالَ: إِنَّهَا لَمْ تَكُنْ فِي حِجْرِك وَإِنَّمَا ذَلِكَ إِذَا كَانَتْ فِي حِجْرِك.

L31421 From the path of Abū ‘Ubayd, narrated by Ḥajjāj—he is Ibn Muḥammad—from Ibn Jurayj, who said: Ibrāhīm ibn Maysarah informed me that a man from Banū Saw’ah named ‘Ubaydullāh ibn Ma‘bad—who was praised favorably—informed him that his father discovered him married to a woman who had a child from another man. They remained together as long as Allah Almighty willed, then he married a young woman. One of the sons from the first wife said to him: “You have married another after our mother, and she has grown old. You have replaced her with a young woman—divorce her!” He replied: “No, by Allah, unless you give me your daughter in marriage.” He said: So he divorced her and gave his daughter in marriage to him, though she was not under his guardianship, nor was her father the son of the elderly divorced woman. He said: I went to Sufyān ibn ‘Abdullāh and said: “Seek a legal ruling for me from ‘Umar ibn al-Khaṭṭāb!” He replied: “Will you come with me?” Then he brought me to ‘Umar, and I recounted the story to him. ‘Umar said: “There is no harm in that. Go ask so-and-so, then return and inform me.” He said: I believe he meant ‘Alī. He said: So I asked him, and he said: “There is no harm in that.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - عَنْ ابْنِ جُرَيْجٍ، قَالَ: أَخْبَرَنِي إِبْرَاهِيمُ بْنُ مَيْسَرَةَ: أَنَّ رَجُلًا مِنْ بَنِي سَوْأَةَ يُقَالُ لَهُ: عُبَيْدُ اللَّهِ بْنُ مَعْبَدٍ - أَثْنَى عَلَيْهِ خَيْرًا - أَخْبَرَهُ أَنَّ أَبَاهُ أَوْجَدَهُ نَكَحَ امْرَأَةً ذَاتَ وَلَدٍ مِنْ غَيْرِهِ، فَاصْطَحَبَا مَا شَاءَ اللَّهُ عَزَّ وَجَلَّ، ثُمَّ نَكَحَ امْرَأَةً شَابَّةً، فَقَالَ لَهُ أَحَدُ بَنِيِّ الْأُولَى: قَدْ نَكَحْت عَلَى أُمِّنَا وَكَبُرَتْ فَاسْتَغْنَيْتُ عَنْهَا بِامْرَأَةٍ شَابَّةٍ فَطَلِّقْهَا؟ قَالَ: لَا وَاَللَّهِ إِلَّا أَنْ تُنْكِحَنِي ابْنَتَك؟ قَالَ: فَطَلَّقَهَا وَأَنْكَحَهُ ابْنَتَهُ، وَلَمْ تَكُنْ فِي حِجْرِهِ وَلَا أَبُوهَا ابْنَ الْعَجُوزِ الْمُطَلَّقَةِ، قَالَ: فَجِئْت سُفْيَانَ بْنَ عَبْدِ اللَّهِ فَقُلْت لَهُ: اسْتَفْتِ لِي عُمَرَ بْنَ الْخَطَّابِ؟ قَالَ: لِتَجِيءَ مَعِي؟ فَأَدْخَلَنِي عَلَى عُمَرَ، فَقَصَصْتُ عَلَيْهِ الْخَبَرَ؟ فَقَالَ عُمَرُ: لَا بَأْسَ بِذَلِكَ وَاذْهَبْ فَسَلْ فُلَانًا ثُمَّ تَعَالَ فَأَخْبِرْنِي؟ قَالَ: وَلَا أَرَاهُ إِلَّا عَلِيًّا - قَالَ: فَسَأَلْته؟ فَقَالَ: لَا بَأْسَ بِذَلِكَ.

L31422 Abū Muḥammad said: It is not permissible to specify the stipulation of Allah, Exalted and Majestic, without textual evidence.

قَالَ أَبُو مُحَمَّدٍ: لَا يَجُوزُ تَخْصِيصُ شَرْطِ اللَّهِ عَزَّ وَجَلَّ بِغَيْرِ نَصٍّ.

L31423 Abū Muḥammad said: Some have said that the statement of the Exalted, “those with whom you have had intercourse” [an-Nisāʾ: 23] refers specifically to sexual intercourse—this is authentically reported from Ibn ʿAbbās, Ṭāwūs, ʿAmr ibn Dīnār, and ʿAbd al-Karīm al-Jazarī.[45]

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ قَالَ قَوْمٌ: قَوْله تَعَالَى: {اللاتِي دَخَلْتُمْ بِهِنَّ} [النساء: ٢٣] إِنَّمَا عَنَى الْجِمَاعَ - صَحَّ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَطَاوُسٍ، وَعَمْرِو بْنِ دِينَارٍ، وَعَبْدِ الْكَرِيمِ الْجَزَرِيِّ.

L31424 It is reported from Ibn Masʿūd that a kiss given to a mother who is getting married prohibits her daughter for marriage to the one who kissed her.

وَرُوِيَ عَنْ ابْنِ مَسْعُودٍ أَنَّ الْقُبْلَةَ لِلْأُمِّ الَّتِي تَتَزَوَّجُ تُحَرِّمُ ابْنَتَهَا.

[44] **Qur’an references (L31418):** Qur’an 4:23 (An-Nisa).
[45] **Qur’an references (L31423):** Qur’an 4:23 (An-Nisa).

L31425 It is authentically reported from ʿAṭāʾ that sexual intercourse entails uncovering, examining, and sitting between her legs—whether in his house or her family's house. He said: If he pinched without uncovering, her daughter would not thereby become forbidden to him.

وَرُوِيَ عَنْ عَطَاءٍ - وَصَحَّ عَنْهُ - أَنَّ الدُّخُولَ: هُوَ أَنْ يَكْشِفَ، وَيُفَتِّشَ، وَيَجْلِسَ بَيْنَ رِجْلَيْهَا، فِي بَيْتِهِ أَوْ فِي بَيْتِ أَهْلِهَا؟ قَالَ: فَلَوْ غَمَزَ وَلَمْ يَكْشِفْ لَمْ تُحَرَّمْ ابْنَتُهَا عَلَيْهِ بِذَلِكَ.

L31426 It has also been narrated from ʿAṭāʾ that the ruling is validated solely by the act of entering, even if no ritual action is performed.

وَرُوِيَ عَنْ عَطَاءٍ أَيْضًا: أَنَّهُ الدُّخُولُ فَقَطْ وَإِنْ لَمْ يَفْعَلْ شَيْئًا.

L31427 Abu Muhammad said: The dissenters—who disregard the stepdaughter's guardianship under her mother's husband and the consummation with her, both with corrupt effects—clamored in objection.

قَالَ أَبُو مُحَمَّد: وَشَغَبَ الْمُخَالِفُونَ الَّذِينَ لَا يُرَاعُونَ كَوْنَ الرَّبِيبَةِ فِي حِجْرِ زَوْجِ أُمِّهَا مَعَ دُخُولٍ بِهَا بِآثَارٍ فَاسِدَةٍ.

L31428 Among them is an interrupted-chain report transmitted through the chain of Ibn Wahb from Yahya ibn Ayyub from Al-Muthanna ibn Al-Sabbah from Amr ibn Shuʿayb from his father, that the Messenger of Allah—peace and blessings be upon him—said: "If a man marries a woman and consummates the marriage with her, it is not lawful for him to marry her daughter. But if he has not consummated the marriage with her, then he may marry her daughter."

مِنْهَا: خَبَرٌ مُنْقَطِعٌ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ الْمُثَنَّى بْنِ الصَّبَّاحِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَيُّمَا رَجُلٍ نَكَحَ امْرَأَةً فَدَخَلَ بِهَا فَلَا يَحِلُّ لَهُ نِكَاحُ ابْنَتِهَا فَإِنْ لَمْ يَدْخُلْ بِهَا فَلْيَنْكِحْهَا» .

L31429–31430 This [narrator] is rejected with an interrupted chain. Yaḥyā ibn Ayyūb and al-Muthannā are both weak.

وَهَذَا هَالِكٌ مُنْقَطِعٌ، وَيَحْيَى بْنُ أَيُّوبَ، وَالْمُثَنَّى: ضَعِيفَانِ.

L31431 Based on a narration from Wahb ibn Munabbih: Indeed, in the Torah it is written: "Whoever exposes the genital area of a woman and her daughter, he is cursed," and this is very strange.

وَبِخَبَرٍ عَنْ وَهْبِ بْنِ مُنَبِّهٍ: أَنَّ فِي التَّوْرَاةِ مَكْتُوبًا " مَنْ كَشَفَ عَنْ فَرْجِ امْرَأَةٍ وَابْنَتِهَا فَهُوَ مَلْعُونٌ " وَهَذَا طَرِيفٌ جِدًّا.

L31432 And with a report from the chain of Ibn Jurayj: I reported from Abu Bakr ibn Abd al-Rahman ibn Umm al-Hakam, who said: "A man asked: 'O Messenger of God, I committed adultery with a woman during the pre-Islamic era. May I marry her daughter?' He replied: 'I do not consider that permissible, nor is it fitting for you to marry a woman through whose daughter you would discover what you discovered from her.'" This chain is disconnected at two points.

وَبِخَبَرٍ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ: أَخْبَرَت عَنْ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أُمِّ الْحَكَمِ قَالَ: «قَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ زَنَيْت بِامْرَأَةٍ فِي الْجَاهِلِيَّةِ أَفَأَنْكِحُ ابْنَتَهَا؟ قَالَ: لَا أَرَى ذَلِكَ، وَلَا يَصْلُحُ لَك أَنْ تَنْكِحَ امْرَأَةً تَطَّلِعُ مِنْ ابْنَتِهَا عَلَى مَا تَطَّلِعُ عَلَيْهِ مِنْهَا» وَهَذَا مُنْقَطِعٌ فِي مَوْضِعَيْنِ.

L31433 Narrated through Ibn Wahb, from Yaḥyā ibn Ayyūb, from Ibn Jurayj: "The Prophet—peace and blessings of Allah be upon him—said concerning a man

who marries a woman and winks at her, not going beyond that: He must not marry her daughter." This chain is more interrupted.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ ابْنِ جُرَيْجٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فِي الَّذِي يَتَزَوَّجُ الْمَرْأَةَ فَيَغْمِزُهَا لَا يَزِيدُ عَلَى ذَلِكَ: أَنْ لَا يَتَزَوَّجَ ابْنَتَهَا» وَهَذَا أَشَدُّ انْقِطَاعًا.

L31434 And with the authentic report transmitted through Umm Habibah, the Mother of the Believers—may Allah be pleased with her—that she said to the Messenger of Allah (peace be upon him): "It has reached me that you propose to Durrah, the daughter of Abu Salamah?" He replied to her (peace be upon him): "By Allah, had she not been my stepdaughter, she would not have been permissible for me. She is indeed the daughter of my brother in breastfeeding."

وَبِالْخَبَرِ الثَّابِتِ مِنْ طَرِيقِ «أُمِّ حَبِيبَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّهَا قَالَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: بَلَغَنِي أَنَّكَ تَخْطُبُ دُرَّةَ بِنْتَ أَبِي سَلَمَةَ؟ فَقَالَ لَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: وَاَللَّهِ لَوْ لَمْ تَكُنْ رَبِيبَتِي مَا حَلَّتْ لِي، إنَّهَا لَابْنَةُ أَخِي فِي الرَّضَاعَةِ» .

L31435 They said: "Then did he not mention her being under his custody?" We replied: "Nor did he mention his consummation of marriage with her. This report only mentions that she is his stepdaughter, and by virtue of the marriage contract she becomes his stepdaughter. They do not disagree that this does not prohibit him from marrying her. How can this be, when this report was transmitted in this manner by Sufyān ibn ʿUyaynah and others—Hishām ibn ʿUrwah?"

قَالُوا: فَلَمْ يَذْكُرْ كَوْنَهَا فِي حِجْرِهِ؟ فَقُلْنَا: وَلَا ذَكَرَ دُخُولَهُ بِهَا أَيْضًا، إنَّمَا فِي هَذَا الْخَبَرِ كَوْنُهَا رَبِيبَةً لَهُ فَقَطْ وَبِعَقْدِ النِّكَاحِ تَكُونُ رَبِيبَتَهُ، وَلَا يَخْتَلِفُونَ أَنَّ ذَلِكَ لَا يُحَرِّمُهَا عَلَيْهِ أَنْ يَتَزَوَّجَهَا، فَكَيْفَ وَهَذَا خَبَرٌ هَكَذَا رَوَاهُ سُفْيَانُ بْنُ عُيَيْنَةَ وَغَيْرُهُ هِشَامُ بْنُ عُرْوَةَ.

L31436 It was narrated by someone no less than Hishām with additional clarification—as we have transmitted it through the chain of Abū Dāwūd al-Sijistānī: ʿAbdullāh ibn Muḥammad al-Nufaylī narrated to us; Zuhayr ibn Muʿāwiyah narrated to us; from Hishām ibn ʿUrwah; from ʿUrwah; from Zaynab bint Abī Salamah—that Umm Ḥabībah said in a lengthy hadith: "O Messenger of Allah, I was informed that you intend to marry the daughter of Abī Salamah." He responded: "The daughter of Abī Salamah?" She replied: "Yes." He said: "By Allah, even if she were not my stepdaughter under my care, she would not be lawful for me. She is the daughter of my milk brother."

وَرَوَاهُ مَنْ لَيْسَ دُونَ هِشَامٍ فَزَادَ بَيَانًا -: كَمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ نا زُهَيْرُ بْنُ مُعَاوِيَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ عُرْوَةَ عَنْ زَيْنَبَ بِنْتِ أَبِي سَلَمَةَ أَنَّ «أُمَّ حَبِيبَةَ قَالَتْ يَا رَسُولَ اللَّهِ - فِي حَدِيثٍ طَوِيلٍ - لَقَدْ أُخْبِرْتُ أَنَّكَ تَخْطُبُ بِنْتَ أَبِي سَلَمَةَ قَالَ: بِنْتَ أَبِي سَلَمَةَ؟ قُلْت: نَعَمْ، قَالَ: أَمَا وَاَللَّهِ لَوْ لَمْ تَكُنْ رَبِيبَتِي فِي حِجْرِي مَا حَلَّتْ لِي، إنَّهَا ابْنَةُ أَخِي مِنْ الرَّضَاعَةِ» .

L31437 Thus, it was narrated by Abu Usamah, Yahya ibn Zakariyya ibn Abi Za'idah, and Al-Layth ibn Sa'd—all of them transmitting from Hisham ibn 'Urwah. They affirmed therein the mention of the Prophet, peace and blessings be upon him, regarding her being under his guardianship.

وَهَكَذَا رَوَاهُ أَبُو أُسَامَةَ، وَيَحْيَى بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ، وَاللَّيْثُ بْنُ سَعْدٍ. كُلُّهُمْ عَنْ هِشَامِ بْنِ عُرْوَةَ، فَأَثْبَتُوا فِيهِ ذِكْرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَوْنَهَا فِي حِجْرِهِ.

وَهَكَذَا رُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْيَمَانِ الْحَكَمُ بْنُ نَافِعٍ أَخْبَرَنَا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ - عَنِ الزُّهْرِيِّ أَخْبَرَنِي عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ أَنَّ زَيْنَبَ بِنْتَ أُمِّ سَلَمَةَ أَخْبَرَتْهُ: أَنَّ أُمَّ حَبِيبَةَ بِنْتَ أَبِي سُفْيَانَ أَخْبَرَتْهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَذَا الْخَبَرِ، وَفِيهِ «لَوْ أَنَّهَا لَمْ تَكُنْ رَبِيبَتِي فِي حِجْرِي» وَلَا شَكَّ، وَلَا خِلَافَ فِي أَنَّهُ خَبَرٌ وَاحِدٌ فِي مَوْطِنٍ وَاحِدٍ عَنْ قِصَّةٍ وَاحِدَةٍ أَسْقَطَ بَعْضُ الرُّوَاةِ لَفْظَةً أَثْبَتَهَا غَيْرُهُ مِمَّنْ هُوَ مِثْلُهُ وَفَوْقَهُ فِي الْحِفْظِ، فَلَا يَحِلُّ الِاحْتِجَاجُ بِالْأَنْقَصِ عَلَى خِلَافِ مَا فِي الْقُرْآنِ.

L31438–31440 And similarly, we have also narrated it through the chain of Al-Bukhārī: from Abū Al-Yamān Al-Ḥakam ibn Nāfiʿ, who reported to us... Shuʿayb—he is Ibn Abī Ḥamzah—narrated from al-Zuhrī, who reported to me from ʿUrwah ibn al-Zubayr that Zaynab bint Umm Salamah informed him: Umm Ḥabībah bint Abī Sufyān informed her on the authority of the Messenger of Allah—peace and blessings be upon him—concerning this report, which includes the statement: "If she had not been my stepdaughter under my guardianship." There is no doubt and no disagreement that this is a single report within one context regarding a single incident, where some narrators omitted a word preserved by others—those equal to him or superior in memorization. Thus, it is impermissible to cite the less complete narration in contradiction to what is established in the Qur'an.

وَمَوَّهُوا بِجَمَاقَاتٍ -: مِثْلُ أَنْ قَالُوا: أَرَادَ اللَّهُ عَزَّ وَجَلَّ بِقَوْلِهِ: {فِي حُجُورِكُمْ} [النساء: ٢٣] عَلَى الْأَغْلَبِ.

L31441 They disguised [their errors] with absurdities: such as when they said, "Allah, the Mighty and Majestic, intended by His statement 'in your bosoms' [An-Nisāʾ 4:23] according to the majority opinion."[46]

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَذِبٌ عَلَى اللَّهِ تَعَالَى، وَإِخْبَارٌ عَنْهُ عَزَّ وَجَلَّ بِالْبَاطِلِ وَمِثْلُ قَوْلِهِمْ هَذَا كَقَوْلِهِ تَعَالَى: {إِنَّا أَحْلَلْنَا لَكَ أَزْوَاجَكَ اللاتِي آتَيْتَ أُجُورَهُنَّ} [الأحزاب: ٥٠] وَلَيْسَ ذَلِكَ بِمُحَرِّمٍ عَلَيْهِ اللَّاتِي لَمْ يُؤْتِهِنَّ أُجُورَهُنَّ؟ .

L31442 Abu Muhammad said: This is a lie against Allah the Exalted and a false report about Him, the Almighty and Majestic. Their statement resembles His declaration: {We have made lawful for you your wives to whom you have given their bridal gifts (mahr)} [Al-Ahzab: 50]. Would it not then be forbidden for him [to marry] those women whom he did not give their bridal gifts (mahr)?[47]

فَقُلْنَا: لَوْ لَمْ يَأْتِ نَصٌّ آخَرُ بِإِحْلَالِ الْمَوْهُوبَةِ وَالَّتِي لَمْ يُفْرَضْ لَهَا فَرِيضَةٌ لَمَا حَلَّتْ إِلَّا اللَّاتِي يُؤْتِيهِنَّ أُجُورَهُنَّ، وَأَنْتُمْ لَا نَصَّ فِي أَيْدِيكُمْ يُحَرِّمُ الَّتِي لَمْ تَكُنْ فِي حِجْرِهِ مِنَ الرَّبَائِبِ.

L31443 So we said: Had there not been another explicit textual evidence permitting the woman given in marriage without a dowry and those for whom no dowry was stipulated, they would not have been lawful except for those to whom their dowries were given. And you possess no textual evidence that prohibits stepdaughters who were not under his guardianship.

وَمِثْلُ قَوْلِهِمْ: كُلُّ تَحْرِيمٍ لَهُ سَبَبَانِ، فَإِنَّ أَحَدَهُمَا إِذَا انْفَرَدَ كَانَ لَهُ تَأْثِيرٌ؟

L31444 "And similar to their statement: 'For every prohibition grounded in two legal reasons - if one reason exists independently, does it still produce legal consequences?'"

[46] **Qur'an references (L31441):** Qur'an 4:23 (An-Nisa).
[47] **Qur'an references (L31442):** Qur'an 33:50 (Al-Ahzab).

L31445 Ali said: "This is sheer falsehood. Rather, it has no effect unless its concurrence in the explicitly stipulated cause occurs alongside it."

قَالَ عَلِيٌّ: وَهَذَا كَذِبٌ مُجَرَّدٌ، بَلْ لَا تَأْثِيرَ لَهُ دُونَ اجْتِمَاعِهِ فِي السَّبَبِ الْمَنْصُوصِ عَلَيْهِ مَعَهُ.

L31446 They claimed that Ibrāhīm ibn ʿUbayd, who narrated from ʿAlī regarding the permissibility of that, is unknown? ʿAlī said: Rather, they have lied. He is well-known and trustworthy; Muslim and others narrated from him in *the Ṣaḥīḥ*.

وَادَّعَوْا أَنَّ إبْرَاهِيمَ بْنَ عُبَيْدٍ الَّذِي رَوَى عَنْ عَلِيٍّ إبَاحَةَ ذَلِكَ مَجْهُولٌ؟ قَالَ عَلِيٌّ: بَلْ كَذَبُوا، هُوَ مَشْهُورٌ ثِقَةٌ، رَوَى مُسْلِمٌ وَغَيْرُهُ عَنْهُ فِي الصَّحِيحِ.

L31447 Thus, the invalidity of their statement became undeniably clear — and all praise is due to Allah, Lord of the worlds.[48]

فَوَضَحَ فَسَادُ قَوْلِهِمْ بِيَقِينٍ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L31448 **A legal ruling on the impermissibility of simultaneously marrying a woman along with her father's wife, her son's wife, or her paternal uncle's daughter.**

[مَسْأَلَةٌ الْجَمْعُ بَيْنَ امْرَأَةٍ وَزَوْجَةِ أَبِيهَا وَزَوْجَةِ ابْنِهَا وَابْنَةِ عَمِّهَا]

L31449 1865 - Issue: It is permissible for a man to be concurrently married to a woman, her father's wife, her son's wife, and her paternal uncle's daughter through agnatic lineage, as there is no explicit text prohibiting any of that. This is the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʿī, and Abū Sulaymān.

١٨٦٥ - مَسْأَلَةٌ: وَجَائِزٌ لِلرَّجُلِ أَنْ يَجْمَعَ بَيْنَ امْرَأَةٍ وَزَوْجَةِ أَبِيهَا، وَزَوْجَةِ ابْنِهَا وَابْنَةِ عَمِّهَا لَحًّا، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِتَحْرِيمِ شَيْءٍ مِنْ ذَلِكَ - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L31450 Similarly, the wife of his mother's husband is permissible for him to marry. In this matter, there is an ancient scholarly disagreement, but we know of no one who upholds this opinion today.

وَكَذَلِكَ تَحِلُّ لَهُ امْرَأَةُ زَوْجِ أُمِّهِ، وَفِي هَذَا خِلَافٌ قَدِيمٌ لَا نَعْلَمُ أَحَدًا يَقُولُ بِهِ الْآنَ.

L31451–31452 Similarly, the marriage of a eunuch (al-khaṣī), an infertile man (al-ʿaqīm), or a sterile man (al-ʿāqir) is permissible because there is no explicit textual prohibition against any of these cases. And with Allah alone is success.

وَكَذَلِكَ يَجُوزُ نِكَاحُ: الْخَصِيِّ، وَالْعَقِيمِ، وَالْعَاقِرِ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِنَهْيٍ عَنْ شَيْءٍ مِنْ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31453 **A legal issue: Intercourse with a forbidden woman is not prohibited within a lawful marriage, except in one specific case.**

[مَسْأَلَةٌ لَا يُحَرِّمُ وَطْءُ حَرَامٍ نِكَاحًا حَلَالًا إلَّا فِي مَوْضِعٍ وَاحِدٍ]

L31454 1866. Issue: Unlawful intercourse does not prohibit a lawful marriage

[48] **Qur'an references (L31447):** Qur'an 37:182 (As-Saffat).

except in one instance: if a man commits unlawful intercourse with a woman, she is permanently forbidden to marry anyone descended from him.

١٨٦٦ - مَسْأَلَةٌ: وَلَا يُحَرَّمُ وَطْءُ حَرَامٍ نِكَاحًا حَلَالًا إلَّا فِي مَوْضِعٍ وَاحِدٍ: وَهُوَ أَنْ يَزْنِيَ الرَّجُلُ بِامْرَأَةٍ، فَلَا يَحِلُّ نِكَاحُهَا لِأَحَدٍ مِمَّنْ تَنَاسَلَ مِنْهُ أَبَدًا.

L31455 If the son commits fornication with her and she subsequently repents, marrying her is not prohibited for his father or grandfather as a result of that act.

وَأَمَّا لَوْ زَنَى الِابْنُ بِهَا ثُمَّ تَابَتْ لَمْ يَحْرُمْ بِذَلِكَ نِكَاحُهَا عَلَى أَبِيهِ وَجَدِّهِ.

L31456 Whoever commits illicit intercourse with a woman not permanently forbidden to him may, if he repents, marry her mother or her daughter. In all these matters, the invalid marriage (nikāḥ fāsid) and illicit intercourse (zina) are equivalent.

وَمَنْ زَنَى بِامْرَأَةٍ لَمْ يَحْرُمْ عَلَيْهِ إذَا تَابَ أَنْ يَتَزَوَّجَ أُمَّهَا، أَوْ ابْنَتَهَا - وَالنِّكَاحُ الْفَاسِدُ وَالزِّنَا فِي هَذَا كُلِّهِ سَوَاءٌ.

L31457 The proof of that is: the statement of Allah, the Exalted and Majestic: "And do not marry what your fathers married from among the women" (4:22).[49]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ} [النساء: ٢٢] .

L31458 Abū Muḥammad said: In the language through which the Quran was revealed, the term "nikah" applies to two matters—one being sexual intercourse, whether lawful or unlawful, and the other being the contract. It is impermissible to restrict the scope of the Quranic verse by a claim unsupported by scriptural evidence from Allah the Exalted or His Messenger (peace be upon him). Therefore, whichever sexual union a man has with a woman—whether she is free or enslaved, lawful or unlawful—she becomes forbidden to his son by the explicit text of the Quran.

قَالَ أَبُو مُحَمَّدٍ: النِّكَاحُ فِي اللُّغَةِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ يَقَعُ عَلَى شَيْئَيْنِ -: أَحَدُهُمَا - الْوَطْءُ، كَيْفَ كَانَ بِحَرَامٍ أَوْ بِحَلَالٍ. وَالْآخَرُ - الْعَقْدُ، فَلَا يَجُوزُ تَخْصِيصُ الْآيَةِ بِدَعْوَى بِغَيْرِ نَصٍّ مِنْ اللَّهِ تَعَالَى، أَوْ مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَيُّ نِكَاحٍ نَكَحَ الرَّجُلُ الْمَرْأَةَ - حُرَّةً أَوْ أَمَةً بِحَلَالٍ أَوْ بِحَرَامٍ - فَهِيَ حَرَامٌ عَلَى وَلَدِهِ بِنَصِّ الْقُرْآنِ.

L31459 We have elucidated that the child of one's child is considered a child based on the words of Allah, the Exalted: "O children of Adam" [Sūrat al-Aʿrāf (7:27)].[50]

وَقَدْ بَيَّنَّا أَنَّ وَلَدَ الْوَلَدِ وَلَدٌ بِقَوْلِهِ تَعَالَى: {يَا بَنِي آدَمَ} [الأعراف: ٢٧] .

L31460 And this is the statement of Abū Ḥanīfah and a group from the Salaf.

وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَجَمَاعَةٍ مِنْ السَّلَفِ.

L31461 There is no text prohibiting a lawful marriage due to unlawful intercourse; therefore, asserting it as forbidden is impermissible, because this constitutes legislating what Allah, the Almighty and Majestic, has not authorized.

وَلَمْ يَأْتِ نَصٌّ بِتَحْرِيمِ نِكَاحٍ حَلَالٍ مِنْ أَجْلِ وَطْءٍ حَرَامٍ، فَالْقَوْلُ بِهِ لَا يَحِلُّ؛ لِأَنَّهُ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ عَزَّ وَجَلَّ.

[49] **Qur'an references (L31457):** Qur'an 4:22 (An-Nisa).
[50] **Qur'an references (L31459):** Qur'an 7:27 (Al-A'raf).

L31462 Among those from whom it has been narrated that unlawful intercourse invalidates the lawful marriage is Ibn Abbas, as it has been reported that he separated a man from his wife after she had borne him seven sons—all of whom reached adulthood and carried weapons—because the man had engaged in unlawful sexual intercourse with her mother.

وَمِمَّنْ رُوِّينَا عَنْهُ أَنَّ وَطْءَ الْحَرَامِ يُحَرِّمُ الْحَلَالَ -: رُوِّينَا ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَأَنَّهُ فَرَّقَ بَيْنَ رَجُلٍ وَامْرَأَتِهِ بَعْدَ أَنْ وَلَدَتْ لَهُ سَبْعَةَ رِجَالٍ كُلُّهُمْ صَارَ رَجُلًا يَحْمِلُ السِّلَاحَ، لِأَنَّهُ كَانَ أَصَابَ مِنْ أُمِّهَا مَا لَا يَحِلُّ.

L31463 And from Mujāhid: A man who has committed fornication with a woman is not permitted to marry her mother.

وَعَنْ مُجَاهِدٍ: لَا يَصْلُحُ لِرَجُلٍ فَجَرَ بِامْرَأَةٍ أَنْ يَتَزَوَّجَ أُمَّهَا.

L31464 From the chain of Shuʿbah from al-Ḥakam ibn ʿUtaybah, who said: Ibrāhīm al-Nakhaʿī said: "If the lawful results in the unlawful, then the unlawful is more strictly forbidden."

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: قَالَ إبْرَاهِيمُ النَّخَعِيُّ: إذَا كَانَ الْحَلَالُ يُحَرِّمُ الْحَرَامَ فَالْحَرَامُ أَشَدُّ تَحْرِيمًا.

L31465–31467 and from Ibn Ma'qil said: This act is not permissible in the lawful, so how could it be permissible for him in the unlawful? Via the chain of Waki' on the authority of Jarīr ibn Ḥāzim from Qays ibn Sa'd from Mujāhid, who said: If he kisses her, touches her, or looks at her private part with desire, her mother and her daughter are prohibited to him.

وَعَنْ ابْنُ مَعْقِلٍ: هِيَ لَا تَحِلُّ فِي الْحَلَالِ فَكَيْفَ تَحِلُّ لَهُ فِي الْحَرَامِ وَمِنْ طَرِيقِ وَكِيع عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ مُجَاهِدٍ قَالَ: إذَا قَبَّلَهَا أَوْ لَامَسَهَا أَوْ نَظَرَ إلَى فَرْجِهَا مِنْ شَهْوَةٍ حُرِّمَتْ عَلَيْهِ أُمُّهَا وَابْنَتُهَا.

L31468 From the chain of Waki' via 'Abdullāh ibn Masīḥ, who said: I asked Ibrāhīm al-Nakhaʿī about a man who committed fornication with a woman and then wished to purchase her mother or marry her. He disliked that.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسِيحٍ قَالَ: سَأَلْتُ إبْرَاهِيمَ النَّخَعِيّ عَنْ رَجُلٍ فَجَرَ بِامْرَأَةٍ فَأَرَادَ أَنْ يَشْتَرِيَ أُمَّهَا أَوْ يَتَزَوَّجَهَا؟ فَكَرِهَ ذَلِكَ.

L31469 From Sufyan ibn Uyaynah from Amr ibn Dinar: He asked Ikrimah, the freed slave of Ibn Abbas, about a man who committed fornication with a woman. Is it valid for him to marry a female slave whom the woman breastfed after that act? He said: No.

وَعَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ: أَنَّهُ سَأَلَ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ عَنْ رَجُلٍ فَجَرَ بِامْرَأَةٍ أَيَصْلُحُ لَهُ أَنْ يَتَزَوَّجَ جَارِيَةً أَرْضَعَتْهَا هِيَ بَعْدَ ذَلِكَ؟ قَالَ: لَا.

L31470 Narrated from Al-Sha'bi: What is deemed prohibited (haram) within lawful (halal) matters remains prohibited (haram) within prohibited (haram) matters.

وَعَنْ الشَّعْبِيِّ مَا كَانَ فِي الْحَلَالِ حَرَامًا فَهُوَ فِي الْحَرَامِ حَرَامٌ.

L31471 From Saʿīd ibn al-Musayyib, Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, and ʿUrwah ibn al-Zubayr concerning one who fornicates with a woman: it is never permissible for him to marry her daughter. Is this the opinion of Sufyān al-Thawrī?—Indeed. We have received a narration via al-Bukhārī's chain, which states: "It is reported from Yaḥyā al-Kindī via al-Shaʿbī and Abū

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَعُرْوَةَ بْنِ الزُّبَيْرِ فِيمَنْ زَنَى بِامْرَأَةٍ أَنَّهُ لَا يَصْلُحُ لَهُ أَنْ يَتَزَوَّجَ ابْنَتَهَا أَبَدًا - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ؟ نَعَمْ، وَلَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ قَالَ: يُرْوَى عَنْ يَحْيَى الْكِنْدِيِّ عَنْ الشَّعْبِيِّ، وَأَبِي جَعْفَرٍ

Jaʿfar Muḥammad ibn ʿAlī ibn al-Ḥusayn, both of whom concurred: ’Whoever commits sodomy with a boy may not marry the boy’s mother.”’ This is also the view of al-Awzāʿī, who further asserted: “Whoever sodomizes a boy, it is unlawful for the perpetrator to marry the daughter of the sodomized individual.”

مُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ، قَالَا جَمِيعًا: مَنْ أَوْلَجَ فِي صَبِيٍّ فَلَا يَتَزَوَّجُ أُمَّهُ - وَبِهِ يَقُولُ الْأَوْزَاعِيُّ حَتَّى أَنَّهُ قَالَ: مَنْ لَاطَ بِغُلَامٍ لَمْ يَحِلَّ لِلْفَاعِلِ أَنْ يَتَزَوَّجَ ابْنَةَ الْمَفْعُولِ بِهِ.

L31472 Abu Hanifah and his companions stated: If a man touches with forbidden desire or gazes at her private part with desire, it becomes impermissible for him to marry her mother or daughter, and marrying her is forever forbidden to her father and her son. This represents one of Malik’s two positions, except that he only imposes prohibition through actual intercourse alone.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، إِذَا لَمَسَ لِشَهْوَةٍ حَرَامًا، أَوْ نَظَرَ إِلَى فَرْجِهَا لِشَهْوَةٍ لَمْ يَحِلَّ لَهُ نِكَاحُ أُمِّهَا وَلَا ابْنَتِهَا، وَحُرِّمَ نِكَاحُهَا عَلَى أَبِيهِ وَابْنِهِ أَبَدًا، وَهُوَ أَحَدُ قَوْلَيْ مَالِكٍ، إِلَّا أَنَّهُ لَا يُحَرِّمُ فِيهِ إِلَّا بِالْوَطْءِ فَقَطْ.

L31473 Others differed from them, as they did not invalidate a lawful marriage because of unlawful sexual intercourse—this has also been narrated to us on the authority of Ibn Abbas.

وَخَالَفَهُمْ آخَرُونَ: فَلَمْ يُحَرِّمُوا بِوَطْءٍ حَرَامٍ نِكَاحًا حَلَالًا - رُوِّينَا ذَلِكَ أَيْضًا عَنِ ابْنِ عَبَّاسٍ.

L31474 From the chain of Hammad ibn Salamah, Yahya ibn Ya’mur reported to us, saying: “The unlawful does not make the lawful unlawful.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا يَحْيَى بْنُ يَعْمُرَ قَالَ: لَا يُحَرِّمُ الْحَرَامُ الْحَلَالَ.

L31475 From the path of Abū ’Ubayd: Yaḥyā ibn Sa’īd (he is al-Qaṭṭān) narrated to us from Ibn Abī Dhi’b, who narrated to us from his maternal uncle al-Ḥārith ibn ’Abd al-Raḥmān, from Sa’īd ibn al-Musayyib and ’Urwah ibn al-Zubayr, who jointly stated: “The ḥarām does not render the ḥalāl forbidden.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْقَطَّانُ - نا ابْنُ أَبِي ذِئْبٍ عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، قَالَا جَمِيعًا: الْحَرَامُ لَا يُحَرِّمُ الْحَلَالَ.

L31476 Narrated via ʿAbd al-Razzāq → Maʿmar → al-Zuhrī: He was asked about someone who fornicated with a woman. He replied: “The forbidden does not prohibit the permissible.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ: أَنَّهُ سُئِلَ عَمَّنْ فَجَرَ بِامْرَأَةٍ؟ فَقَالَ: لَا يُحَرِّمُ الْحَرَامُ الْحَلَالَ.

L31477–31479 And via the chain of transmission of Mujāhid and Saʿīd ibn Jubayr, both said collectively: “The unlawful does not render the lawful unlawful” - and this is [the ruling]. One of the two opinions of Mālik—and it is the opinion of Al-Layth ibn Saʿd, Al-Shāfiʿī, Abū Sulaymān, the followers of Al-Layth and Al-Shāfiʿī, and the scholars of our school.

وَمِنْ طَرِيقِ مُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، قَالَا جَمِيعًا: لَا يُحَرِّمُ الْحَرَامُ الْحَلَالَ - وَهُوَ أَحَدُ قَوْلَيْ مَالِكٍ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا، وَأَصْحَابِنَا.

L31480 Abu Muhammad said: Those who prohibit that argued by analogy on the generality of His statement, the Almighty and Majestic: “And do not marry

those women whom your fathers married from among the women." [An-Nisa: 22].[51]

قَالَ أَبُو مُحَمَّد: احْتَجَّ الْمَانِعُونَ مِنْ ذَلِكَ بِالْقِيَاسِ عَلَى عُمُومِ قَوْلِهِ عَزَّ وَجَلَّ: {وَلا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ} [النساء: ٢٢] .

L31481 And with two mursal narrations—in one of them Ibn Jurayj reported from Ibn Bakr ibn ʿAbd al-Raḥmān ibn Umm al-Ḥakam: "A man asked the Messenger of Allah (peace and blessings be upon him) about a woman with whom he had committed fornication during the pre-Islamic era: 'May I now marry her daughter?' He (peace and blessings be upon him) replied: 'I do not see that as permissible, nor is it suitable for you to marry the daughter, for through her you might be reminded of what you once committed with her mother.'"

وَبِمُرْسَلَيْنِ -: فِي أَحَدِهِمَا ابْنُ جُرَيْجٍ: أَخْبَرْت عَنْ ابْنِ بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أُمِّ الْحَكَمِ: «أَنَّ رَجُلًا سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ امْرَأَةٍ كَانَ زَنَى بِهَا فِي الْجَاهِلِيَّةِ أَيَنْكِحُ الْآنَ ابْنَتَهَا؟ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا أَرَى ذَلِكَ وَلَا يَصْلُحُ لَكَ أَنْ تَنْكِحَ امْرَأَةً تَطَّلِعُ مِنْ ابْنَتِهَا عَلَى مَا اطَّلَعْتَ عَلَيْهِ مِنْهَا» .

L31482 The other narration is transmitted via al-Ḥajjāj ibn Arṭā'ah from Abū Hāni' who said: The Messenger of Allah (peace and blessings be upon him) said, "Whoever looks at the private part of a woman, her mother and daughter are not lawful to him."

وَالْآخَرُ - فِيهِ الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ أَبِي هَانِئٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ نَظَرَ إلَى فَرْجِ امْرَأَةٍ لَمْ تَحِلَّ لَهُ أُمُّهَا وَلَا ابْنَتُهَا» .

L31483 Abu Muhammad said: As for the analogy based on the verse, the analogy in its entirety is invalid.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْقِيَاسُ عَلَى الْآيَةِ فَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L31484 As for the two reports—they are both mursal, and no valid proof exists in a mursal report, particularly since one contains another break in the chain. Moreover, Abū Bakr ibn ʿAbd al-Raḥmān ibn Umm al-Ḥakam is unknown. In the other report, al-Ḥajjāj ibn Arṭāh—a discredited narrator—narrates from Abū Hāni', who is also unknown.

وَأَمَّا الْخَبَرَانِ - فَمُرْسَلَانِ، وَلَا حُجَّةَ فِي مُرْسَلٍ، لَا سِيَّمَا وَفِي أَحَدِهِمَا: انْقِطَاعٌ آخَرُ، وَأَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أُمِّ الْحَكَمِ مَجْهُولٌ - وَفِي الْآخَرِ: الْحَجَّاجُ بْنُ أَرْطَاةَ - وَهُوَ هَالِكٌ - عَنْ أَبِي هَانِئٍ - وَهُوَ مَجْهُولٌ.

L31485 Another report contradicts both—not cited as proof, but to counter the flawed argument with a narration no less valid. This is the report transmitted through the chain of Abdullah ibn Nafi' from al-Mughirah ibn Isma'il from Uthman ibn Abd al-Rahman al-Zuhri from Ibn Shihab from Urwah from Aishah: "The Messenger of Allah—peace and blessings be upon him—was asked about a man who engaged in unlawful relations with a woman: may he marry her daughter or her mother? He replied: 'Unlawful acts do not establish prohibitions; only lawful marriages create such restrictions.'"

وَقَدْ عَارَضَهُمَا خَبَرٌ آخَرُ - لَا نُورِدُهُ احْتِجَاجًا بِهِ، لَكِنْ مُعَارَضَةً لِلْفَاسِدِ بِمَا إنْ لَمْ يَكُنْ أَحْسَنَ مِنْهُ لَمْ يَكُنْ دُونَهُ، وَهُوَ مَا رُوِيَ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ نَافِعٍ عَنْ الْمُغِيرَةِ بْنِ إسْمَاعِيلَ عَنْ عُثْمَانَ بْنِ عَبْدِ الرَّحْمَنِ الزُّهْرِيِّ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَمَّنْ اتَّبَعَ امْرَأَةً حَرَامًا أَيَنْكِحُ ابْنَتَهَا أَوْ أُمَّهَا؟ فَقَالَ: لَا يُحَرِّمُ الْحَرَامُ، وَإِنَّمَا يُحَرِّمُ مَا كَانَ نِكَاحًا حَلَالًا» .

[51] **Qur'an references (L31480):** Qur'an 4:22 (An-Nisa).

L31486 They also obscured the matter by stating: "Whoever intentionally and knowingly has intercourse with his bondwoman or wife while she is menstruating, or when either the man or the woman is in a state of ritual consecration (iḥrām), in seclusion (iʿtikāf), during the daytime in Ramadan, or with his idolatrous or protected non-Muslim (dhimmī) bondwoman – this constitutes unlawful intercourse." There is no disagreement that such intercourse renders her mother and daughter forbidden to him for marriage and makes her unlawful for his father and sons to marry. Does this ruling apply similarly to every form of unlawful intercourse?

وَمَوَّهُوا أَيْضًا - بِأَنْ قَالُوا: مَنْ وَطِئَ أَمَتَهُ، أَوْ امْرَأَتَهُ حَائِضًا، أَوْ إحْدَاهُمَا: مُحْرِمٌ، أَوْ مُعْتَكِفٌ، أَوْ فِي نَهَارِ رَمَضَانَ، أَوْ أَمَتَهُ الْوَثَنِيَّةَ، أَوْ ذِمِّيَّةً، عَمْدًا، ذَاكِرًا، فَإِنَّهُ وَطِئَ حَرَامًا - وَلَا خِلَافَ فِي أَنَّهُ وَطْءٌ مُحَرِّمٌ لِأُمِّهَا وَابْنَتِهَا، وَمُحَرِّمٌ لَهَا عَلَى آبَائِهِ، وَبَنِيهِ، فَكَذَلِكَ كُلُّ وَطْءٍ حَرَامٍ؟

L31487–31489 Abu Muhammad said: It is not as they said; rather, he consummated a lawful marital bed, but it was prohibited due to an effective cause that, if… The prohibition was lifted, and there is no dispute that it is not lawful for him, for he has not engaged in intercourse except with his wife or a legally valid female slave. Thus, the difference between the two matters became evident - and success is from Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ كَمَا قَالُوا، بَلْ وَطِئَ فِرَاشًا حَلَالًا، وَإِنَّمَا حُرِّمَ لِعِلَّةٍ لَوْ ارْتَفَعَتْ حَلَّ، وَلَا خِلَافَ فِي أَنَّهُ لَا حِلَّ عَلَيْهِ، لِأَنَّهُ لَمْ يَطَأْ إلَّا زَوْجَتَهُ، أَوْ مِلْكَ يَمِينٍ صَحِيحٍ، فَلَاحَ الْفَرْقُ بَيْنَ الْأَمْرَيْنِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31490 They also obscured [the matter] by stating: "Whoever engages in sexual intercourse under an invalid contract—whether out of ignorance or other circumstances—commits religiously prohibited intercourse. This act makes her mother and daughter forbidden for marriage to him, and forbids her for marriage to his father and son."

وَمَوَّهُوا أَيْضًا - بِأَنْ قَالُوا: مَنْ وَطِئَ فِي عَقْدٍ فَاسِدٍ - بِجَهْلٍ أَوْ بِغَيْرِهِ - فَهُوَ وَطْءٌ مُحَرَّمٌ، وَهُوَ يُحَرِّمُ أُمَّهَا وَابْنَتَهَا، وَيُحَرِّمُهَا عَلَى أَبِيهِ وَابْنِهِ.

L31491 Abū Muḥammad said: There is no valid proof for them regarding its validity—neither from the Qur'ān, nor from the Sunnah, nor is there any proof outside these two. We affirm: It is permissible for his son to marry her, and permissible for him to marry her mother and her daughter, for she is neither his wife nor his slave-concubine. Her mother and daughter are not forbidden to him, nor is she forbidden for his father to marry, as she is not among his son's spouses or his wives. Had she been such, then it would not be permissible for him to annul the marriage contract with her, and they would have mutual inheritance rights. Since no mutual inheritance rights exist between them, it is established that she is not among his wives. She is forbidden solely to the son, because she is among those whom the father married if he consummated it; otherwise, she is not forbidden to him.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِي صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا حُجَّةَ فِي سِوَاهُمَا - وَنَحْنُ نَقُولُ: إنَّهَا حَلَالٌ لِوَلَدِهِ أَنْ يَنْكِحَهَا، وَحَلَالٌ لَهُ نِكَاحُ أُمِّهَا وَابْنَتِهَا، لِأَنَّهَا لَيْسَتْ زَوْجَةً لَهُ، وَلَا مِلْكَ يَمِينٍ، وَلَا تُحَرَّمُ عَلَيْهِ أُمُّهَا، وَلَا ابْنَتُهَا، وَلَا تُحَرَّمُ عَلَى وَالِدِهِ، لِأَنَّهَا لَيْسَتْ مِنْ حَلَائِلِ ابْنِهِ، وَلَا مِنْ نِسَائِهِ، وَلَوْ كَانَتْ كَذَلِكَ لَمَا حَلَّ أَنْ يَفْسَخَ نِكَاحَهُ مِنْهَا، وَلَتَوَارَثَا، فَلَمَّا لَمْ يَكُنْ بَيْنَهُمَا مِيرَاثٌ صَحَّ أَنَّهَا لَيْسَتْ مِنْ نِسَائِهِ، وَإِنَّمَا تُحَرَّمُ عَلَى الِابْنِ فَقَطْ، لِأَنَّهَا مِمَّا نَكَحَ أَبُوهُ إنْ كَانَ وَطِئَهَا، وَإِلَّا فَلَا تُحَرَّمُ عَلَيْهِ.

L31492 They also obscured the matter by asserting: “Whoever has intercourse with a slave woman jointly owned by him and others, this constitutes ḥarām intercourse. As a result, she becomes forbidden to his father and son, and her mother and daughter become forbidden to him.”

وَمَوَّهُوا أَيْضًا - بِأَنْ قَالُوا: مَنْ وَطِئَ أَمَةً مُشْتَرَكَةً بَيْنَهُ وَبَيْنَ غَيْرِهِ، فَهُوَ وَطْءٌ حَرَامٌ، وَهِيَ تُحَرَّمُ بِذَلِكَ عَلَى أَبِيهِ وَابْنِهِ، وَتُحَرَّمُ عَلَيْهِ أُمُّهَا وَابْنَتُهَا.

L31493 Abu Muhammad said: This is invalid; rather, it is sheer unlawful intercourse. We have not found in the religion of Allah the Exalted that a woman could lawfully be shared consecutively between two men. These are the morals of dogs and the creed of Satan—not the morals of people or the religion of Allah Almighty. The woman’s mother and her daughter are not rendered unlawful to the man by this act, nor is she prohibited for the son of the man. She is only rendered unlawful to her father alone, as we have previously established...

قَالَ أَبُو مُحَمَّد: وَهَذَا بَاطِلٌ، بَلْ هُوَ زِنًى مَحْضٌ وَمَا وَجَدْنَا فِي دِينِ اللَّهِ تَعَالَى: امْرَأَةً تَحِلُّ أَنْ يَتَدَاوَلَهَا رَجُلَانِ، هَذِهِ أَخْلَاقُ الْكِلَابِ، وَمِلَّةُ الشَّيْطَانِ، لَا أَخْلَاقُ النَّاسِ، وَلَا دِينُ اللَّهِ عَزَّ وَجَلَّ، وَلَا تَحْرُمُ بِذَلِكَ عَلَيْهِ أُمُّهَا، وَلَا ابْنَتُهَا، وَلَا تُحَرَّمُ عَلَى ابْنِهِ إنَّمَا تُحَرَّمُ عَلَى الْأَبِ فَقَطْ، لِمَا قَدَّمْنَا -.

L31494 And success is from Allah, the Most High.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31495 They disguised [the matter] by saying: “When the forbidden and the permissible combine, the forbidden is overcome.” This is an invalid statement—neither supported by any Quranic text nor by any Sunnah whatsoever. Moreover, whoever validates this claim would be compelled to assert: “One who commits adultery with a woman can never have permissibility to marry her, since forbidden and permissible principles have combined in her case.”

وَمَوَّهُوا بِأَنْ قَالُوا: إذَا اجْتَمَعَ الْحَرَامُ وَالْحَلَالُ غُلِبَ الْحَرَامُ، فَقَوْلٌ لَا يَصِحُّ، وَلَا جَاءَ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ قَطُّ - وَيَلْزَمُ مَنْ صَحَّحَ هَذَا الْقَوْلَ أَنْ يَقُولَ: إنَّ مَنْ زَنَى بِامْرَأَةٍ لَمْ يَحِلَّ لَهُ نِكَاحُهَا أَبَدًا، لِأَنَّهُ قَدْ اجْتَمَعَ فِيهَا حَرَامٌ وَحَلَالٌ.

L31496 Some of them distorted the ḥadīth regarding the son of Zam’ah’s slave woman—that the Messenger of Allah (may peace and blessings be upon him) assigned his lineage to Zam’ah and commanded Sawdah to veil herself from him.

وَمَوَّهَ بَعْضُهُمْ بِحَدِيثِ ابْنِ وَلِيدَةِ زَمْعَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلْحَقَهُ بِزَمْعَةَ، وَأَمَرَ سَوْدَةَ بِأَنْ تَحْتَجِبَ عَنْهُ» .

L31497–31499 Abū Muḥammad said: We have been tasked to comprehend the basis of their argument using this report, but we could not attain it. It is a feeble, cold, and specious contention—though the report itself is authentic and clear in its apparent meaning. It demonstrates that the Prophet (peace be upon him) assigned him [the child] to Zamʿah based on the evident circumstance of his birth upon Zamʿah’s bed, and he advised his sister—the Mother of the Believers (may Allah be pleased with her)—that she should not be seen by him, fearing that... If he is not of her father’s lineage, a woman may observe modesty in front of her brother, her full brother, provided she does not

قَالَ أَبُو مُحَمَّد: قَدْ رُمْنَا أَنْ نَفْهَمَ وَجْهَ احْتِجَاجِهِمْ بِهَذَا الْخَبَرِ فَمَا قَدَرْنَا عَلَيْهِ، وَهِيَ شَغِيبَةٌ بَارِدَةٌ مُمَوَّهَةٌ - وَالْخَبَرُ صَحِيحٌ ظَاهِرُ الْوَجْهِ، وَهُوَ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلْحَقَهُ بِزَمْعَةَ بِظَاهِرِ وِلَادَتِهِ عَلَى فِرَاشِ زَمْعَةَ، وَأَفْتَى أُخْتَهُ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - بِأَنْ لَا يَرَاهَا، خَوْفَ أَنْ يَكُونَ مِنْ غَيْرِ نُطْفَةِ أَبِيهَا، وَاحْتِجَابُ الْمَرْأَةِ عَنْ أَخِيهَا شَقِيقِهَا مُبَاحٌ إذَا لَمْ تَقْطَعْ رَحِمَهُ وَلَا مَنَعَتْهُ رِفْدَهَا لَمْ يَمْنَعْ مِنْ ذَلِكَ نَصٌّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

sever kinship ties nor withhold her support, as there is no explicit textual prohibition—and success comes only from Allah, the Exalted.

L31500 And since all that they have falsely disputed has been invalidated—and all praise is due to Allah, Lord of the worlds—let us present the proof for the correctness of our view: that Allah the Almighty has detailed for us the marriages He prohibited until He completed it, then He the Exalted said: {And lawful to you is all that is beyond that} [Surah An-Nisāʾ 4:24]. Thus whoever prohibits anything outside what He has specified as prohibited in the Quran has opposed the Quran, forbidden what Allah the Exalted has made lawful, and legislated in the religion what Allah the Exalted has not authorized—and this is an exceedingly grave matter. All success comes from Allah the Exalted alone.[1]

وَإِذْ قَدْ بَطَلَ كُلُّ مَا شَغَبُوا بِهِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - فَلْنَأْتِ بِالْبُرْهَانِ عَلَى صِحَّةِ قَوْلِنَا، وَهُوَ أَنَّ اللَّهَ عَزَّ وَجَلَّ فَصَّلَ لَنَا مَا حَرَّمَ عَلَيْنَا مِنَ الْمَنَاكِحِ إلَى أَنْ أَتَمَّ، ثُمَّ قَالَ تَعَالَى: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} [النساء: ٢٤] فَمَنْ حَرَّمَ شَيْئًا مِنْ غَيْرِ مَا فَصَّلَ تَحْرِيمَهُ فِي الْقُرْآنِ فَقَدْ خَالَفَ الْقُرْآنَ، وَحَرَّمَ مَا أَحَلَّ اللَّهُ تَعَالَى، وَشَرَعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَهَذَا عَظِيمٌ جِدًّا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يُحَرَّمُ عَلَى ابْنٍ مِنْ زِنْجِيَّةٍ لِغِيَّةٍ نِكَاحُ ابْنَةِ الْخَلِيفَةِ الْهَاشِمِيِّ]

There is no prohibition against the son of a Zanj (East African) woman in a state of transient union marrying the daughter of the Hashemite Caliph.

L31501

L31502 1867 - (1875 in other copies) - Issue: All adherents of Islam are brothers. A son of a non-Arab Zanjī [East African] woman is not prohibited from marrying the daughter of the Hashimite Caliph. A Muslim sinner—who has reached the extremity of sin—remains a suitable match for a virtuous Muslim woman, provided he is not one who commits zina.

١٨٦٧ - (١٨٧٥ فِي النُّسَخِ الْأُخْرَى) - مَسْأَلَةٌ: وَأَهْلُ الْإِسْلَامِ كُلُّهُمْ إخْوَةٌ لَا يُحَرَّمُ عَلَى ابْنٍ مِنْ زِنْجِيَّةٍ لِغِيَّةٍ نِكَاحُ ابْنَةِ الْخَلِيفَةِ الْهَاشِمِيِّ. وَالْفَاسِقُ - الَّذِي بَلَغَ الْغَايَةَ مِنْ الْفِسْقِ - الْمُسْلِمُ - مَا لَمْ يَكُنْ زَانِيًا - كُفُؤٌ لِلْمُسْلِمَةِ الْفَاضِلَةِ.

L31503 Similarly, is a virtuous Muslim man a suitable match for an immoral Muslim woman provided she is not an adulteress? The opinion we prefer is that marriage between relatives is permissible.

وَكَذَلِكَ الْفَاضِلُ الْمُسْلِمُ كُفُؤٌ لِلْمُسْلِمَةِ الْفَاسِقَةِ مَا لَمْ تَكُنْ زَانِيَةً؟ وَالَّذِي نَخْتَارُهُ فَنِكَاحُ الْأَقَارِبِ بَعْضُهُمْ لِبَعْضٍ.

L31504 People have differed regarding this: Sufyan al-Thawri, Ibn Jurayj, al-Hasan ibn Ḥayy, Ibn Abi Layla, al-Mughirah ibn Abd al-Rahman al-Makhzumi (the student of Malik), and Ishaq ibn Rahawayh: the marriage of a mawla to an Arab woman is annulled.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَابْنُ جُرَيْجٍ، وَالْحَسَنُ بْنُ حَيٍّ، وَابْنُ أَبِي لَيْلَى، وَالْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ الْمَخْزُومِيُّ - صَاحِبُ مَالِكٍ - وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: يُفْسَخُ نِكَاحُ الْمَوْلَى لِلْعَرَبِيَّةِ.

L31505 Abu Hanifah said: If a Qurayshi woman consents to a mawla and he pays her the full dowry appropriate to women of her status, the guardian should

وَقَالَ أَبُو حَنِيفَةَ: إنْ رَضِيَتْ الْقُرَشِيَّةُ بِالْمَوْلَى وَوَفَّاهَا صَدَاقَ مِثْلِهَا أَمَرَ الْوَلِيُّ أَنْ يُنْكِحَهَا فَإِنْ أَبَى أَنْكَحَهَا الْقَاضِي.

[1] **Qur'an references (L31500):** Qur'an 4:24 (An-Nisa); Qur'an 42:21 (Ash-Shuraa).

instruct him to marry her. If the guardian refuses, the judge may officiate the marriage.

وَقَالَ مَالِكٌ: وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ كَقَوْلِنَا.

L31506 And Mālik said: Al-Shāfiʿī and Abū Sulaymān are in accordance with our view.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْمُخَالِفُونَ بِآثَارٍ سَاقِطَةٍ، وَالْحُجَّةُ قَوْلُ اللَّهِ تَعَالَى: {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] .

L31507–31508 Abu Muhammad said: Those who disagree have cited weak traditions as evidence, and the proof is the statement of Allah, the Exalted: “Indeed, the believers are brothers” [Al-Hujurat: 10].[2]

وقَوْله تَعَالَى مُخَاطِبًا لِجَمِيعِ الْمُسْلِمِينَ: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ} [النساء: ٣] .

L31509 And His statement, the Most High, addressing all Muslims: {Marry what is pleasing to you among women} [An-Nisa’ 4:3].[3]

وَذَكَرَ عَزَّ وَجَلَّ مَا حَرَّمَ عَلَيْنَا مِنْ النِّسَاءِ.

L31510 And He, the Almighty and Majestic, mentioned what He has prohibited to us from among women.

ثُمَّ قَالَ تَعَالَى: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ} [النساء: ٢٤] .

L31511 Then Allah, the Exalted, said: “All else besides that has been made lawful for you” [An-Nisa: 24].[4]

وَقَدْ أَنْكَحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - زَيْنَبَ أُمَّ الْمُؤْمِنِينَ زَيْدًا مَوْلَاهُ.

L31512 The Messenger of Allah (may Allah bless him and grant him peace) arranged the marriage of Zaynab, the Mother of the Believers, to Zayd, his adopted son and formerly enslaved companion.

وَأَنْكَحَ الْمِقْدَادَ ضُبَاعَةَ بِنْتَ الزُّبَيْرِ بْنِ عَبْدِ الْمُطَّلِبِ.

L31513 He married off al-Miqdād to Ḍubāʿah bint al-Zubayr ibn ʿAbd al-Muṭṭalib.

وَإِنَّمَا تَخَيَّرْنَا نِكَاحَ الْأَقَارِبِ، لِأَنَّهُ فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُنْكِحْ بَنَاتِهِ إِلَّا مِنْ بَنِي هَاشِمٍ وَبَنِي عَبْدِ شَمْسٍ.

L31514 We have specifically preferred marriage among relatives because it was the practice of the Messenger of Allah—may Allah bless him and grant him peace—who only gave his daughters in marriage to men from Banū Hāshim and Banū ʿAbd Shams.

وَقَالَ تَعَالَى: {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] .

L31515 And He, the Exalted, said: {In the Messenger of Allah there is indeed an excellent example for you} [Al-Ahzab: 21].[5]

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31516 And success is with Allah, the Exalted.

وَأَمَّا قَوْلُنَا فِي الْفَاسِقِ، وَالْفَاسِقَةِ، فَيَلْزَمُ مَنْ خَالَفَنَا أَنْ لَا يُجِيزَ لِلْفَاسِقِ أَنْ يَنْكِحَ إِلَّا فَاسِقَةً، وَأَنْ لَا يُجِيزَ لِلْفَاسِقَةِ أَنْ يَنْكِحَهَا إِلَّا فَاسِقٌ، وَهَذَا لَا يَقُولُهُ أَحَدٌ.

L31517 As for our position concerning the sinner (male) and the sinner (female),

[2] **Qur’an references (L31508):** Qur’an 49:10 (Al-Hujurat).
[3] **Qur’an references (L31509):** Qur’an 4:3 (An-Nisa).
[4] **Qur’an references (L31511):** Qur’an 4:24 (An-Nisa).
[5] **Qur’an references (L31515):** Qur’an 33:21 (Al-Ahzab).

it would necessitate that those who oppose us disallow a sinful man from marrying except a sinful woman, and disallow a sinful woman from being married except by a sinful man. Yet no one holds this view.

L31518 Allah the Exalted has said: "The believers are none other than brothers" Al-Hujurat 49:10.[6]

L31519 And He, the Exalted, said: "The believing men and believing women are allies and supporters of one another." [At-Tawbah: 71] Success comes only from Allah, the Exalted.[7]

L31520 **An issue regarding the marriage of a sick person who is certain of death or one who is not certain of it.**

L31521 Issue 1868: The marriage of a sick person - whether certain of death or not - to a woman similarly afflicted by illness or to a healthy woman is permissible. He inherits her and she inherits him, whether he dies from that specific illness or recovers and subsequently dies.

L31522 Similarly, a woman who is certain of her illness and one who is uncertain may marry a healthy or sick man: in all such cases, she is entitled to the stipulated mahr as if both spouses were healthy, with no distinction made.

L31523 Malik said: The marriage of a sick person is annulled, whether before or after consummation. If he did not consummate the marriage, she is entitled to nothing. If he did consummate it, she is entitled to a dower equivalent to that of women of her status, payable from one-third of his wealth, due to having lawfully accessed her private part. She has no right to inherit from him whatsoever.

L31524–31526 He said: If he dies before he annuls the marriage, she must observe the waiting period (iddah) and is not entitled to inheritance. He said: If he recovers from his illness—and he had already consummated the marriage with her—then I hold that he should divorce her. He also said on another occasion: If he recovers from his illness, the marriage contract is permissible.

[6] **Qur'an references (L31518):** Qur'an 49:10 (Al-Hujurat).
[7] **Qur'an references (L31519):** Qur'an 9:71 (At-Tawbah).

وَقَدْ قَالَ اللَّهُ تَعَالَى: {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] .

وَقَالَ تَعَالَى: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] . وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ تَزْوِيجُ الْمَرِيضِ الْمُوقِنِ بِالْمَوْتِ أَوْ غَيْرِ الْمُوقِنِ]

١٨٦٨ - مَسْأَلَةٌ: وَتَزْوِيجُ الْمَرِيضِ الْمُوقِنِ بِالْمَوْتِ، أَوْ غَيْرِ الْمُوقِنِ: مَرِيضَةً كَذَلِكَ أَوْ صَحِيحَةً جَائِزٌ، وَيَرِثُهَا وَتَرِثُهُ: مَاتَ مِنْ ذَلِكَ الْمَرَضِ أَوْ صَحَّ ثُمَّ مَاتَ.

وَكَذَلِكَ لِلْمَرِيضَةِ الْمُوقِنَةِ وَغَيْرِ الْمُوقِنَةِ: أَنْ تَتَزَوَّجَ صَحِيحًا أَوْ مَرِيضًا، وَلَهَا فِي كُلِّ ذَلِكَ الصَّدَاقُ الْمُسَمَّى كَالصَّحِيحَيْنِ وَلَا فَرْقَ.

وَقَالَ مَالِكٌ: يُفْسَخُ نِكَاحُ الْمَرِيضِ قَبْلَ الدُّخُولِ وَبَعْدَ الدُّخُولِ، فَإِنْ لَمْ يَدْخُلْ بِهَا فَلَا شَيْءَ لَهَا، فَإِنْ دَخَلَ بِهَا فَلَهَا صَدَاقُ مِثْلِهَا فِي ثُلُثِ مَالِهِ، بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا، وَلَا مِيرَاثَ لَهَا مِنْهُ أَلْبَتَّةَ.

قَالَ: فَإِنْ مَاتَ قَبْلَ أَنْ يَفْسَخَ نِكَاحَهَا فَعَلَيْهَا الْإِحْدَادُ وَلَا مِيرَاثَ لَهَا قَالَ: فَإِنْ صَحَّ مِنْ مَرَضِهِ - وَقَدْ كَانَ دَخَلَ بِهَا - فَأَرَى أَنْ يُفَارِقَهَا وَقَالَ مَرَّةً أُخْرَى: إِنْ صَحَّ مِنْ مَرَضِهِ جَازَ النِّكَاحُ.

قَالَ: وَكَذَلِكَ لَا يَجُوزُ لِلْمَرِيضَةِ أَنْ تَتَزَوَّجَ وَلَا يَرِثَهَا الَّذِي يَتَزَوَّجُهَا - دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ - وَلَهَا الصَّدَاقُ عَلَيْهِ إِنْ دَخَلَ بِهَا.

L31527 He said: Similarly, it is not permissible for a terminally ill woman to contract a marriage, nor does the man who marries her [in this state] inherit from her after her death - whether he has consummated the marriage or not - and she is entitled to the full dower from him if he has consummated the marriage.

قَالَ: وَمَنْ طَلَّقَ امْرَأَتَهُ - وَهِيَ حَامِلٌ طَلَاقًا بَائِنًا فَلَا يَجُوزُ لَهُمَا أَنْ يَتَرَاجَعَا إِذَا أَتَمَّتْ سِتَّةَ أَشْهُرٍ؟ وَهَذَا تَقْسِيمٌ لَا نَعْرِفُهُ عَنْ أَحَدٍ قَبْلَهُ.

L31528 He said: If someone issues an irrevocable divorce (ṭalāq bā'in) to his wife while she is pregnant, is it impermissible for them to reconcile after she completes six months? This is a ruling we do not know to have been asserted by anyone before him.

وَمِمَّنْ قَالَ: لَا يَجُوزُ نِكَاحُ الْمَرِيضِ -: عَطَاءُ بْنُ أَبِي رَبَاحٍ، إِلَّا أَنَّهُ قَالَ: إِنْ صَحَّ مِنْ مَرَضِهِ جَازَ ذَلِكَ النِّكَاحُ.

L31529 Among those who held that the marriage of a sick person is impermissible is ʿAṭāʾ ibn Abī Rabāḥ. However, he said that if the person recovers from his illness, the marriage becomes permissible.

وَيَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ قَالَ: صَدَاقُ الَّتِي تَتَزَوَّجُ الْمَرِيضَ فِي ثُلُثِهِ.

L31530 Yaḥyā ibn Saʿīd al-Anṣārī said: The dower for the woman who marries a sick man is taken from his third [of his estate].

وَاخْتَلَفَ عَنْ رَبِيعَةَ -: فَرُوِيَ عَنْهُ ابْنُ سَمْعَانَ - وَهُوَ ضَعِيفٌ - أَنَّ صَدَاقَهَا فِي ثُلُثِهِ، وَلَا مِيرَاثَ لَهَا - قَالَ ابْنُ سَمْعَانَ: وَقَضَى بِهَذَا أَبُو بَكْرِ بْنُ عُمَرَ بْنِ حَفْصٍ فِي نِكَاحِ بِنْتِ الْمُعْتَمِرِ بْنِ عِيَاضٍ الزُّهْرِيِّ.

L31531 There is a difference of opinion reported from Rabiʿah: Ibn Samʿan—who is weak—narrated from him that her dowry [is payable] from a third of his estate, and she inherits nothing. Ibn Samʿan said: Abu Bakr ibn ʿUmar ibn Hafs adjudicated this verdict in the marriage case involving the daughter of al-Muʿtamir ibn ʿIyad al-Zuhri.

وَرُوِيَ عَنْ رَبِيعَةَ مَعْمَرٍ - وَهُوَ ثِقَةٌ - أَنَّ صَدَاقَهَا وَمِيرَاثَهَا فِي ثُلُثِهِ.

L31532 It is narrated from Rabiʿah Maʿmar—a reliable narrator—that her dowry and her inheritance are within his third.

قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى.

L31533 Ma'mar said: This is the position of Ibn Abī Laylā.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، وَعُثْمَانَ الْبَتِّيِّ.

L31534 Abu Muhammad said: And it is the opinion of al-Layth ibn Saʿd and ʿUthman al-Battī.

وَرَاعَى آخَرُونَ الْمُضَارَّةَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عُثْمَانُ بْنُ صَالِحٍ عَنِ ابْنِ لَهِيعَةَ عَنْ خَالِدِ بْنِ أَبِي عِمْرَانَ قَالَ: سَأَلْتُ الْقَاسِمَ بْنَ مُحَمَّدٍ، وَسَالِمَ بْنَ عَبْدِ اللَّهِ عَنْ تَزْوِيجِ الْمَرِيضِ؟ فَقَالَا جَمِيعًا: إِنْ لَمْ يَكُنْ مُضَارًّا جَازَ تَزْوِيجُهُ - وَإِنْ كَانَ مُضَارًّا لَمْ يَجُزْ، وَلَهَا نِصْفُ الصَّدَاقِ فِي ثُلُثِ مَالِهِ، قَالَا: فَإِنْ خَلَا بِهَا فَلَهَا الصَّدَاقُ مِنَ الثُّلُثِ.

L31535 Others considered harmful intent—as narrated through the chain of Abū ʿUbayd, from ʿUthmān ibn Ṣāliḥ, from Ibn Lahīʿah, from Khālid ibn Abī ʿImrān, who said: I asked al-Qāsim ibn Muḥammad and Sālim ibn ʿAbdullāh about the marriage of a sick person. They both said: "If there is no harmful intent, his marriage is permissible. But if there is harmful intent, it is not permissible, and she is entitled to half the dower allocated within the third

of his estate." They said: "If he enters into seclusion with her, she is entitled to the full dower from the third of his estate."

L31536 From the narration of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī regarding the marriage of a sick person: He said, "He has no right to impose harm upon the rightful heirs, and we hold that she should not inherit him if he did so with harmful intent."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي نِكَاحِ الْمَرِيضِ قَالَ: لَيْسَ لَهُ أَنْ يُدْخِلَ الْإِضْرَارُ عَلَى أَهْلِ الْمِيرَاثِ، وَلَا نَرَى أَنْ تَرِثَهُ إنْ فَعَلَ ذَلِكَ ضِرَارًا.

L31537 Ma'mar said: Qatadah said: If he married her because he needed her help in serving him or handling his affairs, she inherits him.

قَالَ مَعْمَرٌ: وَقَالَ قَتَادَةُ: إنْ كَانَ تَزَوَّجَهَا مِنْ حَاجَةٍ إلَيْهَا فِي خِدْمَتِهِ، أَوْ فِي قِيَامٍ بِأَمْرِهِ فَإِنَّهَا تَرِثُهُ.

L31538–31540 And others held an opinion similar to ours: as it was narrated to us through the chain of Saʿīd ibn Manṣūr - from Abū ʿAwānah, from... Al-Mughīrah ibn Miqsam reported from Ibrāhīm al-Nakhaʿī, from Ibn Masʿūd, who said: "If only ten days remained of my lifespan—and I were to die on the last of them—but I still had the capacity for marriage during those days, I would marry out of fear of temptation."

وَقَالَ آخَرُونَ بِمِثْلِ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: لَوْ لَمْ يَبْقَ مِنْ أَجَلِي إلَّا عَشْرَةُ أَيَّامٍ أَنْ أَمُوتَ فِي آخِرِهَا يَوْمًا لِي فِيهِنَّ طَوْلٌ لِلنِّكَاحِ لَتَزَوَّجْت مَخَافَةَ الْفِتْنَةِ.

L31541 From the chain of Ibn Abi Shaybah: Muhammad ibn Bishr narrated to us from Abu Raja' through al-Hakam ibn Zayd through al-Hasan, who said: Mu'adh ibn Jabal said during his fatal illness, "Marry me to someone, for I dislike meeting Allah - the Mighty and Majestic - while unmarried."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بِشْرٍ عَنْ أَبِي رَجَاءٍ عَنْ الْحَكَمِ بْنِ زَيْدٍ عَنْ الْحَسَنِ قَالَ: قَالَ مُعَاذُ بْنُ جَبَلٍ فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ: زَوِّجُونِي، إنِّي أَكْرَهُ أَنْ أَلْقَى اللَّهَ عَزَّ وَجَلَّ عَزَبًا.

L31542 From the transmission of Abū Ubayd and Saʿīd ibn Manṣūr, they both said together: Abū Muʿāwiyah—the blind—narrated to us from Hishām ibn ʿUrwah from his father, who said: Al-Zubayr entered upon Qudāmah ibn Maẓʿūn to visit him during his illness. Al-Zubayr announced the birth of a daughter while in his presence. Qudāmah said to him: "Marry her to me!" Al-Zubayr replied: "What would you do with a young girl in your state?" Qudāmah said: "If I live, she is Al-Zubayr's daughter, and if I die, she is the most entitled to inherit from me." ʿUrwah said: "So he gave her in marriage to him."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ، وَسَعِيدِ بْنِ مَنْصُورٍ، قَالَا جَمِيعًا: نَا أَبُو مُعَاوِيَةَ - هُوَ الضَّرِيرُ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: دَخَلَ الزُّبَيْرُ عَلَى قُدَامَةَ بْنِ مَظْعُونٍ يَعُودُهُ فَبَشَّرَ الزُّبَيْرُ بِجَارِيَةٍ وَهُوَ عِنْدَهُ؟ فَقَالَ لَهُ قُدَامَةُ: زَوِّجْنِيهَا؟ فَقَالَ لَهُ الزُّبَيْرُ: وَمَا تَصْنَعُ بِجَارِيَةٍ صَغِيرَةٍ وَأَنْتَ عَلَى هَذِهِ الْحَالِ؟ فَقَالَ لَهُ قُدَامَةُ: إنْ أَنَا عِشْت فَابْنَةُ الزُّبَيْرِ، وَإِنْ مِتُّ فَأَحَقُّ مَنْ وَرِثَنِي، قَالَ عُرْوَةُ: فَزَوَّجَهَا إيَّاهُ.

L31543 And from the chain of Sa'id ibn Mansur: Abd al-Aziz ibn Muhammad al-Darawardi narrated to us, who narrated to me from Musa ibn Uqbah, from

Nafi', the client of Ibn Umar, who said: Abd al-Rahman ibn Abi Rabi'ah married his paternal uncle's daughter during his illness so that she would inherit him. He died, and she inherited him. That occurred during the time of Uthman ibn Affan.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ أَخْبَرَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: تَزَوَّجَ عَبْدُ الرَّحْمَنِ بْنُ أَبِي رَبِيعَةَ بِنْتَ عَمٍّ لَهُ فِي مَرَضِهِ لِتَرِثَهُ، فَمَاتَ فَوَرِثَتْهُ، وَذَلِكَ فِي زَمَنِ عُثْمَانَ بْنِ عَفَّانَ.

L31544 And through the chain of Abd al-Razzaq from Ibn Jurayj, who said: Musa ibn Uqbah reported to me from Nafi', the freed slave of Ibn Umar, who said: Abdullah ibn Abi Rabi'ah ibn al-Mughirah al-Makhzumi married the daughter of Hafs ibn al-Mughirah, his uncle, while he was ill. His intention was for her to include his wives in the inheritance.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ ثَنِيّ ابْنُ جُرَيْجٍ، قَالَ أَخْبَرَنِي مُوسَى بْنُ عُقْبَةَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: تَزَوَّجَ عَبْدُ اللَّهِ بْنُ أَبِي رَبِيعَةَ بْنِ الْمُغِيرَةِ الْمَخْزُومِيُّ بِنْتَ حَفْصِ بْنِ الْمُغِيرَةِ عَمِّهِ - وَهُوَ مَرِيضٌ - لِتُشْرِكَ نِسَاءَهُ فِي الْمِيرَاثِ.

L31545 Abu Muhammad said: Abdullah has an authentic companionship.

قَالَ أَبُو مُحَمَّدٍ: عَبْدُ اللَّهِ لَهُ صُحْبَةٌ صَحِيحَةٌ.

L31546 Through the chain of Abu 'Ubayd and Sa'id ibn Mansur, both of whom said: Hushaym narrated to us, on the authority of Abu Ishaq al-Shaybani, on the authority of al-Sha'bi. Sa'id stated in his narration: I heard al-Sha'bi say: The marriage of a sick person is permissible, as are his buying and selling.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ، وَسَعِيدِ بْنِ مَنْصُورٍ قَالَا جَمِيعًا: نا هُشَيْمٌ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنِ الشَّعْبِيِّ، قَالَ سَعِيدٌ فِي رِوَايَتِهِ: سَمِعْتُ الشَّعْبِيَّ يَقُولُ: تَزْوِيجُ الْمَرِيضِ جَائِزٌ، وَشِرَاؤُهُ وَبَيْعُهُ.

L31547 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us: Yūnus ibn ʿUbayd narrated to us from al-Ḥasan al-Baṣrī, who would say: It is permissible to marry off a sick person during his illness.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ بْنُ عُبَيْدٍ عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ يَقُولُ: يَجُوزُ تَزْوِيجُ الْمَرِيضِ فِي مَرَضِهِ.

L31548 From Yaḥyā ibn Saʿīd al-Qaṭṭān, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Ibrāhīm al-Nakhaʿī, who said: The marriage of a sick person is permissible, and it is not counted as part of the bequeathable third.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نَا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: نِكَاحُ الْمَرِيضِ جَائِزٌ، وَلَا يُحْسَبُ مِنَ الثُّلُثِ.

L31549–31550 From the narration of ʿAbd al-Razzāq, from Sufyān al-Thawrī, who said: The marriage of a sick person is permissible with a dowry equivalent to that of her peers. This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, their adherents, and all of them hold that the dowry is to be paid from the husband's capital. It is also the opinion of Ibn Shubrumah, al-Awzāʿī, al-Ḥasan ibn Ḥayy, Abū Sulaymān, and all our companions.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: نِكَاحُ الْمَرِيضِ جَائِزٌ عَلَى مَهْرِ مِثْلِهَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا وَكُلُّهُمْ يَرَى الصَّدَاقَ مِنْ رَأْسِ مَالِهِ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L31551 Al-Ḥasan ibn Ḥayy and Abū Sulaymān held the opinion that she is entitled

to the specified dowry from his own funds.

وَرَأَى الْحَسَنُ بْنُ حَيٍّ، وَأَبُو سُلَيْمَانَ: أَنَّ لَهَا الصَّدَاقَ الْمُسَمَّى لَهَا مِنْ رَأْسِ مَالِهِ.

L31552 Ali said: Our Sheikh Abu al-Khayar Mas'ud ibn Sulayman—may Allah be pleased with him—married seven nights before his death while sick and despairing of life. He consummated the marriage to revive the Sunnah.

قَالَ عَلِيٌّ: وَتَزَوَّجَ شَيْخُنَا أَبُو الْخَيَارِ مَسْعُودُ بْنُ سُلَيْمَانَ - رَضِيَ اللَّهُ عَنْهُ - قَبْلَ مَوْتِهِ بِسَبْعِ لَيَالٍ، وَهُوَ مَرِيضٌ يَائِسٌ مِنْ الْحَيَاةِ وَدَخَلَ بِهَا إحْيَاءً لِلسُّنَّةِ.

L31553 Abu Muhammad said: Our knowledge of the Malikis is that they magnify disagreement with a Companion for whom no opposing Companion—may Allah be pleased with them—is known. Yet this is among the matters in which they opposed Ibn Mas'ud, Mu'adh ibn Jabal, al-Zubayr, Qudamah ibn Maẓ'un, and 'Abdullah ibn Abi Rabi'ah, in the presence of all the living Companions—none objecting—during the caliphate of 'Uthman.

قَالَ أَبُو مُحَمَّدٍ: عَهْدُنَا بِالْمَالِكِيِّينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: مُخَالِفٌ وَهَذَا مِمَّا خَالَفُوا فِيهِ ابْنَ مَسْعُودٍ، وَمُعَاذَ بْنَ جَبَلٍ، وَالزُّبَيْرَ، وَقُدَامَةَ بْنَ مَظْعُونٍ، وَعَبْدَ اللَّهِ بْنَ أَبِي رَبِيعَةَ، بِحَضْرَةِ جَمِيعِ الْأَحْيَاءِ مِنْ الصَّحَابَةِ، لَا يُنْكِرُ ذَلِكَ أَحَدٌ، وَفِي خِلَافَةِ عُثْمَانَ.

L31554 Abu Muhammad said: Allah the Exalted and His Messenger—may the peace and blessings of Allah be upon him—made marriage permissible. Neither the Qur'an nor the Sunnah specified healthy individuals (male or female) to the exclusion of sick ones, for "Your Lord is never forgetful" [Quran 19:64].[8]

قَالَ أَبُو مُحَمَّدٍ: أَبَاحَ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - النِّكَاحَ، وَلَمْ يَخُصَّ فِي الْقُرْآنِ، وَلَا فِي السُّنَّةِ: صَحِيحًا وَصَحِيحَةً مِنْ مَرِيضٍ وَمَرِيضَةٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L31555 We do not know any foundational proof for the opposing view whatsoever—neither from the Quran, nor the Sunnah, nor a Companion's statement, nor rationally sound opinion. However, some argued that he does not have the right to introduce among the heirs someone who would share with them in the inheritance. Abu Muhammad said: Proponents of this view assert that if a man—on his deathbed while certain of death—acknowledges a son born to his female slave whom he persistently called his slave, then acknowledges at death that he is his son, this acknowledgment becomes valid, and the son inherits his wealth. Thus, they permitted introducing among the heirs someone who deprives them entirely, yet prohibited him from introducing someone who diminishes their share slightly. This represents the utmost confusion.

وَمَا نَعْلَمُ لِلْمُخَالِفِ حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا مِنْ رَأْيٍ يُعْقَلُ، غَيْرَ أَنَّ بَعْضَهُمْ احْتَجَّ بِأَنَّهُ لَيْسَ لَهُ أَنْ يُدْخِلَ عَلَى أَهْلِ الْمِيرَاثِ مَنْ يُشْرِكُهُمْ فِيهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَأَهْلُ هَذَا الْقَوْلِ يَقُولُونَ: إنْ أَقَرَّ فِي مَرَضِ مَوْتِهِ - وَهُوَ مُوقِنٌ بِالْمَوْتِ - بِابْنِ أَمَةٍ لَهُ لَمْ يَزَلْ يَقُولُ: إنَّهُ عَبْدُهُ - فَأَقَرَّ عِنْدَ مَوْتِهِ أَنَّهُ ابْنُهُ، فَإِنَّ إقْرَارَهُ نَافِذٌ، وَيَرِثُ مَالَهُ - فَأَجَازُوا أَنْ يُدْخِلَ عَلَى أَهْلِ الْمِيرَاثِ مَنْ يَحْرِمُهُمْ الْكُلَّ، وَمَنَعُوهُ أَنْ يُدْخِلَ عَلَيْهِمْ مَنْ يَحُطُّهُمْ الْيَسِيرَ، وَهَذَا غَايَةُ التَّخْلِيطِ.

L31556 They did not differ that a man gravely ill, despairing of poverty and liveli-

[8] **Qur'an references (L31554):** Qur'an 19:64 (Maryam).

hood, who purchased a female slave and had people witness his declaration that he bought her solely to seek offspring through her - intending thereby to prevent his heirs from inheriting - then had intercourse with her and impregnated her: that this is permissible and lawful.

وَلَمْ يَخْتَلِفُوا أَنَّ رَجُلًا مَرِيضًا يَائِسًا مِنْ الْفَاقَةِ وَالْعَيْشِ ابْتَاعَ جَارِيَةً وَأَشْهَدَ النَّاسَ عَلَى نَفْسِهِ أَنَّهُ إنَّمَا يَبْتَاعُهَا لِيَطْلُبَ مِنْهَا الْوَلَدَ، لِيَمْنَعَ بِذَلِكَ وَرَثَتَهُ الْمِيرَاثَ، فَوَطِئَهَا فَحَمَلَتْ: أَنَّ ذَلِكَ جَائِزٌ مُبَاحٌ.

L31557 If they say, “She may conceive or she may not [conceive]?”

فَإِنْ قَالُوا: إنَّهَا قَدْ تَحْمِلُ وَقَدْ لَا تَحْمِلُ؟

L31558–31559 We said: The woman whom he married during his illness might die before him, whereby he inherits her, thereby increasing the heirs’ share in their inheritance. Would that I knew - do they prevent a Muslim who is ill from marrying a slave woman or a dhimmi woman, neither of whom inherit from him, or not? Do they prevent a sick man who has nothing from marrying? They must necessarily abandon their corrupt foundational principle or contradiction.

قُلْنَا: وَالَّتِي تَزَوَّجَ فِي مَرَضِهِ قَدْ تَمُوتُ هِيَ قَبْلَهُ فَيَرِثُهَا فَيَزِيدُ بِذَلِكَ الْوَرَثَةُ فِي مِيرَاثِهِمْ، وَلَيْتَ شِعْرِي أَيَمْنَعُونَ الْمُسْلِمَ الْمَرِيضَ مِنْ زَوَاجِ مَمْلُوكَةٍ أَوْ ذِمِّيَّةٍ لَا يَرِثَانِهِ أَمْ لَا؟ وَهَلْ يَمْنَعُونَ الْمَرِيضَ الَّذِي لَا شَيْءَ لَهُ مِنْ الزَّوَاجِ؟ وَلَا بُدَّ لَهُمْ مِنْ تَرْكِ أَصْلِهِمْ الْفَاسِدِ ضَرُورَةً أَوْ التَّنَاقُضُ.

L31560 They said: “We have analogized the marriage of a sick person to his divorce.” We responded: “You have analogized one error to another error, then erred in the analogy itself, for you permitted the sick person’s divorce and granted him inheritance afterward. If you seek to apply analogy correctly, permit his marriage while also denying him inheritance along with that.” This is among the instances in which the Hanafis abandoned analogy—a principle they deem foundational and impermissible to disregard.

وَقَالُوا: قِسْنَا نِكَاحَ الْمَرِيضِ عَلَى طَلَاقِهِ؟ فَقُلْنَا: قِسْتُمْ الْخَطَأَ عَلَى الْخَطَأِ، ثُمَّ أَخْطَأْتُمْ فِي الْقِيَاسِ، لِأَنَّكُمْ أَجَزْتُمْ طَلَاقَ الْمَرِيضِ وَوَرَّثْتُمُوهُ بَعْدَ ذَلِكَ، فَإِنْ أَرَدْتُمْ إصَابَةَ الْقِيَاسِ فَأَجِيزُوا نِكَاحَهُ، وَامْنَعُوهُ الْمِيرَاثَ مَعَ ذَلِكَ - وَهَذَا مِمَّا تَرَكَ فِيهِ الْحَنَفِيُّونَ الْقِيَاسَ الَّذِي هُوَ عِنْدَهُمْ أَصْلٌ لَا يَجُوزُ تَرْكُهُ.

L31561 Among the wonders is that Mālik annuls the marriage of the runaway slave woman, just as he annuls the marriage contracted for the sick man’s benefit, yet he leaves for the runaway woman only three dirhams from what was specified for her, while he grants the woman who married the sick man the full dowry appropriate to her status. Has anything more astonishing than this arbitrary ruling without proof ever been heard of?

وَمِنْ الْعَجَائِبِ أَنَّ مَالِكًا يَفْسَخُ نِكَاحَ الْأَمَةِ الْفَارَّةِ، كَمَا يَفْسَخُ نِكَاحَ الصَّحِيحَةِ لِلْمَرِيضِ، وَلَا يَدَعُ لِلْفَارَّةِ مِمَّا سُمِّيَ لَهَا إلَّا ثَلَاثَةَ دَرَاهِمَ، وَيَجْعَلُ لِلَّتِي تَزَوَّجَتْ الْمَرِيضَ جَمِيعَ مَهْرِ مِثْلِهَا - فَهَلْ يُسْمَعُ بِأَعْجَبَ مِنْ هَذَا التَّحَكُّمِ بِلَا بُرْهَانٍ

L31562 Legal Issue: A woman became pregnant through adultery, an invalid marriage, or an annulled marriage.

[مَسْأَلَةٌ حَمَلَتْ الْمَرْأَةُ مِنْ زِنًى أَوْ مِنْ نِكَاحٍ فَاسِدٍ مَفْسُوخٍ]

L31563 **Question 1869**: If a woman becomes pregnant through adultery, through an invalid and annulled marriage, through a valid marriage annulled to fulfill an obligatory right, or if she is a slave who conceives from her master

and he then frees her or dies—each of these women may marry before giving birth to her child. However, it is impermissible for the husband to consummate the marriage until she gives birth to her child. This ruling differs from that of a divorced woman or a widow who is pregnant, for these two are categorically forbidden to marry until they give birth to their children. The exception is a freed pregnant slave woman who chooses for herself, for her marriage is annulled, and it is impermissible for her to marry until she gives birth to her child.

؟ ١٨٦٩ - مَسْأَلَةٌ: وَإِنْ حَمَلَتْ الْمَرْأَةُ مِنْ زِنًى، أَوْ مِنْ نِكَاحٍ فَاسِدٍ مَفْسُوخٍ، أَوْ كَانَ نِكَاحًا صَحِيحًا فَفَسْخٌ لِحَقٍّ وَاجِبٍ، أَوْ كَانَتْ أَمَةً فَحَمَلَتْ مِنْ سَيِّدِهَا ثُمَّ أَعْتَقَهَا، أَوْ مَاتَ عَنْهَا، فَلِكُلِّ مَنْ ذَكَرْنَا أَنْ تَتَزَوَّجَ قَبْلَ أَنْ تَضَعَ حَمْلَهَا، إلَّا أَنَّهُ لَا يَحِلُّ لِلزَّوْجِ أَنْ يَطَأَهَا حَتَّى تَضَعَ حَمْلَهَا، كُلُّ ذَلِكَ بِخِلَافِ الْمُطَلَّقَةِ، أَوْ الْمُتَوَفَّى عَنْهَا وَهِيَ حَامِلٌ، فَهَاتَانِ لَا يَحِلُّ لَهُمَا الزَّوَاجُ أَلْبَتَّةَ حَتَّى يَضَعَا حَمْلَهُمَا، وَحَاشَا الْمُعْتَقَةَ الْحَامِلَةَ تَخْتَارُ نَفْسَهَا، فَإِنَّ نِكَاحَ هَذِهِ مَفْسُوخٌ، وَلَا يَحِلُّ لَهَا أَنْ تَنْكِحَ حَتَّى تَضَعَ حَمْلَهَا.

The proof of this is that the pregnant divorced woman or the woman whose husband has died is in the waiting period by the Quran's explicit ruling, and Allah, the Almighty and Majestic, has wholly prohibited marriage with a woman in her waiting period until it is completed.

L31564

بُرْهَانُ ذَلِكَ -: أَنَّ الْحَامِلَ الْمُطَلَّقَةَ، أَوْ الْمُتَوَفَّى عَنْهَا: هِيَ مُعْتَدَّةٌ بِنَصِّ الْقُرْآنِ، وَقَدْ حَرَّمَ اللَّهُ عَزَّ وَجَلَّ نِكَاحَ الْمُعْتَدَّةِ جُمْلَةً حَتَّى تَتِمَّ عِدَّتُهَا.

As for the rest of those we mentioned, neither the Quran nor the Sunnah imposes a waiting period upon them, nor upon any of them, except in the case of the emancipated woman who chooses for herself only. If a woman is neither observing a waiting period nor married, she may marry unless a textual ruling prohibits it, and no textual ruling prohibits marriage here. Moreover, it is impermissible by explicit text to have intercourse with a pregnant woman unless the pregnancy is from him.

L31565

وَأَمَّا سَائِرُ مَنْ ذَكَرْنَا فَلَمْ يَأْتِ فِي الْقُرْآنِ وَلَا فِي السُّنَّةِ إيجَابُ عِدَّةٍ عَلَيْهِنَّ، وَلَا عَلَى أَحَدٍ مِنْهُنَّ، إلَّا عَلَى الْمُعْتَقَةِ تَخْتَارُ نَفْسَهَا فَقَطْ، وَإِذَا لَمْ تَكُنْ الْمَرْأَةُ مِنْ عِدَّةٍ، وَلَا ذَاتِ زَوْجٍ، فَلَهَا أَنْ تَتَزَوَّجَ، إلَّا أَنْ يَمْنَعَ مِنْ ذَلِكَ نَصٌّ، وَلَا نَصَّ يَمْنَعُ هَهُنَا مِنْ الزَّوَاجِ، وَلَا يَحِلُّ بِالنَّصِّ وَطْءُ حَامِلٍ إلَّا أَنْ يَكُونَ الْحَمْلُ مِنْهُ.

People have differed concerning her case. Abu Hanifah, Al-Shafi'i, Muhammad ibn Al-Hasan, and Abu Yusuf (in one of his two opinions) said: A woman who became pregnant through fornication may marry, but the new husband may not have intercourse with her until she gives birth.

L31566

وَقَدْ اخْتَلَفَ النَّاسُ فِيهَا -: فَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَمُحَمَّدُ بْنُ الْحَسَنِ وَأَبُو يُوسُفَ - فِي أَحَدِ قَوْلَيْهِ -: لِلْحَامِلِ مِنْ زِنًى أَنْ تَتَزَوَّجَ، وَلَا يَطَؤُهَا حَتَّى تَضَعَ حَمْلَهَا.

Abu Hanifah said: If a woman from non-Muslim territory comes to us as a Muslim while being pregnant by her husband, she may marry, but it is not permissible for him to consummate the marriage until she delivers her child. Abu Muhammad said: This is the opinion of our companions. Zufar said: The ʿiddah (waiting period) for the adulteress is complete.

L31567–31568

وَقَالَ أَبُو حَنِيفَةَ: وَإِنْ خَرَجَتْ إلَيْنَا الْحَرْبِيَّةُ مُسْلِمَةً - وَهِيَ حَامِلٌ مِنْ زَوْجِهَا - فَلَهَا أَنْ تَتَزَوَّجَ، وَلَكِنْ لَا يَحِلُّ لَهُ وَطْؤُهَا حَتَّى تَضَعَ حَمْلَهَا؟ قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ أَصْحَابِنَا - وَقَالَ زُفَرُ عَلَى الزَّانِيَةِ الْعِدَّةُ كَامِلَةً.

Malik said: "Does a woman pregnant from adultery not marry until she

L31569

delivers her child? And if she is not pregnant, does she not marry unless she completes three menstrual cycles?" Ali said: Among those from whom a ruling similar to our view is narrated is ʿUmar ibn al-Khaṭṭāb—as narrated to us through Mālik's chain of transmission from Abū al-Zubayr, who said: "I proposed to a man for his sister's hand, and he mentioned that she had committed a sin—meaning adultery. When this reached ʿUmar, he struck him or was about to strike him."

وَقَالَ مَالِكٌ: لَا تَتَزَوَّجُ الْحَامِلُ مِنْ زِنًى حَتَّى تَضَعَ حَمْلَهَا، وَلَا إِنْ كَانَتْ غَيْرَ حَامِلٍ، إِلَّا حَتَّى تَعْتَدَّ ثَلَاثَةَ قُرُوءٍ؟ قَالَ عَلِيٌّ: وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا عُمَرُ بْنُ الْخَطَّابِ -: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ أَبِي الزُّبَيْرِ قَالَ: خَطَبْت إلَى رَجُلٍ أُخْتَهُ، فَذَكَرَ أَنَّهَا أَحْدَثَتْ - يَعْنِي زَنَتْ - فَبَلَغَ ذَلِكَ عُمَرَ فَضَرَبَهُ أَوْ كَادَ يَضْرِبُهُ.

L31570 Mālik said: Regarding the narration, Ibn Wahb said: ʿAmr ibn al-Ḥārith informed me of this narration from Abū al-Zubayr, which states that ʿUmar said to him: "Marry and remain silent?" Abū Muḥammad said: This ʿUmar commanded her to marry, and he did not make an exception for her to complete her waiting period, nor even if she was pregnant. From the chain of Ismāʿīl ibn Isḥāq: ʿAlī ibn ʿAbd Allāh narrated to us, Sufyān ibn ʿUyaynah narrated to us, ʿUbayd Allāh ibn Abī Yazīd narrated to us from his father, who said: Sibāʿ ibn Thābit married the daughter of Mawhab ibn Rabāḥ while having a son from another woman, and she had a daughter from another man. The youth committed illicit intercourse with the girl, resulting in her pregnancy. She was questioned and confessed. The matter was referred to ʿUmar ibn al-Khaṭṭāb, and they both confessed. He thus imposed the ḥadd punishment upon them and urged them to marry, but the youth refused.

وَقَالَ مَالِكٌ: وَلِلْخَبَرِ قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ بِهَذَا الْخَبَرِ عَنْ أَبِي الزُّبَيْرِ، وَفِيهِ: أَنَّ عُمَرَ قَالَ لَهُ: انْكِحْ وَاسْكُتْ؟ قَالَ أَبُو مُحَمَّدٍ: فَهَذَا عُمَرُ أَمَرَهَا بِالنِّكَاحِ، وَلَمْ يَسْتَثْنِ حَتَّى تُتِمَّ عِدَّةً، وَلَا إِنْ كَانَتْ حَامِلًا -: وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا عُبَيْدُ اللَّهِ بْنُ أَبِي يَزِيدَ عَنْ أَبِيهِ قَالَ: تَزَوَّجَ سِبَاعُ بْنُ ثَابِتٍ بِنْتَ مَوْهَبِ بْنِ رَبَاحٍ وَلَهُ ابْنٌ مِنْ غَيْرِهَا، وَلَهَا بِنْتٌ مِنْ غَيْرِهِ، فَفَجَرَ الْغُلَامُ بِالْجَارِيَةِ، فَظَهَرَ بِهَا حَمْلٌ فَسُئِلَتْ فَاعْتَرَفَتْ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَاعْتَرَفَا، فَحَدَّهُمَا وَحَرَّضَ عَلَى أَنْ يُجْمَعَ بَيْنَهُمَا، فَأَبَى الْغُلَامُ.

L31571 So this is Umar permitting marriage for a woman pregnant as a result of fornication in the presence of the Companions—may Allah be pleased with them—with no known opposition from them, even though they would have regarded such a case as serious if they had encountered it.

فَهَذَا عُمَرُ يُبِيحُ لِلْحَامِلِ مِنْ زِنًى الزَّوَاجَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْهُمْ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا لَوْ ظَفِرُوا بِهِ.

L31572 The dissenters clamored, stating: "Allah, the Exalted and Glorified, has said: 'And for those who are pregnant, their waiting period is until they deliver their offspring'" [at-Talaq 4].[9]

وَشَغَبَ الْمُخَالِفُونَ بِأَنْ قَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤]

L31573 It is narrated from Sa'id ibn al-Musayyab that a man named Nadrah ibn Aktham married a woman. When he consummated the marriage, he found her pregnant. He brought the matter to the Prophet—peace and blessings of Allah be upon him—and the Messenger of Allah—peace and blessings of

وَبِخَبَرٍ رُوِّينَاهُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «أَنَّ رَجُلًا يُقَالُ لَهُ نَضْرَةُ بْنُ أَكْثَمَ تَزَوَّجَ امْرَأَةً فَلَمَّا غَشِيَهَا وَجَدَهَا حُبْلَى، فَرَفَعَ ذَلِكَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَضَى رَسُولُ

[9] **Qur'an references (L31572):** Qur'an 65:4 (At-Talaq).

Allah be upon him—ruled that the dowry remained with her husband, that the child in her womb was his slave, ordered her to be flogged with one hundred lashes, and separated them.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ صَدَاقَهَا لِزَوْجِهَا، وَأَنَّ مَا فِي بَطْنِهَا عَبْدٌ لَهُ، وَأَمَرَ بِهَا فَجُلِدَتْ مِائَةً، وَفَرَّقَ بَيْنَهُمَا» .

L31574–31576 Abu Muhammad said: No marvel is more astonishing than that the one who cites this report as evidence is the first to oppose. For everything in it? As for us, if the chain were continuous, we would have ruled by it. However, it is interrupted between Saʿīd and Naḍrah, and there is no proof in an interrupted chain.

قَالَ أَبُو مُحَمَّد: لَا عَجَبَ أَعْجَبُ مِنْ أَنْ يَكُونَ الْمُحْتَجُّ بِهَذَا الْخَبَرِ أَوَّلَ مُخَالِفٍ لِكُلِّ مَا فِيهِ؟ وَأَمَّا نَحْنُ فَلَوْ انْسَنَدَ لَقُلْنَا بِهِ، وَلَكِنَّهُ مُنْقَطِعٌ بَيْنَ سَعِيدٍ وَنَضْرَةَ، وَلَا حُجَّةَ فِي مُنْقَطِعٍ.

L31577 We have been narrated through the chain of Abū Dāwūd: Ibn Abī al-Sarī narrated to us, ʿAbd al-Razzāq informed us, Ibn Jurayj reported from Ṣafwān ibn Sulaym from Saʿīd ibn al-Musayyib from a man among the Companions of the Messenger of Allah—peace and blessings be upon him—named Naḍrah, who said: "I married a virgin woman in her seclusion. When I entered upon her, she was pregnant. The Prophet—upon him be peace and blessings—said: 'She is entitled to the dowry for what you lawfully consummated of her intimacy, the child is your slave, and when she gives birth, flog her?'" Abū Muḥammad said: He did not mention separation here, and this chain's transmission comes closer to masking its defects, except that it is not known whether Saʿīd ibn al-Musayyib heard from Naṣrah or Naḍrah. Thus, citing it as evidence is invalid, though if it were authentic, we would have upheld it.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا ابْنُ أَبِي السَّرِيِّ نا عَبْدُ الرَّزَّاقِ أَخْبَرَنَا ابْنُ جُرَيْجٍ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ «عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقَالُ لَهُ: نَضْرَةُ قَالَ: تَزَوَّجْتُ امْرَأَةً بِكْرًا فِي سِتْرِهَا، فَدَخَلْتُ عَلَيْهَا، فَإِذَا هِيَ حُبْلَى، فَقَالَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: لَهَا الصَّدَاقُ بِمَا اسْتَحْلَلْتَ مِنْ فَرْجِهَا، وَالْوَلَدُ عَبْدٌ لَكَ، وَإِذَا وَلَدَتْ فَاجْلِدُوهَا» ؟ قَالَ أَبُو مُحَمَّد: وَلَمْ يَذْكُرْ هَهُنَا تَفْرِيقًا، وَهُوَ أَقْرَبُ إلَى أَنْ يُمَوِّهَ بِإِسْنَادِهِ إلَّا أَنَّهُ لَا يُعْلَمُ لِسَعِيدِ بْنِ الْمُسَيِّبِ سَمَاعٌ مِنْ نَصْرَةَ أَوْ نَضْرَةَ، فَبَطَلَ الِاحْتِجَاجُ بِهِ، وَلَوْ صَحَّ لَقُلْنَا بِهِ.

L31578 As for the statement of Allah the Almighty: {And those who are pregnant, their waiting period is until they deliver} [At-Talaq: 4], this was revealed concerning the divorced woman. Allah the Almighty said: {As for those women who have ceased menstruation among your women, if you are in doubt, their waiting period is three months—and those who have not yet menstruated; and those who are pregnant, their waiting period is until they deliver} [At-Talaq: 4]. This is referred back to the beginning of the surah concerning divorced women, and what follows it from the statement of the Exalted: {House them where you reside, according to your means} [At-Talaq: 6]—all the verses.[10]

وَأَمَّا قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] فَإِنَّمَا جَاءَ فِي الْمُطَلَّقَةِ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] وَهَذَا مَرْدُودٌ عَلَى أَوَّلِ السُّورَةِ فِي الْمُطَلَّقَاتِ وَمَحْمُولٌ عَلَيْهِ مَا بَعْدَهُ مِنْ قَوْلِهِ تَعَالَى: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ} [الطلاق: ٦] الْآيَاتِ كُلِّهَا.

[10] **Qur'an references (L31578):** Qur'an 65:4 (At-Talaq); Qur'an 65:6 (At-Talaq).

وَإِنَّمَا وَجَبَ ذَلِكَ فِي الْمُتَوَفَّى عَنْهَا بِخَبَرِ سُبَيْعَةَ الْأَسْلَمِيَّةِ.

وَقَالُوا: قِسْنَا الْمُنْفَسِخَةَ النِّكَاحَ بَعْدَ صِحَّتِهِ أَوْ لِفَسَادِهِ فِي ذَلِكَ عَلَى الْمُطَلَّقَةِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ إِنَّمَا هُوَ أَنْ يَحْكُمَ لِلشَّيْءِ بِحُكْمِ نَظِيرِهِ، وَلَيْسَ النِّكَاحُ الصَّحِيحُ الْحَلَالُ نَظِيرًا لِلْفَاسِدِ الْحَرَامِ، الَّذِي لَا يَحِلُّ عَقْدُهُ، وَلَا إِقْرَارُهُ، بَلْ هُوَ ضِدُّهُ، فَهُوَ بَاطِلٌ لَا نِسْبَةَ بَيْنَهُ وَبَيْنَ الطَّلَاقِ عَلَى أُصُولِ أَصْحَابِ الْقِيَاسِ.

وَأَمَّا الَّتِي انْفَسَخَ نِكَاحُهَا بَعْدَ صِحَّتِهِ، فَإِنَّ الْفَسْخَ لَا نِسْبَةَ بَيْنَهُ وَبَيْنَ الطَّلَاقِ، لِأَنَّ الطَّلَاقَ لَا يَكُونُ إِلَّا بِاخْتِيَارِ الزَّوْجِ، وَأَمَّا الْفَسْخُ فَلَا يُرَاعَى اخْتِيَارُهُ فِي ذَلِكَ.

قَالَ أَبُو مُحَمَّدٍ: وَكَذَلِكَ الْأَمَةُ الْحَامِلُ مِنْ سَيِّدِهَا: يَمُوتُ عَنْهَا، أَوْ يَعْتِقُهَا أَوْ تَحْمِلُ مِنْ زِنًى لَا عِدَّةَ عَلَيْهَا، وَقَدْ ثَبَتَ أَنَّ الْمَرْأَةَ الَّتِي لَا زَوْجَ لَهَا، وَلَا هِيَ فِي عِدَّةٍ، وَلَا هِيَ أُمُّ وَلَدٍ، فَإِنَّ إِنْكَاحَهَا حَلَالٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ عِنْدَهُ أَرْبَعُ زَوْجَاتٍ فَطَلَّقَ إِحْدَاهُنَّ ثَلَاثًا]

١٨٧٠ - مَسْأَلَةٌ: وَمَنْ كَانَ عِنْدَهُ أَرْبَعُ زَوْجَاتٍ فَطَلَّقَ إِحْدَاهُنَّ ثَلَاثًا - وَهِيَ حَامِلٌ مِنْهُ أَوْ غَيْرُ حَامِلٍ، وَقَدْ وَطِئَهَا - إِذْ كَانَتْ فِي عِصْمَتِهِ - أَوْ انْفَسَخَ نِكَاحُهَا مِنْهُ - فَلَهُ أَنْ يَتَزَوَّجَ إِثْرَ طَلَاقِهِ لَهَا رَابِعَةً، أَوْ أُخْتَهَا، أَوْ عَمَّتَهَا، أَوْ خَالَتَهَا، أَوْ بِنْتَ أَخِيهَا، أَوْ بِنْتَ أُخْتِهَا، وَيَدْخُلَ بِهَا.

فَأَمَّا فِي الطَّلَاقِ الرَّجْعِيِّ فَلَا يَحِلُّ لَهُ ذَلِكَ مَا دَامَتْ فِي عِدَّتِهَا.

This obligation is specifically established for the widow based on the narration concerning Subay'ah al-Aslamiyyah.

They said: "We analogized the dissolved marriage—whether after its validity or invalidity—to the divorced woman in this matter." We responded: "All analogical reasoning is invalid. Even if it were valid, this case would represent the very essence of invalidity, for analogical reasoning according to its proponents involves applying a ruling to something based on its counterpart. A valid, lawful marriage is not the counterpart of an invalid, unlawful one whose contract is impermissible to establish or affirm. Rather, it is its opposite. Thus, it is invalid, and no correlation exists between it and divorce according to the principles of the proponents of analogical reasoning."

As for the marriage annulled after being valid, there is no doctrinal correlation between annulment and divorce, for divorce occurs solely by the husband's choice, whereas annulment does not take his choice into account in that matter.

Abu Muhammad said: Similarly, the enslaved woman impregnated by her master: he dies concerning her, manumits her, or she gives birth. Due to adultery, there is no waiting period incumbent upon her. It has been established that if a woman has no husband, is not in a waiting period, and is not a slave mother who bore her master's child, then her marriage is permissible. And success is from Allah, the Most High.

A legal case in which a man has four wives and divorces one of them three times.

1870 - Issue: If a man has four wives and divorces one of them irrevocably (three times)—whether she is pregnant by him or not—he may immediately afterward marry a fourth wife, her sister, paternal aunt, maternal aunt, brother's daughter, or sister's daughter, provided either he had consummated the marriage during the marriage or it was annulled, and may consummate it.

As for the revocable divorce, it is not permissible for him to do so as long

as she is in her waiting period.

L31588 Our position on this matter corresponds to the opinion narrated from ʿUthmān ibn ʿAffān and Zayd ibn Thābit.

وَقَوْلُنَا فِي هَذَا هُوَ قَوْلٌ رُوِيَ عَنْ عُثْمَانَ بْنِ عَفَّانَ، وَزَيْدِ بْنِ ثَابِتٍ.

L31589 It has been authentically reported from al-Ḥasan, Saʿīd ibn al-Musayyib, Khilāṣ ibn ʿAmr, ʿUrwah ibn al-Zubayr, al-Qāsim ibn Muḥammad, ʿAṭāʾ, al-Zuhrī, Yazīd ibn ʿAbd Allāh ibn Qusayṭ, ʿAbd Allāh ibn Abī Salamah, Rabīʿah, Ibn Abī Laylā, ʿUthmān al-Battī, al-Layth ibn Saʿd, Mālik, al-Shāfiʿī, the companions of both of them, Abū Thawr, Abū ʿUbayd, Abū Sulaymān, and his companions (and it is the most famous opinion of al-Awzāʿī), though a group of the Salaf did not permit this.

وَصَحَّ عَنْ الْحَسَنِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَخِلَاسِ بْنِ عَمْرٍو، وَعُرْوَةَ بْنِ الزُّبَيْرِ، - وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَعَطَاءٍ، وَالزُّهْرِيِّ، وَيَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ، وَعَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ، وَرَبِيعَةَ، وَابْنِ أَبِي لَيْلَى، وَعُثْمَانَ الْبَتِّيِّ وَاللَّيْثِ بْنِ سَعْدٍ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِ - وَهُوَ الْأَشْهَرُ مِنْ قَوْلِ الْأَوْزَاعِيِّ - وَلَمْ يُجِزْ ذَلِكَ جَمَاعَةٌ مِنْ السَّلَفِ.

L31590 It has been narrated from ʿAlī ibn Abī Ṭālib, and authenticated reports exist from Ibn ʿAbbās and Saʿīd ibn al-Musayyib as well. One of the two opinions of Abū ʿUbaydah ibn Nuḍaylah and ʿUbaydah al-Salmānī is established, along with authenticated reports from al-Shaʿbī, al-Nakhaʿī, and others.

وَرُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَصَحَّ عَنْ ابْنِ عَبَّاسٍ، وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَيْضًا، وَأَحَدُ قَوْلَيْ أَبِي عُبَيْدَةَ بْنِ نُضَيْلَةَ، وَعَبِيدَةَ السَّلْمَانِيِّ، وَصَحَّ عَنْ الشَّعْبِيِّ، وَالنَّخَعِيِّ، وَغَيْرِهِمْ.

L31591 This is the view of Abu Hanifah, his companions, Sufyan al-Thawri, al-Hasan ibn Hayy, Ahmad ibn Hanbal, and one of the two opinions of al-Awza'i. It is authentically reported from al-Hasan that he deemed it permissible, except if the woman he divorced is pregnant.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَحَدُ قَوْلَيْ الْأَوْزَاعِيِّ - وَصَحَّ عَنْ الْحَسَنِ إبَاحَةُ ذَلِكَ، إلَّا أَنْ تَكُونَ الَّتِي طَلَّقَ حُبْلَى.

L31592 Abu Muhammad said: We do not know any valid argument for those who prohibit this, except that they obscured [the matter] by citing Allah's words, may He be exalted: _"And [forbidden to you is] to marry two sisters simultaneously"_ [4:23]. They argued: This combines both in the attribution of their offspring's lineage to him, the obligation to maintain them, and the requirement to provide residence for them.[11]

قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لِمَنْ مَنَعَ مِنْ ذَلِكَ حُجَّةً إلَّا أَنَّهُمْ مَوَّهُوا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَأَنْ تَجْمَعُوا بَيْنَ الأُخْتَيْنِ} [النساء: ٢٣] قَالُوا: وَهَذَا جَامِعٌ بَيْنَهُمَا فِي لِحَاقِ حَمْلِهِمَا بِهِ، وَفِي وُجُوبِ نَفَقَتِهِمَا، وَإِسْكَانِهِمَا عَلَيْهِ.

L31593–31594 They said: It is not permissible for his semen to impregnate five women, nor two sisters. Do we know of anything else for them besides this? Ali said: As for their claim that both are entitled to his maintenance and his housing

وَقَالُوا: لَا يَجُوزُ أَنْ يَجْتَمِعَ مَاؤُهُ فِي خَمْسِ نِسْوَةٍ، وَلَا فِي أُخْتَيْنِ، مَا نَعْلَمُ لَهُمْ غَيْرَ هَذَا؟ قَالَ عَلِيٌّ: أَمَّا قَوْلُهُمْ: إنَّهُمَا يَجْتَمِعَانِ فِي نَفَقَتِهِ عَلَيْهِمَا، وَإِسْكَانِهِ لَهُمَا، فَلَسْنَا نُسَاعِدُهُمْ عَلَى

[11] **Qur'an references (L31592):** Qur'an 4:23 (An-Nisa).

them, we do not support them in that. Had it been as they said, it would not matter, for Allah the Exalted did not prohibit gathering them together in anything except making sexual intercourse permissible alone.

ذَلِكَ، هُمْ لَوْ كَانَ كَمَا قَالُوا مَا ضَرَّ ذَلِكَ شَيْئًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَمْنَعْ مِنْ الْجَمْعِ بَيْنَهُمَا فِي شَيْءٍ إلَّا فِي اسْتِحْلَالِ الْوَطْءِ فَقَطْ.

L31595 There is no distinction between the parents' union leading to the establishment of their conceived child's lineage to him and their union leading to the establishment of their two sons' lineage to him.

وَلَا فَرْقَ بَيْنَ اجْتِمَاعِهِمَا فِي لِحَاقِ حَمْلِهِمَا بِهِ، وَبَيْنَ اجْتِمَاعِهِمَا فِي لِحَاقِ ابْنَيْهِمَا بِهِ.

L31596 As for being married to five women, eight women, or two sisters simultaneously, we know of no explicit prohibition in the Quran or Sunnah that forbids this. Allah the Exalted only prohibited marrying more than four women and forbade combining two sisters within the framework of a marriage contract or legitimizing intercourse outside valid marriage. Allah has clearly delineated for us the women He has forbidden to us, then stated: *"Lawful to you are [all women] beyond these, provided you seek them in marriage with your wealth"* [An-Nisa: 24].[12]

وَأَمَّا اجْتِمَاعُ مِائَةٍ فِي خَمْسِ نِسْوَةٍ، أَوْ فِي ثَمَانٍ، أَوْ فِي أُخْتَيْنِ، فَلَا نَعْلَمُ نَصًّا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ: مَنَعَا مِنْ ذَلِكَ، إنَّمَا مَنَعَ اللَّهُ تَعَالَى مِنْ نِكَاحِ أَكْثَرَ مِنْ أَرْبَعِ نِسْوَةٍ، وَمِنْ الْجَمْعِ بَيْنَ الْأُخْتَيْنِ فِي عَقْدِ نِكَاحٍ، أَوْ اسْتِحْلَالِ وَطْءٍ فَقَطْ، وَقَدْ فَصَّلَ اللَّهُ تَعَالَى لَنَا مَا حَرَّمَ عَلَيْنَا مِنْ النِّسَاءِ ثُمَّ قَالَ: {وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ} [النساء: ٢٤].

L31597 Among the peculiar contradictions of the Hanafis here is that Abū Ḥanīfah said: Whoever emancipates an umm walad (a slave woman who bore her master a child) may not marry her sister, her paternal aunt, her maternal aunt, her brother's daughter, or her sister's daughter until the emancipated umm walad completes her waiting period of three menstrual cycles.

وَمِنْ طَرِيفِ تَنَاقُضِ الْحَنَفِيِّينَ هَهُنَا: أَنَّ أَبَا حَنِيفَةَ قَالَ: مَنْ أَعْتَقَ أُمَّ وَلَدٍ لَمْ يَحِلَّ لَهُ أَنْ يَتَزَوَّجَ أُخْتَهَا، وَلَا عَمَّتَهَا، وَلَا خَالَتَهَا، وَلَا بِنْتَ أَخِيهَا، وَلَا بِنْتَ أُخْتِهَا، حَتَّى تُتِمَّ الْمُعْتَقَةُ عِدَّتَهَا ثَلَاثَ حِيَضٍ.

L31598 He said: He may marry four [women] before the waiting period of one of them has concluded, thereby permitting his semen to be present in four wives and a fifth [woman] in her waiting period—and Zufar prohibited all of this.

قَالَ: وَلَهُ أَنْ يَتَزَوَّجَ أَرْبَعًا قَبْلَ انْقِضَاءِ عِدَّتِهَا، فَأَجَازَ أَنْ يَجْتَمِعَ مَاؤُهُ فِي أَرْبَعِ زَوْجَاتٍ وَخَامِسَةٍ مُعْتَدَّةٍ مِنْهُ - وَمَنَعَ مِنْ كُلِّ ذَلِكَ زُفَرُ.

L31599 Issue: It is not permissible for anyone to marry his bondwoman before he frees her.

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَتَزَوَّجَ مَمْلُوكَتَهُ قَبْلَ أَنْ يُعْتِقَهَا]

L31600 1871 - Issue: It is not lawful for anyone to marry his female slave before emancipating her, nor for a woman to marry her male slave before emancipating him. If she emancipates him, marriage becomes permissible for them—provided they mutually consent—as if they were strangers. There is

١٨٧١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتَزَوَّجَ مَمْلُوكَتَهُ قَبْلَ أَنْ يُعْتِقَهَا، وَلَا لِامْرَأَةٍ أَنْ تَتَزَوَّجَ مَمْلُوكَهَا قَبْلَ أَنْ تُعْتِقَهُ، فَإِنْ أَعْتَقَتْهُ جَازَ لَهُمَا التَّنَاكُحُ إنْ تَرَاضَيَا كَالْأَجْنَبِيِّ، وَلَا فَرْقَ - وَهَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {إلَّا عَلَى أَزْوَاجِهِمْ أَوْ مَا

[12] **Qur'an references (L31596):** Qur'an 4:24 (An-Nisa).

no difference [in the ruling]—and there is no disagreement among scholars on this matter—for Allah the Exalted stated: {Except with their spouses or those their right hands possess} [Al-Mu'minun: 6]. Thus, He distinguished between the two categories, and it is impermissible to combine two categories that Allah the Exalted has explicitly separated.[13]

L31601 **A legal issue concerning whether a man may marry his father's female slave, given that she is not lawful for the father to marry under Sharīʿah.**

L31602 1872 - Issue: It is permissible for a man to marry his father's slave woman whom his father is prohibited from marrying, his son's slave woman whom his son is prohibited from marrying, his mother's slave woman, and his daughter's slave woman.

L31603 It is permissible for a slave to marry the mother of his master, the daughter of his master, and the sister of his master, provided all such marriages are with his master's permission—and we know of no valid proof whatsoever for those who prohibit this.

L31604–31605 However, some of them said: "He might inherit her and she might inherit him, which would annul the marriage?" We replied: "Yes – so what would happen? Or she might acquire him and he might acquire her, with no difference."

L31606 The proof of the validity of this is the statement of Allah, the Mighty and Majestic: "Marry the unmarried among you and the righteous from your male and female servants" [24:32]. Allah, the Exalted, excluded none of those we mentioned, "And your Lord is never forgetful" [19:64]. We seek refuge in Allah from the belief of those who imagine they can introduce through their intellect something your Lord, the Exalted, has not legislated.[14]

L31607 **Issue: If he intends to marry a free woman or a bondwoman.**

[13] **Qur'an references (L31600):** Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij).
[14] **Qur'an references (L31606):** Qur'an 24:32 (An-Nur); Qur'an 19:64 (Maryam).

مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٦] فَفَرَّقَ تَعَالَى بَيْنَ الصِّنْفَيْنِ فَلَا يَجُوزُ اجْتِمَاعُ صِنْفَيْنِ فَرَّقَ اللَّهُ تَعَالَى بَيْنَهُمَا

[مَسْأَلَةٌ لِلرَّجُلِ أَنْ يَتَزَوَّجَ أَمَةَ وَالِدِهِ الَّتِي لَا تَحِلُّ لِوَالِدِهِ]

١٨٧٢ - مَسْأَلَةٌ: وَجَائِزٌ لِلرَّجُلِ أَنْ يَتَزَوَّجَ أَمَةَ وَالِدِهِ الَّتِي لَا تَحِلُّ لِوَالِدِهِ، وَأَمَةَ وَلَدِهِ الَّتِي لَا تَحِلُّ لِوَلَدِهِ، وَأَمَةَ أُمِّهِ، وَأَمَةَ ابْنَتِهِ.

وَجَائِزٌ لِلْعَبْدِ نِكَاحُ أُمِّ سَيِّدِهِ، وَبِنْتِ سَيِّدِهِ، وَأُخْتِ سَيِّدِهِ، إذَا كَانَ كُلُّ ذَلِكَ بِإِذْنِ سَيِّدِهِ - وَمَا نَعْلَمُ لِمَنْ مَنَعَ مِنْ ذَلِكَ حُجَّةً أَصْلًا.

إلَّا أَنَّ بَعْضَهُمْ قَالَ: قَدْ يَرِثُهَا وَتَرِثُهُ فَيَنْفَسِخُ النِّكَاحُ؟ فَقُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ أَوْ قَدْ تَشْتَرِيهِ وَيَشْتَرِيهَا وَلَا فَرْقَ.

بُرْهَانُ صِحَّةِ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] فَلَمْ يَسْتَثْنِ اللَّهُ تَعَالَى أَحَدًا مِمَّنْ ذَكَرْنَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَنَعُوذُ بِاَللَّهِ مِنْ اعْتِقَادِ مَنْ يَظُنُّ أَنَّهُ يَسْتَدْرِكُ بِعَقْلِهِ شَيْئًا لَمْ يُشَرِّعْهُ رَبُّهُ تَعَالَى

[مَسْأَلَةٌ أَرَادَ أَنْ يَتَزَوَّجَ امْرَأَةً حُرَّةً أَوْ أَمَةً]

L31608 1873 - Issue: Whoever intends to marry a free woman or a slave woman may look at her—stealthily without her knowledge and openly with her knowledge—at both her private and public parts. However, this is not permissible if he intends to purchase a slave woman.

١٨٧٣ - مَسْأَلَةٌ: وَمَنْ أَرَادَ أَنْ يَتَزَوَّجَ امْرَأَةً حُرَّةً أَوْ أَمَةً، فَلَهُ أَنْ يَنْظُرَ مِنْهَا - مُتَغَفِّلًا لَهَا وَغَيْرَ مُتَغَفِّلٍ - إلَى مَا بَطَنَ مِنْهَا وَظَهَرَ - وَلَا يَجُوزُ ذَلِكَ فِي أَمَةٍ يُرِيدُ شِرَاءَهَا.

L31609 He is not permitted to look at her except at the face and the two hands only, but he should order a woman to look at her entire body and inform him.

وَلَا يَجُوزُ لَهُ أَنْ يَنْظُرَ مِنْهَا إلَّا إلَى الْوَجْهِ وَالْكَفَّيْنِ فَقَطْ، لَكِنْ يَأْمُرُ امْرَأَةً تَنْظُرُ إلَى جَمِيعِ جِسْمِهَا وَتُخْبِرُهُ.

L31610 The proof of this is Allah Almighty's statement: {Tell the believing men to lower their gaze and guard their private parts} [An-Nur: 30]. Thus, Allah Almighty has obligated lowering the gaze as a whole, just as He obligated guarding the private parts. This is a general ruling that cannot be restricted except by an exception established in an authentic text, and the text has specifically permitted the gaze of those intending marriage as the only exception.[15]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ} [النور: ٣٠] فَافْتَرَضَ اللَّهُ عَزَّ وَجَلَّ غَضَّ الْبَصَرِ جُمْلَةً، كَمَا افْتَرَضَ حِفْظَ الْفَرْجِ، فَهُوَ عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ مِنْهُ إلَّا مَا خَصَّهُ نَصٌّ صَحِيحٌ، وَقَدْ خَصَّ النَّصُّ نَظَرَ مَنْ أَرَادَ الزَّوَاجَ فَقَطْ.

L31611 As we have been narrated through the chain of Abī Dāwūd: Musaddad narrated to us, ʿAbd al-Wāḥid ibn Ziyād narrated to us, Muḥammad ibn Isḥāq narrated to us from Dāwūd ibn al-Ḥuṣayn from Wāqid ibn ʿAbd al-Raḥmān—who is the son of Saʿd ibn Muʿādh—from Jābir ibn ʿAbd Allāh, who said: The Messenger of Allāh—peace and blessings be upon him—said: "When one of you proposes to a woman, if he is able to look at that which invites him to marry her, then let him do so." Jābir said: "I proposed to a woman from Banū Salimah, so I used to hide beneath the date palm stalks until I saw some of what invited me to her."[16]

كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُسَدَّدٌ نا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ وَاقِدِ بْنِ عَبْدِ الرَّحْمَنِ - هُوَ ابْنُ سَعْدِ بْنِ مُعَاذٍ - عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إذَا خَطَبَ أَحَدُكُمْ الْمَرْأَةَ فَإِنْ اسْتَطَاعَ أَنْ يَنْظُرَ إلَى مَا يَدْعُوهُ إلَى نِكَاحِهَا فَلْيَفْعَلْ قَالَ جَابِرٌ فَخَطَبْتُ امْرَأَةً مِنْ بَنِي سَلِمَةَ فَكُنْتُ أَتَخَبَّأُ تَحْتَ الْكَرَبِ حَتَّى رَأَيْتُ مِنْهَا بَعْضَ مَا دَعَانِي إلَيْهَا» .

L31612 We have also narrated it through authentic chains: via Abū Hurayrah and al-Mughīrah ibn Shuʿbah. Thus, this serves as a general exemption for such cases from the totality of what is prohibited regarding unrestrained gazing.

وَقَدْ رُوِّينَاهُ - أَيْضًا - مِنْ طُرُقٍ صِحَاحٍ: مِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَالْمُغِيرَةِ بْنِ شُعْبَةَ، فَكَانَ هَذَا عُمُومًا مَخْرَجًا لِهَذِهِ الْحَالِ مِنْ جُمْلَةِ مَا حُرِّمَ مِنْ غَضِّ الْبَصَرِ.

L31613–31614 As for looking at a young woman with the intention of purchasing her, there is no explicit text from the Messenger of Allah—peace and blessings of

وَأَمَّا النَّظَرُ إلَى الْجَارِيَةِ يُرِيدُ ابْتِيَاعَهَا فَلَا نَصَّ فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا حُجَّةَ فِيمَا جَاءَ عَنْ سِوَاهُ.

[15] **Qur'an references (L31610):** Qur'an 24:30 (An-Nur).
[16] **Hadith references (L31611):** Sunan Abi Dawud 2082; Mishkat al-Masabih 3106.

Allah be upon him—regarding that, nor is there any proof in what has been reported from others besides him.

وَقَدْ اخْتَلَفَ النَّاسُ فِي ذَلِكَ -: فَصَحَّ عَنْ ابْنِ عُمَرَ إبَاحَةُ النَّظَرِ إلَى سَاقِهَا وَبَطْنِهَا وَظَهْرِهَا، وَيَضَعُ يَدَهُ عَلَى عَجُزِهَا وَصَدْرِهَا - وَنَحْوِ ذَلِكَ عَنْ عَلِيٍّ، وَلَمْ يَصِحَّ عَنْهُ.

L31615 Scholars have differed regarding this matter. It has been authentically reported from Ibn ʿUmar that it is permissible to look at her lower leg, stomach, and back, and to place one's hand on her buttocks and chest. Similar actions are narrated from ʿAlī, but they lack authentic documentation.

وَصَحَّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ إبَاحَةُ النَّظَرِ إلَى مَا فَوْقَ السُّرَّةِ وَدُونَ الرُّكْبَةِ.

L31616 It has been authentically reported from Abū Mūsā al-Ashʿarī that the permissibility of looking at what is above the navel and up to the knee.

وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ.

L31617 It has been reported from Saʿīd ibn al-Musayyib.

وَرُوِّينَا عَنْ الْأَسْوَدِ بْنِ يَزِيدَ: أَنَّهُ لَمْ يَسْتَجِزْ النَّظَرَ إلَى سَاقِهَا.

L31618 It was narrated to us from al-Aswad ibn Yazīd that he deemed it impermissible to look at her lower leg.

قَالَ أَبُو مُحَمَّدٍ: فَبَقِيَ أَمْرُ الِابْتِيَاعِ عَلَى وُجُوبِ غَضِّ الْبَصَرِ.

L31619 Abu Muhammad said: The matter of commercial transactions remained based on the obligation to lower the gaze.

وَأَمَّا الْوَجْهُ وَالْكَفَّانِ: فَقَدْ جَاءَ فِيهِمَا الْخَبَرُ الْمَشْهُورُ الَّذِي أَوْرَدْنَاهُ فِي غَيْرِ هَذَا الْمَكَانِ مِنْ أَمْرِ «الْخَثْعَمِيَّةَ الَّتِي سَأَلَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ الْحَجِّ عَنْ أَبِيهَا؟ وَأَنَّ الْفَضْلَ بْنَ الْعَبَّاسِ جَعَلَ يَنْظُرُ إلَى وَجْهِهَا، فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصْرِفُ وَجْهَ الْفَضْلِ عَنْهَا، وَلَمْ يَأْمُرْهَا بِسِتْرِ وَجْهِهَا» فَفِي هَذَا إبَاحَةُ النَّظَرِ إلَى وَجْهِ الْمَرْأَةِ لِغَيْرِ اللَّذَّةِ.

L31620 As for the face and both hands: the well-known report concerning them, which we have cited elsewhere, is the account of the Al-Khath'amiyyah woman who asked the Messenger of Allah—peace and blessings be upon him—about performing Hajj on behalf of her father. Al-Fadl ibn al-Abbas kept looking at her face, so the Messenger of Allah—peace and blessings be upon him—kept turning al-Fadl's face away from her, yet he did not command her to cover her face. This indicates the permissibility of looking at a woman's face without lust.

وَأَمَّا الْكَفَّانِ: فَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ نا أَبِي نا شُعْبَةُ عَنْ عَدِيٍّ - هُوَ ابْنُ ثَابِتٍ - عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَرَجَ يَوْمَ أَضْحَى أَوْ فِطْرٍ، فَصَلَّى رَكْعَتَيْنِ ثُمَّ أَتَى النِّسَاءَ - وَمَعَهُ بِلَالٌ - فَأَمَرَهُنَّ بِالصَّدَقَةِ فَجَعَلَتْ الْمَرْأَةُ تُلْقِي خُرْصَهَا وَتُلْقِي سِخَابَهَا» .

L31621 As for the two hands: We were narrated via the chain in Ṣaḥīḥ Muslim—Abdullāh ibn Muʿādh al-ʿAnbarī narrated to us, his father narrated to us, Shuʿbah narrated to us from ʿAdī—that is, ibn Thābit—from Saʿīd ibn Jubayr from Ibn ʿAbbās: "Allah's Messenger—peace and blessings be upon him—went out on Eid al-Aḍḥā or Eid al-Fiṭr, prayed two units, then came to the women—with Bilāl accompanying him—and commanded them to give charity. Each woman began casting her earring and tossing her necklace."

L31622 From the chain of Abū Dāwūd: Aḥmad ibn Ḥanbal narrated to us, from ʿAbd al-Razzāq and Muḥammad ibn Bakr, both of whom said: Ibn Jurayj narrated

to us, informing me that ʿAṭāʾ said: "I heard Jābir ibn ʿAbd Allāh say: 'The Messenger of Allāh—peace and blessings of Allāh be upon him—went out on the Day of Eid al-Fiṭr and began with the Eid prayer before the sermon. Then he delivered the sermon, descended, and approached the women to remind them, while Bilāl was spreading his garment, and the women cast their charity into it. Each woman would cast her earring.'"

وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ نا عَبْدُ الرَّزَّاقِ، وَمُحَمَّدُ بْنُ بَكْرٍ، قَالَا جَمِيعًا: نَا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ قَالَ: " سَمِعْت جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: «إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَرَجَ يَوْمَ الْفِطْرِ فَبَدَأَ بِالصَّلَاةِ قَبْلَ الْخُطْبَةِ، ثُمَّ خَطَبَ ثُمَّ نَزَلَ فَأَتَى النِّسَاءَ فَذَكَّرَهُنَّ وَبِلَالٌ بَاسِطٌ ثَوْبَهُ يُلْقِينَ فِيهِ النِّسَاءُ صَدَقَةً، تُلْقِي الْمَرْأَةُ فَتَخَهَا» .

L31623 Abu Muhammad said: Al-fathkh are large rings that women fastened tightly on their fingers. Were their palms not exposed, they would not have been able to cast off the al-fathkh.

وَقَالَ أَبُو مُحَمَّدٍ: الْفَتَخُ خَوَاتِمُ كِبَارٌ كُنَّ يَحْبِسْنَهَا فِي أَصَابِعِهِنَّ، فَلَوْلَا ظُهُورُ أَكُفِّهِنَّ مَا أَمْكَنَهُنَّ إلْقَاءُ الْفَتَخِ.

L31624 It is not permissible for anyone to look at a non-mahram woman unless he intends to marry her or purchase her.

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَنْظُرَ مِنْ أَجْنَبِيَّةٍ لَا يُرِيدُ زَوَاجَهَا أَوْ شِرَاءَهَا]

L31625–31627 1874 - Issue: It is not permissible for anyone to look at a non-mahram woman whom he does not intend to marry or—if she is a slave—purchase for carnal pleasure, except out of necessity. If one looks at both private parts during the act of adultery to testify about it, this is permissible, as he is commanded to testify. Almighty God said: "Be upholders of justice, bearing witness for God" [An-Nisā': 135]. They have no means to bear testimony in cases of adultery except through valid observation of the genitalia and verification therein.[17]

١٨٧٤ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَنْظُرَ مِنْ أَجْنَبِيَّةٍ لَا يُرِيدُ زَوَاجَهَا أَوْ شِرَاءَهَا إنْ كَانَتْ أَمَةً لِتَلَذُّذٍ إلَّا لِضَرُورَةٍ، فَإِنْ نَظَرَ فِي الزِّنَا إلَى الْفَرْجَيْنِ لِيَشْهَدَ بِذَلِكَ فَمُبَاحٌ لَهُ، لِأَنَّهُ مَأْمُورٌ بِأَدَاءِ الشَّهَادَةِ، قَالَ عَزَّ وَجَلَّ: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] وَلَا سَبِيلَ لَهُمْ إلَى أَدَاءِ الشَّهَادَةِ فِي الزِّنَا إلَّا بِصِحَّةِ النَّظَرِ إلَى الْفَرْجَيْنِ وَالتَّثَبُّتِ فِي ذَلِكَ.

L31628 In other cases, the face and the two hands [are treated] as we have mentioned earlier, at the time of testimony against her, for her, or from her.

وَأَمَّا فِي غَيْرِ ذَلِكَ، فَالْوَجْهُ وَالْكَفَّانِ كَمَا قَدَّمْنَا آنِفًا عِنْدَ الشَّهَادَةِ عَلَيْهَا أَوْ لَهَا أَوْ مِنْهَا.

L31629 It is permissible for a mahram to see the entire body of his female mahram, such as the mother, grandmother, daughter, granddaughter, maternal aunt, paternal aunt, niece from the brother's side, niece from the sister's side, stepmother, and daughter-in-law, except for the anus and private parts only.

وَجَائِزٌ لِذِي الْمَحْرَمِ أَنْ يَرَى جَمِيعَ جِسْمِ حَرِيمَتِهِ، كَالْأُمِّ، وَالْجَدَّةِ، وَالْبِنْتِ، وَابْنَةِ الِابْنِ، وَالْخَالَةِ، وَالْعَمَّةِ، وَبِنْتِ الْأَخِ، وَبِنْتِ الْأُخْتِ، وَامْرَأَةِ الْأَبِ، وَامْرَأَةِ الِابْنِ، حَاشَا الدُّبُرَ وَالْفَرْجَ فَقَطْ.

L31630 And likewise, women are sisters to one another.

وَكَذَلِكَ النِّسَاءُ بَعْضُهُنَّ مِنْ بَعْضٍ.

[17] **Qur'an references (L31625):** Qur'an 4:135 (An-Nisa).

L31631 And likewise, men are bound to one another in mutual responsibility.

وَكَذَلِكَ الرِّجَالُ بَعْضُهُمْ مِنْ بَعْضٍ.

L31632 The evidence for this is the statement of Allah, the Most High: {And let them not display their adornment except what is outwardly visible. And let them draw their head-coverings over their bosoms. And let them not display their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, those whom their right hands possess, male attendants devoid of desire, or children who have not yet attained awareness of women's private parts. And let them not stamp their feet to reveal what they conceal of their adornment.} [An-Nur: 31].[18]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى: {وَلا يُبْدِينَ زِينَتَهُنَّ إِلا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَى جُيُوبِهِنَّ وَلا يُبْدِينَ زِينَتَهُنَّ إِلا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرِ أُولِي الإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَى عَوْرَاتِ النِّسَاءِ وَلا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ} [النور: ٣١] الْآيَةَ.

L31633 Then Allah, the Mighty and Majestic, mentioned in this verse: their adornment—a visible adornment displayed to everyone, which is the face and hands, as we have explained only. And a concealed adornment, which Allah, the Mighty and Majestic, has forbidden to display except to those mentioned in the verse.

فَذَكَرَ اللَّهُ عَزَّ وَجَلَّ فِي هَذِهِ الْآيَةِ: زِينَتَهُنَّ زِينَةً ظَاهِرَةً تُبْدَى لِكُلِّ أَحَدٍ وَهِيَ الْوَجْهُ وَالْكَفَّانِ عَلَى مَا بَيَّنَّا فَقَطْ، وَزِينَةً بَاطِنَةً حَرَّمَ عَزَّ وَجَلَّ إِبْدَاءَهَا إِلَّا لِمَنْ ذَكَرَ فِي الْآيَةِ.

L31634 We find that He, the Exalted, has made equal in this regard spouses, women, children, and all others we have mentioned in the verse.

وَوَجَدْنَاهُ تَعَالَى قَدْ سَاوَى فِي ذَلِكَ بَيْنَ الْبُعُولَةِ، وَالنِّسَاءِ، وَالْأَطْفَالِ، وَسَائِرِ مَنْ ذَكَرْنَا فِي الْآيَةِ.

L31635 We have clarified in *The Book of Prayer* that a woman's entire body is *ʿawrah* except her face and palms (including the hands up to the wrists). The ruling for the *ʿawrah* applies uniformly as we mentioned, except for what is unanimously agreed upon: that it is impermissible for anyone other than the husband to look at the female genitalia and anus.

وَقَدْ أَوْضَحْنَا فِي " كِتَابِ الصَّلَاةِ " أَنَّ الْمَرْأَةَ كُلَّهَا عَوْرَةٌ إِلَّا الْوَجْهَ وَالْكَفَّيْنِ، فَحُكْمُ الْعَوْرَةِ سَوَاءٌ فِيمَا ذَكَرْنَا، إِلَّا مَا لَا خِلَافَ فِيهِ مِنْ أَنَّهُ لَا يَحِلُّ لِغَيْرِ الزَّوْجِ النَّظَرُ إِلَيْهِ مِنْ الْفَرْجِ وَالدُّبُرِ.

L31636 We have not found in the Qur'an, nor in the Sunnah, nor in rational reasoning any distinction between the hair, neck, forearm, leg, and chest on one hand, and the belly, back, and thigh on the other, except that it is impermissible for anyone to intentionally look at any part of a woman who is unlawful for him—neither her face nor anything else—unless there arises a reason that necessitates such looking, where no wrongdoing is intended in the heart or with the eye.

وَلَمْ نَجِدْ لَا فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا مَعْقُولٍ: فَرْقًا بَيْنَ الشَّعْرِ، وَالْعُنُقِ، وَالذِّرَاعِ، وَالسَّاقِ، وَالصَّدْرِ، وَبَيْنَ الْبَطْنِ، وَالظَّهْرِ، وَالْفَخِذِ إِلَّا أَنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يَتَعَمَّدَ النَّظَرَ إِلَى شَيْءٍ مِنْ امْرَأَةٍ لَا يَحِلُّ لَهُ: لَا الْوَجْهَ، وَلَا غَيْرَهُ، إِلَّا لِقِصَّةٍ تَدْعُو إِلَى ذَلِكَ لَا يُقْصَدُ مِنْهَا مُنْكَرٌ بِقَلْبٍ أَوْ بِعَيْنٍ.

[18] **Qur'an references (L31632):** Qur'an 24:31 (An-Nur).

وَقَدْ رُوِّينَا عَنْ طَاوُسٍ كَرَاهَةَ نَظَرِ الرَّجُلِ إلَى شَعْرِ ابْنَتِهِ، وَأُمِّهِ، وَأُخْتِهِ - وَلَا يَصِحُّ عَنْ طَاوُسٍ، وَصَحَّ عَنْ إبْرَاهِيمَ: أَنْ لَا يُنْظَرَ مِنْ ذَاتِ الْمَحْرَمِ إلَّا إلَى مَا فَوْقَ الصَّدْرِ - وَهَذَا تَحْدِيدٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ، وَلَيْسَ هَذَا مَكَانُ رَأْيٍ، وَلَا اسْتِحْسَانٍ، لِأَنَّ الْمُخَالِفِينَ لَنَا هَهُنَا بِأَهْوَائِهِمْ لَا يَخْتَلِفُونَ فِي أَنَّهُ لَا يَحِلُّ النَّظَرُ إلَى زِينَةِ شَعْرِ الْعَجُوزِ السَّوْدَاءِ الْحُرَّةِ، وَلَعَلَّ النَّظَرَ إلَيْهَا يَقْذِي الْعَيْنَ، وَيُمِيتُ تَهْيِيجَ النَّفْسِ.

L31637–31639 It has been narrated to us that Ṭāwus disliked a man looking at the hair of his daughter, mother, or sister—though this attribution to Ṭāwus is unreliable, while it is authentically reported from Ibrāhīm that one should not look at a mahram woman except at what is above. The beginning—and this is a specification without proof of its validity, for this is not the place for opinion or juristic preference, since those who oppose us here—led by their desires—do not differ on the impermissibility of gazing at the adorned hair of an old black free woman. Indeed, looking at her might harm the eye and extinguish the soul's arousal.

وَيُجِيزُونَ النَّظَرَ لِغَيْرِ لَذَّةٍ إلَى وَجْهِ الْجَارِيَةِ الْجَمِيلَةِ الْفَتَاةِ وَيَدَيْهَا وَقَدْ صَحَّ فِي ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «إنَّ أُمَّ عَطِيَّةَ أُمَّ الْمُؤْمِنِينَ اسْتَأْذَنَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحِجَامَةِ، فَأَذِنَ لَهَا، فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبَا طَيْبَةَ أَنْ يُحَجِّمَهَا - قَالَ: حَسِبْتُ أَنَّهُ كَانَ أَخَاهَا مِنْ الرَّضَاعَةِ، أَوْ غُلَامًا لَمْ يَحْتَلِمْ» .

L31640 They permit looking without desire at the face of a beautiful young slave girl and her hands. It is authentically established regarding this in what we have reported through the chain of Muslim ibn al-Ḥajjāj: Qutaybah ibn Saʿīd narrated to us, al-Layth - that is, Ibn Saʿd - narrated to us from Abū al-Zubayr from Jābir ibn ʿAbdullāh, who said: "Umm ʿAṭiyyah, the Mother of the Believers, sought permission from the Messenger of Allah, peace and blessings be upon him, to perform cupping. He permitted her, and the Messenger of Allah, peace and blessings be upon him, commanded Abū Ṭaybah to perform cupping on her." Jābir said: "I presumed he was either her milk brother or a boy who had not reached puberty."

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ، لِأَنَّهُ مِنْ رِوَايَةِ اللَّيْثِ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ.

L31641 Abu Muhammad said: This is a report of the utmost authenticity, because it is transmitted through al-Layth from Abu al-Zubayr from Jabir.

وَقَدْ رُوِّينَا بِأَصَحِّ طَرِيقٍ: أَنَّ كُلَّ مَا رَوَاهُ اللَّيْثُ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ، فَإِنَّ أَبَا الزُّبَيْرِ أَخْبَرَهُ أَنَّهُ سَمِعَهُ عَنْ جَابِرٍ.

L31642 And it has been narrated to us via the strongest chain that all Al-Layth reported from Abū al-Zubayr from Jābir: Abū al-Zubayr informed him that he heard it from Jābir.

وَأَمَّا قَوْلُ الرَّاوِي: «حَسِبْتُ أَنَّهُ كَانَ أَخَاهَا مِنْ الرَّضَاعَةِ أَوْ غُلَامًا لَمْ يَحْتَلِمْ» فَإِنَّمَا هُوَ ظَنٌّ مِنْ بَعْضِ رُوَاةِ الْخَبَرِ مِمَّنْ دُونَ جَابِرٍ. ثُمَّ هُوَ أَيْضًا ظَنٌّ غَيْرُ صَادِقٍ، لِأَنَّ أُمَّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهَا - وُلِدَتْ بِمَكَّةَ، وَبِهَا وَلَدَتْ أَكْثَرَ أَوْلَادِهَا.

L31643 As for the narrator's statement: "I presumed he was her milk brother or a prepubescent boy," this is merely a conjecture by some narrators of the report from those below Jabir in the chain. Moreover, it is an untrue conjecture, for Umm Salamah—may Allah be pleased with her—was born in Mecca, and there she gave birth to most of her children.

L31644 Abu Taybah was a slave owned by one of the Ansar in Medina, thus it is impossible for him to have been her brother through breastfeeding, as he

was a slave upon whom the kharaj was levied – as has been narrated to us through Malik's chain from Humayd at-Tawil from Anas ibn Malik, who said: "Abu Taybah performed cupping on Allah's Messenger – peace and blessings be upon him – whereupon he ordered that he be given a saa' of dates and instructed his household to reduce his kharaj." It is not permissible to perform cupping on her unless he sees her neck and the upper portion of her back corresponding to the top of her shoulders.

وَأَبُو طَيْبَةَ: غُلَامٌ لِبَعْضِ الْأَنْصَارِ بِالْمَدِينَةِ، فَمُحَالٌ أَنْ يَكُونَ أَخَاهَا مِنَ الرَّضَاعَةِ، وَكَانَ عَبْدًا مَضْرُوبًا عَلَيْهِ الْخَرَاجُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «حَجَمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبُو طَيْبَةَ فَأَمَرَ لَهُ بِصَاعٍ مِنْ تَمْرٍ، وَأَمَرَ أَهْلَهُ أَنْ يُخَفِّفُوا مِنْ خَرَاجِهِ» وَلَا يُمْكِنُ أَنْ يُحَجِّمَهَا إِلَّا حَتَّى يَرَى عُنُقَهَا، وَأَعْلَى ظَهْرِهَا مِمَّا يُوَازِي أَعْلَى كَتِفَيْهَا.

[مَسْأَلَةُ نَظَرُ الرَّجُلِ إِلَى فَرْجِ امْرَأَتِهِ الَّتِي يَحِلُّ لَهُ وَطْؤُهَا]

L31645

Issue: Whether a man may look at the private parts of his wife whom it is lawful for him to have intercourse with.

L31646

1875 - Issue: It is permissible for a man to look at the private parts of his wife (spouse) and his female slave whom it is lawful for him to have intercourse with. Similarly, they both may look at his private parts. There is absolutely no dislike in that whatsoever.

١٨٧٥ - مَسْأَلَةٌ: وَحَلَالٌ لِلرَّجُلِ أَنْ يَنْظُرَ إِلَى فَرْجِ امْرَأَتِهِ زَوْجَتِهِ وَأَمَتِهِ الَّتِي يَحِلُّ لَهُ وَطْؤُهَا، وَكَذَلِكَ لَهُمَا أَنْ يَنْظُرَا إِلَى فَرْجِهِ، لَا كَرَاهِيَةَ فِي ذَلِكَ أَصْلًا.

L31647–31648

The proof of this is the well-known narrations transmitted via 'Ā'ishah, Umm Salamah, and Maymūnah—the Mothers of the Believers (may Allah be pleased with them)—that they would perform the ritual bath for janābah (major ritual impurity) with the Messenger of Allah (peace and blessings be upon him) from a single vessel.

بُرْهَانُ ذَلِكَ -: الْأَخْبَارُ الْمَشْهُورَةُ مِنْ طَرِيقِ «عَائِشَةَ، وَأُمِّ سَلَمَةَ، وَمَيْمُونَةَ: أُمَّهَاتِ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُنَّ - أَنَّهُنَّ كُنَّ يَغْتَسِلْنَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنَ الْجَنَابَةِ مِنْ إِنَاءٍ وَاحِدٍ» .

L31649

In the report of Maymunah, it is clarified that the Prophet (peace and blessings be upon him) was without a loincloth, as her narration states: "He (peace and blessings be upon him) inserted his hand into the vessel, then poured water over his genital area and washed it with his left hand." Therefore, after this evidence, it is rendered invalid to consider any contrary juristic opinion.

وَفِي خَبَرِ مَيْمُونَةَ بَيَانُ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَانَ بِغَيْرِ مِئْزَرٍ، لِأَنَّ فِي خَبَرِهَا «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَدْخَلَ يَدَهُ فِي الْإِنَاءِ ثُمَّ أَفْرَغَ عَلَى فَرْجِهِ وَغَسَلَهُ بِشِمَالِهِ» فَبَطَلَ بَعْدَ هَذَا أَنْ يُلْتَفَتَ إِلَى رَأْيِ أَحَدٍ.

L31650

It is astonishing that some overly strict individuals among the ignorant permit intercourse with the private parts yet prohibit looking at them. Sufficient in refuting this is the statement of Allah, the Almighty: "And those who guard their private parts—except with their wives or those whom their right hands possess, for then they are free from blame" (23:5–6). Thus, the Almighty commanded the guarding of the private parts except with one's wife or those whom their right hands possess, so there is no blame in that.

وَمِنَ الْعَجَبِ أَنْ يُبِيحَ بَعْضُ الْمُتَكَلِّفِينَ مِنْ أَهْلِ الْجَهْلِ وَطْءَ الْفَرْجِ وَيَمْنَعَ مِنَ النَّظَرِ إِلَيْهِ، وَيَكْفِي مِنْ هَذَا قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] . فَأَمَرَ

This is a general ruling encompassing looking at them, touching them, and sexual intercourse.[19]

L31651 We know of no basis for the opposing opinion except a weak report from an unknown woman: "From the Mother of the Believers: 'I never saw the genitalia of the Messenger of Allah (may Allah bless him and grant him peace)'."

L31652 And another—at the utmost level of rejection—from Abū Bakr ibn ʿAyyāsh and Zuhayr ibn Muḥammad, both narrating from ʿAbd al-Malik ibn Abī Sulaymān al-ʿArzamī. These are likened to three supporting stones and deserted ruins: one of them sufficed to invalidate the ḥadīth.

L31653 **It is impermissible for a Muslim to propose marriage over another Muslim's existing proposal.**

L31654 1876 – Issue: It is not permissible for a Muslim to propose over [interfere with] another Muslim's proposal, whether it is settled, nearing acceptance, or otherwise—unless he is superior in religious practice and good conduct. In such a case, he may propose over the proposal of one from those inferior to him in religious practice and good treatment.

L31655 Or unless the first suitor permits him to propose to her, then it becomes permissible for him to propose to her at that point.

L31656 Or unless the first suitor relinquishes the marriage proposal, then it becomes permissible for another to propose to her at that point.

L31657 Or unless the woman who has been proposed to rejects him; at that time, another may propose to her. Otherwise, it is impermissible.

L31658–31660 The proof of that is: what we have narrated through the chain reported by Muslim—Abu al-Tahir narrated to me from ʿAbdullah ibn Wahb, who narrated to us from al-Layth ibn Saʿd, from Yazid ibn Abi Habib, from ʿAbd

[19] **Qur'an references (L31650):** 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).

عَزَّ وَجَلَّ بِحِفْظِ الْفَرْجِ إِلَّا عَلَى الزَّوْجَةِ، وَمِلْكِ الْيَمِينِ، فَلَا مَلَامَةَ فِي ذَلِكَ، وَهَذَا عُمُومٌ فِي رُؤْيَتِهِ وَلَمْسِهِ وَمُخَالَطَتِهِ.

وَمَا نَعْلَمُ لِلْمُخَالِفِ تَعَلُّقًا إِلَّا بِأَثَرٍ سَخِيفٍ عَنْ امْرَأَةٍ مَجْهُولَةٍ «عَنْ أُمِّ الْمُؤْمِنِينَ مَا رَأَيْتُ فَرْجَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ» .

وَآخَرَ - فِي غَايَةِ السُّقُوطِ عَنْ أَبِي بَكْرِ بْنِ عَيَّاشٍ، وَزُهَيْرِ بْنِ مُحَمَّدٍ، كِلَاهُمَا عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ الْعَرْزَمِيِّ - وَهَؤُلَاءِ: ثَلَاثُ الْأَثَافِي وَالدِّيَارُ الْبَلَاقِعِ، أَحَدُهُمْ كَانَ يَكْفِي فِي سُقُوطِ الْحَدِيثِ.

[مَسْأَلَةٌ لَا يَحِلُّ لِمُسْلِمٍ أَنْ يَخْطِبَ عَلَى خِطْبَةِ مُسْلِمٍ]

١٨٧٦ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَخْطِبَ عَلَى خِطْبَةِ مُسْلِمٍ سَوَاءٌ رُكِنَا وَتَقَارَبَا أَوْ لَمْ يَكُنْ شَيْءٌ مِنْ ذَلِكَ، إِلَّا أَنْ يَكُونَ أَفْضَلَ لَهَا فِي دِينِهِ وَحُسْنِ صُحْبَتِهِ، فَلَهُ حِينَئِذٍ أَنْ يَخْطِبَ عَلَى خِطْبَةِ غَيْرِهِ مِمَّنْ هُوَ دُونَهُ فِي الدِّينِ وَجَمِيلِ الصُّحْبَةِ.

أَوْ إِلَّا أَنْ يَأْذَنَ لَهُ الْخَاطِبُ الْأَوَّلُ فِي أَنْ يَخْطُبَهَا فَيَجُوزُ لَهُ أَنْ يَخْطُبَهَا حِينَئِذٍ.

أَوْ إِلَّا أَنْ يَدَعَ الْخَاطِبُ الْأَوَّلُ الْخِطْبَةَ فَيَكُونُ لِغَيْرِهِ أَنْ يَخْطُبَهَا حِينَئِذٍ.

أَوْ إِلَّا أَنْ تَرُدَّهُ الْمَخْطُوبَةُ فَلِغَيْرِهِ أَنْ يَخْطُبَهَا حِينَئِذٍ وَإِلَّا فَلَا.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو الطَّاهِرِ نا عَبْدُ اللَّهِ بْنُ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ شِمَاسَةَ أَنَّهُ سَمِعَ عُقْبَةَ بْنَ عَامِرٍ عَلَى الْمِنْبَرِ يَقُولُ: " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُؤْمِنُ أَخُو الْمُؤْمِنِ

al-Rahman ibn Shimasah, that he heard ʻUqbah ibn ʻAmir. On the pulpit, he said: "The Messenger of Allah—peace and blessings of Allah be upon him—said, 'A believer is the brother of a believer. Therefore, it is not lawful for a believer to purchase over his brother's sale, nor to propose marriage over his brother's proposal, until he abandons it.'" This narration prohibits proposing marriage over a Muslim's proposal until he abandons it.[20]

فَلَا يَحِلُّ لِلْمُؤْمِنِ أَنْ يَبْتَاعَ عَلَى بَيْعِ أَخِيهِ وَلَا يَخْطُبَ عَلَى خِطْبَةِ أَخِيهِ حَتَّى يَذَرَ» فَفِي هَذَا الْخَبَرِ تَحْرِيمُ الْخِطْبَةِ عَلَى خِطْبَةِ الْمُسْلِمِ حَتَّى يَذَرَ.

L31661 And through the chain of Aḥmad ibn Shuʻayb: Narrated to us Ibrāhīm ibn al-Ḥasan al-Miṣṣīṣī; from Ḥajjāj (he is Ibn Muḥammad), who said: Ibn Jurayj said: I heard Nāfiʻ narrating that Ibn ʻUmar used to say: "The Messenger of Allāh—peace and blessings be upon him and his family—forbade that any of you should outbid another's sale, nor should a man propose to a woman already sought in marriage by another man until the proposer withdraws his offer or permits it."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إِبْرَاهِيمُ بْنُ الْحَسَنِ الْمِصِّيصِيُّ نا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - قَالَ: قَالَ ابْنُ جُرَيْجٍ: سَمِعْت نَافِعًا يُحَدِّثُ أَنَّ ابْنَ عُمَرَ كَانَ يَقُولُ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ يَبِيعَ بَعْضُكُمْ عَلَى بَيْعِ بَعْضٍ وَلَا يَخْطُبَ الرَّجُلُ عَلَى خِطْبَةِ الرَّجُلِ حَتَّى يَتْرُكَ الْخَاطِبُ قَبْلَهُ أَوْ يَأْذَنَ لَهُ الْخَاطِبُ» .

L31662 Abu Muhammad said: If the betrothed woman rejects him, he is obligated to terminate the courtship, for his persistence causes deliberate harm to her and wrongs her by preventing other suitors from proposing to her. Thus, any courtship that involves a sinful act has no legal validity.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا إذَا رَدَّتْهُ الْمَخْطُوبَةُ فَقَدْ وَجَبَ عَلَيْهِ قَطْعُ الْخِطْبَةِ، لِأَنَّ فِي تَمَادِيهِ الْإِضْرَارَ بِهَا وَالظُّلْمَ لَهَا فِي مَنْعِهِ بِذَلِكَ غَيْرَهُ مِنْ خِطْبَتِهَا، فَكُلُّ خِطْبَةٍ تَكُونُ مَعْصِيَةً فَلَا حُكْمَ لَهَا.

L31663 As for when one is superior in religion and good companionship, this is based on the famous ḥadīth narrated by Fāṭimah bint Qays: The Messenger of Allah (peace and blessings be upon him) said to her, "Who has proposed to you?" She replied, "Muʻāwiyah and another man from Quraysh." The Messenger of Allah (peace and blessings be upon him) said, "As for Muʻāwiyah, he is a youth from among the youths of Quraysh with no wealth. As for the other, he is an evil man with no goodness in him. Marry Usāmah." She said, "I was averse to it [marrying him]." He repeated this to her three times, so she married him.

وَأَمَّا إذَا كَانَ فَوْقَهُ فِي دِينِهِ وَحُسْنِ صُحْبَتِهِ فَلِحَدِيثِ «فَاطِمَةَ بِنْتِ قَيْسٍ الْمَشْهُورِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا: مَنْ خَطَبَكِ؟ قَالَتْ: مُعَاوِيَةُ وَرَجُلٌ مِنْ قُرَيْشٍ آخَرُ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَّا مُعَاوِيَةُ فَإِنَّهُ غُلَامٌ مِنْ غِلْمَانِ قُرَيْشٍ لَا شَيْءَ لَهُ، وَأَمَّا الْآخَرُ فَإِنَّهُ صَاحِبُ شَرٍّ لَا خَيْرَ فِيهِ، انْكِحِي أُسَامَةَ؟ قَالَتْ: فَكَرِهْتُهُ، فَقَالَ لَهَا ذَلِكَ ثَلَاثَ مَرَّاتٍ: فَنَكَحَتْهُ» .

L31664 It was narrated to us through the chain of Mālik from ʻAbdullāh ibn Yazīd, the freed slave of Al-Aswad ibn Sufyān, from Abū Salamah ibn ʻAbd al-Raḥmān, from Fāṭimah bint Qays, who mentioned her narration. In it, she said: "The Messenger of Allah (peace be upon him) said to her: 'When your

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْأَسْوَدِ بْنِ سُفْيَانَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ فَذَكَرَتْ حَدِيثَهَا، وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا: فَإِذَا حَلَلْتِ فَآذِنِينِي؟ قَالَتْ: فَلَمَّا حَلَلْتُ ذَكَرْتُ لَهُ أَنَّ مُعَاوِيَةَ

[20] **Hadith references (L31658):** Sahih Muslim 1414.

waiting period ends, notify me.' She said: When my waiting period ended, I informed him that Muʿāwiyah ibn Abī Sufyān and Abū Jahm had proposed to me. The Messenger of Allah (peace and blessings be upon him and his family) said: 'As for Abū Jahm, he does not lay down his staff from his shoulder, and as for Muʿāwiyah, he is a destitute man with no wealth. Marry Usāmah ibn Zayd.' She said: I disliked him. Then he said again: 'Marry Usāmah,' so I married him. Allah placed good in him, and I was blessed."[21]

بْنَ أَبِي سُفْيَانَ وَأَبَا جَهْمٍ خَطَبَانِي؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَمَّا أَبُو جَهْمٍ فَلَا يَضَعُ عَصَاهُ عَنْ عَاتِقِهِ وَأَمَّا مُعَاوِيَةُ فَصُعْلُوكٌ لَا مَالَ لَهُ، انْكِحِي أُسَامَةَ بْنَ زَيْدٍ قَالَتْ: فَكَرِهْتُهُ، ثُمَّ قَالَ: انْكِحِي أُسَامَةَ، فَنَكَحْتُهُ، فَجَعَلَ اللَّهُ فِيهِ خَيْرًا وَاغْتَبَطْتُ» .

L31665 Abu Muhammad said: Thus, the Messenger of Allah—may Allah bless him and grant him peace—directed her toward the one more excellent in companionship for her than Abu Jahim, who frequently strikes women, and that Usama is superior to Mu'awiyah.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَشَارَ عَلَيْهَا بِالَّذِي هُوَ أَجْمَلُ صُحْبَةً لَهَا مِنْ أَبِي جَهْمٍ الْكَثِيرِ الضَّرْبِ لِلنِّسَاءِ، وَأُسَامَةُ أَفْضَلُ مِنْ مُعَاوِيَةَ.

L31666 If it is said: How do you know that this narration preceded the narration prohibiting a man from proposing during his brother's proposal?

فَإِنْ قِيلَ: وَمَا يُدْرِيك أَنَّ هَذَا الْخَبَرَ كَانَ قَبْلَ خَبَرِ النَّهْيِ عَنْ أَنْ يَخْطُبَ أَحَدٌ عَلَى خِطْبَةِ أَخِيهِ؟ .

L31667–31668 We said: It has been authentically established from the Messenger of Allah (peace be upon him) that he stated, "Religion is sincere advice, religion is sincere advice, religion is sincere advice," and this ruling remains in effect until the Day of Resurrection.

قُلْنَا: قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدِّينُ النَّصِيحَةُ الدِّينُ النَّصِيحَةُ الدِّينُ النَّصِيحَةُ» وَهَذَا حُكْمٌ بَاقٍ إلَى يَوْمِ الْقِيَامَةِ.

L31669 Among the best pieces of advice is this: If a suitor wishes to propose to a woman who has already been sought by someone better in companionship and more devout in religion than the one who proposed to her before him, he should propose to her.

وَمِنْ أَنْصَحِ النَّصَائِحِ: أَنْ يَكُونَ مَرِيدٌ يُرِيدُ خِطْبَةَ امْرَأَةٍ قَدْ خَطَبَهَا مَنْ هُوَ أَحْسَنُ صُحْبَةً، وَأَفْضَلُ دِينًا، مِنْ الَّذِي خَطَبَهَا قَبْلَهُ فَيَخْطُبُهَا هُوَ.

L31670 As for abandoning his proposal to her solely because of the suitor who preceded him, he has not given honest advice to the Muslim woman. He has indeed deceived her, and this is not permissible.

وَأَمَّا إنْ تَرَكَ خِطْبَتَهَا مِنْ أَجْلِ الْخَاطِبِ قَبْلَهُ فَقَطْ فَمَا نَصَحَ الْمُسْلِمَةَ وَلَقَدْ غَشَّهَا وَهَذَا لَا يَجُوزُ.

L31671 We have certainly known that Mu'awiyah is a young man from Banu Abd Manaf, at the peak of beauty and magnanimity.

وَقَدْ عَلِمْنَا أَنَّ مُعَاوِيَةَ فَتًى مِنْ بَنِي عَبْدِ مَنَافٍ فِي غَايَةِ الْجَمَالِ وَالْحِلْمِ.

L31672 And Usāmah—a freed slave of the Kalb tribe, black as pitch—we necessarily know without doubt that he has no superiority over him except through religion, which, in its utmost sincerity toward all Muslims, is the pinnacle of

[21] **Hadith references (L31664):** Sunan Abi Dawud 2284; Sahih Muslim 1480a.

excellence in the sight of Allah, the Exalted, and His Messenger—may Allah's blessings and peace be upon him.

وَأُسَامَةُ - مَوْلَى كَلْبِيٍّ أَسْوَدُ كَالْقَارِ - فَبِالضَّرُورَةِ نَدْرِي أَنَّهُ لَا فَضْلَ لَهُ عَلَيْهِ إلَّا بِالدِّينِ الَّذِي هُوَ نِهَايَةُ الْفَضْلِ عِنْدَ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَايَةِ النُّصْحِيَّةِ لِجَمِيعِ الْمُسْلِمِينَ بِلَا شَكٍّ.

L31673 As for the one who claims that this constitutes a pillar and an act of devotion, such a claim is corrupt and null, for it lacks support from the Quran, the Sunnah, consensus, any Companion's opinion, or sound juridical reasoning. It is merely a rejected opinion.

وَأَمَّا مَنْ قَالَ: إنَّ ذَلِكَ إذَا رُكْنًا وَتَقَارُبًا فَدَعْوَى فَاسِدَةٌ بَاطِلٌ، لِأَنَّهُ لَمْ يُعَضِّدْهَا قُرْآنٌ وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا نَظَرٌ صَحِيحٌ إنَّمَا هُوَ رَأْيٌ سَاقِطٌ فَقَطْ.

[مَسْأَلَةٌ لَا يَحِلُّ التَّصْرِيحُ بِخِطْبَةِ امْرَأَةٍ فِي عِدَّتِهَا]

L31674 **Jurisprudential Issue: It is impermissible to explicitly declare a marriage proposal to a woman during her ʿiddah (waiting period).**

١٨٧٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ التَّصْرِيحُ بِخِطْبَةِ امْرَأَةٍ فِي عِدَّتِهَا.

L31675 Issue 1877: It is not permissible to explicitly propose marriage to a woman during her waiting period.

وَجَائِزٌ أَنْ يُعَرِّضَ لَهَا بِمَا تَفْهَمُ مِنْهُ أَنَّهُ يُرِيدُ نِكَاحَهَا.

L31676 And it is permissible for him to imply to her through that which she understands from his implication his intent to marry her.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لا تُوَاعِدُوهُنَّ سِرًّا إِلا أَنْ تَقُولُوا قَوْلا مَعْرُوفًا وَلا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ} [البقرة: ٢٣٥] إلَى قَوْلِهِ: {فَاحْذَرُوهُ} [البقرة: ٢٣٥] فَأَبَاحَ تَعَالَى التَّعْرِيضَ وَمَنَعَ مِنْ الْمُوَاعَدَةِ سِرًّا.

L31677 The evidence for this is the statement of Allah, the Exalted: {There is no blame upon you for what you imply in proposing to women or what you conceal within yourselves. Allah knows that you will mention them [for marriage], but do not secretly arrange with them—unless you speak honorably—and do not resolve to conclude marriage until the prescribed term expires.} [Al-Baqarah: 235] until His words: {So beware of Him.} [Al-Baqarah: 235]. Thus, He permitted indirect proposals and forbade secret arrangements.[22]

قَالَ أَبُو مُحَمَّدٍ: وَمِنْ التَّعْرِيضِ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِي ذَكَرْنَاهُ آنِفًا لِفَاطِمَةَ بِنْتِ قَيْسٍ: «إذَا حَلَلْتِ فَآذِنِينِي» .

L31678 Abu Muhammad said: Among the instances of indirect expression is the statement of the Messenger of Allah—may Allah bless him and his family and grant him peace—which we mentioned earlier to Fatimah bint Qays: "When you have completed your waiting period, inform me."

وَقَدْ صَحَّ أَيْضًا - أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «لَا تُفَوِّتِينِي بِنَفْسِكِ» : رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا قُتَيْبَةُ بْنُ سَعِيدٍ: أَنَّ مُحَمَّدَ بْنَ جَعْفَرٍ حَدَّثَهُمْ قَالَ: نا مُحَمَّدُ بْنُ عَمْرٍو عَنْ

L31679 And it has also been authentically established that he—peace and blessings be upon him—said: "Do not deprive me of yourself." It has been narrated to us

[22] **Qur'an references (L31677):** Qur'an 2:235 (Al-Baqarah).

via Abū Dāwūd's chain: Qutaybah ibn Saʿīd reported to us that Muḥammad ibn Jaʿfar narrated to them, stating: Muḥammad ibn ʿAmr reported to us from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from Fāṭimah bint Qays that the Messenger of Allāh—peace and blessings of Allāh be upon him and his family—said: [...]

أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L31680–31681 Among the forms of implicit proposal is what has been narrated from Ibn Abbas—to say, "I desire marriage, and I would love that Allah the Exalted would facilitate for me a righteous wife," and similar expressions.

وَمِنْ التَّعْرِيضِ مَا رُوِّينَاهُ عَنْ ابْنِ عَبَّاسٍ أَنْ يَقُولَ: إنِّي أُرِيدُ الزَّوَاجَ، وَلَوَدِدْت أَنَّ اللَّهَ تَعَالَى يَسَّرَ لِي امْرَأَةً صَالِحَةً، وَنَحْوَ هَذَا.

L31682 **A ruling: The marriage contract of a person not yet born is not permissible.**

[مَسْأَلَةٌ لَا يَحِلُّ نِكَاحُ مَنْ لَمْ يُولَدْ بَعْدُ]

L31683 1878 - Issue: It is not permissible to marry someone who has not yet been born. If someone does so, the marriage is not binding, because it is unknown whether a daughter, a son, or a stillborn female will be born to him.

١٨٧٨ - مَسْأَلَةٌ: وَلَا يَحِلُّ نِكَاحُ مَنْ لَمْ يُولَدْ بَعْدُ، فَمَنْ فَعَلَ ذَلِكَ لَمْ يَلْزَمْهُ، لِأَنَّهُ لَا يَدْرِي أَيُولَدُ لَهُ ابْنَةٌ، أَمْ ابْنٌ، أَمْ مَيْتَةٌ.

L31684 **It is unlawful for the marriage of an absent woman to be conducted except by her proxy thereof.**

[مَسْأَلَةٌ لَا يَحِلُّ نِكَاحُ غَائِبَةٍ إلَّا بِتَوْكِيلٍ مِنْهَا عَلَى ذَلِكَ]

L31685 Issue 1879: It is not permissible to contract a marriage for an absent woman except through her proxy authorization for that purpose; nor is it permissible to contract a marriage for an absent man except through his proxy authorization and consent.

١٨٧٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ نِكَاحُ غَائِبَةٍ إلَّا بِتَوْكِيلٍ مِنْهَا عَلَى ذَلِكَ؛ وَلَا يَحِلُّ إنْكَاحُ غَائِبٍ إلَّا بِتَوْكِيلٍ مِنْهُ وَرِضَا.

L31686 Allah, the Exalted and Glorious, says: {No soul bears sin except upon itself} [Al-An'ām 6:164].[23]

لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

L31687 The Messenger of Allah (may Allah bless him and grant him peace) married Umm Ḥabībah, the Mother of the Believers (may Allah be pleased with her), while she was in Abyssinia and he was in Medina, by the consent of both.

وَقَدْ «تَزَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أُمَّ حَبِيبَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَهِيَ بِأَرْضِ الْحَبَشَةِ وَهُوَ بِالْمَدِينَةِ بِرِضَاهُمَا مَعًا» .

L31688 **A legal issue: [The case of] a man marrying a female slave owned by another, either with or without her owner's permission.**

[مَسْأَلَةٌ تَزَوَّجَ مَمْلُوكَةً لِغَيْرِهِ بِإِذْنِ السَّيِّدِ أَوْ بِغَيْرِ إذْنِهِ]

[23] **Qur'an references (L31686):** Qur'an 6:164 (Al-An'am).

L31689 1880 - Issue: If someone marries a female slave owned by another—whether with the master's permission or without it, regardless of whether she claims freedom or not—all children she bears from him are slaves belonging to her master. The master is not compelled to accept ransom for them. However, if this occurs without her master's permission, she incurs the ḥadd punishment for zinā, and it is not a marriage. The children are legally affiliated with the man if he is ignorant.

١٨٨٠ - مَسْأَلَةٌ: وَمَنْ تَزَوَّجَ مَمْلُوكَةً لِغَيْرِهِ - بِإِذْنِ السَّيِّدِ أَوْ بِغَيْرِ إِذْنِهِ - سَوَاءٌ ادَّعَتْ أَنَّهَا حُرَّةٌ أَوْ لَمْ تَدَّعِ، فَكُلُّ مَا وَلَدَتْ مِنْهُ فَهُمْ عَبِيدٌ لِسَيِّدِهَا لَا يُجْبَرُ عَلَى قَبُولِ فِدَاءٍ فِيهِمْ، إلَّا أَنَّ مَا كَانَ مِنْ ذَلِكَ بِغَيْرِ إذْنِ سَيِّدِهَا، فَعَلَيْهَا حَدُّ الزِّنَا وَلَيْسَ نِكَاحًا وَالْوَلَدُ لَاحِقُونَ بِالرَّجُلِ إنْ كَانَ جَاهِلًا.

L31690 Abu Hanifa said: If a man marries a woman believing her to be free, then discovers she is enslaved and she has borne him children, their children from her are free. He must pay the market value of those alive among them as assessed on the day of the legal ruling, and he may recover the amount he paid as this value from whoever deceived him—if someone other than the two parties deceived him—or from her if she herself deceived him. He owes her dowry to her master, but cannot reclaim this from the deceiver or from her. He bears no liability for those of them who died unless it was killing, in which case the husband receives the diyah for the deceased. If the husband is insolvent, neither he nor his children are liable for anything.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ تَزَوَّجَ امْرَأَةً عَلَى أَنَّهَا حُرَّةٌ فَوُجِدَتْ مَمْلُوكَةً وَقَدْ وَلَدَتْ مِنْهُ أَوْلَادًا فَأَوْلَادُهُ مِنْهَا أَحْرَارٌ، وَعَلَيْهِ قِيمَةُ الْأَحْيَاءِ مِنْهُمْ يَوْمَ الْحُكْمِ وَيَرْجِعُ بِمَا غَرِمَ مِنْ ذَلِكَ عَلَى مَنْ غَرَّهُ، إنْ كَانَ غَرَّهُ غَيْرُهُمَا، أَوْ عَلَيْهَا إنْ كَانَتْ هِيَ غَرَّتْهُ، وَعَلَيْهِ صَدَاقُهَا لِسَيِّدِهَا، وَلَا يَرْجِعُ بِهِ عَلَى مَنْ غَرَّهُ، وَلَا عَلَيْهَا، وَلَا شَيْءَ عَلَيْهِ فِيمَنْ مَاتَ مِنْهُمْ، إلَّا أَنْ يَكُونَ قَتْلٌ فَأَخَذَ الْأَبُ دِيَتَهُ، فَإِنْ كَانَ الْأَبُ مُعْسِرًا فَلَا شَيْءَ عَلَيْهِ وَلَا عَلَى أَوْلَادِهِ.

L31691 Mālik said: They are free, and their father is obligated to pay the value of those among them who are alive on the day of the ruling. He is not liable for those who died before that. If the father dies before the ruling, the children are not liable, and they are free. In another statement, he said: They are liable for their own value, and likewise if their father is destitute.

وَقَالَ مَالِكٌ: هُمْ أَحْرَارٌ وَعَلَى أَبِيهِمْ قِيمَةُ الْأَحْيَاءِ مِنْهُمْ يَوْمَ الْحُكْمِ، وَلَا شَيْءَ عَلَيْهِ فِيمَنْ مَاتَ مِنْهُمْ قَبْلَ ذَلِكَ، فَإِنْ مَاتَ الْأَبُ قَبْلَ الْحُكْمِ فَلَا شَيْءَ عَلَى الْأَوْلَادِ وَهُمْ أَحْرَارٌ - وَقَالَ مَرَّةً أُخْرَى: عَلَيْهِمْ قِيمَةُ أَنْفُسِهِمْ، وَكَذَلِكَ إنْ كَانَ أَبُوهُمْ عَدِيمًا.

L31692 Al-Shafi'i said: They are free, and their father is responsible for their value on the day they were born, whether those among them died or survived.

وَقَالَ الشَّافِعِيُّ: هُمْ أَحْرَارٌ وَعَلَى أَبِيهِمْ قِيمَتُهُمْ يَوْمَ وُلِدُوا، سَوَاءٌ مَنْ مَاتَ مِنْهُمْ وَمَنْ عَاشَ.

L31693–31695 Abu Muhammad said: Marvel at what these statements contain—scandals! It is utterly impossible for them to exist. The children can only be free individuals or slaves; there is no third category. By my life, if they were free from birth, it is impermissible for their mother's master to take the value of a free person, nor is it permissible for their father to be compelled to pay a monetary price for their value under any circumstance.

قَالَ أَبُو مُحَمَّد: اعْجَبُوا لِمَا فِي هَذِهِ الْأَقْوَالِ مِنْ الْفَضَائِحِ لَا يُمْكِنُ أَلْبَتَّةَ أَنْ تَكُونَ الْأَوْلَادُ إلَّا أَحْرَارًا أَوْ مَمَالِيكَ، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ، فَلَعَمْرِي لَئِنْ كَانُوا أَحْرَارًا مُذْ وُلِدُوا فَمَا يَحِلُّ لِسَيِّدِ أُمِّهِمْ أَخْذُ قِيمَةِ حُرٍّ، وَلَا يَحِلُّ أَنْ يَغْرَمَ أَبُوهُمْ فِي قِيمَتِهِمْ ثَمَنًا أَصْلًا.

L31696 It was narrated to us via Al-Bukhārī's chain: Bishr ibn Marḥūm → Yahyā ibn Sulaym → Ismāʿīl ibn Umayyah → Saʿīd ibn Abī Saʿīd al-Maqburī → Abū Hurayrah → the Prophet—may Allah's blessings and peace be upon him and his family—who said: "Three I will be their adversary on the Day of Judgment—and he mentioned among them—: a man who sold a free person and consumed its price."

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا بِشْرُ بْنُ مَرْحُومٍ نا يَحْيَى بْنُ سُلَيْمٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ - فَذَكَرَ فِيهِمْ -: وَرَجُلٌ بَاعَ حُرًّا فَأَكَلَ ثَمَنَهُ» .

L31697 And if they are slaves, no one may compel a person to sell his slaves without an explicit text from the Quran or the Sunnah of the Messenger of Allah (peace be upon him).

وَإِنْ كَانُوا مَمَالِيكَ فَمَا يَحِلُّ لِأَحَدٍ إجْبَارُ إنْسَانٍ عَلَى بَيْعِ مَمَالِيكِهِ بِغَيْرِ نَصٍّ مِنْ قُرْآنٍ، أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L31698 Then comes another peculiar ruling—obliging him to pay the value of the living among them but not those who died, followed by his reclaiming from the deceiver the compensation he paid based on the children's value, though they do not require him to return the dowry he paid. Thereupon, they proposed a novel opinion, saying: "Because he substituted part of it?" We countered: "Yet he substituted free children! So do not compel him to return it to the deceiver on that basis."

ثُمَّ عَجَبٌ آخَرُ - وَهُوَ إلْزَامُهُ قِيمَةَ الْأَحْيَاءِ مِنْهُمْ دُونَ مَنْ مَاتَ مِنْهُمْ، ثُمَّ ارْتِجَاعُهُ بِمَا غَرِمَ عَلَى مَنْ غَرَّهُ مِنْ قِيمَةِ الْأَوْلَادِ وَلَا يَرُدُّونَهُ بِمَا غَرِمَ مِنْ الصَّدَاقِ - فَأَتَوْا بِغَرِيبَةٍ، قَالُوا: لِأَنَّهُ قَدْ اسْتَعَاضَ بَعْضَهَا؟ فَقُلْنَا: وَقَدْ اسْتَعَاضَ أَوْلَادًا أَحْرَارًا، فَلَا تَرُدُّوهُ عَلَى مَنْ غَرَّهُ بِذَلِكَ.

L31699 Abu Muhammad said: There have come reports from the predecessors regarding this matter—It was narrated to us through Hammad ibn Salama from Humaid, who said: A man sold a slave girl belonging to his father. The buyer made her his concubine, and she bore him a child. The father then came and brought the dispute to Umar ibn al-Khattab, who ruled to return her and her child to him. The buyer said: "Let me keep my child." He replied: "Let him keep his child."

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ جَاءَتْ عَنْ السَّلَفِ فِي هَذَا آثَارٌ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ قَالَ: بَاعَ رَجُلٌ جَارِيَةً لِأَبِيهِ فَتَسَرَّاهَا الْمُشْتَرِي فَوَلَدَتْ لَهُ أَوْلَادًا فَجَاءَ أَبُوهُ فَخَاصَمَهُ إلَى عُمَرَ بْنِ الْخَطَّابِ فَرَدَّهَا وَوَلَدَهَا إلَيْهِ، فَقَالَ الْمُشْتَرِي: دَعْ لِي وَلَدِي؟ فَقَالَ: دَعْ لَهُ وَلَدَهُ.

L31700 It has been narrated to us with wording indicating that ʿUmar ruled redemption to be binding upon the seller.

وَرُوِّينَاهُ بِلَفْظٍ يَدُلُّ عَلَى أَنَّ عُمَرَ قَضَى بِالْخَلَاصِ عَلَى الْبَائِعِ.

L31701 As narrated to us by Saʿīd ibn Manṣūr, from Hushaym, who said: Humayd al-Ṭawīl informed me, from al-Ḥasan, that a man sold his father's slave girl while the father was absent. When the father returned, he refused to ratify his son's sale—and she had borne a child by the purchaser. They brought their dispute to ʿUmar ibn al-Khaṭṭāb, who ruled that the slave girl belonged to the man. He ordered the purchaser to rescind the sale through annulment,

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ قَالَ أَنَا حُمَيْدٌ الطَّوِيلُ عَنْ الْحَسَنِ أَنَّ رَجُلًا بَاعَ جَارِيَةً لِأَبِيهِ وَأَبُوهُ غَائِبٌ، فَلَمَّا قَدِمَ أَبَى أَنْ يُجِيزَ بَيْعَ ابْنِهِ وَقَدْ وَلَدَتْ مِنْ الْمُشْتَرِي فَاخْتَصَمُوا إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَقَضَى لِلرَّجُلِ بِجَارِيَتِهِ وَأَمَرَ الْمُشْتَرِيَ أَنْ

thereby binding him. The seller's father said: "Order him to release my son!" 'Umar replied: "And you—release his son!"

يَأْخُذَ بَيْعَهُ بِالْخَلَاصِ فَلَزِمَهُ؟ فَقَالَ أَبُو الْبَائِعِ: مُرْهُ فَلْيُخَلِّ عَنْ ابْنِي؟ فَقَالَ عُمَرُ: وَأَنْتَ فَخَلِّ عَنْ ابْنِهِ.

L31702 Abu Muhammad said: This is an intercession by Umar—may Allah be pleased with him—because he had ruled in his favor concerning their ownership or decreed therefrom their emancipation.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ شَفَاعَةٌ مِنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - لِأَنَّهُ قَدْ قَضَى لَهُ بِمِلْكِهِمْ أَوْ قَضَى مِنْهُ بِالْخَلَاصِ.

L31703–31705 I, Muḥammad ibn Saʿīd ibn Nabāt, report: ʿAbbās ibn Aṣbagh narrated to us, who narrated from Muḥammad ibn Qāsim ibn Muḥammad ibn ʿAbd al-Salām al-Khushanī. Muhammad ibn al-Muthanna narrated to us: Abd al-A'la (who is Ibn Abd al-A'la al-Taghlibi) narrated to us: Sa'id (who is Ibn Abi Arubah) narrated to us from Qatadah from Khilas ibn Amr, who said: A female slave came to Tayy claiming she was free. A man among them married her, and she bore him children. Then her master came forward to claim her. Uthman ibn Affan ruled that she and her children belonged to her master, and that her husband was entitled to whatever possessions of his he could recover. He established among them the tradition or the Sunnah: "A head for two heads." Qatadah said: Al-Hasan used to say: "One head for every head."

وَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا عَبْدُ الْأَعْلَى - هُوَ ابْنُ عَبْدِ الْأَعْلَى التَّغْلِبِيَّ - نَا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو قَالَ: إِنَّ أَمَةً أَتَتْ طَيِّئًا فَزَعَمَتْ أَنَّهَا حُرَّةٌ، فَتَزَوَّجَهَا رَجُلٌ مِنْهُمْ، فَوَلَدَتْ لَهُ أَوْلَادًا، ثُمَّ إِنَّ سَيِّدَهَا ظَهَرَ عَلَيْهَا، فَقَضَى لَهَا عُثْمَانُ بْنُ عَفَّانَ أَنَّهَا وَأَوْلَادُهَا لِسَيِّدِهَا، وَأَنَّ لِزَوْجِهَا مَا أَدْرَكَ مِنْ مَتَاعِهِ، وَجَعَلَ فِيهِمْ الْمِلَّةَ أَوْ السُّنَّةَ كُلُّ رَأْسٍ بِرَأْسَيْنِ - قَالَ قَتَادَةَ: وَكَانَ الْحَسَنُ يَقُولُ: فِي كُلِّ رَأْسٍ رَأْسٌ.

L31706 From the path of Abd al-Razzaq: Ma'mar narrated from Mansur ibn al-Mu'tamir from al-Hakam ibn Utaybah that a woman and her son sold a slave girl belonging to her husband. The slave girl then bore a child for the purchaser. Later, her husband came and brought the dispute to Ali ibn Abi Talib, saying, "I did not sell nor gift her." Ali said to him, "Your son and your wife sold her." The husband replied, "If you deem that I have a rightful claim, then grant it to me." Ali said, "Take your slave girl and the child she bore," then he imprisoned the woman and her son until they settled his claim. When the husband saw this, he conceded the sale. Thus, these Imams of guidance—Umar, Uthman, and Ali—ruled that the children of the slave girl whose ownership was rightfully established are enslaved to their mother's master (the husband), and no opposing opinion to their ruling from the Companions—may Allah be pleased with them—is known regarding this.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ امْرَأَةً بَاعَتْ هِيَ وَابْنٌ لَهَا جَارِيَةً لِزَوْجِهَا، فَوَلَدَتْ الْجَارِيَةُ لِلَّذِي ابْتَاعَهَا، ثُمَّ جَاءَ زَوْجُهَا فَخَاصَمَ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ وَقَالَ: لَمْ أَبِعْ وَلَمْ أَهَبْ، فَقَالَ لَهُ عَلِيٌّ: قَدْ بَاعَ ابْنُك وَامْرَأَتُك؟ فَقَالَ: إنْ كُنْت تَرَى لِي حَقًّا فَأَعْطِنِي؟ قَالَ عَلِيٌّ: فَخُذْ جَارِيَتَك وَابْنَهَا، ثُمَّ سَجَنَ الْمَرْأَةَ وَابْنَهَا حَتَّى تَخَلَّصَا لَهُ، فَلَمَّا رَأَى ذَلِكَ الزَّوْجُ سَلَّمَ الْبَيْعَ -: فَهَؤُلَاءِ عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ - أَئِمَّةُ الْهُدَى - قَدْ قَضَوْا بِأَوْلَادِ الْمُسْتَحِقَّةِ رَقِيقًا لِسَيِّدِ أُمِّهِمْ، وَلَا يُعْرَفُ لَهُمْ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L31707 Except for a weak narration from ʿAlī—which we transmitted through the

chain of Ibn Abī Shaybah from Abū Bakr ibn ʿAyyāsh from Muṭarrif from al-Shaʿbī from ʿAlī—regarding a man who purchased a slave woman who bore him children, then another man produced valid proof that she belonged to him. He ruled: "She is returned to him, and he is responsible for providing for her children. The seller must compensate him according to their value, whether high or low." (Ibn ʿAyyāsh is a weak narrator.) They vilify those who oppose such rulings when it conforms to their caprices, yet they themselves oppose such rulings here.

إِلَّا رِوَايَةً سَاقِطَةً عَنْ عَلِيٍّ رُوِّيناهَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ أَبِي بَكْرِ بْنِ عَيَّاشٍ عَنْ مُطَرِّفٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ فِي رَجُلٍ اشْتَرَى جَارِيَةً فَوَلَدَتْ مِنْهُ أَوْلَادًا ثُمَّ أَقَامَ رَجُلٌ الْبَيِّنَةَ أَنَّهَا لَهُ، قَالَ: تُرَدُّ عَلَيْهِ، وَيَقُومُ عَلَيْهِ وَلَدُهَا فَيَغْرَمُ الَّذِي بَاعَهُ بِمَا عَزَّ وَهَانَ - وَابْنُ عَيَّاشٍ ضَعِيفٌ - وَهُمْ يُشَنِّعُونَ خِلَافَ مِثْلِ هَذَا إذَا وَافَقَ أَهْوَاءَهُمْ، وَقَدْ خَالَفُوهُمْ هَهُنَا.

L31708 As for us, we do not rely here or in any other place in any way except upon the Quran or the Sunnah of the Messenger of Allah—peace and blessings be upon him. We only cite such matters to rebuke those who invoke them when it aligns with their desire, yet disregard them when it contradicts them—and this is trifling with the Religion.

وَأَمَّا نَحْنُ فَلَا نَحْتَجُّ هَهُنَا، وَلَا فِي غَيْرِ هَذَا الْمَكَانِ جُمْلَةً إلَّا بِقُرْآنٍ، أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا نُورِدُ مَا نُورِدُ مِنْ ذَلِكَ تَبْكِيتًا لِمَنْ يَحْتَجُّ بِهِ إذَا وَافَقَ هَوَاهُ، وَلَا يَحْتَجُّ بِهِ إذَا خَالَفَهُ، وَهَذَا هُوَ التَّلَاعُبُ بِالدِّينِ.

L31709 And the Almighty, the Majestic said: {And those who guard their private parts} [The Believers 23:5] {Except with their spouses or those whom their right hands possess, for indeed they are not blameworthy} [The Believers 23:6] {But whoever seeks beyond that, they are the transgressors} [The Believers 23:7].[24]

وَقَالَ عَزَّ وَجَلَّ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦] {فَمَنِ ابْتَغَى وَرَاءَ ذَلِكَ فَأُولَئِكَ هُمُ الْعَادُونَ} [المؤمنون: ٧] .

L31710 The Messenger of Allah—may Allah's blessings and peace be upon him—said: "Indeed, your blood and your wealth are inviolable to you." The ruling of the Messenger of Allah—may Allah's blessings and peace be upon him and his family—and all who came after him has been upheld without disagreement by any Muslim, affirming that the offspring of one's property—whether from female slaves and all other animals—belongs to the owner of its mother.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَجَاءَ حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَكُلُّ مَنْ بَعْدَهُ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ أَهْلِ الْإِسْلَامِ بِأَنَّ وَلَدَ مَا يَمْلِكُهُ الْمَرْءُ مِنْ إنَاثِ الْإِمَاءِ وَسَائِرِ الْحَيَوَانِ فَإِنَّهُ مِلْكٌ لِمَالِكِ أُمِّهِ.

L31711–31712 We ask those who disagree regarding this female captive or the one sold without her owner's permission: Is she a wife to the man for whom she bore

فَنَسْأَلُ الْمُخَالِفِينَ عَنْ هَذِهِ الْغَارَّةِ أَوْ الْمُبِيعَةِ بِغَيْرِ إذْنِ مَالِكِهَا: أَهِيَ زَوْجَةٌ لِلَّذِي وَلَدَتْ لَهُ، أَوْ مِلْكُ يَمِينٍ لَهُ، أَمْ لَيْسَتْ لَهُ زَوْجَةً، وَلَا مِلْكَ يَمِينٍ، وَلَا بُدَّ لَهُ مِنْ أَحَدِهِمَا؟ .

[24] **Qur'an references (L31709):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun); Qur'an 70:31 (Al-Ma'arij).

a child, a concubine he rightfully possesses, or is she neither his wife nor his concubine—and must he necessarily have her in one of these two statuses?

L31713 They do not differ that she is neither his wife nor his female slave, and that she is solely the property of her owner who has not sold her, nor removed her from his ownership, nor permitted her to marry, and that she is property among his property. Since there is no doubt about this, it is not permissible for anyone to rule that his female slave or his slaves be removed from his possession because of offspring she bore under his ownership without a basis in the Quran or Sunnah, and this is the utmost clarity.

L31714 And all divine success is from Allah, the Exalted.

L31715 Abu Muhammad said: There have been narrations reported from the Companions—may Allah be pleased with them—and the Successors. We will mention from these, if Allah—the Almighty and Majestic—wills, what is suitable for this place.

L31716 It was narrated to us through the chain of ʻAbd al-Razzaq from Maʻmar from ʻAbdullah ibn Tawus from his father from Ibn ʻAbbas, who said: ʻUmar ibn al-Khattab said to me: "Retain from me three matters: leadership is by consultation; for every slave in an Arab delegation, another slave is substituted; and the son of a slave woman counts as two slaves."

L31717 Abu Muhammad said: This [ruling] regarding validity transmitted from Umar—may Allah be pleased with him—holds the same status as if we had heard it directly from him without distinction. By Allah, were our opponents to obtain anything resembling this, they would not hesitate and would seek Allah's guidance through *Istikhara* (ritual prayer for divine guidance) if it aligned with their *taqlid* (legal adherence), declaring: "Such a matter cannot be based on personal opinion." There is no doubt this is textually established, as they asserted regarding the statement of Aisha, Mother of the Believers—may Allah be pleased with her—about Zaid ibn Arqam's purchasing the slave and his selling him.

L31718 From the narration of Abd al-Razzaq, via Sufyan al-Thawri, from Abdullah ibn Awn, from Ghadirah al-Anbari, who said: We came to Umar ibn

فَلَا يَخْتَلِفُونَ أَنَّهَا لَيْسَتْ لَهُ زَوْجَةً وَلَا مِلْكَ يَمِينٍ، وَأَنَّهَا إنَّمَا هِيَ مِلْكُ يَمِينِ مَالِكِهَا الَّذِي لَمْ يَبِعْهَا، وَلَا أَخْرَجَهَا عَنْ مِلْكِهِ، وَلَا أَذِنَ لَهَا فِي النِّكَاحِ، وَأَنَّهَا مَالٌ مِنْ مَالِهِ فَإِذْ لَا شَكَّ فِي هَذَا، فَلَا يَجُوزُ لِأَحَدٍ الْحُكْمُ بِإِخْرَاجِ أَمَتِهِ أَوْ مَمَالِيكِهِ بِمَا وَلَدَتْ عَنْ يَدِهِ بِغَيْرِ قُرْآنٍ أَوْ سُنَّةٍ، وَهَذَا غَايَةُ الْبَيَانِ.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ جَاءَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالتَّابِعِينَ أَشْيَاءُ نَذْكُرُ مِنْهَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ مَا يَصْلُحُ لِهَذَا الْمَكَانِ -:

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ لِي عُمَرُ بْنُ الْخَطَّابِ: اعْقِلْ عَنِّي ثَلَاثًا: الْإِمَارَةُ شُورَى، وَفِي وَفْدِ الْعَرَبِ مَكَانَ كُلِّ عَبْدٍ عَبْدٌ، وَفِي ابْنِ الْأَمَةِ عَبْدَانِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا فِي الصِّحَّةِ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِمَنْزِلَةِ مَا لَوْ سَمِعْنَاهُ مِنْهُ وَلَا فَرْقَ - وَبِاَللَّهِ لَوْ ظَفِرُوا خُصُومُنَا بِمِثْلِ هَذَا مَا تَرَدَّدُوا، وَلَاسْتَخَارُوا اللَّهَ تَعَالَى لَوْ وَافَقَ تَقْلِيدَهُمْ أَنْ يَقُولُوا: مِثْلَ هَذَا لَا يُقَالُ بِالرَّأْيِ، فَلَا شَكَّ فِي أَنَّهُ تَوْقِيفٌ، كَمَا قَالُوا فِي قَوْلِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - فِي ابْتِيَاعِ زَيْدِ بْنِ أَرْقَمَ الْعَبْدَ وَبَيْعِهِ.

al-Khattab concerning women who had fornicated in the pre-Islamic era. He ruled that their children should be ascribed to their fathers and not enslaved—referring to female slaves who had fornicated in the pre-Islamic era—and who had borne children from illicit intercourse.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ غَاضِرَةَ الْعَنْبَرِيِّ قَالَ: أَتَيْنَا عُمَرَ بْنَ الْخَطَّابِ فِي نِسَاءٍ سَعَيْنَ فِي الْجَاهِلِيَّةِ، فَأَمَرَ أَنْ يَقُومَ أَوْلَادُهُنَّ عَلَى آبَائِهِمْ وَلَا يُسْتَرَقُّوا - يَعْنِي إِمَاءً زَنَيْنَ فِي الْجَاهِلِيَّةِ - فَوَلَدْنَ مِنْ الزِّنَا.

L31719 And through the chain of Ibn Wahb, Yunus ibn Yazid reported to me from Ibn Shihab, who said: Umar ibn al-Khattab ruled regarding the compensation for a man's child from his female slave - he assessed the compensation as one female slave for each female slave and one male slave for each male slave.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي فِدَاءِ وَلَدِ الرَّجُلِ مِنْ أَمَتِهِ قَوَّمَ مَكَانَ كُلِّ جَارِيَةٍ جَارِيَةً، وَمَكَانَ كُلِّ غُلَامٍ غُلَامًا.

L31720–31722 Ibn Wahb said: Mālik informed me that this ruling had been transmitted to him from ʿUmar or ʿUthmān. Through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: ʿUmar ibn al-Khaṭṭāb ruled regarding the ransom of Arab captives with six prescribed shares. Umar ibn Abd al-Aziz decreed in that matter that four hundred dirhams are to be paid per person.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي مَالِكٌ أَنَّهُ بَلَغَهُ ذَلِكَ عَنْ عُمَرَ أَوْ عَنْ عُثْمَانَ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي فِدَاءِ سَبْيِ الْعَرَبِ بِسِتَّةِ فَرَائِضَ وَقَضَى عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي ذَلِكَ فِي كُلِّ رَأْسٍ أَرْبَعمِائَةِ دِرْهَمٍ.

L31723 And via the narration of Abd al-Razzaq from Sufyan ibn Uyaynah from Yahya ibn Yahya al-Ghassani, who said: Caliph Umar ibn Abd al-Aziz issued a decree that Caliph Umar ibn al-Khattab had ruled regarding the ransom for Arab war captives, establishing it as four hundred dirhams per person.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ يَحْيَى الْغَسَّانِيِّ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي فِدَاءِ سَبْيِ الْعَرَبِ فِي كُلِّ رَأْسٍ أَرْبَعمِائَةِ دِرْهَمٍ

L31724 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: I heard Sulaymān ibn Mūsā relate that ʿUmar ibn al-Khaṭṭāb ruled regarding the child of a female slave who claims she is free—if one of them [the owners] marries her and she bears him a child—that the fathers must provide the equivalent value of every child they father with enslaved women, assessed by span and cubit measurements. Ibn Jurayj said: I asked him, "What if his children are handsome?" He replied: "They are not liable for their equivalent in handsomeness; they are only charged according to cubit measurement."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: سَمِعْت سُلَيْمَانَ بْنَ مُوسَى يَذْكُرُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي وَلَدِ الْأَمَةِ تُخْبِرُ أَنَّهَا حُرَّةٌ فَيَنْكِحُهَا أَحَدُهُمْ فَتَلِدُ لَهُ: أَنَّ عَلَى آبَائِهِمْ مِثْلَ كُلِّ وَلَدٍ لَهُ مِنْ الرَّقِيقِ فِي الشِّبْرِ وَالذِّرْعِ، قَالَ ابْنُ جُرَيْجٍ: فَقُلْت لَهُ: فَإِنْ كَانَ أَوْلَادُهُ حِسَانًا؟ قَالَ: لَا يُكَلَّفُ مِثْلُهُمْ فِي الْحُسْنِ، إنَّمَا يُكَلَّفُ فِي الذَّرْعِ.

L31725 From Humaam, from Ibn Mufarrij, from Ibn al-Aʿrabi, from al-Dabari, from ʿAbd al-Razzaq, from Muhammad ibn Muslim al-Ta'ifi, from Ibrahim ibn Maysarah, who said: A man married a female slave and she bore him a child.

He wrote to ʻUmar ibn ʻAbd al-ʻAziz inquiring about this matter, and ʻUmar wrote in response: He must free his child.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ الطَّائِفِيِّ عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ قَالَ: نَكَحَ رَجُلٌ أَمَةً فَوَلَدَتْ لَهُ، فَكَتَبَ فِي ذَلِكَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ؟ فَكَتَبَ: أَنْ يُفَادِيَ أَوْلَادَهُ -.

L31726 Ibn Mufarrij stated outside the book of Ibn al-A'rabi: with two red attendants, each bearing two.

قَالَ ابْنُ مُفَرِّجٍ فِي غَيْرِ كِتَابِ ابْنِ الْأَعْرَابِيِّ: بِوَصِيفَيْنِ أَحْمَرَيْنِ، كُلُّ وَاحِدٍ بِاثْنَيْنِ.

L31727 None of them consider ransom valid except either with a male slave in place of a male, a female slave in place of a female, or two male slaves in place of a male slave.

فَهَؤُلَاءِ كُلُّهُمْ لَا يَرَوْنَ الْفِدَاءَ، إِلَّا إِمَّا بِغُلَامٍ مَكَانَ الذَّكَرِ، أَوْ بِجَارِيَةٍ مَكَانَ الْأُنْثَى، وَإِمَّا بِغُلَامَيْنِ مَكَانَ غُلَامٍ ذَكَرٍ.

L31728 It has been reported to us from ʻAbd al-Razzāq, from Ibn Jurayj, from ʻAṭāʼ regarding the child of ambiguous lineage (al-ghārah): their father is presumed to have close kinship ties to them.

وَرُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي وَلَدِ الْغَارَّةِ يُقَارَبُ أَبُوهُمْ فِيهِمْ.

L31729 And via the chain of ʿAbd al-Razzāq from ʿAbd Allāh ibn Kathīr from Shuʿbah from al-Mughīrah ibn Miqsam from Ibrāhīm regarding al-ghārrāh (misleading in marriage): He said, "Her dowry is incumbent upon the one who committed the deception."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ عَنْ شُعْبَةَ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ فِي الْغَارَّةِ قَالَ: صَدَاقُهَا عَلَى الَّذِي غَرَّهُ.

L31730 And Ḥumām ibn Abī Sulaymān held the same opinion.

وَقَالَ حُمَامُ بْنُ أَبِي سُلَيْمَانَ مِثْلَ ذَلِكَ.

L31731 Al-Hakam ruled that redeeming her child is the responsibility of the father - and we know of no opinion from any Companion or Follower except what we have mentioned. Yet the Hanafis, Malikis, and Shafi'is, all of them, opposed this due to their invalid innovation; they did so by obligating the value that had not been established by anyone we know before Abu Hanifah. Then Malik and Al-Shafi'i followed him.

وَقَالَ الْحَكَمُ فِكَاكُ وَلَدِهَا عَلَى الْأَبِ - وَلَا نَعْلَمُ عَنْ صَاحِبٍ، وَلَا تَابِعٍ غَيْرَ مَا أَوْرَدْنَا - فَخَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، كُلَّ هَؤُلَاءِ، لِاخْتِرَاعٍ لَهُمْ فَاسِدٍ، وَبِإِيجَابِ الْقِيمَةِ الَّتِي لَمْ تَأْتِ مِنْ أَحَدٍ نَعْلَمُهُ قَبْلَ أَبِي حَنِيفَةَ، ثُمَّ اتَّبَعَهُ مَالِكٌ، وَالشَّافِعِيُّ.

L31732–31734 Indeed, two narrations have been transmitted in this regard, which we will now cite: It was narrated to us through the chain of Abd al-Razzaq from Sufyan ibn Uyaynah from Zakariyya—who is the son of Abi Za'idah—from al-Sha'bi, who said: "The Messenger of Allah—may Allah bless him and his family and grant him peace—ruled regarding the captives of the Arabs during the pre-Islamic era that the ransom for a man is eight camels, and for

وَقَدْ جَاءَ فِي ذَلِكَ أَثَرَانِ نَذْكُرُهُمَا -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنِ الشَّعْبِيِّ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي سَبْيِ الْعَرَبِ فِي الْجَاهِلِيَّةِ أَنَّ فِدَاءَ الرَّجُلِ ثَمَانٌ مِنَ الْإِبِلِ، وَأَنَّ

فِي الْأُنْثَى عَشْرًا، قَالَ سُفْيَانُ: فَأَخْبَرَنِي مُجَالِدٌ عَنْ الشَّعْبِيِّ أَنَّ ذَلِكَ شَكَا إلَى عُمَرَ بْنِ الْخَطَّابِ، فَجَعَلَ فِدَاءَ الرَّجُلِ أَرْبَعَمِائَةِ دِرْهَمٍ» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ قَالَ: «قَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي فِدَاءِ رَقِيقِ الْعَرَبِ مِنْ أَنْفُسِهِمْ فِي الرَّجُلِ إذَا سُبِيَ فِي الْجَاهِلِيَّةِ بِثَمَانٍ مِنْ الْإِبِلِ، وَفِي ابْنِ الْأَمَةِ بِوَصِيفَيْنِ وَصَيْفَيْنِ، لِكُلِّ إنْسَانٍ مِنْهُمْ - ذَكَرٍ وَأُنْثَى -. وَقَضَى فِي سَبِيَّةِ الْجَاهِلِيَّةِ بِعَشْرٍ مِنْ الْإِبِلِ، وَفِي وَلَدِهَا مِنْ الْعَبْدِ بِوَصِيفَيْنِ يَفْدِيهِ مَوَالِي أُمِّهِ - وَهُمْ عُصْبَتُهَا - لَهُمْ مِيرَاثُهَا وَمِيرَاثُهُ، مَا لَمْ يَعْتِقْ أَبُوهُ. وَقَضَى فِي سَبْيِ الْإِسْلَامِ بِسِتَّةٍ مِنْ الْإِبِلِ فِي الرَّجُلِ وَالْمَرْأَةِ وَالصَّبِيِّ - فَذَلِكَ فِدَاءُ الْعَرَبِ» .

فَإِنْ تَعَلَّقُوا بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرٍ عَيَّاشٍ قَالَ: أَبُو حُصَيْنٍ عَنْ الشَّعْبِيِّ لَمَّا اُسْتُخْلِفَ عُمَرُ بْنُ الْخَطَّابِ قَالَ: لَيْسَ عَلَى عَرَبِيٍّ مِلْكٌ، وَلَسْنَا بِنَازِعِينَ مِنْ يَدِ أَحَدٍ شَيْئًا أَسْلَمَ عَلَيْهِ، وَلَا كُنَّا نُقَوِّمُهُمْ الْمِلَّةَ؟ قُلْنَا: أَنْتُمْ أَوَّلُ مُخَالِفٍ لِهَذَا، فَتُوجِبُونَ الْمِلْكَ لِلْعِلْجِ عَلَى أَوْلَادِ الْعَرَبِيِّ، وَالْقُرَشِيِّ، إذَا تَزَوَّجَ أَمَتَهُ بِإِذْنِهِ، وَلَا يُمْكِنُكُمْ دَعْوَى إجْمَاعٍ هَهُنَا، لِأَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ وَالْأَوْزَاعِيَّ، وَسُفْيَانَ الثَّوْرِيَّ، وَأَبَا ثَوْرٍ، وَإِسْحَاقَ بْنَ رَاهْوَيْهِ، كُلَّهُمْ يَقُولُ عَنْ عُمَرَ: فِي الْعَبْدِ يَتَزَوَّجُ أَمَةَ رَجُلٍ بِإِذْنِ سَيِّدِهَا: أَنَّ أَوْلَادَهُ مِنْهَا أَحْرَارٌ لَا رِقَّ عَلَيْهِمْ، وَلَا عَلَى أَبِيهِمْ فِدَاؤُهُمْ -.

وَهُوَ قَوْلُ الشَّافِعِيِّ بِالْعِرَاقِ.

a female, ten [camels]." Sufyan said: "Mujalid informed me from al-Shaʿbi that this matter was brought to Umar ibn al-Khattab's attention, and he set the ransom for a man at four hundred dirham."

L31735 From the chain of ʿAbd al-Razzāq, from Maʿmar, from a man, from ʿIkrimah—the freed slave of Ibn ʿAbbās—who said: "The Prophet—peace and blessings of Allah be upon him and his family—ruled regarding the redemption of Arab captives among their own people: for a man captured in the Age of Ignorance, eight camels; for the son of a female slave, two male and two female slaves in total, applicable to both males and females among them. He ruled that a female captive from the Age of Ignorance is redeemed with ten camels, and for her child from a slave, two male slaves. His mother's patrilineal heirs—who are her agnates—redeem him. They inherit her estate and his estate as long as his father remains unfreed. He ruled that captives taken after the advent of Islam are redeemed with six camels for a man, woman, or child—and that is the redemption ruling for Arabs."

L31736 If they rely on what we narrated through the chain of ʿAbd al-Razzāq from Abū Bakr ʿAyyāsh, who said: Abū Ḥuṣayn reported from al-Shaʿbī that when ʿUmar ibn al-Khaṭṭāb was appointed caliph, he declared: "No tax is imposed on an Arab, nor do we seize anything from anyone's possession that they held upon embracing Islam, nor were we imposing the religious practice on them?" We responded: "You are the first ones to violate this principle, for you grant ownership to the non-Arab (pejoratively) over the children of the Arab or Qurayshī man if a slave marries his maidservant with her master's permission. You cannot claim consensus here, as Saʿīd ibn al-Musayyab, al-Awzāʿī, Sufyān al-Thawrī, Abū Thawr, and Isḥāq ibn Rāhwayh all relate from ʿUmar regarding a slave who marries a man's maidservant with her master's permission: 'Their children from her are free—enslavement does not apply to them, nor is their father liable for their ransom.'"

L31737 And this is the opinion of Al-Shāfiʿī during his time in Iraq.

L31738 Abu Muhammad said: Indeed, whoever relies on rejecting the established Sunnah through the narration transmitted by a shaykh from Banī Kināna from ʿUmar: "The sale concerns a transaction or an option."

قَالَ أَبُو مُحَمَّدٍ: إِنَّ مَنْ - تَعَلَّقَ فِي رَدِّ السُّنَّةِ الثَّابِتَةِ - بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ عَنْ عُمَرَ: الْبَيْعُ عَنْ صَفْقَةٍ أَوْ خِيَارٍ.

وَبِرِوَايَةِ مُجَالِدٍ عَنِ الشَّعْبِيِّ لَا يُؤَمَّنُ أَحَدٌ بَعْدِي جَالِسًا.

ثُمَّ خَالَفَ رِوَايَةَ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ زَكَرِيَّا عَنِ الشَّعْبِيِّ الَّتِي ذَكَرْنَا، وَرِوَايَةَ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ عَنْ عُمَرَ - وَمُرْسَلَ عِكْرِمَةَ -: لِمَنْحُوسِ الْحَظِّ مِنَ الصَّوَابِ - وَنَعُوذُ بِاللَّهِ مِنَ الضَّلَالِ.

وَمِنْ طَرَائِفِ مَا يَأْتُونَ بِهِ: احْتِجَاجُهُمْ فِي هَذِهِ الْمَسْأَلَةِ: بِأَنَّهُ إِنَّمَا أَعْتَقَ " وَلَدَ الْغَارَّةِ، وَالْمُسْتَحَقَّةِ " لِأَنَّ أَبَاهُمْ عَلَى ذَلِكَ دَخَلَ؟ فَقُلْنَا: إِنَّ هَذَا لَعَجَبٌ فَكَانَ مَاذَا؟ وَفِي أَيِّ كِتَابِ اللَّهِ عَزَّ وَجَلَّ وَجَدْتُمْ؟ أَمْ فِي أَيِّ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ يَخْرُجَ مِلْكُ فَرْجٍ، وَمَا وَلَدَ، عَنْ مِلْكِ مَالِكِهِمْ قَهْرًا مِنْ أَجْلِ أَنَّ الْوَاطِئَ لَهُ بِغَيْرِ حَقٍّ عَلَى ذَلِكَ دَخَلَ، فَحَسْبُكَ بِهَذَا الْقَوْلِ هُجْنَةً - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

L31739 And according to the narration of Mujālid from Al-Shaʿbī: After me, no one should lead the prayer while sitting.

L31740–31742 Then he contradicted the narration of Sufyān ibn ʿUyaynah from Zakariyyā from al-Shaʿbī that we mentioned, and the narration of Ibn Ṭāwūs. From his father, from Ibn Abbas, from Umar—and the mursal report from Ikrimah—: "For those cursed with perpetual ill luck, estranged from sound judgment—and we seek refuge in Allah from misguidance."

L31743 Among the curious arguments they advance in this matter is their claim that "the child of the violated woman and the one entitled to emancipation" is freed solely because their father engaged in that act. We responded: How astonishing! What kind of argument is this? In which Book of Allah the Almighty have you found this, or in which Sunnah of the Messenger of Allah—peace and blessings of Allah be upon him and his family—is it established that ownership of intimate rights and offspring is forcibly severed from their owner through compulsion merely because the one who engaged in unlawful intercourse partook in that act? This statement alone suffices to expose its weakness—and in Allah the Exalted we seek strength.

[مَسْأَلَةٌ لَا يَحِلُّ لِلْمَرْأَةِ التَّبَرُّجُ وَلَا التَّزَيُّنُ لِلْخُرُوجِ]

It is a juristic ruling that a woman may not engage in indecent display of beauty nor adorn herself for the purpose of going out.

١٨٨١ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمَرْأَةِ التَّبَرُّجُ وَلَا التَّزَيُّنُ لِلْخُرُوجِ إِذَا خَرَجْنَ لِحَاجَةٍ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَلا تَبَرَّجْنَ تَبَرُّجَ الْجَاهِلِيَّةِ الأُولَى} [الأحزاب: ٣٣] .

وَقَدْ ذَكَرْنَا فِي " كِتَابِ الصَّلَاةِ " أَمْرَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِذَا خَرَجَ النِّسَاءُ إِلَى الصَّلَاةِ أَنْ يَخْرُجْنَ تَفِلَاتٍ.

L31745 1881. Issue: It is not lawful for women to display adornments or beautify themselves when going out for a necessity. Allah, the Almighty, said: "And do not display your adornments as was done in the pre-Islamic era of ignorance" [Al-Ahzab 33:33].[25]

L31746 We have mentioned in the "Book of Prayer" the command of the Prophet—

[25] **Qur'an references (L31745):** Qur'an 33:33 (Al-Ahzab).

peace be upon him and his family—that when women go out to prayer, they should do so without wearing perfume.

L31747 **It is an obligation for a man to have intercourse with his wife who is lawfully married to him.**

L31748 Issue 1882: It is obligatory upon a man to have intercourse with his wife, and the minimum required is once during each purity period—if he is capable of doing so—otherwise he is sinful before Allah the Exalted.

L31749 The evidence for that is the statement of Allah, the Exalted and Majestic: {When they have become pure [from menstruation], then go to them from where Allah has commanded you} [Al-Baqarah: 222].[26]

L31750 We were traveling with ʻUmar ibn al-Khattab at al-Raff of Jamdan when a young woman from Khuzāʻah approached him and said: "O Commander of the Faithful, I am a woman who desires what women desire—children and other desires—yet my husband is an old man. By Allah, we remained together until we saw him decline into a feeble old man." Her husband said to ʻUmar: "O Commander of the Faithful, I treat her well and do not neglect her." ʻUmar asked him: "Do you observe her waiting period of purity?" He replied: "Yes." ʻUmar then said to her: "Go with your husband, for by Allah, he indeed possesses what suffices"—or he said: "what enriches a Muslim woman."

L31751 Abu Muhammad said: One who obstinately refuses is compelled to do so through admonishment, for he has committed a reprehensible act.

L31752–31753 From the transmission of al-Bazzār: Muḥammad ibn Bishshār Bundār narrated to us, Jaʻfar ibn ʿAwn narrated to us, Abū al-ʻUmayṣ (who is ʿUtbah ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd) narrated to us from ʿAwn ibn Abī Juḥayfah from his father: "Salman al-Fārisī said to Abū al-Dardāʾ: ʾYour body has a right over you, and your family has a right over you. Give every right-holder

[26] **Qur'an references (L31749):** Qur'an 2:222 (Al-Baqarah).

[مَسْأَلَةٌ فَرْضٌ عَلَى الرَّجُلِ أَنْ يُجَامِعَ امْرَأَتَهُ الَّتِي هِيَ زَوْجَتُهُ]

١٨٨٢ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى الرَّجُلِ أَنْ يُجَامِعَ امْرَأَتَهُ الَّتِي هِيَ زَوْجَتُهُ وَأَدْنَى ذَلِكَ مَرَّةٌ فِي كُلِّ طُهْرٍ - إنْ قَدَرَ عَلَى ذَلِكَ - وَإِلَّا فَهُوَ عَاصٍ لِلَّهِ تَعَالَى.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ} [البقرة: ٢٢٢] .

وَرُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَعْقُوبَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ قَالَ: إنَّا لَنَسِيرُ مَعَ عُمَرَ بْنِ الْخَطَّابِ بِالرَّفِّ مِنْ جَمْدَانَ إذْ عَرَضَتْ لَهُ امْرَأَةٌ مِنْ خُزَاعَةَ شَابَّةٌ فَقَالَتْ: يَا أَمِيرَ الْمُؤْمِنِينَ إنِّي امْرَأَةٌ أُحِبُّ مَا تُحِبُّ النِّسَاءُ مِنْ الْوَلَدِ، وَغَيْرِهِ، وَلِي زَوْجٌ شَيْخٌ، وَوَاَللَّهِ مَا بَرِحْنَا حَتَّى نَظَرْنَا إلَيْهِ يَهْوِي شَيْخٌ كَبِيرٌ، فَقَالَ لِعُمَرَ: يَا أَمِيرَ الْمُؤْمِنِينَ إنِّي لَمُحْسِنٌ إلَيْهَا وَمَا آلُوهَا؟ فَقَالَ لَهُ عُمَرُ: أَتُقِيمُ لَهَا طُهْرَهَا؟ فَقَالَ: نَعَمْ، فَقَالَ لَهَا عُمَرُ: انْطَلِقِي مَعَ زَوْجِك، وَاَللَّهِ إنَّ فِيهِ لَمَا يَجْزِي، أَوْ قَالَ: يُغْنِي الْمَرْأَةَ الْمُسْلِمَةَ.

قَالَ أَبُو مُحَمَّدٍ: وَيُجْبَرُ عَلَى ذَلِكَ مَنْ أَبَى بِالْأَدَبِ، لِأَنَّهُ أَتَى مُنْكَرًا مِنْ الْعَمَلِ؟

وَمِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ بَشَّارٍ بُنْدَارٌ نا جَعْفَرُ بْنُ عَوْنٍ نا أَبُو الْعُمَيْسِ - هُوَ عُتْبَةُ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ - عَنْ عَوْنِ بْنِ أَبِي جُحَيْفَةَ عَنْ أَبِيهِ: «أَنَّ سَلْمَانَ الْفَارِسِيَّ قَالَ لِأَبِي الدَّرْدَاءِ إنْ لِجَسَدِكَ عَلَيْكَ حَقًّا، وَإِنَّ لِأَهْلِكَ عَلَيْك حَقًّا، أَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ: صُمْ، وَأَفْطِرْ، وَقُمْ، وَنَمْ، وَأْتِ أَهْلَكَ فَأَخْبَرَ أَبُو الدَّرْدَاءِ بِذَلِكَ رَسُولَ اللَّهِ -

their right: fast, break your fast, stand (in prayer), sleep, and attend to your family.'" Abū al-Dardāʾ informed the Messenger of Allah—peace and blessings be upon him—of that, and the Messenger of Allah—peace and blessings be upon him—replied to him with the same words as Salmān's statement.

L31754 **It is an obligation upon both the female slave and the free woman not to prevent their respective master or husband from relations whenever summoned by him.**

L31755 Issue 1883: It is incumbent upon both the female slave and the free woman not to prevent the master [in the case of the female slave] or the husband [in the case of the free woman] from intercourse whenever he summons either of them, unless the summoned one is menstruating, suffering illness that would be aggravated by intercourse, or observing an obligatory fast. If she refuses without valid excuse, she becomes accursed. We have received through Muslim's transmission: Ibn Abī ʿUmar narrated to us; Marwān - that is Ibn Muʿāwiyah al-Fazārī - narrated to us from Yazīd ibn Kaysān from Abū Ḥāzim from Abū Hurayrah, who said: The Messenger of God - may God's blessings and peace be upon him and his household - said: "By Him in whose hand lies my soul! No man calls his wife to her bed while she refuses him, except that the One in the heavens becomes wrathful toward her until He is pleased with her."[27]

L31756 Humaam reported from Abbas ibn Asbagh, who reported from Muhammad ibn Abdul-Malik ibn Ayman, who reported from Bakr ibn Hammad, who reported from Musaddad, who reported from Yahya—Ibn Saʿid al-Qattan—who reported from Shuʿbah, from Qatadah, from Zurarah ibn Awfa, from Abu Hurairah (may Allah be pleased with him), that the Prophet (peace be upon him and his family) said: "If a woman spends the night abandoning her husband or his bed, the angels curse her until she returns."

L31757 And through the chain of Ahmad ibn Shu'ayb: Hannad ibn al-Sarri narrated to us from Mulazim ibn 'Amr, who narrated from 'Abdullah ibn Badr, from Qays ibn Talq, from his father Talq ibn 'Ali, who said: I heard the Messenger

[27] **Hadith references (L31755):** Sahih Muslim 1436c.

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلَ قَوْلِ سَلْمَانَ» .

[مَسْأَلَةٌ فَرْضُ الْأَمَةِ وَالْحُرَّةِ أَنْ لَا يَمْنَعَا السَّيِّدَ وَالزَّوْجَ الْجِمَاعَ مَتَى دَعَاهُمَا]

١٨٨٣ - مَسْأَلَةٌ: وَفَرْضُ الْأَمَةِ وَالْحُرَّةِ أَنْ لَا يَمْنَعَا السَّيِّدَ وَالزَّوْجَ الْجِمَاعَ مَتَى دَعَاهُمَا، مَا لَمْ تَكُنْ الْمَدْعُوَّةُ حَائِضًا، أَوْ مَرِيضَةً تَتَأَذَّى بِالْجِمَاعِ، أَوْ صَائِمَةَ فَرْضٍ، فَإِنْ امْتَنَعَتْ لِغَيْرِ عُذْرٍ، فَهِيَ مَلْعُونَةٌ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ أَبِي عُمَرَ نا مَرْوَانُ - هُوَ ابْنُ مُعَاوِيَةَ الْفَزَارِيّ - عَنْ يَزِيدَ بْنِ كَيْسَانَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «وَالَّذِي نَفْسِي بِيَدِهِ مَا مِنْ رَجُلٍ يَدْعُو امْرَأَتَهُ إلَى فِرَاشِهَا فَتَأْبَى عَلَيْهِ إلَّا كَانَ الَّذِي فِي السَّمَاءِ سَاخِطًا عَلَيْهَا حَتَّى يَرْضَى عَنْهَا» .

نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ بْنُ حَمَّادٍ نا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ زُرَارَةَ بْنِ أَوْفَى عَنْ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «إذَا بَاتَتْ الْمَرْأَةُ مُهَاجِرَةً إلَى زَوْجِهَا أَوْ فِرَاشِ زَوْجِهَا لَعَنَتْهَا الْمَلَائِكَةُ حَتَّى تَرْجِعَ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا هَنَّادُ بْنُ السَّرِيِّ عَنْ مُلَازِمِ بْنِ عَمْرٍو نا عَبْدُ اللَّهِ بْنُ بَدْرٍ عَنْ قَيْسِ بْنِ طَلْقٍ عَنْ أَبِيهِ طَلْقِ بْنِ عَلِيٍّ قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: «إذَا دَعَا الرَّجُلُ زَوْجَتَهُ لِحَاجَتِهِ فَلْتَأْتِهِ وَإِنْ كَانَتْ عَلَى التَّنُّورِ» .

of Allah - peace and blessings of Allah be upon him and his family - say: "When a man calls his wife for his need, she must come to him even if she is at the tannur (clay oven)."[28]

An issue of justice between the wives.

Issue 1884: Justice between wives is obligatory, and the majority of that obligation lies in the division of nights. It is not permissible to favor a free woman over an enslaved married woman or a Muslim woman over a *Dhimmi* woman in the division of nights. If she disobeys him, it becomes lawful for him to abandon her until she complies, and to strike her in a manner that causes no pain, wounds, broken bones, or festering injuries. If he strikes her without fault, she may claim retaliation (qisas) from him.

It is not permissible for him to spend the night at his female slave's place, nor at his *umm walad*'s [mother of his child] place, nor in another's house except with an excuse.

The evidence for that is the statement of Allah the Exalted: "Marry those that please you of women, two, three, or four. But if you fear you cannot be just, then marry only one or those whom your right hands possess" [An-Nisa': 3].[29]

"And the saying of Allah, the Mighty and Majestic: 'You will never be able to do full justice between women, even if you strive earnestly. So do not incline wholly [to one], leaving the other as if suspended' [An-Nisa: 129]."[30]

And He, the Exalted, said: "As for those women from whom you fear ill-conduct, admonish them, forsake them in bed, and strike them. If they obey you, then do not seek a way against them." [Quran 4:34].[31]

Allah, the Mighty and Majestic, did not permit forsaking her in bed ex-

[28] **Hadith references (L31757):** Riyad as-Salihin 284.
[29] **Qur'an references (L31762):** Qur'an 4:3 (An-Nisa).
[30] **Qur'an references (L31763):** Qur'an 4:129 (An-Nisa).
[31] **Qur'an references (L31764):** Qur'an 4:34 (An-Nisa).

[مَسْأَلَةٌ الْعَدْلُ بَيْنَ الزَّوْجَاتِ]

١٨٨٤ - مَسْأَلَةٌ: وَالْعَدْلُ بَيْنَ الزَّوْجَاتِ فَرْضٌ، وَأَكْثَرُ ذَلِكَ فِي قِسْمَةِ اللَّيَالِي - وَلَا يَجُوزُ أَنْ يُفَضِّلَ فِي قِسْمَةِ اللَّيَالِي حُرَّةً عَلَى أَمَةٍ مُتَزَوِّجَةٍ، وَلَا مُسْلِمَةً عَلَى ذِمِّيَّةٍ، فَإِنْ عَصَتْهُ حَلَّ لَهُ هِجْرَانُهَا حَتَّى تُطِيعَهُ، وَضَرْبُهَا بِمَا لَمْ يُؤْلِمْ، وَلَا يَجْرَحْ، وَلَا يَكْسِرْ، وَلَا يَعْفِنْ - فَإِنْ ضَرَبَهَا بِغَيْرِ ذَنْبٍ أُقِيدَتْ مِنْهُ.

وَلَا يَجُوزُ لَهُ الْمَبِيتُ عِنْدَ أَمَتِهِ، وَلَا عِنْدَ أُمِّ وَلَدِهِ، وَلَا فِي دَارِ غَيْرِهِ إِلَّا بِعُذْرٍ.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى: {فَانْكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣] .

وَقَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ وَلَوْ حَرَصْتُمْ فَلا تَمِيلُوا كُلَّ الْمَيْلِ فَتَذَرُوهَا كَالْمُعَلَّقَةِ} [النساء: ١٢٩] .

وَقَالَ تَعَالَى: {وَاللاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلا تَبْغُوا عَلَيْهِنَّ سَبِيلا} [النساء: ٣٤] .

فَلَمْ يُبِحْ اللَّهُ عَزَّ وَجَلَّ هِجْرَانَهَا فِي الْمَضْجَعِ إِلَّا إِذَا خَافَ نُشُوزَهَا، وَإِنَّمَا أَبَاحَ مَضْرِبًا، وَلَمْ يُبِحْ الْجِرَاحَ، وَلَا كَسْرَ الْعِظَامِ، وَلَا تَعْفِينَ اللَّحْمِ.

cept when anticipating her rebellion. He only permitted beating but did not permit wounding, breaking bones, or causing the flesh to rot.

L31766 And He, the Exalted, said: “The sacred months are a time for just recompense.” [Al-Baqarah: 194][32]

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

L31767 It is established that if he transgresses against her without right, then qisas is incumbent upon him.

فَصَحَّ أَنَّهُ إِنْ اعْتَدَى عَلَيْهَا بِغَيْرِ حَقٍّ فَالْقِصَاصُ عَلَيْهِ.

L31768 It was narrated to us through the chain of Ahmad ibn Shu’ayb → ’Amr ibn ’Ali → ’Abd al-Rahman (Ibn Mahdi) → Hammam (Ibn Yahya) → Qatadah → al-Nadr ibn Anas ibn Malik → Bashir ibn Nahik → Abu Hurayrah → the Prophet (peace be upon him and his family), who said: “Whoever has two wives and inclines toward one over the other will come on the Day of Resurrection with one half of his body tilted.”[33]

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا عَبْدُ الرَّحْمَنِ - هُوَ ابْنُ مَهْدِيٍّ - نا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ النَّضْرِ بْنِ أَنَسِ بْنِ مَالِكٍ عَنْ بَشِيرِ بْنِ نَهِيكٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ كَانَ لَهُ امْرَأَتَانِ يَمِيلُ لِإِحْدَاهُمَا عَلَى الْأُخْرَى جَاءَ يَوْمَ الْقِيَامَةِ أَحَدُ شِقَّيْهِ مَائِلٌ» .

L31769 He—peace be upon him—did not distinguish between a free married woman and a married enslaved woman, nor a Muslim woman from a *dhimmi* woman. Almighty God commanded those who fear they might fail to maintain justice to restrict themselves to one wife or restrict themselves to what their right hands possess.

فَلَمْ يَخُصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - حُرَّةً مُتَزَوِّجَةً، مِنْ أَمَةٍ مُتَزَوِّجَةٍ، وَلَا مُسْلِمَةً مِنْ ذِمِّيَّةٍ - وَأَمَرَ عَزَّ وَجَلَّ مَنْ خَافَ أَنْ لَا يَعْدِلَ أَنْ يَقْتَصِرَ عَلَى وَاحِدَةٍ مِنْ الزَّوْجَاتِ، أَوْ أَنْ يَقْتَصِرَ عَلَى مَا مَلَكَتْ يَمِينُهُ.

L31770 Thus, it is established that he is not obliged to treat his female slaves with equal fairness.

فَصَحَّ أَنَّهُ لَيْسَ عَلَيْهِ أَنْ يَعْدِلَ بَيْنَ إمَائِهِ.

L31771 And everything we have said is the opinion of Abū Sulaymān and our companions.

وَكُلُّ مَا قُلْنَا فَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L31772 Ibrahim al-Nakha’i said: No preference is given to Muslim wives over Kitabi women in the division of time, and this is the opinion of Malik, al-Layth, Abu Hanifa, and al-Shafi’i.

وَقَالَ إبْرَاهِيمُ النَّخَعِيُّ: لَا فَضْلَ لِلزَّوْجَةِ الْمُسْلِمَةِ عَلَى الْكِتَابِيَّةِ فِي الْقِسْمَةِ، وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ.

L31773 Abu Hanifah said: Whoever has a free wife and an enslaved wife, the free wife is due two nights, and the enslaved wife one night.

وَقَالَ أَبُو حَنِيفَةَ: مَنْ كَانَتْ لَهُ زَوْجَةٌ حُرَّةٌ وَزَوْجَةٌ مَمْلُوكَةٌ فَلِلْحُرَّةِ لَيْلَتَانِ وَلِلْمَمْلُوكَةِ لَيْلَةٌ.

L31774 It has been narrated to us from Ali, Masruq, Muhammad ibn Ali ibn al-

وَرُوِّينَا ذَلِكَ عَنْ عَلِيٍّ، وَمَسْرُوقٍ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ، وَالشَّعْبِيِّ، وَالْحَسَنِ، وَعَطَاءٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَعُثْمَانَ الْبَتِّيِّ، وَالشَّافِعِيِّ.

[32] **Qur’an references (L31766):** Qur’an 2:194 (Al-Baqarah).
[33] **Hadith references (L31768):** Sunan an-Nasai 3942.

Husayn, al-Shaʿbi, al-Hasan, Ata', Saʿid ibn Jubayr, Saʿid ibn al-Musayyab, Uthman al-Batti, and al-Shafiʿi.

وَقَالَ مَالِكٌ، وَاللَّيْثُ، وَأَبُو سُلَيْمَانَ: الْقِسْمَةُ لَهُمَا سَوَاءٌ.

L31775–31776 Mālik, al-Layth, and Abū Sulaymān said: The apportionment is equal for the two of them.

وَاحْتَجَّ مَنْ رَأَى لِلْحُرَّةِ يَوْمَيْنِ وَلِلْأَمَةِ يَوْمًا بِأَنَّهُ رُوِيَ فِي ذَلِكَ حَدِيثٌ مُرْسَلٌ، وَأَنَّهُ عَنْ عَلِيٍّ - وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَأَنَّهُ قَوْلُ جُمْهُورِ السَّلَفِ.

L31777 Those who held the view that a free woman observes two days and a slave woman one day argued by citing three evidences: a mursal hadith reported on this matter, that it is the opinion of ʿAlī - with no known opposition to him from the Companions (may Allah be pleased with them) - and that it is the view of the majority of the early scholars.

وَقَالُوا: لَمَّا كَانَتْ عِدَّةُ الْأَمَةِ وَحْدَهَا نِصْفَ عِدَّةِ الْحُرَّةِ وَحْدَهَا وَجَبَ أَنْ تَكُونَ قِسْمَتُهَا نِصْفَ قِسْمَةِ الْحُرَّةِ.

L31778 They said: Since the waiting period of a female slave acting alone is half that of a free woman acting alone, it is obligatory that her apportionment be half the apportionment of the free woman.

قَالَ أَبُو مُحَمَّدٍ: الْمُرْسَلُ لَا حُجَّةَ لَهُمْ فِيهِ، وَعَهِدْنَا بِهِمْ يَرُدُّونَ السُّنَنَ الثَّابِتَةَ فِي الْمَسْحِ عَلَى الْعِمَامَةِ وَمَا يَحْرُمُ مِنْ الرَّضَاعَاتِ بِأَنَّهَا زَائِدَةٌ عَلَى مَا فِي الْقُرْآنِ وَتَرَكُوا هَهُنَا عُمُومَ أَمْرِ اللَّهِ تَعَالَى بِالْعَدْلِ بَيْنَ النِّسَاءِ عُمُومًا بِخَبَرٍ سَاقِطٍ مُرْسَلٍ، مُخَالِفٍ لِعُمُومِ الْقُرْآنِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L31779 Abu Muhammad said: The mursal report provides no valid evidence for them in this matter. We have observed them rejecting established Sunnahs—such as wiping over the turban and rulings on what becomes prohibited through breastfeeding—by claiming these exceed the Quran's stipulations. Yet here, they disregard the generality of Allah the Exalted's command to maintain equity among wives in its comprehensive scope, relying instead on a defective, mursal narration that contradicts the Quran's general principles. Authoritative evidence lies with none except the Messenger of Allah—peace and blessings of Allah be upon him.

وَقَدْ خَالَفُوا طَائِفَةً مِنْ الصَّحَابَةِ مِنْهُمْ عَلِيٌّ فِيمَا لَا يُعْرَفُ لَهُمْ فِيهِ مُخَالِفٌ مِنْهُمْ فِي الْقَضَاءِ بِوَلَدِ الْأَمَةِ الْمُسْتَحَقَّةِ لِسَيِّدِ أُمِّهِ، أَوْ فِدَائِهِ بِرَأْسٍ أَوْ رَأْسَيْنِ، وَإِلْزَامِ الْبَائِعِ الْخَلَاصَ.

L31780 They differed from a group of the Companions—including ʿAlī—in matters where no dissenting opinion from among them is recorded, such as the ruling regarding the child of an enslaved woman lawfully owned by her master, his ransom for one or two captives, and compelling the seller to effect redemption.

وَخَالَفُوهُمْ وَجُمْهُورُ السَّلَفِ فِي ذَلِكَ أَيْضًا.

L31781 They opposed them, and the majority of the Salaf in that matter also opposed them.

L31782 As for the analogy between division and the waiting period, it is invalid because all analogy is invalid. Their counter-argument through analogy is more misleading than their original analogy—which claims that since they

are equal in maintenance, they must be equal in division—. And success comes from Allah, the Exalted; He suffices us, and He is the best trustee.

وَأَمَّا قِيَاسُ الْقِسْمَةِ عَلَى الْعِدَّةِ فَبَاطِلٌ، لِأَنَّ الْقِيَاسَ كُلَّهُ بَاطِلٌ، وَتَعَارُضُهُمْ بِقِيَاسٍ أَدْخَلَ فِي الْإِيهَامِ مِنْ قِيَاسِهِمْ، وَهُوَ أَنَّهُ لَمَّا كَانَتَا فِي النَّفَقَةِ سَوَاءً وَجَبَ أَنْ يَكُونَا فِي الْقِسْمَةِ سَوَاءً -. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ، وَهُوَ حَسْبُنَا وَنِعْمَ الْوَكِيلُ.

[أَحْكَامُ الْإِيلَاءِ] [مَسْأَلَةٌ حَلَفَ بِاللَّهِ عَزَّ وَجَلَّ أَنْ لَا يَطَأَ امْرَأَتَهُ]

L31783–31784 **The Rulings of *Ila* A legal case wherein a man swears by Allah, the Exalted and Majestic, that he not have sexual intercourse with his wife.**

١٨٨٥ - مَسْأَلَةٌ: وَمَنْ حَلَفَ بِاللَّهِ عَزَّ وَجَلَّ، أَوْ بِاسْمٍ مِنْ أَسْمَائِهِ تَعَالَى: أَنْ لَا يَطَأَ امْرَأَتَهُ، أَوْ أَنْ يَسُوءَهَا، أَوْ أَنْ لَا يَجْمَعَهُ، وَإِيَّاهَا فِرَاشٌ، أَوْ بَيْتٌ، سَوَاءً قَالَ ذَلِكَ فِي غَضَبٍ أَوْ فِي رِضًا لِصَلَاحِ رَضِيعِهَا، أَوْ لِغَيْرِ ذَلِكَ - اسْتَثْنَى فِي يَمِينِهِ أَوْ لَمْ يَسْتَثْنِ - فَسَوَاءٌ وَقَّتَ وَقْتًا - سَاعَةً فَأَكْثَرَ إلَى جَمِيعِ عُمْرِهِ - أَوْ لَمْ يُوَقِّتْ: الْحُكْمُ فِي ذَلِكَ وَاحِدٌ.

L31785 1885 - Issue: Whoever swears by Allah, the Almighty and Majestic, or by one of His exalted names, that he will not have intercourse with his wife, harm her, or that he will not share a bed or house with her—whether he uttered this in anger or contentment, for the benefit of her nursing child or otherwise, whether he included an exception in his oath or not, whether he specified a time (at least an hour or longer, up to his entire lifetime) or did not specify a time—the ruling in all these cases is the same.

وَهُوَ أَنَّ الْحَاكِمَ يَلْزَمُهُ أَنْ يُوقِفَهُ، وَيَأْمُرَهُ بِوَطْئِهَا، وَيُؤَجِّلَ لَهُ فِي ذَلِكَ أَرْبَعَةَ أَشْهُرٍ مِنْ حِينِ يَحْلِفُ، سَوَاءً طَلَبَتْ الْمَرْأَةُ ذَلِكَ أَوْ لَمْ تَطْلُبْ، رَضِيَتْ ذَلِكَ أَوْ لَمْ تَرْضَ.

L31786 The judge must oblige him to suspend [the oath], order him to have intercourse with her, and postpone for him [the matter] by four months from the time he swears the oath - regardless of whether the woman requested this or not, or consented to it or not.

فَإِنْ فَاءَ فِي دَاخِلِ الْأَرْبَعَةِ الْأَشْهُرِ فَلَا سَبِيلَ عَلَيْهِ، وَإِنْ أَبَى لَمْ يَعْتَرِضْ حَتَّى تَنْقَضِيَ الْأَرْبَعَةُ الْأَشْهُرُ، فَإِذَا تَمَّتْ أَجْبَرَهُ الْحَاكِمُ بِالسَّوْطِ عَلَى أَنْ يَفِيءَ فَيُجَامِعَ أَوْ يُطَلِّقَ، حَتَّى يَفْعَلَ أَحَدَهُمَا، كَمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ أَوْ يَمُوتَ قَتِيلَ الْحَقِّ إلَى مَقْتِ اللَّهِ تَعَالَى، إلَّا أَنْ يَكُونَ عَاجِزًا عَنْ الْجِمَاعِ لَا يَقْدِرُ عَلَيْهِ أَصْلًا، فَلَا يَجُوزُ تَكْلِيفُهُ مَا لَا يُطِيقُ، لَكِنْ يُكَلَّفُ أَنْ يَفِيءَ بِلِسَانِهِ، وَيُحْسِنَ الصُّحْبَةَ، وَالْمَبِيتَ عِنْدَهَا، أَوْ يُطَلِّقَ، وَلَا بُدَّ مِنْ أَحَدِهِمَا.

L31787 If he returns within the four months, no legal claim can be made against him. If he refuses, no action is taken until the four months have elapsed. Upon their completion, the judge compels him by lashing to either return and have intercourse or divorce - obliging him to act upon one of these as Allah Almighty has commanded, or to face lawful execution until he incurs Allah's wrath - unless he is physically incapable of intercourse, being wholly unable to perform it. In such a case, he cannot be burdened with what is beyond his capacity. Instead, he must either verbally declare his return, treat her kindly, and spend the night with her, or divorce. He must choose one of the two.

L31788 It is not permissible for the judge to pronounce divorce on his behalf. If the

judge does so, a divorce pronounced by another judge is not binding upon him, and it is the same whether he included an exception in his oath or not.

وَلَا يَجُوزُ أَنْ يُطَلِّقَ عَلَيْهِ الْحَاكِمُ، فَإِنْ فَعَلَ لَمْ يَلْزَمْهُ طَلَاقُ غَيْرِهِ، وَسَوَاءٌ اسْتَثْنَى فِي يَمِينِهِ أَوْ لَمْ يَسْتَثْنِ.

L31789 And whoever swears to abstain from a woman he is not married to then marries her, the ruling of *ilā'* does not apply to him. However, he is compelled to consummate the marriage, as we have previously stated.

وَمَنْ آلَى مِنْ أَجْنَبِيَّةٍ ثُمَّ تَزَوَّجَهَا لَمْ يَلْزَمْهُ حُكْمُ الْإِيلَاءِ، لَكِنْ يُجْبَرُ عَلَى وَطْئِهَا كَمَا قَدَّمْنَا قَبْلُ.

L31790 And whoever swears in that matter by divorce, manumission, charity, walking, or anything else is not a mu'li (one who has sworn ila'), and he incurs disciplinary action, for he has sworn by that which is not permissible to swear by.

وَمَنْ حَلَفَ فِي ذَلِكَ بِطَلَاقٍ، أَوْ عِتْقٍ، أَوْ صَدَقَةٍ، أَوْ مَشْيٍ، أَوْ غَيْرِ ذَلِكَ فَلَيْسَ مُؤْلِيًا، وَعَلَيْهِ الْأَدَبُ، لِأَنَّهُ حَلَفَ بِمَا لَا يَجُوزُ الْحَلِفُ بِهِ.

L31791–31792 The proof of that is the statement of Allah, the Mighty and Majestic: "For those who take an oath to abstain from their wives, there is a waiting period of four months. If they retract [their oath], then indeed Allah is Forgiving, Merciful" [Al-Baqarah 2:226]. "And if they resolve on divorce, then indeed Allah is All-Hearing, All-Knowing" [Al-Baqarah 2:227].[34]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ} [البقرة: ٢٢٦] {وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ} [البقرة: ٢٢٧] .

L31793 This verse entails all that we have stated, because *īlā'* (an oath of abstention) is a type of oath (*yamīn*), and it has been authentically established from the Messenger of Allah (peace be upon him): "Whoever takes an oath must swear only by Allah."

فَهَذِهِ الْآيَةُ تَقْتَضِي كُلَّ مَا قُلْنَا، لِأَنَّ الْأَلِيَّةَ هِيَ الْيَمِينُ، وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» .

L31794 Thus, it is established that whoever swears by other than Allah, the Exalted, has not sworn by what Allah, the Mighty and Majestic, commanded him, and thus his oath is invalid. The Messenger of Allah (peace be upon him) said: "Whoever performs a deed not in accordance with our command, it is rejected."[35]

فَصَحَّ أَنَّ مَنْ حَلَفَ بِغَيْرِ اللَّهِ تَعَالَى فَلَمْ يَحْلِفْ بِمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ بِهِ، فَلَيْسَ حَالِفًا، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L31795 Allah the Exalted did not single out in the aforementioned judgment one who stipulated a time from one who did not, nor one who made an exception from one who did not, nor one whose wife demanded it of him from one

وَلَمْ يَخُصَّ اللَّهُ تَعَالَى بِالْحُكْمِ الْمَذْكُورِ مَنْ وَقَّتَ مِمَّنْ لَمْ يُوَقِّتْ، وَلَا مَنْ اسْتَثْنَى مِمَّنْ لَمْ يَسْتَثْنِ، وَلَا مَنْ طَلَبَتْهُ امْرَأَتُهُ مِمَّنْ لَمْ تَطْلُبْهُ، وَهُوَ حَقُّ اللَّهِ عَزَّ وَجَلَّ فِي عَبْدِهِ لَا لَهَا.

[34] **Qur'an references (L31792):** Qur'an 2:226 (Al-Baqarah); Qur'an 2:227 (Al-Baqarah).

[35] **Hadith references (L31794):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

whose wife did not. For this is a right of Allah Almighty over His servant, not a right for her.

L31796 The Messenger of Allah—may Allah bless him and his family and grant him peace—said, "Whoever among you witnesses wrongdoing, let him change it with his hand." As for one who refuses to retract [the revocation] or proceed with divorce after the four-month waiting period (ʿiddah)—being one who openly perpetuates wrongdoing—it becomes obligatory to change this through direct action so long as he publicly manifests the wrongdoing. No counteraction may be taken against him before the conclusion of the four months, for this constitutes the explicit text of the Quranic verse.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ» وَالْآبِي مِنْ الْفَيْئَةِ أَوْ الطَّلَاقِ بَعْدَ الْأَرْبَعَةِ الْأَشْهُرِ: مُعْلِنٌ بِالْمُنْكَرِ، فَوَاجِبٌ تَغْيِيرُهُ بِالْيَدِ مَا دَامَ مُظْهِرًا لِلْمُنْكَرِ - وَلَا يَجُوزُ أَنْ يُعَارَضَ بِشَيْءٍ قَبْلَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ، لِأَنَّهُ نَصُّ الْآيَةِ.

L31797 It has been authentically established that the Messenger of Allah—peace be upon him and his family—took an oath to abstain from his wives for a month, so he abstained from all of them for a month, then resumed relations with them. Thus, whoever does likewise incurs no liability if he returns to them before the completion of four months.

وَقَدْ صَحَّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - آلَى مِنْ نِسَائِهِ شَهْرًا فَهَجَرَهُنَّ كُلَّهُنَّ شَهْرًا ثُمَّ رَاجَعَهُنَّ» ، فَمَنْ فَعَلَ كَذَلِكَ فَلَا شَيْءَ عَلَيْهِ إذَا فَاءَ قَبْلَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ -.

L31798 The one who is unable to engage in intercourse—if he swears an īlā' oath to abstain from his wife—must perform expiation according to his capacity, because Allah the Exalted did not confine this ruling solely to intercourse while excluding other obligations. He fulfills the expiation through verbal declaration, and he must resume sharing her bed and maintain honorable companionship with her.

وَالْعَاجِزُ عَنْ الْجِمَاعِ إذَا حَلَفَ مُؤْلٍ مِنْ امْرَأَتِهِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ بِذَلِكَ جِمَاعًا مِنْ غَيْرِهِ فَوَاجِبٌ أَنْ يُكَلَّفَ مِنْ الْفَيْئَةِ مَا يُطِيقُ، وَهُوَ مُطِيقٌ عَلَى الْفَيْئَةِ بِلِسَانِهِ، وَمُرَاجَعَتُهُ مَضْجَعَهَا، وَحُسْنُ صُحْبَتِهَا.

L31799 And He, the Exalted, said: "No soul earns [sin] except upon itself, nor does any bearer of burdens bear another's burden" (An'am 6:164).[36]

وَقَالَ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

L31800 And the Mighty and Majestic said: {And if they resolve to divorce, then indeed Allah is All-Hearing, All-Knowing} [Al-Baqarah 2:227].[37]

وَقَالَ عَزَّ وَجَلَّ: {وَإِنْ عَزَمُوا الطَّلاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ} [البقرة: ٢٢٧] .

L31801 The Almighty and Majestic has prohibited all things except His decree of divorce (al-ṭalāq al-azīmah).

فَمَنَعَ عَزَّ وَجَلَّ مِنْ كُلِّ شَيْءٍ إلَّا عَزِيمَتَهُ الطَّلَاقَ.

L31802–31803 Thus, it is established that the judge's divorce ruling against him is an excess

فَصَحَّ أَنَّ طَلَاقَ الْحَاكِمِ عَلَيْهِ فُضُولٌ، وَبَاطِلٌ، وَتَعَدٍّ لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ.

[36] **Qur'an references (L31799):** Qur'an 6:164 (Al-An'am).
[37] **Qur'an references (L31800):** Qur'an 2:227 (Al-Baqarah).

of authority, void, and a transgression of the boundaries of Allah, the Exalted and Glorious.

وَمِنْ الْبَاطِلِ أَنْ يُطَلِّقَ عَلَيْهِ غَيْرُهُ، أَوْ أَنْ يَفِيءَ عَنْهُ غَيْرُهُ، وَإِنَّمَا أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ الْحُكْمَ الْمَذْكُورَ عَلَى مَنْ آلَى مِنْ امْرَأَتِهِ، لَا عَلَى مَنْ آلَى مِمَّنْ لَيْسَتْ مِنْ نِسَائِهِ، وَإِذَا لَمْ يَلْزَمْ الْحُكْمُ حِينَ كَوْنِ مَا يُوجِبُهُ لَمْ يَلْزَمْهُ بَعْدَ ذَلِكَ، إلَّا بِنَصٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L31804 It is invalid for another to divorce on his behalf or for another to rescind [his oath] by resuming relations on his behalf. Indeed, Allah, the Almighty, has obligated the mentioned ruling only upon one who swears to abstain from his wife, not upon one who swears regarding someone not among his wives. If the ruling is not binding when the cause necessitating it exists, it is not binding afterward except by explicit textual evidence—and with Allah alone is success, the Exalted.

فَإِنْ طَلَّقَهَا ثُمَّ رَاجَعَهَا فَقَدْ سَقَطَ عَنْهُ حُكْمُ الْإِيلَاءِ، لِأَنَّهُ قَدْ فَعَلَ مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، وَمَنْ فَعَلَ مَا أَمَرَهُ اللَّهُ تَعَالَى فَقَدْ أَحْسَنَ، قَالَ اللَّهُ تَعَالَى: {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

L31805 If he divorces her and then takes her back, the ruling of *ilā'* no longer applies to him, for he has fulfilled what Allah, the Mighty and Majestic, commanded. Whoever acts upon what Allah, the Exalted, has enjoined has acted righteously. Allah, the Exalted, said: "There is no blame upon the doers of good." [At-Tawbah: 91].[38]

وَفِي كَثِيرٍ مِمَّا ذَكَرْنَا خِلَافٌ، قَدْ رَأَى قَوْمٌ أَنَّ الْهِجْرَةَ بِلَا يَمِينٍ لَهُ حُكْمُ الْإِيلَاءِ.

L31806 In much of what we have mentioned, there are differences of opinion; some hold that abandonment without an oath is subject to the ruling of *ila'*.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ يَزِيدَ بْنِ الْأَصَمِّ: أَنَّ ابْنَ عَبَّاسٍ قَالَ لَهُ: مَا فَعَلَتْ أَهْلُكَ عَهِدْتُ بِهَا لَسُنَّةٌ سَيِّئَةُ الْخُلُقِ؟ قَالَ: أَجَلْ وَاَللَّهِ لَقَدْ خَرَجَتْ وَمَا أُكَلِّمُهَا، فَقَالَ لَهُ ابْنُ عَبَّاسٍ: عَجِّلْ السَّيْرَ، أَدْرِكْهَا قَبْلَ أَنْ تَمْضِيَ أَرْبَعَةُ أَشْهُرٍ، فَإِنْ مَضَتْ فَهِيَ تَطْلِيقَةٌ.

L31807 It was narrated to us through ʿAbd al-Razzāq from Maʿmar, from Jaʿfar ibn Burqān, from Yazīd ibn al-Aṣamm that Ibn ʿAbbās said to him: "What has your wife done? From what I know of her, she has a habitual flaw in character." The man replied: "Yes, by Allah, she has departed and I no longer converse with her." Ibn ʿAbbās then instructed him: "Expedite your travel: reach her before four months elapse. Should this period expire, it shall count as one divorce."

وَصَحَّ عَنْ ابْنِ عَبَّاسٍ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ سَعِيدَ بْنَ جُبَيْرٍ يُحَدِّثُ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: الْإِيلَاءُ هُوَ أَنْ يَحْلِفَ أَنْ لَا يَأْتِيَهَا أَبَدًا.

L31808 It has been authentically reported from Ibn Abbas—as we have narrated through the chain of Abd al-Razzaq from Ibn Jurayj from Abu al-Zubayr, who heard Sa'id ibn Jubayr relate from Ibn Abbas—that he said: "Ila is when a man swears to abstain indefinitely from having sexual relations with his wife."

وَصَحَّ عَنْ عَطَاءٍ أَنَّ الْإِيلَاءَ إنَّمَا هُوَ أَنْ يَحْلِفَ بِاَللَّهِ عَلَى الْجِمَاعِ أَرْبَعَةَ أَشْهُرٍ فَأَكْثَرَ، فَإِنْ لَمْ يَحْلِفْ فَلَيْسَ إيلَاءً. وَمِمَّنْ قَالَ مِثْلَ قَوْلِنَا بَعْضُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ

L31809 It is authentically reported from ʿAṭāʾ that īlāʾ is specifically when a man swears by Allah to abstain from intercourse for four months or more; if he

[38] **Qur'an references (L31805):** Qur'an 9:91 (At-Tawbah).

الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: إِذَا حَلَفَ بِاللَّهِ لَيَغِيظَنَّهَا، أَوْ لَيَسُؤَنَّهَا، أَوْ لَيَحْرِمَنَّهَا، أَوْ لَا يَجْمَعُ رَأْسَهُ وَرَأْسَهَا: فَهُوَ إِيلَاءٌ.

does not swear, it is not īlāʾ. Among those who held the same view as ours are some of the Salaf—as transmitted through ʿAbd al-Razzāq's chain from Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī, who said: If he swears by Allah that he will indeed provoke her, harm her, deprive her, or not share a bed with her, then it is īlāʾ.

L31810 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ خُصَيْفٍ عَنْ الشَّعْبِيِّ قَالَ: كُلُّ يَمِينٍ حَالَتْ بَيْنَ الرَّجُلِ وَبَيْنَ امْرَأَتِهِ فَهِيَ إِيلَاءٌ.

And via the chain of ʿAbd al-Razzāq from Khuṣayf from al-Shaʿbī, who said: Every oath that prevents a man from his wife is *ilāʾ*.

L31811 وَمِمَّنْ قَالَ بِقَوْلِنَا فِي الْأَيْمَانِ بَعْضُ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَبْدِ الْخَالِقِ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ فِي رَجُلٍ قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ كَظَهْرِ أُمِّي أَنْ قَرُبْتُكِ؟ قَالَ لَيْسَ بِشَيْءٍ.

Among those of the Salaf who held our opinion regarding oaths is [the following] - as reported to us through Shuʾbah's narration from ʾAbd al-Khāliq from Ḥammād ibn Abī Sulaymān concerning a man who said to his wife: "You are to me like my mother's back if I have intercourse with you?" He ruled: "It is of no effect."

L31812–31813 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي رَجُلٍ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِنْ مَسِسْتُكِ أَرْبَعَةَ أَشْهُرٍ؟ قَالَ عَطَاءٌ: لَيْسَ ذَلِكَ بِإِيلَاءٍ، لَيْسَ الطَّلَاقُ بِيَمِينٍ فَيَكُونُ إِيلَاءً.

And via the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ regarding a man who said to his wife: "You are divorced if I touch you during four months." ʿAṭāʾ said: "This is not *ila'*, for divorce is not an oath [of abstention], and thus it becomes *ila'*."

L31814 وَخَالَفَ فِي ذَلِكَ آخَرُونَ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ أَبِي الشَّعْثَاءِ قَالَ: إِنْ قَالَ: أَنْتِ عَلَيَّ حَرَامٌ، أَوْ أَنْتِ كَأُمِّي، أَوْ أَنْتِ طَالِقٌ إِنْ قَرُبْتُكِ: فَهُوَ إِيلَاءٌ.

Others held a differing opinion in this matter, as we have been narrated through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah from Abū al-Shaʿthāʾ, who said: If he says, "You are unlawful to me," or "You are like my mother," or "You are divorced if I come near you"—then it constitutes *ilāʾ*.

L31815 وَقَالَ أَبُو حَنِيفَةَ: إِنْ حَلَفَ بِطَلَاقٍ أَوْ عَتَاقٍ أَوْ حَجٍّ أَوْ عُمْرَةٍ أَوْ صِيَامٍ فَهُوَ إِيلَاءٌ، فَإِنْ حَلَفَ بِنَذْرِ صَلَاةٍ، أَوْ بِأَنْ يَطُوفَ أُسْبُوعًا، أَوْ بِأَنْ يُسَبِّحَ مِائَةَ مَرَّةٍ فَلَيْسَ مُؤْلِيًا.

Abū Ḥanīfah said: If one swears by divorce, manumission, *ḥajj*, *ʿumrah*, or fasting, it constitutes *īlāʾ*. But if he swears by a vow of prayer, by performing seven circumambulations, or by uttering glorifications a hundred times, he is not considered to have made *īlāʾ*.

L31816 وَهَذَا كَلَامٌ يُغْنِي سَمَاعُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ؟ وَمِمَّنْ قَالَ مِثْلَ قَوْلِنَا فِي الْمُدَّةِ طَائِفَةٌ -: كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ

This statement—does hearing it not render a contrived rebuttal unnecessary? Among those who held an opinion similar to ours regarding the prescribed period is a group, as narrated by Muḥammad ibn Saʿīd ibn Nabāt; Aḥmad ibn ʿAbd al-Baṣīr; Qāsim ibn Aṣbagh; Muḥammad ibn ʿAbd al-Salām

عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ كَثِيرٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ وَبَرَةَ فِيمَنْ حَلَفَ أَنْ لَا يَقْرَبَ امْرَأَتَهُ عَشْرَةَ أَيَّامٍ، فَلَمْ يَقْرَبْهَا حَتَّى مَضَتْ ثَلَاثَةُ أَشْهُرٍ؟ فَأَتَوْا فِي ذَلِكَ ابْنَ مَسْعُودٍ، فَجَعَلَهُ إِيلَاءً.

al-Khushanī; Muḥammad ibn al-Muthannā; Muḥammad ibn Kathīr from Sufyān al-Thawrī; Layth ibn Abī Sulaym from Wabarah—regarding a man who swore not to approach his wife for ten days, yet refrained from approaching her until three months had passed. They brought this matter to Ibn Masʿūd, and he ruled it to be īlāʾ.

L31817 قَالَ سُفْيَانُ، وَقَالَ ابْنُ أَبِي لَيْلَى، وَغَيْرُهُ: إِذَا آلَى يَوْمًا أَوْ لَيْلَةً فَهُوَ إِيلَاءٌ.

L31817 Sufyan, Ibn Abi Layla, and others said: If he swears to abstain from marital relations for a day or a night, then it constitutes Ilā'.

L31818 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّهُ سُئِلَ عَمَّنْ حَلَفَ أَنْ لَا يَقْرَبَ امْرَأَتَهُ شَهْرًا، فَمَكَثَ عَنْهَا خَمْسَةَ أَشْهُرٍ؟ فَقَالَ عَطَاءٌ: ذَلِكَ إِيلَاءٌ - سَمَّى أَجَلًا أَوْ لَمْ يُسَمِّهِ - فَإِذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ - كَمَا قَالَ عَزَّ وَجَلَّ - فَهِيَ وَاحِدَةٌ - يُرِيدُ هِيَ تَطْلِيقَةٌ.

L31818 From the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ: He was asked about a man who swore not to approach his wife for a month, then abstained from her for five months. ʿAṭāʾ replied: "That is Ila' (whether he specified a term or not). When four months have passed, as Allah, the Almighty and Majestic, states in the Quran, it counts as one—meaning it constitutes a single divorce (ṭalāq) pronouncement."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِيمَنْ حَلَفَ أَنْ لَا يَقْرَبَ امْرَأَتَهُ عَشَرَةَ أَيَّامٍ فَتَرَكَهَا أَرْبَعَةَ أَشْهُرٍ؟ فَهُوَ إِيلَاءٌ.

L31819 Through the chain of ʿAbd al-Razzāq from Maʿmar, from Qatādah regarding one who swore not to have sexual relations with his wife for ten days but then abandoned her for four months: Is this considered īlāʾ? This constitutes īlāʾ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ بْنُ عُبَيْدٍ عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ يَقُولُ: إِذَا قَالَ الرَّجُلُ لِامْرَأَتِهِ: وَاللَّهِ لَا أَقْرَبُهَا اللَّيْلَةَ، فَتَرَكَهَا أَرْبَعَةَ أَشْهُرٍ؟ فَإِنْ كَانَ تَرَكَهَا لِيَمِينِهِ فَهُوَ إِيلَاءٌ.

L31820 From the narration of Saʿīd ibn Manṣūr: Hushaym reported to us; Yunus ibn ʿUbayd reported to us from al-Ḥasan al-Baṣrī that he would say: If a man says to his wife, "By Allah, I will not approach her tonight," and then withholds conjugal relations for four months? If his abstention was due to his oath, then it constitutes *īlāʾ* (a legally binding oath of abstention from conjugal relations).

وَرُوِّينَاهُ أَيْضًا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ.

L31821 It has also been narrated to us from Ibrāhīm al-Nakhaʿī.

وَبِهِ يَقُولُ إِسْحَاقُ بْنُ إِبْرَاهِيمَ بْنِ رَاهْوَيْهِ.

L31822 And by it says Isḥāq ibn Ibrāhīm ibn Rāhawayhi.

وَصَحَّ خِلَافُ هَذَا عَنِ ابْنِ عَبَّاسٍ كَمَا ذَكَرْنَا، وَعَنْ طَاوُسٍ: إِذَا حَلَفَ دُونَ أَرْبَعَةِ أَشْهُرٍ؟ فَلَيْسَ إِيلَاءً - وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ، وَأَحَدُ قَوْلَيْ عَطَاءٍ.

L31823–31824 A valid juristic disagreement regarding this is transmitted from Ibn Abbas as previously mentioned, and from Tāwus: "If one swears to abstain for less than four months, is it not considered *ilāʾ*?" It is not considered *ilāʾ* - this being the opinion of Saʿīd ibn Jubayr and one of the two positions held by ʿAṭāʾ.

L31825 This is the view of Sufyan al-Thawri, Abu Hanifah, and the companions of Abu Hanifah.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ.

L31826 Malik, al-Shafi'i, Abu Thawr, Ahmad ibn Hanbal, and their companions said: A husband is not considered to have sworn an oath of abstention (*īlāʾ*) if he vows not to approach her [conjugally] for four months or less. Only the husband who swears to abstain for more than four months is regarded as having taken an oath of abstention.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ: لَا يَكُونُ مُؤْلِيًا حَلَفَ أَنْ لَا يَقْرَبَهَا أَرْبَعَةَ أَشْهُرٍ فَأَقَلَّ، إِنَّمَا الْمُؤْلِي مَنْ حَلَفَ عَلَى أَكْثَرَ مِنْ أَرْبَعَةِ أَشْهُرٍ.

L31827 Abu Muhammad said: Both opinions contradict the text of the verse. Allah the Exalted mentioned the oath of abstention concerning their wives without a specified cessation. Then He decreed a specified cessation and a waiting period of four months. After the four months have elapsed, He mandated either retracting the oath or divorce.

قَالَ أَبُو مُحَمَّدٍ: كِلَا الْقَوْلَيْنِ خِلَافٌ لِنَصِّ الْآيَةِ، إِنَّمَا ذَكَرَ اللَّهُ تَعَالَى الْإِيلَاءَ مِنْ نِسَائِهِمْ دُونَ تَوْقِيفٍ، ثُمَّ حَكَمَ بِالتَّوْقِيفِ وَالتَّرَبُّصِ أَرْبَعَةَ أَشْهُرٍ، ثُمَّ حَكَمَ بَعْدَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ بِإِلْزَامِ الْفَيْئَةِ أَوْ الطَّلَاقِ.

L31828 As for the one who says, "There is no ilā' except that which occurs in anger," that has been narrated to us from Ali.

وَأَمَّا مَنْ قَالَ: لَا إِيلَاءَ إِلَّا مَا كَانَ فِي غَضَبٍ: فَرُوِّينَا ذَلِكَ عَنْ عَلِيٍّ.

L31829 As narrated via Saʿīd ibn Manṣūr → Hushaym → Dāwūd ibn Abī Hind → Simāk ibn Ḥarb → Abū ʿAṭiyyah al-Asadī, who said: I said to ʿAlī ibn Abī Ṭālib, "I married my brother's wife while she was breastfeeding my nephew. I said: 'She is divorced if I approach her until she weans him.'" ʿAlī replied: "You only intended to set things right for yourself and your nephew. You are not bound by *ilā'*, for *ilā'* applies only to oaths sworn in anger."

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ أَبِي عَطِيَّةَ الْأَسَدِيِّ قَالَ: قُلْت لِعَلِيِّ بْنِ أَبِي طَالِبٍ: تَزَوَّجْتُ امْرَأَةَ أَخِي وَهِيَ تُرْضِعُ ابْنَ أَخِي فَقُلْت: هِيَ طَالِقٌ إنْ قَرِبْتهَا حَتَّى تَفْطِمَهُ؟ قَالَ عَلِيٌّ: إنَّمَا أَرَدْت الْإِصْلَاحَ لَك وَلِابْنِ أَخِيك، فَلَا إيلَاءَ عَلَيْك، إنَّمَا الْإِيلَاءُ مَا كَانَ فِي الْغَضَبِ.

L31830 Abu Muhammad said: Yunus ibn 'Ubayd narrated to us from al-Hasan that he used to say the same thing. Hushaym said: Abu Waki' narrated to us from Abu Fazārah from Ibn 'Abbas, who said: The oath of continence was prescribed in anger.

قَالَ أَبُو مُحَمَّدٍ: وَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ أَنَّهُ كَانَ يَقُولُ مِثْلَ ذَلِكَ - قَالَ هُشَيْمٌ: وَنَا أَبُو وَكِيعٍ عَنْ أَبِي فَزَارَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: إنَّمَا جُعِلَ الْإِيلَاءُ فِي الْغَضَبِ.

L31831 Among those who did not observe this were Ibrāhīm al-Nakhaʿī and Ibn Sīrīn. It was narrated to us via the chain of Saʿīd ibn Manṣūr: Hushaym reported to us, al-Qaʿqaʿ ibn Yazīd al-Ḍabbī reported to us that he said to Muḥammad ibn Sīrīn regarding the statement of those who assert, "Is īlā' (oath of abstention) valid only when sworn in anger?" He replied: "I do not comprehend what they mean. Allāh, the Most Blessed and Exalted, states:

وَمِمَّنْ لَمْ يُرَاعِ ذَلِكَ: إبْرَاهِيمُ النَّخَعِيُّ، وَابْنُ سِيرِينَ -: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْقَعْقَاعُ بْنُ يَزِيدَ الضَّبِّيُّ أَنَّهُ قَالَ لِمُحَمَّدِ بْنِ سِيرِينَ فِي قَوْلِ مَنْ يَقُولُ: إنَّمَا الْإِيلَاءُ فِي الْغَضَبِ؟ فَقَالَ: لَا أَدْرِي مَا يَقُولُونَ، قَالَ اللَّهُ تَبَارَكَ وَتَعَالَى: ﴿لِلَّذِينَ يُؤْلُونَ

مِنْ نِسَائِهِمْ تَرَبُّصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ} [البقرة: ٢٢٦] {وَإِنْ عَزَمُوا الطَّلاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ} [البقرة: ٢٢٧]

For those who swear oaths of abstention from their wives, there is a waiting period of four months. If they resume [relations], then truly Allāh is All-Forgiving, Most Merciful (al-Baqarah 2:226). *And if they resolve upon divorce, then Allāh is All-Hearing, All-Knowing* (al-Baqarah 2:227)."[39]

L31832 قَالَ أَبُو مُحَمَّدٍ صَدَقَ أَبُو بَكْرٍ - رَحِمَهُ اللَّهُ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

Abū Muḥammad said: Abū Bakr was correct—may Allah have mercy on him—and this is the position of Abū Ḥanīfah, Mālik, al-Shāfiʿī, Abū Sulaymān, and their companions.

L31833–31835 وَأَمَّا الِاخْتِلَافُ فِي هَلْ يَقَعُ طَلَاقٌ بِمُضِيِّ الْأَرْبَعَةِ الْأَشْهُرِ أَمْ لَا يَقَعُ بِذَلِكَ طَلَاقٌ؟ فَالَّذِينَ قَالُوا بِمُضِيِّ الْأَرْبَعَةِ الْأَشْهُرِ يَقَعُ الطَّلَاقُ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَعْمَرٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ، وَزَيْدَ بْنَ ثَابِتٍ، قَالَا فِي الْإِيلَاءِ: إِذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ فَهِيَ تَطْلِيقَةٌ، وَهِيَ أَمْلَكُ بِنَفْسِهَا.

As for the disagreement concerning whether divorce takes effect upon the completion of four months or does not occur thereby: those who maintained that it takes effect— And just as it was transmitted to us through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Abū Bakr ibn Abī Shaybah narrated to us; ʿAbdullāh ibn al-Mubārak narrated to us from Maʿmar, from ʿAṭāʾ al-Khurāsānī, from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf, that ʿUthmān ibn ʿAffān and Zayd ibn Thābit said regarding the oath of abstention (ilāʾ): When four months have elapsed, then it is a divorce, and she gains full control over herself.

L31836 وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: إِذَا آلَى مِنْهَا فَمَضَتْ الْأَرْبَعَةُ الْأَشْهُرُ فَقَدْ بَانَتْ مِنْهُ، وَلَا يَخْطُبُهَا غَيْرُهُ.

Through the chain of Hammad ibn Salamah, from Qatadah, from Khilas ibn Amr, that Ali ibn Abi Talib said: If a man takes an oath of abstinence (Ilaʾ) from his wife and the four months elapse, she is divorced from him, and no other may seek her hand in marriage during her waiting period.

L31837 وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا أَبُو مُعَاوِيَةَ - هُوَ الضَّرِيرُ - عَنْ الْأَعْمَشِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، قَالَا جَمِيعًا إِذَا آلَى فَلَمْ يَفِئْ حَتَّى تَمْضِيَ الْأَرْبَعَةُ الْأَشْهُرُ فَهِيَ تَطْلِيقَةٌ بَائِنَةٌ - قَالَ إِسْمَاعِيلُ: وَنَا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قُلْت لِسَعِيدِ بْنِ جُبَيْرٍ أَكَانَ ابْنُ عَبَّاسٍ يَقُولُ فِي الْإِيلَاءِ إِذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ فَهِيَ تَطْلِيقَةٌ بَائِنَةٌ وَتَتَزَوَّجُ وَلَا عِدَّةَ عَلَيْهَا؟ قَالَ: نَعَمْ.

From the chain of Ismāʿīl ibn Isḥāq: Abū Bakr ibn Abī Shaybah narrated to us, Abū Muʿāwiyah—the blind—narrated to us from al-Aʿmash, from Ḥabīb ibn Abī Thābit, from Saʿīd ibn Jubayr, from Ibn ʿUmar and Ibn ʿAbbās, who jointly stated: "If a man pronounces ilāʾ (oath of abstaining from marital relations) and does not retract (the oath) until four months have elapsed, it is a bāʾinah (conclusive, non-revocable divorce)." Ismāʿīl said: And Sulaymān ibn Ḥarb narrated to us from Ḥammād ibn Zayd, from Ayyūb al-Sakhtiyānī: I asked Saʿīd ibn Jubayr, "Did Ibn ʿAbbās rule regarding ilāʾ that when four months pass, it becomes a bāʾinah (conclusive, non-revocable divorce), she may marry, and no ʿiddah (waiting period) is required of her?" He replied, "Yes."

[39] **Qur'an references (L31831):** Qur'an 2:226 (Al-Baqarah); Qur'an 2:227 (Al-Baqarah).

L31838 From the chain of Waki‘, from Al-Mas‘ūdī, from ‘Alī ibn Badhīmah, from Abū ‘Ubaydah ibn ‘Abdullāh ibn Mas‘ūd, from Masrūq, from ‘Abdullāh ibn Mas‘ūd, who said: If a man vows to abstain from his wife and four months elapse, it constitutes a final and irrevocable divorce. He may propose marriage to her during her waiting period, and no other man may propose to her.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْمَسْعُودِيِّ عَنْ عَلِيِّ بْنِ بَذِيمَةَ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: إذَا آلَى مِنْهَا فَمَضَتْ أَرْبَعَةُ أَشْهُرٍ فَهِيَ تَطْلِيقَةٌ بَائِنَةٌ وَيَخْطُبُهَا فِي عِدَّتِهَا وَلَا يَخْطُبُهَا غَيْرُهُ.

L31839 Abu Muhammad said: This contradicts the opinion of Ibn Abbas, for Ibn Abbas maintained that the waiting period ends with the completion of the four months.

قَالَ أَبُو مُحَمَّد: هَذَا خِلَافُ قَوْلِ ابْنِ عَبَّاسٍ، لِأَنَّ ابْنَ عَبَّاسٍ رَأَى انْقِضَاءَ الْعِدَّةِ مَعَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ.

L31840 Ibn Mas’ud held that she begins the waiting period after the expiration of the four months.

وَرَأَى ابْنِ مَسْعُودٍ أَنَّهَا تَبْتَدِئُ الْعِدَّةَ بَعْدَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ.

L31841 And by the saying of Ibn Abbas, Jabir ibn Zayd says—as we reported through the chain of Sa‘id ibn Mansur: Sufyan ibn ‘Uyaynah narrated to us from ‘Amr ibn Dinar from Jabir ibn Zayd, who said: If a man swears an oath of *ila’* and four months pass, she is not required to observe the *‘iddah*.

وَبِقَوْلِ ابْنِ عَبَّاسٍ يَقُولُ جَابِرُ بْنُ زَيْدٍ -: وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: إذَا آلَى الرَّجُلُ فَمَضَتْ أَرْبَعَةُ أَشْهُرٍ فَلَيْسَ عَلَيْهَا عِدَّةٌ.

L31842 And according to the statement of Ibn Mas’ud, Masruq said - as we have narrated through the chain of Sa’id ibn Mansur: Hushaym reported to us, al-Mughirah reported to us from al-Sha’bi, from Masruq - that a man sought his legal opinion regarding his Ilaʾ (oath of abstention) from his wife. Masruq told him: “When four months have passed, she is separated from you by one pronouncement of divorce. She observes a waiting period of three menstrual cycles. Then you may seek her hand in marriage if you wish and she consents. No one other than you may seek her hand.”

وَبِقَوْلِ ابْنِ مَسْعُودٍ يَقُولُ مَسْرُوقٌ كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّ رَجُلًا اسْتَفْتَاهُ فِي إيلَائِهِ مِنْ امْرَأَتِهِ؟ فَقَالَ لَهُ مَسْرُوقٌ: إذَا مَضَتْ الْأَرْبَعَةُ الْأَشْهُرُ بَانَتْ مِنْك بِتَطْلِيقَةٍ وَتَعْتَدُّ بِثَلَاثِ حِيَضٍ فَتَخْطُبُهَا إنْ شِئْت وَشَاءَتْ، وَلَا يَخْطُبُهَا غَيْرُك.

L31843–31844 We have also narrated it from Shuraih—and this is the opinion maintained by Ata.

وَرُوِّينَاهُ أَيْضًا عَنْ شُرَيْحٍ - وَبِهِ يَقُولُ عَطَاءٌ.

L31845 Among those from whom it is authentically reported that it is an irrevocable divorce are al-Ḥasan al-Baṣrī, Ibrāhīm al-Nakhaʿī, Qabīṣa ibn Dhuʾayb, ʿIkrimah—the mawlā of Ibn ʿAbbās—ʿAlqama, and al-Shaʿbī.

وَمِمَّنْ صَحَّ عَنْهُ أَنَّهَا تَطْلِيقَةٌ بَائِنَةٌ، الْحَسَنُ الْبَصْرِيُّ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَقَبِيصَةُ بْنُ ذُؤَيْبٍ، وَعِكْرِمَةُ مَوْلَى ابْنِ عَبَّاسٍ، وَعَلْقَمَةُ، وَالشَّعْبِيُّ.

L31846 This is also the opinion held by Abū Ḥanīfah, his companions, Ibn Jurayj, Sufyān al-Thawrī, Ibn Abī Laylā, and al-Awzāʿī. Abū Ḥanīfah holds that she

must observe the ʻiddah (waiting period) after the expiry of the four-month period.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَابْنُ جُرَيْجٍ، وَسُفْيَانُ الثَّوْرِيُّ، وَابْنُ أَبِي لَيْلَى، وَالْأَوْزَاعِيُّ - وَيَرَى أَبُو حَنِيفَةَ: أَنْ تَعْتَدَّ بَعْدَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ.

L31847 A group among them held that upon the completion of four months, a revocable divorce takes effect upon her. This is as narrated through the chain of ʻAbd al-Razzāq from Maʻmar from al-Zuhrī, who said: Abū Bakr ibn ʻAbd al-Raḥmān ibn al-Ḥārith ibn Hishām stated regarding the ruling on the oath of abstention: "When four months have passed, it constitutes one divorce, and he is more entitled to her"—and this is what al-Zuhrī and Makḥūl say.

وَقَالَتْ طَائِفَةٌ مِنْهُمْ بِمُضِيِّ الْأَرْبَعَةِ الْأَشْهُرِ تَقَعُ عَلَيْهَا تَطْلِيقَةٌ رَجْعِيَّةٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: قَالَ أَبُو بَكْرِ بْنُ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ فِي الْإِيلَاءِ: إذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ، فَهِيَ تَطْلِيقَةٌ، وَهُوَ أَحَقُّ بِهَا - وَبِهِ يَقُولُ الزُّهْرِيُّ، وَمَكْحُولٌ.

L31848 It was narrated from Sa'īd ibn al-Musayyib, but it was not authenticated from him.

وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَلَمْ يَصِحَّ عَنْهُ.

L31849 As for the one who said: He is to be compelled to decide after four months—as informed to us through the chain of Saʻīd ibn Manṣūr, who informed us from ʻAbd al-ʻAzīz ibn Muḥammad al-Darāwardī, who informed us from Yaḥyā ibn Saʻīd al-Anṣārī, from ʻAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from his father, from ʻĀ'ishah, the Mother of the Believers: she did not recognize the īlā' as legally binding until he is compelled to decide.

وَأَمَّا مَنْ قَالَ: يُوقَفُ بَعْدَ الْأَرْبَعَةِ الْأَشْهُرِ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ لَا تَرَى الْإِيلَاءَ شَيْئًا حَتَّى يُوقَفَ.

L31850 From the chain of Ismāʿīl ibn Isḥāq: Naṣr ibn ʿAlī al-Jahḍamī narrated to us, Sahl ibn Yūsuf and Muḥammad ibn Jaʿfar Ghundar—both transmitting from Shuʿbah, from Simāk ibn Ḥarb, from Saʿīd ibn Jubayr—who said: "'Umar ibn al-Khaṭṭāb said concerning *īlā'*: 'When four months have passed, she remains his wife.'"

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ نا سَهْلُ بْنُ يُوسُفَ وَمُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ، كِلَاهُمَا عَنْ شُعْبَةَ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْإِيلَاءِ: إذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ فَهِيَ امْرَأَتُهُ.

L31851 From the narration chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from Misʿar ibn Kidām, from Ḥabīb ibn Abī Thābit, from Ṭāwūs, from ʿUthmān ibn ʿAffān, who said: The husband who takes an ilā' (oath of abstention) is compelled: he must either resume conjugal relations or divorce.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مِسْعَرِ بْنِ كِدَامٍ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ طَاوُسٍ عَنْ عُثْمَانَ بْنِ عَفَّانَ قَالَ: يُوقَفُ الْمُؤْلِي فَإِمَّا أَنْ يَفِيءَ وَإِمَّا أَنْ يُطَلِّقَ.

L31852 From the chain of Isma'il ibn Ishaq: Abdullah ibn Maslamah—al-Qa'nabi—narrated to us: Sulaiman ibn Bilal reported from Umar ibn Husayn that Uthman ibn Affan did not consider *ila'* (sworn abstention from marital

relations) to hold any effect—even if four months had elapsed—until the abstainer desisted.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ - هُوَ الْقَعْنَبِيُّ - نَا سُلَيْمَانُ بْنُ بِلَالٍ عَنْ عُمَرَ بْنِ حُسَيْنٍ أَنَّ عُثْمَانَ بْنَ عَفَّانَ كَانَ لَا يَرَى الْإِيلَاءَ شَيْئًا - وَإِنْ مَضَى أَرْبَعَةُ أَشْهُرٍ - حَتَّى يُوقَفَ.

L31853 It is authentically reported from ʿAlī—as we have transmitted through Saʿīd ibn Manṣūr, from Hushaym, from al-Shaybānī (who is Abū Isḥāq), from Bukayr ibn al-Akhnas, from Mujāhid, from ʿAbd al-Raḥmān ibn Abī Laylā—who said: "I witnessed ʿAlī ibn Abī Ṭālib summon a man publicly in the square at the expiration of four months [stipulating]: 'Either return to cohabitation or divorce.'"

وَصَحَّ عَنْ عَلِيٍّ كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الشَّيْبَانِيُّ - هُوَ أَبُو إِسْحَاقَ - عَنْ بُكَيْرِ بْنِ الْأَخْنَسِ عَنْ مُجَاهِدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: شَهِدْتُ عَلِيَّ بْنَ أَبِي طَالِبٍ أَوْقَفَ رَجُلًا عِنْدَ الْأَرْبَعَةِ الْأَشْهُرِ بِالرَّحْبَةِ: إِمَّا أَنْ يَفِيءَ وَإِمَّا أَنْ يُطَلِّقَ.

L31854–31855 When a man vows to abstain from his wife, he is halted at the completion of four months. It is declared to him: "Either return to marital relations or resolve to divorce." He is compelled to comply.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ بْنِ الْمَدِينِيِّ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إِذَا آلَى الرَّجُلُ مِنْ امْرَأَتِهِ وُقِفَ عِنْدَ تَمَامِ الْأَرْبَعَةِ الْأَشْهُرِ، وَقِيلَ لَهُ: إِمَّا تَفِيءُ، وَإِمَّا تَعْزِمُ الطَّلَاقَ؟ وَيُجْبَرُ عَلَى ذَلِكَ.

L31856 Via Abd al-Razzaq, from Ma'mar, from Ayyub, from Nafi', from Ibn Umar, who said: The mu'li (one who has sworn Ila') is held accountable upon the expiry of four months; he must choose either to revoke [his oath] or divorce.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: يُوقَفُ الْمُؤْلِي عِنْدَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ، فَإِمَّا أَنْ يَفِيءَ، وَإِمَّا أَنْ يُطَلِّقَ.

L31857 From the transmission of Ḥammād ibn Salamah, who narrated to us from Qatādah, reporting from Saʿīd ibn al-Musayyib, al-Qāsim ibn Muḥammad ibn Abī Bakr, Ṭāwūs, and Mujāhid—all of whom reported that Abū al-Dardāʾ said: In the case of īlāʾ, the husband is compelled upon the expiration of the four months, then he must either divorce or revoke his oath.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا قَتَادَةُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، كُلِّهِمْ: أَنَّ أَبَا الدَّرْدَاءِ قَالَ: يُوقَفُ فِي الْإِيلَاءِ عِنْدَ انْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ، فَإِمَّا أَنْ يُطَلِّقَ وَإِمَّا أَنْ يَفِيءَ.

L31858 And through the chain of Sufyān ibn ʿUyaynah from Yaḥyā ibn Saʿīd al-Anṣārī from Sulaymān ibn Yasār, who said: I encountered more than ten men from the Companions of the Messenger of Allah (peace and blessings of Allah be upon him), all of whom stated regarding the oath of abstention (īlāʾ) that the husband must be compelled to choose: either to resume marital

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: أَدْرَكْتُ بِضْعَةَ عَشَرَ رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلُّهُمْ

relations or to divorce. This is also the opinion of Saʿīd ibn al-Musayyab, Ṭāwūs, Mujāhid, and al-Qāsim ibn Muḥammad ibn Abī Bakr. It is firmly established from all of them that the husband who takes such an oath is compelled: either to resume marital relations or to divorce.

يَقُولُ فِي الْإِيلَاءِ: يُوقَفُ - وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَطَاوُسٍ، وَمُجَاهِد وَالْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ، كُلِّهِمْ صَحَّ عَنْهُ أَنَّ الْمُؤْلِي يُوقَفُ: فَإِمَّا أَنْ يَفِيءَ وَإِمَّا أَنْ يُطَلِّقَ.

L31859 This has been authentically established from ʿUmar ibn ʿAbd al-ʿAzīz, ʿUrwah ibn al-Zubayr, Abū Mijlaz, and Muḥammad ibn Kaʿb, all of whom stated: It is to be withheld.

وَصَحَّ ذَلِكَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَأَبِي مِجْلَزٍ، وَمُحَمَّدِ بْنِ كَعْبٍ، كُلِّهِمْ يَقُولُ: يُوقَفُ.

L31860 From the chain of Ismāʿīl ibn Isḥāq, who received from Sulaymān ibn Ḥarb, who narrated to us from Ḥammād ibn Zayd, from Yaḥyā ibn Saʿīd al-Anṣārī, from Sulaymān ibn Yasār, who said: I witnessed people compelling the one who had sworn the abstention (īlāʾ) after four months had passed—either to resume relations or to divorce. This is the statement of Sulaymān ibn Yasār.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: أَدْرَكْت النَّاسَ يَقِفُونَ صَاحِبَ الْإِيلَاءِ إذَا مَضَتْ أَرْبَعَةُ أَشْهُرٍ: فَإِمَّا أَنْ يَفِيءَ وَإِمَّا أَنْ يُطَلِّقَ - وَهُوَ قَوْلُ سُلَيْمَانَ بْنِ يَسَارٍ.

L31861 This is the opinion of Mālik, al-Shāfiʿī, Abū Thawr, Abū ʿUbayd, Aḥmad, Isḥāq, Abū Sulaymān, and their companions, except that Mālik and al-Shāfiʿī—in one of their two opinions—say: The judge pronounces the divorce on his behalf if he refuses.

وَهُوَ قَوْلُ مَالِك، وَالشَّافِعِيِّ " وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ، إلَّا أَنَّ مَالِكًا، وَالشَّافِعِيِّ - فِي أَحَدِ قَوْلَيْهِ - يَقُولَانِ: يُطَلِّقُ الْحَاكِمُ عَلَيْهِ إنْ أَبَى.

L31862 Then they differed. Al-Shafiʿi said: He may retract [the oath] while she remains in her waiting period. If he resumes intercourse with her, this nullifies the oath of abstinence. If he does not, the stipulated suspension reverts to the initial four-month period. If he fulfills [his duty]; otherwise, the judge will compel divorce upon him. He may then revoke the divorce. If he resumes intercourse, the oath is nullified. Otherwise, the stipulated suspension resumes for four months, after which the judge will compel divorce upon him, and she becomes permanently forbidden to him unless she marries another husband and the marriage is dissolved.

ثُمَّ اخْتَلَفَا - فَقَالَ الشَّافِعِيُّ: لَهُ أَنْ يُرَاجِعَهَا مَا دَامَتْ فِي عِدَّتِهَا، فَإِنْ وَطِئَهَا فَذَلِكَ سُقُوطُ الْإِيلَاءِ، وَإِنْ لَمْ يَطَأْهَا عَادَ عَلَيْهِ التَّوْقِيفُ أَرْبَعَةَ أَشْهُرٍ مِنْ ذِي قَبْلٍ، فَإِنْ فَاءَ وَإِلَّا طَلَّقَ عَلَيْهِ الْحَاكِمُ، ثُمَّ لَهُ أَنْ يُرَاجِعَهَا فَإِنْ وَطِئَهَا سَقَطَ الْإِيلَاءُ، وَإِلَّا عَادَ عَلَيْهِ التَّوْقِيفُ أَرْبَعَةَ أَشْهُرٍ، ثُمَّ يُطَلِّقُ عَلَيْهِ الْحَاكِمُ، وَتَحْرُمُ عَلَيْهِ إلَّا بَعْدَ زَوْجٍ.

L31863–31864 Ali said: This is an invalid opinion, for it renders the prescribed period for marital abstention unquestionably a full year, contradicting the Quran. When the prescribed period becomes invalid, the oath of abstention the husband unquestionably obligated is likewise invalidated.

قَالَ عَلِيٌّ: وَهَذَا قَوْلٌ فَاسِدٌ، لِأَنَّهُ يُصَيِّرُ التَّوْقِيفَ فِي الْإِيلَاءِ بِلَا شَكٍّ عَامًا كَامِلًا، وَهَذَا خِلَافُ الْقُرْآنِ، وَإِذَا بَطَلَ التَّوْقِيفُ بَطَلَ الْإِيلَاءُ الَّذِي أَوْجَبَهُ بِلَا شَكٍّ.

L31865 Malik said: He may revoke the ila’ (oath of abstinence) regarding her. If he

has intercourse with her, the ila' is nullified. If he does not have intercourse with her, she becomes irrevocably divorced from him upon the completion of her waiting period due to the judge's divorce ruling.

L31866 Abu Muhammad said: This is a statement—how could its proponent have uttered it? For no falsehood surpasses permitting a woman to remain under the guardianship of a husband in a valid marriage while she is in the waiting period imposed [on her] due to a divorce by another man. In which of God's religions—exalted is He—has this ever been found?

L31867 Know that Mālik's statement was not uttered by anyone before him, nor by anyone other than him except those afflicted with adhering to his rulings. Furthermore, his statement which al-Shāfiʿī adopted—that someone else can pronounce divorce on his behalf—has never been recorded from anyone before Mālik. This is a statement that contradicts the Qur'an, all the Sunnahs, analogy, and reason. As for the Qur'an, Almighty God says: {And if they resolve to divorce} [Al-Baqarah: 227], thus assigning the resolve to divorce to the husband who has sworn to abstain, not to anyone else.[40]

L31868 And the Exalted and Majestic said: "No soul earns except upon itself" [Al-An'am 164].[41]

L31869 It is invalid for anyone to enforce a divorce upon another, neither a judge nor anyone else.

L31870 As for the Sunnah rulings, they have only been established in specific contexts concerning the annulment of marriage or one party divorcing the other—for this has no foundational basis. Every scholar reported to have expressed a position on this matter has only echoed our stance: either the party must retract [the oath] or pronounce a divorce. It is therefore obligatory to compel him to choose whichever of the two he prefers, with no exception.

L31871 As for *qiyas* (analogical reasoning)—I do not understand on what basis

وَقَالَ مَالِكٌ: لَهُ أَنْ يُرَاجِعَهَا، فَإِنْ وَطِئَهَا سَقَطَ عَنْهُ الْإِيلَاءُ، وَإِنْ لَمْ يَطَأْهَا بَانَتْ عَنْهُ عِنْدَ تَمَامِ عِدَّتِهَا مِنْ طَلَاقِ الْحَاكِمِ.

قَالَ أَبُو مُحَمَّد: وَهَذَا كَلَامٌ لَا نَدْرِي كَيْفَ قَالَهُ قَائِلُهُ؟ إذْ لَيْسَ فِي الْبَاطِلِ أَكْثَرُ مِنْ إجَازَةِ كَوْنِ امْرَأَةٍ فِي عِصْمَةِ زَوْجٍ صَحِيحِ الزَّوْجِيَّةِ، وَهِيَ فِي عِدَّةٍ مِنْ طَلَاقِ غَيْرِهِ عَلَيْهِ، وَمَا نَعْلَمُ فِي أَيِّ دِينِ اللَّهِ تَعَالَى وُجِدَ هَذَا؟

وَاعْلَمُوا أَنَّ قَوْلَ مَالِكٍ لَمْ يَقُلْهُ أَحَدٌ قَبْلَهُ، وَلَا قَالَهُ أَحَدٌ غَيْرُهُ إلَّا مَنْ ابْتُلِيَ بِتَقْلِيدِهِ، ثُمَّ إنَّ قَوْلَهُ الَّذِي اتَّبَعَهُ عَلَيْهِ الشَّافِعِيُّ: مِنْ أَنْ يُطَلِّقَ عَلَيْهِ غَيْرُهُ، لَمْ يُحْفَظْ قَطُّ عَنْ أَحَدٍ قَبْلَ مَالِكٍ - وَهُوَ قَوْلٌ مُخَالِفٌ لِلْقُرْآنِ، وَلِلسُّنَنِ كُلِّهَا، وَلِلْقِيَاسِ وَالْمَعْقُولِ -: أَمَّا الْقُرْآنُ - فَإِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {وَإِنْ عَزَمُوا الطَّلَاقَ} [البقرة: ٢٢٧] فَجَعَلَ عَزِيمَةَ الطَّلَاقِ إلَى الزَّوْجِ الْمُؤْلِي لَا إلَى غَيْرِهِ.

وَقَالَ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

فَمِنْ الْبَاطِلِ أَنْ يُطَلِّقَ أَحَدٌ عَلَى غَيْرِهِ، لَا حَاكِمٌ وَلَا غَيْرُ حَاكِمٍ.

وَأَمَّا السُّنَنُ - فَإِنَّهَا إنَّمَا جَاءَتْ فِي مَوَاضِعَ مَعْرُوفَةٍ بِفَسْخِ النِّكَاحِ، وَإِمَّا بِطَلَاقِ أَحَدٍ عَنْ غَيْرِهِ فَلَا أَصْلًا، وَكُلُّ مَنْ رُوِيَ عَنْهُ فِي هَذَا كَلِمَةٌ، فَإِنَّمَا قَالَ بِقَوْلِنَا: إمَّا أَنْ يَفِيءَ، وَإِمَّا أَنْ يُطَلِّقَ؟ فَالْوَاجِبُ أَنْ يُجْبَرَ عَلَى أَيِّهِمَا شَاءَ وَلَا بُدَّ.

وَأَمَّا الْقِيَاسُ - فَلَا أَدْرِي مِنْ أَيْنَ أَجَازُوا أَنْ يُطَلِّقَ الْحَاكِمُ عَلَى الْمُؤْلِي؟ وَلَمْ يُجِيزُوا أَنْ يَفِيءَ عَنْهُ - وَلَا فَرْقَ بَيْنَ الْأَمْرَيْنِ.

[40] **Qur'an references (L31867):** Qur'an 2:227 (Al-Baqarah).
[41] **Qur'an references (L31868):** Qur'an 6:164 (Al-An'am).

they permitted the judge to impose divorce on the *mu'li* (one who swore an oath of abstention), yet did not permit him to retract it—for there is no distinction between the two rulings.

L31872 If they say: It is not permissible for the judge to declare lawful the chastity of a woman other than himself, thus it would be unlawful intercourse? We would respond to him: Nor is it permissible for him to permit the chastity of a woman other than himself to anyone besides her husband by divorcing her for his sake, which would amount to permitting unlawful intercourse, with no distinction between the two scenarios.

L31873 If they say: What difference is there between him annulling his marriage and divorcing her against him? We say: There is no difference. We have never permitted a judge to annul the marriage of any woman in the world from her husband. Allah forbid that we should do such a thing!

L31874–31875 We have only stated that every marriage for which Allah the Exalted has obligated annulment in the Qur'an or through the words of His Messenger—peace and blessings be upon him and his family—is indeed annulled, whether the judge likes or dislikes it. The judge has no role in this matter, nor any discretion in it. The judge merely enforces, by the power of his authority, all that Allah the Exalted and His Messenger have commanded, and prohibits acting upon anything not commanded by Allah or His Messenger at all. Any judgment the judge issues contrary to what we have mentioned is invalid, rejected, and perpetually nullified.

L31876 **Issue: The slave and the free person are equivalent in rulings pertaining to *īlāʾ*.**

L31877 Issue 1886: A slave and a free man are equal in all that we have mentioned regarding Ila (oath of abstention) each from his wife—whether she is free, a Muslim slave woman, or a Dhimmi woman, adult or minor. This is because Allah, the Almighty, has generalized the ruling and not restricted it, {and your Lord is not forgetful} [Maryam 19:64].[42]

[42] **Qur'an references (L31877):** Qur'an 19:64 (Maryam).

فَإِنْ قَالُوا: لَا يَحِلُّ لِلْحَاكِمِ أَنْ يَسْتَحِلَّ فَرْجَ امْرَأَةٍ سِوَاهُ فَيَكُونُ زِنًى؟ قُلْنَا لَهُ: وَلَا يَحِلُّ لَهُ أَنْ يُبِيحَ فَرْجَ امْرَأَةٍ سِوَاهُ لِغَيْرِ زَوْجِهَا بِأَنْ يُطَلِّقَهَا عَلَيْهِ فَيَكُونُ إِبَاحَةً لِلزِّنَا وَلَا فَرْقَ.

فَإِنْ قَالُوا: أَيُّ فَرْقٍ بَيْنَ أَنْ يَفْسَخَ نِكَاحَهُ وَبَيْنَ أَنْ يُطَلِّقَهَا عَلَيْهِ؟ قُلْنَا: وَلَا فَرْقَ، وَمَا أَجَزْنَا قَطُّ أَنْ يَفْسَخَ الْحَاكِمُ نِكَاحَ امْرَأَةٍ فِي الْعَالَمِ عَنْ زَوْجِهَا، وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ؟

إِنَّمَا قُلْنَا: كُلُّ نِكَاحٍ أَوْجَبَ اللَّهُ تَعَالَى فِي الْقُرْآنِ، أَوْ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَسْخَهُ: فَهُوَ مَفْسُوخٌ، سَوَاءٌ أَحَبَّ الْحَاكِمُ ذَلِكَ أَوْ كَرِهَهُ، وَلَا مَدْخَلَ لِلْحَاكِمِ فِي ذَلِكَ، وَلَا رَأْيَ لَهُ فِيهِ، إِنَّمَا الْحَاكِمُ مُنَفِّذٌ بِقُوَّةِ سُلْطَانِهِ كُلَّ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَانِعٌ مِنَ الْعَمَلِ بِمَا لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَكُلُّ مَا حَكَمَ بِهِ الْحَاكِمُ مِمَّا عَدَا مَا ذَكَرْنَا فَهُوَ بَاطِلٌ مَرْدُودٌ مَفْسُوخٌ أَبَدًا.

[مَسْأَلَةٌ الْعَبْدُ وَالْحُرُّ فِي الْإِيلَاءِ سَوَاءٌ]

١٨٨٦ - مَسْأَلَةٌ: وَالْعَبْدُ وَالْحُرُّ فِي الْإِيلَاءِ كُلُّ وَاحِدٍ مِنْهُمَا مِنْ زَوْجَتِهِ الْحُرَّةِ، أَوْ الْأَمَةِ الْمُسْلِمَةِ، أَوْ الذِّمِّيَّةِ - الْكَبِيرَةِ أَوْ الصَّغِيرَةِ - سَوَاءٌ فِي كُلِّ مَا ذَكَرْنَا، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ عَمَّ وَلَمْ يَخُصَّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ - وَلَمْ يَصِحَّ عَنْهُ - لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى آلِ أَبِي طَلْحَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ إِيلَاءُ الْعَبْدِ شَهْرَانِ.

L31878 It has been reported to us from ʿUmar ibn al-Khaṭṭāb (though it is not authenticated from him) because it is through the chain of ʿAbd al-Razzāq from Ibrāhīm ibn Muḥammad ibn Abī Yaḥyā from Muḥammad ibn ʿAbd al-Raḥmān, freed client of the family of Abī Ṭalḥah, from Sulaymān ibn Yasār from ʿAbd Allāh ibn ʿUtbah ibn Masʿūd, who said: "'Umar ibn al-Khaṭṭāb stated: 'The sworn abstention (īlāʾ) period for a slave lasts two months.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: بَلَغَنِي عَنْ عُمَرَ إِيلَاءُ الْعَبْدِ شَهْرَانِ وَرُوِّينَا عَنْهُ أَيْضًا - إِيلَاءُ الْأَمَةِ شَهْرَانِ، وَلَا يَصِحُّ أَيْضًا، لِأَنَّهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ حِبَّانَ بْنِ عَلِيٍّ عَنْ ابْنِ أَبِي لَيْلَى عَنْ عَبْدِ الْكَرِيمِ عَنْ ابْنِ سِيرِينَ: أَنَّ عُمَرَ قَالَ: طَلَاقُ الْأَمَةِ تَطْلِيقَتَانِ، وَإِيلَاؤُهَا شَهْرَانِ، وَصَحَّ عَنْ عَطَاءٍ أَنْ لَا إِيلَاءَ لِلْعَبْدِ دُونَ سَيِّدِهِ، وَهُوَ شَهْرَانِ.

L31879 From the chain of transmission of ʿAbd al-Razzāq via Ibn Jurayj: It reached me from ʿUmar that the *īlāʾ* (oath of abstinence) of a male slave is two months. It has also been narrated through him [that] the *īlāʾ* of a female slave is two months – but this is likewise unsound. This is because it is transmitted through the chain of Saʿīd ibn Manṣūr via Ḥibbān ibn ʿAlī via Ibn Abī Laylā via ʿAbd al-Karīm via Ibn Sīrīn: that ʿUmar said, "The divorce of a female slave requires two pronouncements of divorce, and her *īlāʾ* is two months." It is authentically established from ʿAṭāʾ that there is no *īlāʾ* for a slave without the involvement of his master, and this [period] is two months.

وَبِهِ يَقُولُ الْأَوْزَاعِيُّ، وَاللَّيْثُ، وَمَالِكٌ، وَإِسْحَاقُ.

L31880 This is also the position upheld by Al-Awzāʿī, Al-Layth, Mālik, and Isḥāq.

فَإِنْ مَوَّهُوا بِعُمَرَ؟ قُلْنَا: وَقَدْ جَاءَ عَنْ عُمَرَ الْإِيلَاءُ مِنَ الْأَمَةِ شَهْرَانِ - وَجَاءَ عَنْهُ: لَا يَنْكِحُ الْعَبْدُ إِلَّا اثْنَتَيْنِ، فَخَالَفْتُمُوهُ، وَهَذَا تَلَاعُبٌ.

L31881 If they have deceptively cited ʿUmar, we say: It has been reported from ʿUmar that the oath of abstention (īlāʾ) concerning a female slave is two months, and it has been reported from him that a male slave may only marry two wives. Yet you have opposed him, and this is mere mockery.

وَقَالَتْ طَائِفَةٌ: الْحُكْمُ فِي ذَلِكَ لِلنِّسَاءِ، فَإِنْ كَانَتْ حُرَّةً فَإِيلَاءُ زَوْجِهَا الْحُرِّ وَالْعَبْدِ عَنْهَا أَرْبَعَةُ أَشْهُرٍ، وَإِنْ كَانَتْ أَمَةً فَإِيلَاءُ زَوْجِهَا الْحُرِّ وَالْعَبْدِ عَنْهَا شَهْرَانِ - وَهُوَ قَوْلُ إِبْرَاهِيمَ النَّخَعِيِّ، وَقَتَادَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ.

L31882 A group of scholars held that the ruling depends on the status of women: if she is free, the oath-bound abstention (Ila') of her husband, whether he is the free or the enslaved, from her lasts four months; if she is a female slave, the oath-bound abstention of her husband, whether he is the free or the enslaved, from her lasts two months. This is the opinion of Ibrahim al-Nakhaʿi, Qatadah, Sufyan al-Thawri, Abu Hanifah, and his companions.

وَقَالَتْ طَائِفَةٌ: إِيلَاءُ الْحُرِّ وَالْعَبْدِ مِنَ الزَّوْجَةِ الْحُرَّةِ وَالْأَمَةِ سَوَاءٌ، وَهُوَ أَرْبَعَةُ أَشْهُرٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L31883–31885 A juristic school maintained: The oath of abstention (Ilaa') applies equally to free men and enslaved men in cases involving free wives or enslaved wives, and its duration is four months. "months — and this is the opinion of Al-Shāfiʿī, Aḥmad ibn Ḥanbal, Abū Thawr, Abū Sulaymān, and their companions."

Abu Muhammad said: There is no argument from the Quran for anyone.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لِأَحَدٍ مِنْ الْقُرْآنِ.

A legal issue wherein a man swore by a single oath of *ilā'* to abstain from his four wives.

Issue 1887: If a man takes a single oath of abstinence (ilāʾ) regarding four of his wives, marital relations are suspended for all of them from the moment he swears. If he resumes relations with one wife, the ruling concerning her ceases while the rulings for the remaining wives remain effective. The suspension continues for wives with whom he does not resume relations until he either resumes relations or divorces them. Only one expiation is required for the entire matter, as it constitutes a single oath pertaining to distinct matters - each wife being subject to her own ruling. He remains in a state of ilāʾ against each wife individually, for "No soul bears the burden of another" (Quran 6:164).[43]

[مَسْأَلَةٌ آلَى مِنْ أَرْبَعِ نِسْوَةٍ لَهُ بِيَمِينٍ وَاحِدَةٍ]

١٨٨٧ - مَسْأَلَةٌ: وَمَنْ آلَى مِنْ أَرْبَعِ نِسْوَةٍ لَهُ بِيَمِينٍ وَاحِدَةٍ: وُقِفَ لَهُنَّ كُلِّهِنَّ مِنْ حِينِ يَحْلِفُ، فَإِنْ فَاءَ إلَى وَاحِدَةٍ سَقَطَ حُكْمُهَا، وَبَقِيَ حُكْمُ الْبَوَاقِي، فَلَا يَزَالُ يُوقَفُ لِمَنْ لَمْ يَفِئْ إلَيْهَا حَتَّى يَفِيءَ أَوْ يُطَلِّقَ، وَلَيْسَ عَلَيْهِ فِي كُلِّ ذَلِكَ إلَّا كَفَّارَةٌ وَاحِدَةٌ؛ لِأَنَّهَا يَمِينٌ وَاحِدَةٌ عَلَى أَشْيَاءَ مُتَغَايِرَةٍ، وَلِكُلِّ وَاحِدَةٍ حُكْمُهَا، وَهُوَ مُؤْلٍ مِنْ كُلِّ وَاحِدَةٍ مِنْهُنَّ {وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

An issue concerning one who has sworn an oath of *ila'* (to abstain from conjugal relations) with his female slave.

Issue 1888: If a man swears an oath of abstention (īlāʾ) regarding his female slave, no legal obligation is imposed on him, for Allah the Almighty says: "And if they resolve on divorce, then Allah is All-Hearing, All-Knowing" [Al-Baqarah 2:227]. Thus, it is established that the ruling of īlāʾ applies only to those legally obligated to either return to conjugal relations or divorce. Since formal divorce (ṭalāq) does not apply to a female slave at all, it is established that this ruling applies exclusively to wives. And success comes from Allah the Exalted.[44]

[مَسْأَلَةٌ آلَى مِنْ أَمَتِهِ]

١٨٨٨ - مَسْأَلَةٌ: وَمَنْ آلَى مِنْ أَمَتِهِ فَلَا تَوْقِيفَ عَلَيْهِ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ قَالَ: {وَإِنْ عَزَمُوا الطَّلاقَ} [البقرة: ٢٢٧] فَصَحَّ أَنَّ حُكْمَ الْإِيلَاءِ إنَّمَا هُوَ فِيمَنْ تَلْزَمُهُ فِيهَا الْفَيْئَةُ أَوْ الطَّلَاقُ، وَلَيْسَ فِي الْمَمْلُوكَةِ طَلَاقٌ أَصْلًا - فَصَحَّ أَنَّهُ فِي الْمُتَزَوِّجَاتِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Juridical Case: He swore to abstain from a non-mahram woman, then married her.

1889. Issue: As for our statement regarding one who swore abstinence from an unrelated woman and subsequently married her—is the ruling of īlāʾ not

[مَسْأَلَةٌ آلَى مِنْ أَجْنَبِيَّةٍ ثُمَّ تَزَوَّجَهَا]

١٨٨٩ - مَسْأَلَةٌ: وَأَمَّا قَوْلُنَا فِيمَنْ آلَى مِنْ أَجْنَبِيَّةٍ ثُمَّ تَزَوَّجَهَا: أَنَّهُ لَيْسَ عَلَيْهِ حُكْمُ الْإِيلَاءِ؟ فَلِأَنَّ اللَّهَ عَزَّ وَجَلَّ إنَّمَا قَالَ: {لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ} [البقرة: ٢٢٦] فَمَنْ آلَى مِنْ أَجْنَبِيَّةٍ فَلَمْ يُؤْلِ مِنْ أَحَدٍ مِنْ نِسَائِهِ، فَلَا إيلَاءَ عَلَيْهِ.

[43] **Qur'an references (L31888):** Qur'an 6:164 (Al-An'am); Qur'an 17:15 (Al-Isra); Qur'an 35:18 (Fatir); Qur'an 39:7 (Az-Zumar).

[44] **Qur'an references (L31890):** Qur'an 2:227 (Al-Baqarah).

applicable to him? This is because Allah, the Mighty and Sublime, stated: For those who swear off their wives [Al-Baqarah 2:226]. Thus, whoever swore abstinence from an unrelated woman did not swear off any of his wives; therefore, the ruling of īlā' does not apply to him.[45]

L31893 If it is said: "Has she indeed become one of his wives?" We respond: It is inconceivable for a ruling to lapse when it is made obligatory, and then become obligatory at a time when it was not required. No authoritative explicit text has stipulated this, nor has the Sunnah conveyed it. Furthermore, the waiting period only applies where there is a need for determining pregnancy, and this is not permissible for a woman unrelated by marriage. And success is from Allah, the Most High.

L31894 The "Book of Ila'" has been completed with the praise of Allah, the Exalted, and His excellent assistance. May Allah send blessings upon our master Muhammad and upon his family, and grant him peace.

فَإِنْ قِيلَ: قَدْ صَارَتْ مِنْ نِسَائِهِ؟ قُلْنَا: مِنْ الْمُحَالِ أَنْ يَسْقُطَ الْحُكْمُ حِينَ إيجَابِهِ، وَيَجِبَ حِينَ لَمْ يَجِبْ، وَلَمْ يُوجِبْ ذَلِكَ نَصٌّ وَارِدٌ، وَلَا جَاءَتْ بِهِ سُنَّةٌ، وَلِأَنَّ التَّرَبُّصَ لَا يَكُونُ إلَّا حَيْثُ يُؤْخَذُ بِالْفَيْئَةِ، وَلَا يَجُوزُ ذَلِكَ فِي أَجْنَبِيَّةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

تَمَّ " كِتَابُ الْإِيلَاءِ " بِحَمْدِ اللَّهِ تَعَالَى وَحُسْنِ عَوْنِهِ وَصَلَّى اللَّهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى آلِهِ وَسَلَّمَ

[45] **Qur'an references (L31892):** Qur'an 2:226 (Al-Baqarah).