

AL-MUHALLA

كِتَابُ الظِّهَارِ

The Book of Zihar

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[كِتَابُ الظِّهَارِ] [مَسْأَلَةٌ قَالَ لِامْرَأَتِهِ أَنْتِ عَلَيَّ كَظَهْرِ أُمِّي]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ - مَسْأَلَةٌ: وَمَنْ قَالَ مِنْ حُرٍّ، أَوْ عَبْدٍ لِامْرَأَتِهِ، أَوْ لِأَمَتِهِ الَّتِي يَحِلُّ لَهُ وَطْؤُهَا: أَنْتِ عَلَيَّ كَظَهْرِ أُمِّي، أَوْ قَالَ لَهَا: أَنْتِ مِنِّي بِظَهْرِ أُمِّي، أَوْ كَظَهْرِ أُمِّي، أَوْ مِثْلُ ظَهْرِ أُمِّي؟ فَلَا شَيْءَ عَلَيْهِ، وَلَا يُحَرَّمُ بِذَلِكَ وَطْؤُهَا عَلَيْهِ، حَتَّى يُكَرِّرَ الْقَوْلَ بِذَلِكَ مَرَّةً أُخْرَى، فَإِذَا قَالَهَا مَرَّةً ثَانِيَةً وَجَبَتْ عَلَيْهِ كَفَّارَةُ الظِّهَارِ، وَهِيَ عِتْقُ رَقَبَةٍ.

L31895–31896 **The Book of Ẓihār. A case where a man said to his wife: "You are to me like the back of my mother."**

L31897 In the name of Allah, the Most Gracious, the Most Merciful. Issue: If a free man or a slave says to his wife or to his female slave whom it is lawful for him to have intercourse with, "You are to me like my mother's back," or says to her, "You are to me as my mother's back," or "like my mother's back," or "similar to my mother's back," then nothing is required of him, and intercourse with her is not forbidden to him unless he repeats such a statement a second time. If he says it a second time, the expiation for ẓihār becomes obligatory upon him, which is the freeing of a slave.

وَيُجْزِئُ فِي ذَلِكَ: الْمُؤْمِنُ، وَالْكَافِرُ، وَالذَّكَرُ وَالْأُنْثَى، وَالْمَعِيبُ وَالسَّالِمُ، فَمَنْ لَمْ يَقْدِرْ عَلَى رَقَبَةٍ فَعَلَيْهِ صِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، وَلَا يَحِلُّ لَهُ أَنْ يَطَأَهَا، وَلَا أَنْ يَمَسَّهَا بِشَيْءٍ مِنْ بَدَنِهِ - فَضْلًا عَنْ الْوَطْءِ - إلَّا حَتَّى يُكَفِّرَ بِالْعِتْقِ، أَوْ بِالصِّيَامِ، فَإِنْ أَقْدَمَ أَوْ نَسِيَ فَوَطِئَ قَبْلَ أَنْ يُكَفِّرَ بِالْعِتْقِ أَوْ بِالصِّيَامِ: أَمْسَكَ عَنْ الْوَطْءِ حَتَّى يُكَفِّرَ، وَلَا بُدَّ.

L31898 The following are considered sufficient for that: a believer, a disbeliever, a male, a female, the blemished, and the unblemished. Whoever cannot afford a slave must fast two consecutive months. It is impermissible for him to touch her with any part of his body—let alone have intercourse—until he atones by manumission or fasting. If he intentionally proceeds or forgets and has intercourse before atoning through manumission or fasting, he must refrain from intercourse until he atones without exception.

فَإِنْ عَجَزَ عَنْ الصِّيَامِ فَعَلَيْهِ أَنْ يُطْعِمَ سِتِّينَ مِسْكِينًا مُتَغَايِرِينَ شَبَّعَهُمْ.

L31899 If he is unable to fast, he must feed sixty distinct needy individuals, satiating them.

وَلَا يُحَرَّمُ عَلَيْهِ وَطْؤُهَا قَبْلَ الْإِطْعَامِ، وَلَا يَجِبُ شَيْءٌ مِمَّا ذَكَرْنَا إلَّا بِذِكْرِ " ظَهْرِ الْأُمِّ " وَلَا يَجِبُ بِذِكْرِ فَرْجِ الْأُمِّ، وَلَا بِعُضْوٍ غَيْرِ الظَّهْرِ، وَلَا بِذِكْرِ الظَّهْرِ أَوْ غَيْرِهِ مِنْ غَيْرِ الْأُمِّ، لَا مِنْ ابْنَةٍ، وَلَا مِنْ أَبٍ، وَلَا مِنْ أُخْتٍ، وَلَا مِنْ أَجْنَبِيَّةٍ، وَالْجَدَّةُ أُمٌّ.

L31900 It is not prohibited for him to have intercourse with her before providing food. None of the obligations we mentioned are binding unless one explicitly mentions "the mother's private part." No obligation arises from mentioning the mother's vagina, nor any body part other than the private part, nor from mentioning the private part or other body parts of anyone other than the mother—whether a daughter, father, sister, or unrelated woman. The grandmother is considered a mother.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {الَّذِينَ يُظَاهِرُونَ مِنْكُمْ مِنْ نِسَائِهِمْ مَا هُنَّ أُمَّاتِهِمْ إِنْ أُمَّاتُهُمْ} [المجادلة: ٢] الْآيَةَ إلَى قَوْله تَعَالَى: {وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِنْ قَبْلِ أَنْ يَتَمَاسَّا ذَلِكُمْ تُوعَظُونَ بِهِ وَاللَّهُ بِمَا تَعْمَلُونَ خَبِيرٌ} [المجادلة:

L31901–31903 The proof of that is the statement of Allah, the Glorified and Exalted: "Those among you who declare *ẓihār* against their wives—they are not their mothers; indeed, their mothers..." (Al-Mujādilah 58:2). The verse up to the statement of His Exalted: *"And those who declare dhihar (a form of divorce by likening one's wife to a forbidden relative) against their wives then retract what they said must free a slave before the couple resumes marital relations

- this is what you are instructed, and Allah is fully aware of what you do”* [Al-Mujadila: 3]. *“Whoever cannot afford to free a slave must fast two consecutive months before they resume marital relations. Whoever is unable must feed sixty needy people”* [Al-Mujadila: 4].[1]

٣] {فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مِنْ قَبْلِ أَنْ يَتَمَاسَّا فَمَنْ لَمْ يَسْتَطِعْ فَإِطْعَامُ سِتِّينَ مِسْكِينًا} [المجادلة: ٤] .

L31904 This verse encompasses all we have stated, for Allah, the Mighty and Sublime, mentioned only the oath of ẓihār (comparing a wife to one’s mother). He did not mandate expiation for it except upon repetition, as He had ordained. He mandated the freeing of a slave without differentiating between a female disbeliever and a female believer, a defective and sound one, a male and a female, or an adult and a minor. {Nor is your Lord ever forgetful} [Maryam: 64].[2]

فَهَذِهِ الْآيَةُ تَنْتَظِمُ كُلَّ مَا قُلْنَاهُ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَذْكُرْ إلَّا الظِّهَارَ مِنْ الْأُمِّ، وَلَمْ يُوجِبْ تَعَالَى الْكَفَّارَةَ فِي ذَلِكَ إلَّا بِالْعَوْدِ لِمَا قَالَ، وَأَوْجَبَ عِتْقَ الرَّقَبَةِ، وَلَمْ يَخُصَّ كَافِرَةً مِنْ مُؤْمِنَةٍ، وَلَا مَعِيبَةً مِنْ صَحِيحَةٍ، وَلَا ذَكَرًا مِنْ أُنْثَى، وَلَا كَبِيرًا مِنْ صَغِيرٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L31905 Allah, the Mighty and Majestic, stipulated that manumission and fasting must occur before sexual intercourse.

وَشَرَطَ اللَّهُ عَزَّ وَجَلَّ فِي الْعِتْقِ وَالصِّيَامِ قَبْلَ التَّمَاسِّ.

L31906 He did not stipulate that in the *kaffārah* by feeding—{My Lord does not err nor forget} (Taha 20:52)—as an explanation of all things.[3]

وَلَمْ يَشْتَرِطْ ذَلِكَ فِي الْكَفَّارَةِ بِالْإِطْعَامِ {لا يَضِلُّ رَبِّي وَلا يَنْسَى} [طه: ٥٢] تِبْيَانًا لِكُلِّ شَيْءٍ.

L31907 Repeating does not suffice if distributed to fewer than sixty poor persons, because they are not sixty poor persons. There is no disagreement regarding satiety.

وَلَا يُجْزِئُ التَّكْرَارُ عَلَى أَقَلَّ مِنْ سِتِّينَ مِسْكِينًا، لِأَنَّهُمْ لَيْسُوا سِتِّينَ مِسْكِينًا، وَلَا خِلَافَ فِي الْإِشْبَاعِ.

L31908 The Most High has not stipulated food to the exclusion of food.

وَلَمْ يَشْتَرِطْ تَعَالَى طَعَامًا دُونَ طَعَامٍ.

L31909 The Exalted did not favor a free person above an enslaved man, nor a free woman above an enslaved woman.

وَلَمْ يَخُصَّ تَعَالَى حُرًّا مِنْ عَبْدٍ، وَلَا زَوْجَةٍ مِنْ أَمَةٍ.

L31910 In what we have mentioned there is a disagreement: some hold that no expiation is required in it [i.e., for ẓihār] in the case of a female slave? This was narrated from al-Sha‘bī – in one of his opinions – and ‘Ikrimah, though

وَفِيمَا ذَكَرْنَا خِلَافٌ -: ذَهَبَ قَوْمٌ إلَى أَنَّ الظِّهَارَ مِنْ الْأَمَةِ لَا تَجِبُ فِيهِ كَفَّارَةٌ؟ رُوِيَ ذَلِكَ عَنْ الشَّعْبِيِّ - فِي قَوْلٍ لَهُ - وَعِكْرِمَةُ - وَلَمْ يَصِحَّ عَنْهُمَا - وَصَحَّ عَنْ مُجَاهِدٍ - فِي أَحَدِ قَوْلَيْهِ - وَابْنِ أَبِي مُلَيْكَةَ.

[1] **Qur’an references (L31901):** Qur’an 58:2 (Al-Mujadila); Qur’an 58:3 (Al-Mujadila); Qur’an 58:4 (Al-Mujadila).

[2] **Qur’an references (L31904):** Qur’an 19:64 (Maryam).

[3] **Qur’an references (L31906):** Qur’an 20:52 (Taha).

it is not authentically narrated from them. It is authentically narrated from Mujāhid – in one of his two opinions – and Ibn Abī Mulaykah.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَإِسْحَاقَ، وَأَصْحَابِهِمْ، إِلَّا أَنَّ أَحْمَدَ قَالَ فِي الظِّهَارِ مِنْ مِلْكِ الْيَمِينِ: كَفَّارَةُ يَمِينٍ.

L31911 This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Aḥmad, Isḥāq, and their followers, except that Aḥmad stated regarding *ẓihār* involving those whom one's right hand possesses: "It requires the expiation for an oath."

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ يَطَأُ الْأَمَةَ فَعَلَيْهِ كَفَّارَةُ الظِّهَارِ، وَإِنْ كَانَ لَا يَطَؤُهَا فَلَا كَفَّارَةَ ظِهَارٍ عَلَيْهِ -: صَحَّ هَذَا الْقَوْلُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ وَالْحَسَنِ الْبَصْرِيِّ فِي أَحَدِ قَوْلَيْهِمَا.

L31912 A group of scholars said: If he has intercourse with the female slave, he must perform the expiation for *ẓihār*. If he does not have intercourse with her, no expiation for *ẓihār* is required of him. This opinion is authentically reported from Saʿīd ibn al-Musayyab and al-Ḥasan al-Baṣrī in one of their two positions.

وَقَالَتْ طَائِفَةٌ: الظِّهَارُ مِنْ الْأَمَةِ كَالظِّهَارِ مِنْ الْحُرَّةِ -: صَحَّ ذَلِكَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَمُرَّةَ الْهَمْدَانِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالشَّعْبِيِّ، وَعِكْرِمَةَ، وَطَاوُسٍ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَعَمْرِو بْنِ دِينَارٍ، وَمَنْصُورِ بْنِ الْمُعْتَمِرِ - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ وَالْحَسَنِ بْنِ حَيٍّ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ.

L31913–31915 A group of scholars said: The *ẓihār* from a slave woman is like the *ẓihār* from a free woman — this is established from Saʿīd ibn al-Musayyib, al-Ḥasan, Sulaymān ibn Yasār, Murrah al-Hamdānī, Ibrāhīm al-Nakhaʿī, Saʿīd ibn Jubayr, al-Shaʿbī, ʿIkrimah, Ṭāwūs, al-Zuhrī, Qatādah, and ʿAmr ibn Dīnār. And Manṣūr ibn al-Muʿtamir—this opinion is also held by Mālik, al-Layth, al-Ḥasan ibn Ḥayy, Sufyān al-Thawrī, Abū Sulaymān, and all their companions.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ الْقَائِلُونَ بِأَنَّهُ لَيْسَ ظِهَارًا بِأَنْ قَالُوا: قِسْنَاهُ عَلَى الْإِيلَاءِ؟ قَالَ عَلِيٌّ: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ وَالتَّحَكُّمِ، لِأَنَّهُ لَيْسَ قِيَاسُ ذِكْرِ النِّسَاءِ فِي الظِّهَارِ عَلَى ذِكْرِ النِّسَاءِ فِي الْإِيلَاءِ بِأَوْلَى مِنْ قِيَاسِ ذِكْرِ النِّسَاءِ فِي الظِّهَارِ عَلَى ذِكْرِ النِّسَاءِ فِيمَا حَرَّمَ اللَّهُ عَزَّ وَجَلَّ عَلَيْنَا، إذْ يَقُولُ {وَأُمَّهَاتُ نِسَائِكُمْ} [النساء: ٢٣] فَدَخَلَ فِي ذَلِكَ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ الْإِمَاءُ مَعَ الْحَرَائِرِ.

L31916 Abū Muḥammad said: Those who claim it does not constitute ẓihār argued by stating: "Did we not measure it against īlāʾ?" ʿAlī responded: "All qiyās is inherently invalid. Even if qiyās were valid, this specific case would represent the essence of invalidity and arbitrariness. For analogizing the mention of women in ẓihār to their mention in īlāʾ holds no greater validity than analogizing it to their mention in what Allah Almighty has prohibited us, as He states: 'and the mothers of your wives' (Quran 4:23). By consensus from both us and them, this ruling encompasses enslaved women alongside free women."[4]

L31917 It is astonishing that they assert the weakest texts take precedence over *qiyas*, yet in this matter they abandoned the Qur'an's universal ruling for an invalid *qiyas*. There exists no legal rationale in *dhihār* that links it

[4] **Qur'an references (L31916):** Qur'an 4:23 (An-Nisa).

to *ilā'* to permit analogical derivation according to proponents of *qiyas*. They then produced absurdities after all this that were meaningless to mention, for they are mere absurdities and idiocies.

وَالْعَجَبُ أَنَّهُمْ يَقُولُونَ: إنَّ أَضْعَفَ النُّصُوصِ أَوْلَى مِنْ الْقِيَاسِ، وَهَذَا مَكَانٌ تَرَكُوا فِيهِ عُمُومَ الْقُرْآنِ لِقِيَاسٍ فَاسِدٍ، وَلَيْسَ فِي الظِّهَارِ عِلَّةٌ تَجْمَعُهُ بِالْإِيلَاءِ فَيَجُوزُ الْقِيَاسُ عَلَيْهَا عِنْدَ أَصْحَابِ الْقِيَاسِ، وَأَتَوْا بِأَهْذَارٍ بَعْدَ هَذَا لَا مَعْنَى لِذِكْرِهَا، لِأَنَّهَا سَخَافَاتٌ وَحَمَاقَاتٌ.

L31918 A group held: Dhihar becomes obligatory through a single utterance.

وَقَالَتْ طَائِفَةٌ: الظِّهَارُ يَجِبُ بِقَوْلٍ مَرَّةً.

L31919 They differed regarding the meaning of "returning to what they said." A group once held the view that "returning to what they said" refers to the act of intercourse itself. Thus, the expiation for ẓihār is not obligatory upon him until he has intercourse with her. If he does so, the expiation becomes binding, and abstaining from intercourse with her at that point is legally permissible, as confirmed by Ṭāwūs, Qatādah, al-Ḥasan, and az-Zuhrī.

وَاخْتَلَفُوا فِي مَعْنَى " الْعَوْدِ لِمَا قَالُوا ". فَقَالَتْ طَائِفَةٌ مَرَّةً " الْعَوْدُ لِمَا قَالُوا " هُوَ الْوَطْءُ نَفْسُهُ، فَلَا تَجِبُ عَلَيْهِ كَفَّارَةُ الظِّهَارِ حَتَّى يَطَأَهَا، فَإِذَا وَطِئَهَا لَزِمَتْهُ الْكَفَّارَةُ، وَالْإِمْسَاكُ عَنْ وَطْئِهَا حِينَئِذٍ - صَحَّ ذَلِكَ عَنْ طَاوُسٍ، وَقَتَادَةَ، وَالْحَسَنِ، وَالزُّهْرِيِّ.

L31920 It was narrated to us via the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah concerning Allah Almighty's statement: {Then they return to what they said} [Al-Mujādilah: 3]. He said: He declares her unlawful via *dhihar* by equating her to his mother's back, then proceeds to have intercourse with her again, thus necessitating the freeing of an enslaved person.[5]

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ {ثُمَّ يَعُودُونَ لِمَا قَالُوا} [المجادلة: ٣] . قَالَ: جَعَلَهَا عَلَيْهِ كَظَهْرِ أُمِّهِ ثُمَّ يَعُودُ فَيَطَؤُهَا فَتَحْرِيرُ رَقَبَةٍ.

L31921 And through the chain of Ibn Wahb, Yunus reported to me from Ibn Shihāb, who said regarding the words of Allah, the Almighty and Majestic, *Then they return to what they said* [Al-Mujādilah: 3]: "He returns to touching her [i.e., resuming marital relations]."[6]

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ قَالَ فِي قَوْلِهِ عَزَّ وَجَلَّ، {ثُمَّ يَعُودُونَ لِمَا قَالُوا} [المجادلة: ٣] قَالَ: يَعُودُ لِمَسِّهَا.

L31922 And through the chain of ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwus from his father concerning Allah's statement, Exalted and Majestic is He: {Then they return to what they said} [al-Mujādilah: 3]. He said: He made her unlawful to him by ẓihār (as his mother's back), then he resumes intercourse with her, obligating him to free a slave. A group said: When one utters ẓihār, the kaffārah becomes binding upon him.[7]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ فِي قَوْلِهِ عَزَّ وَجَلَّ {ثُمَّ يَعُودُونَ لِمَا قَالُوا} [المجادلة: ٣] . قَالَ: جَعَلَهَا عَلَيْهِ كَظَهْرِ أُمِّهِ، ثُمَّ يَعُودُ فَيَطَؤُهَا فَتَحْرِيرُ رَقَبَةٍ. وَقَالَتْ طَائِفَةٌ: إذَا تَكَلَّمَ بِالظِّهَارِ فَقَدْ لَزِمَهُ كَفَّارَةٌ -

[5] **Qur'an references (L31920):** Qur'an 58:3 (Al-Mujadila).
[6] **Qur'an references (L31921):** Qur'an 58:3 (Al-Mujadila).
[7] **Qur'an references (L31922):** Qur'an 58:3 (Al-Mujadila).

L31923–31925 : كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ طَاوُسٍ قَالَ: إذَا تَكَلَّمَ بِالظِّهَارِ فَقَدْ لَزِمَهُ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَعُثْمَانَ الْبَتِّيِّ - قَالَ الْبَتِّيُّ: إنْ مَاتَتْ لَمْ يَصِلْ إلَى مِيرَاثِهَا حَتَّى يُكَفِّرَ، وَإِنْ وَطِئَهَا كَفَرَ.

L31926 وَقَالَتْ طَائِفَةٌ: الْعَوْدُ هَهُنَا إرَادَةُ الْوَطْءِ، فَمَنْ ظَاهَرَ مِنْ امْرَأَتِهِ لَمْ يَلْزَمْهُ كَفَّارَةُ الْوَطْءِ حَتَّى يُرِيدَ وَطْأَهَا، فَإِذَا أَرَادَ وَطْأَهَا فَحِينَئِذٍ لَزِمَتْهُ الْكَفَّارَةُ، فَإِنْ بَدَا لَهُ عَنْ وَطْئِهَا سَقَطَتْ عَنْهُ الْكَفَّارَةُ، فَإِنْ أَرَادَ وَطْأَهَا عَادَتْ عَلَيْهِ الْكَفَّارَةُ، فَإِنْ بَدَا لَهُ سَقَطَتْ عَنْهُ، وَهَكَذَا أَبَدًا.

L31927 وَهُوَ قَوْلُ مَالِكٍ - فِي أَشْهَرِ قَوْلَيْهِ - وَرُوِيَ عَنْ عَبْدِ الْعَزِيزِ الْمَاجِشُونِ، وَمَا نَعْلَمُ هَذَا عَنْ أَحَدٍ قَبْلَهُمَا - وَهُوَ أَسْقَطُ الْأَقْوَالِ لِتَعَرِّيهِ عَنْ الْأَدِلَّةِ، وَلِأَنَّهُ إيجَابٌ وَإِبْطَالٌ لِلدَّعْوَى بِلَا مَعْنًى.

L31928 وَقَالَتْ طَائِفَةٌ: مَعْنَى " الْعَوْدِ " أَنَّ الظِّهَارَ يُوجِبُ تَحْرِيمًا لَا تَرْفَعُهُ إلَّا الْكَفَّارَةُ، إلَّا أَنَّهُ إنْ لَمْ يَطَأْهَا مُدَّةً طَوِيلَةً حَتَّى مَاتَتْ فَلَا كَفَّارَةَ عَلَيْهِ سَوَاءٌ أَرَادَ فِي خِلَالِ ذَلِكَ وَطْأَهَا أَوْ لَمْ يُرِدْ، فَإِنْ طَلَّقَهَا ثَلَاثًا فَلَا كَفَّارَةَ عَلَيْهِ، فَإِنْ تَزَوَّجَهَا بَعْدَ زَوْجٍ عَادَ عَلَيْهِ حُكْمُ الظِّهَارِ، وَلَا يَطَؤُهَا حَتَّى يُكَفِّرَ، وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، قَالَ: وَالظِّهَارُ قَوْلٌ كَانُوا يَقُولُونَهُ فِي الْجَاهِلِيَّةِ فَنُهُوا عَنْهُ، فَكُلُّ مَنْ قَالَهُ فَقَدْ عَادَ لِمَا قَالَ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَرِيبٌ فِي الْفَسَادِ مِنْ قَوْلِ مَالِكٍ، لِأَنَّهُ تَحَكُّمٌ بِالْبَاطِلِ وَلَعِبٌ وَكَذِبٌ ظَاهِرٌ، لِأَنَّ الَّذِينَ يَقُولُونَهُ فِي الْإِسْلَامِ لَمْ يَقُولُوهُ قَطُّ فِي الْجَاهِلِيَّةِ، وَإِنَّمَا قَالَ عَزَّ وَجَلَّ: {ثُمَّ يَعُودُونَ لِمَا قَالُوا} [المجادلة: ٣] وَلَمْ يَقُلْ: لِمَا قَالَ غَيْرُهُمْ.

Almighty stated: “Then they return to what they themselves said” [58:3], not “to what others said.”[8]

وَذِكْرُ هَذَيْنِ الْقَوْلَيْنِ يُغْنِي عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِمَا لِظُهُورِ فَسَادِهِمَا، وَأَنَّهُمَا شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَأَنَّهُمَا لَا يُحْفَظَانِ عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ، وَمَالِكٍ.

L31929 The mention of these two opinions suffices without laborious refutation due to their evident invalidity, and that they are legislation Allah the Exalted has not authorized, and that they are not reliably attributed to anyone before Abū Ḥanīfah and Mālik.

وَقَالَتْ طَائِفَةٌ: الْعَوْدُ هُوَ أَنْ يُظَاهِرَ مِنْهَا ثُمَّ يُمْسِكَهَا مُدَّةً بِقَدْرِ أَنْ يَقُولَ فِيهَا: أَنْتِ طَالِقٌ، فَلَا يُطَلِّقُهَا فِي تِلْكَ الْمُدَّةِ، فَإِذَا فَعَلَ ذَلِكَ فَقَدْ عَادَ لِمَا قَالَ.

L31930 A juristic school held: “The reversion (al-ʿawd) occurs when a man declares dhihar against his wife, then refrains from divorcing her for a duration equivalent to the time required to utter ’You are divorced.’ If he acts thus without divorcing her during that period, he has thereby reverted to his initial declaration.”

وَلَزِمَتْهُ الْكَفَّارَةُ - مَاتَتْ أَوعَاشَتْ، طَلَّقَهَا بَعْدَ ذَلِكَ أَوْ لَمْ يُطَلِّقْهَا - فَإِنْ طَلَّقَهَا إثْرَ ظِهَارِهِ مِنْهَا فَلَا كَفَّارَةَ ظِهَارٍ عَلَيْهِ - وَهَذَا قَوْلُ الشَّافِعِيِّ، وَبَعْضِ أَصْحَابِنَا.

L31931 The expiation becomes obligatory upon him—whether she dies or lives, whether he divorces her after that or does not divorce her—. If he divorces her immediately after his ẓihār against her, then no expiation for ẓihār is incumbent upon him. This is the opinion of al-Shāfiʿī and some of our companions.

وَرَوَى أَشْهَبُ عَنْ مَالِكٍ أَنَّهُ قَالَ: إذَا ظَاهَرَ مِنْ امْرَأَتِهِ ثُمَّ أَمْسَكَهَا وَعَزَمَ عَلَى وَطْئِهَا فَقَدْ لَزِمَتْهُ الْكَفَّارَةُ، وَلَا تَسْقُطُ عَنْهُ بَعْدُ - مَاتَتْ أَوْ عَاشَتْ.

L31932–31933 Ashhab reported from Mālik that he said: If a man pronounces *dhihar* upon his wife, then retains her as his wife and resolves to have intercourse with her, the expiation becomes obligatory upon him. This obligation remains binding on him thereafter—whether she dies or lives.

وَقَالَتْ طَائِفَةٌ كَقَوْلِنَا - رُوِيَ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ، وَيَحْيَى بْنِ زِيَادٍ الْفَرَّاءِ - وَقَدْ رُوِيَ نَحْوُهُ عَنْ عَطَاءٍ.

L31934 A group adhered to the same view as ours—as reported by Bukair ibn al-Ashajj and Yaḥyā ibn Ziyād al-Farrā’—and a similar position was transmitted from ʿAṭāʾ.

قَالَ أَبُو مُحَمَّدٍ: جَمِيعُ الْأَقْوَالِ الَّتِي قَدَّمْنَا إنَّمَا هِيَ دَعَاوَى لَا تُوَافِقُ فِي اللُّغَةِ - الَّتِي بِهَا خَاطَبَنَا اللَّهُ عَزَّ وَجَلَّ، وَبِهَا نَزَلَ الْقُرْآنُ - مَا يَقَعُ عَلَيْهِ لَفْظَةُ " الْعَوْدِ لِمَا قَالَ " وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ بِيَقِينٍ، نَعْنِي مَنْ فَسَّرَ " الْعَوْدَ " بِالْوَطْءِ، أَوْ بِإِرَادَةِ الْوَطْءِ، أَوْ بِالْإِمْسَاكِ، إذْ لَيْسَ شَيْءٌ مِنْ هَذَا عَوْدًا لِمَا قَالَ.

L31935 Abu Muhammad said: All the statements we have presented are mere assertions that conflict with the language by which Allah the Almighty addressed us and in which the Quran was sent down - specifically regarding the meaning of the term “returning to what he said.” Any interpretation contradicting this linguistic standard is unequivocally invalid. We mean those who interpreted “returning” as intercourse, the intention of intercourse, or retaining the wife, for none of these constitutes a return to what he said.

[8] **Qur’an references (L31928):** Qur’an 58:3 (Al-Mujadila).

وَكَذَلِكَ مَنْ قَالَ: إِنَّهُ يُوجِبُ تَحْرِيمًا لَا يَرْفَعُهُ إِلَّا الْكَفَّارَةُ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ الْكَفَّارَةَ بِالظِّهَارِ وَحْدَهُ، لَكِنْ بِهِ وَبِ " الْعَوْدِ لِمَا قَالَ هَذَا نَصُّ الْقُرْآنِ.

L31936 Similarly, whoever claims that it entails a prohibition liftable only by expiation—because Allah the Exalted did not mandate expiation for ẓihār alone, but for both ẓihār and retracting the statement and resuming relations—this is the explicit text of the Quran.

قَالَ أَبُو مُحَمَّد: وَلَمْ يَبْقَ إِلَّا قَوْلُنَا وَهُوَ " أَنْ يَعُودَ لِمَا قَالَ ثَانِيَةً " وَلَا يَكُونُ الْعَوْدُ لِلْقَوْلِ إِلَّا بِتَكْرِيرِهِ، لَا يُعْقَلُ فِي اللُّغَةِ غَيْرُ هَذَا، وَبِهَذَا جَاءَتْ السُّنَّةُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سُلَيْمَانَ بْنِ حَرْبٍ، وَمُحَمَّدِ بْنِ الْفَضْلِ عَارِمٍ، كِلَاهُمَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ جَمِيلَةَ بِنْتَ ثَعْلَبَةَ امْرَأَةَ أَوْسِ بْنِ الصَّامِتِ وَكَانَ بِهِ لَمَمٌ فَكَانَ إذَا اشْتَدَّ لَمَمُهُ ظَاهَرَ مِنْهَا، فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ فِيهِ كَفَّارَةَ الظِّهَارِ.

L31937 Abu Muhammad said: There remains only our opinion, which is "that he must return to his statement a second time," for retracting a statement is only valid through its repetition. No other interpretation is linguistically conceivable, and this is established in the Sunnah: as transmitted to us through the chain of Sulaymān ibn Ḥarb and Muḥammad ibn al-Faḍl ʿĀrim, both from Ḥammād ibn Salamah from Hishām ibn ʿUrwah from his father from ʿĀ'ishah, the Mother of the Believers: That Jamīlah bint Thaʿlabah, the wife of Awṣ ibn al-Ṣāmit (who suffered from occasional madness), would, whenever his condition worsened, declare ẓihar against her. Thereupon, Allah Almighty revealed the expiation for ẓihar regarding him.

قَالَ أَبُو مُحَمَّد: هَذَا يَقْتَضِي التَّكْرَارَ وَلَا بُدَّ، وَلَا يَصِحُّ فِي الظِّهَارِ إلَّا هَذَا الْخَبَرُ وَحْدَهُ، إلَّا خَبَرًا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، وَكُلُّ مَا عَدَا ذَلِكَ فَسَاقِطٌ: إمَّا مُرْسَلٌ، وَإِمَّا مِنْ رِوَايَةِ مَنْ لَا خَيْرَ فِيهِ، كَمَا بَيَّنَّا فِي " كِتَابِ الْإِيصَالِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L31938 Abū Muḥammad said: This necessitates repetition, which is unavoidable. Nothing is valid in *ẓihār* except this report alone, except a report we will mention hereafter, if Allah, the Exalted and Glorified, wills. All else is invalid: either a *mursal* report or narrated by an unreliable narrator, as we clarified in *Kitāb al-Iṣāl*. All praise is due to Allah, Lord of the worlds.

وَاخْتَلَفُوا فِيمَا يُجْزِئُ فِي ذَلِكَ مِنْ الرِّقَابِ -: فَقَالَتْ طَائِفَةٌ: لَا يُجْزِئُ فِي ذَلِكَ عِتْقُ الْكِتَابِيِّ - وَهُوَ قَوْلُ مَالِكٍ.

L31939 They differed regarding what suffices in terms of slaves for this ruling. A group held that manumitting a Person of the Book does not suffice for this purpose—and that is the opinion of Mālik.

وَقَالَ أَصْحَابُنَا، وَأَبُو حَنِيفَةَ: يَجْزِي - وَإِنَّمَا قَالَ الْمَالِكِيُّونَ ذَلِكَ قِيَاسًا عَلَى رَقَبَةِ كَفَّارَةِ قَتْلِ الْخَطَأِ؟ .

L31940–31941 Our companions and Abū Ḥanīfah said: It suffices. The Mālikīs, however, said this exclusively on the basis of analogy to manumitting a slave as expiation for unintentional killing.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّ الْقِيَاسَ بَاطِلٌ، وَلَوْ كَانَ حَقًّا لَكَانَ هَذَا بَاطِلًا، لِأَنَّهُمْ جَمَعُوا بَيْنَ الْكَفَّارَتَيْنِ فِي أَنْ لَا يَجْزِيَ فِيهِمَا كَافِرٌ، وَلَمْ يَجْمَعُوا بَيْنَهُمَا، وَلَا قَاسُوا إحْدَاهُمَا

L31942 Abu Muhammad said: This is erroneous, for the analogy is invalid. Even if it were valid, this would still be invalid, as they combined the two expiations on the basis that a disbeliever does not suffice for both, yet they neither truly combined them nor drew an analogy between them regarding substituting feeding from fasting for those incapable of fasting. This constitutes arbitrary judgment that no one may validly endorse.

عَلَى الْأُخْرَى فِي تَعْوِيضِ الْإِطْعَامِ مِنْ الصِّيَامِ لِمَنْ عَجَزَ عَنْ الصِّيَامِ - وَهَذَا تَحَكُّمٌ لَا يَسُوغُ لِأَحَدٍ.

L31943 فَإِنْ قَالُوا: لَمْ يُذْكَرْ تَعْوِيضُ الصِّيَامِ فِي كَفَّارَةِ الْقَتْلِ، إنَّمَا ذُكِرَ فِي الظِّهَارِ؟ فَقُلْنَا: وَلَا ذُكِرَتْ الْمُؤْمِنَةُ إلَّا فِي كَفَّارَةِ الْقَتْلِ، وَلَمْ تُذْكَرْ فِي الظِّهَارِ، فَإِمَّا قِيسُوا كُلَّ وَاحِدَةٍ عَلَى الْأُخْرَى، وَإِمَّا أَنْ لَا تَقِيسُوا وَاحِدَةً مِنْهُمَا عَلَى الْأُخْرَى.

L31944 وَأَمَّا قِيَاسُكُمْ إحْدَاهُمَا عَلَى الْأُخْرَى فِي بَعْضِ مَا فِيهَا دُونَ سَائِرِ مَا فِيهَا - فَتَحَكُّمٌ فَاسِدٌ، وَمُنَاقَضَةٌ ظَاهِرَةٌ - وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ فِي الرَّقَبَةِ الْمَعِيبَةِ أَقْوَالًا فِي غَايَةِ الْفَسَادِ. وَلَا نَدْرِي مَا ذَنْبُ الْمَعِيبِ عِنْدَهُمْ، فَلَمْ يُجِيزُوا عِتْقَهُ فِي وَاجِبٍ.

L31945 فَإِنْ قَالُوا: السَّالِمُ أَكْثَرُ ثَمَنًا؟ قُلْنَا: وَالْبَيْضَاءُ الْجَمِيلَةُ أَكْثَرُ ثَمَنًا مِنْ السَّوْدَاءِ الذَّمِيمَةِ، فَلَا تُجِيزُوا فِي ذَلِكَ السَّوْدَاءَ الذَّمِيمَةَ - وَجُمْلَةُ الْأَمْرِ فَإِنَّمَا هِيَ آرَاءٌ فَاسِدَةٌ - وَنَعُوذُ بِاَللَّهِ مِنْ التَّحَكُّمِ فِي الدِّينِ بِمِثْلِهَا.

L31946 وَقَدْ رُوِّينَا عَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ: أَنَّ عِتْقَ الْأَعْمَى يَجْزِي فِي ذَلِكَ، وَعَنْ ابْنِ جُرَيْجٍ أَنَّ الْأَشَلَّ يَجْزِي.

L31947 وَقَالَتْ طَائِفَةٌ: إنْ ظَاهَرَ بِذَاتِ مَحْرَمٍ فَهُوَ ظِهَارٌ، وَإِنْ ظَاهَرَ بِغَيْرِ ذَاتِ مَحْرَمٍ فَلَيْسَ ظِهَارًا -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: مَنْ ظَاهَرَ مِنْ ذَاتِ مَحْرَمٍ فَهُوَ ظِهَارٌ.

L31948 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ: Whoever pronounces dhihar against a mahram relative or a milk-sister, all such women are considered like his mother; she is unlawful to him until he expiates. But

if he pronounces dhihar regarding the daughter of his maternal uncle, it is not considered valid dhihar.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: مَنْ ظَاهَرَ بِذَاتِ مَحْرَمٍ أَوْ بِأُخْتٍ مِنْ الرَّضَاعَةِ، فَكُلُّ ذَلِكَ كَأُمِّهِ لَا تَحِلُّ لَهُ حَتَّى يُكَفِّرَ، فَإِنْ ظَاهَرَ بِبِنْتِ خَالِهِ فَلَيْسَ ظِهَارًا.

L31949–31950 It has been narrated to us from al-Sha'bī—this being the view of Abū Ḥanīfah—and one of the two positions of al-Shāfi'ī. Al-Shāfi'ī holds another opinion—the most renowned of his positions—which states that if a man pronounces *dhihār* against a woman he could lawfully marry for a single day in his lifetime, this does not constitute *dhihār*. But if he pronounces *dhihār* against a woman he could never lawfully marry, then it constitutes *dhihār*.

وَرُوِّينَاهُ عَنْ الشَّعْبِيِّ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ - وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَلِلشَّافِعِيِّ قَوْلٌ آخَرُ - هُوَ أَشْهَرُ أَقْوَالِهِ - وَهُوَ أَنَّ كُلَّ مَنْ ظَاهَرَ بِامْرَأَةٍ حَلَّ لَهُ نِكَاحُهَا يَوْمًا وَمِنْ الدَّهْرِ فَلَيْسَ ظِهَارًا، مَنْ ظَاهَرَ بِامْرَأَةٍ لَمْ يَحِلَّ لَهُ نِكَاحُهَا قَطُّ فَهُوَ ظِهَارٌ.

L31951 Mālik said: Whoever pronounces ẓihār against a mahram woman, a non-mahram woman, or a daughter—the entire act constitutes ẓihār.

وَقَالَ مَالِكٌ: مَنْ ظَاهَرَ بِذَاتِ مَحْرَمٍ أَوْ بِأَجْنَبِيَّةٍ أَوْ بِابْنَةٍ فَهُوَ كُلُّهُ ظِهَارٌ.

L31952 And it has been narrated to us from Al-Sha'bi: "There is no ẓihār except with a mother or grandmother" - a statement also narrated by Abu Thawr from Al-Shafi'i.

وَرُوِّينَا عَنْ الشَّعْبِيِّ: لَا ظِهَارَ إلَّا بِأُمٍّ أَوْ جَدَّةٍ - وَهُوَ قَوْلٌ رَوَاهُ أَيْضًا - أَبُو ثَوْرٍ عَنْ الشَّافِعِيِّ.

L31953 Abu Muhammad said: To those who claim, "There is no ẓihār except from a woman prohibited by familial ties (mahram)," it is asked: From where did you restrict this ruling specifically to mahram women? If they respond: "Because they are prohibited [as mahram] like the mother," we say: The father too is prohibited like the mother, and all men are likewise prohibited.

وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا. قَالَ أَبُو مُحَمَّدٍ: يُقَالُ لِمَنْ قَالَ: لَا ظِهَارَ إلَّا مِنْ ذَاتِ مَحْرَمٍ: مِنْ أَيْنَ خَصَّصْتُمْ ذَوَاتِ الْمَحَارِمِ؟ فَإِنْ قَالُوا: لِأَنَّهُنَّ مُحْرِمَاتٌ كَالْأُمِّ؟ قُلْنَا: وَالْأَبُ أَيْضًا مُحَرَّمٌ كَالْأُمِّ، وَجَمِيعُ الرِّجَالِ كَذَلِكَ.

L31954 If they say, "They are not among the women," and is the mother among the women?

فَإِنْ قَالُوا: لَيْسُوا مِنْ النِّسَاءِ، وَالْأُمُّ مِنْ النِّسَاءِ؟

L31955 We said: Nor are those within prohibited degrees of marriage considered mothers, for the mother is she who bore him. So what distinguishes one *qiyas* from another? He challenged those who ruled *dhihar* applicable to every unrelated woman and even to the father: "From where did you analogize *dhihar* by the father to *dhihar* by the mother? Why do you not analogize a woman's *dhihar* toward a man to a man's *dhihar* toward a woman?" A group of scholars—all more eminent than Malik and Abu

قُلْنَا: وَلَا ذَوَاتُ الْمَحَارِمِ أُمَّهَاتٌ، وَالْأُمُّ هِيَ الَّتِي وَلَدَتْهُ، فَمَا الْفَرْقُ بَيْنَ قِيَاسٍ وَقِيَاسٍ - وَقَالَ لِمَنْ قَالَ بِالظِّهَارِ مِنْ كُلِّ أَجْنَبِيَّةٍ، وَمِنْ الْأَبِ أَيْضًا: مِنْ أَيْنَ قِسْتُمْ الظِّهَارَ بِالْأَبِ عَلَى الظِّهَارِ بِالْأُمِّ، وَلَمْ تَقِيسُوا ظِهَارَ الْمَرْأَةِ مِنْ الرَّجُلِ عَلَى ظِهَارِ الرَّجُلِ مِنْ الْمَرْأَةِ؟

Hanifah—held this view. As we narrate through Ahmad ibn Hanbal's chain: Hushaym reported to us, saying: Mughirah, the son of Miqsam, narrated from Ibrahim al-Nakha'i that 'Aisha bint Talhah ibn 'Ubayd Allah said: "If I marry Mus'ab ibn al-Zubayr, he is to me like my mother's back." She consulted the people of Medina, and they ruled that atonement was incumbent upon her. Al-Athram said: I asked Ahmad ibn Hanbal, "Must she perform atonement?" He replied, "Yes, she must perform it." This reflects the view held by the people of Medina during Mus'ab's era—this is an old ruling.

وَقَدْ قَالَ بِهَذَا جَمَاعَةٌ، كُلُّهُمْ أَجَلُ مِنْ مَالِكٍ، وَأَبِي حَنِيفَةَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ نَا هُشَيْمٌ أَنَا مُغِيرَةُ هُوَ ابْنُ مِقْسَمٍ - عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عَائِشَةَ بِنْتَ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ قَالَتْ: إِنْ تَزَوَّجْت مُصْعَبَ بْنَ الزُّبَيْرِ فَهُوَ عَلَيَّ كَظَهْرِ أُمِّي؟ فَسَأَلَتْ أَهْلَ الْمَدِينَةِ، فَرَأَوْا أَنَّ عَلَيْهَا الْكَفَّارَةَ - قَالَ الْأَثْرَمُ: فَقُلْت لِأَحْمَدَ بْنِ حَنْبَلٍ: أَتُكَفِّرُ؟ قَالَ: نَعَمْ تُكَفِّرُ - فَهَذَا كَمَا يَرَى أَهْلُ الْمَدِينَةِ فِي زَمَنِ مُصْعَبٍ - هَذَا قَدِيمٌ.

L31956 And through the chain of Waki' from Sufyān al-Thawrī from al-Mughīra from Ibrāhīm al-Nakha'ī: that 'Ā'isha bint Ṭalḥa pronounced ẓihār upon al-Muṣ'ab ibn al-Zubayr if she married him. She then married him, so she asked the jurists—while they were gathered—a question, and she was instructed to perform expiation.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عَائِشَةَ بِنْتَ طَلْحَةَ ظَاهَرَتْ مِنْ الْمُصْعَبِ بْنِ الزُّبَيْرِ إنْ تَزَوَّجَتْهُ، فَتَزَوَّجَتْهُ فَسَأَلَتْ الْفُقَهَاءَ وَهُمْ مُتَوَافِرُونَ؟ فَأُمِرَتْ بِكَفَّارَةٍ.

L31957–31958 We have also narrated it through the chain of 'Abd al-Razzāq, from Sufyān al-Thawrī, from Abū Isḥāq al-Shaybānī and Ash'ath ibn 'Abd al-Malik al-Ḥumrānī. Abū Isḥāq narrated from al-Sha'bī, and al-Ḥumrānī narrated from Muḥammad ibn Sīrīn, both of them having narrated a ḥadīth similar to that of Ibrāhīm.

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ، وَأَشْعَثَ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ، قَالَ أَبُو إِسْحَاقَ عَنْ الشَّعْبِيِّ، وَقَالَ الْحُمْرَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ، كِلَاهُمَا بِمِثْلِ حَدِيثِ إبْرَاهِيمَ.

L31959 From the narration of 'Abd al-Razzāq via Ma'mar via Ibn Shubrumah, who said: The daughter of Ṭalḥah declared: "If I were to marry Muṣ'ab ibn al-Zubayr, he would be as forbidden to me as her father due to fosterage." She then married him and inquired about this matter with the companions of Ibn Mas'ūd. They replied: "She must perform kaffārah (expiation)."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ شُبْرُمَةَ قَالَ: قَالَتْ بِنْتُ طَلْحَةَ: مُصْعَبُ بْنُ الزُّبَيْرِ إنْ نَكَحْته فَهُوَ عَلَيَّ كَظَهْرِ أَبِيهَا، ثُمَّ نَكَحَتْهُ، فَسَأَلَتْ عَنْ ذَلِكَ أَصْحَابَ ابْنِ مَسْعُودٍ؟ فَقَالُوا: تُكَفِّرُ.

L31960 And through him to Ma'mar, from Al-Zuhri, regarding a woman who said to her husband: "He is to her as her father." Al-Zuhri said: "She has uttered reprehensible speech and falsehood. We hold that she must atone by freeing a slave, fasting two consecutive months, or feeding sixty needy people—and this does not prevent her husband from having intercourse with her."

وَبِهِ إلَى مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي امْرَأَةٍ قَالَتْ لِزَوْجِهَا: هُوَ عَلَيْهَا كَأَبِيهَا؟ فَقَالَ الزُّهْرِيُّ: قَالَتْ مُنْكَرًا مِنْ الْقَوْلِ وَزُورًا، فَنَرَى أَنْ تُكَفِّرَ بِعِتْقِ رَقَبَةٍ، أَوْ بِصَوْمِ شَهْرَيْنِ مُتَتَابِعَيْنِ، أَوْ تُطْعِمَ سِتِّينَ مِسْكِينًا - وَلَا يَحُولُ بَيْنَهَا وَبَيْنَ زَوْجِهَا أَنْ يَطَأَهَا.

L31961 It has been reported to us through the chain of Sufyān al-Thawrī from

ʿAmr ibn ʿĀmir al-Nahdī from al-Ḥasan al-Baṣrī that he held the view that a woman can pronounce ẓihār against the man as ẓihār—and this is the opinion of al-Awzāʿī, al-Ḥasan ibn Ḥayyin, and al-Ḥasan ibn Ziyād al-Luʾluʾī.

وَرُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ عَامِرٍ النَّهْدِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ يَرَى: تُظَاهِرُ الْمَرْأَةُ مِنْ الرَّجُلِ ظِهَارًا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالْحَسَنِ بْنِ زِيَادٍ اللُّؤْلُؤِيِّ.

L31962 If they say: "Ẓihār was the divorce of the pre-Islamic era, and divorce belongs to men," we say: "How has it been validated according to you that ẓihār was the divorce of the pre-Islamic era? How can this be when you permit divorce to be in the woman's control if the man places it in her hand? Then say the same regarding ẓihār." All of this demonstrates the corruption of qiyās and its contradictions.

فَإِنْ قَالُوا: كَانَ الظِّهَارُ طَلَاقَ الْجَاهِلِيَّةِ وَالطَّلَاقُ إلَى الرِّجَالِ؟ قُلْنَا: وَمِنْ أَيْنَ صَحَّ عِنْدَكُمْ أَنَّ الظِّهَارَ كَانَ طَلَاقَ الْجَاهِلِيَّةِ؟ فَكَيْفَ وَأَنْتُمْ تُجِيزُونَ أَنْ يَكُونَ الطَّلَاقُ بِيَدِ الْمَرْأَةِ إذَا جَعَلَهُ الرَّجُلُ بِيَدِهَا؟ فَقُولُوا كَذَلِكَ فِي الظِّهَارِ، وَهَذَا كُلُّهُ يُبَيِّنُ فَسَادَ الْقِيَاسِ وَتَنَاقُضَهُ.

L31963 A group, among them Sufyan al-Thawri and al-Shafiʿi, said: If he declares ẓihār by his mother's head or her hand, it is ẓihār.

وَقَالَتْ طَائِفَةٌ، مِنْهُمْ سُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ: إنْ ظَاهَرَ بِرَأْسِ أُمِّهِ أَوْ يَدِهَا؟ فَهُوَ ظِهَارٌ.

L31964 Abu Hanifah said: If one makes ẓihār by [referring to] something of his mother that he is forbidden to look upon, it constitutes valid ẓihār. But if he makes ẓihār by [referring to] something of his mother that he is permitted to look upon, it does not constitute ẓihār.

وَقَالَ أَبُو حَنِيفَةَ: إنْ ظَاهَرَ بِشَيْءٍ لَا يَحِلُّ لَهُ أَنْ يَنْظُرَ إلَيْهِ مِنْ أُمِّهِ؟ فَهُوَ ظِهَارٌ، وَإِنْ ظَاهَرَ بِشَيْءٍ يَحِلُّ لَهُ أَنْ يَنْظُرَ إلَيْهِ مِنْ أُمِّهِ؟ فَلَيْسَ ظِهَارًا.

L31965 Abu Muhammad said: All these are corrupt standards, and none of them is preferable to the others.

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذِهِ مَقَايِيسُ فَاسِدَةٌ، لَيْسَ بَعْضُهَا أَوْلَى مِنْ بَعْضٍ.

L31966 Similarly, the analogy of Mālik's opinion as mentioned by Ibn al-Qāsim holds that declaring any of his mother's limbs [as unlawful] constitutes ẓihār. The truth regarding this is what we have stated: that we do not transgress the text defined by Allah the Exalted. Allah the Exalted said: "And whoever transgresses the limits of Allah has certainly wronged himself" (Quran 65:1).[9]

وَكَذَلِكَ قِيَاسُ قَوْلِ مَالِكٍ ذَكَرَهُ ابْنُ الْقَاسِمِ: أَنَّ مَا ظَاهَرَ بِهِ مِنْ أَعْضَاءِ أُمِّهِ فَهُوَ ظِهَارٌ وَالْحَقُّ مِنْ ذَلِكَ مَا ذَكَرْنَا: مِنْ أَنْ لَا نَتَعَدَّى النَّصَّ الَّذِي حَدَّهُ اللَّهُ تَعَالَى، قَالَ اللَّهُ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L31967 Abu Hanifah said: If one feeds the same needy person each day for sixty days, it suffices.

وَقَالَ أَبُو حَنِيفَةَ: إنْ كَرَّرَ الْإِطْعَامَ عَلَى مِسْكِينٍ وَاحِدٍ سِتِّينَ يَوْمًا أَجْزَأَهُ.

L31968–31969 Abu Muhammad said: This contradicts Allah the Exalted's obligation of feeding sixty needy persons. As for one who begins fasting and then engages

[9] **Qur'an references (L31966):** Qur'an 65:1 (At-Talaq).

in intercourse at night before completing them, or engages in intercourse before performing expiation via manumission of a slave or fasting - it has been narrated from Abu Yusuf that he does not perform expiation, because he cannot fulfill the expiation.

قَالَ أَبُو مُحَمَّد: هَذَا خِلَافُ إيجَابِ اللَّهِ تَعَالَى سِتِّينَ مِسْكِينًا - وَأَمَّا مَنْ شَرَعَ فِي الصَّوْمِ فَوَطِئَ لَيْلًا قَبْلَ أَنْ يُتِمَّهُنَّ أَوْ وَطِئَ قَبْلَ أَنْ يُكَفِّرَ بِعِتْقٍ أَوْ بِصَوْمٍ؟ فَرُوِيَ عَنْ أَبِي يُوسُفَ أَنَّهُ لَا يُكَفِّرُ، لِأَنَّهُ لَا يَسْتَطِيعُ عَلَى الْكَفَّارَةِ.

L31970 Others said: "He is only obligated to perform a single expiation" — as we have narrated from Wakiʿ, from Hishām al-Dastuwāʾī, from Qatādah, from Saʿīd ibn al-Musayyab regarding the one who pronounces ẓihār and then has intercourse before performing expiation. He said: "He must abstain until he performs expiation."

وَقَالَ آخَرُونَ: لَيْسَ عَلَيْهِ إلَّا كَفَّارَةٌ وَاحِدَةٌ -: كَمَا رُوِّينَا عَنْ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي الْمَظَاهِرِ يُجَامِعُ قَبْلَ أَنْ يُكَفِّرَ قَالَ: يُمْسِكُ حَتَّى يُكَفِّرَ.

L31971 Also via the chain of Waki', from al-Ṣalt ibn Dīnār, who said: I asked ten jurists about a man who pronounced ẓihār and then had intercourse before performing atonement. They replied, "Only one atonement is required."

وَمِنْ طَرِيقِ وَكِيعٍ أَيْضًا عَنْ الصَّلْتِ بْنِ دِينَارٍ قَالَ: سَأَلْت عَشَرَةً مِنْ الْفُقَهَاءِ عَنْ الْمُظَاهِرِ يُجَامِعُ قَبْلَ أَنْ يُكَفِّرَ؟ فَقَالُوا: كَفَّارَةٌ وَاحِدَةٌ.

L31972 Waki' said: And they are—al-Ḥasan, Ibn Sīrīn, Muwarriq al-'Ijlī, Bakr Ibn 'Abd Allāh al-Muzanī, Qatādah, 'Aṭā', Ṭāwus, Mujāhid, and 'Ikrimah.

وَقَالَ وَكِيعٌ: وَهُمْ -: الْحَسَنُ، وَابْنُ سِيرِينَ، وَمُوَرِّقٌ الْعِجْلِيُّ، وَبَكْرُ بْنُ عَبْدِ اللَّهِ الْمُزَنِيّ، وَقَتَادَةُ، وَعَطَاءٌ، وَطَاوُسٌ وَمُجَاهِدٌ، وَعِكْرِمَةُ.

L31973 Waki' said: "As for the tenth, I deem it valid"—the position held by Ibrāhīm al-Nakhaʿī and al-Shaʿbī.

قَالَ وَكِيعٌ: وَالْعَاشِرُ أَرَاهُ نَافِعًا - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ.

L31974 A group said: He must perform two acts of expiation. As transmitted to us through the chain of Ibn Abī Shaybah – from 'Abd al-Aʿlā, and Yazīd ibn Hārūn. 'Abd al-Aʿlā reported from Saʿīd ibn Abī 'Arūbah, from Qatādah, from Rajā' ibn Ḥaywah, from Qabīṣah ibn Dhu'ayb, from 'Amr ibn al-'Āṣ. Yazīd ibn Hārūn reported via al-Taymī, who narrated from Ibn 'Umar. Then 'Amr ibn al-'Āṣ and Ibn 'Umar agreed regarding one who pronounced *ẓihār* [a form of divorce by likening one's wife to a mother] and had intercourse with her before performing expiation. They both said: He must perform two acts of expiation.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ كَفَّارَتَانِ: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى، وَيَزِيدُ بْنُ هَارُونَ، قَالَ عَبْدُ الْأَعْلَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ رَجَاءِ بْنِ حَيْوَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ عَمْرِو بْنِ الْعَاصِ، وَقَالَ يَزِيدُ بْنُ هَارُونَ: عَنْ التَّيْمِيِّ بَلَغَنِي عَنْ ابْنِ عُمَرَ، ثُمَّ اتَّفَقَ عَمْرُو بْنُ الْعَاصِ وَابْنُ عُمَرَ فِي الْمَظَاهِرِ يَطَؤُهَا قَبْلَ أَنْ يُكَفِّرَ؟ قَالَا جَمِيعًا: عَلَيْهِ كَفَّارَتَانِ.

L31975 And via the chain of ʿAbd al-Razzāq, from ʿUmar, from Qatādah, from Qabīṣah ibn Dhuʾayb regarding one who pronounced ẓihār [a divorce declaration]: If he has intercourse with her before performing expiation? He said: He is obligated to two acts of expiation.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ عَنْ قَتَادَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ فِي الْمَظَاهِرِ يَطَؤُهَا قَبْلَ أَنْ يُكَفِّرَ؟ قَالَ عَلَيْهِ كَفَّارَتَانِ.

L31976 Ma’mar said: This is also the view of Qatadah—and it is the view of Sa’īd ibn Jubayr, al-Ḥakam ibn ʿUtaybah, and ʿUbayd Allāh ibn al-Ḥasan the judge.

قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ قَتَادَةَ أَيْضًا - وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَعُبَيْدِ اللَّهِ بْنِ الْحَسَنِ الْقَاضِي.

L31977–31979 A group said: Upon him are three expiations: as we have transmitted through the chain of transmission of Saʿīd ibn Manṣūr, who reported to us from Hushaym, from Yūnus ibn ʿUbayd and ʿUbaydah. Yūnus reported from al-Ḥasan, while ʿUbaydah reported from Ibrāhīm. Both collectively said regarding one who pronounces *dhihār* and then has intercourse with her before expiating: “Are three expiations incumbent upon him?” Abū Muḥammad said: The opinion would have followed Abū Yūsuf’s position were it not for the report we transmitted through the chain of transmission of Aḥmad ibn Shuʿayb—al-Ḥasan ibn Ḥurayth reported to us from al-Faḍl ibn Mūsā, from Maʿmar, from al-Ḥakam ibn Abān, from... Ikrimah reported from Ibn Abbas that a man came to the Prophet (peace be upon him) and said: “O Messenger of Allah, I declared my wife unlawful through dhihar, then I had intercourse with her before I expiated.” The Messenger of Allah (peace be upon him) said to him: “Do not approach her until you fulfill what Allah, the Almighty and Majestic, has commanded.”

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ ثَلَاثُ كَفَّارَاتٍ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ بْنُ عُبَيْدٍ، وَعُبَيْدَةُ، قَالَ يُونُسُ: عَنْ الْحَسَنِ، وَقَالَ عُبَيْدَةُ: عَنْ إبْرَاهِيمَ، قَالَا جَمِيعًا فِي الَّذِي يُظَاهِرُ ثُمَّ يَطَؤُهَا قَبْلَ أَنْ يُكَفِّرَ: عَلَيْهِ ثَلَاثُ كَفَّارَاتٍ؟ قَالَ أَبُو مُحَمَّدٍ: كَانَ الْقَوْلُ قَوْلَ أَبِي يُوسُفَ لَوْلَا الْخَبَرُ الَّذِي رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا الْحَسَنُ بْنُ حُرَيْثٍ نا الْفَضْلُ بْنُ مُوسَى عَنْ مَعْمَرٍ عَنْ الْحَكَمِ بْنِ أَبَانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي ظَاهَرْتُ مِنْ امْرَأَتِي فَوَقَعْتُ عَلَيْهَا قَبْلَ أَنْ أُكَفِّرَ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا تَقْرَبْهَا حَتَّى تَفْعَلَ مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ»

L31980 Abu Muhammad said: Therefore, it became obligatory to adhere to his command (May Allah bless him and grant him peace).

قَالَ أَبُو مُحَمَّدٍ: فَوَجَبَ الْوُقُوفُ عِنْدَ أَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L31981 Ali said: “This is an authentic report from the narrations of trustworthy authorities; its transmission as a *mursal* report by those who transmitted it does not detract from its validity.”

قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ صَحِيحٌ مِنْ رِوَايَاتِ الثِّقَاتِ لَا يَضُرُّهُ إرْسَالُ مَنْ أَرْسَلَهُ.

L31982 Abu Muhammad said: As for one who begins the fast and then has vaginal intercourse with the woman upon whom he pronounced *dhihar* at night before completing the two months? Mālik said: He must start the two months anew. Abū Ḥanīfah and al-Shāfiʿī said: He must complete them by resuming what he has already fasted of them.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَنْ شَرَعَ فِي الصَّوْمِ فَوَطِئَ قُبُلَ الَّتِي ظَاهَرَ عَلَيْهَا لَيْلًا، قَبْلَ أَنْ يُتِمَّ الشَّهْرَيْنِ؟ فَإِنَّ مَالِكًا قَالَ: يَبْتَدِئُ الشَّهْرَيْنِ مِنْ ذِي قَبْلٍ، وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: يُتِمُّهُمَا بَانِيًا عَلَى مَا صَامَ مِنْهُمَا.

L31983 This is valid, as the obligation was that the two months be fully completed before intercourse. Since this can no longer be achieved afterward, whatever remains of them after intercourse does not count, and the portion already

completed before intercourse is better than intending for them to be fully completed after intercourse.

وَهَذَا هُوَ صَحِيحٌ، إذْ إنَّمَا كَانَ الْوَاجِبُ أَنْ يَكُونَ الشَّهْرَانِ يَتِمَّانِ قَبْلَ الْوَطْءِ فَإِذْ لَا سَبِيلَ إلَى ذَلِكَ بَعْدُ فَلَا يَكُونُ مَا بَقِيَ مِنْهُمَا بَعْدَ الْوَطْءِ، وَمَا مَضَى مِنْهُمَا قَبْلَ الْوَطْءِ خَيْرٌ مِنْ أَنْ يَقْصِدَ إلَى أَنْ يَكُونَا بِكَمَالِهِمَا بَعْدَ الْوَطْءِ.

L31984 As for the ẓihār of the slave: there is disagreement therein.

وَأَمَّا ظِهَارُ الْعَبْدِ - فَفِيهِ اخْتِلَافٌ.

L31985 It has been narrated to us via Abd al-Razzaq, from Ma'mar, from Qatadah, from Ibrahim al-Nakha'i, who said regarding a slave who pronounces *dhihar* upon his wife: "If he fasts for a month, it suffices for him."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ فِي الْعَبْدِ يُظَاهِرُ مِنْ امْرَأَتِهِ أَنَّهُ إنْ صَامَ شَهْرًا أَجْزَأَ عَنْهُ.

L31986 Narrated by ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ regarding a slave who pronounced zhihar against a woman: He said, "He must undertake fasting [as expiation], and a slave cannot validly pronounce zhihar independent of his master."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي عَبْدٍ ظَاهَرَ مِنْ امْرَأَةٍ؟ قَالَ: يَنْتَظِرُ الصَّوْمَ، وَلَا ظِهَارَ لِعَبْدٍ دُونَ سَيِّدِهِ.

L31987–31989 And others said: As narrated via the transmission of Abd al-Razzaq, from Sufyan al-Thawri, from Yunus ibn Ubayd. From Al-Ḥasan al-Baṣrī regarding the slave who pronounced ẓihār: he must fast for two months. If they permit him to be manumitted, it suffices, and he may feed.

وَقَالَ آخَرُونَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ فِي الْعَبْدِ الْمُظَاهِرِ يَصُومُ شَهْرَيْنِ وَإِنْ أَذِنُوا لَهُ فِي الْعِتْقِ جَازَ، وَلَهُ أَنْ يُطْعِمَ.

L31990 We have received reports through the chain narrated by ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Layth ibn Abī Sulaym, from Mujāhid regarding the expiation of the servant. He said: "Nothing is obligatory upon the servant except fasting and the prescribed prayers (Ṣalāt)."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ فِي تَكْفِيرِ الْعَبْدِ؟ قَالَ: لَيْسَ عَلَى الْعَبْدِ إلَّا الصَّوْمُ وَالصَّلَاةُ.

L31991 And Ṭāwus held the same view as we hold – as transmitted through the chain of Saʿīd ibn Manṣūr who reported to us from Sufyān ibn ʿUyaynah. He said: I asked ʿAbd Allāh ibn Ṭāwus, "What did your father say regarding a slave's ẓihār?" He replied: "He held that upon him is an expiation like that of a free man."

وَقَالَ طَاوُسٌ كَقَوْلِنَا - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ قَالَ: قُلْت لِعَبْدِ اللَّهِ بْنِ طَاوُسٍ: مَا كَانَ أَبُوك يَقُولُ فِي ظِهَارِ الْعَبْدِ؟ قَالَ: كَانَ يَقُولُ عَلَيْهِ مِثْلُ كَفَّارَةِ الْحُرِّ.

L31992 And Abu Hanifah, Malik, and al-Shafi'i said: He must fast for two months, and manumission does not suffice for him.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: يَصُومُ شَهْرَيْنِ وَلَا يَجْزِيهِ الْعِتْقُ.

L31993 Ali said: Allah the Almighty and Majestic has not singled out a free person

to the exclusion of a slave: {Nor is your Lord forgetful} [Maryam: 64].[10]

قَالَ عَلِيٌّ: لَمْ يَخُصَّ اللَّهُ عَزَّ وَجَلَّ حُرًّا مِنْ عَبْدٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

A legal issue: a man pronounced ẓihār upon his wife, then repeated it, then remarried her after completing expiation.

[مَسْأَلَةٌ ظَاهَرَ مِنْ أَجْنَبِيَّةٍ ثُمَّ كَرَّرَهُ ثُمَّ تَزَوَّجَهَا]

1891 - Issue: Whoever pronounces ẓihār against a woman not his wife, repeats it, then marries her, no ẓihār is held against him, nor is expiation required.

١٨٩١ - مَسْأَلَةٌ: وَمَنْ ظَاهَرَ مِنْ أَجْنَبِيَّةٍ ثُمَّ كَرَّرَهُ، ثُمَّ تَزَوَّجَهَا فَلَيْسَ عَلَيْهِ ظِهَارٌ، وَلَا كَفَّارَةٌ.

People have differed regarding this matter. It has been narrated to us through Mālik's chain from Saʿīd ibn ʿAmr ibn Sulaym al-Zuraqī from al-Qāsim ibn Muḥammad, who said: A man declared a woman to be as unlawful as his mother's back (by ẓihār) if he were to marry her. ʿUmar ibn al-Khaṭṭāb said to him: "If you marry her, do not approach her until you perform the *kaffārah*."

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ سَعِيدِ بْنِ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، قَالَ: جَعَلَ رَجُلٌ امْرَأَةً كَظَهْرِ أُمِّهِ إنْ تَزَوَّجَهَا؟ فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: إنْ تَزَوَّجْتَهَا فَلَا تَقْرَبْهَا حَتَّى تُكَفِّرَ.

This is the view of ʿAṭāʾ, Saʿīd ibn al-Musayyib, al-Ḥasan, and ʿUrwah ibn al-Zubayr; this has been authenticated as sound from them.

وَهُوَ قَوْلُ عَطَاءٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، صَحَّ ذَلِكَ عَنْهُمْ.

This is the opinion of Abū Ḥanīfah, Mālik, Aḥmad ibn Ḥanbal, their companions, Sufyān al-Thawrī, and Isḥāq.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِمْ، وَسُفْيَانَ الثَّوْرِيِّ، وَإِسْحَاقَ.

A group held the same opinion as we have stated: It has been narrated to us through the chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from Muḥammad ibn ʿAjlān, from ʿIkrimah, from Ibn ʿAbbās, that he did not regard *ẓihār* before marriage as having any effect, nor did he regard divorce before marriage as having any effect—and this narration is of the highest authenticity in its transmission from Ibn ʿAbbās.

وَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ لَا يَرَى الظِّهَارَ قَبْلَ النِّكَاحِ شَيْئًا، وَلَا يَرَى أَيْضًا الطَّلَاقَ قَبْلَ النِّكَاحِ شَيْئًا - وَهَذَا فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ عَبَّاسٍ.

[10] **Qur'an references (L31993):** Qur'an 19:64 (Maryam).

L32000 Narrated via the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Ḥasan and Qatādah, who both said: If he declares ẓihār before consummating the marriage, it has no legal effect—and this is the opinion of al-Shāfiʿī and Abū Sulaymān.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْحَسَنِ، وَقَتَادَةَ، قَالَا جَمِيعًا: إنْ ظَاهَرَ قَبْلَ أَنْ يَنْكِحَ فَلَيْسَ بِشَيْءٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L32001–32002 Abu Muhammad said: Allah the Exalted stated: {And those who declare dhihar against their wives} [Al-Mujadilah: 3]. The Exalted has decreed expiation only for one who declares dhihar against his wife and then retracts his statement. He has not imposed this [expiation] on one who declares dhihar against someone other than his wife.[1]

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى: {وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ} [المجادلة: ٣] فَإِنَّمَا جَعَلَ الْكَفَّارَةَ عَلَى مَنْ ظَاهَرَ مِنْ امْرَأَتِهِ، ثُمَّ عَادَ لِمَا قَالَ، وَلَمْ يَجْعَلْ تَعَالَى ذَلِكَ عَلَى مَنْ ظَاهَرَ مِنْ غَيْرِ امْرَأَتِهِ.

L32003 If it is said: "If he marries her, does that make him a muẓāhir (one who has pronounced ẓihār) toward her, while she is his wife?" We respond: Ẓihār is only legally established at the moment of its utterance, not afterward. It is invalid for the ruling not to take effect when the statement is uttered, then to take effect when it is no longer uttered.

فَإِنْ قِيلَ: فَإِنَّهُ إذَا تَزَوَّجَهَا فَهُوَ مُظَاهِرٌ مِنْهَا، وَهِيَ امْرَأَتُهُ؟ قُلْنَا: إنَّمَا الظِّهَارُ حِينَ النُّطْقِ بِهِ لَا بَعْدَ ذَلِكَ، وَمِنْ الْبَاطِلِ أَنْ لَا يَلْزَمَ الْحُكْمُ لِلْقَوْلِ حِينَ يُقَالُ ثُمَّ يَلْزَمَ حِينَ لَا يُقَالُ.

L32004 And whoever conditions his ẓihār upon an action he may perform—such as saying, "You are like my mother's back if I have intercourse with you," or saying, "If you spoke to Zayd"—and repeats this statement, it does not constitute ẓihār, whether he performs that action or not. This is because he neither enacted the ẓihār nor bound himself to it when he uttered it. Whatever is not binding at the moment of his commitment does not become binding outside the state of commitment unless a textual ruling obligates it, and there is no such text in this case.

وَمَنْ عَلَّقَ ظِهَارَهُ بِشَيْءٍ يَفْعَلُهُ مِثْلَ أَنْ يَقُولَ: أَنْتِ كَظَهْرِ أُمِّي إنْ وَطِئْتُك، أَوْ قَالَ: إنْ كَلَّمْتِ زَيْدًا - وَكَرَّرَ ذَلِكَ - فَلَيْسَ ظِهَارًا - فَعَلَ ذَلِكَ الشَّيْءَ أَوْ لَمْ يَفْعَلْهُ - لِأَنَّهُ لَمْ يُمْضِ الظِّهَارَ وَلَا الْتَزَمَهُ حِينَ نَطَقَ بِهِ، وَكُلُّ مَا لَمْ يَلْزَمْ حِينَ الْتِزَامِهِ لَمْ يَلْزَمْ فِي غَيْرِ حَالِ الْتِزَامِهِ، إلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ، وَلَا نَصَّ هَهُنَا.

A case where he declared dhihar, then repeated it a second time, then a third time.

[مَسْأَلَةٌ ظَاهَرَ ثُمَّ كَرَّرَ ثَانِيَةً ثُمَّ ثَالِثَةً]

L32006 1892 - Question: If someone pronounces dhihar and then repeats it a second time, followed by a third, only one expiation is required. This is because the second instance obligates the expiation, as we have previously established, while the third occurs independently and does not incur any obligation. If he repeats it a fourth time, another expiation becomes due. The same ruling applies to every repetition of dhihar, because the second repetition obligates

١٨٩٢ - مَسْأَلَةٌ: وَمَنْ ظَاهَرَ ثُمَّ كَرَّرَ ثَانِيَةً، ثُمَّ ثَالِثَةً، فَلَيْسَ عَلَيْهِ إلَّا كَفَّارَةٌ وَاحِدَةٌ، لِأَنَّ الثَّانِيَةَ بِهَا وَجَبَتْ الْكَفَّارَةُ كَمَا قَدَّمْنَا وَحَصَلَتْ الثَّالِثَةُ مُنْفَرِدَةً لَا تُوجِبُ شَيْئًا، فَإِنْ كَرَّرَ رَابِعَةً فَعَلَيْهِ كَفَّارَةٌ أُخْرَى، وَهَكَذَا الْقَوْلُ فِي كُلِّ مَا أَعَادَ مِنْ الظِّهَارِ لِأَنَّ بِتَكْرَارِهِ

[1] **Qur'an references (L32002):** Qur'an 58:3 (Al-Mujadila).

and confirms the expiation. Subsequent repetitions constitute a new initiation of dhihar - if he repeats it, another expiation becomes due. Success is from Allah, the Most High.

ثَانِيَةً تَجِبُ الْكَفَّارَةُ وَتَلْزَمُ، فَيَكُونُ فِيمَا بَعْدَهَا مُبْتَدِئًا لِلظِّهَارِ، فَإِنْ كَرَّرَهُ وَجَبَتْ كَفَّارَةٌ أَيْضًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L32007 Narrations have been reported regarding this: We were narrated via ʿAbd al-Razzāq from Muṭarrif from Saʿīd from Qatādah from Khilāṣ from ʿAlī ibn Abī Ṭālib, who said: "If one pronounces ẓihār repeatedly in a single gathering, one expiation suffices. But if he pronounces it in different sessions, multiple expiations are obligatory. The ruling for oaths is the same." This is the opinion of Qatādah and ʿAmr ibn Dīnār, and this has been reliably transmitted from both of them.

وَقَدْ جَاءَتْ فِي هَذَا آثَارٌ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُطَرِّفٍ عَنْ سَعِيدٍ عَنْ قَتَادَةَ عَنْ خِلَاسٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: إذَا ظَاهَرَ فِي مَجْلِسٍ وَاحِدٍ مِرَارًا فَكَفَّارَةٌ وَاحِدَةٌ، وَإِنْ ظَاهَرَ فِي مَقَاعِدَ شَتَّى فَعَلَيْهِ كَفَّارَاتٌ شَتَّى، وَالْإِيمَانُ كَذَلِكَ - وَهُوَ قَوْلُ قَتَادَةَ، وَعَمْرِو بْنِ دِينَارٍ صَحَّ ذَلِكَ عَنْهُمَا.

L32008 And others said, in all of that, there is nothing except a single expiation.

وَقَالَ آخَرُونَ: لَيْسَ فِي كُلِّ ذَلِكَ إلَّا كَفَّارَةٌ وَاحِدَةٌ.

L32009 It has been narrated to us from Ṭāwus, ʿAṭāʾ, and al-Shaʿbī: If a man pronounces ẓihār regarding his wife fifty times, only a single expiation is required of him.

رُوِّينَا عَنْ طَاوُسٍ، وَعَطَاءٍ، وَالشَّعْبِيِّ قَالُوا: إذَا ظَاهَرَ الرَّجُلُ مِنْ امْرَأَتِهِ خَمْسِينَ مَرَّةً فَإِنَّمَا عَلَيْهِ كَفَّارَةٌ وَاحِدَةٌ.

L32010 A similar [ruling] has been authenticated from al-Ḥasan and ʿAṭāʾ—and this is the opinion of al-Awzāʿī.

وَصَحَّ مِثْلُهُ عَنْ الْحَسَنِ، وَعَطَاءٍ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L32011 A group holds that there is a single *kaffarah*, whether the *ẓihār* was performed in a single sitting or multiple sittings, provided he does not offer expiation. If he offers expiation and then commits *ẓihār* again, another *kaffarah* is required.

وَقَالَتْ طَائِفَةٌ: كَفَّارَةٌ وَاحِدَةٌ، سَوَاءٌ كَانَ ذَلِكَ فِي مَجْلِسٍ وَاحِدٍ أَوْ فِي مَجَالِسَ شَتَّى مَا لَمْ يُكَفِّرْ، فَإِنْ كَفَّرَ ثُمَّ ظَاهَرَ فَكَفَّارَةٌ أُخْرَى.

L32012–32013 We have been narrated through the chain of ʿAbd al-Razzāq from Maʿmar, from [an unnamed man], from al-Ḥasan, who said: "If one pronounces ẓihār repeatedly—even across different sittings—only one expiation is required as long as he has not performed it, and the same ruling applies to oaths." Maʿmar said: "This is the opinion of al-Zuhrī."

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ الْحَسَنِ قَالَ: إذَا ظَاهَرَ مِرَارًا وَإِنْ كَانَ فِي مَجَالِسَ شَتَّى - فَكَفَّارَةٌ وَاحِدَةٌ مَا لَمْ يُكَفِّرْ، وَالْأَيْمَانُ كَذَلِكَ - قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ الزُّهْرِيِّ.

L32014 Abu Muhammad said: And this is the opinion of Malik. Abu Hanifah said: If one repeated the ẓihār in a single session while intending the repetition, then one expiation is required. If he had no intention, each ẓihār requires its own expiation, whether the ẓihār occurred in a single session or in multiple sessions.

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ مَالِكٍ - وَقَالَ أَبُو حَنِيفَةَ: إِنْ كَانَ كَرَّرَ الظِّهَارَ فِي مَجْلِسٍ وَاحِدٍ وَنَوَى التَّكْرَارَ فَكَفَّارَةٌ وَاحِدَةٌ، وَإِنْ لَمْ تَكُنْ لَهُ نِيَّةٌ فَلِكُلِّ ظِهَارٍ كَفَّارَةٌ، وَسَوَاءٌ كَانَ ذَلِكَ فِي مَجْلِسٍ وَاحِدٍ أَوْ فِي مَجَالِسَ شَتَّى.

L32015 Ali said, "We have not known this from anyone before Abū Ḥanīfa—and success is only by Allah, the Exalted—for these are statements with no proof of their soundness, neither from the Quran, nor the Sunnah, nor analogy—and with Allah, the Exalted, alone lies success."

قَالَ عَلِيٌّ: لَا نَعْلَمُ هَذَا عَنْ أَحَدٍ قَبْلَ أَبِي حَنِيفَةَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - وَهَذِهِ أَقْوَالٌ لَا بُرْهَانَ عَلَى صِحَّتِهَا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا مِنْ قِيَاسٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ لَزِمَتْهُ كَفَّارَةُ الظِّهَارِ لَمْ يُسْقِطْهَا عَنْهُ مَوْتُهُ وَلَا مَوْتُهَا]

L32016 **Issue: If someone is obligated to perform the kafārah for ẓihār, neither his death nor her death nullifies this obligation.**

١٨٩٣ - مَسْأَلَةٌ: وَمَنْ لَزِمَتْهُ كَفَّارَةُ الظِّهَارِ لَمْ يُسْقِطْهَا عَنْهُ مَوْتُهُ، وَلَا مَوْتُهَا، وَلَا طَلَاقُهُ لَهَا، وَهِيَ مِنْ رَأْسِ مَالِهِ إِنْ مَاتَ - أَوْصَى بِهَا أَوْ لَمْ يُوصِ - لِأَنَّهَا مِنْ دُيُونِ اللَّهِ عَزَّ وَجَلَّ فَهِيَ مُقَدَّمَةٌ عَلَى دُيُونِ النَّاسِ.

L32017 Issue 1893: If someone is obligated to perform the expiation for ẓihār, neither his death, nor her death, nor his divorcing her nullifies it. And it is payable from his estate if he dies—whether he has bequeathed it or not—because it is among the obligations owed to Allah, the Exalted, and thus takes precedence over debts owed to people.

[مَسْأَلَةٌ عَجَزَ الْمُظَاهِرُ عَنْ جَمِيعِ الْكَفَّارَاتِ]

L32018 **[A case where the muẓāhir was incapable of all expiations.]**

١٨٩٤ - مَسْأَلَةٌ: فَمَنْ عَجَزَ عَنْ جَمِيعِ الْكَفَّارَاتِ: فَحُكْمُهُ الْإِطْعَامُ أَبَدًا - أَيْسَرَ بَعْدَ ذَلِكَ أَمْ لَمْ يُوسِرْ، قَوِيَ عَلَى الصِّيَامِ أَوْ لَمْ يَقْوَ - وَذَلِكَ لِأَنَّهُ إِذَا عَجَزَ عَنْ الْعِتْقِ وَالصِّيَامِ فَقَدْ اسْتَقَرَّ عَلَيْهِ الْإِطْعَامُ بِنَصِّ الْقُرْآنِ، وَلَمْ يُعَوِّضْ اللَّهُ - عَزَّ وَجَلَّ - مِنْهُ شَيْئًا أَصْلًا، فَهُوَ حُكْمُ مَنْ عَجَزَ عَنْ الْعِتْقِ وَالصَّوْمِ، وَمَنْ عَجَزَ عَنْ شَيْءٍ لَمْ يُوَقِّتْ اللَّهُ - عَزَّ وَجَلَّ - لَهُ آخَرَ فَهُوَ لَازِمٌ أَبَدًا، لِأَنَّ أَمْرَهُ تَعَالَى وَاجِبٌ لَا يُسْقِطُهُ شَيْءٌ.

L32019 1894 - Issue: As for one who is unable to perform all the expiations, his ruling is to feed the poor perpetually—whether he later gains means or not, whether he can fast or not. This is because if he is unable to free a slave or fast, then feeding the poor becomes binding upon him by the explicit text of the Qur'an, and Allah, the Exalted, has not substituted anything from it whatsoever. This is the ruling for one who is unable to free a slave or fast. Whoever is unable to fulfill an obligation for which Allah, the Exalted, has not appointed another [obligation or time] must uphold it perpetually, because the command of Him, the Most High, is binding and nothing can annul it.

L32020 And whoever, when the obligation of expiation for ẓihār becomes binding upon him, is capable of freeing a slave, no other expiation will ever be per-

missible for him. If he becomes impoverished, his matter is left to Allah, Exalted and Majestic is He, because the obligation imposed by Allah the Exalted upon him to free a slave has been firmly established, and nothing can nullify it.

وَمَنْ كَانَ حِينَ لُزُومِهِ كَفَّارَةُ ظِهَارٍ لَهُ قَادِرًا عَلَى عِتْقِ رَقَبَةٍ لَمْ يَجْزِهِ غَيْرُهَا أَبَدًا، وَإِنْ افْتَقَرَ فَأَمْرُهُ إِلَى اللَّهِ - عَزَّ وَجَلَّ - لِأَنَّ فَرْضَ اللَّهِ تَعَالَى عَلَيْهِ بِالْعِتْقِ قَدْ اسْتَقَرَّ، فَلَا يُحِيلُهُ شَيْءٌ.

L32021 And whoever is incapable of freeing a slave but capable of fasting two consecutive months—without Ramadan occurring between them, nor any day when fasting is invalid—and his strength persists until the conclusion of the specified period, yet he does not fast them, then becomes unable to fast until death—neither feeding nor manumission will ever suffice. If he recovers, he must fast them. If he dies, his guardian fasts them on his behalf, according to the saying of Allah's Messenger (peace and blessings of Allah be upon him): "Whoever dies while owing fasts, his guardian should fast on his behalf." If his health and capacity to fast do not persist throughout the entire mentioned period, and manumission becomes the easiest obligation during that interval, then manumission remains his perpetual duty. If he lacks the means, then feeding becomes his perpetual obligation—and success is attained through Allah alone.

وَمَنْ كَانَ عَاجِزًا عَنْ الرَّقَبَةِ قَادِرًا عَلَى صَوْمِ شَهْرَيْنِ مُتَّصِلَيْنِ، وَلَا يَحُولُ بَيْنَهُمَا رَمَضَانُ، وَلَا بِيَوْمٍ لَا يَحِلُّ صِيَامُهُ، وَاتَّصَلَتْ قُوَّتُهُ كَذَلِكَ إلَى انْقِضَاءِ الْمُدَّةِ الْمَذْكُورَةِ فَلَمْ يَصُمْهَا، ثُمَّ عَجَزَ عَنْ الصَّوْمِ - إلَى أَنْ مَاتَ - لَمْ يَجْزِهِ إطْعَامٌ وَلَا عِتْقٌ أَبَدًا، فَإِنْ صَحَّ صَامَهُمَا، وَإِنْ مَاتَ صَامَهُمَا عَنْهُ وَلِيُّهُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ مَاتَ وَعَلَيْهِ صِيَامٌ صَامَ عَنْهُ وَلِيُّهُ» فَلَوْ لَمْ تَتَّصِلْ صِحَّتُهُ وَقُوَّتُهُ عَلَى الصِّيَامِ جَمِيعَ الْمُدَّةِ الَّتِي ذَكَرْنَا، فَإِنَّ أَيْسَرَ فِي خِلَالِهَا فَالْعِتْقُ فَرْضُهُ أَبَدًا، فَإِنْ لَمْ يُوسِرْ فَالْإِطْعَامُ فَرْضُهُ أَبَدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The rulings concerning the impotent man [include the following case]: A man who married a woman but was unable to consummate the marriage with her.

[أَحْكَامُ الْعِنِّينِ] [مَسْأَلَةٌ تَزَوَّجَ امْرَأَةً فَلَمْ يَقْدِرْ عَلَى وَطْئِهَا]

L32022–32023

L32024 Issue 1895 - Whoever marries a woman and is unable to consummate the marriage - regardless of whether he had intercourse with her once, repeatedly, or never at all - it is categorically impermissible for the judge or any other party to separate them under any circumstance, nor to designate a timeframe for him. She remains his wife; he may divorce her if he wills or keep her if he wills.

١٨٩٥ - مَسْأَلَةٌ: وَمَنْ تَزَوَّجَ امْرَأَةً فَلَمْ يَقْدِرْ عَلَى وَطْئِهَا - سَوَاءٌ كَانَ وَطِئَهَا مَرَّةً أَوْ مِرَارًا أَوْ لَمْ يَطَأْهَا قَطُّ - فَلَا يَجُوزُ لِلْحَاكِمِ وَلَا لِغَيْرِهِ أَنْ يُفَرِّقَ بَيْنَهُمَا أَصْلًا، وَلَا أَنْ يُؤَجِّلَ لَهُ أَجَلًا، وَهِيَ امْرَأَتُهُ - إنْ شَاءَ طَلَّقَ وَإِنْ شَاءَ أَمْسَكَ.

L32025 In this matter, there is an old and recent disagreement. It has been narrated to us that Uthman ibn Affan ordered him to separate from her without stipulation or delay—and the chain is disconnected: Sulaiman ibn Yasar narrates that Uthman.

وَفِي هَذَا خِلَافٌ قَدِيمٌ وَحَدِيثٌ -: وَرُوِّينَا عَنْ عُثْمَانَ بْنِ عَفَّانَ أَنَّهُ أَمَرَهُ بِفِرَاقِهَا دُونَ تَوْقِيفٍ وَلَا تَأْجِيلٍ - وَهُوَ مُنْقَطِعٌ: سُلَيْمَانُ بْنُ يَسَارٍ أَنَّ عُثْمَانَ.

وَرُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ عُيَيْنَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ أَنَّهُ حَضَرَ سَمُرَةُ بْنُ جُنْدُبٍ قَدْ شَكَتْ إِلَيْهِ امْرَأَةٌ أَنَّ زَوْجَهَا لَا يَصِلُ إِلَيْهَا: فَكَتَبَ فِي ذَلِكَ سَمُرَةُ إِلَى مُعَاوِيَةَ، فَكَتَبَ إِلَيْهِ مُعَاوِيَةُ: أَنْ يُزَوِّجَهُ امْرَأَةً ذَاتَ جَمَالٍ وَدِينٍ وَيُدْخِلَهُ عَلَيْهَا، ثُمَّ يَسْأَلَهَا؟ فَإِنْ ذَكَرَتْ أَنَّهُ لَا يَطَؤُهَا أَمَرَهُ بِفِرَاقِ الَّتِي شَكَتْ بِهِ، فَفَعَلَ؟ فَحَكَتْ: أَنَّهُ لَا يُجَامِعُ، فَأَمَرَهُ بِفِرَاقِهَا

L32026 It was narrated to us through the chain of Abū Ubayd—Yazīd ibn Uyaynah ibn Abd al-Raḥmān—from his father, that he witnessed Samurah ibn Jundub when a woman complained to him that her husband did not have sexual relations with her. Samurah wrote to Muʿāwiyah regarding this matter, and Muʿāwiyah responded by instructing him to marry the man to a woman of beauty and religious devotion, have him consummate the marriage, then ask her about it. If she stated that he did not engage in intercourse, he should order him to divorce the complaining wife. This was carried out, and the new wife testified that he did not perform intercourse. Consequently, he ordered him to divorce the complaining wife.

وَقَوْلٌ ثَالِثٌ - صَحَّ مِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ فِي الْعِنِّينِ يُؤَجَّلُ، قُلْت: كَمْ يُؤَجَّلُ؟ قَالَ: يُؤَجَّلُ، فَكُلَّمَا كَرَّرَ عَلَيْهِ: كَمْ يُؤَجَّلُ؟ لَمْ يَزِدْهُ عَلَى: يُؤَجَّلُ

L32027 A third opinion—reported via the chain of Shuʿbah from al-Mughīrah from Ibrāhīm al-Nakhaʿī—states concerning the impotent man: “He is to be granted a delay.” I asked: “For how long is he granted a delay?” He responded: “He is to be granted a delay.” Whenever someone repeated to him: “For how long is he granted a delay?” he did not add beyond: “He is to be granted a delay.”

وَقَوْلٌ رَابِعٌ - رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ الشَّعْبِيِّ أَنَّ الْحَارِثَ بْنَ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ أَجَّلَ رَجُلًا لَمْ يَسْتَطِعْ أَنْ يَأْتِيَ امْرَأَتَهُ عَشَرَةَ أَشْهُرٍ وَقَوْلٌ خَامِسٌ - رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَعَلَ لِلْعِنِّينِ أَجَلَ سَنَةٍ، وَأَعْطَاهَا صَدَاقَهَا وَافِيًا

L32028–32030 A fourth opinion—narrated through the chain of ʿAbd al-Raḥmān ibn Mahdī, from Shuʿbah, from al-Mughīrah ibn Miqsam, from al-Shaʿbī—states that al-Ḥārith ibn ʿAbd Allāh ibn Abī Rabīʿah imposed a ten-month waiting period upon a man who was unable to have intercourse with his wife. And a fifth opinion—we have narrated it via the transmission of ʿAbd al-Razzāq from Ibn Jurayj from Yaḥyā ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyib: that ʿUmar ibn al-Khaṭṭāb set a one-year period for the impotent man and gave her the full mahr in full.

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: إنْ لَمْ يُصِبْهَا فِي السَّنَةِ فُرِّقَ بَيْنَهُمَا - وَلَا يَصِحُّ عَنْ عُمَرَ هَذَا أَصْلًا، لِأَنَّهَا إمَّا عَنْ ضُعَفَاءَ، وَإِمَّا مُنْقَطِعَةً وَمِنْ جُمْلَتِهَا - أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَعَبْدَ اللَّهِ بْنَ مَسْعُودٍ قَضَيَا فِي الْعِنِّينِ: أَنْ يَنْتَظِرَ بِهِ سَنَةً - ثُمَّ تَعْتَدَّ بَعْد السَّنَةِ

L32031 It has been reported to us from Umar ibn al-Khattab that he said: “If he does not consummate the marriage within the year, they are to be separated.” This is not authentically established from Umar whatsoever, as its chains are either from weak narrators or interrupted, among them being that Umar ibn al-Khattab and Abdullah ibn Mas’ud ruled regarding the chronically impotent man: that he is given a year’s grace period, after which she observes the waiting period of a divorced woman. He retains priority over her affairs during her waiting period. From Ibn Mas’ud also: “It is postponed for a

year. If he consummates the marriage; otherwise, he is separated from his wife." None of this is authentic.

L32032 It has also been narrated to us from Al-Mughīrah ibn Shuʿbah: that the separation is postponed for a year, after which they are separated. She is entitled to the mahr, and she must observe the iddah—but this ruling is not valid.

L32033 It is also narrated from Ali that he granted a one-year postponement and then issued a judicial separation between them—but that is invalid.

L32034 It is authentically reported from al-Ḥasan al-Baṣrī and Ibrāhīm al-Nakhaʿī that a deferment of one year is applied, and she is entitled to the full ṣadāq.

L32035 It is authentically reported from Sa'id ibn al-Musayyib that a delay of one year is granted. If he consummates the marriage, it remains valid; otherwise, the judge must annul the marriage.

L32036–32038 This has been narrated as a whole in this manner from the judges—Rabiʿah, Shurayh (the Judge), ʿAmr ibn Dīnār, and Ḥammād ibn Abī Sulaymān. This is the opinion of Al-Awzāʿī, Al-Layth, Al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, Mālik, Al-Shāfiʿī, and their companions.

L32039 Then they differed. Abu Hanifah said: This is if he believes her, but if he contradicts her, then if she is a virgin, women should examine her. If she is previously married, the husband's statement is upheld; no delay is granted to her, and they are not separated.

L32040 The Malikis said: His statement is accepted when accompanied by his oath, provided he claims that he has intercourse with her.

L32041 Al-Shāfiʿī said: The husband's statement is accepted with his oath. If he refuses to swear, she swears, and they are separated. If the women [e.g., examiners] say she is a virgin, she swears accordingly, and they are separated. If she refuses to swear, he swears, and the marriage remains valid.

عِدَّةَ الْمُطَلَّقَةِ، وَهُوَ أَحَقُّ بِأَمْرِهَا فِي عِدَّتِهَا وَعَنْ ابْنِ مَسْعُودٍ أَيْضًا - تُؤَجَّلُ سَنَةً، فَإِنْ وَصَلَ إِلَيْهَا وَإِلَّا فُرِّقَ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ - وَلَا يَصِحُّ

وَرُوِّينَا أَيْضًا - عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ: أَنَّهُ يُؤَجَّلُ سَنَةً ثُمَّ يُفَرَّقُ بَيْنَهُمَا، وَلَهَا الصَّدَاقُ، وَعَلَيْهَا الْعِدَّةُ - وَلَا يَصِحُّ ذَلِكَ

وَعَنْ عَلِيٍّ أَيْضًا - أَنَّهُ أَجَّلَهُ سَنَةً ثُمَّ فَرَّقَ بَيْنَهُمَا - وَلَا يَصِحُّ ذَلِكَ

وَصَحَّ عَنْ الْحَسَنِ الْبَصْرِيِّ، وَإِبْرَاهِيمَ النَّخَعِيِّ: يُؤَجَّلُ سَنَةً، وَلَهَا الصَّدَاقُ كَامِلًا

وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ يُؤَجَّلُ سَنَةً، فَإِنْ مَسَّهَا وَإِلَّا فَرَّقَ بَيْنَهُمَا.

وَرُوِيَ هَذَا عَنْ الْقُضَاةِ هَكَذَا جُمْلَةً، وَرَبِيعَةَ، وَشُرَيْحٍ الْقَاضِي، وَعَمْرِو بْنِ دِينَارٍ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَاللَّيْثِ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمْ

ثُمَّ اخْتَلَفُوا، فَقَالَ أَبُو حَنِيفَةَ: هَذَا إنْ صَدَقَهَا، وَأَمَّا إذَا خَالَفَهَا، فَإِنْ كَانَتْ بِكْرًا نَظَرَ إلَيْهَا النِّسَاءُ، وَإِنْ كَانَتْ ثَيِّبًا، فَالْقَوْلُ قَوْلُ الزَّوْجِ، وَلَا يُؤَجَّلُ لَهَا، وَلَا يُفَرَّقُ بَيْنَهُمَا.

وَقَالَ الْمَالِكِيُّونَ: الْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ إنْ ادَّعَى أَنَّهُ يَطَؤُهَا

وَقَالَ الشَّافِعِيُّ: الْقَوْلُ قَوْلُ الزَّوْجِ مَعَ يَمِينِهِ، فَإِنْ نَكَلَ حَلَفَتْ هِيَ، وَفُرِّقَ بَيْنَهُمَا، وَإِنْ قَالَ النِّسَاءُ: هِيَ بِكْرٌ حَلَفَتْ - مَعَ ذَلِكَ - وَفُرِّقَ بَيْنَهُمَا، فَإِنْ نَكَلَتْ حَلَفَ هُوَ وَبَقِيَتْ مَعَهُ

L32042 Then they differed; this group said, “If he consummated the marriage—even once—she has no right to annulment, nor is she obligated to observe a waiting period.”

ثُمَّ اخْتَلَفُوا: فَقَالَ هَؤُلَاءِ: إِنْ كَانَ قَدْ وَطِئَهَا - وَلَوْ مَرَّةً - فَلَا كَلَامَ لَهَا وَلَا يُؤَجَّلُ لَهَا

L32043 Abu Thawr said: If he turns away from her, he is granted a postponement of one year, then they are separated—even if he had previously consummated the marriage.

وَقَالَ أَبُو ثَوْرٍ: مَتَى عَنَّ عَنْهَا أُجِّلَ سَنَةً ثُمَّ فُرِّقَ بَيْنَهُمَا - وَإِنْ كَانَ قَدْ وَطِئَهَا قَبْلَ ذَلِكَ

L32044 It has been reported from a group sharing our view, as narrated through the chain of Ḥammād ibn Salamah from Yaḥyā ibn Saʿīd al-Anṣārī: A man married his daughter to his nephew who was impotent. ʿUmar said to him, “May Allah reward you and has saved your daughter for you.”

وَرُوِيَ عَنْ طَائِفَةٍ مِثْلُ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ رَجُلًا زَوَّجَ ابْنَتَهُ مِنْ ابْنِ أَخٍ لَهُ وَكَانَ عِنِّينًا، فَقَالَ لَهُ عُمَرُ: قَدْ آجَرَكَ اللَّهُ وَوَفَّرَ لَكَ ابْنَتَكَ

L32045 From the narration of Al-Ḥajjāj ibn Al-Minhāl: Shuʿbah narrated to us from Abū Isḥāq Al-Sabīʿī, who said: I heard Hāniʾ ibn Hāniʾ say: I saw a woman come to ʿAlī ibn Abī Ṭālib. She said, “Is there a ruling concerning a woman who is neither a widow nor married?” He asked, “Has her husband returned?” She replied, “No.” He said, “Do not ask about her except regarding where she stays.” ʿAlī then said to her, “Are you unable to do anything?” She answered, “No.” He asked, “Not even through sorcery?” She said, “No.” ʿAlī told her, “You are ruined and have ruined others. As for me, I will not separate you two. Fear Allah and remain patient.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا شُعْبَةُ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ، قَالَ: سَمِعْت هَانِئَ بْنَ هَانِئٍ قَالَ: رَأَيْت امْرَأَةً جَاءَتْ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَتْ: هَلْ لَك فِي امْرَأَةٍ لَيْسَتْ بِأَيِّمٍ وَلَا بِذَاتِ بَعْلٍ؟ قَالَ: وَجَاءَ زَوْجُهَا؟ فَقَالَ: لَا تَسْأَلْ عَنْهَا إلَّا مَبِيتَهَا؟ فَقَالَ لَهُ عَلِيٌّ: أَلَا تَسْتَطِيعُ أَنْ تَصْنَعَ شَيْئًا؟ قَالَ: لَا، قَالَ: وَلَا مِنْ السِّحْرِ قَالَ: لَا، قَالَ لَهُ عَلِيٌّ: هَلَكْتَ وَأَهْلَكْتَ أَمَّا أَنَا فَلَسْت مُفَرِّقًا بَيْنَكُمَا؟ اتَّقِي اللَّهَ وَاصْبِرِي

L32046–32048 And through the chain of Saʿīd ibn Manṣūr: Sufyān narrated to us, Abū Isḥāq narrated to us from Hāniʾ ibn Hāniʾ, who said: I was with Ali ibn Abi Talib when a woman approached him and said: “Would you consider a woman who is neither unmarried nor married?” He asked: “Where is your husband?” She replied: “He is among the people.” A stooped old man rose and said: “What is this woman saying?” Ali said: “Ask her if she has complaints about food or clothing.” When she answered “No,” Ali said: “Is there nothing?” She said: “No.” He asked: “Not even magic?” She said: “No.” He said: “Have you destroyed yourself and others?” She pleaded: “Separate me from him!” He replied: “Be patient, for had Allah willed, He would have tested you with something more severe than this.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: نا سُفْيَانُ نا أَبُو إِسْحَاقَ عَنْ هَانِئِ بْنِ هَانِئٍ قَالَ: كُنْت عِنْدَ عَلِيِّ بْنِ أَبِي طَالِبٍ، فَقَامَتْ إلَيْهِ امْرَأَةٌ فَقَالَتْ: لَهُ: هَلْ لَك إلَى امْرَأَةٍ وَلَا أَيِّمٍ وَلَا ذَاتِ بَعْلٍ؟ قَالَ: وَأَيْنَ زَوْجُك؟ فَقَالَتْ: هُوَ فِي الْقَوْمِ فَقَامَ شَيْخٌ يَجْنَحُ فَقَالَ: مَا تَقُولُ هَذِهِ الْمَرْأَةُ؟ قَالَ: سَلْهَا هَلْ تَنْقِمُ فِي مَطْعَمٍ أَوْ ثِيَابٍ؟ فَقَالَ عَلِيٌّ: فَمَا مِنْ شَيْءٍ؟ قَالَ: لَا، قَالَ: وَلَا مِنْ السِّحْرِ؟ قَالَ: لَا، قَالَ: هَلَكْتَ وَأَهْلَكْتَ؟ قَالَتْ فَرِّقْ بَيْنِي وَبَيْنَهُ؟ قَالَ اصْبِرِي، فَإِنَّ اللَّهَ تَعَالَى لَوْ شَاءَ لَابْتَلَاك بِأَشَدَّ مِنْ ذَلِكَ

L32049 From the chain of Abī ʿUbayd: ʿAbdullāh ibn al-Mubārak narrated to us from Maʿmar ibn Abī Najīḥ from Mujāhid, that he said regarding a man who

marries a woman then is afflicted by a disease: “She remains his wife. She is not to be taken away from him.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ مَعْمَرِ بْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: أَنَّهُ قَالَ فِي الرَّجُلِ يَتَزَوَّجُ الْمَرْأَةَ، ثُمَّ يَعْرِضُ لَهُ الدَّاءُ؟ قَالَ: هِيَ امْرَأَتُهُ لَا تُنْزَعُ مِنْهُ

L32050 It is narrated from Al-Hakam ibn ‘Utaybah that she is his wife; neither a waiting period is appointed for him nor for her, and they are not separated. This is the opinion of Abu Sulayman and our companions. Abu Muhammad said: Those who adhere to a view similar to ‘Uthman’s argument cited as proof that he commanded him to separate from her without being bound by a transmitted report - we narrated it through the transmission path of Abu Dawud: Ahmad ibn Salih reported to us, ‘Abd al-Razzaq reported to us, Ibn Jurayj reported to us, some descendants of Abu Rafi‘ - the freed slave of the Prophet (PBUH) - informed me from ‘Ikrimah, from Ibn ‘Abbas, who said: “Abd Yazid - Abu Rukanah - and his brothers divorced Umm Rukanah and her sisters. He then married a woman from Muzaynah. She came to the Prophet (PBUH) and said: ‘Does anything benefit me except what this single hair benefits another hair from her head? Separate me from him!’ Thereupon protective zeal seized the Messenger of Allah (PBUH),” and he mentioned the rest of the hadith.

وَرُوِيَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّهَا امْرَأَتُهُ، لَا تُؤَجَّلُ لَهُ، وَلَا يُؤَجَّلُ لَهَا، وَلَا يُفَرَّقُ بَيْنَهُمَا -، وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا؟ قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ ذَهَبَ إلَى مِثْلِ قَوْلِ عُثْمَانَ: أَنَّهُ أَمَرَهُ بِفِرَاقِهَا دُونَ تَوْقِيفٍ بِخَبَرٍ - رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ صَالِحٍ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي بَعْضُ بَنِي أَبِي رَافِعٍ مَوْلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ «طَلَّقَ عَبْدُ يَزِيدَ أَبُو رُكَانَةَ وَإِخْوَتِهِ أُمَّ رُكَانَةَ وَإِخْوَتِهِ، وَنَكَحَ امْرَأَةً مِنْ مُزَيْنَةَ، فَجَاءَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: مَا يُغْنِي عَنِّي إلَّا كَمَا تُغْنِي هَذِهِ الشَّعْرَةُ لِشَعْرَةٍ أَخَذَتْهَا مِنْ رَأْسِهَا؟ فَفَرِّقْ بَيْنِي وَبَيْنَهُ؟ فَأَخَذَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَمِيَّةٌ: فَذَكَرَ الْحَدِيثَ»

L32051–32053 It also states that the Prophet (peace and blessings be upon him) said to him: “Divorce her.” So he did. The Prophet then said: “Retain your wife Umm Rukānah during their waiting periods.” The man responded: “But I have divorced her three times, O Messenger of Allah!” He replied: “I am aware. Retain her,” and he recited: {O Prophet, when you divorce women, divorce them for their prescribed waiting period} [Surah aṭ-Ṭalāq 65:1]. They cited the action of ʿUthmān as evidence, saying: “I married him solely for conjugal relations, so if she is deprived of it, it is harm to her, and harm is prohibited.” Do they have any argument other than what we have mentioned?[2]

وَفِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «قَالَ لَهُ: طَلِّقْهَا؟ فَفَعَلَ، قَالَ: رَاجِعْ امْرَأَتَكَ أُمَّ رُكَانَةَ وَإِخْوَتِهِ؟ فَقَالَ: إنْ طَلَّقْتُهَا ثَلَاثًا يَا رَسُولَ اللَّهِ، قَالَ: قَدْ عَلِمْتُ، أَرْجِعْهَا وَتَلَا {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] » وَاحْتَجُّوا بِفِعْلِ عُثْمَانَ، وَقَالُوا: إنَّمَا تَزَوَّجته لِلْوَطْءِ، فَإِذَا عَدِمَتْهُ فَهُوَ ضَرَرٌ بِهَا، وَالضَّرَرُ مَمْنُوعٌ - لَا حُجَّةَ لَهُمْ غَيْرُ مَا ذَكَرْنَا؟

L32054 Abu Muhammad said: As for the narration, it is weak because it is attributed to an unnamed individual who is not known among the sons of Abu Rafi‘—thus it is unsound. Moreover, ‘Abd al-Yazid never possessed any certainty

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْخَبَرُ فَضَعِيفٌ، لِأَنَّهُ عَمَّنْ لَمْ يُسَمَّ، وَلَا عُرِفَ مِنْ بَنِي أَبِي رَافِعٍ - فَهُوَ لَا يَصِحُّ، وَأَيْضًا فَإِنَّ عَبْدَ يَزِيدَ لَمْ تَكُنْ لَهُ قَطُّ مُتَيَقَّنٌ، وَلَا إسْلَامٌ، وَإِنَّمَا الصُّحْبَةُ لِرُكَانَةَ ابْنِهِ فَسَقَطَ التَّمْوِيهُ بِهِ

[2] **Qur’an references (L32051):** Qur’an 65:1 (At-Talaq).

whatsoever nor Islam; rather, the companionship was with Rukanah, his son. Therefore, the obfuscation involving him is invalidated.

L32055 As for ʿUthmān's action? We have stated that it is not valid on his part, whereas contrary positions have been reported from other Companions – may Allah be pleased with them. Therefore, invoking some of them as proof holds no greater weight than invoking others among them.

L32056–32058 As for their statement: "We only contracted marriage with him for intercourse, so does his refusal harm her?" Yes, the one who refuses it [causes harm]— If he is capable of it—Allah, the Exalted—then it is obligatory to prevent him from that action. As for the one who is unable, Allah the Exalted has said: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286].[3]

L32059 Therefore, it is obligatory not to burden the sexually impotent man with what he is incapable of.

L32060 As for the opinion of Abū Ḥanīfah, Mālik, and al-Shāfiʿī regarding postponing [the matter] for a year then effecting judicial annulment between the spouses, it is an unsound opinion with no evidence supporting its validity—neither from the Quran, nor from an authentic or weak (daʿīf) Sunnah, nor from any reliably transmitted report of the Companions, nor from analogical reasoning (qiyās), nor from an opinion supported by rationally defensible grounds.

L32061 As for the narration attributed to ʿUmar, it is not valid because it is a Mursal narration - either transmitted through the path of Saʿīd ibn al-Musayyib from ʿUmar - and Saʿīd did not hear anything from ʿUmar except his [Saʿīd's] announcement of the death of al-Nuʿmān ibn Muqrin.

L32062 From Al-Sha'bi and Al-Hasan, from Umar — but Al-Sha'bi was not born except after Umar's death, and Al-Hasan was not born except during the two remaining years of Umar's life.

L32063 From ʿAbd al-Karīm and ʿAṭāʾ [narrating] from ʿUmar—though ʿAṭāʾ was not

[3] **Qur'an references (L32056):** Qur'an 2:286 (Al-Baqarah).

وَأَمَّا فِعْلُ عُثْمَانَ؟ فَقَدْ قُلْنَا: إنَّهُ لَا يَصِحُّ عَنْهُ، وَقَدْ جَاءَ عَنْ غَيْرِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافُ ذَلِكَ، فَلَيْسَ الِاحْتِجَاجُ بِبَعْضِهِمْ أَوْلَى مِنْ الِاحْتِجَاجِ بِآخَرَ مِنْهُمْ

وَأَمَّا قَوْلُهُمْ: إنَّمَا نَكَحْته لِلْوَطْءِ فَعَدَمُهُ ضَرَرٌ عَلَيْهَا؟ فَنَعَمْ، إنَّ الْمُمْتَنِعَ مِنْ ذَلِكَ - وَهُوَ قَادِرٌ عَلَيْهِ - وَجَلَّ فَوَاجِبٌ مَنْعُهُ مِنْ ذَلِكَ، وَأَمَّا الْعَاجِزُ - فَقَدْ قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦]

فَوَجَبَ أَنْ لَا يُكَلَّفَ الْعِنِّينُ مَا لَا يَقْدِرُ عَلَيْهِ

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، فِي تَأْجِيلِ السَّنَةِ، ثُمَّ التَّفْرِيقُ بَيْنَهُمَا، فَقَوْلٌ فَاسِدٌ، لَا دَلِيلَ عَلَى صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا مِنْ شَيْءٍ يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ

أَمَّا الرِّوَايَةُ عَنْ عُمَرَ فَلَا تَصِحُّ، لِأَنَّهَا مُرْسَلَةٌ إمَّا مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ، وَلَا سَمَاعَ لَهُ مِنْ عُمَرَ إلَّا نَعْيُهُ النُّعْمَانَ بْنَ مُقْرِنٍ

وَعَنْ الشَّعْبِيِّ، وَالْحَسَنِ عَنْ عُمَرَ - وَلَمْ يُولَدْ الشَّعْبِيُّ إلَّا بَعْدَ مَوْتِ عُمَرَ، وَلَا وُلِدَ الْحَسَنُ إلَّا لِعَامَيْنِ بَقِيَا مِنْ حَيَاةِ عُمَرَ

وَعَنْ عَبْدِ الْكَرِيمِ، وَعَطَاءٍ عَنْ عُمَرَ - وَلَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ - وَعَنْ يَحْيَى بْنِ سَعِيدٍ - وَلَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ بِنَحْوِ خَمْسٍ وَعِشْرِينَ سَنَةً

born until after ʿUmar's death—and from Yaḥyā ibn Saʿīd—who was not born until approximately twenty-five years after ʿUmar's death.

وَعَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيِّ، وَهُوَ مَجْهُولٌ

L32064 From Yahya ibn Abd al-Rahman al-Ansari, an unknown narrator (majhūl).

وَقَدْ رُوِّينَا عَنْ عُمَرَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا عَبْدُ اللَّهِ بْنُ عَوْنٍ عَنِ ابْنِ سِيرِينَ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ بَعَثَ رَجُلًا عَلَى السِّقَايَةِ فَتَزَوَّجَ امْرَأَةً - وَكَانَ عَقِيمًا - فَقَالَ لَهُ عُمَرُ: أَعْلَمْتَهَا أَنَّك عَقِيمٌ؟ قَالَ: لَا، قَالَ: فَانْطَلِقْ فَأَعْلِمْهَا ثُمَّ خَيِّرْهَا

L32065 It has been narrated to us from ʿUmar via the transmission route of Saʿīd ibn Manṣūr - Hushaym narrated to us from ʿAbdullāh ibn ʿAwn, from Ibn Sīrīn, from Anas ibn Mālik: ʿUmar ibn al-Khaṭṭāb appointed a man in charge of the water supply. He married a woman (while being infertile), so ʿUmar said to him: "Did you inform her that you were infertile?" He replied: "No." He said: "Go and inform her, then give her the option."

وَرُوِيَ أَيْضًا أَنَّهُ - رَضِيَ اللَّهُ عَنْهُ - أَجَّلَ مَجْنُونًا سَنَةً، فَإِنْ أَفَاقَ وَإِلَّا فَرَّقَ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ - وَهُمْ يُخَالِفُونَ عُمَرَ فِي ذَلِكَ، فَمِنْ أَيْنَ وَجَبَ تَقْلِيدُهُ فِي الْعِنِّينِ دُونَ الْعَقِيمِ وَالْمَجْنُونِ؟ وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ مَسْعُودٍ فَإِنَّمَا جَاءَتْ مِنْ طَرِيقِ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ - وَلَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ ابْنِ مَسْعُودٍ أَوْ مِنْ طَرِيقِ حُصَيْنِ بْنِ قَبِيصَةَ وَهُوَ مَجْهُولٌ

L32066 It was also narrated that ʿUmar—may Allah be pleased with him—delayed the ruling on a mentally incompetent person's case for a year: if he regained sanity, the marriage continued; otherwise, ʿUmar would annul the marriage between him and his wife. Scholars disagreed with ʿUmar on this ruling, so on what basis is it obligatory to follow his ruling regarding the impotent man but not the infertile or mentally incompetent? As for the narration from Ibn Masʿūd, it was only transmitted via ʿAbd al-Karīm al-Jazarī—who was not born until after Ibn Masʿūd's death—or via Ḥuṣayn ibn Qabīṣa, who is an unknown narrator.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَمِنْ طَرِيقِ يَزِيدَ بْنِ عِيَاضِ بْنِ جعدبة، وَهُوَ مَذْكُورٌ بِالْكَذِبِ وَوَضْعِ الْحَدِيثِ وَمِنْ طَرِيقِ الْحَسَنِ بْنِ عُمَارَةَ وَهُوَ مَتْرُوكُ الْحَدِيثِ جُمْلَةً هَالِكٌ

L32067–32069 As for the narration from ʿAlī, it is transmitted through Yazīd ibn ʿIyāḍ ibn Juʿdaba, who is accused of lying and known to have fabricated ḥadīths. And through the chain of al-Ḥasan ibn ʿUmārah, who is entirely abandoned in ḥadīth transmission, utterly rejected.

وَمِنْ طَرِيقِ الضَّحَّاكِ بْنِ مُزَاحِمٍ وَهُوَ لَا شَيْءَ

L32070 And through the chain of Al-Dahhak ibn Muzahim, and he is weak.

وَأَمَّا الرِّوَايَةُ عَنِ الصَّحَابَةِ جُمْلَةً فَمِنْ طَرِيقِ شَرِيكٍ - وَهُوَ مُدَلِّسٌ - عَنْ جَابِرٍ الْجُعْفِيِّ - وَهُوَ كَذَّابٌ مَشْهُورٌ بِذَلِكَ، فَاسِدُ الدِّينِ، يَقُولُ بِالرَّجْعَةِ

L32071 As for the narration collectively attributed to the Companions, it is transmitted through the chain of Sharīk – a narrator guilty of tadlīs (concealing defects in transmission) – from Jābir al-Juʿfī, a notorious liar, religiously corrupt, and an advocate of the doctrine of rajʿah.

L32072 As for the narration from al-Mughīrah ibn Shuʿbah, it is transmitted through

the chain of Abū Ṭalq al-ʿĀʾidī and Abū al-Nuʿmān—both of whom are unverified narrators, their status unknown to anyone.

وَأَمَّا الرِّوَايَةُ عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ فَمِنْ طَرِيقِ أَبِي طَلْقٍ الْعَائِدِيِّ، وَأَبِي النُّعْمَانِ - وَهُمَا مَجْهُولَانِ لَا يَدْرِيهِمَا أَحَدٌ

L32073 From Al-Ḥajjāj ibn Arṭāh—who is rejected and weak—from a man whose name is unknown and whose identity is not recognized—from Ḥanẓalah ibn Nuʿaym, who is unknown—thus all that they relied upon has fallen away.

وَعَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ سَاقِطٌ وَجِلٌ - عَنْ رَجُلٍ - لَا يُعْرَفُ اسْمُهُ وَلَا يَدْرِي مَنْ هُوَ - عَنْ حَنْظَلَةَ بْنِ نُعَيْمٍ - وَهُوَ مَجْهُولٌ فَسَقَطَ كُلُّ مَا تَعَلَّقُوا بِهِ

L32074 Then, if all of that were valid, it would have been narrated from Uthman, Ali, Samurah, and Muawiyah holding contrary opinions to that; and none of them is more entitled to have their view adopted than the others.

ثُمَّ لَوْ صَحَّ كُلُّ ذَلِكَ لَكَانَ قَدْ رُوِيَ عَنْ عُثْمَانَ، وَعَلِيٍّ، وَسَمُرَةَ وَمُعَاوِيَةَ: خِلَافُ ذَلِكَ، وَلَيْسَ بَعْضُهُمْ أَوْلَى بِأَخْذِ قَوْلِهِ مِنْ بَعْضٍ

L32075 Indeed, in the narration from ʿUmar and Ibn Masʿūd, it is stated that she must observe the ʿiddah, and he is more entitled to her as long as she remains in her ʿiddah, and they do not hold that view.

وَأَيْضًا - فَإِنَّ فِي الرِّوَايَةِ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ: أَنَّ عَلَيْهَا الْعِدَّةَ وَهُوَ أَمْلَكُ بِهَا مَا دَامَتْ فِي عِدَّتِهَا وَهُمْ لَا يَقُولُونَ بِذَلِكَ

L32076 Moreover, none of the aforementioned scholars held the view that if he had intercourse with her once, she would have no valid claim nor any textually mandated prohibition. It is established that they contradict all the Companions—may Allah be pleased with them—from whom any ruling on this matter is reported.

وَأَيْضًا - فَلَيْسَ عَنْ أَحَدٍ مِنْ الْمَذْكُورِينَ: أَنَّهُ إنْ وَطِئَهَا مَرَّةً وَاحِدَةً، فَلَا كَلَامَ لَهَا وَلَا تَوْقِيفَ - وَصَحَّ أَنَّهُمْ مُخَالِفُونَ لِكُلِّ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ كَلِمَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -

L32077 They have no grounds to claim harm due to the absence of sexual intercourse, for if they oblige her to endure abstinence for a year, there is no distinction between abstaining for one year and two years, and the same applies to any longer duration.

وَلَا مُتَعَلَّقَ لَهُمْ بِضَرَرٍ فَقْدِ الْجِمَاعِ، لِأَنَّهَا إذَا كَلَّفُوهَا صَبْرَ سَنَةٍ، فَلَا فَرْقَ بَيْنَ صَبْرِ سَنَةٍ وَبَيْنَ صَبْرِ سَنَتَيْنِ، وَهَكَذَا مَا زَادَ

L32078 The most extreme of these assertions is their claim: "If he has intercourse with her even once in time, she has no grounds to claim." The harm in this ruling is graver than in the case of a woman he has never had intercourse with. Whoever asserts otherwise has openly defied and stubbornly resisted legal necessity and sensory evidence.

ثُمَّ أَشَدُّ ذَلِكَ قَوْلُهُمْ: إنْ وَطِئَهَا مَرَّةً فِي الدَّهْرِ فَلَا كَلَامَ لَهَا - وَالضَّرَرُ فِي ذَلِكَ أَشَدُّ مِنْهُ فِي الَّتِي لَمْ يَطَأْهَا قَطُّ، مَنْ قَالَ غَيْرَ هَذَا فَقَدْ جَاهَرَ وَكَابَرَ الضَّرُورَةَ وَالْحِسَّ

L32079–32081 Abu Muhammad said: The proof for the soundness of our view is that every marriage validated by the word of Allah (the Mighty and Sublime) and the Sunnah of His Messenger (may Allah's peace and blessings be upon him)

قَالَ أَبُو مُحَمَّد: وَبُرْهَانُ صِحَّةِ قَوْلِنَا -: هُوَ أَنَّ كُلَّ نِكَاحٍ صَحَّ بِكَلِمَةِ اللَّهِ عَزَّ وَجَلَّ وَسُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ حَرَّمَ اللَّهُ تَعَالَى بَشَرَتَهَا وَفَرْجَهَا عَلَى كُلِّ مَنْ سِوَاهُ،

has rendered her skin and private parts forbidden by Allah the Exalted to all except her husband. Whoever severs their bond without Quran or an established Sunnah has entered into the description of those whom Allah the Exalted censured in His words: "They learn from them that by which they separate a man from his wife" [Al-Baqarah:102]. We seek refuge in Allah from this. It has been authentically established from the Messenger of Allah (peace and blessings of Allah be upon him) a narration similar to our statement, as transmitted to us through Muslim's chain: Abu al-Tahir and Harmalah ibn Yahya (the wording belongs to him) reported: I am Ibn Wahb; Yunus—that is, Ibn Yazid—informed me from al-Zuhri, from Urwah ibn al-Zubayr: "Aisha, the Prophet's wife (peace and blessings of Allah be upon him), informed him that Rifa'ah al-Qurazi divorced his wife, who then married 'Abd al-Rahman ibn al-Zubayr afterward. She came to the Prophet (peace and blessings of Allah be upon him) and said: 'O Messenger of Allah, she was married to Rifa'ah, who divorced her with the last of three divorces. Then she married 'Abd al-Rahman ibn al-Zubayr, but by Allah, he has nothing except something like this hem'—grasping a hem from her garment. The Messenger of Allah (peace and blessings of Allah be upon him) smiled laughingly and said: 'Do you perhaps wish to return to Rifa'ah? No, not until you taste his honey and he tastes yours.'" He mentioned the hadith. Abu Muhammad said: This narration indicates that her husband had not consummated the marriage, that his member resembled the hem—unable to extend toward her—and that she complained to the Messenger of Allah (peace and blessings of Allah be upon him) seeking separation. Yet he neither annulled the marriage, prescribed a waiting period, nor dissolved their union. In this lies sufficient clarity for those who understand.[45]

فَمَنْ فَرَّقَ بَيْنَهُمَا بِغَيْرِ قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ فَقَدْ دَخَلَ فِي صِفَةِ الَّذِينَ ذَمَّهُمْ اللَّهُ تَعَالَى بِقَوْلِهِ {فَيَتَعَلَّمُونَ مِنْهُمَا مَا يُفَرِّقُونَ بِهِ بَيْنَ الْمَرْءِ وَزَوْجِهِ} [البقرة: ١٠٢] وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى - وَاللَّفْظُ لَهُ - قَالَ: أَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنْ الزُّهْرِيِّ نِي عُرْوَةُ بْنُ الزُّبَيْرِ: «أَنَّ عَائِشَةَ زَوْجَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَتْهُ: أَنَّ رِفَاعَةَ الْقُرَظِيَّ طَلَّقَ امْرَأَتَهُ فَتَزَوَّجَتْ بَعْدَهُ عَبْدَ الرَّحْمَنِ بْنَ الزُّبَيْرِ، فَجَاءَتْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ، إنَّهَا كَانَتْ تَحْتَ رِفَاعَةَ فَطَلَّقَهَا آخِرَ ثَلَاثِ تَطْلِيقَاتٍ، فَتَزَوَّجَتْ بَعْدَهُ عَبْدَ الرَّحْمَنِ بْنَ الزُّبَيْرِ، وَإِنَّهُ وَاَللَّهِ مَا مَعَهُ إلَّا مِثْلُ هَذِهِ الْهُدْبَةِ - وَأَخَذَتْ بِهُدْبَةٍ مِنْ جِلْبَابِهَا - فَتَبَسَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ضَاحِكًا، وَقَالَ: لَعَلَّك تُرِيدِينَ أَنْ تَرْجِعِي إلَى رِفَاعَةَ؟ لَا حَتَّى تَذُوقِي عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتَك» وَذَكَرَ الْحَدِيثَ قَالَ أَبُو مُحَمَّد: فَهَذِهِ تَذْكُرُ: أَنَّ زَوْجَهَا لَمْ يَطَأْهَا، وَأَنَّ إحْلِيلَهُ كَالْهُدْبَةِ، لَا يَنْتَشِرُ إلَيْهَا وَتَشْكُو ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتُرِيدُ مُفَارَقَتَهُ؟ فَلَمْ يَشْكُهَا، وَلَا أَجَّلَ لَهَا شَيْئًا، وَلَا فَرَّقَ بَيْنَهُمَا - وَفِي هَذَا كِفَايَةٌ لِمَنْ عَقَلَ

L32082–32084 Some dissenters have objected to this authentic report with weak traditions—one of them transmitted through Ibn Nāfiʿ from Mālik from al-Mustawrid ibn Rifāʿah from al-Zubayr ibn ʿAbd al-Raḥmān ibn al-Zubayr: "Rifāʿah ibn Samawʾal divorced his wife thrice during the era of the Messenger of Allah (peace and blessings be upon him). ʿAbd al-Raḥmān ibn

فَاعْتَرَضَ بَعْضُ الْمُخَالِفِينَ فِي هَذَا الْأَثَرِ الصَّحِيحِ بِآثَارٍ وَاهِيَةٍ -: أَحَدِهَا - مِنْ طَرِيقِ ابْنِ نَافِعٍ عَنْ مَالِكٍ عَنْ الْمُسْتَوْرِدِ بْنِ رِفَاعَةَ عَنْ الزُّبَيْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الزُّبَيْرِ «أَنَّ رِفَاعَةَ بْنَ سَمَوْأَلَ طَلَّقَ امْرَأَتَهُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَلَاثًا فَنَكَحَهَا عَبْدُ الرَّحْمَنِ بْنُ الزُّبَيْرِ فَاعْتَرَضَ عَنْهَا فَلَمْ يَسْتَطِعْ أَنْ يَغْشَاهَا، فَفَارَقَهَا، فَأَرَادَ

[4]**Hadith references (L32079):** Sahih al-Bukhari 6084.
[5]**Qur'an references (L32079):** Qur'an 2:102 (Al-Baqarah).

al-Zubayr then married her, but he faced an obstacle with her and was unable to consummate the marriage, so he divorced her. He then intended to [...] [text cut off]." Rifa'ah sought to remarry her—he was her first husband—so the Prophet (peace be upon him) said, "It is not lawful for you until you consummate the marriage with him."

رِفَاعَةُ أَنْ يَنْكِحَهَا - وَهُوَ زَوْجُهَا الْأَوَّلُ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَحِلُّ لَكِ حَتَّى تَذُوقِي عُسَيْلَتَهُ؟»

L32085 Abū Muḥammad said: This is a disconnected chain containing no valid proof. It is narrated from Al-Mustawrid ibn Rifāʿah, from Al-Zubayr ibn ʿAbd al-Raḥmān—both being unknown narrators—from Mālik, constituting an unknown report. Even if authentic, it would not challenge the report we cite as evidence, for we do not deny that a certain ʿAbd al-Raḥmān could divorce her voluntarily. Thus, their obfuscation through it is entirely invalid.

قَالَ أَبُو مُحَمَّد: وَهَذَا مُنْقَطِعٌ لَا حُجَّةَ فِيهِ، ثُمَّ عَنْ الْمُسْتَوْرِدِ بْنِ رِفَاعَةَ عَنْ الزُّبَيْرِ بْنِ عَبْدِ الرَّحْمَنِ - وَهُمَا مَجْهُولَانِ - وَهُوَ خَبَرٌ غَيْرُ مَعْرُوفٍ - عَنْ مَالِكٍ، ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ اعْتِرَاضٌ عَلَى الْخَبَرِ الَّذِي احْتَجَجْنَا بِهِ، لِأَنَّنَا لَا نُنْكِرُ أَنْ يُطَلِّقَهَا عَبْدُ الرَّحْمَنِ مُخْتَارًا، فَبَطَلَ تَمْوِيهُهُمْ بِهِ جُمْلَةً

L32086 The second report—narrated by Ibn Qāniʿ, the narrator of every calamity—from Yahyā ibn Muḥammad al-Bakhtarī, whose identity is unknown, from Hudbah ibn Khālid from Wuhaib from Hishām ibn ʿUrwah from his father from ʿĀ'ishah: "The wife of Rifāʿah came to the Prophet, peace and blessings be upon him," and he mentioned the hadith up to the Prophet's statement: "You may not become lawful for him until he tastes a drop of your honey and you taste a drop of his honey." She said: "O Messenger of God, he has already come to me once as a gift."

وَالْخَبَرُ الثَّانِي - رَوَاهُ ابْنُ قَانِعٍ - رَاوِي كُلِّ بَلِيَّةٍ - عَنْ يَحْيَى بْنِ مُحَمَّدٍ الْبَخْتَرِيِّ - الَّذِي لَا يُعْرَفُ مَنْ هُوَ - عَنْ هُدْبَةَ بْنِ خَالِدٍ عَنْ وُهَيْبٍ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ " أَنَّ امْرَأَةَ رِفَاعَةَ جَاءَتْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَذَكَرَ الْحَدِيثَ، إلَى قَوْلِهِ «فَلَا تَحِلِّينَ لَهُ حَتَّى يَذُوقَ عُسَيْلَتَكِ وَتَذُوقِي عُسَيْلَتَهُ فَقَالَتْ: يَا رَسُولَ اللَّهِ إنَّهُ قَدْ جَاءَنِي هِبَةً وَاحِدَةً»

L32087 We have also narrated it through the chain of Ibn Wahb: ʿAbd al-Raḥmān ibn Abī al-Zinād narrated to me from Hishām ibn ʿUrwah from his father from ʿĀ'ishah regarding the ḥadīth of the wife of Rifāʿah al-Quraẓī. She mentioned therein that she said: "For indeed, O Messenger of Allah, he came to me as a grant?"

وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ بِحَدِيثِ امْرَأَةِ رِفَاعَةَ الْقُرَظِيِّ، فَذَكَرَتْ فِيهِ أَنَّهَا قَالَتْ: فَإِنَّهُ يَا رَسُولَ اللَّهِ قَدْ جَاءَنِي هِبَةً "؟

L32088 Abu Muhammad said: Abd al-Rahman ibn Abi al-Zinad is considered profoundly unreliable. Even if all of this were authentic, it would still provide them no valid legal ground, because neither of these two discarded narrations contains any statement that the Messenger of Allah—peace and blessings be upon him—said he waived the postponement or judicial separation due to that gift, nor that Aisha said such a thing.

قَالَ أَبُو مُحَمَّد: عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ فِي غَايَةِ الضَّعْفِ، ثُمَّ لَوْ صَحَّ كُلُّ هَذَا لَكَانَ لَا مُتَعَلَّقَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ هَذَيْنِ الْخَبَرَيْنِ السَّاقِطَيْنِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: إنَّهُ إنَّمَا أَسْقَطَ التَّأْجِيلَ، أَوْ التَّفْرِيقَ مِنْ أَجْلِ تِلْكَ الْهِبَةِ، وَلَا أَنَّ عَائِشَةَ قَالَتْ ذَلِكَ "

L32089 Thus, it was confirmed that she was a lying female soothsayer against the Messenger of Allah—may Allah bless him and grant him peace.

فَصَحَّ أَنَّهَا كَهَانَةٌ كَاذِبَةٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L32090–32092 The term "hibah" (gift) is authentically mentioned in a hadith we have narrated through the chain narrated by Al-Bukhari: from Muḥammad, from Abū Muʿāwiyah—the blind one—from Hishām ibn ʿUrwah, from his father, from ʿĀ'ishah, the Mother of the Believers, who said: "A man divorced his wife. She married another husband who later divorced her. She had received from him something as insignificant as a trifle, which did not suffice for anything she desired. She had hardly stayed with him before he divorced her. She came to the Prophet—peace and blessings of Allah be upon him—and said: 'O Messenger of Allah, my husband...'" He divorced me, and I married another husband besides him. He consummated the marriage with me, yet he possessed nothing but a mere fringe. He only approached me once as a gift and failed to reach anything within me. Am I now lawful for my first husband? The Messenger of Allah—peace and blessings of Allah be upon him—said, "You are not lawful for your first husband until the other husband tastes your intimate sweetness and you taste his intimate sweetness." Abu Muhammad said: We do not prevent an impotent man from divorcing her if he wishes. We categorically forbid and condemn separating them against their will or postponing separation for a year. This is the falsehood that has never been authentically reported from any of the Companions—may Allah be pleased with them—nor has it ever been found in the Quran, the Sunnah, a corrupt narration, nor is it necessitated by analogy or sound reasoning.

وَإِنَّمَا جَاءَ لَفْظُ الْهِبَةِ صَحِيحًا فِي حَدِيثٍ -: رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدٌ نا أَبُو مُعَاوِيَةَ - هُوَ الضَّرِيرُ - نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «طَلَّقَ رَجُلٌ امْرَأَتَهُ فَتَزَوَّجَتْ زَوْجًا غَيْرَهُ فَطَلَّقَهَا، وَكَانَتْ مَعَهُ مِثْلَ الْهُدْبَةِ، فَلَمْ تَصِلْ مِنْهُ إلَى شَيْءٍ تُرِيدُهُ، فَلَمْ تَلْبَثْ أَنْ طَلَّقَهَا، فَأَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ إنَّ زَوْجِي طَلَّقَنِي، وَإِنِّي تَزَوَّجْت زَوْجًا غَيْرَهُ فَدَخَلَ بِي وَلَمْ يَكُنْ مَعَهُ إلَّا مِثْلُ الْهُدْبَةِ، فَلَمْ يَقْرَبْنِي إلَّا هِبَةً وَاحِدَةً، وَلَمْ يَصِلْ مِنِّي إلَى شَيْءٍ، أَفَأَحِلُّ لِزَوْجِي الْأَوَّلِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَحِلِّينَ لِزَوْجِك الْأَوَّلِ حَتَّى يَذُوقَ الْآخَرُ عُسَيْلَتَك وَتَذُوقِي عُسَيْلَتَهُ» ؟ قَالَ أَبُو مُحَمَّدٍ: وَنَحْنُ لَا نَمْنَعُ أَنْ يُطَلِّقَهَا الْعِنِّينُ إنْ شَاءَ، إنَّمَا نَمْنَعُ وَنُنْكِرُ أَنْ يُفَرَّقَ بَيْنَهُمَا عَلَى كُرْهٍ، أَوْ أَنْ يُؤَجَّلَ عَامًا، ثُمَّ يُفَرَّقَ بَيْنَهُمَا، فَهَذَا هُوَ الْبَاطِلُ الَّذِي لَمْ يَصِحَّ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، لَا، وَلَا جَاءَ قَطُّ فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا فِي رِوَايَةٍ فَاسِدَةٍ، وَلَا أَوْجَبَهُ قِيَاسٌ، وَلَا مَعْقُولٌ

L32093 If they say: "Allah Almighty has commanded in ilāʾ a suspension period, then enforcement of either resumption or divorce," we reply: "Yes, four months—but where is the Sunnah, and where is the court-ordered separation? Moreover, you yourselves are the foremost in refusing to apply analogy to the mu'lī for one who intentionally withholds intercourse with his wife without swearing ilāʾ by oath, for you neither impose a suspension period on him nor grant him a deferral."

فَإِنْ قَالُوا: قَدْ أَمَرَ اللَّهُ عَزَّ وَجَلَّ فِي الْإِيلَاءِ بِالتَّوْقِيفِ ثُمَّ الْإِجْبَارِ عَلَى الْفَيْئَةِ أَوْ الطَّلَاقِ؟ قُلْنَا: نَعَمْ، أَرْبَعَةَ أَشْهُرٍ، فَأَيْنَ السُّنَّةُ وَأَيْنَ التَّفْرِيقُ؟ ثُمَّ أَنْتُمْ أَوَّلُ مَنْ لَا يَقِيسُ عَلَى الْمُؤْلِي مَنْ امْتَنَعَ مِنْ وَطْءِ امْرَأَتِهِ عَامِدًا مِنْ غَيْرِ إيلَاءٍ بِيَمِينٍ فَلَا تُوقِفُونَهُ، وَلَا تُؤَجِّلُونَهُ

L32094 The corruption of all they clung to became evident, as did the corruption of their entire statement. We have mentioned those from whom narrations have

been narrated among the Companions—may Allah be pleased with them—and the Successors. And all praise is due to Allah, the Lord of the worlds.[6]

فَظَهَرَ فَسَادُ كُلِّ مَا تَعَلَّقُوا بِهِ، وَفَسَادُ قَوْلِهِمْ جُمْلَةً، وَقَدْ ذَكَرْنَا مَنْ رُوِيَ عَنْهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالتَّابِعِينَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

L32095 ## The Rulings on the Division of Wives

[أَحْكَامُ قَسْمِ الزَّوْجَاتِ]

L32096 ## A legal issue: A man married a virgin and has another wife.

[مَسْأَلَةٌ تَزَوَّجَ الرَّجُلُ بِكْرًا وَلَهُ زَوْجَةٌ أُخْرَى]

L32097 The rulings on apportioning time between wives 1896 - Issue: If a man marries a virgin—whether a free woman, a Muslim slave woman, or a woman from the People of the Book under enslavement—while having another wife who is free or a slave, he must allocate seven nights to reside with the virgin at her dwelling. Thereafter he must divide his time among his wives and return to the division [of nights], without counting those seven nights against her share or any part of them.

أَحْكَامُ قَسْمِ الزَّوْجَاتِ ١٨٩٦ - مَسْأَلَةٌ: وَإِذَا تَزَوَّجَ الرَّجُلُ بِكْرًا حُرَّةً أَوْ أَمَةً مُسْلِمَةً أَوْ كِتَابِيَّةً، وَلَهُ زَوْجَةٌ أُخْرَى حُرَّةٌ أَوْ أَمَةٌ فَعَلَيْهِ أَنْ يَخُصَّ الْبِكْرَ بِمَبِيتِ سَبْعِ لَيَالٍ عِنْدَهَا، ثُمَّ يُقَسِّمَ فَيَعُودَ وَلَا يُحَاسِبَهَا بِتِلْكَ السَّبْعِ، وَلَا بِشَيْءٍ مِنْهَا

L32098–32100 If he marries a previously married woman (free or slave) while already having another wife (who may be free or slave, Muslim or from the People of the Book)—he is permitted. that he allocates three nights specifically to her, then divides his time and ensures fairness without counting those three nights against her. If he stays beyond those three nights, he must stay with another wife exactly as he stayed with her, in strictly equal measure, and the ruling granting her preference thereby ceases to apply.

فَإِنْ تَزَوَّجَ ثَيِّبًا حُرَّةً أَوْ أَمَةً وَعِنْدَهُ زَوْجَةٌ أُخْرَى حُرَّةٌ أَوْ أَمَةٌ - مُسْلِمَةٌ أَوْ كِتَابِيَّةٌ - فَلَهُ أَنْ يَخُصَّهَا بِمَبِيتِ ثَلَاثِ لَيَالٍ، ثُمَّ يُقَسِّمُ وَيَعْدِلُ، وَلَا يُحَاسِبُهَا بِتِلْكَ الثَّلَاثِ، فَإِنْ زَادَ عَلَى الثَّلَاثِ أَقَامَ عِنْدَ غَيْرِهَا كَمَا أَقَامَ عِنْدَهَا سَوَاءً سَوَاءً، وَيَسْقُطُ حُكْمُهَا فِي التَّفْضِيلِ

L32101 It is impermissible for him in any of the cases we have mentioned—whether he has another wife or not—to neglect attending congregational prayers in the mosque or the Friday prayer. If he does so, it is a sin and a transgression against him, as with all people, and there is no distinction.

وَلَا يَحِلُّ لَهُ فِي كُلِّ مَا ذَكَرْنَا - كَانَتْ عِنْدَهُ زَوْجَةٌ غَيْرُهَا أَوْ لَمْ يَكُنْ - أَنْ يَتَخَلَّفَ عَنْ صَلَاةِ الْجَمَاعَةِ فِي الْمَسْجِدِ، وَلَا عَنْ صَلَاةِ الْجُمُعَةِ، فَإِنْ فَعَلَ فَهِيَ مَعْصِيَةٌ وَجُرْحَةٌ فِيهِ، كَسَائِرِ النَّاسِ وَلَا فَرْقَ

L32102 It is impermissible for him to specifically designate one of his wives for traveling with him except through the drawing of lots.

وَلَا يَجُوزُ لَهُ أَنْ يَخُصَّ امْرَأَةً مِنْ نِسَائِهِ بِأَنْ تُسَافِرَ مَعَهُ إِلَّا بِقُرْعَةٍ

L32103 The proof of that is what we have reported through the chain of transmission

[6] **Qur'an references (L32094):** Qur'an 37:182 (As-Saffat).

of al-Bazzār: narrated by Muḥammad ibn Maʿmar, narrated by Yaʿlā ibn ʿUbayd, narrated by Muḥammad ibn Isḥāq, from Ayyūb al-Sakhtiyānī, from Abū Qilābah, from Anas ibn Mālik, that "the Prophet (peace and blessings be upon him) assigned seven days for the virgin and three days for the previously married woman."

L32104 I, Ahmad ibn Qāsim, said: Qāsim ibn Muḥammad ibn Qāsim informed me from my grandfather Qāsim ibn Aṣbagh, who narrated from Abū Qilābah—he is ʿAbd al-Malik ibn Yazīd al-Raqāshī—who narrated from Abū ʿĀṣim—he is al-Ḍaḥḥāk ibn Makhlad—who narrated from Sufyān al-Thawrī, from Ayyūb al-Sikhtiyānī and Khālid al-Ḥadhdhāʾ, both of whom narrated from Abū Qilābah—he is ʿAbdullāh ibn Zayd al-Jarmī—from Anas ibn Mālik, that the Messenger of Allah—peace and blessings be upon him—said: "When a man marries a virgin, he should stay with her seven days, and when he marries a previously married woman, he should stay with her three days."

L32105 We have narrated that Anas said: "It is the Sunnah"—and all of that is unquestionably valid; what we have mentioned provides a clear clarification of its chain of transmission.

L32106 And through the chain of Muslim: Abdullah ibn Maslamah—Al-Qa'nabi—narrated to us, from Sulayman—**meaning** Ibn Bilal—from Abd al-Rahman ibn Humayd, from Abd al-Malik ibn Abi Bakr ibn Abd al-Rahman ibn al-Harith ibn Hisham: "When the Messenger of Allah—peace be upon him—married Umm Salamah and came to her, and when he wished to depart, she seized his garment? The Messenger of Allah—peace be upon him—said: 'If **I** will, I shall extend [the period] for you and settle it with you **for that**—for a virgin bride seven days are due, and for a **previously married woman** three days.'"

L32107–32109 And through the chain of Mālik from ʿAbdullāh ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm from… Abd al-Malik ibn Abī Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith reported from his father that when the Messenger of Allah—peace and blessings be upon him—married Umm Salamah and she stayed with him overnight, he said to her: "There is no disgrace upon you in the eyes of your family. If you wish, I will spend seven nights with you, and

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ نا مُحَمَّدُ بْنُ مَعْمَرٍ نا يَعْلَى بْنُ عُبَيْدٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لِلْبِكْرِ سَبْعًا وَلِلثَّيِّبِ ثَلَاثًا»

وَنَا أَحْمَدُ بْنُ قَاسِمٍ قَالَ: أَخْبَرَنِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَبُو قِلَابَةَ - هُوَ عَبْدُ الْمَلِكِ بْنُ يَزِيدَ الرَّقَاشِيُّ - نا أَبُو عَاصِمٍ - هُوَ الضَّحَّاكُ بْنُ مَخْلَدٍ - نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَخَالِدٍ الْحَذَّاءِ كِلَاهُمَا عَنْ أَبِي قِلَابَةَ - هُوَ عَبْدُ اللَّهِ بْنُ زَيْدٍ الْجَرْمِيُّ - عَنْ أَنَسِ بْنِ مَالِكٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِذَا تَزَوَّجَ الْبِكْرَ أَقَامَ عِنْدَهَا سَبْعًا، وَإِذَا تَزَوَّجَ الثَّيِّبَ أَقَامَ عِنْدَهَا ثَلَاثًا»

وَقَدْ رُوِّينَاهُ بِأَنَّ أَنَسًا قَالَ: هِيَ السُّنَّةُ - وَكُلُّ ذَلِكَ حَقٌّ، وَالَّذِي ذَكَرْنَا بَيَانٌ وَاضِحٌ فِي إِسْنَادِهِ

وَمِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ - هُوَ الْقَعْنَبِيُّ - نا سُلَيْمَانُ - يَعْنِي ابْنَ بِلَالٍ - عَنْ عَبْدِ الرَّحْمَنِ بْنِ حُمَيْدٍ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ «أَنَّ أُمَّ سَلَمَةَ حِينَ تَزَوَّجَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَخَلَ عَلَيْهَا فَأَرَادَ أَنْ يَخْرُجَ أَخَذَتْ بِثَوْبِهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: إِنْ شِئْتُ زِدْتُكِ وَحَاسَبْتُكِ بِهِ لِلْبِكْرِ سَبْعٌ وَلِلثَّيِّبِ ثَلَاثٌ»

وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

if you wish, I will spend three nights, then I will take turns with my other wives." She replied: "Three."[7]

- حِينَ تَزَوَّجَ أُمَّ سَلَمَةَ وَأَصْبَحَتْ عِنْدَهُ قَالَ لَهَا: لَيْسَ بِكِ عَلَى أَهْلِكِ هَوَانٌ، إِنْ شِئْتِ سَبَّعْتُ عِنْدَكِ، وَإِنْ شِئْتِ ثَلَّثْتُ ثُمَّ دُرْتُ؟ قَالَتْ: ثَلِّثْ»

L32110 This report was narrated to us within the chains of transmission through the path of Ahmad ibn Shu'ayb: Ya'qub ibn Ibrāhīm and Muḥammad ibn Bashshār both narrated to us: Yaḥyā—who is Ibn Sa'īd al-Qaṭṭān—narrated to us from Sufyān al-Thawrī. Aḥmad ibn Abī Bakr—who is Ibn Muḥammad ibn 'Amr ibn Ḥazm—narrated to me from 'Abd al-Malik ibn Abī Bakr ibn 'Abd al-Raḥmān ibn al-Ḥārith ibn Hishām, from his father, from Umm Salamah, the Mother of the Believers, that when the Prophet—peace and blessings of Allah be upon him—married her, he stayed with her for three days and said: "There is no humiliation upon your family because of you. If you wish, I will stay seven days for you. If I stay seven days for you, I will do the same for my other wives."[8]

وَرُوِّينَا هَذَا الْخَبَرَ بَيْنَ الْإِسْنَادِ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا يَعْقُوبُ بْنُ إِبْرَاهِيمَ، وَمُحَمَّدُ بْنُ بَشَّارٍ، قَالَا جَمِيعًا: نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ سُفْيَانَ الثَّوْرِيِّ حَدَّثَنِي أَحْمَدُ بْنُ أَبِي بَكْرٍ - هُوَ ابْنُ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ - عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ عَنْ أَبِيهِ «عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا تَزَوَّجَهَا أَقَامَ عِنْدَهَا ثَلَاثًا، وَقَالَ: لَيْسَ بِكِ عَلَى أَهْلِكِ هَوَانٌ، إِنْ شِئْتِ سَبَّعْتُ لَكِ، وَإِنْ سَبَّعْتُ لَكِ سَبَّعْتُ لِنِسَائِي»

L32111 And with this, Anas ibn Mālik, Ibrāhīm al-Nakha'ī, al-Sha'bī, Mālik, al-Shāfi'ī, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Abū Thawr, Abū 'Ubayd, Abū Sulaymān, and all their companions held the same opinion.

وَبِهِ يَقُولُ أَنَسُ بْنُ مَالِكٍ وَإِبْرَاهِيمُ النَّخَعِيُّ، وَالشَّعْبِيُّ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَأَبُو ثَوْرٍ، وَأَبُو عُبَيْدٍ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِهِمْ

L32112 A group held a differing opinion—that a virgin receives three nights, and a previously married woman two nights. We have been narrated this through 'Abd al-Razzāq from Ibn Jurayj, that he asked 'Aṭā' about this matter. 'Aṭā' said: "They transmit from Anas ibn Mālik that he stated: 'A virgin receives three nights, and a previously married woman receives two nights.'"

وَذَهَبَتْ طَائِفَةٌ إِلَى غَيْرِ ذَلِكَ -: وَهُوَ أَنَّ لِلْبِكْرِ ثَلَاثَ لَيَالٍ، وَلِلثَّيِّبِ لَيْلَتَانِ -: رُوِّينَا ذَلِكَ عَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَنَّهُ سَأَلَ عَطَاءً عَنْ ذَلِكَ فَقَالَ عَطَاءٌ: يُؤْثِرُونَ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّهُ قَالَ: لِلْبِكْرِ ثَلَاثٌ، وَلِلثَّيِّبِ لَيْلَتَانِ

L32113 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Yunus ibn Ubayd from al-Hasan, who said: A virgin [observes] three menstrual cycles, and a previously married woman [observes] two menstrual cycles.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنِ الْحَسَنِ قَالَ: لِلْبِكْرِ ثَلَاثٌ، وَلِلثَّيِّبِ لَيْلَتَانِ

L32114 From the narration of Abd al-Razzaq, from Ma'mar, from Qatadah, from Sa'id ibn al-Musayyab, who said: He stays with a virgin bride for three days

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ قَالَ: يَمْكُثُ عِنْدَ الْبِكْرِ ثَلَاثًا ثُمَّ يُقَسِّمُ، وَعِنْدَ الثَّيِّبِ يَوْمَيْنِ ثُمَّ يُقَسِّمُ

[7] **Hadith references (L32107):** Sahih Muslim 1460b.
[8] **Hadith references (L32110):** Sunan Abi Dawud 2122; Sunan Ibn Majah 1917.

then he divides [his time], and with a previously married woman two days then he divides [his time].

L32115 This is the opinion of Khilās ibn ʿAmr, Sufyān al-Thawrī, and al-Awzāʿī.

وَهُوَ قَوْلُ خِلَاسِ بْنِ عَمْرٍو، وَسُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ.

L32116–32118 A group of scholars opined: He is not required to provide maintenance for a previously married woman or a virgin except what he provides for others under his care—this being the view of al-Ḥakam ibn ʿUtaybah, Ḥammād ibn Abī Sulaymān, Abū Ḥanīfah, and his companions. Those who adopted the view of al-Ḥasan and Ibn al-Musayyib argued using a report we have narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Shuʿayb and Muḥammad ibn Isḥāq, both of whom said: The Messenger of Allāh—peace and blessings be upon him—stated, "A virgin [is entitled to] three?" Abū Muḥammad remarked: This is a *mursal* report (with an interrupted chain), and it contains no valid evidence—thus this opinion is invalidated.

وَقَالَتْ طَائِفَةٌ: لَا يُقِيمُ عِنْدَ ثَيِّبٍ وَلَا بِكْرٍ إلَّا مَا يُقِيمُ عِنْدَ غَيْرِهِمَا مِمَّنْ عِنْدَهُ - وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ وَاحْتَجَّ مَنْ ذَهَبَ إلَى قَوْلِ الْحَسَنِ، وَابْنِ الْمُسَيِّبِ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ، وَمُحَمَّدِ بْنِ إسْحَاقَ قَالَا جَمِيعًا: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لِلْبِكْرِ ثَلَاثٌ» ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِيهِ - فَسَقَطَ هَذَا الْقَوْلُ

L32119 We have found those who adhere to Abū Ḥanīfah's opinion arguing based on the obligation of fairness among wives.

وَوَجَدْنَا مَنْ ذَهَبَ إلَى قَوْلِ أَبِي حَنِيفَةَ يَحْتَجُّونَ بِمَا يَجِبُ مِنْ الْعَدْلِ بَيْنَ النِّسَاءِ

L32120 And by the authentic report in which the Messenger of Allah (peace be upon him) said: "Whoever has two wives at the same time and inclines unjustly toward one of them will come on the Day of Resurrection with half his body drooping."[9]

وَبِالْخَبَرِ الثَّابِتِ الَّذِي فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ امْرَأَتَانِ فَمَالَ إلَى إحْدَاهُمَا جَاءَ يَوْمَ الْقِيَامَةِ وَشِقُّهُ مَائِلٌ»

L32121 Abu Muhammad said: The one who asserted this position is the same one who ruled an additional seven days for the virgin and an additional three days for the previously married woman. It is not permissible for anyone to abandon any statement of the Prophet—peace be upon him—in favor of another statement of his, as long as it is possible to apply them all, whether by combining some statements with others or by excepting some from others. Whoever transgresses this disobeys Allah, the Almighty and Majestic, and His Messenger—peace be upon him.

قَالَ أَبُو مُحَمَّدٍ: الَّذِي قَالَ هَذَا الْقَوْلَ هُوَ الَّذِي حَكَمَ لِلْبِكْرِ بِسَبْعٍ زَائِدَةٍ، وَلِلثَّيِّبِ بِثَلَاثٍ زَائِدَةٍ، وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَتْرُكَ قَوْلًا لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِقَوْلٍ لَهُ آخَرَ مَا دَامَ يُمْكِنُ اسْتِعْمَالُهَا جَمِيعًا، بِأَنْ يَضُمَّ بَعْضَهَا إلَى بَعْضٍ، أَوْ بِأَنْ يَسْتَثْنِيَ بَعْضَهَا مِنْ بَعْضٍ، وَمَنْ تَعَدَّى هَذَا فَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ وَلِرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L32122 Among the wonders of the world is that the Hanafis—who oppose the Messenger of Allah, may Allah bless him and grant him peace, with their corrupt desires—in this ruling obligate two nights for the free wife in the division.

وَمِنْ عَجَائِبِ الدُّنْيَا أَنَّ الْحَنَفِيِّينَ الْمُخَالِفِينَ بِأَهْوَائِهِمْ الْفَاسِدَةِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَهُنَا يُوجِبُونَ فِي الْقِسْمَةِ لِلزَّوْجَةِ الْحُرَّةِ لَيْلَتَيْنِ

[9] **Hadith references (L32120):** Sunan Abi Dawud 2133.

وَلِلزَّوْجَةِ الْأَمَةِ لَيْلَةً، وَهَذَا هُوَ الْمَيْلُ حَقًّا، وَالْجَوْرُ صِرَاحًا، لَا سِيَّمَا مَعَ قَوْلِهِمْ: إِنَّ لِلْحُرَّةِ الْيَهُودِيَّةِ وَالنَّصْرَانِيَّةِ لَيْلَتَيْنِ، وَلِلْأَمَةِ الْمُسْلِمَةِ لَيْلَةً، وَلَا يَسْتَحْيُونَ مِنْ هَذَا التَّفْضِيلِ بِالْبَاطِلِ

L32123 And for the enslaved woman is one night. This is true bias and blatant injustice, especially given their claim: "Indeed, free Jewish and Christian women have two nights, while an enslaved Muslim woman has one night." Yet they do not even feel shame over this unjust preferential treatment.

وَقَالَ بَعْضُهُمْ: قَدْ جَاءَ فِي ذَلِكَ أَثَرٌ عَنْ الْحَسَنِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَا يُعْرَفُ - ثُمَّ لَوْ صَحَّ لَكَانَ لَا يَجُوزُ الْأَخْذُ بِهِ، لِأَنَّهُ مُرْسَلٌ

L32124 And some of them said: There exists a narration concerning that from Al-Hasan from the Messenger of Allah—may Allah bless him and grant him peace—but this is not reliably attested. Furthermore, even if it were authentic, it would not be permissible to act upon it, as it is mursal.

وَعَجَبٌ آخَرُ - وَهُوَ أَنَّهُمْ يُجِيزُونَ لِمَنْ لَهُ زَوْجَةٌ حُرَّةٌ مُسْلِمَةٌ، وَأَمَةٌ نَصْرَانِيَّةٌ، أَنْ يُقَسِّمَ لِلْحُرَّةِ لَيْلَةً، وَلِلْمَمْلُوكَةِ الْيَهُودِيَّةِ ثَلَاثَ لَيَالٍ، فَاعْجَبُوا لِهَذِهِ الْفَضَائِحِ.

L32125 Another cause for astonishment—they permit a man who has a free Muslim wife and a Christian slave woman to allocate one night to the free woman and three nights to the Jewish slave woman. Be astonished at these scandals!

وَلَهُمْ هَهُنَا اعْتِرَاضَاتٌ تَشْهَدُ بِقِلَّةِ حَيَاءِ الْمُعْتَرِضِ بِهَا، وَرِقَّةِ دِينِهِ كَتَعَلُّقِهِمْ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إِنْ سَبَّعْتُ لَكِ سَبَّعْتُ لِنِسَائِي» فَقَالُوا: هَذَا حَدِيثٌ يُوجِبُ التَّسْوِيَةَ، وَنَسُوا أَنْفُسَهُمْ فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي هَذَا الْخَبَرِ نَفْسِهِ: «وَإِنْ شِئْتِ ثَلَّثْتُ وَدُرْتُ»

L32126–32128 And here they have objections that demonstrate the shamelessness of those who raise them and the shallowness of their faith, such as their clinging to his saying—peace and blessings be upon him—"If I were to allocate seven to you, I would have to allocate seven to each of my wives." They said: "This hadith necessitates equalization," yet they forgot themselves in his statement (prayers and peace be upon him) within this very report: "If you [feminine] wish, I will divide it into thirds and rotate [the portions]."

فَاعْتَرَضُوا بِعُقُولِهِمْ الرَّكِيكَةِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَّمُوهُ الْعَدْلَ وَالْحِسَابَ

L32129 They opposed the Prophet—peace be upon him—with their feeble intellects, presuming to instruct him in justice and mundane calculation.

وَقَالُوا: إِنَّمَا كَانَ يَنْبَغِي لَوْ سَبَّعَ عِنْدَهَا أَنْ يُحَاسِبَهَا بِالْأَرْبَعِ لَيَالٍ الزَّائِدَةِ عَلَى الثَّلَاثِ الَّتِي هِيَ حَقُّهَا

L32130 They said: It would have been necessary, were he to make seven nights with her, to adjust with her for the four additional nights beyond the three that are her right.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِنْ الْحُمْقِ وَرِقَّةِ الدِّينِ فِي النِّهَايَةِ الْقُصْوَى، لِأَنَّهُ لَا يَجِبُ حَقٌّ لِأَحَدٍ إلَّا أَنْ يُوجِبَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L32131 Abu Muhammad said: This is among the utmost foolishness and weakness in religion, for no right is due to anyone unless Allah, Exalted, has ordained it through the tongue of His Messenger - peace be upon him.

فَالَّذِي أَوْجَبَ لَهَا ثَلَاثَ لَيَالٍ أَلَمَّ بِهَا دُونَ ضَرَّتِهَا، هُوَ الَّذِي أَسْقَطَهَا إنْ سَبَّعَ عِنْدَهَا - لَا يَعْتَرِضُ عَلَيْهِ إلَّا كَافِرٌ - نَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ.

L32132 The One who obligated three nights for her—during which one must stay with her without harm—is the One who nullifies it if seven are completed

with her. None contests this except a disbeliever. We seek refuge in Allah from misguidance.

L32133 Abu Muhammad said: If they say: What is your opinion if he stays with a non-virgin woman for more than three but less than seven days, or more than seven days, or stays with a virgin or non-virgin woman for more than seven days—and she has a co-wife or co-wives?

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قَالُوا: فَمَا قَوْلُكُمْ إِنْ أَقَامَ عِنْدَ الثَّيِّبِ أَكْثَرَ مِنْ ثَلَاثٍ وَأَقَلَّ مِنْ سَبْعٍ، أَوْ أَكْثَرَ مِنْ سَبْعٍ، أَوْ أَقَامَ عِنْدَ الْبِكْرِ أَوْ الثَّيِّبِ أَكْثَرَ مِنْ سَبْعٍ - وَلَهَا ضَرَّةٌ، أَوْ ضَرَائِرُ زَوْجَاتٌ؟

L32134 We said: Yes. If he stays with the previously married woman more than three but fewer than seven days, he is only held accountable for what exceeds three days. If he stays with her or with the virgin more than seven days, he is held accountable to the previously married woman for the entire duration he stayed with her, and must compensate her co-wife or co-wives with the full equivalent of that entire period. He is only held accountable to the virgin for what exceeds seven days.

قُلْنَا: نَعَمْ، أَمَّا إنْ أَقَامَ عِنْدَ الثَّيِّبِ أَكْثَرَ مِنْ ثَلَاثٍ وَأَقَلَّ مِنْ سَبْعٍ، فَلَا يُحَاسِبُهَا إلَّا بِمَا زَادَ عَلَى الثَّلَاثِ، وَأَمَّا إنْ أَقَامَ عِنْدَهَا أَوْ عِنْدَ الْبِكْرِ أَكْثَرَ مِنْ سَبْعٍ، فَإِنَّهُ يُحَاسِبُ الثَّيِّبَ بِجَمِيعِ مَا أَقَامَ عِنْدَهَا، وَيُوفِي ضَرَّتَهَا أَوْ ضَرَائِرَهَا مِثْلَ ذَلِكَ كُلِّهِ وَلَا يُحَاسِبُ الْبِكْرَ إلَّا بِمَا زَادَ عَلَى السَّبْعِ فَقَطْ

L32135 The proof of that is that three days are the right of the previously married woman, and seven days are the right of the virgin. Whatever exceeds these two constitutes an injustice for which she will be held accountable. The right of the previously married woman to three days is not nullified unless God—the Mighty and Majestic—has nullified it solely through the words of His Messenger (peace be upon him). This occurs only when her period is set to seven days with an addition beyond them, for exceeding seven combines establishing seven and adding to it. Her entitlement to three days is nullified by setting it to seven, and once nullified, it does not return by adding beyond seven.

بُرْهَانُ ذَلِكَ -: أَنَّ الثَّلَاثَ حَقُّ الثَّيِّبِ، وَالسَّبْعَ حَقُّ الْبِكْرِ، فَمَا زَادَ عَلَى هَذَيْنِ فَهُوَ ظُلْمٌ يُحَاسِبُهَا بِهِ، وَلَا يَسْقُطُ حَقُّ الثَّيِّبِ فِي أَنْ أَلَمَّ بِالثَّلَاثِ إلَّا حَيْثُ أَسْقَطَهُ اللَّهُ عَزَّ وَجَلَّ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَلَيْسَ ذَلِكَ إلَّا أَنْ يُسَبِّعَ لَهَا وَزَادَ عَلَى السَّبْعِ، لِأَنَّ الزِّيَادَةَ عَلَى السَّبْعِ تَسْبِيعٌ وَزِيَادَةٌ، وَقَدْ سَقَطَ حَقُّهَا فِي الثَّلَاثِ بِالتَّسْبِيعِ، فَإِذَا سَقَطَ لَمْ يَعُدْ بِالزِّيَادَةِ عَلَى السَّبْعِ

L32136 And success is by Allah, the Exalted.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L32137–32139 Abū Muḥammad said: They argued for their opinion—that he assigns two nights to the free woman and one night to the enslaved wife—by a narration we transmitted via the chain: Saʿīd ibn Manṣūr → Hushaym [who] reported to us → Ibn Abī Laylā → al-Minhāl ibn ʿAmr → Dharr—or ʿAbbād ibn ʿAbdullāh al-Asadī—from ʿAlī, that he would say: When... If a man marries a free woman while already married to a slave woman, one-third is allocated to the slave woman and two-thirds are allocated to the free woman.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجُّوا لِقَوْلِهِمْ: يُقَسِّمُ لِلْحُرَّةِ لَيْلَتَيْنِ، وَلِلزَّوْجَةِ الْمَمْلُوكَةِ لَيْلَةً بِرِوَايَةٍ رُوِّينَاهَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أرنا ابْنُ أَبِي لَيْلَى عَنْ الْمِنْهَالِ بْنِ عَمْرٍو عَنْ ذَرٍّ -

أَوْ عَبَّادِ بْنِ عَبْدِ اللَّهِ الْأَسَدِيِّ - عَنْ عَلِيٍّ أَنَّهُ كَانَ يَقُولُ: إذَا تَزَوَّجَ الْحُرَّةَ عَلَى الْأَمَةِ قَسَّمَ لِلْأَمَةِ الثُّلُثُ، وَلِلْحُرَّةِ الثُّلُثَانِ

L32140 This is invalid because Ibn Abī Laylā is deficient in retention; Al-Minhāl is weak.

وَهَذَا لَا يَصِحُّ، لِأَنَّ ابْنَ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ، وَالْمِنْهَالُ ضَعِيفٌ

L32141 It was narrated from Al-Mughīrah ibn Miqsam that he said: "Al-Minhal's testimonial reliability has not been affirmed in Islam. However, the report is authentic based on the rulings of Ibrāhīm, Saʿīd ibn al-Musayyib, Masrūq, Al-Shaʿbī, and Al-Ḥasan al-Baṣrī."

وَرُوِيَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ أَنَّهُ قَالَ: لَمْ يَثْبُتْ لِلْمِنْهَالِ شَهَادَةٌ فِي الْإِسْلَامِ وَلَكِنَّهُ صَحِيحٌ مِنْ قَوْلِ إبْرَاهِيمَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَمَسْرُوقٍ، وَالشَّعْبِيِّ، وَالْحَسَنِ الْبَصْرِيِّ

L32142 And it was reported from ʿAṭāʾ, Saʿīd ibn Jubīr, and Muḥammad ibn ʿAlī ibn al-Ḥusayn.

وَرُوِيَ عَنْ عَطَاءٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَمُحَمَّدِ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ

L32143 And it is the position of ʿUthmān al-Battī, and al-Shāfiʿī.

وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَالشَّافِعِيِّ

L32144 Imām Mālik, al-Layth, and Abū Sulaymān said: The division between them is equal.

وَقَالَ مَالِكٌ، وَاللَّيْثُ، وَأَبُو سُلَيْمَانَ: الْقَسْمُ بَيْنَهُمَا سَوَاءٌ.

L32145 Abu Muhammad said: There is no authority in anyone other than the Messenger of Allah—peace and blessings be upon him—and he—peace and blessings be upon him—warned, as we previously mentioned, against inclining toward one wife over another. He did not distinguish between a free woman and an enslaved woman, nor between a Muslim woman and a woman of the People of the Book.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ تَوَعَّدَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَمَا أَوْرَدْنَا قَبْلُ عَلَى الْمَيْلِ إلَى زَوْجَةٍ دُونَ أُخْرَى وَلَمْ يَخُصَّ حُرَّةً مِنْ أَمَةٍ وَلَا مُسْلِمَةً مِنْ كِتَابِيَّةٍ

L32146 They argued using their invalid analogy by stating: Since the waiting period of a female slave is half that of a free woman, it is obligatory that the same apply to both in the division.

وَاحْتَجُّوا مِنْ قِيَاسِهِمْ الْفَاسِدِ بِأَنْ قَالُوا: لَمَّا كَانَتْ عِدَّةُ الْأَمَةِ نِصْفَ عِدَّةِ الْحُرَّةِ: وَجَبَ أَنْ يَكُونَا فِي الْقَسْمِ كَذَلِكَ

L32147 Abu Muhammad said: This is utterly flawed—firstly, we do not agree with them that a female slave's waiting period is half that of a free woman. Yet despite their contradictory stance, they do not dispute that the waiting period of a pregnant female slave equals that of a pregnant free woman. Why then do they not establish an equal division for both, given their parity in the specified waiting period?

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا فِي غَايَةِ الْفَسَادِ -: أَوَّلُ ذَلِكَ أَنَّا لَا نُوَافِقُهُمْ عَلَى أَنَّ عِدَّةَ الْأَمَةِ نِصْفُ عِدَّةِ الْحُرَّةِ، ثُمَّ عَلَى قَوْلِهِمْ الْمُخْتَلِطِ لَا يَخْتَلِفُونَ أَنَّ عِدَّةَ الْأَمَةِ الْحَامِلِ كَعِدَّةِ الْحُرَّةِ الْحَامِلِ فَهَلَّا جَعَلُوا الْقِسْمَةَ لَهُمَا سَوَاءً؟ مِنْ أَجْلِ تَسَاوِيهِمَا فِي الْعِدَّةِ الْمَذْكُورَةِ.

L32148 They say: The waiting period for a female slave is three quru' (menstrual/pu-

rity periods), equivalent to that of a free woman. Then why do they not apportion two-thirds of a free woman's share for her, due to what we have stated? There is no disagreement that a female slave does not inherit, while a free woman does inherit. Why then do they not deny her any apportioned share, just as she has no inheritance, and no legal testimony according to them? Yet in their ramblings, they resemble a drowning person clinging to whatever they perceive.

وَيَقُولُونَ: إنَّ عِدَّةَ الْأَمَةِ بِالْأَقْرَاءِ ثَلَاثًا عِدَّةَ الْحُرَّةِ، فَهَلَّا قَسَمُوا لَهَا الثُّلُثَيْنِ مِنْ قَسَمِ الْحُرَّةِ لِمَا ذَكَرْنَا؟ وَلَا خِلَافَ فِي أَنَّ الْأَمَةَ لَا تَرِثُ، وَأَنَّ الْحُرَّةَ تَرِثُ، فَهَلَّا جَعَلُوا الْأَمَةَ لَا قِسْمَةَ لَهَا، كَمَا لَا مِيرَاثَ لَهَا، وَكَمَا لَا شَهَادَةَ لَهَا عِنْدَهُمْ، وَلَكِنَّهُمْ فِي أَهْذَارِهِمْ مِثْلُ الْغَرِيقِ بِمَا أَحَسَّ تَعَلَّقَ.

L32149 They argued in their corrupt claim that the husband may allocate one night to the free woman, then spend three nights wherever he wishes, citing rejected narrations from Kaʿb ibn Sawwār: that he ruled thus in the presence of ʿUmar ibn al-Khaṭṭāb, and ʿUmar was impressed by it.

وَاحْتَجُّوا فِي قَوْلِهِمْ الْفَاسِدِ: إنَّ لِلزَّوْجِ أَنْ يَقْسِمَ لِلْحُرَّةِ لَيْلَةً، ثُمَّ يَبِيتَ ثَلَاثَ لَيَالٍ حَيْثُ شَاءَ، بِرِوَايَاتٍ سَاقِطَةٍ عَنْ كَعْبِ بْنِ سَوَّارٍ: أَنَّهُ حَكَمَ بِذَلِكَ بِحَضْرَةِ عُمَرَ بْنِ الْخَطَّابِ، فَأُعْجِبَ عُمَرُ بِذَلِكَ

L32150–32152 This is not valid because only Al-Shaʿbī, Qatadah, and Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf narrated it from ʿUmar, and all of them were born after ʿUmar's death— Moreover, if it were sound, no one besides the Messenger of Allah—peace and blessings be upon him—would hold conclusive proof.

وَهَذَا لَا يَصِحُّ؛ لِأَنَّهُ إنَّمَا رَوَاهُ عَنْ عُمَرَ: الشَّعْبِيُّ، وَقَتَادَةُ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَكُلُّهُمْ لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ - ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِي أَحَدٍ حُجَّةٌ غَيْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L32153 As for neglecting congregational prayer—we have mentioned in "The Book of Prayer" from this compilation of ours and other [works] that the Messenger of Allah—peace and blessings be upon him—imposed this obligation, and his threat to burn the houses of those who neglect it without valid excuse.

وَأَمَّا التَّخَلُّفُ عَنْ صَلَاةِ الْجَمَاعَةِ - فَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الصَّلَاةِ " مِنْ دِيوَانِنَا هَذَا وَغَيْرِهِ إيجَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ، وَتَوَعُّدَهُ بِحَرْقِ بُيُوتِ الْمُتَخَلِّفِينَ عَنْهَا لِغَيْرِ عُذْرٍ

L32154 He—peace and blessings be upon him—married, as did his companions. None among them neglected the sevenfold glorification [of Allah] or threefold repetition [of dhikr] in relation to attending congregational and Friday prayers. Rather, this [neglect] is a deviation innovated by Satan.

وَقَدْ تَزَوَّجَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَأَصْحَابُهُ فَمَا مِنْهُمْ مِنْ أَحَدٍ تَخَلَّفَ فِي التَّسْبِيعِ وَالتَّثْلِيثِ عَنْ صَلَاةِ الْجَمَاعَةِ وَالْجُمُعَةِ، وَإِنَّمَا هِيَ ضَلَالَةٌ أَحْدَثَهَا الشَّيْطَانُ.

L32155 As for traveling with one of his wives, two wives, or three wives, it is permissible only through drawing lots, as established from the Messenger of Allah—peace and blessings be upon him—as we have been narrated through the chain in Muslim's compilation: Narrated to us by Isḥāq ibn Ibrāhīm—who is Ibn Rāhawayh—from Abū Nuʿaym al-Faḍl ibn Dukayn, from ʿAbd

وَأَمَّا السَّفَرُ بِامْرَأَةٍ مِنْ زَوْجَاتِهِ أَوْ بِامْرَأَتَيْنِ أَوْ بِثَلَاثٍ فَلَا يَكُونُ إلَّا بِالْقُرْعَةِ لِأَنَّهُ ثَبَتَ ذَلِكَ عَنْ رَسُولِ اللَّهِ كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - عَنْ أَبِي نُعَيْمٍ الْفَضْلِ بْنِ دُكَيْنٍ نا عَبْدُ الْوَاحِدِ بْنُ أَيْمَنَ حَدَّثَنِي ابْنُ أَبِي مُلَيْكَةَ عَنْ

al-Wāḥid ibn Ayman, who narrated to me from Ibn Abī Mulaykah, from al-Qāsim ibn Muḥammad, from ʿĀ'ishah, the Mother of the Believers. She said: "Whenever the Messenger of Allah—peace and blessings be upon him—intended to travel, he would draw lots among his wives. The lot fell upon ʿĀ'ishah and Ḥafṣah, so the two of them accompanied him."[10]

L32156 Abu Muhammad said: If he departs with her as we mentioned by lottery, he is not required to account to them for their nights with him during the journey, for he departed with them by rightful means—not through inclination or injustice. But if he departs with her without a lottery, he must account to them for those nights, and he is obligated by duty to make up to the one he did not travel with the number of those nights.

L32157 This is the opinion of Al-Shāfiʿī and Abū Sulaymān.

L32158 Abu Hanifah, Malik, and their followers said: The ruling is derived through it without resorting to drawing lots.

L32159 Abū Muḥammad said: This is invalid, because equitable treatment among wives is an obligation, as we have mentioned. Therefore, it is impermissible to specify any part of this obligation except what a scriptural text has explicitly designated. The text designates only the use of drawing lots for travel. Whatever is other than this constitutes injustice – and success comes from Allah, the Exalted.

L32160 If it is said: "Does he have the right not to travel with one of them?" We say: Yes, and he is fair in equitably preventing [them from traveling], thereby not favoring any one of them.

L32161 If he travels without drawing lots and takes one of them with him, he has indeed shown bias in her favor, and this is an injustice that is not permissible.

L32162 And success is with Allah, the Exalted.

L32163 **Issue: A man is not permitted to apportion time to his**

[10]**Hadith references (L32155):** Sahih Muslim 2445.

الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا خَرَجَ أَقْرَعَ بَيْنَ نِسَائِهِ فَطَارَتْ الْقُرْعَةُ عَلَى عَائِشَةَ، وَحَفْصَةَ، فَخَرَجَتَا مَعَهُ»

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ خَرَجَ بِهَا كَمَا ذَكَرْنَا بِقُرْعَةٍ لَمْ يُحَاسِبْهُنَّ بِلَيَالِيهِنَّ مَعَهُ فِي السَّفَرِ، لِأَنَّهُ خَرَجَ بِهِنَّ بِحَقٍّ لَا بِمَيْلٍ وَلَا بِحَيْفٍ، فَإِنْ خَرَجَ بِهَا بِغَيْرِ قُرْعَةٍ حَاسَبَهُنَّ بِتِلْكَ اللَّيَالِي، وَلَزِمَهُ فَرْضًا أَنْ يُوفِيَ الَّتِي لَمْ يُسَافِرْ بِهَا عَدَدَ تِلْكَ اللَّيَالِي

وَهَذَا قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ

وَقَالَ أَبُو حَنِيفَةَ: وَمَالِكٌ وَأَصْحَابُهُمَا: يَخْرُجُ بِهَا بِغَيْرِ قُرْعَةٍ

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، لِأَنَّ الْعَدْلَ بَيْنَ الزَّوْجَاتِ فَرْضٌ، كَمَا أَوْرَدْنَا، فَلَا يَجُوزُ تَخْصِيصُ شَيْءٍ مِنْ ذَلِكَ إلَّا مَا خَصَّهُ نَصٌّ، وَلَمْ يَخُصَّ النَّصُّ إلَّا السَّفَرَ بِالْقُرْعَةِ فَقَطْ، فَمَا عَدَا ذَلِكَ فَهُوَ ظُلْمٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ قِيلَ: إنْ لَهُ أَنْ لَا يُسَافِرَ بِوَاحِدَةٍ مِنْهُنَّ؟ قُلْنَا: نَعَمْ، وَهُوَ عَدْلٌ بَيْنَهُنَّ فِي الْمَنْعِ، فَلَيْسَ بِذَلِكَ مَائِلًا إلَى إحْدَاهُنَّ.

وَأَمَّا إذَا سَافَرَ بِغَيْرِ قُرْعَةٍ بِوَاحِدَةٍ مِنْهُنَّ، فَقَدْ مَالَ إلَيْهَا، وَهَذَا ظُلْمٌ لَا يَحِلُّ -.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ لَا يَجُوزُ لِلرَّجُلِ أَنْ يَقْسِمَ لِأُمٍّ وَلَدِهِ وَلَا لِأَمَتِهِ مَعَ زَوْجَةٍ]

***umm walad* (enslaved mother of his child) or his female slave (*ama*) alongside a wife.**

L32164–32166 Issue 1897: It is not permissible for a man to apportion nights to his *umm walad* or to his female slave if he has a wife, and there is no disagreement on this matter. The evidence for this is the statement of Allah, the Most High: *"But if you fear you will not be just, then marry one or those whom your right hands possess"* [An-Nisa': 3]. He did not establish for those whom your right hands possess a right requiring justice in their case. Since they have no right to division, it is impermissible to include in the obligation those who have no right in it alongside those who do. If the wife herself is content with this, the husband may then allocate a share to his female slave, since it is the wife's right, which she has willingly relinquished. However, he may have intercourse with his female slave whenever he wishes, as the Prophet (peace be upon him) did with Mariyah on a day when he chose any of his wives, without division. And success is from Allah, the Most High.[11]

١٨٩٧ - مَسْأَلَةٌ: وَلَا يَجُوزُ لِلرَّجُلِ أَنْ يَقْسِمَ لِأُمِّ وَلَدِهِ، وَلَا لِأَمَتِهِ مَعَ زَوْجَةٍ - إنْ كَانَتْ - وَهَذَا لَا خِلَافَ فِيهِ وَبُرْهَانُهُ: قَوْلُ اللَّهِ تَعَالَى: {فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣] فَلَمْ يَجْعَلْ لِمِلْكِ الْيَمِينِ حَقًّا يَجِبُ فِيهِ الْعَدْلُ، فَإِذْ لَا حَقَّ لَهُنَّ فِي الْقِسْمَةِ فَلَا يَجُوزُ أَنْ يُشَارِكَ فِي الْوَاجِبِ مَنْ لَا حَقَّ لَهُ فِيهِ مَعَ مَنْ لَهُ فِيهِ حَقٌّ، فَلَوْ طَابَتْ نَفْسُ الزَّوْجَةِ بِذَلِكَ فَلَهُ حِينَئِذٍ أَنْ يَقْسِمَ لِأَمَتِهِ، لِأَنَّهُ حَقُّ الزَّوْجَةِ طَابَتْ بِتَرْكِهِ نَفْسًا، لَكِنْ لَهُ أَنْ يَطَأَ أَمَتَهُ مَتَى شَاءَ كَمَا فَعَلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِمَارِيَةَ فِي يَوْمِ أَيِّ نِسَائِهِ شَاءَ دُونَ قِسْمَةٍ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

An Issue Concerning the Limit of Allocation for Wives

[مَسْأَلَةٌ حَدُّ الْقِسْمَةِ لِلزَّوْجَاتِ]

L32167 The stipulated ruling for allocating time among wives begins with one night and may extend up to seven nights for each one, and he may not allocate more than seven nights to any single wife.

١٨٩٨ - مَسْأَلَةٌ: وَحَدُّ الْقِسْمَةِ لِلزَّوْجَاتِ: مِنْ لَيْلَةٍ فَمَا زَادَ إلَى سَبْعٍ لِكُلِّ وَاحِدَةٍ، وَلَا يَجُوزُ لَهُ أَنْ يَزِيدَ عَلَى سَبْعٍ

L32169 A group said: It must not exceed three for each one.

وَقَالَ قَوْمٌ: لَا يَزِيدُ عَلَى ثَلَاثٍ لِكُلِّ وَاحِدَةٍ

L32170 A group has said: It does not exceed one night for each woman - It has been narrated to us from Muḥammad ibn al-Mundhir al-Naysābūrī: Aḥmad ibn Muḥammad ibn al-Jasūr reported to us from him, from Mundhir ibn Sa'īd the Judge, from Muḥammad ibn Ibrāhīm ibn al-Mundhir.

وَقَالَتْ طَائِفَةٌ: لَا يَزِيدُ عَلَى لَيْلَةٍ لِكُلِّ وَاحِدَةٍ -: رُوِّينَا ذَلِكَ عَنْ مُحَمَّدِ بْنِ الْمُنْذِرِ النَّيْسَابُورِيِّ: نَا بِذَلِكَ عَنْهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ عَنْ مُنْذِرِ بْنِ سَعِيدٍ الْقَاضِي عَنْ مُحَمَّدِ بْنِ إبْرَاهِيمَ بْنِ الْمُنْذِرِ

L32171 Abū Muḥammad said: The proof validating our position is what we cited in the previous chapter from the statement of Allah's Messenger—peace and

قَالَ أَبُو مُحَمَّدٍ: بُرْهَانُ صِحَّةِ قَوْلِنَا -: مَا ذَكَرْنَاهُ فِي الْبَابِ الَّذِي قَبْلَ هَذَا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأُمِّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهَا -: «إنْ سَبَّعْتُ لَكِ سَبَّعْتُ

[11] **Qur'an references (L32164):** Qur'an 4:3 (An-Nisa).

blessings be upon him—to Umm Salamah—may Allah be pleased with her: "If I were to apportion seven **nights** for you, I would apportion seven **nights** for my wives." This establishes that a husband may apportion seven **nights**, and less than seven is permissible **because seven is permissible**, since **less than seven** is a portion of seven. As for exceeding seven, it is prohibited due to our prior mention of the obligation to maintain justice between them. Were exceeding seven permissible, it would permit him to spend nights with one wife as long as he wishes—**even if it were years**—while claiming, "I will **allocate** the same for the others." This is **null and void** and unjust.

L32172 It has thus been established that from the number of nights, only what the scriptural text has permitted is permissible. Were it not for this narration, we would not have allowed more than one night—and success is with Allah, the Most High.

L32173 And a night we prefer, because it is in this way that the established narrations indicate the division of the Messenger of Allah – may Allah bless him and grant him peace – for the Mothers of the Believers – may Allah be pleased with them.

L32174 **A case where the woman allocated her night to her co-wife.**

L32175–32177 Issue 1899: If a woman gifts her night to her co-wife, this is permissible. If she later wishes to retract her decision in this matter, she may do so. The proof of this is what was narrated to us through the chain of Ahmad ibn Shu'ayb, who narrated to us from Ishaq (that is, Ibn Rahawayh), who narrated from Jarir (that is, Ibn Abd al-Hamid), who narrated from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers: "When Sawdah bint Zam'ah grew old, she said: 'O Messenger of Allah, I have given my day with you to Aisha.' So he—peace and blessings be upon him—would apportion two days to Aisha: her day and Sawdah's day."

L32178 It has been authentically reported that the Prophet—peace and blessings be upon him—sought permission from his wives during his final illness, in

لِنِسَائِي» فَصَحَّ أَنَّ لِلزَّوْجِ أَنْ يُسَبِّعَ وَمَا دُونَ السَّبْعِ جَائِزٌ بِجَوَازِ السَّبْعِ، لِأَنَّهُ بَعْضُ السَّبْعِ، وَأَمَّا الزِّيَادَةُ عَلَى السَّبْعِ فَمَمْنُوعٌ لِمَا ذَكَرْنَا قَبْلُ مِنْ وُجُوبِ الْعَدْلِ بَيْنَهُنَّ فَلَوْ جَازَ أَكْثَرُ مِنْ سَبْعٍ لَكَانَ لَهُ أَنْ يَبِيتَ عِنْدَ الْوَاحِدَةِ مَا شَاءَ - وَلَوْ أَعْوَامًا - وَيَقُولُ: سَأَقْسِمُ لِلْأُخْرَى مِثْلَ ذَلِكَ - وَهَذَا بَاطِلٌ وَظُلْمٌ.

فَصَحَّ أَنَّهُ لَا يَجُوزُ مِنْ عَدَدِ اللَّيَالِي إلَّا مَا أَجَازَهُ النَّصُّ فَقَطْ، وَلَوْلَا هَذَا الْأَثَرُ مَا أَجَزْنَا أَكْثَرَ مِنْ لَيْلَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَيْلَةً أَحَبُّ إلَيْنَا، لِأَنَّهُ كَذَلِكَ جَاءَتْ الْآثَارُ الثَّابِتَةُ مِنْ قَسْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأُمَّهَاتِ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُنَّ -

[مَسْأَلَةٌ وَهَبَتْ الْمَرْأَةُ لَيْلَتَهَا لِضَرَّتِهَا]

١٨٩٩ - مَسْأَلَةٌ: وَإِنْ وَهَبَتْ الْمَرْأَةُ لَيْلَتَهَا لِضَرَّتِهَا جَازَ ذَلِكَ، فَإِنْ بَدَا لَهَا فَرَجَعَتْ فِي ذَلِكَ، فَلَهَا ذَلِكَ بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إِسْحَاقُ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا جَرِيرٌ - هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: «أَنَّ سَوْدَةَ بِنْتَ زَمْعَةَ لَمَّا كَبِرَتْ قَالَتْ: يَا رَسُولَ اللَّهِ، جَعَلْتُ يَوْمِي مِنْكَ لِعَائِشَةَ؟ فَكَانَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - يَقْسِمُ لِعَائِشَةَ يَوْمَيْنِ، يَوْمَهَا وَيَوْمَ سَوْدَةَ»

وَقَدْ صَحَّ «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - اسْتَأْذَنَ نِسَاءَهُ فِي مَرَضِهِ - الَّذِي مَاتَ فِيهِ - أَنْ يُمَرَّضَ فِي بَيْتِ عَائِشَةَ؟ فَأَذِنَّ لَهُ فِي ذَلِكَ»

which he passed away, to be ill in the house of ʿĀ'ishah, and they granted him permission to do so.

L32179 As for our statement that she retains the right to retract in this matter, it is because each day is distinct from the preceding day without doubt, and gifting an unknown is impermissible. Rather, it constitutes a newly arising permissibility specific to that day when it arrives. Thus, she has the right not to initiate that permissibility and to uphold her right which Allah—Exalted and Almighty—has ordained for her, and through Him—Glorified and Exalted—we are strengthened.

L32180 ## The Rulings of Lawful Sexual Intercourse and its Etiquette

L32181 ## A question: Is it permissible for a man to have intercourse with all his wives and female slaves in a single session?

L32182 The Rulings of Sexual Intercourse and Its Etiquettes 1900 - Issue: It is permissible for a man to have intercourse with all his wives and female slaves in a single instance. If he performs the ritual bath between every two women, this is preferable. If he performs the ritual bath only after the last of them, it remains acceptable, with no disapproval in this.

L32183–32185 It was narrated to us through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Manṣūr narrated to us: Sufyān—Ibn ʿUyaynah—narrated from Maʿmar, from Thābit al-Banānī, from Anas ibn Mālik: "Allah's Messenger—peace and blessings of Allah be upon him—would go around to all his wives in one night, then perform a single ritual bath." Abū Muḥammad said: Female slaves are among a man's women, as Allah the Exalted said: {Lawful for you during the night of fasting is sexual intercourse with your women} [Al-Baqarah 2:187]. Aḥmad ibn Muḥammad ibn al-Jasūr informed us: Wahb ibn Musirrah narrated to us: Muḥammad ibn Waḍḍāḥ narrated to us: Abū Bakr ibn Abī Shaybah narrated from Yazīd ibn Hārūn, from Ḥammād ibn Salamah, from ʿAbd al-Raḥmān ibn Fulān ibn Abī Rāfiʿ, from his paternal aunt Salmā bint Abī Rāfiʿ, from Abū Rāfiʿ: "Allah's Messenger—peace and blessings of Allah be upon him—went around to his wives in one night, then performed a single ritual bath." In one night, he performed a ritual bath after

وَأَمَّا قَوْلُنَا: إِنَّ لَهَا الرُّجُوعَ فِي ذَلِكَ، فَلِأَنَّ كُلَّ يَوْمٍ هُوَ غَيْرُ الْيَوْمِ الَّذِي قَبْلَهُ بِلَا شَكٍّ، وَلَا تَجُوزُ هِبَةُ مَجْهُولٍ، فَإِنَّمَا هُوَ إِبَاحَةُ حَادِثَةٍ فِي ذَلِكَ الْيَوْمِ إِذَا جَاءَ، فَلَهَا أَنْ لَا تُحْدِثَ تِلْكَ الْإِبَاحَةَ وَأَنْ تَتَمَسَّكَ بِحَقِّهَا الَّذِي جَعَلَهُ اللَّهُ تَعَالَى لَهَا - وَبِهِ جَلَّ وَعَزَّ نَتَأَيَّدُ

[أَحْكَامُ الْوَطْءِ وَآدَابُهُ]

[مَسْأَلَةٌ لِلرَّجُلِ أَنْ يَطَأَ جَمِيعَ زَوْجَاتِهِ وَإِمَائِهِ فِي فَوْرٍ وَاحِدٍ]

أَحْكَامُ الْوَطْءِ وَآدَابُهُ ١٩٠٠ - مَسْأَلَةٌ: وَجَائِزٌ لِلرَّجُلِ أَنْ يَطَأَ جَمِيعَ زَوْجَاتِهِ وَإِمَائِهِ فِي فَوْرٍ وَاحِدٍ، فَإِنْ تَطَهَّرَ بَيْنَ كُلِّ اثْنَتَيْنِ فَهُوَ أَحْسَنُ، وَإِنْ لَمْ يَغْتَسِلْ إِلَّا فِي آخِرِهِنَّ فَحَسَنٌ، لَا كَرَاهَةَ فِي ذَلِكَ

رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ مَنْصُورٍ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ مَعْمَرٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: كَانَ يَطُوفُ عَلَى نِسَائِهِ فِي اللَّيْلَةِ الْوَاحِدَةِ ثُمَّ يَغْتَسِلُ مَرَّةً» . قَالَ أَبُو مُحَمَّدٍ: الْإِمَاءُ مِنْ نِسَاءِ الرَّجُلِ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {أُحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ} [البقرة: ١٨٧] . أَخْبَرَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا وَهْبُ بْنُ مُسِرَّةَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ يَزِيدَ بْنِ هَارُونَ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ فُلَانِ بْنِ أَبِي رَافِعٍ عَنْ عَمَّتِهِ سَلْمَى بِنْتِ أَبِي رَافِعٍ عَنْ أَبِي رَافِعٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَافَ عَلَى نِسَائِهِ فِي لَيْلَةٍ وَاحِدَةٍ فَاغْتَسَلَ عِنْدَ كُلِّ امْرَأَةٍ مِنْهُنَّ غُسْلًا،

being with each of his wives. I said to him: “O Messenger of Allah, why not perform a single bath?” He replied: “This is purer and better,” or said: “and cleaner.” Ali said: “Had this narration not come, performing a bath after each wife would have been acceptable, for no prohibition regarding that has been reported—and success comes only from Allah, the Most High.”[12]

Issue: Intercourse in the Anus

L32186

L32187–32189 Issue 1901: Anal intercourse is fundamentally impermissible in all cases, whether with women or others. Regarding those beyond women, this constitutes a certain consensus. As for women, disagreement exists. Contradictory reports are transmitted from Ibn Umar and Nafi’, as we narrated through Ahmad ibn Shu’ayb’s chain: Ar-Rabi’ ibn Sulayman ibn Dawud narrated to us - Asbagh ibn Al-Faraj narrated to us - Abdur-Rahman ibn Al-Qasim narrated to us. He said: I asked Malik: “We have in Egypt Al-Layth ibn Sa’d, who relates from Al-Harith ibn Ya’qub from Sa’id ibn Yasar, who said: I asked Ibn Umar: ’We purchase slave girls and practice tahmiḍ (anal intercourse) on them.’ He inquired: ’What is tahmiḍ?’ I explained: ’We have intercourse with them in their anuses.’ Ibn Umar exclaimed: ’Ugh! Ugh! Ugh! Would a Muslim even do such a thing?’” Malik then told me: “I testify that Rabi’ah narrated to me from Sa’id ibn Yasar that he asked Ibn Umar, who responded: ’There is no harm in it.’” Through another chain from Ahmad ibn Shu’ayb: Ali ibn Uthman ibn Muhammad ibn Sa’id ibn Abdullah ibn Nufayl informed me - Sa’id ibn Isa narrated to us - Al-Mufaddal narrated to me - Abdullah ibn Sulayman from Ka’b ibn Alqamah from Abu An-Nadr, who reported saying to Nafi’, Ibn Umar’s freedman: “There has been much said about you claiming you transmit from Ibn Umar his legal opinion permitting anal intercourse with women.” Nafi’ responded: “They have lied against me.” They cited narrations concerning this matter, though had these been authentic, there would have come to us abrogating evidence - as we shall mention, God, the Almighty and Majestic, willing. They argued using Allah’s verse: {Your wives are a tilth for you, so come to your tilth from where you will} [Al-Baqarah

[12] **Qur’an references (L32183):** Qur’an 2:187 (Al-Baqarah).

قَالَ فَقُلْت لَهُ: يَا رَسُولَ اللَّهِ، لَوْ اغْتَسَلْت غُسْلًا وَاحِدًا؟ قَالَ: هَذَا أَطْهَرُ وَأَطْيَبُ» ، أَوْ قَالَ: وَأَنْظَفُ ". قَالَ عَلِيٌّ: وَلَوْ لَمْ يَأْتِ هَذَا الْخَبَرُ لَكَانَ الْغُسْلُ بَيْنَ كُلِّ اثْنَتَيْنِ مِنْهُنَّ حَسَنًا، لِأَنَّهُ لَمْ يَأْتِ عَنْ ذَلِكَ نَهْيٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْوَطْءِ فِي الدُّبُرِ]

١٩٠١ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْوَطْءُ فِي الدُّبُرِ أَصْلًا، لَا فِي امْرَأَةٍ وَلَا فِي غَيْرِهَا - أَمَّا مَا عَدَا النِّسَاءَ، فَإِجْمَاعٌ مُتَيَقَّنٌ. وَأَمَّا فِي النِّسَاءِ فَفِيهِ اخْتِلَافٌ - اُخْتُلِفَ فِيهِ عَنْ ابْنِ عُمَرَ، وَعَنْ نَافِعٍ كَمَا رَوَيْنَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَرنا الرَّبِيعُ بْنُ سُلَيْمَانَ بْنِ دَاوُد نا أُصْبَغُ بْنُ الْفَرَجِ ثنا عَبْدُ الرَّحْمَنِ بْنِ الْقَاسِمِ، قَالَ: قُلْت لِمَالِكٍ: إنَّ عِنْدَنَا بِمِصْرَ اللَّيْثَ بْنَ سَعْدٍ يُحَدِّثُ عَنْ الْحَارِثِ بْنِ يَعْقُوبَ عَنْ سَعِيدِ بْنِ يَسَارٍ قَالَ: قُلْت لِابْنِ عُمَرَ: إنَّا نَشْتَرِي الْجَوَارِيَ فَنُحَمِّضُ لَهُنَّ، قَالَ: وَمَا التَّحْمِيضُ؟ قَالَ: نَأْتِيهِنَّ فِي أَدْبَارِهِنَّ؟ قَالَ ابْنُ عُمَرَ: أُفٍّ أُفٍّ أُفٍّ، أَوَ يَعْمَلُ هَذَا مُسْلِمٌ؟ فَقَالَ لِي مَالِكٌ: فَأَشْهَدُ عَلَى رَبِيعَةَ لَحَدَّثَنِي عَنْ سَعِيدِ بْنِ يَسَارٍ أَنَّهُ سَأَلَ ابْنَ عُمَرَ فَقَالَ: لَا بَأْسَ بِهِ. وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي عَلِيُّ بْنُ عُثْمَانَ بْنِ مُحَمَّدِ بْنِ سَعِيدِ بْنِ عَبْدِ اللَّهِ بْنِ نُفَيْلٍ نا سَعِيدُ بْنُ عِيسَى حَدَّثَنِي الْمُفَضَّلُ نا عَبْدُ اللَّهِ بْنُ سُلَيْمَانَ عَنْ كَعْبِ بْنِ عَلْقَمَةَ عَنْ أَبِي النَّضْرِ أَنَّهُ أَخْبَرَهُ: أَنَّهُ قَالَ لِنَافِعٍ مَوْلَى ابْنِ عُمَرَ: قَدْ أَكْثَرَ عَلَيْك الْقَوْلَ أَنَّك تَقُولُ عَنْ ابْنِ عُمَرَ أَنَّهُ أَفْتَى بِأَنَّ تُؤْتَى النِّسَاءُ فِي أَدْبَارِهِنَّ؟ فَقَالَ نَافِعٌ: لَقَدْ كَذَبُوا عَلَيَّ - وَذَكَرُوا فِي ذَلِكَ أَحَادِيثَ لَوْ صَحَّتْ لَجَاءَنَا مَا يَنْسَخُهَا - عَلَى مَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - وَاحْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {نِسَاؤُكُمْ حَرْثٌ لَكُمْ فَأْتُوا حَرْثَكُمْ أَنَّى شِئْتُمْ} [البقرة: ٢٢٣] . قَالَ أَبُو مُحَمَّدٍ:

2:223]. Abu Muhammad remarked: This provides no proof for them, for "from where you will" in the Arabic tongue of the Quran's revelation signifies "from which direction" rather than "where." Since this is established, the meaning refers exclusively to "from which direction." "Where do you wish?" Allah, the Almighty and Majestic, said: {O Mary, how is this granted to you?} [Āl ʿImrān: 37].[13]

وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ لِأَنَّ " أَنَّى " فِي لُغَةِ الْعَرَبِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ إنَّمَا هِيَ بِمَعْنَى " مِنْ أَيْنَ " لَا بِمَعْنَى: أَيْنَ، فَإِذْ ذَلِكَ كَذَلِكَ - فَإِنَّمَا مَعْنَاهُ مِنْ أَيْنَ شِئْتُمْ " قَالَ اللَّهُ عَزَّ وَجَلَّ: {يَا مَرْيَمُ أَنَّى لَكِ هَذَا} [آل عمران: ٣٧]

L32190 In other words: How did this come to you?

بِمَعْنَى: مِنْ أَيْنَ لَك هَذَا

L32191 They said: "If any part of a woman were forbidden, would her entire being be forbidden?" Abu Muhammad responded: "This is analogous to their statement: 'Had no explicit text come prohibiting it.'"

وَقَالُوا: لَوْ حُرِّمَ مِنْ الْمَرْأَةِ شَيْءٌ لَحُرِّمَ جَمِيعُهَا؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا كَمَا قَالُوا لَوْ لَمْ يَأْتِ نَصٌّ بِتَحْرِيمِهِ

L32192 They said: Intercourse within a polygamous arrangement is permissible, and at times the male organ might incline toward the anus?

وَقَالُوا: وَطْءُ الْمَجْمُوعَةِ جَائِزٌ وَرُبَّمَا مَالَ الذَّكَرُ إلَى الدُّبُرِ؟

L32193 Ali said: If one cannot engage in intercourse with his wife except through anal penetration, then intercourse with her is prohibited.

قَالَ عَلِيٌّ: إذَا لَمْ يَتَمَكَّنْ مِنْ وَطْءِ الْمَجْمُوعَةِ إلَّا بِالْإِيلَاجِ فِي الدُّبُرِ فَوَطْؤُهَا حَرَامٌ

L32194 Abū Muḥammad said: We looked into that? So we found what Aḥmad ibn Muḥammad ibn al-Jasūr and ʿAbd Allāh ibn Rabīʿ narrated to us. Aḥmad stated: Wahb ibn Masarrata narrated to us, who narrated from Ibn Waḍḍāḥ, who narrated from Abū Bakr ibn Abī Shaybah. ʿAbd Allāh stated: Muḥammad ibn Muʿāwiyah narrated to us, who narrated from Aḥmad ibn Shuʿayb, who narrated from ʿAbd Allāh ibn Saʿīd Abū Saʿīd al-Ashajj. Then al-Ashajj and Ibn Abī Shaybah's chains converged. Both said together: Abū Khālid al-Aḥmar narrated to us from al-Ḍaḥḥāk ibn ʿUthmān from Makhramah ibn Sulaymān from Kurayb from Ibn ʿAbbās, who said: The Messenger of Allah—peace and blessings be upon him—said, "Allah will not look at a man who approaches a man or a woman in the anus." This is the wording of ʿAbd Allāh ibn Rabīʿ's narration, while Aḥmad's narration states "in her anus." They did not differ in anything besides this.

قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِي ذَلِكَ؟ فَوَجَدْنَا مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ، وَعَبْدُ اللَّهِ بْنُ رَبِيعٍ، قَالَ أَحْمَدُ: نَا وَهْبُ بْنُ مَسَرَّةَ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَقَالَ عَبْدُ اللَّهِ: نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عَبْدُ اللَّهِ بْنُ سَعِيدٍ أَبُو سَعِيدٍ الْأَشَجُّ، ثُمَّ اتَّفَقَ الْأَشَجُّ، وَابْنُ أَبِي شَيْبَةَ، قَالَا جَمِيعًا: نا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ الضَّحَّاكِ بْنِ عُثْمَانَ عَنْ مَخْرَمَةَ بْنِ سُلَيْمَانَ عَنْ كُرَيْبٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا يَنْظُرُ اللَّهُ إلَى رَجُلٍ أَتَى رَجُلًا أَوْ امْرَأَةً فِي دُبُرٍ» هَذَا لَفْظُ وَرِوَايَةُ عَبْدِ اللَّهِ بْنِ رَبِيعٍ، وَرِوَايَةُ أَحْمَدَ " فِي دُبُرِهَا " لَمْ يَخْتَلِفَا فِي غَيْرِ ذَلِكَ

L32195 By the same chain to Aḥmad ibn Shuʿayb: I am Muḥammad ibn Manṣūr: Sufyān—he is al-Thawrī—narrated to us, saying: Yazīd ibn ʿAbd Allāh ibn

[13] **Qur'an references (L32187):** Qur'an 2:223 (Al-Baqarah); Qur'an 3:37 (Ali 'Imran).

وَبِهِ إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - حَدَّثَنِي يَزِيدُ بْنُ عَبْدِ اللَّهِ بْنِ أُسَامَةَ بْنِ الْهَادِ عَنْ عُمَارَةَ بْنِ خُزَيْمَةَ بْنِ ثَابِتٍ عَنْ أَبِيهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ اللَّهَ لَا يَسْتَحْيِي مِنْ الْحَقِّ، لَا تَأْتُوا النِّسَاءَ فِي أَدْبَارِهِنَّ»

Usāmah ibn al-Hād narrated to me, from ʿUmārah ibn Khuzaymah ibn Thābit, from his father, from the Prophet—peace and blessings of Allah be upon him—who said: «Indeed, Allah does not shy away from the truth. Do not approach women in their anuses.»

قَالَ أَبُو مُحَمَّدٍ: وَهَذَانِ خَبَرَانِ صَحِيحَانِ تَقُومُ الْحُجَّةُ بِهِمَا، وَلَوْ صَحَّ خَبَرٌ فِي إبَاحَةِ ذَلِكَ لَكَانَ هَذَانِ نَاسِخَيْنِ لَهُ، لِأَنَّ الْأَصْلَ أَنَّ كُلَّ شَيْءٍ مُبَاحٌ حَتَّى يَأْتِيَ تَحْرِيمُهُ، فَهَذَانِ الْخَبَرَانِ وَرَدَا بِمَا فَصَّلَ اللَّهُ تَحْرِيمَهُ لَنَا

Abū Muḥammad said: These are two authentic reports that constitute definitive evidence. If a valid report permitting such an act existed, these two would abrogate it, for the default principle is that all matters are permissible until their prohibition is established. These two reports elucidate the prohibitions Allah has explicitly delineated for us.

وَقَدْ جَاءَ تَحْرِيمُ ذَلِكَ عَنْ أَبِي هُرَيْرَةَ وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَبِي الدَّرْدَاءِ وَابْنِ عَبَّاسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَطَاوُسٍ، وَمُجَاهِدٍ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَغَيْرِهِمْ

The prohibition of this has been transmitted from Abu Hurairah, Ali ibn Abi Talib, Abu al-Darda, Ibn Abbas, Saʿid ibn al-Musayyib, Abu Salamah ibn Abd al-Rahman ibn Awf, Tawus, and Mujahid. And it is the view of Abū Ḥanīfah, al-Shāfiʿī, Sufyān al-Thawrī, and others besides them.

وَمَا رَوَيْت إبَاحَةَ ذَلِكَ عَنْ أَحَدٍ إلَّا عَنْ ابْنِ عُمَرَ وَحْدَهُ بِاخْتِلَافٍ عَنْهُ، وَعَنْ نَافِعٍ بِاخْتِلَافٍ عَنْهُ، وَعَنْ مَالِكٍ بِاخْتِلَافٍ عَنْهُ فَقَطْ.

I have not narrated the permissibility of that from anyone except Ibn Umar alone with differing narrations from him, and from Nāfiʿ with differing narrations from him, and from Mālik only with differing narrations from him.

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

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

[مَسْأَلَةٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَطَأَ امْرَأَةً حُبْلَى مِنْ غَيْرِهِ]

A legal ruling: It is impermissible for anyone to lie with a woman pregnant by someone other than him.

١٩٠٢ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَطَأَ امْرَأَةً حُبْلَى مِنْ غَيْرِهِ، فَإِنْ فَعَلَ أُدِّبَ، فَإِنْ كَانَتْ أَمَةً لَهُ أَعْتَقَ عَلَيْهِ مَا وَلَدَتْ مِنْ ذَلِكَ الْحَمْلِ وَلَا بُدَّ - وَلَا تَعْتِقُ هِيَ بِذَلِكَ

1902 - Issue: It is not permissible for anyone to have intercourse with a woman pregnant by another. If he does so, he is to be disciplined. If she is his female slave, he must emancipate the child she bears from that pregnancy without fail, but she herself does not become free by that.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرُ نا شُعْبَةُ عَنْ يَزِيدَ بْنِ حُمَيْدٍ قَالَ: سَمِعْت عَبْدَ الرَّحْمَنِ بْنَ جُبَيْرٍ يُحَدِّثُ عَنْ أَبِيهِ جُبَيْرِ بْنِ

The evidence for this is what we have transmitted through the chain of Muslim: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Jaʿfar Ghundar narrated to us, Shuʿbah narrated to us, from Yazīd ibn Ḥumayd, who said: I heard ʿAbd al-Raḥmān ibn Jubayr narrating from his father Jubayr ibn

Nufayr, from Abū al-Dardāʾ: “A woman in a state of Ihrām was brought to the Prophet (peace be upon him) at the entrance of a tent. He said: ’Does he intend to have intercourse with her?’ They replied: ’Yes.’ Thereupon the Messenger of Allah (peace be upon him) said: ’I nearly cursed him with a curse that would enter the grave with him. How can he make the child inherit when it is unlawful for him? How can he use the child as a servant when it is unlawful for him?’”[14]

L32205 Abu Muhammad said: There is no authentic report concerning the prohibition of intercourse with a pregnant woman except this one. Thus, if it is not permissible for him, his ownership of her becomes prohibited. Since his ownership of her is prohibited, it is forbidden, for there is none except a slave or a free person.

L32206 As for disciplining the one who did that, it is because he committed an evil act. All divine enablement comes from Allah, the Exalted.

L32207 ## The Rulings on *Coitus Interruptus*

L32208 ## **Issue:** Withdrawal is not permissible from a free woman nor from a female slave.

L32209 Rulings on Withdrawal (al-ʿAzl)

L32210 Issue 1903: Coitus interruptus is not permissible from a free woman or from a slave woman.

L32211–32213 The proof of that is what we have narrated through the chain of Muslim: Ubaydullah ibn Sa‘id reported to us, via al-Maqburī (Abdullah ibn Yazid), who reported to us via Sa‘id ibn Abi Ayyub, who said: Abu al-Aswad (who is Urwah’s orphan) narrated to me from Urwah ibn al-Zubayr, from Aisha, the Mother of the Believers, from Judamah bint Wahb, the sister of ʿUkāshah, who said: “I was present with the Messenger of Allah (peace and blessings be upon him) among a group of people when they asked him about coitus interruptus. He said: ’That is the covert form of infanticide,’ and he recited:

[14] **Hadith references (L32204):** Sahih Muslim 1441a.

نُفَيْرٍ عَنْ أَبِي الدَّرْدَاءِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِامْرَأَةٍ مُجِحٍّ عَلَى بَابِ فُسْطَاطٍ فَقَالَ لَهُ: يُرِيدُ أَنْ يُلِمَّ بِهَا؟ فَقَالُوا: نَعَمْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَقَدْ هَمَمْتُ أَنْ أَلْعَنَهُ لَعْنًا يَدْخُلُ مَعَهُ قَبْرَهُ، كَيْفَ يُوَرِّثُهُ وَهُوَ لَا يَحِلُّ لَهُ؟ كَيْفَ يَسْتَخْدِمُهُ وَهُوَ لَا يَحِلُّ لَهُ؟»

قَالَ أَبُو مُحَمَّدٍ: لَا يَصِحُّ فِي تَحْرِيمِ وَطْءِ الْحَامِلِ خَبَرٌ غَيْرَ هَذَا، فَإِذَا لَمْ يَحِلَّ لَهُ فَقَدْ حُرِّمَ عَلَيْهِ مِلْكُهُ، وَإِذْ حُرِّمَ عَلَيْهِ مِلْكُهُ، فَهُوَ حَرَامٌ، إِذْ لَيْسَ إِلَّا مَمْلُوكٌ أَوْ حُرٌّ.

وَأَمَّا تَأْدِيبُ مَنْ فَعَلَ ذَلِكَ فَلِأَنَّهُ أَتَى مُنْكَرًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[أَحْكَامُ الْعَزْلِ]

[مَسْأَلَةٌ لَا يَحِلُّ الْعَزْلُ عَنْ حُرَّةٍ وَلَا عَنْ أَمَةٍ]

أَحْكَامُ الْعَزْلِ

١٩٠٣ - مَسْأَلَةٌ: وَلَا يَحِلُّ الْعَزْلُ عَنْ حُرَّةٍ وَلَا عَنْ أَمَةٍ

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عُبَيْدُ اللَّهِ بْنُ سَعِيدٍ نا الْمَقْبُرِيُّ - هُوَ عَبْدُ اللَّهِ بْنُ يَزِيدَ - نا سَعِيدُ بْنُ أَبِي أَيُّوبَ حَدَّثَنِي أَبُو الْأَسْوَدِ - هُوَ يَتِيمُ عُرْوَةَ - عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ جُدَامَةَ بِنْتِ وَهْبٍ أُخْتِ عُكَّاشَةَ قَالَتْ «حَضَرْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أُنَاسٍ فَسَأَلُوهُ عَنْ الْعَزْلِ فَقَالَ رَسُولُ اللَّهِ -

{And when the buried infant girl is asked} [At-Takwir 81:8]." Abu Muhammad said: This is a report of the utmost authenticity.[15]

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: ذَلِكَ الْوَأْدُ الْخَفِيُّ، وَقَرَأَ: {وَإِذَا الْمَوْءُودَةُ سُئِلَتْ} [التكوير: ٨] » قَالَ أَبُو مُحَمَّدٍ: هَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ

L32214 Those who permitted contraceptive withdrawal cited as evidence the narration of Abū Saʿīd, in which it is stated: "There is no blame upon you if you do not do it."

وَاحْتَجَّ مَنْ أَبَاحَ الْعَزْلَ بِخَبَرِ أَبِي سَعِيدٍ الَّذِي فِيهِ «لَا عَلَيْكُمْ أَنْ لَا تَفْعَلُوا»

L32215 Ali said: This report is closer to indicating prohibition. Similarly, Ibn Sirin stated the same. They argued by citing the Prophet's (peace be upon him) rejection of the Jews' claim that she was the younger buried infant girl, and also cited other unauthentic reports.

قَالَ عَلِيٌّ: هَذَا خَبَرٌ إلَى النَّهْيِ أَقْرَبُ، وَكَذَلِكَ قَالَ ابْنُ سِيرِينَ - وَاحْتَجُّوا بِتَكْذِيبِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَوْلَ يَهُودَ: هُوَ الْمَوْءُودَةُ الصُّغْرَى وَبِأَخْبَارٍ أُخَرَ لَا تَصِحُّ

L32216 Abu Muhammad said: The narration of Judamah that we cited contradicts it, and we know with certainty that the fundamental principle for all things is permissibility by virtue of Allah the Exalted's statement: "Who created for you all that is on the earth" [Al-Baqarah: 29]. Thus, everything was lawful until the prohibition was revealed, as He the Exalted said: "And He has already detailed for you what He has forbidden to you" [Al-An'am: 119].[16]

قَالَ أَبُو مُحَمَّدٍ: يُعَارِضُهَا خَبَرُ جُدَامَةَ الَّذِي أَوْرَدْنَا، وَقَدْ عَلِمْنَا بِيَقِينٍ أَنَّ كُلَّ شَيْءٍ فَأَصْلُهُ الْإِبَاحَةُ لِقَوْلِ اللَّهِ تَعَالَى: {الَّذِي خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] وَعَلَى هَذَا كَانَ كُلُّ شَيْءٍ حَلَالًا حَتَّى نَزَلَ التَّحْرِيمُ قَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩]

L32217 It has been established that the narration of Judāma concerning the prohibition constitutes the abrogator of all prior permissions which undoubtedly were in effect both before and after the advent of the prophetic mission. This is a matter of certainty, for he—peace and blessings be upon him—declared that it is the hidden act of burying infants alive, and burying infants alive is forbidden. Thus, it has abrogated the prior permissibility with definitive certainty.

فَصَحَّ أَنَّ خَبَرَ جُدَامَةَ بِالتَّحْرِيمِ هُوَ النَّاسِخُ لِجَمِيعِ الْإِبَاحَاتِ الْمُتَقَدِّمَةِ الَّتِي لَا شَكَّ فِي أَنَّهَا قَبْلَ الْبَعْثِ وَبَعْدَ الْبَعْثِ، وَهَذَا أَمْرٌ مُتَيَقَّنٌ، لِأَنَّهُ أَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ الْوَأْدُ الْخَفِيُّ، وَالْوَأْدُ مُحَرَّمٌ، فَقَدْ نَسَخَ الْإِبَاحَةَ الْمُتَقَدِّمَةَ بِيَقِينٍ.

L32218 Whoever claims that this abrogated permissibility has been restored and that the definitively established abrogation has been invalidated has indeed asserted falsehood, blindly followed matters beyond his knowledge, and brought forth claims without evidence. The Exalted says: *"Produce your proof if you are truthful"* [Al-Baqarah 2:111].[17]

فَمَنْ ادَّعَى أَنَّ تِلْكَ الْإِبَاحَةَ الْمَنْسُوخَةَ قَدْ عَادَتْ، وَأَنَّ النَّسْخَ الْمُتَيَقَّنَ قَدْ بَطَلَ فَقَدْ ادَّعَى الْبَاطِلَ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَأَتَى بِمَا لَا دَلِيلَ لَهُ عَلَيْهِ، قَالَ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١]

[15] **Qur'an references (L32211):** Qur'an 81:8 (At-Takwir).
[16] **Qur'an references (L32216):** Qur'an 2:29 (Al-Baqarah); Qur'an 6:119 (Al-An'am).
[17] **Qur'an references (L32218):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

L32219–32221 The permissibility of withdrawal is authentically established from Jābir ibn ʿAbdullāh, Ibn ʿAbbās, Saʿd ibn Abī Waqqāṣ, Zayd ibn Thābit, and Ibn Masʿūd. The prohibition [of coitus interruptus] was validated through a group's transmission: as narrated by Ḥammād ibn Salamah via ʿUbayd Allāh ibn ʿUmar from Nāfiʿ, that Ibn ʿUmar did not practice withdrawal, stating: "Were I to know any of my offspring practicing withdrawal, I would impose exemplary punishment upon him."

وَقَدْ جَاءَتْ الْإِبَاحَةُ لِلْعَزْلِ صَحِيحَةً عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَابْنِ عَبَّاسٍ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَزَيْدِ بْنِ ثَابِتٍ وَابْنِ مَسْعُودٍ وَصَحَّ الْمَنْعُ مِنْهُ عَنْ جَمَاعَةٍ -: كَمَا رُوِّينَا عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ كَانَ لَا يَعْزِلُ، وَقَالَ: لَوْ عَلِمْت أَحَدًا مِنْ وَلَدِي يَعْزِلُ لَنَكَّلْته

L32222 Abu Muhammad said: It is not permissible to impose deterrent punishment for something he deems permissible.

قَالَ أَبُو مُحَمَّدٍ: لَا يَجُوزُ أَنْ يُنَكِّلَ عَلَى شَيْءٍ مُبَاحٍ عِنْدَهُ.

L32223 And from the chain of Al-Hajjaj ibn Al-Minhal, Abu ʿAwanah narrated to us from ʿAsim ibn Bahdalah from Zirr ibn Hubaysh that ʿAli ibn Abi Talib disapproved of coitus interruptus.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ عَاصِمِ بْنِ بَهْدَلَةَ عَنْ زِرِّ بْنِ حُبَيْشٍ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يَكْرَهُ الْعَزْلَ

L32224 We have also narrated it via Shuʿbah, narrated by ʿĀṣim, narrated by Zirr, narrated by ʿAlī, who informed us: Yunus ibn ʿAbdullāh, who informed us: Aḥmad ibn ʿAbdullāh ibn ʿAbd al-Baṣīr, who informed us: Aḥmad ibn Khālid, who informed us: Muḥammad ibn ʿAbd al-Salām al-Khushanī, who informed us: Muḥammad ibn Bashshār, who informed us: Yaḥyā ibn Saʿīd al-Qaṭṭān, who informed us: Sulaymān al-Taymī, narrated by Abū ʿAmr al-Shaybānī, narrated by ʿAbdullāh ibn Masʿūd that he said regarding _ʿazl_ (coitus interruptus): "It is the covert burial of a female infant alive."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَاصِمٍ عَنْ زِرٍّ عَنْ عَلِيٍّ نا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَّهُ قَالَ فِي الْعَزْلِ: هِيَ الْمَوْءُودَةُ الْخَفِيَّةُ

L32225 This report was transmitted to us through the chain of Saʿīd ibn Manṣūr, who said: Muʿtamir ibn Sulaymān al-Taymī narrated to us, saying: Abū ʿAmr al-Shaybānī narrated to me from Ibn Masʿūd that he said regarding withdrawal: "It is the minor buried female infant."

وَرُوِّينَا هَذَا الْخَبَرَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ قَالَ: نا مُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ حَدَّثَنِي أَبُو عَمْرٍو الشَّيْبَانِيُّ عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ فِي الْعَزْلِ: هِيَ الْمَوْءُودَةُ الصُّغْرَى

L32226 And via him to Muḥammad ibn Bashshār: from ʿAbd al-Raḥmān ibn Mahdī, from Shuʿbah, from Zayd ibn Khumayr, from Sulaymān ibn ʿĀmir, who said: I heard Abū Umāmah al-Bāhilī say when he was asked about withdrawal (al-ʿazl)?, "I did not used to think a Muslim would do such a thing."

وَبِهِ إلَى مُحَمَّدِ بْنِ بَشَّارٍ نَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا شُعْبَةُ نا زَيْدُ بْنُ خُمَيْرٍ عَنْ سُلَيْمَانَ بْنِ عَامِرٍ قَالَ: سَمِعْت أَبَا أُمَامَةَ الْبَاهِلِيَّ يَقُولُ وَقَدْ سُئِلَ عَنْ الْعَزْلِ؟ فَقَالَ: مَا كُنْت أَرَى مُسْلِمًا يَفْعَلُهُ

L32227 And from the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us, Ibn ʿAwn narrated to us, saying: Nāfiʿ reported from Ibn ʿUmar that he said:

"Umar administered a beating to some of his sons for practicing ʿazl (coitus interruptus)."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أرنا ابْنُ عَوْنٍ قَالَ حَدَّثَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ: ضَرَبَ عُمَرُ عَلَى الْعَزْلِ بَعْضَ بَنِيهِ

L32228 Via the chain of Saʿīd ibn Manṣūr: He narrated to us Hushaym, who narrated to us Yaḥyā ibn Saʿīd al-Anṣārī, from Saʿīd ibn al-Musayyib, who said: "'Umar ibn al-Khaṭṭāb and ʿUthmān ibn ʿAffān used to forbid ʿazl (withdrawal during intercourse)."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ، وَعُثْمَانُ بْنُ عَفَّانَ يُنْكِرَانِ الْعَزْلَ

L32229 Abu Muhammad said: Sa'id's narration from Uthman is authentic (ṣaḥīḥ).

قَالَ أَبُو مُحَمَّدٍ: سَمَاعُ سَعِيدٍ عَنْ عُثْمَانَ صَحِيحٌ

L32230 And it has also been authentically narrated from al-Aswad ibn Yazīd and Tāwus.

وَصَحَّ أَيْضًا عَنْ الْأَسْوَدِ بْنِ يَزِيدَ، وَطَاوُسٍ

L32231 **The Rulings Pertaining to the Rights of Both Spouses**

[أَحْكَامُ حُقُوقُ الزَّوْجَيْنِ]

L32232 **Issue: Kindness toward women is obligatory.**

[مَسْأَلَةٌ الْإِحْسَانُ إلَى النِّسَاءِ فَرْضٌ]

L32233–32235 Rulings on the Rights of the Two Spouses 1904 – Issue: Treating women with excellence (iḥsān) is a religious obligation (farḍ), and it is impermissible to seek out their faults. Whoever returns from a journey at night must not enter his home until daytime, and whoever returns during the day must not enter until nighttime, unless prevented by a legitimate impediment. The proof of this is the statement of Allah, the Exalted and Majestic: "Live with them in kindness" [An-Nisa: 19], and His statement: "Do not harm them to make their lives difficult" [At-Talaq: 6].[18]

أَحْكَامُ حُقُوقُ الزَّوْجَيْنِ ١٩٠٤ - مَسْأَلَةٌ: وَالْإِحْسَانُ إلَى النِّسَاءِ فَرْضٌ وَلَا يَحِلُّ تَتَبُّعُ عَثَرَاتِهِنَّ وَمَنْ قَدِمَ مِنْ سَفَرِهِ لَيْلًا فَلَا يَدْخُلُ بَيْتَهُ إلَّا نَهَارًا، وَمَنْ قَدِمَ نَهَارًا فَلَا يَدْخُلُ إلَّا لَيْلًا، إلَّا أَنْ يَمْنَعَهُ مَانِعٌ عُذْرٌ بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ} [النساء: ١٩] وَقَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ} [الطلاق: ٦]

L32236 Abu Muhammad said: Since imposing restrictions upon them was prohibited, the Exalted has thereby obligated expansion for them and mandated abandoning harm toward them—

قَالَ أَبُو مُحَمَّدٍ: إذْ حُرِّمَ التَّضْيِيقُ عَلَيْهِنَّ فَقَدْ أَوْجَبَ تَعَالَى التَّوْسِيعَ عَلَيْهِنَّ وَافْتَرَضَ تَرْكَ ضَرِّهِنَّ -:

L32237 We have been narrated via the chain transmitted by Imam Muslim: Isḥāq ibn Ibrāhīm narrated to us from Ḥātim ibn Ismāʿīl from Jaʿfar ibn Muḥammad from his father from Jābir ibn ʿAbdillāh: "The Messenger of Allah—peace and

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ إبْرَاهِيمَ عَنْ حَاتِمِ بْنِ إسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَ النَّاسَ - فَذَكَرَ كَلَامًا كَثِيرًا وَفِيهِ -: فَاتَّقُوا اللَّهَ فِي النِّسَاءِ فَإِنَّكُمْ أَخَذْتُمُوهُنَّ بِأَمَانِ اللَّهِ، وَاسْتَحْلَلْتُمْ

[18] **Qur'an references (L32233):** Qur'an 65:6 (At-Talaq); Qur'an 4:19 (An-Nisa).

فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ، وَلَكُمْ عَلَيْهِنَّ أَنْ لَا يُوطِئْنَ فِرَاشَكُمْ أَحَدًا تَكْرَهُونَهُ، فَإِنْ فَعَلْنَ ذَلِكَ فَاضْرِبُوهُنَّ ضَرْبًا غَيْرَ مُبَرِّحٍ، وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ»

blessings of Allah be upon him—addressed the people and spoke at length, saying: 'Fear Allah concerning women, for you have taken them by Allah's trust and made lawful their private parts through Allah's word. Your right over them is that they do not permit anyone you dislike to enter your bed. If they do so, strike them with a blow that causes no injury. Their right over you is their provision and clothing in accordance with what is recognized.'"

قَالَ أَبُو مُحَمَّد: لَمْ يَعْنِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِرَاشَ الْمَضْجَعِ، ذَلِكَ أَمْرٌ يَجِبُ فِيهِ الرَّجْمُ عَلَى الْمُحْصَنَةِ، فَلَا يُؤْمَرُ فِيهِ بِضَرْبٍ غَيْرِ مُبَرِّحٍ، وَإِنَّمَا عَنَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِلَا شَكٍّ كُلَّ مَا افْتُرِشَ فِي الْبُيُوتِ، وَهَذَا نَهْيٌ عَنْ أَنْ يَدْخُلَ فِي مَسْكَنِهِ أَوْ فِي بَيْتِهِ مَنْ لَا يُرِيدُ دُخُولَهُ مَنْزِلَهُ مِنْ رَجُلٍ أَوْ امْرَأَةٍ فَقَطْ - وَهَذَا يَأْتِي مُبَيَّنًا فِي الْمَسْأَلَةِ الَّتِي تَأْتِي بَعْدَ هَذِهِ

L32238 Abu Muhammad said: The Messenger of Allah (peace and blessings be upon him) did not intend the bed of the resting place, for that is a matter requiring stoning for a married woman, where non-severe beating would not be commanded. Rather, he (PBUH) undoubtedly meant anything spread out within houses. This prohibits anyone—whether a man or a woman—from entering his dwelling/home if he does not desire their entry. This will be clarified in the subsequent issue following this one.

وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا حُسَيْنُ بْنُ عَلِيٍّ عَنْ زَائِدَةَ عَنْ مَسَرَّةَ عَنْ أَبِي حَازِمٍ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ كَلَامًا، وَفِيهِ «فَاسْتَوْصُوا بِالنِّسَاءِ خَيْرًا»

L32239 From the chain of Muslim: Abū Bakr ibn Abī Shaybah narrated to us from Ḥusayn ibn ʿAlī, who narrated from Zā'idah, who narrated from Masarrat, who narrated from Abū Ḥāzim, who narrated from Abū Hurayrah, who narrated from the Prophet—peace and blessings be upon him—and he mentioned some words, in which was: "I enjoin you to treat women with kindness."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نا أَبُو نُعَيْمٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَارِبِ بْنِ دِثَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ

L32240 And via the chain of Ahmad ibn Shuʿayb: ʿAmr ibn Manṣūr narrated to us; Abū Nuʿaym narrated to us from Sufyān al-Thawrī, from Muḥārib ibn Dithār, from Jābir ibn ʿAbd Allāh, who said:

«نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ يَطْرُقَ الرَّجُلُ أَهْلَهُ لَيْلًا أَنْ يَتَخَوَّنَهُمْ أَوْ يَلْتَمِسَ عَثَرَاتِهِمْ»

L32241 "The Messenger of Allah (may Allah's peace and blessings be upon him and his family) prohibited a man from arriving suddenly at night, lest he suspect his household of betrayal or seek out their shortcomings."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو النُّعْمَانِ - هُوَ مُحَمَّدُ بْنُ الْفَضْلِ عَارِمٌ - نا هُشَيْمٌ نا سَيَّارٌ عَنْ الشَّعْبِيِّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «قَفَلْنَا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L32242 Through the chain of al-Bukhārī: Abū al-Nuʿmān—who is Muḥammad ibn al-Faḍl ʿĀrim—narrated to us: Hushaym narrated to us: Sayyār narrated to us: from al-Shaʿbī: from Jābir ibn ʿAbd Allāh, who said: "We returned with the Messenger of God—peace be upon him and his family—from a military expedition. When we were about to enter, he said: 'Wait until you enter at

night, so that the disheveled woman may comb her hair and the woman who stayed behind may remove her pubic hair.'"

L32243–32245 If it is said: "Is this a contradiction?" We say: By no means! Rather, he - peace and blessings be upon him - has clarified in both... The intended meaning of the two reports is as follows: He mentioned in the first report that one should not enter at night, thereby leading to a misstep—whether there is one or not. Thus, it is established that this pertains specifically to one who arrives at night.

L32246 And he—peace and blessings be upon him—clarified in the other case: that one who arrives by day should be granted respite until nighttime has fully set in after the news of his arrival reaches his household, so that she may shave her pubic hair and comb her hair.

L32247 No one attributes contradiction to the speech of Allah's Messenger—may Allah bless him and his family and grant him peace—except a disbeliever, nor attributes it to the Companions except a heretic, nor attributes it to the Imams—or those below them—except one whose heart has deviated from the Sunnah. We seek refuge with Allah from all of that.

L32248 **A question concerning a woman donating from her husband's wealth without causing detriment.**

L32249 Issue 1905: A woman may give charity from her husband's wealth without causing detriment, provided it does not harm his wealth, whether he permits or forbids, approves or disapproves.

L32250 The evidence for that is what we have narrated through the chain of Muslim: Muḥammad ibn Rāfiʿ narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar narrated to us from Hammām ibn Munabbih from Abū Hurayrah, who said: The Messenger of Allah - peace and blessings be upon him and his family - said: "A woman must not fast while her husband is present except with his permission, nor may she allow [someone] in his house while he is present

مِنْ غَزْوَةٍ فَلَمَّا ذَهَبْنَا لِنَدْخُلَ قَالَ أَمْهِلُوا حَتَّى تَدْخُلُوا لَيْلًا لِكَيْ تَمْتَشِطَ الشَّعِثَةُ وَتَسْتَحِدَّ الْمُغِيبَةُ»

فَإِنْ قِيلَ: هَذَا تَعَارُضٌ؟ قُلْنَا: كَلَّا، بَلْ قَدْ بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي كِلَا الْخَبَرَيْنِ مُرَادَهُ، ذَكَرَ فِي الْخَبَرِ الْأَوَّلِ: أَنْ لَا يَدْخُلَ لَيْلًا فَيَتَّبِعَ بِذَلِكَ عَثْرَةً إِنْ كَانَتْ أَوْ لَمْ تَكُنْ فَصَحَّ أَنَّ ذَلِكَ فِي الَّذِي جَاءَ لَيْلًا

وَبَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي الْآخَرِ: أَنْ يُمْهِلَ مَنْ أَتَى نَهَارًا حَتَّى يَدْخُلَ لَيْلًا بَعْدَ أَنْ يَتَّصِلَ خَبَرُهُ بِأَهْلِهِ، فَتَسْتَحِدَّ وَتَمْتَشِطَ

وَلَا يَنْسُبُ التَّعَارُضَ إِلَى كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَّا كَافِرٌ وَلَا يَنْسُبُهُ إِلَى الصَّحَابَةِ إِلَّا مُبْتَدِعٌ، وَلَا يَنْسُبُهُ إِلَى الْأَئِمَّةِ - وَمَنْ دُونَهُمْ - إِلَّا مُنْحَرِفُ الْقَلْبِ عَنْ السُّنَنِ - وَنَعُوذُ بِاَللَّهِ مِنْ كُلِّ ذَلِكَ

[مَسْأَلَةٌ لِلْمَرْأَةِ أَنْ تَتَصَدَّقَ مِنْ مَالِ زَوْجِهَا غَيْرَ مُفْسِدَةٍ]

١٩٠٥ - مَسْأَلَةٌ: وَلِلْمَرْأَةِ أَنْ تَتَصَدَّقَ مِنْ مَالِ زَوْجِهَا غَيْرَ مُفْسِدَةٍ، لَكِنْ بِمَا لَا يُؤَثِّرُ فِي مَالِهِ سَوَاءٌ أَذِنَ فِي ذَلِكَ أَمْ نَهَى أَحَبَّ أَمْ كَرِهَ

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لَا تَصُمْ الْمَرْأَةُ وَبَعْلُهَا شَاهِدٌ إِلَّا بِإِذْنِهِ وَلَا تَأْذَنْ فِي بَيْتِهِ وَهُوَ شَاهِدٌ إِلَّا بِإِذْنِهِ وَمَا أَنْفَقَتْ مِنْ كَسْبِهِ مِنْ غَيْرِ أَمْرِهِ فَإِنَّ نِصْفَ أَجْرِهِ لَهُ»

except with his permission. Whatever she spends from his earnings without his permission, then half the reward of that spending is for him."[19]

L32251 Through the chain of Ahmad ibn Shu'ayb: Ahmad ibn Harb informed me, Abu Mu'awiyah narrated from al-A'mash from Shaqiq from Masruq from Aisha, the Mother of the Believers, who said: The Messenger of Allah—peace be upon him and his family—said: "When a woman spends from her husband's household without causing corruption, she has her reward, he has the like thereof for what he provided, she is rewarded for what she spent, and the one who provides it has the same. None of their rewards is diminished in the slightest."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي أَحْمَدُ بْنُ حَرْبٍ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ شَقِيقٍ عَنْ مَسْرُوقٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إذَا أَنْفَقَتْ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا غَيْرَ مُفْسِدَةٍ كَانَ لَهَا أَجْرُهَا وَلَهُ مِثْلُهُ بِمَا كَسَبَ وَلَهَا بِمَا أَنْفَقَتْ وَلِلْخَازِنِ مِثْلُ ذَلِكَ، مِنْ غَيْرِ أَنْ يَنْقُصَ مِنْ أُجُورِهِمْ شَيْءٌ»

L32252 Abu Muhammad said: This wording is an addition to what we have narrated via Mansur's chain from Shaqiq in this report, wherein it states: "from the food of her house."

قَالَ أَبُو مُحَمَّد: هَذَا اللَّفْظُ زَائِدٌ عَلَى مَا رُوِّينَاهُ مِنْ طَرِيقِ مَنْصُورٍ عَنْ شَقِيقٍ فِي هَذَا الْخَبَرِ، فَقَالَ فِيهِ " مِنْ طَعَامِ بَيْتِهَا "

L32253 Abu Muhammad said: Some audacious people who oppose the Sunnah raised an objection, saying: This is from the narration of Abu Hurairah. Abu Hurairah was asked, "Can a woman give charity from her husband's household?" He replied: "No, except something from her own sustenance. The reward is divided between them, and it is not permissible for her to give charity from her husband's household except with his permission?"

قَالَ أَبُو مُحَمَّد: فَاعْتَرَضَ بَعْضُ أَهْلِ الْجُرْأَةِ عَلَى مُخَالَفَةِ السُّنَنِ بِأَنْ قَالُوا: هَذَا مِنْ رِوَايَةِ أَبِي هُرَيْرَةَ، وَقَدْ سُئِلَ أَبُو هُرَيْرَةَ هَلْ تَصَّدَّقُ الْمَرْأَةُ مِنْ بَيْتِ زَوْجِهَا؟ فَقَالَ: لَا، إلَّا شَيْئًا مِنْ قُوتِهَا، فَالْأَجْرُ بَيْنَهُمَا، وَلَا يَحِلُّ لَهَا أَنْ تَصَّدَّقَ مِنْ بَيْتِ زَوْجِهَا إلَّا بِإِذْنِهِ؟

L32254–32255 Abū Muḥammad said: This legal opinion from Abū Hurayrah was only transmitted to us through the chain of ʿAbd al-Malik ibn Abī Sulaymān al-ʿArzamī—who is rejected (as unreliable)—from ʿAṭāʾ, from Abū Hurayrah. Therefore, it is invalid; it cannot be used to oppose the narration of Hammām ibn Munabbih from him except by an ignorant person or a transgressor who brazenly upholds falsehood despite knowing it.

قَالَ أَبُو مُحَمَّد: هَذِهِ الْفُتْيَا مِنْ أَبِي هُرَيْرَةَ، إنَّمَا رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ الْعَرْزَمِيِّ - وَهُوَ مَتْرُوكٌ - عَنْ عَطَاءٍ عَنْ أَبِي هُرَيْرَةَ، فَهِيَ سَاقِطَةٌ، فَلَا يُعَارِضُ بِهَا رِوَايَةَ هَمَّامِ بْنِ مُنَبِّهٍ عَنْهُ إلَّا جَاهِلٌ، أَوْ فَاسِقٌ مُجَاهِرٌ بِالْبَاطِلِ وَهُوَ يَعْلَمُهُ.

L32256 From the chain of Muslim: Muslim ibn Hatim and Harun ibn Abdullah both narrated to us together: Hajjaj ibn Muhammad narrated to us, saying: Ibn Jurayj said: Ibn Abi Mulaikah informed me that Abbad ibn Abdullah ibn al-Zubayr informed him, from Asma bint Abi Bakr al-Siddiq, that she said: "O Messenger of Allah, I possess nothing except what al-Zubayr provides me. Is

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُسْلِمُ بْنُ حَاتِمٍ، وَهَارُونُ بْنُ عَبْدِ اللَّهِ، قَالَا جَمِيعًا: نا حَجَّاجُ بْنُ مُحَمَّد قَالَ: قَالَ ابْنُ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ أَنَّ عَبَّادَ بْنَ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ أَخْبَرَهُ «عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ أَنَّهَا قَالَتْ: يَا رَسُولَ اللَّهِ لَيْسَ لِي شَيْءٌ إلَّا مَا أَدْخَلَ

[19] **Hadith references (L32250):** Sahih Muslim 1026.

it sinful for me to give in charity from what he gives me?" He replied: "Give as much as you can, and do not withhold, lest Allah withhold from you."

L32257 Abu Muhammad said: Hajjaj's narration from Ibn Jurayj is established, but he relates it as follows: Ibn Jurayj said. And among those who held this opinion is the Mother of the Believers (may Allah be pleased with her).

L32258 As it has been narrated to us through the chain of Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqrī, from Sufyān ibn ʿUyaynah, from Ismāʿīl ibn Abī Khālid, from Qays ibn Abī Ḥāzim, from his wife that she heard ʿĀ'ishah, the Mother of the Believers—may Allāh be pleased with her—when a woman asked her: "May I feed from my husband's house?" The Mother of the Believers replied: "So long as you do not safeguard your wealth with his wealth."

L32259 Allah, the Almighty, the Majestic, said: {The Prophet has more right over the believers than they have over themselves} [Surah Al-Ahzab 33:6].[20]

L32260 And He, the Exalted, said: "It is not for a believing man or a believing woman, when Allah and His Messenger have decreed a matter, that they should have the choice in their matter." [Al-Ahzab: 36][21]

L32261 Therefore, when the Prophet—may God bless him and grant him peace—declared it permissible, the husband has no right whatsoever to prevent it.

L32262 **A ruling: A woman is not fundamentally obligated to serve her husband in any matter whatsoever.**

L32263–32265 1906: Question: A woman is not obligated to serve her husband in any way whatsoever—not in kneading dough, cooking, spreading bedding, sweeping, spinning, weaving, nor anything else. If she does so, it would be more virtuous for her. The husband must provide her with properly tailored clothing and fully prepared food. Her obligation is to treat him kindly, not to perform voluntary fasting while he is present without his permission, and not to

[20] **Qur'an references (L32259):** Qur'an 33:6 (Al-Ahzab).
[21] **Qur'an references (L32260):** Qur'an 33:36 (Al-Ahzab).

عَلَيَّ الزُّبَيْرُ فَهَلْ عَلَيَّ جُنَاحٌ أَنْ أَرْضَخَ بِمَا يُدْخِلُ عَلَيَّ؟ فَقَالَ: ارْضَخِي مَا اسْتَطَعْتِ وَلَا تُوكِي فَيُوكِيَ اللَّهُ عَلَيْكِ»

قَالَ أَبُو مُحَمَّد: سَمَاعُ حَجَّاجٍ مِنْ ابْنِ جُرَيْجٍ ثَابِتٌ، وَلَكِنَّهُ هَكَذَا يَقُولُ: قَالَ ابْنُ جُرَيْجٍ، وَمِمَّنْ قَالَ بِهَذَا أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -

كَمَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ امْرَأَتِهِ أَنَّهَا سَمِعَتْ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - وَسَأَلَتْهَا امْرَأَةٌ فَقَالَتْ: أُطْعِمُ مِنْ بَيْتِ زَوْجِي؟ فَقَالَتْ أُمُّ الْمُؤْمِنِينَ: مَا لَمْ تَقِي مَالَكِ بِمَالِهِ

قَالَ اللَّهُ عَزَّ وَجَلَّ: {النَّبِيُّ أَوْلَى بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ} [الأحزاب: ٦]

وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦]

فَإِذَا أَبَاحَ ذَلِكَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا رَأْيَ لِلزَّوْجِ فِي الْمَنْعِ مِنْهُ أَصْلًا

[مَسْأَلَةٌ لَا يَلْزَمُ الْمَرْأَةَ أَنْ تَخْدِمَ زَوْجَهَا فِي شَيْءٍ أَصْلًا]

١٩٠٦ - مَسْأَلَةٌ: وَلَا يَلْزَمُ الْمَرْأَةَ أَنْ تَخْدِمَ زَوْجَهَا فِي شَيْءٍ أَصْلًا، لَا فِي عَجْنٍ، وَلَا طَبْخٍ، وَلَا فَرْشٍ، وَلَا كَنْسٍ، وَلَا غَزْلٍ، وَلَا نَسْجٍ، وَلَا غَيْرِ ذَلِكَ أَصْلًا - وَلَوْ أَنَّهَا فَعَلَتْ لَكَانَ أَفْضَلَ لَهَا وَعَلَى الزَّوْجِ أَنْ يَأْتِيَهَا بِكِسْوَتِهَا مَخِيطَةً تَامَّةً، وَبِالطَّعَامِ مَطْبُوخًا

allow... She must not allow into his home anyone he dislikes, nor withhold herself from him whenever he desires, nor fail to safeguard whatever of his wealth he has placed with her.

L32266 Abu Thawr said: It is incumbent upon the woman to serve her husband in all matters. This may be substantiated by the authentic report from Ali ibn Abi Talib, who narrated: "Fatimah complained about her hands becoming calloused from grinding flour, and Ali informed the Messenger of Allah—may Allah bless him and his family and grant him peace—of this when she asked him (the Prophet) for a servant."

L32267 And by the authentically transmitted report—through the narration of Asmāʾ bint Abī Bakr, who said: "I used to serve al-Zubayr in household duties. He had a horse, and I would tend to it. I would cut fodder for it and oversee its care."

L32268 By the authentic report—through the narration of Asma as well—that she used to feed Az-Zubair's horse, fetch water, repair his water-skin, knead dough, and carry date stones on her head from his land situated two-thirds of a farsakh away, and that the Messenger of Allah—upon him be prayers and peace—met her while she was carrying them. He said: "If these two distinguished women have undertaken such burdensome service, then which women after them would consider themselves too dignified for that?" Abu Muhammad said: There is no valid proof for the proponents of this opinion in any of these reports, for neither these nor other narrations state that the Prophet—upon him be prayers and peace—commanded them to do so. Rather, they voluntarily performed these acts, being women of merit and dutifulness—may Allah be pleased with them. We do not forbid this if a woman voluntarily undertakes it. Our discourse concerns the essence of the divine truth that obligates enforcement through legal rulings and judicial verdicts.

L32269 If it is said: "Allah, Exalted is He, has said: {If they [women] obey you, do not seek a way against them} [An-Nisāʾ 4:34]."[22]

تَامًّا وَإِنَّمَا عَلَيْهَا أَنْ تُحْسِنَ عِشْرَتَهُ، وَلَا تَصُومَ تَطَوُّعًا وَهُوَ حَاضِرٌ إِلَّا بِإِذْنِهِ، وَلَا تُدْخِلَ بَيْتَهُ مَنْ يَكْرَهُ، وَأَنْ لَا تَمْنَعَهُ نَفْسَهَا مَتَى أَرَادَ، وَأَنْ تَحْفَظَ مَا جَعَلَ عِنْدَهَا مِنْ مَالِهِ

وَقَالَ أَبُو ثَوْرٍ: عَلَى الْمَرْأَةِ أَنْ تَخْدِمَ زَوْجَهَا فِي كُلِّ شَيْءٍ، وَيُمْكِنُ أَنْ يُحْتَجَّ لِذَلِكَ بِالْأَثَرِ الثَّابِتِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ «شَكَتْ فَاطِمَةُ مَجْلَ يَدَيْهَا مِنْ الطَّحِينِ، وَأَنَّهُ أَعْلَمَ بِذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إذْ سَأَلَهُ خَادِمًا»

وَبِالْخَبَرِ الثَّابِتِ - مِنْ طَرِيقِ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ قَالَتْ: كُنْت أَخْدِمُ الزُّبَيْرَ خِدْمَةَ الْبَيْتِ وَكَانَ لَهُ فَرَسٌ وَكُنْت أَسُوسُهُ كُنْت أَحْتَشُّ لَهُ وَأَقُومُ عَلَيْهِ

وَبِالْخَبَرِ الثَّابِتِ - مِنْ طَرِيقِ «أَسْمَاءَ أَيْضًا، أَنَّهَا كَانَتْ تَعْلِفُ فَرَسَ الزُّبَيْرِ وَتَسْقِي الْمَاءَ، وَتَجْزِمُ غَرْبَهُ، وَتَعْجِنُ، وَتَنْقُلُ النَّوَى عَلَى رَأْسِهَا مِنْ أَرْضٍ لَهُ عَلَى ثُلُثَيْ فَرْسَخٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَقِيَهَا وَهِيَ تَنْقُلُهُ - قَالَ: فَإِذَا خَدَمَتْ هَاتَانِ الْفَاضِلَتَانِ هَذِهِ الْخِدْمَةَ الثَّقِيلَةَ فَمَنْ بَعْدَهُمَا يَتَرَفَّعُ عَنْ ذَلِكَ مِنْ النِّسَاءِ» ؟ قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لِأَهْلِ هَذَا الْقَوْلِ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ، لِأَنَّهُ لَيْسَ فِي شَيْءٍ مِنْهَا، وَلَا مِنْ غَيْرِهَا: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَهُمَا بِذَلِكَ إنَّمَا كَانَتَا مُتَبَرِّعَتَيْنِ بِذَلِكَ، وَهُمَا أَهْلُ الْفَضْلِ وَالْمَبَرَّةِ - رَضِيَ اللَّهُ عَنْهُمَا - وَنَحْنُ لَا نَمْنَعُ مِنْ ذَلِكَ إنْ تَطَوَّعَتْ الْمَرْأَةُ بِهِ، إنَّمَا نَتَكَلَّمُ عَلَى سِرِّ الْحَقِّ الَّذِي تَجِبُ بِهِ الْفُتْيَا وَالْقَضَاءُ بِإِلْزَامِهِ

فَإِنْ قِيلَ: قَدْ قَالَ اللَّهُ تَعَالَى: {فَإِنْ أَطَعْنَكُمْ فَلا تَبْغُوا عَلَيْهِنَّ سَبِيلا} [النساء: ٣٤]

[22] **Qur'an references (L32269):** Qur'an 4:34 (An-Nisa).

قُلْنَا: أَوَّلُ الْآيَةِ بَيَّنَ فِيمَا هِيَ هَذِهِ الطَّاعَةُ، قَالَ تَعَالَى: {وَاللاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِنْ أَطَعْنَكُمْ فَلا تَبْغُوا عَلَيْهِنَّ سَبِيلا} [النساء: ٣٤]

L32270 We said: The beginning of the verse clarifies regarding what this obedience entails. Allah, the Exalted, said: "As for those women from whom you fear disobedience, admonish them, separate from them in bed, and strike them. If they obey you, do not seek any means against them." [Quran 4:34][23]

فَصَحَّ أَنَّهَا الطَّاعَةُ إِذَا دَعَاهَا لِلْجِمَاعِ فَقَطْ.

L32271 Thus, it was established that her obedience is only when he summons her to intercourse.

وَقَدْ بَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا يَجِبُ عَلَى الرَّجُلِ لِلْمَرْأَةِ وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذِهِ الْمَسْأَلَةِ بِمَسْأَلَتَيْنِ

L32272 The Messenger of Allah—may Allah bless him and grant him peace—has clarified what is obligatory upon a man regarding a woman, and we have discussed it two questions prior to this one.

وَمَنْ أَلْزَمَ الْمَرْأَةَ خِدْمَةً دُونَ خِدْمَةٍ فَقَدْ شَرَّعَ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَقَالَ مَا لَا يَصِحُّ، وَمَا لَا نَصَّ فِيهِ، وَكَذَلِكَ بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَنَّ لَهُنَّ عَلَيْنَا رِزْقَهُنَّ وَكِسْوَتَهُنَّ بِالْمَعْرُوفِ فَصَحَّ مَا قُلْنَاهُ: مِنْ أَنْ عَلَى الزَّوْجِ أَنْ يَأْتِيَهَا بِرِزْقِهَا مُمَكِّنًا لَهَا أَكْلَهُ، وَالْكِسْوَةَ مُمَكِّنًا لَهَا لِبَاسَهَا، لِأَنَّ مَا لَا يُوصَلُ إلَى أَكْلِهِ وَلِبَاسِهِ إلَّا بِعَجْنٍ وَطَبْخٍ، وَغَزْلٍ، وَنَسْجٍ، وَقِصَارَةٍ، وَصِبَاغٍ، وَخِيَاطَةٍ، فَلَيْسَ هُوَ رِزْقًا، وَلَا كِسْوَةً - هَذَا مَا لَا خِلَافَ فِيهِ فِي اللُّغَةِ وَالْمُشَاهَدَةِ - وَأَمَّا حِفْظُ مَا جُعِلَ عِنْدَهَا فَفَرْضٌ بِلَا خِلَافٍ

L32273–32275 Whoever imposes upon a woman one service instead of another has prescribed what Allah the Exalted has not permitted, and has spoken what is invalid and what lacks textual basis. Similarly, the Prophet—peace and blessings be upon him—clarified that they have a right against us to their maintenance and clothing in a reasonable manner. Thus, our established position remains correct: the husband must provide her with provisions enabling her to consume them and clothing enabling her to wear them. For whatever cannot be eaten or worn except through kneading, cooking, spinning, weaving, fulling, dyeing, or sewing does not qualify as provisions or clothing—a matter undisputed in linguistic usage and observable reality. As for safeguarding what is placed in her custody, this is unquestionably obligatory.

[مَسْأَلَةٌ لَا يَحِلُّ لِلْمَرْأَةِ أَنْ تَحْلِقَ رَأْسَهَا إلَّا مِنْ ضَرُورَةٍ]

L32276 **Legal Ruling: It is impermissible for a woman to shave her head except out of necessity.**

١٩٠٧ - مَسْأَلَةٌ: وَلَا يَحِلُّ لِلْمَرْأَةِ أَنْ تَحْلِقَ رَأْسَهَا إلَّا مِنْ ضَرُورَةٍ لَا مَحِيدَ مِنْهَا، وَلَا أَنْ تَصِلَ فِي شَعْرِهَا شَيْئًا أَصْلًا، لَا مِنْ شَعْرِهَا وَلَا مِنْ شَعْرِ إنْسَانٍ غَيْرِهَا، أَوْ مِنْ شَعْرِ حَيَوَانٍ، أَوْ صُوفٍ، أَوْ غَيْرِ ذَلِكَ - وَهُوَ مِنْ الْكَبَائِرِ

L32277 Issue 1907: It is not permissible for a woman to shave her head except out of unavoidable necessity, nor may she add extensions to her hair absolutely - neither from her own hair, nor from the hair of another person, nor from animal hair, wool, or anything else, and this is among the major sins.

وَلَا يَحِلُّ لَهَا أَنْ تُفَلِّجَ أَسْنَانَهَا، وَلَا أَنْ تَنْتِفَ الشَّعْرَ مِنْ وَجْهِهَا، وَلَا أَنْ تَشُمَّ بِالنَّقْشِ وَالْكُحْلِ أَوْ غَيْرِهِ شَيْئًا مِنْ جَسَدِهَا، فَإِنْ فَعَلَتْ فَهِيَ مَلْعُونَةٌ هِيَ وَالَّتِي تَفْعَلُ بِهَا ذَلِكَ

L32278 It is not permissible for her to create gaps between her teeth, pluck hair from her face, tattoo, apply kohl, or use anything else on her body. If she does so, she is cursed—both she and the one who does this to her.

[23] **Qur'an references (L32270):** Qur'an 4:34 (An-Nisa).

L32279 The proof of that is what we have narrated through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Mūsā al-Ḥarashī narrated to us, Abū Dāwūd [he is al-Ṭayālisī] narrated to us, Hammām [he is ibn Yaḥyā] from Qatādah from Khilās from ʿAlī, who said: "The Messenger of Allah—peace and blessings be upon him—prohibited a woman from shaving her head." If compelled to do so, Allah the Exalted has said: {He has made clear to you what He has forbidden you, except what you are compelled to} [al-Anʿām 6:119].[2425]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ مُوسَى الْحَرَشِيُّ نا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - نا هَمَّامٌ - هُوَ ابْنُ يَحْيَى - عَنْ قَتَادَةَ عَنْ خِلَاسٍ عَنْ عَلِيٍّ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَحْلِقَ الْمَرْأَةُ رَأْسَهَا» فَإِنْ اُضْطُرَّتْ إِلَى ذَلِكَ فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩]

L32280 And via the chain of Ahmad ibn Shu'ayb: Narrated to us Muhammad ibn al-Muthanna, from Yahya—he is Ibn Sa'id al-Qattan—from Hisham ibn 'Urwah, who said: Fatimah bint al-Mundhir narrated to me from Asma' bint Abi Bakr al-Siddiq, who said: "A woman came to the Messenger of Allah—peace and blessings of Allah be upon him—and said: 'O Messenger of Allah, indeed I have a daughter who is a bride, and she was afflicted, so her hair tore. Is there any sin on me if I attach hair extensions to it for her?' The Messenger of Allah—peace be upon him—said to her: 'May Allah curse the one who attaches hair extensions and the one who seeks them.'"

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ هِشَامِ بْنِ عُرْوَةَ قَالَ: حَدَّثَتْنِي فَاطِمَةُ بِنْتُ الْمُنْذِرِ عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَتْ: «جَاءَتْ امْرَأَةٌ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ إِنَّ لِي ابْنَةً عَرُوسًا وَأَنَّهَا اشْتَكَتْ فَتَمَزَّقَ شَعْرُهَا، فَهَلْ عَلَيَّ جُنَاحٌ إِنْ وَصَلْتُ لَهَا فِيهِ، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَعَنَ اللَّهُ الْوَاصِلَةَ وَالْمُسْتَوْصِلَةَ» .

L32281 From the chain of Ahmad ibn Shu'ayb: 'Abd al-Rahman ibn Muhammad ibn Salam narrated to us from Abu Dawud (al-Tayalisi) from Sufyan al-Thawri, from Mansur, from Ibrahim al-Nakha'i, from 'Alqamah, from 'Abdullah ibn Mas'ud, who said: "The Messenger of Allah—peace be upon him—cursed the women who apply tattoos, those who seek tattoos, those who pluck eyebrows, and those who create gaps between teeth for beauty, thereby altering Allah's creation."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ سَلَامٍ نا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ «لَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوَاشِمَاتِ وَالْمُسْتَوْشِمَاتِ وَالْمُتَنَمِّصَاتِ وَالْمُتَفَلِّجَاتِ لِلْحُسْنِ الْمُغَيِّرَاتِ خَلْقَ اللَّهِ»

L32282 **A case concerning one spouse lying to the other in matters through which one seeks to elicit affection.**

[مَسْأَلَةٌ كَذِبِ أَحَدِ الزَّوْجَيْنِ لِلْآخَرِ فِيمَا يَسْتَجْلِبُ بِهِ الْمَوَدَّةَ]

L32283–32285 1908 - Issue: There is no harm in one spouse lying to the other in matters that foster affection. As narrated to us via the chain of transmission (ṭarīq) of Aḥmad ibn Shuʿayb: Abū Ṣāliḥ Muḥammad ibn Zunbūr al-Makkī narrated to

١٩٠٨ - مَسْأَلَةٌ: وَلَا بَأْسَ بِكَذِبِ أَحَدِ الزَّوْجَيْنِ لِلْآخَرِ فِيمَا يَسْتَجْلِبُ بِهِ الْمَوَدَّةَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَبُو صَالِحٍ مُحَمَّدُ بْنُ زُنْبُورٍ الْمَكِّيُّ نا ابْنُ أَبِي حَازِمٍ - هُوَ عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الْوَهَّابِ بْنِ أَبِي بَكْرٍ - عَنِ ابْنِ شِهَابٍ عَنْ حُمَيْدِ بْنِ عَبْدِ

[24] **Hadith references (L32279):** Sunan an-Nasai 5049; Jami at-Tirmidhi 914; Mishkat al-Masabih 4485.

[25] **Qur'an references (L32279):** Qur'an 6:119 (Al-An'am).

us, Ibn Abī Ḥāzim (ʿAbd al-ʿAzīz ibn ʿAbd al-Wahhāb ibn Abī Bakr) narrated to us from Ibn Shihāb from... Humaid ibn Abd al-Rahman ibn Awf reported from his mother Umm Kulthum bint Uqba ibn Abi Muʻayt that she heard Allah's Messenger (peace and blessings of Allah be upon him) say: "I do not consider the following as lying: a man who reconciles between people by saying something to promote harmony; a man who says something during war; a man who converses with his wife; and a woman who converses with her husband."

L32286 **Issue: It is unlawful to bestow a gift on baseless grounds.**

L32287 1909 - Issue: It is not permissible to pretend falsely. As we have reported through the chain of al-Bukhari: Sulayman ibn Harb narrated to us, Hammad ibn Zayd narrated to us from Hisham ibn Urwah from Fatimah bint al-Mundhir from Asma bint Abi Bakr al-Siddiq that a woman said: "O Messenger of Allah, I have a co-wife. Is there any sin upon me if I pretend to have received from my husband more than he gives?" The Prophet—peace and blessings be upon him—said: "One who pretends to possess what they were not given is like the wearer of two garments of falsehood."

L32288 **A juristic question on the permissibility of young girls specifically playing with images.**

L32289 1910 - Issue: It is permissible for young girls specifically to play with images, and it is not lawful for others. Images are prohibited except for this and except for what constitutes a pattern on a garment.

L32290 It was narrated to us through the chain of Muslim ibn al-Ḥajjāj: Abū Bakr ibn Abī Shaybah and ʿAmr an-Nāqid narrated to us—they both said: Sufyān ibn ʿUyaynah narrated to us from az-Zuhrī from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah from Ibn ʿAbbās from Abū Ṭalḥah from the Prophet—peace

الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أُمِّهِ أُمِّ كُلْثُومٍ بِنْتِ عُقْبَةَ بْنِ أَبِي مُعَيْطٍ أَنَّهَا سَمِعَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا أَعُدُّهُ كَذِبًا: الرَّجُلُ يُصْلِحُ بَيْنَ النَّاسِ يَقُولُ الْقَوْلَ يُرِيدُ الصَّلَاحَ، وَالرَّجُلُ يَقُولُ الْقَوْلَ فِي الْحَرْبِ وَالرَّجُلُ يُحَدِّثُ امْرَأَتَهُ، وَالْمَرْأَةُ تُحَدِّثُ زَوْجَهَا»

[مَسْأَلَةٌ لَا يَحِلُّ النَّفْحُ بِالْبَاطِلِ]

١٩٠٩ - مَسْأَلَةٌ: وَلَا يَحِلُّ النَّفْحُ بِالْبَاطِلِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ ثنا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ فَاطِمَةَ بِنْتِ الْمُنْذِرِ عَنْ أَسْمَاءَ بِنْتِ أَبِي بَكْرٍ الصِّدِّيقِ «أَنَّ امْرَأَةً قَالَتْ: يَا رَسُولَ اللَّهِ إنَّ لِي ضَرَّةً فَهَلْ عَلَيَّ جُنَاحٌ إنْ تَشَبَّعْتُ مِنْ زَوْجِي غَيْرَ الَّذِي يُعْطِي؟ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: الْمُتَشَبِّعُ بِمَا لَمْ يُعْطَ كَلَابِسِ ثَوْبَيْ زُورٍ»

[مَسْأَلَةٌ جَوَازُ اللَّعِبِ بِالصُّوَرِ لِلصَّبَايَا خَاصَّةً]

١٩١٠ - مَسْأَلَةٌ: وَجَائِزٌ لِلصَّبَايَا خَاصَّةً اللَّعِبُ بِالصُّوَرِ، وَلَا يَحِلُّ لِغَيْرِهِنَّ، وَالصُّوَرُ مُحَرَّمَةٌ إلَّا هَذَا، وَإِلَّا مَا كَانَ رَقْمًا فِي ثَوْبٍ

رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَمْرٌو النَّاقِدُ، قَالَا جَمِيعًا: نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ أَبِي طَلْحَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا تَدْخُلُ الْمَلَائِكَةُ بَيْتًا فِيهِ كَلْبٌ وَلَا صُورَةٌ» .

and blessings be upon him—who said: “The angels do not enter a house containing a dog or an image [of a living being].”[26]

L32291 From the narration of Muslim: Qutaybah narrated to us, al-Layth—who is Ibn Sa‘d—narrated to us from Bukayr—who is Ibn al-Ashajj—from Busr ibn Sa‘īd from Zayd ibn Khālid from Abū Ṭalḥah al-Anṣārī that the Messenger of Allah—peace and blessings of Allah be upon him—said: “Angels do not enter a house in which there is an image.” Later, Zayd ibn Khālid fell ill, so we visited him, and there, at his door, was a curtain with an image. I said to ‘Ubaydullāh al-Khawlānī—the stepson of Maymūnah, the Mother of the Believers—“Did Zayd not inform us about images?” ‘Ubaydullāh replied: “Did you not hear him when he said, ‘except for a design on a garment’?”

L32292–32294 And via the transmission of Aḥmad ibn Shu‘ayb: Muḥammad ibn Rāfi‘ al-Naysābūrī informed us from Ḥujayn — who is Ibn al-Muthannā. From Abdul Aziz ibn Abi Salamah Al-Majishun, from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers, who said: “The Messenger of Allah (peace be upon him) would discreetly allow my companions to come to me so they could play with me using young girl dolls.”

L32295 ## Rulings on Intercourse

L32296 ### Issue: Concealment during sexual intercourse is obligatory.

L32297 The Rulings of Marital Relations 1911 – Issue: It is obligatory to maintain privacy during marital relations, based on the statement of Allah, the Mighty and Majestic: “O you who believe, let those under your authority and those who have not reached puberty among you ask your permission at three times: before the dawn prayer, when you remove your clothing at noon, and after

[26] **Hadith references (L32290):** Sahih al-Bukhari 3322; Sahih al-Bukhari 4002; Sahih al-Bukhari 3225.

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ بُكَيْرٍ - هُوَ ابْنُ الْأَشَجِّ - عَنْ بُسْرِ بْنِ سَعِيدٍ عَنْ زَيْدِ بْنِ خَالِدٍ عَنْ أَبِي طَلْحَةَ الْأَنْصَارِيِّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إِنَّ الْمَلَائِكَةَ لَا تَدْخُلُ بَيْتًا فِيهِ صُورَةٌ ثُمَّ اشْتَكَى زَيْدُ بْنُ خَالِدٍ فَعُدْنَاهُ، فَإِذَا عَلَى بَابِهِ سِتْرٌ فِيهِ صُورَةٌ، فَقُلْتُ لِعُبَيْدِ اللَّهِ الْخَوْلَانِيِّ - رَبِيبِ مَيْمُونَةَ أُمِّ الْمُؤْمِنِينَ - أَلَمْ يُخْبِرْنَا زَيْدٌ عَنْ الصُّورَةِ؟ فَقَالَ عُبَيْدُ اللَّهِ: أَلَمْ تَسْمَعْهُ حِينَ قَالَ إِلَّا رَقْمًا فِي ثَوْبٍ»

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَرِنَا مُحَمَّدُ بْنُ رَافِعٍ النَّيْسَابُورِيُّ نَا حُجَيْنٌ - هُوَ ابْنُ الْمُثَنَّى - نا عَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ الْمَاجِشُونِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُسَرِّبُ إِلَيَّ صَوَاحِبِي يَلْعَبْنَ مَعِي بِاللُّعَبِ الْبَنَاتِ الصِّغَارِ»

[أَحْكَامُ الْوَطْء]

[مَسْأَلَةُ الِاسْتِتَارُ بِالْجِمَاعِ فَرْضٌ]

أَحْكَامُ الْوَطْء ١٩١١ - مَسْأَلَةٌ: وَالِاسْتِتَارُ بِالْجِمَاعِ فَرْضٌ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا لِيَسْتَأْذِنْكُمُ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا الْحُلُمَ مِنْكُمْ ثَلَاثَ مَرَّاتٍ مِنْ قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِنَ الظَّهِيرَةِ وَمِنْ بَعْدِ صَلَاةِ الْعِشَاءِ ثَلَاثُ عَوْرَاتٍ لَكُمْ} [النور: ٥٨] وَالْحَدِيثُ بِذَلِكَ لَا يَجُوزُ

the night prayer. These are three times of privacy for you" [An-Nur: 58]. It is impermissible to discuss these times.[27]

L32298 **A legal issue: For a man with his menstruating wife, all things are permissible except penetration alone.**

L32299 1912. Issue: It is permissible for a man to engage in all acts with his menstruating wife except penetration. This matter has been a subject of disagreement among people. It was narrated to us through the chain of Ismāʿīl ibn Isḥāq, from Muḥammad ibn Abī Khidāsh, from Marwān ibn Muʿāwiyah, from Jaʿfar ibn al-Zubayr, from al-Qāsim ibn ʿAbd al-Raḥmān, from Abū Umāmah al-Bāhilī—the Companion of Allah's Messenger (peace and blessings be upon him)—who said: ʿUmar ibn al-Khaṭṭāb declared, "We used to engage in intimacy with women during menstruation on bedding and under covers due to scarcity. But since Allah has now provided ample bedding and covers, refrain from them as Allah the Exalted has commanded."

Ḥammām narrated to us: ʿAbbās ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Malik ibn Ayman narrated to us: Abū Ismāʿīl Muḥammad ibn Ismāʿīl al-Tirmidhī narrated to us: Sufyān ibn ʿUyaynah narrated to us: Manbūdh al-Makkī narrated from his mother, who said: "We were with Maymūnah when Ibn ʿAbbās entered. Maymūnah said to him, 'My son, why do I see your hair disheveled?' He replied, 'My groomer is menstruating,'" and he mentioned the hadith…

L32300–32302 Those who held this opinion cited as evidence the words of Allah, the Almighty and Majestic: "Say, 'It is harm, so keep away from women during menstruation. And do not approach them until they have purified themselves.'" [Al-Baqarah: 222] and with a narration we have transmitted through the chain of Abū Dāwūd: Muḥammad ibn Saʿīd narrated to us, Saʿīd ibn ʿAbd al-Jabbār narrated to us, ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī narrated to us from Abū al-Yamān from Umm Durrah from ʿĀ'ishah, the Mother of the Believers, who said: Whenever I menstruated, I would come down from the elevated bedding to the mat, and we would neither approach the Mes-

[27] **Qur'an references (L32297):** Qur'an 24:58 (An-Nur).

[مَسْأَلَةٌ لِلرَّجُلِ مِنْ امْرَأَتِهِ الْحَائِضِ كُلُّ شَيْءٍ حَاشَ الْإِيلَاجَ فَقَطْ]

١٩١٢ - مَسْأَلَةٌ: وَحَلَالٌ لِلرَّجُلِ مِنْ امْرَأَتِهِ الْحَائِضِ كُلُّ شَيْءٍ حَاشَ الْإِيلَاجَ فَقَطْ، وَهَذَا أَمْرٌ قَدْ اخْتَلَفَ النَّاسُ فِيهِ -: رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا مُحَمَّدُ بْنُ أَبِي خِدَاشٍ نا مَرْوَانُ بْنُ مُعَاوِيَةَ نا جَعْفَرُ بْنُ الزُّبَيْرِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي أُمَامَةَ - وَهُوَ الْبَاهِلِيُّ - صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: كُنَّا نُضَاجِعُ النِّسَاءَ فِي الْمَحِيضِ وَفِي الْفُرُشِ وَاللُّحُفِ مِنْ قِلَّةٍ، فَأَمَّا إذْ وَسَّعَ اللَّهَ الْفُرُشَ وَاللُّحُفَ فَاعْتَزِلُوهُنَّ كَمَا أَمَرَ اللَّهُ تَعَالَى نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَبُو إِسْمَاعِيلَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا مَنْبُوذٌ الْمَكِّيُّ عَنْ أُمِّهِ قَالَتْ: كُنَّا عِنْدَ مَيْمُونَةَ فَدَخَلَ عَلَيْهَا ابْنُ عَبَّاسٍ، فَقَالَتْ لَهُ مَيْمُونَةُ: أَيْ بُنَيَّ مَا لِي أَرَاكَ شَعِثَ الرَّأْسِ؟ فَقَالَ: إنَّ مُرَجِّلَتِي حَائِضٌ - وَذَكَرَ الْحَدِيثَ.

وَاحْتَجَّ مَنْ ذَهَبَ إلَى هَذَا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {قُلْ هُوَ أَذًى فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ وَلَا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ} [البقرة: ٢٢٢] وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد ثنا مُحَمَّدُ بْنُ سَعِيدٍ نا سَعِيدُ بْنُ عَبْدِ الْجَبَّارِ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ أَبِي الْيَمَانِ عَنْ أُمِّ دُرَّةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: كُنْت إذَا حِضْت نَزَلْت عَنْ الْمِثَالِ إلَى الْحَصِيرِ فَلَمْ نَقْرَبْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ نَدْنُ مِنْهُ حَتَّى نَطْهُرَ

senger of Allah—peace be upon him—nor draw close to him until we had become pure.[28]

وَهَذَا لَا شَيْءَ، لِأَنَّهُ مِنْ طَرِيقِ أُمِّ دُرَّةَ وَهِيَ مَجْهُولَةٌ لَا تُدْرَى

L32303 This is baseless, for it is narrated by Umm Durrah, who is unreliable as her status is not known.

وَذَهَبَتْ طَائِفَةٌ - إِلَى أَنَّ لَهُ مِنْ السُّرَّةِ فَصَاعِدًا فَقَطْ، وَلَيْسَ لَهُ مَا دُونَ ذَلِكَ.

L32304 A group of scholars holds the opinion that the ruling pertains exclusively to the area from the navel upward and does not apply to anything below that.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمٍ الْبَجَلِيِّ أَنَّ نَفَرًا سَأَلُوا عُمَرَ بْنَ الْخَطَّابِ عَمَّا يَحِلُّ لِلرَّجُلِ مِنْ امْرَأَتِهِ حَائِضًا؟ فَقَالَ عُمَرُ: لَك مَا فَوْقَ الْإِزَارِ، لَا تَطَّلِعَنَّ عَلَى مَا تَحْتَهُ حَتَّى تَطْهُرَ.

L32305 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Abū Isḥāq al-Sabīʿī from ʿĀṣim al-Bajalī that a group of people asked ʿUmar ibn al-Khaṭṭāb about what is permissible for a man from his wife during her menstruation. ʿUmar said: “What is above the lower garment (izār) is lawful for you. Do not look at what lies beneath it until she attains ritual purity.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ مُوسَى عَنْ نَافِعٍ: أَنَّ ابْنَ عُمَرَ أَرْسَلَ إِلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ يَسْتَفْتِيهَا فِي الْحَائِضِ يُبَاشِرُهَا؟ فَقَالَتْ عَائِشَةُ: نَعَمْ، تَجْعَلُ عَلَى سِفْلَتِهَا ثَوْبًا.

L32306 Narrated through the chain of Abd al-Razzaq, from Ibn Jurayj, from Musa, from Nafi: That Ibn Umar sent to Aisha, the Mother of the Believers, seeking her legal opinion regarding having intimate contact with a menstruating woman. Aisha replied: “Yes, let him place a garment over her private area.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ عَنْ شُرَيْحٍ قَوْلُ: لَك مَا فَوْقَ السُّرَّةِ -.

L32307 And from the chain of Abd al-Razzaq, from Maʿmar, from Ayyub al-Sikhtiyani, from Ibn Sirin, from Shurayh - the opinion: “What is above the navel belongs to you” -

قَالَ مَعْمَرٌ: وَسَمِعْت قَتَادَةَ يَقُولُ: لَك مَا فَوْقَ الْإِزَارِ.

L32308 Ma’mar said, “And I heard Qatadah say, ’What is above the lower garment belongs to you.”’

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ: مَا تَحْتَ الْإِزَارِ حَرَامٌ.

L32309 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Sulaymān ibn Mūsā, who said: What lies beneath the *izar* must remain covered.

وَبِهِ إِلَى ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: تُبَاشِرُ الْحَائِضُ زَوْجَهَا إِذَا كَانَ عَلَى جَزْلَتِهَا السُّفْلَى إِزَارٌ، سَمِعْنَا ذَلِكَ.

L32310 And through him to Ibn Jurayj from ‘Ata’, who said: A menstruating woman can have direct physical contact with her husband if her lower abdomen is covered with a lower garment (izar); we have heard this.

L32311 The proponents of this opinion cited as evidence a narration [we have trans-

[28] **Qur’an references (L32300):** Qur’an 2:222 (Al-Baqarah).

mitted it from the Messenger of Allah, peace be upon him and his family] in which he said: "As for what is permissible for a man with his wife while she is menstruating, it is [limited to] what is above the loincloth."

وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِخَبَرٍ - رُوِّينَاهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «وَأَمَّا مَا لِلرَّجُلِ مِنْ امْرَأَتِهِ وَهِيَ حَائِضٌ فَمَا فَوْقَ الْإِزَارِ» .

L32312–32314 Abu Muhammad said: This is a report we have narrated through sound chains to a man named 'Asim ibn 'Amr al-Bajali al-Kufi, from 'Umar ibn al-Khattab, from the Messenger of Allah—peace and blessings of Allah be upon him. This 'Asim did not hear it from 'Umar, for we have narrated it through the chain of Abu Ishaq al-Sabi'i, from 'Asim ibn 'Amr, from 'Umayr—the client of 'Umar—and this 'Umayr is obscure. We have also narrated it through the chain of Shu'bah, from the aforementioned 'Asim, from a man from the group who asked 'Umar about that matter. And with another report—through the chain of Abu Dawud, who narrated from Harun ibn Muhammad ibn Bakkar, who narrated from Marwan (i.e., ibn Muhammad), who narrated from al-Haytham ibn Humaid, who narrated from al-Ala ibn al-Harith, who narrated from Hizam ibn Hakim, from his uncle—that he asked the Messenger of Allah (peace and blessings be upon him and his family), "What is permissible for me from my wife while she is menstruating?" He said: "You may have what is above the waist-wrapper."

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرٌ رُوِّينَاهُ مِنْ طُرُقٍ صِحَاحٍ إلَى رَجُلٍ يُسَمَّى عَاصِمَ بْنَ عَمْرٍو الْبَجَلِيَّ الْكُوفِيَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَاصِمٌ هَذَا لَمْ يَسْمَعْهُ مِنْ عُمَرَ، لِأَنَّنَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ عَمْرٍو عَنْ عُمَيْرٍ - مَوْلَى عُمَرَ - وَعُمَيْرٌ هَذَا مَجْهُولٌ وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَاصِمٍ الْمَذْكُورِ عَنْ رَجُلٍ عَنْ الْقَوْمِ الَّذِينَ سَأَلُوا عُمَرَ عَنْ ذَلِكَ وَبِخَبَرٍ آخَرَ - مِنْ طَرِيقِ أَبِي دَاوُد نا هَارُونُ بْنُ مُحَمَّدِ بْنِ بَكَّارٍ نا مَرْوَانُ - يَعْنِي ابْنَ مُحَمَّدٍ - نا الْهَيْثَمُ بْنُ حُمَيْدٍ نا الْعَلَاءُ بْنُ الْحَارِثِ عَنْ حِزَامِ بْنِ حَكِيمٍ عَنْ عَمِّهِ: أَنَّهُ «سَأَلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا يَحِلُّ لِي مِنْ امْرَأَتِي وَهِيَ حَائِضٌ؟ قَالَ: لَكَ مَا فَوْقَ الْإِزَارِ» .

L32315 This is invalid because Ḥizām ibn Ḥakīm is a weak narrator, as he is the one who reported the ruling requiring washing the female genitalia [labia] for cases involving madhy (pre-seminal fluid). Marwān ibn Muḥammad, from whom Ḥizām transmitted the narration, is also a weak narrator.

وَهَذَا لَا يَصِحُّ، لِأَنَّ حِزَامَ بْنَ حَكِيمٍ ضَعِيفٌ، وَهُوَ الَّذِي رَوَى غَسْلَ الْأُنْثَيَيْنِ مِنْ الْمَذْيِ، وَمَرْوَانُ بْنُ مُحَمَّدٍ الَّذِي رَوَى عَنْهُ ضَعِيفٌ أَيْضًا.

L32316 And with a report—we have narrated it through the chain of Abū Dāwūd: Hishām ibn ʿAbd al-Malik al-Yazanī informed us, Baqiyyah ibn ʿAbd al-Walīd narrated to me from Saʿīd (Ibn ʿAbd Allāh al-Aghṭash) from ʿAbd al-Raḥmān ibn ʿĀ'idh al-Azdī. Hishām ibn Qirṭ al-Azdī (the governor of Ḥimṣ) reported from Muʿādh ibn Jabal, who said: "I asked the Messenger of God—may God bless him and his family and grant him peace—about what is permissible for a man to do with his wife while she is menstruating. He said: 'What is above the lower garment. Restraint from that is more virtuous.'"

وَبِخَبَرٍ - رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا هِشَامُ بْنُ عَبْدِ الْمَلِكِ الْيَزَنِيُّ حَدَّثَنِي بَقِيَّةُ بْنُ عَبْدِ الْوَلِيدِ عَنْ سَعِيدٍ - هُوَ ابْنُ عَبْدِ اللَّهِ الْأَغْطَشُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَائِذٍ الْأَزْدِيِّ قَالَ هِشَامٌ - وَهُوَ ابْنُ قِرْطٍ الْأَزْدِيُّ أَمِيرُ حِمْصَ - عَنْ مُعَاذِ بْنِ جَبَلٍ، قَالَ: «سَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَمَّا يَحِلُّ لِلرَّجُلِ مِنْ امْرَأَتِهِ وَهِيَ حَائِضٌ؟ فَقَالَ: مَا هُوَ فَوْقَ الْإِزَارِ، وَالتَّعَفُّفُ عَنْ ذَلِكَ أَفْضَلُ»

L32317 This is an inauthentic report because it is narrated through Baqiyyah - who is

ḍaʿīf (weak) - from Saʿīd ibn ʿAbdullāh al-Aghṭash - who is majhūl (unknown) and unrecognized.

وَهَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ مِنْ طَرِيقِ بَقِيَّةَ - وَهُوَ ضَعِيفٌ - عَنْ سَعِيدِ بْنِ عَبْدِ اللَّهِ الْأَغْطَشِ - وَهُوَ مَجْهُولٌ لَا يُعْرَفُ.

L32318 And with a report—from the chain of Ibn Abī Shaybah: ʿAbd al-Raḥīm narrated to us, Muḥammad ibn Kurayb narrated to us from Kurayb from Ibn ʿAbbās—that he was asked about the menstruating woman: "What is permissible for her husband?" He said: "We heard—and Allah knows best if the Messenger of Allah—peace and blessings be upon him and his family—said it—then it is so: 'Nothing above the izār is permissible for him.'" This ḥadīth, as you see, is not musnad.

وَبِخَبَرٍ - مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحِيمِ نا مُحَمَّدُ بْنُ كُرَيْبٍ عَنْ كُرَيْبٍ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ سُئِلَ عَنْ الْمَرْأَةِ الْحَائِضِ مَاذَا يَحِلُّ لِزَوْجِهَا؟ قَالَ: سَمِعْنَا - وَاَللَّهُ أَعْلَمُ إنْ كَانَ قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَهُوَ كَذَلِكَ: «لَا يَحِلُّ لَهُ مَا فَوْقَ الْإِزَارِ» وَهَذَا حَدِيثٌ كَمَا تَرَى غَيْرُ مُسْنَدٍ.

L32319 From the chain of Abū al-Jahm: Muḥammad ibn al-Faraj narrated to us from ʿAbdullāh ibn ʿUmar, from Abū al-Naḍr, from Abū Salama, from ʿĀ'isha: "The Messenger of Allah—may Allah bless him and his family and grant him peace—was asked: 'What is permissible for a man regarding his wife—meaning the menstruating one?' He replied: 'What is above the lower garment.'"

وَمِنْ طَرِيقِ أَبِي الْجَهْمِ نا مُحَمَّدُ بْنُ الْفَرَجِ نا عَبْدُ اللَّهِ بْنُ عُمَرَ عَنْ أَبِي النَّضْرِ عَنْ أَبِي سَلَمَةَ عَنْ عَائِشَةَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا يَحِلُّ لِلرَّجُلِ مِنْ امْرَأَتِهِ - يَعْنِي الْحَائِضَ - قَالَ: مَا فَوْقَ الْإِزَارِ» .

L32320–32322 And this is not valid, because it is narrated via the chain of al-ʿUmari al-Saghir—who is a weak narrator—. Thus, this report is invalidated, and all praise is due to Allah, Lord of the worlds.

وَهَذَا لَا يَصِحُّ، لِأَنَّهُ مِنْ طَرِيقِ الْعُمَرِيِّ الصَّغِيرِ - وَهُوَ ضَعِيفٌ - فَسَقَطَ هَذَا الْخَبَرُ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L32323 It is reported through the chain of Al-Layth ibn Saʿd, from Ibn Shihāb, from Ḥabīb, a freed slave of ʿUrwah, from Nudbah, a freed slave of Maymūnah, from Maymūnah (may Allah be pleased with her), that the Messenger of Allah (peace and blessings be upon him and his family) would have sexual intercourse with his menstruating wives when she wore a lower garment reaching mid-thigh or the knees, securely fastened around her waist.

وَقَدْ جَاءَ خَبَرٌ - مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ حَبِيبٍ مَوْلَى عُرْوَةَ عَنْ نُدْبَةَ - مَوْلَاةِ مَيْمُونَةَ - عَنْ مَيْمُونَةَ - رَضِيَ اللَّهُ عَنْهَا - «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يُبَاشِرُ الْحَائِضَ مِنْ نِسَائِهِ إذَا كَانَ عَلَيْهَا إزَارٌ يَبْلُغُ أَنْصَافَ الْفَخْذَيْنِ أَوْ الرُّكْبَتَيْنِ مُحْتَجِزَةً» .

L32324 From Ibn Wahb: It has been reported to me from 'Ā'isha and Umm Salama—the two Mothers of the Believers—something similar to this. And this chain is interrupted. From Nudba—who is unknown—even if it were authentic, there would be no definitive evidence in it nor any basis for reliance by anyone, for it is an action, not a command.

وَعَنْ ابْنِ وَهْبٍ: بَلَغَنِي عَنْ عَائِشَةَ، وَأُمِّ سَلَمَةَ - أُمَّيْ الْمُؤْمِنِينَ - مِثْلُ هَذَا، وَهَذَا مُنْقَطِعٌ، وَعَنْ نُدْبَةَ - وَهِيَ مَجْهُولَةٌ - وَلَوْ صَحَّ لَمْ تَكُنْ فِيهِ حُجَّةٌ وَلَا مُتَعَلَّقَ لِأَحَدٍ، لِأَنَّهُ فِعْلٌ لَا أَمْرٌ.

L32325 A group maintained the opinion that he must not have direct skin contact with her unless there is a concealing garment between them.

وَذَهَبَتْ طَائِفَةٌ: إِلَى أَنَّهُ لَا يُبَاشِرُهَا إِلَّا وَبَيْنَهُمَا ثَوْبٌ.

L32326 It has been narrated to us from Wakīʿ from ʿAbdullāh ibn ʿAwn from Muḥammad ibn Sīrīn, who said: "I asked ʿUbaydah al-Salmānī, 'What is permissible for a man with his menstruating wife?' He replied, 'The bed is shared, but the blankets are separate. If he cannot avoid it, he may cover her with the edge of his garment?'" The adherents of this view cited as evidence what has been narrated to us through the chain in Imam Muslim's compilation: Hārūn ibn Saʿīd narrated to us, Ibn Wahb narrated to us, Makhramah—who is Ibn Bukayr—narrated to us from his father from Kurayb, the freed slave of Ibn ʿAbbās, who said: "I heard Maymūnah, the wife of the Prophet—may Allah bless him and grant him peace—say: 'The Messenger of Allah—may Allah bless him and grant him peace—would lie down beside me while I was menstruating, with a garment between us.'"[29]

رُوِّينَا عَنْ وَكِيعٍ عَنْ عَبْدِ اللَّهِ بْنِ عَوْنٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: سَأَلْت عَبِيدَةَ السَّلْمَانِيَّ مَا لِلرَّجُلِ مِنْ امْرَأَتِهِ الْحَائِضِ؟ فَقَالَ: الْفِرَاشُ وَاحِدٌ وَاللِّحَافُ شَتَّى، وَإِنْ لَمْ يَجِدْ بُدًّا مِنْ أَنْ يَرُدَّ عَلَيْهَا مِنْ طَرَفِ ثَوْبِهِ رَدَّ عَلَيْهَا؟ وَاحْتَجَّ أَهْلُ هَذَا الْقَوْلِ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا هَارُونُ بْنُ سَعِيدٍ نا ابْنُ وَهْبٍ نا مَخْرَمَةُ - هُوَ ابْنُ بُكَيْرٍ - عَنْ أَبِيهِ عَنْ كُرَيْبٍ مَوْلَى ابْنِ عَبَّاسٍ قَالَ: «سَمِعْتُ مَيْمُونَةَ زَوْجَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَتْ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَضْطَجِعُ مَعِي وَأَنَا حَائِضٌ، وَبَيْنِي وَبَيْنَهُ ثَوْبٌ» .

L32327 Narrated to us ʿAbdullāh ibn Rabīʿ, narrated to us Muḥammad ibn Muʿāwiyah, narrated to us Aḥmad ibn Shuʿayb, narrated to us Abū Khalīfah al-Faḍl ibn al-Ḥubāb—a client of the Banū Jumaḥ—narrated to us Musaddad, narrated to us Abū ʿAwānah, from ʿUmar ibn Abī Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from his father, from ʿĀ'ishah, the Mother of the Believers, that she used to sleep beside the Messenger of Allah—peace and blessings be upon him—while she was menstruating, with a garment between them.

وَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا أَبُو خَلِيفَةَ الْفَضْلُ بْنُ الْحُبَابِ - هُوَ مَوْلَى بَنِي جُمَحَ - نَا مُسَدَّدٌ نا أَبُو عَوَانَةَ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا كَانَتْ تَنَامُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ حَائِضٌ وَبَيْنَهُمَا ثَوْبٌ» .

L32328–32330 Abū Muḥammad said: Makhramah ibn Bukayr's transmission from his father is unreliable—just as Yūsuf ibn ʿAbd Allāh al-Namarī narrated from ʿAbd Allāh ibn Muḥammad ibn Yūsuf al-Azdī; who narrated from Muḥammad ibn Isḥāq al-Ṣaydalānī; who narrated from al-ʿUqaylī; who narrated from ʿAbd Allāh ibn Aḥmad ibn Ḥanbal, who said: My father narrated from Ḥammād ibn Khālid al-Khayyāṭ, who said: Makhramah ibn Bukayr produced a book before me and said: "These are my father's writings; I did not hear anything directly from these [books]." As for the report of Aisha, the Mother of the Believers, in it is Umar ibn Abi Salamah—a narrator deemed weak in Hadith; no one has authenticated him.

قَالَ أَبُو مُحَمَّد: سَمَاعُ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ لَا يَصِحُّ -: كَمَا نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ نا مُحَمَّدُ بْنُ إِسْحَاقَ الصَّيْدَلَانِيُّ نا الْعُقَيْلِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا حَمَّادُ بْنُ خَالِدٍ الْخَيَّاطُ قَالَ: أَخْرَجَ إِلَيَّ مَخْرَمَةُ بْنُ بُكَيْرٍ كِتَابًا وَقَالَ لِي: هَذِهِ كُتُبُ أَبِي لَمْ أَسْمَعْ مِنْهَا شَيْئًا وَأَمَّا خَبَرُ عَائِشَةَ - أُمِّ الْمُؤْمِنِينَ - فَفِيهِ عُمَرُ بْنُ أَبِي سَلَمَةَ - وَهُوَ ضَعِيفٌ لَمْ يُوَثِّقْهُ أَحَدٌ.

[29] **Hadith references (L32326):** Sahih Muslim 295.

L32331 Abu Hanifah, Abu Yusuf, Malik, and those who emulated them held that it is permissible for him [to expose] what is above the navel and below the knee, while forbidden for him [to expose] what is between the navel and the knee. We know of no foundational basis for this opinion in the primary sources, thus it is obligatory to abandon it.

وَذَهَبَ أَبُو حَنِيفَةَ، وَأَبُو يُوسُفَ، وَمَالِكٌ، وَمَنْ قَلَّدَهُ إِلَى أَنَّهُ مُبَاحٌ لَهُ مَا فَوْقَ السُّرَّةِ، وَمَا تَحْتَ الرُّكْبَةِ، وَيَحْرُمُ عَلَيْهِ مَا بَيْنَ السُّرَّةِ وَالرُّكْبَةِ وَمَا نَعْلَمُ لِهَذَا الْقَوْلِ مُتَعَلَّقًا أَصْلًا، فَوَجَبَ تَرْكُهُ.

L32332 No one should confuse the matter by citing reports stating that the Prophet—peace and blessings of Allah be upon him—commanded menstruating women among his wives to wear an izar (waist-wrapper) and then have physical contact with them. For the izar may extend to the ankles or reach mid-thigh.

وَلَا يُمَوِّهَنَّ مُمَوِّهٌ بِالْأَخْبَارِ الَّتِي فِيهَا كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ الْحَائِضَ مِنْ نِسَائِهِ أَنْ تَتَّزِرَ ثُمَّ يُبَاشِرَهَا، فَإِنَّ الْإِزَارَ قَدْ يَبْلُغُ إِلَى الْكَعْبَيْنِ، وَقَدْ يَبْلُغُ إِلَى أَنْصَافِ الْفَخِذَيْنِ.

L32333 A group held a view similar to our opinion: As narrated to us by ʻAbdullāh ibn Rabīʻ, from Muḥammad ibn Muʻāwiyah, from Abū Khalīfah al-Faḍl ibn al-Ḥubāb al-Jumaḥī, from Abū al-Walīd al-Ṭayālisī, from al-Layth ibn Saʻd, from Bukayr ibn ʻAbdillāh ibn al-Ashajj, from Abū Marrah - the freed slave of ʻAqīl ibn Abī Ṭālib - from Ḥakīm ibn ʻIqāl: I asked Umm al-Muʾminīn ʻĀʾishah, "What is forbidden for a man regarding his wife if he is fasting?" She said, "Her private part." I asked, "And what is forbidden for him regarding her if she is menstruating?" She said, "Her private part," and this is the statement of Umm Salamah, the Mother of the Believers.

وَذَهَبَتْ طَائِفَةٌ - إِلَى مِثْلِ قَوْلِنَا -: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَبُو خَلِيفَةَ الْفَضْلُ بْنُ الْحُبَابِ الْجُمَحِيُّ نا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ أَبِي مُرَّةَ مَوْلَى عَقِيلِ بْنِ أَبِي طَالِبٍ عَنْ حَكِيمِ بْنِ عِقَالٍ سَأَلْت أُمَّ الْمُؤْمِنِينَ عَائِشَةَ مَا يَحْرُمُ عَلَى الرَّجُلِ مِنْ امْرَأَتِهِ إِذَا كَانَ صَائِمًا؟ قَالَتْ: فَرْجُهَا؟ قُلْت: فَمَا يَحْرُمُ عَلَيْهِ مِنْهَا إِذَا كَانَتْ حَائِضًا؟ قَالَتْ: فَرْجُهَا - وَهُوَ قَوْلُ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ.

L32334 Through the chain of Hammad ibn Salamah, from ʾUbayd Allah ibn Muhammad ibn ʾAqil, from Ibn ʾAbbas, who said: A man may do everything with his menstruating wife except the place where blood exits.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لِلرَّجُلِ مِنْ امْرَأَتِهِ وَهِيَ حَائِضٌ كُلُّ شَيْءٍ، إِلَّا مَخْرَجَ الدَّمِ.

L32335 Through the chain of Wakiʻ, from Ismāʻīl ibn Abī Khālid, from Al-Shaʻbī, who said: "A man may have intimate contact with a menstruating woman if he refrains from causing harm."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: يُبَاشِرُ الرَّجُلُ الْحَائِضَ إِذَا كَفَّ عَنْهَا الْأَذَى.

L32336 And through the chain of Wakiʻ from Mālik ibn Mighwal from ʻAṭāʾ ibn Abī Rabāḥ: He stated concerning a menstruating woman: There is no harm in her husband having intercourse with her in what is below the blood.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مَالِكِ بْنِ مِغْوَلٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّهُ قَالَ فِي الْحَائِضِ: لَا بَأْسَ أَنْ يَأْتِيَهَا زَوْجُهَا فِيمَا دُونَ الدَّمِ.

L32337 Through the narration of Wakīʻ from ʻAṭāʾ ibn Abī Rabāḥ from al-Ḥakam ibn ʻUtaybah that he said regarding the menstruating woman: There is no

harm in a man placing his genitalia against hers as long as he does not insert it – that is, her genitalia.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّهُ قَالَ فِي الْحَائِضِ: لَا بَأْسَ أَنْ يَضَعَ الرَّجُلُ فَرْجَهُ عَلَيْهِ مَا لَمْ يُدْخِلْهُ - يَعْنِي عَلَى فَرْجِهَا -.

L32338 And through him to Waki‘ from Ar-Rabi‘ from Al-Hasan Al-Basri: that he did not deem it problematic to move between the two thighs of a menstruating woman—a view shared by Masruq, Ibrahim An-Nakha‘i, Sufyan Ath-Thawri, Muhammad ibn Al-Hasan, the associate of Abu Hanifah, Abu Sulayman, and all our companions—and it is the well-known opinion of Ash-Shafi‘i.

وَبِهِ إلَى وَكِيعٍ عَنْ الرَّبِيعِ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا أَنْ يُقَلِّبَ بَيْنَ فَخِذَيْ الْحَائِضِ - وَهُوَ قَوْلُ مَسْرُوقٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَسُفْيَانَ الثَّوْرِيِّ، وَمُحَمَّدِ بْنِ الْحَسَنِ صَاحِبِ أَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ وَجَمِيعِ أَصْحَابِنَا - وَهُوَ الْمَشْهُورُ عَنْ الشَّافِعِيِّ.

L32339–32341 Abū Muḥammad said: We have clarified the invalidity of all the opinions we previously presented except this opinion and the opinion of those who... He relied upon the verse, so we examined this opinion and found what was transmitted to us via the chain transmitted in Ṣaḥīḥ Muslim: Zuhayr ibn Harb narrated to us, from ʿAbd al-Raḥmān ibn Mahdī, from Ḥammād ibn Salamah, from Thābit—that is, al-Bunānī—from Anas ibn Mālik, who mentioned a ḥadīth, in which it states: “Then Allah the Exalted revealed: {They ask you about menstruation. Say, ’It is harm, so keep away from women during menstruation’} [Al-Baqarah: 222] to the end of the verse?” The Messenger of Allah—peace and blessings of Allah be upon him—said: “Do everything except intercourse.”[30]

قَالَ أَبُو مُحَمَّدٍ: قَدْ بَيَّنَّا سُقُوطَ جَمِيعِ الْأَقْوَالِ الَّتِي قَدَّمْنَا إلَّا هَذَا الْقَوْلَ، وَقَوْلَ مَنْ تَعَلَّقَ بِالْآيَةِ فَنَظَرْنَا فِي هَذَا الْقَوْلِ فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا حَمَّادُ بْنُ سَلَمَةَ نَا ثَابِتٌ - هُوَ الْبُنَانِيُّ - عَنْ أَنَسِ بْنِ مَالِكٍ، فَذَكَرَ حَدِيثًا، وَفِيهِ: فَأَنْزَلَ اللَّهُ تَعَالَى: {وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذًى فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ} [البقرة: ٢٢٢] إلَى آخِرِ الْآيَةِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «اصْنَعُوا كُلَّ شَيْءٍ إلَّا النِّكَاحَ» .

L32342 Abu Muhammad said: This is a narration of utmost authenticity, and it constitutes an elucidation of the verse. He, peace and blessings be upon him, clarified the intent of his Lord, the Most High, in it immediately after its revelation.

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا خَبَرٌ فِي غَايَةِ الصِّحَّةِ، وَهُوَ بَيَانٌ لِلْآيَةِ، بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إثْرَ نُزُولِهَا مُرَادَ رَبِّهِ تَعَالَى فِيهَا.

L32343 This confirms the validity of the statement by scholars who asserted that the meaning of Allah the Exalted and Majestic’s words {فِي الْمَحِيضِ} [Al-Baqarah: 222] refers specifically to the place of menstruation - and this is beyond doubt - because the Prophet (peace and blessings be upon him) elucidated the intent of his Lord the Most High in the verse without abrogating it.

وَصَحَّ بِهَذَا قَوْلُ مَنْ قَالَ مِنْ الْعُلَمَاءِ: إنَّ مَعْنَى قَوْلِهِ عَزَّ وَجَلَّ: {فِي الْمَحِيضِ} [البقرة: ٢٢٢] إنَّمَا هُوَ مَوْضِعُ الْحَيْضِ - وَلَا شَكَّ فِي هَذَا - لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيَّنَ مُرَادَ رَبِّهِ تَعَالَى فِي الْآيَةِ، وَلَمْ يَنْسَخْهَا، قَالَ اللَّهُ عَزَّ وَجَلَّ: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إلَيْهِمْ} [النحل: ٤٤] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[30] **Qur’an references (L32339):** Qur’an 2:222 (Al-Baqarah).

Allah the Exalted and Majestic said: “to clarify to people what was revealed to them” [An-Naḥl: 44]. And success is from Allah the Most High alone.[31]

A legal case: Intercourse with a menstruating woman, whether intentional or ignorant.

1913 - Issue: Whoever has intercourse with a menstruating woman, intentionally or out of ignorance, has disobeyed Allah the Exalted in the case of intentionality. There is nothing required of him as a consequence—neither charity nor anything else—except repentance and seeking forgiveness.

Some have stated regarding that matter that there is an expiation - as we have reported from Ibn Abbas: If he has intercourse with her during the blood, then a dinar; and if he has intercourse with her during the cessation of the blood, then half a dinar.

It is narrated from Qatādah: If he is financially able, then one dinar; but if he cannot afford it, then half a dinar.

And from Ata, whoever has intercourse with a menstruating woman should give a dinar in charity. It has been narrated from Muhammad ibn al-Hasan, the companion of Abu Hanifah. Ahmad ibn Hanbal held the view that one may choose between giving a dinar or half a dinar. We observed the adherents of this opinion citing as evidence a narration we transmitted through the chain of Miqsam from Ibn Abbas, attributed via a continuous chain to the Messenger of Allah (peace and blessings be upon him and his family), though Miqsam is a weak narrator.

It has also been narrated to us through the chain of Sharīq from Khuṣayf from ‘Ikrimah from Ibn ‘Abbās from the Messenger of Allāh—may Allāh bless him and his family and grant him peace—. Both Sharīq and Khuṣayf are weak narrators. And through a chain containing Abd al-Malik ibn Habib from al-Makfūf from Ayyub ibn Khawt from Qatadah from Ibn Abbas as a musnad narration attributed to the Prophet—Abd al-Malik and Ayyub are rejected narrators, and al-Makfūf is unknown.

[31] **Qur’an references (L32343):** Qur’an 16:44 (An-Nahl); Qur’an 2:222 (Al-Baqarah).

[مَسْأَلَةٌ وَطِئَ حَائِضًا عَامِدًا أَوْ جَاهِلًا]

١٩١٣ - مَسْأَلَةٌ: وَمَنْ وَطِئَ حَائِضًا عَامِدًا أَوْ جَاهِلًا: فَقَدْ عَصَى اللَّهَ تَعَالَى فِي الْعَمْدِ، وَلَيْسَ عَلَيْهِ فِي ذَلِكَ شَيْءٌ لَا صَدَقَةٌ وَلَا غَيْرُهَا، إلَّا التَّوْبَةُ وَالِاسْتِغْفَارُ.

وَقَدْ قَالَ قَائِلُونَ فِي ذَلِكَ بِكَفَّارَةٍ -: كَمَا رُوِّينَا عَنْ ابْنِ عَبَّاسٍ إنْ وَطِئَهَا فِي الدَّمِ فَدِينَارٌ، وَإِنْ وَطِئَهَا فِي انْقِطَاعِ الدَّمِ فَنِصْفُ دِينَارٍ.

وَعَنْ قَتَادَةَ: إنْ كَانَ وَاجِدًا فَدِينَارٌ، وَإِنْ لَمْ يَجِدْ فَنِصْفُ دِينَارٍ.

وَعَنْ عَطَاءٍ مَنْ وَطِئَ حَائِضًا يَتَصَدَّقُ بِدِينَارٍ -: وَقَدْ رُوِيَ عَنْ مُحَمَّدِ بْنِ الْحَسَنِ صَاحِبِ أَبِي حَنِيفَةَ -: وَرَأَى أَحْمَدُ بْنُ حَنْبَلٍ أَنَّهُ مُخَيَّرٌ بَيْنَ دِينَارٍ أَوْ نِصْفِ دِينَارٍ وَوَجَدْنَا أَهْلَ هَذِهِ الْمَقَالَةِ يَحْتَجُّونَ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ مُسْنَدًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَمِقْسَمٌ ضَعِيفٌ

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ شَرِيكٍ عَنْ خُصَيْفٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَشَرِيكٌ، وَخُصَيْفٌ ضَعِيفَانِ - وَمِنْ طَرِيقٍ فِيهَا عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ عَنْ الْمَكْفُوفِ عَنْ أَيُّوبَ بْنِ خَوْطٍ عَنْ قَتَادَةَ عَنْ ابْنِ عَبَّاسٍ مُسْنَدًا، وَعَبْدِ الْمَلِكِ، وَأَيُّوبَ - هَالِكَانِ - وَالْمَكْفُوفُ مَجْهُولٌ.

L32352 And through the chain of Abd al-Malik ibn Habib from Asbagh ibn al-Faraj from al-Sabiʿī from Zayd ibn ʿAbd al-Ḥamīd: “Umar asked the Messenger of Allah—peace be upon him and his family—about that, and he said: ’Give a dinar in charity.”’ However, Abd al-Malik is discredited, al-Sabiʿī is unknown, and no ignorant person would assume this refers to Abu Ishaq—Abu Ishaq died long before Asbagh was born. Moreover, the narration is mursal. Al-Awzaʿī also narrated it as mursal, stating: “Give two-fifths of a dinar in charity.”

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ أَصْبَغَ بْنِ الْفَرَجِ عَنْ السَّبِيعِيِّ عَنْ زَيْدِ بْنِ عَبْدِ الْحَمِيدِ «أَنَّ عُمَرَ سَأَلَ عَنْ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لَهُ: تَصَدَّقْ بِدِينَارٍ» ، وَعَبْدُ الْمَلِكِ - هَالِكٌ - وَالسَّبِيعِيُّ - مَجْهُولٌ - وَلَا يَظُنُّ جَاهِلٌ أَنَّهُ أَبُو إِسْحَاقَ - مَاتَ أَبُو إِسْحَاقَ قَبْلَ أَنْ يُولَدَ أَصْبَغُ بِدَهْرٍ - وَهُوَ أَيْضًا مُرْسَلٌ - وَقَدْ رَوَاهُ الْأَوْزَاعِيُّ أَيْضًا مُرْسَلًا، وَفِيهِ: «تَصَدَّقْ بِخُمْسَيْ دِينَارٍ» .

L32353 A group held the view that one must perform expiation equivalent to that required for sexual intercourse during Ramadan—as we have transmitted through the chain of Ahmad ibn Shu’ayb: I am Muhammad ibn ’Abd al-A’la [narrating] from al-Mu’tamir, who is Ibn Sulayman al-Taymi. He said: I recited to Fadl from Abu Hariz that Ayyaf reported to him, relating that Sa’id ibn Jubayr informed him from Ibn ’Abbas, who said: “Whoever breaks the fast in Ramadan must manumit a slave, fast for two consecutive months, or feed sixty poor persons.” I inquired: “What of one who has intercourse with his wife while she is menstruating—or hears the Friday call but fails to resolve to attend without valid excuse?” He responded: “Likewise—manumission of a slave.”

وَذَهَبَتْ طَائِفَةٌ: أَنَّ عَلَيْهِ مِثْلَ كَفَّارَةِ مَنْ وَطِئَ فِي رَمَضَانَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى نَا الْمُعْتَمِرُ - هُوَ ابْنُ سُلَيْمَانَ التَّيْمِيُّ - قَالَ: قَرَأْت عَلَى فَضْلٍ عَنْ أَبِي حَرِيزٍ: أَنَّ أَيْفَعَ حَدَّثَهُ أَنَّ سَعِيدَ بْنَ جُبَيْرٍ أَخْبَرَهُ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: مَنْ أَفْطَرَ فِي رَمَضَانَ فَعَلَيْهِ عِتْقُ رَقَبَةٍ، أَوْ صَوْمُ شَهْرٍ، أَوْ إطْعَامُ ثَلَاثِينَ مِسْكِينًا: قُلْت: وَمَنْ وَقَعَ عَلَى امْرَأَتِهِ وَهِيَ حَائِضٌ - أَوْ سَمِعَ أَذَانَ الْجُمُعَةِ، وَلَمْ يُجْمِعْ لَيْسَ لَهُ عُذْرٌ؟ قَالَ: كَذَلِكَ عِتْقُ رَقَبَةٍ.

L32354 From the chain of ʿAbd al-Razzāq, narrated to us by Hishām—he is Ibn Ḥassān—from al-Ḥasan al-Baṣrī: that he used to analogize (*qiyas*) the case of one who has intercourse with a menstruating woman to the case of one who has intercourse with his wife during Ramadan.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا هِشَامٌ - هُوَ ابْنُ حَسَّانٍ - عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّهُ كَانَ يَقِيسُ الَّذِي يَقَعُ عَلَى الْحَائِضِ بِالَّذِي يَقَعُ عَلَى امْرَأَتِهِ فِي رَمَضَانَ.

L32355 The proponents of this view cited as evidence a narration we narrated through the chain of Ahmad ibn Shuʿayb, who informed me that Mahmud ibn Khalid informed us: al-Walid ibn Muslim reported from ʿAbd al-Rahman ibn Yazid ibn Tamim al-Sulami, who said: I heard ʿAli ibn Bidhīmah say: I heard Saʿīd ibn Jubayr say: I heard Ibn ʿAbbās say: “A man said: ’O Messenger of God, I had intercourse with my wife while she was menstruating.’ The Messenger of God, peace and blessings be upon him and his family, commanded him to emancipate a slave.” Ibn ʿAbbās said: “The value of a slave at that time was a dinar.” We also narrated it via the chain of Mūsā ibn

وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مَحْمُودُ بْنُ خَالِدٍ نا الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ بْنِ تَمِيمٍ السُّلَمِيِّ قَالَ: سَمِعْت عَلِيَّ بْنَ بَذِيمَةَ يَقُولُ: سَمِعْت سَعِيدَ بْنَ جُبَيْرٍ يَقُولُ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ «قَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ إنِّي أَصَبْتُ امْرَأَتِي - وَهِيَ حَائِضٌ - فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

Ayyūb, from al-Walīd ibn Muslim, from Jābir, from ʿAlī ibn Bidhīmah, with his chain of narrators.

L32356–32358 Abu Muhammad said: Musa ibn Ayyub and Abd al-Rahman ibn Yazid ibn Tamim are weak narrators – therefore, all narrations in this chapter are dismissed. Indeed, it was incumbent upon those who uphold analogy to apply it to the case of intercourse with a menstruating woman. Regarding the one who has intercourse during Ramadan - since both engaged in [intercourse involving] a lawful private part, which is not prohibited except during the state of fasting or the state of menstruation only - this demonstrates their contradictions regarding it, particularly while they rely on evidence weaker than this report.

L32359 As for us, had anything from all of this been authentically established from the Messenger of Allah—may Allah bless him and his family and grant him peace—we would have adhered to it. However, since nothing in it has been authentically established, nothing of it is obligatory, because it is a divine law that Allah, the Most High, has not ordained.

L32360 Among those who held our view is Ibn Sīrīn—it is authentically reported that he said: "One seeks forgiveness from Allah, and nothing is incumbent upon him." A similar statement is authentically reported from Ibrāhīm al-Nakhaʿī, ʿAṭāʾ, and Makhūl. This is the opinion of Mālik, Abū Ḥanīfa, al-Shāfiʿī, Abū Sulaymān, and their companions.

L32361 **Issue: The Menstruating Woman Saw the Ritual Purity**

L32362 1914. Issue: If a menstruating woman observes the cessation [of menstruation], then if she washes only her private parts, performs ablution only, or performs a full ritual bath of her entire body—whichever of these she does, her husband may lawfully have intercourse with her. However, she must not pray until she performs a full ritual bath of her entire body with water. And indeed, people have differed regarding this matter: a group said, "It is not permissible for him to have intercourse with her until she performs the

أَنْ يعْتِقَ رَقَبَةً» ، قَالَ ابْنُ عَبَّاسٍ: وَقِيمَةُ الرَّقَبَةِ يوْمَئِذٍ دِينَارٌ - وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ مُوسَى بْنِ أَيُّوبَ عَنْ الْوَلِيدِ بْنِ مُسْلِمٍ عَنْ جَابِرٍ عَنْ عَلِيِّ بْنِ بَذِيمَةَ بِإِسْنَادِهِ

قَالَ أَبُو مُحَمَّد: مُوسَى بْنُ أَيُّوبَ وَعَبْدُ الرَّحْمَنِ بْنُ يَزِيدَ بْنِ تَمِيمٍ ضَعِيفَانِ - فَسَقَطَ كُلُّ مَا فِي هَذَا الْبَابِ - وَلَقَدْ كَانَ يَلْزَمُ الْقَائِلِينَ بِالْقِيَاسِ أَنْ يَقِيسُوا وَاطِئَ الْحَائِضِ عَلَى الْوَاطِئِ فِي رَمَضَانَ، لِأَنَّهُمَا مَعًا وَطِئَا فَرْجًا حَلَالَ الْعَيْنِ، لَمْ يَحْرُمْ إلَّا بِحَالِ الصَّوْمِ، أَوْ حَالِ الْحَيْضِ فَقَطْ، وَلَكِنْ هَذَا مِمَّا تَنَاقَضُوا فِيهِ، لَا سِيَّمَا وَهُمْ يَحْتَجُّونَ بِأَضْعَفَ مِنْ هَذَا الْخَبَرِ.

وَأَمَّا نَحْنُ فَلَوْ صَحَّ شَيْءٌ مِنْ كُلِّ هَذَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَقُلْنَا بِهِ، فَلَمَّا لَمْ يَصِحَّ فِيهِ شَيْءٌ لَمْ يَجِبْ مِنْهُ شَيْءٌ، لِأَنَّهُ شَرْعٌ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ.

وَمِمَّنْ قَالَ بِقَوْلِنَا ابْنُ سِيرِينَ صَحَّ عَنْهُ أَنَّهُ قَالَ: يَسْتَغْفِرُ اللَّهَ، وَلَيْسَ عَلَيْهِ شَيْءٌ - وَصَحَّ أَيْضًا مِثْلُ ذَلِكَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَعَطَاءٍ، وَمَكْحُولٍ - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِمْ

[مَسْأَلَةٌ رَأَتْ الْحَائِضُ الطُّهْرَ]

١٩١٤ - مَسْأَلَةٌ: وَإِذَا رَأَتْ الْحَائِضُ الطُّهْرَ فَإِنْ غَسَلَتْ فَرْجَهَا فَقَطْ، أَوْ تَوَضَّأَتْ فَقَطْ، أَوْ اغْتَسَلَتْ كُلَّهَا، فَأَيَّ ذَلِكَ فَعَلَتْ حَلَّ وَطْؤُهَا لِزَوْجِهَا، إلَّا أَنَّهَا لَا تُصَلِّي حَتَّى تَغْتَسِلَ كُلَّهَا بِالْمَاءِ وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: لَا يَحِلُّ لَهُ وَطْؤُهَا

ritual bath for her entire body." This has been narrated to us from Mujāhid, Ibrāhīm an-Nakhaʿī, al-Qāsim ibn Muḥammad, Sālim ibn ʿAbdullāh, Makhūl, al-Ḥasan, Sulaymān ibn Yasār, az-Zuhrī, and Rabīʿah.

إِلَّا حَتَّى تَغْسِلَ جَمِيعَ جَسَدِهَا - رُوِّينَا ذَلِكَ عَنْ مُجَاهِدٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ وَمَكْحُولٍ، وَالْحَسَنِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَالزُّهْرِيِّ، وَرَبِيعَةَ.

L32363 We have narrated it from Ata and Maymun ibn Mihran—and this is the view of Malik, al-Shafi'i, and their companions. Abu Hanifa and his companions maintained that if a menstruating woman's period lasts ten days, then upon the conclusion of the ten days, it becomes permissible for her husband to engage in conjugal relations with her—even if she does not wash her private parts, nor perform ablution, nor take a ritual bath. If her menstrual days are fewer than ten, then when she observes purity, it is not permissible for her husband to engage in conjugal relations with her except through one of two ways: either she performs the complete ritual bath, or the time of a prayer passes over her. If the time of a prayer has passed [since her purity], it becomes permissible for him to engage in conjugal relations with her—even if she does not take a ritual bath, nor wash her private parts, nor perform ablution.

وَرُوِّينَاهُ عَنْ عَطَاءٍ، وَمَيْمُونِ بْنِ مِهْرَانَ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا وَذَهَبَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، إِلَى أَنَّ الْحَائِضَ إِنْ كَانَتْ أَيَّامُهَا عَشْرَةً، فَإِنَّهَا بِانْقِضَاءِ الْعَشَرَةِ يَحِلُّ لِزَوْجِهَا وَطْؤُهَا - وَإِنْ لَمْ تَغْسِلْ فَرْجَهَا وَلَا تَوَضَّأَتْ وَلَا اغْتَسَلَتْ - فَإِنْ كَانَتْ أَيَّامُهَا أَقَلَّ مِنْ عَشَرَةٍ، فَإِنَّهَا إِذَا رَأَتْ الطُّهْرَ لَمْ يَحِلَّ لِزَوْجِهَا وَطْؤُهَا إِلَّا بِأَحَدِ وَجْهَيْنِ -: إِمَّا أَنْ تَغْتَسِلَ كُلُّهَا، وَإِمَّا أَنْ يَمْضِيَ عَلَيْهَا وَقْتُ صَلَاةٍ فَإِنْ مَضَى لَهَا وَقْتُ صَلَاةٍ حَلَّ لَهُ وَطْؤُهَا - وَإِنْ لَمْ تَغْتَسِلْ وَلَا غَسَلَتْ فَرْجَهَا وَلَا تَوَضَّأَتْ -

L32364 Abu Muhammad said: There is no statement more baseless than this, for it is an arbitrary assertion of falsehood without any evidence whatsoever. We know of no one who held this view before Abū Ḥanīfah or after him, except those who followed him.

قَالَ أَبُو مُحَمَّد: لَا قَوْلَ أَسْقَطُ مِنْ هَذَا، لِأَنَّهُ تَحَكُّمٌ بِالْبَاطِلِ بِلَا دَلِيلٍ أَصْلًا، وَلَا نَعْلَمُ أَحَدًا قَالَ قَبْلَ أَبِي حَنِيفَةَ وَلَا بَعْدَهُ، إِلَّا مَنْ قَلَّدَهُ.

L32365–32367 And a group has held an opinion similar to our view—as has been narrated to us through the chain of ʿAbd al-Razzāq: Ibn Jurayj narrated. Ma'mar said: Ibn Jurayj reported from 'Ata', and Ma'mar reported from Qatadah. Then 'Ata' and Qatadah concurred, both stating regarding the menstruating woman: When she observes [signs of] purity, she must wash her private parts, and her husband may have marital relations with her.

وَذَهَبَ قَوْمٌ إِلَى مِثْلِ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ رَنَا ابْنُ جُرَيْجٍ، وَمَعْمَرٌ قَالَ ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ وَقَالَ مَعْمَرٌ عَنْ قَتَادَةَ، ثُمَّ اتَّفَقَ عَطَاءٌ، وَقَتَادَةُ، فَقَالَا جَمِيعًا فِي الْحَائِضِ إِذَا رَأَتْ الطُّهْرَ فَإِنَّهَا تَغْسِلُ فَرْجَهَا وَيُصِيبُهَا زَوْجُهَا.

L32368 It has been narrated to us from ʿAṭāʾ that when she observes the cessation [of menstruation] and performs *wudu*, her husband may lawfully have intercourse with her. This is the opinion of Abū Sulaymān and all our companions.

وَرُوِّينَا عَنْ عَطَاءٍ أَنَّهَا إِذَا رَأَتْ الطُّهْرَ فَتَوَضَّأَتْ حَلَّ وَطْؤُهَا لِزَوْجِهَا - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L32369 Abū Muḥammad said: Perhaps some obfuscator might confuse matters with the report we narrated through ʿAbd al-Karīm's chain from Miqsam from

Ibn ʿAbbās from the Prophet—peace and blessings of Allah be upon him and his family—"If he has intercourse with her—meaning the menstruating woman—after her blood has ceased and he has not performed ghusl, then half a dinar?" We have clarified: Miqsam is weak, and ʿAbd al-Karīm never met Miqsam, rendering this report worthless. This is further reinforced by the fact that the Mālikīs and Shāfiʿīs do not uphold this report.

L32370 Among invalid matters is for a person to cite a report that he himself first nullified. It might be argued: "He may not lawfully have intercourse with her unless she is in a state of ritual purity [where prayer is valid]."

L32371 Abū Muḥammad said: This is an error, for intercourse is not contingent upon prayer. A woman might be in a state of major ritual impurity (janabah), where intercourse with her is permissible though prayer is forbidden to her. Conversely, she might be observing iʿtikāf, in the state of iḥrām, or fasting, where prayer is permissible to her but intercourse is forbidden.

L32372–32374 Abu Muhammad said: Since there is no clarification in any of this except in the verse, it is obligatory to refer back to it. Allah the Exalted said: {And do not approach them until they attain purity. When they have purified themselves, then approach them from where Allah has commanded you} [Al-Baqarah: 222]. We find that He—Majestic and Exalted—did not permit intercourse with menstruating women except through two aspects: that menstruation ceases and that they perform purification. For the pronoun in "they purify themselves" indisputably refers—according to all proficient in Arabic—to the pronoun in "they attain purity," while the pronoun in "they attain purity" refers to menstruation. Thus, the meaning of "they attain purity" is the cessation of menstruation and the emergence of ritual purity, since the action is not ascribed to them. The meaning of "they purify themselves" denotes an act they perform, as the action is ascribed to them. Therefore, the verse must be understood according to its comprehensive implications and universal application. It is impermissible to contradict this, impermissible to restrict its scope, or limit it to only part of what its wording encompasses—excluding the whole—through false claims, thereby presenting mere asser-

قَالَ أَبُو مُحَمَّد: رُبَّمَا يُمَوِّهُ مُمَوِّهٌ بِالْخَبَرِ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الْكَرِيمِ عَنْ مِقْسَمٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «وَإِنْ أَتَاهَا - يَعْنِي الْحَائِضَ - وَقَدْ أَدْبَرَ الدَّمُ عَنْهَا وَلَمْ يَغْتَسِلْ فَنِصْفُ دِينَارٍ» ؟ فَقَدْ قُلْنَا: إنْ مِقْسَمًا ضَعِيفٌ وَلَمْ يَلْقَ عَبْدُ الْكَرِيمِ مِقْسَمًا، فَهُوَ لَا شَيْءَ، وَلَا سِيَّمَا وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ لَا يَقُولُونَ بِهَذَا الْخَبَرِ.

وَمِنْ الْبَاطِلِ أَنْ يَحْتَجَّ الْمَرْءُ بِخَبَرٍ هُوَ أَوَّلُ مُبْطِلٍ لَهُ، وَلَعَلَّهُمْ أَنْ يَقُولُوا: لَا يَجُوزُ لَهُ وَطْؤُهَا إلَّا أَنْ تَجُوزَ لَهَا الصَّلَاةُ.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ، لِأَنَّ الْوَطْءَ لَيْسَ مُعَلَّقًا بِالصَّلَاةِ، فَقَدْ تَكُونُ الْمَرْأَةُ جُنُبًا فَيَحِلُّ وَطْؤُهَا، وَلَا تَحِلُّ لَهَا الصَّلَاةُ، وَتَكُونُ مُعْتَكِفَةً، وَمُحْرِمَةً وَصَائِمَةً فَتُصَلِّي وَلَا يَحِلُّ وَطْؤُهَا.

قَالَ أَبُو مُحَمَّد: فَإِذْ لَا بَيَانَ فِي شَيْءٍ مِنْ هَذَا إلَّا فِي الْآيَةِ، فَالْوَاجِبُ الرُّجُوعُ إلَيْهَا قَالَ اللَّهُ تَعَالَى: {وَلا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ} [البقرة: ٢٢٢] فَوَجَدْنَاهُ عَزَّ وَجَلَّ لَمْ يُبِحْ وَطْءَ الْحَائِضِ إلَّا بِوَجْهَيْنِ اثْنَيْنِ -: وَهِيَ أَنْ تَطْهُرَ، وَأَنْ تَطْهُرَ، لِأَنَّ الضَّمِيرَ الَّذِي فِي " تَطَهَّرْنَ " رَاجِعٌ بِلَا خِلَافٍ مِنْ أَحَدٍ مِمَّنْ يُحْسِنُ الْعَرَبِيَّةَ إلَى الضَّمِيرِ الَّذِي فِي " يَطْهُرْنَ " وَالضَّمِيرُ الَّذِي فِي " يَطْهُرْنَ " رَاجِعٌ إلَى الْحَيْضِ، فَكَانَ مَعْنَى " يَطْهُرْنَ " هُوَ انْقِطَاعُ الْحَيْضِ وَظُهُورُ الطُّهْرِ، لِأَنَّهُ لَمْ يُضِفْ الْفِعْلَ إلَيْهِنَّ، وَكَانَ مَعْنَى " يَطْهُرْنَ " فِعْلًا يَفْعَلْنَهُ، لِأَنَّهُ رَدَّ الْفِعْلَ إلَيْهِنَّ، فَوَجَبَ حَمْلُ الْآيَةِ عَلَى مُقْتَضَاهَا وَعُمُومِهَا، لَا يَجُوزُ غَيْرُ ذَلِكَ، وَلَا يَجُوزُ تَخْصِيصُهَا، وَلَا الِاخْتِصَارُ عَلَى بَعْضِ مَا يَقَعُ عَلَيْهِ لَفْظُهَا دُونَ كُلِّ مَا يَقَعُ عَلَيْهِ بِالدَّعْوَى الْكَاذِبَةِ، فَيَكُونُ إخْبَارًا عَنْ مُرَادِ اللَّهِ تَعَالَى بِمَا لَمْ يُخْبِرْ بِهِ عَزَّ وَجَلَّ عَنْ مُرَادِهِ، وَهَذَا حَرَامٌ - وَنَحْنُ نَشْهَدُ

tions as declarations of Allah the Exalted's intent. Allah, the Almighty and Majestic, did not inform us about it regarding His intent, and this is forbidden. We bear witness by the testimony of Allah, the Almighty and Majestic, that if He, Exalted, had willed any specific instance of what the term "you [feminine plural] purify yourselves" applies to, excluding the rest of what it applies to, He would have informed us about it, clarified it to us, and would not have left us to speculation and conjecture.[32]

L32375 The Almighty said: {And He has detailed for you what He has forbidden upon you} [al-Anʿām 6:119]. Thus, He, the Exalted and Majestic, has detailed for us what He prohibited, including intercourse with menstruating women: that it remains forbidden as long as they have not attained purity, until they complete their purification.[33]

L32376 It has thus been established that whatever bears the name of "purification" after they have become pure thereby, they have become lawful by it. Ablution is a purification without dispute, washing the private parts with water is likewise a purification, and washing the entire body is a purification. Therefore, by whichever of these means the woman who has observed the cessation of menstrual bleeding has purified herself, it has thereby become lawful for us to have intercourse with her - and with Allah, the Exalted, is all success.

L32377 ## The Rulings on the Wearing of the Silk and the Gold

L32378 ## A question regarding a woman's clothing of silk and gold in prayer and otherwise.

L32379 The rulings on wearing silk and gold (1915) - Issue: A woman's wearing of silk and gold during prayer and otherwise is permissible (ḥalāl), though there is disagreement on this matter. Some scholars did not permit it for women - as we have reported via the transmission chain of Aḥmad ibn Shuʿayb: Abū Bakr ibn ʿAlī al-Marwazī narrated to us, Shurayḥ ibn Yūnus narrated to us, Hushaym narrated to us, from Abī Bishr, from Yūsuf ibn Māhak: "A woman

بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ أَنَّهُ تَعَالَى لَوْ أَرَادَ بَعْضَ مَا يَقَعُ عَلَيْهِ اسْمُ " تَطَهَّرْنَ " دُونَ سَائِرِ مَا يَقَعُ عَلَيْهِ لَأَخْبَرَنَا بِهِ، وَلَبَيَّنَهُ عَلَيْنَا، وَلَمَا وَكَلَنَا إِلَى التَّكَهُّنِ وَالظُّنُونِ.

وَقَالَ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] فَقَدْ فَصَّلَ لَنَا عَزَّ وَجَلَّ مَا حَرَّمَ عَلَيْنَا مِنْ وَطْءِ الْحَائِضِ وَأَنَّهُ حَرَامٌ مَا لَمْ يَطْهُرْنَ فَيَطَّهَّرْنَ.

فَصَحَّ أَنَّ كُلَّ مَا يَقَعُ عَلَيْهِ اسْمُ " الطُّهْرِ " بَعْدَ أَنْ " يَطْهُرْنَ " فَقَدْ حَلَلْنَ بِهِ، وَالْوُضُوءُ تَطَهُّرٌ بِلَا خِلَافٍ، وَغَسْلُ الْفَرْجِ بِالْمَاءِ تَطَهُّرٌ كَذَلِكَ، وَغَسْلُ جَمِيعِ الْجَسَدِ تَطَهُّرٌ، فَبِأَيِّ هَذِهِ الْوُجُوهِ تَطَهَّرَتْ الَّتِي رَأَتْ الطُّهْرَ مِنْ الْحَيْضِ فَقَدْ حَلَّ بِهِ لَنَا إتْيَانُهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[أَحْكَامُ لِبْسُ الْحَرِيرِ وَالذَّهَبِ]

[مَسْأَلَةٌ لِبَاسُ الْمَرْأَةِ الْحَرِيرَ وَالذَّهَبَ فِي الصَّلَاةِ وَغَيْرِهَا]

أَحْكَامُ لِبْسُ الْحَرِيرِ وَالذَّهَبِ ١٩١٥ - مَسْأَلَةٌ: وَلِبَاسُ الْمَرْأَةِ الْحَرِيرَ وَالذَّهَبَ فِي الصَّلَاةِ وَغَيْرِهَا: حَلَالٌ، عَلَى أَنَّهُ قَدْ اُخْتُلِفَ فِي ذَلِكَ، فَلَمْ يُجِزْ ذَلِكَ قَوْمٌ لَهُنَّ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ حَدَّثَنَا أَبُو بَكْرِ بْنُ عَلِيٍّ الْمَرْوَزِيِّ نا شُرَيْحُ بْنُ يُونُسَ نا هُشَيْمٌ عَنْ أَبِي بِشْرٍ عَنْ يُوسُفَ بْنِ مَاهَكَ " أَنَّ امْرَأَةً سَأَلَتْ ابْنَ عُمَرَ عَنْ الْحَرِيرِ فَقَالَ لَهَا ابْنُ عُمَرَ: مَنْ لَبِسَهُ فِي الدُّنْيَا لَمْ يَلْبَسْهُ فِي الْآخِرَةِ ".

[32] **Qur'an references (L32372):** Qur'an 2:222 (Al-Baqarah).
[33] **Qur'an references (L32375):** Qur'an 6:119 (Al-An'am).

asked Ibn ʿUmar about silk, whereupon Ibn ʿUmar said to her: Whoever wears it in this world will not wear it in the Hereafter."

L32380 From the chain of Muslim: Ibn Abi Shaybah narrated to us: Ubayd ibn Saʿid from Shuʿbah from Khalifah ibn Kaʿb Abu Dhubyan, who said: I heard ʿAbdullah ibn al-Zubayr delivering a sermon, saying: "Behold! Do not dress your women in silk, for whoever wears silk in this world will not wear it in the Hereafter."

وَمِنْ طَرِيقِ مُسْلِمٍ نا ابْنُ أَبِي شَيْبَةَ نا عُبَيْدُ بْنُ سَعِيدٍ عَنْ شُعْبَةَ عَنْ خَلِيفَةَ بْنِ كَعْبٍ أَبِي ذُبْيَانَ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ يَخْطُبُ يَقُولُ " أَلَا لَا تُلْبِسُوا نِسَاءَكُمْ الْحَرِيرَ فَإِنَّ مَنْ لَبِسَ الْحَرِيرَ فِي الدُّنْيَا لَمْ يَلْبَسْهُ فِي الْآخِرَةِ ".

L32381 From the path of Abd al-Razzaq, Maʾmar narrated to us from Ayyub al-Sikhtiyānī, from Ibn Sirin, that Abu Hurairah used to say to his daughter: "Do not wear gold, for I fear for you the heat of the flame."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السَّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ أَنَّ أَبَا هُرَيْرَةَ كَانَ يَقُولُ لِابْنَتِهِ " لَا تَلْبَسِي الذَّهَبَ فَإِنِّي أَخَافُ عَلَيْكِ حَرَّ اللَّهَبِ ".

L32382–32384 And through the narration of Waki‘ from Mubarak—who is the son of Fadilah—from al-Hasan that he deemed gold reprehensible for women. The proponents of this opinion cited a narration through al-Hasan: "The Messenger of Allah—may Allah bless him and his family and grant him peace—said, referring to women: 'The two red substances—gold and saffron—will ruin them.'" This is a mursal narration which cannot be used as proof. And with a report we have transmitted through the chain of ʿAbd al-Razzāq ibn Maʿmar from al-Zuhrī: "The Messenger of Allah—peace and blessings be upon him and his family—saw on ʿĀ'isha two silver bracelets gilded with gold, so he commanded her to discard them and make two silver bracelets, coloring them yellow with saffron." This is a mursal report, and there is no valid proof in a mursal report.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مُبَارَكٍ - هُوَ ابْنُ فَاضِلَةَ - عَنْ الْحَسَنِ أَنَّهُ كَرِهَ الذَّهَبَ لِلنِّسَاءِ - وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِخَبَرٍ مِنْ طَرِيقِ الْحَسَنِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: يَعْنِي النِّسَاءَ - أَهْلَكَهُنَّ الْأَحْمَرَانِ الذَّهَبُ وَالزَّعْفَرَانُ» وَهَذَا مُرْسَلٌ لَا حُجَّةَ فِيهِ وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ بْنِ مَعْمَرٍ عَنْ الزُّهْرِيِّ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَأَى عَلَى عَائِشَةَ قُلَابَيْنِ مِنْ فِضَّةٍ مُلَوَّنَيْنِ بِذَهَبٍ فَأَمَرَهَا أَنْ تُلْقِيَهُمَا وَتَجْعَلَ قُلَابَيْنِ مِنْ فِضَّةٍ وَتُصَفِّرَهُمَا بِالزَّعْفَرَانِ» وَهَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ.

L32385 And with a narration we have narrated through Shuʿbah, Sufyān, al-Muʿtamir ibn Sulaymān, and Jarīr: all of them from Manṣūr ibn al-Muʿtamir from Ribʿī ibn Khirāsh from his wife from the sister of Ḥudhayfah. She said: "The Messenger of Allah (peace and blessings be upon him and his family) addressed us and said: 'O women! Do you not have silver to adorn yourselves with? Indeed, there is no woman who wears gold and flaunts it openly except that she is punished for it.'" This is narrated from the wife of Ribʿī—and she is an unknown narrator.

وَبِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ، وَالْمُعْتَمِرِ بْنِ سُلَيْمَانَ، وَجَرِيرٍ كُلِّهِمْ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ رِبْعِيِّ بْنِ خِرَاشٍ عَنْ امْرَأَتِهِ عَنْ أُخْتِ حُذَيْفَةَ قَالَتْ: «خَطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ يَا مَعْشَرَ النِّسَاءِ أَمَا لَكُنَّ فِي الْفِضَّةِ مَا تَحَلَّيْنَ، أَمَا إنَّهُ لَيْسَ مِنْ امْرَأَةٍ تَلْبَسُ ذَهَبًا تُظْهِرُهُ إلَّا عُذِّبَتْ بِهِ» وَهَذَا عَنْ امْرَأَةِ رِبْعِيٍّ - وَهِيَ مَجْهُولَةٌ.

L32386 Indeed, it was incumbent upon the Mālikīs and Ḥanafīs—those who adopted the narration of the wife of Abū Isḥāq regarding Umm Walad of Zayd ibn Arqam—to prohibit lawful matters through this report; otherwise, they would be contradictory.

وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ وَالْحَنَفِيِّينَ الْآخِذِينَ بِرِوَايَةِ امْرَأَةِ أَبِي إِسْحَاقَ عِنْدَ أُمِّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ، فَحَرَّمُوا بِهِ الْحَلَالَ أَنْ يَقُولَ بِهَذَا الْخَبَرِ، وَإِلَّا فَهُمْ مُتَنَاقِضُونَ.

L32387 And with a narration containing Laith ibn Abi Sulaim—who is weak—from Shahr ibn Hawshab—who is similarly weak or deemed unreliable—from Asma bint Yazid ibn as-Sakan, who said: "The Messenger of Allah (peace and blessings be upon him) saw me wearing two gold bracelets and gold rings. He said to me (peace and blessings be upon him): 'Do you wish that Allah should encircle you with two bracelets of fire and rings of fire?' I replied: 'No.' He said: 'Then remove these two. Is it too difficult for any of you women to wear two silver rings or earrings, then coat them with perfume, wars, or saffron?'"

وَبِخَبَرٍ فِيهِ لَيْثُ بْنُ أَبِي سُلَيْمٍ - وَهُوَ ضَعِيفٌ - عَنْ شَهْرِ بْنِ حَوْشَبٍ - وَهُوَ مِثْلُهُ أَوْ أَسْقَطُ مِنْهُ عَنْ «أَسْمَاءَ بِنْتِ يَزِيدَ بْنِ السَّكَنِ قَالَتْ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَأَى عَلَيَّ سِوَارَيْنِ مِنْ ذَهَبٍ وَخَوَاتِمَ مِنْ ذَهَبٍ فَقَالَ لِي - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَتُحِبِّينَ أَنْ يُسَوِّرَكِ اللَّهُ بِسِوَارَيْنِ مِنْ نَارٍ وَخَوَاتِمَ مِنْ نَارٍ؟ قَالَتْ: لَا، قَالَ: فَانْزَعِي هَذَيْنِ، أَتَعْجَزُ إِحْدَاكُنَّ أَنْ تَتَّخِذَ حَلْقَتَيْنِ أَوْ تُومَتَيْنِ مِنْ فِضَّةٍ، ثُمَّ تُلَطِّخُهُمَا بِعَبِيرٍ، أَوْ وَرْسٍ أَوْ زَعْفَرَانٍ» .

L32388 And another report—in it: Mahmud ibn 'Amr al-Ansari from Shahr: that Asma' bint Yazid ibn al-Sakan narrated to him from the Messenger of Allah—peace and blessings be upon him—who said: "Any woman who wears a necklace of gold will be given a necklace of fire like it around her neck on the Day of Resurrection. And any woman who places in her ear a piece of gold, Allah will place in her ear a piece of fire like it on the Day of Resurrection."

وَخَبَرٍ آخَرَ - فِيهِ: مَحْمُودُ بْنُ عَمْرٍو الْأَنْصَارِيُّ عَنْ شَهْرٍ: أَنَّ أَسْمَاءَ بِنْتَ يَزِيدَ بْنِ السَّكَنِ حَدَّثَتْهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «أَيُّمَا امْرَأَةٍ تَقَلَّدَتْ قِلَادَةً مِنْ ذَهَبٍ قُلِّدَتْ فِي عُنُقِهَا مِثْلُهَا مِنْ النَّارِ يَوْمَ الْقِيَامَةِ، وَأَيُّمَا امْرَأَةٍ جَعَلَتْ فِي أُذُنِهَا خَرْصًا مِنْ ذَهَبٍ جَعَلَهُ اللَّهُ فِي أُذُنِهَا مِنْ النَّارِ يَوْمَ الْقِيَامَةِ» .

L32389–32391 Mahmud ibn Amr is weak, and another—through the chain of Abu Zayd from Abu Hurayrah—that Abu Hurayrah was with the Messenger of Allah, peace and blessings be upon him and his family, when a woman wearing two gold bracelets came to him. The Prophet, peace and blessings be upon him and his family, said: "Two bracelets of fire?" She asked: "What do you think of a gold necklace?" He replied: "A necklace of fire?" She said: "What do you think of two gold earrings?" He answered: "Two earrings of fire?" Abu Zayd is unknown. And with a sound narration—we have transmitted it through the chain of Ahmad ibn Shuʿayb: al-Rabīʿ ibn Sulaymān ibn Dāwūd narrated to me, Isḥāq ibn Bakr narrated to us from his father, from ʿAmr ibn al-Ḥārith, from Ibn Shihāb, from ʿUrwah ibn al-Zubayr, from ʿĀ'ishah, the

وَمَحْمُودُ بْنُ عَمْرٍو ضَعِيفٌ وَآخَرَ - مِنْ طَرِيقِ أَبِي زَيْدٍ عَنْ «أَبِي هُرَيْرَةَ أَنَّهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَجَاءَتْهُ امْرَأَةٌ عَلَيْهَا سِوَارَانِ مِنْ ذَهَبٍ؟ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: سِوَارَانِ مِنْ نَارٍ؟ فَقَالَتْ: مَا تَرَى فِي طَوْقٍ مِنْ ذَهَبٍ، قَالَ: طَوْقٌ مِنْ نَارٍ؟ قَالَتْ: فَمَا تَرَى فِي قُرْطَيْنِ مِنْ ذَهَبٍ؟ قَالَ: قُرْطَانِ مِنْ نَارٍ» وَأَبُو زَيْدٍ مَجْهُولٌ وَبِخَبَرٍ صَحِيحٍ - رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي الرَّبِيعُ بْنُ سُلَيْمَانَ بْنِ دَاوُد نا إِسْحَاقُ بْنُ بَكْرٍ حَدَّثَنِي أَبِي عَنْ عَمْرِو بْنِ الْحَارِثِ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ

Mother of the Believers, that the Messenger of God—may God's blessings and peace be upon him and his family—saw her wearing two gold bracelets. The Messenger of God—may God's blessings and peace be upon him and his family—said to her: "Shall I not inform you of what is more beautiful than this? If you remove these and replace them with two silver bracelets, then dye them yellow with saffron, they would be beautiful."[34]

بْنِ الزُّبَيْرِ «عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - رَأَى عَلَيْهَا مَسَكَتَيْ ذَهَبٍ، فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَلَا أُخْبِرُك بِمَا هُوَ أَحْسَنُ مِنْ هَذَا لَوْ نَزَعْتِ هَذَا وَجَعَلْتِ مَسَكَتَيْنِ مِنْ وَرِقٍ، ثُمَّ صَفَّرْتِهِمَا بِزَعْفَرَانٍ كَانَتَا حَسَنَتَيْنِ» .

L32392 This report is evidence for us, because there is nothing in this report stating that the Prophet—may the peace and blessings of Allah be upon him—prohibited her from the two gold bracelets. Rather, it only states that he—may the peace and blessings of Allah be upon him—chose for her other than them, and this is what we uphold.

وَهَذَا الْخَبَرُ حُجَّةٌ لَنَا، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ: أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَاهَا عَنْ مَسَكَتَيْ الذَّهَبِ، إنَّمَا فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - اخْتَارَ لَهَا غَيْرَهُ - وَنَحْنُ نَقُولُ بِهَذَا.

L32393 They argued with a report we narrated through the chain of Abū Dāwūd: ʿAbdullāh ibn Maslamah—he is al-Qaʿnabī—narrated to us: ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī narrated to us from Usayd ibn Abī Usayd al-Barrād from Nāfiʿ from Ibn ʿAbbās from Abū Hurayrah that the Messenger of Allah—peace and blessings be upon him—said: "Whoever wishes to make a ring of fire on his forehead, let him make a ring of gold upon it. Whoever wishes to collar his forehead with a collar of fire, let him collar it with a collar of gold. Whoever wishes to bracelet his forehead with a bracelet of fire, let him bracelet it with a bracelet of gold. But you should adhere to silver—use it freely."

وَاحْتَجُّوا بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ - هُوَ الْقَعْنَبِيُّ - نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ أُسَيْدِ بْنِ أَبِي أُسَيْدٍ الْبَرَّادِ عَنْ نَافِعٍ عَنْ ابْنِ عَبَّاسٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ أَحَبَّ أَنْ يُحَلِّقَ جَبِينَهُ حَلْقَةً مِنْ نَارٍ فَلْيُحَلِّقْهُ حَلْقَةً مِنْ ذَهَبٍ، وَمَنْ أَحَبَّ أَنْ يُطَوِّقَ جَبِينَهُ طَوْقًا مِنْ نَارٍ فَلْيُطَوِّقْهُ طَوْقًا مِنْ ذَهَبٍ، وَمَنْ أَحَبَّ أَنْ يُسَوِّرَ جَبِينَهُ بِسِوَارٍ مِنْ نَارٍ فَلْيُسَوِّرْهُ سِوَارًا مِنْ ذَهَبٍ وَلَكِنْ عَلَيْكُمْ بِالْفِضَّةِ فَالْعَبُوا بِهَا» .

L32394 Abu Muhammad said: This is a general statement from which an exception must be made for the saying of the Messenger of Allah (ṣallallāhu ʿalayhi wa-ālihi wa-sallam): "Indeed, gold is forbidden for the males of my Ummah and permitted for its females."

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُجْمَلٌ يَجِبُ أَنْ يُخَصَّ مِنْهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ الذَّهَبَ حَرَامٌ عَلَى ذُكُورِ أُمَّتِي حَلَالٌ لِإِنَاثِهَا» .

L32395 Because it is the least significant of its implications, and some parts of it are excluded. They mentioned what we have narrated through the chain of transmission of Ahmad ibn Shuʿayb, from Wahb ibn Bayān, from Ibn Wahb, from ʿAmr ibn al-Ḥārith, that Abū ʿUshānah reported to him, having heard

لِأَنَّهُ أَقَلُّ مَعَانِ مِنْهُ وَمُسْتَثْنًى بَعْضُ مَا فِيهِ وَذَكَرُوا - مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا وَهْبُ بْنُ بَيَانٍ نا ابْنُ وَهْبٍ نا عَمْرُو بْنُ الْحَارِثِ أَنَّ أَبَا عُشَانَةَ حَدَّثَهُ أَنَّهُ سَمِعَ

[34] **Hadith references (L32389):** Sunan an-Nasai 5143.

ʿUqbah ibn ʿĀmir relate: “The Messenger of Allah (peace and blessings be upon him and his family) would forbid his family from wearing adornments and silk, saying: ’If you love the adornments and silk of Paradise, then do not wear either of them in this world.”’

L32396 Abū Muḥammad said: Abū ʻUshānah is not renowned in transmission—then, even if it were authentic, it would be universally applicable to men and women, but it is restricted by the report stating: “Gold and silk are forbidden for the males of my community but permissible for their females.”

L32397–32399 And another narration—through the chain of Aḥmad ibn Shuʿayb: ʿUbaydullāh ibn Saʿīd informed us; Muʿādh ibn Hishām al-Dastawā’ī informed us; Ubayy narrated from Yaḥyā ibn Abī Kathīr, who said: Zayd—who is the son of Salām—related to me from... Abi Salam—who is Mamṭur al-Habashi—from Abi Asma al-Rahabi—who is Amr ibn Marthad—said: Thawban, the freed slave of the Messenger of Allah (peace and blessings of Allah be upon him), reported: “The daughter of Hubayrah came to the Messenger of Allah (peace and blessings of Allah be upon him and his family) with a fatakh in her hand.” Mu’adh said: “As written in my father’s book”—meaning large rings. The Messenger of Allah (peace and blessings of Allah be upon him and his family) began striking her hands. She then went to Fatimah to complain, whereupon Fatimah removed a gold chain from her neck and said: “This was gifted to me by Abu Hasan.” When the Messenger of Allah (peace and blessings of Allah be upon him and his family) entered while the chain was in her hand, he said: “Would it please you that people say, ’The daughter of the Messenger of Allah has a chain of fire in your hand?”’ He then departed without sitting. Fatimah sent the chain to the market, sold it, and purchased a slave with its price—and he mentioned a word indicating she emancipated him. When this was relayed to the Prophet (peace and blessings of Allah be upon him), he said: “Praise be to Allah who saved Fatimah from the Fire.”

L32400 Abu Muhammad said: As for the Messenger of Allah (may the peace and blessings of Allah be upon him and his family) striking Bint Hubayrah’s hands, it does not state that he (may the peace and blessings of Allah be upon him

عُقْبَةَ بْنَ عَامِرٍ يُخْبِرُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يَمْنَعُ أَهْلَهُ الْحِلْيَةَ وَالْحَرِيرَ، وَيَقُولُ: إِنْ كُنْتُمْ تُحِبُّونَ حِلْيَةَ الْجَنَّةِ وَحَرِيرَهَا فَلَا تَلْبَسُوهُمَا فِي الدُّنْيَا» .

قَالَ أَبُو مُحَمَّدٍ: أَبُو عُشَانَةَ غَيْرُ مَشْهُورٍ بِالنَّقْلِ - ثُمَّ لَوْ صَحَّ لَكَانَ عَامًّا لِلرِّجَالِ وَالنِّسَاءِ يَخُصُّهُ الْخَبَرُ الَّذِي فِيهِ «أَنَّ الذَّهَبَ وَالْحَرِيرَ حَرَامٌ عَلَى ذُكُورِ أُمَّتِي حَلَالٌ لِإِنَاثِهَا» .

وَحَدِيثٌ آخَرُ - مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ سَعِيدٍ نَا مُعَاذُ بْنُ هِشَامٍ - هُوَ الدَّسْتُوَائِيُّ - نَا أُبَيٌّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ حَدَّثَنِي زَيْدٌ - هُوَ ابْنُ سَلَامٍ - عَنْ أَبِي سَلَامٍ - هُوَ مَمْطُورٌ الْحَبَشِيُّ - عَنْ أَبِي أَسْمَاءَ الرَّحَبِيِّ - هُوَ عَمْرُو بْنُ مَرْثَدٍ - قَالَ: إِنَّ ثَوْبَانَ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «جَاءَتْ ابْنَةُ هُبَيْرَةَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي يَدِهَا فَتَخٌ - قَالَ مُعَاذٌ: كَذَا فِي كِتَابِ أَبِي - أَيْ خَوَاتِمُ كِبَارٌ - فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَضْرِبُ يَدَيْهَا فَدَخَلَتْ عَلَى فَاطِمَةَ تَشْكُو ذَلِكَ إِلَيْهَا، فَنَزَعَتْ فَاطِمَةُ سِلْسِلَةً مِنْ ذَهَبٍ فِي عُنُقِهَا، فَقَالَتْ: هَذِهِ أَهْدَاهَا أَبُو حَسَنٍ، فَدَخَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالسِّلْسِلَةُ فِي يَدِهَا، فَقَالَ: أَيَسُرُّكِ أَنْ تَقُولَ النَّاسُ ابْنَةُ رَسُولِ اللَّهِ وَفِي يَدِكِ سِلْسِلَةٌ مِنْ نَارٍ - ثُمَّ خَرَجَ وَلَمْ يَقْعُدْ، فَأَرْسَلَتْ فَاطِمَةُ بِالسِّلْسِلَةِ إِلَى السُّوقِ فَبَاعَتْهَا وَاشْتَرَتْ بِثَمَنِهَا غُلَامًا - وَذَكَرَ كَلِمَةً مَعْنَاهَا: فَأَعْتَقَتْهُ - فَحُدِّثَ بِذَلِكَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: الْحَمْدُ لِلَّهِ الَّذِي نَجَّى فَاطِمَةَ مِنَ النَّارِ» .

and his family) struck her specifically due to the rings, nor does it indicate that those rings were made of gold.

قَالَ أَبُو مُحَمَّد: أَمَّا ضَرْبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَدَيْ بِنْتِ هُبَيْرَةَ فَلَيْسَ فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا ضَرَبَهَا مِنْ أَجْلِ الْخَوَاتِمِ، وَلَا فِيهِ أَيْضًا: أَنَّ تِلْكَ الْخَوَاتِمَ كَانَتْ مِنْ ذَهَبٍ.

L32401 Whoever adds these two meanings to the report has undoubtedly lied, following what he has no knowledge of and what the narrator of the report did not convey. This is purely forbidden. It is possible that the reason he—peace and blessings be upon him—struck both her hands was because she exposed parts of her arms she was not permitted to reveal, or for other reasons about which he—peace and blessings be upon him—has greater knowledge.

وَمَنْ زَادَ هَذَيْنِ الْمَعْنَيَيْنِ فِي الْخَبَرِ فَقَدْ كَذَبَ بِلَا شَكٍّ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَمَا لَمْ يُخْبِرْ بِهِ رَاوِي الْخَبَرِ، وَهَذَا حَرَامٌ بَحْتٌ، وَقَدْ يُمْكِنُ أَنْ يَكُونَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ضَرْبُ يَدَيْهَا لِأَنَّهَا أَبْرَزَتْ عَنْ ذِرَاعَيْهَا مَا لَا يَحِلُّ لَهَا إبْرَازُهُ، أَوْ لِغَيْرِ ذَلِكَ مِمَّا هُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَعْلَمُ بِهِ

L32402 As for his statement, “Would it please you that people say, ‘The daughter of the Messenger of God,’ while you hold a chain of fire in your hand?”—the apparent meaning of the wording, which cannot be understood otherwise, is that he (peace be upon him) only objected to her holding it in her hand. The wording of the report contains no explicit text beyond this, nor is there any evidence for such a prohibition. There is nothing in it stating that he (peace be upon him) forbade her from wearing it or owning it. This is beyond doubt.

وَأَمَّا قَوْلُهُ «أَيَسُرُّكِ أَنْ يَقُولَ النَّاسُ ابْنَةُ رَسُولِ اللَّهِ وَفِي يَدِكِ سِلْسِلَةٌ مِنْ نَارٍ» فَظَاهِرُ اللَّفْظِ الَّذِي لَيْسَ يُفْهَمُ مِنْهُ سِوَاهُ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا أَنْكَرَ إمْسَاكَهَا إيَّاهَا بِيَدِهَا، لَيْسَ فِي لَفْظِ الْخَبَرِ نَصٌّ بِغَيْرِ هَذَا، وَلَا دَلِيلٌ عَلَيْهِ، وَلَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - نَهَاهَا عَنْ لِبَاسِهَا وَلَا عَنْ تَمَلُّكِهَا، هَذَا لَا شَكَّ فِيهِ.

L32403 And it is indeed possible that he—peace and blessings be upon him—knew she had not purified it through zakat, though it was among what is subject to obligatory zakat, as the Mighty and Majestic says: “And those who hoard gold and silver and spend it not in Allah’s way—give them tidings of a painful punishment” [At-Tawbah: 34], “on the Day when it will be heated in Hellfire, then their foreheads, sides, and backs will be branded with it: ‘This is what you hoarded for yourselves. Now taste what you stored!’” [At-Tawbah: 35].[35]

وَقَدْ يُمْكِنُ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلِمَ أَنَّهَا لَمْ تُزَكِّهَا وَكَانَتْ مِمَّا تَجِبُ فِيهِ الزَّكَاةُ كَمَا قَالَ عَزَّ وَجَلَّ: {وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلا يُنْفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ} [التوبة: ٣٤] {يَوْمَ يُحْمَى عَلَيْهَا فِي نَارِ جَهَنَّمَ فَتُكْوَى بِهَا جِبَاهُهُمْ وَجُنُوبُهُمْ وَظُهُورُهُمْ هَذَا مَا كَنَزْتُمْ لأَنْفُسِكُمْ فَذُوقُوا مَا كُنْتُمْ تَكْنِزُونَ} [التوبة: ٣٥] .

L32404–32406 And Allah knows best on what basis she denied that the chain was in her hand—may Allah be pleased with her—except that there is nothing in it. The absolute prohibition of her wearing it for herself is established; rather, there is an explicit text: that he (peace and blessings be upon him) permitted her

وَاَللَّهُ أَعْلَمُ لِأَيِّ وَجْهٍ أَنْكَرَ كَوْنَ السِّلْسِلَةِ فِي يَدِهَا - رَضِيَ اللَّهُ عَنْهَا - إلَّا أَنَّهُ لَيْسَ فِيهِ أَلْبَتَّةَ تَحْرِيمُ لِبَاسِهَا لَهَا، بَلْ فِيهِ نَصًّا: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَبَاحَ لَهَا مِلْكَهَا يَقِينًا لَا شَكَّ فِيهِ، لِأَنَّهُ جَوَّزَ بَيْعَهَا لِلسِّلْسِلَةِ، وَجَوَّزَ لِلْمُشْتَرِي لَهَا مِنْهَا شِرَاؤُهَا، وَأَمَّا إمْسَاكُهَا

[35] **Qur’an references (L32403):** Qur’an 9:34 (At-Tawbah); Qur’an 9:35 (At-Tawbah).

بِالْيَدِ الَّذِي فِي هَذَا الْخَبَرِ إِنْكَارُهُ فَقَدْ نُسِخَ بِيَقِينٍ لَا شَكَّ فِيهِ، لِإِيجَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الزَّكَاةَ فِي الذَّهَبِ وَإِبَاحَتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْعَ الذَّهَبِ بِالذَّهَبِ مِثْلًا بِمِثْلٍ، وَزْنًا بِوَزْنٍ، وَإِبَاحَتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْعَ قِلَادَةِ الذَّهَبِ الَّتِي أُصِيبَتْ بِخَيْبَرَ بَعْدَ أَنْ أَمَرَ بِنَزْعِ الْخَرَزِ عَنْهَا، وَبَيْعَ الذَّهَبِ بِالذَّهَبِ مِثْلًا بِمِثْلٍ، وَلَمْ يُحَرِّمْ بَيْعَ الْقِلَادَةِ الَّتِي فِيهَا الذَّهَبُ، وَلَا ابْتِيَاعَهَا وَلَا أَمَرَ بِكَسْرِهَا.

ownership of it with certainty, without any doubt, because he allowed her to sell it as a chain and permitted the buyer to purchase it from her. As for the denial of her holding it by hand mentioned in this report, it has been abrogated with certainty, without any doubt, due to the Messenger of Allah (peace and blessings be upon him) obligating zakāh on gold, his permission (peace and blessings be upon him) to sell gold for gold, like for like, weight for weight, his permission (peace and blessings be upon him) to sell the gold necklace acquired at Khaybar after ordering the beads to be removed from it, and to sell gold for gold, like for like, weight for weight. He did not prohibit selling the necklace containing gold, nor purchasing it, nor did he command its destruction.

وَلَا خِلَافَ فِي أَنَّ إِيجَابَ الزَّكَاةِ فِي الذَّهَبِ وَإِبَاحَةَ بَيْعِهِ بِالذَّهَبِ مِثْلًا بِمِثْلٍ بَاقٍ إِلَى يَوْمِ الْقِيَامَةِ لَمْ يُنْسَخْ.

L32407 There is no dispute that the obligation of zakat concerning gold and the permissibility of selling it in exchange for gold, like for like, remains until the Day of Resurrection and has not been abrogated.

وَأَمَّا قَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِذْ بَلَغَهُ بَيْعُ فَاطِمَةَ - رَضِيَ اللَّهُ عَنْهَا - السِّلْسِلَةَ الذَّهَبَ وَابْتِيَاعَهَا بِثَمَنِهَا غُلَامًا فَأَعْتَقَتْهُ «الْحَمْدُ لِلَّهِ الَّذِي أَنْقَذَ فَاطِمَةَ مِنْ النَّارِ» .

L32408 As for his statement—peace and blessings be upon him—when he was informed of Fāṭimah's (may Allah be pleased with her) sale of the golden chain and her purchasing a slave with its price, then she emancipated him: "Praise be to Allah Who rescued Fāṭimah from the Fire."

فَالَّذِي لَا شَكَّ فِيهِ، فَهُوَ أَنَّهُ قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نَا قُتَيْبَةُ بْنُ سَعْدٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ الْهَادِ عَنْ عُمَرَ بْنِ عَلِيِّ بْنِ الْحُسَيْنِ عَنْ سَعِيدِ بْنِ مَرْجَانَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ أَعْتَقَ رَقَبَةً أَعْتَقَ اللَّهُ بِكُلِّ عُضْوٍ مِنْهَا عُضْوًا مِنْ النَّارِ حَتَّى فَرْجِهِ بِفَرْجِهِ» .

L32409 As for that which is beyond doubt, it is that there has been authentically reported from the Messenger of Allah—peace and blessings be upon him and his family—what we have narrated through the chain of Muslim: Qutaybah ibn Sa'd narrated to us, al-Layth—he is Ibn Sa'd—narrated to us, on the authority of Ibn al-Hād, from 'Umar ibn 'Alī ibn al-Ḥusayn, from Sa'īd ibn Marjānah, from Abū Hurayrah, from the Messenger of Allah—peace and blessings be upon him and his family—who said: "Whoever frees a slave, for every limb of the slave Allah will free a limb of his from the Fire, even his private part for his private part."

فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى أَنْقَذَهَا مِنْ النَّارِ بِعِتْقِهَا لِلْغُلَامِ

L32410 So we are certain that Allah, the Exalted, saved her from the Fire through her emancipation for the slave boy.

L32411 And whoever claims that he saved her from the Fire by her selling the chain has presumed what he has no knowledge of, has uttered what he has no evidence for, and possesses no demonstrative proof of its validity. There

is no explicit text in the tradition regarding it, nor any indication except conjecture, which is the most deceitful of speech.

وَمَنْ ادَّعَى أَنَّهُ إِنَّمَا أَنْقَذَهَا مِنْ النَّارِ بِبَيْعِهَا السِّلْسِلَةَ فَقَدْ قَفَا مَا لَا عِلْمَ لَهُ بِهِ، وَقَالَ مَا لَا دَلِيلَ لَهُ عَلَيْهِ، وَلَا بُرْهَانَ عِنْدَهُ بِصِحَّتِهِ، وَمَا لَيْسَ فِي الْخَبَرِ مِنْهُ نَصٌّ، وَلَا دَلِيلٌ إِلَّا بِالظَّنِّ الَّذِي هُوَ أَكْذَبُ الْحَدِيثِ.

L32412–32414 An authentic narration has been transmitted regarding the reprehensibility of touching gold ornaments—as we have been narrated through the chain of Abū Dāwūd: narrated to us by Ibn Nufayl, who was ʿAbdullāh ibn Muḥammad ibn Nufayl, narrated to us by Muḥammad ibn Salamah from Muḥammad ibn Isḥāq, who said: "Yaḥyā ibn ʿAbbād ibn ʿAbdullāh ibn al-Zubayr narrated to me from ʿĀ'ishah, the Mother of the Believers, who said: 'A piece of jewelry was brought to the Messenger of Allah (peace and blessings be upon him and his family) from the Negus, which the Negus had gifted to him. It contained a gold ring with an Ethiopian-stone bezel.' She said: 'The Messenger of Allah (peace and blessings be upon him and his family) took it using a stick while turning away, or [...]'" With some of his fingers, then he called Umamah bint Abi al-ʿĀṣ, the daughter of Zaynab, and said: "Wear this ornament, my daughter."

وَقَدْ جَاءَ فِي كَرَاهَةِ مَسِّ حُلِيِّ الذَّهَبِ أَثَرٌ صَحِيحٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا ابْنُ نُفَيْلٍ - هُوَ عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ نُفَيْلٍ - نا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ حَدَّثَنِي يَحْيَى بْنُ عَبَّادِ بْنِ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ عَنْ «عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ قَدِمَتْ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حِلْيَةٌ مِنْ عِنْدِ النَّجَاشِيِّ أَهْدَاهَا لَهُ فِيهَا خَاتَمٌ مِنْ ذَهَبٍ فِيهِ فَصٌّ حَبَشِيٌّ قَالَتْ: فَأَخَذَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِعُودٍ مُعْرِضًا أَوْ بِبَعْضِ أَصَابِعِهِ، ثُمَّ دَعَا أُمَامَةَ بِنْتَ أَبِي الْعَاصِ ابْنَةَ زَيْنَبَ فَقَالَ: تَحَلَّيْ بِهَذَا يَا بُنَيَّةُ» .

L32415 The Messenger of Allah—peace be upon him and his family—disliked touching a gold ring, and perhaps he disliked it for Fatimah as well. Yet despite that, he put it on Umamah bint Abi al-ʿAs.

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ كَرِهَ مَسَّ خَاتَمِ الذَّهَبِ فَلَعَلَّهُ كَرِهَهُ لِفَاطِمَةَ أَيْضًا، وَمَعَ ذَلِكَ حَلَّاهُ أُمَامَةَ بِنْتَ أَبِي الْعَاصِ.

L32416 Abu Muhammad said: The ruling on all of that is what we have transmitted through the chain of Ahmad ibn Shuʿayb: ʿAmr ibn ʿAlī narrated to us from Yaḥyā (he is Ibn Saʿīd al-Qaṭṭān), Yazīd (he is Ibn Zuraiʿ), Muʿtamir (he is Ibn Sulaymān al-Taymī), and Bishr ibn al-Mufaḍḍal. All of them narrated from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, the freed slave of Ibn ʿUmar, from Saʿīd ibn Abī Hind, from Abū Mūsā al-Ashʿarī: "The Messenger of Allāh—may Allāh bless him and his family and grant him peace—said: 'Allāh has made silk and gold lawful for the females of my nation and forbidden them for their males.'"

قَالَ أَبُو مُحَمَّدٍ: وَالْحَاكِمُ عَلَى كُلِّ ذَلِكَ هُوَ مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - وَيَزِيدُ - هُوَ ابْنُ زُرَيْعٍ - وَمُعْتَمِرٌ - هُوَ ابْنُ سُلَيْمَانَ التَّيْمِيُّ - وَبِشْرُ بْنُ الْمُفَضَّلِ قَالُوا كُلُّهُمْ: نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ سَعِيدِ بْنِ أَبِي هِنْدٍ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «إِنَّ اللَّهَ أَحَلَّ لِإِنَاثِ أُمَّتِي الْحَرِيرَ وَالذَّهَبَ وَحَرَّمَهُ عَلَى ذُكُورِهَا» .

L32417 It has also been narrated by us through the chain of Ḥammād ibn Salamah, ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī, Abū Muʿāwiyah al-Ḍarīr, and

Ḥammād ibn Masʿadah—all of them from ʿUbayd Allāh ibn ʿUmar with his chain. However, they restricted their accounts to mentioning silk alone, except Ḥammād ibn Salamah, whereas he included both silk and gold.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَعَبْدِ الْوَهَّابِ بْنِ عَبْدِ الْمَجِيدِ الثَّقَفِيِّ، وَأَبِي مُعَاوِيَةَ الضَّرِيرِ، وَحَمَّادِ بْنِ مَسْعَدَةَ كُلِّهِمْ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بِإِسْنَادِهِ، إِلَّا أَنَّهُمْ اقْتَصَرُوا عَلَى ذِكْرِ الْحَرِيرِ فَقَطْ إِلَّا حَمَّادَ بْنَ سَلَمَةَ فَإِنَّهُ ذَكَرَ: الْحَرِيرَ وَالذَّهَبَ.

L32418 We have also narrated it through the chain of Sa'id ibn Abi 'Arubah and Ma'mar, both of whom reported from Ayyub al-Sikhtiyani from Nafi' via his chain of transmission, and the narrator mentioned silk and gold. This is an authentic report because Sa'id ibn Abi Hind is a trustworthy and renowned authority from whom Nafi' and Musa ibn Maysarah narrated.

وَرُوِّينَاهُ أَيْضًا: مِنْ طَرِيقِ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، وَمَعْمَرٍ، وَكِلَاهُمَا عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ بِإِسْنَادِهِ وَذَكَرَ الْحَرِيرَ وَالذَّهَبَ وَهُوَ أَثَرٌ صَحِيحٌ؛ لِأَنَّ سَعِيدَ بْنَ أَبِي هِنْدٍ ثِقَةٌ مَشْهُورٌ رَوَى عَنْهُ نَافِعٌ وَمُوسَى بْنُ مَيْسَرَةَ.

L32419 Through the chain of Abū Dāwūd: Aḥmad ibn Ḥanbal narrated to us, Yaʿqūb—the son of Ibrāhīm ibn Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf—narrated to us from his father, from Ibn Isḥāq, who said: Nāfiʿ, the freed slave of Ibn ʿUmar, narrated to me from ʿAbdullāh ibn ʿUmar, who said: He heard the Messenger of Allah—peace and blessings be upon him and his family—forbid women in their state of iḥrām from wearing gloves and the niqāb, and from clothes dyed with wars (wars dye) or saffron. However, after that, they may wear whatever they desire of safflower-dyed garments, shoes, jewelry, trousers, shirts, or khuffs. The Messenger of Allah—upon him be prayers and peace—applied a general ruling to all jewelry for them, and if gold had been forbidden for them, he—peace and blessings be upon him and his family—would have undoubtedly clarified it. Since he did not explicitly prohibit it, this is permissible for them.

وَمِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ نَا يَعْقُوبُ هُوَ ابْنُ إِبْرَاهِيمَ بْنِ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - نا أَبِي عَنْ ابْنِ إِسْحَاقَ قَالَ: إنَّ نَافِعًا مَوْلَى ابْنِ عُمَرَ حَدَّثَنِي عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ: إنَّهُ «سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَهَى النِّسَاءَ فِي إحْرَامِهِنَّ عَنْ الْقُفَّازَيْنِ وَالنِّقَابِ، وَمَا مَسَّ الْوَرْسُ، أَوْ الزَّعْفَرَانُ، مِنْ الثِّيَابِ، وَلْتَلْبَسْ بَعْدَ ذَلِكَ مَا أَحَبَّتْ مِنْ مُعَصْفَرٍ، أَوْ حِذَاءٍ، أَوْ حُلِيٍّ، أَوْ سَرَاوِيلَ، أَوْ قَمِيصٍ، أَوْ خُفٍّ» فَعَمَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهَا جَمِيعَ الْحُلِيِّ، وَلَوْ كَانَ الذَّهَبُ حَرَامًا عَلَيْهِنَّ لَبَيَّنَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِلَا شَكٍّ، فَإِذْ لَمْ يُنَصَّ عَلَى مَنْعِهِ، فَهَذَا حَلَالٌ لَهُنَّ -.

L32420–32422 And with Allah, the Exalted, is success—and this is what a group of the *Salaf* state. It has been narrated to us through the chains of Ḥammād ibn Salamah and Qaṭādah. Qaṭādah reported from ʿAlī ibn ʿAbdillāh al-Bāriqī, and Ḥammād reported from ʿUqbah ibn Wassāj—both of whom narrated from Ibn ʿUmar that they asked him about silk and gold? He replied: "They are disliked for men and not disliked for women." From the narration of Shu'bah through Sulaymān ibn Abī al-Mughīrah al-Bazzār through Sa'īd ibn Jubayr, who said: Ḥudhayfah saw boys wearing silk shirts, so he removed the

وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَبِهَذَا تَقُولُ جَمَاعَةٌ مِنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَقَتَادَةَ، قَالَ قَتَادَةُ عَنْ عَلِيِّ بْنِ عَبْدِ اللَّهِ الْبَارِقِيِّ، وَقَالَ حَمَّادٌ عَنْ عُقْبَةَ بْنِ وَسَّاجٍ، كِلَاهُمَا عَنْ ابْنِ عُمَرَ أَنَّهُمَا سَأَلَاهُ عَنْ الْحَرِيرِ وَالذَّهَبِ؟ فَقَالَ: يُكْرَهَانِ لِلرِّجَالِ وَلَا يُكْرَهَانِ لِلنِّسَاءِ وَمِنْ طَرِيقِ شُعْبَةَ عَنْ سُلَيْمَانَ بْنِ أَبِي الْمُغِيرَةِ الْبَزَّارِ عَنْ سَعِيدِ بْنِ

silk from the boys, ordered its removal from them, and left it on the female servants.

L32423 This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Mālik, Abū Sulaymān, and their companions.

L32424 **The ruling on adorning oneself with silver, pearls, rubies, and emeralds.**

L32425 1916 - Issue: Adornment with silver, pearls, rubies, and emeralds is permissible in all things for both men and women. We do not make an exception for anything except silver vessels alone, for they are forbidden for both men and women, based on the ḥadīth of Al-Barāʾ ibn ʿĀẓib — which we previously mentioned in the "Book of Prayer" — because Allāh, the Exalted and Majestic, says: "He created for you all that is in the earth" (Al-Baqarah 2:29).[36]

L32426 And He, the Exalted, says: "And He has explained in detail to you what He has forbidden to you" [Al-Anʿām: 119].[37]

L32427 Since Allah, the Exalted and Majestic, did not explicitly specify the prohibition of adorning with silver in that context, it therefore remains ḥalāl.

L32428 Some people specified the permissibility of adornment for swords, belts, rings, and the *Mus'haf*. This specification lacks any evidence for its validity and is thus a baseless assertion.

L32429 As for pearls, Allah, the Almighty and Majestic, has said: {And from each of them you eat fresh meat and extract ornaments that you wear, and you see the ships cleaving through it} [35:12].[38]

L32430 Ali said: "Nothing emerges from the sea except pearls. In accordance with the explicit text of the Quran, they are ḥalāl for both men and women. And with Allah, the Exalted, is success."

[36] **Qur'an references (L32425):** Qur'an 2:29 (Al-Baqarah).
[37] **Qur'an references (L32426):** Qur'an 6:119 (Al-An'am).
[38] **Qur'an references (L32429):** Qur'an 35:12 (Fatir).

جُبَيْرٍ قَالَ: رَأَى حُذَيْفَةُ صِبْيَانًا عَلَيْهِمْ قُمُصُ حَرِيرٍ فَنَزَعَهُ عَنْ الْغِلْمَانِ، وَأَمَرَ بِنَزْعِهِ عَنْهُمْ، وَتَرَكَهُ عَلَى الْجَوَارِي.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَمَالِكٍ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِ

[مَسْأَلَةُ التَّحَلِّي بِالْفِضَّةِ وَاللُّؤْلُؤِ وَالْيَاقُوتِ وَالزُّمُرُّدِ]

١٩١٦ - مَسْأَلَةٌ: وَالتَّحَلِّي بِالْفِضَّةِ، وَاللُّؤْلُؤِ، وَالْيَاقُوتِ، وَالزُّمُرُّدِ: حَلَالٌ فِي كُلِّ شَيْءٍ لِلرِّجَالِ وَالنِّسَاءِ، وَلَا نَخُصُّ شَيْئًا إلَّا آنِيَةُ الْفِضَّةِ فَقَطْ، فَهِيَ حَرَامٌ عَلَى الرِّجَالِ وَالنِّسَاءِ، عَلَى خَبَرِ الْبَرَاءِ بْنِ عَازِبٍ وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الصَّلَاةِ " لِأَنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {خَلَقَ لَكُمْ مَا فِي الأَرْضِ جَمِيعًا} [البقرة: ٢٩] .

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

فَلَمْ يُفَصِّلْ عَزَّ وَجَلَّ تَحْرِيمَ التَّحَلِّي بِالْفِضَّةِ فِي ذَلِكَ، فَهِيَ حَلَالٌ.

وَقَدْ خَصَّ قَوْمٌ بِالْإِبَاحَةِ حِلْيَةَ السَّيْفِ، وَالْمِنْطَقَةِ، وَالْخَاتَمِ، وَالْمُصْحَفِ وَهَذَا تَخْصِيصٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ فَهُوَ دَعْوَى مُجَرَّدَةٌ.

وَأَمَّا اللُّؤْلُؤُ فَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَمِنْ كُلٍّ تَأْكُلُونَ لَحْمًا طَرِيًّا وَتَسْتَخْرِجُونَ حِلْيَةً تَلْبَسُونَهَا وَتَرَى الْفُلْكَ فِيهِ مَوَاخِرَ} [فاطر: ١٢] .

قَالَ عَلِيٌّ: وَلَا يَخْرُجُ مِنْ الْبَحْرِ إلَّا اللُّؤْلُؤُ، فَهُوَ بِنَصِّ الْقُرْآنِ حَلَالٌ لِلرِّجَالِ وَالنِّسَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

Provisions of Reconciliation Between the Spouses

Issue: When a dispute arises between a man and his wife.

The Rulings on Reconciliation Between Spouses - Issue 1917: When a dispute arises between a man and his wife, the judge shall dispatch an arbitrator from the husband's family and one from the wife's family to determine the circumstances of the wrongdoer among them. They shall report their findings to the judge so that he may take the rightful claim from the party identified before him and restrain the transgressor. The arbitrators have no authority to dissolve the marriage bond between the spouses, neither through khulʿ nor any other means.

The proof of that is the statement of Allah, the Mighty and Majestic: {And if you fear dissension between them, then send an arbiter from his family and an arbiter from her family. If they desire reconciliation, Allah will bring about reconciliation between them} [An-Nisa 4:35].[39]

Abu Muhammad said: The family of kinship are those related through the father and the mother. The term family also refers to mawālī, as [...] [text incomplete]. It has been narrated to us in the hadith of Abi Taybah that the Messenger of Allah—may Allah bless him and grant him peace—commanded his family to lighten from him of his kharaj.

And the Exalted said: {If the two desire reconciliation, Allah will reconcile between them} [An-Nisa: 35]. The pronoun in "between them" necessarily refers either to the two spouses (as we maintain) or to the two arbiters. The verse's explicit text states that Allah the Exalted only reconciles between them if they intend reconciliation, and reconciliation means ending discord between the two spouses.[40]

If it is said: Indeed, Allah Almighty has stated: {And if a woman fears from

[39] **Qur'an references (L32434):** Qur'an 4:35 (An-Nisa).
[40] **Qur'an references (L32438):** Qur'an 4:35 (An-Nisa).

[أَحْكَامُ الصُّلْحِ بَيْنَ الزَّوْجَيْنِ]

[مَسْأَلَةٌ إِذَا شَجَرَ بَيْنَ الرَّجُلِ وَامْرَأَتِهِ]

أَحْكَامُ الصُّلْحِ بَيْنَ الزَّوْجَيْنِ ١٩١٧ - مَسْأَلَةٌ: وَإِذَا شَجَرَ بَيْنَ الرَّجُلِ وَامْرَأَتِه: بَعَثَ الْحَاكِمُ حَكَمًا مِنْ أَهْلِه، وَحَكَمًا مِنْ أَهْلِهَا عَنْ حَالِ الظَّالِمِ مِنْهُمَا، وَيَنْهَيَا إِلَى الْحَاكِمِ مَا وَقَفَا عَلَيْهِ مِنْ ذَلِكَ، لِيَأْخُذَ الْحَقَّ مِمَّنْ هُوَ قِبَلَهُ، وَيَأْخُذَ عَلَى يَدَيْ الظَّالِمِ، وَلَيْسَ لَهُمَا أَنْ يُفَرِّقَا بَيْنَ الزَّوْجَيْنِ، لَا بِخُلْعٍ، وَلَا بِغَيْرِهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا} [النساء: ٣٥] .

قَالَ أَبُو مُحَمَّد: الْأَهْلُ الْقَرَابَةُ: هُمْ مِنْ الْأَبِ وَالْأُمِّ - وَالْأَهْلُ أَيْضًا: الْمَوَالِي، كَمَا رُوِّينَا فِي حَدِيثِ أَبِي طَيْبَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ أَهْلَهُ أَنْ يُخَفِّفُوا عَنْهُ مِنْ خَرَاجِهِ» .

وَقَالَ عَزَّ وَجَلَّ: {إِنْ يُرِيدَا إِصْلاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا} [النساء: ٣٥] فَلَا يَخْلُو ضَرُورَةً الضَّمِيرُ الَّذِي فِي " بَيْنِهِمَا " مِنْ أَنْ يَكُونَ رَاجِعًا إلَى الزَّوْجَيْنِ وَهَكَذَا نَقُولُ أَوْ يَكُونَ رَاجِعًا إلَى الْحَكَمَيْنِ، فَنَصُّ الْآيَةِ: أَنَّهُ إنَّمَا يُوَفِّقُ اللَّهُ تَعَالَى بَيْنَهُمَا إنْ أَرَادَا إصْلَاحًا، وَالْإِصْلَاحُ هُوَ قَطْعُ الشَّرِّ بَيْنَ الزَّوْجَيْنِ.

her husband rebellion (نُشُوزًا) or aversion (إِعْرَاضًا), there is no blame on them if they reconcile between themselves, and reconciliation is better} [An-Nisa: 128], meaning divorce, and it has been recited in a variant reading as "that they reconcile"?[41]

فَإِنْ قِيلَ: قَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَإِنِ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ} [النساء: ١٢٨] يَعْنِي الطَّلَاقَ، وَقَدْ قُرِئَ " أَنْ يُصْلِحَا "؟ .

L32440 We said: Yes, for the Exalted and Glorious has referred this reconciliation solely to the discretion of the two spouses—not to others—and it is their responsibility. Neither linguistically nor in the Sharīʿah is the phrase "I reconciled between the spouses" (interpreted as "I divorced her upon him") recognized. The early scholars held divergent views on this matter. One group maintained that the two arbiters may separate [the couple]—as narrated in the account where ʿUthmān appointed Ibn ʿAbbās and Muʿāwiyah as two arbiters between ʿAqīl ibn Abī Ṭālib and his wife Fāṭimah bint ʿUtbah ibn Rabīʿah. They were told: "If the two of you deem separation appropriate, then separate them."

قُلْنَا: نَعَمْ، وَإِنَّمَا رَدَّ عَزَّ وَجَلَّ هَذَا الصُّلْحَ إِلَى اخْتِيَارِ الزَّوْجَيْنِ، لَا إِلَى غَيْرِهِمَا، وَعَلَيْهِمَا، وَلَا يُعْرَفُ فِي اللُّغَةِ، وَلَا فِي الشَّرِيعَةِ: أَصْلَحْت بَيْنَ الزَّوْجَيْنِ - أَيْ طَلَّقْتهَا عَلَيْهِ - وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: لَهُمَا أَنْ يُفَرِّقَا -: كَمَا رُوِّينَا - أَنَّ عُثْمَانَ بَعَثَ ابْنَ عَبَّاسٍ وَمُعَاوِيَةَ حَكَمَيْنِ بَيْنَ عَقِيلِ بْنِ أَبِي طَالِبٍ وَامْرَأَتِهِ فَاطِمَةَ بِنْتِ عُتْبَةَ بْنِ رَبِيعَةَ فَقِيلَ لَهُمَا: إِنْ رَأَيْتُمَا أَنْ تُفَرِّقَا فَرَّقْتُمَا.

L32441 This narration is not authentic because it has only been transmitted with a disconnected chain.

وَهَذَا خَبَرٌ لَا يَصِحُّ، لِأَنَّهُ لَمْ يَأْتِ إِلَّا مُنْقَطِعًا.

L32442 We have narrated it from Ibn Abbas as well: through Yahya ibn Abd al-Hamid al-Himmani—who is weak—and it is authentically established from Ali ibn Abi Talib that he said to the two arbiters between the spouses: "Upon you both—if you deem separation appropriate, separate them; and if you deem reconciliation appropriate, reconcile them."

رُوِّينَاهُ عَنْ ابْنِ عَبَّاسٍ أَيْضًا: مِنْ طَرِيقِ يَحْيَى بْنِ عَبْدِ الْحَمِيدِ الْحِمَّانِيُّ - وَهُوَ ضَعِيفٌ - وَصَحَّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ لِلْحَكَمَيْنِ بَيْنَ الزَّوْجَيْنِ: عَلَيْكُمَا إِنْ رَأَيْتُمَا أَنْ تُفَرِّقَا فَرَّقْتُمَا، وَإِنْ رَأَيْتُمَا أَنْ تَجْمَعَا جَمَعْتُمَا.

L32443 It has been authentically reported from Abu Salamah ibn Abd al-Rahman ibn Awf, al-Shaʿbi, Saʿid ibn Jubayr, and al-Hakam ibn ʿUtaybah, and from Rabiʿah and Shurayh; and it has been narrated from Tawus and al-Nakhaʿī.

وَصَحَّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَالشَّعْبِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَعَنْ رَبِيعَةَ وَشُرَيْحٍ، وَرُوِيَ عَنْ طَاوُسٍ وَالنَّخَعِيِّ.

L32444 This is the opinion of Malik, Al-Awzaʿi, Abu Sulayman, and the scholars of our school, with the exception of Ibn al-Mughallis.

وَهُوَ قَوْلُ مَالِكٍ، وَالْأَوْزَاعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، إِلَّا ابْنَ الْمُغَلِّسِ.

L32445–32447 Others said: The two arbitrators do not have the authority to separate [the spouses]. From Aḥmad ibn ʿUmar ibn Anas al-ʿUdhurī, from Abū Dharr al-Harawī, from ʿAbd Allāh ibn Aḥmad ibn Ḥammawayh al-Sarakhsī, from

وَقَالَ آخَرُونَ: لَيْسَ لِلْحَكَمَيْنِ أَنْ يُفَرِّقَا - نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَّوَيْهِ السَّرَخْسِيُّ نا إِبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ

[41] **Qur'an references (L32439):** Qur'an 4:128 (An-Nisa).

الْكَشِّيُّ نا يَزِيدُ بْنُ هَارُونَ نا هِشَامٌ - هُوَ ابْنُ حَسَّانَ - عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: لَهُمَا - يَعْنِي الْحَكَمَيْنِ - أَنْ يُصْلِحَا، وَلَيْسَ لَهُمَا أَنْ يُفَرِّقَا وَبِهِ إلَى عَبْدِ بْنِ حُمَيْدٍ نا يُونُسُ عَنْ شَيْبَانَ - هُوَ ابْنُ فَرُّوخَ - عَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا} [النساء: ٣٥] .

Ibrāhīm ibn Khuraym, from ʿAbd ibn Ḥumayd al-Kashshī, from Yazīd ibn Hārūn, from Hishām (son of Ḥassān), from al-Ḥasan al-Baṣrī, who said: They—meaning the two arbitrators—have the authority to reconcile, but they do not have the authority to separate [the spouses]. From him [through] Abd ibn Humaid: Yunus narrated to us from Shayban (he is Ibn Farrukh) from Qatadah regarding the statement of Allah, Exalted and Majestic: {And if you fear dissension between them} [An-Nisa': 35].[42]

قَالَ قَتَادَةُ: إنَّمَا بُعِثَ الْحَكَمَانِ لِيُصْلِحَا، فَإِنْ أَعْيَاهُمَا ذَلِكَ شَهِدَا عَلَى الظَّالِمِ بِظُلْمِهِ، وَلَيْسَ بِأَيْدِيهِمَا الْفُرْقَةُ، وَلَا يَمْلِكَانِ ذَلِكَ.

L32448 Qatadah said: The two arbitrators were appointed solely to reconcile. If they are unable to do so, they testify against the oppressor regarding his oppression, but they do not have the authority to effect separation, nor do they possess control over it.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّ إنْسَانًا قَالَ لَهُ: أَيُفَرِّقُ الْحَكَمَانِ؟ قَالَ عَطَاءٌ: لَا، إلَّا أَنْ يَجْعَلَ الزَّوْجَانِ ذَلِكَ بِأَيْدِيهِمَا.

L32449 Narrated through Abd al-Razzaq, from Ibn Jurayj, from Ata: A person inquired, "Do the two arbitrators have the authority to effect a divorce?" Ata responded, "No, unless the husband and wife explicitly delegate that authority to them."

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي الْحَسَنِ بْنِ الْمُغَلِّسِ.

L32450 This is the view of Abū Ḥanīfah, al-Shāfiʿī, and Abū al-Ḥasan ibn al-Mughallis.

وَصَحَّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: أَنَّ التَّفْرِيقَ إلَى الْحَاكِمِ بِمَا يُنْهِيهِ إلَيْهِ الْحَكَمَانِ

L32451 It has been authentically reported from Saʿīd ibn Jubayr that judicial separation is referred to the judge based on what the two arbiters submit to him.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ فِي الْآيَةِ، وَلَا فِي شَيْءٍ مِنْ السُّنَنِ: أَنَّ لِلْحَكَمَيْنِ أَنْ يُفَرِّقَا، وَلَا أَنَّ ذَلِكَ لِلْحَاكِمِ.

L32452 Abu Muhammad said: There is nothing in the verse, nor in any of the traditions, indicating that the two arbitrators may effect a divorce, nor that this applies to the judge.

وَقَالَ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] .

L32453 And He, Allah, the Almighty, the Majestic, said: "No soul earns except against itself" [6:164].[43]

فَصَحَّ أَنَّهُ لَا يَجُوزُ أَنْ يُطَلِّقَ أَحَدٌ عَلَى أَحَدٍ، وَلَا أَنْ يُفَرِّقَ بَيْنَ رَجُلٍ وَامْرَأَتِهِ، إلَّا حَيْثُ جَاءَ النَّصُّ بِوُجُوبِ فَسْخِ النِّكَاحِ فَقَطْ، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

L32454 It is established that it is not permissible for anyone to divorce another, nor to separate a man from his wife, except where the religious text mandates only the annulment of the marriage. No valid authority exists in the statement of anyone other than the Messenger of Allah - peace be upon him.

[42] **Qur'an references (L32445):** Qur'an 4:35 (An-Nisa).
[43] **Qur'an references (L32453):** Qur'an 6:164 (Al-An'am).

[أَحْكَامُ النَّفَقَات] [مَسْأَلَةٌ يُنْفِقُ الرَّجُلُ عَلَى امْرَأَتِهِ مِنْ حِينِ يَعْقِدُ نِكَاحَهَا]

Rulings on Maintenance [Issue: A man is obligated to provide maintenance for his wife from the moment he formalizes the marriage contract with her.]

١٩١٨ - مَسْأَلَةٌ: وَيُنْفِقُ الرَّجُلُ عَلَى امْرَأَتِهِ مِنْ حِينِ يَعْقِدُ نِكَاحَهَا دُعِيَ إِلَى الْبِنَاءِ أَوْ لَمْ يُدْعَ - وَلَوْ أَنَّهَا فِي الْمَهْدِ - نَاشِزًا كَانَتْ أَوْ غَيْرَ نَاشِزٍ، غَنِيَّةً كَانَتْ أَوْ فَقِيرَةً، ذَاتَ أَبٍ كَانَتْ أَوْ يَتِيمَةً، بِكْرًا أَوْ ثَيِّبًا، حُرَّةً كَانَتْ أَوْ أَمَةً - عَلَى قَدْرِ مَالِهِ -.

1918 - Issue: A man must financially support his wife from the moment of concluding the marriage contract - whether he is called to consummate the marriage or not, even if she is in the cradle, whether she is defiant or compliant, wealthy or poor, having a father or orphaned, a virgin or non-virgin, free or enslaved - according to his financial capacity.

فَالْمُوسِرُ: خُبْزُ الْحَوَارِيِّ، وَاللَّحْمُ، وَفَاكِهَةُ الْوَقْتِ - عَلَى حَسَبِ مِقْدَارِهِ - وَالْمُتَوَسِّطُ عَلَى قَدْرِ طَاقَتِهِ، وَالْمُقِلُّ أَيْضًا عَلَى حَسَبِ طَاقَتِهِ.

For the affluent: white bread, meat, and seasonal fruit—each according to his measure; the moderate according to his capacity; and the needy likewise according to his capacity.

بُرْهَانُ ذَلِكَ -: مَا قَدْ ذَكَرْنَا بِإِسْنَادِهِ قَبْلُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي النِّسَاءِ: «وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ» .

The proof of this is what we have previously cited with its chain of transmission from the statement of the Messenger of Allah—may Allah's peace and blessings be upon him—regarding women: "They have the right to your provision of their maintenance and clothing according to what is customary."

وَهَذَا يُوجِبُ لَهُنَّ النَّفَقَةَ مِنْ حِينِ الْعَقْدِ.

The marriage contract obligates the husband to provide financial support for the wives from the time the contract is concluded.

وَقَالَ قَوْمٌ: لَا نَفَقَةَ لِلْمَرْأَةِ إِلَّا حَيْثُ تُدْعَى إِلَى الْبِنَاءِ بِهَا وَهَذَا قَوْلٌ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ، وَلَا شَكَّ فِي أَنَّ اللَّهَ عَزَّ وَجَلَّ لَوْ أَرَادَ اسْتِثْنَاءَ الصَّغِيرَةِ وَالنَّاشِزِ لَمَا أَغْفَلَ ذَلِكَ حَتَّى يُبَيِّنَهُ لَهُ غَيْرُهُ، حَاشَ لِلَّهِ مِنْ ذَلِكَ.

A group of people said: "There is no maintenance obligation for the wife except when she is called to cohabit." This is a statement unsupported by the Qur'an, the Sunnah, the saying of a Companion, analogical reasoning, or any opinion with a sound basis. There is no doubt that if Allah, the Almighty, had intended to exempt the prepubescent girl or the rebellious wife, He would not have overlooked it until someone else clarified it for Him. Allah is far above such a thing.

وَقَدْ نا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نَا 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 عَنْ ابْنِ عُمَرَ قَالَ " كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أُمَرَاءِ الْأَجْنَادِ أَنْ انْظُرُوا

Yunus ibn Abdullah narrated to us: Ahmad ibn Abdullah ibn Abd al-Rahim narrated to us: Ahmad ibn Khalid narrated to us: Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn Bashshar narrated to us: Yahya ibn Saʿīd al-Qattan narrated to us: Ubaydullah ibn Umar informed us, from Nafiʿ, from Ibn Umar, who said: "Umar ibn al-Khattab wrote to the commanders of the armies: 'Investigate those whose absence has prolonged—

they must either send maintenance, return, or depart. If he departs, then upon him is the maintenance for what he has departed from, starting from the day he was absent.'" Abu Muhammad said: Umar did not treat a disobedient wife differently from others.

مَنْ طَالَتْ غِيبَتُهُ أَنْ يَبْعَثُوا نَفَقَةً أَوْ يَرْجِعُوا أَوْ يُفَارِقُوا فَإِنْ فَارَقَ فَإِنَّ عَلَيْهِ نَفَقَةَ مَا فَارَقَ مِنْ يَوْمٍ غَابَ " قَالَ أَبُو مُحَمَّدٍ: وَلَمْ يَخُصَّ عُمَرُ نَاشِزًا مِنْ غَيْرِهَا.

L32465 Through the chain of Shuʿbah: He asked al-Ḥakam ibn ʿUtaybah about a woman who left her husband's house in anger - does she have the right to maintenance? He replied: Yes. Abū Sulaymān, his companions, and Sufyān al-Thawrī said: Is maintenance obligatory for the minor girl from the moment the marriage contract is concluded on her behalf?

وَمِنْ طَرِيقِ شُعْبَةَ سَأَلْت الْحَكَمَ بْنِ عُتَيْبَةَ عَنْ امْرَأَةٍ خَرَجَتْ مِنْ بَيْتِ زَوْجِهَا غَاضِبَةً هَلْ لَهَا نَفَقَةٌ؟ قَالَ: نَعَمْ - وَقَالَ أَبُو سُلَيْمَانَ، وَأَصْحَابُهُ، وَسُفْيَانُ الثَّوْرِيُّ: النَّفَقَةُ وَاجِبَةٌ لِلصَّغِيرَةِ مِنْ حِينِ الْعَقْدِ عَلَيْهَا؟

L32466 Abu Muhammad said: We do not know of any of the Companions - may Allah be pleased with them - who opposed Umar in this matter. Nor is it recorded that any of the Companions withheld maintenance from a rebellious wife. This is merely something reported from Al-Nakha'i, Al-Sha'bi, Hammad ibn Abi Sulayman, Al-Hasan, and Al-Zuhri. We do not know of any argument for them except their statement: Maintenance is given in exchange for sexual access. Should maintenance then be withheld if she withholds intercourse?

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ لِعُمَرَ فِي هَذَا مُخَالِفًا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا يُحْفَظُ مَنْعُ النَّاشِزِ مِنْ النَّفَقَةِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، إنَّمَا هُوَ شَيْءٌ رُوِيَ عَنْ النَّخَعِيِّ، وَالشَّعْبِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَالْحَسَنِ، وَالزُّهْرِيِّ، وَمَا نَعْلَمُ لَهُمْ حُجَّةً إلَّا أَنَّهُمْ قَالُوا: النَّفَقَةُ بِإِزَاءِ الْجِمَاعِ، فَإِذَا مَنَعَتْ الْجِمَاعَ مُنِعَتْ النَّفَقَةُ؟ .

L32467 Abu Muhammad said: This argument is poorer in what could validate it than the means they used to validate it, and they spoke falsely in that. Is it not that maintenance and clothing are only in exchange for the marital relationship? When the marital relationship exists, then are maintenance and clothing not both obligatory?

قَالَ أَبُو مُحَمَّدٍ: وَهَذِهِ حُجَّةٌ أَفْقَرُ إلَى مَا يُصَحِّحُهَا مِمَّا رَامُوا تَصْحِيحَهَا بِهِ، وَقَدْ كَذَبُوا فِي ذَلِكَ، مَا النَّفَقَةُ وَالْكِسْوَةُ إلَّا بِإِزَاءِ الزَّوْجِيَّةِ، فَإِذَا وُجِدَتْ الزَّوْجِيَّةُ فَالنَّفَقَةُ وَالْكِسْوَةُ وَاجِبَتَانِ؟

L32468 Abū Muḥammad said: What is utterly astonishing is their deeming it permissible to oppress the recalcitrant wife in depriving her of her rightful due on account of her wronging the husband through denying him his rightful due. This is injustice itself and sheer falsehood.

قَالَ أَبُو مُحَمَّدٍ: وَالْعَجَبُ كُلُّهُ اسْتِحْلَالُهُمْ ظُلْمَ النَّاشِزِ فِي مَنْعِهَا حَقَّهَا مِنْ أَجْلِ ظُلْمِهَا لِلزَّوْجِ فِي مَنْعِ حَقِّهِ، وَهَذَا هُوَ الظُّلْمُ بِعَيْنِهِ، وَالْبَاطِلُ صُرَاحًا.

L32469 Most astonishing of all is that the Hanafis do not permit a wronged person who seized property due to him from his oppressor—even though he is capable of seeking redress by taking property belonging to his oppressor—to actually claim redress. They permit withholding maintenance and clothing from a disobedient wife, though it is unclear why—moreover, they contradicted their own aforementioned argument by ruling that a sick wife

وَالْعَجَبُ كُلُّهُ أَنَّ الْحَنَفِيِّينَ لَا يُجِيزُونَ لِمَنْ ظَلَمَهُ إنْسَانٌ فَأَخَذَ لَهُ مَالًا فَقَدَرَ عَلَى الِانْتِصَافِ مِنْ مَالِ يَجِدُهُ لِظَالِمِهِ أَنْ يَنْتَصِفَ، وَرَأَوْا مَنْعَ النَّاشِزِ النَّفَقَةَ، وَالْكِسْوَةَ، وَلَا يُدْرَى لِمَاذَا؟ وَقَدْ تَنَاقَضُوا فِي حُجَّتِهِمْ الْمَذْكُورَةِ فَرَأَوْا النَّفَقَةَ لِلْمَرِيضَةِ الَّتِي لَا يُمْكِنُ

whom one cannot have sexual intercourse with is entitled to maintenance, thereby abandoning their claim that maintenance is in exchange for sexual intercourse. Abū Muḥammad said: A man must clothe his wife according to his means—thus the wealthy are obligated to clothe her in khazz silk and fabrics of similar quality.

وَطْؤُهَا، فَتَرَكُوا قَوْلَهُمْ: إنَّ النَّفَقَةَ بِإِزَاءِ الْجِمَاعِ؟ قَالَ أَبُو مُحَمَّدٍ: وَيَكْسُو الرَّجُلُ امْرَأَتَهُ عَلَى قَدْرِ مَالِهِ: فَالْمُوسِرُ يُؤْمَرُ بِأَنْ يَكْسُوهَا الْخَزَّ وَمَا أَشْبَهَهُ.

L32470 The intermediate category is good linen and cotton.

وَالْمُتَوَسِّطُ: جَيِّدَ الْكَتَّانِ وَالْقُطْنِ

L32471 And the one with limited means [is obligated] according to his capacity, based on the statement of Allah's Messenger (peace be upon him): "They (wives) are entitled to their sustenance and clothing according to customary norms." This refers to what is customarily recognized as appropriate pertaining to people's food and garments.

وَالْمُقِلُّ عَلَى قَدْرِهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَهُنَّ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ» وَهَذَا هُوَ الْمَعْرُوفُ مِنْ مَأْكَلِ النَّاسِ وَمَلَابِسِهِمْ.

L32472–32474 And it has been narrated to us through the chain of Aḥmad ibn Shuʿayb—from ʿImrān ibn Bakkār al-Ḥimṣī, who informed us to us. Abu al-Yaman—who is al-Hakam ibn Nafiʿ—narrated to us from Shuʿayb ibn Abi Hamzah, who said: Al-Zuhri was asked about women wearing silk. He said, "Anas ibn Malik reported to me that he saw Umm Kulthum, the daughter of the Messenger of Allah—peace and blessings of Allah be upon him and his family—wearing a striped silk mantle."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا عِمْرَانُ بْنُ بَكَّارٍ الْحِمْصِيُّ نا أَبُو الْيَمَانِ - هُوَ الْحَكَمُ بْنُ نَافِعٍ - أرنا شُعَيْبُ بْنُ أَبِي حَمْزَةَ قَالَ: سُئِلَ الزُّهْرِيُّ عَنْ لِبَاسِ النِّسَاءِ الْحَرِيرَ؟ فَقَالَ: أَخْبَرَنِي أَنَسُ بْنُ مَالِكٍ " أَنَّهُ رَأَى عَلَى أُمِّ كُلْثُومٍ بِنْتِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بُرْدَ حَرِيرٍ ".

L32475 Allah, the Almighty, said: "Let the affluent spend from their abundance, and let those whose provision is constrained spend from what Allah has granted them. Allah does not burden any soul beyond what He has given." [At-Talāq: 7] If she resides in a land where people eat only dates, figs, specific fruits, milk, or fish, her maintenance is determined by what sustains the people of her land, as we have stated—and the standard maximum maintenance in our view is two Baghdadi ratls.[44]

وَقَالَ اللَّهُ عَزَّ وَجَلَّ: {لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا} [الطلاق: ٧] فَإِنْ كَانَ فِي بَلَدٍ لَا يَأْكُلُونَ فِيهِ إِلَّا التَّمْرَ، أَوْ التِّينَ، أَوْ بَعْضَ الثِّمَارِ، أَوْ اللَّبَنَ، أَوْ السَّمَكَ: قُضِيَ لَهَا بِمَا يَقْتَاتُهُ أَهْلُ بَلَدِهَا كَمَا ذَكَرْنَا - وَأَكْثَرُ النَّفَقَةِ عِنْدَنَا رَطْلَانِ بِالْبَغْدَادِيِّ.

L32476 Ahmad ibn Muḥammad ibn al-Jasūr narrated to us; Wahab ibn Miswarah narrated to us; Ibn Waddāḥ narrated to us; Abū Bakr ibn Abī Shaybah narrated to us; Abū al-Aḥwaṣ—he is Salām ibn Sulaym al-Kūfī—from Abū Isḥāq al-Sabīʿī, from Abū al-Aḥwaṣ ʿAwf ibn Mālik ibn Faḍālah al-Jushamī, who said: "My father entered the presence of Allah's Messenger—peace be upon

ثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا وَهْبُ بْنُ مِسْوَرَةَ نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ ثنا أَبُو الْأَحْوَصِ - هُوَ سَلَامُ بْنُ سُلَيْمٍ الْكُوفِيُّ - عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ «أَبِي الْأَحْوَصِ عَوْفِ بْنِ مَالِكِ بْنِ فَضَالَةَ الْجُشَمِيِّ قَالَ دَخَلَ أَبِي عَلَى رَسُولِ اللَّهِ - صَلَّى

[44] **Qur'an references (L32475):** Qur'an 65:7 (At-Talaq).

him—wearing patched garments. The Prophet—peace be upon him—said to him: 'Do you not possess wealth?' He replied: 'Rather, I have every kind of wealth—Allah has granted me camels, cattle, and sheep.' The Prophet—peace be upon him—then said: 'Let what Allah has given you be manifest upon you.'"

In this narration is that one should dress according to his wealth and the favor of Allah, the Exalted, upon him.

Legal Issue: The husband is not obligated to provide for a servant for his wife.

Issue 1919: A husband is not obligated to provide a servant for his wife, even if he is the son of the Caliph and she is the daughter of a Caliph.

It is only incumbent upon him to arrange for someone to bring her food and water—prepared and accessible for consumption—morning and evening.

And by whom all the work of sweeping and arranging is sufficiently provided for her.

And it is incumbent upon him to provide her with clothing as well, because this defines the nature of sustenance and clothing.

There is no text that has ever obligated him to provide maintenance for her servant; thus, it constitutes oppression and injustice.

As for the one who obligates her to knead dough and cook, yet does not obligate her to weave her garments and sew them, he has contradicted himself, and his error is manifest, and with Allah, the Most High, is success.

A jurisprudential issue: Maintenance for the wife is obligatory daily.

Issue 1920: Maintenance for her daily sustenance is obligatory upon him daily. If he transgresses by delaying her lunch or dinner for this reason, he is subject to disciplinary punishment for it.

اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَيْهِ ثِيَابٌ أَسْمَالٌ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَمَا لَكَ مِنْ مَالٍ؟ فَقَالَ: بَلْ مِنْ كُلِّ الْمَالِ، قَدْ أَتَانِي اللَّهُ مِنْ الْإِبِلِ، وَالْبَقَرِ، وَالْغَنَمِ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلْيُرَ عَلَيْكَ مِمَّا أَتَاكَ اللَّهُ» .

فَفِي هَذَا الْخَبَرِ أَنْ يَلْبَسَ الْإِنْسَانُ عَلَى حَسَبِ مَالِهِ، وَنِعْمَةِ اللَّهِ تَعَالَى عَلَيْهِ

[مَسْأَلَةٌ لَيْسَ عَلَى الزَّوْجِ أَنْ يُنْفِقَ عَلَى خَادِمٍ لِزَوْجَتِهِ]

١٩١٩ - مَسْأَلَةٌ: وَلَيْسَ عَلَى الزَّوْجِ أَنْ يُنْفِقَ عَلَى خَادِمٍ لِزَوْجَتِهِ - وَلَوْ أَنَّهُ ابْنُ الْخَلِيفَةِ وَهِيَ بِنْتُ خَلِيفَةٍ.

إنَّمَا عَلَيْهِ أَنْ يَقُومَ لَهَا بِمَنْ يَأْتِيهَا بِالطَّعَامِ وَالْمَاءِ، مُهَيَّأً مُمْكِنًا لِلْأَكْلِ - غَدْوَةً وَعَشِيَّةً -.

وَبِمَنْ يَكْفِيهَا جَمِيعَ الْعَمَلِ مِنْ الْكَنْسِ وَالْفَرْشِ.

وَعَلَيْهِ أَنْ يَأْتِيَهَا بِكِسْوَتِهَا كَذَلِكَ، لِأَنَّ هَذِهِ صِفَةُ الرِّزْقِ وَالْكِسْوَةِ.

وَلَمْ يَأْتِ نَصٌّ قَطُّ بِإِيجَابِ نَفَقَةِ خَادِمِهَا عَلَيْهِ، فَهُوَ ظُلْمٌ وَجَوْرٌ.

وَأَمَّا مَنْ كَلَّفَهَا الْعَجِينَ وَالطَّبْخَ، وَلَمْ يُكَلِّفْهَا حِيَاكَةَ كِسْوَتِهَا وَخِيَاطَتِهَا فَقَدْ تَنَاقَضَ، وَظَهَرَ خَطَؤُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَجِبُ النَّفَقَةُ لِلزَّوْجَةِ مُيَاوَمَةً]

١٩٢٠ - مَسْأَلَةٌ: وَإِنَّمَا تَجِبُ لَهَا النَّفَقَةُ مُيَاوَمَةً، لِأَنَّهُ هُوَ رِزْقُهَا، فَإِنْ تَعَدَّى مِنْ أَجْلِ ذَلِكَ وَأَخَّرَ عَنْهَا الْغَدَاءَ، أَوْ الْعَشَاءَ أُدِّبَ عَلَى ذَلِكَ.

فَإِنْ أَعْطَاهَا أَكْثَرَ، فَإِنْ مَاتَتْ، أَوْ طَلَّقَهَا ثَلَاثًا، أَوْ طَلَّقَهَا قَبْلَ أَنْ يَطَأَهَا، أَوْ أَتَمَّتْ عِدَّتَهَا وَعِنْدَهَا فَضْلُ يَوْمٍ أَوْ غَدَاءٍ أَوْ عَشَاءٌ: قُضِيَ عَلَيْهَا بِرَدِّهِ إِلَيْهِ. وَهُوَ فِي الْمَيْتَةِ مِنْ رَأْسِ مَالِهَا؛ لِأَنَّهُ لَيْسَ مِنْ حَقِّهَا قَبْلَهُ، وَإِنَّمَا جَعَلَهُ عِنْدَهَا عِدَّةً لِوَقْتِ مَجِيءِ اسْتِحْقَاقِهَا إِيَّاهُ، فَإِذَا لَمْ يَأْتِ ذَلِكَ الْوَقْتِ وَلَهَا عَلَيْهِ نَفَقَةٌ فَهُوَ عِنْدَهَا أَمَانَةٌ وَاَللَّهُ تَعَالَى يَقُولُ: {إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الأَمَانَاتِ إِلَى أَهْلِهَا} [النساء: ٥٨] وَلَا ظُلْمَ أَكْثَرَ مِنْ أَنْ لَا يُقْضَى عَلَيْهَا بِرَدِّ مَا لَمْ تَسْتَحِقَّهُ قَبْلَهُ. وَأَمَّا الْكِسْوَةُ - فَإِنَّهَا إِذَا وَجَبَتْ لَهَا فَهِيَ حَقُّهَا، وَإِذْ هُوَ حَقُّهَا فَهُوَ لَهَا، فَسَوَاءٌ مَاتَتْ إِثْرَ ذَلِكَ أَوْ طَلَّقَهَا ثَلَاثًا، أَوْ أَتَمَّتْ عِدَّتَهَا، أَوْ طَلَّقَهَا قَبْلَ أَنْ يَطَأَهَا: لَيْسَ عَلَيْهَا رَدُّهَا، لِأَنَّهُ لَوْ وَجَبَ عَلَيْهَا رَدُّهَا لَكَانَتْ غَيْرَ مَالِكَةٍ لَهَا حِينَ تَجِبُ لَهَا - وَهَذَا بَاطِلٌ. وَكَذَلِكَ لَوْ أَخْلَقَتْ ثِيَابَهَا أَوْ أَصَابَتْهَا وَلَيْسَتْ مِنْ مَالِهَا فَهِيَ لَهَا، فَإِذَا جَاءَ الْوَقْتُ الَّذِي يُعْهَدُ فِي مِثْلِهِ إِخْلَاقُ تِلْكَ الْكِسْوَةِ فَهِيَ لَهَا، وَيُقْضَى لَهَا عَلَيْهِ بِأُخْرَى - فَلَوْ امْتَهَنَتْهَا ضِرَارًا أَوْ فَسَادًا حَتَّى أُخْلِقَتْ قَبْلَ الْوَقْتِ الَّذِي يُعْهَدُ فِيهِ إِخْلَاقُ مِثْلِهَا فَلَا شَيْءَ لَهَا عَلَيْهِ، إِنَّمَا عَلَيْهِ رِزْقُهَا وَكِسْوَتُهَا بِالْمَعْرُوفِ وَالْمَعْرُوفُ هُوَ الَّذِي قُلْنَا.

L32487–32488 If he gives her more, then if she dies, he divorces her three times, divorces her before consummation, she completes her waiting period while having an extra day, a noon meal, or an evening meal, it is ruled that she must return it to him. This is taken from the principal of her wealth in the event of her death, as it was not her right prior to that. It is placed with her as maintenance until the time of her entitlement to it arrives. If that time does not come while she is owed maintenance from him, it remains a trust with her, for Allah the Exalted says: "Indeed, Allah commands you to return trusts to their rightful recipients" (4:58). There is no greater injustice than not requiring her to return what she had no rightful claim to beforehand.

As for clothing—when it becomes due to her, it is her right. And since it is her right, it belongs to her. Therefore, whether she dies afterward, he divorces her three times, she completes her waiting period, or he divorces her before consummation, she is not obligated to return it. If she were required to return it, this would mean she did not own it when it became due to her—and this is null and void. Similarly, if her clothes wear out naturally or she uses them while they are not from her own wealth, they remain hers. When the customary time for such clothing to wear out arrives, they are hers, and he is obligated to provide her with another set. But if she deliberately damages them out of harm or misuse, causing them to wear out before the customary time, she has no claim against him. He is only required to provide her sustenance and clothing in accordance with customary norms—and "customary norms" are as we have explained.[45]

وَأَمَّا الْوِطَاءُ وَالْغِطَاءُ - فَبِخِلَافِ ذَلِكَ، لِأَنَّ عَلَيْهِ إِسْكَانَهَا، فَإِذْ عَلَيْهِ إِسْكَانُهَا فَعَلَيْهِ مِنْ الْفُرُشِ وَالْغِطَاءِ مَا يَكُونُ دَافِعًا لِضَرَرِ الْأَرْضِ عَنْ السَّاكِنِ فَهُوَ لَهُ، لِأَنَّ ذَلِكَ لَا يُسَمَّى كِسْوَتَهَا - وَبَيَّنَ ذَلِكَ الْخَبَرَ الَّذِي أَوْرَدْنَاهُ قَبْلُ مُسْنَدًا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «وَلَكُمْ عَلَيْهِنَّ أَلَّا يُوطِئْنَ فُرُشَكُمْ مَنْ تَكْرَهُونَهُ» . فَنَسَبَ - عَلَيْهِ السَّلَامُ - الْفُرُشَ إِلَى الزَّوْجِ فَوَاجِبٌ عَلَيْهِ أَنْ يَقُومَ لَهَا بِهِ، وَهُوَ لِلزَّوْجِ لَا تَمْلِكُهُ هِيَ، وَمَنْ قَضَى لَهَا بِأَكْثَرَ مِنْ نَفَقَةِ الْمُيَاوَمَةِ فَقَدْ قَضَى بِالظُّلْمِ الَّذِي لَمْ يُوجِبْهُ اللَّهُ عَزَّ

L32489 As for treading and covering—this differs, because he is responsible for her residence. Since he is responsible for her residence, he must provide from the bedding and covering what will protect her from the harm of the ground, and it belongs to him, as that is not termed her clothing. This is clarified by the report we previously cited with an authenticated chain from the Messenger of Allah—peace and blessings be upon him: "You have the right that they do not allow anyone whom you dislike to tread on your bedding." Thus, the Prophet (peace be upon him) ascribed the bedding to the husband, obligating him to furnish it for her, though it remains his property—

[45] **Qur'an references (L32488):** Qur'an 4:58 (An-Nisa).

she holds no ownership. Whoever rules that she is entitled to more than daily maintenance has ruled by an injustice Allah the Almighty never ordained. We demand that he establish a precise limit for this—so whatever limit is imposed, be it a week, month, or year—one is obligated to provide proof from the Quran or the Sunnah of the Messenger of Allah—peace and blessings be upon him—yet none is found. Should someone cite what we narrated through Bukhari's chain: From Muhammad, from Waki', from Sufyān ibn 'Uyaynah, who said: Ma'mar informed me, from Ibn Shihāb, from Mālik ibn Aws al-Hadathan, from 'Umar ibn al-Khaṭṭāb: "The Messenger of Allah—peace and blessings be upon him—would sell the date palms of Banū al-Naḍīr and reserve provisions for his family's annual sustenance."

وَجَلَّ، وَنَسْأَلُهُ عَنْ أَنْ يَحُدَّ فِي ذَلِكَ حَدًّا، فَأَيُّ حَدٍّ حُدَّ - مِنْ جُمُعَةٍ أَوْ شَهْرٍ أَوْ سَنَةٍ -: كُلِّفَ الْبُرْهَانَ عَلَى ذَلِكَ مِنْ الْقُرْآنِ، أَوْ مِنْ سُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَجِدُهُ. فَإِنْ ذَكَرَ ذَاكِرٌ مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدٌ نا وَكِيعٌ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ قَالَ: أَخْبَرَنِي مَعْمَرٌ نا ابْنُ شِهَابٍ عَنْ مَالِكِ بْنِ أَوْسٍ الْحَدَثَانِ عَنْ عُمَرَ بْنِ الْخَطَّابِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَبِيعُ نَخْلَ بَنِي النَّضِيرِ وَيَحْبِسُ لِأَهْلِهِ قُوتَ سَنَتِهِمْ» .

L32490–32491 We were narrated it also from the path of Abū Dāwūd, narrated by Aḥmad ibn ʿAbdah, narrated by Sufyān ibn ʿUyaynah, narrated by ʿAmr ibn Dīnār, narrated by al-Zuhrī through his chain.

رُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ أَبِي دَاوُد نَا أَحْمَدُ بْنُ عَبْدَةَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ الزُّهْرِيِّ بِإِسْنَادِهِ.

L32492 And through the chain of Muslim: Ali ibn Mushir reported to us from Ubaydullah ibn Umar, from Nafi', from Ibn Umar, who said: "The Messenger of Allah—peace be upon him—would give his wives eighty wasqs of dates and twenty wasqs of barley annually." We said: This does not specify whether he delivered it to them in advance, thus it is permissible. It is likewise permissible to give it to them daily or monthly—and we do not forbid this if he consents willingly. If the judge acted thus and the provision perished—whether without her misconduct or due to her misconduct.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا عَلِيُّ بْنُ مُسْهِرٍ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُعْطِي أَزْوَاجَهُ كُلَّ سَنَةٍ ثَمَانِينَ وَسْقًا مِنْ تَمْرٍ وَعِشْرِينَ وَسْقًا مِنْ شَعِيرٍ» ؟ قُلْنَا: لَيْسَ فِي هَذَا بَيَانٌ أَنَّهُ كَانَ يَدْفَعُهُ إلَيْهِنَّ مُقَدَّمًا فَهُوَ جَائِزٌ، وَجَائِزٌ أَيْضًا أَنْ يُعْطِيَهُ إيَّاهُنَّ مُيَاوَمَةً، أَوْ مُشَاهَرَةً - وَنَحْنُ لَمْ نَمْنَعْ مِنْ ذَلِكَ إنْ طَابَتْ نَفْسُهُ بِهِ، فَإِنْ فَعَلَ الْحَاكِمُ ذَلِكَ فَتَلِفَ بِغَيْرِ عُدْوَانٍ مِنْهَا، أَوْ بِعُدْوَانٍ.

L32493 She is liable to him because she took what was not rightfully hers, and a judge's ruling does not render lawful someone's property for another nor nullify the right of a rightful claimant. If he voluntarily provided for her without a judge's decree and those provisions perished without transgression on her part, he must provide her maintenance a second time and her clothing a second time likewise, as she did not overstep. Therefore, she bears no liability, and her right remains valid against him since he has not yet given her those provisions.

فَهِيَ ضَامِنَةٌ لَهُ، لِأَنَّهَا أَخَذَتْ مَا لَيْسَ حَقًّا لَهَا، وَحُكْمُ الْحَاكِمِ لَا يُحِلُّ مَالَ أَحَدٍ لِغَيْرِهِ، وَلَا يُسْقِطُ حَقَّ ذِي حَقٍّ، فَلَوْ تَطَوَّعَ هُوَ بِذَلِكَ دُونَ قَضَاءِ قَاضٍ فَتَلِفَ بِغَيْرِ عُدْوَانٍ مِنْهَا فَعَلَيْهِ نَفَقَتُهَا ثَانِيَةً، وَكِسْوَتُهَا ثَانِيَةً كَذَلِكَ، لِأَنَّهَا لَمْ تَتَعَدَّ، فَلَا شَيْءَ عَلَيْهَا وَحَقُّهَا بَاقٍ قَبْلَهُ، إذْ لَمْ يُعْطِهِ إيَّاهَا بَعْدُ.

L32494 **Issue: providing residence for the wife according to the**

husband's capability.

L32495 Issue 1921: He is required to provide residence for her according to his capacity, as Allah, the Exalted, says: "Provide residence for them where you reside within your capacity" [Quran 65:6] .[46]

[مَسْأَلَةٌ إِسْكَانُ الزَّوْجَة عَلَى قَدْرِ طَاقَتِه]

١٩٢١ - مَسْأَلَةٌ: وَيَلْزَمُهُ إِسْكَانُهَا عَلَى قَدْرِ طَاقَتِهِ، لِقَوْلِ اللَّهِ تَعَالَى: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ} [الطلاق: ٦] .

L32496 **Issue: The husband has no obligation regarding jewelry or perfume.**

[مَسْأَلَةٌ لَا يَلْزَمُ الزَّوْج حُلِيٌّ وَلَا طِيبٌ]

L32497 1922 - Issue: He is not obligated to provide her with jewelry or perfume, for Allah the Mighty and Majestic has not made these obligatory upon him, nor has His Messenger - peace and blessings of Allah be upon him and his family - mandated them.

١٩٢٢ - مَسْأَلَةٌ: وَلَا يَلْزَمُهُ لَهَا حُلِيٌّ وَلَا طِيبٌ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يُوجِبْهُمَا عَلَيْهِ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L32498 **A legal issue: The husband withheld maintenance and clothing despite being capable of providing them.**

[مَسْأَلَةٌ مَنَعَ الزَّوْج النَّفَقَةَ وَالْكِسْوَةَ وَهُوَ قَادِرٌ عَلَيْهَا]

L32499 1923 - Issue: Whoever withholds maintenance and clothing despite being capable of providing them, it is the same whether he is absent [or not].

١٩٢٣ - مَسْأَلَةٌ: وَمَنْ مَنَعَ النَّفَقَةَ وَالْكِسْوَةَ - وَهُوَ قَادِرٌ عَلَيْهَا - فَسَوَاءٌ كَانَ غَائِبًا.

[46] **Qur'an references (L32495):** Qur'an 65:6 (At-Talaq).

L32500 Or it is a present debt incumbent upon him, to be taken from him perpetually and discharged for her during his lifetime and after his death. It is distributed from his estate alongside other creditors, as it constitutes her rightful claim, thus being a debt owed by him.

L32501 **A legal ruling on [a husband] being able to provide only a portion of the wife's required financial support and clothing.**

L32502 1924 - Issue: If someone is capable of affording some of the maintenance and clothing—whether what he can afford is little or much—it is obligatory to rule against him to pay what he can afford, and what he cannot afford is waived. If he cannot afford any of it, the obligation is waived, and he is not required to pay anything. If he later becomes able, he is required to pay from the time he becomes able. He is not obligated to compensate her for what she spent on herself for maintenance or clothing during his period of hardship, based on Allah's words, Exalted and Majestic: {Allah does not burden a soul beyond its capacity} [Al-Baqarah: 286].[1]

L32503–32505 Allah the Exalted says: "Allah does not burden a soul except with what He has given it" [Surah At-Talaq 65:7]. Thus, it is established with certainty that whatever lies beyond its capability, and Allah the Exalted has not granted such capacity to the soul, then Allah, the Exalted and Majestic, has not burdened it with that. And whatever Allah the Exalted has not imposed as an obligation, He has not burdened the soul with it. Therefore, it is not obligatory upon him, and since it is not obligatory, it is impermissible to enforce it against him at any time—whether he attains financial capability or not.[2]

L32506 This is contrary to the sustenance or clothing owed to her, which he withholds from her while being capable of providing them. This obligation remains perpetually binding on him whether he later becomes insolvent or not, for Allah the Almighty has imposed it upon him as his duty. Thus, his insolvency does not absolve him of the obligation, but merely necessitates

أَوْ حَاضِرًا هُوَ دَيْنٌ فِي ذِمَّتِهِ، يُؤْخَذُ مِنْهُ أَبَدًا وَيُقْضِي لَهَا بِهِ فِي حَيَاتِهِ وَبَعْدَ مَوْتِهِ، وَمِنْ رَأْسِ مَالِهِ يُضْرَبُ بِهِ مَعَ الْغُرَمَاءِ، لِأَنَّهُ حَقٌّ لَهَا فَهُوَ دَيْنٌ قِبَلَهُ.

[مَسْأَلَةٌ قَدَرَ عَلَى بَعْضِ نَفَقَةِ الزَّوْجَةِ وَالْكِسْوَةِ]

١٩٢٤ - مَسْأَلَةٌ: فَمَنْ قَدَرَ عَلَى بَعْضِ النَّفَقَةِ وَالْكِسْوَةِ، فَسَوَاءٌ قَلَّ مَا يَقْدِرُ عَلَيْهِ أَوْ كَثُرَ: الْوَاجِبُ أَنْ يُقْضَى عَلَيْهِ بِمَا قَدَرَ، وَيُسْقَطُ عَنْهُ مَا لَا يَقْدِرُ، فَإِنْ لَمْ يَقْدِرْ عَلَى شَيْءٍ مِنْ ذَلِكَ سَقَطَ عَنْهُ، وَلَمْ يَجِبْ أَنْ يُقْضَى عَلَيْهِ بِشَيْءٍ، فَإِنْ أَيْسَرَ بَعْدَ ذَلِكَ قُضِيَ عَلَيْهِ مِنْ حِينِ يُوسَرُ، وَلَا يُقْضَى عَلَيْهِ بِشَيْءٍ أَنْفَقَتْهُ عَلَى نَفْسِهَا مِنْ نَفَقَةٍ أَوْ كِسْوَةٍ مُدَّةَ عُسْرِهِ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

وَقَوْله تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا} [الطلاق: ٧] فَصَحَّ يَقِينًا أَنَّ مَا لَيْسَ فِي وُسْعِه، وَلَا آتَاهُ اللَّهُ تَعَالَى إيَّاهُ، فَلَمْ يُكَلِّفْهُ اللَّهُ عَزَّ وَجَلَّ إيَّاهُ، وَمَا لَمْ يُكَلِّفْهُ اللَّهُ تَعَالَى فَهُوَ غَيْرُ وَاجِبٍ عَلَيْهِ، وَمَا لَمْ يَجِبْ عَلَيْهِ فَلَا يَجُوزُ أَنْ يُقْضَى عَلَيْهِ بِهِ أَبَدًا أَيْسَرَ أَوْ لَمْ يُوسِرْ.

وَهَذَا بِخِلَافِ مَا وَجَبَ لَهَا مِنْ نَفَقَةٍ أَوْ كِسْوَةٍ فَمَنَعَهَا إيَّاهَا - وَهُوَ قَادِرٌ عَلَيْهَا - فَهَذَا يُؤْخَذُ بِهِ أَبَدًا أَعْسَرَ بَعْدَ ذَلِكَ أَوْ لَمْ يُعْسِرْ، لِأَنَّهُ قَدْ كَلَّفَهُ اللَّهُ تَعَالَى إيَّاهُ، فَهُوَ وَاجِبٌ عَلَيْهِ، فَلَا يُسْقِطُهُ عَنْهُ إعْسَارُهُ، لَكِنْ يُوجِبُ الْإِعْسَارُ أَنْ يُنْظَرَ بِهِ إلَى الْمَيْسَرَةِ فَقَطْ، لِقَوْلِهِ عَزَّ وَجَلَّ: {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠] .

[1] **Qur'an references (L32502):** Qur'an 2:286 (Al-Baqarah).
[2] **Qur'an references (L32503):** Qur'an 65:7 (At-Talaq).

delaying its fulfillment until he attains financial capacity, in accordance with the Almighty's decree: "And if someone is in hardship, grant them respite until ease" [Al-Baqarah 2:280].[3]

L32507 **A case where the husband withholds maintenance, clothing, or *mahr*.**

L32508 1925. Issue: If the husband unjustly withholds her maintenance, clothing, or dower, or because he is poor and unable to provide, it is not permissible for her to refuse conjugal relations with him on account of this. For even if he wrongs her, she may not deny him a right that takes precedence over hers. She may only take from his wealth - if he has the means - an amount equivalent to her rightful due, "as the Messenger of Allah (peace be upon him) instructed Hind bint Utbah when she said: 'O Messenger of Allah, Abū Sufyān is a stingy man who does not give me what suffices me. May I take from his wealth without his knowledge?' The Messenger of Allah (peace be upon him) replied: 'Take what suffices you and your children in a fitting manner.'"

L32509 We have transmitted it as such verbatim from the Messenger of Allah (Peace and blessings of Allah be upon him and his family) through the chain of Al-Bukhārī. He reported: Muḥammad ibn Al-Muthannā reported to us, saying: Yaḥyā [Ibn Saʿīd Al-Qaṭṭān] reported to us from Hishām ibn ʿUrwah, who said: My father informed me from ʿĀ'ishah, the Mother of the Believers, from the Messenger of Allah (Peace and blessings of Allah be upon him and his family).

L32510 **Issue: The husband was unable to provide for his own maintenance, and his wife is financially capable.**

L32511 Issue 1926: If the husband is unable to provide for his own maintenance while his wife is wealthy, she must bear his maintenance expenses. She has no right to seek reimbursement from him if he later gains means, unless he is a slave—in which case his maintenance falls upon his master rather than his wife. Similarly, if a free man has a child or a father, his maintenance becomes

[3]**Qur'an references (L32506):** Qur'an 2:280 (Al-Baqarah).

[مَسْأَلَةٌ مَنَعَهَا الزَّوْج النَّفَقَةَ أَوْ الْكِسْوَةَ أَوْ الصَّدَاقَ]

١٩٢٥ - مَسْأَلَةٌ: وَلَوْ أَنَّ الزَّوْجَ يَمْنَعُهَا النَّفَقَةَ أَوْ الْكِسْوَةَ أَوْ الصَّدَاقَ ظُلْمًا، أَوْ لِأَنَّهُ فَقِيرٌ لَا يَقْدِرُ لَمْ يَجُزْ لَهَا مَنْعُ نَفْسِهَا مِنْهُ مِنْ أَجْلِ ذَلِكَ، لِأَنَّهُ وَإِنْ ظَلَمَ فَلَا يَجُوزُ لَهَا أَنْ تَمْنَعَهُ حَقًّا لَهُ قَبْلَهَا، إنَّمَا لَهَا أَنْ تَنْتَصِفَ مِنْ مَالِهِ - إنْ وَجَدَتْهُ لَهُ - بِمِقْدَارِ حَقِّهَا: «كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هِنْدَ بِنْتَ عُتْبَةَ إذْ قَالَتْ: يَا رَسُولَ اللَّهِ إنَّ أَبَا سُفْيَانَ رَجُلٌ مُمْسِكٌ لَا يُعْطِينِي مَا يَكْفِينِي أَفَآخُذُ مِنْ مَالِهِ بِغَيْرِ عِلْمِهِ؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: خُذِي مَا يَكْفِيكِ وَوَلَدَكِ بِالْمَعْرُوفِ» .

رُوِّينَاهُ هَكَذَا مِنْ لَفْظِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ طَرِيقِ الْبُخَارِيِّ، قَالَ: نا مُحَمَّدُ بْنُ الْمُثَنَّى، قَالَ: نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ هِشَامِ بْنِ عُرْوَةَ، قَالَ: أَخْبَرَنِي أَبِي عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

[مَسْأَلَةٌ عَجَزَ الزَّوْجُ عَنْ نَفَقَةِ نَفْسِهِ وَامْرَأَتُهُ غَنِيَّةٌ]

١٩٢٦ - مَسْأَلَةٌ: فَإِنْ عَجَزَ الزَّوْجُ عَنْ نَفَقَةِ نَفْسِهِ وَامْرَأَتُهُ غَنِيَّةٌ كُلِّفَتْ النَّفَقَةَ عَلَيْهِ، وَلَا تَرْجِعُ عَلَيْهِ بِشَيْءٍ مِنْ ذَلِكَ إنْ أَيْسَرَ، إلَّا أَنْ يَكُونَ عَبْدًا فَنَفَقَتُهُ عَلَى سَيِّدِهِ لَا عَلَى امْرَأَتِهِ - وَكَذَلِكَ إنْ كَانَ لِلْحُرِّ وَلَدٌ أَوْ وَالِدٌ فَنَفَقَتُهُ عَلَى وَلَدِهِ، أَوْ وَالِدِهِ إلَّا أَنْ يَكُونَا فَقِيرَيْنِ.

the obligation of his child or father, except if the responsible relative (child or father) is poor.

L32512 The proof of that is the statement of Allah, the Exalted and Majestic: *"And upon the father is their provision and clothing in an acceptable manner. No soul is burdened beyond its capacity. No mother should be harmed because of her child, nor should the father be harmed because of his child. And the same duty rests upon the heir"* [Al-Baqarah: 233].[4]

L32513 Ali said: The wife is a legal heir, and his maintenance [in cases of his indigence] becomes her obligation, as derived from Quranic injunctions.

L32514–32516 Abū Muḥammad said: The maintenance of the wife is incumbent upon the slave, just as it is upon the free man, because Allah, the Exalted, when... He decreed through His Messenger—peace and blessings of Allah be upon him and his family—that women's maintenance and clothing are obligatory for their husbands, drawing no distinction between a free man and a slave.

L32517 And when Allah, the Exalted, said: "And give the women their bridal gifts as a free gift" [An-Nisa: 4].[5]

L32518 And the Exalted has not distinguished a free person from a bondservant: *{And your Lord is never forgetful}* [Maryam: 64]. Regarding this matter, there are differing opinions. We shall mention what is most pertinent to clarify, Allah willing.[6]

L32519 Among these rulings is that Abū Yūsuf stated regarding a mature, ill woman—whose husband has not consummated the marriage—that no maintenance is due from him if her illness prevents intercourse with her. If he consummates it with her while she remains in this state, he may divorce her and is not obligated to maintain her until he is able to have intercourse with her. If he chooses to retain her, he becomes liable for her maintenance.

L32520 He said: If she falls ill under his care after the marriage was consummated

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لا تُكَلَّفُ نَفْسٌ إِلا وُسْعَهَا لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

قَالَ عَلِيٌّ: الزَّوْجَةُ وَارِثَةٌ فَعَلَيْهَا نَفَقَتُهُ بِنَصِّ الْقُرْآنِ.

قَالَ أَبُو مُحَمَّدٍ: وَنَفَقَةُ الزَّوْجَةِ عَلَى الْعَبْدِ كَمَا هِيَ عَلَى الْحُرِّ، لِأَنَّ اللَّهَ تَعَالَى إِذْ أَوْجَبَ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَفَقَةَ النِّسَاءِ وَكِسْوَتَهُنَّ عَلَى أَزْوَاجِهِنَّ، لَمْ يَخُصَّ حُرًّا مِنْ عَبْدٍ.

وَإِذْ قَالَ اللَّهُ تَعَالَى: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤] .

وَلَمْ يَخُصَّ تَعَالَى حُرًّا مِنْ عَبْدٍ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَفِيمَا ذَكَرْنَا خِلَافٌ نَذْكُرُ مِنْهُ مَا تَيَسَّرَ إِنْ شَاءَ اللَّهُ تَعَالَى -:

فَمِنْ ذَلِكَ أَنَّ أَبَا يُوسُفَ قَالَ: فِي الْمَرْأَةِ الْبَالِغَةِ الْمَرِيضَةِ - الَّتِي لَمْ يَدْخُلْ بِهَا زَوْجُهَا - أَنَّهُ لَا نَفَقَةَ لَهَا عَلَيْهِ إِذَا كَانَ مَرَضُهَا يَمْنَعُ مِنْ وَطْئِهَا - فَإِنْ بَنَى بِهَا وَهِيَ كَذَلِكَ فَلَهُ أَنْ يَرُدَّهَا وَلَا يُنْفِقَ عَلَيْهَا حَتَّى يَقْدِرَ عَلَى جِمَاعِهَا فَإِنْ أَمْسَكَهَا فَعَلَيْهِ نَفَقَتُهَا.

قَالَ: فَإِنْ مَرِضَتْ عِنْدَهُ بَعْدَ أَنْ دَخَلَ بِهَا صَحِيحَةً - فَعَلَيْهِ نَفَقَتُهَا وَلَيْسَ لَهُ رَدُّهَا.

[4] **Qur'an references (L32512):** Qur'an 2:233 (Al-Baqarah).
[5] **Qur'an references (L32517):** Qur'an 4:4 (An-Nisa).
[6] **Qur'an references (L32518):** Qur'an 19:64 (Maryam).

while she was healthy, he remains obligated to provide her maintenance and may not repudiate her.

قَالَ: فَإِنْ بَنَى بِالرَّتْقَاءِ فَعَلَيْهِ نَفَقَتُهَا وَلَيْسَ لَهُ رَدُّهَا.

L32521 He said: If he consummates the marriage with a woman who has vaginal occlusion, he is obligated to provide her maintenance, but he does not have the right to annul the marriage.

وَهَذِهِ مُنَاقَضَاتٌ طَرِيفَةٌ فِي السَّخَافَةِ جِدًّا.

L32522 And these are peculiar contradictions in extreme absurdity.

وَقَالَ: إِنْ سُجِنَتْ الْمَرْأَةُ أَوْ حِيلَ بَيْنَهَا وَبَيْنَ زَوْجِهَا كَرْهًا فَلَا نَفَقَةَ لَهَا عَلَيْهِ.

L32523 He said: If a woman is imprisoned or prevented from being with her husband against her will, there is no maintenance obligation upon him for her.

وَقَدْ ذَكَرْنَا قَوْلَ عُمَرَ فِي وُجُوبِ النَّفَقَةِ عَلَى الْغَائِبِ مُدَّةَ مَغِيبِهِ وَإِنْ طَلَّقَ.

L32524 We have mentioned ʿUmar's statement regarding the obligation of maintenance on the absent one for the duration of his absence, even if he has divorced.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ، قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنْ الْمَرْأَةِ تُنْفِقُ عَلَى نَفْسِهَا مِنْ الَّذِي لَهَا وَتَتَسَلَّفُ؟ قَالَ: نَرَى أَنْ يُؤْخَذَ بِهِ زَوْجُهَا بِالسَّدَادِ إِلَّا أَنْ يَكُونَ لَهُ بَيِّنَةٌ أَنَّهُ وَضَعَ لَهَا مَا يُصْلِحُهَا. قَالَ يُونُسُ: وَهُوَ قَوْلُ رَبِيعَةَ.

L32525 It has been narrated to us through the chain of Ibn Wahb from Yunus ibn Yazid, who said: Ibn Shihab was asked about a woman who spends on herself from her own wealth and borrows. He said: "We hold that her husband is responsible for repayment unless he produces clear evidence that he allocated for her what suffices her." Yunus said: "This is the position of Rabi'ah."

قَالَ أَبُو مُحَمَّدٍ: هَذَا الْحَقُّ، لِأَنَّهُ إِنْ ادَّعَى أَنَّهُ أَنْفَقَ فَهُوَ مُدَّعٍ لِسُقُوطِ حَقٍّ لَهَا ثَبَتَ قَبْلَهُ، فَالْبَيِّنَةُ عَلَيْهِ، وَالْيَمِينُ عَلَيْهَا.

L32526 Abu Muhammad said: This is the correct ruling, because if he claims to have spent, he is asserting the cessation of a preexisting right of hers. Thus, the burden of proof lies upon him, and the oath is incumbent upon her.

وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L32527 This is the opinion of al-Ḥasan al-Baṣrī, al-Shāfiʿī, and Abū Sulaymān.

رُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ: مَا أَنْفَقَتْ مِنْ مَالِهَا فَلَا شَيْءَ لَهَا فِيهِ، وَمَا اسْتَدَانَتْ فَهُوَ عَلَى الزَّوْجِ - وَهَذَا تَقْسِيمٌ لَا يَقُومُ بِصِحَّتِهِ بُرْهَانٌ.

L32528 It has been narrated to us from Ibrāhīm al-Nakhaʿī: Whatever she spends from her wealth, she retains no claim to it, and whatever debt she incurs falls upon the husband - and this division is unsupported by valid proof.

وَقَالَ ابْنُ شُبْرُمَةَ: لَا نَفَقَةَ لِلْمَرْأَةِ إلَّا إذَا شَكَتْ إلَى الْجِيرَانِ، فَمِنْ حِينِ تَشْكُو تَجِبُ لَهَا النَّفَقَةُ، وَيُؤْخَذُ بِهَا الزَّوْجُ - وَهَذَا تَحْدِيدٌ فَاسِدٌ.

L32529 Ibn Shubrumah said: A wife is not entitled to maintenance unless she complains to the neighbors. From the moment she complains, maintenance becomes due to her, and the husband is obligated to provide it - and this is an invalid stipulation.

L32530–32531 It is authentically reported from Shurayh that a woman said to him: "My

husband has been absent, and I borrowed a dinar which I spent on myself." Shurayh said to her: "Did he command that?" She replied: "No." He said: "Then settle your debt."

وَصَحَّ عَنْ شُرَيْحٍ أَنَّ امْرَأَةً قَالَتْ لَهُ: إنَّ زَوْجِي غَابَ، وَإِنِّي اسْتَدَنْت دِينَارًا فَأَنْفَقْتُهَا عَلَى نَفْسِي؟ فَقَالَ لَهَا شُرَيْحٌ: أَكَانَ أَمَرَ بِذَلِكَ؟ قَالَتْ: لَا، قَالَ: فَاقْضِي دَيْنَك.

L32532 Abu Hanifah said: There is no maintenance for the woman unless the authority imposes it for her.

وَقَالَ أَبُو حَنِيفَةَ: لَا نَفَقَةَ لِلْمَرْأَةِ إلَّا أَنْ يَفْرِضَهَا لَهَا السُّلْطَانُ.

L32533 Abu Muhammad said: The Sovereign of Sovereigns—and He is Allah, the Exalted—has ordained it for her on the tongue of His Messenger, may Allah bless him and grant him peace, thereby invalidating the opinion of Abu Hanifah.

قَالَ أَبُو مُحَمَّد: قَدْ فَرَضَهَا لَهَا سُلْطَانُ السَّلَاطِينِ وَهُوَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَطَلَ رَأْيُ أَبِي حَنِيفَةَ.

L32534 Mālik said: If a man is absent and then returns, and his wife demands maintenance from him, then if she produces evidence that he admitted to her that he had not sent her anything, the judge must rule in her favor. Otherwise, she is not entitled to maintenance except from the day she lodges the claim.

وَقَالَ مَالِكٌ: مَنْ غَابَ ثُمَّ قَدُمَ فَطَلَبَتْهُ امْرَأَةٌ بِالنَّفَقَةِ، فَإِنْ أَقَامَتْ لَهَا بَيِّنَةً بِأَنَّهَا أَقَرَّ لَهَا بِأَنَّهُ لَمْ يَبْعَثْ إلَيْهَا بِشَيْءٍ قَضَى لَهَا، وَإِلَّا فَلَا نَفَقَةَ لَهَا إلَّا مِنْ يَوْمِ تَرْفَعُهُ.

L32535 Abu Muhammad said: This is also a legal matter for which there is no evidence of its validity, nor is it known how the obligatory right owed to it was forfeited by his claim.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ أَيْضًا قَضِيَّةٌ لَا دَلِيلَ عَلَى صِحَّتِهَا، وَلَا يُدْرَى بِمَاذَا سَقَطَ حَقُّهَا الْوَاجِبُ لَهَا بِدَعْوَاهُ.

L32536 As for one who is unable to provide financial maintenance, scholars have differed regarding the ruling applicable to him. A group of scholars has opined that he is imprisoned, and thus cannot divorce nor is he obligated to do so. This is the position of Ubayd Allāh ibn al-Ḥasan al-ʿAnbarī, the judge of Basra.

وَأَمَّا مَنْ لَمْ يَقْدِرْ عَلَى النَّفَقَةِ فَقَدْ اخْتَلَفَ النَّاسُ فِي حُكْمِهِ -: فَقَالَتْ طَائِفَةٌ: يُسْجَنُ فَلَا يُطَلِّقُ وَلَا يُكَلَّفُ طَلَاقًا. وَهَذَا قَوْلُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ الْعَنْبَرِيِّ قَاضِي الْبَصْرَةِ.

L32537 Abu Muhammad said: Would that I knew why he is imprisoned? A group said: He is compelled to either provide maintenance or divorce. As was narrated to us from Abd al-Razzaq, from Ubayd Allah ibn Umar, from Nafi', from Ibn Umar, who said: "Umar wrote to the commanders of the armies: Call upon so-and-so and so-and-so – people who severed ties with Medina and departed from it – either to return to their wives, or to send maintenance to them, or to divorce and send the maintenance for the elapsed period."

قَالَ أَبُو مُحَمَّد: لَيْتَ شِعْرِي لِمَاذَا يُسْجَنُ؟ وَقَالَتْ طَائِفَةٌ: يُجْبَرُ عَلَى أَنْ يُنْفِقَ أَوْ يُطَلِّقَ -: كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: " كَتَبَ عُمَرُ إلَى أُمَرَاءِ الْأَجْنَادِ ادْعُوْا - فُلَانًا وَفُلَانًا - نَاسًا قَدْ انْقَطَعُوا عَنْ الْمَدِينَةِ وَرَحَلُوا عَنْهَا: إمَّا أَنْ يَرْجِعُوا إلَى نِسَائِهِمْ، وَإِمَّا أَنْ يَبْعَثُوا بِنَفَقَةٍ إلَيْهِنَّ، وَإِمَّا أَنْ يُطَلِّقُوا وَيَبْعَثُوا بِنَفَقَةِ مَا مَضَى ".

L32538 And from the narration of ʿAbd al-Razzāq from Sufyān al-Thawrī from Yaḥyā

ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyab, who said: If a man cannot find the means to provide for his wife, he is compelled to divorce her.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: إذَا لَمْ يَجِدْ الرَّجُلُ مَا يُنْفِقُ عَلَى امْرَأَتِهِ أُجْبِرَ عَلَى طَلَاقِهَا.

L32539 Abu Muhammad said: We examined the evidence presented by the proponents of this view, based on what was narrated to us via the route of al-Bazzar: Amr ibn Ali from Abu Muawiyah al-Darir from al-A'mash from Abu Salih from Abu Hurairah, who said: The Messenger of Allah (peace and blessings be upon him) said: "The best charity is that which leaves sufficiency, and the upper hand is better than the lower hand. Your wife says: 'Spend on me or divorce me.'"

قَالَ أَبُو مُحَمَّد: فَنَظَرْنَا فِيمَا يَحْتَجُّ بِهِ أَهْلُ هَذِهِ الْمَقَالَةِ بِمَا رُوِّينَا مِنْ طَرِيقِ الْبَزَّارِ نا عَمْرُو بْنُ عَلِيٍّ نا أَبُو مُعَاوِيَةَ الضَّرِيرُ نا الْأَعْمَشُ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَفْضَلُ الصَّدَقَةِ مَا أَبْقَتْ غِنًى، وَالْيَدُ الْعُلْيَا خَيْرٌ مِنْ الْيَدِ السُّفْلَى» ، تَقُولُ امْرَأَتُكَ: أَنْفِقْ عَلَيَّ أَوْ طَلِّقْنِي.

L32540 Abu Muhammad said: We examined this narration and found that this addition does not originate from the Messenger of Allah (peace be upon him and his family).

قَالَ أَبُو مُحَمَّد: فَنَظَرْنَا فِي هَذَا الْخَبَرِ - فَوَجَدْنَا هَذِهِ الزِّيَادَةَ لَيْسَتْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L32541–32542 The evidence for that is what we have narrated through the chain of Al-Bukhārī: 'Umar ibn Ḥafṣ ibn Ghiyāth narrated to us, my father narrated to us, Al-A'mash narrated to us, Abū Ṣāliḥ narrated to us, Abū Hurayrah narrated to me: The Messenger of Allah—peace and blessings be upon him and his family—said, "The best charity is that which leaves one free from want. The upper hand is better than the lower hand, and begin with those under your care." The woman says: "Either you feed me."[7]

بُرْهَانُ ذَلِكَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نَا أَبِي ثنا الْأَعْمَشُ نا أَبُو صَالِحٍ حَدَّثَنِي أَبُو هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «أَفْضَلُ الصَّدَقَةِ مَا تَرَكَ غِنًى وَالْيَدُ الْعُلْيَا خَيْرٌ مِنْ الْيَدِ السُّفْلَى وَابْدَأْ بِمَنْ تَعُولُ» ، تَقُولُ الْمَرْأَةُ: إمَّا أَنْ تُطْعِمَنِي.

L32543 "Or that you divorce me," and he mentioned the rest of the report. They said: "O Abu Hurairah, did you hear this from the Messenger of Allah (peace be upon him and his family)?" He said: "No, this is from Abu Hurairah's cleverness."

وَإِمَّا أَنْ تُطَلِّقَنِي " وَذَكَرَ بَاقِيَ الْخَبَرِ - قَالُوا: يَا أَبَا هُرَيْرَةَ سَمِعْت هَذَا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: لَا، هَذَا مِنْ كَيْسِ أَبِي هُرَيْرَةَ.

L32544 Thus, the argument based on this report became invalid.

فَبَطَلَ الِاحْتِجَاجُ بِهَذَا الْخَبَرِ.

L32545 If they say it is from the statement of Abū Hurayrah, then it is the statement of both Companions: 'Umar and Abū Hurayrah.

فَإِنْ قَالُوا: هُوَ مِنْ قَوْلِ أَبِي هُرَيْرَةَ، فَهُوَ قَوْلُ صَاحِبَيْنِ، عُمَرَ، وَأَبِي هُرَيْرَةَ.

L32546 We said: As for Abu Hurairah, he merely narrated the woman's statement and did not say that this is the obligatory in the ruling.

قُلْنَا: أَمَّا أَبُو هُرَيْرَةَ، فَإِنَّهُ إنَّمَا حَكَى قَوْلَ الْمَرْأَةِ، وَلَمْ يَقُلْ: إنَّ هَذَا هُوَ الْوَاجِبُ فِي الْحُكْمِ.

[7] **Hadith references (L32542):** Sahih al-Bukhari 5355.

وَأَمَّا عُمَرُ، فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَمْ يُخَاطِبْ بِذَلِكَ إِلَّا أَغْنِيَاءَ قَادِرِينَ عَلَى النَّفَقَةِ، وَلَيْسَ فِي خَبَرِ عُمَرَ ذِكْرُ حُكْمِ الْمُعْسِرِ؟ بَلْ قَدْ صَحَّ عَنْهُ إِسْقَاطُ طَلَبِ الْمَرْأَةِ لِلنَّفَقَةِ إِذَا أُعْسِرَ بِهَا الزَّوْجُ - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L32547 As for ʿUmar, they have no valid argument concerning him, because he only addressed wealthy individuals capable of providing maintenance. Does the report about ʿUmar not mention the ruling regarding the insolvent? Rather, it is authentically established from him that he waived the wife's claim for maintenance if the husband becomes insolvent regarding her, as we will mention after this, God the Exalted willing.

وَقَالَتْ طَائِفَةٌ: يُطَلِّقُهَا عَلَيْهِ الْحَاكِمُ.

L32548 A group said: The judge pronounces the divorce on his behalf.

ثُمَّ اخْتَلَفُوا -: فَقَالَ مَالِكٌ: يُؤَجَّلُ فِي عَدَمِ النَّفَقَةِ شَهْرًا أَوْ نَحْوَهُ، فَإِنْ انْقَضَى الْأَجَلُ - وَهِيَ حَائِضٌ أُخِّرَ حَتَّى تَطْهُرَ، وَفِي الصَّدَاقِ عَامَيْنِ، ثُمَّ يُطَلِّقُهَا عَلَيْهِ الْحَاكِمُ طَلْقَةً رَجْعِيَّةً، فَإِنْ أَيْسَرَ فِي الْعِدَّةِ فَلَهُ ارْتِجَاعُهَا.

L32549 Then they differed: Mālik said, "He is granted a month's delay (or similar) due to lack of maintenance. If the period expires while she is menstruating, it is postponed until she becomes ritually pure. For the dowry, two years are allotted. Then the judge pronounces a revocable divorce against him. If he regains financial means during the waiting period, he retains the right to take her back."

وَقَالَتْ طَائِفَةٌ: لَا يُؤَجَّلُ إِلَّا يَوْمًا وَاحِدًا ثُمَّ يُطَلِّقُهَا الْحَاكِمُ عَلَيْهِ -: وَمِمَّنْ رُوِّينَا عَنْهُ نَحْوَ هَذَا جَمَاعَةً -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ قَالَ: سَأَلْتُ سَعِيدَ بْنَ الْمُسَيِّبِ عَنِ الرَّجُلِ لَا يَجِدُ مَا يُنْفِقُ عَلَى امْرَأَتِهِ؟ قَالَ: يُفَرَّقُ بَيْنَهُمَا، قُلْتُ: سَنَةٌ؟ قَالَ: نَعَمْ، سَنَةٌ.

L32550 A group said: The delay is only one day, then the judge divorces her against him. Among those from whom we have received narrations of this kind are a multitude of scholars: as narrated by Abd al-Razzaq from Sufyan ibn Uyaynah from Abu al-Zinad, who said: I asked Sa'id ibn al-Musayyab about a man who cannot afford to provide for his wife. He said: They must be compulsorily separated. I asked: For a year? He replied: Yes, a year.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ وَعَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ أَبِي الزِّنَادِ قَالَ: شَهِدْتُ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ يَقُولُ لِزَوْجِ امْرَأَةٍ شَكَتْ إِلَيْهِ أَنَّهُ لَا يُنْفِقُ عَلَيْهَا: اضْرِبُوا لَهُ أَجَلَ شَهْرٍ أَوْ شَهْرَيْنِ، فَإِنْ لَمْ يُنْفِقْ عَلَيْهَا إِلَى ذَلِكَ الْأَجَلِ فَرِّقُوا بَيْنَهُ وَبَيْنَهَا - قَالَ: أَبُو الزِّنَادِ فَسَأَلْتُ عَنْهُ سَعِيدَ بْنَ الْمُسَيِّبِ؟ فَقَالَ فِي الْأَجَلِ وَالتَّفْرِيقِ مِثْلَ قَوْلِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L32551 From the narration of Ibn Wahb, from ʿAbd al-Raḥmān ibn Abī al-Zinād and ʿAbd al-Jabbār ibn ʿUmar, from Abū al-Zinād, who said: I witnessed ʿUmar ibn ʿAbd al-ʿAzīz say to the husband of a woman who complained to him that he failed to provide for her: "Set him a term of one month or two months. If he does not provide for her by that term, separate him from her." Abū al-Zinād said: I asked Saʿīd ibn al-Musayyib about it, and he gave the same ruling as ʿUmar ibn ʿAbd al-ʿAzīz regarding the term and separation.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ ابْنِ لَهِيعَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا شَكَا إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ أَنْكَحَ ابْنَتَهُ رَجُلًا لَا يُنْفِقُ عَلَيْهَا، فَأَرْسَلَ إِلَى الزَّوْجِ فَأَتَى فَقَالَ:

L32552–32553 Narrated via the chain of Ibn Wahb, from Ibn Lahiʿah, from Muḥammad ibn ʿAbd al-Raḥmān: A man complained to ʿUmar ibn ʿAbd al-ʿAzīz that he had given his daughter in marriage to a man who did not provide for her. He

summoned the husband, who came and said: “Did he give her in marriage to me knowing I have nothing?” ʿUmar ibn ʿAbd al-ʿAzīz responded: “You married her to him knowing—what am I to do? Go with your household.”

أَنْكَحَنِي وَهُوَ يَعْلَمُ أَنَّهُ لَيْسَ لِي شَيْءٌ؟ فَقَالَ لَهُ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْكَحْتَهُ وَأَنْتَ تَعْرِفُ، فَمَا الَّذِي أَصْنَعُ، اذْهَبْ بِأَهْلِك.

L32554 From the chain of Ibn Wahb, from Al-Layth ibn Sa’d, from Yahya ibn Sa’id al-Ansari, who said: “Whoever marries while wealthy, then falls into need and cannot find the means to provide for his wife, they are to be separated.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ قَالَ: " مَنْ تَزَوَّجَ - وَهُوَ غَنِيٌّ - ثُمَّ احْتَاجَ فَلَمْ يَجِدْ مَا يُنْفِقُ عَلَى امْرَأَتِهِ فُرِّقَ بَيْنَهُمَا "

L32555 From the chain of Ibn Wahb from Malik, he said: “Those scholars I encountered would say: ’If a man does not spend on his wife, they are separated.’” Malik was asked: “But the Companions experienced poverty and need?” Malik replied: “People today are not like that. She only married him in expectation of that.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ، قَالَ: إنَّ مَنْ أَدْرَكْتُ كَانُوا يَقُولُونَ: إذَا لَمْ يُنْفِقْ الرَّجُلُ عَلَى امْرَأَتِهِ فُرِّقَ بَيْنَهُمَا، قِيلَ لِمَالِكٍ: قَدْ كَانَتْ الصَّحَابَةُ يُعْسِرُونَ وَيَحْتَاجُونَ؟ قَالَ مَالِكٌ: لَيْسَ النَّاسُ الْيَوْمَ كَذَلِكَ، إنَّمَا تَزَوَّجَتْهُ رَجَاءَ.

L32556 Via the chain of ʿAbd al-Razzāq from Maʿmar, from Qatādah and Ḥammād ibn Abī Sulaymān, both said: If he cannot afford to provide for his wife, judicial divorce is decreed between them.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، قَالَا جَمِيعًا: إذَا لَمْ يَجِدْ مَا يُنْفِقُ عَلَى امْرَأَتِهِ فُرِّقَ بَيْنَهُمَا.

L32557 Abu Muhammad said: We have found no foundational argument for the adherents of this doctrine whatsoever, except their clinging to the statement of Sa’id ibn al-Musayyib that it constitutes a Sunnah practice.

قَالَ أَبُو مُحَمَّدٍ: لَمْ نَجِدْ لِأَهْلِ هَذِهِ الْمَقَالَةِ حُجَّةً أَصْلًا، إلَّا تَعَلُّقَهُمْ بِقَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ: إنَّهُ سُنَّةٌ.

L32558 Abu Muhammad said: Two statements have been authentically reported from Saʿīd ibn al-Musayyib, as we mentioned one of them: that he is legally compelled to separate from her, and the other: that separation is imposed between them. These two are conflicting. Which of them was the Sunnah? Whichever was the Sunnah, the other would undoubtedly be contrary to the Sunnah. Saʿīd did not state that it was the Sunnah of the Messenger of Allah (peace and prayers be upon him and his family). Even if he had said so, it would have been a mursal narration, holding no authority. How could this be the case when he undoubtedly meant that it was a Sunnah other than his—peace and prayers be upon him?

قَالَ أَبُو مُحَمَّدٍ: قَدْ صَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَوْلَانِ، كَمَا أَوْرَدْنَا أَحَدُهُمَا - يُجْبَرُ عَلَى مُفَارَقَتِهَا، وَالْآخَرُ - يُفَرَّقُ بَيْنَهُمَا، وَهُمَا مُخْتَلِفَانِ، فَأَيُّهُمَا السُّنَّةُ، وَأَيُّهُمَا كَانَ السُّنَّةُ، فَالْآخَرُ خِلَافُ السُّنَّةِ، بِلَا شَكٍّ، وَلَمْ يَقُلْ سَعِيدٌ: إنَّهَا سُنَّةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَحَتَّى لَوْ قَالَهُ لَكَانَ مُرْسَلًا لَا حُجَّةَ فِيهِ، فَكَيْفَ وَإِنَّمَا أَرَادَ - بِلَا شَكٍّ - أَنَّهُ سُنَّةٌ مِنْ دُونِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L32559 Perhaps he intended what has been narrated to us regarding the action of Umar ibn al-Khattab - which contradicts the position of those who cite Sa’id’s opinion as evidence. The height of astonishment lies in those who

invoke Sa’id’s statement as proof in matters of spousal separation by claiming it is Sunnah, while they utterly disregard what was narrated to us by Muhammad ibn Sa’id ibn Umar ibn Nabat; narrated via Abbas ibn Asbagh; Muhammad ibn Qasim ibn Muhammad; Muhammad ibn Abd al-Salam al-Khushani; Muhammad ibn al-Muthanna; Abd al-A’la; Sa’id ibn Abi Arubah; from Qatadah; from Khilas ibn Amr: that Uthman ibn Affan ruled regarding the redemption for the child of the abducted slave woman (taken as booty) that she is religiously emancipated, or that the Sunnah (established precedent) dictates two persons [as compensation] for every person.

وَلَعَلَّهُ أَرَادَ مَا رُوِّينَا مِنْ فِعْلِ عُمَرَ بْنِ الْخَطَّابِ الَّذِي هُوَ مُخَالِفٌ لِقَوْلِ مَنْ يَحْتَجُّ بِقَوْلِ سَعِيدٍ هَذَا - وَالْعَجَبُ كُلُّهُ مِمَّنْ يَحْتَجُّ فِيمَا يُفَرِّقُ بِهِ بَيْنَ الزَّوْجَيْنِ بِقَوْلِ سَعِيدٍ: إنَّهُ سُنَّةٌ، وَهُمْ لَا يَلْتَفِتُونَ - مَا حَدَّثَنَا بِهِ مُحَمَّدُ بْنُ سَعِيدِ بْنِ عُمَرَ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الْأَعْلَى نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو " أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَضَى فِي فِدَاءِ وَلَدِ الْأَمَةِ الْغَارَّةِ بِأَنَّهَا حُرَّةُ الْمِلَّةِ، أَوْ السُّنَّةُ كُلُّ رَأْسٍ رَأْسَيْنِ ".

L32560–32562 And they do not turn around—what was narrated to us by Aḥmad ibn Muḥammad ibn al-Jasūr, from Wahb ibn Masarrata, from Muḥammad ibn Waddāḥ. Abu Bakr ibn Abi Shaybah narrated to us, from Abd al-A’la, from Sa’id—he is Ibn Abi Arubah—from Matar al-Warraq, from Raja’ ibn Haywah, from Qabisah ibn Dhu’ayb, from Amr ibn al-As, who said: “Do not confuse for us the Sunnah of our Prophet—may Allah bless him and his family and grant him peace—: the ʿiddah of an umm al-walad is that of a widow.”

وَلَا يَلْتَفِتُونَ - مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا وَهْبُ بْنُ مَسَرَّةَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ سَعِيدٍ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ مَطَرٍ الْوَرَّاقِ عَنْ رَجَاءِ بْنِ حَيْوَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ عَمْرِو بْنِ الْعَاصِ قَالَ: " لَا تَلْبِسُوا عَلَيْنَا سُنَّةَ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عِدَّةُ أُمِّ الْوَلَدِ عِدَّةُ الْمُتَوَفَّى عَنْهَا ".

L32563 The authentic and established narration through the chain of al-Bukhārī: Muḥammad ibn Kathīr narrated to us, Sufyān narrated to us from Saʿd—he is Ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf—from Ṭalḥah ibn ʿUbayd Allāh ibn ʿAwf, who said: “I prayed behind Ibn ʿAbbās at a funeral prayer, and he recited the Fātiḥah of the Book. He then said: ’That you may know it is a Sunnah.’” Another narration through the chain of Aḥmad ibn Shuʿayb: Quṭaybah ibn Saʿīd narrated to us, al-Layth ibn Saʿd narrated to us from Ibn Shihāb from Abū Umāmah ibn Sahl ibn Ḥunayf, who said: “The Sunnah concerning the funeral prayer is to recite silently during the first Takbīr, then to say the Takbīr, and the Taslīm is given after the last Takbīr.”

وَالصَّحِيحُ الثَّابِتُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُفْيَانُ عَنْ سَعْدٍ - هُوَ ابْنُ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ بْنِ عَوْفٍ قَالَ " صَلَّيْتُ خَلْفَ ابْنِ عَبَّاسٍ عَلَى جِنَازَةٍ فَقَرَأَ بِفَاتِحَةِ الْكِتَابِ، فَقَالَ: لِتَعْلَمُوا أَنَّهَا سُنَّةٌ ". وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا قُتَيْبَةُ بْنُ سَعِيدٍ أرنا اللَّيْثُ بْنُ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ أَنَّهُ قَالَ «السُّنَّةُ فِي الصَّلَاةِ عَلَى الْجِنَازَةِ أَنْ يُقْرَأَ فِي التَّكْبِيرَةِ الْأُولَى مُخَافَتَةً ثُمَّ يُكَبِّرُ وَالتَّسْلِيمُ عِنْدَ الْآخِرَةِ» .

L32564 Who is more astonishing than one who deems the opinion of Sa‘id ibn al-Musayyib in a matter about which conflicting opinions are reported from him as a Sunnah that constitutes proof, yet does not regard the opinion of Abi Umamah ibn Sahl as a Sunnah that constitutes proof? Such a person is

فَمَنْ أَعْجَبُ مِمَّنْ يَرَى قَوْلَ سَعِيدِ بْنِ الْمُسَيَّبِ فِي قَضِيَّةٍ اُخْتُلِفَ عَنْهُ فِيهَا هِيَ سُنَّةٌ حُجَّةٌ، وَلَا يَرَى قَوْلَ أَبِي أُمَامَةَ بْنِ سَهْلٍ هِيَ السُّنَّةُ حُجَّةٌ؟ وَهُوَ مِثْلُ سَعِيدٍ فِي إدْرَاكِ الصَّحَابَةِ -

comparable to Sa‘id in having met the Companions—may Allah be pleased with them. How then can one compare this to ‘Uthmān, ‘Amr ibn al-‘Āṣ, and Ibn ‘Abbās? Sa‘id never experienced a single day of their lifetimes, yet all of them are undoubtedly more knowledgeable about the Sunnah than Sa‘id without doubt. This is an arbitrary imposition of falsehood in matters of religion.

رَضِيَ اللَّهُ عَنْهُمْ - فَكَيْفَ بِعُثْمَانَ، وَعَمْرِو بْنِ الْعَاصِ، وَابْنِ عَبَّاسٍ، وَكُلُّ وَاحِدٍ مِنْهُمْ لَا يُدْرِكُ سَعِيدٌ يَوْمًا مِنْ أَيَّامِهِمْ أَبَدًا، وَكُلُّهُمْ أَعْلَمُ بِالسُّنَّةِ مِنْ سَعِيدٍ بِلَا شَكٍّ - وَهَذَا تَحَكُّمٌ فِي الدِّينِ بِالْبَاطِلِ.

L32565 As for the narration from ’Umar ibn ’Abd al-’Aziz and Sa’īd ibn al-Musayyib regarding deferment for one or two months, it is completely dismissed. This is because its chain comes through ’Abd al-Raḥmān ibn Abī al-Zinād and ’Abd al-Jabbār ibn ’Umar—both of whom are deemed unreliable.

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ فِي تَأْجِيلِ شَهْرٍ أَوْ شَهْرَيْنِ، فَسَاقِطَةٌ جِدًّا، لِأَنَّهَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ، وَعَبْدِ الْجَبَّارِ بْنِ عُمَرَ، وَكِلَاهُمَا لَا شَيْءَ.

L32566 Among the most wondrous of wonders is Mālik’s reply to the one who cited the Companions’ experience of need and hardship as evidence against him in this matter, when he said: “People today are not like that; she only married him out of hope.” This statement combines multiple aspects of error: among them is opposing the directives of the Companions and their established practice through his admission that people are not like that today. How then can he permit a ruling that acknowledges people are acting contrary to what the Companions upheld? Who permitted him that? From where did he discern a change in people regarding this matter? No one knows in this matter that people today differ from their state during the Companions’ era, for whenever a Companion married, the woman unquestionably married him for intimacy and provision. People today are none other than the same.

وَمِنْ أَعْجَبِ الْعَجَبِ قَوْلُ مَالِكٍ لِلَّذِي احْتَجَّ عَلَيْهِ فِي هَذِهِ الْمَسْأَلَةِ بِأَنَّ الصَّحَابَةَ كَانُوا يَحْتَاجُونَ وَيُعَسِّرُونَ بِقَوْلِهِ: لَيْسَ النَّاسُ الْيَوْمَ كَذَلِكَ، إِنَّمَا تَزَوَّجَتْهُ رَجَاءً " فَجَمَعَ هَذَا الْقَوْلُ وُجُوهًا مِنْ الْخَطَأِ -: مِنْهَا - مُخَالَفَةُ أَمْرِ الصَّحَابَةِ وَمَا مَضَوْا عَلَيْهِ بِإِقْرَارِهِ الِاعْتِرَافَ بِأَنَّ النَّاسَ لَيْسُوا كَذَلِكَ الْيَوْمِ، فَكَيْفَ يَجُوزُ لَهُ أَنْ يُجِيزَ حُكْمًا يُقِرُّ بِأَنَّ النَّاسَ فِيهِ عَلَى خِلَافِ مَا مَضَى عَلَيْهِ الصَّحَابَةُ، ثُمَّ مَنْ لَهُ بِذَلِكَ، وَمِنْ أَيْنَ عَرَفَ تَبَدُّلَ النَّاسِ فِي هَذِهِ الْقَصَّةِ وَمَا يَعْلَمُ أَحَدٌ فِيهَا أَنَّ النَّاسَ عَلَى خِلَافِ مَا كَانُوا عَلَيْهِ عَصْرَ الصَّحَابَةِ، لِأَنَّ كُلَّ مَنْ تَزَوَّجَ مِنْ الصَّحَابَةِ، فَإِنَّمَا تَزَوَّجَتْهُ الْمَرْأَةُ لِلْجِمَاعِ وَالنَّفَقَةِ بِلَا شَكٍّ، فَمَا النَّاسُ الْيَوْمَ إِلَّا كَذَلِكَ.

L32567–32568 Then his statement, “She only married him in hope of maintenance,” so it is said to him: What then? How does this [argument] invalidate the ruling that the Companions - may Allah be pleased with them - had previously established? The Shafi’is presented a clear argument against them - namely, their argument: “If you oblige her to endure [without maintenance] for a month, there is no way to live for a month without eating. What distinction exists between this and requiring her to endure [without maintenance] perpetually?”

ثُمَّ قَوْلُهُ " إِنَّمَا تَزَوَّجَتْهُ رَجَاءً " فَيُقَالُ لَهُ: فَكَانَ مَاذَا؟ وَأَيُّ شَيْءٍ فِي هَذَا مِمَّا يُحِيلُ حُكْمَ مَا مَضَى عَلَيْهِ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -؟ وَاحْتَجَّ الشَّافِعِيُّونَ عَلَيْهِمْ بِحُجَّةٍ ظَاهِرَةٍ - وَهِيَ أَنْ قَالُوا: إِذَا كَلَّفْتُمُوهَا صَبْرَ شَهْرٍ، فَلَا سَبِيلَ إِلَى عَيْشِ شَهْرٍ بِلَا أَكْلٍ، فَأَيُّ فَرْقٍ بَيْنَ ذَلِكَ وَبَيْنَ تَكْلِيفِهَا الصَّبْرَ أَبَدًا.

L32569 Abū Muḥammad said: This is a valid objection, but it may also be said to al-Shāfiʿī: If you divorce her upon him, there is no endurance without eating. By obligating her to observe the waiting period—which may sometimes span months—you have imposed upon her to endure without maintenance for a duration wherein one cannot live without food, with no exception. Thus the invalidity of this opinion becomes entirely evident.

قَالَ أَبُو مُحَمَّد: وَهَذَا اعْتِرَاضٌ صَحِيحٌ، إلَّا أَنَّهُ يُقَالُ أَيْضًا لِلشَّافِعِيِّ: إذَا طَلَّقْتُمُوهَا عَلَيْهِ فَإِنَّهُ لَا صَبْرَ عَنْ الْأَكْلِ، فَأَنْتُمْ تُكَلِّفُونَهَا الْعِدَّةَ - وَهِيَ رُبَّمَا كَانَتْ أَشْهُرًا - فَقَدْ كَلَّفْتُمُوهَا الصَّبْرَ بِلَا نَفَقَةٍ مُدَّةً لَا يُعَاشُ فِيهَا بِلَا أَكْلٍ وَلَا فَرْقَ - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً.

L32570 They also argued against the followers of Abū Ḥanīfa—not against us—by stating: "We have agreed upon mandating judicial separation between one who withholds marital relations from his wife and separates from her due to the harm of depriving her of intercourse. Is the harm of depriving her of maintenance not more severe?" The followers of Abū Ḥanīfa retorted: "We and you have already concurred that if a man engages in intercourse once then withholds relations, separation is not decreed. Thus, it becomes incumbent upon you to refrain from separating a couple when the husband provided maintenance once or multiple times then became unable to afford it? You are thereby bound not to separate them."

وَاحْتَجُّوا أَيْضًا عَلَى أَصْحَابِ أَبِي حَنِيفَةَ، لَا عَلَيْنَا بِأَنْ قَالُوا: قَدْ اتَّفَقْنَا عَلَى التَّفْرِيقِ بَيْنَ مَنْ عَنَّ عَنْ امْرَأَتِهِ وَبَيْنَهَا بِضَرَرِ فَقْدِ الْجِمَاعِ، فَضَرَرُ فَقْدِ النَّفَقَةِ أَشَدُّ؟ فَقَالَ لَهُمْ أَصْحَابُ أَبِي حَنِيفَةَ: قَدْ اتَّفَقْنَا نَحْنُ وَأَنْتُمْ عَلَى أَنَّهُ إنْ وَطِئَهَا مَرَّةً ثُمَّ عَنَّ عَنْهَا أَنَّهُ لَا يُفَرَّقُ بَيْنَهُمَا فَيَلْزَمُكُمْ أَنْ لَا تُفَرِّقُوا بَيْنَ مَنْ أَنْفَقَ عَلَيْهَا مَرَّةً وَاحِدَةً فَأَكْثَرَ ثُمَّ أُعْسِرَ بِنَفَقَتِهَا؟ فَيَلْزَمُكُمْ أَنْ لَا تُفَرِّقُوا بَيْنَهُمَا.

L32571 Abu Muhammad said: Both groups abandoned their corrupt analogy in this matter.

قَالَ أَبُو مُحَمَّد: كِلَا الطَّائِفَتَيْنِ تَرَكَتْ قِيَاسَهَا الْفَاسِدَ فِي هَذِهِ الْمَسْأَلَةِ.

L32572 Abu Muhammad said: A group held the same opinion as ours—as transmitted to us through Muslim's chain: From Zuhayr ibn Harb, from Ruh ibn Ubada, from Zakariyya ibn Ishaq, from Abu al-Zubayr, from Jabir ibn Abdullah, who said: "Abu Bakr and Umar entered upon the Messenger of Allah—peace and blessings be upon him—and found him sitting with his wives around him, silent and somber. Abu Bakr said: 'O Messenger of Allah, if only you saw Kharijah's daughter; she asked me for expenses, so I approached her and grabbed her neck!' The Messenger of Allah—peace and blessings be upon him—smiled and said: 'They are around me as you see, asking me for expenses.' Abu Bakr then rose to Aisha, pressing her neck, and Umar rose to Hafsa, pressing her neck, both saying: 'Do you ask the Messenger of Allah—peace and blessings be upon him—for what he does not possess?' They replied: 'By Allah, we will never ask the Messenger of Allah—peace and blessings be upon him—for anything he does not possess.'

قَالَ أَبُو مُحَمَّد: وَقَالَتْ طَائِفَةٌ كَقَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا رَوْحُ بْنُ عُبَادَةَ نا زَكَرِيَّا بْنُ إِسْحَاقَ نا أَبُو الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «دَخَلَ أَبُو بَكْرٍ، وَعُمَرُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَجَدَاهُ جَالِسًا حَوْلَهُ نِسَاؤُهُ وَاجِمًا سَاكِتًا؟ فَقَالَ أَبُو بَكْرٍ: يَا رَسُولَ اللَّهِ، لَوْ رَأَيْتَ بِنْتَ خَارِجَةَ سَأَلَتْنِي النَّفَقَةَ فَقُمْتُ إلَيْهَا فَوَجَأْتُ عُنُقَهَا؟ فَضَحِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَالَ: هُنَّ حَوْلِي كَمَا تَرَى يَسْأَلْنَنِي النَّفَقَةَ، فَقَامَ أَبُو بَكْرٍ عَلَى عَائِشَةَ يَجَأُ عُنُقَهَا وَقَامَ عُمَرُ إلَى حَفْصَةَ يَجَأُ عُنُقَهَا، كِلَاهُمَا يَقُولُ: تَسْأَلْنَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَيْسَ عِنْدَهُ؟ فَقُلْنَ: وَاَللَّهِ

Then he secluded himself from them—peace and blessings be upon him—for a month." And he related the rest of the hadith.

لَا نَسْأَلُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - شَيْئًا أَبَدًا مَا لَيْسَ عِنْدَهُ، ثُمَّ اعْتَزَلَهُنَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - شَهْرًا» وَذَكَرَ الْحَدِيثَ.

L32573 Abu Muhammad said: We have cited this solely because of what is reported from Abu Bakr and Umar, may Allah be pleased with them both, concerning their striking of their respective daughters when the two daughters asked the Prophet, peace and blessings of Allah be upon him and his family, for maintenance he could not find, and when Abu Bakr struck his wife after she asked him for maintenance he could not find.

قَالَ أَبُو مُحَمَّد: إنَّمَا أَوْرَدْنَا هَذَا لِمَا فِيهِ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - مِنْ ضَرْبِهِمَا ابْنَتَيْهِمَا، إذْ سَأَلَتَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَفَقَةً لَا يَجِدُهَا، وَإِذْ ضَرَبَ أَبُو بَكْرٍ امْرَأَتَهُ، إذْ سَأَلَتْهُ نَفَقَةً لَا يَجِدُهَا.

L32574–32575 It is an absolute and certain impossibility that the two would strike a woman claiming her rightful due. Had our opponents discovered such a claim, they would have exploited it to the utmost—given how aggressively they wield such means to assert control. As for us, we do not adopt as evidence what is attributed to the Messenger of Allah—peace be upon him and his family—regarding Abū al-Zubayr's narration from Jābir, since he did not explicitly affirm having directly heard it from him.

وَمِنْ الْمُحَالِ الْمُتَيَقَّنِ أَنْ يَضْرِبَا طَالِبَةَ حَقٍّ، وَمِثْلُ هَذَا لَوْ وَجَدَهُ الْمُخَالِفُونَ لَنَا لِعِظَمِ تَسَلُّطِهِمْ بِهِ - وَأَمَّا نَحْنُ فَلَا نَحْتَجُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِمَا رَوَاهُ أَبُو الزُّبَيْرِ عَنْ جَابِرٍ، لَمْ يَقُلْ فِيهِ: أَنَّهُ سَمِعَهُ مِنْهُ.

L32576 Through the transmission of Abd al-Razzaq.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ.

L32577 From Ibn Jurayj: I asked ʿAṭāʾ about someone who cannot find what suffices his wife for maintenance. He said: "She has no right except to what you can provide, she has no right except to what you can provide. She has no right to have him divorce her."

عَنْ ابْنِ جُرَيْجٍ سَأَلْتُ عَطَاءً عَمَّنْ لَمْ يَجِدْ مَا يَصْلُحُ امْرَأَتَهُ مِنْ النَّفَقَةِ؟ فَقَالَ: لَيْسَ لَهَا إلَّا مَا وَجَدْتَ، لَيْسَ لَهَا إلَّا مَا وَجَدْتَ، لَيْسَ لَهَا أَنْ يُطَلِّقَهَا.

L32578 From the chain of Ḥammād ibn Salamah, via multiple narrators, from al-Ḥasan al-Baṣrī, who was asked about a man unable to provide for his wife's maintenance. He said: "She should support him, fear Allah, remain patient, and he should provide for her according to his ability."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ غَيْرِ وَاحِدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ " أَنَّهُ قَالَ فِي الرَّجُلِ يَعْجَزُ عَنْ نَفَقَةِ امْرَأَتِهِ؟ قَالَ: تُوَاسِيه تَتَّقِي اللَّهَ عَزَّ وَجَلَّ وَتَصْبِرُ وَيُنْفِقُ عَلَيْهَا مَا اسْتَطَاعَ ".

L32579 From the narration of Abd al-Razzaq, from Maʿmar, who said: I asked al-Zuhri about a man who cannot provide for his wife—should they be separated? He replied: "The man should be given respite, and they should not be divorced." Then he recited: _"Allah does not burden a soul beyond its capacity. Allah will bring ease after hardship"_ [al-Talaq 7]. Maʿmar said: It

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَنْ رَجُلٍ لَا يَجِدُ مَا يُنْفِقُ عَلَى امْرَأَتِهِ، يُفَرَّقُ بَيْنَهُمَا؟ قَالَ: يَسْتَأْنِي بِهِ وَلَا يُفَرَّقُ بَيْنَهُمَا وَتَلَا {لا يُكَلِّفُ اللَّهُ نَفْسًا

has reached me from Umar ibn Abd al-Aziz a statement similar to that of al-Zuhri, other than it.[8]

إِلا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا} [الطلاق: ٧] . قَالَ مَعْمَرٌ: وَبَلَغَنِي عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ مِثْلَ قَوْلِ الزُّهْرِيِّ سِوَاهُ.

L32580 And from the narration of Abd al-Razzaq from Sufyan al-Thawri concerning the woman whose husband is insolvent in providing her maintenance: He said, "She is a woman who has been tested, so let her be patient, and she should not adopt the opinion of those who rule for separation between them"—this being the position of Ibn Shubrumah, Abu Hanifa, Abu Sulayman, and the companions of both.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ فِي الْمَرْأَةِ يُعْسِرُ زَوْجُهَا بِنَفَقَتِهَا؟ قَالَ: هِيَ امْرَأَةٌ ابْتُلِيَتْ فَلْتَصْبِرْ، وَلَا تَأْخُذُ بِقَوْلِ مَنْ فَرَّقَ بَيْنَهُمَا - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَأَبِي حَنِيفَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L32581 Abu Muhammad said: The proof of the validity of our opinion is the statement of Allah, the Mighty and Majestic: "Let the affluent spend from his affluence, and whoever has his provision restricted, let him spend from what Allah has given him. Allah does not burden any soul except with what He has given it." [At-Talaq: 7][9]

قَالَ أَبُو مُحَمَّد: بُرْهَانُ صِحَّةِ قَوْلِنَا: قَوْلُ اللَّهِ عَزَّ وَجَلَّ {لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا} [الطلاق: ٧] .

L32582 And He, the Exalted, said: "Allah does not burden a soul beyond its capacity" [Al-Baqarah 2:286]. And with Allah, the Most High, lies all success.[10]

وَقَالَ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L32583 **A legal issue: A man and woman provide for their slaves, both male and female.**

[مَسْأَلَةٌ يُنْفِقُ الرَّجُلُ وَالْمَرْأَةُ عَلَى مَمَالِيكِهِمَا مِنْ الْعَبِيدِ وَالْإِمَاءِ]

L32584 1927 - Issue: A man and a woman must provide for their slaves (male and female) by feeding them to satiety with what the people of their locality eat, clothing them with garments that ward off heat and cold from them, and ensuring no disfigurement is apparent on them among people. However, [the clothing must be] from what is worn in that locality—akin to what is commonly worn there—from garments in which prayer is permissible and that cover the private parts.

١٩٢٧ - مَسْأَلَةٌ: وَيُنْفِقُ الرَّجُلُ وَالْمَرْأَةُ عَلَى مَمَالِيكِهِمَا مِنْ الْعَبِيدِ وَالْإِمَاءِ، أَنْ يُطْعِمَهُ شِبَعَهُ مِمَّا يَأْكُلُهُ أَهْلُ بَلَدِهِ وَيَكْسُوهُ مِمَّا يَطْرُدُ عَنْهُ الْحَرَّ وَالْبَرْدَ، وَلَا يَكُونُ بِهِ مُثْلَةٌ بَيْنَ النَّاسِ، لَكِنْ مِمَّا يُلْبَسُ مِثْلَ ذَلِكَ الْمَكْسُوِّ فِي ذَلِكَ الْبَلَدِ مِمَّا تَجُوزُ فِيهِ الصَّلَاةُ، وَيَسْتُرُ الْعَوْرَةَ.

L32585–32587 And it is incumbent upon him—in addition to that—to feed the slave from what he himself eats, even a morsel, and to clothe him from what he himself wears, even on Eid. The master is compelled to do so. If he refuses or lacks

وَفُرِضَ عَلَيْهِ - مَعَ ذَلِكَ - أَنْ يُطْعِمَهُ مِمَّا يَأْكُلُ - وَلَوْ لُقْمَةً - وَأَنْ يَكْسُوَهُ مِمَّا يَلْبَسُ - وَلَوْ فِي الْعِيدِ - وَيُجْبِرُ السَّيِّدُ عَلَى ذَلِكَ، فَإِنْ أَبَى، أَوْ أَعْسَرَ: بِيعَ مِنْ مَالِهِ مَا يُنْفِقُ بِهِ عَلَى مَنْ ذَكَرْنَا فِي الْإِبَايَةِ - وَأَمَّا فِي الْعُسْرِ: فَيُبَاعُ عَلَيْهِ الْعَبْدُ وَالْأَمَةُ إنْ لَمْ يَكُنْ بِأَيْدِيهِمَا

[8] **Qur'an references (L32579):** Qur'an 65:7 (At-Talaq).
[9] **Qur'an references (L32581):** Qur'an 65:7 (At-Talaq).
[10] **Qur'an references (L32582):** Qur'an 2:286 (Al-Baqarah).

the means, they sell from his wealth enough to spend on him. As for those we mentioned regarding the inability to provide maintenance—in cases of financial hardship: the male and female slaves must be sold if they are not engaged in work that provides wages sufficient for their upkeep. In that case, they are to be rented out rather than sold. The *umm al-walad* is not emancipated due to lack of maintenance, but he is compelled as we stated if he possesses wealth. If he has no wealth, she is obligated in the same manner as poor Muslims are obligated.

عَمَلٌ يَكُونُ لَهُ أُجْرَةٌ يَقُومُ مِنْهَا مُؤْنَتُهُ، فَإِنَّهُ يُؤَاجِرُ حِينَئِذٍ وَلَا يُبَاعُ - وَلَا تُعْتَقُ أُمُّ الْوَلَدِ مِنْ عَدَمِ النَّفَقَةِ، لَكِنْ يُجْبَرُ كَمَا قُلْنَا إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ كُلِّفَتْ مَا يُكَلَّفُ فُقَرَاءُ الْمُسْلِمِينَ.

L32588 The evidence for that is: what we have narrated through Muslim's chain of transmission—Muhammad ibn al-Muthannā narrated to us, Muhammad ibn Jaʿfar narrated to us, Shuʿbah narrated to us from Wāṣil the Hunchbacked from al-Maʿrūr ibn Suwayd: that Abū Dharr informed him the Messenger of Allah (peace be upon him) said: "Your brothers are your servants whom Allah has placed under your authority. Whoever has a brother under his authority, let him feed him from what he himself eats, clothe him from what he himself wears, and do not burden them with what overwhelms them. If you burden them, then assist them in it."[11]

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ وَاصِلٍ الْأَحْدَبِ عَنْ الْمَعْرُورِ بْنِ سُوَيْدٍ: أَنَّ أَبَا ذَرٍّ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «إخْوَانُكُمْ خَوَلُكُمْ جَعَلَهُمْ اللَّهُ تَحْتَ أَيْدِيكُمْ، فَمَنْ كَانَ أَخُوهُ تَحْتَ يَدِهِ فَلْيُطْعِمْهُ مِمَّا يَأْكُلُ، وَلْيُلْبِسْهُ مِمَّا يَلْبَسُ، وَلَا تُكَلِّفُوهُمْ مَا يَغْلِبُهُمْ فَإِنْ كَلَّفْتُمُوهُمْ فَأَعِينُوهُمْ عَلَيْهِ» .

L32589 And through the chain of Muslim: Hārūn ibn Maʿrūf narrated to us; Ḥātim ibn Ismāʿīl narrated to us from Yaʿqūb ibn Mujāhid from Abū Ḥazrah al-Qāṣṣ from ʿUbādah ibn al-Walīd ibn ʿUbādah ibn al-Ṣāmit: that Abū al-Yusr said to him, "I heard the Messenger of Allah (peace be upon him and his family) say concerning slaves: 'Feed them from your own food and clothe them from your own garments.'"

وَمِنْ طَرِيقِ مُسْلِمٍ نا هَارُونُ بْنُ مَعْرُوفٍ نا حَاتِمُ بْنُ إسْمَاعِيلَ عَنْ يَعْقُوبَ بْنِ مُجَاهِدٍ عَنْ أَبِي حَزْرَةَ الْقَاصِّ عَنْ عُبَادَةَ بْنِ الْوَلِيدِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ: أَنَّ أَبَا الْيُسْرِ قَالَ لَهُ: إنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ فِي الرَّقِيقِ «أَطْعِمُوهُمْ مِمَّا تَأْكُلُونَ وَأَلْبِسُوهُمْ مِمَّا تَلْبَسُونَ» .

L32590 Abu al-Yusr said, "It would have been easier for me that I gave him worldly possessions than for him to take from my good deeds on the Day of Resurrection." Thus, Abu al-Yusr viewed this matter as an obligatory duty.

قَالَ: أَبُو الْيُسْرِ " فَكَانَ أَنْ أَعْطَيْتُهُ مِنْ مَتَاعِ الدُّنْيَا أَهْوَنَ عَلَيَّ مِنْ أَنْ يَأْخُذَ مِنْ حَسَنَاتِي يَوْمَ الْقِيَامَةِ " فَهَذَا أَبُو الْيُسْرِ يَرَى هَذَا الْأَمْرَ فَرْضًا.

L32591 From the chain of Muslim: Abu al-Tahir Ahmad ibn Amr ibn al-Sarh narrated to me, from Ibn Wahb, who reported to us from Amr ibn al-Harith that Bukayr ibn al-Ashajj narrated to him from al-Ajlan, the client of Fatimah, the daughter of the Prophet, from Abu Hurayrah, from the Messenger of Allah—

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ نا ابْنُ وَهْبٍ أرنا عَمْرُو بْنُ الْحَارِثِ أَنَّ بُكَيْرَ بْنَ الْأَشَجِّ حَدَّثَهُ عَنْ الْعَجْلَانِ مَوْلَى فَاطِمَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ

[11] **Hadith references (L32588):** Sahih al-Bukhari 30.

peace be upon him and his family—that he said: "A slave is entitled to his food and clothing, and he should not be tasked with work beyond his capacity."[12]

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ «لِلْمَمْلُوكِ طَعَامُهُ وَكِسْوَتُهُ وَلَا يُكَلَّفُ مِنْ الْعَمَلِ إلَّا مَا يُطِيقُ» .

L32592 And through the chain of Al-Bukhārī: Ḥafṣ ibn ʿUmar—he is Al-Ḥawḍī—narrated to us: Shuʿbah narrated from Muḥammad ibn Ziyād, who said: I heard Abū Hurayrah report from the Prophet—peace and blessings of Allah be upon him and his household—saying: "When a servant brings food to one of you, let him feed him one or two portions, or one or two morsels, for he has borne its heat and the labor of preparing it."

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا حَفْصُ بْنُ عُمَرَ - هُوَ الْحَوْضِيُّ - نَا شُعْبَةُ عَنْ مُحَمَّدِ بْنِ زِيَادٍ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: «إذَا أَتَى أَحَدَكُمْ خَادِمُهُ بِطَعَامِهِ فَلْيُؤَاكِلْهُ أُكْلَةً أَوْ أُكْلَتَيْنِ، أَوْ لُقْمَةً أَوْ لُقْمَتَيْنِ، فَإِنَّهُ وَلِيَ حَرَّهُ وَعِلَاجَهُ» .

L32593–32595 Abu Muhammad said: These hadiths encompass what we have stated, and the prohibition by the Messenger of Allah—may Allah bless him and his family and grant him peace—against mutilation has been established. As for our statement that if he is absent or refuses, it is to be sold against his property, this is due to the words of Allah, the Almighty and Majestic: "Be upholders of justice" [Quran 4:135]. Every maintenance obligation incumbent upon a Muslim entails a rightful claim in his property. Thus, it is obligatory for us to deliver it to him and fulfill it completely for him. If one cannot achieve this except by selling... If it is movable property or real estate, that property should be sold, in accordance with Allah Almighty's decree: {Allah has permitted trade} [Al-Baqarah 2:275]. Whoever withholds from selling—from the property of the one obligated by a right—what enables the individual or others to secure their rightful claim has disobeyed Allah Almighty's command in His words: {Cooperate in righteousness and piety, and do not cooperate in sin and aggression} [Al-Mā'idah 5:2]. Among the most manifest righteousness is fulfilling the rightful claimant's due, and among the acts of sin and aggression is withholding the right of its claimant.[13]

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ الْأَحَادِيثُ تَجْمَعُ مَا قُلْنَا، وَقَدْ صَحَّ نَهْيُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ الْمُثْلَةِ - وَأَمَّا قَوْلُنَا: إنَّهُ إنْ غَابَ أَوْ أَبَى بِيعَ عَلَيْهِ مِنْ مَالِهِ، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] وَكُلُّ مَا لَزِمَتْ الْمُسْلِمَ نَفَقَتُهُ فَقَدْ وَجَبَ لَهُ حَقٌّ فِي مَالِهِ، فَفَرْضٌ عَلَيْنَا إيصَالُهُ إلَيْهِ، وَتَوْفِيَتُهُ إيَّاهُ، فَإِذَا لَمْ يَقْدِرْ عَلَى ذَلِكَ إلَّا بِبَيْعِ عَرْضٍ أَوْ عَقَارٍ: بِيعَ ذَلِكَ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَأَحَلَّ اللَّهُ الْبَيْعَ} [البقرة: ٢٧٥] فَمَنْ لَمْ يَبِعْ مِنْ مَالِ مَنْ عَلَيْهِ حَقٌّ مَا يُوَصِّلُهُ بِهِ الْعَبْدُ أَوْ غَيْرُهُ إلَى حَقِّهِ، فَقَدْ عَصَى اللَّهَ تَعَالَى فِي قَوْلِهِ عَزَّ وَجَلَّ {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَمِنْ أَبَرِّ الْبِرِّ إيفَاءُ ذِي الْحَقِّ حَقَّهُ، وَمِنْ الْإِثْمِ وَالْعُدْوَانِ مَنْعُ ذِي الْحَقِّ حَقَّهُ.

L32596 As for the sale of a bondservant if his master possesses no wealth to spend on him, nor does the bondservant have work through which he could be hired, or the hiring of the bondservant if he has work that suffices for his upkeep

وَأَمَّا بَيْعُ الْمَمْلُوكِ إنْ لَمْ يَكُنْ لِسَيِّدِهِ مَالٌ يُنْفِقُ مِنْهُ عَلَيْهِ، وَلَا كَانَ بِيَدِ الْعَبْدِ عَمَلٌ يُؤَاجَرُ بِهِ، أَوْ مُؤَاجَرَةُ الْمَمْلُوكِ إنْ كَانَ بِيَدِهِ عَمَلٌ تَقُومُ مِنْهُ نَفَقَتُهُ وَكِسْوَتُهُ، فَلَمَّا قَدْ ذَكَرْنَا قَبْلُ

[12] **Hadith references (L32591):** Sahih Muslim 1662; Mishkat al-Masabih 3344.

[13] **Qur'an references (L32593):** Qur'an 4:135 (An-Nisa); Qur'an 2:275 (Al-Baqarah); Qur'an 5:2 (Al-Ma'idah).

and clothing – then, since we have previously mentioned that Abū Ṭaybah owed a kharāj to his masters with the knowledge of Allah's Messenger (peace be upon him), and that he commanded them to conceal from him a portion of his kharāj.

مِنْ أَنَّ أَبَا طَيْبَةَ كَانَ لِمَوَالِيهِ عَلَيْهِ خَرَاجٌ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَّهُ أَمَرَهُمْ أَنْ يُخْفُوا عَنْهُ مِنْ خَرَاجِهِ.

L32597 We have narrated it through the chain of Muslim: Qutaybah ibn Sa'īd reported to us, Layth—that is, Ibn Sa'd—reported to us from Abū al-Zubayr from Jābir ibn 'Abdullāh, who said: "A man from Banū 'Udhrah manumitted a slave of his through *tadbeer* (posthumous emancipation). When this reached the Messenger of Allah—may Allah bless him and his family and grant him peace—he asked, 'Do you possess any wealth other than him?' The man replied, 'No.' The Prophet said, 'Who will purchase him from me?' Nu'aym ibn al-Naḥḥām bought him for eight hundred dirhams. The Messenger of Allah—may Allah bless him and his family and grant him peace—gave the money to the man and said, 'Begin by providing for yourself first. If anything remains, allocate it to your family. If anything remains after your family, allocate it to your relatives. If anything remains after your relatives, then do thus and thus,' gesturing to those in front of you, to your right, and to your left."[14]

وَرُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «أَعْتَقَ رَجُلٌ مِنْ بَنِي عُذْرَةَ عَبْدًا لَهُ عَنْ دُبُرٍ، فَبَلَغَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: أَلَكَ مَالٌ غَيْرُهُ؟ قَالَ: لَا، قَالَ: مَنْ يَشْتَرِيهِ مِنِّي؟ فَاشْتَرَاهُ نُعَيْمُ بْنُ النَّحَّامِ بِثَمَانِمِائَةِ دِرْهَمٍ فَدَفَعَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَيْهِ وَقَالَ لَهُ: ابْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِي قَرَابَتِكَ فَإِنْ فَضَلَ عَنْ ذِي قَرَابَتِكَ شَيْءٌ فَهَكَذَا وَهَكَذَا يَقُولُ فَبَيْنَ يَدَيْكَ وَعَنْ يَمِينِكَ وَعَنْ شِمَالِكَ» .

L32598 Abu Muhammad said: All that al-Layth ibn Sa'd narrated from Abu al-Zubayr from Jabir was indeed heard by Abu al-Zubayr from Jabir, as narrated to us by Yusuf ibn ʿAbd Allah al-Namari who narrated from ʿAbd Allah ibn Muhammad ibn Yusuf who narrated from Ishaq ibn Muhammad who narrated from al-ʿUqayli who narrated from Muhammad ibn Ismaʿil who narrated from al-Hasan ibn ʿAli al-Hulwani who narrated from Saʿid ibn Abi Maryam who narrated from al-Layth ibn Saʿd, who said: "I visited Abu al-Zubayr and he handed me two books. I asked him: 'Did you hear all of this from Jabir ibn ʿAbd Allah?' He replied: 'Some of it I heard, and some of it was narrated to me.' I said: 'Mark for me everything you heard from him.' So he marked for me on this that I had with me."

قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَا رَوَاهُ اللَّيْثُ بْنُ سَعْدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ فَقَدْ سَمِعَهُ أَبُو الزُّبَيْرِ مِنْ جَابِرٍ كَمَا نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ نا إِسْحَاقُ بْنُ مُحَمَّدٍ نا الْعُقَيْلِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ نا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا اللَّيْثُ بْنُ سَعْدٍ قَالَ: " قَدِمْتُ عَلَى أَبِي الزُّبَيْرِ فَدَفَعَ إِلَيَّ كِتَابَيْنِ فَسَأَلْتُهُ كُلَّ هَذَا سَمِعْتَه مِنْ جَابِرِ بْنِ عَبْدِ اللَّهِ؟ فَقَالَ: مِنْهُ مَا سَمِعْتُ، وَمِنْهُ مَا حُدِّثْتُ، فَقُلْتُ: أَعْلِمْ لِي عَلَى كُلِّ مَا سَمِعْتَ مِنْهُ؟ فَأَعْلِمْ لِي عَلَى هَذَا الَّذِي عِنْدِي ".

L32599–32601 And a group of people said: "Why do you sell the slave when the master cannot afford his own maintenance, the maintenance of his family, or his

وَقَدْ قَالَ قَوْمٌ: لِمَ بِعْتُمْ الْعَبْدَ إذَا أَعْسَرَ السَّيِّدُ بِنَفَقَتِهِ، أَوْ بِنَفَقَةِ أَهْلِهِ، أَوْ بِنَفَقَةِ نَفْسِهِ - وَلَمْ تُطَلِّقُوا الزَّوْجَةَ، وَلَمْ تَعْتِقُوا أُمَّ الْوَلَدِ بِعَدَمِ النَّفَقَةِ؟ قُلْنَا: حَقُّ مَنْ لَهُ النَّفَقَةُ عَلَيْهِ

[14]**Hadith references (L32597):** Sahih Muslim 997a; Mishkat al-Masabih 3392.

personal expenses—yet you do not divorce the wife or free the *umm walad* due to the lack of maintenance?" We replied: "The right of those entitled to maintenance is an obligation upon him to fulfill from his wealth. His male and female slaves are part of his property; therefore, they are sold to settle every rightful claim against him, so that each entitled party receives their due, as the Messenger of Allah—peace and blessings be upon him and his family—commanded." And as the Almighty has said, {Do not deprive people of their due} [Al-A'raf 7:85]. Whoever denies someone their obligatory maintenance has indeed withheld what is rightfully theirs. As for the wife and the umm al-walad, they are not property from his wealth, but their right is upon his wealth. If he has no wealth, their right lies in their own wealth. If they have no wealth, their right is in the share of the poor and needy from charitable funds (ṣadaqāt), by explicit Quranic decree, for they then become among the poor or needy—as discerned through observation. What justification exists here for divorce or manumission? Would those who stubbornly oppose not be fair to themselves?[15]

A legal question regarding the full upkeep for his animal or allowing it to graze.

Issue 1928: He is also compelled to either bear the entire maintenance cost of his animal or release it for grazing if it can subsist on pasture. If he refuses, all of that is sold against his will.

The proof of that is what we have narrated through the chain of al-Bukhārī: Mūsā narrated to us, Abū 'Awānah narrated to us, 'Abd al-Malik narrated to us from Warrād - the scribe of al-Mughīrah ibn Shu'bah - who said: Al-Mughīrah ibn Shu'bah wrote to Mu'āwiyah, "The Prophet of Allah - may Allah bless him and his family and grant him peace - used to forbid vain talk, excessive questioning, and squandering wealth," and Warrād mentioned the ḥadīth.

Abū Muḥammad said: Squandering wealth is unanimously prohibited, sinful, and an act of aggression. Preventing a person from their livelihood - whether

[15] **Qur'an references (L32599):** Qur'an 7:85 (Al-A'raf); Qur'an 11:85 (Hud); Qur'an 26:183 (Ash-Shu'ara).

وَاجِبٌ فِي مَالِهِ وَعَبْدُهُ، وَأَمَتُهُ، مَالٌ مِنْ مَالِهِ فَيُبَاعَانِ فِي كُلِّ حَقٍّ عَلَيْهِ لِيُعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَكَمَا قَالَ عَزَّ وَجَلَّ {وَلا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ} [الأعراف: ٨٥] وَمَنْ مَنَعَ أَحَدًا نَفَقَتَهُ الْوَاجِبَةَ لَهُ فَقَدْ بَخَسَ شَيْئًا هُوَ لَهُ - وَأَمَّا الزَّوْجَةُ وَأُمُّ الْوَلَدِ فَلَيْسَتَا مَالًا مِنْ مَالِهِ لَكِنَّ حَقَّهُمَا فِي مَالِهِ فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ فَحَقُّهُمَا فِي مَالِ أَنْفُسِهِمَا فَإِنْ لَمْ يَكُنْ لَهُمَا مَالٌ فَحَقُّهُمَا فِي سَهْمِ الْمَسَاكِينِ وَالْفُقَرَاءِ مِنْ الصَّدَقَاتِ بِنَصِّ الْقُرْآنِ لِأَنَّهُمَا حِينَئِذٍ مِنْ جُمْلَةِ الْمَسَاكِينِ أَوْ الْفُقَرَاءِ، يُعْلَمُ ذَلِكَ بِالْمُشَاهَدَةِ، فَأَيُّ وَجْهٍ لِلطَّلَاقِ وَالْعِتْقِ هَاهُنَا؟ لَوْ أَنْصَفَ الْمُعَانِدُونَ أَنْفُسَهُمْ؟ .

[مَسْأَلَةٌ نَفَقَة حَيَوَانِهِ كُلِّهِ أَوْ تَسْرِيحِهِ لِلرَّعْيِ]

١٩٢٨ - مَسْأَلَةٌ: وَيُجْبَرُ أَيْضًا عَلَى نَفَقَةِ حَيَوَانِهِ كُلِّهِ أَوْ تَسْرِيحِهِ لِلرَّعْيِ إنْ كَانَ يَعِيشُ مِنْ الْمَرْعَى إنْ أَبَى بِيعَ عَلَيْهِ كُلُّ ذَلِكَ.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى نا أَبُو عَوَانَةَ نا عَبْدُ الْمَلِكِ عَنْ وَرَّادٍ - كَاتِبِ الْمُغِيرَةِ بْنِ شُعْبَةَ - قَالَ: كَتَبَ الْمُغِيرَةُ بْنُ شُعْبَةَ إلَى مُعَاوِيَةَ «أَنَّ نَبِيَّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يَنْهَى عَنْ قِيلَ وَقَالَ، وَكَثْرَةِ السُّؤَالِ، وَإِضَاعَةِ الْمَالِ» وَذَكَرَ الْحَدِيثَ.

through denying their means of subsistence or obstructing its rectification - constitutes waste of their wealth. Therefore, it is obligatory to prevent them from such actions, in accordance with Allah's statement: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" [al-Mā'idah: 2].[16]

قَالَ أَبُو مُحَمَّد: فَإِضَاعَةُ الْمَالِ حَرَامٌ وَإِثْمٌ، وَعُدْوَانٌ، بِلَا خِلَافٍ، وَمَنْعُ الْمَرْءِ حَيَوَانَهُ مِمَّا فِيهِ مَعَاشُهُ، أَوْ إِصْلَاحُهُ إِضَاعَةٌ لِمَالِهِ، فَالْوَاجِبُ مَنْعُهُ مِنْ ذَلِكَ، لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L32606 Kindness to animals is righteousness and piety. Whoever fails to contribute to their proper care has indeed aided in sin and aggression, and has disobeyed God Almighty.

وَالْإِحْسَانُ إِلَى الْحَيَوَانِ بِرٌّ وَتَقْوَى، فَمَنْ لَمْ يُعِنْ عَلَى إِصْلَاحِهِ فَقَدْ أَعَانَ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَعَصَى اللَّهَ تَعَالَى.

L32607 And Abu Hanifah said: His animal may not be sold against his will. However—peace and blessings be upon the Prophet—the owner is merely instructed to treat it kindly and cannot be compelled to do so.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُبَاعُ عَلَيْهِ حَيَوَانُهُ، لَكِنْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُؤْمَرُ بِالْإِحْسَانِ إِلَيْهِ فَقَطْ، وَلَا يُجْبَرُ عَلَى ذَلِكَ.

L32608 Abū Muḥammad said: This is manifest error—as we have mentioned—and some of his followers defended it with another error, stating: "He is not compelled to safeguard his wealth if he intends to squander it, just as he is not compelled to water his palm trees?" Abū Muḥammad said: This is another instance of absurdity. Rather, he is compelled to water the palm trees if neglecting to water them would result in their destruction, and the same applies to crops.

قَالَ أَبُو مُحَمَّد: وَهَذَا ضَلَالٌ ظَاهِرٌ - كَمَا ذَكَرْنَا - وَاحْتَجَّ لَهُ بَعْضُ مُقَلِّدِيهِ بِضَلَالٍ آخَرَ قَالَ: لَا يُجْبَرُ عَلَى حِفْظِ مَالِهِ إِذَا أَرَادَ إِضَاعَتَهُ، كَمَا لَا يُجْبَرُ عَلَى سَقْيِ نَخْلِهِ؟ قَالَ أَبُو مُحَمَّد: وَهَذَا عَجَبٌ آخَرُ، بَلْ يُجْبَرُ عَلَى سَقْيِ النَّخْلِ إِنْ كَانَ فِي تَرْكِ سَقْيِهِ هَلَاكُ النَّخْلِ، وَكَذَلِكَ فِي الزَّرْعِ.

L32609 The proof of that is the statement of Allah, the Exalted and Majestic: "And when he turns away, he goes about the earth to cause corruption therein and destroy crops and progeny. Allah does not love corruption" (Surah Al-Baqarah 2:205).[17]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَإِذَا تَوَلَّى سَعَى فِي الأَرْضِ لِيُفْسِدَ فِيهَا وَيُهْلِكَ الْحَرْثَ وَالنَّسْلَ وَاللَّهُ لا يُحِبُّ الْفَسَادَ} [البقرة: ٢٠٥] .

L32610–32611 Abū Muḥammad said: Depriving animals of what they cannot survive without—whether fodder or grazing—and abandoning the irrigation of fruit trees and crops until they perish, by Allah's explicit textual injunction, is corruption on earth, destruction of tillage, and ruin of progeny. Allah the Exalted does not love this deed. Who is more astray than one who upholds these corrupt assertions that result in the corruption Allah the Exalted does not love?

قَالَ أَبُو مُحَمَّد: فَمَنْعُ الْحَيَوَانِ مَا لَا مَعَاشَ لَهُ إِلَّا بِهِ مِنْ عَلَفٍ أَوْ رَعْيٍ، وَتَرْكُ سَقْيِ شَجَرِ الثَّمَرِ وَالزَّرْعِ حَتَّى يَهْلَكَا - بِنَصِّ اللَّهِ تَعَالَى - فَسَادٌ فِي الْأَرْضِ وَإِهْلَاكٌ لِلْحَرْثِ وَالنَّسْلِ، وَاللَّهُ تَعَالَى لَا يُحِبُّ هَذَا الْعَمَلَ، فَمَنْ أَضَلُّ مِمَّنْ يَنْصُرُ هَذِهِ الْأَقْوَالَ الْفَاسِدَةَ الْعَائِدَةَ بِالْفَسَادِ الَّذِي لَا يُحِبُّهُ اللَّهُ تَعَالَى.

[16] **Qur'an references (L32605):** Qur'an 5:2 (Al-Ma'idah).
[17] **Qur'an references (L32609):** Qur'an 2:205 (Al-Baqarah).

L32612 If it is said: “Do you not compel anyone to cultivate his land if he does not wish to?” We respond: **We only refrain from compelling him, and that is** if he has another source of livelihood sufficient to replace cultivating it—and this is undoubtedly an **improvement** for the land and a **preservation** of it.

فَإِنْ قِيلَ: فَأَنْتُمْ لَا تُجْبِرُونَ أَحَدًا عَلَى زَرْعِ أَرْضِهِ إِذَا لَمْ يُرِدْ ذَلِكَ؟ قُلْنَا: إِنَّمَا نَتْرُكُهُ، وَذَلِكَ إِذَا كَانَ لَهُ مَعَاشٌ غَيْرُهُ يُغْنِي عَنْ زَرْعِهَا - وَهَذَا بِلَا شَكٍّ صَلَاحٌ لِلْأَرْضِ وَإِحْمَامٌ لَهَا.

L32613 If he is not self-sufficient without cultivating it, he is compelled to cultivate it if he is capable, or to give it in return for a portion of its yield. We do not leave him to remain a burden upon the Muslims by squandering his wealth and disobeying Allah, the Mighty and Majestic, through such actions—and in Allah, the Exalted, we seek assistance.

وَأَمَّا إِذَا لَمْ يَكُنْ لَهُ غِنًى عَنْ زَرْعِهَا، فَإِنَّمَا يُجْبِرُهُ عَلَى زَرْعِهَا إِنْ قَدَرَ عَلَى ذَلِكَ، أَوْ عَلَى إِعْطَائِهَا بِجُزْءٍ مِمَّا يَخْرُجُ مِنْهَا، وَلَا نَتْرُكُهُ يَبْقَى عَالَةً عَلَى الْمُسْلِمِينَ بِإِضَاعَتِهِ لِمَالِهِ، وَمَعْصِيَتِهِ لِلَّهِ عَزَّ وَجَلَّ بِذَلِكَ - وَبِاللَّهِ تَعَالَى نَسْتَعِينُ.

[النَّفَقَاتُ عَلَى الْأَقَارِبِ] [مَسْأَلَةٌ الْبَدْءُ بِمَا لَا بُدَّ لَهُ مِنْهُ وَلَا غِنًى عَنْهُ بِهِ مِنْ نَفَقَةٍ وَكِسْوَةٍ]

L32614–32615 **Maintenance of Relatives: The matter entails beginning with what is indispensable and unavoidable for their basic needs—such as [financial] maintenance and clothing.**

L32616 Issue 1929: It is obligatory upon every person - men and women, adults and minors - to first fulfill what is indispensable for themselves: expenses and clothing according to their circumstances and wealth. Thereafter, each person is compelled to provide for those possessing neither wealth nor manual labor to sustain themselves - including parents, grandparents, grandmothers (even if higher in lineage), sons, daughters, their children (even if lower in lineage), brothers, sisters, and wives. All these are equal in the obligation to be maintained, with none prioritized over another - whether the obligated person possesses little or much. Rather, they must share proportionally. If nothing remains beyond his own expenses, he bears no obligation to share with those we have mentioned. If surplus remains after their clothing and expenses, he is compelled to provide for his mahram relatives and inheritors - provided those previously mentioned lack means - including paternal uncles, paternal aunts (even if higher in lineage), maternal uncles, maternal aunts (even if higher in lineage), and brothers’ children (even if lower in lineage).

١٩٢٩ - مَسْأَلَةٌ: فَرْضٌ عَلَى كُلِّ أَحَدٍ مِنْ الرِّجَالِ وَالنِّسَاءِ الْكِبَارِ وَالصِّغَارِ أَنْ يَبْدَأَ بِمَا لَا بُدَّ لَهُ مِنْهُ، وَلَا غِنًى عَنْهُ بِهِ: مِنْ نَفَقَةٍ وَكِسْوَةٍ، عَلَى حَسَبِ حَالِهِ وَمَالِهِ، ثُمَّ بَعْدَ ذَلِكَ يُجْبَرُ كُلُّ أَحَدٍ عَلَى النَّفَقَةِ عَلَى مَنْ لَا مَالَ لَهُ وَلَا عَمَلَ بِيَدِهِ مِمَّا يَقُومُ مِنْهُ عَلَى نَفْسِهِ: مِنْ أَبَوَيْهِ، وَأَجْدَادِهِ، وَجَدَّاتِهِ، وَإِنْ عَلَوْا - وَعَلَى الْبَنِينَ وَالْبَنَاتِ وَبَنِيهِمْ - وَإِنْ سَفَلُوا - وَالْإِخْوَةِ وَالْأَخَوَاتِ وَالزَّوْجَاتِ -: كُلُّ هَؤُلَاءِ يُسَوَّى بَيْنَهُمْ فِي إِيجَابِ النَّفَقَةِ عَلَيْهِمْ، وَلَا يُقَدَّمُ مِنْهُمْ أَحَدٌ عَلَى أَحَدٍ - قَلَّ مَا بِيَدِهِ بَعْدَ مَوْتِهِ أَوْ كَثُرَ - لَكِنْ يَتَوَاسَوْنَ فِيهِ، فَإِنْ لَمْ يَفْضُلْ لَهُ عَنْ نَفَقَةِ نَفْسِهِ شَيْءٌ: لَمْ يُكَلَّفْ أَنْ يُشْرِكَهُ فِي ذَلِكَ أَحَدٌ مِمَّنْ ذَكَرْنَا، فَإِنْ فَضَلَ عَنْ هَؤُلَاءِ - بَعْدَ كِسْوَتِهِمْ وَنَفَقَتِهِمْ - شَيْءٌ أُجْبِرَ عَلَى النَّفَقَةِ عَلَى ذَوِي رَحِمِهِ الْمَحْرَمَةِ وَمَوْرُوثِيهِ، إِنْ كَانَ مَنْ ذَكَرْنَا لَا شَيْءَ لَهُمْ، وَلَا عَمَلَ بِأَيْدِيهِمْ تَقُومُ مُؤْنَتُهُمْ

مِنْهُ، وَهُمْ الْأَعْمَامُ، وَالْعَمَّاتُ - وَإِنْ عَلَوْا - وَالْأَخْوَالُ وَالْخَالَاتُ - وَإِنْ عَلَوْا - وَبَنُو الْإِخْوَةِ - وَإِنْ سَفَلُوا.

L32617 Heirs are those whom no one bars from their inheritance upon the death [of the deceased], whether they are male agnates or a lower-ranking client. If an heir is excluded from inheritance due to another heir, the excluded heir bears no obligation for their [the other heirs'] expenses.

وَالْمَوْرُوثُونَ - هُمْ: مَنْ لَا يُحَجِّبُهُ أَحَدٌ عَنْ مِيرَاثِهِ إنْ مَاتَ، مِنْ عُصْبَةٍ أَوْ مَوْلًى مِنْ أَسْفَلَ، فَإِنْ حُجِبَ عَنْ مِيرَاثِهِ لِوَارِثٍ فَلَا شَيْءَ عَلَيْهِ مِنْ نَفَقَاتِهِمْ.

L32618 Whoever falls ill among the dependents we have mentioned must be provided for, along with those who serve them. None of these individuals are entitled to obligatory maintenance if they can earn a livelihood—even inadequately—through work, except parents, grandfathers, grandmothers, and wives. In such cases, the responsible individual is obligated to protect them from engaging in demeaning work, provided he has the means to do so.

وَمَنْ مَرِضَ مِمَّنْ ذَكَرْنَا كُلِّفَ أَنْ يَقُومَ بِهِمْ وَبِمَنْ يَخْدُمُهُمْ، وَكُلِّ هَؤُلَاءِ فَمَنْ قَدَرَ مِنْهُمْ عَلَى مَعَاشٍ وَتَكَسُّبٍ، - وَإِنْ خَسَّ - فَلَا نَفَقَةَ لَهُمْ، إلَّا الْأَبَوَيْنِ وَالْأَجْدَادِ، وَالْجَدَّاتِ، وَالزَّوْجَاتِ " فَإِنَّهُ يُكَلَّفُ أَنْ يَصُونَهُمْ عَنْ خَسِيسِ الْكَسْبِ - إنْ قَدَرَ عَلَى ذَلِكَ.

L32619–32620 Assets may be sold against him to fulfill all the obligations we mentioned - from what he can do without among his real estate, merchandise, and livestock. None of these may be sold if their sale would cause destruction or loss. Such items are only sold when facing intrinsic necessity where failure to sell them would result in perishing. No one shares with a parent the obligation to provide for their closest children - this duty rests solely on the parent.

وَيُبَاعُ عَلَيْهِ فِي كُلِّ مَا ذَكَرْنَا مَا بِهِ عَنْهُ غِنًى مِنْ عَقَارِهِ وَعُرُوضِهِ وَحَيَوَانِهِ وَلَا يُبَاعُ عَلَيْهِ مِنْ ذَلِكَ مَا إنْ بِيعَ عَلَيْهِ هَلَكَ وَضَاعَ، فَمَا كَانَ هَكَذَا لَمْ يُبَعْ إلَّا فِيمَا فِي نَفْسِهِ إلَيْهِ ضَرُورَةً إنْ، لَمْ يَتَدَارَكْهَا بِذَلِكَ هَلَكَ، وَلَا يُشَارِكُ الْوَالِدَ أَحَدٌ فِي النَّفَقَةِ عَلَى وَلَدِهِ الْأَدْنَيْنَ فَقَطْ.

L32621 This is a matter of disagreement: A group held that no one may be compelled to provide maintenance for another, as narrated by Aḥmad ibn ʿUmar ibn Anas al-ʿUdhurī from Abū al-Harawī from ʿAbd Allāh ibn Aḥmad ibn Ḥammawayh al-Sarakhsī from Ibrāhīm ibn Khuraym from ʿAbd ibn Ḥumayd al-Kāshshī from Qabīṣah from Sufyān al-Thawrī from Ashʿath from al-Shaʿbī, who said: "I have never seen anyone compelled to provide maintenance for another person."

وَهَذَا مَكَانُ اُخْتُلِفَ فِيهِ: فَقَالَتْ طَائِفَةٌ: لَا يُجْبَرُ أَحَدٌ عَلَى نَفَقَةِ أَحَدٍ، كَمَا حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نَا أَبُو الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَّوَيْهِ السَّرَخْسِيُّ نا إبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ الْكَشِّيُّ نا قَبِيصَةُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ، قَالَ: مَا رَأَيْتُ أَحَدًا أَجْبَرَ أَحَدًا عَلَى أَحَدٍ - يَعْنِي عَلَى نَفَقَتِهِ.

L32622 A group of scholars has stated: No one is obligated to provide maintenance except for the father as the closest relative and the mother who bore him from her womb—meaning both parents. Both male and female children are compelled to provide maintenance for them if they are poor. A man, but not a woman, is compelled to provide maintenance for his own male child only

وَقَالَتْ طَائِفَةٌ: لَا يُنْفِقُ أَحَدٌ إلَّا عَلَى الْوَالِدِ الْأَدْنَى، وَالْأُمِّ الَّتِي وَلَدَتْهُ مِنْ بَطْنِهَا هَذَيْنِ - يَعْنِي الْأَبَوَيْنِ - يُجْبَرُ الذَّكَرُ وَالْأُنْثَى مِنْ الْوَلَدِ عَلَى النَّفَقَةِ عَلَيْهِمَا إذَا كَانَا فَقِيرَيْنِ، وَيُجْبَرُ

الرَّجُلُ دُونَ الْمَرْأَةِ عَلَى النَّفَقَةِ عَلَى الْوَلَدِ الْأَدْنَى الذَّكَرِ حَتَّى يَبْلُغَ فَقَطْ، وَعَلَى الْبِنْتِ الدُّنْيَا - وَإِنْ بَلَغَتْ - حَتَّى يُزَوِّجَهَا فَقَطْ.

until he reaches puberty, and for the daughter under his guardianship—even if she has attained puberty—only until her father marries her off.

وَلَا تُجْبَرُ الْأُمُّ عَلَى نَفَقَةِ وَلَدِهَا - وَإِنْ مَاتَ جُوعًا - وَهِيَ فِي غَايَةِ الْغِنَى.

L32623 The mother is not compelled to provide maintenance for her child, even if the child died of hunger, while she is at the height of wealth.

قَالَ: وَلَا يُنْفِقُ عَلَى أَبَوَيْهِ إِلَّا مَا فَضَلَ عَنْ نَفَقَتِهِ وَنَفَقَةِ زَوْجَتِهِ - وَهَذَا قَوْلُ مَالِكٍ وَمَنْ قَلَّدَهُ.

L32624 He said: One should not spend on his parents except from what remains after covering his own expenses and those of his wife—this is the view of Mālik and those who emulate him.

وَقَالَتْ طَائِفَةٌ: يُجْبَرُ عَلَى النَّفَقَةِ عَلَى الْأَبَوَيْنِ وَالْأَجْدَادِ وَالْجَدَّاتِ - وَإِنْ بَعُدُوا - وَعَلَى بَنِيهِ وَبَنَاتِهِ وَمَنْ تَنَاسَلَ مِنْهُمْ - وَإِنْ سَفَلَ - وَلَا يُجْبَرُ عَلَى نَفَقَةِ أَحَدٍ غَيْرِ مَنْ ذَكَرْنَا - وَهُوَ قَوْلُ الشَّافِعِيِّ وَمَنْ قَلَّدَهُ - وَقَدْ أَشَارَ فِي بَعْضِ كَلَامِهِ إِلَى أَنَّ الْمَرْأَةَ لَا تُجْبَرُ عَلَى نَفَقَةِ أَبٍ، وَلَا أُمٍّ، وَلَا غَيْرِهِمَا.

L32625 A group has stated that one is compelled to provide financial support for parents, grandfathers, and grandmothers—even if distantly related—as well as for his sons, daughters, and their descendants, even if remote in lineage. However, one is not compelled to support anyone other than those we have mentioned. This is the opinion of al-Shāfiʿī and his adherents. In some of his writings, he indicated that a woman is not compelled to provide financial support for her father, mother, or anyone besides them.

وَقَالَتْ طَائِفَةٌ: لَا يُجْبَرُ أَحَدٌ إِلَّا عَلَى كُلِّ ذِي رَحِمٍ مَحْرَمَةٍ وَهُوَ قَوْلُ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ إِلَّا أَنَّهُ تَنَاقَضَ تَنَاقُضًا شَنِيعًا، قَالَ: يُجْبَرُ الرَّجُلُ عَلَى النَّفَقَةِ عَلَى أَوْلَادِهِ الصِّغَارِ الْمُحْتَاجِينَ خَاصَّةً - ذُكُورًا كَانُوا أَوْ إِنَاثًا - فَإِنْ كَانُوا كِبَارًا مُحْتَاجِينَ أُجْبِرَ عَلَى نَفَقَةِ الْإِنَاثِ مِنْهُمْ وَلَمْ يُجْبَرْ عَلَى نَفَقَةِ الذُّكُورِ إِلَّا أَنْ يَكُونُوا زَمْنَى.

L32626 A group held the opinion: No one is compelled [to provide maintenance] except for close blood relatives. This is the view of Ḥammād ibn Abī Sulaymān, and Abū Ḥanīfah also adopts it—though he contradicted himself in a glaring contradiction. He asserted: A man is compelled to financially support his minor children in need specifically, regardless of gender. However, if they are adult and in need, he is compelled to support the females among them but not the males unless they are incapacitated.

فَإِنْ كَانُوا زَمْنَى مُحْتَاجِينَ أُجْبِرَ عَلَى النَّفَقَةِ عَلَيْهِمْ، وَكَذَلِكَ يُجْبَرُ عَلَى نَفَقَةِ الصِّغَارِ الْمُحْتَاجِينَ مِنْ الذُّكُورِ وَالْإِنَاثِ وَالْكِبَارِ وَالْفَقِيرَاتِ مِنْ النِّسَاءِ خَاصَّةً - وَإِنْ لَمْ يَكُنَّ زَمِنَاتٍ - وَالْكِبَارِ الْمُحْتَاجِينَ إذَا كَانُوا زَمْنَى، وَإِلَّا فَلَا - كُلُّ ذَلِكَ مِنْ ذَوِي رَحِمِهِ الْمَحْرَمَةِ إذَا كَانَ وَارِثًا لَهُمْ خَاصَّةً.

L32627–32629 If they are chronically ill or needy, he is compelled to financially support them. Similarly, he is compelled to support needy minors among males and females, the elderly, and specifically poor women—even if they are not... Chronically ill women and the elderly in need (if they are chronically ill; otherwise not)—these rulings apply to his mahram blood relatives if he is specifically their heir.

وَلَا يُجْبَرُ عَلَى نَفَقَةِ ذِي رَحِمٍ مَحْرَمَةٍ إذَا لَمْ يَكُنْ وَارِثًا لَهُ، وَلَا يُجْبَرُ عَلَى نَفَقَةِ

L32630 He is not compelled to provide maintenance for a mahram relative if he is not an heir of that relative, nor is he compelled to provide maintenance for

the one from whom he inherits if the deceased is not a mahram relative of his.

وَلَا يُجْبَرُ عَلَى نَفَقَةِ ذِي رَحِمٍ مَحْرَمَةٍ إذَا لَمْ يَكُنْ هُوَ وَارِثًا لَهُ، وَلَا عَلَى نَفَقَةِ مَوْرُوثِهِ إذَا لَمْ يَكُنْ ذَا رَحِمٍ مَحْرَمَةٍ مِنْهُ.

L32631 He said: No one shares the parent's obligation to provide maintenance for their child, and no one shares the child's obligation to provide maintenance for their parents. If there is a group of legal heirs who are mahram relatives by blood among those we previously stated are compelled to provide maintenance, they are all compelled to provide maintenance for him in proportion to their inheritance shares from him.

قَالَ: وَلَا يُشَارِكُ الْوَالِدَ فِي النَّفَقَةِ عَلَى وَلَدِهِ أَحَدٌ، وَلَا يُشَارِكُ الْوَلَدَ فِي النَّفَقَةِ عَلَى وَالِدَيْهِ أَحَدٌ، فَإِنْ كَانَ جَمَاعَةٌ وَارِثُونَ ذَوُو رَحِمٍ مَحْرَمَةٍ مِمَّنْ ذَكَرْنَا أَنَّهُ يُجْبَرُ عَلَى النَّفَقَةِ أُجْبِرُوا كُلُّهُمْ عَلَى النَّفَقَةِ عَلَيْهِ عَلَى قَدْرِ مَوَارِيثِهِمْ مِنْهُ.

L32632 They said: If their religions differ, none of them is obligated to provide financial maintenance for someone whose religion conflicts with theirs, except for the child having a right upon his parents who differ from him in religion, and except for the non-Muslim father being obligated to provide for his young children specifically, those who became Muslim through their mother's conversion to Islam.

قَالُوا: فَإِنْ اخْتَلَفَتْ أَدْيَانُهُمْ لَمْ يَلْزَمْ أَحَدًا مِنْهُمْ نَفَقَةٌ عَلَى مَنْ دِينُهُ خِلَافُ دِينِهِ إلَّا الْوَلَدَ عَلَى أَبَوَيْهِ الْمُخَالِفِينَ لَهُ فِي دِينِهِ، وَإِلَّا الْوَالِدَ الْكَافِرَ عَلَى نَفَقَةِ أَوْلَادِهِ الصِّغَارِ خَاصَّةً الَّذِينَ صَارُوا مُسْلِمِينَ بِإِسْلَامِ أُمِّهِمْ.

L32633 He said: A poor person is not compelled to provide maintenance for anyone except that a father is compelled to maintain his minor children, and except that a husband is compelled to maintain his wife, and except that a poor man and a poor woman are compelled to maintain their poor mother. He said: A poor son is not compelled to maintain his poor father unless the father is disabled, in which case he is then compelled to provide maintenance for him.

قَالَ: وَلَا يُجْبَرُ فَقِيرٌ عَلَى أَحَدٍ إلَّا الْوَالِدُ عَلَى أَوْلَادِهِ الصِّغَارِ، وَإِلَّا الزَّوْجُ عَلَى نَفَقَةِ زَوْجَتِهِ، وَإِلَّا الرَّجُلُ الْفَقِيرُ، وَالْمَرْأَةُ الْفَقِيرَةُ عَلَى نَفَقَةِ أُمِّهِمَا الْفَقِيرَةِ - قَالَ: وَلَا يُجْبَرُ الِابْنُ الْفَقِيرُ عَلَى نَفَقَةِ أَبِيهِ الْفَقِيرِ إلَّا أَنْ يَكُونَ الْأَبُ زَمِنًا فَيُجْبَرُ حِينَئِذٍ عَلَى النَّفَقَةِ عَلَيْهِ.

L32634 Abū Muḥammad said: I wish I knew how compelling a poor person to provide for another's maintenance is possible—truly, this is astonishing! Then we would have wished to learn the threshold they establish for poverty relative to the wealth that obligates maintenance for those they previously mentioned. Then they forgot their own statements and declared: If he has a wealthy maternal uncle and a wealthy paternal cousin, while being a chronically ill poor person or a healthy minor in poverty—then his maintenance falls upon his maternal uncle rather than his paternal cousin.

قَالَ أَبُو مُحَمَّد: لَيْتَ شِعْرِي كَيْفَ يُمْكِنُ إجْبَارُ فَقِيرٍ عَلَى نَفَقَةِ أَحَدٍ، إنَّ هَذَا لَعَجَبٌ؟ ثُمَّ لَوَدِدْنَا أَنْ نَعْرِفَ حَدَّ هَذَا الْفَقْرِ عِنْدَهُمْ مِنْ الْغِنَى الَّذِي يُوجِبُونَ بِهِ النَّفَقَةَ عَلَى مَنْ ذَكَرُوا قَبْلُ، ثُمَّ نَسُوا مَا قَالُوا، فَقَالُوا: إنْ كَانَ لَهُ خَالٌ، وَابْنُ عَمٍّ مُوسِرَانِ، وَهُوَ فَقِيرٌ زَمِنٌ، أَوْ صَغِيرٌ صَحِيحٌ فَقِيرٌ: فَنَفَقَتُهُ عَلَى خَالِهِ دُونَ ابْنِ عَمِّهِ.

L32635 They said: If there is a man who is indigent and permanently disabled, having an indigent daughter, along with a full brother, a paternal half-brother, and a

maternal half-brother—all of whom are affluent—then his maintenance and his daughter's maintenance are the responsibility of the full brother alone.

قَالُوا: فَإِنْ كَانَ رَجُلٌ مُعْسِرٌ زَمِنٌ وَلَهُ ابْنَةٌ مُعْسِرَةٌ، وَلَهُ أَخٌ شَقِيقٌ، وَأَخٌ لِأَبٍ، وَأَخٌ لِأُمٍّ مُوسِرُونَ: فَنَفَقَتُهُ وَنَفَقَةُ ابْنَتِهِ عَلَى الشَّقِيقِ فَقَطْ.

L32636 They said: If in place of the daughter there were an insolvent, chronically ill, elderly son, the father's maintenance expense would entail five-sixths of it on his full brother, and one-sixth of it on his maternal half-brother, with none of this obligation falling upon his paternal half-brother. The son's maintenance expense would rest solely on his paternal uncle (the father's full brother).

قَالُوا: فَلَوْ كَانَ مَكَانَ الِابْنَةِ ابْنٌ مُعْسِرٌ زَمِنٌ كَبِيرٌ كَانَتْ نَفَقَةُ الْأَبِ خَمْسَةَ أَسْدَاسِهَا عَلَى شَقِيقِهِ، وَسُدُسُهَا عَلَى أَخِيهِ لِلْأُمِّ وَلَا شَيْءَ مِنْ ذَلِكَ عَلَى أَخِيهِ لِلْأَبِ وَكَانَتْ نَفَقَةُ الِابْنِ عَلَى عَمِّهِ شَقِيقِ أَبِيهِ فَقَطْ.

L32637 Marvel at this folly! They grant no inheritance to the father, the son, or any mahram relative. They claim: If a chronically ill pauper has a wealthy father and a wealthy son, his financial maintenance is the son's obligation, not the father's—yet their arguments are lengthy, incoherent, and muddled; what we have mentioned suffices to clarify the invalidity of their position. We ask God, the Exalted, for protection [from error].

فَاعْجَبُوا لِهَذَا الْهَوَسِ؟ وَهُمْ لَا يُوَرِّثُونَ الْأَبَ، وَلَا الِابْنَ وَكُلَّ ذِي رَحِمٍ مَحْرَمَةٍ، قَالُوا: وَمَنْ كَانَ فَقِيرًا زَمِنًا وَلَهُ أَبٌ مُوسِرٌ، وَابْنٌ مُوسِرٌ، فَنَفَقَتُهُ عَلَى الِابْنِ دُونَ الْأَبِ - وَلَهُمْ تَخْلِيطٌ كَثِيرٌ طَوِيلٌ غَثٌّ، يَكْفِي مِنْ بَيَانِ سُقُوطِهِ مَا ذَكَرْنَا - وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ.

L32638–32639 A group held an opinion similar to ours, as narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who reported: ʿAmr ibn Shuʿayb informed me that Saʿīd ibn al-Musayyab informed him that ʿUmar ibn al-Khaṭṭāb assigned the paternal cousins of Manfūs as kalālah, stipulating maintenance for him.

وَقَالَتْ طَائِفَةٌ: بِمِثْلِ قَوْلِنَا - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ شُعَيْبٍ أَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ أَخْبَرَهُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ وَقَفَ بَنِي عَمِّ مَنْفُوسٍ كَلَالَةً بِالنَّفَقَةِ عَلَيْهِ.

L32640 From the chain of Ismāʿīl ibn Isḥāq: ʿAlī—that is, the son of al-Madīnī—reported to us, Sufyān ibn ʿUyaynah reported to us, from Ibn Jurayj, from ʿAmr ibn Shuʿayb, from Saʿīd ibn al-Musayyib: that ʿUmar ibn al-Khaṭṭāb obligated the male agnates responsible for a minor to provide for him, specifying that this duty fell upon the men, not the women.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيٌّ - هُوَ ابْنُ الْمَدِينِيِّ - نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ حَبَسَ عُصْبَةَ صَبِيٍّ أَنْ يُنْفِقُوا عَلَيْهِ الرِّجَالُ دُونَ النِّسَاءِ.

L32641 From the path of Ismāʿīl ibn Isḥāq al-Qāḍī: Abū Bakr ibn Abī Shaybah narrated to us, Ḥumayd ibn ʿAbd al-Raḥmān (he is al-Ruʾāsī) narrated to us, from al-Ḥasan (the son of Ḥayy) from Muṭarrif (the son of Ṭarīf) from Ismāʿīl (the son of ʿUlayyah) from al-Ḥasan al-Baṣrī, from Zayd ibn Thābit, who said: "In the case of an uncle and a mother [as heirs], the uncle receives

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ هُوَ الرُّؤَاسِيُّ عَنِ الْحَسَنِ - هُوَ ابْنُ حَيٍّ - عَنْ مُطَرِّفٍ - هُوَ ابْنُ طَرِيفٍ - عَنْ إِسْمَاعِيلَ

according to his inheritance share, and the mother receives according to her inheritance share."

- هُوَ ابْنُ عُلَيَّةَ - عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: إذَا كَانَ عَمٌّ وَأُمٌّ؟ فَعَلَى الْعَمِّ بِقَدْرِ مِيرَاثِهِ وَعَلَى الْأُمِّ بِقَدْرِ مِيرَاثِهَا.

L32642 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Muḥammad ibn Sīrīn: ʿAbd Allāh ibn ʿUtbah ibn Masʿūd decreed that a child's maintenance should be drawn from their own wealth. He said to the heir: "If they had no wealth, we would take from you the maintenance—do you not observe that He, the Exalted, says: {And upon the heir is a duty like that} [Al-Baqarah: 233]?"[18]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ عَبْدَ اللَّهِ بْنَ عُتْبَةَ بْنِ مَسْعُودٍ جَعَلَ نَفَقَةَ الصَّبِيِّ مِنْ مَالِهِ، وَقَالَ لِوَارِثِهِ: أَمَّا إنَّهُ لَوْ لَمْ يَكُنْ لَهُ مَالٌ أَخَذْنَاك بِنَفَقَةٍ - أَلَا تَرَى أَنَّهُ تَعَالَى يَقُولُ: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

L32643 From the path of Ismāʿīl: From Musaddad, from ʿAbdullāh ibn Yazīd - he is the Muqri (the Quran reciter) - from Ḥaywah ibn Shurayḥ, from Jaʿfar ibn Rabīʿah, that Qabīṣah ibn Dhuʾayb said regarding the statement of Allah, the Mighty and Majestic, {And upon the heir is the like of that} [Al-Baqarah: 233]: "The breastfeeding of the child"—From Aḥmad ibn ʿUmar ibn Anas, from Abū Dharr al-Harawī, from ʿAbdullāh ibn Aḥmad ibn Ḥamawayh, from Ibrāhīm ibn Khuraym, from ʿAbd ibn Ḥumayd, from Rawḥ - he is Ibn ʿUbādah - from Hishām ibn Ḥassān, from al-Ḥasan al-Baṣrī, who said: "If the child has no wealth, his heir is responsible for his upkeep. Allah, the Mighty and Majestic, said {And upon the heir is the like of that} [Al-Baqarah: 233]."[19]

وَمِنْ طَرِيقِ إسْمَاعِيلَ نا مُسَدَّدٌ نا عَبْدُ اللَّهِ بْنُ يَزِيدَ - هُوَ الْمُقْرِي - نا حَيْوَةُ بْنُ شُرَيْحٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ أَنَّ قَبِيصَةَ بْنَ ذُؤَيْبٍ قَالَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] قَالَ: رَضَاعُ الصَّبِيِّ -: نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ نا إبْرَاهِيمُ بْنُ خُرَيْمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا رَوْحٌ - هُوَ ابْنُ عُبَادَةَ - عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ الْحَسَنِ الْبَصْرِيِّ، قَالَ: نَفَقَةُ الصَّبِيِّ إذَا لَمْ يَكُنْ لَهُ مَالٌ عَلَى وَارِثِهِ، قَالَ اللَّهُ عَزَّ وَجَلَّ {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

L32644 And through him (the narrator), it reaches Rawh ibn Ubada, from Ibn Jurayj: I said to Aṭāʾ, "Is the heir of the child compelled—even if he refuses—to pay the wage of his wet nurse when the child has no wealth?" He replied, "Would you abandon him to perish?"

وَبِهِ إلَى رَوْحِ بْنِ عُبَادَةَ عَنْ ابْنِ جُرَيْجٍ قُلْت: لِعَطَاءٍ أَيُجْبَرُ وَارِثُ الصَّبِيِّ - وَإِنْ كَرِهَ - بِأَجْرِ مُرْضِعَتِهِ إذَا لَمْ يَكُنْ لِلصَّبِيِّ مَالٌ؟ فَقَالَ: أَفَتَدَعُهُ يَمُوتُ.

L32645 And via the chain of Abd al-Razzaq from Ibn Jurayj: I asked Ata about "{And upon the heir is a duty like that [of the father]}" [Al-Baqarah: 233]. He replied: "It refers to the heir of the newborn; the same applies to him, meaning what has been mentioned."[20]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْتُ لِعَطَاءٍ {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] فَقَالَ عَطَاءٌ: هُوَ وَارِثُ الْمَوْلُودِ، عَلَيْهِ مِثْلُ ذَلِكَ، أَيْ مِثْلُ مَا ذُكِرَ.

[18] **Qur'an references (L32642):** Qur'an 2:233 (Al-Baqarah).
[19] **Qur'an references (L32643):** Qur'an 2:233 (Al-Baqarah).
[20] **Qur'an references (L32645):** Qur'an 2:233 (Al-Baqarah).

وَمِنْ طَرِيقِ إِسْمَاعِيلَ نَا مُسَدَّدٌ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانِ - عَنْ أَشْعَثَ - هُوَ ابْنُ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ - عَنِ الْحَسَنِ الْبَصْرِيِّ فِي قَوْلِهِ تَعَالَى: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] قَالَ: النَّفَقَةُ

L32646–32647 Through the chain of Ismāʿīl: Musaddad narrated to us; Yahyā narrated to us—he is Ibn Saʿīd al-Qaṭṭān—from Ashʿath—he is Ibn ʿAbd al-Malik al-Ḥumrānī—from al-Ḥasan al-Baṣrī regarding the Exalted's saying: {And upon the heir is the same obligation} [Al-Baqarah: 233]. He said, "The maintenance."[21]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ - هُوَ الْمُقَدَّمِيُّ - ثنا حَسَّانُ بْنُ إِبْرَاهِيمَ عَنْ إِبْرَاهِيمَ الصَّائِغِ أَنَّهُ سَأَلَ عَطَاءً عَنْ يَتِيمٍ لَهُ عُصْبَةٌ أَغْنِيَاءُ أَيُجْبَرُونَ عَلَى أَنْ يُنْفِقُوا عَلَيْهِ؟ قَالَ عَطَاءٌ: نَعَمْ، يُنْفِقُونَ عَلَيْهِ بِقَدْرِ مَا كَانُوا يَرِثُونَهُ لَوْ مَاتَ وَتَرَكَ مَالًا.

L32648 From the chain of Ismāʿīl ibn Isḥāq: Muḥammad ibn Abī Bakr (Al-Muqaddamī) narrated to us via Ḥassān ibn Ibrāhīm, from Ibrāhīm al-Ṣā'igh (the Goldsmith), that he asked ʿAṭā' about an orphan who has wealthy male agnates: "Are they compelled to provide for him?" ʿAṭā' said: "Yes—they must spend on him according to the share they would inherit from him if the orphan had died leaving wealth."

وَمِنْ طَرِيقِ عَبْدِ بْنِ حُمَيْدٍ أرنا سَعِيدُ بْنُ عَامِرٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: يُجْبَرُ الرَّجُلُ إِذَا كَانَ مُوسِرًا عَلَى نَفَقَةِ أَخِيهِ إِذَا كَانَ مُعْسِرًا -: وَنَا 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 أَبُو عَوَانَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ أَصْحَابُنَا يَقُولُونَ: إِذَا كَانَ الْمَالُ كَثِيرًا فَيُنْفَقُ عَلَى الصَّغِيرِ مِنْ نَصِيبِهِ - يَعْنِي مِنَ الْمِيرَاثِ - إِنْ كَانَ الْمَالُ قَلِيلًا أُنْفِقَ عَلَى الصَّغِيرِ مِنْ جَمِيعِ الْمَالِ.

L32649 And via ʿAbd ibn Ḥumayd: Saʿīd ibn ʿĀmir narrated to us from Hishām al-Dastawā'ī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī, who said: A man is obligated, if he is wealthy, to provide maintenance for his brother if he is impoverished. And ʿAbdullāh ibn Rabīʿ narrated to us: ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us, Aḥmad ibn Khālid narrated to us, ʿAlī ibn ʿAbd al-ʿAzīz narrated to us, al-Ḥajjāj ibn al-Minhāl narrated to us, Abū ʿAwānah narrated to us from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī, who said: Our companions used to say: If the wealth is abundant, maintenance for the minor is to be provided from his share—meaning from the inheritance—but if the wealth is scarce, maintenance for the minor is to be provided from the entirety of the wealth.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا مُسَدَّدٌ نا هُشَيْمٌ نا مَنْصُورٌ عَنْ قَتَادَةَ، قَالَ: يُجْبَرُ كُلُّ إِنْسَانٍ مِنْهُمْ بِقَدْرِ مَا يَرِثُ - يَعْنِي فِي النَّفَقَةِ عَلَى الْمَوْرُوثِ -.

L32650 From the chain of Ismāʿīl ibn Isḥāq: Musaddad narrated to us, Hushaym narrated to us, Mansūr narrated from Qatādah, who said: Each heir is financially obligated in proportion to their inheritance share—meaning regarding expenditures for the deceased.

وَبِهِ إِلَى إِسْمَاعِيلَ نا عَبْدُ الْوَاحِدِ بْنُ غِيَاثٍ نَا أَبُو عَوَانَةَ عَنْ إِسْمَاعِيلَ بْنِ سَالِمٍ عَنِ الشَّعْبِيِّ قَالَ: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] قَالَ: رَضَاعُ الصَّغِيرِ.

L32651 Through him, the chain continues to Ismāʿīl: ʿAbd al-Wāḥid ibn Ghiyāth narrated to us: Abū ʿAwānah narrated to us from Ismāʿīl ibn Sālim from al-Shaʿbī, who said: *{"And upon the heir is a duty like that"}* [Al-Baqarah:233]. Al-Shaʿbī said: "This refers to the breastfeeding of the young child."[22]

[21] **Qur'an references (L32647):** Qur'an 2:233 (Al-Baqarah).
[22] **Qur'an references (L32651):** Qur'an 2:233 (Al-Baqarah).

L32652 From the chain of Ismāʿīl ibn Isḥāq: ʿAlī ibn ʿAbdullāh and Ibn al-Madīnī narrated to us from Sufyān ibn ʿUyaynah, from Ibn Abī Najīḥ, from Mujāhid concerning the verse {And upon the heir is the like of that} [Al-Baqarah: 233]: "The heir bears the same obligation as was upon his father—to arrange for a wet nurse for the child."[23]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ، وَابْنُ الْمَدِينِيِّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] ، عَلَى الْوَارِثِ مِثْلُ مَا عَلَى أَبِيهِ أَنْ يَسْتَرْضِعَ لَهُ.

L32653 And through the chain of Al-Hajjaj ibn Al-Minhal, Abu 'Awanah narrated from Mansur ibn Al-Mu'tamir from Ibrahim An-Nakha'i from Judge Shurayh: that he ruled the breastfeeding of a child whose father dies must be taken from all his wealth.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ شُرَيْحٍ الْقَاضِي: أَنَّهُ قَالَ فِي رَضَاعِ الصَّبِيِّ يَمُوتُ أَبُوهُ أَنَّهُ مِنْ جَمِيعِ الْمَالِ.

L32654 And via the chain of Ibn Wahb from Al-Layth ibn Saʿd from Khalīd ibn Yazīd, that Zayd ibn Aslam said regarding the statement of Allah, the Almighty: {And upon the heir is the like of that} [Al-Baqarah: 233], he said: "It is the guardian of the deceased."[24]

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنِ اللَّيْثِ بْنِ سَعْدٍ عَنْ خَالِدِ بْنِ يَزِيدَ أَنَّ زَيْدَ بْنَ أَسْلَمَ قَالَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] قَالَ: هُوَ وَلِيُّ الْمَيِّتِ.

L32655–32656 Abu Muhammad said: So these are Umar ibn al-Khattab and Zayd ibn Thabit. No dissenter among the Companions (may Allah be pleased with them) is known regarding them.

قَالَ أَبُو مُحَمَّدٍ فَهَؤُلَاءِ عُمَرُ بْنُ الْخَطَّابِ، وَزَيْدُ بْنُ ثَابِتٍ لَا يُعْرَفُ لَهُمَا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ.

L32657 And among the Followers: Abdullah ibn Utbah ibn Mas'ud, Qabisa ibn Dhu'ayb, al-Hasan al-Basri, Ata ibn Abi Rabah, Ibrahim al-Nakha'i, the companions of Ibn Mas'ud, Qatadah, al-Sha'bi, Mujahid, Shurayh and Zayd ibn Aslama.

وَمِنَ التَّابِعِينَ - عَبْدُ اللَّهِ بْنُ عُتْبَةَ بْنِ مَسْعُودٍ، وَقَبِيصَةُ بْنُ ذُؤَيْبٍ، وَالْحَسَنُ الْبَصْرِيُّ، وَعَطَاءُ بْنُ أَبِي رَبَاحٍ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَأَصْحَابُ ابْنِ مَسْعُودٍ، وَقَتَادَةُ، وَالشَّعْبِيُّ، وَمُجَاهِدٌ، وَشُرَيْحٌ وَزَيْدُ بْنُ أَسْلَمَ.

L32658 And it is the view of al-Ḍaḥḥāk ibn Muzāḥim, Sufyān al-Thawrī, and ʿAbd al-Razzāq.

وَهُوَ قَوْلُ الضَّحَّاكِ بْنِ مُزَاحِمٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَعَبْدِ الرَّزَّاقِ.

L32659 Abu Muhammad said: As for Abu Hanifa's statement, it is utterly corrupt, for they are numerous frivolous classifications not mandated by the Quran, Sunnah, any weak narration, analogy, precautionary principle, sound rational consideration, nor did anyone before him assert it.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهَا تَقَاسِيمُ كَثِيرَةٌ سَخِيفَةٌ لَمْ يُوجِبْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا احْتِيَاطٌ، وَلَا مَعْقُولٌ، وَلَا قَالَ بِهَا أَحَدٌ قَبْلَهُ.

[23] **Qur'an references (L32652):** Qur'an 2:233 (Al-Baqarah).
[24] **Qur'an references (L32654):** Qur'an 2:233 (Al-Baqarah).

L32660 As for the opinion of Mālik—we do not know of it from anyone before him either, nor do we know of any evidence being cited for it from what we have mentioned, except that an obfuscator might argue by claiming: "Consensus has been established regarding the obligation of nafaqah for parents and minor dependent children, while disagreement exists concerning other cases."

وَأَمَّا قَوْلُ مَالِكٍ - فَمَا نَعْلَمُهُ أَيْضًا عَنْ أَحَدٍ قَبْلَهُ، وَلَا نَعْلَمُهُ يُحْتَجُّ لَهُ بِشَيْءٍ مِمَّا ذَكَرْنَا إِلَّا أَنْ يُمَوِّهَ مُمَوِّهٌ بِأَنْ يَقُولَ: قَدْ أُجْمِعَ عَلَى وُجُوبِ النَّفَقَةِ عَلَى الْأَبَوَيْنِ وَالْوَلَدِ الصِّغَارِ وَاخْتُلِفَ فِيمَا عَدَا ذَلِكَ.

L32661 Abū Muḥammad said: This is invalid, for we have already cited the narration from al-Shaʿbī that no one can be compelled to financially sustain another. Moreover, anyone who claims to have definitively established consensus is lying about the entire Ummah. Furthermore, this is an opinion unsupported by the Qurʾān or the Sunnah – and there is no difference regarding al-Shāfiʿī's opinion.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، لِأَنَّا قَدْ ذَكَرْنَا الرِّوَايَةَ عَنْ الشَّعْبِيِّ: أَنَّهُ لَا يُجْبَرُ أَحَدٌ عَلَى نَفَقَةِ أَحَدٍ، مَعَ أَنَّهُ لَا يَدَّعِي ضَبْطَ الْإِجْمَاعِ إِلَّا كَاذِبٌ عَلَى الْأُمَّةِ كُلِّهَا، مَعَ أَنَّهُ قَوْلٌ لَا يُؤَيِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ - وَكَذَلِكَ قَوْلُ الشَّافِعِيِّ وَلَا فَرْقَ.

L32662 As for the statement of Ḥammād, he restricted [the ruling] to mahram relatives while excluding non-mahram heirs without any evidence.

وَأَمَّا قَوْلُ حَمَّادٍ فَإِنَّهُ خَصَّ ذَوِي الرَّحِمِ الْمَحْرَمَةِ دُونَ الْمَوْرُوثِ بِلَا دَلِيلٍ.

L32663 There remains nothing but our opinion—which is the opinion of the majority of the Salaf—for we have found Allah, the Exalted, saying: *"And give the kinsman his due, and the needy, and the wayfarer"* [Al-Isrāʾ: 26].[25]

فَلَمْ يَبْقَ إِلَّا قَوْلُنَا، وَهُوَ قَوْلُ جُمْهُورِ السَّلَفِ، فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَآتِ ذَا الْقُرْبَى حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ} [الإسراء: ٢٦] .

L32664 The report we narrated earlier via Aḥmad ibn Shuʿayb, from Quṭaybah, from al-Layth ibn Saʿd, from Abū al-Zubayr, from Jābir, who said: The Messenger of Allāh—peace be upon him—said: "Begin by providing for your own needs. If anything remains, give to your family. If anything remains after your family, give to your relatives. If anything remains after your relatives, then to others in need successively."[26]

وَالْخَبَرُ الَّذِي رُوِّينَاهُ قَبْلُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ عَنْ قُتَيْبَةَ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «ابْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ، فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِي قَرَابَتِكَ فَإِنْ فَضَلَ عَنْ ذِي قَرَابَتِكَ شَيْءٌ فَهَكَذَا وَهَكَذَا» .

L32665 Allah, the Almighty, the Majestic, ordained a due for close kin, the needy, and the wayfarer, and the Messenger of Allah (peace and blessings of Allah be upon him and his household) obligated the giving of gifts to relatives.

فَأَوْجَبَ اللَّهُ عَزَّ وَجَلَّ حَقًّا لِذِي الْقُرْبَى وَلِلْمَسَاكِينِ، وَابْنِ السَّبِيلِ - وَأَوْجَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْعَطِيَّةَ لِلْأَقَارِبِ.

L32666 If the opponent says, "Is the duty owed to him to uphold kinship ties and avoid cutting them off?"

فَإِنْ قَالَ الْمُخَالِفُ: حَقُّهُ الصِّلَةُ وَتَرْكُ الْقَطِيعَةِ؟

[25] **Qur'an references (L32663):** Qur'an 17:26 (Al-Isra).
[26] **Hadith references (L32664):** Sahih Muslim 997a; Mishkat al-Masabih 3392.

قُلْنَا: نَعَمْ، هَذَا حَقُّهُ، وَالصِّلَةُ: هِيَ أَنْ لَا يَدَعَهُ يَسْأَلَ وَيَتَكَفَّفَ، أَوْ يَمُوتَ جَوْعًا أَوْ بَرْدًا، أَوْ ضَيَاعًا، أَوْ يُضْحِي لِلشَّمْسِ وَالْمَطَرِ وَالرِّيحِ وَالْبَرْدِ، وَهُوَ ذُو فَضْلَةٍ مِنْ مَالٍ هُوَ عَنْهَا فِي غِنًى، وَلَيْسَ فِي الْقَطِيعَةِ شَيْءٌ أَكْثَرَ مِنْ أَنْ يَدَعَهُ كَمَا ذَكَرْنَا.

We said: Yes, this is his rightful due, and upholding kinship ties requires preventing him from begging and seeking alms, letting him die from hunger or cold, perish from destitution, or be exposed to sun, rain, wind, or cold - while he possesses surplus wealth he does not need. There is no greater severance of ties than abandoning him in the manner we have described.

فَإِنْ قَالُوا: إِنَّهُ قَدْ قَرَنَ ذَوِي الْقُرْبَى بِالْمَسَاكِينِ، وَابْنِ السَّبِيلِ؟ قُلْنَا: نَعَمْ، وَحَقُّ الْمَسَاكِينِ عَلَى كُلِّ مَنْ بِحَضْرَتِهِمْ أَنْ يَقُومُوا بِهِمْ فَرْضًا يُجْبَرُونَ عَلَى ذَلِكَ، وَيَقْضِي الْحَاكِمُ عَلَيْهِمْ بِهِ، وَكَذَلِكَ حَقُّ ابْنِ السَّبِيلِ ضِيَافَتُهُ، فَإِنْ قِيلَ: مَنْ هُمْ ذَوُو الْقُرْبَى هَؤُلَاءِ؟ قُلْنَا: كُلُّ مَنْ عَلَى ظَهْرِ الْأَرْضِ مُنْتَسِلُونَ مِنْ آدَمَ - عَلَيْهِ السَّلَامُ - وَامْرَأَتِهِ، وَابْنًا بَعْدَ ابْنٍ، وَوِلَادَةً بَعْدَ وِلَادَةٍ، إِلَى أَبِ الْإِنْسَانِ الْأَدْنَى وَأُمِّهِ، فَلَا بُدَّ مِنْ حَدٍّ يُبَيِّنُ مَنْ هُمْ ذَوُو الْقُرْبَى الَّذِينَ أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ لَهُمُ الْحَقَّ مِنْ غَيْرِهِمْ؟ فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا -: مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ كَثِيرٍ أرنا سُفْيَانُ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ قَالَ: «أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالصَّدَقَةِ؟ فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ عِنْدِي دِينَارٌ؟ فَقَالَ: تَصَدَّقْ بِهِ عَلَى نَفْسِكَ، قَالَ: عِنْدِي آخَرُ؟ قَالَ: تَصَدَّقْ بِهِ عَلَى وَلَدِكَ، قَالَ: عِنْدِي آخَرُ؟ قَالَ: تَصَدَّقْ بِهِ عَلَى زَوْجَتِكَ، أَوْ قَالَ: عَلَى زَوْجِكَ، قَالَ عِنْدِي آخَرُ، قَالَ: تَصَدَّقْ بِهِ عَلَى خَادِمِكَ، قَالَ: عِنْدِي آخَرُ؟ قَالَ: أَنْتَ أَعْلَمُ» .

If they say: "He has associated close relatives with the poor and the wayfarer," we respond: "Yes, for the right of the poor is incumbent upon all those within their presence to fulfill as an obligation—they may be compelled to this, and the ruler may enforce it upon them. Likewise, the right of the wayfarer is to offer him hospitality." If asked: "Who are these close relatives?" we say: "All who exist on earth, tracing lineage to Adam—peace be upon him—and his wife, through generation after generation, up to one's immediate father and mother. Thus, a defining limit is necessary to clarify who these close relatives are to whom Allah—Exalted and Majestic—has granted rights above others." We investigated this matter and found the following narration transmitted via Abū Dāwūd: Muḥammad ibn Kathīr informed us, Sufyān informed us from Muḥammad ibn ʿAjlān from Saʿīd ibn Abī Saʿīd al-Maqburī from Abū Hurayrah, who said: "Allah's Messenger—peace and blessings be upon him and his family—commanded charity. A man asked: 'O Messenger of Allah, I have a dinar.' He replied: 'Give it as charity to yourself.' The man said: 'I have another.' He said: 'Give it as charity to your child.' The man said: 'I have another.' He said: 'Give it as charity to your wife'—or he said, 'to your husband.' The man said: 'I have another.' He said: 'Give it as charity to your servant.' The man said: 'I have another.' He replied: 'You know best [what to do with it].'"

وَرُوِّينَا هَذَا الْخَبَرُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا عُمَرُ بْنُ عَلِيٍّ نا مُحَمَّدُ بْنُ الْمُثَنَّى قَالَا جَمِيعًا: نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنِ ابْنِ عَجْلَانَ قَالَ: نا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «تَصَدَّقُوا فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ عِنْدِي دِينَارٌ؟ قَالَ: تَصَدَّقْ بِهِ عَلَى نَفْسِكَ، قَالَ: عِنْدِي آخَرُ؟ قَالَ: تَصَدَّقْ

This report has been conveyed to us through the chain of Aḥmad ibn Shuʿayb: ʿUmar ibn ʿAlī informed us, Muḥammad ibn al-Muthannā informed us—both narrated together: Yaḥyā ibn Saʿīd al-Qaṭṭān informed us from Ibn ʿAjlān, who said: Saʿīd ibn Abī Saʿīd al-Maqburī informed us from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: "Give charity." A man asked: "O Messenger of Allah, I have a dinar?" He said: "Give it as charity to yourself." The man said: "I have another?" He

said: “Give it as charity to your wife.” The man said: “I have another?” He said: “Give it as charity to your child.” The man said: “I have another?” He said: “Give it as charity to your servant.” The man said: “I have another?” He said: “You know best.”[27]

L32671–32673 Abu Muhammad said: Sufyan and Yahya differed in opinion. Sufyan prioritized the child over the wife, while al-Qattan prioritized the wife over the child. Both Sufyan and Yahya are reliable authorities. Thus, it is obligatory not to prioritize the child over the wife nor the wife over the child, but rather to treat them equally, for it has been authentically established that the Messenger of Allah, peace and blessings be upon him, would repeat his words. Three times; thus, it is possible that he (peace be upon him) reiterated his juridical opinions here similarly. Once he prioritized the child, and once he prioritized the wife, thereby making them equal in accordance with his statement (peace be upon him) to Hind bint Utbah when she sought his permission to take from the wealth of her husband Abu Sufyan without his knowledge. The Prophet (peace be upon him) said, “Take what suffices you and your child in a reasonable and accepted manner,” thus equating her and the child equally.

L32674 Then we found what we transmitted through the chain of Abū Bakr ibn Abī Shaybah, who narrated: ʿAbdullāh ibn Numayr narrated to us, who narrated: Yazīd ibn Ziyād ibn Abī al-Jaʿd narrated to us, who narrated: Abū Ṣakhra Jāmiʿ ibn Shaddād narrated to us from Ṭāriq ibn ʿAbdillāh al-Muḥāribī, who said: “We entered Madīnah, and there was the Messenger of Allāh—may Allāh bless him and his family and grant him peace—standing on the pulpit, addressing the people. He was saying: ’O people! The hand of the giver is the superior one. Begin with those under your care: your mother, your father, your sister, then the closest ones, then the next closest.”’

L32675 These are authentic reports from the narration of trustworthy narrators. The Prophet (peace and blessings be upon him) informed, as a command, that one should begin with those they support—namely the parents and siblings. Thus, it is established with certainty that these are prioritized along with the child and wife.

[27] **Hadith references (L32670):** Sunan an-Nasai 2535.

بِهِ عَلَى زَوْجَتِكَ، قَالَ: عِنْدِي آخَرُ قَالَ: تَصَدَّقْ بِهِ عَلَى وَلَدِكَ، قَالَ: عِنْدِي آخَرُ؟ قَالَ: تَصَدَّقْ بِهِ عَلَى خَادِمِكَ قَالَ: عِنْدِي آخَرُ؟ قَالَ: أَنْتَ أَبْصَرُ» .

قَالَ أَبُو مُحَمَّدٍ: فَاخْتَلَفَ سُفْيَانُ، وَيَحْيَى، فَقَدَّمَ سُفْيَانُ الْوَلَدَ عَلَى الزَّوْجَةِ، وَقَدَّمَ الْقَطَّانُ الزَّوْجَةَ عَلَى الْوَلَدِ، وَكِلَاهُمَا ثِقَةٌ، فَالْوَاجِبُ أَنْ لَا يُقَدَّمَ الْوَلَدُ عَلَى الزَّوْجَةِ، وَلَا الزَّوْجَةُ عَلَى الْوَلَدِ، بَلْ يَكُونَانِ سَوَاءً، لِأَنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يُكَرِّرُ كَلَامَهُ ثَلَاثَ مَرَّاتٍ، فَمُمْكِنٌ أَنْ يُكَرِّرَ فُتْيَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هَاهُنَا كَذَلِكَ، فَمَرَّةً قَدَّمَ الْوَلَدَ، وَمَرَّةً قَدَّمَ الزَّوْجَةَ، فَصَارَ سَوَاءً مَعَ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِهِنْدَ بِنْتِ عُتْبَةَ إِذْ سَأَلَتْهُ إِبَاحَةً مِنْ مَالِ أَبِي سُفْيَانَ زَوْجِهَا بِغَيْرِ عِلْمِهِ؟ فَقَالَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «خُذِي مَا يَكْفِيكِ وَوَلَدَكِ بِالْمَعْرُوفِ» فَقَرَنَ بَيْنَهَا وَبَيْنَ الْوَلَدِ سَوَاءً.

ثُمَّ وَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ ثنا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ نا يَزِيدُ بْنُ زِيَادِ بْنِ أَبِي الْجَعْدِ نا أَبُو صَخْرَةَ جَامِعُ بْنُ شَدَّادٍ عَنْ طَارِقِ بْنِ عَبْدِ اللَّهِ الْمُحَارِبِيِّ قَالَ قَالَ: «دَخَلْنَا الْمَدِينَةَ فَإِذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَائِمٌ عَلَى الْمِنْبَرِ يَخْطُبُ النَّاسَ وَهُوَ يَقُولُ: يَا أَيُّهَا النَّاسُ يَدُ الْمُعْطِي الْعُلْيَا، وَابْدَأْ بِمَنْ تَعُولُ: أُمَّكَ، وَأَبَاكَ، وَأُخْتَكَ، ثُمَّ أَدْنَاكَ أَدْنَاكَ» .

وَهَذِهِ أَخْبَارٌ صِحَاحٌ مِنْ رِوَايَةِ الثِّقَاتِ، فَأَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - آمِرًا بِأَنْ يَبْدَأَ بِمَنْ يَعُولُ، وَهُمْ: الْأَبَوَانِ، وَالْإِخْوَةُ، فَصَحَّ يَقِينًا أَنَّ هَؤُلَاءِ مُبْدُونَ مَعَ الْوَلَدِ وَالزَّوْجَةِ.

وَقَدْ بَيَّنَّا قَبْلُ أَنَّ كُلَّ جَدَّةٍ " أُمٌّ " وَكُلَّ جَدٍّ " أَبٌ " وَكُلَّ ابْنِ ابْنَةٍ وَابْنٍ " ابْنٌ " وَابْنَةِ ابْنٍ وَابْنَةٍ " ابْنَةٌ " كُلُّهُمْ ابْنٌ وَابْنَةٌ - فَصَحَّ نَصًّا مَا قُلْنَا.

L32676 We have previously clarified that every grandmother is a "mother," every grandfather is a "father," every son whether of a daughter or a son is a "son," and every daughter whether of a son or a daughter is a "daughter"—all are categorized as sons or daughters. Thus, what we have stated is textually sound.

وَأَنَّ بَعْدَ هَؤُلَاءِ: الْأَدْنَى الْأَدْنَى، وَفِي هَؤُلَاءِ يَدْخُلُ كُلُّ ذِي رَحِمٍ مَحْرَمَةٍ، مِنْ: عَمٍّ وَعَمَّةٍ، وَخَالٍ وَخَالَةٍ، وَابْنِ أُخْتٍ وَبِنْتِ أُخْتٍ، وَابْنِ أَخٍ وَابْنَةِ أَخٍ: يَقِينًا.

L32677 After these [heirs], the closest in order, then the next closest relatives are included—those within prohibited degrees of kinship: paternal uncles, paternal aunts, maternal uncles, maternal aunts, sister's sons, sister's daughters, brother's sons, and brother's daughters—certainly.

ثُمَّ وَجَدْنَا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لا تُكَلَّفُ نَفْسٌ إِلا وُسْعَهَا لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

L32678 Then we found the words of Allah, the Mighty and Sublime: *"Upon the father lies the mothers' sustenance and clothing in accordance with what is reasonable. No soul is burdened beyond its capacity. No mother shall be harmed through her child, nor any father through his child. And the same obligation applies to the heir."* [Al-Baqarah: 233].[28]

فَصَحَّ بِهَذَا أَنَّ النَّفَقَةَ عَلَى الْوَارِثِ مَعَ ذَوِي الرَّحِمِ الْمَحْرَمَةِ، وَخَرَجَ مَنْ لَيْسَ ذَا رَحِمٍ مَحْرَمَةٍ، وَلَا وَارِثًا مِنْ هَذَا الْحُكْمِ، وَمِنْ تَخْصِيصِهِ بِالنَّفَقَةِ - مِنْهُ أَوْ عَلَيْهِ - لِأَنَّهُ كَسَائِرِ مَنْ أَدْلَتْهُ الْوِلَادَاتُ - وِلَادَةً بَعْدَ وِلَادَةٍ - إِلَى آدَمَ - عَلَيْهِ السَّلَامُ -، لَيْسَتْ وِلَادَةٌ بِأَوْلَى مِنْ الَّتِي فَوْقَهَا بِأَبٍ، فَلَمْ يَجُزْ إِيجَابُ فَرْضِ إِخْرَاجِ الْمَالِ عَنْ يَدِ مَالِكِهِ إِلَى آخَرَ إِلَّا بِنَصٍّ جَلِيٍّ، وَلَا نَصَّ إِلَّا فِيمَنْ ذَكَرْنَا.

L32679 Through this, it is established that financial maintenance is incumbent upon the heir who belongs to the mahram relatives. Excluded from this ruling are those neither related by mahram kinship nor entitled to inheritance. This specification of maintenance—whether provided by him or incumbent upon him—is because he resembles all others connected through lineal descent, traced birth after birth back to Adam (peace be upon him). No lineage through a father is inherently more entitled than the one preceding it. Therefore, it is impermissible to impose the obligation of transferring wealth from its owner's possession to another except through explicit textual evidence, and no such evidence exists except for those we have mentioned.

وَلَا يَحِلُّ لِأَحَدٍ أَنْ يَخُصَّ وِلَادَةً أَكْثَرَ مِمَّنْ ذَكَرْنَا بِغَيْرِ نَصٍّ، فَإِنْ عَمَّ أَوْجَبَ النَّفَقَةَ عَلَى جَمِيعِ وَلَدِ آدَمَ، وَالنُّصُوصُ كُلُّهَا لَا تُوجِبُ ذَلِكَ، إِلَّا فِي خَاصٍّ مِنْهَا، لِتَفْرِيقِهِ عَزَّ وَجَلَّ بَيْنَ ذَوِي الْقُرْبَى وَبَيْنَ الْمَسَاكِينِ وَالْمَسَاكِينُ مِنْ وَلَدِ آدَمَ بِلَا شَكٍّ.

L32680–32682 It is not permissible for anyone to specify a childbirth more than those we have mentioned without textual evidence. If one generalizes [the ruling], it obligates financial maintenance. It is obligatory upon all the children of Adam, yet all scriptural texts do not impose this obligation except in specific ones among them, due to the distinction made by Him, the Exalted and Majestic, between relatives and the poor—for the poor are unquestionably from the children of Adam.

[28] **Qur'an references (L32678):** Qur'an 2:233 (Al-Baqarah).

L32683 Thus, it is established that the obligatory right is due only to certain close kindred among the lineages of specific fathers and grandfathers, excluding others. Thus, our position is confirmed, and all praise belongs to Allah.

فَصَحَّ أَنَّ الْحَقَّ الْوَاجِبَ إِنَّمَا هُوَ لِبَعْضِ ذَوِي الْقُرْبَى مِنْ وِلَادَاتِ بَعْضِ الْآبَاءِ وَالْأَجْدَادِ دُونَ بَعْضٍ - فَصَحَّ مَا قُلْنَا، وَلِلَّهِ الْحَمْدُ.

L32684 Some dissenters have objected concerning Allah's statement {And upon the heir is a duty like that} [Al-Baqarah: 233], arguing that its meaning obliges the heir to avoid causing harm. They cited this through a chain unauthentically attributed to Ibn Abbas, being either mursal (disconnected) or transmitted via Ash'ath ibn Sawwar—a weak narrator. It has been authentically established from Al-Sha'bi that the verse's meaning is: "No harm is to be inflicted, nor any financial liability imposed upon him."[29]

وَقَدْ اعْتَرَضَ بَعْضُ الْمُخَالِفِينَ فِي قَوْلِهِ تَعَالَى: {وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] فَقَالُوا: مَعْنَى ذَلِكَ أَنَّ عَلَيْهِ أَنْ لَا يُضَارَّ، وَذَكَرُوا ذَلِكَ مِنْ طَرِيقٍ لَا تَصِحُّ عَنْ ابْنِ عَبَّاسٍ، لِأَنَّهَا إِمَّا مُرْسَلَةٌ، وَإِمَّا مِنْ طَرِيقٍ فِيهَا أَشْعَثُ بْنُ سَوَّارٍ - وَهُوَ ضَعِيفٌ - وَصَحَّ عَنْ الشَّعْبِيِّ: أَنَّ مَعْنَاهُ - لَا يُضَارُّ وَلَا غُرْمَ عَلَيْهِ.

L32685 It is reported from Abdullah ibn Mughaffal, Al-Zuhri, Rabi'ah, and Abu al-Zinad that the nursing of the minor is within his share of his father's estate.

وَرُوِّينَا عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ، وَالزُّهْرِيِّ، وَرَبِيعَةَ، وَأَبِي الزِّنَادِ: أَنَّ رَضَاعَ الصَّغِيرِ فِي حِصَّتِهِ مِنْ مَالِ أَبِيهِ.

L32686 Narrated from Sa'id ibn al-Musayyib: The inheritance reverts to the rightful heirs.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ يُرَدُّ الْمِيرَاثُ لِأَهْلِهِ.

L32687 Abū Muḥammad said: All of this is obfuscation by the dissenter, yet it is entirely true and constitutes our position—directly opposing the dissenting view. For the statement "The heir must refrain from detrimental harm" is valid. There is no greater harm than allowing the one from whom he inherits to die of hunger and cold—while the heir is wealthy—by withholding food or any covering to protect him from cold-induced death. This is undeniably the quintessential example of detrimental harm, as agreed by all without doubt.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّهُ تَمْوِيهٌ مِنْ الْمُخَالِفِ، وَكُلُّ هَذَا حَقٌّ، وَبِهِ نَقُولُ، وَهُوَ خِلَافُ قَوْلِ الْمُخَالِفِ، لِأَنَّ قَوْلَ الْقَائِلِ (عَلَى الْوَارِثِ أَنْ لَا يُضَارَّ) قَوْلٌ صَحِيحٌ، وَلَيْسَ فِي الْمُضَارَّةِ أَكْثَرُ مِنْ أَنْ يَمُوتَ مَوْرُوثُهُ جَوْعًا وَبَرْدًا - وَهُوَ غَنِيٌّ - فَلَا يَرْحَمُهُ بِأَكْلَةٍ، وَلَا بِشَيْءٍ يَسْتُرُهُ بِهِ وَيَمْنَعُ مِنْهُ الْمَوْتَ مِنْ الْبَرْدِ، وَهَذَا عَيْنُ الْمُضَارَّةِ، بِلَا شَكٍّ عِنْدَ أَحَدٍ.

L32688 As for the statement of those who say, "The nursing expenses of the minor are to be covered from his share," this is a correct statement if he has a share of inherited wealth. We have not obligated his upkeep costs upon his heir unless he has no wealth at all.

أَمَّا قَوْلُ مَنْ قَالَ " إنَّ رَضَاعَ الصَّغِيرِ فِي نَصِيبِهِ " فَقَوْلٌ صَحِيحٌ إذَا كَانَ لَهُ مِيرَاثٌ مِنْ مَالٍ، وَنَحْنُ لَمْ نُوجِبْ مُؤْنَتَهُ عَلَى وَارِثِهِ إلَّا إذَا لَمْ يَكُنْ لَهُ مَالٌ أَصْلًا.

L32689 Abu Muhammad said: Some have opined that a woman may attribute her child's paternity to the father—if she is divorced—and to his agnatic rela-

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ قَالَ قَوْمٌ: إنَّ لِلْمَرْأَةِ أَنْ تَرْمِيَ وَلَدَهَا إلَى أَبِيهِ - إنْ كَانَتْ مُطَلَّقَةً - وَإِلَى عُصْبَتِهِ - إنْ كَانَتْ مُتَوَفًّى عَنْهَا - وَأَنَّ لِزَوْجِهَا أَنْ يَمْنَعَهَا رَضَاعَ وَلَدِهَا مِنْ غَيْرِهِ؟

[29] **Qur'an references (L32684):** Qur'an 2:233 (Al-Baqarah).

tives—if he is deceased—and that her husband has the right to prevent her from having her child breastfed by someone other than him.

L32690 Abu Muhammad said: All of this is invalid and contradictory to the Quran. Allah Almighty said: "Mothers shall breastfeed their children for two complete years for those who wish to complete breastfeeding. It is incumbent upon the child's father to provide their sustenance and clothing according to customary norms. No soul is burdened beyond its capacity. Let no mother be harmed because of her child, nor a father because of his child. And upon the heir is a like obligation." [Al-Baqarah: 233][30]

L32691–32693 It is obligatory to compel the mother—whether she is willing or reluctant—to breastfeed her child for two complete years, as Allah commanded. Allah, the Almighty and Majestic—whether her husband approves or disapproves—commands that she be compelled against suffering harm regarding her child, for no harm is greater than preventing her from breastfeeding. No woman is permitted this—even if she were the ruler's daughter—except the divorced woman. If she and the infant's father reach an impasse by failing to agree on mutually acceptable compensation—and provided the child will nurse from another woman—then the divorcing husband must secure another wet nurse, in accordance with the words of the Most High: "If they breastfeed for you, give them their due compensation, and consult together in kindness. But if you are at an impasse, another woman will breastfeed for him. Let the affluent spend from his abundance, and let him whose provision is restricted spend from what Allah has given him. Allah does not burden any soul beyond its capacity. Allah will bring ease after hardship." (At-Talāq 65:6-7).[31]

L32694 And all of this is the speech of Allah, the Almighty and the Majestic, so there shall be neither heeding nor obedience for whoever stubbornly opposes Him.

L32695 It was narrated to us through the chain of Ḥammād ibn Salamah, who said: "Yaḥyā ibn Muḥammad ibn Thābit ibn Qays ibn al-Shammās informed me, through his grandfather Thābit ibn Qays al-Shammās, about the woman who had sought khulʿ—that she was Jamīlah bint Ubayy ibn Salūl. She gave birth

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ بَاطِلٌ مُخَالِفٌ لِلْقُرْآنِ، قَالَ اللَّهُ عَزَّ وَجَلَّ {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لا تُكَلَّفُ نَفْسٌ إِلا وُسْعَهَا لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

فَوَجَبَ إِجْبَارُ الْأُمِّ - أَحَبَّتْ أَمْ كَرِهَتْ - عَلَى إِرْضَاعِ وَلَدِهَا حَوْلَيْنِ كَامِلَيْنِ، كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ - أَحَبَّ زَوْجُهَا أَمْ كَرِهَ - وَأَنْ تُجْبَرَ عَلَى أَنْ لَا تُضَارَّ بِوَلَدِهَا وَلَا ضِرَارَ أَكْثَرَ مِنْ مَنْعِهِ رَضَاعَهَا، وَلَا يُبَاحُ لِامْرَأَةٍ - وَلَوْ أَنَّهَا بِنْتُ الْخَلِيفَةِ - غَيْرَ هَذَا، إِلَّا الْمُطَلَّقَةَ، فَإِنَّهَا إِنْ تَعَاسَرَتْ هِيَ وَأَبُو الصَّغِيرِ بِأَنْ لَا يَتَّفِقَا عَلَى أُجْرَةٍ يَتَرَاضَيَانِ بِهَا - وَكَانَ مَعَ ذَلِكَ يَقْبَلُ ثَدْيَ غَيْرِهَا - فَهَذِهِ يَسْتَرْضِعُ الْمُطَلِّقُ لَهَا أُخْرَى أَخْذًا بِقَوْلِهِ تَعَالَى: {فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ وَأْتَمِرُوا بَيْنَكُمْ بِمَعْرُوفٍ وَإِنْ تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ أُخْرَى - لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا} [الطلاق: ٦ - ٧] .

وَهَذَا كُلُّهُ كَلَامُ اللَّهِ عَزَّ وَجَلَّ، فَلَا سَمْعًا وَلَا طَاعَةً لِمَنْ عَنَدَ عَنْهُ.

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ قَالَ: «أَخْبَرَنِي يَحْيَى بْنُ مُحَمَّدِ بْنِ ثَابِتِ بْنِ قَيْسِ بْنِ الشَّمَّاسِ فِي الْمُخْتَلَعَةِ مِنْ جَدِّهِ ثَابِتِ بْنِ قَيْسٍ الشَّمَّاسِ أَنَّهَا كَانَتْ جَمِيلَةَ بِنْتَ أُبَيِّ ابْنِ سَلُولَ، وَأَنَّهَا وَلَدَتْ غُلَامًا فَجَعَلَتْهُ فِي لِيفٍ وَأَرْسَلَتْ بِهِ إِلَى ثَابِتِ بْنِ قَيْسٍ أَنْ خُذْ

[30] **Qur'an references (L32690):** Qur'an 2:233 (Al-Baqarah).
[31] **Qur'an references (L32691):** Qur'an 65:6 (At-Talaq); Qur'an 65:7 (At-Talaq).

to a boy, placed him in a palm-fiber basket, and sent him to Thābit ibn Qays, saying: 'Take your child from me?' He brought the child to the Prophet (peace and blessings of Allāh be upon him), who performed taḥnīk, arranged breastfeeding for him, and named him Muḥammad."

L32696 Abu Muhammad said: This is the precise wording of what we stated—she was a *khul'*-divorcee, divorced, since people considered cohabitation with him in his case the most detestable.

L32697 Abu Muhammad said: If the heirs are numerous, it is not permissible for them to spend on the dependant except according to their individual shares, not in proportion to their inheritance portions, for the scriptural ruling establishes equality among them by imposing this obligation uniformly. Therefore, preferential treatment between them is invalid. Some scholars asked: "Which heir is intended here - the heir of the deceased father, or the heir of the person entitled to maintenance?" We responded: This constitutes arbitrary and strained reasoning for which the questioner bears sin, as the verse makes no mention of the deceased parent of the maintained dependant. Almighty Allah states: {No mother shall be harmed through her child, nor any father through his child. The same obligation applies to the legal heir} [Al-Baqarah: 233].[32]

L32698 In {the heir} [Al-Baqarah: 233], the pronoun "he" necessitates the existence of inherited property. The pronoun refers to the one who holds the legal right, and the child is unquestionably the one who restrains his parents from harming him. The difference between the two religions holds no meaning when specifically applied to close blood relatives.[33]

L32699 As for inheritance, there is no inheritance when the religions [of the parties] differ, because no scriptural text exists addressing this matter.

L32700–32701 As for our statement: If each of those we mentioned has a lowly means of earning that they can manage by themselves, then it is not incumbent upon a person to provide for their maintenance except fathers, mothers, and wives. For indeed, he is obligated to protect them from such means, according to

عَنِّي صَبِيَّكَ؟ فَأَتَى بِهِ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَحَنَّكَهُ، وَاسْتَرْضَعَ لَهُ، وَسَمَّاهُ مُحَمَّدًا» .

قَالَ أَبُو مُحَمَّدٍ: هَذَا نَصُّ مَا قُلْنَا كَانَتْ مُخْتَلِعَةً مُطَلَّقَةً أَبْغَضَ النَّاسُ فِيهِ مُعَاشَرَةً لَهُ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَجُوزُ - إنْ كَانَ الْوَرَثَةُ كَثِيرًا - أَنْ يُنْفِقُوا عَلَى الْمُحْتَاجِ إلَّا عَلَى دُورِهِمْ، لَا عَلَى قَدْرِ مَوَارِيثِهِمْ، لِأَنَّ النَّصَّ سَوِيٌّ بَيْنَهُمْ بِإِيجَابِ ذَلِكَ عَلَيْهِمْ، فَلَا تَجُوزُ الْمُفَاضَلَةُ بَيْنَهُمْ، وَقَالَ بَعْضُهُمْ: مَنْ هُوَ هَذَا الْوَارِثُ؟ أَهُوَ وَارِثُ الْأَبِ الْمَيِّتِ، أَمْ وَارِثُ الَّذِي تَجِبُ لَهُ النَّفَقَةُ؟ قُلْنَا: هَذَا تَعَسُّفٌ وَتَكَلُّفٌ يَأْثَمُ السَّائِلُ، لِأَنَّهُ لَا ذِكْرَ لِوَالِدِ الْمُنْفَقِ عَلَيْهِ فِي الْآيَةِ إنَّمَا قَالَ عَزَّ وَجَلَّ {لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ} [البقرة: ٢٣٣] .

فَفِي {الْوَارِثِ} [البقرة: ٢٣٣] ضَمِيرُ هُوَ أَنَّهُ يَقْتَضِي مَوْرُوثًا وَلَا بُدَّ، وَالضَّمِيرُ رَاجِعٌ إلَى الَّذِي لَهُ الْحُكْمُ وَالَّذِي مَنَعَ أَبَوَاهُ مِنْ الْمُضَارَّةِ بِهِ هُوَ الْوَلَدُ بِلَا شَكٍّ، وَلَا مَعْنَى لِاخْتِلَافِ الدِّينَيْنِ فِي ذَوِي الرَّحِمِ خَاصَّةً.

وَأَمَّا فِي الْوِرَاثَةِ - فَلَا مِيرَاثَ مَعَ اخْتِلَافِ الدِّينَيْنِ، لِأَنَّهُ لَمْ يَأْتِ بِذَلِكَ نَصٌّ.

وَأَمَّا قَوْلُنَا: إنَّهُ إنْ كَانَ لِكُلِّ مَنْ ذَكَرْنَا كَسْبٌ يَقُومُ بِهِ بِنَفْسِهِ - وَإِنْ كَانَ خَسِيسًا مِنْ الْكَسْبِ - فَلَيْسَ عَلَى الْإِنْسَانِ أَنْ يَقُومَ بِنَفَقَتِهِمْ حِينَئِذٍ إلَّا الْآبَاءُ، وَالْأُمَّهَاتُ، وَالزَّوْجَاتُ، فَقَطْ، فَإِنَّ هَؤُلَاءِ فَرْضٌ عَلَيْهِ أَنْ يَصُونَهُمْ عَنْ ذَلِكَ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ

[32] **Qur'an references (L32697):** Qur'an 2:233 (Al-Baqarah).
[33] **Qur'an references (L32698):** Qur'an 2:233 (Al-Baqarah).

the words of Allah, the Almighty, where He says: “If one or both of them reach old age with you, do not say to them a word of annoyance, nor scold them, but speak to them a noble word. And act with humble tenderness out of mercy and say, ‘My Lord, have mercy upon them as they raised me when I was small’” (Al-Isra 17:23–24).[34]

L32702 Abu Muhammad said: It is authentically established from the Prophet—peace and blessings of Allah be upon him—that disobedience to parents is among the major sins. There is no greater form of disobedience than when a son is wealthy and well-off, yet abandons his father or grandfather to sweep latrines, or tend livestock, or remove dung, or perform cupping, or wash people’s garments, or stoke furnaces in bathhouses—or leaves his mother or grandmother to serve people and draw water for others in the streets. Whoever does this has undoubtedly failed to lower the wing of humble mercy for them through compassion.

L32703 And He, the Exalted, said: “And show kindness to parents, and to relatives, and to orphans, and to the needy, and to the neighbor who is a relative, and to the distant neighbor, and to the companion by your side, and to the wayfarer, and to those under your authority” [An-Nisa: 36].[35]

L32704 Abu Muhammad said: Allah, the Mighty and Majestic, has affirmed within all people the differing aspects of benevolence for those mentioned in this verse, and the texts clarify that.

L32705 Kindness to parents requires enduring their harshness, showing reverence for them, exalting them, and obeying them unless they command sin. Allah the Exalted said: “Give thanks to Me and to your parents. To Me is the final destination” [Luqman 31:14], and “If they pressure you to associate with Me what you have no knowledge of, do not obey them, yet maintain kind companionship with them in the world” [Luqman 31:15]. Thus even if they command *shirk*, it remains obligatory to maintain kind companionship with them. This entails everything we have stated.[36]

حَيْثُ يَقُولُ: {إِمَّا يَبْلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلاهُمَا فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلا كَرِيمًا - وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ وَقُلْ رَبِّ ارْحَمْهُمَا كَمَا رَبَّيَانِي صَغِيرًا} [الإسراء: ٢٣ - ٢٤] .

قَالَ أَبُو مُحَمَّد: وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُقُوقُ الْوَالِدَيْنِ مِنْ الْكَبَائِرِ، وَلَيْسَ فِي الْعُقُوقِ أَكْثَرُ مِنْ أَنْ يَكُونَ الِابْنُ غَنِيًّا ذَا حَالٍ وَيَتْرُكُ أَبَاهُ، أَوْ جَدَّهُ يَكْنُسُ الْكَنَفَ، أَوْ يَسُوسُ الدَّوَابَّ، وَيَكْنُسُ الزِّبْلَ، أَوْ يَحْجُمُ، أَوْ يَغْسِلُ الثِّيَابَ لِلنَّاسِ، أَوْ يُوقِدُ فِي الْحَمَّامِ - وَيَدَعُ أُمَّهُ أَوْ جَدَّتَهُ تَخْدِمُ النَّاسَ، وَتَسْقِي الْمَاءَ فِي الطُّرُقِ - فَمَا خَفَضَ لَهُمَا جُنَاحَ الذُّلِّ مِنْ الرَّحْمَةِ مَنْ فَعَلَ ذَلِكَ بِلَا شَكٍّ.

وَقَالَ تَعَالَى: {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَالْجَارِ ذِي الْقُرْبَى وَالْجَارِ الْجُنُبِ وَالصَّاحِبِ بِالْجَنْبِ وَابْنِ السَّبِيلِ وَمَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٣٦] .

قَالَ أَبُو مُحَمَّد: وَقَدْ أَثْبَتَ اللَّهُ عَزَّ وَجَلَّ فِي النُّفُوسِ كُلِّهَا اخْتِلَافَ وُجُوهِ الْإِحْسَانِ إلَى مَنْ ذَكَرَ فِي هَذِهِ الْآيَةِ، وَجَاءَتْ النُّصُوصُ بِبَيَانِ ذَلِكَ.

فَالْإِحْسَانُ إلَى الْأَبَوَيْنِ: الصَّبْرُ لِجَفَائِهِمَا، وَتَوْقِيرُهُمَا، وَتَعْظِيمُهُمَا، وَطَاعَتُهُمَا مَا لَمْ يَأْمُرَا بِمَعْصِيَةٍ، قَالَ تَعَالَى: {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ إِلَيَّ الْمَصِيرُ} [لقمان: ١٤] {وَإِنْ جَاهَدَاكَ عَلَى أَنْ تُشْرِكَ بِي مَا لَيْسَ لَكَ بِهِ عِلْمٌ فَلا تُطِعْهُمَا وَصَاحِبْهُمَا فِي الدُّنْيَا مَعْرُوفًا} [لقمان: ١٥] فَهُمَا وَإِنْ أَمَرَا بِالشِّرْكِ فَوَاجِبٌ مَعَ ذَلِكَ أَنْ يُصْحَبَا بِالْمَعْرُوفِ، وَهَذَا يَقْتَضِي كُلَّ مَا قُلْنَا.

[34] **Qur’an references (L32701):** Qur’an 17:23 (Al-Isra); Qur’an 17:24 (Al-Isra).
[35] **Qur’an references (L32703):** Qur’an 4:36 (An-Nisa).

وَالْإِحْسَانُ إِلَى ذِي الْقُرْبَى: أَنْ يَدْفَعَ عَنْهُمُ الْأَذَى، وَأَنْ يُكْرِمَهُمْ وَيَحُوطَهُمْ، وَيَقُومَ فِي أُمُورِهِمْ، وَأَنْ لَا يُسْلِمَهُمْ إِلَى ضَرَرٍ.

L32706 Benevolence toward relatives is to ward off harm from them, honor them, safeguard them, diligently manage their affairs, and not surrender them to harm.

وَالْإِحْسَانُ إِلَى الْمَسَاكِينِ: الصَّدَقَةُ بِالْفَضْلِ حَتَّى يَشْبَعُوا أَوْ يَكْتَسِبُوا، وَيَكُونَ لَهُمْ مَرْقَدٌ يَأْوُونَ إِلَيْهِ، وَمَنْ يَقُومُ بِمَرْضَاهُمْ.

L32707–32708 Kindness to the poor entails giving charity from one's surplus until they are full or can earn a living, providing them a place to sleep where they can take shelter, and having someone who cares for their sick.

وَالْإِحْسَانُ إِلَى الْيَتَامَى، وَرَحْمَتُهُمْ، وَتَعْلِيمُهُمْ، وَالْقِيَامُ بِهِمْ حَتَّى لَا يَضِيعُوا.

L32709 Kindness to orphans, showing mercy to them, teaching them, and caring for them so they are not lost.

وَالْإِحْسَانُ إِلَى الْجَارِ: كَفُّ الْأَذَى، وَالْبِرُّ، وَاللِّقَاءُ بِالْبِشْرِ، وَالْإِكْرَامُ وَحِمَايَتُهُمْ مِنْ الظُّلْمِ - وَكَذَلِكَ الْإِحْسَانُ إِلَى الصَّاحِبِ بِالْجَنْبِ نَحْوُ ذَلِكَ.

L32710 Kindness to the neighbor entails refraining from harm, acts of righteousness, greeting them with a cheerful face, honoring them, and protecting them from oppression. Likewise, kindness to the close companion should be shown in the same manner.

وَالْإِحْسَانُ إِلَى مَا مَلَكَتْ أَيْمَانُنَا: إطْعَامُهُمْ مِمَّا نَأْكُلُ، وَكِسْوَتُهُمْ مِمَّا نَلْبَسُ، وَكُلُّ ذَلِكَ بِالْمَعْرُوفِ، وَأَنْ لَا نُكَلِّفَهُمْ مَا لَا يُطِيقُونَ، وَأَنْ لَا يُسَبُّوا فِي غَيْرِ وَاجِبٍ، وَأَنْ لَا يُضْرَبُوا فِي غَيْرِ حَقٍّ - فَهَذَا كُلُّهُ وَاجِبٌ يَعْصِي اللَّهَ تَعَالَى مَنْ تَرَكَ شَيْئًا مِنْ ذَلِكَ.

L32711 Kindness to those whom your right hands possess entails feeding them from what we eat, clothing them from what we wear, all of this in accordance with what is good. It requires that you not burden them beyond their capacity, not revile them without legitimate cause, and not strike them unjustly. All of this constitutes an obligation, and whoever abandons any part of it disobeys Allah the Exalted.

وَأَمَّا صِيَانَةُ الزَّوْجَةِ - فَلِأَنَّهُ قَدْ أَوْجَبَ اللَّهُ تَعَالَى نَفَقَتَهَا، وَكِسْوَتَهَا، وَإِسْكَانَهَا، وَالْقِيَامَ عَلَيْهَا - وَإِنْ كَانَتْ أَغْنَى مِنْ الزَّوْجِ - وَهَذَا يَقْتَضِي صِيَانَتَهَا عَنْ كُلِّ خِدْمَةٍ، وَكُلِّ عَمَلٍ لَهُ أَوْ لِغَيْرِهِ.

L32712 As for preserving the wife's status, it is because Allah the Exalted has obligated her maintenance, clothing, housing, and comprehensive care - even if she is wealthier than her husband - and this entails protecting her from undertaking any service or labor, whether for him or others.

وَأَمَّا كُلُّ مَنْ عَدَا الزَّوْجَةِ - فَلَا نَفَقَةَ لَهُمْ، وَلَا كِسْوَةَ، وَلَا إسْكَانَ إلَّا أَنْ لَا يَكُونَ لَهُمْ مِنْ الْمَالِ، أَوْ الصَّنْعَةِ مَا يَقُومُونَ مِنْهُ عَلَى أَنْفُسِهِمْ.

L32713 As for all others besides the wife, there is no maintenance, clothing, or lodging for them unless they lack sufficient means from wealth or a trade from which to sustain themselves.

وَلَا مَعْنَى لِمُرَاعَاةِ الزَّمَانَةِ فِي ذَلِكَ إذْ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ.

L32714 There is no basis for considering temporal context in that matter, as neither the Qur'an nor the Sunnah has sanctioned it.

[36] **Qur'an references (L32705):** Qur'an 31:14 (Luqman); Qur'an 31:15 (Luqman).

L32715 If they carried out some of that and were unable to perform the remainder, it becomes obligatory upon those we specified to undertake precisely what they failed to accomplish.

فَإِنْ قَامُوا بِبَعْضِ ذَلِكَ وَعَجَزُوا عَنْ الْبَعْضِ: وَجَبَ عَلَى مَنْ ذَكَرْنَا أَنْ يَقُومَ بِمَا عَجَزُوا عَنْهُ فَقَطْ.

L32716 All that we have mentioned is obligatory upon the woman just as it is obligatory upon the man, except the maintenance of the child. As long as the father is capable of providing it, there is nothing obligatory upon the woman in that regard. This has been the established practice of all Muslims, past and present. If the father becomes unable to do so or dies, and they have no wealth, then it becomes incumbent upon the mother to provide their maintenance and clothing, based on the verse of Allah, the Mighty and Majestic: "No mother shall be harmed through her child, and no parent [to whom a child is born] shall be harmed through their child" [Al-Baqarah: 233].[37]

وَيَلْزَمُ الْمَرْأَةَ كُلُّ مَا ذَكَرْنَا كَمَا يَلْزَمُ الرَّجُلَ، إلَّا نَفَقَةَ الْوَلَدِ، فَمَا دَامَ الْأَبُ قَادِرًا عَلَيْهَا فَلَيْسَ عَلَى الْمَرْأَةِ مِنْ ذَلِكَ شَيْءٌ - هَذَا عَمَلُ جَمِيعِ أَهْلِ الْإِسْلَامِ قَدِيمًا وَحَدِيثًا، فَإِنْ عَجَزَ الْأَبُ عَنْ ذَلِكَ أَوْ مَاتَ، وَلَا مَالَ لَهُمْ، فَحِينَئِذٍ يُقْضَى بِنَفَقَتِهِمْ وَكِسْوَتِهِمْ عَلَى أُمِّهِمْ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {لا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلا مَوْلُودٌ لَهُ بِوَلَدِهِ} [البقرة: ٢٣٣] .

L32717 "There is nothing more harmful than a woman being wealthy while others are begging at the gates, and because the aforementioned commands—which were revealed in a single instance—were not made exclusive to men over women."

وَلَيْسَ فِي الْمُضَارَّةِ شَيْءٌ أَكْثَرَ مِنْ أَنْ تَكُونَ غَنِيَّةً وَهُمْ يَسْأَلُونَ عَلَى الْأَبْوَابِ، وَلِأَنَّ الْأَوَامِرَ الْمَذْكُورَةَ الَّتِي جَاءَتْ مَجِيئًا وَاحِدًا لَمْ يُخَصَّ بِهَا رَجُلٌ مِنْ امْرَأَةٍ.

L32718–32720 And it was narrated to us via the transmission route of Al-Bukhari: from Mūsā ibn Ismāʿīl, from Wahb—who is Ibn Khālid—, from Hishām—who is Ibn ʿUrwah—, from his father, from Zaynab bint Umm Salamah (daughter of Umm Salamah, the Mother of the Believers), from her mother Umm Salamah. She said: "O Messenger of God, is there reward for me concerning the sons of Abu Salamah if I spend on them - though I would never abandon them - in this way and that? Are they not my sons?" He said: "Yes, you have the reward for what you have spent on them."

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إسْمَاعِيلَ نا وَهْبٌ - وَهُوَ ابْنُ خَالِدٍ - نَا هِشَامٌ - هُوَ ابْنُ عُرْوَةَ - عَنْ أَبِيهِ عَنْ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ عَنْ أُمِّهَا «أُمِّ سَلَمَةَ قَالَتْ: يَا رَسُولَ اللَّهِ، هَلْ لِي مِنْ أَجْرٍ فِي بَنِي أَبِي سَلَمَةَ إنْ أَنْفَقْتُ عَلَيْهِمْ - وَلَسْتُ بِتَارِكَتِهِمْ - هَكَذَا وَهَكَذَا، إنَّمَا هُمْ بَنِيَّ؟ قَالَ: نَعَمْ، لَكِ أَجْرُ مَا أَنْفَقْتِ عَلَيْهِمْ» .

L32721 So this Mother of the Believers informs [us] that she spends on her sons and does not abandon them to perish, since they are indeed her sons. The Prophet (peace and blessings be upon him) did not disapprove of this, nor did he inform her that this was not obligatory upon her. And with Allah, the Most High, is success.

فَهَذِهِ أُمُّ الْمُؤْمِنِينَ تُخْبِرُ أَنَّهَا تُنْفِقُ عَلَى بَنِيهَا وَلَيْسَتْ بِتَارِكَتِهِمْ يَضِيعُونَ إنَّمَا هُمْ بَنُوهَا، وَلَمْ يُنْكِرْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ذَلِكَ، وَلَا أَخْبَرَهَا أَنَّ ذَلِكَ لَيْسَ وَاجِبًا عَلَيْهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L32722 It is not incumbent upon the son to provide for his father's wife or for

[37] **Qur'an references (L32716):** Qur'an 2:233 (Al-Baqarah).

the mother of his child (umm walad), as neither the Quran nor the Sunnah has obligated this. Rather, his duty is exclusively to provide his father's nourishment, clothing, and expenses for his service. And with Allah, the Exalted, is success.

وَلَيْسَ عَلَى الْوَلَدِ أَنْ يُنْفِقَ عَلَى زَوْجَةِ أَبِيهِ، وَلَا عَلَى أُمِّ وَلَدِهِ، إِذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، إِنَّمَا عَلَيْهِ أَنْ يَقُومَ بِمَطْعَمِ أَبِيهِ، وَمَلْبَسِهِ، وَمُؤْنَةِ خِدْمَتِهِ فَقَطْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[What Annuls a Marriage After Its Validity and What Does Not] [Legal Issue: A marriage is not annulled after its validity is established by leprosy that occurs thereafter, leukoderma, or insanity.]

[مَا يُفْسَخُ بِهِ النِّكَاحُ بَعْدَ صِحَّتِهِ وَمَا لَا يُفْسَخُ بِهِ] [مَسْأَلَةٌ لَا يُفْسَخُ النِّكَاحُ بَعْدَ صِحَّتِهِ بِجُذَامٍ حَادِثٍ وَلَا بِبَرَصٍ وَلَا بِجُنُونٍ]

L32723–32724

L32725 Issue 1930: A marriage is not annulled after its validation due to leprosy arising after the marriage, nor vitiligo arising after the marriage, nor insanity arising after the marriage, nor due to the husband finding in her any of these defects, nor due to her finding the same in him.

١٩٣٠ - مَسْأَلَةٌ: لَا يُفْسَخُ النِّكَاحُ بَعْدَ صِحَّتِهِ بِجُذَامٍ حَادِثٍ، وَلَا بِبَرَصٍ كَذَلِكَ، وَلَا بِجُنُونٍ كَذَلِكَ، وَلَا بِأَنْ يَجِدَ بِهَا شَيْئًا مِنْ هَذِهِ الْعُيُوبِ، وَلَا بِأَنْ تَجِدَهُ هِيَ كَذَلِكَ.

L32726 Nor due to male impotence, nor due to a disease of the female genitalia, nor due to any of the defects.

وَلَا بِعِنَانَةٍ، وَلَا بِدَاءِ فَرْجٍ، وَلَا بِشَيْءٍ مِنْ الْعُيُوبِ.

L32727 Nor due to the lack of maintenance, nor due to the lack of clothing, nor due to the lack of dowry, nor due to the lapse of the four months in the oath of abstention (*īlā'*), nor due to marrying a slave woman over a free woman, nor due to marrying a free woman over a slave woman.

وَلَا بِعَدَمِ نَفَقَةٍ، وَلَا بِعَدَمِ كِسْوَةٍ، وَلَا بِعَدَمِ صَدَاقٍ، وَلَا بِانْقِضَاءِ الْأَرْبَعَةِ الْأَشْهُرِ فِي الْإِيلَاءِ، وَلَا بِزَوَاجِ أَمَةٍ عَلَى حُرَّةٍ، وَلَا بِزَوَاجِ حُرَّةٍ عَلَى أَمَةٍ.

L32728 Nor by adultery committed by either of them, nor by his adultery with her mahram [prohibited relative], such as her mother, grandmother, daughter, son's daughter, daughter's daughter, sister, maternal aunt, paternal aunt, nor by her adultery with his son.

وَلَا بِزِنًى يَحْدُثُ مِنْ أَحَدِهِمَا، وَلَا بِزِنَاهُ بِحَرِيمَتِهَا، كَأُمِّهَا، أَوْ جَدَّتِهَا، أَوْ بِنْتِهَا، أَوْ بِنْتِ ابْنِهَا، أَوْ بِنْتِ ابْنَتِهَا، أَوْ أُخْتِهَا، أَوْ خَالَتِهَا، أَوْ عَمَّتِهَا، وَلَا بِزِنَاهَا بِابْنِهِ.

L32729 Nor by the separation by the two arbiters, nor by his granting her the choice—whether she chooses for herself or did not choose.

وَلَا بِتَفْرِيقِ الْحَكَمَيْنِ، وَبِتَخْيِيرِهِ إِيَّاهَا - اخْتَارَتْ نَفْسَهَا أَوْلَمْ تَخْتَرْ.

L32730 Nor is it valid for him to declare to her: "You are unlawful," or say: "You are to me like a corpse, a pig, and blood."

وَلَا بِأَنْ يَقُولَ لَهَا: أَنْتِ حَرَامٌ، أَوْ قَالَ: أَنْتِ عَلَيَّ كَالْمَيْتَةِ، وَالْخِنْزِيرِ، وَالدَّمِ.

L32731 Nor by his grant of her to her people (whether they accept her or not), nor by her departure from the land of war while being non-Muslim.

وَلَا بِهِبَتِهِ إِيَّاهَا لِأَهْلِهَا - قَبِلُوهَا أَوْ لَمْ يَقْبَلُوهَا - وَلَا بِخُرُوجِهَا مِنْ أَرْضِ الْحَرْبِ غَيْرَ مُسْلِمَةٍ.

L32732 Nor is it permissible to sell a married female slave or a married male slave.

وَلَا بِبَيْعِ الْأَمَةِ ذَاتِ الزَّوْجِ، وَلَا بِبَيْعِ الْعَبْدِ ذِي الزَّوْجَةِ.

L32733 Nor by the loss of the husband, because it is not known where he is. They both remain in the state of marriage throughout all this, as it was.

وَلَا بِفَقْدِ الزَّوْجِ، لِأَنَّهُ لَا يَدْرِي أَيْنَ هُوَ؟ وَهُمَا فِي كُلِّ ذَلِكَ بَاقِيَانِ عَلَى الزَّوْجِيَّةِ كَمَا كَانَ.

L32734–32735 In all that we have mentioned, there are differing opinions. We have mentioned from it what Allah the Exalted has willed us to mention, and we shall—Allah willing—also mention what we have not previously mentioned. Among these are...

وَفِي كُلِّ مَا ذَكَرْنَا خِلَافٌ قَدْ ذَكَرْنَا مِنْهُ مَا شَاءَ اللَّهُ تَعَالَى أَنْ نَذْكُرَهُ، وَنَذْكُرُ أَيْضًا إِنْ شَاءَ اللَّهُ تَعَالَى مَا لَمْ نَذْكُرْهُ قَبْلُ - فَمِنْ ذَلِكَ

[مَسْأَلَةٌ امْرَأَةٌ تَزَوَّجَتْ بِهَا جُنُونٌ أَوْ جُذَامٌ أَوْ بَرَصٌ]

L32736 **A legal issue: a woman with whom insanity, leprosy, or vitiligo was present at the time of marriage.**

-: ١٩٣١ - مَسْأَلَةٌ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: أَيُّمَا امْرَأَةٍ تَزَوَّجَتْ بِهَا جُنُونٌ أَوْ جُذَامٌ أَوْ بَرَصٌ فَدَخَلَ بِهَا فَاطَّلَعَ عَلَى ذَلِكَ، فَلَهَا مَهْرُهَا بِمَسِيسِهِ إيَّاهَا، وَعَلَى الْوَلِيِّ الصَّدَاقُ بِمَا دَلَّسَ كَمَا غَرَّهُ.

L32737 Issue 1931: It has been narrated to us through the chain of ʻAbd al-Razzāq from Ibn Jurayj from Yaḥyā ibn Saʻīd al-Anṣārī: I heard Saʻīd ibn al-Musayyab say: ʻUmar ibn al-Khaṭṭāb stated: "Any woman married to a man afflicted with madness, leprosy, or leucoderma – if he consummates the marriage and the defect is then discovered – she retains her full dowry for the consummation. The guardian must bear the compensatory payment for his concealment, just as he deceived her through his fraud."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أرنا يَحْيَى بْنُ سَعِيدٍ نَا سَعِيدُ بْنُ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: أَيُّمَا رَجُلٍ تَزَوَّجَ امْرَأَةً فَدَخَلَ بِهَا فَوَجَدَهَا بَرْصَاءَ، أَوْ مَجْنُونَةً، أَوْ مَجْذُومَةً، فَلَهَا الصَّدَاقُ بِمَسِّهِ إيَّاهَا - وَيَرْجِعُ عَلَى مَنْ غَرَّهُ بِهَا فَذَهَبَ إلَى هَذَا الْأَوْزَاعِيُّ، وَأَبُو عُبَيْدٍ، فَرَأَيَا جَوَازَ النِّكَاحِ وَأَنَّ الزَّوْجَ يَرْجِعُ مَعَ ذَلِكَ بِالصَّدَاقِ عَلَى مَنْ غَرَّهُ.

L32738 From the path of Sa'id ibn Mansur: Hushaym narrated to us, Yahya ibn Sa'id narrated to us, Sa'id ibn al-Musayyib narrated that Umar ibn al-Khattab said: Any man who marries a woman and consummates the marriage, then finds her to be leprous, insane, or afflicted with leprosy, she is entitled to the dower due to his intimacy with her—and he may claim compensation from whoever deceived him about her. Al-Awzaʻī and Abu Ubayd upheld this view, affirming the permissibility of the marriage while ruling that the husband may nevertheless reclaim the dower from whoever deceived him.

وَذَهَبَ قَوْمٌ إلَى فَسَادِهِ قَبْلَ الدُّخُولِ وَجَوَازِهِ بَعْدَ الدُّخُولِ، لِمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا سُفْيَانُ عَنْ مُطَرِّفٍ عَنْ الشَّعْبِيِّ عَنْ عَلِيٍّ: أَيُّمَا امْرَأَةٍ نُكِحَتْ وَبِهَا بَرَصٌ،

L32739 A group of scholars held that the marriage is invalid before consummation and valid after consummation, based on what was transmitted to us through Saʻīd ibn Manṣūr's chain: Sufyān reported from Muṭarrif from al-Shaʻbī from ʻAlī: "Whichever woman is married while afflicted with vitiligo, insanity, leprosy, or a vaginal defect, her husband has the choice—provided he has not

consummated the marriage—to retain her or divorce her. If he consummates the marriage, she is entitled to the mahr for having lawfully consummated it."

أَوَجُنُونٌ، أَوْ جُذَامٌ، أَوْ قَرَنٌ، فَزَوْجُهَا بِالْخِيَارِ - مَا لَمْ يَمَسَّهَا - إِنْ شَاءَ أَمْسَكَ، وَإِنْ شَاءَ طَلَّقَ، وَإِنْ مَسَّهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا.

L32740 Through the narration of Shuʿbah from al-Ḥakam ibn ʿUtaybah: ʿAlī ibn Abī Ṭālib ruled concerning the insane woman (al-majnūnah), the leprous woman (al-majdhūmah), the woman with leprosy (al-barṣāʾ), and the woman with a horn-like growth (dhāt al-qarn): If he consummates the marriage with her, she remains his wife, but if he discovers her condition before consummation, the marriage is annulled.

وَمِنْ طَرِيقِ شُعْبَةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْمَجْنُونَةِ، وَالْمَجْذُومَةِ، وَالْبَرْصَاءِ، وَذَاتِ الْقَرَنِ -: إِنْ دَخَلَ بِهَا فَهِيَ امْرَأَتُهُ وَإِنْ عَلِمَ بِهَا قَبْلَ أَنْ يَدْخُلَ فُرِّقَ بَيْنَهُمَا.

L32741–32743 Through the chain of ʿAbd al-Malik ibn Ḥabīb, the following narrated to me: al-Ḥizāmī, Ismāʿīl ibn Abī Uways, and Aṣbagh ibn al-Faraj. Ismāʿīl narrated from Ḥusayn ibn ʿAbd Allāh ibn Ḍhumayrah, from his father, from his grandfather, from ʿAlī ibn Abī Ṭālib. Al-Ḥizāmī narrated from Sufyān, from ʿAmr ibn Dīnār, from Ibn ʿAbbās. Aṣbagh narrated from Ibn Wahb, from ʿUmar, ʿAlī, Ibn ʿAbbās, Saʿīd ibn al-Musayyib, and Ibn Shihāb. And of Rabīʿah, they all said: Do not reject a woman in marriage except on account of the four defects: insanity, leprosy, vitiligo, and genital disease.

وَمِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ حَدَّثَنِي الْحِزَامِيُّ وَإِسْمَاعِيلُ بْنُ أَبِي أُوَيْسٍ وَأَصْبَغُ بْنُ الْفَرَجِ، قَالَ إِسْمَاعِيلُ عَنْ حُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - وَقَالَ الْحِزَامِيُّ عَنْ سُفْيَانَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنِ ابْنِ عَبَّاسٍ - وَقَالَ أَصْبَغُ عَنِ ابْنِ وَهْبٍ، عَنْ عُمَرَ، وَعَلِيٍّ، وَابْنِ عَبَّاسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَابْنِ شِهَابٍ وَرَبِيعَةَ، قَالُوا كُلُّهُمْ: لَا تَرُدُّ النِّسَاءُ إِلَّا مِنَ الْعُيُوبِ الْأَرْبَعَةِ، الْجُنُونُ، وَالْجُذَامُ، وَالْبَرَصُ، وَالدَّاءُ فِي الْفَرْجِ.

L32744 From the narration of Saʾīd ibn Manṣūr: Hushaym narrated to us, Muḥammad ibn Sālim narrated to us from al-Shaʿbī regarding a man who discovers his wife to be afflicted with leucoderma, insane, leprous, or having a vaginal defect: If he has consummated the marriage, she retains her full dowry. If he discovers [the defect] before consummation, he may choose to retain her or annul the marriage without divorce—these are two juristic positions. The first holds that if he consummates the marriage, she receives her dowry, and he may reclaim it from whoever deceived him—a view narrated from ʿUmar. In another narration from ʿUmar, he may reclaim [the dowry] from her guardian. The second position states that he may annul the marriage before consummation if he wishes, but after consummation, she remains his wife; he may then divorce her or keep her. This is narrated from ʿAlī and al-Shaʿbī as we conveyed, and in a narration from ʿUmar, ʿAlī, Ibn ʿAbbās,

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُحَمَّدُ بْنُ سَالِمٍ عَنِ الشَّعْبِيِّ فِي الَّذِي يَجِدُ امْرَأَتَهُ بَرْصَاءَ، أَوْ مَجْنُونَةً، أَوْ مَجْذُومَةً، أَوْ ذَاتَ قَرَنٍ: إِنْ دَخَلَ بِهَا فَلَهَا مَهْرُهَا، وَإِنْ عَلِمَ قَبْلَ الدُّخُولِ إِنْ شَاءَ أَمْسَكَ، وَإِنْ شَاءَ فَارَقَ بِغَيْرِ طَلَاقٍ - فَهَذَانِ قَوْلَانِ -: أَحَدُهُمَا - أَنَّهُ إِنْ دَخَلَ بِهَا فَلَهَا مَهْرُهَا، وَيَرْجِعُ بِهِ عَلَى مَنْ غَرَّهُ - وَهُوَ قَوْلٌ رُوِيَ عَنْ عُمَرَ، وَمَرَّةً رُوِيَ عَنْهُ: يَرْجِعُ عَلَى وَلِيِّهَا. وَقَوْلٌ آخَرُ - أَنَّهُ يَفْسَخُ إِنْ شَاءَ قَبْلَ الدُّخُولِ، وَأَمَّا بَعْدَ الدُّخُولِ فَهِيَ امْرَأَتُهُ، إِنْ شَاءَ طَلَّقَ، وَإِنْ شَاءَ أَمْسَكَ - وَهُوَ قَوْلٌ رُوِيَ عَنْ عَلِيٍّ، وَالشَّعْبِيِّ كَمَا أَوْرَدْنَا، وَرِوَايَةٌ عَنْ عُمَرَ وَعَلِيٍّ، وَابْنِ عَبَّاسٍ، وَابْنِ الْمُسَيِّبِ، وَالزُّهْرِيِّ،

Ibn al-Musayyib, al-Zuhrī, and Rabīʿah: the marriage is only annulled due to four defects—madness, leprosy, leucoderma, or genital disease.

وَرَبِيعَةَ: أَنَّهُ لَا يُرَدُّ النِّكَاحُ إِلَّا مِنْ الْعُيُوبِ الْأَرْبَعَةِ مِنْ: الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ، وَدَاءِ الْفَرْجِ

L32745 And it was not mentioned in this narration, neither before her consummation, nor after it, nor the legal ruling concerning the dowry.

- وَلَمْ يُذْكَرْ فِي هَذِهِ الرِّوَايَةِ قَبْلَ دُخُولِهَا، وَلَا بَعْدَهُ، وَلَا حُكْمُ الصَّدَاقِ.

L32746 A group held the view that a portion of her dowry should be relinquished for her. It has been narrated to us through the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ: It has reached us that neither a sale nor a marriage is valid [if involving] an insane woman, a woman afflicted with leprosy, a woman with vitiligo, or a barren woman. Ibn Jurayj said: I asked him, "What if he had intercourse with her while she had one of these four conditions, and her guardian—the one responsible for her—knew of her condition yet concealed it?" He replied, "In my view, he must compensate by reducing part of her dowry for what he took from her, except for a negligible amount." I said, "What if someone other than her guardian married her off?" He said, "She is entitled to the dowry customary for women of her status."

وَذَهَبَ قَوْمٌ - إِلَى أَنَّهُ يُخْلَى لَهَا شَيْءٌ مِنْ صَدَاقِهَا -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: بَلَغَنَا أَنَّهُ لَا يَجُوزُ فِي بَيْعٍ، وَلَا نِكَاحٍ: الْمَجْنُونَةُ، وَالْمَجْذُومَةُ، وَالْبَرْصَاءُ، وَالْعَفْلَاءُ. قَالَ ابْنُ جُرَيْجٍ: فَقُلْت لَهُ: فَوَاقَعَهَا وَبِهَا بَعْضُ الْأَرْبَعِ، وَقَدْ عَلِمَ الَّذِي بِهَا فَكَتَمَهُ - يَعْنِي وَلِيَّهَا - قَالَ: مَا أَرَاهُ إِلَّا قَدْ غَرِمَ مِنْ صَدَاقِهَا بِمَا أَصَابَ مِنْهَا، إِلَّا شَيْئًا يَسِيرًا؟ قُلْت: فَأَنْكَحَهَا غَيْرُ وَلِيِّهَا؟ قَالَ: تُرَدُّ إِلَى صَدَاقِ مِثْلِهَا.

L32747 Through the chain of Abū ʿUbayd—Yazīd reported to us from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, from Shurayh—that he would compensate the leprous woman with something.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا يَزِيدُ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ: أَنَّهُ كَانَ يُعَوِّضُ الْبَرْصَاءَ شَيْئًا.

L32748 And a group of scholars—maintained that marriage to any woman who has any of that is not permissible.

وَذَهَبَ قَوْمٌ - إِلَى أَنَّهُ لَا يَجُوزُ نِكَاحُ مَنْ بِهَا شَيْءٌ مِنْ ذَلِكَ.

L32749 Narrated by Saʿīd ibn Manṣūr, from Ḥammād, from ʿAmr ibn Dīnār, from Jābir ibn Yazīd, who said: Four defects are impermissible in sale and marriage: a leprous woman, an insane woman, a woman with vitiligo, and a sterile woman.

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا حَمَّادٌ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ يَزِيدَ قَالَ: أَرْبَعٌ لَا يَجُوزُ فِي بَيْعٍ، وَلَا نِكَاحٍ: الْمَجْذُومَةُ، وَالْمَجْنُونَةُ، وَالْبَرْصَاءُ، وَالْعَفْلَاءُ.

L32750–32751 From the narration of Abū ʾUbayd: Ibn Maryam narrated to us via Ibn Lahīʿah from Yazīd ibn Abī Ḥabīb, who said: Ibn Shihāb said: It is not permissible among Muslims to marry a woman afflicted with leprosy, nor an insane woman, nor a woman with an imperforate vagina.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا ابْنُ مَرْيَمَ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ قَالَ: قَالَ ابْنُ شِهَابٍ: لَا يَجُوزُ بَيْنَ الْمُسْلِمِينَ نِكَاحُ بَرْصَاءَ، وَلَا مَجْنُونَةٍ، وَلَا عَفْلَاءَ.

L32752 A group has held the opinion that it is impermissible to marry such a woman, but if he consummates the marriage with her, it becomes valid. This is as we

have reported through the chain of Abd al-Razzaq from Ma‘mar from Ayyub al-Sikhtiyani from Abu al-Sha‘tha’ Jabir ibn Yazid, who said: Four women do not invalidate a marriage or a sale unless the defect is named. If the defect is named, the marriage remains valid: the insane woman, the leprous woman, the woman with vitiligo, and the woman with a congenital genital defect. If he has intercourse with her, the marriage becomes valid even if he was deceived.

وَذَهَبَتْ طَائِفَةٌ - إِلَى أَنَّهُ لَا يَجُوزُ نِكَاحُهَا، فَإِنْ دَخَلَ بِهَا وَوَطِئَهَا جَازَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ يَزِيدَ قَالَ: أَرْبَعٌ لَا يَجْزِينَ فِي نِكَاحٍ وَلَا بَيْعٍ، إِلَّا أَنْ يُسَمَّى، فَإِنْ سُمِّيَ فَهِيَ مِنْهُ: الْمَجْنُونَةُ، وَالْمَجْذُومَةُ، وَالْبَرْصَاءُ، وَالْعَفْلَاءُ، فَإِنْ مَسَّهَا جَازَتْ، وَإِنْ غُرَّ.

L32753 A group held the opinion that if the guardian denies having known about it, he must be made to swear an oath, be absolved, and the marriage remains valid - as narrated through the transmission chain of Abd al-Razzaq from Ma’mar from al-Zuhri, who said: If the guardian knew, he is liable; otherwise, he is made to swear by Allah that he did not know, and then the obligation rests upon the husband - meaning the dowry.

وَذَهَبَتْ طَائِفَةٌ - إِلَى أَنَّ الْوَلِيَّ إِنْ أَنْكَرَ أَنْ يَكُونَ عَرَفَ ذَلِكَ أُحْلِفَ وَبُرِّئَ وَصَحَّ النِّكَاحُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: إِنْ كَانَ الْوَلِيُّ عَلِمَ غَرِمَ، وَإِلَّا اُسْتُحْلِفَ بِاَللَّهِ: مَا عَلِمَ، ثُمَّ هُوَ عَلَى الزَّوْجِ - يَعْنِي الصَّدَاقَ.

L32754 Through the route of Abū ‘Ubayd: Hushaym reported to us; Yūnus b. ‘Ubayd reported to us, from al-Ḥasan, who said: “If the guardian had known of the defect, the bridal gift (mahr) would fall upon him, just as he deceived her through her. But if he did not know, she remains his wife—he may either divorce her or retain her, as he wishes.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ أرنا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: إِنْ عَلِمَ الْوَلِيُّ الْعَيْبَ فَالصَّدَاقُ عَلَيْهِ، كَمَا غَرَّهُ مِنْهَا، وَإِنْ لَمْ يَعْلَمْ فَهِيَ امْرَأَتُهُ إِنْ شَاءَ طَلَّقَ، وَإِنْ شَاءَ أَمْسَكَ.

L32755 From the narration of Abū ‘Ubayd: ‘Abd Allāh ibn Ṣāliḥ narrated to us from Yaḥyā ibn Ayyūb from ‘Amr ibn Qays from ‘Adī ibn ‘Adī: that ‘Umar ibn ‘Abd al-‘Azīz wrote to him concerning a woman afflicted with a vaginal bone—a condition known as ḥalqā’ (she is the one in whose genitalia there is a bone)—whom a man married, stating, “He is only entitled to the equivalent of the insertion point of a thin probe—from which she urinates.” He wrote in response: “If those who married her off knew of her condition, compel them to reimburse her husband the dowry [he paid]. But if they were unaware of it, they must only swear by Allah: ’We did not know of that.’”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ ثنا عَبْدُ اللَّهِ بْنُ صَالِحٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ عَمْرِو بْنِ قَيْسٍ عَنْ عَدِيِّ بْنِ عَدِيٍّ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ إِلَيْهِ فِي امْرَأَةٍ حَلْقَاءَ تَزَوَّجَهَا رَجُلٌ - وَهِيَ الَّتِي فِي فَرْجِهَا عَظْمٌ -: إِنَّمَا لَهُ مِثْلُ مَدْخَلِ الْمِرْوَدِ تَبُولُ مِنْهُ - فَكَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: إِنْ كَانَ الَّذِينَ زَوَّجُوهُ عَلِمُوا الَّذِي بِهَا فَأَغْرِمْهُمْ صَدَاقَهَا لِزَوْجِهَا، وَإِنْ كَانُوا لَمْ يَعْلَمُوهُ فَلَيْسَ عَلَيْهِمْ إِلَّا أَنْ يَحْلِفُوا: بِاَللَّهِ مَا عَلِمْنَا ذَلِكَ.

L32756 From the narration of Abd al-Razzaq via Abd al-Rahman via al-Muthanna ibn al-Sabbah: That Adi ibn Adi said: I wrote to Umar ibn Abd al-Aziz concerning a woman with an imperforate hymen that prevents men from consummating the marriage. He responded: “Have the guardian swear to his knowledge. If he swears, uphold the marriage. If he does not swear, hold him liable for the mahr.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ الرَّحْمَنِ عَنْ الْمُثَنَّى بْنِ الصَّبَّاحِ: أَنَّ عَدِيَّ بْنَ عَدِيٍّ قَالَ: كَتَبْت إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي امْرَأَةٍ مُرْتَتِقَةٍ لَا يَقْدِرُ عَلَيْهَا الرِّجَالُ؟ فَكَتَبَ

إِلَيَّ: أَنْ اسْتَحْلِفْ الْوَلِيَّ مَا عَلِمَ، فَإِنْ حَلَفَ فَأَجِزْ النِّكَاحَ، وَإِنْ لَمْ يَحْلِفْ فَاحْمِلْ عَلَيْهِ الصَّدَاقَ

L32757 Via the chain of Ibn Wahb, from ʿĀmir ibn Murrah, from Rabīʿah ibn Abī ʿAbd al-Raḥmān, who mentioned a ruling meaning: If someone marries a person afflicted with leprosy, leukoderma, or a genital disease, and the guardian swears he had no knowledge of this condition, he incurs no liability. The husband is entitled to reclaim his bridal gift (mahr), unless the afflicted party provides something in exchange for it.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَامِرِ بْنِ مُرَّةَ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، فَذَكَرَ كَلَامًا مَعْنَاهُ: فِيمَنْ تَزَوَّجَ مَنْ بِهَا جُذَامٌ، أَوْ بَرَصٌ، أَوْ دَاءُ فَرْجٍ: أَنَّ الْوَلِيَّ إنْ حَلَفَ أَنَّهُ مَا عَلِمَ بِذَلِكَ فَلَا غَرَامَةَ عَلَيْهِ، وَيُرَدُّ عَلَى الزَّوْجِ صَدَاقُهُ، إلَّا أَنْ تُعَاضَ هِيَ مِنْ ذَلِكَ بِشَيْءٍ.

L32758–32759 From the path of Ibn Wahb, ʻAbd al-Aʻlā ibn Saʻīd al-Jayshānī narrated to me: that Muḥammad ibn ʻIkrimah al-Mahrī reported to him: that he married a woman and consummated the marriage, then observed a patch of whiteness at the root of her thighs. He said to her, "Take your covering upon yourself," then spoke to ʻAbdullāh ibn Yazīd ibn Khidhām, who wrote to ʻUmar ibn ʻAbd al-ʻAzīz on his behalf. ʻUmar issued a ruling in the matter: the husband must swear in the mosque by Allah that he has not derived any sexual enjoyment from her since seeing that mark. Her brothers must also swear that they did not know of her condition before she was married. If they swear, they are to give the woman a quarter of the mahr.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي عَبْدُ الْأَعْلَى بْنُ سَعِيدٍ الْجَيَشَانِيُّ: أَنَّ مُحَمَّدَ بْنَ عِكْرِمَةَ الْمَهْرِيَّ حَدَّثَهُ: أَنَّهُ تَزَوَّجَ امْرَأَةً فَدَخَلَ بِهَا فَرَأَى بِأَصْلِ فَخْذَيْهَا وَضَحًا مِنْ بَيَاضٍ؟ فَقَالَ لَهَا: خُذِي عَلَيْك مِلْحَفَتَك ثُمَّ كَلَّمَ عَبْدَ اللَّهِ بْنَ يَزِيدَ بْنِ خِذَامٍ، فَكَتَبَ لَهُ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، فَكَتَبَ عُمَرُ فِي ذَلِكَ: أَنْ يَسْتَحْلِفَ الزَّوْجَ فِي الْمَسْجِدِ: بِاَللَّهِ مَا تَلَذَّذَ مِنْهَا بِشَيْءٍ مُذْ رَأَى ذَلِكَ؟ وَيَحْلِفُ إخْوَتُهَا أَنَّهُمْ لَمْ يَعْلَمُوا بِالَّذِي بِهَا قَبْلَ أَنْ يُزَوَّجَهَا، فَإِنْ حَلَفُوا فَأَعْطَوْا الْمَرْأَةَ رُبْعَ الصَّدَاقِ.

L32760 A group held that blindness and other such defects among imperfections are treated analogously—as we have reported through the chain of Wakiʿ from Sufyān al-Thawrī from Yaḥyā ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyab from ʿUmar ibn al-Khaṭṭāb, who said: If he marries a leprous or blind woman and consummates the marriage, she is entitled to the dower, and he has recourse against whoever deceived him.

وَذَهَبَتْ طَائِفَةٌ: إلَى أَنَّ الْعَمَى، وَغَيْرَ ذَلِكَ، مِنْ الْعُيُوبِ كَذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: إذَا تَزَوَّجَهَا بَرْصَاءَ أَوْ عَمْيَاءَ فَدَخَلَ بِهَا، فَلَهَا الصَّدَاقُ وَيَرْجِعُ عَلَى مَنْ غَرَّهُ.

L32761 From the chain of Abd al-Razzaq via Ma'mar, from Ayyub al-Sikhtiyani, from Muhammad ibn Sirin, who said: A man brought a lawsuit to Shuraih, complaining, "These people said to me, 'We will marry you to the most beautiful of people,' yet they brought me a bleary-eyed woman?" Shuraih

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: خَاصَمَ رَجُلٌ إلَى شُرَيْحٍ فَقَالَ: إنَّ هَؤُلَاءِ قَالُوا لِي: إنَّا نُزَوِّجُكَ أَحْسَنَ النَّاسِ، فَجَاءُونِي بِامْرَأَةٍ عَمْشَاءَ؟ فَقَالَ شُرَيْحٌ إنْ كَانَ دُلِّسَ لَك بِعَيْبٍ لَمْ يَجُزْ.

ruled: “If a defect was fraudulently concealed from you, the marriage is not valid.”

وَرُوِيَ عَنْ الزُّهْرِيِّ: أَنَّهُ يُرَدُّ النِّكَاحُ مِنْ كُلِّ دَاءٍ عُضَالٍ، وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ فِي هَذِهِ الْعُيُوبِ فِي النِّكَاحِ: مَا كَانَ يُشْبِهُهَا. وَهُوَ قَوْلُ أَبِي ثَوْرٍ.

L32762 It has been narrated from al-Zuhri that a marriage may be revoked due to any incurable ailment. Through the chain of Abd al-Razzaq from Ma’mar, he stated regarding these defects in marriage: “Those that are similar to them.” This is the opinion of Abu Thawr.

وَذَهَبَتْ طَائِفَةٌ - إلَى أَنَّ الْمَرْأَةَ يُرَدُّ بِذَلِكَ نِكَاحُهَا إذَا وَجَدَتْ فِي زَوْجِهَا -: 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 عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: وَجَدْتُ فِي كِتَابِ عَبْدِ اللَّهِ بْنِ عُمَرَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إذَا عَبِثَ الْمَعْتُوهُ بِامْرَأَتِهِ طَلَّقَ عَلَيْهِ وَلِيُّهُ

L32763 A group held the opinion that a woman’s marriage is annulled for that reason if she finds in her husband. Narrated 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 Sufyān al-Thawrī from Ḥabīb ibn Abī Thābit from ʿAmr ibn Shuʿayb, who said: I found in the book of ʿAbd Allāh ibn ʿUmar that ʿUmar ibn al-Khaṭṭāb said: If a mentally deficient man consummates the marriage with his wife, his guardian must divorce on his behalf.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مَالِكٌ: أَنَّهُ بَلَغَهُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: أَيُّمَا امْرَأَةٍ تَزَوَّجَتْ رَجُلًا بِهِ جُنُونٌ أَوْ ضَرَرٌ، فَإِنَّهَا تُخَيَّرُ، فَإِنْ شَاءَتْ قَرَّتْ، وَإِنْ شَاءَتْ فَارَقَتْ.

L32764 From the transmission of Ibn Wahb, Malik informed me that it reached him from Saʿīd ibn al-Musayyab, who said: “Any woman who marries a man afflicted with insanity or harm, she is given the choice: if she wishes, she may remain, and if she wishes, she may separate.”

وَقَالَ مَالِكٌ: تُرَدُّ الْمَرْأَةُ مِنْ الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ، وَدَاءِ الْفَرْجِ - إذَا تَزَوَّجَهَا وَلَمْ يَعْلَمْ بِذَلِكَ - فَإِنْ دَخَلَ بِهَا فَلَهَا الصَّدَاقُ وَيَرْجِعُ بِهِ عَلَى وَلِيِّهَا إنْ كَانَ أَخًا أَوْ أَبًا بِمَا دَلَّسَا عَلَيْهِ، فَإِنْ كَانَ الَّذِي زَوَّجَهَا ابْنُ عَمِّهَا، أَوْ مَوْلًى - لَا عِلْمَ لَهُمْ بِشَيْءٍ مِنْ أَمْرِهَا - فَلَا غُرْمَ عَلَيْهِمْ وَيُرَدُّ الصَّدَاقُ، إلَّا قَدْرَ مَا يُسْتَحَلُّ بِهِ مِثْلُهَا، وَهُوَ رُبْعُ دِينَارٍ، فَقَطْ.

L32765–32767 Mālik said: The marriage may be annulled [due to] insanity, leprosy, leukoderma, or vulvar disease - if He married her without knowing that—if he consummates the marriage, she is entitled to the dowry, and he may reclaim it from her guardian if the guardian was a brother or father due to their fraudulent concealment from him. If the one who gave her in marriage was her paternal cousin or a freed slave—while he himself had no knowledge of any aspect of her situation—they bear no liability, and the dowry is returned except the amount necessary to validate the marriage for someone of her status, which is only a quarter of a dinar.

قَالَ: وَلِلْمَرْأَةِ مِثْلُ ذَلِكَ إذَا تَزَوَّجَهَا وَبِهِ هَذِهِ الْأَشْيَاءُ، إذَا كَانَ الْجُذَامُ الَّذِي بِهِ بَيِّنًا وَلَا يُفَرَّقُ بَيْنَهَا وَبَيْنَ الْأَبْرَصِ.

L32768 He said: The same applies to the woman if he marries her while afflicted with these defects, provided the leprosy he has is manifest, and no distinction is made between her case [of marrying a leper] and [the case of marrying] one with leukoderma.

L32769 Mālik said: A marriage may only be annulled due to the four defects. It cannot be annulled for blindness or blackness unless her soundness was stipulated, in which case it may be annulled. If the marriage is annulled before consummation, no part of the dowry is due from the husband.

قَالَ مَالِكٌ: وَلَا تُرَدُّ إِلَّا مِنْ الْعُيُوبِ الْأَرْبَعَةِ، لَا تُرَدُّ مِنْ الْعَمَى، وَلَا مِنْ السَّوَادِ، إِلَّا أَنْ يُشْتَرَطَ صِحَّتُهَا فَتُرَدُّ، وَلَا شَيْءَ عَلَيْهِ مِنْ الصَّدَاقِ قَبْلَ الدُّخُولِ.

L32770 As for after consummation, she is entitled to the dowry, and he may recover it from the guardian who married her off. Likewise, if he married her based on lineage and found her lacking legal competence (rushdah).

وَأَمَّا بَعْدَ الدُّخُولِ فَلَهَا الصَّدَاقُ، وَيَرْجِعُ بِهِ عَلَى الْوَلِيِّ الَّذِي أَنْكَحَهَا، وَكَذَلِكَ إِنْ تَزَوَّجَهَا عَلَى نَسَبٍ فَوَجَدَهَا لِغَيْرِ رِشْدَةٍ.

L32771 Al-Layth held the same opinion as Malik regarding insanity, leprosy, vitiligo, and disease of the female genitalia. Al-Layth said: “Al-ākila is like leprosy.”

وَقَالَ اللَّيْثُ: فِي الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ، وَدَاءِ الْفَرْجِ، مِثْلَ قَوْلِ مَالِكٍ - قَالَ اللَّيْثُ: وَالْأَكَلَةُ كَالْجُذَامِ.

L32772 Al-Shafi‘i said: The marriage is annulled due to insanity, leprosy, vitiligo, or chronic skin disease. If the annulment occurs before consummation, she is entitled to nothing; but if it occurs after consummation, she is entitled to the customary dowry for women of her status.

وَقَالَ الشَّافِعِيُّ: تُرَدُّ مِنْ الْجُنُونِ، وَالْجُذَامِ، وَالْبَرَصِ، وَالْقَرَنِ، فَأَمَّا قَبْلَ الدُّخُولِ فَلَا شَيْءَ لَهَا، وَأَمَّا بَعْدَ الدُّخُولِ فَلَهَا مَهْرُ مِثْلِهَا.

L32773 And Al-Ḥasan ibn Ḥayy held the same view based on it, except he stated: “She is entitled to the specified bridal gift.”

وَبِهِ قَالَ الْحَسَنُ بْنُ حَيٍّ، إِلَّا أَنَّهُ قَالَ: لَهَا الْمَهْرُ الْمُسَمَّى.

L32774 A group holds that there is no annulment for him in her case, nor annulment for her in his case—due to any of these defects or other than these defects—neither before nor after consummation.

وَذَهَبَتْ طَائِفَةٌ - إِلَى أَنَّهُ لَا رَدَّ لَهُ فِيهَا، وَلَا رَدَّ لَهَا فِيهِ بِشَيْءٍ مِنْ هَذِهِ الْعُيُوبِ، وَلَا مِنْ غَيْرِهَا - لَا قَبْلَ الدُّخُولِ وَلَا بَعْدَهُ.

L32775 And that if he divorces before consummation, she is entitled to half the dower, and after intercourse, she is entitled to the full dower, as we have reported through the narration of Waki‘ from Ismā‘īl ibn Abī Khālid from al-Sha‘bī, who said: ‘Alī ibn Abī Ṭālib stated, “Any man who marries a woman who is insane, afflicted with leprosy, vitiligo, or a horn, she is his wife. He may either divorce her or keep her as his wife, as he wishes.”

وَأَنَّهُ إِنْ طَلَّقَ قَبْلَ الدُّخُولِ فَلَهَا نِصْفُ الصَّدَاقِ وَلَهَا بَعْدَ الْوَطْءِ جَمِيعُهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ " أَيُّمَا رَجُلٍ تَزَوَّجَ امْرَأَةً مَجْنُونَةً أَوْ جَذْمَاءَ أَوْ بَرْصَاءَ أَوْ بِهَا قَرَنٌ فَهِيَ امْرَأَتُهُ، إِنْ شَاءَ طَلَّقَ وَإِنْ شَاءَ أَمْسَكَ ".

L32776 And through him to Waki‘ from Sufyan al-Thawri from Hammad ibn Abi Sulayman from Ibrahim al-Nakha‘i, who said: A free woman is not rejected due to a defect.

وَبِهِ إِلَى وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: الْحُرَّةُ لَا تُرَدُّ مِنْ عَيْبٍ.

L32777–32779 From the chain of transmission of Sa’id ibn Mansur: Hushaym reported to us, from Al-Mughirah, from Ibrahim, that he would say: It is. His wife—if he wishes, he may retain her, and if he wishes, he may divorce her, whether he has consummated the marriage or not—free women are not like enslaved women; a free woman cannot be rejected due to a disease.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا هُشَيْمٌ أرنا الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ أَنَّهُ كَانَ يَقُولُ: هِيَ امْرَأَتُهُ - إِنْ شَاءَ أَمْسَكَ وَإِنْ شَاءَ طَلَّقَ، دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ بِهَا - لَيْسَ الْحَرَائِرُ كَالْإِمَاءِ، الْحُرَّةُ لَا تُرَدُّ مِنْ دَاءٍ.

L32780 From the narration of Waki‘ through Sufyan, from ‘Amr ibn Maymun, from ‘Umar ibn Abd al-Aziz regarding a man who married a woman and was deceived by a defect concealed within her, he said: “You have no recourse except to hold your in-laws accountable for their integrity.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ عَمْرِو بْنِ مَيْمُونٍ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِيمَنْ تَزَوَّجَ فَدُلِّسَ لَهُ فِيهَا بِعَيْبٍ قَالَ: لَيْسَ لَك إلَّا أَمَانَةُ أَصْهَارِك.

L32781 From the transmission of al-Ḥajjāj ibn al-Minhāl via Ḥammād ibn Zayd via Ayyūb al-Sikhtiyānī, who said: I wrote to Abū Qilābah inquiring about a man who married a woman, then she became afflicted with [what appeared as] medical treatment or madness. He responded: This woman has been tested with a trial, so let her persevere in patience.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ زَيْدٍ نا أَيُّوبُ السِّخْتِيَانِيُّ قَالَ: كَتَبْت إلَى أَبِي قِلَابَةَ أَسْأَلُهُ عَنْ رَجُلٍ تَزَوَّجَ امْرَأَةً فَعَرَضَ لَهَا طِبٌّ أَوْ جُنُونٌ؟ قَالَ: هَذِهِ امْرَأَةٌ ابْتُلِيَتْ فَلْتَصْبِرْ

L32782 From the narration chain of Saʿīd ibn Manṣūr: Ismāʿīl ibn ʿAyyāsh reported to us from Ibn Jurayj, who reported from ʿAṭāʾ, that he said regarding one who married: when he consummated the marriage, she discovered he had vitiligo or leprosy. ʿAṭāʾ said: “She cannot withdraw from him”—and this is the opinion of Abū al-Zinād, Abū Ḥanīfah, Abū Yūsuf, Ibn Abī Laylā, Sufyān al-Thawrī, Abū Sulaymān, and our companions.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إسْمَاعِيلُ بْنُ عَيَّاشٍ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ: أَنَّهُ قَالَ فِيمَنْ تَزَوَّجَ فَلَمَّا دَخَلَ بِهَا بَدَا لَهَا مِنْهُ بَرَصٌ أَوْ جُذَامٌ؟ قَالَ عَطَاءٌ: لَا تَنْزِعُ عَنْهُ - وَهُوَ قَوْلُ أَبِي الزِّنَادِ، وَأَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ وَابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L32783 Abu Muhammad said: As for the Malikis and Shafi’is, they opposed all that was narrated on this issue from the Companions - may Allah be pleased with them. Regarding Umar, they contradicted him in five matters: The first was Umar’s ruling permitting recovery of her dowry from her legal guardian. He stated: “The guardian cannot recover the dowry unless he is the father or brother. If the guardian is a cousin or freedman, nothing may be recovered from him.” Al-Shafi’i said: “Nothing may be recovered from her legal guardian—whether he is a father or other relative.”

قَالَ أَبُو مُحَمَّد: أَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فَقَدْ خَالَفُوا كُلَّ مَا رُوِيَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: أَمَّا عُمَرُ فَخَالَفُوهُ فِي خَمْسَةِ مَوَاضِعَ: أَوَّلُهَا - حُكْمُ عُمَرَ أَنْ يَرْجِعَ بِصَدَاقِهَا عَلَى وَلِيِّهَا - فَقَالَ لَك: لَا يَرْجِعُ عَلَى وَلِيِّهَا إلَّا أَنْ يَكُونَ أَبًا أَوْ أَخًا، فَإِنْ كَانَ ابْنَ عَمٍّ أَوْ مَوْلًى لَمْ يَرْجِعْ عَلَيْهِ بِشَيْءٍ - وَقَالَ الشَّافِعِيُّ: لَا يَرْجِعُ عَلَى وَلِيِّهَا بِشَيْءٍ - أَبًا كَانَ أَوْ غَيْرَهُ.

L32784 The second issue—the opinion of Mālik: If he has consummated the marriage with her, and her marriage was concluded by someone other than her

وَثَانِيهَا - قَوْلُ مَالِكٍ: لَيْسَ لَهَا إنْ دَخَلَ بِهَا وَكَانَ الْمُزَوِّجُ لَهَا غَيْرَ أَبِيهَا وَأَخِيهَا إلَّا رُبُعُ دِينَارٍ، فَقَطْ.

وَقَالَ الشَّافِعِيُّ: تُرَدُّ إلَى صَدَاقِ مِثْلِهَا - وَعُمَرُ يُمْضِيهِ كُلَّهُ لَهَا -.

وَثَالِثُهَا - أَنَّهُمْ لَا يَرُدُّونَ مِنْ الْعَمَى - وَعُمَرُ قَدْ سَوَّى بَيْنَهُ وَبَيْنَ الْبَرَصِ بِالرِّوَايَةِ الَّتِي جَاءَتْ عَنْهُ: أَنَّهُ رَدَّ بِالْجُذَامِ، وَبِالْجُنُونِ، وَالْبَرَصِ، فَإِنْ كَانَتْ تِلْكَ حُجَّةً فَهَذِهِ حُجَّةٌ، وَإِنْ لَمْ تَكُنْ هَذِهِ حُجَّةً فَتِلْكَ لَيْسَتْ حُجَّةً، وَإِلَّا فَهُوَ تَلَاعُبٌ بِالدِّينِ.

فَإِنْ قَالُوا: لَمْ تَبْلُغْ تِلْكَ الرِّوَايَةُ مَالِكًا، وَالشَّافِعِيَّ؟ قُلْنَا: فَقَدْ بَلَغَتْكُمْ فَقُولُوا بِهَا وَارْجِعُوا عَنْ تِلْكَ، وَإِلَّا فَاحْتِجَاجُكُمْ بِعُمَرَ تَلَاعُبٌ {كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لا تَفْعَلُونَ} [الصف: ٣] .

وَرَابِعُهَا - أَنَّهُمْ يَرُدُّونَ النِّكَاحَ بِذَلِكَ قَبْلَ الدُّخُولِ وَلَمْ يَأْتِ بِذَلِكَ عَنْ عُمَرَ فِي شَيْءٍ مِنْ الرِّوَايَاتِ إلَّا رِوَايَةً مَكْذُوبَةً مِنْ طَرِيقِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ - وَهُوَ هَالِكٌ - عَنْ أَصْبَغَ بْنِ الْفَرَجِ عَنْ ابْنِ وَهْبٍ عَنْ عُمَرَ -.

وَإِنَّمَا جَاءَتْ سَائِرُ الرِّوَايَاتِ بِرُجُوعِهِ بِالصَّدَاقِ عَلَى وَلِيِّهَا فَقَطْ - كَمَا يَقُولُ الْأَوْزَاعِيُّ، وَأَبُو عُبَيْدَةَ.

وَخَامِسُهَا - أَنَّهُ رُوِيَ عَنْ عُمَرَ، كَمَا أَوْرَدْنَا فِي الْمَعْتُوهِ يَعْبَثُ بِامْرَأَتِهِ أَنَّهُ يُطَلِّقُهَا مِنْهُ وَلِيُّهُ وَهُمْ لَا يَقُولُونَ بِهَذَا.

father or brother, she is not entitled to anything except a quarter of a dinar, and nothing more.

L32785 Al-Shafi'i said: It is to be referred back to the standard dowry for women of her status, whereas 'Umar ratifies the entire amount for her.

L32786 The third is that they do not reject for blindness, while 'Umar equated it with leprosy according to the narration reported from him: that he annulled marriages due to leprosy, insanity, and vitiligo. If that constitutes valid proof, then this constitutes valid proof. If this does not constitute valid proof, then neither does that. Otherwise, it would amount to mockery of the religion.

L32787 If they say: "Did that narration not reach Mālik and al-Shāfi'ī?" We reply: "It has indeed reached you, so follow it and abandon that position. Otherwise, your citation of 'Umar's stance as evidence is frivolous. _'Most hateful it is to Allah that you say what you do not do'_ [al-Ṣaff 61:3]."[38]

L32788–32789 The fourth point is that they invalidate the marriage on that basis before consummation. No narration from 'Umar exists regarding this matter in any of the reports except a fabricated one via 'Abd al-Malik ibn Habib—who is discredited—from Asbagh ibn al-Faraj, from Ibn Wahb, from 'Umar.

L32790 All other narrations report the return of the dowry being upon her guardian alone, as stated by Al-Awzā'ī and Abū 'Ubaydah.

L32791 The fifth is that it was narrated from 'Umar—as we mentioned regarding the mentally incompetent person who acts improperly with his wife—that his guardian effectuates the divorce from him, and they do not uphold this opinion.

L32792 So whoever proceeds to differ from Umar in five rulings, can he follow

[38] **Qur'an references (L32787):** Qur'an 61:3 (As-Saf).

Umar in one ruling reported from him - specifically the retraction against some guardians? As for Al-Shāfiʿī: no, not even in a single ruling.

فَمَنْ أَقْدَمَ عَلَى خِلَافِ عُمَرَ فِي خَمْسَةِ مَوَاضِعَ أَيَجُوزُ لَهُ أَنْ يُقَلِّدَ عُمَرَ فِي مَوْضِعٍ وَاحِدٍ مِمَّا جَاءَ عَنْهُ، وَهُوَ الرُّجُوعُ عَلَى بَعْضِ الْأَوْلِيَاءِ؟ وَأَمَّا الشَّافِعِيُّ - فَلَا، وَلَا فِي مَوْضِعٍ وَاحِدٍ.

L32793 As for Ali (may Allah be pleased with him), only three narrations are reported from him: One states that he did not reject any of that, and this is our opinion.

وَأَمَّا عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّمَا جَاءَتْ عَنْهُ ثَلَاثُ رِوَايَاتٍ -: إِحْدَاهَا - أَنَّهُ لَا رَدَّ لَهُ فِي شَيْءٍ مِنْ ذَلِكَ - وَهُوَ قَوْلُنَا.

L32794 The second ruling derived from this method is that before consummation, the husband retains the right to choose between annulment or ratification of the marriage. After consummation, this option ceases—she remains irrevocably his wife, to be divorced or retained at his discretion.

وَالثَّانِيَةُ - مِنْ تِلْكَ الطَّرِيقِ: أَنَّهُ مُخَيَّرٌ قَبْلَ الدُّخُولِ بَيْنَ فَسْخٍ أَوْ إِمْضَاءٍ، وَأَنَّهُ لَا خِيَارَ لَهُ بَعْدَ الدُّخُولِ، وَهِيَ امْرَأَتُهُ - إِنْ شَاءَ طَلَّقَ وَإِنْ شَاءَ أَمْسَكَ -.

L32795 And this is the opinion of Al-Awzāʿī transmitted from Al-Shaʿbī.

وَهُوَ قَوْلُ الْأَوْزَاعِيِّ عَنْ الشَّعْبِيِّ.

L32796 A third narration—utterly invalid, as it is narrated from al-Ḥusayn ibn ʿAbdillāh ibn Ḍumayrah (from whom narration is not permissible)—states that marriage is wholly rejected.

وَرِوَايَةٌ ثَالِثَةٌ - فِي غَايَةِ السُّقُوطِ، لِأَنَّهَا عَنْ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ - وَلَا تَجُوزُ الرِّوَايَةُ عَنْهُ - أَنَّ النِّكَاحَ مَرْدُودٌ جُمْلَةً.

L32797 The Mālikīs and the Shāfiʿīs—differ from all these opinions.

وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ - مُخَالِفُونَ لِجَمِيعِ هَذِهِ الْأَقْوَالِ.

L32798 As for Ibn Abbas—this is from the narration of ʿAbd al-Malik ibn Ḥabīb, who is a discredited narrator—and it explicitly states the total annulment of the marriage without mentioning a mahr or any portion thereof.

وَأَمَّا ابْنُ عَبَّاسٍ - فَهِيَ مِنْ رِوَايَةِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ - وَهُوَ هَالِكٌ - وَإِنَّمَا فِيهِ أَيْضًا: رَدُّ النِّكَاحِ جُمْلَةً دُونَ ذِكْرِ صَدَاقٍ أَوْ شَيْءٍ مِنْهُ.

L32799 The attachment of these two groups to anything narrated from any of the Companions regarding that matter is invalidated, and their divergence from his position has now become fully evident in its entirety. We have cited from the rulings of Mālik and al-Shāfiʿī on this matter what was not recorded from any authority before them. Among these rulings are Mālik's opinion that it is reduced to a quarter dinar, and al-Shāfiʿī's opinion that it is adjusted to the dowry equivalent to hers.

فَبَطَلَ تَعَلُّقُ هَاتَيْنِ الطَّائِفَتَيْنِ بِشَيْءٍ مِمَّا رُوِيَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ فِي ذَلِكَ وَلَاحَ خِلَافُهُمْ لَهُ جُمْلَةً - وَقَدْ أَتَيْنَا مِنْ قَوْلِ مَالِكٍ، وَالشَّافِعِيِّ فِي ذَلِكَ بِمَا لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَهُمَا، فَمِنْ ذَلِكَ -: قَوْلُ مَالِكٍ تُرَدُّ إِلَى رُبُعِ دِينَارٍ، وَقَوْلُ الشَّافِعِيِّ تُرَدُّ إِلَى صَدَاقِ مِثْلِهَا.

L32800–32801 The discussion remains concerning those who may base their argument on

what is narrated from the Companions we mentioned—may Allah be pleased with them. The first point is that no authentic report exists from any of the Companions on this matter. As for the narrations from Umar and Ali, their chains are interrupted. The narration from Ibn Abbas comes through an unreliable chain. Then, even if they were authentic, they would not constitute proof, for no one's statement apart from the Messenger of Allah—peace and blessings be upon him—holds authority, especially given the contradictions in these narrations despite their interruption. Indeed, what is reported from Ali aligns with our position. Thus, the contrary narrations are not proof; they are merely another statement.

وَبَقِيَ الْكَلَامُ مَعَ مَنْ لَعَلَّهُ يَتَعَلَّقُ فِي ذَلِكَ بِمَا رُوِيَ عَمَّنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَأَوَّلُ ذَلِكَ: أَنَّهُ لَا يَصِحُّ فِي ذَلِكَ شَيْءٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ، وَعَلِيٍّ فَمُنْقَطِعَةٌ، وَعَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقٍ لَا خَيْرَ فِيهِ - ثُمَّ لَوْ صَحَّ لَكَانَ لَا حُجَّةَ فِيهِ، لِأَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ اخْتِلَافِ تِلْكَ الرِّوَايَاتِ - عَلَى انْقِطَاعِهَا - فَقَدْ جَاءَ عَنْ عَلِيٍّ مَا يُوَافِقُ قَوْلَنَا، فَلَيْسَ مَا رُوِيَ مِنْ خِلَافِ ذَلِكَ حُجَّةً، إنَّمَا هُوَ قَوْلٌ كَقَوْلٍ.

L32802 We found that some later scholars among them cited as evidence in this matter that marriage resembles sales transactions, and sales transactions can be annulled due to defects; thus, marriage must be annulled for the same reason? Abū Muḥammad said: This is an opinion that cannot be obfuscated except by those who follow the view of Abū Thawr, al-Zuhrī, and Shurayḥ. As for the Mālikīs and the Shāfiʿīs, they do not, because they limited to four defects, excluding all others. This constitutes a complete abandonment of the aforementioned legal analogy.

وَوَجَدْنَا بَعْضَ الْمُتَأَخِّرِينَ مِنْهُمْ قَدْ احْتَجَّ فِي ذَلِكَ بِأَنَّ النِّكَاحَ يُشْبِهُ الْبُيُوعَ، وَالْبُيُوعُ تُرَدُّ بِالْعُيُوبِ، فَوَجَبَ رَدُّ النِّكَاحِ بِذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا قَوْلٌ لَا يَسُوغُ التَّمْوِيهُ بِهِ إلَّا لِمَنْ قَالَ بِقَوْلِ أَبِي ثَوْرٍ وَالزُّهْرِيِّ، وَشُرَيْحٍ - وَأَمَّا الْمَالِكِيُّونَ وَالشَّافِعِيُّونَ فَلَا، لِأَنَّهُمْ خَصُّوا أَرْبَعَةَ عُيُوبٍ دُونَ سَائِرِ الْعُيُوبِ، وَهَذَا تَرْكٌ لِلْقِيَاسِ الْمَذْكُورِ جُمْلَةً.

L32803 Then we say to those who uphold the opinion of Abū Thawr: "We do not know in what aspect marriage resembles sales; rather, it is entirely contrary to them. This is because a sale is the transfer of ownership, whereas in marriage there is no ownership whatsoever."

ثُمَّ نَقُولُ لِمَنْ قَالَ بِقَوْلِ أَبِي ثَوْرٍ: مَا نَدْرِي فِي أَيِّ وَجْهٍ يُشْبِهُ النِّكَاحُ الْبُيُوعَ بَلْ هُوَ خِلَافُهُ جُمْلَةً -: لِأَنَّ الْبَيْعَ نَقْلُ مِلْكٍ، وَلَيْسَ فِي النِّكَاحِ مِلْكٌ أَصْلًا.

L32804 Marriage is permissible without mentioning a mahr in its contract, but a sale is impermissible without mentioning a price.

وَالنِّكَاحُ جَائِزٌ بِغَيْرِ ذِكْرِ صَدَاقٍ فِي عَقْدِهِ، وَلَا يَجُوزُ الْبَيْعُ بِغَيْرِ ذِكْرِ ثَمَنٍ.

L32805 According to them, the khiyar (contractual option) is permissible in the sale for a specified period, but not in marriage.

وَالْخِيَارُ جَائِزٌ عِنْدَهُمْ فِي الْبَيْعِ مُدَّةً مُسَمَّاةً، وَلَا يَجُوزُ فِي النِّكَاحِ.

L32806 The sale without viewing the item sold or describing it is void and fundamentally impermissible.

وَالْبَيْعُ بِتَرْكِ رُؤْيَةِ الْمَبِيعِ، وَتَرْكِ وَصْفِهِ بَاطِلٌ لَا يَجُوزُ أَصْلًا.

L32807 It is permissible to contract a marriage without viewing the woman to be married and without specifying her attributes.

وَالنِّكَاحُ بِتَرْكِ رُؤْيَةِ الْمَنْكُوحَةِ وَتَرْكُ وَصْفِهَا جَائِزٌ.

L32808 According to the Malikis, marriage is valid if stipulated to include a house,

a servant, or unspecified attributes, whereas such stipulations are invalid in sales—thus, the analogy equating marriage to a sale has been entirely invalidated.

وَالنِّكَاحُ عِنْدَ الْمَالِكِيِّينَ جَائِزٌ عَلَى بَيْتٍ وَخَادِمٍ وَوُصَفَاءَ غَيْرِ مَوْصُوفِينَ وَلَا يَجُوزُ ذَلِكَ فِي الْبُيُوعِ - فَبَطَلَ تَشْبِيهُ النِّكَاحِ بِالْبَيْعِ جُمْلَةً.

L32809 Some of them said: It is not permissible to fulfill the rights of marriage in cases of insanity, nor does one's conscience find it acceptable to engage in intercourse with a leprous woman or one afflicted with *jadhām*, nor can a man perform intercourse with a woman having a clitoral abnormality—since he married her solely for intercourse? We replied: Nor is it permissible to fulfill the rights of marriage in cases of transgression, marital disobedience, bad character, muteness, deafness, or intellectual deficiency—did they reject these [conditions]?

قَالَ بَعْضُهُمْ: لَا يَجُوزُ تَوْفِيَةُ حُقُوقِ النِّكَاحِ مَعَ الْجُنُونِ، وَلَا تَطِيبُ النَّفْسُ عَلَى مُجَامَعَةِ بَرْصَاءَ، أَوْ مَجْذُومَةٍ، وَلَا يَقْدِرُ عَلَى جِمَاعِ قَرْنَاءَ، إِنَّمَا تَزَوَّجَهَا لِلْجِمَاعِ؟ فَقُلْنَا: وَلَا تَجُوزُ تَوْفِيَةُ حُقُوقِ النِّكَاحِ مَعَ الْفِسْقِ وَالنُّشُزِ وَسُوءِ الْخُلُقِ، وَمَعَ الْبُكْمِ وَالصَّمِّ، وَمَعَ ضَعْفِ الْعَقْلِ، فَرَدُّوا مِنْهَا؟

L32810–32811 If they say: "Can one repent from immorality?" We reply: "Can one recover from madness?" As for contentment in intercourse—by Allah, no soul is truly content with one who harbors a hidden leprous patch in their body, nor with one afflicted by monthly seizures. This applies equally to defects such as: the adulteress, the ugly black old woman, one bearing a facial sore, a prominent wart, a hunched chest or back, or muteness. This is undoubted in anyone's view.

فَإِنْ قَالُوا: قَدْ يَتُوبُ مِنَ الْفِسْقِ؟ قُلْنَا: وَقَدْ يَبْرَأُ مِنَ الْجُنُونِ. وَأَمَّا طِيبُ النَّفْسِ عَلَى الْجِمَاعِ، فَوَاللَّهِ إِنَّ نَفْسَ كُلِّ أَحَدٍ لَا تَطِيبُ عَلَى مَنْ بِهَا فِي خَافِي جَسَدِهَا لَمْعَةٌ مِنْ بَرَصٍ، وَمَنْ يَمَسُّهَا صَرْعٌ فِي الشَّهْرِ مَرَّةً، مِنْهَا عَلَى الزَّانِيَةِ، وَعَلَى الْعَجُوزِ السَّوْدَاءِ الشَّوْهَاءِ، وَعَلَى مَنْ بِهَا أَكَلَةٌ فِي وَجْهِهَا، أَوْ أُثْلُولٌ ضَخْمٌ، أَوْ حُدْبٌ فِي الصَّدْرِ، أَوِ الظَّهْرِ، أَوْ بَكَمٌ - هَذَا مَا لَا شَكَّ فِيهِ عِنْدَ أَحَدٍ.

L32812 All these opinions are corrupt. Marriage is solely as Allah, the Exalted and Majestic, has ordained. It is then either retaining [the spouse] with kindness or parting with excellence—unless an authentic textual evidence arises, in which case adherence to it is obligatory.

وَكُلُّ هَذِهِ آرَاءٌ فَاسِدَةٌ، إِنَّمَا هُوَ النِّكَاحُ كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، ثُمَّ إِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ، إِلَّا أَنْ يَأْتِيَ نَصٌّ صَحِيحٌ فَيُوقَفُ عِنْدَهُ -.

L32813 Some of them mentioned the report which states, "Flee from the leper as you would flee from a lion." We said: This does not necessitate fleeing. Then even if it did imply that, annul the marriage due to its occurrence after both of them after years - while they do not comprehend this.

وَقَدْ ذَكَرَ بَعْضُهُمُ الْخَبَرَ الَّذِي فِيهِ «وَفِرَّ مِنَ الْمَجْذُومِ فِرَارَكَ مِنَ الْأَسَدِ» قُلْنَا: لَيْسَ عَلَى الْأَمْرِ بِالْفِرَارِ، ثُمَّ لَوْ كَانَ كَذَلِكَ فَافْسَخُوا النِّكَاحَ بِحُدُوثِهِ بَعْدَهُمَا بَعْدَ سِنِينَ - وَهُمْ لَا يَعْقِلُونَ هَذَا.

L32814 Moreover, on what grounds do you ascribe leprosy to him? Some of them said: "There is no assurance that a madman will refrain from killing his companion." We replied: This is undoubtedly more feared in the case of the

transgressor—so dissolve the marriage due to moral corruption! Thus, the invalidity of their argument became entirely evident.

وَأَيْضًا - فَمِنْ أَيْنَ أَضَفْتُمْ إلَيْهِ الْأَبْرَصَ؟ وَقَالَ بَعْضُهُمْ: لَا يُؤْمَنُ مِنْ الْمَجْنُونِ قَتْلُ صَاحِبِهِ؟ قُلْنَا: هَذَا فِي الْفَاسِقِ - بِلَا شَكٍّ - أَخْوَفُ، فَرُدُّوا النِّكَاحَ بِالْفِسْقِ؟ فَلَاحَ فَسَادُ قَوْلِهِمْ جُمْلَةً.

L32815 If an obfuscator has obscured [the matter] by citing what we narrated through the chain of Saʿīd ibn Manṣūr — Abū Muʿāwiyah the Blind — Jamīl ibn Zayd al-Ṭāʾī — from Zayd ibn Kaʿb ibn ʿUjrah, who said: "The Messenger of Allah—peace and blessings be upon him—married a woman from Banū Ghifār. When she entered upon him and removed her clothes, he saw whiteness on her flank. He said: 'Put on your clothes and return to your family.'"

فَإِنْ مَوَّهَ مُمَوِّهٌ بِمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ الضَّرِيرُ نا جَمِيلُ بْنُ زَيْدٍ الطَّائِيُّ عَنْ زَيْدِ بْنِ كَعْبِ بْنِ عُجْرَةَ قَالَ «تَزَوَّجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - امْرَأَةً مِنْ بَنِي غِفَارٍ فَلَمَّا دَخَلَتْ عَلَيْهِ وَوَضَعَتْ ثِيَابَهَا رَأَى بِكَشْحِهَا بَيَاضًا فَقَالَ: الْبَسِي ثِيَابَك وَالْحَقِي بِأَهْلِك» .

L32816 Abu Mu'awiyah said: A man narrated to us from Jamil ibn Zayd, from Zayd ibn Ka'b ibn 'Ujra that the Prophet (may Allah's peace and blessings be upon him) decreed that she be granted her ṣadāq.

قَالَ أَبُو مُعَاوِيَةَ: فَحَدَّثَنَا رَجُلٌ عَنْ جَمِيلِ بْنِ زَيْدٍ «عَنْ زَيْدِ بْنِ كَعْبِ بْنِ عُجْرَةَ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ لَهَا بِالصَّدَاقِ» .

L32817 Abū Muḥammad said: This is from the narration of Jamīl ibn Zayd—and he is wholly discarded and abandoned—from Zayd ibn Kaʿb—and he is unknown; it is not known that Kaʿb ibn ʿUjrah has a son named Zayd—.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مِنْ رِوَايَةِ جَمِيلِ بْنِ زَيْدٍ وَهُوَ مُطْرَحٌ مَتْرُوكٌ جُمْلَةً عَنْ زَيْدِ بْنِ كَعْبٍ - وَهُوَ مَجْهُولٌ لَا يُعْلَمُ لِكَعْبِ بْنِ عُجْرَةَ وَلَدٌ اسْمُهُ زَيْدٌ -.

L32818–32819 Moreover, it is mursal. Then, even if it were valid, it would not contradict our position, for we do not prohibit the husband from divorce before consummation or after it, if he wishes.

ثُمَّ هُوَ مُرْسَلٌ - ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ مُخَالِفًا لِقَوْلِنَا، لِأَنَّنَا لَا نَمْنَعُ الزَّوْجَ مِنْ الطَّلَاقِ قَبْلَ الدُّخُولِ وَبَعْدَهُ إنْ شَاءَ.

L32820 Abu Muhammad said: If they stipulated freedom from defects in the marriage contract and he found a defect—any defect—then it is an annulled and void marriage. He has no option to ratify it, with no dowry, nor inheritance, nor maintenance—whether he has consummated or not—for the one presented to him is not the one he married, and because the woman stipulated to be free from defects is without doubt different from the defective one. If he did not marry her, is there no marital bond between them? Abu Muhammad said: As for the Hanafis, they have contradicted themselves here by following inauthentic narrations attributed to Umar and Uthman regarding annulment due to chronic impotence and the inheritance of a triply divorced woman—

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ اشْتَرَطَا السَّلَامَةَ فِي عَقْدِ النِّكَاحِ فَوَجَدَ عَيْبًا - أَيَّ عَيْبٍ كَانَ - فَهُوَ نِكَاحٌ مَفْسُوخٌ مَرْدُودٌ لَا خِيَارَ لَهُ فِي إجَازَتِهِ، وَلَا صَدَاقَ فِيهِ، وَلَا مِيرَاثَ، وَلَا نَفَقَةَ - دَخَلَ أَوْ لَمْ يَدْخُلْ - لِأَنَّ الَّتِي أُدْخِلَتْ عَلَيْهِ غَيْرَ الَّتِي تَزَوَّجَ، وَلِأَنَّ الْمُسَالِمَةَ غَيْرُ الْمَعِيبَةِ بِلَا شَكٍّ، فَإِذَا لَمْ يَتَزَوَّجْهَا فَلَا زَوْجِيَّةَ بَيْنَهُمَا؟ قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْحَنَفِيُّونَ فَقَدْ تَنَاقَضُوا هَاهُنَا، لِأَنَّهُمْ قَلَّدُوا رِوَايَاتٍ لَا تَصِحُّ عَنْ عُمَرَ وَعُثْمَانَ فِي الْفَسْخِ بِالْعِنَانَةِ،

narrations like those from Umar. The disagreement there persists as it does here, with no distinction. And success comes from Allah, the Exalted.

A legal issue concerning the annulment of marriage on account of the wife being a mahram to the husband or a mahram to the son.

1932 - Issue: As for the one whose marriage is annulled due to his adultery with her mahram, or due to his son's adultery with her - this is based on what we have narrated through the chain of Sufyan al-Thawri from al-Agharr ibn al-Sabbah from Khalifah ibn al-Husayn from Abu Nasr from Ibn Abbas: A man said to him, "He had intercourse with his wife's mother." Ibn Abbas replied, "Your wife has become forbidden to you," and this occurred after his wife had borne seven children who had attained the status of men.

Through the chain of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from al-Ḥasan, from ʿImrān ibn al-Ḥuṣayn, who said: "Whoever commits fornication with his wife's mother, his wife becomes permanently unlawful to him." This opinion was affirmed by ʿAṭāʾ, al-Ḥasan al-Baṣrī, al-Ḥakam ibn ʿUtaybah, Ḥammād ibn Abī Sulaymān, Ibrāhīm al-Nakhaʿī, and al-Shaʿbī.

And through the chain of Wakiʿ from Jarīr ibn Ḥāzim from Qays ibn Saʿd from Mujāhid, who said: If he kisses her, touches her, or looks at her genitals with desire, her mother and daughter are forbidden to him—this is the view of Abū Ḥanīfah.

It is reliably established from Jabir ibn Zayd that if a man commits adultery with the sister of his wife, his wife becomes forbidden to him.

It has also been authentically reported from Qatādah that he considered stoning applicable only in cases of penetrative intercourse, not for mere sexual contact.

It has also been established (from Tawus) and narrated from Saʿid ibn al-Musayyib, ʿUrwah ibn al-Zubayr, Abu Salamah ibn ʿAbd al-Rahman, and

وَتَوْرِيثِ الْمُطَلَّقَةِ ثَلَاثًا - وَهَذِهِ رِوَايَاتٌ كَتِلْكَ عَنْ عُمَرَ، وَالْخِلَافُ هُنَالِكَ مَوْجُودٌ كَمَا هُوَ هَاهُنَا وَلَا فَرْقَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ فُسِخَ النِّكَاحُ بِزِنَاهُ بِحَرِيمَتِهَا أَوْ بِزِنَا ابْنِهِ بِهَا]

١٩٣٢ - مَسْأَلَةٌ: وَأَمَّا مَنْ فُسِخَ النِّكَاحُ بِزِنَاهُ بِحَرِيمَتِهَا، أَوْ بِزِنَا ابْنِهِ بِهَا -: فَلِمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنِ الْأَغَرِّ بْنِ الصَّبَّاحِ عَنْ خَلِيفَةَ بْنِ الْحُصَيْنِ عَنْ أَبِي نَصْرٍ " عَنِ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا قَالَ لَهُ: إِنَّهُ أَصَابَ أُمَّ امْرَأَتِهِ؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: حَرُمَتْ عَلَيْكَ امْرَأَتُكَ " وَذَلِكَ بَعْدَ أَنْ وَلَدَتْ امْرَأَتُهُ سَبْعَةَ أَوْلَادٍ بَلَغَ مَبْلَغَ الرِّجَالِ.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ الْحَسَنِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ أَنَّهُ قَالَ: مَنْ فَجَرَ بِأُمِّ امْرَأَتِهِ فَقَدْ حَرُمَتْ عَلَيْهِ امْرَأَتُهُ - فَصَحَّ هَذَا الْقَوْلُ عَنْ عَطَاءٍ، وَالْحَسَنِ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ مُجَاهِدٍ قَالَ: إِذَا قَبَّلَهَا أَوْ لَامَسَهَا، أَوْ نَظَرَ إِلَى فَرْجِهَا مِنْ شَهْوَةٍ: حَرُمَتْ عَلَيْهِ أُمُّهَا وَابْنَتُهَا - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ.

وَصَحَّ عَنْ جَابِرِ بْنِ زَيْدٍ، إِذَا زَنَى بِأُخْتِ امْرَأَتِهِ: حَرُمَتْ عَلَيْهِ امْرَأَتُهُ.

وَصَحَّ أَيْضًا - عَنْ قَتَادَةَ وَلَمْ يَرَهَا تُرْجَمُ إِلَّا بِالْوَطْءِ، لَا بِالْمُبَاشَرَةِ.

‘Abdullah ibn Mughaffal. This is the opinion of Sufyan al-Thawri, al-Awza‘i, and one of the two opinions of Malik. Others held: It is not forbidden for him. This has been authenticated from Ibn ‘Abbas—we have transmitted it via the route of Yahya ibn Sa‘id al-Qattan and al-Hajjaj ibn al-Minhal. Yahya said: Hisham al-Dastuwa’i narrated to us... Al-Ḥajjāj said: Ḥammād ibn Salamah narrated to us, then the chains of Hishām and Ḥammād converge—both from Qatādah, from ʿIkrimah, from Ibn ʿAbbās—that he said regarding one who commits adultery with the mother of his wife after consummating the marriage: he has erred against two sanctities, but his wife does not thereby become forbidden to him.

وَصَحَّ أَيْضًا - عَنْ طَاوُسٍ - وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، وَعَبْدِ اللَّهِ بْنِ مُغَفَّلٍ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَأَحَدُ قَوْلَيْ مَالِكٍ، وَقَالَ آخَرُونَ: لَا تَحْرُمُ عَلَيْهِ، صَحَّ ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ، وَالْحَجَّاجِ بْنِ الْمِنْهَالِ، قَالَ يَحْيَى: نا هِشَامٌ الدَّسْتُوَائِيُّ - وَقَالَ الْحَجَّاجُ: نا حَمَّادُ بْنُ سَلَمَةَ ثُمَّ اتَّفَقَ هِشَامٌ، وَحَمَّادٌ، كِلَاهُمَا عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ قَالَ فِيمَنْ زَنَى بِأُمِّ امْرَأَتِهِ بَعْدَ أَنْ دَخَلَ بِامْرَأَتِهِ: تَخَطَّأَ حُرْمَتَيْنِ وَلَمْ تَحْرُمْ عَلَيْهِ امْرَأَتُهُ.

L32830 And through the chain of Al-Ḥajjāj ibn al-Minhāl, who narrated from Hammām ibn Yaḥyā, from Qatādah, from Al-Ḥalāl ibn Abī Al-Ḥalāl Al-ʿAtakī, from his father, from ʿAlī ibn Abī Ṭālib: A man came to him and informed him that he had married a man’s daughter, specifically named, but he had her sister brought to him instead. He ordered him to return the one who was brought to him, to consummate the marriage with the one he had married, and not to approach her until the ʿiddah (waiting period) of the one who was initially brought to him is completed.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ الْحَلَالِ بْنِ أَبِي الْحَلَالِ الْعَتَكِيِّ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ " أَنَّهُ أَتَاهُ رَجُلٌ فَأَخْبَرَهُ أَنَّهُ تَزَوَّجَ ابْنَةَ رَجُلٍ مُسَمَّاةً بِعَيْنِهَا فَأَدْخَلَ عَلَيْهِ أُخْتَهَا؟ فَأَمَرَهُ بِرَدِّ الَّتِي أُدْخِلَتْ عَلَيْهِ، وَأَنْ يُدْخِلَ عَلَيْهِ الَّتِي تَزَوَّجَتْ، وَأَنْ لَا يَقْرَبَهَا حَتَّى تَتِمَّ عِدَّةُ الَّتِي أُدْخِلَتْ عَلَيْهِ أَوَّلًا.

L32831 It was narrated to us through the chain of Hushaym, a narration other than this one, as we have mentioned earlier, and then Hushaym said immediately afterward: “Narrate to us Yunus from al-Ḥasan that he used to say that.”

وَرُوِّينَا مِنْ طَرِيقِ هُشَيْمٍ خَبَرًا غَيْرَ هَذَا، كَمَا أَوْرَدْنَاهُ، ثُمَّ قَالَ بِإِثْرِهِ: أرنا يُونُسُ عَنْ الْحَسَنِ أَنَّهُ كَانَ يَقُولُ ذَلِكَ.

L32832 And ʿUbaydah narrated to us from Ibrāhīm that he used to say so.

وَنَا عُبَيْدَةُ عَنْ إبْرَاهِيمَ أَنَّهُ كَانَ يَقُولُ ذَلِكَ.

L32833 Abu Muhammad said: I accused this report from Ibrāhīm of being unreliable—and it is narrated from Saʿīd ibn al-Musayyab, ʿUrwah ibn al-Zubayr, Mujāhid, and Saʿīd ibn Jubayr.

قَالَ أَبُو مُحَمَّدٍ: وَأَنَا اتَّهَمْت هَذِهِ الرِّوَايَةَ عَنْ إبْرَاهِيمَ - وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ.

L32834 And it has been authentically reported from al-Zuhrī and Yaḥyā ibn Yaʿmar.

وَصَحَّ عَنْ الزُّهْرِيِّ، وَيَحْيَى بْنِ يَعْمُرَ.

L32835 This is the opinion of al-Shāfiʿī, Abū Sulaymān, the companions of both of

them, and one of the two opinions of Mālik.

L32836 Our discussion of this matter has already been presented, making its repetition unnecessary.

L32837–32838 **Divorce: a matter where the husband gave his wife the choice, and she chose to stay in the marriage or to be divorced.**

L32839 Issue 1933: If a man delegates to his wife the choice [of divorce], and she chooses separation, selects divorce, chooses her husband, or makes no choice - all these cases are null and void with no distinction between them. She is not divorced by this, nor is she forbidden to him, and no legal consequences arise from any of these. Even if he reiterates the offer [of choice], and she selects separation or divorce a thousand times, it remains without effect.

L32840 Similarly, if he grants her authority over herself or entrusts her affairs to her, there is no distinction between the two.

L32841 It is authentically reported from ʿUmar ibn al-Khaṭṭāb and Ibn Masʿūd regarding a man who entrusted his wife's affairs to her, and she divorced herself three times or divorced him three times, that this constitutes a single revocable divorce.

L32842 And it has also been authenticated from Zayd ibn Thābit, and from Mujāhid, and ʿUmar ibn ʿAbd al-ʿAzīz.

L32843 Another opinion—and it is that the divine decree is that which Allah has ordained. This has been authentically transmitted from ʿUthmān ibn ʿAffān.

L32844 Through the chain of transmission narrated by Saʿīd ibn Manṣūr via Ibn ʿUmar, and through another chain of transmission besides his own via ʿAbdullāh ibn al-Zubayr.

L32845 It has been narrated via a chain disconnected from them [Ali and Ibn Umar], and it is authentically reported from Abdullah ibn al-Harith ibn Abi Rabiʿah, Umar ibn ʿAbd al-ʿAzīz, and Saʿid ibn al-Musayyib.

وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا - وَأَحَدُ قَوْلَيْ مَالِكٍ.

وَقَدْ تَقَدَّمَ كَلَامُنَا فِي هَذِهِ الْمَسْأَلَةِ فَأَغْنَى عَنْ تَرْدَادِهِ

[الطَّلَاقُ] [مَسْأَلَةٌ خَيَّرَ امْرَأَتَهُ فَاخْتَارَتْ نَفْسَهَا أَوْ اخْتَارَتْ الطَّلَاقَ]

١٩٣٣ - مَسْأَلَةٌ وَمَنْ خَيَّرَ امْرَأَتَهُ فَاخْتَارَتْ نَفْسَهَا، أَوْ اخْتَارَتْ الطَّلَاقَ، أَوْ اخْتَارَتْ زَوْجَهَا، أَوْ لَمْ تَخْتَرْ شَيْئًا، فَكُلُّ ذَلِكَ لَا شَيْءَ، وَكُلُّ ذَلِكَ سَوَاءٌ، وَلَا تَطْلُقُ بِذَلِكَ، وَلَا تُحَرَّمُ عَلَيْهِ، وَلَا لِشَيْءٍ مِنْ ذَلِكَ حُكْمٌ، وَلَوْ كَرَّرَ التَّخْيِيرَ وَكَرَّرَتْ هِيَ اخْتِيَارَ نَفْسِهَا، أَوْ اخْتِيَارَ الطَّلَاقِ أَلْفَ مَرَّةٍ.

وَكَذَلِكَ إنْ مَلَّكَهَا أَمْرَ نَفْسِهَا، أَوْ جَعَلَ أَمْرَهَا بِيَدِهَا وَلَا فَرْقَ.

فَصَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ فِيمَنْ جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِهَا فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا، أَوْ طَلَّقَتْهُ ثَلَاثًا: أَنَّهَا طَلْقَةٌ وَاحِدَةٌ رَجْعِيَّةٌ.

وَصَحَّ أَيْضًا - عَنْ زَيْدِ بْنِ ثَابِتٍ، وَعَنْ مُجَاهِدٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

وَقَوْلٌ آخَرُ - وَهُوَ أَنَّ الْقَضَاءَ مَا قَضَتْ: صَحَّ ذَلِكَ عَنْ عُثْمَانَ بْنِ عَفَّانَ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ ابْنِ عُمَرَ - وَمِنْ طَرِيقٍ غَيْرِهِ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ.

وَرُوِيَ عَنْ عَلِيٍّ، وَابْنِ عُمَرَ مُنْقَطِعًا عَنْهُمَا - وَصَحَّ عَنْ عَبْدِ اللَّهِ بْنِ الْحَارِثِ بْنِ أَبِي رَبِيعَةَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَسَعِيدِ بْنِ الْمُسَيِّبِ.

L32846 It has been authentically narrated from Umm Salamah and ʿĀ’ishah—the two Mothers of the Believers—Qarībah, her sister, and ʿAbd al-Raḥmān ibn Abī Bakr al-Ṣiddīq: If the right to decide [her divorce] is granted to her and she returns it to her husband, she remains his wife as she was.

وَصَحَّ عَنْ أُمِّ سَلَمَةَ، وَعَائِشَةَ: أُمَّيِ الْمُؤْمِنِينَ، وَقَرِيبَةَ - أُخْتِ أُمِّ سَلَمَةَ - وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ: إِنْ جُعِلَ أَمْرُهَا بِيَدِهَا فَرَدَّتْهُ إِلَى زَوْجِهَا فَهِيَ امْرَأَتُهُ كَمَا كَانَتْ.

L32847–32849 A third opinion: If she chooses separation or herself, it constitutes a single irrevocable divorce. But if she returns it to her husband, the divorce is revoked. She chose it, so it is a revocable divorce. It is authentically reported from Ali, Zayd ibn Thabit, men from the Companions, and al-Hasan al-Basri.

وَقَوْلٌ ثَالِثٌ - إِنْ اخْتَارَتْ الْفِرَاقَ أَوْ نَفْسَهَا: فَهِيَ وَاحِدَةٌ بَائِنَةٌ، وَإِنْ رَدَّتْهُ إِلَى زَوْجِهَا فَاخْتَارَتْهُ، فَهِيَ طَلْقَةٌ رَجْعِيَّةٌ - صَحَّ عَنْ عَلِيٍّ، وَزَيْدِ بْنِ ثَابِتٍ، وَرِجَالٍ مِنْ الصَّحَابَةِ، وَعَنْ الْحَسَنِ الْبَصْرِيِّ.

L32850 The fourth opinion is that the ruling corresponds to what she pronounced, and the husband may deny the ruling. He then swears, and the judgment is rendered in his favor based on his oath affirming his intent, and it becomes a revocable (rajʿiyyah) divorce. This is reported—though unauthenticated—from ʿUmar ibn al-Khaṭṭāb, and authenticated from Ibn ʿUmar, authenticated from al-Qāsim ibn Muḥammad, and authenticated from Marwān.

وَقَوْلٌ رَابِعٌ - أَنَّ الْقَضَاءَ مَا قَضَتْ، وَلَهُ أَنْ يُنَاكِرَهَا، فَيَحْلِفَ وَيُقْضَى لَهُ بِمَا حَلَفَ أَنَّهُ نَوَاهُ، وَتَكُونُ طَلْقَةً رَجْعِيَّةً: رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ - وَلَمْ يَصِحَّ - وَصَحَّ عَنْ ابْنِ عُمَرَ، وَصَحَّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَمَرْوَانَ.

L32851 A fifth opinion—which holds that it is three in all circumstances—is authentically reported from al-Ḥasan and from men among the Companions, may Allah be pleased with them, and there is a musnad narration concerning it.

وَقَوْلٌ خَامِسٌ - وَهُوَ ثَلَاثٌ بِكُلِّ حَالٍ - صَحَّ عَنْ الْحَسَنِ، وَعَنْ رِجَالٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَفِيهِ أَثَرٌ مُسْنَدٌ.

L32852 A sixth opinion: Whoever places the authority over his wife into the hands of another and then divorces her himself, such a divorce is invalid. This is narrated from Ibn Mas’ud.

وَقَوْلٌ سَادِسٌ - مَنْ جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِ آخَرَ فَطَلَّقَهَا فَلَيْسَ بِشَيْءٍ، رُوِيَ عَنْ ابْنِ مَسْعُودٍ.

L32853 If a man says to his wife, “Your affair is in your hands,” and declares, “You are forbidden to me, you are forbidden to me,” it constitutes one irrevocable divorce. We have narrated this through the chain of Saʿīd ibn Manṣūr from al-Qāsim ibn Muḥammad, though it is not authentically attributed to him.

وَقَوْلٌ سَابِعٌ - مَنْ قَالَ لِامْرَأَتِهِ: أَمْرُكِ بِيَدِكِ؟ فَقَالَ: قَدْ حَرُمْتِ عَلَيْكِ، قَدْ حَرُمْتِ عَلَيْكِ: فَهِيَ وَاحِدَةٌ - رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ - وَلَيْسَ يَصِحُّ عَنْهُ.

L32854 We have been narrated via the chain of Ibn Abī Laylā from al-Shaʿbī: “Your affair lies in your hand, and choose for yourself” – being equivalent in the statements of Zayd, Ibn Masʿūd, and ʿAlī. It has been authentically established from al-Shaʿbī that this is his opinion, and from al-Nakhaʿī.

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ: أَنَّ أَمْرَكِ بِيَدِكِ، وَاخْتَارِي نَفْسَكِ سَوَاءٌ، فِي قَوْلِ زَيْدٍ، وَابْنِ مَسْعُودٍ، وَعَلِيٍّ - وَصَحَّ عَنْ الشَّعْبِيِّ: أَنَّهُ قَوْلُهُ، وَعَنْ النَّخَعِيِّ.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ قَالَ: أَمْرُك بِيَدِك، وَالتَّمْلِيكُ، وَالتَّخْيِيرُ سَوَاءٌ، فَإِذَا مَلَّكَهَا أَمْرَهَا، أَوْ قَالَ: اخْتَارِي، أَوْ قَالَ: أَمْرُك بِيَدِك، ثُمَّ قَالَ: لَمْ أَنْوِ طَلَاقًا، فَإِنْ كَانَ فِي غَضَبٍ فِيهِ ذِكْرُ طَلَاقٍ، أَوْ لَيْسَ فِيهِ ذِكْرُ طَلَاقٍ: لَمْ يُصَدَّقْ، وَإِنْ كَانَ فِي رِضًا لَمْ يَلْزَمْهُ شَيْءٌ مِمَّا تَقْضِي بِهِ هِيَ، فَإِنْ كَانَ فِي غَضَبٍ فَرَدَّتْ إلَيْهِ أَمْرَهَا فَلَا شَيْءَ وَهِيَ امْرَأَتُهُ - فَلَوْ كَانَ فِي غَضَبٍ فَطَلَّقَتْ نَفْسَهَا لَمْ يُلْتَفَتْ لِمَا قَالَتْ، لَكِنْ هُوَ يُسْأَلُ عَنْ نِيَّتِهِ؟ فَإِنْ قَالَ: نَوَيْت الثَّلَاثَ، فَهِيَ طَالِقٌ ثَلَاثًا، إلَّا فِي اخْتَارِي، فَإِنَّهَا لَا تَكُونُ إلَّا وَاحِدَةً بَائِنَةً - سَوَاءٌ نَوَى ذَلِكَ أَوْ أَقَلَّ - أَوْ نَوَى طَلَاقًا رَجْعِيًّا أَوْ لَمْ يَنْوِهِ - وَإِنْ قَالَ: نَوَيْت اثْنَتَيْنِ، أَوْ قَالَ: نَوَيْت الطَّلَاقَ بِلَا عَدَدٍ، أَوْ قَالَ: نَوَيْت وَاحِدَةً بَائِنَةً، أَوْ قَالَ: نَوَيْت وَاحِدَةً رَجْعِيَّةً، أَوْ قَالَ: لَمْ أَنْوِ طَلَاقًا أَصْلًا فَكُلُّ هَذَا سَوَاءٌ، وَلَا يَلْزَمُهُ فِي كُلِّ ذَلِكَ إلَّا وَاحِدَةٌ بَائِنَةٌ وَلَا بُدَّ؟ فَاعْلَمُوا أَنَّ كُلَّ مَا مَوَّهَ بِهِ عَنْ الصَّحَابَةِ وَالتَّابِعِينَ - رَضِيَ اللَّهُ عَنْهُمْ - فَبَاطِلٌ، وَأَنَّهُ فِي قَوْلِهِ هَذَا لَمْ يُوَافِقْ أَحَدًا مِنْهُمْ وَهُوَ قَوْلٌ مَا سُبِقَ إلَيْهِ، وَلَمْ يُعْرَفْ عَنْ أَحَدٍ قَبْلَهُ، وَلَا دَلِيلَ لَهُ عَلَى شَيْءٍ مِنْهُ، لَا مِنْ نَصٍّ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ قَوْلٍ يُعْقَلُ.

L32855–32857 As for the later scholars, Abū Ḥanīfah stated: “The decision is yours,” and delegation of authority, granting choice, and saying “your matter is in your hand” are equivalent. If he delegates authority to her, says “choose,” or says “the decision is yours,” then claims “I did not intend divorce,” he is not believed—whether this occurred in anger with mention of divorce or without. If it occurred in mutual agreement, he is not bound by any decision she makes. If it occurred in anger and she returns the matter to him, nothing is required and she remains his wife. If during anger she pronounces divorce upon herself, her statement is disregarded, but he is questioned about his intention. If he says “I intended three divorces,” she is irrevocably divorced thrice—except in cases of “choose,” where it only constitutes one irrevocable divorce regardless of whether he intended three, fewer, a revocable divorce, or did not intend revocability. If he says “I intended two,” “I intended divorce without specifying a number,” “I intended one irrevocable divorce,” “I intended one revocable divorce,” or “I did not intend divorce at all”—all these scenarios are treated equally, requiring only one irrevocable divorce without exception. Know that all specious arguments raised against the Companions and Successors—may Allah be pleased with them—are invalid, and that... In this statement of his, none of them agreed with his opinion, and it is a novel opinion unprecedented in prior discourse, nor is it known from anyone before him. Nor is there any evidence for him regarding any part of it—neither from a textual source, nor analogical reasoning, nor a rationally grounded opinion.

وَأَمَّا مَالِكٌ فَقَالَ: أَمْرُك بِيَدِك وَالتَّمْلِيكُ سَوَاءٌ.

L32858 As for Mālik, he said: “The discretion is yours, and transferring ownership is the same.”

قَالَ: وَمَنْ قَالَ: لِامْرَأَتِهِ أَمْرُكِ بِيَدِكِ فَقَالَتْ: قَدْ قَبِلْت، فَقَدْ طَلُقَتْ، إلَّا أَنْ تَقُولَ هِيَ: لَمْ أُرِدْ طَلَاقًا - قَالَ: فَلَوْ جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِ امْرَأَةٍ لَهُ أُخْرَى فَطَلَّقَتْهَا ثَلَاثًا، فَهِيَ طَالِقٌ ثَلَاثًا، وَلَهُ أَنْ يُنَاكِرَهَا فَيَقُولَ: لَمْ أُرِدْ إلَّا وَاحِدَةً، أَوْ يَقُولَ: لَمْ أُرِدْ إلَّا اثْنَتَيْنِ، فَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ، وَتَكُونُ وَاحِدَةً بَائِنَةً.

L32859 He said: And whoever says to his wife, “Your matter is in your hand,” and she responds, “I have accepted,” then she is divorced, unless she says, “I did not intend a divorce.” He said: If he delegates the authority to divorce his wife to another of his wives, and she divorces her three times, then she is divorced three times. He may contest it by saying, “I only intended one,” or “I only intended two.” His claim is accepted provided he swears an oath, and it becomes a single irrevocable divorce.

L32860 If a man says to his wife, “I have entrusted you with authority over yourself,

قَالَ: فَلَوْ قَالَ لامْرَأَته: قَدْ وَلَّيْتُكِ أَمْرَكِ إِنْ شَاءَ اللَّهُ؟ فَقَالَتْ هِيَ: قَدْ فَارَقْتُك إِنْ شَاءَ اللَّهُ، فَهُوَ طَلَاقٌ - فَلَوْ قَالَ لَهَا: مَا كُنْت إِلَّا لَاعِبًا، أَوْ قَالَتْ هِيَ: مَا كُنْت إِلَّا لَاعِبَةً مَا أَرَدْنَا طَلَاقًا، فَالْقَوْلُ قَوْلُ الرَّجُلِ مَعَ يَمِينِهِ.

if Allah wills," and she herself responds, "I have divorced you, if Allah wills," this counts as a valid divorce. If he later says, "I was only jesting," or she says, "I was only jesting; I did not intend divorce," the presumption is in favor of the man's statement, provided he swears an oath.

قَالَ: فَلَوْ قَالَ لَهَا: أَمْرُك بِيَدِك فَأَخَذَتْ شُقَّةً وَمَضَتْ إلَى أَهْلِهَا وَخَرَجَ هُوَ إلَى سَفَرٍ وَلَمْ يَكُنْ غَيْرَ هَذَا، قَالُوا: قَدْ طَلُقَتْ.

L32861 He said: If he were to say to her, "The matter is in your hands," and she took her waiting period provisions and went to her family, while he departed on a journey with nothing else occurring, they said: "She is divorced."

فَلَوْ قَالَ: أَمْرُك بِيَدِك، أَوْ مَلَّكَهَا؟ فَطَلَّقَتْ نَفْسَهَا وَاحِدَةً، فَقَالَ هُوَ: لَمْ أَنْوِ إلَّا ثَلَاثًا، لَمْ يَلْزَمْهُ إلَّا وَاحِدَةٌ؟

L32862 If he were to say: "The matter is in your hands," or "I have made you the owner of it," and she then divorces herself once, while he claims: "I only intended three divorces," would only one divorce count against him?

فَاعْلَمُوا أَنَّ هَذَا الْقَوْلَ أَيْضًا غَيْرُ مُوَافِقٍ لِقَوْلِ أَحَدٍ مِنْ الصَّحَابَةِ، وَلَا مِنْ التَّابِعِينَ إلَّا رِوَايَةً عَنْ عُمَرَ لَمْ تَصِحَّ: رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ عَبْدِ الْكَرِيمِ أَبِي أُمَيَّةَ أَنَّ رَجُلًا جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِهَا فِي زَمَانِ عُمَرَ بْنِ الْخَطَّابِ فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا، فَقَالَ هُوَ: وَاَللَّهِ مَا جَعَلْت أَمْرَهَا إلَّا وَاحِدَةً؟ فَتَرَافَعَا إلَى عُمَرَ، فَاسْتَحْلَفَهُ عُمَرُ " بِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ مَا جَعَلْت أَمْرَهَا بِيَدِهَا إلَّا وَاحِدَةً فَحَلَّفَ فَرَدَّهَا عُمَرُ عَلَيْهِ.

L32863 Know that this opinion also does not correspond with the view of any Companion or Successor except for an unverified narration attributed to ʿUmar. We have transmitted it through the chain of ʿAbd al-Razzāq from Muḥammad ibn Rāshid from ʿAbd al-Karīm Abū Umayyah: A man placed the matter of his wife in her hand during the era of ʿUmar ibn al-Khaṭṭāb, whereupon she divorced herself thrice. The husband said: "By Allah, I only placed her matter once!" They took their dispute to ʿUmar, who made him swear: "By Allah, besides whom there is no deity, I did not place her matter in her hand except once." When he swore, ʿUmar returned her to him.

مُحَمَّدُ بْنُ رَاشِدٍ مُتَكَلَّمٌ فِيهِ، وَعَبْدُ الْكَرِيمِ أَبُو أُمَيَّةَ غَيْرُ ثِقَةٍ وَلَمْ يُدْرِكْ عُمَرَ - وَالصَّحِيحُ عَنْ عُمَرَ خِلَافُ ذَلِكَ كَمَا ذَكَرْنَا مِنْ أَقْوَالِهِ وَالْأَسَانِيدُ فِي ذَلِكَ قَدْ ذَكَرْنَاهَا فِي " كِتَابِ الْإِيصَالِ " وَإِنَّمَا قَصَدْنَا هَاهُنَا الِاخْتِصَارَ - وَأَمَّا سَائِرُ تَقَاسِيمِهِ فَلَا سَلَفَ لَهُ فِيهَا.

L32864 Muhammad ibn Rashid is a narrator of disputed reliability, and Abd al-Karim Abu Umayyah is untrustworthy and did not live during Umar's era. (The ṣaḥīḥ narration from Umar contradicts this, as we have mentioned his statements, and we have already cited the chains of transmission for those in *Kitāb al-Iṣāl*; here, however, we aimed for brevity.) As for the rest of his categorizations, there is no precedent from the Salaf for them.

وَأَيْضًا - فَإِنَّ هَذِهِ الرِّوَايَةَ عَنْ عُمَرَ خَالَفَهُ فِيهَا، لِأَنَّ عُمَرَ جَعَلَهَا رَجْعِيَّةً، وَجَعَلَهَا مَالِكٌ بَائِنَةً، فَخَرَجَ عَنْ قَوْلِ جَمِيعِهِمْ.

L32865–32866 Moreover, in this narration from 'Umar, Malik contradicted him, for 'Umar deemed it revocable while Malik deemed it irrevocable. Thus, the ruling diverged from the opinion of all scholars.

L32867 Similarly, Marwān deemed it revocable, as did al-Qāsim ibn Muḥammad.

وَكَذَلِكَ أَيْضًا جَعَلَهَا مَرْوَانُ، وَالْقَاسِمُ بْنُ مُحَمَّدٍ رَجْعِيَّةً.

L32868 وَقَدْ رُوِّينَا ذَلِكَ أَيْضًا - مِنْ طَرِيقٍ ثَابِتَةٍ عَنْ ابْنِ عُمَرَ - يَعْنِي الْمُنَاكَرَةَ - مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، فَصَحَّ أَنَّهُ رَأْيٌ مُجَرَّدٌ لَا دَلِيلَ عَلَيْهِ، لَا مِنْ نَصٍّ، وَلَا مِنْ قَوْلٍ مُتَقَدِّمٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ يُعْقَلُ.

L32869 وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ: هُوَ مَا نَوَى، فَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا فَهُوَ كَمَا قَالَ - وَكَذَلِكَ إِنْ رَدَّتْ الْأَمْرَ إلَيْهِ؟ فَإِنْ طَلَّقَتْ نَفْسَهَا، أَوْ اخْتَارَتْ نَفْسَهَا فَأَيَّ شَيْءٍ قَالَتْ لَمْ يَلْزَمْهُ إلَّا طَلْقَةٌ وَاحِدَةٌ رَجْعِيَّةٌ فَقَطْ - وَهَكَذَا قَالَا فِي التَّخْيِيرِ، وَالتَّمْلِيكِ.

L32870 قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذِهِ الْأَقَاوِيلِ آرَاءٌ لَا دَلِيلَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا - وَقَدْ تَقَصَّيْنَا مَنْ رُوِيَ عَنْهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّهُ يَقَعُ بِهِ طَلَاقٌ، فَلَمْ يَكُونُوا بَيْنَ مَنْ صَحَّ عَنْهُ وَمَنْ لَمْ يَصِحَّ عَنْهُ إلَّا سَبْعَةً، ثُمَّ قَدْ اخْتَلَفُوا كَمَا تَرَى، وَلَيْسَ قَوْلُ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ، وَلَا أَثَرَ فِي شَيْءٍ مِنْهَا إلَّا أَثَرًا -: رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا عَلِيُّ بْنُ نَصْرٍ الْجَهْضَمِيُّ نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ قَالَ: قُلْت لِأَيُّوبَ السِّخْتِيَانِيِّ: هَلْ عَلِمْت أَحَدًا قَالَ فِي أَمْرِك بِيَدِك أَنَّهَا ثَلَاثٌ غَيْرَ الْحَسَنِ؟ قَالَ: لَا، اللَّهُمَّ غُفْرًا إلَّا مَا حَدَّثَنِي قَتَادَةُ عَنْ كَثِيرٍ - مَوْلَى ابْنِ سَمُرَةَ - عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «قَالَ: ثَلَاثٌ» ، قَالَ أَيُّوبُ: فَلَقِيتُ كَثِيرًا - مَوْلَى ابْنِ سَمُرَةَ - فَسَأَلْتُهُ، فَلَمْ يَعْرِفْهُ، فَرَجَعْت إلَى قَتَادَةَ فَأَخْبَرْتُهُ، فَقَالَ: نَسِيَ.

L32871–32873 Abu Muhammad said: All these statements are opinions with no evidence to validate any of them. We have exhaustively traced the Companions—may Allah be pleased with them—from whom it was reported that divorce is effected by such statements, and they numbered only seven, whether their transmissions were authenticated or not. Then, as you see, they disagreed, and the view of some holds no greater authority than that of others. There is no trace supporting any of them except a single trace—we narrated it through the path of Ahmad ibn Shuʿayb: he narrated to us ʿAli ibn Nasr al-Jahdhamī, who narrated to us Sulaymān ibn Ḥarb, who narrated to us Ḥammād ibn Zayd. He said: I asked Ayyūb al-Sakhtiyānī, "Do you know anyone besides al-Ḥasan who stated that 'the matter is in your hands' refers to three divorces?" He replied, "No. O Allah, pardon! Except what Qatādah narrated to me from Kathīr—the freed slave of Ibn Samurah—from Abū Salamah, from Abū Hurayrah, from the Prophet—peace and blessings be upon him—who said: 'Three.'" Ayyūb said: I met Kathīr, the freed slave of Ibn Samurah, and questioned him about it, but he did not recognize the narration. I returned to Qatādah and informed him, whereupon he said, "He forgot it."

L32868 We have also been narrated that—through a reliable chain from Ibn ʿUmar (referring to the rejected narration)—and via the chain of Saʿīd ibn Manṣūr. Thus, it was confirmed to be a baseless opinion unsupported by any evidence—whether from an explicit text, an earlier authoritative statement, analogical reasoning, or a rationally defensible opinion.

L32869 Sufyan al-Thawri and al-Shafiʿi said: It is what he intended. If he says, "I did not intend a divorce," then it is as he stated. Similarly, if she returns the matter to him: if she divorces herself [via ṭalāq] or chooses to separate [via khulʿ], no matter what she declares, he is only bound by a single revocable divorce. And thus they both ruled regarding the right of choice in divorce and the granting of divorce authority.

قَالَ أَبُو مُحَمَّد: كَثِيرٌ - مَوْلَى ابْنِ سَمُرَةَ مَجْهُولٌ - وَلَوْ كَانَ مَشْهُورًا بِالثِّقَةِ وَالْحِفْظِ لَمَا خَالَفْنَا هَذَا الْخَبَرَ، وَقَدْ أَوْقَفَهُ بَعْضُ رُوَاتِهِ عَلَى أَبِي هُرَيْرَةَ. وَالَّذِي نَقُولُ بِهِ هُوَ قَوْلُ أَبِي سُلَيْمَانَ وَأَصْحَابِنَا، فَهُوَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَبُو بَكْرِ بْنُ عَيَّاشٍ نا حَبِيبُ بْنُ أَبِي ثَابِتٍ " أَنَّ رَجُلًا قَالَ لِامْرَأَةٍ لَهُ: إِنْ أَدْخَلْت هَذَا الْعَدْلَ الْبَيْتَ فَأَمْرُ صَاحِبَتِك بِيَدِك، فَأَدْخَلَتْهُ، ثُمَّ قَالَتْ: هِيَ طَالِقٌ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَبَانَهَا مِنْهُ، فَمَرُّوا بِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ فَأَخْبَرُوهُ؟ فَذَهَبَ بِهِمْ إلَى عُمَرَ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ إنَّ اللَّهَ تَعَالَى جَعَلَ الرِّجَالَ قَوَّامِينَ عَلَى النِّسَاءِ، وَلَمْ يَجْعَلْ النِّسَاءَ قَوَّامَاتٍ عَلَى الرِّجَالِ؟ فَقَالَ عُمَرُ: فَمَا تَرَى؟ قَالَ: أَرَاهَا امْرَأَتَهُ، قَالَ عُمَرُ: وَأَنَا أَرَى ذَلِكَ، فَجَعَلَهَا وَاحِدَةً ".

Had he been renowned for reliability and memorization, we would not have opposed this report. Some of its narrators suspended the chain at Abu Hurayrah. Our position is that of Abu Sulayman and our companions—namely, what we narrated through the chain of Abu Ubayd: from Abu Bakr ibn Ayyash, from Habib ibn Abi Thabit: "A man said to his wife, 'If you bring this measuring vessel into the house, then the matter of your co-wife is in your hands.' She brought it in, then declared, 'She is hereby divorced.' The case was brought before Umar ibn al-Khattab, and he divorced her from him. They passed by Abdullah ibn Masud and informed him, whereupon he took them to Umar and said, 'O Leader of the Believers, Allah the Exalted has made men guardians over women, and has not made women...' "Female guardians over men?" So 'Umar asked, "What is your opinion?" He replied, "I consider it to be his wife." 'Umar said, "And I agree with that," so he limited it to one.

L32874 قَالَ أَبُو مُحَمَّد: قَدْ يُمْكِنُ أَنْ يَكُونَ عُمَرُ أَمْضَى حُكْمَهُ وَإِلَّا فَقَدْ رَجَعَ إلَى قَوْلِ ابْنِ مَسْعُودٍ فِي أَنْ لَا يَنْفُذَ طَلَاقُ مَنْ جَعَلَ الزَّوْجُ أَمْرَ امْرَأَتِهِ بِيَدِهِ.

Abu Muhammad said: It is possible that Umar upheld his ruling; otherwise, he reverted to Ibn Mas'ud's opinion that a divorce initiated by a wife to whom the husband delegated authority over herself is not valid.

L32875 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، قُلْت لِعَطَاءٍ: رَجُلٌ قَالَ لِامْرَأَتِهِ: أَمْرُك بِيَدِك بَعْدَ يَوْمٍ أَوْ يَوْمَيْنِ، قَالَ: لَيْسَ هَذَا بِشَيْءٍ قُلْت: فَأَرْسَلَ إلَيْهَا رَجُلًا أَنَّ أَمْرَهَا بِيَدِهَا يَوْمًا أَوْ سَاعَةً؟ قَالَ: مَا أَدْرِي مَا هَذَا، مَا أَظُنُّ هَذَا شَيْئًا؟ قُلْت لِعَطَاءٍ: أَمَلَّكَتْ عَائِشَةُ حَفْصَةَ حِينَ مَلَّكَهَا الْمُنْذِرُ بْنُ الزُّبَيْرِ أَمْرَهَا؟ فَقَالَ عَطَاءٌ: لَا، إنَّمَا عَرَضَتْ عَلَيْهِمْ أَيُطَلِّقُهَا أَمْ لَا؟ وَلَمْ يُمَلِّكْهَا أَمْرَهَا.

From the narration of Abd al-Razzaq via Ibn Jurayj: I said to Ata: "A man told his wife: 'Your matter is in your hands after one or two days.'" He replied: "This holds no validity." I asked: "If he sent a man to inform her that her matter is in her hands for a day or an hour?" He said: "I do not know what this is. I do not think this is valid." I asked Ata: "Did Aisha grant Hafsa authority when al-Mundhir ibn al-Zubayr placed her matter in her hands?" Ata answered: "No. She merely presented them with the choice to divorce her or not. He did not grant her authority over her matter."

L32876 وَأَمَّا التَّمْلِيكُ - فَقَدْ صَحَّ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ: الْقَضَاءُ مَا قَضَتْ، وَلَهُ أَنْ يُنَاكِرَهَا فَإِنْ نَاكَرَهَا حَلَفَ، وَلَهُ مَا نَوَى.

As for conferring ownership: it has been authentically reported from Ibn 'Umar that he said, "The judgment is what has been decided. He may deny it, and if he denies it, he must swear an oath. He retains what he intended."

L32877 وَرُوِيَ عَنْهُ قَوْلٌ آخَرُ - يَصِحُّ عَنْهُ: الْقَضَاءُ مَا قَضَتْ، وَلَا قَوْلَ لَهُ - وَهُوَ قَوْلُ عَطَاءٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَالزُّهْرِيِّ.

Another statement—authentically reported from him—is: "The judgment is what she has judged, and he has no authority." This is the opinion of 'Aṭā', 'Umar ibn 'Abd al-'Azīz, and al-Zuhrī.

وَرُوِيَ عَنْهُ - قَوْلٌ ثَالِثٌ: أَنَّ التَّمْلِيكَ نَفْسَهُ طَلَاقٌ -: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ: أَنَّ ابْنَ عُمَرَ قَالَ: مَنْ مَلَّكَ امْرَأَتَهُ طَلُقَتْ، وَعَصَى رَبَّهُ - وَهُوَ قَوْلُ الْحَسَنِ.

L32878 A third opinion is reported from him—that the very act of transferring ownership [of the divorce right] itself constitutes a divorce. We have transmitted it through the chain of ʿAbd al-Razzāq, from Maʿmar, from Qatādah: that Ibn ʿUmar said, "If a man grants his wife the right [to divorce], she becomes divorced, and he thereby disobeys his Lord." This is the opinion of al-Ḥasan.

وَقَوْلٌ رَابِعٌ - صَحَّ عَنْ زَيْدِ بْنِ ثَابِتٍ: إنْ مَلَّكَهَا نَفْسَهَا فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا، فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ.

L32879 The fourth opinion—authentically reported from Zayd ibn Thabit—states: If he grants her authority over herself and she divorces herself three times, it counts as a single revocable divorce.

وَقَدْ ذَكَرْنَا قَوْلَ سُفْيَانَ، وَالشَّافِعِيِّ، وَأَبِي حَنِيفَةَ فِي التَّمْلِيكِ.

L32880 We have mentioned the opinions of Sufyan, al-Shafi'i, and Abu Hanifah concerning the transfer of ownership.

وَلِمَالِكٍ فِي التَّمْلِيكِ أَقْوَالٌ لَمْ نَذْكُرْهَا، نَذْكُرُهَا - إنْ شَاءَ اللَّهُ تَعَالَى - وَهِيَ أَنَّهُ قَالَ: مَنْ مَلَّكَ امْرَأَتَهُ أَمْرَهَا فَسَوَاءٌ كَانَتْ بَالِغًا، أَوْ غَيْرَ بَالِغٍ، إذَا كَانَ مِثْلُهَا يَفْهَمُ مَا يُجْعَلُ إلَيْهَا - فَهِيَ طَالِقٌ ثَلَاثًا، وَلَهُ أَنْ يُنَاكِرَهَا، فَإِنْ رَدَّتْ أَمْرَهَا إلَيْهِ فَلَا حُكْمَ لَهَا، فَإِنْ طَلَّقَتْ نَفْسَهَا أَكْثَرَ مِنْ وَاحِدَةٍ؟ فَقَالَ: لَمْ أُمَلِّكْ إلَّا وَاحِدَةً أَوْ يَقُولُ: لَمْ أُرِدْ الطَّلَاقَ، فَهَذِهِ هِيَ الْمُنَاكَرَةُ، وَيَحْلِفُ هُوَ، فَتَكُونُ طَلْقَةً وَاحِدَةً بَائِنَةً.

L32881 Malik has statements regarding the delegation of divorce authority which we have not mentioned. We shall mention them, God willing. Among them is his statement: If a man delegates his wife's authority over herself, it is the same whether she has reached puberty or not, provided that someone of her capacity would comprehend what is entrusted to her, then she is divorced by three pronouncements. He may contest her action. If she relinquishes the authority back to him, her decision is invalidated. If she pronounces divorce more than once, what then? He [the husband] said: "I only delegated one [divorce]," or "I did not intend the divorce." This is the denial. He must then swear an oath, resulting in a single irrevocable divorce (bā'in).

قَالَ: فَلَوْ قَالَ: لَمْ أَنْوِ عَدَدًا مِنْ الطَّلَاقِ، فَهِيَ طَالِقٌ ثَلَاثًا.

L32882 He said, "If he says, 'I did not intend a specific number of divorces,' she is irrevocably divorced thrice."

قَالَ: فَلَوْ قَالَ لِامْرَأَتِهِ: قَدْ مَلَّكْتُكِ أَمْرَكِ، فَلَيْسَ لَهُ أَنْ يَرْجِعَ عَنْ ذَلِكَ، وَلَيْسَ لَهُ أَنْ يُوقِفَهَا هُوَ لِتَقْضِيَ، أَوْ لِتَتْرُكَ، إنَّمَا الْقَضَاءُ إلَيْهَا حَتَّى يُوقِفَهَا السُّلْطَانُ فَتَقْضِيَ أَوْ تَتْرُكَ، فَيَبْطُلَ مَا جُعِلَ إلَيْهَا إنْ تَرَكَتْ.

L32883–32884 He said: If a man says to his wife, "I have entrusted you with authority over your matters," he cannot retract this, nor may he restrict her [authority] to resolve or relinquish. The decision-making rests entirely with her until the governing authority intervenes to restrict her [right], obliging her to either resolve the matter or refrain, thereby nullifying what was granted to her if she refrains.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يُوَافِقْ فِي هَذَا إلَّا قَوْلًا مِنْ أَقْوَالِ ثَلَاثَةٍ لِابْنِ عُمَرَ فِي الْمُنَاكَرَةِ خَاصَّةً.

L32885 Abu Muhammad said: In this matter, he concurred only with one of three opinions of Ibn Umar, exclusively pertaining to the denial.

L32886 All his statements on this matter have no precedent among earlier schol-

ars, and Zayd opposed him - a position confirmed as sound through Zayd's transmission.

وَسَائِرُ أَقْوَالِهِ فِي ذَلِكَ لَا سَلَفَ لَهُ فِيهَا، وَقَدْ خَالَفَهُ زَيْدٌ صَحَّ ذَلِكَ عَنْهُ.

L32887 There is no obligation of divorce in granting the right (tamlik) reported from any of the Companions—may Allah be pleased with them—except from Ibn Umar and Zaid alone. Some people mentioned it as being from Fadalah ibn Ubayd. The position we adopt is that which we have narrated through the chain of Abu Ubayd: Abd al-Ghaffar ibn Dawud reported to us from Ibn Lahi'ah from Yazid ibn Abi Habib that Rumaythah al-Firasiyyah was married to Muhammad ibn Abd al-Rahman ibn Abi Bakr al-Siddiq, and he granted her authority over herself. She said: "Are you divorced three times?" Uthman ibn Affan said: "She erred. She has no right to divorce. Know that! A woman does not effect divorce."

وَلَيْسَ فِي التَّمْلِيكِ إِيجَابُ طَلَاقٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَّا عَنْ ابْنِ عُمَرَ، وَزَيْدٍ فَقَطْ، وَذَكَرَهُ بَعْضُ النَّاسِ عَنْ فَضَالَةَ بْنِ عُبَيْدٍ، وَالَّذِي نَقُولُ بِهِ هُوَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا عَبْدُ الْغَفَّارِ بْنُ دَاوُد عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ رُمَيْثَةَ الْفِرَاسِيَّةَ كَانَتْ تَحْتَ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ فَمَلَّكَهَا أَمْرَهَا، فَقَالَتْ: أَنْتَ طَالِقٌ ثَلَاثَ مَرَّاتٍ؟ فَقَالَ عُثْمَانُ بْنُ عَفَّانَ: أَخْطَأَتْ، لَا طَلَاقَ لَهَا، أَلَا إنَّ الْمَرْأَةَ لَا تُطَلِّقُ.

L32888 From the narration of Abd al-Razzaq, who narrated to us: Ibn Jurayj informed me that Abu al-Zubayr reported: Mujahid informed him that a man came to Ibn Abbas and said, "I delegated the right of divorce to my wife, and she divorced me three times." Ibn Abbas replied, "May Allah invalidate her effort against you. Divorce is your right over her, not hers over you." This narration is of the highest authenticity from Ibn Abbas.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ: أَنَّ مُجَاهِدًا أَخْبَرَهُ " أَنَّ رَجُلًا جَاءَ إلَى ابْنِ عَبَّاسٍ فَقَالَ: مَلَّكْتُ امْرَأَتِي فَطَلَّقَتْنِي ثَلَاثًا؟ فَقَالَ ابْنُ عَبَّاسٍ: خَطَّأَ اللَّهُ نَوْأَهَا عَلَيْك، إنَّمَا الطَّلَاقُ لَك عَلَيْهَا، وَلَيْسَ لَهَا عَلَيْك " وَهَذَا فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ عَبَّاسٍ.

L32889 And via the chain of transmission from Ibn Jurayj through Abd al-Razzaq: I asked Abdullah ibn Tawus: What was your father's ruling regarding a man who granted his wife authority over her own divorce—does she possess the right to divorce herself or not? He answered: He would say: "Divorce is not within women's authority." I then asked him: What was his father's ruling regarding a man who granted another man authority over his wife's divorce—does that man possess the right to divorce her? He answered: No—and this is the opinion of Abu Sulayman and all our companions.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَأَلْت عَبْدَ اللَّهِ بْنَ طَاوُسٍ: كَيْفَ كَانَ أَبُوك يَقُولُ فِي رَجُلٍ مَلَّكَ امْرَأَتَهُ أَمْرَهَا، أَتَمْلِكُ أَنْ تُطَلِّقَ نَفْسَهَا أَمْ لَا؟ قَالَ: كَانَ يَقُولُ: لَيْسَ إلَى النِّسَاءِ طَلَاقٌ؟ فَقُلْت لَهُ: فَكَيْفَ كَانَ أَبُوهُ يَقُولُ فِي رَجُلٍ مَلَّكَ رَجُلًا أَمْرَ امْرَأَتِهِ، أَيَمْلِكُ الرَّجُلُ أَنْ يُطَلِّقَهَا؟ قَالَ: لَا - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ وَجَمِيعِ أَصْحَابِنَا.

L32890 As for the option of choice, it is authentically reported that Umar ibn al-Khattab said: If she chooses herself, that constitutes one revocable divorce; and if she chooses her husband, she remains his wife as before.

وَأَمَّا التَّخْيِيرُ - فَصَحَّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إنْ اخْتَارَتْ نَفْسَهَا فَوَاحِدَةٌ رَجْعِيَّةٌ، وَإِنْ اخْتَارَتْ زَوْجَهَا فَهِيَ امْرَأَتُهُ كَمَا كَانَتْ.

L32891 It has been narrated to us via the chain of ʿAbdur-Raḥmān ibn Mahdī from

Jarīr ibn Ḥāzim from ʿĪsā ibn ʿĀṣim from Zādhān: that ʿAlī ibn Abī Ṭālib opposed ʿUmar in that matter, then he returned to ʿUmar's opinion when he assumed the caliphate.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ عِيسَى بْنِ عَاصِمٍ عَنْ زَاذَانَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ خَالَفَ عُمَرَ فِي ذَلِكَ، ثُمَّ رَجَعَ إِلَى قَوْلِ عُمَرَ، إِذْ وَلِيَ الْخِلَافَةَ.

L32892–32893 This statement was narrated to us from Ibn Abbas, but it has not been authenticated from him.

وَرُوِّينَا هَذَا الْقَوْلَ عَنِ ابْنِ عَبَّاسٍ، وَلَمْ يَصِحَّ عَنْهُ.

L32894 It is authentically reported from ʿAṭāʾ, ʿUmar ibn ʿAbd al-ʿAzīz, and Ibrāhīm.

وَصَحَّ عَنْ عَطَاءٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِبْرَاهِيمَ.

L32895 It is authentically reported from Jabir ibn Abdullah: If she opts for herself, then it constitutes one revocable divorce.

وَصَحَّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: إِنْ اخْتَارَتْ نَفْسَهَا فَوَاحِدَةٌ رَجْعِيَّةٌ.

L32896 Another opinion states: If she chooses herself, it is a single irrevocable divorce; if she chooses her husband, it is a single revocable divorce. If he repeats this three times - every time she chooses him - she is divorced thrice. If he has intercourse with her before she marries another husband, he is liable to stoning. It has been reported to us that Ali renounced his agreement with Umar's position and adopted this view when he assumed the office of the caliphate. This is transmitted via the narration of Waki' ibn al-Jarrah and al-Ḥajjāj ibn al-Minhāl, both of whom reported from Jarīr ibn Ḥāzim, from ʿĪsā ibn ʿĀṣim, from Zādhān, from Ali.

وَقَوْلٌ آخَرُ - وَهُوَ: إِنْ اخْتَارَتْ نَفْسَهَا فَوَاحِدَةٌ بَائِنَةٌ، وَإِنْ اخْتَارَتْ زَوْجَهَا فَوَاحِدَةٌ رَجْعِيَّةٌ، فَإِنْ كَرَّرَ ذَلِكَ ثَلَاثَ مَرَّاتٍ كُلُّ ذَلِكَ تَخْتَارُهُ: طَلُقَتْ ثَلَاثًا، فَإِنْ وَطِئَهَا قَبْلَ زَوْجٍ يَتَزَوَّجُهَا فَعَلَيْهِ الرَّجْمُ -: رُوِّينَا - أَنَّ عَلِيًّا رَجَعَ عَنْ مُوَافَقَةِ عُمَرَ إِلَى هَذَا الْقَوْلِ، إِذْ وَلِيَ الْخِلَافَةَ: مِنْ طَرِيقَةِ وَكِيعِ بْنِ الْجَرَّاحِ، وَالْحَجَّاجِ بْنِ الْمِنْهَالِ، كِلَاهُمَا عَنْ جَرِيرِ بْنِ حَازِمٍ عَنْ عِيسَى بْنِ عَاصِمٍ عَنْ زَاذَانَ عَنْ عَلِيٍّ.

L32897 This statement has been authentically reported from Qatādah—and it has also been authentically reported from ʿAlī—that if she opts for self-separation [khulʿ], neither he nor anyone else may formally propose to her during the waiting period resulting from that divorce. This supplementary narration has been transmitted to us via the chain of Ḥammād ibn Salamah from Qatādah from Khilās ibn ʿAmr: that ʿAlī ibn Abī Ṭālib said: If she chooses self-separation, it counts as one revocable divorce, and neither he nor any other man may propose to her except after the completion of the waiting period. If she chooses to stay with her husband, it is considered a single revocable divorce, and he retains the right to reclaim her.

وَصَحَّ هَذَا الْقَوْلُ عَنْ قَتَادَةَ - وَصَحَّ عَنْ عَلِيٍّ أَيْضًا: أَنَّهَا إِنْ اخْتَارَتْ نَفْسَهَا لَمْ يَجُزْ لَهُ وَلَا لِغَيْرِهِ أَنْ يَخْطُبَهَا فِي الْعِدَّةِ مِنْ تِلْكَ الطَّلْقَةِ -: رُوِّينَا هَذِهِ الزِّيَادَةَ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: إِنْ اخْتَارَتْ نَفْسَهَا فَهِيَ وَاحِدَةٌ، وَلَا يَخْطُبُهَا هُوَ، وَلَا مَنْ سِوَاهُ، إِلَّا بَعْدَ انْقِضَاءِ الْعِدَّةِ، وَإِنْ اخْتَارَتْ زَوْجَهَا فَهِيَ وَاحِدَةٌ، وَهُوَ أَحَقُّ بِهَا.

L32898 And a third opinion—authentically reported from Zayd ibn Thabit—is that if he chooses her [for divorce], then three [irrevocable divorces], and if he

chooses to retain her as his wife, then one revocable [divorce]. This is also the opinion held by Masruq.

وَقَوْلٌ ثَالِثٌ - صَحَّ عَنْ زَيْدِ بْنِ ثَابِتٍ وَهُوَ إِنْ اخْتَارَتْ نَفْسَهَا فَثَلَاثٌ وَإِنْ اخْتَارَتْ زَوْجَهَا فَوَاحِدَةٌ رَجْعِيَّةٌ - وَبِهِ يَقُولُ مَسْرُوقٌ.

L32899 It has been narrated to us through Saʿīd ibn Manṣūr via Hushaym, via Dāwūd ibn Abī Hind, from al-Shaʿbī, from Masrūq, that he would relate Zayd's opinion: "If she chooses herself, three are required; but if she chooses her husband, one suffices."

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ أَنَّهُ كَانَ يَقُولُ مِنْ قَوْلِ زَيْدٍ: إنْ اخْتَارَتْ نَفْسَهَا فَثَلَاثٌ، وَإِنْ اخْتَارَتْ زَوْجَهَا فَوَاحِدَةٌ.

L32900 A fourth opinion—that if a man delegates to his wife the right to pronounce divorce and she does so three times, it counts as a single divorce—is narrated through the chain of Sufyān ibn ʿUyaynah, from Abū al-Zinād, from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, from Zayd ibn Thābit, who said: "If a man gives his wife the choice and she pronounces divorce upon herself three times, it is counted as one."

وَقَوْلٌ رَابِعٌ - وَهُوَ أَنَّهُ إذَا خَيَّرَهَا فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا فَهِيَ وَاحِدَةٌ -: رُوِّينَاهُ هَكَذَا أَيْضًا: مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: إذَا خَيَّرَ الرَّجُلُ امْرَأَتَهُ فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا فَهِيَ وَاحِدَةٌ.

L32901 And through the chain of Abd al-Razzaq from Ma'mar, from Yahya ibn Abi Kathir, who said: Muhammad ibn Abi Atiq delegated to his wife the authority to divorce herself, so she pronounced a triple divorce upon herself. He consulted Zayd ibn Thabit, who ruled it to constitute a single revocable divorce, and [the husband] retained the exclusive right to revoke it during her waiting period. Yahya said: "I mentioned this to Ayyub," and he replied: "A similar ruling has reached me concerning Zayd."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: خَيَّرَ مُحَمَّدُ بْنُ أَبِي عَتِيقٍ امْرَأَتَهُ فَطَلَّقَتْ نَفْسَهَا ثَلَاثًا، فَسَأَلَ زَيْدَ بْنَ ثَابِتٍ؟ فَجَعَلَهَا زَيْدٌ وَاحِدَةً، وَهُوَ أَمْلَكُ بِرَجْعَتِهَا - قَالَ: فَذَكَرْت ذَلِكَ لِأَيُّوبَ؟ فَقَالَ: بَلَغَنِي نَحْوُ هَذَا عَنْ زَيْدٍ.

L32902–32903 A fifth opinion—narrated from Ibn Masʿūd through an unauthentic chain containing Jābir al-Juʿfī, a fabricator—holds that if he offers her the choice three times while she remains silent, then on the third occasion she declares "I have chosen myself," she is irrevocably divorced thrice.

وَقَوْلٌ خَامِسٌ - رُوِّينَاهُ عَنْ ابْنِ مَسْعُودٍ مِنْ طَرِيقٍ لَا تَصِحُّ، لِأَنَّ فِيهَا جَابِرًا الْجُعْفِيَّ - وَهُوَ كَذَّابٌ - إنْ خَيَّرَهَا مَرَّةً، ثُمَّ مَرَّةً، ثُمَّ مَرَّةً - وَهِيَ سَاكِتَةٌ، فَقَالَتْ فِي الْمَرَّةِ الثَّالِثَةِ: قَدْ اخْتَرْت نَفْسِي، فَهِيَ طَالِقٌ ثَلَاثًا.

L32904 It has been reported to us from Ibrāhīm al-Nakhaʿī and al-Shaʿbī that they both said: If he repeats giving her the choice three times and she selects one, she is divorced three times. If he gives her the choice once and she chooses three divorces, it is a single divorce.

وَرُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ: أَنَّهُمَا قَالَا: إنْ كَرَّرَ تَخْيِيرَهَا ثَلَاثَ مَرَّاتٍ فَاخْتَارَتْ وَاحِدَةً، فَهِيَ طَالِقٌ ثَلَاثًا، وَإِنْ خَيَّرَهَا مَرَّةً وَاحِدَةً فَاخْتَارَتْ ثَلَاثَ تَطْلِيقَاتٍ، فَهِيَ طَلْقَةٌ وَاحِدَةٌ.

L32905 A sixth opinion—narrated from Jābir ibn Zayd concerning the woman whose husband grants her the option [to annul the marriage]: “The obligation is based on what she has decided.” It is authentically reported from Ibn Masʿūd, Jābir ibn ʿAbd Allāh, al-Nakhaʿī, al-Shaʿbī, Jābir ibn Zayd, Makhūl, and ʿAṭāʾ that if she rises from her seat before finalizing her decision, no obligation is incumbent on her.

وَقَوْلٌ سَادِسٌ - رُوِّينَاهُ عَنْ جَابِرِ بْنِ زَيْدٍ فِي الَّتِي يُخَيِّرُهَا زَوْجُهَا: الْقَضَاءُ مَا قَضَتْ - وَصَحَّ عَنْ ابْنِ مَسْعُودٍ، وَجَابِرِ بْنِ عَبْدِ اللَّهِ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ، وَجَابِرِ بْنِ زَيْدٍ، وَمَكْحُولٍ، وَعَطَاءٍ: إنْ قَامَتْ مِنْ مَجْلِسِهَا قَبْلَ أَنْ تَقْضِيَ فَلَا قَضَاءَ لَهَا.

L32906 It has been narrated to us from Umar ibn al-Khattab, Ali ibn Abi Talib, Zayd ibn Thabit, Ayyub al-Sakhtiyānī, and al-Zuhri that granting the choice and transferring ownership are equivalent.

وَرُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ ثَابِتٍ، وَأَيُّوبَ السِّخْتِيَانِيِّ، وَالزُّهْرِيِّ: أَنَّ التَّخْيِيرَ، وَالتَّمْلِيكَ سَوَاءٌ.

L32907 A seventh opinion—and this is the one we hold—has been narrated through the chain of Sufyan ibn ʻUyaynah from ʻAmr ibn Dinar from ʻIkrimah from Ibn ʻAbbas: He was asked about a man who delegated the authority of divorce to his wife, and she said, “You are divorced! You are divorced! You are divorced!” Ibn ʻAbbas replied, “May Allah invalidate her action! I do not know what the correct option is.”

وَقَوْلٌ سَابِعٌ - وَبِهِ نَقُولُ -: رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ سُئِلَ عَنْ رَجُلٍ جَعَلَ أَمْرَ امْرَأَتِهِ بِيَدِهَا؟ فَقَالَتْ: أَنْتَ طَالِقٌ، أَنْتَ طَالِقٌ، أَنْتَ طَالِقٌ؟ فَقَالَ ابْنُ عَبَّاسٍ: خَطَّأَ اللَّهُ نَوْأَهَا لَا أَدْرِي مَا الْخِيَارُ.

L32908 Abu Muhammad said: This is the most authentic narration transmitted from Ibn Abbas regarding this matter. As for the addition reported by some narrators in this account - that Ibn Abbas stated: “If she were to say ’I am divorced three times,’ it would take effect as she declared, or else the divorce would not occur unless pronounced three times” - this is invalid, for it was only transmitted by Al-Hakam ibn ’Utaybah, Habib ibn Abi Thabit, and Mansur, none of whom ever met Ibn Abbas.

قَالَ أَبُو مُحَمَّدٍ: هَذَا أَصَحُّ مَا رُوِيَ فِي ذَلِكَ عَنْ ابْنِ عَبَّاسٍ، وَأَمَّا الزِّيَادَةُ الَّتِي رَوَاهَا قَوْمٌ فِي هَذَا الْخَبَرِ مِنْ أَنَّ ابْنَ عَبَّاسٍ قَالَ: لَوْ قَالَتْ: أَنَا طَالِقٌ ثَلَاثًا، لَكَانَ كَمَا قَالَتْ، أَوْ إلَّا طَلَّقَتْ نَفْسَهَا ثَلَاثًا، فَلَا يَصِحُّ، لِأَنَّهُ إنَّمَا رَوَاهَا الْحَكَمُ بْنُ عُتَيْبَةَ، وَحَبِيبُ بْنُ أَبِي ثَابِتٍ وَمَنْصُورٌ - وَكُلُّهُمْ لَمْ يَلْقَ ابْنَ عَبَّاسٍ.

L32909 And this has also been narrated to us through the chain of ʿAmr ibn Dīnār from Ibn ʿAbbās, except for the statement “She said: ’I am divorced, I am divorced.’” This report was not heard by ʿAmr from Ibn ʿAbbās, for he only narrated it from ʿIkrimah, contrary to this report attributed to Ibn ʿAbbās. Abū Sulaymān says this, and so do our companions. Abū Muḥammad said: We have already mentioned the opinion of Sufyān and Al-Shāfiʿī regarding the right to choose divorce earlier in this work.

وَرُوِّينَا هَذَا أَيْضًا: مِنْ طَرِيقِ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عَبَّاسٍ: إلَّا " قَالَتْ: أَنَا طَالِقٌ، أَنَا طَالِقٌ " وَهَذَا خَبَرٌ لَمْ يَسْمَعْهُ عَمْرٌو مِنْ ابْنِ عَبَّاسٍ، لِأَنَّهُ إنَّمَا رَوَاهُ عَنْ عِكْرِمَةَ، بِخِلَافِ هَذَا عَنْ ابْنِ عَبَّاسٍ - وَبِهَذَا يَقُولُ أَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: قَالَ أَبُو مُحَمَّدٍ: وَقَدْ ذَكَرْنَا قَوْلَ سُفْيَانَ، وَالشَّافِعِيِّ فِي التَّخْيِيرِ آنِفًا.

L32910–32912 As for Abū Ḥanīfah, he said: If he said to her “Choose!” and gave her the choice, and then said “I had no intention of divorce,” then, if... If this

occurred during mutual consent with no mention of divorce, his statement is upheld along with his oath, and she has no option. If it occurred in anger (whether divorce was mentioned or not) or during mutual consent with divorce mentioned, no consideration is given to the husband's claim, and she retains the choice. If she chooses her husband, she remains his wife, and her option is void. If she chooses herself, she is divorced by a single irrevocable divorce (bā'inah), which is categorically non-revocable and cannot exceed one - regardless of whether he intended more than one divorce, she chose multiple divorces, or she opted for a revocable divorce.

وَأَمَّا أَبُو حَنِيفَةَ - فَقَالَ: إِنْ قَالَ لَهَا: اخْتَارِي فَخَيَّرَهَا، ثُمَّ قَالَ: لَمْ أُرِدْ طَلَاقًا، فَإِنْ كَانَ ذَلِكَ فِي رِضًا لَمْ يَجْرِ فِيهِ ذِكْرُ طَلَاقٍ كَانَ الْقَوْلُ قَوْلَهُ مَعَ يَمِينِهِ، وَلَا خِيَارَ لَهَا - فَإِنْ كَانَ فِي غَضَبٍ فِيهِ ذِكْرُ طَلَاقٍ أَوْ لَيْسَ فِيهِ ذِكْرُ طَلَاقٍ، أَوْ كَانَ فِي رِضًا ذُكِرَ فِيهِ طَلَاقٌ لَمْ يُلْتَفَتْ إِلَى دَعْوَى الزَّوْجِ، وَكَانَ لَهَا الْخِيَارُ، فَإِنْ اخْتَارَتْ زَوْجَهَا فَهِيَ امْرَأَتُهُ، وَبَطَلَ خِيَارُهَا، وَإِنْ اخْتَارَتْ نَفْسَهَا فَهِيَ طَالِقٌ وَاحِدَةً بَائِنَةً، لَا تَكُونُ رَجْعِيَّةً أَصْلًا، وَلَا أَكْثَرَ مِنْ وَاحِدَةٍ، سَوَاءٌ نَوَى هُوَ أَكْثَرَ مِنْ وَاحِدَةٍ أَوْ لَمْ يَنْوِ، اخْتَارَتْ هِيَ أَكْثَرَ مِنْ وَاحِدَةٍ، أَوْ اخْتَارَتْ وَاحِدَةً رَجْعِيَّةً.

L32913 Then they have among the confusions in its movements and actions matters too lengthy to recount. Yet these are among the wonders of the worldly life; we have mentioned them in *The Book of Transmission*.

ثُمَّ لَهُمْ مِنَ التَّخَالِيطِ فِي حَرَكَاتِهَا وَأَعْمَالِهَا أَشْيَاءُ يَطُولُ ذِكْرُهَا، إِلَّا أَنَّهَا مِنْ عَجَائِبِ الدُّنْيَا، قَدْ ذَكَرْنَاهَا فِي " كِتَابِ الْإِيصَالِ ".

L32914 Mālik said: If he grants her the choice and she chooses him, she remains his wife and her option is nullified. If she chooses herself, she is inevitably divorced three times—whether she states, "I intended divorce," or states, "I did not intend divorce." He cannot contest her, and no attention is paid to his intention whatsoever. If she divorces herself once or twice, it is void and does not bind him. She may only choose her husband or pronounce a triple divorce inevitably—unless he grants her the choice while resolved to divorce her or initiate a khulʿ separation. In such a case, if she chooses herself, it constitutes one irrevocable divorce. Similarly, if he tells her, "Choose a divorce," she may only pronounce one revocable divorce. All this applies to consummated marriages.

وَقَالَ مَالِكٌ: إِنْ خَيَّرَهَا فَاخْتَارَتْهُ، فَهِيَ امْرَأَتُهُ وَقَدْ بَطَلَ خِيَارُهَا، فَإِنْ اخْتَارَتْ نَفْسَهَا فَهِيَ طَالِقٌ ثَلَاثًا وَلَا بُدَّ، سَوَاءٌ قَالَتْ: أَرَدْتُ الطَّلَاقَ، أَوْ قَالَتْ: لَمْ أُرِدْ الطَّلَاقَ، وَلَيْسَ لَهُ أَنْ يُنَاكِرَهَا، وَلَا يُلْتَفَتُ إِلَى نِيَّتِهِ أَصْلًا، فَلَوْ طَلَّقَتْ نَفْسَهَا وَاحِدَةً أَوْ اثْنَتَيْنِ فَلَيْسَ بِشَيْءٍ، وَلَا يَلْزَمُهُ ذَلِكَ وَلَيْسَ لَهَا إِلَّا اخْتِيَارُ زَوْجِهَا، أَوْ أَنْ تُطَلِّقَ نَفْسَهَا ثَلَاثًا وَلَا بُدَّ، إِلَّا أَنْ يُخَيِّرَهَا وَقَدْ عَزَمَ عَلَى طَلَاقِهَا، أَوْ مُخَالَعَتِهَا؟ فَهَاهُنَا إِنْ اخْتَارَتْ نَفْسَهَا فَهِيَ طَلْقَةٌ وَاحِدَةٌ بَائِنَةٌ - وَكَذَلِكَ لَوْ قَالَ لَهَا: اخْتَارِي طَلْقَةً؟ فَلَيْسَ لَهَا إِلَّا طَلْقَةٌ وَاحِدَةٌ رَجْعِيَّةٌ - هَذَا كُلُّهُ فِي الْمَدْخُولِ بِهَا.

L32915 If he gives her the choice before consummating the marriage, then if she chooses herself, it is only one pronouncement. If the wife whom he did not consummate the marriage with says, "I have chosen myself with three pronouncements," and he responds, "I intended only one," then it is one.

فَإِنْ خَيَّرَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا؟ فَهِيَ إِنْ اخْتَارَتْ نَفْسَهَا طَلْقَةً وَاحِدَةً فَقَطْ - فَلَوْ قَالَتْ الَّتِي لَمْ يَدْخُلْ بِهَا: قَدْ اخْتَرْت نَفْسِي بِثَلَاثِ طَلْقَاتٍ؟ فَقَالَ هُوَ: لَمْ أُرِدْ إِلَّا وَاحِدَةً، فَهِيَ وَاحِدَةٌ.

L32916 He said: If the wife whose marriage has been consummated were to say, "I have accepted my situation?" this would not constitute a divorce unless she herself were to say, "I intended divorce," in which case it would necessarily be three divorces; there can be no fewer than that.

وَقَالَ: فَلَوْ قَالَتْ الْمَدْخُولُ بِهَا: قَدْ قَبِلْت أَمْرِي؟ لَمْ يَكُنْ طَلَاقًا إِلَّا أَنْ تَقُولَ هِيَ: أَرَدْت الطَّلَاقَ فَيَكُونُ ثَلَاثًا وَلَا بُدَّ، لَا أَقَلَّ مِنْ ذَلِكَ.

L32917 If she were to say to him, "I have divorced you (via khulʿ)," then it constitutes an irrevocable triple divorce.

فَلَوْ قَالَتْ لَهُ: قَدْ خَلَّيْت سَبِيلَك، فَهِيَ ثَلَاثٌ وَلَا بُدَّ.

L32918 His opinion differed regarding the woman granted the right of choice (al-mukhayyarah): does her prerogative become void if she rises from the setting of choice before selecting? At one point, he ruled: her right is invalidated, unlike the case of granting ownership. He later revised his position, stating: rather, she retains the right until she is formally presented with the choice to accept or relinquish it. If coerced into consummation, her right remains valid. But if she consents willingly, her right becomes void.

وَاخْتَلَفَ قَوْلُهُ فِي الْمُخَيَّرَةِ تَقُومُ مِنْ مَجْلِسِ التَّخْيِيرِ قَبْلَ أَنْ تَخْتَارَ؟ فَمَرَّةً قَالَ: بَطَلَ خِيَارُهَا بِخِلَافِ التَّمْلِيكِ، ثُمَّ رَجَعَ فَقَالَ: بَلْ لَهَا الْخِيَارُ حَتَّى تُوقَفَ فَتَخْتَارَ أَوْ تَتْرُكَ، فَلَوْ وَطِئَهَا مُكْرَهَةً لَمْ يَبْطُلْ خِيَارُهَا، فَلَوْ وَطِئَهَا طَائِعَةً بَطَلَ خِيَارُهَا.

L32919–32921 Abū Muḥammad said: The mention of these statements suffices to dispense with refuting them, due to their obvious weakness. Regarding her circumstances—in summary, none before him had articulated these distinctions. Rather, he adhered to one of three opinions narrated from Zayd concerning her exercise of choice, which Zayd limited to three only. However, the one who held this opinion contradicted Zayd's own position in differentiating between a consummated and unconsummated marriage, and in Zayd's equating the right of choice with granting the right of divorce. Thus, his reliance on Zayd is invalid.

قَالَ أَبُو مُحَمَّد: ذِكْرُ هَذِهِ الْأَقْوَالِ يُغْنِي عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهَا، لِشِدَّةِ اخْتِلَاطِهَا - وَبِالْجُمْلَةِ فَلَمْ يَقُلْ أَحَدٌ قَبْلَهُ بِهَذِهِ التَّقْسِيمَاتِ، وَإِنَّمَا تَعَلَّقَ بِقَوْلٍ مِنْ أَحَدِ أَقْوَالٍ ثَلَاثَةٍ رُوِيَتْ عَنْ زَيْدٍ فِي إنْ اخْتَارَتْ نَفْسَهَا، فَهِيَ ثَلَاثٌ فَقَطْ، وَخَالَفَهُ فِي ذَلِكَ الْقَوْلِ نَفْسِهِ فِي الْفَرْقِ بَيْنَ الْمَدْخُولِ بِهَا وَغَيْرِ الْمَدْخُولِ بِهَا، وَفِي تَسْوِيَةِ زَيْدٍ بَيْنَ التَّخْيِيرِ وَالتَّمْلِيكِ - فَبَطَلَ تَعَلُّقُهُ بِزَيْدٍ.

L32922 This statement contradicts another opinion from Zaid, an opinion from Umar, and an opinion from Ali. None of these opinions possess any valid proof for their authentication—neither from the Quran, nor the Sunnah, nor reasoned judgment, nor an earlier statement in which no equivalent

authority contradicted him, nor analogy, nor an opinion with an intellectually conceivable basis.

وَقَدْ خَالَفَ هَذَا الْقَوْلَ قَوْلٌ لِزَيْدٍ آخَرُ، وَقَوْلٌ لِعُمَرَ، وَقَوْلٌ لِعَلِيٍّ - وَكُلُّ هَذِهِ الْأَقْوَالِ لَا حُجَّةَ فِي تَصْحِيحِهَا، مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا مَعْقُولٍ، وَلَا قَوْلِ مُتَقَدِّمٍ لَمْ يُخَالِفْهُ فِيهِ مَنْ هُوَ مِثْلُهُ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ يُعْقَلُ.

L32923 Those who held that the option influences divorce cited as evidence that "the Messenger of Allah—may Allah bless him and grant him peace—gave his wives the option." Abu Muhammad said: As for the Malikis, they have no basis for this position whatsoever, for they maintain that the option is valid only in cases of remaining [in marriage] or the triple irrevocable divorce.[39]

وَاحْتَجَّ مَنْ رَأَى أَنَّ التَّخْيِيرَ لَهُ تَأْثِيرٌ فِي الطَّلَاقِ بِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيَّرَ نِسَاءَهُ؟» قَالَ أَبُو مُحَمَّد: أَمَّا الْمَالِكِيُّونَ فَلَا مُتَعَلَّقَ لَهُمْ بِذَلِكَ أَصْلًا، لِأَنَّهُمْ يَقُولُونَ: لَا يَكُونُ التَّخْيِيرُ إلَّا فِي الْبَقَاءِ، أَوْ فِي الطَّلَاقِ الثَّلَاثِ.

L32924 They say: "The triple divorce is an innovation and a sin. So how could it be valid—according to them—for the Messenger of God (peace be upon him) to grant a legitimate choice in enforcing a sin? Allah is far above such a thing!"

وَيَقُولُونَ: إنَّ طَلَاقَ الثَّلَاثِ بِدْعَةٌ وَمَعْصِيَةٌ، فَكَيْفَ يَجُوزُ - عِنْدَهُمْ - أَنْ يُخَيِّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي إنْفَاذِ مَعْصِيَةٍ، حَاشَا لِلَّهِ مِنْ هَذَا.

L32925 Some of them said: "Did he give them only the choice between worldly life and the Hereafter?" We responded: "Your argument about the choice affecting divorce—based on his (peace be upon him) giving his wives the option—is invalid, for according to your view, he did not present them with a choice that would result in divorce if they opted for it. As for others, we say to them: The verse itself nullifies your claim, for its text states: {If you desire worldly life and its adornment, then come—I will provide for you and release you graciously} [Al-Ahzab 33:28]."[40]

وَقَالَ بَعْضُهُمْ: إنَّمَا خَيَّرَهُنَّ بَيْنَ الدُّنْيَا وَالْآخِرَةِ؟ فَقُلْنَا: قَدْ بَطَلَ تَعَلُّقُكُمْ فِي أَنَّ لِلتَّخْيِيرِ تَأْثِيرًا فِي الطَّلَاقِ «بِتَخْيِيرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نِسَاءَهُ» إذْ لَمْ يُخْبِرْهُنَّ تَخْيِيرًا عِنْدَكُمْ يَكُنَّ بِهِ إنْ اخْتَرْنَ الطَّلَاقَ طَوَالِقَ، وَأَمَّا غَيْرُهُمْ فَنَقُولُ لَهُمْ: الْآيَةُ نَفْسُهَا تُبْطِلُ دَعْوَاكُمْ لِأَنَّ نَصَّهَا: {إِنْ كُنْتُنَّ تُرِدْنَ الْحَيَاةَ الدُّنْيَا وَزِينَتَهَا فَتَعَالَيْنَ أُمَتِّعْكُنَّ وَأُسَرِّحْكُنَّ سَرَاحًا جَمِيلًا} [الأحزاب: ٢٨] .

L32926 Indeed, Allah the Exalted has decreed that if they [the wives] desire worldly life and do not desire the Hereafter, the Prophet (peace be upon him) would divorce them at that time by his own volition—choosing to divorce of his own accord—not that they are divorced merely by their choosing worldly life. Whoever claims otherwise has distorted the words of Allah the Mighty and Majestic, wrongfully inserting into the verse's ruling a sheer falsehood for which there exists no explicit text or evidence within the verse itself.

فَإِنَّمَا نَصَّ اللَّهُ تَعَالَى أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنْ أَرَدْنَ الدُّنْيَا، وَلَمْ يُرِدْنَ الْآخِرَةَ: طَلَّقَهُنَّ حِينَئِذٍ مِنْ قِبَلِ نَفْسِهِ مُخْتَارًا لِلطَّلَاقِ، لَا أَنَّهُنَّ طَوَالِقُ بِنَفْسِ اخْتِيَارِهِنَّ الدُّنْيَا - وَمَنْ ادَّعَى غَيْرَ هَذَا فَقَدْ حَرَّفَ كَلَامَ اللَّهِ عَزَّ وَجَلَّ وَأَقْحَمَ فِي حُكْمِ الْآيَةِ كَذِبًا مَحْضًا لَيْسَ فِيهَا مِنْهُ نَصٌّ وَلَا دَلِيلٌ.

[39] **Hadith references (L32923):** Sahih Muslim 1477c.
[40] **Qur'an references (L32925):** Qur'an 33:28 (Al-Ahzab).

L32927 Some of them concealed [their positions] using fabricated reports—among these is what we narrated through the chain of Ibn Wahb from ʿAbd al-Jabbār ibn ʿUmar and Yaḥyā ibn ʿAbd Allāh, both of whom reported from Rabīʿah: "That one of the Prophet's wives—peace and blessings be upon him—chose for herself [lifelong abstinence], thus becoming al-battah (one who has taken a vow of abstinence)." Now, ʿAbd al-Jabbār ibn ʿUmar and Yaḥyā ibn ʿAbd Allāh are discredited narrators. Moreover, the narration is mursal (with an incomplete chain).

وَمَوَّهَ بَعْضُهُمْ بِأَخْبَارٍ مَوْضُوعَةٍ -: مِنْهَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ، وَيَحْيَى بْنِ عَبْدِ اللَّهِ، كِلَاهُمَا عَنْ رَبِيعَةَ: «أَنَّ وَاحِدَةً مِنْ نِسَاءِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اخْتَارَتْ نَفْسَهَا فَكَانَتْ أَلْبَتَّةَ» ، وَعَبْدُ الْجَبَّارِ بْنُ عُمَرَ، وَيَحْيَى بْنُ عَبْدِ اللَّهِ - هَالِكَانِ - ثُمَّ هُوَ مُرْسَلٌ.

L32928–32929 And through the chain of Ibn Wahb from ʿAbd al-Jabbār ibn ʿUmar from al-Zuhrī: that when the Prophet—peace and blessings of Allah be upon him—gave his wives the choice, one of them chose herself and left—and ʿAbd al-Jabbār, we have clarified his narrator standing—and this narration is also *mursal*.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ الزُّهْرِيِّ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ خَيَّرَ نِسَاءَهُ؟ تَخَيَّرَتْ امْرَأَةٌ مِنْهُنَّ نَفْسَهَا فَذَهَبَتْ - وَعَبْدُ الْجَبَّارِ قَدْ بَيَّنَّا أَمْرَهُ - وَهُوَ مُرْسَلٌ أَيْضًا.

L32930 And from the chain of Ibn Wahb through Ibn Lahi'ah through Yazid ibn Abi Habib through 'Amr ibn Shu'ayb in similar fashion: He said - she being the daughter of al-Dahhak al-'Amiri (Ibn Lahi'ah's narration is baseless) - and it is also a mursal report. The Prophet - peace and blessings be upon him - never married the daughter of al-Dahhak al-'Amiri. The established report that exposes the falsehood of these scandals is the one we have narrated through various chains, including: From Muslim's chain - Harmala ibn Yahya reported to us, Ibn Wahb narrated to us, Yunus ibn Yazid reported to me from Ibn Shihab: Abu Salama ibn 'Abd al-Rahman ibn 'Awf informed me that 'Aisha said - mentioning the revelation of the Verse of Choice - "The Messenger of Allah - peace and blessings be upon him - recited it to her." She responded: "I choose Allah, His Messenger, and the Final Abode." She added: Then the Prophet's wives - peace and blessings be upon him - did the same as she had done.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ بِنَحْوِ ذَلِكَ، قَالَ: وَهِيَ بِنْتُ الضَّحَّاكِ الْعَامِرِيِّ - ابْنِ لَهِيعَةَ لَا شَيْءَ - وَمُرْسَلٌ أَيْضًا، وَمَا تَزَوَّجَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ بِنْتَ الضَّحَّاكِ الْعَامِرِيِّ - وَيُوَضِّحُ كَذِبَ هَذِهِ الْفَضَائِحِ الْخَبَرُ الثَّابِتُ الَّذِي رُوِّينَاهُ مِنْ طُرُقٍ: مِنْهَا - مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى نا ابْنُ وَهْبٍ حَدَّثَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ: أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ: أَنَّ عَائِشَةَ قَالَتْ، فَذَكَرَتْ نُزُولَ آيَةِ التَّخْيِيرِ، «وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَلَاهَا عَلَيْهَا» ؟ فَقَالَتْ: إنِّي أُرِيدُ اللَّهَ وَرَسُولَهُ وَالدَّارَ الْآخِرَةَ، قَالَتْ: ثُمَّ فَعَلَ أَزْوَاجُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلَ مَا فَعَلَتْ.

L32931 Through the chain of Muslim: Isḥāq ibn Manṣūr reported to us; ʿAbd al-Raḥmān—he is Ibn Mahdī—reported to us; from Sufyān al-Thawrī from ʿĀṣim al-Aḥwal and Ismāʿīl ibn Abī Khālid, both from al-Shaʿbī; from Masrūq; from ʿĀ'ishah, the Mother of the Believers, who said: "The Messenger of

وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ نا عَبْدُ الرَّحْمَنِ - هُوَ ابْنُ مَهْدِيٍّ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَاصِمٍ الْأَحْوَلِ، وَإِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ

Allah—may Allah bless him and grant him peace—gave us the choice, so we chose him, and he did not consider it a divorce."[41]

عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، قَالَتْ: «خَيَّرَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاخْتَرْنَاهُ، فَلَمْ يُعِدَّهُ طَلَاقًا» .

L32932 Abu Muhammad said: We have thoroughly examined all these narrations and demonstrated the great falsehood of those who claimed consensus in any of that. We established that there is nothing regarding the juridical option except statements from Umar, Ali, and Zaid—each of them contradicted his fellow—and an unsound narration from Ibn Masʿūd, along with weak narrations from Ibn ʿAbbās. What is reliably established from him corresponds to our own statement: that the option holds no validity whatsoever. As for the transfer of ownership, there are only differing opinions from Zaid and Ibn ʿUmar alone, with no third opinion from the Companions—may Allah be pleased with them—except a statement transmitted from Faḍālah ibn ʿUbayd concerning it: "The ruling is what has been decreed."

قَالَ أَبُو مُحَمَّدٍ: قَدْ تَقَصَّيْنَا كُلَّ هَذِهِ الْآثَارِ، وَأَرَيْنَا عَظِيمَ كَذِبِ مَنْ ادَّعَى الْإِجْمَاعَ فِي شَيْءٍ مِنْ ذَلِكَ، وَوَقَفْنَا عَلَى أَنَّهُ لَيْسَ فِي التَّخْيِيرِ شَيْءٌ إلَّا عَنْ عُمَرَ، وَعَلِيٍّ، وَزَيْدٍ: أَقْوَالٌ خَالَفَ فِيهَا كُلُّ وَاحِدٍ مِنْهُمْ صَاحِبَهُ وَأَثَرٌ لَا يَصِحُّ عَنْ ابْنِ مَسْعُودٍ، وَآثَارٌ سَاقِطَةٌ عَنْ ابْنِ عَبَّاسٍ، وَالثَّابِتُ عَنْهُ كَقَوْلِنَا: أَنَّهُ لَا مَعْنَى لِلتَّخْيِيرِ أَصْلًا، وَأَنَّهُ لَيْسَ فِي التَّمْلِيكِ إلَّا أَقْوَالٌ مُخْتَلِفَةٌ عَنْ زَيْدٍ، وَابْنِ عُمَرَ فَقَطْ، لَا ثَالِثَ لَهُمَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إلَّا قَوْلًا ذُكِرَ عَنْ فَضَالَةَ بْنِ عُبَيْدٍ فِيهِ: أَنَّ الْقَضَاءَ مَا قَضَتْ.

L32933 Two narrations: from the chains of ʿUthmān and Ibn ʿAbbās, conforming to our position, and that regarding "your affair is in your hand," there are only differing statements narrated from ʿUmar, ʿAlī, Zayd, ʿUthmān, Ibn ʿUmar, Ibn ʿAmr, Abū Hurayrah, Ibn Masʿūd, Ibn al-Zubayr, and unnamed men among the Companions, may Allah be pleased with them all.

وَأَثَرَانِ: مِنْ طَرِيقِ عُثْمَانَ، وَابْنِ عَبَّاسٍ، مُوَافِقَانِ لِقَوْلِنَا، وَأَنَّهُ لَيْسَ " فِي أَمْرِك بِيَدِك " إلَّا أَقْوَالٌ مُخْتَلِفَةٌ عَنْ عُمَرَ، وَعَلِيٍّ، وَزَيْدٍ، وَعُثْمَانَ وَابْنِ عُمَرَ، وَابْنِ عَمْرٍو، وَأَبِي هُرَيْرَةَ، وَابْنِ مَسْعُودٍ، وَابْنِ الزُّبَيْرِ، وَرِجَالٍ لَمْ يُسَمُّوا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L32934 Among some of these is a statement from Jābir ibn ʿAbd Allāh. Mālik did not agree with any of them except for an authenticated narration from Ibn ʿUmar only in the context of the rejected narration—and a similar narration from ʿUmar, which was not authenticated from him—and Abū Ḥanīfah did not agree with any of them.

وَفِي بَعْضِ هَذِهِ قَوْلٌ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ لَمْ يُوَافِقْ مَالِكٌ أَحَدًا مِنْهُمْ، إلَّا رِوَايَةً عَنْ ابْنِ عُمَرَ صَحَّتْ عَنْهُ فِي الْمُنَاكَرَةِ فَقَطْ - وَمِثْلُهَا عَنْ عُمَرَ - لَمْ تَصِحَّ عَنْهُ - وَلَمْ يُوَافِقْ أَبُو حَنِيفَةَ مِنْهُمْ أَحَدًا.

L32935 We ourselves have endorsed the legal opinion transmitted from Ibn Masʿūd and ʿUmar.

وَوَافَقْنَا نَحْنُ قَوْلًا رُوِيَ عَنْ ابْنِ مَسْعُودٍ، وَعُمَرَ.

L32936–32937 Abu Muhammad said: There is no authoritative evidence in anyone apart from the Messenger of Allah—peace be upon him. Since nothing has been mentioned in the Qur'an or from the Messenger of Allah—peace be upon him—that a man's statement to his wife such as "Your affair is in your hands,"

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِذْ لَمْ يَأْتِ فِي الْقُرْآنِ، وَلَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ قَوْلَ الرَّجُلِ لِامْرَأَتِهِ: " أَمْرُك بِيَدِك، أَوْ قَدْ مَلَّكْتُك أَمْرَك، أَوْ اخْتَارِي " يُوجِبُ أَنْ تَكُونَ طَالِقًا، أَوْ أَنَّ لَهَا

[41] **Hadith references (L32931):** Sahih Muslim 1477d.

"I have granted you authority over your matter," or "Choose" necessitates her divorce, grants her the right to divorce herself, or permits her to opt for divorce, it is not permissible to forbid a man from lawful marital relations that Allah the Exalted and His Messenger—peace be upon him—have permitted him, based on utterances that neither Allah the Exalted nor His Messenger—peace be upon him—have mandated. This is of the utmost clarity—and all praise is due to Allah, Lord of the worlds.

أَنْ تُطَلِّقَ نَفْسَهَا، أَوْ أَنْ تَخْتَارَ طَلَاقًا، فَلَا يَجُوزُ أَنْ يَحْرُمَ عَلَى الرَّجُلِ فَرْجٌ أَبَاحَهُ اللَّهُ تَعَالَى لَهُ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَقْوَالٍ لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا فِي غَايَةِ الْبَيَانِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

L32938

Issue: If he says to his wife, "You are unlawful to me," or adds to that.

[مَسْأَلَةٌ قَالَ لِامْرَأَتِهِ أَنْتِ عَلَيَّ حَرَامٌ أَوْ زَادَ عَلَى ذَلِكَ]

L32939

1934. Issue: If a man says to his wife, "You are forbidden to me," or adds to that by saying, "Like carrion, blood, and pork," or says anything of that sort, all of it is null and void and unfounded. She does not become forbidden to him by that, and she remains his wife as she was—whether he intended divorce by it or not.

١٩٣٤ - مَسْأَلَةٌ: وَمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ حَرَامٌ، أَوْ زَادَ عَلَى ذَلِكَ فَقَالَ: كَالْمَيْتَةِ، وَالدَّمِ، وَلَحْمِ الْخِنْزِيرِ، أَوْ مَا قَالَ مِنْ ذَلِكَ، فَهُوَ كُلُّهُ بَاطِلٌ وَكَذِبٌ، وَلَا تَكُونُ بِذَلِكَ عَلَيْهِ حَرَامًا، وَهِيَ امْرَأَتُهُ كَمَا كَانَتْ - نَوَى بِذَلِكَ طَلَاقًا أَوْ لَمْ يَنْوِ.

L32940

People have differed regarding this matter. ʿAlī, Zayd ibn Thābit, and Ibn ʿUmar said: she is divorced three times by that statement—and this is the opinion of al-Ḥasan and Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Laylā—and it was narrated from al-Ḥakam ibn ʿUtaybah.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَ عَلِيٌّ، وَزَيْدُ بْنُ ثَابِتٍ، وَابْنُ عُمَرَ: هِيَ بِذَلِكَ الْقَوْلِ طَالِقٌ ثَلَاثًا - وَهُوَ قَوْلُ الْحَسَنِ، وَمُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى - وَرُوِيَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ.

L32941

Another opinion states that it is thereby forbidden for him—they did not mention divorce—this is authentically reported from Ali ibn Abi Talib, from unnamed men among the Companions (may Allah be pleased with them), and from Abu Huraira. It is also authentically reported from al-Hasan, Khilas ibn Amr, Jabir ibn Zayd, and Qatadah that they commanded him to avoid her only.

وَقَوْلٌ آخَرُ - أَنَّهَا بِذَلِكَ حَرَامٌ عَلَيْهِ - وَلَمْ يَذْكُرُوا طَلَاقًا، صَحَّ هَذَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَنْ رِجَالٍ لَمْ يُسَمُّوا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَعَنْ أَبِي هُرَيْرَةَ - وَصَحَّ عَنْ الْحَسَنِ، وَخِلَاسِ بْنِ عَمْرٍو، وَجَابِرِ بْنِ زَيْدٍ، وَقَتَادَةَ: أَنَّهُمْ أَمَرُوهُ بِاجْتِنَابِهَا فَقَطْ.

L32942

The third opinion—narrated from Ibn Masʿūd: If he intended divorce at the time of prohibition, otherwise it is an oath—and this is the opinion of al-Ḥasan, Ṭāwūs, al-Shāfiʿī, and al-Zuhrī.

وَقَوْلٌ ثَالِثٌ - رُوِيَ عَنْ ابْنِ مَسْعُودٍ: إنْ كَانَ نَوَى فِي التَّحْرِيمِ الطَّلَاقَ وَإِلَّا فَهُوَ يَمِينٌ - وَهُوَ قَوْلُ الْحَسَنِ، وَطَاوُسٍ، وَالشَّافِعِيِّ، وَالزُّهْرِيِّ.

L32943

A fourth opinion—we have narrated from Ibrāhīm, who said: Our companions ruled concerning irrevocable divorce—if one intended three [divorces],

it is three; and if one intended a single [divorce], it is a single irrevocable (bā'in) divorce. This is the opinion of Sufyān, except that he said: If one intended an oath, it is an oath; and if no intent was made, it is a falsehood with no legal consequence.

وَقَوْلٌ رَابِعٌ - رُوِّينَاهُ عَنْ إِبْرَاهِيمَ قَالَ: كَانَ أَصْحَابُنَا يَقُولُونَ فِي الْحَرَامِ: إِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ نَوَى وَاحِدَةً فَهِيَ وَاحِدَةٌ بَائِنَةٌ - وَهُوَ قَوْلُ سُفْيَانَ، إِلَّا أَنَّهُ قَالَ: وَإِنْ نَوَى يَمِينًا فَهِيَ يَمِينٌ، وَإِنْ لَمْ يَنْوِ شَيْئًا فَهِيَ كَذِبٌ لَا شَيْءَ فِيهَا.

L32944 A fifth opinion—reported from Ibrāhīm: If he intends one divorce or does not intend anything, then it is a single bā'in (irrevocable) divorce. If he intends three divorces, then it is three divorces. It has been transmitted to us through Wakī''s chain from al-Ḥasan ibn Ḥayyin, from al-Mughīrah, from Ibrāhīm: "If he intends two divorces, then it is two divorces."

وَقَوْلٌ خَامِسٌ - عَنْ إِبْرَاهِيمَ: إِنْ نَوَى وَاحِدَةً أَوْ لَمْ يَنْوِ شَيْئًا فَهِيَ وَاحِدَةٌ بَائِنَةٌ، وَإِنْ نَوَى ثَلَاثًا فَثَلَاثٌ - وَقَدْ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنِ الْحَسَنِ بْنِ حَيٍّ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ: وَإِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ.

L32945 A sixth opinion—that it constitutes a single divorce—is reported from 'Umar, and this is the view held by Ḥammād ibn Abī Sulaymān.

وَقَوْلٌ سَادِسٌ - هُوَ طَلْقَةٌ وَاحِدَةٌ: رُوِّينَاهُ عَنْ عُمَرَ - وَبِهِ يَقُولُ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ.

L32946–32947 A seventh opinion—which is that it is a ẓihār, wherein lies the expiation prescribed for ẓihār—has been authentically transmitted from Ibn ʿAbbās through ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Manṣūr ibn al-Muʿtamir, from Saʿīd ibn Jubayr, from Ibn ʿAbbās. He stated regarding the prohibited act (al-ḥarām) and the vow: [the expiation entails] emancipating a slave, fasting two consecutive months, or feeding sixty of the poor.

وَقَوْلٌ سَابِعٌ - وَهُوَ أَنَّهُ ظِهَارٌ، فِيهِ كَفَّارَةُ الظِّهَارِ - صَحَّ ذَلِكَ عَنِ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ فِي الْحَرَامِ، وَالنَّذْرِ: عِتْقُ رَقَبَةٍ، أَوْ صِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، أَوْ إِطْعَامُ سِتِّينَ مِسْكِينًا.

L32948 From the narration of Muhammad ibn Ja'far through Shu'bah through Mansur ibn al-Mu'tamir through Sa'id ibn Jubayr through Ibn Abbas regarding a man who says, "Forbidden upon me is eating," or says, "This food is forbidden upon me": He is obligated to emancipate a slave, fast two consecutive months, or feed sixty indigent people. This is the position of Abi Qilabah, Sa'id ibn Jubayr, and Wahb ibn Munabbih. It is also the position of Uthman al-Battī and Ahmad ibn Hanbal.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ فِي الرَّجُلِ إِذَا قَالَ: حَرَامٌ عَلَيَّ أَنْ آكُلَ، أَوْ قَالَ: هَذَا الطَّعَامُ عَلَيَّ حَرَامٌ؟ قَالَ: يُعْتِقُ رَقَبَةً، أَوْ يَصُومُ شَهْرَيْنِ مُتَتَابِعَيْنِ، أَوْ يُطْعِمُ سِتِّينَ مِسْكِينًا - وَهُوَ قَوْلُ أَبِي قِلَابَةَ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَوَهْبِ بْنِ مُنَبِّهٍ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ.

L32949 And the eighth opinion—which is that the prohibition is treated as an oath, thereby requiring the expiation applicable to oaths.

وَقَوْلٌ ثَامِنٌ - وَهُوَ أَنَّ التَّحْرِيمَ يَمِينٌ فِيهِ كَفَّارَةُ يَمِينٍ.

L32950 Then these differed: a faction among them said, "It is a solemn oath requiring no expiation except freeing a slave"—this has been reported to us from Ibn ʿAbbās.

ثُمَّ اخْتَلَفَ هَؤُلَاءِ: فَقَالَتْ طَائِفَةٌ مِنْهُمْ: هِيَ يَمِينٌ مُغَلَّظَةٌ لَيْسَ فِيهَا إِلَّا عِتْقُ رَقَبَةٍ - رُوِّينَا ذَلِكَ عَنِ ابْنِ عَبَّاسٍ.

L32951 Others said: It is solely an oath, as was narrated to us via the transmission of ʿAbd al-Razzāq from Maʿmar, from Yaḥyā ibn Abī Kathīr and Ayyūb al-Sikhtiyānī—both of whom reported from ʿIkrimah—that ʿUmar ibn al-Khaṭṭāb said: "It is an oath—meaning the prohibitive oath."

وَقَالَ آخَرُونَ: هِيَ يَمِينٌ فَقَطْ، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، وَأَيُّوبَ السِّخْتِيَانِيِّ، كِلَاهُمَا عَنْ عِكْرِمَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: هِيَ يَمِينٌ يَعْنِي التَّحْرِيمَ.

L32952 Through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Al-Muqaddamī narrated to us → Ḥammād ibn Zayd → Ṣakhr ibn Juwayriyah → Nāfiʿ → Ibn ʿUmar, who said: "The forbidden [declaration] is an oath."

Through the chain of ʿAbdullāh ibn Rabīʿ → Muḥammad ibn Muʿāwiyah al-Qurashī → Abū Khalīfah al-Faḍl ibn al-Ḥubāb al-Jumaḥī → Abū al-Walīd al-Ṭayālisī → al-Layth ibn Saʿd → Yazīd ibn Abī Ḥabīb → ʿAbdullāh ibn Hubayrah → Qabīṣah ibn Dhuʾayb, who said: "I asked Zayd ibn Thābit and Ibn ʿUmar about a man who says to his wife: 'You are forbidden to me.' They both replied: 'This requires the expiation for an oath.'"

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا الْمُقَدَّمِيُّ نا حَمَّادُ بْنُ زَيْدٍ عَنْ صَخْرِ بْنِ جُوَيْرِيَةَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: الْحَرَامُ يَمِينٌ -: نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْقُرَشِيُّ نا أَبُو خَلِيفَةَ الْفَضْلُ بْنُ الْحُبَابِ الْجُمَحِيُّ نا أَبُو الْوَلِيدِ الطَّيَالِسِيُّ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَبْدِ اللَّهِ بْنِ هُبَيْرَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ قَالَ: سَأَلْت زَيْدَ بْنَ ثَابِتٍ وَابْنَ عُمَرَ عَمَّنْ قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ حَرَامٌ؟ فَقَالَا جَمِيعًا كَفَّارَةُ يَمِينٍ.

L32953 Narrated via the chain of Abd al-Razzaq from Sufyan ibn Uyaynah from Ibn Abi Najih from Mujahid that Ibn Mas'ud said concerning prohibition (al-tahrim): "Prohibition is an oath that requires expiation."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنِ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ أَنَّ ابْنَ مَسْعُودٍ قَالَ فِي التَّحْرِيمِ: هِيَ يَمِينٌ يُكَفِّرُهَا.

L32954 Through the chain in Ṣaḥīḥ Muslim: Zuhayr ibn Ḥarb narrated to us, from Ismāʿīl ibn Ibrāhīm, from Hishām al-Dastuwāʾī, who said: Yaḥyā ibn Abī Kathīr wrote to me, narrating from Yaʿlā ibn Ḥakīm, from Saʿīd ibn Jubayr, from Ibn ʿAbbās, who said: "The forbidden [act] constitutes an oath requiring expiation."

وَمِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ قَالَ: كَتَبَ إِلَيَّ يَحْيَى بْنُ أَبِي كَثِيرٍ يُحَدِّثُ عَنْ يَعْلَى بْنِ حَكِيمٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: الْحَرَامُ يَمِينٌ يُكَفِّرُهَا.

L32955–32956 That was also narrated from Abu Bakr al-Siddiq.

وَرُوِيَ أَيْضًا ذَلِكَ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ.

L32957 And Aisha, the Mother of the Believers — and this is the opinion of Ikrimah and Ata. It has been narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj: I said to Ata, "What about one who says to his wife, 'You are forbidden to me'?" He replied, "It is an oath." Ibn Jurayj said: I then asked him, "Even if he intended divorce?" He said, "He knew the place of divorce." Ata said: "Even if he said, 'You are to me like blood' or 'like the flesh of a pig,'" Ata said, "It is equivalent to his saying, 'You are forbidden to me.'" This

وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ - وَهُوَ قَوْلُ عِكْرِمَةَ، وَعَطَاءٍ رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: مَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ حَرَامٌ؟ قَالَ: يَمِينٌ قَالَ ابْنُ جُرَيْجٍ فَقُلْت لَهُ: وَإِنْ كَانَ أَرَادَ الطَّلَاقَ؟ قَالَ: قَدْ عَلِمَ مَكَانَ الطَّلَاقِ، قَالَ عَطَاءٌ: وَلَوْ قَالَ:

أَنْتِ عَلَيَّ كَالدَّمِ، أَوْ كَلَحْمِ الْخِنْزِيرِ؟ قَالَ عَطَاءٌ: هُوَ كَقَوْلِهِ: أَنْتِ عَلَيَّ حَرَامٌ، وَهُوَ قَوْلُ مَكْحُولٍ، وَقَتَادَةَ، كَقَوْلِ عَطَاءٍ فِي كُلِّ مَا ذَكَرْنَاهُ

is also the opinion of Makhul and Qatadah, like the opinion of Ata in all that we have mentioned.

L32958 وَمِنْ طَرِيقِ قَتَادَةَ عَنْ الْحَسَنِ أَنَّهُ قَالَ: كُلُّ حَلَالٍ عَلَيَّ حَرَامٌ، فَهِيَ يَمِينٌ - وَبِهَذَا كَانَ يُفْتِي قَتَادَةُ - وَهُوَ قَوْلُ الشَّعْبِيِّ.

L32958 And through the narration of Qatādah from al-Ḥasan that he said: "If every lawful thing becomes forbidden to me, that constitutes an oath"—and Qatādah would issue juridical rulings based on this position. This is also the opinion of al-Shaʿbī.

L32959 وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ، عَنْ دَاوُد بْنِ أَبِي هِنْدَ، عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: الْحَرَامُ يَمِينٌ يُكَفِّرُهَا - وَهُوَ قَوْلُ سُلَيْمَانَ بْنِ يَسَارٍ، وَجَابِرِ بْنِ زَيْدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ.

L32959 From the chain of Waki', from Sufyan al-Thawri, from Dawud ibn Abi Hind, from Sa'id ibn al-Musayyab, who said: "An unlawful oath requires expiation." This is the opinion of Sulayman ibn Yasar, Jabir ibn Zayd, and Sa'id ibn Jubayr.

L32960 وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا جَرِيرُ بْنُ حَازِمٍ قَالَ: سَأَلْت نَافِعًا مَوْلَى ابْنِ عُمَرَ عَنْ الْحَرَامِ أَطَلَاقٌ هُوَ؟ قَالَ: لَا، أَوَلَيْسَ قَدْ حَرَّمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَارِيَتَهُ فَأَمَرَهُ اللَّهُ عَزَّ وَجَلَّ أَنْ يُكَفِّرَ يَمِينَهُ وَلَمْ يُحَرِّمْهَا عَلَيْهِ.

L32960 Through the chain of Al-Ḥajjāj ibn Al-Minhāl, Jarīr ibn Ḥāzim narrated to us, saying: I asked Nāfiʿ, the freed slave of Ibn ʿUmar, "Is declaring something forbidden a divorce?" He replied: No. Did the Messenger of Allah, peace and blessings be upon him, not forbid his slave girl upon himself? Yet Allah the Almighty commanded him to expiate his oath without making her permanently forbidden to him.

L32961 وَرُوِيَ عَنْ طَاوُسٍ أَيْضًا فَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَأَبِي ثَوْرٍ.

L32961 It has also been reported from Ṭāwūs, and this is the opinion of Al-Awzāʿī and Abū Thawr.

L32962 وَرُوِّينَا عَنْ الْحَسَنِ أَنَّهُ قَالَ: هُوَ فِي غَيْرِ الزَّوْجَةِ يَمِينٌ.

L32962 It was reported from al-Ḥasan that he said: "In matters unrelated to the wife, the ruling is an oath."

L32963–32965 وَقَوْلٌ تَاسِعٌ - وَهُوَ التَّوَقُّفُ، كَمَا رُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ نا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: يَقُولُ رِجَالٌ فِي الْحَرَامِ: هِيَ حَرَامٌ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ، وَلَا وَاَللَّهِ مَا قَالَ ذَلِكَ عَلِيٌّ، إنَّمَا قَالَ عَلِيٌّ: مَا أَنَا بِمُحِلِّهَا وَلَا بِمُحَرِّمِهَا عَلَيْك، إنْ شِئْت فَتَقَدَّمْ وَإِنْ شِئْت فَتَأَخَّرْ. وَقَوْلٌ عَاشِرٌ - عَنْ أَبِي حَنِيفَةَ فَإِنَّهُ قَالَ: إذَا قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ حَرَامٌ، فَإِنْ نَوَى طَلْقَةً وَاحِدَةً، أَوْ طَلْقَتَيْنِ، أَوْ طَلَاقًا دُونَ عَدَدٍ،

L32963–32965 The ninth opinion, which is withholding judgment, as narrated through the chain of Yahya ibn Sa'id al-Qattan, who narrated to us from Ismail ibn Abi Khalid, from al-Sha'bi, who said: Some men say regarding the prohibition: "It remains forbidden until she marries a husband other than him." No, by God, Ali did not say that. Rather, Ali said: "I am neither permitting it nor forbidding it to you. If you wish, proceed; if you wish, hold back." The tenth opinion, attributed to Abu Hanifah, states: If a man says to his wife, "You are forbidden to me," then if he intended a single divorce, two divorces, or a divorce without specifying a number, it is in all these cases a

فَهُوَ فِي كُلِّ ذَلِكَ طَلْقَةٌ وَاحِدَةٌ بَائِنَةٌ، لَا أَكْثَرَ، فَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، فَإِنْ نَوَى يَمِينًا فَهِيَ يَمِينٌ فِيهِ كَفَّارَةُ يَمِينٍ، فَإِنْ لَمْ يَنْوِ شَيْئًا فَهُوَ إِيلَاءٌ فِيهِ حُكْمُ الْإِيلَاءِ، فَإِنْ نَوَى الْكَذِبَ صُدِّقَ فِي الْفُتْيَا، وَلَمْ يَكُنْ شَيْئًا، وَلَا يَنْوِي فِي الْقَضَاءِ، بَلْ يَكُونُ إِيلَاءً وَلَا بُدَّ، وَلَا يَكُونُ ذَلِكَ ظِهَارًا أَصْلًا، سَوَاءٌ نَوَاهُ وَقَالَ ذَلِكَ، أَوْ لَمْ يَنْوِهِ وَلَا قَالَهُ. وَقَوْلٌ حَادِيَ عَشَرَ - قَالَهُ مَالِكٌ، وَهُوَ أَنَّهُ مَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ عَلَيَّ حَرَامٌ، فَإِنْ كَانَ مَدْخُولًا بِهَا فَهِيَ ثَلَاثُ طَلْقَاتٍ لَا يَنْوِي فِي ذَلِكَ، فَإِنْ كَانَتْ غَيْرَ مَدْخُولٍ بِهَا فَإِنَّهُ يَنْوِي، فَإِنْ قَالَ نَوَيْت وَاحِدَةً فَهِيَ وَاحِدَةٌ، وَإِنْ قَالَ: نَوَيْت اثْنَتَيْنِ فَهِيَ اثْنَتَانِ، وَإِنْ قَالَ: نَوَيْت ثَلَاثًا فَهِيَ ثَلَاثٌ - قَالَ: فَإِنْ قَالَ ذَلِكَ لِغَيْرِ امْرَأَتِهِ فَلَيْسَ بِشَيْءٍ، سَوَاءٌ قَالَ ذَلِكَ لِأَمَتِهِ، أَوْ لِطَعَامٍ - قَالَ: فَلَوْ قَالَ: كُلُّ حِلٍّ عَلَيَّ حَرَامٌ: لَمْ يَحْرُمْ عَلَيْهِ بِذَلِكَ شَيْءٌ إِلَّا زَوْجَتَهُ فَقَطْ، فَإِنْ قَالَ: اسْتَثْنَيْت نِسَائِي، أَوْ امْرَأَتِي فِي نَفْسِي، صُدِّقَ فِي ذَلِكَ. وَقَوْلٌ ثَانِيَ عَشَرَ - لَيْسَ التَّحْرِيمُ بِشَيْءٍ، لَا فِي الزَّوْجَةِ وَلَا فِي غَيْرِهَا، وَلَا يَقَعُ بِذَلِكَ طَلَاقٌ أَصْلًا، وَلَا إِيلَاءٌ، وَلَا ظِهَارٌ، وَلَا تَحْرِيمٌ، وَلَا تَجِبُ فِي ذَلِكَ كَفَّارَةٌ أَصْلًا. كَمَا رَوَيْنَا مِنْ طَرِيقِ الْبُخَارِيِّ نا الْحَسَنُ بْنُ الصَّبَّاحِ سَمِعَ الرَّبِيعَ بْنَ نَافِعٍ نا مُعَاوِيَةُ - هُوَ ابْنُ سَلَامٍ - عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ يَعْلَى بْنِ حَكِيمٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: إِذَا حَرَّمَ امْرَأَتَهُ لَيْسَ بِشَيْءٍ، لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ قَالَ: مَا أُبَالِي حَرَّمْت امْرَأَتِي أَوْ قَصْعَةً مِنْ ثَرِيدٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ صَالِحِ بْنِ مُسْلِمٍ عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ فِي تَحْرِيمِ الْمَرْأَةِ: لَهِيَ أَهْوَنُ عَلَيَّ مِنْ نَعْلِي. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي عَبْدُ الْكَرِيمِ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ

single irrevocable divorce (*bāʾinah*)—nothing more. If he intended three divorces, it is three. If he intended an oath, it is an oath requiring expiation for an oath. If he did not intend anything, it is an oath of abstention (*īlāʾ*), subject to the rulings of *īlāʾ*. If he intended to lie, his statement is accepted in the legal ruling (*fatwa*), and it has no effect. He does not intend in legal rulings, but it must necessarily be an oath of abstention (īlāʾ), and this cannot be considered żihār under any circumstance – whether he intended it and stated so, or neither intended nor stated it. The eleventh opinion – held by Mālik – is that if a man tells his wife, "You are forbidden to me," then if he has consummated the marriage, it constitutes three irrevocable divorces without requiring intent. If unconsummated, he must specify his intention: if he states "I intended one divorce," it counts as one; "two" as two; "three" as three. He said: If uttered to anyone other than his wife – whether to his female slave, food, or anything else – it holds no effect. If one declares, "All lawful things are forbidden to me," nothing becomes prohibited except his wife alone. If he states, "I excepted my wives" or "I excepted my wife in my conscience," his statement is accepted. The twelfth opinion – that such prohibitions hold no legal weight regarding wives or others, incurring neither divorce, īlāʾ, żihār, prohibition, nor requiring any expiation – is supported by our narration through Bukhārī's chain: Al-Ḥasan ibn al-Ṣabbāḥ reported from al-Rabīʿ ibn Nāfiʿ, from Muʿāwiyah ibn Salām, from Yaḥyā ibn Abī Kathīr, from Yaʿlā ibn Ḥakīm, from Saʿīd ibn Jubayr, who heard Ibn ʿAbbās state: "Declaring one's wife forbidden is invalid. You have an exemplary model in God's Messenger." Through Wakīʿ's chain: Ismāʿīl ibn Abī Khālid reported from al-Shaʿbī, from Masrūq, who said: "I care not whether I declare my wife or a bowl of tharīd forbidden." Through ʿAbd al-Razzāq's chain: Sufyān al-Thawrī reported from Ṣāliḥ ibn Muslim, from al-Shaʿbī, who said regarding declaring a wife forbidden: "She is as insignificant to me as my sandal." Through ʿAbd al-Razzāq's chain: Ibn Jurayj reported from ʿAbd al-Karīm, from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, who said: "I care not whether I declare her – meaning his wife – or river water forbidden." Through al-Ḥajjāj ibn al-Minhāl's chain: Hammām ibn Yaḥyā reported from Qatādah that a man declared his wife forbidden and consulted Ḥumayd ibn ʿAbd al-Raḥmān al-Ḥimyarī, who replied: "God Almighty says:

‘When you have fulfilled your obligations, then devote yourself to worship, and turn wholeheartedly to your Lord’ (94:7-8). You are a man playing games – go play!” This is the opinion of Abū Sulaymān and all our companions.[42]

قَالَ: مَا أُبَالِي حَرَّمْتَهَا - يَعْنِي امْرَأَتَهُ - أَوْ حَرَّمْت مَاءَ النَّهْرِ. وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى أَنَا قَتَادَةُ أَنَّ رَجُلًا جَعَلَ امْرَأَتَهُ عَلَيْهِ حَرَامًا، فَسَأَلَ عَنْ ذَلِكَ حُمَيْدَ بْنَ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيَّ؟ فَقَالَ لَهُ حُمَيْدٌ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَإِذَا فَرَغْتَ فَانْصَبْ - وَإِلَى رَبِّكَ فَارْغَبْ} [الشرح: ٧ - ٨] وَأَنْتَ رَجُلٌ تَلْعَبُ، فَاذْهَبْ فَالْعَبْ. وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L32966–32967 Abu Muhammad said: As for the statements of Mālik and Abū Ḥanīfah, we know of no one before them who held the positions they held regarding the distinctions they made, despite their views lacking support from the Quran, any authentic Sunnah, weak narration, analogy, or valid opinion. No one discerns the basis for differentiating between rendering a wife unlawful and rendering a female slave unlawful—since a female slave becomes prohibited through manumission just as a wife becomes prohibited through divorce, and as possessions become prohibited through charitable giving or sale. Moreover, a thrice-divorced woman becomes lawful again after a husband, so why did they not declare her permanently prohibited, as they did for one who marries a woman during her waiting period and consummates the marriage? Thus, it would have perfected the prohibition. Similarly, no one discerns the basis for differentiating between rendering unlawful a wife whom Allah Almighty has made lawful and rendering unlawful food which Allah the Exalted has made lawful—given that ʿAṭāʾ and others equated the two matters. The most absurd aspect is their distinction between a consummated marriage and an unconsummated one. Their argument for this is: “Does the single pronouncement finalize her separation if unconsummated?” We retorted: “In your view, the single irrevocable pronouncement also finalizes the separation of a consummated marriage—so what is the distinction?” This is truly astounding! Likewise, Abū Ḥanīfah’s view—that if one intends two divorces, it counts as a single irrevocable divorce, but if one intends three, it counts as three—is perplexing. They argued that an irrevocable divorce

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ، فَمَا نَعْلَمُ أَحَدًا قَبْلَهُمَا قَالَ بِمَا قَالَا مِنْ تَقْسِيمِ مَا قَسَّمَاهُ، مَعَ أَنَّهُ لَا يُؤَيِّدُ قَوْلَهُمَا قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا رِوَايَةٌ سَقِيمَةٌ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ لَهُ وَجْهٌ، وَمَا يَدْرِي أَحَدٌ وَجْهَ التَّفْرِيقِ بَيْنَ تَحْرِيمِ الزَّوْجَةِ، وَبَيْنَ تَحْرِيمِ الْأَمَةِ، وَغَيْرِهَا - وَالْأَمَةُ تَحْرُمُ بِالْعِتْقِ كَمَا تَحْرُمُ الزَّوْجَةُ بِالطَّلَاقِ، وَكَمَا يَحْرُمُ الْمَتَاعُ بِالصَّدَقَةِ بِهِ، وَبِبَيْعِهِ، وَقَدْ تَحِلُّ الْمُطَلَّقَةُ ثَلَاثًا بَعْدَ زَوْجٍ، فَهَلَّا قَالُوا بِتَحْرِيمِهَا فِي الْأَبَدِ، كَمَا قَالُوا فِي النَّاكِحِ فِي الْعِدَّةِ يَدْخُلُ بِهَا، فَكَانَ يَكُونُ قَدْ أَتَمَّ فِي التَّحْرِيمِ. وَكَذَلِكَ لَا يَعْلَمُ أَحَدٌ وَجْهَ التَّفْرِيقِ بَيْنَ تَحْرِيمِ الزَّوْجَةِ الَّتِي أَحَلَّهَا اللَّهُ عَزَّ وَجَلَّ، وَبَيْنَ تَحْرِيمِ الطَّعَامِ الَّذِي أَحَلَّهُ اللَّهُ تَعَالَى - وَقَدْ سَوَّى بَيْنَ الْأَمْرَيْنِ عَطَاءٌ، وَغَيْرُهُ. وَأَطْرَفُ شَيْءٍ تَفْرِيقُهُمْ بَيْنَ الْمَدْخُولِ بِهَا وَغَيْرِ الْمَدْخُولِ بِهَا، وَحُجَّتُهُمْ فِي ذَلِكَ: أَنَّ الَّتِي لَمْ يَدْخُلْ بِهَا تَبِينُهَا الْوَاحِدَةُ؟ فَقُلْنَا لَهُمْ: وَالْمَدْخُولُ بِهَا عِنْدَكُمْ أَيْضًا تَبِينُهَا الْوَاحِدَةُ الْبَائِنَةُ، فَمَا الْفَرْقُ؟ إنَّ هَذَا لَعَجَبٌ - وَكَذَلِكَ قَوْلُ أَبِي حَنِيفَةَ: إنْ نَوَى اثْنَتَيْنِ فَهِيَ وَاحِدَةٌ بَائِنَةٌ وَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ - وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ الطَّلَاقَ الْبَائِنَ لَا يُرْتَدَفُ عَلَى الطَّلَاقِ الْبَائِنِ، وَنَسَوْا قَوْلَهُمْ: إنَّ الْخُلْعَ طَلَاقٌ بَائِنٌ، وَأَنَّهُ إنْ طَلَّقَهَا فِي عِدَّتِهَا لَحِقَتْهَا طَلْقَةٌ أُخْرَى بَائِنَةٌ، فَاعْجَبُوا لِتَنَاقُضِهِمْ؟ ، وَكَذَلِكَ قَوْلُهُ: إنْ نَوَى إيلَاءً، أَوْ لَمْ يَنْوِ شَيْئًا فَهُوَ إيلَاءٌ، وَإِنْ

[42] **Qur’an references (L32963):** Qur’an 33:21 (Al-Ahzab); Qur’an 94:7 (Ash-Sharh); Qur’an 94:8 (Ash-Sharh).

cannot follow another irrevocable divorce, yet they overlooked their own position that khulʿ is an irrevocable divorce and that if a man divorces his wife during her waiting period, another irrevocable divorce is counted as another. Observe their contradictions! Similarly, his statement—that if one intends īlāʾ, or intends nothing, it is īlāʾ, but if one intends ẓihār, it is not ẓihār—leads one to exclaim: "Would that I knew! From where did this distinction emerge?" Likewise, al-Shāfiʿī's view—that if one intends divorce, it is divorce, but if one intends īlāʾ, it is not īlāʾ, and if one intends ẓihār, it is not ẓihār—is a distinction with no discernible basis. If they argue that ẓihār and īlāʾ require specific phrases and cannot occur without them, we reply: "Divorce too requires a specific phrase and cannot occur without it." If they counter that divorce can occur without the explicit term 'divorce,' we respond: "In your view, ẓihār can occur without mentioning the back of a mother, and īlāʾ can occur without mentioning the oath's specific wording. By Allah the Exalted, there is absolutely no difference!"

نَوَى الظِّهَارَ لَمْ يَكُنْ ظِهَارًا، لَيْتَ شَعْرِي. مِنْ أَيْنَ خَرَجَ هَذَا الْفَرْقُ. وَكَذَلِكَ قَوْلُ الشَّافِعِيِّ: إِنْ نَوَى طَلَاقًا فَهُوَ طَلَاقٌ، وَإِنْ نَوَى إِيلَاءً لَمْ يَكُنْ إِيلَاءً، وَإِنْ نَوَى ظِهَارًا لَمْ يَكُنْ ظِهَارًا - وَهَذَا فَرْقٌ لَا يُعْرَفُ وَجْهُهُ. فَإِنْ قِيلَ: لِلظِّهَارِ، وَلِلْإِيلَاءِ أَلْفَاظٌ لَا يَكُونَانِ إِلَّا بِهَا؟ . قُلْنَا: وَلِلطَّلَاقِ لَفْظٌ لَا يَكُونُ إِلَّا بِهِ. فَإِنْ قَالُوا: قَدْ يَكُونُ الطَّلَاقُ بِغَيْرِ لَفْظِ الطَّلَاقِ؟ قُلْنَا: وَقَدْ يَكُونُ الظِّهَارُ عِنْدَكُمْ بِغَيْرِ ظَهْرِ الْأُمِّ، وَقَدْ يَكُونُ الْإِيلَاءُ عِنْدَكُمْ بِغَيْرِ ذِكْرِ الْأَلْيَةِ - بِاللَّهِ تَعَالَى وَلَا فَرْقَ.

L32968–32969 Abū Muḥammad said: All other statements that necessitate divorce, oaths, *ẓihār*, or *īlāʾ* are utterances not found in the explicit text of the Quran or the Sunnah, nor is there any authoritative proof beyond these two. Indeed, we find Allah the Exalted saying: *"O Prophet, why do you prohibit what Allah has made lawful for you?"* (*At-Tahrim* 66:1). Here Allah denounced the prohibition of what He has permitted. Since a wife is among what Allah has made lawful, declaring her prohibited is reprehensible—and such reprehensible matters are rejected, having no legal validity except repentance and seeking forgiveness. Allah the Almighty also said: *"Do not say falsely of what your tongues describe, 'This is lawful and this is forbidden,' fabricating lies against Allah"* (*An-Nahl* 16:116). Thus, whoever declares his wife—lawful to him by Allah's decree—as forbidden has lied and fabricated falsehood. She does not become forbidden to him by his words, but only by the means through which Allah the Exalted has prohibited her. It is authentically reported from Allah's Messenger that he said: *"Whoever introduces into this matter of ours what is not part of it, it is rejected."* Prohibiting what is lawful constitutes introducing an innovation absent from Allah's command, thus necessitating its rejection. There is no distinction

قَالَ أَبُو مُحَمَّد: وَسَائِرُ الْأَقْوَالِ الْمُوجِبَةِ لِلطَّلَاقِ، وَلِلْيَمِينِ، وَلِلظِّهَارِ، وَلِلْإِيلَاءِ: كُلُّهَا أَقْوَالٌ لَمْ تَأْتِ فِي نَصِّ قُرْآنٍ، وَلَا فِي سُنَّةٍ، وَلَا حُجَّةَ فِي سِوَاهُمَا، بَلْ وَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {يَا أَيُّهَا النَّبِيُّ لِمَ تُحَرِّمُ مَا أَحَلَّ اللَّهُ لَكَ} [التحريم: ١] فَأَنْكَرَ اللَّهُ تَعَالَى تَحْرِيمَ مَا أَحَلَّهُ لَهُ، وَالزَّوْجَةُ مِمَّا أَحَلَّ اللَّهُ: فَتَحْرِيمُهَا مُنْكَرٌ، وَالْمُنْكَرُ مَرْدُودٌ، لَا حُكْمَ لَهُ إِلَّا التَّوْبَةَ وَالِاسْتِغْفَارَ. وَقَالَ عَزَّ وَجَلَّ: {وَلا تَقُولُوا لِمَا تَصِفُ أَلْسِنَتُكُمُ الْكَذِبَ هَذَا حَلالٌ وَهَذَا حَرَامٌ لِتَفْتَرُوا عَلَى اللَّهِ الْكَذِبَ} [النحل: ١١٦] فَمَنْ قَالَ لِامْرَأَتِهِ - الْحَلَالِ لَهُ بِحُكْمِ اللَّهِ عَزَّ وَجَلَّ هِيَ حَرَامٌ، فَقَدْ كَذَبَ وَافْتَرَى، وَلَا تَكُونُ عَلَيْهِ حَرَامًا بِقَوْلِهِ، لَكِنْ بِالْوَجْهِ الَّذِي حَرَّمَهَا اللَّهُ تَعَالَى بِهِ - صَحَّ عَنْ رَسُولِ اللَّهِ أَنَّهُ قَالَ: «مَنْ أَحْدَثَ فِي أَمْرِنَا هَذَا مَا لَيْسَ مِنْهُ فَهُوَ رَدٌّ» فَتَحْرِيمُ الْحَلَالِ إِحْدَاثُ حَدَثٍ لَيْسَ فِي أَمْرِ اللَّهِ عَزَّ وَجَلَّ فَوَجَبَ أَنْ يُرَدَّ. وَلَا فَرْقَ بَيْنَ قَوْلِ الْقَائِلِ: امْرَأَتِي عَلَيَّ حَرَامٌ، وَبَيْنَ قَوْلِهِ: امْرَأَةُ زَيْدٍ

between one who says, “My wife is forbidden to me,” and one who says, “Zayd’s wife is lawful to me.” Similarly, there is no difference between one who forbids himself ram’s meat and one who permits himself swine’s meat. Thus, it is confirmed that such prohibition is invalid, and falsehood holds no legal weight except its invalidation and repentance from it. With Allah the Exalted alone is success. Likewise, if a man tells his wife, “You are to me like carrion, blood, or swine’s meat,” all this is false—rather, she remains as lawful as water and does not become forbidden by such statements. In Allah the Exalted we seek strength.[43][44]

Issue: He said to his wife, “I have given you to your family.”

L32970

L32971–32975

1935. Question: Among such cases is that of a man who says to his wife: “I have transferred you to your family.” We have narrated from Ali ibn Abi Talib through the chain of Hammad ibn Salama, from Qatada, from Khilas ibn Amr, that Ali ibn Abi Talib said regarding a woman transferred to her family: If they accept her, it constitutes one irrevocable divorce (bā’inah). If they reject her, it constitutes one revocable divorce—and he retains priority over her (meaning through his right of retraction). Through another chain reported to us by al-Hajjaj ibn al-Minhal: Yazid ibn Ibrahim (al-Tustari) reported to us from al-Hasan (al-Basri), who said: Some Companions of Allah’s Messenger would state: If a man transfers his wife to her family and they take custody of her, she is irrevocably divorced (bā’inah) from him. If they return her to him, it constitutes one divorce—and he retains priority over her. Regarding her – this opinion is narrated from Ibrāhīm al-Nakhaʿī. Another opinion – also narrated from ʿAlī – states that if they accept her, it constitutes one divorce, and if they reject her, it holds no validity. Narrated via ʿAbd al-Razzāq from Sufyān al-Thawrī from Ashʿath from al-Shaʿbī from Masrūq from ʿAbd Allāh ibn Masʿūd, who said concerning the gifted wife: “If they accept her, it is one irrevocable divorce, and if they reject her, it is invalid.” ʿAṭāʾ said: “If

[43] **Hadith references (L32969):** Sunan Ibn Majah 14; Sahih Muslim 1718a; Mishkat al-Masabih 140.

[44] **Qur’an references (L32969):** Qur’an 66:1 (At-Tahrim); Qur’an 16:116 (An-Nahl).

لِي حَلَالٌ. وَلَا فَرْقَ بَيْنَ مَنْ حَرَّمَ عَلَى نَفْسِهِ لَحْمَ الْكَبْشِ، وَبَيْنَ مَنْ أَحَلَّ لِنَفْسِهِ لَحْمَ الْخِنْزِيرِ. فَصَحَّ أَنَّ التَّحْرِيمَ بَاطِلٌ، وَلَا حُكْمَ لِلْبَاطِلِ إِلَّا إِبْطَالَهُ وَالتَّوْبَةَ مِنْهُ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. وَكَذَلِكَ قَوْلُهُ لَهَا: أَنْتِ عَلَيَّ كَالْمَيْتَةِ وَالدَّمِ وَلَحْمِ الْخِنْزِيرِ وَكُلُّ ذَلِكَ كَذِبٌ بَلْ هِيَ حَلَالٌ كَالْمَاءِ، وَلَا تَكُونُ حَرَامًا بِهَذَا الْقَوْلِ وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

[مَسْأَلَةٌ قَالَ لِامْرَأَتِهِ قَدْ وَهَبْتُك لِأَهْلِك]

١٩٣٥ - مَسْأَلَةٌ: وَمِنْ ذَلِكَ مَنْ قَالَ لِامْرَأَتِهِ: قَدْ وَهَبْتُك لِأَهْلِك؟ فَإِنَّا رَوَيْنَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْمَرْأَةِ تُوهَبُ لِأَهْلِهَا: إنْ قَبِلُوهَا فَوَاحِدَةٌ بَائِنَةٌ، وَإِنْ رَدُّوهَا فَوَاحِدَةٌ - وَهُوَ أَحَقُّ بِهَا - يَعْنِي بِرَجْعَتِهِ. وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا يَزِيدُ بْنُ إبْرَاهِيمَ - هُوَ التُّسْتَرِيُّ - نا الْحَسَنُ - هُوَ الْبَصْرِيُّ - قَالَ: كَانَ رِجَالٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ يَقُولُونَ: إنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا فَأَمْسَكُوهَا، فَقَدْ بَانَتْ مِنْهُ، وَإِنْ هُمْ رَدُّوهَا عَلَيْهِ فَهِيَ وَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا - وَرُوِيَ هَذَا الْقَوْلُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ. وَقَوْلٌ آخَرُ - وَهُوَ مَرْوِيٌّ عَنْ عَلِيٍّ أَيْضًا - وَهُوَ أَنَّهُ إنْ قَبِلُوهَا فَهِيَ وَاحِدَةٌ، وَإِنْ لَمْ يَقْبَلُوهَا فَلَيْسَ بِشَيْءٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ - يَعْنِي فِي الْمَوْهُوبَةِ -: إنْ قَبِلُوهَا فَوَاحِدَةٌ بَائِنَةٌ وَإِنْ لَمْ يَقْبَلُوهَا فَلَيْسَ بِشَيْءٍ. وَقَالَ عَطَاءٌ: إنْ قَبِلُوهَا فَوَاحِدَةٌ بَائِنَةٌ وَإِنْ لَمْ يَقْبَلُوهَا فَلَيْسَ بِشَيْءٍ. وَقَوْلٌ ثَالِثٌ - كَمَا رَوَيْنَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ الْحَسَنِ أَنَّ زَيْدَ بْنَ ثَابِتٍ

they accept her, it is one irrevocable divorce, and if they reject her, it holds no validity."

A third opinion – as we narrated via ʿAbd al-Razzāq from Maʿmar from Qatādah from al-Ḥasan – states that Zayd ibn Thābit said: "If they accept her, it counts as three divorces, and she becomes unlawful for him until she marries another husband. If they reject her, it constitutes one divorce, and he retains authority over her." This is al-Ḥasan's opinion.

A fourth opinion – narrated via Saʿīd ibn Manṣūr from Ismāʿīl ibn ʿAyyāsh from ʿAbd Allāh ibn ʿUbayd Allāh al-Kalāʿī and ʿAbd al-ʿAzīz ibn ʿUbayd Allāh: al-Kalāʿī reported from Makḥūl, while ʿAbd al-ʿAzīz reported from al-Shaʿbī from Masrūq – both Masrūq and Makḥūl concurred regarding one who gifts his wife to her family, jointly stating: "If they accept her, it is one divorce, and he retains authority over her. If they reject her, it is invalid." We also narrated this from al-Zuhrī – it being the opinion of Aḥmad ibn Ḥanbal and Isḥāq ibn Rāhwayh.

A fifth opinion – as narrated via Saʿīd ibn Manṣūr: al-Muʿtamir ibn Sulaymān al-Taymī reported to us from Manṣūr from Ibrāhīm, who said: "It was held concerning the wife gifted to her family: one divorce." Saʿīd added: "Abū ʿAwānah demonstrated to us via Manṣūr from Ibrāhīm the same, further noting: 'We cannot determine whether they are irrevocable divorces or a revocable divorce.'"

A sixth opinion – narrated from Rabīʿah, Yaḥyā ibn Saʿīd, and Abū al-Zinād concerning one who gifts his wife to her family – states: "It constitutes three divorces, whether they accept or reject her."

A seventh opinion – stated by al-Awzāʿī: "It is one divorce, regardless of their acceptance or rejection."

An eighth opinion – that of al-Layth ibn Saʿd: "Whoever gifts his wife to her family, the binding ruling depends on their judgment. If he gifted her without awaiting their decision, it constitutes absolute divorce."

A ninth opinion – narrated from Mālik, who said: "If one gifts his wife to her family, if she was..." If she has been consummated with, she is irrevocably

قَالَ: إِنْ قَبِلُوهَا فَهِيَ ثَلَاثٌ لَا تَحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ، وَإِنْ رَدُّوهَا فَوَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا - وَهَذَا قَوْلُ الْحَسَنِ. وَقَوْلٌ رَابِعٌ - رَوَيْنَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ اللَّهِ الْكَلَاعِيِّ، وَعَبْدِ الْعَزِيزِ بْنِ عُبَيْدِ اللَّهِ قَالَ الْكَلَاعِيُّ: عَنْ مَكْحُولٍ، وَقَالَ عَبْدُ الْعَزِيزِ: عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ - ثُمَّ اتَّفَقَ مَسْرُوقٌ وَمَكْحُولٌ فِيمَنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا، قَالَا جَمِيعًا: إِنْ قَبِلُوهَا فَهِيَ طَلْقَةٌ وَهُوَ أَمْلَكُ بِهَا، وَإِنْ لَمْ يَقْبَلُوهَا فَلَا شَيْءَ. وَرَوَيْنَا هَذَا أَيْضًا عَنْ الزُّهْرِيِّ - وَهُوَ قَوْلُ أَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ. وَقَوْلٌ خَامِسٌ - كَمَا رَوَيْنَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ أَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ قَالَ: كَانَ يُقَالُ فِي الْمَوْهُوبَةِ لِأَهْلِهَا: تَطْلِيقَةٌ قَالَ سَعِيدٌ: وَأَرَانَاهُ أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ بِمِثْلِهِ، وَزَادَ: لَا نَدْرِي أَبَائِنَةٌ أَمْ رَجْعِيَّةٌ. وَقَوْلٌ سَادِسٌ - رُوِيَ عَنْ رَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ، وَأَبِي الزِّنَادِ فِيمَنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا؟ قَالُوا: هِيَ ثَلَاثٌ قَبِلُوهَا أَوْ رَدُّوهَا. وَقَوْلٌ سَابِعٌ - قَالَهُ الْأَوْزَاعِيُّ، قَالَ: هِيَ طَلْقَةٌ وَاحِدَةٌ قَبِلُوهَا أَوْ رَدُّوهَا. وَقَوْلٌ ثَامِنٌ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ: مَنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا فَالْقَضَاءُ مَا قَضَوْا، فَإِنْ كَانَ وَهَبَهَا لَهُمْ - وَهُوَ لَا يَنْتَظِرُ قَضَاءَهُمْ - فَهُوَ طَلَاقٌ أَلْبَتَّةَ. وَقَوْلٌ تَاسِعٌ - رَوَيْنَاهُ عَنْ مَالِكٍ، وَهُوَ أَنَّهُ قَالَ: مَنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا فَإِنْ كَانَتْ مَدْخُولًا بِهَا فَهِيَ طَالِقٌ ثَلَاثًا قَبِلُوهَا أَوْ لَمْ يَقْبَلُوهَا - وَإِنْ كَانَتْ غَيْرَ مَدْخُولٍ بِهَا فَهِيَ وَاحِدَةٌ فَقَطْ - قَبِلُوهَا أَوْ رَدُّوهَا. وَقَوْلٌ عَاشِرٌ - رَوَيْنَاهُ عَنْ الشَّافِعِيِّ قَالَ: مَنْ وَهَبَ امْرَأَتَهُ لِأَهْلِهَا فَلَهُ نِيَّتُهُ فِي الْفُتْيَا وَالْقَضَاءِ، فَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا لَمْ يَلْزَمْهُ طَلَاقٌ، وَإِنْ قَالَ: نَوَيْت ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ قَالَ: نَوَيْت اثْنَتَيْنِ

فَهِيَ اثْنَتَانِ رَجْعِيَّتَانِ، وَإِنْ قَالَ: نَوَيْت وَاحِدَةً فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ. وَقَوْلٌ حَادِيَ عَشَرَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، قَالَ: إنْ قَالَهُ لِامْرَأَتِهِ: قَدْ وَهَبْتُك لِأَهْلِك، أَوْ قَالَ: لِأَبِيك، أَوْ قَالَ: لِأُمِّك، أَوْ قَالَ: لِلْأَزْوَاجِ؟ فَإِنْ كَانَ هَذَا فِي غَضَبٍ، أَوْ جَوَابًا لَهَا إذْ سَأَلَتْهُ الطَّلَاقَ، ثُمَّ قَالَ: لَمْ أَنْوِ الطَّلَاقَ: صُدِّقَ وَلَمْ يَلْزَمْهُ طَلَاقٌ فِي الْفُتْيَا، وَفِي الْقَضَاءِ. وَإِنْ قَالَ: نَوَيْت بِذَلِكَ الطَّلَاقَ - فَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ نَوَى اثْنَتَيْنِ بِاثْنَتَيْنِ، أَوْ رَجْعِيَّتَيْنِ، أَوْ وَاحِدَةً بَائِنَةً، أَوْ رَجْعِيَّةً، لَمْ يَكُنْ فِي كُلِّ ذَلِكَ إلَّا وَاحِدَةً بَائِنَةً فَقَطْ، لَا أَكْثَرَ. قَالَ: فَلَوْ قَالَ لَهَا: وَهَبْتُك لِخَالَتِك، أَوْ قَالَ لِزَيْدٍ، أَوْ لِفُلَانٍ - وَذَكَرَ أَجْنَبِيًّا فَلَيْسَ ذَلِكَ بِشَيْءٍ، وَلَا يَلْزَمُهُ بِذَلِكَ طَلَاقٌ - سَوَاءٌ نَوَى بِذَلِكَ طَلَاقًا ثَلَاثًا أَوْ أَقَلَّ؛ أَوْ لَمْ يَنْوِ طَلَاقًا - كَانَ ذَلِكَ فِي غَضَبٍ أَوْ فِي جَوَابِ سُؤَالِهَا إيَّاهُ الطَّلَاقَ، أَوْ لَمْ يَكُنْ - وَلَا مَعْنَى لِحُكْمِ أَهْلِهَا الَّذِينَ وَهَبَهَا لَهُمْ فِي ذَلِكَ. وَقَوْلٌ ثَانِيَ عَشَرَ - وَهُوَ أَنَّ كُلَّ ذَلِكَ بَاطِلٌ لَا يَلْزَمُهُ بِهِ طَلَاقٌ أَصْلًا - نَوَاهُ أَوْ لَمْ يَنْوِهِ - وَهُوَ أَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا. قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ - فَآبِدَةٌ مِنْ أَوَابِدِ الدَّهْرِ، وَتَفْرِيقُ مَا سَمِعَ بِأَسْخَفَ مِنْهُ، كُلُّ ذَلِكَ بِلَا دَلِيلٍ يُعْقَلُ، وَلَا قِيَاسٍ يُضْبَطُ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَلَا نَعْلَمُهُ عَنْ أَحَدٍ قَبْلَهُ، لَا سِيَّمَا إذَا أُضِيفَ هَذَا الْقَوْلُ إلَى قَوْلِهِ الَّذِي ذَكَرْنَاهُ فِي التَّخْيِيرِ وَالتَّمْلِيكِ وَتِلْكَ التَّفَارِيقِ السَّخِيفَةِ. وَأَمَّا قَوْلُ مَالِكٍ بَيْنَ الْمَدْخُولِ بِهَا وَغَيْرِ الْمَدْخُولِ بِهَا فِي التَّفْرِيقِ - فَمَا يُعْلَمُ عَنْ أَحَدٍ قَبْلَهُ، وَمَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ بِالْهِبَةِ أَنْ تَكُونَ طَالِقًا ثَلَاثًا؟ وَقَالُوا: الْمَدْخُولُ بِهَا لَا يُحَرِّمُهَا إلَّا الثَّلَاثُ؟ فَقُلْنَا: وَقَدْ يُحَرِّمُهَا عِنْدَكُمْ الْوَاحِدَةُ الْبَائِنَةُ.

divorced three times whether they accept it or reject it. If she has not been consummated with, it is only a single revocable divorce whether they accept or reject it. The tenth opinion—which we have narrated from Al-Shāfiʿī—states: Whoever gifts his wife to her family, his intention governs both fatwas and court judgments. If he says, "I did not intend divorce," no divorce is binding. If he says, "I intended three divorces," then it is three. If he says, "I intended two divorces," they are two revocable divorces. If he says, "I intended one divorce," it is one revocable divorce. The eleventh opinion—which is the view of Abū Ḥanīfa—states: If he says to his wife, "I have gifted you to your family," or "to your father," or "to your mother," or "to spouses?" and this was uttered in anger or in response to her request for divorce, and he later says, "I did not intend divorce," he is believed, and no divorce is binding in fatwas or court judgments. If he says, "I intended divorce by that," and he intended three divorces, it is three. If he intended two divorces as two revocable acts, two revocable divorces, one final divorce, or one revocable divorce, it remains only a single final divorce, nothing more. He said: If he tells her, "I have gifted you to your aunt," or says to Zayd, or to a stranger, this holds no validity, and no divorce is binding—whether he intended three divorces, fewer, or no divorce; whether said in anger, in response to her request for divorce, or otherwise. The ruling regarding the recipients of the gift holds no meaning here. The twelfth opinion—held by Abū Thawr, Abū Sulaymān, and our companions—states: All of this is invalid, and no divorce is binding whatsoever, whether he intended it or not. Abū Muḥammad said: As for Abū Ḥanīfa's opinion, it is among the most baseless anomalies of the age, making distinctions more absurd than any known—all without rational evidence, valid analogy, or plausible reasoning, nor is it attested from anyone before him, especially when combined with his aforementioned views on spousal choice, transfer of ownership, and other nonsensical distinctions. As for Mālik's distinction between consummated and unconsummated wives in rulings, it is unknown from any predecessor. How did they conclude that gifting necessitates a triple divorce? They claim a consummated wife is only prohibited by three divorces, yet according to their own principle, even a single final divorce prohibits her.

فَإِنْ قَالُوا: يَتَزَوَّجُهَا إِذَا شَاءَ؟ قُلْنَا: وَفِي الثَّلَاثِ يَتَزَوَّجُهَا بَعْدَ زَوْجٍ، وَكَذَلِكَ غَيْرُ الْمَدْخُولِ بِهَا يَتَزَوَّجُهَا فِي الْبَائِنَةِ إِنْ شَاءَ وَشَاءَتْ، وَهَلَّا حَرَّمْتُمُوهَا فِي الْأَبَدِ، كَمَا فَعَلْتُمْ بِالْمَدْخُولِ بِهَا فِي عِدَّتِهَا؟ ،. قَالَ أَبُو مُحَمَّد: وَسَائِرُ الْأَقْوَالِ لَا نَعْلَمُ لِشَيْءٍ مِنْهَا بُرْهَانًا، لَا قُرْآنًا، وَلَا سُنَّةً - وَلَا حُجَّةً فِي سِوَاهُمَا - وَمَا كَانَ هَكَذَا فَلَا يَجُوزُ الْقَوْلُ بِهِ، وَمِنْ الْبَاطِلِ أَنْ يَهَبَ حُرَّةً، أَوْ أَمَةَ غَيْرِهِ؟ فَهِبَتُهُ فَاسِدَةٌ، وَالْفَسَادُ لَا حُكْمَ لَهُ إلَّا بِإِبْطَالِهِ، وَالتَّوْبَةُ إلَى اللَّهِ عَزَّ وَجَلَّ مِنْهُ - فَصَحَّ الَّذِي قُلْنَا وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L32976–32977 If they say: "May he marry her if he wishes?" We respond: In the case of the triple divorce, he may marry her only after [she marries and divorces] another husband. Similarly, the unconsummated woman may be married following a final divorce if both he and she consent. Why do you not deem her permanently forbidden, as you did with the consummated woman during her waiting period? Abu Muhammad said: As for the remaining opinions, we know no proof for any of them—neither from the Qur'an, nor the Sunnah, nor any valid argument beyond these two. Whatever resembles this cannot be legally upheld. Is it not invalid for him to unilaterally offer a free woman or another's slave [in marriage]? His act is voidable, and a voidable act holds no legal validity unless annulled, coupled with repentance to Allah Almighty. Thus, what we have stated stands verified, and in Allah, the Exalted, we place our trust.

[مَسْأَلَةٌ مَنْ بَاعَ عَبْدَهُ وَلَهُ زَوْجَةٌ وَمَنْ بَاعَ أَمَتَهُ وَلَهَا زَوْجٌ]

١٩٣٦ - مَسْأَلَةٌ: وَمَنْ بَاعَ عَبْدَهُ وَلَهُ زَوْجَةٌ فَهِيَ زَوْجَتُهُ كَمَا كَانَتْ، وَمَنْ بَاعَ أَمَتَهُ وَلَهَا زَوْجٌ فَهِيَ زَوْجَتُهُ كَمَا كَانَتْ. وَقَدْ اخْتَلَفَ النَّاسُ فِي ذَلِكَ كَمَا رَوَيْنَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ قَالَ: سُئِلَ إبْرَاهِيمُ النَّخَعِيُّ عَنْ الْأَمَةِ تُبَاعُ وَلَهَا زَوْجٌ؟ فَقَالَ: كَانَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ يَقُولُ: بَيْعُهَا طَلَاقُهَا وَيَتْلُو هَذِهِ الْآيَةَ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] . 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 سُفْيَانُ الثَّوْرِيُّ، عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، عَنْ إبْرَاهِيمَ النَّخَعِيِّ، عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ فِي قَوْلِ اللَّهِ تَعَالَى: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] ذَوَاتُ الْأَزْوَاجِ مِنْ الْمُسْلِمِينَ وَالْمُشْرِكِينَ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْمُبَارَكِ بْنِ فَضَالَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ أُبَيِّ بْنِ كَعْبٍ قَالَ: بَيْعُهَا طَلَاقُهَا. أَنَا

A case regarding one who sells his male slave who has a wife, and one who sells his female slave who has a husband.

L32978

L32979–32981 1936. Issue: If someone sells his male slave who has a wife, she remains the slave's wife as before. If someone sells his female slave who has a husband, she remains her husband's wife as before. People have differed on this matter, as we transmitted through Shu'bah's chain from al-Mughīrah ibn Miqsam, who said: Ibrāhīm al-Nakha'ī was asked about a female slave being sold while having a husband. He replied: 'Abdullāh ibn Mas'ūd used to say: "Selling her constitutes her divorce," and he would recite this verse: {Married women [are forbidden to you], except those whom your right hands possess} [4:24]. Narrated by Muḥammad ibn Sa'īd ibn Nabāt via Aḥmad ibn 'Abd al-Baṣīr via Qāsim ibn Aṣbaġ via Muḥammad ibn 'Abd al-Salām al-Khushanī via Muḥammad ibn al-Muthannā via 'Abd al-Raḥmān ibn Mahdī via Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakha'ī from Ibn Mas'ūd, who said regarding Allah's statement {Married women [are forbidden to you], except those whom your right hands possess} [4:24]: "These are married women from the Muslims and the polytheists." Through Wakī''s chain from al-Mubārak ibn Faḍālah from al-Ḥasan al-Baṣrī from Ubayy ibn Ka'b, who said: "Selling her constitutes her divorce." Narrated by Yūnus ibn 'Abdullāh via Aḥmad ibn 'Abdullāh ibn 'Abd al-Raḥīm via Aḥmad ibn Khālid

via Muḥammad ibn ʻAbd al-Salām al-Khushanī via Muḥammad ibn Bashshār via Yaḥyā ibn Saʻīd al-Qaṭṭān via Sulaymān al-Taymī from... Abu Mijlaz reported from Anas ibn Malik, who said: "The sale of a female slave constitutes her divorce." Anas commented on the verse {And forbidden to you are chaste women except those your right hands possess} [Quran 4:24], stating: "This refers to married women." Through the chain of Abd al-Razzaq from Ma'mar, from Sa'id ibn Abi Arubah, from Qatadah: Jabir ibn Abd Allah declared: "Her sale is her divorce." Through the chain of Sa'id ibn Mansur: Hushaym narrated to us from Khalid al-Hadhdha', from Ikrimah, from Ibn Abbas, who ruled: "Selling a female slave is her divorce." Through another chain of Sa'id ibn Mansur: Hushaym narrated from Yunus ibn Ubayd, from al-Hasan, who stated: "Whichever is sold, their marriage is divorced"—meaning: the male slave from his wife and the female slave from her husband.

Muhammad ibn Sa'id ibn Nabat narrated through Abbas ibn Asbagh, Muhammad ibn Qasim ibn Muhammad, Muhammad ibn Abd al-Salam al-Khushani, Muhammad ibn al-Muthanna, Abd al-A'la, Sa'id ibn Abi Arubah, Qatadah, and al-Hasan al-Basri, who said regarding a female slave: "Her sale is her divorce from her husband, and his sale is her divorce"—meaning: the male slave's wife is divorced when he is sold.

Through the chain of Hammad ibn Salamah from Hisham ibn Urwah, from his father: "If a master marries his male slave to his female slave, divorce remains with the male slave. If one buys a female slave who has a husband, divorce becomes the buyer's right."

A group of scholars held: "If a female slave is sold, this constitutes her divorce from her husband. If a male slave is sold while married, his wife is not divorced by this." As transmitted through Abd al-Razzaq's chain from Ma'mar, al-Zuhri (via Sa'id ibn al-Musayyib) and Ibn Abi Najih (via Mujahid), who both said: "Her sale is her divorce, but his sale does not result in his wife's divorce."

From al-Hasan al-Basri: "If a male slave flees, his flight constitutes his divorce." This was transmitted through Sa'id ibn Mansur's chain: Hushaym

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 سُلَيْمَانُ التَّيْمِيُّ عَنْ أَبِي مِجْلَزٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: بَيْعُ الْأَمَةِ طَلَاقُهَا - قَالَ أَنَسٌ {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] قَالَ: ذَوَاتُ الْبُعُولِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ قَالَ: بَيْعُهَا طَلَاقُهَا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا خَالِدٌ الْحَذَّاءُ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَقُولُ: بَيْعُ الْأَمَةِ هُوَ طَلَاقُهَا. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنِ الْحَسَنِ قَالَ: أَيُّهُمَا بِيعَ فَهُوَ طَلَاقٌ - يَعْنِي: الْعَبْدَ مِنْ زَوْجَتِهِ، وَالْأَمَةَ مِنْ زَوْجِهَا: 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 قَتَادَةَ عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ فِي الْأَمَةِ: بَيْعُهَا طَلَاقُهَا - يَعْنِي: مِنْ زَوْجِهَا، وَبَيْعُهُ طَلَاقُهَا - يَعْنِي: مِنْ زَوْجَتِهِ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: إِذَا زَوَّجَ عَبْدَهُ مِنْ أَمَتِهِ فَالطَّلَاقُ بِيَدِ الْعَبْدِ، وَإِذَا اشْتَرَى أَمَةً وَلَهَا زَوْجٌ فَالطَّلَاقُ بِيَدِ الْمُشْتَرِي. وَقَالَتْ طَائِفَةٌ: إِنْ بِيعَتِ الْأَمَةُ فَهُوَ طَلَاقُهَا مِنْ زَوْجِهَا، وَإِنْ بِيعَ الْعَبْدُ وَلَهُ زَوْجَةٌ لَمْ تَطْلُقْ بِذَلِكَ. كَمَا رَوَيْنَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ وَابْنِ أَبِي نَجِيحٍ قَالَ الزُّهْرِيُّ: عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَقَالَ ابْنُ أَبِي نَجِيحٍ: عَنْ مُجَاهِدٍ، قَالَا جَمِيعًا: بَيْعُهَا طَلَاقُهَا، فَإِنْ بِيعَ الْعَبْدُ لَمْ تَطْلُقْ هِيَ حِينَئِذٍ. وَرَوَيْنَا عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّ الْعَبْدَ إِذَا أَبَقَ وَلَهُ زَوْجَةٌ فَإِنَّهَا طَالِقٌ بِإِبَاقَةِ الْعَبْدِ - رُوِّينَا ذَلِكَ مِنْ

narrated from Mansur, who reported al-Hasan's ruling: "A male slave's flight is his divorce."[45]

طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ: يُسْبَى أرنا مَنْصُورٌ عَنْ الْحَسَنِ أَنَّهُ كَانَ يَقُولُ: إبَاقُ الْعَبْدِ طَلَاقُهُ.

L32982–32984 A group held another opinion, as narrated to us through the chain of Ismail ibn Ishaq al-Qadi: from Musaddad, from al-Mu'tamir ibn Sulayman, who said: "I heard my father narrate from Abu Mijlaz from..." Anas ibn Mālik commented on the verse of Allah, the Exalted and Glorious: *"And chaste women from among the women, except those whom your right hands have possessed"* [al-Nisā' 4:24].[46]

وَذَهَبَتْ طَائِفَةٌ: إلَى قَوْلٍ آخَرَ، كَمَا رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي نا مُسَدَّدٌ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ قَالَ: سَمِعْت أَبِي يُحَدِّثُ عَنْ أَبِي مِجْلَزٍ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] .

L32985 He said: Married women are those with husbands among the free women, since he sees no harm in matters pertaining to those whom the right hand possesses - that a man may take the slave girl from his male slave and then have intercourse with her.

قَالَ: الْمُحْصَنَاتُ ذَوَاتُ الْأَزْوَاجِ مِنْ الْحَرَائِرِ، وَإِذْ هُوَ لَا يَرَى بَأْسًا بِمَا مَلَكَتْ الْيَمِينُ أَنْ يَنْتَزِعَ الرَّجُلُ الْجَارِيَةَ مِنْ عَبْدِهِ فَيَطَؤُهَا.

L32986 Through him to Ismāʿīl: Abū Bakr ibn Abī Shaybah narrated to us: Muḥammad ibn Jaʿfar Ghundar narrated from Ibn Jurayj from ʿAṭāʾ from Ibn ʿAbbās regarding Allah's statement: {Except what your right hands possess} [an-Nisāʾ 4:24]. He said: A man may take his female slave, the wife of his male slave.[47]

وَبِهِ إلَى إسْمَاعِيلَ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {إلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] قَالَ يَنْتَزِعُ الرَّجُلُ وَلِيدَتَهُ امْرَأَةَ عَبْدِهِ.

L32987 From the narration of Abd al-Razzaq from Ibn Jurayj, who said: I asked Ata, "May I reclaim my slave girl from a slave belonging to another tribe to whom I married her?" He replied, "Yes, and his land." I asked, "Does he insist on keeping his dowry?" He said, "It is all his. If he refuses, then reclaim her if you wish. And if you married her to a free man—" then Ata reconsidered and said, "Do not reclaim her from the free man. If you gave him the dowry, do not employ her, nor sell her."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: أَنْتَزِعُ أَمَتِي مِنْ عَبْدِ قَوْمٍ آخَرِينَ أَنْكَحْتهَا إيَّاهُ؟ قَالَ: نَعَمْ، وَأَرْضِهِ، قُلْت: أَبَى إلَّا صَدَاقَهُ؟ قَالَ: هُوَ لَهُ كُلُّهُ، فَإِنْ أَبَى فَانْتَزِعْهَا، إنْ شِئْت، وَمِنْ حُرٍّ أَنْكَحْتهَا إيَّاهُ - ثُمَّ رَجَعَ عَطَاءٌ فَقَالَ: لَا تَنْتَزِعْهَا مِنْ الْحُرِّ، وَإِنْ أَعْطَيْته الصَّدَاقَ فَلَا تَسْتَخْدِمْهَا، وَلَا تَبِعْهَا.

L32988 Others have held the view that selling a female slave does not constitute divorce, and that selling a male slave or his fleeing does not constitute divorce for his wife. Nor does the master have the right to reclaim his female slave from his male slave if the master married her to him. It has been narrated

وَذَهَبَ آخَرُونَ إلَى أَنَّ بَيْعَ الْأَمَةِ لَيْسَ طَلَاقًا، وَأَنَّ بَيْعَ الْعَبْدِ أَوْ إبَاقَهُ لَيْسَ طَلَاقًا لِزَوْجَتِهِ، وَلَا لِلسَّيِّدِ أَنْ يَنْتَزِعَ أَمَتَهُ مِنْ عَبْدِهِ إذَا زَوَّجَهَا مِنْهُ -: رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ لَيْسَ بَيْعُ الْأَمَةِ طَلَاقًا لَهَا مِنْ زَوْجِهَا.

[45] **Qur'an references (L32979):** Qur'an 4:24 (An-Nisa).
[46] **Qur'an references (L32982):** Qur'an 4:24 (An-Nisa).
[47] **Qur'an references (L32986):** Qur'an 4:24 (An-Nisa).

from ʿUmar ibn al-Khaṭṭāb that selling a female slave is not a divorce from her husband.

وَصَحَّ أَنَّ ابْنَ عُمَرَ أَنْ سَأَلَهُ رَجُلٌ فَقَالَ: اشْتَرَيْت جَارِيَةً لَهَا زَوْجٌ أَفَأَطَؤُهَا؟ فَقَالَ لَهُ ابْنُ عُمَرَ: أَتُرِيدُ أَنْ أُحِلَّ لَك الزِّنَا؟ وَصَحَّ هَذَا أَيْضًا عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَعَنْ عُثْمَانَ، وَعَلِيٍّ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ وَمَالِكٌ وَالشَّافِعِيُّ وَأَحْمَدُ وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L32989 It is authentically established that a man asked Ibn ʿUmar, saying, “I purchased a slave girl who has a husband—may I have sexual relations with her?” Ibn ʿUmar replied to him, “Do you wish for me to make adultery permissible for you?” This has also been authentically established from ʿAbd al-Raḥmān ibn ʿAwf, ʿUthmān, ʿAlī, and Saʿd ibn Abī Waqqāṣ. This is the opinion held by Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad, Abū Sulaymān, and their followers.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ رَأَى بَيْعَهَا طَلَاقَهَا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] .

L32990 Abu Muhammad said: Those who held the view that the sale of a female slave constitutes her divorce argued by invoking the statement of Allah, the Mighty and Majestic: “Forbidden to you are married women from among [other] women except those whom your right hands possess” [An-Nisa: 24].[48]

قَالُوا: فَحَرَّمَ اللَّهُ تَعَالَى عَلَيْنَا كُلَّ مُحْصَنَةٍ إِلَّا مَا مَلَكَتْ أَيْمَانُنَا فَهِيَ حَلَالٌ لَنَا مِنْ جُمْلَةِ الْمُحْصَنَاتِ - وَالْمُحْصَنَاتُ هُنَّ ذَوَاتُ الْأَزْوَاجِ.

L32991 They said: So Allah the Exalted has forbidden for us every free married woman except those whom our right hands possess [enslaved women]; thus, they are lawful for us as part of the category of free married women. Free married women are those with husbands.

فَصَحَّ أَنَّهُنَّ إذَا كُنَّ ذَوَاتَ أَزْوَاجٍ فَمَلَكْنَاهُنَّ أَنَّهُنَّ لَنَا حَلَالٌ، وَلَا يَحْلِلْنَ لَنَا إلَّا بِأَنْ يُحَرَّمْنَ عَلَى أَزْوَاجِهِنَّ، إذْ كَوْنُ الْفَرْجِ حَلَالًا لِاثْنَيْنِ مَعًا مَمْنُوعٌ فِي الدِّيَانَةِ.

L32992 Thus, it is established that if they are women with husbands and we then take them as captives, they become lawful for us, and they cannot become lawful for us except by being prohibited to their husbands, since the permissibility of a woman’s sexual relations being lawfully available to two men at once is forbidden in the religion.

قَالُوا: وَسَوَاءٌ فِي ذَلِكَ الْمَبِيعَاتُ وَالْمَسْبِيَّاتُ، لِأَنَّ الْآيَةَ عَلَى عُمُومِهَا.

L32993–32994 They said: Women sold into slavery and female captives are treated equally in this matter, as the verse applies in its general sense.

وَقَالَتْ طَائِفَةٌ: إنَّمَا عَنَى اللَّهُ عَزَّ وَجَلَّ بِذَلِكَ الْمَسْبِيَّاتِ خَاصَّةً. رُوِّينَا ذَلِكَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ مِنْ طَرِيقِ إبْرَاهِيمَ عَنْهُ، وَإِبْرَاهِيمُ لَمْ يُدْرِكْهُ، وَلَا لَقِيَهُ، وَعَنْ ابْنِ عَبَّاسٍ مِنْ طَرِيقِ إسْرَائِيلَ بْنِ يُونُسَ - وَهُوَ ضَعِيفٌ.

L32995 A group said: Allah, the Mighty and Majestic, meant by that specifically the female captives. This has been narrated to us from Ali ibn Abi Talib through Ibrahim narrating from him—though Ibrahim neither lived during his time nor met him—and from Ibn Abbas through Isra’il ibn Yunus, who is a weak narrator.

L32996 And it has been narrated to us from Ibn Abbas also: “Every woman who has

[48] **Qur’an references (L32990):** Qur’an 4:24 (An-Nisa).

a husband is forbidden to you" through the chain of Yahya ibn Abd al-Malik al-Ḥimmānī—who is weak—from Sharik—who is a mudallis.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ أَيْضًا: كُلُّ ذَاتِ زَوْجٍ عَلَيْك حَرَامٌ مِنْ طَرِيقِ يَحْيَى بْنِ عَبْدِ الْمَلِكِ الْحِمَّانِيُّ - وَهُوَ ضَعِيفٌ - عَنْ شَرِيكٍ - وَهُوَ مُدَلِّسٌ.

L32997 Abu Muhammad said: As for those who deem the sale of a female slave to constitute her divorce, citing as evidence the words of Allah the Exalted: "except what your right hands possess" [Quran 4:24], we find this specifically addressed by an authentic narration: the case of Bareerah's sale when Aisha, the Mother of the Believers, purchased her while she had a husband named Mughith. Her sale did not constitute a divorce for her. Then after purchasing her, she manumitted her, and this too did not constitute a divorce for her. Rather, the Messenger of Allah (peace and blessings be upon him) granted her the choice at that time to remain in his marriage or to separate.[49]

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ جَعَلَ بَيْعَ الْأَمَةِ طَلَاقَهَا وَاحْتَجَّ بِقَوْلِهِ تَعَالَى: {إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] فَوَجَدْنَاهَا قَدْ خَصَّهَا خَبَرٌ صَحِيحٌ، وَهُوَ بَيْعُ بَرِيرَةَ وَابْتِيَاعُ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ لَهَا، وَلَهَا زَوْجٌ اسْمُهُ مُغِيثٌ، فَلَمْ يَكُنْ بَيْعُهَا طَلَاقًا لَهَا، ثُمَّ أَعْتَقَتْهَا أُمُّ الْمُؤْمِنِينَ بَعْدَ ابْتِيَاعِهَا لَهَا، فَلَمْ يَكُنْ ذَلِكَ أَيْضًا طَلَاقًا لَهَا، بَلْ خَيَّرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَئِذٍ فِي الْبَقَاءِ فِي زَوْجِيَّتِهِ، أَوْ فِي فِرَاقِهِ.

L32998 This confirms that selling a female slave does not constitute her divorce. This also validates that Allah's statement {except what your right hands possess} [4:24] constitutes a disconnected exception - its meaning: but what your right hands possess, provided they are not forbidden to you, such as female relatives forbidden in marriage (mahram), married women, and unbelieving women. Whatever falls outside these categories is permissible for you.[50]

فَصَحَّ بِذَلِكَ أَنَّ بَيْعَ الْأَمَةِ لَيْسَ طَلَاقًا لَهَا، وَصَحَّ بِهَذَا: أَنَّ قَوْله تَعَالَى {إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] اسْتِثْنَاءٌ مُنْقَطِعٌ - مَعْنَاهُ: لَكِنْ مَا مَلَكَتْ أَيْمَانُكُمْ مَا لَمْ يُحَرَّمْ عَلَيْكُمْ، كَذَوَاتِ الْمَحَارِمِ، وَذَوَاتِ الْأَزْوَاجِ، وَالْكَوَافِرِ، فَمَا عَدَا هَؤُلَاءِ فَحَلَالٌ لَكُمْ.

L32999 As for the one who claims that selling a slave constitutes divorce for his wife [who is] a female slave, we find no evidence to support this. Thus, this claim is invalid, and all praise is due to Allah, Lord of the worlds.

وَأَمَّا مَنْ قَالَ: بَيْعُ الْعَبْدِ طَلَاقٌ لِزَوْجَتِهِ الْأَمَةِ، فَلَا نَعْلَمُ لَهُ شَيْئًا يَتَعَلَّقُ بِهِ - فَسَقَطَ هَذَا الْقَوْلُ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[49] **Qur'an references (L32997):** Qur'an 4:24 (An-Nisa).
[50] **Qur'an references (L32998):** Qur'an 4:24 (An-Nisa).

L33000 Then we examined the case of the female captive—whether she was captured alongside her husband, separately from him, or he was captured separately from her—or if she departed to Muslim lands while her husband remained in enemy territory. We concluded her situation must necessarily fall into one of these two scenarios without exception: either she was captured or she voluntarily left for Muslim lands. In either case, she would either remain in her Book religion, her non-Book religion, or embrace Islam—with no third possibility beyond these alternatives.

ثُمَّ نَظَرْنَا فِي الْمَسْبِيَّةِ مَعَ زَوْجِهَا، أَوْ دُونَهُ، أَوْ يُسْبَى هُوَ دُونَهَا، أَوْ خَرَجَتْ إِلَى أَرْضِ الْمُسْلِمِينَ وَلَهَا زَوْجٌ فِي أَرْضِ الْحَرْبِ؟ فَوَجَدْنَاهَا لَا تَخْلُو مِنْ أَنْ تَكُونَ إِذْ سُبِيَتْ، أَوْ خَرَجَتْ إِلَى أَرْضِ الْمُسْلِمِينَ مُخْتَارَةً: بَقِيَتْ عَلَى دِينِهَا الْكِتَابِيِّ، أَوْ غَيْرِ الْكِتَابِيِّ، أَوْ أَسْلَمَتْ؟ لَا تَخْلُو ضَرُورَةً مِنْ أَحَدِ هَذَيْنِ الْوَجْهَيْنِ، وَلَا ثَالِثَ هُنَالِكَ.

L33001–33003 If she had not embraced Islam, we have already clarified in the introduction of our discussion on “Marriage” in this book of ours that intercourse with an enslaved disbelieving woman - whether she was from the People of the Book or otherwise - through lawful ownership by right hand is fundamentally impermissible, rendering its repetition unnecessary due to the statement. Allah the Exalted: “And do not marry polytheistic women until they believe. And a believing bondwoman is better than a polytheist woman, even if she pleased you.” [Al-Baqarah: 221][1]

فَإِنْ كَانَتْ لَمْ تُسْلِمْ فَقَدْ بَيَّنَّا فِي صَدْرِ كَلَامِنَا فِي " النِّكَاحِ " مِنْ كِتَابِنَا هَذَا أَنَّ وَطْءَ الْأَمَةِ الْكَافِرَةِ كِتَابِيَّةً كَانَتْ أَوْ غَيْرَ كِتَابِيَّةٍ بِمِلْكِ الْيَمِينِ لَا يَحِلُّ أَصْلًا فَأَغْنَى عَنْ إِعَادَتِهِ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ وَلَأَمَةٌ مُؤْمِنَةٌ خَيْرٌ مِنْ مُشْرِكَةٍ وَلَوْ أَعْجَبَتْكُمْ} [البقرة: ٢٢١] .

L33004 Allah, the Exalted, has not specified any exception to this prohibition except what is through marriage only, by His statement: {And chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their dowers} [Al-Ma’idah: 5].[2]

وَلَمْ يَخُصَّ اللَّهُ تَعَالَى مِنْ هَذَا التَّحْرِيمِ إِلَّا مَا كَانَ بِالزَّوَاجِ فَقَطْ بِقَوْلِهِ تَعَالَى: {وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [المائدة: ٥] .

L33005 It has been authentically established that the marriage contracts of disbelievers are valid, and from such marriages came the birth of the Messenger of Allah—may Allah bless him and grant him peace—and his Companions—may Allah be pleased with them. What is established as valid cannot be invalidated except by explicit textual evidence. Thus, it is confirmed that as long as the captured married woman does not embrace Islam, her marriage remains valid regardless of whether her husband remains in the abode of war or is captured with her.

وَقَدْ صَحَّ أَنَّ عُقُودَ نِكَاحَاتِ الْكُفَّارِ صِحَاحٌ، وَمِنْهَا كَانَتْ وِلَادَةُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - وَمَا صَحَّ فَلَا سَبِيلَ لِإِبْطَالِهِ إِلَّا بِنَصٍّ - فَصَحَّ أَنَّهَا مَا لَمْ تُسْلِمْ الْمَسْبِيَّةُ ذَاتُ الزَّوْجِ فَهِيَ عَلَى زَوْجِيَّتِهَا سَوَاءٌ بَقِيَ فِي دَارِ الْحَرْبِ أَوْ سُبِيَ مَعَهَا.

L33006 As for the statement of those who claim that differing territories sever the

وَأَمَّا قَوْلُ مَنْ قَالَ: إِنَّ اخْتِلَافَ الدَّارَيْنِ يَقْطَعُ عِصْمَةَ النِّكَاحِ، فَقَوْلٌ بَاطِلٌ فَاسِدٌ، لِأَنَّهُ دَعْوَى مُجَرَّدَةٌ لَمْ يُؤَيِّدْهَا قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ وَقَدْ تَكَلَّمْنَا فِي صَدْرِ كِتَابِنَا هَذَا فِي

[1] **Qur’an references (L33001):** Qur’an 2:221 (Al-Baqarah).
[2] **Qur’an references (L33004):** Qur’an 5:5 (Al-Ma’idah).

marital bond of marriage, this is a false and invalid assertion, for it is a baseless claim never supported by any Quranic verse or prophetic tradition. We have previously discussed in the introduction of this book the report transmitted through Abū Saʿīd al-Khudrī concerning their acquisition of the female captives from Awṭās, when they felt religious scruples about engaging in intercourse with them. Thereupon Allah the Almighty revealed: {And forbidden to you are the married women except those whom your right hands possess} [4:24]. Thus they become lawful for you once their waiting period has concluded.[3]

الْخَبَرِ الْوَارِدِ مِنْ طَرِيقِ أَبِي سَعِيدٍ الْخُدْرِيِّ إِذْ أَصَابُوا سَبَايَا أَوْطَاسٍ، فَتَحَرَّجُوا مِنْ غَشَيَانِهِنَّ، فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ أَيْمَانُكُمْ} [النساء: ٢٤] فَهُنَّ لَكُمْ حَلَالٌ إِذَا انْقَضَتْ عِدَّتُهُنَّ.

L33007 We clarified with certainty—and by consensus—that they are middle-aged women among the Hawazin captives, and that intercourse with them remains unlawful for Muslims until they submit to Islam, without any disagreement from us or the opposing scholars present, and by the explicit prohibition against idolatrous women until they attain faith. Thus, it is confirmed that the intent of God, the Exalted, by this applies when they embrace submission.

وَبَيَّنَّا أَنَّهُنَّ بِيَقِينٍ - مُتَّفَقٍ عَلَيْهِ - وَثَنِيَّاتٌ مِنْ سَبَايَا هَوَازِنَ، وَوَطْؤُهُنَّ لَا يَحِلُّ لِلْمُسْلِمِينَ حَتَّى يُسْلِمْنَ بِلَا خِلَافٍ مِنَّا وَمِنَ الْحَاضِرِينَ مِنَ الْمُخَالِفِينَ وَبِنَصِّ تَحْرِيمِ الْمُشْرِكَاتِ حَتَّى يُؤْمِنَّ - فَصَحَّ أَنَّ مُرَادَ اللَّهِ تَعَالَى بِذَلِكَ إِذَا أَسْلَمْنَ.

L33008 Abū Muḥammad said: When they embrace Islam, it is inevitable that the husband of any woman among them who converts—whether he was captured with her or not, rather he is in his land—if he was with her or in his land and did not embrace Islam before her conversion (if she was a woman of the Book) or did not convert alongside her, whatever her religion may have been, then her marriage to him is dissolved as we will explain after this—God Almighty willing. Once her marriage is nullified by her conversion without her husband's acceptance of Islam, her marital bond becomes lawful to her Muslim master at that moment by the explicit text of the Qur'an and Sunnah without dispute. If her husband embraces Islam alongside her conversion—regardless of her prior religion—or if he converted before her while she was a woman of the Book, they remain in all the aforementioned cases bound by their marriage. This is because any marriage sanctioned by God's approval cannot be dissolved except through a Qur'anic injunction or an authentically established Sunnah of the Messenger of God—peace and blessings be upon him. There exists no basis for dissolving the marriage of a female captive after her conversion unless her husband alone does not embrace Islam.

قَالَ أَبُو مُحَمَّد: فَإِذَا أَسْلَمْنَ فَلَا يَخْلُوْنَ ضَرُورَةً مِنْ أَنْ يَكُونَ زَوْجُ مَنْ أَسْلَمَ مِنْهُنَّ سُبِيَ مَعَهَا أَوْ لَمْ يُسْبَ، بَلْ هُوَ فِي أَرْضِهِ، فَإِنْ كَانَ مَعَهَا أَوْ فِي أَرْضِهِ وَلَمْ يُسْلِمْ قَبْلَ إِسْلَامِهَا إِنْ كَانَتْ كِتَابِيَّةً، أَوْ مَعَ إِسْلَامِهَا كَائِنًا مَا كَانَ دِينُهَا؟ فَقَدْ انْفَسَخَ نِكَاحُهَا مِنْهُ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ تَعَالَى - فَإِذَا انْفَسَخَ نِكَاحُهَا بِإِسْلَامِهَا دُونَ إِسْلَامِ زَوْجِهَا فَقَدْ حَلَّ فَرْجُهَا لِسَيِّدِهَا الْمُسْلِمِ حِينَئِذٍ: بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ بِلَا خِلَافٍ، فَإِنْ أَسْلَمَ زَوْجُهَا مَعَ إِسْلَامِهَا كَائِنًا مَا كَانَ دِينُهَا، أَوْ أَسْلَمَ قَبْلَ إِسْلَامِهَا وَهِيَ كِتَابِيَّةٌ، فَهُمَا فِي كُلِّ مَا ذَكَرْنَا بَاقِيَانِ عَلَى زَوْجِيَّتِهِمَا، لِمَا ذَكَرْنَا: مِنْ أَنَّ كُلَّ نِكَاحٍ صَحَّ بِتَصْحِيحِ اللَّهِ تَعَالَى إِيَّاهُ فَإِنَّهُ لَا يَحِلُّ لِأَحَدٍ فَسْخُهُ إِلَّا بِنَصِّ قُرْآنٍ أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتَةٍ، وَلَا سَبِيلَ إِلَى وُجُودِ شَيْءٍ مِنْ ذَلِكَ فِي فَسْخِ نِكَاحِ الْمَسْبِيَّةِ بَعْدَ إِسْلَامِهَا دُونَ إِسْلَامِ زَوْجِهَا فَقَطْ.

[3] **Qur'an references (L33006):** Qur'an 4:24 (An-Nisa).

L33009–33010 Abu Hanifah said: If both spouses are captured, their marriage remains valid until they depart to the Abode of Islam. When they enter it, the marriage is annulled. The beginning of this statement of his is sound, while its conclusion is of utmost corruption, for the difference between the two abodes neither prohibits lineage nor legitimizes it.

وَقَدْ قَالَ أَبُو حَنِيفَةَ: إذَا سُبِيَ الزَّوْجَانِ فَهُمَا عَلَى نِكَاحِهِمَا حَتَّى يَخْرُجَا إلَى دَارِ الْإِسْلَامِ، فَإِذَا صَارَ فِيهَا انْفَسَخَ النِّكَاحُ - وَهَذَا قَوْلُهُ أَوَّلُهُ صَحِيحٌ وَآخِرُهُ فِي غَايَةِ الْفَسَادِ، لِأَنَّ اخْتِلَافَ الدَّارَيْنِ لَا يُحَرِّمُ نَسَبًا وَلَا يُحِلُّهُ.

L33011 Malik said: If the people of war bring captives among whom there are two spouses, do they remain bound by their marriage contract? Abu Muhammad said: Every opinion not supported by the Quran or a Sunnah established from the Messenger of Allah—peace and blessings be upon him—is invalid with certain truth, without any doubt. And success is only from Allah, the Exalted.

وَقَالَ مَالِكٌ: إنْ جَاءَ أَهْلُ الْحَرْبِ بِسَبْيٍ فِيهِ زَوْجَانِ فَهُمَا عَلَى نِكَاحِهِمَا؟ قَالَ أَبُو مُحَمَّدٍ: كُلُّ قَوْلٍ مَا لَمْ يُؤَيِّدْهُ قُرْآنٌ وَلَا سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتَةٌ فَهُوَ بَاطِلٌ بِيَقِينٍ لَا شَكَّ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33012–33013 Annulment of the Marriage of a Missing Person: A case wherein a man is declared missing, leaving behind either a wife or an umm walad, as well as an enslaved woman and property.

[فَسْخُ نِكَاحِ الْمَفْقُودِ] [مَسْأَلَةٌ فُقِدَ وَلَهُ زَوْجَةٌ أَوْ أُمُّ وَلَدٍ وَأَمَةٌ وَمَالٌ]

L33014 Issue 1937: If a person goes missing—whether his location is known or unknown, and whether he disappeared during war or in peacetime—and he has a wife, an umm walad, a female slave, and property, the marriage of his wife is never annulled. She remains his wife until his death is confirmed or she dies. The umm walad is not freed, his female slave is not sold, and his property is not divided. However, expenses for the aforementioned dependents are provided from his property.

١٩٣٧ - مَسْأَلَةٌ: وَمَنْ فُقِدَ فَعُرِفَ أَيْنَ مَوْضِعُهُ، أَوْ لَمْ يُعْرَفْ فِي حَرْبٍ فُقِدَ، أَوْ فِي غَيْرِ حَرْبٍ - وَلَهُ زَوْجَةٌ أَوْ أُمُّ وَلَدٍ وَأَمَةٌ وَمَالٌ -: لَمْ يُفْسَخْ بِذَلِكَ نِكَاحُ امْرَأَتِهِ أَبَدًا، وَهِيَ امْرَأَتُهُ حَتَّى يَصِحَّ مَوْتُهُ أَوْ تَمُوتَ هِيَ، وَلَا تَعْتِقُ أُمُّ وَلَدِهِ، وَلَا تُبَاعُ أَمَتُهُ، وَلَا يُفَرَّقُ مَالُهُ، لَكِنْ يُنْفَقُ عَلَى مَنْ ذَكَرْنَا مِنْ مَالِهِ.

L33015 If he has no wealth, the female slave is to be sold. It is said to the wife and the umm al-walad: “Provide for yourselves.” If the wife and umm al-walad possess no acquired wealth, they are to be supported from the share designated for the destitute and the needy among the alms, like all other destitute individuals, with no distinction made.

فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ بِيعَتْ الْأَمَةُ، وَقِيلَ لِلزَّوْجَةِ، وَلِأُمِّ الْوَلَدِ: انْظُرَا لِأَنْفُسِكُمَا، فَإِنْ لَمْ يَكُنْ لَهُمَا مَالٌ مُكْتَسَبٌ أُنْفِقَ عَلَيْهِمَا مِنْ سَهْمِ الْفُقَرَاءِ وَالْمَسَاكِينِ مِنْ الصَّدَقَاتِ كَسَائِرِ الْفُقَرَاءِ، وَلَا فَرْقَ.

L33016 People have differed regarding this matter. It has been authentically reported from Umar ibn al-Khattab that he said: “The wife of a missing person observes a waiting period of four years.” This is transmitted through multiple chains - among them a chain via Hammad ibn Salama, who narrates from

وَقَدْ اخْتَلَفَ النَّاسُ فِي ذَلِكَ -: فَصَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: امْرَأَةُ الْمَفْقُودِ تَعْتَدُّ أَرْبَعَ سِنِينَ مِنْ طُرُقٍ -: مِنْهَا - مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَاصِمٍ الْأَحْوَلِ،

two authorities: Asim al-Ahwal (reporting from Abu Uthman al-Nahdi, citing Umar) and Sulayman al-Taymi (reporting from Abu Amr al-Shaybani, citing Umar). Both Asim and Sulayman met Umar and heard directly from him.

وَسُلَيْمَانَ التَّيْمِيِّ، قَالَ عَاصِمٌ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ عَنْ عُمَرَ، وَقَالَ سُلَيْمَانُ عَنْ أَبِي عَمْرٍو الشَّيْبَانِيِّ عَنْ عُمَرَ، وَكِلَاهُمَا أَدْرَكَ عُمَرَ وَسَمِعَ مِنْهُ.

L33017 I witnessed ʻUmar give a choice to a missing man whose wife had married [during his absence] between her and the mahr he had conveyed to her.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ نا خَالِدٌ الْحَذَّاءُ عَنْ أَبِي نَضْرَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: شَهِدْت عُمَرَ خَيَّرَ مَفْقُودًا تَزَوَّجَتْ امْرَأَتُهُ بَيْنَهَا وَبَيْنَ الْمَهْرِ الَّذِي سَاقَهُ إلَيْهَا.

L33018–33020 Abu Muhammad said: We have cited this only to confirm the authenticity of Abd al-Rahman's hearing of this from Umar—and through the chain of Hammad ibn Salama, from Thabit al-Bunani, from Abd al-Rahman ibn Abi Layla—that a man... Her husband went missing, so she came to Umar ibn al-Khattab after four years. He inquired of her people, and they confirmed her account. He ordered her to observe a waiting period of four years starting from the time he went missing. She then remarried, and her [original] husband returned—the narrator mentioned the rest of the account. He said: Umar gave him the choice between the mahr and his wife, and he chose the mahr.

قَالَ أَبُو مُحَمَّد: إنَّمَا أَوْرَدْنَا هَذَا لِيَصِحَّ سَمَاعُ عَبْدِ الرَّحْمَنِ لِذَلِكَ مِنْ عُمَرَ -: وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى أَنَّ رَجُلًا فَقَدَتْهُ امْرَأَتُهُ فَأَتَتْ عُمَرَ بْنَ الْخَطَّابِ بَعْدَ أَرْبَعِ سِنِينَ فَسَأَلَ قَوْمَهَا فَصَدَّقُوهَا، فَأَمَرَهَا أَنْ تَعْتَدَّ أَرْبَعَ سِنِينَ مِنْ ذِي قَبْلُ - ثُمَّ تَزَوَّجَتْ، فَجَاءَ زَوْجُهَا - وَذَكَرَ الْخَبَرَ. قَالَ: فَخَيَّرَهُ عُمَرُ بَيْنَ الصَّدَاقِ وَبَيْنَ امْرَأَتِهِ فَاخْتَارَ الصَّدَاقَ.

L33021 From the narration of Hammad ibn Salamah from Dawud ibn Abi Hind from Abu Nadrah from Abd al-Rahman ibn Abi Layla: A woman whose husband went missing came to Umar. He questioned her neighbors and her people, and they confirmed her account. He said to her: "Observe the prescribed waiting period of four years, then you may marry." When her husband later returned, Umar gave him the choice between reclaiming his wife or paying the mahr.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ أَبِي نَضْرَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى: أَنَّ امْرَأَةً فَقَدَتْ زَوْجَهَا فَأَتَتْ عُمَرَ فَسَأَلَ جِيرَانَهَا وَقَوْمَهَا فَصَدَّقُوهَا، فَقَالَ لَهَا: اعْتَدِّي أَرْبَعَ سِنِينَ وَتَزَوَّجِي، فَجَاءَ زَوْجُهَا بَعْدَ ذَلِكَ، فَخَيَّرَهُ عُمَرُ بَيْنَ الصَّدَاقِ وَبَيْنَ امْرَأَتِهِ.

L33022 From the narration of ʻAbd al-Razzāq, from Maʻmar, from Thābit al-Bunānī, from ʻAbd al-Raḥmān ibn Abī Laylā, who said: A woman lost her husband and waited four years. She then presented her case to ʻUmar ibn al-Khaṭṭāb, who instructed her to observe a waiting period of four years from the time she presented her case to him. If her husband returned, she could remain with him; otherwise, she could remarry. She married after the four years had passed without hearing any mention of him. Later, her husband returned and

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى قَالَ: فَقَدَتْ امْرَأَةٌ زَوْجَهَا فَمَكَثَتْ أَرْبَعَ سِنِينَ، ثُمَّ ذَكَرَتْ أَمْرَهَا لِعُمَرَ بْنِ الْخَطَّابِ، فَأَمَرَهَا أَنْ تَتَرَبَّصَ أَرْبَعَ سِنِينَ مِنْ حِينِ رَفَعَتْ أَمْرَهَا إلَيْهِ، فَإِنْ جَاءَ زَوْجُهَا وَإِلَّا تَزَوَّجَتْ؟ فَتَزَوَّجَتْ بَعْدَ أَنْ مَضَتْ السَّنَوَاتُ الْأَرْبَعُ وَلَمْ تَسْمَعْ لَهُ بِذِكْرٍ - ثُمَّ جَاءَ

was informed of the situation. He came to ‘Umar, who said to him: “If you wish, we will return your wife to you, or if you wish, we will marry you to another woman.” He replied: “Rather, marry me to another woman.”

L33023 From the chain of Sa’id ibn Mansur: Hushaym narrated to us; Dawud ibn Abi Hind narrated to us from Abu Nadrah from Abd al-Rahman ibn Abi Layla: A man from the Ansar went out at night, and the jinn seized him, so his absence was prolonged. His wife came to Umar ibn al-Khattab and informed him. He ordered her to observe a waiting period of four years. She complied, and he then commanded her to remarry, which she did. When her first husband returned, Umar offered him the choice between his wife and the dowry. He chose his wife, so Umar annulled her marriage to the second husband and restored her to her first spouse.

L33024 Abu Muhammad said: This is fundamentally the only authentic report attributed to Umar. It stipulates that she must begin a waiting period of four years from the time her case is presented to the Imam. When she completes the four years, she may marry—if she wishes. If her husband returns after she has married, he may choose between reclaiming the dowry he gave her, having his wife returned to him with the annulment of the other marriage, or having the Imam arrange another marriage for him.

L33025–33027 It has been narrated to us similarly from Ibn Abbas and Ibn Umar through the chain of Sa‘id ibn Mansur, who narrated to us from Abu Awanah from Abu Bishr from ‘Amr ibn Harim from Jabir ibn Zayd from Ibn Abbas and Ibn Umar. They both said regarding the wife of a missing man: She waits four years. Ibn Umar said: She is to be supported during this period from her husband’s wealth. Because she has restrained herself for him—Ibn Abbas said: “This would wrong the heirs, but she should borrow. If her husband returns, she takes from his wealth. If he dies, she settles the debt from her share of the inheritance”—then they both jointly stated: “She is to be maintained after four years, four months, and ten days from the entire estate.”

L33028 Abu Muhammad said: This is ṣaḥīḥ (authentic) from Ibn Abbas and Ibn Umar.

زَوْجُهَا فَأُخْبِرَ بِالْخَبَرِ، فَأَتَى إِلَى عُمَرَ؟ فَقَالَ لَهُ عُمَرُ: إِنْ شِئْت رَدَدْنَا إِلَيْك امْرَأَتَك، وَإِنْ شِئْت زَوَّجْنَاك غَيْرَهَا؟ قَالَ: بَلْ زَوِّجْنِي غَيْرَهَا.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ أَبِي نَضْرَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى: أَنَّ رَجُلًا مِنْ الْأَنْصَارِ خَرَجَ لَيْلًا فَاسْتَبَتْهُ الْجِنُّ فَطَالَتْ غَيْبَتُهُ، فَأَتَتْ امْرَأَتُهُ عُمَرَ بْنَ الْخَطَّابِ فَأَخْبَرَتْهُ؟ فَأَمَرَهَا أَنْ تَعْتَدَّ أَرْبَعَ سِنِينَ، فَفَعَلَتْ فَأَمَرَهَا أَنْ تَتَزَوَّجَ فَفَعَلَتْ،. وَقَدِمَ زَوْجُهَا الْأَوَّلُ فَخَيَّرَهُ عُمَرُ بَيْنَ امْرَأَتِهِ وَبَيْنَ الصَّدَاقِ؟ فَاخْتَارَ امْرَأَتَهُ، فَفَرَّقَ عُمَرُ بَيْنَهُمَا وَرَدَّهَا إلَيْهِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا الَّذِي لَا يَصِحُّ عَنْ عُمَرَ غَيْرُهُ أَصْلًا، وَهُوَ أَنْ تَبْتَدِئَ بِتَرَبُّصِ أَرْبَعِ سِنِينَ مِنْ حِينِ تَرْفَعُ أَمْرَهَا إلَى الْإِمَامِ، فَإِذَا أَتَمَّتْ الْأَرْبَعَ سِنِينَ تَزَوَّجَتْ - إنْ شَاءَتْ - فَإِنْ جَاءَ زَوْجُهَا - وَقَدْ تَزَوَّجَتْ - فَهُوَ مُخَيَّرٌ بَيْنَ صَدَاقِهَا الَّذِي أَعْطَاهَا، وَبَيْنَ أَنْ تُرَدَّ إلَيْهِ امْرَأَتُهُ وَيُفْسَخَ نِكَاحُ الْآخَرِ، أَوْ يُزَوِّجُهُ الْإِمَامُ زَوْجَةً أُخْرَى.

وَرُوِّينَا نَحْوَ هَذَا عَنْ ابْنِ عَبَّاسٍ؛ وَابْنِ عُمَرَ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ جَابِرِ بْنِ زَيْدٍ عَنْ ابْنِ عَبَّاسٍ وَابْنِ عُمَرَ؛ قَالَا جَمِيعًا: فِي امْرَأَةِ الْمَفْقُودِ: تَنْتَظِرُ أَرْبَعَ سِنِينَ - قَالَ ابْنُ عُمَرَ: يُنْفَقُ عَلَيْهَا فِيهَا مِنْ مَالِ زَوْجِهَا، لِأَنَّهَا حَبَسَتْ نَفْسَهَا عَلَيْهِ - قَالَ ابْنُ عَبَّاسٍ: إذَا يُجْحِفُ ذَلِكَ بِالْوَرَثَةِ، وَلَكِنْ تَسْتَدِينُ، فَإِنْ جَاءَ زَوْجُهَا أَخَذَتْ مِنْ مَالِهِ، فَإِنْ مَاتَ قَضَتْ مِنْ نَصِيبِهَا مِنْ الْمِيرَاثِ - ثُمَّ قَالَا جَمِيعًا يُنْفَقُ عَلَيْهَا بَعْدَ الْأَرْبَعِ سِنِينَ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا مِنْ جَمِيعِ الْمَالِ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا صَحِيحٌ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ.

L33029 It is reported from ʿUmar through another chain deemed weak due to al-Ḥajjāj ibn Arṭāh's inclusion in it that ʿUmar commanded the wife of a missing man to wait four years from the time she presented her case to him. When she completed this period, his guardian—the husband's guardian—was to divorce her on his behalf. She would then observe the ʿiddah of four months and ten days, after which she could remarry. If her husband returned after her remarriage, ʿUmar permitted him to choose between reclaiming her (which would annul her new marriage) or receiving the dowry from her new marriage.

وَرُوِيَ عَنْ عُمَرَ غَيْرُ هَذَا مِنْ طَرِيقٍ لَا تَصِحُّ فِيهَا الْحَجَّاجُ بْنُ أَرْطَاةَ أَنَّ عُمَرَ أَمَرَ امْرَأَةَ الْمَفْقُودِ أَنْ تَتَرَبَّصَ أَرْبَعَ سِنِينَ مِنْ حِينِ تَرْفَعُ أَمْرَهَا إِلَيْهِ، فَإِذَا أَتَمَّتْهَا طَلَّقَهَا وَلِيُّهُ عَنْهُ، ثُمَّ تَعْتَدُّ بَعْدَ ذَلِكَ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، ثُمَّ تَتَزَوَّجُ، فَإِنْ جَاءَ زَوْجُهَا - وَقَدْ تَزَوَّجَتْ - خَيَّرَهُ عُمَرُ بَيْنَهَا وَبَيْنَ صَدَاقِهَا.

L33030 Other narrations differing from all this have also been reported from Umar through unreliable chains containing Abd al-Malik ibn Abi Sulayman al-Arzami, and these are mursal narrations from Ubayd ibn Umayr. He said: A woman lost her husband, so she came to Umar ibn al-Khattab. He instructed her to observe a waiting period of four years, which she did. Then she came to him again, and he ordered her to observe the iddah of four months and ten days. After that, she returned to him, and he summoned the guardian of the missing man and commanded him to divorce her. The guardian divorced her, and Umar ordered her to observe the iddah of three menstrual cycles, which she did. She then came back to him, and he permitted her to marry. She remarried, and her missing husband returned. Umar gave him the choice between reclaiming that wife of his or receiving the dowry. He chose the dowry, so Umar ordered the dowry to be given to him.

وَرُوِيَ عَنْ عُمَرَ غَيْرُ هَذَا كُلِّهِ أَيْضًا مِنْ طُرُقٍ لَا تَصِحُّ، لِأَنَّ فِيهَا عَبْدَ الْمَلِكِ بْنَ أَبِي سُلَيْمَانَ الْعَرْزَمِيَّ وَهِيَ أَيْضًا مُرْسَلَةٌ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ - قَالَ: فَقَدَتْ امْرَأَةٌ زَوْجَهَا فَأَتَتْ عُمَرَ بْنَ الْخَطَّابِ، فَأَمَرَهَا أَنْ تَتَرَبَّصَ أَرْبَعَةَ أَعْوَامٍ، فَفَعَلَتْ، ثُمَّ جَاءَتْهُ، فَأَمَرَهَا أَنْ تَعْتَدَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، ثُمَّ أَتَتْهُ فَدَعَا وَلِيَّ الْمَفْقُودِ فَأَمَرَهُ أَنْ يُطَلِّقَهَا؟ فَطَلَّقَهَا، فَأَمَرَهَا أَنْ تَعْتَدَّ ثَلَاثَةَ قُرُوءٍ فَفَعَلَتْ ثُمَّ أَتَتْهُ، فَأَبَاحَ لَهَا الزَّوَاجَ، فَتَزَوَّجَتْ فَجَاءَ زَوْجُهَا الْمَفْقُودُ؟ فَخَيَّرَهُ عُمَرُ بَيْنَ امْرَأَتِهِ تِلْكَ وَبَيْنَ الصَّدَاقِ، فَاخْتَارَ الصَّدَاقَ، فَأَمَرَ لَهُ عُمَرُ بِالصَّدَاقِ.

L33031 A fourth statement is also reported from ʿUmar—it is not authentic, as it is a mursal narration transmitted through Mālik from Yaḥyā ibn Saʿīd al-Anṣārī from Saʿīd ibn al-Musayyib, who said: "'Umar ibn al-Khaṭṭāb said: 'Any woman whose husband is missing must wait for him for four years, then observe a waiting period of four months and ten days, after which she becomes lawful.'"

وَرُوِيَ عَنْ عُمَرَ أَيْضًا قَوْلٌ رَابِعٌ - لَا يَصِحُّ، لِأَنَّهُ مُرْسَلٌ مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: إِنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: أَيُّمَا امْرَأَةٍ فَقَدَتْ زَوْجَهَا فَإِنَّهَا تَنْتَظِرُهُ أَرْبَعَ سِنِينَ، ثُمَّ تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، ثُمَّ تَحِلُّ.

L33032 It was narrated to us through Al-Ḥasan's chain from ʿUmar similarly.

وَرُوِّينَا مِنْ طَرِيقِ الْحَسَنِ عَنْ عُمَرَ مِثْلَ ذَلِكَ.

L33033 And through the chain of al-Zuhri, ʿAṭāʾ, and ʿAmr ibn Dīnār from ʿUmar, a similar narration.

وَمِنْ طَرِيقِ الزُّهْرِيِّ وَعَطَاءٍ وَعَمْرِو بْنِ دِينَارٍ عَنْ عُمَرَ مِثْلَ ذَلِكَ.

L33034 It has been reported to us from 'Umar through a different narration apart

from all of that via a weak chain involving al-Minhāl ibn ʾAmr: that a woman came to ʾUmar ibn al-Khaṭṭāb whose husband had been missing for three years and eight months. ʾUmar commanded her to complete four years, then observe the waiting period for a deceased husband, after which she may marry if she wishes.

وَرُوِّينَا عَنْ عُمَرَ أَيْضًا غَيْرَ ذَلِكَ كُلِّهِ مِنْ طَرِيقٍ ضَعِيفَةٍ فِيهَا الْمِنْهَالُ بْنُ عَمْرٍو: أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَتَتْهُ امْرَأَةٌ فَقَدَتْ زَوْجَهَا مُذْ ثَلَاثَةِ أَعْوَامٍ وَثَمَانِيَةِ أَشْهُرٍ، فَأَمَرَهَا عُمَرُ أَنْ تُتِمَّ أَرْبَعَ سِنِينَ، ثُمَّ تَعْتَدَّ عِدَّةَ الْمُتَوَفَّى عَنْهَا، ثُمَّ تَتَزَوَّجَ إِنْ شَاءَتْ.

L33035–33037 Abū Muḥammad said: There have indeed been transmitted via the chain of Saʿīd ibn al-Musayyab, ʿAmr ibn Dīnār, and al-Zuhrī—other than what we previously mentioned from them—: Just as it has been narrated to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who informed me, on the authority of ʿAmr ibn Dīnār, that he said: Verily, ʿUmar ibn al-Khaṭṭāb commanded the legal guardian of the woman whose husband is absent from her to divorce her.

قَالَ أَبُو مُحَمَّد: وَقَدْ جَاءَ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعَمْرِو بْنِ دِينَارٍ وَالزُّهْرِيِّ، غَيْرُ مَا ذَكَرْنَا آنِفًا عَنْهُمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: إِنَّ عُمَرَ بْنَ الْخَطَّابِ أَمَرَ وَلِيَّ الْمُغَيَّبِ عَنْهَا زَوْجُهَا أَنْ يُطَلِّقَهَا.

L33038 From the narration of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Saʿīd ibn al-Musayyab: that ʿUmar ibn al-Khaṭṭāb and ʿUthmān ibn ʿAffān ruled regarding the missing person that his wife should serve a waiting period (ʿiddah) of four years, four months, and ten days, after which she may remarry. If her first husband returns, he may choose to reclaim his wife by refunding the second husband's mahr or allow the remarriage to stand while retaining his original mahr.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَعُثْمَانَ بْنَ عَفَّانَ: قَضَيَا فِي الْمَفْقُودِ أَنَّ امْرَأَتَهُ تَتَرَبَّصُ أَرْبَعَ سِنِينَ، وَأَرْبَعَةَ أَشْهُرٍ وَعَشْرًا بَعْدَ ذَلِكَ، ثُمَّ تَتَزَوَّجَ - فَإِنْ جَاءَ زَوْجُهَا الْأَوَّلُ خُيِّرَ بَيْنَ الصَّدَاقِ وَبَيْنَ امْرَأَتِهِ.

L33039 Abu Muhammad said: Ma'mar is not inferior to Malik.

قَالَ أَبُو مُحَمَّد: لَيْسَ مَعْمَرٌ دُونَ مَالِكٍ.

L33040 As for Az-Zuhri, he is more reliable in memorization than Yaḥyā ibn Saʿīd, and this narration of Saʿīd from ʿUthmān is authentic because he met him, kept his company, and ʿUthmān (may Allah be pleased with him) was martyred when Ibn al-Musayyib was twenty years old.

وَأَمَّا الزُّهْرِيُّ فَأَحْفَظُ مِنْ يَحْيَى بْنِ سَعِيدٍ، وَرِوَايَةُ سَعِيدٍ هَذِهِ عَنْ عُثْمَانَ صَحِيحَةٌ، لِأَنَّهُ أَدْرَكَهُ وَجَالَسَهُ وَقُتِلَ عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - وَابْنُ الْمُسَيِّبِ لَهُ عِشْرُونَ سَنَةً.

L33041 And via the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAṭāʾ al-Khurāsānī informed me that Ibn Shihāb informed him that ʿUmar and ʿUthmān issued a legal ruling regarding the inheritance of a missing person: it is to be distributed starting from the day the four years are completed, and his wife must observe the _ʿiddah_ (waiting period) of four months and ten days.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَطَاءٌ الْخُرَاسَانِيُّ: أَنَّ ابْنَ شِهَابٍ أَخْبَرَهُ: أَنَّ عُمَرَ، وَعُثْمَانَ قَضَيَا فِي مِيرَاثِ الْمَفْقُودِ: أَنَّهُ يُقَسَّمُ مِنْ يَوْمِ تَمْضِي الْأَرْبَعُ السُّنُونَ وَتَسْتَقْبِلُ امْرَأَتُهُ عِدَّةَ أَرْبَعَةِ أَشْهُرٍ وَعَشْرًا.

L33042 From the path of Sa'id ibn Mansur: He narrated from Sufyan—Ibn Uyay-

nah—from Amr ibn Dinar, from Yahya ibn Ja'dah: A woman whose husband went missing remained [waiting] for as long as Allah the Exalted willed. Then she came to Umar ibn al-Khattab, and he ordered her to observe a waiting period of four years. When he did not return, Umar instructed her guardian to divorce her. He then commanded her to observe the post-divorce waiting period. When her waiting period concluded, if her husband came, he would be given the choice between her and the dowry.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ ثَنَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ يَحْيَى بْنِ جَعْدَةَ: أَنَّ امْرَأَةً فَقَدَتْ زَوْجَهَا فَلَبِثَتْ مَا شَاءَ اللَّهُ تَعَالَى، ثُمَّ أَتَتْ عُمَرَ بْنَ الْخَطَّابِ فَأَمَرَهَا أَنْ تَتَرَبَّصَ أَرْبَعَ سِنِينَ، فَلَمْ يَجِئْ فَأَمَرَ عُمَرُ وَلِيَّهُ أَنْ يُطَلِّقَهَا، ثُمَّ أَمَرَهَا أَنْ تَعْتَدَّ، فَإِذَا انْقَضَتْ عِدَّتُهَا، فَإِنْ جَاءَ زَوْجُهَا خَيَّرَهُ بَيْنَهَا وَبَيْنَ الصَّدَاقِ.

L33043 Through the narration of Hammad ibn Salamah from Ayyub al-Sikhtiyani from Abu al-Malih al-Hudhali: A man embarked on a sea voyage and was lost. His wife and the mothers of his children (ummahat awlad, his concubines) remarried, and his inheritance was divided. He later returned. They brought the case to Uthman ibn Affan, who gave the man the choice between reclaiming his wife or taking the dowry (from her new marriage), returned the mothers of his children (ummahat awlad) to him, and imposed ransom for their children. When Uthman—may Allah be pleased with him—was killed, they appealed to Ali ibn Abi Talib, who ruled in accordance with Uthman's judgment.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي الْمَلِيحِ الْهُذَلِيِّ: أَنَّ رَجُلًا رَكِبَ الْبَحْرَ فَتِيهَ بِهِ، فَتَزَوَّجَتْ امْرَأَتُهُ وَأُمَّهَاتُ أَوْلَادِهِ، وَقُسِّمَ مِيرَاثُهُ، فَقَدِمَ بَعْدَ ذَلِكَ. فَارْتَفَعُوا إِلَى عُثْمَانَ بْنِ عَفَّانَ فَخَيَّرَ الرَّجُلَ بَيْنَ امْرَأَتِهِ وَبَيْنَ الصَّدَاقِ، وَرَدَّ عَلَيْهِ أُمَّهَاتِ أَوْلَادِهِ وَجَعَلَ فِي أَوْلَادِهِنَّ الْفِدَاءَ، فَلَمَّا قُتِلَ عُثْمَانُ - رَضِيَ اللَّهُ عَنْهُ - ارْتَفَعُوا إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَضَى بِمِثْلِ قَضَاءِ عُثْمَانَ.

L33044–33046 From the path of Abd al-Razzaq, from Ma'mar, from Ayyub al-Sikhtiyani: that Abu al-Malih ibn Usamah was asked about the wife of a missing man. Abu al-Malih said: Suhayma bint Umar al-Shaybaniyya related to me that she lost her husband in a battle he fought, and it was not known whether he perished or not. She observed the waiting period of four years, then remarried. Then her first husband came. He and her second husband rode to Uthman and informed him. Uthman said: "The first husband is given the choice." A dispute arose between his wife and her claim to the dowry. Soon after, ʿUthmān was killed. They rode to ʿAlī in Kufa, where he said: "I hold no opinion except what ʿUthmān declared." She responded: "He chose the dowry settlement. I assisted my husband with two thousand, while the dowry was four thousand. He restored the ummahāt al-awlād (enslaved mothers of his children) - who had married after him - and returned their children to them. To my knowledge, he affirmed this."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ: أَنَّ أَبَا الْمَلِيحِ بْنَ أُسَامَةَ سُئِلَ عَنْ امْرَأَةِ الْمَفْقُودِ؟ فَقَالَ أَبُو مَلِيحٍ: حَدَّثَتْنِي سُهَيْمَةُ بِنْتُ عُمَرَ الشَّيْبَانِيَّةُ أَنَّهَا فَقَدَتْ زَوْجَهَا فِي غَزَاةٍ غَزَاهَا، فَلَمْ يُدْرَ أَهَلَكَ أَمْ لَا، فَتَرَبَّصَتْ أَرْبَعَ سِنِينَ، ثُمَّ تَزَوَّجَتْ فَجَاءَ زَوْجُهَا الْأَوَّلُ، فَرَكِبَ هُوَ وَزَوْجُهَا الثَّانِي إِلَى عُثْمَانَ فَأَخْبَرَاهُ، فَقَالَ عُثْمَانُ يُخَيَّرُ الْأَوَّلُ بَيْنَ امْرَأَتِهِ وَبَيْنَ صَدَاقِهَا، فَلَمْ يَلْبَثْ أَنْ قُتِلَ عُثْمَانُ فَرَكِبَا إِلَى عَلِيٍّ بِالْكُوفَةِ فَقَالَ: مَا أَرَى إِلَّا مَا قَالَ عُثْمَانُ؟ قَالَتْ: فَاخْتَارَ الصَّدَاقَ، فَأَعَنْت زَوْجِي بِأَلْفَيْنِ وَكَانَ الصَّدَاقُ أَرْبَعَةَ آلَافٍ، وَرَدَّ أُمَّهَاتِ أَوْلَادِهِ - كُنَّ تَزَوَّجْنَ بَعْدَهُ - وَرَدَّ أَوْلَادَهُنَّ مَعَهُنَّ، عِلْمِي أَنَّهُ قَالَهُ.

L33047 From the chain of Ḥammād ibn Salamah: Qatādah narrated to us from Khilās ibn ʿAmr that ʿAlī ibn Abī Ṭālib said: "The wife of a missing man

observes a waiting period of four years. Then the guardian divorces her. She then waits four months and ten. If her husband returns, he may choose either to retain his wife or finalize the divorce by paying the dower." This is authentically reported from ʿAlī.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أرنا قَتَادَةُ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: امْرَأَةُ الْمَفْقُودِ تَعْتَدُّ أَرْبَعَ سِنِينَ، ثُمَّ يُطَلِّقُهَا الْوَلِيُّ، ثُمَّ تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، فَإِذَا جَاءَ زَوْجُهَا خُيِّرَ بَيْنَ امْرَأَتِهِ وَبَيْنَ الصَّدَاقِ - وَهَذَا صَحِيحٌ عَنْ عَلِيٍّ.

L33048 Abu Muhammad said: As for the Followers (Tābiʿūn), it has been narrated to us—via the chain of al-Ḥajjāj ibn al-Minhāl—that al-Rabīʿ ibn Ḥabīb reported to us: I asked al-Ḥasan al-Baṣrī about the woman with a disappeared husband. He replied: She observes a waiting period of four years. After this, her guardian pronounces divorce on her behalf. She then observes a waiting period of four months and ten days—equivalent to the waiting period for a woman whose husband has died—after which she may remarry if she wishes. If her husband returns, he has the choice: if he wishes, he may take back his wife, or if he wishes, he may take the mahr he owed her.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا التَّابِعُونَ فَرُوِّينَا -: وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا الرَّبِيعُ بْنُ حَبِيبٍ قَالَ: سَأَلْت الْحَسَنَ الْبَصْرِيَّ عَنْ الْمَفْقُودِ زَوْجُهَا؟ فَقَالَ: تَعْتَدُّ أَرْبَعَ سِنِينَ، ثُمَّ يُطَلِّقُهَا وَلِيُّهُ، ثُمَّ تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا - عِدَّةَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا - ثُمَّ تَتَزَوَّجُ إنْ شَاءَتْ، فَإِنْ جَاءَ زَوْجُهَا فَهُوَ بِالْخِيَارِ، فَإِنْ شَاءَ امْرَأَتَهُ، وَإِنْ شَاءَ صَدَاقَهَا الَّذِي كَانَ أَصْدَقَهَا.

L33049 And through the chain of Hammad ibn Salamah from Qatadah: Al-Hasan ruled that the missing husband is given the choice between the first dowry and his wife. Qatadah reported this, and Al-Khilas ibn Amr stated: He is given the choice between the other dowry and his wife.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ أَنَّ الْحَسَنَ كَانَ يُخَيِّرُ الْمَفْقُودَ بَيْنَ الصَّدَاقِ الْأَوَّلِ وَبَيْنَ امْرَأَتِهِ، قَالَ قَتَادَةُ، وَقَالَ الْخِلَاسُ بْنُ عَمْرٍو: يُخَيَّرُ بَيْنَ الصَّدَاقِ الْآخَرِ وَبَيْنَ امْرَأَتِهِ.

L33050 From the narration of Hammad ibn Salamah, who narrated to us that Ata ibn al-Sa'ib said: While I was with Ibrahim al-Nakha'i—and there was a man from the companions of al-Sābirī present, sorrowful and distressed—I asked, "What is the matter with this man?" Al-Nakha'i replied, "Her previous husband has arrived." I asked, "What should he do?" He said, "He is given the choice between the mahr and his wife. If he chooses divorce, this man remains with his wife, and she does not observe a waiting period from him, since he is the biological father. But if he chooses his wife, she must observe a waiting period from this man." Ata said: I informed al-Hakam ibn Utaybah of this, and he said, "No ruling in this matter is valid unless a waiting period is observed."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أرنا عَطَاءُ بْنُ السَّائِبِ قَالَ: بَيْنَمَا أَنَا عِنْدَ إبْرَاهِيمَ النَّخَعِيِّ - وَعِنْدَهُ رَجُلٌ مِنْ أَصْحَابِ السَّابِرِيِّ حَزِينٌ كَئِيبٌ - فَقُلْت: مَا شَأْنُ ذَا؟ فَقَالَ النَّخَعِيُّ قَدِمَ زَوْجُ امْرَأَتِهِ؟ فَقُلْت: فَكَيْفَ يَصْنَعُ؟ قَالَ: يُخَيَّرُ بَيْنَ الصَّدَاقِ وَبَيْنَ امْرَأَتِهِ، فَإِنْ اخْتَارَ الطَّلَاقَ أَقَامَ هَذَا عَلَى امْرَأَتِهِ وَلَا تَعْتَدُّ مِنْهُ، لِأَنَّ الْمَاءَ مَاؤُهُ، وَإِنْ اخْتَارَ امْرَأَتَهُ اعْتَدَّتْ مِنْ هَذَا، قَالَ عَطَاءٌ: فَأَخْبَرْت بِذَلِكَ الْحَكَمَ بْنَ عُتَيْبَةَ، فَقَالَ: لَا يَكُونُ شَيْءٌ مِنْ هَذَا إلَّا وَفِيهِ عِدَّةٌ.

L33051 From the narration chain of ʿAbd al-Razzāq: Ibn Jurayj informed us from ʿAṭāʾ ibn Abī Rabāḥ regarding the wife of a missing man. He said: She observes a waiting period (ʿiddah) of four years from the day the matter is

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ فِي امْرَأَةِ الْمَفْقُودِ؟ قَالَ: تَتَرَبَّصُ أَرْبَعَ سِنِينَ مِنْ يَوْمِ يُتَكَلَّمُ، ثُمَّ يُطَلِّقُهَا وَلِيُّهُ يَأْخُذُ بِالْوَثَاقِ، وَلَا يَمْنَعُ زَوْجَهَا

declared, then her guardian acting on the husband's authority pronounces the divorce, thereby securing it with a binding guarantee. That divorce does not prevent her husband—even if it is irrevocable. If he returns and chooses her, she observes the waiting period (ʿiddah) from the subsequent husband. If he chooses the recovery of her dowry, she must compensate him from her own wealth, does not observe the waiting period (ʿiddah) from the subsequent husband, and remains with him as she was.

تِلْكَ الطَّلْقَةُ - وَإِنْ كَانَتْ أَلْبَتَّةَ - فَإِنْ جَاءَ فَاخْتَارَهَا اعْتَدَّتْ مِنْ الْآخَرِ، وَإِنْ اخْتَارَ صَدَاقَهَا غَرِمَتْهُ هِيَ مِنْ مَالِهَا، وَلَمْ تَعْتَدَّ مِنْ الْآخَرِ، وَقَرَّتْ عِنْدَهُ كَمَا هِيَ.

L33052–33053 Narrated by Abd al-Razzaq, from Ma'mar, from al-Zuhri concerning the wife of a missing man: If he returns after she has remarried, the woman is liable to forfeit the mahr.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي امْرَأَةِ الْمَفْقُودِ يَأْتِي وَقَدْ تَزَوَّجَتْ أَنَّ الْمَرْأَةَ تَغْرَمُ الصَّدَاقَ.

L33054 And through the chain of Abu ʿUbayd: Yahya ibn Bukayr narrated to us from al-Layth ibn Saʿd from Ayyub ibn Musa from Makhlul regarding the wife of a missing man: If the first husband returns, she may remain his wife if he so wishes, and she must observe the waiting period from her current husband. If the first husband chooses, the second husband is entitled to the dowry he gave her.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَحْيَى بْنُ بُكَيْرٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ مَكْحُولٍ فِي امْرَأَةِ الْمَفْقُودِ إذَا قَدِمَ الْأَوَّلُ كَانَتْ امْرَأَتُهُ - إنْ شَاءَ - وَاعْتَدَّتْ مِنْ زَوْجِهَا الَّذِي هِيَ عِنْدَهُ، وَإِنْ شَاءَ فَلَهُ مَا أَصْدَقَهَا.

L33055 Through the chain of Abu ʿUbayd, Muḥammad ibn Abī ʿAdiyyin narrated to us from Dāwūd ibn Abī Hind from al-Shaʿbī, who said: "Were it not for ʿUmar allowing the missing person to choose, I would have considered him more entitled to her if he so wishes."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ الشَّعْبِيِّ قَالَ: لَوْلَا أَنَّ عُمَرَ خَيَّرَ الْمَفْقُودَ لَرَأَيْته أَحَقَّ بِهَا إذَا شَاءَ.

L33056 From the transmission of Hammad ibn Salamah from Qatadah, he said: Umar ibn Abd al-Aziz wrote to Adi ibn Artah that the wife of a missing person must observe a waiting period of four years.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إلَى عَدِيِّ بْنِ أَرْطَاةَ أَنَّ امْرَأَةَ الْمَفْقُودِ تَعْتَدُّ أَرْبَعَ سِنِينَ.

L33057 From the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Dāwūd ibn Abī Hind, from Saʿīd ibn al-Musayyib, who said: If one is lost in the battlefront, a waiting period of one year is observed for him, and if lost outside the battlefront, then four years.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: إذَا فُقِدَ فِي الصَّفِّ تَرَبَّصَتْ بِهِ سَنَةً، وَإِذَا فُقِدَ فِي غَيْرِ صَفٍّ فَأَرْبَعُ سِنِينَ.

L33058 And by him to Abd al-Razzaq, from Ma'mar, from Qatadah, who said: When four years have elapsed since the wife of the missing person raises her matter, his estate shall be distributed among his heirs.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: إذَا مَضَتْ أَرْبَعُ سِنِينَ مِنْ حِينِ تَرْفَعُ امْرَأَةُ الْمَفْقُودِ أَمْرَهَا فَإِنَّهُ يُقَسَّمُ مَالُهُ بَيْنَ وَرَثَتِهِ.

L33059 Via the report of Ibn Wahb, from ʿAbd al-Raḥmān ibn Abī al-Zināد, from his father, who said regarding a man who disappears in combat, and it is unknown whether he has been captured or killed: "I hold that his wife should observe the specified ʿiddah of four years, four months, and ten days, after which she may remarry if she wishes."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ قَالَ فِي الَّذِي يَحْضُرُ الْقِتَالَ فَلَا يُدْرَى أُسِرَ أَمْ قُتِلَ؟ فَإِنِّي أَرَى أَنْ تَعْتَدَّ امْرَأَتُهُ عِدَّةَ الْمُؤَجَّلَةِ أَرْبَعَ سِنِينَ وَأَرْبَعَةَ أَشْهُرٍ وَعَشْرًا ثُمَّ تَنْكِحَ إِنْ شَاءَتْ.

L33060 And from the narration of Ibn Wahb, from Yunus ibn Yazid, from Rabi'ah regarding the missing person: a waiting period is observed to search for him, but no information about him is found. That is the case in which the Imam establishes a waiting period for the wife (of the missing person), as has been reported to us. Then she observes the waiting period of a woman whose husband has died.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ رَبِيعَةَ فِي الْمَفْقُودِ يُتَلَوَّمُ لِطَلَبِهِ فَلَا يُوجَدُ لَهُ خَبَرٌ، فَذَلِكَ الَّذِي يَضْرِبُ الْإِمَامُ لِامْرَأَتِهِ فِيمَا بَلَغَنَا، ثُمَّ تَعْتَدُّ عِدَّةَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا.

L33061 They state: If her husband comes [forward] during her waiting period (ʿiddah) or after it—provided she has not married [another]—he has the prior right to her. But if she marries [another] after the waiting period and the marriage is consummated, he has no claim over her.

يَقُولُونَ: إِنْ جَاءَ زَوْجُهَا فِي عِدَّتِهَا أَوْ بَعْدَ الْعِدَّةِ - مَا لَمْ تُنْكَحْ - فَهُوَ أَحَقُّ بِهَا، فَإِنْ نُكِحَتْ بَعْدَ الْعِدَّةِ وَدُخِلَ بِهَا، فَلَا سَبِيلَ لَهُ عَلَيْهَا.

L33062 From the transmission of Ibn Wahb, from ʿAbd al-Jabbār ibn ʿUmar, from Rabīʿah, who said: If the governing authority annuls the marriage between them, the first husband has no right over her, nor is there a right of return—whether he had consummated the marriage or not.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ عَبْدِ الْجَبَّارِ بْنِ عُمَرَ عَنْ رَبِيعَةَ قَالَ: إِذَا فَرَّقَ السُّلْطَانُ بَيْنَهُمَا فَلَا سَبِيلَ لِلْأَوَّلِ عَلَيْهَا، وَلَا رَجْعَةَ - دَخَلَ بِهَا أَوْ لَمْ يَدْخُلْ.

L33063 It has been narrated to us—other than all of this—from Ibn Abi Talib and others.

وَرُوِّينَا غَيْرَ هَذَا كُلِّهِ عَنِ ابْنِ أَبِي طَالِبٍ، وَغَيْرِهِ.

L33064–33065 As narrated to us by Abu ʿUbayd, who narrated from Jarir, from Mansur ibn al-Muʿtamir, from al-Hakam ibn ʿUtaybah, who said: "Ali ibn Abi Talib said: 'If a woman loses her husband, she may not remarry until he returns or she dies.'"

كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا جَرِيرٌ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِذَا فَقَدَتِ الْمَرْأَةُ زَوْجَهَا لَمْ تَتَزَوَّجْ حَتَّى يَقْدَمَ أَوْ تَمُوتَ.

L33066 And through the chain of Abu Ubayd as well: Hushaym reported to us, Sayyar reported to us from al-Shaʿbi, who said: Ali ibn Abi Talib said: When her first husband comes, he has no right to choose. She is his wife.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ أَيْضًا نا هُشَيْمٌ نا سَيَّارٌ عَنِ الشَّعْبِيِّ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِذَا جَاءَ زَوْجُهَا الْأَوَّلُ فَلَا خِيَارَ لَهُ، وَهِيَ امْرَأَتُهُ.

L33067 And through the chain of Abū ʿUbayd: ʿAlī ibn Maʿbad narrated to us from ʿAbdullāh ibn ʿAmr from ʿAbd al-Karīm al-Jazarī from Saʿīd ibn Jubayr, who said: ʿAlī ibn Abī Ṭālib said regarding the wife of a missing man who re-

marries: “She is the wife of the first — whether the second husband has consummated the marriage with her or not.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا عَلِيُّ بْنُ مَعْبَدٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ فِي امْرَأَةِ الْمَفْقُودِ تُزَوَّجُ: هِيَ امْرَأَةُ الْأَوَّلِ - دَخَلَ بِهَا الْآخَرُ أَوْ لَمْ يَدْخُلْ.

L33068 And through the narration of ʿAbd al-Razzāq from Ibn Jurayj, who said: It was conveyed to me from Ibn Masʿūd that he agreed with ʿAlī ibn Abī Ṭālib concerning the wife of a missing person—that she is to wait for him perpetually.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: بَلَغَنِي عَنِ ابْنِ مَسْعُودٍ: أَنَّهُ وَافَقَ عَلِيَّ بْنَ أَبِي طَالِبٍ فِي امْرَأَةِ الْمَفْقُودِ عَلَى أَنَّهَا تَنْتَظِرُهُ أَبَدًا.

L33069 Via the chain of Sa’id ibn Mansur: Hushaym narrated to us, informing us through Sayyar from al-Sha’bi that he would rule regarding the missing man’s wife: “If the first husband returns, she remains his wife, and he has no right to annul the marriage.” Hushaym added: “This is the opinion.” Hushaym further stated: Isma’il ibn Abi Khalid showed us from al-Sha’bi that he ruled concerning a missing man’s wife who remarries and conceives from her second husband, then learns her first husband is alive: “A separation is mandated between her and her second husband. If the first husband subsequently dies, she observes the waiting period for this second husband during her remaining pregnancy. Upon delivery, she then observes a waiting period for the first husband of four months and ten days, and inherits from him.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ ثنا هُشَيْمٌ أَخْبَرَنَا سَيَّارٌ عَنِ الشَّعْبِيِّ: أَنَّهُ كَانَ يَقُولُ: فِي امْرَأَةِ الْمَفْقُودِ: إِنْ جَاءَ الْأَوَّلُ فَهِيَ امْرَأَتُهُ، وَلَا خِيَارَ لَهُ - قَالَ هُشَيْمٌ: وَهُوَ الْقَوْلُ - قَالَ هُشَيْمٌ: وَأَرَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ أَنَّهُ قَالَ فِي امْرَأَةِ الْمَفْقُودِ إِذَا تَزَوَّجَتْ فَحَمَلَتْ مِنْ زَوْجِهَا الْآخَرِ، ثُمَّ بَلَغَهَا أَنَّ زَوْجَهَا الْأَوَّلَ حَيٌّ، يُفَرَّقُ بَيْنَهَا وَبَيْنَ زَوْجِهَا الْآخَرِ، فَإِنْ مَاتَ زَوْجُهَا الْأَوَّلُ فَإِنَّهَا تَعْتَدُّ مِنْ هَذَا الْآخَرِ بَقِيَّةَ حَمْلِهَا، فَإِذَا وَضَعَتْ اعْتَدَّتْ مِنَ الْأَوَّلِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا وَوَرِثَتْهُ.

L33070 And via the chain of Wakīʿ from Sufyān al-Thawrī from al-Mughīra ibn Miqsam from Ibrāhīm al-Nakhaʿī concerning the wife of a missing man: he said, “She is afflicted, so let her endure.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي امْرَأَةِ الْمَفْقُودِ، قَالَ: هِيَ مُبْتَلَاةٌ فَلْتَصْبِرْ.

L33071 From the transmission of Sa’id ibn Mansur: Jarir reported to us from Mughira from al-Nakha’i, similar to Ali’s statement regarding the wife of a missing person: “She should not marry until his situation is clarified.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرٌ عَنْ مُغِيرَةَ عَنِ النَّخَعِيِّ مِثْلُ قَوْلِ عَلِيٍّ فِي امْرَأَةِ الْمَفْقُودِ: لَا تَتَزَوَّجُ حَتَّى يَسْتَبِينَ أَمْرُهُ.

L33072 From the transmission of Shu‘bah: He heard Hammad ibn Abi Sulayman say: “‘Umar said concerning the wife of a missing person that she is to be granted the choice [between remaining or seeking divorce].” And ‘Ali said:

وَمِنْ طَرِيقِ شُعْبَةَ: أَنَّهُ سَمِعَ حَمَّادَ بْنَ أَبِي سُلَيْمَانَ يَقُولُ: قَالَ عُمَرُ فِي امْرَأَةِ الْمَفْقُودِ تُخَيَّرُ - وَقَالَ عَلِيٌّ: هِيَ امْرَأَتُهُ - قَالَ حَمَّادٌ: وَعُمَرُ أَحَبُّ إِلَيَّ مِنْ عَلِيٍّ، وَقَوْلُ عَلِيٍّ أَعْجَبُ إِلَيَّ مِنْ قَوْلِ عُمَرَ.

"She remains his wife." Hammad said: "I hold 'Umar in higher personal esteem than 'Ali, but 'Ali's opinion is more compelling to me than 'Umar's."

وَمِمَّنْ قَالَ: لَا تُؤَجَّلُ امْرَأَةُ الْمَفْقُودِ، وَلَا يُفَرِّقُ بَيْنَهُ وَبَيْنَهَا الْقَاضِي -: ابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَعُثْمَانُ الْبَتِّيُّ، وَسُفْيَانُ الثَّوْرِيِّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L33073–33075 Among those who held that the wife of a missing husband is not to have her case delayed, nor should the judge separate between him and her, was Ibn Abī Laylā. Ibn Shubrumah, Uthman al-Battī, Sufyan al-Thawri, al-Hasan ibn Ḥayyin, Abu Hanifah, al-Shafi'i, Abu Sulayman, and their companions.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ: مَنْ حَكَمَ بِتَأْجِيلِهَا ثُمَّ فَسَخَ النِّكَاحَ مِنْهُ وَأَمَرَهَا أَنْ تَعْتَدَّ، ثُمَّ تَزَوَّجَتْ؛ فَإِنَّهُ يَفْسَخُ كُلَّ ذَلِكَ، وَتُرَدُّ إِلَى الْأَوَّلِ كَمَا كَانَتْ.

L33076 Al-Shafi'i and Abu Sulayman said: If a judge rules to postpone the commencement of her 'iddah, then annuls the marriage contract from him and orders her to observe the 'iddah, and she subsequently remarries—he invalidates all these actions, and she is returned to the first husband in her original state as she was.

وَقَالَ الْأَوْزَاعِيُّ - فِي الْقَوْمِ يَلْقَوْنَ الْعَدُوَّ فَيُفْقَدُونَ، فَلَا يُدْرَى أَقُتِلُوا أَمْ أُسِرُوا: فَإِنَّ نِسَاءَهُمْ يَعْتَدُّونَ عِدَّةَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا، ثُمَّ يَتَزَوَّجْنَ - كَتَبَ بِذَلِكَ عُمَرُ بْنُ الْخَطَّابِ - وَعَلَى هَذَا مَضَى أَمْرُ النَّاسِ.

L33077 Al-Awza'ī said concerning men who encounter the enemy and go missing: so it is not known whether they were killed or captured, "Their wives must observe the *'iddah* of a woman whose husband has died, after which they may remarry." Umar ibn al-Khattab decreed this ruling, and this has been the enduring practice of the people.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ فِي امْرَأَةِ الْمَفْقُودِ: أَنَّهَا تُؤَجَّلُ، فَإِنْ جَاءَ زَوْجُهَا الْمَفْقُودُ وَوَجَدَهَا تَزَوَّجَتْ، فَهُوَ أَوْلَى بِهَا وَتُرَدُّ إِلَيْهِ.

L33078 Al-Layth ibn Sa'd said regarding the wife of a missing person that she must observe a waiting period. If her missing husband returns and finds she has remarried, he has more right to her, and she must be returned to him.

وَقَالَ مَالِكٌ: تَنْتَظِرُ امْرَأَةُ الْمَفْقُودِ أَرْبَعَ سِنِينَ مِنْ حِينِ تَرْفَعُ أَمْرَهَا إِلَيْهِ ثُمَّ تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، فَإِنْ كَانَ الزَّوْجُ عَبْدًا أُجِّلَتْ عَامَيْنِ ثُمَّ تَعْتَدُّ - كَمَا ذَكَرْنَا - فَإِنْ جَاءَ زَوْجُهَا قَبْلَ أَنْ تَتَزَوَّجَ فَهِيَ امْرَأَتُهُ كَمَا كَانَتْ، وَإِنْ جَاءَ - وَقَدْ تَزَوَّجَتْ - فَلَا سَبِيلَ لَهُ إِلَيْهَا - دَخَلَ الثَّانِي بِهَا أَوْ لَمْ يَدْخُلْ -.

L33079 Malik said: The wife of a missing person (whose status is legally uncertain) waits four years from the time she formally files her case with the judge, then she observes the ʿiddah of four months and ten days. If the husband is enslaved, she waits two years, after which she observes the ʿiddah—as we have mentioned. If her husband returns before she remarries, she remains his wife as before. If he returns after she has remarried—whether the second husband has consummated the marriage or not—he has no lawful right to reclaim her.

L33080 Then Malik reconsidered and said: The first husband retains the strongest claim to her provided the second husband has not consummated the marriage. The first husband has no right to reclaim her. He said: This ruling applies specifically to a husband declared missing in peacetime contexts.

ثُمَّ رَجَعَ مَالِكٌ فَقَالَ: هُوَ أَوْلَى بِهَا مَا لَمْ يَدْخُلْ بِهَا الثَّانِي، وَلَا خِيَارَ لِلْأَوَّلِ - قَالَ: وَإِنَّمَا هَذَا فِي الْمَفْقُودِ فِي غَيْرِ الْحَرْبِ.

L33081 As for one missing in war whose status as deceased or alive is unknown: his wife is not postponed, nor is separation made between him and her. He said: The missing person's wealth is not distributed, nor are the mothers of his children emancipated, until a period of time has come where it is known that he could not have survived.

فَأَمَّا الَّذِي فُقِدَ فِي الْحَرْبِ فَلَمْ يُعْرَفْ أَمَيِّتٌ هُوَ أَمْ حَيٌّ؟ فَلَا تُؤَجَّلُ امْرَأَتُهُ، وَلَا يُفَرَّقُ بَيْنَهُ وَبَيْنَهَا - قَالَ: وَلَا يُقَسَّمُ مَالُ الْمَفْقُودِ، وَلَا تَعْتِقُ أُمَّهَاتُ أَوْلَادِهِ، حَتَّى يَأْتِيَ مِنْ الزَّمَانِ مَا يُعْرَفُ أَنَّهُ لَا يَعِيشُ إِلَيْهِ.

L33082 Ahmad and Ishaq said: The wife of a missing person must observe a waiting period of four months and ten days after four years, then she may remarry. They both stated: The missing person whose wife's waiting period is delayed is one who is missing in war, missing at sea, or who disappears from his home.

وَقَالَ أَحْمَدُ وَإِسْحَاقُ: تَتَرَبَّصُ امْرَأَةُ الْمَفْقُودِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا بَعْدَ أَرْبَعَةِ أَعْوَامٍ، ثُمَّ تَتَزَوَّجُ - قَالَا جَمِيعًا: وَالْمَفْقُودُ الَّذِي تُؤَجَّلُ امْرَأَتُهُ -: هُوَ الْمَفْقُودُ فِي الْحَرْبِ أَوْ فِي الْبَحْرِ، أَوْ يُفْقَدُ مِنْ مَنْزِلِهِ.

L33083 As for a man who is absent from his family and whose condition is unknown, his wife's ʿiddah (mandatory waiting period) is not delayed.

وَأَمَّا مَنْ غَابَ عَنْ أَهْلِهِ فَلَمْ يُدْرَ مَا فَعَلَ فَلَا تُؤَجَّلُ امْرَأَتُهُ.

L33084–33086 Abu Muhammad said: The Salaf differed over twelve points from this narrative - and they are: who... The missing person? - And the postponement period? - From when does the postponement period begin? - How long is the postponement period? - Is the guardian permitted to dissolve the marriage after the postponement period? - Is there a waiting period after death following this? - What is the ruling on granting the husband the option [to decide] if he returns? - Regarding what does he choose? - Who is responsible for paying the bridal gift (mahr) if he chooses it? - Which bridal gift is required? - Is his inheritance distributed? - Are the mothers of his children [umm al-walad] emancipated?

قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ السَّلَفُ فِي اثْنَيْ عَشَرَ مَوْضِعًا مِنْ هَذِهِ الْقِصَّةِ وَهِيَ -: مَنْ الْمَفْقُودُ؟ - وَالتَّأْجِيلُ - وَمِنْ مَتَى يَبْدَأُ التَّأْجِيلُ؟ - وَكَمْ التَّأْجِيلُ - وَهَلْ بَعْدَ التَّأْجِيلِ طَلَاقُ الْوَلِيِّ؟ - وَهَلْ بَعْدَ ذَلِكَ عِدَّةُ الْوَفَاةِ؟ - وَحُكْمُ تَخْيِيرِ الزَّوْجِ إنْ قَدِمَ - وَفِيمَا ذَا تَخَيَّرَ؟ - وَعَلَى مَنْ غُرْمُ الصَّدَاقِ إنْ اخْتَارَهُ؟ - وَأَيُّ صَدَاقٍ يَكُونُ؟ - وَهَلْ يُقَسَّمُ مِيرَاثُهُ؟ - وَهَلْ تُعْتَقُ أُمَّهَاتُ أَوْلَادِهِ؟ .

L33087 As for the case of the missing person: all those from whom a ruling was narrated regarding this matter did not distinguish between the circumstances of disappearance—and they are: Umar, Uthman, Ali, Ibn Mas'ud, Ibn Abbas, and Ibn Umar.

فَأَمَّا مَنْ الْمَفْقُودُ: فَإِنَّ كُلَّ مَنْ رُوِيَ عَنْهُ فِي هَذَا شَيْءٌ لَمْ يُفَرِّقْ بَيْنَ أَحْوَالِ الْفَقْدِ، وَهُمْ -: عُمَرُ، وَعُثْمَانُ، وَعَلِيٌّ، وَابْنُ مَسْعُودٍ وَابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ.

L33088 And from the Followers: Al-Ḥasan, Khilāṣ ibn ʿAmr, Ibrāhīm al-Nakhaʿī,

وَمِنْ التَّابِعِينَ -: الْحَسَنُ، وَخِلَاسُ بْنُ عَمْرٍو، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَعَطَاءٌ، وَالزُّهْرِيُّ، وَمَكْحُولٌ وَالشَّعْبِيُّ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَقَتَادَةُ، وَأَبُو الزِّنَادِ، وَرَبِيعَةُ، وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ، وَابْنُ أَبِي لَيْلَى، وَابْنُ شُبْرُمَةَ، وَعُثْمَانُ الْبَتِّيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَهُشَيْمٌ، وَالْحَسَنُ بْنُ حَيٍّ، وَالْأَوْزَاعِيُّ، وَاللَّيْثُ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَدَاوُد، وَأَصْحَابُهُمْ - حَاشَا: مَالِكًا، وَأَحْمَدَ، وَإِسْحَاقَ -: فَإِنَّ مَالِكًا قَالَ: لَيْسَ هَذَا الْحُكْمُ فِي الْمَفْقُودِ فِي الْحَرْبِ - وَلَا نَعْلَمُ هَذَا عَنْ أَحَدٍ قَبْلَ مَالِكٍ -.

Al-Ḥakam ibn ʿUtaybah, ʿAṭāʾ, Al-Zuhrī, Makḥūl, Al-Shaʿbī, ʿUmar ibn ʿAbd al-ʿAzīz, Saʿīd ibn al-Musayyib, Qatādah, Abū al-Zinād, Rabīʿah, Ḥammād ibn Abī Sulaymān, Ibn Abī Laylā, Ibn Shubrumah, ʿUthmān al-Battī, Sufyān al-Thawrī, Hushaym, Al-Ḥasan ibn Ḥayy, Al-Awzāʿī, Al-Layth, Abū Ḥanīfah, Al-Shāfiʿī, Dāwūd, and their companions—excluding Mālik, Aḥmad, and Isḥāq. This is because Mālik said: "This ruling does not apply to the missing person in war," and we have no record of anyone before Mālik holding this opinion.

وَقَالَ أَحْمَدُ وَإِسْحَاقُ، لَيْسَ هَذَا الْحُكْمُ فِيمَنْ خَرَجَ عَنْ أَهْلِهِ فَفُقِدَ.

L33089 Aḥmad and Isḥāq both said that this ruling does not apply to someone who leaves his family and is missing.

وَأَمَّا التَّأْجِيلُ: فَإِنَّ كُلَّ مَنْ ذَكَرْنَا رَوَى التَّأْجِيلَ - حَاشَا رِوَايَاتٍ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ، وَرِوَايَةً عَنْ الشَّعْبِيِّ، وَرِوَايَةً عَنْ النَّخَعِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَابْنِ أَبِي لَيْلَى، وَابْنِ شُبْرُمَةَ، وَعُثْمَانَ الْبَتِّيِّ، وَسُفْيَانَ الثَّوْرِيِّ وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَدَاوُد وَأَصْحَابِهِمْ.

L33090 As for the postponement: All those we mentioned have narrated it – except for narrations from ʿAlī and Ibn Masʿūd, and a narration from Al-Shaʿbī, Al-Nakhaʿī, Ḥammād ibn Abī Sulaymān, Ibn Abī Laylā, Ibn Shubrumah, ʿUthmān al-Battī, Sufyān al-Thawrī, Al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, Al-Shāfiʿī, Dāwūd, and their companions.

وَأَمَّا مَتَى يَبْدَأُ التَّأْجِيلُ - فِي قَوْلِ مَنْ قَالَ بِهِ -: فَإِنَّ أَكْثَرَ مَنْ ذَكَرْنَا يَرَى مَبْدَأَهُ مِنْ حِينِ يُرْفَعُ أَمْرُهَا إلَى الْإِمَامِ - حَاشَا رِوَايَةً ضَعِيفَةً عَنْ عُمَرَ: أَنَّهُ أَمَرَهَا بِإِتْمَامِ أَرْبَعِ سِنِينَ مِنْ حِينِ غَابَ.

L33091 As for when the postponement begins according to those who uphold this view, the majority of those we mentioned hold that its starting point is from when her case is raised to the Imam - except for a weakly transmitted report from 'Umar: that he commanded her to complete four years from the time he was absent.

وَقَالَ بَعْضُهُمْ: تَرَبُّصُ أَرْبَعِ سِنِينَ - وَلَمْ يَحُدُّوا مِنْ حِينِ تَبْدَأُ؟ وَأَمَّا كَمْ التَّأْجِيلُ: فَإِنَّ مَنْ ذَكَرْنَا يَرَاهُ أَرْبَعَ سِنِينَ، إلَّا سَعِيدَ بْنَ الْمُسَيِّبِ وَمَالِكًا - قَالَ سَعِيدٌ: أَرَى أَنْ تُؤَجَّلَ امْرَأَةُ مَنْ فُقِدَ فِي الصَّفِّ سَنَةً، وَمَنْ فُقِدَ فِي غَيْرِ الصَّفِّ أَرْبَعَ سِنِينَ -.

L33092 Some of them said: The waiting period is four years—but they did not specify from when it begins? As for the postponement period: Those we mentioned hold it to be four years, except Sa'īd ibn al-Musayyab and Mālik. Sa'īd said: I hold that the wife of one missing in battle should wait one year, while the wife of one missing outside battle should wait four years.

وَقَالَ مَالِكٌ: إنْ كَانَ عَبْدًا أُجِّلَتْ لَهُ عَامَيْنِ - وَلَا يُعْلَمُ هَذَا عَنْ أَحَدٍ قَبْلَهُ.

L33093–33094 And Mālik said: If he is a slave, a deferral of two years was granted to him—and this is not known from anyone before him.

L33095 As for the guardian's pronouncement of divorce after the postponement period, it is validly established from ʿUmar ibn al-Khaṭṭāb, ʿAlī ibn Abī Ṭālib, al-Ḥasan, and ʿAṭāʾ.

وَأَمَّا طَلَاقُ الْوَلِيِّ بَعْدَ التَّأْجِيلِ: فَإِنَّهُ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ وَالْحَسَنِ، وَعَطَاءٍ.

L33096 As for whether a waiting period due to death is required after that four-year period: We have cited the opinions of ʻUmar, ʻUthmān, and ʻUmar ibn ʻAbd al-ʻAzīz that she must observe a waiting period of four years, after which she may marry without needing to observe a waiting period due to death.

وَأَمَّا هَلْ بَعْدَ ذَلِكَ عِدَّةُ وَفَاةٍ: فَإِنَّهُ قَدْ ذَكَرْنَا عَنْ عُمَرَ، وَعُثْمَانَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: تَرَبُّصَ أَرْبَعَةِ أَعْوَامٍ، ثُمَّ تَتَزَوَّجُ دُونَ ذِكْرِ عِدَّةِ وَفَاةٍ.

L33097 It has been authentically reported from Uthman, Ibn Abbas, Ibn Umar, Ali, al-Hasan, Ataa, Abi az-Zinad, and Rabiʻah that she must also observe the waiting period following death. In some of those narrations, it is stated that she must observe this waiting period due to divorce as well.

وَصَحَّ عَنْ عُثْمَانَ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، وَعَلِيٍّ، وَالْحَسَنِ، وَعَطَاءٍ وَأَبِي الزِّنَادِ، وَرَبِيعَةَ: أَنَّهَا تَعْتَدُّ أَيْضًا عِدَّةَ الْوَفَاةِ - وَفِي بَعْضِ تِلْكَ الرِّوَايَاتِ: أَنَّهَا تَعْتَدُّ أَيْضًا مِنْ الطَّلَاقِ.

L33098 As for the husband's option upon returning: it is established from ʿUmar, ʿUthmān, and ʿAlī. Has no disagreement from the proponent of the postponement opinion been reported regarding that? It has also been authenticated from al-Ḥasan, Khilās, Ibrāhīm, ʿAṭāʾ, al-Ḥakam ibn ʿUtaybah, al-Zuhrī, Makḥūl, and al-Shaʿbī.

وَأَمَّا تَخْيِيرُ الزَّوْجِ إذَا قَدِمَ: فَثَابِتٌ عَنْ عُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَلَمْ يُرْوَ عَنْ صَاحِبِ رَأْيِ التَّأْجِيلِ خِلَافُ ذَلِكَ؟ وَصَحَّ أَيْضًا: عَنْ الْحَسَنِ، وَخِلَاسٍ، وَإِبْرَاهِيمَ، وَعَطَاءٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ وَالزُّهْرِيِّ، وَمَكْحُولٍ، وَالشَّعْبِيِّ.

L33099 And it has been narrated to us from all those we mentioned regarding the husband's option that he is to choose between his wife and the mahr, except for one authentic narration from Umar, which states that he granted him the choice between his wife and marrying him to another woman.

وَرُوِّينَا عَنْ كُلِّ مَنْ ذَكَرْنَا عَنْهُ تَخْيِيرَ الزَّوْجِ: أَنَّهُ يُخَيَّرُ بَيْنَ زَوْجَتِهِ وَبَيْنَ الصَّدَاقِ، إلَّا رِوَايَةً عَنْ عُمَرَ صَحِيحَةً: أَنَّهُ خَيَّرَهُ بَيْنَ زَوْجَتِهِ وَبَيْنَ أَنْ يُزَوِّجَهُ مِنْ أُخْرَى.

L33100 Some of them differed regarding who is liable for the dower if the husband chooses it. The majority of those we mentioned said: The other husband is liable for it. Az-Zuhri said: The woman is liable for it.

وَاخْتَلَفَ بَعْضُهُمْ فِيمَنْ يَغْرَمُ الصَّدَاقَ - إنْ اخْتَارَهُ الزَّوْجُ -: فَقَالَ جُمْهُورُ مَنْ ذَكَرْنَا: يَغْرَمُهُ الزَّوْجُ الْآخَرُ - وَقَالَ الزُّهْرِيُّ: تَغْرَمُهُ الْمَرْأَةُ.

L33101 They also differed regarding which dowry should be legally enforced for her if he opts for it. The majority stated: "The enforceable dowry is the mahr he had originally pledged to her."

وَاخْتَلَفُوا أَيْضًا: أَيُّ الصَّدَاقِ يُقْضَى لَهُ بِهِ. - إنْ اخْتَارَهُ -: فَقَالَ جُمْهُورُهُمْ: صَدَاقُهُ الَّذِي كَانَ أَصْدَقَهَا هُوَ.

L33102 And Khilās ibn ʿAmr said: "Rather, it refers to the mahr of the other husband."

وَقَالَ خِلَاسُ بْنُ عَمْرٍو: بَلْ صَدَاقُ الزَّوْجِ الْآخَرِ.

L33103 They differed regarding whether the mothers of children by enslavement are emancipated. Qatādah said: "The mothers of children by enslavement

are emancipated if his wife is lawfully permitted to him in marriage. This ruling was specifically decreed during the caliphate of Uthmān (may Allah be pleased with him)." Some of them said: "The mothers are not emancipated."

وَاخْتَلَفُوا هَلْ تَعْتِقُ أُمَّهَاتُ أَوْلَادِهِ؟ - فَقَالَ قَتَادَةُ: تَعْتِقُ أُمَّهَاتُ أَوْلَادِهِ إِذَا أُبِيحَ لِزَوْجَتِهِ الزَّوَاجُ، وَإِنَّمَا قُضِيَ بِذَلِكَ فِي خِلَافَةِ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَقَالَ بَعْضُهُمْ: لَا يُعْتِقْنَ.

L33104 They differed regarding the deceased's inheritance: is it to be divided? And it has been narrated to us that during the caliphate of ʿUthmān—may Allāh be pleased with him—the inheritance was divided when his wife was permitted to marry.

وَاخْتَلَفُوا فِي مِيرَاثِهِ هَلْ يُقَسَّمُ؟ فَرُوِّينَا: أَنَّ فِي خِلَافَةِ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - قُسِّمَ مِيرَاثُهُ إِذَا أُبِيحَ لِامْرَأَتِهِ الزَّوَاجُ.

L33105–33106 Abu Muhammad said: As for the Malikis, Hanafis, and Shafi'is—they contradicted one another here in the ugliest self-contradiction.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ - فَإِنَّهُمْ تَنَاقَضُوا هَاهُنَا أَقْبَحَ تَنَاقُضٍ.

L33107 As for the Shāfiʿīs—they emulated ʿUmar based on a narration never authentically attributed to him regarding granting a deferment to the wife of an impotent man and dissolving her marital tie without the Quran or the Sunnah.

فَأَمَّا الشَّافِعِيُّونَ - فَقَلَّدُوا عُمَرَ فِي رِوَايَةٍ لَمْ تَصِحَّ عَنْهُ قَطُّ فِي تَأْجِيلِ امْرَأَةِ الْعِنِّينِ وَإِخْرَاجِهَا عَنْ عِصْمَتِهِ بِغَيْرِ قُرْآنٍ وَلَا سُنَّةٍ.

L33108 Then they opposed ʿUmar, ʿUthmān, ʿAlī, Ibn ʿAbbās, and Ibn ʿUmar here regarding what has been authentically reported from them concerning the determination of the waiting period for the wife of a missing man – and this is utterly astonishing?

ثُمَّ خَالَفُوا هَاهُنَا عُمَرَ، وَعُثْمَانَ، وَعَلِيًّا، وَابْنَ عَبَّاسٍ، وَابْنَ عُمَرَ فِيمَا صَحَّ عَنْهُمْ مِنْ تَأْجِيلِ امْرَأَةِ الْمَفْقُودِ - وَهَذَا عَجَبٌ جِدًّا؟

L33109 Similarly, the Ḥanafīs also did this: they rejected uncritical adherence to what was not reliably transmitted from ʿUmar regarding the inheritance of a thrice-divorced woman - and this is frivolous manipulation of religion and of prohibitions and permissions. If ʿUmar is an authority there, he is undoubtedly an authority here; and if he is not an authority here, then he is not an authority there either.

وَكَذَلِكَ فَعَلَ الْحَنَفِيُّونَ أَيْضًا: وَقَدْ رَدُّوا تَقْلِيدَ مَا لَمْ يَصِحَّ عَنْ عُمَرَ فِي تَوْرِيثِ الْمُطَلَّقَةِ ثَلَاثًا - وَهَذَا تَلَاعُبٌ بِالدِّينِ وَبِالتَّحْرِيمِ وَالتَّحْلِيلِ، وَلَئِنْ كَانَ عُمَرُ هُنَالِكَ حُجَّةً إِنَّهُ هَاهُنَا لَحُجَّةٌ، وَإِنْ لَمْ يَكُنْ هَاهُنَا حُجَّةً فَمَا هُوَ هُنَالِكَ حُجَّةً.

L33110 If they say: Did ʿAlī dissent from him here? We say: ʿAlī did dissent from him regarding the waiting period for the impotent man, and there is no difference. Similarly, ʿAbd al-Raḥmān ibn ʿAwf and ʿAbdullāh ibn al-Zubayr dissented from him concerning the inheritance of an irrevocably divorced woman during terminal illness—and both opinions necessitate annulling a marriage that neither Allah the Exalted nor His Messenger—peace and blessings be upon him—made obligatory to annul.

فَإِنْ قَالُوا: قَدْ خَالَفَهُ عَلِيٌّ هَاهُنَا؟ قُلْنَا: قَدْ خَالَفَهُ عَلِيٌّ فِي أَجَلِ الْعِنِّينِ وَلَا فَرْقَ، وَقَدْ خَالَفَهُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ، وَعَبْدُ اللَّهِ بْنُ الزُّبَيْرِ فِي تَوْرِيثِ الْمَبْتُوتَةِ فِي الْمَرَضِ - وَكِلَا الْقَوْلَيْنِ مُوجِبٌ فَسْخَ نِكَاحٍ لَمْ يُوجِبْ اللَّهُ تَعَالَى فَسْخَهُ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَأَمَّا الْمَالِكِيُّونَ - فَإِنَّهُمْ خَالَفُوا الثَّابِتَ عَنْ عُمَرَ مِنْ أَنَّهُ أَمَرَ وَلِيَّهُ بِطَلَاقِهَا وَأَنَّهُ خَيَّرَ الزَّوْجَ - إذَا أَتَى - بَيْنَهَا وَبَيْنَ الصَّدَاقِ، وَقَلَّدُوهُ فِيمَا لَمْ يَصِحَّ عَنْهُ قَطُّ، مِنْ أَنْ تَعْتَدَّ بَعْدَ ذَلِكَ عِدَّةَ الْوَفَاةِ.

L33111 As for the Malikis, they opposed the established report from Umar—that he commanded his guardian to divorce her and that he gave the husband, upon consummation, a choice between keeping her or forfeiting the mahr. Yet they emulated him in what was never reliably attributed to him—that she must thereafter observe the widow's waiting period.

فَإِنْ قَالُوا: قَدْ صَحَّ ذَلِكَ عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ؟ قُلْنَا: وَقَدْ صَحَّ عَنْ عُمَرَ تَخْيِيرُ الزَّوْجِ - إذَا جَاءَ - بَيْنَهَا وَبَيْنَ الصَّدَاقِ، فَمِنْ أَيْنَ وَقَعَ لَكُمْ تَقْلِيدُ بَعْضِ الصَّحَابَةِ فِي بَعْضِ هَذِهِ الْقَضِيَّةِ بِلَا دَلِيلٍ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ قِيَاسٍ؟ وَمُخَالَفَةُ بَعْضِهِمْ فِيهَا نَفْسَهَا، وَهَذَا تَحَكُّمٌ فِي الدِّينِ بِالْبَاطِلِ، فَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ تَقْلِيدُ بَعْضِ مَا رُوِيَ عَنْ عُمَرَ دُونَ سَائِرِ مَا رُوِيَ عَنْهُ بِلَا بُرْهَانٍ أَصْلًا؟ قَالَ عَلِيٌّ: لَا حُجَّةَ فِي أَحَدٍ دُونَ اللَّهِ تَعَالَى وَرَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَا يَحِلُّ تَحْرِيمُ فَرْجٍ أَبَاحَهُ اللَّهُ تَعَالَى لِلزَّوْجِ وَتَحْلِيلُهُ لِمَنْ حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْهِ مِنْ سَائِرِ الرِّجَالِ بِغَيْرِ قُرْآنٍ وَلَا سُنَّةٍ.

L33112 If they say: "This has been authentically reported from 'Ali, Ibn 'Abbas, and Ibn 'Umar," we respond: "It has also been authentically reported from 'Umar that the husband is given the choice—when he comes—between retaining her or the dowry. So how have you come to blindly follow some Companions in certain aspects of this issue without any evidence whatsoever—neither from the Quran, nor the Sunnah, nor analogical reasoning—while contradicting others among them on the very same matter? This is wrongfully imposing falsehood in religion. We do not comprehend how you selectively follow some reports from 'Umar while disregarding others without any proof at all." 'Ali said: "There is no valid proof in anyone other than Allah Almighty and His Messenger—peace and blessings be upon him. It is impermissible to prohibit the private part Allah has permitted for the husband or to permit for other men what Allah has forbidden them, without authority from the Quran or Sunnah."

وَأَمَّا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَقَدْ فَازُوا - وَهُمْ وَاَللَّهِ مَأْجُورُونَ - فِي كُلِّ مَا قَالُوهُ قَاصِدِينَ بِهِ الْحَقَّ، وَإِنَّمَا الشَّأْنُ فِيمَنْ قَالَ قَوْلًا فِي الدِّينِ لَمْ يَأْتِ بِهِ قُرْآنٌ وَلَا سُنَّةٌ.

L33113–33114 As for the Companions (may Allah be pleased with them), they have succeeded—and by Allah, they are rewarded—in everything they said, intending thereby the truth. The matter pertains solely to those who assert a religious claim not supported by the Quran or the Sunnah.

فَإِذَا قِيلَ لَهُ: مِنْ أَيْنَ قُلْته؟ قَالَ: لِأَنَّ عُمَرَ، وَعُثْمَانَ قَالَهُ.

L33115 When he is asked, "From where did you derive this?" he replies, "Because 'Umar and 'Uthmān said it."

فَإِذَا قِيلَ لَهُ: فَفِي هَذِهِ الْقَضِيَّةِ نَفْسِهَا لَهُمَا قَوْلٌ خَالَفْتُمُوهُ -: هُوَ أَصَحُّ عَنْهُمَا مِنْ الَّذِي زَعَمْتُمْ أَنَّكُمْ احْتَجَجْتُمْ بِهِمَا فِيهِ؟ لَجُّوا عَلَى تَقْلِيدِهِمْ إعْرَاضًا عَنْ الْحَقِّ بِلَا بُرْهَانٍ أَصْلًا.

L33116 When it is said to him: "In this very issue, do the two scholars not hold a position you have opposed - is this not more authentically attributed to them than the stance you claimed to invoke them upon?" - such people stubbornly cling to their blind imitation, turning away from the truth without any proof whatsoever.

L33117 Abu Muhammad said: Therefore, there is no decisive proof in anyone apart

قَالَ أَبُو مُحَمَّد: فَإِذَا لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَجُوزُ فَسْخُ نِكَاحِ أَحَدٍ بِمَغِيبِهِ، وَلَا إيجَابُ عِدَّةٍ مِمَّنْ لَمْ يَصِحَّ مَوْتُهُ، وَلَا أَنْ يُطَلِّقَ أَحَدٌ عَنْ غَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

from the Messenger of Allah—may Allah bless him and grant him peace. Hence, it is impermissible to annul a marriage due to the spouse's absence, nor to impose a waiting period on one whose death has not been verified, nor for anyone to divorce as a proxy for another. And success comes solely from Allah, the Exalted.

وَمِنْ الْعَجَبِ قَوْلُ مَالِك " إنْ جَاءَ الزَّوْجُ قَبْلَ أَنْ تَتَزَوَّجَ فَهُوَ أَوْلَى بِهَا وَهِيَ امْرَأَتُهُ كَمَا كَانَتْ " فَيُقَالُ لِمَنْ قَلَّدَهُ: وَمِنْ أَيْنَ قُلْت هَذَا وَأَنْت قَدْ قَطَعْت عِصْمَتَهُ مِنْهَا وَأَبَحْت لَهَا أَنْ تَنْكِحَ مَنْ شَاءَتْ؟ وَكَيْفَ تَرُدُّهَا إلَى أَجْنَبِيٍّ قَدْ أَبَحْت لَهَا نِكَاحَ زَوْجٍ سِوَاهُ مِنْ أَجْلِ تَأْخِيرِهَا نِكَاحًا قَدْ أَبَحْته لَهَا عَادَتْ إلَى زَوْجٍ قَدْ فَسَخْت نِكَاحَهَا مِنْهُ؟ هَذَا مَعَ أَنَّهُ قَوْلٌ لَا يُحْفَظُ عَنْ أَحَدٍ قَبْلَ مَالِكٍ، فَاعْجَبُوا لِهَذَا الِاخْتِيَارِ؟

L33118 Among the astonishing statements is Mālik's saying: "If the husband arrives before she remarries, he has the strongest claim to her, and she remains his wife as she was." Thus, it is said to those who adopt his view: From where did you say this when you have severed his marital bond with her and permitted her to marry whomever she wishes? How can you return her to a stranger after permitting her to marry another husband merely because she delayed entering into a marriage you had permitted, thereby causing her to return to a husband whose marriage to her you had annulled? This is despite the fact that this opinion is not recorded from anyone before Mālik. Marvel at this chosen position!

ثُمَّ يُقَالُ لَهُمْ: وَمِنْ أَيْنَ قُلْتُمْ فِي أَحَدِ قَوْلَيْهِ: إنَّهُ إنْ جَاءَ الزَّوْجُ - وَهِيَ قَدْ تَزَوَّجَتْ - فَلَا سَبِيلَ لَهُ إلَيْهَا مِنْ أَجْلِ عَقْدٍ قَدْ كَانَ لَهَا مُبَاحًا، إذْ رَدَدْتهَا إلَيْهِ بِكُلِّ حَالٍ، فَقُولُوا لَنَا: أَيُّ شَيْءٍ أَحْدَثَهُ عَقْدُهَا النِّكَاحَ مِنْ تَحْرِيمِهَا عَلَى زَوْجِهَا مِمَّنْ لَمْ تُحْدِثْهُ إبَاحَتُك لَهَا ذَلِكَ الْعَقْدَ، فَأَجَزْت عَقْدَهَا.

L33119 Then it is said to them: On what basis do you assert in one of his two opinions that if the husband returns—while she has already married—he has no claim over her due to a contract that was lawful for her, when you have returned her to him in any case? Say to us: What prohibition did her marriage contract create against her husband that was not established by the one for whom your permission [to marry] did not produce it, such that you sanctioned her marriage contract?

ثُمَّ قَوْلُهُ الثَّانِي: مِنْ أَنَّهُ إنْ جَاءَ الزَّوْجُ - قَدْ تَزَوَّجَتْ إلَّا أَنَّهُ لَمْ يَدْخُلْ بِهَا فَهِيَ زَوْجَةُ الْأَوَّلِ - وَإِنْ جَاءَ بَعْدَ دُخُولِ الثَّانِي بِهَا فَلَا سَبِيلَ لَهُ عَلَيْهَا؟ فَقُولُوا لَنَا: هَلْ دَخَلَ الزَّوْجُ الثَّانِي عَلَى زَوْجَتِهِ، أَوْ عَلَى أَجْنَبِيَّةٍ؟ فَإِنْ قَالُوا: عَلَى زَوْجَتِهِ؟ قُلْنَا: فَمِنْ أَيْنَ أَبَحْتُمْ فَرْجَ زَوْجَتِهِ الَّتِي أَحْلَلْتُمْ لَهُ الدُّخُولَ بِهَا لِإِنْسَانٍ قَدْ فَسَخْتُمْ نِكَاحَهُ مِنْهَا، وَحَرَّمْتُمُوهَا عَلَيْهِ وَعَقَدْتُمْ نِكَاحَهَا مَعَ غَيْرِهِ؟ وَإِنْ قَالُوا: بَلْ دَخَلَ عَلَى غَيْرِ زَوْجَتِهِ؟ وَمِنْ أَيْنَ اسْتَحْلَلْتُمْ أَنْ

L33120–33122 His second argument is: If the husband returns after she has remarried but he has not consummated the marriage, she remains the wife of the first husband. But if he returns after the second husband has consummated the marriage, he has no recourse to her. Then say to them: Did the second husband consummate the marriage with his wife or with a woman unrelated to him? If they say, "With his wife," respond: How then do you permit the sexual access of his wife—whom you permitted him to consummate with—to a man whose marriage you annulled, prohibited her to him, and contracted her marriage to another? If they say, "Rather, he consummated with a woman unrelated to his wife," say: How do you deem it lawful to permit him to have

intercourse with a woman unrelated to his wife? It is undeniably evident that these are corrupt, conflicting, and unquestionably erroneous statements.

L33123 Some of them said: "We only did that based on what was narrated from Umar - under what circumstance?" We replied: "This is further obfuscation. Why would Umar only do so in a situation where he divorced his wife, informed her of the divorce, then revoked it without informing her of the revocation? Who inserted this case into that one?" Moreover, both these opinions are not recorded from any scholar before Mālik, nor will they ever find it [attributed to anyone]. So marvel at the severity of this imitation when they adopted a statement unattributed to anyone before Mālik - thereby opposing every opinion of a Companion or Successor. They misleadingly claimed in that narrative that they were citing some Companions - may Allah be pleased with them - as evidence. And success comes from Allah, the Exalted.

تُبِيحُوا لَهُ وَطْءَ غَيْرِ زَوْجَتِهِ؟ -: فَلَاحَ يَقِينًا أَنَّهَا أَقْوَالٌ فَاسِدَةٌ مُتَخَاذِلَةٌ، خَطَأٌ لَا شَكَّ فِيهَا.

وَقَدْ قَالَ بَعْضُهُمْ: إِنَّمَا فَعَلْنَا ذَلِكَ بِمَا رُوِيَ عَنْ عُمَرَ ذَلِكَ فِي أَيِّ كَنَفٍ؟ فَقُلْنَا: هَذَا تَمْوِيهٌ آخَرُ، وَهَلَّا فَعَلَ عُمَرُ ذَلِكَ فِي أَيِّ كَنَفٍ إِلَّا إِذَا طَلَّقَ امْرَأَتَهُ وَأَعْلَمَهَا بِالطَّلَاقِ، ثُمَّ رَاجَعَهَا وَلَمْ يُعْلِمْهَا بِالرَّجْعَةِ، فَمَنْ الَّذِي أَدْخَلَ هَذِهِ الْقَضِيَّةَ فِي تِلْكَ؟ مَعَ أَنَّ هَذَيْنِ الْقَوْلَيْنِ جَمِيعًا لَا يُحْفَظَانِ عَنْ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ أَنَّهُ قَالَهُ قَبْلَ مَالِكٍ، وَلَا يَجِدُونَهُ أَبَدًا، فَاعْجَبُوا لِفُحْشِ هَذَا التَّقْلِيدِ إِذْ قَلَّدُوا قَوْلًا لَا يُعْرَفُ أَحَدٌ قَالَهُ قَبْلَ مَالِكٍ -: خَالَفُوا فِيهِ كُلَّ قَوْلٍ لِصَاحِبٍ أَوْ تَابِعٍ رَأَوْا فِي تِلْكَ الْقِصَّةِ الَّتِي أَوْهَمُوا فِيهَا أَنَّهُمْ يَحْتَجُّونَ بِبَعْضِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.



AL-MUHALLA

كِتَاب فَسْخُ النِّكَاحِ

The Book of Annulment of Marriage

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

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[كِتَاب فَسْخُ النِّكَاحِ] [مَسْأَلَةٌ مَا يَقَعُ بِهِ فَسْخُ النِّكَاحِ بَعْدَ صِحَّتِهِ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَبِاللَّهِ تَوْفِيقِي، وَإِلَيْهِ مَتَابِي كِتَاب فَسْخُ النِّكَاحِ ١٩٣٨ - مَسْأَلَةٌ: مَا يَقَعُ بِهِ فَسْخُ النِّكَاحِ بَعْدَ صِحَّتِهِ: وَهِيَ ثَمَانِيَةُ أَوْجُهٍ فَقَطْ -: أَحَدُهَا - أَنْ تَصِيرَ حَرِيمَةً بِرَضَاعٍ وَقَدْ ذَكَرْنَا ذَلِكَ.

وَالثَّانِي - أَنْ يَطَأَهَا أَبُوهُ، أَوْ جَدُّهُ بِجَهَالَةٍ، أَوْ بِقَصْدٍ إِلَى الزِّنَا، وَقَدْ ذَكَرْنَا ذَلِكَ.

وَالثَّالِثُ - أَنْ يَتِمَّ الْتِعَانُهُ وَالْتِعَانُهَا.

وَالرَّابِعُ - أَنْ تَكُونَ أَمَةً فَتُعْتَقَ، فَلَهَا الْخِيَارُ فِي فَسْخِ نِكَاحِهَا مِنْ زَوْجِهَا أَوْ إِبْقَائِهِ.

وَالْخَامِسُ - اخْتِلَافُ الدِّينَيْنِ إِلَّا فِي جِهَةٍ وَاحِدَةٍ، وَهِيَ أَنْ يُسْلِمَ الزَّوْجُ وَهِيَ كِتَابِيَّةٌ، فَإِنَّهُمَا يَبْقَيَانِ عَلَى نِكَاحِهِمَا.

وَيَنْقَسِمُ اخْتِلَافُ دِينِهِمَا فِي غَيْرِ الْوَجْهِ الَّذِي ذَكَرْنَا خَمْسَةَ أَقْسَامٍ -: أَحَدُهَا - أَنْ يُسْلِمَ هُوَ وَهِيَ كَافِرَةٌ غَيْرُ كِتَابِيَّةٍ.

وَثَانِيهَا - أَنْ تُسْلِمَ هِيَ، وَهُوَ كَافِرٌ - كِتَابِيٌّ، أَوْ غَيْرُ كِتَابِيٍّ - فَلَوْ أَسْلَمَا مَعًا، فَهُمَا عَلَى نِكَاحِهِمَا.

ثَالِثُهَا - أَنْ يَرْتَدَّ هُوَ دُونَهَا.

وَرَابِعُهَا - أَنْ تَرْتَدَّ هِيَ دُونَهُ.

وَخَامِسُهَا - أَنْ يَرْتَدَّا مَعًا.

Chapter on the Annulment of Marriage Issue: What Causes the Annulment of Marriage After Its Validity

In the name of Allah, the Most Gracious, the Most Merciful. And with Allah is my success, and to Him is my return. The Book of Dissolution of Marriage 1938 – A Question: What necessitates the dissolution of a valid marriage? There are only eight causes: 1. She becomes forbidden in marriage due to breastfeeding, as we have mentioned that.

The second is if her father or paternal grandfather has intercourse with her out of ignorance of the prohibition or with the intent of fornication, as we have mentioned.

The third is that his mutual assistance and her mutual assistance be perfected.

The fourth case is when a female slave is emancipated, whereupon she may choose to annul her marriage contract with her husband or retain it.

The fifth case is a difference between the two religions, except in one scenario: if the husband embraces Islam while she is a woman of the Book (*Kitabiyyah*), their marriage remains valid.

The difference in their religion regarding aspects other than the one we mentioned is divided into five categories: one of these is when he becomes Muslim while she remains a disbeliever who is not a female from the People of the Book.

The second case is that she embraces Islam while he remains a disbeliever—whether he is a member of the People of the Book or not. If they both embrace Islam together, their marriage remains valid.

The third case is that he apostatizes without her doing so.

The fourth reason is her apostasy from Islam while he remains [Muslim].

The fifth cause is that both apostatize together.

In all these scenarios—whether he converts to Islam after her conversion,

she converts after his conversion, he reverts to Islam, she reverts to Islam, or they both revert together—their marriage is annulled. In all such cases, she does not return to him except with their mutual consent, a mahr, a guardian, and witnesses.

L33138 It is not obligatory to take into account any aspect of the waiting period or the declaration of Islam in that matter.

L33139 We have already clarified all of this in "The Book of Jihad" within this Dīwān of ours here.

L33140 And all praise is to Allah alone.

L33141 The sixth is to own it, or a portion of it.

L33142 The seventh [condition]: that you possess it or a part of it.

L33143 And the eighth reason—his death or her death, with no difference of opinion on this matter. Let us mention here—if Allah the Exalted wills—what we have not yet discussed: "mutual imprecation" and "the freed female slave's right to choose."

Liʿān Issue: The Description of Liʿān

L33144–33145

L33146 1939 – Issue: The procedure for liʿān is as follows: If a man accused his wife of zinā—whether generally or by naming a specific person; regardless of whether he had intercourse with her or not; whether they were both enslaved, one enslaved and the other free; both Muslim, he Muslim and she a Scripturary, both Scripturaries; whether he had been penalized for qadhf or zinā, or she had, or both; whether one was blind or both; whether they were sinners or one claimed to have witnessed it or did not—it is obligatory for the judge to assemble them in his court, whether she requested it or not, or he requested it or not. They have no choice in the matter.

L33147 Then the judge asks him to present evidence for his accusation against her.

فَفِي كُلِّ هَذِهِ الْوُجُوهِ يَنْفَسِخُ نِكَاحُهُمَا - سَوَاءٌ أَسْلَمَ إِثْرَ إِسْلَامِهَا، أَوْ أَسْلَمَتْ إِثْرَ إِسْلَامِهِ، أَوْ رَاجَعَ الْإِسْلَامَ، أَوْ رَاجَعَتْ الْإِسْلَامَ، أَوْ رَاجَعَاهُ مَعًا -: لَا تَرْجِعُ إِلَيْهِ فِي كُلِّ ذَلِكَ إِلَّا بِرِضَاهُمَا وَبِصَدَاقٍ، وَبِوَلِيٍّ، وَإِشْهَادٍ.

وَلَا يَجِبُ أَنْ يُرَاعَى فِي ذَلِكَ شَيْءٌ مِنْ عِدَّةٍ، وَلَا عَرْضِ إِسْلَامٍ.

وَقَدْ أَوْضَحْنَا كُلَّ هَذَا فِي " كِتَابِ الْجِهَادِ " مِنْ دِيوَانِنَا هَذَا.

وَالْحَمْدُ لِلَّهِ وَحْدَهُ.

وَالسَّادِسُ - أَنْ يَمْلِكَهَا، أَوْ بَعْضَهَا.

وَالسَّابِعُ - أَنْ تَمْلِكَهُ أَوْ بَعْضَهُ.

وَالثَّامِنُ - مَوْتُهُ أَوْ مَوْتُهَا، وَلَا خِلَافَ فِي ذَلِكَ، فَلْنَذْكُرْ هُنَا - إِنْ شَاءَ اللَّهُ تَعَالَى - مَا لَمْ نَذْكُرْهُ بَعْدُ، وَهُوَ " اللِّعَانُ " " وَتَخْيِيرُ الْمُعْتَقَةِ "

[اللِّعَانُ] [مَسْأَلَةٌ صِفَةُ اللِّعَانِ]

١٩٣٩ - مَسْأَلَةٌ: صِفَةُ اللِّعَانِ: هُوَ أَنَّ مَنْ قَذَفَ امْرَأَتَهُ بِالزِّنَا هَكَذَا مُطْلَقًا، أَوْ بِإِنْسَانٍ سَمَّاهُ - سَوَاءٌ كَانَ قَدْ دَخَلَ أَوْ لَمْ يَدْخُلْ بِهَا - كَانَا مَمْلُوكَيْنِ أَوْ أَحَدُهُمَا مَمْلُوكًا وَالْآخَرُ حُرًّا - أَوْ مُسْلِمَيْنِ، أَوْ هُوَ مُسْلِمٌ وَهِيَ كِتَابِيَّةٌ، أَوْ كَانَا كِتَابِيَّيْنِ، أَوْ كَانَ مَحْدُودًا فِي قَذْفٍ، أَوْ فِي زِنًى، أَوْ هِيَ كَذَلِكَ أَوْ كِلَاهُمَا، أَوْ أَحَدُهُمَا أَعْمَى أَوْ كِلَاهُمَا، أَوْ فَاسِقَيْنِ، أَوْ أَحَدُهُمَا ادَّعَى رُؤْيَةً أَوْ لَمْ يَدَّعِ -: فَوَاجِبٌ عَلَى الْحَاكِمِ أَنْ يَجْمَعَهُمَا فِي مَجْلِسِهِ؟ طَلَبَتْ هِيَ ذَلِكَ أَوْ لَمْ تَطْلُبْهُ، طَلَبَ هُوَ ذَلِكَ أَوْلَمْ يَطْلُبْهُ، لَا رَأْيَ لَهُمَا فِي ذَلِكَ.

ثُمَّ يَسْأَلُهُ الْبَيِّنَةَ عَلَى مَا رَمَاهَا بِهِ؟ فَإِنْ أَتَى بِبَيِّنَةِ عُدُولٍ بِذَلِكَ عَلَى مَا ذَكَرْنَا فِي الشَّهَادَةِ بِالزِّنَا أُقِيمَ عَلَيْهَا الْحَدُّ.

If he produces testimony from upright witnesses regarding this matter as previously elaborated in the context of bearing witness to adultery, the Hadd punishment is carried out upon her.

فَإِنْ لَمْ يَأْتِ بِالْبَيِّنَةِ قِيلَ لَهُ: الْتَعِنْ؟ فَيَقُولُ: بِاللَّهِ إِنِّي لَمِنْ الصَّادِقِينَ، بِاللَّهِ إِنِّي لَمِنْ الصَّادِقِينَ، بِاللَّهِ إِنِّي لَمِنْ الصَّادِقِينَ، بِاللَّهِ إِنِّي لَمِنْ الصَّادِقِينَ - هَكَذَا يُكَرِّرُ. " بِاللَّهِ إِنِّي لَمِنْ الصَّادِقِينَ " أَرْبَعَ مَرَّاتٍ.

L33148 If he does not bring the evidence, he is told: "Swear the oath of mutual cursing (liʿān)!" He then says: "By Allah, I am indeed among the truthful, by Allah, I am indeed among the truthful, by Allah, I am indeed among the truthful, by Allah, I am indeed among the truthful"—thus he repeats "By Allah, I am indeed among the truthful" four times.

ثُمَّ يَأْمُرُ الْحَاكِمُ مَنْ يَضَعُ يَدَهُ عَلَى فِيهِ، وَيَقُولُ لَهُ: إنَّهَا مُوجِبَةٌ؟ فَإِنْ أَبَى، فَإِنَّهُ يَقُولُ: وَعَلَيَّ لَعْنَةُ اللَّهِ إنْ كُنْت مِنْ الْكَاذِبِينَ - فَإِذَا أَتَمَّ هَذَا الْكَلَامَ سَقَطَ عَنْهُ الْحَدُّ لَهَا، وَالَّذِي رَمَاهَا بِهِ.

L33149 Then the judge orders him to place his hand over his mouth and says: "Does it necessitate [the *hadd*]?" If he refuses, he must declare: "May Allah's curse be upon me if I am lying." When he utters these words, the *hadd* punishment is waived for the woman, and the accuser is absolved.

فَإِنْ لَمْ يَلْتَعِنْ حُدَّ حَدَّ الْقَذْفِ، فَإِذَا الْتَعَنَ كَمَا ذَكَرْنَا، قِيلَ لَهَا: إنْ الْتَعَنَتْ وَإِلَّا حُدَّتْ حَدَّ الزِّنَا، فَتَقُولُ: بِاللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ، بِاللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ، بِاللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ، بِاللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ - تُكَرِّرُ " بِاللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ " أَرْبَعَ مَرَّاتٍ.

L33150 If he does not engage in mutual imprecation, he is to be punished with the prescribed penalty for false accusation. If he has engaged in mutual imprecation as we mentioned, she is told: "If she engages in mutual imprecation, otherwise she will be subjected to the prescribed penalty for adultery." She then says: "By Allah, he is indeed among the liars. By Allah, he is indeed among the liars. By Allah, he is indeed among the liars. By Allah, he is indeed among the liars"—she repeats "By Allah, he is indeed among the liars" four times.

ثُمَّ تَقُولُ: وَعَلَيَّ غَضَبُ اللَّهِ إنْ كَانَ لَمِنْ الصَّادِقِينَ، وَيَأْمُرُ الْحَاكِمُ مَنْ يُوقِفُهَا عِنْدَ الْخَامِسَةِ، وَيُخْبِرُهَا بِأَنَّهَا مُوجِبَةٌ لِغَضَبِ اللَّهِ تَعَالَى عَلَيْهَا، فَإِذَا قَالَتْ ذَلِكَ بَرِئَتْ مِنْ الْحَدِّ، وَانْفَسَخَ نِكَاحُهَا مِنْهُ، وَحَرُمَتْ عَلَيْهِ أَبَدَ الْآبِدِ لَا تَحِلُّ لَهُ أَصْلًا - لَا بَعْدَ زَوْجٍ وَلَا قَبْلَهُ - وَلَا وَإِنْ أَكْذَبَ نَفْسَهُ، لَكِنْ إنْ أَكْذَبَ نَفْسَهُ حُدَّ فَقَطْ.

L33151–33152 Then she says, "May God's wrath be upon me if he is not among the truthful," and the judge orders someone to halt her at the fifth oath, informing her that it entails God's wrath upon her. If she utters this, she is absolved of the ḥadd punishment, her marriage to him is annulled, and she becomes permanently forbidden to him—never permissible to him under any circumstance, neither after marrying another man nor before doing so—even if he admits to lying. However, if he admits to lying, only the ḥadd punishment for false accusation is imposed upon him.

وَأَمَّا مَا لَمْ يُتِمَّ هُوَ اللِّعَانَ أَوْ تُتِمَّهُ هِيَ، فَهُمَا عَلَى نِكَاحِهِمَا.

L33153 As for cases where he did not complete the liʿān or she completed it, their marriage remains intact.

فَلَوْ مَاتَ أَحَدُهُمَا قَبْلَ تَمَامِ اللِّعَانِ لَتَوَارَثَا، وَلَا مَعْنَى لِتَفْرِيقِ الْحَاكِمِ بَيْنَهُمَا، أَوْ لِتَرْكِهِ، لَكِنْ بِتَمَامِ اللِّعَانِ تَقَعُ الْفُرْقَةُ.

L33154 If either of them were to die before the completion of the mutual imprecation (liʿān), the surviving spouse would inherit from the deceased. There is no justification for the judge to separate them or to leave them together. However, upon the completion of the mutual imprecation, the divorce becomes irrevocable.

فَإِنْ كَانَتْ هِيَ صَغِيرَةً أَوْ مَجْنُونَةً حُدَّ هُوَ حَدَّ الْقَذْفِ وَلَا بُدَّ، وَلَا لِعَانَ فِي ذَلِكَ - فَإِنْ كَانَ هُوَ مَجْنُونًا حِينَ قَذَفَهَا فَلَا حَدَّ وَلَا لِعَانَ.

L33155 If she is a minor or insane, he is necessarily subjected to the ḥadd punishment for qadhf, and there is no liʿān in this case. If he was insane at the time he accused her of unlawful sexual intercourse, neither the ḥadd punishment nor liʿān applies.

وَيَتَلَاعَنُ الْأَخْرَسَانِ كَمَا يَقْدِرَانِ بِالْإِشَارَةِ.

L33156 The two mute individuals curse each other as much as they are able, through gestures.

فَإِنْ كَانَتْ الْمَرْأَةُ الْمُلَاعَنَةُ حَامِلًا فَبِتَمَامِ الِالْتِعَانِ مِنْهُمَا جَمِيعًا يَنْتَفِي عَنْهُ الْحَمْلُ ذَكَرَهُ أَوْ لَمْ يَذْكُرْهُ - إلَّا أَنْ يُقِرَّ بِهِ فَيَلْحَقَهُ وَلَا حَدَّ عَلَيْهِ فِي قَذْفِهِ لَهَا مَعَ إقْرَارِهِ بِأَنَّ حَمْلَهَا مِنْهُ إذَا الْتَعَنَ.

L33157 If the woman undergoing *liʿān* is pregnant, then upon completion of *liʿān* by both parties, the pregnancy is no longer attributed to him—whether he acknowledges it or not—unless he admits to it, in which case it is established as his. No punishment is imposed on him for the accusation (of adultery), despite his admission that her pregnancy is from him when performing *liʿān*.

فَلَوْ صَدَّقَتْهُ هِيَ فِيمَا قَذَفَهَا بِهِ، وَفِي أَنَّ الْحَمْلَ لَيْسَ مِنْهُ حَدَثَ، وَلَا يَنْتَفِي عَنْهُ مَا وَلَدَتْ، بَلْ هُوَ لَاحِقٌ بِهِ - فَإِنْ لَمْ يُلَاعِنْهَا حَتَّى وَضَعَتْ حَمْلَهَا فَلَهُ أَنْ يُلَاعِنَهَا لِدَرْءِ الْحَدِّ عَنْ نَفْسِهِ.

L33158 If she confirms his accusation against her and acknowledges that the pregnancy did not occur from him, while not disavowing the child she bore—rather, it remains affiliated with him—then if he does not invoke liʿān against her until she delivers her pregnancy, he may invoke liʿān against her to avert the punishment from himself.

وَأَمَّا مَا وَلَدَتْ فَلَا يَنْتَفِي عَنْهُ بَعْدُ أَصْلًا.

L33159 As for what she has borne, it is not fundamentally negated concerning him thereafter.

فَلَوْ طَلَّقَهَا وَقَذَفَهَا فِي عِدَّتِهَا مِنْهُ لَاعَنَهَا.

L33160 If he were to divorce her and accuse her of unlawful sexual intercourse (zinā) during her waiting period from him, he would invoke the liʿān procedure against her.

فَلَوْ قَذَفَهَا - وَهِيَ أَجْنَبِيَّةٌ - حُدَّ، وَلَا تَلَاعُنَ، وَلَا يَضُرُّهُ إمْسَاكُهَا وَوَطْؤُهَا بَعْدَ أَنْ قَذَفَهَا، بَلْ يُلَاعِنُهَا مَتَى شَاءَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33161 If he accuses her—while she is a woman unrelated to him—he is subjected to the *ḥadd* punishment, and no *liʿān* occurs. Keeping her or having intercourse with her after the accusation does not harm him. Rather, he may initiate *liʿān* against her whenever he wishes—and with Allah, the Exalted, is success.

[مَسْأَلَةٌ كُلُّ زَوْجٍ قَذَفَ امْرَأَتَهُ فَإِنَّهُ يُلَاعِنُهَا]

١٩٤٠ - مَسْأَلَةٌ: وَأَمَّا قَوْلُنَا: إِنَّ كُلَّ زَوْجٍ قَذَفَ امْرَأَتَهُ فَإِنَّهُ يُلَاعِنُهَا إِذْ ذَكَرْنَا صِفَةَ اللِّعَانِ، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُنْ لَهُمْ شُهَدَاءُ إِلا أَنْفُسُهُمْ فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ} [النور: ٦] فَلَمْ يَخُصَّ عَزَّ وَجَلَّ حُرًّا مِنْ عَبْدٍ، وَلَا أَعْمَى مِنْ بَصِيرٍ، وَلَا صَالِحًا مِنْ فَاسِقٍ، وَلَا امْرَأَةً كَافِرَةً مِنْ مُؤْمِنَةٍ، وَلَا حُرَّةً مِنْ أَمَةٍ، وَلَا فَاسِقَةً مِنْ صَالِحَةٍ، وَلَا مَحْدُودًا مِنْ غَيْرِ مَحْدُودٍ، وَلَا مَحْدُودَةً مِنْ غَيْرِ مَحْدُودَةٍ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَقَالَ أَبُو حَنِيفَةَ: إِنْ كَانَ أَحَدُهُمَا مَمْلُوكًا أَوْ كَافِرًا فَلَا لِعَانَ - وَهَذَا تَحَكُّمٌ بِالْبَاطِلِ، وَتَخْصِيصٌ لِلْقُرْآنِ بِرَأْيِهِ الْفَاسِدِ.

فَإِنْ قَالُوا: قَالَ اللَّهُ تَعَالَى: {فَشَهَادَةُ أَحَدِهِمْ أَرْبَعُ شَهَادَاتٍ بِاللَّهِ} [النور: ٦] وَالْعَبْدُ لَا شَهَادَةَ لَهُ؟ قُلْنَا: بَاطِلٌ مَا قُلْتُمْ، بَلْ شَهَادَتُهُ كَشَهَادَةِ الْحُرِّ، وَأَنْتُمْ لَا تُجِيزُونَ شَهَادَةَ الْأَعْمَى، وَلَا شَهَادَةَ الْفَاسِقِ، وَتُوجِبُونَ اللِّعَانَ لَهُمَا.

وَرُوِّينَا عَنْ الشَّعْبِيِّ: لَا يُلَاعِنُ مَنْ لَا شَهَادَةَ لَهُ.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ قَضِيَّةٌ فَاسِدَةٌ، لَا يُصَحِّحُهَا قُرْآنٌ وَلَا سُنَّةٌ، وَاَللَّهُ تَعَالَى وَإِنْ كَانَ سَمَّاهَا شَهَادَةً، فَلَيْسَتْ مِنْ سَائِرِ الشَّهَادَاتِ الَّتِي يُرَاعَى فِيهِ الْعَدْلُ مِنْ الْفَاسِقِ، لِأَنَّ تِلْكَ الشَّهَادَاتِ لَا يَحْلِفُ فِيهَا الشَّاهِدُ بِهَا، وَشَهَادَاتُ اللِّعَانِ أَيْمَانٌ، وَسَائِرُ الشَّهَادَاتِ لَا يُقْبَلُ فِي أَكْثَرِهَا إِلَّا اثْنَانِ، وَشَهَادَةُ اللِّعَانِ إِنَّمَا هِيَ مِنْ وَاحِدٍ، وَسَائِرُ الشَّهَادَاتِ لَا

L33162 **Legal issue: Any husband who accuses his wife of unchastity must invoke liʿān against her.**

L33163–33165 1940 - Issue: As for our statement: "Every husband who accuses his wife must perform liʿān with her," when we mentioned the description of liʿān, this is due to the statement of Allah, the Mighty and Majestic: "And those who accuse their wives and have no witnesses except themselves, then the testimony of one of them is four testimonies by Allah" [An-Nur 24:6]. He, the Mighty and Majestic, did not distinguish between a free person and a slave, nor a blind person and a sighted one, nor a righteous person over a sinner, nor... Do not equate a disbelieving woman with a believing woman, nor a free woman with an enslaved woman, nor a transgressing woman with a righteous woman, nor a man subject to *hadd* punishment with one who is not, nor a woman subject to *hadd* punishment with one who is not. "And your Lord is never forgetful" [Maryam: 64].[1]

L33166 Abu Hanifah said: If either of them is enslaved or a disbeliever, then there is no liʿān—and this constitutes an arbitrary imposition of falsehood and a restriction of the Quran's general ruling based on his invalid reasoning.

L33167 If they say: Allah the Exalted has said, {The testimony of one of them is four testimonies by Allah} [24:6], and a slave has no testimony? We say: What you have claimed is false; rather, his testimony is like that of a free person, even though you do not accept the testimony of the blind nor the testimony of the sinner, yet you still mandate *liʿān* for the spouses.[2]

L33168 It was narrated to us from Ash-Shaʿbī: One who cannot testify cannot perform liʿān (the mutual oath of condemnation).

L33169 Abū Muḥammad said: This is an invalid ruling, validated by neither the Qur'ān nor the Sunnah. Though Allah the Exalted has termed it a testimony, it is not like other testimonies where the witness's integrity is required and the testimony of a transgressor is rejected. For in those testimonies, the witness does not swear an oath, whereas the oaths of liʿān are sworn dec-

[1] **Qur'an references (L33163):** Qur'an 24:6 (An-Nur); Qur'an 19:64 (Maryam).
[2] **Qur'an references (L33167):** Qur'an 24:6 (An-Nur).

larations. Moreover, most other testimonies require two witnesses, while the oath of liʿān is from one alone. In other testimonies, a person cannot testify on their own behalf, but the oath of liʿān is for oneself—to avert the prescribed punishment from himself and impose it upon the wife. Thus, it is invalid to equate liʿān with the rulings governing other testimonies.

L33170 As for our statement: If he invokes the curse (liʿān), the ḥadd punishment is lifted from him; otherwise, the ḥadd punishment is applied to her—this is based on the saying of the Messenger of Allah, may the peace and blessings of Allah be upon him, in the ḥadīth of mutual cursing: "The evidence; otherwise, the ḥadd is your liability."

L33171–33173 And his statement: "If he accused her with a specific person, then a single ḥadd suffices to annul the liʿān." When we transmitted it through the chain of Aḥmad ibn Shuʿayb—from ʿImrān ibn Yazīd al-Dimashqī, from Makhlad ibn al-Ḥusayn al-Azdī, from Hishām ibn Ḥassān, from Muḥammad ibn Sīrīn—from Anas ibn Mālik, who said: "The first instance of liʿān in Islam occurred when Hilāl ibn Umayyah accused Sharīk ibn al-Saḥmāʾ with his wife. He came to the Prophet—peace be upon him—and informed him of that. The Prophet—peace be upon him—said to him: 'Four witnesses, otherwise a ḥadd on your back,' repeating this multiple times. Hilāl said to him: 'By Allah, O Messenger of Allah...'" By Allah, Allah knows that I am truthful, and Allah will surely reveal to you what will heal my back from the lashing? While they were in that state, the verse of liʿān was revealed. The Prophet called Hilāl, and he testified four times by Allah that he was among the truthful, and the fifth testimony invoked Allah's curse upon him if he was among the liars. Then the woman was summoned, and she testified four times by Allah that he was among the liars. When she reached the fourth or fifth testimony, the Messenger of Allah—peace and blessings be upon him—said, "Restrain her, for it is binding." She hesitated until we almost believed she would confess, then declared, "I will not disgrace my people for the rest of the day," and proceeded with the oath. The Messenger of Allah—peace and blessings be upon him—said, "Observe her. If she bears a child who is white, straight-haired, and bright-eyed, it belongs to Hilāl ibn Umayyah. But if she bears a child who is dark, curly-haired, stocky, and thin-calved, it belongs to Sharīk

يُقْبَلُ فِيهَا الْمَرْءُ لِنَفْسِه، وَشَهَادَةُ اللِّعَانِ إِنَّمَا هِيَ لِنَفْسِهِ لِيَدْرَأَ عَنْهَا الْحَدَّ، وَلِيُوجِبَهُ عَلَى الْمَرْأَةِ - فَبَطَلَ أَنْ يَكُونَ اللِّعَانُ حُكْمَ سَائِرِ الشَّهَادَاتِ.

وَأَمَّا قَوْلُنَا: إِنْ الْتَعَنَ سَقَطَ عَنْهُ الْحَدُّ وَإِلَّا حُدَّتْ هِيَ: فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ اللِّعَانِ «الْبَيِّنَةُ وَإِلَّا حَدٌّ فِي ظَهْرِكَ» .

وَقَوْلِهِ: إنَّهُ رَمَاهَا بِإِنْسَانٍ بِعَيْنِهِ فَحَدٌّ وَاحِدٌ يُسْقِطُ التَّلَاعُنَ فَلَمَّا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عِمْرَانُ بْنُ يَزِيدَ الدِّمَشْقِيُّ نا مَخْلَدُ بْنُ الْحُسَيْنِ الْأَزْدِيُّ نا هِشَامُ بْنُ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ «عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: أَوَّلُ لِعَانٍ كَانَ فِي الْإِسْلَامِ: أَنَّ هِلَالَ بْنَ أُمَيَّةَ قَذَفَ شَرِيكَ ابْنَ السَّحْمَاءِ بِامْرَأَتِهِ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ بِذَلِكَ؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَرْبَعَةُ شُهَدَاءَ، وَإِلَّا حَدٌّ فِي ظَهْرِكَ - يُكَرِّرُ ذَلِكَ مِرَارًا، فَقَالَ لَهُ هِلَالٌ: وَاَللَّهِ يَا رَسُولَ اللَّهِ إنَّ اللَّهَ لَيَعْلَمُ إنِّي لَصَادِقٌ وَلَيُنْزِلَنَّ اللَّهُ عَلَيْكَ مَا يُبْرِئُ بِهِ ظَهْرِي مِنْ الْجَلْدِ؟ فَبَيْنَمَا هُمْ كَذَلِكَ إذْ نَزَلَتْ آيَةُ اللِّعَانِ، فَدَعَا هِلَالًا فَشَهِدَ أَرْبَعَ شَهَادَاتٍ بِاَللَّهِ إنَّهُ لَمِنْ الصَّادِقِينَ وَالْخَامِسَةَ أَنَّ لَعْنَةَ اللَّهِ عَلَيْهِ إنْ كَانَ مِنْ الْكَاذِبِينَ. ثُمَّ دُعِيَتْ الْمَرْأَةُ فَشَهِدَتْ أَرْبَعَ شَهَادَاتٍ بِاَللَّهِ إنَّهُ لَمِنْ الْكَاذِبِينَ، فَلَمَّا كَانَ فِي الرَّابِعَةِ أَوْ الْخَامِسَةِ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقِّفُوهَا فَإِنَّهَا مُوجِبَةٌ، فَتَلَكَّأَتْ حَتَّى مَا شَكَكْنَا أَنَّهَا سَتَعْتَرِفُ ثُمَّ قَالَتْ: لَا أَفْضَحُ قَوْمِي سَائِرَ الْيَوْمِ فَمَضَتْ عَلَى الْيَمِينِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - انْظُرُوهَا، فَإِنْ جَاءَتْ بِهِ أَبْيَضَ سَبِطًا قَضِيءَ الْعَيْنَيْنِ فَهُوَ لِهِلَالِ بْنِ أُمَيَّةَ، وَإِنْ جَاءَتْ بِهِ آدَمَ جَعْدًا رَبْعًا حَمْشَ السَّاقَيْنِ فَهُوَ

ibn al-Saḥmāʾ." She bore a child who was dark, curly-haired, stocky, and thin-calved. The Messenger of Allah—peace and blessings be upon him—said, "Were it not for what Allah's decree has ordained, there would have been a grave matter between me and her."[3]

L33174 The verse does not include the additions made by Mālik and others in the oath, such as saying, "the One besides Whom there is no deity" [Al-Ḥashr: 23], nor anything else. There is no distinction between this addition and phrases like "Creator of the heavens and the earth, who raised their structure and fashioned them, who darkened its night and brought forth its morning light," and similar praise of Allah, the Mighty and Majestic. Whoever utters such is rewarded, but whoever omits it in their oath is not held accountable. Judgment upon people is based solely on what Allah has commanded, not on what is non-obligatory at that time, even if it is a reward.[4]

L33175 And Allah, the Exalted and Glorified, says: {The punishment shall be averted from her by her testifying four times by Allah} [An-Nur: 8]. This indicates a known punishment, as the word "punishment" is preceded by the definite article *al-*, and we know of no punishment for fornication except the *ḥadd*.[5]

L33176 As for imprisonment, Abū Ḥanīfah and his followers state that it is not permissible.

L33177 Through the chain of Aḥmad ibn Shuʿayb: ʿAlī ibn Maymūn al-Raqqī narrated to us from Sufyān, from ʿĀṣim ibn Kulayb, from his father, from Ibn ʿAbbās: That the Prophet—peace and blessings of Allah be upon him—when he commanded the two parties undergoing mutual cursing (liʿān) to swear oaths, he instructed a man to cover his mouth during the fifth oath and said, "Verily, it is legally definitive."

L33178–33180 There is no validity to the addition made by anyone who adds to the oath of the two parties engaged in *liʿān* when he himself says: "Indeed, I am

لِشَرِيكِ ابْنِ السَّحْمَاءِ - فَجَاءَتْ بِهِ آدَمَ جَعْدًا رَبْعًا حَمْشَ السَّاقَيْنِ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَوْلَا مَا سَبَقَ مِنْ كِتَابِ اللَّهِ لَكَانَ لِي وَلَهَا شَأْنٌ» .

وَلَيْسَ فِي الْآيَةِ مَا يَزِيدُهُ مَالِكٌ وَغَيْرُهُ فِي الْيَمِينِ مِنْ قَوْلِ: {الَّذِي لا إِلَهَ إِلا هُوَ} [الحشر: ٢٣] وَلَا غَيْرَ ذَلِكَ، وَلَا فَرْقَ بَيْنَ هَذِهِ الزِّيَادَةِ وَبَيْنَ أَنْ يَزِيدَ خَالِقُ السَّمَاوَاتِ وَالْأَرْضِ الَّذِي رَفَعَ سَمْكَهَا فَسَوَّاهَا وَأَغْطَشَ لَيْلَهَا وَأَخْرَجَ ضُحَاهَا وَمَا أَشْبَهَ ذَلِكَ مِنَ الثَّنَاءِ عَلَى اللَّهِ عَزَّ وَجَلَّ، الَّذِي مَنْ قَالَهُ أُجِرَ، وَمَنْ تَرَكَهُ فِي يَمِينِهِ لَمْ يُحْرَجْ، وَإِنَّمَا يُقْضَى عَلَى النَّاسِ بِمَا أَمَرَ بِهِ اللَّهُ، لَا بِمَا لَا يَلْزَمُ فِي ذَلِكَ الْوَقْتِ، وَإِنْ كَانَ أَجْرًا.

وَقَوْلُهُ عَزَّ وَجَلَّ: {وَيَدْرَأُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ} [النور: ٨] فَإِنَّ فِيهِ إِشَارَةً إِلَى عَذَابٍ مَعْلُومٍ، لِأَنَّهُ بِأَلِفِ التَّعْرِيفِ وَلَامِهِ، وَلَا نَعْلَمُ عَذَابًا فِي الزِّنَا إِلَّا الْحَدَّ.

وَأَمَّا السِّجْنُ - كَمَا قَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ -: فَلَا.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَلِيُّ بْنُ مَيْمُونٍ الرَّقِّيُّ عَنْ سُفْيَانَ عَنْ عَاصِمِ بْنِ كُلَيْبٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ أَمَرَ الْمُتَلَاعِنَيْنِ بِاللِّعَانِ أَمَرَ رَجُلًا أَنْ يَضَعَ يَدَهُ عَلَى فِيهِ عِنْدَ الْخَامِسَةِ وَقَالَ: إِنَّهَا مُوجِبَةٌ.

وَلَا مَعْنَى لِزِيَادَةِ مَنْ زَادَ فِي يَمِينِ الْمُتَلَاعِنَيْنِ أَنْ يَقُولَ هُوَ: إِنِّي لَمِنَ الصَّادِقِينَ فِيمَا رَمَيْتُهَا بِهِ مِنَ الزِّنَا، وَأَنْ تَقُولَ هِيَ: إِنَّهُ لَمِنَ الْكَاذِبِينَ فِيمَا رَمَانِي بِهِ مِنَ الزِّنَا، لِأَنَّ اللَّهَ تَعَالَى كَفَانَا بِمَا أَمَرَنَا بِهِ فِي الْقُرْآنِ عَنْ تَكَلُّفِ هَذِهِ الزِّيَادَةِ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[3] **Hadith references (L33171):** Sunan an-Nasai 3469.

[4] **Qur'an references (L33174):** Qur'an 20:98 (Taha); Qur'an 59:22 (Al-Hashr); Qur'an 59:23 (Al-Hashr); Qur'an 79:28 (An-Nazi'at); Qur'an 79:29 (An-Nazi'at).

[5] **Qur'an references (L33175):** Qur'an 24:8 (An-Nur).

among the truthful in what is claimed." He thereby accused her of adultery, and that she should say, "He is surely one of the liars in accusing me of adultery," for Allah the Exalted has spared us—through what He ordained in the Quran—the need to burden ourselves with this superfluous addition: *"And your Lord is not forgetful"* [Maryam 19:64].[6]

L33181 We reject every opinion that adds something to the religion not brought by the command of Allah, the Exalted, and cast it into the dunghill, for it is religious legislation which Allah, the Exalted and Majestic, has not authorized.

L33182 If they say: Perhaps he intended that he is among the truthful in his testimony concerning monotheism, and she intended that he is among the liars in another incident? We say: Suppose they both intended that—by Allah, they derive no benefit from it—and their oath, in accordance with Allah's command concerning one of them brazenly asserting falsehood in it, entails the curse upon him and the wrath upon her, whether they intended what you claim or not. Nor can such a thing be hidden from the Knower of the Unseen.

L33183 And via the chain of Al-Ḥajjāj ibn Al-Minhāl, from Hammām ibn Yaḥyā, from Ayyūb al-Sakhtiyānī, that Saʿīd ibn Jubayr reported to him from Ibn ʿUmar, who said: "Verily, the Messenger of Allah (peace and blessings be upon him) effected a separation between the two brothers of Banū al-ʿAjlān."

L33184 From the narration of Abī Dāwūd and Al-Bukhārī—Abū Dāwūd said: Aḥmad ibn Ḥanbal narrated to us, and Al-Bukhārī said: ʿAlī ibn ʿAbd Allāh narrated to us. Both said: Sufyān—that is, Ibn ʿUyaynah—narrated to us that he heard ʿAmr ibn Dīnār narrate from Saʿīd ibn Jubayr, who said: I heard Ibn ʿUmar say: The Messenger of Allāh—peace and blessings be upon him—said to the two engaged in mutual cursing: "Your account is with Allāh; one of you is lying. You have no right over her." Abū Muḥammad said: I have narrated it from Sufyān. Sufyān said: I memorized it from ʿAmr ibn Dīnār. Thus, the separation decreed by the Messenger of Allāh—peace and blessings be upon him—supersedes the separation decreed by any judge after him. His

وَكُلُّ رَأْيٍ زَادَنَا شَيْئًا فِي الدِّينِ لَمْ يَأْتِ بِهِ أَمْرُ اللَّهِ تَعَالَى فَنَحْنُ نَرْغَبُ عَنْ ذَلِكَ الرَّأْيِ وَنَقْذِفُهُ فِي الْحَشِّ، لِأَنَّهُ شَرْعٌ فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ عَزَّ وَجَلَّ.

فَإِنْ قَالُوا: رُبَّمَا نَوَى: أَنَّهُ لَمِنْ الصَّادِقِينَ فِي شَهَادَتِهِ بِالتَّوْحِيدِ، وَنَوَتْ هِيَ: أَنَّهُ لَمِنْ الْكَاذِبِينَ فِي قِصَّةٍ أُخْرَى؟ قُلْنَا: هَبْكَ أَنَّهُمَا نَوَيَا ذَلِكَ، فَوَاَللَّهِ مَا يَنْتَفِعَانِ بِذَلِكَ، وَأَنَّ يَمِينَهُمَا بِمَا أَمَرَ اللَّهُ تَعَالَى فِي مُجَاهَرَةِ أَحَدِهِمَا فِيهِ بِالْبَاطِلِ مُوجِبٌ عَلَيْهِ اللَّعْنَةَ، وَعَلَيْهَا الْغَضَبَ، نَوَيَا مَا قُلْتُمْ أَوْ لَمْ يَنْوِيَا، وَلَا يُمَوَّهُ عَلَى عَلَّامِ الْغُيُوبِ بِمِثْلِ هَذَا.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى نا أَيُّوبُ السِّخْتِيَانِيُّ أَنَّ سَعِيدَ بْنَ جُبَيْرٍ حَدَّثَهُ عَنْ ابْنِ عُمَرَ قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَّقَ بَيْنَ أَخَوَيْ بَنِي الْعَجْلَانِ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد، وَالْبُخَارِيِّ - قَالَ أَبُو دَاوُد: نا أَحْمَدُ بْنُ حَنْبَلٍ، وَقَالَ الْبُخَارِيُّ: نا عَلِيُّ بْنُ عَبْدِ اللَّهِ، قَالَا جَمِيعًا: نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - أَنَّهُ سَمِعَ عَمْرَو بْنَ دِينَارٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ يَقُولُ: سَمِعْت ابْنَ عُمَرَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِلْمُتَلَاعِنَيْنِ: «حِسَابُكُمَا عَلَى اللَّهِ أَحَدُكُمَا كَاذِبٌ لَا سَبِيلَ لَك عَلَيْهَا؟» قَالَ أَبُو مُحَمَّد: قَدْ رَوَيْته عَنْ سُفْيَانَ، قَالَ سُفْيَانُ حَفِظْته مِنْ عَمْرِو بْنِ دِينَارٍ: فَتَفْرِيقُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُغْنِي عَنْ تَفْرِيقِ كُلِّ حَاكِمٍ بَعْدَهُ. وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ

[6] **Qur'an references (L33178):** Qur'an 19:64 (Maryam).

statement—peace and blessings be upon him—"You have no right over her" prohibited them from ever reuniting under any circumstance. He—peace and blessings be upon him—only stated this explicitly in the report after the completion of their mutual cursing. Therefore, the separation does not occur except at that point.[7]

-: «لَا سَبِيلَ لَكَ عَلَيْهَا» مَنَعَ مِنْ أَنْ يَجْتَمِعَا أَبَدًا بِكُلِّ وَجْهٍ، وَلَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ذَلِكَ بِنَصِّ الْخَبَرِ إِلَّا بَعْدَ تَمَامِ الْتِعَانِهِمَا جَمِيعًا، فَلَا يَقَعُ التَّفْرِيقُ إِلَّا حِينَئِذٍ.

L33185–33186 We have been narrated that Muṣʿab ibn al-Zubayr did not deem separation obligatory between the two who engaged in mutual imprecation (liʿān) — this being the view of ʿUthmān al-Battī. Abū Ḥanīfa said: "Separation does not occur merely by completing the liʿān until the judge separates them. When the judge separates them, it constitutes an irrevocable divorce (bā'inah)." This was indeed astonishing! We say to them: "If the judge refuses to separate them, do they remain married?" Far from it! The judge of the wise has already separated them. Thus, the separation by those who succeed him or his own refusal to separate them is as inconsequential as the beard of a goat from al-Ḥazn.

وَقَدْ رُوِّينَا أَنَّ مُصْعَبَ بْنَ الزُّبَيْرِ لَمْ يُوجِبْ التَّفْرِيقَ بَيْنَ الْمُتَلَاعِنَيْنِ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ. وَقَالَ أَبُو حَنِيفَةَ: لَا يَقَعُ التَّفْرِيقُ بِتَمَامِ اللِّعَانِ حَتَّى يُفَرِّقَ بَيْنَهُمَا الْحَاكِمُ، وَإِذَا فَرَّقَ الْحَاكِمُ بَيْنَهُمَا فَهِيَ طَلْقَةٌ بَائِنَةٌ - فَكَانَ هَذَا عَجَبًا؟ وَنَقُولُ لَهُمْ: فَإِنْ أَبَى الْحَاكِمُ مِنْ التَّفْرِيقِ أَيَبْقَيَانِ عَلَى زَوْجِيَّتِهِمَا؟ هَيْهَاتَ حَاكِمُ الْحُكَمَاءِ قَدْ فَرَّقَ، فَتَفْرِيقُ مَنْ بَعْدَهُ أَوْ تَرْكُهُ التَّفْرِيقَ نَبِيبُ تَيْسٍ مِنْ الْحَزْنِ سَوَاءٌ.

L33187 Al-Shafiʿi held that when a man's impotence is fully established, the marriage is annulled and the child's legitimacy is negated—and this, too, is an unsubstantiated claim.

وَقَالَ الشَّافِعِيُّ - بِتَمَامِ الْتِعَانِ الرَّجُلِ يَقَعُ التَّفْرِيقُ وَيَنْتَفِي الْوَلَدُ - وَهَذِهِ أَيْضًا دَعْوَى بِلَا بُرْهَانٍ.

L33188 And Mālik said as we have stated - and this is the opinion of al-Awzāʿī and al-Layth.

وَقَالَ مَالِكٌ كَمَا قُلْنَا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَاللَّيْثِ.

L33189 As for our statement: If she is a female minor or insane, the ḥadd punishment for qadhf is imposed, and liʿān does not apply in this case, since neither a female minor nor an insane woman can commit zinā whatsoever, for zinā is an act of disobedience toward Allah the Almighty, and no sinful act can occur from them. This derives from the statement of the Messenger of Allah—peace and blessings be upon him—: "The pen is lifted from three people," in which he mentioned the minor until they reach puberty, the insane until they regain sanity, and the sleeper until they awaken.

وَأَمَّا قَوْلُنَا: إنْ كَانَتْ صَغِيرَةً أَوْ مَجْنُونَةً حُدَّ لِلْقَذْفِ، وَلَا لِعَانَ فِي ذَلِكَ؛ لِأَنَّ الصَّغِيرَةَ وَالْمَجْنُونَةَ لَا يَكُونُ مِنْهُمَا زِنًى أَصْلًا، لِأَنَّ الزِّنَا مَعْصِيَةٌ لِلَّهِ عَزَّ وَجَلَّ، وَهَاتَانِ لَا تَقَعُ مِنْهُمَا مَعْصِيَةٌ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «رُفِعَ الْقَلَمُ عَنْ ثَلَاثٍ» فَذَكَرَ الصَّغِيرَ حَتَّى يَبْلُغَ، وَالْمَجْنُونَ حَتَّى يُفِيقَ.

L33190 When the hadd punishment becomes obligatory in cases where there is no

وَإِذَا وَجَبَ الْحَدُّ حَيْثُ لَا يُوقَنُ بِكَذِبِهِ فَإِسْقَاطُهُ عَنْ الْقَاذِفِ حِينَ يُوقَنُ بِكَذِبِهِ خَطَأٌ، وَالْحَدُّ بِنَصِّ الْقُرْآنِ وَاجِبٌ عَلَى كُلِّ مَنْ رَمَى مِنَّا بِالزِّنَا.

[7] **Hadith references (L33184):** Sahih al-Bukhari 5312; Sahih al-Bukhari 5350; Sunan Abi Dawud 2257.

certainty of its falsehood, exempting the one who commits qadhf from it when his falsehood is confirmed is incorrect. By the explicit text of the Quran, the hadd punishment is obligatory upon everyone among us who accuses [another] of adultery.

وَأَمَّا الْأَخْرَسُ فَإِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَلَيْسَ فِي وُسْعِهِ الْكَلَامُ، فَلَا يَجُوزُ أَنْ يُكَلَّفَ إِيَّاهُ.

L33191 As for the mute person, Allah, the Exalted and Majestic, says: "Allah does not burden a soul beyond its capacity" [Al-Baqarah: 286], and he lacks the capacity for speech; thus, it is not permissible to impose speech upon him.[8]

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

L33192 The Messenger of Allah—peace be upon him—said: "When I command you to do something, take from it what you can."

فَصَحَّ أَنَّهُ يَلْزَمُ كُلَّ أَحَدٍ مِمَّا أَمَرَ اللَّهُ تَعَالَى بِهِ مَا اسْتَطَاعَ، وَالْأَخْرَسُ يَسْتَطِيعُ الْإِفْهَامَ بِالْإِشَارَةِ، فَعَلَيْهِ أَنْ يَأْتِيَ بِهَا.

L33193 Thus, it is established that it is incumbent upon everyone to fulfill what Allah, the Exalted, has commanded to the best of their ability. The mute person is able to communicate through gestures, so they are obligated to do so.

وَكَذَلِكَ مَنْ لَا يُحْسِنُ الْعَرَبِيَّةَ يَلْتَعِنُ بِلُغَتِهِ بِأَلْفَاظٍ يُعَبِّرُ بِهَا عَمَّا نَصَّ اللَّهُ تَعَالَى عَلَيْهِ.

L33194 Likewise, one who is not proficient in Arabic struggles in their own language, using words to express what Allah, the Exalted, has explicitly decreed.

وَالْعَجَبُ مِنْ زِيَادَاتِ أَبِي حَنِيفَةَ بِرَأْيِهِ، زِيَادَاتٌ فِي غَايَةِ السُّخْفِ عَلَى مَا فِي آيَةِ اللِّعَانِ، وَهُوَ يَرُدُّ أَوَامِرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَعْمَالَهُ كَالْمَسْحِ عَلَى الْعِمَامَةِ وَالْيَمِينِ مَعَ الشَّاهِدِ وَغَيْرِ ذَلِكَ بِأَنَّهَا زِيَادَةٌ عَلَى مَا فِي الْقُرْآنِ، فَأَيُّ ضَلَالٍ يَفُوقُ هَذَا؟

L33195–33197 Astonishment is due to Abū Ḥanīfah's opinion-based additions—additions of the utmost absurdity, contrary to what is in the Quranic verse. Liʿān, which rejects the commands of the Messenger of Allah—peace and blessings be upon him—and his practices such as wiping over the turban, the oath alongside a witness, and other similar matters, on the grounds that they are additions to what is in the Qur'an. What misguidance could surpass this?

وَأَمَّا قَوْلُنَا: إِنَّهُ بِتَمَامِ اللِّعَانِهِ وَاللِّعَانِهَا يَنْتَفِي عَنْهُ لِحَاقُ حَمْلِهَا، إِلَّا أَنْ يُقِرَّ بِهِ - وَسَوَاءٌ ذَكَرَهُ أَوْ لَمْ يَذْكُرْهُ - إِذَا انْتَفَى عَنْهُ قَبْلَ ذَلِكَ -: فَلِمَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: " إِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَاعَنَ بَيْنَ رَجُلٍ وَامْرَأَتِهِ فَانْتَفَى عَنْ وَلَدِهِ فَفَرَّقَ بَيْنَهُمَا وَأَلْحَقَ الْوَلَدَ بِالْمَرْأَةِ ".

L33198 As for our statement that upon the completion of his liʿān and her liʿān, the child's lineage is disavowed from him—unless he acknowledges him, whether he mentions him or not—provided the lineage had already been disavowed from him beforehand, this is based on what we have transmitted through Mālik's chain from Nāfiʿ, from Ibn 'Umar, who said: "The Prophet, peace and blessings of God be upon him, administered mutual imprecation between a man and his wife. The child's lineage was thereby disavowed from him, and he separated them and attributed the child to the woman."

[8] **Qur'an references (L33191):** Qur'an 2:286 (Al-Baqarah).

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي حَرْمَلَةُ بْنُ يَحْيَى أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي سَهْلُ بْنُ سَعْدٍ قَالَ: إنَّ عُوَيْمِرًا الْعَجْلَانِيَّ - فَذَكَرَ حَدِيثَ اللِّعَانِ وَفِيهِ «فَكَانَتْ حَامِلًا فَكَانَ الْوَلَدُ إلَى أُمِّهِ»

L33199 From the chain of Muslim: Haramlah ibn Yahya narrated to me: Ibn Wahb informed me: Yunus narrated on the authority of Ibn Shihab, who informed me that Sahl ibn Sa'd said: "'Uwaymir al-'Ajlānī"—then he mentioned the Hadith of Liʿān, wherein it states: "She was pregnant, so the child was ascribed to his mother."

وَأَمَّا قَوْلُنَا: إنَّهُ لَمْ يُلَاعِنْهَا حَتَّى وَلَدَتْ، لَاعَنَ لِإِسْقَاطِ الْحَدِّ فَقَطْ، وَلَا يَنْتَفِي وَلَدُهَا مِنْهُ، فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْوَلَدُ لِصَاحِبِ الْفِرَاشِ» .

L33200 As for our statement that he did not perform liʿān upon her until she gave birth—he performed liʿān solely to nullify the legal punishment, and her child is not denied from him—this is because the Messenger of Allah, peace and blessings of Allah be upon him, said: "The child belongs to the legal husband."

فَصَحَّ أَنَّ كُلَّ مَنْ وُلِدَ عَلَى فِرَاشِهِ وَلَدٌ فَهُوَ وَلَدُهُ إلَّا حَيْثُ نَفَاهُ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ حَيْثُ يُوقِنُ بِلَا شَكٍّ أَنَّهُ لَيْسَ هُوَ وَلَدَهُ، وَلَمْ يَنْفِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَّا وَهِيَ حَامِلٌ بِاللِّعَانِ فَقَطْ، فَيَبْقَى مَا عَدَا ذَلِكَ عَلَى لِحَاقِ النَّسَبِ، وَلِذَلِكَ قُلْنَا: إنْ صَدَّقَتْهُ فِي أَنَّ الْحَمْلَ لَيْسَ مِنْهُ فَإِنَّ تَصْدِيقَهَا لَهُ لَا يُلْتَفَتُ إلَيْهِ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا} [الأنعام: ١٦٤] فَوَجَبَ أَنَّ إقْرَارَ الْأَبَوَيْنِ لَا يُصَدَّقُ عَلَى نَفْيِ الْوَلَدِ، فَيَكُونُ كَسْبًا عَلَى غَيْرِهِمَا، وَإِنَّمَا نَفَى اللَّهُ عَزَّ وَجَلَّ الْوَلَدَ إنْ كَذَّبَتْهُ الْأُمُّ وَالْتَعَنَتْ هِيَ وَالزَّوْجُ فَقَطْ، فَلَا يَنْتَفِي فِي غَيْرِ هَذَا الْمَوْضِعِ، وَالْعَجَبُ كُلُّهُ أَنَّ الْمُخَالِفِينَ لَنَا هَاهُنَا يَقُولُونَ: إنْ اتَّفَقَا جَمِيعًا عَلَى أَنَّ الْحَمْلَ مِنْ غَيْرِهِ، أَوْ عَلَى أَنَّ الْوَلَدَ مِنْ غَيْرِهِ: لَمْ يُصَدَّقَا، وَلَمْ يَنْفِهِ إلَّا بِلِعَانٍ؟ فَلَيْتَ شِعْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ هَذَا إذَا أَلْغَوْا تَصْدِيقَهُمَا فَلَمْ يَنْفُوا نَسَبَهُ إلَّا بِلِعَانٍ، فَإِذْ لَا مَعْنَى لِتَصْدِيقِهِمَا لَهُ فَلَا يَجُوزُ اللِّعَانُ إلَّا حَيْثُ حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَيْثُ أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْقُرْآنِ، وَهُوَ إذَا رَمَاهَا بِالزِّنَا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33201 It is established that every child born within his marital bed is his child, except where Allah the Exalted negated it through the tongue of His Messenger—peace and blessings of Allah be upon him—or where one attains absolute certainty without doubt that it is not his child. The Prophet—peace and blessings be upon him—only negated paternity through *liʿān* when she was pregnant. Thus, all other cases remain subject to the establishment of lineage. For this reason, we state: If she supports his claim that the pregnancy is not from him, her support is disregarded, as Allah the Exalted says: *"No soul bears the burden of another"* (6:164). Therefore, the parents' acknowledgment cannot be accepted to negate the child's lineage, for this would impose a burden on another. Allah—Majestic and Exalted—only negates the child if the mother denies him and she and the husband engage in *liʿān*. Beyond this circumstance, paternity cannot be negated. It is utterly perplexing that our opponents here claim: "If they both agree that the pregnancy is not from him or that the child is not from him, they are not believed, and lineage is only negated through *liʿān*." I wonder where they derived this from, given that they nullify their testimony yet refuse to negate lineage except through *liʿān*. Since their testimony carries no meaning, *liʿān* is only permissible where the Messenger of Allah—peace and blessings of Allah be upon him—ruled and where Allah the Exalted commanded it in the Quran: specifically when he accuses her of adultery. And with Allah the Exalted is success.[9]

L33202–33204 As for when he accuses her of adultery while she is in her waiting period

[9] **Qur'an references (L33201):** Qur'an 6:164 (Al-An'am).

following a revocable divorce he pronounced, he is to perform the oath of imprecation (liʿān) with her once the matter is referred for judgment. The ruling pertains to the Imam—even if she was under another husband's marriage—because he accused her while she was his lawful wife, for Allah the Exalted states: {And those who accuse their wives} [An-Nur: 6]. The accusation is assessed strictly by the Quranic text. If it concerns a wife, liʿān remains binding permanently, as Allah the Exalted has not set a time restriction for liʿān to expire. If the accusation occurred during the waiting period of a triple divorce or while she was not his wife, and he later remarries her, the hadd penalty is invariably applied, and liʿān is invalid in this case. This is because he did not accuse his own wife but a woman unrelated to him in marriage. Thus, the hadd is imposed solely by the explicit Quranic injunction.[10]

وَأَمَّا إِذَا قَذَفَهَا وَهِيَ فِي عِدَّتِهَا مِنْ طَلَاقٍ رَجْعِيٍّ مِنْهُ أَنَّهُ يُلَاعِنُهَا مَتَى رُفِعَ الْأَمْرُ لِلْإِمَامِ - وَلَوْ أَنَّهَا عِنْدَ زَوْجٍ آخَرَ - فَلِأَنَّهُ قَذَفَهَا وَهِيَ زَوْجَةٌ لَهُ، وَاَللَّهُ تَعَالَى يَقُولُ: {وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ} [النور: ٦] فَإِنَّمَا يُرَاعَى الرَّمْيُ بِنَصِّ الْقُرْآنِ، فَإِنْ كَانَ لِزَوْجَةٍ لَاعَنَ أَبَدًا، إِذْ لَمْ يَحُدَّ اللَّهُ تَعَالَى لِلِّعَانِ وَقْتًا لَا يَتَعَدَّاهُ، وَإِنْ كَانَ الرَّمْيُ فِي عِدَّةٍ مِنْ طَلَاقِ ثَلَاثٍ أَوْ وَهِيَ غَيْرُ زَوْجَةٍ لَهُ، ثُمَّ تَزَوَّجَهَا، فَالْحَدُّ وَلَا بُدَّ، وَلَا لِعَانَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَرْمِ زَوْجَةً لَهُ، إِنَّمَا رَمَى زَوْجَةً أَجْنَبِيَّةً، فَالْحَدُّ بِنَصِّ الْقُرْآنِ فَقَطْ.

L33205 As for our statement: "His retaining her after stoning her or after his definitive confession that she committed adultery—and he knew that—does not harm him, nor does his having intercourse with her harm him," this is because Allah, Exalted and Majestic, did not mention that, nor did His Messenger—peace and blessings of Allah be upon him. Thus, it is an invalid condition and a man-made law Allah, Exalted and Majestic, has not permitted.

وَأَمَّا قَوْلُنَا: وَلَا يَضُرُّهُ إِمْسَاكُهُ إِيَّاهَا بَعْدَ رَمْيِهِ لَهَا، أَوْ بَعْدَ إِقْرَارِهِ بِأَنَّهَا زَنَتْ يَقِينًا - وَعَلِمَ بِذَلِكَ - وَلَا يَضُرُّهُ وَطْؤُهُ لَهَا، فَلِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَذْكُرْ ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ شَرْطٌ فَاسِدٌ، وَشَرْعٌ لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ.

A legal case: Two men married a woman under ambiguous terms within one purity period.

L33206–33207

[مَسْأَلَةٌ تَزَوَّجَ رَجُلَانِ بِجَهَالَةٍ امْرَأَةً فِي طُهْرٍ وَاحِدٍ]

L33208 A legal issue: If two men marry a woman due to contractual uncertainty within the same menstrual purity period, or if one of them purchases a female slave from the other and has intercourse with her—and the first man had also had intercourse with her—and neither the sequence of the two marriages or ownerships nor their dates are known, and it becomes evident that she is pregnant and she bears a child, then if both men claim paternity, a lot must be cast between them concerning the child. Whichever man is selected by the lot, the child is ascribed to him, and he is ordered to pay his share of the diyah (blood money) to the opponent.

مَسْأَلَةٌ: فَإِنْ تَزَوَّجَ رَجُلَانِ بِجَهَالَةٍ امْرَأَةً فِي طُهْرٍ وَاحِدٍ، أَوْ ابْتَاعَ أَحَدُهُمَا أَمَةً مِنْ الْآخَرِ فَوَطِئَهَا - وَكَانَ الْأَوَّلُ قَدْ وَطِئَهَا أَيْضًا - وَلَمْ يُعْرَفْ أَيُّهُمَا الْأَوَّلُ، وَلَا تَارِيخُ النِّكَاحَيْنِ أَوْ الْمِلْكَيْنِ: فَظَهَرَ بِهَا حَمْلٌ، فَأَتَتْ بِوَلَدٍ، فَإِنَّهُ إِنْ تَدَاعَيَاهُ جَمِيعًا: فَإِنَّهُ يُقْرَعُ بَيْنَهُمَا فِيهِ فَأَيُّهُمَا خَرَجَتْ قُرْعَتُهُ أُلْحِقَ بِهِ الْوَلَدُ، وَقُضِيَ عَلَيْهِ لِخَصْمِهِ بِحِصَّتِهِ مِنْ الدِّيَةِ.

L33209 If there is one claimant, they receive half the diyah; if there are three

[10] **Qur'an references (L33202):** Qur'an 24:6 (An-Nur).

claimants, they receive two-thirds of the diyah; if there are four claimants, they receive three-quarters of the diyah. This ruling applies proportionally to larger numbers, whether the two disputing parties consist of two strangers, two relatives, a father and son, or a free person and a slave.

إِنْ كَانَ وَاحِدًا فَنِصْفُ الدِّيَةِ، وَإِنْ كَانُوا ثَلَاثَةً فَلَهُمَا ثُلُثَا الدِّيَةِ، وَإِنْ كَانُوا أَرْبَعَةً فَثَلَاثَةُ أَرْبَاعِ الدِّيَةِ، وَهَكَذَا الْحُكْمُ فِيمَا زَادَ، سَوَاءٌ كَانَ الْمُتَدَاعِيَانِ أَجْنَبِيَّيْنِ، أَوْ قَرِيبَيْنِ أَوْ أَبًا وَابْنًا، أَوْ حُرًّا وَعَبْدًا.

L33210 If one of them is a Muslim and the other is a non-Muslim, affiliation must necessarily follow the Muslim without recourse to lot-drawing.

فَإِنْ كَانَ أَحَدُهُمَا مُسْلِمًا وَالْآخَرُ كَافِرًا أُلْحِقَ بِالْمُسْلِمِ وَلَا بُدَّ بِلَا قُرْعَةٍ.

L33211 If they both mutually deny it, or neither denies nor claims it, then the Qāfah (experts in physical resemblance for lineage determination) are summoned for him. If one or more witnesses among them, qualified in lineage science and morally upright, testify that he is the child of this man, his lineage is legally attributed to him. If one or more attribute him to two or more fathers, their statement is rejected, and other witnesses must be sought.

فَإِنْ تَدَافَعَاهُ جَمِيعًا، أَوْ لَمْ يُنْكِرَاهُ وَلَا تَدَاعَيَاهُ، فَإِنَّهُ يُدْعَى لَهُ بِالْقَافَةِ فَإِنْ شَهِدَ مِنْهُمْ وَاحِدٌ عَالِمٌ عَدْلٌ فَأَكْثَرُ مِنْ وَاحِدٍ بِأَنَّهُ وَلَدُ هَذَا؟ أُلْحِقَ بِهِ نَسَبُهُ، فَإِنْ أَلْحَقَهُ وَاحِدٌ أَوْ أَكْثَرُ بِاثْنَيْنِ فَصَاعِدًا طُرِحَ كَلَامُهُمْ وَطُلِبَ غَيْرُهُمْ.

L33212 It is not permissible for a single child to be the offspring of two men, nor of two women.

وَلَا يَجُوزُ أَنْ يَكُونَ وَلَدٌ وَاحِدٌ ابْنَ رَجُلَيْنِ، وَلَا ابْنَ امْرَأَتَيْنِ.

L33213 Similarly, if two women contend over children, then if it is in the custody of one of them, it belongs to her. But if it is in the custody of both, or if neither disputed nor denied it, or if they mutually rejected it, the qāfah is summoned for it, as previously stated.

وَكَذَلِكَ إِنْ تَدَاعَتْ امْرَأَتَانِ فَأَكْثَرُ وَلَدًا، فَإِنْ كَانَ فِي يَدِ إِحْدَاهُمَا فَهُوَ لَهَا وَإِنْ كَانَ فِي أَيْدِيهِنَّ كُلِّهِنَّ، أَوْ لَمْ يَتَدَاعَيَاهُ وَلَا أَنْكَرَتَاهُ، أَوْ تَدَافَعَتَاهُ دُعِيَ لَهُ الْقَافَةُ كَمَا قُلْنَا.

L33214 The evidence for this is what we have narrated through the chain of Al-Layth ibn Saʿd, from Ibn Shihāb, from ʿUrwah ibn al-Zubayr, from ʿĀʾishah, the Mother of the Believers, who said: “The Messenger of Allah (peace and blessings be upon him) entered upon me joyfully, the lines of his face glowing brightly, and said: ’Did you not see how Mujazziz looked at Zayd ibn Ḥārithah and Usāmah ibn Zayd and said: ”Indeed, some of these feet are certainly from some of the same“?”

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ اللَّيْثِ بْنِ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ عَلَيَّ مَسْرُورًا تَبْرُقُ أَسَارِيرُ وَجْهِهِ فَقَالَ: أَلَمْ تَرَيْ أَنَّ مُجَزِّزًا نَظَرَ إِلَى زَيْدِ بْنِ حَارِثَةَ وَأُسَامَةَ بْنِ زَيْدٍ فَقَالَ: إِنَّ بَعْضَ هَذِهِ الْأَقْدَامِ لَمِنْ بَعْضٍ» .

L33215–33216 And through the chain of Aḥmad ibn Shuʿayb: Isḥāq ibn Ibrāhīm (Ibn Rāhwayh) narrated to us; Sufyān (Ibn ʿUyaynah) informed us from al-Zuhrī, from ʿUrwah, from ʿĀʾishah, the Mother of the Believers, who said: “Allah’s Messenger—may Allah’s peace and blessings be upon him—entered upon me joyfully and said: ’O ʿĀʾishah, did you not observe that Mujazziz al-Mudlijī came to me while Usāmah ibn Zayd was present? He saw Usāmah and Zayd

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - وَهُوَ ابْنُ رَاهْوَيْهِ - نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «دَخَلَ عَلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَسْرُورًا فَقَالَ: يَا عَائِشَةُ أَلَمْ تَرَيْ أَنَّ مُجَزِّزًا الْمُدْلِجِيَّ دَخَلَ

with a single quilt covering them both—their heads veiled and their feet exposed—and remarked: These feet are parts of one another.”’

L33217 From the chain of Muslim: Mansur ibn Abi Muzahim reported to us: Ibrahim ibn Sa‘d ibn Ibrahim ibn ‘Abd al-Rahman ibn ‘Awf narrated from al-Zuhri from ‘Urwah from ‘A’ishah, the Mother of the Believers, who said: “A physiognomist entered while the Messenger of Allah (peace and blessings of Allah be upon him) was present, with Usamah ibn Zayd and Zayd ibn Harithah lying down. He said: ‘These feet are part of one another.’ The Prophet (peace and blessings of Allah be upon him) was pleased by that and it impressed him.”

L33218 And through the chain of Abu Dawud: Amr ibn Uthman al-Himsi informed us, al-Walid - he is Ibn Muslim - informed us, from al-Awzā‘ī, from Yahya ibn Abi Kathir, from Abu Qilabah, from Anas ibn Malik, who mentioned the *ḥadīth* of the Urayniyyin, their killing of the shepherds, and their seizure of the Prophet’s camels - peace and blessings be upon him. Anas said: “The Messenger of Allah - peace and blessings be upon him - sent trackers in pursuit of them, and they were brought to him.” And he mentioned the *ḥadīth*.

L33219 Thus, it has been established that *qiyāfah* is a sound science, and it is obligatory to judge by it in matters of lineage and traces.

L33220 It has been narrated to us through the chain of Abd al-Razzāq from Maʿmar from al-Zuhrī regarding a man who had intercourse with a woman who was both his male slave’s wife and his own female slave. He said that he consulted the Qafah experts for their case. Indeed, Urwah ibn al-Zubayr informed me that Umar ibn al-Khaṭṭāb consulted the Qafah experts in the case of two men who both had intercourse with the same woman during a single purity period and claimed her child. He then attributed the child to one of them.

L33221 Al-Zuhri said: Umar ibn al-Khattab and his successors relied on the evaluation of genealogists in cases like this.

L33222 From the narration of Abd al-Razzaq, from Ma’mar, from Ayyub al-

عَلَيَّ وَعِنْدِي أُسَامَةُ بْنُ زَيْدٍ فَرَأَى أُسَامَةَ وَزَيْدًا وَعَلَيْهِمَا قَطِيفَةٌ وَقَدْ غَطَّيَا رُءُوسَهُمَا وَبَدَتْ أَقْدَامُهُمَا فَقَالَ: هَذِهِ أَقْدَامٌ بَعْضُهَا مِنْ بَعْضٍ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا مَنْصُورُ بْنُ أَبِي مُزَاحِمٍ نا إِبْرَاهِيمُ بْنُ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «دَخَلَ قَائِفٌ وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَاهِدٌ وَأُسَامَةُ بْنُ زَيْدٍ وَزَيْدُ بْنُ حَارِثَةَ مُضْطَجِعَانِ، فَقَالَ: إِنَّ هَذِهِ الْأَقْدَامَ بَعْضُهَا مِنْ بَعْضٍ، فَسُرَّ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ وَأَعْجَبَهُ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عَمْرُو بْنُ عُثْمَانَ الْحِمْصِيُّ نا الْوَلِيدُ - هُوَ ابْنُ مُسْلِمٍ - عَنِ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسِ بْنِ مَالِكٍ فَذَكَرَ «حَدِيثَ الْعُرَنِيِّينَ وَقَتْلِهِمْ الرِّعَاءَ وَأَخْذِهِمْ إبِلَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ أَنَسٌ فَبَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَافَةً فِي طَلَبِهِمْ فَأُتِيَ بِهِمْ» وَذَكَرَ الْحَدِيثَ.

فَصَحَّ أَنَّ " الْقِيَافَةَ " عِلْمٌ صَحِيحٌ يَجِبُ الْقَضَاءُ بِهِ فِي الْأَنْسَابِ وَالْآثَارِ.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي رَجُلٍ وَقَعَ عَلَى امْرَأَةٍ لِعَبْدِهِ وَهِيَ أَمَتُهُ؟ قَالَ: فَدَعَا لَهُمَا الْقَافَةَ، فَإِنَّ عُرْوَةَ بْنَ الزُّبَيْرِ أَخْبَرَنِي: أَنَّ عُمَرَ بْنَ الْخَطَّابِ دَعَا الْقَافَةَ فِي رَجُلَيْنِ اشْتَرَكَا فِي الْوُقُوعِ عَلَى امْرَأَةٍ فِي طُهْرٍ وَاحِدٍ، وَادَّعَيَا وَلَدَهَا؟ فَأَلْحَقَهُ بِأَحَدِهِمَا.

قَالَ الزُّهْرِيُّ: أَخَذَ عُمَرُ بْنُ الْخَطَّابِ وَمَنْ بَعْدَهُ بِنَظَرِ الْقَافَةِ فِي مِثْلِ هَذَا.

Sakhtiyani, from Muhammad ibn Sirin, who said: A dispute was brought before Abu Musa al-Ash'ari concerning a child claimed by a Dihqan and an Arab man. He summoned the Qafah, who examined him and said to the Arab: "You are dearer to us than this non-Arab, but he is not your son. Relinquish your claim, for he is his son."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: اخْتُصِمَ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ فِي وَلَدٍ ادَّعَاهُ دُهْقَانٌ، وَرَجُلٌ مِنَ الْعَرَبِ، فَدَعَا الْقَافَةَ فَنَظَرُوا إِلَيْهِ فَقَالُوا لِلْعَرَبِيِّ: أَنْتَ أَحَبُّ إِلَيْنَا مِنْ هَذَا الْعِلْجِ، وَلَكِنْ لَيْسَ بِابْنِكَ فَخَلِّ عَنْهُ فَإِنَّهُ ابْنُهُ.

L33223–33225 Muhammad ibn Saʿīd ibn Nabāt narrated to us; 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; Abū Aḥmad al-Zubayrī narrated to us; Sufyān al-Thawrī narrated from [...]. Abd al-Karim al-Jazari reported from Ziyad ibn Abi Ziyad, who said: Did Ibn Abbas deny paternity of a child of his? Ibn Abbas then summoned Ibn Kaladah al-Qa'if, the physiognomist, for him. Ibn Kaladah said to him: "Know that this is indeed his child!" Thereupon Ibn Abbas acknowledged the child's paternity.

ثنا 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 سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ زِيَادِ بْنِ أَبِي زِيَادٍ قَالَ: انْتَفَى ابْنُ عَبَّاسٍ مِنْ وَلَدٍ لَهُ؟ فَدَعَا لَهُ ابْنُ كَلَدَةَ الْقَائِفَ، فَقَالَ لَهُ: أَمَا إِنَّهُ وَلَدُهُ، فَادَّعَاهُ ابْنُ عَبَّاسٍ.

L33226 From the chain of ʿAbd al-Razzāq, from Ibn Jurayj, who reported from Yaḥyā ibn Saʿīd al-Qaṭṭān and Abū al-Zināد—both of whom narrated from Saʿīd ibn al-Musayyib—who said: "If he has a child, let him summon the Qāfah [lineage experts] for the child."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ وَأَبُو الزِّنَادِ، كِلَاهُمَا عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ قَالَ: إِنْ كَانَ لَهُ وَلَدٌ فَلْيَدْعُ لَهُ بِالْقَافَةِ.

L33227 This is also the view of Qatādah, others, Mālik, al-Shāfiʿī, and the majority of our scholars. However, Mālik stated: "Judgment is not rendered based on the statement of the Qāfah except in the case of the son of a slave woman, not the son of a free woman"—but this is erroneous, for the report we cited earlier from Mujazziz al-Mudliji concerning Usāmah ibn Zayd—may Allah be pleased with them both—which is the foundation of Mālik's position and our own foundation in ruling based on the Qāfah, in fact applies to the son of a free woman, not the son of a slave woman.

وَبِهِ يَقُولُ قَتَادَةُ، وَغَيْرُهُ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَجُمْهُورُ أَصْحَابِنَا: إِلَّا أَنَّ مَالِكًا قَالَ: لَا يُحْكَمُ بِقَوْلِ الْقَافَةِ إِلَّا فِي وَلَدِ أَمَةٍ لَا فِي وَلَدِ حُرَّةٍ - وَهَذَا خَطَأٌ، لِأَنَّ الْأَثَرَ الَّذِي أَوْرَدْنَا آنِفًا مِنْ قَوْلِ مُجَزِّزٍ الْمُدْلِجِيِّ فِي أُسَامَةَ بْنِ زَيْدٍ - رَضِيَ اللَّهُ عَنْهُمَا - الَّذِي هُوَ عُمْدَةُ مَالِكٍ وَعُمْدَتُنَا فِي الْحُكْمِ بِالْقَافَةِ إِنَّمَا جَاءَ فِي ابْنِ حُرَّةٍ لَا فِي ابْنِ أَمَةٍ.

L33228 Neither Abū Ḥanīfah nor his companions deemed valid rulings based on the qiyāfah. They argued against it by claiming it constitutes judgment through conjecture, yet they establish religious laws and nullify the divine ordinances of Allah the Exalted and the rulings of His Messenger—peace and bless-

وَلَمْ يَرَ أَبُو حَنِيفَةَ وَلَا أَصْحَابُهُ الْحُكْمَ بِالْقَافَةِ - وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّهُ حُكْمٌ بِالظَّنِّ - وَهُمْ يُشَرِّعُونَ الشَّرَائِعَ، وَيُبْطِلُونَ أَحْكَامَ اللَّهِ تَعَالَى وَأَحْكَامَ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ

ings be upon him—through analogical reasoning which they themselves acknowledge is conjecture. But they have lied: the qiyāfah does not judge by conjecture, but rather by sound knowledge learned by those who pursue it and dedicate themselves to its study. The Messenger of Allah—peace and blessings be upon him—would never judge through conjecture.

وَسَلَّمَ - بِالْقِيَاسِ الَّذِي يُقِرُّونَ بِأَنَّهُ ظَنٌّ - وَقَدْ كَذَبُوا: مَا حَكَمَ الْقَافَةُ بِظَنٍّ، بَلْ بِعِلْمٍ صَحِيحٍ يَتَعَلَّمُهُ مَنْ طَلَبَهُ وَعُنِيَ بِهِ، وَمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيَحْكُمَ بِالظَّنِّ.

L33229 Then, despite all this, they judge according to the ignorance of Abu Hanifa, who attributes the child to two wives, making each one of them his birth mother. He grants the child the inheritance rights of a son from each mother, grants the mothers inheritance rights from the child, and prohibits him from marrying any of the sisters of both mothers. This is true folly and utter blind ignorance - not what pleased the Messenger of Allah (may Allah bless him and grant him peace) nor the rulings enacted by the Companions (may Allah be pleased with them). Nothing escapes the judgment of al-Qāfah (lineage experts) except one scenario: when two or more men dispute paternity of the child. In this case, if there is neither clear evidence nor customary recognition of whose marriage bed it was, a lot is drawn between them as we previously mentioned.

ثُمَّ مَعَ هَذَا كُلِّهِ يَحْكُمُونَ بِجَهْلِ أَبِي حَنِيفَةَ، إذْ يُلْحِقُ الْوَلَدَ بِامْرَأَتَيْنِ يَجْعَلُ كُلَّ وَاحِدَةٍ مِنْهُمَا أُمَّهُ الَّتِي وَلَدَتْهُ، وَيُورِثُهُ مِنْهُمَا مِيرَاثَ الِابْنِ مِنْ الْأُمِّ، وَيُورِثُهُمَا مِنْهُ مِيرَاثَ الْأُمِّ مِنْ الْوَلَدِ، وَيُحَرِّمُ عَلَيْهِ أَخَوَاتِهِمَا جَمِيعًا - فَهَذَا هُوَ الرُّعُونَةُ حَقًّا، وَالْجَهْلُ الْأَعْمَى، لَا مَا سُرَّ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحَكَمَ بِهِ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا يَخْرُجُ عَنْ حُكْمِ الْقَافَةِ شَيْءٌ إلَّا مَوْضِعٌ وَاحِدٌ -: وَهُوَ الرَّجُلَانِ فَصَاعِدًا يَتَدَاعَيَانِ الْوَلَدَ؟ فَإِنَّ هَاهُنَا إنْ لَمْ تَكُنْ بَيِّنَةٌ وَلَا عُرْفٌ لِأَيِّهِمَا كَانَ الْفِرَاشُ، وَإِلَّا أُقْرِعَ بَيْنَهُمَا كَمَا ذَكَرْنَا.

L33230 From what has been narrated through the chain of Abdullah or Sufyan al-Thawri, from Salih ibn Hayy, from Abd Khayr al-Hadhrami, from Zayd ibn Arqam, who said: "Ali was in Yemen when a woman was brought to him who had intercourse with three men within a single period of purity (tuhr). He asked two: 'Do you acknowledge this child?' They refused. Then he asked two: 'Do you acknowledge this child?' They refused. Then he asked two until he finished. He cast lots among them, assigning the child to the one selected by the lot and obligated him to pay two-thirds of the diyah. This matter was referred to the Messenger of Allah—peace and blessings be upon him—and he laughed until his molars showed."

لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ أَوْ عَنْ سُفْيَانَ الثَّوْرِيِّ، عَنْ صَالِحِ بْنِ حَيٍّ عَنْ عَبْدِ خَيْرٍ الْحَضْرَمِيِّ عَنْ زَيْدِ بْنِ أَرْقَمَ قَالَ: «كَانَ عَلِيٌّ بِالْيَمَنِ فَأَتَى بِامْرَأَةٍ وَطِئَهَا ثَلَاثَةٌ فِي طُهْرٍ وَاحِدٍ، فَسَأَلَ اثْنَيْنِ: أَتُقِرَّانِ لِهَذَا بِالْوَلَدِ؟ فَلَمْ يُقِرَّا، ثُمَّ سَأَلَ اثْنَيْنِ: أَتُقِرَّانِ لِهَذَا بِالْوَلَدِ؟ فَلَمْ يُقِرَّا، ثُمَّ سَأَلَ اثْنَيْنِ، حَتَّى فَرَغَ، فَأَقْرَعَ بَيْنَهُمْ، فَأَلْزَمَ الْوَلَدَ لِلَّذِي خَرَجَتْ لَهُ الْقُرْعَةُ، وَجَعَلَ عَلَيْهِ ثُلُثَيْ الدِّيَةِ فَرَفَعَ ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَضَحِكَ حَتَّى بَدَتْ نَوَاجِذُهُ» .

L33231–33233 Abu Muhammad said: The Messenger of Allah—peace and blessings be upon him—would not laugh without disapproving of what he saw or disapproving of what he heard that was not. It is entirely permissible unless it brings him joy—and he (peace and blessings be upon him) is only pleased by the truth—and it is not permissible for him to hear falsehood and then approve of it.

قَالَ أَبُو مُحَمَّدٍ: لَا يَضْحَكُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دُونَ أَنْ يُنْكِرَ مَا يَرَى أَوْ يَسْمَعُ مَا لَا يَجُوزُ أَلْبَتَّةَ إلَّا أَنْ يَكُونَ سُرُورًا بِهِ - وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يُسَرُّ إلَّا بِالْحَقِّ - وَلَا يَجُوزُ أَنْ يَسْمَعَ بَاطِلًا فَيُقِرَّهُ.

وَهَذَا خَبَرٌ مُسْتَقِيمُ السَّنَدِ، نَقَلَتُهُ كُلُّهُمْ ثِقَاتٌ، وَالْحُجَّةُ بِهِ قَائِمَةٌ، وَلَا يَصِحُّ خِلَافُهُ أَلْبَتَّةَ.

L33234 This is a report with a sound chain of transmission; all its narrators are trustworthy, the proof based on it is established, and contradicting it is utterly invalid.

فَإِنْ قِيلَ: إِنَّهُ خَبَرٌ اُضْطُرِبَ فِي إِسْنَادِهِ، فَأَرْسَلَهُ شُعْبَةُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنِ الشَّعْبِيِّ عَنْ مَجْهُولٍ.

L33235 If it is said: It is a narration with an inconsistent chain because Shu'bah narrated it as mursal from Salamah ibn Kuhayl from Al-Sha'bi from an unknown narrator.

وَرَوَاهُ أَبُو إِسْحَاقَ عَنْ رَجُلٍ مِنْ حَضْرَمَوْتَ عَنْ زَيْدِ بْنِ أَرْقَمَ؟ قُلْنَا: هَذَا الْعَجَبُ، فَكَانَ مَاذَا؟ قَدْ وَصَلَهُ سُفْيَانُ - وَلَيْسَ هُوَ دُونَ شُعْبَةَ - عَنْ صَالِحِ بْنِ حَيٍّ - وَهُوَ ثِقَةٌ - عَنْ عَبْدِ خَيْرٍ - وَهُوَ ثِقَةٌ - عَنْ زَيْدِ بْنِ أَرْقَمَ - وَإِنَّ مَنْ يَتَعَلَّلُ بِهَذَا ثُمَّ يَرُدُّ السُّنَّةَ بِرِوَايَةِ شَيْخٍ مِنْ بَنِي كِنَانَةَ إِنَّ هَذَا لَعَظِيمُ الْمُجَاهَرَةِ، وَقَدْ كَانَ يَنْبَغِي أَنْ يَرْدَعَهُ الْحَيَاءُ عَنِ الرِّضَا بِهِ؟ لَا سِيَّمَا أَبَا حَنِيفَةَ، وَأَصْحَابَهُ الْقَائِلِينَ: إِنْ ادَّعَى الْوَلَدَ اثْنَانِ - وَهُوَ فِي أَيْدِيهِمَا - فَهُوَ ابْنُهُمَا يَرِثَانِهِ وَيَرِثُهُمَا، ثُمَّ اخْتَلَفُوا فَافْتَضَحُوا فِي اخْتِلَافِهِمْ؟ كَمَا افْتَضَحُوا فِي اتِّفَاقِهِمْ فِي وَلَدٍ ادَّعَاهُ ثَلَاثَةُ نَفَرٍ فَصَاعِدًا فَقَالَ أَبُو حَنِيفَةَ: هُوَ ابْنُهُمْ كُلُّهُمْ وَلَوْ كَانُوا أُلُوفًا.

L33236 And Abu Ishaq narrated it from a man of Hadramawt through Zayd ibn Arqam? We said: "This is astonishing—what then occurred?" Sufyan (who is not inferior to Shu'bah) conveyed it via Salih ibn Hayy—a trustworthy narrator—from 'Abd Khayr—also trustworthy—from Zayd ibn Arqam. Indeed, whoever uses this as a pretext and then rejects the Sunnah based on a narration from a sheikh of Banu Kinanah—this is immense audacity! Shouldn't shame have prevented him from accepting this? Particularly Abu Hanifah and his companions who assert: "If two claimants allege a child's parentage while he is in their custody, he becomes their son—they inherit from him and he inherits from them." Then they differed and were exposed in their disagreement—just as they were disgraced in their consensus regarding a child claimed by three or more individuals. Abu Hanifah declared: "He is the son of them all, even if they numbered a thousand."

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: يَكُونُ ابْنَ ثَلَاثَةٍ وَلَا يَكُونُ ابْنَ أَكْثَرَ.

L33237 Muhammad ibn al-Hasan said: He is a son of three and not a son of more.

وَقَالَ أَبُو يُوسُفَ: لَا يَكُونُ إِلَّا ابْنَ اثْنَيْنِ فَقَطْ لَا ابْنَ أَكْثَرَ - فَهُوَ هُوَ الْفُحْشُ وَالسُّخَامُ وَالضَّلَالُ؟ لَا اتِّبَاعُ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L33238 Abu Yusuf said: It can only be the offspring of two parents exclusively, not of more than two. Is that not immorality, soot [of sin], and misguidance? There is no adherence to what has been authentically established from the Messenger of Allah—may Allah bless him and grant him peace.

وَمَوَّهُوا فِي إِلْحَاقِهِمْ الْوَلَدَ بِاثْنَيْنِ بِرِوَايَةٍ سَاقِطَةٍ عَنْ عُمَرَ، لِأَنَّهَا مُرْسَلَةٌ مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ عُمَرَ، وَلَمْ يَحْفَظْ سَعِيدٌ عَنْ عُمَرَ شَيْئًا إِلَّا نَعْيَ النُّعْمَانِ بْنِ مُقَرِّنٍ عَلَى الْمِنْبَرِ، مَعَ أَنَّ فِيهَا: أَنَّهُ حَكَمَ مَعَ الْقَافَةِ بِذَلِكَ.

L33239 They obscured their attribution of the child to two fathers by citing a defective narration from 'Umar, as it is a mursal narration (with an interrupted chain) transmitted through Sa'īd ibn al-Musayyab from 'Umar. Sa'īd preserved nothing from 'Umar except the announcement of al-Nu'mān ibn Muqarrin's death on the pulpit. Yet the narration states he ruled in accordance with the Qāfah (lineage experts) on this matter.

وَمِنْ طَرِيقِ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُمَرَ، وَلَمْ يُدْرِكْهُ أَصْلًا.

وَمِنْ طَرِيقِ ابْنِ سِيرِينَ عَنْ عُمَرَ أَنَّهُ تَوَقَّفَ فِيهِ.

وَرِوَايَةٌ عَنْ عَلِيٍّ فِيهَا قَالُوسُ بْنُ أَبِي ظَبْيَانَ، وَهُوَ ضَعِيفٌ، وَفِيهَا: أَنَّهُ لِلثَّانِي مِنْكُمَا.

وَالثَّابِتُ عَنْ عُمَرَ فِي ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: إنَّ رَجُلَيْنِ ادَّعَيَا وَلَدًا؟ فَدَعَا عُمَرُ الْقَافَةَ، وَاقْتَدَى فِي ذَلِكَ بِبَصَرِ الْقَافَةِ، وَأَلْحَقَهُ بِأَحَدِ الرَّجُلَيْنِ - وَعُرْوَةُ قَدْ اعْتَمَرَ مَعَ عُمَرَ.

وَرِوَايَةٌ أُخْرَى مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ قَالَ هِشَامٌ: وَسَمِعْته يُحَدِّثُ أَبِي قَالَ: إنَّ رَجُلَيْنِ وَقَعَا بِامْرَأَةٍ فِي الْجَاهِلِيَّةِ، فَوَلَدَتْ غُلَامًا، فَلَمَّا كَانَ عُمَرُ ادَّعَيَاهُ جَمِيعًا؟ فَدَعَا عُمَرُ رَجُلًا مِنْ بَنِي كَعْبٍ فَقَالَ: انْظُرْ فَاسْتَبْطِنْ وَاسْتَظْهِرْ؟ فَقَالَ: وَالَّذِي أَكْرَمَك بِالْخِلَافَةِ لَقَدْ اشْتَرَكَ فِيهِ جَمِيعًا، فَضَرَبَهُ عُمَرُ بِالدِّرَّةِ حَتَّى اضْطَجَعَ، وَقَالَ لَهُ عُمَرُ: لَقَدْ ذَهَبَ بِك النَّظَرُ إلَى غَيْرِ مَذْهَبٍ - ثُمَّ دَعَا عُمَرُ بِالْمَرْأَةِ فَسَأَلَهَا، فَقَالَتْ: هَذَا كَانَ يَطَؤُنِي، فَإِذَا كَانَ يَطَؤُنِي حَمَانِي مِنْ النَّاسِ حَتَّى إذَا اسْتَمَرَّ بِي الْحَمْلُ خَلَا بِي فَأَهْرَقْتُ دَمًا كَثِيرًا فَجَاءَنِي هَذَا فَوَطِئَنِي، فَلَا أَدْرِي مِنْ أَيِّهِمَا هُوَ؟ فَقَالَ الْكَعْبِيُّ: اللَّهُ أَكْبَرُ، شُرَكَاءُ فِيهِ وَرَبِّ الْكَعْبَةِ، فَقَالَ عُمَرُ: أَمَّا أَنَا فَقَدْ رَأَيْت مَا رَأَيْت، ثُمَّ قَالَ لِلْغُلَامِ: اخْتَرْ أَيَّهُمَا شِئْت؟ قَالَ يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ: فَلَقَدْ رَأَيْت حِينَ سَفَعَ أَحَدُهُمَا بِيَدِ الْغُلَامِ ثُمَّ ذَهَبَ بِهِ.

L33240 And through the chain of Ibrāhīm al-Nakhaʿī from ʿUmar; Ibrāhīm al-Nakhaʿī never met him.

L33241 Via the chain of Ibn Sīrīn from ʿUmar that he refrained from ruling on it.

L33242–33243 And a narration from ʿAlī mentions Qālūs ibn Abī Ẓabyān—a weak narrator—and states in it: “It is for the second of you two.”

L33244 What has been established from ʾUmar regarding this matter is what we narrated through the chain of ʾAbd al-Razzāq from Maʾmar from al-Zuhrī from ʾUrwah ibn al-Zubayr, who said: Two men claimed a child. ʾUmar summoned the lineage experts, followed the judgment of the lineage experts in this matter, and ruled to assign the child to one of the two men. ʾUrwah had performed ʾUmrah with ʾUmar.

L33245 Another narration from the path of Hammad ibn Salamah, from Hisham ibn Urwah, from his father, from Yahya ibn Abd al-Rahman ibn Hatib, who said: Hisham said—and I heard him narrate to my father—that two men had relations with a woman in the pre-Islamic era, and she bore a boy. When Umar became caliph, both claimed him. Umar summoned a man from Banu Kaʿb and said: “Examine him thoroughly, inspecting both his hidden and apparent traits.” The man replied: “By Him who honored you with leadership, they both shared in him!” Umar struck him with a cane until he fell prostrate, saying: “Your judgment has deviated from the correct path!” Then Umar summoned the woman and questioned her. She said: “This man used to lie with me and shielded me from others. When my pregnancy became evident, he abandoned me. I menstruated heavily, then this other man came and lay with me. I do not know which of them is the father.” The Kaʿbi man declared: “Allah is greatest! They are partners in him, by the Lord of the Kaaba!” Umar said: “As for me, I have seen what I have seen,” then told the boy: “Choose whichever you wish.” Yahya ibn Abd al-Rahman said: “I saw one of them grab the boy by the hand and take him away.”

L33246 A narration through the chain of Shuʿbah from Tawbah al-Anbari from al-Shaʿbi from Ibn ʿUmar, who said: Two men shared relations with a woman during her purity period, and she gave birth to a boy. ʿUmar summoned the

lineage experts? They said, “The child bears resemblance to both of them altogether.” So ʻUmar assigned the child to both of them.

وَرِوَايَةٌ مِنْ طَرِيقِ شُعْبَةَ عَنْ تَوْبَةَ الْعَنْبَرِيِّ عَنْ الشَّعْبِيِّ عَنْ ابْنِ عُمَرَ قَالَ: اشْتَرَكَ رَجُلَانِ فِي طُهْرِ امْرَأَةٍ فَوَلَدَتْ غُلَامًا فَدَعَا عُمَرُ بِالْقَافَةِ؟ فَقَالُوا: قَدْ أَخَذَ الشَّبَهَ مِنْهُمَا جَمِيعًا، فَجَعَلَهُ عُمَرُ بَيْنَهُمَا.

L33247 Abu Muhammad said: Tawbah al-Anbari is weak, and there is consensus on his weakness.

قَالَ أَبُو مُحَمَّدٍ: تَوْبَةُ الْعَنْبَرِيُّ ضَعِيفٌ، مُتَّفَقٌ عَلَى ضَعْفِهِ.

L33248 Moreover, all of this contradicts their position, as it constitutes a ruling based on qāfah (lineage determination through physical resemblance). The statement of Ibn Umar—“he placed him between them”—does not indicate that he legally affiliated him with both lineages. Rather, the apparent meaning of his words “he placed him between them” is that he held him between them until the basis for the ruling became evident to him. Is it permissible to presume anything other than this of Umar? We do not know of any precedent from the early scholars regarding the legal affiliation of a child to two fathers except from Ibrāhīm al-Nakhaʿī, and no one besides the Messenger of Allah—peace and blessings be upon him—constitutes a valid proof. What is definitively established from him—peace and blessings be upon him—contradicts the permissibility of a child originating from the semen of two fathers.

ثُمَّ هَذَا كُلُّهُ بِخِلَافِ قَوْلِهِمْ، لِأَنَّهُ حُكْمٌ بِالْقَافَةِ، وَقَوْلُ ابْنِ عُمَرَ: جَعَلَهُ بَيْنَهُمَا، لَيْسَ فِيهِ: أَنَّهُ أَلْحَقَهُ بِنَسَبِهِمَا، لَكِنَّ الظَّاهِرَ مِنْ قَوْلِهِ " جَعَلَهُ بَيْنَهُمَا " أَيْ وَقَفَهُ بَيْنَهُمَا حَتَّى يَلُوحَ لَهُ فِيهِ وَجْهُ الْحُكْمِ، لَا يَجُوزُ أَنْ يُظَنَّ بِعُمَرَ غَيْرَ هَذَا؟ وَمَا نَعْرِفُ إلْحَاقَ الْوَلَدِ بِاثْنَيْنِ عَنْ أَحَدٍ مِنْ الْمُتَقَدِّمِينَ إلَّا عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالثَّابِتُ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - يُكَذِّبُ جَوَازَ كَوْنِ وَلَدٍ مِنْ مَنِيِّ أَبَوَيْنِ.

L33249–33250 And it is that which was narrated to us through the chain of Muslim: From Abū Bakr ibn Abī Shaybah and Muḥammad ibn ʿAbdillāh ibn Numayr—each of them says: From Abū Muʿāwiyah (the blind one) and Wakīʿ, both of whom said: From al-Aʿmash from Zayd ibn Wahb from ʿAbdillāh ibn Masʿūd that the Messenger of Allāh—peace and blessings of Allāh be upon him—said: “Indeed, the formation of one of you is gathered in his mother’s womb for forty days, then he becomes a clinging clot for a similar period, then he becomes a chewed substance for a similar period, then the angel is sent and he breathes the soul into him”—and he related the rest of the ḥadīth.

وَهُوَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ كُلُّ وَاحِدٍ مِنْهُمَا يَقُولُ: نَا أَبُو مُعَاوِيَةَ - هُوَ الضَّرِيرُ - وَوَكِيعٌ، قَالَا جَمِيعًا: نا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ أَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ أَحَدَكُمْ يُجْمَعُ خَلْقُهُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا ثُمَّ يَكُونُ عَلَقَةً مِثْلَ ذَلِكَ ثُمَّ يَكُونُ مُضْغَةً مِثْلَ ذَلِكَ ثُمَّ يُرْسَلُ الْمَلَكُ فَيَنْفُخُ فِيهِ الرُّوحَ» وَذَكَرَ الْحَدِيثَ.

L33251 Thus, it is firmly established that the count begins from the moment the nutfah (semen drop) is deposited. Without doubt, the minute in which the nutfah settles in the womb is not the same minute in which the semen of the second partner is deposited. If it were permissible for the two fluids to combine and produce a single child, the count would be rendered false. For

فَصَحَّ يَقِينًا أَنَّ ابْتِدَاءَ الْعَدَدِ مِنْ حِينِ وُقُوعِ النُّطْفَةِ، وَبِلَا شَكٍّ أَنَّ الدَّقِيقَةَ الَّتِي تَقَعُ فِيهَا النُّطْفَةُ فِي الرَّحِمِ هِيَ غَيْرُ الدَّقِيقَةِ الَّتِي يَقَعُ فِيهَا مَنِيُّ الْوَاطِئِ الثَّانِي، فَلَوْ جَازَ أَنْ

if counted from the time the first nutfah is deposited, it belongs solely to the first. If the second is added to it, the count would begin from the time the second semen settles, inevitably causing a decrease and increase in some of the forty days without doubt. They are more deserving of being linked to falsehood and its people than the Messenger of Allah—peace and blessings be upon him—the Truthful.

يُجْمَعَ الْمَاءَانِ فَيَصِيرَ مِنْهُمَا وَلَدٌ وَاحِدٌ، لَكَانَ الْعَدَدُ مَكْذُوبًا فِيهِ، لِأَنَّهُ إِنْ عَدَّ مِنْ حِينِ وُقُوعِ النُّطْفَةِ الْأُولَى، فَهُوَ لِلْأَوَّلِ وَحْدَهُ فَلَوْ اسْتَضَافَ إِلَيْهِ الثَّانِيَ لَابْتَدَأَ الْعَدَدُ مِنْ حِينِ حُلُولِ الْمَنِيِّ الثَّانِي، فَكَانَ يَكُونُ فِي بَعْضِ الْأَرْبَعِينَ يَوْمًا نَقْصٌ وَزِيَادَةٌ بِلَا شَكٍّ، وَهُمْ أَوْلَى بِالْكَذِبِ وَأَهْلِهِ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الصَّادِقِ.

L33252 How astonishing that they said: Abu Hanifah did not rule that the child is actually the son of two women - meaning each of them gave birth to him - yet he obligated the right of motherhood for each of them?

وَالْعَجَبُ أَنَّهُمْ قَالُوا: لَمْ يَحْكُمْ أَبُو حَنِيفَةَ بِأَنَّ الْوَلَدَ يَكُونُ ابْنَ امْرَأَتَيْنِ مُحَقِّقًا: أَنَّ كُلَّ وَاحِدَةٍ مِنْهُمَا وَلَدَتْهُ، لَكِنْ أَوْجَبَ لِكُلِّ وَاحِدَةٍ مِنْهُمَا حَقَّ الْأُمُومَةِ؟ .

L33253 So we said: This is undoubtedly injustice, oppression, and falsehood—to impose the legal ruling of a mother upon one who is not a mother, without any Qur'anic text, Sunnah, or statement from any of Allah the Exalted's creation before this, except through corrupt reasoning. And we ask Allah for well-being.

فَقُلْنَا: وَهَذَا جَوْرٌ وَظُلْمٌ وَبَاطِلٌ بِلَا شَكٍّ أَنْ يُوجَبَ لِغَيْرِ أُمٍّ حُكْمُ أُمٍّ بِلَا نَصِّ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا قَوْلِ أَحَدٍ مِنْ خَلْقِ اللَّهِ تَعَالَى قَبْلَهُ إِلَّا الرَّأْيَ الْفَاسِدَ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

L33254 As for our statement that if the parentage of a child is contested between a Muslim and a disbeliever, the child is affiliated with the Muslim, this is based on the words of Allah, the Almighty: "Set your heart steadfastly toward the true religion, devoting yourself exclusively to Him—[according to] the natural disposition of Allah upon which He created mankind. There is no altering Allah's design. That is the upright religion, but most people do not know." [Ar-Rum 30:30][11]

وَأَمَّا قَوْلُنَا: إِنْ تَدَاعَى فِي الْوَلَدِ مُسْلِمٌ وَكَافِرٌ: أُلْحِقَ بِالْمُسْلِمِ، فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لا يَعْلَمُونَ} [الروم: ٣٠] .

L33255 The established from the statement of the Messenger of Allah—peace and blessings be upon him—is: "Every child is born upon the fitrah."

وَالثَّابِتُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «كُلُّ مَوْلُودٍ يُولَدُ عَلَى الْفِطْرَةِ» .

L33256 We have also narrated it according to the creed: a child may not be diverted from the innate disposition (fitrah) upon which he was born except with certainty that the parentage belongs to a disbeliever without ambiguity - such that his parents would make him a Jew, Christian, Zoroastrian, or one who associates partners with Allah. Success comes solely from Allah, the Exalted.

وَرُوِّينَاهُ أَيْضًا عَلَى الْمِلَّةِ: حَتَّى يَكُونَ أَبَوَاهُ يُهَوِّدَانِهِ أَوْ يُنَصِّرَانِهِ أَوْ يُمَجِّسَانِهِ أَوْ يُشَرِّكَانِهِ، فَلَا يَجُوزُ أَنْ يُنْقَلَ عَمَّا وُلِدَ عَلَيْهِ مِنْ الْفِطْرَةِ الَّتِي وُلِدَ عَلَيْهَا إِلَّا بِيَقِينٍ كَوْنِ الْفِرَاشِ لِكَافِرٍ بِلَا إِشْكَالٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur'an references (L33254):** Qur'an 30:30 (Ar-Rum).

[نِكَاحُ الْأَمَةِ] [مَسْأَلَةٌ كَانَتْ مَمْلُوكَةٌ لَهَا زَوْجٌ عَبْدٌ أَوْ حُرٌّ فَأُعْتِقَتْ]

١٩٤٢ - مَسْأَلَةٌ: وَإِذَا كَانَتْ مَمْلُوكَةٌ لَهَا زَوْجٌ عَبْدٌ أَوْ حُرٌّ - وَلَوْ أَنَّهُ قُرَشِيٌّ - فَأُعْتِقَتْ فِي وَاجِبٍ، أَوْ تَطَوُّعٍ، أَوْ بِتَمَامِ أَدَاءِ مُكَاتَبَتِهَا، أَوْ بِأَيِّ وَجْهٍ عَتَقَتْ، فَإِنَّهَا تُخَيَّرُ، فَإِنْ اخْتَارَتْ فِرَاقَهُ فَلَهَا ذَلِكَ، وَإِنْ اخْتَارَتْ أَنْ تُقِرَّ عِنْدَهُ فَلَهَا ذَلِكَ، وَقَدْ بَطَلَ خِيَارُهَا، وَعَلَيْهَا الْعِدَّةُ فِي اخْتِيَارِهَا فِرَاقَهُ كَعِدَّةِ الطَّلَاقِ - وَلَيْسَ فِي شَيْءٍ مِنْ وُجُوهِ الْفَسْخِ عِدَّةٌ أَصْلًا إلَّا فِي هَذَا الْمَكَانِ - وَعِدَّةِ الْوَفَاةِ فِي مَوْتِ الزَّوْجِ فَقَطْ، فَإِنْ أَرَادَا جَمِيعًا أَنْ يَتَنَاكَحَا لَمْ يَجُزْ إلَّا بِرِضَاهُمَا، وَبِإِشْهَادٍ، وَصَدَاقٍ، وَوَلِيٍّ، وَلَهُ ذَلِكَ فِي عِدَّتِهَا، وَلَيْسَ ذَلِكَ لِغَيْرِهِ حَتَّى تُتِمَّ عِدَّتَهَا، وَلَا يَسْقُطُ خِيَارُهَا إذَا أُعْتِقَتْ طُولَ بَقَائِهَا مَعَهُ وَلَا وَطْؤُهُ لَهَا بِرِضَاهَا، أَوْ بِغَيْرِ رِضَاهَا، وَلَا عِلْمُهَا بِأَنَّ الْخِيَارَ لَهَا فَإِذَا أُوقِفَتْ فَلَا بُدَّ لَهَا مِنْ أَنْ تَخْتَارَ فِرَاقَهُ أَوْ الْبَقَاءَ مَعَهُ وَلَا تُتْرَكُ تَتَأَنَّى فِي ذَلِكَ أَصْلًا.

بُرْهَانُ ذَلِكَ: «فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي تَخْيِيرِهِ بَرِيرَةَ إذْ أَعْتَقَتْهَا عَائِشَةُ أُمُّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -» .

وَفِي سَائِرِ مَا ذَكَرْنَا خِلَافٌ -: قَالَ قَوْمٌ: إنَّهَا تُخَيَّرُ تَحْتَ الْعَبْدِ، وَلَا تُخَيَّرُ تَحْتَ الْحُرِّ.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إنْ أُعْتِقَتْ تَحْتَ حُرٍّ فَلَا خِيَارَ لَهَا.

The marriage of a female slave: A legal issue concerning a female slave who had a husband (whether a slave or free) and was subsequently emancipated.

1942. Issue: If a female slave having a husband—whether enslaved or free, even if he is Qurayshi—is emancipated through obligatory manumission, voluntary release, fulfillment of her manumission contract, or any means of emancipation, she is granted the choice. If she elects separation, this is permitted. If she chooses to remain with him, this is allowed and her option becomes void. She must observe the waiting period upon choosing separation, equivalent to the divorce waiting period—as no annulment scenario inherently requires a waiting period except this specific instance—and the widow's waiting period applies solely upon the husband's death. If both wish to remarry, this is only valid with mutual consent, witnessed ceremony, dowry, and guardian involvement. The husband may renew the marriage during her waiting period, while others are barred until its completion. Her choice remains valid even if she prolongs cohabitation, experiences marital relations (consensual or otherwise), or lacks awareness of her entitlement. When notified, she must decisively choose separation or continuation—no procrastination is permitted.

The evidence for that is «the action of the Messenger of Allah (may the peace and blessings of Allah be upon him) in giving Barīrah the choice when ʿĀ'ishah, the Mother of the Believers (may Allah be pleased with her), freed her.»

There is disagreement regarding the rest of what we have mentioned: some scholars hold that she is given the choice if married to a slave, but not if married to a free man.

It was narrated to us through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from ʿUbayd Allāh ibn ʿUmar from Nāfiʿ from Ibn ʿUmar, who said: "If she is manumitted while [still] in the marriage of a free man, she retains no right to annul the marriage."

It has been authentically reported from al-Ḥasan, az-Zuhri, Abī Qilābah, ʿAṭā', Ṣafiyyah bint Abī ʿUbayd, and ʿUrwah ibn az-Zubayr. Some people

attribute that to Ibn Abbas—though we do not know this from him—and it is the opinion of Ibn Abi Layla, Al-Awza'i, Malik, Al-Layth, Al-Shafi'i, Abu Thawr, Ahmad ibn Hanbal, Ishaq ibn Rāhawayhi, Abu Sulayman, and all their companions.

وَصَحَّ عَنْ الْحَسَنِ، وَالزُّهْرِيِّ، وَأَبِي قِلَابَةَ، وَعَطَاءٍ، وَصَفِيَّةَ بِنْتِ أَبِي عُبَيْدٍ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَيَنْسُبُ قَوْمٌ ذَلِكَ إلَى ابْنِ عَبَّاسٍ - وَلَا نَعْلَمُ هَذَا عَنْهُ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْأَوْزَاعِيِّ، وَمَالِكٍ، وَاللَّيْثِ، وَالشَّافِعِيِّ وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ.

L33266 A group upheld our view—as transmitted through Abū Dāwūd's chain: Muḥammad ibn Kathīr narrated to us via Sufyān al-Thawrī via Manṣūr ibn al-Muʿtamir via Ibrāhīm al-Nakhaʿī via al-Aswad ibn Yazīd via ʿĀʾishah, Mother of the Believers, who said: "Indeed, Barirah's husband was a free man when she was emancipated and given the choice. She said: 'I do not wish to remain with him even if I were granted such and such.'"

وَقَالَتْ طَائِفَةٌ كَقَوْلِنَا - كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد نا مُحَمَّدُ بْنُ كَثِيرٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ بْنِ يَزِيدَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ " إنَّ زَوْجَ بَرِيرَةَ كَانَ حُرًّا حِينَ أُعْتِقَتْ وَخُيِّرَتْ؟ فَقَالَتْ: مَا أُحِبُّ أَنْ أَكُونَ مَعَهُ وَأَنَّ لِي كَذَا وَكَذَا ".

L33267 And through the route of Ahmad ibn Shu'ayb: 'Amr ibn 'Ali narrated to us, from al-Thaqafi (he is 'Abd al-Wahhab ibn 'Abd al-Majid), from 'Ubayd Allah ibn 'Umar, spanning sixty years, from Yazid ibn Ruman, from 'Urwah ibn al-Zubayr, from Barirah, who said: She was in a three-year [waiting period] – then she related the Hadith – and in it: "The Messenger of Allah (peace and blessings be upon him) said to 'Aisha: 'Purchase her and stipulate for them the right of clientage, for indeed clientage belongs to the one who manumits.'" So she manumitted me, and I had the right of choice (khiyār).

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ عَلِيٍّ نا الثَّقَفِيُّ - هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ - مُذْ سِتِّينَ سَنَةً - عَنْ يَزِيدَ بْنِ رُومَانَ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ بَرِيرَةَ أَنَّهَا قَالَتْ: كَانَتْ فِي ثَلَاثِ سِنِينَ - فَذَكَرَتْ الْحَدِيثَ - وَفِيهِ: «فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعَائِشَةَ اشْتَرِيهَا وَاشْتَرِطِي لَهُمْ الْوَلَاءَ فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ» فَأَعْتَقَتْنِي فَكَانَ لِي الْخِيَارُ.

L33268 Abu Muhammad said: The ruling for Barirah was generalized and not restricted to a slave belonging to a free person.

قَالَ أَبُو مُحَمَّدٍ: فَعَمَّتْ بَرِيرَةُ وَلَمْ تُخَصَّ تَحْتَ عَبْدٍ مِنْ حُرٍّ.

L33269 From the chain of Saʿīd ibn Manṣūr: Hushaym informed us [via] Ibn Abī Laylā, from Nāfiʿ, from Ibn ʿUmar, that he would grant her the option over the free man—and Hushaym holds this opinion as well.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا ابْنُ أَبِي لَيْلَى عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ أَنَّهُ كَانَ يَجْعَلُ لَهَا الْخِيَارَ عَلَى الْحُرِّ - وَبِهِ يَقُولُ هُشَيْمٌ.

L33270 From the chain of Al-Ḥajjāj ibn Al-Minhāl: Yazīd ibn Zuraiʿ narrated to us via Khālid Al-Ḥadhāʾ, from Abū Qilābah, who said: 'Umar ibn Al-Khaṭṭāb stated, "If a female slave is emancipated, she retains the choice provided that

her husband has not had intercourse with her." ʿUmar applied this ruling universally without distinguishing between a male slave and a free man.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ: نا يَزِيدُ بْنُ زُرَيْعٍ نا خَالِدٌ الْحَذَّاءُ عَنْ أَبِي قِلَابَةَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ " إِذَا أُعْتِقَتْ الْأَمَةُ فَلَهَا الْخِيَارُ مَا لَمْ يَطَأْهَا زَوْجُهَا " فَعَمَّ عُمَرُ وَلَمْ يَخُصَّ عَبْدًا مِنْ حُرٍّ.

L33271 And from the narration of Hammad ibn Salamah, from Hammad ibn Abi Sulayman, from Ibrahim al-Nakha'i, that he said regarding a female slave manumitted while married: the choice is upon her husband—whether he is free or enslaved—even if he were someone like Hisham ibn Abd al-Malik.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي الْأَمَةِ تُعْتَقُ تَحْتَ زَوْجٍ: فَهِيَ عَلَيْهِ بِالْخِيَارِ - حُرًّا كَانَ أَوْ عَبْدًا - وَلَوْ أَنَّهُ هِشَامُ بْنُ عَبْدِ الْمَلِكِ.

L33272 From the narration of Abd al-Razzaq, from Sufyan ibn Uyaynah, from Abdullah ibn Tawus, from his father, regarding a female slave emancipated while married: she is given the choice, even if married to a Qurayshi man.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ فِي الْأَمَةِ تُعْتَقُ تَحْتَ زَوْجٍ أَنَّهَا تُخَيَّرُ وَلَوْ كَانَتْ تَحْتَ قُرَشِيٍّ.

L33273 Via the chain of ʿAbd al-Razzāq from Maʿmar from ʿĀṣim from al-Shaʿbī, who said: "When a female slave married to a free man is emancipated, she has the option to dissolve the marriage."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَاصِمٍ عَنْ الشَّعْبِيِّ قَالَ " إِذَا أُعْتِقَتْ تَحْتَ حُرٍّ فَلَهَا الْخِيَارُ ".

L33274–33275 And via the transmission of Ma'mar from Ayyub al-Sakhtiyānī from Ibn Sirin: If a female slave is emancipated in the presence of a free person, she has the option.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ ابْنِ سِيرِينَ إِذَا أُعْتِقَتْ عِنْدَ حُرٍّ فَلَهَا الْخِيَارُ

L33276 On the authority of ʿAbd al-Razzāq from Ibrāhīm ibn Yazīd from ʿAmr ibn Dīnār from Saʿīd ibn al-Musayyab, who said: "The husband of *Barīrah* was a free man."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ يَزِيدَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كَانَ زَوْجُ بَرِيرَةَ حُرًّا.

L33277 And through the chain of Abd al-Razzaq, from Ibn Jurayj, from Husayn ibn Muslim, who said: When a female slave is emancipated in the presence of a free person, she has the option.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ حُسَيْنِ بْنِ مُسْلِمٍ قَالَ: إِذَا أُعْتِقَتْ عِنْدَ حُرٍّ فَلَهَا الْخِيَارُ.

L33278 Abū Muḥammad said: Those who did not grant her the right to choose except in the case of a slave husband cited as evidence the report we transmitted via al-Bukhārī's chain: Qutaybah ibn Saʿīd reported to us; ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī reported to us from Ayyūb al-Sikhtiyānī from

قَالَ أَبُو مُحَمَّد: وَاحْتَجَّ مَنْ لَمْ يُوجِبْ لَهَا الْخِيَارَ إِلَّا تَحْتَ الْعَبْدِ -: بِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ

‘Ikrimah from Ibn ‘Abbās, who said: “Barirah’s husband was a black man called Mughīth, a slave belonging to the sons of so-and-so [fulān], as if I am looking at him.” He mentioned the remainder of the account. Yūsuf ibn ‘Abd Allāh al-Namarī reported to us; ‘Abd al-Wārith ibn Sufyān reported to us; Qāsim ibn Aṣbagh reported to us; Muḥammad ibn Waḍḍāḥ reported to us; Yūsuf ibn ‘Adī reported to us; ‘Abdah ibn Sulaymān reported from Saʿīd ibn Abī ‘Arūbah from Ayyūb al-Sikhtiyānī and Qatādah – both of them transmitting from ‘Ikrimah from Ibn ‘Abbās: “Barirah’s husband was a slave when she was emancipated.”

عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ زَوْجُ بَرِيرَةَ أَسْوَدَ يُقَالُ لَهُ مُغِيثٌ عَبْدًا لِبَنِي فُلَانٍ كَأَنِّي أَنْظُرُ إِلَيْهِ - وَذَكَرَ بَاقِيَ الْخَبَرِ -: نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا عَبْدُ الْوَارِثِ بْنُ سُفْيَانَ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نَا يُوسُفُ بْنُ عَدِيٍّ نا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، وَقَتَادَةَ، كِلَاهُمَا عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: أَنَّ زَوْجَ بَرِيرَةَ كَانَ عَبْدًا حِينَ أُعْتِقَتْ.

L33279 And through the chain of Abu Dawud: Uthman ibn Abi Shaybah narrated to us from Jarir from Hisham ibn Urwah from his father from Aisha, the Mother of the Believers, concerning the case of Barirah—whose husband was a slave—“The Messenger of Allah, peace be upon him, gave her the choice, and she chose herself. Had he been free, he would not have given her the choice.”[12]

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فِي قِصَّةِ بَرِيرَةَ - وَكَانَ زَوْجُهَا عَبْدًا «فَخَيَّرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَاخْتَارَتْ نَفْسَهَا» وَلَوْ كَانَ حُرًّا لَمْ يُخَيِّرْهَا.

L33280 From the chain of Aḥmad ibn Shuʿayb: Isḥāq ibn Ibrāhīm —he is Ibn Rāhawayh— narrated to us, al-Mughīrah ibn Salama narrated to us, Wuḥayb narrated to us from ʿUbayd Allāh ibn ʿUmar from Yazīd ibn Rūmān from ʿUrwah from ʿĀ’ishah, the Mother of the Believers, who said: “The husband of Barirah was a slave.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - نَا الْمُغِيرَةُ بْنُ سَلَمَةَ نا وُهَيْبٌ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ يَزِيدَ بْنِ رُومَانَ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ " كَانَ زَوْجُ بَرِيرَةَ عَبْدًا ".

L33281 From the chain of Aḥmad ibn Shuʿayb, who narrated from Isḥāq ibn Ibrāhīm—he is Ibn Rāhwayh—who narrated from Ḥammād ibn Masʿadah, who narrated from Ibn Mawhab, who narrated from al-Qāsim ibn Muḥammad, who said: “‘Ā’ishah, the Mother of the Believers, had a male slave and a female slave. She said: ’I intended to manumit them both, so I mentioned this to the Messenger of Allah—peace be upon him—and he said: ”Begin with the male slave before the female slave.“”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - نا حَمَّادُ بْنُ مَسْعَدَةَ نا ابْنُ مَوْهَبٍ عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، قَالَ: كَانَ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ غُلَامٌ وَجَارِيَةٌ، قَالَتْ: فَأَرَدْت أَنْ أُعْتِقَهُمَا، فَذَكَرْت ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: «ابْتَدِي بِالْغُلَامِ قَبْلَ الْجَارِيَةِ» .

L33282–33283 From the path of Aḥmad ibn Shuʿayb: I am Aḥmad ibn ʿAbd al-Wāḥid, from Marwān, from al-Layth, from ʿUbayd Allāh ibn Abī Jaʿfar, from al-Ḥasan ibn ʿAmr ibn Umayyah al-Ḍamrī that he narrated to him: Men from the

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْوَاحِدِ نا مَرْوَانُ نا اللَّيْثُ نا عُبَيْدُ اللَّهِ بْنُ أَبِي جَعْفَرٍ عَنِ الْحَسَنِ بْنِ عَمْرِو بْنِ أُمَيَّةَ الضَّمْرِيِّ أَنَّهُ حَدَّثَهُ: أَنَّ رِجَالًا مِنْ أَصْحَابِ

[12] **Hadith references (L33279):** Sunan Abi Dawud 2233; Jami at-Tirmidhi 1154; Sahih Muslim 1504e.

Companions of the Messenger of Allah (peace be upon him) narrated to him that the Messenger of Allah (peace be upon him) said: “If a female slave married to a male slave is freed, she has the choice as long as her husband has not had intercourse with her.”

L33284 They said, “By way of juristic reasoning, no valid marriage contract may be dissolved except with certainty.”

L33285 The proponents of analogy among them said: “She was granted the option solely due to the superiority of free status over slavery. When he becomes her equal in status, she has no option.” Is this all they cited as evidence? Abu Muhammad said: “None of this constitutes valid proof for them. As for the reports stating he was a slave, there is disagreement in what is transmitted from Aisha, the Mother of the Believers—may Allah be pleased with her—as we cited earlier. Only three narrators transmitted this report from her: Al-Aswad, Urwah, and Al-Qasim. Regarding Al-Aswad, there is no differing transmission from him, from the Mother of the Believers, stating he was free.”

L33286 As for Urwah—it was narrated from him, as we cited—that he was a slave, though the contrary was also narrated from him: Ahmad ibn Qasim narrated from my father Qasim ibn Muhammad ibn Qasim, from my grandfather Qasim ibn Asbagh, from Ahmad ibn Yazid the Teacher, from Musa ibn Mu’awiyah, from Jarir, from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers, who said: “Barirah’s husband was a free man.” Thus, the narrations conflicted from Hisham ibn Urwah, from his father, from Aisha, the Mother of the Believers.

L33287 As for al-Qāsim ibn Muḥammad, we were narrated through the chain of Aḥmad ibn Shuʿayb: Muḥammad ibn Ismāʿīl ibn ʿUlayyah reported to me, from Yaḥyā ibn Abī Bukayr, from Shuʿbah, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from his father, from ʿĀ’ishah, who mentioned that Barirah’s husband was a slave. Then ʿAbd al-Raḥmān later said: “I do not know”—so the narration from the Mother of the Believers became conflicting. The narration of Ibn ʿAbbās persisted, stating he was a slave when she was emancipated, though it contradicted the narration from the Mother

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدَّثُوهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «أَيُّمَا أَمَةٍ كَانَتْ تَحْتَ عَبْدٍ فَعَتَقَتْ فَهِيَ بِالْخِيَارِ مَا لَمْ يَطَأْهَا زَوْجُهَا» .

وَقَالُوا: مِنْ طَرِيقِ النَّظَرِ: كُلُّ عَقْدِ نِكَاحٍ صَحِيحٌ فَلَا يَجُوزُ فَسْخُهُ إلَّا بِيَقِينٍ.

وَقَالَ أَصْحَابُ الْقِيَاسِ مِنْهُمْ: إنَّمَا جُعِلَ لَهَا الْخِيَارُ لِفَضْلِ الْحُرِّيَّةِ عَلَى الرِّقِّ فَإِذَا سَاوَاهَا فَلَا خِيَارَ لَهَا - هَذَا كُلُّ مَا احْتَجُّوا بِهِ؟ قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا الْآثَارُ - بِأَنَّهُ كَانَ عَبْدًا، فَقَدْ اُخْتُلِفَ فِي ذَلِكَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - كَمَا أَوْرَدْنَا - وَإِنَّمَا رَوَى هَذَا الْخَبَرَ عَنْهَا ثَلَاثَةٌ الْأَسْوَدُ، وَعُرْوَةُ، وَالْقَاسِمُ -: فَأَمَّا الْأَسْوَدُ - فَلَمْ يَخْتَلِفْ عَنْهُ عَنْ أُمِّ الْمُؤْمِنِينَ أَنَّهُ كَانَ حُرًّا.

وَأَمَّا عُرْوَةُ - فَرُوِيَ عَنْهُ - كَمَا أَوْرَدْنَا - أَنَّهُ كَانَ عَبْدًا - وَقَدْ رُوِيَ عَنْهُ أَيْضًا خِلَافُ ذَلِكَ -: نا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ يَزِيدَ الْمُعَلِّمُ نا مُوسَى بْنُ مُعَاوِيَةَ نا جَرِيرٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، قَالَتْ: كَانَ زَوْجُ بَرِيرَةَ حُرًّا - فَتَعَارَضَتْ الرِّوَايَةُ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ.

وَأَمَّا الْقَاسِمُ بْنُ مُحَمَّدٍ فَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ إسْمَاعِيلَ بْنِ عُلَيَّةَ نا يَحْيَى بْنُ أَبِي بُكَيْرٍ نا شُعْبَةُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ، فَذَكَرَتْ أَنَّ زَوْجَ بَرِيرَةَ كَانَ عَبْدًا - ثُمَّ قَالَ عَبْدُ الرَّحْمَنِ بَعْدَ ذَلِكَ: مَا أَدْرِي فَاضْطَرَبَتْ الرِّوَايَةُ عَنْ أُمِّ الْمُؤْمِنِينَ وَبَقِيَتْ رِوَايَةُ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ عَبْدًا حِينَ أُعْتِقَتْ - وَقَدْ

of the Believens which stated he was free when she was emancipated? We therefore ceased discussing this matter until we could address—the Ḥadīth of ʿUbayd Allāh ibn Abī Jaʿfar.

عَارَضَتْهَا الرِّوَايَةُ عَنْ أُمِّ الْمُؤْمِنِينَ أَنَّهُ كَانَ حُرًّا حِينَ أُعْتِقَتْ؟ فَتَرَكْنَا الْكَلَامَ فِي ذَلِكَ حَتَّى نَتَكَلَّمَ فِي -: حَدِيثِ عُبَيْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ.

L33288 And the hadith of Ibn Mawhab from al-Qasim ibn Muhammad, if Allah, the Exalted and Glorious, wills?

وَحَدِيثِ ابْنِ مَوْهَبٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ؟

L33289–33290 Abu Muhammad said: As for the report stating, "Any female slave married to a male slave who is then emancipated has the choice [to remain or separate] as long as her husband has not consummated the marriage"—this is only transmitted via the chain of Ḥasan ibn ʿAmr ibn Umayyah, who is unknown—i.e., he is not recognized as a reliable narrator—thus, it cannot be relied upon.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْخَبَرُ الَّذِي فِيهِ: «أَيُّمَا أَمَةٍ كَانَتْ تَحْتَ عَبْدٍ فَعَتَقَتْ، فَهِيَ بِالْخِيَارِ مَا لَمْ يَطَأْهَا زَوْجُهَا» - فَإِنَّمَا هُوَ مِنْ طَرِيقِ حَسَنِ بْنِ عَمْرِو بْنِ أُمَيَّةَ - وَهُوَ مَجْهُولٌ - لَا يُعْرَفُ - فَسَقَطَ التَّعَلُّقُ بِهِ.

L33291 Furthermore, even if it were valid, it would contain no proof that there is no option when married to a free man. It only pertains to the ruling of her manumission when married to a slave exclusively, and it is silent about her manumission when married to a free man. If another narration is authenticated as sound containing what necessitates her manumission when married to a free man, it becomes obligatory to adhere to it.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ أَنْ لَا تَخَيُّرَ تَحْتَ حُرٍّ، إنَّمَا فِيهِ حُكْمُ عِتْقِهَا تَحْتَ الْعَبْدِ فَقَطْ، وَسَكَتَ فِيهِ عَنْ عِتْقِهَا تَحْتَ الْحُرِّ - فَإِنْ صَحَّ فِي خَبَرٍ آخَرَ مَا يُوجِبُ عِتْقَهَا تَحْتَ الْحُرِّ وَجَبَ الْمَصِيرُ إلَيْهِ.

L33292 As for the narration of Ibn Mawhab from al-Qāsim ibn Muḥammad from ʿĀ'isha—that she had a male slave and a female slave, and the Messenger of Allah (peace and blessings be upon him) commanded her to begin emancipation with the male slave before the female slave (this is an inauthentic report)—it has been transmitted to us from al-ʿUqaylī that he said when mentioning this report: "This report is only known through ʿUbayd Allāh ibn ʿAbd al-Raḥmān ibn Mawhab—and he is weak." Thus it cannot be relied upon. Abū Muḥammad said: "Then, even if it were authentic, it would contain no proof, for does it state that they were spouses? To interject claims through assertion is a lie."

وَأَمَّا حَدِيثُ ابْنِ مَوْهَبٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ: أَنَّهُ كَانَ لَهَا عَبْدٌ وَجَارِيَةٌ فَأَمَرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَبْدَأَ فِي الْعِتْقِ بِالْغُلَامِ قَبْلَ الْجَارِيَةِ - فَإِنَّهُ خَبَرٌ لَا يَصِحُّ -: رُوِّينَا عَنْ الْعُقَيْلِيِّ أَنَّهُ قَالَ وَقَدْ ذَكَرَ هَذَا الْخَبَرَ فَقَالَ: هَذَا خَبَرٌ لَا يُعْرَفُ إلَّا لِعُبَيْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ مَوْهَبٍ - وَهُوَ ضَعِيفٌ - فَسَقَطَ التَّعَلُّقُ بِهِ -: قَالَ أَبُو مُحَمَّدٍ: ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ: أَنَّهُمَا كَانَا زَوْجَيْنِ؟ فَإِقْحَامُ الْقَوْلِ بِالدَّعْوَى كَذِبٌ.

L33293 Then, even if it were valid that they were spouses, there is no mention in it that he—peace and blessings be upon him—commanded this to invalidate the wife's right of option. Introducing this claim into that narration constitutes a manifest lie—this is a grave matter that no one who fears falsehood would

ثُمَّ لَوْ صَحَّ أَنَّهُمَا كَانَا زَوْجَيْنِ، فَلَيْسَ فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَ بِذَلِكَ لِيُسْقِطَ خِيَارَ الزَّوْجَةِ؟ وَإِقْحَامُ هَذَا فِي ذَلِكَ الْخَبَرِ كَذْبَةٌ بَائِنَةٌ - هَذَا عَظِيمٌ لَا يَسْتَجِيزُهُ مَنْ يَهَابُ الْكَذِبَ، لَا سِيَّمَا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِنَّهُ يُوجِبُ النَّارَ.

ever permit, especially against the Messenger of Allah (peace and blessings of Allah be upon him), for it entails the Fire.

L33294 And it would be possible—if the narration were authentic—that her instruction is to begin by freeing the slave, based on the statement of Allah the Almighty and Majestic: {And men have a degree over them} [Al-Baqarah 2:228].[13]

L33295 As the Almighty narrates from the mother of Maryam: "The male is not like the female" [Āl ʿImrān 3:36].[14]

L33296 And regarding the narration we transmitted—via Abū Dāwūd's chain from Ḥafṣ ibn ʿUmar, from Shuʿbah, from ʿAmr ibn Murrah, from Sālim ibn Abī al-Jaʿd, from Shuraḥbīl ibn al-Simṭ—that he said to Kaʿb ibn Murrah or Murrah ibn Kaʿb: Relate to us a ḥadīth you heard from Allah's Messenger—peace and blessings be upon him. He then cited a statement containing: Any man who frees a Muslim, any woman who frees two Muslim women, or any man who frees two Muslim women—it will be his ransom from the Fire, each bone from them compensating for a bone of his. Thus, the reward for freeing a male is doubled. However, this narration has been discarded in its entirety.

L33297–33298 And we are certain—without any doubt—that he, prayers and peace be upon him, does not resort to legal artifices to nullify a right that his Lord, the Exalted, has ordained for the emancipated woman—thus their claim against him was nullified through a certainty utterly free from doubt.

L33299 As for their statement: "It is not permissible to dissolve a valid marriage contract except with certainty"—they have spoken truthfully, and were it not for certainty, we would not have ruled thus. As for the claim of the advocates of analogical reasoning: "The choice was granted to her in the case of the slave due to the superiority of freedom over enslavement"—this is a false assertion they will never find any basis for from the Messenger of Allah, peace and blessings be upon him. We seek refuge in Allah from the presumption of attributing to the Messenger of Allah, peace and blessings

وَقَدْ يُمْكِنُ - لَوْ صَحَّ الْخَبَرُ - أَنْ يَكُونَ أَمْرُهَا أَنْ تَبْدَأَ بِعِتْقِ الْعَبْدِ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ {وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ} [البقرة: ٢٢٨]

لِقَوْلِهِ تَعَالَى حَاكِيًا عَنْ أُمِّ مَرْيَمَ {وَلَيْسَ الذَّكَرُ كَالأُنْثَى} [آل عمران: ٣٦]

وَلِلْخَبَرِ الَّذِي رُوِّينَاهُ - مِنْ طَرِيقِ أَبِي دَاوُد عَنْ حَفْصِ بْنِ عُمَرَ عَنْ شُعْبَةَ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ شُرَحْبِيلَ بْنِ السِّمْطِ أَنَّهُ قَالَ لِكَعْبِ بْنِ مُرَّةَ أَوْ مُرَّةَ بْنِ كَعْبٍ: حَدِّثْنَا حَدِيثًا سَمِعْته مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ كَلَامًا، وَفِيهِ «أَيُّمَا امْرِئٍ أَعْتَقَ مُسْلِمًا وَأَيُّمَا امْرَأَةٍ أَعْتَقَتْ امْرَأَةً وَأَيُّمَا رَجُلٍ أَعْتَقَ امْرَأَتَيْنِ مُسْلِمَتَيْنِ إلَّا كَانَتْ فِكَاكَهُ مِنْ النَّارِ يُجْزِي بِكُلِّ عَظْمٍ مِنْهَا عَظْمًا مِنْ عِظَامِهِ» فَالْأَجْرُ فِي عِتْقِ الذَّكَرِ مُضَاعَفٌ - فَسَقَطَ هَذَا الْخَبَرُ جُمْلَةً.

وَنَحْنُ نُوقِنُ - بِلَا شَكٍّ - أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يَتَحَيَّلُ فِي إسْقَاطِ حَقٍّ أَوْجَبَهُ رَبُّهُ تَعَالَى لِلْمُعْتَقَةِ - فَبَطَلَ تَعَلُّقُهُمْ بِهِ بِيَقِينٍ لَا إشْكَالَ فِيهِ.

وَأَمَّا قَوْلُهُمْ: لَا يَحِلُّ فَسْخُ عَقْدِ نِكَاحٍ صَحِيحٍ إلَّا بِيَقِينٍ - فَصَدَقُوا، وَلَوْلَا الْيَقِينُ مَا قُلْنَا بِهِ، وَأَمَّا قَوْلُ أَصْحَابِ الْقِيَاسِ: إنَّمَا جُعِلَ لَهَا الْخِيَارُ تَحْتَ الْعَبْدِ لِفَضْلِ الْحُرِّيَّةِ عَلَى الرِّقِّ - فَهَذِهِ دَعْوَى كَاذِبَةٌ، لَا يَجِدُونَهَا أَبَدًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَنَعُوذُ بِاَللَّهِ مِنْ الْإِقْدَامِ عَلَى أَنْ نَنْسُبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ إلَى اللَّهِ تَعَالَى أَنَّهُ إنَّمَا فَعَلَ أَمْرَ كَذَا مِنْ أَجْلِ أَمْرِ كَذَا، مِمَّا لَمْ يُخْبِرْ اللَّهُ تَعَالَى بِهِ وَلَا رَسُولُهُ

[13] **Qur'an references (L33294):** Qur'an 2:228 (Al-Baqarah).
[14] **Qur'an references (L33295):** Qur'an 3:36 (Ali 'Imran).

be upon him, and then to Allah Almighty, that He enacted such a ruling for such a reason—regarding what Allah Almighty and His Messenger, peace and blessings be upon him and his family, have not disclosed. Behold, this is indeed a lie against Allah Almighty and His Messenger, peace and blessings be upon him and his family, without doubt. We ask Allah for protection.

L33300 Abu Muhammad said: "There remains only the apparent conflict between the narration from Ibn Abbas—'Barīrah's husband was a slave when she was emancipated'—and the narration from Umm al-Mu'minīn: 'Barīrah's husband was a free man at that time.'"

L33301 Both narrations are authentic, especially the narration of Al-Aswad from Aisha, the Mother of the Believers, and they contradict the narration from Urwah regarding that matter. All of this conflicts with the narration of Al-Qasim. We found all of this to be in agreement, with no falsehood in it. As long as it is possible to reconcile the narrations of trustworthy narrators, it is impermissible to attribute falsehood or error to some of them.

L33302 Know that whoever says, "He was a slave," and whoever says, "He was free"—both statements are valid because he was formerly a slave who was later manumitted, thereby becoming free. However, this exclusion does not extend to the narration from Ibn Abbas stating he was a slave at the time of his manumission. Rather, it applies when one was aware of his enslavement or unaware of his freedom.

L33303 Aisha—may Allah be pleased with her—narrated an addition in her knowledge that he was free when she (the slave) was emancipated. Uthman ibn Abi Shaybah's narration lacks the phrase "Had he been free, he would not have given her the choice," which forms part of the speech of the Mother of the Believers. It may also potentially originate from someone below her. Since this is the case, how can it be permissible to ascribe a statement to her based on conjecture?

L33304 No Maliki, Shafi'i, Hanbali, or Zahiri differs in the ruling that if two just witnesses testify, "We recognize this individual as a slave," and two other just witnesses testify, "We know him to be free," the judgment must be based on

- صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَلَا إِنَّ هَذَا لَهُوَ الْكَذِبُ عَلَى اللَّهِ تَعَالَى، وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِلَا شَكٍّ وَنَسْأَلُ اللَّهَ الْعَافِيَةَ؟

قَالَ أَبُو مُحَمَّدٍ: فَلَمْ يَبْقَ إِلَّا تَعَارُضُ الرِّوَايَةِ عَنْ ابْنِ عَبَّاسٍ: كَانَ زَوْجُ بَرِيرَةَ عَبْدًا إِذْ أُعْتِقَتْ، لِلرِّوَايَةِ عَنْ أُمِّ الْمُؤْمِنِينَ " كَانَ زَوْجُ بَرِيرَةَ حُرًّا إِذْ أُعْتِقَتْ ".

وَكِلَا الرِّوَايَتَيْنِ صَحِيحَةٌ، لَا سِيَّمَا رِوَايَةَ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَتُعَارِضُ الرِّوَايَةَ عَنْ عُرْوَةَ فِي ذَلِكَ، وَكُلُّ ذَلِكَ مُعَارِضٌ لِرِوَايَةِ الْقَاسِمِ، فَوَجَدْنَا كُلَّ ذَلِكَ مُتَّفَقًا لَا تَكَاذُبَ فِيهِ، وَمَا دَامَ يُمْكِنُ تَأْلِيفُ رِوَايَاتِ الثِّقَاتِ فَلَا يَحِلُّ أَنْ يُنْسَبَ الْكَذِبُ إِلَى بَعْضِهِمْ، أَوْ الْوَهْمُ.

فَاعْلَمُوا أَنَّ مَنْ قَالَ: كَانَ عَبْدًا، وَمَنْ قَالَ: كَانَ حُرًّا، يَصِحُّ عَلَى أَنَّهُ كَانَ عَبْدًا قَبْلُ ثُمَّ أُعْتِقَ، فَصَارَ حُرًّا، إِلَّا أَنَّهُ لَا يَخْرُجُ هَذَا فِي الرِّوَايَةِ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ عَبْدًا حِينَ أُعْتِقَتْ، لَكِنَّهُ يَخْرُجُ عَلَى أَنَّهُ كَانَ يَدْرِيهِ عَبْدًا، أَوْ لَمْ يَعْلَمْ بِحُرِّيَّتِهِ.

وَرَوَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا - مَا كَانَ فِي عِلْمِهَا مِنْ الزِّيَادَةِ أَنَّهُ كَانَ حُرًّا حِينَ أُعْتِقَتْ - وَلَيْسَ فِي رِوَايَةِ عُثْمَانَ بْنِ أَبِي شَيْبَةَ: وَلَوْ كَانَ حُرًّا مَا خَيَّرَهَا: أَنَّهُ مِنْ كَلَامِ أُمِّ الْمُؤْمِنِينَ، وَقَدْ يُمْكِنُ أَنْ يَكُونَ مِنْ قَوْلِ مَنْ دُونَهَا - فَإِذْ ذَلِكَ كَذَلِكَ فَلَا يَجُوزُ أَنْ يُنْسَبَ إِلَيْهَا قَوْلٌ بِظَنٍّ؟

the testimony of those who affirmed his freedom, because they testified with superior knowledge they possessed.

وَلَا يَخْتَلِفُ مَالِكِيٌّ، وَلَا شَافِعِيٌّ، وَلَا حَنْبَلِيٌّ، وَلَا ظَاهِرِيٌّ، فِي أَنَّ عَدْلَيْنِ لَوْ شَهِدَا بِأَنَّ هَذَا نَعْرِفُهُ عَبْدًا مَمْلُوكًا، وَشَهِدَ عَدْلَانِ آخَرَانِ: أَنَّنَا نَدْرِيهِ حُرًّا، فَإِنَّ الْحُكْمَ يَجِبُ بِقَوْلِ مَنْ شَهِدَ الْحُرِّيَّةَ، لِأَنَّهُ شَهِدَ بِفَضْلِ عِلْمٍ كَانَ عِنْدَهُ.

L33305–33306 Then we set all this aside and say: Suppose for yourselves that no one reported he was free; rather, the narrators unanimously agreed he was a slave when she was emancipated. Has it ever been mentioned in any of the established reports that the Messenger of Allah—peace and blessings be upon him—said, "I only gave her the choice because she was married to a slave; had her husband been free, I would not have given her the choice"? This is something they will never encounter in any narration from the Messenger of Allah—peace and blessings be upon him—neither in an authentic nor a defective report. Since there is absolutely no way to establish this, it is definitively confirmed that when Barirah was emancipated, he (peace and blessings be upon him) gave her the choice to remain with her husband or separate from him. This is beyond doubt; thus, it is impermissible to transgress it or append any ruling to it.

ثُمَّ نَدَعُ هَذَا كُلَّهُ، فَنَقُولُ: هَبْكُمْ أَنَّهُ لَمْ يَرْوِ أَحَدٌ أَنَّهُ كَانَ حُرًّا، بَلْ لَمْ يَخْتَلِفِ الرُّوَاةُ فِي أَنَّهُ كَانَ عَبْدًا حِينَ أُعْتِقَتْ؟ هَلْ جَاءَ قَطُّ فِي شَيْءٍ مِنَ الْأَخْبَارِ الثَّابِتَةِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: إِنَّمَا خَيَّرْتُهَا؛ لِأَنَّهَا تَحْتَ عَبْدٍ، وَلَوْ كَانَ زَوْجُهَا حُرًّا مَا خَيَّرْتُهَا - هَذَا أَمْرٌ لَا يَجِدُونَهُ أَبَدًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا فِي رِوَايَةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، فَإِذْ لَا سَبِيلَ إِلَى وُجُودِ هَذَا أَبَدًا فَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمَّا أُعْتِقَتْ بَرِيرَةُ خَيَّرَهَا فِي الْبَقَاءِ مَعَ زَوْجِهَا أَوْ فِرَاقِهِ، فَهَذَا - لَا شَكَّ فِيهِ، فَلَا يَجُوزُ تَعَدِّيهِ، وَلَا زِيَادَةُ حُكْمٍ فِيهِ.

L33307 There is no distinction between one who claims that he—peace and blessings be upon him—granted her the option solely because he was a slave, another who claims he did not grant her the option except due to his blackness, and a third who claims that the granting of the option was only because his name was Mughīth.

وَلَا فَرْقَ بَيْنَ مَنِ ادَّعَى أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِنَّمَا خَيَّرَهَا؛ لِأَنَّهُ كَانَ عَبْدًا، وَبَيْنَ آخَرَ ادَّعَى أَنَّهُ لَمْ يُخَيِّرْهَا إِلَّا لِأَنَّهُ كَانَ أَسْوَدَ، وَبَيْنَ ثَالِثٍ ادَّعَى أَنَّ تَخْيِيرَهَا إِنَّمَا كَانَ، لِأَنَّ اسْمَهُ مُغِيثٌ.

L33308 All of these are false presumptions; it is not permissible to speak or judge based on them. The truth is that the Messenger of Allah (peace and blessings be upon him and his family) granted an emancipated female slave the choice between separating from her husband or remaining with him, with no further options. Therefore, it is obligatory that every emancipated female slave be given this choice, with no further options—and success is through Allah, the Most High.

وَكُلُّ هَذِهِ ظُنُونٌ كَاذِبَةٌ لَا يَحِلُّ الْقَوْلُ بِهَا، وَلَا الْحُكْمُ بِهَا، وَإِنَّمَا الْحَقُّ أَنَّ الْمُعْتَقَةَ خَيَّرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بَيْنَ فِرَاقِ زَوْجِهَا، وَالْبَقَاءِ مَعَهُ وَلَا مَزِيدَ، فَوَاجِبٌ أَنْ تُخَيَّرَ كُلُّ مُعْتَقَةٍ وَلَا مَزِيدَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L33309 Among the matters disputed: Does her option cease due to her husband having intercourse with her or not? It has been narrated to us through the

chain of Ḥammād ibn Salamah from Khālid al-Ḥadhdhā’ from Abu Qilābah that ‘Umar ibn al-Khaṭṭāb said concerning the affair of Barīrah: “If her husband has had intercourse with her, she has no option”—and this chain is disconnected.

وَمِمَّا اُخْتُلِفَ فِيهِ -: هَلْ يَنْقَطِعُ خِيَارُهَا بِوَطْءِ زَوْجِهَا لَهَا أَمْ لَا؟ فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي أَمْرِ بَرِيرَةَ: إنْ غَشِيَهَا زَوْجُهَا فَلَا خِيَارَ لَهَا - وَهَذَا مُنْقَطِعٌ.

L33310 From the path of Hammad ibn Salamah, from Qatadah, from Sulayman ibn Yasar, who said: Hafsah, the Mother of the Believers, manumitted a slave girl named Zabrā. She then said to her: “Know that if he has intercourse with you, you have no choice”—and this is what Sulayman ibn Yasar used to say—and it has been authentically reported from Qatadah, al-Zuhri, and Nafi‘, the freed slave of Ibn ‘Umar.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: أَعْتَقَتْ حَفْصَةُ أُمُّ الْمُؤْمِنِينَ جَارِيَةً يُقَالُ لَهَا " زَبْرَاءُ " ثُمَّ قَالَتْ لَهَا: اعْلَمِي أَنَّهُ إنْ وَطِئَك فَلَا خِيَارَ لَك - وَبِهِ كَانَ يَقُولُ سُلَيْمَانُ بْنُ يَسَارٍ - وَصَحَّ عَنْ قَتَادَةَ، وَالزُّهْرِيِّ، وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ.

L33311 Others held the opinion that if he has intercourse with her while she is unaware that she has the option, her option is not forfeited by that. However, if she has become aware, then her option is forfeited. It has been reported to us through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Khālid al-Ḥadhdhāʾ from Abū Qilābah that ʿUmar ibn al-Khaṭṭāb said: “If he has intercourse with her after she becomes aware that she has the option, then she no longer has the option.” This chain is interrupted.

وَذَهَبَ آخَرُونَ - إلَى أَنَّهَا إنْ وَطِئَهَا - وَهِيَ لَا تَعْلَمُ أَنَّ لَهَا الْخِيَارَ: لَمْ يَسْقُطْ بِذَلِكَ خِيَارُهَا، وَإِنْ عَلِمَتْ فَقَدْ سَقَطَ خِيَارُهَا -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: إذَا جَامَعَهَا بَعْدَ أَنْ تَعْلَمَ أَنَّ لَهَا الْخِيَارَ، فَلَا خِيَارَ لَهَا - وَهَذَا مُنْقَطِعٌ.

L33312–33313 From the route of ʿAbd al-Razzāq, from Ibn Jurayj: I was informed from ʿAbd Allāh ibn ʿĀmir ibn Rabīʿah that Ibn ʿUmar said: If he had intercourse with her while she was aware, she has no option. If he had intercourse with her while she was unaware, she has the option when she becomes aware. Even if he had intercourse with her a thousand times until upright witnesses testify that she has become aware of her option. This chain is disconnected.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أُخْبِرْت عَنْ عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ أَنَّ ابْنَ عُمَرَ قَالَ: إنْ أَصَابَهَا - وَقَدْ عَرَفَتْ فَلَيْسَ لَهَا خِيَارٌ، وَإِنْ أَصَابَهَا - وَلَمْ تَعْرِفْ - فَإِنَّ لَهَا الْخِيَارَ إذَا عَلِمَتْ، وَإِنْ أَصَابَهَا أَلْفَ مَرَّةٍ حَتَّى يَشْهَدَ الْعُدُولُ: أَنَّهَا قَدْ عَلِمَتْ: أَنَّ لَهَا الْخِيَارَ - وَهَذَا مُنْقَطِعٌ.

L33314 From the transmission of ʿAbd al-Razzāq from Ibn Jurayj: It was reported to me from Ibn Masʿūd that he said: If a woman is emancipated while owned by a male slave without being aware of her option [to annul the marriage], or without being given the choice until her husband is emancipated, or he dies, or she dies: they inherit from one another. And this chain is severely disconnected.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أُخْبِرْت عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: إنْ أُعْتِقَتْ عِنْدَ عَبْدٍ وَلَمْ تَعْلَمْ أَنَّ لَهَا الْخِيَارَ، أَوْ لَمْ تُخَيَّرْ حَتَّى عَتَقَ زَوْجُهَا، أَوْ يَمُوتُ أَوْ تَمُوتُ: تَوَارَثَا - وَهَذَا شَدِيدُ الِانْقِطَاعِ.

L33315 Sa‘īd ibn al-Musayyib holds this opinion.

وَبِهِ يَقُولُ سَعِيدُ بْنُ الْمُسَيِّبِ.

وَقَوْلٌ آخَرُ، وَآخَرُ فِي دَرَجَةٍ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: إذَا أُعْتِقَتْ وَزَوْجُهَا مَعَهَا فِي مَجْلِسٍ وَهِيَ تَعْلَمُ حَتَّى تَقُومَ فَلَا خِيَارَ لَهَا، فَإِنْ ادَّعَتْ: أَنَّهَا لَمْ تَعْلَمْ اُسْتُحْلِفَتْ، ثُمَّ خُيِّرَتْ، قَالَ سُفْيَانُ: وَبِهِ يَقُولُ نَاسٌ أَنَّ لَهَا الْخِيَارَ أَبَدًا حَتَّى يَقِفَهَا الْإِمَامُ فَيُخَيِّرَهَا، بَلَغَنِي هَذَا عَنْهُ؟ قَالَ أَبُو مُحَمَّدٍ: فَهَذَا سُفْيَانُ الثَّوْرِيُّ يَذْكُرُ مِثْلَ قَوْلِنَا عَمَّنْ مَعَهُ، أَوْ مَنْ قَبْلَهُ، وَقَدْ قَالَ ابْنُ مَسْعُودٍ - كَمَا أَوْرَدْنَا - أَنَّهَا قَدْ تَبْقَى مَعَهُ وَلَا تَخْتَارُ حَتَّى يَمُوتَ أَوْ تَمُوتَ.

L33316 Another opinion, and another of a different rank: We were narrated through the chain of Abd al-Razzaq from Sufyan al-Thawri, who said: If she is manumitted while her husband remains with her in the same gathering and she is aware until she rises, she has no option. If she claims she was unaware, she is made to swear an oath, then granted the choice. Sufyan said: Some people hold this view - that she retains the option indefinitely until the Imam confronts her and presents her with the choice. Has this reached me from him? Abu Muhammad said: Here Sufyan al-Thawri mentions a position resembling ours from those with him or before him. Ibn Mas'ud indeed stated - as we transmitted - that she may remain with him without choosing until he dies or she dies.

وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: لَهَا الْخِيَارُ مَا لَمْ تَعْلَمْ: فَإِذَا عَلِمَتْ فَلَا خِيَارَ لَهَا إلَّا مَا دَامَتْ فِي الْمَجْلِسِ، فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِالْخَبَرِ الَّذِي ذَكَرْنَاهُ قَبْلُ -: مِنْ طَرِيقِ الْحَسَنِ بْنِ عَمْرِو بْنِ أُمَيَّةَ - وَقَدْ بَيَّنَّا سُقُوطَهُ.

L33317 Abu Hanifa and his associates said: She retains the option as long as she remains unaware. When she becomes aware, she no longer has the option except while remaining in the session. We noted that they invoked as evidence the report we previously mentioned - through al-Hasan ibn Amr ibn Umayyah's transmission - though we have already clarified its dismissal.

وَذَكَرُوا أَيْضًا أَثَرًا آخَرَ: مِنْ طَرِيقِ أَبِي دَاوُد نا عَبْدُ الْعَزِيزِ بْنُ يَحْيَى - هُوَ أَبُو الْأَصْبَغِ الْحَرَّانِيُّ - حَدَّثَنِي مُحَمَّدٌ - يَعْنِي ابْنَ سَلَمَةَ - عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ أَبِي جَعْفَرٍ، وَأَبَانَ بْنِ صَالِحٍ، وَهِشَامِ بْنِ عُرْوَةَ، قَالَ أَبُو جَعْفَرٍ: إنَّ بَرِيرَةَ، وَقَالَ أَبَانُ عَنْ مُجَاهِدٍ: إنَّ بَرِيرَةَ، وَقَالَ هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ: إنَّ بَرِيرَةَ عَتَقَتْ.

L33318 They also mentioned another narration via the chain of Abu Dawud: Abd al-Aziz ibn Yahya - who is Abu al-Asbagh al-Harrani - narrated to us, saying: Muhammad - meaning Ibn Salamah - narrated to me from Muhammad ibn Ishaq, who narrated from Abu Ja'far, Aban ibn Salih, and Hisham ibn Urwah. Abu Ja'far said: "Indeed, Barirah..." Aban said from Mujahid: "Indeed, Barirah..." while Hisham ibn Urwah said from his father from Aisha: "Indeed, Barirah was emancipated."

ثُمَّ اتَّفَقُوا كُلُّهُمْ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «خَيَّرَهَا وَقَالَ لَهَا: إنْ قَرِبَكِ فَلَا خِيَارَ لَكِ» ؟ قَالَ أَبُو مُحَمَّدٍ: أَبُو الْأَصْبَغِ الْحَرَّانِيُّ ضَعِيفٌ مُنْكَرُ الْحَدِيثِ قَالَ أَبُو مُحَمَّدٍ: وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَعَلَ لَهَا الْخِيَارَ، فَلَا يَجُوزُ أَنْ يُسْقِطَهُ وَطْؤُهُ، وَلَا طُولُ مَقَامِهِ مَعَهَا إذْ لَمْ يَصِحَّ بِذَلِكَ نَصٌّ، وَلَا يَبْطُلُ حُكْمُهُ

L33319–33321 Then all of them agreed that the Messenger of Allah—peace be upon him and his family and grant him peace—"gave her the choice and said to her: If he consummates the marriage with you, then you no longer have the choice." Abu Muhammad said: Abu al-Asbagh al-Harrani. The hadith is weak and rejected. Abu Muhammad said: It has been authentically established that the Messenger of Allah (peace and blessings be upon him and his family) granted her the option. Therefore, it is not permissible for his intercourse with her or his prolonged stay with her to nullify this option, since no valid textual evidence supports that. His ruling (peace and blessings be upon him) cannot

be invalidated by opinions, and there is no argument in anyone besides him (peace and blessings be upon him). And success is from Allah, the Most High.

- عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْآرَاءِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L33322 And some people said: The enslaved under a mukatabah contract is not given the choice when their emancipation is finalized.

وَقَالَ قَوْمٌ: لَا تُخَيَّرُ الْمُكَاتَبَةُ إذَا أُعْتِقَتْ.

L33323 It is authentically reported from Ibrāhīm al-Nakhaʿī: If her husband assists her in her written kitāba (manumission contract), she has no right to annul it.

صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: إنْ أَعَانَهَا زَوْجُهَا فِي كِتَابَتِهَا فَلَا خِيَارَ لَهَا.

L33324 It has been authentically reported from Al-Hasan: There is no contractual option for the mukātabah agreement once emancipation is granted.

وَصَحَّ عَنْ الْحَسَنِ: لَا خِيَارَ لِلْمُكَاتَبَةِ إذَا أُعْتِقَتْ.

L33325 And this is the position of ʿAṭāʾ, Abū Qilābah, and al-Zuhrī.

وَهُوَ قَوْلُ عَطَاءٍ، وَأَبِي قِلَابَةَ، وَالزُّهْرِيِّ.

L33326 And it is authentically reported from Ibn Sīrīn and al-Shaʿbī.

وَصَحَّ عَنْ ابْنِ سِيرِينَ، وَالشَّعْبِيِّ.

L33327 It has been reported to us from Jābir ibn Zayd that she holds the option.

وَرُوِّينَاهُ عَنْ جَابِرِ بْنِ زَيْدٍ: أَنَّ لَهَا الْخِيَارَ.

L33328 And by this opinion state Abu Hanifah, Malik, Al-Shafi'i, Abu Sulayman, and their companions—and this is the position we affirm. Sufyan Al-Thawri said: If he marries her after the *kitabah* contract, she has no choice, but if he marries her before the *kitabah* contract, or she was with him, then she has the choice? Abu Muhammad said: The Messenger of Allah—peace and blessings be upon him and his family—gave the freed woman the right to choose, without specifying a *mukatabah* as distinct from others. Therefore, it is impermissible to differentiate between one freed woman and another.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ - وَبِهِ نَقُولُ - وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إنْ تَزَوَّجَهَا بَعْدَ الْكِتَابَةِ فَلَا خِيَارَ لَهَا، وَإِنْ تَزَوَّجَهَا قَبْلَ الْكِتَابَةِ، أَوْ كَانَتْ مَعَهُ فَلَهَا الْخِيَارُ؟ قَالَ أَبُو مُحَمَّد: خَيَّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْمُعْتَقَةَ، وَلَمْ يَخُصَّ مُكَاتَبَةً مِنْ غَيْرِهَا، فَلَا يَجُوزُ أَنْ يَخُصَّ مُعْتَقَةً مِنْ مُعْتَقَةٍ.

L33329 Among the matters they differed upon is whether her choice to separate from her husband constitutes an annulment or a divorce. It was authentically reported from Qatādah that her choice constitutes a single irrevocable divorce—and we have narrated it from ʿUmar ibn ʿAbd al-ʿAzīz.

وَمِمَّا اخْتَلَفُوا فِيهِ: هَلْ اخْتِيَارُهَا فِرَاقَ زَوْجِهَا فَسْخٌ أَوْ طَلَاقٌ؟ فَصَحَّ عَنْ قَتَادَةَ أَنَّهَا وَاحِدَةٌ بَائِنَةٌ - وَرُوِّينَاهُ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L33330 And this is the opinion of Abū Ḥanīfah, Mālik, and their companions. It is reported from ʿAṭāʾ that it constitutes a single divorce. It has been authentically established from Ḥammād ibn Abī Sulaymān and Ibrāhīm al-Nakhaʿī that this is an annulment (faskh), not a divorce.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَأَصْحَابِهِمَا، وَعَنْ عَطَاءٍ أَنَّهَا طَلْقَةٌ وَاحِدَةٌ - وَصَحَّ أَنَّهُ فَسْخٌ لَا طَلَاقٌ - عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَإِبْرَاهِيمَ النَّخَعِيِّ.

وَرُوِّينَاهُ عَنْ طَاوُسٍ، وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ: التَّسْمِيَةُ فِي الشَّرِيعَةِ لَيْسَتْ إلَّا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَمْ يُسَمِّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَطُّ فِرَاقَ الْمُعْتَقَةِ لِزَوْجِهَا طَلَاقًا، وَلَا جَعَلَ لَهُ مِنْ أَحْكَامِ الطَّلَاقِ غَيْرَ الْعِدَّةِ وَحْدَهَا، فَلَا يَحِلُّ تَسْمِيَتُهُ طَلَاقًا - قَالَ تَعَالَى: {إِنْ هِيَ إِلا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَآبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَمَا تَهْوَى الأَنْفُسُ وَلَقَدْ جَاءَهُمْ مِنْ رَبِّهِمُ الْهُدَى} [النجم: ٢٣]

L33331–33333 It has been narrated to us from Tāwus, and this is the opinion of al-Shāfiʿī, Aḥmad ibn Ḥanbal, Isḥāq ibn Rāhawayh, Abū Sulaymān, and their companions. Abū Muḥammad said: "In the Sharīʿah, the act of naming applies only to the Messenger of Allāh—may Allāh bless him and his family and grant him peace. The Messenger of Allāh—may Allāh bless him and his family and grant him peace—never called the separation of an emancipated woman from her husband a divorce, nor did he assign to it any of the rulings of divorce except the waiting period alone. Therefore, it is impermissible to call it a divorce." Allāh the Exalted said: They are nothing but names which you and your forefathers have named, for which Allah has sent down no authority. They follow nothing but conjecture and the desires of their souls, and certainly there has come to them from their Lord the guidance.[15]

فَصَحَّ أَنَّهُ لَيْسَ طَلَاقًا، لَكِنَّهُ فِرَاقٌ، أَوْ فَسْخٌ، أَوْ نَقْضُ نِكَاحٍ - وَكُلُّ اسْمٍ يُعَبَّرُ بِهِ عَنْ بُطْلَانِ عِصْمَةِ النِّكَاحِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33334 Thus, it is established that it is not a divorce, but rather a separation, annulment, or dissolution of marriage—any term that signifies the exclusive invalidation of the marriage bond. And success is from Allah, the Most High.

وَمِمَّا اخْتَلَفُوا فِيهِ - إنْ تَخَيَّرَتْ قَبْلَ الدُّخُولِ فِرَاقَهُ: مَاذَا لَهَا مِنْ الصَّدَاقِ؟ فَقَالَ قَوْمٌ: لَا صَدَاقَ لَهَا - صَحَّ ذَلِكَ عَنْ الزُّهْرِيِّ -.

L33335 Among the matters they disagreed upon is: if she chooses to dissolve the marriage before consummation, what is her entitlement to the dowry? A group of jurists said: She is entitled to no dowry; this is authentically reported from al-Zuhri.

وَصَحَّ عَنْ قَتَادَةَ: لَهَا نِصْفُ الصَّدَاقِ - وَقَالَ أَصْحَابُنَا: لَهَا الصَّدَاقُ كُلُّهُ؟ قَالَ أَبُو مُحَمَّدٍ: إذْ قَدْ بَيَّنَّا أَنَّهُ لَيْسَ طَلَاقًا، فَقَدْ بَطَلَ قَوْلُ مَنْ قَالَ: لَهَا نِصْفُ الصَّدَاقِ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَجْعَلْ لَهَا نِصْفَ الصَّدَاقِ إلَّا فِي الطَّلَاقِ قَبْلَ الْمَسِّ فَقَطْ.

L33336 It is authentically reported from Qatādah: she is entitled to half the dower. And our scholars said: *Is she entitled to the entire dower?* Abū Muḥammad said: Since we have clarified that it is not a divorce, then the opinion of those who claimed she is entitled to half the dower is nullified, for Allah the Almighty has not granted her half the dower except solely in divorce before consummation.

وَوَجَدْنَاهُ عَزَّ وَجَلَّ قَالَ: {وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً} [النساء: ٤]

L33337 We have found Him, the Mighty and Sublime, as saying: {And give the women their dowries as a free gift} [An-Nisa: 4].[16]

فَصَحَّ أَنَّ الصَّدَاقَ لَهَا فَلَا يُسْقِطُهُ شَيْءٌ، وَلَا شَيْئًا مِنْهُ إلَّا حَيْثُ أَسْقَطَ اللَّهُ عَزَّ وَجَلَّ، النِّصْفَ فِي الطَّلَاقِ قَبْلَ الْمَسِّ، وَمَا عَدَا ذَلِكَ فَظُلْمٌ لَا شَكَّ فِيهِ.

L33338 Thus, it is established that the dowry (mahr) rightfully belongs to her, and nothing invalidates it entirely or partially except where Allah, the Mighty and

[15] **Qur'an references (L33331):** Qur'an 53:23 (An-Najm).
[16] **Qur'an references (L33337):** Qur'an 4:4 (An-Nisa).

Majestic, has nullified it—the half in cases of divorce before consummation. Whatever exceeds this is undoubtedly an injustice.

L33339 If it is said: Indeed, the Messenger of Allah—may Allah bless him and his family and grant him peace—said, "He owes her for what he has lawfully accessed of her private part."

L33340 We said: Yes, and her marriage contract establishes the lawfulness of sexual access to her. The Prophet—peace and blessings be upon him—did not state that her entitlement to the *mahr* is dependent on your consummation with her. Therefore, she is entitled to the full *mahr*.

L33341 Similarly, in every marriage dissolved before consummation—whether through liʿān (mutual imprecation), her becoming his forbidden relative through breastfeeding, his father, grandfather, or son having intercourse with her due to ignorance or adultery, her embracing Islam while he remains a disbeliever, his embracing Islam while she is not from the People of the Book, her apostasy, his apostasy, both apostatizing, her death, or his death (with disagreement existing regarding her embracing Islam without him doing so)—a group of jurists invalidated her bridal gift on these grounds. This constitutes an assistance to Satan and a barrier to Islam, for is her bridal gift not equivalent to a debt owed to her among all other debts due to her from him, with no difference whatsoever?

L33342 Abu Muhammad said: Nor is she entitled to a consolatory gift (*mut'ah*) in any of that, for Allah, the Exalted, has not established *mut'ah* except in divorce alone. {And whoever transgresses the bounds set by Allah has truly wronged himself} [Divorce: 1].[17]

L33343–33344 An issue where a female slave was under his ownership, and he owned her or a part of her.

L33345 Issue: If a man has a slave woman as his wife and subsequently acquires full or partial ownership of her—whether the owned portion is small or large, by any means such as inheritance, purchase, gift, lease, or other methods—his marriage to her is annulled immediately upon ownership without delay. This

فَإِنْ قِيلَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وآلِهِ وَسَلَّمَ - قَالَ: «هُوَ لَهَا بِمَا اسْتَحْلَلْتَ مِنْ فَرْجِهَا» .

قُلْنَا: نَعَمْ، وَعَقْدُ نِكَاحِهَا اسْتِحْلَالٌ لِفَرْجِهَا، وَلَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّهُ لَهَا بِوَطْئِك لَهَا، فَوَجَبَ أَنَّ لَهَا جَمِيعَ الصَّدَاقِ.

وَكَذَلِكَ فِي كُلِّ مُنْفَسِخَةِ النِّكَاحِ قَبْلَ الدُّخُولِ بِلِعَانٍ، أَوْ بِأَنْ تَصِيرَ حَرِيمَتَهُ بِرَضَاعٍ، أَوْ بِأَنْ يَطَأَهَا أَبُوهُ، أَوْ جَدُّهُ، أَوْ ابْنُهُ بِجَهَالَةٍ، أَوْ بِزِنًى، أَوْ بِأَنْ تُسْلِمَ هِيَ - وَهُوَ كَافِرٌ - أَوْ بِأَنْ يُسْلِمَ هُوَ - وَهِيَ غَيْرُ كِتَابِيَّةٍ - أَوْ بِأَنْ تَرْتَدَّ هِيَ، أَوْ هُوَ، أَوْ كِلَاهُمَا، أَوْ بِأَنْ تَمُوتَ هِيَ، أَوْ هُوَ - وَقَدْ اُخْتُلِفَ فِي إسْلَامِهَا دُونَهُ -: فَأَبْطَلَ قَوْمٌ صَدَاقَهَا بِذَلِكَ - وَهَذَا عَوْنٌ لِلشَّيْطَانِ، وَصَدٌّ عَنْ الْإِسْلَامِ - وَهَلْ صَدَاقُهَا إلَّا كَدَيْنٍ لَهَا قِبَلَهُ مِنْ سَائِرِ دُيُونِهَا وَلَا فَرْقَ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا مُتْعَةَ لَهَا فِي شَيْءٍ مِنْ ذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ الْمُتْعَةَ إلَّا فِي الطَّلَاقِ فَقَطْ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

[مَسْأَلَةٌ كَانَتْ تَحْتَهُ أَمَةٌ فَمَلَكَهَا أَوْ بَعْضَهَا]

مَسْأَلَةٌ: مَنْ كَانَتْ تَحْتَهُ أَمَةٌ فَمَلَكَهَا، أَوْ بَعْضَهَا - قَلَّ الْجُزْءُ الَّذِي مَلَكَ مِنْهَا أَوْ كَثُرَ - بِأَيِّ وَجْهٍ مَلَكَ ذَلِكَ، مِنْ مِيرَاثٍ، أَوْ ابْتِيَاعٍ، أَوْ هِبَةٍ، أَوْ إجَارَةٍ، أَوْ غَيْرِ ذَلِكَ، فَقَدْ

[17] **Qur'an references (L33342):** Qur'an 65:1 (At-Talaq).

ruling applies equally whether he relinquishes ownership afterward through manumission or other means, or retains her.

انْفَسَخَ نِكَاحُهُ مِنْهَا إِثْرَ الْمِلْكِ بِلَا فَصْلٍ، وَسَوَاءٌ أَخْرَجَهَا عَنْ مِلْكِهِ إِثْرَ ذَلِكَ بِعِتْقٍ، أَوْ غَيْرِ ذَلِكَ، أَوْ لَمْ يُخْرِجْهَا.

L33346 Similarly, if a woman is married to a slave and then comes to own him, or a portion of him, through any means of ownership, her marriage to him is automatically dissolved immediately. It makes no difference whether she subsequently removes him from her ownership through emancipation or other means or does not remove him.

وَكَذَلِكَ مَنْ كَانَتْ مُتَزَوِّجَةً بِعَبْدٍ فَمَلَكَتْهُ، أَوْ بَعْضَهُ، بِأَيِّ وَجْهٍ مَلَكَتْ ذَلِكَ مِنْ وُجُوهِ الْمِلْكِ: فَقَدْ انْفَسَخَ نِكَاحُهَا مِنْهُ بِلَا فَصْلٍ، وَسَوَاءٌ أَخْرَجَتْهُ عَنْ مِلْكِهَا إِثْرَ ذَلِكَ بِعِتْقٍ أَوْ غَيْرِ ذَلِكَ، أَوْ لَمْ تُخْرِجْهُ.

L33347 If the son of her husband, the father of her husband, the mother of her husband, or the slave of her husband were to own the female slave; or if the father of his wife, the wife's son, the wife's mother, the wife's slave, or the wife's father were to own the male slave, the marriage would not be annulled by any of that.

فَلَوْ مَلَكَ الْأَمَةَ ابْنُ زَوْجِهَا، أَوْ أَبُو زَوْجِهَا، أَوْ أُمُّ زَوْجِهَا، أَوْ عَبْدُ زَوْجِهَا، أَوْ مَلَكَ الْعَبْدَ أَبُو امْرَأَتِهِ، أَوْ ابْنُهَا، أَوْ أُمُّهَا، أَوْ عَبْدُهَا، أَوْ أَبُوهَا لَمْ يَنْفَسِخِ النِّكَاحُ بِشَيْءٍ مِنْ ذَلِكَ.

L33348 Similarly, if a man were to initiate the marriage contract with his father's female slave who has never been lawful for his father ever, or his son's female slave who has never been lawful for his son ever, or his mother's female slave, or his daughter's female slave, or his female slave's female slave, or his male slave's female slave; or if a woman were to initiate the marriage contract with her father's male slave, or her son's male slave, or her mother's male slave, or her daughter's male slave, or her male slave's male slave, or her female slave's male slave: all of that would be lawful and valid.

وَكَذَلِكَ لَوْ ابْتَدَأَ الرَّجُلُ نِكَاحَ أَمَةِ أَبِيهِ الَّتِي لَمْ تَحِلَّ لِأَبِيهِ قَطُّ، أَوْ أَمَةِ ابْنِهِ الَّتِي لَمْ تَحِلَّ لِابْنِهِ قَطُّ، أَوْ أَمَةِ أُمِّهِ، أَوْ أَمَةِ ابْنَتِهِ، أَوْ أَمَةِ أَمَتِهِ، أَوْ أَمَةِ عَبْدِهِ، أَوْ ابْتَدَأَتْ امْرَأَةٌ نِكَاحَ عَبْدِ أَبِيهَا، أَوْ عَبْدِ ابْنِهَا، أَوْ عَبْدِ أُمِّهَا، أَوْ عَبْدِ ابْنَتِهَا، أَوْ عَبْدِ عَبْدِهَا، أَوْ عَبْدِ أَمَتِهَا -: لَكَانَ كُلُّ ذَلِكَ حَلَالًا جَائِزًا.

L33349 The proof of that is the words of Allah, the Exalted and Majestic: "[5] And those who guard their private parts [6] except with their spouses or what their right hands possess—then indeed they incur no blame. [7] But whoever seeks beyond that, those are the transgressors" [Al-Mu'minoon 23:5–7].[18]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ 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]

L33350 Allah the Exalted permitted only a wife or those whom your right hands possess, and He made a distinction between them.

فَلَمْ يُبِحِ اللَّهُ تَعَالَى إِلَّا زَوْجَةً، أَوْ مِلْكَ يَمِينٍ وَفَرَّقَ بَيْنَهُمَا.

[18] **Qur'an references (L33349):** 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).

وَكُلُّ اسْمَيْنِ فَرَّقَ اللَّهُ عَزَّ وَجَلَّ بَيْنَهُمَا، فَلَا يَجُوزُ أَنْ يُقَالَ: هُمَا شَيْءٌ وَاحِدٌ إِلَّا بِنَصٍّ يُوجِبُ ذَلِكَ، أَوْ ضَرُورَةٍ تُوجِبُهُ، وَلَا نَصَّ هُنَا وَلَا ضَرُورَةَ تُوجِبُ وُقُوعَ اسْمِ الزَّوْجَةِ، وَاسْمِ مِلْكِ الْيَمِينِ عَلَى امْرَأَةٍ وَاحِدَةٍ لِرَجُلٍ وَاحِدٍ.

L33351 Whenever Allah, the Mighty and Majestic, distinguishes between two terms, it is impermissible to regard them as a single entity unless mandated by a scriptural text or compelled by necessity. In this matter, there exists neither a scriptural text nor a compelling necessity that would permit the simultaneous application of the terms “wife” and “female slave owned by the right hand” to the same woman in relation to one man.

وَبِهَذَا الِاسْتِدْلَالِ حَرُمَ عَلَى الرَّجُلِ أَنْ يَتَزَوَّجَ أَمَتَهُ دُونَ أَنْ يُعْتِقَهَا، أَوْ يُخْرِجَهَا عَنْ مِلْكِهِ - وَحَرُمَ عَلَى الْمَرْأَةِ أَنْ تَتَزَوَّجَ عَبْدَهَا دُونَ أَنْ تُعْتِقَهُ، أَوْ تُخْرِجَهُ عَنْ مِلْكِهَا - وَكَذَلِكَ مُحَالٌ أَنْ يَكُونَ بَعْضُهَا زَوْجَةً لَهُ، وَبَعْضُهَا مِلْكَ يَمِينٍ لَهُ، لِمَا ذَكَرْنَا مِنْ الْآيَةِ.

L33352–33354 Based on this reasoning, it is forbidden for a man to marry his bondwoman without emancipating her or releasing her from bondage. His ownership—and it is forbidden for a woman to marry her male slave without emancipating him or removing him from her ownership. Likewise, it is impossible for part of her status to be as his wife and part as his possession (milk yamīn), due to the verse we mentioned.

فَإِذْ قَدْ صَحَّ مَا ذَكَرْنَا فَقَدْ وَجَبَ أَنَّ الْمِلْكَ يُنَافِي الزَّوْجِيَّةَ، فَلَا يَجُوزُ أَنْ يَجْتَمِعَا، فَوَجَبَ مِنْ هَذَا أَنَّهُ إِذَا مَلَكَهَا، أَوْ بَعْضَهَا، فَهِيَ مِلْكُ يَمِينٍ لَهُ، أَوْ بَعْضُهَا، فَلَا يَكُونُ زَوْجًا لَهَا، وَلَا يَكُونُ بَعْضُهَا زَوْجَةً لَهُ - فَصَحَّ انْفِسَاخُ النِّكَاحِ بِلَا شَكٍّ.

L33355 Since what we have mentioned is established, it necessarily follows that ownership is incompatible with marital relations, and their coexistence is invalid. Therefore, if he acquires full or partial ownership of her, she becomes his lawful property, whether wholly or partially. Consequently, he cannot remain her husband, nor can any part of her remain his wife. Thus, the dissolution of the marriage is confirmed without doubt.

وَكَذَلِكَ قَوْلُهُ تَعَالَى: {وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلا يُبْدِينَ زِينَتَهُنَّ إِلا مَا ظَهَرَ مِنْهَا} [النور: ٣١] إِلَى قَوْلِهِ: {أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ} [النور: ٣١] فَفَرَّقَ عَزَّ وَجَلَّ بَيْنَ الزَّوْجِ وَبَيْنَ مِلْكِ يَمِينِ الْمَرْأَةِ، فَوَجَبَ أَنْ لَا يَكُونَ مِلْكُ يَمِينِهَا زَوْجَهَا أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L33356 Similarly, the statement of the Almighty, the Exalted: _“And tell the believing women to lower their gaze, guard their private parts, and not display their adornments except what is apparent thereof”_ until His words: _“or those whom their right hands possess (i.e., slaves)”_ [An-Nur: 31]. Thus, the Almighty, the Exalted, has distinguished between the husband and those whom a woman’s right hand possesses. It is obligatory that those whom her right hand possesses cannot be her husband at all. And success is from Allah, the Exalted.[19]

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُبَيْدٍ الْكَلَاعِيِّ عَنْ مَكْحُولٍ فِي امْرَأَةٍ وَرِثَتْ زَوْجَهَا - وَهُوَ عَبْدٌ - عَنْ بَعْضِ وَلَدِهَا؟ قَالَ: لَا تَحِلُّ لَهُ - وَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: يُؤْمَرُ بِطَلَاقِهَا -.

L33357 It has been narrated to us through the chain of Sa’īd ibn Manṣūr: Ismā’īl ibn ’Ayyāsh reported from ’Ubayd Allāh ibn ’Ubayd al-Kalā’ī, from Makhūl regarding [the case of] a woman who inherited her husband—who was a slave—from some of her children? He said: “She is not lawful for him.” And ’Alī ibn Abī Ṭālib said: “He must be commanded to divorce her.”

[19] **Qur’an references (L33356):** Qur’an 24:31 (An-Nur).

وَقَدْ صَحَّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ وَإِبْرَاهِيمَ النَّخَعِيِّ: إنْ أَعْتَقَتْهُ بَعْدَ أَنْ مَلَكَتْهُ فَهُمَا عَلَى نِكَاحِهِمَا.

L33358 It has been authentically reported from Ubayd Allah ibn Abd Allah ibn Utbah and Ibrahim al-Nakha'i that if she emancipates him after acquiring ownership of him, their marriage continues.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ لِأَنَّهُ لَوْ كَانَ ذَلِكَ لَكَانَ النِّكَاحُ صَحِيحًا - وَلَوْ طَرْفَةَ عَيْنٍ - وَلَوْ صَحَّ طَرْفَةَ عَيْنٍ لَصَحَّ بَعْدَ ذَلِكَ - وَأَمَةُ الِابْنِ لَيْسَتْ أَمَةً لِأَبِيهِ، وَلَا لِابْنِهِ، لِأَنَّ اللَّهَ تَعَالَى قَالَ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ} [المؤمنون: ٦]

L33359 Abu Muhammad said: This is incorrect because if that were the case, the marriage would be valid even if for the blink of an eye, and if it were valid for the blink of an eye, it would be valid afterward. The son's female slave is not a slave owned by his father or his son, for Allah the Most High said: "And those who guard their private parts except from their spouses or those their right hands possess, for indeed they are not to be blamed" [23:5-6].[20]

فَلَوْ كَانَتْ أَمَةُ الْوَلَدِ لِأَبِيهِ لَكَانَتْ حَرَامًا عَلَى الْوَلَدِ وَهَكَذَا نَقُولُ فِي أَمَةِ الْعَبْدِ وَعَبْدِ الْأَمَةِ لَا يَكُونُ شَيْءٌ مِنْ ذَلِكَ مِلْكًا لِلسَّيِّدِ إلَّا أَنْ يُنْتَزَعَ ذَلِكَ مِنْ مِلْكِ الْعَبْدِ فَيَصِيرُ مِلْكًا لَهُ حِينَئِذٍ.

L33360 If the child's slave woman belonged to his father, she would be forbidden to the child. Similarly, we rule concerning the male-slave's slave-woman and the female-slave's male-slave: none of these become the master's property unless seized from the slave's ownership, at which point they become his property.

فَإِنْ احْتَجَّ مُحْتَجٌّ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنْتَ وَمَالُكَ لِأَبِيكَ» .

L33361 If someone argues by the authentic narration from the Messenger of Allah (peace and blessings of Allah be upon him and his household): "You and your wealth are for your father."

قُلْنَا: هَذَا مَنْسُوخٌ بِالْمَوَارِيثِ وَبِالْآيَةِ الَّتِي ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33362 We said: This is abrogated by the laws of inheritance and the verse we mentioned—and success is from Allah, the Exalted, alone.

كَمُلَ كِتَابُ النِّكَاحِ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ

L33363–33364 This concludes the Book of Marriage Contract, and all praise is due to Allah, Lord of all the worlds.

[فَسْخُ النِّكَاحِ]

L33365 **Annulment of Marriage**

[مَسْأَلَةٌ لَا عِدَّةَ فِي شَيْءٍ مِنْ وُجُوهِ فَسْخِ النِّكَاحِ إلَّا فِي الْوَفَاةِ]

L33366 **Issue: There is no waiting period required in any form of marriage annulment except in the case of death.**

فَسْخُ النِّكَاحِ ١٩٤٤ - مَسْأَلَةٌ: وَلَا عِدَّةَ فِي شَيْءٍ مِنْ وُجُوهِ الْفَسْخِ الَّذِي ذَكَرْنَا إلَّا فِي الْوَفَاةِ وَفِي الْمُعْتَقَةِ الَّتِي تَخْتَارُ فِرَاقَ زَوْجِهَا، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ

L33367 Annulment of Marriage 1944 - Issue: There is no waiting period required in any of the aspects of annulment we have mentioned except in the event of

[20] **Qur'an references (L33359):** 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).

death and in the case of the freed slave woman who chooses to separate from her husband, due to the command of the Messenger of Allah—may Allah bless him and grant him peace—to observe the waiting period in these two cases. He did not command others besides these two to observe a waiting period, nor is it permissible to impose this [ruling] upon her, because it constitutes legislation for which Allah the Exalted has not granted permission.

وَسَلَّمَ - لَهُمَا بِالْعِدَّةِ، وَلَمْ يَأْمُرْ غَيْرَهُمَا بِعِدَّةٍ وَلَا يَجُوزُ أَمْرُهَا بِذَلِكَ؛ لِأَنَّهُ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L33368 It is not permissible to analogize annulment to divorce, for they are fundamentally different: divorce occurs only through the husband's utterance and his volition, while annulment takes effect without the husband's utterance (whether he consents or objects). How then can analogy apply, when analogy itself is entirely invalid?

وَلَا يَجُوزُ قِيَاسُ الْفَسْخِ عَلَى الطَّلَاقِ، لِأَنَّهُمَا مُخْتَلِفَانِ، لِأَنَّ الطَّلَاقَ لَا يَكُونُ إِلَّا بِلَفْظِ الْمُطَلِّقِ وَاخْتِيَارِهِ، وَالْفَسْخُ يَقَعُ بِغَيْرِ لَفْظِ الزَّوْجِ - أَحَبَّ أَمْ كَرِهَ - فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L33369 It was narrated to us via Al-Bukhārī's chain: Ibrāhīm ibn Mūsā narrated to us from Hishām ibn Yūsuf, from Ibn Jurayj, who said: "'Aṭāʾ narrated from Ibn ʿAbbās: 'When a woman emigrated from the abode of war, she would not be proposed to until she menstruates and becomes pure. Once she becomes pure, marriage becomes permissible for her.'"

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا إِبْرَاهِيمُ بْنُ مُوسَى نا هِشَامُ بْنُ يُوسُفَ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ عَنْ ابْنِ عَبَّاسٍ: كَانُوا إِذَا هَاجَرَتْ امْرَأَةٌ مِنْ دَارِ الْحَرْبِ لَمْ تُخْطَبْ حَتَّى تَحِيضَ وَتَطْهُرَ، فَإِذَا طَهُرَتْ حَلَّ لَهَا النِّكَاحُ.

L33370 Ibn Abbas relates: This was the practice of the Companions in its entirety, and it is impermissible to oppose it. The text states this, as Allah the Exalted says: _"O you who believe! When believing women come to you as emigrants, test them. Allah knows best about their faith. If you know them to be believers, do not return them to the disbelievers - they are not lawful for them, nor are they lawful for them"_ [Al-Mumtahanah: 10] up to His statement: _"There is no blame upon you if you marry them when you give them their dowers"_ [Al-Mumtahanah: 10]. Thus the Almighty and Majestic did not obligate upon them any waiting period following the annulment of their marriages with their disbelieving husbands due to their acceptance of Islam. And success is from Allah, the Exalted.[21]

فَهَذَا ابْنُ عَبَّاسٍ يَحْكِي: أَنَّ هَذَا فِعْلُ الصَّحَابَةِ جُمْلَةً فَلَا يَجُوزُ خِلَافُهُ، وَبِذَلِكَ جَاءَ النَّصُّ، قَالَ اللَّهُ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا جَاءَكُمُ الْمُؤْمِنَاتُ مُهَاجِرَاتٍ فَامْتَحِنُوهُنَّ اللَّهُ أَعْلَمُ بِإِيمَانِهِنَّ فَإِنْ عَلِمْتُمُوهُنَّ مُؤْمِنَاتٍ فَلَا تَرْجِعُوهُنَّ إِلَى الْكُفَّارِ لَا هُنَّ حِلٌّ لَهُمْ وَلَا هُمْ يَحِلُّونَ لَهُنَّ} [الممتحنة: ١٠] إِلَى قَوْلِهِ {وَلَا جُنَاحَ عَلَيْكُمْ أَنْ تَنْكِحُوهُنَّ إِذَا آتَيْتُمُوهُنَّ أُجُورَهُنَّ} [الممتحنة: ١٠] ، فَلَمْ يُوجِبْ عَزَّ وَجَلَّ عَلَيْهِنَّ عِدَّةً فِي انْفِسَاخِ نِكَاحِهِنَّ مِنْ أَزْوَاجِهِنَّ الْكُفَّارِ بِإِسْلَامِهِنَّ وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[21] **Qur'an references (L33370):** Qur'an 60:10 (Al-Mumtahanah).