

AL-MUHALLA

كِتَابُ الطَّلَاقِ

The Book of Divorce

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[كِتَابُ الطَّلَاقِ] [مَسْأَلَةٌ أَرَادَ طَلَاقَ امْرَأَةٍ لَهُ قَدْ وَطِئَهَا لَمْ يَحِلَّ لَهُ أَنْ يُطَلِّقَهَا فِي حَيْضَتِهَا]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ كِتَابُ الطَّلَاقِ ١٩٤٥ - مَسْأَلَةٌ: مِنْ الطَّلَاقِ - مَنْ أَرَادَ طَلَاقَ امْرَأَةٍ لَهُ قَدْ وَطِئَهَا: لَمْ يَحِلَّ لَهُ أَنْ يُطَلِّقَهَا فِي حَيْضَتِهَا، وَلَا فِي طُهْرٍ وَطِئَهَا فِيهِ.

فَإِنْ طَلَّقَهَا طَلْقَةً أَوْ طَلْقَتَيْنِ فِي طُهْرٍ وَطِئَهَا فِيهِ، أَوْ فِي حَيْضَتِهَا: لَمْ يَنْفُذْ ذَلِكَ الطَّلَاقُ وَهِيَ امْرَأَتُهُ كَمَا كَانَتْ، إلَّا أَنْ يُطَلِّقَهَا كَذَلِكَ ثَالِثَةً أَوْ ثَلَاثَةً مَجْمُوعَةً فَيَلْزَمُ.

فَإِنْ طَلَّقَهَا فِي طُهْرٍ لَمْ يَطَأْهَا فِيهِ فَهُوَ طَلَاقُ سُنَّةٍ لَازِمٌ - كَيْفَمَا أَوْقَعَهُ - إنْ شَاءَ طَلْقَةً وَاحِدَةً، وَإِنْ شَاءَ طَلْقَتَيْنِ مَجْمُوعَتَيْنِ، وَإِنْ شَاءَ ثَلَاثًا مَجْمُوعَةً.

فَإِنْ كَانَتْ حَامِلًا مِنْهُ أَوْ مِنْ غَيْرِهِ: فَلَهُ أَنْ يُطَلِّقَهَا حَامِلًا وَهُوَ لَازِمٌ، وَلَوْ إثْرَ وَطْئِهِ إيَّاهَا فَإِنْ كَانَ لَمْ يَطَأْهَا قَطُّ فَلَهُ أَنْ يُطَلِّقَهَا فِي حَالِ طُهْرِهَا وَفِي حَالِ حَيْضَتِهَا - إنْ شَاءَ - وَاحِدَةً، وَإِنْ شَاءَ اثْنَتَيْنِ وَإِنْ شَاءَ ثَلَاثًا.

فَإِنْ كَانَتْ لَمْ تَحِضْ قَطُّ، أَوْ قَدْ انْقَطَعَ حَيْضُهَا طَلَّقَهَا أَيْضًا كَمَا قُلْنَا فِي الْحَامِلِ مَتَى شَاءَ.

وَفِيمَا ذَكَرْنَا اخْتِلَافٌ فِي ثَلَاثَةِ مَوَاضِعَ -:

أَحَدُهَا - هَلْ يَنْفُذُ الطَّلَاقُ الَّذِي هُوَ بِدْعَةٌ مُخَالِفٌ لِأَمْرِ اللَّهِ عَزَّ وَجَلَّ أَمْ لَا يَنْفُذُ؟

[The Book of Divorce] [A ruling: If a man wishes to divorce a wife he has had intercourse with, it is impermissible for him to divorce her during her menstrual period.]

In the name of Allah, the Most Gracious, the Most Merciful. The Book of Divorce 1945 – A Legal Issue Regarding Divorce: For one who intends to divorce his wife with whom he has had intercourse, it is impermissible for him to divorce her during her menstruation or during a state of ritual purity in which he had intercourse with her.

If he divorces her once or twice during a state of purity (after intercourse without observing the waiting period) or during her menstruation, the divorce is invalid, and she retains her status as his wife. However, if he issues a third divorce in the same invalid manner or pronounces a triple divorce collectively, it becomes irrevocable.

If he divorces her during a period of purity in which he has not had intercourse with her, it is a binding divorce in accordance with the Sunnah, regardless of how he effects it. He may declare one divorce, two in a single instance, or three collectively.

If she is pregnant by him or by another, he may divorce her while she is pregnant, and it is binding, even immediately after having intercourse with her. If he has never had intercourse with her, he may divorce her during her state of purity and during her menstruation - if he wishes once, and if he wishes twice, and if he wishes three times.

If she has never menstruated at all, or if her menstruation has ceased, he may divorce her, as we said regarding the pregnant woman: he may do so whenever he wishes.

And in what we have mentioned, there is disagreement concerning three places:

One of the issues: Is a divorce that is an innovation, contrary to the command of Allah, the Exalted and Majestic, executed, or is it not?

The second: Is the triple divorce an innovation or not?

وَالثَّانِي - هَلْ طَلَاقُ الثَّلَاثِ بِدْعَةٌ أَمْ لَا؟

وَالثَّالِثُ - صِفَةُ طَلَاقِ السُّنَّةِ.

L33384 The third – the method of divorce in accordance with the *Sunnah*.

بُرْهَانُ مَا قُلْنَا: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا} [الأحزاب: ٤٩]

L33385–33386 The proof of what we have said is the statement of Allah, the Exalted: "O you who have believed, when you marry believing women and then divorce them before consummating the marriage, there is no waiting period incumbent upon them for you to enforce." [Al-Ahzab: 49][1]

فَأَبَاحَ عَزَّ وَجَلَّ طَلَاقَ الَّتِي لَمْ تُمَسَّ بِالْوَطْءِ، وَلَمْ يَحُدَّ فِي طَلَاقِهَا وَقْتًا، وَلَا عَدَدًا: فَوَجَبَ مِنْ ذَلِكَ أَنَّ هَذَا حُكْمُهَا - وَإِنْ دَخَلَ بِهَا، وَطَالَ مُكْثُهَا مَعَهُ، وَلَا أَشْفَرَهَا فَحَمَلَتْ مِنْ ذَلِكَ، لِأَنَّهُ لَمْ يَمَسَّهَا.

L33387 The Almighty permitted divorce for a woman with whom intercourse has not occurred, prescribing neither a waiting period nor restricting the number [of divorces] for her case. Thus, it is established that this ruling applies to her even if he was secluded with her, their time together has been prolonged, nor did he make her conceive such that she became pregnant from it—because he did not engage in intercourse with her.

وَلَا تَكُونُ بِذَلِكَ مُحْصَنَةً، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَسْتَثْنِ شَيْئًا مِنْ ذَلِكَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L33388 And she does not thereby become a muḥṣanah (a lawfully protected woman), because Allah, the Exalted, excluded nothing from that: "Your Lord is not forgetful" [Maryam: 64].[2]

وَالْمُفَرِّقُ بَيْنَ هَذِهِ الْأَحْكَامِ مُتَنَاقِضٌ شَارِعٌ مِنْ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ عَزَّ وَجَلَّ.

L33389 The one who differentiates between these rulings is a self-contradicting legislator in matters of religion regarding what Allah, the Mighty and Majestic, has not permitted.

فَإِنْ قِيلَ: فَمِنْ أَيْنَ حَكَمْتُمْ بِذَلِكَ فِي الْكِتَابِيَّاتِ إذَا طَلَّقَهُنَّ الْمُؤْمِنُونَ وَأَنْتُمْ تُبْطِلُونَ الْقِيَاسَ؟ قُلْنَا: لِقَوْلِ اللَّهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩]

L33390 If it is said: "From where have you ruled this regarding the Women of the Book when believers divorce them, while you nullify qiyas?" We said: Due to the statement of Allah the Exalted: "And judge between them by what Allah has revealed" [Al-Mā'idah: 49].[3]

وَبِقَوْلِهِ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] وَأَخَصُّ مِنْ هَذَا كُلِّهِ بِجَوَابِ هَذَا السُّؤَالِ قَوْله تَعَالَى: {لا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً} [البقرة: ٢٣٦] الْآيَةَ، فَعَمَّ عَزَّ وَجَلَّ جَمِيعَ النِّسَاءِ، وَلَمْ يَخُصَّ مُؤْمِنَةً مِنْ كَافِرَةٍ - فَهَذَا قَوْلُهُ عَزَّ وَجَلَّ فِي غَيْرِ الْمَوْطُوءَةِ.

L33391 And by His statement, Exalted: {And fight them until there is no discord and the entire religion is for Allah} [Al-Anfal: 39]. More specific to answering this question is His statement, Almighty and Majestic: {There is no blame upon you if you divorce women you have neither touched nor stipulated a dowry for} [Al-Baqarah: 236] - this verse. Thus He Almighty and Majes-

[1] **Qur'an references (L33386):** Qur'an 33:49 (Al-Ahzab).
[2] **Qur'an references (L33388):** Qur'an 19:64 (Maryam).
[3] **Qur'an references (L33390):** Qur'an 5:49 (Al-Ma'idah).

tic generalized all women, without singling out believers or disbelievers - this is His declaration regarding women with whom marriage has not been consummated.[4]

L33392–33393 As for the woman with whom the marriage has been consummated, the words of Allah Almighty apply: "O Prophet, when you divorce women, divorce them during their waiting periods and calculate the waiting period precisely. Be mindful of Allah, your Lord. Do not evict them from their [marital] homes, nor should they leave unless they commit clear immorality. These are the boundaries set by Allah. Whoever transgresses Allah's boundaries has truly wronged himself. You do not know; perhaps Allah will bring about something after that." [At-Talaq 65:1][5]

L33394 The waiting period is not part of divorce except in the case of consummated marriage. Thus, Allah—the Mighty and Majestic—has taught us how the divorce of a consummated wife is conducted, and He has informed us that those are the boundaries set by Allah. Whoever transgresses them wrongs his own soul.

L33395 It has been established that whoever acts unjustly and transgresses the limits set by Allah (the Mighty and Majestic), his action is invalid and rejected, in accordance with the statement of the Prophet (peace and blessings be upon him and his family): "Whoever performs an action not in accordance with our command, that action is rejected."[6]

L33396 It has been established that the aforementioned divorce is only valid for the waiting period, as Allah, the Exalted and Majestic, commanded.

L33397 We explored the elucidation of Allah's intent, the Exalted and Majestic, in His statement: "Divorce them for their waiting period" [Surah At-Talaq (65:1)].[7]

L33398–33400 We found what we have narrated through Muslim: Muhammad ibn Abdullah ibn Numayr reported to us, from his father, from Ubayd Allah ibn Umar,

[4]**Qur'an references (L33391):** Qur'an 8:39 (Al-Anfal); Qur'an 2:236 (Al-Baqarah).

[5]**Qur'an references (L33393):** Qur'an 65:1 (At-Talaq).

[6]**Hadith references (L33395):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[7]**Qur'an references (L33397):** Qur'an 65:1 (At-Talaq).

وَأَمَّا فِي الْمَوْطُوءَةِ فَقَوْلُ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١]

وَالْعِدَّةُ لَا تَكُونُ مِنْ الطَّلَاقِ إلَّا فِي مَوْطُوءَةٍ فَعَلَّمَنَا اللَّهُ عَزَّ وَجَلَّ كَيْفَ يَكُونُ طَلَاقُ الْمَوْطُوءَةِ، وَأَخْبَرَنَا أَنَّ تِلْكَ حُدُودُ اللَّهِ، وَأَنَّ مَنْ تَعَدَّاهَا ظَالِمٌ لِنَفْسِهِ.

فَصَحَّ أَنَّ مَنْ ظَلَمَ وَتَعَدَّى حُدُودَ اللَّهِ - عَزَّ وَجَلَّ - فَفِعْلُهُ بَاطِلٌ مَرْدُودٌ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

فَصَحَّ أَنَّ الطَّلَاقَ الْمَذْكُورَ لَا يَكُونُ إلَّا لِلْعِدَّةِ كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ.

فَنَظَرْنَا بَيَانَ مُرَادِ اللَّهِ عَزَّ وَجَلَّ بِقَوْلِهِ: {فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١]

فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ نا أَبِي نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ " طَلَّقْت امْرَأَتِي عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهِيَ حَائِضٌ فَذَكَرَ ذَلِكَ عُمَرُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: «مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ لِيَدَعْهَا حَتَّى تَطْهُرَ ثُمَّ تَحِيضَ حَيْضَةً أُخْرَى فَإِذَا طَهُرَتْ

فَلْيُطَلِّقْهَا قَبْلَ أَنْ يُجَامِعَهَا أَوْ يُمْسِكَهَا، فَإِنَّهَا الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ أَنْ تُطَلَّقَ لَهَا النِّسَاءُ» فَكَانَ هَذَا بَيَانًا لَا يَحِلُّ خِلَافُهُ، وَقَدْ رُوِيَ هَذَا الْخَبَرُ بِنُقْصَانٍ عَمَّا أَوْرَدْنَاهُ -: مِنْهَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ عَنْ قَتَادَةَ قَالَ: سَمِعْتُ يُونُسَ بْنَ جُبَيْرٍ قَالَ: سَمِعْتُ ابْنَ عُمَرَ يَقُولُ طَلَّقْت امْرَأَتِي - وَهِيَ حَائِضٌ - فَأَتَى عُمَرُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَ ذَلِكَ لَهُ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مُرْهُ فَلْيُرَاجِعْهَا فَإِذَا طَهُرَتْ فَإِنْ شَاءَ طَلَّقَهَا؟» .

from Nāfiʿ, from Ibn Umar, who said: "I divorced my wife during the time of the Messenger of Allah—peace and blessings be upon him and his family—while she was menstruating. Umar mentioned this to the Messenger of Allah—peace and blessings be upon him and his family—and he said: 'Order him to take her back, then let him leave her until she becomes pure, then menstruates another period. When she becomes pure, he should divorce her before having intercourse with her or retain her. For that is the waiting period which Allah has ordained for divorcing women [properly].'" This was a definitive clarification that must not be contravened, and this report has been narrated with omissions compared to what we have cited. Among them is what we have narrated through the chain of Shuʿbah from Qatādah, who said: I heard Yūnus ibn Jubayr say: I heard Ibn ʿUmar say: "I divorced my wife while she was menstruating." ʿUmar went to the Prophet—may Allah bless him, his family, and grant him peace—and mentioned that to him. The Prophet—may Allah bless him, his family, and grant him peace—said: "Direct him to take her back. When she becomes pure, if he wishes, let him divorce her?"

قَالَ أَبُو مُحَمَّدٍ: وَرُوِّينَا الْأَخْذَ بِهَذَا عَنْ عَطَاءٍ - قَالَ عَلِيٌّ: وَزِيَادَةُ الْعَدْلِ لَا يَحِلُّ تَرْكُ الْأَخْذِ بِهَا - وَهُوَ خَبَرٌ وَاحِدٌ، عَنْ قِصَّةٍ وَاحِدَةٍ، فِي مَقَامٍ وَاحِدٍ وَأَمَّا طَلَاقُ الْحَامِلِ - فَكَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى لِطَلْحَةَ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ ابْنِ عُمَرَ: أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «مُرْهُ فَلْيُرَاجِعْهَا، ثُمَّ لِيُطَلِّقْهَا طَاهِرًا، أَوْ حَامِلًا» .

L33401–33404 Abu Muhammad said: It has been narrated to us that this ruling was accepted from ʿAṭāʾ – ʿAlī said: "It is impermissible to neglect accepting the additional report from a just narrator" – and this is a solitary report pertaining to a single incident in one specific context. As for the divorce of a pregnant woman—as we have been narrated through the chain of Muslim: I, Abu Bakr ibn Abi Shaybah, narrate from Waki', from Sufyan al-Thawri, from Muhammad ibn ʿAbd al-Rahman, a freed slave of Talha, from Salim ibn ʿAbd Allah ibn ʿUmar, from Ibn ʿUmar—that he divorced his wife while she was menstruating. The Messenger of Allah (peace and blessings be upon him and his family) said: "Command him to take her back, then let him divorce her when she is either in a state of ritual purity or pregnant."

وَأَمَّا الَّتِي لَمْ تَحِضْ - أَوْ قَدْ انْقَطَعَ حَيْضُهَا - فَإِنَّ اللَّهَ عَزَّ وَجَلَّ أَجْمَلَ لَنَا إبَاحَةَ الطَّلَاقِ، وَبَيَّنَ لَنَا طَلَاقَ الْحَامِلِ، وَطَلَاقَ الَّتِي تَحِيضُ، وَلَمْ يَحُدَّ لَنَا تَعَالَى فِي الَّتِي لَمْ تَحِضْ،

L33405–33406 As for the woman who has not menstruated—or whose menstruation has ceased—Allah, the Exalted and Majestic, has outlined for us the permissibility of divorce. He has clarified the divorce of a pregnant woman and the divorce of a menstruating woman, but He, the Exalted, has not specified an iddah (waiting period) for the woman who has not menstruated, nor one for the

woman whose menstruation has ceased. Thus it necessarily follows that He, the Exalted, has permitted her divorce whenever the husband wills, for if there were a divine ruling from Him, the Exalted and Majestic, regarding when to divorce her, He would have made it clear to us.

وَلَا فِي الَّتِي انْقَطَعَ حَيْضُهَا حَدًّا، فَوَجَبَ أَنَّهُ تَعَالَى أَبَاحَ طَلَاقَهَا مَتَى شَاءَ الزَّوْجُ، إِذْ لَوْ كَانَ لَهُ عَزَّ وَجَلَّ فِي وَقْتِ طَلَاقِهَا شَرْعٌ لَبَيَّنَهُ عَلَيْنَا ".

L33407 Then people differed regarding divorce during menstruation—if a man divorces in such a manner, or during a purity period in which he had intercourse with her—whether such a divorce is binding or not. Abu Muhammad said: "Some proponents of this position claimed it was a consensus?"

ثُمَّ اخْتَلَفَ النَّاسُ فِي الطَّلَاقِ فِي الْحَيْضِ إِنْ طَلَّقَ الرَّجُلُ كَذَلِكَ، أَوْ فِي طُهْرٍ وَطِئَهَا فِيهِ، هَلْ يَلْزَمُ ذَلِكَ الطَّلَاقُ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ: ادَّعَى بَعْضُ الْقَائِلِينَ بِهَذَا أَنَّهُ إِجْمَاعٌ؟

L33408 Abu Muhammad said: The one who claims that has indeed lied, because disagreement on that matter exists. Even if the disagreement had not reached us, the one who makes a definitive judgment—regarding all the people of Islam—about something about which he has no certainty and has not received from the entirety of them, would be lying against all of them.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ كَذَبَ مُدَّعِي ذَلِكَ، لِأَنَّ الْخِلَافَ فِي ذَلِكَ مَوْجُودٌ، وَحَتَّى لَوْ لَمْ يَبْلُغْنَا لَكَانَ الْقَاطِعُ - عَلَى جَمِيعِ أَهْلِ الْإِسْلَامِ - بِمَا لَا يَقِينَ عِنْدَهُ بِهِ، وَلَا بَلَغَهُ عَنْ جَمِيعِهِمْ -: كَاذِبًا عَلَى جَمِيعِهِمْ.

L33409–33411 It has been narrated to us through ʿAbd al-Razzāq from Wahb ibn Nāfiʿ that ʿIkrimah reported to him that he heard Ibn ʿAbbās. He states: Divorce is of four kinds – two permissible and two impermissible. The permissible are divorcing her without having engaged in intercourse or during a pregnancy when her condition is clearly evident. The impermissible are divorcing her during menstruation or at the time of intercourse, when it is uncertain whether the womb contains a child or not.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ وَهْبِ بْنِ نَافِعٍ أَنَّ عِكْرِمَةَ أَخْبَرَهُ: أَنَّهُ سَمِعَ ابْنَ عَبَّاسٍ يَقُولُ: الطَّلَاقُ عَلَى أَرْبَعَةِ أَوْجُهٍ -: وَجْهَانِ حَلَالٌ، وَوَجْهَانِ حَرَامٌ، فَأَمَّا الْحَلَالُ فَأَنْ يُطَلِّقَهَا مِنْ غَيْرِ جِمَاعٍ أَوْ حَامِلًا مُسْتَبِينًا حَمْلُهَا، وَأَمَّا الْحَرَامُ فَأَنْ يُطَلِّقَهَا حَائِضًا أَوْ حِينَ يُجَامِعُهَا لَا يَدْرِي أَيَشْتَمِلُ الرَّحِمُ عَلَى الْوَلَدِ أَمْ لَا؟

L33412 Abu Muhammad said: It is inconceivable that Ibn Abbas would declare something permissible to be forbidden.

قَالَ أَبُو مُحَمَّدٍ: وَمِنْ الْمُحَالِ أَنْ يُخْبِرَ ابْنَ عَبَّاسٍ عَمَّا هُوَ جَائِزٌ بِأَنَّهُ حَرَامٌ.

L33413–33415 And through the chain of Ibn Wahb: Jarīr ibn Ḥāzim informed me from al-Aʿmash that Ibn Masʿūd said: "Whoever divorces in accordance with Allah's command, Allah the Exalted has clarified the matter for him. As for those who contravene it, we cannot tolerate their contravention." Narrated by Yūnus ibn ʿUbayd Allāh, from Ibn ʿAbd Allāh ibn ʿAbd al-Raḥīm, from Aḥmad ibn Khālid, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Ibn Bashshār, from ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī, from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ - the freed slave of Ibn ʿUmar - from Ibn ʿUmar, who said regarding a man divorcing his wife during menstruation: "That divorce is invalid."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي جَرِيرُ بْنُ حَازِمٍ عَنْ الْأَعْمَشِ أَنَّ ابْنَ مَسْعُودٍ قَالَ: مَنْ طَلَّقَ كَمَا أَمَرَ اللَّهُ تَعَالَى فَقَدْ بَيَّنَ اللَّهُ تَعَالَى لَهُ، وَمَنْ خَالَفَ فَإِنَّا لَا نُطِيقُ خِلَافَهُ -: نا يُونُسُ بْنُ عُبَيْدِ اللَّهِ نا ابْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا ابْنُ بَشَّارٍ نا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ فِي الرَّجُلِ يُطَلِّقُ امْرَأَتَهُ وَهِيَ حَائِضٌ،

قَالَ ابْنُ عُمَرَ: لَا يُعْتَدُّ لِذَلِكَ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ لَا يَرَى طَلَاقًا مَا خَالَفَ وَجْهَ الطَّلَاقِ، وَوَجْهَ الْعِدَّةِ، وَكَانَ يَقُولُ: وَجْهُ الطَّلَاقِ: أَنْ يُطَلِّقَهَا طَاهِرًا عَنْ غَيْرِ جِمَاعٍ، وَإِذَا اسْتَبَانَ حَمْلُهَا -: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبَّاسُ بْنُ أَصْبَغَ نَا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا حُمَامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّهُ قَالَ فِي الرَّجُلِ يُطَلِّقُ امْرَأَتَهُ وَهِيَ حَائِضٌ؟ قَالَ: لَا يُعْتَدُّ بِهَا.

Through the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAbd Allāh ibn Ṭāwūs, from his father: He held that no divorce is valid if it contradicts the proper manner of divorce and the prescribed waiting period. He stated: "The proper manner of divorce requires divorcing her while she is pure without prior intercourse, and when her pregnancy becomes evident—" Muhammad ibn Sa'id ibn Nabat narrated from Abbas ibn Asbagh, who narrated from Muhammad ibn Qasim ibn Muhammad, who narrated from Muhammad ibn Abd al-Salam al-Khushani, who narrated from Muhammad ibn al-Muthanna, who narrated from Abd al-Rahman ibn Mahdi, who narrated from Humam ibn Yahya from Qatadah from Khilas ibn Amr that he said regarding a man who divorces his wife while she is menstruating: "It is not counted."

L33416 قَالَ أَبُو مُحَمَّد: وَالْعَجَبُ مِنْ جُرْأَةِ مَنْ ادَّعَى الْإِجْمَاعَ عَلَى خِلَافِ هَذَا - وَهُوَ لَا يَجِدُ فِيمَا يُوَافِقُ قَوْلَهُ فِي إمْضَاءِ الطَّلَاقِ فِي الْحَيْضِ، أَوْ فِي طُهْرٍ جَامَعَهَا فِيهِ -: كَلِمَةً عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - غَيْرَ رِوَايَةٍ عَنْ ابْنِ عُمَرَ قَدْ عَارَضَهَا مَا هُوَ أَحْسَنُ مِنْهَا عَنْ ابْنِ عُمَرَ، وَرِوَايَتَيْنِ سَاقِطَتَيْنِ عَنْ عُثْمَانَ، وَزَيْدِ بْنِ ثَابِتٍ.

Abu Muhammad said: How astonishing is the audacity of those who claim consensus against this ruling, when they find no support for their position regarding the execution of divorce during menstruation or during a state of purity in which he had intercourse with her - not a single word from any Companion (may Allah be pleased with them) - besides a narration from Ibn Umar that is contradicted by a superior narration from Ibn Umar himself, and two rejected narrations attributed to Uthman and Zayd ibn Thabit.

L33417 إحْدَاهُمَا - رُوِّينَاهَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ سَمْعَانَ عَنْ رَجُلٍ أَخْبَرَهُ أَنَّ عُثْمَانَ بْنَ عَفَّانَ كَانَ يَقْضِي فِي الْمَرْأَةِ الَّتِي يُطَلِّقُهَا زَوْجُهَا وَهِيَ حَائِضٌ أَنَّهَا لَا تَعْتَدُّ بِحَيْضَتِهَا تِلْكَ وَتَعْتَدُّ بَعْدَهَا ثَلَاثَةَ قُرُوءٍ.

One of them—we narrated her through the chain of Ibn Wahb from Ibn Samʿān, from a man who reported to him—states that ʿUthmān ibn ʿAffān ruled that a woman divorced by her husband during menstruation does not observe her waiting period with that menstruation and must observe three menstrual cycles thereafter.

L33418–33420 وَالْأُخْرَى - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ قَيْسِ بْنِ سَعْدٍ مَوْلَى ابْنِ عَلْقَمَةَ عَنْ رَجُلٍ سَمَّاهُ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ فِيمَنْ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ: يَلْزَمُهُ الطَّلَاقُ وَتَعْتَدُّ بِثَلَاثِ حِيَضٍ سِوَى تِلْكَ الْحَيْضَةِ. قَالَ أَبُو مُحَمَّد: بَلْ نَحْنُ أَسْعَدُ بِدَعْوَى الْإِجْمَاعِ هَاهُنَا لَوْ اسْتَجَزْنَا مَا يَسْتَجِيزُونَ - وَنَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ - وَذَلِكَ أَنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ قَاطِبَةً، وَفِي جُمْلَتِهِمْ جَمِيعُ الْمُخَالِفِينَ لَنَا فِي ذَلِكَ

The second narration - through the chain of ʿAbd al-Razzāq from Hishām ibn Ḥassān from Qays ibn Saʿd, the client of Ibn ʿAlqamah, from a man whom he named, from Zayd ibn Thābit, that he said regarding one who divorces his wife while she is menstruating: The divorce becomes binding upon him, and she must observe three menstrual cycles excluding that menstrual period. Abū Muḥammad said: Rather, we are more entitled to claim consensus here - if we permitted what they permit (and we seek refuge with Allah from that) - because there exists no disagreement among any scholar whatsoever, including in their entirety all those who oppose us in this mat-

ter, that divorce during menstruation or during a state of ritual purity in which he had intercourse with her constitutes an innovation that was prohibited. Concerning her, the Messenger of Allah—peace and blessings be upon him and his family—is a contradiction to his own command—upon him be peace and blessings. Since they entertain no doubt about this matter, how can they deem it permissible to rule by sanctioning an innovation they themselves acknowledge as an innovation and misguidance? Does not the very act of permitting such innovation, by observable judgment, contradict the consensus of those who affirm that it is an innovation? Abu Muhammad said: They cited as evidence from transmitted reports—including what we narrated through the chain of Ibn Wahb, who narrated to us from Ibn Abi Dhi'b, that Nāfiʿ reported to them from Ibn ʿUmar that he divorced his wife while she was menstruating. ʿUmar asked the Messenger of Allah—peace and blessings be upon him and his family—about this, whereupon he said: "Command him to take her back, then retain her until she becomes ritually pure, then menstruates, then becomes ritually pure again. Thereafter, if he wishes, he may keep her, or if he wishes, divorce her before intimacy. That is the prescribed waiting period within which Allah the Exalted has commanded that women be divorced." This counts as one divorce.

فِي أَنَّ الطَّلَاقَ فِي الْحَيْضِ أَوْ فِي طُهْرٍ جَامَعَهَا فِيهِ: بِدْعَةٌ نَهَى عَنْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مُخَالِفَةٌ لِأَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَإِذْ لَا شَكَّ فِي هَذَا عِنْدَهُمْ: فَكَيْفَ يَسْتَجِيزُونَ الْحُكْمَ بِتَجْوِيزِ الْبِدْعَةِ الَّتِي يُقِرُّونَ أَنَّهَا بِدْعَةٌ وَضَلَالَةٌ؟ أَلَيْسَ بِحُكْمِ الْمُشَاهَدَةِ مُجِيزَ الْبِدْعَةِ مُخَالِفًا لِإِجْمَاعِ الْقَائِلِينَ بِأَنَّهَا بِدْعَةٌ؟ قَالَ أَبُو مُحَمَّد: وَاحْتَجُّوا مِنْ الْآثَارِ -: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ نا ابْنُ أَبِي ذِئْبٍ أَنَّ نَافِعًا أَخْبَرَهُمْ عَنْ ابْنِ عُمَرَ أَنَّهُ طَلَّقَ امْرَأَتَهُ - وَهِيَ حَائِضٌ - فَسَأَلَ عُمَرُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ ذَلِكَ؟ فَقَالَ: «مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ لِيُمْسِكْهَا حَتَّى تَطْهُرَ ثُمَّ تَحِيضَ ثُمَّ تَطْهُرَ ثُمَّ إنْ شَاءَ أَمْسَكَ بَعْدَ ذَلِكَ، وَإِنْ شَاءَ طَلَّقَ قَبْلَ أَنْ يَمَسَّ، فَتِلْكَ الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ تَعَالَى أَنْ تَطْلُقَ لَهَا النِّسَاءُ» وَهِيَ وَاحِدَةٌ.

L33421 And through the transmission of Muslim—it was narrated to me by Isḥāq ibn Rāhawayh, who reported to us from Yazīd ibn ʿAbd Rabbihi, who reported to us from Muḥammad ibn Ḥarb, who narrated to me from al-Zubaydī, from al-Zuhrī, from Sālim, from his father. He mentioned divorcing his wife while she was menstruating, concluding: "He revoked it, and the talaq he pronounced was counted as a divorce for her."

وَمِنْ طَرِيقِ مُسْلِمٍ - حَدَّثَنِي إِسْحَاقُ بْنُ رَاهْوَيْهِ نا يَزِيدُ بْنُ عَبْدِ رَبِّهِ نا مُحَمَّدُ بْنُ حَرْبٍ حَدَّثَنِي الزُّبَيْدِيُّ عَنْ الزُّهْرِيِّ عَنْ سَالِمٍ عَنْ أَبِيهِ فَذَكَرَ طَلَاقَهُ لِامْرَأَتِهِ وَهِيَ حَائِضٌ، وَقَالَ فِي آخِرِهِ: فَرَاجَعْتَهَا وَحُسِبَتْ لَهَا التَّطْلِيقَةُ الَّتِي طَلَّقْتَهَا.

L33422–33423 And because of what is found in some of those reports from Ibn Umar's statement: "What prevents me from counting it?" And in others: "So, wait - what do you think if he becomes incapacitated and is declared legally incompetent?"

وَبِمَا فِي بَعْضِ تِلْكَ الْآثَارِ مِنْ قَوْلِ ابْنِ عُمَرَ: مَا يَمْنَعُنِي أَنْ أَعْتَدَّ بِهَا. وَفِي بَعْضِهَا: فَمَهْ أَرَأَيْت إنْ عَجَزَ وَاسْتَحْمَقَ.

L33424 From the narration of Abd al-Razzaq through Ibn Jurayj, who said: We sent to Nafi' while he was grooming himself in Dar al-Nadwah, heading toward Medina (and we were with Ata) - [to ask]: "Was the divorce pronounced by Abdullah ibn Umar upon his wife while she was menstruating counted

during the era of the Messenger of Allah - peace and blessings of Allah be upon him and his family?" He replied: "Yes."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَرْسَلْنَا إِلَى نَافِعٍ وَهُوَ يَتَرَجَّلُ فِي دَارِ النَّدْوَةِ ذَاهِبًا إِلَى الْمَدِينَةِ - وَنَحْنُ مَعَ عَطَاءٍ - هَلْ حُسِبَتْ تَطْلِيقَةُ عَبْدِ اللَّهِ بْنِ عُمَرَ امْرَأَتَهُ حَائِضًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ: نَعَمْ.

L33425 Some of them mentioned a narration transmitted through ʿAbd al-Bāqī ibn Qāniʿ from Abū Yaḥyā al-Sājī: Ismāʿīl ibn Umayyah al-Dharraʿ narrated to us, Ḥammād ibn Zayd from ʿAbd al-ʿAzīz ibn Ṣuhayb from Anas, who said: The Messenger of Allah (may Allah bless him and his family and grant him peace) said: "Whoever divorces through an innovation, We will bind him to his innovation."

وَذَكَرَ بَعْضُهُمْ: رِوَايَةً مِنْ طَرِيقِ عَبْدِ الْبَاقِي بْنِ قَانِعٍ عَنْ أَبِي يَحْيَى السَّاجِيِّ نا إِسْمَاعِيلُ بْنُ أُمَيَّةَ الذَّرَّاعُ نا حَمَّادُ بْنُ زَيْدٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «، مَنْ طَلَّقَ فِي بِدْعَةٍ أَلْزَمْنَاهُ بِدْعَتَهُ» .

L33426 Abu Muhammad said: All of this provides no valid proof for them. As for the cited ḥadīth of Anas—it is undoubtedly fabricated, for none of the trustworthy narrators among Ḥammād ibn Zayd's students transmitted it. It is solely narrated through the chain of Ismāʿīl ibn Umayyah al-Dharrāʿ. If this refers to al-Qurashī the Younger, the Basran—and this is certain—then he is weak and rejected. If it refers to someone else—then he is unknown, so who is he?

قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ: أَمَّا حَدِيثُ أَنَسٍ الْمَذْكُورُ - فَمَوْضُوعٌ بِلَا شَكٍّ - لَمْ يَرْوِهِ أَحَدٌ مِنْ أَصْحَابِ حَمَّادِ بْنِ زَيْدٍ الثِّقَاتِ إنَّمَا هُوَ مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ أُمَيَّةَ الذَّرَّاعِ، فَإِنْ كَانَ الْقُرَشِيُّ الصَّغِيرُ الْبَصْرِيُّ - وَهُوَ بِلَا شَكٍّ - فَهُوَ ضَعِيفٌ مَتْرُوكٌ، وَإِنْ كَانَ غَيْرُهُ - فَهُوَ مَجْهُولٌ لَا يُعْرَفُ مَنْ هُوَ؟

L33427 And through the chain of—Abdul-Baqi ibn Qani', a narrator of every lie, isolated in every calamity, and not a valid authority because he altered in his later days—moreover, even if it were authentic—and it has never been authentic—it would hold no authority, because the meaning of his statement "We have bound him to his innovation" was as the Almighty said: {And every human We have bound his deeds to his neck} [Al-Isra: 13].[8]

وَمِنْ طَرِيقِ - عَبْدِ الْبَاقِي بْنِ قَانِعٍ رَاوِي كُلِّ كِذْبَةٍ، الْمُنْفَرِدُ بِكُلِّ طَامَّةٍ وَلَيْسَ بِحُجَّةٍ، لِأَنَّهُ تَغَيَّرَ بِآخِرَةٍ - ثُمَّ لَوْ صَحَّ - وَلَمْ يَصِحَّ قَطُّ - لَكَانَ لَا حُجَّةَ فِيهِ، لِأَنَّهُ كَانَ مَعْنَى قَوْلِهِ " أَلْزَمْنَاهُ بِدْعَتَهُ " أَيْ كَمَا قَالَ عَزَّ وَجَلَّ: {وَكُلَّ إِنْسَانٍ أَلْزَمْنَاهُ طَائِرَهُ فِي عُنُقِهِ} [الإسراء: ١٣]

L33428–33430 And it does not mean that a judgment is passed against him to enforce the ruling of his innovation or to permit [heretical] matters in the religion; and this is... The apparent ruling—as they themselves assert—applies to one who conducts an invalid sale or enters into a bidʿah marriage. It extends to all other legal rulings without distinction.

وَلَيْسَ فِيهِ - أَنَّهُ يُحْكَمُ عَلَيْهِ بِإِمْضَاءِ حُكْمِ بِدْعَتِهِ، وَتَجْوِيزِ مَا فِي الدِّينِ، وَهَذَا هُوَ الظَّاهِرُ، كَمَا يَقُولُونَ هُمْ فِيمَنْ بَاعَ بَيْعًا لَا يَحِلُّ، أَوْ نَكَحَ نِكَاحًا بِبِدْعَةٍ وَفِي سَائِرِ الْأَحْكَامِ وَلَا فَرْقَ.

L33431 As for the report of Nāfiʿ, it is mawqūf [stopping at him], and there is no

وَأَمَّا خَبَرُ نَافِعٍ - فَمَوْقُوفٌ عَلَيْهِ لَيْسَ فِيهِ: أَنَّهُ سَمِعَهُ مِنْ ابْنِ عُمَرَ فَبَطَلَ الِاحْتِجَاجُ بِهِ.

[8] **Qur'an references (L33427):** Qur'an 17:13 (Al-Isra).

mention within it that he heard it from Ibn ʻUmar. Thus, using it as evidence is invalid.

L33432 As for what is narrated from Ibn Umar, “Enough! Have you considered if he becomes incapacitated and irrational?”—this wording contains no clarification that such a divorce would count as a valid divorce for him. Legal rulings are not derived from unclarified statements. Rather, it may plausibly mean he intended to deter such questioning and indicate that the individual became incapacitated and irrational in this matter. The more apparent view regarding such a scenario is that it should not be recognized, being a lapse from the doer’s action, for there is no binding ruling in Allah’s religion—Exalted is He—through which the judge enforcing it becomes senseless or incapacitated. Rather, every religious ruling is executed by one who is attentive and judicious. All praise is due to Allah, Lord of the worlds.

L33433 As for what has been narrated regarding his statement: “What prevents me from counting it,” and his saying: “The divorce he pronounced was counted as a divorce for her” - he did not state in it that the Messenger of Allah (may Allah bless him and his family and grant him peace) counted it as a divorce, nor that he (peace and blessings be upon him) said to him: “Count it as a divorce.” Rather, it is a report about himself - and there is no authoritative proof in his action nor in the actions of anyone besides the Messenger of Allah (may Allah bless him and his family and grant him peace).

L33434–33436 As for the ḥadīth of Ibn Abī Dhi’b which concludes with “and it is one,” this is a phrase that Ibn Abī Dhi’b introduced. He alone; nor do we assert that it is from the speech of the Messenger of Allah (may Allah bless him and his family and grant him peace). It may be from the statement of someone other than him—peace and blessings be upon him—and religious laws are not taken based on conjectures.

L33437 Then, if it were definitively established that [this statement] is from the speech of the Messenger of Allah—peace and blessings be upon him and his family—its meaning would be: “It is a single case in which Ibn Umar erred,” or “It is a binding ruling incumbent upon every divorcer.”

وَأَمَّا مَا رُوِيَ عَنْ ابْنِ عُمَرَ " فَمَهْ أَرَأَيْت إنْ عَجَزَ وَاسْتَحْمَقَ " فَلَا بَيَانَ فِي هَذَا اللَّفْظِ بِأَنَّ تِلْكَ الطَّلْقَةَ عُدَّتْ لَهُ طَلْقَةً، وَالشَّرَائِعُ لَا تُؤْخَذُ بِلَفْظٍ لَا بَيَانَ فِيهِ، بَلْ قَدْ يُحْتَمَلُ أَنْ يَكُونَ أَرَادَ الزَّجْرَ عَنْ السُّؤَالِ عَنْ هَذَا، وَالْإِخْبَارَ بِأَنَّهُ عَجَزَ وَاسْتَحْمَقَ فِي ذَلِكَ، وَالْأَظْهَرُ فِيمَا هَذِهِ صِفَتُهُ أَنْ لَا يُعْتَدَّ بِهِ، وَأَنَّهُ سَقْطَةٌ مِنْ فِعْلِ فَاعِلِهِ، لِأَنَّهُ لَيْسَ فِي دِينِ اللَّهِ تَعَالَى حُكْمٌ نَافِذٌ يَسْتَحْمِقُ الْحَاكِمُ بِهِ وَيَعْجِزُ، بَلْ كُلُّ حُكْمٍ فِي الدِّينِ فَالْمُنَفِّذُ لَهُ مُسْتَغْفِلٌ كَيِّسٌ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا مَا رُوِيَ مِنْ قَوْلِهِ: " مَا يَمْنَعُنِي أَنْ أَعْتَدَّ بِهَا " وَقَوْلُهُ " وَحُسِبَتْ لَهَا التَّطْلِيقَةُ الَّتِي طَلَّقَتْهَا " فَلَمْ يَقُلْ فِيهِ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَسَبَهَا تَطْلِيقَةً، وَلَا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هُوَ الَّذِي قَالَ لَهُ: أَعْتَدَّ بِهَا طَلْقَةً، إنَّمَا هُوَ إخْبَارٌ عَنْ نَفْسِهِ - وَلَا حُجَّةَ فِي فِعْلِهِ وَلَا فِعْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَأَمَّا حَدِيثُ ابْنِ أَبِي ذِئْبٍ الَّذِي فِي آخِرِهِ «وَهِيَ وَاحِدَةٌ» فَهَذِهِ لَفْظَةٌ أَتَى بِهَا ابْنُ أَبِي ذِئْبٍ وَحْدَهُ، وَلَا نَقْطَعُ عَلَى أَنَّهَا مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَمُمْكِنٌ أَنْ تَكُونَ مِنْ قَوْلِ مَنْ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَالشَّرَائِعُ لَا تُؤْخَذُ بِالظُّنُونِ.

ثُمَّ لَوْ صَحَّ يَقِينًا أَنَّهَا مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَكَانَ مَعْنَاهُ -: وَهِيَ وَاحِدَةٌ أَخْطَأَ فِيهَا ابْنُ عُمَرَ، أَوْ وَهِيَ قَضِيَّةٌ وَاحِدَةٌ لَازِمَةٌ لِكُلِّ مُطَلِّقٍ.

L33438 The apparent meaning is that this is from the statement of someone other than the Prophet (peace be upon him), reporting that Ibn ʿUmar had divorced her with one divorce pronouncement. We previously mentioned the authentic narration through the chain of ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar, concerning one who divorces his wife while she is menstruating, that such a divorce is not counted.

وَالظَّاهِرُ - أَنَّهُ مِنْ قَوْلِ مَنْ دُونَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مُخْبِرًا بِأَنَّ ابْنَ عُمَرَ كَانَ طَلَّقَهَا طَلْقَةً وَاحِدَةً، وَقَدْ ذَكَرْنَا قَبْلُ الرِّوَايَةَ الصَّحِيحَةَ مِنْ طَرِيقِ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ فِيمَنْ طَلَّقَ امْرَأَتَهُ حَائِضًا أَنَّهُ لَا يُعْتَدُّ بِذَلِكَ.

L33439 Sufficient from all this is the well-documented ḥadīth, clear and established, which we transmitted through the chain of Abū Dāwūd al-Sijistānī, who said: Aḥmad ibn Ṣāliḥ narrated to us, ʿAbd al-Razzāq narrated to us, Ibn Jurayj narrated to us, informing me on the authority of Abū al-Zubayr, who heard ʿAbd al-Raḥmān ibn Ayman, the client of ʿAzza, questioning Ibn ʿUmar. Abū al-Zubayr said—while I was listening—"What is your opinion regarding a man who divorces his wife while she is menstruating?" Ibn ʿUmar responded: "Ibn ʿUmar divorced his wife while she was menstruating during the time of Allah's Messenger—peace and blessings be upon him and his household. ʿUmar then asked Allah's Messenger—peace and blessings be upon him and his household—about this, saying, 'Ibn ʿUmar divorced his wife while she was menstruating.'" ʿAbdullāh said: "He ordered me to take her back and did not count it as a valid divorce. He said, 'When she becomes pure, let him divorce her if he wishes or retain her.' And Allah's Messenger—peace and blessings be upon him and his household—recited: 'O Prophet, when you divorce women, divorce them at the outset of their waiting period.'"

وَيَكْفِي مِنْ هَذَا كُلِّهِ الْمُسْنَدُ الْبَيِّنُ الثَّابِتُ، الَّذِي رُوِّينَاهُ - مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ قَالَ: نا أَحْمَدُ بْنُ صَالِحٍ نَا عَبْدُ الرَّزَّاقِ نَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ عَبْدَ الرَّحْمَنِ بْنَ أَيْمَنَ مَوْلَى عَزَّةَ يَسْأَلُ ابْنَ عُمَرَ قَالَ أَبُو الزُّبَيْرِ - وَأَنَا أَسْمَعُ - كَيْفَ تَرَى فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ حَائِضًا؟ فَقَالَ ابْنُ عُمَرَ: طَلَّقَ ابْنُ عُمَرَ امْرَأَتَهُ وَهِيَ حَائِضٌ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَسَأَلَ عُمَرُ عَنْ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنَّ ابْنَ عُمَرَ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ قَالَ عَبْدُ اللَّهِ: فَرَدَّهَا عَلَيَّ وَلَمْ يَرَهَا شَيْئًا؟ وَقَالَ: إِذَا طَهُرَتْ فَلْيُطَلِّقْ إِذَا شَاءَ أَوْ لِيُمْسِكْ وَقَرَأَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - " يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ فِي قُبُلِ عِدَّتِهِنَّ ".

L33440–33442 Abu Muhammad said: This is among what was initially revealed, then the phrase "during the initial phase of their waiting periods" was abrogated, and Allah the Exalted revealed {for their waiting periods} [At-Talaq: 1]. And likewise, we have transmitted it through the chain of al-Dabarī from ʿAbd al-Razzāq from Ibn Jurayj: Abū al-Zubayr informed me that he heard Ibn ʿUmar, and ʿAbd al-Raḥmān ibn Ayman asked him—and Ibn ʿUmar recounted it verbatim. This is an impeccably authentic chain of transmission; it does not permit [scholarly] interpretations.[9]

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِمَّا قُرِئَ ثُمَّ رُفِعَتْ لَفْظَةُ " فِي قُبُلِ " وَأَنْزَلَ اللَّهُ تَعَالَى {لِعِدَّتِهِنَّ} [الطلاق: ١] وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ الدَّبَرِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ ابْنَ عُمَرَ وَسَأَلَهُ عَبْدُ الرَّحْمَنِ بْنُ أَيْمَنَ - فَذَكَرَهُ نَصًّا - وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ، لَا يَحْتَمِلُ التَّوْجِيهَاتِ.

L33443 And all praise is due to Allah, Lord of the worlds.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[9] **Qur'an references (L33440):** Qur'an 65:1 (At-Talaq).

وَقَالَ بَعْضُهُمْ: أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِمُرَاجَعَتِهَا دَلِيلٌ عَلَى أَنَّهَا طَلْقَةٌ يُعْتَدُّ بِهَا؟ فَقُلْنَا: لَيْسَ ذَلِكَ دَلِيلًا عَلَى مَا زَعَمْتُمْ، لِأَنَّ ابْنَ عُمَرَ - بِلَا شَكٍّ - إذْ طَلَّقَهَا حَائِضًا فَقَدْ اجْتَنَبَهَا، فَإِنَّمَا أَمَرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِرَفْضِ فِرَاقِهِ لَهَا وَأَنْ يُرَاجِعَهَا كَمَا كَانَتْ قَبْلُ، بِلَا شَكٍّ.

L33444 Some of them said: The command of the Messenger of Allah—peace and blessings be upon him—to take her back is proof that this constitutes a divorce requiring observance of the waiting period. We responded: This provides no evidence for your claim, for Ibn Umar—undoubtedly—had already abstained from her when he divorced her during menstruation. The Prophet—peace and blessings be upon him—only commanded him to reject his separation from her and restore her to her prior marital status as she was before, without question.

وَقَالَ بَعْضُهُمْ: الْوَرَعُ إلْزَامُهُ تِلْكَ الطَّلْقَةَ إذْ قَدْ يُطَلِّقُهَا بَعْدَ ذَلِكَ طَلْقَتَيْنِ فَتَبْقَى عِنْدَهُ، وَلَعَلَّهَا مُطَلَّقَةٌ ثَلَاثًا؟ .

L33445 Some scholars said: Piety requires him to uphold that divorce, for he may later divorce her twice [more], and she would remain with him. Yet she might [already] be thrice-divorced?

فَقُلْنَا: بَلْ هَذَا ضِدُّ الْوَرَعِ، إذْ تُبِيحُونَ فَرْجَهَا لِأَجْنَبِيٍّ بِلَا بَيَانٍ، وَإِنَّمَا الْوَرَعُ أَنْ لَا تُحَرِّمَ عَلَى الْمُسْلِمِ امْرَأَتَهُ الَّتِي نَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ عَزَّ وَجَلَّ أَبَاحَهَا لَهُ وَحَرَّمَهَا عَلَى مَنْ سِوَاهُ إلَّا بِيَقِينٍ، وَأَمَّا بِالظُّنُونِ وَالْمُحْتَمَلَاتِ فَلَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33446 We said: Rather, this contradicts piety, since you permit her private parts to a non-mahram without clarification. True piety lies in not depriving a Muslim of his wife—whom we are certain Allah the Exalted has permitted to him and forbidden to all others—except through definitive proof. As for suspicions and probabilities, they hold no validity. And success comes only from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَالْعَجَبُ كُلُّهُ أَنَّهُمْ إنْ وَجَدُوا فِي الطَّلَاقِ فِي الْحَيْضِ مَا يَشْغَبُونَ بِهِ مِمَّا ذَكَرْنَا، فَأَيُّ شَيْءٍ وَجَدُوا فِي طَلَاقِهِ إيَّاهَا فِي طُهْرٍ وَطِئَهَا فِيهِ؟ فَإِنْ قَالُوا: قِسْنَاهُ عَلَى الطَّلَاقِ فِي الْحَيْضِ؟ قُلْنَا: هَذَا بَاطِلٌ مِنْ الْقِيَاسِ، وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّهُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ: طُهْرٌ عَلَى حَيْضٍ، فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؟

L33447 Abū Muḥammad said: What is utterly perplexing is that if they find in divorce during menstruation any grounds for frivolous dispute from what we have mentioned, then what justification do they find for divorcing her during a state of ritual purity (ṭuhr) in which he had intercourse with her? If they say: "We have analogized it to divorce during menstruation," we respond: This is invalid by analogy. Even if analogy were valid, this would still constitute the very essence of falsehood, for it analogizes a thing to its opposite: ritual purity to menstruation. How then, when all analogy is inherently invalid?

فَإِنْ قَالُوا: إنَّكُمْ تُلْزِمُونَهُ الطَّلَاقَ فِي الْحَيْضِ، وَفِي طُهْرٍ مَسَّهَا فِيهِ إذَا كَانَ طَلَاقًا ثَالِثًا أَوْ ثَلَاثَةً مَجْمُوعَةً، وَهِيَ غَيْرُ الْمَدْخُولِ بِهَا بِكُلِّ حَالٍ؟

L33448–33449 If they say: "Do you oblige him to divorce her during menstruation or during a purity period in which he had intercourse with her - if it is a third divorce or three combined divorces - while she is someone with whom the marriage has not been consummated in any case?"

L33450 We said: Yes, because Allah's statement—the Almighty, the Majestic—{Divorce them for their waiting period} [65:1] leaves no ambiguity that He,

exalted, commanded this specifically regarding divorces in cases of consummated marriage, excluding the triple divorce. It is in these two aspects that Allah's Messenger—peace and blessings be upon him—issued a legal opinion to Ibn ʻUmar. The Almighty never commanded this for non-consummated marriages, nor for those who pronounce a third divorce or three cumulative divorces. There exists no waiting period for divorce in non-consummated marriages, thus requiring the divorce to be effected for her, as we have clarified through the Quranic text. His statement—exalted—{You [the husband] do not know—perhaps Allah will bring about a new circumstance after that} [65:1] and {When they have reached their term, either retain them honorably or separate from them honorably} [65:2] does not apply to triple divorce.[10]

قُلْنَا: نَعَمْ، لِأَنَّ قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] لَا إِشْكَالَ فِي أَنَّهُ تَعَالَى إِنَّمَا أَمَرَ بِذَلِكَ فِي الْمَدْخُولِ بِهَا فِيمَا كَانَ مِنَ الطَّلَاقِ دُونَ الثَّلَاثِ - وَفِي هَذَيْنِ الْوَجْهَيْنِ أَفْتَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْنَ عُمَرَ، وَلَمْ يَأْمُرْ قَطُّ عَزَّ وَجَلَّ بِذَلِكَ فِي غَيْرِ مَدْخُولٍ بِهَا، وَلَا فِيمَنْ طَلَّقَ ثَالِثَةً، أَوْ ثَلَاثَةً مَجْمُوعَةً وَلَيْسَ فِي غَيْرِ الْمَدْخُولِ بِهَا عِدَّةُ طَلَاقٍ فَيَلْزَمُ أَنْ يُطَلَّقَ لَهَا، كَمَا بَيَّنَّا بِنَصِّ الْقُرْآنِ وقَوْله تَعَالَى: {لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] وَلَيْسَ هَذَا فِي طَلَاقِ الثَّلَاثِ.

L33451 From ʿAbd al-Razzāq, who reported to us: Maʿmar narrated from Ayyūb al-Sikhtiyānī from Nāfiʿ from Ibn ʿUmar that Ibn ʿUmar divorced his wife once while she was menstruating, mentioning the ḥadīth.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ " أَنَّهُ طَلَّقَ امْرَأَتَهُ وَاحِدَةً وَهِيَ حَائِضٌ " وَذَكَرَ الْحَدِيثَ.

L33452 From the chain of Muslim: Muḥammad ibn Rumḥ reported to us, al-Layth ibn Saʿd reported to us, from Nāfiʿ, from Ibn ʿUmar: That he divorced his wife with a single pronouncement of divorce while she was menstruating. The Messenger of Allah (peace and blessings of Allah be upon him) commanded him to take her back, retain her until she becomes pure, then she menstruates another menstruation with him. Then he should let her wait until she becomes pure from her menstruation. If he wishes to divorce her thereafter, let him divorce her when she is pure before resuming intimacy. That is the waiting period Allah the Exalted has ordained for divorcing women within its prescribed time.

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ (أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ تَطْلِيقَةً وَاحِدَةً فَأَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرَاجِعَهَا ثُمَّ يُمْسِكَهَا حَتَّى تَطْهُرَ ثُمَّ تَحِيضَ عِنْدَهُ حَيْضَةً أُخْرَى ثُمَّ يُمْهِلَهَا حَتَّى تَطْهُرَ مِنْ حَيْضَتِهَا، فَإِنْ أَرَادَ أَنْ يُطَلِّقَهَا فَلْيُطَلِّقْهَا حِينَ تَطْهُرُ مِنْ قَبْلِ أَنْ يُجَامِعَهَا، فَتِلْكَ الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ تَعَالَى أَنْ تُطَلَّقَ لَهَا النِّسَاءُ.

L33453 Ibn Umar said: "Did you divorce your wife once or twice? The Messenger of Allah (peace and blessings be upon him) has commanded you regarding that. But if you divorced her three times, she is forbidden to you until she marries another husband. You have disobeyed your Lord in what He commanded you concerning the divorce of your wife."

قَالَ ابْنُ عُمَرَ: أَأَنْت طَلَّقْتَ امْرَأَتَك مَرَّةً أَوْ مَرَّتَيْنِ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَك بِذَلِكَ، وَإِنْ كُنْت طَلَّقْتَهَا ثَلَاثًا فَقَدْ حُرِّمَتْ عَلَيْك حَتَّى تَنْكِحَ زَوْجًا غَيْرَك، وَعَصَيْت رَبَّك فِيمَا أَمَرَك بِهِ مِنْ طَلَاقِ امْرَأَتِك) .

L33454–33455 Abu Muhammad said: It is possible that Ibn Umar meant by *the sinful act*

قَالَ أَبُو مُحَمَّدٍ: قَدْ يُمْكِنُ أَنَّ ابْنَ عُمَرَ أَرَادَ بِالْمَعْصِيَةِ مَنْ طَلَّقَهَا كَذَلِكَ دُونَ الثَّلَاثِ.

[10] **Qur'an references (L33450):** Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq).

the one who divorces his wife in that way without the triple divorce.

L33456 As for the disagreement regarding the triple divorce pronounced collectively: is it a bidʿah or not? A group claimed that it was a bidʿah, then they differed among themselves.

L33457 A group among them said, “It is not valid at all, because innovation is rejected.”

L33458 A group among them said: Rather, it is referred back to the judgment of the single authorized individual, such that the ruling on divorce is likewise.

L33459 A group said: Rather, it takes effect as it is, and the divorcer is similarly disciplined.

L33460 A group held the view that it is not an innovation, but rather a Sunnah in which there is no reprehensibility.

L33461 Those who asserted that it is nullified argued by citing the verse of Allah, the Exalted: {O Prophet, when you divorce women} [At-Talaq: 1], the verse.[11]

L33462 And by the statement of Allah, the Exalted: {Divorced women shall wait three menstrual periods, and it is not lawful for them} [Al-Baqarah: 228] up to His words: {and their husbands have the greatest right to restore them during that} [Al-Baqarah: 228].[12]

L33463 And by His statement, the Exalted: {When you divorce women and they have reached their prescribed term, either retain them in a kind manner or release them honorably} [Al-Baqarah 2:231].[13]

L33464 They said: “A divorce does not [count as] divorce unless it fulfills these conditions.”

L33465–33466 They said: The meaning of Allah’s statement, the Exalted: “Divorce is [allowed] twice; thereafter, either retain [your wives] with kindness or release

وَأَمَّا الِاخْتِلَافُ فِي طَلَاقِ الثَّلَاثِ مَجْمُوعَةً - أَهُوَ بِدْعَةٌ أَمْ لَا؟ فَزَعَمَ قَوْمٌ أَنَّهَا بِدْعَةٌ، ثُمَّ اخْتَلَفُوا.

فَقَالَتْ طَائِفَةٌ مِنْهُمْ - لَا يَقَعُ أَلْبَتَّةَ، لِأَنَّ الْبِدْعَةَ مَرْدُودَةٌ.

وَقَالَتْ طَائِفَةٌ مِنْهُمْ: بَلْ يُرَدُّ إِلَى حُكْمِ الْوَاحِدِ الْمَأْمُورِ بِأَنْ يَكُونَ حُكْمُ الطَّلَاقِ كَذَلِكَ.

قَالَتْ طَائِفَةٌ: بَلْ تَقَعُ كَمَا هُوَ، وَيُؤَدَّبُ الْمُطَلِّقُ كَذَلِكَ.

وَقَالَتْ طَائِفَةٌ: لَيْسَتْ بِدْعَةً، وَلَكِنَّهَا سُنَّةٌ لَا كَرَاهَةَ فِيهَا.

وَاحْتَجَّ مَنْ قَالَ: إِنَّهَا تَبْطُلُ بِقَوْلِ اللَّهِ تَعَالَى: {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ} [الطلاق: ١] الْآيَةَ.

وَبِقَوْلِهِ تَعَالَى: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ} [البقرة: ٢٢٨] إِلَى قَوْله تَعَالَى {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ} [البقرة: ٢٢٨] .

وَبِقَوْلِهِ تَعَالَى: {وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ} [البقرة: ٢٣١] .

قَالُوا: فَلَا يَكُونُ طَلَاقًا إِلَّا مَا كَانَ بِهَذِهِ الصِّفَةِ.

قَالُوا: وَمَعْنَى قَوْلِ اللَّهِ تَعَالَى: {الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ} [البقرة: ٢٢٩] أَيْ مَرَّةً بَعْدَ مَرَّةٍ كَمَا تَقُولُ: سِيرَ بِهِ فَرْسَخَانِ.

[11] **Qur’an references (L33461):** Qur’an 65:1 (At-Talaq).
[12] **Qur’an references (L33462):** Qur’an 2:228 (Al-Baqarah).
[13] **Qur’an references (L33463):** Qur’an 2:231 (Al-Baqarah).

them with good treatment" [Al-Baqarah: 229] is that [it must be done] on two separate occasions, just as one might say: "He traveled two parasangs."[14]

L33467 They mentioned what we have narrated through the chain of Aḥmad ibn Shuʿayb, who narrated from Sulaymān ibn Dāwūd, who narrated from Ibn Wahb, who narrated from Makhramah (who is the son of Bukayr ibn al-Ashajj), who narrated from his father, who said: I heard Maḥmūd ibn Labīd say: "The Messenger of God (may God's blessings and peace be upon him and his family) reported regarding a man who divorced his wife with threefold divorce (triple talaq) simultaneously. He rose in anger and said: 'Does he play with the Book of God while I am present among you?' A man then stood and asked: 'O Messenger of God, shall I kill him?'"

L33468–33469 Aḥmad ibn Shuʿayb said, "I do not know of anyone who narrated it besides Makhrama."

L33470 Abu Muhammad said: As for their statement, "An innovation is rejected," they have spoken truthfully. For if it were an innovation, it would be obligatory to reject and nullify it.

L33471–33472 As for the verses, they were revealed exclusively concerning those who divorced their wives only once or twice.

L33473 Then ask them about one who divorces once, then reconciles, then divorces a second time, then reconciles a second time, then divorces a third time—has he acted upon an innovation? If they answer, "No—rather, in accordance with the Sunnah," then ask them: "Do you rule for him based on what is in the aforementioned verses?" They will respond: "No," without any difference of opinion.

L33474 Thus, it has become evident that the intended [subject] in the mentioned verses is he who seeks to issue a revocable divorce? Consequently, their argumentation using these verses regarding the ruling of one who issued a triple divorce has been invalidated.

L33475 As for their claim that the meaning of His statement {Divorce is twice} [Al-Baqarah: 229] is that it signifies one after another, this is erroneous. Rather,

[14]**Qur'an references (L33466):** Qur'an 2:229 (Al-Baqarah).

وَذَكَرُوا مَا رُوِّينَاهُ - مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا سُلَيْمَانُ بْنُ دَاوُد نا ابْنُ وَهْبٍ نا مَخْرَمَةُ - هُوَ ابْنُ بُكَيْرِ بْنِ الْأَشَجِّ - عَنْ أَبِيهِ قَالَ: سَمِعْتُ مَحْمُودَ بْنَ لَبِيدٍ قَالَ: «أُخْبِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ ثَلَاثَ تَطْلِيقَاتٍ جَمِيعًا فَقَامَ غَضْبَانَ ثُمَّ قَالَ: أَيُلْعَبُ بِكِتَابِ اللَّهِ وَأَنَا بَيْنَ أَظْهُرِكُمْ، فَقَامَ رَجُلٌ فَقَالَ: يَا رَسُولَ اللَّهِ أَلَا أَقْتُلُهُ» .

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ: لَا أَعْلَمُ أَحَدًا رَوَاهُ غَيْرَ مَخْرَمَةَ.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُهُمْ: " الْبِدْعَةُ مَرْدُودَةٌ " فَصَدَقُوا، وَلَوْ كَانَتْ بِدْعَةً لَوَجَبَ أَنْ تُرَدَّ وَتَبْطُلَ.

وَأَمَّا الْآيَاتُ - فَإِنَّمَا نَزَلَتْ فِيمَنْ طَلَّقَ وَاحِدَةً أَوْ اثْنَتَيْنِ فَقَطْ.

ثُمَّ تَسْأَلُهُمْ عَمَّنْ طَلَّقَ مَرَّةً، ثُمَّ رَاجَعَ، ثُمَّ مَرَّةً، ثُمَّ رَاجَعَ ثَانِيَةً، ثُمَّ ثَالِثَةً، أَبِبِدْعَةٍ أَتَى؟ فَمَنْ قَوْلُهُمْ: لَا، بَلْ بِسُنَّةٍ؟ فَنَسْأَلُهُمْ: أَتَحْكُمُونَ لَهُ بِمَا فِي الْآيَاتِ الْمَذْكُورَاتِ؟ فَمِنْ قَوْلِهِمْ: لَا، بِلَا خِلَافٍ.

فَصَحَّ أَنَّ الْمَقْصُودَ - فِي الْآيَاتِ الْمَذْكُورَاتِ - مَنْ أَرَادَ أَنْ يُطَلِّقَ طَلَاقًا رَجْعِيًّا؟ فَبَطَلَ احْتِجَاجُهُمْ بِهَا فِي حُكْمِ مَنْ طَلَّقَ ثَلَاثًا.

وَأَمَّا قَوْلُهُمْ مَعْنَى قَوْلِهِ: {الطَّلَاقُ مَرَّتَانِ} [البقرة: ٢٢٩] أَنَّ مَعْنَاهُ: مَرَّةً بَعْدَ مَرَّةٍ فَخَطَأٌ، بَلْ هَذِهِ الْآيَةُ كَقَوْلِهِ تَعَالَى: {نُؤْتِهَا أَجْرَهَا مَرَّتَيْنِ} [الأحزاب: ٣١] أَيْ مُضَاعَفًا مَعًا.

this verse is like His saying—exalted is He—: {We will give her her reward twice} [Al-Ahzab: 31], meaning doubled at once.[15]

وَهَذِهِ الْآيَةُ أَيْضًا تَعْلِيمٌ لِمَا دُونَ الثَّلَاثِ مِنْ الطَّلَاقِ، وَهُوَ حُجَّةٌ لَنَا عَلَيْهِمْ، لِأَنَّهُمْ لَا يَخْتَلِفُونَ - يَعْنِي الْمُخَالِفِينَ لَنَا - فِي أَنَّ طَلَاقَ السُّنَّةِ هُوَ أَنْ يُطَلِّقَهَا وَاحِدَةً، ثُمَّ يَتْرُكَهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا - فِي قَوْلِ طَائِفَةٍ مِنْهُمْ.

L33476–33477 This verse also provides instruction regarding divorce pronounced fewer than three times, and it constitutes proof for us against our opponents, for they—those who differ from us—do not dispute that the Sunnah-compliant divorce is to issue a single pronouncement, then leave her until her waiting period expires—this being affirmed in the juridical view of a faction among them.

وَفِي قَوْلِ آخَرِينَ مِنْهُمْ: أَنْ يُطَلِّقَهَا فِي كُلِّ طُهْرٍ طَلْقَةً -: وَلَيْسَ شَيْءٌ مِنْ هَذَا فِي هَذِهِ الْآيَةِ، وَهُمْ لَا يَرَوْنَ مَنْ طَلَّقَ طَلْقَتَيْنِ مُتَتَابِعَتَيْنِ فِي كَلَامٍ مُتَّصِلٍ: طَلَاقَ سُنَّةٍ، فَبَطَلَ تَعَلُّقُهُمْ بِقَوْلِهِ تَعَالَى: {الطَّلَاقُ مَرَّتَانِ} [البقرة: ٢٢٩] .

L33478 In the opinion of others among them: that he divorces her once in each period of purity. None of this is present in this verse, and they do not consider someone who issues two consecutive divorces in a single connected statement as having performed a Sunnah-compliant divorce. Thus, their reliance upon the words of the Almighty, “Divorce is twice” [Al-Baqarah: 229], is invalidated.[16]

وَأَمَّا خَبَرُ مَحْمُودِ بْنِ لَبِيدٍ فَمُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ - وَمَخْرَمَةُ لَمْ يَسْمَعْ مِنْ أَبِيهِ شَيْئًا.

L33479 As for the report of Maḥmūd ibn Labīd, it is *mursal*, and there is no authoritative proof in a *mursal* report—for Makhramah never heard anything directly from his father.

وَأَمَّا قَوْلُ مَنْ قَالَ: إنَّ الثَّلَاثَ تُجْعَلُ وَاحِدَةً، فَإِنَّهُمْ احْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ الطَّلَاقُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَبِي بَكْرٍ وَسَنَتَيْنِ مِنْ خِلَافَةِ عُمَرَ: طَلَاقُ الثَّلَاثِ وَاحِدَةً، فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: إنَّ النَّاسَ قَدْ اسْتَعْجَلُوا فِي أَمْرٍ كَانَ لَهُمْ فِيهِ أَنَاةٌ، فَلَوْ أَمْضَيْنَاهُ عَلَيْهِمْ؟ فَأَمْضَاهُ عَلَيْهِمْ.

L33480 As for the statement of those who claim that three divorce pronouncements are treated as one, they argued using the narration transmitted through the chain of Muslim: Muḥammad ibn Rāfiʿ reported from ʿAbd al-Razzāq, from Maʿmar, from Ibn Ṭāwūs, from his father, from Ibn ʿAbbās, who said: “During the era of Allah’s Messenger (peace and blessings be upon him and his family), Abū Bakr, and two years of ʿUmar’s caliphate, three divorce pronouncements were counted as a single act.” Then ʿUmar ibn al-Khaṭṭāb said: “People have hastened in a matter wherein they had the capacity for deliberation. What if we were to enforce it upon them?” Thus, he ratified it among them.

وَرُوِّينَا مِنْ طَرِيقِ الدَّبَرِيِّ عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّ أَبَا الصَّهْبَاءِ قَالَ لِابْنِ عَبَّاسٍ: أَلَمْ تَعْلَمْ أَنَّهَا كَانَتْ الثَّلَاثُ تُجْعَلُ وَاحِدَةً عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَبِي بَكْرٍ وَصَدْرًا مِنْ إمَارَةِ عُمَرَ؟ قَالَ: نَعَمْ.

L33481–33482 It was narrated to us through the chain of al-Dabarī from ʿAbd al-Razzāq from Ibn Jurayj: Ibn Ṭāwūs informed me from his father that Abū al-Ṣahbāʾ said to Ibn ʿAbbās, “Did you not know that the three were combined into

[15] **Qur’an references (L33475):** Qur’an 33:31 (Al-Ahzab); Qur’an 2:229 (Al-Baqarah).
[16] **Qur’an references (L33478):** Qur’an 2:229 (Al-Baqarah).

one during the time of Allah's Messenger (peace be upon him and his family), Abū Bakr, and the early phase of ʿUmar's rule?" He replied, "Yes."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا سُلَيْمَانُ بْنُ سَيْفٍ الْحَرَّانِيُّ نا أَبُو عَاصِمٍ هُوَ النَّبِيلُ - عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّ أَبَا الصَّهْبَاءِ قَالَ لِابْنِ عَبَّاسٍ: أَلَمْ تَعْلَمْ أَنَّ الثَّلَاثَ كَانَتْ تُجْعَلُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبِي بَكْرٍ وَصَدْرًا مِنْ خِلَافَةِ عُمَرَ تُرَدُّ إِلَى الْوَاحِدَةِ؟ قَالَ: نَعَمْ.

L33483 And through the chain of Ahmad ibn Shu'ayb: Sulayman ibn Sayf al-Harrani reported to us: Abu 'Asim, who is al-Nabil, reported to us from Ibn Jurayj from Ibn Tawus from his father that Abu al-Sahba' said to Ibn 'Abbas: "Did you not know that during the time of the Messenger of Allah (peace be upon him), Abu Bakr, and the early part of 'Umar's caliphate, the three were reverted to one?" He said: "Yes."

وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ مُسْلِمٍ عَنْ إِسْحَاقَ بْنِ رَاهَوَيْهِ نا سُلَيْمَانُ بْنُ حَرْبٍ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ.

L33484 It was also narrated to us through the chain of Muslim, from Ishaq ibn Rāhawayh, who narrated to us from Sulayman ibn Harb, from Hammad ibn Zayd, from Ayyub al-Sikhtiyani, from Ibrahim ibn Maysarah, from Tawus, from Ibn Abbas.

وَبِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا أَحْمَدُ بْنُ صَالِحٍ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي بَعْضُ بَنِي أَبِي رَافِعٍ مَوْلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: «طَلَّقَ عَبْدُ يَزِيدَ أَبُو رُكَانَةَ وَإِخْوَتُهُ أُمَّ رُكَانَةَ - فَذَكَرَ الْحَدِيثَ وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: رَاجِعْ امْرَأَتَكَ أُمَّ رُكَانَةَ وَإِخْوَتِهِ؟ فَقَالَ: إِنِّي طَلَّقْتُهَا ثَلَاثًا يَا رَسُولَ اللَّهِ؟ قَالَ: قَدْ عَلِمْتُ أَرْجِعْهَا وَتَلَا {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] ».

L33485 And according to what we have narrated through the chain of Abu Dawud—Ahmad ibn Salih—Abd al-Razzaq—Ibn Jurayj—some of the sons of Abu Rafi', the freed slave of the Messenger of Allah (peace be upon him), from Ikrimah, from Ibn Abbas, who said: "Abd Yazeed Abu Rukanah and his brothers divorced Umm Rukanah." He mentioned the hadith, which states that the Messenger of Allah (peace be upon him) said to him: "Take back your wife Umm Rukanah and his brothers?" He replied: "I have divorced her three times, O Messenger of Allah." He said: "I know. Take her back," and he recited: {O Prophet, when you divorce women, divorce them for their waiting period} [At-Talaq 65:1].[17]

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ شَيْئًا احْتَجُّوا بِهِ غَيْرَ هَذَا، وَهَذَا لَا يَصِحُّ، لِأَنَّهُ عَنْ غَيْرِ مُسَمًّى مِنْ بَنِي أَبِي رَافِعٍ وَلَا حُجَّةَ فِي مَجْهُولٍ، وَمَا نَعْلَمُ فِي بَنِي أَبِي رَافِعٍ مِنْ يُحْتَجُّ بِهِ إِلَّا عُبَيْدُ اللَّهِ وَحْدَهُ وَسَائِرُهُمْ مَجْهُولُونَ.

L33486–33487 Abu Muhammad said: We do not know of any proof they have used as evidence other than this, and this is not sound, for it is transmitted by an unnamed individual from the sons of Abi Rafi'—and there is no valid argument from an unknown narrator. We do not know of anyone among the sons of Abi Rafi' whose narration is relied upon except Ubayd Allah alone; all the rest are unknown narrators.

L33488–33490 As for the narration of Ṭāwūs - from Ibn ʿAbbās - which states that the three

[17] **Qur'an references (L33485):** Qur'an 65:1 (At-Talaq).

were one [feminine], are reverted to the one [feminine], and are rendered as one, there is nothing in it to indicate that he - peace and blessings be upon him - is the one who made them one. Or returned it to the one, nor that he—peace and blessings be upon him—knew of that and approved it. Nor is there any proof except in what is authentically established that he—peace and blessings be upon him—said it, did it, or knew of it and did not reject it. This report is only incumbent upon those who claimed regarding Abū Sa'īd al-Khudrī's statement: "We used to give in Zakāt al-Fiṭr during the time of Allah's Messenger—may the peace and blessings of Allah be upon him and his family—a ṣāʿ of such-and-such," but as for us, we do not do so. All praise is due to Allah, Lord of the worlds.[18]

وَأَمَّا حَدِيثُ طَاوُسٍ - عَنْ ابْنِ عَبَّاسٍ الَّذِي فِيهِ أَنَّ الثَّلَاثَ كَانَتْ وَاحِدَةً وَتُرَدُّ إِلَى الْوَاحِدَةِ وَتُجْعَلُ وَاحِدَةً فَلَيْسَ شَيْءٌ مِنْهُ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هُوَ الَّذِي جَعَلَهَا وَاحِدَةً، أَوْ رَدَّهَا إِلَى الْوَاحِدَةِ، وَلَا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلِمَ بِذَلِكَ فَأَقَرَّهُ، وَلَا حُجَّةَ إِلَّا فِيمَا صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَهُ أَوْ فَعَلَهُ أَوْ عَلِمَهُ فَلَمْ يُنْكِرْهُ وَإِنَّمَا يَلْزَمُ هَذَا الْخَبَرُ مَنْ قَالَ فِي قَوْلِ أَبِي سَعِيدٍ الْخُدْرِيِّ: «كُنَّا نُخْرِجُ فِي زَكَاةِ الْفِطْرِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - صَاعًا مِنْ كَذَا» ، وَأَمَّا نَحْنُ فَلَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L33491 As for those who asserted it is a sin and that it takes effect, they were deluded by what we narrated through the chain of ʿAbd al-Razzāq from Yaḥyā ibn al-ʿAlā' from ʿUbayd Allāh ibn al-Walīd al-Ruṣāfī al-ʿIjlī from Ibrāhīm—who is the son of ʿUbayd Allāh ibn ʿUbādah ibn al-Ṣāmit—from Dāwūd from ʿUbādah ibn al-Ṣāmit, who said: "My grandfather divorced his wife a thousand times. My father went to the Messenger of Allah—peace and blessings be upon him—and mentioned this to him. The Prophet said: 'Did your grandfather not fear Allah?! As for three, they are his right; as for the nine hundred and ninety-seven, they are transgression and injustice. If Allah wills, He punishes him, and if He wills, He forgives him.'"

وَأَمَّا مَنْ قَالَ: إِنَّهَا مَعْصِيَةٌ وَأَنَّهَا تَقَعُ فَإِنَّهُمْ مَوَّهُوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَحْيَى بْنِ الْعَلَاءِ عَنْ عُبَيْدِ اللَّهِ بْنِ الْوَلِيدِ الرُّصَافِيِّ الْعِجْلِيِّ عَنْ إِبْرَاهِيمَ - هُوَ ابْنُ عُبَيْدِ اللَّهِ بْنُ عُبَادَةَ بْنِ الصَّامِتِ - عَنْ دَاوُد عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: «طَلَّقَ جَدِّي امْرَأَةً لَهُ أَلْفَ تَطْلِيقَةٍ فَانْطَلَقَ أَبِي إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ ذَلِكَ لَهُ، فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَا اتَّقَى اللَّهَ جَدُّكَ، أَمَّا ثَلَاثٌ فَلَهُ، وَأَمَّا تِسْعُمِائَةٍ وَسَبْعٌ وَتِسْعُونَ فَعُدْوَانٌ وَظُلْمٌ، إِنْ شَاءَ اللَّهُ عَذَّبَهُ، وَإِنْ شَاءَ غَفَرَ لَهُ» .

L33492 Some people narrated it from Sadaqah ibn Abī ʿImrān, from Ibrāhīm ibn ʿUbayd Allāh ibn ʿUbādah ibn al-Ṣāmit, from his father, from his grandfather, who said: "One of my ancestors divorced his wife. His sons went to the Messenger of Allah—peace and blessings be upon him—and said: 'O Messenger of Allah, our father has divorced our mother a thousand times. Is there any way out for him?' He replied: 'Your father did not fear Allah, so He did not provide a way out. She is irrevocably divorced by three divorce pronouncements contrary to the Sunnah, and nine-hundred-and-ninety-seven sins remain upon his neck.'"

وَرَوَاهُ بَعْضُ النَّاسِ عَنْ صَدَقَةَ بْنِ أَبِي عِمْرَانَ عَنْ إِبْرَاهِيمَ بْنِ عُبَيْدِ اللَّهِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: «طَلَّقَ بَعْضُ آبَائِي امْرَأَتَهُ فَانْطَلَقَ بَنُوهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: يَا رَسُولَ اللَّهِ إِنَّ أَبَانَا طَلَّقَ أُمَّنَا أَلْفًا فَهَلْ لَهُ مِنْ مَخْرَجٍ؟ فَقَالَ: إِنَّ أَبَاكُمْ لَمْ يَتَّقِ اللَّهَ فَيَجْعَلْ مَخْرَجًا بَانَتْ مِنْهُ بِثَلَاثٍ عَلَى غَيْرِ السُّنَّةِ، وَتِسْعُمِائَةٍ وَسَبْعٌ وَتِسْعُونَ إِثْمًا فِي عُنُقِهِ» .

[18] **Qur'an references (L33488):** Qur'an 37:182 (As-Saffat).

L33493 A narration reported through the chain of Muḥammad ibn Shādhān from Muʿallā ibn Manṣūr from Shuʿayb ibn Ruzayq that ʿAṭāʾ al-Khurāsānī related to them from al-Ḥasan, who said: ʿAbdullāh ibn ʿUmar reported that he divorced his wife while she was menstruating, then he intended to pronounce two additional divorces during the two remaining waiting periods of purity. When this reached the Messenger of Allāh—peace be upon him and his progeny—he said: "O Ibn ʿUmar, Allāh has not commanded you thus; indeed, you have erred against the Sunnah." He cited the full narration, which continues: I said: "O Messenger of Allāh, had I divorced her three times, would I have been permitted to take her back?" He replied: "No, she would have been irrevocably divorced, and it would have been a sinful act."

وَخَبَرٌ رُوِيَ مِنْ طَرِيقِ مُحَمَّدِ بْنِ شَاذَانَ عَنْ مُعَلَّى بْنِ مَنْصُورٍ عَنْ شُعَيْبِ بْنِ رُزَيْقٍ أَنَّ عَطَاءً الْخُرَاسَانِيَّ حَدَّثَهُمْ عَنْ الْحَسَنِ قَالَ: نا عَبْدُ اللَّهِ بْنُ عُمَرَ " أَنَّهُ طَلَّقَ امْرَأَتَهُ وَهِيَ حَائِضٌ ثُمَّ أَرَادَ أَنْ يُتْبِعَهَا تَطْلِيقَتَيْنِ أُخْرَيَيْنِ عِنْدَ الْقُرْأَيْنِ الْبَاقِيَيْنِ فَبَلَغَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «فَقَالَ: يَا ابْنَ عُمَرَ مَا هَكَذَا أَمَرَكَ اللَّهُ إنَّكَ قَدْ أَخْطَأْتَ السُّنَّةَ» وَذَكَرَ الْخَبَرَ، وَفِيهِ - فَقُلْت: «يَا رَسُولَ اللَّهِ لَوْ كُنْتُ طَلَّقْتُهَا ثَلَاثًا أَكَانَ لِي أَنْ أُرَاجِعَهَا؟ قَالَ: لَا، كَانَتْ تَبِينُ وَتَكُونُ مَعْصِيَةً» .

L33494–33495 The report we mentioned previously is narrated through the chain of Ismail ibn Umayyah al-Dharra, from Hammad ibn Zayd, from Abd al-Aziz ibn Suhayb, from Anas, from the Messenger of Allah (peace and blessings be upon him and his family): "Whoever divorces through innovation, we bind him to his innovation."

وَالْخَبَرُ الَّذِي ذَكَرْنَاهُ آنِفًا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ أُمَيَّةَ الذَّرَّاعِ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ عَنْ أَنَسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ طَلَّقَ فِي بِدْعَةٍ أَلْزَمْنَاهُ بِدْعَتَهُ» .

L33496 They narrated from those other than the Messenger of Allah—may Allah bless him and his family and grant him peace—what we previously mentioned of Umar's statement in the narration of Tawus: "People hastened into a matter they could have deliberated upon; had we implemented it for them..."

وَذَكَرُوا عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا ذَكَرْنَاهُ آنِفًا مِنْ قَوْلِ عُمَرَ فِي حَدِيثِ طَاوُسٍ: إنَّ النَّاسَ قَدْ اسْتَعْجَلُوا أَمْرًا كَانَتْ لَهُمْ فِيهِ أَنَاةٌ فَلَوْ أَمْضَيْنَاهُ عَلَيْهِمْ.

L33497 From the narration of Abd al-Razzaq via Ismail ibn Abi Abdullah: Ubaydullah ibn al-Ayzar informed me that he heard Anas ibn Malik say: "When Umar caught someone who had pronounced a triple divorce, he would beat his head severely."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إسْمَاعِيلَ بْنِ أَبِي عَبْدِ اللَّهِ أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ الْعَيْزَارِ أَنَّهُ سَمِعَ أَنَسَ بْنَ مَالِكٍ يَقُولُ: كَانَ عُمَرُ إذَا ظَفَرَ بِمَنْ طَلَّقَ ثَلَاثًا أَوْجَعَ رَأْسَهُ.

L33498 Narrated by ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Sālim ibn ʿAbd Allāh ibn ʿUmar from his father, who said: Whoever divorces his wife three times, she is divorced, but he has thereby transgressed against his Lord.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: مَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا طَلُقَتْ وَعَصَى رَبَّهُ.

L33499 Narrated by Abd al-Razzaq from Ma'mar from Ibn Tawus from his father, who said: When Ibn Abbas was asked regarding someone who divorced his

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: كَانَ ابْنُ عَبَّاسٍ إذَا سُئِلَ عَمَّنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا؟ قَالَ: لَوْ اتَّقَيْت اللَّهَ لَجَعَلَ لَك مَخْرَجًا.

wife three times, he would say: "If you had feared Allah, He would have granted you a way out."

L33500 Abu Muhammad said: We know of nothing they dispute contentiously except this, and none of it constitutes a decisive proof for them. As for the narration of ʻUbadah ibn al-Samit, it is utterly rejected—for it is transmitted through Yahya ibn al-ʻAla'—who is not reliable—from ʻUbayd Allah ibn al-Walid al-Waṣṣāf—who is rejected—from Ibrahim ibn ʻUbayd Allah ibn ʻUbadah ibn al-Samit—who is unknown and unrecognized.

قَالَ أَبُو مُحَمَّدٍ: لَا نَعْلَمُ لَهُمْ شَيْئًا يَشْغَبُونَ بِهِ إِلَّا هَذَا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ - أَمَّا حَدِيثُ عُبَادَةَ بْنِ الصَّامِتِ فَفِي غَايَةِ السُّقُوطِ، لِأَنَّهُ إِمَّا مِنْ طَرِيقِ يَحْيَى بْنِ الْعَلَاءِ - وَلَيْسَ بِالْقَوِيِّ - عَنْ عُبَيْدِ اللَّهِ بْنِ الْوَلِيدِ الْوَصَّافِيِّ - وَهُوَ هَالِكٌ - عَنْ إِبْرَاهِيمَ بْنِ عُبَيْدِ اللَّهِ بْنِ عُبَادَةَ بْنِ الصَّامِتِ - وَهُوَ مَجْهُولٌ لَا يُعْرَفُ.

L33501–33502 Moreover, this is utterly invalid because it has never been found in any of the narrations that the father of Ubada—may Allah be pleased with him—lived to witness the advent of Islam, so how then could his grandfather have done so? This is undeniably impossible.

ثُمَّ هُوَ مُنْكَرٌ جِدًّا، لِأَنَّهُ لَمْ يُوجَدْ قَطُّ فِي شَيْءٍ مِنْ الْآثَارِ: أَنَّ وَالِدَ عُبَادَةَ - رَضِيَ اللَّهُ عَنْهُ - أَدْرَكَ الْإِسْلَامَ، فَكَيْفَ جَدُّهُ؟ وَهُوَ مُحَالٌ بِلَا شَكٍّ.

L33503 Furthermore, its expressions are contradictory in some parts: "As for three, they are permitted for you"—this indicates the permissibility of the three—while others are contrary to that.

ثُمَّ أَلْفَاظُهُ مُتَنَاقِضَةٌ فِي بَعْضِهَا " أَمَّا ثَلَاثٌ فَلَكَ " وَهَذَا إبَاحَةٌ لِلثَّلَاثِ، وَبَعْضُهَا بِخِلَافِ ذَلِكَ.

L33504 As for the ḥadīth of Ibn ʿUmar—it is utterly rejected, for it is narrated from Ruzaiq ibn Shuʿayb or Shuʿayb ibn Ruzaiq al-Shāmī—who is weak—and we have previously mentioned the weakness of Ismāʿīl ibn Umayyah al-Dharraʿ and his anonymity. Thus, the arguments they raised are invalidated.

وَأَمَّا حَدِيثُ ابْنِ عُمَرَ - فَفِي غَايَةِ السُّقُوطِ، لِأَنَّهُ عَنْ رُزَيْقِ بْنِ شُعَيْبٍ أَوْ شُعَيْبِ بْنِ رُزَيْقٍ الشَّامِيِّ - وَهُوَ ضَعِيفٌ - وَقَدْ ذَكَرْنَا ضَعْفَ إسْمَاعِيلَ بْنِ أُمَيَّةَ الذَّرَّاعِ وَجَهَالَتَهُ فَبَطَلَ مَا شَغَبُوا بِهِ.

L33505 And nothing remained in their hands—and all praise is due to Allah, the Lord of all the worlds.

وَلَمْ يَبْقَ بِأَيْدِيهِمْ شَيْءٌ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L33506 As for what they cited from the Companions—may Allah be pleased with them—such as the narration from ʿUmar: "We see people have hastened into something they once exercised patience in," this contains no proof that pronouncing three divorces at once is inherently sinful. It is authentically reported from Ibn ʿUmar, and no one's opinion constitutes valid proof against the Messenger of Allah—peace and blessings be upon him and his family.

وَأَمَّا مَا ذَكَرُوا عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَالرِّوَايَةُ عَنْ عُمَرَ " نَرَى النَّاسَ قَدْ اسْتَعْجَلُوا شَيْئًا كَانَتْ لَهُمْ فِيهِ أَنَاةٌ " فَلَا دَلِيلَ فِيهِ عَلَى أَنَّ طَلَاقَ الثَّلَاثِ مَعْصِيَةٌ أَصْلًا وَهُوَ صَحِيحٌ عَنْ ابْنِ عُمَرَ وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ".

L33507 Abū Muḥammad said: There is nothing weaker than the statement of one who admits to implementing heretical innovation and issuing rulings based on invalid [principles] without textual evidence from Allah the Exalted or His Messenger (peace and blessings be upon him and his family).

قَالَ أَبُو مُحَمَّدٍ: وَلَا أَضْعَفُ مِنْ قَوْلِ مَنْ يُقِرُّ أَنَّهُ يُنَفِّذُ الْبِدْعَةَ وَيَحْكُمُ بِمَا لَا يَجُوزُ بِغَيْرِ نَصٍّ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L33508–33510 Abū Muḥammad said: We encountered, within the arguments of those who claim that issuing the threefold divorce in a single pronouncement is valid and not an innovation, the statement of Allah Almighty: {If he divorces her, she is not lawful for him thereafter until she marries a husband other than him} [Al-Baqarah: 230]. This ruling applies to the triple divorce whether issued collectively in one instance or separately, and it is impermissible to restrict this verse to certain cases rather than others without a scriptural text. Likewise, Allah Almighty's statement: {When you marry believing women and then divorce them before touching them, there is no waiting period incumbent upon them for you to enforce} [Al-Aḥzāb: 49] is of general import (ʿumūm). Regarding the permissibility of three, two, or one divorces, and His Exalted's statement: "Divorced women are entitled to fair provision" [Al-Baqarah: 241], the Exalted has not distinguished a woman divorced once from a woman divorced twice or a woman divorced three times.[1]

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ وَجَدْنَا مِنْ حُجَّةِ مَنْ قَالَ: إنَّ الطَّلَاقَ الثَّلَاثَ مَجْمُوعَةً سُنَّةٌ وَلَا بِدْعَةٌ قَوْلُ اللَّهِ تَعَالَى: {فَإِنْ طَلَّقَهَا فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] فَهَذَا يَقَعُ عَلَى الثَّلَاثِ مَجْمُوعَةً وَمُفَرَّقَةً، وَلَا يَجُوزُ أَنْ يُخَصَّ بِهَذِهِ الْآيَةِ بَعْضُ ذَلِكَ دُونَ بَعْضٍ بِغَيْرِ نَصٍّ - وَكَذَلِكَ قَوْلُه تَعَالَى: {إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا} [الأحزاب: ٤٩] عُمُومٌ لِإِبَاحَةِ الثَّلَاثِ وَالِاثْنَيْنِ وَالْوَاحِدَةِ، وَقَوْلُه تَعَالَى: {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ} [البقرة: ٢٤١] فَلَمْ يُخَصَّ تَعَالَى مُطَلَّقَةً وَاحِدَةً مِنْ مُطَلَّقَةٍ اثْنَتَيْنِ وَمِنْ مُطَلَّقَةٍ ثَلَاثًا.

L33511 We found what we have transmitted through Mālik from Ibn Shihāb: that Sahl ibn Saʿd al-Sāʿidī informed him of the Hadith of Liʿān (mutual imprecation) of ʿUwaymir al-ʿAjlānī with his wife. At its conclusion, ʿUwaymir said: "I lied against her, O Messenger of God, if I retain her," so he divorced her three times before the Messenger of God (peace and blessings be upon him and his family) could instruct him. Then he said: "And I was among the people present before the Messenger of God (peace and blessings be upon him and his family)."

وَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ: أَنَّ سَهْلَ بْنَ سَعْدٍ السَّاعِدِيَّ أَخْبَرَهُ عَنْ حَدِيثِ اللِّعَانِ عُوَيْمِرٌ الْعَجْلَانِيُّ مَعَ امْرَأَتِهِ - وَفِي آخِرِهِ: أَنَّهُ قَالَ: «كَذَبْتُ عَلَيْهَا يَا رَسُولَ اللَّهِ إنْ أَمْسَكْتُهَا فَطَلَّقَهَا ثَلَاثًا قَبْلَ أَنْ يَأْمُرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - ثُمَّ قَالَ: وَأَنَا مَعَ النَّاسِ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -» .

L33512–33514 Abu Muhammad said: If pronouncing a triple talaq were an act of disobedience to Allah the Exalted, the Messenger of Allah would not have remained silent. It was validated with certainty—regarding the clarification from the Prophet, may Allah bless him and grant him peace and his family—that this is a permissible practice.

قَالَ أَبُو مُحَمَّدٍ: لَوْ كَانَ طَلَاقُ الثَّلَاثِ مَجْمُوعَةً مَعْصِيَةً لِلَّهِ تَعَالَى لَمَا سَكَتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ بَيَانِ ذَلِكَ - فَصَحَّ يَقِينًا أَنَّهَا سُنَّةٌ مُبَاحَةٌ.

L33515 Some of our companions said: It cannot be except that he divorced her while she was his wife, or he divorced her when she had become forbidden to him, requiring permanent separation between them. If he divorced her while she was his wife, this is not your position, for your view is that she becomes

وَقَالَ بَعْضُ أَصْحَابِنَا: لَا يَخْلُو مِنْ أَنْ يَكُونَ طَلَّقَهَا وَهِيَ امْرَأَتُه، أَوْ طَلَّقَهَا وَقَدْ حُرِّمَتْ عَلَيْه، وَوَجَبَ التَّفْرِيقُ بَيْنَهُمَا، فَإِنْ كَانَ طَلَّقَهَا وَهِيَ امْرَأَتُه فَلَيْسَ هَذَا قَوْلُكُمْ، لِأَنَّ قَوْلَكُمْ أَنَّهَا بِتَمَامِ اللِّعَانِ تَبِينُ عَنْهُ إلَى الْأَبَدِ، وَإِنْ كَانَ طَلَّقَهَا أَجْنَبِيَّةً، فَإِنَّمَا نَحْنُ فِيمَنْ

[1] **Qur'an references (L33508):** Qur'an 2:230 (Al-Baqarah); Qur'an 33:49 (Al-Ahzab); Qur'an 2:241 (Al-Baqarah).

irrevocably separated from him upon completing the mutual imprecation. But if he divorced her as a stranger, are we discussing one who divorces his wife or one who divorces a stranger? We replied: He divorced her while assuming she was his wife – this is something no one disputes. Had this been sinful, the Messenger of Allah (peace and blessings be upon him and his family) would have preceded you in objecting to it. Our entire proof rests on the Messenger of Allah's (peace and blessings be upon him and his family) silence toward one who pronounced a triple divorce to a woman he believed to be his wife, having no doubt that she remained within his marital bond.

طَلَّقَ امْرَأَتَهُ، لَا فِيمَنْ طَلَّقَ أَجْنَبِيَّةً؟ فَقُلْنَا: إِنَّمَا طَلَّقَهَا وَهُوَ يُقَدِّرُ أَنَّهَا امْرَأَتُهُ - هَذَا مَا لَا يَشُكُّ فِيهِ أَحَدٌ فَلَوْ كَانَ ذَلِكَ مَعْصِيَةً لَسَبَقَكُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَى هَذَا الِاعْتِرَاضِ، فَإِنَّمَا حُجَّتُنَا كُلُّهَا فِي تَرْكِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْإِنْكَارَ عَلَى مَنْ طَلَّقَ ثَلَاثًا مَجْمُوعَةً امْرَأَةً يَظُنُّهَا امْرَأَتَهُ، وَلَا يَشُكُّ أَنَّهَا فِي عِصْمَتِهِ فَقَطْ.

L33516 If they say: "Not every case where mention is omitted in the narrations means that its omission constitutes binding evidence..."

فَإِنْ قَالُوا: لَيْسَ كُلُّ مَسْكُوتٍ عَنْ ذِكْرِهِ فِي الْأَخْبَارِ يَكُونُ تَرْكُ ذِكْرِهِ حُجَّةً؟ .

L33517 So we said: Yes, it is a binding proof unless there exists a clarification in another report that has not been mentioned in this report. In such a case, silence about it in another report does not constitute proof.

فَقُلْنَا: نَعَمْ، هُوَ حُجَّةٌ لَازِمَةٌ إِلَّا أَنْ يُوجَدَ بَيَانٌ فِي خَبَرٍ آخَرَ لَمْ يُذْكَرْ فِي هَذَا الْخَبَرِ فَحِينَئِذٍ لَا يَكُونُ السُّكُوتُ عَنْهُ فِي خَبَرٍ آخَرَ حُجَّةً.

L33518 Through the chain of al-Bukhārī: Muḥammad ibn Bashshār narrated to us: Yaḥyā—that is, Ibn Saʿīd al-Qaṭṭān—narrated to us from ʿUbayd ibn ʿUmar, from al-Qāsim ibn Muḥammad ibn Abī Bakr, from ʿĀ'ishah, the Mother of the Believers, who said: "A man divorced his wife three times. She then married [another], and he divorced her. The Messenger of Allah—may Allah send blessings upon him and his family and grant him peace—was asked: 'Is she lawful for the first?' He replied: 'No, until he tastes her sweetness as the first tasted.'" The Prophet—upon him be peace and blessings—did not reject this question, and had it been impermissible, he would have informed them so.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نَا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - عَنْ عُبَيْدِ بْنِ عُمَرَ نا الْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «إِنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ ثَلَاثًا فَتَزَوَّجَتْ فَطَلَّقَ. فَسُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَتَحِلُّ لِلْأَوَّلِ؟ قَالَ: لَا، حَتَّى يَذُوقَ عُسَيْلَتَهَا كَمَا ذَاقَ الْأَوَّلُ» فَلَمْ يُنْكِرْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هَذَا السُّؤَالَ، وَلَوْ كَانَ لَا يَجُوزُ لَأَخْبَرَ بِذَلِكَ.

L33519–33521 The well-known report of Fatimah bint Qays—we have narrated it through the chain of Yahya ibn Abi Kathir, who reported that Abu Salamah ibn Abd al-Rahman informed him that Fatimah bint Qays informed him: Her husband, Ibn Hafs ibn al-Mughirah al-Makhzumi, divorced her three times, then departed for Yemen. Khalid ibn al-Walid set out with a group and came to the Messenger of Allah (peace be upon him and his family) in the house of Maymunah, the Mother of the Believers. They said: "Ibn Hafs has divorced her." He divorced his wife three times. Is she entitled to maintenance? The

وَخَبَرُ فَاطِمَةَ بِنْتِ قَيْسٍ الْمَشْهُورُ -: رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ أَبِي كَثِيرٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ أَنَّ فَاطِمَةَ بِنْتَ قَيْسٍ أَخْبَرَتْهُ: أَنَّ زَوْجَهَا ابْنَ حَفْصِ بْنِ الْمُغِيرَةِ الْمَخْزُومِيَّ طَلَّقَهَا ثَلَاثًا ثُمَّ انْطَلَقَ إِلَى الْيَمَنِ، فَانْطَلَقَ خَالِدُ بْنُ الْوَلِيدِ فِي نَفَرٍ فَأَتَوْا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي بَيْتِ مَيْمُونَةَ أُمِّ الْمُؤْمِنِينَ فَقَالُوا: إِنَّ ابْنَ حَفْصٍ

طَلَّقَ امْرَأَتَهُ ثَلَاثًا فَهَلْ لَهَا مِنْ نَفَقَةٍ؟ فَقَالَ رَسُولُ اللَّهِ «- صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: لَيْسَ لَهَا نَفَقَةٌ وَعَلَيْهَا الْعِدَّةُ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

Messenger of Allah—peace be upon him and his family—said: "There is no maintenance for her, and she must observe the 'iddah (waiting period)." The narrator mentioned the rest of the hadith.

L33522 وَمِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ نا عَبْدُ الرَّحْمَنِ - هُوَ ابْنُ مَهْدِيٍّ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ قَالَ: سَمِعْت فَاطِمَةَ بِنْتَ قَيْسٍ فَذَكَرَتْ حَدِيثَ طَلَاقِهَا قَالَتْ «وَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: كَمْ طَلَّقَكِ؟ قُلْتُ: ثَلَاثًا، فَقَالَ: صَدَقَ، لَيْسَ لَكِ نَفَقَةٌ» وَذَكَرَتْ بَاقِيَ الْخَبَرِ.

And through the chain of Imam Muslim: Ishaq ibn Mansur narrated to us, Abd al-Rahman (Ibn Mahdi) narrated to us, from Sufyan al-Thawri, from Abu Bakr ibn Abi al-Jahm, who said: I heard Fatimah bint Qays, and she mentioned the narration of her divorce. She said, "I went to the Messenger of Allah (peace be upon him and his family), and he said: 'How many times has he divorced you?' I said: 'Three times.' He said: 'He spoke truthfully. You have no right to maintenance,'" and she mentioned the remainder of the report.

L33523 وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا حَفْصُ بْنُ غِيَاثٍ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ قَالَتْ: «قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّ زَوْجِي طَلَّقَنِي ثَلَاثًا وَأَنَا أَخَافُ أَنْ يَقْتَحِمَ عَلَيَّ؟ قَالَ: فَأَمَرَهَا فَتَحَوَّلَتْ» .

From the chain of Muslim: Muḥammad ibn al-Muthannā reported to us, Ḥafṣ ibn Ghiyāth reported to us, Hishām ibn ʿUrwah reported to us from his father, from Fāṭimah bint Qays, who said: "I said, 'O Messenger of Allah, my husband has divorced me three times, and I fear he may intrude upon me.' The Prophet commanded her to move, and she complied."

L33524 وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ الشَّعْبِيِّ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُطَلَّقَةِ ثَلَاثًا قَالَ: «لَيْسَ لَهَا سُكْنَى وَلَا نَفَقَةٌ» .

And through the chain of Muslim: Muḥammad ibn al-Muthannā narrated to us from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Salamah ibn Kuhayl, from al-Shaʿbī, from Fāṭimah bint Qays, from the Prophet (peace be upon him) regarding the irrevocably divorced woman (thrice-divorced). He said: "She is not entitled to housing or financial maintenance."

L33525 فَهَذَا نَقْلُ تَوَاتُرٍ عَنْ فَاطِمَةَ بِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَخْبَرَهَا هِيَ وَنَفَرٌ سِوَاهَا بِأَنَّ زَوْجَهَا طَلَّقَهَا ثَلَاثًا.

This is a mutawatir narration from Fatimah that the Messenger of Allah—may Allah bless him and his family and grant him peace—informed her and others besides her that her husband had divorced her three times.

L33526 وَبِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - حَكَمَ فِي الْمُطَلَّقَةِ ثَلَاثًا وَلَمْ يُنْكِرْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ذَلِكَ، وَلَا أَخْبَرَ بِأَنَّهُ لَيْسَ بِسُنَّةٍ - وَفِي هَذَا كِفَايَةٌ لِمَنْ نَصَحَ نَفْسَهُ.

And that he—may blessings and peace be upon him—ruled regarding the woman divorced by a thrice-pronounced divorce, and did not disapprove of that, nor did he state that it was not a Sunnah. In this lies sufficient guidance for whoever counsels himself.

L33527–33529 وَإِنْ قِيلَ: إنَّ الزُّهْرِيَّ رَوَى هَذَا الْخَبَرَ عَنْ أَبِي سَلَمَةَ وَفِيهِ أَنَّهَا ذَكَرَتْ أَنَّهُ... طَلَّقَهَا آخِرَ ثَلَاثٍ

If it is said: Indeed, al-Zuhrī narrated this report from Abū Salamah, and in it he stated that she mentioned that he... He divorced her with the last of three

فَإِنْ قِيلَ: إنَّ الزُّهْرِيَّ رَوَى عَنْ أَبِي سَلَمَةَ هَذَا الْخَبَرَ فَقَالَ فِيهِ: إنَّهَا ذَكَرَتْ أَنَّهُ طَلَّقَهَا آخِرُ ثَلَاثَ تَطْلِيقَاتٍ - وَرَوَى الزُّهْرِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّ زَوْجَهَا أَرْسَلَ إلَيْهَا بِتَطْلِيقَةٍ كَانَتْ بَقِيَتْ لَهَا مِنْ طَلَاقِهَا - فَذَكَرَ الْخَبَرَ وَفِيهِ: فَأَرْسَلَ مَرْوَانُ إلَيْهَا قَبِيصَةُ بْنُ ذُؤَيْبٍ فَحَدَّثَتْهُ - وَذَكَرَ بَاقِيَ الْخَبَرِ؟ قُلْنَا: نَعَمْ، هَكَذَا رَوَاهُ الزُّهْرِيُّ، فَأَمَّا رِوَايَتُهُ مِنْ طَرِيقِ عُبَيْدِ اللَّهِ فَمُنْقَطِعَةٌ، لَمْ يَذْكُرْ عُبَيْدُ اللَّهِ ذَلِكَ عَنْهَا، وَلَا عَنْ قَبِيصَةَ عَنْهَا، إنَّمَا قَالَ: إنَّ فَاطِمَةَ طَلَّقَهَا زَوْجُهَا، وَأَنَّ مَرْوَانَ بَعَثَ إلَيْهَا قَبِيصَةَ فَحَدَّثَتْهُ.

وَأَمَّا خَبَرُهُ عَنْ أَبِي سَلَمَةَ فَمُتَّصِلٌ - إلَّا أَنَّ كِلَا الْخَبَرَيْنِ لَيْسَ فِيهِمَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَخْبَرَتْهُ هِيَ وَلَا غَيْرُهَا بِذَلِكَ - إنَّمَا الْمُسْنَدُ الصَّحِيحُ الَّذِي فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - سَأَلَ عَنْ كَمِّيَّةِ طَلَاقِهَا وَأَنَّهَا أَخْبَرَتْهُ، فَهِيَ الَّتِي قَدَّمْنَا أَوَّلًا وَعَلَى ذَلِكَ الْإِجْمَالِ جَاءَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L33530 As for his narration from Abu Salama, it is connected. However, neither of the two narrations contains any indication that she [the woman] or anyone else informed the Messenger of Allah (peace and blessings be upon him and his family) of that matter. The only authentic *Musnad* narration states that he (peace and blessings be upon him and his family) inquired about the number of her divorces and that she informed him. This is the narration we initially cited, and his ruling (peace and blessings be upon him and his family) was based on that concise account.

وَكَذَلِكَ كُلُّ لَفْظٍ رُوِيَ بِهِ خَبَرُ فَاطِمَةَ مِنْ " أَبَتَّ طَلَاقِي "، " وَطَلَّقَهَا أَلْبَتَّةَ " " وَطَلَّقَهَا طَلَاقًا بَاتًّا " " وَطَلَاقًا بَائِنًا " فَلَيْسَ فِي شَيْءٍ مِنْهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَفَ عَلَيْهِ أَصْلًا.

L33531 Similarly, every wording used to narrate the report of Fāṭimah—such as "You have made my divorce irrevocable," "and divorced her absolutely," "and divorced her with an irrevocable divorce," or "and divorced her with a non-retractable divorce"—contains no indication in any of these that the Messenger of Allah—peace be upon him and his family—endorsed it as a basis whatsoever.

فَسَقَطَ كُلُّ ذَلِكَ، وَثَبَتَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى مَا صَحَّ أَنَّهُ أَخْبَرَ بِهِ مِنْ أَنَّهُ طَلَّقَهَا ثَلَاثًا فَقَطْ.

L33532 Thus, all of that was invalidated, and the ruling of the Prophet (peace and blessings be upon him) was established based on what was authentically confirmed: that he had divorced her three times only.

وَأَمَّا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - فَإِنَّ الثَّابِتَ عَنْ عُمَرَ الَّذِي لَا يَثْبُتُ عَنْهُ غَيْرُهُ مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ نا زَيْدُ بْنُ وَهْبٍ أَنَّهُ رُفِعَ إلَى عُمَرَ بْنِ الْخَطَّابِ بِرَجُلٍ طَلَّقَ امْرَأَتَهُ أَلْفًا فَقَالَ لَهُ عُمَرُ: أَطَلَّقْت امْرَأَتَك؟

L33533–33535 As for the Companions—may Allah be pleased with them—the authenticated report from Umar, which no other narration is confirmed from him besides this one, is what we have narrated through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Salama ibn Kuhayl, narrated to us by Zayd ibn Wahb. It was reported to Umar ibn al-Khattab that a man had divorced his wife a

thousand times. Umar asked him, “Did you divorce your wife?” The man replied, “I was only joking.” Umar then struck him with a cane and said, “Three are sufficient for you in that regard.” Umar struck him for exceeding the three divorces, acted rightly in doing so, made clear to him that three are sufficient, and did not deny them.

فَقَالَ: إِنَّمَا كُنْت أَلْعَبُ، فَعَلَاهُ عُمَرُ بِالدِّرَّةِ وَقَالَ: إِنَّمَا يَكْفِيك مِنْ ذَلِكَ ثَلَاثٌ - فَإِنَّمَا ضَرَبَهُ عُمَرُ عَلَى الزِّيَادَةِ عَلَى الثَّلَاثِ، وَأَحْسَنَ عُمَرُ فِي ذَلِكَ، وَأَعْلَمَهُ أَنَّ الثَّلَاثَ تَكْفِي وَلَمْ يُنْكِرْهَا.

L33536 And through the narration of Wakīʿ from al-Aʿmash from Ḥabīb ibn Abī Thābit: A man came to ʿAlī ibn Abī Ṭālib and said, “I have divorced my wife a thousand times.” ʿAlī said to him, “She is irrevocably divorced from you with three [final] divorces, and divide the rest among your [other] wives”—and he did not reject the permissibility of combining three [divorces] in a single instance.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْأَعْمَشِ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ جَاءَ رَجُلٌ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَ: إنِّي طَلَّقْت امْرَأَتِي أَلْفًا؟ فَقَالَ لَهُ عَلِيٌّ: بَانَتْ مِنْك بِثَلَاثٍ، وَاقْسِمْ سَائِرَهُنَّ بَيْنَ نِسَائِك - فَلَمْ يُنْكِرْ جَمْعَ الثَّلَاثِ.

L33537 And through the chain of Waki‘ from Ja‘far ibn Burqān from Mu‘āwiyah ibn Abī Yaḥyā, he said: A man came to ‘Uthmān ibn ‘Affān and said, “I have divorced my wife a thousand times.” He replied, “She is irrevocably divorced from you by three.” And he did not disapprove of the three.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ مُعَاوِيَةَ بْنِ أَبِي يَحْيَى قَالَ: جَاءَ رَجُلٌ إلَى عُثْمَانَ بْنِ عَفَّانَ فَقَالَ: طَلَّقْتُ امْرَأَتِي أَلْفًا؟ فَقَالَ: بَانَتْ مِنْك بِثَلَاثٍ - فَلَمْ يُنْكِرْ الثَّلَاثَ.

L33538 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Amr ibn Murrah from Sa‘id ibn Jubayr, who said: A man asked Ibn Abbas, “I divorced my wife a thousand times.” Ibn Abbas replied, “Three divorces make her permanently unlawful to you, and the rest are a sin upon you. You have taken Allah’s Quranic injunctions as a mockery.” He did not reject the validity of the three divorces but rejected what exceeded them.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: قَالَ رَجُلٌ لِابْنِ عَبَّاسٍ: طَلَّقْت امْرَأَتِي أَلْفًا؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: ثَلَاثٌ تُحَرِّمُهَا عَلَيْك، وَبَقِيَّتُهَا عَلَيْك وِزْرًا، اتَّخَذْت آيَاتِ اللَّهِ هُزُوًا - لَمْ يُنْكِرْ الثَّلَاثَ وَأَنْكَرَ مَا زَادَ.

L33539 And what is reported from the Prophet ﷺ regarding his statement to the one who pronounced a triple divorce and then regretted it—“If you had feared Allah, He would have provided a way out for you”—is to be understood literally: *Yes*, if he fears Allah, He will provide a way out for him. There is nothing in this to indicate that his triple divorce constitutes a sin.

وَالَّذِي جَاءَ عَنْهُ مِنْ قَوْلِهِ لِمَنْ طَلَّقَ ثَلَاثًا ثُمَّ نَدِمَ " لَوْ اتَّقَيْت اللَّهَ لَجَعَلَ لَك مَخْرَجًا " وَهُوَ عَلَى ظَاهِرِهِ: نَعَمْ، إنْ اتَّقَى اللَّهَ جَعَلَ لَهُ مَخْرَجًا - وَلَيْسَ فِيهِ أَنَّ طَلَاقَهُ الثَّلَاثَ مَعْصِيَةٌ.

L33540–33541 Via the chain of Abd al-Razzaq, from Ma’mar, from al-A’mash, from Ibrahim, from Alqamah, who said: A man came to Ibn Mas’ud and said, “I have divorced my wife ninety-nine times?” Ibn Mas’ud replied, “Three divorces irrevocably separate her, and the remainder are transgression.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ عَنْ عَلْقَمَةَ قَالَ: جَاءَ رَجُلٌ عَنْ ابْنِ مَسْعُودٍ فَقَالَ: إنِّي طَلَّقْت امْرَأَتِي تِسْعًا وَتِسْعِينَ؟ فَقَالَ لَهُ ابْنُ مَسْعُودٍ: ثَلَاثٌ تُبِينُهَا وَسَائِرُهُنَّ عُدْوَانٌ.

L33542 And these are two rigorously authentic reports. Ibn Mas'ud and Ibn Abbas did not fundamentally disapprove of the three being grouped; rather, they objected to exceeding three.

وَهَذَانِ خَبَرَانِ فِي غَايَةِ الصِّحَّةِ لَمْ يُنْكِرْ ابْنُ مَسْعُودٍ، وَابْنُ عَبَّاسٍ الثَّلَاثَ مَجْمُوعَةً أَصْلًا، وَإِنَّمَا أَنْكَرَ الزِّيَادَةَ عَلَى الثَّلَاثِ.

L33543 From the path of Ahmad ibn Shu'ayb: I heard from Amr ibn Ali, who narrated to us from Yahya ibn Sa'id al-Qattan, from Sufyan al-Thawri, from Abu Ishaq al-Sabi'i, from Abu al-Ahwas, from Abdullah ibn Mas'ud, who said: "The Sunnah-compliant divorce is to divorce her while ritually pure without having engaged in intercourse." This narration is of the highest authenticity from Ibn Mas'ud, and he did not specify a single divorce [as distinct] from two or three.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ أَبِي الْأَحْوَصِ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: طَلَاقُ السُّنَّةِ أَنْ يُطَلِّقَهَا طَاهِرًا مِنْ غَيْرِ جِمَاعٍ - وَهَذَا فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ مَسْعُودٍ فَلَمْ يَخُصَّ طَلْقَةً مِنْ طَلْقَتَيْنِ مِنْ ثَلَاثٍ.

L33544 If it is said: Al-A'mash narrated from Abū Isḥāq from Abū'l-Aḥwaṣ from Ibn Mas'ūd—and in it [the narration] is: "When she menstruates and becomes pure, he divorces her again; when she menstruates and becomes pure, he divorces her again"—we say: Yes, this is also a *sunnah*, and it does not contain [the assertion] that anything besides that is unlawful and a *bid'ah*.

فَإِنْ قِيلَ: قَدْ رَوَى الْأَعْمَشُ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي الْأَحْوَصِ عَنْ ابْنِ مَسْعُودٍ وَفِيهِ فَإِذَا حَاضَتْ وَطَهُرَتْ طَلَّقَهَا أُخْرَى، فَإِذَا حَاضَتْ وَطَهُرَتْ طَلَّقَهَا أُخْرَى؟ قُلْنَا: نَعَمْ، هَذَا أَيْضًا سُنَّةٌ - وَلَيْسَ فِيهِ أَنَّ مَا عَدَا ذَلِكَ حَرَامٌ وَبِدْعَةٌ.

L33545 If it is said: You have narrated through the chain of Ḥammād ibn Zayd, from Yaḥyā ibn ʿAtīq, from Muḥammad ibn Sīrīn, who said: ʿAlī ibn Abī Ṭālib stated: "Had people adhered to Allah's command regarding divorce, no man would ever permit himself concerning a woman in such a way. He would initiate by divorcing her once, then observe the interval between her [current state] and the conclusion of her waiting period. Thereafter, whenever he wills, he may take her back." We respond: This chain is disconnected, for Ibn Sīrīn did not hear a single word from ʿAlī. Moreover, the narration does not state that what differs from this is sinful or an innovation - nor is any practice other than what we mentioned known from the Companions (may Allah be pleased with them).

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ نا يَحْيَى بْنُ عَتِيقٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: لَوْ أَنَّ النَّاسَ أَخَذُوا بِأَمْرِ اللَّهِ تَعَالَى فِي الطَّلَاقِ مَا يُبِيحُ رَجُلٌ نَفْسَهُ فِي امْرَأَةٍ أَبَدًا يَبْدَأُ فَيُطَلِّقُهَا تَطْلِيقَةً، ثُمَّ يَتَرَبَّصُ مَا بَيْنَهَا وَبَيْنَ أَنْ تَنْقَضِيَ عِدَّتُهَا، فَمَتَى مَا شَاءَ رَاجَعَهَا؟ قُلْنَا هَذَا مُنْقَطِعٌ عَنْهُ، لِأَنَّ ابْنَ سِيرِينَ لَمْ يَسْمَعْ مِنْ عَلِيٍّ كَلِمَةً، ثُمَّ لَيْسَ فِيهِ أَيْضًا: أَنَّ مَا عَدَا ذَلِكَ مَعْصِيَةٌ وَلَا بِدْعَةٌ - لَا يُعْلَمُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - غَيْرُ مَا ذَكَرْنَا.

L33546–33547 As for the Tābiʿūn: it has been reported to us through the chain of Wakiʿ from Ismāʿīl ibn Abī Khālid from al-Shaʿbī, who said: A man said to Shuraih the judge, "I divorced my wife one hundred times." He replied, "She is irrevocably divorced from you with three [pronouncements]; the remaining ninety-seven are excess and sin." Shuraih did not reject the three; he only regarded what exceeded three as excess and sin.

وَأَمَّا التَّابِعُونَ - فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: قَالَ رَجُلٌ لِشُرَيْحٍ الْقَاضِي: طَلَّقْت امْرَأَتِي مِائَةً؟ فَقَالَ: بَانَتْ مِنْك بِثَلَاثٍ؟ وَسَبْعٌ وَتِسْعُونَ

إِسْرَافٌ وَمَعْصِيَةٌ - فَلَمْ يُنْكِرْ شُرَيْحٌ الثَّلَاثَ، وَإِنَّمَا جَعَلَ الْإِسْرَافَ وَالْمَعْصِيَةَ مَا زَادَ عَلَى الثَّلَاثِ.

L33548 Through the chain of transmission from ʻAbd al-Razzāq, from Maʻmar, from Qatādah, from Saʻīd ibn al-Musayyib, who said: The divorce of the waiting period is when a man divorces his wife after she has become pure from menstruation, without having had sexual relations.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: طَلَاقُ الْعِدَّةِ أَنْ يُطَلِّقَهَا إِذَا طَهُرَتْ مِنْ الْحَيْضَةِ بِغَيْرِ جِمَاعٍ.

L33549 Abu Muhammad said: He did not specify one out of three, but rather one out of two. It is not known that any of the Followers held that all three were sinful except al-Hasan, who alone explicitly affirmed this.

قَالَ أَبُو مُحَمَّد: فَلَمْ يَخُصَّ وَاحِدَةً مِنْ ثَلَاثٍ، مِنْ اثْنَتَيْنِ - لَا يُعْلَمُ عَنْ أَحَدٍ مِنْ التَّابِعِينَ - أَنَّ الثَّلَاثَ مَعْصِيَةٌ - صُرِّحَ بِذَلِكَ إِلَّا الْحَسَنُ.

L33550 The view that the three are a Sunnah is held by Al-Shāfiʻī, Abū Dharr, and their companions.

وَالْقَوْلُ بِأَنَّ الثَّلَاثَ سُنَّةٌ: قَوْلُ الشَّافِعِيِّ، وَأَبِي ذَرٍّ، وَأَصْحَابِهِمَا.

L33551 As for the manner of divorce according to the Sunnah, we previously mentioned Ibn Mas'ud's statement regarding this through the chain of transmission of Al-A'mash from Abu Ishaq - and another narration through a chain transmitted from Ali ibn Abi Talib - which states that Ibn Mas'ud said: A man should divorce her during a pure period in which he has not had intercourse with her, then leave her until she menstruates. When she becomes pure, he divorces her another time, then leaves her until she menstruates. When she becomes pure again, he divorces her a third time.

وَأَمَّا صِفَةُ طَلَاقِ السُّنَّةِ فَقَدْ ذَكَرْنَا قَوْلَ ابْنِ مَسْعُودٍ آنِفًا فِي ذَلِكَ مِنْ طَرِيقِ الْأَعْمَشِ عَنْ أَبِي إِسْحَاقَ - وَآخَرَ مِنْ طَرِيقِ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَهُوَ أَنَّ ابْنَ مَسْعُودٍ قَالَ: يُطَلِّقُهَا فِي طُهْرٍ لَمْ يَمَسَّهَا فِيهِ - ثُمَّ يَدَعُهَا حَتَّى تَحِيضَ، فَإِذَا طَهُرَتْ طَلَّقَهَا أُخْرَى - ثُمَّ يَدَعُهَا حَتَّى تَحِيضَ، فَإِذَا طَهُرَتْ طَلَّقَهَا ثَالِثَةً.

L33552 And Ali said: He may divorce her, then he leaves her until she completes her waiting period, or he takes her back during the waiting period if he wishes.

وَقَالَ عَلِيٌّ: لَهُ أَنْ يُطَلِّقَهَا ثُمَّ يَدَعَهَا حَتَّى تُتِمَّ عِدَّتَهَا، أَوْ يُرَاجِعَهَا فِي الْعِدَّةِ إِنْ شَاءَ.

L33553 Among the statements of Ibn Masʻūd that we mentioned is one narrated through the chain of ʻAbd al-Razzāq from Maʻmar from Qatādah. And a similar one is narrated from Maʻmar from al-Zuhrī, and from Qatādah from Ibn al-Musayyib.

وَمِنْ قَوْلِ ابْنِ مَسْعُودٍ الَّذِي ذَكَرْنَا قَوْلٌ رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ -: وَمِثْلُهُ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، وَعَنْ قَتَادَةَ عَنْ ابْنِ الْمُسَيِّبِ.

L33554 And a similar narration via the chain of Abd al-Razzaq from Abu Hanifah from Hammad ibn Abi Sulayman from Ibrahim al-Nakha'i—and Abd al-Razzaq added: If she has despaired of menstruation, then he must divorce her with one pronouncement at each new moon—and this is the opinion of al-Sha'bi.

وَمِثْلُهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ - وَزَادَ فَإِنْ كَانَتْ يَئِسَتْ مِنْ الْمَحِيضِ فَلْيُطَلِّقْهَا عِنْدَ كُلِّ هِلَالٍ تَطْلِيقَةً - وَهُوَ قَوْلُ الشَّعْبِيِّ.

وَمِمَّنْ كَرِهَ أَنْ يُطَلِّقَهَا أَكْثَرَ مِنْ وَاحِدَةٍ: اللَّيْثُ، وَالْأَوْزَاعِيُّ، وَمَالِكٌ، وَأَبُو حَنِيفَةَ، وَعَبْدُ الْعَزِيزِ بْنُ الْمَاجِشُونِ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L33555–33556 Among those who disliked divorcing her more than once were Al-Layth, Al-Awzāʿī, Mālik, Abū Ḥanīfah, ʿAbd al-ʿAzīz ibn al-Mājashūn, Al-Ḥasan ibn Ziyād, Abū Sulaymān, and their companions.

وَأَمَّا قَوْلُنَا فِي طَلَاقِ الْحَامِلِ، وَالَّتِي لَمْ يَطَأْهَا، وَالَّتِي لَمْ تَحِضْ، وَالَّتِي يَئِسَتْ مِنَ الْمَحِيضِ: فَإِنَّ النُّصُوصَ الَّتِي ذَكَرْنَا قَبْلُ وَإِنَّمَا جَاءَتْ فِي اللَّوَاتِي عِدَّتُهُنَّ الْأَطْهَارُ.

L33557 As for our ruling regarding the divorce of the pregnant woman, the unconsummated wife, the prepubescent girl, and the menopausal woman: the texts we previously mentioned indeed apply only to those women whose waiting period is determined by menstrual purity periods.

وَأَمَّا الْحَامِلُ - فَلَيْسَ لَهَا أَقْرَاءٌ تُرَاعَى، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَمَا أَوْرَدْنَاهُ قَبْلُ فِي صَدْرِ كَلَامِنَا فِي الطَّلَاقِ ثُمَّ لِيُطَلِّقْهَا طَاهِرًا أَوْ حَامِلًا - فَبَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي الطَّاهِرِ أَنْ لَا يَطَأَهَا فِي ذَلِكَ الطُّهْرِ قَبْلَ أَنْ يُطَلِّقَهَا، وَأَجْمَلُ طَلَاقِ الْحَامِلِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L33558–33559 As for the pregnant woman—she has no menstrual cycles to observe. The Messenger of Allah—may Allah's blessings and peace be upon him and his family—said, as we mentioned earlier at the beginning of our discussion on divorce: "Then let him divorce her while she is in a state of purity or pregnant." He clarified—may peace and blessings be upon him—regarding the pure state that he should not have intercourse with her during that period of purity before divorcing her. The established ruling concerning divorcing a pregnant woman is affirmed by the verse: "And your Lord is never forgetful" [Maryam: 64], which underscores that Allah's rulings are precise and never overlooked.[2]

وَأَمَّا الَّتِي لَمْ يَطَأْهَا - فَلَا عِدَّةَ عَلَيْهَا بِنَصِّ الْقُرْآنِ، فَلَيْسَتْ مِنَ اللَّاتِي قَالَ اللَّهُ تَعَالَى فِيهِنَّ: {فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] فَلَهُ أَنْ يُطَلِّقَهَا كَمَا أَبَاحَ اللَّهُ تَعَالَى مَتَى شَاءَ قَالَ تَعَالَى: {لا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ} [البقرة: ٢٣٦] .

L33560 As for the woman he has not consummated the marriage with, there is no waiting period incumbent upon her according to the Quran's explicit text, for she is not among those women concerning whom Allah the Exalted stated: "Divorce them during their waiting period" [At-Talaq:1]. Thus he may divorce her as Allah the Exalted has permitted at any time he wills. Allah the Exalted said: "There is no blame upon you if you divorce women whom you have not touched" [Al-Baqarah:236].[3]

وَأَمَّا الَّتِي لَمْ تَحِضْ قَطُّ، أَوِ الَّتِي انْقَطَعَ حَيْضُهَا فَقَدْ قَالَ مَنْ ذَكَرْنَا: إِنَّهُ يُطَلِّقُهَا عِنْدَ اسْتِهْلَالِ الْهِلَالِ وَهَذَا شَيْءٌ لَا نُوجِبُهُ، لِأَنَّهُ لَمْ يَأْتِ بِإِيجَابِهِ قُرْآنٌ وَلَا سُنَّةٌ.

L33561 As for the woman who has never menstruated at all, or the one whose menstruation has ceased, those we have mentioned stated: He divorces her upon the sighting of the crescent moon. This is something we do not consider obligatory, because neither the Quran nor the Sunnah have prescribed it as obligatory.

[2] **Qur'an references (L33559):** Qur'an 19:64 (Maryam).
[3] **Qur'an references (L33560):** Qur'an 2:236 (Al-Baqarah); Qur'an 65:1 (At-Talaq).

L33562–33563 If it is said: Did not Allah, the Mighty and Sublime, say: “As for those of your women who have reached menopause—if you are uncertain—their waiting period is three months, and those who have not yet menstruated” [at-Talaq 4].[4]

فَإِنْ قِيلَ: أَلَمْ يَقُلْ اللَّهُ عَزَّ وَجَلَّ: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] .

L33564 We said: Yes, and it has been authentically reported from the Messenger of Allah—peace be upon him and his family—that he said, “A month consists of twenty-nine days.” Therefore, from where he began the count, once he completes twenty-nine days, then it is a month.

قُلْنَا: نَعَمْ، وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ «الشَّهْرُ تِسْعَةٌ وَعِشْرُونَ يَوْمًا» فَمِنْ حَيْثُ ابْتَدَأَ بِالْعِدَّةِ فَإِذَا أَتَمَّ تِسْعَةً وَعِشْرِينَ يَوْمًا فَهُوَ شَهْرٌ.

L33565 The proof of this is the statement of Allah, the Almighty: {Divorced women shall wait for three waiting periods (qurū’)} [Al-Baqarah: 228]. Thus, the Almighty has mandated what we have stated. This means the woman may begin with the count of the months from any day or night she chooses, or from when the waiting period becomes obligatory due to death or calculated by months—and success is from Allah, the Exalted.[5]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] فَأَوْجَبَ عَزَّ وَجَلَّ مَا قُلْنَا، وَهُوَ أَنْ يَبْدَأَ بِعَدَدِ الشُّهُورِ مِنْ أَيِّ يَوْمٍ أَوْ لَيْلَةٍ شَاءَ الْعَادُّ، أَوْ مِنْ حَيْثُ تَجِبُ الْعِدَّةُ بِالْوَفَاةِ، أَوْ بِالشُّهُورِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

He said, “You are divorced,” intending the statement to count as two or three divorces.

[مَسْأَلَةٌ قَالَ أَنْتِ طَالِقٌ وَنَوَى اثْنَتَيْنِ أَوْ ثَلاثًا]

L33566–33567

L33568 Issue: Whoever says, “You are divorced,” and intends two or three divorces, then it is as he intended—whether he made that statement and intended it regarding a consummated wife or a non-consummated wife.

مَسْأَلَةٌ: وَمَنْ قَالَ: أَنْتِ طَالِقٌ، وَنَوَى اثْنَتَيْنِ أَوْ ثَلاثًا فَهُوَ كَمَا نَوَى - سَوَاءٌ قَالَ ذَلِكَ وَنَوَاهُ فِي مَوْطُوءَةٍ أَوْ فِي غَيْرِ مَوْطُوءَةٍ.

L33569 The evidence for this is that we have mentioned that divorcing three times in a single instance is Sunnah, and that the term “divorce” applies to three, two, or one. Since this is so, it is what he intended regarding the number of divorces, according to the Prophet’s statement (peace be upon him): “Actions are but by intentions, and each person will have only what they intended.” If he did not intend a specific number of divorces, it counts as one, for it is the minimum divorce – being the unequivocal certainty that obligates him without doubt. It is impermissible to be obligated by an increase without certainty. This is the opinion of Mālik, al-Layth, and al-Shāfiʿī.[6]

بُرْهَانُ ذَلِكَ - أَنَّا قَدْ ذَكَرْنَا أَنَّ طَلاقَ الثَّلاثِ مَجْمُوعَةً سُنَّةٌ وَأَنَّ اسْمَ الطَّلاقِ يَقَعُ عَلَيْهَا، وَعَلَى الثِّنْتَيْنِ، وَعَلَى الْوَاحِدَةِ، فَإِذْ ذَلِكَ كَذَلِكَ فَهُوَ مَا نَوَى مِنْ عَدَدِ الطَّلاقِ لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» فَإِنْ لَمْ يَنْوِ عَدَدًا مِنَ الطَّلاقِ فَهِيَ وَاحِدَةٌ، لِأَنَّهَا أَقَلُّ الطَّلاقِ فَهِيَ الْيَقِينُ الَّذِي لَا شَكَّ فِيهِ أَنْ يَلْزَمَهُ، وَلَا يَجُوزُ أَنْ يَلْزَمَ زِيَادَةٌ بِلَا يَقِينٍ - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ، وَالشَّافِعِيِّ.

[4] **Qur’an references (L33563):** Qur’an 65:4 (At-Talaq).
[5] **Qur’an references (L33565):** Qur’an 2:228 (Al-Baqarah).

L33570 Abu Hanifa, Abu Sulayman, Sufyan, and Al-Awza'i said: He is obligated to perform one expiation and no more. And with Allah, the Exalted, is success.

وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَسُفْيَانُ، وَالْأَوْزَاعِيُّ: يَلْزَمُهُ وَاحِدَةٌ لَا أَكْثَرُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L33571 **A jurisprudential issue: He said to a consummated wife, "You are divorced. You are divorced. You are divorced."**

[مَسْأَلَةٌ قَالَ لِمَوْطُوءَةٍ أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ]

L33572–33574 1947 - Issue: If a man says to a woman with whom he has consummated marriage, "You are divorced, you are divorced, you are divorced"—then if he intended the repetition of his initial word and to inform her, it counts as a single divorce. Likewise, if he intended nothing by his repetition—if he intended By that ruling, each single talaq distinct from the others counts as three if he repeats it thrice, and not two if he repeats it twice without doubt.

١٩٤٧ - مَسْأَلَةٌ: فَلَوْ قَالَ لِمَوْطُوءَةٍ: أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ - فَإِنْ نَوَى التَّكْرِيرَ لِكَلِمَتِهِ الْأُولَى وَإِعْلَامَهَا فَهِيَ وَاحِدَةٌ، وَكَذَلِكَ إِنْ لَمْ يَنْوِ بِتَكْرَارِهِ شَيْئًا - فَإِنْ نَوَى بِذَلِكَ أَنَّ كُلَّ طَلْقَةٍ غَيْرُ الْأُخْرَى فَهِيَ ثَلَاثٌ إِنْ كَرَّرَهَا ثَلَاثًا، وَلَا اثْنَتَانِ إِنْ كَرَّرَهَا مَرَّتَيْنِ بِلَا شَكٍّ.

L33575 If he were to say to a woman with whom he has not consummated marriage: "You are divorced, you are divorced, you are divorced," it would count as a single divorce only. This is because the repetition of divorce occurred while she was not in a waiting period from him, as there is no waiting period for a woman who has not been consummated with, according to the explicit text of the Quran. She becomes a stranger thereafter, and divorcing a stranger is invalid.

فَلَوْ قَالَ لِغَيْرِ مَوْطُوءَةٍ مِنْهُ: أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ أَنْتِ طَالِقٌ فَهِيَ طَلْقَةٌ وَاحِدَةٌ فَقَطْ، لِأَنَّ تَكْرَارَهُ لِلطَّلَاقِ وَقَعَ - وَهِيَ فِي غَيْرِ عِدَّةٍ مِنْهُ - إِذْ لَا عِدَّةَ عَلَى غَيْرِ مَوْطُوءَةٍ بِنَصِّ الْقُرْآنِ وَهِيَ أَجْنَبِيَّةٌ بَعْدُ، وَطَلَاقُ الْأَجْنَبِيَّةِ بَاطِلٌ.

L33576 And the people differed regarding this—so a group said as we said.

وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا.

L33577–33578 A group held that if his speech was connected and he did not interrupt parts of it from one another, it constitutes three irrevocable divorces. But if he separated his speech with a pause, it is only a single pronouncement.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ وَصَلَ كَلَامَهُ وَلَا يَقْطَعُ بَعْضَهُ عَنْ بَعْضٍ فَهِيَ ثَلَاثٌ لَازِمَةٌ، وَإِنْ كَانَ فَرَّقَ بَيْنَ كَلَامِهِ بِسَكْتَةٍ فَهِيَ طَلْقَةٌ وَاحِدَةٌ فَقَطْ.

L33579 A group stated: If the divorces are pronounced in a single session, all of them are binding, whether he inserts a pause between each divorce pronouncement or not. But if they occur across multiple sessions, only the divorces from the first session become binding.

وَقَالَتْ طَائِفَةٌ: إِنْ كَانَ ذَلِكَ فِي مَجْلِسٍ وَاحِدٍ فَهِيَ كُلُّهَا لَوَازِمُ سَوَاءٌ فَرَّقَ بَيْنَ كُلِّ طَلَاقٍ بِسَكْتَةٍ أَوْ لَمْ يُفَرِّقْ، وَإِنْ كَانَ ذَلِكَ فِي مَجَالِسَ شَتَّى لَمْ يَلْزَمْ مِنَ الطَّلَاقِ إِلَّا مَا كَانَ فِي الْمَجْلِسِ الْأَوَّلِ فَقَطْ.

[6] **Hadith references (L33569):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

L33580 Among those from whom we have narrated an opinion similar to ours is the following, via the chain of Sa‘īd ibn Manṣūr: ‘Attāb ibn Bashīr narrated to us from Khuṣayf from Ziyād ibn Abī Maryam from Ibn Mas‘ūd concerning one who divorces his wife three times without having consummated the marriage. He said: “It counts as three. If he divorces her once, then makes a second, then a third, the latter two do not count against her, for she was irrevocably separated by the first.” This is authentically reported from Khilās, Ibrāhīm al-Nakha‘ī in one of his opinions, Ṭāwūs, al-Sha‘bī, ‘Ikrimah, Abū Bakr ibn ‘Abd al-Raḥmān ibn al-Ḥārith ibn Hishām, and Ḥammād ibn Abī Sulaymān. We have also narrated it from Masrūq.

فَمِمَّنْ رُوِّينَا عَنْهُ مِثْلُ قَوْلِنَا: مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ: نا عَتَّابُ بْنُ بَشِيرٍ عَنْ خُصَيْفٍ عَنْ زِيَادِ بْنِ أَبِي مَرْيَمَ عَنِ ابْنِ مَسْعُودٍ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَلَمْ يَكُنْ دَخَلَ بِهَا؟ قَالَ: هِيَ ثَلَاثٌ، فَإِنْ طَلَّقَهَا وَاحِدَةً ثُمَّ ثَنَّى ثُمَّ ثَلَّثَ لَمْ يَقَعْ عَلَيْهَا، لِأَنَّهَا قَدْ بَانَتْ بِالْأُولَى - وَصَحَّ هَذَا عَنْ خِلَاسٍ، وَإِبْرَاهِيمَ النَّخَعِيِّ فِي أَحَدِ أَقْوَالِهِ، وَطَاوُسٍ، وَالشَّعْبِيِّ، وَعِكْرِمَةَ، وَأَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ - وَرُوِّينَاهُ عَنْ مَسْرُوقٍ.

L33581–33583 And we have narrated it through the chain of Al-Ḥajjāj ibn Al-Minhāl: Abū ‘Awānah reported to us from Muṭarrif ibn Ṭarīf, who said: I asked Al-Ḥakam ibn ‘Utaybah about someone who said to his wife, “You are divorced, you are divorced, you are divorced?” meaning he did not... Had he consummated the marriage with her? He said: The irrevocable separation occurs with the first divorce pronouncement, and the two divorce pronouncements he subsequently issued are invalid. I then asked him: From whom do you narrate this? He replied: From Ali ibn Abi Talib, Abdullah ibn Mas’ud, and Zayd ibn Thabit.

وَرُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ مُطَرِّفِ بْنِ طَرِيفٍ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ عَمَّنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ؟ يَعْنِي لَمْ يَكُنْ دَخَلَ بِهَا؟ قَالَ: تَبِينُ بِالتَّطْلِيقَةِ الْأُولَى وَالثِّنْتَانِ الَّتِي أَتْبَعَ لَيْسَتَا بِشَيْءٍ، فَقُلْت لَهُ: عَمَّنْ تَحْفَظُهُ؟ قَالَ: عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَبْدِ اللَّهِ بْنِ مَسْعُودٍ، وَزَيْدِ بْنِ ثَابِتٍ.

L33584 We have also narrated it from Ibn Abbas—and it is the opinion of Sufyan al-Thawri, al-Hasan ibn Hayy, Abu Hanifah, al-Shafi’i, Abu Thawr, Abu Ubayd, Ahmad ibn Hanbal, Abu Sulayman, and their companions.

وَرُوِّينَاهُ أَيْضًا عَنِ ابْنِ عَبَّاسٍ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي ثَوْرٍ، وَأَبِي عُبَيْدٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L33585 The second opinion—narrated through the chain of Sa‘īd ibn Manṣūr: Hushaym reported to us, al-Mughīrah reported to us from Ibrāhīm al-Nakha‘ī concerning one who says to an unconsummated marriage: “You are divorced, you are divorced, you are divorced”—uttered consecutively: she is not permitted to him until she marries another husband. If he says: “You are divorced,” then says: “You are divorced,” then pauses, then says: “You are divorced,” she is irrevocably divorced by the first declaration, and the latter two declarations are invalid. Exactly the same, without any difference, applies from ‘Abdullāh ibn Mughaffal al-Muzanī—and this is the opinion of Mālik, al-Awzā‘ī, and al-Layth.

وَالْقَوْلُ الثَّانِي - رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ قَالَ لِغَيْرِ الْمَدْخُولِ بِهَا: أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ - وَقَالَهَا مُتَّصِلَةً: لَمْ تَحِلَّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ، فَإِنْ قَالَ: أَنْتِ طَالِقٌ ثُمَّ قَالَ: أَنْتِ طَالِقٌ ثُمَّ سَكَتَ، ثُمَّ قَالَ: أَنْتِ طَالِقٌ، بَانَتْ بِالْأُولَى وَلَمْ تَكُنْ الْأُخْرَيَانِ شَيْئًا - وَمِثْلُهُ سَوَاءً سَوَاءً عَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ الْمُزَنِيِّ - وَهُوَ قَوْلُ مَالِكٍ - وَالْأَوْزَاعِيِّ، وَاللَّيْثِ.

L33586 The third opinion—we have narrated it through the chain of al-Ḥajjāj ibn al-Minhāl, narrated to us by ʿAbd al-ʿAzīz ibn ʿAbd al-Ṣamad, who said: Manṣūr said to me: “It was conveyed to me from Ibrāhīm al-Nakhaʿī that he would state: If a man says to his wife whom he has not had intercourse with in a single gathering: ’You are divorced, you are divorced, you are divorced,’ she becomes unlawful to him until she marries another husband; but if he leaves that gathering after uttering a single pronouncement of divorce, then pronounces divorce again afterward, it counts for nothing.”[7]

L33587 There have come narrations without elaboration—among them is what we narrated through the chain of Saʿīd ibn Manṣūr, who reported to us: Sufyān ibn ʿUyaynah narrated from ʿAmr ibn Dīnār, from ʿAṭāʾ ibn Abī Rabāḥ and Jābir ibn Zayd. Both said: “If a virgin is divorced three times, it constitutes one divorce.”

L33588 And via the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us from Manṣūr - he is the son of al-Muʿtamir - that al-Ḥasan’s final opinion regarding one who divorces his wife thrice before consummation was: “If he wishes, he may propose to her.”

L33589 And from the chain of Malik, from Yahya ibn Sa’id al-Ansari, from al-Nu’man ibn Abi ’Ayyash, from ’Ata’ ibn Yasar: He was asked about a man who divorced his wife before consummating the marriage. He said: A single pronouncement of divorce suffices for a virgin.

L33590 Abu Muhammad said: They did not single out an individual case from a collective, and Allah knows best what they intended.

L33591–33593 Among these is also what we have narrated through ʿAbd al-Razzāq, from ʿUmar ibn Rāshid, from Yaḥyā ibn Abī Kathīr, from Muḥammad ibn ʿAbd al-Raḥmān ibn Thawbān, who said: A man from Muzaynah divorced his wife three times before [...] Regarding the matter of consummation, he asked Ibn Abbas—while Abu Hurayrah was present with him—about it. Abu Hurayrah said: “Does one pronouncement finalize the divorce, and three render her

وَالْقَوْلُ الثَّالِثُ - رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الصَّمَدِ قَالَ: قَالَ لِي مَنْصُورٌ: حُدِّثْتُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ يَقُولُ: إذَا قَالَ لِلَّتِي لَمْ يَدْخُلْ بِهَا فِي مَجْلِسٍ وَاحِدٍ: أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ، أَنْتِ طَالِقٌ، فَلَا تَحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا، غَيْرَهُ - فَإِنْ قَامَ مِنْ مَجْلِسِهِ ذَلِكَ بَعْدَ أَنْ طَلَّقَ طَلْقَةً وَاحِدَةً ثُمَّ طَلَّقَ بَعْدَ ذَلِكَ، فَلَيْسَ بِشَيْءٍ.

وَقَدْ جَاءَتْ رِوَايَاتٌ لَا بَيَانَ فِيهَا -: مِنْهَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَجَابِرِ بْنِ زَيْدٍ، قَالَا جَمِيعًا: إذَا طَلُقَتْ الْبِكْرُ ثَلَاثًا فَهِيَ وَاحِدَةٌ.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مَنْصُورٌ - هُوَ ابْنُ الْمُعْتَمِرِ - أَنَّ آخِرَ قَوْلِ الْحَسَنِ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا قَبْلَ الدُّخُولِ بِهَا: أَنَّهُ إنْ شَاءَ خَطَبَهَا.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ النُّعْمَانِ بْنِ أَبِي عَيَّاشٍ عَنْ عَطَاءِ بْنِ يَسَارٍ أَنَّهُ سُئِلَ عَمَّنْ طَلَّقَ امْرَأَتَهُ قَبْلَ أَنْ يَمَسَّهَا؟ قَالَ: طَلَاقُ الْبِكْرِ وَاحِدَةٌ.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يَخُصُّوا مُفَرَّقَةً مِنْ مَجْمُوعَةٍ، وَاَللَّهُ أَعْلَمُ بِمُرَادِهِمْ.

وَمِنْهَا أَيْضًا مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ رَاشِدٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ قَالَ: طَلَّقَ رَجُلٌ مِنْ مُزَيْنَةَ امْرَأَتَهُ ثَلَاثًا قَبْلَ الدُّخُولِ، فَسَأَلَ ابْنَ عَبَّاسٍ وَعِنْدَهُ أَبُو هُرَيْرَةَ؟ فَقَالَ أَبُو هُرَيْرَةَ: وَاحِدَةٌ تُبِينُهَا وَثَلَاثٌ تُحَرِّمُهَا؟ فَصَوَّبَهَا ابْنُ عَبَّاسٍ - وَهَذَا لَا يَصِحُّ، لِأَنَّ عُمَرَ بْنَ رَاشِدٍ ضَعِيفٌ.

[7] **Qur’an references (L33586):** Qur’an 2:230 (Al-Baqarah).

unlawful?" Ibn Abbas endorsed this. However, this is invalid because Umar ibn Rashid is weak.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ بُكَيْرِ بْنِ النُّعْمَانِ بْنِ أَبِي عَيَّاشٍ أَنَّ عَبْدَ اللَّهِ قَالَ فِيمَنْ طَلَّقَ امْرَأَتَهُ الْبِكْرَ: وَاحِدَةٌ تُبِينُهَا، وَثَلَاثٌ تُحَرِّمُهَا - وَنَحْوُهُ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ - فَلَمْ يُبَيِّنُوا مُفَرَّقَةً أَمْ مَجْمُوعَةً.

L33594 And from the chain of Mālik, from Yaḥyā ibn Saʿīd, from Bukayr ibn al-Nuʿmān ibn Abī ʿAyyāsh, that ʿAbdullāh said concerning one who divorces his virgin wife: "One [declaration] constitutes a revocable divorce, and three render her unlawful" — a similar position is reported from Umm Salamah, the Mother of the Believers, and ʿAlī ibn Abī Ṭālib — though they did not clarify whether the declarations were separated [by intervals] or uttered together [in one sitting].

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ فَرَّقَ بَيْنَ قَوْلِهِ ذَلِكَ فِي مَجْلِسٍ، وَبَيْنَ قَوْلِهِ ذَلِكَ فِي مَجْلِسَيْنِ فَدَعْوَى بِلَا بُرْهَانٍ، وَكَذَلِكَ مَنْ فَرَّقَ بَيْنَ قَوْلِهِ ذَلِكَ مُتَّصِلًا، وَبَيْنَ تَفْرِيقِهِ بَيْنَ ذَلِكَ بِالسُّكُوتِ هُوَ أَيْضًا قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ - فَهُوَ سَاقِطٌ -.

L33595 Abū Muḥammad said: As for one who distinguishes between uttering this statement in one session and two sessions, this is a baseless claim. Similarly, distinguishing between uttering it continuously and separating it with silence is also an assertion lacking evidence—thus, it is invalid.

فَصَحَّ قَوْلُنَا، لِأَنَّهُ بِتَمَامِ قَوْلِهِ لَهَا: أَنْتِ طَالِقٌ بَانَتْ وَحَلَّ لَهَا زَوْجٌ غَيْرُهُ - وَلَوْ مَاتَ لَمْ تَرِثْهُ - وَلَوْ مَاتَتْ لَمْ يَرِثْهَا - وَلَيْسَ فِي عِدَّةٍ مِنْهُ، فَطَلَاقُهُ لَهَا لَغْوٌ سَاقِطٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

L33596 Thus, our position is valid, because by the completeness of his statement to her: "You are irrevocably divorced"—she is permitted to marry another husband (if he dies, she does not inherit him; if she dies, he does not inherit her)—and she is not observing a waiting period for him. Therefore, his divorce of her is invalid and void—and success comes from Allah, the Exalted.

[مَسْأَلَةٌ قَالَ لِغَيْرِ مَوْطُوءَةٍ مِنْهُ أَنْتِ طَالِقٌ ثَلَاثًا]

Issue: He said to a woman with whom he has not consummated marriage, "You are divorced thrice."

١٩٤٨ - مَسْأَلَةٌ: فَلَوْ قَالَ لِغَيْرِ مَوْطُوءَةٍ مِنْهُ: أَنْتِ طَالِقٌ ثَلَاثًا؟ فَإِنْ كَانَ نَوَى فِي قَوْلِهِ: أَنْتِ طَالِقٌ: أَنَّهَا ثَلَاثٌ فَهِيَ ثَلَاثٌ، فَإِنْ لَمْ يَنْوِ ذَلِكَ لَكِنْ نَوَى الثَّلَاثَ، إذْ قَالَ: ثَلَاثًا لَمْ تَكُنْ طَلَاقًا إلَّا وَاحِدَةً، لِأَنَّ بِتَمَامِ قَوْلِهِ: أَنْتِ طَالِقٌ بَانَتْ مِنْهُ - فَصَارَ قَوْلُهُ " ثَلَاثًا " لَغْوًا لَا مَعْنَى لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33598 1948 - Issue: If he says to his non-consummated wife: "You are divorced threefold" - if he intended his statement "You are divorced" to represent three divorces, then it constitutes three. If he did not intend this but instead intended a triple divorce through uttering "threefold," it does not constitute more than a single divorce. This is because upon completing his statement "You are divorced," she became irrevocably divorced from him, rendering his utterance of "threefold" legally void. And with Allah the Exalted lies success.

[مَسْأَلَةٌ طَلَاقُ النُّفَسَاءِ]

An Issue Concerning the Divorce of Women in the State of Nifās.

L33599–33600

L33601 Issue: The divorce of a woman in postpartum bleeding is exactly the same in every respect as divorce during menstruation. It does not take effect unless it constitutes three pronouncements issued collectively or the third pronouncement as the last of three, two of which have already been made.

مَسْأَلَةٌ: وَطَلَاقُ النُّفَسَاءِ كَالطَّلَاقِ فِي الْحَيْضِ سَوَاءً سَوَاءً لَا يَلْزَمُ إلَّا أَنْ يَكُونَ ثَلَاثًا مَجْمُوعَةً أَوْ آخِرُ ثَلَاثٌ قَدْ تَقَدَّمَتْ مِنْهَا اثْنَتَانِ.

L33602–33604 The proof of this is: There is only menstruation or a state of purity. We have cited from the Messenger of Allah—peace and blessings be upon him—that he prohibited divorce during menstruation and instructed divorce during a purity period in which no intercourse occurred, or [to divorce] a pregnant woman. There is no disagreement that postnatal bleeding is neither a purity period nor pregnancy. Thus, nothing remains except menstruation—so it is menstruation. No authentic scriptural evidence has ever established that postnatal bleeding is not menstruation. Rather, there is no dispute that it entails the rulings of menstruation, such as abstaining from prayer, fasting, and intercourse. It has been authentically reported from the Messenger of Allah—peace and blessings be upon him—that menstrual blood is black and distinctly identifiable. It is established that any black blood emerging from a woman's private parts is menstruation, provided it does not exceed the duration of menstruation and she is not pregnant.

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَيْسَ إلَّا حَيْضٌ أَوْ طُهْرٌ - وَقَدْ ذَكَرْنَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ نَهَى عَنْ الطَّلَاقِ فِي الْحَيْضِ، وَأَمَرَ بِالطَّلَاقِ فِي طُهْرٍ لَمْ يُجَامِعْهَا فِيهِ، أَوْ حَامِلًا» وَلَا خِلَافَ فِي أَنَّ دَمَ النِّفَاسِ لَيْسَ طُهْرًا، وَلَا هُوَ حَمْلٌ، فَلَمْ يَبْقَ إلَّا الْحَيْضُ فَهُوَ حَيْضٌ، وَلَمْ يَصِحَّ قَطُّ نَصٌّ بِأَنَّ النِّفَاسَ لَيْسَ حَيْضًا، بَلْ لَا خِلَافَ فِي أَنَّ لَهُ حُكْمَ الْحَيْضِ، مِنْ تَرْكِ الصَّلَاةِ، وَالصَّوْمِ، وَالْوَطْءِ وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ دَمَ الْحَيْضِ أَسْوَدُ يُعْرَفُ» فَصَحَّ أَنَّ كُلَّ دَمٍ أَسْوَدَ ظَهَرَ مِنْ فَرْجِ الْمَرْأَةِ فَهُوَ حَيْضٌ مَا لَمْ يَتَجَاوَزْ أَمَدَ الْحَيْضِ، وَمَا لَمْ يَكُنْ فِي حَمْلٍ.

L33605 It is authentically established that the Prophet—peace and blessings be upon him—said to Umm Salamah and ʻĀ'ishah, the Mothers of the Believers—may Allah be pleased with them both—when one of them experienced menstrual bleeding: "Have you entered postpartum bleeding?" They replied: "Yes." Thereupon, the Messenger of Allah—peace and blessings be upon him—referred to menstruation as postpartum bleeding.

وَصَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لِأُمِّ سَلَمَةَ، وَعَائِشَةَ: أُمَّيْ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُمَا - «إذْ حَاضَتْ كُلُّ وَاحِدَةٍ مِنْهُمَا: أَنُفِسْتِ؟ قَالَتْ: نَعَمْ، فَسَمَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْحَيْضَ نِفَاسًا» .

L33606 Among those who held our opinion is a group of the Salaf—as transmitted through Waki''s narration from Jarīr ibn Ḥāzim and Sufyān al-Thawrī. Jarīr reported from Qays ibn Saʿd from Bukayr from ʿAbdullāh ibn al-Ashajj from Sulaymān ibn Yasār from Zayd ibn Thābit, while Sufyān al-Thawrī said: from Ibn Jarīr from ʿAṭāʾ. Zayd and ʿAṭāʾ stated: If a man divorces his wife while she is experiencing postpartum bleeding, she does not count her postpartum bleeding as part of her waiting period.

وَمِمَّنْ قَالَ بِقَوْلِنَا طَائِفَةٌ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ جَرِيرِ بْنِ حَازِمٍ، وَسُفْيَانَ الثَّوْرِيِّ، قَالَ جَرِيرٌ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ بُكَيْرٍ عَنْ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ زَيْدِ بْنِ ثَابِتٍ، وَقَالَ سُفْيَانُ: عَنْ ابْنِ جَرِيرٍ عَنْ عَطَاءٍ، قَالَ زَيْدٌ، وَعَطَاءٌ: إذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ - وَهِيَ نُفَسَاءُ - لَمْ تَعْتَدَّ بِدَمِ نِفَاسِهَا فِي عِدَّتِهَا.

L33607 Others besides those two said differently, as we were narrated through the

chain of transmission of ʻAbd al-Razzāq from ʻUthmān ibn Maṭar from Saʻīd ibn Abī ʻArūbah, who said: Maṭar al-Warrāq reported from al-Ḥasan regarding the woman who divorces three times while menstruating? He said: She observes her waiting period by counting one menstrual cycle from her cycles.

وَقَالَ غَيْرُهُمَا غَيْرَ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُثْمَانَ بْنِ مَطَرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ قَالَ: قَالَ مَطَرٌ الْوَرَّاقُ عَنْ الْحَسَنِ فِي الَّتِي تَطْلُقُ وَهِيَ حَائِضٌ ثَلَاثَةً؟ قَالَ: تَعْتَدُّ بِهِ قَرْءًا مِنْ أَقْرَائِهَا.

L33608 From the narration of Abd al-Razzaq from Ibn Jurayj from Ata, he said: It is forbidden to divorce one's wife during menstruation, just as it is forbidden to divorce her during the postpartum period.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ، قَالَ: يُكْرَهُ أَنْ يُطَلِّقَ امْرَأَتَهُ حَائِضًا كَمَا يُكْرَهُ أَنْ يُطَلِّقَهَا نُفَسَاءَ.

L33609–33611 Abu Muhammad said: If a man revocably divorces his wife during a period of purity without having intercourse with her, and she then becomes pregnant through adultery, coercion, or a mistaken assumption due to ignorance, her waiting period transitions to that of a pregnant woman. Her waiting period is concluded by the delivery of her child, as she remains his wife; she inherits from him and he inherits from her. His *īlāʾ* (oath of abstention) and *ẓihār* (sworn allegation) affect her, and he may invoke mutual cursing (*liʿān*, a procedure to deny paternity) against her. If he accuses her of adultery and invokes *liʿān*, she is divorced as a pregnant woman.

قَالَ أَبُو مُحَمَّد: وَلَوْ أَنَّ امْرَأً طَلَّقَ امْرَأَتَهُ فِي طُهْرٍ لَمْ يَمَسَّهَا فِيهِ طَلَاقًا رَجْعِيًّا فَحَمَلَتْ مِنْ زِنًى، أَوْ مِنْ إكْرَاهٍ أَوْ مِنْ شُبْهَةٍ بِجَهَالَةٍ، فَإِنَّهَا تَنْتَقِلُ إلَى عِدَّةِ الْحَامِلِ فَتَنْقَضِي عِدَّتُهَا بِوَضْعِ حَمْلِهَا، لِأَنَّهَا زَوْجَتُهُ بَعْدُ، تَرِثُهُ وَيَرِثُهَا، وَيَلْحَقُهَا إيلَاؤُهُ، وَظِهَارُهُ، وَيُلَاعِنُهَا - إنْ قَذَفَهَا فَهِيَ مُطَلَّقَةٌ مِنْ ذَوَاتِ الْأَحْمَالِ.

L33612 And the Most High has said: "For pregnant women, their waiting period lasts until they deliver their burden." [At-Talaq: 4][8]

وَقَدْ قَالَ تَعَالَى: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤]

L33613 Similarly, the waiting period (due to death) becomes that of a pregnant woman if the husband dies—whether she conceived during the first, second, or third post-menstrual purity period. However, if the divorce was a triple pronouncement, the final of three divorces, or if a freed slave woman chose to separate from him, the waiting period does not shift to the widow's waiting period nor to any waiting period whatsoever.

وَكَذَلِكَ تَنْتَقِلُ إلَى عِدَّةِ الْحَامِلِ الْوَفَاةُ إنْ مَاتَ - وَسَوَاءٌ حَمَلَتْ فِي الطُّهْرِ الْأَوَّلِ أَوْ الثَّانِي أَوْ الثَّالِثِ، فَإِنْ كَانَ الطَّلَاقُ ثَلَاثًا، أَوْ آخِرَ ثَلَاثٍ، أَوْ مُعْتَقَةً تَخَيَّرَتْ فِرَاقَهُ: لَمْ تَنْتَقِلْ إلَى عِدَّةِ الْوَفَاةِ، وَلَا إلَى عِدَّةٍ.

L33614 However, if she conceives during the first clean period, she counts her entire pregnancy as one menstrual cycle, then counts her postpartum bleeding as part of her menstrual cycle. She must then complete two additional cycles afterward. There is no distinction between her counting a cycle—even if only an instant remains of it—and her counting it—even if only an instant

لَكِنْ إنْ حَمَلَتْ فِي الطُّهْرِ الْأَوَّلِ عَدَّتْ جَمِيعَ حَمْلِهَا قُرْءًا ثُمَّ عَدَّتْ نِفَاسَهَا حَيْضًا، ثُمَّ تَأْتِي بِقُرْأَيْنِ بَعْدَهُ، وَلَا فَرْقَ بَيْنَ اعْتِدَادِهَا بِهِ قُرْءًا - وَلَوْ لَمْ يَبْقَ مِنْهُ إلَّا طَرْفَةُ عَيْنٍ - وَبَيْنَ اعْتِدَادِهَا بِهِ - وَلَوْ لَمْ يَمْضِ مِنْهُ إلَّا طَرْفَةُ عَيْنٍ - لِأَنَّ بَعْضَ الطُّهْرِ طُهْرٌ، فَإِنْ

[8] **Qur'an references (L33612):** Qur'an 65:4 (At-Talaq).

has passed of it—since any portion of the clean period is considered a complete cycle. If she conceives during the second clean period, she counts the duration of her pregnancy as a second menstrual cycle, then her postpartum bleeding as part of her menstrual cycle, then she must complete a third cycle. If she conceives during the third clean period, she counts the duration of her pregnancy as a menstrual cycle. When she delivers her child, the first postpartum blood that appears marks the completion of her waiting period, and she becomes lawful for marriage, as she is obligated to observe the waiting period through menstrual cycles by explicit Quranic decree, which cannot be waived. If she is among women who do not menstruate, her divorce is irrevocable, as previously established.

حَمَلَتْ فِي الطُّهْرِ الثَّانِي عَدَّتْ مُدَّةَ حَمْلِهَا قُرْءًا ثَانِيًا، ثُمَّ نِفَاسَهَا حَيْضًا، ثُمَّ عَلَيْهَا أَنْ تَأْتِيَ بِقُرْءٍ ثَالِثٍ، فَإِنْ حَمَلَتْ فِي الطُّهْرِ الثَّالِثِ عَدَّتْ مُدَّةَ حَمْلِهَا قُرْءًا، فَإِذَا وَضَعَتْ حَمْلَهَا بِأَوَّلِ دَمٍ يَظْهَرُ مِنْهَا تَمَّتْ عِدَّتُهَا، وَحَلَّتْ لِلْأَزْوَاجِ، لِأَنَّهَا قَدْ لَزِمَهَا الِاعْتِدَادُ بِالْأَقْرَاءِ بِنَصِّ الْقُرْآنِ فَلَا يَسْقُطُ عَنْهَا، فَلَوْ كَانَتْ مِمَّنْ لَا تَحِيضُ فَكَانَ طَلَاقُهَا بَائِنًا كَمَا ذَكَرْنَا.

L33615 Or if she was a freed slave and sought divorce from him, she observes the three-month waiting period and becomes permissible to [new] spouses upon its completion, as pregnancy is irrelevant in this case.

أَوْ كَانَتْ مُعْتَقَةً فَاخْتَارَتْ فِرَاقَهُ فَإِنَّهَا تَتَمَادَى عَلَى عِدَّةِ الشُّهُورِ وَتَحِلُّ لِلْأَزْوَاجِ بِتَمَامِهَا، وَلَا مَعْنَى لِلْحَمْلِ حِينَئِذٍ.

L33616–33617 Similarly, if she becomes pregnant after his death, she continues in her waiting period of four months and ten nights. She becomes lawful for remarriage to husbands upon its full completion, and the pregnancy is not taken into account.

وَكَذَلِكَ لَوْ حَمَلَتْ بَعْدَ مَوْتِهِ فَإِنَّهَا تَتَمَادَى عَلَى عِدَّتِهَا أَرْبَعَةَ أَشْهُرٍ وَعَشْرَ لَيَالٍ، ثُمَّ تَحِلُّ لِلْأَزْوَاجِ بِتَمَامِهَا - وَلَا يُرَاعَى الْحَمْلُ.

L33618 By our statement "she becomes permissible to her spouse(s)," we mean that the marital bond is reestablished. As for marital intimacy, it remains entirely prohibited until she delivers her child and her postpartum bleeding ceases—and with Allah alone is success.

وَإِنَّمَا نَعْنِي بِقَوْلِنَا " تَحِلُّ لِلْأَزْوَاجِ " أَنَّهَا يَحِلُّ لَهَا الزَّوَاجُ، وَأَمَّا الْوَطْءُ فَلَا أَلْبَتَّةَ، حَتَّى تَضَعَ حَمْلَهَا ثُمَّ تَطْهُرَ مِنْ دَمِ نِفَاسِهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا لَمْ يَحِلَّ لَهُ زَوَاجُهَا إلَّا بَعْدَ زَوْجٍ يَطَؤُهَا بِنِكَاحٍ صَحِيحٍ]

L33619–33620 **Issue: If a man divorces his wife three times, it is not lawful for him to remarry her unless she marries another husband in a valid marriage and he consummates it.**

مَسْأَلَةٌ: وَمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا كَمَا ذَكَرْنَا لَمْ يَحِلَّ لَهُ زَوَاجُهَا إلَّا بَعْدَ زَوْجٍ يَطَؤُهَا فِي فَرْجِهَا بِنِكَاحٍ صَحِيحٍ فِي حَالِ عَقْلِهِ وَعَقْلِهَا وَلَا بُدَّ - وَلَا يُحِلُّهَا لَهُ وَطْءٌ فِي نِكَاحٍ فَاسِدٍ، وَلَا وَطْءٌ فِي دُبُرٍ، وَلَا وَطْؤُهَا فِي نِكَاحٍ صَحِيحٍ - وَهِيَ فِي غَيْرِ عَقْلِهَا بِإِغْمَاءٍ أَوْ بِسُكْرٍ أَوْ

L33621 Issue: If a man divorces his wife three times as we have mentioned, it is not lawful for him to remarry her unless she marries another husband who has vaginal intercourse with her in a valid marriage while both he and she are of sound mind—and this is a necessary condition. Intercourse in an invalid marriage, anal intercourse, or intercourse with her in a valid marriage while she is not in her right mind due to fainting, intoxication, or insanity—or if

he is not in his right mind—does not make her lawful for him. However, if either retains enough consciousness during such states or during sleep to attain pleasure, then such intercourse makes her lawful for him again if that husband dies, divorces her, or their marriage with him is dissolved after the marriage is validly contracted.

L33622–33624 Similarly, if the marriage is valid and he subsequently has intercourse with her in a state where intercourse is impermissible, such as during fasting hours. An obligation on him or her, entering iḥrām (ritual consecration for pilgrimage), observing iʿtikāf (mosque seclusion), or her being menstruating—none of these make her lawful for marriage. An enslaved man may make her lawful by marrying her, and a dhimmī (if she is a dhimmī woman). And if she is an enslaved woman, her master's intercourse with her does not make her lawful.

L33625 The evidence for this is the statement of Allah, the Mighty and Majestic: *{Then she is not lawful for him thereafter until she marries another husband. But if the new husband divorces her, there is no sin upon them to return to each other if they think they can uphold Allah's limits}* [Al-Baqarah: 230]. This verse applies universally to all husbands, and no marriage is valid unless it is lawfully contracted.[9]

L33626 As for one who marries contrary to what Allah the Almighty has commanded, he is not a husband, nor is the marriage considered valid. This [invalid union] enables his lawful return to her after the husband's divorce.

L33627 The matter of intercourse, the matter of the second husband's death, and the dissolution of his marriage remained. We found what we have narrated through the chain of Abū Dāwūd al-Sijistānī: from Musaddad, from Abū Muʿāwiyah, from al-Aʿmash, from Ibrāhīm al-Nakhaʿī, from al-Aswad, from ʿĀ'ishah, the Mother of the Believers, who said: "The Messenger of Allāh—peace and blessings be upon him—was asked about a man who divorced his wife—meaning three times—whereupon she married another man who divorced her before consummating the marriage. Does she become lawful for her first husband?" She said: "The Messenger of Allāh—peace and blessings

بِجُنُونٍ، وَلَا هُوَ كَذَلِكَ - فَإِنْ بَقِيَ مِنْ حِسِّهِ أَوْ مِنْ حِسِّهَا - فِي هَذِهِ الْأَحْوَالِ، أَوْ فِي النَّوْمِ - مَا تُدْرِكُ بِهِ اللَّذَّةَ أَحَلَّهَا ذَلِكَ إِذَا مَاتَ ذَلِكَ الزَّوْجُ أَوْ طَلَّقَهَا، أَوْ انْفَسَخَ نِكَاحُهَا مِنْهُ بَعْدَ صِحَّتِهِ.

وَكَذَلِكَ إِنْ كَانَ النِّكَاحُ صَحِيحًا ثُمَّ وَطِئَهَا فِي حَالٍ لَا يَحِلُّ فِيهِ الْوَطْءُ مِنْ صَوْمِ فَرْضٍ مِنْهُ، أَوْ مِنْهَا، أَوْ إِحْرَامٍ كَذَلِكَ، أَوْ اعْتِكَافٍ كَذَلِكَ، أَوْ وَهِيَ حَائِضٌ: فَكُلُّ ذَلِكَ لَا يُحِلُّهَا - وَيُحِلُّهَا الْعَبْدُ يَتَزَوَّجُهَا، وَالذِّمِّيُّ - إِنْ كَانَتْ هِيَ ذِمِّيَّةً - وَلَا يُحِلُّهَا - إِنْ كَانَتْ أَمَةً -: وَطْءُ سَيِّدِهَا لَهَا.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ فَإِنْ طَلَّقَهَا فَلا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُقِيمَا حُدُودَ اللَّهِ} [البقرة: ٢٣٠] فَفِي هَذِهِ الْآيَةِ عُمُومُ كُلِّ زَوْجٍ، وَلَا يَكُونُ زَوَاجًا إِلَّا مَنْ كَانَ زَوَاجُهُ صَحِيحًا.

وَأَمَّا مَنْ تَزَوَّجَ بِخِلَافِ مَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ فَلَيْسَ زَوْجًا، وَلَا عُدَّ زَوَاجًا، وَفِيهَا تَحْلِيلُ رَجْعَتِهِ لَهَا بَعْدَ طَلَاقِ الزَّوْجِ.

وَبَقِيَ أَمْرُ الْوَطْءِ، وَأَمْرُ مَوْتِ الزَّوْجِ الثَّانِي، وَانْفِسَاخُ نِكَاحِهِ: فَوَجَدْنَا مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ نَا مُسَدَّدٌ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ - تَعْنِي ثَلَاثًا - فَتَزَوَّجَتْ غَيْرَهُ فَطَلَّقَهَا قَبْلَ أَنْ يُوَاقِعَهَا، أَتَحِلُّ لِزَوْجِهَا الْأَوَّلِ؟ قَالَتْ: فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: لَا تَحِلُّ لِلْأَوَّلِ حَتَّى تَذُوقَ عُسَيْلَةَ الْآخَرِ وَيَذُوقَ عُسَيْلَتَهَا» .

[9] **Qur'an references (L33625):** Qur'an 2:230 (Al-Baqarah).

be upon him—replied: 'She is not lawful for the first until she tastes the other's intimacy and he tastes her intimacy.'"

L33628–33629 In this report, there is an extension of the generality of its permissibility for him through intercourse, not other means. Thus, included in this are his death and the dissolution of his marriage after its validity, and all that we previously mentioned enters into the generality of 'tasting the sweetness'—and success is from Allah, the Exalted.

L33630 We stated that the master's intercourse does not render her lawful for the husband who divorced her, because the master is not a husband. Rather, the Exalted has permitted her to return to him only after she marries another man.

L33631 In many of what we have mentioned, there are opinions differing from that of Saʿīd ibn al-Musayyib. He said—as we were narrated through the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us from Dāwūd ibn Abī Hind, from Saʿīd ibn al-Musayyib—regarding the question: "A woman divorced thrice, then she remarries?" Saʿīd said: "As for the people, they say: He may consummate the marriage with her. But as for me, I say: If the second husband marries her with a valid marriage, not intending by that [act] to facilitate ḥalāla, then there is no harm in the first husband marrying her."

L33632–33633 Abū Muḥammad said: It would have been appropriate for those who argue in rejecting the ḥadīth about wiping over the turban and the ḥadīth of five sucklings—claiming these are additions to the Qur'ān and thus impermissible to take from except what is conveyed through mass-transmitted reports (tawātur)—to adhere to the opinion of Saʿīd here. For ʿĀ'ishah's report regarding tasting the date paste (ʿusaylah) is an addition to the Qur'ān, transmitted solely through the chain from ʿĀ'ishah—may Allah be pleased with her—from whom the report of five sucklings came, and there is no difference.

L33634 And it is narrated through Ibn Abbas. It is also narrated, though inauthentic, through Anas and Ibn Umar.

L33635 Similarly, it is necessary for those who uphold the rejection of the second Sunnah—that a sale is only valid if the two parties separate from their place—

فَفِي هَذَا الْخَبَرِ زِيَادَةُ عُمُومِ حِلِّهَا لَهُ بِالْوَطْءِ لَا بِغَيْرِهِ، فَدَخَلَ فِي ذَلِكَ مَوْتُهُ، وَانْفِسَاخُ نِكَاحِهِ بَعْدَ صِحَّتِهِ، وَدَخَلَ فِي عُمُومِ ذَوْقِ الْعُسَيْلَةِ كُلُّ مَا ذَكَرْنَا قَبْلُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَإِنَّمَا قُلْنَا " إنَّ وَطْءَ السَّيِّدِ لَا يُحِلُّهَا لِزَوْجِهَا الْمُطَلِّقِ لَهَا " لِأَنَّهُ لَيْسَ زَوْجًا، وَإِنَّمَا أَحَلَّهَا لَهُ تَعَالَى بَعْدَ أَنْ تَنْكِحَ زَوْجًا غَيْرَهُ.

وَفِي كَثِيرٍ مِمَّا ذَكَرْنَا خِلَافٌ مِنْ ذَلِكَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي الْمُطَلَّقَةِ ثَلَاثًا ثُمَّ تَتَزَوَّجُ؟ قَالَ سَعِيدٌ: أَمَّا النَّاسُ فَيَقُولُونَ: يُجَامِعُهَا، وَأَمَّا أَنَا فَإِنِّي أَقُولُ: إذَا تَزَوَّجَهَا بِتَزْوِيجٍ صَحِيحٍ لَا يُرِيدُ بِذَلِكَ إحْلَالًا، فَلَا بَأْسَ أَنْ يَتَزَوَّجَهَا الْأَوَّلُ.

قَالَ أَبُو مُحَمَّدٍ: كَانَ يَنْبَغِي لِمَنْ يَقُولُ فِي رَدِّهِ حَدِيثَ الْمَسْحِ عَلَى الْعِمَامَةِ وَحَدِيثَ الْخَمْسِ رَضَعَاتٍ إنَّ هَذَا زَائِدٌ عَلَى الْقُرْآنِ فَلَا يَجُوزُ أَنْ يُؤْخَذَ مِنْهُ إلَّا مَا جَاءَ مَجِيءَ تَوَاتُرٍ أَنْ يَقُولَ بِقَوْلِ سَعِيدٍ هَهُنَا، لِأَنَّ خَبَرَ عَائِشَةَ فِي ذَوْقِ الْعُسَيْلَةِ زَائِدٌ عَلَى مَا فِي الْقُرْآنِ لَمْ يَأْتِ إلَّا مِنْ طَرِيقِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - الَّتِي مِنْ قِبَلِهَا جَاءَ خَبَرُ الْخَمْسِ رَضَعَاتٍ وَلَا فَرْقَ.

وَمِنْ طَرِيقِ ابْنِ عَبَّاسٍ، وَرُوِيَ غَيْرُ صَحِيحٍ مِنْ طَرِيقِ أَنَسٍ، وَابْنِ عُمَرَ.

to acknowledge that among matters causing frequent trials is adhering to the opinion of Saʿīd while stating: "This is among what causes widespread tribulations." If what was obscure to Saʿīd were valid—as transmitted from al-Ḥasan: that the divorced woman does not become lawful for her first husband even if the second [husband] has intercourse with her unless he ejaculates within her—[this would apply].

وَكَذَلِكَ يَنْبَغِي لِمَنْ قَالَ بِرَدِّ السُّنَّةِ الثَّانِيَةِ فِي أَنْ لَا يَتِمَّ بَيْعٌ إِلَّا بِأَنْ يَفْتَرِقَا عَنْ مَوْضِعِهِمَا فَإِنَّ مِمَّا تَكْثُرُ بِهِ الْبَلْوَى أَنْ يَقُولَ بِقَوْلِ سَعِيدٍ، وَيَقُولَ: هَذَا مِمَّا تَكْثُرُ بِهِ الْبَلْوَى، فَلَوْ صَحَّ مَا خَفِيَ عَنْ سَعِيدٍ - وَجَاءَ عَنِ الْحَسَنِ: أَنَّهَا لَا تَحِلُّ لِزَوْجِهَا الْأَوَّلِ وَإِنْ وَطِئَهَا الثَّانِي إِلَّا حَتَّى يُنْزِلَ فِيهَا.

L33636–33637 It is indeed incumbent upon the Malikis—those who maintain that prohibition enters through the most tenuous of grounds while permissibility only enters through the most robust of grounds—to adhere to this precise opinion of al-Hasan. Yet their contradictions extend far beyond this matter.

وَلَقَدْ يَنْبَغِي لِلْمَالِكِيِّينَ الْقَائِلِينَ: إِنَّ التَّحْرِيمَ يَدْخُلُ بِأَرَقِّ الْأَسْبَابِ، وَلَا يَدْخُلُ التَّحْلِيلُ إِلَّا بِأَغْلَظِ الْأَسْبَابِ، أَنْ يَقُولَ بِقَوْلِ الْحَسَنِ هَذَا - وَلَكِنَّ تَنَاقُضَهُمْ أَكْثَرُ مِنْ ذَلِكَ.

L33638 They differed concerning a Muslim who divorces a woman from the People of the Book thrice, then she marries a man from the People of the Book and he consummates the marriage, after which he dies. Al-Ḥasan al-Baṣrī, al-Zuhrī, Sufyān al-Thawrī, Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their adherents stated that she has become permissible for the first [husband].

وَاخْتَلَفُوا فِي الْمُسْلِمِ يُطَلِّقُ الْكِتَابِيَّةَ ثَلَاثًا فَتَتَزَوَّجُ كِتَابِيًّا وَيَطَؤُهَا ثُمَّ يَمُوتُ؟ فَقَالَ الْحَسَنُ الْبَصْرِيُّ، وَالزُّهْرِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ: أَنَّهَا قَدْ حَلَّتْ لِلْأَوَّلِ.

L33639 Rabiʿah and Mālik said: "It does not make her lawful"—and we know of no dispute from them except their statement, "Does he not have the right to divorce?" We said: "What does that entail? What in that prevents her from being made lawful if he dies or his marriage to her is dissolved?"

وَقَالَ رَبِيعَةُ، وَمَالِكٌ: لَا يُحِلُّهَا - وَمَا نَعْلَمُ لَهُمْ شَغَبًا إِلَّا قَوْلَهُمْ: لَيْسَ لَهُ طَلَاقٌ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ أَيُّ شَيْءٍ فِي ذَلِكَ مِمَّا يَمْنَعُ مِنْ إِحْلَالِهَا إِنْ مَاتَ أَوْ انْفَسَخَ نِكَاحُهُ مِنْهَا.

L33640 Then we ask them: If he marries her and consummates the marriage, then embraces Islam without having consummated after his conversion, then divorces her—does this render her lawful to him or not? If they say: It does not render her lawful to him, their rationale—that he has no right to divorce—is invalidated, since his divorce is valid. If they say: Rather, it renders her lawful, they contradict their own claim that a husband from the People of the Book's consummation does not make her lawful.

ثُمَّ نَسْأَلُهُمْ: إِنْ تَزَوَّجَهَا وَوَطِئَهَا ثُمَّ أَسْلَمَ وَلَمْ يَطَأْهَا بَعْدَ إِسْلَامِهِ ثُمَّ طَلَّقَهَا أَيُحِلُّهَا لَهُ أَمْ لَا؟ فَإِنْ قَالُوا: لَا يُحِلُّهَا لَهُ، بَطَلَ تَعْلِيلُهُمْ بِأَنَّهُ لَا طَلَاقَ لَهُ، إِذْ قَدْ صَحَّ طَلَاقُهُ، وَإِنْ قَالُوا: بَلْ يُحِلُّهَا: نَقَضُوا قَوْلَهُمْ فِي أَنَّ وَطْءَ الزَّوْجِ الْكِتَابِيِّ لَا يُحِلُّهَا.

L33641 As for their differing views regarding the invalid marriage, the majority uphold this position, except for an opinion attributed to al-Ḥakam ibn ʿUtaybah: that he permits her [to remain in it]—but this is erroneous, for he is not [legally] a husband. Even if he were [considered] a husband, one could

وَأَمَّا اخْتِلَافُهُمْ فِي النِّكَاحِ الْفَاسِدِ، فَجُمْهُورُ النَّاسِ عَلَى هَذَا، إِلَّا شَيْئًا رُوِيَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّهُ يُحِلُّهَا - وَهَذَا خَطَأٌ، لِأَنَّهُ لَيْسَ زَوْجًا، وَلَوْ كَانَ زَوْجًا مَا حَلَّ أَنْ يُفَرِّقَ بَيْنَهُمَا بِلَا مَعْنًى إِلَّا فَسَادُ عَقْدِهِ فَقَطْ.

not separate them without valid justification except for the invalidity of the contract itself.

وَأَمَّا الِاخْتِلَافُ فِي هَلْ يُحِلُّهَا وَطْءُ سَيِّدِهَا إِنْ كَانَتْ أَمَةً؟ فَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا يَزِيدُ بْنُ زُرَيْعٍ نا خَالِدٌ عَنْ مَرْوَانَ الْأَصْفَرِ عَنْ أَبِي رَافِعٍ، قَالَ: دَخَلْنَا عَلَى عُثْمَانَ أَمِيرِ الْمُؤْمِنِينَ فَسَأَلْنَاهُ عَنْ رَجُلٍ كَانَتْ تَحْتَهُ أَمَةٌ فَطَلَّقَهَا فَبَانَتْ مِنْهُ، فَخَلَّفَ عَلَيْهَا سَيِّدَهَا ثُمَّ خَلَا عَنْهَا، وَعِنْدَهُ زَيْدُ بْنُ ثَابِتٍ، وَرَجُلٌ آخَرُ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَا جَمِيعًا: لَا بَأْسَ بِهِ.

L33642 As for the differing opinions regarding whether her master's intercourse makes her permissible if she was a female slave—it was narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl, from Yazīd ibn Zuraiʿ, from Khālid, from Marwān al-Aṣfar, from Abū Rāfiʿ, who said: We entered upon ʿUthmān, the Commander of the Faithful, and asked him about a man who had a female slave as his wife, then divorced her, resulting in her irrevocable separation. Her master subsequently took her back and later abandoned her. Present with him were Zayd ibn Thābit and another companion of the Messenger of Allah (peace and blessings be upon him and his family), and they both said: "There is no harm in it."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ: أَنَّ زَيْدَ بْنَ ثَابِتٍ، وَالزُّبَيْرَ بْنَ الْعَوَّامِ كَانَا لَا يَرَيَانِ بَأْسًا بِالْأَمَةِ يُطَلِّقُهَا زَوْجُهَا فَيَتَسَرَّاهَا سَيِّدُهَا ثُمَّ يَتَزَوَّجُهَا زَوْجُهَا، قَالَا جَمِيعًا: إذَا لَمْ يُرِدْ السَّيِّدُ بِذَلِكَ إحْلَالَهَا فَلَيْسَ بِهِ بَأْسٌ.

L33643 And through the narration of Ḥammād ibn Salamah from Qaṭādah from al-Ḥasan: that Zayd ibn Thābit and al-Zubayr ibn al-ʿAwwām saw no objection if a slave woman was divorced by her husband, her master took her as a concubine after her divorce, and her former husband subsequently remarried her. They both said: If the master did not intend by this to facilitate her permissibility (ḥalālah) for remarriage, there is no harm in it.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ عَنْ أَشْعَثِ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: السَّيِّدُ زَوْجٌ.

L33644–33645 And from the transmission of Yaḥyā ibn Saʿīd al-Qaṭṭān, from Ashʿath ibn ʿAbd al-Malik al-Ḥumrānī, from al-Ḥasan al-Baṣrī, from Zayd ibn Thābit, who said: The master [of a female slave] is [legally] her spouse.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ فِي الْعَبْدِ يَبِتُّ الْأَمَةَ أَنَّهُ يُحِلُّهَا أَنْ يَطَأَهَا سَيِّدُهَا - قَالَ عَطَاءٌ: مَنْ كَانَتْ زَوْجَتُهُ أَمَةً فَبَتَّهَا ثُمَّ ابْتَاعَهَا قَبْلَ أَنْ تَنْكِحَ غَيْرَهُ فَحَلَالٌ لَهُ وَطْؤُهَا، فَإِنْ وَطِئَهَا ثُمَّ أَعْتَقَهَا فَلَهُ أَنْ يَتَزَوَّجَهَا، فَإِنْ أَعْتَقَهَا قَبْلَ أَنْ يَطَأَهَا لَمْ تَحِلَّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ؟ وَهَذَا تَقْسِيمٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ.

L33646 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ, from Ibn ʿAbbās regarding a male slave who irrevocably divorces a female slave: that he declares her lawful for her master to have intercourse with her. ʿAṭāʾ said: If a man's wife is a slave woman and he irrevocably divorces her, then purchases her before she marries another husband, she is lawful for him to have intercourse with. If he has intercourse with her and then emancipates her, he may marry her. But if he emancipates her before he has intercourse with her, does she not become lawful for him until she marries another husband? This classification has no evidence to confirm its validity.

L33647 Different opinions have been narrated to us from other scholars - as conveyed through the chain of al-Ḥajjāj ibn al-Minhāl who narrated from Yazīd

ibn Zurayʿ, who narrated from Khālid al-Ḥadhdhā, who narrated from al-Ḥakam ibn ʿUtaybah, who narrated from ʿAlī ibn Abī Ṭālib, who said: “Until she becomes permissible to him in the same respect she was forbidden to him” - meaning: when a female slave is divorced by her master, her master may have intercourse with her without her marrying another husband.

وَرُوِّينَا خِلَافَ هَذَا عَنْ غَيْرِهِمْ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا يَزِيدُ بْنُ زُرَيْعٍ نا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: حَتَّى تَحِلَّ لَهُ مِنْ حَيْثُ حُرِّمَتْ عَلَيْهِ - يَعْنِي: الْأَمَةَ تَطْلُقُ فَيَطَأُهَا سَيِّدُهَا دُونَ أَنْ تَتَزَوَّجَ زَوْجًا آخَرَ.

L33648 And through him to Khalid al-Khazzāʾ, from Abū Maʿshar, from Ibrāhīm al-Nakhaʿī, from ʿAbīdah al-Salmanī, from Ibn Masʿūd, who said: “It is not lawful for him except in the same manner it was prohibited to him.” It is established from Masrūq that he retracted [his fatwā] and returned to the [original] opinion after having issued a legal verdict in accordance with the view of Zayd.

وَبِهِ إِلَى خَالِدٍ الْحَذَّاءِ عَنْ أَبِي مَعْشَرٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَبِيدَةَ السَّلْمَانِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: لَا تَحِلُّ لَهُ إِلَّا مِنْ حَيْثُ حُرِّمَتْ عَلَيْهِ - وَصَحَّ عَنْ مَسْرُوقٍ أَنَّهُ رَجَعَ إِلَى الْقَوْلِ بَعْدَ أَنْ أَفْتَى بِقَوْلِ زَيْدٍ.

L33649 As for whether she becomes lawful for her master as a slave under his possession if he purchases her after she had been his wife and he divorced her irrevocably [three times], we have already mentioned the opinion of ʿAṭāʾ regarding this.

وَأَمَّا هَلْ تَحِلُّ لِسَيِّدِهَا بِمِلْكِ الْيَمِينِ إِذَا اشْتَرَاهَا بَعْدَ أَنْ كَانَتْ زَوْجَتَهُ وَطَلَّقَهَا ثَلَاثًا؟ فَقَدْ ذَكَرْنَا آنِفًا عَنْ عَطَاءٍ.

L33650 And from the transmission of Abd al-Razzaq from Ibn Jarir: I asked Ata, “If a man committed zinā with a slave woman, then purchased her, and she did not marry anyone after him - does she become permissible for him?” He replied, “Yes. Ibn Abbas used to say it.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جَرِيرٍ قُلْت لِعَطَاءٍ: رَجُلٌ بَتَّ أَمَةً ثُمَّ ابْتَاعَهَا وَلَمْ تَنْكِحْ بَعْدَهُ أَحَدًا، أَتَحِلُّ لَهُ؟ قَالَ: نَعَمْ، كَانَ ابْنُ عَبَّاسٍ يَقُولُهُ.

L33651 And through the chain of ʿAbd al-Razzāq from Maʿmar from Ismāʿīl ibn Umayyah from Ibn Qusayṭ: Kathīr, the freedman of al-Ṣalt, divorced her twice then purchased her and freed her. Zayd ibn Thābit said: “If you had consummated the marriage by virtue of ownership, she would have become lawful for you. But she is not lawful for you until she marries a husband other than you.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ ابْنِ قُسَيْطٍ أَنَّ كَثِيرًا مَوْلَى الصَّلْتِ طَلَّقَهَا تَطْلِيقَتَيْنِ ثُمَّ اشْتَرَاهَا فَأَعْتَقَهَا؟ فَقَالَ زَيْدُ بْنُ ثَابِتٍ: لَوْ كُنْت وَطِئْتَهَا بِمِلْكٍ حَلَّتْ لَك، وَلَكِنْ لَا تَحِلُّ لَك حَتَّى تَنْكِحَ زَوْجًا غَيْرَك.

L33652–33654 And through the chain of Ḥammād ibn Salamah from Ziyād al-Aʿlam from al-Ḥasan—the same, the same as the opinions of Zayd and ʿAṭāʾ—a contrary position has been authentically reported from others: It has been narrated to us from ʿUthmān and Zayd ibn Thābit that she is not lawful for her owner through lawful ownership if he purchases her after divorcing her thrice. It has been authentically reported from Jābir ibn ʿAbdullāh and from ʿAlī ibn

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ عَنْ الْحَسَنِ مِثْلُ قَوْلِ زَيْدٍ وَعَطَاءٍ سَوَاءً سَوَاءً - صَحَّ عَنْ غَيْرِهِمْ خِلَافُ ذَلِكَ: رُوِّينَا: أَنَّهُ لَا تَحِلُّ لِسَيِّدِهَا بِمِلْكِ الْيَمِينِ إِذَا اشْتَرَاهَا بَعْدَ أَنْ طَلَّقَهَا ثَلَاثًا عَنْ عُثْمَانَ، وَزَيْدِ بْنِ ثَابِتٍ - وَصَحَّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، وَعَنْ

Abī Ṭālib that he disliked it. That is—it has been authentically narrated from Masrūq, an-Nakhaʿī, ʿUbaydah as-Salmānī, ash-Shaʿbī, Ibn al-Musayyib, and Sulaymān *ibn* Yasār.

L33655 Abū Muḥammad said: It is not permissible for the master to see anything of her ʻawrah except what he may see of his mahram women, nor may he derive sexual pleasure from her, due to the words of Allah, the Mighty and Sublime: {Then she is not lawful to him until she marries a husband other than him} [Al-Baqarah: 230]. Thus, He, the Exalted, generalized the ruling without specifying, contrary to the case of women of the Book, the menstruating woman, the woman fasting an obligatory fast, and the woman in iḥrām, for these women are only prohibited in terms of marriage—which is sexual intercourse—and nothing else. And success is attained only through Allah, the Exalted.[10]

L33656 **A case in which a husband who pronounced a triple divorce enticed another man to marry her and consummate the marriage, thereby rendering her permissible for him again.**

L33657 Issue 1951: If a man who has pronounced a triple divorce encourages someone to marry her and consummate the marriage to render her lawful for him, this is permissible provided the marriage is contracted without stipulating such a condition within the actual marriage contract. If he marries her, he holds the option: if he wishes, he may divorce her, and if he wishes, he may retain her. If he divorces her, she becomes lawful for the first [husband]. However, if the marriage contract stipulates that he will divorce her upon consummation, the contract becomes invalid and perpetually annulled. She does not become lawful for him through it. There is no distinction between this case and what we previously mentioned regarding every invalid marriage.

L33658 Abu Muhammad said: Some proponents stated: She is not rendered lawful

[10] **Qur'an references (L33655):** Qur'an 2:230 (Al-Baqarah).

عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ كَرِهَ ذَلِكَ - وَصَحَّ عَنْ مَسْرُوقٍ، وَالنَّخَعِيِّ، وَعُبَيْدَةَ السَّلْمَانِيِّ، وَالشَّعْبِيِّ، وَابْنِ الْمُسَيِّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ.

قَالَ أَبُو مُحَمَّدٍ: وَلَا يَحِلُّ لِلسَّيِّدِ أَنْ يَرَى مِنْ عَوْرَتِهَا شَيْئًا إِلَّا مَا يَرَى مِنْ حَرِيمَتِهِ، وَلَا أَنْ يَتَلَذَّذَ بِهَا، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] فَعَمَّ تَعَالَى وَلَمْ يَخُصَّ، بِخِلَافِ الْكِتَابِيَّةِ، وَالْحَائِضِ، وَالصَّائِمَةِ فَرْضًا، وَالْمُحْرِمَةِ، لِأَنَّ هَؤُلَاءِ إِنَّمَا حُرِّمَ نِكَاحُهُنَّ فَقَطْ - وَهُوَ الْوَطْءُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ رَغَّبَ الْمُطَلِّقُ ثَلَاثًا إلَى مَنْ يَتَزَوَّجُهَا وَيَطَؤُهَا لِيُحِلَّهَا لَهُ]

١٩٥١ - مَسْأَلَةٌ: فَلَوْ رَغَّبَ الْمُطَلِّقُ ثَلَاثًا إلَى مَنْ يَتَزَوَّجُهَا وَيَطَؤُهَا لِيُحِلَّهَا لَهُ فَذَلِكَ جَائِزٌ إذَا تَزَوَّجَهَا بِغَيْرِ شَرْطٍ لِذَلِكَ فِي نَفْسِ عَقْدِهِ لِنِكَاحِهِ إيَّاهَا، فَإِذَا تَزَوَّجَهَا فَهُوَ بِالْخِيَارِ إنْ شَاءَ طَلَّقَهَا، وَإِنْ شَاءَ أَمْسَكَهَا، فَإِنْ طَلَّقَهَا حَلَّتْ لِلْأَوَّلِ، فَلَوْ شَرَطَ فِي عَقْدِ نِكَاحِهَا أَنَّهُ يُطَلِّقُهَا إذَا وَطِئَهَا، فَهُوَ عَقْدٌ فَاسِدٌ مَفْسُوخٌ أَبَدًا، وَلَا تَحِلُّ لَهُ بِهِ، وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ مَا ذَكَرْنَا قَبْلُ فِي كُلِّ نِكَاحٍ فَاسِدٍ.

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ بَعْضُ الْقَائِلِينَ: لَا تَكُونُ حَلَالًا إلَّا بِنِكَاحِ رَغْبَةٍ لَا يَنْوِي بِهِ تَحْلِيلَهَا لِلَّذِي طَلَّقَهَا.

except through a marriage based on desire, where he does not intend by it to make her lawful for the one who had divorced her.

وَاحْتَجُّوا فِي ذَلِكَ بِأَثَرٍ رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نَا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي قَيْسٍ - هُوَ عَبْدُ الرَّحْمَنِ بْنُ ثَرْوَانَ - عَنْ هُذَيْلِ بْنِ شُرَحْبِيلَ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «وَلَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْوَاشِمَةَ، وَالْمُسْتَوْشِمَةَ، وَالْوَاصِلَةَ، وَالْمَوْصُولَةَ - وَآكِلَ الرِّبَا وَمُؤَكِّلَهُ، وَالْمُحِلَّ وَالْمُحَلَّلَ لَهُ» .

L33659–33661 They argued for that position by citing a narration reported through the chain of Ahmad ibn Shu'ayb → 'Amr ibn Mansur → Abu Nu'aym (al-Fadl ibn Dukayn) → Sufyan al-Thawri → Abu Qays ('Abd al-Rahman ibn Tharwan) → Hudhayl ibn Shurahbīl → 'Abdullah ibn Mas'ud, who said: "The Messenger of Allah—peace and blessings be upon him—cursed—" Those who tattoo, those who are tattooed, those who attach hair extensions, those who wear them, the consumer of usury and its facilitator, the one who legalizes religiously forbidden acts through trickery, and the one for whom it is legalized.

L33662 This is the only authentic narration in this chapter. Furthermore, there are other reports conveying its meaning, but they are invalid—either transmitted through the chain of Al-Ḥārith Al-A'war, the liar, or through the chain of Isḥāq Al-Farwī—and they are entirely devoid of value.

وَهَذَا خَبَرٌ لَا يَصِحُّ فِي هَذَا الْبَابِ سِوَاهُ، ثُمَّ آثَارٌ بِمَعْنَاهُ إلَّا أَنَّهَا هَالِكَةٌ - إمَّا مِنْ طَرِيقِ الْحَارِثِ الْأَعْوَرِ الْكَذَّابِ، أَوْ مِنْ طَرِيقِ إسْحَاقَ الْفَرْوِيِّ - وَلَا خَيْرَ فِيهِ -.

L33663 Abū Muḥammad said: People have differed regarding the sinful, cursed muḥallil and the sinful, cursed one for whom it is made lawful (muḥallal lahu)—who are they? So, it has been narrated to us through the chain of Wakī', from Sufyān al-Thawrī, from al-Musayyib ibn Rāfi', from Qabīṣa ibn Jābir, who said: 'Umar ibn al-Khaṭṭāb declared: "If any muḥill or muḥallal is brought before me, I will stone them."

قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ النَّاسُ فِي الْمُحَلِّلِ الْآثِمِ الْمَلْعُونِ، وَالْمُحَلَّلِ لَهُ الْآثِمِ الْمَلْعُونِ، مَنْ هُمَا؟ فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُسَيِّبِ بْنِ رَافِعٍ عَنْ قَبِيصَةَ بْنِ جَابِرٍ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا أُوتَى بِمُحِلٍّ وَلَا بِمُحَلَّلٍ إلَّا رَجَمْته.

L33664–33665 And through the chain of Ibn Wahb, Yazīd ibn 'Iyāḍ ibn Ju'duba informed me that he heard Nāfi' say: A man asked Ibn 'Umar about the tahlīl. Ibn 'Umar said to him: Do you not know of 'Umar ibn al-Khaṭṭāb? Had he witnessed any of that, he would have stoned for it?

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يَزِيدُ بْنُ عِيَاضِ بْنِ جُعْدُبَةَ أَنَّهُ سَمِعَ نَافِعًا يَقُولُ: إنَّ رَجُلًا سَأَلَ ابْنَ عُمَرَ عَنْ التَّحْلِيلِ؟ فَقَالَ لَهُ ابْنُ عُمَرَ: عَرَفْت عُمَرَ بْنَ الْخَطَّابِ لَوْ رَأَى شَيْئًا مِنْ ذَلِكَ لَرَجَمَ فِيهِ.؟

L33666 Abu Muhammad said: Yazid ibn Iyad ibn Ju'dubah is a liar, known for fabricating hadith.

قَالَ أَبُو مُحَمَّدٍ: يَزِيدُ بْنُ عِيَاضِ بْنِ جُعْدُبَةَ كَذَّابٌ مَذْكُورٌ بِوَضْعِ الْحَدِيثِ.

L33667 On the authority of Abd al-Razzaq, on the authority of Sufyan al-Thawri, on the authority of Abdullah ibn Shuraik al-Amiri, who said: I heard Ibn Umar being asked about a man who divorced his wife then regretted it, and wanted a man to marry her for *taḥlīl* [to make her permissible for him again]. Ibn Umar responded: "Both of them [the divorcer and the *muḥallil*]

are fornicators, even if the two men were to remain [in this arrangement] for twenty years."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ شَرِيكٍ الْعَامِرِيِّ، قَالَ: سَمِعْت ابْنَ عُمَرَ يَسْأَلُ عَمَّنْ طَلَّقَ امْرَأَتَهُ ثُمَّ نَدِمَ، فَأَرَادَ أَنْ يَتَزَوَّجَهَا رَجُلٌ يُحَلِّلُهَا لَهُ؟ فَقَالَ لَهُ ابْنُ عُمَرَ: كِلَاهُمَا زَانٍ، وَلَوْ مَكَثَا عِشْرِينَ سَنَةً.

L33668 And through the chain of Waki‘ from Abu Ghassan al-Madani from ‘Umar ibn Nafi‘ from his father: A man asked Ibn ‘Umar about one who divorced his wife three times, then this same questioner married her without the divorcer’s consent—does she become permissible for her original husband? Ibn ‘Umar replied: No, except through a valid marriage of sincere intent. We regarded it as fornication during the era of the Messenger of Allah (peace and blessings of Allah be upon him).

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي غَسَّانَ الْمَدَنِيِّ عَنْ عُمَرَ بْنِ نَافِعٍ عَنْ أَبِيهِ: أَنَّ رَجُلًا سَأَلَ ابْنَ عُمَرَ عَمَّنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا فَتَزَوَّجَهَا هَذَا السَّائِلُ عَنْ غَيْرِ مُؤَامَرَةٍ مِنْهُ، أَتَحِلُّ لِمُطَلَّقِهَا؟ قَالَ ابْنُ عُمَرَ: لَا، إِلَّا بِنِكَاحِ رَغْبَةٍ، كُنَّا نَعُدُّهُ سِفَاحًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L33669–33670 And through the chain of Ibn Wahb, Al-Layth ibn Saʿd reported to me from Muḥammad ibn ʿAbd al-Raḥmān al-Murādī that he heard Abū Marzūq al-Tujībī say: A man divorced his wife thrice, then they both regretted it. He had a neighbor who sought to facilitate a *tahleel* between them without the couple’s knowledge. I asked ʿUthmān about this, and ʿUthmān replied: “No, except through a genuine marriage, free of deception.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ الْمُرَادِيِّ أَنَّهُ سَمِعَ أَبَا مَرْزُوقٍ التُّجِيبِيَّ يَقُولُ: إِنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ ثَلَاثًا ثُمَّ نَدِمَا، وَكَانَ لَهُ جَارٌ فَأَرَادَ أَنْ يُحَلِّلَ بَيْنَهُمَا بِغَيْرِ عِلْمِهِمَا، فَسَأَلْت عَنْ ذَلِكَ عُثْمَانَ؟ فَقَالَ لَهُ عُثْمَانُ: لَا، إِلَّا بِنِكَاحِ رَغْبَةٍ، غَيْرِ مُدَالَسَةٍ.

L33671 From the path of Abd al-Razzaq, from Ma’mar, from al-A’mash, from Abdullah ibn Murrah, from al-Harith, from Abdullah ibn Mas’ud, who said: The consumer of usury, the facilitator of it, its two witnesses, and its scribe if they are aware of it, the woman who attaches hair extensions, the one who seeks them, the one who withholds Zakat, the transgressor, the apostate who reverts to nomadic life after his migration, and the one for whom tahleel is performed—all are cursed by the tongue of Muhammad, peace and blessings be upon him, on the Day of Resurrection.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْأَعْمَشِ عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ عَنْ الْحَارِثِ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ، قَالَ: آكِلُ الرِّبَا وَمُؤَكِّلُهُ وَشَاهِدَاهُ وَكَاتِبُهُ إذَا عَلِمُوا بِهِ، وَالْوَاصِلَةُ، وَالْمُسْتَوْصِلَةُ وَلَاوِي الصَّدَقَةِ، وَالْمُعْتَدِي، وَالْمُرْتَدُّ أَعْرَابِيًّا بَعْدَ هِجْرَتِهِ، وَالْمُحَلَّلُ لَهُ: مَلْعُونُونَ عَلَى لِسَانِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ الْقِيَامَةِ.

L33672 From the chain of Abd al-Razzaq, from Hushaym, from Khalid al-Ḥadhdhā’, from Marwan al-Asfar, from Abu Rafi’, who said: Uthman, Ali, and Zayd ibn Thabit were asked about a female slave - does her master permit her to return to her husband if he does not intend to facilitate her lawful remarriage

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هُشَيْمٍ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ مَرْوَانَ الْأَصْفَرِ عَنْ أَبِي رَافِعٍ قَالَ: سُئِلَ عُثْمَانُ، وَعَلِيٌّ، وَزَيْدُ بْنُ ثَابِتٍ: عَنْ الْأَمَةِ، هَلْ يُحِلُّهَا سَيِّدُهَا لِزَوْجِهَا

(tahleel), meaning if he has irrevocably divorced her? Uthman and Zayd said: "Yes." Ali rose in anger and disapproved of their statement.

إِذَا كَانَ لَا يُرِيدُ التَّحْلِيلَ؟ يَعْنِي: إِذَا بَتَّ طَلَاقَهَا؟ فَقَالَ عُثْمَانُ، وَزَيْدٌ: نَعَمْ، فَقَامَ عَلِيٌّ غَضْبَانَ وَكَرِهَ قَوْلَهُمَا.

L33673 On the authority of ʿAlī: Cursed are both the one who performs tahleel and the one for whom tahleel is enacted.

وَعَنْ عَلِيٍّ: لُعِنَ الْمُحَلِّلُ وَالْمُحَلَّلُ لَهُ

L33674 From the narration of Abd al-Razzaq, who reported from Sufyan al-Thawri and Maʿmar - both of whom narrated from al-Aʿmash, from Malik ibn al-Harith, from Ibn Abbas: A man inquired about someone who had divorced his wife, asking, "What is your view concerning a man who makes her lawful for himself through *tahlil*?" Ibn Abbas responded, "Whoever tries to deceive Allah, Allah will outwit him."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، كِلَاهُمَا: عَنْ الْأَعْمَشِ عَنْ مَالِكِ بْنِ الْحَارِثِ عَنْ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا سَأَلَ عَمَّنْ طَلَّقَ امْرَأَتَهُ، كَيْفَ تَرَى فِي رَجُلٍ يُحِلُّهَا لَهُ؟ فَقَالَ ابْنُ عَبَّاسٍ: مَنْ يُخَادِعْ اللَّهَ يَخْدَعْهُ.

L33675–33677 It is authentically established from Qatādah, al-Ḥasan, and al-Nakhaʿī that they said: "If one of the marrying parties intends, or..." If the marriage or the woman is contracted for *tahleel* (a temporary marriage to circumvent Islamic divorce law and permit remarriage to a former husband), it is invalid. If the temporary husband divorces her, she does not become lawful for the original husband, and their union is annulled if his marriage was contracted for the purpose of *tahleel*.

وَصَحَّ عَنْ قَتَادَةَ، وَالْحَسَنِ، وَالنَّخَعِيِّ، قَالُوا: إنْ نَوَى وَاحِدٌ مِنْ النَّاكِحِ، أَوْ الْمُنْكَحِ أَوْ الْمَرْأَةِ التَّحْلِيلَ، فَلَا يَصْلُحُ، فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لِلَّذِي طَلَّقَهَا، وَيُفَرَّقُ بَيْنَهُمَا - إذَا كَانَ نِكَاحُهُ عَلَى وَجْهِ التَّحْلِيلِ.

L33678 It has been reported from al-Ḥasan that he was asked about that. He replied: Fear Allah and do not become a fiery nail in Allah's sacred boundaries. He also said: The Muslims used to say, "It is the borrowed male goat [referring to temporary marriage facilitators]." From Saʿīd ibn Jubayr: The muḥallil is cursed.

وَرُوِيَ عَنْ الْحَسَنِ أَنَّهُ سُئِلَ عَنْ ذَلِكَ؟ فَقَالَ: اتَّقِ اللَّهَ وَلَا تَكُنْ مِسْمَارَ نَارٍ فِي حُدُودِ اللَّهِ - وَأَنَّهُ قَالَ: كَانَ الْمُسْلِمُونَ يَقُولُونَ: هُوَ التَّيْسُ الْمُسْتَعَارُ؟ وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: الْمُحَلِّلُ مَلْعُونٌ.

L33679 It was also narrated from Saʿīd ibn al-Musayyib and Ṭāwus.

وَرُوِيَ أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَطَاوُسٍ.

L33680 And that was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar, and also from Qatādah.

وَرُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَيْضًا.

L33681 And from the chain of transmission of Saʿīd ibn Manṣūr: Hushaym narrated to us: I received from Mughīrah and Yūnus ibn ʿUbayd. Mughīrah said from Ibrāhīm; Yūnus said from al-Ḥasan. Then he cited it verbatim as we have presented it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا مُغِيرَةُ، وَيُونُسُ بْنُ عُبَيْدٍ، قَالَ مُغِيرَةُ عَنْ إبْرَاهِيمَ - وَقَالَ يُونُسُ عَنْ الْحَسَنِ ثُمَّ ذَكَرَهُ نَصًّا كَمَا أَوْرَدْنَاهُ.

L33682 Sufyan al-Thawri said: “If he marries her to make her permissible [for re-marriage] to the man who divorced her, and she appeals to him?” Sufyan replied: “He must renew the marriage contract.”

L33683–33685 Mālik said: If the second husband intends to marry her in order to make her lawful [to return] to the first [husband], then it is an invalid marriage. The marriage is annulled, she is entitled to the stipulated dowry from him, and she does not become permissible to the first husband through intercourse with him.

L33686 Others maintained the permissibility of that.

L33687 As it was narrated to us through the chain of ʿAbd al-Razzāq from Hishām—who is Ibn Ḥassān—from Muḥammad ibn Sīrīn, who said: A woman sent for a man and offered herself in marriage to him to perform *ḥalāla* for her husband. ʿUmar ibn al-Khaṭṭāb then commanded the man to uphold the marriage with her and not divorce her, and threatened to punish him if he divorced her.

L33688 Via the narration of ʿAbd al-Razzāq, from Maʿmar, from Hishām ibn ʿUrwah, from his father, that he did not deem *tahlīl* impermissible if one of the original spouses is unaware of it.

L33689 Al-Layth ibn Saʿd said: If he marries her then divorces her so that she may return to her husband, while neither the divorcer nor she knew of this purpose - was this action done by him seeking Allah’s reward? There is no harm in her returning to the first husband. If the second husband clarifies this matter to the first after consummating the marriage, it does not harm the ruling.

L33690 And this is the view of Sālim ibn ʿAbd Allāh ibn ʿUmar and al-Qāsim ibn Muḥammad ibn Abī Bakr.

L33691 It has been authentically reported that ʿAṭāʾ was asked about a man who intentionally marries a woman as a muḥallil (to render her permissible for her former husband), then develops affection for her and keeps her [in marriage]—what is the ruling? He replied: “There is no harm in that.” It has been

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إِنْ تَزَوَّجَهَا لِيُحِلَّهَا لِلَّذِي طَلَّقَهَا فَأَعْجَبَتْهُ؟ قَالَ سُفْيَانُ: يُجَدِّدُ نِكَاحًا.

وَقَالَ مَالِكٌ: إِنْ نَوَى الزَّوْجُ الثَّانِي أَنْ يَتَزَوَّجَهَا لِيُحِلَّهَا لِلْأَوَّلِ؟ فَهُوَ نِكَاحٌ فَاسِدٌ مَفْسُوخٌ، وَلَهَا عَلَيْهِ الْمَهْرُ الَّذِي سُمِّيَ لَهَا، وَلَا تَحِلُّ بِوَطْئِهِ لِلْأَوَّلِ.

وَذَهَبَ آخَرُونَ إِلَى إِجَازَةِ ذَلِكَ.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامٍ - هُوَ ابْنُ حَسَّانَ - عَنْ مُحَمَّدِ بْنِ سِيرِينَ، قَالَ: أَرْسَلَتْ امْرَأَةٌ إِلَى رَجُلٍ فَزَوَّجَتْهُ نَفْسَهَا لِيُحِلَّهَا لِزَوْجِهَا؟ فَأَمَرَهُ عُمَرُ بْنُ الْخَطَّابِ أَنْ يُقِيمَ عَلَيْهَا، وَلَا يُطَلِّقَهَا، وَأَوْعَدَهُ أَنْ يُعَاقِبَهُ إِنْ طَلَّقَهَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالتَّحْلِيلِ إِذَا لَمْ يَعْلَمْ أَحَدُ الزَّوْجَيْنِ بِهِ.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: إِنْ تَزَوَّجَهَا ثُمَّ فَارَقَهَا لِتَرْجِعَ إِلَى زَوْجِهَا وَلَمْ يَعْلَمْ الْمُطَلِّقُ وَلَا هِيَ بِذَلِكَ، وَإِنَّمَا كَانَ ذَلِكَ مِنْهُ احْتِسَابًا؟ فَلَا بَأْسَ بِأَنْ تَرْجِعَ إِلَى الْأَوَّلِ، فَإِنْ بَيَّنَ الثَّانِي ذَلِكَ لِلْأَوَّلِ بَعْدَ دُخُولِهِ بِهَا لَمْ يَضُرَّهُ ذَلِكَ.

وَهُوَ قَوْلُ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَالْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ.

وَصَحَّ عَنْ عَطَاءٍ فِيمَنْ نَكَحَ امْرَأَةً عَامِدًا مُحَلِّلًا ثُمَّ رَغِبَ فِيهَا فَأَمْسَكَهَا؟ قَالَ: لَا بَأْسَ بِذَلِكَ: وَرُوِّينَا عَنْ الشَّعْبِيِّ: لَا بَأْسَ بِالتَّحْلِيلِ إِذَا لَمْ يَأْمُرْ بِهِ الزَّوْجُ.

narrated to us from al-Shaʿbī: "There is no blame in taḥlīl (the intermediary marriage for permissibility) provided the former husband did not order it."

وَبِهِ يَقُولُ الشَّافِعِيُّ، وَأَبُو ثَوْرٍ، قَالَا جَمِيعًا: الْمُحَلِّلُ - الَّذِي يَفْسُدُ نِكَاحُهُ - هُوَ الَّذِي يَعْقِدُ عَلَيْهِ فِي نَفْسِ عَقْدِ النِّكَاحِ أَنَّهُ إِنَّمَا يَتَزَوَّجُهَا لِيُحِلَّهَا ثُمَّ يُطَلِّقَهَا فَأَمَّا مَنْ لَمْ يَشْتَرِطْ ذَلِكَ عَلَيْهِ فِي عَقْدِ النِّكَاحِ فَهُوَ عَقْدٌ صَحِيحٌ لَا دَاخِلَةَ فِيهِ، سَوَاءٌ شَرَطَ ذَلِكَ عَلَيْهِ قَبْلَ الْعَقْدِ أَوْ لَمْ يَشْتَرِطْ - نَوَى ذَلِكَ فِي نَفْسِهِ أَوْ لَمْ يَنْوِهِ؟ - قَالَ أَبُو ثَوْرٍ: وَهُوَ مَأْجُورٌ.

L33692–33694 Al-Shāfiʿī and Abū Thawr both state: The muḥallil (a man who marries to facilitate re-legitimation)—whose marriage is inherently invalid—is one who stipulates within the marriage contract itself that his sole intent is to marry her merely to make her lawful for her former husband and then divorce her. As for one who does not... If a condition is imposed on him in the marriage contract, the contract remains valid without the condition having any effect on it—whether he stipulated it before the contract or did not stipulate it, whether he intended it inwardly or did not intend it? Abu Thawr said: He is rewarded.

وَأَمَّا أَبُو حَنِيفَةَ، وَأَصْحَابُهُ -: فَرَوَى بِشْرُ بْنُ الْوَلِيدِ عَنْ أَبِي يُوسُفَ عَنْ أَبِي حَنِيفَةَ مِثْلَ قَوْلِ الشَّافِعِيِّ سَوَاءً سَوَاءً.

L33695 As for Abū Ḥanīfah and his companions, Bishr ibn al-Walīd narrated from Abū Yūsuf from Abū Ḥanīfah the same as the view of al-Shāfiʿī—identical, identical.

وَرُوِيَ أَيْضًا عَنْ مُحَمَّدِ بْنِ الْحَسَنِ عَنْ أَبِي يُوسُفَ عَنْ أَبِي حَنِيفَةَ: أَنَّهُ إِذَا نَوَى الثَّانِي تَحْلِيلَهَا لِلْأَوَّلِ لَمْ تَحِلَّ لَهُ بِذَلِكَ.

L33696 It was also narrated from Muḥammad ibn al-Ḥasan from Abū Yūsuf from Abū Ḥanīfah that if the second husband intended the *taḥlīl* (making her lawful) for the first husband, she does not thereby become lawful for him.

وَهُوَ قَوْلُ أَبِي يُوسُفَ، وَمُحَمَّدٍ.

L33697 And this is the opinion of Abī Yūsuf and Muḥammad.

وَرُوِيَ عَنْ زُفَرَ بْنِ الْهُذَيْلِ، وَأَبِي حَنِيفَةَ: أَنَّهُ وَإِنْ اشْتَرَطَ عَلَيْهِ فِي نَفْسِ الْعَقْدِ أَنَّهُ إِنَّمَا يَتَزَوَّجُهَا لِيُحِلَّهَا لِلْأَوَّلِ، فَإِنَّهُ نِكَاحٌ صَحِيحٌ، وَيُحْصَنَانِ بِهِ وَيَبْطُلُ الشَّرْطُ، وَلَهُ أَنْ يُمْسِكَهَا، فَإِنْ طَلَّقَهَا حَلَّتْ لِلْأَوَّلِ.

L33698 It is narrated from Zufar ibn al-Hudhayl and Abu Hanifah that if a man stipulates within the marriage contract itself that he is marrying her solely to make her permissible for the first husband, the marriage is valid. It establishes their lawful union, the stipulation is nullified, and he may retain her. If he divorces her, she becomes permissible for the first husband.

وَرُوِيَ ذَلِكَ عَنْ زُفَرَ عَنْ أَبِي حَنِيفَةَ، وَالْحَسَنِ بْنِ زِيَادٍ.

L33699 And that was narrated from Zufar from Abu Hanifah, and Al-Hasan ibn Ziyad.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا احْتِجَاجُ الْمَالِكِيِّينَ بِمَنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَهُوَ كُلُّهُ عَلَيْهِمْ لَا لَهُمْ.

L33700 Abū Muḥammad said: As for the Mālikīs' citing as evidence those Companions we mentioned—may Allah be pleased with them—it is entirely against them, not for them.

L33701 As for Umar, no clarification came from him regarding who the cursed one

who performs tahleel—deserving stoning—is. Thus, they hold no greater authority over him than others. Moreover, they opposed Umar in this matter, as they do not deem stoning applicable in such cases.

أَمَّا عُمَرُ - فَلَمْ يَأْتِ عَنْهُ بَيَانُ مَنْ هُوَ الْمُحَلِّلُ الْمَلْعُونُ الَّذِي يَسْتَحِقُّ الرَّجْمَ فَلَيْسُوا أَوْلَى بِهِ مِنْ غَيْرِهِمْ ثُمَّ قَدْ خَالَفُوا عُمَرَ فِي ذَلِكَ فَلَا يَرَوْنَ فِيهِ الرَّجْمَ.

L33702 Furthermore, we have cited from Umar the permissibility of the Muḥallil's divorce—thereby invalidating their reliance on it.

ثُمَّ قَدْ أَوْرَدْنَا عَنْ عُمَرَ إجَازَةَ طَلَاقِ الْمُحَلِّلِ - فَبَطَلَ تَعَلُّقُهُمْ بِهِ.

L33703 Similarly, the narration transmitted from Ali and Ibn Mas'ud does not include the phrase "from them both," i.e., the facilitators of *tahlil*—are they the cursed ones? We maintain: The cursed one is he who contracts his marriage openly for that purpose alone.

وَكَذَلِكَ الرِّوَايَةُ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ لَيْسَ فِيهَا " عَنْهُمَا " أَيْ الْمُحَلِّلِينَ هُوَ الْمَلْعُونُ؟ وَنَحْنُ نَقُولُ: إنَّ الْمَلْعُونَ هُوَ الَّذِي يَعْقِدُ نِكَاحَهُ مُعْلِنًا بِذَلِكَ فَقَطْ.

L33704–33706 As for Uthman and Zayd, they oppose both of them in that very fatwa in that the master's sexual intercourse. He permits the female slave to the one who conclusively finalized her status. It is invalid to cite their opinion as evidence in one context but reject it as evidence in another—this is trivializing the religion.

وَأَمَّا عُثْمَانُ، وَزَيْدٌ - فَهُمْ مُخَالِفُونَ لَهُمَا فِي تِلْكَ الْفُتْيَا بِعَيْنِهَا فِي أَنَّ وَطْءَ السَّيِّدِ بِمِلْكِ الْيَمِينِ يُحَلِّلُهَا لِلَّذِي بَتَّهَا، وَمِنْ الْبَاطِلِ أَنْ يُحْتَجَّ بِقَوْلِهِمْ فِي مَوْضِعٍ وَلَا يُحْتَجَّ بِهِ فِي آخَرَ - هَذَا تَلَاعُبٌ بِالدِّينِ.

L33707 As for Ibn Umar, they opposed him regarding his view that it constituted unlawful sexual intercourse.

وَأَمَّا ابْنُ عُمَرَ - فَقَدْ خَالَفُوهُ فِي أَنَّهُ زِنًى.

L33708 As for Ibn Abbas, there is no statement from him declaring the marriage invalid, nor that she does not become lawful through it. How many rulings have they opposed Ibn Abbas in? Yet no proof resides with anyone except the Messenger of Allah (peace be upon him and his family).

وَأَمَّا ابْنُ عَبَّاسٍ فَلَيْسَ عَنْهُ بَيَانُ أَنَّ النِّكَاحَ فَاسِدٌ، وَلَا أَنَّهَا لَا تَحِلُّ بِهِ، وَكَمْ قَضِيَّةٍ خَالَفُوا فِيهَا ابْنَ عَبَّاسٍ؟ مَعَ أَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L33709 As for the report from the Messenger of Allah - peace and blessings be upon him - that he "cursed the muḥallil (one who permits a prohibited act) and the muḥallal lahu (the one for whom it is permitted)," then yes, all that he said - upon him be peace - is truth. However, we and all our opponents agree that this wording from him - upon him be peace - is not a universal condemnation of every muḥallil (permitter) and every muḥallal lahu (one for whom something is permitted). Were this the case - and I seek refuge in Allah, for He has already protected us from that - he would have cursed every giver and every recipient, every seller and every buyer, every person entering into marriage and every person being married to. For all these are

وَأَمَّا الْخَبَرُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّهُ «لَعَنَ الْمُحَلِّلَ وَالْمُحَلَّلَ لَهُ» ، فَنَعَمْ، كُلُّ مَا قَالَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَهُوَ حَقٌّ، إلَّا أَنَّنَا وَجَمِيعُ خُصُومِنَا لَا نَخْتَلِفُ فِي أَنَّ هَذَا اللَّفْظَ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَيْسَ عُمُومًا لِكُلِّ مُحَلٍّ، وَلِكُلِّ مُحَلَّلٍ لَهُ، وَلَوْ كَانَ ذَلِكَ - وَأَعُوذُ بِاَللَّهِ، وَقَدْ أَعَاذَنَا اللَّهُ تَعَالَى مِنْ ذَلِكَ - لَلَعَنَ كُلَّ وَاهِبٍ وَكُلَّ مَوْهُوبٍ لَهُ، وَكُلَّ بَائِعٍ وَكُلَّ مُبْتَاعٍ لَهُ، وَكُلَّ نَاكِحٍ وَكُلَّ مُنْكَحٍ، لِأَنَّ

permitting acts that were prohibited and having matters made permissible for them that were once forbidden to them. There is no doubt about this.

هَؤُلَاءِ كُلُّهُمْ مُحِلُّونَ لِشَيْءٍ كَانَ حَرَامًا وَمُحَلَّلٌ لَهُمْ أَشْيَاءُ كَانَتْ حَرَامًا عَلَيْهِمْ، هَذَا مَا لَا شَكَّ فِيهِ.

L33710 Thus, it is conclusively evident that he—peace and blessings be upon him—specifically referred to certain permiters and certain permittees. Therefore, this matter is as clear as the sun and irrefutably certain. It is impermissible for any Muslim to ascribe to him—peace and blessings of Allah be upon him—an intention regarding any ruling except with absolute certainty derived from textual evidence mentioned without doubt. Otherwise, such a person lies against the Messenger of Allah—peace and blessings of Allah be upon him—falsely attributing to him what he did not state and spreading falsehood about him. Hence, given this absolute certainty, the cursed permitter and the one for whom it is permitted: they both are undoubtedly those who declare lawful what is unlawful for others without any textual evidence.

فَصَحَّ يَقِينًا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا أَرَادَ بَعْضَ الْمُحِلِّينَ وَبَعْضَ الْمُحَلَّلِ لَهُمْ، فَإِذَا هَذَا كَالشَّمْسِ وُضُوحًا وَيَقِينًا لَا يُمْكِنُ سِوَاهُ فَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَنْسِبَ إلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ أَرَادَ أَمْرَ كَذَا إلَّا بِيَقِينٍ مِنْ نَصٍّ وَارِدٍ لَا شَكَّ فِيهِ، وَإِلَّا فَهُوَ كَاذِبٌ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمُقَوِّلٌ لَهُ مَا لَمْ يَقُلْهُ، وَمُخْبِرٌ عَنْهُ بِالْبَاطِلِ، فَإِذَا هَذَا كُلُّهُ يَقِينٌ فَالْمُحِلُّ الْمَلْعُونُ، وَالْمُحَلَّلُ لَهُ كَذَلِكَ: إنَّمَا هُمَا بِلَا شَكٍّ مَنْ أَحَلَّ حَرَامًا لِغَيْرِهِ بِلَا نَصٍّ.

L33711–33713 Then we considered: Does one who marries a thrice-divorced woman with the intention of making her permissible for the husband who issued the triple divorce fall under that ruling, or not? We found that anyone who marries a thrice-divorced woman becomes the one who makes her permissible through intercourse, while the divorcer is the one for whom she is made permissible—whether he intended this or not. Thus, it is invalid for him to be included in this divine censure, because even if he stipulated this condition upon himself... Before the contract, such speech is inconsequential, and the marriage is not validly contracted unless it is sound and free from all conditions, but rather as Allah, the Mighty and Majestic, has commanded. As for the intention for that, we have now sufficiently addressed it.

ثُمَّ نَظَرْنَا -: هَلْ يَدْخُلُ فِي ذَلِكَ مَنْ تَزَوَّجَ وَفِي نِيَّتِهِ أَنْ يُحِلَّهَا لِمُطَلِّقِهَا ثَلَاثًا، أَمْ لَا يَدْخُلُ؟ فَوَجَدْنَا كُلَّ مَنْ يَتَزَوَّجُ مُطَلَّقَةً ثَلَاثًا فَإِنَّهُ بِوَطْئِهِ لَهَا مُحِلٌّ وَالْمُطَلِّقُ مُحَلَّلٌ لَهُ - نَوَى ذَلِكَ أَوْ لَمْ يَنْوِهِ - فَبَطَلَ أَنْ يَكُونَ دَاخِلًا فِي هَذَا الْوَعِيدِ، لِأَنَّهُ حَتَّى إنْ اشْتَرَطَ ذَلِكَ عَلَيْهِ قَبْلَ الْعَقْدِ فَهُوَ لَغْوٌ مِنْ الْقَوْلِ وَلَمْ يَنْعَقِدْ النِّكَاحُ إلَّا صَحِيحًا بَرِيًّا مِنْ كُلِّ شَرْطٍ، بَلْ كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ؛ وَأَمَّا بِنِيَّتِهِ لِذَلِكَ -: فَقَدْ قُلْنَا فِيهَا الْآنَ مَا كَفَى.

L33714 And it is astonishing that those who oppose us assert regarding a man who marries a woman intending not to retain her beyond a month before divorcing her—provided he did not stipulate this in the marriage contract—that the marriage remains valid without defect, granting him discretion to divorce or retain her as he wishes. Yet had he stipulated this within the contract itself, they deem it invalid and annulled. What distinction exists between what they permit and what they prohibit? This is not analogizing one spouse to another, but rather a single legal category governed by the ruling

وَالْعَجَبُ - أَنَّ الْمُخَالِفِينَ لَنَا يَقُولُونَ فِيمَنْ تَزَوَّجَ امْرَأَةً وَفِي نِيَّتِهِ أَنْ لَا يُمْسِكَهَا إلَّا شَهْرًا ثُمَّ يُطَلِّقَهَا، إلَّا أَنَّهُ لَمْ يَذْكُرْ ذَلِكَ فِي عَقْدِ النِّكَاحِ، فَإِنَّهُ نِكَاحٌ صَحِيحٌ لَا دَاخِلَةَ فِيهِ، وَهُوَ مُخَيَّرٌ إنْ شَاءَ طَلَّقَهَا وَإِنْ شَاءَ أَمْسَكَهَا، وَأَنَّهُ لَوْ ذَكَرَ ذَلِكَ فِي نَفْسِ الْعَقْدِ لَكَانَ عَقْدًا فَاسِدًا مَفْسُوخًا - فَأَيُّ فَرْقٍ بَيْنَ مَا أَجَازُوهُ، وَبَيْنَ مَا مَنَعُوا مِنْهُ، وَلَيْسَ هَذَا قِيَاسًا

of Allah's Messenger—peace and blessings be upon him—in his statement we previously cited with its chain: "My nation is forgiven for what their souls inwardly conceive," so long as it is not manifested through speech or action. This is further corroborated by the authenticated report of his—peace and blessings be upon him—addressing the woman divorced by Rifa'ah al-Qurazi and later married by 'Abd al-Rahman ibn al-Zubayr: "Do you desire to return to Rifa'ah? No, not until he tastes the taste of marriage with you and you taste it with him"—or as he—peace and blessings be upon him—stated.

لِأَحَدِ النَّاكِحِينَ عَلَى صَاحِبِهِ، لَكِنَّهُ كُلُّهُ بَابٌ وَاحِدٌ يُبَيِّنُ حُكْمَهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ: «عُفِيَ لِأُمَّتِي عَمَّا حَدَّثَتْ بِهِ أَنْفُسَهَا» مَا لَمْ يَخْرُجْ ذَلِكَ بِقَوْلٍ أَوْ عَمَلٍ - لَا سِيَّمَا وَقَدْ جَاءَ فِي ذَلِكَ الْخَبَرُ الثَّابِتُ «عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ قَوْلِهِ لِلَّتِي طَلَّقَهَا رِفَاعَةُ الْقُرَظِيِّ وَتَزَوَّجَهَا عَبْدُ الرَّحْمَنِ بْنُ الزُّبَيْرِ أَتُرِيدِينَ أَنْ تَرْجِعِي إلَى رِفَاعَةَ؟ لَا، حَتَّى يَذُوقَ عُسَيْلَتَكِ وَتَذُوقِي عُسَيْلَتَهُ» أَوْ كَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L33715 He—peace and blessings be upon him—did not consider her intention to return to the one who divorced her three times as preventing her return if the second husband has intercourse with her. Thus our position is validated by this, while their opinion and interpretation remain devoid of all proof, and their claim lacks any evidence to support its validity.

فَلَمْ يَجْعَلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إرَادَتَهَا الرُّجُوعَ إلَى الَّذِي طَلَّقَهَا ثَلَاثًا مَانِعًا مِنْ رُجُوعِهَا إذَا وَطِئَهَا الثَّانِي - فَصَحَّ بِذَلِكَ قَوْلُنَا، وَبَقِيَ قَوْلُهُمْ وَتَأْوِيلُهُمْ عَارِيًا مِنْ كُلِّ بُرْهَانٍ وَدَعْوَى لَا حُجَّةَ عَلَى صِحَّتِهَا.

L33716 It has been established that the cursed *muḥallil* is the one who marries her by declaring that he is marrying her solely to make her lawful, then divorces her—and they contract the marriage on this basis. Such a marriage is forbidden and nullified forever, because they stipulated a binding condition not permitted by the Book of Allah the Exalted, which provides no allowance for such adherence. The Prophet (peace be upon him) said: "Every condition not in the Book of Allah is void."

وَصَحَّ أَنَّ الْمُحَلِّلَ الْمَلْعُونَ هُوَ الَّذِي يَتَزَوَّجُهَا بِبَيَانٍ أَنَّهُ إنَّمَا يَتَزَوَّجُهَا لِيُحِلَّهَا ثُمَّ يُطَلِّقَهَا، وَيَعْقِدَانِ النِّكَاحَ عَلَى هَذَا - فَهَذَا حَرَامٌ مَفْسُوخٌ أَبَدًا، لِأَنَّهُمَا تَشَارَطَا شَرْطًا يَلْتَزِمَانِهِ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى إبَاحَةُ الْتِزَامِهِ، وَقَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ» .

L33717–33718 It is established that every marriage contract—or other contract—concluded on the condition that its validity is contingent solely on the validity of what is inherently invalid is itself null and void, devoid of any validity. And in Allah, the Exalted, we place our trust.

وَصَحَّ أَنَّ كُلَّ عَقْدِ نِكَاحٍ أَوْ غَيْرِهِ عُقِدَ عَلَى أَنْ لَا صِحَّةَ لَهُ إلَّا بِصِحَّةِ مَا لَا صِحَّةَ لَهُ فَهُوَ بَاطِلٌ لَا صِحَّةَ لَهُ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

L33719 If they mentioned: What was narrated to us by Ahmad ibn Qasim, narrated to us by his father Qasim ibn Muhammad ibn Qasim, narrated to us by my grandfather Qasim ibn Asbagh, narrated to us by Isma'il ibn Ishaq, narrated to us by Ishaq ibn Muhammad al-Farawi, narrated to us by my grandfather Qasim ibn Asbagh, narrated to us by Isma'il ibn Ishaq, narrated to us by Ishaq ibn Muhammad al-Farawi, narrated to us by Ibrahim ibn Isma'il al-

فَإِنْ ذَكَرُوا -: مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا إسْمَاعِيلُ بْنُ إسْحَاقَ نا إسْحَاقُ بْنُ مُحَمَّدٍ الْفَرْوِيُّ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا إسْمَاعِيلُ بْنُ إسْحَاقَ نا إسْحَاقُ بْنُ مُحَمَّدٍ الْفَرْوِيُّ نا إبْرَاهِيمُ بْنُ إسْمَاعِيلَ الْفَرْوِيُّ عَنْ دَاوُد

Farawi from Dawud, who narrated to me from Ikrimah from Ibn Abbas: "The Messenger of Allah—peace and blessings be upon him—was asked about the temporary marriage facilitator, and he said: 'There is no marriage except a marriage of earnest desire, no marriage except a marriage of earnest desire, no marriage of deceit, nor one who mocks the Book of Allah Almighty—then he has tasted the honeyed drink.'"

حَدَّثَنِي عِكْرِمَةُ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنْ الْمُحَلِّلِ فَقَالَ لَا نِكَاحَ إِلَّا نِكَاحَ رَغْبَةٍ، لَا نِكَاحَ إِلَّا نِكَاحَ رَغْبَةٍ، لَا نِكَاحَ دُلْسَةٍ، وَلَا مُسْتَهْزِئٍ بِكِتَابِ اللَّهِ تَعَالَى، ثُمَّ تَذُوقَ الْعُسَيْلَةَ» .

L33720 This is a fabricated ḥadīth, because Isḥāq ibn Muḥammad al-Farwī is extremely weak and his narrations are abandoned. Then through Ibrāhīm ibn Ismāʿīl—who is undoubtedly either Ibn Mujammiʿ or Ibn Abī Ḥabībah—both are Ansārī, Medinan, and weak; their narrations cannot be cited as authoritative evidence.

فَهَذَا حَدِيثٌ مَوْضُوعٌ، لِأَنَّ إِسْحَاقَ بْنَ مُحَمَّدٍ الْفَرْوِيَّ ضَعِيفٌ جِدًّا مَتْرُوكُ الْحَدِيثِ - ثُمَّ عَنْ إِبْرَاهِيمَ بْنِ إِسْمَاعِيلَ - وَهُوَ بِلَا شَكٍّ أَمَّا ابْنُ مُجَمِّعٍ، وَأَمَّا ابْنُ أَبِي حَبِيبَةَ - كِلَاهُمَا أَنْصَارِيٌّ مَدَنِيٌّ ضَعِيفٌ - لَا يُحْتَجُّ بِهِمَا.

L33721 Then, even if it were valid, there would be no binding proof against us in this matter, for they do not bring forth to us the specific type of interim husband he (peace be upon him) intended. We have clarified that it was said: "He (peace and blessings be upon him) did not refer to every interim husband." Rather, this report establishes that no marriage is valid except one entered with genuine intent, and this marriage fulfills the genuine intent required to make her lawful for the Muslim - as Almighty Allah decreed: {until she marries a husband other than him} [Al-Baqarah: 230]. This man is unquestionably a husband other than the former one.[11]

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ فِيهِ عَلَيْنَا حُجَّةٌ، لِأَنَّهُمْ لَا يَأْتُونَنَا بِأَيِّ الْمُحَلِّلِينَ أَرَادَ - عَلَيْهِ السَّلَامُ - وَقَدْ بَيَّنَّا قِيلَ: إنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُرِدْ كُلَّ مُحَلِّلٍ، وَإِنَّمَا فِي هَذَا الْخَبَرِ أَنَّهُ لَا نِكَاحَ إِلَّا نِكَاحَ رَغْبَةٍ وَهَذَا نِكَاحُ رَغْبَةٍ فِي تَحْلِيلِهَا لِلْمُسْلِمِ كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ: {حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] وَهُوَ زَوْجٌ غَيْرُهُ بِلَا شَكٍّ.

L33722 And as he—peace and blessings be upon him—clarified: "Until each one of the two tastes the other's honeyed sweetness, thus when he has intercourse with her, each one has indeed tasted the other's honeyed sweetness."

وَكَمَا بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «حَتَّى يَذُوقَ كُلُّ وَاحِدٍ مِنْهُمَا عُسَيْلَةَ الْآخَرِ فَهُوَ إِذَا وَطِئَهَا قَدْ ذَاقَ كُلُّ وَاحِدٍ عُسَيْلَةَ الْآخَرِ» .

L33723–33725 In it [the ruling]: There is no validity to a deceptive marriage (nikāḥ al-dulsah), and this is not a deceptive marriage. Deceptive marriage refers to deceiving someone by substituting a spouse other than the one he married or is marrying—not out of genuine desire for marriage, but to harm her personally or financially. And they... They permit the marriage of a woman who is not wed except for her wealth, her lineage, or the prestige of her father

وَفِيهِ: لَا نِكَاحَ دُلْسَةٍ وَلَيْسَ هَذَا نِكَاحَ دُلْسَةٍ - إِنَّمَا الدُّلْسَةُ: أَنْ يُدَلِّسَ لَهُ بِغَيْرِ الَّتِي تَزَوَّجَ أَوْ الَّذِي يَتَزَوَّجُ، لَا رَغْبَةً فِي نِكَاحٍ، لَكِنْ لِيَضُرَّ بِهَا فِي نَفْسِهَا أَوْ مَالِهَا، وَهُمْ يُبِيحُونَ نِكَاحَ مَنْ لَا تُنْكَحُ إِلَّا لِمَالِهَا أَوْ لِحَسَبِهَا أَوْ لِوَجَاهَةِ أَبِيهَا أَوْ أَخِيهَا، لَا رَغْبَةً فِيهَا، وَهَذَا تَنَاقُضٌ مِنْهُمْ.

[11] **Qur'an references (L33721):** Qur'an 2:230 (Al-Baqarah).

or brother - not out of desire for her - and this constitutes a contradiction on their part.

وَفِيهِ: وَلَا مُسْتَهْزِئَ بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ - وَهَذَانِ لَيْسَ مِنْهُمْ أَحَدٌ مُسْتَهْزِئًا بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ، بَلْ كُلُّ وَاحِدٍ مِنْهُمْ طَائِعٌ لِكِتَابِ اللَّهِ عَزَّ وَجَلَّ، عَامِلُونَ بِهِ مُمْتَنِعُونَ مِنْ خِلَافِهِ، إِذْ قَصَدُوا مَا لَا يَحِلُّ لَهُ مُرَاجَعَتُهَا إِلَّا بِمَا أَمَرَ اللَّهُ تَعَالَى بِهِ، إِنَّمَا الْمُسْتَهْزِئُ بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ مَنْ يُخَالِفُ مَا فِيهِ، أَوْ لَوْ تَزَوَّجَهَا قَبْلَ زَوْجٍ -.

L33726 And in it: There is no one who mocks the Book of Allah, the Mighty and Sublime—and these two are not among those who mock it. Rather, each of them is obedient to the Book of Allah, acting upon it and refraining from opposing it, since they sought what it is not permissible to revoke except in the manner Allah has commanded. Indeed, the one who mocks the Book of Allah is either he who opposes what is in it or [he who acts as] if he were to marry her before [the term of] her husband.

فَصَحَّ أَنَّ هَذَا الْخَبَرَ - عَلَى سُقُوطِهِ - عَلَيْهِمْ لَا لَهُمْ.

L33727 Thus, it is established that this narration (despite its invalidity) binds them as evidence, not benefits them.

وَخَبَرٌ آخَرُ -: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ وَمَعْمَرٍ أَنَّ ابْنَ شِهَابٍ أَخْبَرَهُمَا عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا أَخْبَرَتْهُ بِخَبَرِ امْرَأَةِ رِفَاعَةَ الْقُرَظِيِّ إِذْ طَلَّقَهَا ثَلَاثًا، وَذِكْرِهَا لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَيْسَ مَعَهُ إِلَّا مِثْلُ هُدْبَةٍ مِنْ ثَوْبِهَا - وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «تُرِيدِينَ أَنْ تَرْجِعِي إِلَى رِفَاعَةَ؟ لَا، حَتَّى تَذُوقِي عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتَكِ» .

L33728 And another account: We have transmitted it through the chain of Abd al-Razzaq from both Ibn Jurayj and Ma'mar, that Ibn Shihab informed them from Urwah ibn al-Zubayr, from Aisha, the Mother of the Believers, that she informed him of the incident involving the wife of Rifa'ah al-Qurazi when he divorced her thrice, and her mention to the Prophet (peace and blessings of Allah be upon him) that he possessed nothing except the equivalent of the fringe of her garment, and his statement (peace and blessings be upon him): "Do you wish to return to Rifa'ah? No, until you experience his intimacy and he experiences yours."[12]

ثُمَّ رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ: «أَتَتْ امْرَأَةٌ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَعَقَدَتْ، ثُمَّ جَاءَتْهُ بَعْدُ فَأَخْبَرَتْهُ: أَنَّهُ قَدْ مَسَّهَا، فَمَنَعَهَا أَنْ تَرْجِعَ إِلَى زَوْجِهَا الْأَوَّلِ، وَقَالَ: اللَّهُمَّ إِنْ كَانَ إِنَّمَا بِهَا أَنْ يُحِلَّهَا لِرِفَاعَةَ لَا يَتِمُّ لَهُ نِكَاحُهَا مَرَّةً أُخْرَى» ، ثُمَّ أَتَتْ أَبَا بَكْرٍ، وَعُمَرَ فِي خِلَافَتِهِمَا فَمَنَعَاهَا.

L33729 Then it was narrated to us from 'Abd al-Razzaq from Ibn Jurayj from Ibn Shihab from 'Urwah ibn al-Zubayr from 'A'ishah, the Mother of the Believers, that she said: "A woman came to the Prophet (peace and blessings of Allah be upon him) and contracted [a marriage]. Then she came to him afterward and informed him that he had touched her. He prevented her from returning to her first husband and said: 'O Allah, if it was solely because of her situation that she became lawful for Rifa'ah, may her marriage to him never be valid a second time.'" Then she went to Abu Bakr and 'Umar during their two caliphates, and they both prevented her.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ حُجَّةٌ قَاطِعَةٌ لَنَا عَلَيْهِمْ، لِأَنَّ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُبْطِلْ نِكَاحَهَا لِعَبْدِ الرَّحْمَنِ مَعَ تَقْدِيرِهِ أَنَّهُ إِنَّمَا يُرِيدُ إِحْلَالَهَا لِرِفَاعَةَ، لَكِنْ

L33730–33731 Abu Muhammad said: This is a decisive proof for us against them, because in it is that the Messenger of Allah—peace and blessings of Allah be upon him—

[12] **Hadith references (L33728):** Sahih al-Bukhari 6084; Sunan an-Nasai 3409.

did not invalidate her marriage to Abd al-Rahman despite his awareness that he only intended to facilitate her lawful remarriage through tahleel for Rifa'ah. However, when she denied that Abd al-Rahman had consummated the marriage with her, then when she learned that she could not become lawful for Rifa'ah unless Abd al-Rahman had consummated with her, she retracted that denial and acknowledged that he had indeed consummated with her.

لَمَّا أَنْكَرَتْ أَنَّ عَبْدَ الرَّحْمَنِ وَطِئَهَا، ثُمَّ لَمَّا عَلِمَتْ أَنَّهَا لَا تَحِلُّ لَهُ إلَّا بَعْدَ أَنْ يَطَأَهَا عَبْدُ الرَّحْمَنِ رَجَعَتْ عَنْ ذَلِكَ الْإِنْكَارِ، وَأَقَرَّتْ بِأَنَّهُ وَطِئَهَا.

L33732 And his saying—peace and blessings be upon him—"If the only reason in her case is that he declares her lawful for Rifa'ah, then his marriage to her will not be valid another time," undoubtedly means that Rifa'ah's marriage to her will not be valid another time.

وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «إنْ كَانَ إنَّمَا بِهَا أَنْ يُحِلَّهَا لِرِفَاعَةَ فَلَا يَتِمُّ لَهُ نِكَاحُهَا مَرَّةً أُخْرَى» ، إنَّمَا هُوَ بِلَا شَكٍّ أَنَّهُ لَا يَتِمُّ لِرِفَاعَةَ نِكَاحُهَا مَرَّةً أُخْرَى.

L33733 The Mālikīs hold no disagreement that if the second husband did not intend to render her permissible for the first [husband], and she never intended at all through her marriage to him except to achieve her permissibility for the first, she becomes permissible through that marriage contract and through intercourse within it. This certainly contradicts this narration.

وَالْمَالِكِيُّونَ لَا يَخْتَلِفُونَ إذَا لَمْ تَكُنْ نِيَّةُ الزَّوْجِ الثَّانِي إحْلَالَهَا لِلْأَوَّلِ وَكَانَتْ هِيَ لَمْ تَنْوِ قَطُّ بِزَوَاجِهَا إيَّاهُ إلَّا لِتَحْلِيلِهَا لِلْأَوَّلِ، فَإِنَّهَا تَحِلُّ بِذَلِكَ الْعَقْدِ وَبِالْوَطْءِ فِيهِ - وَهَذَا خِلَافٌ لِهَذَا الْخَبَرِ بِيَقِينٍ.

L33734 In this report, it is stated that she is not to be believed if she denies the second act of intercourse with her, then comes to know that she is not lawful for him except through his intercourse with her, so she acknowledges that he did have intercourse with her. With this, we assert: she is not to be believed unless her acknowledgment and the husband's acknowledgment of intercourse concur, or there is established evidence of his intercourse with her. And with Allah alone is success.

وَإِنَّمَا فِي هَذَا الْخَبَرِ: أَنَّهَا لَا تُصَدَّقُ إذَا أَنْكَرَتْ مَسَّ الثَّانِي لَهَا، ثُمَّ عَلِمَتْ أَنَّهَا لَا تَحِلُّ لَهُ إلَّا بِوَطْئِهِ إيَّاهَا، فَأَقَرَّتْ بِأَنَّهُ وَطِئَهَا - وَبِهَذَا نَقُولُ: إنَّهَا لَا تُصَدَّقُ، إلَّا حَتَّى يَجْتَمِعَ إقْرَارُهَا وَإِقْرَارُ الزَّوْجِ بِالْوَطْءِ، أَوْ تَقُومَ بِوَطْئِهِ لَهَا بَيِّنَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33735 Abu Muhammad said: If he took a wage for that, it is a forbidden wage whose restitution has been obligated.

قَالَ أَبُو مُحَمَّدٍ: وَلَوْ أَخَذَ لِذَلِكَ أُجْرَةً فَهِيَ أُجْرَةٌ حَرَامٌ، فُرِضَ رَدُّهَا.

L33736 Abū Muḥammad said: We do not know of any valid argument for those who oppose our position—not from the Quran, nor a sound or weak *sunnah*, nor *qiyās*, and especially not Mālik's statement, which restricted the relevance of intention solely to the second husband while excluding both her intention and that of the divorcer.

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ لِمَنْ خَالَفَ قَوْلَنَا حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا قِيَاسٍ - وَلَا سِيَّمَا قَوْلُ مَالِكٍ الَّذِي خَصَّ نِيَّةَ الزَّوْجِ الثَّانِي دُونَ نِيَّتِهَا، وَدُونَ نِيَّةِ الْمُطَلِّقِ.

L33737 The Issue of the Verbal Expressions of Divorce

[مَسْأَلَةُ أَلْفَاظ الطَّلَاق]

L33738 Issue 1952: A divorce does not take effect unless pronounced using one of three words: “ṭalāq,” “sarāḥ,” or “firāq.”

١٩٥٢ - مَسْأَلَةٌ: لَا يَقَعُ طَلَاقٌ إِلَّا بِلَفْظٍ مِنْ أَحَدِ ثَلَاثَةِ أَلْفَاظٍ: إِمَّا الطَّلَاقُ، وَإِمَّا السَّرَاحُ، وَإِمَّا الْفِرَاقُ.

L33739–33740 Such as saying: “You are divorced (ṭāliq),” or saying: “Divorced (muṭallaqah),” or “I have divorced you,” or “You are divorced (ṭāliqah),” or “You are the divorce itself,” or “You are released (musarḥah),” or “I have released you,” or “You are the release itself,” or “You are separated (mufāraqah),” or “I have separated from you,” or “You are the separation itself.”

مِثْلَ أَنْ يَقُولَ: أَنْتِ طَالِقٌ، أَوْ يَقُولَ: مُطَلَّقَةٌ، أَوْ قَدْ طَلَّقْتُك - أَوْ أَنْتِ طَالِقَةٌ، أَوْ أَنْتِ الطَّلَاقُ - أَوْ أَنْتِ مُسَرَّحَةٌ، أَوْ قَدْ سَرَحْتُك، أَوْ أَنْتِ السَّرَاحُ - أَوْ أَنْتِ مُفَارَقَةٌ، أَوْ قَدْ فَارَقْتُك، أَوْ أَنْتِ الْفِرَاقُ.

L33741 All of this applies if he intended divorce by it. If he states regarding any part of all this: “I did not intend divorce,” he is deemed truthful in fatwa, but not deemed truthful in judicial proceedings concerning divorce and acts arising from it. He is deemed truthful in all other such matters in judicial proceedings as well.

هَذَا كُلُّهُ إذَا نَوَى بِهِ الطَّلَاقَ، فَإِنْ قَالَ فِي شَيْءٍ مِنْ ذَلِكَ كُلِّهِ: لَمْ أَنْوِ الطَّلَاقَ، صُدِّقَ فِي الْفُتْيَا، وَلَمْ يُصَدَّقْ فِي الْقَضَاءِ فِي الطَّلَاقِ، وَمَا تَصَرَّفَ مِنْهُ، وَصُدِّقَ فِي سَائِرِ ذَلِكَ فِي الْقَضَاءِ أَيْضًا.

L33742–33743 The evidence for that is the statement of Allah, the Almighty and Majestic: “Then you divorced them” [Al-Ahzab 49].[13]

بُرْهَانُ ذَلِكَ: قَوْلُهُ عَزَّ وَجَلَّ: {ثُمَّ طَلَّقْتُمُوهُنَّ} [الأحزاب: ٤٩]

L33744 The Exalted has said: “Then divorce them” [At-Talāq: 1]. “Divorced women are entitled to a consolatory gift” [Al-Baqarah: 241].[14]

وقَوْله تَعَالَى: {فَطَلِّقُوهُنَّ} [الطلاق: ١] ، {وَلِلْمُطَلَّقَاتِ مَتَاعٌ} [البقرة: ٢٤١]

L33745 “And release them in a gracious manner.” [Al-Aḥzāb 33:49][15]

وقَوْله تَعَالَى: {وَسَرِّحُوهُنَّ سَرَاحًا جَمِيلا} [الأحزاب: ٤٩] .

L33746 Then either retain them in kindness or release them with kindness. [Al-Baqarah: 229][16]

وقَوْله تَعَالَى: {فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ} [البقرة: ٢٢٩] .

L33747 And Allah, the Exalted, says: {Retain them in kindness or divorce them in kindness} [Surah At-Talaq 65:2].[17]

وقَوْله تَعَالَى: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] .

L33748 And if they separate, Allah will enrich each from His abundance.[18]

{وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلا مِنْ سَعَتِهِ} [النساء: ١٣٠] .

L33749 Allah the Exalted has not mentioned the lawfulness of the husband’s marriage

لَمْ يَذْكُرْ اللَّهُ تَعَالَى حِلَّ الزَّوْجِ لِلزَّوْجَةِ إلَّا بِهَذِهِ الْأَلْفَاظِ، فَلَا يَجُوزُ حَلُّ عُقْدَةٍ عُقِدَتْ بِكَلِمَةِ اللَّهِ عَزَّ وَجَلَّ وَسُنَّةِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا بِمَا نَصَّ اللَّهُ عَزَّ وَجَلَّ عَلَيْهِ: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

[13] **Qur’an references (L33743):** Qur’an 33:49 (Al-Ahzab).
[14] **Qur’an references (L33744):** Qur’an 65:1 (At-Talaq); Qur’an 2:241 (Al-Baqarah).
[15] **Qur’an references (L33745):** Qur’an 33:49 (Al-Ahzab).
[16] **Qur’an references (L33746):** Qur’an 2:229 (Al-Baqarah).
[17] **Qur’an references (L33747):** Qur’an 65:2 (At-Talaq).
[18] **Qur’an references (L33748):** Qur’an 4:130 (An-Nisa).

to the wife except through these terms. Thus, it is impermissible to dissolve a contract concluded by the word of Allah, the Exalted and Majestic, and the Sunnah of His Messenger (peace be upon him) except by what Allah, the Exalted and Majestic, has ordained: {And whoever transgresses the limits of Allah has wronged himself} (Quran 65:1).[19]

L33750 As for our statement: "If he intends divorce along with that," this is based on the saying of the Messenger of Allah (peace be upon him and his family): "Actions are but by intentions, and every person will have what he intended."

L33751 As for our distinction between the expressions of divorce, it does not necessitate taking into account his statement regarding them—"I did not intend divorce specifically in the judgment"—though we considered this in the terms "final divorce (sarāḥ)" and "separation." This is because the term "divorce" and its derivatives are not used in the language by which God—Exalted and Majestic—addressed us in the rulings of the Sharia except exclusively for the marriage contract, with absolutely no other meaning whatsoever, not even remotely. Therefore, his claim cannot be accepted in a judgment that has been established against him by conclusive evidence, nor in nullifying rights that were incontestably owed to the woman due to the divorce preceding [the judgment].

L33752 We have considered his claim in the fatwa, for he may intend a different wording while his tongue outpaces him to what he did not intend. If this cannot be ascertained except through his statement, then his entire statement is admissible. It is impermissible to accept part of it and disregard the rest.

L33753 As for "al-sarāḥ (release) and al-firāq (separation)," these terms occur in the language through which God—Exalted and Majestic—has addressed us in His laws concerning the dissolution of marriage contracts, along with other meanings that are equally applicable. No single meaning among these holds greater claim to the term than the others. Thus, "You are released (musarraḥah)" signifies "You are free to depart if you wish," while the statements "I have separated from you (qad fāraqtuk)" and "You are separated (mufāraqah)" pertain to any matters between them where she does not agree with him.

وَأَمَّا قَوْلُنَا: إِنْ نَوَى مَعَ ذَلِكَ الطَّلَاقَ - فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

وَأَمَّا تَفْرِيقُنَا بَيْنَ أَلْفَاظِ الطَّلَاقِ، فَلَمْ يُوجِبْ أَنْ يُرَاعَى قَوْلُهُ فِيهَا: لَمْ أَنْوِ الطَّلَاقَ فِي الْقَضَاءِ خَاصَّةً - وَرَاعَيْنَا ذَلِكَ فِي أَلْفَاظِ " السَّرَاحِ، وَالْفِرَاقِ " فَلِأَنَّ لَفْظَةَ " الطَّلَاقِ " وَمَا تَصَرَّفَ مِنْهَا لَا يَقَعُ فِي اللُّغَةِ الَّتِي خَاطَبَنَا اللَّهُ - عَزَّ وَجَلَّ - بِهَا فِي أَحْكَامِ الشَّرِيعَةِ إِلَّا عَلَى عَقْدِ الزَّوَاجِ فَقَطْ، لَا مَعْنًى آخَرَ أَلْبَتَّةَ، فَلَا يَجُوزُ أَنْ يُصَدَّقَ فِي دَعْوَاهُ فِي حُكْمٍ قَدْ ثَبَتَ بِالْبَيِّنَةِ عَلَيْهِ وَفِي إِسْقَاطِ حُقُوقٍ وَجَبَتْ يَقِينًا لِلْمَرْأَةِ بِالطَّلَاقِ قَبْلَهُ.

وَرَاعَيْنَا دَعْوَاهُ تِلْكَ فِي الْفُتْيَا، لِأَنَّهُ قَدْ يُرِيدُ لَفْظًا آخَرَ فَيَسْبِقُهُ لِسَانُهُ إِلَى مَا لَمْ يُرِدْهُ، فَإِذَا لَمْ يُعْرَفْ ذَلِكَ إِلَّا بِقَوْلِهِ، فَقَوْلُهُ كُلُّهُ مَقْبُولٌ لَا يَجُوزُ أَخْذُ بَعْضِهِ وَإِسْقَاطُ بَعْضِهِ.

وَأَمَّا " السَّرَاحُ، وَالْفِرَاقُ " فَإِنَّهُمَا تَقَعُ فِي اللُّغَةِ الَّتِي بِهَا خَاطَبَنَا اللَّهُ - عَزَّ وَجَلَّ - فِي شَرَائِعِهِ عَلَى حَلِّ عَقْدِ النِّكَاحِ، وَعَلَى مَعَانٍ أُخَرَ وُقُوعًا مُسْتَوِيًا لَيْسَ مَعْنًى مِنْ تِلْكَ الْمَعَانِي أَحَقَّ بِتِلْكَ اللَّفْظَةِ مِنْ سَائِرِ تِلْكَ الْمَعَانِي، فَيَكُونُ: أَنْتِ مُسَرَّحَةٌ، أَيْ: أَنْتِ مُسَرَّحَةٌ لِلْخُرُوجِ إِذَا شِئْتِ، وَبِقَوْلِهِ قَدْ فَارَقْتُكِ، وَأَنْتِ مُفَارَقَةٌ، فِي شَيْءٍ مِمَّا بَيْنَهُمَا مَا لَمْ تُوَافِقْهُ فِيهِ.

[19] **Qur'an references (L33749):** Qur'an 65:1 (At-Talaq).

L33754 When that was the case, it was not permissible to decree the dissolution of a valid contract by the word of Allah, the Almighty and Majestic, without certainty of what necessitates its dissolution. And with Allah, the Exalted, is success.

فَلَمَّا كَانَ ذَلِكَ كَذَلِكَ لَمْ يَجُزْ أَنْ يَحْكُمَ بِحِلِّ عَقْدٍ صَحِيحٍ بِكَلِمَةِ اللَّهِ عَزَّ وَجَلَّ بِغَيْرِ يَقِينٍ مَا يُوجِبُ حِلَّهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L33755–33756 The issue of expressions by which divorce is not valid.

[مَسْأَلَةُ الْأَلْفَاظ الَّتِي لَا يَقَع بِهَا الطَّلَاق]

L33757 Issue: Any expressions other than these terms do not constitute divorce at all—whether one intends divorce by them or not—neither in legal opinions nor in judicial rulings. Examples include: “the released woman,” “I am free of you,” “you are absolved,” “I have renounced you,” “your obligation is upon you,” “imposing constraint,” “I have granted you to your family or to someone he mentions other than the family,” “declaring unlawful,” “granting the option to choose,” and “granting the right of divorce.”

مَسْأَلَةٌ: وَمَا عَدَا هَذِهِ الْأَلْفَاظُ فَلَا يَقَعُ بِهَا طَلَاقٌ أَلْبَتَّةَ - نَوَى بِهَا طَلَاقًا أَوْ لَمْ يَنْوِ - لَا فِي فُتْيَا وَلَا فِي قَضَاءٍ -: مِثْلُ: الْخَلِيَّةِ، وَالْبَرِيَّةِ، وَأَنْتِ مُبَرَّأَةٌ، وَقَدْ بَارَأْتُك، وَحَبْلُك عَلَى غَارِبِك، وَالْخَرَجُ، وَقَدْ وَهَبْتُك لِأَهْلِك، أَوْ لِمَنْ يَذْكُرُ غَيْرَ الْأَهْلِ، وَالتَّحْرِيمُ، وَالتَّخْيِيرُ، وَالتَّمْلِيكُ.

L33758 These are matters regarding which there exist differing legal opinions from a number of the Companions—may Allah be pleased with them—while no foundational evidence whatsoever has been transmitted from the Messenger of Allah—peace and blessings be upon him. Nor is there any decisive authority in the statements of others besides the Prophet—peace and blessings be upon him—particularly in divergent rulings where none is more preponderant than another.

وَهَذِهِ أَلْفَاظٌ جَاءَتْ فِيهَا آثَارٌ مُخْتَلِفَةُ الْفُتْيَا عَنْ نَفَرٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَمْ يَأْتِ فِيهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْءٌ أَصْلًا، وَلَا حُجَّةَ فِي كَلَامِ غَيْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -، لَا سِيَّمَا فِي أَقْوَالٍ مُخْتَلِفَةٍ لَيْسَ بَعْضُهَا أَوْلَى مِنْ بَعْضٍ.

L33759 As for prohibition, granting choice, transferring ownership, and *I have given you*—we have previously mentioned these. Here, if Allah, the Almighty and Majestic, wills, we will mention what has been made accessible to us of the teachings of the early predecessors concerning the remaining terms we have not mentioned before.

فَأَمَّا - التَّحْرِيمُ، وَالتَّخْيِيرُ، وَالتَّمْلِيكُ، وَقَدْ وَهَبْتُك - فَقَدْ ذَكَرْنَاهَا قَبْلُ وَنَذْكُرُ هَهُنَا - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - مَا يُسِّرَ لَنَا مِنْ أَقْوَالِ السَّلَفِ فِي سَائِرِ الْأَلْفَاظِ الَّتِي لَمْ نَذْكُرْهَا قَبْلُ.

L33760 Here also are terms for which there are reports from the Prophet (peace be upon him): al-bā’in, al-battata, i‘tiddī, al-ḥiqī bi-ahlik, and amruk bi-yadik.

هَهُنَا أَيْضًا أَلْفَاظٌ جَاءَتْ فِيهَا آثَارٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ: الْبَائِنُ، وَأَلْبَتَّةَ، وَاعْتَدِّي، وَأَلْحِقِي بِأَهْلِك وَأَمْرُك بِيَدِك.

L33761 As for your matter being under your discretion, we have previously addressed this. It is necessary to mention the transmitted reports found within all these terms and clarify their legal rulings—if Allah, the Almighty and Majestic, wills.

فَأَمَّا أَمْرُك بِيَدِك فَقَدْ ذَكَرْنَاهُ قَبْلُ فَلَا بُدَّ مِنْ ذِكْرِ الْآثَارِ الَّتِي جَاءَتْ فِي سَائِرِ هَذِهِ الْأَلْفَاظِ وَبَيَانِ حُكْمِهَا - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ -.

L33762 Here also are expressions regarding which no narration—neither authentic nor weak—has been transmitted from the Prophet, peace and blessings of Allah be upon him, nor from any of the Companions, may Allah be pleased with them. However, differing legal opinions concerning them have arisen from a group of the Followers. Thus, we shall mention—if Allah, the Exalted and Majestic, wills—from that which Allah, the Most High, has made easy for us to mention.

هَهُنَا أَيْضًا أَلْفَاظٌ لَمْ يَأْتِ فِي شَيْءٍ مِنْهَا أَثَرٌ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا صَحِيحٌ وَلَا سَقِيمٌ، وَلَا عَنْ أَحَدٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَكِنْ جَاءَتْ فِيهَا فَتَاوَى مُخْتَلِفَةٌ عَنْ نَفَرٍ مِنَ التَّابِعِينَ، فَنَذْكُرُ - إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ - مِنْ ذَلِكَ مَا يَسَّرَ اللَّهُ تَعَالَى لَنَا ذِكْرَهُ.

L33763 As for the expressions for which no precedent is found from the Prophet—peace and blessings of Allah be upon him—nor from any of the Companions—may Allah be pleased with them—nor from any of the Followers—may Allah have mercy on them—but only legal verdicts from the jurists of the regions based on their personal opinions, there is no validity in concerning oneself with them. This is because it is impermissible to dissolve a Muslim's marriage or permit lawful access to a Muslim woman's private parts for anyone other than those whom Allah the Exalted has permitted, except for a follower engaged in misguided imitation through his adherence—a self-destructive [individual] facing perishment. We seek refuge in Allah from being forsaken [by Him].

وَأَمَّا الْأَلْفَاظُ الَّتِي لَمْ يَأْتِ فِيهَا أَثَرٌ لَا عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا عَنْ أَحَدٍ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا عَنْ أَحَدٍ مِنَ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ - وَإِنَّمَا جَاءَتْ فِيهَا فَتَاوَى عَنْ فُقَهَاءِ الْأَمْصَارِ بِآرَائِهِمْ، فَلَا مَعْنَى لِلِاشْتِغَالِ بِهَا، لِأَنَّهُ لَا يَسْتَحِلُّ تَفْرِيقَ نِكَاحِ مُسْلِمٍ، وَإِبَاحَةَ فَرْجِ مُسْلِمَةٍ لِغَيْرِ مَنْ أَبَاحَهُ اللَّهُ تَعَالَى لَهُ إِلَّا مُقَلِّدٌ ضَالٌّ بِتَقْلِيدِهِ، مُسْتَهْلِكٌ هَالِكٌ - وَنَعُوذُ بِاللَّهِ مِنَ الْخِذْلَانِ.

L33764 An issue concerning the words of divorce that appear in them from the Messenger...

[مَسْأَلَةٌ أَلْفَاظِ الطَّلَاقِ الَّتِي جَاءَتْ فِيهَا عَنْ رَسُولِ]

L33765–33767 1954 - Issue: Concerning the phrases narrated from the Messenger of Allah (peace and blessings be upon him), which are: "Return to your family and undergo your waiting period," "the final divorce," and "the separating divorce." As narrated through the chain of Al-Bukhari: Al-Humaidi narrated to us, Sufyan Al-Thawri narrated to us. Sufyan said: Al-Zuhri narrated to me, informing me through Urwah ibn Al-Zubayr from Aisha, the Mother of the Believers, that when the daughter of Al-Jawn was brought to the Messenger of Allah (peace and blessings be upon him and his family) and he approached her, she exclaimed: "I seek refuge in Allah from you!" He replied: "You have sought refuge with the Great One. Return to your family."

١٩٥٤ - مَسْأَلَةٌ: فِي الْأَلْفَاظِ الَّتِي جَاءَتْ فِيهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ الْحَقِي بِأَهْلِك وَاعْتَدِّي، وَأَلْبَتَّةَ، وَالْبَائِنُ فَأَمَّا الْحَقِي بِأَهْلِك - فَكَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ ثنا الْحُمَيْدِيُّ ثنا سُفْيَانُ الثَّوْرِيُّ، قَالَ: حَدَّثَنِي الزُّهْرِيُّ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ ابْنَةَ الْجَوْنِ لَمَّا أُدْخِلَتْ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَدَنَا مِنْهَا قَالَتْ: أَعُوذُ بِاللَّهِ مِنْكَ؟ قَالَ لَهَا: لَقَدْ عُذْتِ بِعَظِيمٍ، الْحَقِي بِأَهْلِكِ» .

L33768 Abu Muhammad said: There is no proof in this narration for those who claim the phrase "Rejoin your family" constitutes divorce pronouncement -

due to what we narrated through al-Bukhari's chain: Abu Nu'aym (who is al-Fadl ibn Dukayn) narrated to us from Abd al-Rahman ibn al-Ghasil from Hamzah ibn Abi Usayd from his father: "He was with Allah's Messenger (peace and blessings be upon him and his family) when a Juhaniyyah woman was brought and lodged in Umaymah bint al-Nu'man ibn Sharahil's dwelling among palm trees, accompanied by her mount. The Prophet (peace and blessings be upon him and his family) entered her quarters and said: 'Surrender yourself to me.' She retorted: 'Would a queen yield herself to a plebeian?' He reached out to place his hand upon her to pacify her, whereupon she exclaimed: 'I seek refuge with Allah from you!' He responded: 'You have sought refuge with a mighty refuge.' Then he departed and instructed: 'O Abu Usayd, clothe her with two provision garments and escort her back to her people.'"

L33769 From the chain of Muslim: Muhammad ibn Sahl narrated to us: Ibn Abi Maryam (he is Sa'id) narrated to us: Muhammad (he is Ibn Mutarrif, Abu Ghassan) informed me, from Abu Hazim, from Sahl ibn Sa'd, who said: "An Arab woman was mentioned to the Messenger of Allah (peace be upon him), so he commanded Abu Usayd to send for her. He sent for her: she came and settled in the thicket of Banu Sa'idah. The Messenger of Allah (peace be upon him) entered. When he spoke to her, she said: 'I seek refuge with Allah from you!' He responded: 'I grant you refuge from me.' They asked her: 'Do you know who this is?' She replied: 'No.' They said: 'This is the Messenger of Allah (peace be upon him) who has come to propose to you.' She responded: 'I would have been the most wretched [if that were the case]!'"

L33770 All these reports pertain to a single narrative involving one woman in a single context, making it evident that the Prophet (peace and blessings be upon him) had not yet married her but had visited her to propose marriage.

L33771 Thus, their reliance on his statement—peace and blessings be upon him—"Join with your household" [feminine command] was nullified.

L33772 Then, even if it were valid that he - peace and blessings be upon him - had

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ فِي هَذَا الْخَبَرِ حُجَّةٌ لِمَنْ ادَّعَى أَنَّ " الْحَقِي بِأَهْلِك " لَفْظٌ يَقَعُ بِهِ الطَّلَاقُ -: لِمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - نا عَبْدُ الرَّحْمَنِ بْنُ الْغَسِيلِ عَنْ حَمْزَةَ بْنِ أَبِي أُسَيْدٍ عَنْ أَبِيهِ: «أَنَّهُ كَانَ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ أُوتِيَ بِالْجُونِيَّةِ فَأُنْزِلَتْ فِي بَيْتِ أُمَيْمَةَ بِنْتِ النُّعْمَانِ بْنِ شَرَاحِيلَ فِي نَخْلٍ وَمَعَهَا دَابَّتُهَا فَدَخَلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَيْهَا فَقَالَ لَهَا: هَبِي لِي نَفْسَكِ؟ قَالَتْ: وَهَلْ تَهَبُ الْمَلِكَةُ نَفْسَهَا لِسُوقَةٍ؟ فَأَهْوَى لِيَضَعَ يَدَهُ عَلَيْهَا لِتَسْكُنَ فَقَالَتْ: أَعُوذُ بِاَللَّهِ مِنْكَ، فَقَالَ: قَدْ عُذْتِ بِمَعَاذٍ، ثُمَّ خَرَجَ فَقَالَ: يَا أَبَا أُسَيْدٍ اُكْسُهَا رَازِقِيَّتَيْنِ وَأَلْحِقْهَا بِأَهْلِهَا» .

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ سَهْلٍ نا ابْنُ أَبِي مَرْيَمَ - هُوَ سَعِيدٌ - نَا مُحَمَّدٌ - هُوَ ابْنُ مُطَرِّفٍ أَبُو غَسَّانَ - أَخْبَرَنِي أَبُو حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ: «ذُكِرَتْ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - امْرَأَةٌ مِنْ الْعَرَبِ فَأَمَرَ أَبَا أُسَيْدٍ أَنْ يُرْسِلَ إلَيْهَا: فَأَرْسَلَ إلَيْهَا، فَقَدِمَتْ فَنَزَلَتْ فِي أَجَمِ بَنِي سَاعِدَةَ، فَدَخَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمَّا كَلَّمَهَا قَالَتْ: أَعُوذُ بِاَللَّهِ مِنْكَ؟ قَالَ: قَدْ أَعَذْتُكِ مِنِّي، فَقَالُوا لَهَا: أَتَدْرِينَ مَنْ هَذَا؟ قَالَتْ: لَا، قَالُوا: هَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَاءَكِ لِيَخْطُبَكِ؟ قَالَتْ: أَنَا كُنْتُ أَشْقَى مِنْ ذَلِكَ» .

فَهَذِهِ كُلُّهَا أَخْبَارٌ عَنْ قِصَّةٍ وَاحِدَةٍ، فِي امْرَأَةٍ وَاحِدَةٍ، فِي مَقَامٍ وَاحِدٍ، فَلَاحَ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَكُنْ تَزَوَّجَهَا بَعْدُ، وَإِنَّمَا دَخَلَ عَلَيْهَا لِيَخْطُبَهَا.

فَبَطَلَ تَعَلُّقُهُمْ بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: الْحَقِي بِأَهْلِك.

married her, there is no evidence that he - peace and blessings be upon him - stated he divorced her merely by saying “Join your family?” Valid marriages are only lawful with certainty.

ثُمَّ لَوْ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَانَ قَدْ تَزَوَّجَهَا فَلَيْسَ فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ذَكَرَ أَنَّهُ إنَّمَا طَلَّقَهَا بِقَوْلِهِ الْحَقِي بِأَهْلِك؟ وَلَا تَحِلُّ النِّكَاحَاتُ الصِّحَاحُ إلَّا بِيَقِينٍ.

L33773–33775 It has been narrated to us through the chain of Aḥmad ibn Shuʿayb: Sulaymān ibn Dāwūd narrated to us; Ibn Wahb narrated to us from Yūnus ibn Yazīd, who said: Ibn Shihāb said: ʿAbd al-Raḥmān ibn Kaʿb ibn Mālik informed me that ʿAbd al-Raḥmān ibn Kaʿb [continued]... He said: “I heard Kaʿb ibn Mālik narrate the story of his staying behind from the Battle of Tabūk, in which he mentioned that the Messenger of Allah (peace be upon him and his family) sent a message to him ordering him to separate from his wife.” He said: “So I asked his Messenger: ‘Should I divorce her, or what should I do instead?’ He said: ‘No, rather stay away from her and do not approach her.’” Kaʿb said: “So I told my wife: ‘Go to your family and remain with them until Allah decides regarding this matter.’”

وَقَدْ رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا سُلَيْمَانُ بْنُ دَاوُد نا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ قَالَ: قَالَ ابْنُ شِهَابٍ أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ كَعْبِ بْنِ مَالِكٍ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ كَعْبٍ قَالَ: «سَمِعْتُ كَعْبَ بْنَ مَالِكٍ يُحَدِّثُ حَدِيثَ تَخَلُّفِهِ عَنْ تَبُوكَ، فَذَكَرَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَرْسَلَ إلَيْهِ يَأْمُرُهُ أَنْ يَعْتَزِلَ امْرَأَتَهُ؟ قَالَ: فَقُلْتُ لِرَسُولِهِ: أُطَلِّقُهَا أَمْ مَاذَا أَفْعَلُ؟ قَالَ: لَا، بَلْ اعْتَزِلْهَا فَلَا تَقْرَبْهَا؟ قَالَ كَعْبٌ فَقُلْت لِامْرَأَتِي: الْحَقِي بِأَهْلِكِ فَكُونِي فِيهِمْ حَتَّى يَقْضِيَ اللَّهُ فِي هَذَا الْأَمْرِ» .

L33776 Thus, this Kaʿb did not consider “Rejoin your family” among the expressions of divorce, and none of the Companions—may Allah be pleased with them—are known to have opposed him in that.

فَهَذَا كَعْبٌ لَمْ يَرَ " الْحَقِي بِأَهْلِك " مِنْ أَلْفَاظِ الطَّلَاقِ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ فِي ذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L33777 It was also narrated to us from Qatādah: that that is not a thing.

وَرُوِّينَا عَنْ قَتَادَةَ أَيْضًا: أَنَّهُ لَيْسَ ذَلِكَ شَيْءٌ.

L33778 There are narrations reported from the Followers concerning that matter—Al-Shaʿbi and al-Hasan narrated that whoever says to his wife, “Join your family,” the ruling depends on his intention.

وَجَاءَتْ عَنْ التَّابِعِينَ فِي ذَلِكَ آثَارٌ -: رُوِّينَا عَنْ الشَّعْبِيِّ، وَالْحَسَنِ: أَنَّ مَنْ قَالَ لِامْرَأَتِهِ: الْحَقِي بِأَهْلِك، فَهُوَ عَلَى مَا نَوَى -.

L33779 And this is the position of Mālik and al-Shāfiʿī.

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ.

L33780 It is authentically reported from Al-Hasan: If he intended divorce, then it is one revocable divorce; otherwise, it is null and void—and it was narrated by us from Al-Sha’bi as well—and it was narrated from Ikrimah: that it is solely one revocable divorce—and from Al-Zuhri: that it is one talaq.

وَصَحَّ عَنْ الْحَسَنِ: إنْ نَوَى طَلَاقًا فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ، وَإِلَّا فَلَيْسَ بِشَيْءٍ - وَرُوِّينَاهُ عَنْ الشَّعْبِيِّ أَيْضًا - وَرُوِيَ عَنْ عِكْرِمَةَ: أَنَّهَا طَلْقَةٌ وَاحِدَةٌ رَجْعِيَّةٌ فَقَطْ - وَعَنْ الزُّهْرِيِّ: أَنَّهَا طَلْقَةٌ وَاحِدَةٌ.

L33781 Abu Hanifa and his disciples stated: If he intended one or two divorces, it is necessarily a single irrevocable divorce. If he intended three, then it counts as three. And if he did not intend a divorce, then it is not a divorce.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إِنْ نَوَى وَاحِدَةً أَوْ اثْنَتَيْنِ، فَهِيَ طَلْقَةٌ وَاحِدَةٌ بَائِنَةٌ وَلَا بُدَّ، وَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ لَمْ يَنْوِ طَلَاقًا فَلَيْسَ طَلَاقًا.

L33782 Zufar said: If he intended two prayers, then they are two.

قَالَ زُفَرُ: وَإِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ.

L33783 As for the irrevocable divorce, there is the established report transmitted from the chain of Aḥmad ibn Shuʿayb: from Aḥmad ibn ʿAbd Allāh ibn al-Ḥakam, from Muḥammad ibn Jaʿfar, from Shuʿbah, from Abū Bakr ibn Abī al-Jahm, who narrated, "I visited Fāṭimah bint Qays, and she mentioned the ḥadīth. In its conclusion: 'Her husband had divorced her with an irrevocable divorce.'"

وَأَمَّا الْبَائِنُ - فَفِيهِ الْخَبَرُ الثَّابِتُ: مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ الْحَكَمِ نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ عَنْ أَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ، قَالَ: «دَخَلْتُ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ فَذَكَرَتْ الْحَدِيثَ، وَفِي آخِرِهِ: وَكَانَ زَوْجُهَا طَلَّقَهَا طَلَاقًا بَائِنًا» .

L33784 Abu Muhammad said: There is no valid argument in this, because it is not from her wording; rather, it is from the wording of someone other than her. It does not state that the Messenger of Allah – peace be upon him and his family – heard this wording and ruled it as a divorce, nor is there any valid argument regarding those below him in authority – peace be upon him. We have mentioned in the chapter on the threefold divorce a collection of how the divorce of Fatimah bint Qays occurred.

قَالَ أَبُو مُحَمَّد: وَهَذَا لَا حُجَّةَ فِيهِ، لِأَنَّهُ لَيْسَ مِنْ لَفْظِهَا، إنَّمَا هُوَ مِنْ لَفْظِ مِنْ دُونِهَا، وَلَيْسَ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سَمِعَ هَذِهِ اللَّفْظَةَ فَجَعَلَهَا طَلَاقًا، وَلَا حُجَّةَ فِيمَنْ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَقَدْ ذَكَرْنَا فِي " بَابِ طَلَاقِ الثَّلَاثِ " مَجْمُوعَةً كَيْفَ أَنَّ طَلَاقَ فَاطِمَةَ بِنْتِ قَيْسٍ.

L33785 There is a difference of opinion reported from the Salaf regarding this matter. What has been authenticated from 'Ali is what we narrated through Shu'bah: 'Aṭā' ibn al-Sā'ib narrated to us, saying: Abū al-Buḥturī narrated to me from 'Ali ibn Abī Ṭālib that he said concerning al-Bā'inah: "It is three pronouncements."

وَاخْتُلِفَ عَنْ السَّلَفِ مِنْ ذَلِكَ -: فَصَحَّ عَنْ عَلِيٍّ مَا رُوِّينَاهُ عَنْ شُعْبَةَ نا عَطَاءُ بْنُ السَّائِبِ حَدَّثَنِي أَبُو الْبُخْتُرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِي الْبَائِنَةِ: هِيَ ثَلَاثٌ.

L33786–33787 And through the chain of Qatadah, from al-Ḥasan, from Zayd ibn Thābit, that he said regarding irrevocable divorce (al-Bā'ina): It is three.

وَمِنْ طَرِيقِ قَتَادَةَ عَنْ الْحَسَنِ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ فِي الْبَائِنَةِ: هِيَ ثَلَاثٌ.

L33788 And through the transmission of ʿAbd al-Razzāq from Maʿmar from al-Ḥasan and al-Zuhrī, that they both regarded al-bā'inah (the irrevocably divorced woman) as equivalent to the three pronouncements of divorce - and this is the view of Ibn Abī Laylā, al-Awzāʿī, and Abū ʿUbayd.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْحَسَنِ، وَالزُّهْرِيِّ أَنَّهُمَا كَانَا يَجْعَلَانِ الْبَائِنَةَ بِمَنْزِلِ الثَّلَاثِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى وَالْأَوْزَاعِيِّ، وَأَبِي عُبَيْدٍ.

L33789 It has been transmitted to us in a different narration—as conveyed through the chain of Abd al-Razzaq from Sufyan al-Thawri from Hammad ibn Abi

Sulayman from Ibrahim al-Nakha'i—that Umar ibn al-Khattab said concerning the irrevocable divorce (al-Ba'inah): "It constitutes one pronouncement of divorce, and he retains the right to her."

وَرُوِّينَا غَيْرَ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنْ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْبَائِنَةِ: هِيَ طَلْقَةٌ وَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا.

L33790 Via the narration of ʿAbd al-Razzāq, from Ibn Jurayj, that ʿAmr ibn Dīnār said regarding the irrevocable divorce (al-bā'inah): "It is a single divorce, and he judges." Ibn Jurayj said: "I asked him: 'What if he intended it to be three?' He replied: 'It is one.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنْ عَمْرَو بْنَ دِينَارٍ قَالَ فِي الْبَائِنَةِ: هِيَ طَلْقَةٌ وَاحِدَةٌ وَيَدِينُ، قَالَ ابْنُ جُرَيْجٍ فَقُلْت لَهُ: فَإِنْ نَوَى بِهَا ثَلَاثًا؟ قَالَ: هِيَ وَاحِدَةٌ.

L33791 And from the chain of Ḥammād ibn Salamah from Qays—he is Ibn ʿAbbād—from ʿAṭā' ibn Abī Rabāḥ that he said regarding the irrevocable divorce (al-bā'inah): it is a single one, and he has more right to her.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسٍ - هُوَ ابْنُ عَبَّادٍ - عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ قَالَ فِي الْبَائِنَةِ: هِيَ وَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا.

L33792 This is the opinion of Abū Thawr, except that he said: if he does not intend [divorce]—whether he intended three, two, or one [divorces]. This is also the view of Isḥāq ibn Rāhawayh and Abū Sulaymān, except that they said: If he states, "I did not intend a divorce," then it was not considered a divorce.

وَهُوَ قَوْلُ أَبِي ثَوْرٍ إلَّا أَنَّهُ قَالَ: لَا يَنْوِي - وَسَوَاءٌ نَوَى ثَلَاثًا أَوْ اثْنَتَيْنِ أَوْ وَاحِدَةً - وَهُوَ قَوْلُ إسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، إلَّا أَنَّهُمَا قَالَا: إنْ قَالَ: لَمْ أَنْوِ طَلَاقًا لَمْ يَكُنْ طَلَاقًا.

L33793–33795 A third opinion—narrated through Ḥammād ibn Salamah's transmission from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī—states regarding the definitive divorce (al-bā'inah): "It is a single definitive divorce." A fourth opinion asserts that the ruling follows his intention: if he intended three divorces, it counts as three; if he intended two, it counts as two; if he intended one, it counts as one; and if he declared, "I did not intend a divorce," then no divorce occurs—narrated through ʿAbd al-Razzāq's transmission from Ibn Jurayj, from ʿAṭā', which aligns with al-Shāfiʿī's view. A fifth opinion—that three divorces are irrevocably binding for a wife with whom consummation has occurred, while only one divorce applies to a wife without consummation—is reported from Rabīʿah and represents al-Layth ibn Saʿd's position. A sixth opinion—that three divorces are obligatory for a consummated marriage, while a non-consummated marriage follows the number intended (one, two, or three)—is held by Mālik and his school, with no predecessor known to have endorsed this view. A seventh opinion—that if he uttered this to her

وَقَوْلٌ ثَالِثٌ - رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ فِي الْبَائِنَةِ: هِيَ وَاحِدَةٌ بَائِنَةٌ. وَقَوْلٌ رَابِعٌ - لَهُ نِيَّتُهُ، فَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ، وَإِنْ نَوَى وَاحِدَةً فَوَاحِدَةٌ، وَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا فَلَيْسَ طَلَاقًا - رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ. وَقَوْلٌ خَامِسٌ - وَهُوَ أَنَّهُ فِي الْمَدْخُولِ بِهَا ثَلَاثٌ وَلَا بُدَّ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا وَاحِدَةٌ فَقَطْ - وَرُوِيَ عَنْ رَبِيعَةَ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ. وَقَوْلٌ سَادِسٌ - إنَّهَا فِي الْمَدْخُولِ بِهَا ثَلَاثٌ وَلَا بُدَّ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا مَا نَوَى مِنْ وَاحِدَةٍ أَوْ اثْنَتَيْنِ أَوْ ثَلَاثٍ - وَهُوَ قَوْلُ مَالِكٍ وَأَصْحَابِهِ - وَلَا نَعْلَمُ هَذَا الْقَوْلَ عَنْ أَحَدٍ مِمَّنْ قَبْلَهُ. وَقَوْلٌ

in anger or otherwise, provided it was not during the mention of... If it is a divorce, he must intend it. If he says, “I did not intend a divorce,” then it is not a divorce. If he says, “I intended a divorce without specifying a number,” or says, “I intended one revocable divorce,” or says, “I intended one irrevocable divorce,” or says, “I intended two revocable or two irrevocable divorces,” then in all these cases, it is necessarily one irrevocable divorce. If this occurs during the mention of divorce, the ruling is identical in every way. However, his claim, “I did not specifically intend a divorce,” is not accepted—and this is the opinion of Abu Hanifah, Abu Yusuf, and Muhammad ibn al-Hasan. An eighth opinion—that of Sufyan al-Thawri—matches Abu Hanifah’s view in all we have mentioned, except that no distinction is made between cases where divorce is mentioned and those where it is not, nor between anger and other states.

سَابِعٌ - أَنَّهُ إِنْ قَالَ لَهَا ذَلِكَ فِي غَضَبٍ أَوْ فِي غَيْرِ غَضَبٍ، مَا لَمْ يَكُنْ فِي ذِكْرِ طَلَاقٍ فَإِنَّهُ يَنْوِي، فَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا، فَلَيْسَ طَلَاقًا، وَإِنْ قَالَ: نَوَيْت طَلَاقًا بِلَا عَدَدٍ، أَوْ قَالَ: نَوَيْت وَاحِدَةً رَجْعِيَّةً، أَوْ قَالَ: نَوَيْت وَاحِدَةً بَائِنَةً، أَوْ قَالَ: نَوَيْت اثْنَتَيْنِ رَجْعِيَّتَيْنِ أَوْ بَائِنَتَيْنِ فَهِيَ فِي كُلِّ ذَلِكَ طَلْقَةٌ وَاحِدَةٌ بَائِنَةٌ وَلَا بُدَّ، فَلَوْ كَانَ ذَلِكَ فِي ذِكْرِ طَلَاقٍ فَكَذَلِكَ سَوَاءً سَوَاءً، إِلَّا أَنَّهُ لَا يُصَدَّقُ فِي قَوْلِهِ: لَمْ أَنْوِ طَلَاقًا فَقَطْ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ. وَقَوْلٌ ثَامِنٌ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ مِثْلُ قَوْلِ أَبِي حَنِيفَةَ سَوَاءً سَوَاءً، فِي كُلِّ مَا ذَكَرْنَا، إِلَّا أَنَّهُ لَمْ يُفَرِّقْ بَيْنَ ذِكْرِ طَلَاقٍ وَغَيْرِ ذِكْرِهِ، وَلَا بَيْنَ غَضَبٍ وَغَيْرِهِ.

L33796 The ninth opinion—held by Zufar ibn al-Hudhayl and identical to Abu Hanifah’s view—except that he stated: If one intends two divorces, they must necessarily be two irrevocable divorces.

وَقَوْلٌ تَاسِعٌ - وَهُوَ قَوْلُ زُفَرَ بْنِ الْهُذَيْلِ مِثْلُ قَوْلِ أَبِي حَنِيفَةَ، إِلَّا أَنَّهُ قَالَ: إِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ بَائِنَتَانِ وَلَا بُدَّ.

L33797 As for al-bātt and al-battah—it has been narrated to us through the chain of Muslim: ‘Ubayd Allāh ibn Mu‘ādh al-‘Anbarī narrated to us, my father narrated to us, Shu‘bah narrated to us, Abū Bakr—he is Ibn Abī al-Jahm—narrated to us that he visited Fāṭimah bint Qays, and she informed him that her husband had divorced her with an absolute divorce. Through another chain of Muslim: Abū Bakr ibn Abī Shaybah narrated to us, Muḥammad ibn Bishr narrated to us, Muḥammad ibn ‘Amr narrated to us, Abū Salamah ibn ‘Abd al-Raḥmān narrated to us, from Fāṭimah bint Qays, who said: “I was married to a man from Banū Makhzūm, and he divorced me with an absolute divorce,” and she mentioned the ḥadīth.

وَأَمَّا الْبَاتُّ، وَأَلْبَتَّةَ - فَرُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عُبَيْدُ اللَّهِ بْنُ مُعَاذٍ الْعَنْبَرِيُّ نا أَبِي نا شُعْبَةُ ثنا أَبُو بَكْرٍ - هُوَ ابْنُ أَبِي الْجَهْمِ - أَنَّهُ «دَخَلَ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ فَحَدَّثَتْهُ أَنَّ زَوْجَهَا طَلَّقَهَا طَلَاقًا بَاتًّا» وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نَا مُحَمَّدُ بْنُ بِشْرٍ نا مُحَمَّدُ بْنُ عَمْرٍو نا أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ عَنْ «فَاطِمَةَ بِنْتِ قَيْسٍ قَالَتْ: كُنْت عِنْدَ رَجُلٍ مِنْ بَنِي مَخْزُومٍ فَطَلَّقَنِي أَلْبَتَّةَ وَذَكَرَتْ الْحَدِيثَ» .

L33798 And through the chain of Malik from Abdullah ibn Yazid, the client of Al-Aswad ibn Sufyan, from Abu Salamah ibn Abd al-Rahman, from Fatimah bint Qays: that Abu Amr ibn Hafs divorced her irrevocably. His agent sent her some barley, so she resented this. He said, “By Allah, you have no claim to anything from us!” She then went to the Messenger of Allah, peace and blessings of Allah be upon him and his family, and mentioned this to him.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْأَسْوَدِ بْنِ سُفْيَانَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ عَنْ «فَاطِمَةَ بِنْتِ قَيْسٍ أَنَّ أَبَا عَمْرِو بْنَ حَفْصٍ طَلَّقَهَا أَلْبَتَّةَ، فَأَرْسَلَ إِلَيْهَا وَكِيلُهُ بِشَعِيرٍ، فَسَخِطَتْ فَقَالَ: وَاَللَّهِ مَالَكِ عَلَيْنَا مِنْ شَيْءٍ؟ فَجَاءَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ

He said to her, “You have no right to maintenance upon him,” and she related the hadith.

L33799 Through the chain of Muslim: ʻAmr al-Nāqid narrated to us, Sufyān narrated to us from al-Zuhrī from ʻUrwah from ʻĀ’ishah, the Mother of the Believers, who said: “The wife of Rifāʻah came to the Prophet—peace and blessings be upon him—and said: ’I was married to Rifāʻah, and he divorced me irrevocably. Then I married ʻAbd al-Raḥmān ibn al-Zubayr, and he has something like the fringe of a garment.’ The Prophet—peace and blessings be upon him—said: ’Do you wish to return to Rifāʻah? No, not until you taste his sweetness and he tastes your sweetness.’”

L33800 On the authority of Aḥmad ibn Shuʿayb: ʿAmr ibn ʿAlī narrated to us; Yazīd ibn Zuraiʿ narrated to us; Maʿmar narrated to us from al-Zuhrī, from ʿUrwah, from ʿĀ’ishah: “The wife of Rifāʿah said: ’O Messenger of Allāh, I was married to Rifāʿah, and he divorced me irrevocably (a final triple divorce),’ and she narrated the hadith” - as we have previously cited it verbatim.

L33801–33802 Through the chain of Abū Dāwūd from Abū Thawr Ibrāhīm ibn Khālid al-Faqīh, from Muḥammad ibn Idrīs al-Shāfiʿī, who said: My uncle Muḥammad ibn ʿAlī ibn Shāfiʿ narrated to me from ʿAbdullāh ibn ʿAlī ibn al-Sā’ib, from Nāfiʿ, from ʿUjayr ibn ʿAbdul-Yazīd, from Rukānah ibn ʿAbdul-Yazīd that he divorced his wife Suhaymah irrevocably. When the Messenger of Allah—peace and blessings be upon him—was informed of this, Rukānah said: “By Allah, I only intended one [divorce].” The Prophet asked him: “By Allah, did you intend only one?” Rukānah replied: “By Allah, I only intended one.” Thereupon the Messenger of Allah—peace and blessings be upon him—returned her to him.

L33803 Through the chain of Abu Dawud: Sulayman ibn Dawud al-Ataki narrated to us, Jarir ibn Hazim narrated to us from al-Zubayr ibn Sa‘id—he is al-Hashimi—from his grandfather that he divorced his wife irrevocably (albattah). He came to the Messenger of Allah—peace and blessings be upon him—who asked: “What did you intend?” He replied: “One.” He said: “By Allah?”

عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَتْ ذَلِكَ لَهُ؟ فَقَالَ لَهَا: لَيْسَ لَكِ عَلَيْهِ نَفَقَةٌ، وَذَكَرَتْ الْحَدِيثَ» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا عَمْرُو النَّاقِدُ نا سُفْيَانُ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: «جَاءَتْ امْرَأَةُ رِفَاعَةَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ كُنْتُ عِنْدَ رِفَاعَةَ فَطَلَّقَنِي فَبَتَّ طَلَاقِي، فَتَزَوَّجْتُ عَبْدَ الرَّحْمَنِ بْنَ الزُّبَيْرِ وَإِنَّمَا مَعَهُ مِثْلُ هُدْبَةِ الثَّوْبِ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَتُرِيدِينَ أَنْ تَرْجِعِي إلَى رِفَاعَةَ؟ لَا، حَتَّى تَذُوقِي عُسَيْلَتَهُ وَيَذُوقَ عُسَيْلَتَكِ» .

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ عَلِيٍّ نا يَزِيدُ بْنُ زُرَيْعٍ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَنَّ امْرَأَةَ رِفَاعَةَ قَالَتْ: يَا رَسُولَ اللَّهِ إنِّي كُنْتُ تَحْتَ رِفَاعَةَ فَطَلَّقَنِي أَلْبَتَّةَ وَذَكَرَتْ الْحَدِيثَ» كَمَا أَوْرَدْنَاهُ آنِفًا حَرْفًا حَرْفًا.

وَمِنْ طَرِيقِ أَبِي دَاوُد نَا أَبُو ثَوْرٍ إبْرَاهِيمُ بْنُ خَالِدٍ الْفَقِيهُ نا مُحَمَّدُ بْنُ إدْرِيسَ الشَّافِعِيُّ حَدَّثَنِي عَمِّي مُحَمَّدُ بْنُ عَلِيِّ بْنِ شَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عَلِيِّ بْنِ السَّائِبِ عَنْ نَافِعٍ عَنْ عُبَيْدِ بْنِ عَبْدِ يَزِيدَ عَنْ «رُكَانَةَ بْنِ عَبْدِ يَزِيدَ أَنَّهُ طَلَّقَ امْرَأَتَهُ سُهَيْمَةَ أَلْبَتَّةَ، فَأُخْبِرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ، وَقَالَ: وَاَللَّهِ مَا أَرَدْتُ بِذَلِكَ إلَّا وَاحِدَةً فَقَالَ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: وَاَللَّهِ مَا أَرَدْتُ إلَّا وَاحِدَةً؟ فَقَالَ رُكَانَةُ: وَاَللَّهِ مَا أَرَدْتُ إلَّا وَاحِدَةً، فَرَدَّهَا إلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

وَمِنْ طَرِيقِ أَبِي دَاوُد نا سُلَيْمَانُ بْنُ دَاوُد الْعَتَكِيُّ نا جَرِيرُ بْنُ حَازِمٍ عَنْ «الزُّبَيْرِ بْنِ سَعِيدٍ - هُوَ الْهَاشِمِيُّ - عَنْ جَدِّهِ أَنَّهُ طَلَّقَ امْرَأَتَهُ أَلْبَتَّةَ فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ

He responded: “By Allah.” The Messenger of Allah—peace and blessings be upon him—said: “It is as you intended.”

عَلَيْهِ وَسَلَّمَ - فَقَالَ: مَا أَرَدْتَ؟ قَالَ: وَاحِدَةً، قَالَ: آللَّهِ، قَالَ: آللَّهِ؟ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: هُوَ عَلَى مَا أَرَدْتَ» .

L33804 As for those below him—peace and blessings be upon him—it is transmitted through Shuʿbah’s chain: ʻAṭāʼ ibn al-Sāʼib narrated to us, [that] Abū al-Bakhtarī reported to me from ʻAlī ibn Abī Ṭālib regarding al-battah: “It is three.”

وَأَمَّا مَنْ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَمِنْ طَرِيقِ شُعْبَةَ نا عَطَاءُ بْنُ السَّائِبِ أَخْبَرَنِي أَبُو الْبَخْتَرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِي أَلْبَتَّةَ: هِيَ ثَلَاثٌ.

L33805 And through the chain of ʿAbd al-Razzāq from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, who said regarding al-battah: “It entails three.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّهُ قَالَ فِي أَلْبَتَّةَ: هِيَ ثَلَاثٌ.

L33806 From the transmission of Ibn Wahb, Maslamah ibn Ali informed us from Muhammad ibn al-Walid al-Zubaydi from al-Zuhri, who said: “Whoever irrevocably divorces his wife, she is not lawful for him until she marries another husband.” Al-Zubaydi said: “The successors also stated the same,” and this chain is disconnected.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنَا مَسْلَمَةُ بْنُ عَلِيٍّ عَنْ مُحَمَّدِ بْنِ الْوَلِيدِ الزُّبَيْدِيِّ عَنْ الزُّهْرِيِّ قَالَ: مَنْ بَتَّ امْرَأَتَهُ لَمْ تَحِلَّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ؟ قَالَ الزُّبَيْدِيُّ: وَقَالَ الْخُلَفَاءُ مِثْلَ ذَلِكَ - وَهَذَا مُنْقَطِعٌ.

L33807 It has also been narrated to us via a broken chain from ʿUmar ibn al-Khaṭṭāb, Ibn ʿAbbās, al-Qāsim ibn Muḥammad, Rabīʿah, Makḥūl, and al-Ḥasan.

وَرُوِّينَاهُ أَيْضًا مُنْقَطِعًا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَنْ ابْنِ عَبَّاسٍ، وَالْقَاسِمِ بْنِ مُحَمَّدٍ، وَرَبِيعَةَ، وَمَكْحُولٍ، وَالْحَسَنِ.

L33808 None of that is authentic except from ʿAlī and Ibn ʿUmar.

وَلَا يَصِحُّ شَيْءٌ مِنْ ذَلِكَ إلَّا عَنْ عَلِيٍّ، وَابْنِ عُمَرَ.

L33809 It has been authentically reported from al-Zuhri, Qatadah, Urwah ibn al-Zubayr, and Umar ibn Abd al-Aziz—and it is narrated from Saʿid ibn al-Musayyab—and it is the view of Ibn Abi Layla, al-Awzaʿi, and Abu Ubayd. A second opinion. It has been transmitted to us via the chain of Shuʿbah from Abu Ishaq al-Shaybani from Abdullah ibn Shaddad ibn al-Hadi from Umar ibn al-Khattab, who said: “The irrevocable divorce is one, and he is more entitled to it.”

وَصَحَّ عَنْ الزُّهْرِيِّ، وَقَتَادَةَ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْأَوْزَاعِيِّ، وَأَبِي عُبَيْدٍ. وَقَوْلٌ ثَانٍ - رُوِّينَاهُ مِنْ طَرِيقِ شُعْبَةَ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادِ بْنِ الْهَادِي عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: أَلْبَتَّةَ وَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا.

L33810–33812 And through the chain of ʿAbd al-Razzāq: Ibn Jurayj informed us; ʿAmr ibn Dīnār informed me; Muḥammad ibn ʿAbbād ibn Jaʿfar al-Makhzūmī informed me. That al-Muṭṭalib ibn Hantab came to Umar ibn al-Khattab and

said to him: “I said to my wife: ’You are irrevocably divorced.”’ Umar then recited: _“O Prophet, when you divorce women, divorce them during their waiting periods”_ [At-Talaq: 1]. Then he recited: _“And if only they had acted according to what they were admonished, it would have been better for them”_ [An-Nisa: 66]. “The single pronouncement is irrevocable. Return to your wife.”[20]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَخْبَرَنِي مُحَمَّدُ بْنُ عَبَّادِ بْنِ جَعْفَرٍ الْمَخْزُومِيُّ أَنَّ الْمُطَّلِبَ بْنَ حَنْطَبٍ جَاءَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَ لَهُ: إنِّي قُلْت لِامْرَأَتِي: أَنْتِ طَالِقٌ أَلْبَتَّةَ، فَتَلَا عُمَرُ {يَا أَيُّهَا النَّبِيُّ إذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] ثُمَّ تَلَا: {وَلَوْ أَنَّهُمْ فَعَلُوا مَا يُوعَظُونَ بِهِ لَكَانَ خَيْرًا لَهُمْ} [النساء: ٦٦] الْوَاحِدَةُ تَبُتُّ ارْجِعْ إلَى أَهْلِك

L33813 This has been authentically reported from Abān ibn ʿUthmān, Saʿīd ibn Jubayr, Abū Thawr, and Abū Sulaymān, except that Abū Sulaymān said: If he did not intend divorce, it is not a divorce. If he intended two or three, it is one revocable divorce. A third opinion—that he intends, so it becomes what he intended—has been authentically reported from Shurayḥ, and it is the view of Al-Shāfiʿī and his companions.

- وَصَحَّ هَذَا عَنْ أَبَانَ بْنِ عُثْمَانَ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، إلَّا أَنَّ أَبَا سُلَيْمَانَ قَالَ: إنْ لَمْ يَنْوِ طَلَاقًا فَلَيْسَ طَلَاقًا، فَإِنْ نَوَى ثَلَاثًا أَوْ اثْنَتَيْنِ فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ. وَقَوْلٌ ثَالِثٌ - أَنَّهُ يَنْوِي فَيَكُونُ مَا نَوَى - صَحَّ ذَلِكَ عَنْ شُرَيْحٍ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَصْحَابِهِ.

L33814 A fourth opinion - authentically reported from Ibrāhīm al-Nakhaʿī: that “al-battah” (irrevocable divorce) - if he intends it as a single divorce, it counts as a single irrevocable divorce, and if he intends it as three divorces, it counts as three divorces.

وَقَوْلٌ رَابِعٌ - صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ " أَلْبَتَّةَ " إنْ نَوَاهَا طَلْقَةً فَهِيَ وَاحِدَةٌ بَائِنَةٌ، وَإِنْ نَوَاهَا ثَلَاثًا فَهِيَ ثَلَاثٌ.

L33815 The fifth opinion—which is that if he pronounces this to a woman with whom he has consummated the marriage, it counts as three divorces without exception. If he pronounces it to a woman with whom he has not consummated the marriage, it follows his intention: if he intended one, it counts as one; if two, two; if three, three. If he did not specify a number, it counts as three. This is Mālik’s opinion, and this distinction is not known to have been held by any of the early scholars before him—we mean this particular distinction. The sixth opinion—that if he utters this while mentioning divorce, then if he intended one or two divorces, or did not specify a number, it counts as a single irrevocable divorce. If he says, “I intend divorce,” he is not believed. If he says this to her without mentioning divorce, the ruling

وَقَوْلٌ خَامِسٌ - وَهُوَ أَنَّهُ إنْ قَالَ ذَلِكَ لِمَدْخُولٍ بِهَا، فَهِيَ ثَلَاثٌ وَلَا بُدَّ، وَإِنْ قَالَهَا لِغَيْرِ مَدْخُولٍ بِهَا فَهُوَ عَلَى مَا نَوَى: إنْ وَاحِدَةً فَوَاحِدَةٌ، وَإِنْ اثْنَتَيْنِ فَاثْنَتَانِ، وَإِنْ ثَلَاثًا فَثَلَاثٌ - وَإِنْ لَمْ يَنْوِ عَدَدًا فَهِيَ ثَلَاثٌ - وَهُوَ قَوْلُ مَالِكٍ وَلَا يُعْرَفُ هَذَا عَنْ أَحَدٍ مِنْ السَّلَفِ قَبْلَهُ - نَعْنِي هَذَا الْفَرْقَ. وَقَوْلٌ سَادِسٌ - أَنَّهُ إنْ قَالَ ذَلِكَ فِي ذِكْرِ طَلَاقٍ، فَإِنْ نَوَى وَاحِدَةً أَوْ اثْنَتَيْنِ، أَوْ لَمْ يَنْوِ عَدَدًا فَهِيَ وَاحِدَةٌ بَائِنَةٌ، فَإِنْ قَالَ: أَنْوِي طَلَاقًا لَمْ يُصَدَّقْ، فَإِنْ قَالَ لَهَا ذَلِكَ فِي غَيْرِ ذِكْرِ طَلَاقٍ فَكَذَلِكَ سَوَاءً سَوَاءً، إلَّا أَنَّهُ إنْ قَالَ: لَمْ أَنْوِ طَلَاقًا فَصُدِّقَ.

[20] **Qur’an references (L33810):** Qur’an 65:1 (At-Talaq); Qur’an 4:66 (An-Nisa).

applies the same way, except that if he says, “I did not intend divorce,” he is believed.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَأَصْحَابِهِ إِلَّا زُفَرَ بْنَ الْهُذَيْلِ فَإِنَّهُ وَافَقَهُمْ فِي كُلِّ ذَلِكَ، إِلَّا أَنَّهُ قَالَ: إِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ بَائِنَتَانِ.

L33816 This is the opinion of Abū Ḥanīfa and his companions except Zufar ibn al-Hudhayl, for he agreed with them in all of that, except that he said: “If he intends two divorces, then they are two irrevocable divorces.”

قَالَ أَبُو مُحَمَّد: وَقَدْ قُلْنَا وَنَقُولُ: لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا سِيَّمَا فِي أَقْوَالٍ مُخْتَلِفَةٍ لَا بُرْهَانَ عَلَى صِحَّةِ شَيْءٍ مِنْهَا، فَلَمْ يَبْقَ إِلَّا الْآثَارُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: فَأَمَّا الَّتِي مِنْ طَرِيقِ فَاطِمَةَ فَقَدْ بَيَّنَّا قَبْلُ أَنَّهُ قَدْ صَحَّ طَلَاقُ زَوْجِهَا لَهَا كَانَ ثَلَاثًا هَكَذَا، أَوْ آخِرَ ثَلَاثٍ، فَوَجَبَ ضَرُورَةً أَنَّ قَوْلَ مَنْ قَالَ فِي خَبَرِهَا أَلْبَتَّةَ، أَوْ بَتَّ طَلَاقَهَا، أَوْ بَائِنًا أَنَّهُ إِنَّمَا عَنَى مِنْ عِنْدِ نَفْسِهِ آخِرَ ثَلَاثِ طَلْقَاتٍ - فَبَطَلَ التَّعَلُّقُ بِهَا.

L33817–33819 Abū Muḥammad said: We have said and we say: There is no proof in the statement of anyone other than the Messenger of Allah, may Allah bless him and his family and grant him peace. Especially in differing statements where there is no proof validating any of them, nothing remains except the transmitted reports from the Prophet (peace be upon him and his family). As for the report transmitted through Fāṭimah, we previously clarified that her husband’s divorce of her was confirmed as three [acts] in this manner, or as the third and final [act]. It necessarily follows that those who stated in her report “al-battah (as irrevocable),” “he divorced her irrevocably,” or “a Bā’in divorce (irrevocable)” merely intended, from their own perspective, the final one of three pronouncements. Thus, relying on these [statements] as evidence is invalid.

وَأَمَّا حَدِيثُ امْرَأَةِ رِفَاعَةَ فَكَذَلِكَ أَيْضًا -: لِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رِفَاعَةَ الْقُرَظِيَّ طَلَّقَ امْرَأَتَهُ فَجَاءَتْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ: إنَّ رِفَاعَةَ طَلَّقَهَا آخِرَ ثَلَاثِ تَطْلِيقَاتٍ - وَذَكَرَتْ الْخَبَرَ» فَفَسَّرَ عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ مَا أَجْمَلَهُ غَيْرُهُ - وَصَحَّ أَنَّ طَلَاقَهُ لَهَا كَانَ آخِرَ ثَلَاثِ تَطْلِيقَاتٍ.

L33820 As for the ḥadīth concerning the wife of Rifāʿah al-Quraẓī, it is similarly established: As transmitted through the chain of Muslim—ʿAbd ibn Ḥumayd narrated to us, who narrated from ʿAbd al-Razzāq, who narrated from Maʿmar, from al-Zuhrī, from ʿUrwah, from ʿĀ’ishah, the Mother of the Believers—that Rifāʿah al-Quraẓī divorced his wife. She came to the Prophet (peace be upon him) and said, “O Messenger of Allāh, Rifāʿah divorced her as the last of three pronouncements of divorce”—and she relayed the narration. ʿAbd al-Razzāq, via Maʿmar, explained what others had summarized, and it was verified that his divorce of her was the final of three pronouncements of divorce.

ثُمَّ نَظَرْنَا فِي خَبَرِ رُكَانَةَ فَوَجَدْنَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ عَلِيِّ بْنِ يَزِيدَ عَنْ نَافِعٍ عَنْ عُجَيْرٍ - وَكِلَاهُمَا مَجْهُولٌ - وَلَوْ صَحَّ لَقُلْنَا بِهِ مُبَادِرِينَ إلَيْهِ.

L33821 Then we examined the report of Rukānah and found it via the narration of ʿAbd Allāh ibn ʿAlī ibn Yazīd through Nāfiʿ and ʿUjayr—both unknown—and had it been authentic, we would have promptly adhered to it.

L33822 Then we examined the ḥadīth of az-Zubayr ibn Saʿīd and found it weak, for this az-Zubayr is a narrator whose ḥadīths are rejected. Thus, all reliance on

every transmitted report in this matter becomes invalid. It is impermissible to prohibit marital relations for one to whom Almighty Allāh has made it lawful, nor to permit it to one whom Allāh has forbidden it without a Quranic text or a Sunnah - particularly the statements of Mālik and Abū Ḥanīfah, as no one is known to have upheld these two opinions before them.

ثُمَّ نَظَرْنَا فِي حَدِيثِ الزُّبَيْرِ بْنِ سَعِيدٍ فَوَجَدْنَاهُ ضَعِيفًا، وَالزُّبَيْرُ هَذَا مَتْرُوكُ الْحَدِيثِ، فَبَطَلَ التَّعَلُّقُ بِكُلِّ أَثَرٍ فِي هَذِهِ الْمَسْأَلَةِ، وَلَا يَحِلُّ تَحْرِيمُ فَرْجٍ عَلَى مَنْ أَبَاحَهُ اللَّهُ عَزَّ وَجَلَّ لَهُ، وَإِبَاحَتُهُ لِمَنْ حَرَّمَهُ اللَّهُ عَلَيْهِ بِغَيْرِ قُرْآنٍ وَلَا سُنَّةٍ، لَا سِيَّمَا قَوْلُ مَالِكٍ، وَأَبِي حَنِيفَةَ لَا يُعْرَفُ أَحَدٌ قَالَ بِهِمَا قَبْلَهُمَا.

L33823 As for the matter of observing the waiting period: some who care nothing about supporting misguidance by circulating lies fabricated against the Messenger of Allah—peace and blessings be upon him and his household—have claimed that the Messenger of Allah—peace and blessings be upon him and his household—said to Sawdah, the Mother of the Believers: "Observe your waiting period," so it was a divorce, after which he took her back.

وَأَمَّا اعْتِدِّي - فَإِنَّ بَعْضَ مَنْ لَا يُبَالِي بِنَصْرِ ضَلَالَةٍ بِأَنْ يُورِدَ الْكَذِبَ الْمُفْتَرَى عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ ادَّعَى «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِسَوْدَةَ أُمِّ الْمُؤْمِنِينَ: اعْتَدِّي، فَكَانَ طَلَاقًا ثُمَّ رَاجَعَهَا» .

L33824 Abu Muhammad said: This is a fabricated falsehood. It has never been authentically established that the Messenger of Allah—may Allah bless him and his household and grant him peace—divorced any of his wives except Hafsa alone, then he reconciled with her. As for Sawda—no—the only report concerning her is that she gave her day and night—when she grew old—to Aisha—may Allah be pleased with her.

قَالَ أَبُو مُحَمَّد: وَهَذَا كَذِبٌ مَوْضُوعٌ مَا صَحَّ قَطُّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - طَلَّقَ امْرَأَةً مِنْ نِسَائِهِ إلَّا حَفْصَةَ فَقَطْ ثُمَّ رَاجَعَهَا، وَأَمَّا سَوْدَةُ فَلَا إنَّمَا جَاءَ فِيهَا: أَنَّهَا وَهَبَتْ يَوْمَهَا وَلَيْلَتَهَا - لَمَّا أَسَنَّتْ - لِعَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -.

L33825 And it was reported that he—peace and blessings be upon him—intended to divorce her. When she pleaded with him—peace and blessings be upon him—to keep her and would give her day and night to ʿĀ'isha, he did not divorce her.

وَجَاءَ - أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَرَادَ فِرَاقَهَا؟ فَلَمَّا رَغِبَتْ إلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي إمْسَاكِهَا وَتَجْعَلُ يَوْمَهَا وَلَيْلَتَهَا لِعَائِشَةَ لَمْ يُفَارِقْهَا.

L33826–33827 There remained those below him—peace and blessings be upon him—: it was reported from Ibn Masʿūd that it constitutes one *ṭalāq*.

فَبَقِيَ مَنْ دُونَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: فَذُكِرَ عَنْ ابْنِ مَسْعُودٍ أَنَّهَا طَلْقَةٌ.

L33828 This has also been authentically reported from Ibrāhīm, Makhūl, and al-Awzāʿī; and it is authentically reported from ʿAṭā' that this counts as a valid divorce.

وَصَحَّ هَذَا أَيْضًا عَنْ إبْرَاهِيمَ، وَمَكْحُولٍ، وَالْأَوْزَاعِيِّ - وَصَحَّ عَنْ عَطَاءٍ: أَنَّهُ طَلَاقٌ.

L33829 It is authentically reported from Qatādah that it constitutes a single divorce. If he repeats it three times, it counts as three divorces unless he states: "I intended to make it clear to her," in which case it is as he stated. And it is narrated from Ash-Shaʿbī: It counts as one divorce, even if he intended

وَصَحَّ عَنْ قَتَادَةَ أَنَّهَا طَلْقَةٌ وَاحِدَةٌ، فَإِنْ كَرَّرَهَا ثَلَاثَ مَرَّاتٍ فَهِيَ ثَلَاثُ تَطْلِيقَاتٍ، إلَّا أَنْ يَقُولَ: أَرَدْت إفْهَامَهَا، فَهُوَ كَمَا قَالَ - وَرُوِيَ عَنْ الشَّعْبِيِّ: هِيَ وَاحِدَةٌ، نَوَى ثَلَاثًا

three or fewer than three. From Al-Hasan: If he says, “You are divorced. Observe your waiting period,” it constitutes two divorces unless he intends one. Qatādah would deem it exactly two divorces.

أَوْ أَقَلَّ - وَعَنْ الْحَسَنِ إنْ قَالَ: أَنْتِ طَالِقٌ اعْتَدِّي؟ فَهِيَ اثْنَتَانِ، إلَّا أَنْ يَنْوِيَ وَاحِدَةً - وَكَانَ قَتَادَةُ يَجْعَلُهَا اثْنَتَيْنِ.

L33830 Abu Hanifa said: If he intended divorce by his statement “Count your waiting period,” then it is a divorce. If he says, “I did not intend divorce,” and this occurred neither in anger nor in a situation where divorce is mentioned, he is believed. However, if it was during a discussion of divorce or in anger, he is disbelieved, and one revocable divorce is binding upon him—whether he said, “I did not intend divorce,” or said, “I intended [divorce] without a specific number,” or said, “I intended a revocable divorce,” or said, “I intended an irrevocable divorce,” or said, “I intended two revocable divorces,” or said, “I intended two irrevocable divorces,” or said, “I intended three divorces.”

وَقَالَ أَبُو حَنِيفَةَ: إنْ نَوَى بِقَوْلِهِ: اعْتَدِّي، طَلَاقًا فَهُوَ طَلَاقٌ، وَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا، فَإِنْ كَانَ فِي غَيْرِ غَضَبٍ، وَفِي غَيْرِ ذَلِكَ طَلَاقٌ صُدِّقَ، وَإِنْ كَانَ فِي ذِكْرِ طَلَاقٍ أَوْ فِي غَضَبٍ لَمْ يُصَدَّقْ وَلَزِمَتْهُ طَلْقَةٌ وَاحِدَةٌ رَجْعِيَّةٌ، سَوَاءٌ قَالَ: لَمْ أَنْوِ طَلَاقًا أَوْ قَالَ: نَوَيْت بِلَا عَدَدٍ، أَوْ قَالَ: نَوَيْت طَلْقَةً رَجْعِيَّةً، أَوْ قَالَ: نَوَيْت بَائِنَةً، أَوْ قَالَ: نَوَيْت طَلْقَتَيْنِ رَجْعِيَّتَيْنِ، أَوْ قَالَ: نَوَيْت طَلْقَتَيْنِ بَائِنَتَيْنِ، أَوْ قَالَ: نَوَيْت ثَلَاثًا.

L33831 They said: If he says to her, “Observe the waiting period, observe the waiting period, observe the waiting period?” If he states, “I intended one divorce,” or says, “I did not intend anything,” it is inevitably three. If he says, “I intended the first as a divorce, and intended the two subsequent declarations to refer to menstrual periods,” he is believed. They said: If he says, “Observe three waiting periods,” his intention is scrutinized. If he says, “I intended one divorce for which she observes three menstrual periods,” he is believed.

قَالُوا: فَإِنْ قَالَ لَهَا: اعْتَدِّي اعْتَدِّي اعْتَدِّي؟ فَإِنْ قَالَ: نَوَيْت طَلْقَةً وَاحِدَةً، أَوْ قَالَ: لَمْ أَنْوِ شَيْئًا - فَهِيَ ثَلَاثٌ وَلَا بُدَّ، وَإِنْ قَالَ: نَوَيْت بِالْأُولَى طَلَاقًا، وَنَوَيْت بِالِاثْنَتَيْنِ الْحَيْضَ صُدِّقَ - قَالُوا فَإِنْ قَالَ: اعْتَدِّي ثَلَاثًا، سُئِلَ عَنْ نِيَّتِهِ، فَإِنْ قَالَ: نَوَيْت وَاحِدَةً تَعْتَدُّ لَهَا ثَلَاثَ حِيَضٍ صُدِّقَ.

L33832 Abu Muhammad said: These are divine statutes that are not accepted from anyone except the Messenger of Allah—may Allah bless him and his family and grant him peace—as conveyed from Allah the Exalted, who is not questioned about what He does. As for anyone beyond him, these are deviations, sinister whispers, and mockery—and we seek refuge in Allah from abandonment! Moreover, these very corrupt classifications were not transmitted from any predecessor before Abu Hanifah.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ شَرَائِعُ لَا تُقْبَلُ مِنْ أَحَدٍ إلَّا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عَنْ اللَّهِ تَعَالَى الَّذِي لَا يُسْأَلُ عَمَّا يَفْعَلُ، وَأَمَّا مَنْ دُونَهُ فَهِيَ ضَلَالَاتٌ وَوَسَاوِسُ وَتَلَاعُبٌ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ؟ مَعَ أَنَّ هَذِهِ التَّقَاسِيمَ الْفَاسِدَةَ لَمْ تُحْفَظْ عَنْ أَحَدٍ سَلَفَ قَبْلَ أَبِي حَنِيفَةَ.

L33833 Malik said: If a man says to his wife, “Observe the waiting period,” he must intend. If he says, “I did not intend a divorce,” his claim is not accepted, and a revocable divorce becomes binding on him. Similarly, if he intended a divorce without specifying a number—if he says, “I intended two divorces,” then it is two divorces; if he says, “I intended three divorces,” then it is three divorces. This is also a classification not known from anyone before him.

وَقَالَ مَالِكٌ: إنْ قَالَ لِامْرَأَتِهِ: اعْتَدِّي؟ فَإِنَّهُ يَنْوِي فَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا لَمْ يُصَدَّقْ وَلَزِمَتْهُ طَلْقَةٌ رَجْعِيَّةٌ - وَكَذَلِكَ إنْ نَوَى طَلَاقًا بِغَيْرِ عَدَدٍ، فَإِنْ قَالَ: نَوَيْت اثْنَتَيْنِ فَهِيَ اثْنَتَانِ، وَإِنْ قَالَ: نَوَيْت ثَلَاثًا فَهِيَ ثَلَاثٌ - وَهَذَا أَيْضًا تَقْسِيمٌ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ،

Since there is no established precedent from the Messenger of Allah—peace and blessings be upon him and his family—regarding this matter, it is impermissible to invalidate a valid marriage, declare her private part forbidden, or make it lawful through unsound opinions lacking textual evidence. And success is from Allah, the Most High.

فَإِذْ لَيْسَ فِي هَذَا أَثَرٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَلَا يَحِلُّ إبْطَالُ نِكَاحٍ صَحِيحٍ وَتَحْرِيمُ فَرْجٍ وَإِحْلَالُهُ بِآرَاءٍ فَاسِدَةٍ بِغَيْرِ نَصٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33834–33836 As for the terms accompanied by narrations from the Companions – may Allah be pleased with them – but not from the Prophet – peace and blessings of Allah be upon him and his family – They are: the declaration of freedom (khaliyyah), as in "I have freed myself from you," and the mutual separation (bariyyah), as in "I have severed ties with you," and you are absolved, "your rope is upon your back," the constrained divorce (haraj), the option (takhyir), the delegation (tamlik), and "I have bestowed [the choice] upon you." As for the prohibition (tahrim), the option (takhyir), the delegation (tamlik), and "I have bestowed upon you," we have mentioned these. We shall now mention the remaining types here—if Allah the Exalted wills. Among them is the khaliyyah: it has been narrated to us through the chain of Abdullah ibn Ahmad ibn Hanbal, from his father, from Muhammad ibn Ja'far, from Shu'bah, from 'Ata' ibn al-Sa'ib, from Abu al-Bakhtari, from 'Ali ibn Abi Talib, who said concerning the khaliyyah: "It comprises three types."

وَأَمَّا الْأَلْفَاظُ الَّتِي فِيهَا آثَارٌ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَهِيَ: الْخَلِيَّةُ، وَقَدْ خَلَوْت مِنِّي، وَالْبَرِيَّةُ وَقَدْ بَارَأْتُك، وَأَنْتِ مُبْرَأَةٌ، وَحَبْلُك عَلَى غَارِبِك، وَالْحَرَجُ، وَالتَّخْيِيرُ، وَالتَّمْلِيكُ، وَقَدْ وَهَبْتُك -: فَأَمَّا التَّحْرِيمُ وَالتَّخْيِيرُ وَالتَّمْلِيكُ وَقَدْ وَهَبْتُك، فَقَدْ ذَكَرْنَاهَا وَنَذْكُرُ الْبَوَاقِيَ هَاهُنَا - إنْ شَاءَ اللَّهُ تَعَالَى -: فَمِنْ ذَلِكَ: الْخَلِيَّةُ - رُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ أَبِيهِ عَنْ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ فِي الْخَلِيَّةِ: إنَّهَا ثَلَاثٌ.

L33837 And through the chain of Ḥammād ibn Salamah from 'Ubayd Allāh ibn 'Umar from Nāfi' from Ibn 'Umar, he said regarding the *khaliyyah*: "It is three [divorces]" — and this is the opinion of Ibn Abī Laylā and Abū 'Ubayd. Another opinion — as narrated through the chain of 'Abd al-Razzāq from Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakha'ī — states that 'Umar ibn al-Khaṭṭāb said regarding the *khaliyyah*: "It is one [divorce], and he retains the right to revoke it."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ فِي الْخَلِيَّةِ: إنَّهَا ثَلَاثٌ - وَهَذَا قَوْلُ ابْنِ أَبِي لَيْلَى، وَأَبِي عُبَيْدٍ. وَقَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْخَلِيَّةِ: هِيَ وَاحِدَةٌ وَهُوَ أَحَقُّ بِهَا.

L33838 It is authentically narrated from al-Zuhri and Qatāda that they both stated regarding *khul'* and the phrase "you have become free of me" that these constitute a single irrevocable divorce. This is also narrated from al-Ḥasan and ʿAṭāʾ, and it is the opinion of Abū Thawr.

وَصَحَّ عَنْ الزُّهْرِيِّ وَقَتَادَةَ أَنَّهُمَا قَالَا جَمِيعًا فِي الْخَلِيَّةِ، وَخَلَوْت عَنِّي: هِيَ وَاحِدَةٌ رَجْعِيَّةٌ - وَصَحَّ عَنْ الْحَسَنِ أَيْضًا، وَعَنْ عَطَاءٍ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ.

L33839 A third legal opinion—as we were narrated through Hammad ibn Salamah's chain from Marwan al-Asfar, who said: A man told his wife, "If you leave the house, you are divorced." She left, so Mu'āwiyah ibn Abī Sufyān annulled

their marriage. This constituted only an annulment, with no mention of it being a formal divorce.

وَقَوْلٌ ثَالِثٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مَرْوَانَ الْأَصْفَرِ قَالَ: قَالَ رَجُلٌ لِامْرَأَتِهِ: إنْ خَرَجْت فَأَنْتِ خَلِيَّةٌ، فَخَرَجَتْ: فَفَرَّقَ مُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ بَيْنَهُمَا - فَهَذَا تَفْرِيقٌ فَقَطْ وَلَمْ يَذْكُرْ أَنَّهُ طَلَاقٌ.

L33840 And a fourth opinion—as we have been narrated through the chain of Ḥammād ibn Salamah from Ziyād al-Aʿlam from al-Ḥasan, who said regarding al-khalīyah: He said, “It is a single irrevocable.”

وَقَوْلٌ رَابِعٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ زِيَادٍ الْأَعْلَمِ عَنْ الْحَسَنِ قَالَ فِي الْخَلِيَّةِ، قَالَ: هِيَ وَاحِدَةٌ بَائِنَةٌ.

L33841 A fifth opinion—authentically reported from Ibrāhīm al-Nakhaʿī—is that he said: Our companions used to say: In a khulʿ divorce, if one intends a single [declaration], it counts as a single irrevocable divorce (bā’in); and if one intends three, then three are effected.

وَقَوْلٌ خَامِسٌ - صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: كَانَ أَصْحَابُنَا يَقُولُونَ: الْخَلِيَّةُ إنْ نَوَى وَاحِدَةً فَهِيَ وَاحِدَةٌ بَائِنَةٌ - وَإِنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ.

L33842 From the chain of Wakiʿ, from al-Ḥasan ibn Ḥayy, from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʿī, who said regarding the non-pregnant ewe: “If two are vowed, they count as two.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْحَسَنِ بْنِ حَيٍّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ فِي الْخَلِيَّةِ: إنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ.

L33843 It has been authentically reported from Shuraih that he said: “He judges. If he intends one, it is a single irrevocable ruling.”

وَصَحَّ عَنْ شُرَيْحٍ أَنَّهُ قَالَ: يَدِينُ، فَإِنْ نَوَى وَاحِدَةً فَهِيَ وَاحِدَةٌ بَائِنَةٌ.

L33844–33846 It is authentically reported from ‘Aṭā’ that he said: “Whether you declare, ‘You are free’ or ‘You have been freed from me,’ it is equivalent. This is the established Sunnah. No sin is incurred.” It is a divorce—and it is authentically reported from Amr ibn Dinar that “it is only one, and he is bound by it religiously”—whether he intended divorce or did not intend it.

وَصَحَّ عَنْ عَطَاءٍ أَنَّهُ قَالَ: أَنْتِ خَلِيَّةٌ، أَوْ خَلَوْت مِنِّي سَوَاءٌ، هِيَ سُنَّةٌ، لَا يَدِينُ، وَهِيَ طَلَاقٌ - وَصَحَّ عَنْ عَمْرِو بْنِ دِينَارٍ: إنَّمَا هِيَ وَاحِدَةٌ وَيَدِينُ - نَوَى طَلَاقًا أَوْ لَمْ يَنْوِ.

L33847 From Marwān and ʿUmar ibn ʿAbd al-ʿAzīz: that one forms the intention and becomes bound by what one intends—and this is the position of al-Shāfiʿī and Isḥāq ibn Rāhwayh. A sixth opinion—narrated from Rabīʿah regarding al-khaliyyah—is that it entails three pronouncements in the case of a consummated marriage and one pronouncement in the case of a non-consummated marriage.

وَعَنْ مَرْوَانَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّهُ يَنْوِي وَيَلْزَمُهُ مَا نَوَى - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ. وَقَوْلٌ سَادِسٌ - رُوِيَ عَنْ رَبِيعَةَ فِي الْخَلِيَّةِ أَنَّهَا ثَلَاثٌ فِي الْمَدْخُولِ بِهَا، وَفِي غَيْرِ الْمَدْخُولِ بِهَا وَاحِدَةٌ.

L33848 The seventh opinion—stated by Mālik—is that the waiting period for a woman in a consummated marriage must be three cycles without exception, while for a woman in a non-consummated marriage: if he intended three

cycles, it is three; if he intended two, it is two; and if he intended one, it is one. This classification was not known from anyone before him.

وَقَوْلٌ سَابِعٌ - قَالَهُ مَالِكٌ، وَهُوَ أَنَّ الْخَلِيَّةَ فِي الْمَدْخُولِ بِهَا ثَلَاثٌ وَلَا بُدَّ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا إنْ نَوَى ثَلَاثًا فَثَلَاثٌ، وَإِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ، وَإِنْ نَوَى وَاحِدَةً فَوَاحِدَةٌ - وَلَا يُعْرَفُ هَذَا التَّقْسِيمُ عَنْ أَحَدٍ قَبْلَهُ.

L33849 The eighth opinion—held by Abū Ḥanīfah, his companions, and Sufyān al-Thawrī—states: If one intends three divorces through al-khalīyah, it is three. However, if one intends one or two, it is a single irrevocable divorce (bāʾin) only.

وَقَوْلٌ ثَامِنٌ - قَالَهُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَسُفْيَانُ الثَّوْرِيُّ: إنْ نَوَى بِالْخَلِيَّةِ ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ نَوَى وَاحِدَةً أَوْ اثْنَتَيْنِ فَهِيَ وَاحِدَةٌ بَائِنَةٌ فَقَطْ.

L33850 Abu Hanifa and his companions said: If a man declares, "I did not intend a divorce," then if he said this in the context of mentioning divorce, he is not believed and one irrevocable divorce becomes binding upon him. And if he made this declaration in a context unrelated to mentioning divorce, he is believed—whether it was not in anger or in anger.

قَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: فَإِنْ قَالَ: لَمْ أَنْوِ طَلَاقًا، فَإِنْ كَانَ فِي ذِكْرِ طَلَاقٍ لَمْ يُصَدَّقْ وَلَزِمَتْهُ وَاحِدَةٌ بَائِنَةٌ، وَإِنْ كَانَ فِي غَيْرِ ذِكْرِ طَلَاقٍ صُدِّقَ - سَوَاءٌ كَانَ فِي غَيْرِ غَضَبٍ أَوْ فِي غَضَبٍ.

L33851 Abu Muhammad said: Among the abominations are his differentiating between anger and non-anger, and his once equating the two - all of which was not known from anyone before him.

قَالَ أَبُو مُحَمَّدٍ: إنَّ مِنْ الشُّنْعِ تَفْرِيقَهُ بَيْنَ الْغَضَبِ وَغَيْرِ الْغَضَبِ، وَتَسْوِيَتِهِ مَرَّةً بَيْنَهُمَا - وَهَذَا كُلُّهُ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ.

L33852 We have stated: Prohibiting what is permitted in marital relations or permitting what is prohibited is not permissible for anyone without a Quranic text or a Sunnah from the Messenger of Allah—may Allah bless him and his family and grant him peace.

وَقَدْ قُلْنَا: إنَّ تَحْرِيمَ الْفُرُوجِ الْمُحَلَّلَةِ وَتَحْلِيلَ الْفُرُوجِ الْمُحَرَّمَةِ: لَا يَحِلُّ لِأَحَدٍ بِغَيْرِ نَصِّ قُرْآنٍ أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L33853 As for *al-bariyyah* (a juristic divorce oath): "You are absolved from me, we have mutually parted, and I am free from me"—it was narrated to us through the chain of ʿAbdullāh ibn Aḥmad ibn Ḥanbal from his father, from Muḥammad ibn Jaʿfar, from Shuʿbah, from ʿAṭāʾ ibn al-Sāʾib, from Abū al-Bakhtarī, from ʿAlī ibn Abī Ṭālib that he said regarding *al-bariyyah*: "It entails three [declarations]."

وَأَمَّا الْبَرِيَّةُ، وَأَنْتِ مُبْرَأَةٌ مِنِّي، وَقَدْ بَارَأْتُك، وَقَدْ بَرِئْت مِنِّي: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ عَنْ أَبِيهِ عَنْ مُحَمَّدِ بْنِ جَعْفَرٍ عَنْ شُعْبَةَ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِي الْبَرِيَّةِ: هِيَ ثَلَاثٌ.

L33854 Narrated via the chain of Hammad ibn Salamah, from Ubayd Allah ibn Umar, from Nafiʾ, from Ibn Umar: He said regarding wild animals, "There are three types."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّهُ قَالَ فِي الْبَرِيَّةِ: هِيَ ثَلَاثٌ.

- وَمِنْ طَرِيقِ قَتَادَةَ عَنْ الْحَسَنِ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: الْبَرِيَّةُ ثَلَاثٌ.

L33855 And from the chain of Qatadah, from Al-Hasan, from Zayd ibn Thabit, who said: Oaths are of three types.

وَصَحَّ عَنْ قَتَادَةَ، وَالزُّهْرِيِّ: أَنَّ الْبَرِيَّةَ ثَلَاثٌ.

L33856 It has been authentically reported from Qatadah and Az-Zuhri that creation comprises three categories.

وَصَحَّ عَنْ الْحَسَنِ أَيْضًا - فَفَرَّقَ الزُّهْرِيُّ، وَقَتَادَةُ بَيْنَ الْخَلِيَّةِ وَبَيْنَ الْبَرِيَّةِ كَمَا ذَكَرْنَا.

L33857–33858 It has also been authentically reported from Al-Ḥasan that Az-Zuhri and Qatādah differentiated between free-ranging and wild animals, as mentioned previously.

وَهُوَ قَوْلُ ابْنِ وَهْبٍ صَاحِبُ مَالِكٍ.

L33859 And this is the statement of Ibn Wahb, the companion of Malik.

وَقَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الْبَرِيَّةِ: هِيَ وَاحِدَةٌ، وَهُوَ أَحَقُّ بِهَا - وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ: أَنَّ الْبَرِيَّةَ وَاحِدَةٌ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا، وَبَعْضِ أَصْحَابِ مَالِكٍ.

L33860 A second opinion, as reported to us via the chain of Wakīʿ from Sufyān al-Thawrī from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī: that ʿUmar ibn al-Khaṭṭāb ruled concerning barren land: It is considered a single unit, and the claimant holds the strongest entitlement to it. We also received reports from Ibn ʿAbbās that barren land constitutes a single unit. This is the position of Abū Thawr, Abū Sulaymān, our school's scholars, and some Mālikī jurists.

وَقَوْلٌ ثَالِثٌ - صَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: كَانَ أَصْحَابُنَا يَقُولُونَ فِي الْبَرِيَّةِ: هِيَ وَاحِدَةٌ بَائِنَةٌ.

L33861 A third opinion—it has been authentically reported from Ibrāhīm al-Nakhaʿī that he said: "Our companions used to say regarding the wilderness: It is one irrevocable divorce."

وَقَوْلٌ رَابِعٌ - كَمَا رُوِّينَا صَحِيحًا عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ أَصْحَابُنَا يَقُولُونَ فِي الْبَرِيَّةِ: إنْ نَوَى ثَلَاثًا فَثَلَاثٌ، وَإِنْ نَوَى وَاحِدَةً فَوَاحِدَةٌ بَائِنَةٌ - وَصَحَّ عَنْ إبْرَاهِيمَ أَيْضًا - وَإِنْ نَوَى اثْنَتَيْنِ فَاثْنَتَانِ - وَهُوَ قَوْلُ الشَّعْبِيِّ، وَعَطَاءٍ، وَعَمْرِو بْنِ دِينَارٍ، وَالشَّافِعِيِّ.

L33862 A fourth opinion—as we have authentically reported from Ibrāhīm al-Nakhaʿī, who said: "Our companions ruled regarding the wilderness: If he intends three, then three; if he intends one, then one final divorce." It is also authentically reported from Ibrāhīm: "If he intends two, then two." This is the opinion of al-Shaʿbī, ʿAṭāʾ, ʿAmr ibn Dīnār, and al-Shāfiʿī.

وَقَوْلٌ خَامِسٌ - قَالَهُ رَبِيعَةُ فِي الْمَدْخُولِ بِهَا ثَلَاثٌ وَلَا بُدَّ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا وَاحِدَةٌ.

L33863 A fifth opinion, stated by Rabiʿah, is that for the consummated woman three are obligatory, and for the unconsummated woman, one.

L33864 A sixth opinion—stated by Mālik regarding a bride not yet secluded: For a consummated wife, three [divorce declarations] are necessarily required,

and for a non-consummated wife, one, unless the husband intends a greater number, in which case the number he intended applies.

وَقَوْلٌ سَادِسٌ - قَالَهُ مَالِكٌ فِي الْبَرِيَّةِ: فِي الْمَدْخُولِ بِهَا ثَلَاثٌ وَلَا بُدَّ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا وَاحِدَةٌ، إلَّا أَنْ يَنْوِيَ أَكْثَرَ فَيَكُونَ مَا نَوَى.

L33865 The seventh opinion—held by Abū Ḥanīfah and his companions except Zufar and Sufyān al-Thawrī—is that if one intends three divorces, they are counted as three. But if one intends one revocable divorce or one irrevocable divorce, or two revocable divorces or two irrevocable divorces, then it is deemed a single irrevocable divorce and no more.

وَقَوْلٌ سَابِعٌ - قَالَهُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ - إلَّا زُفَرُ، وَسُفْيَانُ الثَّوْرِيُّ: إنْ نَوَى ثَلَاثًا فَهِيَ ثَلَاثٌ، وَإِنْ نَوَى وَاحِدَةً رَجْعِيَّةً، أَوْ بَائِنَةً، أَوْ اثْنَتَيْنِ رَجْعِيَّتَيْنِ، أَوْ بَائِنَتَيْنِ، فَهِيَ وَاحِدَةٌ بَائِنَةٌ لَا أَكْثَرَ.

L33866 Abu Hanifa and his companions stated: If a man says, "I did not intend divorce," his statement is not accepted if made within the context of divorce. If it occurs outside such a context, his statement is accepted—whether he was in a state of anger or not.

قَالَ أَبُو حَنِيفَةَ: وَأَصْحَابُهُ: إنْ قَالَ: لَمْ أَنْوِ طَلَاقًا، فَإِنْ كَانَ فِي ذِكْرِ طَلَاقٍ لَمْ يُصَدَّقْ، فَإِنْ كَانَ فِي غَيْرِ ذِكْرِ طَلَاقٍ فَهُوَ مُصَدَّقٌ - سَوَاءٌ كَانَ ذَلِكَ فِي ذِكْرِ غَضَبٍ أَوْ فِي غَيْرِ ذِكْرِ غَضَبٍ.

L33867 Zufar similarly said, except that he stated: And if one intends two [acts], then they are two separate acts.

وَقَالَ زُفَرُ كَذَلِكَ، إلَّا أَنَّهُ قَالَ: وَإِنْ نَوَى اثْنَتَيْنِ فَهِيَ اثْنَتَانِ بَائِنَتَانِ.

L33868–33870 Abu Muhammad said: We do not know of any statement by Malik and Abu Hanifah attributed to anyone before them, nor is there any proof in... anyone other than the Messenger of Allah (may Allah bless him and his family and grant him peace), and they apply the same ruling to the phrases "al-bariyyah" and "I have irrevocably divorced you, and you are irrevocably divorced," except in a narration reported from Ibn al-Qasim, the disciple of Malik, for he said: "Whoever says, 'I have divorced you,' it constitutes a single irrevocable divorce for a wife whose marriage has been consummated."

قَالَ أَبُو مُحَمَّدٍ: لَا نَعْلَمُ قَوْلَ مَالِكٍ، وَأَبِي حَنِيفَةَ عَنْ أَحَدٍ قَبْلَهُمَا، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَسَوَاءٌ عِنْدَهُمْ " الْبَرِيَّةُ، وَقَدْ بَارَأْتُك، وَأَنْتِ مُبْرَأَةٌ " إلَّا رِوَايَةً عَنْ ابْنِ الْقَاسِمِ صَاحِبِ مَالِكٍ، فَإِنَّهُ قَالَ: مَنْ قَالَ: قَدْ بَارَأْتُك، فَهِيَ وَاحِدَةٌ بَائِنَةٌ فِي الْمَدْخُولِ بِهَا.

L33871 Abu Muhammad said: It is not permissible to prohibit a lawful sexual union decreed by Allah, the Mighty and Majestic, nor to permit a union forbidden by the decree of Allah, the Exalted, without a scriptural text—and success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: لَا يَحِلُّ تَحْرِيمُ فَرْجٍ مُحَلَّلٍ بِحُكْمِ اللَّهِ عَزَّ وَجَلَّ، وَتَحْلِيلُ فَرْجٍ مُحَرَّمٍ بِحُكْمِهِ تَعَالَى بِغَيْرِ نَصٍّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33872 As for al-ḥaraj, it is established from ʿAlī that he said: If a man says, "You are divorced with a divorce under compulsion," then it counts as three divorces.

وَأَمَّا الْحَرَجُ - فَصَحَّ عَنْ عَلِيٍّ أَنَّهُ قَالَ: إذَا قَالَ: أَنْتِ طَالِقٌ طَلَاقَ الْحَرَجِ فَهِيَ ثَلَاثٌ.

L33873 And it has been authenticated: from al-Ḥasan as well as from al-Zuhrī in one of his two opinions.

وَصَحَّ - عَنْ الْحَسَنِ أَيْضًا، وَعَنْ الزُّهْرِيِّ فِي أَحَدِ قَوْلَيْهِ.

L33874 And a second opinion – from Umar ibn al-Khattab: “It is one” – and it is one of the two opinions of al-Zuhri.

وَقَوْلٌ ثَانٍ - عَنْ عُمَرَ بْنِ الْخَطَّابِ: هِيَ وَاحِدَةٌ - وَهُوَ أَحَدُ قَوْلَيْ الزُّهْرِيِّ.

L33875 A third view—Sufyān al-Thawrī said: “His intention is his own”—and this is the view of Isḥāq ibn Rāhawayh.

وَقَوْلٌ ثَالِثٌ - قَالَ سُفْيَانُ الثَّوْرِيُّ: لَهُ نِيَّتُهُ - وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ.

L33876 Abu Muhammad said, “We have stated that there is no binding authority for anyone other than the Messenger of Allah (peace be upon him).”

قَالَ أَبُو مُحَمَّدٍ: قَدْ قُلْنَا: إنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L33877 As for the phrase “your obligation is upon your own shoulders” - it was narrated to us from Mālik that ʿUmar ordered a man from Iraq to be brought to Mecca. The man had said to his wife: “Your obligation is upon your own shoulders (meaning separation).” ʿUmar made him swear an oath near the Kaaba, demanding: “What did you intend?” The man replied: “I intended separation.” ʿUmar then declared: “Then it shall be as you intended.” This ruling encompassed three aspects: the first was the swearing of the oath.

وَأَمَّا حَبْلُك عَلَى غَارِبِك - فَرُوِّينَا عَنْ مَالِكٍ: أَنَّ عُمَرَ كَتَبَ: أَنْ يُجْلَبَ إلَى مَكَّةَ رَجُلٌ مِنْ الْعِرَاقِ قَالَ لِامْرَأَتِهِ: حَبْلُك عَلَى غَارِبِك، فَأَحْلَفَهُ عِنْدَ الْكَعْبَةِ: مَاذَا أَرَادَ؟ فَقَالَ: أَرَدْت الْفِرَاقَ، فَقَالَ لَهُ عُمَرُ: فَهُوَ مَا أَرَدْت - فَجَمَعَ هَذَا الْحُكْمُ ثَلَاثَةَ أَوْجُهٍ -: أَحَدُهَا - التَّحْلِيفُ.

L33878 And the second is its procurement from Iraq to Makkah.

وَالثَّانِي - الِاسْتِجْلَابُ فِيهِ مِنْ الْعِرَاقِ إلَى مَكَّةَ.

L33879 The third principle—that it is according to what one intends—and we have received narrations from Ali that this is the case.

وَالثَّالِثُ - أَنَّهُ عَلَى مَا نَوَى - وَرُوِّينَا عَنْ عَلِيٍّ أَنَّهُ عَلَى مَا نَوَى.

L33880 A second opinion—stated by Mālik: “Your rope is on your camel’s hump”—prescribes three waiting periods for a consummated marriage and none for a non-consummated marriage. This ruling is not known from anyone before him.

وَقَوْلٌ ثَانٍ - قَالَهُ مَالِكٌ: حَبْلُك عَلَى غَارِبِك، فِي الْمَدْخُولِ بِهَا ثَلَاثٌ، وَفِي غَيْرِ الْمَدْخُولِ بِهَا وَاحِدَةٌ - وَلَا يُعْرَفُ هَذَا عَنْ أَحَدٍ قَبْلَهُ.

L33881 As for the expressions not transmitted from any Companion among the Companions—may Allah be pleased with them—but rather reported in statements by certain Successors, we shall mention what Allah the Exalted has made easy to mention, if Allah, the Exalted and Majestic, wills. Among these is the declaration “I have emancipated you.” It has been reported to us from ʿAṭāʾ: If he intended divorce, it constitutes divorce; otherwise, it is nothing.

وَأَمَّا الْأَلْفَاظُ الَّتِي لَمْ تَأْتِ مِنْهَا لَفْظَةٌ عَنْ صَاحِبٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَإِنَّمَا جَاءَ فِيهَا أَقْوَالٌ عَنْ نَفَرٍ مِنْ التَّابِعِينَ، فَنَذْكُرُ مِنْهَا مَا يَسَّرَ اللَّهُ تَعَالَى لِذِكْرِهِ إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ -: فَمِنْهَا - قَدْ أَعْتَقْتُك، فَرُوِّينَا عَنْ عَطَاءٍ: إنْ نَوَى الطَّلَاقَ فَهُوَ طَلَاقٌ، وَإِلَّا فَلَيْسَ شَيْئًا -.

L33882–33883 It is authentically reported from Al-Hasan concerning one who says to his wife, “You are divorced,” that he said: It constitutes one irrevocable divorce.

وَصَحَّ عَنْ الْحَسَنِ فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ عَتِيقَةٌ، قَالَ: هِيَ وَاحِدَةٌ -.

L33884 Qatadah said: Whoever says to her, “You are free,” his intention is binding.

وَقَالَ قَتَادَةُ: مَنْ قَالَ لَهَا: أَنْتِ حُرَّةٌ فَلَهُ مَا نَوَى.

L33885 As for the statement, “I have permitted you, so marry?” it has been reliably transmitted from Ibrāhīm that it is baseless.

وَأَمَّا - قَدْ أَذِنْت لَك فَتَزَوَّجِي؟ فَصَحَّ عَنْ إبْرَاهِيمَ أَنَّهُ لَيْسَ بِشَيْءٍ.

L33886 It has also been authentically reported from him: If he did not intend a divorce, then it is invalid.

وَصَحَّ عَنْهُ أَيْضًا: إنْ لَمْ يَنْوِ طَلَاقًا فَلَيْسَ بِشَيْءٍ.

L33887 On the authority of Al-Shaʿbī: Even less than this is considered a divorce.

وَعَنْ الشَّعْبِيِّ: أَقَلُّ مِنْ هَذَا يَكُونُ طَلَاقًا.

L33888 It is authentically reported from Qatādah that this constitutes a single pronouncement of divorce.

وَصَحَّ عَنْ قَتَادَةَ: أَنَّهَا طَلْقَةٌ.

L33889 It has been reported from Al-Ḥasan that it is a single revocable divorce.

وَرُوِيَ عَنْ الْحَسَنِ: هِيَ طَلْقَةٌ رَجْعِيَّةٌ.

L33890 As for: “Leave my house—what keeps you here? Are you not my wife?”—it is established from Al-Hasan that he said: “Whoever repeats it three times, it is one [divorce], and he intends.”

وَأَمَّا - اُخْرُجِي عَنْ بَيْتِي مَا يُجْلِسُك، لَسْتِ لِي بِامْرَأَةٍ؟ فَصَحَّ عَنْ الْحَسَنِ أَنَّهُ قَالَ: مَنْ كَرَّرَهَا ثَلَاثًا فَهِيَ وَاحِدَةٌ، وَيَنْوِي.

L33891 As for “I have no need in you”—it is soundly established from Ibrāhīm that he said, “His intention is his own.”

وَأَمَّا - لَا حَاجَةَ لِي فِيك - فَصَحَّ عَنْ إبْرَاهِيمَ أَنَّهُ قَالَ: لَهُ نِيَّتُهُ.

L33892 Al-Hasan held that if a man intends divorce, it counts as one pronouncement of divorce, whereas Makhul maintained that it holds no legal weight.

وَعَنْ الْحَسَنِ: إنْ نَوَى الطَّلَاقَ فَهِيَ طَلْقَةٌ، وَعَنْ مَكْحُولٍ: لَيْسَ بِشَيْءٍ.

L33893 And from the narration of Waki‘ through Shu‘bah: I asked al-Ḥakam ibn ‘Utaybah and Ḥammād ibn Abī Sulaymān about a man who said to his wife, “Go wherever you wish; I have no need of you.” They both said: If he intended divorce, then it is a single revocable divorce.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَمَّنْ قَالَ لِامْرَأَتِهِ: اذْهَبِي حَيْثُ شِئْت، لَا حَاجَةَ لِي فِيك؟ فَقَالَا جَمِيعًا: إنْ نَوَى طَلَاقًا فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ.

L33894 As for “Wait out the istibrāʾ period, depart, and go”—it is authentically reported from Al-Hasan concerning all of them: If he intended divorce, it constitutes one divorce. It is also authentically reported from Al-Hasan regarding one who says to his wife: “Go, I have no need in you”—that it constitutes three divorces.

وَأَمَّا - اسْتَبْرِئِي، وَاخْرُجِي، وَاذْهَبِي - فَصَحَّ عَنْ الْحَسَنِ فِي جَمِيعِهَا: إنْ نَوَى الطَّلَاقَ فَهِيَ طَلْقَةٌ - وَصَحَّ أَيْضًا عَنْ الْحَسَنِ فِيمَنْ قَالَ لِامْرَأَتِهِ: اذْهَبِي، فَلَا حَاجَةَ لِي فِيك: أَنَّهَا ثَلَاثٌ.

L33895 As for “I have relinquished my right over you; is there no claim upon you?”—it has been narrated from Ibrāhīm and Al-Shaʿbī (though not authentically established from either) that this constitutes an irrevocable divorce. And it is authentically established from Al-Ḥakam ibn ʿUtaybah: his intention prevails.

وَأَمَّا - قَدْ خَلَّيْت سَبِيلَك، لَا سَبِيلَ عَلَيْك؟ فَرُوِّينَا عَنْ إبْرَاهِيمَ، وَالشَّعْبِيِّ - وَلَمْ يَصِحَّ عَنْهُمَا -: هِيَ طَلْقَةٌ بَائِنَةٌ - وَصَحَّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: لَهُ نِيَّتُهُ.

L33896 It is authentically reported from al-Ḥasan regarding the statement “There is no authority for me over you”: If he intended a divorce, then it is a single revocable divorce; otherwise, it is null. We have also narrated this from al-Shaʿbī.

وَصَحَّ عَنْ الْحَسَنِ فِي لَا سَبِيلَ لِي عَلَيْك: إنْ نَوَى طَلَاقًا فَهِيَ وَاحِدَةٌ رَجْعِيَّةٌ، وَإِلَّا فَلَيْسَ بِشَيْءٍ - رُوِّينَاهُ أَيْضًا عَنْ الشَّعْبِيِّ.

L33897 As for the one who said, “You are not a wife to me,” it has been narrated to us from Ibrāhīm that he said: “I do not see—if he repeats this three times—that he intended anything but divorce.” It is authentically narrated from Qatādah: “If he intended divorce by that, then it is a divorce.” Saʿīd ibn al-Musayyab hesitated concerning this.

وَأَمَّا - مَنْ قَالَ: لَسْت لِي بِامْرَأَةٍ - فَرُوِّينَا عَنْ إبْرَاهِيمَ أَنَّهُ قَالَ: مَا أَرَاهُ - إنْ كَرَّرَ ذَلِكَ ثَلَاثًا - أَرَادَ إلَّا الطَّلَاقَ - وَصَحَّ عَنْ قَتَادَةَ: إنْ أَرَادَ بِذَلِكَ طَلَاقًا فَهُوَ طَلَاقٌ - وَتَوَقَّفَ فِيهَا سَعِيدُ بْنُ الْمُسَيِّبِ.

L33898 As for Aflajī, it was narrated to us from Ṭāwūs: If he intends divorce, then it is a divorce.

وَأَمَّا - أَفْلِجِي؛ فَرُوِّينَا عَنْ طَاوُسٍ: إنْ نَوَى طَلَاقًا فَهُوَ طَلَاقٌ.

L33899–33900 As for your situation with it: It has been narrated to us from Al-Qāsim ibn Muḥammad that he said, “The scholars held the view that it constituted a single pronouncement of divorce.” From Masrūq, Ṭāwūs, and Ibrāhīm: “Whatever is intended as divorce counts as such.”

وَأَمَّا - شَأْنُكُمْ بِهَا؟ فَرُوِّينَا عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّهُ قَالَ: رَأَى النَّاسُ أَنَّهَا طَلْقَةٌ - وَعَنْ مَسْرُوقٍ، وَطَاوُسٍ، وَإِبْرَاهِيمَ: مَا أُرِيدَ بِهِ الطَّلَاقُ فَهُوَ طَلَاقٌ.

L33901 Abu Muhammad said: There is no authoritative proof in anyone beneath the Messenger of Allah—may Allah’s blessings and peace be upon him and his family.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L33902 If they say, “Is scrupulousness for him to separate from her?” We reply: The most scrupulous course for every jurist on earth is not to enforce precautions upon others that would harm himself, nor to deem a woman’s private part prohibited for her husband while permitting her [sexual relations] to another without a divine ruling from Allah the Exalted and His Messenger (peace be upon him). The Exalted has said: “They learn from them that by which they cause separation between a man and his wife, though they harm none thereby except by Allah’s permission” [Al-Baqarah: 102].[21]

فَإِنْ قَالُوا: الْوَرَعُ لَهُ أَنْ يُفَارِقَهَا؟ قُلْنَا: إنَّمَا أَوْرَعُ لِكُلِّ مُفْتٍ فِي الْأَرْضِ أَنْ لَا يَحْتَاطَ لِغَيْرِهِ بِمَا يُهْلِكُ بِهِ نَفْسَهُ، وَأَنْ لَا يَسْتَحِلَّ تَحْرِيمَ فَرْجِ امْرَأَةٍ عَلَى زَوْجِهَا وَإِبَاحَتَهُ لِغَيْرِهِ بِغَيْرِ حُكْمٍ مِنْ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قَالَ تَعَالَى: {فَيَتَعَلَّمُونَ مِنْهُمَا مَا يُفَرِّقُونَ بِهِ بَيْنَ الْمَرْءِ وَزَوْجِهِ وَمَا هُمْ بِضَارِّينَ بِهِ مِنْ أَحَدٍ إلا بِإِذْنِ اللَّهِ} [البقرة: ١٠٢] .

L33903 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb al-Sikhtiyānī from Ṭāwūs from Ibn ʿAbbās that he did not consider the ransom (fidāʾ) as divorce until a divorce was formally pronounced. Ibn ʿAbbās said: “Do you not see that He—Exalted and Mighty is He—first mentioned divorce, then mentioned the ransom without counting it as divorce? Then

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ: أَنَّهُ كَانَ لَا يَرَى الْفِدَاءَ طَلَاقًا حَتَّى يُطَلِّقَ؟ قَالَ ابْنُ عَبَّاسٍ: أَلَا تَرَى أَنَّهُ -

[21] **Qur’an references (L33902):** Qur’an 2:102 (Al-Baqarah).

He declared regarding the third instance of divorce: *‘But if he divorces her, she is not lawful to him thereafter’* (Q 2:230).”[22]

L33904 This is Ibn Abbas—via the most rigorously authenticated chain of transmission from him—holding that divorce is not established except by the explicit pronouncement of divorce or what Allah, the Mighty and Majestic, has legislated as divorce. This is our position.

L33905 We have mentioned the difference of opinion of Abū Ḥanīfah and Mālik regarding every Companion from whom something was narrated concerning that matter—may Allah be pleased with them—and their statements were among what no one before them had ever said, without any textual evidence for it whatsoever.

L33906 ## [An Issue of Agency in Divorce]

L33907 1955. Issue: It is impermissible to delegate divorce through an agent, for Allah, the Almighty, says: {No soul bears responsibility except against itself} [6:164]. Thus, acting on another’s behalf is invalid unless permitted by the Quran or the established Sunnah of the Messenger of Allah—peace and blessings be upon him and his family. Similarly, speaking on another’s behalf is invalid unless sanctioned by the Quran or the established Sunnah from the Messenger of Allah—peace and blessings be upon him and his family. Since neither the Quran nor the Sunnah has authorized delegating divorce to an agent, it is invalid.[23]

L33908 Those who differ from us claim to follow analogy, yet by necessity every person knows that divorce, *ẓihār*, *liʿān*, and *īlāʾ* are verbal declarations.

L33909–33911 They do not disagree that it is impermissible for anyone to pronounce ẓihār

[22] **Qur’an references (L33903):** Qur’an 2:230 (Al-Baqarah).
[23] **Qur’an references (L33907):** Qur’an 6:164 (Al-An’am).

جَلَّ وَعَزَّ - ذَكَرَ الطَّلَاقَ مِنْ قَبْلِهِ، ثُمَّ ذَكَرَ الْفِدَاءَ فَلَمْ يَجْعَلْهُ طَلَاقًا، ثُمَّ قَالَ فِي الثَّالِثَةِ {فَإِنْ طَلَّقَهَا فَلا تَحِلُّ لَهُ مِنْ بَعْدُ} [البقرة: ٢٣٠] .

فَهَذَا ابْنُ عَبَّاسٍ بِأَصَحِّ إِسْنَادٍ عَنْهُ: لَا يَرَى طَلَاقًا إِلَّا بِلَفْظِ الطَّلَاقِ، أَوْ مَا سَمَّاهُ اللَّهُ عَزَّ وَجَلَّ طَلَاقًا وَهَذَا هُوَ قَوْلُنَا.

قَدْ ذَكَرْنَا خِلَافَ أَبِي حَنِيفَةَ، وَمَالِكٍ لِكُلِّ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ شَيْءٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَمَا قَالَاهُ مِمَّا لَمْ يَقُلْهُ أَحَدٌ قَبْلَهُمَا بِغَيْرِ نَصٍّ فِي ذَلِكَ أَصْلًا.

[مَسْأَلَةُ الْوَكَالَةُ فِي الطَّلَاقِ]

١٩٥٥ - مَسْأَلَةٌ: وَلَا تَجُوزُ الْوَكَالَةُ فِي الطَّلَاقِ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] فَلَا يَجُوزُ عَمَلُ أَحَدٍ عَنْ أَحَدٍ إِلَّا حَيْثُ أَجَازَهُ الْقُرْآنُ، أَوْ السُّنَّةُ الثَّابِتَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا يَجُوزُ كَلَامُ أَحَدٍ عَنْ كَلَامِ غَيْرِهِ مِنْ حَيْثُ أَجَازَهُ الْقُرْآنُ أَوْ سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَمْ يَأْتِ فِي طَلَاقِ أَحَدٍ عَنْ أَحَدٍ بِتَوْكِيلِهِ إِيَّاهُ قُرْآنٌ وَلَا سُنَّةٌ، فَهُوَ بَاطِلٌ.

وَالْمُخَالِفُونَ لَنَا أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَبِالضَّرُورَةِ يَدْرِي كُلُّ أَحَدٍ أَنَّ الطَّلَاقَ كَلَامٌ، وَالظِّهَارَ كَلَامٌ، وَاللِّعَانَ كَلَامٌ، وَالْإِيلَاءَ كَلَامٌ.

against another, nor to engage in liʿān against another [text incomplete]. No one can act independently, nor can anyone appoint another on their behalf—whether through proxy or other means. Why do they not analogize divorce to this [principle]? Yet they neither follow the textual sources nor practice sound analogy (qiyās).

L33912 Every instance where Allah the Exalted has mentioned "divorce," He has addressed it exclusively to the husbands. Therefore, it is impermissible for anyone other than them to act on their behalf—neither through agency nor through any other means besides it—as this would constitute a violation of the limits set by Allah, the Mighty and Majestic.

L33913 Allah, the Exalted, has said: "And whoever transgresses the limits of Allah—those are the wrongdoers" (Al-Baqarah 2:229).[24]

L33914 Allah the Exalted said: {It is not for a believing man or a believing woman, when Allah and His Messenger have decreed a matter, to have any choice in their affair} (Sūrat al-Aḥzāb 33:36). Thus, no one has any choice to contradict what the divine text prescribes. We know of no permission for delegation in *divorce* from any of the early predecessors except [opinions] transmitted from Ibrāhīm and al-Ḥasan.[25]

L33915 Issue: He wrote to his wife pronouncing divorce.

L33916 1956 – Issue: If a man writes to his wife declaring divorce, it is invalid.

L33917 People have differed regarding this—It has been narrated to us from al-Nakhaʿī, Al-Shaʿbī, and Al-Zuhrī that if he writes the divorce with his own hand, it constitutes an irrevocable divorce. This is also the opinion of Al-Awzāʿī, Al-Ḥasan ibn Ḥayy, and Aḥmad ibn Ḥanbal.

L33918 It has been narrated to us from Saʿid ibn Mansur: Hushaym narrated to us [saying], "Yunus and Mansur [narrated] from al-Hasan regarding a man

[24] **Qur'an references (L33913):** Qur'an 2:229 (Al-Baqarah).
[25] **Qur'an references (L33914):** Qur'an 33:36 (Al-Ahzab).

وَلَا يَخْتَلِفُونَ فِي أَنَّهُ لَا يَجُوزُ أَنْ يُظَاهِرَ أَحَدٌ عَنْ أَحَدٍ، وَلَا أَنْ يُلَاعِنَ أَحَدٌ عَنْ أَحَدٍ، وَلَا أَنْ يُولِيَ أَحَدٌ عَنْ أَحَدٍ، لَا بِوَكَالَةٍ، وَلَا بِغَيْرِهَا، فَهَلَّا قَاسُوا الطَّلَاقَ عَلَى ذَلِكَ؟ وَلَكِنْ لَا النُّصُوصُ يَتَّبِعُونَ، وَلَا الْقِيَاسُ يُحْسِنُونَ.

وَكُلُّ مَكَانٍ ذَكَرَ اللَّهُ تَعَالَى فِيهِ " الطَّلَاقَ " فَإِنَّهُ خَاطَبَ بِهِ الْأَزْوَاجَ لَا غَيْرَهُمْ، فَلَا يَجُوزُ أَنْ يَنُوبَ غَيْرُهُمْ عَنْهُمْ - لَا بِوَكَالَةٍ وَلَا بِغَيْرِهَا - لِأَنَّهُ كَانَ تَعَدِّيًا لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ.

وَقَدْ قَالَ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ} [البقرة: ٢٢٩] .

وَقَالَ تَعَالَى: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] فَلَا خِيَارَ لِأَحَدٍ فِي خِلَافِ مَا جَاءَ بِهِ النَّصُّ - وَمَا نَعْلَمُ إِجَازَةَ التَّوْكِيلِ فِي " الطَّلَاقِ " عَنْ أَحَدٍ مِنْ الْمُتَقَدِّمِينَ إِلَّا عَنْ إِبْرَاهِيمَ، وَالْحَسَنِ.

[مَسْأَلَةٌ كَتَبَ إِلَى امْرَأَتِهِ بِالطَّلَاقِ]

١٩٥٦ - مَسْأَلَةٌ: وَمَنْ كَتَبَ إِلَى امْرَأَتِهِ بِالطَّلَاقِ فَلَيْسَ شَيْئًا.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا عَنْ النَّخَعِيِّ وَالشَّعْبِيِّ وَالزُّهْرِيِّ إذَا كَتَبَ الطَّلَاقَ بِيَدِهِ فَهُوَ طَلَاقٌ لَازِمٌ - وَبِهِ يَقُولُ الْأَوْزَاعِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَحْمَدُ بْنُ حَنْبَلٍ.

وَرُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ أَنَا يُونُسُ، وَمَنْصُورٌ عَنْ الْحَسَنِ، فِي رَجُلٍ كَتَبَ بِطَلَاقِ امْرَأَتِهِ ثُمَّ مَحَاهُ؟ فَقَالَ: لَيْسَ بِشَيْءٍ إلَّا أَنْ يُمْضِيَهُ، أَوْ يَتَكَلَّمَ بِهِ.

who wrote down [a document stipulating] the divorce of his wife and then erased it." He was asked [about this], and he said: "It holds no effect unless he formalizes it or verbally pronounces it."

L33919 It has been reported to us from Al-Sha'bi the same ruling, and it has also been authentically established from Qatādah. Abū Ḥanīfah said: If a man writes [the word] "divorce" for his wife on the ground, no divorce is legally valid. If he writes it in writing then states, "I did not intend [to enact] a divorce," his statement is accepted in issuing fatwas but not upheld in court judgments.

L33920 Mālik said: If a man writes the divorce of his wife, then if he intended by that a divorce, it is a divorce. But if he did not intend by it a divorce, it is not a divorce. This is the statement of al-Layth and al-Shāfi'ī.

L33921 Abu Muhammad said: "Allah, the Exalted, said, 'Divorce is twice' [Al-Baqarah: 229]."[26]

L33922 And the Exalted said: {Divorce them for their waiting period} [65:1]. In the language by which Allah the Exalted and His Messenger—peace and blessings be upon him and his family—addressed us, the term "talaq" does not apply to writing alone; rather, it only takes effect when verbally pronounced. Thus, it is established that the written form is not considered talaq until he utters it, as no scriptural text mandates that. And success comes only from Allah, the Exalted.[27]

L33923–33924 Legal Issue: The Validity of Divorce Pronounced by Someone Who Does Not Know Arabic.

L33925 Issue: A person who is not proficient in Arabic may pronounce divorce in his own language using wording that translates into Arabic as divorce. A mute or a sick person may also pronounce divorce through sound or gesture according to their capability, provided that whoever hears it is absolutely certain that the person intended divorce.

L33926 The proof of that—: the Words of Allah, the Exalted and Majestic: "He does

وَرُوِّينَا عَنْ الشَّعْبِيِّ مِثْلَهُ - وَصَحَّ أَيْضًا عَنْ قَتَادَةَ - وَقَالَ أَبُو حَنِيفَةَ: إنْ كَتَبَ طَلَاقَ امْرَأَتِهِ فِي الْأَرْضِ لَمْ يَلْزَمْهُ طَلَاقٌ وَإِنْ كَتَبَهُ فِي كِتَابٍ ثُمَّ قَالَ: لَمْ أَنْوِ طَلَاقًا صُدِّقَ فِي الْفُتْيَا وَلَمْ يُصَدَّقْ فِي الْقَضَاءِ.

وَقَالَ مَالِكٌ إنْ كَتَبَ طَلَاقَ امْرَأَتِهِ فَإِنْ نَوَى بِذَلِكَ الطَّلَاقَ فَهُوَ طَلَاقٌ وَإِنْ لَمْ يَنْوِ بِهِ طَلَاقًا فَلَيْسَ بِطَلَاقٍ وَهُوَ قَوْلُ اللَّيْثِ، وَالشَّافِعِيِّ.

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ تَعَالَى: {الطَّلاقُ مَرَّتَانِ} [البقرة: ٢٢٩]

وَقَالَ تَعَالَى: {فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] وَلَا يَقَعُ فِي اللُّغَةِ الَّتِي خَاطَبَنَا اللَّهُ تَعَالَى بِهَا وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - اسْمُ تَطْلِيقٍ عَلَى أَنْ يَكْتُبَ إنَّمَا يَقَعُ ذَلِكَ اللَّفْظُ بِهِ - فَصَحَّ أَنَّ الْكِتَابَ لَيْسَ طَلَاقًا حَتَّى يَلْفِظَ بِهِ إذْ لَمْ يُوجِبْ ذَلِكَ نَصٌّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَاقُ مَنْ لَا يُحْسِنُ الْعَرَبِيَّةَ]

مَسْأَلَةٌ: وَيُطَلِّقُ مَنْ لَا يُحْسِنُ الْعَرَبِيَّةَ بِلُغَتِهِ بِاللَّفْظِ الَّذِي يُتَرْجَمُ عَنْهُ فِي الْعَرَبِيَّةِ بِالطَّلَاقِ وَيُطَلِّقُ الْأَبْكَمُ وَالْمَرِيضُ بِمَا يَقْدِرُ عَلَيْهِ مِنْ الصَّوْتِ أَوْ الْإِشَارَةِ الَّتِي يُوقِنُ بِهَا مَنْ سَمِعَهَا قَطْعًا أَنَّهُمَا أَرَادَا الطَّلَاقَ.

وَبُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦]

[26] **Qur'an references (L33921):** Qur'an 2:229 (Al-Baqarah).
[27] **Qur'an references (L33922):** Qur'an 65:1 (At-Talaq).

not burden any soul beyond its capacity" [Al-Baqarah: 286].[28]

L33927 And the saying of the Messenger of Allah: «When I command you with a matter, then fulfill from it what you are able.»

L33928 It is established that whatever is neither within a person's capacity nor within their ability is lifted from them, and that they must fulfill only what they are capable of from what they have been commanded. And success is with Allah, the Most High.

Issue: If a man divorced his wife while he was absent.

L33929

L33930 1958. Issue: If a man divorces his wife while absent, this does not constitute a valid divorce. She retains her status as his wife as before—they inherit from each other if either dies, and all marital rights between them remain intact, regardless of whether the marriage was consummated or not, or whether the divorce was pronounced three times or fewer. The divorce only becomes binding once the news reaches her through either a person she deems truthful or judicially acceptable testimony. At that point, the divorce takes effect provided she is either pregnant or in a state of purity during a menstrual-free period in which he did not engage in intercourse with her.

L33931 The evidence for this is the statement of Allah, the Almighty: "O Prophet, when you [all] divorce women, divorce them at the time of their waiting period, count the waiting period, and fear Allah, your Lord. Do not evict them from their homes, nor should they leave unless they commit a manifestly indecent act. These are the boundaries set by Allah—and whoever transgresses Allah's boundaries has wronged himself." [At-Talaq: 1] This describes the manner of divorcing a woman whose marriage has been consummated.[29]

L33932 And He, the Exalted, said: "There is no blame upon you if you divorce women before consummating the marriage or specifying a bridal gift for them. And provide for them: the affluent according to their means and the straitened according to theirs." [Al-Baqarah: 236][30]

وَقَوْلُ رَسُولِ اللَّهِ «إِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» .

فَصَحَّ - أَنَّ مَا لَيْسَ فِي وُسْعِ الْمَرْءِ وَلَا يَسْتَطِيعُهُ فَقَدْ سَقَطَ مِنْهُ، وَأَنَّهُ يُؤَدِّي مِمَّا أُمِرَ بِهِ مَا اسْتَطَاعَ فَقَطْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَّقَ امْرَأَتَهُ وَهُوَ غَائِبٌ]

١٩٥٨ - مَسْأَلَةٌ: وَمَنْ طَلَّقَ امْرَأَتَهُ وَهُوَ غَائِبٌ: لَمْ يَكُنْ طَلَاقًا، وَهِيَ امْرَأَتُهُ كَمَا كَانَتْ، يَتَوَارَثَانِ إِنْ مَاتَ أَحَدُهُمَا، وَجَمِيعُ حُقُوقِ الزَّوْجِيَّةِ بَيْنَهُمَا - سَوَاءٌ كَانَتْ مَدْخُولًا بِهَا أَوْ غَيْرَ مَدْخُولٍ بِهَا - ثَلَاثًا أَوْ أَقَلَّ إلَّا حَتَّى يَبْلُغَ إلَيْهَا، فَإِذَا بَلَّغَهَا الْخَبَرُ مَنْ تُصَدِّقُهُ أَوْ بِشَهَادَةٍ تُقْبَلُ فِي الْحُكْمِ فَحِينَئِذٍ يَلْزَمُهَا الطَّلَاقُ إِنْ كَانَتْ حَامِلًا أَوْ طَاهِرًا فِي طُهْرٍ لَمْ يَمَسَّهَا فِيهِ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] فَهَذِهِ صِفَةُ طَلَاقِ الْمَدْخُولِ بِهَا.

وَقَالَ تَعَالَى: {لا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتِّعُوهُنَّ عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ} [البقرة: ٢٣٦] .

[28] **Qur'an references (L33926):** Qur'an 2:286 (Al-Baqarah).
[29] **Qur'an references (L33931):** Qur'an 65:1 (At-Talaq).
[30] **Qur'an references (L33932):** Qur'an 2:236 (Al-Baqarah).

L33933 *“O you who have believed, when you marry believing women and then divorce them before you have consummated the marriage, there is no waiting period for you to count against them. So give them a compensatory gift and release them honorably.”* [Al-Ahzab 49][31]

L33934 And He, the Exalted, said: “Do not harm them to restrict them. And if they are women bearing pregnancy, then provide for them until they give birth.” [Surah At-Talaq 65:6][32]

L33935–33936 This describes the ruling on divorcing a woman with whom the marriage has not been consummated, which includes three divorces issued collectively and the finality of the third. Every sound-minded person necessarily knows with certainty that whoever divorces her without informing her of the divorce has harmed her, and harming her is forbidden. Thus, his action is rejected and invalid, for disobedience cannot substitute for compliance. Everyone necessarily knows with certainty that whoever does this has not released her honorably, and whoever did not divorce in accordance with the waiting period nor observe the waiting period has not divorced as Allah the Exalted commanded. Whoever does not divorce as Allah the Exalted commanded has not divorced at all.

L33937 If someone mentions—what we have narrated through the chain of Ahmad ibn Shuʿayb, who said: Ubayd Allah ibn Qudamah al-Sarakhsi narrated to us, Abd al-Rahman Mahdi narrated to us, from Sufyan al-Thawri, from Abu Bakr—who is Ibn Abi al-Jahm—who said: I heard Fatimah bint Qays say: “My husband initiated my divorce and informed me, so I tightened my garments and went to the Prophet (peace and blessings of Allah be upon him and his family). He said: ’How many times has he divorced you?’ I said: ’Three times,”’ and he mentioned the hadith? We said: Yes, and this is our opinion. We have never said that the divorce does not become binding upon her when it reaches her. We will mention—if Allah the Exalted wills—in the Chapter on Waiting Periods those among the early scholars who said: If her

[31] **Qur’an references (L33933):** Qur’an 33:49 (Al-Ahzab).

[32] **Qur’an references (L33934):** Qur’an 65:6 (At-Talaq).

وَقَالَ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا فَمَتِّعُوهُنَّ وَسَرِّحُوهُنَّ سَرَاحًا جَمِيلا} [الأحزاب: ٤٩] .

وَقَالَ تَعَالَى: {وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٦] .

فَهَذِهِ صِفَةُ طَلَاقِ غَيْرِ الْمَدْخُولِ بِهَا، وَيَدْخُلُ فِيهِ طَلَاقُ الثَّلَاثِ الْمَجْمُوعَةِ، وَآخِرُ الثَّلَاثِ، وَبِالضَّرُورَةِ يُوقِنُ كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ مَنْ طَلَّقَهَا فَلَمْ يُبْلِغْهَا الطَّلَاقَ فَقَدْ ضَارَّهَا، وَمُضَارَّتُهَا حَرَامٌ، فَفِعْلُهُ مَرْدُودٌ بَاطِلٌ، وَالْمَعْصِيَةُ لَا تَنُوبُ عَنْ الطَّاعَةِ، وَبِالضَّرُورَةِ يُوقِنُ كُلُّ أَحَدٍ أَنَّ مَنْ فَعَلَ ذَلِكَ فَلَمْ يُسَرِّحْهَا سَرَاحًا جَمِيلًا، وَمَنْ لَمْ يُطَلِّقْ لِلْعِدَّةِ، وَلَمْ يُحْصِ الْعِدَّةَ فَلَمْ يُطَلِّقْ كَمَا أَمَرَهُ اللَّهُ تَعَالَى، وَمَنْ لَمْ يُطَلِّقْ كَمَا أَمَرَهُ اللَّهُ تَعَالَى فَلَمْ يُطَلِّقْ أَصْلًا.

فَإِنْ ذَكَرَ ذَاكِرٌ - مَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ قَالَ: نَا عُبَيْدُ اللَّهِ بْنُ قُدَامَةَ السَّرَخْسِيُّ نا عَبْدُ الرَّحْمَنِ مَهْدِيٌّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي بَكْرٍ - هُوَ ابْنُ أَبِي الْجَهْمِ - قَالَ: سَمِعْتُ «فَاطِمَةَ بِنْتَ قَيْسٍ تَقُولُ: أَرْسَلَ إِلَيَّ زَوْجِي بِطَلَاقِي، فَشَدَدْتُ عَلَيَّ ثِيَابِي ثُمَّ أَتَيْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: كَمْ طَلَّقَكِ؟ قُلْتُ: ثَلَاثًا - وَذَكَرَ الْحَدِيثَ» ؟ قُلْنَا: نَعَمْ، وَهَذَا قَوْلُنَا، وَلَمْ نَقُلْ قَطُّ: إنَّهُ لَا يَلْزَمُهَا الطَّلَاقُ إذَا بَلَغَهَا وَسَنَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي " بَابِ الْعِدَدِ " مَنْ قَالَ مِنْ السَّلَفِ: إنَّ مَنْ طَلَّقَهَا زَوْجُهَا وَهُوَ غَائِبٌ فَإِنَّهَا لَا تَلْزَمُهَا الْعِدَّةُ، إلَّا مِنْ حِينِ يَبْلُغُهَا الْخَبَرُ.

husband divorces her while he is absent, the waiting period does not become obligatory for her except from the time the news reaches her.

وَهَذَا يَدُلُّ عَلَى أَنَّهَا لَمْ يَلْزَمْهَا الطَّلَاقُ إِلَّا مِنْ حِينِ لَزِمَتْهَا الْعِدَّةُ، لَا قَبْلَ ذَلِكَ، إِذْ لَا يَجُوزُ فِي دِينِ الْإِسْلَامِ أَنْ يُحَالَ بِزَمَانٍ بَيْنَ الطَّلَاقِ وَبَيْنَ أَوَّلِ عِدَّتِهَا.

L33938 This indicates that the divorce does not become binding upon her except from the time the waiting period becomes incumbent upon her, not before that, for it is impermissible in Islam that any time should be interposed between the divorce and the beginning of her waiting period.

وَلَا يَجُوزُ أَنْ تَكُونَ امْرَأَةٌ ذَاتُ زَوْجٍ مَوْطُوءَةٌ مِنْهُ خَارِجَةً عَنْ الزَّوْجِيَّةِ بِطَلَاقِهِ، وَفِي غَيْرِ عِدَّةٍ - هَذَا خِلَافُ الْقُرْآنِ وَالسُّنَّةِ، فَكَيْفَ وَقَدْ جَاءَ خَبَرُ فَاطِمَةَ بِخِلَافِ مَا ذَكَرَ أَبُو بَكْرِ بْنُ أَبِي الْجَهْمِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي مُحَمَّدُ بْنُ رَافِعٍ نا حُسَيْنُ بْنُ مُحَمَّدٍ نا شَيْبَانُ - هُوَ ابْنُ فَرُّوخَ - عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ «أَنَّ فَاطِمَةَ بِنْتَ قَيْسٍ أَخْبَرَتْهُ أَنَّ أَبَا حَفْصِ بْنَ الْمُغِيرَةِ طَلَّقَهَا ثَلَاثًا ثُمَّ انْطَلَقَ إِلَى الْيَمَنِ - وَذَكَرَتْ الْخَبَرَ» .

L33939 It is not permissible for a married woman with whom he has consummated to be outside the marital bond through his divorce while not in the ʿiddah period - this is contrary to the Quran and Sunnah. How could this be, when the report of Fāṭimah contradicts what Abū Bakr ibn Abi al-Jahm mentioned? As transmitted to us through Muslim's chain: Muḥammad ibn Rāfiʿ narrated to us, Ḥusayn ibn Muḥammad narrated to us, from Shaybān [Ibn Farrūkh], from Yaḥyā [Ibn Abī Kathīr], who informed me: Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf narrated that Fāṭimah bint Qays informed him Abū Ḥafṣ ibn al-Mughīrah divorced her thrice, then left for Yemen - and she mentioned the report.

فَإِنْ قِيلَ: فَأَنْتُمْ لَا تُجِيزُونَ الطَّلَاقَ إلَى أَجَلٍ، وَلَا الطَّلَاقَ بِصِفَةٍ، وَتَحْتَجُّونَ بِأَنَّ كُلَّ طَلَاقٍ لَا يَقَعُ حِينَ يُوقَعُ، فَمِنْ الْمُحَالِ أَنْ يَقَعَ حِينَ لَمْ يَقَعْ، فَكَيْفَ أَجَزْتُمْ طَلَاقَ الْغَائِبِ؟ قُلْنَا: لِأَنَّ اللَّهَ عَزَّ وَجَلَّ عَلَّمَنَا الطَّلَاقَ فِي كُلِّ صِنْفٍ مِنْ الْمُطَلَّقَاتِ، وَفِي الْمُطَلَّقَةِ الصَّغِيرَةِ الَّتِي لَمْ تُخَاطَبْ، وَالْمَجْنُونَةِ، وَهُمَا لَا يَلْزَمُ خِطَابُهُمَا بِالطَّلَاقِ، وَقَدْ يُطَلِّقُ الْمُطَلِّقُ عِنْدَ بَابِ الدَّارِ وَيَبْعَثُ إلَيْهَا الْخَبَرَ، وَعَلَى أَذْرُعٍ مِنْهَا، وَإِذَا جَازَ ذَلِكَ فَلَا فَرْقَ بَيْنَ الطَّلَاقِ فِي الْبُعْدِ - وَلَوْ أَقْصَى الْمَعْمُورِ وَبَيْنَ الطَّلَاقِ خَلْفَ حَائِطٍ - وَلَيْسَ ذَلِكَ طَلَاقًا إلَى أَجَلٍ، إنَّمَا هُوَ كُلُّهُ طَلَاقٌ لَازِمٌ إذَا بَلَغَهَا، أَوْ بَلَغَ أَهْلَهَا إنْ كَانَتْ مِمَّنْ لَا تُخَاطَبُ، فَيَقَعُ بِذَلِكَ حِلُّ النِّكَاحِ، كَمَا يَقَعُ بِالْفَسْخِ وَلَا فَرْقَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33940–33942 "If it is said: 'Then you do not permit divorce for a specified term, nor conditional divorce, and you argue on the basis that...'" Every divorce that does not take effect when executed cannot possibly take effect when it did not occur. How then do you permit divorcing an absent woman? We replied: Because Allah Almighty has taught us divorce for every category of divorceable women, including the minor divorceable woman who is not legally competent to be addressed and the insane woman—for addressing them is not required to effect the divorce. A divorcer may pronounce divorce at the door of the house and send the news to her while she remains at a distance of a few arm's lengths. If this is permissible, there is no distinction between divorce pronounced at the farthest inhabited land and divorce pronounced behind a wall. This is not a delayed divorce—rather, it becomes fully binding once the news reaches her or reaches her guardians if she is among those incompetent to be addressed. The dissolution of marriage is thereby effected, just as it is effected through annulment, with no distinction. Success comes only from Allah, the Exalted.

Case: Silent Pronouncement of Divorce

Issue 1959: If a person pronounces divorce inwardly, the divorce does not take effect.

The proof of that is the established report from the Messenger of Allah: "My Ummah has been pardoned for what their souls inwardly speak within themselves, so long as they do not manifest it through speech or action"—or as he, upon him be prayers and peace, said. Thus, it is confirmed that the inner discourse of the soul is disregarded so long as one does not utter it.

Similarly, manumission in the heart, revocation of divorce during the waiting period (iddah) in the heart, gift-giving and charity in the heart, and embracing Islam in the heart - all these have no legal effect.

The Salaf have three positions regarding this matter: the first—as we mentioned—is what was narrated to us via the chain of Waki' from Sufyan al-Thawri, from Ibn Jurayj, from ʿAṭā, who said: "If he divorces [her] inwardly, it is not valid."

And through him to Ibn Jurayj from ʿAmr ibn Dīnār from Abū al-Shaʿthaʾ Jābir ibn Zayd, who said: If he divorces inwardly, it is invalid.

From the narration of ʿAbd al-Razzāq via Ibn Jurayj via ʿAṭāʾ: Neither his divorce nor his emancipation of a slave [intended] mentally counts as valid. Ibn Jurayj said: ʿAmr ibn Dīnār informed me that a man divorced his wife mentally—so was it revoked from him? Jābir ibn Zayd said: He was indeed wronged.

This was also narrated to us from Al-Shaʿbī.

And through the chain of ʻAbd al-Razzāq from Maʻmar, from Qaṭādah and al-Ḥasan, they both said together: Whoever divorces mentally, then such a divorce is invalid.

Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their companions say this.

[مَسْأَلَةٌ طَلَّقَ فِي نَفْسِهِ]

١٩٥٩ - مَسْأَلَةٌ: وَمَنْ طَلَّقَ فِي نَفْسِهِ لَمْ يَلْزَمْهُ الطَّلَاقُ.

بُرْهَانُ ذَلِكَ -: الْخَبَرُ الثَّابِتُ عَنْ رَسُولِ اللَّهِ «عُفِيَ لِأُمَّتِي عَمَّا حَدَّثَتْ بِهِ أَنْفُسَهَا مَا لَمْ تُخْرِجْهُ بِقَوْلٍ أَوْ عَمَلٍ» أَوْ كَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَصَحَّ أَنَّ حَدِيثَ النَّفْسِ سَاقِطٌ مَا لَمْ يَنْطِقْ بِهِ.

وَكَذَلِكَ الْعِتْقُ فِي النَّفْسِ، وَالْمُرَاجَعَةُ فِي النَّفْسِ، وَالْهِبَةُ وَالصَّدَقَةُ فِي النَّفْسِ، وَالْإِسْلَامُ فِي النَّفْسِ، كُلُّ ذَلِكَ لَيْسَ بِشَيْءٍ -.

وَلِلسَّلَفِ فِي ذَلِكَ ثَلَاثَةُ أَقْوَالٍ -: أَحَدُهَا - كَمَا قُلْنَا: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: إذَا طَلَّقَ فِي نَفْسِهِ فَلَيْسَ بِشَيْءٍ -.

وَبِهِ إلَى ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ قَالَ: إذَا طَلَّقَ فِي نَفْسِهِ فَلَيْسَ بِشَيْءٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ: لَيْسَ طَلَاقُهُ وَلَا عَتَاقُهُ فِي نَفْسِهِ شَيْئًا - قَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ فِي نَفْسِهِ فَانْتُزِعَتْ مِنْهُ؟ فَقَالَ جَابِرُ بْنُ زَيْدٍ: لَقَدْ ظُلِمَ.

وَرُوِّينَا ذَلِكَ أَيْضًا عَنْ الشَّعْبِيِّ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ وَالْحَسَنِ قَالَا جَمِيعًا: مَنْ طَلَّقَ فِي نَفْسِهِ فَلَيْسَ طَلَاقُهُ ذَلِكَ بِشَيْءٍ.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L33954 A second opinion—as transmitted to us through the chain of Abd al-Razzaq from Ma'mar, who said: Ibn Sirin was asked about it and he said, "Did Allah not know what is in your soul?" He said: "Yes." He said: "Then I will not say anything about it"—this constitutes jurisprudential abstention.

وَقَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ سُئِلَ عَنْهَا ابْنُ سِيرِينَ فَقَالَ: أَلَيْسَ قَدْ عَلِمَ اللَّهُ مَا فِي نَفْسِكَ؟ قَالَ: بَلَى، قَالَ: فَلَا أَقُولُ فِيهَا شَيْئًا - فَهَذَا تَوَقُّفٌ.

L33955 A third opinion: that it is a divorce—was reported from al-Zuhri, and Ashhab reported it on the authority of Malik.

وَقَوْلٌ ثَالِثٌ - إنَّهُ طَلَاقٌ، رُوِيَ عَنْ الزُّهْرِيِّ، وَرَوَاهُ أَشْهَبُ عَنْ مَالِكٍ.

L33956 Abu Muhammad said: It is an obligation and a duty of piety that no judge may issue a ruling nor any jurist give a legal verdict to dissolve the marriage of a wife whose nikāḥ was contracted according to the Book of Allah, the Mighty and Majestic, and the Sunnah of His Messenger Muhammad (ṣallallāhu ʿalayhi wa-ālihi wa-sallam), without a Qur'anic injunction or an established Sunnah.

قَالَ أَبُو مُحَمَّدٍ: الْفَرْضُ وَالْوَرَعُ أَنْ لَا يَحْكُمَ حَاكِمٌ وَلَا يُفْتِي مُفْتٍ بِفِرَاقِ زَوْجَةٍ عُقِدَ نِكَاحُهَا بِكِتَابِ اللَّهِ عَزَّ وَجَلَّ وَسُنَّةِ رَسُولِهِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِغَيْرِ قُرْآنٍ أَوْ سُنَّةٍ ثَابِتَةٍ.

L33957 Those who upheld this opinion argued using the authentically established report from the Messenger of Allah—may Allah's peace and blessings be upon him and his family—"Actions are judged by intentions, and every person will have what they intended."

وَاحْتَجَّ مَنْ ذَهَبَ إلَى هَذَا الْقَوْلِ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَلِكُلِّ امْرِئٍ مَا نَوَى» .

L33958 Abū Muḥammad said: This report serves as proof for us against them, because the Prophet—peace and blessings be upon him—did not isolate intention from action, nor action from intention, but rather combined both. He did not establish a ruling based on one without the other. Thus, we say: Whoever intends divorce but does not utter it, or utters it but does not intend it, there is no divorce until he utters it and intends it—unless a scriptural text specifies something from the rulings that necessitates it based on intention alone without action, or action alone without intention; in which case we adhere strictly to it. And with Allāh, the Exalted, lies success.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا الْخَبَرُ حُجَّةٌ لَنَا عَلَيْهِمْ، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُفْرِدْ فِيهِ النِّيَّةَ عَنْ الْعَمَلِ، وَلَا الْعَمَلَ عَنْ النِّيَّةِ، بَلْ جَمَعَهُمَا جَمِيعًا، وَلَمْ يُوجِبْ حُكْمًا بِأَحَدِهِمَا دُونَ الْآخَرِ - وَهَكَذَا نَقُولُ: إنَّ مَنْ نَوَى الطَّلَاقَ وَلَمْ يَلْفِظْ بِهِ، أَوْ لَفَظَ بِهِ وَلَمْ يَنْوِهِ فَلَيْسَ طَلَاقٌ، إلَّا حَتَّى يَلْفِظَ بِهِ وَيَنْوِيَهُ، إلَّا أَنْ يَخُصَّ نَصٌّ شَيْئًا مِنْ الْأَحْكَامِ بِإِلْزَامِهِ بِنِيَّةٍ دُونَ عَمَلٍ، أَوْ بِعَمَلٍ دُونَ نِيَّةٍ، فَنَقِفُ عِنْدَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L33959 They also argued: "Do you not claim that whoever harbors disbelief in their heart is a disbeliever, even if they do not utter it? Do you not assert that one who persists in sins is a sinner, guilty and deserving punishment? Do you not say that whoever entertains the false accusation of a chaste woman in

وَاحْتَجُّوا أَيْضًا - بِأَنْ قَالُوا: إنَّكُمْ تَقُولُونَ: مَنْ اعْتَقَدَ الْكُفْرَ بِقَلْبِهِ فَهُوَ كَافِرٌ وَإِنْ لَمْ يَلْفِظْ بِهِ؟ وَتَقُولُونَ: إنَّ الْمُصِرَّ عَلَى الْمَعَاصِي عَاصٍ آثِمٌ مُعَاقَبٌ بِذَلِكَ؟ وَتَقُولُونَ: إنَّ مَنْ

their heart is guilty, and whoever unjustly harbors enmity toward a believer is in defiance of God Almighty—even if they do not manifest this through speech or action?"

L33960 And whoever is self-admiring of his knowledge or seeks praise through deeds—is he not doomed? We said: As for the belief in disbelief, the Quran has indeed addressed this explicitly. The Exalted said: {O Messenger, let not grieve you those who hasten into disbelief among those who say, "We believe" [verbally], but their hearts do not believe} [Al-Ma'idah: 41]. Thus, by the explicit texts of the Quran and the Sunnah, these individuals have excluded themselves from what was overlooked.[33]

L33961–33963 Moreover, the exemption from accountability for the whispers of the soul applies exclusively to the Ummah of Muhammad—may Allah bless him and his family and grant him peace. They are distinguished by a virtue through the explicit textual evidence, and whoever conceals disbelief inwardly is not of his community (peace and blessings be upon him), so he is excluded from this virtue.

L33964 As for the one who persists in sins—is he not as you supposed? It has been authentically reported from the Prophet (peace and blessings of Allah be upon him and his family) that he said: "Whoever resolves to commit an evil deed but does not act upon it, it is not recorded against him."

L33965 It is thus established that the sinner who persists in his wrongdoing is he who commits an evil deed and then persists in it—thus, such a person combined evil intent and evil action.

L33966 As for one who slanders a chaste woman in his mind, Allah the Almighty has indeed forbidden him from evil suspicion—and this is baseless suspicion—thus he has exceeded what was pardoned by the explicit ruling. It is impermissible to analogize other cases to his, thereby contradicting the established textual ruling regarding Allah's pardon of such matters.

L33967 As for one who harbors enmity toward a Muslim, if he does not harm him

قَذَفَ مُحْصَنَةً فِي نَفْسِهِ فَهُوَ آثِمٌ، وَمَنْ اعْتَقَدَ عَدَاوَةَ مُؤْمِنٍ ظُلْمًا فَهُوَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ - وَإِنْ لَمْ يُظْهِرْ ذَلِكَ بِقَوْلٍ أَوْ فِعْلٍ.

وَمَنْ أُعْجِبَ بِعِلْمِهِ أَوْ رَاءَى فَهُوَ هَالِكٌ؟ قُلْنَا: أَمَّا اعْتِقَادُ الْكُفْرِ، فَإِنَّ الْقُرْآنَ قَدْ جَاءَ بِذَلِكَ نَصًّا، قَالَ تَعَالَى: {يَا أَيُّهَا الرَّسُولُ لا يَحْزُنْكَ الَّذِينَ يُسَارِعُونَ فِي الْكُفْرِ مِنَ الَّذِينَ قَالُوا آمَنَّا بِأَفْوَاهِهِمْ وَلَمْ تُؤْمِنْ قُلُوبُهُمْ} [المائدة: ٤١] فَخَرَجَ هَؤُلَاءِ بِنُصُوصِ الْقُرْآنِ وَالسُّنَنِ عَمَّا عُفِيَ عَنْهُ.

وَأَيْضًا - فَإِنَّ الْعَفْوَ عَنْ حَدِيثِ النَّفْسِ إِنَّمَا هُوَ عَنْ أُمَّةِ مُحَمَّدٍ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَضِيلَةٌ لَهُمْ بِنَصِّ الْخَبَرِ، وَمَنْ أَسَرَّ الْكُفْرَ فَلَيْسَ مِنْ أُمَّتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَهُوَ خَارِجٌ عَنْ هَذِهِ الْفَضِيلَةِ.

وَأَمَّا الْمُصِرُّ عَلَى الْمَعَاصِي فَلَيْسَ كَمَا ظَنَنْتُمْ؟ صَحَّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «مَنْ هَمَّ بِسَيِّئَةٍ فَلَمْ يَعْمَلْهَا لَمْ تُكْتَبْ عَلَيْهِ» .

فَصَحَّ أَنَّ الْمُصِرَّ الْآثِمَ بِإِصْرَارِهِ هُوَ الَّذِي عَمِلَ السَّيِّئَةَ ثُمَّ أَصَرَّ عَلَيْهَا - فَهَذَا جَمَعَ نِيَّةَ السُّوءِ وَالْعَمَلَ السُّوءَ مَعًا.

وَأَمَّا مَنْ قَذَفَ مُحْصَنَةً فِي نَفْسِهِ فَقَدْ نَهَاهُ اللَّهُ عَزَّ وَجَلَّ عَنِ الظَّنِّ السُّوءِ، وَهَذَا ظَنُّ سُوءٍ، فَخَرَجَ عَمَّا عُفِيَ عَنْهُ بِالنَّصِّ، وَلَا يَحِلُّ أَنْ يُقَاسَ عَلَيْهِ غَيْرُهُ فَيُخَالِفُ النَّصَّ الثَّابِتَ فِي عَفْوِ اللَّهِ عَزَّ وَجَلَّ عَنْ ذَلِكَ.

[33] **Qur'an references (L33960):** Qur'an 5:41 (Al-Ma'idah).

through action or speech, it is merely hatred. Hatred that a person cannot rid himself of is not held against him. However, if he does so deliberately, he is sinful, for he is commanded to show allegiance to a Muslim and love him. He has thereby transgressed what God Almighty commanded him, and thus he incurs sin.

L33968 Similarly, ostentation and self-admiration - the prohibition against them has been authentically established, yet no explicit text has ever obligated divorce, manumission, revocation of divorce, gift-giving, or charity involving oneself when no verbal declaration of such matters was made. Therefore, it is necessarily established that all such acts are legally non-binding - and with Allah the Exalted lies all success.

L33969 **An issue: If a man pronounces divorce without intending it, but his tongue errs.**

L33970 1960 – Issue: And whoever pronounces divorce without intending it, but his tongue slips? If conclusive evidence is established against him, the divorce is legally validated. But if no conclusive evidence is established against him, and he consults a scholar for a formal legal opinion, the divorce is not binding upon him.

L33971 The proof of that is: the statement of Allah, the Mighty and Majestic: "There is no blame upon you for mistakes you unintentionally made, but only what your hearts deliberately intended." [Al-Ahzab:5][34]

L33972 The statement of the Messenger of Allah — may the peace and blessings of Allah be upon him and his family — "Deeds are by intentions, and for every person is only what they intended." Thus, it is established that there is no deed except with intention, and no intention except with a deed.[35]

L33973 As for when clear proof is established regarding that matter, it is a confirmed right. And when he states in his claim, "I did not intend divorce," he asserts the invalidity of this confirmed right - thus his claim is void.

[34]**Qur'an references (L33971):** Qur'an 33:5 (Al-Ahzab).

[35]**Hadith references (L33972):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

وَأَمَّا مَنْ اعْتَقَدَ عَدَاوَةَ مُسْلِمٍ فَإِنْ لَمْ يَضُرَّ بِهِ بِعَمَلٍ وَلَا بِكَلَامٍ فَإِنَّمَا هُوَ بُغْضَةٌ وَالْبُغْضَةُ الَّتِي لَا يَقْدِرُ الْمَرْءُ عَلَى صَرْفِهَا عَنْ نَفْسِهِ لَا يُؤَاخَذُ بِهَا، فَإِنْ تَعَمَّدَ ذَلِكَ فَهُوَ عَاصٍ، لِأَنَّهُ مَأْمُورٌ بِمُوَالَاةِ الْمُسْلِمِ وَمَحَبَّتِهِ، فَتَعَدَّى مَا أَمَرَهُ اللَّهُ تَعَالَى بِهِ، فَلِذَلِكَ أَثِمَ.

وَهَكَذَا الرِّيَاءُ وَالْعُجْبُ قَدْ صَحَّ النَّهْيُ عَنْهُمَا، وَلَمْ يَأْتِ نَصٌّ قَطُّ بِإِلْزَامِ طَلَاقٍ، أَوْ عَتَاقٍ، أَوْ رَجْعَةٍ، أَوْ هِبَةٍ، أَوْ صَدَقَةٍ بِالنَّفْسِ، لَمْ يَلْفِظْ بِشَيْءٍ مِنْ ذَلِكَ، فَوَجَبَ أَنَّهُ كُلُّهُ لَغْوٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَّقَ وَهُوَ غَيْرُ قَاصِدٍ إلَى الطَّلَاقِ لَكِنْ أَخْطَأَ لِسَانُهُ]

١٩٦٠ - مَسْأَلَةٌ: وَمَنْ طَلَّقَ وَهُوَ غَيْرُ قَاصِدٍ إلَى الطَّلَاقِ، لَكِنْ أَخْطَأَ لِسَانُهُ؟ فَإِنْ قَامَتْ عَلَيْهِ بَيِّنَةٌ قُضِيَ عَلَيْهِ بِالطَّلَاقِ، وَإِنْ لَمْ تَقُمْ عَلَيْهِ بَيِّنَةٌ لَكِنْ أَتَى مُسْتَفْتِيًا لَمْ يَلْزَمْهُ الطَّلَاقُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ، وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» فَصَحَّ أَنْ لَا عَمَلَ إلَّا بِنِيَّةٍ وَلَا نِيَّةَ إلَّا بِعَمَلٍ.

وَأَمَّا إذَا قَامَتْ بِذَلِكَ بَيِّنَةٌ فَإِنَّهُ حَقٌّ قَدْ ثَبَتَ، وَهُوَ فِي قَوْلِهِ: لَمْ أَنْوِ الطَّلَاقَ، مُدَّعٍ بُطْلَانَ ذَلِكَ الْحَقِّ الثَّابِتِ، فَدَعْوَاهُ بَاطِلٌ -.

L33974–33975 It was narrated to us through the chain of Wakiʿ from Ibn Abi Laylā from al-Ḥakam ibn ʿUtaybah from Khaythamah ibn ʿAbd al-Raḥmān, who said: A woman said to her husband, “Name me!” He called her “the gazelle.” She said, “You have said nothing!” He replied, “Then provide a name for me to call you!” She said, “Name me ’free and divorced’!” He declared, “Then you are free and divorced.” She went to ʿUmar ibn al-Khaṭṭāb and said, “My husband has divorced me.” Her husband came and recounted the story to him. ʿUmar caused her head pain and said to her husband, “Take her by the hand and cause her head pain.”

رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ خَيْثَمَةَ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: قَالَتْ امْرَأَةٌ لِزَوْجِهَا: سَمِّنِي؟ فَسَمَّاهَا الظَّبْيَةَ، قَالَتْ: مَا قُلْت شَيْئًا؟ قَالَ: فَهَاتِ مَا أُسَمِّيك بِهِ؟ قَالَتْ: سَمِّنِي خَلِيَّةٌ طَالِقٌ، قَالَ: فَأَنْتِ خَلِيَّةٌ طَالِقٌ، فَأَتَتْ عُمَرَ بْنَ الْخَطَّابِ فَقَالَتْ: إنَّ زَوْجِي طَلَّقَنِي؟ فَجَاءَ زَوْجُهَا فَقَصَّ عَلَيْهِ الْقِصَّةَ؟ فَأَوْجَعَ عُمَرُ رَأْسَهَا، وَقَالَ لِزَوْجِهَا: خُذْ بِيَدِهَا وَأَوْجِعْ رَأْسَهَا.

L33976 Abu Muhammad said: As for a case like this, even if evidence were established in it, it would not count as a divorce.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا مِثْلُ هَذَا فَحَتَّى لَوْ قَامَتْ بِهِ بَيِّنَةٌ لَمْ يَكُنْ طَلَاقًا -.

L33977 And our opinion is narrated from Iyās ibn Muʿāwiyah.

وَرُوِيَ قَوْلُنَا عَنْ إيَاسِ بْنِ مُعَاوِيَةَ.

L33978 Malik said: If a man says, “You are irrevocably divorced (al-battah)” while intending to swear an oath regarding something, then changes his mind and abandons the oath, she is not divorced, because he did not intend to divorce her.

وَقَالَ مَالِكٌ: إذَا قَالَ: أَنْتِ طَالِقٌ أَلْبَتَّةَ - وَهُوَ يُرِيدُ أَنْ يَحْلِفَ عَلَى شَيْءٍ - ثُمَّ بَدَا لَهُ فَتَرَكَ الْيَمِينَ؟ فَلَيْسَتْ طَالِقًا، لِأَنَّهُ لَمْ يُرِدْ أَنْ يُطَلِّقَهَا -.

L33979 It is the doctrine of Al-Layth ibn Saʿd.

وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ.

L33980 Al-Shafiʿī said: Speech that overpowers a person’s tongue without their deliberate intent is equivalent to no utterance at all; neither divorce nor anything else incurs legal consequences upon them because of it.

وَقَالَ الشَّافِعِيُّ: مَا غَلَبَ الْمَرْءُ عَلَى لِسَانِهِ بِغَيْرِ اخْتِيَارٍ مِنْهُ لِذَلِكَ فَهُوَ كَلَا قَوْلٍ، لَا يَلْزَمُهُ بِهِ طَلَاقٌ وَلَا غَيْرُهُ.

L33981 Abu Hanifa and his companions said: If someone intends to say something to his wife but his tongue slips and he says, “You are divorced,” the divorce is binding upon him in judicial rulings, in fatwas, and between him and Allah, the Exalted and the Majestic.

قَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: مَنْ أَرَادَ أَنْ يَقُولَ شَيْئًا لِامْرَأَتِهِ فَسَبَقَهُ لِسَانُهُ فَقَالَ: أَنْتِ طَالِقٌ، لَزِمَهُ الطَّلَاقُ فِي الْقَضَاءِ، وَفِي الْفُتْيَا، وَبَيْنَهُ وَبَيْنَ اللَّهِ عَزَّ وَجَلَّ.

L33982 Similarly, if he intended to say, “You are divorced three times if you enter the house,” but instead said, “You are divorced three times,” then changed his mind about the conditional oath, or an intervenor intervened to prevent him from uttering what he intended to say, she is divorced according to legal opinion (fatwa) and judicial ruling (qadaʾ). Between him and Allah Almighty, it is the same whether she entered the house or not.

وَكَذَلِكَ لَوْ أَرَادَ أَنْ يَقُولَ: أَنْتِ طَالِقٌ ثَلَاثًا إنْ دَخَلْت الدَّارَ، فَقَالَ: أَنْتِ طَالِقٌ ثَلَاثًا، ثُمَّ بَدَا لَهُ عَنْ الْيَمِينِ، أَوْ قَطَعَ بِهِ عَنْ ذَلِكَ قَاطِعٌ فَلَمْ يَلْفِظْ بِمَا أَرَادَ أَنْ يَقُولَ فَهِيَ طَالِقٌ فِي الْفُتْيَا، وَالْقَضَاءِ، وَبَيْنَهُ وَبَيْنَ اللَّهِ عَزَّ وَجَلَّ سَوَاءٌ دَخَلَتْ الدَّارَ أَوْ لَمْ تَدْخُلْ.

L33983 Abū Ḥanīfa said: If he intended to say, “You are free if you enter the house,” but instead said, “You are free,” then reconsidered the oath or was interrupted by another party, she is free according to legal opinion and judicial ruling. And between him and Allah, the Almighty, it is a matter of whether she entered the house or not.

L33984 If he intended to say something to her but erred, and his tongue slipped by asking “Are you free?” Abu Hanifa said: She does not become free by this, nor is he bound to manumit her - contrary to divorce and contrary to the case regarding manumission we mentioned earlier. His disciples said: All such cases are treated the same.

L33985 Abū Muḥammad said: As for the opinion of Abū Ḥanīfah, it is profoundly flawed and contradictory.

L33986–33988 As for Mālik’s opinion, it contradicts his rulings regarding prohibition, the expression “leaving matters unattended” (literally “your rope upon your camel’s hump”), and all other related matters... He held the view that prohibition applies to it through the subtlest of means - and success is from Allah, the Exalted.

L33989 **A polytheist’s divorce is not binding.**

L33990 1961 - Issue: The divorce of a polytheist is not binding. As for his marriage, sale, purchase, gift, charity, manumission, and leasing—all are permissible.

L33991 The evidence for this is the statement of the Prophet (peace and blessings be upon him): “Whoever does a deed not in accordance with our command, it is rejected.”[36]

L33992 And the Words of Allah, the Mighty and Majestic: “Whoever transgresses the limits set by Allah has certainly wronged himself” [Surah At-Talaq: 1].[37]

[36] **Hadith references (L33991):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[37] **Qur’an references (L33992):** Qur’an 65:1 (At-Talaq).

قَالَ أَبُو حَنِيفَةَ: فَلَوْ أَرَادَ أَنْ يَقُولَ: أَنْتِ حُرَّةٌ إِنْ دَخَلْتِ الدَّارَ، فَقَالَ: أَنْتِ حُرَّةٌ، ثُمَّ بَدَا لَهُ عَنْ الْيَمِينِ، أَوْ قَطَعَهُ عَنْهُ قَاطِعٌ، فَهِيَ حُرَّةٌ فِي الْفُتْيَا: وَفِي الْقَضَاءِ، وَبَيْنَهُ وَبَيْنَ اللَّهِ عَزَّ وَجَلَّ دَخَلَتْ الدَّارَ أَوْ لَمْ تَدْخُلْ.

فَلَوْ أَرَادَ أَنْ يَقُولَ لَهَا كَلَامًا فَأَخْطَأَ فَسَبَقَهُ لِسَانُهُ فَقَالَ: أَنْتِ حُرَّةٌ؟ قَالَ أَبُو حَنِيفَةَ: لَا تَكُونُ بِذَلِكَ حُرَّةً، وَلَا يَلْزَمُهُ الْعِتْقُ، بِخِلَافِ الطَّلَاقِ، وَبِخِلَافِ الْمَسْأَلَةِ فِي الْعِتْقِ الَّتِي ذَكَرْنَا آنِفًا - وَقَالَ أَصْحَابُهُ: كُلُّ ذَلِكَ سَوَاءٌ.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ وَالْمُنَاقَضَةِ.

وَأَمَّا قَوْلُ مَالِكٍ - فَمُنَاقِضٌ لِقَوْلِهِ فِي التَّحْرِيمِ، وَفِي حَبْلِك عَلَى غَارِبِك، وَسَائِرِ مَا رَأَى التَّحْرِيمَ يَدْخُلُ فِيهِ بِأَرَقِّ الْأَسْبَابِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ لَا يَلْزَمُ الْمُشْرِكَ طَلَاقُهُ]

١٩٦١ - مَسْأَلَةٌ: وَلَا يَلْزَمُ الْمُشْرِكَ طَلَاقُهُ، وَأَمَّا نِكَاحُهُ، وَبَيْعُهُ، وَابْتِيَاعُهُ، وَهِبَتُهُ، وَصَدَقَتُهُ، وَعِتْقُهُ، وَمُؤَاجَرَتُهُ: فَجَائِزٌ كُلُّ ذَلِكَ.

بُرْهَانُ ذَلِكَ: قَوْلُ النَّبِيِّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

وَقَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١]

فَصَحَّ بِهَذَيْنِ النَّصَّيْنِ أَنَّ كُلَّ مَنْ عَمِلَ بِخِلَافِ مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ بِهِ، أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَهُوَ بَاطِلٌ لَا يُعْتَدُّ بِهِ.

L33993 It has been established through these two texts that whoever acts in contradiction to what Allah, the Almighty and Majestic, or His Messenger—peace and blessings of Allah be upon him and his family—has commanded, his deed is null and void and not to be considered.

L33994 There is no doubt that the disbeliever is commanded to profess, "There is no deity but Allah, and Muhammad is the Messenger of Allah." He is compelled to this testimony and threatened with eternal abiding among the levels of the Fire if he rejects it. Thus, any speech he utters while rejecting this testimony is misplaced and holds no weight.

L33995 We say: As for marriage, it is because the Messenger of Allah—peace be upon him and his family—validated the marriages of polytheists and maintained their validity after their conversion to Islam.

L33996 As for his selling and buying: this is because the Messenger of Allah—peace and blessings be upon him and his family—used to engage in transactions with merchants from the disbelievers, and he died—peace and blessings be upon him—while his armor was pledged to a Jew for ṣāʿs of barley.

L33997 As for the permissibility of hiring him, it is because "the Messenger of Allah—may Allah bless him and his family and grant him peace—hired Ibn Arqat, who was a disbeliever, to guide him to Medina," and "he contracted the Jews of Khaybar to work on cultivating their land and tending to their trees in return for half of what Allah, the Exalted and Glorified, causes to grow therein."

L33998 As for the gift, charity, and emancipation of slaves, this is based on the statement of Ḥakīm ibn Ḥizām: "O Messenger of God, are the deeds I used to engage in as pious acts during the Age of Ignorance - such as emancipating slaves, maintaining kinship ties, and giving charity - [valid]?" The Messenger of God—peace and blessings be upon him and his family—responded: "You have embraced Islam while retaining the good you had previously accomplished."

L33999 He—peace and blessings be upon him—called all of that good and informed

وَلَا شَكَّ فِي أَنَّ الْكَافِرَ مَأْمُورٌ بِقَوْلِ: لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ، مُلْزَمٌ ذَلِكَ، مُتَوَعَّدٌ عَلَى تَرْكِهِ بِالْخُلُودِ بَيْنَ أَطْبَاقِ النِّيرَانِ فَكُلُّ كَلَامٍ قَالَهُ، وَتَرَكَ الشَّهَادَةَ الْمَذْكُورَةَ: فَقَدْ وَضَعَ ذَلِكَ الْكَلَامَ غَيْرَ مَوْضِعِهِ، فَهُوَ غَيْرُ مُعْتَدٍّ.

فَإِنْ قِيلَ: فَمِنْ أَيْنَ أَجَزْتُمْ سَائِرَ عُقُودِهِ الَّتِي ذَكَرْتُمْ؟ قُلْنَا: أَمَّا النِّكَاحُ فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَجَازَ نِكَاحَ أَهْلِ الشِّرْكِ، وَأَبْقَاهُمْ بَعْدَ إسْلَامِهِمْ عَلَيْهِ.

وَأَمَّا بَيْعُهُ، وَابْتِيَاعُهُ: فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يُعَامِلُ تُجَّارَ الْكُفَّارِ، «وَمَاتَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَدِرْعُهُ مَرْهُونَةٌ عِنْدَ يَهُودِيٍّ فِي أَصْوَاعٍ شَعِيرٍ» .

وَأَمَّا مُؤَاجَرَتُهُ - فَلِأَنَّ «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - اسْتَأْجَرَ ابْنَ أَرْقَطَ لِيَدُلَّ بِهِ إلَى الْمَدِينَةِ وَهُوَ كَافِرٌ» «وَعَامَلَ يَهُودَ خَيْبَرَ عَلَى عَمَلِ أَرْضِهَا وَشَجَرِهَا بِنِصْفِ مَا يُخْرِجُ اللَّهُ عَزَّ وَجَلَّ مِنْ ذَلِكَ» .

وَأَمَّا هِبَتُهُ، وَصَدَقَتُهُ وَعِتْقُهُ «فَلِقَوْلِ حَكِيمِ بْنِ حِزَامٍ يَا رَسُولَ اللَّهِ، أَشْيَاءُ كُنْت أَتَحَنَّثُ بِهَا فِي الْجَاهِلِيَّةِ مِنْ عَتَاقَةٍ وَصِلَةِ رَحِمٍ وَصَدَقَةٍ؟ فَقَالَ لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَسْلَمْتَ عَلَى مَا أَسْلَفْتَ مِنْ خَيْرٍ» .

that it is counted for him therein. Thus divorce remained without any explicit textual ruling emerging regarding its implementation, so it remains established upon its preceding foundational principle.

فَسَمَّى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كُلَّ ذَلِكَ خَيْرًا، وَأَخْبَرَ: أَنَّهُ مُعْتَدٌّ لَهُ بِهِ -: فَبَقِيَ الطَّلَاقُ لَمْ يَأْتِ فِي إمْضَائِهِ نَصٌّ: فَثَبَتَ عَلَى أَصْلِهِ الْمُتَقَدِّمِ.

L34000–34001 So if it is said: “Indeed, Allah, the Exalted, has said, ’And to judge between them by what Allah has revealed, and do not follow their capricious desires’” [Al-Mā’idah: 49].[1]

فَإِنْ قِيلَ: فَقَدْ قَالَ اللَّهُ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ وَلا تَتَّبِعْ أَهْوَاءَهُمْ} [المائدة: ٤٩] .

L34002 We said: Yes, and this which we have judged between them is from what Allah, the Exalted, has revealed, as we have mentioned.

قُلْنَا: نَعَمْ، وَهَذَا الَّذِي حَكَمْنَا بِهِ بَيْنَهُمْ هُوَ مِمَّا أَنْزَلَ اللَّهُ تَعَالَى كَمَا ذَكَرْنَا.

L34003 People have differed regarding this matter -: We have reported via the chain of Qatādah that a man divorced his wife twice during the pre-Islamic era and once during the Islamic era. He asked ʿUmar, who responded: “I neither command nor forbid you.” Thereupon ʿAbd al-Raḥmān ibn ʿAwf told him: “But I do command you: your divorce during polytheism is invalid.” Qatādah used to issue fatwas based on this position.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَاهُ مِنْ طَرِيقِ قَتَادَةَ أَنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ طَلْقَتَيْنِ فِي الْجَاهِلِيَّةِ، وَطَلْقَةً فِي الْإِسْلَامِ فَسَأَلَ عُمَرَ؟ فَقَالَ لَهُ عُمَرُ: لَا آمُرُك وَلَا أَنْهَاك؟ فَقَالَ لَهُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: لَكِنَّنِي آمُرُك، لَيْسَ طَلَاقُك فِي الشِّرْكِ بِشَيْءٍ - وَبِهَذَا كَانَ يُفْتِي قَتَادَةُ.

L34004 It has been authentically reported from Al-Ḥasan and Rabiʿah—and it is the opinion of Mālik, Abū Sulaymān, and the followers of both.

وَصَحَّ عَنْ الْحَسَنِ، وَرَبِيعَةَ - وَهُوَ قَوْلُ مَالِكٍ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمَا.

L34005 It is authentically established from ʿAṭāʾ, ʿAmr ibn Dīnār, Firās al-Hamdānī, al-Zuhrī, al-Nakhaʿī, and Ḥammād ibn Abī Sulaymān that the permissibility of divorcing a polytheist.

وَصَحَّ عَنْ عَطَاءٍ، وَعَمْرِو بْنِ دِينَارٍ، وَفِرَاسٍ الْهَمْدَانِيِّ، وَالزُّهْرِيِّ، وَالنَّخَعِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ إجَازَةُ طَلَاقِ الْمُشْرِكِ

L34006 It is the opinion of Al-Awza’i, Abu Hanifah, Al-Shafi’i, and the followers of Abu Hanifah and Al-Shafi’i.

هُوَ قَوْلُ الْأَوْزَاعِيِّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا.

L34007 If it is said: You have narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Dīnār, who stated: “Men divorced women during the Jahiliyyah, then Islam came, yet they did not return to their husbands?” Abū Muḥammad responded: This contains no valid proof for the following reasons—

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ، قَالَ: لَقَدْ طَلَّقَ رِجَالٌ نِسَاءً فِي الْجَاهِلِيَّةِ ثُمَّ جَاءَ الْإِسْلَامُ فَمَا رَجَعْنَ إلَى أَزْوَاجِهِنَّ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ فِيهِ لِوُجُوهٍ -:

L34008 The first is that it is mursal (disconnected narration), and that ʿAmr ibn Dīnār transmits from the pre-Islamic Jahiliyyah (era of ignorance).

أَوَّلُهَا - أَنَّهُ مُرْسَلٌ، وَأَنَّ عَمْرَو بْنَ دِينَارٍ مِنْ الْجَاهِلِيَّةِ.

L34009 And the second is that there is nothing in it stating that the Messenger of Allah (peace be upon him and his family) prohibited it.

وَثَانِيهَا - أَنَّهُ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَنَعَ مِنْ ذَلِكَ.

L34010 And the third is that we ourselves did not prevent there being people who

وَثَالِثُهَا - أَنَّا لَمْ نَمْنَعْ نَحْنُ مِنْ أَنْ يَكُونَ قَوْمٌ رَأَوْا أَنَّ ذَلِكَ نَافِذٌ، وَلَا حُجَّةَ فِي ذَلِكَ، إلَّا أَنْ يَعْلَمَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَيُقِرَّهُ.

[1] **Qur’an references (L34001):** Qur’an 5:49 (Al-Ma’idah).

held the view that such a matter was valid, nor is there any proof against that except if he, peace be upon him, should know it and then approve it.

The Issue of Divorce by a Compelled Person.

Issue 1962: A divorce issued by a coerced individual is not binding on them.

People have differed regarding this. It has been narrated to us via ʿAbd al-Razzāq's isnād: from Sufyān al-Thawrī, from Sulaymān al-Shaybānī, from ʿAlī ibn Ḥanẓalah, from his father, who said: ʿUmar ibn al-Khaṭṭāb stated, "A man is not trustworthy over himself if you coerce him, strike him, or restrain him."

And through the chain of Abdur Rahman ibn Mahdi from Abdul Malik ibn Qudamah al-Jumahi, my father narrated to me that a man lowered himself by a rope to buy honey. His wife came to him and said: "I will surely cut the rope, or you will surely divorce me!"

So he implored her by Allah the Exalted, but she refused. He then divorced her. When the divorce became apparent, he went to Umar ibn al-Khattab and informed him of what occurred. Umar said to him: "Return to your wife, for this is not a valid divorce."

And on the authority of Abd al-Rahman ibn Mahdi, from Hammad ibn Salama, from Humayd, from al-Hasan: that Ali ibn Abi Talib did not recognize as legally valid a divorce pronounced under coercion.

And from the chain of Sufyān ibn 'Uyaynah from 'Amr ibn Dīnār from Thābit al-A'raj, who said: I asked Ibn 'Umar and Ibn al-Zubayr about the divorce of one compelled under duress, and they both said together: It is not valid.

From the chain of Al-Hajjaj ibn Al-Minhal: Hushaym narrated to us from Ubayd Allah ibn Talhah Al-Khuza'i, from Abu Yazid Al-Madani, from Ibn Abbas, who said: No divorce is valid for one coerced or compelled by dire necessity.

[مَسْأَلَةُ طَلَاقُ الْمُكْرَهِ]

١٩٦٢ - مَسْأَلَةٌ: وَطَلَاقُ الْمُكْرَهِ غَيْرُ لَازِمٍ لَهُ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سُلَيْمَانَ الشَّيْبَانِيِّ عَنْ عَلِيِّ بْنِ حَنْظَلَةَ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ لَيْسَ الرَّجُلُ بِأَمِينٍ عَلَى نَفْسِهِ إذَا أَخَفْتَهُ أَوْ ضَرَبْتَهُ أَوْ أَوْثَقْتَهُ.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ عَبْدِ الْمَلِكِ بْنِ قُدَامَةَ الْجُمَحِيِّ حَدَّثَنِي أَبِي أَنَّ رَجُلًا تَدَلَّى بِحَبْلٍ لِيَشْتَارَ عَسَلًا فَأَتَتْ امْرَأَتُهُ فَقَالَتْ لَهُ: لَأَقْطَعَنَّ الْحَبْلَ، أَوْ لَتُطَلِّقَنِّي؟

فَنَاشَدَهَا اللَّهَ تَعَالَى فَأَبَتْ، فَطَلَّقَهَا، فَلَمَّا ظَهَرَ أَتَى عُمَرَ بْنَ الْخَطَّابِ فَذَكَرَ ذَلِكَ لَهُ؟ فَقَالَ لَهُ عُمَرُ: ارْجِعْ إلَى امْرَأَتِك، فَإِنَّ هَذَا لَيْسَ بِطَلَاقٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ لَا يُجِيزُ طَلَاقَ الْمُكْرَهِ.

وَمِنْ طَرِيقِ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ثَابِتٍ الْأَعْرَجِ، قَالَ: سَأَلْت ابْنَ عُمَرَ، وَابْنَ الزُّبَيْرِ عَنْ طَلَاقِ الْمُكْرَهِ فَقَالَا جَمِيعًا: لَيْسَ بِشَيْءٍ.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هُشَيْمٌ نا عُبَيْدُ اللَّهِ بْنُ طَلْحَةَ الْخُزَاعِيُّ نا أَبُو يَزِيدَ الْمَدَنِيُّ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَيْسَ لِمُكْرَهٍ وَلَا لِمُضْطَرٍّ طَلَاقٌ.

L34020 Narrated through the chain of Abd al-Razzaq from Abdullah ibn al-Mubarak from al-Awza'i from Yahya ibn Abi Kathir from Ibn Abbas, that he did not consider a coerced divorce as having any validity.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ لَا يَرَى طَلَاقَ الْمُكْرَهِ شَيْئًا.

L34021 It is authentically reported from al-Ḥasan al-Baṣrī: "A coerced divorce is not valid" - this being one of the two views of ʿUmar ibn ʿAbd al-ʿAzīz. It is also authentically reported from ʿAṭāʾ, Ṭāwūs, Abū al-Shaʿthāʾ Jābir ibn Zayd, and from al-Ḥajjāj ibn al-Minhāl. Abū ʿAwānah reported to us from al-Mughīrah from Ibrāhīm, who said: "Divorce is that which is explicitly intended as such." This is the view of Mālik, al-Awzāʿī, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, Abū Sulaymān, their companions, and constitutes one of the two views of al-Shāfiʿī.

وَصَحَّ عَنْ الْحَسَنِ الْبَصْرِيِّ: طَلَاقُ الْمُكْرَهِ لَا يَجُوزُ - وَهُوَ أَحَدُ قَوْلَيْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَصَحَّ أَيْضًا عَنْ عَطَاءٍ، وَطَاوُسٍ، وَأَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ وَعَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ قَالَ: الطَّلَاقُ مَا عُنِيَ بِهِ الطَّلَاقُ - وَهُوَ قَوْلُ مَالِكٍ، وَالْأَوْزَاعِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ - وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L34022 A contrary ruling has been attributed to ʿUmar, as narrated by Saʿīd ibn Manṣūr through his chain: Faraj ibn Faḍālah reported: ʿAmr ibn Sharāḥīl al-Maʿāfirī narrated to me that a woman unsheathed a sword, placed it on her husband's abdomen, and swore: "By Allah, I will pierce you through or you must divorce me!" He pronounced three divorces upon her. When the matter was presented to ʿUmar ibn al-Khaṭṭāb, he ratified the validity of her divorce.

وَرُوِيَ خِلَافُ ذَلِكَ عَنْ عُمَرَ -: كَمَا رُوِّينَا عَنْ سَعِيدِ بْنِ مَنْصُورٍ نَا فَرَجُ بْنُ فَضَالَةَ حَدَّثَنِي عَمْرُو بْنُ شَرَاحِيلَ الْمَعَافِرِيُّ أَنَّ امْرَأَةً سَلَّتْ سَيْفًا فَوَضَعَتْهُ عَلَى بَطْنِ زَوْجِهَا وَقَالَتْ: وَاَللَّهِ لَأَنْفُذَنك أَوْ لِتُطَلِّقَنِي؟ فَطَلَّقَهَا ثَلَاثًا، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ، فَأَمْضَى طَلَاقَهَا.

L34023 It is narrated from Ibn ʿUmar that a man asked him, saying, "Someone stepped on my leg to force me to divorce my wife, so I divorced her." He disapproved of him returning to her. This is interpreted based on the view that he did not regard this as coercion, and it is also narrated from ʿUmar ibn ʿAbd al-ʿAzīz.

وَعَنْ ابْنِ عُمَرَ رُوِّينَا عَنْهُ أَنَّهُ سَأَلَهُ رَجُلٌ فَقَالَ لَهُ: إنَّهُ وَطِئَ فُلَانٌ عَلَى رِجْلِي حَتَّى أَطْلَقَ امْرَأَتِي، فَطَلَّقْتهَا، فَكَرِهَ لَهُ الرُّجُوعَ إلَيْهَا - وَهَذَا يُخَرَّجُ عَلَى أَنَّهُ لَمْ يَرَ ذَلِكَ إكْرَاهًا - وَرُوِيَ أَيْضًا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L34024 It has been reported to us from Ali ibn Abi Talib that all divorce is permissible except the divorce of the insane. It has previously been reported from him that the divorce of a coerced person is invalid. It has also been reported from Ibrahim - and soundly narrated from Abi Qilabah, al-Zuhri, Qatadah, and Sa'id ibn Jubayr.

وَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ كُلُّ الطَّلَاقِ جَائِزٌ إلَّا طَلَاقَ الْمَعْتُوهِ، وَقَدْ رُوِّينَا عَنْهُ قَبْلُ إبْطَالَ طَلَاقِ الْمُكْرَهِ وَرُوِيَ أَيْضًا عَنْ إبْرَاهِيمَ - وَصَحَّ عَنْ أَبِي قِلَابَةَ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَسَعِيدِ بْنِ جُبَيْرٍ -.

L34025–34026 Abu Hanifah and his disciples upheld this ruling.

وَبِهِ أَخَذَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ.

L34027 A third opinion—which states that the divorce pronounced by a person under duress is not binding if compelled by thieves, but is binding if compelled by the ruler—is one we have reported from Al-Sha'bi.

وَقَوْلٌ ثَالِثٌ - وَهُوَ أَنَّ طَلَاقَ الْمُكْرَهِ إنْ أَكْرَهَهُ اللُّصُوصُ لَمْ يَلْزَمْهُ، وَإِنْ أَكْرَهَهُ السُّلْطَانُ لَزِمَهُ -: رُوِّينَاهُ عَنْ الشَّعْبِيِّ.

L34028 A fourth opinion—narrated from Ibrāhīm—states: "If someone is unjustly compelled to divorce and employs a stratagem [tawreek] through alternative wording, it is not binding upon him. But if he does not employ such a stratagem, it becomes binding. The oppressor gains no benefit from the tawreek, and this is one of the two opinions of Sufyān."

وَقَوْلٌ رَابِعٌ - رُوِّينَاهُ عَنْ إبْرَاهِيمَ أَنَّهُ قَالَ: مَنْ أُكْرِهَ ظُلْمًا عَلَى الطَّلَاقِ فَوَرَّكَ إلَى شَيْءٍ آخَرَ لَمْ يَلْزَمْهُ، فَإِنْ لَمْ يُوَرِّكْ لَزِمَهُ، وَلَا يَنْتَفِعُ الظَّالِمُ بِالتَّوْرِيكِ وَهُوَ أَحَدُ قَوْلَيْ سُفْيَانَ.

L34029 Abu Muhammad said: Those who deemed it permissible argued with a narration we reported through Baqiyyah's chain from al-Ghāzī ibn Jabalah, from Ṣafwān ibn ʿAmr al-Aṣamm al-Ṭāʾī, from a man among the Companions of the Messenger of Allah—peace and blessings be upon him and his family—that a man's wife sat on his chest, held a knife to his throat, and said: "Divorce me, or I will slaughter you!" He implored her by Allah the Exalted, but she persisted, so he pronounced three divorces upon her. This was brought to the Prophet—peace and blessings be upon him and his family—and he said: "There is no validity to a divorce under duress."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ أَجَازَهُ بِخَبَرٍ رُوِّينَاهُ مِنْ طَرِيقِ بَقِيَّةَ عَنْ الْغَازِي بْنِ جَبَلَةَ عَنْ صَفْوَانَ بْنِ عَمْرٍو الْأَصَمِّ الطَّائِيِّ عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّ رَجُلًا جَلَسَتْ امْرَأَتُهُ عَلَى صَدْرِهِ وَجَعَلَتْ السِّكِّينَ عَلَى حَلْقِهِ وَقَالَتْ لَهُ: طَلِّقْنِي أَوْ لَأَذْبَحَنَّكَ؟ فَنَاشَدَهَا اللَّهَ تَعَالَى فَأَبَتْ، فَطَلَّقَهَا ثَلَاثًا، فَذُكِرَ ذَلِكَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: لَا قَيْلُولَةَ فِي الطَّلَاقِ» .

L34030 From the path of Sa'id ibn Mansur, Al-Walid ibn Muslim narrated to me from Al-Ghazi ibn Jabalah Al-Jublani that he heard Safwan say: "A man's wife sat on his chest, placed a knife over his heart, and declared: 'Divorce me or I will kill you!' So he divorced her. He then came to the Messenger of Allah—peace and blessings be upon him and his family—and he—peace and blessings be upon him—said: 'There is no validity to a divorce during the midday rest (qaylula).'" This is an utterly unreliable report: Safwan's narrations are rejected, the remaining narrators are weak, and Al-Ghazi ibn Jabalah is obscure.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ حَدَّثَنِي الْوَلِيدُ بْنُ مُسْلِمٍ عَنْ الْغَازِي بْنِ جَبَلَةَ الْجُبْلَانِيِّ أَنَّهُ سَمِعَ صَفْوَانَ يَقُولُ: «إنَّ رَجُلًا جَلَسَتْ امْرَأَتُهُ عَلَى صَدْرِهِ فَوَضَعَتْ السِّكِّينَ عَلَى فُؤَادِهِ وَهِيَ تَقُولُ: لَتُطَلِّقَنِّي أَوْ لَأَقْتُلَنَّكَ؟ فَطَلَّقَهَا، ثُمَّ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: لَا قَيْلُولَةَ فِي الطَّلَاقِ» وَهَذَا خَبَرٌ فِي غَايَةِ السُّقُوطِ، صَفْوَانُ مُنْكَرُ الْحَدِيثِ - وَبَقِيَّةُ ضَعِيفٌ - وَالْغَازِي بْنُ جَبَلَةَ مَغْمُورٌ.

L34031 They mentioned another report—narrated through the chain of ʿAṭāʾ ibn ʿAjlān from ʿIkrimah from Ibn ʿAbbās from the Prophet (peace be upon him and his family)—who said: "Every divorce is permissible except that of a mentally incapacitated person whose reason is impaired."

وَذَكَرُوا خَبَرًا آخَرَ - مِنْ طَرِيقِ عَطَاءِ بْنِ عَجْلَانَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «كُلُّ الطَّلَاقِ جَائِزٌ إلَّا طَلَاقَ الْمَعْتُوهِ الْمَغْلُوبِ عَلَى عَقْلِهِ» .

L34032 This is worse than the first, because ʿAṭāʾ ibn ʿAjlān is noted for lying.

وَهَذَا شَرٌّ مِنْ الْأَوَّلِ، لِأَنَّ عَطَاءَ بْنَ عَجْلَانَ مَذْكُورٌ بِالْكَذِبِ

L34033 وَالْعَجَبُ أَنَّ الْمُحْتَجِّينَ بِهِ أَوَّلُ الْمُخَالِفِينَ لَهُ لِأَصْلٍ فَاسِدٍ لَهُمْ -: أَمَّا أَصْلُهُمْ - فَإِنَّهُمْ يَقُولُونَ فِي الْأَخْبَارِ الثَّابِتَةِ: إذَا خَالَفَ شَيْئًا مِنْهَا رَاوِيهِ فَهُوَ دَلِيلٌ عَلَى سُقُوطِهِ، وَهَذَا خَبَرٌ إنَّمَا ذُكِرَ مِنْ طَرِيقِ ابْنِ عَبَّاسٍ، وَالثَّابِتُ عَنْ ابْنِ عَبَّاسٍ إبْطَالُ طَلَاقِ الْمُكْرَهِ كَمَا ذَكَرْنَا آنِفًا.

L34034 وَأَمَّا خِلَافُهُمْ لَهُ - فَإِنَّهُمْ لَا يُجِيزُونَ طَلَاقَ الصَّبِيِّ الَّذِي لَمْ يَبْلُغْ، وَعُمُومُ هَذَا الْخَبَرِ الْمَلْعُونِ يَقْتَضِي جَوَازَهُ، كَمَا يَقْتَضِي عِنْدَهُمْ جَوَازَ طَلَاقِ الْمُكْرَهِ.

L34035–34036 فَإِنْ ادَّعَوْا فِي إبْطَالِ طَلَاقِ الصَّبِيِّ الْإِجْمَاعَ عَلَى عَادَتِهِمْ فِي اسْتِسْهَالِ الْكَذِبِ فِي دَعْوَى الْإِجْمَاعِ بَيَّنَ كَذِبَهُمْ مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ عَمَّنْ سَمِعَ عَلِيَّ بْنَ أَبِي طَالِبٍ أَنَّهُ كَانَ يَقُولُ " اُكْتُمُوا الصِّبْيَانَ النِّكَاحَ ".

L34037 مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هُشَيْمٌ نا الْمُغِيرَةُ عَنْ إبْرَاهِيمَ أَنَّهُ كَانَ لَا يَهَابُ شَيْئًا مِنْ أَمْرِ الْغُلَامِ إلَّا الطَّلَاقَ.

L34038 وَمِنْ طَرِيقِ وَكِيعٍ عَنْ هِشَامٍ الدَّسْتُوَائِيِّ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي طَلَاقِ الصَّبِيِّ قَالَ: إذَا صَامَ رَمَضَانَ وَأَحْصَى الصَّلَاةَ جَازَ طَلَاقُهُ.

L34039 مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانُوا يَكْتُمُونَ الصِّبْيَانَ النِّكَاحَ إذَا زَوَّجُوهُمْ مَخَافَةَ الطَّلَاقِ.

L34040 فَإِنْ قِيلَ: فَفِي هَذَا الْخَبَرِ " وَكَانَ إذَا وَقَعَ لَمْ يَرَهُ شَيْئًا ".

L34041 The remarkable thing is that those who cite it as evidence are foremost in opposing it due to their own corrupt principle—a principle which: they assert regarding established narrations that if something within them contradicts their narrator, this constitutes proof of its invalidation. Yet this narration is indeed only transmitted through Ibn Abbas, while what is definitively established from Ibn Abbas is the invalidation of coerced divorce, as we previously mentioned.

As for their disagreement with him, they do not permit the divorce of a prepubescent boy, while the general wording of this rejected narration necessitates its permissibility, just as it necessitates, according to their principles, the validity of a divorce issued under compulsion.

If they claim consensus in invalidating a minor's divorce according to their customary practice of taking lying lightly in claims of consensus, what has been transmitted to us through Wakīʿ's narration from Sufyān al-Thawrī, from Abū Isḥāq, from someone who heard ʿAlī ibn Abī Ṭālib say: "Conceal marriage from boys" exposes the falsehood of their claim.

Through the chain of al-Ḥajjāj ibn al-Minhāl: Hushaym narrated to us, from al-Mughīrah, from Ibrāhīm, that he feared nothing in matters pertaining to the boy except divorce.

And via the chain of transmission of Wakiʿ, from Hishām al-Dastawā'ī, from Qatādah, from Saʿīd ibn al-Musayyib concerning the divorce of a prepubescent boy: He said, "If he fasts Ramadan and properly observes prayer, his divorce is valid."

Narrated via Wakiʿ, from Sufyān al-Thawrī, from Manṣūr, from Ibrāhīm al-Nakhaʿī: "They would conceal the marriage from the boys when they married them off, for fear of divorce."

If it is said: "Then in this report, 'And whenever it occurred, he did not regard it as anything.'"

We said: Yes, this is an account from Ibrāhīm, not from his companions

from whom it was narrated that they concealed the children's marriages for fear of divorce.

قُلْنَا: نَعَمْ، هَذِهِ حِكَايَةٌ عَنْ إِبْرَاهِيمَ، لَا عَنْ أَصْحَابِهِ الَّذِينَ حُكِيَ عَنْهُمْ كِتْمَانُ الصِّبْيَانِ زَوَاجَهُمْ مَخَافَةَ الطَّلَاقِ.

L34042 They also cited narrations containing: "Three matters whose seriousness is binding and whose jest is binding: marriage, divorce, and revocation." These narrations are fabricated because they only address rulings pertaining to those acting in jest and those acting earnestly, with no mention of the coerced in them.

وَاحْتَجُّوا أَيْضًا بِآثَارٍ فِيهَا «ثَلَاثٌ جَدُّهُنَّ جَدٌّ وَهَزْلُهُنَّ جَدٌّ: النِّكَاحُ، وَالطَّلَاقُ، وَالرَّجْعَةُ» وَهِيَ أَخْبَارٌ مَوْضُوعَةٌ، لِأَنَّهَا إِنَّمَا فِيهَا حُكْمُ الْهَازِلِ، وَالْجَادِّ، لَا ذِكْرَ لِلْمُكْرَهِ فِيهَا

L34043 To proceed: We have narrated it through the chain of ʿAbd al-Raḥmān ibn Ḥabīb ibn Adraka (denounced in ḥadīth transmission and unknown), for some transmitters stated: "from ʿAbd al-Raḥmān ibn Ḥabīb," while others stated: "Ḥabīb ibn ʿAbd al-Raḥmān." Yet there is unanimous agreement regarding the weakness of his narration.

وَبَعْدُ: فَإِنَّمَا رُوِّينَاهَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ حَبِيبِ بْنِ أَدْرَكَ - وَهُوَ مُنْكَرُ الْحَدِيثِ مَجْهُولٌ - لِأَنَّ قَوْمًا قَالُوا: عَنْ عَبْدِ الرَّحْمَنِ بْنِ حَبِيبٍ، وَقَوْمًا قَالُوا: حَبِيبُ بْنُ عَبْدِ الرَّحْمَنِ، وَهُوَ مَعَ ذَلِكَ مُتَّفَقٌ عَلَى ضَعْفِ رِوَايَتِهِ.

L34044 From the narration of Waki' through Sufyan from Abu Ishaq from Abu Burda: The Messenger of Allah (peace be upon him and his family) said, "What is wrong with men who trifle with Allah's ordained limits? One of them says: 'I have divorced,' then takes back [his wife]." This is a mursal narration (one with an incomplete chain of transmission), and no conclusive evidence can be derived from a mursal report. Moreover, it does not address the permissibility of a coerced divorce.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي بُرْدَةَ، أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَا بَالُ رِجَالٍ يَلْعَبُونَ بِحُدُودِ اللَّهِ، يَقُولُ أَحَدُهُمْ: قَدْ طَلَّقْتُ ثُمَّ رَاجَعْتُ» وَهَذَا مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَيْسَ فِيهِ أَيْضًا جَوَازُ طَلَاقِ مُكْرَهٍ.

L34045 Or it is narrated from Al-Hasan that the Messenger of Allah—may Allah bless him and his family and grant him peace—said: "Whoever divorces in jest, arranges a marriage in jest, marries in jest, or emancipates in jest, it is valid." There is no proof in a mursal report, nor is there any basis for the divorce of a coerced person.

أَوْ عَنْ الْحَسَنِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ طَلَّقَ لَاعِبًا أَوْ أَنْكَحَ لَاعِبًا أَوْ نَكَحَ لَاعِبًا أَوْ أَعْتَقَ لَاعِبًا فَقَدْ جَازَ» وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَيْسَ فِيهِ أَيْضًا لِطَلَاقِ مُكْرَهٍ أَثَرٌ.

L34046–34047 And from a chain of transmission containing Ibrāhīm ibn Muḥammad ibn Abī Laylā—known for lying—and it only includes those who divorce in jest or free in jest.

وَمِنْ طَرِيقٍ فِيهَا إِبْرَاهِيمُ بْنُ مُحَمَّدِ بْنِ أَبِي لَيْلَى - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - ثُمَّ لَيْسَ فِيهِ إِلَّا مَنْ طَلَّقَ لَاعِبًا أَوْ أَعْتَقَ لَاعِبًا.

L34048 And there is no mention of the compelled person therein.

وَلَيْسَ فِيهِ لِلْمُكْرَهِ ذِكْرٌ.

L34049 Or through the chain of Ibn Jurayj—that the Messenger of Allah (peace and

blessings of Allah be upon him and his family)—though this chain is grossly interrupted. The coerced person's statement is not considered, for the text states only: "Whoever marries in jest or divorces in jest." If they ask: "Is this a divorce?" We reply: By no means. It is not a divorce. Divorce is solely what the divorcer utters willingly with his tongue while intending it in his heart, as Allah the Exalted has commanded. Yet you label temporary marriage and ten-day marriage as "marriage"—do you then permit it for that reason? Since all their camouflaged arguments have been nullified, we must present proof—by Allah's will and power—to invalidate coerced divorce. Among these proofs is the statement of the Messenger of Allah (peace and blessings of Allah be upon him and his family): "Actions are judged by intentions, and each person will have only what he intended." This confirms that every act without intent is invalid and inconsequential. The coerced person's divorce is an act without intent, thus, invalid. It is merely a rehearsal of what he was commanded to say, and no divorce applies to one who utters words he did not sincerely believe.[2]

أَوْ مِنْ طَرِيقِ ابْنِ جُرَيْجٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهَذَا فَاحِشُ الِانْقِطَاعِ، ثُمَّ لَيْسَ لِلْمُكْرَهِ ذِكْرٌ، وَإِنَّمَا فِيهِ «مَنْ نَكَحَ لَاعِبًا أَوْ طَلَّقَ لَاعِبًا» وَإِنْ قَالُوا: هُوَ طَلَاقٌ؟ قُلْنَا: كَلَّا، لَيْسَ طَلَاقًا إنَّمَا الطَّلَاقُ مَا نَطَقَ بِهِ الْمُطَلِّقُ مُخْتَارًا بِلِسَانِهِ قَاصِدًا بِقَلْبِهِ، كَمَا أَمَرَ اللَّهُ تَعَالَى، وَأَنْتُمْ تُسَمُّونَ نِكَاحَ الْمُتْعَةِ، وَنِكَاحَ عَشْرٍ: نِكَاحًا فَأَجِيزُوهُ لِذَلِكَ؟ فَإِذْ قَدْ بَطَلَ كُلُّ مَا مَوَّهُوا بِهِ فَعَلَيْنَا إيرَادُ الْبُرْهَانِ - بِحَوْلِ اللَّهِ وَقُوَّتِهِ عَلَى بُطْلَانِ طَلَاقِ الْمُكْرَهِ -: فَمِنْ ذَلِكَ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ وَإِنَّمَا لِكُلِّ امْرِئٍ مَا نَوَى» فَصَحَّ أَنَّ كُلَّ عَمَلٍ بِلَا نِيَّةٍ فَهُوَ بَاطِلٌ لَا يُعْتَدُّ بِهِ، وَطَلَاقُ الْمُكْرَهِ عَمَلٌ بِلَا نِيَّةٍ، فَهُوَ بَاطِلٌ، وَإِنَّمَا هُوَ حَاكٍ لِمَا أُمِرَ أَنْ يَقُولَهُ فَقَطْ، وَلَا طَلَاقَ عَلَى حَاكٍ كَلَامًا لَمْ يَعْتَقِدْهُ.

L34050 It has been authentically reported from the Messenger of Allah—peace and blessings of Allah be upon him and his family—that he said: "Allah has pardoned for me [on behalf of] my Ummah their mistakes, forgetfulness, and that which they are compelled to do." We have narrated it by way of Ar-Rabi' ibn Sulayman the mu'adhdhin: Bishr ibn Bakr narrated to us from Al-Awza'i from 'Ata' ibn Abi Rabah from 'Ubayd ibn 'Umayr from Ibn 'Abbas from the Prophet—peace and blessings of Allah be upon him and his family.

وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ اللَّهَ تَجَاوَزَ لِي عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اُسْتُكْرِهُوا عَلَيْهِ» رُوِّينَاهُ مِنْ طَرِيقِ الرَّبِيعِ بْنِ سُلَيْمَانَ الْمُؤَذِّنِ نا بِشْرُ بْنُ بَكْرٍ عَنْ الْأَوْزَاعِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L34051 Among the greatest of their contradictions is that they permit divorce by the coerced, his marriage contract, marrying him off, his revocable divorce, and his emancipation - yet they do not permit his sale, purchase, gifting, nor his confession. This is toying with the religion - and we seek refuge in Allah from being forsaken.

وَمِنْ أَعْظَمِ تَنَاقُضِهِمْ: أَنَّهُمْ يُجِيزُونَ طَلَاقَ الْمُكْرَهِ، وَنِكَاحَهُ، وَإِنْكَاحَهُ، وَرَجْعَتَهُ، وَعِتْقَهُ - وَلَا يُجِيزُونَ بَيْعَهُ، وَلَا ابْتِيَاعَهُ، وَلَا هِبَتَهُ، وَلَا إقْرَارَهُ - وَهَذَا تَلَاعُبٌ بِالدِّينِ - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L34052 **A legal issue: If a person says, "Should I marry so-and-so, she is divorced."**

[مَسْأَلَةٌ قَالَ إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ طَالِقٌ]

[2] **Hadith references (L34049):** Sahih al-Bukhari 1; Sunan Abi Dawud 2201; Mishkat al-Masabih 1.

L34053 1963 – Issue: If someone says, “If I marry a specific woman, then she is divorced,” or says, “then she is divorced three times”—all such statements are null and void. He may marry her, and she will not be considered divorced.

١٩٦٣ - مَسْأَلَةٌ: وَمَنْ قَالَ: إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ طَالِقٌ، أَوْ قَالَ: فَهِيَ طَالِقٌ ثَلَاثًا - فَكُلُّ ذَلِكَ بَاطِلٌ، وَلَهُ أَنْ يَتَزَوَّجَهَا وَلَا تَكُونَ طَالِقًا.

L34054 Similarly, if he were to say, “Every woman I marry shall be divorced”—and whether he specifies a duration, near or far, a tribe, or a town—all of that is void and not binding.

وَكَذَلِكَ لَوْ قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ - وَسَوَاءٌ عَيَّنَ مُدَّةً قَرِيبَةً أَوْ بَعِيدَةً أَوْ قَبِيلَةً أَوْ بَلْدَةً - كُلُّ ذَلِكَ بَاطِلٌ لَا يَلْزَمُ.

L34055–34056 People have differed regarding this: a group held that all of that is obligatory for him.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: يَلْزَمُهُ كُلُّ ذَلِكَ.

L34057 A group held: If he specifies a tribe, a specific location, a particular woman, or a short period he expects to live, it becomes binding on him. But if he speaks generally, it does not become binding.

وَقَالَتْ طَائِفَةٌ: إنْ عَيَّنَ قَبِيلَةً أَوْ بَلْدَةً أَوْ امْرَأَةً أَوْ مُدَّةً قَرِيبَةً يَعِيشُ إلَيْهَا لَزِمَهُ، فَإِنْ عَمَّ لَمْ يَلْزَمْهُ.

L34058 A group held that it is makruh for him to marry her. But if he does marry her, we did not prevent him nor annul the marriage.

وَقَالَتْ طَائِفَةٌ: يُكْرَهُ لَهُ أَنْ يَتَزَوَّجَهَا، فَإِنْ تَزَوَّجَهَا لَمْ نَمْنَعْهُ، وَلَمْ نَفْسَخْهُ.

L34059 From those from whom our view has been reported - as transmitted through the chain of Hammad ibn Salamah from Humayd from al-Hasan - is that Ali ibn Abi Talib said: “There is no divorce except after marriage. If he pronounces it, it is not a divorce.”

فَمِمَّنْ رُوِيَ عَنْهُ قَوْلُنَا كَمَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ " لَا طَلَاقَ إلَّا مِنْ بَعْدِ نِكَاحٍ وَإِنْ سَمَّاهَا فَلَيْسَ بِطَلَاقٍ ".

L34060 From the chain of Abu ʿUbayd: Hushaym narrated to us, Al-Mubarak ibn Fadalah narrated to us, from Al-Hasan, from Ali ibn Abi Talib that he was asked about a man who said: “If I marry so-and-so, she will be divorced.” Ali responded: “There is no divorce except after marriage.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ نا الْمُبَارَكُ بْنُ فَضَالَةَ عَنْ الْحَسَنِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ سُئِلَ عَنْ رَجُلٍ قَالَ: إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ طَالِقٌ؟ فَقَالَ عَلِيٌّ: لَيْسَ طَلَاقٌ إلَّا مِنْ بَعْدِ مِلْكٍ.

L34061 From the narration of ʿAbd al-Razzāq, who narrated to us from Ibn Jurayj, who said: I heard ʿAṭāʾ say: Ibn ʿAbbās stated, “There is no divorce except after marriage.” ʿAṭāʾ said: “If one swears by divorce before marrying, there is no consequence.” Ibn Jurayj said: It reached Ibn ʿAbbās that Ibn Masʿūd stated: “If one divorces before marrying, it is valid.” Ibn ʿAbbās responded: “He erred in this matter—Allah, the Mighty and Majestic, says: {When you

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: سَمِعْت عَطَاءً يَقُولُ: قَالَ ابْنُ عَبَّاسٍ، لَا طَلَاقَ إلَّا مِنْ بَعْدِ نِكَاحٍ "، قَالَ عَطَاءٌ: فَإِنْ حَلَفَ بِطَلَاقٍ مَا لَمْ يَنْكِحْ فَلَا شَيْءَ - قَالَ ابْنُ جُرَيْجٍ: بَلَغَ ابْنَ عَبَّاسٍ أَنَّ ابْنَ مَسْعُودٍ يَقُولُ: إنْ طَلَّقَ مَا لَمْ يَنْكِحْ فَهُوَ جَائِزٌ؟

marry believing women and then divorce them} [Al-Aḥzāb: 49], and He did not say, 'When you divorce believing women and then marry them.'"[3]

فَقَالَ ابْنُ عَبَّاسٍ: أَخْطَأَ فِي هَذَا - إِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: {إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ} [الأحزاب: ٤٩] وَلَمْ يَقُلْ إِذَا طَلَّقْتُمُ الْمُؤْمِنَاتِ ثُمَّ نَكَحْتُمُوهُنَّ.

L34062 And through the chain of Wakīʿ from Ibn Abī Dhiʾb, from Muḥammad ibn al-Munkadir and ʿAṭāʾ ibn Abī Rabāḥ—both of them narrating from Jābir ibn ʿAbdullāh, who elevates it to the Prophet: "There is no divorce prior to marriage."

وَمِنْ طَرِيقِ وَكِيعٍ عَنِ ابْنِ أَبِي ذِئْبٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، كِلَاهُمَا عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ يَرْفَعُهُ «لَا طَلَاقَ قَبْلَ نِكَاحٍ» .

L34063 It has been authentically reported from Tawus, Sa'id ibn al-Musayyib, Ata', Mujahid, Sa'id ibn Jubayr, Urwah ibn al-Zubayr, Qatadah, al-Hasan, Wahb ibn Munabbih, Ali ibn al-Husayn, al-Qasim ibn Abd al-Raḥmān, and Shurayh al-Qadi.

وَصَحَّ عَنْ طَاوُسٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَعَطَاءٍ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَقَتَادَةَ وَالْحَسَنِ، وَوَهْبِ بْنِ مُنَبِّهٍ، وَعَلِيِّ بْنِ الْحُسَيْنِ، وَالْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ، وَشُرَيْحٍ الْقَاضِي.

L34064 It has also been narrated from 'Ā'ishah, the Mother of the Believers, and 'Ikrimah—and this is the opinion of Sufyān ibn 'Uyaynah, 'Abd al-Raḥmān ibn Mahdī, al-Shāfi'ī and his companions, Aḥmad and his companions, Isḥāq ibn Rāhuyah, Abū Sulaymān and his companions, and the majority of proponents of hadith.

وَرُوِيَ أَيْضًا عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ وَعِكْرِمَةَ - وَهُوَ قَوْلُ سُفْيَانَ بْنِ عُيَيْنَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ، وَالشَّافِعِيِّ، وَأَصْحَابِهِ، وَأَحْمَدَ، وَأَصْحَابِهِ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِ، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ.

L34065–34067 As for the one who disapproved of that and did not annul it - as narrated via the chain of al-Ḥajjāj ibn al-Minhāl, who narrated to Jarīr ibn Ḥāzim from Yaḥyā ibn Saʿīd al-Anṣārī from al-Qāsim ibn Muḥammad ibn Abī Bakr regarding one who stated: "Every woman I marry is divorced" - He disliked it—and that is the position of al-Awzāʿī—and it is reported from him that he said: "If he married her, I do not command him to separate from her, and if he had not married her, I do not command him to marry her"—and that is the position of Sufyān al-Thawrī. When asked: "Is it forbidden?" he replied: "Who says it is forbidden? Those who grant concession regarding it are more numerous than those who take a strict stance on it"—and this is the position upheld by Abū ʿUbayd.

وَأَمَّا مَنْ كَرِهَ ذَلِكَ وَلَمْ يَفْسَخْهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا جَرِيرُ بْنُ حَازِمٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ فِيمَنْ قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ، فَكَرِهَهُ - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ - وَرُوِيَ عَنْهُ أَنَّهُ قَالَ: إِنْ تَزَوَّجَهَا لَمْ آمُرْهُ بِفِرَاقِهَا، وَإِنْ كَانَ لَمْ يَتَزَوَّجْهَا لَمْ آمُرْهُ أَنْ يَتَزَوَّجَهَا - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، فَقِيلَ لَهُ: أَحَرَامٌ هُوَ؟ فَقَالَ: وَمَنْ يَقُولُ: إِنَّهُ حَرَامٌ، مَنْ رَخَّصَ فِيهِ أَكْثَرُ مِمَّنْ شَدَّدَ فِيهِ - وَبِهِ يَقُولُ أَبُو عُبَيْدٍ.

L34068 The third opinion (concerning the distinction between specification and generality) has been transmitted to us through Mālik's chain from Saʿīd ibn

[3] **Qur'an references (L34061):** Qur'an 33:49 (Al-Ahzab).

ʿAmr ibn Sulaym, from al-Qāsim ibn Muḥammad: A man declared, “If I marry so-and-so, she shall be to me like my mother’s back [a form of unlawful divorce] (ẓihār),” and then married her. Umar ibn al-Khattab said to him, “Do not approach her until you offer kaffārah.”

وَالْقَوْلُ الثَّالِثُ - فِي الْفَرْقِ بَيْنَ التَّخْصِيصِ وَالْعُمُومِ -: رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ سَعِيدِ بْنِ عَمْرِو بْنِ سُلَيْمٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّ رَجُلًا قَالَ: إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ عَلَيَّ كَظَهْرِ أُمِّي، فَتَزَوَّجَهَا، فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: لَا تَقْرَبْهَا حَتَّى تُكَفِّرَ.

L34069 Abū Muḥammad said: This does not align with their position, for it has been reported from ʿUmar that even if it is general, it remains binding. He mentioned this after this—God, the Mighty and Majestic, willing. It has reached me from Ibn Masʿūd that he said: “Whoever declares, ’Every woman I marry is divorced,’ without specifying a tribe, a village, or a particular woman, it is invalid.” We have previously cited this from Ibn Masʿūd in summary.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ هَذَا مُوَافِقًا لَهُمْ، لِأَنَّهُ قَدْ رُوِيَ عَنْ عُمَرَ: أَنَّهُ وَإِنْ عَمَّ فَهُوَ لَازِمٌ فَذَكَرَهُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ، بَلَغَنِي عَنْ ابْنِ مَسْعُودٍ أَنَّهُ قَالَ: مَنْ قَالَ: كُلُّ امْرَأَةٍ أَنْكِحُهَا فَهِيَ طَالِقٌ إنْ لَمْ يُسَمِّ قَبِيلَةً أَوْ قَرْيَةً أَوْ امْرَأَةً بِعَيْنِهَا فَلَيْسَ بِشَيْءٍ - وَقَدْ ذَكَرْنَاهُ قَبْلُ عَنْ ابْنِ مَسْعُودٍ مُجْمَلًا.

L34070 From the transmission of Al-Hajjaj ibn Al-Minhal: Abu ʿAwanah narrated to us from Muhammad ibn Qays—known as Al-Marhabi—who said: I asked Ibrahim Al-Nakha’i about a man who said regarding a woman, “If I marry her, then she is divorced.” Ibrahim narrated from ʿAlqamah or from Al-Aswad that Ibn Mas’ud said, “It is as he said.” Then I asked Al-Sha’bi and mentioned to him the statement of Ibrahim Al-Nakha’i. He replied, “He is correct.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ مُحَمَّدِ بْنِ قَيْسٍ - هُوَ الْمَرْهَبِيُّ - قَالَ: سَأَلْت إبْرَاهِيمَ النَّخَعِيَّ عَنْ رَجُلٍ قَالَ فِي امْرَأَةٍ: إنْ تَزَوَّجْتهَا فَهِيَ طَالِقٌ، فَذَكَرَ إبْرَاهِيمُ عَنْ عَلْقَمَةَ أَوْ عَنْ الْأَسْوَدِ: أَنَّ ابْنَ مَسْعُودٍ قَالَ: هِيَ كَمَا قَالَ - ثُمَّ سَأَلْت الشَّعْبِيَّ وَذَكَرْت لَهُ قَوْلَ إبْرَاهِيمَ النَّخَعِيِّ؟ فَقَالَ: صَدَقَ.

L34071 From the narration of Abū ʿUbayd via Hushaym: Mughīrah reported to us from Ibrāhīm al-Nakhaʿī concerning one who said: “Every woman I marry is divorced.” He replied: “This is invalid. This man has rendered married women unlawful for himself; let him marry.” He said: “If he names her, attributes her lineage, specifies a city, or fixes a timeframe, then it is as he said.”

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ هُشَيْمٍ نا مُغِيرَةُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ؟ قَالَ: لَيْسَ بِشَيْءٍ، هَذَا رَجُلٌ حَرَّمَ الْمُحْصَنَاتِ عَلَى نَفْسِهِ: فَلْيَتَزَوَّجْ، قَالَ: فَإِنْ سَمَّاهَا أَوْ نَسَبَهَا، أَوْ سَمَّى مِصْرًا، أَوْ وَقَّتَ وَقْتًا، فَهِيَ كَمَا قَالَ.

L34072 From the chain of Wakiʿ, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, who said: If a man says, “Every woman I marry is divorced,” it holds no effect. But if he stipulates a time, it becomes binding.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: إنْ قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ، فَلَيْسَ بِشَيْءٍ، فَإِنْ وَقَّتَ لَزِمَهُ.

L34073 And from the chain of Abū ’Ubayd: Muḥammad ibn Kathīr narrated to us from Ḥammād ibn Salamah from Qays ibn Sa’d from ’Aṭā’, who said:

"Whoever says, 'If I marry so-and-so woman, she is divorced,' then she is divorced exactly as he stated."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُحَمَّدُ بْنُ كَثِيرٍ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ عَطَاءٍ، قَالَ: مَنْ قَالَ: إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ طَالِقٌ، فَهِيَ كَمَا قَالَ -.

L34074 And this is the opinion of Al-Ḥakam ibn ʿUtaybah, Rabīʿah, Al-Ḥasan ibn Ḥayy, Al-Layth ibn Saʿd, Mālik, and his companions.

وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ، وَرَبِيعَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَاللَّيْثِ بْنِ سَعْدٍ، وَمَالِكٍ، وَأَصْحَابِهِ.

L34075–34076 The fourth opinion is that it becomes binding upon him, even if the declaration is general. It has been narrated to us through the chain of Abd al-Razzaq from Yasin al-Zayyat from Abu Muhammad from Ata al-Khurasani from Abu Salama ibn Abd al-Rahman: A man said, "Every woman I marry is divorced." Umar ibn al-Khattab responded to him: "It is as you have said."

وَالْقَوْلُ الرَّابِعُ - أَنَّهُ يَلْزَمُهُ، وَإِنْ عَمَّ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ يَاسِينَ الزَّيَّاتِ عَنْ أَبِي مُحَمَّدٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ أَنَّ رَجُلًا قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ؟ فَقَالَ لَهُ عُمَرُ بْنُ الْخَطَّابِ: هُوَ كَمَا قُلْت.

L34077 Through the narration of Abd al-Razzaq from Maʿmar from al-Zuhri regarding one who said: "Every woman I marry is divorced? And every female slave I purchase is free?" Al-Zuhri said: "It is as he said."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِيمَنْ قَالَ: كُلُّ امْرَأَةٍ أَتَزَوَّجُهَا فَهِيَ طَالِقٌ؟ وَكُلُّ أَمَةٍ أَشْتَرِيهَا فَهِيَ حُرَّةٌ؟ قَالَ الزُّهْرِيُّ: هُوَ كَمَا قَالَ.

L34078 From the transmission path of Abu 'Ubayd, who narrated to us from Yahya ibn Sa'id al-Qattan and Yazid ibn Harun - both transmitting from Yahya ibn Sa'id al-Ansari - who said: Al-Qasim ibn Muhammad, Salim ibn 'Abdullah ibn 'Umar, and 'Umar ibn 'Abd al-'Aziz viewed divorce before marriage as he said.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، وَيَزِيدُ بْنُ هَارُونَ، كِلَاهُمَا عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، قَالَ: كَانَ الْقَاسِمُ بْنُ مُحَمَّدٍ، وَسَالِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ: يَرَوْنَ الطَّلَاقَ قَبْلَ النِّكَاحِ كَمَا قَالَ.

L34079 From the narration of Abū 'Ubayd: Marwān reported from Shujā' from Khuṣayf, who said: I asked Mujāhid about the statement of one who said, "He divorced before acquiring marital authority," and Mujāhid criticized him, saying: "He has no valid divorce except after acquiring marital authority." This is the opinion of 'Uthmān al-Battī and Abū Ḥanīfah. Abū Muḥammad said: We examined the evidence cited by those who permit it under all circumstances. We found their proponents arguing: "Do you disagree with us concerning someone who says to his wife, 'You are divorced if I father a daughter'—[claiming] that it is nothing?" Thus, it is established that the divorce is contingent upon the time to which it is attached. Abū Muḥammad said: This is invalid, because he did not execute the divorce as commanded.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مَرْوَانُ عَنْ شُجَاعٍ عَنْ خُصَيْفٍ قَالَ: سَأَلْت مُجَاهِدًا عَنْ قَوْلِ مَنْ قَالَ: طَلَّقَ قَبْلَ أَنْ يَمْلِكَ فَعَابَهُ مُجَاهِدٌ، وَقَالَ: مَا لَهُ طَلَاقٌ إلَّا بَعْدَمَا مَلَكَ - وَهُوَ قَوْلُ عُثْمَانَ الْبَتِّيِّ، وَأَبِي حَنِيفَةَ. قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ أَجَازَهُ بِكُلِّ حَالٍ؟ فَوَجَدْنَا قَائِلَهُمْ قَالَ: لَا تُخَالِفُونَنَا فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إذَا بِنْت مِنِّي -: أَنَّهُ لَيْسَ شَيْئًا - فَصَحَّ أَنَّ الطَّلَاقَ مُعَلَّقٌ بِالْوَقْتِ الَّذِي أُضِيفَ إلَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا فَاسِدٌ، لِأَنَّهُ لَمْ يُخْرِجْ الطَّلَاقَ كَمَا أُمِرَ، بَلْ لَمْ يُوقِعْهُ حِينَ نَطَقَ بِهِ، وَأَوْقَعَهُ حَيْثُ لَا يَقَعُ؟ فَهُوَ بَاطِلٌ فَقَطْ.

Rather, he failed to effectuate it when he uttered it and attempted to effectuate it where it cannot apply. Thus, it is merely void.

L34080 They said: "Did we analogize it to the *nadhr* (vow)?" We replied: "All *qiyas* (analogy) is invalid. Furthermore, even if it were valid, this instance of it would still be invalid, because the *nadhr* is supported by an explicit text, while no text exists regarding advancing divorce before marriage."

L34081 A vow is something by which one draws near to Allah, the Mighty and Majestic, whereas divorce is not among the acts by which one draws near to Allah, the Mighty and Majestic, nor is it among the matters Allah, the Exalted, has recommended to His servants nor encouraged them to perform.

L34082–34084 And they do not differ with us regarding one who says, "I vow to Allah, the Exalted, that I will divorce my wife" - that divorcing her is not binding upon him. This invalidates their specious argumentation in citing the Almighty's injunction: {Fulfill [your] covenants} [Al-Mā'idah: 1]. Because divorce is a contract that does not obligate fulfillment for one who binds himself to it—meaning he contracted to divorce without having divorced—is divorce not among the contracts God Almighty commanded to fulfill before their execution? They stated: "We analogized it to the bequest." Abu Muhammad said: "This is among the vilest of their analogies and the most evidently invalid, except that the bequest takes effect after death, whereas if a living person were to divorce after his death, it would not be permissible."[4]

L34085 The bequest is a means of drawing closer to Allah, the Exalted and Glorious - rather, it is an obligation - whereas divorce is neither an obligation nor recommended. We have found no objection from them other than this.

L34086 This is an opinion not authentically reported from any of the Companions—may Allah be pleased with them—for the narration attributed to ʿUmar is fabricated. The chain includes Yāsīn—who is discredited—and Abū Muḥammad—who is unknown. Additionally, the chain of transmission is interrupted between Abū Salamah and ʿUmar.

L34087 Then we examined the stance of those who impose obligations when he

وَقَالُوا: قِسْنَاهُ عَلَى النَّذْرِ؟ قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ - ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ النَّذْرَ جَاءَ فِيهِ النَّصُّ، وَلَمْ يَأْتِ فِي تَقْدِيمِ الطَّلَاقِ قَبْلَ النِّكَاحِ نَصٌّ -.

وَالنَّذْرُ شَيْءٌ يُتَقَرَّبُ بِهِ إلَى اللَّهِ عَزَّ وَجَلَّ، وَلَيْسَ الطَّلَاقُ مِمَّا يُتَقَرَّبُ بِهِ إلَى اللَّهِ عَزَّ وَجَلَّ، وَلَا مِمَّا نَدَبَ اللَّهُ تَعَالَى عِبَادَهُ إلَيْهِ، وَحَضَّهُمْ عَلَيْهِ.

وَهُمْ لَا يُخَالِفُونَنَا فِي أَنَّ مَنْ قَالَ: عَلَيَّ نَذْرٌ لِلَّهِ تَعَالَى أَنْ أُطَلِّقَ زَوْجَتِي -: أَنَّهُ لَا يَلْزَمُهُ طَلَاقُهَا - وَهَذَا يُبْطِلُ عَلَيْهِمْ تَمْوِيهَهُمْ فِي ذَلِكَ بِقَوْلِهِ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] لِأَنَّ الطَّلَاقَ عَقْدٌ لَا يَلْزَمُ الْوَفَاءُ بِهِ لِمَنْ عَقَدَهُ عَلَى نَفْسِهِ - بِمَعْنَى عَقَدَ أَنْ يُطَلِّقَ، إلَّا أَنَّهُ لَمْ يُطَلِّقْ، فَلَيْسَ الطَّلَاقُ مِنْ الْعُقُودِ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهَا قَبْلَ أَنْ تُوقَعَ؟ وَقَالُوا: قِسْنَاهُ عَلَى الْوَصِيَّةِ؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مِنْ أَرْذَلِ قِيَاسَاتِهِمْ وَأَظْهَرِهَا فَسَادًا، إلَّا أَنَّ الْوَصِيَّةَ نَافِذَةٌ بَعْدَ الْمَوْتِ، وَلَوْ طَلَّقَ الْحَيُّ بَعْدَ مَوْتِهِ لَمْ يَجُزْ.

وَالْوَصِيَّةُ قُرْبَةٌ إلَى اللَّهِ عَزَّ وَجَلَّ، بَلْ هِيَ فَرْضٌ وَالطَّلَاقُ لَيْسَ فَرْضًا وَلَا مَنْدُوبًا إلَيْهِ - وَمَا وَجَدْنَا لَهُمْ شَغَبًا غَيْرَ هَذَا.

وَهُوَ قَوْلٌ لَمْ يَصِحَّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لِأَنَّ الرِّوَايَةَ عَنْ عُمَرَ مَوْضُوعَةٌ، فِيهَا يَاسِينُ - وَهُوَ هَالِكٌ - وَأَبُو مُحَمَّدٍ - مَجْهُولٌ - ثُمَّ هُوَ مُنْقَطِعٌ بَيْنَ أَبِي سَلَمَةَ، وَعُمَرَ.

[4] **Qur'an references (L34082):** Qur'an 5:1 (Al-Ma'idah).

specifies but refrain from imposing them when he generalizes, and we found this to be a corrupt distinction and an apparent contradiction. We found no argument of theirs beyond their claim: "If he generalizes, he has restricted himself." We responded: "He has not restricted himself - rather, he maintains leeway in the matter. Even if we grant he did restrict himself, where did you establish that such restriction in this context permits the forbidden?" Moreover, the fear incurred by abstaining from marrying the woman whose divorce he specified - should he then marry her - may exceed the fear if he had generalized, due to his obsession with with her. Thus, the corruption of this claim becomes evident through its complete lack of substantiating evidence.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ أَلْزَمَهُ إِنْ خَصَّ، وَلَمْ يُلْزِمْهُ إِنْ عَمَّ، فَوَجَدْنَاهُ فَرْقًا فَاسِدًا، وَمُنَاقَضَةً ظَاهِرَةً، وَلَمْ نَجِدْ لَهُمْ حُجَّةً أَكْثَرَ مِنْ قَوْلِهِمْ: إِذَا عَمَّ فَقَدْ ضَيَّقَ عَلَى نَفْسِهِ؟ فَقُلْنَا: مَا ضَيَّقَ، بَلْ لَهُ فِي الشِّرَاءِ فُسْحَةٌ، ثُمَّ هَبْكَ أَنَّهُ قَدْ ضَيَّقَ فَأَيْنَ وَجَدْتُمْ أَنَّ الضِّيقَ فِي مِثْلِ هَذَا يُبِيحُ الْحَرَامَ؟ وَأَيْضًا - فَقَدْ يَخَافُ فِي امْتِنَاعِهِ مِنْ نِكَاحِ الَّتِي خَصَّ طَلَاقَهَا إِنْ تَزَوَّجَهَا أَكْثَرَ مِمَّا يَخَافُ لَوْ عَمَّ لِكَلَفِهِ بِهَا - فَوَضَحَ فَسَادُ هَذَا الْقَوْلِ لِتَعَرِّيهِ عَنْ الْبُرْهَانِ جُمْلَةً.

L34088 We also found it—it is not authentically transmitted from any Companion, as it is either a broken chain or narrated through Muḥammad ibn Qays al-Marhabī—who is not renowned. Then we reconsidered our earlier opinion and found Allah the Exalted stating: {When you divorce women, divorce them during their waiting period} [al-Ṭalāq: 1].[5]

وَوَجَدْنَاهُ أَيْضًا - لَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، لِأَنَّهُ إِمَّا مُنْقَطِعٌ، وَإِمَّا مِنْ طَرِيقِ مُحَمَّدِ بْنِ قَيْسٍ الْمَرْهَبِيِّ - وَلَيْسَ بِالْمَشْهُورِ ثُمَّ رَجَعْنَا إلَى قَوْلِنَا فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١]

L34089 And the Most High said: "O you who have believed, when you marry believing women and then divorce them before consummating the marriage" [Al-Ahzab: 49]. Thus, Allah the Most High has not permitted divorce except after the marriage contract.[6]

وَقَالَ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ} [الأحزاب: ٤٩] فَلَمْ يَجْعَلْ اللَّهُ تَعَالَى الطَّلَاقَ إلَّا بَعْدَ عَقْدِ النِّكَاحِ.

L34090 Among the invalid [acts] is that divorce does not take effect when pronounced, yet later occurs without being pronounced—unless supported by clear proof. We found that he divorced none other than a woman not his lawful wife, and divorcing such a woman is invalid.

وَمِنْ الْبَاطِلِ أَنْ لَا يَقَعَ الطَّلَاقُ حِينَ إيقَاعِهِ، ثُمَّ يَقَعَ حِينَ لَمْ يُوقِعْهُ إلَّا بِبُرْهَانٍ وَاضِحٍ - وَوَجَدْنَاهُ إنَّمَا طَلَّقَ أَجْنَبِيَّةً، وَطَلَاقُ الْأَجْنَبِيَّةِ بَاطِلٌ.

L34091–34093 Astonishingly, those who oppose us—proponents of analogy by their own claim—do not differ regarding whoever said... To his wife: "If I divorce you, you are revocably divorced [by me]." But if he divorces her, she cannot be reclaimed unless he initiates an explicit verbal declaration of taking her back.

وَالْعَجَبُ - أَنَّ الْمُخَالِفِينَ لَنَا أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِامْرَأَتِهِ: إنْ طَلَّقْتُكِ فَأَنْتِ مُرْتَجَعَةٌ مِنِّي، فَطَلَّقَهَا: أَنَّهَا لَا تَكُونُ مُرْتَجَعَةً حَتَّى يَبْتَدِئَ النُّطْقَ بِارْتِجَاعِهِ لَهَا.

L34094 We found them in agreement regarding one who says, "If my father arrives, then marry me to yourself"—for I have accepted your marriage proposal?

[5] **Qur'an references (L34088):** Qur'an 65:1 (At-Talaq).
[6] **Qur'an references (L34089):** Qur'an 33:49 (Al-Ahzab).

She—being legally competent to manage her own affairs—said, “When your father comes, I have married you and accepted you as a husband.” When his father arrived, no valid marriage was established between them whatsoever due to that.

وَوَجَدْنَاهُمْ - لَا يَخْتَلِفُونَ فِيمَنْ قَالَ: إذَا قَدِمَ أَبِي فَزَوِّجِينِي مِنْ نَفْسِك فَقَدْ قَبِلْتُ نِكَاحَك؟ فَقَالَتْ هِيَ - وَهِيَ مَالِكَةٌ أَمْرَ نَفْسِهَا - وَأَنَا إذَا جَاءَ أَبُوك فَقَدْ تَزَوَّجْتُك وَرَضِيت بِك زَوْجًا، فَقَدِمَ أَبُوهُ، فَإِنَّهُ لَيْسَ بَيْنَهُمَا بِذَلِكَ نِكَاحٌ أَصْلًا.

L34095 They do not differ concerning one who says to another: “If you acquire wealth, you are my agent to give charity from it,” and if he acquires wealth—the latter does not become an agent to give charity from it until he initiates the verbal wording of his appointment. We do not know from where they derived the permissibility of advancing divorce or ẓihār before marriage? Sufficient is Allah for us—what an excellent Guardian!

وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِآخَرَ: إذَا كَسَبْت مَالًا فَأَنْتَ وَكِيلِي فِي الصَّدَقَةِ بِهِ، فَكَسَبَ مَالًا، فَإِنَّهُ لَا يَكُونُ الْآخَرُ وَكِيلًا فِي الصَّدَقَةِ بِهِ إلَّا حَتَّى يَبْتَدِئَ اللَّفْظَ بِتَوْكِيلِهِ، فَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ جَوَازُ تَقْدِيمِ الطَّلَاقِ، وَالظِّهَارِ، قَبْلَ النِّكَاحِ؟ - وَحَسْبُنَا اللَّهَ وَنِعْمَ الْوَكِيلُ.

L34096 Similarly, they do not differ concerning one who says to another: “Marry me to your daughter if she is born to you from so-and-so.” The other replied: “Yes, I have married you to my daughter - if so-and-so gives birth to her for me.” Then so-and-so gave birth to a daughter for him. In that case, she does not become his wife through that agreement.

وَكَذَلِكَ لَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِآخَرَ: زَوِّجْنِي ابْنَتَك إنْ وُلِدَتْ لَك مِنْ فُلَانَةَ؟ فَقَالَ الْآخَرُ: نَعَمْ، قَدْ زَوَّجْتُك ابْنَتِي - إنْ وَلَدَتْهَا لِي فُلَانَةُ - فَوَلَدَتْ لَهُ فُلَانَةُ ابْنَةً، فَإِنَّهَا لَا تَكُونُ لَهُ بِذَلِكَ زَوْجَةً.

L34097 The enforcement of this marriage has been reported from Ibn Mas’ud and al-Hasan—it was narrated to us via the chain of Hammad ibn Salamah, who narrated to me from Yahya ibn Sa’id al-Taymi, from al-Sha’bi, from Ibn Mas’ud, who ruled that she was entitled to the dowry of one of her husband’s wives—and no opposing view from the Companions (may Allah be pleased with them) against Ibn Mas’ud’s ruling is known.

وَقَدْ جَاءَ إنْفَاذُ هَذَا النِّكَاحِ عَنْ ابْنِ مَسْعُودٍ، وَالْحَسَنِ -: رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنِي يَحْيَى بْنُ سَعِيدٍ التَّيْمِيُّ عَنْ الشَّعْبِيِّ عَنْ ابْنِ مَسْعُودٍ بِذَلِكَ وَقَضَى لَهَا بِصَدَاقِ إحْدَى نِسَائِهَا - وَلَا يُعْرَفُ لِابْنِ مَسْعُودٍ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L34098 They do not differ concerning one who says to another, “If you authorize me to divorce your wife so-and-so, then I have divorced her three times,” and then the husband authorizes him to divorce her, that she is not thereby divorced.

وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ لِآخَرَ: إذَا وَكَّلْتنِي بِطَلَاقِ امْرَأَتِك فُلَانَةَ فَقَدْ طَلَّقْتهَا ثَلَاثًا، ثُمَّ وَكَّلَهُ الزَّوْجُ بِطَلَاقِهَا، أَنَّهَا لَا تَكُونُ بِذَلِكَ طَالِقًا.

L34099 And they do not differ regarding one who said, “If you were to marry so-and-so, she would be divorced three times,” then he married her and divorced her three times immediately after the completion of the marriage contract,

وَلَا يَخْتَلِفُونَ فِيمَنْ قَالَ: إنْ تَزَوَّجْت فُلَانَةَ فَهِيَ طَالِقٌ ثَلَاثًا، فَتَزَوَّجَهَا فَطَلَّقَهَا إثْرَ تَمَامِ الْعَقْدِ ثَلَاثًا، ثُمَّ أَتَتْ بِوَلَدٍ لِتَمَامِ سِتَّةِ أَشْهُرٍ مِنْ حِينِ ذَلِكَ، فَإِنَّهُ لَاحِقٌ بِهِ.

then she gave birth to a child six months after that event—indeed, the child is ascribed to him.

L34100 All of these are invalid contradictions. And success is from Allah, the Exalted.

L34101 **The Ruling on Divorce Pronounced by an Intoxicated Man.**

L34102 Issue 1964: A divorce pronounced by an intoxicated person is not binding.

L34103 Likewise, anyone who loses his reason through means other than intoxicants.

L34104–34106 The legal definition of intoxication is when one's speech becomes confused, uttering what is unreasonable and what he would not utter if not intoxicated. He is considered drunk—even if he demonstrates rational behavior during that state—because a madman may similarly act rationally and guard against authorities and other dangers.

L34107 As for the one whose tongue became heavy, his speech articulation was impaired, his gait was unsteady, and he merely acted wildly—except that he did not speak nonsensically—he is not considered intoxicated.

L34108 The proof of that is the statement of Allah the Exalted: "Do not approach Prayer while you are intoxicated until you know what you are saying" [An-Nisa: 43]. Allah the Exalted clarified that the intoxicated person does not know what he is saying. Thus, whoever does not know what he is saying is intoxicated, and whoever knows what he is saying is not intoxicated.[7]

L34109 Whoever mixes [drinks] and thereby exhibits both rational and irrational speech or behavior is in a state of intoxication (sukr), for he does not know what he is saying.

L34110 Whoever Allah, the Exalted, has declared to be unaware of what he is saying, it is impermissible to hold him accountable for any legal rulings—neither divorce nor otherwise—because he is not legally responsible. Thus, he is not among those endowed with understanding.

[7] **Qur'an references (L34108):** Qur'an 4:43 (An-Nisa).

وَهَذِهِ كُلُّهَا مُنَاقِضَاتٌ فَاسِدَةٌ: - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَاقُ السَّكْرَانِ]

١٩٦٤ - مَسْأَلَةٌ: وَطَلَاقُ السَّكْرَانِ غَيْرُ لَازِمٍ.

وَكَذَلِكَ مَنْ فَقَدَ عَقْلَهُ بِغَيْرِ الْخَمْرِ.

وَحَدُّ السُّكْرِ - هُوَ أَنْ يَخْلِطَ فِي كَلَامِهِ فَيَأْتِيَ بِمَا لَا يُعْقَلُ، وَبِمَا لَا يَأْتِي بِهِ إذَا لَمْ يَكُنْ سَكْرَانَ - وَإِنْ أَتَى بِمَا يُعْقَلُ فِي خِلَالِ ذَلِكَ - لِأَنَّ الْمَجْنُونَ قَدْ يَأْتِي بِمَا يُعْقَلُ، وَيَتَحَفَّظُ مِنْ السُّلْطَانِ وَمِنْ سَائِرِ الْمَخَاوِفِ.

وَأَمَّا مَنْ ثَقُلَ لِسَانُهُ وَتَخَبَّلَ مَخْرَجُ كَلَامِهِ وَتَخَبَّلَتْ مَشْيَته وَعَرْبَدَ فَقَطْ إلَّا أَنَّهُ لَمْ يَتَكَلَّمْ بِمَا لَا يُعْقَلُ - فَلَيْسَ هُوَ سَكْرَانُ.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى: {لا تَقْرَبُوا الصَّلاةَ وَأَنْتُمْ سُكَارَى حَتَّى تَعْلَمُوا مَا تَقُولُونَ} [النساء: ٤٣] فَبَيَّنَ اللَّهُ تَعَالَى أَنَّ السَّكْرَانَ لَا يَعْلَمُ مَا يَقُولُ، فَمَنْ لَمْ يَعْلَمْ مَا يَقُولُ فَهُوَ سَكْرَانُ، وَمَنْ عَلِمَ مَا يَقُولُ فَلَيْسَ بِسَكْرَانَ.

وَمَنْ خَلَطَ فَأَتَى بِمَا يُعْقَلُ وَمَا لَا يُعْقَلُ فَهُوَ سَكْرَانُ، لِأَنَّهُ لَا يَعْلَمُ مَا يَقُولُ.

وَمَنْ أَخْبَرَ اللَّهُ تَعَالَى أَنَّهُ لَا يَدْرِي مَا يَقُولُ فَلَا يَحِلُّ أَنْ يُلْزَمَ شَيْئًا مِنْ الْأَحْكَامِ، لَا طَلَاقًا، وَلَا غَيْرَهُ، لِأَنَّهُ غَيْرُ مُخَاطَبٍ، إذًا لَيْسَ مِنْ ذَوِي الْأَلْبَابِ.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا - فَمَنْ رُوِيَ عَنْهُ خِلَافُ مَا قُلْنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ خِرَاشِ بْنِ مَالِكٍ الْجَهْضَمِيِّ حَدَّثَنِي يَحْيَى بْنُ عُبَيْدٍ عَنْ أَبِيهِ: أَنَّ رَجُلًا مِنْ أَهْلِ عُمَانَ تَمَلَّأَ مِنَ الشَّرَابِ فَطَلَّقَ امْرَأَتَهُ ثَلَاثًا فَشَهِدَ عَلَيْهِ نِسْوَةٌ فَكُتِبَ إِلَى عُمَرَ بِذَلِكَ، فَأَجَازَ شَهَادَةَ النِّسْوَةِ، وَأَثْبَتَ عَلَيْهِ الطَّلَاقَ.

L34111 People have differed regarding this matter. As transmitted to us through the chain of Abd al-Rahman ibn Mahdi from Khirash ibn Malik al-Jahdhami, who narrated to me from Yahya ibn Ubayd on his father's authority: A man from Oman consumed a large amount of drink and divorced his wife three times. Women testified against him, so a report was sent in writing to Umar about this. He validated the women's testimony and upheld the divorce ruling against him.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ هَارُونَ عَنْ جَرِيرِ بْنِ حَازِمٍ عَنِ الزُّبَيْرِ بْنِ الْخِرِّيتِ عَنْ أَبِي لَبِيدٍ أَنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ وَهُوَ سَكْرَانُ فَرُفِعَ إِلَى عُمَرَ بْنِ الْخَطَّابِ وَشَهِدَ عَلَيْهِ أَرْبَعُ نِسْوَةٍ فَفَرَّقَ عُمَرُ بَيْنَهُمَا.

L34112 Through the chain of Abu ʻUbayd: Yazid ibn Harun narrated to us from Jarir ibn Hazim from al-Zubayr ibn al-Khirrit from Abu Labid that a man divorced his wife while intoxicated. The case was referred to ʻUmar ibn al-Khattab, and four women testified against him. ʻUmar then separated the couple.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا ابْنُ أَبِي مَرْيَمَ - وَهُوَ سَعِيدٌ - عَنْ نَاجِيَةَ بْنِ أَبِي بَكْرٍ عَنْ جَعْفَرِ بْنِ رَبِيعَةَ عَنِ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ مُعَاوِيَةَ أَجَازَ طَلَاقَ السَّكْرَانِ.

L34113 Through the chain of Abū ʻUbayd: Ibn Abī Maryam (who is Saʻīd) narrated from Nājiyah ibn Abī Bakr, from Jaʻfar ibn Rabīʻah, from Ibn Shihāb, from Saʻīd ibn al-Musayyab: that Muʻāwiyah permitted the divorce pronounced by a drunk person.

وَرُوِّينَاهُ عَنِ ابْنِ عَبَّاسٍ مِنْ طُرُقٍ لَمْ تَصِحَّ: لِأَنَّ فِي إِحْدَى طَرِيقَيْهِ الْحَجَّاجَ بْنَ أَرْطَاةَ، وَفِي الْأُخْرَى إِبْرَاهِيمَ بْنَ أَبِي يَحْيَى.

L34114 We have narrated it from Ibn Abbas through chains that are not authentic, because one of its two chains includes Al-Ḥajjāj ibn Arṭāʾah, and the other includes Ibrāhīm ibn Abī Yaḥyā.

وَصَحَّ عَنِ النَّخَعِيِّ، وَابْنِ سِيرِينَ، وَالْحَسَنِ، وَمَيْمُونِ بْنِ مِهْرَانَ، وَحُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ، وَعَطَاءٍ، وَقَتَادَةَ، وَالزُّهْرِيِّ - إِلَّا أَنَّهُ فَرَّقَ بَيْنَ أَحْكَامِهِ.

L34115 It has been authentically reported from an-Nakhaʻī, Ibn Sīrīn, al-Ḥasan, Maymūn ibn Mihrān, Ḥumaid ibn ʻAbd al-Raḥmān, ʻAṭāʾ, Qatādah, and az-Zuhrī (though az-Zuhrī differentiated between his rulings).

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: يَجُوزُ طَلَاقُ السَّكْرَانِ وَعِتْقُهُ، وَلَا يَجُوزُ نِكَاحُهُ، وَلَا شِرَاؤُهُ وَلَا بَيْعُهُ.

L34116 It has been reported to us via the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: The divorce pronounced by an intoxicated person and his manumission are valid, but his act of marriage, buying, and selling are not valid.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ شِهَابٍ يَجُوزُ طَلَاقُ السَّكْرَانِ وَلَا تَجُوزُ هِبَتُهُ وَلَا صَدَقَتُهُ.

L34117–34118 Narrated by Abd al-Razzaq from Ibn Jurayj from Ibn Shihab: An intoxicated person's divorce is permissible, and his gift and charity are not permissible.

L34119 The validity of the divorce pronounced by an intoxicated person was af-

firmed, as reported by al-Shaʿbī, Mujāhid, Saʿīd ibn al-Musayyab, Jābir ibn Zayd, and ʿUmar ibn ʿAbd al-ʿAzīz.

وَصَحَّتْ إِجَازَةُ طَلَاقِ السَّكْرَانِ عَنْ الشَّعْبِيِّ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ وَجَابِرِ بْنِ زَيْدٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L34120 We have reported the opinion from ʿAṭāʾ ibn Abī Rabāḥ and Sulaymān ibn Yasār—this being the view of Ibn Shubruma, though he withheld judgment regarding its permissibility—while Ibn Abī Laylā permitted both scenarios.

وَرُوِّينَاهُ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ، وَسُلَيْمَانَ بْنِ يَسَارٍ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَتَوَقَّفَ فِي نِكَاحِهِ - وَأَجَازَ ابْنُ أَبِي لَيْلَى كِلَا الْأَمْرَيْنِ.

L34121 Among those who deemed his divorce permissible are Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, and al-Shāfiʿī—in one of his two opinions.

وَمِمَّنْ أَجَازَ طَلَاقَهُ: سُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيِّ - فِي أَحَدِ قَوْلَيْهِ.

L34122 Mālik said: The divorce, marriage, and all actions of a drunkard are valid except apostasy alone. Consequently, no ruling pertaining to an apostate is applied to his benefit in any of his affairs.

وَقَالَ مَالِكٌ: طَلَاقُ السَّكْرَانِ وَنِكَاحُهُ وَجَمِيعُ أَفْعَالِهِ جَائِزَةٌ إِلَّا الرِّدَّةُ فَقَطْ، فَلَا يُحْكَمُ لَهُ فِي شَيْءٍ مِنْ أُمُورِهِ بِحُكْمِ الْمُرْتَدِّ.

L34123 Ibn Wahb narrated from him that his divorce is permissible, but his marriage is impermissible.

وَرَوَى عَنْهُ ابْنُ وَهْبٍ يَجُوزُ طَلَاقُهُ وَلَا يَجُوزُ نِكَاحُهُ.

L34124 Mutarrif ibn Abdullah, a companion of Malik, said: "An intoxicated person is not liable nor held accountable for anything except four matters—there is no fifth. He then named them: divorce, freeing a slave, intentional killing, and false accusation of adultery (*qadhf*)." This indicates that there is no *ḥadd* punishment for *zinā* nor for theft.

وَقَالَ مُطَرِّفُ بْنُ عَبْدِ اللَّهِ صَاحِبُ مَالِكٍ: لَا يَلْزَمُ السَّكْرَانَ شَيْءٌ وَلَا يُؤَاخَذُ بِشَيْءٍ، إِلَّا بِأَرْبَعَةِ أَشْيَاءَ لَا خَامِسَ لَهَا - هَكَذَا قَالَ، ثُمَّ سَمَّاهَا - فَقَالَ: الطَّلَاقُ، وَالْعِتْقُ، وَالْقَتْلُ، وَالْقَذْفُ - فَدَلَّ ذَلِكَ عَلَى أَنَّهُ لَا يُحَدُّ لِلزِّنَى وَلَا لِلسَّرِقَةِ.

L34125 Abu Hanifa and his companions said: His divorce is permissible, and all his legal acts are permissible except apostasy. Muhammad ibn al-Hasan said: Neither is his conversion to Islam valid if he was a disbeliever, nor is his confession to offenses entailing ḥudūd penalties valid.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: يَجُوزُ طَلَاقُهُ، وَجَمِيعُ أَفْعَالِهِ إِلَّا الرِّدَّةُ. وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: وَلَا إِسْلَامُهُ إِنْ كَانَ كَافِرًا، وَلَا إِقْرَارُهُ بِالْحُدُودِ.

L34126 Abu Yusuf said: All of that is binding upon him.

وَقَالَ أَبُو يُوسُفَ: كُلُّ ذَلِكَ لَهُ لَازِمٌ.

L34127 As for those from whom opinions similar to ours are narrated—and similarly, as transmitted through Ibn Abī Shaybah, who narrated to us from Wakīʿ, from Ibn Abī Dhi'b, from al-Zuhrī, from Abān ibn ʿUthmān, from his father ʿUthmān, who said: "There is no divorce for the insane or the intoxicated."

وَأَمَّا مَنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ عَنْ أَبَانَ بْنِ عُثْمَانَ عَنْ أَبِيهِ عُثْمَانَ قَالَ: لَيْسَ لِمَجْنُونٍ، وَلَا لِسَكْرَانَ طَلَاقٌ.

L34128 It has been reported to us that al-Zuhrī and ʻUmar ibn ʻAbd al-ʻAzīz retracted their position and reverted to this opinion.

وَقَدْ رُوِّينَا رُجُوعَ الزُّهْرِيِّ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِلَى هَذَا.

L34129 And narrated via Wakiʿ from Rabāḥ ibn Abī Maʿrūf from ʿAṭāʾ ibn Abī Rabāḥ, who said: The divorce pronounced by an intoxicated man is not valid.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ رَبَاحِ بْنِ أَبِي مَعْرُوفٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: طَلَاقُ السَّكْرَانِ لَا يَجُوزُ.

L34130 And through the chain of ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwūs from his father: The divorce of an intoxicated person is not permissible.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ: لَا يَجُوزُ طَلَاقُ السَّكْرَانِ.

L34131–34132 It has been authentically reported from Al-Qasim ibn Muhammad that divorcing him is not permissible, nor should his hand be amputated if he steals unless he is known for theft.

وَصَحَّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّهُ لَا يَجُوزُ طَلَاقُهُ، وَأَنَّهُ لَا يُقْطَعُ إنْ سَرَقَ إلَّا أَنْ يَكُونَ مَعْرُوفًا بِالسَّرِقَةِ.

L34133 From the chain of Abū ʻUbayd, from Hushaym, from Yaḥyā ibn Saʻīd al-Anṣārī: ʻUmar ibn ʻAbd al-ʻAzīz was brought a drunk man who had divorced his wife. He made him swear by Him besides whom there is no deity, [saying]: "I swear that I divorced her while not in my senses." The man swore, so ʻUmar returned his wife to him and imposed the ḥadd punishment. Yaḥyā ibn Saʻīd said: This is the opinion held by al-Qāsim ibn Muḥammad ibn Abī Bakr.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أُتِيَ بِسَكْرَانَ طَلَّقَ امْرَأَتَهُ، فَاسْتَحْلَفَهُ بِالَّذِي لَا إلَهَ إلَّا هُوَ لَقَدْ طَلَّقَهَا - وَهُوَ لَا يَعْقِلُ - فَحَلَفَ، فَرَدَّ إلَيْهِ امْرَأَتَهُ وَضَرَبَهُ الْحَدَّ - قَالَ يَحْيَى بْنُ سَعِيدٍ: وَبِهَذَا يَقُولُ الْقَاسِمُ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرٍ.

L34134 It is soundly established from Yaḥyā ibn Saʿīd al-Anṣārī and Ḥumayd ibn ʿAbd al-Raḥman.

وَصَحَّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَحُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ.

L34135 We have narrated it from Rabīʿah—and it is the statement of ʿUbayd Allāh ibn al-Ḥasan and al-Layth ibn Saʿd.

وَرُوِّينَاهُ عَنْ رَبِيعَةَ - وَهُوَ قَوْلُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَاللَّيْثِ بْنِ سَعْدٍ.

L34136 One of the two opinions of al-Shāfiʿī, along with the view of Isḥāq ibn Rāhwayh, Abū Thawr, al-Muzanī, Abū Sulaymān, all their companions, and the position held by Abū Jaʿfar al-Ṭaḥāwī and Abū al-Ḥasan al-Karkhī among the senior Ḥanafī scholars, states that he incurs no obligation for contracts, sales, or prescribed penalties except the penalty for consuming khamr alone. ʿUthmān al-Battī said: "He is not bound by contracts, sales, or penalties except the penalty for khamr exclusively—even if he commits adultery, falsely accuses, or steals." Al-Layth said: "No divorce, sale, marriage, manumission, or any verbal declaration becomes binding upon him. As for physical acts such as killing, theft, or adultery, all such offenses are enforced against him."

وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ، وَقَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي ثَوْرٍ، وَالْمُزَنِيِّ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ وَبِهِ يَقُولُ أَبُو جَعْفَرٍ الطَّحَاوِيُّ، وَأَبُو الْحَسَنِ الْكَرْخِيُّ مِنْ شُيُوخِ الْحَنَفِيِّينَ - وَقَالَ عُثْمَانُ الْبَتِّيُّ: لَا يَلْزَمُهُ عَقْدٌ وَلَا بَيْعٌ وَلَا حَدٌّ إلَّا حَدَّ الْخَمْرِ فَقَطْ، وَإِنْ زَنَى وَقَذَفَ وَسَرَقَ - وَقَالَ اللَّيْثُ: لَا يَلْزَمُهُ طَلَاقٌ وَلَا بَيْعٌ وَلَا نِكَاحٌ وَلَا عِتْقٌ وَلَا شَيْءٌ بِقَوْلِهِ. وَأَمَّا مَا عَمِلَ بِبَدَنِهِ مِنْ قَتْلٍ، أَوْ سَرِقَةٍ، أَوْ زِنًى، فَإِنَّهُ يُقَامُ عَلَيْهِ كُلُّ ذَلِكَ

L34137 We examined the arguments of those opposing our position and found them claiming: “He brought madness upon himself through disobedience to Allah the Almighty.” We countered: “What consequence follows? Why must one who inflicted this upon himself be held liable for acts committed during his mental corruption?” This principle finds no basis in the Qur’an or Sunnah. You yourselves agree regarding one who throws himself to die in disobedience to Allah - surviving only to strike his head and corrupt his mind - and regarding one who wages armed rebellion and spreads corruption on the road, then suffers a head injury causing mental corruption: such individuals bear no accountability for the obligations incumbent upon the sound-minded, even though they incurred madness through the most grievous sins.

- فَنَظَرْنَا فِيمَا يَحْتَجُّ بِهِ مَنْ خَالَفَ قَوْلَنَا؟ فَوَجَدْنَاهُمْ يَقُولُونَ: هُوَ أَدْخَلَ عَلَى نَفْسِهِ ذَهَابَ عَقْلِهِ بِمَعْصِيَتِهِ لِلَّهِ عَزَّ وَجَلَّ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ وَمِنْ أَيْنَ وَجَبَ إِذَا أَدْخَلَ ذَلِكَ عَلَى نَفْسِهِ أَنْ يُؤَاخَذَ بِمَا يَجْنِي فِي ذَهَابِ عَقْلِهِ؟ وَهَذَا مَا لَا يُوجَدُ فِي قُرْآنٍ وَلَا سُنَّةٍ، وَلَا خِلَافَ بَيْنَكُمْ فِيمَنْ تَرَدَّى لِيَقْتُلَ نَفْسَهُ عَاصِيًا لِلَّهِ عَزَّ وَجَلَّ، فَسَلِمَتْ نَفْسُهُ إِلَّا أَنَّهُ سَقَطَ عَلَى رَأْسِهِ فَفَسَدَ عَقْلُهُ، وَفِيمَنْ حَارَبَ وَأَفْسَدَ الطَّرِيقَ فَضُرِبَ فِي رَأْسِهِ فَفَسَدَ عَقْلُهُ أَنَّهُ لَا يَلْزَمُهُ شَيْءٌ مِمَّا يَلْزَمُ الْأَصِحَّاءَ وَهُوَ الَّذِي أَدْخَلَ عَلَى نَفْسِهِ الْجُنُونَ بِأَعْظَمِ الْمَعَاصِي.

L34138 Then they do not differ regarding someone whom a group of ruffians seized—his hands and feet were restrained, his mouth was forced open with a hook, and wine was poured into it until he became intoxicated. They disputed whether he is held accountable for his divorce, though he neither voluntarily consumed anything nor disobeyed. Thus, the baselessness of their objection became evident.

ثُمَّ لَا يَخْتَلِفُونَ فِيمَنْ أَمْسَكَهُ قَوْمٌ عَيَّارُونَ فَضَبَطَتْ يَدَاهُ وَرِجْلَاهُ، وَفُتِحَ فَمُهُ بِكَلُّوبٍ وَصُبَّ فِيهِ الْخَمْرُ حَتَّى سَكِرَ أَنَّهُ مُؤَاخَذٌ بِطَلَاقِهِ - وَهُوَ لَمْ يُدْخِلْ عَلَى نَفْسِهِ شَيْئًا وَلَا عَصَى -: فَظَهَرَ فَسَادُ اعْتِرَاضِهِمْ.

L34139–34140 They obscured using narrations stating, “Three [acts] for which jesting about them is serious,” yet these narrations neither mention their nullification for the intoxicated person nor provide evidence for it.

وَمَوَّهُوا بِالْأَخْبَارِ الَّتِي فِيهَا «ثَلَاثٌ هَزْلُهُنَّ جَدٌّ» وَلَيْسَ فِيهَا عَلَى سُقُوطِهَا لِلسَّكْرَانِ ذِكْرٌ، وَلَا دَلِيلَ عَلَيْهِ.

L34141 They cited the fabricated report: “There is no divorce during qaylulah (noon rest period).” If this were authentic, it would apply to the divorce of one whose divorce is a divorce—among those of sound mind—as they [scholars] state regarding the divorce of a minor or a mentally incapacitated person.

وَاحْتَجُّوا بِالْخَبَرِ الْمَوْضُوعِ «لَا قَيْلُولَةَ فِي الطَّلَاقِ» وَلَوْ صَحَّ هَذَا لَكَانَ ذَلِكَ فِي طَلَاقِ مَنْ طَلَاقُهُ طَلَاقٌ مِمَّنْ يَعْقِلُ كَمَا يَقُولُونَ فِي طَلَاقِ الصَّبِيِّ وَالْمَجْنُونِ.

L34142 And by the false report: “Every divorce is valid except that of the mentally incompetent.”

وَبِالْخَبَرِ الْكَاذِبِ: «كُلُّ طَلَاقٍ جَائِزٌ إِلَّا طَلَاقَ الْمَعْتُوهِ» .

L34143 Abu Muhammad said: We have explained its invalidity earlier in the chapter on “Divorce under Duress.”

قَالَ أَبُو مُحَمَّدٍ: قَدْ بَيَّنَّا سُقُوطَهُ آنِفًا فِي بَابِ " طَلَاقِ الْمُكْرَهِ ".

L34144 Furthermore, even if it were valid, they would have no argument for it,

ثُمَّ لَوْ صَحَّ لَمْ يَكُنْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُمْ لَا يُجِيزُونَ طَلَاقَ مَنْ لَمْ يَبْلُغْ وَلَيْسَ بِمَعْتُوهٍ.

because they do not recognize the divorce of a minor who has not reached puberty and is not mentally incapacitated.

L34145 As for the intoxicated person who does not know what he is saying, he is unquestionably deemed *maʿtūh*—mentally deranged—for linguistically, the *maʿtūh* is one who has no intellect. Whoever is unaware of what he is saying has no intellect, and thus he is *maʿtūh* regardless of the situation.

وَأَمَّا السَّكْرَانُ الَّذِي لَا يَدْرِي مَا يَتَكَلَّمُ بِهِ فَهُوَ مَعْتُوهٌ بِلَا شَكٍّ، لِأَنَّ الْمَعْتُوهَ فِي اللُّغَةِ: هُوَ الَّذِي لَا عَقْلَ لَهُ، وَمَنْ لَا يَدْرِي مَا يَتَكَلَّمُ بِهِ، فَلَا عَقْلَ لَهُ، فَهُوَ مَعْتُوهٌ بِأَيِّ وَجْهٍ كَانَ.

L34146 They said: It has been reported from ʿAlī and ʿAbd al-Raḥmān in the presence of the Companions: If he drinks, he becomes intoxicated; when intoxicated, he babbles deliriously; when babbling deliriously, he fabricates; and when he fabricates, he is flogged eighty lashes.

وَقَالُوا: قَدْ رُوِيَ عَنْ عَلِيٍّ، وَعَبْدِ الرَّحْمَنِ بِحَضْرَةِ الصَّحَابَةِ، إِذَا شَرِبَ سَكِرَ، وَإِذَا سَكِرَ هَذَى، وَإِذَا هَذَى افْتَرَى، وَإِذَا افْتَرَى: جُلِدَ ثَمَانِينَ.

L34147 Abu Muhammad said: This is a fabricated report. God, Exalted is He, has declared Ali and Abd al-Rahman free from it, as its chain of transmission is not authentic. Moreover, the magnitude of the contradiction within it lies in the fact that it stipulates imposing the prescribed punishment on one who is delirious, while no prescribed punishment applies to the delirious.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا خَبَرٌ مَكْذُوبٌ قَدْ نَزَّهَ اللَّهُ تَعَالَى عَلِيًّا، وَعَبْدَ الرَّحْمَنِ عَنْهُ، لِأَنَّهُ لَا يَصِحُّ إِسْنَادُهُ، ثُمَّ عَظِيمُ مَا فِيهِ مِنْ الْمُنَاقَضَةِ، لِأَنَّ فِيهِ إِيجَابَ الْحَدِّ عَلَى مَنْ هَذَى، وَالْهَاذِي لَا حَدَّ عَلَيْهِ.

L34148 Why did you not say: If he raves, he apostatizes, and if he apostatizes, he is to be killed? They said: By intoxication itself, the ḥadd is obligatory for him—is divorce the same? We said: You have lied! The ḥadd has never been obligatory for intoxication alone, but rather for his intent to drink a substance whose large quantity only causes intoxication, whether he became intoxicated or not.

وَهَلَّا قُلْتُمْ: إِذَا هَذَى كَفَرَ، وَإِذَا كَفَرَ قُتِلَ؟ وَقَالُوا: بِنَفْسِ السُّكْرِ يَجِبُ عَلَيْهِ الْحَدُّ، فَالطَّلَاقُ كَذَلِكَ؟ قُلْنَا: كَذَبْتُمْ مَا وَجَبَ قَطُّ بِالسُّكْرِ حَدٌّ، لَكِنْ بِقَصْدِهِ إِلَى شُرْبِ مَا يُسْكِرُ كَثِيرُهُ فَقَطْ، سَوَاءٌ سَكِرَ أَوْ لَمْ يَسْكَرْ.

L34149 The proof of that is that there is no prescribed punishment for one who becomes intoxicated by someone compelled to make them drink the intoxicant.

بُرْهَانُ ذَلِكَ -: أَنَّ مَنْ سَكِرَ مِمَّنْ أُكْرِهَ عَلَى شُرْبِهَا لَا حَدَّ عَلَيْهِ.

L34150 They said: "Is he obligated to pray, so the divorce he pronounces becomes binding on him?" We replied: "You are mistaken. The Qur'an's text clarifies that he is not obligated to pray; rather, he is prohibited from praying until he understands what he is saying."

وَقَالُوا: هُوَ مُخَاطَبٌ بِالصَّلَاةِ فَطَلَاقُهُ لَازِمٌ لَهُ؟ قُلْنَا: كَذَبْتُمْ، بَلْ نَصُّ الْقُرْآنِ يُبَيِّنُ أَنَّهُ غَيْرُ مُخَاطَبٍ بِالصَّلَاةِ، بَلْ هُوَ مَنْهِيٌّ عَنْهَا حَتَّى يَدْرِيَ مَا يَقُولُ.

L34151 They said: If that were the case, then whoever wished to kill his enemy

وَقَالُوا: لَوْ كَانَ ذَلِكَ لَكَانَ مَنْ شَاءَ قَتْلَ عَدُوِّهِ سَكِرَ فَقَتَلَهُ، وَمَنْ يَدْرِي أَنَّهُ سَكْرَانُ؟

would have become intoxicated and killed him, and who could know that he was intoxicated?

فَقُلْنَا: فَقُولُوا إذًا بِإِقَامَةِ الْحُدُودِ عَلَى الْمَجَانِينِ، لِأَنَّهُ لَوْ سَقَطَ عَنْهُمْ الْحَدُّ لَكَانَ مَنْ شَاءَ قَتْلَ عَدُوِّهِ تَحَامَقَ، وَمَنْ يَدْرِي أَنَّهُ أَحْمَقُ - لَكِنْ نَقُولُ: لَا يَخْفَى السَّكْرَانُ مِنْ الْمُتَسَاكِرِ، وَلَا الْأَحْمَقُ مِنْ الْمُتَحَامِقِ.

L34152–34153 So we said: Then assert that Hudud penalties are to be enforced upon the mentally incompetent, for if the punishment were waived for them, anyone wishing to kill their enemy would feign foolishness—and who could discern whether he is truly a fool? However, we say: A drunkard cannot be concealed among those who are drunk, nor a fool among those feigning foolishness.

وَمِمَّا يُوَضِّحُ صِحَّةَ قَوْلِنَا يَقِينًا: الْخَبَرُ الثَّابِتُ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدَانُ، وَأَحْمَدُ بْنُ صَالِحٍ قَالَ عَبْدَانُ: نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ - وَقَالَ أَحْمَدُ: نا عَنْبَسَةُ، كِلَاهُمَا أَخْبَرَهُ يُونُسُ بْنُ يَزِيدَ عَنْ الزُّهْرِيِّ أَخْبَرَنِي عَلِيُّ بْنُ الْحُسَيْنِ أَنَّ الْحُسَيْنَ بْنَ عَلِيٍّ أَخْبَرَهُ أَنَّ عَلِيًّا قَالَ فِي حَدِيثٍ طَوِيلٍ، قَالَ: «فَطَفِقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَلُومُ حَمْزَةَ فِيمَا فَعَلَ -: يَعْنِي إذْ عَقَرَ شَارِفَيْ عَلِيٍّ وَهُوَ يَشْرَبُ مَعَ قَوْمٍ مِنْ الْأَنْصَارِ، قَالَ عَلِيٌّ: فَإِذَا حَمْزَةُ ثَمِلٌ مُحْمَرَّةٌ عَيْنَاهُ فَقَالَ لَهُ حَمْزَةُ: هَلْ أَنْتُمْ إلَّا عَبِيدٌ لِأَبِي؟ فَعَرَفَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ ثَمِلَ فَنَكَصَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَلَى عَقِبَيْهِ الْقَهْقَرَى، فَخَرَجَ وَخَرَجْنَا مَعَهُ» . فَهَذَا حَمْزَةُ - رَضِيَ اللَّهُ عَنْهُ - يَقُولُ وَهُوَ سَكْرَانُ مَا لَوْ قَالَهُ غَيْرُ سَكْرَانَ لَكَفَرَ، وَقَدْ أَعَاذَهُ اللَّهُ مِنْ ذَلِكَ.

L34154 Among what clarifies the soundness of our position with certainty is the authentically established report we transmitted through Al-Bukhārī's chain: ʿAbdān and Aḥmad ibn Ṣāliḥ narrated to us. ʿAbdān said: ʿAbdullāh ibn al-Mubārak narrated to us - while Aḥmad said: ʿAnbasah narrated to us - both of whom were informed by Yūnus ibn Yazīd, from Al-Zuhrī, who reported: ʿAlī ibn al-Ḥusayn informed me that al-Ḥusayn ibn ʿAlī informed him that ʿAlī said in a lengthy ḥadīth: "Thereupon the Messenger of Allah - peace and blessings be upon him - proceeded to reproach Ḥamzah for his deed" - referring to when he hamstrung ʿAlī's two prized camels while drinking with a group of the Anṣār. ʿAlī said: "Ḥamzah was there in a state of intoxication, his eyes crimson. Ḥamzah said to him: 'Are you not but slaves belonging to my father?' When the Messenger of Allah - peace and blessings be upon him - perceived his drunkenness, he - upon him be peace and blessings - retreated backward on his heels. He departed, and we departed with him." Thus Ḥamzah - may Allah be pleased with him - spoke while intoxicated what would have constituted disbelief if uttered by one sober, yet Allah safeguarded him from that consequence.

L34155 Therefore, it is validly established that the intoxicated person is entirely exempt from accountability for his actions.

فَصَحَّ أَنَّ السَّكْرَانَ غَيْرُ مُؤَاخَذٍ بِمَا يَفْعَلُ جُمْلَةً.

L34156 As for the one who differentiates and does not impose apostasy but imposes other than that, his statement is contradictory, his ruling invalid with certainty without ambiguity—and by Allah the Most High is all divine facilitation.

وَأَمَّا مَنْ فَرَّقَ فَلَمْ يُلْزِمْهُ الرِّدَّةَ، وَأَلْزَمَهُ غَيْرَ ذَلِكَ، فَمُتَنَاقِضُ الْقَوْلِ، بَاطِلُ الْحُكْمِ بِيَقِينٍ لَا إشْكَالَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْيَمِينُ بِالطَّلَاقِ لَا يَلْزَمُ سَوَاءٌ بَرَّ أَوْ حَنِثَ]

L34157 **A juristic ruling: An oath sworn with divorce as its condition does not take effect, whether fulfilled or broken.**

L34158 Issue 1965: An oath involving divorce is not binding - whether fulfilled or broken - and no divorce is effected by it. There is no divorce except as Allah, the Exalted, has commanded, and no oath except as Allah, the Exalted, has commanded on the tongue of His Messenger - may Allah bless him and grant him peace.

١٩٦٥ - مَسْأَلَةٌ: وَالْيَمِينُ بِالطَّلَاقِ لَا يَلْزَمُ - سَوَاءٌ بَرَّ أَوْ حَنِثَ - لَا يَقَعُ بِهِ طَلَاقٌ، وَلَا طَلَاقَ إِلَّا كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، وَلَا يَمِينَ إِلَّا كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L34159 The proof of this is the statement of Allah, the Mighty and Majestic: *"That is the expiation for your oaths when you swear"* [Al-Mā'idah: 89]. All those who disagree with us here do not differ in affirming that oaths by divorce, freeing a slave, walking to Mecca, or alms-giving of wealth—in their view, there is no expiation for breaking any of them except by fulfilling the sworn action or upholding the oath itself.[8]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {ذَلِكَ كَفَّارَةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ} [المائدة: ٨٩] وَجَمِيعُ الْمُخَالِفِينَ لَنَا هَاهُنَا لَا يَخْتَلِفُونَ فِي أَنَّ الْيَمِينَ بِالطَّلَاقِ، وَالْعَتَاقِ وَالْمَشْيِ إِلَى مَكَّةَ، وَصَدَقَةَ الْمَالِ فَإِنَّهُ لَا كَفَّارَةَ عِنْدَهُمْ فِي حِنْثِهِ فِي شَيْءٍ مِنْهُ إِلَّا بِالْوَفَاءِ بِالْفِعْلِ، أَوْ الْوَفَاءِ بِالْيَمِينِ.

L34160 Thus, it is thereby established with certainty that none of those [aforementioned] things is an oath at all, for there is no oath except what Allah, the Exalted, has explicitly designated as an oath.

فَصَحَّ بِذَلِكَ يَقِينًا أَنَّهُ لَيْسَ شَيْءٌ مِنْ ذَلِكَ يَمِينًا، إِذْ لَا يَمِينَ إِلَّا مَا سَمَّاهُ اللَّهُ تَعَالَى يَمِينًا.

L34161–34163 And the statement of the Messenger of Allah—may peace and blessings be upon him—which we have narrated via the chain of Abu 'Ubayd: Ismāʿīl ibn Jaʿfar informed us. Abdullah ibn Dinar narrated from Ibn Umar that the Messenger of Allah (peace be upon him) said, "Whoever takes an oath, let him swear only by Allah." Thus, the ambiguity is removed regarding that every oath sworn by other than Allah, the Exalted and Glorified, is a sin and not a valid oath.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ نا عَبْدُ اللَّهِ بْنُ دِينَارٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَ حَالِفًا فَلَا يَحْلِفْ إِلَّا بِاللَّهِ» فَارْتَفَعَ الْإِشْكَالُ فِي أَنَّ كُلَّ حَلِفٍ بِغَيْرِ اللَّهِ عَزَّ وَجَلَّ فَإِنَّهُ مَعْصِيَةٌ وَلَيْسَ يَمِينًا.

L34164 And this is a matter wherein there is disagreement. It has been authentically reported from al-Ḥasan regarding one who said to his wife: "You are divorced if I do not strike my slave," then the slave absconded. He said: "She remains his wife; he may remain married to her and they inherit from one another until he fulfills his declaration. If the slave dies before he fulfills what he declared, his wife is irrevocably divorced from him."

وَهَذَا مَكَانٌ اُخْتُلِفَ فِيهِ - فَصَحَّ: عَنْ الْحَسَنِ فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِنْ لَمْ أَضْرِبْ غُلَامِي، فَأَبَقَ الْغُلَامُ؟ قَالَ: هِيَ امْرَأَتُهُ يَنْكِحُهَا وَيَتَوَارَثَانِ حَتَّى يَفْعَلَ مَا قَالَ، فَإِنْ مَاتَ الْغُلَامُ قَبْلَ أَنْ يَفْعَلَ مَا قَالَ فَقَدْ ذَهَبَتْ مِنْهُ امْرَأَتُهُ.

L34165 From the narration of Abd al-Razzaq, from Ma'mar, from Matar al-Warraq, from Amr ibn Shu'ayb, from Sa'id ibn al-Musayyib regarding a man who divorces his wife if he does not do such a thing: He said: He must not

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ مَطَرٍ الْوَرَّاقِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ إِنْ لَمْ يَفْعَلْ كَذَا؟ قَالَ: لَا يَقْرَبُ امْرَأَتَهُ حَتَّى يَفْعَلَ مَا قَالَ، فَإِنْ مَاتَ قَبْلَ أَنْ يَفْعَلَ فَلَا مِيرَاثَ بَيْنَهُمَا.

[8] **Qur'an references (L34159):** Qur'an 5:89 (Al-Ma'idah).

approach his wife until he does what he said. If he dies before doing it, there is no inheritance between them.

L34166 A valid disagreement concerning this has been established from a group of the Salaf.

L34167 As reported to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ regarding a man who said to his wife: "You are divorced if I do not marry another [woman]." He said: If he does not marry another until she dies or he dies, they inherit from each other.

L34168 From the chain of Abd al-Razzaq via Sufyan al-Thawri, from Ghaylan ibn Jami', from al-Hakam ibn Utaybah, who said regarding a man who tells his wife, "You are divorced if I do not do such-and-such"—then if one of them dies before the act is performed, they inherit from each other. Sufyan al-Thawri said: "The oath's violation occurred only after death."

L34169 Abū Muḥammad said: How astonishing is this! That a deceased person violates an oath after dying—and we have thoroughly expounded upon this in Kitāb al-Aymān within this book of ours.

L34170 Among those from whom a statement similar to our opinion has been narrated—as reported through the chain of Ḥammād ibn Salama from Ḥumayd from al-Ḥasan—is the account of a man who married a woman and intended to travel. Her family detained him, so he rendered her divorced if he failed to send her maintenance by the end of a month. When the term arrived and he did not send her anything, they took their dispute to ʿAlī when he arrived. ʿAlī said, "You oppressed him until he pronounced her divorce," and thus he restored her to him.

L34171 From the narration of Abd al-Razzaq, from Hisham ibn Hassan, from Muhammad ibn Sirin, from Shuraih: A case was brought before him regarding a man who divorced his wife if he committed an act in Islam. He rented a mule to go to the bathhouse of A'yan but overstepped by taking it to Isfahan, sold it, and used the proceeds to buy wine? Shuraih said, "If you wish, you may testify against him that he divorced her." They repeated the

وَصَحَّ خِلَافُ هَذَا عَنْ طَائِفَةٍ مِنْ السَّلَفِ.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي رَجُلٍ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إنْ لَمْ أَتَزَوَّجْ عَلَيْكِ؟ قَالَ: إنْ لَمْ يَتَزَوَّجْ عَلَيْهَا حَتَّى تَمُوتَ أَوْ يَمُوتَ تَوَارَثَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ غَيْلَانَ بْنِ جَامِعٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ فِي الرَّجُلِ يَقُولُ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إنْ لَمْ أَفْعَلْ كَذَا - ثُمَّ مَاتَ أَحَدُهُمَا قَبْلَ أَنْ يَفْعَلَ فَإِنَّهُمَا يَتَوَارَثَانِ - قَالَ سُفْيَانُ الثَّوْرِيُّ: إنَّمَا وَقَعَ الْحِنْثُ بَعْدَ الْمَوْتِ.

قَالَ أَبُو مُحَمَّد: هَذَا عَجَبٌ؟ مَيِّتٌ يَحْنَثُ بَعْدَ مَوْتٍ - وَقَدْ تَقَصَّيْنَا هَذَا فِي " كِتَابِ الْأَيْمَانِ " مِنْ كِتَابِنَا هَذَا.

وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ أَنَّ رَجُلًا تَزَوَّجَ امْرَأَةً وَأَرَادَ سَفَرًا فَأَخَذَهُ أَهْلُ امْرَأَتِهِ، فَجَعَلَهَا طَالِقًا إنْ لَمْ يَبْعَثْ بِنَفَقَتِهَا إلَى شَهْرٍ، فَجَاءَ الْأَجَلُ وَلَمْ يَبْعَثْ إلَيْهَا بِشَيْءٍ فَلَمَّا قَدِمَ خَاصَمُوهُ إلَى عَلِيٍّ فَقَالَ عَلِيٌّ: اضْطَهَدْتُمُوهُ حَتَّى جَعَلَهَا طَالِقًا، فَرَدَّهَا عَلَيْهِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ هِشَامِ بْنِ حَسَّانَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ: أَنَّهُ خُوصِمَ إلَيْهِ فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ إنْ أَحْدَثَ فِي الْإِسْلَامِ حَدَثًا فَاكْتَرَى بَغْلًا إلَى حَمَّامِ أَعْيَنَ فَتَعَدَّى بِهِ إلَى أَصْبَهَانَ فَبَاعَهُ وَاشْتَرَى بِهِ خَمْرًا؟ فَقَالَ شُرَيْحٌ: إنْ شِئْتُمْ شَهِدْتُمْ عَلَيْهِ أَنَّهُ طَلَّقَهَا؟ فَجَعَلُوا يُرَدِّدُونَ عَلَيْهِ الْقِصَّةَ وَيُرَدِّدُ عَلَيْهِمْ - فَلَمْ يَرَهُ حَدَثًا؟

story to him, and he repeated his response to them—did he not consider it an act?

قَالَ أَبُو مُحَمَّد: لَا مُتَعَلَّقَ لَهُمْ بِمَا رُوِيَ مِنْ قَوْلِ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - اضْطَهَدْتُمُوهُ، لِأَنَّهُ لَمْ يَكُنْ هُنَالِكَ إكْرَاهٌ، إنَّمَا طَالَبُوهُ بِحَقِّ نَفَقَتِهَا فَقَطْ فَإِنَّمَا أَنْكَرَ عَلَى الْيَمِينِ بِالطَّلَاقِ فَقَطْ وَلَمْ يُرِدْ الطَّلَاقَ يَقَعُ بِذَلِكَ - وَكَذَلِكَ لَا مُتَعَلَّقَ لَهُمْ بِمَا فِي خَبَرِ شُرَيْحٍ مِنْ قَوْلِ أَحَدِ مَنْ رَوَاهُ فَلَمْ يَرَهُ حَدَثًا - فَإِنَّمَا هُوَ ظَنٌّ مِنْ مُحَمَّدِ بْنِ سِيرِينَ، أَوَ مِنْ هِشَامِ بْنِ حَسَّانَ - وَهُوَ ظَنٌّ خَطَأٌ - أَوَ مَا نَعْلَمُ فِي الْإِسْلَامِ أَكْثَرَ مِمَّنْ تَعَدَّى مِنْ " حَمَّامِ أَعْيَنَ " وَهُوَ عَلَى أَمْيَالٍ يَسِيرَةٍ دُونَ الْعَشَرَةِ مِنْ الْكُوفَةِ إلَى أَصْبَهَانَ، وَهِيَ أَيَّامٌ كَثِيرَةٌ مِنْ الْكُوفَةِ، ثُمَّ بَاعَ بَغْلَ مُسْلِمٍ ظُلْمًا وَاشْتَرَى بِالثَّمَنِ خَمْرًا.

L34172–34173 Abu Muhammad said: They have no basis in what is narrated from the statement of Ali—may Allah be pleased with him—"You oppressed him," for there was no coercion. They merely demanded her maintenance rights alone. He only rejected the oath contingent upon divorce, not intending that divorce would result from it. Similarly, they have no basis in what is mentioned in the report of Shuraih regarding the statement of one of its narrators who did not deem it a valid legal ruling—it is merely a conjecture from Muhammad ibn Sirin or Hisham ibn Hassan, and it is an erroneous conjecture. Or do we not know in Islam anyone who has transgressed more than the one from "Hammam Aʿyan"—located a few miles, less than ten, from Kufa, while Isfahan is a journey of many days from Kufa—who then unjustly sold a Muslim's mule and purchased wine with the proceeds?

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَقُولُ: الْحَلِفُ بِالطَّلَاقِ لَيْسَ شَيْئًا، قُلْت: كَانَ يَرَاهُ يَمِينًا؟ قَالَ: لَا أَدْرِي - فَهَؤُلَاءِ: عَلِيُّ بْنُ أَبِي طَالِبٍ، وَشُرَيْحٌ، وَطَاوُسٌ لَا يَقْضُونَ بِالطَّلَاقِ عَلَى مَنْ حَلَفَ بِهِ فَحَنِثَ، وَلَا يُعْرَفُ لِعَلِيٍّ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L34174 From the transmission of ʿAbd al-Razzāq, from Ibn Jurayj, who reported: Ibn Ṭāwūs informed me from his father that he would say: "An oath sworn by divorce is invalid." I asked: "Did he consider it an oath?" He replied: "I do not know." Thus, these—ʿAlī ibn Abī Ṭālib, Shurayḥ, and Ṭāwūs—did not decree divorce upon one who swore by it and then broke the oath. No opposing view from the Companions (may Allah be pleased with them) is known regarding ʿAlī's position on this matter.

قَالَ أَبُو مُحَمَّد: وَالطَّلَاقُ بِالصِّفَةِ عِنْدَنَا كَمَا هُوَ الطَّلَاقُ بِالْيَمِينِ، كُلُّ ذَلِكَ لَا يَلْزَمُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34175 Abu Muhammad said: Conditional divorce, according to our school, is like divorce by oath; none of these are binding. And by Allah, the Exalted, is success.

وَلَا يَكُونُ طَلَاقًا إلَّا كَمَا أَمَرَ اللَّهُ تَعَالَى بِهِ وَعَلِمَهُ، وَهُوَ الْقَصْدُ إلَى الطَّلَاقِ وَأَمَّا مَا عَدَا ذَلِكَ فَبَاطِلٌ، وَتَعَدٍّ - لِحُدُودِ اللَّهِ عَزَّ وَجَلَّ.

L34176 A divorce is not valid except in the manner Allah the Exalted has commanded it and knew it, which is the intention to divorce. As for anything other than that, it is invalid and transgressing the boundaries of Allah, the Mighty and Majestic.

L34177 We have mentioned the opinion of ʿAṭāʾ regarding one who swears to divorce his wife three times if he does not strike Zayd, and then Zayd dies or he himself dies: that no divorce is incumbent upon him whatsoever, that he

inherits from his wife if she dies, and she inherits from him if he dies—and this is the opinion of Abū Thawr.

وَقَدْ ذَكَرْنَا قَوْلَ عَطَاءٍ فِيمَنْ حَلَفَ بِطَلَاقِ امْرَأَتِهِ ثَلَاثًا إِنْ لَمْ يَضْرِبْ زَيْدًا فَمَاتَ زَيْدٌ أَوْ مَاتَ هُوَ: أَنَّهُ لَا طَلَاقَ عَلَيْهِ أَصْلًا، وَأَنَّهُ يَرِثُ امْرَأَتَهُ إِنْ مَاتَتْ، وَتَرِثُهُ إِنْ مَاتَ - وَهُوَ قَوْلُ أَبِي ثَوْرٍ.

L34178 Sufyan said, "Divorce takes effect after death." This is a clear error.

وَقَالَ سُفْيَانُ: الطَّلَاقُ يَقَعُ بَعْدَ الْمَوْتِ - وَهَذَا خَطَأٌ ظَاهِرٌ.

L34179 Al-Shafi'i said: Divorce is incumbent upon the husband, whereas breaking an oath [is judged] at the final stages of life - and this is an assertion without proof.

وَقَالَ الشَّافِعِيُّ: الطَّلَاقُ يَقَعُ عَلَيْهِ وَالْحِنْثُ فِي آخِرِ أَوْقَاتِ الْحَيَاةِ - وَهَذِهِ دَعْوَى بِلَا بُرْهَانٍ.

L34180 Mālik said: He is barred from approaching his wife while breaking an oath until he fulfills it—but this is unsound reasoning, for if he is breaking an oath, he is an oath-breaker, and thus his wife must divorce him, or he must undertake the expiation for the oath sworn by God. Otherwise, he is not an oath-breaker, and if he is not an oath-breaker, he is fulfilling his oath—one of the two is necessarily the case. There is absolutely no third state for the oath-taker whatsoever.

وَقَالَ مَالِكٌ: يُوقَفُ عَنْ امْرَأَتِهِ، وَهُوَ عَلَى حِنْثٍ حَتَّى يَبَرَّ - وَهَذَا كَلَامٌ فَاسِدٌ، لِأَنَّهُ إِنْ كَانَ عَلَى حِنْثٍ فَهُوَ حَانِثٌ فَيَلْزَمُهُ أَنْ تَطْلُقَ عَلَيْهِ امْرَأَتُهُ، أَوْ أَنْ تَلْزَمَهُ الْكَفَّارَةُ بِالْيَمِينِ بِاللَّهِ، وَإِلَّا فَلَيْسَ حَانِثًا، وَإِذَا لَمْ يَكُنْ حَانِثًا فَهُوَ عَلَى بِرٍّ - لَا بُدَّ مِنْ أَحَدِهِمَا - وَلَا سَبِيلَ إِلَى حَالٍ ثَالِثَةٍ لِلْحَالِفِ أَصْلًا.

L34181–34182 Thus, it became evident that his statement, "He is upon [breaking] an oath," is an illogical statement—and success is from Allah, the Most High.

فَصَحَّ أَنَّ قَوْلَهُ " هُوَ عَلَى حِنْثٍ " كَلَامٌ لَا يُعْقَلُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L34183 "Would that I knew—why would one refrain from his wife? It must inevitably be one of two scenarios: either she is lawful, in which case it is impermissible for him to withhold [relations with] what is lawful."

وَلَيْتَ شِعْرِي - لِأَيِّ شَيْءٍ يُوقَفُ عَنْ امْرَأَتِهِ، وَلَا تَخْلُو مِنْ أَحَدِ وَجْهَيْنِ -: إِمَّا أَنْ تَكُونَ حَلَالًا فَلَا يَحِلُّ تَوَقُّفُهُ عَنْ الْحَلَالِ.

L34184 Or if she becomes unlawful, she is not unlawful to him except by breaking the oath; then he must divorce her as an obligation upon him.

أَوْ تَكُونَ حَرَامًا فَلَا تَحْرُمُ عَلَيْهِ إِلَّا بِالْحِنْثِ فَلْيُطَلِّقْهَا عَلَيْهِ.

L34185 Then we say to them: From where do you permit divorce in a specified form while not permitting marriage in a specified form, nor revocation (of divorce) in a specified form? Such as one who says: "If I enter the house, I have revoked the divorce from my wife" - or says: "Then it is established that I have married you?" - while she declares the same, and the guardian

ثُمَّ نَقُولُ لَهُمْ: مِنْ أَيْنَ أَجَزْتُمْ الطَّلَاقَ بِصِفَةٍ وَلَمْ تُجِيزُوا النِّكَاحَ بِصِفَةٍ؟ وَالرَّجْعَةَ بِصِفَةٍ؟ كَمَنْ قَالَ: إِذَا دَخَلْت الدَّارَ فَقَدْ رَاجَعْت زَوْجَتِي الْمُطَلَّقَةَ - أَوْ قَالَ: فَقَدْ تَزَوَّجْتُك؟

declares the same - with no distinction possible between them. And success is from Allah, the Exalted.

L34186 **An issue: He said, "When the beginning of the month arrives, you are divorced," or he specified a time.**

L34187 1966 - Issue: If someone says, "When the new month is sighted, you are divorced," or specifies any time, she is not divorced by that—neither now nor when the new month is sighted.

L34188 The proof of that is that there has come no Quranic verse or Sunnah indicating the occurrence of divorce in that manner. Indeed, Allah has taught us the rulings of divorce for the wife with whom marriage has been consummated and the one with whom it has not been consummated, and this is not among what He has taught us: "And whoever transgresses the limits of Allah has certainly wronged himself" (Surah At-Talaq 65:1).[9]

L34189 Moreover, if a divorce does not take effect at the moment of its pronouncement, it is impossible for it to take effect afterward at a time when it was not pronounced—and people have differed regarding this. A faction has stated: Whoever pronounces a divorce effective at a specified term, the divorce only takes effect at that designated time—as narrated to us through the chain of narration of Abū Ubayd: Yazīd ibn Hārūn reported to us from al-Jarrāḥ ibn al-Minhāl, from al-Ḥakam (ibn Utaybah)—that Ibn Abbās used to say: If a man says to his wife, "You are divorced at the beginning of the year," he may have intercourse with her between the pronouncement and the beginning of the year.

L34190 Narrated through Abd al-Razzaq, via Ibn Jurayj, via Ata: Whoever says to his wife, "You are divorced when you give birth," may engage in marital relations with her as long as she has not yet given birth—and he does not divorce [her] until the specified term arrives.

L34191 Likewise, whoever says: "You are divorced until a year has elapsed."

وَقَالَتْ هِيَ مِثْلَ ذَلِكَ، وَقَالَ الْوَلِيُّ مِثْلَ ذَلِكَ - وَلَا سَبِيلَ إِلَى فَرْقٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَالَ إِذَا جَاءَ رَأْسُ الشَّهْرِ فَأَنْتِ طَالِقٌ أَوْ ذَكَرَ وَقْتًا مَا]

١٩٦٦ - مَسْأَلَةٌ: مَنْ قَالَ: إِذَا جَاءَ رَأْسُ الشَّهْرِ فَأَنْتِ طَالِقٌ، أَوْ ذَكَرَ وَقْتًا مَا؟ فَلَا تَكُونُ طَالِقًا بِذَلِكَ، لَا الْآنَ، وَلَا إِذَا جَاءَ رَأْسُ الشَّهْرِ.

بُرْهَانُ ذَلِكَ -: أَنَّهُ لَمْ يَأْتِ قُرْآنٌ وَلَا سُنَّةٌ بِوُقُوعِ الطَّلَاقِ بِذَلِكَ، وَقَدْ عَلَّمَنَا اللَّهُ الطَّلَاقَ عَلَى الْمَدْخُولِ بِهَا، وَفِي غَيْرِ الْمَدْخُولِ بِهَا، وَلَيْسَ هَذَا فِيمَا عَلَّمَنَا {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

وَأَيْضًا - فَإِنْ كَانَ كُلُّ طَلَاقٍ لَا يَقَعُ حِينَ إِيقَاعِهِ فَمِنَ الْمُحَالِ أَنْ يَقَعَ بَعْدَ ذَلِكَ فِي حِينٍ لَمْ يُوقِعْهُ فِيهِ - وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ: مَنْ طَلَّقَ إِلَى أَجَلٍ لَمْ يَقَعْ الطَّلَاقُ إِلَّا إِلَى ذَلِكَ الْأَجَلِ - كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ هَارُونَ عَنْ الْجَرَّاحِ بْنِ الْمِنْهَالِ نَا الْحَكَمُ - هُوَ ابْنُ عُتَيْبَةَ - أَنَّ ابْنَ عَبَّاسٍ كَانَ يَقُولُ: مَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِلَى رَأْسِ السَّنَةِ -: أَنَّهُ يَطَؤُهَا مَا بَيْنَهُ وَبَيْنَ رَأْسِ السَّنَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ مَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِذَا وَلَدْتِ؟ فَلَهُ أَنْ يُصِيبَهَا مَا لَمْ تَلِدْ - وَلَا يُطَلِّقُ حَتَّى يَأْتِيَ الْأَجَلُ.

وَكَذَلِكَ مَنْ قَالَ: أَنْتِ طَالِقٌ إِلَى سَنَةٍ

[9] **Qur'an references (L34188):** Qur'an 65:1 (At-Talaq).

L34192 And through the chain of Abū ʻUbayd: Yazīd ibn Hārūn reported to us from Ḥabīb ibn Abī Ḥabīb, from ʻAmr ibn Harim, from Jābir ibn Zayd Abū al-Shaʻthāʼ, who said: She is divorced until the term specified, and she remains lawful for him before its conclusion.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ هَارُونَ عَنْ حَبِيبِ بْنِ أَبِي حَبِيبٍ عَنْ عَمْرِو بْنِ هَرِمٍ عَنْ جَابِرِ بْنِ زَيْدٍ أَبِي الشَّعْثَاءِ قَالَ: هِيَ طَالِقٌ إِلَى الْأَجَلِ الَّذِي سُمِّيَ، وَتَحِلُّ لَهُ مَا دُونَ ذَلِكَ.

L34193–34194 From the path of Abū ʻUbayd: Hushaym narrated to us—Mughīrah—from Ibrāhīm al-Nakhaʻī regarding one who stipulates a time period for divorce. He said: When that time arrives, the divorce takes effect.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا هُشَيْمٌ أَنَا مُغِيرَةُ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ وَقَّتَ فِي الطَّلَاقِ وَقْتًا، قَالَ: إِذَا جَاءَ ذَلِكَ الْوَقْتُ وَقَعَ.

L34195 We have also narrated it from Al-Shaʻbī.

وَرُوِّينَاهُ أَيْضًا عَنِ الشَّعْبِيِّ.

L34196 And from the chain of Saʼid ibn Mansur: Abu Muʼawiyah narrated to us from ʼUbaydah from al-Shaʼbi, similar to the statement of Ibrahim - and it is also reported: from ʼAbdullah ibn Muhammad ibn al-Ḥanafiyyah.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ عَنْ عُبَيْدَةَ عَنِ الشَّعْبِيِّ مِثْلُ قَوْلِ إِبْرَاهِيمَ - وَرُوِيَ أَيْضًا: عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ الْحَنَفِيَّةِ.

L34197 It has been reported from Sufyan al-Thawri that he said: If a man says to his wife, “If you menstruate, you are divorced,” the divorce takes effect immediately when she enters menstruation. He said: If he says to her, “When you menstruate, you are divorced,” she is not divorced until she completes ghusl after her final menstrual cycle, because he may revoke [the divorce] until she completes ghusl. This reflects the rule that a contingent divorce only takes effect at its appointed time.

وَرُوِّينَا عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: مَنْ قَالَ لِامْرَأَتِهِ: إِذَا حِضْتِ فَأَنْتِ طَالِقٌ؟ فَإِنَّهَا إِذَا دَخَلَتْ فِي الدَّمِ طَلُقَتْ عَلَيْهِ. قَالَ: فَإِنْ قَالَ لَهَا: مَتَى حِضْتِ حَيْضَةً فَأَنْتِ طَالِقٌ؟ فَلَا تَطْلُقُ حَتَّى تَغْتَسِلَ مِنْ آخِرِ حَيْضَتِهَا، لِأَنَّهُ يُرَاجِعُهَا حَتَّى تَغْتَسِلَ. وَبِأَنْ: لَا يَقَعَ الطَّلَاقُ الْمُؤَجَّلُ إِلَّا إِلَى أَجَلِهِ

L34198 Abu ʼUbayd, Ishaq ibn Rahawayh, al-Shafiʼi, Ahmad, Abu Sulayman, and their companions hold this view. Another opinion—that the divorce in such a case takes effect the moment it is uttered—is one we have received reports of through the chain of Abd al-Razzaq from Sufyan al-Thawri from Yahya ibn Saʼid al-Ansari from Saʼid ibn al-Musayyab regarding a man who divorces his wife to a term. He said: The divorce takes effect at that moment, and he must not approach her.

-: يَقُولُ أَبُو عُبَيْدٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ. وَقَوْلٌ آخَرُ - وَهُوَ أَنَّ الطَّلَاقَ يَقَعُ فِي ذَلِكَ سَاعَةَ يَلْفِظُ بِهِ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ فِيمَنْ طَلَّقَ امْرَأَتَهُ إِلَى أَجَلٍ؟ قَالَ: يَقَعُ الطَّلَاقُ سَاعَتَئِذٍ وَلَا يَقْرَبُهَا.

L34199 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated to us from Manṣūr and Yūnus, from al-Ḥasan—that he did not postpone divorce.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نَا مَنْصُورٌ، وَيُونُسُ عَنِ الْحَسَنِ: أَنَّهُ كَانَ لَا يُؤَجِّلُ فِي الطَّلَاقِ -.

وَرُوِّينَا عَنْ الزُّهْرِيِّ مَنْ طَلَّقَ إلَى سَنَةٍ؟ فَهِيَ طَالِقٌ حِينَئِذٍ.

L34200 It has been transmitted to us from al-Zuhrī that he was asked, "What is the ruling for one who pronounces a divorce to take effect after a year?" He replied, "The divorce becomes effective at that point."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ هُشَيْمٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ كَانَ لَا يُؤَجِّلُ فِي الطَّلَاقِ أَجَلًا.

L34201 Through the chain of Abi 'Ubayd from Hushaym from Yaḥyā ibn Saʿīd al-Anṣārī, it is reported that he did not postpone the waiting period (ʿiddah) in divorce.

وَرُوِيَ عَنْ رَبِيعَةَ - وَهُوَ قَوْلُ اللَّيْثِ، وَأَحَدُ قَوْلَيْ أَبِي حَنِيفَةَ - وَهُوَ قَوْلُ زُفَرَ.

L34202 It has been reported from Rabiʿah—and this is the opinion of al-Layth and one of the two opinions of Abū Ḥanīfah—, and it is the opinion of Zufar.

وَقَوْلٌ ثَالِثٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ عَنْ الْحَسَنِ أَنَّهُ قَالَ: إذَا قَالَ: أَنْتِ طَالِقٌ إذَا كَانَ كَذَا - لِأَمْرٍ لَا يَدْرِي أَيَكُونُ أَمْ لَا؟ - فَلَيْسَ بِطَلَاقٍ حَتَّى يَكُونَ ذَلِكَ وَيَطَؤُهَا، فَإِنْ مَاتَا قَبْلَ ذَلِكَ تَوَارَثَا. فَإِنْ قَالَ: أَنْتِ طَالِقٌ إلَى سَنَةٍ فَهِيَ طَالِقٌ حِينَ يَقُولُ ذَلِكَ - وَهُوَ قَوْلُ مَالِكٍ.

L34203–34205 A third opinion—as we have narrated via the chain of Abd al-Razzaq, who reported from Maʿmar, from Qatadah, from Al-Hasan—states: If he says "You are divorced if such-and-such occurs" concerning a matter he does not know whether it will happen or not, it is not a divorce until... If he does so and has intercourse with her, then if they die before that time, they inherit from each other. If he says: "You are divorced until a year," she is divorced when he utters those words—and this is the opinion of Mālik.

وَقَوْلٌ رَابِعٌ - رُوِيَ عَنْ ابْنِ أَبِي لَيْلَى فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إلَى رَأْسِ الْهِلَالِ؟ قَالَ: أَتَخَوَّفُ أَنْ يَكُونَ قَدْ طَلَّقَهَا؟ فَوَجَدْنَا مِنْ حُجَّةِ مَنْ قَالَ: بِأَنَّهُ وَقَعَ عَلَيْهِ الطَّلَاقُ الْآنَ -: أَنْ قَالُوا: هَذَا الطَّلَاقُ إلَى أَجَلٍ، فَهُوَ بَاطِلٌ كَالنِّكَاحِ إلَى أَجَلٍ؟ فَقُلْنَا لَهُمْ: فَلِمَ قُلْتُمْ: إنَّهُ إنْ قَالَ: إنْ دَخَلْت الدَّارَ فَأَنْتِ طَالِقٌ؟ أَنَّهَا لَا تَطْلُقُ إلَّا بِدُخُولِ الدَّارِ، فَإِنَّهُ طَلَاقٌ إلَى أَجَلٍ، فَأَوْقَعْتُمُوهُ حِينَ لَفَظَ بِهِ.

L34206 A fourth opinion—narrated from Ibn Abī Laylā regarding one who told his wife, "You are divorced until the crescent's appearance"—stated: "Do I fear that he has divorced her?" We found in the proof of those who maintained that the divorce takes effect immediately their argument: "This is a conditional divorce, thus invalid like a time-bound marriage?" We responded: "Then why do you rule that if he says, 'If you enter the house, you are divorced,' she is not divorced except upon entering the house? For this too is a conditional divorce, yet you make it take effect only when he utters it?"

وَبِهَذَا نُعَارِضُهُمْ فِي قَوْلِهِمْ: إنَّ ظَاهِرَ أَمْرِهِ أَنَّهُ نَدِمَ إذْ قَالَ: أَنْتِ طَالِقٌ، فَأَتْبَعَ ذَلِكَ بِالْأَجَلِ؟ فَيَلْزَمُهُمْ ذَلِكَ فِيمَنْ قَالَ: أَنْتِ طَالِقٌ إنْ دَخَلْت الدَّارَ.

L34207 With this, we counter them regarding their statement: "Does the apparent nature of his statement—'You are divorced'—indicate that he regretted, since he appended a condition to it?" This same reasoning necessarily applies to them in the case of one who says: "You are divorced if you enter the house."

وَهُوَ قَوْلٌ صَحَّ عَنْ شُرَيْحٍ أَلْزَمَهُ الطَّلَاقَ - دَخَلَتْ الدَّارَ أَوْ لَمْ تَدْخُلْهُ.

L34208 This is a valid statement authentically attributed to Shurayh, who deemed the divorce binding—whether she entered the house or did not enter it.

L34209 They said: If he says, "You are divorced," then the divorce is permissible.

وَقَالُوا: إذَا قَالَ: أَنْتِ طَالِقٌ، فَالطَّلَاقُ مُبَاحٌ، فَإِنْ أَتْبَعَهُ أَجَلًا فَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ؟ فَقُلْنَا: بَلْ مَا طَلَاقُهُ إلَّا فَاسِدٌ لَا مُبَاحٌ؟ إذْ عَلَّقَهُ بِوَقْتٍ، وَلَا يَجُوزُ إلْزَامُهُ بَعْضَ مَا الْتَزَمَ دُونَ سَائِرِهِ - فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ، وَيَكْفِي مِنْ هَذَا أَنَّهُ تَحْرِيمُ فَرْجٍ بِالظَّنِّ عَلَى مَنْ أَبَاحَهُ اللَّهُ تَعَالَى لَهُ بِالْيَقِينِ - وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا.

But if he makes it contingent upon a time limit, it constitutes a stipulation not found in the Book of Allah Almighty, so it is invalid? We replied: Rather, his divorce is nothing but invalid, not permissible? Since he conditioned it upon a specific time, and it is not permissible to legally bind him to part of what he undertook while excluding the rest—thus, the invalidity of this claim becomes evident. It suffices that this constitutes prohibiting lawful marital relations based on conjecture against one whom Allah Almighty has permitted to him with certainty—and we seek refuge in Allah from this.

وَلَمْ نَجِدْ لِمَنْ فَرَّقَ بَيْنَ الْأَجَلِ الْآتِي وَالْآبِدِ، وَبَيْنَ الْأَجَلِ الَّذِي لَا يَأْتِي حُجَّةً أَصْلًا، غَيْرَ دَعْوَاهُ؟ لَا سِيَّمَا وَهُمْ يُفْسِدُونَ النِّكَاحَ إذَا أَجَّلَ الصَّدَاقَ إلَى أَجَلٍ قَدْ يَكُونُ وَقَدْ لَا يَكُونُ، بِعَكْسِ قَوْلِهِمْ فِي الطَّلَاقِ؟ وَكِلَا الْأَمْرَيْنِ أَجَلٌ وَلَا فَرْقَ.

L34210 We have found no proof whatsoever for those who differentiate between the impending term and the indefinite term, and between the term that may or may not materialize, except their mere claim? This is especially so when they nullify the marriage if the dowry is deferred to a term that may or may not occur—opposite to their ruling on divorce. Yet both cases involve a term, and there is no distinction.

وَأَيْضًا - فَقَدْ يَأْتِي الْأَجَلُ الَّذِي قَالُوا فِيهِ: إنَّهُ يَجِيءُ - وَهُوَ مَيِّتٌ أَوْ وَهِيَ مَيِّتَةٌ، أَوْ كِلَاهُمَا، أَوْ قَدْ طَلَّقَهَا ثَلَاثًا -: فَظَهَرَ فَسَادُ هَذَا الْقَوْلِ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34211 Moreover, the appointed term they posited concerning its arrival may occur while he is dead, she is dead, both are dead, or he has already divorced her thrice. Thus, the invalidity of this opinion is entirely clear. And success is attained only through Allah, the Exalted.

وَهُمْ يُشَنِّعُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ؟ وَقَدْ خَالَفُوا هَاهُنَا ابْنَ عَبَّاسٍ، وَأَيْضًا - فَإِنَّهُمْ يُوقِعُونَ عَلَيْهِ طَلَاقًا لَمْ يَلْتَزِمْهُ قَطُّ؟ وَهَذَا بَاطِلٌ.

L34212 They condemn opposition to the Companion whose position has no known dissenters, yet they themselves oppose Ibn Abbas in this matter! Moreover, how can they impose a divorce ruling he never acknowledged? This is utterly invalid.

ثُمَّ لَوْ عُكِسَ عَلَيْهِمْ قَوْلُهُمْ، فَقِيلَ: بَلْ تَطْلُقُ عَلَيْهِ إذَا أَجَّلَ أَجَلًا - قَدْ يَكُونُ وَقَدْ لَا يَكُونُ - سَاعَةَ لَفْظِهِ بِالطَّلَاقِ، وَلَا تَطْلُقُ عَلَيْهِ إذَا أَجَّلَ أَجَلًا يَأْتِي وَلَا بُدَّ، لَمَا كَانَ بَيْنَهُمْ فَرْقٌ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34213–34214 Then, if their own argument were turned back on them, and it were said: “Rather, the divorce takes effect upon him if he stipulates a term—one that may or may not occur—at the moment of his pronouncement, and does not take effect if he stipulates a term that must inevitably occur,” there would be no distinction at all between the two scenarios—and success comes from Allah, the Most High.

ثُمَّ نَظَرْنَا فِيمَا يَحْتَجُّ بِهِ مَنْ أَجَازَ ذَلِكَ وَجَعَلَ الطَّلَاقَ يَقَعُ إذَا جَاءَ الْأَجَلُ - لَا قَبْلَ ذَلِكَ - بِأَنْ قَالَ: قَالَ اللَّهُ تَعَالَى: {أَوْفُوا بِالْعُقُودِ} [المائدة: ١] ؟ فَقُلْنَا: إنَّمَا هَذَا فِي كُلِّ

L34215 Then we examined the argument of those who permit this and hold that divorce takes effect only upon the appointed term—not before—by citing Allah’s statement, the Exalted: {Fulfill the contracts} [Al-Ma’idah: 1]. We responded: This verse pertains solely to every contract Allah, the Exalted, has

commanded to fulfill or encouraged—not to all contracts universally, nor to sinful acts. Among such sinful acts is divorcing contrary to the manner Allah, the Exalted, has commanded, and thus fulfilling such a divorce is impermissible.[10]

L34216 The scholars ruled: "Muslims are held to their stipulations."

L34217 And this is similar to the previous one, because the Messenger of Allah—peace and blessings of Allah be upon him—said: «Every condition not in the Book of Allah, the Most High, is void.»

L34218 A divorce stipulated to a term by a condition not found in the Book of Allah, the Most High, is invalid.

L34219 They said: "We analogize this to deferred payment to a specified term and manumission to a specified term." We replied: "The analogy is invalid. Furthermore, even if it were valid, this instance of it would still be invalid, because textual evidence exists for the permissibility of deferred payment to a specified term and manumission to a specified term, whereas no such evidence exists for divorce to a specified term."

L34220 Furthermore, if analogy were valid, this [ruling on time-bound divorce] would be invalid by it, for you unanimously agree that time-bound marriage is impermissible and that such a marriage is invalid. Why then do you not analogize time-bound divorce to this [ruling]?

L34221 They said: They have reached consensus that divorce occurs at the fixed term, for whoever enacted it when he uttered it has validated this. Is it not then obligatory to adhere to their consensus? We responded: This is invalid, for they never reached consensus on this matter. Whoever enacted the divorce when uttered by the divorcer never permitted delaying its enactment to a fixed term, while those who enacted it at the fixed term did not validate its enactment when he uttered it.

L34222 They said: "This is the statement of a companion for whom no dissenter among the companions is known?"

عَقْدٍ أَمَرَ اللَّهُ تَعَالَى بِالْوَفَاءِ بِهِ، أَوْ نَدَبَ إِلَيْهِ - لَا فِي كُلِّ عَقْدٍ جُمْلَةً، وَلَا فِي مَعْصِيَةٍ، وَمِنْ الْمَعَاصِي أَنْ يُطَلِّقَ بِخِلَافِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ، فَلَا يَحِلُّ الْوَفَاءُ بِهِ.

وَقَالُوا: " الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ ".

وَهَذَا كَالَّذِي قَبْلَهُ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ» .

وَالطَّلَاقُ إلَى أَجَلٍ مُشْتَرَطٍ بِشَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى فَهُوَ بَاطِلٌ.

وَقَالُوا: نَقِيسُ ذَلِكَ عَلَى الْمُدَايَنَةِ إلَى أَجَلٍ، وَالْعِتْقِ إلَى أَجَلٍ؟ فَقُلْنَا: الْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّ الْمُدَايَنَةَ وَالْعِتْقَ قَدْ جَاءَ فِي جَوَازِهِمَا إلَى أَجَلٍ النَّصُّ، وَلَمْ يَأْتِ ذَلِكَ فِي الطَّلَاقِ.

ثُمَّ لَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ بَاطِلًا، لِأَنَّكُمْ مُجْمِعُونَ عَلَى أَنَّ النِّكَاحَ إلَى أَجَلٍ لَا يَجُوزُ، وَأَنَّ ذَلِكَ النِّكَاحَ بَاطِلٌ، فَهَلَّا قِسْتُمْ الطَّلَاقَ إلَى أَجَلٍ عَلَى ذَلِكَ.

وَقَالُوا: قَدْ أَجْمَعُوا عَلَى وُقُوعِ الطَّلَاقِ عِنْدَ الْأَجَلِ، لِأَنَّ مَنْ أَوْقَعَهُ حِينَ نَطَقَ بِهِ فَقَدْ أَجَازَهُ، فَالْوَاجِبُ الْمَصِيرُ إلَى مَا اتَّفَقُوا عَلَيْهِ؟ فَقُلْنَا: هَذَا بَاطِلٌ، وَمَا أَجْمَعُوا قَطُّ عَلَى ذَلِكَ، لِأَنَّ مَنْ أَوْقَعَ الطَّلَاقَ - حِينَ لَفَظَ بِهِ الْمُطَلِّقُ - لَمْ يَجُزْ قَطُّ أَنْ يُؤَخِّرَ إيقَاعَهُ إلَى أَجَلٍ وَالَّذِينَ أَوْقَعُوهُ عِنْدَ الْأَجَلِ لَمْ يُجِيزُوا إيقَاعَهُ حِينَ نَطَقَ بِهِ.

وَقَالُوا: هَذَا قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ؟

[10] **Qur'an references (L34215):** Qur'an 5:1 (Al-Ma'idah).

فَقُلْنَا: هَذَا مِنْ رِوَايَةِ أَبِي الْعَطُوفِ الْجَرَّاحِ بْنِ الْمِنْهَالِ الْجَزَرِيِّ - وَهُوَ كَذَّابٌ مَشْهُورٌ بِوَضْعِ الْحَدِيثِ - فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا -.

وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

We said: This is from the narration of Abī al-ʿAṭūf al-Jarrāḥ ibn al-Minhāl al-Jazari—and he is a liar well-known for fabricating ḥadīth—thus, this statement also became nullified.

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

[مَسْأَلَةٌ جَعَلَ إِلَى امْرَأَتِهِ أَنْ تُطَلِّقَ نَفْسَهَا]

A case in which he delegated to his wife the authority to divorce herself.

١٩٦٧ - مَسْأَلَةٌ: وَمَنْ جَعَلَ إِلَى امْرَأَتِهِ أَنْ تُطَلِّقَ نَفْسَهَا: لَمْ يَلْزَمْهُ ذَلِكَ، وَلَا تَكُونُ طَالِقًا - طَلَّقَتْ نَفْسَهَا أَوْ لَمْ تُطَلِّقْ - لِمَا ذَكَرْنَا قَبْلُ مِنْ أَنَّ الطَّلَاقَ إِنَّمَا جَعَلَهُ اللَّهُ تَعَالَى لِلرِّجَالِ لَا لِلنِّسَاءِ.

Issue 1967: If a man delegates to his wife the authority to divorce herself, this is not binding upon him, and she is not divorced - whether she divorces herself or refrains from divorcing herself - due to what we previously mentioned that Allah the Exalted has ordained divorce as a right for men specifically, not for women.

[مَسْأَلَةٌ لَا يَكُونُ طَلَاقًا بَائِنًا أَبَدًا إِلَّا فِي مَوْضِعَيْنِ]

Issue: An irrevocable divorce can never occur except in two specific instances.

١٩٦٨ - مَسْأَلَةٌ: وَلَا يَكُونُ طَلَاقًا بَائِنًا أَبَدًا إِلَّا فِي مَوْضِعَيْنِ لَا ثَالِثَ لَهُمَا.

1968 - Issue: A divorce is not considered irrevocable forever except in two cases, and there is no third besides them.

أَحَدُهُمَا - طَلَاقُ غَيْرِ الْمَوْطُوءَةِ، لِقَوْلِهِ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا} [الأحزاب: ٤٩] .

One of them is the divorce of a woman with whom the marriage has not been consummated, as stated by the Exalted: *O you who have believed, when you marry believing women and then divorce them before consummating the marriage, there is no waiting period incumbent upon them for you to reckon* [Al-Aḥzāb: 49].[11]

وَالثَّانِي - طَلَاقُ الثَّلَاثِ مَجْمُوعَةً أَوْ مُفَرَّقَةً، لِقَوْلِهِ تَعَالَى: {فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] .

The second is the triple *talaq*, whether pronounced collectively or separately, as stated by the Exalted: {Then she is not lawful to him thereafter until she marries another husband} [Al-Baqarah: 230].[12]

وَأَمَّا مَا عَدَا هَذَيْنِ فَلَا أَصْلًا، لِقَوْلِهِ تَعَالَى: {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ} [البقرة: ٢٢٨] .

As for what is other than these two, there is no basis at all, due to the statement of Allah, the Most High: “And their husbands are more entitled to take them back in that” [al-Baqarah 2:228].[13]

وَلِقَوْلِهِ تَعَالَى: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ} [البقرة: ٢٣١]

[11] **Qur’an references (L34230):** Qur’an 33:49 (Al-Ahzab).
[12] **Qur’an references (L34231):** Qur’an 2:230 (Al-Baqarah).
[13] **Qur’an references (L34232):** Qur’an 2:228 (Al-Baqarah).

L34233 And [they are obligated] because of Allah's saying: "Then retain them with fairness or release them with fairness" [Al-Baqarah: 231][14]

وَقَالَ تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢]

L34234 And He, the Exalted, said: "When they have reached their prescribed term, either keep them in a kind manner or part with them in a kind manner." (65:2)[15]

فَجُعِلَ إِلَى الزَّوْجِ فِي الْعِدَّةِ أَنْ يُرَاجِعَهَا أَوْ يَتْرُكَ.

L34235 During the waiting period, the husband is granted the choice to either take her back or let the waiting period lapse.

L34236 Among those who held this opinion are Al-Shafi'i, Abu Sulayman, and their companions. However, Al-Shafi'i considered khul' an irrevocable divorce—though this is not our view—and we will discuss it in its chapter, God, the Most High, willing.

وَمِمَّنْ قَالَ بِذَلِكَ -: الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا، إِلَّا أَنَّ الشَّافِعِيَّ رَأَى الْخُلْعَ طَلَاقًا بَائِنًا - وَلَيْسَ عِنْدَنَا كَذَلِكَ، وَسَنَتَكَلَّمُ فِيهِ فِي بَابِهِ إِنْ شَاءَ اللَّهُ تَعَالَى.

L34237 If a man says to his wife, "You are divorced; I have no right to retract it concerning you in this matter, rather you have full control over yourself through it," scholars have differed regarding this. Abū Ḥanīfa, al-Shāfi'ī, their companions, and Ibn Wahb—Mālik's disciple—said: "This counts as a single revocable divorce in which her husband retains the right to take her back. Any statement he utters contradicting this is null and void."

فَمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ لَا رَجْعَةَ لِي فِيهَا عَلَيْكِ، بَلْ تَمْلِكِينَ بِهَا نَفْسَكِ، فَإِنَّ النَّاسَ اخْتَلَفُوا فِي ذَلِكَ: فَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا، وَابْنُ وَهْبٍ - صَاحِبُ مَالِكٍ -: هِيَ طَلْقَةٌ يَمْلِكُ فِيهَا زَوْجُهَا رَجْعَتَهَا، وَقَوْلُهُ بِخِلَافِ ذَلِكَ لَغْوٌ.

L34238–34239 And a scholarly faction said: They are three, and that is the opinion of Ibn al-Mājishūn — the disciple of Mālik.

وَقَالَتْ طَائِفَةٌ: هِيَ ثَلَاثَةٌ، وَهُوَ قَوْلُ ابْنِ الْمَاجِشُونِ - صَاحِبِ مَالِكٍ.

L34240 And a group said: "It is as he stated," and this is the view of Ibn al-Qāsim, the companion of Mālik.

وَقَالَتْ طَائِفَةٌ: هِيَ كَمَا قَالَ، وَهُوَ قَوْلُ ابْنِ الْقَاسِمِ صَاحِبِ مَالِكٍ.

L34241 The position we hold is that it is invalid speech through which no divorce occurs at all, because he did not divorce as Allah—the Mighty and Majestic—commanded him, and there is no divorce except as Allah, the Exalted, has commanded.

وَالَّذِي نَقُولُ بِهِ: إِنَّهُ كَلَامٌ فَاسِدٌ لَا يَقَعُ بِهِ طَلَاقٌ أَصْلًا، لِأَنَّهُ لَمْ يُطَلِّقْ كَمَا أَمَرَهُ اللَّهُ - عَزَّ وَجَلَّ - وَلَا طَلَاقَ إِلَّا كَمَا أَمَرَ اللَّهُ تَعَالَى.

L34242 The Messenger of Allah—peace and blessings be upon him—said: "Whoever does an action not in accordance with our command, it is rejected."[16]

قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

[14]**Qur'an references (L34233):** Qur'an 2:231 (Al-Baqarah).

[15]**Qur'an references (L34234):** Qur'an 65:2 (At-Talaq).

[16]**Hadith references (L34242):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

وَالطَّلَاقُ الرَّجْعِيُّ - هُوَ الَّذِي يَكُونُ فِيهِ الزَّوْجُ مُخَيَّرًا مَا دَامَتْ فِي الْعِدَّةِ بَيْنَ تَرْكِهَا لَا يُرَاجِعُهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا، فَتَمْلِكُ أَمْرَهَا فَلَا يُرَاجِعُهَا إِلَّا بِوَلِيٍّ وَرِضَاهَا، وَصَدَاقٍ، وَبَيْنَ أَنْ يُشْهِدَ عَلَى ارْتِجَاعِهَا فَقَطْ فَتَكُونُ زَوْجَتُهُ - أَحَبَّتْ أَمْ كَرِهَتْ - بِلَا وَلِيٍّ وَلَا صَدَاقٍ، لَكِنْ بِإِشْهَادٍ فَقَطْ. وَلَوْ مَاتَ أَحَدُهُمَا قَبْلَ تَمَامِ الْعِدَّةِ وَقَبْلَ الْمُرَاجَعَةِ وَرِثَهُ الْبَاقِي مِنْهُمَا - وَهَذَا لَا خِلَافَ فِيهِ مِنْ أَحَدٍ مِنَ الْأَئِمَّةِ.

L34243 Revocable divorce is that in which the husband has the option during the waiting period either to refrain from revoking the divorce until her waiting period concludes—whereupon she gains control over her affairs, and thus he cannot reinstate the marriage except through a guardian, her consent, and a dower—or to have witnesses attest solely to the reinstatement, whereby she remains his wife regardless of her consent, without requiring a guardian or dower, but solely through witnessing. If either spouse dies before completing the waiting period and before reinstatement, the surviving spouse inherits from the deceased—a ruling undisputed among all jurists.

وَالْبَائِنُ - هُوَ الَّذِي لَا رَجْعَةَ لَهُ عَلَيْهَا إِلَّا أَنْ تَشَاءَ هِيَ - فِي غَيْرِ الثَّلَاثِ - بِوَلِيٍّ، وَصَدَاقٍ، وَرِضَاهَا، وَنَفَقَتُهَا عَلَيْهِ فِي الطَّلَاقِ الرَّجْعِيِّ مَا دَامَتْ فِي الْعِدَّةِ، وَيَلْحَقُهَا طَلَاقُهُ.

L34244 The irrevocable divorce (al-bā'in) is one where the husband has no right to revoke it unless she herself wills it—excluding those beyond the first three revocable divorces. [Reconciliation in this case] requires a guardian, a dowry, and her consent. In a revocable divorce, his obligation to provide her maintenance persists throughout her prescribed waiting period ('iddah), and the divorce becomes legally binding upon her.

[مَسْأَلَةٌ قَالَ أَنْتِ طَالِقٌ إِنْ شَاءَ اللَّهُ]

L34245 ## Issue: He said, "You are divorced if Allah wills."

١٩٦٩ - مَسْأَلَةٌ: وَمَنْ قَالَ: أَنْتِ طَالِقٌ إِنْ شَاءَ اللَّهُ، أَوْ قَالَ: إِلَّا أَنْ يَشَاءَ اللَّهُ، أَوْ قَالَ: إِلَّا أَنْ لَا يَشَاءَ اللَّهُ -: فَكُلُّ ذَلِكَ سَوَاءٌ، وَلَا يَقَعُ بِشَيْءٍ مِنْ ذَلِكَ طَلَاقٌ.

L34246 Issue 1969: If someone says, "You are divorced if Allah wills," or says, "unless Allah wills," or says, "except if Allah does not will"—all such statements are treated the same, and no divorce is effected through any of them.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَقُولَنَّ لِشَيْءٍ إِنِّي فَاعِلٌ ذَلِكَ غَدًا} [الكهف: ٢٣] {إِلا أَنْ يَشَاءَ اللَّهُ} [الكهف: ٢٤] .

L34247 The proof of that is the statement of Allah, the Exalted and Majestic: "And never say of anything, 'I will surely do that tomorrow,' unless Allah wills" [Al-Kahf: 23, 24].[17]

وَقَالَ تَعَالَى: {وَمَا تَشَاءُونَ إِلا أَنْ يَشَاءَ اللَّهُ} [الإنسان: ٣٠]

L34248 And He, the Exalted, said: "You cannot will anything unless Allah wills it" (Qur'an 76:30).[18]

وَنَحْنُ نَعْلَمُ أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ إِمْضَاءَ هَذَا الطَّلَاقِ لَيَسَّرَهُ لِإِخْرَاجِهِ بِغَيْرِ اسْتِثْنَاءٍ.

L34249 And we know that if Allah, the Exalted, had willed the execution of this divorce, He would have made its implementation effortless, without exception.

فَصَحَّ أَنَّهُ تَعَالَى لَمْ يُرِدْ وُقُوعَهُ إِذْ يَسَّرَهُ لِتَعْلِيقِهِ بِمَشِيئَتِهِ - عَزَّ وَجَلَّ.

L34250 Thus, it is confirmed that He, the Exalted, did not will its occurrence, since

[17] **Qur'an references (L34247):** Qur'an 18:23 (Al-Kahf); Qur'an 18:24 (Al-Kahf).
[18] **Qur'an references (L34248):** Qur'an 76:30 (Al-Insan); Qur'an 81:29 (At-Takwir).

He made it easy by conditioning it upon His will—the Almighty and Majestic.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا - كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا مُعَاذُ بْنُ مُعَاذٍ عَنْ وَرْقَاءَ بْنِ عُمَرَ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِنْ شَاءَ اللَّهُ؟ قَالَ: لَهُ ثُنْيَاهُ وَمِنْ طَرِيقِ وَكِيعٍ عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إِنْ شَاءَ اللَّهُ؟ قَالَ: لَا يَحْنَثُ.

L34251–34253 People have differed regarding this: A group has said as we have said—as narrated to us via Abū ʻUbayd: Muʻadh ibn Muʻadh reported to us from Warqāʼ ibn ʻUmar from Ibn Ṭāwūs, who reported from his father concerning one who says to his wife, “You are divorced if Allah wills?” His father said: “He retains his two chances [to revoke it].” And through the chain of Wakiʿ from al-Aʿmash from Ibrāhīm al-Nakhaʿī regarding one who said to his wife, “You are divorced if Allah wills,” Ibrāhīm al-Nakhaʿī said: Such a person does not break his oath.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِيهِ عَنِ اللَّيْثِ قَالَ: اجْتَمَعَ عَطَاءٌ، وَمُجَاهِدٌ وَطَاوُسٌ، وَالزُّهْرِيُّ: عَلَى أَنَّ الِاسْتِثْنَاءَ فِي كُلِّ شَيْءٍ جَائِزٌ.

L34254 And through the chain of Wakīʿ from his father from al-Layth, who said: ʿAṭāʼ, Mujāhid, Ṭāwūs, and al-Zuhrī collectively agreed that conditional exceptions are permissible in all matters.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ حَكِيمٍ أَبِي دَاوُد عَنِ الشَّعْبِيِّ فِيمَنْ قَالَ: أَنْتَ حُرٌّ إِنْ شَاءَ اللَّهُ تَعَالَى؟ قَالَ: لَا يَحْنَثُ.

L34255 And via the narration of Waki‘ from Hakim, the father of Dawud, from al-Sha‘bi concerning someone who said: “You are free if Allah the Exalted wills.” He [al-Sha‘bi] said: “The oath is not binding.”

وَمِنْ طَرِيقِ الْحَكَمِ بْنِ عُتَيْبَةَ فِيمَنْ قَالَ: أَنْتِ طَالِقٌ إِنْ شَاءَ اللَّهُ؟ لَهُ ثُنْيَاهُ.

L34256 And from the narration of Al-Ḥakam ibn ʻUtaybah regarding someone who says, “You are divorced if Allah wills,” the divorce remains revocable, and he retains the right to revoke it.

وَعَنْ أَبِي مِجْلَزٍ مِثْلُ ذَلِكَ - وَهُوَ قَوْلُ عَطَاءٍ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ.

L34257 And from Abu Mijlaz likewise—and that is the opinion of ‘Aṭā’, Ḥammād ibn Abī Sulaymān, and Sa‘īd ibn al-Musayyib.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ قَالَ: إِذَا قَالَ: إِنْ لَمْ أَفْعَلْ كَذَا فَامْرَأَتِي طَالِقٌ - إِنْ شَاءَ اللَّهُ - فَحَنِثَ لَمْ تَطْلُقْ امْرَأَتُهُ.

L34258 From Abd al-Razzaq, from Abu Hanifah, from Hammad ibn Abi Sulayman, from Ibrahim, who said: If someone says, “If I do not do such-and-such, then my wife is divorced—if Allah wills,” and he then breaks his oath, his wife is not divorced.

وَبِهِ - كَانَ يَأْخُذُ أَبُو حَنِيفَةَ، وَعَبْدُ الرَّزَّاقِ قَالَ: وَالنَّاسُ عَلَيْهِ.

L34259 And with it—Abu Hanifah and Abd al-Razzaq used to hold [this position]. He said: “And the people are upon it.”

وَقَالَ سُفْيَانُ الثَّوْرِيُّ - مَنْ قَالَ: امْرَأَتِي طَالِقٌ إِنْ كَلَّمْتُ فُلَانًا شَهْرًا إِلَّا أَنْ يَبْدُوَ لِي أَنَّهُ إِنْ وَصَلَ الْكَلَامُ فَلَهُ اسْتِثْنَاؤُهُ، فَإِنْ قَطَعَهُ وَسَكَتَ ثُمَّ اسْتَثْنَى فَلَا اسْتِثْنَاءَ لَهُ.

L34260 Sufyan al-Thawri said: If someone declares, “My wife is divorced if I speak to so-and-so for a month, unless I make an exception”—then if he continues speaking, his exception is valid. But if he stops speaking and remains silent, then attempts to make an exception afterward, no exception is valid for him.

L34261 Al-Awzaʿī said in one of his two opinions: If he states, “If you do a stipulated act, then you [as a wife] are divorced, Allah willing,” the exception is permissible, the divorce does not take effect, and the same applies to emancipation.

وَقَالَ الْأَوْزَاعِيُّ - فِي أَحَدِ قَوْلَيْهِ -: إِنْ قَالَ: إِنْ فَعَلْت كَذَا فَأَنْتِ طَالِقٌ - إِنْ شَاءَ اللَّهُ - فَالِاسْتِثْنَاءُ جَائِزٌ، وَلَا يَقَعُ الطَّلَاقُ، وَكَذَلِكَ الْعَتَاقُ.

L34262 According to this, Ash-Shāfiʿī, his companions, Abū Thawr, ʿUthmān al-Battī, Isḥāq, Abū Sulaymān, and our companions hold the opinion.

وَبِهِ يَقُولُ الشَّافِعِيُّ، وَأَصْحَابُهُ، وَأَبُو ثَوْرٍ، وَعُثْمَانُ الْبَتِّيُّ، وَإِسْحَاقُ، وَأَبُو سُلَيْمَانَ وَأَصْحَابُنَا.

L34263 Others said: The divorce does not take effect by the exception—as has been narrated to us via the chain of narration from Abu Ubayd: Saʿid ibn ʿUfayr narrated to us, saying: al-Fadl ibn al-Mukhtar narrated to me from Abu Hamzah, who said: I heard Ibn Abbas say: If a man says to his wife “You are divorced, Allah willing,” then she is divorced.

وَقَالَ آخَرُونَ: لَا يَسْقُطُ الطَّلَاقُ بِالِاسْتِثْنَاءِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا سَعِيدُ بْنُ عُفَيْرٍ حَدَّثَنِي الْفَضْلُ بْنُ الْمُخْتَارِ عَنْ أَبِي حَمْزَةَ ، قَالَ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: إذَا قَالَ لِامْرَأَتِهِ: أَنْتِ طَالِقٌ إنْ شَاءَ اللَّهُ، فَهِيَ طَالِقٌ.

L34264 This has been authentically reported from Sa’id ibn al-Musayyib, al-Hasan, al-Sha’bi, al-Zuhri, Qatadah, and Makḥūl - and it is one of the two opinions of each of al-Awza’i, Malik, and al-Layth, as well as one of the two opinions of Ibn Abi Layla.

وَقَدْ صَحَّ هَذَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَالشَّعْبِيِّ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَمَكْحُولٍ - وَهُوَ أَحَدُ قَوْلَيْ الْأَوْزَاعِيِّ، وَمَالِكٍ، وَاللَّيْثِ، وَأَحَدُ قَوْلَيْ ابْنِ أَبِي لَيْلَى.

L34265–34266 It is narrated from Ibn Abi Laylā: If a man divorces [his wife] while stipulating an exception, the divorce is valid. If he frames the exception as an oath, his exception remains valid.

وَرُوِيَ عَنْ ابْنِ أَبِي لَيْلَى: إنْ طَلَّقَ وَاسْتَثْنَى فَالطَّلَاقُ وَاقِعٌ، وَإِنْ أَخْرَجَهُ مَخْرَجَ الْيَمِينِ فَلَهُ اسْتِثْنَاؤُهُ.

L34267 Malik said: If he says, “You are divorced if Zayd wills,” or says, “Unless Zayd does not will,” or “Unless Zayd wills,” then the divorce does not take effect unless Zayd wills. They cited as evidence in this regard by stating that Zayd’s will can be ascertained, whereas the will of God Almighty cannot be ascertained.

وَقَالَ مَالِكٌ: فَإِنْ قَالَ: أَنْتِ طَالِقٌ إنْ شَاءَ زَيْدٌ - أَوْ قَالَ: إلَّا أَنْ لَا يَشَاءَ زَيْدٌ - أَوْ إلَّا أَنْ يَشَاءَ زَيْدٌ: فَإِنَّهَا لَا تَطْلُقُ إلَّا أَنْ يَشَاءَ زَيْدٌ - وَاحْتَجُّوا فِي ذَلِكَ بِأَنَّ مَشِيئَةَ زَيْدٍ تُعْرَفُ، وَمَشِيئَةَ اللَّهِ تَعَالَى لَا تُعْرَفُ.

L34268 Abu Muhammad said: This is invalid. Rather, the will of Zayd is never known by anyone other than himself and Allah the Exalted, for he may lie. As for the will of Allah the Exalted, it is known without doubt, because everything that has come to pass exists only by Allah’s will, and whatever has not occurred – we have no doubt that Allah the Exalted did not will its existence. This is among the matters in which the Hanafis opposed others by condemning [them] through their opposition to a companion for whom no opponent among the companions is known.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، بَلْ مَشِيئَةُ زَيْدٍ لَا يَعْرِفُهَا أَبَدًا أَحَدٌ غَيْرُهُ، وَغَيْرُ اللَّهِ تَعَالَى، لِأَنَّهُ قَدْ يَكْذِبُ، وَأَمَّا مَشِيئَةُ اللَّهِ تَعَالَى فَمَعْرُوفَةٌ بِلَا شَكٍّ، لِأَنَّ كُلَّ مَا نَفَذَ فَقَدْ شَاءَ اللَّهُ تَعَالَى كَوْنَهُ، وَمَا لَمْ يَنْفُذْ فَلَا نَشُكُّ أَنَّ اللَّهَ تَعَالَى لَمْ يَشَأْ كَوْنَهُ - وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ تَشْنِيعَهُمْ بِمُخَالَفَةِ صَاحِبٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ.

[مَسْأَلَةٌ طَلَّقَ امْرَأَتَهُ ثُمَّ كَرَّرَ طَلَاقَهَا لِكُلِّ مَنْ لَقِيَهُ مُشْهِدًا أَوْ مُخْبِرًا]

١٩٧٠ - مَسْأَلَةٌ: وَمَنْ طَلَّقَ امْرَأَتَهُ ثُمَّ كَرَّرَ طَلَاقَهَا لِكُلِّ مَنْ لَقِيَهُ مُشْهِدًا أَوْ مُخْبِرًا: فَهُوَ طَلَاقٌ وَاحِدٌ، لَا يَلْزَمُهُ أَكْثَرُ مِنْ ذَلِكَ - وَهَذَا مَا لَا خِلَافَ فِيهِ، لِأَنَّهُ لَمْ يَنْوِ بِذَلِكَ طَلَاقًا آخَرَ.

[مَسْأَلَةٌ أَيْقَنَتْ امْرَأَتُهُ أَنَّهُ طَلَّقَهَا ثَلَاثًا]

١٩٧١ - مَسْأَلَةٌ: وَمَنْ أَيْقَنَتْ امْرَأَتُهُ أَنَّهُ طَلَّقَهَا ثَلَاثًا، أَوْ آخِرَ ثَلَاثٍ أَوْ دُونَ ثَلَاثٍ، وَلَمْ يُشْهِدْ عَلَى مُرَاجَعَتِهِ إيَّاهَا حَتَّى تَمَّتْ عِدَّتُهَا ثُمَّ أَمْسَكَهَا مُعْتَدِيًا: فَفَرْضٌ عَلَيْهَا أَنْ تَهْرُبَ عَنْهُ - إنْ لَمْ تَكُنْ لَهَا بَيِّنَةٌ - فَإِنْ أَكْرَهَهَا فَلَهَا قَتْلُهُ دِفَاعًا عَنْ نَفْسِهَا، وَإِلَّا فَهُوَ زِنًى مِنْهَا إنْ أَمْكَنَتْهُ مِنْ نَفْسِهَا - وَهُوَ أَجْنَبِيٌّ - كَعَابِرِ السَّبِيلِ فَحُكْمُهُ فِي كُلِّ شَيْءٍ حُكْمُ الْأَجْنَبِيِّ

[مَسْأَلَةٌ طَلَاقُ الْمَرِيضِ]

١٩٧٢ - مَسْأَلَةٌ: وَطَلَاقُ الْمَرِيضِ كَطَلَاقِ الصَّحِيحِ، وَلَا فَرْقَ - مَاتَ مِنْ ذَلِكَ الْمَرَضِ أَوْ لَمْ يَمُتْ مِنْهُ - فَإِنْ كَانَ طَلَاقُ الْمَرِيضِ ثَلَاثًا، أَوْ آخِرَ ثَلَاثٍ، أَوْ قَبْلَ أَنْ يَطَأَهَا فَمَاتَ، أَوْ مَاتَتْ - قَبْلَ تَمَامِ الْعِدَّةِ أَوْ بَعْدَهَا - أَوْ كَانَ طَلَاقًا رَجْعِيًّا فَلَمْ يُرْتَجِعْهَا - حَتَّى مَاتَ أَوْ مَاتَتْ بَعْدَ تَمَامِ الْعِدَّةِ، فَلَا تَرِثُهُ فِي شَيْءٍ مِنْ ذَلِكَ كُلِّهِ، وَلَا يَرِثُهَا أَصْلًا.

L34269 **A case where a man divorced his wife and then repeated her divorce to everyone he met, treating them as witnesses or informants.**

L34270 1970. Issue: If a man divorces his wife and then repeats her divorce to everyone he encounters - whether by having someone bear witness or informing them - it constitutes a single divorce, and nothing beyond that becomes binding upon him. There is no disagreement on this matter, as he did not intend another divorce through this action.

L34271 **An issue where his wife became certain that he had divorced her three times.**

L34272 Issue 1971: Whoever's wife becomes certain that he has divorced her thrice, the last of three, or less than three, and he did not have witnesses attest to resuming relations with her until her waiting period concluded; then he wrongfully retains her. It is incumbent upon her to flee from him—if she has no proof. If he coerces her, she may kill him in self-defense. Otherwise, if she permits him access to herself, it is adultery on her part—as he is a stranger, like a passerby—and his legal status in all matters is that of a stranger.

L34273 **Issue: Divorce by a Sick Person**

L34274 Issue 1972: The divorce of an ill person holds the same ruling as that of a healthy person without distinction - whether he dies from that illness or not. If the ill person pronounces a triple divorce, the final instance of three divorces, or divorces before consummating the marriage, and either dies or the wife dies - whether before or after completing the waiting period (ʿiddah) - or if it is a revocable divorce (where the husband may resume the marriage) and he does not take her back until he dies, or she dies after completing the ʿiddah - then she does not inherit anything from him in any of these circumstances, nor does he inherit from her at all.

L34275–34277 Similarly, the divorce of a healthy man for a sick wife, the divorce of a

sick man for a sick wife—there is no difference—and likewise the divorce of one detained for murder and a heavily burdened pregnant woman: this is a matter on which people have disagreed. The first opinion concerning it states it does not constitute a divorce, as narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, from Ibn Mufarrij, from... Abdullah ibn Ja'far ibn al-Ward narrated: Yahya ibn Ayyub ibn Badi al-Allaf narrated: Yahya ibn Bukayr narrated: Al-Layth ibn Sa'd narrated from Nafi' - the freed slave of Ibn Umar - who said: Abd al-Rahman ibn Awf divorced his Kalbi wife during the illness from which he died. Uthman spoke to him so that he would take her back, but Abd al-Rahman hesitated in response. Uthman said: "I know you divorced her only to prevent her from inheriting alongside Umm Kulthum. By Allah, I will certainly allocate her inheritance even if Umm Kulthum is my sister." Nafi' said: Her final divorce was a single pronouncement made during his illness.

L34278 So this Uthman ordered Abd al-Rahman to take her back after he divorced her the last of his divorces during his illness—thus it was confirmed that he did not consider it a divorce.

L34279 Therefore, anything narrated from ʿUthmān after this is to be referred back to it.

L34280 It is also reported from Uthman that Abd al-Rahman ibn Mukammil divorced one of his wives after being afflicted with hemiplegia, then died two years later. Uthman granted her inheritance rights from him. It is authentically established that he granted inheritance rights to the Kalbi woman, wife of Abd al-Rahman ibn Awf, whom he had divorced—while ill—as the third and final divorce. He died after she had completed her waiting period. Uthman was asked: "Why do you make her inherit from Abd al-Rahman when you know he did not divorce her to cause harm nor to evade the Book of Allah Almighty?" Uthman replied: "I sought to establish a practice that would deter people from evading the Book of Allah Almighty."

L34281 Another opinion—she inherits from him and he inherits from her: as we have reported via the chain of Abd al-Razzaq from Maʿmar from one who heard al-Hasan say: They mutually inherit if he dies due to that illness.

وَكَذَلِكَ طَلَاقُ الصَّحِيحِ لِلْمَرِيضَةِ، وَطَلَاقُ الْمَرِيضِ لِلْمَرِيضَةِ، وَلَا فَرْقَ وَكَذَلِكَ طَلَاقُ الْمَوْقُوفِ لِلْقَتْلِ وَالْحَامِلِ الْمُثْقَلَةِ -: وَهَذَا مَكَانٌ اخْتَلَفَ النَّاسُ فِيهِ -: فَقَوْلٌ أَوَّلٌ - فِيهِ: أَنَّهُ لَيْسَ طَلَاقًا، كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا ابْنُ مُفَرِّجٍ نا عَبْدُ اللَّهِ بْنُ جَعْفَرِ بْنِ الْوَرْدِ نا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِي الْعَلَّافُ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ - مَوْلَى ابْنِ عُمَرَ - قَالَ: إِنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ طَلَّقَ امْرَأَةً لَهُ كَلْبِيَّةً فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ، فَكَلَّمَهُ عُثْمَانُ لِيُرَاجِعَهَا؟ فَتَلَكَّأَ عَلَيْهِ عَبْدُ الرَّحْمَنِ؟ فَقَالَ عُثْمَانُ: قَدْ أَعْرِفُ إِنَّمَا طَلَّقَهَا كَرَاهِيَةَ أَنْ تَرِثَ مَعَ أُمِّ كُلْثُومٍ، وَإِنِّي وَاللَّهِ لَأَقْسِمَنَّ لَهَا مِيرَاثَهَا، وَإِنْ كَانَتْ أُمُّ كُلْثُومٍ أُخْتِي - قَالَ نَافِعٌ: وَكَانَ آخِرُ طَلَاقِهَا تَطْلِيقَةً فِي مَرَضِهِ.

فَهَذَا عُثْمَانُ يَأْمُرُ عَبْدَ الرَّحْمَنِ بِمُرَاجَعَتِهَا بَعْدَ أَنْ طَلَّقَهَا آخِرَ طَلَاقِهَا فِي مَرَضِهِ - فَصَحَّ أَنَّهُ لَمْ يَكُنْ يَرَاهُ طَلَاقًا.

فَكُلُّ مَا رُوِيَ عَنْ عُثْمَانَ بَعْدَ هَذَا فَهُوَ مَرْدُودٌ إِلَى هَذَا.

وَجَاءَ عَنْ عُثْمَانَ أَيْضًا - أَنَّ عَبْدَ الرَّحْمَنِ بْنَ مُكَمِّلٍ طَلَّقَ بَعْضَ نِسَائِهِ بَعْدَ أَنْ أَصَابَهُ فَالِجٌ، ثُمَّ مَاتَ بَعْدَ سَنَتَيْنِ فَوَرَّثَهَا مِنْهُ عُثْمَانُ. وَصَحَّ عَنْهُ أَنَّهُ وَرَّثَ امْرَأَةَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ الْكَلْبِيَّةَ، وَقَدْ طَلَّقَهَا - وَهُوَ مَرِيضٌ - آخِرَ ثَلَاثِ تَطْلِيقَاتٍ، ثُمَّ مَاتَ بَعْدَ أَنْ أَتَمَّتْ عِدَّتَهَا، فَقِيلَ لِعُثْمَانَ: لِمَ تُوَرِّثُهَا مِنْ عَبْدِ الرَّحْمَنِ، وَقَدْ عَلِمْتَ أَنَّهُ لَمْ يُطَلِّقْهَا ضِرَارًا وَلَا فِرَارًا مِنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ؟ فَقَالَ عُثْمَانُ: أَرَدْتُ أَنْ تَكُونَ سُنَّةً يَهَابُ النَّاسُ الْفِرَارَ مِنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ.

وَقَوْلٌ آخَرُ - تَرِثُهُ وَيَرِثُهَا: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَمَّنْ سَمِعَ الْحَسَنَ يَقُولُ: يَتَوَرَّثَانِ إِنْ مَاتَ مِنْ مَرَضِهِ ذَلِكَ.

L34282 A third opinion: she inherits from him if he recovered and then died from another illness. We have been narrated through the chain of Abu ʻUbayd, from ʻAbdullah ibn Salih, from Al-Layth ibn Saʻd, from Yunus ibn Yazid, from Al-Zuhri: He was asked about a man who divorced his wife while ill, irrevocably divorced her, and he recovered for some days during her waiting period, then fell ill again and died from another illness or his previous illness recurred. Al-Zuhri said: "We hold that when he divorced her while ill, she inherits from him according to ʻUthman's judgment."

وَقَوْلٌ ثَالِثٌ -: تَرِثُهُ - وَإِنْ صَحَّ ثُمَّ مَاتَ مِنْ مَرَضٍ آخَرَ -: رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نَا عَبْدُ اللَّهِ بْنُ صَالِحٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ الزُّهْرِيِّ: أَنَّهُ سُئِلَ عَمَّنْ طَلَّقَ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - فَبَتَّهَا فَصَحَّ أَيَّامًا - وَهِيَ فِي الْعِدَّةِ - ثُمَّ مَرِضَ ثُمَّ مَاتَ مِنْ وَجَعٍ آخَرَ، أَوْ عَادَ لَهُ وَجَعُهُ؟ قَالَ الزُّهْرِيُّ: نَرَى حِينَ طَلَّقَهَا - وَهُوَ مَرِيضٌ - أَنَّهَا - فِي قَضَاءِ عُثْمَانَ - تَرِثُهُ.

L34283 With this, Sufyān al-Thawrī, al-Awzāʻī, Zufar ibn al-Hudhayl, Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhawayh all hold: If a man divorces his wife while he is sick, recovers, and subsequently dies before the conclusion of her ʻiddah (waiting period), she inherits from him.

وَبِهَذَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَالْأَوْزَاعِيُّ، وَزُفَرُ بْنُ الْهُذَيْلِ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، كُلُّهُمْ يَقُولُ: إذَا طَلَّقَهَا وَهُوَ مَرِيضٌ، ثُمَّ صَحَّ، ثُمَّ مَاتَ قَبْلَ انْقِضَاءِ عِدَّتِهَا، فَإِنَّهَا تَرِثُهُ.

L34284–34285 Al-Awzāʻī said: If a husband, while ill, empowers his wife to divorce herself and she does so, she forfeits inheritance. But if he divorces her during his illness with her explicit permission, she retains inheritance rights.

وَقَالَ الْأَوْزَاعِيُّ: إنْ مَلَّكَهَا نَفْسَهَا - وَهُوَ مَرِيضٌ - فَطَلَّقَتْ نَفْسَهَا لَمْ تَرِثْهُ، وَإِنْ طَلَّقَهَا - وَهُوَ مَرِيضٌ - بِإِذْنِهَا وَرِثَتْهُ.

L34286 A fourth opinion—we have reported it through the chain of Saʻīd ibn Manṣūr: Ismāʻīl ibn ʻAyyāsh narrated to us from Hishām ibn ʻUrwah that he asked his father ʻUrwah about a man who divorced his wife irrevocably while he was ill. ʻUrwah said: They do not inherit from each other unless she is pregnant, or unless he divorced her with the intent to cause detriment and then died while she was in her waiting period from him.

وَقَوْلٌ رَابِعٌ - رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا إسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ هِشَامِ بْنِ عُرْوَةَ أَنَّهُ سَأَلَ أَبَاهُ عُرْوَةَ عَمَّنْ طَلَّقَ امْرَأَتَهُ أَلْبَتَّةَ، وَهُوَ مَرِيضٌ؟ فَقَالَ عُرْوَةُ: لَا يَتَوَارَثَانِ إلَّا أَنْ يَكُونَ بِهَا حَبَلٌ، أَوْ يُطَلِّقُ مُضَارَّةً فَيَمُوتُ وَهِيَ فِي الْعِدَّةِ مِنْهُ.

L34287 A fifth opinion states: If he pronounces three divorces to her while sick and does not recover until he dies, she inherits from him as long as her waiting period regarding him has not expired. But if he dies after her waiting period has ended, she does not inherit from him.

وَقَوْلٌ خَامِسٌ - إنْ طَلَّقَ ثَلَاثًا وَهُوَ مَرِيضٌ وَلَمْ يَصِحَّ حَتَّى مَاتَ، فَإِنَّهَا تَرِثُهُ مَا لَمْ تَنْقَضِ عِدَّتُهَا مِنْهُ، فَإِنْ مَاتَ بَعْدَ أَنْ انْقَضَتْ عِدَّتُهَا لَمْ تَرِثْهُ.

L34288 As reported via Ibn Abi Shaybah, who narrated to us from Yazid ibn Harun

كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أَنَّهَا قَالَتْ فِي الْمُطَلَّقَةِ ثَلَاثًا - وَهُوَ مَرِيضٌ -: تَرِثُهُ مَا دَامَتْ فِي الْعِدَّةِ.

from Saʿīd ibn Abī ʻArūbah, from Hishām ibn ʻUrwah, from his father, from ʻĀ'ishah, that she said regarding a woman divorced three times by her husband while he was ill: she inherits from him as long as she remains in the iddah.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يَسْمَعْ ابْنُ أَبِي عَرُوبَةَ مِنْ هِشَامِ بْنِ عُرْوَةَ شَيْئًا.

L34289 Abū Muḥammad said, Ibn Abī al-ʿArūba did not hear a single thing from Hishām ibn ʿUrwa.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَاتِمُ بْنُ إِسْمَاعِيلَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ حُسَيْنَ بْنَ عَلِيٍّ طَلَّقَ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - فَوَرِثَتْهُ.

L34290 Through the chain of Ibn Abi Shaybah: Ḥātim ibn Ismāʿīl narrated to us from Jaʿfar ibn Muḥammad from his father that Ḥusayn ibn ʿAlī divorced his wife—while he was ill—so she inherited from him.

وَمِنْ طَرِيقِ شُعْبَةَ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ عُبَيْدَةَ بْنِ مُغِيثٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: الرَّجُلُ إِذَا طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَرِثَتْهُ مَا كَانَتْ فِي الْعِدَّةِ - وَبِهِ يَقُولُ إِبْرَاهِيمُ.

L34291 From the narration of Shuʿbah, from al-Mughīrah ibn Miqsam, from ʿUbaydah ibn Mughīth, from Ibrāhīm al-Nakhaʿī, from ʿUmar ibn al-Khaṭṭāb, who said: "When a man divorces his wife three times [irrevocably], she inherits him as long as she is in her ʿiddah." This is the view upheld by Ibrāhīm.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ عَنْ شُرَيْحٍ قَالَ: أَتَانِي عُرْوَةُ الْبَارِقِيُّ مِنْ عِنْدِ عُمَرَ فِي الرَّجُلِ يُطَلِّقُ امْرَأَتَهُ ثَلَاثًا فِي مَرَضِهِ: أَنَّهَا تَرِثُهُ مَا دَامَتْ فِي الْعِدَّةِ وَلَا يَرِثُهَا - وَبِهِ يَقُولُ إِبْرَاهِيمُ.

L34292 Via the transmission route of Abu Bakr ibn Abi Shaybah, who narrated to us: Jarir ibn Abd al-Hamid narrated from al-Mughirah, from Ibrahim, from Shurayh, who said: "Urwah al-Bāriqī came to me bearing a ruling issued by Umar concerning a man who divorces his wife thrice during his illness: she inherits from him as long as she remains in the waiting period, but he does not inherit from her"—and this is the opinion held by Ibrahim.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا مُغِيرَةُ عَنْ إِبْرَاهِيمَ فِيمَنْ طَلَّقَ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - ثَلَاثًا قَبْلَ أَنْ يَدْخُلَ بِهَا؟ قَالَ: لَهَا نِصْفُ الصَّدَاقِ، وَلَا مِيرَاثَ لَهَا، وَلَا عِدَّةَ عَلَيْهَا - قَالَ هُشَيْمٌ: وَبِهَذَا نَقُولُ.

L34293 Through the narration of Saʿīd ibn Manṣūr: Hushaym reported to us from Mughīrah, who reported from Ibrāhīm regarding a man who divorces his wife—while ill—three times before consummating the marriage? He said: She receives half the dower, she has no inheritance rights, and no waiting period is required of her. Hushaym said: This is our opinion.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ عَنِ ابْنِ عُمَرَ قَالَ: إِذَا طَلَّقَ امْرَأَتَهُ ثَلَاثًا، وَهُوَ مَرِيضٌ وَرِثَتْ فِي الْعِدَّةِ.

L34294 From the path of Waki' through Sufyān al-Thawrī through al-Mughīrah through Ibrāhīm through Ibn ʻUmar, who said: If a man pronounces a triple divorce against his wife while he is ill, she inherits during the waiting period.

L34295–34296 Abu Muhammad said: This is in my book from Muhammad ibn Saʿīd ibn

ʿUmar, and I consider it nothing but an error, and that it is actually ʿUmar—and Allah knows best—similarly, we have transmitted it via the narration of Sufyān and Shuʿbah.

قَالَ أَبُو مُحَمَّد: هَكَذَا فِي كِتَابِي عَنْ مُحَمَّدِ بْنِ سَعِيدِ بْنِ عُمَرَ، وَلَا أَرَاهُ إِلَّا وَهْمًا، وَأَنَّهُ إِنَّمَا هُوَ عُمَرُ - وَاَللَّهُ أَعْلَمُ - كَذَلِكَ رُوِّينَاهُ مِنْ طَرِيقِ سُفْيَانَ، وَشُعْبَةَ.

L34297 From the transmission of Ibn Abī Shaybah: Ḥafṣ ibn Ghiyāth reported to us from Dāwūd and al-Ashʿath, the latter of whom reported from al-Shaʿbī and Shurayḥ—both of whom said: If he pronounces a triple ṭalāq during his illness, she inherits from him so long as she remains observing the waiting period.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ دَاوُد، وَالْأَشْعَثِ عَنْ الشَّعْبِيِّ، وَشُرَيْحٍ، قَالَا: إذَا طَلَّقَ ثَلَاثًا فِي مَرَضِهِ وَرِثَتْهُ مَا دَامَتْ فِي الْعِدَّةِ.

L34298 Abu Hanifah and his companions said: If he gave her the choice [to divorce], delegated to her the right to divorce, or divorced her via *khulʿ* while he was ill, or if he swore to divorce her three times while he was healthy, then she caused him to violate his oath while he was ill, and he died, she does not inherit from him.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: فَإِنْ خَيَّرَهَا أَوْ مَلَّكَهَا، أَوْ خَالَعَهَا - وَهُوَ مَرِيضٌ - أَوْ حَلَفَ بِطَلَاقِهَا ثَلَاثًا - وَهُوَ صَحِيحٌ - فَحَنِثَ - وَهُوَ مَرِيضٌ - فَمَاتَ - لَمْ تَرِثْهُ.

L34299 If a man were to challenge another in combat or was presented for execution, and then divorces her three times, she inherits him.

فَلَوْ بَارَزَ رَجُلًا فِي الْقِتَالِ أَوْ قُدِّمَ لِيُقْتَلَ فَطَلَّقَهَا ثَلَاثًا وَرِثَتْهُ.

L34300 If he divorces her while he is sick and has not consummated the marriage with her, she does not inherit from him.

فَلَوْ طَلَّقَهَا وَهُوَ مَرِيضٌ - وَلَمْ يَكُنْ دَخَلَ بِهَا - لَمْ تَرِثْهُ.

L34301 If her father coerced her, and then the father's son had intercourse with her during the son's illness, and the son died, she does not inherit from the son.

فَلَوْ أَكْرَهَهَا أَبُوهُ فَوَطِئَهَا فِي مَرَضِهِ ابْنُهُ فَمَاتَ - لَمْ تَرِثْهُ.

L34302 Through the narration of Ḥammād ibn Salamah from Hishām ibn ʿUrwah from his father: That ʿAbd al-Raḥmān ibn ʿAwf divorced his wife three times during his illness. ʿUthmān declared: "If you die, I will assuredly ensure she inherits from you." He responded: "I am aware of that." When he died during her waiting period, ʿUthmān ruled she should inherit from him while she remained in her waiting period.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ طَلَّقَ امْرَأَتَهُ ثَلَاثًا فِي مَرَضِهِ؟ فَقَالَ عُثْمَانُ: لَئِنْ مِتّ لَأُوَرِّثَنَّهَا مِنْك؟ قَالَ: قَدْ عَلِمْت ذَلِكَ، فَمَاتَ فِي عِدَّتِهَا، فَوَرَّثَهَا عُثْمَانُ فِي عِدَّتِهَا.

L34303 From the narration chain of Abd al-Razzaq, from Ibn Jurayj, who reported: Ibn Abi Mulaikah informed me that he asked Abdullah ibn al-Zubayr, whereupon Ibn al-Zubayr said to him: Abd al-Rahman ibn Awf divorced the daughter of al-Asbagh al-Kalbiyyah irrevocably, then he died. Uthman granted her the right to inherit during her waiting period. Then Ibn al-Zubayr stated his own view.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ أَنَّهُ سَأَلَ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ فَقَالَ لَهُ ابْنُ الزُّبَيْرِ: طَلَّقَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ بِنْتَ الْأَصْبَغِ الْكَلْبِيَّةَ فَبَتَّهَا، ثُمَّ مَاتَ، فَوَرَّثَهَا عُثْمَانُ فِي عِدَّتِهَا - ثُمَّ ذَكَرَ ابْنُ الزُّبَيْرِ قَوْلَهُ نَفْسَهُ.

نا عَلِيُّ بْنُ عَبَّادٍ الْأَنْصَارِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ يَزِيدَ اللَّخْمِيُّ نا ابْنُ مُفَرِّجٍ نا أَحْمَدُ بْنُ عَبْدِ الرَّحِيمِ الْأَسَدِيُّ نا عَمْرُو بْنُ ثَوْبَانَ نا مُحَمَّدُ بْنُ يُوسُفَ الْفِرْيَابِيُّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَيُّوبَ السَّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: مَنْ طَلَّقَ - وَهُوَ مَرِيضٌ - طَلَاقًا بَائِنًا فَإِنَّهَا تَرِثُهُ مَا دَامَتْ فِي الْعِدَّةِ.

L34304 ʿAlī ibn ʿAbbād *al-Anṣārī* from Muḥammad ibn ʿAbd Allāh ibn Muḥammad ibn Yazīd *al-Lakhmī* from Ibn Mufarrij from Aḥmad ibn ʿAbd al-Raḥīm *al-Asadī* from ʿAmr ibn Thawbān from Muḥammad ibn Yūsuf *al-Firyābī* from Sufyān *al-Thawrī* from Ayyūb *al-Sikhtiyānī* from Muḥammad ibn Sīrīn, who said: “Whoever pronounces an irrevocable divorce while ill, she retains her right to inherit from him for the duration of her waiting period.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ وَابْنِ جُرَيْجٍ كِلَاهُمَا عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: إِذَا طَلَّقَهَا مَرِيضًا فَبَتَّهَا فَانْقَضَتْ الْعِدَّةُ فَلَا مِيرَاثَ بَيْنَهُمَا.

L34305 Narrated by Abd al-Razzaq from Ma’mar and Ibn Jurayj, both of whom narrated from Hisham ibn Urwah from his father, who said: If a man divorces his wife while ill and makes the divorce irrevocable, and her waiting period concludes, no right of inheritance exists between them.

وَصَحَّ عَنْ شُرَيْحٍ فِيمَنْ طَلَّقَ مَرِيضًا فَمَاتَ فَإِنَّهَا تَرِثُهُ مَا كَانَتْ فِي الْعِدَّةِ، فَبَلَغَ ذَلِكَ سَعِيدَ بْنَ الْمُسَيِّبِ فَلَمْ يُنْكِرْهُ.

L34306 It is authentically reported from Shurayh concerning a man who divorces while ill and then dies, that she inherits from him as long as she is in her ʿiddah. When this ruling reached Saʿīd ibn al-Musayyab, he did not reject it.

وَهُوَ قَوْلُ الشَّعْبِيِّ، وَالْحَارِثِ الْعُكْلِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ.

L34307 This is the opinion of al-Shaʿbī, al-Ḥārith al-ʿUklī, and Ḥammād ibn Abī Sulaymān.

وَرُوِيَ عَنْ رَبِيعَةَ، وَطَاوُسٍ، وَاللَّيْثِ بْنِ سَعْدٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَالْأَوْزَاعِيِّ، وَابْنِ شُبْرُمَةَ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ.

L34308–34309 It has been narrated from Rabīʿah, Ṭāwūs, al-Layth ibn Saʿd, Sufyān al-Thawrī, al-Awzāʿī, Ibn Shubrumah, Abū Ḥanīfah, and his companions.

وَقَوْلٌ سَادِسٌ - مَنْ رُوِيَ عَنْهُ أَنَّ الْمُطَلَّقَةَ فِي الْمَرَضِ تَرِثُ - هَكَذَا جُمْلَةً - لَمْ يُبَيِّنْ فِي الْعِدَّةِ فَقَطْ أَمْ بَعْدَهَا؟ فَكَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي رِجَالٌ - مِنْ أَهْلِ الْعِلْمِ - أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: الْمُطَلَّقَةُ فِي الْمَرَضِ تَرِثُ.

L34310 A sixth opinion—attributed to those from whom it was narrated that a woman divorced during illness inherits—is phrased thus, in general terms, without clarifying whether this applies only during the waiting period or after it. And just as it was narrated to us via the transmission chain of Ibn Wahb: men from the scholars informed me that Ali ibn Abi Talib said, “A woman divorced during illness inherits.”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا عُبَيْدُ اللَّهِ عَنْ عُثْمَانَ بْنِ أَبِي الْأَسْوَدِ عَنْ عَطَاءٍ قَالَ: لَوْ مَرِضَ سَنَةً لَوَرَّثْتُهَا مِنْهُ.

L34311 Through the chain of transmission of Ibn Abi Shaybah: ‘Ubaydullah narrated to us from ‘Uthman ibn Abi al-Aswad, from ‘Ata’, who said: “If he were ill for a year, I would make her inherit from him.”

وَالْأَصَحُّ عَنْ عَطَاءٍ أَنَّهَا تَرِثُهُ فِي الْعِدَّةِ، وَلَا تَرِثُهُ بَعْدَهَا.

L34312 The most correct opinion narrated from ‘Aṭā’ is that she inherits from him during the ʿiddah (waiting period), but not after it.

L34313 And through the chain of Ibn Abi Shaybah: Yazid ibn Harun narrated to us

from Ash'ath from Muhammad ibn Sirin, who said: They would say: "They do not differ concerning one who flees from the Book of Allah—he is to be returned to it," meaning: regarding one who divorces his wife while he is ill.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ أَشْعَثَ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: كَانُوا يَقُولُونَ: لَا يَخْتَلِفُونَ فِيمَنْ فَرَّ مِنْ كِتَابِ اللَّهِ رُدَّ إِلَيْهِ - يَعْنِي: فِيمَنْ طَلَّقَ امْرَأَتَهُ وَهُوَ مَرِيضٌ.

L34314 A seventh opinion—from one who said, "She inherits from him after the waiting period provided she does not marry"—: Muḥammad ibn Saʿīd ibn Nabāt narrated from Aḥmad ibn ʿAbd Allāh 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 a scholar of Quraysh from Ubayy ibn Kaʿb regarding a man who divorces his wife thrice during his illness. He said: "I continue to entitle her to inherit from him until he recovers, she marries, or she waits a year"—or he said: "even if she waits a year."

وَقَوْلٌ سَابِعٌ - مَنْ قَالَ: تَرِثُهُ بَعْدَ الْعِدَّةِ مَا لَمْ تَتَزَوَّجْ - فَكَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ شَيْخٍ مِنْ قُرَيْشٍ عَنْ أُبَيِّ بْنِ كَعْبٍ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا فِي مَرَضِهِ؟ قَالَ: لَا أَزَالُ أُوَرِّثُهَا مِنْهُ حَتَّى يَبْرَأَ، أَوْ تَتَزَوَّجَ، أَوْ تَمْكُثَ سَنَةً - أَوْ قَالَ: وَلَوْ مَكَثَتْ سَنَةً.

L34315 Through the chain of Abd al-Razzaq from Ibn Jurayj: I said to Ata, "What if a man divorces his wife while ill, then dies from that ailment?" Ata replied, "She inherits from him even if her waiting period from him has expired, if he dies during that illness, as long as she has not been married."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: الرَّجُلُ يُطَلِّقُ امْرَأَتَهُ مَرِيضًا ثُمَّ يَمُوتُ مِنْ وَجَعِهِ ذَلِكَ؟ قَالَ عَطَاءٌ: تَرِثُهُ وَإِنْ انْقَضَتْ عِدَّتُهَا مِنْهُ إذَا مَاتَ فِي مَرَضِهِ ذَلِكَ، مَا لَمْ تُنْكَحْ.

L34316 From the route of Abū ʿUbayd, Yazīd ibn Hārūn narrated to us from Ismāʿīl ibn Abī Khālid from al-Shaʿbī regarding the woman whom he divorces while ill. He said: She inherits from him even if the illness lasted up to two years, provided she has not married.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَزِيدُ بْنُ هَارُونَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ فِي الَّتِي يُطَلِّقُهَا وَهُوَ مَرِيضٌ؟ قَالَ: تَرِثُهُ وَإِنْ كَانَ إلَى سَنَتَيْنِ مَا لَمْ تَتَزَوَّجْ.

L34317 Abu Ubayd said: I heard Abu Yusuf the judge relate from Ibn Abi Layla that he said concerning a woman divorced during illness: she inherits from him as long as she does not marry. This is the opinion of Sharik the judge, Ahmad ibn Hanbal, Ishaq, and Abu Ubayd.

وَقَالَ أَبُو عُبَيْدٍ: وَسَمِعْت أَبَا يُوسُفَ الْقَاضِيَ يَقُولُ عَنِ ابْنِ أَبِي لَيْلَى، أَنَّهُ قَالَ فِي الْمُطَلَّقَةِ فِي الْمَرَضِ: تَرِثُهُ مَا لَمْ تَتَزَوَّجْ - وَهُوَ قَوْلُ شَرِيكٍ الْقَاضِي، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي عُبَيْدٍ.

L34318–34320 The eighth opinion—held by those who assert she does not inherit him except during the iddah and transitions to the iddah of death—was also maintained by even some scholars who grant her inheritance after the iddah. As

وَقَوْلٌ ثَامِنٌ - وَهُوَ لِمَنْ قَالَ: إنَّهَا لَا تَرِثُهُ، إلَّا مَا دَامَتْ فِي الْعِدَّةِ، وَإِنَّهَا تَنْتَقِلُ إلَى عِدَّةِ الْوَفَاةِ - وَقَالَهُ أَيْضًا بَعْضُ مَنْ وَرَّثَهَا بَعْدَ الْعِدَّةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَحْيَى

narrated to us through the chain of Abū ʿUbayd: Yaḥyā ibn Zakariyyā ibn Abī Zāʾidah → his father → al-Shaʿbī, who said: "A significant chapter on divorce [is as follows]: If a woman inherits from him, she observes the ʿiddah—she inherits from him only if she had not been married before his death. If she inherits from him, she observes the ʿiddah of four months and ten days."

بْنُ زَكَرِيَّا بْنِ أَبِي زَائِدَةَ عَنْ أَبِيهِ عَنْ الشَّعْبِيِّ، قَالَ: بَابٌ مِنْ الطَّلَاقِ جَسِيمٌ: إذَا وَرِثَتْ الْمَرْأَةُ اعْتَدَّتْ - تَرِثُهُ مَا لَمْ تُنْكَحْ قَبْلَ مَوْتِهِ - فَإِذَا وَرِثَتْهُ اعْتَدَّتْ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L34321 Narrated by Waki', from Sufyan al-Thawri, from al-Mughirah ibn Miqsam, from Ibrahim al-Nakha'i, who said: If a man divorces his wife—while he is sick—and then dies, she inherits from him (as his legal heir) and must restart the ʿiddah [waiting period] of four months and ten days.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - فَمَاتَ وَرِثَتْهُ وَاسْتَأْنَفَتْ الْعِدَّةَ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L34322 And from the narration of Abd al-Razzaq, from Sufyan al-Thawri, that he said: If a man divorces his wife while he is ill, she observes the longer of the two waiting periods. If four months and ten days exceed the duration of her menstrual period, she observes four months and ten days; but if the menstrual period is longer, she observes that instead.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ أَنَّهُ قَالَ: إذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - فَإِنَّهَا تَكُونُ عَلَى أَقْصَى الْعِدَّتَيْنِ إنْ كَانَتْ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا أَكْثَرَ مِنْ حَيْضَتِهَا أَخَذَتْ بِالْأَرْبَعَةِ الْأَشْهُرِ وَالْعَشْرِ، وَإِنْ كَانَ الْحَيْضُ أَكْثَرَ أَخَذَتْ بِالْحَيْضِ.

L34323 Abu Muhammad said: This is the opinion of Abū Ḥanīfah and Muḥammad ibn al-Ḥasan.

قَالَ أَبُو مُحَمَّدٍ وَهَذَا هُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمُحَمَّدِ بْنِ الْحَسَنِ.

L34324 Abu Yusuf said: It extends exclusively over the menstrual period and does not shift to the Iddah of death.

وَقَالَ أَبُو يُوسُفَ: تَتَمَادَى عَلَى الْحَيْضِ فَقَطْ، وَلَا تَنْتَقِلُ إلَى عِدَّةِ الْوَفَاةِ.

L34325 The ninth opinion, which is the view of those who say: she inherits from him during the waiting period and after the waiting period, without stipulating "if she does not remarry" or "even if she remarries."

وَقَوْلٌ تَاسِعٌ - وَهُوَ قَوْلُ مَنْ قَالَ: تَرِثُهُ فِي الْعِدَّةِ وَبَعْدَ الْعِدَّةِ، وَلَمْ يَخُصَّ " إنْ لَمْ تَتَزَوَّجْ " وَلَا قَالَ " وَإِنْ تَزَوَّجَتْ ".

L34326 Just as it has been narrated to us through the chain of Ibn Wahb: Mūsā ibn Yazīd informed me on the authority of al-Zuhrī, who said: Ṭalḥah ibn ʿAbd Allāh ibn ʿAwf narrated to me that ʿAbd al-Raḥmān ibn ʿAwf lived until Tumāḍir's waiting period ended. Then ʿUthmān assigned her inheritance from him after her waiting period had concluded.

فَكَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مُوسَى بْنُ يَزِيدَ عَنْ الزُّهْرِيِّ حَدَّثَنِي طَلْحَةُ بْنُ عَبْدِ اللَّهِ بْنِ عَوْفٍ أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ عَاشَ حَتَّى حَلَّتْ تُمَاضِرُ، ثُمَّ وَرَّثَهَا عُثْمَانُ مِنْهُ بَعْدَ مَا حَلَّتْ.

L34327 And similarly, we have transmitted it through the chain of Saʿīd ibn Manṣūr who reported to us from ʿAbbād ibn ʿAbbād al-Muhallabī, who reported to us from Hishām ibn ʿUrwah (from his father) and Muḥammad ibn ʿAmr ibn ʿAlqamah—both of whom narrated from Abū Salamah ibn ʿAbd al-Raḥmān

ibn ʿAwf—that his father divorced his wife during his illness. He died after she had completed her waiting period, so ʿUthmān granted her inheritance.

وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبَّادُ بْنُ عَبَّادٍ الْمُهَلَّبِيُّ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ، وَمُحَمَّدُ بْنُ عَمْرِو بْنِ عَلْقَمَةَ، كِلَاهُمَا عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّ أَبَاهُ طَلَّقَ امْرَأَتَهُ فِي مَرَضِهِ فَمَاتَ بَعْدَ مَا حَلَّتْ فَوَرَّثَهَا عُثْمَانُ.

L34328 There are differing reports from ʿUmar ibn Abi Salama via his father: Abu ʿAwanah reported from him that this occurred during the waiting period, while Hushaym reported from him that this occurred after the waiting period, and ʿUmar is a weak narrator.

وَاخْتُلِفَ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ عَنْ أَبِيهِ فَرَوَى عَنْهُ أَبُو عَوَانَةَ أَنَّهُ كَانَ ذَلِكَ فِي الْعِدَّةِ - وَرَوَى عَنْهُ هُشَيْمٌ: كَانَ ذَلِكَ بَعْدَ الْعِدَّةِ، وَعُمَرُ ضَعِيفٌ.

L34329 From the transmission of Ibn Wahb: Yazid ibn Iyad ibn Juʿdubah reported to me, from Abd al-Karim ibn al-Harith, from Mujahid, that he said: "If a sick man divorces his wife before consummating the marriage, she is entitled to her inheritance from him and half of the mahr."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يَزِيدُ بْنُ عِيَاضِ بْنِ جُعْدُبَةَ عَنْ عَبْدِ الْكَرِيمِ بْنِ الْحَارِثِ عَنْ مُجَاهِدٍ أَنَّهُ قَالَ: إذَا طَلَّقَ الْمَرِيضُ امْرَأَتَهُ قَبْلَ أَنْ يَدْخُلَ بِهَا فَلَهَا مِيرَاثُهَا مِنْهُ وَنِصْفُ الصَّدَاقِ.

L34330–34331 From the transmission of Ibn Wahb, Makhramah ibn Bukayr informed me from his father, who said: It is said that if a man divorces his wife while he is ill, having specified her mahr and not having consummated the marriage, she is entitled to half of her mahr and she inherits from him.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مَخْرَمَةُ بْنُ بُكَيْرٍ عَنْ أَبِيهِ، قَالَ يُقَالُ: إذَا طَلَّقَ امْرَأَتَهُ - وَهُوَ وَجِعٌ - وَقَدْ فَرَضَ لَهَا وَلَمْ يَمَسَّهَا، فَلَهَا نِصْفُ صَدَاقِهَا وَتَرِثُهُ.

L34332 And through the chain of Abū Bakr ibn Abī Shaybah—narrated to us by Sahl ibn Yūsuf, from Ḥumayd, from Bakr, from al-Ḥasan—regarding one who divorces his wife three times during his illness and dies—after her ʿiddah has concluded—then she inherits from him.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا سَهْلُ بْنُ يُوسُفَ عَنْ حُمَيْدٍ عَنْ بَكْرٍ عَنْ الْحَسَنِ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا فِي مَرَضِهِ فَمَاتَ - وَقَدْ انْقَضَتْ عِدَّتُهَا - فَإِنَّهَا تَرِثُهُ.

L34333 Via Saʿīd ibn Manṣūr: Hushaym reported to us that Yūnus ibn ʿUbayd and Manṣūr—both of them—narrated from al-Ḥasan concerning one who divorces his wife while ill before consummating the marriage—what is the ruling? He said: She receives the entire mahr and the inheritance, and she is obligated to observe the ʿiddah.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا يُونُسُ بْنُ عُبَيْدٍ، وَمَنْصُورٌ، كِلَاهُمَا: عَنْ الْحَسَنِ فِيمَنْ طَلَّقَ امْرَأَتَهُ - وَهُوَ مَرِيضٌ - قَبْلَ أَنْ يَدْخُلَ بِهَا؟ قَالَ: لَهَا الصَّدَاقُ كُلُّهُ وَالْمِيرَاثُ، وَعَلَيْهَا الْعِدَّةُ.

L34334 Through the chain of Ḥammād ibn Salamah from ʿUthmān al-Battī, Ḥumayd, and the companions of al-Ḥasan, they said: She inherits from him after the completion of the ʿiddah.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُثْمَانَ الْبَتِّيِّ، وَحُمَيْدٍ، وَأَصْحَابِ الْحَسَنِ، قَالُوا: تَرِثُهُ بَعْدَ انْقِضَاءِ الْعِدَّةِ.

L34335 A tenth opinion—we have related it through the chain of Ibn Wahb, who

reported: “Men from the people of knowledge informed me”—states that Rabīʿah ruled regarding a woman divorced three times during an illness: she inherits from him even if she marries ten husbands after him.

وَقَوْلٌ عَاشِرٌ - رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي رِجَالٌ - مِنْ أَهْلِ الْعِلْمِ - أَنَّ رَبِيعَةَ قَالَ فِي الْمُطَلَّقَةِ ثَلَاثًا فِي الْمَرَضِ: تَرِثُهُ وَإِنْ نَكَحَتْ بَعْدَهُ عَشْرَةَ أَزْوَاجٍ.

L34336 This is the opinion of Mālik and those who imitate him in taqlīd, and it is also narrated from al-Layth ibn Saʿd.

وَبِهَذَا يَقُولُ مَالِكٌ وَمَنْ قَلَّدَهُ - وَرُوِيَ أَيْضًا عَنِ اللَّيْثِ بْنِ سَعْدٍ.

L34337 Mālik said: If he divorces her while sick before consummating the marriage, she is entitled to inherit from him, half the bridal gift (ṣadāq), and no waiting period is required of her. He also said: If the husband gives her the choice while he is sick, and she chooses herself—thereby being divorced thrice—or if she seeks a *khulʿ* from him while he is sick, and he later dies of his illness, she inherits him.

وَقَالَ مَالِكٌ: إِنْ طَلَّقَهَا مَرِيضًا قَبْلَ الدُّخُولِ بِهَا؟ فَلَهَا الْمِيرَاثُ، وَلَهَا نِصْفُ الصَّدَاقِ وَلَا عِدَّةَ عَلَيْهَا - وَقَالَ: إِنْ خَيَّرَهَا - وَهُوَ مَرِيضٌ - فَاخْتَارَتْ نَفْسَهَا فَطَلُقَتْ ثَلَاثًا، أَوْ اخْتَلَعَتْ مِنْهُ - وَهُوَ مَرِيضٌ ثُمَّ مَاتَ مِنْ مَرَضِهِ - فَإِنَّهَا تَرِثُهُ.

L34338 He said: Similarly, if he swore to divorce her three times if she entered the house of Fulān while he was healthy—then he fell ill—and she deliberately entered that house, she is divorced three times; or if he died from his illness, she inherits him.

قَالَ: وَكَذَلِكَ لَوْ حَلَفَ بِطَلَاقِهَا ثَلَاثًا إِنْ دَخَلَتْ دَارَ فُلَانٍ، وَهُوَ صَحِيحٌ فَمَرِضَ فَتَعَمَّدَتْ دُخُولَ تِلْكَ الدَّارِ فَطَلُقَتْ ثَلَاثًا، أَوْ مَاتَ مِنْ مَرَضِهِ، فَإِنَّهَا تَرِثُهُ.

L34339 He said: Similarly, if a healthy person of sound mind declares, “If my father arrives, you are divorced three times,” and his father arrives while he is ill—whereupon she becomes divorced three times—then if he dies afterward, she inherits from him.

قَالَ: وَكَذَلِكَ مَنْ قَالَ وَهُوَ صَحِيحٌ: إِذَا قَدِمَ أَبِي فَأَنْتِ طَالِقٌ ثَلَاثًا؟ فَقَدِمَ أَبُوهُ - وَهُوَ مَرِيضٌ - فَطَلُقَتْ ثَلَاثًا ثُمَّ مَاتَ هُوَ؟ فَإِنَّهَا تَرِثُهُ.

L34340 He said: Whoever fights during a military advance, or is detained for the purpose of killing, and then pronounces a triple divorce upon his wife, she retains her right to inherit from him.

قَالَ: وَمَنْ قَاتَلَ فِي الزَّحْفِ، أَوْ حُبِسَ لِلْقَتْلِ، فَطَلَّقَ امْرَأَتَهُ ثَلَاثًا، فَإِنَّهَا تَرِثُهُ.

L34341 He said: If a constrained person pronounces a triple divorce, she does not inherit him.

قَالَ: وَالْمَحْصُورُ - إِنْ طَلَّقَ ثَلَاثًا لَمْ تَرِثْهُ.

L34342 He said: If he were to apostatize while ill, the female heir does not inherit from him.

قَالَ: فَلَوْ ارْتَدَّ وَهُوَ مَرِيضٌ لَمْ تَرِثْهُ.

L34343–34345 The eleventh opinion: As transmitted to us through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, who stated: Ghaylān ibn Salamah al-Thaqafī divorced all his wives and apportioned his wealth. Between his sons—and this occurred during the caliphate of ʿUmar—had that reached him? ʿUmar said to him:

وَقَوْلٌ حَادِيَ عَشَرَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ، قَالَ: طَلَّقَ غَيْلَانُ بْنُ سَلَمَةَ الثَّقَفِيُّ نِسَاءَهُ، وَقَسَّمَ مَالَهُ بَيْنَ بَنِيهِ، وَذَلِكَ فِي خِلَافَةِ عُمَرَ، فَبَلَغَهُ ذَلِكَ؟ فَقَالَ لَهُ عُمَرُ: طَلَّقْتَ نِسَاءَكَ، وَقَسَّمْتَ مَالَكَ

بَيْنَ بَنِيك؟ قَالَ: نَعَمْ، قَالَ لَهُ عُمَرُ: وَاَللَّهِ لَأَرَى الشَّيْطَانَ فِيمَا يَسْتَرِقُ مِنْ السَّمْعِ سَمِعَ بِمَوْتِك، فَأَلْقَاهُ فِي نَفْسِك؟ فَلَعَلَّك أَنْ لَا تَمْكُثَ إلَّا قَلِيلًا، وَأَيْمُ اللَّهِ لَئِنْ لَمْ تُرَاجِعْ نِسَاءَك، وَتَرْجِعْ فِي مَالِك لَأُوَرِّثَنَّهُنَّ مِنْك إذَا مِتَّ، ثُمَّ لَآمُرَنَّ بِقَبْرِك فَلْيُرْجَمَنَّ كَمَا يُرْجَمُ قَبْرُ أَبِي رِغَالَ؟ قَالَ فَرَاجَعَ نِسَاءَهُ وَمَالَهُ، قَالَ نَافِعٌ: فَمَا لَبِثَ إلَّا سَبْعًا حَتَّى مَاتَ.

"Did you divorce your wives and divide your wealth among your sons?" He replied: "Yes." ʿUmar said: "By Allah, I see Satan - through what he steals by eavesdropping - heard of your death and cast it into your heart? Perhaps you will not remain except briefly. By Allah, if you do not retract your divorce and reclaim your wealth, I will make them inherit from you when you die. Then I will order your grave to be stoned as the grave of Abū Righāl was stoned?" So he retracted his divorce and reclaimed his wealth. Nāfiʿ said: "He did not remain except seven until he died."

وَأَمَّا الْمَحْصُورُ - فَرُوِّينَا مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ، قَالَ: نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ أَنَّ أُمَّ الْبَنِينَ بِنْتَ عُيَيْنَةَ بْنِ حِصْنٍ كَانَتْ تَحْتَ عُثْمَانَ، فَلَمَّا حُوصِرَ طَلَّقَهَا، وَكَانَ قَدْ أَرْسَلَ إلَيْهَا يَشْتَرِي مِنْهَا ثَمَنَهَا، فَأَبَتْ، فَلَمَّا قُتِلَ أَتَتْ عَلِيَّ بْنَ أَبِي طَالِبٍ فَذَكَرَتْ ذَلِكَ لَهُ؟ فَقَالَ عَلِيٌّ: تَرَكَهَا حَتَّى إذَا أَشْرَفَ عَلَى الْمَوْتِ طَلَّقَهَا، فَوَرَّثَهَا.

L34346 As for the besieged individual – it has been narrated to us through the narration chain of Ibn Abi Shaybah, who said: ʿAbbad ibn al-ʿAwwam reported to us from Ashʿath from al-Shaʿbi that Umm al-Banin bint ʿUyaynah ibn Hisn was married to Uthman. When he was besieged, he divorced her. He had sent to her to reclaim her dowry, but she refused. When he was killed, she came to Ali ibn Abi Talib and mentioned this matter to him. Ali said: "He refrained from divorcing her until he approached the brink of death, then divorced her, thereby entitling her to inherit."

وَقَوْلٌ ثَانِي عَشَرَ - وَهُوَ مَنْ لَمْ يُوَرِّثْ الْمَبْتُوتَةَ فِي الْمَرَضِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي مُلَيْكَةَ: أَنَّهُ سَأَلَ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ عَنْ الْمَبْتُوتَةِ -: يَعْنِي فِي الْمَرَضِ؟ قَالَ: فَقَالَ لِي ابْنُ الزُّبَيْرِ: طَلَّقَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ بِنْتَ الْأَصْبَغِ الْكَلْبِيَّةَ ثَلَاثًا ثُمَّ مَاتَ وَهِيَ فِي عِدَّتِهَا فَوَرَّثَهَا عُثْمَانُ. قَالَ ابْنُ الزُّبَيْرِ: فَأَمَّا أَنَا فَلَا أَرَى أَنْ تَرِثَ الْمَبْتُوتَةُ.

L34347 The twelfth opinion—which is that of those who do not grant inheritance to a woman irrevocably divorced during terminal illness—is as follows: It was narrated to us via the chain of ʿAbd al-Razzāq, from Ibn Jurayj, who reported that Ibn Abī Mulaykah asked ʿAbd Allāh ibn al-Zubayr about the irrevocably divorced woman—referring to divorce during illness. Ibn al-Zubayr replied: "ʿAbd al-Raḥmān ibn ʿAwf divorced the daughter of al-Aṣbagh of the Kalbi tribe with three pronouncements. He then died while she was in her post-divorce waiting period, and ʿUthmān granted her inheritance." Ibn al-Zubayr added: "As for me, I do not believe an irrevocably divorced woman should inherit."

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا ابْنُ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ قَالَ: سَأَلْت عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ عَمَّنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَهُوَ مَرِيضٌ؟ فَقَالَ ابْنُ الزُّبَيْرِ: أَمَّا عُثْمَانُ فَوَرَّثَ ابْنَةَ الْأَصْبَغِ الْكَلْبِيَّةَ، وَأَمَّا أَنَا فَلَا أَرَى أَنْ تَرِثَ مَبْتُوتَةٌ.

L34348 From the path of Abū ʿUbayd: Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to us, Ibn Jurayj narrated to us from Ibn Abī Mulaykah, who said: I asked ʿAbdullāh ibn al-Zubayr about a man who divorced his wife three times while he was ill. Ibn al-Zubayr replied: As for ʿUthmān, he granted the daughter of al-Aṣbagh of the Kalb tribe the right to inherit from her husband. But as for me, I do not maintain that an irrevocably divorced woman should inherit.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ، وَالْحَجَّاجِ بْنِ الْمِنْهَالِ، قَالَا جَمِيعًا: نا أَبُو عَوَانَةَ نا عُمَرُ بْنُ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِيهِ، فَذَكَرَ حَدِيثَ أَبِيهِ، وَأَنَّ امْرَأَتَهُ تُمَاضِرَ بِنْتَ الْأَصْبَغِ بْنِ زِيَادِ بْنِ الْحُصَيْنِ أَرْسَلَتْ إِلَيْهِ تَسْأَلُهُ الطَّلَاقَ؟ فَقَالَ: إِذَا طَهُرَتْ -: يَعْنِي مِنْ حَيْضِهَا فَلْتُؤْذِنِّي؟ فَطَهُرَتْ، فَأَرْسَلَتْ إِلَيْهِ وَهُوَ مَرِيضٌ، فَغَضِبَ وَقَالَ: هِيَ طَالِقٌ أَلْبَتَّةَ، وَلَا رَجْعَةَ لَهَا، فَلَمْ يَلْبَثْ إِلَّا يَسِيرًا حَتَّى مَاتَ، فَقَالَ عَبْدُ اللَّهِ بْنُ عَوْفٍ: لَا أُوَرِّثُ تُمَاضِرَ شَيْئًا - هَذَا لَفْظُ الْحَجَّاجِ وَقَالَ سَعِيدُ بْنُ مَنْصُورٍ فِي رِوَايَتِهِ: فَقَالَ عَبْدُ الرَّحْمَنِ: لَا أُوَرِّثُ تُمَاضِرَ شَيْئًا، ثُمَّ اتَّفَقَا، فَارْتَفَعُوا إِلَى عُثْمَانَ فَوَرَّثَهَا، وَكَانَ ذَلِكَ فِي الْعِدَّةِ.

L34349 And from the narration of Saʿīd ibn Manṣūr and al-Ḥajjāj ibn al-Minhāl—both narrated via Abū ʿAwānah: ʿUmar ibn Abī Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf reported from his father, who mentioned the ḥadīth of his father: His wife Tumāḍir bint al-Aṣbagh ibn Ziyād ibn al-Ḥuṣayn sent to him requesting divorce. He responded: "When she becomes pure"—meaning from her menstruation—"let her inform me." She became pure and sent to him while he was ill. He grew angry and declared: "She is irrevocably divorced with no possibility of revocation." He survived only briefly before dying. ʿAbdullāh ibn ʿAwf said: "I do not let her inherit anything"—this being al-Ḥajjāj's wording. In Saʿīd ibn Manṣūr's narration, ʿAbd al-Raḥmān said: "I do not let her inherit anything." Both narrations then concur: They elevated the case to ʿUthmān, who ruled her entitled to inheritance. This ruling was issued during her ʿiddah period.

وَمِنْ طَرِيقِ أَبِي عُبَيْدٍ نا أَبُو أَحْمَدَ الزُّبَيْرِيُّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ لَيْثٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ فِي الَّذِي يُطَلِّقُ امْرَأَتَهُ ثَلَاثًا فِي مَرَضِهِ قَبْلَ أَنْ يَدْخُلَ بِهَا؟ قَالَ: لَيْسَ لَهَا مِيرَاثٌ، وَلَهَا نِصْفُ الصَّدَاقِ.

L34350–34351 From the chain of Abū ʿUbayd: Abū Aḥmad al-Zubayrī narrated to us from Sufyān al-Thawrī from Layth from Ṭāwūs from Ibn ʿAbbās regarding one who divorces his wife thrice during his illness before having consummated the marriage—what is the ruling? He said: She has no inheritance right, but she is entitled to half the *mahr*.

وَمِنْ طَرِيقِ قَتَادَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا تَرِثُ الْمَبْتُوتَةُ.

L34352 Through the narration of Qatadah: ʿAlī ibn Abī Ṭālib said, "The irrevocably divorced woman does not inherit."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنِ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنِ الْحَارِثِ الْعُكْلِيِّ، قَالَ: مَنْ طَلَّقَ امْرَأَتَهُ طَلْقَتَيْنِ فِي صِحَّتِهِ فَطَلَّقَهَا الثَّالِثَةَ لِلْعِدَّةِ فِي مَرَضِهِ لَمْ تَرِثْهُ، لِأَنَّهُ لَمْ تَعْتَدَّ - وَبِأَنْ لَا تَرِثَ الْمُطَلَّقَةُ الْمَبْتُوتَةُ فِي الْمَرَضِ يَقُولُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا.

L34353 From the path of Sa'id ibn Mansur: Jarir ibn 'Abd al-Hamid narrated to us from al-Mughirah ibn Miqsam from al-Harith al-'Ukli, who said: Whoever divorces his wife twice during his health, then divorces her a third time during the husband's illness for the waiting period, she does not inherit him because she has not completed it. Al-Shafi'i, Abu Sulayman, and their companions state that the woman who has been irrevocably divorced during the husband's illness does not inherit.

L34354 Abu Muhammad said: Those who held the view that a finally divorced woman during illness inherits argued that the husband evaded what God the Exalted had ordained for her in His Book regarding inheritance. Therefore,

a ruling should be made against him and against those not suspected of that, to prevent this from becoming a means of withholding rights.

قَالَ أَبُو مُحَمَّد: احْتَجَّ مَنْ رَأَى تَوْرِيثَ الْمَبْتُوتَةِ فِي الْمَرَضِ بِأَنْ قَالُوا: فَرَّ بِذَلِكَ عَمَّا أَوْجَبَ اللَّهُ تَعَالَى لَهَا فِي كِتَابِهِ فِي الْمِيرَاثِ، فَوَجَبَ أَنْ يُقْضَى عَلَيْهِ وَعَلَى مَنْ لَا يُتَّهَمُ بِذَلِكَ، لِئَلَّا يَكُونَ ذَرِيعَةً إِلَى مَنْعِ الْحُقُوقِ.

L34355 Abū Muḥammad said: We say—and we seek support from Allah the Exalted—he never fled from the Book of Allah; rather, he adhered to Allah's Book and followed it. For Allah the Exalted permitted divorce, decreed via the threefold divorce and via divorce before consummation: the termination of all spousal rights—maintenance, lawful intimacy, and inheritance. Where then is fleeing from Allah's Book here? Fleeing from Allah's Book would only occur if he had said, "She inherits nothing from me without him divorcing her." Rather, fleeing from Allah's Book is granting inheritance to one who is neither a wife, mother, grandmother, daughter, granddaughter, sister, nor an emancipated female slave—but rather an unrelated woman for whom Allah the Exalted has never ordained inheritance.

قَالَ أَبُو مُحَمَّد: فَنَقُولُ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ - مَا فَرَّ قَطُّ عَنْ كِتَابِ اللَّهِ تَعَالَى بَلْ أَخَذَ بِكِتَابِ اللَّهِ وَاتَّبَعَهُ، لِأَنَّ اللَّهَ تَعَالَى أَبَاحَ الطَّلَاقَ، وَقَطَعَ بِالثَّلَاثِ، وَبِالطَّلَاقِ قَبْلَ الْوَطْءِ: جَمِيعَ حُقُوقِ الزَّوْجِيَّةِ: مِنْ النَّفَقَةِ، وَإِبَاحَةِ الْوَطْءِ، وَالتَّوَارُثِ، فَأَيْنَ هَاهُنَا الْفِرَارُ مِنْ كِتَابِ اللَّهِ تَعَالَى؟ إنَّمَا كَانَ يَفِرُّ عَنْ كِتَابِ اللَّهِ تَعَالَى لَوْ قَالَ: لَا تَرِثُ مِنِّي شَيْئًا دُونَ أَنْ يُطَلِّقَهَا، بَلْ الْفِرَارُ مِنْ كِتَابِ اللَّهِ تَعَالَى: هُوَ تَوْرِيثُ مَنْ لَيْسَتْ زَوْجَةً، وَلَا أُمًّا، وَلَا جَدَّةً، وَلَا ابْنَةً، وَلَا ابْنَةَ ابْنٍ، وَلَا أُخْتًا، وَلَا مُعْتِقَةً، وَلَكِنْ أَجْنَبِيَّةً لَمْ يَجْعَلْ اللَّهُ تَعَالَى قَطُّ لَهَا مِيرَاثًا.

L34356 How can it be permissible for a woman to be inherited through the spousal bond when intercourse with her would warrant stoning? Or for one whom it has become permissible to marry another? Or for one who is already another man's wife? This is truly in opposition to the Book of Allah Almighty, without any doubt.

وَكَيْف يَجُوزُ أَنْ تُورَّثَ بِالزَّوْجِيَّةِ مَنْ إنْ وَطِئَهَا رُجِمَ؟ أَوْ مَنْ قَدْ حَلَّ لَهَا زَوَاجُ غَيْرِهِ: أَوْ مَنْ هِيَ زَوْجَةٌ لِغَيْرِهِ؟ هَذَا هُوَ خِلَافُ كِتَابِ اللَّهِ تَعَالَى حَقًّا، بِلَا شَكٍّ.

L34357 Furthermore, if she inherits from him by virtue of the marital bond, he must inherit from her by virtue of the marital bond—as Al-Ḥasan says—since it is absurd, impossible, and inconceivable that she should be his wife while he is not her husband. If they say, "She is not his wife," we respond: Then why have you given her the inheritance of a wife? This is most perplexing! This is undeniably misappropriation of wealth.

وَأَيْضًا - فَإِنْ كَانَتْ تَرِثُهُ بِالزَّوْجِيَّةِ فَوَاجِبٌ أَنْ يَرِثَهَا بِالزَّوْجِيَّةِ - كَمَا يَقُولُ الْحَسَنُ - إذْ مِنْ الْبَاطِلِ الْمُحَالِ الْمُمْتَنِعِ أَنْ تَكُونَ هِيَ امْرَأَتَهُ، وَلَا يَكُونُ هُوَ زَوْجَهَا؟ فَإِنْ قَالُوا: لَيْسَتْ امْرَأَتَهُ.؟ قُلْنَا: فَلِمَ وَرَّثْتُمُوهَا مِيرَاثَ زَوْجَةٍ، وَهَذَا عَجَبٌ جِدًّا؟ وَهَذَا أَكْلُ الْمَالِ بِالْبَاطِلِ، بِلَا شَكٍّ.

L34358–34359 And among the astonishing matters is their claim: "He fled with her inheritance"—but what inheritance could she possibly have from a healthy husband? Perhaps she might die before him, for many a healthy husband dies

before that ailing one. Moreover, the husband may recover from his illness. Thus, since he divorced her, no inheritance was ever established for him to flee with from her.

وَمِنْ الْعَجَبِ؟ قَوْلُهُمْ: فَرَّ بِمِيرَاثِهَا، وَأَيُّ مِيرَاثٍ لَهَا مِنْ صَحِيحٍ لَعَلَّهَا هِيَ تَمُوتُ قَبْلَهُ - وَرُبَّ صَحِيحٍ يَمُوتُ قَبْلَ ذَلِكَ الْمَرِيضِ، وَقَدْ يَبْرَأُ مِنْ مَرَضِهِ، فَمَا وَجَبَ بِهَا قَطُّ - إذْ طَلَّقَهَا - مِيرَاثٌ يَفِرُّ بِهِ عَنْهَا.

L34360 Then, it is astonishing that the Ḥanafīs grant inheritance to the irrevocably divorced woman from a husband imprisoned for murder or who engaged in combat while not ill, yet deny inheritance to the woman coerced by her husband's father into intercourse during her husband's illness—though her husband had no involvement whatsoever and never willingly divorced her. Similarly perplexing is the Mālikīs' granting inheritance to the woman who obtained a *khulʿ* divorce, the woman who chooses to ransom herself through *khulʿ*, and the woman who seeks to cause him to break his oath made during his illness—even though he is legally competent to divorce, reluctant to separate from her, while she eagerly pursues it, compelling him to do so.

ثُمَّ مِنْ الْعَجَبِ تَوْرِيثُ الْحَنَفِيِّينَ الْمَبْتُوتَةَ مِمَّنْ حُبِسَ لِلْقَتْلِ، أَوْ بَارَزَ فِي حَرْبٍ وَلَيْسَ مَرِيضًا، وَمَنْعُهُمْ الْمِيرَاثَ لِلَّتِي أَكْرَهَهَا أَبُو زَوْجِهَا عَلَى أَنْ وَطِئَهَا فِي مَرَضِ زَوْجِهَا، وَلَيْسَ لِزَوْجِهَا فِي ذَلِكَ عَمَلٌ أَصْلًا، وَلَا طَلَّقَهَا مُخْتَارًا قَطُّ؟ وَتَوْرِيثُ الْمَالِكِيِّينَ الْمُخْتَلِعَةَ، وَالْمُخْتَارَةَ نَفْسَهَا، وَالْقَاصِدَةَ إلَى تَحْنِيثِهِ فِي مَرَضِهِ فِي يَمِينِهِ، وَهُوَ صَحِيحٌ بِالطَّلَاقِ، وَهُوَ كَارِهٌ لِمُفَارَقَتِهَا وَهِيَ مُسَارِعَةٌ إلَيْهِ، مُكْرِهَةٌ لَهُ عَلَى ذَلِكَ.

L34361 Astonishment peaks at their denial of inheritance to the married woman during illness—a right Allah has ordained for her based on the certainty of a valid marriage—while granting inheritance to the thrice-divorced woman during illness. Thus, they grant inheritance through marital ties to one who is no longer a wife, yet deny the wife's inheritance to one who remains his wife. Allah suffices us, and He is the Best Disposer of Affairs.

وَمَا فِي الْعَجَبِ أَكْثَرُ مِنْ مَنْعِهِمْ الْمُتَزَوِّجَةَ فِي الْمَرَضِ مِنْ الْمِيرَاثِ الَّذِي أَوْجَبَهُ اللَّهُ تَعَالَى لَهَا يَقِينًا بِالزَّوْجِيَّةِ الصَّحِيحَةِ، وَتَوْرِيثِهِمْ الْمُطَلَّقَةَ ثَلَاثًا فِي الْمَرَضِ، فَوَرَّثُوا بِالزَّوْجِيَّةِ مَنْ لَيْسَتْ زَوْجَةً، وَمَنَعُوا مِيرَاثَ الزَّوْجَةِ مَنْ هِيَ زَوْجَتُهُ - وَحَسْبُنَا اللَّهُ، وَنِعْمَ الْوَكِيلُ.

L34362–34364 We have been narrated through the chain of Ibn Wahb: Malik, Amr ibn al-Harith, al-Layth ibn Sa'd, Makhramah ibn Bukayr, and Yunus ibn Yazid informed me. Malik, al-Layth, Amr—all of them reported from Yahya ibn Sa'id al-Ansari from Muhammad ibn Yahya ibn Hibban. Makhramah reported from his father from Sulayman ibn Yasar. Yunus said—and the wording is his—: Al-Zuhri narrated to us that a man from the Ansar named Hibban ibn Munqidh was married to Hind bint Rabi'ah ibn al-Harith ibn Abd al-Muttalib and a woman from the Ansar. He divorced the Ansari woman while she was breastfeeding his son—the child being healthy. She remained for seven months or nearly eight months without menstruating. Then Hibban fell ill, and it was said to him: "She will inherit you if you die." He

وَرُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي مَالِكٌ وَعَمْرُو بْنُ الْحَارِثِ، وَاللَّيْثُ بْنُ سَعْدٍ، وَمَخْرَمَةُ بْنُ بُكَيْرٍ، وَيُونُسُ بْنُ يَزِيدَ، قَالَ مَالِكٌ، وَاللَّيْثُ وَعَمْرٌو وَكُلُّهُمْ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حِبَّانَ - وَقَالَ مَخْرَمَةُ عَنْ أَبِيهِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ " وَقَالَ يُونُسُ - وَاللَّفْظُ لَهُ -: نا الزُّهْرِيُّ أَنَّ رَجُلًا مِنْ الْأَنْصَارِ يُقَالُ: لَهُ: حِبَّانُ بْنُ مُنْقِذٍ كَانَتْ تَحْتَهُ هِنْدُ بِنْتُ رَبِيعَةَ بْنِ الْحَارِثِ بْنِ عَبْدِ الْمُطَّلِبِ، وَامْرَأَةٌ مِنْ الْأَنْصَارِ فَطَلَّقَ الْأَنْصَارِيَّةَ - وَهِيَ تُرْضِعُ ابْنَهُ وَهُوَ صَحِيحٌ - فَمَكَثَتْ سَبْعَةَ أَشْهُرٍ أَوْ قَرِيبًا مِنْ

said: “Carry me to the Commander of the Faithful Uthman.” He was carried to him, and he mentioned his wife’s situation—with Ali ibn Abi Talib (may Allah be pleased with him) and Zayd ibn Thabit present. Uthman asked them: “What is your view?” They both replied: “We hold that she inherits him if he dies, and he inherits her if she dies. She is neither among postmenopausal women who have despaired of menstruation nor among those who have not yet menstruated. She remains subject to her menstrual cycle, whether scant or abundant, and nothing has prevented her menstruation except breastfeeding.” Hibban returned and took back his son from her. When she ceased breastfeeding, she menstruated once, then menstruated again at the new moon. Hibban died at the beginning of the year or close to it, and Uthman ordered the inheritance to be shared. He ruled between the two women concerning inheritance, and commanded the Ansari woman to observe the widow’s waiting period. To the Hashimi woman he said: “This is the opinion of your paternal cousin - he recommended it to us” - meaning Ali ibn Abi Talib. Ibn Wahb reported: Bishr ibn Bakr reported to us from Al-Awza’i, from Ibn Shihab, who said: “Uthman ruled that we should remove her child from her custody until she completes the prescribed waiting period through menstruation.”

ثَمَانِيَةِ أَشْهُرٍ لَا تَحِيضُ، ثُمَّ مَرِضَ حِبَّانُ فَقِيلَ لَهُ: إِنَّهَا تَرِثُكَ إِنْ مِتَّ؟ قَالَ: احْمِلُونِي إِلَى أَمِيرِ الْمُؤْمِنِينَ عُثْمَانَ فَحُمِلَ إِلَيْهِ فَذَكَرَ لَهُ شَأْنَ امْرَأَتِهِ - وَعِنْدَهُ عَلِيُّ بْنُ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - وَزَيْدُ بْنُ ثَابِتٍ؟ فَقَالَ لَهُمَا عُثْمَانُ: مَا تَرَيَانِ؟ قَالَا جَمِيعًا: نَرَى أَنَّهَا تَرِثُهُ إِنْ مَاتَ، وَيَرِثُهَا إِنْ مَاتَتْ، فَإِنَّهَا لَيْسَتْ مِنْ الْقَوَاعِدِ اللَّاتِي يَئِسْنَ مِنْ الْمَحِيضِ، وَلَيْسَتْ مِنْ اللَّائِي لَمْ يَحِضْنَ، فَهِيَ عِنْدَهُ عَلَى حَيْضِهَا مَا كَانَتْ مِنْ قَلِيلٍ أَوْ كَثِيرٍ، وَأَنَّهُ لَمْ يَمْنَعْهَا مِنْ أَنْ تَحِيضَ إِلَّا الرَّضَاعُ؟ فَرَجَعَ حِبَّانُ فَانْتَزَعَ ابْنَهُ مِنْهَا، فَلَمَّا فَقَدَتْ الرَّضَاعَ حَاضَتْ حَيْضَةً، ثُمَّ حَاضَتْ أُخْرَى فِي الْهِلَالِ، ثُمَّ تُوُفِّيَ حِبَّانُ عَلَى رَأْسِ السَّنَةِ أَوْ قَرِيبًا مِنْهَا؟ فَشَرَّكَ عُثْمَانُ بَيْنَ الْمَرْأَتَيْنِ فِي الْمِيرَاثِ، وَأَمَرَ الْأَنْصَارِيَّةَ أَنْ تَعْتَدَّ عِدَّةَ الْوَفَاةِ - وَقَالَ لِلْهَاشِمِيَّةِ هَذَا رَأْيُ ابْنِ عَمِّكَ، هُوَ أَشَارَ عَلَيْنَا بِهِ - يَعْنِي عَلِيَّ بْنَ أَبِي طَالِبٍ - قَالَ ابْنُ وَهْبٍ: نا بِشْرُ بْنُ بَكْرٍ عَنْ الْأَوْزَاعِيِّ عَنْ ابْنِ شِهَابٍ قَالَ: إِنَّ عُثْمَانَ قَضَى أَنْ نَخْتَلِجَ مِنْهَا وَلَدَهَا حَتَّى تَحِيضَ أَقْرَاءَهَا.

L34365 Ibn Wahb said: Khālid ibn Ḥumayd al-Mahrī informed me from someone who informed him from Ibn Shihāb that ʿUthmān sent to Zayd ibn Thābit to consult him regarding the matter of Ḥibbān ibn Munqidh? Zayd said: “His son was snatched from her—does menstruation resume?” ʿUthmān then acted accordingly, and he mentioned the report. This is the opinion held by Imam Mālik.

قَالَ ابْنُ وَهْبٍ: أَخْبَرَنِي خَالِدُ بْنُ حُمَيْدٍ الْمَهْرِيُّ عَمَّنْ أَخْبَرَهُ عَنْ ابْنِ شِهَابٍ أَنَّ عُثْمَانَ أَرْسَلَ إِلَى زَيْدِ بْنِ ثَابِتٍ يُشَاوِرُهُ فِي أَمْرِ حِبَّانَ بْنِ مُنْقِذٍ؟ فَقَالَ زَيْدٌ: اخْتَلَجَ ابْنُهُ مِنْهَا، تَرْجِعُ الْحَيْضَةُ؟ فَفَعَلَ عُثْمَانُ، وَذَكَرَ الْخَبَرَ - وَبِهِ يَقُولُ مَالِكٌ.

L34366 Abū Muḥammad said: This is indeed fleeing from the Book of Allah, the Almighty—that she is prevented from breastfeeding her child to hasten her menstruation, thereby completing her waiting period and nullifying her inheritance. The correct view—if he is deemed by them to be fleeing from the Book of Allah—is to invalidate the divorce by which he aimed to prevent her inheritance, as the Mālikīs did regarding the marriage of a sick person.

قَالَ أَبُو مُحَمَّدٍ: هَذَا حَقًّا هُوَ الْفِرَارُ مِنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ أَنْ تُمْنَعَ رَضَاعَ وَلَدِهَا لِيَتَعَجَّلَ حَيْضَهَا فَتَتِمَّ عِدَّتُهَا، وَتُبْطِلَ مِيرَاثَهَا - وَإِنَّمَا كَانَ الْوَجْهُ - إِذَا هُوَ عِنْدَهُمْ فَارٌّ مِنْ كِتَابِ اللَّهِ - أَنْ يُبْطِلُوا الطَّلَاقَ الَّذِي بِهِ أَرَادَ مَنْعَهَا الْمِيرَاثَ، كَمَا فَعَلَ الْمَالِكِيُّونَ فِي نِكَاحِ الْمَرِيضِ.

L34367 As for their permitting divorce while retaining inheritance, it constitutes a

contradiction that is clearly erroneous.

وَأَمَّا تَجْوِيزُهُمْ الطَّلَاقَ وَإِبْقَاؤُهُمْ الْمِيرَاثَ فَمُنَاقَضَةٌ ظَاهِرَةُ الْخَطَأِ.

L34368 We have previously cited from ʿUthmān that he did not consider that divorce valid, as he commanded ʿAbd al-Raḥmān to revoke the divorce after he had pronounced three divorces (in one instance).

وَقَدْ أَوْرَدْنَا قَبْلُ عَنْ عُثْمَانَ أَنَّهُ لَمْ يُجِزْ ذَلِكَ الطَّلَاقَ، إذْ أَمَرَ عَبْدَ الرَّحْمَنِ بِمُرَاجَعَتِهَا بَعْدَ أَنْ طَلَّقَهَا ثَلَاثًا.

L34369 They are told: Do you see ʿAbd al-Raḥmān ibn ʿAwf fleeing from the Book of God Almighty? Far be it from him! Among their statements is: "He only did this against one from whom fleeing is inconceivable, to block the means [to evil]." We said: Why do you not adopt Abū Ḥanīfa's opinion that a woman coerced by her husband's father into intercourse still inherits? For the husband might secretly collude with his father to deprive her of inheritance, as many a transgressor might trivialize this regarding his female kin—thus precluding potential pretexts.

وَيُقَالُ لَهُمْ: أَتَرَوْنَ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ فَرَّ مِنْ كِتَابِ اللَّهِ تَعَالَى؟ حَاشَا لَهُ مِنْ ذَلِكَ، فَمِنْ قَوْلِهِمْ: إنَّمَا فَعَلَ ذَلِكَ بِمَنْ لَا يُظَنُّ بِهِ الْفِرَارُ لِقَطْعِ الذَّرِيعَةِ؟ فَقُلْنَا: فَهَلَّا قُلْتُمْ بِقَوْلِ أَبِي حَنِيفَةَ فِي أَنَّ مَنْ أَكْرَهَهَا أَبُو زَوْجِهَا عَلَى الْوَطْءِ أَنَّهَا تَرِثُ، لِأَنَّهُ قَدْ يُمْكِنُ أَنْ يَدُسَّ الزَّوْجُ أَبَاهُ لِذَلِكَ لِيَمْنَعَهَا الْمِيرَاثَ فَرُبَّ فَاسِقٍ يَسْتَسْهِلُ هَذَا فِي حَرِيمَتِهِ فَيَكُونُ قَطْعًا لِلذَّرِيعَةِ.

L34370 If you are Malikis, why did you not apply this reasoning to the apostate during his illness when you claimed, "We do not suspect him of apostatizing to evade her inheritance"? Countless people have fled to the land of war and apostatized out of personal anger or to provoke their neighbors through harm. All this constitutes blatant contradiction. What then of one who apostatizes to prevent her from inheriting from him, then returns to Islam? Why did you not permit her to inherit from him—even if she died before him? There is no distinction between granting her inheritance from him posthumously and granting it through marital ties when she is an unrelated woman—married to another—where even adultery with her would necessitate his stoning for adultery, and hers as well?

وَهَلَّا إنْ كُنْتُمْ مَالِكِيِّينَ قُلْتُمْ بِذَلِكَ فِي الْمُرْتَدِّ فِي مَرَضِهِ، إذْ قُلْتُمْ: لَا نَتَّهِمُهُ أَنَّهُ ارْتَدَّ فِرَارًا مِنْ مِيرَاثِهَا، فَكَمْ مِنْ النَّاسِ فَرَّ إلَى أَرْضِ الْحَرْبِ وَارْتَدَّ لِغَضَبٍ غَضِبَهُ، وَلِيَغِيظَ جَارَهُ بِأَذَاهُ لَهُ؟ وَهَذَا كُلُّهُ تَنَاقُضٌ لَا خَفَاءَ بِهِ فَكَيْفَ مَنْ ارْتَدَّ لِئَلَّا تَرِثَهُ ثُمَّ رَاجَعَ الْإِسْلَامَ؟ وَهَلَّا وَرَّثُوهَا مِنْهُ - وَإِنْ مَاتَتْ قَبْلَهُ؟ فَلَا فَرْقَ بَيْنَ تَوْرِيثِهَا وَهِيَ مَيِّتَةٌ وَبَيْنَ تَوْرِيثِهَا بِالزَّوْجِيَّةِ وَهِيَ أَجْنَبِيَّةٌ زَوْجَةٌ لِغَيْرِهِ لَوْ وَطِئَهَا هُوَ لَرُجِمَ وَرُجِمَتْ؟

L34371–34372 If they say, "No textual precedent exists for this?" We respond: "Nor does any precedent exist regarding the duelist. Why did you not apply analogy to the divorced woman as you did to the one who pronounces divorce? Nor did you grant her inheritance rights from the apostate, for indeed a group of early scholars affirmed that the apostate's wealth is inherited by his heirs from among the Muslims."

فَإِنْ قَالُوا: لَمْ يَأْتِ بِهَذَا أَثَرٌ؟ قُلْنَا: وَلَا جَاءَ فِي الْمُبَارِزِ أَثَرٌ فَهَلَّا قِسْتُمْ هَذَا عَلَى الْمُطَلَّقَةِ كَمَا قِسْتُمْ ذَلِكَ عَلَى الْمُطَلِّقِ؟ وَلَا وَرَّثْتُمُوهَا مِنْ الْمُرْتَدِّ، فَقَدْ قَالَ بِتَوْرِيثِ مَالِ الْمُرْتَدِّ لِوَرَثَتِهِ مِنْ الْمُسْلِمِينَ طَائِفَةٌ مِنْ السَّلَفِ.

L34373 We do not know their position regarding a sick man married to an enslaved woman who is emancipated during his illness and chooses to separate from

him; a male slave married to a free woman who irrevocably divorces her while sick, then gains his freedom; or a Muslim married to a Scripturist woman whom he divorces thrice during his illness, after which she completes her waiting period and embraces Islam during her waiting period, after her waiting period, or after she marries another. Moreover, preventing her from inheriting applies to divorce by a healthy man just as it does to divorce by a sick man. A healthy man may die before the sick man. They must therefore grant her inheritance rights from one who divorced her thrice while healthy, then died suddenly or from an illness that befell him. Additionally, they unanimously agree that if a man wounded in battle or injured until his entrails protrude exerts himself to have intercourse with his enslaved woman while declaring that he only had intercourse with her to impregnate her, this act deprives his agnatic relatives of inheritance if she conceives and gives birth.

L34374 If they say, "But she may not be pregnant?" We reply, "He may recover, and she may die before him." Why did they not apply their conjecture about evasion where it is most fitting in the Book of Allah Almighty? They should have said: If he divorces her three times while he is ill, he has merely circumvented Allah's ordinance regarding what He obligated for her—maintenance, clothing, and all that is due to her—thus obligating him to provide clothing and maintenance indefinitely. Yet they did not do this, instead acting on their conjecture that he evaded obligations concerning an inheritance she was never entitled to at all.

L34375 They do not differ regarding the fact that whoever acknowledges a child during his terminal illness—from which he dies—the child is legally ascribed to him, inherits from him, deprives his agnatic relatives of inheritance, and reduces the wife's share from a quarter to an eighth. Why then do they not say he did this to reduce her portion of the inheritance? As for the Ḥanafīs—they upheld his evasion of the Book of Allah, the Exalted and Majestic, by terminating her inheritance after the *ʿiddah*. Thus they allowed him to benefit from this evasion of Allah's Book in one case but denied it in another—this constitutes confusion and arbitrariness. The cessation of the *ʿiddah* itself is generated by the divorce, which is his own act.

وَلَا نَدْرِي مَا قَوْلُهُمْ فِي مَرِيضٍ تَحْتَهُ مَمْلُوكَةٌ فَأُعْتِقَتْ فِي مَرَضِهِ فَاخْتَارَتْ فِرَاقَهُ؟ وَفِي مَمْلُوكٍ تَحْتَهُ حُرَّةٌ فَطَلَّقَهَا بَتَاتًا، وَهُوَ مَرِيضٌ ثُمَّ أُعْتِقَ هُوَ؟ وَفِي مُسْلِمٍ تَحْتَهُ كِتَابِيَّةٌ فَطَلَّقَهَا فِي مَرَضِهِ ثَلَاثًا ثُمَّ اعْتَدَّتْ وَأَسْلَمَتْ فِي عِدَّتِهَا أَوْ بَعْدَ عِدَّتِهَا، أَوْ بَعْدَ أَنْ تَزَوَّجَتْ؟ وَأَيْضًا - فَإِنَّ الْفِرَارَ بِالْمِيرَاثِ عَنْهَا يَدْخُلُ فِي طَلَاقِ الصَّحِيحِ كَمَا يَدْخُلُ فِي طَلَاقِ الْمَرِيضِ، وَقَدْ يَمُوتُ الصَّحِيحُ قَبْلَ الْمَرِيضِ، فَلْيُوَرِّثُوهَا مِمَّنْ طَلَّقَهَا ثَلَاثًا - وَهُوَ صَحِيحٌ - ثُمَّ مَاتَ بَغْتَةً أَوْ مِنْ مَرَضٍ أَصَابَهُ؟ وَأَيْضًا - فَلَا يَخْتَلِفُونَ فِيمَنْ بِهِ حِينَ قَاتَلَ، أَوْ جُرِحَ فَانْتَثَرَتْ حَشْوَتُهُ فَتَحَامَلَ فَوَطِئَ جَارِيَةً لَهُ فَحَمَلَتْ - وَهُوَ يَهْتِفُ بِأَنَّهُ إنَّمَا وَطِئَهَا لِتَحْمِلَ - فَيَحْرِمَ عَصَبَتَهُ الْمِيرَاثَ أَنَّهَا إنْ حَمَلَتْ وَوَلَدَتْ حَرَمَتْ الْعَصَبَةَ الْمِيرَاثَ.

فَإِنْ قَالُوا: وَقَدْ لَا تَحْمِلُ؟ قُلْنَا: وَهُوَ قَدْ يُفِيقُ، وَهِيَ قَدْ تَمُوتُ قَبْلَهُ - وَهَلَّا وَضَعُوا الظَّنَّ فِي الْفِرَارِ مِنْ كِتَابِ اللَّهِ تَعَالَى حَيْثُ هُوَ أَلْيَقُ بِهِ فَيَقُولُوا: إذَا طَلَّقَهَا ثَلَاثًا - وَهُوَ مَرِيضٌ - فَإِنَّمَا فَرَّ عَنْ كِتَابِ اللَّهِ تَعَالَى فِيمَا أَوْجَبَ لَهَا مِنْ النَّفَقَةِ وَالْكِسْوَةِ الْوَاجِبِ لَهَا كُلَّ ذَلِكَ، فَيُلْزِمُونَهُ الْكِسْوَةَ وَالنَّفَقَةَ أَبَدًا، فَلَمْ يَفْعَلُوا، وَأَعْمَلُوا ظَنَّهُمْ فِي أَنَّهُ فَرَّ عَنْهَا بِمِيرَاثٍ لَمْ يَجِبْ لَهَا قَطُّ.

وَلَا يَخْتَلِفُونَ فِي أَنَّ مَنْ أَقَرَّ فِي مَرَضِهِ - الَّذِي مَاتَ فِيهِ - بِوَلَدٍ أَنَّهُ يَلْحَقُهُ وَيَرِثُ وَيَمْنَعُ عَصَبَتَهُ الْمِيرَاثَ، وَيَحُطُّ الزَّوْجَةَ مِنْ رُبُعٍ إلَى ثُمُنٍ - فَهَلَّا قَالُوا: إنَّمَا فَعَلَ ذَلِكَ لِيَحُطَّهَا مِنْ الْمِيرَاثِ؟ وَأَمَّا الْحَنَفِيُّونَ - فَإِنَّهُمْ أَمْضَوْا فِرَارَهُ عَنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ، إذْ قَطَعُوا مِيرَاثَهَا بَعْدَ الْعِدَّةِ فَجَعَلُوهُ يَنْتَفِعُ بِفِرَارِهِ عَنْ كِتَابِ اللَّهِ تَعَالَى فِي مَوْضِعٍ، وَلَا يَنْتَفِعُ بِهِ فِي مَوْضِعٍ آخَرَ - فَهَذَا التَّخْلِيطُ وَالْخَبْطُ، وَانْقِطَاعُ الْعِدَّةِ: مُتَوَلِّدٌ مِنْ الطَّلَاقِ الَّذِي هُوَ فِعْلُهُ.

وَيُقَالُ لَهُمْ: قَدْ أَجَزْتُمْ نِكَاحَ الْمَرِيضِ وَهُوَ إِضْرَارٌ بِأَهْلِ الْمِيرَاثِ فِي إِدْخَالِ مَنْ يُشْرِكُهُمْ فِيهِ؟ فَهَلَّا إِذْ أَجَزْتُمْ طَلَاقَ الْمَرِيضِ أَمْضَيْتُمْ حُكْمَهُ فِي قَطْعِ الْمِيرَاثِ؟ وَيُقَالُ لِلْمَالِكِيِّينَ: مِنْ أَيْنَ وَرَّثْتُمُ الْمُخَنَّثَةَ لِزَوْجِهَا فِي مَرَضِهِ - وَهُوَ لَمْ يَفِرَّ قَطُّ بِمِيرَاثِهَا، وَلَا طَلَّقَهَا فِي مَرَضِهِ، وَكَيْفَ يَجُوزُ أَنْ يُقَاسَ غَيْرُ فَارٍّ عَلَى فَارٍّ؟ .

L34376–34377 They are told: You have permitted the marriage of a sick person, which harms the heirs by introducing someone who shares with them in the inheritance. Why then, when you permitted a sick person's divorce, did you not enforce its ruling to terminate the inheritance? And it is said to the Mālikīs: From what basis do you entitle the spouse of ambiguous gender to inherit from her husband during his illness—when he never evaded her inheritance rights nor divorced her during his illness—and how can it be valid to analogize one who did not evade [inheritance obligations] to one who did?

وَأَعْجَبُ شَيْءٍ - قَوْلُ الْمَالِكِيِّينَ فِي الَّتِي يُطَلِّقُهَا زَوْجُهَا - وَهُوَ مَرِيضٌ - وَلَمْ يَدْخُلْ بِهَا: أَنَّهَا تَرِثُهُ، وَلَيْسَ لَهَا إِلَّا نِصْفُ الصَّدَاقِ؟ فَهَلَّا قَالُوا: إِنَّهُ فَرَّ بِنِصْفِ صَدَاقِهَا فَيَقْضُوا لَهَا بِجَمِيعِهِ - كَمَا قَالَ الْحَسَنُ؟ وَهَلَّا قَالُوا فِيمَنْ قَالَ لِامْرَأَتِهِ: إِنْ دَخَلْتِ دَارَ زَيْدٍ فَأَنْتِ طَالِقٌ ثَلَاثًا، وَهُوَ صَحِيحٌ فَاعْتَلَّتْ هِيَ فَأَمَرَتْ مَنْ حَمَلَهَا فَدَخَلَتْ دَارَ زَيْدٍ وَقَالَتْ: إِنَّمَا أَفْعَلُ هَذَا لِئَلَّا يَرِثَنِي؟ فَهَذِهِ فَارَّةٌ بِمِيرَاثِهَا، فَهَلَّا وَرَّثُوهُ مِنْهَا بِعِلَّةِ الْفِرَارِ؟ وَلَكِنَّهُمْ لَا يَتَمَسَّكُونَ بِنَصٍّ، وَلَا بِقِيَاسٍ، وَلَا بِعِلَّةٍ.

L34378 The most baffling thing is the Mālikīs' statement regarding a woman whose husband divorces her—while he is ill and has not consummated the marriage—that she inherits from him yet is entitled only to half the dower. Why do they not say: "He fled with half her dower," so that they rule to grant her the entirety—as al-Ḥasan held? And why do they not rule concerning a man who tells his wife, "If you enter Zayd's house, you are triply divorced"—while he is healthy—then she feigns illness, instructs someone to carry her, enters Zayd's house, and declares, "I am doing this only to prevent him from inheriting me"? For this woman is evading his right to inherit from her. Why do they not make him inherit from her on the grounds of evasion? Yet they adhere neither to an explicit text, nor to analogy, nor to a legal cause.

وَعَجَبٌ آخَرُ - وَهُوَ أَنَّهُمْ قَالُوا: إِنْ صَحَّ لَمْ تَرِثْهُ فَجَعَلُوهُ يَنْتَفِعُ بِفِرَارِهِ مِنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ إِنْ صَحَّ - وَهَذَا تَلَاعُبٌ، وَلَمْ يَأْتِ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ أَنَّهُ إِنْ صَحَّ لَمْ تَرِثْهُ إِلَّا عَنْ أُبَيٍّ وَحْدَهُ.

L34379 Another cause for wonder is their statement: "If he is legally competent, she does not inherit from him," thereby making him benefit by fleeing from Allah's Book. This is sheer mockery. No report has ever come from any of the Companions stating that "if he is competent, she does not inherit from him," except from Ubayy alone.

وَقَدْ خَالَفَهُ الْمَالِكِيُّونَ فِي قَوْلِهِ: إِلَّا أَنْ تَتَزَوَّجَ.

L34380 The Mālikīs, however, disagreed with him concerning his statement: "unless one marries."

وَخَالَفَهُ الْحَنَفِيُّونَ فِي تَوْرِيثِهَا مِنْهُ بَعْدَ الْعِدَّةِ - وَالْقَوْمُ مُتَلَاعِبُونَ بِلَا شَكٍّ.

L34381 The Hanafis opposed him regarding her inheritance from him after the waiting period—and the group is undeniably frivolous.

وَقَالَ بَعْضُهُمْ: لَمَّا كَانَ الْمَرَضُ يُحْدِثُ لِصَاحِبِهِ أَحْكَامًا لَمْ تَكُنْ لَهُ فِي الصِّحَّةِ فَيُمْنَعُ مِنْ أَكْثَرَ مِنْ ثُلُثِ مَالِهِ فِي الصَّدَقَةِ، وَالْعِتْقِ، وَالْهِبَةِ، وَكَانَ الطَّلَاقُ كَذَلِكَ؟ فَقُلْنَا: هَذَا

L34382 Some of them argued: Since illness imposes legal rulings upon the sick person that were not applicable during health—such as prohibiting him from donating more than a third of his wealth for charity, from freeing slaves, or from making gifts—[they asked]: "Is divorce analogous to this?" We replied:

This is defending one error with another. It has never been obligatory to prevent a sick person from disposing of all his wealth; rather, he remains exactly equal to a healthy person. Even if your premise were accepted, what obligates us to analogize divorce to this ruling? We know of no evidence supporting this—neither from scriptural text, nor consensus, nor prior scholarly opinion, nor sound rational basis, nor even a false claim. Thus this argument is decisively invalidated, and anyone can assert whatever they wish.

احْتِجَاجٌ لِلْخَطَأِ بِالْخَطَأِ، وَمَا وَجَبَ قَطُّ مَنْعُ الْمَرِيضِ مِنْ جَمِيعِ مَالِهِ، بَلْ هُوَ كَالصَّحِيحِ سَوَاءً سَوَاءً، وَحَتَّى لَوْ كَانَ مَا قُلْتُمْ فَمِنْ أَيْنَ وَجَبَ أَنْ يَكُونَ الطَّلَاقُ مَقِيسًا عَلَى ذَلِكَ، وَمَا نَعْلَمُ دَلِيلًا عَلَى ذَلِكَ لَا مِنْ نَصٍّ، وَلَا مِنْ إجْمَاعٍ، وَلَا مِنْ قَوْلٍ مُتَقَدِّمٍ، وَلَا مِنْ مَعْقُولٍ، وَلَا دَعْوَى كَاذِبَةٍ - فَبَطَلَ هَذَا أَيْضًا بِيَقِينٍ، وَلَا يَعْجِزُ أَحَدٌ عَنْ أَنْ يَدَّعِيَ مَا شَاءَ.

L34383 We have already discussed this in the “Book of Gifts” from this diwan of ours, and thus it renders repetition unnecessary.

وَقَدْ تَكَلَّمْنَا عَلَى هَذَا فِي " كِتَابِ الْهِبَاتِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ.

L34384–34385 They said: “Is this the opinion of the majority of the Companions—may God be pleased with them—?” We responded: “He who said this has lied: the most heinous lie. Only differing and contradictory narrations have come regarding that from five Companions alone: Umar, Uthman, Ali, Aisha the Mother of the Believers, and Ubayy ibn Ka‘b.”

وَقَالُوا: هَذَا قَوْلُ جُمْهُورِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ فَقُلْنَا: كَذَبَ مَنْ قَالَ هَذَا، أَشْنَعَ كَذِبٍ، إنَّمَا جَاءَتْ فِي ذَلِكَ رِوَايَاتٌ مُخْتَلِفَةٌ مُتَنَاقِضَةٌ عَنْ خَمْسَةٍ مِنْ الصَّحَابَةِ فَقَطْ: عُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَأُبَيِّ بْنِ كَعْبٍ.

L34386 As for the narration from Ali, it is weak and exposed as flawed, having never been authenticated. This is because it comes through Ibn Wahb and certain scholars from Ali. Then, nothing is established from him except the ruling that a woman divorced during illness inherits - though we say she inherits unless the divorce is irrevocable. The narration does not state that she inherits specifically during the waiting period rather than after it, nor that she inherits only if the divorce is valid. Thus, despite its weakness, this narration contradicts the legal rulings of the Hanafis and Malikis. How could it be otherwise when we have transmitted a similar ruling from Ali: “A woman subject to irrevocable divorce does not inherit”?

أَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَسَاقِطَةٌ مَفْضُوحَةٌ، وَلَمْ تَصِحَّ قَطُّ، لِأَنَّهَا عَنْ ابْنِ وَهْبٍ وَعَنْ رِجَالٍ مِنْ أَهْلِ الْعِلْمِ عَنْ عَلِيٍّ، ثُمَّ لَيْسَ عَنْهُ إلَّا الْمُطَلَّقَةُ فِي الْمَرَضِ تَرِثُ - وَنَحْنُ نَقُولُ: إنَّهَا تَرِثُ مَا لَمْ تَكُنْ مَبْتُوتَةً، وَلَيْسَ فِيهِ: أَنَّهَا تَرِثُ فِي الْعِدَّةِ دُونَ مَا بَعْدَ الْعِدَّةِ، وَلَا أَنَّهَا تَرِثُ إلَّا أَنْ يَصِحَّ - فَهِيَ رِوَايَةٌ عَلَى سُقُوطِهَا غَيْرُ مُوَافِقَةٍ لِتَحَكُّمِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، فَكَيْفَ وَقَدْ أَوْرَدْنَا عَنْ عَلِيٍّ مِثْلَهَا: لَا تَرِثُ مَبْتُوتَةٌ.

L34387 We cited from him that he granted the woman whom ʿUthmān divorced while he was under siege the right to inherit, though all of them categorically reject this ruling.

وَأَوْرَدْنَا عَنْهُ: أَنَّهُ وَرَّثَ الْمَرْأَةَ الَّتِي طَلَّقَهَا عُثْمَانُ وَهُوَ مَحْصُورٌ وَهُمْ كُلُّهُمْ لَا يَقُولُونَ بِهَذَا.

L34388 The report transmitted from Aisha, the Mother of the Believers, is invalid, for Sa‘īd ibn Abī ʿArūbah never heard anything from Hishām ibn ʿUrwah whatsoever. Consequently, we cannot ascertain his source for this, and it

opposes the doctrine of the Mālikīs; thus, it undermines their position rather than affirming it. Therefore, this transmitted opinion is deemed invalid.

وَالرِّوَايَةُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ لَا تَصِحُّ، لِأَنَّ سَعِيدَ بْنَ أَبِي عَرُوبَةَ لَمْ يَسْمَعْ مِنْ هِشَامِ بْنِ عُرْوَةَ شَيْئًا قَطُّ، فَلَا نَدْرِي عَمَّنْ أَخَذَهُ، وَهُوَ مُخَالِفٌ لِقَوْلِ الْمَالِكِيِّينَ، فَهُوَ عَلَيْهِمْ لَا لَهُمْ - فَسَقَطَتْ هَذِهِ الرِّوَايَةُ.

L34389 The narration from Ubay is rejected as invalid because it is transmitted through a sheikh from Quraysh whose identity is unknown? Moreover, it contradicts both the Hanafis and Malikis entirely, as it states: “unless she marries”—thus their reliance became invalid upon what they were the first to oppose.

وَالرِّوَايَةُ عَنْ أُبَيٍّ سَاقِطَةٌ لَا تَصِحُّ، لِأَنَّهَا مِنْ طَرِيقِ شَيْخٍ مِنْ قُرَيْشٍ لَا يُدْرَى مَنْ هُوَ؟ ثُمَّ هِيَ مُخَالِفَةٌ لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ جَمِيعًا، لِأَنَّ فِيهَا: إِلَّا أَنْ تَتَزَوَّجَ - فَبَطَلَ تَعَلُّقُهُمْ بِمَا هُمْ أَوَّلُ مُخَالِفِينَ لَهُ.

L34390 The narration from ʿUmar is disconnected because it is transmitted through Ibrāhīm from ʿUmar. In some of my narrations—due to a mistaken attribution—it is reported from Ibn ʿUmar, but both chains are disconnected since Ibrāhīm never heard a single word from ʿUmar or Ibn ʿUmar. It is only valid through the chain we have cited from Ibrāhīm from Shurayḥ, despite the fact that all reports transmitted on this matter from ʿUmar contradict the Mālikīs, because all of them only permit inheritance during the waiting period. Thus, the Ḥanafīs have no narration besides this solitary one.

الرِّوَايَةُ عَنْ عُمَرَ مُنْقَطِعَةٌ، لِأَنَّهَا عَنْ إِبْرَاهِيمَ عَنْ عُمَرَ، وَفِي بَعْضِ رِوَايَاتِي عَنِ ابْنِ عُمَرَ - وَهُوَ وَهْمٌ - وَكِلَاهُمَا غَيْرُ مُتَّصِلَةٍ، لِأَنَّ إِبْرَاهِيمَ لَمْ يَسْمَعْ قَطُّ مِنْ عُمَرَ، وَلَا مِنِ ابْنِ عُمَرَ كَلِمَةً، وَإِنَّمَا تَصِحُّ مِنَ الطَّرِيقِ الَّتِي أَوْرَدْنَا عَنْ إِبْرَاهِيمَ عَنْ شُرَيْحٍ مَعَ أَنَّ كُلَّ مَا رُوِيَ فِي ذَلِكَ عَنْ عُمَرَ مُخَالِفٌ لِلْمَالِكِيِّينَ، لِأَنَّهَا كُلَّهَا، لَا تَرِثُ إِلَّا فِي الْعِدَّةِ - فَلَيْسَ لِلْحَنَفِيِّينَ غَيْرُ هَذِهِ الرِّوَايَةِ وَحْدَهَا.

L34391 How numerous are the cases in which a group of Companions held opinions with no opponent known against them therein, such as ’Umar’s ruling regarding the wife of a missing person and others.

وَكَمْ قِصَّةٍ خَالَفُوا فِيهَا الطَّائِفَةَ مِنَ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ فِيهَا مُخَالِفٌ، كَقَوْلِ عُمَرَ فِي امْرَأَةِ الْمَفْقُودِ وَغَيْرِ ذَلِكَ.

L34392–34394 Yes, and in this same narration, because it contains: “Among what Urwah al-Bariqi brought forth to Shurayh was...” From Umar ibn al-Khattab: The wounds of men and women are equal, except for the muwḍiḥah, where half the compensation applies.

نَعَمْ، وَفِي هَذِهِ الرِّوَايَةِ نَفْسِهَا، لِأَنَّ فِيهَا: كَانَ فِيمَا جَاءَ بِهِ عُرْوَةُ الْبَارِقِيُّ إِلَى شُرَيْحٍ مِنْ عِنْدِ عُمَرَ بْنِ الْخَطَّابِ: أَنَّ جُرُوحَ الرِّجَالِ وَالنِّسَاءِ سَوَاءٌ إِلَّا الْمُوضِحَةَ فَعَلَى النِّصْفِ.

L34395 When he pronounces a threefold *ṭalāq* upon his wife, she inherits him as long as she is in the *ʿiddah*.

وَإِذَا طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَرِثَتْهُ مَا دَامَتْ فِي الْعِدَّةِ.

L34396 It is invalid to regard some of ʿUmar’s letter as authoritative evidence while dismissing other parts as non-authoritative, for all of them categorically reject this position.

وَمِنْ الْبَاطِلِ أَنْ يَكُونَ بَعْضُ كِتَابِ عُمَرَ حُجَّةً وَبَعْضُهُ لَيْسَ بِحُجَّةٍ، لِأَنَّهُمْ كُلُّهُمْ لَا يَقُولُونَ بِهَذَا.

وَقَدْ أَوْرَدْنَا عَنْ عُمَرَ بِأَصَحِّ طَرِيقٍ أَنَّهُ قَالَ لِغَيْلَانَ بْنِ سَلَمَةَ وَقَدْ طَلَّقَ نِسَاءَهُ وَهُوَ صَحِيحٌ: لَئِنْ مِتّ لَأُوَرِّثَنَّهُنَّ مِنْك وَهُمْ لَا يَقُولُونَ بِهَذَا، فَكَيْفَ وَقَدْ صَحَّ خِلَافُ عُمَرَ فِي هَذَا عَنْ ابْنِ الزُّبَيْرِ وَعَبْدِ اللَّهِ بْنِ عَوْفٍ - أَخِي عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ وَلَهُ صُحْبَةٌ - وَرُوِيَ عَنْ عَلِيٍّ مِثْلُ قَوْلِنَا، وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ.

L34397 We have conveyed from ʿUmar through the soundest chain that he said to Ghaylān ibn Salamah when he divorced his wives while in sound health: "If you die, I will indeed entitle them to inherit from you," though later scholars do not uphold this position. How then is this tenable when authentic disagreement with ʿUmar on this matter is established from Ibn al-Zubayr and ʿAbdullāh ibn ʿAwf (brother of ʿAbd al-Raḥmān ibn ʿAwf and a Companion of the Prophet), while a statement aligning with our view is reported from ʿAlī and likewise from ʿAbd al-Raḥmān ibn ʿAwf.

وَأَمَّا الرِّوَايَةُ عَنْ عُثْمَانَ فَقَدْ ذَكَرْنَا أَنَّهُ لَمْ يَرَهُ طَلَاقًا، وَأَنَّهُ أَمَرَهُ بِمُرَاجَعَتِهَا - وَهَذَا خِلَافٌ لِلطَّائِفَتَيْنِ مَعًا.

L34398 As for the narration from ʿUthmān, we have mentioned that he did not deem it a divorce and commanded him to take her back—a stance contrary to both schools of thought simultaneously.

ثُمَّ اضْطَرَبَتْ رِوَايَةُ الثِّقَاتِ عَنْهُ -: فَرَوَى عَنْهُ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ، وَحَمَّادُ بْنُ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّهُ لَمْ يُوَرِّثْهَا إلَّا فِي الْعِدَّةِ - وَكَذَلِكَ رَوَى أَبُو عَوَانَةَ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي سَلَمَةَ

L34399 Then the narrations of the trustworthy narrators from him conflicted: ʿAbdullāh ibn al-Zubayr narrated directly from him, while Ḥammād ibn Salamah narrated from Hishām ibn ʿUrwah from his father ʿUrwah ibn al-Zubayr, stating that he granted her inheritance rights only during the waiting period. Similarly, Abū ʿAwānah narrated from ʿUmar ibn Abī Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from Abū Salamah.

وَرَوَى عُرْوَةُ بْنُ الزُّبَيْرِ، وَمُحَمَّدُ بْنُ عَمْرِو بْنِ عَلْقَمَةَ عَنْ أَبِي سَلَمَةَ، وَطَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ، وَهُشَيْمٌ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ عَنْ أَبِي سَلَمَةَ، وَابْنِ الْمُسَيِّبِ: أَنَّهُ وَرَّثَهَا مِنْهُ بَعْدَ الْعِدَّةِ - فَإِحْدَى الرِّوَايَتَيْنِ مُخَالِفَةٌ لِلْحَنَفِيِّينَ وَلَا شَكَّ فِي أَنَّ إحْدَاهُمَا وَهْمٌ، لَا نَدْرِي أَيَّتُهُمَا هِيَ؟ وَلَا يَجُوزُ الْحُكْمُ بِقَضِيَّةٍ قَدْ صَحَّ الْوَهْمُ فِيهَا، فَلَا يُدْرَى كَيْف وَقَعَتْ؟

L34400 Urwah ibn al-Zubayr and Muhammad ibn Amr ibn Alqamah narrated from Abu Salamah, Talhah ibn Abdullah ibn Awf, and Hushaym - who narrated from Umar ibn Abi Salamah, from Abu Salamah and Ibn al-Musayyib - that he granted her inheritance from him after the ʿiddah. One of the two narrations contradicts the Hanafis, and there is no doubt that one of them contains an error. We do not know which one it is, nor is it permissible to issue a ruling regarding a case where error has been confirmed, for it remains unknown how this occurred.

L34401 It has been reported to us from Uthman that Zayd divorced his wife while afflicted with hemiplegia, lived for two years, then died, and she inherited from him. The scholars do not disagree that the one divorced by the hemi-

plegic during that illness does not inherit from him. Thus, their reliance on Uthman's report is invalidated.

وَقَدْ رُوِّينَا عَنْ عُثْمَانَ: أَنَّ زَيْدًا طَلَّقَ امْرَأَتَهُ - وَبِهِ فَالِجٌ - فَعَاشَ سَنَتَيْنِ ثُمَّ مَاتَ فَوَرَّثَهَا مِنْهُ - وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ الْمَفْلُوجَ لَا يَرِثُهُ بِذَلِكَ الْمَرَضِ مَنْ طَلَّقَهَا فِيهِ - فَسَقَطَ تَعَلُّقُهُمْ بِعُثْمَانَ.

L34402 It is astonishing that the Ḥanafīs say that if she asks him for divorce during his illness and he divorces her, she does not inherit from him. What is established from ʿAbd al-Raḥmān is that he only divorced her after she persistently sought divorce to the extent that he became angered, thus the Ḥanafīs contradicted ʿUthmān in this ruling.

وَالْعَجَبُ - أَنَّ الْحَنَفِيِّينَ يَقُولُونَ: إِنَّهَا إِنْ سَأَلَتْهُ الطَّلَاقَ فِي مَرَضِهِ فَطَلَّقَهَا: أَنَّهَا لَا تَرِثُهُ، وَالثَّابِتُ عَنْ عَبْدِ الرَّحْمَنِ أَنَّهُ لَمْ يُطَلِّقْهَا إِلَّا بَعْدَ أَنْ سَأَلَتْهُ الطَّلَاقَ حَتَّى غَضِبَ، فَخَالَفُوا عُثْمَانَ فِي ذَلِكَ.

L34403–34404 Thus, there remained no basis among the Companions—may Allah be pleased with them—for them to cling to.

فَلَمْ يَبْقَ لَهُمْ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُتَعَلَّقٌ.

L34405 If it is said: "You have reported from Jaʿfar ibn Muḥammad, from his father, that al-Ḥusayn ibn ʿAlī divorced his wife while he was ill, and she inherited from him?" We reply: This narration lacks evidentiary weight. The first reason is that it is discredited (munkar), for it claims al-Ḥusayn divorced his wife while ill and she inherited from him, whereas al-Ḥusayn—may Allah be pleased with him—did not die a natural death; he was slain. Thus, it was established that he had recovered from that illness, and this contradicts the positions of the two groups.

فَإِنْ قِيلَ: قَدْ رَوَيْتُمْ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ: أَنَّ الْحُسَيْنَ بْنَ عَلِيٍّ طَلَّقَ امْرَأَتَهُ وَهُوَ مَرِيضٌ فَوَرِثَتْهُ؟ قُلْنَا: هَذِهِ رِوَايَةٌ لَا حُجَّةَ فِيهَا؟ أَوَّلُ ذَلِكَ: أَنَّهَا مُنْكَرَةٌ، لِأَنَّ فِيهَا: أَنَّ الْحُسَيْنَ طَلَّقَ امْرَأَتَهُ وَهُوَ مَرِيضٌ فَوَرِثَتْهُ، وَالْحُسَيْنُ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَمُتْ حَتْفَ أَنْفِهِ، إِنَّمَا مَاتَ مَقْتُولًا، فَصَحَّ أَنَّهُ قَدْ كَانَ صَحَّ مِنْ ذَلِكَ الْمَرَضِ فَهَذَا مُخَالِفٌ لِلطَّائِفَتَيْنِ.

L34406 Moreover, the chain is disconnected because Muḥammad ibn ʿAlī ibn al-Ḥusayn was not contemporaneous with al-Ḥusayn or al-Ḥasan (peace be upon them).

ثُمَّ هِيَ مُنْقَطِعَةٌ، لِأَنَّ مُحَمَّدَ بْنَ عَلِيِّ بْنِ الْحُسَيْنِ لَمْ يُدْرِكْ الْحُسَيْنَ وَلَا الْحَسَنَ.

L34407 Furthermore, the text does not specify the testator from whom she inherits, nor does it state that Imam Al-Ḥusayn affirmed she inherits from him.

ثُمَّ لَيْسَ فِيهِ: مَنْ هُوَ الْمُوَرِّثُ لَهَا، وَلَا أَنَّ الْحُسَيْنَ أَخْبَرَ أَنَّهَا تَرِثُهُ.

L34408 Some of them said: "You have narrated that 'Uthman said to 'Abd al-Rahman: 'If you die, I will certainly inherit it from you.'" 'Abd al-Rahman responded: "You certainly know."

وَقَالَ بَعْضُهُمْ: قَدْ رَوَيْتُمْ أَنَّ عُثْمَانَ قَالَ لِعَبْدِ الرَّحْمَنِ: لَئِنْ مِتّ لَأُوَرِّثَنَّهَا مِنْك؟ فَقَالَ عَبْدُ الرَّحْمَنِ: لَقَدْ عَلِمْت.

L34409 They said: Does this indicate his agreement with ʿUthmān in that matter? We replied: Not at all! This does not in any way indicate his agreement with ʿUthmān in that. Rather, it contains only what cannot be interpreted

otherwise: “You have known what you informed me of—that it stems from your own opinion.” Thus, all they disputed against any of the Companions - may Allah be pleased with them - regarding that matter became invalid, and praise be to Allah, Lord of the worlds.

قَالُوا: فَدَلَّ ذَلِكَ عَلَى مُوَافَقَتِه لِعُثْمَانَ فِي ذَلِكَ؟ فَقُلْنَا: كَلَّا، مَا دَلَّ ذَلِكَ قَطُّ عَلَى مُوَافَقَتِه لِعُثْمَانَ فِي ذَلِكَ، بَلْ إِنَّمَا فِيهِ مِمَّا لَا يَحْتَمِلُ سِوَاهُ: قَدْ عَلِمْت مَا أَعْلَمَنِي بِهِ أَنَّهُ مِنْ رَأْيِك - فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L34410–34412 Some of them objected to the established narration from Ibn al-Zubayr that an irrevocably divorced woman does not inherit, based on what Sa‘īd ibn ‘Abd al-Barr al-Balansī narrated to us, stating: ‘Abdullāh ibn Abī Zayd al-Mālikī narrated to us – from Ibn ‘Uthmān – from Muḥammad ibn Aḥmad ibn al-Jahm – from Muḥammad ibn Shādhān – from Mu‘allā ibn Manṣūr – from Hushaym – from al-Ḥajjāj ibn Arṭāh – from Ibn Abī Mulaykah – from ‘Abdullāh ibn al-Zubayr, who said: “Ibn ‘Awf divorced his Kalbī wife three times while he was ill. When Ibn ‘Awf died, ‘Uthmān granted her inheritance from him.” Ibn al-Zubayr said: “Had ‘Uthmān not granted her inheritance, I would not recognize any inheritance for a divorced woman.” Abū Muḥammad said: “Al-Ḥajjāj ibn Arṭāh is worthless and rejected. None would oppose the narration of the renowned Imam Ibn Jurayj from Ibn Abī Mulaykah through al-Ḥajjāj’s narration except an ignorant person, or one who flagrantly upholds falsehood and argues with it to subvert the truth. Far is he from attaining that! What such a person accomplishes by this is merely to expose his defect, ignorance, or lack of piety – and we seek refuge in Allah from misguidance. Thus, all their obfuscations in this matter are nullified – and it is confirmed to be pure error –.” And it is established that the woman irrevocably divorced during a terminal illness or the one divorced during it, whom he has not had intercourse with, has no inheritance for them both at all.

وَاعْتَرَضَ بَعْضُهُمْ عَلَى الرِّوَايَةِ الثَّابِتَةِ عَنْ ابْنِ الزُّبَيْرِ: أَنَّهُ لَا تَرِثُ مَبْتُوتَةٌ بِمَا حَدَّثَنَاهُ سَعِيدُ بْنُ عَبْدِ الْبَرِّ الْبَلَنْسِيُّ قَالَ: نا عَبْدُ اللَّهِ بْنُ أَبِي زَيْدٍ الْمَالِكِيُّ نا ابْنُ عُثْمَانَ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ شَاذَانَ نا مُعَلَّى بْنُ مَنْصُورٍ نَا هُشَيْمٌ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ قَالَ: طَلَّقَ ابْنُ عَوْفٍ امْرَأَتَهُ الْكَلْبِيَّةَ - وَهُوَ مَرِيضٌ ثَلَاثًا - فَمَاتَ ابْنُ عَوْفٍ فَوَرَّثَهَا مِنْهُ عُثْمَانُ، قَالَ ابْنُ الزُّبَيْرِ: لَوْلَا أَنَّ عُثْمَانَ وَرَّثَهَا لَمْ أَرَ لِمُطَلَّقَةٍ مِيرَاثًا؟ قَالَ أَبُو مُحَمَّدٍ: الْحَجَّاجُ بْنُ أَرْطَاةَ هَالِكٌ سَاقِطٌ، وَلَا يُعْتَرَضُ بِرِوَايَتِهِ عَلَى رِوَايَةِ الْإِمَامِ الْمَشْهُورِ ابْنِ جُرَيْجٍ عَنْ ابْنِ أَبِي مُلَيْكَةَ إلَّا جَاهِلٌ، أَوْ مُجَاهِرٌ بِالْبَاطِلِ مُجَادِلٌ بِهِ لِيُدْحِضَ بِهِ الْحَقَّ، وَهَيْهَاتَ لَهُ مِنْ ذَلِكَ، وَمَا يَزِيدُ مِنْ فَعَلَ هَذَا عَلَى أَنْ يُبْدِيَ عَنْ عَوَارِهِ وَجَهْلِهِ أَوْ قِلَّةِ وَرَعِهِ - وَنَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ. فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ فِي هَذِهِ الْمَسْأَلَةِ - وَصَحَّ أَنَّهَا خَطَأٌ مَحْضٌ - وَصَحَّ أَنَّ الْمَبْتُوتَةَ فِي الْمَرَضِ، أَوْ الْمُطَلَّقَةَ فِيهِ، لَمْ يَطَأْهَا لَا مِيرَاثَ لَهُمَا أَصْلًا.

L34413 Similarly, the woman revocably divorced during his illness has no inheritance if he does not take her back until his death—even if he declares openly that he did so solely to prevent her from inheriting from him. There is no sin upon him for this, for he has performed a divorce from what is permissible

وَكَذَلِكَ الْمُطَلَّقَةُ طَلَاقًا رَجْعِيًّا فِي الْمَرَضِ إذَا لَمْ يُرَاجِعْهَا حَتَّى مَاتَ فَلَا مِيرَاثَ لَهَا - وَحَتَّى لَوْ أَقَرَّ عَلَانِيَةً أَنَّهُ إنَّمَا فَعَلَ ذَلِكَ لِئَلَّا تَرِثَهُ، وَلَا حَرَجَ عَلَيْهِ فِي ذَلِكَ، لِأَنَّهُ فَعَلَ مَا

for him, through which Allah the Exalted has severed inheritance between them and abolished the marital bond between them.

أُبِيحَ لَهُ مِنْ الطَّلَاقِ الَّذِي قَطَعَ اللَّهُ تَعَالَى بِهِ الْمُوَارَثَةَ بَيْنَهُمَا، وَقَطَعَ بِهِ حُكْمَ الزَّوْجِيَّةِ بَيْنَهُمَا.

L34414 Similarly, if he divorces while detained for execution—whether rightful or wrongful—or for stoning in adultery, there is no distinction, because no text has ever distinguished between their divorce and that of others.

وَكَذَلِكَ إنْ طَلَّقَ وَهُوَ مَوْقُوفٌ لِلْقَتْلِ فِي حَقٍّ أَوْ بَاطِلٍ أَوْ لِلرَّجْمِ فِي زِنًى، وَلَا فَرْقَ، لِأَنَّهُ لَمْ يَأْتِ نَصٌّ قَطُّ بَيْنَ طَلَاقِ هَؤُلَاءِ وَبَيْنَ غَيْرِهِمْ بِفَرْقٍ.

L34415 It is not permissible to inherit through spousal relationship except a wife or a husband who inherits her under the same conditions she inherits him, without distinction. None inherits through filiation except a son or daughter. None inherits through fatherhood except a father. None inherits through motherhood except a mother—with no difference between any of these relationships.

وَلَا يَجُوزُ أَنْ يَرِثَ بِالزَّوْجِيَّةِ إلَّا زَوْجَةٌ، أَوْ زَوْجٌ تَرِثُهُ حَيْثُ يَرِثُهَا وَلَا فَرْقَ، وَلَا يَرِثُ بِالْبُنُوَّةِ، إلَّا ابْنٌ أَوْ ابْنَةٌ، وَلَا يَرِثُ بِالْأُبُوَّةِ إلَّا أَبٌ، وَلَا يَرِثُ بِالْأُمُومَةِ إلَّا أُمٌّ - وَلَا فَرْقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ.

L34416 The one who differentiates between such matters enables the wrongful seizure of wealth. Whoever is authentically reported to have judged thus among the Companions—may Allah be pleased with them—is rewarded in all circumstances, whether in error or correctness. The concern lies with those who blindly follow some of the matters in which the Companions exercised ijtihad, yet oppose them in other aspects, arbitrarily controlling matters of religion through whims and falsehood—and with Allah alone is success.

وَالْمُفَرِّقُ بَيْنَ ذَلِكَ مُؤْكِلٌ مَالًا بِالْبَاطِلِ، وَمَنْ صَحَّ عَنْهُ أَنَّهُ قَضَى بِذَلِكَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَمَأْجُورٌ بِكُلِّ حَالٍ مِنْ خَطَأٍ أَوْ صَوَابٍ، وَإِنَّمَا الشَّأْنُ فِيمَنْ قَلَّدَ بَعْضَ مَا اجْتَهَدُوا فِيهِ، وَخَالَفَهُمْ فِي بَعْضِهِ تَحَكُّمًا فِي الدِّينِ بِالْهَوَى وَالْبَاطِلِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ طَلَاقُ الْعَبْدِ بِيَدِهِ]

Issue: The slave's right to divorce his wife is in his hand.

L34417

L34418 1973 - Issue: The divorce of a slave is under his own control, not his master's. The divorce of a slave for his wife—whether she is an enslaved or free woman—and the divorce of a free man for his wife—whether she is an enslaved or free woman—all these cases are equivalent. None of the aforementioned women becomes religiously prohibited to the aforementioned divorcer except through three repudiations, whether pronounced together or separately. This cannot be achieved with fewer than three fundamentally.

١٩٧٣ - مَسْأَلَةٌ: وَطَلَاقُ الْعَبْدِ بِيَدِهِ لَا بِيَدِ سَيِّدِهِ، وَطَلَاقُ الْعَبْدِ لِزَوْجَتِهِ الْأَمَةِ أَوْ الْحُرَّةِ، وَطَلَاقُ الْحُرِّ لِزَوْجَتِهِ الْأَمَةِ أَوْ الْحُرَّةِ -: كُلُّ ذَلِكَ سَوَاءٌ، لَا تَحْرُمُ وَاحِدَةٌ مِمَّنْ ذَكَرْنَا عَلَى مُطَلِّقٍ مِمَّنْ ذَكَرْنَا إلَّا بِثَلَاثِ تَطْلِيقَاتٍ مَجْمُوعَةٍ أَوْ مُفَرَّقَةٍ، لَا بِأَقَلَّ أَصْلًا.

L34419 The evidence for that is the statement of Allah, the Almighty and Majestic:

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١]

{When you divorce women, then divorce them during their waiting period} [Surah At-Talaq (The Divorce) 65:1].[19]

وَقَالَ تَعَالَى: {إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ} [الأحزاب: ٤٩]

L34420 And He, the Exalted, said: "When you have contracted marriage with the believing women, then divorce them before consummating the marriage" [Al-Aḥzāb 33:49].[20]

وَقَالَ تَعَالَى: {وَأَنْكِحُوا الأَيَامَى مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ} [النور: ٣٢] فَسَوَّى تَعَالَى بَيْنَ طَلَاقِ كُلِّ نَاكِحٍ مِنْ حُرٍّ أَوْ عَبْدٍ، أَوْ عَرَبِيٍّ أَوْ عَجَمِيٍّ، أَوْ مَرِيضٍ أَوْ صَحِيحٍ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L34421–34423 And He, the Exalted, said: "Marry the unmarried among you, and the righteous among your male slaves and female slaves." [An-Nur: 32] The Exalted has equalized the ruling of divorce for every husband, whether free or enslaved, Arab or non-Arab, sick or healthy: "And your Lord is not forgetful" (Quran 19:64).[21]

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ أَنَّهُ تَعَالَى لَوْ أَرَادَ أَنْ يُفَرِّقَ بَيْنَ شَيْءٍ مِنْ ذَلِكَ لَمَا أَهْمَلَهُ وَلَا أَغْفَلَهُ وَلَا غَشَّنَا بِكِتْمَانِهِ، وَلَبَيَّنَهُ لَنَا عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذْ لَمْ يَفْعَلْ ذَلِكَ فَوَاللَّهِ مَا أَرَادَ اللَّهُ قَطُّ فَرْقًا بَيْنَ شَيْءٍ مِنْ ذَلِكَ.

L34424 We testify by the testimony of Allah, the Almighty and Majestic, that if He, Exalted, had willed to differentiate between any part of that, He would not have neglected it, overlooked it, or concealed from us by keeping it secret. Rather, He would have clarified it to us through the words of His Messenger (peace and blessings be upon him). Since He did not do so, by Allah, Allah never intended any differentiation between any part of that.

وَبِالْآيَاتِ الَّتِي ذَكَرْنَا صَحَّ أَنَّ الطَّلَاقَ بِيَدِ النَّاكِحِ لَا بِيَدِ سِوَاهُ، فَدَخَلَ فِي ذَلِكَ الْحُرُّ وَالْعَبْدُ دُخُولًا مُسْتَوِيًا بِلَا شَكٍّ.

L34425 By the verses we have mentioned, it is established that divorce is in the hand of the marrying party, not in the hand of another. Thus, the free man and the slave enter into this ruling with equal inclusion, unquestionably.

وَقَدْ وَافَقَنَا الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ وَالشَّافِعِيُّونَ عَلَى هَذَا.

L34426 Indeed, the Malikis, the Hanafis and the Shafi'is have agreed with us on this.

وَوَافَقَنَا الْحَنَفِيُّونَ عَلَى أَنَّ الْحُرَّةَ لَا تَحْرُمُ عَلَى زَوْجِهَا الْعَبْدِ إِلَّا بِثَلَاثِ تَطْلِيقَاتٍ.

L34427 The Hanafis agreed with us that a free woman is not forbidden to her enslaved husband except after three divorces.

وَوَافَقَنَا الشَّافِعِيُّونَ وَالْمَالِكِيُّونَ عَلَى أَنَّ الْأَمَةَ لَا تَحْرُمُ عَلَى زَوْجِهَا الْحُرِّ إِلَّا بِثَلَاثِ تَطْلِيقَاتٍ - وَخَالَفُونَا فِي الْأَمَةِ تَحْتَ الْعَبْدِ.

L34428 The Shāfiʿīs and Mālikīs agreed with us that a female slave does not become forbidden to her free husband except by three pronouncements of divorce, but disagreed with us concerning a female slave married to a slave.

وَقَوْلُ اللَّهِ تَعَالَى: {فَإِنْ طَلَّقَهَا فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] بَعْدَ قَوْله تَعَالَى: {الطَّلاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ} [البقرة:

L34429 And the statement of Allah, the Most High: {Then if he divorces her, she

[19] **Qur'an references (L34419):** Qur'an 65:1 (At-Talaq).
[20] **Qur'an references (L34420):** Qur'an 33:49 (Al-Ahzab).
[21] **Qur'an references (L34421):** Qur'an 24:32 (An-Nur); Qur'an 19:64 (Maryam).

is not lawful to him afterward until she marries a husband other than him} [Al-Baqarah: 230], after His statement, the Most High: {Divorce is twice. Then either retain with kindness or release with good treatment} [Al-Baqarah: 229], decisively confirms the correctness of our view and serves as clear evidence that it is undoubtedly the truth, for He, the Most High, did not distinguish in this between a free person and a slave.[22]

٢٢٩] قَاضٍ لِقَوْلِنَا بِالصَّوَابِ، وَشَاهِدٌ بِأَنَّهُ الْحَقُّ قَطْعًا، لِأَنَّهُ تَعَالَى لَمْ يَخُصَّ بِذَلِكَ حُرًّا مِنْ عَبْدٍ.

L34430 In what we have mentioned there is differing opinion. We shall mention—if Allah the Exalted wills—what He has facilitated by His bounty for His remembrance. There is no power nor strength except through Allah, the Most High, the Magnificent. We were narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ that Ibn ʿAbbās would say: "The slave's divorce rests with his master. If he pronounces divorce, it is valid. If he effects a separation, it counts as one divorce when both spouses are entirely his property. If the male slave is his while the female slave belongs to another, the master may likewise divorce her if he so wills." Narrated to us by Muḥammad ibn Saʿīd ibn Nabāt → Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Baṣīr → Qāsim ibn Aṣbagh → Muḥammad ibn ʿAbd al-Salām al-Khushanī → Muḥammad ibn al-Muthannā → ʿAbd al-Raḥmān ibn Mahdī → Sufyān al-Thawrī → ʿAbd al-Karīm al-Jazarī → ʿAṭāʾ → Ibn ʿAbbās, who said: "Neither the slave's divorce nor his separation has any effect."

وَفِيمَا ذَكَرْنَا خِلَافٌ نَذْكُرُ مِنْهُ - إِنْ شَاءَ اللَّهُ تَعَالَى - مَا يَسَّرَ بِفَضْلِهِ لِذِكْرِهِ - وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّ ابْنَ عَبَّاسٍ كَانَ يَقُولُ: طَلَاقُ الْعَبْدِ بِيَدِ سَيِّدِهِ إِنْ طَلَّقَ جَازَ، وَإِنْ فَرَّقَ فَهِيَ وَاحِدَةٌ إِذَا كَانَا لَهُ جَمِيعًا، فَإِنْ كَانَ الْعَبْدُ لَهُ وَالْأَمَةُ لِغَيْرِهِ طَلَّقَ السَّيِّدُ أَيْضًا إِنْ شَاءَ. وَحَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ، عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ عَطَاءٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: لَيْسَ طَلَاقُ الْعَبْدِ وَلَا فُرْقَتُهُ بِشَيْءٍ.

L34431–34432 Abū Muḥammad said (here, regarding the free woman and the slave woman): From the chain of ʿAbd al-Razzāq – who narrated from Ibn Jurayj, who narrated from Abū al-Zubayr – that he heard Jābir ibn ʿAbd Allāh state concerning the female slave and the male slave: "Their master may marry them [to others] or divorce them."

قَالَ أَبُو مُحَمَّدٍ، هَاهُنَا عَمَّ الْحُرَّةَ وَالْأَمَةَ -: وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ فِي الْأَمَةِ وَالْعَبْدِ: سَيِّدُهُمَا يَجْمَعُ بَيْنَهُمَا وَيُفَرِّقُ.

L34433 From the narration of ʿAbd al-Razzāq: Ibn Jurayj reported to us, who informed me through ʿAmr ibn Dīnār from Abu al-Shaʿthāʾ that he said: A slave cannot divorce except with his master's permission. If he divorces twice, his master does not ratify it, should he so wish.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ أَنَّهُ قَالَ: لَا طَلَاقَ لِعَبْدٍ إِلَّا بِإِذْنِ سَيِّدِهِ، فَإِنْ طَلَّقَ اثْنَتَيْنِ لَمْ يُجِزْهُ سَيِّدُهُ إِنْ شَاءَ.

L34434 From the chain of Wakiʿ, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, who

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ قَالَ: أَهْلُ الْمَدِينَةِ لَا يَرَوْنَ لِلْعَبْدِ طَلَاقًا إِلَّا بِإِذْنِ سَيِّدِهِ - فَهَذَا قَوْلٌ.

[22] **Qur'an references (L34429):** Qur'an 2:230 (Al-Baqarah); Qur'an 2:229 (Al-Baqarah).

said: The people of Medina do not regard a slave's divorce as valid except with his master's permission. This is a position.

L34435 A second opinion—as conveyed to us through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who reported: Hishām ibn ʿUrwah informed me, saying: We asked ʿUrwah—referring to his father—about a man who married his male slave to his female slave. Is it permissible for him to take her away from him without the male slave's consent? He replied: "No. However, in that case, he must purchase him, since he had already married him off."

وَقَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي هِشَامُ بْنُ عُرْوَةَ قَالَ: سَأَلْنَا عُرْوَةَ - يَعْنِي أَبَاهُ - عَنْ رَجُلٍ أَنْكَحَ عَبْدَهُ أَمَتَهُ، هَلْ يَصْلُحُ لَهُ أَنْ يَنْتَزِعَهَا مِنْهُ بِغَيْرِ طِيبِ نَفْسِ الْعَبْدِ؟ قَالَ: لَا، وَلَكِنْ إِذَا ابْتَاعَهُ وَقَدْ أَنْكَحَهُ.

L34436 A third opinion—as narrated to us through ʿAbd al-Razzāq from Ibn Jurayj, who said to ʿAṭāʾ: "Do I reclaim my slave woman from a slave belonging to other people after marrying her to him?" He answered: "Yes, and I was satisfied with him." I said: "Does he refuse unless he keeps the entire dowry?" He replied: "The dowry is entirely his. If he refuses, reclaim her if you wish, even if you married her to a free man." Then ʿAṭāʾ retracted his earlier opinion and said: "Do not reclaim her from the free man even if you give him the dowry, nor force her to work, nor sell her."

وَقَوْلٌ ثَالِثٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنَّهُ قَالَ لِعَطَاءٍ: أَنْتَزِعُ أَمَتِي مِنْ عَبْدِ قَوْمٍ آخَرِينَ، وَقَدْ أَنْكَحْتهَا إيَّاهُ؟ قَالَ: نَعَمْ، وَأَرْضِهِ، قُلْت: أَبَى إلَّا صَدَاقَهُ كُلَّهُ؟ قَالَ: هُوَ لَهُ كُلُّهُ، فَإِنْ أَبَى فَانْتَزِعْهَا إنْ شِئْت، وَمِنْ حُرٍّ أَنْكَحْتهَا إيَّاهُ - ثُمَّ رَجَعَ عَطَاءٌ فَقَالَ: لَا تَنْزِعْهَا مِنْ الْحُرِّ، وَإِنْ أَعْطَيْته الصَّدَاقَ، وَلَا تَسْتَخْدِمْهَا وَلَا تَبِعْهَا.

L34437 A fourth opinion—via a broken chain from ʿUmar ibn al-Khaṭṭāb: If a slave marries without his masters' permission, his marriage is forbidden. But if he marries with their permission, the right to divorce lies with the masters who authorize the sexual union.

وَقَوْلٌ رَابِعٌ - مِنْ طَرِيقٍ مُنْقَطِعَةٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ: إذَا نَكَحَ الْعَبْدُ بِغَيْرِ إذْنِ مَوَالِيهِ فَنِكَاحُهُ حَرَامٌ، فَإِنْ نَكَحَ بِإِذْنِ مَوَالِيهِ فَالطَّلَاقُ بِيَدِ مَنْ يَسْتَحِلُّ الْفَرْجَ.

L34438 Through the chain of Mālik, from Nāfiʿ, from Ibn ʿUmar: If a master permits his slave to marry, it is not permissible for the slave's wife to be divorced unless the slave himself divorces her. If the slave refuses to take the female slave of his master's male slave or the female slave of his master's female slave, there is no blame on him.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: إنْ أَذِنَ السَّيِّدُ لِعَبْدِهِ أَنْ يَتَزَوَّجَ فَإِنَّهُ لَا يَجُوزُ لِامْرَأَتِهِ طَلَاقٌ إلَّا أَنْ يُطَلِّقَهَا الْعَبْدُ وَإِنْ أَبَى أَنْ يَأْخُذَ أَمَةَ غُلَامِهِ، أَوْ أَمَةَ وَلِيدَتِهِ فَلَا جُنَاحَ عَلَيْهِ.

L34439 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Dīnār that Abū Maʿbad informed him: A male slave belonging to Ibn ʿAbbās had a wife who was a female slave owned by Ibn ʿAbbās. He divorced her—did he finalize it? Ibn ʿAbbās said: "You have no valid divorce; revoke the divorce," but he refused? ʿAbd al-Razzāq said: Maʿmar narrated to us through Simāk ibn al-Faḍl that when the slave inquired of Ibn ʿUmar, he responded: "Do not return to her, even if he strikes your head."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ أَنَّ أَبَا مَعْبَدٍ أَخْبَرَهُ أَنَّ عَبْدًا كَانَ لِابْنِ عَبَّاسٍ وَكَانَتْ لَهُ امْرَأَةٌ جَارِيَةٌ لِابْنِ عَبَّاسٍ، فَطَلَّقَهَا فَبَتَّهَا؟ فَقَالَ ابْنُ عَبَّاسٍ: لَا طَلَاقَ لَك فَارْتَجِعْهَا، فَأَبَى؟ قَالَ عَبْدُ الرَّزَّاقِ: نا مَعْمَرٌ عَنْ سِمَاكِ بْنِ الْفَضْلِ أَنَّ الْعَبْدَ سَأَلَ ابْنَ عُمَرَ؟ فَقَالَ لَهُ: لَا تَرْجِعْ إلَيْهَا، وَإِنْ ضَرَبَ رَأْسَك.

وَصَحَّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ: الطَّلَاقُ بِيَدِ الْعَبْدِ.

L34440 It has been authentically reported from Saʿīd ibn Jubayr: Divorce is the right of the slave.

وَصَحَّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ إِذَا أَنْكَحَ السَّيِّدُ عَبْدَهُ فَلَيْسَ لَهُ أَنْ يُفَرِّقَ بَيْنَهُمَا.

L34441 It is authentically reported from Saʿīd ibn al-Musayyib: If a master marries off his male slave, he does not have the right to separate them.

وَصَحَّ عَنْ شُرَيْحٍ، وَالْحَسَنِ، وَإِبْرَاهِيمَ: أَنَّ الطَّلَاقَ بِيَدِ الْعَبْدِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L34442–34443 It is established from Shurayḥ, al-Ḥasan, and Ibrāhīm that divorce is within the authority of the slave—and this is the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʿī, Abī Sulaymān, and their companions.

وَأَمَّا بِكَمْ تَحْرُمُ الْأَمَةُ تَحْتَ الْعَبْدِ مِنْ عَدَدِ الطَّلَاقِ أَوْ الْحُرَّةُ؟ وَبِكَمْ تَحْرُمُ الْأَمَةُ وَالْحُرَّةُ تَحْتَ الْحُرِّ؟ فَرُوِّينَا مِنْ طَرِيقِ إِسْحَاقَ بْنِ أَحْمَدَ نا الْعُقَيْلِيُّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ: السُّنَّةُ بِالنِّسَاءِ - يَعْنِي الطَّلَاقَ وَالْعِدَّةَ - قَالَ هَمَّامٌ: لَا أَشُكُّ فِيهِ وَلَا أَمْتَرِي.

L34444 After how many divorces does a slave woman become irrevocably prohibited when married to a slave man, or a free woman? And after how many divorces do a slave woman and a free woman become prohibited when married to a free man? It was narrated to us via the chain of Isḥāq ibn Aḥmad: Al-ʿUqaylī narrated to us, ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to us, my father narrated to us, Muḥammad ibn Jaʿfar Ghundar narrated to us, Hammām ibn Yaḥyā narrated to us from Qatādah from Saʿīd ibn al-Musayyib from ʿAlī ibn Abī Ṭālib that he said: "The Sunnah concerning women"—meaning divorce and the waiting period. Hammām said: "I have no doubt about it, nor do I hesitate."

قَالَ أَبُو مُحَمَّدٍ: وَهُوَ قَوْلُ قَتَادَةَ - وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا عَبْدُ الرَّحْمَنِ بْنُ زِيَادٍ عَنْ شُعْبَةَ عَنْ أَشْعَثَ بْنِ سَوَّارٍ عَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ ابْنِ مَسْعُودٍ قَالَ: السُّنَّةُ بِالنِّسَاءِ الطَّلَاقُ وَالْعِدَّةُ.

L34445 Abū Muḥammad said: This is the opinion of Qatādah. From the chain of Saʿīd ibn Manṣūr: He narrated to us from ʿAbd al-Raḥmān ibn Ziyād, from Shuʿbah, from Ashʿath ibn Sawwār, from al-Shaʿbī, from Masrūq, from Ibn Masʿūd, who said: "The Sunnah regarding women is divorce and the waiting period."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ يَحْيَى، وَغَيْرِ وَاحِدٍ عَنْ عِيسَى عَنْ الشَّعْبِيِّ عَنْ اثْنَيْ عَشَرَ مِنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالُوا: الطَّلَاقُ وَالْعِدَّةُ بِالْمَرْأَةِ.

L34446 And through the chain of ʿAbd al-Razzāq from Muḥammad ibn Yaḥyā, and through multiple narrators from ʿĪsā from al-Shaʿbī, from twelve Companions of the Prophet (PBUH) who said: "Divorce and the waiting period pertain to the woman."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَدَاوُد، وَقَتَادَةَ، قَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ عَنْ إبْرَاهِيمَ، وَقَالَ دَاوُد: عَنْ الشَّعْبِيِّ، وَقَالَ قَتَادَةُ: عَنْ الْحَسَنِ، قَالُوا

L34447 Through the chain of Ḥammād ibn Salamah from Ḥammād ibn Abī Sulaymān, Dāwūd, and Qatādah: Ḥammād ibn Abī Sulaymān narrated from Ibrāhīm, Dāwūd narrated from al-Shaʿbī, and Qatādah narrated from al-Ḥasan. They all said, "A slave divorces a free woman thrice, and she under-

goes an ʿiddah of three menstrual cycles. A free man divorces a slave woman twice, and she undergoes an ʿiddah of two menstrual cycles."

كُلُّهُمْ: الْعَبْدُ يُطَلِّقُ الْحُرَّةَ ثَلَاثًا وَتَعْتَدُّ ثَلَاثَ حِيَضٍ، وَالْحُرُّ يُطَلِّقُ الْأَمَةَ تَطْلِيقَتَيْنِ وَتَعْتَدُّ حَيْضَتَيْنِ.

L34448 Through the chain of al-Ḥajjāj ibn al-Minhāl: Ḥammād ibn Zayd narrated to us from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn and al-Ḥasan: They both said: "Divorce and the waiting period are incumbent upon women."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ، نَا حَمَّادُ بْنُ زَيْدٍ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ وَالْحَسَنِ، قَالَا جَمِيعًا: الطَّلَاقُ وَالْعِدَّةُ بِالنِّسَاءِ.

L34449 From the narration of Saʿīd ibn Manṣūr: Sufyān reported from ʿAmr ibn Dīnār from ʿIkrimah, who said: "A male slave divorces a free woman with three pronouncements, and a free man divorces a female slave with two pronouncements." From the narration of Abū Bakr ibn Abī Shaybah: Ibn ʿUlayyah reported from Ayyūb al-Sikhtiyānī from Nāfiʿ, who said: "A female slave is conclusively separated by a free man or a male slave with two pronouncements."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ قَالَ: يُطَلِّقُ الْمَمْلُوكُ الْحُرَّةَ ثَلَاثًا، وَيُطَلِّقُ الْحُرُّ الْمَمْلُوكَةَ تَطْلِيقَتَيْنِ. وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ قَالَ: تَبِينُ الْأَمَةُ مِنَ الْحُرِّ وَالْعَبْدِ بِتَطْلِيقَتَيْنِ.

L34450–34451 Ayyūb said: It is established according to Ibn ʿAbbās that divorce and the waiting period are rulings pertaining to women.

قَالَ أَيُّوبُ: وَثَبَتَ عِنْدَ ابْنِ عَبَّاسٍ: الطَّلَاقُ وَالْعِدَّةُ بِالنِّسَاءِ.

L34452 From the chain of Ibn Abi Shaybah: Zayd ibn al-Ḥubāb narrated to us via Sayf, from Mujāhid, who said: If a free woman is married to a male slave, her divorce is three, and her waiting period is three menstrual cycles. If a female slave is married to a free man, her divorce is two, and her waiting period is two menstrual cycles.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ عَنْ سَيْفٍ عَنْ مُجَاهِدٍ قَالَ: إِذَا كَانَتِ الْحُرَّةُ تَحْتَ الْعَبْدِ فَطَلَاقُهَا ثَلَاثٌ، وَعِدَّتُهَا ثَلَاثُ حِيَضٍ، وَإِذَا كَانَتِ الْأَمَةُ تَحْتَ الْحُرِّ فَطَلَاقُهَا اثْنَتَانِ، وَعِدَّتُهَا حَيْضَتَانِ.

L34453 And from the chain of al-Ḥajjāj ibn al-Minhāl: Shuʿbah narrated to us from al-Ḥakam ibn ʿUtaybah and al-Aʿmash. Al-Ḥakam said from Ibrāhīm that ʿUbaydah al-Salmanī asked about a man who had a slave woman as his wife, divorced her twice, then purchased her—whether he could resume intercourse with her. He prohibited it. Al-Aʿmash reported from Abū al-Ḍuḥā from Masrūq concerning one who had a slave woman as his wife, divorced her twice, then bought her—he deemed it reprehensible to resume intercourse with her.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ: نا شُعْبَةُ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ، وَالْأَعْمَشِ، قَالَ الْحَكَمُ عَنْ إِبْرَاهِيمَ أَنَّهُ سَأَلَ عَبِيدَةَ السَّلْمَانِيَّ عَمَّنْ كَانَ تَحْتَهُ أَمَةٌ فَطَلَّقَهَا ثِنْتَيْنِ، ثُمَّ اشْتَرَاهَا أَنْ يَأْتِيَهَا؟ فَأَبَى، وَقَالَ الْأَعْمَشُ عَنْ أَبِي الضُّحَى عَنْ مَسْرُوقٍ فِيمَنْ كَانَتْ تَحْتَهُ أَمَةٌ فَطَلَّقَهَا اثْنَتَيْنِ ثُمَّ اشْتَرَاهَا؟ فَكَرِهَ أَنْ يَأْتِيَهَا.

L34454 Sufyan al-Thawri, al-Hasan ibn Hayy, Abu Hanifa, and his companions hold this opinion. They include: Ali (and it is authentically reported from him), Ibn Mas'ud, Ibn Abbas, and twelve of the Companions (may Allah be pleased

وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ فَهُمْ: عَلِيٌّ - وَصَحَّ عَنْهُ - وَابْنِ مَسْعُودٍ، وَابْنِ عَبَّاسٍ، وَاثْنَيْ عَشَرَ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا

with them). However, no authentic report exists from any of them, as the chain is either interrupted or reported through Ash'ath ibn Sawwar and Isa al-Hannat - both of whom are weak narrators. It is authentically reported from Qatadah, al-Nakha'i, al-Sha'bi, Masruq, Ubaidah, al-Hasan, Ibn Sirin, Nafi' (the freed slave of Ibn Umar), and Mujahid.

يَصِحُّ عَنْ أَحَدٍ مِنْهُمْ، لِأَنَّهُ إِمَّا مُنْقَطِعٌ، وَإِمَّا عَنْ أَشْعَثَ بْنِ سَوَّارٍ، وَعِيسَى الْخَنَّاطِ - وَكِلَاهُمَا ضَعِيفٌ - وَهُوَ صَحِيحٌ عَنْ قَتَادَةَ وَالنَّخَعِيِّ، وَالشَّعْبِيِّ، وَمَسْرُوقٍ، وَعَبِيدَةَ، وَالْحَسَنِ، وَابْنِ سِيرِينَ، وَنَافِعٍ مَوْلَى ابْنِ عُمَرَ - وَمُجَاهِدٍ.

L34455 A group held a contrary opinion, as narrated to us through the chain of Ibn Wahb from Yunus ibn Yazid from Ibn Shihab: Qabisa ibn Dhu'ayb narrated to me that he heard Zayd ibn Thabit say: If a man is free and his wife is a slave woman, he divorces her three times, and she observes two menstrual cycles. And if he is a male slave and his wife is a free woman, he divorces her twice, and she observes three menstrual cycles.

وَقَالَتْ طَائِفَةٌ - بِخِلَافِ ذَلِكَ - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي قَبِيصَةُ بْنُ ذُؤَيْبٍ: أَنَّهُ سَمِعَ زَيْدَ بْنَ ثَابِتٍ يَقُولُ: إِنْ كَانَ الرَّجُلُ حُرًّا وَامْرَأَتُهُ أَمَةً طَلَّقَ ثَلَاثَ تَطْلِيقَاتٍ، وَاعْتَدَّتْ حَيْضَتَيْنِ - وَإِنْ كَانَ عَبْدًا وَامْرَأَتُهُ حُرَّةً طَلَّقَ تَطْلِيقَتَيْنِ، وَاعْتَدَّتْ ثَلَاثَ حِيَضٍ.

L34456 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Ayyūb al-Sikhtiyānī: Narrated to us by Rajāʾ ibn Ḥaywah from Qabīṣah ibn Dhuʾayb from ʿĀʾishah, the Mother of the Believers: A young man divorced his wife—a free woman—twice, so he asked ʿĀʾishah. She said: "Do not approach her."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ: نا رَجَاءُ بْنُ حَيْوَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَنَّ غُلَامًا طَلَّقَ امْرَأَتَهُ - وَهِيَ حُرَّةٌ - تَطْلِيقَتَيْنِ، فَسَأَلَ عَائِشَةَ؟ فَقَالَتْ: لَا تَقْرَبْهَا.

L34457 From the chain of Abd al-Razzaq, from Maʿmar, from al-Zuhri, from Saʿid ibn al-Musayyab, who said: Uthman ibn Affan ruled regarding a mukatab (a slave who contracted for manumission) who divorced his wife—and she was free—twice, ruling that she is not lawful for him until she marries another man.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَضَى عُثْمَانُ بْنُ عَفَّانَ فِي مُكَاتَبٍ طَلَّقَ امْرَأَتَهُ - وَهِيَ حُرَّةٌ - تَطْلِيقَتَيْنِ: أَنَّهَا لَا تَحِلُّ لَهُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ.

L34458 And through the chain of Abd al-Razzaq from Abdullah ibn Ziyad ibn Samʿan al-Ansari: that Abdullah ibn Abd al-Rahman al-Ansari informed him from Nafiʿ from Umm Salamah, the Mother of the Believers, a statement similar to that of Uthman and Zayd.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ زِيَادِ بْنِ سَمْعَانَ: أَنَّ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيَّ أَخْبَرَهُ عَنْ نَافِعٍ عَنْ أُمِّ سَلَمَةَ - أُمِّ الْمُؤْمِنِينَ - مِثْلُ قَوْلِ عُثْمَانَ، وَزَيْدٍ.

L34459–34460 And through the chain of Ibn Abī Shaybah: Wakīʿ narrated to us from Hishām from Qatādah from ʿIkrimah from Ibn ʿAbbās that he used to say: Divorce is in the hands of men, and the waiting period is incumbent upon women.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ هِشَامٍ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ كَانَ يَقُولُ: الطَّلَاقُ بِالرِّجَالِ، وَالْعِدَّةُ بِالنِّسَاءِ.

L34461 From the route of Ibn Abi Shaybah: Ali ibn Mushir from Ubayd Allah ibn Umar from Nafi' from Ibn Umar, who said: If a free woman is married to a slave, she is separated from him by two pronouncements, and her waiting period is three menstrual cycles. If a slave woman is married to a free man, she is separated from him by three pronouncements, and her waiting period is two menstrual cycles.

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا عَلِيُّ بْنُ مُسْهِرٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إِذَا كَانَتْ الْحُرَّةُ تَحْتَ الْعَبْدِ فَقَدْ بَانَتْ مِنْهُ بِتَطْلِيقَتَيْنِ، وَعِدَّتُهَا ثَلَاثُ حِيَضٍ، وَإِذَا كَانَتْ الْأَمَةُ تَحْتَ الْحُرِّ فَقَدْ بَانَتْ مِنْهُ بِثَلَاثٍ، وَعِدَّتُهَا حَيْضَتَانِ.

L34462 Through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Yaḥyā ibn Saʿīd from Saʿīd ibn al-Musayyab, who said: "Divorce is the prerogative of men, and the observance of the ʿiddah (waiting period) is an obligation upon women."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: الطَّلَاقُ بِالرِّجَالِ، وَالْعِدَّةُ بِالنِّسَاءِ.

L34463 And through the chain of Ibn Abi Shaybah from Waki' from Al-Sha'bi from Makhūl, who said: "Divorce is for men, and the 'iddah is for women."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ عَنْ وَكِيعٍ عَنْ الشَّعْبِيِّ عَنْ مَكْحُولٍ قَالَ: الطَّلَاقُ بِالرِّجَالِ، وَالْعِدَّةُ بِالنِّسَاءِ.

L34464 And through the chain of Abd al-Razzaq from Ibn Jurayj from Ata, he said: Divorce is pronounced by men, and the iddah [waiting period] is incumbent upon women.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: الطَّلَاقُ بِالرِّجَالِ، وَالْعِدَّةُ بِالنِّسَاءِ.

L34465 And via Ibn Wahb's chain, men of knowledge reported to me from al-Qāsim ibn Muḥammad, Sālim ibn ʿAbd Allāh, Abū Salama ibn ʿAbd al-Raḥmān, ʿUmar ibn ʿAbd al-ʿAzīz, Yaḥyā ibn Saʿīd, Yazīd ibn Qusayṭ, ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn al-Hadīr, Rabīʿah, Abū al-Zinād, Sulaymān ibn Yasār, Muḥammad ibn ʿAbd al-Raḥmān ibn Thawbān, and ʿAmr ibn Shuʿayb: "Divorce is effected by men, and the waiting period is observed by women."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَسَالِمِ بْنِ عَبْدِ اللَّهِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَيَحْيَى بْنِ سَعِيدٍ، وَيَزِيدَ بْنِ قُسَيْطٍ، وَعَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ الْهَدِيرِ، وَرَبِيعَةَ، وَأَبِي الزِّنَادِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَمُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ ثَوْبَانَ، وَعَمْرِو بْنِ شُعَيْبٍ: الطَّلَاقُ بِالرِّجَالِ، وَالْعِدَّةُ بِالنِّسَاءِ.

L34466 It is the opinion of Mālik and al-Shāfiʿī. They are Zayd ibn Thābit, ʿUthmān, Ibn ʿAbbās, and Ibn ʿUmar (with no authentic reports transmitted from others besides them), Saʿīd ibn al-Musayyab, and ʿAṭāʾ. All other [narrations] are disconnected.

وَهُوَ قَوْلُ: مَالِكٍ، وَالشَّافِعِيِّ، فَهُمْ: زَيْدُ بْنُ ثَابِتٍ، وَعُثْمَانُ، وَابْنُ عَبَّاسٍ وَابْنُ عُمَرَ - وَلَا يَصِحُّ عَنْ غَيْرِهِمْ - وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَعَطَاءٌ، وَسَائِرُ ذَلِكَ مُنْقَطِعٌ.

L34467 A group of scholars said: The ruling is specific to slavery—as has been narrated to us via the chain of Ḥammād ibn Salamah from 'Ubayd Allāh ibn 'Umar from Nāfi' from Ibn 'Umar, who said: A free man divorces a female slave twice, and she observes a waiting period of two menstrual cycles. A

slave divorces a free woman twice, and she observes a waiting period of three menstrual cycles.

وَقَالَتْ طَائِفَةٌ: الْحُكْمُ لِلرِّقِّ خَاصَّةً - كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: الْحُرُّ يُطَلِّقُ الْأَمَةَ تَطْلِيقَتَيْنِ وَتَعْتَدُّ حَيْضَتَيْنِ، وَالْعَبْدُ يُطَلِّقُ الْحُرَّةَ تَطْلِيقَتَيْنِ، وَتَعْتَدُّ ثَلَاثَ حِيَضٍ.

L34468 And with it Uthman al-Battī says.

وَبِهِ يَقُولُ عُثْمَانُ الْبَتِّيُّ.

L34469–34471 A group adopted a position akin to our opinion, as narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, narrated to us by Ismāʿīl ibn Isḥāq al-Naṣrī, narrated to us by ʿĪsā ibn Ḥabīb, narrated to us by ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqrī. My grandfather Muhammad ibn Abdullah narrated to us that Sufyan ibn Uyaynah narrated to him from Amr ibn Dinar from Abu Maʿbad—the freed slave of Ibn Abbas—from Ibn Abbas that a slave of his divorced his wife twice. Ibn Abbas ordered him to take her back, but he refused. So Ibn Abbas said to him: "She is yours; reclaim her by right of ownership." This is the position upheld by Abu Sulayman and all our companions.

وَذَهَبَتْ طَائِفَةٌ - إِلَى مِثْلِ قَوْلِنَا - كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ النَّصْرِيُّ نا عِيسَى بْنُ حَبِيبٍ نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا جَدِّي مُحَمَّدُ بْنُ عَبْدِ اللَّهِ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ أَبِي مَعْبَدٍ - مَوْلَى ابْنِ عَبَّاسٍ - عَنِ ابْنِ عَبَّاسٍ أَنَّ عَبْدًا لَهُ طَلَّقَ امْرَأَتَهُ طَلْقَتَيْنِ فَأَمَرَهُ ابْنُ عَبَّاسٍ أَنْ يُرَاجِعَهَا فَأَبَى؟ فَقَالَ لَهُ ابْنُ عَبَّاسٍ: هِيَ لَك فَاسْتَحَلَّهَا بِمِلْكِ الْيَمِينِ - وَبِهِ يَأْخُذُ أَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L34472 Abū Muḥammad said: The first group vehemently argued based on what we transmitted through the chain of Abū Dāwūd: Muḥammad ibn Masʿūd → Abū ʿĀṣim → Ibn Jurayj → Muzāhir ibn Aslam → al-Qāsim ibn Muḥammad → ʿĀ'ishah, Mother of the Believers → the Prophet (peace be upon him), who said: "The divorce of a female slave requires two pronouncements, and her waiting period is two menstrual cycles." Abū ʿĀṣim said: Muzāhir narrated it to me from al-Qāsim from ʿĀ'ishah from the Prophet (peace be upon him), except that he [Ibn Jurayj] said: "And her waiting period is two menstrual cycles."

قَالَ أَبُو مُحَمَّدٍ: شَغَبَتْ الطَّائِفَةُ الْأُولَى بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد: نا مُحَمَّدُ بْنُ مَسْعُودٍ نا أَبُو عَاصِمٍ عَنِ ابْنِ جُرَيْجٍ عَنْ مُظَاهِرِ بْنِ أَسْلَمَ عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «طَلَاقُ الْأَمَةِ تَطْلِيقَتَانِ وَقُرْؤُهَا حَيْضَتَانِ» قَالَ أَبُو عَاصِمٍ: حَدَّثَنِي بِهِ مُظَاهِرٌ عَنِ الْقَاسِمِ عَنْ عَائِشَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَنَّهُ قَالَ «وَعِدَّتُهَا حَيْضَتَانِ» .

L34473 Narrated by Hammam from Yahya ibn Malik ibn A'idh from Ibn Abi Ghassan from Abu Yahya Zakariyya ibn Yahya al-Saji from Muhammad ibn Isma'il ibn Samurah al-Ahmasi from Umar ibn Shabib al-Musli from Abdullah ibn Isa from Atiyyah from Ibn Umar, who said: The Messenger of Allah (peace be

نا حُمَامٌ نا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ نا ابْنُ أَبِي غَسَّانَ نا أَبُو يَحْيَى زَكَرِيَّا بْنُ يَحْيَى السَّاجِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ سَمُرَةَ الْأَحْمَسِيُّ نا عُمَرُ بْنُ شَبِيبٍ الْمُسْلِيُّ نا عَبْدُ اللَّهِ بْنُ عِيسَى

upon him) said, “The divorce of a slave woman is twice, and her waiting period is two menstrual cycles.”

عَنْ عَطِيَّةَ عَنْ ابْنِ عُمَرَ قَالَ: " قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «طَلَاقُ الْأَمَةِ ثِنْتَانِ، وَعِدَّتُهَا حَيْضَتَانِ» .

L34474 They said: Since we have agreed with the Mālikīs and the Shāfiʿīs that the waiting period of a bondwoman is half that of a free woman, and since divorce is what necessitates the waiting period, it follows that her divorce must be half that of a free woman.

وَقَالُوا: لَمَّا اتَّفَقْنَا مَعَ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ عَلَى أَنَّ عِدَّةَ الْأَمَةِ نِصْفُ عِدَّةِ الْحُرَّةِ، وَكَانَ الطَّلَاقُ هُوَ الْمُوجِبُ لِلْعِدَّةِ وَجَبَ أَنْ يَكُونَ طَلَاقُهَا نِصْفَ طَلَاقِ الْحُرَّةِ.

L34475 They said: And since the prescribed punishment for an adulterous male slave and female slave is half that of a free man and a free woman, whether they committed adultery with a free man, a free woman, a male slave, or a female slave.

قَالُوا: وَلَمَّا كَانَ حَدُّ الْعَبْدِ وَالْأَمَةِ الزَّانِيَيْنِ: نِصْفَ حَدِّ الْحُرِّ وَالْحُرَّةِ - سَوَاءٌ زَنَيَا بِحُرٍّ أَوْ بِحُرَّةٍ، أَوْ بِعَبْدٍ أَوْ أَمَةٍ.

L34476 And since the prescribed punishment for the female slave who commits qadhf—whether against a free man, a male slave, a female slave, or a free woman—is half that of the free woman, it is obligatory that the divorce for her be likewise half. Do we know of any argument for them besides this? Abu Muhammad said: The two narrations are invalid—because one of them is transmitted through Muẓāhir ibn Aslam, who is weak.

وَلَمَّا كَانَ حَدُّ الْأَمَةِ الْقَاذِفَةِ لِلْحُرِّ وَالْعَبْدِ، وَلِلْأَمَةِ وَالْحُرَّةِ: نِصْفَ حَدِّ الْحُرَّةِ وَجَبَ أَنْ يَكُونَ الطَّلَاقُ لَهَا كَذَلِكَ - مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا؟ قَالَ أَبُو مُحَمَّدٍ: الْأَثَرَانِ سَاقِطَانِ -: لِأَنَّ أَحَدَهُمَا - مِنْ طَرِيقِ مُظَاهِرِ بْنِ أَسْلَمَ، وَهُوَ ضَعِيفٌ.

L34477 In the second: ʿUmar ibn Shabīb al-Musliyy and ʿAṭiyyah, both of whom are weak.

وَفِي الثَّانِي - عُمَرُ بْنُ شَبِيبٍ الْمُسْلِيُّ، وَعَطِيَّةُ، وَهُمَا ضَعِيفَانِ.

L34478 Abu ’Asim (from whom he narrated) and Al-Bukhari openly declared [the narrator] weak.

ضَعَّفَ مُظَاهِرًا: أَبُو عَاصِمٍ الَّذِي رَوَى عَنْهُ، وَالْبُخَارِيُّ.

L34479 Atiyyah was deemed weak by: Sufyan al-Thawri and Ahmad ibn Hanbal.

وَضَعَّفَ عَطِيَّةَ: سُفْيَانُ الثَّوْرِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ.

L34480 Ibn Maʿīn and Al-Sājī declared the narrator ʿUmar ibn Shabīb weak—thus, reliance on him is dismissed.

وَضَعَّفَ عُمَرَ بْنَ شَبِيبٍ: ابْنُ مَعِينٍ، وَالسَّاجِيُّ - فَسَقَطَ التَّعَلُّقُ بِهِمَا.

L34481–34482 As for their analogy of divorce to false accusation of adultery, adultery, and the waiting period—why did they not analogize it to what all Muslims have unanimously agreed upon: that the waiting period for a slave woman is determined by the delivery of the child, just as it is for a free woman.

وَأَمَّا قِيَاسُهُمْ الطَّلَاقَ عَلَى الْقَذْفِ، وَالزِّنَا، وَالْعِدَّةِ، فَهَلَّا قَاسُوهُ عَلَى مَا اتَّفَقَ عَلَيْهِ جَمِيعُ أَهْلِ الْإِسْلَامِ مِنْ أَنَّ عِدَّةَ الْأَمَةِ بِوَضْعِ الْحَمْلِ كَعِدَّةِ الْحُرَّةِ.

L34483 That the prescribed punishment for the male slave and female slave in amputation for theft and highway robbery—are all these equal to those of free

مِنْ أَنَّ حَدَّ الْعَبْدِ وَالْأَمَةِ فِي الْقَطْعِ وَفِي السَّرِقَةِ وَفِي الْحِرَابَةِ - كُلُّ ذَلِكَ سَوَاءٌ كَالْحُرِّ وَالْحُرَّةِ؟ لَا سِيَّمَا وَالْحَنَفِيُّونَ يَقُولُونَ: إِنَّ أَجَلَ الْعَبْدِ الْعِنِّينِ مِنْ زَوْجِهِ الْأَمَةِ وَالْحُرَّةِ كَأَجَلِ الْحُرِّ، وَصِيَامَ الْعَبْدِ فِي الظِّهَارِ كَصِيَامِ الْحُرِّ، وَفِي كَفَّارَةِ الْيَمِينِ كَذَلِكَ - فَبَطَلَ هَذَا الْقَوْلُ.

men and women? Especially since the Ḥanafīs assert: The waiting period for the wife of the impotent male slave—whether she is a female slave or free—is equivalent to that of the free man, the slave's fasting in *ẓihār* equals the free man's fasting, and similarly in oath expiations—thus this assertion is invalid.

L34484 ثُمَّ نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الثَّانِيَةُ - فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ قَالَ: كَتَبَ إِلَيَّ عَبْدُ اللَّهِ بْنُ زِيَادِ بْنِ سَمْعَانَ أَنَّ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ الْأَنْصَارِيَّ أَخْبَرَهُ عَنْ نَافِعٍ عَنْ «أُمِّ سَلَمَةَ - أُمِّ الْمُؤْمِنِينَ - أَنَّ غُلَامًا لَهَا طَلَّقَ امْرَأَةً لَهُ حُرَّةً تَطْلِيقَتَيْنِ فَاسْتَفْتَتْ أُمَّ سَلَمَةَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: حَرُمَتْ عَلَيْكَ حَتَّى تَنْكِحَ زَوْجًا غَيْرَكَ» .

Then we examined what the second group cited as evidence and found the narration transmitted to us through the path of ʿAbd al-Razzāq—who informed us—from Ibn Jurayj, who said: ʿAbdullāh ibn Ziyād ibn Samʿān wrote to me that ʿAbdullāh ibn ʿAbd al-Raḥmān al-Anṣārī informed him from Nāfiʿ, from Umm Salamah—the Mother of the Believers—that her male slave pronounced two divorces to his free wife. Umm Salamah sought a verdict from the Prophet (peace and blessings be upon him), and he—peace and blessings be upon him—said: "She is forbidden to you until she marries a husband other than you."

L34485 وَقَالُوا: لَمَّا كَانَ حَدُّ الْعَبْدِ نِصْفَ حَدِّ الْحُرِّ وَجَبَ أَنْ يَكُونَ طَلَاقُهُ نِصْفَ طَلَاقِ الْحُرِّ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْقِيَاسُ - فَعَارَضَهُ قِيَاسُ الطَّائِفَةِ الْأُولَى، وَكُلُّ ذَلِكَ بَاطِلٌ وَدَعْوَى بِلَا حُجَّةٍ؟

They said: Since the prescribed punishment for a slave is half that of a free man, it necessarily follows that his divorce should be half that of a free man. Abu Muhammad said: As for analogy, it was opposed by the analogy of the first school. All of that is invalid and a claim without evidence.

L34486 وَيُقَالُ لَهُمْ: هَلَّا قِسْتُمْ طَلَاقَ الْعَبْدِ عَلَى مُسَاوَاتِهِ لِلْحُرِّ فِي حَدِّ السَّرِقَةِ وَالْحِرَابَةِ، وَعَلَى مَا أَبَاحَ لَهُ مَالِكٌ مِنْ زَوَاجِ أَرْبَعٍ كَالْحُرِّ، وَعَلَى مَا جَعَلَ الشَّافِعِيُّ أَجَلَهُ فِي الْإِيلَاءِ كَأَجَلِ الْحُرِّ، وَعَلَى صِيَامِهِ فِي الْكَفَّارَاتِ؟ لَا سِيَّمَا وَكُلُّهُمْ مُتَنَاقِضٌ إِذَا احْتَجُّوا - بِزَعْمِهِمْ - لِكَوْنِ طَلَاقِ الْعَبْدِ، أَوِ الْأَمَةِ نِصْفَ طَلَاقِ الْحُرِّ وَالْحُرَّةِ.

It is said to them: Why did you not equate the divorce of a slave to that of a free man in the prescribed punishment for theft and ḥirābah, to what Mālik permitted him regarding marrying four wives as a free man is permitted, to what al-Shāfiʿī established concerning his waiting period in ilā' being equal to that of a free man, and to his fasting in expiations? Especially since they all contradict themselves when they argue - as they claim - that the divorce of a male or female slave is half the divorce of a free man or free woman.

L34487 وَقَدْ أَبْطَلُوا فِي ذَلِكَ، لِأَنَّ طَلَاقَ الْعَبْدِ عِنْدَ إِحْدَى الطَّائِفَتَيْنِ: طَلْقَتَانِ، وَطَلَاقَ الْأَمَةِ عِنْدَ الطَّائِفَةِ الْأُخْرَى: ثَلَاثًا - طَلَاقُ الْحُرِّ وَالْحُرَّةِ.

They nullified that because, according to one of the two groups, a male slave's divorce entails two instances, while the other group holds that a female slave's divorce entails three instances—the divorce of a free man and a free woman.

L34488–34489 We have not found a punishment prescribed for a slave that is two-thirds of

the punishment for a free person. If they argue: “He is unable to perform one and a half divorce pronouncements?” We say: Then disregard what you are unable to perform and make it irrevocable with one divorce pronouncement.

L34490 As for the report—it is utterly corrupt, for Ibn Samʿān is noted for lying, and ʿAbd Allāh ibn ʿAbd al-Raḥmān is unknown—though this rejected report contradicts those two rejected reports. They are mutually conflicting and inherently false; it is impermissible to base any ruling on any of them.

L34491 By Allah, if any of these matters were valid, they would not have preceded us in it, nor to the assertion of it. However, proclaiming falsehood is not lawful, just as opposing the truth is not lawful - and success comes only from Allah, the Most High.

L34492 As for those overcome by slavery, we know of no decisive argument for them except that they combined the juristic analogies of the two factions.

L34493 It will be said to them: “What distinguishes you from those overcome by freedom? Is this anything but a mere claim like any other claim?” If they argue: “Ibn Abbas only ordered his slave to retract the divorce of his enslaved wife after divorcing her twice, because he held that a slave cannot divorce,” we respond: “May Allah protect Ibn Abbas from deception! Rather, Ata reported from him: ’A slave has no capacity for divorce,’ while Abu Ma’bad reported: ’His divorce is permissible.’ Both are trustworthy and reliable narrators. Since there is no definitive text distinguishing between a slave’s divorce and a free man’s divorce, nor between an enslaved woman’s divorce and a free woman’s divorce, it is impermissible to make exceptions to the Quranic ruling - that divorce only becomes irrevocable after three [pronouncements], whether for a free man or a slave, a free woman or an enslaved woman - based on mere claims without evidence. And in Allah the Exalted we seek support.”

L34494–34495 **Khulʿ is a matter: Khulʿ is when the woman dislikes her husband.**

وَمَا وَجَدْنَا حَدًّا يَكُونُ لِلْعَبْدِ ثُلُثَيْ حَدِّ الْحُرِّ؟ فَإِنْ قَالُوا: لَمْ يَقْدِرْ عَلَى طَلْقَةٍ وَنِصْفٍ؟ قُلْنَا: فَأَسْقِطُوا مَا عَجَزْتُمْ عَنْهُ وَحَرِّمُوهَا بِطَلْقَةٍ.

وَأَمَّا الْخَبَرُ - فَفِي غَايَةِ الْفَسَادِ، لِأَنَّ ابْنَ سَمْعَانَ مَذْكُورٌ بِالْكَذِبِ، وَعَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ مَجْهُولٌ - مَعَ أَنَّ هَذَا الْأَثَرَ السَّاقِطَ يُعَارِضُ ذَيْنِك الْأَثَرَيْنِ السَّاقِطَيْنِ، فَهِيَ مُتَدَافِعَةٌ مُتَكَاذِبَةٌ، لَا يَحِلُّ الْقَوْلُ بِشَيْءٍ مِنْهَا.

وَتَاللَّهِ لَوْ صَحَّ شَيْءٌ مِنْهَا لَمَا سَبَقُونَا إلَيْهِ، وَلَا إلَى الْقَوْلِ بِهِ، وَلَكِنَّ الْقَوْلَ بِالْبَاطِلِ لَا يَحِلُّ، كَمَا لَا تَحِلُّ مُخَالَفَةُ الْحَقِّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا مَنْ غَلَبَ عَلَيْهِ الرِّقُّ فَمَا نَعْلَمُ لَهُمْ حُجَّةً إلَّا أَنْ جَمَعُوا قِيَاسَ الطَّائِفَتَيْنِ.

فَيُقَالُ لَهُمْ: مَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ مَنْ غَلَبَ الْحُرِّيَّةُ، وَهَلْ هِيَ إلَّا دَعْوَى كَدَعْوَى؟ فَإِنْ قِيلَ: إنَّ ابْنَ عَبَّاسٍ إنَّمَا أَمَرَ غُلَامَهُ أَنْ يُرَاجِعَ زَوْجَتَهُ الْأَمَةَ بَعْدَ أَنْ طَلَّقَهَا طَلْقَتَيْنِ، لِأَنَّهُ لَا يَرَى طَلَاقَ الْعَبْدِ شَيْئًا؟ قُلْنَا: قَدْ أَعَاذَ اللَّهُ ابْنَ عَبَّاسٍ مِنْ التَّدْلِيسِ، بَلْ رَوَى عَنْهُ عَطَاءٌ: لَا طَلَاقَ لِلْعَبْدِ - وَقَدْ رَوَى عَنْهُ أَبُو مَعْبَدٍ: أَنَّ طَلَاقَهُ جَائِزٌ، وَكِلَاهُمَا ثِقَةٌ مَأْمُونٌ، فَإِذْ لَا نَصَّ فِي الْفَرْقِ بَيْنَ طَلَاقِ الْعَبْدِ، وَطَلَاقِ الْحُرِّ، وَلَا بَيْنَ طَلَاقِ الْأَمَةِ، وَطَلَاقِ الْحُرَّةِ: فَلَا يَحِلُّ تَخْصِيصُ الْقُرْآنِ فِي أَنَّ الطَّلَاقَ لَا يَحْرُمُ إلَّا بِثَلَاثٍ - فِي حُرٍّ أَوْ عَبْدٍ، أَوْ حُرَّةٍ أَوْ أَمَةٍ -: بِالدَّعْوَى بِلَا بُرْهَانٍ وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ.

[الْخُلْعُ] [مَسْأَلَةٌ الْخُلْعُ إذَا كَرِهَتْ الْمَرْأَةُ زَوْجَهَا]

- مَسْأَلَةٌ: الْخُلْعُ، وَهُوَ: الِافْتِدَاءُ إِذَا كَرِهَتْ الْمَرْأَةُ زَوْجَهَا، فَخَافَتْ أَنْ لَا تُوفِيَهُ حَقَّهُ، أَوْ خَافَتْ أَنْ يُبْغِضَهَا فَلَا يُوفِيهَا حَقَّهَا، فَلَهَا أَنْ تَفْتَدِيَ مِنْهُ وَيُطَلِّقَهَا، إنْ رَضِيَ هُوَ؟ وَإِلَّا لَمْ يُجْبَرْ هُوَ؟ وَلَا أُجْبِرَتْ هِيَ؟ إنَّمَا يَجُوزُ بِتَرَاضِيهِمَا.

L34496 Issue: Khul‘—which refers to redemption (iftidā’)—occurs when a woman dislikes her husband and fears she cannot fulfill his rights or that he may grow averse to her and neglect her rights. In such a case, she may redeem herself from him by offering compensation, and he divorces her if he consents. Otherwise, he is not compelled, nor is she compelled. It is only valid through their mutual consent.

وَلَا يَحِلُّ الِافْتِدَاءُ إلَّا بِأَحَدِ الْوَجْهَيْنِ الْمَذْكُورَيْنِ، أَوْ بِاجْتِمَاعِهِمَا، فَإِنْ وَقَعَ بِغَيْرِهِمَا فَهُوَ بَاطِلٌ، وَيَرُدُّ عَلَيْهَا مَا أَخَذَ مِنْهَا، وَهِيَ امْرَأَتُهُ كَمَا كَانَتْ، وَيَبْطُلُ طَلَاقُهُ وَيُمْنَعُ مِنْ ظُلْمِهَا فَقَطْ.

L34497 It is impermissible to seek release via khulʿ except through one of the two aforementioned conditions or their combination. If it is effected by any means other than these two, it is invalid. He must return the dowry he received from her, and she retains her status as his wife. The divorce is invalidated, and he is only barred from unjustly harming her.

وَلَهَا أَنْ تَفْتَدِيَ بِجَمِيعِ مَا تَمْلِكُ، وَهُوَ طَلَاقٌ رَجْعِيٌّ، إلَّا أَنْ يُطَلِّقَهَا ثَلَاثًا، أَوْ آخِرَ ثَلَاثٍ، أَوْ تَكُونَ غَيْرَ مَوْطُوءَةٍ.

L34498 She may ransom herself with all that she possesses, and it is a revocable divorce unless he pronounces three simultaneous divorces, issues the final divorce in a sequence, or she is unconsummated.

فَإِنْ رَاجَعَهَا فِي الْعِدَّةِ جَازَ ذَلِكَ أَحَبَّتْ أَمْ كَرِهَتْ - وَيَرُدُّ مَا أَخَذَ مِنْهَا إلَيْهَا.

L34499 If he takes her back during the ʿiddah, this is permissible whether she is willing or unwilling, and he must return what he took from her to her.

L34500 It is permissible to offer ransom through a limited service, but not with unknown wealth. Rather, it is permissible with wealth that is known, limited, visible, specified, or described.

وَيَجُوزُ الْفِدَاءُ بِخِدْمَةٍ مَحْدُودَةٍ، وَلَا يَجُوزُ بِمَالٍ مَجْهُولٍ، لَكِنْ بِمَعْرُوفٍ مَحْدُودٍ، مَرْئِيٍّ، مَعْلُومٍ، أَوْ مَوْصُوفٍ.

L34501–34502 "Abu Muḥammad said: 'People have differed regarding khul'? A group did not permit it, while those who permitted it differed? Another group stated: "It is not permissible except with the permission of the ruler."'"

قَالَ أَبُو مُحَمَّد: وَاخْتَلَفَ النَّاسُ فِي الْخُلْعِ؟ فَلَمْ تُجِزْهُ طَائِفَةٌ، وَاخْتَلَفَ الَّذِينَ أَجَازُوهُ؟ فَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ إِلَّا بِإِذْنِ السُّلْطَانِ.

L34503 One school said: It constitutes a divorce; another said it does not.

وَقَالَتْ طَائِفَةٌ: هُوَ طَلَاقٌ - وَقَالَتْ طَائِفَةٌ: لَيْسَ طَلَاقًا.

L34504 Then those who held that it was a divorce differed: one group said, "It is revocable, as we have stated?" and another group said, "It is irrevocable."

ثُمَّ اخْتَلَفَ الْقَائِلُونَ: إِنَّهُ طَلَاقٌ -: فَقَالَتْ طَائِفَةٌ: هُوَ رَجْعِيٌّ كَمَا قُلْنَا؟ وَقَالَتْ طَائِفَةٌ: هُوَ بَائِنٌ.

L34505 A group maintained: It is permissible only with the dower he has specified for her, not exceeding it.

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ إِلَّا بِمَا أَصْدَقَهَا، لَا بِأَكْثَرَ.

L34506 A group among them said: If he takes more, we would love that he give it as charity.

وَقَالَتْ طَائِفَةٌ مِنْهُمْ: فَإِنْ أَخَذَ أَكْثَرَ أَحْبَبْنَا لَهُ أَنْ يَتَصَدَّقَ بِهِ.

L34507 And a group said: It is permissible with all that you own.

وَقَالَتْ طَائِفَةٌ: يَجُوزُ بِكُلِّ مَا تَمْلِكُ.

L34508 A group of scholars holds that khul' is permissible only when there is fear of his ill-conduct (nushūz) or aversion, or if she cannot uphold the limits set by God, the Exalted, while living with him.

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ الْخُلْعُ إِلَّا مَعَ خَوْفِ نُشُوزِهِ وَإِعْرَاضِهِ، أَوْ أَنْ لَا تُقِيمَ مَعَهُ حُدُودَ اللَّهِ تَعَالَى.

L34509 A group held that khul' is not permissible unless he finds a man on her abdomen.

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ الْخُلْعُ إِلَّا بِأَنْ يَجِدَ عَلَى بَطْنِهَا رَجُلًا.

L34510 A group said: Khul' is not permissible unless she declares, "I will not fulfill any of your marital obligations, nor perform the ritual bath required after janabah (major impurity) caused by intercourse with you."

وَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ الْخُلْعُ إِلَّا بِأَنْ تَقُولَ: لَا أُطِيعُ لَك أَمْرًا، وَلَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ.

L34511 Scholars differed concerning the defective khul': A group maintained that it is to be carried out and finalized.

وَاخْتَلَفُوا فِي الْخُلْعِ الْفَاسِدِ -: فَقَالَتْ طَائِفَةٌ: يُنَفَّذُ وَيَتِمُّ.

L34512 A faction of scholars said: [The ruling] is rejected and annulled—

وَقَالَتْ طَائِفَةٌ: يُرَدُّ وَيُفْسَخُ -:

فَأَمَّا مَنْ قَالَ: لَا يَجُوزُ الْخُلْعُ - فَكَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا عُقْبَةُ بْنُ أَبِي الصَّهْبَاءِ قَالَ سَأَلْت بَكْرَ بْنَ عَبْدِ اللَّهِ الْمُزَنِيّ عَنْ الْخُلْعِ؟ قَالَ: لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْهَا؟ قُلْت: فَقَوْلُ اللَّهِ عَزَّ وَجَلَّ فِي كِتَابِهِ {فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] قَالَ: نُسِخَتْ هَذِهِ، وَذَكَرَ أَنَّ النَّاسِخَ لَهَا قَوْله تَعَالَى: {وَإِنْ أَرَدْتُمُ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلا تَأْخُذُوا مِنْهُ شَيْئًا أَتَأْخُذُونَهُ بُهْتَانًا وَإِثْمًا مُبِينًا} [النساء: ٢٠] {وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَى بَعْضُكُمْ إِلَى بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا} [النساء: ٢١]

L34513 As for those who say that khulʿ is not permissible—as narrated via Al-Ḥajjāj ibn Al-Minhāl—ʿUqbah ibn Abī Aṣ-Ṣahbāʾ reported: “I asked Bakr ibn ʿAbdillāh Al-Muzannī about khulʿ. He said: ‘It is not lawful for him to take anything from her.’ I said: ‘What about Allah’s statement in His Book: {There is no blame on them concerning what she gives up to redeem herself} [2:229]?’ He replied: ‘This verse has been abrogated.’ He then mentioned that its abrogator is His saying: {If you wish to replace one wife with another and you have given one of them a qinṭār, do not take anything back from it. Would you take it through slander and manifest sin?} [4:20] and {How could you take it when you have been intimate with each other, and they have taken from you a solemn covenant?} [4:21].”[1]

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ مَنْ ذَهَبَ إلَى هَذَا -: بِمَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إسْحَاقَ بْنِ السُّلَيْمِ نَا ابْنُ الْأَعْرَابِيِّ نا مُحَمَّدُ بْنُ إسْمَاعِيلَ الصَّائِغُ نا عَفَّانُ بْنُ مُسْلِمٍ نا حَمَّادٌ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي أَسْمَاءَ الرَّحَبِيِّ عَنْ ثَوْبَانَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا امْرَأَةٍ سَأَلَتْ زَوْجَهَا الطَّلَاقَ مِنْ غَيْرِ مَا بَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ» .

L34514–34516 Abū Muḥammad said: Those who held this opinion cited as evidence the narration transmitted to us by ʿAbdullāh ibn Rabīʿ from Muḥammad ibn Isḥāq ibn as-Sulaym from Ibn al-Aʿrābī from Muḥammad ibn Ismāʿīl aṣ-Ṣāʾigh from ʿAffān ibn Muslim from Ḥammād from Ayyūb as-Sikhtiyānī from Abū Qilābah from Abū Asmāʾ ar-Raḥabī from Thawbān, who said: The Messenger of Allah (peace and blessings be upon him) said: “Any woman who seeks divorce from her husband without a valid reason will be deprived of the fragrance of Paradise.”

وَبِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نَا إِسْحَاقُ بْنُ إبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - نا الْمَخْزُومِيُّ - هُوَ الْمُغِيرَةُ بْنُ سَلَمَةَ - نا وُهَيْبٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «الْمُنْتَزِعَاتُ وَالْمُخْتَلِعَاتُ هُنَّ الْمُنَافِقَاتُ» . قَالَ الْحَسَنُ: لَمْ أَسْمَعْهُ مِنْ أَبِي هُرَيْرَةَ.

L34517 And as reported to us through the chain of transmission: Ahmad ibn Shuʿayb → Isḥāq ibn Ibrāhīm (Ibn Rāhawayh) → Al-Makhzūmī (Al-Mughīrah ibn Salamah) → Wuhaib → Ayyūb al-Sakhtiyānī → al-Ḥasan al-Baṣrī → Abū Hurayrah → the Prophet (peace be upon him), who said: “Women who abandon marriage and women who initiate khulʿ are the female hypocrites.” Al-Ḥasan said: “I did not hear this from Abū Hurayrah.”

قَالَ أَبُو مُحَمَّدٍ: فَسَقَطَ بِقَوْلِ الْحَسَنِ أَنْ نَحْتَجَّ بِذَلِكَ الْخَبَرِ.

L34518 Abu Muhammad said: By Al-Hasan’s statement, the citation of that narration as evidence is thereby invalidated.

[1] **Qur’an references (L34513):** Qur’an 2:229 (Al-Baqarah); Qur’an 4:20 (An-Nisa); Qur’an 4:21 (An-Nisa).

L34519 As for the first narration, it contains no valid argument for prohibiting khul‘, as it merely conveys a warning to the woman who seeks divorce without a valid reason. Thus we maintain—there is no greater valid reason than fearing that the husband does not uphold Allah’s limits concerning the wife.

وَأَمَّا الْخَبَرُ الْأَوَّلُ - فَلَا حُجَّةَ فِيهِ فِي الْمَنْعِ مِنْ الْخُلْعِ، لِأَنَّهُ إنَّمَا فِيهِ الْوَعِيدُ عَلَى السَّائِلَةِ الطَّلَاقَ مِنْ غَيْرِ بَأْسٍ - وَهَكَذَا نَقُولُ وَلَيْسَ فِي الْبَأْسِ أَعْظَمُ مِنْ أَنْ يُخَافَ أَلَّا يُقِيمَ حُدُودَ اللَّهِ فِي الزَّوْجَةِ.

L34520 As for the two verses, they are not contradictory. Rather, the verse cited by Bakr establishes the prohibition of taking anything from her dowry as a clear sin and slanderous act—this is beyond doubt—and neither verse contains any prohibition against *khul‘* whatsoever.

وَأَمَّا الْآيَتَانِ فَلَيْسَتَا بِمُتَعَارِضَتَيْنِ، إنَّمَا فِي الَّتِي نَزَعَ بِهَا " بَكْرٌ " تَحْرِيمُ أَخْذِ شَيْءٍ مِنْ صَدَاقِهَا إثْمًا مُبِينًا وَبُهْتَانًا - وَهَذَا لَا شَكَّ فِيهِ - وَلَيْسَ فِيهِمَا نَهْيٌ عَنْ الْخُلْعِ أَصْلًا.

L34521 And He, the Exalted, said: “If they willingly relinquish a portion of it with contentment, then partake of it freely and wholesomely.” (An-Nisāʾ 4:4)[2]

وَقَالَ تَعَالَى: {فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا} [النساء: ٤]

L34522 And in the other verse: The ruling of khul‘ with her voluntary consent entails neither sin nor transgression. When such is the case, it is impermissible to claim it contains an abrogating verse or an abrogated verse except through a scriptural text. Rather, the obligation is to uphold both verses without abandoning one for the other - and we are capable of implementing both - by exempting one from the other.

وَفِي الْآيَةِ الْأُخْرَى: حُكْمُ الْخُلْعِ بِطِيبِ النَّفْسِ مِنْهَا فَلَيْسَ إثْمًا وَلَا عُدْوَانًا، وَمَا كَانَ هَكَذَا فَلَا يَحِلُّ أَنْ يُقَالَ: فِيهِ نَاسِخٌ أَوْ مَنْسُوخٌ إلَّا بِنَصٍّ، بَلْ الْفَرْضُ الْأَخْذُ بِكِلَا الْآيَتَيْنِ لَا تَرْكُ إحْدَاهُمَا لِلْأُخْرَى - وَنَحْنُ قَادِرُونَ عَلَى الْعَمَلِ بِهِمَا - بِأَنْ نَسْتَثْنِيَ إحْدَاهُمَا مِنْ الْأُخْرَى.

L34523 Abu Muhammad said: Allah, the Exalted and Majestic, declared: “If a woman fears ill-treatment or aversion from her husband, there is no sin upon them if they seek to reconcile between them with a settlement; and reconciliation is best.” [Surah An-Nisāʾ 4:128][3]

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَإِنِ امْرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُوزًا أَوْ إِعْرَاضًا فَلا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ} [النساء: ١٢٨]

L34524 And He, the Exalted, said: {If you fear that the two will not uphold the limits of Allah, then there is no blame on them concerning what she offers as ransom} [Al-Baqarah: 229]. These two verses are decisive over all matters pertaining to khul‘.[4]

وَقَالَ تَعَالَى: {فَإِنْ خِفْتُمْ أَلا يُقِيمَا حُدُودَ اللَّهِ فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] فَهَاتَانِ الْآيَتَانِ قَاضِيَتَانِ عَلَى كُلِّ مَا فِي الْخُلْعِ.

L34525–34526 As for the one who prevents *khul‘* without the Sultan’s permission, it has been narrated to us through the chain of Waki‘ from Yazīd ibn Ibrāhīm

وَأَمَّا مَنْ مَنَعَ مِنْهُ بِغَيْرِ إذْنِ السُّلْطَانِ - فَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ يَزِيدَ بْنِ إبْرَاهِيمَ التُّسْتَرِيِّ، وَرَبِيعٍ - هُوَ ابْنُ صُبَيْحٍ - كِلَاهُمَا عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: لَا يَكُونُ خُلْعٌ إلَّا عِنْدَ السُّلْطَانِ.

[2] **Qur’an references (L34521):** Qur’an 4:4 (An-Nisa).
[3] **Qur’an references (L34523):** Qur’an 4:128 (An-Nisa).
[4] **Qur’an references (L34524):** Qur’an 2:229 (Al-Baqarah).

al-Tustarī and Rabīʿ [Ibn Ṣubayḥ], both transmitting from al-Ḥasan al-Baṣrī, who said: “There is no *khulʿ* except with the Sultan.”

L34527 Via the narration of Al-Ḥajjāj ibn al-Minhāl: Ḥammād ibn Zayd narrated to us from Yaḥyā (who is Ibn ʿAtīq) that he heard Muḥammad ibn Sīrīn say: They [the scholars] used to say: *Khulʿ* is not valid except before the Sultan.

L34528 From the narration of Ḥammād ibn Salamah, from Ayyūb al-Sikhtiyānī, from Saʿīd ibn Jubayr, who said: Khulʿ cannot be valid unless he admonishes her. If she heeds, [well]; otherwise, he strikes her. If she does not heed, they refer the matter to the ruler. The ruler then appoints an arbitrator from her family and an arbitrator from his family. Each arbitrator conveys to the ruler what he hears from the spouse they represent. If the ruler deems separation appropriate, he separates them; if he deems reconciliation appropriate, he reconciles them.

L34529 Abu Muhammad said: And all of this is no proof for its validation.

L34530 He, the Exalted, said: *Say, “Bring forth your proof if you are truthful”* (al-Baqarah 2:111).[5]

L34531 As for those who said that *khulʿ* is not a divorce, they argued based on what Muḥammad ibn Saʿīd ibn Nabāt narrated to us, Ibn Mufarrij narrated to us, ʿAbdullāh ibn Jaʿfar ibn al-Ward narrated to us, Yaḥyā ibn Ayyūb ibn Bādī al-ʿAllāf narrated to us, Yaḥyā ibn Bukayr narrated to us, al-Layth ibn Saʿd narrated from Nāfiʿ, the freed slave of Ibn ʿUmar, that he heard Rubayyiʿ bint Muʿawwidh ibn ʿAfrāʾ informing ʿAbdullāh ibn ʿUmar: She sought *khulʿ* from her husband during the reign of ʿUthmān ibn ʿAffān. Her uncle came to ʿUthmān and said, “The daughter of Muʿawwidh sought *khulʿ* from her husband today. Should we proceed?” ʿUthmān replied, “We must indeed proceed. She has no right to inheritance from him, nor is any waiting period required of her, except that she may not be wed until she menstruates once—for fear that she might be pregnant.” So ʿAbdullāh ibn ʿUmar said, “‘Uthmān informed us and was the most knowledgeable among us.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا حَمَّادُ بْنُ زَيْدٍ نا يَحْيَى - هُوَ ابْنُ عَتِيقٍ - أَنَّهُ سَمِعَ مُحَمَّدَ بْنَ سِيرِينَ يَقُولُ: كَانُوا يَقُولُونَ: لَا يَجُوزُ الْخُلْعُ إِلَّا عِنْدَ السُّلْطَانِ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: لَا يَكُونُ الْخُلْعُ إِلَّا حَتَّى يَعِظَهَا، فَإِنْ اتَّعَظَتْ وَإِلَّا ضَرَبَهَا، فَإِنْ اتَّعَظَتْ وَإِلَّا ارْتَفَعَا إِلَى السُّلْطَانِ، فَيَبْعَثُ حَكَمًا مِنْ أَهْلِهَا وَحَكَمًا مِنْ أَهْلِهِ يَرْفَعُ كُلُّ وَاحِدٍ مِنْهُمَا إِلَى السُّلْطَانِ مَا يَسْمَعُ مِنْ صَاحِبِهِ، فَإِنْ رَأَى أَنْ يُفَرِّقَ فَرَّقَ، وَإِنْ رَأَى أَنْ يَجْمَعَ جَمَعَ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كُلُّهُ لَا حُجَّةَ عَلَى تَصْحِيحِهِ.

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

وَأَمَّا مَنْ قَالَ الْخُلْعُ لَيْسَ طَلَاقًا، فَاحْتَجَّ بِمَا - نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا ابْنُ مُفَرِّجٍ نا عَبْدُ اللَّهِ بْنُ جَعْفَرِ بْنِ الْوَرْدِ نا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِي الْعَلَّافُ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ أَنَّهُ سَمِعَ رُبَيِّعَ ابْنَةَ مُعَوِّذِ ابْنِ عَفْرَاءَ وَهِيَ تُخْبِرُ عَبْدَ اللَّهِ بْنَ عُمَرَ: أَنَّهَا اخْتَلَعَتْ مِنْ زَوْجِهَا عَلَى عَهْدِ عُثْمَانَ بْنِ عَفَّانَ، فَجَاءَ عَمُّهَا إِلَى عُثْمَانَ فَقَالَ: إِنَّ ابْنَةَ مُعَوِّذٍ اخْتَلَعَتْ مِنْ زَوْجِهَا الْيَوْمَ أَفَنَنْتَقِلُ؟ فَقَالَ عُثْمَانُ: لَنَنْتَقِلُ وَلَا مِيرَاثَ بَيْنَهُمَا لَهَا، وَلَا عِدَّةَ عَلَيْهَا، إِلَّا أَنَّهَا لَا تُنْكَحُ حَتَّى تَحِيضَ حَيْضَةً - خَشْيَةَ أَنْ يَكُونَ بِهَا حَمْلٌ؟ فَقَالَ عَبْدُ اللَّهِ بْنُ عُمَرَ: فَعُثْمَانُ أَخْبَرُنَا وَأَعْلَمُنَا.

[5] **Qur’an references (L34530):** Qur’an 2:111 (Al-Baqarah); Qur’an 27:64 (An-Naml).

فَهَذَا عُثْمَانُ، وَالرُّبَيِّعُ - وَلَهَا صُحْبَةٌ - وَعَمُّهَا - وَهُوَ مِنْ كِبَارِ الصَّحَابَةِ - وَابْنُ عُمَرَ، كُلُّهُمْ لَا يَرَى فِي الْفَسْخِ عِدَّةً.

L34532 Uthman; al-Rubayyiʿ—a Companion—; her uncle—who was among the senior Companions—; and Ibn ʿUmar—all of them do not consider a waiting period necessary in the case of annulment.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ حَنْبَلٍ نا يَحْيَى بْنُ سَعِيدٍ هُوَ الْقَطَّانُ عَنْ سُفْيَانَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: الْخُلْعُ: تَفْرِيقٌ، وَلَيْسَ بِطَلَاقٍ.

L34533–34534 From the chain of Aḥmad ibn Ḥanbal: He narrated to us from Yaḥyā ibn Saʿīd—he is al-Qaṭṭān—from Sufyān, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ibn ʿAbbās, who said: "Khulʿ: a separation, it is not a divorce."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ أَنَّهُ سَأَلَهُ إِبْرَاهِيمُ بْنُ سَعْدٍ عَنْ رَجُلٍ طَلَّقَ امْرَأَتَهُ تَطْلِيقَتَيْنِ، ثُمَّ اخْتَلَعَتْ مِنْهُ، أَيَنْكِحُهَا؟ قَالَ ابْنُ عَبَّاسٍ: نَعَمْ، ذَكَرَ اللَّهُ الطَّلَاقَ فِي أَوَّلِ الْآيَةِ وَفِي آخِرِهَا، وَالْخُلْعُ بَيْنَ ذَلِكَ.

L34535 And from the chain of ʿAbd al-Razzāq, from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from Ṭāwūs: Ibrāhīm ibn Saʿd asked him about a man who divorced his wife twice, then she sought khulʿ from him: "Can he remarry her?" Ṭāwūs said: "Ibn ʿAbbās said: Yes. Allāh mentioned divorce at the beginning of the verse and at its end, and khulʿ comes between them."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ طَاوُسٍ قَالَ: كَانَ أَبِي لَا يَرَى الْفِدَاءَ طَلَاقًا وَيُجِيزُهُ بَيْنَهُمَا - وَقَالَ ابْنُ جُرَيْجٍ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ يَقُولُ: مَا أَجَازَهُ الْمَرْءُ فَلَيْسَ بِطَلَاقٍ.

L34536 Through the narration of Abd al-Razzaq, from Ibn Jurayj, from Ibn Tawus, who said: "My father did not consider redemption as divorce, yet permitted it between the two spouses." Ibn Jurayj stated: "Amr ibn Dinar informed me that he heard Ikrimah, the freed servant of Ibn Abbas, declare: 'What a person permits is not considered divorce.'"

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: رَأَيْت أَبِي كَأَنَّهُ يَذْهَبُ إِلَى قَوْلِ ابْنِ عَبَّاسٍ: أَنَّ الْخُلْعَ لَيْسَ طَلَاقًا - وَهُوَ قَوْلُ إِسْحَاقَ بْنِ رَاهْوَيْهِ، وَأَبِي ثَوْرٍ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِ.

L34537 We have been narrated through the chain of ʿAbdullāh ibn Aḥmad ibn Ḥanbal, who said: "I observed my father as if he inclined toward the opinion of Ibn ʿAbbās—that khulʿ is not a divorce—and this is the position of Isḥāq ibn Rāhawayh, Abū Thawr, Abū Sulaymān, and his companions."

وَأَمَّا مَنْ قَالَ: إِنَّهَا تَطْلِيقَةٌ - فَكَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ جُمْهَانَ أَنَّ أُمَّ بَكْرَةَ الْأَسْلَمِيَّةَ كَانَتْ تَحْتَ عَبْدِ اللَّهِ بْنِ أُسَيْدَ فَاخْتَلَعَتْ مِنْهُ، فَنَدِمَا فَارْتَفَعَا إِلَى عُثْمَانَ بْنِ عَفَّانَ؟ فَأَجَازَ ذَلِكَ - وَقَالَ: هِيَ وَاحِدَةٌ إِلَّا أَنْ تَكُونَ سَمَّيْت شَيْئًا، فَهُوَ عَلَى مَا سَمَّيْت.

L34538 As for those who said it counts as one divorce, it is as narrated to us through the chain of Ḥammād ibn Salamah from Hishām ibn ʿUrwah from his father from Jumhān: Umm Bakrah al-Aslamiyyah was married to ʿAbdullāh ibn Usayd, and she sought a *khulʿ* from him. They both regretted it and brought the case to ʿUthmān ibn ʿAffān. He upheld it, stating: "This counts as one irrevocable divorce unless one has specified a stipulation, in which case it follows what was stipulated."

L34539 From the narration of Abū Bakr ibn Abī Shaybah, who reported from ʿAlī ibn Hāshim, from Ibn Abī Laylā, from Ṭalḥa ibn Muṣarrif, from Ibrāhīm

al-Nakhaʿī, from ʿAlqama, from Ibn Masʿūd, who said: A definitive divorce (ṭalāq bāʾin) only occurs in cases involving compensation [as in khulʿ] or an oath of abstinence (īlāʾ).

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ هَاشِمٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ قَالَ: لَا تَكُونُ طَلْقَةً بَائِنَةً إِلَّا فِي فِدْيَةٍ أَوْ إِيلَاءٍ.

L34540 We have narrated it through a chain that is not authentic from Ali ibn Abi Talib.

وَرُوِّينَاهُ مِنْ طَرِيقٍ لَا تَصِحُّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ.

L34541–34542 And with this say al-Hasan, Saʿid ibn al-Musayyib, ʿAtaʾ, Shurayh, ash-Shaʿbi, Qabisah ibn Dhuʾayb, Mujahid, Abu Salamah ibn ʿAbd al-Rahman, Ibrahim al-Nakhaʿi, al-Zuhri, Makhul, Ibn Abi Najih, Urwah ibn al-Zubayr, al-Awzaʿi, Sufyan al-Thawri, Abu Hanifah, Malik, and al-Shafiʿi.

وَبِهَذَا يَقُولُ الْحَسَنُ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَعَطَاءٌ، وَشُرَيْحٌ، وَالشَّعْبِيُّ، وَقَبِيصَةُ بْنُ ذُؤَيْبٍ، وَمُجَاهِدٌ، وَأَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ، وَإِبْرَاهِيمُ النَّخَعِيُّ، وَالزُّهْرِيُّ، وَمَكْحُولٌ، وَابْنُ أَبِي نَجِيحٍ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَالْأَوْزَاعِيُّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ.

L34543 Abu Muhammad said: As for the contention of those who cite Allah the Exalted's mention of divorce, thereafter *khulʿ*, thereafter divorce in the Quran—this is indeed its sequence in the text. However, the Quran neither explicitly negates nor affirms *khulʿ* as a divorce. Thus, it becomes imperative to revert to the exposition of Allah's Messenger—peace and blessings be upon him.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا احْتِجَاجُ مَنْ احْتَجَّ بِأَنَّ اللَّهَ تَعَالَى ذَكَرَ الطَّلَاقَ، ثُمَّ الْخُلْعَ، ثُمَّ الطَّلَاقَ؟ فَنَعَمْ، هُوَ فِي الْقُرْآنِ كَذَلِكَ، إِلَّا أَنَّهُ لَيْسَ فِي الْقُرْآنِ أَنَّهُ لَيْسَ طَلَاقًا، وَلَا أَنَّهُ طَلَاقٌ، فَوَجَبَ الرُّجُوعُ إِلَى بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L34544 We examined that matter and found what was narrated to us through Malik from Yahya ibn Saʿīd al-Anṣārī from ʿAmrah bint ʿAbd al-Raḥmān ibn Saʿd ibn Zurārah: that she informed him about Ḥabībah bint Sahl al-Anṣāriyyah, who mentioned that she sought *khulʿ* from her husband Thābit ibn Qays ibn al-Shammās, and that the Messenger of Allah—peace and blessings be upon him—said to Thābit, "Take from her." So he took from her, and she resided with her family.

فَنَظَرْنَا فِي ذَلِكَ - فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ بْنِ سَعْدِ بْنِ زُرَارَةَ: أَنَّهَا أَخْبَرَتْهُ عَنْ «حَبِيبَةَ بِنْتِ سَهْلٍ الْأَنْصَارِيَّةِ، فَذَكَرَتْ اخْتِلَاعَهَا مِنْ زَوْجِهَا ثَابِتِ بْنِ قَيْسِ بْنِ الشَّمَّاسِ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِثَابِتٍ: خُذْ مِنْهَا؟ فَأَخَذَ مِنْهَا، وَجَلَسَتْ فِي أَهْلِهَا» .

L34545 And through the chain of Ahmad ibn Shu'ayb: Muhammad ibn Yahya al-Marwazi narrated to us: Shadhan ibn Uthman, brother of Abdan, narrated to me: Ubai narrated to us: Ali ibn al-Mubarak narrated from Yahya ibn Abi Kathir: Muhammad ibn Abd al-Rahman informed me: "Rubayyi' bint Mu'awwidh ibn Afra informed him - she mentioned the khul' of Thabit ibn

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ نا مُحَمَّدُ بْنُ يَحْيَى الْمَرْوَزِيِّ حَدَّثَنِي شَاذَانُ بْنُ عُثْمَانَ أَخُو عَبْدَانَ نا أُبَيٌّ نا عَلِيُّ بْنُ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ: أَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ:

Qays' wife from him - and that her brother complained about him to the Messenger of Allah (peace and blessings be upon him). The Messenger of Allah (peace and blessings be upon him) sent for Thabit and said to him: 'Take what is hers [as compensation] and release her.' He replied: 'Yes.' Thereupon the Messenger of Allah (peace and blessings be upon him) commanded her to wait for one menstrual cycle and return to her family."

L34546 From the narration of Abd al-Razzaq, from Ma'mar, from Amr ibn Muslim, from Ikrimah, the freed slave of Ibn Abbas, who said: "The wife of Thabit ibn Qays sought khul' from her husband, so the Prophet—peace be upon him—established her waiting period as one menstrual cycle." They said: "Does this not clarify that khul' is not a divorce but rather a dissolution?" Abu Muhammad said: "As for the hadith of Abd al-Razzaq we previously mentioned, it is invalid because it is mursal—and it contains Amr ibn Muslim—and the narration itself holds no reliability."

L34547 As for the report of Ar-Rubayyiʿ and Habībah, even if no other besides them had come forth, they both would have constituted an irrefutable proof.

L34548–34550 It was narrated to us through the chain of al-Bukhārī: Azhar ibn Jamil reported to us, ʿAbd al-Wahhāb ibn ʿAbd al-Majīd al-Thaqafī reported to us, from Khālid—who is al-Khaddāʾ—from ʿIkrimah, from Ibn ʿAbbās, that the wife of Thābit ibn Qays came... The Prophet (peace be upon him), then she said: "O Messenger of Allah, concerning Thabit ibn Qays - I find no fault in his character or religion, but I detest disbelief in Islam." The Messenger of Allah (peace be upon him) said: "Will you return his garden to him?" She said: "Yes?" The Messenger of Allah (peace be upon him) said: "Accept the garden and divorce her with a single pronouncement." This report contains an addition beyond the two previously mentioned reports that must not be disregarded. Since this concerns divorce, Allah the Exalted and Majestic mentioned the waiting period for divorce - thus it is an addition to what is in Rubayyi's report. This addition must not be disregarded.[6]

«أَنَّ رُبَيِّعَ بِنْتَ مُعَوِّذِ ابْنِ عَفْرَاءَ أَخْبَرَتْهُ - فَذَكَرَتْ اخْتِلَاعَ امْرَأَةِ ثَابِتِ بْنِ قَيْسٍ مِنْهُ - وَأَنَّ أَخَاهُ شَكَاهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَرْسَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى ثَابِتٍ فَقَالَ لَهُ: خُذْ الَّذِي لَهَا وَخَلِّ سَبِيلَهَا؟ قَالَ: نَعَمْ، فَأَمَرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَتَرَبَّصَ حَيْضَةً وَاحِدَةً، وَتَلْحَقَ بِأَهْلِهَا» .

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَمْرِو بْنِ مُسْلِمٍ عَنْ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ قَالَ: «اخْتَلَعَتْ امْرَأَةُ ثَابِتِ بْنِ قَيْسٍ مِنْ زَوْجِهَا فَجَعَلَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِدَّتَهَا حَيْضَةً» ، قَالُوا: فَهَذَا يُبَيِّنُ أَنَّ الْخُلْعَ لَيْسَ طَلَاقًا، لَكِنَّهُ فَسْخٌ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا حَدِيثُ عَبْدِ الرَّزَّاقِ الَّذِي ذَكَرْنَا آنِفًا فَسَاقِطٌ، لِأَنَّهُ مُرْسَلٌ - وَفِيهِ عَمْرُو بْنُ مُسْلِمٍ - وَلَيْسَ بِشَيْءٍ.

وَأَمَّا خَبَرُ الرُّبَيِّعِ وَحَبِيبَةَ - فَلَوْ لَمْ يَأْتِ غَيْرُهُمَا لَكَانَا حُجَّةً قَاطِعَةً.

لَكِنْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَزْهَرُ بْنُ جَمِيلٍ نا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ نا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ «أَنَّ امْرَأَةَ ثَابِتِ بْنِ قَيْسٍ أَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ ثَابِتُ بْنُ قَيْسٍ مَا أَعْتِبُ عَلَيْهِ فِي خُلُقٍ وَلَا دِينٍ، وَلَكِنِّي أَكْرَهُ الْكُفْرَ فِي الْإِسْلَامِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَتَرُدِّينَ عَلَيْهِ حَدِيقَتَهُ؟ قَالَتْ: نَعَمْ؟ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اقْبَلْ الْحَدِيقَةَ وَطَلِّقْهَا تَطْلِيقَةً» فَكَانَ هَذَا الْخَبَرُ فِيهِ زِيَادَةٌ عَلَى الْخَبَرَيْنِ الْمَذْكُورَيْنِ لَا يَجُوزُ تَرْكُهَا، وَإِذْ هُوَ طَلَاقٌ ذَكَرَ اللَّهُ عَزَّ وَجَلَّ عِدَّةَ الطَّلَاقِ، فَهُوَ زَائِدٌ - عَلَى مَا فِي حَدِيثِ الرُّبَيِّعِ - وَالزِّيَادَةُ لَا يَجُوزُ تَرْكُهَا.

[6] **Hadith references (L34548):** Mishkat al-Masabih 3274.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L34551 And with Allah, the Exalted, lies all divine success.

قَالَ أَبُو مُحَمَّدٍ: إِلَّا أَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ - لَا يَجُوزُ لَهُمُ الِاحْتِجَاجُ بِهَذَا الْخَبَرِ عَلَى أُصُولِهِمُ الْفَاسِدَةِ، لِأَنَّ مِنْ قَوْلِهِمْ: إِذَا خَالَفَ الصَّاحِبُ مَا رُوِيَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَلَّ عَلَى نَسْخِهِ أَوْ ضَعْفِهِ، كَمَا فَعَلُوا فِي رِوَايَةِ عَائِشَةَ، وَابْنِ عَبَّاسٍ «مَنْ مَاتَ وَعَلَيْهِ صِيَامٌ صَامَ عَنْهُ وَلِيُّهُ» .

L34552 Abu Muhammad said: However, the Hanafis and Malikis cannot validly cite this report as evidence for their corrupt principles, because from their principles is: When a Companion contradicts what is narrated from the Prophet—peace and blessings of Allah be upon him—it indicates its abrogation or weakness, as they did regarding the narration of ʾĀʾisha and Ibn ʾAbbās: “Whoever dies while owing fasts, his guardian may fast on his behalf.”

وَهَذَا الْخَبَرُ لَمْ يَأْتِ إِلَّا مِنْ طَرِيقِ ابْنِ عَبَّاسٍ، وَالثَّابِتُ عَنْ ابْنِ عَبَّاسٍ مَا ذَكَرْنَا آنِفًا مِنْ أَنَّ الْخُلْعَ لَيْسَ طَلَاقًا.

L34553 This report has only been transmitted through the chain of Ibn Abbas, and what is established from Ibn Abbas is what we previously mentioned: that Khulʿ is not ṭalāq.

وَأَمَّا نَحْنُ فَلَا نَلْتَفِتُ إِلَى شَيْءٍ مِنْ هَذَا، إِنَّمَا هُوَ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قُلْنَا بِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L34554 As for us, we pay no heed to any of this. We affirm only what has been established from the Messenger of Allah (peace and blessings be upon him), and all praise is due to Allah, Lord of the worlds.

[مَسْأَلَةٌ هَلْ الْخُلْعُ طَلَاقٌ بَائِنٌ أَوْ رَجْعِيٌّ]

L34555 Question: Is khulʿ classified as an irrevocable divorce (ṭalāq bāʾin) or a revocable divorce (ṭalāq rajʿī)?

وَأَمَّا هَلْ الْخُلْعُ طَلَاقٌ بَائِنٌ أَوْ رَجْعِيٌّ؟ فَقَالَتْ طَائِفَةٌ: هِيَ طَلْقَةٌ بَائِنَةٌ كَمَا ذَكَرْنَا عَنْ ابْنِ مَسْعُودٍ آنِفًا.

L34556 As for whether khulʿ constitutes an irrevocable divorce or a revocable one, a group maintained that it is a single irrevocable divorce, as we mentioned earlier from Ibn Masʿūd.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: كَانَ عِمْرَانُ بْنُ الْحُصَيْنِ، وَابْنُ مَسْعُودٍ يَقُولَانِ فِي الَّتِي تَفْتَدِي مِنْ زَوْجِهَا بِمَالِهَا: يَقَعُ عَلَيْهَا الطَّلَاقُ مَا دَامَتْ فِي الْعِدَّةِ، وَخَالَفَ ذَلِكَ غَيْرُهُمَا.

L34557–34559 And we were narrated through the route of Wakīʿ from ʿAlī ibn al-Mubārak from Yaḥyā ibn Abī Kathīr, who said: “There was...” Imran ibn al-Husayn and Ibn Mas’ud ruled concerning a woman who redeems herself from her husband using her own wealth: the divorce takes effect on her as long as she remains in the waiting period. Others disagreed with them.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّهُ قَالَ فِيمَنْ طَلَّقَ بَعْدَ الْفِدَاءِ: لَا يُحْسَبُ شَيْئًا مِنْ أَجْلِ أَنَّهُ طَلَّقَ امْرَأَةً لَا يَمْلِكُ مِنْهَا شَيْئًا - اتَّفَقَ عَلَى ذَلِكَ:

L34560 As transmitted to us through the chain of Abd al-Razzaq from Ibn Jurayj from Ata, who said regarding one who pronounces divorce after the redemption (khulʿ): “It is not counted as anything, because he divorced a woman over whom he has no authority.” Ibn Abbas and Ibn al-Zubayr concurred on this concerning a man who effected a khulʿ with his wife then divorced her after

the khulʿ—it holds no legal weight. Both declared: "Did he divorce his wife? Rather, he divorced someone over whom he has no authority."

ابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ فِي رَجُلٍ اخْتَلَعَ مِنْ امْرَأَتِهِ ثُمَّ طَلَّقَهَا بَعْدَ الْخُلْعِ، فَإِنَّهُ لَا يُحْسَبُ شَيْئًا، قَالَا جَمِيعًا: أَطَلَّقَ امْرَأَتَهُ؟ إِنَّمَا طَلَّقَ مَنْ لَا يَمْلِكُ.

L34561 Ibn Jurayj said: Ibn Ṭāwus claimed from his father that he would say: If he divorces her after the compensation, it is permissible.

قَالَ ابْنُ جُرَيْجٍ: وَزَعَمَ ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَقُولُ: إِنْ طَلَّقَهَا بَعْدَ الْفِدَاءِ جَازَ.

L34562 Abu Hanifah said: It is a definitive divorce, and his divorce applies to her as long as she is in the ʿiddah.

وَقَالَ أَبُو حَنِيفَةَ: هُوَ طَلَاقٌ بَائِنٌ وَيَلْحَقُهَا طَلَاقُهُ مَا دَامَتْ فِي الْعِدَّةِ.

L34563 Mālik and al-Shāfiʿī said: It is a final divorce, and his divorce during the ʿiddah does not affect her.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: هُوَ طَلَاقٌ بَائِنٌ وَلَا يَلْحَقُهَا طَلَاقُهُ فِي الْعِدَّةِ.

L34564 As for those who say that khulʿ is a revocable divorce: as transmitted to us through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah from Saʿīd ibn al-Musayyab, who said regarding the woman who seeks khulʿ: "If he wishes to revoke the divorce during the waiting period, he must return to her what he received from her and have witnesses attest to his revocation of the divorce." Maʿmar said: "Al-Zuhrī used to say this." Qatādah said: "Al-Ḥasan would say: 'He may only reinstate the marriage through a new proposal?'" Abū Muḥammad said: "Allah the Exalted has clarified the ruling on divorce, stating: {And their husbands are most entitled to restore them during this [waiting period]} [2:228], and He said: {Either retain them honorably or release them honorably} [65:2]. It is impermissible to contravene this."[7]

وَأَمَّا مَنْ قَالَ: إِنَّ الْخُلْعَ طَلَاقٌ رَجْعِيٌّ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّهُ قَالَ فِي الْمُخْتَلِعَةِ: إِنْ شَاءَ أَنْ يُرَاجِعَهَا فَلْيَرْدُدْ عَلَيْهَا مَا أَخَذَ مِنْهَا فِي الْعِدَّةِ، وَلْيُشْهِدْ عَلَى رَجْعَتِهَا - قَالَ مَعْمَرٌ: وَكَانَ الزُّهْرِيُّ يَقُولُ ذَلِكَ - قَالَ قَتَادَةُ: وَكَانَ الْحَسَنُ يَقُولُ: لَا يُرَاجِعُهَا إِلَّا بِخِطْبَةٍ؟ قَالَ أَبُو مُحَمَّدٍ: قَدْ بَيَّنَ اللَّهُ تَعَالَى حُكْمَ الطَّلَاقِ، وَأَنَّ {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ} [البقرة: ٢٢٨] وَقَالَ {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] فَلَا يَجُوزُ خِلَافُ ذَلِكَ.

L34565–34567 And we have never found in the religion of Islam—from Allah the Exalted or His Messenger (peace be upon him)—a final divorce that does not... Revocable divorce applies here, except in cases of the threefold divorce—whether combined or separate—or [divorcing] the one he has not had intercourse with, with no further cases. As for other scenarios, they are opinions with no valid proof.

وَمَا وَجَدْنَا قَطُّ فِي دِينِ الْإِسْلَامِ عَنْ اللَّهِ تَعَالَى، وَلَا عَنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - طَلَاقًا بَائِنًا لَا رَجْعَةَ فِيهِ، إِلَّا الثَّلَاثُ مَجْمُوعَةً أَوْ مُفَرَّقَةً، أَوْ الَّتِي لَمْ يَطَأْهَا، وَلَا مَزِيدَ - وَأَمَّا عَدَا ذَلِكَ فَآرَاءٌ لَا حُجَّةَ فِيهَا.

L34568 As for returning what he took from her, he only took it so that she would not remain under his marital bond. If her objective is not achieved, her property—which she gave solely for that purpose—must be returned to her, unless he clarifies to her that it is a revocable divorce in which he retains

وَأَمَّا رَدُّهُ مَا أَخَذَ مِنْهَا فَإِنَّمَا أَخَذَهُ لِئَلَّا تَكُونَ فِي عِصْمَتِهِ، فَإِذَا لَمْ يَتِمَّ لَهَا مُرَادُهَا فَمَالُهَا - الَّذِي لَمْ تُعْطِهِ إِلَّا لِذَلِكَ - مَرْدُودٌ عَلَيْهَا، إِلَّا أَنْ يُبَيِّنَ عَلَيْهَا أَنَّهَا طَلْقَةٌ لَهُ الرَّجْعَةُ فِيهَا، فَتَرْضَى، فَلَا يَرُدُّ عَلَيْهَا شَيْئًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[7] **Qur'an references (L34564):** Qur'an 2:228 (Al-Baqarah); Qur'an 65:2 (At-Talaq).

the right of retraction and she consents, in which case he does not return anything to her. And success comes from Allah, the Exalted.

L34569 As for what is permissible regarding compensation: A group maintained that compensation is valid only with the amount of the dowry he gave her, not more. This is based on the narration through ʿAbd al-Razzāq from al-Muʿtamir ibn Sulaymān al-Taymī, from Layth ibn Abī Sulaym, from al-Ḥakam ibn ʿUtaybah, that ʿAlī ibn Abī Ṭālib said: "One may not take from her more than what he gave her as dowry."

وَأَمَّا مَا يَجُوزُ فِيهِ الْفِدَاءُ -: فَقَالَتْ طَائِفَةٌ: لَا يَجُوزُ الْفِدَاءُ إِلَّا بِمَا أَصْدَقَهَا لَا بِأَكْثَرَ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْمُعْتَمِرِ بْنِ سُلَيْمَانَ التَّيْمِيِّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا يَأْخُذُ مِنْهَا فَوْقَ مَا أَعْطَاهَا.

L34570 This is not authentically reported from ʿAlī, as its chain of transmission is disconnected, and in its chain is Layth.

وَهَذَا لَا يَصِحُّ عَنْ عَلِيٍّ، لِأَنَّهُ مُنْقَطِعٌ، وَفِيهِ لَيْثٌ.

L34571 And through the chain of ʿAbd al-Razzāq from Maʿmar and Ibn Jurayj, both said: Ibn Ṭāwūs narrated **to us** from his father that he used to say: It is not permissible for him to take from her more than what he gave her. Ibn Jurayj said: ʿAṭāʾ said to me: If he takes an increase **over** her dower, then the increase must be returned to her. Maʿmar narrated from al-Zuhrī: It is not permissible for him to take from his wife more than what he gave her.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ، قَالَا: نا ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَقُولُ: لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْهَا أَكْثَرَ مِمَّا أَعْطَاهَا، قَالَ ابْنُ جُرَيْجٍ: وَقَالَ لِي عَطَاءٌ: إِنْ أَخَذَ زِيَادَةً عَلَى صَدَاقِهَا، فَالزِّيَادَةُ مَرْدُودَةٌ إِلَيْهَا - وَقَالَ مَعْمَرٌ عَنْ الزُّهْرِيِّ: لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْ امْرَأَتِهِ أَكْثَرَ مِمَّا أَعْطَاهَا.

L34572 And through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: Abū Bakr—identified as al-Muqaddamī—narrated to us, from ʿUmar ibn Ayyūb, from Jaʿfar ibn Burqān, from Maymūn ibn Mihrān, who said: Whoever takes more from her [the wife/marriage] than he has given her has not released her with kindness.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي نا أَبُو بَكْرٍ - هُوَ الْمُقَدَّمِيُّ - نَا عُمَرُ بْنُ أَيُّوبَ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ مَيْمُونِ بْنِ مِهْرَانَ قَالَ: مَنْ أَخَذَ مِنْهَا أَكْثَرَ مِمَّا أَعْطَاهَا فَلَمْ يُسَرِّحْ بِإِحْسَانٍ.

L34573 Al-Awzāʿī said, "The judges did not permit reclaiming anything from her except what had been provided to her."

وَقَالَ الْأَوْزَاعِيُّ كَانَتْ الْقُضَاةُ لَا تُجِيزُ أَنْ يَأْخُذَ مِنْهَا إِلَّا مَا سَاقَ إِلَيْهَا.

L34574 A group of scholars said: This is disliked (makruh)—as was narrated to us via the chain of Wakīʿ, from Abū Ḥanīfah, from ʿAmmār ibn ʿImrān al-Hamdānī, from his father [ʿImrān]—that ʿAlī ibn Abī Ṭālib disliked taking from her [e.g., a wife] more than he gave her.

وَقَالَتْ طَائِفَةٌ: بِكَرَاهَةِ ذَلِكَ - كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي حَنِيفَةَ عَنْ عَمَّارِ بْنِ عِمْرَانَ الْهَمْدَانِيِّ عَنْ أَبِيهِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَرِهَ أَنْ يَأْخُذَ مِنْهَا أَكْثَرَ مِمَّا أَعْطَاهَا.

L34575 And through the chain of Wakiʿ from Shuʿbah, from al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān, that they both disapproved of a man taking

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُمَا كَرِهَا أَنْ يَأْخُذَ مِنْ فِدَاءِ امْرَأَتِهِ مِنْهَا أَكْثَرَ مِمَّا سَاقَ إِلَيْهَا.

from his wife as ransom an amount exceeding the dower he had conveyed to her.

L34576 And through the chain of Wakiʿ from Sufyān from Abī Ḥuṣayn from ʿĀmir al-Shaʿbī that he disliked taking from the woman who sought khulʿ more than he had given her.

L34577–34578 A school of thought maintained: It is reprehensible for him to take all that he had given her.

L34579 As narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar, from ʿAbd al-Karīm al-Jazarī, from Saʿīd ibn al-Musayyab, who said: "I disapprove of him reclaiming all he gave her unless he leaves her what suffices her."

L34580 A group said: He takes from her either all that she has with her or anything less than that, provided they mutually consent to it.

L34581 As we have been narrated through the chain of Hammad ibn Salamah, from Ayyub al-Sikhtiyani, from Kathir ibn Abi Kathir, the freed slave of Abd al-Rahman ibn Samurah, that a woman was disobedient toward her husband, so he brought her case to Umar ibn al-Khattab. He mentioned the account, stating that Umar said to her husband: "Divorce her, even if it means her earring."

L34582 Through the chain of Abd al-Razzaq from Ma'mar from Abdullah ibn Muhammad ibn Aqil ibn Abi Talib, that al-Rubayyi' bint Mu'awwidh ibn Afra' narrated to him that she initiated a khul' from her husband by relinquishing everything she owned. He disputed her over this matter before Uthman ibn Affan, who approved it and commanded him to take the braids of her head and the rest of her hair.

L34583 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Mūsā ibn ʿUqbah from Nāfiʿ: A freedwoman of Ibn ʿUmar's wife came to him after initiating khulʿ, relinquishing every possession she owned—even down to her face-covering with eye openings. This ruling is authentically reported from ʿIkrimah, Ibrāhīm, and Mujāhid.

L34584 And this is the opinion of Mālik, al-Shāfiʿī, Abū Sulaymān, and their com-

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ عَنْ أَبِي حُصَيْنٍ عَنْ عَامِرٍ الشَّعْبِيِّ أَنَّهُ كَرِهَ أَنْ يَأْخُذَ مِنْ الْمُخْتَلِعَةِ أَكْثَرَ مِمَّا أَعْطَاهَا.

وَقَالَتْ طَائِفَةٌ: يُكْرَهُ أَنْ يَأْخُذَ مِنْهَا كُلَّ مَا أَعْطَاهَا.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ الْكَرِيمِ الْجَزَرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: لَا أُحِبُّ أَنْ يَأْخُذَ مِنْهَا كُلَّ مَا أَعْطَاهَا حَتَّى يَدَعَ لَهَا مَا يُغْنِيهَا.

وَقَالَتْ طَائِفَةٌ: يَأْخُذُ مِنْهَا كُلَّ مَا مَعَهَا فَمَا دُونَ ذَلِكَ إذَا تَرَاضَيَا بِهِ.

كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا أَيُّوبُ السِّخْتِيَانِيُّ عَنْ كَثِيرِ بْنِ أَبِي كَثِيرٍ مَوْلَى عَبْدِ الرَّحْمَنِ بْنِ سَمُرَةَ أَنَّ امْرَأَةً نَشَزَتْ عَلَى زَوْجِهَا فَرَفَعَهَا إلَى عُمَرَ بْنِ الْخَطَّابِ، فَذَكَرَ الْقِصَّةَ، وَأَنَّ عُمَرَ قَالَ لِزَوْجِهَا: اخْلَعْهَا وَلَوْ مِنْ قُرْطِهَا.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلِ بْنِ أَبِي طَالِبٍ أَنَّ الرُّبَيِّعَ بِنْتَ مُعَوِّذِ ابْنِ عَفْرَاءَ حَدَّثَتْهُ أَنَّهَا اخْتَلَعَتْ مِنْ زَوْجِهَا بِكُلِّ شَيْءٍ تَمْلِكُهُ فَخَاصَمَهُ فِي ذَلِكَ إلَى عُثْمَانَ بْنِ عَفَّانَ فَأَجَازَهُ، وَأَمَرَهُ أَنْ يَأْخُذَ عِقَاصَ رَأْسِهَا فَمَا دُونَهُ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ جَاءَتْهُ مَوْلَاةٌ لِامْرَأَتِهِ اخْتَلَعَتْ مِنْ كُلِّ شَيْءٍ لَهَا وَكُلِّ ثَوْبٍ لَهَا حَتَّى مِنْ نُقْبَتِهَا - وَصَحَّ عَنْ عِكْرِمَةَ، وَإِبْرَاهِيمَ، وَمُجَاهِدٍ.

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

panions.

L34585 Abu Hanifah said: He should not take from her more than he gave her. If he does so, he should give the excess as voluntary charity.

L34586 Abū Muḥammad said: The first group cited as evidence what we have narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAṭāʾ said to me: "A woman came to the Messenger of Allāh (peace and blessings be upon him) and said: 'O Messenger of Allāh, I detest my husband and desire to separate from him.' He said: 'Would you return to him the garden he gave you as a dowry?' She replied: 'Yes—and [should I give] more from my wealth?' The Messenger of Allāh (ﷺ) said: 'As for giving more from your wealth, no—only the garden [is required].' She said: 'Yes.' Thereupon he (upon him be peace and blessings) ruled in favor of the wife regarding the husband's obligation to accept this."

L34587 It was also narrated from Ibn Jurayj, from Abi al-Zubayr.

L34588 Abu Muhammad said: This is a *mursal* narration, and it was indeed incumbent upon the Malikis—who assert that the *mursal* is equivalent to the *musnad*—to adhere to it. And there is no proof with us in a *mursal* narration. Thus, the mentioned opinion is dismissed.

L34589–34591 Then we considered the second opinion and found: what was reported to us by Muḥammad ibn Saʿīd ibn Nabāt, reporting to us. Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Baṣīr narrated from Qāsim ibn Aṣbagh, who narrated from Muḥammad ibn ʿAbd al-Salām al-Khushanī, who narrated from Muḥammad ibn al-Muthannā, who narrated from Muʾammal ibn Ismāʿīl, from Ibn Jurayj, from ʿAṭāʾ: "The Prophet—peace be upon him—disapproved of the husband taking in the case of *khulʿ* more than the dowry he had given her." This is a *mursal* narration, thus it cannot be used as evidence.

L34592 We did not find any foundational basis supporting the statement of Ibn al-Musayyib.

L34593 As for Abu Hanifah's position, it is utterly invalid, for his taking of the excess beyond what he gave her as her dowry must necessarily be either impermis-

وَقَالَ أَبُو حَنِيفَةَ: لَا يَأْخُذُ مِنْهَا أَكْثَرَ مِمَّا أَعْطَاهَا، فَإِنْ فَعَلَ فَلْيَتَصَدَّقْ الزِّيَادَةَ.

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّتْ الطَّائِفَةُ الْأُولَى -: بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَطَاءٌ: «أَتَتْ امْرَأَةٌ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: يَا رَسُولَ اللَّهِ إنِّي أُبْغِضُ زَوْجِي وَأُحِبُّ فِرَاقَهُ؟ قَالَ: فَتَرُدِّينَ إلَيْهِ حَدِيقَتَهُ الَّتِي أَصْدَقَكِ؟ قَالَتْ: نَعَمْ، وَزِيَادَةً مِنْ مَالِي؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَمَّا زِيَادَةٌ مِنْ مَالِكِ فَلَا، وَلَكِنْ الْحَدِيقَةَ، قَالَتْ: نَعَمْ فَقَضَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِذَلِكَ عَلَى الزَّوْجِ» .

وَرُوِيَ أَيْضًا عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي الزُّبَيْرِ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا مُرْسَلٌ، وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْقَائِلِينَ بِأَنَّ الْمُرْسَلَ كَالْمُسْنَدِ أَنْ يَقُولُوا بِهِ، وَلَا حُجَّةَ عِنْدَنَا فِي مُرْسَلٍ - فَسَقَطَ الْقَوْلُ الْمَذْكُورُ.

ثُمَّ نَظَرْنَا فِي الْقَوْلِ الثَّانِي - فَوَجَدْنَا: مَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُؤَمَّلُ بْنُ إسْمَاعِيلَ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَكْرَهُ أَنْ يَأْخُذَ فِي الْخُلْعِ أَكْثَرَ مِمَّا أَعْطَاهَا» وَهَذَا مُرْسَلٌ، فَسَقَطَ الِاحْتِجَاجُ بِهِ.

وَلَمْ نَجِدْ لِقَوْلِ ابْنِ الْمُسَيِّبِ مُتَعَلَّقًا أَصْلًا.

sible or permissible. If it is impermissible, its restitution to her becomes obligatory as 'Ata stated. If it is permissible, why would they command him to donate the excess as charity rather than any other portion of his wealth? - this constitutes manifest error.

وَأَمَّا قَوْلُ أَبِي حَنِيفَةَ فَفِي غَايَةِ الْفَسَادِ، لِأَنَّهُ لَا يَخْلُو أَخْذُهُ الزِّيَادَةَ عَلَى مَا أَعْطَاهَا فِي صَدَاقِهَا مِنْ أَنْ يَكُونَ حَرَامًا أَوْ مُبَاحًا فَإِنْ كَانَ حَرَامًا فَوَاجِبٌ رَدُّهُ إِلَيْهَا كَمَا قَالَ عَطَاءٌ، وَإِنْ كَانَ مُبَاحًا فَلِمَ أَمَرُوهُ بِالصَّدَقَةِ بِالزِّيَادَةِ دُونَ سَائِرِ مَالِهِ - وَهَذَا ظَاهِرُ الْخَطَأِ.

L34594 It is astonishing that they reject the established statements of Allah's Messenger—peace and blessings be upon him—claiming they are additions to the Quran, such as wiping over the turban, inhaling water into the nostrils, and other similar acts, yet they adopt weak and contradictory statements that conflict with the Quran—having no basis except Abu Hanifah's opinion alone. Therefore, it is obligatory to adhere to the generality of Allah's statement: {There is no blame upon them regarding what she offers as compensation for her release} [Al-Baqarah 2:229].[8]

وَالْعَجَبُ أَنَّهُمْ يَرُدُّونَ كَلَامَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثَّابِتَ بِدَعْوَاهُمْ أَنَّهُ زَائِدٌ عَلَى مَا فِي الْقُرْآنِ، كَالْمَسْحِ عَلَى الْعِمَامَةِ، وَالِاسْتِنْشَاقِ وَغَيْرِ ذَلِكَ، ثُمَّ يَأْخُذُونَ بِكَلَامٍ سَاقِطٍ مُتَنَاقِضٍ، مُخَالِفٍ لِمَا فِي الْقُرْآنِ، لَيْسَ مَعَهُمْ فِيهِ إِلَّا رَأْيُ أَبِي حَنِيفَةَ فَقَطْ - فَوَجَبَ الْأَخْذُ بِعُمُومِ قَوْلِهِ تَعَالَى: {فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩].

L34595 It is astonishing how some of them obscure the truth by citing the Almighty's words: *"If you have given one of them a quintal, then do not take anything from it"* [An-Nisā: 20], and the Almighty's words: *"It is not lawful for you to take back anything from what you have given them unless both fear they will fail to uphold the bounds set by Allah"* [Al-Baqarah: 229].[9]

وَمِنَ الْعَجَبِ تَمْوِيهُ بَعْضِهِمْ بِقَوْلِهِ تَعَالَى: {وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلا تَأْخُذُوا مِنْهُ شَيْئًا} [النساء: ٢٠] وقَوْله تَعَالَى: {وَلا يَحِلُّ لَكُمْ أَنْ تَأْخُذُوا مِمَّا آتَيْتُمُوهُنَّ شَيْئًا إِلا أَنْ يَخَافَا أَلا يُقِيمَا حُدُودَ اللَّهِ} [البقرة: ٢٢٩]

L34596 Abu Muhammad said: Indeed, it is not permissible for him to take anything from what he has given her unless she willingly consents to it. Then another ruling: "But if you fear the two will not uphold Allah's boundaries, there is no blame upon them regarding what she offers for her release" (Quran 2:229). This is a generality that cannot be particularized through false allegations.[10]

قَالَ أَبُو مُحَمَّد: نَعَمْ، لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِمَّا آتَاهَا شَيْئًا، إِلَّا أَنْ تَطِيبَ نَفْسُهَا بِهِ - ثُمَّ حُكْمٌ آخَرُ {فَإِنْ خِفْتُمْ أَلا يُقِيمَا حُدُودَ اللَّهِ فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] عُمُومٌ لَا يَحِلُّ تَخْصِيصُهُ بِالدَّعَاوَى الْكَاذِبَةِ.

L34597 Some of them said: "If one takes more than he gave her, has he not failed to divorce her properly?" We replied: There is no distinction between taking all he gave her, part of what he gave her, or more than he gave her without right. At that point, he is not divorcing her properly. However, in cases where God

وَقَالَ بَعْضُهُمْ: مَنْ أَخَذَ أَكْثَرَ مِمَّا أَعْطَى فَلَمْ يُسَرِّحْ بِإِحْسَانٍ؟ فَقُلْنَا: لَا فَرْقَ بَيْنَ أَخْذِهِ كُلَّ مَا أَعْطَاهَا أَوْ بَعْضَ مَا أَعْطَاهَا أَوْ أَكْثَرَ مِمَّا أَعْطَاهَا بِغَيْرِ حَقٍّ فَحِينَئِذٍ يَكُونُ غَيْرَ مُسَرِّحٍ بِإِحْسَانٍ أَنْ يَأْخُذَ كُلَّ ذَلِكَ حَيْثُ أَبَاحَ اللَّهُ تَعَالَى لَهُ أَخْذَهُ، فَهُوَ مُسَرِّحٌ بِإِحْسَانٍ، وَلَوْ أَبَاحَ اللَّهُ لَهُ قَتْلَهَا لَكَانَ مُحْسِنًا فِي ذَلِكَ.

[8] **Qur'an references (L34594):** Qur'an 2:229 (Al-Baqarah).
[9] **Qur'an references (L34595):** Qur'an 4:20 (An-Nisa); Qur'an 2:229 (Al-Baqarah).
[10] **Qur'an references (L34596):** Qur'an 2:229 (Al-Baqarah).

Almighty has permitted him to take it, he is divorcing her properly. Had God permitted him to kill her, he would be virtuous in doing so.

L34598 If it is said: "You [jurists] prohibit anyone from donating all their wealth or what leaves them without financial independence afterwards, and you explicitly forbid a man from donating his entire wealth—yet you permit her to give away all her wealth?"

L34599–34600 We said: We only follow in that the command of Allah the Exalted. Then came the prohibition regarding charity except what preserves sufficiency, and that he should not give her his lower garment as charity since he lacks sufficiency without it. The text states: *"Then there is no sin upon them concerning what she redeems herself with"* (Quran 2:229). Thus we adhered to all that and did not oppose the commands of Allah the Exalted and the commands of His Messenger (peace and blessings of Allah be upon him) through personal opinion. With Allah the Exalted lies all success.[11]

L34601 As for the situation permitting ransom: It has been narrated to us through the chain of Abd al-Razzaq from Ma'mar via Ayyub al-Sakhtiyānī, who said: Abu Qilabah held the view that when a woman commits fornication and her husband becomes aware of it, he must beat her until she offers a ransom.

L34602 Abu Muhammad said: This is meaningless, for if he witnesses that while she is a woman in a state of legal marital protection, it becomes permissible for him to kill her.

L34603 And from the chain of Ismāʿīl ibn Isḥāq: from Musaddad, from al-Muʿtamir ibn Sulaymān al-Taymī - I heard my father say: "Abū Qilābah and Muḥammad ibn Sīrīn used to say: Khulʿ is not permissible until he finds a man on her belly. Allāh the Exalted said: {Unless they commit a clear immorality} [an-Nisāʾ: 19]."[12]

L34604 Abu Muhammad said: This applies to remaining in homes during the ʿiddah, not to khulʿ.

فَإِنْ قِيلَ: أَنْتُمْ تَمْنَعُونَ مِنْ أَنْ يَتَصَدَّقَ بِجَمِيعِ مَالِهِ أَوْ بِمَا لَا يَبْقَى لِنَفْسِهِ غِنًى بَعْدَهُ، وَمِنْ أَنْ يَصَّدَّقَ الرَّجُلُ بِمَالِهِ كُلِّهِ، وَتُبِيحُونَ لَهَا أَنْ تُعْطِيَ مَالَهَا كُلَّهُ؟

قُلْنَا: إِنَّمَا نَتَّبِعُ فِي ذَلِكَ أَمْرَ اللَّهِ تَعَالَى فَجَاءَ النَّهْيُ عَنْ الصَّدَقَةِ إِلَّا بِمَا أَبْقَى غِنًى، وَبِأَنْ لَا يُصْدِقَهَا إزَارَهُ إذْ لَا غِنًى بِهِ عَنْهُ، وَجَاءَ النَّصُّ بِأَنْ {فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] فَوَقَفْنَا عِنْدَ كُلِّ ذَلِكَ وَلَمْ نَعْتَرِضْ عَلَى أَوَامِرِ اللَّهِ تَعَالَى وَأَوَامِرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالرَّأْيِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا الْحَالُ الَّتِي يَجُوزُ فِيهَا الْفِدَاءُ - فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: كَانَ أَبُو قِلَابَةَ يَرَى أَنَّ الْمَرْأَةَ إذَا فَجَرَتْ فَاطَّلَعَ زَوْجُهَا عَلَى ذَلِكَ فَلْيَضْرِبْهَا حَتَّى تَفْتَدِيَ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا مَعْنَى لَهُ إذَا رَأَى ذَلِكَ وَهِيَ مُحْصَنَةٌ حَلَّ لَهُ قَتْلُهَا.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ نا مُسَدَّدٌ نا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ سَمِعْت أَبِي يَقُولُ: إنَّ أَبَا قِلَابَةَ، وَمُحَمَّدَ بْنَ سِيرِينَ كَانَا يَقُولَانِ: لَا يَحِلُّ الْخُلْعُ حَتَّى يَجِدَ عَلَى بَطْنِهَا رَجُلًا قَالَ اللَّهُ تَعَالَى: {إلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ} [النساء: ١٩] .

قَالَ أَبُو مُحَمَّدٍ: هَذَا فِي الْإِخْرَاجِ مِنْ الْبُيُوتِ مِنْ الْعِدَّةِ، لَا فِي الْخُلْعِ.

[11] **Qur'an references (L34600):** Qur'an 2:229 (Al-Baqarah).
[12] **Qur'an references (L34603):** Qur'an 4:19 (An-Nisa); Qur'an 65:1 (At-Talaq).

L34605 Through the chain of Ḥammād ibn Salamah, Ḥumayd narrated that Bakr ibn ʿAbdillāh al-Muzanī asked al-Ḥasan about a man who sees another man kissing his wife. He said: He has the right to divorce her via khulʿ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ نا حُمَيْدٌ أَنَّ بَكْرَ بْنَ عَبْدِ اللَّهِ الْمُزَنِيَّ سَأَلَ الْحَسَنَ عَمَّنْ رَأَى امْرَأَتَهُ يُقَبِّلُهَا رَجُلٌ غَيْرُهُ؟ قَالَ: قَدْ حَلَّ أَنْ يَخْلَعَهَا.

L34606 It has been reported to us from Ali—though it is not authentic—that khulʿ becomes valid for a man if she says: "By Allah, I will not fulfill any oath for your sake, nor obey any command of yours, nor perform ghusl from a state of major ritual impurity for your sake, nor honor any person for your sake." In the chain is Isra'il—who is weak—via Jabir—who is a fabricator.

رُوِّينَا عَنْ عَلِيٍّ - وَلَا يَصِحُّ - يَطِيبُ الْخُلْعُ لِلرَّجُلِ إذَا قَالَتْ: وَاَللَّهِ لَا أَبَرُّ لَك قَسَمًا، وَلَا أُطِيعُ لَك أَمْرًا، وَلَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ، وَلَا أُكْرِمُ لَك نَفْسًا - فِيهَا إسْرَائِيلُ - وَهُوَ ضَعِيفٌ - عَنْ جَابِرٍ - وَهُوَ كَذَّابٌ.

L34607 From him [the Prophet] also, via a chain including Ibrāhīm ibn Abī Yaḥyā: It is permissible for a woman to obtain khulʿ in three instances - if she violates your marital rights, if you summon her to reconcile with you and she refuses, or if she leaves without your permission.

وَعَنْهُ أَيْضًا - مِنْ طَرِيقٍ فِيهَا إبْرَاهِيمُ بْنُ أَبِي يَحْيَى: يَحِلُّ خُلْعُ الْمَرْأَةِ ثَلَاثًا إذَا أَفْسَدَتْ عَلَيْك ذَاتَ يَدِك، أَوْ دَعَوْتهَا لِتَسْكُنَ إلَيْهَا فَأَبَتْ، أَوْ خَرَجَتْ بِغَيْرِ إذْنِك.

L34608 And from the chain of Ḥammād ibn Salama, Marwān al-Aṣfar narrated to me from Ḥumayd ibn ʿAbd al-Raḥmān al-Himyārī, who said: "The khulʿ is not valid until the woman states: By Allah, I will not obey you in any command, nor perform for you the ritual bath required from a state of major impurity."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنِي مَرْوَانُ الْأَصْفَرُ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ الْحِمْيَرِيِّ قَالَ: لَا يَصِحُّ الْخُلْعُ حَتَّى تَقُولَ الْمَرْأَةُ: وَاَللَّهِ لَا أُطِيعُ لَك أَمْرًا، وَلَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ.

L34609–34611 And through the chain of Hammad ibn Salamah: from Qays, who narrated from 'Ata'; and from Mujahid. One of the two [narrators, 'Ata' or Mujahid] said: It is not authentic. Khulʿ is valid until she does not perform the ritual bath for him due to janabah, does not obey his commands, and does not honor his oaths. The other scholar said: If she were to do this, she would have apostatized. Rather, it is until she says: "I will not honor your oaths, perform the ritual bath for you due to janabah, or obey your commands."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَيْسٍ عَنْ عَطَاءٍ، وَمُجَاهِدٍ، قَالَ أَحَدُهُمَا: لَا يَصِحُّ الْخُلْعُ حَتَّى لَا تَغْتَسِلَ لَهُ مِنْ جَنَابَةٍ، وَلَا تُطِيعُ لَهُ أَمْرًا، وَلَا تَبَرُّ لَهُ قَسَمًا، وَقَالَ الْآخَرُ: لَوْ فَعَلَتْ هَذَا كَفَرَتْ، وَلَكِنْ حَتَّى تَقُولَ: لَا أَبَرُّ لَك قَسَمًا، وَلَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ، وَلَا أُطِيعُ لَك أَمْرًا.

L34612 And through the chain of Waki' from Yazid ibn Ibrahim from Al-Hasan, he said: "Khul' is when she says: 'By Allah, I will not perform the ritual bath for you from impurity incurred through intimacy.'" And all of this has no proof to substantiate its authenticity.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ يَزِيدَ بْنِ إبْرَاهِيمَ عَنْ الْحَسَنِ قَالَ: الْخُلْعُ إذَا قَالَتْ: وَاَللَّهِ لَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ - وَكُلُّ هَذَا لَا بُرْهَانَ عَلَى صِحَّتِهِ.

L34613 And from the narration of Waki' from Ismāʿīl ibn Abī Khālid from Al-Shaʿbī: If a woman dislikes her husband, let him take from her.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ إذَا كَرِهَتْ الْمَرْأَةُ زَوْجَهَا فَلْيَأْخُذْ مِنْهَا.

L34614 From the narration of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī: It is unlawful for him to take anything from the compensation unless defiance originates from her side: by openly displaying enmity toward him, treating him poorly in companionship, and disobeying his commands. It is not lawful for him to take more than what he gave her.

مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ: لَا يَحِلُّ لَهُ أَخْذُ شَيْءٍ مِنْ الْفِدْيَةِ حَتَّى يَكُونَ النُّشُوزُ مِنْ قِبَلِهَا، أَنْ تُظْهِرَ لَهُ الْبَغْضَاءَ، وَتُسِيءَ عِشْرَتَهُ وَتَعْصِيَ أَمْرَهُ، وَلَا يَحِلُّ لَهُ أَنْ يَأْخُذَ أَكْثَرَ مِمَّا أَعْطَاهَا.

L34615 From the path of Abd al-Razzaq, from Ibn Jurayj: Ibn Tawus informed me from his father regarding Khulʿ. He said: Allah Almighty said: {That they fear they will not uphold the limits of Allah} [Al-Baqarah: 229]. He did not utter the statement of the foolish ones: "It is not lawful for him until she says, 'I will not perform the major ritual ablution to remove janābah for you,'" but rather {that they fear they will not uphold the limits of Allah} [Al-Baqarah: 229], the Exalted, in the duties He has ordained for each toward the other in marital life and companionship.[13]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ فِي الْخُلْعِ قَالَ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {أَنْ يَخَافَا أَلا يُقِيمَا حُدُودَ اللَّهِ} [البقرة: ٢٢٩] . وَلَمْ يَكُنْ يَقُولُ قَوْلَ السُّفَهَاءِ: لَا يَحِلُّ لَهُ حَتَّى تَقُولَ: لَا أَغْتَسِلُ لَك مِنْ جَنَابَةٍ، لَكِنْ {أَنْ يَخَافَا أَلا يُقِيمَا حُدُودَ اللَّهِ} [البقرة: ٢٢٩] تَعَالَى فِيمَا افْتَرَضَ لِكُلِّ وَاحِدٍ مِنْهُمَا عَلَى صَاحِبِهِ فِي الْعِشْرَةِ وَالصُّحْبَةِ.

L34616 Abu Muhammad said: This is the truth, based on the words of Allah, the Exalted, which we have mentioned, and success is only by Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: هَذَا هُوَ الْحَقُّ، لِقَوْلِهِ تَعَالَى الَّذِي ذَكَرْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34617 Al-Shafiʿi said: Khulʿ is permissible by their mutual consent, even if neither of them fears disobedience or aversion, and they do not fear failing to uphold Allah's boundaries [Al-Baqarah 2:229]. This is incorrect, because it is a claim without demonstrative evidence.[14]

وَقَالَ الشَّافِعِيُّ: الْخُلْعُ جَائِزٌ بِتَرَاضِيهِمَا وَإِنْ لَمْ يَخَفْ مِنْهُمَا نُشُوزًا وَلَا إعْرَاضًا وَلَا خَافَا {أَلا يُقِيمَا حُدُودَ اللَّهِ} [البقرة: ٢٢٩] وَهَذَا خَطَأٌ، لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ.

L34618 As for the invalid khulʿ, some people have permitted it. I know of no proof they hold. How can a corrupt act be permissible, when Allah the Exalted says: "Indeed, Allah does not rectify the work of the corrupters" [Quran 10:81]?[15]

وَأَمَّا الْخُلْعُ الْفَاسِدُ - فَقَدْ أَجَازَهُ قَوْمٌ: وَمَا أَعْلَمُ لَهُمْ حُجَّةً، وَكَيْفَ يَجُوزُ عَمَلٌ فَاسِدٌ، وَاَللَّهُ تَعَالَى يَقُولُ: {إِنَّ اللَّهَ لا يُصْلِحُ عَمَلَ الْمُفْسِدِينَ} [يونس: ٨١]

L34619 Abu Hanifah said: It is not permissible for him to take anything from her

وَقَالَ أَبُو حَنِيفَةَ: لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْهَا شَيْئًا - وَهُوَ مُضَارٌّ بِهَا - فَإِنْ فَعَلَ لَزِمَهُ الطَّلَاقُ، وَجَازَ لَهُ مَا أَخَذَ.

[13] **Qur'an references (L34615):** Qur'an 2:229 (Al-Baqarah).
[14] **Qur'an references (L34617):** Qur'an 2:229 (Al-Baqarah).
[15] **Qur'an references (L34618):** Qur'an 10:81 (Yunus).

while he is actively harming her. If he does so, divorce becomes obligatory for him, but he retains what he took.

L34620–34622 Abu Muhammad said: There is astonishment in this statement! If it is not permissible for him to take it, then what is permissible for him? He took it, and if indeed it was permissible for him when he took it: would that mean it is permissible for him to take it? Anything beyond this is evil whispers.

قَالَ أَبُو مُحَمَّدٍ: فِي هَذَا الْقَوْلِ عَجَبٌ، لَئِنْ كَانَ لَا يَحِلُّ لَهُ أَنْ يَأْخُذَهُ فَمَا يَحِلُّ لَهُ إذَا أَخَذَهُ، وَلَئِنْ كَانَ يَحِلُّ لَهُ إذَا أَخَذَهُ: أَنَّهُ لِيَحِلَّ لَهُ أَنْ يَأْخُذَهُ؟ - وَمَا عَدَا هَذَا فَوَسَاوِسُ.

L34623 Al-Zuhri and Malik said: It is not permissible for him to take anything from her—as this constitutes harming her—for if he does so, divorce becomes binding upon him, and he must return what he took. This also involves a contradiction: if divorce becomes binding upon him, he becomes entitled to own what he took as compensation for the divorce. Conversely, if he is not entitled to own what he took as compensation for the divorce: then the divorce is not binding upon him, because he did not pronounce an absolute divorce, but rather a divorce contingent on compensation—one he would not have pronounced without this exchange.

وَقَالَ الزُّهْرِيُّ، وَمَالِكٌ: لَا يَحِلُّ لَهُ أَنْ يَأْخُذَ مِنْهَا شَيْئًا - وَهُوَ مُضَارٌّ لَهَا - فَإِنْ فَعَلَ لَزِمَهُ الطَّلَاقُ، وَيَرُدُّ مَا أَخَذَ؟ وَهَذِهِ أَيْضًا مُنَاقَضَةٌ، لِأَنَّهُ إنْ لَزِمَهُ الطَّلَاقُ وَجَبَ لَهُ تَمَلُّكُ مَا أَخَذَهُ عِوَضًا عَنْ الطَّلَاقِ، وَإِنْ لَمْ يَجِبْ لَهُ تَمَلُّكُ مَا أَخَذَهُ عِوَضًا مِنْ الطَّلَاقِ: لَمْ يَلْزَمْهُ الطَّلَاقُ، لِأَنَّهُ لَمْ يُطَلِّقْ طَلَاقًا مُطْلَقًا، بَلْ طَلَاقًا بِعِوَضٍ، لَوْلَاهُ لَمْ يُطَلِّقْ.

L34624 Qatādah said: If he took it from her with intent to harm her, he must return what he took. He may take her back as long as she remains in the waiting period, but he cannot resume the marriage after the waiting period expires except with her consent? This is erroneous, for if the divorce is irrevocable for him, what he took becomes his legally valid ownership—unless he claims that a khulʿ divorce is revocable (rajʿī)? We hold that if the consideration (upon which the divorce depended) is invalid, the divorce itself is invalid because it cannot take effect unless the husband has lawful ownership of what he took as compensation for the divorce.

وَقَالَ قَتَادَةُ: إنْ أَخَذَهُ مِنْهَا وَهُوَ مُضَارٌّ لَهَا يَرُدُّ مَا أَخَذَ، وَلَهُ أَنْ يَرْجِعَ إلَيْهَا مَا دَامَتْ فِي الْعِدَّةِ، وَلَا يَرْجِعُ إلَيْهَا بَعْدَ انْقِضَاءِ الْعِدَّةِ إلَّا بِرِضَاهَا؟ وَهَذَا خَطَأٌ، لِأَنَّهُ إنْ كَانَ الطَّلَاقُ لَهُ لَازِمًا، فَالَّذِي أَخَذَ لَهُ مِلْكٌ، إلَّا إنْ كَانَ يَقُولُ: إنَّ طَلَاقَ الْخُلْعِ طَلَاقٌ رَجْعِيٌّ؟ فَقَدْ قُلْنَا: إذَا لَمْ يَصِحَّ الْعِوَضُ الَّذِي لَمْ يُعْقَدْ الطَّلَاقُ إلَّا عَلَيْهِ: لَمْ يَصِحَّ الطَّلَاقُ الَّذِي لَا وُقُوعَ لَهُ بِصِحَّةِ مِلْكِ الْمُطَلِّقِ لِمَا أَخَذَ عِوَضًا مِنْ الطَّلَاقِ.

L34625 The statement of ʿAṭāʾ—that if she ransoms herself from him while being compliant toward him, she returns to him and her wealth remains hers, unless it is the third instance, in which case she departs—we have transmitted this through the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ. This too is erroneous due to what we previously mentioned regarding the invalidity of the positions of Qatādah and Mālik. The statement of Ṭāwus constitutes the correct position—we transmitted it through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Ibn Ṭāwus from his father, who said: If he takes her

وَقَوْلُ عَطَاءٍ أَنَّهُ إنْ افْتَدَتْ مِنْهُ وَكَانَتْ لَهُ مُطَاوِعَةً فَإِنَّهَا تَرْجِعُ إلَيْهِ، وَمَالُهَا لَهَا، إلَّا أَنْ تَكُونَ الثَّالِثَةُ فَتَذْهَبَ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْهُ، فَهُوَ أَيْضًا خَطَأٌ لِمَا ذَكَرْنَا فِي بُطْلَانِ قَوْلِ قَتَادَةَ، وَمَالِكٍ، وَقَوْلُ طَاوُسٍ هُوَ الْحَقُّ: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: إنْ أَخَذَ فِدَاءَهَا -

ransom—though it is impermissible for him to take it—her wealth reverts to her, she returns to him, and she does not depart with herself and her wealth. No other opinion is permissible besides this, due to what we earlier established.

L34626 And by Allah, the Most High, is the divine success.

L34627 ## A case of khulʿ conditioned on an unspecified term.

L34628 1975. Issue: If a husband divorces through khulʿ for an unknown consideration, it is invalid because he does not know what becomes incumbent upon him through it, nor does she inform him of what is owed. This constitutes a corrupt contract. Any divorce contingent upon the validity of what is inherently invalid is itself invalid. If it is invalid, then he has not divorced at all. What is most astounding is their argument against this ruling by citing God's words: "There is no blame upon them for what she offers as ransom" [2:229].[16]

L34629–34631 They said, "Is this a general ruling?" We replied, "Yes—a general ruling for what is lawful in its contract and ownership, not for the forbidden. And if that were the case, it would be permissible to redeem." From his wife by committing adultery with her whenever he wishes, by a wineskin of wine, by his ownership remaining valid, by not praying, and similar acts.

L34632 ## Issue: Khulʿ Based on a Limited Action

L34633 1976. Issue: Khulʿ (divorce initiated by the wife) in exchange for a limited permissible act is permissible, as it falls under His Exalted's statement: *"There is no blame upon either of them concerning that by which she ransoms herself"* [Al-Baqarah 2:229]. This applies if that act is permissible and the exchange is permissible through hire or other means. And success is from Allah, the Exalted.[17]

وَلَا يَحِلُّ لَهُ أَخْذُهُ - رَجَعَ إِلَيْهَا مَالُهَا وَرَجَعَتْ إِلَيْهِ، وَلَمْ تَذْهَبْ بِنَفْسِهَا وَمَالِهَا - وَهَذَا الَّذِي لَا يَجُوزُ غَيْرُهُ، لِمَا ذَكَرْنَا قَبْلُ.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ خَالَعَ عَلَى مَجْهُولٍ]

١٩٧٥ - مَسْأَلَةٌ: وَمَنْ خَالَعَ عَلَى مَجْهُولٍ فَهُوَ بَاطِلٌ، لِأَنَّهُ لَا يَدْرِي هُوَ مَا يَجِبُ لَهُ عِنْدَهَا، وَلَا تَدْرِيهِ هِيَ، فَهُوَ عَقْدٌ فَاسِدٌ وَكُلُّ طَلَاقٍ لَمْ يَصِحَّ إِلَّا بِصِحَّةِ مَا لَا صِحَّةَ لَهُ فَهُوَ غَيْرُ صَحِيحٍ، إِذَا كَانَ غَيْرَ صَحِيحٍ فَلَمْ يُطَلِّقْ أَصْلًا - وَالْعَجَبُ كُلُّهُ احْتِجَاجُهُمْ فِي خِلَافِ هَذَا بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] .

قَالُوا: هَذَا عُمُومٌ؟ فَقُلْنَا: نَعَمْ، عُمُومٌ لِمَا يَحِلُّ عَقْدُهُ وَمِلْكُهُ لَا لِلْحَرَامِ، وَلَوْ كَانَ ذَلِكَ لَجَازَ أَنْ يَفْتَدِيَ مِنْ زَوْجَتِهِ بِأَنْ يَزْنِيَ بِهَا مَتَى أَرَادَ، وَبِزِقِّ خَمْرٍ وَيَصِحُّ لَهُ مِلْكُهُ، وَبِأَنْ لَا يُصَلِّيَ، وَمَا أَشْبَهَ ذَلِكَ.

[مَسْأَلَةٌ الْخُلْعُ عَلَى عَمَلٍ مَحْدُودٍ]

١٩٧٦ - مَسْأَلَةٌ: وَالْخُلْعُ عَلَى عَمَلٍ مَحْدُودٍ جَائِزٌ لِدُخُولِهِ تَحْتَ قَوْلِهِ تَعَالَى: {فَلا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ} [البقرة: ٢٢٩] هَذَا إِذَا كَانَ ذَلِكَ الْعَمَلُ مُبَاحًا تَجُوزُ الْمُعَاوَضَةُ فِيهِ بِالْإِجَارَةِ وَغَيْرِهَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[16] **Qur'an references (L34628):** Qur'an 2:229 (Al-Baqarah).
[17] **Qur'an references (L34633):** Qur'an 2:229 (Al-Baqarah).

He divorced his wife through a valid khulʿ.

[مَسْأَلَةٌ خَالَعَ امْرَأَتَهُ خُلْعًا صَحِيحًا]

1977 - Issue: If a man validly divorces his wife through *khulʿ*, his obligation to provide her maintenance, clothing, and housing during the waiting period does not cease unless three menstrual cycles have passed—whether consecutive or separate. Nor does he cease to be obligated to pay whatever remains of her mahr—whether small or large.

١٩٧٧ - مَسْأَلَةٌ: وَمَنْ خَالَعَ امْرَأَتَهُ خُلْعًا صَحِيحًا لَمْ يَسْقُطْ بِذَلِكَ عَنْهُ نَفَقَتُهَا وَكِسْوَتُهَا وَإِسْكَانُهَا فِي الْعِدَّةِ، إلَّا أَنْ تَكُونَ ثَلَاثَةً مَجْمُوعَةً أَوْ مُفَرَّقَةً، وَلَا يَسْقُطُ بِذَلِكَ عَنْهُ مَا بَقِيَ عَلَيْهِ مِنْ صَدَاقِهَا - قَلَّ أَوْ كَثُرَ.

The dissenting scholars here hold distinctive opinions: Abu Hanifah stated: If he divorces her in exchange for a sum of money taken from her, he is not absolved of any of her rights that existed prior to it - whether they pertained to the marriage itself or to other matters.

وَلِلْمُخَالِفِينَ هَاهُنَا أَقْوَالٌ طَرِيفَةٌ -: قَالَ أَبُو حَنِيفَةَ: إنْ طَلَّقَهَا عَلَى مَالٍ يَأْخُذُهُ مِنْهَا، فَإِنَّهُ لَا يَبْرَأُ مِنْ شَيْءٍ مِنْ حُقُوقِهَا قَبْلَهُ - سَوَاءٌ كَانَتْ مِنْ قِبَلِ النِّكَاحِ أَوْ مِنْ قِبَلِ غَيْرِهِ.

He said: If he divorces her through *mubara'ah* in exchange for property she gives him, then all her rights against him arising from the marriage are thereby waived, specifically such as the *ṣadāq* (dowry) and the *mut'ah* (post-divorce compensation). If she had already received the *mahr* (dower), it remains hers, and he cannot claim anything back from her, whether he had consummated the marriage with her or not.

قَالَ: فَإِنْ بَارَأَهَا عَلَى مَالٍ يَأْخُذُهُ مِنْهَا، فَإِنَّهُ يَسْقُطُ بِذَلِكَ عَنْهُ جَمِيعُ حُقُوقِهَا الَّتِي لَهَا عَلَيْهِ مِنْ قِبَلِ النِّكَاحِ خَاصَّةً كَالصَّدَاقِ وَالْمُتْعَةِ، فَإِنْ كَانَتْ قَدْ قَبَضَتْ الْمَهْرَ فَهُوَ لَهَا وَلَا يَرْجِعُ عَلَيْهَا بِشَيْءٍ سَوَاءٌ كَانَتْ مَدْخُولًا بِهَا أَوْ غَيْرَ مَدْخُولٍ بِهَا.

He said: He is not absolved from her maintenance and housing during the waiting period. If, as part of the khulʿ contract, she releases him from maintenance and the right to residence during her waiting period, he is absolved from maintenance but is not absolved from the right to residence.

قَالَ: وَلَا يَبْرَأُ مِنْ نَفَقَتِهَا وَإِسْكَانِهَا فِي الْعِدَّةِ، فَإِنْ أَبْرَأَتْهُ فِي عَقْدِ الْخُلْعِ مِنْ النَّفَقَةِ وَالسُّكْنَى مُدَّةَ عِدَّتِهَا بَرِئَ مِنْ النَّفَقَةِ وَلَمْ يَبْرَأْ مِنْ السُّكْنَى.

Abū Muḥammad said: Presenting this categorization makes refuting him unnecessary—and we ask Allāh for safety.

قَالَ أَبُو مُحَمَّدٍ: إيرَادُ هَذَا التَّقْسِيمِ يُغْنِي مِنْ الرَّدِّ عَلَيْهِ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

Mālik said: If she ransoms herself from him before consummation with ten dinars, she may not resell it for half [of that amount]. As for the mahr, if she asks him to divorce her in exchange for part of her dowry (ṣadāq), she is to return to him half of what remains.

وَقَالَ مَالِكٌ: إنْ افْتَدَتْ مِنْهُ قَبْلَ الدُّخُولِ بِعَشَرَةِ دَنَانِيرَ لَمْ يَكُنْ لَهَا أَنْ تَبِيعَهُ بِنِصْفِ الْمَهْرِ، فَلَوْ سَأَلَتْهُ أَنْ يُطَلِّقَهَا عَلَى شَيْءٍ مِنْ صَدَاقِهَا رَجَعَتْ عَلَيْهِ بِنِصْفِ مَا بَقِيَ.

The mere mention of this statement renders a contrived rebuttal unnecessary, for it constitutes sheer injustice and the dropping of a right that has not been dropped.

وَهَذَا كَلَامٌ يُغْنِي ذِكْرُهُ عَنْ تَكَلُّفِ الرَّدِّ عَلَيْهِ، لِأَنَّهُ ظُلْمٌ صُرَاحٌ وَإِسْقَاطُ حَقٍّ لَمْ تُسْقِطْهُ.

And the wonder is their waiving of one thousand dinars owed to her from

her dowry because she redeemed herself from him with a single dinar, yet they do not reduce a single dirham of what she borrowed from him—and these are sheer confusions, enough to mention them!—and in Allah the Exalted we seek assistance.

L34645 **A legal issue: It is impermissible for a father or anyone else to initiate khulʿ on behalf of a mentally incompetent woman or a minor girl.**

L34646 1978 - Issue: It is impermissible for a father or anyone else to grant khulʿ from an insane woman or a minor, due to Allah's statement: {No soul bears a burden except its own} [al-Anʿām 6:164] and His statement: {Do not consume one another's wealth unjustly unless it is a transaction through mutual consent} [al-Nisāʾ 4:29].[18]

L34647 Khulʿ enacted by the father, guardian, or ruler regarding a minor or adult woman is an unlawful gain at another's expense, and such an act is prohibited. The husband's appropriation of her wealth without her consent constitutes wrongful consumption of property, and this is ḥarām (unlawful). And success is attained solely through Allah, the Most High.

L34648 **A legal case: Khulʿ is on the condition that she releases him from maintenance.**

L34649 1979 – Issue: It is not permissible to enact khulʿ on the condition that she absolves him from the expenses of her pregnancy or the expenses of breastfeeding her child. All of that is invalid, as the amount is unspecified – for the cost may increase or decrease – and because it has not yet become obligatory for her. Therefore, her khulʿ in exchange for obligations she has no entitlement to is invalid and an injustice.

L34650 Among the marvels of this world is Abū Ḥanīfah's permission for a woman

[18] **Qur'an references (L34646):** Qur'an 6:164 (Al-An'am); Qur'an 4:29 (An-Nisa).

وَالْعَجَبُ مِنْ إسْقَاطِهِمْ أَلْفَ دِينَارٍ لَهَا قِبَلَهُ مِنْ صَدَاقِهَا مِنْ أَجْلِ أَنَّهَا افْتَدَتْ مِنْهُ بِدِينَارٍ، وَلَا يُسْقِطُونَ عَنْهُ بِذَلِكَ دِرْهَمًا اسْتَقْرَضَتْهُ مِنْهُ - وَهَذِهِ تَخَالِيطُ نَاهِيك بِهَا - وَبِاَللَّهِ تَعَالَى نَسْتَعِينُ.

[مَسْأَلَةٌ لَا يَجُوزُ أَنْ يُخَالِعَ عَنْ الْمَجْنُونَةِ وَلَا عَنْ الصَّغِيرَةِ أَبٌ وَلَا غَيْرُهُ]

١٩٧٨ - مَسْأَلَةٌ: وَلَا يَجُوزُ أَنْ يُخَالِعَ عَنْ الْمَجْنُونَةِ وَلَا عَنْ الصَّغِيرَةِ أَبٌ، وَلَا غَيْرُهُ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَقَوْله تَعَالَى: {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] فَمُخَالَعَةُ الْأَبِ أَوْ الْوَصِيِّ أَوْ السُّلْطَانِ عَنْ صَغِيرَةٍ أَوْ كَبِيرَةٍ كَسْبٌ عَلَى غَيْرِهِ، وَهَذَا لَا يَجُوزُ - وَاسْتِحْلَالُ الزَّوْجِ مَالَهَا بِغَيْرِ رِضًا مِنْهَا أَكْلُ مَالٍ بِالْبَاطِلِ، فَهُوَ حَرَامٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْخُلْعُ عَلَى أَنْ تُبْرِيَهُ مِنْ نَفَقَةٍ]

١٩٧٩ - مَسْأَلَةٌ: وَلَا يَجُوزُ الْخُلْعُ عَلَى أَنْ تُبْرِيَهُ مِنْ نَفَقَةِ حَمْلِهَا أَوْ مِنْ رَضَاعِ وَلَدِهَا - وَكُلُّ ذَلِكَ بَاطِلٌ، لِأَنَّهُ غَيْرُ مَعْلُومِ الْقَدْرِ، وَقَدْ يَزِيدُ السِّعْرُ وَقَدْ يَنْقُصُ، وَلِأَنَّهُ لَمْ يَجِبْ لَهَا بَعْدُ، فَمُخَالَعَتُهَا بِمَا لَا تَمْلِكُهُ بَاطِلٌ وَظُلْمٌ.

وَمِنْ عَجَائِبِ الدُّنْيَا - إجَازَةُ أَبِي حَنِيفَةَ أَنْ تُخَالِعَهُ عَلَى خَمْرٍ أَوْ خِنْزِيرٍ - وَهُمَا مُسْلِمَانِ

to seek a khulʿ divorce from her husband in exchange for wine or a pig - even though both are Muslims.

L34651 Malik prohibited using unripe visible fruit in marriage contracts before they ripen and crops that have not yet formed ears, yet he permits khulʿ contingent on what the palm trees will produce even if there is no fruit on them, and he allows no alternative to that—and sufficient for us is Allah, the Excellent Trustee.

The issue of *mutʾah* is an obligation for every divorcer.

L34652–34653

L34654 Issue 1980: Mutʾah is obligatory upon every divorcing husband—whether he divorced her once, twice, thrice, or the final irrevocable divorce after three pronouncements; whether he consummated the marriage or not; whether he assigned her dowry or did not assign her anything—to provide her with mutʾah. Similarly, the woman seeking a compensatory divorce (khulʿ) is also entitled to it, and the judge must compel him to do so, whether he consents or refuses.

L34655 No *mutʾah* is owed by one whose marriage to her is dissolved without divorce. Neither the husband resuming the marriage with her during the waiting period, nor his death, nor her death nullifies the obligation of *mutʾah*.

L34656 The *mutʿah* (post-divorce compensation) is due to her or her heirs from his personal capital, distributed proportionally among creditors and heirs. If he faces hardship in providing the *mutʿah*, a judgment obligates the solvent party to sustain her equitably—whether he is immensely wealthy or possesses surplus beyond the basic sustenance required for himself, his dependents, and a servant who autonomously performs service.

L34657 The obligation for one who possesses no surplus beyond the sustenance of his household and himself is thirty dirhams by the Iraqi standard—this being the dirham in which Zakāt is obligatory, as previously established in “the Book of Zakāt.”

L34658 He obligates upon the one of limited means—even if by a mudd or a dirham—according to their capacity. The proof for this is Allah the Ex-

وَمَنَعَ مَالِكٌ مِنْ النِّكَاحِ بِثَمَرَةٍ ظَاهِرَةٍ قَبْلَ أَنْ تَنْضَجَ، وَبِزَرْعٍ لَمْ يُسْنْبِلْ وَهُوَ يُجِيزُ الْخُلْعَ عَلَى مَا يُثْمِرُ نَخْلَهَا وَإِنْ لَمْ يَكُنْ فِيهَا ثَمَرَةٌ، وَلَا يَرَى لَهَا غَيْرَ ذَلِكَ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ. .

[الْمُتْعَةُ] [مَسْأَلَةٌ الْمُتْعَةُ فَرْضٌ عَلَى كُلِّ مُطَلِّقٍ]

١٩٨٠ - مَسْأَلَةٌ: الْمُتْعَةُ فَرْضٌ عَلَى كُلِّ مُطَلِّقٍ وَاحِدَةً أَوْ اثْنَتَيْنِ أَوْ ثَلَاثًا - أَوْ آخَرَ ثَلَاثٍ - وَطِئَهَا أَوْ لَمْ يَطَأْهَا - فَرَضَ لَهَا صَدَاقَهَا أَوْ لَمْ يَفْرِضْ لَهَا شَيْئًا -: أَنْ يُمَتِّعَهَا، وَكَذَلِكَ الْمُفْتَدِيَةُ أَيْضًا وَيُجْبِرُهُ الْحَاكِمُ عَلَى ذَلِكَ - أَحَبَّ أَمْ كَرِهَ.

وَلَا مُتْعَةَ عَلَى مَنْ انْفَسَخَ نِكَاحُهُ مِنْهَا بِغَيْرِ طَلَاقٍ وَلَا يُسْقِطُ التَّمَتُّعَ عَنْ الْمُطَلِّقِ مُرَاجَعَتُهُ إيَّاهَا فِي الْعِدَّةِ وَلَا مَوْتُهُ وَلَا مَوْتُهَا -.

وَالْمُتْعَةُ لَهَا أَوْ لِوَرَثَتِهَا مِنْ رَأْسِ مَالِهِ يَضْرِبُ بِهَا مَعَ الْغُرَمَاءِ، وَإِنْ تَعَاسَرَ فِي الْمُتْعَةِ قَضَى عَلَى الْمُوسِرِ لَهَا سَوَاءٌ كَانَ عَظِيمَ الْيَسَارِ أَوْ زَادَ فَضْلَةً عَنْ قُوتِهِ وَقُوتِ أَهْلِهِ خَادِمٌ يَسْتَقِلُّ بِالْخِدْمَةِ.

وَعَلَى مَنْ لَا فَضْلَةَ عِنْدَهُ عَنْ قُوتِ أَهْلِهِ وَنَفْسِهِ ثَلَاثُونَ دِرْهَمًا بِالْعِرَاقِيِّ وَهُوَ الدِّرْهَمُ الَّذِي تَجِبُ الزَّكَاةُ فِيهِ وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الزَّكَاةِ ".

alted's statement: *"Divorced women are entitled to provision according to what is fair—a binding obligation upon the righteous"* [Al-Baqarah: 241]. Thus, the Almighty and Majestic universalized this ruling for every divorced woman without exception, obligating it upon every righteous person who fears Allah, the Exalted.[19]

L34659 People have differed regarding its obligation—it has been reported from a group that it is not obligatory—this was transmitted to us through the chain of ʿAbd al-Raḥmān ibn Abi al-Zināد, from his father, from the seven jurists of Medina. Abū Muḥammad said: ʿAbd al-Raḥmān ibn Abi al-Zināد—weak.

L34660 This is the view of Ibn Abī Laylā, ʿAbd al-ʿAzīz ibn Abī Salama al-Mājishūn, and Mālik.

L34661–34662 And among the marvels of worldly logic is the argument advanced by adherents of his school to defend their claim that Allah the Exalted obligated these acts solely upon the God-fearing and those perfected in virtue, not upon others?

L34663 So we said to them: Suppose you are truthful in that—do you consider it obligatory upon those among the pious and virtuous upon whom God Almighty has ordained it, or not? If they say no, they acknowledge their own contradiction of God's statement and nullify their cited argument. If they say yes, they abandon their doctrine.

L34664 A group said: It is an obligation upon the God-fearing and the virtuous, arguing based on the apparent meaning of Allah's words—as narrated to us through the chain of Hammad ibn Zayd from Ayyub al-Sikhtiyani from Muhammad ibn Sirin, who said: I witnessed Shurayh when they brought him a case regarding mut'ah (post-divorce compensation). He said: "Do not refuse to be among the God-fearing?" He said: "I am in need." He said: "Do not refuse to be among the virtuous?" Ayyub said: I asked Sa'id ibn Jubayr: "Does every divorced woman have a right to mut'ah?" He said: "Yes, if he is among the God-fearing, if he is among the virtuous." Ayyub said: A

[19] **Qur'an references (L34658):** Qur'an 2:241 (Al-Baqarah).

وَيَقْضِي عَلَى الْمُقِلِّ وَلَوْ بِمُدٍّ أَوْ بِدِرْهَمٍ - عَلَى حَسَبِ طَاقَتِهِ بُرْهَانُ ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ} [البقرة: ٢٤١] فَعَمَّ عَزَّ وَجَلَّ كُلَّ مُطَلَّقَةٍ وَلَمْ يَخُصَّ وَأَوْجَبَهُ لَهَا عَلَى كُلِّ مُتَّقٍ يَخَافُ اللَّهَ تَعَالَى.

وَقَدْ اخْتَلَفَ النَّاسُ فِي وُجُوبِهَا -: فَرُوِيَ عَنْ طَائِفَةٍ: أَنَّهَا لَيْسَتْ وَاجِبَةً -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ عَنْ فُقَهَاءِ الْمَدِينَةِ السَّبْعَةِ. قَالَ أَبُو مُحَمَّدٍ: عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزِّنَادِ - ضَعِيفٌ

- وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَعَبْدِ الْعَزِيزِ بْنِ أَبِي سَلَمَةَ الْمَاجِشُونِ، وَمَالِكٍ.

وَمِنْ عَجَائِبِ الدُّنْيَا احْتِجَاجُ مَنْ قَلَّدَهُ لِقَوْلِهِمْ هَذَا بِأَنَّ اللَّهَ تَعَالَى إنَّمَا أَوْجَبَهَا عَلَى الْمُتَّقِينَ وَالْمُحْسِنِينَ لَا عَلَى غَيْرِهِمْ؟ .

فَقُلْنَا لَهُمْ: فَهَبْكُمْ صَادِقِينَ فِي ذَلِكَ، أَتُوجِبُونَهَا أَنْتُمْ عَلَى مَنْ أَوْجَبَهَا اللَّهُ تَعَالَى عَلَيْهِ مِنْ الْمُتَّقِينَ وَالْمُحْسِنِينَ أَوْ لَا؟ فَإِنْ قَالُوا: لَا، أَقَرُّوا بِخِلَافِهِمْ لِقَوْلِ اللَّهِ تَعَالَى، وَأَبْطَلُوا احْتِجَاجَهُمْ الْمَذْكُورَ، وَإِنْ قَالُوا: نَعَمْ، تَرَكُوا مَذْهَبَهُمْ.

وَقَالَتْ طَائِفَةٌ: هِيَ فَرْضٌ عَلَى الْمُتَّقِينَ، وَالْمُحْسِنِينَ - وَاحْتَجُّوا بِظَاهِرِ كَلَامِ اللَّهِ تَعَالَى -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: شَهِدْت شُرَيْحًا وَأَتَوْهُ مِنْ مَتَاعٍ، فَقَالَ: لَا تَأْبَ أَنْ تَكُونَ مِنْ الْمُتَّقِينَ؟ قَالَ: إنِّي مُحْتَاجٌ قَالَ: لَا تَأْبَ أَنْ تَكُونَ مِنْ الْمُحْسِنِينَ؟ قَالَ أَيُّوبُ: قُلْت لِسَعِيدِ بْنِ جُبَيْرٍ: لِكُلِّ مُطَلَّقَةٍ مَتَاعٌ؟ قَالَ: نَعَمْ، إنْ كَانَ مِنْ الْمُتَّقِينَ، إنْ كَانَ مِنْ الْمُحْسِنِينَ، قَالَ أَيُّوبُ: وَسَأَلَ

man asked ʻIkrimah: “I divorced my wife. Is there any mut’ah (post-divorce compensation) due from me?” He said: “If you are among the God-fearing, then yes.”

عِكْرِمَةَ رَجُلٌ فَقَالَ: إِنِّي طَلَّقْت امْرَأَتِي فَهَلْ عَلَيَّ مُتْعَةٌ؟ قَالَ: إنْ كُنْت مِنْ الْمُتَّقِينَ، فَنَعَمْ.

L34665 Abu Muhammad said: Every Muslim who is upon the face of the earth, by his declaration of “There is no god but Allah, Muhammad is the Messenger of Allah,” is counted among the God-fearing and the doers of good by virtue of this declaration and his faith. Yet it is Allah’s right, the Exalted, to cast him into the Fire eternally if he does not submit to Islam.

قَالَ أَبُو مُحَمَّد: كُلُّ مُسْلِمٍ هُوَ عَلَى أَدِيمِ الْأَرْضِ، فَهُوَ بِقَوْلِهِ لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ مِنْ جُمْلَةِ الْمُتَّقِينَ بِقَوْلِهِ ذَلِكَ، وَإِيمَانِهِ، وَمِنْ جُمْلَةِ الْمُحْسِنِينَ - وَلِلَّهِ تَعَالَى أَنْ يُخْلِدَهُ فِي النَّارِ إنْ لَمْ يُسْلِمْ.

L34666 Thus every Muslim in the world is virtuous and God-fearing, from among the virtuous and God-fearing ones.

فَكُلُّ مُسْلِمٍ فِي الْعَالَمِ فَهُوَ مُحْسِنٌ مُتَّقٍ، مِنْ الْمُحْسِنِينَ الْمُتَّقِينَ.

L34667 If the names “Muḥsin” (doer of good) and “Muttaqī” (God-fearing) were only ascribed to one who does good and is God-fearing in all his deeds, there would be no “Muḥsin” or “Muttaqī” on earth after the Messenger of Allah (peace and blessings be upon him), for everyone besides him inevitably has shortcomings and misdeeds, and in those actions they would not be counted among the doers of good or the God-fearing.

وَلَوْ لَمْ يَقَعْ اسْمُ “ مُحْسِنٍ، وَمُتَّقٍ ” إلَّا عَلَى مَنْ يُحْسِنُ وَيَتَّقِي فِي كُلِّ أَفْعَالِهِ: لَمْ يَكُنْ فِي الْأَرْضِ مُحْسِنٌ، وَلَا مُتَّقٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ لَا بُدَّ لِكُلِّ مَنْ دُونَهُ مِنْ تَقْصِيرٍ، وَإِسَاءَةٍ لَمْ يَكُنْ فِيهَا مِنْ الْمُحْسِنِينَ، وَلَا مِنْ الْمُتَّقِينَ.

L34668 Thus, according to this, the words of Allah the Exalted—{an obligation upon those who do good} [Al-Baqarah: 236] and {an obligation upon the God-fearing} [Al-Baqarah: 241]—would be empty, vain, and null and void. It is impermissible for anyone to hold such a belief.[20]

فَكَانَ عَلَى هَذَا يَكُونُ كَلَامُ اللَّهِ تَعَالَى: {حَقًّا عَلَى الْمُحْسِنِينَ} [البقرة: ٢٣٦] {حَقًّا عَلَى الْمُتَّقِينَ} [البقرة: ٢٤١] فَارِغًا وَلَغْوًا وَبَاطِلًا، وَهَذَا لَا يَحِلُّ لِأَحَدٍ أَنْ يَعْتَقِدَهُ.

L34669 There is no distinction between His saying, the Exalted, “from the doers of good” [Al-A’raf 7:56] and His saying, the Exalted, “from the God-fearing” [Al-Ma’idah 5:27], and between His saying, the Exalted, “from the Muslims” [Yunus 10:72] and His saying, the Exalted, “from the believers” [An-Nisa’ 4:95], and the meaning in all these cases is the same, and there is no difference.[21]

وَلَا فَرْقَ بَيْنَ قَوْله تَعَالَى {مِنَ الْمُحْسِنِينَ} [الأعراف: ٥٦] وَ {مِنَ الْمُتَّقِينَ} [المائدة: ٢٧] وَبَيْنَ قَوْله تَعَالَى {مِنَ الْمُسْلِمِينَ} [يونس: ٧٢] وَ {مِنَ الْمُؤْمِنِينَ} [النساء: ٩٥] وَالْمَعْنَى فِي كُلِّ ذَلِكَ وَاحِدٌ، وَلَا فَرْقَ.

L34670 If they mentioned what we have narrated through the path of Wakīʻ from

فَإِنْ ذَكَرُوا: مَا رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ.

[20] **Qur’an references (L34668):** Qur’an 2:236 (Al-Baqarah); Qur’an 2:180 (Al-Baqarah); Qur’an 2:241 (Al-Baqarah).

[21] **Qur’an references (L34669):** Qur’an 7:56 (Al-A’raf); Qur’an 5:27 (Al-Ma’idah); Qur’an 10:72 (Yunus); Qur’an 4:95 (An-Nisa).

Shuʿbah from Qatādah from Saʿīd ibn al-Musayyib

L34671–34672 The verse {And for the divorced women is maintenance according to what is customary} [Al-Baqarah: 241] abrogates the earlier verse {And if you divorce them before you have touched them and you have already assigned them a settlement} [Al-Baqarah: 237].[22]

L34673–34674 We said: No one is to be believed in their attempt to invalidate the ruling of a revealed verse except through an authentic report from the Messenger of Allah (peace and blessings be upon him). How can this be when the verse he cited contains nothing that contradicts the one he alleged to have abrogated it? Thus, both are valid.

L34675 A group holds that mut'ah is only obligatory for a woman divorced before consummation—even if no dower was specified for her—and for such a woman, mut'ah becomes a compulsory obligation.

L34676 As has been narrated to us through the chain of Ismāʿīl ibn Isḥāq: ʿAlī ibn ʿAbd Allāh ibn al-Madīnī narrated to us; Sufyān ibn ʿUyaynah narrated to us from ʿAmr ibn Dīnār from ʿAṭāʾ from Ibn ʿAbbās, who said: If the right to divorce is delegated to the man and he divorces her before consummation, she is entitled only to the mutʿah.

L34677 Abu Muhammad said: There is no evidence in this to indicate that he did not consider temporary marriage permissible for others, except that this opinion is the view of Sufyan al-Thawri, al-Hasan ibn Ḥayy, al-Awza'i, Abu Hanifa, and his companions.

L34678 However, Al-Awza'i said: There is no temporary marriage imposed on a male slave.

L34679 However, Abū Ḥanīfah said: Whoever marries without specifying a dowry, then establishes a dowry for her with mutual consent - the judge having already stipulated for her the customary dowry - and divorces her before consummating the marriage, that stipulated dowry becomes invalid, and she is entitled only to the mut'ah.

نَسَخَتْ هَذِهِ الْآيَةُ: {وَإِنْ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً} [البقرة: ٢٣٧] الَّتِي بَعْدَهَا {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ} [البقرة: ٢٤١] .

قُلْنَا: لَا يُصَدَّقُ أَحَدٌ عَلَى إبْطَالِ حُكْمِ آيَةٍ مُنَزَّلَةٍ إلَّا بِخَبَرٍ ثَابِتٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَيْفَ وَلَيْسَ فِي الْآيَةِ الَّتِي ذَكَرَ شَيْءٌ يُخَالِفُ الَّتِي زَعَمَ أَنَّهَا نَسَخَتْهَا؟ فَكِلْتَاهُمَا حَقٌّ.

وَقَالَتْ طَائِفَةٌ: لَا تَجِبُ الْمُتْعَةُ إلَّا لِلَّتِي طَلُقَتْ قَبْلَ أَنْ تُوطَأَ -، وَإِنْ لَمْ يُسَمَّ لَهَا صَدَاقٌ - فَهَذِهِ تَجِبُ لَهَا الْمُتْعَةُ فَرْضًا.

كَمَا رُوِّينَا مِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ أَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ بْنِ الْمَدِينِيِّ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: إذَا فُوِّضَ إلَى الرَّجُلِ فَطَلَّقَ قَبْلَ أَنْ يَمَسَّ؟ فَلَيْسَ لَهَا إلَّا الْمَتَاعُ.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ فِي هَذَا دَلِيلٌ عَلَى أَنَّهُ لَمْ يَكُنْ يَرَى لِغَيْرِهَا الْمُتْعَةَ، إلَّا أَنَّ هَذَا الْقَوْلَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالْأَوْزَاعِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ.

إلَّا ، أَنَّ الْأَوْزَاعِيَّ قَالَ: لَا مُتْعَةَ عَلَى عَبْدٍ.

إلَّا أَنَّ أَبَا حَنِيفَةَ قَالَ: مَنْ تَزَوَّجَ وَلَمْ يَذْكُرْ مَهْرًا ثُمَّ فَرَضَ لَهَا مَهْرًا بِرِضَاهُ وَبِرِضَاهَا - وَقَدْ فَرَضَ لَهَا الْقَاضِي مَهْرَ الْمِثْلِ - ثُمَّ طَلَّقَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا، فَإِنَّ ذَلِكَ الْمَهْرَ يَبْطُلُ، وَلَا يَجِبُ لَهَا إلَّا الْمُتْعَةُ.

[22] **Qur'an references (L34672):** Qur'an 2:237 (Al-Baqarah); Qur'an 2:241 (Al-Baqarah).

قَالَ أَبُو مُحَمَّد: وَهَذَا فَاسِدٌ جِدًّا، وَقَوْلٌ بِلَا بُرْهَانٍ: إِسْقَاطُ فَرْضٍ أَمَرَ بِهِ اللَّهُ تَعَالَى بَعْدَ الْتِزَامِهِ أَوْ إِلْزَامِهِ بِغَيْرِ حَقٍّ.

L34680–34681 Abu Muhammad said: This is utterly invalid and a claim without evidence - the nullification of an obligation (farḍ) that Allah the Exalted has commanded after one has voluntarily committed to it or been legally bound to it without legitimate justification.

وَاحْتَجَّ هَؤُلَاءِ بِقَوْلِ اللَّهِ تَعَالَى: {لا جُنَاحَ عَلَيْكُمْ إِنْ طَلَّقْتُمُ النِّسَاءَ مَا لَمْ تَمَسُّوهُنَّ أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتِّعُوهُنَّ} [البقرة: ٢٣٦] .

L34682 These people cited as evidence the words of Allah, the Most High: “There is no blame upon you if you divorce women before you have touched them or specified a bridal gift for them. And provide for them” [Al-Baqarah: 236].[23]

قَالَ عَلِيٌّ: لَوْ لَمْ يَكُنْ إِلَّا هَذِهِ الْآيَةَ لَكَانَ قَوْلُهُ هَذَا حَقًّا، لَكِنَّ قَوْلَ اللَّهِ تَعَالَى: {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ} [البقرة: ٢٤١] جَامِعٌ لِكُلِّ مُطَلَّقَةٍ مَفْرُوضٌ لَهَا، أَوْ غَيْرُ مَفْرُوضٍ لَهَا، مَدْخُولٌ بِهَا، أَوْ غَيْرُ مَدْخُولٍ بِهَا - وَلَمْ يَقُلْ عَزَّ وَجَلَّ فِي أَوَّلِ الْآيَةِ الَّتِي نَزَعُوا بِهَا: أَنَّهُ لَا مُتْعَةَ لِغَيْرِهَا؟ فَظَهَرَ بُطْلَانُ قَوْلِهِمْ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L34683 Ali said: “If only this verse existed, his claim would be valid. However, Allah, Exalted is He, states: *‘And for divorced women is a provision according to what is acceptable’* [Al-Baqarah 2:241], encompassing every divorced woman—whether a dowry was specified for her or not, and whether the marriage was consummated or not. Yet did Allah, Mighty and Majestic, not state in the earlier verse they cited that there is no compensation for others? Thus, the falsity of their claim becomes evident—and all praise is due to Allah, Lord of the worlds.”[24]

وَقَالَتْ طَائِفَةٌ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ، إِلَّا الَّتِي طَلُقَتْ قَبْلَ أَنْ تُمَسَّ وَقَدْ فَرَضَ لَهَا بِحَسَبِهَا نِصْفَ مَا فَرَضَ لَهَا.

L34684 A group maintained that every divorced woman is entitled to compensation, except one divorced before consummation—for her, half of what was stipulated for her according to her circumstances was stipulated.

بِمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ، قَالَ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ، إِلَّا الَّتِي لَمْ يُدْخَلْ بِهَا.

L34685 By what has been narrated to us through the chain of Ḥammād ibn Salamah: from Ubayd Allāh ibn Umar, from Nāfiʿ, from Ibn Umar, who said: Every divorced woman is entitled to a mutʿah, except the one whose marriage has not been consummated.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَنَا اللَّيْثُ، وَمَالِكٌ، قَالَا جَمِيعًا: أَنَا نَافِعٌ أَنَّ ابْنَ عُمَرَ كَانَ يَقُولُ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ - الَّتِي تَطْلُقُ وَاحِدَةً أَوْ اثْنَتَيْنِ أَوْ ثَلَاثًا - إِلَّا أَنْ تَكُونَ امْرَأَةً طَلَّقَهَا زَوْجُهَا قَبْلَ أَنْ يَمَسَّهَا وَقَدْ فَرَضَ لَهَا فَرِيضَةً فَحَسْبُهَا فَرِيضَتُهَا، وَإِنْ لَمْ يَكُنْ فَرَضَ لَهَا، فَلَيْسَ لَهَا إِلَّا الْمُتْعَةُ - وَهُوَ قَوْلُ شُرَيْحٍ، وَمُجَاهِدٍ، وَصَحَّ عَنْ إِبْرَاهِيمَ.

L34686 From the path of Ibn Wahb: Al-Layth and Mālik both reported via Nāfiʿ that Ibn ʿUmar said: “Every divorced woman is entitled to mutʿah - whether divorced once, twice, or thrice - except a woman whose husband divorces her before consummation when he had assigned her a specified dowry. In that case, her assigned dowry suffices her. If no dowry was assigned for her, she has nothing except the mutʿah.” This is the opinion of Shurayḥ and Mujāhid, and it is authentically reported from Ibrāhīm.

وَرُوِّينَاهُ عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ وَعَبْدِ اللَّهِ بْنِ أَبِي سَلَمَةَ.

[23] **Qur’an references (L34682):** Qur’an 2:236 (Al-Baqarah).
[24] **Qur’an references (L34683):** Qur’an 2:241 (Al-Baqarah); Qur’an 37:182 (As-Saffat).

L34687 We have narrated it on the authority of al-Qāsim ibn Muḥammad and ʿAbdullāh ibn Abī Salama.

L34688 Abu Muhammad said: This nullifies the statement because Allah, the Exalted, when He mentioned that she is entitled to half of what was ordained for her, did not say, “Nor any mut’ah for her.”

L34689–34690 He has obligated the mutʿah for her through His truthful statement: {And for divorced women is a provision in a reasonable manner} [Al-Baqarah: 241]. This is a divorced woman; thus, she is entitled to the mutʿah as an obligation along with half of what was decreed for her.[25]

L34691 And a strange opinion—we have narrated it through the chain of Ibn Wahb from Yunus ibn Yazīd from Rabīʿah, who said: “Only one not subject to apostasy is obligated to provide maintenance, and creditors are not subjected to proportional division of assets—for proportional division does not apply to one who has no assets.” This is an opinion unsupported by evidence for its validity, thus it is rejected.

L34692 A group held the same opinion as us, as narrated through Ibn Wahb → Yahya ibn Ayyub → Musa ibn Ayyub al-Ghafiqi → Iyas ibn Amir, who heard Ali ibn Abi Talib say: “Every divorced woman is entitled to mut’ah.”

L34693 Through the chain of Ibn Wahb from Malik from Al-Zuhri, who said, “Every divorced woman is due *mut’ah*.”

L34694 And via the chain of Ibn Wahb from Yunus bin Yazid, who said: Ibn Shihab was asked about the woman granted the right to divorce (al-mumallakah) and the one granted the choice (al-mukhayyarah). He replied: “Every divorced woman on earth is entitled to provisions (matāʿ).”

L34695 From the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: A woman who seeks khulʿ is entitled to the mutʿah equally, whether she has consummated or not.

قَالَ أَبُو مُحَمَّد: وَيُبْطِلُ هَذَا الْقَوْلَ أَنَّ اللَّهَ تَعَالَى إِذْ ذَكَرَ: أَنَّ لَهَا نِصْفَ مَا فُرِضَ لَهَا، لَمْ يَقُلْ: وَلَا مُتْعَةَ لَهَا.

وَقَدْ أَوْجَبَ لَهَا الْمُتْعَةَ بِقَوْلِهِ الصَّادِقِ: {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ} [البقرة: ٢٤١] وَهَذِهِ مُطَلَّقَةٌ فَلَهَا الْمُتْعَةُ فَرْضًا مَعَ نِصْفِ مَا فُرِضَ لَهَا.

وَقَوْلٌ غَرِيبٌ - رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ رَبِيعَةَ، قَالَ: إِنَّمَا يُؤْمَرُ بِالْمَتَاعِ مَنْ لَا رِدَّةَ عَلَيْهِ، وَلَا تُحَاصُّ الْغُرَمَاءُ، لَيْسَتْ عَلَى مَنْ لَيْسَ لَهُ شَيْءٌ - وَهَذَا قَوْلٌ لَا بُرْهَانَ عَلَى صِحَّتِهِ، فَهُوَ سَاقِطٌ.

وَطَائِفَةٌ قَالَتْ كَقَوْلِنَا - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ مُوسَى ابْنِ أَيُّوبَ الْغَافِقِيِّ عَنْ إِيَاسِ بْنِ عَامِرٍ: أَنَّهُ سَمِعَ عَلِيَّ بْنَ أَبِي طَالِبٍ يَقُولُ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنِ الزُّهْرِيِّ قَالَ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنِ الْمُمَلَّكَةِ وَالْمُخَيَّرَةِ؟ فَقَالَ ابْنِ شِهَابٍ: كُلُّ مُطَلَّقَةٍ فِي الْأَرْضِ لَهَا مَتَاعٌ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ، قَالَ: لِلْمُخْتَلِعَةِ الْمُتْعَةُ، الَّتِي جَمَعَتْ، وَالَّتِي لَمْ تَجْمَعْ سَوَاءٌ.

[25] **Qur’an references (L34690):** Qur’an 2:241 (Al-Baqarah).

L34696 And through the chain of Ḥammād ibn Zayd from Ayyūb al-Sikhtiyānī from Saʿīd ibn Jubayr, who said: “Every divorced woman has a right to *mutʿah*,” and he recited: *“And for divorced women is a provision in fairness - an obligation upon the righteous”* (2:241).[26]

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ وَتَلَا: {وَلِلْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ} [البقرة: ٢٤١] .

L34697 And narrated by Abd al-Razzaq via Maʿmar from Abu Qilabah, who said: “Every divorced woman is entitled to a mut’ah.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي قِلَابَةَ، قَالَ: لِكُلِّ مُطَلَّقَةٍ مُتْعَةٌ.

L34698 From the chain of ‘Abd al-Razzāq: Ibn Jurayj reported from ‘Aṭā’, who said: Every woman who freed herself from her husband is entitled to the mut’ah (consolatory gift).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لِكُلِّ امْرَأَةٍ افْتَلَتَتْ نَفْسَهَا مِنْ زَوْجِهَا فَلَهَا الْمُتْعَةُ.

L34699–34700 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Ḥammād Abū Sulaymān from Ibrāhīm al-Nakhaʿī, who said: The mutʿah is for the woman who has sought khulʿ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَمَّادٍ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: لِلْمُخْتَلِعَةِ الْمُتْعَةُ.

L34701 Through the transmission of Saʿīd ibn Manṣūr: We [heard] from Hushaym, who [heard] from Yūnus ibn ʿUbayd, from al-Ḥasan, who said, “Every divorced woman is due provision.” Through the transmission of ʿAbd al-Razzāq, from Sufyān al-Thawrī, who said, “For the female slave, the Jewish woman, and the Christian woman: the mutʿah is due when she is divorced.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: لِكُلِّ مُطَلَّقَةٍ مَتَاعٌ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، قَالَ: لِلْمَمْلُوكَةِ، وَالْيَهُودِيَّةِ وَالنَّصْرَانِيَّةِ: الْمُتْعَةُ إِذَا طَلُقَتْ.

L34702 Abu Muhammad said: Among the marvels in the reasoning of the proponents of analogical deduction is that Allah, the Almighty, has obligated the waiting period (ʿiddah) for every widow, every divorced woman whose marriage was consummated, and every emancipated slave woman who chooses separation from her husband. He has also categorically mandated post-divorce compensation (mutʿah) for all divorced women.

قَالَ أَبُو مُحَمَّدٍ: مِنْ عَجَائِبِ أَصْحَابِ الْقِيَاسِ - أَنَّ اللَّهَ عَزَّ وَجَلَّ أَوْجَبَ الْعِدَّةَ -: عَلَى كُلِّ مُتَوَفًّى عَنْهَا زَوْجُهَا مِنْ الزَّوْجَاتِ - وَعَلَى كُلِّ مُطَلَّقَةٍ مَوْطُوءَةٍ مِنْهُنَّ - وَعَلَى الْمُعْتَقَةِ الْمُخْتَارَةِ فِرَاقَ زَوْجِهَا - وَأَوْجَبَ الْمُتْعَةَ لِلْمُطَلَّقَاتِ جُمْلَةً.

L34703 They analogized by their opinions that any man without a wife, but with whom intercourse occurred under a defective and annulled contract, does not obligate inheritance for the validly married wife in the obligation of the waiting period upon both of them.

فَقَاسُوا بِآرَائِهِمْ كُلَّ مَنْ لَيْسَتْ لَهُ زَوْجَةٌ، لَكِنْ وُطِئَتْ بِعَقْدٍ مَفْسُوخٍ فَاسِدٍ، لَا يُوجِبُ مِيرَاثًا عَلَى الزَّوْجَةِ الصَّحِيحَةِ النِّكَاحِ فِي إِيجَابِ الْعِدَّةِ عَلَيْهِمَا.

L34704 They have exempted many divorced women from the obligation of mut’ah

وَأَسْقَطُوا كَثِيرًا مِنْ الْمُطَلَّقَاتِ عَنْ إِيجَابِ الْمُتْعَةِ لَهُنَّ، فَهَلْ سُمِعَ بِأَعْجَبَ مِنْ فَسَادِ هَذَا الْعَمَلِ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

[26] **Qur’an references (L34696):** Qur’an 2:241 (Al-Baqarah).

due to them. Has anything more astonishing than this corrupt action ever been heard? We ask Allah for safety.

L34705 As for the measure of mut'ah - we have narrated through Abd al-Razzaq's chain from Ibn Jurayj via Musa ibn Uqbah from Nafi' that Ibn Umar stated: "The minimum amount I consider sufficient for mut'ah is thirty dirhams." Through Waki's chain from Sufyan al-Thawri via Isma'il ibn Umayyah from Ikrimah from Ibn Abbas, he said: "The highest form of mut'ah is granting a servant, while lesser forms include sustenance and clothing." Through Waki's chain from Sufyan al-Thawri via Amr ibn Ubayd from al-Hasan concerning mut'ah owed to a divorced woman - he ruled: "There is no fixed amount restricting it, but rather according to one's financial capacity." Through Abd al-Razzaq's chain from Ibn Jurayj via Ata', he declared: "I know of no fixed time for mut'ah. Allah the Exalted has stated: ***'Upon the wealthy according to their means, and upon the needy according to their means'*** [Al-Baqarah 2:236]."[27]

وَأَمَّا مِقْدَارُ الْمُتْعَةِ - فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ مُوسَى بْنِ عُقْبَةَ عَنْ نَافِعٍ أَنَّ ابْنَ عُمَرَ قَالَ: أَدْنَى مَا أَرَاهُ يَجْزِي فِي الْمُتْعَةِ ثَلَاثُونَ دِرْهَمًا. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ بْنِ أُمَيَّةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: أَعْلَى الْمُتْعَةِ، الْخَادِمُ، وَدُونَ ذَلِكَ: النَّفَقَةُ وَالْكِسْوَةُ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَمْرِو بْنِ عُبَيْدٍ عَنْ الْحَسَنِ فِي الْمُتْعَةِ لِلْمُطَلَّقَةِ - قَالَ: لَيْسَ فِيهَا شَيْءٌ مُؤَقَّتٌ يَمْنَعُهَا عَلَى قَدْرِ الْمَيْسَرَةِ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَا أَعْلَمُ لِلْمُتْعَةِ وَقْتًا، قَالَ اللَّهُ تَعَالَى: {عَلَى الْمُوسِعِ قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ} [البقرة: ٢٣٦] .

L34706 Abū Ḥanīfah said: The maximum compensation one can be obligated to give for *mut'ah* is ten *dirhams*, and the minimum compensation is five *dirhams*.

وَقَالَ أَبُو حَنِيفَةَ: أَعْلَى مَا يُجْبَرُ عَلَيْهِ مِنْ الْمُتْعَةِ: عَشَرَةُ دَرَاهِمَ، وَأَدْنَى ذَلِكَ: خَمْسَةُ دَرَاهِمَ.

L34707–34708 And this is a statement without evidence? Assuming he analogized the ten dirhams to the amount warranting hand amputation—then upon what basis did he analogize the five dirhams? Abu Muhammad said: Had Allah the Exalted delegated the mut'ah to the recipient's discretion, we would have adhered strictly to His command and obligated the recipient accordingly, as practiced in granting property to a slave under a contract of manumission. However, He the Exalted obligated it according to financial capacity in affluence and poverty. Thus, we are compelled to establish that the mut'ah of the affluent differs necessarily from that of the impoverished. Finding no stipulated measure from Allah's Messenger (peace be upon him) in this matter, we must interpret it by the convention understood by those addressed. This necessitates recourse to authentic reports from the Companions (may Allah be pleased with them), as we did regarding hunting expiations. Whatever

وَهَذَا قَوْلٌ لَا دَلِيلَ عَلَيْهِ؟ وَهَبْكَ أَنَّهُ قَاسَ الْعَشَرَةَ دَرَاهِمَ عَلَى مَا تُقْطَعُ فِيهِ الْيَدُ؟ فَعَلَى أَيِّ شَيْءٍ قَاسَ الْخَمْسَةَ دَرَاهِمَ؟ قَالَ أَبُو مُحَمَّدٍ: لَوْ أَنَّ اللَّهَ تَعَالَى وَكَّلَ الْمُتْعَةَ إلَى الْمُتَمَتِّعِ لَوَقَفْنَا عِنْدَ أَمْرِهِ عَزَّ وَجَلَّ وَأَلْزَمْنَاهُ ذَلِكَ؟ كَمَا يَفْعَلُ فِي إيتَاءِ الْمُكَاتِبِ مِنْ مَالِ الْمُكَاتَبِ لَكِنَّهُ تَعَالَى أَلْزَمَهُ عَلَى قَدْرِ الْيَسَارِ وَالْإِقْتَارِ، فَلَزِمَنَا فَرْضًا أَنْ نَجْعَلَ مُتْعَةَ الْمُوسِرِ غَيْرَ مُتْعَةِ الْمُقْتِرِ وَلَا بُدَّ - وَلَمْ نَجِدْ فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَدًّا وَجَبَ حَمْلُ ذَلِكَ عَلَى الْمَعْرُوفِ عِنْدَ الْمُخَاطَبِينَ بِذَلِكَ، فَوَجَبَ بِهَذَا الرُّجُوعُ إلَى مَا صَحَّ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ، كَمَا فَعَلْنَا فِي جَزَاءِ الصَّيْدِ فَمَا كَانَ هُوَ الْمَعْرُوفُ عِنْدَهُمْ فِي الْمُتْعَةِ، فَهُوَ الَّذِي أَرَادَ اللَّهُ عَزَّ وَجَلَّ بِلَا شَكٍّ، إذْ لَا بُدَّ لِمَا أَمَرَ

[27] **Qur'an references (L34705):** Qur'an 2:236 (Al-Baqarah).

convention they recognized for mut'ah is undoubtedly Allah's intent, for His commands require clarification. Among them (may Allah be pleased with them) were those of utmost affluence like Abd al-Rahman ibn Awf, while Ibn Abbas and Ibn Umar were affluent but less so than Abd al-Rahman.

L34709 One of the proofs clarifying the obligation to refer back to the opinions of the Companions—may Allah be pleased with them—is that it constitutes a post-divorce provision granted in a fair manner, as we stated regarding maintenance and clothing, since Allah the Exalted said: "Let the affluent spend from his abundance, and let him whose provision is restricted spend from what Allah has granted him. Allah does not burden any soul beyond what He has given it" (65:7). Dissenting scholars have agreed with us on this matter, and it is obligatory to follow both texts.[28]

L34710 From Muhammad ibn Sa'id ibn Nubatah, from Ibn Mufarrih, from Abdullah ibn Ja'far ibn al-Ward, from Yahya ibn Ayyub ibn Badi al-Allaf, from Yahya ibn Bukayr, from al-Layth ibn Sa'd, from Abdullah ibn Yazid—the freed slave of al-Aswad—from Abu Salamah ibn Abd al-Rahman ibn Awf, from Fatimah bint Qays herself. She said: Abu Amr ibn Hafs divorced me irrevocably, then departed for Yemen and appointed Ayyash ibn Abi Rabi'ah as his agent over her. Ayyash sent her some maintenance, but did she resent it? Ayyash said to her: "You have no right to maintenance or housing from us. The Messenger of Allah is here—peace and blessings be upon him—so ask him." She asked the Messenger of Allah—peace and blessings be upon him—about his statement. The Messenger of Allah—peace and blessings be upon him—said to her: "You have no right to maintenance or housing, but only to a provision in kindness. Depart from them." She then relayed the remainder of the account.

L34711–34712 This, then, is the ultimate clarification: temporary marriage is restored to what was known among them at that time, for we have cited the statements of Ibn ʻUmar and Ibn ʻAbbās.

L34713 It was reported to us through the chain of Saʻīd ibn Manṣūr: From ʻAbd al-

[28] **Qur'an references (L34709):** Qur'an 65:7 (At-Talaq).

اللَّهُ تَعَالَى بِهِ مِنْ بَيَانٍ، فَقَدْ كَانَ فِيهِمْ - رَضِيَ اللَّهُ عَنْهُمْ - الْمُوسِرُ الْمُتَنَاهِي، كَعَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَغَيْرِهِ، وَكَانَ ابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ مُوسِرَيْنِ دُونَ عَبْدِ الرَّحْمَنِ.

وَمِمَّا يُبَيِّنُ وُجُوبَ الرُّجُوعِ إلَى مَا رَآهُ الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّهُ مُتْعَةٌ بِالْمَعْرُوفِ، كَمَا قُلْنَا فِي النَّفَقَةِ، وَالْكِسْوَةِ، إذْ قَالَ اللَّهُ تَعَالَى: {لِيُنْفِقْ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لا يُكَلِّفُ اللَّهُ نَفْسًا إلا مَا آتَاهَا} [الطلاق: ٧] وَقَدْ وَافَقَنَا الْمُخَالِفُونَ عَلَى هَذَا، وَكِلَا النَّصَّيْنِ وَاجِبٌ اتِّبَاعُهُ.

وَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا ابْنُ مُفَرِّجٍ أَنَا عَبْدُ اللَّهِ بْنُ جَعْفَرِ بْنِ الْوَرْدِ أَنَا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِي الْعَلَّافُ أَنَا يَحْيَى بْنُ بُكَيْرٍ أَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ مَوْلَى الْأَسْوَدِ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ نَفْسِهَا قَالَتْ: طَلَّقَنِي أَبُو عَمْرِو بْنِ حَفْصٍ أَلْبَتَّةَ ثُمَّ خَرَجَ إلَى الْيَمَنِ وَوَكَّلَ بِهَا عَيَّاشُ بْنُ أَبِي رَبِيعَةَ فَأَرْسَلَ إلَيْهَا عَيَّاشٌ بِبَعْضِ النَّفَقَةِ، فَسَخِطَتْهَا؟ فَقَالَ لَهَا عَيَّاشٌ: مَا لَك عَلَيْنَا نَفَقَةٌ وَلَا سُكْنَى هَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَلِيهِ؟ فَسَأَلَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَمَّا قَالَ؟ فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَيْسَ لَكِ نَفَقَةٌ وَلَا مَسْكَنٌ، وَلَكِنْ مَتَاعٌ بِالْمَعْرُوفِ وَاخْرُجِي عَنْهُمْ» ، وَذَكَرَتْ بَاقِي الْخَبَرِ.

فَهَذَا غَايَةُ الْبَيَانِ - أَنَّ الْمُتْعَةَ مَرْدُودَةٌ إلَى مَا كَانَ مَعْرُوفًا عِنْدَهُمْ يَوْمَئِذٍ، فَقَدْ ذَكَرْنَا قَوْلَ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا عَبْدُ الرَّحْمَنِ بْنُ زِيَادٍ أَنَا شُعْبَةُ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: سَمِعْت حُمَيْدَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ يُحَدِّثُ عَنْ أُمِّهِ - هِيَ أُمُّ كُلْثُومٍ بِنْتُ عُقْبَةَ، مِنْ الْمُهَاجِرَاتِ الْفَوَاضِلِ لَهَا صُحْبَةٌ - أَنَّهَا قَالَتْ: كَأَنِّي أَنْظُرُ إلَى جَارِيَةٍ سَوْدَاءَ حَمَّمَهَا عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ امْرَأَتُهُ أُمُّ أَبِي سَلَمَةَ حِينَ طَلَّقَهَا فِي مَرَضِهِ. قَالَ سَعِيدِ بْنِ مَنْصُورٍ: أَنَا هُشَيْمٌ أَنَا مُغِيرَةَ عَنْ إبْرَاهِيمَ قَالَ: الْعَرَبُ تُسَمِّي " الْمُتْعَةَ " التَّحْمِيمَ.

Raḥmān ibn Ziyād, from Shu'bah, from Sa'd ibn Ibrāhīm ibn 'Abd al-Raḥmān ibn 'Awf, who said: I heard Ḥumayd ibn 'Abd al-Raḥmān ibn 'Awf narrating from his mother—she was Umm Kulthūm bint 'Uqbah, one of the eminent emigrant women honored with the Prophet's companionship—that she said: "It is as though I am looking at a black slave girl whom 'Abd al-Raḥmān ibn 'Awf's wife, Umm Abī Salamah, heated water for when he divorced her during his illness." Sa'īd ibn Manṣūr said: From Hushaym, from Mughīrah, from Ibrāhīm, who said: "The Arabs called 'al-mut'ah' 'al-taḥmīm'."

فَقَدْ اتَّفَقَ ابْنُ عَبَّاسٍ، وَعَبْدُ الرَّحْمَنِ، بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمَا فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - عَلَى أَنَّ مُتْعَةَ الْمُوسِرِ الْمُتَنَاهِي - خَادِمُ سَوْدَاءُ، فَإِنْ زَادَ عَلَى ذَلِكَ فَهُوَ مُحْسِنٌ، كَمَا فَعَلَ الْحَسَنُ بْنُ عَلِيٍّ، وَغَيْرُهُ، فَإِنْ كَانَتْ غَيْرَ مُطِيقَةٍ لِلْخِدْمَةِ فَلَيْسَتْ خَادِمًا، فَعَلَى هَذَا الْمِقْدَارِ يُجْبَرُ الْمُوسِرُ إذَا أَبَى أَكْثَرَ مِنْ ذَلِكَ.

L34714 Ibn Abbas and Abd al-Rahman unanimously agreed—in the presence of the Companions, may Allah be pleased with them, with no known opposition from the Companions—may Allah be pleased with them—that the utmost obligation of a financially capable person is a black female servant. If he exceeds this, he performs an act of excellence, as did al-Hasan ibn Ali and others. If she is incapable of service, she does not qualify as a servant. Based on this standard, the financially capable person who refuses to give more than that must be compelled.

وَأَمَّا الْمُتَوَسِّطُ - فَيُجْبَرُ عَلَى ثَلَاثِينَ دِرْهَمًا أَوْ قِيمَتِهَا إذْ لَمْ يَأْتِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَقَلُّ مِنْ ذَلِكَ كَمَا رُوِّينَا آنِفًا عَنْ ابْنِ عَبَّاسٍ وَابْنِ عُمَرَ إذْ رَأَيَا ذَلِكَ هُوَ الْمَعْرُوفُ.

L34715 As for the person of average means, he is compelled to pay thirty dirhams or their value, since no lesser amount has been transmitted from any of the Companions (may Allah be pleased with them), as we have previously narrated from Ibn Abbas and Ibn Umar, who ruled that to be the established amount.

وَأَمَّا الْمُقْتِرُ - فَأَقَلُّهُمْ مَنْ لَا يَجِدُ قُوتَ يَوْمِهِ، أَوْ لَا يَجِدُ زِيَادَةً عَلَى ذَلِكَ، فَهَذَا لَا يُكَلَّفُ حِينَئِذٍ شَيْئًا، لَكِنَّهَا دَيْنٌ عَلَيْهِ، فَإِذَا وَجَدَ زِيَادَةً عَلَى قُوتِهِ كُلِّفَ أَنْ يُعْطِيَهَا مَا تَنْتَفِعُ بِهِ - وَلَوْ فِي أَكْلَةِ يَوْمٍ - كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ إذْ يَقُولُ: {وَعَلَى الْمُقْتِرِ قَدَرُهُ} [البقرة: ٢٣٦] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34716–34718 As for the constrained person, the minimum definition is one who cannot find sustenance for a day or anything beyond that. Such a person does not... He is then obligated to do something, but it remains a debt upon him. When he possesses surplus beyond his basic sustenance, he must give her what she can benefit from—even if it amounts to a day's meal—as Almighty Allah has commanded when He says: {And for the one who is straitened is according

to his means} [Al-Baqarah: 236]. And success comes from Allah, the Most High.[29]

[الرَّجْعَةُ] [مَسْأَلَةٌ طَلَّقَ امْرَأَتَهُ ثُمَّ تَزَوَّجَتْ بِآخَرَ وَطِئَهَا ثُمَّ مَاتَ عَنْهَا ثُمَّ رَاجَعَهَا الَّذِي كَانَ طَلَّقَهَا ثُمَّ طَلَّقَهَا]

The Case of Revocation (Rajʿa): A man divorced his wife. She then married another man who consummated the marriage with her. When this second husband died, the first husband who had divorced her attempted to revoke the divorce via rajʿa, then divorced her again.

١٩٨١ - مَسْأَلَةٌ: وَمِنْ الرَّجْعَةِ مَنْ طَلَّقَ امْرَأَتَهُ تَطْلِيقَةً أَوْ تَطْلِيقَتَيْنِ فَاعْتَدَّتْ ثُمَّ تَزَوَّجَتْ زَوْجًا وَطِئَهَا فِي فَرْجِهَا ثُمَّ مَاتَ عَنْهَا أَوْ طَلَّقَهَا ثُمَّ رَاجَعَهَا الَّذِي كَانَ طَلَّقَهَا ثُمَّ طَلَّقَهَا لَمْ تَحِلَّ لَهُ إلَّا حَتَّى تَنْكِحَ زَوْجًا آخَرَ - يَطَؤُهَا فِي فَرْجِهَا - إنْ كَانَ طَلَّقَهَا قَبْلَ ذَلِكَ طَلْقَتَيْنِ فَإِنْ كَانَ إنَّمَا طَلَّقَهَا طَلْقَةً وَاحِدَةً فَإِنَّهُ تَبْقَى لَهُ فِيهَا طَلْقَةٌ هِيَ الثَّالِثَةُ.

L34719–34720

L34721 Issue 1981: Among rulings related to revocable divorce: If a man divorces his wife once or twice, she completes her waiting period, then marries another husband who consummates the marriage through vaginal intercourse. If this second husband dies or divorces her, and the first husband who originally divorced her then takes her back and divorces her again, she becomes unlawful for him unless she contracts a valid marriage with another husband who consummates it through vaginal intercourse. This applies specifically if he had divorced her twice before these events. If he had only divorced her once previously, he retains one remaining divorce count - which constitutes the third divorce.

وَقَالَتْ طَائِفَةٌ: إنَّ الَّذِي تَزَوَّجَهَا بَعْدَ طَلَاقِ الْأَوَّلِ قَدْ هَدَمَ طَلَاقَهُ كَمَا يَهْدِمُ الثَّلَاثَ، فَإِنَّهُ يَهْدِمُ مَا دُونَهَا - فَمِمَّنْ رُوِيَ عَنْهُ الْقَوْلُ الْأَوَّلُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ أَبَا هُرَيْرَةَ قَالَ فِيمَنْ طَلَّقَ امْرَأَتَهُ طَلْقَةً فَاعْتَدَّتْ، ثُمَّ تَزَوَّجَتْ، ثُمَّ طَلَّقَهَا الثَّانِي، فَتَزَوَّجَهَا الْأَوَّلُ فَطَلَّقَهَا طَلْقَتَيْنِ: أَنَّهَا قَدْ حُرِّمَتْ عَلَيْهِ - وَوَافَقَهُ عَلَى ذَلِكَ عَلِيٌّ، وَأُبَيُّ بْنُ كَعْبٍ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَالِكٍ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، كِلَاهُمَا عَنْ الزُّهْرِيِّ قَالَ: سَمِعْت سَعِيدَ بْنَ الْمُسَيِّبِ، وَحُمَيْدَ بْنَ عَبْدِ الرَّحْمَنِ، وَعُبَيْدَ اللَّهِ بْنَ عَبْدِ اللَّهِ بْنِ عُتْبَةَ، وَسُلَيْمَانَ بْنَ يَسَارٍ، كُلَّهُمْ قَالَ: سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: سَمِعْت عُمَرَ يَقُولُ: أَيُّمَا امْرَأَةٍ طَلَّقَهَا زَوْجُهَا

L34722–34723 A group said: The one who marries her after the first divorce has nullified his divorce, just as the triple divorce nullifies, for it nullifies any number fewer than three. Among those from whom the first opinion is narrated—as transmitted through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who informed me that Yaḥyā ibn Saʿīd al-Anṣārī reported from Saʿīd ibn al-Musayyib: That Abū Hurayrah said regarding a man who divorced his wife once, she observed her ʿiddah, then married another, then the second husband divorced her, and the first husband remarried her and divorced her twice: She has become forbidden to him. This was concurred by ʿAlī and Ubayy ibn Kaʿb. From ʿAbd al-Razzāq's transmission via Mālik and Sufyān ibn ʿUyaynah—both from al-Zuhrī—who said: I heard Saʿīd ibn al-Musayyib, Ḥumayd ibn ʿAbd al-Raḥmān, ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, and Sulaymān ibn Yasār—all of whom said: I heard Abū Hurayrah say: I heard ʿUmar say: Any

[29] **Qur'an references (L34716):** Qur'an 2:236 (Al-Baqarah).

woman divorced by her husband once or twice, then marries another—if he dies or divorces her, and the first husband remarries her—she remains with him according to what remains from his divorce for her. Through the chain of Ḥammād ibn Salamah from Ḥumayd from al-Ḥasan from ʿImrān ibn al-Ḥuṣayn, a similar statement is reported. This is also authentically established from Ibn ʿUmar—in one of his two contradictory opinions—through the chain of Ḥammād ibn Salamah from ʿUbayd Allāh ibn ʿUmar from Nāfiʿ from him.

طَلْقَةً أَوْ طَلْقَتَيْنِ ثُمَّ تَزَوَّجَتْ غَيْرَهُ فَمَاتَ أَوْ طَلَّقَهَا ثُمَّ تَزَوَّجَهَا الْأَوَّلُ فَإِنَّهَا عِنْدَهُ عَلَى مَا بَقِيَ مِنْ طَلَاقِهِ لَهَا. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ مِثْلُهُ - وَصَحَّ أَيْضًا: عَنْ ابْنِ عُمَرَ - فِي أَحَدِ قَوْلَيْهِ - عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْهُ.

L34724 It has also been reported from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ and a number of the Companions—may Allah be pleased with them—and it is the opinion of al-Ḥasan, Ibn Abī Laylā, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Muḥammad ibn al-Ḥasan, Mālik, al-Shāfiʿī, Abū Sulaymān, and their followers.

وَرُوِيَ أَيْضًا - عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ، وَنَفَرٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهُوَ قَوْلُ الْحَسَنِ، وَابْنِ أَبِي لَيْلَى، وَسُفْيَانَ الثَّوْرِيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ.

L34725–34727 And it has been narrated to us the second opinion through various chains, among which is that which we have narrated via ʿAbd al-Razzāq from Maʿmar. From Ibn Tawus from his father from Ibn Abbas, he said: “A new marriage and a new divorce.” And from Ibn Umar (in one of his two opinions) via the chains of Abd al-Razzaq and Wakiʿ. Wakiʿ narrated from Ismail ibn Abi Khalid from al-Shaʿbi, while Abd al-Razzaq narrated from Maʿdin ibn Tawus from his father. Then they both agreed upon the narration from Ibn Umar, who said: “A new marriage and a new divorce.”

وَرُوِّينَا الْقَوْلَ الثَّانِي - مِنْ طُرُقٍ، مِنْهَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ قَالَ: نِكَاحٌ جَدِيدٌ، وَطَلَاقٌ جَدِيدٌ - وَعَنْ ابْنِ عُمَرَ - فِي أَحَدِ قَوْلَيْهِ - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ، وَوَكِيعٍ، قَالَ وَكِيعٌ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ، وَقَالَ عَبْدُ الرَّزَّاقِ: عَنْ مَعْدِنِ بْنِ طَاوُسٍ عَنْ أَبِيهِ، ثُمَّ اتَّفَقَا عَنْ ابْنِ عُمَرَ، قَالَ: نِكَاحٌ جَدِيدٌ، وَطَلَاقٌ جَدِيدٌ.

L34728 We have also narrated it from Ibn Mas’ud—and this is the position of Ata, Shuraih, Ibrahim, the companions of Ibn Mas’ud, Ubaydah al-Salmani, Abu Hanifah, Zufar, and Abu Yusuf—so have we not examined the evidence cited by the proponents of this view? We found no evidence beyond their claim: “There is no disagreement among us that marriage to another husband annuls the three divorces. There is no doubt that if it annuls them, it has annulled the single [divorce] within their totality and the two [divorces] within their totality—for it is impossible that it annuls them piecemeal.”

وَرُوِّينَاهُ أَيْضًا - عَنْ ابْنِ مَسْعُودٍ - وَهُوَ قَوْلُ عَطَاءٍ وَشُرَيْحٍ، وَإِبْرَاهِيمَ، وَأَصْحَابِ ابْنِ مَسْعُودٍ، وَعَبِيدَةَ السَّلْمَانِيِّ، وَأَبِي حَنِيفَةَ، وَزُفَرَ، وَأَبِي يُوسُفَ -: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ أَهْلُ هَذِهِ الْمَقَالَةِ؟ فَلَمْ نَجِدْ لَهُمْ أَكْثَرَ مِنْ أَنْ قَالُوا: إنَّنَا لَمْ نَخْتَلِفْ أَنَّ نِكَاحَ زَوْجٍ آخَرَ يَهْدِمُ الثَّلَاثَ، وَلَا شَكَّ فِي أَنَّهُ إذَا هَدَمَهَا فَإِنَّهُ قَدْ هَدَمَ الْوَاحِدَةَ مِنْ جُمْلَتِهَا، وَالِاثْنَيْنِ مِنْ جُمْلَتِهَا - وَمِنْ الْمُحَالِ أَنْ يَهْدِمَهَا مُتَفَرِّقَةً.

L34729 Abū Muḥammad said: We said, “He never nullified any divorce at all. He only nullified the prohibition incurred by the completion of three divorces—

whether separated or combined—exclusively. Neither two divorces nor one render her prohibited through the nullification of that prohibition."

قَالَ أَبُو مُحَمَّد: فَقُلْنَا: لَمْ يَهْدِمْ قَطُّ طَلَاقًا، إِنَّمَا هَدَمَ التَّحْرِيمَ الْوَاقِعَ بِتَمَامِ الثَّلَاثِ مُفَرَّقَةً أَوْ مَجْمُوعَةً فَقَطْ، وَلَا تُحَرَّمُ بِالطَّلْقَتَيْنِ وَلَا بِالْوَاحِدَةِ بِهَدْمِهِ.

L34730 We said to them: You have imposed upon the agnatic group half a tenth of the blood money or more, yet exempted them from anything less than half a tenth. Undoubtedly, when they are charged half a tenth, they are in fact collectively burdened with less than that? They replied: We only imposed what was financially burdensome. We said: What authority do you have to assert that half a tenth or more constitutes the burden, rather than a third being the burden or the entire amount?

وَقُلْنَا لَهُمْ: أَنْتُمْ قَدْ حَمَّلْتُمْ الْعَاقِلَةَ نِصْفَ عُشْرِ الدِّيَةِ فَأَكْثَرَ، وَلَمْ تُحَمِّلُوهَا أَقَلَّ مِنْ نِصْفِ الْعُشْرِ، وَلَا شَكَّ أَنَّهَا إذَا حُمِّلَتْ نِصْفَ الْعُشْرِ فَقَدْ حُمِّلَتْ فِي جُمْلَتِهِ أَقَلَّ مِنْهُ؟ فَقَالُوا: إنَّمَا حَمَّلْنَاهَا مَا ثَقُلَ؟ فَقُلْنَا: وَمَنْ لَكُمْ بِأَنَّ نِصْفَ الْعُشْرِ فَصَاعِدًا هُوَ الثِّقَلُ دُونَ أَنْ يَكُونَ الثُّلُثُ هُوَ الثِّقَلُ أَوْ الْكُلُّ.

L34731 Moreover, there may be a perpetrator upon whom even one-fortieth of the *diyah* becomes burdensome due to the scarcity of his wealth, while another may find the entire *diyah* light due to the abundance of his wealth.

وَأَيْضًا - فَرُبَّ جَانٍ يَعْظُمُ عَلَيْهِ وَيَثْقُلُ رُبُعُ عُشْرِ الدِّيَةِ، لِقِلَّةِ مَالِهِ، وَآخَرَ تَخِفُّ عَلَيْهِ الدِّيَةُ كُلُّهَا لِكَثْرَةِ مَالِهِ.

L34732 The question still remains for you, since you imposed a heavy burden on her, then it would be more fitting to impose a lighter one—yet all of this is meaningless. The decisive proof lies in Allah's statement: {If he divorces her} [Al-Baqarah: 230]—referring to the third divorce—{she is not lawful for him thereafter until she marries another husband} [Al-Baqarah: 230]. Therefore, it is impermissible to transgress Allah's ordained limits, and all qiyas is invalid. Success is attained only through Allah, the Exalted.[30]

ثُمَّ السُّؤَالُ بَاقٍ عَلَيْكُمْ، إذْ حَمَّلْتُمُوهَا مَا ثَقُلَ، فَالْأَوْلَى أَنْ تُحَمِّلُوهَا مَا خَفَّ وَكُلُّ هَذَا لَا مَعْنَى لَهُ، إنَّمَا الْحُجَّةُ فِي ذَلِكَ قَوْلُ اللَّهِ تَعَالَى: {فَإِنْ طَلَّقَهَا} [البقرة: ٢٣٠] يَعْنِي فِي الثَّالِثَةِ {فَلا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ} [البقرة: ٢٣٠] فَلَا يَجُوزُ تَعَدِّي حُدُودَ اللَّهِ تَعَالَى وَالْقِيَاسُ كُلُّهُ بَاطِلٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ حُكْمُ الْمُطَلَّقَةِ طَلَاقًا رَجْعِيًّا]

Issue: The ruling concerning the woman divorced through a revocable divorce.

L34733

L34734–34736 1982 - Issue: We have stated that the woman divorced by a revocable divorce remains the wife of the one who divorced her as long as... Her waiting period has not expired; they inherit from each other. His divorce, oath of abstention (īlāʾ), disavowal (ẓihār), and imprecation (liʿān—if he accuses her) apply to her. He is obligated to provide her maintenance, clothing, and housing.

١٩٨٢ - مَسْأَلَةٌ: وَقَدْ قُلْنَا: إنَّ الْمُطَلَّقَةَ طَلَاقًا رَجْعِيًّا فَهِيَ زَوْجَةٌ لِلَّذِي طَلَّقَهَا مَا لَمْ تَنْقَضِ عِدَّتُهَا، يَتَوَارَثَانِ، وَيَلْحَقُهَا طَلَاقُهُ، وَإِيلَاؤُهُ، وَظِهَارُهُ، وَلِعَانُهُ إنْ قَذَفَهَا، وَعَلَيْهِ نَفَقَتُهَا، وَكِسْوَتُهَا، وَإِسْكَانُهَا.

L34737 Since she is his wife, it is permissible for him to look at from her what he used to look at from her before he divorced her and to have intercourse

[30] **Qur'an references (L34732):** Qur'an 2:230 (Al-Baqarah).

with her, as no text has come to prohibit him from any of that. Allah the Exalted has named him her "baʿl," for He, the Almighty and Majestic, states: "And their husbands are more entitled to take them back in that" [Al-Baqarah 2:228].[31]

فَإِذْ هِيَ زَوْجَتُهُ فَحَلَالٌ لَهُ أَنْ يَنْظُرَ مِنْهَا إلَى مَا كَانَ يَنْظُرُ إلَيْهِ مِنْهَا قَبْلَ أَنْ يُطَلِّقَهَا، وَأَنْ يَطَأَهَا، إذْ لَمْ يَأْتِ نَصٌّ بِمَنْعِهِ مِنْ شَيْءٍ مِنْ ذَلِكَ - وَقَدْ سَمَّاهُ اللَّهُ تَعَالَى " بَعْلًا " لَهَا، إذْ يَقُولُ عَزَّ وَجَلَّ: {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ} [البقرة: ٢٢٨] .

L34738–34739 Abū Muḥammad said: If he has intercourse with her, he does not thereby become one who has revoked the divorce to her until he verbally pronounces the revocation, has it witnessed, and informs her of this before the completion of her waiting period. If he revokes the divorce without having two just witnesses attest to it, it is not a valid revocation due to Allah the Exalted's statement: {When they have fulfilled their term, either retain them honorably or separate from them honorably, and have two just witnesses from among you attest} [65:2]. He, the Almighty and Majestic, distinguished between revocation, divorce, and the requirement of witnessing. Thus, it is impermissible to separate any of these from the others. Whoever divorces without having two just witnesses attest to it, or revokes the divorce without having two just witnesses attest to it, has transgressed the boundaries set by Allah the Exalted.[32]

قَالَ أَبُو مُحَمَّد: فَإِنْ وَطِئَهَا لَمْ يَكُنْ بِذَلِكَ مُرَاجِعًا لَهَا حَتَّى يَلْفِظَ بِالرَّجْعَةِ وَيُشْهِدَ، وَيُعْلِمَهَا بِذَلِكَ قَبْلَ تَمَامِ عِدَّتِهَا، فَإِنْ رَاجَعَ وَلَمْ يُشْهِدْ فَلَيْسَ مُرَاجِعًا لِقَوْلِ اللَّهِ تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوَيْ عَدْلٍ مِنْكُمْ} [الطلاق: ٢] فَرَّقَ عَزَّ وَجَلَّ بَيْنَ الْمُرَاجَعَةِ، وَالطَّلَاقِ وَالْإِشْهَادِ، فَلَا يَجُوزُ إفْرَادُ بَعْضِ ذَلِكَ عَنْ بَعْضٍ، وَكَانَ مَنْ طَلَّقَ وَلَمْ يُشْهِدْ ذَوَيْ عَدْلٍ، أَوْ رَاجَعَ وَلَمْ يُشْهِدْ ذَوَيْ عَدْلٍ، مُتَعَدِّيًا لِحُدُودِ اللَّهِ تَعَالَى.

L34740 The Messenger of Allah, peace and blessings be upon him, said, "Whoever does a deed not in accordance with our command, it is rejected."[33]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L34741 If it is said: Allah—the Exalted and Majestic—has declared, "And call upon witnesses when you engage in transactions" (Quran 2:282).[34]

فَإِنْ قِيلَ: قَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ} [البقرة: ٢٨٢] .

L34742 And He, the Exalted, said regarding deferred debt: "Call upon two witnesses from among your men. But if the two are not men, then a man and two women." (Al-Baqarah 2:282)[35]

وَقَالَ تَعَالَى فِي الدَّيْنِ الْمُؤَجَّلِ: {وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ} [البقرة: ٢٨٢] .

L34743 Why did you permit the deferred sale and others when they did not have it

فَلِمَ أَجَزْتُمْ الْبَيْعَ الْمُؤَجَّلَ وَغَيْرَهُ إذَا لَمْ يُشْهِدْ عَلَيْهِ؟ وَقَالَ تَعَالَى: {فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهِدُوا عَلَيْهِمْ} [النساء: ٦] .

[31] **Qur'an references (L34737):** Qur'an 2:228 (Al-Baqarah).
[32] **Qur'an references (L34739):** Qur'an 65:2 (At-Talaq).
[33] **Hadith references (L34740):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.
[34] **Qur'an references (L34741):** Qur'an 2:282 (Al-Baqarah).
[35] **Qur'an references (L34742):** Qur'an 2:282 (Al-Baqarah).

witnessed? And He, the Most High, said: “So when you deliver their wealth to them, appoint witnesses over them” [An-Nisa’ 4:6].[36]

L34744 Why did you permit handing over his property to the orphan when he attains discernment without testimony? We replied: We did not accept his claim to receive the property unless he furnishes evidence, and we obligated the orphan to swear an oath if the custodian fails to furnish evidence that he has handed over his property to the orphan. However, we deem him disobedient to God Almighty only if he swears a perjured oath.

فَلِمَ أَجَزْتُمْ الدَّفْعَ إِلَى الْيَتِيمِ مَالَهُ إِذَا بَلَغَ مُمَيِّزًا دُونَ إِشْهَادٍ؟ قُلْنَا: لَمْ نُجِزْ دَعْوَاهُ لِلدَّفْعِ لَا حَتَّى يَأْتِيَ بِالْبَيِّنَةِ، وَقَضَيْنَا بِالْيَمِينِ عَلَى الْيَتِيمِ إِنْ لَمْ يَأْتِ الْمَوْلَى بِالْبَيِّنَةِ عَلَى أَنَّهُ قَدْ دَفَعَ إِلَيْهِ مَالَهُ، وَلَكِنْ جَعَلْنَاهُ عَاصِيًا لِلَّهِ تَعَالَى إِنْ حَلَفَ حَانِثًا فَقَطْ.

L34745–34746 Just as We have deemed the woman—for whom no clear evidence has been established by the husband regarding her divorce or its revocation—disobedient to Allah, the Almighty, the Majestic: if she swears falsely, knowing that he has divorced her or revoked [the divorce].

كَمَا جَعَلْنَا الْمَرْأَةَ الَّتِي لَمْ يَقُمْ لِلزَّوْجِ بَيِّنَةٌ بِطَلَاقِهَا، وَلَا بِرَجْعَتِهَا: عَاصِيَةً لِلَّهِ عَزَّ وَجَلَّ إِنْ حَلَفَتْ حَانِثَةً، عَالِمَةً بِأَنَّهُ قَدْ طَلَّقَهَا أَوْ رَاجَعَهَا.

L34747 As for our permitting of the deferred sale and other [transactions], even if they did not have it witnessed—this ruling derives from the statement of Allah’s Messenger (peace and blessings be upon him): “The two parties retain the right of choice until they part. If they part, or if one offers the other the choice and he opts to finalize the sale, then the sale is concluded”—as he (peace and blessings be upon him) expressed it—in accordance with what we have previously cited verbatim with its chain of transmission in the “Book of Sales” within this compendium of ours and other sources. All praise belongs to Allah, Lord of the worlds.

وَأَمَّا إِجَازَتُنَا الْبَيْعَ الْمُؤَجَّلَ وَغَيْرَهُ -، وَإِنْ لَمْ يُشْهِدَا عَلَيْهِ - فَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - “ أَنَّهُمَا بِالْخِيَارِ مَا لَمْ يَتَفَرَّقَا فَإِذَا تَفَرَّقَا أَوْ خَيَّرَ أَحَدُهُمَا الْآخَرَ فَاخْتَارَ الْبَيْعَ فَقَدْ تَمَّ الْبَيْعُ ” أَوْ كَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِمَّا قَدْ ذَكَرْنَاهُ فِي “ كِتَابِ الْبُيُوعِ ” مِنْ دِيوَانِنَا هَذَا وَغَيْرِهِ بِنَصِّهِ، وَإِسْنَادِهِ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L34748 And in all of that, he is disobeying Allah, the Mighty and Majestic, if he does not have witnesses in deferred sales and similar transactions, and in transferring wealth to the orphan when he reaches the age of discernment, in his divorce, and in reinstating the marriage, if he does not act as Allah, the Mighty and Majestic, has commanded him.

وَهُوَ فِي كُلِّ ذَلِكَ عَاصٍ لِلَّهِ عَزَّ وَجَلَّ إِنْ لَمْ يُشْهِدْ فِي الْبَيْعِ الْمُؤَجَّلِ، وَغَيْرِهِ، وَفِي دَفْعِ الْمَالِ لِلْيَتِيمِ إِذَا بَلَغَ مُمَيِّزًا، وَفِي طَلَاقِهِ، وَفِي رَجْعَتِهِ، إِذَا لَمْ يَفْعَلْ كَمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ.

L34749 People have differed regarding intercourse during the waiting period: does it constitute a revocable act (*rajʿah*) or not? Indeed, there is a view that it does. As for acts short of intercourse—it has been reported to us from al-Ḥakam ibn ʿUtaybah and Saʿīd ibn al-Musayyab that intercourse constitutes a revocable act (*rajʿah*), and this has also been authenticated from Ibrāhīm

وَقَدْ اخْتَلَفَ النَّاسُ فِي الْوَطْءِ فِي الْعِدَّةِ، أَيَكُونُ رَجْعَةً أَمْ لَا؟ نَعَمْ، وَفِيمَا دُونَ الْوَطْءِ -: فَرُوِّينَا عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ وَسَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ الْوَطْءَ رَجْعَةٌ - وَصَحَّ هَذَا أَيْضًا

[36] **Qur’an references (L34743):** Qur’an 4:6 (An-Nisa).

al-Nakhaʿī, Ṭāwūs, al-Ḥasan, al-Zuhrī, and ʿAṭāʾ. It has been reported to us from al-Shaʿbī, and it was reported from Ibn Sīrīn—this being the opinion of al-Awzāʿī and Ibn Abī Laylā.

- عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَطَاوُسٍ، وَالْحَسَنِ، وَالزُّهْرِيِّ، وَعَطَاءٍ. وَرُوِّينَاهُ عَنْ الشَّعْبِيِّ - وَرُوِيَ عَنْ ابْنِ سِيرِينَ -، وَهُوَ قَوْلُ الْأَوْزَاعِيِّ، وَابْنِ أَبِي لَيْلَى.

L34750 Malik and Ishaq ibn Rāhawayh said: If he intends revocation [of divorce] through intercourse, it constitutes a revocation. But if he does not intend revocation through it, it is not a revocation. They both agreed: As for acts less than intercourse, they are not a revocation, even if he intended them as revocation.

وَقَالَ مَالِكٌ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: إِنْ نَوَى بِالْجِمَاعِ الرَّجْعَةَ فَهِيَ رَجْعَةٌ، وَإِنْ لَمْ يَنْوِ بِهِ الرَّجْعَةَ فَلَيْسَ رَجْعَةً، قَالَا جَمِيعًا: وَأَمَّا مَا دُونَ النِّكَاحِ فَلَيْسَ رَجْعَةً، وَإِنْ نَوَى بِهِ الرَّجْعَةَ؟

L34751–34752 Abū Muḥammad said: This categorization has no valid basis at all. Al-Ḥasan ibn Ḥayy, Sufyān al-Thawrī, and Abū Ḥanīfah said: Intercourse constitutes revocation of the divorce—whether he intended it as such or not—and likewise intimate contact.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَقْسِيمٌ لَا حُجَّةَ عَلَى صِحَّتِهِ أَصْلًا وَقَالَ الْحَسَنُ بْنُ حَيٍّ، وَسُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ: الْجِمَاعُ رَجْعَةٌ - نَوَى بِهِ الرَّجْعَةَ أَوْ لَمْ يَنْوِ - وَكَذَلِكَ اللَّمْسُ.

L34753 Sufyan and Abu Hanifah said: If it is for desire, then yes; otherwise, no.

قَالَ سُفْيَانُ، وَأَبُو حَنِيفَةَ: إِذَا كَانَ لِشَهْوَةٍ، وَإِلَّا فَلَا.

L34754 Abu Hanifah said: Looking at the private parts with illicit desire is a reversion.

قَالَ أَبُو حَنِيفَةَ: وَالنَّظَرُ إِلَى الْفَرْجِ بِشَهْوَةٍ رَجْعَةٌ.

L34755 If she kisses him out of desire or touches him out of desire—and he formally admits this—it constitutes revocation. If he is insane and kisses her out of desire, it constitutes revocation. If she has intercourse with him under compulsion, it constitutes revocation, but acts less than intercourse—even if compelled—do not constitute revocation.

قَالَ: فَلَوْ قَبَّلَتْهُ لِشَهْوَةٍ، أَوْ لَمَسَتْهُ لِشَهْوَةٍ - وَأَقَرَّ هُوَ بِذَلِكَ - فَهِيَ رَجْعَةٌ؟ فَلَوْ جُنَّ فَقَبَّلَهَا لِشَهْوَةٍ فَهِيَ رَجْعَةٌ، فَلَوْ جَامَعَتْهُ مُكْرَهَةً فَهِيَ رَجْعَةٌ، وَلَا يَكُونُ مَا دُونَ الْجِمَاعِ بِإِكْرَاهٍ رَجْعَةً.

L34756 Abu Muhammad said: These opinions are utterly corrupt, for they constitute legislation in religion without Quran, sound Sunnah, weak Sunnah, any analogy with a valid basis, any opinion that has even a trace of soundness, nor—to our knowledge—has anyone preceded them in this.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ الْأَقْوَالُ فِي غَايَةِ الْفَسَادِ، لِأَنَّهَا شَرْعٌ فِي الدِّينِ بِغَيْرِ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا قِيَاسٍ لَهُ وَجْهٌ، وَلَا رَأْيٍ لَهُ فِي السَّدَادِ حَظٌّ، وَلَا سَبَقَهُ إِلَيْهَا أَحَدٌ نَعْلَمُهُ.

L34757 Jabir ibn Zayd, Abu Qilabah, Al-Layth ibn Sa'd, and Al-Shafi'i said: Intercourse or acts short of it do not constitute a revocable divorce—whether the husband intended by such acts to effect revocation or not—and revocation is only valid through an explicit verbal declaration.

وَقَالَ جَابِرُ بْنُ زَيْدٍ، وَأَبُو قِلَابَةَ، وَاللَّيْثُ بْنُ سَعْدٍ وَالشَّافِعِيُّ: الْوَطْءُ فَمَا دُونَهُ لَا يَكُونُ رَجْعَةً - نَوَى بِهِ الرَّجْعَةَ أَوْ لَمْ يَنْوِ - وَلَا رَجْعَةَ إِلَّا بِالْكَلَامِ.

L34758 Abū Muḥammad said: Neither the Qur'ān nor the Sunnah has established

that intercourse constitutes revocation. There is no disagreement that revocation effected through speech is valid. Therefore, revocation occurs only through what is established as valid revocation. The Exalted said: *"Then retain them with what is recognized as proper"* [al-Ṭalāq: 2]. "What is recognized as proper" refers to what reveals the intention of the husband retaining [his wife] through revocation. This can only be known through speech. And success is from Allah, the Exalted.[37]

L34759 Some have said: The meaning of Allah the Exalted's statement, "So when they have [nearly] reached their term, then keep them with kindness" [al-Ṭalāq 65:2], is that its meaning is the approach of reaching the term.[38]

L34760–34761 Abu Muhammad said: This is an error and unquestionably false, for it constitutes an assertion about Allah (the Exalted and Majestic) that He willed what He has not informed us of, and that He willed it and the Messenger of Allah (peace and blessings be upon him) did not inform us of it.

L34762 And He, the Exalted, has said: *"And that you associate with Allah [partners] for which He has not sent down any authority, and that you say about Allah what you do not know."* (Surah Al-A'rāf 7:33)[39]

L34763 Moreover, if their claim were true, there would be no retention [of the wife] except near the end of the maximum waiting period—a position neither they nor anyone else upholds.

L34764 Abu Muhammad said: "Its meaning, without doubt, is: 'When they have reached their term' [At-Talaq: ٢] - the term of their prescribed waiting period ('iddah)."[40]

L34765 The proof of this is that from the beginning to the end of the *iddah* period, there exists a timeframe for revoking the divorce (*raj'a*) or retaining her. No statement holds greater validity than one confirmed by the definitive consensus acknowledged by both opponents and proponents. Abū Muḥammad

قَالَ أَبُو مُحَمَّد: لَمْ يَأْتِ بِأَنَّ الْجِمَاعَ رَجْعَةٌ: قُرْآنٌ وَلَا سُنَّةٌ، وَلَا خِلَافَ فِي أَنَّ الرَّجْعَةَ بِالْكَلَامِ رَجْعَةٌ، فَلَا يَكُونُ رَجْعَةً إِلَّا بِمَا صَحَّ أَنَّهُ رَجْعَةٌ وَقَالَ تَعَالَى: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] وَالْمَعْرُوفُ مَا عُرِفَ بِهِ مَا فِي نَفْسِ الْمُمْسِكِ الرَّادِّ، وَلَا يُعْرَفُ ذَلِكَ إِلَّا بِالْكَلَامِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَدْ قَالَ قَوْمٌ: إِنَّ مَعْنَى قَوْلِ اللَّهِ تَعَالَى: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] إِنَّمَا مَعْنَاهُ: مُقَارَبَةُ بُلُوغِ الْأَجَلِ.

قَالَ أَبُو مُحَمَّد: وَهَذَا خَطَأٌ وَبَاطِلٌ بِلَا شَكٍّ، لِأَنَّهُ إِخْبَارٌ عَنْ اللَّهِ تَعَالَى بِأَنَّهُ أَرَادَ مَا لَمْ يُخْبِرْنَا - عَزَّ وَجَلَّ - وَبِأَنَّهُ أَرَادَهُ وَلَا أَخْبَرَنَا بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَقَدْ قَالَ تَعَالَى: {وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [الأعراف: ٣٣] .

وَأَيْضًا - فَلَوْ كَانَ مَا قَالُوا لَكَانَ لَا إِمْسَاكَ إِلَّا قُرْبَ بُلُوغِ أَقْصَى الْعِدَّةِ وَهَذَا مَا لَا يَقُولُونَهُ، لَا هُمْ وَلَا غَيْرُهُمْ.

قَالَ أَبُو مُحَمَّدٍ: مَعْنَاهُ - بِلَا شَكٍّ -: {فَإِذَا بَلَغْنَ أَجَلَهُنَّ} [الطلاق: ٢] أَجَلُ عِدَّتِهِنَّ.

بُرْهَانُ ذَلِكَ -: أَنَّ مِنْ أَوَّلِ الْعِدَّةِ إِلَى آخِرِهَا وَقْتًا لِرَدِّهِ إِيَّاهَا وَلِإِمْسَاكِهِ لَهَا، وَلَا قَوْلَ أَصَحَّ مِنْ قَوْلٍ صَحَّحَهُ الْإِجْمَاعُ الْمُتَيَقَّنُ مِنْ الْمُخَالِفِ وَالْمُوَالِفِ، قَالَ أَبُو مُحَمَّد: وَأَمَّا قَوْلُنَا: إِنَّهُ إِنْ رَاجَعَ وَلَمْ يُشْهِدْ، أَوْ أَشْهَدَ وَلَمْ يُعْلِمْهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا - غَائِبًا كَانَ أَوْ حَاضِرًا - وَقَدْ طَلَّقَهَا وَأَعْلَمَهَا وَأَشْهَدَ، فَقَدْ بَانَتْ مِنْهُ، وَلَا رَجْعَةَ لَهُ عَلَيْهَا إِلَّا بِرِضَاهَا بِابْتِدَاءِ

[37] **Qur'an references (L34758):** Qur'an 65:2 (At-Talaq).
[38] **Qur'an references (L34759):** Qur'an 65:2 (At-Talaq).
[39] **Qur'an references (L34762):** Qur'an 7:33 (Al-A'raf).
[40] **Qur'an references (L34764):** Qur'an 2:234 (Al-Baqarah); Qur'an 65:2 (At-Talaq).

said: As for our position—if he revokes the divorce without witnesses, or appoints witnesses but fails to inform her until her *iddah* concludes (whether the husband is absent or present), even though he had already divorced her, notified her, and appointed witnesses—then she becomes irrevocably separated from him. He retains no right to revoke the divorce unless she consents to a new marriage contract initiated with a guardian, witnesses, and a newly stipulated *mahr*—regardless of whether she remarries or not, and irrespective of the second husband's consummation of the marriage. If news of the revocation reaches her while she remains within her *iddah* period, this constitutes a valid revocation of the divorce (*raj'a*).

L34766 The evidence for that is the statement of Allah, the Exalted: "They seek to deceive Allah and those who believe, but they deceive none except themselves" [Al-Baqarah: 9]. And He, the Exalted, said: "Do not harm them in order to make things difficult for them" [At-Talāq: 6], for this constitutes clear harm. The Messenger of Allah—peace and blessings be upon him—said: "Whoever performs an act not in accordance with our command, it is rejected." Therefore, his harmful act is rejected and invalid.[41][42]

L34767–34769 Furthermore, Allah the Exalted has referred to the act of taking back (*raj'ah*) as "retaining with kindness." He, the Exalted, said: *"When they have reached their term, either retain them in a decent manner or part with them in a decent manner"* [Quran, At-Talaq 65:2]. The revocation [of divorce] is retaining [the wife], and according to the explicit text of Allah's words, it is only valid when conducted through recognized norms. These norms require informing her and her family if she is a minor or mentally incapacitated. If he fails to notify her, his retention becomes wrongful rather than lawful, for he thereby denies her marital rights: financial support, clothing, housing, and equitable division [of time]. Such retention remains defective and void unless attested through formal notification of her awareness, after which it becomes valid according to established norms.[43]

نِكَاحٍ بِوَلِيٍّ، وَإِشْهَادٍ وَصَدَاقٍ مُبْتَدَأٍ - سَوَاءٌ تَزَوَّجَتْ أَوْ لَمْ تَتَزَوَّجْ دَخَلَ بِهَا الزَّوْجُ الثَّانِي أَوْ لَمْ يَدْخُلْ - فَإِنْ أَتَاهَا الْخَبَرُ - وَهِيَ بَعْدُ فِي الْعِدَّةِ - فَهِيَ رَجْعَةٌ صَحِيحَةٌ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {يُخَادِعُونَ اللَّهَ وَالَّذِينَ آمَنُوا وَمَا يَخْدَعُونَ إِلا أَنْفُسَهُمْ} [البقرة: ٩] ، وَقَالَ تَعَالَى: {وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ} [الطلاق: ٦] وَهَذَا عَيْنُ الْمُضَارَّةِ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» ، فَمُضَارَّتُهُ مَرْدُودَةٌ بَاطِلٌ.

وَأَيْضًا - فَإِنَّ اللَّهَ تَعَالَى سَمَّى الرَّجْعَةَ إمْسَاكًا بِمَعْرُوفٍ، قَالَ تَعَالَى {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] فَالرَّجْعَةُ - هِيَ الْإِمْسَاكُ، وَلَا تَكُونُ - بِنَصِّ كَلَامِ اللَّهِ تَعَالَى إلَّا بِمَعْرُوفٍ وَالْمَعْرُوفُ - هُوَ إعْلَامُهَا، وَإِعْلَامُ أَهْلِهَا، إنْ كَانَتْ صَغِيرَةً أَوْ مَجْنُونَةً - فَإِنْ لَمْ يُعْلِمْهَا لَمْ يُمْسِكْ بِمَعْرُوفٍ، وَلَكِنْ بِمُنْكَرٍ، إذْ مَنَعَهَا حُقُوقَ الزَّوْجِيَّةِ: مِنْ النَّفَقَةِ، وَالْكِسْوَةِ، وَالْإِسْكَانِ، وَالْقِسْمَةِ فَهُوَ إمْسَاكٌ فَاسِدٌ بَاطِلٌ مَا لَمْ يُشْهِدْ بِإِعْلَامِهَا فَحِينَئِذٍ يَكُونُ بِمَعْرُوفٍ.

[41] **Hadith references (L34766):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[42] **Qur'an references (L34766):** Qur'an 2:9 (Al-Baqarah); Qur'an 65:6 (At-Talaq).

[43] **Qur'an references (L34767):** Qur'an 65:2 (At-Talaq).

L34770 And similarly, Allah, the Mighty and Majestic, has said: “And their husbands are more entitled to take them back during that waiting period if they desire reconciliation. And women have rights equivalent to the responsibilities they owe in accordance with what is recognized [as customary].” [Al-Baqarah 2:228][44]

وَكَذَلِكَ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ} [البقرة: ٢٢٨] .

L34771 Abu Muhammad said: The husband is only entitled to retract [the divorce] if he intends reconciliation—by the Quranic text itself. Whoever conceals the retraction or retracts it in a manner that does not reach her has unquestionably not intended reconciliation but rather corruption. Thus, it constitutes neither a valid retraction nor a restitution of marriage in any sense.

قَالَ أَبُو مُحَمَّد: إِنَّمَا يَكُونُ " الْبَعْلُ " أَحَقَّ بِرَدِّهَا إِنْ أَرَادَ إِصْلَاحًا - بِنَصِّ الْقُرْآنِ وَمَنْ كَتَمَهَا الرَّدَّ، أَوْ رَدَّ بِحَيْثُ لَا يَبْلُغُهَا، فَلَمْ يُرِدْ إِصْلَاحًا بِلَا شَكٍّ، بَلْ أَرَادَ الْفَسَادَ، فَلَيْسَ رَدًّا وَلَا رَجْعَةً أَصْلًا.

L34772 Indeed, people have differed regarding this matter into five opinions: –

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا عَلَى خَمْسَةِ أَقْوَالٍ: -:.

L34773–34775 The first opinion—as was reported to us through the chain of Shuʿbah from al-Ḥakam ibn ʿUtaybah: that ʿUmar ibn al-Khaṭṭāb said regarding a woman whose husband divorced her, informed her of the divorce, then took her back without informing her until her waiting period concluded: she is irrevocably separated from him. Through the chain of Saʿd ibn Manṣūr: I, al-Muʿtamir ibn Sulaymān, report from Manṣūr ibn al-Muʿtamir from Ibrāhīm al-Nakhaʿī, who said: ʿUmar ibn al-Khaṭṭāb said, “If a man divorces his wife, informs her of the divorce, then takes her back but conceals the revocation from her until the waiting period concludes: he has no claim over her.” Through the chain of ʿAbd al-Razzāq from Ibn Jurayj: ʿAmr ibn Dīnār reported to us, narrating from Abū al-Shaʿthāʾ Jābir ibn Zayd, who said: “I disputed with a man among the early Qurʾānic scholars regarding a woman whom a man divorces, then...” He took her back but concealed the revocation? I said, “He has nothing,” so we asked Judge Shurayh? He replied, “He has nothing except the teeth of the hyena.” From the path of Sa’id ibn Mansur: I am Husaym, I am Yunus ibn ’Ubayd, from Ibn Sirin, who said: A man asked ’Imran ibn al-Husayn, “He divorced without witnesses and revoked without witnesses.” ’Imran said to him, “You divorced without observing the waiting period and revoked not in accordance with the Prophetic practice. Have witnesses attest to what you have done.”

فَالْقَوْلُ الْأَوَّلُ - كَمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي امْرَأَةٍ طَلَّقَهَا زَوْجُهَا، فَأَعْلَمَهَا، ثُمَّ رَاجَعَهَا وَلَمْ يُعْلِمْهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا: فَقَدْ بَانَتْ مِنْهُ. وَمِنْ طَرِيقِ سَعْدِ بْنِ مَنْصُورٍ أَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ إذَا طَلَّقَ امْرَأَتَهُ فَأَعْلَمَهَا طَلَاقَهَا، ثُمَّ رَاجَعَهَا فَكَتَمَهَا الرَّجْعَةَ حَتَّى انْقَضَتْ الْعِدَّةُ: فَلَا سَبِيلَ لَهُ عَلَيْهَا. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنَا عَمْرُو بْنُ دِينَارٍ أَخْبَرَنِي أَبُو الشَّعْثَاءِ جَابِرُ بْنُ زَيْدٍ، قَالَ: تَمَارَيْتُ أَنَا وَرَجُلٌ مِنْ الْقُرَّاءِ الْأَوَّلِينَ فِي الْمَرْأَةِ يُطَلِّقُهَا الرَّجُلُ ثُمَّ يَرْتَجِعُهَا، فَيَكْتُمُهَا رَجْعَتَهَا؟ فَقُلْت أَنَا: لَيْسَ لَهُ شَيْءٌ فَسَأَلْنَا شُرَيْحًا الْقَاضِيَ؟ فَقَالَ: لَيْسَ لَهُ إلَّا فَسْوَةُ الضَّبُعِ. وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ ابْنِ سِيرِينَ قَالَ: سَأَلَ رَجُلٌ عِمْرَانَ بْنَ الْحُصَيْنِ فَقَالَ: إنَّهُ طَلَّقَ وَلَمْ يُشْهِدْ، وَرَاجَعَ وَلَمْ يُشْهِدْ؟ فَقَالَ لَهُ عِمْرَانُ: طَلَّقْت بِغَيْرِ عِدَّةٍ، وَرَاجَعْت فِي غَيْرِ سُنَّةٍ، فَأَشْهِدْ عَلَى مَا صَنَعْت.

[44]**Qur’an references (L34770):** Qur’an 2:228 (Al-Baqarah).

L34776 From the chain of Saʿīd ibn Manṣūr: I am Hushaym, who reported to me that ʿUbaydah narrated from al-Ḥasan ibn Rawwāḥ, who said: I asked Saʿīd ibn al-Musayyib about a man who divorces secretly and revokes secretly. He replied: "You divorced outside the iddah and revoked in obscurity. Produce witnesses for what you have done!"

From another chain of Saʿīd ibn Manṣūr: I am Hushaym; I am Manṣūr, from al-Ḥasan, who said: If a man divorces his wife, then takes her back in her absence or presence without informing her of the revocation until the iddah expires, he has no claim over her. This is an opinion.

L34777 A second opinion—we have narrated it through the chain of Ibn Wahb from Mālik, who said: It reached me that ʿUmar ibn al-Khaṭṭāb said regarding a man who divorces his wife while absent, then takes her back without informing her of his revocation—after he had informed her of the divorce—that if she marries another husband and he has not consummated the marriage with her, or if he has consummated it, the first husband has no recourse to her. Mālik said: "This is the most preferable opinion I have heard concerning this matter and the case of the missing person." From the chain of Ibn Wahb: Yunus informed me from Ibn Shihāb from Saʿīd ibn al-Musayyib, who said: "The established Sunnah regarding a man who divorces his wife, then revokes it during her waiting period while concealing his revocation from her until her ʿiddah concludes and she marries another—he has no authority over her. Rather, she is to remain with her other husband."

L34778–34779 Ibn Wahb said: Makhramah ibn Bukayr informed me from his father from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad—and Nāfiʿ reported similarly—and it has also been authenticated via the chain of Ibn Samʿān from al-Zuhrī in like manner—when the two are in the same locality. A third narration—via the chain of Ibn Wahb—states that Mālik said: "The ruling according to me, with no disagreement, is as follows: If her other husband consummates the marriage with her before the first husband consummates the marriage with her, then he has no right to her. This ruling applies in our view to this case and to the missing person—meaning: one who divorced her and informed her, then reinstated the marriage with witnessed testimony but failed to notify her."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَخْبَرَنِي عَبِيدَةُ عَنْ الْحَسَنِ بْنِ رَوَّاحٍ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ عَنْ رَجُلٍ طَلَّقَ سِرًّا، وَرَاجَعَ سِرًّا؟ فَقَالَ: طَلَّقْت فِي غَيْرِ عِدَّةٍ، وَارْتَجَعْت فِي عَمَاءٍ، أَشْهِدْ عَلَى مَا صَنَعْت؟ وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنْ الْحَسَنِ قَالَ: إذَا طَلَّقَ امْرَأَتَهُ ثُمَّ رَاجَعَهَا فِي غَيْبٍ أَوْ مَشْهَدٍ، وَلَمْ يُعْلِمْهَا بِالرَّجْعَةِ حَتَّى انْقَضَتْ الْعِدَّةُ، فَلَا سَبِيلَ لَهُ عَلَيْهَا - فَهَذَا قَوْلٌ.

وَقَوْلٌ ثَانٍ - رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ قَالَ: بَلَغَنِي أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ الَّذِي يُطَلِّقُ امْرَأَتَهُ - وَهُوَ غَائِبٌ - ثُمَّ يُرَاجِعُهَا وَلَا يُبَلِّغُهَا مُرَاجَعَتَهُ -، وَقَدْ بَلَّغَهَا طَلَاقُهُ -: أَنَّهَا إنْ تَزَوَّجَتْ وَلَمْ يَدْخُلْ بِهَا زَوْجُهَا الْآخَرُ، أَوْ دَخَلَ: فَلَا سَبِيلَ إلَى زَوْجِهَا الْأَوَّلِ إلَيْهَا. وَقَالَ مَالِكٌ: وَهَذَا أَحَبُّ مَا سَمِعْت إلَيَّ فِيهَا وَفِي الْمَفْقُودِ. وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: مَضَتْ السُّنَّةُ فِي الَّذِي يُطَلِّقُ امْرَأَتَهُ ثُمَّ يُرَاجِعُهَا فَيَكْتُمُهَا رَجْعَتَهَا حَتَّى تَحِلَّ فَتَنْكِحَ زَوْجًا غَيْرَهُ: فَإِنَّهُ لَيْسَ لَهُ مِنْ أَمْرِهَا شَيْءٌ، وَلَكِنَّهَا مِنْ زَوْجِهَا الْآخَرِ.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي مَخْرَمَةُ بْنُ بُكَيْرٍ عَنْ أَبِيهِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ، وَنَافِعٍ مِثْلُهُ - وَصَحَّ أَيْضًا مِنْ طَرِيقِ ابْنِ سَمْعَانَ عَنْ الزُّهْرِيِّ مِثْلُ ذَلِكَ، إذَا كَانَا فِي بَلَدٍ وَاحِدٍ. وَقَالَ ثَالِثٌ - مِنْ طَرِيقِ ابْنِ وَهْبٍ، قَالَ مَالِكٌ: الْأَمْرُ لِي لَا اخْتِلَافَ فِيهِ: إنَّهُ إذَا دَخَلَ بِهَا زَوْجُهَا الْآخَرُ قَبْلَ أَنْ يُدْرِكَهَا الْأَوَّلُ فَلَا سَبِيلَ لَهُ إلَيْهَا - وَذَلِكَ الْأَمْرُ عِنْدَنَا فِي هَذَا وَفِي الْمَفْقُودِ - يَعْنِي: فِي الَّذِي طَلَّقَهَا وَأَعْلَمَهَا ثُمَّ رَاجَعَهَا وَأَشْهَدَ وَلَمْ يُبْلِغْهَا.

L34780 Ibn al-Qasim said: Then Malik retracted his earlier opinion and stated: The first husband has a greater right to her. Ibn al-Qasim said: As for me, I hold that if the second husband has consummated the marriage, he retains no claim over her; but if he has not consummated the marriage, she reverts to the first husband.

قَالَ ابْنُ الْقَاسِمِ: ثُمَّ رَجَعَ مَالِكٌ عَنْ ذَلِكَ وَقَالَ: زَوْجُهَا الْأَوَّلُ أَحَقُّ بِهَا قَالَ ابْنُ الْقَاسِمِ: أَمَّا أَنَا فَأَرَى أَنَّهَا إِنْ دَخَلَ بِهَا زَوْجُهَا فَلَا سَبِيلَ لَهُ إِلَيْهَا، فَإِنْ لَمْ يَدْخُلْ بِهَا فَهِيَ لِلْأَوَّلِ.

L34781 Abu Muhammad said: We have mentioned this to expose how the troublemakers cite Malik's statements—"The established position among us" and "The position about which there is no disagreement among us"—as evidence and consensus, claiming it is impermissible to oppose them.

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا أَوْرَدْنَا هَذَا لِنَرَى الْمُشْغِبِينَ بِقَوْلِ مَالِكٍ: " الْأَمْرُ عِنْدَنَا، وَالْأَمْرُ الَّذِي لَا اخْتِلَافَ فِيهِ عِنْدَنَا " حُجَّةً، وَإِجْمَاعًا، لَا يَحِلُّ خِلَافُهُ.

L34782 And this is Malik, who has retracted from a statement he mentioned as being their established position, and the position that is undisputed suffices them and suffices you.

وَهَذَا مَالِكٌ قَدْ رَجَعَ عَنْ قَوْلٍ ذَكَرَ أَنَّهُ الْأَمْرُ عِنْدَهُمْ، وَالْأَمْرُ الَّذِي لَا اخْتِلَافَ فِيهِ: فَحَسْبُهُمْ وَحَسْبُكُمْ.

L34783 It has been narrated to us through various chains from ʻUmar—all disconnected, as they are from Ibrāhīm from ʻUmar, or al-Ḥasan ibn Muslim from ʻUmar, or Saʿīd ibn al-Musayyab from ʻUmar, or Abū al-Zinād—that ʻUmar ruled regarding a man who divorced his wife, then traveled and appointed witnesses to attest to his revocation of the divorce pronouncement before the waiting period's end while she remained unaware until she married another man: If he reaches her in time before the new husband consummates the marriage, she remains his wife. But if he fails to reach her until consummation occurs, she becomes the second husband's wife. He ruled this regarding Abū Kanaf—and this is the opinion of al-Layth and al-Awzāʿī.

وَرُوِّينَا مِنْ طُرُقٍ عَنْ عُمَرَ كُلُّهَا مُنْقَطِعَةٌ؛ لِأَنَّهَا عَنْ إِبْرَاهِيمَ عَنْ عُمَرَ أَوْ عَنْ الْحَسَنِ بْنِ مُسْلِمٍ عَنْ عُمَرَ، أَوْ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ عُمَرَ، أَوْ عَنْ أَبِي الزِّنَادِ: أَنَّ عُمَرَ قَالَ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثُمَّ سَافَرَ وَأَشْهَدَ عَلَى رَجْعَتِهَا قَبْلَ انْقِضَاءِ الْعِدَّةِ لَا عِلْمَ لَهَا بِذَلِكَ حَتَّى تَزَوَّجَتْ: أَنَّهُ إِنْ أَدْرَكَهَا قَبْلَ أَنْ يَدْخُلَ بِهَا فَهِيَ امْرَأَتُهُ، وَإِنْ لَمْ يُدْرِكْهَا حَتَّى دَخَلَ بِهَا الثَّانِي فَهِيَ امْرَأَةُ الثَّانِي، حَكَمَ بِذَلِكَ فِي أَبِي كَنَفٍ - وَهُوَ قَوْلُ اللَّيْثِ، وَالْأَوْزَاعِيِّ.

L34784 A fourth opinion—we have transmitted it through the chain of Abd al-Razzaq from Ibn Jurayj from Ata' concerning one who divorces [his wife], then revokes [the divorce] and attests to it, but the revocation does not take effect for her before she remarries. He said: If the marriage is consummated, the first [husband] has no claim over her according to what has reached us—it is said so. But if she is married and the marriage is not consummated, then the first [husband] has a stronger right to her—and this is the opinion held by Abd al-Karim.

وَقَوْلٌ رَابِعٌ - رُوِّينَاهُ: مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِيمَنْ طَلَّقَ ثُمَّ ارْتَجَعَهَا وَأَشْهَدَ فَلَمْ تَأْتِهَا الرَّجْعَةُ حَتَّى تَزَوَّجَتْ؟ قَالَ: إِنْ أُصِيبَتْ فَلَا شَيْءَ لِلْأَوَّلِ فِيمَا بَلَغَنَا - يُقَالُ ذَلِكَ، فَإِنْ نُكِحَتْ وَلَمْ تُصَبْ؟ فَالْأَوَّلُ أَحَقُّ بِهَا - وَبِهِ يَقُولُ عَبْدُ الْكَرِيمِ.

L34785–34786 A fifth opinion—narrated to us through the chain of transmission of Waki' from Shu'bah from al-Hakam ibn 'Utaybah, who said: 'Ali ibn Abī Ṭālib

stated: “If a man divorces his wife, then takes her back without informing her, she remains his wife if he formalizes the revocation with witnesses.” Through the chain of transmission of Sufyān al-Thawrī from Manṣūr ibn al-Muʿtamir from al-Ḥakam ibn ʿUtaybah from ʿAlī ibn Abī Ṭālib, that he ruled regarding a man who divorced his wife, departed, then wrote to her about taking her back, but the letter went missing until her waiting period concluded: “Her first husband retains priority over her, whether the other party has consummated the marriage or not.” Through the chain of transmission of Ḥammād ibn Abī Sulaymān and Qatādah from ʿAlī, an identical ruling is cited—and through the chain of transmission of Ibrāhīm from ʿAlī regarding the case of Abī Kanaff, a corresponding ruling is reported.

وَقَوْلٌ خَامِسٌ - رُوِّينَاهُ مِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ ثُمَّ رَاجَعَهَا وَلَمْ يُعْلِمْهَا: فَهِيَ امْرَأَتُهُ إذَا أَشْهَدَ. وَمِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثُمَّ غَابَ، فَكَتَبَ إلَيْهَا بِرَجْعَتِهَا، فَضَاعَ الْكِتَابُ حَتَّى انْقَضَتْ عِدَّتُهَا، فَإِنَّ زَوْجَهَا الْأَوَّلَ أَحَقُّ بِهَا دَخَلَ بِهَا الْآخَرُ أَوْ لَمْ يَدْخُلْ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَقَتَادَةَ عَنْ عَلِيٍّ مِثْلُهُ - وَمِنْ طَرِيقِ إبْرَاهِيمَ عَنْ عَلِيٍّ فِي أَبِي كَنَفٍ مِثْلُهُ

L34787 This is the statement of al-Ḥakam ibn ʿUtaybah. Then we found it transmitted through an uninterrupted chain from ʿAlī as follows: I, Muḥammad ibn Saʿīd ibn Nubāt, [transmit] from ʿAyyāsh ibn Aṣbagh, from Muḥammad ibn Qāsim ibn Muḥammad, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ʿAbd al-Aʿlā, from Saʿīd—he is the son of Abī ʿArūbah—from Qatādah, from Khilāṣ ibn ʿAmr: A man divorced his wife, informed her of it, took her back, and had two witnesses testify. He told them, “Keep this concealed for me,” so they concealed it until her waiting period had elapsed. They then referred the matter to ʿAlī ibn Abī Ṭālib? He upheld the divorce, ordered the two witnesses to be flogged, and accused them [of dishonesty].

وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ. ثُمَّ وَجَدْنَاهُ مُتَّصِلًا عَنْ عَلِيٍّ كَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا عَيَّاشُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الْأَعْلَى أَنَا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ، وَأَعْلَمَهَا، وَأَرْجَعَهَا، وَأَشْهَدَ شَاهِدَيْنِ وَقَالَ: اُكْتُمَا عَلَيَّ، فَكَتَمَا، حَتَّى انْقَضَتْ عِدَّتُهَا، فَارْتَفَعُوا إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ؟ فَأَجَازَ الطَّلَاقَ وَجَلَدَ الشَّاهِدَيْنِ وَاتَّهَمَهُمَا.

L34788 Abu Muhammad said: Then we examined this narration and found no evidence in it for those who hold this opinion, for it contains nothing but the permissibility of divorce, not the permissibility of revocation.

قَالَ أَبُو مُحَمَّد: ثُمَّ نَظَرْنَا فِي هَذِهِ الرِّوَايَةِ، فَوَجَدْنَاهَا لَا حُجَّةَ فِيهَا لِمَنْ ذَهَبَ إلَى هَذَا الْقَوْلِ؛ لِأَنَّهُ لَيْسَ فِيهَا إلَّا إجَازَةُ الطَّلَاقِ، لَا إجَازَةُ الرَّجْعَةِ.

L34789 Abu Muhammad said: There is only this opinion or the one we have chosen. Whatever differs from them is an error without ambiguity, for neither her marriage contract, his consummation with her, nor his lawful intercourse with her invalidates a sound marriage - and success is with Allah, the Exalted. The matter concerns only the validity or nullity of revocable divorce. The

قَالَ أَبُو مُحَمَّد: لَيْسَ إلَّا هَذَا الْقَوْلُ، أَوْ الَّذِي تَخَيَّرْنَاهُ، وَمَا عَدَاهُمَا خَطَأٌ لَا إشْكَالَ فِيهِ؛ لِأَنَّ زَوَاجَهَا أَوْ دُخُولَهُ بِهَا، أَوْ وَطْأَهُ لَهَا، لَا يَفْسَخُ شَيْءٌ مِنْ ذَلِكَ نِكَاحًا صَحِيحًا -،

opinion of Ali which we mentioned is affirmed by Sufyan al-Thawri, Abu Hanifa, al-Shafi'i, Abu Sulayman, and their companions.

The Issue of Revocability Regarding the Triple Divorce.

A legal issue: We compile here what we may have mentioned separately, which is: There is no divorce in which the divorcer lacks the right to reconciliation during her waiting period except the triple divorce—whether grouped or separated—and the divorce of a woman whom the divorcer has not consummated with, whether he divorces her once, twice, or three times—except that it is less than three. If he and she consent, they may initiate marriage with a guardian, witnesses, and a dowry—and this is the ruling for all annulments.

As for divorcing a consummated woman once or twice: the divorcer may reclaim her—whether she consents or objects—without mahr or wali, but solely through formal witnessing—and this is a matter with no disagreement—. Success comes through Allah, the Most High.

[The Waiting Periods (ʿIddāt)] [A Legal Issue Regarding the Types of ʿIddāt]

Issue 1984: The waiting periods are three types. The first is [resulting] from a divorce within a marriage in which he had intercourse with her at least once in her lifetime or more.

Or whether it is due to death, it makes no difference whether he had consummated the marriage with her or not.

As for the woman granted khulʿ when she chooses herself and separation from her husband, this case is specifically distinct from other forms of annulment: her waiting period is exactly the same as that of a divorced woman.

As for the remaining types of annulment, including those where the husband

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -، وَإِنَّمَا هُوَ صِحَّةُ الرَّجْعَةِ أَوْ فَسَادُهَا، وَبِقَوْلِ عَلِيٍّ الَّذِي ذَكَرْنَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

[مَسْأَلَةٌ الرَّجْعَةِ مِنْ الطَّلَاقِ الثَّلَاثِ]

مَسْأَلَةٌ وَنَجْمَعُ هَاهُنَا مَا لَعَلَّنَا ذَكَرْنَاهُ مُفَرَّقًا هُوَ: أَنَّهُ لَا يَكُونُ طَلَاقٌ لَا يَمْلِكُ فِيهِ الْمُطَلِّقُ الرَّجْعَةَ مَا دَامَتْ فِي الْعِدَّةِ إلَّا طَلَاقَ الثَّلَاثِ - مَجْمُوعَةً، أَوْ مُفَرَّقَةً - وَطَلَاقُ الَّتِي لَمْ يَطَأْهَا الْمُطَلِّقُ سَوَاءٌ طَلَّقَهَا وَاحِدَةً أَوْ اثْنَتَيْنِ أَوْ ثَلَاثًا - إلَّا أَنَّهُ دُونَ الثَّلَاثِ - إنْ رَضِيَ هُوَ وَهِيَ - فَلَهُمَا ابْتِدَاءُ النِّكَاحِ بِوَلِيٍّ، وَإِشْهَادٍ، وَصَدَاقٍ - وَهَذَا حُكْمُ الْفَسْخِ كُلِّهِ.

وَأَمَّا طَلَاقُ الْمَوْطُوءَةِ وَاحِدَةً، أَوْ اثْنَتَيْنِ: فَلِلْمُطَلِّقِ مُرَاجَعَتُهَا - أَحَبَّتْ أَمْ كَرِهَتْ - بِلَا صَدَاقٍ، وَلَا وَلِيٍّ، وَلَكِنْ بِإِشْهَادٍ فَقَطْ - وَهَذَا مَا لَا خِلَافَ فِيهِ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[الْعِدَدُ] [مَسْأَلَةٌ أَنْوَاعُ الْعِدَدِ]

١٩٨٤ - مَسْأَلَةٌ: الْعِدَدُ ثَلَاثٌ -: إمَّا مِنْ طَلَاقٍ فِي نِكَاحٍ وَطِئَهَا فِيهِ مَرَّةً فِي الدَّهْرِ فَأَكْثَرَ.

وَإِمَّا مِنْ وَفَاةٍ، سَوَاءٌ وَطِئَهَا أَوْ لَمْ يَطَأْهَا.

وَأَمَّا الْمُعْتَقَةُ - إذَا اخْتَارَتْ نَفْسَهَا وَفِرَاقَ زَوْجِهَا؟ فَإِنَّ هَذِهِ خَاصَّةً دُونَ سَائِرِ وُجُوهِ الْفَسْخِ: عِدَّتُهَا عِدَّةُ الْمُطَلَّقَةِ سَوَاءً سَوَاءً.

has not consummated the marriage, no waiting period is required for any of these women, and they may be married upon annulment or divorce.

وَأَمَّا سَائِرُ وُجُوهِ الْفَسْخِ، وَالَّتِي لَمْ يَطَأْهَا زَوْجُهَا فَلَا عِدَّةَ عَلَى وَاحِدَةٍ مِنْهُنَّ، وَلَهُنَّ أَنْ يُنْكَحْنَ: سَاعَةَ الْفَسْخِ، وَسَاعَةَ الطَّلَاقِ.

L34800 The proof of this is that the waiting period for divorce and death is mentioned in the Qur'an, as well as the exemption of the exempted waiting period for the woman who was divorced if the divorcing husband did not consummate the marriage with her during that marriage.

بُرْهَانُ ذَلِكَ -: أَنَّ عِدَّةَ الطَّلَاقِ، وَالْوَفَاةِ: مَذْكُورَةٌ فِي الْقُرْآنِ - وَكَذَلِكَ سُقُوطُ الْمَسْقُوطَةِ الْعِدَّةِ عَنْ الَّتِي طَلُقَتْ وَلَمْ يَطَأْهَا الْمُطَلِّقُ فِي ذَلِكَ النِّكَاحِ.

L34801–34803 As for the woman who has been manumitted and chooses to annul her marriage: Just as we were narrated through the chain of Abu Dawud—I am Uthman ibn Abi Shaybah—[the ruling applies]. From Affan ibn Muslim, from Hammam ibn Yahya, from Qatadah, from Ikrimah, from Ibn Abbas: "Barirah's husband was a black slave named Mughīth. The Messenger of Allah, peace and blessings be upon him, gave her the choice and commanded her to undertake the waiting period."

وَأَمَّا الْمُعْتَقَةُ - تَخْتَارُ فَسْخَ نِكَاحِهَا -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ أَنَا عَفَّانُ بْنُ مُسْلِمٍ أَنَا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: «أَنَّ زَوْجَ بَرِيرَةَ كَانَ عَبْدًا أَسْوَدَ اسْمُهُ مُغِيثٌ فَخَيَّرَهَا - يَعْنِي رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمَرَهَا تَعْتَدُّ» .

L34804 Abū Muḥammad said: If there were a waiting period (ʿiddah) other than that mentioned in the Qur'ān, the Messenger of Allāh—peace and blessings of Allāh be upon him—would have undoubtedly clarified it. We maintain this is the ʿiddah for divorce because it applies to separation from a living one, not a deceased one. It is valid because he—peace and blessings be upon him—commanded her to observe the ʿiddah due to her separation from him while he was alive, establishing that this is unequivocally the ʿiddah from separation from a living one.

قَالَ أَبُو مُحَمَّدٍ: فَلَوْ كَانَتْ عِدَّةٌ غَيْرَ الْمَذْكُورَةِ فِي الْقُرْآنِ لَبَيَّنَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَا شَكٍّ، وَإِنَّمَا قُلْنَا: إنَّهَا عِدَّةُ الطَّلَاقِ، لِأَنَّهَا عِدَّةٌ مِنْ حَيٍّ لَا مِنْ مَيِّتٍ - فَصَحَّ إذْ أَمَرَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنْ تَعْتَدَّ مِنْ فِرَاقِهَا لَهُ - وَهُوَ حَيٌّ - أَنَّهَا الْعِدَّةُ مِنْ مُفَارَقَةِ الْحَيِّ بِلَا شَكٍّ.

L34805 As for the remaining forms of annulment—whether they pertain to a valid marriage or an invalid contract—: there is no waiting period in any of those cases, because neither the Quran, the Sunnah, nor any valid evidence beyond these two sources has established it.

وَأَمَّا سَائِرُ وُجُوهِ الْفَسْخِ - سَوَاءٌ كَانَتْ مِنْ نِكَاحٍ صَحِيحٍ أَوْ مِنْ عَقْدٍ فَاسِدٍ -: فَلَا عِدَّةَ فِي شَيْءٍ مِنْ ذَلِكَ؛ لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا حُجَّةٌ فِيمَا سِوَاهُمَا.

L34806–34808 Divorce does not occur except within a valid marriage. Similarly, there is no waiting period required upon the death of one whose marriage contract is invalid, because Allah the Exalted has not prescribed a waiting period for such a person's divorce or death except in the case of a husband. One whose marriage contract is invalid is not considered a husband, so there is no divorce for him. Since there is no... A divorce for him entails no ʿiddah from

وَلَا يَكُونُ طَلَاقٌ إلَّا فِي نِكَاحٍ صَحِيحٍ، وَكَذَلِكَ لَا عِدَّةَ مِنْ وَفَاةِ مَنْ لَيْسَ عَقْدُ زَوَاجِهِ صَحِيحًا؛ لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ عِدَّةَ طَلَاقٍ لَهُ، أَوْ وَفَاةٍ، إلَّا مِنْ زَوْجٍ، وَمَنْ عَقْدُهُ

separation. Since he is not a husband, no ʿiddah from his death. {*And whoever transgresses the limits of Allāh has certainly wronged himself*} [Sūrah al-Ṭalāq: 1].[45]

فَاسِدٌ لَيْسَ زَوْجًا، فَلَا طَلَاقَ لَهُ، وَإِذْ لَا طَلَاقَ لَهُ فَلَا عِدَّةَ مِنْ فِرَاقِهِ، وَإِذْ لَيْسَ زَوْجًا فَلَا عِدَّةَ مِنْ وَفَاتِهِ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

L34809 If they say: "We have analogized every annulment to the emancipated woman who chooses to separate from her husband," we respond: All analogical reasoning is invalid. Even if it were valid, this particular case would epitomize invalidity, for in all forms of annulment, the woman whose marriage is dissolved has no choice except the emancipated woman. They have unanimously agreed—without exception—that her ruling diverges from the rulings applicable to all other women whose marriages are annulled. The obligatory waiting period is solely a ruling commanded by Allah, the Most High; none of its durations relate to ascertaining pregnancy.

فَإِنْ قَالُوا: قِسْنَا كُلَّ فَسْخٍ عَلَى الْمُعْتَقَةِ تَخْتَارُ فِرَاقَ زَوْجِهَا. قُلْنَا: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ جَمِيعَ وُجُوهِ الْفَسْخِ لَا خِيَارَ فِيهِ لِلْمُنْفَسِخِ نِكَاحُهَا إِلَّا الْمُعْتَقَةَ فَقَدْ أَجْمَعُوا - بِلَا خِلَافٍ - عَلَى مُفَارَقَةِ حُكْمِهَا لِحُكْمِ سَائِرِ الْمُنْفَسِخِ نِكَاحُهُنَّ، وَالْعِدَّةُ الْوَاجِبَةُ إِنَّمَا هِيَ حُكْمٌ أَمَرَ اللَّهُ تَعَالَى بِهِ، لَيْسَ شَيْءٌ مِنْهَا لِاسْتِبْرَاءِ الرَّحِمِ.

L34810 The proof of that is that our opponents in this matter do not oppose us regarding the waiting period being incumbent upon the prepubescent girl who has been consummated with—meaning the one who does not conceive—and the elderly woman who does not conceive, in cases of divorce or death. Even if they oppose us concerning the divorce of the prepubescent girl, the statement of Allah, the Exalted: {As for women who have ceased menstruation among you, if you are uncertain, their waiting period is three months—and [also] those who have not menstruated} [65:4] would judge the validity of our position and the invalidity of theirs.[46]

بُرْهَانُ ذَلِكَ -: أَنَّ الْمُخَالِفِينَ لَنَا فِي هَذَا لَا يُخَالِفُونَنَا فِي أَنَّ الْعِدَّةَ: عَلَى الصَّغِيرَةِ الْمَوْطُوءَةِ أَيْ الَّتِي لَا تَحْمِلُ، وَالْعَجُوزِ الْكَبِيرَةِ الَّتِي لَا تَحْمِلُ -: فِي الطَّلَاقِ وَالْوَفَاةِ، وَلَوْ خَالَفُونَا فِي الطَّلَاقِ فِي الصَّغِيرَةِ لَكَانَ قَوْلُ اللَّهِ تَعَالَى: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] حَاكِمًا بِصِحَّةِ قَوْلِنَا وَبُطْلَانِ قَوْلِهِمْ.

L34811 The meaning of the statement of the Most High, {If you are in doubt} [Quran 65:4], is that if you doubt how her ruling is determined, no alternative ruling is permitted. This is because no one doubts that there is no uncertainty about pregnancy in women who have reached menopause.[47]

وَمَعْنَى قَوْله تَعَالَى: {إِنِ ارْتَبْتُمْ} [الطلاق: ٤] إِنَّمَا هُوَ إِنْ ارْتَبْتُمْ كَيْفَ يَكُونُ حُكْمُهَا لَا يَجُوزُ غَيْرُ ذَلِكَ؛ لِأَنَّ اللَّائِي يَئِسْنَ مِنْ الْمَحِيضِ لَا يَشُكُّ أَحَدٌ فِي أَنَّهُ لَا يَرْتَابُ فِيهَا بِحَمْلٍ.

L34812 Likewise, they unanimously agree that a castrated man who has a remaining part of the male organ that allows penetration—his wife must observe the waiting period, and he will, without doubt, never have a child.

وَكَذَلِكَ لَا يَخْتَلِفُونَ فِي أَنَّ الْخَصِيَّ الَّذِي بَقِيَ لَهُ مِنْ الذَّكَرِ مَا يُولِجُ، فَإِنَّ عَلَى امْرَأَتِهِ الْعِدَّةَ - وَهُوَ بِلَا شَكٍّ لَا يَكُونُ لَهُ وَلَدٌ أَبَدًا.

[45] **Qur'an references (L34806):** Qur'an 65:1 (At-Talaq).
[46] **Qur'an references (L34810):** Qur'an 65:4 (At-Talaq).
[47] **Qur'an references (L34811):** Qur'an 65:4 (At-Talaq).

L34813 Similarly, there is no disagreement among them that if a man has intercourse with his wife once, then remains absent from her for decades, and later divorces her, she is obligated to observe the waiting period.

L34814 There is no doubt that she is not pregnant, for if the waiting period were prescribed due to fear of pregnancy, a single menstrual cycle would suffice—and success is from Allah, the Most High.

L34815 **Issue: The waiting period for a menstruating divorced woman whose marriage was consummated.**

L34816–34818 Issue 1985: The waiting period for a divorced woman who has had intercourse and menstruates consists of three purity periods. This includes the remainder of the purity period during which she was divorced (even if it was an hour, less, or more), followed by the menstruation occurring after that remaining portion of purity, then a second complete purity period, followed by the menstruation after it, then a third complete purity period. When she observes its sign, her waiting period ends. Upon the onset of menstruation, her ʿiddah has been completed, and she may marry at that time if she wishes.

L34819 And the people differed concerning this—they said as we said.

L34820 And a group held the view that the aqrāʾ refers to menstruation, despite the consensus of all on obedience, based on the statement of the Almighty: "Divorced women must observe a waiting period of three qurūʾ [menstrual periods], and it is not lawful for them to conceal what Allah has created in their wombs" [Al-Baqarah 2:228].[48]

L34821–34823 Abu Muhammad said: The term "qurū'" is the plural of "qur'." In the Arabic language in which the Quran was revealed, "qur'" applies to the period of ritual purity, applies to menstruation, and applies to both ritual purity and menstruation: I, Abu Sa'id al-Ja'fari, by this chain: I, Muhammad ibn Ali al-Muqri'; I, Abu Ja'far Ahmad ibn Muhammad ibn Isma'il an-Nahhas the Grammarian; I, Abu Ja'far at-Tahawi; I, Muhammad ibn Muhammad ibn Hassan; I, Abd al-Malik ibn Hisham; I, Abu Zayd al-Ansari, who said: "I

[48] **Qur'an references (L34820):** Qur'an 2:228 (Al-Baqarah).

وَكَذَلِكَ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ وَطِئَ امْرَأَتَهُ مَرَّةً، ثُمَّ غَابَ عَنْهَا عَشَرَاتِ السِّنِينَ، ثُمَّ طَلَّقَهَا أَنَّ الْعِدَّةَ عَلَيْهَا.

وَلَا شَكَّ فِي أَنَّهَا لَا حَمْلَ بِهَا، وَلَوْ كَانَتْ الْعِدَّةُ خَوْفَ الْحَمْلِ لَأَجْزَأَتْ حَيْضَةٌ وَاحِدَةٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ عِدَّةُ الْمُطَلَّقَةِ الْمَوْطُوءَةِ الَّتِي تَحِيضُ]

١٩٨٥ - مَسْأَلَةٌ: وَعِدَّةُ الْمُطَلَّقَةِ الْمَوْطُوءَةِ الَّتِي تَحِيضُ ثَلَاثَةُ قُرُوءٍ - وَهِيَ بَقِيَّةُ الطُّهْرِ الَّذِي طَلَّقَهَا فِيهِ - وَلَوْ أَنَّهَا سَاعَةٌ أَوْ أَقَلُّ أَوْ أَكْثَرُ - ثُمَّ الْحَيْضَةُ الَّتِي تَلِي بَقِيَّةَ ذَلِكَ الطُّهْرِ، ثُمَّ طُهْرٍ ثَانٍ كَامِلٍ، ثُمَّ الْحَيْضَةُ الَّتِي تَلِيهِ، ثُمَّ طُهْرٍ ثَالِثٍ كَامِلٍ -: فَإِذَا رَأَتْ أَثَرَهُ أَوَّلَ شَيْءٍ مِنْ الْحَيْضِ فَقَدْ تَمَّتْ عِدَّتُهَا وَلَهَا أَنْ تَنْكِحَ حِينَئِذٍ إنْ شَاءَتْ.

وَاخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ كَمَا قُلْنَا.

وَقَالَتْ طَائِفَةٌ: الْأَقْرَاءُ الْحَيْضُ - مَعَ اتِّفَاقِ الْجَمِيعِ عَلَى الطَّاعَةِ - لِقَوْلِهِ عَزَّ وَجَلَّ: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ} [البقرة: ٢٢٨] .

قَالَ أَبُو مُحَمَّدٍ: الْقُرُوءُ جَمْعُ " قُرْءٍ " وَالْقُرْءُ فِي لُغَةِ الْعَرَبِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ: يَقَعُ عَلَى الطُّهْرِ وَيَقَعُ عَلَى الْحَيْضِ، وَيَقَعُ عَلَى الطُّهْرِ وَالْحَيْضِ -: أَنَا بِذَلِكَ أَبُو سَعِيدٍ الْجَعْفَرِيُّ أَنَا مُحَمَّدُ بْنُ عَلِيٍّ الْمُقْرِي أَنَا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إسْمَاعِيلَ النَّحَّاسِ النَّحْوِيُّ أَنَا

heard Abu Amr ibn al-Ala' say" - and he mentioned it as we have transmitted - and al-A'sha said:

أَبُو جَعْفَرٍ الطَّحَاوِيَّ أَنَا مُحَمَّدُ بْنُ مُحَمَّدِ بْنِ حَسَّانَ أَنَا عَبْدُ الْمَلِكِ بْنُ هِشَامٍ أَنَا أَبُو زَيْدٍ الْأَنْصَارِيُّ قَالَ: سَمِعْت أَبَا عَمْرِو بْنَ الْعَلَاءِ يَقُولُ فَذَكَرَهُ كَمَا أَوْرَدْنَا - وَقَالَ الْأَعْشَى:

L34824 Is it every year you relentlessly undertake an expedition, Dragging to its farthest limit the debtor of your mourning?

أَفِي كُلِّ عَامٍ أَنْتَ جَاشِمُ غَزْوَةٍ ... تَشُدُّ لِأَقْصَاهَا عَزِيمَ عَزَائِكَا

L34825 She inherits wealth, and in principle, sanctity, For the waiting periods of your women invalidated therein.

مُورِثَةٍ مَالًا وَفِي الْأَصْلِ رِفْعَةٌ ... لِمَا ضَاعَ فِيهَا مِنْ قُرُوءِ نِسَائِكَا

L34826 So he intended the ritual purification—and another said:

فَأَرَادَ الْأَطْهَارَ - وَقَالَ آخَرُ:

L34827 How many resent the usurer... whose recurring cycles mirror the menstrual cycles of women!

يَا رُبَّ ذِي ضِغْنٍ عَلَى قَارِضٍ ... لَهُ قُرُوءٌ كَقُرُوءِ الْحَائِضِ

L34828 Then she anticipated menstruation.

فَأَرَادَ الْحَيْضَ.

L34829 Among those from whom statements resembling our position have been transmitted is a group – as narrated through ʿAbd al-Razzāq's chain from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyib, from Zayd ibn Thābit, who said: "When the divorced woman completes her third menstrual period, the divorce from her husband is finalized." Through the same chain to al-Zuhrī, from ʿUrwah, from ʿĀ'ishah, the Mother of the Believers, an explicit statement identical to Zayd's is reported. Al-Zuhrī said: "This is the opinion of Abū Bakr ibn ʿAbd al-Raḥmān ibn al-Ḥārith ibn Hishām," and al-Zuhrī adheres to this view.

وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا جَمَاعَةٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: إذَا دَخَلَتْ الْمُطَلَّقَةُ فِي الْحَيْضَةِ الثَّالِثَةِ فَقَدْ بَانَتْ مِنْ زَوْجِهَا. وَبِهِ إلَى الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ مِثْلُ قَوْلِ زَيْدٍ نَصًّا، قَالَ الزُّهْرِيُّ: وَهُوَ قَوْلُ أَبِي بَكْرِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ - وَبِهِ يَأْخُذُ الزُّهْرِيُّ.

L34830 And from the chain of ʿAbd al-Razzāq, from Maʿmar, from Ayyūb al-Sikhtiyānī, from Nāfiʿ, from Ibn ʿUmar: similar to the explicit text of the aforementioned Zayd—this is the statement of Abān ibn ʿUthmān and al-Qāsim ibn Muḥammad ibn Abī Bakr.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ مِثْلُ قَوْلِ زَيْدٍ الْمَذْكُورِ نَصًّا - وَهُوَ قَوْلُ أَبَانِ بْنِ عُثْمَانَ، وَالْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ.

L34831 And with this view hold Mālik, al-Shāfiʿī, Abū Thawr, Abū Sulaymān, and their companions.

وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L34832 Some of them said: When she observes the beginning of the third menstrual cycle, she is irrevocably divorced from her husband, and it is not permissible for her to remarry until she observes purity from that cycle.

وَقَالَ بَعْضُ هَؤُلَاءِ: إذَا رَأَتْ أَوَّلَ الْحَيْضَةِ الثَّالِثَةِ فَقَدْ بَانَتْ مِنْ زَوْجِهَا وَلَا يَجُوزُ لَهَا أَنْ تَتَزَوَّجَ حَتَّى تَرَى الطُّهْرَ مِنْ تِلْكَ الْحَيْضَةِ.

L34833 It has been narrated to us through the chain of Sa'īd ibn Manṣūr: From 'Abd al-'Azīz ibn Muḥammad al-Darāwardī, from Thawr ibn Zayd, from 'Ikrimah, from Ibn 'Abbās, who said: "If she menstruates the third time, her waiting period has ended, but she must not remarry until she becomes ritually pure."

كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: إِذَا حَاضَتْ الثَّالِثَةَ فَقَدْ بَرِئَتْ مِنْهُ، إِلَّا أَنَّهَا لَا تَتَزَوَّجُ حَتَّى تَطْهُرَ.

L34834–34835 And through the narration of Hammad ibn Salamah from Yaḥya ibn Sa'īd al-Anṣārī from Sālim ibn 'Abdullāh ibn 'Umar, he said: When the third menstrual period enters, the waiting period has ended. Yaḥya said: I asked him, "Is it permissible to marry during the third menstrual period [of the waiting period]?" He replied, "No." This statement is narrated from Isḥāq ibn Rāhawayh.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ قَالَ إِذَا دَخَلَتْ فِي الْحَيْضَةِ الثَّالِثَةِ فَقَدْ ذَهَبَتْ مِنْهُ - قَالَ يَحْيَى فَقُلْت لَهُ: أَتَتَزَوَّجُ فِي الْحَيْضَةِ الثَّالِثَةِ؟ قَالَ: لَا، رُوِيَ هَذَا الْقَوْلُ عَنْ إِسْحَاقَ بْنِ رَاهْوَيْهِ.

L34836 A group hesitated regarding that—as was narrated to us by Al-Hajjaj ibn Al-Minhal: I, Hammad ibn Zayd, narrate from Ayyub As-Sikhtiyani from Nafi' from Sulayman ibn Yasar, who said: A man pronounced one or two divorces to his wife. When she entered her third menstrual cycle, he died. She sought her inheritance from him. The case was referred to Mu'awiyah ibn Abi Sufyan, who sent for a group of the Companions of the Messenger of Allah (peace and blessings be upon him), including Fadalah ibn 'Ubayd, but found they possessed no juristic knowledge regarding the matter.

وَتَوَقَّفَتْ فِي ذَلِكَ طَائِفَةٌ -: كَمَا رُوِّينَا عَنْ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ طَلَّقَ رَجُلٌ امْرَأَتَهُ طَلْقَةً أَوْ طَلْقَتَيْنِ فَلَمَّا دَخَلَتْ فِي الْحَيْضَةِ الثَّالِثَةِ مَاتَ فَطَلَبَتْ مِيرَاثَهُ، فَأُتِيَ مُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ فِي ذَلِكَ، فَأَرْسَلَ فِي ذَلِكَ إلَى رَهْطٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهُمْ: فَضَالَةُ بْنُ عُبَيْدٍ، فَلَمْ يَجِدْ عِنْدَهُمْ بِذَلِكَ عِلْمًا.

L34837 Ahmad ibn Hanbal expressed conflicting views on this matter: at one point, he stated, "The aqrā' [waiting periods] are purity," while at another, he said, "The aqrā' are menstruation." On yet another occasion, he abstained from definitively ruling on the issue.

وَاضْطَرَبَ فِي ذَلِكَ أَحْمَدُ بْنُ حَنْبَلٍ -: فَمَرَّةً قَالَ: الْأَقْرَاءُ الْأَطْهَارُ وَمَرَّةً قَالَ: الْأَقْرَاءُ الْحَيْضُ، وَمَرَّةً تَوَقَّفَ فِي ذَلِكَ.

L34838 Those who affirm that it is menstruation differed: A group said, "He may revoke [the divorce] as long as she is in the third menstrual period. Once she becomes pure from it, he can no longer revoke the divorce."

وَاخْتَلَفَ الْقَائِلُ بِأَنَّهَا الْحَيْضُ -: فَقَالَتْ طَائِفَةٌ: لَهُ رَجْعَةٌ مَا كَانَتْ فِي الْحَيْضَةِ الثَّالِثَةِ، فَإِذَا رَأَتْ الطُّهْرَ مِنْهَا فَلَا رَجْعَةَ عَلَيْهَا.

L34839 As reported through the chain of Abd al-Razzaq, from Ibn Jurayj, who reported from Amr ibn Muslim, from Tawus, who said: "He may resume relations with her while she is menstruating" - and this is the view of Sa'id ibn Jubayr.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ مُسْلِمٍ عَنْ طَاوُسٍ قَالَ: يُرَاجِعُهَا مَا كَانَتْ فِي الدَّمِ - وَهُوَ قَوْلُ سَعِيدِ بْنِ جُبَيْرٍ -.

L34840 It was narrated to us via the chain of Saʿīd ibn Manṣūr: Sufyān ibn ʿUyaynah said: I narrate from ʿAmr ibn Dīnār, from Saʿīd ibn Jubayr, who said: “He is most entitled to it as long as it is in the blood.”

رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: هُوَ أَحَقُّ بِهَا مَا كَانَتْ فِي الدَّمِ.

L34841 This is the view of Ibn Shubrumah and al-Awzāʿī, and it has been narrated to us from some of the Companions which corroborate this view.

وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ، وَالْأَوْزَاعِيِّ، وَرُوِّينَا عَنْ بَعْضِ الصَّحَابَةِ مَا يَدُلُّ عَلَى ذَلِكَ.

L34842 It has been narrated to us through the chain of Mālik from Nāfiʿ from Ibn ʿUmar, who said: The waiting period for a slave woman is two menstrual cycles, and the waiting period for a free woman is three menstrual cycles. Similarly, it has been narrated through the chain of al-Zuhrī from Qabīṣa ibn Dhu’ayb from Zayd ibn Thābit, exactly the same, identical in wording.

كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ، وَعِدَّةُ الْحُرَّةِ ثَلَاثُ حِيَضٍ. وَمِنْ طَرِيقِ الزُّهْرِيِّ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ زَيْدِ بْنِ ثَابِتٍ مِثْلُ ذَلِكَ سَوَاءً سَوَاءً.

L34843–34844 A group held—as narrated through the chain of ʿAbd al-Razzāq from Maʿmar, from Zayd ibn Rufayʿ, from Maʿbad al-Juhanī—who said: When she washes her private parts after the third menstruation, she is separated from him.

وَقَالَتْ طَائِفَةٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ زَيْدِ بْنِ رُفَيْعٍ عَنْ مَعْبَدٍ الْجُهَنِيِّ قَالَ: إِذَا غَسَلَتْ فَرْجَهَا مِنْ الْحَيْضَةِ الثَّالِثَةِ فَقَدْ بَانَتْ مِنْهُ.

L34845 A group of scholars maintained that he retains the right to revoke the divorce as long as she has not performed the purificatory bath following the third menstruation—as we have been narrated through the transmission chain of Al-Ḥajjāj ibn Minhāl: Abū ʿAwānah from Manṣūr from Ibrāhīm al-Nakhaʿī from ʿAlqamah from Ibn Masʿūd, who reported being present with ʿUmar ibn al-Khaṭṭāb when a woman came accompanied by a man. She said: “He divorced me, then left me until I reached the end of my third menstruation. When my bleeding ceased, I prepared my purificatory bath and removed my garments. Then he knocked on the door and declared: ’I have revoked the divorce.”’ ʿUmar asked Ibn Masʿūd: “What is your ruling regarding her?” He replied: “I consider him most entitled to reclaim her before she regains eligibility for prayer.” ʿUmar responded: “Excellent is your opinion! This is likewise my judgment.”

وَقَالَتْ طَائِفَةٌ: إِنَّ لَهُ أَنْ يَرْتَجِعَهَا مَا لَمْ تَغْتَسِلْ مِنْ الْحَيْضَةِ الثَّالِثَةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ أَنَّهُ كَانَ عِنْدَ عُمَرَ بْنِ الْخَطَّابِ فَأَتَتْهُ امْرَأَةٌ مَعَ رَجُلٍ فَقَالَتْ: طَلَّقَنِي ثُمَّ تَرَكَنِي حَتَّى إذَا كُنْت فِي آخِرِ ثَلَاثِ حِيَضٍ وَانْقَطَعَ عَنِّي الدَّمُ وَضَعْت غُسْلِي وَنَزَعْت ثِيَابِي فَقَرَعَ الْبَابَ وَقَالَ: قَدْ رَاجَعْتُك؟ فَقَالَ عُمَرُ لِابْنِ مَسْعُودٍ: مَا تَقُولُ فِيهَا؟ فَقَالَ: أَرَاهُ أَحَقَّ بِهَا مَا دُونَ أَنْ تَحِلَّ لَهَا الصَّلَاةُ، فَقَالَ لَهُ عُمَرُ: نِعْمَ مَا رَأَيْت، وَأَنَا أَرَى ذَلِكَ.

L34846 From the narration of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyab: that ʿAlī ibn Abī Ṭālib said: Her husband has the right to revoke the divorce until she performs *ghusl* after the third menstrual period and becomes ritually pure to pray again.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لِزَوْجِهَا الرَّجْعَةُ عَلَيْهَا حَتَّى تَغْتَسِلَ مِنْ الْحَيْضَةِ الثَّالِثَةِ وَتَحِلُّ لَهَا الصَّلَاةُ.

L34847 Via the chain of Hammad ibn Salamah, from Humaid, from al-Hasan: A man

divorced his wife with one pronouncement. When she was about to perform the ritual bath after her third menstrual cycle, he reconciled with her. They brought their dispute to Abu Musa al-Ash'ari, who required them to swear by Allah—besides whom there is no deity—whether prayer had indeed become permissible for her. She refused to swear, so he ruled that she must return to her husband. A similar ruling has been authentically reported from Ibn Mas'ud.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ: أَنَّ رَجُلًا طَلَّقَ امْرَأَتَهُ طَلْقَةً، فَلَمَّا أَرَادَتْ أَنْ تَغْتَسِلَ مِنْ الْحَيْضَةِ الثَّالِثَةِ رَاجَعَهَا؟ فَاخْتَصَمَا إلَى أَبِي مُوسَى الْأَشْعَرِيِّ، فَاسْتَحْلَفَهُمَا بِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ لَقَدْ حَلَّتْ لَهَا الصَّلَاةُ؟ فَأَبَتْ أَنْ تَحْلِفَ، فَرَدَّهَا إلَيْهِ - وَصَحَّ مِثْلُهُ أَيْضًا عَنْ ابْنِ مَسْعُودٍ.

L34848 And through the chain of Abd al-Razzaq, from Maʿmar, from Zayd ibn Rufayʿ, from Abi Ubaydah ibn Abd Allah ibn Masʿud, who said: Did Uthman send a messenger to Ubayy ibn Kaʿb regarding that matter? Ubayy ibn Kaʿb said: "I hold that she remains entitled to it until she performs *ghusl* after her third menstruation, after which prayer is permissible for her." Abu Ubaydah said: "I know of no action by Uthman except that he adopted this ruling."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ زَيْدِ بْنِ رُفَيْعٍ عَنْ أَبِي عُبَيْدَةَ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: أَرْسَلَ عُثْمَانُ إلَى أُبَيِّ بْنِ كَعْبٍ فِي ذَلِكَ؟ فَقَالَ أُبَيّ بْنُ كَعْبٍ: أَرَى أَنَّهُ أَحَقُّ بِهَا حَتَّى تَغْتَسِلَ مِنْ حَيْضَتِهَا الثَّالِثَةِ، وَتَحِلَّ لَهَا الصَّلَاةُ؟ قَالَ: فَمَا أَعْلَمُ عُثْمَانَ إلَّا أَخَذَ بِذَلِكَ.

L34849 And through the narration of Waki' from Muḥammad ibn Rāshid from Makhūl from Muʿādh ibn Jabal and Abū al-Dardāʾ, a similar report is related. And through the narration of Waki' from ʿĪsā al-Ḥannāṭ from al-Shaʿbī from thirteen of the Companions of the Messenger of Allah—peace and blessings be upon him—the virtuous, the virtuous: among them are Abū Bakr, ʿUmar, and Ibn ʿAbbās, that he has the strongest right to her as long as she has not performed the ritual bath from the third menstrual period.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ عَنْ مُعَاذِ بْنِ جَبَلٍ، وَأَبِي الدَّرْدَاءِ مِثْلُهُ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ عِيسَى الْحَنَّاطِ عَنْ الشَّعْبِيِّ عَنْ ثَلَاثَةَ عَشَرَ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْخَيِّرُ، فَالْخَيِّرُ -: مِنْهُمْ: أَبُو بَكْرٍ، وَعُمَرُ، وَابْنُ عَبَّاسٍ: أَنَّهُ أَحَقُّ بِهَا مَا لَمْ تَغْتَسِلْ مِنْ الْحَيْضَةِ الثَّالِثَةِ.

L34850–34852 And through the chain of transmission of ʿAbd al-Razzāq, from ʿUmar ibn Rāshid, from Yaḥyā ibn Abī Kathīr: that ʿUbādah ibn al-Ṣāmit He said: She is not irrevocably divorced until she performs the ritual bath following the third menstrual period, so that prayers become permissible for her again. This ruling is authentically reported from ʿAṭāʾ ibn Abī Rabāḥ, ʿAbd al-Karīm al-Jazarī, Saʿīd ibn al-Musayyib, and al-Ḥasan ibn Ḥayyin. He made no distinction between the Muslim woman and the dhimmi woman in this ruling.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ رَاشِدٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ: أَنَّ عُبَادَةَ بْنَ الصَّامِتِ قَالَ: لَا تَبِينُ حَتَّى تَغْتَسِلَ مِنْ الْحَيْضَةِ الثَّالِثَةِ، وَتَحِلَّ لَهَا الصَّلَوَاتُ وَصَحَّ هَذَا عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ وَعَبْدِ الْكَرِيمِ الْجَزَرِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ بْنِ حَيٍّ، وَسَوَّى فِي ذَلِكَ بَيْنَ الْمُسْلِمَةِ وَالذِّمِّيَّةِ.

L34853 Sharik ibn Abdullah al-Qāḍī said: If she neglects the ritual bath (ghusl) for twenty years, he has the right of revocation (rajʿah) over her.

وَقَالَ شَرِيكُ بْنُ عَبْدِ اللَّهِ الْقَاضِي: إنْ فَرَّطَتْ فِي الْغُسْلِ عِشْرِينَ سَنَةً فَلَهُ الرَّجْعَةُ عَلَيْهَا.

L34854 Abu Muhammad said: This is the clear meaning of what has been narrated to us earlier from the Companions - referring to those who stated: "He is

more entitled to her as long as she has not performed the ritual bath, after which the prayers become permissible for her."

قَالَ أَبُو مُحَمَّد: هَذَا ظَاهِرُ مَا رُوِّينَا عَنْ الصَّحَابَةِ آنِفًا - نَعْنِي الْقَائِلِينَ: هُوَ أَحَقُّ بِهَا مَا لَمْ تَغْتَسِلْ وَتَحِلَّ لَهَا الصَّلَوَاتُ.

L34855 A group said, as narrated to us by ʿAbd al-Razzāq from Ibn Jurayj from Ismāʿīl ibn Muslim from al-Ḥasan al-Baṣrī, who said: "Unless she observes the cessation of bleeding and then delays her ritual bath until she misses that prayer. If she does so, she became liable at that point." This is also the position upheld by Sufyān al-Thawrī.

وَقَالَتْ طَائِفَةٌ كَمَا رُوِّينَا عَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ إسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إلَّا أَنْ تَرَى الطُّهْرَ ثُمَّ تُؤَخِّرُ اغْتِسَالَهَا حَتَّى تَفُوتَهَا تِلْكَ الصَّلَاةُ، فَإِنْ فَعَلَتْ فَقَدْ بَانَتْ حِينَئِذٍ. وَبِهِ - يَقُولُ سُفْيَانُ الثَّوْرِيُّ

L34856 And Abu Hanifa—Abu Hanifa and his companions said: If her menstrual period is ten days, her waiting period concludes with its full completion, and she is not lawful for her husbands—whether she has performed the ritual bath or not, or whether she has observed the cessation of bleeding or not.

وَأَبُو حَنِيفَةَ، وَقَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ: إنْ كَانَتْ حَيْضَتُهَا عَشَرَةَ أَيَّامٍ فَبِتَمَامِهَا تَنْقَضِي عِدَّتُهَا، وَلَا تَحِلُّ لِلْأَزْوَاجِ - اغْتَسَلَتْ أَوْ لَمْ تَغْتَسِلْ، رَأَتْ الطُّهْرَ أَوْ لَمْ تَرَهُ.

L34857 They said: As for the Dhimmī woman, her waiting period concludes by the cessation of blood from the third menstruation, and she becomes permissible to husbands - whether her waiting period was ten or less than ten, whether she performed ghusl or did not perform it.

قَالُوا: وَأَمَّا الذِّمِّيَّةُ فَبِانْقِطَاعِ الدَّمِ مِنْ الْحَيْضَةِ الثَّالِثَةِ تَنْقَضِي عِدَّتُهَا وَتَحِلُّ لِلْأَزْوَاجِ - كَانَتْ عِدَّتُهَا عَشَرًا أَوْ أَقَلَّ مِنْ عَشَرٍ، اغْتَسَلَتْ أَوْ لَمْ تَغْتَسِلْ.

L34858 They said: As for the Muslim woman whose menstrual period lasts fewer than ten days, the husband retains the right to retract the divorce as long as she has not washed her entire body during ghusl - even if a single complete body part remains unwashed in the process.

قَالُوا: وَأَمَّا الْمُسْلِمَةُ الَّتِي حَيْضُهَا أَقَلُّ مِنْ عَشَرَةِ أَيَّامٍ فَلَهُ الرَّجْعَةُ عَلَيْهَا مَا لَمْ تَغْتَسِلْ كُلُّهَا وَلَوْ لَمْ يَبْقَ لَهَا مِنْ الْغُسْلِ إلَّا عُضْوٌ وَاحِدٌ كَامِلٌ.

L34859–34860 They said: "According to analogical reasoning, if she did not wash a complete body part that remained [to be washed], would he not retain the right to revoke [the divorce] against her?" They said: "Rather, we abandon analogical reasoning and approve via juristic preference that he retains the right to revoke against her. If all that remains for her to wash is part of a limb, he has no right to revoke, and she has now become lawful to marry."

قَالُوا: وَكَانَ الْقِيَاسُ أَنَّهُ إنْ بَقِيَ لَهَا عُضْوٌ كَامِلٌ لَمْ تَغْسِلْ أَنْ لَا يَكُونَ لَهُ عَلَيْهَا رَجْعَةٌ؟ قَالُوا: وَلَكِنْ نَدَعُ الْقِيَاسَ، وَنَسْتَحْسِنُ أَنْ يَكُونَ لَهُ عَلَيْهَا الرَّجْعَةُ، فَإِنْ لَمْ يَبْقَ لَهَا أَنْ تَغْسِلَ إلَّا بَعْضَ عُضْوٍ فَلَا رَجْعَةَ لَهُ عَلَيْهَا، وَقَدْ حَلَّ لَهَا الزَّوَاجُ.

L34861 Abu Hanifah holds another opinion: if more than the measure of a Baghli dirham remains on her limb, he cannot take her back, nor is it lawful for her to marry until she washes off that trace.

وَلِأَبِي حَنِيفَةَ قَوْلٌ آخَرُ - وَهُوَ أَنَّهُ إنْ بَقِيَ عَلَيْهَا مِنْ الْعُضْوِ أَكْثَرُ مِنْ قَدْرِ الدِّرْهَمِ الْبَغْلِيِّ فَلَا رَجْعَةَ لَهُ عَلَيْهَا، وَلَا يَحِلُّ لَهَا الزَّوَاجُ حَتَّى تَغْسِلَ تِلْكَ اللُّمْعَةَ.

L34862 He said: If she observes purification after the third menstruation while

traveling with no water at her disposal and performs tayammum, he retains the right to take her back as long as she has not prayed.

قَالَ: فَلَوْ رَأَتْ الطُّهْرَ مِنْ الْحَيْضَةِ الثَّالِثَةِ وَهِيَ مُسَافِرَةٌ لَا مَاءَ مَعَهَا فَتَيَمَّمَتْ، فَلَهُ عَلَيْهَا الرَّجْعَةُ مَا لَمْ تُصَلِّ.

L34863 He said: If she found water from which a donkey had drunk—and found no other—then she performed *ghusl* with it or *tayammum*, he has no right to revoke the divorce, nor is she permitted to marry under those circumstances.

قَالَ: فَلَوْ وَجَدَتْ مَاءً قَدْ شَرِبَ مِنْهُ حِمَارٌ - وَلَمْ تَجِدْ غَيْرَهُ - فَاغْتَسَلَتْ بِهِ، أَوْ تَيَمَّمَتْ فَلَا رَجْعَةَ لَهُ عَلَيْهَا، وَلَا يَحِلُّ مَعَ ذَلِكَ لَهَا الزَّوَاجُ.

L34864 Abu Muhammad said: As for the statement of Abu Hanifah - it is utterly invalid, and it is an opinion not known from anyone before him. Similarly, the defining by those who stipulate the cessation of the waiting period as the passing of a prayer's time - so she does not perform the ritual bath - [is invalid] because this is a claim entirely devoid of supporting evidence, neither from the Quran, nor the Sunnah, nor an authentic narration, nor the saying of a Companion.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ - فَفِي غَايَةِ الْفَسَادِ، وَهُوَ قَوْلٌ لَا يُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ - وَكَذَلِكَ تَحْدِيدُ مَنْ حَدَّ انْقِطَاعَ الْعِدَّةِ بِأَنْ يَمْضِيَ لَهَا وَقْتُ صَلَاةٍ فَلَا تَغْتَسِلُ؛ لِأَنَّهُ قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ صَحِيحَةٍ وَلَا قَوْلِ صَاحِبٍ.

L34865 Similarly, the opinion of those who stated "until she washes her private parts from the third menstrual period" - all these opinions have been invalidated.

وَكَذَلِكَ قَوْلُ مَنْ قَالَ حَتَّى تَغْسِلَ فَرْجَهَا مِنْ الْحَيْضَةِ الثَّالِثَةِ فَسَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا.

L34866 There remain only two opinions: that of those who say, "He has the strongest claim to her [for revoking the divorce] as long as she has not performed the ritual bath and prayer becomes permissible for her," and that of those who say, "Her waiting period is completed upon her purity following the third menstruation"—which is our opinion.

وَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ: هُوَ أَحَقُّ بِهَا مَا لَمْ تَغْتَسِلْ وَتَحِلَّ لَهَا الصَّلَاةُ، وَقَوْلُ مَنْ قَالَ: إنَّ بِطُهْرِهَا مِنْ الْحَيْضَةِ الثَّالِثَةِ تَتِمُّ عِدَّتُهَا - وَهُوَ قَوْلُنَا.

L34867 We found the evidence of those who asserted: He remains most entitled to her as long as her [obligatory] prayers are not due. They cite as evidence the authentic reports from 'Umar ibn al-Khaṭṭāb, 'Alī ibn Abī Ṭālib, and Ibn Mas'ūd, along with narrations attributed to Abū Bakr al-Ṣiddīq, Abū Mūsā al-Ash'arī, Ubayy ibn Ka'b, Mu'ādh ibn Jabal, Abū al-Dardā', Ibn 'Abbās, 'Ubāda ibn al-Ṣāmit, and others - even if these narrations are not authentically established from them. They stated: Such a ruling cannot be derived through speculative reasoning.

فَوَجَدْنَا حُجَّةَ مَنْ قَالَ: هُوَ أَحَقُّ بِهَا مَا لَمْ تَحِلَّ لَهَا الصَّلَوَاتُ - يَحْتَجُّونَ بِأَنَّهُ صَحَّ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ مَسْعُودٍ، وَرُوِيَ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ، وَأَبِي مُوسَى الْأَشْعَرِيِّ، وَأُبَيِّ بْنِ كَعْبٍ، وَمُعَاذِ بْنِ جَبَلٍ، وَأَبِي الدَّرْدَاءِ، وَابْنِ عَبَّاسٍ، وَعُبَادَةَ بْنِ الصَّامِتِ، وَغَيْرِهِمْ، وَإِنْ لَمْ يَصِحَّ عَنْهُمْ - قَالُوا: وَمِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ.

L34868–34870 Abu Muhammad said: We do not know of any clamor on their part other than this, and it is invalid. For it is impermissible to attribute to the Mes-

senger of Allah—may Allah bless him and grant him peace—anything based on conjecture, which he—peace and blessings be upon him—described as the most false of narrations, unless it is established. From him—peace and blessings be upon him—especially, the established narrations from Umar and Ibn Mas'ud are what we previously mentioned: that it was an opinion they formulated independently, not derived from any narrational evidence they possessed—rather, the two of them stated it.

L34871 Despite this, the Hanafis take no pleasure in this controversy, for they are the first to oppose the Companions in this matter. It is established from the Companions we mentioned—may Allah be pleased with them—that a man retains the right to revoke [the divorce] as long as her waiting period has not concluded. Yet the Hanafis deny him this right of revocation before her waiting period ends if any part [of the fetus] remains in her body, even the size of a dirham.

L34872 Abu Muhammad said: Those we have mentioned have contradicted the opinion held by some Companions who maintained that her waiting period concludes upon entering the third menstruation. This view is also undoubtedly invalid, as there exists no evidence supporting it from the Qur'an, the Sunnah, nor even an unsound narration. Thus, only the opinion of those who stated that her waiting period concludes with the cessation of bleeding in the third menstruation remains valid. This aligns with the view of those who declared: "The aqrā' [menstrual cycles] refer to menstruation." Among their proofs, we found that if the qur' [menstrual cycle] denoted purity, the waiting period would amount to two aqrā' and part of a third. Yet Allah the Exalted has obligated three aqrā', thereby confirming that they signify menstruation, three full cycles of which must be completed.

L34873 Abū Muḥammad said: It is not so. Rather, some *qur'* is *qur'* without doubt, and some menstruation is menstruation.

L34874 Abu Muhammad said, and they mentioned what was narrated to us through the chain of Abu Dawud: from Muhammad ibn Mas'ud, from Abu 'Asim, from Ibn Jurayj, from Muẓāhir ibn Aslam, from al-Qasim ibn Muhammad, from 'A'ishah, the Mother of the Believers, from the Prophet—peace and

قَالَ أَبُو مُحَمَّدٍ: وَمَا نَعْلَمُ لَهُمْ شَغَبًا غَيْرَ هَذَا، وَهُوَ بَاطِلٌ؛ لِأَنَّهُ لَا يَحِلُّ أَنْ يُضَافَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالظَّنِّ الَّذِي أَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ أَكْذَبُ الْحَدِيثِ، مَا لَمْ يَأْتِ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا سِيَّمَا وَالثَّابِتُ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ مَا ذَكَرْنَا قَبْلُ مِنْ أَنَّهُ رَأْيٌ رَأَيَاهُ لَا عَنْ أَثَرٍ عِنْدَهُمَا قَالَاهُ.

وَمَعَ ذَلِكَ فَلَا يَفْرَحُ الْحَنَفِيُّونَ بِهَذَا الشَّغَبِ، فَهُمْ أَوَّلُ مُخَالِفٍ لِلصَّحَابَةِ فِي هَذَا الْمَكَانِ، لِأَنَّ الثَّابِتَ عَمَّنْ ذَكَرْنَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ لَهُ الرَّجْعَةَ مَا لَمْ تَحِلَّ لَهَا الصَّلَاةُ، وَهُمْ يَقْطَعُونَ عَنْهُ الرَّجْعَةَ قَبْلَ أَنْ تَحِلَّ لَهَا الصَّلَاةُ إذَا بَقِيَ لَهَا شَيْءٌ مِنْ أَعْضَاءِ جَسَدِهَا وَلَوْ قَدْرَ الدِّرْهَمِ.

قَالَ أَبُو مُحَمَّدٍ وَقَدْ خَالَفَ مَنْ ذَكَرْنَا هَذَا مَنْ رَأَى مِنْ الصَّحَابَةِ أَنَّ بِدُخُولِهَا فِي الْحَيْضَةِ الثَّالِثَةِ تَتِمُّ عِدَّتُهَا - فَبَطَلَ هَذَا الْقَوْلُ أَيْضًا بِلَا شَكٍّ إذْ لَا دَلِيلَ عَلَى صِحَّتِهِ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، فَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ قَالَ بِانْقِطَاعِ الدَّمِ مِنْ الْحَيْضَةِ الثَّالِثَةِ تَتِمُّ عِدَّتُهَا - وَهُوَ قَوْلُ مَنْ قَالَ: الْأَقْرَاءُ الْحِيَضُ، فَوَجَدْنَا مِنْ حُجَّتِهِمْ أَنَّهُ لَوْ كَانَ الْقُرْءُ الطُّهْرَ لَكَانَتْ الْعِدَّةُ قُرْأَيْنِ وَشَيْئًا مِنْ قُرْءٍ وَاَللَّهُ تَعَالَى أَوْجَبَ ثَلَاثَ قُرُوءٍ، فَصَحَّ أَنَّهَا الْحِيَضُ الَّتِي تُسْتَوْفَى ثَلَاثٌ مِنْهَا كَامِلَةً.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ كَذَلِكَ بَلْ بَعْضُ الْقُرْءِ قُرْءٌ بِلَا شَكٍّ، وَبَعْضُ الْحَيْضِ حَيْضٌ.

blessings be upon him—who said: “The divorce of a slave woman is two divorces, and her waiting period is two menstrual cycles.”

قَالَ أَبُو مُحَمَّدٍ وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ مَسْعُودٍ أَنَا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ عَنْ مُظَاهِرِ بْنِ أَسْلَمَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «طَلَاقُ الْأَمَةِ طَلْقَتَانِ، وَعِدَّتُهَا حَيْضَتَانِ» .

L34875 Humaam narrated to us: Yahya ibn Malik ibn ‘A’idh narrated to me; Abu al-Hasan ibn Abi Ghassan narrated to me; Abu Yahya Zakariyya ibn Yahya al-Sājī narrated to me; Muhammad ibn Isma‘il ibn Samurah al-Ahmasi narrated to me; ‘Umar ibn Shabib al-Musli narrated to me; ‘Abdullah ibn ‘Isa narrated to me from ‘Atiyyah, from Ibn ‘Umar, who said: The Messenger of Allah—peace and blessings be upon him—said, “The divorce of a slave woman is twice, and her waiting period is two menstrual cycles.”

وَنَا حُمَامٌ أَنَا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ أَنَا أَبُو الْحَسَنِ بْنُ أَبِي غَسَّانَ أَنَا أَبُو يَحْيَى زَكَرِيَّا ابْنُ يَحْيَى السَّاجِيُّ أَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ سَمُرَةَ الْأَحْمَسِيُّ أَنَا عُمَرُ بْنُ شَبِيبٍ الْمُسْلِيُّ أَنَا عَبْدُ اللَّهِ بْنُ عِيسَى عَنْ عَطِيَّةَ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «طَلَاقُ الْأَمَةِ ثِنْتَانِ وَعِدَّتُهَا حَيْضَتَانِ» .

L34876–34878 Abu Muhammad said: These two reports are weak; it is not permissible to cite them as evidence because of Muẓāhir ibn Aslam. Weak: Similarly, Umar ibn Shabib and ’Atiyyah are both weak narrators; they are not considered authoritative. If either or both of them were authentic, we would not oppose them.

قَالَ أَبُو مُحَمَّدٍ: هَذَانِ خَبَرَانِ سَاقِطَانِ لَا يَجُوزُ الِاحْتِجَاجُ بِهِمَا، لِأَنَّ مُظَاهِرَ بْنَ أَسْلَمَ ضَعِيفٌ - وَكَذَلِكَ عُمَرُ بْنُ شَبِيبٍ، وَعَطِيَّةُ ضَعِيفَانِ لَا يُحْتَجُّ بِهِمَا، وَلَوْ صَحَّ أَحَدُهُمَا أَوْ كِلَاهُمَا لَمَا خَالَفْنَاهُ.

L34879 Abu Muhammad said: If someone mentions the authentic report from the Messenger of Allah—peace be upon him—that he said to the woman experiencing irregular bleeding: “When your *qur’* comes, do not pray, and when the *qur’* passes, purify yourself then pray from one *qur’* to the next,” and the authentic report from him—peace be upon him—that he ordered her to abstain from prayer equivalent to the duration of her periods (qurū’) and her menstruation? We replied: We do not deny that menstruation is called *qur’*, just as you do not deny that the clean period is called *qur’*. Our disagreement concerns only which of these is intended by the statement of the Exalted: *{three qurū’}* [al-Baqarah 2:228].[49]

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ ذَكَرَ ذَاكِرٌ الْخَبَرَ الثَّابِتَ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِلْمُسْتَحَاضَةِ: إذَا أَتَاكِ قُرْؤُكِ فَلَا تُصَلِّي وَإِذَا مَرَّ الْقُرْءُ تَطَهَّرِي ثُمَّ صَلِّي مِنْ الْقُرْءِ إلَى الْقُرْءِ» وَالْخَبَرُ الثَّابِتُ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ أَمَرَهَا أَنْ تَتْرُكَ الصَّلَاةَ قَدْرَ أَقْرَائِهَا وَحَيْضَتِهَا؟ قُلْنَا: لَمْ نُنْكِرْ أَنَّ الْحَيْضَ يُسَمَّى قُرْءًا، كَمَا أَنَّكُمْ لَا تُنْكِرُونَ أَنَّ الطُّهْرَ يُسَمَّى قُرْءًا، وَإِنَّمَا اخْتَلَفْنَا فِي أَيِّ ذَلِكَ الْمُرَادُ مِنْ قَوْلِهِ تَعَالَى: {ثَلَاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] .

L34880 And they said: Indeed, Allah, the Exalted, commanded the divorce of women solely for the observance of the waiting period.

وَقَالُوا: إنَّمَا أَمَرَ اللَّهُ تَعَالَى بِطَلَاقِ النِّسَاءِ لِاسْتِقْبَالِ الْعِدَّةِ.

L34881 They said: If the *qur’* (purity period) were equivalent to the *tuhr* (state

[49] **Qur’an references (L34879):** Qur’an 2:228 (Al-Baqarah).

of purity), would divorce then occur during the *iddah* (waiting period)? We replied: This is an error in your ruling and legal framework, even though it is built on a sound premise. And yes, indeed, Allah the Exalted commanded that divorce occur at the onset of the *iddah*. If the *iddah*—defined by the *aqrā'* (purity periods)—were equivalent to menstruation itself, there would be a span between the divorce and the start of the *iddah* during which the woman would not be considered in the waiting period, and this is invalid.

قَالُوا: فَلَوْ كَانَ الْقُرْءُ هُوَ الطُّهْرَ لَكَانَ مُطَلَّقًا فِي الْعِدَّةِ؟ فَقُلْنَا: هَذَا خَطَأٌ مِنْ حُكْمِكُمْ وَبِنَائِكُمْ عَلَى مُقَدَّمَةٍ صَحِيحَةٍ وَنَعَمْ، إنَّ الطَّلَاقَ إنَّمَا أَمَرَ اللَّهُ تَعَالَى بِالطَّلَاقِ فِي اسْتِقْبَالِ الْعِدَّةِ، فَلَوْ كَانَتْ الْعِدَّةُ الَّتِي هِيَ الْأَقْرَاءُ الْحِيَضَ، لَكَانَ بَيْنَ الطَّلَاقِ وَبَيْنَ أَوَّلِ الْعِدَّةِ مُدَّةٌ لَيْسَتْ فِيهَا مُعْتَدَّةً، وَهَذَا بَاطِلٌ.

L34882 Abu Muhammad said: All the evidence they presented was invalidated, and our position remained. We identified evidence for those who held this opinion in what has been narrated to us through Al-Bukhari's chain: Ismāʿīl ibn ʿAbdullāh reported to us, from Mālik, from Nāfiʿ, from Ibn ʿUmar, that he divorced his wife while she was menstruating. ʿUmar asked Allah's Messenger (peace be upon him) about this? The Messenger of Allah (peace be upon him) said: "Command him to take her back, then keep her until she attains purity, then menstruates, then attains purity again. After that, if he wishes, he may retain her thereafter, or divorce her before intimacy. That is the waiting period within which Allah the Exalted has commanded that women are divorced."

قَالَ أَبُو مُحَمَّدٍ: فَسَقَطَ كُلُّ مَا احْتَجُّوا بِهِ - وَبَقِيَ قَوْلُنَا - فَوَجَدْنَا حُجَّةَ مَنْ قَالَ بِهِ -: مَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا إسْمَاعِيلُ بْنُ عَبْدِ اللَّهِ أَنَا مَالِكٌ عَنْ نَافِعٍ «عَنْ ابْنِ عُمَرَ: أَنَّهُ طَلَّقَ امْرَأَتَهُ، وَهِيَ حَائِضٌ، فَسَأَلَ عُمَرُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ ذَلِكَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُرْهُ فَلْيُرَاجِعْهَا ثُمَّ لِيُمْسِكْهَا حَتَّى تَطْهُرَ ثُمَّ تَحِيضَ ثُمَّ تَطْهُرَ، ثُمَّ إنْ شَاءَ أَمْسَكَ بَعْدُ، وَإِنْ شَاءَ طَلَّقَ قَبْلَ أَنْ يَمَسَّ فَتِلْكَ الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ تَعَالَى أَنْ تَطْلُقَ لَهَا النِّسَاءُ» .

L34883 The Messenger of Allah—peace and blessings be upon him—indicated the purity (ṭuhr) and clarified that it constitutes the waiting period during which Allah the Exalted has commanded that women be divorced. Thus, it is confirmed that the "qur'" is the purity (ṭuhr).

فَأَشَارَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى الطُّهْرِ، وَأَخْبَرَ أَنَّهُ الْعِدَّةُ الَّتِي أَمَرَ اللَّهُ تَعَالَى أَنْ تَطْلُقَ لَهَا النِّسَاءُ - فَصَحَّ أَنَّ الْقُرْءَ هُوَ الطُّهْرُ.

L34884–34885 Moreover, the waiting period is a mandatory obligation immediately after divorce, without delay. Thus, it is validly established that this refers to the period of purity connected in time to the divorce, not menstruation that occurs unrelated to it.

وَأَيْضًا - فَإِنَّ الْعِدَّةَ وَاجِبَةٌ فَرْضًا إثْرَ الطَّلَاقِ بِلَا مُهْلَةٍ - فَصَحَّ أَنَّهَا الطُّهْرُ الْمُتَّصِلُ بِالطَّلَاقِ، لَا الْحَيْضُ الَّذِي لَا يَتَّصِلُ بِالطَّلَاقِ.

L34886 If *qur'* were equated to menstruation, it would necessitate—according to their doctrine—that a woman divorced during menstruation observe her waiting period by treating that menstruation itself as a *qur'*. And al-Ḥasan did indeed hold this view.

وَلَوْ كَانَ الْقُرْءُ هُوَ الْحَيْضَ لَوَجَبَ عِنْدَهُمْ عَلَى أَصْلِهِمْ فِيمَنْ طَلَّقَ حَائِضًا أَنْ تَعْتَدَّ بِتِلْكَ الْحَيْضَةِ قُرْءًا - وَقَدْ قَالَ بِذَلِكَ الْحَسَنُ.

L34887 As narrated through the chain of ʿAbd al-Razzāq from ʿUthmān ibn Maṭar, from Saʿīd ibn Abī ʿArūbah, from Maṭar al-Warrāq, from al-Ḥasan, regarding

a man who divorces his wife three times while she is menstruating: she observes her waiting period based on her menstrual cycles through those three divorces.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُثْمَانَ بْنِ مَطَرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ مَطَرٍ الْوَرَّاقِ عَنْ الْحَسَنِ فِيمَنْ طَلَّقَ امْرَأَتَهُ ثَلَاثًا وَهِيَ حَائِضٌ أَنَّهَا تَعْتَدُّ بِهَا مِنْ أَقْرَائِهَا.

L34888 Ibn Abī ʿArūbah said: Qatadah and Abu Maʿshar narrated to me. Qatadah narrated from Saʿīd ibn al-Musayyib, and Abu Maʿshar narrated from Ibrāhīm. They both said, "Do not count it."

وَقَالَ ابْنُ أَبِي عَرُوبَةَ: وَحَدَّثَنِي قَتَادَةُ، وَأَبُو مَعْشَرٍ، قَالَ قَتَادَةُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَقَالَ أَبُو مَعْشَرٍ عَنْ إبْرَاهِيمَ، قَالَا جَمِيعًا: لَا تَعْتَدُّ بِهَا.

L34889 Abu Muhammad said: Whichever of the two interpretations Allah the Exalted intended—are the "aqrā'" referring to purity periods or menstruation? Our position necessitates both, for divorce occurs during a purity period, which constitutes a qur', then the second purity period, then the third. Between the first and second purity periods lies a menstrual period, then between the second and third lies another menstrual period, followed by the occurrence of the final menstrual period of the three.

قَالَ أَبُو مُحَمَّدٍ: وَأَيُّ الْقَوْلَيْنِ كَانَ مُرَادَ اللَّهِ تَعَالَى، فَالْأَقْرَاءُ الْأَطْهَارُ أَمْ الْحِيَضُ؟ فَإِنَّ قَوْلَنَا يَقْتَضِيهِمَا جَمِيعًا؛ لِأَنَّ الطَّلَاقَ يَقَعُ فِي الطُّهْرِ فَهُوَ قُرْءٌ، ثُمَّ الطُّهْرِ الثَّانِي، ثُمَّ الثَّالِثِ، وَبَيْنَ الطُّهْرِ الْأَوَّلِ وَالثَّانِي حَيْضٌ، ثُمَّ بَيْنَ الثَّانِي وَالثَّالِثِ حَيْضٌ، ثُمَّ دُفْعَةُ حَيْضِ آخِرِ الثَّلَاثِ.

L34890–34892 We have said: A portion of menstruation is valid menstruation, a portion of purity is valid purity, and a portion of the qur' is a valid qur'. Thus, she observes three qur' periods in all cases. We adhere to al-Ḥasan's opinion: If a man divorces her thrice while she is menstruating, she observes her waiting period with that menstruation, then the subsequent purity period, then the second menstruation, then the second purity period, then the third menstruation. When she completes the purity period following it (the third purity period), she becomes lawful to her husbands. Such is the ruling. The ruling concerning the waiting period of a female slave who is emancipated and chooses to divorce her husband—if she is menstruating at that time—is the same; there is no difference.

وَقَدْ قُلْنَا: إنَّ بَعْضَ الْحَيْضِ حَيْضٌ، وَبَعْضَ الطُّهْرِ طُهْرٌ، وَبَعْضَ الْقُرْءِ قُرْءٌ، فَهِيَ ثَلَاثَةُ أَقْرَاءٍ بِكُلِّ حَالٍ - وَبِقَوْلِ الْحَسَنُ نَقُولُ إنْ طَلَّقَهَا ثَلَاثًا - وَهِيَ حَائِضٌ - فَإِنَّهَا تَعْتَدُّ بِتِلْكَ الْحَيْضَةِ، ثُمَّ بِالطُّهْرِ الَّذِي يَلِيهَا، ثُمَّ بِالْحَيْضَةِ الثَّانِيَةِ ثُمَّ بِالطُّهْرِ الثَّانِي، ثُمَّ بِالْحَيْضَةِ الثَّالِثَةِ فَإِذَا رَأَتْ الطُّهْرَ مِنْهَا - فَهُوَ طُهْرٌ ثَالِثٌ - حَلَّتْ بِهِ لِلْأَزْوَاجِ، وَهَكَذَا الْقَوْلُ فِي عِدَّةِ الْأَمَةِ الَّتِي تُعْتَقُ فَتَخْتَارُ فِرَاقَ زَوْجِهَا - إنْ كَانَتْ حِينَ ذَلِكَ حَائِضًا - وَلَا فَرْقَ.

L34893 Similarly, we state regarding a woman thrice-divorced in a single pronouncement during a period of purity in which her husband had intercourse with her, and a freedwoman who chooses to separate from her husband, that both observe their waiting period starting from that same purity, calculated according to menstrual cycles.

وَكَذَلِكَ نَقُولُ فِي الْمُطَلَّقَةِ ثَلَاثًا فِي طُهْرٍ مَسَّهَا فِيهِ، وَفِي الْمُعْتَقَةِ تَخْتَارُ فِرَاقَ زَوْجِهَا أَنَّهُمَا يَعْتَدَّانِ بِذَلِكَ الطُّهْرِ قُرْءًا.

L34894 It has been authentically reported from Az-Zuhri that she does not observe

وَقَدْ صَحَّ عَنْ الزُّهْرِيِّ أَنَّهَا لَا تَعْتَدُّ بِهِ، لَكِنْ بِثَلَاثَةِ أَقْرَاءٍ مُسْتَأْنَفَةٍ.

the iddah with that method, but rather [must complete] three newly started menstrual cycles.

L34895 **A legal issue wherein he issued her an irrevocable divorce during her waiting period prior to its completion.**

L34896 Issue 1986: If he follows a divorce with an irrevocable pronouncement during her waiting period before its completion - provided the waiting period is not due to a triple divorce issued in a single instance nor a third pronouncement - she must commence the waiting period anew from its beginning. If he divorces her a third time after two prior pronouncements, she must likewise commence the waiting period anew without exception. Similarly, if he revokes the divorce (rajʿah) during her waiting period - whether he consummates the marriage or not - then divorces her, she must necessarily commence the waiting period anew.

L34897 And it has been narrated to us—as per our statement—from a group of the Salaf, as has been narrated to us through ʿAbd al-Razzāq's chain from Maʿmar and through other chains from Qatādah, that Jābir ibn ʿAbdullāh and Khilās ibn ʿAmr jointly stated regarding a woman divorced during her waiting period: "She observes her waiting period from the other divorce for three menstrual cycles."

L34898 It is reported from Ibn Masʿūd that she resumes her waiting period of the first divorce—this is the opinion of Ibrāhīm al-Nakhaʿī, Saʿīd ibn al-Musayyab, al-Ḥasan, and Abū Qilābah—and this is also the view of al-Zuhrī and Qatādah.

L34899–34901 Abu Muhammad said: This is the opinion of Abu Hanifah, Malik, and al-Shafi'i, except that Abu Hanifah, Malik, and one of the two opinions of al-Shafi'i regarding the woman whom he takes back during her waiting period and then divorces again before consummation hold that she... She restarts the waiting period - and Ash-Shāfiʿī once stated: she resumes her waiting period from the first divorce - and this is the opinion of ʿAṭāʾ.

L34902 Abū Muḥammad said: We know of no evidence for them from the Quran or Sunnah whatsoever, nor any foundational basis for these groups in what is re-

[مَسْأَلَةٌ أَتْبَعَهَا فِي عِدَّتِهَا قَبْلَ انْقِضَائِهَا طَلَاقًا بَائِنًا]

١٩٨٦ - مَسْأَلَةٌ: فَإِنْ أَتْبَعَهَا فِي عِدَّتِهَا قَبْلَ انْقِضَائِهَا طَلَاقًا بَائِنًا، وَلَمْ تَكُنْ عِدَّتُهَا تِلْكَ مِنْ طَلَاقِ ثَلَاثٍ مَجْمُوعَةٍ وَلَا مِنْ طَلْقَةٍ ثَالِثَةٍ فَعَلَيْهَا أَنْ تَبْتَدِئَ الْعِدَّةَ مِنْ أَوَّلِهَا فَإِنْ طَلَّقَهَا بَعْدَ ثِنْتَيْنِ ثَالِثَةً فَتَبْتَدِئُ الْعِدَّةَ أَيْضًا وَلَا بُدَّ - وَكَذَلِكَ لَوْ رَاجَعَهَا فِي عِدَّتِهَا فَوَطِئَهَا أَوْ لَمْ يَطَأْهَا ثُمَّ طَلَّقَهَا فَإِنَّهَا تَبْتَدِئُ الْعِدَّةَ وَلَا بُدَّ.

وَرُوِّينَا مِثْلَ قَوْلِنَا عَنْ طَائِفَةٍ مِنْ السَّلَفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَغَيْرِهِ عَنْ قَتَادَةَ أَنَّ جَابِرَ بْنَ عَبْدِ اللَّهِ، وَخِلَاسَ بْنَ عَمْرٍو، قَالَا جَمِيعًا فِي الْمُطَلَّقَةِ فِي الْعِدَّةِ: تَعْتَدُّ مِنْ الطَّلَاقِ الْآخَرِ ثَلَاثَ حِيَضٍ.

وَرُوِّينَا عَنْ ابْنِ مَسْعُودٍ: أَنَّهَا تَبْنِي عَلَى عِدَّتِهَا مِنْ الطَّلَاقِ الْأَوَّلِ - وَهُوَ قَوْلُ إبْرَاهِيمَ النَّخَعِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَالْحَسَنِ، وَأَبِي قِلَابَةَ - وَبِهِ قَالَ الزُّهْرِيُّ، وَقَتَادَةُ.

قَالَ أَبُو مُحَمَّدٍ: وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، إلَّا أَنَّ أَبَا حَنِيفَةَ، وَمَالِكًا، وَأَحَدَ قَوْلَيْ الشَّافِعِيِّ فِي الَّتِي يُرَاجِعُهَا فِي الْعِدَّةِ ثُمَّ يُطَلِّقُ قَبْلَ أَنْ يَطَأَهَا: أَنَّهَا تَسْتَأْنِفُ الْعِدَّةَ - وَقَالَ الشَّافِعِيُّ مَرَّةً: تَبْنِي عَلَى عِدَّتِهَا مِنْ الطَّلَاقِ الْأَوَّلِ - وَهُوَ قَوْلُ عَطَاءٍ.

ported from Ibn Masʿūd concerning this matter—for it is merely a narration: ʿAbdullāh ibn Rabīʿ narrated to us, stating: I am Muḥammad ibn Muʿāwiyah al-Qurashī, I am Aḥmad ibn Shuʿayb, I am Muḥammad ibn Yaḥyā ibn Ayyūb al-Marwazī, I am Ḥafṣ—who is Ibn Ghīyāth—from al-Aʿmash, from Abū Isḥāq, from Abū al-Aḥwaṣ, from ʿAbdullāh ibn Masʿūd, who said: "The divorce in accordance with the Sunnah is to divorce her once while she is in a state of purity without intercourse. When her menstruation arrives and she thereafter becomes pure, he divorces her another time. When she menstruates again and becomes pure, he divorces her a third time. She then observes her waiting period with one subsequent menstrual cycle."

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ حُجَّةً مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ أَصْلًا وَلَا مُتَعَلَّقَ لِهَذِهِ الطَّوَائِفِ فِيمَا جَاءَ عَنْ ابْنِ مَسْعُودٍ فِي ذَلِكَ، لِأَنَّهُ خَبَرٌ -: حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ: أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْقُرَشِيُّ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ يَحْيَى بْنِ أَيُّوبَ الْمَرْوَزِيِّ أَنَا حَفْصٌ - هُوَ ابْنُ غِيَاثٍ - أَنَا الْأَعْمَشُ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي الْأَحْوَصِ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: طَلَاقُ السُّنَّةِ يُطَلِّقُهَا تَطْلِيقَةً وَهِيَ طَاهِرَةٌ فِي غَيْرِ جِمَاعٍ، فَإِذَا جَاءَ وَطَهُرَتْ طَلَّقَهَا أُخْرَى فَإِذَا حَاضَتْ وَطَهُرَتْ طَلَّقَهَا أُخْرَى، ثُمَّ تَعْتَدُّ بَعْدَ ذَلِكَ بِحَيْضَةٍ.

L34903 Al-Aʿmash said, "So I asked Ibrāhīm al-Nakhaʿī," and Ibrāhīm replied likewise.

قَالَ الْأَعْمَشُ فَسَأَلْت إبْرَاهِيمَ النَّخَعِيَّ؟ فَقَالَ مِثْلَ ذَلِكَ.

L34904 Abu Muhammad said: All these schools contradict the authentic reports from Ibn Masʿūd here—that it is the Sunnah—because they all deem it reprehensible to follow it with a divorce during the waiting period. The Mālikīs and Shāfiʿīs do not regard menstruation as the waiting period.

قَالَ أَبُو مُحَمَّد: كُلُّ هَؤُلَاءِ الطَّوَائِفِ مُخَالِفُونَ لِمَا صَحَّ عَنْ ابْنِ مَسْعُودٍ هَاهُنَا أَنَّهُ السُّنَّةُ، لِأَنَّهُمْ كُلَّهُمْ يَكْرَهُونَ أَنْ يُتْبِعَهَا طَلَاقًا فِي الْعِدَّةِ، وَالْمَالِكِيُّونَ وَالشَّافِعِيُّونَ لَا يَرَوْنَ الْحَيْضَ عِدَّةً.

L34905 There is no greater astonishment than [that directed at] one who invokes the statement of Saʿīd ibn al-Musayyib regarding the diyah for a woman's fingers—"This is the Sunnah, O my nephew"—and here relies on Ibn Masʿūd's statement that it [the ruling on the woman's fingers] is the Sunnah.

وَلَا عَجَبَ أَعْجَبُ مِمَّنْ يَحْتَجُّ بِقَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ فِي دِيَةِ أَصَابِعِ الْمَرْأَةِ: هِيَ السُّنَّةُ يَا ابْنَ أَخِي، وَيَحْتَجُّ بِقَوْلِ ابْنِ مَسْعُودٍ هَاهُنَا أَنَّهُ السُّنَّةُ.

L34906 Abu Muhammad said: As for us, there is no proof with us except the text of the Qur'an and the Sunnah—the latter's rulings being established from the Messenger of Allah, may Allah's peace and blessings be upon him.

قَالَ أَبُو مُحَمَّد: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِيمَا عَدَا نَصِّ قُرْآنٍ وَسُنَّةٍ ثَبَتَ حُكْمُهَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L34907 Our evidence for this ruling is that Allah, the Almighty and Majestic, has waived the waiting period for the divorced woman who has not been touched only, and has imposed it upon the divorced woman who has been touched.

وَحُجَّتُنَا لِقَوْلِنَا هَاهُنَا: هُوَ أَنَّ اللَّهَ عَزَّ وَجَلَّ إنَّمَا أَسْقَطَ الْعِدَّةَ عَنْ الْمُطَلَّقَةِ غَيْرِ الْمَمْسُوسَةِ فَقَطْ، وَأَوْجَبَهَا عَلَى الْمَطْلَقَةِ الْمَمْسُوسَةِ.

L34908–34909 Allah, the Exalted, has commanded that whoever divorces must divorce in accordance with the waiting period, and He has prescribed the waiting period for a menstruating woman as three cycles.

وَأَمَرَ اللَّهُ تَعَالَى مَنْ طَلَّقَ أَنْ يُطَلِّقَ لِلْعِدَّةِ، وَجَعَلَ الْعِدَّةَ عَلَى الَّتِي تَحِيضُ ثَلَاثَةَ قُرُوءٍ.

L34910 And for the woman who does not menstruate—due to young age or advanced age—three months.

وَعَلَى الَّتِي لَا تَحِيضُ - لِصِغَرٍ أَوْ كِبَرٍ - ثَلَاثَةَ أَشْهُرٍ.

L34911 The Exalted has decreed that she remains his wife as long as her waiting period from him has not expired: they inherit from one another, and his divorce takes effect upon her. Thus, if he divorces her a second time, he is undeniably divorcing his wife with whom he has consummated the marriage within that matrimonial contract. Consequently, she must begin the waiting period immediately after this divorce, without interruption.

وَحَكَمَ تَعَالَى أَنَّهَا امْرَأَتُهُ مَا لَمْ تَنْقَضِ عِدَّتُهَا مِنْهُ: يَتَوَارَثَانِ، وَيَلْحَقُهَا طَلَاقُهُ، فَهُوَ إِذَا طَلَّقَهَا ثَانِيَةً: مُطَلِّقٌ امْرَأَتَهُ الْمَوْطُوءَةَ مِنْهُ فِي ذَلِكَ النِّكَاحِ بِلَا شَكٍّ، فَعَلَيْهَا أَنْ تَبْتَدِئَ الْعِدَّةَ مِنْ إِثْرِهِ بِلَا فَصْلٍ.

L34912 It is invalid for any part of the waiting period to precede the divorce, just as it is invalid to divorce a wife with whom intercourse has occurred without a waiting period.

وَمِنَ الْبَاطِلِ أَنْ يَتَقَدَّمَ شَيْءٌ مِنَ الْعِدَّةِ قَبْلَ الطَّلَاقِ، كَمَا مِنَ الْبَاطِلِ طَلَاقُ مَوْطُوءَةٍ بِلَا عِدَّةٍ.

L34913 Or the divorce of a woman with whom intercourse has occurred would constitute one menstrual cycle or two. Our opponents in this matter must necessarily adopt one of these three approaches - all of which are invalid with certainty.

أَوْ طَلَاقُ مَوْطُوءَةٍ يَكُونُ قُرْءًا وَاحِدًا أَوْ قُرْأَيْنِ، وَلَا بُدَّ لِمُخَالِفِينَا هَاهُنَا مِنْ أَحَدِ هَذِهِ الْوُجُوهِ الثَّلَاثَةِ - وَهِيَ كُلُّهَا بَاطِلٌ بِيَقِينٍ.

L34914 Similarly, it is impossible for the revocably divorced woman (murtajiʿah) to base her status on a waiting period (ʿiddah) that has been invalidated by the reinstatement (rajʿah), as it is invalid for her to retain the status of a revocably divorced woman while she is, after the reinstatement, in the waiting period. And success is from Allah, the Exalted.

وَكَذَلِكَ مِنَ الْمُحَالِ أَنْ تَبْنِيَ الْمُرْتَجَعَةُ عَلَى عِدَّةٍ قَدْ بَطَلَتْ بِالرَّجْعَةِ، إِذْ مِنَ الْبَاطِلِ أَنْ تَكُونَ مُرْتَجَعَةً، وَهِيَ بَعْدَ الِارْتِجَاعِ فِي الْعِدَّةِ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L34915 **A legal case where the divorced woman was pregnant from the one who divorced her, from adultery, or by coercion.**

[مَسْأَلَةٌ كَانَتْ الْمُطَلَّقَةُ حَامِلًا مِنْ الَّذِي طَلَّقَهَا أَوْ مِنْ زِنًى أَوْ بِإِكْرَاهٍ]

L34916 If the divorced woman is pregnant by the man who divorced her—whether through adultery, coercion, or otherwise—her waiting period concludes with the delivery of the child, even if this occurs immediately after her husband's divorce (whether by an hour, less, or more), provided it is the final offspring in her womb. When she delivers it (as we mentioned) or miscarries, her waiting period has ended, and marriage becomes permissible for her.

١٩٨٧ - مَسْأَلَةٌ: فَإِنْ كَانَتْ الْمُطَلَّقَةُ حَامِلًا مِنْ الَّذِي طَلَّقَهَا أَوْ مِنْ زِنًى أَوْ بِإِكْرَاهٍ فَعِدَّتُهَا وَضْعُ حَمْلِهَا - وَلَوْ إثْرَ طَلَاقِ زَوْجِهَا لَهَا بِسَاعَةٍ أَوْ أَقَلَّ أَوْ أَكْثَرَ - وَهُوَ آخِرُ وَلَدٍ فِي بَطْنِهَا، فَإِذَا وَضَعَتْهُ - كَمَا ذَكَرْنَا - أَوْ أَسْقَطَتْهُ فَقَدْ انْقَضَتْ عِدَّتُهَا وَحَلَّ لَهَا الزَّوَاجُ.

L34917–34918 Similarly, an emancipated woman who is pregnant may choose to separate from her husband, with no distinction [in the ruling].

وَكَذَلِكَ الْمُعْتَقَةُ - وَهِيَ حَامِلٌ - تَتَخَيَّرُ فِرَاقَ زَوْجِهَا وَلَا فَرْقَ.

L34919 Similarly, a woman whose husband has died—whether her pregnancy is from him, from illicit intercourse, or from coercion—her waiting period concludes upon delivering the last child in her womb, even if she delivers it immediately after her husband's death. She may then remarry if she wishes.

وَكَذَلِكَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا - وَهِيَ حَامِلٌ مِنْهُ، أَوْ مِنْ زِنًى، أَوْ مِنْ إِكْرَاهٍ - فَإِنَّ عِدَّتَهَا تَنْقَضِي بِوَضْعِ آخِرِ وَلَدٍ فِي بَطْنِهَا - وَلَوْ وَضَعَتْهُ إِثْرَ مَوْتِ زَوْجِهَا - وَلَهَا أَنْ تَتَزَوَّجَ إِنْ شَاءَتْ.

L34920 And likewise, if she were to miscarry it, and there is no difference.

وَكَذَلِكَ لَوْ أَسْقَطَتْهُ، وَلَا فَرْقَ.

L34921 The proof of that is the statement of Allah, the Most High, the Exalted: {And for those who are pregnant, their waiting period is until they deliver their pregnancy} [At-Talaq: 4]. He, the Most High, the Exalted, did not specify whether the pregnancy is from the husband or another man, and it is the same whether the husband had sexual intercourse with her or not, because Allah, the Exalted, has stated this.[50]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] فَلَمْ يَخُصَّ عَزَّ وَجَلَّ كَوْنَ الْحَمْلِ مِنْهُ أَوْ مِنْ غَيْرِهِ - وَسَوَاءٌ وَطِئَهَا الزَّوْجُ أَوْ لَمْ يَطَأْهَا، لِأَنَّ اللَّهَ تَعَالَى قَالَ مَا ذَكَرْنَا.

L34922 And He, the Exalted, said: {O you who believe, when you marry believing women and then divorce them before consummating the marriage, there is no waiting period for you to impose upon them} [Al-Ahzab: 49].[51]

وَقَالَ تَعَالَى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا} [الأحزاب: ٤٩] .

L34923 Abu Muhammad said: It is legally valid to interpret this as excluding these [cases] from the former category. Thus, the intended meaning is: "For pregnant women, their waiting period lasts until they deliver, except those who became pregnant by you without sexual relations—through non-vaginal intercourse (tashfīr)—or by non-Muslim men."

قَالَ أَبُو مُحَمَّدٍ: فَاحْتَمَلَ أَنْ يَسْتَثْنِيَ هَذِهِ مِنْ الْأُولَى فَيَكُونُ الْمُرَادُ: وَأُولَاتُ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ إلَّا اللَّوَاتِي لَمْ تَمَسُّوهُنَّ وَهُنَّ حَوَامِلُ مِنْكُمْ مِنْ تَشْفِيرٍ أَوْ مِنْ غَيْرِكُمْ.

L34924 It is possible that the first instance is excluded from this ruling, so that the intended meaning is: "Then if you divorce them before having touched them, you have no waiting period to count against them - unless they are pregnant from you or from someone other than you." Therefore, it becomes obligatory to examine which of the two usages - or which of the two exceptions - is correct, since the Exalted and Majestic has guaranteed the clarification of this matter through the laws He revealed to us. We found the narration of Abdullah ibn Umar regarding his divorce of his wife, which we previously

وَاحْتَمَلَ أَنْ تُسْتَثْنَى الْأُولَى مِنْ هَذِهِ فَيَكُونُ الْمُرَادُ: ثُمَّ طَلَّقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا إلَّا أَنْ يَكُنَّ حَوَامِلَ مِنْكُمْ أَوْ مِنْ غَيْرِكُمْ، فَوَاجِبٌ أَنْ نَنْظُرَ أَيَّ الِاسْتِعْمَالَيْنِ، أَوْ أَيَّ الِاسْتِثْنَاءَيْنِ هُوَ الْحَقُّ؟ إذْ قَدْ ضَمِنَ عَزَّ وَجَلَّ بَيَانَ ذَلِكَ فِيمَا أَنْزَلَ إلَيْنَا مِنْ شَرَائِعِهِ -: فَوَجَدْنَا - خَبَرَ عَبْدِ اللَّهِ بْنِ عُمَرَ فِي طَلَاقِ امْرَأَتِهِ وَقَدْ ذَكَرْنَاهُ فِي " أَوَّلِ مَسْأَلَةٍ مِنْ الطَّلَاقِ فِي كِتَابِنَا هَذَا " بِإِسْنَادِهِ.

[50] **Qur'an references (L34921):** Qur'an 65:4 (At-Talaq).
[51] **Qur'an references (L34922):** Qur'an 33:49 (Al-Ahzab).

mentioned in “the first issue of divorce in this book of ours” with its chain of transmission.[52]

L34925–34926 We found therein that he—peace and blessings be upon him—said: “Command him to take her back and then divorce her either in a state of ritual purity or when she is pregnant with his child.”

L34927 And in it also: “When she becomes pure, let him either divorce her or retain her,” and the Messenger of Allah (peace and blessings be upon him) recited: “O Prophet, when you divorce women, divorce them at the commencement of their waiting period.”[53]

L34928–34930 Abu Muhammad said: It has been established that divorcing a pregnant woman is universally permissible, as this ruling originates from him—peace and blessings be upon him. Instruction for every husband who divorces until the Day of Resurrection—regardless of whether the pregnancy is from him or another—because the Prophet (peace and blessings be upon him) did not distinguish between a pregnant woman and a pregnant woman from another. That circumstance signifies the commencement of her waiting period, thus obligating her to observe it due to what we have mentioned. This ruling cannot be nullified except with certainty, and no certainty exists for its annulment except in the case of the repudiated woman with whom he has not had intercourse and who is not pregnant at all.

L34931 If it is confirmed that she is obligated to observe the waiting period, then it necessarily follows that he retains the right to take her back as long as she remains within the waiting period following his divorce; he is obligated to provide financial support, they inherit from one another, his ilā’ (sworn abstention) and his ẓihār (injurious comparison) apply to her, and he may engage in li‘ān (oath-based denial of paternity) with her, based on the statement of Allah the Exalted: {And their husbands have the greatest right to reclaim them during this period} [Al-Baqarah: 228].[54]

L34932 And by His saying, the Most High: “Retain them equitably or divorce them

فَوَجَدْنَا فِيهِ «أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ مُرْهُ: فَلْيُرَاجِعْهَا ثُمَّ لِيُطَلِّقْهَا طَاهِرًا، أَوْ حَامِلًا مِنْهُ» .

وَفِيهِ أَيْضًا «إذَا طَهُرَتْ فَلْيُطَلِّقْ أَوْ لِيُمْسِكْ، وَقَرَأَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا أَيُّهَا النَّبِيُّ إذَا طَلَّقْتُمْ النِّسَاءَ فَطَلِّقُوهُنَّ لِقُبُلِ عِدَّتِهِنَّ» .

قَالَ أَبُو مُحَمَّد: فَصَحَّ أَنَّ طَلَاقَ الْحَامِلِ جَائِزٌ عُمُومًا، إذْ هَذَا مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - تَعْلِيمٌ لِكُلِّ مُطَلِّقٍ إلَى يَوْمِ الْقِيَامَةِ، سَوَاءٌ كَانَ الْحَمْلُ مِنْهُ أَوْ مِنْ غَيْرِهِ، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَخُصَّ حَامِلًا مِنْ حَامِلٍ مِنْ غَيْرِهِ، وَأَنَّ تِلْكَ الْحَالَ هُوَ قُبُلُ عِدَّتِهَا، فَوَجَبَتْ الْعِدَّةُ عَلَيْهَا بِمَا ذَكَرْنَا، وَلَمْ يَجُزْ أَنْ يَسْقُطَ هَذَا الْحُكْمُ إلَّا بِيَقِينٍ، وَلَا يَقِينَ فِي سُقُوطِهِ إلَّا فِي الْمُطَلَّقَةِ الَّتِي لَمْ يَطَأْهَا وَلَيْسَتْ حَامِلًا فَقَطْ.

وَإِذَا صَحَّ أَنَّ عَلَيْهَا الْعِدَّةَ فَقَدْ وَجَبَ ضَرُورَةً أَنَّ لَهُ الرَّجْعَةَ عَلَيْهَا مَا دَامَتْ فِي الْعِدَّةِ مِنْ طَلَاقِهِ، وَعَلَيْهِ النَّفَقَةُ، وَيَتَوَارَثَانِ، وَيَلْحَقُهَا إيلَاؤُهُ، وَظِهَارُهُ، وَيُلَاعِنُهَا؛ لِقَوْلِهِ تَعَالَى: {وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ} [البقرة: ٢٢٨] .

وَبِقَوْلِهِ تَعَالَى: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] .

[52] **Qur’an references (L34924):** Qur’an 33:49 (Al-Ahzab).
[53] **Qur’an references (L34927):** Qur’an 65:1 (At-Talaq).
[54] **Qur’an references (L34931):** Qur’an 2:228 (Al-Baqarah).

equitably" [At-Talaq 2].[55]

L34933 Success is by Allah, the Most High.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L34934 Similarly, we say: If he divorces her while her waiting period is determined by menstrual cycles or months, then she becomes pregnant before completing the waiting period—whether from him or another man, through adultery or coercion—her waiting period transfers to the childbirth of that pregnancy. Then, when she delivers, her waiting period is deemed complete.

وَكَذَلِكَ نَقُولُ: إنَّهُ إنْ طَلَّقَهَا وَعِدَّتُهَا بِالْأَقْرَاءِ أَوْ بِالشُّهُورِ، ثُمَّ حَمَلَتْ قَبْلَ تَمَامِ الْعِدَّةِ مِنْهُ أَوْ مِنْ غَيْرِهِ بِزِنًى أَوْ بِإِكْرَاهٍ، فَإِنَّهَا تَنْتَقِلُ عِدَّتُهَا إلَى وَضْعِ ذَلِكَ الْحَمْلِ، فَإِذَا وَضَعَتْ فَقَدْ تَمَّتْ عِدَّتُهَا.

L34935 Similarly, if a man dies and she becomes pregnant during her waiting period from his death—whether through illicit intercourse or coercion—her waiting period transitions to that of a pregnant woman, ending upon childbirth. This is because all such cases fall under the general ruling of Allah's statement: "As for those who are pregnant, their term is until they deliver" (Quran 65:4).[56]

وَكَذَلِكَ لَوْ مَاتَ فَحَمَلَتْ فِي عِدَّتِهَا مِنْ وَفَاتِهِ مِنْ زِنًى أَوْ إكْرَاهٍ فَإِنَّ عِدَّتَهَا تَنْتَقِلُ إلَى عِدَّةِ الْحَامِلِ بِوَضْعِ الْحَمْلِ؛ لِأَنَّ كُلَّ ذَلِكَ دَاخِلٌ فِي عُمُومِ قَوْله تَعَالَى: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] .

L34936–34938 The Messenger of Allah—may Allah bless him and grant him peace—ruled that the delivery of the child in the event of the husband's death supersedes the four months and ten days [waiting period]. As we have been narrated through the chain of Ahmad ibn Shuʿayb: I am Husayn ibn Manṣūr ibn Jaʿfar al-Naysābūrī, I am Jaʿfar ibn ʿAwn, Yaḥyā ibn Saʿīd al-Anṣārī informed me, Sulaymān ibn Yasār informed me, Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf said: "We sent Kuraib—the client of Ibn ʿAbbās—to Umm Salamah, the Mother of the Believers..." The believers? Then we received news from her that Subay'ah gave birth days after her husband's death, so the Messenger of Allah (peace and blessings of Allah be upon him) commanded her to marry.

وَقَدْ غَلَّبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَضْعَ الْحَمْلِ فِي الْوَفَاةِ عَلَى الْأَرْبَعَةِ الْأَشْهُرِ وَالْعَشْرِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا حُسَيْنُ بْنُ مَنْصُورِ بْنِ جَعْفَرٍ النَّيْسَابُورِيُّ أَنَا جَعْفَرُ بْنُ عَوْنٍ أَنَا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - أَخْبَرَنِي سُلَيْمَانُ بْنُ يَسَارٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: «بَعَثْنَا كُرَيْبًا - هُوَ مَوْلَى ابْنِ عَبَّاسٍ - إلَى أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ؟ فَجَاءَنَا مِنْ عِنْدِهَا أَنَّ سُبَيْعَةَ وَضَعَتْ بَعْدَ وَفَاةِ زَوْجِهَا بِأَيَّامٍ، فَأَمَرَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَتَزَوَّجَ» .

L34939 As for our statement, "the last child in her womb," it is based on the words of Allah, the Almighty: {Their waiting period is until they deliver their child} [At-Talaq: 4]. Thus, as long as any part of the child remains in her womb, she has not delivered the child.[57]

وَأَمَّا قَوْلُنَا " آخِرُ وَلَدٍ فِي بَطْنِهَا " فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] فَمَتَى مَا بَقِيَ مِنْ حَمْلِهَا شَيْءٌ فِي بَطْنِهَا: لَمْ تَضَعْ حَمْلَهَا.

L34940 Abū Muḥammad said: Muḥammad ibn al-Ḥasan has an opinion here which

قَالَ أَبُو مُحَمَّدٍ: وَلِمُحَمَّدِ بْنِ الْحَسَنِ قَوْلٌ هَاهُنَا نَذْكُرُهُ - لِيَحْمَدَ اللَّهَ تَعَالَى سَامِعُهُ عَلَى السَّلَامَةِ - وَهُوَ أَنَّهُ قَالَ: إذَا خَرَجَ مِنْ بَطْنِ الْمَرْأَةِ مِنْ الْوَلَدِ النِّصْفُ فَقَدْ تَمَّتْ عِدَّتُهَا، لَا يَعُدُّ

[55] **Qur'an references (L34932):** Qur'an 65:2 (At-Talaq).
[56] **Qur'an references (L34935):** Qur'an 65:4 (At-Talaq).
[57] **Qur'an references (L34939):** Qur'an 65:4 (At-Talaq).

we shall mention—so that whoever hears it may praise Allah Almighty for granting safety—and it is that he said: If half of the child exits the woman's womb, her postpartum waiting period is considered complete. Excluded from that half are his thighs, shins, feet, and head. Abū Yūsuf said: If a man says to his slave woman while she is giving birth, "You are free," then if, at the time of his statement, half of the child containing its head has already emerged, she is freed and the child is free. But if half of the child's body, excluding the head, has emerged, the child remains enslaved, though she is freed.

فِي ذَلِكَ النِّصْفِ: فَخِذَاهُ، وَلَا سَاقَاهُ، وَلَا رِجْلَاهُ، وَلَا رَأْسُهُ - وَقَالَ أَبُو يُوسُفَ: مَنْ قَالَ لِأَمَتِهِ وَهِيَ تَلِدُ: أَنْتِ حُرَّةٌ فَإِنْ كَانَتْ حِينَ قَوْلِهِ ذَلِكَ قَدْ خَرَجَ نِصْفُهُ الَّذِي فِيهِ رَأْسُهُ فَهِيَ حُرَّةٌ وَالْوَلَدُ حُرٌّ، وَإِنْ كَانَتْ قَدْ خَرَجَ نِصْفُ بَدَنِهِ سِوَى رَأْسِهِ فَالْوَلَدُ مَمْلُوكٌ، وَهِيَ حُرَّةٌ.

L34941 Hisham ibn ʻUbayd Allah, the narrator, reported all of that from both of them through his hearing. Abu Muhammad said: Let the hearer of this be astonished at this confusion? Could the wretched one be so immersed in naivety that he does not realize when the newborn's head and shoulders emerge, the entire body falls out in a time swifter than the rolling of an eye? When could one possibly find the time to break the newborn's spine and measure the newborn? Until he knows whether half of it has emerged, or less, or more? For when its head and shoulders emerge, it is wholly impossible—under any circumstance—for his declaration "You are emancipated" to take effect until the entire body has fully emerged.

رَوَى عَنْهُمَا ذَلِكَ جَمِيعًا هِشَامُ بْنُ عُبَيْدِ اللَّهِ الرَّاوِي فِي سَمَاعِهِ مِنْهُمَا؟ قَالَ أَبُو مُحَمَّد: فَلْيَعْجَبْ سَامِعُ هَذَا مِنْ هَذَا الِاخْتِلَاطِ؟ أَتُرَاهُ الْبَائِسُ كَانَ مِنْ الْغَرَارَةِ بِحَيْثُ لَا يَدْرِي أَنَّهُ مَتَى خَرَجَ رَأْسُ الْمَوْلُودِ وَمَنْكِبَاهُ فَإِنَّهُ فِي أَسْرَعَ مِنْ كَرِّ الطَّرْفِ يَسْقُطُ كُلُّهُ، فَمَتَى يَتَفَرَّغُ لِتَكْسِيرِ صُلْبِ الْمَوْلُودِ وَمِسَاحَتِهِ؟ حَتَّى يَعْلَمَ أَخَرَجَ نِصْفُهُ أَمْ أَقَلُّ أَمْ أَكْثَرُ، وَأَنَّهُ مَتَى خَرَجَ رَأْسُهُ وَمَنْكِبَاهُ فَإِنَّهُ لَا يُمْكِنُ أَلْبَتَّةَ أَنْ يَتِمَّ قَوْلُهُ أَنْتِ حُرَّةٌ حَتَّى يَقَعَ جَمِيعُهُ.

L34942 Could he have possibly been unaware that the poor woman, at that time, was busier than one grieving two losses?

أَتُرَاهُ خَفِيَ عَلَيْهِ أَنَّهَا الْمِسْكِينَةُ فِي ذَلِكَ الْوَقْتِ " أَشْغَلُ مِنْ ذَاتِ النَّحْيَيْنِ ".

L34943–34944 Indeed, astonishment abounds at ascribing any portion of knowledge to one whose measure of knowledge is this meager — Sufficient for us is Allah, and what an excellent Trustee He is.

إنَّ الْعَجَبَ لَيَكْثُرُ مِنْ نِسْبَةِ مَنْ هَذَا مِقْدَارُ عِلْمِهِ إلَى شَيْءٍ مِنْ الْعِلْمِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L34945 If any part of the placenta remains, even the slightest amount, she remains in her waiting period, because it is from her pregnancy generated alongside the child, equally, equally.

فَإِنْ بَقِيَ مِنْ الْمَشِيمَةِ وَلَوْ شَيْءٌ - فَهِيَ فِي الْعِدَّةِ بَعْدُ، لِأَنَّهَا مِنْ حَمْلِهَا الْمُتَوَلِّدِ مَعَ الْوَلَدِ سَوَاءٌ سَوَاءٌ

L34946 **Issue: If the fetus dies in the womb of the muʻtaddah (woman in her ʻiddah), her ʻiddah is not completed until the entirety of it is expelled.**

[مَسْأَلَةٌ مَاتَ الْحَمْلُ فِي بَطْنِ الْمُعْتَدَّةِ فَلَا تَنْقَضِي عِدَّتُهَا إلَّا بِطَرْحِ جَمِيعِهِ]

L34947 Issue 1988: If the fetus dies in her womb, her waiting period does not

conclude until she expels all of it, even if nothing remains of it except a finger or part of the finger. This is because she has not expelled all of it and thus has not delivered her fetus. And success is with Allah, the Exalted.

L34948 **A case in which the divorced woman does not menstruate, is not pregnant, and he had intercourse with her.**

L34949 If the divorced woman does not menstruate due to young age, old age, or physical constitution and is not pregnant - provided she had been intimate with - her waiting period is three months from the time the divorce is formally communicated to her or to her guardians if she is a minor, according to Allah's statement: "As for those women who have ceased menstruation among your women, if you are in doubt, their waiting period is three months, and those who have not menstruated" [at-Talāq 65:4].[58]

L34950–34951 This is the opinion of Abū Ḥanīfah, al-Shāfiʿī, Abū Sulaymān, and their companions—meaning the necessity of this ruling for both minor and major sins.

L34952 Mālik said: No waiting period is required for a prepubescent girl.

L34953 Abu Muhammad said: We do not know anyone who held this view before him, and it is a corrupt opinion for several reasons. The first is that it constitutes a specification of the Quran contrary to its legal ruling.

L34954 The second point is that He obligated her to observe the waiting period for death, even if she is in the cradle, and exempted her from the waiting period for divorce, while she is a divorced woman whose marriage has been consummated. This constitutes a contradiction that is manifestly invalid.

L34955 And the third is that he failed to define the endpoint of minority at which he waived her obligation to observe the ʿiddah, from the start of a period when he obligated her to observe it. This is a clear deception—its corruption undeniable—and a conflation of obligatory acts with non-obligatory ones.

[58] **Qur'an references (L34949):** Qur'an 65:4 (At-Talaq).

١٩٨٨ - مَسْأَلَةٌ: فَإِنْ مَاتَ فِي بَطْنِهَا فَلَا تَنْقَضِي عِدَّتُهَا إلَّا بِطَرْحِ جَمِيعِهِ، وَلَوْ لَمْ يَبْقَ مِنْهُ إلَّا أُصْبُعٌ أَوْ بَعْضُهَا؛ لِأَنَّهَا لَمْ تَضَعْ جَمِيعَهُ فَلَمْ تَضَعْ حَمْلَهَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ كَانَتْ الْمُطَلَّقَةُ لَا تَحِيضُ وَلَمْ تَكُنْ حَامِلًا وَكَانَ قَدْ وَطِئَهَا]

١٩٨٩ - مَسْأَلَةٌ: فَإِنْ كَانَتْ الْمُطَلَّقَةُ لَا تَحِيضُ لِصِغَرٍ أَوْ كِبَرٍ أَوْ خِلْقَةٍ وَلَمْ تَكُنْ حَامِلًا وَكَانَ قَدْ وَطِئَهَا: فَعِدَّتُهَا ثَلَاثَةُ أَشْهُرٍ مِنْ حِينِ بُلُوغِ الطَّلَاقِ إلَيْهَا أَوْ إلَى أَهْلِهَا إنْ كَانَتْ صَغِيرَةً، لِقَوْلِ اللَّهِ تَعَالَى: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] .

وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ - يَعْنِي: لُزُومَ ذَلِكَ لِلصَّغِيرَةِ وَالْكَبِيرَةِ.

وَقَالَ مَالِكٌ: لَا عِدَّةَ عَلَى الصَّغِيرَةِ جِدًّا.

قَالَ أَبُو مُحَمَّد: وَلَا نَعْلَمُ أَحَدًا قَالَ بِهَذَا قَبْلَهُ، وَهُوَ قَوْلٌ فَاسِدٌ، لِوُجُوهٍ: أَحَدُهَا - أَنَّهُ تَخْصِيصٌ لِلْقُرْآنِ مُخَالِفٌ لِحُكْمِهِ.

وَثَانِيهَا - أَنَّهُ أَوْجَبَ عَلَيْهَا عِدَّةَ الْوَفَاةِ - وَلَوْ أَنَّهَا فِي الْمَهْدِ - وَأَسْقَطَ عَنْهَا عِدَّةَ الطَّلَاقِ - وَهِيَ مَوْطُوءَةٌ مُطَلَّقَةٌ - وَهَذَا تَنَاقُضٌ ظَاهِرُ الْفَسَادِ.

وَثَالِثُهَا - أَنَّهُ لَمْ يَحُدَّ مُنْتَهَى الصِّغَرِ الَّذِي أَسْقَطَ فِيهِ عَنْهَا عِدَّةَ الطَّلَاقِ مِنْ مَبْدَأِ وَقْتٍ أَلْزَمَهَا فِيهِ الْعِدَّةَ - وَهَذَا تَلْبِيسٌ لَا خَفَاءَ بِفَسَادِهِ، وَمَزْجٌ لِلْفَرْضِ بِمَا لَيْسَ فَرْضًا -.

L34956 Sufficient concerning all of this is that it is a statement with no evidence for its validity—neither from the Quran, nor the Sunnah, nor a weak narration, nor a corrupt narration, nor analogy, nor an opinion with basis, nor the sayings of the Salaf. Anything of this nature is invalidated with certainty.

L34957 **A legal issue wherein he divorced her at the beginning of the first night of the month.**

L34958 1990 - Issue: If he divorces her at the beginning of the first night of the month when the sun has fully set, she observes her waiting period until the crescent of the fourth month appears. When the crescent appears, her waiting period ends.

L34959 If he divorces her before or after that, she is obligated to observe a waiting period of eighty-seven nights equivalent to eighty-seven complete days, until the same time during which the waiting period became required of her.

L34960 The fraction of a day or night is not invalidated, for it is impermissible that there be any distinction whatsoever between the beginning of her waiting period and when the obligation of this waiting period becomes binding upon her—neither a small amount nor a large one.

L34961 When she completes the menstrual period we have mentioned, she becomes pure, based on the statement of the Messenger of Allah (peace and blessings be upon him), "The month may be twenty-nine days," as we have cited in the "Book of Fasting" with its isnād (chain of narration).

L34962 If it is asked: "Since her waiting period was definitively established, can she exit it without equal certainty?"

L34963–34964 We said: This is an invalid ruling. However, she becomes obligated to observe the waiting period by the revelation from Allah, the Mighty and Majestic, to His Messenger (peace be upon him) - with certainty from the revelation we described, not an absolute certainty arising from false conjecture or someone's statement. We cannot depart from this except through the clarification of Allah's Messenger, which constitutes true certainty.

وَيَكْفِي مِنْ هَذَا كُلِّهِ أَنَّهُ قَوْلٌ لَا دَلِيلَ عَلَى صِحَّتِهِ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا رِوَايَةٍ سَقِيمَةٍ، وَلَا رِوَايَةٍ فَاسِدَةٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ لَهُ وَجْهٌ، وَلَا قَوْلِ سَلَفٍ - وَمَا كَانَ هَكَذَا فَهُوَ سَاقِطٌ بِيَقِينٍ.

[مَسْأَلَةٌ طَلَّقَهَا فِي اسْتِقْبَالِ أَوَّلِ لَيْلَةٍ مِنْ الشَّهْرِ]

١٩٩٠ - مَسْأَلَةٌ: فَإِنْ طَلَّقَهَا فِي اسْتِقْبَالِ أَوَّلِ لَيْلَةٍ مِنْ الشَّهْرِ مَعَ تَمَامِ غُرُوبِ الشَّمْسِ اعْتَدَّتْ حَتَّى يَظْهَرَ هِلَالُ الشَّهْرِ الرَّابِعِ، فَإِذَا ظَهَرَ حَلَّتْ مِنْ عِدَّتِهَا.

فَإِنْ طَلَّقَهَا قَبْلَ ذَلِكَ أَوْ بَعْدَهُ لَزِمَهَا أَنْ تَعْتَدَّ سَبْعًا وَثَمَانِينَ لَيْلَةً بِمِثْلِهِنَّ مِنْ الْأَيَّامِ كَمْلَى، إلَى مِثْلِ الْوَقْتِ الَّذِي لَزِمَتْهَا فِيهِ الْعِدَّةُ.

وَلَا يُلْغَى كَسْرُ الْيَوْمِ، وَلَا كَسْرُ اللَّيْلَةِ؛ لِأَنَّهُ لَا يَجُوزُ أَنْ يَكُونَ بَيْنَ أَوَّلِ عِدَّتِهَا وَبَيْنَ وَقْتِ لُزُومِ الْعِدَّةِ لَهَا فَرْقٌ أَصْلًا، لَا مَا قَلَّ وَلَا مَا كَثُرَ.

فَإِذَا أَتَمَّتْ مَا ذَكَرْنَا حَلَّتْ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الشَّهْرُ تِسْعٌ وَعِشْرُونَ» وَقَدْ ذَكَرْنَاهُ فِي " كِتَابِ الصِّيَامِ " بِإِسْنَادِهِ.

فَإِنْ قِيلَ: إنَّهُ قَدْ لَزِمَتْهَا عِدَّةٌ بِيَقِينٍ فَلَا تَخْرُجُ مِنْهَا إلَّا بِيَقِينٍ؟

قُلْنَا: هَذَا وَضْعٌ فَاسِدٌ، لَكِنْ قَدْ لَزِمَتْهَا عِدَّةٌ بِوَحْيِ اللَّهِ عَزَّ وَجَلَّ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِيَقِينٍ مِنْ قِبَلِ الْوَحْيِ الَّذِي ذَكَرْنَا لَا بِيَقِينٍ مُطْلَقٍ مِنْ ظَنٍّ كَاذِبٍ، أَوْ قَوْلِ قَائِلٍ، فَلَا نَخْرُجُ مِنْ ذَلِكَ إلَّا بِبَيَانِ رَسُولِ اللَّهِ الَّذِي هُوَ الْيَقِينُ حَقًّا.

L34965 He—peace be upon him—clarified that the month is twenty-nine days, and it is impermissible to add anything beyond that due to baseless whispers. {And your Lord is never forgetful} [Maryam: 64].[59]

L34966 **An issue: a pregnant woman who is divorced or widowed miscarried.**

L34967 1991. Issue: We hold: If a pregnant divorced woman, a pregnant widow, or a pregnant emancipated slave woman who chooses to separate from her husband causes a miscarriage, she becomes lawful to remarry.

L34968 The criterion for this is that she miscarries a clot (ʿalaqah) or beyond. As for miscarrying a nutfah (germinal fluid) below the clot stage, it is insignificant and does not terminate the waiting period.

L34969 The proof of this is what we have transmitted through the chain (ṭarīq) of Muslim: Abū Bakr ibn Abī Shaybah and Muḥammad ibn ʿAbdillāh ibn Numayr both said: "We heard from Abū Muʿāwiyah and Wakīʿ," who both said: "We heard from al-Aʿmash, from Zayd ibn Wahb, from ʿAbdillāh ibn Masʿūd," who said: The Messenger of Allah (peace and blessings be upon him) said, "Verily, the formation of each one of you is gathered in his mother's womb for forty days, then he becomes a clinging clot"—and Ibn Masʿūd mentioned the remainder of the ḥadīth.[60]

L34970 Through the chain of transmission recorded by Muslim: From Abū Ṭāhir Aḥmad ibn ʿUmar ibn al-Sarḥ, from Ibn Wahb, from ʿAmr ibn al-Ḥārith, from Abū al-Zubayr al-Makkī, that ʿĀmir ibn Wāthilah reported to him that he heard Ḥudhayfah ibn Usayd al-Ghifārī say: I heard the Messenger of Allah—peace and blessings be upon him—say, "When forty-two nights pass over the nutfah, Allah sends an angel to it who forms it and creates its hearing, sight, skin, flesh, and bones. Then the angel says: O Lord, is it male or female?" And he mentioned the remainder of the report.[61]

وَقَدْ بَيَّنَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّ الشَّهْرَ تِسْعٌ وَعِشْرُونَ فَلَا يَحِلُّ أَنْ يُزَادَ عَلَى ذَلِكَ شَيْءٌ بِوَسْوَسَةٍ لَا أَصْلَ لَهَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[مَسْأَلَةٌ أَسْقَطَتْ الْحَامِلُ الْمُطَلَّقَةُ أَوْ الْمُتَوَفَّى عَنْهَا زَوْجُهَا]

١٩٩١ - مَسْأَلَةٌ: وَقَدْ قُلْنَا: إنْ أَسْقَطَتْ الْحَامِلُ الْمُطَلَّقَةُ، أَوْ الْمُتَوَفَّى عَنْهَا زَوْجُهَا، أَوْ الْمُعْتَقَةُ الْمُتَخَيِّرَةُ فِرَاقَ زَوْجِهَا: حَلَّتْ.

وَحَدُّ ذَلِكَ: أَنْ تُسْقِطَهُ عَلَقَةً فَصَاعِدًا، وَأَمَّا إنْ أَسْقَطَتْ نُطْفَةً دُونَ الْعَلَقَةِ فَلَيْسَ بِشَيْءٍ، لَا تَنْقَضِي بِذَلِكَ عِدَّةٌ.

بُرْهَانُ ذَلِكَ -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ، قَالَا جَمِيعًا: أَنَا أَبُو مُعَاوِيَةَ، وَوَكِيعٌ، قَالَا جَمِيعًا: أَنَا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ أَحَدَكُمْ يُجْمَعُ خَلْقُهُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا ثُمَّ يَكُونُ عَلَقَةً» وَذَكَرَ بَاقِي الْخَبَرِ.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو الطَّاهِرِ أَحْمَدُ بْنُ عُمَرَ بْنِ السَّرْحِ أَنَا ابْنُ وَهْبٍ أَنَا عَمْرُو بْنُ الْحَارِثِ عَنْ أَبِي الزُّبَيْرِ الْمَكِّيِّ أَنَّ عَامِرَ بْنَ وَاثِلَةَ حَدَّثَهُ أَنَّهُ سَمِعَ حُذَيْفَةَ بْنَ أُسَيْدَ الْغِفَارِيَّ يَقُولُ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إذَا مَرَّ بِالنُّطْفَةِ ثِنْتَانِ وَأَرْبَعُونَ لَيْلَةً بَعَثَ اللَّهُ إلَيْهَا مَلَكًا فَصَوَّرَهَا وَخَلَقَ سَمْعَهَا وَبَصَرَهَا وَجِلْدَهَا وَلَحْمَهَا وَعِظَامَهَا ثُمَّ قَالَ: يَا رَبِّ أَذَكَرٌ أَمْ أُنْثَى؟» وَذَكَرَ بَاقِي الْخَبَرِ.

[59] **Qur'an references (L34965):** Qur'an 19:64 (Maryam).
[60] **Hadith references (L34969):** Sahih al-Bukhari 3208.
[61] **Hadith references (L34970):** Sahih Muslim 2645a.

L34971 Abu Muhammad said: Its meaning is the creation of the whole entity that later divides into hearing, sight, skin, flesh, and bones. Thus, it is confirmed that the first stage of the child's creation is its being a clinging clot rather than a sperm-drop, which refers to the seminal fluid.

قَالَ أَبُو مُحَمَّد: مَعْنَاهُ خَلْقُ الْجُمْلَةِ الَّتِي تَنْقَسِمُ بَعْدَ ذَلِكَ سَمْعًا وَبَصَرًا وَجِلْدًا وَلَحْمًا وَعِظَامًا - فَصَحَّ أَنَّ أَوَّلَ خَلْقِ الْمَوْلُودِ كَوْنُهُ عَلَقَةً لَا كَوْنُهُ نُطْفَةً، وَهِيَ الْمَاءُ.

[مَسْأَلَةٌ طَلُقَتْ الَّتِي لَمْ تَحِضْ قَطُّ ثُمَّ حَاضَتْ قَبْلَ تَمَامِ الْعِدَّةِ]

L34972–34973 **Issue: A woman who had never menstruated was divorced, then she menstruated before the completion of the waiting period.**

L34974 Issue: If a woman who has never menstruated at all is divorced, then menstruated before completing her waiting period—whether immediately after the divorce, at the end of the month, or between these times—her waiting period shifts to being measured by months. When she completes it, she is permitted to remarry, and the menstruation is disregarded.

مَسْأَلَةٌ: فَإِنْ طَلُقَتْ الَّتِي لَمْ تَحِضْ قَطُّ ثُمَّ حَاضَتْ قَبْلَ تَمَامِ الْعِدَّةِ، سَوَاءٌ إثْرَ طَلَاقِهَا أَوْ فِي آخِرِ الشَّهْرِ فَمَا بَيْنَ ذَلِكَ: تَمَادَتْ عَلَى الْعِدَّةِ بِالشُّهُورِ، فَإِذَا أَتَمَّتْهَا حَلَّتْ وَلَمْ تَلْتَفِتْ إلَى الْحَيْضِ.

L34975 Similarly, if she becomes pregnant by him or another after her divorce or before the completion of the three months, she begins the full widowhood ʿiddah.

وَكَذَلِكَ لَوْ حَمَلَتْ مِنْهُ أَوْ مِنْ غَيْرِهِ إثْرَ طَلَاقِهَا، أَوْ قَبْلَ انْقِضَاءِ الثَّلَاثَةِ الْأَشْهُرِ ابْتَدَأَتْ عِدَّةَ الْوَفَاةِ كَامِلَةً.

L34976 The evidence for this is the statement of Allah, the Almighty and Majestic: {As for those women who have ceased menstruation among your women, if you are uncertain, their waiting period is three months, and those who have not yet menstruated} [At-Talāq: 4]. Indeed, Allah, the Almighty and Majestic, has obligated upon her a three-month waiting period after the obligation of the waiting period upon her from the divorce. Thus, what Allah, the Almighty and Majestic, has obligated upon her cannot be invalidated by any claim that no text has ever substantiated.[62]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] فَإِنَّمَا أَوْجَبَ اللَّهُ عَزَّ وَجَلَّ عَلَيْهَا عِدَّةَ ثَلَاثَةِ أَشْهُرٍ إثْرَ وُجُوبِ الْعِدَّةِ عَلَيْهَا مِنْ الطَّلَاقِ، فَلَا يُبْطِلُ مَا أَوْجَبَهُ اللَّهُ تَعَالَى عَلَيْهَا بِدَعْوَى لَمْ يَأْتِ بِهَا قَطُّ نَصٌّ.

L34977 If it is said: Allah the Exalted has obligated the menstrual periods by His statement: {And divorced women shall wait for three menstrual periods} [Al-Baqarah: 228], and He also said: {And those who are pregnant, their term is until they deliver} [At-Talaq: 4], and this is a divorced wife? We respond: Allah the Exalted has only obligated what you mentioned upon menstruating women and upon pregnant women. This woman, since the waiting period for this divorce is required of her, was only obligated because

فَإِنْ قِيلَ: فَاَللَّهُ تَعَالَى قَدْ أَوْجَبَ الْأَقْرَاءَ بِقَوْلِهِ تَعَالَى: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] وَقَالَ تَعَالَى أَيْضًا: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] وَهَذِهِ زَوْجَةٌ مُطَلَّقَةٌ؟ قُلْنَا: إنَّمَا أَوْجَبَ اللَّهُ تَعَالَى مَا ذَكَرْتُمْ عَلَى ذَوَاتِ الْأَقْرَاءِ، وَعَلَى ذَوَاتِ الْحَمْلِ، وَهَذِهِ إذْ لَزِمَتْهَا عِدَّةُ هَذَا الطَّلَاقِ إنَّمَا كَانَتْ بِيَقِينٍ

[62] **Qur'an references (L34976):** Qur'an 65:4 (At-Talaq).

it is certain she is among those who have ceased menstruating or those who have not menstruated. She is neither among menstruating women nor among pregnant women.[63]

مِنْ اللَّائِي يَئِسْنَ، أَوْ مِنْ اللَّائِي لَمْ يَحِضْنَ، وَلَمْ تَكُنْ أَصْلًا مِنْ ذَوَاتِ الْأَقْرَاءِ، وَلَا مِنْ ذَوَاتِ الْحَمْلِ.

L34978–34979 Among the definitively false and inherently impossible absurdities is that Allah the Exalted would obligate a woman with no menstrual periods at the time the waiting period becomes incumbent upon her to base her waiting period on menstruation, or obligate a woman who is not pregnant at the time the waiting period becomes incumbent upon her to base her waiting period on pregnancy.

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ، وَالْمُحَالِ الْمُمْتَنِعِ: أَنْ يُلْزِمَ اللَّهُ تَعَالَى الْعِدَّةَ بِالْأَقْرَاءِ مَنْ لَا قُرْءَ لَهَا حِينَ وُجُوبِ الْعِدَّةِ عَلَيْهَا، أَوْ يُلْزِمَ الْعِدَّةَ بِالْحَمْلِ مَنْ لَيْسَتْ ذَاتَ حَمْلٍ حِينَ وُجُوبِ الْعِدَّةِ عَلَيْهَا.

L34980 Just as it is invalid for there to be a period—not counted as part of the ʿiddah—between the time the obligation of the ʿiddah arises (due to divorce or death) and the actual commencement of the ʿiddah itself, based on the Prophet's statement (peace and blessings be upon him): "Divorce them at the onset of their ʿiddah"—which we previously cited with its chain of narration—unless an explicit text emerges, in which case it is adhered to.

كَمَا أَنَّ مِنْ الْبَاطِلِ أَنْ يَحُولَ بَيْنَ وَقْتِ وُجُوبِ الْعِدَّةِ مِنْ الطَّلَاقِ، أَوْ الْمَوْتِ، وَبَيْنَ الْعِدَّةِ وَقْتٌ لَيْسَ مِنْ الْعِدَّةِ؛ لِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «فَطَلِّقُوهُنَّ لِقُبُلِ عِدَّتِهِنَّ» وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا بِإِسْنَادِهِ إلَّا أَنْ يَأْتِيَ بِذَلِكَ نَصٌّ جَلِيٌّ فَيُوقَفُ عِنْدَهُ.

L34981 Furthermore, the 'quroo [period of purity]' refers specifically to the interval between two menstrual cycles. Thus, her state before experiencing menstruation and after menopause does not constitute a quroo. Therefore, it is invalid for a woman not divorced at the onset of a quroo [period of purity] she was in to calculate her waiting period using quroo. Even if her child from him is legally attributed to him since she remains his wife, we have clarified: His intercourse with her is neither a revocation nor a divorce, thus she does not begin the waiting period from it.

وَأَيْضًا - فَإِنَّ الْقُرْءَ إنَّمَا هُوَ مَا بَيْنَ الْحَيْضَتَيْنِ مِنْ الطُّهْرِ، فَحَالُهَا قَبْلَ أَنْ تَحِيضَ وَبَعْدَ الْيَأْسِ مِنْ الْمَحِيضِ لَيْسَ قُرْءًا - فَبَطَلَ أَنْ تَعْتَدَّ بِالْأَقْرَاءِ مَنْ لَمْ تَطْلُقْ فِي اسْتِقْبَالِ قُرْءٍ هِيَ فِيهِ، وَهِيَ وَإِنْ كَانَ وَلَدُهَا مِنْهُ لَاحِقًا بِهِ؛ لِأَنَّهَا زَوْجَتُهُ بَعْدُ؟ فَقَدْ قُلْنَا: إنَّ وَطْأَهُ لَهَا لَيْسَ رَجْعَةً، وَلَا طَلَاقًا فَتَبْتَدِئُ الْعِدَّةَ مِنْهُ.

L34982 Some people have claimed consensus here—but this is invalid, as they cannot cite a single statement from any of the Companions (may Allah be pleased with them). Only narrations from then eight of the Successors have been reported in this regard: they are ʿAṭāʾ, Mujāhid, Saʿīd ibn al-Musayyab, al-Zuhrī, al-Ḥasan, Qatādah, al-Nakhaʿī, and al-Shaʿbī. Such a claim cannot be deemed consensus except by one who dares to justify lying to the Ummah.

وَقَدْ ادَّعَى قَوْمٌ الْإِجْمَاعَ هَاهُنَا - وَهَذَا بَاطِلٌ؛ لِأَنَّهُمْ لَا يَقْدِرُونَ عَلَى إيرَادِ كَلِمَةٍ فِي ذَلِكَ عَنْ أَحَدٍ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إنَّمَا جَاءَتْ فِي ذَلِكَ آثَارٌ عَنْ ثَمَانِيَةٍ مِنْ التَّابِعِينَ فَقَطْ -: وَهُمْ: عَطَاءٌ، وَمُجَاهِدٌ، وَسَعِيدُ بْنُ الْمُسَيِّبِ وَالزُّهْرِيُّ، وَالْحَسَنُ، وَقَتَادَةُ، وَالنَّخَعِيُّ، وَالشَّعْبِيُّ - وَمِثْلُ هَذَا لَا يَعُدُّهُ إجْمَاعًا إلَّا مَنْ اسْتَجَازَ الْكَذِبَ عَلَى الْأُمَّةِ.

[63] **Qur'an references (L34977):** Qur'an 2:228 (Al-Baqarah); Qur'an 65:4 (At-Talaq).

L34983–34985 Abu Muhammad said: Then we further considered the statement of Allah—the Most High—"They shall wait for themselves three periods." [Al-Baqarah: 228] And His Exalted saying: *"As for the women among you who have despaired of menstruation—if you are uncertain [about their status]—their waiting period is three months, and those who have not yet menstruated"* [At-Talaq: 4].[64]

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ اسْتَدْرَكْنَا النَّظَرَ فِي قَوْلِ اللَّهِ تَعَالَى: {يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] وقَوْله تَعَالَى: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] .

L34986 We found that the woman undergoing the waiting period who menstruates during it is neither among those who have ceased menstruation nor among those unquestionably categorized as not having menstruated. Rather, she belongs to those who menstruate. Thus, it necessarily follows that her waiting period is three menstrual cycles. It is invalid that she be classified among menstruating women while her waiting period is determined by months.

فَوَجَدْنَا الْمُعْتَدَّةَ إِذَا حَاضَتْ فِي الْعِدَّةِ فَلَيْسَتْ مِنْ اللَّائِي يَئِسْنَ مِنْ الْمَحِيضِ وَلَا مِنْ اللَّائِي لَمْ يَحِضْنَ بِلَا شَكٍّ، بَلْ هِيَ مِنْ اللَّائِي حِضْنَ، فَوَجَبَ ضَرُورَةً أَنَّ عِدَّتَهَا ثَلَاثَةُ قُرُوءٍ - وَمِنْ الْبَاطِلِ أَنْ تَكُونَ مِنْ اللَّائِي يَحِضْنَ، وَتَكُونَ عِدَّتُهَا الشُّهُورَ.

L34987 Thus, it has been established that the ruling requiring observance of the waiting period by months has been invalidated, even if part of the waiting period had already elapsed.

فَصَحَّ أَنَّ حُكْمَ الِاعْتِدَادِ بِالشُّهُورِ قَدْ بَطَلَ، وَإِنْ كَانَ بَعْضَ الْعِدَّةِ.

L34988 It is established that her waiting period transfers to menstrual periods or, if she is pregnant, to childbirth.

وَصَحَّ أَنَّهَا تَنْتَقِلُ إِلَى الْأَقْرَاءِ، أَوْ إِلَى وَضْعِ الْحَمْلِ إِنْ حَمَلَتْ.

L34989 As for her transition into the ʿiddah of death, this applies only if the divorce was revocable; otherwise, it does not. This is because she is his wife - she inherits him and he inherits her. Since death has occurred [to her husband], the ʿiddah of death becomes obligatory upon her. And with Allah, the Most High, is success.

وَأَمَّا انْتِقَالُهَا إِلَى عِدَّةِ الْوَفَاةِ إِنْ كَانَ الطَّلَاقُ رَجْعِيًّا فَقَطْ، وَإِلَّا فَلَا، فَلِأَنَّهَا زَوْجَةٌ تَرِثُهُ وَيَرِثُهَا، فَهِيَ مُتَوَفًّى عَنْهَا فَيَلْزَمُهَا بِالْوَفَاةِ عِدَّةُ الْوَفَاةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L34990 Issue: The ruling on the menstrual cycle of a woman experiencing irregular bleeding (mustahādah) whose blood is indistinct and who cannot identify her menstrual days.

[مَسْأَلَةٌ عِدَةُ الْمُسْتَحَاضَةُ الَّتِي لَا يَتَمَيَّزُ دَمُهَا وَلَا تَعْرِفُ أَيَّامَ حَيْضَتِهَا]

L34991 1993 AH - Issue: As for the mustahādah (a woman with chronic irregular bleeding) whose blood cannot be distinguished and who does not know the days of her menstruation: If she is newly menstruating and had no established days of menstruation prior to this regarding her waiting period, her waiting period is three months, for she has never experienced valid menstru-

١٩٩٣ - مَسْأَلَةٌ: وَأَمَّا الْمُسْتَحَاضَةُ الَّتِي لَا يَتَمَيَّزُ دَمُهَا وَلَا تَعْرِفُ أَيَّامَ حَيْضَتِهَا؟ فَإِنْ كَانَتْ مُبْتَدَأَةً لَمْ يَكُنْ لَهَا أَيَّامُ حَيْضٍ قَبْلَ ذَلِكَ بِعِدَّتِهَا: فَعِدَّتُهَا ثَلَاثَةُ أَشْهُرٍ، لِأَنَّهَا لَمْ يَصِحَّ مِنْهَا حَيْضٌ قَطُّ، فَهِيَ مِنْ اللَّائِي لَمْ يَحِضْنَ، فَإِنْ كَانَتْ مِمَّنْ كَانَ لَهَا حَيْضٌ

[64] **Qur'an references (L34983):** Qur'an 2:228 (Al-Baqarah); Qur'an 65:4 (At-Talaq).

ation—thus she is among those who have not menstruated. If she belongs to those who had a known menstrual cycle but forgot it, or forgot its duration and timing, she must observe a waiting period for a duration during which she becomes certain she has completed three clean periods and two menstrual periods, thereby entering the third clean period—without fail.

مَعْرُوفٌ فَنَسِيَتْهُ، أَوْ نَسِيَتْ مِقْدَارَهُ وَوَقْتَهُ فَعَلَيْهَا أَنْ تَتَرَبَّصَ مِقْدَارًا تُوقِنُ فِيهِ أَنَّهَا قَدْ أَتَمَّتْ ثَلَاثَةَ أَطْهَارٍ وَحَيْضَتَيْنِ، وَصَارَتْ فِي الثَّالِثَةِ، وَلَا بُدَّ.

L34992 When the aforementioned period has elapsed, she is permitted [to resume relations] because she is—undoubtedly—among those subject to intermenstrual periods. She must therefore complete three clean periods. If her blood becomes distinguishable, her situation is evident: when she observes black blood, it is menstruation; when she sees red blood or yellowish discharge, this signifies ritual purity.

فَإِذَا مَضَى الْمِقْدَارُ الْمَذْكُورُ فَقَدْ حَلَّتْ؛ لِأَنَّهَا مِنْ ذَوَاتِ الْأَقْرَاءِ - بِلَا شَكٍّ - فَعَلَيْهَا إتْمَامُ ثَلَاثَةِ قُرُوءٍ -، وَأَمَّا إذَا تَمَيَّزَ دَمُهَا فَأَمْرُهَا بَيِّنٌ إذَا رَأَتْ الدَّمَ الْأَسْوَدَ فَهُوَ حَيْضٌ، وَإِذْ رَأَتْ الْأَحْمَرَ، أَوْ الصُّفْرَةَ فَهُوَ طُهْرٌ.

L34993 Similarly, a woman whose menstrual blood is indistinguishable—yet knows her established days—observes her waiting period when the days she used to menstruate arrive as menstruation and by the days she used to be pure as cleanliness.

وَكَذَلِكَ الَّتِي لَا يَتَمَيَّزُ دَمُهَا إلَّا أَنَّهَا تَعْرِفُ أَيَّامَهَا فَإِنَّهَا تَعْتَدُّ إذَا جَاءَتْ أَيَّامُهَا الَّتِي كَانَتْ تَحِيضُ فِيهَا حَيْضًا، وَبِأَيَّامِهَا الَّتِي كَانَتْ تَطْهُرُ فِيهَا طُهْرًا.

L34994 We have already mentioned the proof of that—in "The Book of Menstruation" within the section on "Purification" from this compendium of ours—making its repetition unnecessary. These are established narrations from the Messenger of Allah (ṣallallāhu ʿalayhi wa-sallam) as we have mentioned.

وَقَدْ ذَكَرْنَا بُرْهَانَ ذَلِكَ -: فِي " كِتَابِ الْحَيْضِ " فِي " الطَّهَارَةِ " مِنْ دِيوَانِنَا هَذَا فَأَغْنَى عَنْ إعَادَتِهِ، وَهِيَ أَخْبَارٌ ثَابِتَةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا ذَكَرْنَا.

L34995–34997 As for the woman uncertain about pregnancy—if her waiting period is calculated by menstrual cycles or months and she has completed it, yet estimates she might be pregnant without being certain of this nor certain she is not pregnant—then she is a woman who has not conclusively determined whether her waiting period is based on cycles or months. Undoubtedly, do you not affirm she is among women with pregnancies ending in miscarriage? This is her attribute—without doubt—we know it through sensory perception and observation.

وَأَمَّا الْمُسْتَرِيبَةُ - فَإِنْ كَانَتْ عِدَّتُهَا بِالْأَقْرَاءِ أَوْ بِالشُّهُورِ فَأَتَمَّتْهَا إلَّا أَنَّهَا تُقَدِّرُ أَنَّهَا حَامِلٌ وَلَيْسَتْ مُوقِنَةً بِذَلِكَ، وَلَا بِأَنَّهَا لَيْسَتْ حَامِلًا؟ فَهَذِهِ امْرَأَةٌ لَمْ تُوقِنْ أَنَّهَا مِنْ ذَوَاتِ الْأَقْرَاءِ قَطْعًا، وَلَا تُوقِنُ أَنَّهَا مِنْ ذَوَاتِ الشُّهُورِ حَتْمًا، وَلَا تُوقِنُ أَنَّهَا مِنْ ذَوَاتِ الْأَحْمَالِ بَتْلًا؟ هَذِهِ صِفَتُهَا - بِلَا شَكٍّ - نَعْلَمُ ذَلِكَ حِسًّا وَمُشَاهَدَةً.

L34998 When this is the case, she must observe the waiting period until she is certain she is pregnant - whereby her waiting period concludes with the delivery of her pregnancy - or until she is certain she is not pregnant, after which she may remarry if she wishes once certain of her non-pregnant state. This is because her continuous waiting period connected to what Allah the Exalted

فَإِذْ هِيَ كَذَلِكَ فَلَا بُدَّ لَهَا مِنْ التَّرَبُّصِ حَتَّى تُوقِنَ أَنَّهَا حَامِلٌ فَتَكُونُ عِدَّتُهَا وَضْعَ حَمْلِهَا، أَوْ تُوقِنَ أَنَّهَا لَيْسَتْ حَامِلًا فَتَتَزَوَّجُ إنْ شَاءَتْ إذَا أَيْقَنَتْ أَنَّهَا لَا حَمْلَ بِهَا؛ لِأَنَّهَا

ordained from divorce - whether through menstrual purity periods (qurū') or months - has been completed. And success comes only from Allah, the Exalted.

L34999 The maximum duration of the waiting period from the last time her husband had intercourse with her is five months. She cannot exceed this period unless she is certain of pregnancy or its cessation, because the Messenger of Allah—peace and blessings be upon him—informed that after four months, the spirit is breathed into it. Once the spirit is breathed into it, it becomes alive, and being alive, it must exhibit movement.

قَدْ تَمَّتْ عِدَّتُهَا الْمُتَّصِلَةُ بِمَا أَوْجَبَهَا اللَّهُ تَعَالَى مِنْ الطَّلَاقِ - إمَّا الْأَقْرَاءُ وَإِمَّا الشُّهُورُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

، وَأَقْصَى مَا يَكُونُ التَّرَبُّصُ مِنْ آخِرِ وَطْءٍ وَطِئَهَا زَوْجُهَا خَمْسَةُ أَشْهُرٍ، فَلَا سَبِيلَ إلَى أَنْ تَتَجَاوَزَهَا إلَّا وَهِيَ مُوقِنَةٌ بِالْحَمْلِ، أَوْ بِبُطْلَانِهِ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرَ بِأَنَّهُ بَعْدَ أَرْبَعَةِ أَشْهُرٍ يُنْفَخُ فِيهِ الرُّوحُ، وَإِذَا نُفِخَ فِيهِ الرُّوحُ فَهُوَ حَيٌّ إذَا كَانَ حَيًّا فَلَا بُدَّ لَهُ - ضَرُورَةً - مِنْ حَرَكَةٍ.

وَأَمَّا الْمُخْتَلِفَةُ الْأَقْرَاءِ - فَلَا بُدَّ لَهَا مِنْ تَمَامِ أَقْرَائِهَا بَالِغَةً مَا بَلَغَتْ لَا حَدَّ لِذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى أَوْجَبَ عَلَيْهَا أَنْ تَتَرَبَّصَ ثَلَاثَةَ قُرُوءٍ، وَلَمْ يَجْعَلْ اللَّهُ تَعَالَى لِذَلِكَ حَدًّا مَحْدُودًا {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] فَإِنْ حَاضَتْ حَيْضَةً ثُمَّ لَمْ تَحِضْ، أَوْ حَاضَتْ حَيْضَتَيْنِ ثُمَّ لَمْ تَحِضْ، أَوْ انْتَظَرَتْ الْحَيْضَةَ الْأُولَى فَلَمْ تَأْتِهَا بَعْدَ أَنْ كَانَتْ قَدْ حَاضَتْ فِي عِصْمَةِ زَوْجِهَا، أَوْ قَبْلَهَا.

L35000 As for the woman with irregular menstrual cycles—she must complete her waiting period through her full cycles, however prolonged they may be, for there is no defined limit. This is because Allah the Exalted has obligated her to observe a waiting period of three cycles, and He has not designated any restricted limit. *"And whoever transgresses the limits of Allah has certainly wronged himself"* (Quran 65:1). If she menstruates once and then ceases, menstruates twice and then ceases, or awaited the first menstrual cycle—whether she had previously menstruated during her husband's custody or before it—and it did not occur.[1]

فَلَا بُدَّ لِهَؤُلَاءِ كُلِّهِنَّ مِنْ التَّرَبُّصِ أَبَدًا حَتَّى يَحِضْنَ تَمَامَ ثَلَاثِ حِيَضٍ كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ، أَوْ حَتَّى يَصِرْنَ فِي حَدِّ الْيَأْسِ مِنْ الْمَحِيضِ، فَإِذَا صِرْنَ فِيهِ اسْتَأْنَفْنَ ثَلَاثَةَ أَشْهُرٍ - وَلَا بُدَّ - لِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ الْعِدَّةَ ثَلَاثَةَ أَشْهُرٍ إلَّا عَلَى اللَّوَاتِي لَمْ يَحِضْنَ، وَعَلَى الْيَائِسَاتِ مِنْ الْمَحِيضِ؟ وَهَذِهِ لَيْسَتْ وَاحِدَةً مِنْهُمَا، فَإِذَا صَارَتْ مِنْ الْيَائِسَاتِ فَحِينَئِذٍ دَخَلَتْ فِي أَمْرِ اللَّهِ تَعَالَى لَهَا بِالْعِدَّةِ بِثَلَاثَةِ أَشْهُرٍ - هَذَا نَصُّ كَلَامِ اللَّهِ عَزَّ وَجَلَّ وَحُكْمُهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35001–35003 All of these women must perpetually observe the waiting period until they complete three menstrual cycles as Allah, the Mighty and Majestic, has commanded, or until they reach the stage of despair from menstruation. Concerning menstruation, if they enter into it, they must necessarily begin a new three-month period because Allah the Exalted has not ordained the ʿiddah as three months except for those who have not menstruated and those who have despaired of menstruation. This is not one of the two categories. When she becomes among those who have despaired of menstruation, then she enters into Allah the Exalted's command for her to observe the ʿiddah of three months—this is the explicit text of Allah's speech and His ruling. And praise be to Allah, the Lord of the worlds.

وَفِيمَا ذَكَرْنَا اخْتِلَافٌ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ أَنَّ حِبَّانَ بْنَ مُنْقِذٍ طَلَّقَ امْرَأَتَهُ - وَهُوَ صَحِيحٌ - وَهِيَ تُرْضِعُ فَمَكَثَتْ سَبْعَةَ أَشْهُرٍ لَا تَحِيضُ يَمْنَعُهَا الرَّضَاعُ الْحَيْضَ، ثُمَّ مَرِضَ حِبَّانُ بَعْدَ أَنْ طَلَّقَهَا بِأَشْهُرٍ؟ فَقَالُوا لَهُ: إنَّهَا تَرِثُك إنْ مِتَّ؟ فَأَمَرَ أَنْ يُحْمَلَ إلَى عُثْمَانَ؟ فَحُمِلَ إلَيْهِ، فَذَكَرَ لَهُ شَأْنَ امْرَأَتِهِ - وَعِنْدَهُ عَلِيُّ بْنُ أَبِي طَالِبٍ، وَزَيْدُ بْنُ ثَابِتٍ، فَسَأَلَهُمَا عُثْمَانُ؟ فَقَالَا جَمِيعًا: نَرَى أَنْ تَرِثَهُ إنْ مَاتَ، وَأَنَّهُ يَرِثُهَا إنْ مَاتَتْ، فَإِنَّهَا لَيْسَتْ مِنْ الْقَوَاعِدِ اللَّائِي يَئِسْنَ مِنْ الْمَحِيضِ، وَلَا مِنْ الْأَبْكَارِ اللَّائِي لَمْ يَحِضْنَ.

L35004 In what we have mentioned, there is a difference of opinion. It has been narrated to us via ʿAbd al-Razzāq's chain from Maʿmar from al-Zuhrī that Ḥibbān ibn Munqidh divorced his wife—while he was healthy—and she was breastfeeding. She remained for seven months without menstruating, as breastfeeding prevented her menstruation. Then Ḥibbān fell ill months after divorcing her. They asked him, "Will she inherit from you if you die?" So Ḥibbān ordered that he be carried to ʿUthmān, and he was transported there. He recounted his wife's situation to him—while ʿAlī ibn Abī Ṭālib and Zayd ibn Thābit were present. ʿUthmān asked them both, and they said together: "We hold that she would inherit from him if he dies, and he would inherit from her if she dies, for she is neither among post-menopausal women who have ceased menstruation nor among young girls who have not menstruated."

[1] **Qur'an references (L35000):** Qur'an 65:1 (At-Talaq).

أَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ أَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدَ الرَّحِيمِ أَنَا أَحْمَدُ بْنُ خَالِدٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ أَشْعَثَ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ، وَعَبْدَ اللَّهِ بْنَ مَسْعُودٍ قَالَا جَمِيعًا فِي الشَّابَّةِ تَطْلُقُ فَلَا تَحِيضُ: إِنَّهَا تَنْتَظِرُ حَتَّى تَيْأَسَ مِنْ الْمَحِيضِ.

L35005 Yunus ibn Abdullah narrated from Ahmad ibn Abdullah ibn Abd al-Rahim, who narrated from Ahmad ibn Khalid, who narrated from Muhammad ibn Abd al-Salam al-Khushani, who narrated from Muhammad ibn Bishar, who narrated from Yahya ibn Saʿīd al-Qaṭṭān, from Ashʿath ibn Abd al-Malik al-Ḥumrānī, from Muḥammad ibn Sīrīn: that ʿUmar ibn al-Khaṭṭāb and ʿAbdullāh ibn Masʿūd both agreed regarding a young woman who is divorced and does not menstruate—she waits until she despairs of menstruation.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، كِلَاهُمَا عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، كِلَاهُمَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ أَنَّهُ طَلَّقَ امْرَأَتَهُ تَطْلِيقَةً أَوْ تَطْلِقَتَيْنِ، ثُمَّ ارْتَفَعَتْ حَيْضَتُهَا سِتَّةَ عَشَرَ شَهْرًا ثُمَّ مَاتَتْ؟ فَقَالَ لَهُ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: حَبَسَ اللَّهُ عَلَيْك مِيرَاثَهَا، وَوَرَّثَهُ مِنْهَا - هَذَا فِي غَايَةِ الصِّحَّةِ عَنْ ابْنِ مَسْعُودٍ.

L35006 From the path of Abd al-Razzaq—who narrates from both Sufyan al-Thawri and Ma'mar (each of whom reported from Mansur ibn al-Mu'tamir and Hammad ibn Abi Sulayman)—both of whom reported from Ibrahim al-Nakha'i, from Alqamah: that he divorced his wife once or twice, then her menstruation ceased for sixteen months, then she died. Abdullah ibn Mas'ud said to him: "God has deprived you of her inheritance and made you inherit from her." This narration is of the utmost authenticity transmitted from Ibn Mas'ud.

وَقَدْ رُوِّينَا هَذَا بِعَيْنِهِ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ، إلَّا أَنَّهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ سَمْعَانَ.

L35007–35008 This exact narration has been transmitted to us from Ibn ʿAbbās and Ibn ʿUmar, but it is via the chain of Ibn Wahb from Ibn Samʿān.

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ السَّلَامِ الْخُشَنِيِّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ الصَّمَدِ الْعَمِّيُّ، قَالَ: سَأَلْت مَنْصُورَ بْنَ الْمُعْتَمِرِ عَمَّنْ طَلَّقَ امْرَأَتَهُ فَحَاضَتْ حَيْضَةً ثُمَّ يَئِسَتْ مِنْ الْمَحِيضِ؟ قَالَ: تَسْتَأْنِفُ الْعِدَّةَ حِينَئِذٍ بِثَلَاثَةِ أَشْهُرٍ. قَالَ: وَسَأَلْته عَنْ امْرَأَةٍ شَابَّةٍ طَلُقَتْ فَلَمْ تَحِضْ مِنْ مَرَضٍ أَوْ ارْتَفَعَ حَيْضُهَا؟ قَالَ: تَعْتَدُّ بِالْحَيْضِ مَا كَانَ. وَسَأَلْته عَنْ جَارِيَةٍ حَاضَتْ حَيْضَةً وَطَلُقَتْ فَلَمْ تَحِضْ سَنَتَيْنِ؟ قَالَ عِدَّتُهَا الْحَيْضُ مَا كَانَ.

L35009 From the path of Muhammad ibn Abd al-Salam al-Khushani: I am Muhammad ibn al-Muthanna, I am Abdul Aziz ibn Abd al-Samad al-Ammi, who said: I asked Mansur ibn al-Mu'tamir about a man who divorces his wife after she menstruated once and then ceased menstruating. He said: She must restart the waiting period at that point with three months. He said: I asked him about a young woman who was divorced and did not menstruate due to illness or her menstruation ceasing. He said: She observes the waiting period according to her menstrual cycle. I asked him about a young woman who menstruated once, was divorced, then did not menstruate for two years. He said: Her waiting period is according to her menstrual cycle.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَنَا عُقْبَةُ بْنُ نَافِعٍ عَنْ خَالِدِ بْنِ يَزِيدَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ سَأَلَ عَنْ مُطَلَّقَةٍ لَا تَحِيضُ فِي السَّنَةِ إلَّا مَرَّةً؟ قَالَ: أَقْرَاؤُهَا مَا كَانَتْ.

L35010 Through the chain of Ibn Wahb: I, 'Uqbah ibn Nāfi', report from Khālid ibn Yazīd, from 'Aṭā' ibn Abī Rabāḥ, that he was asked about a divorced woman who menstruates only once a year. He said: "Her menstrual periods remain as they were."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَالِكٍ عَنِ الزُّهْرِيِّ مِثْلُ ذَلِكَ.

L35011 And from the chain of Ibn Wahb from Mālik from al-Zuhrī, similarly.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنْ أَبِي الزِّنَادِ قَالَ: يَنْبَغِي لَهَا أَنْ تَعْتَدَّ ثَلَاثَ حِيَضٍ - وَلَوْ كَانَتْ فِي عِشْرِينَ سَنَةً - إِذَا كَانَتْ تَحِيضُ وَلَهَا شَبَابٌ. وَمِنْ طَرِيقِ وَكِيعٍ عَنِ الرَّبِيعِ بْنِ صُبَيْحٍ، وَيَزِيدَ بْنِ إِبْرَاهِيمَ - هُوَ التُّسْتَرِيُّ - عَنِ الْحَسَنِ الْبَصْرِيِّ قَالَ: تَعْتَدُّ بِالْحَيْضِ، وَإِنْ كَانَتْ لَا تَحِيضُ فِي السَّنَةِ إِلَّا مَرَّةً.

L35012 From the narration of Ibn Wahb, Yunus reported to me from Abu Az-Zinad, who said: She should observe a waiting period of three menstrual cycles—even if it occurs within twenty years—provided that she menstruates and is of childbearing age. From the narration of Waki‘, from Ar-Rabi‘ ibn Subayh and Yazid ibn Ibrahim (the one from Tustar), from Al-Hasan Al-Basri, who said: She observes the waiting period based on her menstrual cycles, even if she only menstruates once a year.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ، قَالَ عَطَاءٌ: تَعْتَدُّ أَقْرَاءَهَا مَا كَانَتْ تَقَارَبَتْ أَوْ تَبَاعَدَتْ.

L35013 On the authority of Abd al-Razzaq from Ibn Jurayj, Ata said: She observes her waiting period by counting her clean intervals, whether they occur frequently or infrequently.

- وَقَالَ ابْنُ جُرَيْجٍ: وَهُوَ قَوْلُ عَبْدِ الْكَرِيمِ - قَالَ عَطَاءٌ: فَإِنْ وَجَدَتْ فِي بَطْنِهَا كَالْحَشَّةِ لَا تَدْرِي أَفِي بَطْنِهَا وَلَدٌ أَمْ لَا؟ فَلَا تُعَجِّلْ بِنِكَاحٍ حَتَّى تَسْتَبِينَ أَنَّهُ لَيْسَ فِي بَطْنِهَا وَلَدٌ.

L35014 Ibn Jurayj said—and this is the opinion of ʿAbd al-Karīm—who reported that ʿAṭāʾ said: If she detects something like a vermin in her womb but does not know whether there is a child in her womb or not, then do not rush into marriage until she ascertains that there is no child in her womb.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: إِذَا كَانَتْ تَحِيضُ فَعِدَّتُهَا عَلَى حَيْضَتِهَا، تَقَارَبَتْ أَوْ تَبَاعَدَتْ.

L35015 Through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: If she menstruates, her waiting period is based on her menstrual cycle, whether it is close or far apart.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ عَنْ أَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ أَنَّهُ كَانَ يَقُولُ: تَعْتَدُّ أَقْرَاءَهَا مَا كَانَتْ.

L35016 She observes her waiting period by counting her menstrual cycles as they occur.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ دَاوُد بْنِ أَبِي هِنْدَ عَنِ الشَّعْبِيِّ فِي الْمَرْأَةِ تَحِيضُ حَيْضًا مُخْتَلِفًا أَنَّ عِدَّتَهَا الْحَيْضُ، وَإِنْ لَمْ تَحِضْ فِي كُلِّ سَنَةٍ إِلَّا مَرَّةً.

L35017–35018 Via the transmission of ʿAbd al-Razzāq from Sufyān al-Thawrī from Dāwūd ibn Abī Hind from al-Shaʿbī concerning the woman who has irregular menstruation: her waiting period is reckoned through menstruation, even if she does not menstruate in a year except once.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا عَبِيدَةُ عَنْ إِبْرَاهِيمَ قَالَ: إِذَا كَانَتْ تَحِيضُ فَعِدَّتُهَا بِالْحَيْضِ - وَإِنْ حَاضَتْ فِي كُلِّ سَنَةٍ مَرَّةً.

L35019 From the transmission of Saʿīd ibn Manṣūr: From Hushaym → ʿUbaydah → Ibrāhīm, who said: If she menstruates, her waiting period is by menstruation, even if she menstruates once a year.

L35020 Through the transmission of Saʿīd ibn Manṣūr: I report - Sufyān ibn ʻUyaynah narrated to us from ʻAmr ibn Dīnār - concerning the woman who menstruates only once a year. He said: “Her menstrual periods remain as they were.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ فِي الَّتِي لَا تَحِيضُ فِي السَّنَةِ إِلَّا مَرَّةً؟ قَالَ: أَقْرَاؤُهَا مَا كَانَتْ.

L35021 This is the opinion of Abu Hanifah, Sufyan al-Thawri, al-Shafi’i, Abu Sulayman, their companions, and Abu ’Ubayd - and al-Layth stated it regarding differing periods of purity.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ، وَأَبِي عُبَيْدٍ - وَقَالَهُ اللَّيْثُ فِي الْمُخْتَلِفَةِ الْأَقْرَاءِ.

L35022 Abu Muhammad said: All these individuals hold the same opinion as ours. Here is a second opinion—as narrated to us through Malik’s chain from Yaḥyā ibn Saʿīd, from Saʿīd ibn al-Musayyib, who said: ʿUmar ibn al-Khaṭṭāb stated: “Any woman who is divorced and menstruates once or twice, then her menstruation ceases, she must wait nine months. If pregnancy becomes evident, this suffices; otherwise, she must fulfill her waiting period of three months after the nine months, then she becomes lawful to remarry.”

قَالَ أَبُو مُحَمَّدٍ: فَكُلُّ هَؤُلَاءِ يَقُولُونَ مِثْلَ قَوْلِنَا، وَهَهُنَا قَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ أَيُّمَا امْرَأَةٍ طَلُقَتْ فَحَاضَتْ حَيْضَةً أَوْ حَيْضَتَيْنِ، ثُمَّ رُفِعَتْ حَيْضَتُهَا "، فَإِنَّهَا تَنْتَظِرُ تِسْعَةَ أَشْهُرٍ، فَإِنْ بَانَ بِهَا حَمْلٌ فَذَلِكَ، وَإِلَّا اعْتَدَّتْ بَعْدَ التِّسْعَةِ الْأَشْهُرِ ثَلَاثَةَ أَشْهُرٍ ثُمَّ حَلَّتْ.

L35023 A similar ruling has been authentically reported from Al-Ḥasan Al-Baṣrī and Saʿīd ibn Al-Musayyib, and through the transmission of Mālik from Ibn Shihāb—who is Az-Zuhrī—from Saʿīd ibn Al-Musayyib, resembling ʿUmar’s statement that the mustaḥāḍah observes a waiting period of one year.

وَصَحَّ مِثْلُ هَذَا عَنْ الْحَسَنِ الْبَصْرِيِّ، وَسَعِيدِ بْنِ الْمُسَيِّبِ وَمِنْ طَرِيقِ مَالِكٍ عَنْ ابْنِ شِهَابٍ - هُوَ الزُّهْرِيُّ - عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِثْلُ قَوْلِ عُمَرَ فِي الْمُسْتَحَاضَةِ تَعْتَدُّ سَنَةً.

L35024 Via ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Saʿīd ibn al-Musayyab, who said: If menstruation occurs once over the course of months, her ʿiddah (waiting period) is one year.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: إذَا كَانَتْ فِي الْأَشْهُرِ مَرَّةً - يَعْنِي الْحَيْضَ - فَعِدَّتُهَا سَنَةٌ.

L35025 A third opinion—as narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from a man from ʿIkrimah—is that he was asked about a woman who menstruates but whose bleeding becomes so excessive that she cannot determine the state of her menstruation. He said: She should observe the prescribed waiting period (ʿiddah) of three months, and that is the doubt about which Allah, the Exalted and Glorified, said: {If you are in doubt} (65:4). This ruling was issued by Ibn ʿAbbās and Zayd ibn Thābit.[2]

وَقَوْلٌ ثَالِثٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ أَنَّهُ سُئِلَ عَنْ الَّتِي تَحِيضُ فَيَكْثُرُ دَمُهَا حَتَّى لَا تَدْرِي كَيْفَ حَيْضَتُهَا؟ قَالَ: تَعْتَدُّ ثَلَاثَةَ أَشْهُرٍ وَهِيَ الرِّيبَةُ، الَّتِي قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنِ ارْتَبْتُمْ} [الطلاق: ٤] قَضَى بِذَلِكَ ابْنُ عَبَّاسٍ، وَزَيْدُ بْنُ ثَابِتٍ.

L35026 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: ʿAmr

[2] **Qur’an references (L35025):** Qur’an 65:4 (At-Talaq).

ibn Dīnār informed me from Ṭāwus, who said: If she experiences irregular menstruation, it suffices for her to observe a waiting period of three months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ قَالَ: إِذَا كَانَتْ تَحِيضُ حَيْضًا مُخْتَلِفًا أَجْزَأَ عَنْهَا أَنْ تَعْتَدَّ ثَلَاثَةَ أَشْهُرٍ.

L35027–35028 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Qatādah, from ʿIkrimah, who said: If a woman menstruates with irregular bleeding, then indeed it is a matter of uncertainty—her waiting period is three months. Qatādah said: The mustahāḍah—a woman experiencing abnormal bleeding—likewise observes a waiting period of three months.

مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ قَالَ: إِذَا كَانَتْ تَحِيضُ حَيْضًا مُخْتَلِفًا فَإِنَّهَا رِيبَةٌ عِدَّتُهَا ثَلَاثَةُ أَشْهُرٍ، قَالَ قَتَادَةُ: تَعْتَدُّ الْمُسْتَحَاضَةُ ثَلَاثَةَ أَشْهُرٍ.

L35029 Narrated by Saʿīd ibn Manṣūr: Sufyān ibn ʿUyaynah reported from ʿAmr ibn Dīnār, from Jābir ibn Zayd, who said: "If a woman menstruates only once a year, a three-month waiting period suffices for her."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: إِذَا كَانَتْ تَحِيضُ فِي كُلِّ سَنَةٍ مَرَّةً يَكْفِيهَا ثَلَاثَةُ أَشْهُرٍ.

L35030 Abu Muhammad said: Ibn Jurayj and Sufyan ibn Uyaynah differed from Amr ibn Dinar regarding this matter, as we mentioned. Sufyan reported from Jabir ibn Zayd: three months – and from Tawus: her menstrual cycles whatever they were.

قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ ابْنُ جُرَيْجٍ، وَسُفْيَانُ بْنُ عُيَيْنَةَ: عَلَى عَمْرِو بْنِ دِينَارٍ فِي هَذَا؟ كَمَا أَوْرَدْنَا، فَذَكَرَ سُفْيَانُ عَنْ جَابِرِ بْنِ زَيْدٍ: ثَلَاثَةَ أَشْهُرٍ - وَعَنْ طَاوُسٍ: أَقْرَاؤُهَا مَا كَانَتْ.

L35031 Ibn Jurayj mentioned that Jabir ibn Zayd said, "Her waiting period is determined by her menstrual cycles as they occur," and cited Tawus as saying, "Three months."

وَذَكَرَ ابْنُ جُرَيْجٍ عَنْ جَابِرِ بْنِ زَيْدٍ: أَقْرَاؤُهَا مَا كَانَتْ - وَعَنْ طَاوُسٍ: ثَلَاثَةُ أَشْهُرٍ.

L35032 As for the later scholars, Layth ibn Saʿd said: The waiting period (ʿiddah) for the mustahāḍah (a woman with chronic irregular bleeding) in cases of divorce or death [of the husband] is one year.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ اللَّيْثَ بْنَ سَعْدٍ قَالَ: عِدَّةُ الْمُسْتَحَاضَةِ فِي الطَّلَاقِ وَالْوَفَاةِ سَنَةٌ.

L35033 Al-Awzaʿī said: If the menstruation of the divorced woman ceases for three months, she must observe an ʿiddah of one year.

وَقَالَ الْأَوْزَاعِيُّ: إِنْ ارْتَفَعَ حَيْضُ الْمُطَلَّقَةِ ثَلَاثَةَ أَشْهُرٍ اعْتَدَّتْ سَنَةً.

L35034 Ahmad and Isḥāq said: The waiting period for a mustahāḍah (woman with irregular bleeding) is based on her intervals of purity (aqrā') if she knows their timing; otherwise, it is a year.

وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: عِدَّةُ الْمُسْتَحَاضَةِ الْأَقْرَاءُ، إِنْ عَرَفَتْ أَوْقَاتَهَا وَإِلَّا فَسَنَةٌ.

L35035 Malik said: If a divorced woman does not menstruate for nine consecutive months, she must restart the waiting period of three months. If she completes it without menstruating, her waiting period is concluded, and she becomes lawful for remarriage. If she menstruates before completing it, she counts all

وَقَالَ مَالِكٌ: إِنْ لَمْ تَحِضْ الْمُطَلَّقَةُ تِسْعَةَ أَشْهُرٍ مُتَّصِلَةٍ اسْتَأْنَفَتْ عِدَّةَ ثَلَاثَةِ أَشْهُرٍ، فَإِنْ أَتَمَّتْهَا، وَلَمْ تَحِضْ فَقَدْ تَمَّتْ الْعِدَّةُ، وَحَلَّتْ لِلْأَزْوَاجِ - وَإِنْ حَاضَتْ قَبْلَ تَمَامِهَا عَدَّتْ

that time as one menstrual cycle (qurʾ), then she must await menstruation. If she does not menstruate for nine months, she must restart the three-month waiting period. If she does not menstruate until completing it, her waiting period is concluded. If she menstruates during it, she counts all that time as a second menstrual cycle (qurʾ), then she must wait nine months. If she does not menstruate, she begins the three-month waiting period. If she menstruates during it or completes it without experiencing menstruation, her waiting period is concluded.

كُلَّ ذَلِكَ قُرْءًا وَاحِدًا ثُمَّ تَنْتَظِرُ الْحَيْضَ، فَإِنْ لَمْ تَحِضْ تِسْعَةَ أَشْهُرٍ اسْتَأْنَفَتْ عِدَّةَ ثَلَاثَةِ أَشْهُرٍ، فَإِنْ لَمْ تَحِضْ حَتَّى تُتِمَّهَا تَمَّتْ عِدَّتُهَا، وَإِنْ حَاضَتْ فِيهَا عَدَّتْ كُلَّ ذَلِكَ قُرْءًا ثَانِيًا ثُمَّ تَنْتَظِرُ تِسْعَةَ أَشْهُرٍ، فَإِنْ لَمْ تَحِضْ اعْتَدَّتْ ثَلَاثَةَ أَشْهُرٍ، فَإِنْ حَاضَتْ فِيهَا أَوْ أَتَمَّتْهَا دُونَ أَنْ تَرَى حَيْضًا فَقَدْ تَمَّتْ عِدَّتُهَا.

L35036 Abu Muhammad said: All these statements lack any valid proof to validate them—neither from the Quran, nor the Sunnah, nor a weak report, nor analogy, nor a sound opinion, nor an authentic narration from a Companion. The only narration concerning this is what we mentioned from Umar, though it remains inauthentic because Saʿīd ibn al-Musayyib heard nothing from Umar except the announcement of al-Nuʿmān ibn Muqarrin's death.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ هَذِهِ الْأَقْوَالِ لَا حُجَّةَ لِتَصْحِيحِهَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا رِوَايَةٍ ضَعِيفَةٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ يَصِحُّ، وَلَا رِوَايَةٍ تَصِحُّ عَنْ صَاحِبٍ، إِنَّمَا جَاءَ فِي ذَلِكَ الرِّوَايَةُ الَّتِي ذَكَرْنَا عَنْ عُمَرَ، مَعَ أَنَّهَا لَا تَصِحُّ؛ لِأَنَّ سَعِيدَ بْنَ الْمُسَيِّبِ لَمْ يَسْمَعْ مِنْ عُمَرَ إِلَّا نَعْيَهُ النُّعْمَانَ بْنَ مُقَرِّنٍ.

L35037 We have been transmitted narrations from ʿUmar contrary to that, as we presented earlier. What makes one of the two narrations from him more valid than the other?

وَقَدْ رُوِّينَا عَنْ عُمَرَ خِلَافَ ذَلِكَ كَمَا أَوْرَدْنَا آنِفًا فَمَا الَّذِي جَعَلَ إِحْدَى الرِّوَايَتَيْنِ عَنْهُ أَوْلَى مِنَ الْأُخْرَى.

L35038–35039 Mālik said: The prescribed waiting period of nine months begins at the time her menstruation ceased, not from when her husband divorced her, except for the woman whose menstruation had ceased immediately after her divorce. In that case, she observes the nine-month prescribed waiting period from the time she was divorced.

وَقَالَ مَالِكٌ: إِنَّمَا تَبْتَدِي بِتَرَبُّصِ التِّسْعَةِ الْأَشْهُرِ مِنْ حِينِ ارْتَفَعَتْ حَيْضَتُهَا، لَا مِنْ حِينِ طَلَّقَهَا زَوْجُهَا، إِلَّا الَّتِي رَفَعَتْهَا حَيْضَتُهَا إِثْرَ طَلَاقِهَا، فَهَذِهِ تَعْتَدُّ التِّسْعَةَ الْأَشْهُرَ مِنْ حِينِ طُلِّقَتْ.

L35040 He said: The woman experiencing istihadah - her waiting period is likewise a year - the free woman and the slave woman are equal. Similarly, the woman whose menstruation has ceased due to illness - the slave woman and the free woman are equal. As for the woman whose menstruation has ceased due to breastfeeding - her case differs from those mentioned, and her waiting period is only completed by fulfilling three full menstrual cycles, regardless of their circumstances.

قَالَ: وَالْمُسْتَحَاضَةُ - كَذَلِكَ عِدَّتُهَا سَنَةٌ - الْحُرَّةُ وَالْأَمَةُ سَوَاءٌ - وَكَذَلِكَ الَّتِي ارْتَفَعَ حَيْضُهَا مِنْ مَرَضٍ - الْأَمَةُ وَالْحُرَّةُ سَوَاءٌ - قَالَ: وَأَمَّا الَّتِي ارْتَفَعَ حَيْضُهَا مِنْ أَجْلِ الرَّضَاعِ - فَإِنَّهَا بِخِلَافِ ذَلِكَ، وَلَا تَتِمُّ عِدَّتُهَا إِلَّا بِتَمَامِ ثَلَاثَةِ أَقْرَاءٍ كَائِنَةً مَا كَانَتْ.

L35041 He said: As for the woman in doubt [regarding pregnancy], she must observe

the waiting period until the doubt is dispelled or the pregnancy becomes evident. The maximum duration of her ʿiddah is nine months.

قَالَ: وَأَمَّا الْمُرْتَابَةُ - فَإِنَّهَا تُقِيمُ حَتَّى تَذْهَبَ الرِّيبَةُ أَوْ يَصِحَّ الْحَمْلُ، قَالَ: وَأَقْصَى تَرَبُّصِهَا تِسْعَةُ أَشْهُرٍ.

L35042 Imam Abū Muḥammad said: These [aforementioned] methodological divisions are not attested to any scholar before him.

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ تَقَاسِيمُ لَا تُحْفَظُ عَنْ أَحَدٍ قَبْلَهُ.

L35043 If they raise objections based on the narration from Ali and Zaid during Uthman's authority, we say: They did not state that this was due to breastfeeding. Rather, they clarified that she is neither among prepubescent girls nor among those who have not yet ceased menstruation. Therefore, it is impermissible to attribute to them statements they never made—and success comes only from Allah, the Exalted.

فَإِنْ شَغَبُوا بِالرِّوَايَةِ الَّتِي هِيَ عَنْ عَلِيٍّ، وَزَيْدٍ بِحَضْرَةِ عُثْمَانَ؟ قُلْنَا: لَمْ يَقُولُوا إنَّ ذَلِكَ مِنْ أَجْلِ الرَّضَاعِ، إنَّمَا بَيَّنُوا أَنَّهَا لَيْسَتْ مِنْ اللَّائِي لَمْ يَحِضْنَ، وَلَا مِنْ اللَّائِي لَمْ يَيْأَسْنَ مِنْ الْمَحِيضِ، فَلَا يَحِلُّ أَنْ يَقُولُوا مَا لَمْ يَقُولُوا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَقَارُبُ الْأَقْرَاءِ أَوْ تَبَاعُدُهَا]

A legal case regarding irregularly spaced menstrual/purity cycles.

L35044

L35045 1994 - Issue: It is the same regarding what we mentioned—whether menstrual cycles are close-spaced or widely spaced (there being no defined limit in this matter)—except that the woman's claim shall not be accepted if the husband denies her statement unless four just and knowledgeable women testify that she had a black menstrual flow and then attained purity from it, thus three menstrual cycles, or through the testimony of two women in like manner coupled with her oath. This is because Allah the Almighty has not prescribed a defined limit in this matter, nor has His Messenger—peace and blessings of Allah be upon him—{And your Lord is never forgetful} [Maryam 19:64].[3]

١٩٩٤ - مَسْأَلَةٌ: وَسَوَاءٌ فِيمَا ذَكَرْنَا تَقَارُبُ الْأَقْرَاءِ أَوْ تَبَاعُدُهَا - لَا حَدَّ فِي ذَلِكَ - إلَّا أَنَّهُ لَا تُصَدَّقُ الْمَرْأَةُ فِي ذَلِكَ إذَا أَنْكَرَ الزَّوْجُ قَوْلَهَا، إلَّا بِأَرْبَعِ عُدُولٍ مِنْ النِّسَاءِ عَالِمَاتٍ، يَشْهَدْنَ أَنَّهَا حَاضَتْ حَيْضًا أَسْوَدَ ثُمَّ طَهُرَتْ مِنْهُ - هَكَذَا ثَلَاثَةَ أَقْرَاءٍ - أَوْ بِشَهَادَةِ امْرَأَتَيْنِ كَذَلِكَ مَعَ يَمِينِهَا؛ لِأَنَّ اللَّهَ عَزَّ وَجَلَّ لَمْ يَحُدَّ فِي ذَلِكَ حَدًّا، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L35046 And among the certain falsehood is that the Exalted would have intended for the menstrual cycles to have a specific minimum duration, then remain silent about it? Thereby obliging us to possess knowledge of the unseen, which He has concealed from us, or leaving us to rely on false conjectures and corrupt statements whose invalidity is beyond doubt.

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَكُونَ تَعَالَى أَرَادَ أَنْ يَكُونَ لِلْأَقْرَاءِ مِقْدَارٌ لَا يَكُونُ أَقَلَّ مِنْهُ ثُمَّ يَسْكُتُ عَنْ ذَلِكَ؟ لِيُكَلِّفَنَا عِلْمَ الْغَيْبِ الَّذِي حَجَبَهُ عَنَّا، أَوْ يَكِلَنَا إلَى الظُّنُونِ الْكَاذِبَةِ، وَالْأَقْوَالِ الْفَاسِدَةِ الَّتِي لَا يُشَكُّ فِي بُطْلَانِهَا.

L35047 As for her not being believed if the husband denies her claim, this is because

[3] **Qur'an references (L35045):** Qur'an 19:64 (Maryam).

the Messenger of Allah, peace and blessings be upon him, ruled that proof must be provided by the claimant. She is contesting her husband's established right to revoke the divorce during the waiting period—whether she likes it or dislikes it. Thus, her claim is not accepted except through the testimony of just witnesses.

وَأَمَّا أَنْ لَا تُصَدَّقَ فِي ذَلِكَ إِذَا أَنْكَرَ الزَّوْجُ - فَلِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِالْبَيِّنَةِ عَلَى مَنْ ادَّعَى، وَهِيَ مُدَّعِيَةٌ بُطْلَانَ حَقٍّ ثَابِتٍ لِزَوْجِهَا فِي رَجْعَتِهَا - أَحَبَّتْ أَمْ كَرِهَتْ - فَلَا تُصَدَّقُ إِلَّا بِبَيِّنَةِ عَدْلٍ.

L35048–35050 -: It has been narrated to us through the chain of Waki‘ from Ismā‘īl ibn Abī Khālid from al-Sha‘bī, who said: A woman came to ‘Alī ibn Abī Ṭālib whose husband had divorced her. She claimed that she had menstruated three times in a month. ‘Alī said to Shurayḥ: “Speak concerning her case.” Shurayḥ said: “If she produces evidence—from those approved in religious integrity and trustworthiness among her close family—that she menstruated three times in a month, and that she attained purity after each period of purity and prayed, then she is truthful. Otherwise, she is lying.” ‘Alī said: “Qālūn”—a Greek term (καλόν) meaning “well done.”

-: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ، قَالَ: جَاءَتْ امْرَأَةٌ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ قَدْ طَلَّقَهَا زَوْجُهَا فَادَّعَتْ أَنَّهَا حَاضَتْ ثَلَاثَةَ حِيَضٍ فِي الشَّهْرِ؟ فَقَالَ عَلِيٌّ لِشُرَيْحٍ: قُلْ فِيهَا؟ فَقَالَ شُرَيْحٌ: إنْ جَاءَتْ بِبَيِّنَةٍ - مِمَّنْ يُرْضَى دِينُهُ، وَأَمَانَتُهُ - مِنْ بِطَانَةِ أَهْلِهَا أَنَّهَا حَاضَتْ فِي شَهْرٍ ثَلَاثًا: طَهُرَتْ عِنْدَ كُلِّ قُرْءٍ وَصَلَّتْ، فَهِيَ صَادِقَةٌ؟ وَإِلَّا فَهِيَ كَاذِبَةٌ، فَقَالَ عَلِيٌّ: قالون - يَعْنِي: أَصَبْت بِالرُّومِيَّةِ.

L35051 - From the narration of Hammad ibn Salamah through Qatadah, who said: A woman was divorced and menstruated three times in approximately forty nights. They disputed before Shuraih, who referred them to Ali ibn Abi Talib? Ali ruled: If four women from her women testify that her menstruation was like this, she is irrevocably separated. Otherwise, she must observe her waiting period through three menstruations in three months.

- وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ قَالَ: إنَّ امْرَأَةً طَلُقَتْ فَحَاضَتْ فِي نَحْوٍ مِنْ أَرْبَعِينَ لَيْلَةً ثَلَاثَ حِيَضٍ، فَاخْتَصَمُوا إلَى شُرَيْحٍ فَرَفَعَهُمْ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ؟ فَقَالَ عَلِيٌّ: إنْ شَهِدَ أَرْبَعَةٌ مِنْ نِسَائِهَا أَنَّ حَيْضَهَا كَانَ هَكَذَا أَبَانَتْ مِنْهُ، وَإِلَّا فَلْتَعْتَدَّ ثَلَاثَ حِيَضٍ فِي ثَلَاثَةِ أَشْهُرٍ.

L35052 From the narration of Al-Hajjaj ibn Al-Minhal: I am Abu Awanah, from Al-Mughirah, from Ibrahim Al-Nakha’i concerning a woman who menstruated three times either in a month or over forty nights. He said: If upright women testify on her behalf that she has seen what prohibits prayer - the menstruation of women, which is the commonly recognized menstruation - then her waiting period has concluded. Abu Muhammad said: All of this is our opinion. I have transmitted a narration we shall mention - if Allah wills - as related through Waki’ from Sufyan Al-Thawri and Sufyan ibn Uyaynah. Sufyan Al-Thawri said: From Al-A’mash, from Abu Al-Duha, from Masruq, and from Ubayy ibn Ka’b. Ibn Uyaynah said: From Amr ibn Dinar, from

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي امْرَأَةٍ حَاضَتْ فِي شَهْرٍ أَوْ أَرْبَعِينَ لَيْلَةً ثَلَاثَ حِيَضٍ؟ قَالَ: إذَا شَهِدَتْ لَهَا الْعُدُولُ مِنْ النِّسَاءِ أَنَّهَا قَدْ رَأَتْ مَا يُحَرِّمُ عَلَيْهَا الصَّلَاةَ مِنْ طُمُوثِ النِّسَاءِ الَّذِي هُوَ الطُّمُوثُ الْمَعْرُوفُ، فَقَدْ خَلَا أَجَلُهَا قَالَ أَبُو مُحَمَّد: هَذَا كُلُّهُ قَوْلُنَا - وَقَدْ رَوَيْت رِوَايَةً نَذْكُرُهَا - إنْ شَاءَ اللَّهُ تَعَالَى -: رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَسُفْيَانَ بْنِ عُيَيْنَةَ - قَالَ سُفْيَانُ الثَّوْرِيُّ: عَنْ الْأَعْمَشِ عَنْ أَبِي الضُّحَى عَنْ مَسْرُوقٍ، وَعَنْ أُبَيِّ بْنِ كَعْبٍ - وَقَالَ

Ubaid ibn Umayr. They both said unanimously: Among the matters of trust is that a woman was entrusted with her private parts.

ابْنُ عُيَيْنَةَ - عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ، قَالَا جَمِيعًا: مِنْ الْأَمَانَةِ أَنَّ الْمَرْأَةَ أُؤْتُمِنَتْ عَلَى فَرْجِهَا.

L35053–35054 From the path of Wakiʿ via Ḥammād ibn Zayd via Ayyūb al-Sikhtiyānī via Sulaymān ibn Yasār: When women were mentioned in his presence, he said: "Were we not commanded to physically inspect them?" Abū Muḥammad said: Ubayy (may Allah be pleased with him) and ʿUbayd ibn ʿUmayr spoke truthfully regarding the woman being entrusted with her private parts—and likewise the man too. Every person is entrusted with their religion—matters hidden from others regarding it—based on their trustworthiness. There is nothing here that necessitates accepting her testimony to nullify her husband's right to revocable divorce, due to Allah's statement: {No soul earns [sin] except against itself} [6:164]. Similarly, Sulaymān ibn Yasār's statement "We were not commanded to physically inspect women" is correct—none have contested this. Requiring her to provide evidence of menstruation parallels requiring evidence for women's hidden defects—is there any distinction?[4]

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ: أَنَّهُ ذُكِرَ عِنْدَهُ النِّسَاءُ؟ فَقَالَ: لَمْ نُؤْمَرْ بِفَتْحِهِنَّ؟ قَالَ أَبُو مُحَمَّدٍ: صَدَقَ أُبَيٌّ - رَضِيَ اللَّهُ عَنْهُ - وَعُبَيْدُ بْنُ عُمَيْرٍ: فِي أَنَّ الْمَرْأَةَ أُؤْتُمِنَتْ عَلَى فَرْجِهَا، وَكَذَلِكَ الرَّجُلُ أَيْضًا: كُلُّ أَحَدٍ مُوَكَّلٌ فِي دِينِهِ الَّذِي يَغِيبُ عَنْ النَّاسِ بِهِ إلَى أَمَانَتِهِ - وَلَيْسَ فِي هَذَا مَا يُوجِبُ تَصْدِيقَهَا عَلَى إبْطَالِ حَقِّ زَوْجِهَا فِي الرَّجْعَةِ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَكَذَلِكَ قَوْلُ سُلَيْمَانَ بْنِ يَسَارٍ " لَمْ نُؤْمَرْ بِفَتْحِ النِّسَاءِ " قَوْلٌ صَحِيحٌ مَا نَازَعَهُ فِي ذَلِكَ أَحَدٌ، وَتَكْلِيفُهَا الْبَيِّنَةَ عَلَى أَنَّهَا حَاضَتْ كَتَكْلِيفِ الْبَيِّنَةِ عَلَى عُيُوبِ النِّسَاءِ الْبَاطِنَةِ وَلَا فَرْقَ؟ .

L35055 Abu Muhammad said: Then these [scholars] disagreed, and it was narrated from Abū Ḥanīfah that a woman's claim about completing the waiting period in less than sixty days is not accepted, nor is the claim of postpartum women accepted if it is less than eighty-five days.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ اخْتَلَفَ هَؤُلَاءِ، فَرُوِيَ عَنْ أَبِي حَنِيفَةَ: لَا تُصَدَّقُ فِي انْقِضَاءِ الْعِدَّةِ فِي أَقَلَّ مِنْ سِتِّينَ يَوْمًا وَلَا تُصَدَّقُ النُّفَسَاءُ فِي أَقَلَّ مِنْ خَمْسَةٍ وَثَمَانِينَ يَوْمًا.

L35056 Abu Yusuf, Muhammad ibn al-Hasan, Sufyan in one of his two opinions, and Malik in the validity of his rulings maintained that the completion of the waiting period cannot be validated in fewer than thirty-nine days.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَسُفْيَانُ فِي أَحَدِ قَوْلَيْهِ - وَمَالِكٌ - فِي مُوجِبِ أَقْوَالِهِ - لَا تُصَدَّقُ فِي انْقِضَاءِ الْعِدَّةِ فِي أَقَلَّ مِنْ تِسْعَةٍ وَثَلَاثِينَ يَوْمًا.

L35057 Abū Muḥammad said: This is most consistent with their foundational principles, as it deems her divorced at the end of her clean period—then three menstruations, each lasting three days (the shortest menstrual period they recognize)—and two clean periods, each lasting fifteen days (the minimum duration of purity in their view).

قَالَ أَبُو مُحَمَّدٍ: هَذَا أَقْيَسُ عَلَى أُصُولِهِمْ؛ لِأَنَّهُ يَجْعَلُهَا مُطَلَّقَةً فِي آخِرِ طُهْرِهَا، ثُمَّ ثَلَاثُ حِيَضٍ، كُلُّ حَيْضَةٍ مِنْ ثَلَاثَةِ أَيَّامٍ - وَهُوَ أَقَلُّ الْحَيْضِ عِنْدَهُمْ - وَطُهْرَانِ، كُلُّ طُهْرٍ خَمْسَةَ عَشَرَ يَوْمًا - وَهُوَ أَقَلُّ الطُّهْرِ عِنْدَهُمْ.

[4] **Qur'an references (L35054):** Qur'an 6:164 (Al-An'am).

L35058 They differed concerning the postpartum woman. Abū Yūsuf said: I do not accept her claim for a duration shorter than sixty-five days.

وَاخْتَلَفُوا فِي النُّفَسَاءِ - فَقَالَ أَبُو يُوسُفَ: لَا أُصَدِّقُهَا فِي أَقَلَّ مِنْ خَمْسَةٍ وَسِتِّينَ يَوْمًا.

L35059 Muhammad ibn al-Hasan said: I do not affirm it in fewer than fifty-four days and an hour.

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: لَا أُصَدِّقُهَا فِي أَقَلَّ مِنْ أَرْبَعَةٍ وَخَمْسِينَ يَوْمًا وَسَاعَةً.

L35060 Al-Ḥasan ibn Ḥayy said: I do not deem valid a woman's observance of the waiting period through menstrual cycles in fewer than forty-five days.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: لَا أُصَدِّقُ الْمُعْتَدَّةَ بِالْأَقْرَاءِ فِي أَقَلَّ مِنْ خَمْسَةٍ وَأَرْبَعِينَ يَوْمًا.

L35061 Al-Awza'i said: I do not accept it in fewer than forty days.

وَقَالَ الْأَوْزَاعِيُّ: لَا أُصَدِّقُهَا فِي أَقَلَّ مِنْ أَرْبَعِينَ يَوْمًا.

L35062 Abu Ubayd said: If you do not present clear evidence, your claim will not be upheld if made in less than three months.

وَقَالَ أَبُو عُبَيْدٍ: إِنْ لَمْ تَأْتِ بِبَيِّنَةٍ لَمْ تُصَدَّقْ فِي أَقَلَّ مِنْ ثَلَاثَةِ أَشْهُرٍ.

L35063 According to one of al-Shāfiʿī's opinions: A woman's claim about her menstruation is not accepted if she states a duration shorter than thirty-two days and even a part of a day. This is because, in this opinion, the minimum menstruation period is one day, and the minimum purity period is fifteen days.

وَعَلَى أَحَدِ أَقْوَالِ الشَّافِعِيِّ: لَا تُصَدَّقُ فِي أَقَلَّ مِنْ اثْنَيْنِ وَثَلَاثِينَ يَوْمًا، وَبَعْضِ يَوْمٍ؛ لِأَنَّ أَقَلَّ الْحَيْضِ عِنْدَهُ فِي هَذَا الْقَوْلِ يَوْمٌ،، وَأَقَلُّ الطُّهْرِ خَمْسَةَ عَشَرَ يَوْمًا.

L35064–35065 Abu Muhammad said: Allah, the Mighty and Majestic, said: "Had it been from other than Allah, they would have found in it much contradiction." [Surah An-Nisa 4:82][5]

قَالَ أَبُو مُحَمَّدٍ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلافًا كَثِيرًا} [النساء: ٨٢] .

L35066 It is correct that these differences are not from Allah, the Exalted and Majestic—there is no doubt in that. Since they are not from Allah, they are invalid. Rather, they erred in this by stipulating the minimum of menstruation and the minimum of purity. Specifying something Allah, the Most High, has not specified is invalid, for it constitutes a law Allah has not permitted.

فَصَحَّ - أَنَّ هَذِهِ الِاخْتِلَافَاتِ لَيْسَتْ مِنْ عِنْدِ اللَّهِ عَزَّ وَجَلَّ لَا شَكَّ فِي ذَلِكَ، وَإِذْ لَيْسَتْ مِنْ عِنْدِ اللَّهِ فَلَيْسَتْ بِشَيْءٍ، وَإِنَّمَا أُتُوا فِي ذَلِكَ لِتَحْدِيدِهِمْ أَقَلَّ الْحَيْضِ، وَأَقَلَّ الطُّهْرِ، وَمِنْ الْبَاطِلِ تَحْدِيدُ شَيْءٍ لَمْ يُحَدَّهُ اللَّهُ عَزَّ وَجَلَّ فَهُوَ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L35067 If they say: It has been narrated from the Prophet—may Allah bless him and grant him peace—"She has a menstrual period of six or seven days in Allah's knowledge."

فَإِنْ قَالُوا: قَدْ جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «تَحِيضُ فِي عِلْمِ اللَّهِ سِتًّا أَوْ سَبْعًا» .

L35068 We said: It is not valid, and even if it were valid, it would be against you, not

قُلْنَا: لَا يَصِحُّ، وَلَوْ صَحَّ لَكَانَ عَلَيْكُمْ لَا لَكُمْ؛ لِأَنَّكُمْ لَا تَقُولُونَ بِهَذَا التَّحْدِيدِ، فِي أَقَلِّ الْحَيْضِ وَلَا فِي أَكْثَرِ.

[5] **Qur'an references (L35065):** Qur'an 4:82 (An-Nisa).

in your favor; for you do not uphold this restriction in neither the minimum nor the maximum period of menstruation.

فَإِنْ قَالُوا: صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «انْظُرِي عَدَدَ الْأَيَّامِ وَاللَّيَالِي الَّتِي كُنْتِ، تَحِيضِينَ» ؟ قُلْنَا: لَا شَكَّ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا أَمَرَ بِذَلِكَ مَنْ كَانَتْ تَحِيضُ أَيَّامًا وَلَيَالِيَ - وَقَدْ صَحَّ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «إذَا أَتَاكِ قُرْؤُكِ فَلَا تُصَلِّي، فَإِذَا مَرَّ الْقُرْءُ فَتَطَهَّرِي، ثُمَّ صَلِّي مِنْ الْقُرْءِ إلَى الْقُرْءِ» فَلَمْ يَجْعَلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِذَلِكَ حَدًّا لَا يَكُونُ أَقَلَّ مِنْهُ.

L35069 If they say: It is established that he—peace and blessings be upon him—said, "Observe the number of days and nights during which you were menstruating," we reply: There is no doubt that he—peace and blessings be upon him—only commanded this to one whose menstruation spans days and nights. It is authentically reported from him—peace and blessings be upon him—that he said, "When your menstruation begins, do not pray. When the menstrual period ends, purify yourself, then pray from one clean interval to the next." Thus, he—peace and blessings be upon him—did not set a minimum limit for that [duration].

فَصَحَّ أَنَّ ذَلِكَ الْخَبَرَ لِمَنْ لَهَا أَيَّامٌ وَلَيَالٍ مَعْرُوفَةٌ.

L35070 Thus, it has been established that the report pertains to those for whom it specifies a known period.

فَهَذَا الْآخَرُ لِمَنْ لَمْ يَبْلُغْ اللَّيَالِيَ وَلَا الْأَيَّامَ: كُلُّ خَبَرٍ عَلَى ظَاهِرِهِ دُونَ تَكْلِيفِ تَأْوِيلٍ فَاسِدٍ، أَوْ تَرْكِ أَحَدِهِمَا لِلْآخَرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L35071 As for the latter, it is for those who have not yet attained [the discernment marked by] nights and days [of experience]: every textual report must be taken at its apparent meaning without imposing a corrupt interpretation or abandoning one of the two [principles] for the other—and with Allah alone is success, the Exalted.

فَإِنْ قِيلَ: إنَّ اللَّهَ تَعَالَى جَعَلَ ثَلَاثَةَ أَشْهُرٍ بِإِزَاءِ ثَلَاثَةِ أَقْرَاءٍ؟

L35072 If it is asked: "Has Allah, the Exalted, established three months as equivalent to three menstrual cycles?"

قُلْنَا: نَعَمْ، وَلَيْسَ ذَلِكَ بِمُوجِبٍ أَنَّهُ لَا يَكُونُ قُرْءٌ فِي أَقَلَّ مِنْ شَهْرٍ، وَلَا فِي أَكْثَرَ مِنْهُ، وَأَنْتُمْ أَوَّلُ مُبْطِلٍ لِهَذِهِ الْحُجَّةِ، لِأَنَّكُمْ تُجِيزُونَ كَوْنَ قُرْءَيْنِ فِي شَهْرٍ وَاحِدٍ، وَتُجِيزُونَ أَنْ يَكُونَ قُرْءٌ وَاحِدٌ أَكْثَرَ مِنْ ثَلَاثَةِ أَشْهُرٍ - فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ.

L35073–35074 We said: Yes, and this does not necessitate that a clean interval cannot occur in less than a month nor in more than a month. Yet you yourselves are the first to invalidate this argument, for you permit two clean intervals within a single month and permit a single clean interval to extend beyond three months. Thus, all their contentious objections are thereby nullified.

فَإِنْ قَالُوا: لَا تَظْهَرُ الْبَرَاءَةُ مِنْ الرَّحِمِ فِي نِصْفِ شَهْرٍ فَأَقَلَّ؟ قُلْنَا: وَلَا فِي ثَلَاثَةِ أَشْهُرٍ، وَكُلُّكُمْ يَجْعَلُ الْعِدَّةَ تَتِمُّ بِالْأَقْرَاءِ فِي أَقَلَّ مِنْ ثَلَاثَةِ أَشْهُرٍ -.

L35075 If they say: "Does the clearance [from pregnancy] not become evident within half a month or less?" We reply: "Nor in three months. Yet all of you consider the waiting period completed through menstrual cycles in less than three months."

L35076 As for Mālik, he said: When menstruation begins, she ceases prayer and fasting, and her husband is prohibited from having intercourse with her.

When she observes purity from it [menstruation], she resumes prayer and fasting, and becomes permissible to her husband. However, this purity is not one by which she reckons [days] during the waiting period.

وَأَمَّا مَالِكٌ فَإِنَّهُ قَالَ: الْحَيْضُ مَتَى ظَهَرَ -: تَرَكَتْ الصَّلَاةَ وَالصَّوْمَ، وَحَرُمَ وَطْؤُهَا عَلَى زَوْجِهَا - فَمَتَى رَأَتْ الطُّهْرَ مِنْهُ صَلَّتْ، وَصَامَتْ وَحَلَّتْ لِزَوْجِهَا، إلَّا أَنَّ ذَلِكَ لَا يَكُونُ طُهْرًا تَعْتَدُّ بِهِ فِي الْعِدَّةِ.

L35077 Abū Muḥammad said: This is utterly corrupt, for it is impossible for it to be menstruation and purity that alter the rulings of prayer and fasting, the permission and prohibition of intercourse, and yet it cannot be menstruation and purity that count as qur' in the waiting period. This is a statement whose corruption is self-evident, as it contradicts the Quran, the Sunnah, and the statements of all the predecessors.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا فِي غَايَةِ الْفَسَادِ، إذْ مِنْ الْمُحَالِ أَنْ يَكُونَ حَيْضًا وَطُهْرًا يُحِيلُ حُكْمَ الصَّلَاةِ، وَالصِّيَامِ، وَإِبَاحَةَ الْوَطْءِ وَتَحْرِيمَهُ، وَلَا يَكُونُ حَيْضًا وَطُهْرًا يُعَدُّ قُرْءًا فِي الْعِدَّةِ - هَذَا قَوْلٌ لَا خَفَاءَ بِفَسَادِهِ، لِأَنَّهُ خِلَافٌ لِلْقُرْآنِ وَالسُّنَنِ، وَلِقَوْلِ كُلِّ مَنْ سَلَفَ.

L35078 We are not aware that Abu Hanifah and Malik based their opinion in this matter on the view of any predecessors, thus it becomes obligatory to refer back to the speech of Allah—the Mighty and Majestic—and the explanation of His Messenger, may Allah bless him and grant him peace.

وَمَا نَعْلَمُ لِأَبِي حَنِيفَةَ، وَمَالِكٍ، أَنَّهُمَا تَعَلَّقَا فِي هَذِهِ الْمَسْأَلَةِ بِقَوْلِ أَحَدٍ مِنْ السَّلَفِ، فَوَجَبَ الرُّجُوعُ إلَى كَلَامِ اللَّهِ عَزَّ وَجَلَّ وَبَيَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L35079 We found Him, the Exalted, stating: {three menstrual periods} [Al-Baqarah: 228], and He did not specify therein a number of days that must not be exceeded. {Your Lord is not forgetful} [Maryam: 64].[6]

فَوَجَدْنَاهُ تَعَالَى قَالَ: {ثَلَاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] وَلَمْ يَحُدَّ فِي ذَلِكَ بِعَدَدِ أَيَّامٍ لَا تُتَجَاوَزُ: {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L35080 He (peace and blessings be upon him) commanded that when menses begins, she should cease praying. And when it ends, she should pray, fast, and become permissible for her husband.

وَأَمَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إذَا أَقْبَلَتْ الْحَيْضَةُ - أَنْ تَدَعَ الصَّلَاةَ، فَإِذَا أَدْبَرَتْ صَلَّتْ، وَصَامَتْ، وَحَلَّتْ لِبَعْلِهَا.

L35081 He (peace be upon him) said: "Menstrual blood is black and recognizable. When it comes, she must stop praying." Yet he (peace be upon him) did not specify a fixed duration, so it is impermissible for anyone to set a limit in this matter. However, if her husband denies her claim, her assertion is not accepted unless supported by evidence from a just person, as we have mentioned.

وَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «دَمُ الْحَيْضِ أَسْوَدُ يُعْرَفُ فَإِذَا أَقْبَلَ فَدَعِي الصَّلَاةَ» وَلَمْ يَحُدَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - حَدًّا، فَلَا يَجُوزُ لِأَحَدٍ التَّحْدِيدُ فِي ذَلِكَ إلَّا أَنَّهُ إنْ أَنْكَرَ زَوْجُهَا ذَلِكَ لَمْ تُصَدَّقْ إلَّا بِبَيِّنَةِ عَدْلٍ كَمَا ذَكَرْنَا.

L35082 Similarly, if the husband claims that her waiting period has concluded while she asserts it has not, the husband's claim is not accepted unless he provides

وَكَذَلِكَ إنْ ادَّعَى الزَّوْجُ أَنَّ عِدَّتَهَا قَدْ تَمَّتْ وَقَالَتْ: هِيَ لَمْ تَتِمَّ - فَالزَّوْجُ غَيْرُ مُصَدَّقٍ إلَّا بِبَيِّنَةٍ، وَهِيَ مُصَدَّقَةٌ مَعَ يَمِينِهَا؛ لِأَنَّهَا مُدَّعًى عَلَيْهَا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[6] **Qur'an references (L35079):** Qur'an 19:64 (Maryam); Qur'an 2:228 (Al-Baqarah).

evidence, whereas her statement is accepted when supported by her oath, as she is the defendant in this claim. And with Allah, the Exalted, lies success.

L35083–35084 Abu Muhammad said: Some of them have raised clamorous objections concerning granting credence to her statement about the completion of her waiting period, citing Allah the Exalted's words: {It is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day} [Al-Baqarah 2:228]. Abu Muhammad responded: This verse contains no evidence obligating belief in her statement, nor do we know how it occurred to them that this verse requires credence to her claim. We have received via the chain of Abd al-Razzaq from Ibn Jurayj from Mujahid regarding the interpretation of this verse: It is not lawful for her to say "I am pregnant" while not being pregnant, nor "I am not pregnant" while being pregnant; nor "I am menstruating" while not menstruating, nor "I am not menstruating" while menstruating. Narrated from Ata, he said: She must not conceal the child, though I do not know—perhaps menstruation is included with it.[7]

L35085 Abū Muḥammad said: The woman who claims she has completed her waiting period [asserts she] did not conceal anything God the Exalted created in her womb. She merely claims that He ordained her menstruation. Whether she lies or speaks truthfully, she is not implicated by the verse's prohibition against concealing what God created in her womb. Even if this action is impermissible for her, it does not negate the husband's right to revocation during the waiting period, which God the Exalted has ordained.

L35086–35087 Abu Muhammad said: If she claims to be pregnant while the husband denies this, four midwives from those whose trustworthiness is beyond doubt must necessarily be presented to her, and this is obligatory.

L35088 If they testify to her pregnancy, the judge rules according to what the pregnancy necessitates. If they testify that she is not pregnant, her claim is invalidated. If they testify to her pregnancy and then it is confirmed that they lied or were mistaken, the judge rules against her to return what she took

[7] **Qur'an references (L35084):** Qur'an 2:228 (Al-Baqarah).

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ شَغَبَ بَعْضُهُمْ فِي تَصْدِيقِهَا فِي انْقِضَاءِ عِدَّتِهَا بِقَوْلِ اللَّهِ تَعَالَى: {وَلا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنَّ بِاللَّهِ وَالْيَوْمِ الآخِرِ} [البقرة: ٢٢٨] قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ فِي هَذِهِ الْآيَةِ دَلِيلٌ عَلَى وُجُوبِ تَصْدِيقِهَا، وَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ أَنَّ هَذِهِ الْآيَةَ تُوجِبُ تَصْدِيقَهَا؟ وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ مُجَاهِدٍ فِي تَفْسِيرِ هَذِهِ الْآيَةِ قَالَ: لَا يَحِلُّ لَهَا أَنْ تَقُولَ: أَنَا حُبْلَى - وَلَيْسَتْ حُبْلَى - وَلَا لَسْتُ حُبْلَى - وَهِيَ حُبْلَى - وَلَا أَنَا حَائِضٌ - وَلَيْسَتْ حَائِضًا - وَلَا لَسْتُ حَائِضًا - وَهِيَ حَائِضٌ - وَعَنْ عَطَاءٍ قَالَ: الْوَلَدُ لَا تَكْتُمُهُ، وَلَا أَدْرِي لَعَلَّ الْحَيْضَةَ مَعَهُ.

قَالَ أَبُو مُحَمَّدٍ: الْمُدَّعِيَةُ أَنَّهَا قَدْ أَتَمَّتْ عِدَّتَهَا لَمْ تَكْتُمْ شَيْئًا خَلَقَهُ اللَّهُ تَعَالَى فِي رَحِمِهَا، إِنَّمَا ادَّعَتْ أَنَّهُ تَعَالَى قَدْ خَلَقَ حَيْضَهَا، وَهِيَ إِمَّا كَاذِبَةٌ وَإِمَّا صَادِقَةٌ فَلَا مَدْخَلَ لَهَا فِيمَا فِي الْآيَةِ مِنْ تَحْرِيمِ كِتْمَانِ مَا خَلَقَ اللَّهُ فِي رَحِمِهَا - وَلَيْسَ فِي أَنَّ ذَلِكَ لَا يَحِلُّ لَهَا مَا يُسْقِطُ حَقَّ الزَّوْجِ الَّذِي أَوْجَبَهُ اللَّهُ تَعَالَى فِي الرَّجْعَةِ.

قَالَ أَبُو مُحَمَّدٍ: وَلَوِ ادَّعَتْ أَنَّهَا حَامِلٌ، وَأَنْكَرَ الزَّوْجُ ذَلِكَ عُرِضَ عَلَيْهَا مِنَ الْقَوَابِلِ مَنْ لَا يُشَكُّ فِي عَدَالَتِهِنَّ أَرْبَعٌ، وَلَا بُدَّ.

فَإِنْ شَهِدْنَ بِحَمْلِهَا قَضَى بِمَا يُوجِبُهُ الْحَمْلُ، وَإِنْ شَهِدْنَ بِأَنْ لَا حَمْلَ بِهَا بَطَلَتْ دَعْوَاهَا - فَلَوْ شَهِدْنَ - بِحَمْلِهَا ثُمَّ صَحَّ أَنَّهُنَّ كَذَبْنَ أَوْ أَوْهَمْنَ قَضَى عَلَيْهَا بِرَدِّ مَا أَخَذَتْ مِنَ الزَّوْجِ مِنْ نَفَقَةٍ وَكِسْوَةٍ -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

from the husband pertaining to maintenance and clothing. And success is from Allah, the Exalted.

An Issue on the Widow's Waiting Period and Mourning Observance

1995. Issue: The waiting period following death and the mourning restrictions observed during it are obligatory for a minor female—even if she is in the cradle—and likewise for the mentally incapacitated woman. This is the opinion of Mālik and al-Shāfiʿī.

Abu Hanifah said: She must observe the waiting period ('iddah), but is not required to undertake formal mourning (iḥdād), because she is not [legally] addressed.

Abu Muhammad said: If he possesses evidence that invalidates the mourning obligation during the waiting period, it is necessary to relieve her of the waiting period based on that evidence, for Allah the Exalted states: "And those of you who die and leave wives behind - they shall wait by themselves for four months and ten days" [Al-Baqarah: 234]. The minor girl is not addressed by this ruling, and similarly the mentally incapacitated woman - for she does not wait by herself.[8]

As for us, our proof in that is what we have narrated through the chain of Al-Bukhari: Abdullah ibn Yusuf narrated to us, Malik narrated to us from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm from Humaid ibn Nafi' from Zaynab bint Abi Salamah that she informed him that she heard Umm Salamah, the Mother of the Believers, say: A woman said, "O Messenger of Allah, my daughter's husband has died, and she suffered from an eye ailment. Should we apply kohl to her?" The Messenger of Allah—peace and blessings of Allah be upon him—said, "No, no. It is only four months and ten." And she related the report.

He did not specify (peace and blessings be upon him) major sins from minor ones, nor sane women from insane ones, nor did he address the woman

[8] **Qur'an references (L35092):** Qur'an 2:234 (Al-Baqarah).

[مَسْأَلَةُ عِدَّةُ الْوَفَاةِ وَالْإِحْدَادِ]

١٩٩٥ - مَسْأَلَةٌ: وَعِدَّةُ الْوَفَاةِ وَالْإِحْدَادِ فِيهَا يَلْزَمُ الصَّغِيرَةَ - وَلَوْ فِي الْمَهْدِ - وَكَذَلِكَ الْمَجْنُونَةُ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ.

وَقَالَ أَبُو حَنِيفَةَ: عَلَيْهَا الْعِدَّةُ، وَلَا إحْدَادَ عَلَيْهَا - قَالَ: لِأَنَّهَا غَيْرُ مُخَاطَبَةٍ.

قَالَ أَبُو مُحَمَّد: إنْ كَانَ ذَلِكَ عِنْدَهُ حُجَّةً مُسْقِطَةً لِلْإِحْدَادِ فَيَنْبَغِي أَنْ يُسْقِطَ بِذَلِكَ عَنْهَا الْعِدَّةَ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا} [البقرة: ٢٣٤] وَالصَّغِيرَةُ غَيْرُ مُخَاطَبَةٍ، وَكَذَلِكَ الْمَجْنُونَةُ - وَلَا تَتَرَبَّصُ بِنَفْسِهَا.

وَأَمَّا نَحْنُ، فَحُجَّتُنَا فِي ذَلِكَ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَنَا مَالِكٌ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ حُمَيْدِ بْنِ نَافِعٍ «عَنْ زَيْنَبَ بِنْتِ أَبِي سَلَمَةَ أَنَّهَا أَخْبَرَتْهُ أَنَّهَا سَمِعَتْ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ تَقُولُ: قَالَتْ امْرَأَةٌ: يَا رَسُولَ اللَّهِ إنَّ ابْنَتِي تُوُفِّيَ عَنْهَا زَوْجُهَا وَقَدْ اشْتَكَتْ عَيْنَهَا أَفَنُكَحِّلُهَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا لَا إنَّمَا هِيَ أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ» وَذَكَرَتْ الْخَبَرَ.

فَلَمْ يَخُصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - كَبِيرَةً مِنْ صَغِيرَةٍ، وَلَا عَاقِلَةً مِنْ مَجْنُونَةٍ، وَلَا خَاطَبَهَا، بَلْ خَاطَبَ غَيْرَهَا فِيهَا - فَهَذَا عُمُومٌ زَائِدٌ عَلَى مَا فِي الْقُرْآنِ.

herself; instead, he addressed others about her. This constitutes a generality that extends beyond what is in the Qur'an.

L35095–35096 If she begins observing the waiting period from the first night of the month, she proceeds through four lunar months and ten nights beginning with the fifth crescent. When dawn appears of the tenth day, her waiting period is concluded and she becomes eligible for remarriage, for the Almighty stated: {and ten} [Al-Baqarah: 234]. This is a feminine grammatical form, indicating nights. Had He intended days, He would have used the masculine form of the number ten (*ʿasharah*).[9]

L35097 If she begins the waiting period before or after that, her waiting period is 126 nights (including the days between them only), based on the statement of Allah's Messenger (peace and blessings of Allah be upon him): "The month is twenty-nine." It is impermissible to interject between the days of a single month anything not part of it, for this is invalid without doubt—and success comes from Allah, the Exalted.

L35098 **Issue: The woman observing the ʿiddah due to her husband's death must avoid kohl.**

L35099 1996. Matter: It is obligatory upon the woman observing the waiting period due to death to avoid all kohl entirely—whether necessary or not, even if she lost her eyesight—neither at night nor during the day. As for the medicinal poultice, it is permissible for her.

L35100 She is also obliged to avoid every dyed garment worn on the head, on the body, or on any part of the body—including black, green, red, yellow, or any other color—except *al-ʿaṣb* alone, which are embroidered garments made in Yemen, and it is permissible for her.

L35101 She is also religiously obligated to avoid all hair dyeing; she must not engage in any of it whatsoever, in its entirety.

L35102 She must avoid combing [her hair] except with the comb alone, for that [act]

فَإِنْ ابْتَدَأَتْ بِالْعِدَّةِ مِنْ أَوَّلِ لَيْلَةٍ مِنَ الشَّهْرِ مَشَتْ: أَرْبَعَةُ أَهِلَّةٍ وَعَشْرُ لَيَالٍ مِنَ الْهِلَالِ الْخَامِسِ، فَإِذَا طَلَعَ الْفَجْرُ مِنَ الْيَوْمِ الْعَاشِرِ: فَقَدْ تَمَّتْ عِدَّتُهَا وَحَلَّتْ لِلْأَزْوَاجِ؛ لِأَنَّهُ تَعَالَى قَالَ: {وَعَشْرًا} [البقرة: ٢٣٤] فَهُوَ لَفْظُ تَأْنِيثٍ، فَهُوَ لِلَّيَالِي، وَلَوْ أَرَادَ الْأَيَّامَ لَقَالَ: وَعَشْرَةً.

وَإِنْ بَدَأَتْ بِالْعِدَّةِ قَبْلَ ذَلِكَ أَوْ بَعْدَهُ، فَعِدَّتُهَا مِائَةُ لَيْلَةٍ وَسِتٍّ وَعِشْرُونَ لَيْلَةً بِمَا بَيْنَهَا مِنَ الْأَيَّامِ فَقَطْ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الشَّهْرُ تِسْعَةٌ وَعِشْرُونَ» وَلَا يَجُوزُ أَنْ يُحَالَ بَيْنَ أَيَّامِ شَهْرٍ وَاحِدٍ بِمَا لَيْسَ مِنْهُ، هَذَا مُحَالٌ بِلَا شَكٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمُعْتَدَّةُ مِنْ وَفَاةٍ تَجْتَنِبُ الْكُحْلَ]

١٩٩٦ - مَسْأَلَةٌ: وَفَرْضٌ عَلَى الْمُعْتَدَّةِ مِنَ الْوَفَاةِ أَنْ تَجْتَنِبَ الْكُحْلَ كُلَّهُ لِضَرُورَةٍ أَوْ لِغَيْرِ ضَرُورَةٍ - وَلَوْ ذَهَبَتْ عَيْنَاهَا - لَا لَيْلًا وَلَا نَهَارًا -، وَأَمَّا الضِّمَادُ - فَمُبَاحٌ لَهَا.

وَتَجْتَنِبُ أَيْضًا فَرْضًا: كُلَّ ثَوْبٍ مَصْبُوغٍ مِمَّا يُلْبَسُ فِي الرَّأْسِ، أَوْ عَلَى الْجَسَدِ، أَوْ عَلَى شَيْءٍ مِنْهُ، سَوَاءٌ فِي ذَلِكَ السَّوَادُ، وَالْخُضْرَةُ، وَالْحُمْرَةُ وَالصُّفْرَةُ، وَغَيْرُ ذَلِكَ - إِلَّا الْعَصْبَ وَحْدَهُ - وَهِيَ: ثِيَابٌ مُوَشَّاةٌ تُعْمَلُ بِالْيَمَنِ، فَهُوَ مُبَاحٌ لَهَا.

وَتَجْتَنِبُ أَيْضًا فَرْضًا: الْخِضَابَ كُلَّهُ، فَلَا تَقْرَبُهُ كُلَّهُ جُمْلَةً.

وَتَجْتَنِبُ الِامْتِشَاطَ حَاشَ بِالْمُشْطِ فَقَطْ، فَهُوَ حَلَالٌ لَهَا.

[9] **Qur'an references (L35096):** Qur'an 2:234 (Al-Baqarah).

is permissible for her.

L35103 She is also obligated to avoid all fragrances entirely and must not use them, except for costus root or cypress cloves—and only during her state of post-menstrual purity.

وَتَجْتَنِبُ أَيْضًا فَرْضًا - الطِّيبَ كُلَّهُ فَلَا تَقْرَبُهُ حَاشَا شَيْئًا مِنْ قُسْطٍ، أَوْ إِظْفَارٍ عِنْدَ طُهْرِهَا فَقَطْ.

L35104 And it is permissible for her to wear after that whatever she wishes of white silk, undyed yellow silk in its natural hue, wool of its natural color, white cotton, white linen from the fine linen of the Mudar tribe, fabrics from Marw, and other materials.

وَمُبَاحٌ لَهَا: أَنْ تَلْبَسَ بَعْدَ ذَلِكَ مَا شَاءَتْ مِنْ حَرِيرٍ أَبْيَضَ، أَوْ أَصْفَرَ مِنْ لَوْنِهِ الَّذِي لَمْ يُصْبَغْ، وَصُوفَ الْبَحْرِ الَّذِي هُوَ لَوْنُهُ، وَالْقُطْنَ الْأَبْيَضَ، وَالْكَتَّانَ الْأَبْيَضَ مِنْ دِبْقِ مُضَرَ، وَالْمَرْوِيَّ، وَغَيْرَ ذَلِكَ.

L35105 It is permissible for her to wear what is woven with gold—and all jewelry, including gold, silver, gemstones, rubies, emeralds, and others.

وَمُبَاحٌ لَهَا: أَنْ تَلْبَسَ الْمَنْسُوجَ بِالذَّهَبِ - وَالْحُلِيَّ كُلَّهُ: مِنَ الذَّهَبِ، وَالْفِضَّةِ، وَالْجَوْهَرِ وَالْيَاقُوتِ، وَالزُّمُرُّدِ، وَغَيْرِ ذَلِكَ.

L35106–35107 She must avoid entering the bathhouse, washing her head with khitmi (marshmallow root), and [interacting with] the child. These are the only five things she must avoid.

وَتَدْخُلُ الْحَمَّامَ، وَتَغْسِلُ رَأْسَهَا بِالْخِطْمِيِّ، وَالطِّفْلِ فَهِيَ خَمْسَةُ أَشْيَاءَ تَجْتَنِبُهَا فَقَطْ.

L35108 The proof of this is what Aḥmad ibn Qāsim narrated to us, stating: from my father Qāsim ibn Muḥammad ibn Qāsim, from my grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn Ismāʿīl, from Muḥammad ibn Kathīr al-ʿAbdī, from Sufyān al-Thawrī, from ʿAbdullāh ibn Abī Bakr, Ayyūb ibn Mūsā, and Yaḥyā ibn Saʿīd al-Anṣārī—all of them from Ḥumayd ibn Nāfiʿ, from Zaynab bint Umm Salamah: When the husband of al-Naḥḥām's daughter died, her mother came to the Prophet (peace be upon him) and said, "My daughter's eye is causing her pain. May I apply kohl to it?" He replied, "No." She said, "I fear her eye might rupture." He responded, "Even if it ruptures"—and Zaynab mentioned the rest of the report.

بُرْهَانُ ذَلِكَ -: مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ أَنَا مُحَمَّدُ بْنُ كَثِيرٍ الْعَبْدِيُّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ، وَأَيُّوبُ بْنُ مُوسَى، وَيَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ كُلُّهُمْ عَنْ حُمَيْدِ بْنِ نَافِعٍ «عَنْ زَيْنَبَ بِنْتِ أُمِّ سَلَمَةَ أَنَّ ابْنَةَ النَّحَّامِ تُوُفِّيَ عَنْهَا زَوْجُهَا، فَأَتَتْ أُمُّهَا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ ابْنَتِي تَشْتَكِي عَيْنَهَا أَفَأُكَحِّلُهَا؟ قَالَ: لَا قَالَتْ: إِنِّي أَخْشَى أَنْ تَنْفَقِئَ عَيْنُهَا؟ قَالَ: وَإِنْ انْفَقَأَتْ» وَذَكَرَتْ الْخَبَرَ.

L35109 Abu Muhammad said: Zaynab has companionship, and we have mentioned it before this from Zaynab from her mother—the Mother of the Believers (may Allah be pleased with her).

قَالَ أَبُو مُحَمَّدٍ: زَيْنَبُ لَهَا صُحْبَةٌ وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا عَنْ زَيْنَبَ عَنْ أُمِّهَا أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا -.

L35110 From the chain of Aḥmad ibn Shuʿayb: I [Ḥusayn ibn Muḥammad al-Zāriʿ

al-Baṣrī] report, from Khālid ibn al-Ḥārith, from Hishām ibn Ḥassān, from Ḥafṣa bint Sīrīn, from Umm ʿAṭiyya, who said: The Messenger of Allah (peace be upon him) said: "A woman shall not mourn any deceased for more than three days except for her husband, for she must mourn him four months and ten days. She shall not wear dyed garments except a garment of ʿaṣb fabric, nor apply kohl, nor comb her hair, nor use any fragrance except at the time of her purification when she becomes pure: a small measure of qust and nail-shaped [substance]."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا حُسَيْنُ بْنُ مُحَمَّدٍ الزَّارِعُ الْبَصْرِيُّ أَنَا خَالِدُ بْنُ الْحَارِثِ أَنَا هِشَامُ بْنُ حَسَّانٍ عَنْ حَفْصَةَ بِنْتِ سِيرِينَ عَنْ أُمِّ عَطِيَّةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُحِدُّ الْمَرْأَةُ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ إِلَّا عَلَى زَوْجٍ فَإِنَّهَا تُحِدُّ عَلَيْهِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا إِلَّا ثَوْبَ عَصْبٍ وَلَا تَكْتَحِلُ وَلَا تَمْتَشِطُ، وَلَا تَمَسُّ طِيبًا إِلَّا عِنْدَ طُهْرِهَا حِينَ تَطْهُرُ: نُبْذَةً مِنْ قُسْطٍ وَأَظْفَارٍ» .

L35111 Through the chain of Ahmad ibn Shuʿayb: From Muhammad ibn Mansur al-Makki, from Sufyan, from ʿAsim, from Hafsah bint Sirin, from Umm ʿAtiyyah, that the Messenger of Allah—peace and blessings be upon him—said: "It is not lawful for a woman who believes in Allah and the Last Day to mourn a deceased person beyond three days, except for her husband; nor may she apply kohl, apply henna, or wear dyed garments."[10]

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَنْصُورٍ الْمَكِّيُّ أَنَا سُفْيَانُ أَنَا عَاصِمٌ عَنْ حَفْصَةَ بِنْتِ سِيرِينَ عَنْ أُمِّ عَطِيَّةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُحِدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ إِلَّا عَلَى زَوْجٍ وَلَا تَكْتَحِلُ وَلَا تَخْتَضِبُ وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا» .

L35112–35113 These are the established narrations from the Messenger of Allah—may Allah bless him and grant him peace—and they encompass all that we have mentioned. Here are narrations we clarify as inauthentic—if Allah the Exalted wills—so that those unaware may not err through them.

فَهَذِهِ هِيَ الْآثَارُ الثَّابِتَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهِيَ جَامِعَةٌ لِكُلِّ مَا ذَكَرْنَا - وَهَهُنَا - آثَارٌ لَا تَصِحُّ، نُنَبِّهُ عَلَيْهَا - إِنْ شَاءَ اللَّهُ تَعَالَى لِئَلَّا يُخْطِئَ بِهَا مَنْ لَا يَعْرِفُ.

L35114 And here: Among them is a narration via the chain of Ibrāhīm ibn Ṭahmān – Badīl narrated from al-Ḥasan ibn Muslim from Ṣafiyyah bint Shaybah from Umm Salamah from the Prophet (peace be upon him), who said: "A woman whose husband has died must not wear safflower-dyed garments, nor stiffened clothing, nor jewelry." Abū Muḥammad said: This narration mentions jewelry.[11]

وَهَهُنَا -: مِنْهَا خَبَرٌ مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ طَهْمَانَ حَدَّثَنِي بَدِيلٌ عَنْ الْحَسَنِ بْنِ مُسْلِمٍ عَنْ صَفِيَّةَ بِنْتِ شَيْبَةَ عَنْ أُمِّ سَلَمَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْمُتَوَفَّى عَنْهَا زَوْجُهَا: لَا تَلْبَسُ الْمُعَصْفَرَ مِنْ الثِّيَابِ وَلَا الْمُمَشَّقَةَ وَلَا الْحُلِيَّ» . قَالَ أَبُو مُحَمَّدٍ: فِي هَذَا الْخَبَرِ ذِكْرُ الْحُلِيِّ،

L35115 And it is not sound because Ibrāhīm ibn Ṭahmān is weak, and had it been

وَلَا يَصِحُّ لِأَنَّ إِبْرَاهِيمَ بْنَ طَهْمَانَ ضَعِيفٌ، وَلَوْ صَحَّ لَقُلْنَا بِهِ.

[10] **Hadith references (L35111):** Sunan an-Nasai 3536.
[11] **Hadith references (L35114):** Sunan Abi Dawud 2304; Mishkat al-Masabih 3334.

sound, we would have upheld it.

وَالْإِحْدَادُ وَاجِبٌ عَلَى الذِّمِّيَّةِ - لِقَوْلِ اللَّهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] ، وَبِقَوْلِهِ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] وَالدِّينُ الْحُكْمُ.

L35116 Mourning is obligatory upon the dhimmi woman due to Allah's statement, the Exalted: "Judge between them by what Allah has revealed" [Al-Mā'idah: 49], and His saying: "Fight them until there is no fitnah and the religion is entirely for Allah" [Al-Anfāl: 39] – for the religion is the governance.[12]

فَوَاجِبٌ أَنْ يَحْكُمَ عَلَيْهِمْ بِحُكْمِ الْإِسْلَامِ، وَهُوَ لَازِمٌ لَهُمْ، وَبِتَرْكِهِمْ إِيَّاهُ اسْتَحَقُّوا الْخُلُودَ - وَمَنْ قَالَ: إِنَّهُ لَا يَلْزَمُهُمْ دِينُ الْإِسْلَامِ: فَقَدْ فَارَقَ الْإِسْلَامَ.

L35117 It is obligatory to judge them by the ruling of Islam, and it is binding upon them. By abandoning it, they have become deserving of eternal punishment in Hell. Whoever claims that the religion of Islam is not binding upon them has indeed abandoned Islam.

وَيَلْزَمُ الْإِحْدَادُ الْأَمَةَ الْمُتَوَفَّى عَنْهَا زَوْجُهَا كَالْحُرَّةِ.

L35118 Mourning is incumbent upon the bondwoman whose husband has died, just as it is for the free woman.

وَمِنَ الْآثَارِ الَّتِي ذَكَرْنَا -: أَثَرٌ رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ قَالَ: سَمِعْت الْمُغِيرَةَ بْنَ الضَّحَّاكِ يَقُولُ: «أَخْبَرَتْنِي أُمُّ حَكِيمٍ بِنْتُ أُسَيْدَ عَنْ أُمِّهَا أَنَّ زَوْجَهَا تُوُفِّيَ عَنْهَا فَأَرْسَلَتْ مَوْلَاتَهَا إلَى أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ تَسْأَلُهَا عَنْ كُحْلِ الْجَلَاءِ؟ فَقَالَتْ: لَا تَكْتَحِلُ بِهِ إلَّا لِأَمْرٍ لَا بُدَّ مِنْهُ يَشْتَدُّ عَلَيْكِ وَتَمْسَحِينَهُ بِالنَّهَارِ فَإِنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ عَلَيَّ حِينَ تُوُفِّيَ أَبُو سَلَمَةَ - وَقَدْ جَعَلْتُ عَلَى عَيْنِي صَبِرًا؟ فَقَالَ: مَا هَذَا يَا أُمَّ سَلَمَةَ؟

L35119 Among the narrations we mentioned is one we transmitted through Ibn Wahb's chain from Makhramah ibn Bukayr from his father, who said: I heard al-Mughīrah ibn al-Ḍaḥḥāk say: "Umm Ḥakīm bint Usayd informed me through her mother that when her husband died, she sent her freed-woman to Umm Salamah, the Mother of the Believers, to ask her about kohl of jalā'." Umm Salamah replied: "Do not apply it except for an unavoidable necessity that causes you hardship, and wipe it off during the day. For the Prophet—peace and blessings of Allah be upon him—entered upon me when Abū Salamah died, and I had applied aloe sap on my eye. He said: 'What is this, O Umm Salamah?'"

قُلْتُ: يَا رَسُولَ اللَّهِ إنَّمَا هُوَ صَبْرٌ لَيْسَ فِيهِ طِيبٌ، فَقَالَ: إنَّهُ يَشُبُّ الْوَجْهَ فَلَا تَجْعَلِينَهُ إلَّا بِاللَّيْلِ وَتَنْزِعِينَهُ بِالنَّهَارِ وَلَا تَمْتَشِطِي بِالطِّيبِ وَلَا بِالْحِنَّاءِ فَإِنَّهُ خِضَابٌ؟ قُلْت: بِأَيِّ شَيْءٍ أَمْتَشِطُ يَا رَسُولَ اللَّهِ؟ قَالَ: بِالسِّدْرِ تُغَلِّفِينَ بِهِ رَأْسَكِ» . أُمُّ حَكِيمٍ: مَجْهُولَةٌ، وَأُمُّهَا أَشَدُّ إيغَالًا فِي الْجَهَالَةِ.

L35120–35121 I said, "O Messenger of Allah, this is merely aloe (with no fragrance)." He replied, "It enhances the clarity of the complexion, so apply it only at night and remove it by day. Do not comb your hair with perfume or henna, for it is a dye." I asked, "With what should I comb my hair, O Messenger of Allah?" He said, "With lote leaves - apply them to your head." Umm Hakim is obscure, and her mother is even more deeply entrenched in obscurity.

[12] **Qur'an references (L35116):** Qur'an 5:49 (Al-Ma'idah); Qur'an 8:39 (Al-Anfal).

وَجَاءَ فِي ذَلِكَ -: عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، صَحَّ عَنْ ابْنِ عُمَرَ: لَا تَكْتَحِلُ وَلَا تَطَيَّبُ، وَلَا تَخْتَضِبُ، وَلَا تَلْبَسُ الْمُعَصْفَرَ، وَلَا ثَوْبًا مَصْبُوغًا إلَّا بُرْدًا، وَلَا تَتَزَيَّنُ بِحُلِيٍّ، وَلَا تَلْبَسُ شَيْئًا تُرِيدُ بِهِ الزِّينَةَ. وَلَا تَكْتَحِلُ بِكُحْلٍ تُرِيدُ بِهِ الزِّينَةَ إلَّا أَنْ تَشْتَكِيَ عَيْنَهَا.

L35122 It is mentioned regarding this matter from the Companions - may Allah be pleased with them - and it is authentically reported from Ibn Umar: “She must not apply kohl, perfume herself, dye herself with henna, wear safflower-dyed garments, nor any dyed garment except a *burd*; she must not adorn herself with jewelry, wear anything intended for adornment, nor apply kohl with the intent of beautification unless she has an eye ailment.”

وَصَحَّ عَنْهُ أَيْضًا - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ لَا تَمَسُّ الْمُتَوَفَّى عَنْهَا زَوْجُهَا طِيبًا، وَلَا تَخْتَضِبُ وَلَا تَكْتَحِلُ، وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا، إلَّا ثَوْبَ عَصْبٍ تَتَجَلْبَبُ بِهِ - وَهَذَا قَوْلُنَا.

L35123 It has also been authentically reported from him—through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from ʿUbayd Allāh ibn ʿUmar, from Nāfiʿ, from Ibn ʿUmar—that a woman whose husband has died during her waiting period may not touch any perfume, nor dye with henna, nor apply kohl, nor wear a dyed garment, except for a garment of undyed striped ʿaṣb cloth which she wears as an outer garment—and this is our position.

وَصَحَّ عَنْ أُمِّ عَطِيَّةَ أَنْ لَا تَلْبَسَ فِي الْإِحْدَادِ الثِّيَابَ الْمُصْبَغَةَ إلَّا الْعَصْبَ، وَأَنْ لَا تَمَسَّ طِيبًا إلَّا أَدْنَاهُ فِي الطُّهْرِ: الْقُسْطَ، وَالْأَظْفَارَ.

L35124 It is authentically reported from Umm ʿAṭiyyah that during mourning, a woman must not wear dyed garments except for undyed cloth (ʿaṣb), nor may she apply any perfume except the least of it - costus (qusṭ) and aromatic buds (aẓfār) - during ritual purity.

وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا هِشَامُ بْنُ حَسَّانٍ عَنْ ابْنِ سِيرِينَ، وَحَفْصَةُ عَنْ أُمِّ عَطِيَّةَ قَالَتْ فِي الْمُتَوَفَّى عَنْهَا زَوْجُهَا، أَنَّهَا لَا تَمَسُّ خِضَابًا، وَلَا تَكْتَحِلُ بِكُحْلٍ زِينَةً، وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا، وَلَا تَمَسُّ مِنْ الطِّيبِ إلَّا أَدْنَى الطِّيبِ: نُبْذَةً مِنْ قُسْطٍ، وَأَظْفَارٍ عِنْدَ طُهْرِهَا.

L35125 It has been narrated to us via the chain of Saʿīd ibn Manṣūr → Ḥushaym → Hishām ibn Ḥassān → Ibn Sīrīn and Ḥafṣah—narrating from Umm ʿAṭiyyah—who said regarding a woman whose husband has died: She must not apply henna or hair dye, nor adorn herself with decorative kohl, nor wear dyed garments, nor use perfume except the most minimal amount: a small portion of costus (قُسْط) and cloves (أَظْفَار) at the time of her purification after menstruation.

وَقَدْ رُوِّينَا عَنْ أُمِّ سَلَمَةَ - أُمِّ الْمُؤْمِنِينَ -: لَا تَكْتَحِلُ وَإِنْ انْفَقَأَتْ عَيْنَاهَا.

L35126 It has been narrated to us from Umm Salamah—the Mother of the Believers—“Do not apply kohl, even if her eyes were to burst.”

وَهَذَا قَوْلُنَا.

L35127 And this is our position.

وَرُوِّينَا عَنْ ابْنِ عَبَّاسٍ أَنَّهَا تَجْتَنِبُ الطِّيبَ وَالزِّينَةَ.

L35128 It has been reported to us from Ibn Abbas that a woman must avoid fragrances and adornment.

L35129–35130 It has been narrated to us from Umm Salamah—the Mother of the Believers—through the chain of ʿAbd al-Razzāq, from Maʿmar, from Budayl al-ʿUqaylī, from al-Ḥasan ibn Muslim, from Ṣafiyyah bint Shaybah, who nar-

rated from Umm Salamah, the Mother of the Believers (whose husband had passed away): she must not wear anything of dyed garments, nor apply kohl, nor wear a ring, nor dye, nor apply perfume.

وَرُوِّينَا عَنْ أُمِّ سَلَمَةَ - أُمِّ الْمُؤْمِنِينَ - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ بُدَيْلٍ الْعُقَيْلِيِّ عَنْ الْحَسَنِ بْنِ مُسْلِمٍ عَنْ صَفِيَّةَ بِنْتِ شَيْبَةَ عَنْ أُمِّ سَلَمَةَ - أُمِّ الْمُؤْمِنِينَ - الْمُتَوَفَّى عَنْهَا زَوْجُهَا: لَا تَلْبَسُ مِنْ الثِّيَابِ الْمُصْبَغَةِ شَيْئًا، وَلَا تَكْتَحِلُ، وَلَا تَلْبَسُ خَاتَمًا، وَلَا تَخْتَضِبُ، وَلَا تَطَيَّبُ.

L35131 It is reported from Ibn Abbas or Saʿīd ibn al-Musayyib that a woman whose husband has died during her waiting period must not use perfume, wear a garment dyed with conspicuous colors, apply kohl, wear jewelry, or apply dye.

وَعَنْ ابْنِ عَبَّاسٍ - أَوْ سَعِيدِ بْنِ الْمُسَيِّبِ -: الْمُتَوَفَّى عَنْهَا زَوْجُهَا لَا تَمَسُّ طِيبًا، وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا، وَلَا تَكْتَحِلُ، وَلَا تَلْبَسُ الْحُلِيَّ، وَلَا تَخْتَضِبُ.

L35132 And from a chain that is not sound from ʿĀʾishah—the Mother of the Believers—due to Ibn Lahiʿah's presence in it: A widow should not wear saffron-dyed clothing, nor use perfume, nor apply kohl, nor wear jewelry. She may wear striped woven garments if she wishes.

وَمِنْ طَرِيقٍ لَا تَصِحُّ عَنْ عَائِشَةَ - أُمِّ الْمُؤْمِنِينَ - لِأَنَّ فِيهَا ابْنَ لَهِيعَةَ -: لَا تَلْبَسُ الْمُتَوَفَّى عَنْهَا مُعَصْفَرًا، وَلَا تَقْرَبُ طِيبًا، وَلَا تَكْتَحِلُ، وَلَا تَلْبَسُ حُلِيًّا، وَتَلْبَسُ - إنْ شَاءَتْ - ثِيَابَ الْعَصْبِ.

L35133 As for the followers—it is authentically reported from ʻAṭāʾ that a woman in mourning must not wear dyed garments or jewelry, nor use perfume or adornment. She must not apply antimony-based kohl, as it constitutes adornment, nor use ḥaḍḍ—as they claimed it contains wars—though she may apply aloe-based kohl if she wishes. If she already wears silver jewelry, she need not remove it if she chooses, but if she does not wear it, she must not don it for adornment. If compelled to use antimony or perfume medicinally, she may do so. He disliked gold for her and others except as a ring. He said: She may apply henna and katam to her hair. He stated: Costus root and cloves are not perfume, and she must not adorn her howdah if she rides in it. He regarded garments from Marw and Herat as adornment and pearls as adornment. He said: If she wears silver rings set with rubies or other gems, she may retain them. He ruled: If a young girl's husband dies, her guardians may adorn and perfume her.

أَمَّا التَّابِعُونَ - فَصَحَّ عَنْ عَطَاءٍ أَنَّ الْمُتَوَفَّى عَنْهَا لَا تَلْبَسُ صِبَاغًا، وَلَا حُلِيًّا وَتُنْهَى عَنْ الطِّيبِ، وَالزِّينَةِ، وَلَا تَكْتَحِلُ بِإِثْمِدٍ، فَإِنَّ فِيهِ زِينَةً، وَلَا تُخَضِّضُ فَإِنَّ فِيهِ - زَعَمُوا - وَرْسًا، وَتَكْتَحِلُ بِالصَّبِرِ - إنْ شَاءَتْ - فَإِنْ كَانَ عَلَيْهَا حُلِيٌّ فِضَّةٍ فَلَا تَنْزِعُهُ - إنْ شَاءَتْ - وَإِنْ لَمْ يَكُنْ عَلَيْهَا فَلَا تَلْبَسُهُ تُرِيدُ بِهِ الزِّينَةَ، فَإِنْ اُضْطُرَّتْ إلَى الْإِثْمِدِ، أَوْ الطِّيبِ: فَلَهَا أَنْ تَتَدَاوَى بِهِ، وَكَانَ يَكْرَهُ الذَّهَبَ لَهَا، وَلِغَيْرِهَا إلَّا أَنْ يَكُونَ خَاتَمًا. قَالَ: وَلَهَا أَنْ تَمْتَشِطَ بِالْحِنَّاءِ، وَالْكَتَمِ. قَالَ: وَلَيْسَ الْقُسْطُ، وَالْأَظْفَارُ طِيبًا، وَلَا تُزَيِّنُ هَوْدَجَهَا - إنْ رَكِبَتْ فِيهِ وَرَأَى: الْمَرْوِيَّ، وَالْهَرَوِيَّ زِينَةً - وَرَأَى اللُّؤْلُؤَ زِينَةً. قَالَ: فَإِنْ كَانَ عَلَيْهَا خَوَاتِمُ فِضَّةٍ فِيهَا فُصُوصٌ يَوَاقِيتُ، أَوْ غَيْرُهُ: فَلَهَا أَنْ تَلْبَسَهُ - قَالَ: فَإِنْ تُوُفِّيَ زَوْجُ الصَّغِيرَةِ فَلِأَهْلِهَا أَنْ يُزَيِّنُوهَا وَيُطَيِّبُوهَا.

L35134 It has been reported from Saʿīd ibn al-Musayyib, ʿAmrah bint ʿAbd al-

Raḥmān, ʿUrwah ibn al-Zubayr, ʿAṭāʾ, Yaḥyā ibn Saʿīd al-Anṣārī, and Rabīʿah that she should not wear jewelry nor garments dyed with any kind of dye.

وَرُوِيَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَعَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَعَطَاءٍ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ: أَنَّهَا لَا تَلْبَسُ حُلِيًّا، وَلَا ثَوْبًا مَصْبُوغًا بِشَيْءٍ مِنْ الْأَصْبَاغِ.

L35135 It is authentically reported from Urwah ibn al-Zubayr: A woman whose husband has died must not apply kohl, dye her hair, comb her hair, wear a garment dyed with wars or saffron, nor wear red clothing except for those made of ʿaṣb—a striped Yemeni cloth.

وَصَحَّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: الْمُتَوَفَّى عَنْهَا زَوْجُهَا لَا تَكْتَحِلُ، وَلَا تَخْتَضِبُ وَلَا تَمْتَشِطُ، وَلَا تَلْبَسُ ثَوْبًا فِيهِ وَرْسٌ، أَوْ زَعْفَرَانٌ، وَلَا تَلْبَسُ الْحُمْرَةَ إلَّا الْعَصْبَ.

L35136–35137 It is authentically reported from Az-Zuhri that he said: It is disliked for a widow to bind her hair tightly, wear black in any form, wear garments dyed with bright colors, adorn herself with jewelry, or apply perfume.

وَصَحَّ عَنْ الزُّهْرِيِّ قَالَ: يُكْرَهُ لِلْمُتَوَفَّى عَنْهَا: الْعَصْبُ وَالسَّوَادُ، وَلَا تَلْبَسُ الثِّيَابَ الْمُصْبَغَةَ، وَلَا تَلْبَسُ حُلِيًّا وَلَا طِيبًا.

L35138 It has been authentically reported from Ibrāhīm al-Nakhaʿī: A widow in her waiting period must not apply yellow dye, nor touch perfume, nor apply kohl for adornment. However, she may apply kohl made from medicinal kohl (zūr) or aloe (ṣabr) - except if her eyes become inflamed, in which case she may apply kohl.

وَصَحَّ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: الْمُتَوَفَّى عَنْهَا لَا تَمَسُّ الصُّفْرَةَ، وَلَا الطِّيبَ، وَلَا تَكْتَحِلُ بِكُحْلٍ زِينَةً، لَكِنْ بِزُورٍ، أَوْ صَبْرٍ، إلَّا أَنْ تَرْمَدَ فَتَكْتَحِلَ.

L35139 It has been authentically reported from Urwa ibn al-Zubayr: A woman whose husband died said to him, “I have nothing but this headscarf—and it is dyed with sappanwood?” He replied, “Dye it black.”

وَصَحَّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّ امْرَأَةً مَاتَ زَوْجُهَا، قَالَتْ لَهُ: لَيْسَ لِي إلَّا هَذَا الْخِمَارُ - وَهُوَ مَصْبُوغٌ بِبَقَّمٍ؟ فَقَالَ: أُصْبُغِيهِ بِسَوَادٍ -.

L35140 As for the later scholars, Abū Ḥanīfa and his companions stated: She must abstain from adornment, perfume, kohl, and garments dyed specifically with wars (a type of dye plant), saffron, or safflower. She must not apply oil at all—whether perfumed or not.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ، وَأَصْحَابَهُ قَالُوا: تَمْتَنِعُ مِنْ الزِّينَةِ، وَالطِّيبِ، وَالْكُحْلِ، وَالثِّيَابِ الْمَصْبُوغَةِ بِالْوَرْسِ، وَالزَّعْفَرَانِ، وَالْعُصْفُرِ خَاصَّةً - وَلَا تَدَّهِنُ بِزَيْتٍ أَصْلًا، سَوَاءٌ مُطَيَّبًا كَانَ أَوْ غَيْرَ مُطَيَّبٍ.

L35141 They permitted her the red *khazz*.

وَأَبَاحُوا لَهَا الْخَزَّ الْأَحْمَرَ.

L35142 Malik said: She must avoid all adornment and jewelry entirely—rings and other items. She may not wear silk or striped cloth, except coarse striped cloth specifically, nor any dyed garment except those dyed black. She must not apply kohl whatsoever, nor use any perfume, nor any oil scented with

وَقَالَ مَالِكٌ: تَجْتَنِبُ الزِّينَةَ كُلَّهَا، وَالْحُلِيَّ: الْخَاتَمَ، وَغَيْرَهُ - وَلَا تَلْبَسُ الْخَزَّ، وَلَا الْعَصْبَ، إلَّا الْعَصْبَ الْغَلِيظَ خَاصَّةً، وَلَا ثَوْبًا مَصْبُوغًا إلَّا بِسَوَادٍ وَلَا تَكْتَحِلُ أَصْلًا، وَلَا تَقْرَبُ

basil or other substances. She may not comb her hair with henna or katam, nor use anything that remains in the hair, but may use sidr or similar substances. She may apply oil or sesame oil (shiraj).

شَيْئًا مِنْ الطِّيبِ، وَلَا دُهْنًا مُطَيَّبًا بِرَيْحَانٍ، أَوْ غَيْرِهِ، وَلَا تَمْتَشِطُ بِحِنَّاءٍ، وَلَا بِكَتَمٍ، وَلَا بِشَيْءٍ يَخْتَمِرُ فِي الرَّأْسِ، لَكِنْ بِالسِّدْرِ، وَمَا أَشْبَهَهُ - وَتَدَّهِنُ بِالزَّيْتِ وَالشَّيْرَجِ.

L35143 Al-Shafi'i said: She must avoid all adornment and all ointments—oil and similar substances, whether applied to the head or elsewhere. She should not apply kohl that contains adornment, but there is no harm in using plain kohl without adornment. If compelled to use kohl containing adornment, she may apply it at night and wipe it off during the day, such as aloe sap and the like.

وَقَالَ الشَّافِعِيُّ: تَجْتَنِبُ الزِّينَةَ كُلَّهَا، وَالدُّهْنَ كُلَّهُ: الزَّيْتَ، وَغَيْرَهُ، فِي الرَّأْسِ، وَغَيْرِهِ، وَلَا تَكْتَحِلُ بِمَا فِيهِ زِينَةٌ، وَلَا بَأْسَ بِالْكُحْلِ الَّذِي لَا زِينَةَ فِيهِ، فَإِنْ اُضْطُرَّتْ إلَى مَا فِيهِ زِينَةٌ مِنْهُ جَعَلَتْهُ لَيْلًا، وَمَسَحَتْهُ نَهَارًا، كَالصَّبْرِ، وَنَحْوِهِ.

L35144 She avoids any dye containing ornamentation, wears white, black-dyed [clothing], green hues proximate to black, and non-ornamental [items], and avoids perfume.

وَتَجْتَنِبُ كُلَّ صِبَاغٍ فِيهِ زِينَةٌ، وَتَلْبَسُ الْبَيَاضَ، وَالْمَصْبُوغَ بِالسَّوَادِ، وَالْخُضْرَةَ الْمُقَارِبَةَ لِلسَّوَادِ، وَمَا لَيْسَ بِزِينَةٍ - وَتَجْتَنِبُ الطِّيبَ.

L35145 Abu Muhammad said: All these statements are erroneous, and there is no obscurity in this, for there is no proof whatsoever in any of them to validate them—neither from the Quran nor the Sunnah—let alone Abu Hanifah's statement restricting exclusively to what is dyed with wars, saffron, or safflower.

قَالَ أَبُو مُحَمَّد: كُلُّ هَذِهِ الْأَقْوَالِ خَطَأٌ لَا خَفَاءَ بِهِ؛ لِأَنَّهَا لَيْسَ بِشَيْءٍ مِنْهَا بُرْهَانٌ يُصَحِّحُهُ، لَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا سِيَّمَا قَوْلَ أَبِي حَنِيفَةَ فِي تَخْصِيصِ مَا صُبِغَ بِوَرْسٍ، أَوْ زَعْفَرَانٍ، أَوْ عُصْفُرٍ خَاصَّةً.

L35146 The opinion of Mālik concerning avoiding sinews except the thick one, and the opinion of al-Shāfiʿī regarding specifying dyes: these are positions not known from anyone before them, and they have no basis whatsoever.

وَقَوْلُ مَالِكٍ فِي اجْتِنَابِ الْعَصْبِ إلَّا الْغَلِيظَ مِنْهُ، وَقَوْلُ الشَّافِعِيِّ فِي تَخْصِيصِ الْأَصْبَاغِ، فَإِنَّهَا أَقْوَالٌ لَا تُعْرَفُ عَنْ أَحَدٍ قَبْلَهُمْ، وَلَا مَعْنَى لَهَا أَصْلًا.

L35147–35148 If it is said: "The meaning in mourning is avoiding adornment?" We reply: Allah is far removed from that. By Allah, had the Messenger of Allah—peace and blessings be upon him—intended this, he would not have failed to state it in a single word. Nor would he have elaborated by mentioning dye except ʿaṣb, perfume except qusṭ, trimming nails only at the time of post-menstrual purification, or restricted applying kohl for adornment and styling hair specifically to henna dyeing. Yet he—upon him be peace and blessings—was endowed with comprehensive speech.

فَإِنْ قِيلَ: الْمَعْنَى فِي الْإِحْدَادِ اجْتِنَابُ الزِّينَةِ؟ قُلْنَا: حَاشَا لِلَّهِ مِنْ ذَلِكَ، وَاَللَّهِ لَوْ أَرَادَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ لَمَا عَجَزَ عَنْ كَلِمَةٍ وَاحِدَةٍ يَقُولُهَا، وَلَا يُطَوِّلُ بِذِكْرِ الصِّبَاغِ إلَّا الْعَصْبَ، وَبِذِكْرِ الطِّيبِ إلَّا الْقُسْطَ، وَالْأَظْفَارَ عِنْدَ الطُّهْرِ، خَاصَّةً، وَبِذِكْرِ الْكُحْلِ، وَالِامْتِشَاطِ، فِي الِاخْتِضَابِ خَاصَّةً، وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَدْ أُوتِيَ جَوَامِعَ الْكَلِمِ.

L35149 Among the definitively established falsehoods is attributing to him—peace

and blessings be upon him—that he intended adornment without specifying it, and that he merely intended some dye yet generalized it. This is the undoubted falsehood, the definitive lie, and every statement devoid of proof is falsehood.

وَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ -: أَنْ يُنْسَبَ إلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّهُ أَرَادَ الزِّينَةَ فَلَمْ يُسَمِّهَا، وَلَمْ يُرِدْ إلَّا بَعْضَ الصِّبَاغِ فَسَمَّاهُ عُمُومًا - هَذَا الْبَاطِلُ الَّذِي لَا شَكَّ فِيهِ، وَالْكَذِبُ الْمَقْطُوعُ بِهِ، وَكُلُّ قَوْلٍ عَرِيَ مِنْ الْبُرْهَانِ فَهُوَ بَاطِلٌ.

L35150 If they say: "The purpose of prescribed mourning is merely grief?" We respond: This is a falsehood. If that were the case, it would have been obligatory first upon the Prophet (peace be upon him)—for there is no grief more obligatory than grief for him (peace be upon him)—then next upon the parents. If a woman were to openly declare that at no time was she made as happy as by her husband's death, she would bear no sin nor reproach for that, provided she did not neglect her marital duties during his lifetime. If the prescribed mourning period were intended for grieving him, it would be permissible for her after the waiting period, as grieving him after the waiting period is not forbidden. However, she is not permitted to observe prescribed mourning beyond the specified duration.

فَإِنْ قَالُوا: إنَّمَا قَصَدَ بِالْإِحْدَادِ الْحُزْنَ؟ قُلْنَا: هَذَا الْكَذِبُ، لَوْ كَانَ ذَلِكَ لَكَانَ وَاجِبًا عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي لَا حُزْنَ أَوْجَبَ مِنْ الْحُزْنِ عَلَيْهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ عَلَى الْأَبَوَيْنِ، وَلَوْ أَنَّ امْرَأَةً أَعْلَنَتْ بِأَنَّهَا لَمْ تُسَرَّ قَطُّ كَسُرُورِهَا بِمَوْتِ زَوْجِهَا لَمَا كَانَ عَلَيْهَا فِي ذَلِكَ إثْمٌ، وَلَا مَلَامَةٌ، إذْ لَمْ تُقَصِّرْ فِي حُقُوقِ التَّبَعُّلِ فِي حَيَاتِهِ، وَلَوْ كَانَ لِلْحُزْنِ عَلَيْهِ لَكَانَ مُبَاحًا لَهَا بَعْدَ الْعِدَّةِ، وَالْحُزْنُ عَلَيْهِ بَعْدَ الْعِدَّةِ لَيْسَ مَحْظُورًا، وَلَا يَجُوزُ لَهَا الْإِحْدَادُ أَكْثَرَ الْمُدَّةِ الْمَذْكُورَةِ.

L35151 And here is another opinion—as reported to us through the chain of Ḥammād ibn Salamah from Ḥumayd that Al-Ḥasan Al-Baṣrī used to say: The triply divorced woman and the widow may both apply kohl, comb their hair, apply perfume, dye with henna, wear sandals, and apply whatever they wish.

وَهَهُنَا قَوْلٌ آخَرُ - كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ أَنَّ الْحَسَنَ الْبَصْرِيَّ كَانَ يَقُولُ: الْمُطَلَّقَةُ ثَلَاثًا، أَوْ الْمُتَوَفَّى عَنْهَا زَوْجُهَا يَكْتَحِلَانِ وَيَمْتَشِطَانِ وَيَطَّيَّبَانِ، وَيَخْتَضِبَانِ، وَيَنْتَعِلَانِ، وَيَضَعَانِ مَا شَاءَتَا.

L35152 It is reported through the chain of transmission of Shu'bah from al-Ḥakam ibn 'Utaybah that the widow does not observe the mourning period ('iddah).

وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ الْمُتَوَفَّى عَنْهَا لَا تُحِدُّ.

L35153–35155 Abū Muḥammad said: The proponents of this doctrine cited as evidence by what – I am Muḥammad ibn Sa'īd ibn Nubāt, I am Aḥmad ibn 'Awn Allāh, I am Qāsim ibn Aṣbagh, I am Muḥammad ibn 'Abd al-Salām al-Khushanī, I am Muḥammad ibn Bashshār, I am Muḥammad ibn Ja'far, from Shu'bah, from al-Ḥakam ibn 'Utaybah, from 'Abd Allāh ibn Shaddād ibn al-Hādī: "That the Messenger of..." Allah's Messenger—may Allah's peace and blessings be upon him—said to the wife of Ja'far ibn Abī Ṭālib: "When three days have passed, then wear whatever you wish," or "after three days"—Shu'bah doubted.

قَالَ أَبُو مُحَمَّدٍ: وَاحْتَجَّ أَهْلُ هَذِهِ الْمَقَالَةِ بِمَا - أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا أَحْمَدُ بْنُ عَوْنِ اللَّهِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ أَنَا شُعْبَةُ أَنَا الْحَكَمُ بْنُ عُتَيْبَةَ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادِ بْنِ الْهَادِي «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لِامْرَأَةِ جَعْفَرِ بْنِ أَبِي طَالِبٍ: إذَا كَانَ ثَلَاثَةُ أَيَّامٍ فَالْبَسِي مَا شِئْتِ، أَوْ إذَا كَانَ بَعْدَ ثَلَاثَةِ أَيَّامٍ» شُعْبَةُ شَكَّ.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ: أَنَا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ الْحَسَنِ بْنِ سَعِيدٍ عَنْ عَبْدِ اللَّهِ بْنِ شَدَّادٍ «أَنَّ أَسْمَاءَ بِنْتَ عُمَيْسٍ اسْتَأْذَنَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تَبْكِيَ عَلَى جَعْفَرٍ - وَهِيَ امْرَأَتُهُ - فَأَذِنَ لَهَا ثَلَاثَةَ أَيَّامٍ، ثُمَّ بَعَثَ إلَيْهَا بَعْدَ ثَلَاثَةِ أَيَّامٍ: أَنْ تَطَهَّرِي وَاكْتَحِلِي.» قَالَ أَبُو مُحَمَّدٍ: هَذَا مُنْقَطِعٌ وَلَا حُجَّةَ فِيهِ؛ لِأَنَّ عَبْدَ اللَّهِ بْنَ شَدَّادٍ لَمْ يَسْمَعْ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْئًا.

From the path of Hammad ibn Salama: I [narrate] from Al-Hajjaj ibn Artat, from Al-Hasan ibn Sa'id, from 'Abdullah ibn Shaddad, that Asma' bint 'Umays sought permission from the Prophet (peace be upon him) to mourn Ja'far—who was her husband—so he permitted her for three days. Then after three days, he sent her a message instructing her to purify herself and apply kohl. Abu Muhammad said: This chain is disconnected and contains no valid evidence, for 'Abdullah ibn Shaddad did not hear anything from the Messenger of Allah (peace be upon him).

قَالَ عَلِيٌّ: وَلَقَدْ كَانَ يَلْزَمُ الْآخِذِينَ بِالْمُرْسَلِ إذَا وَافَقَ آرَاءَهُمْ الْفَاسِدَةَ وَرَدُّوا بِهِ السُّنَنَ الثَّابِتَةَ: كَصَلَاةِ الْإِمَامِ قَاعِدًا لِمَرَضٍ بِالْأَصِحَّاءِ.

Ali said: Indeed, those who persist in rigidly following *mursal* reports—when they align with their flawed opinions—use them to reject established Sunnah practices, such as [rejecting] the Imam praying seated due to illness while the congregation is healthy.

وَكَإِيجَابِ الْعِدَّةِ أَنْ يَأْخُذُوا بِهَذَا، وَلَا سِيَّمَا وَالْإِحْدَادُ رَوَتْهُ أُمُّ سَلَمَةَ - أُمُّ الْمُؤْمِنِينَ -: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَ بِهِ إثْرَ مَوْتِ أَبِي سَلَمَةَ، وَلَا خِلَافَ فِي أَنَّ مَوْتَ أَبِي سَلَمَةَ كَانَ قَبْلَ قَتْلِ جَعْفَرٍ - رَضِيَ اللَّهُ عَنْهُمَا - بِسَنَتَيْنِ - وَلَكِنَّهُمَا لَا يُبَالُونَ بِالتَّنَاقُضِ.

The obligation of the waiting period entails adhering to this practice of mourning, all the more so because Umm Salamah - the Mother of the Believers - reported that the Prophet (peace and blessings be upon him) commanded it following Abu Salamah's death. There is no disagreement that Abu Salamah's death occurred two years before the killing of Ja'far (may Allah be pleased with them both). Yet they pay no heed to the contradiction.

قَالَ عَلِيٌّ: إنْ غُسِلَ الثَّوْبُ الْمَصْبُوغُ حَتَّى لَا يَبْقَى فِيهِ أَثَرُ صِبَاغٍ فَلَيْسَ مَصْبُوغًا: فَلَهَا لِبَاسُهُ.

Ali said: If a dyed garment is washed until no trace of dye remains in it, it is not dyed; therefore, for her, wearing it is permissible.

[مَسْأَلَةُ الْإِحْدَادِ عَلَى الْمَيِّتِ]

The Ruling on the Widow's 'Iddah (Mourning Period) for the Deceased

١٩٩٧ - مَسْأَلَةٌ: فَلَوْ الْتَزَمَتْ الْمَرْأَةُ هَذَا ثَلَاثَةَ أَيَّامٍ عَلَى أَبٍ، أَوْ أَخٍ، أَوْ ابْنٍ، أَوْ أُمٍّ، أَوْ قَرِيبٍ، أَوْ قَرِيبَةٍ: كَانَ ذَلِكَ مُبَاحًا -: لِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَنَا مَالِكٌ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ حُمَيْدِ بْنِ نَافِعٍ «عَنْ زَيْنَبَ بِنْتِ أَبِي سَلَمَةَ أَنَّهَا أَخْبَرَتْهُ أَنَّهَا سَمِعَتْ أُمَّ حَبِيبَةَ، وَزَيْنَبَ بِنْتَ جَحْشٍ -

1997. Issue: If a woman undertakes mourning for three days over a father, brother, son, mother, male relative, or female relative, this is permissible—based on what we have narrated through Al-Bukhari's chain: I am Abdullah ibn Yusuf, I am Malik, from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm, from Humaid ibn Nāfiʿ, from Zaynab bint Abi Salamah, who informed him that she heard Umm Habibah and Zaynab bint Jahsh—the two Mothers of the Believers—say they heard Allah's Messenger, peace and blessings be upon him, state: "It is not lawful for a woman who believes

in Allah and the Last Day to mourn a deceased person beyond three days, except for a husband: four months and ten days."[13]

أُمِّ الْمُؤْمِنِينَ - تَقُولَانِ: إِنَّهُمَا سَمِعَتَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ لَا يَحِلُّ لِامْرَأَةٍ تُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ تُحِدَّ عَلَى مَيِّتٍ فَوْقَ ثَلَاثٍ إِلَّا عَلَى زَوْجٍ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا» .

L35162–35163 **A legal issue: A thrice-divorced woman is not obligated to observe the waiting period.**

[مَسْأَلَةٌ لَيْسَ عَلَى الْمُطَلَّقَةِ ثَلَاثًا إِحْدَادٌ]

L35164 Issue: A woman thrice-divorced is not obligated to observe *iḥdād* (mourning) whatsoever. This is the position of ʿAṭāʾ, Mālik, and Abū Sulaymān. Others held a contrary view—as we have transmitted via the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Saʿīd ibn al-Musayyab, who stated: "A woman definitively divorced observes mourning like a widow. She is not to use perfume, wear dyed garments, apply kohl, nor dye with henna, nor adorn herself with jewelry."

مَسْأَلَةٌ: وَلَيْسَ عَلَى الْمُطَلَّقَةِ ثَلَاثًا إِحْدَادٌ أَصْلًا، وَهُوَ قَوْلُ عَطَاءٍ، وَمَالِكٍ وَأَبِي سُلَيْمَانَ - وَقَالَ غَيْرُهُمْ خِلَافَ ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: تُحِدُّ الْمَبْتُوتَةُ كَمَا تُحِدُّ الْمُتَوَفَّى عَنْهَا، فَلَا تَمَسُّ طِيبًا وَلَا تَلْبَسُ ثَوْبًا مَصْبُوغًا وَلَا تَكْتَحِلُ لَا تَخْتَضِبُ وَلَا تَلْبَسُ الْحُلِيَّ.

L35165 Al-Zuhri said: A woman irrevocably divorced must not wear new jewelry. If she has jewelry on, she need not remove it. She must not apply perfume. She may dye or style her hair with henna and katam (a plant used for dye), and may use oil infused with basil. Al-Zuhri considered reprehensible oil containing aromatic substances.

وَقَالَ الزُّهْرِيُّ: الْمَبْتُوتَةُ لَا تُحْدِثُ حُلِيًّا فَإِنْ كَانَ عَلَيْهَا حُلِيٌّ لَمْ تَنْزِعْهُ، وَلَا تَمَسُّ طِيبًا، وَتَمْتَشِطُ بِالْحِنَّاءِ وَالْكَتَمِ، وَتَدَّهِنُ بِالدُّهْنِ الَّذِي يَنِشُّ بِالرَّيْحَانِ - وَكَرِهَ الزُّهْرِيُّ الَّذِي فِيهِ الْأَفَاوِيهُ.

L35166 And through the chain of Ibn Abī Shaybah: I am Abdul Wahhab ibn Abdul Majid al-Thaqafi, from Ayyub al-Sikhtiyānī, who said: Ata al-Khurasani wrote to me, stating: I asked Sa'id ibn al-Musayyib and the jurists of Medina about the divorced woman and the widow during her waiting period. They replied: Both must observe the iḥdād mourning restrictions and refrain from using kohl, henna application, perfume, and adornment.

وَمِنْ طَرِيقِ ابْنِ بْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ الثَّقَفِيُّ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ قَالَ: كَتَبَ إِلَيَّ عَطَاءُ الْخُرَاسَانِيُّ قَالَ: سَأَلْت سَعِيدَ بْنَ الْمُسَيِّبِ، وَفُقَهَاءَ الْمَدِينَةِ عَنْ الْمُطَلَّقَةِ، وَالْمُتَوَفَّى عَنْهَا زَوْجُهَا؟ فَقَالُوا: تُحِدَّانِ وَتَتْرُكَانِ التَّكْحِيلَ، وَالتَّخْضِيبَ وَالتَّطْيِيبَ، وَالزِّينَةَ.

L35167 Through the chain of Abu Bakr ibn Abi Shaybah: Jarir reported from al-Mughirah, from Ibrahim, who said: A divorced woman should not apply kohl as adornment.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا جَرِيرٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ قَالَ: الْمُطَلَّقَةُ لَا تَكْتَحِلُ بِكُحْلٍ زِينَةً.

[13] **Hadith references (L35161):** Sunan Ibn Majah 2086.

L35168 And through the chain of Abū Bakr ibn Abī Shaybah: Abū Dāwūd—he is al-Ṭayālisī—narrated from Ḥammād ibn Salamah from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn, who said: A woman thrice-divorced does not apply kohl nor dye her hair.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا أَبُو دَاوُد - هُوَ الطَّيَالِسِيُّ - عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: الْمُطَلَّقَةُ ثَلَاثًا لَا تَكْتَحِلُ، وَلَا تَخْتَضِبُ.

L35169 From the chain of Abū Bakr ibn Abī Shaybah: Ghundar narrated from Shuʿbah from al-Ḥakam regarding the thrice-divorced woman—she must not apply kohl nor deliberately adorn herself, and her restrictions are stricter, in his view, than those of a widow.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا غُنْدَرٌ عَنْ شُعْبَةَ عَنْ الْحَكَمِ فِي الْمُطَلَّقَةِ ثَلَاثًا لَا تَكْتَحِلُ وَلَا تَزَيَّنُ - وَهِيَ عِنْدَهُ أَشَدُّ مِنْ الْمُتَوَفَّى عَنْهَا.

L35170 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī, from al-Mughīrah, from Ibrāhīm al-Nakhaʿī: he considered adornment reprehensible for divorced women over whom the husband has no right of revocation. Al-Shāfiʿī states the view of Ibrāhīm al-Nakhaʿī but did not deem it obligatory, whereas Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, Abū Ḥanīfah, his companions, Abū ʿUbayd, and Abū Thawr deemed it obligatory.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ كَانَ يَكْرَهُ الزِّينَةَ لِلَّتِي لَا رَجْعَةَ لَهُ عَلَيْهَا مِنْ الْمُطَلَّقَاتِ - وَبِقَوْلِ إبْرَاهِيمَ النَّخَعِيِّ يَقُولُ الشَّافِعِيُّ، وَلَمْ يُوجِبْهُ، وَأَوْجَبَهُ سُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَأَبُو عُبَيْدٍ، وَأَبُو ثَوْرٍ.

L35171–35172 Abu Muhammad said: The argument of those who obligate mourning on a thrice-divorced woman is their statement: “She is divorced from her husband like a widow, so the legal ruling for both should be the same.”

قَالَ أَبُو مُحَمَّد: حُجَّةُ مَنْ أَوْجَبَ الْإِحْدَادَ عَلَى الْمُطَلَّقَةِ ثَلَاثًا أَنْ قَالُوا: هِيَ مُفَارِقَةٌ لِزَوْجِهَا كَالْمُتَوَفَّى عَنْهَا فَيَجِبُ أَنْ يَكُونَ حُكْمُهُمَا وَاحِدًا.

L35173 Ali said: We know of no objection from them other than this, and it is invalid, for all qiyas is void.

قَالَ عَلِيٌّ: مَا نَعْلَمُ لَهُمْ شَغَبًا غَيْرَ هَذَا، وَهُوَ شَغَبٌ فَاسِدٌ، لِأَنَّ الْقِيَاسَ كُلَّهُ بَاطِلٌ.

L35174 Then it is said to them: Why have you not obligated mourning practices for the woman involved in liʿān, the khulʿ divorcee, and the woman divorced with an irrevocable divorce—according to your view—so all these women, in your understanding, are separated from their husbands?

ثُمَّ يُقَالُ لَهُمْ: هَلَّا أَوْجَبْتُمْ الْإِحْدَادَ عَلَى الْمُلَاعِنَةِ، وَالْمُخْتَلِعَةِ، وَالْمُطَلَّقَةِ - عِنْدَكُمْ - طَلَاقًا بَائِنًا، فَكُلُّ هَؤُلَاءِ عِنْدَكُمْ مُفَارِقَاتٌ لِأَزْوَاجِهِنَّ.

L35175 Moreover, Allah the Almighty refers to the revocably divorced woman as “one separating from her husband” throughout her entire waiting period, as He the Exalted says: {So retain them honorably or part with them honorably} [65:2]. There is no disagreement that the mourning observance (ihdād) is not required of her—neither during the waiting period nor after its completion.[14]

وَأَيْضًا فَقَدْ سَمَّى اللَّهُ - عَزَّ وَجَلَّ - الْمُطَلَّقَةَ طَلَاقًا رَجْعِيًّا " مُفَارِقَةً لِزَوْجِهَا " بِتَمَامِ عِدَّتِهَا، إذْ يَقُولُ تَعَالَى: {فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] وَلَا خِلَافَ فِي أَنَّهُ لَا إحْدَادَ عَلَيْهَا لَا فِي الْعِدَّةِ وَلَا بَعْدَ الْعِدَّةِ.

[14] **Qur’an references (L35175):** Qur’an 65:2 (At-Talaq).

L35176 Allah the Exalted has distinguished between what they had conflated: He decreed that the widow's waiting period is four months and ten days, and the irrevocably divorced (ba'in) woman's waiting period is three menstrual cycles or three months. Thus, the invalidity of those who analogize one to the other becomes evident—and success comes only from Allah, the Exalted.

L35177 This is among the matters in which Mālik nullified the veneration due to him through his opposition to the jurists of Medina and the majority of earlier scholars.

L35178 **A case regarding a woman in her waiting period who failed to observe mourning prohibitions during her ʿiddah.**

L35179 1999. Issue: If the woman observing the waiting period neglects the aforementioned mourning obligations until her waiting period concludes, then if this was due to ignorance, there is no blame on her. But if intentional, she is disobedient to Allah, the Mighty and Majestic, and she does not have to repeat it, as the time designated for mourning has already passed. It is not permissible to perform any act outside its proper place or beyond its appointed time.

L35180 Abu Muhammad said: If the waiting period of the woman whose husband has died is determined by the delivery of her pregnancy, she must observe mourning for exactly four months and ten days; we do not impose it upon her beyond that, because all the texts stipulate four months and ten days only.

L35181 It has been authentically established that the Messenger of Allah—peace and blessings be upon him—commanded Subay'ah al-Aslamiyyah to marry whomever she wished when she delivered her child after her husband's death by nights, as she was eager for marriage, and he did not disapprove of that for her.

L35182 Thus, it is confirmed that if her pregnancy ends before completing four months and ten days, there is no mourning obligation upon her thereafter. We have not found an explicit text obligating it upon her - if the pregnancy extends beyond four months and ten days. If such a text exists, ruling ac-

وَقَدْ فَرَّقَ اللَّهُ تَعَالَى بَيْنَ مَا جَمَعُوا بَيْنَهُ فَجَعَلَ عِدَّةَ الْمُتَوَفَّى عَنْهَا أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا، وَعِدَّةَ الْمَبْتُوتَةِ ثَلَاثَةَ قُرُوءٍ أَوْ ثَلَاثَةَ أَشْهُرٍ -: فَلَاحَ فَسَادُ مَنْ قَاسَ إحْدَاهُمَا عَلَى الْأُخْرَى - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَهَذَا مِمَّا نَقَضَ فِيهِ مَالِكٌ تَعْظِيمَهُ مُخَالَفَةَ فُقَهَاءِ الْمَدِينَةِ، وَجُمْهُورِ الْمُتَقَدِّمِينَ.

[مَسْأَلَةٌ أَغْفَلَتْ الْمُعْتَدَّةُ الْإِحْدَادَ حَتَّى تَنْقَضِيَ الْعِدَّةُ]

١٩٩٩ - مَسْأَلَةٌ: فَإِنْ أَغْفَلَتْ الْمُعْتَدَّةُ الْإِحْدَادَ الْمَذْكُورَ حَتَّى تَنْقَضِيَ الْعِدَّةُ، فَإِنْ كَانَ مِنْ جَهْلٍ فَلَا حَرَجَ، وَإِنْ كَانَ عَمْدًا فَهِيَ عَاصِيَةٌ لِلَّهِ عَزَّ وَجَلَّ وَلَا تُعِيدُ ذَلِكَ؛ لِأَنَّ وَقْتَ الْإِحْدَادِ قَدْ مَضَى، وَلَا يَجُوزُ عَمَلُ شَيْءٍ فِي غَيْرِ مَوْضِعِهِ وَفِي غَيْرِ وَقْتِهِ.

قَالَ أَبُو مُحَمَّدٍ إنْ كَانَتْ عِدَّةُ الْمُتَوَفَّى عَنْهَا وَضْعَ حَمْلِهَا فَلَا بُدَّ لَهَا مِنْ الْإِحْدَادِ أَرْبَعَةِ أَشْهُرٍ وَعَشْرٍ فَأَقَلَّ - وَلَا نُوجِبُهُ عَلَيْهَا بَعْدَ ذَلِكَ، لِأَنَّ النُّصُوصَ كُلَّهَا إنَّمَا جَاءَتْ بِأَرْبَعَةِ أَشْهُرٍ وَعَشْرٍ فَقَطْ.

وَقَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ سُبَيْعَةَ الْأَسْلَمِيَّةَ بِأَنْ تَنْكِحَ مَنْ شَاءَتْ إذْ وَضَعَتْ حَمْلَهَا إثْرَ مَوْتِ زَوْجِهَا بِلَيَالٍ وَقَدْ تَشَوَّفَتْ لِلْخُطَّابِ فَلَمْ يُنْكِرْ ذَلِكَ عَلَيْهَا.

cordingly becomes obligatory; otherwise, it does not. And success comes only from Allah, the Exalted.

فَصَحَّ أَنَّهُ لَا إحْدَادَ عَلَيْهَا بَعْدَ انْقِضَاءِ حَمْلِهَا قَبْلَ الْأَرْبَعَةِ الْأَشْهُرِ وَالْعَشْرِ وَلَمْ نَجِدْ نَصًّا بِإِيجَابِهِ عَلَيْهَا - إنْ تَمَادَى الْحَمْلُ أَكْثَرَ مِنْ أَرْبَعَةِ أَشْهُرٍ وَعَشْرٍ، فَإِنْ وُجِدَ فَالْقَوْلُ بِهِ وَاجِبٌ، وَإِلَّا فَلَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L35183–35185 Then, when we reflected, we made up for it by examining the Messenger of Allah—may Allah's blessings and peace be upon him—in some chains of the narration from Umm ʿAṭiyyah, which states that she avoids [something]. What he mentioned requiring abstention, without specifying [the waiting period of] four months and ten days, therefore the default ruling takes precedence: that she must carry her pregnancy to term.

ثُمَّ اسْتَدْرَكْنَا إذْ تَدَبَّرْنَا قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي بَعْضِ طُرُقِ خَبَرِ أُمِّ عَطِيَّةَ أَنَّهَا تَجْتَنِبُ مَا ذَكَرَ اجْتِنَابَهُ دُونَ ذِكْرِ أَرْبَعَةِ أَشْهُرٍ وَعَشْرٍ، فَكَانَ الْعُمُومُ أَوْلَى أَنْ تَضَعَ حَمْلَهَا.

L35186 **A legal issue: The widow and the thrice-divorced woman must fulfill their prescribed waiting periods in the residence mandated by law.**

[مَسْأَلَةٌ تَعْتَدُّ الْمُتَوَفَّى عَنْهَا وَالْمُطَلَّقَةُ ثَلَاثًا حَيْثُ أَحْبَبْنَ]

L35187 2000 – Issue: The widow observing her waiting period, the thrice-divorced woman, and the manumitted woman who chooses to separate from her husband may be wherever they wish.

٢٠٠٠ - مَسْأَلَةٌ: وَتَعْتَدُّ الْمُتَوَفَّى عَنْهَا، وَالْمُطَلَّقَةُ ثَلَاثًا، أَوْ آخِرِ ثَلَاثٍ وَالْمُعْتَقَةُ تَخْتَارُ فِرَاقَ زَوْجِهَا -: حَيْثُ أَحْبَبْنَ.

L35188–35189 There is no housing entitlement for them—neither on the divorcing husband, nor on the heirs of the deceased, nor on the one she chose to separate from—and there is no maintenance.

وَلَا سُكْنَى لَهُنَّ، لَا عَلَى الْمُطَلِّقِ، وَلَا عَلَى وَرَثَةِ الْمَيِّتِ، وَلَا عَلَى الَّذِي اخْتَارَتْ فِرَاقَهُ، وَلَا نَفَقَةَ.

L35190 They are permitted to perform Hajj during their ʿiddah and to travel wherever they wish.

وَلَهُنَّ أَنْ يَحْجُجْنَ فِي عِدَّتِهِنَّ، وَأَنْ يَرْحَلْنَ حَيْثُ شِئْنَ.

L35191 As for every woman revocably divorced (ṭalāq rajʿī) by her husband—while she remains in her waiting period (ʿiddah)—it is not permissible for her to leave the house she occupied when he divorced her. She is entitled to sustenance and clothing from him. If she faces intense fear (of harm) or a hadd punishment is legally imposed upon her, she may leave at that time. Otherwise, she is not permitted to leave absolutely—at any time—under any circumstance except for an unavoidable necessity permitting no alternative.

وَأَمَّا كُلُّ مُطَلَّقَةٍ لِلَّذِي طَلَّقَهَا عَلَيْهَا الرَّجْعَةُ - مَا دَامَتْ فِي الْعِدَّةِ - فَلَا يَحِلُّ لَهَا الْخُرُوجُ مِنْ بَيْتِهَا الَّذِي كَانَتْ فِيهِ إذْ طَلَّقَهَا، وَلَهَا عَلَيْهِ النَّفَقَةُ وَالْكِسْوَةُ فَإِنْ كَانَ خَوْفٌ شَدِيدٌ، أَوْ لَزِمَهَا حَدٌّ فَلَهَا أَنْ تَخْرُجَ حِينَئِذٍ، وَإِلَّا فَلَا أَصْلًا - لَا لَيْلًا وَلَا نَهَارًا - أَلْبَتَّةَ إلَّا لِضَرُورَةٍ لَا حِيلَةَ فِيهَا.

L35192 The evidence for this is the statement of Allah, the Exalted and Majestic:

{O Prophet, when you divorce women, divorce them during their waiting period and count the waiting period. Fear Allah, your Lord. Do not expel them from their homes, nor should they depart unless they commit a clear indecency. These are the limits of Allah. Whoever transgresses Allah's limits has wronged himself. You [O Prophet] do not know—perhaps Allah will bring about a resolution after that.} [At-Talaq: 1] {When they have reached their term, either retain them with kindness or separate from them with kindness.} [At-Talaq: 2].[15]

L35193 So this is the description of the revocable divorce, not that of the irrevocable divorce.

L35194 As for the irrevocable divorce—as narrated to us through the chain of Muslim: Muhammad ibn al-Muthanna from Abd al-Rahman ibn Mahdi from Sufyan al-Thawri from Salamah ibn Kuhayl from al-Sha'bi from Fatimah bint Qays—from the Prophet, peace and blessings be upon him, regarding the woman divorced three times: she is not entitled to sukna nor nafaqah.

L35195 Narrated by Humam ibn Ahmad from Abbas ibn Asbagh from Muhammad ibn Abd al-Malik ibn Ayman from Abdullah ibn Ahmad ibn Hanbal from his father from Hushaym from Sayyar—and Husayn ibn Abd al-Rahman—and al-Mughirah ibn Miqsam—and Ismail ibn Abi Khalid and Dawud ibn Abi Hind, all narrating from al-Sha'bi who said: I visited Fatimah bint Qays and asked her about the ruling of Allah's Messenger (peace be upon him) regarding her case. She said: "My husband divorced me irrevocably. I brought my dispute with him to Allah's Messenger (peace be upon him) concerning housing and maintenance, but he did not assign me housing or maintenance, and commanded me to observe my waiting period in the house of Ibn Umm Maktum."

L35196–35197 Through the chain of Muslim: I am Qutaybah ibn Sa'd, I am 'Abd al-'Aziz ibn Abi Hazim and Ya'qub — the son of 'Abd al-Rahman — al-Qari. Both of

[15] **Qur'an references (L35192):** Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq).

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] .

فَهَذِهِ صِفَةُ الطَّلَاقِ الرَّجْعِيِّ لَا صِفَةُ الطَّلَاقِ الْبَاتِّ.

وَأَمَّا الطَّلَاقُ الْبَاتُّ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ الشَّعْبِيِّ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ «عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُطَلَّقَةِ ثَلَاثًا لَيْسَ لَهَا سُكْنَى وَلَا نَفَقَةٌ» .

أَنَا حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا أَبِي أَنَا هُشَيْمٌ أَنَا سَيَّارٌ، وَحُصَيْنٌ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - وَالْمُغِيرَةُ - هُوَ ابْنُ مِقْسَمٍ - وَإِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ، وَدَاوُد بْنُ أَبِي هِنْدٍ كُلُّهُمْ عَنْ الشَّعْبِيِّ قَالَ: دَخَلْت عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ فَسَأَلْتهَا عَنْ قَضَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهَا؟ فَقَالَتْ: «طَلَّقَهَا زَوْجُهَا أَلْبَتَّةَ، قَالَتْ: فَخَاصَمْتُهُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي السُّكْنَى وَالنَّفَقَةِ؟ فَلَمْ يَجْعَلْ لِي سُكْنَى وَلَا نَفَقَةً، وَأَمَرَنِي أَنْ أَعْتَدَّ فِي بَيْتِ ابْنِ أُمِّ مَكْتُومٍ» .

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ بْنُ سَعْدٍ أَنَا عَبْدُ الْعَزِيزِ بْنُ أَبِي حَازِمٍ وَيَعْقُوبُ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - الْقَارِيِّ كِلَاهُمَا عَنْ أَبِي حَازِمٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ

them narrated from Abu Hazim, from Abu Salamah ibn ‘Abd al-Rahman ibn ‘Awf, from Fatimah bint Qays that her husband divorced her. She said: “I mentioned that to the Messenger of Allah — may Allah’s peace and blessings be upon him — and he said: ’There is no maintenance for you nor housing.’”

L35198 From the chain of Muslim: I am Abu Bakr ibn Abi Shaybah, I heard from Waki’, who heard from Sufyan al-Thawri, from Abu Bakr ibn Abi al-Jahm al-Adawi, who said: “I heard Fatimah bint Qays say: ’Her husband divorced her three times, and the Prophet—peace and blessings of Allah be upon him—did not assign for her housing or maintenance.’”

L35199 From the chain of transmission via Muslim: Ibn Ḥātim ibn Maymūn, Muḥammad ibn Rāfi‘, and Hārūn ibn ‘Abdullāh—with the wording being Hārūn’s—narrated to me. Ibn Ḥātim said: “Yaḥyā ibn Sa‘īd al-Qaṭṭān narrated to me.” Ibn Rāfi‘ said: “‘Abd al-Razzāq narrated to me.” Hārūn said: “Ḥajjāj ibn Muḥammad narrated to me.” Then their narrations converged—Yaḥyā, ‘Abd al-Razzāq, and Ḥajjāj—all transmitting from Ibn Jurayj, who informed me: Abū al-Zubayr al-Makkī reported to me that he heard Jābir ibn ‘Abdullāh say: “My maternal aunt was divorced and wished to harvest her palm trees, but a man prevented her from going out. She came to the Prophet (peace and blessings be upon him), and the Prophet (peace and blessings be upon him) said to her: ’Go harvest your palm trees, for perhaps you may give charity or perform a virtuous act.’”

L35200 And through the chain of Abū Dāwūd al-Sijistānī: I am Aḥmad ibn Ḥanbal: Yaḥyā—he is Ibn Saʿīd al-Qaṭṭān—from Ibn Jurayj, who said: “Abū al-Zubayr narrated to me from Jābir ibn ʿAbd Allāh, who said: ’My maternal aunt was divorced three times, so she went out to harvest her date palms. A man forbade her? She then came to the Prophet—peace be upon him—and mentioned that to him? He said: ”Go out and harvest your date palms, so that you might give charity from it or do some good.“’”

L35201 Abu Muhammad said: As for the narration of Fatimah, it is universally transmitted in a manner that decisively cuts off any excuse.

L35202 As for the report of Jābir, it is of the utmost authenticity, and Abū al-Zubayr

عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ أَنَّهُ «طَلَّقَهَا زَوْجُهَا قَالَتْ: فَذَكَرْتُ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: لَا نَفَقَةَ لَكِ وَلَا سُكْنَى»

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا وَكِيعٌ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ الْعَدَوِيِّ قَالَ: " سَمِعْتُ «فَاطِمَةَ بِنْتِ قَيْسٍ تَقُولُ إِنَّ زَوْجَهَا طَلَّقَهَا ثَلَاثًا فَلَمْ يَجْعَلْ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُكْنَى وَلَا نَفَقَةً» .

وَمِنْ طَرِيقِ مُسْلِمٍ حَدَّثَنِي ابْنُ حَاتِمِ بْنِ مَيْمُونٍ، وَمُحَمَّدُ بْنُ رَافِعٍ وَهَارُونُ بْنُ عَبْدِ اللَّهِ - وَاللَّفْظُ لَهُ - قَالَ ابْنُ حَاتِمٍ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ وَقَالَ ابْنُ رَافِعٍ: أَنَا عَبْدُ الرَّزَّاقِ، وَقَالَ هَارُونُ: أَنَا حَجَّاجُ بْنُ مُحَمَّدٍ - ثُمَّ اتَّفَقَ يَحْيَى، وَعَبْدُ الرَّزَّاقِ، وَحَجَّاجٌ، كُلُّهُمْ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ الْمَكِّيُّ «أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: طَلُقَتْ خَالَتِي فَأَرَادَتْ أَنْ تَجُذَّ نَخْلَهَا فَزَجَرَهَا رَجُلٌ أَنْ تَخْرُجَ، فَأَتَتِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَلْ اذْهَبِي فَجُدِّي نَخْلَكِ، فَإِنَّكِ عَسَى أَنْ تَصَدَّقِي أَوْ تَفْعَلِي مَعْرُوفًا» .

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا أَحْمَدُ بْنُ حَنْبَلٍ أَنَا يَحْيَى هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ عَنِ ابْنِ جُرَيْجٍ حَدَّثَنِي أَبُو الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ «طَلُقَتْ خَالَتِي ثَلَاثًا فَخَرَجَتْ تَجُذُّ نَخْلَهَا فَنَهَاهَا رَجُلٌ؟ فَأَتَتِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَتْ ذَلِكَ لَهُ؟ فَقَالَ: اُخْرُجِي فَجُدِّي نَخْلَكِ، فَعَسَى أَنْ تَصَدَّقِي مِنْهُ، أَوْ تَفْعَلِي خَيْرًا» .

قَالَ أَبُو مُحَمَّدٍ: أَمَّا خَبَرُ فَاطِمَةَ فَمَنْقُولٌ نَقْلَ الْكَافَّةِ قَاطِعٌ لِلْعُذْرِ.

heard it from him. He did not specify for her a ruling that she should not stay there rather than staying: *“He does not speak from [his own] inclination”* (al-Najm 53:3), *“It is nothing but a revelation revealed”* (al-Najm 53:4), *“And your Lord is not forgetful”* (Maryam 19:64).[16]

وَأَمَّا خَبَرُ جَابِرٍ فَفِي غَايَةِ الصِّحَّةِ، وَقَدْ سَمِعَهُ مِنْهُ أَبُو الزُّبَيْرِ، وَلَمْ يَخُصَّ لَهَا أَنْ لَا تَبِيتَ هُنَالِكَ مِنْ أَنْ تَبِيتَ: {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L35203–35204 It is not permissible for anyone to deviate from these two narrations due to their clarity and authenticity.

وَلَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْ هَذَيْنِ الْأَثَرَيْنِ لِبَيَانِهِمَا وَصِحَّتِهِمَا.

L35205 There is no authentic narration whatsoever concerning the obligation to provide residence for the widow.

وَلَمْ يَصِحَّ فِي وُجُوبِ السُّكْنَى لِلْمُتَوَفَّى عَنْهَا أَثَرٌ أَصْلًا.

L35206 The residence is either owned by the deceased or owned by another. If it is owned by another—whether rented or unowned—the contract is voided upon his death. No one may lawfully reside in it without the owner’s permission and willing consent. The Messenger of Allah (peace be upon him) said, “Your blood and your wealth are inviolable to you.”

وَالْمَنْزِلُ لَا يَخْلُو مِنْ أَنْ يَكُونَ مِلْكًا لِلْمَيِّتِ أَوْ مِلْكًا لِغَيْرِهِ -: فَإِنْ كَانَ مِلْكًا لِغَيْرِهِ - وَهُوَ مُكْتَرًى أَوْ مُبَاحٌ - فَقَدْ بَطَلَ الْعَقْدُ بِمَوْتِهِ، فَلَا يَحِلُّ لِأَحَدٍ سُكْنَاهُ إِلَّا بِإِذْنِ صَاحِبِهِ وَطِيبِ نَفْسِهِ، قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L35207 If the property was owned by the deceased, it now belongs to the creditors, the heirs, or the legatees. Therefore, it is unlawful for her to claim the wealth of the creditors, heirs, or those designated in the will for the reasons we mentioned. She is only entitled to the amount of her inheritance from it if she is an heir—nothing beyond this. This is clear and decisive proof, while anything contrary constitutes blatant injustice without doubt. This is an issue where people have widely disagreed. One group upheld our position—as reported through the transmission chain of ‘Abd al-Razzāq from Ibn Jurayj from ‘Aṭā’ that Ibn ‘Abbās said: “A woman divorced irrevocably may observe her waiting period wherever she wishes.”

وَإِنْ كَانَ مِلْكًا لِلْمَيِّتِ، فَقَدْ صَارَ لِلْغُرَمَاءِ أَوْ لِلْوَرَثَةِ أَوْ لِلْوَصِيَّةِ، فَلَا يَحِلُّ لَهَا مَالُ الْغُرَمَاءِ، وَالْوَرَثَةِ، وَالْمُوصَى لَهُمْ لِمَا ذَكَرْنَا، وَإِنَّمَا لَهَا مِنْهُ مِقْدَارُ مِيرَاثِهَا إِنْ كَانَتْ وَارِثَةً فَقَطْ، وَهَذَا بُرْهَانٌ قَاطِعٌ لَائِحٌ وَمَا عَدَا هَذَا فَظُلْمٌ لَا خَفَاءَ بِهِ، وَهَذَا مَكَانٌ كَثُرَ فِيهِ اخْتِلَافُ النَّاسِ -: فَطَائِفَةٌ قَالَتْ بِقَوْلِنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّ ابْنَ عَبَّاسٍ قَالَ: تَعْتَدُّ الْمَبْتُوتَةُ حَيْثُ شَاءَتْ.

L35208 Ibn Jurayj said: Abu al-Zubayr informed me that he heard Jabir ibn Abdullah say: The irrevocably divorced woman observes her waiting period where she wishes.

- قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: تَعْتَدُّ الْمَبْتُوتَةُ حَيْثُ شَاءَتْ.

[16] **Qur’an references (L35202):** Qur’an 53:3 (An-Najm); Qur’an 53:4 (An-Najm); Qur’an 19:64 (Maryam).

L35209 From the narration of Abd al-Razzaq, who said: I am Ma’mar, from al-Zuhri, from Ubayd Allah ibn Abd Allah ibn Utba ibn Mas’ud: That Fatimah bint Qays said: Allah the Almighty said: “Do not drive them out of their homes” [Quran 65:1]. She said: This was for the one who retained the right of revocation [during the waiting period]. So what ruling applies after the third [irrevocable] divorce? Ubayd Allah ibn Abd Allah said to us: Abdullah ibn Amr ibn Uthman—a young man—divorced the daughter of Sa‘id ibn Zayd ibn Amr during the rule of Marwan. Her mother was the daughter of Qays, and her maternal aunt Fatimah bint Qays took her into her care.[17]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ قَالَ: أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ: أَنَّ فَاطِمَةَ بِنْتَ قَيْسٍ قَالَتْ: قَالَ اللَّهُ عَزَّ وَجَلَّ: {لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ} [الطلاق: ١] قَالَتْ: هَذَا كَانَ لِمَنْ كَانَتْ لَهُ رَجْعَةٌ، فَأَيُّ أَمْرٍ يَحْدُثُ بَعْدَ الثَّلَاثِ - قَالَ لَنَا عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ: فَطَلَّقَ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ عُثْمَانَ - وَهُوَ غُلَامٌ شَابٌّ - بِنْتَ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرٍو فِي إِمَارَةِ مَرْوَانَ، وَأُمُّهَا بِنْتُ قَيْسٍ، فَانْتَقَلَتْهَا خَالَتُهَا فَاطِمَةُ بِنْتُ قَيْسٍ.

L35210 From the path of Ibn Abi Shaybah: I, Al-Thaqafi—he is Abd al-Wahhab ibn Abd al-Majid—narrated from Ubayd Allah ibn Umar, from Nafi’, from Ibn Umar, who said: “Al-Rubayyi‘ sought khul‘ from her husband. Mu‘awwidh—he is Ibn Afra‘—came to Uthman ibn Affan and asked him: ’Does she leave?’ He replied: ’Yes, she leaves.’”

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا الثَّقَفِيُّ - هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: إِنَّ الرُّبَيِّعَ اخْتَلَعَتْ مِنْ زَوْجِهَا، فَأَتَى مُعَوِّذٌ - هُوَ ابْنُ عَفْرَاءَ - عُثْمَانَ بْنَ عَفَّانَ فَسَأَلَهُ أَتَنْتَقِلُ؟ قَالَ: نَعَمْ تَنْتَقِلُ.

L35211–35213 Abū Muḥammad said: We have mentioned this because according to them, the woman who seeks khul‘ has an irrevocable divorce, and she is obligated to observe the waiting period. In our view, she is divorced with a revocable divorce and must not leave her residence—the place where the divorce was pronounced—until her waiting period is completed. This is the position held by some of the Companions, may Allah be pleased with them.

قَالَ أَبُو مُحَمَّدٍ: إِنَّمَا أَوْرَدْنَا هَذَا، لِأَنَّ الْمُخْتَلِعَةَ عِنْدَهُمْ طَلَاقُهَا بَائِنٌ وَعَلَيْهَا الْعِدَّةُ وَأَمَّا نَحْنُ فَهِيَ عِنْدَنَا مُطَلَّقَةٌ طَلَاقًا رَجْعِيًّا لَا تَخْرُجُ فِيهِ مِنْ مَوْضِعِهَا الَّذِي طَلَّقَهَا فِيهِ حَتَّى تَتِمَّ عِدَّتُهَا - فَهَؤُلَاءِ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L35214 As for the Successors (Tābiʿūn), we have been informed through the chain of Saʿīd ibn Manṣūr: Hushaym said: I [heard] from Yūnus ibn ʿUbayd, who said: I [heard] from al-Ḥasan al-Baṣrī that he used to say: “A thrice-divorced woman and a widow have no lodging or maintenance, and both women may spend their waiting period wherever they choose.”

وَأَمَّا التَّابِعُونَ - فَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ - هُوَ ابْنُ عُبَيْدٍ - عَنِ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ يَقُولُ: الْمُطَلَّقَةُ ثَلَاثًا، وَالْمُتَوَفَّى عَنْهَا لَا سُكْنَى لَهُمَا، وَلَا نَفَقَةَ، وَتَعْتَدَّانِ حَيْثُ شَاءَتَا.

L35215 And from the chain of Abd al-Razzaq, from Muhammad ibn Muslim, from Amr ibn Dinar, from Tawus and from Ata, who both said: The irrevocably divorced woman and the woman whose husband has died may perform Hajj and Umrah, relocate, and finalize the separation.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ، وَعَطَاءٍ، قَالَا جَمِيعًا: الْمَبْتُوتَةُ، وَالْمُتَوَفَّى عَنْهَا يَحُجَّانِ، وَيَعْتَمِرَانِ، وَيَنْتَقِلَانِ، وَيَبِينَانِ.

[17] **Qur’an references (L35209):** Qur’an 65:1 (At-Talaq).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ وَسُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ أَنَّهُ قَالَ: تَحُجُّ الْمَبْتُوتَةُ فِي عِدَّتِهَا.

L35216–35217 Narrated by Abd al-Razzaq and Sufyan al-Thawri, from Yunus ibn Ubayd, from al-Hasan, who said: A woman irrevocably divorced performs Hajj during her waiting period.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ أَنَّهُ قَالَ: فِي الْمُطَلَّقَةِ ثَلَاثًا لَهَا أَنْ تَنْتَقِلَ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] فَأَيُّ أَمْرٍ بَعْدَ الثَّلَاثِ، إنَّمَا جَاءَ ذَلِكَ فِي الْوَاحِدَةِ وَالِاثْنَتَيْنِ.

L35218 From the narration of Hammad ibn Zayd from Ayyub al-Sikhtiyani from Ikrimah, who said: Regarding a woman irrevocably divorced three times, she must transfer [to another husband]. Allah Almighty said: {It may be that Allah will ordain a new situation after that} [65:1]. What [possible] matter could arise after three divorces? This ruling [of potential reconciliation] only applies to the first or second divorce.[18]

أَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا أَبِي، قَالَ الشَّعْبِيِّ: الْمُطَلَّقَةُ ثَلَاثًا لَا سُكْنَى لَهَا وَلَا نَفَقَةَ، قَالَ أَحْمَدُ: وَبِهِ أَقُولُ.

L35219 I am Humam; I am Abbas ibn Asbagh; I am Muhammad ibn Abd al-Malik ibn Ayman; I am Abdullah ibn Ahmad ibn Hanbal; [reporting] from my father. Al-Sha'bi said: A woman irrevocably divorced three times has no right to housing or maintenance. Ahmad said: This is my view.

قَالَ أَبُو مُحَمَّدٍ: وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L35220 Abū Muḥammad said: In accordance with this, hold the view Isḥāq ibn Rāhawayh, Abū Sulaymān, and all our companions.

وَأَمَّا الْمُتَوَفَّى عَنْهَا - فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا قَيْسٌ - هُوَ ابْنُ عَبَّادٍ - عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ عَائِشَةَ - أُمِّ الْمُؤْمِنِينَ - أَنَّهَا حَجَّتْ بِأُخْتِهَا أُمِّ كُلْثُومٍ امْرَأَةِ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ فِي عِدَّتِهَا فِي الْفِتْنَةِ.

L35221 As for the woman whose husband has died—it was narrated to us via Hammad ibn Salamah from Qays ibn ʻAbbad, from ʻAta' ibn Abi Rabah, from ʻAishah, the Mother of the Believers, that she took her sister Umm Kulthum, the wife of Talhah ibn ʻUbaydullah, with her to perform Hajj during her waiting period in the Fitnah.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ عَائِشَةَ - أُمِّ الْمُؤْمِنِينَ - أَنَّهَا كَانَتْ تُفْتِي الْمُتَوَفَّى عَنْهَا زَوْجُهَا بِالْخُرُوجِ فِي عِدَّتِهَا، وَخَرَجَتْ بِأُخْتِهَا أُمِّ كُلْثُومٍ حِينَ قُتِلَ عَنْهَا طَلْحَةُ بْنُ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ إلَى مَكَّةَ فِي عُمْرَةٍ.

L35222 Narrated via the chain of Abd al-Razzaq, from Ma'mar, from al-Zuhri, from Urwah ibn al-Zubayr, from Aisha—the Mother of the Believers—that she would issue rulings for a woman whose husband had died to go out during her waiting period. She herself went out with her sister Umm Kulthum when Talha ibn Ubayd Allah ibn Abd Allah was killed, traveling to Mecca to perform Umrah.

L35223 From the transmission of ʿAbd al-Razzāq: I, Ibn Jurayj, inform you that ʿAṭāʾ reported from Ibn ʿAbbās, who said: Allah the Exalted and Majestic specifically stated, *"They shall wait for four months and ten days"* [al-

[18] **Qur'an references (L35218):** Qur'an 65:1 (At-Talaq).

Baqarah 2:234], and He did not say, “They shall observe the waiting period in their homes.” Thus, she may observe it wherever she wishes.[19]

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: إِنَّمَا قَالَ اللَّهُ عَزَّ وَجَلَّ تَعْتَدُّ: {أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا} [البقرة: ٢٣٤] وَلَمْ يَقُلْ: تَعْتَدُّ فِي بَيْتِهَا، فَلْتَعْتَدَّ حَيْثُ شَاءَتْ.

L35224–35226 From the chain of Ismāʿīl ibn Isḥāq the Judge: I, ʿAlī ibn ʿAbd Allāh—he is Ibn al-Madīnī—narrated from I... Sufyan ibn ’Uyaynah reported from Ibn Jurayj from ’Ata’, who said: I heard Ibn ’Abbas say regarding the verse, *“And those of you who die and leave wives behind—they must observe the waiting period for four months and ten days”* [Al-Baqarah 2:234]—that he did not say “they must observe the waiting period in their homes.” Rather, she observes her waiting period wherever she wishes. Sufyan said: Ibn Jurayj reported this to us, as he had narrated. This clarifies that ’Ata’ directly heard it from Ibn ’Abbas.[20]

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ الْقَاضِي أَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ ابْنُ الْمَدِينِيُّ - أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: سَمِعْتُ ابْنَ عَبَّاسٍ يَقُولُ: {وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا} [البقرة: ٢٣٤] وَلَمْ يَقُلْ يَعْتَدِدْنَ فِي بُيُوتِهِنَّ، تَعْتَدُّ حَيْثُ شَاءَتْ، وَقَالَ سُفْيَانُ: قَالَهُ لَنَا ابْنُ جُرَيْجٍ كَمَا أَخْبَرَنَا - هَذَا يُبَيِّنُ أَنَّ عَطَاءً سَمِعَهُ مِنِ ابْنِ عَبَّاسٍ.

L35227 Via the chain of ʿAbd al-Razzāq: I am Ibn Jurayj, [who said]: Abū al-Zubayr reported to me that he heard Jābir ibn ʿAbd Allāh saying: A widow observes her waiting period wherever she wishes.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: تَعْتَدُّ الْمُتَوَفَّى عَنْهَا حَيْثُ شَاءَتْ.

L35228 Narrated through the chain of Abd al-Razzaq: Sufyan al-Thawri → Isma’il ibn Abi Khalid → al-Sha’bi: That Ali ibn Abi Talib would relocate women whose husbands had died away from them during their waiting period.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ كَانَ يُرَحِّلُ الْمُتَوَفَّى عَنْهُنَّ فِي عِدَّتِهِنَّ.

L35229 From the narration of Abd al-Razzaq, on the authority of Ibn Jurayj, on the authority of Ata, who said: “The location where the widow observes her waiting period does not harm [her observance].” We have mentioned this ruling earlier, prior to this chapter, from al-Hasan.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَا يَضُرُّ الْمُتَوَفَّى عَنْهَا أَيْنَ اعْتَدَّتْ، وَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا الْبَابِ عَنِ الْحَسَنِ.

L35230 From the chain of Ismāʿīl ibn Isḥāq: I, ʿAlī ibn ʿAbdillāh al-Madanī, from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from ʿAṭāʾ and Abū al-Shaʿthāʾ Jābir ibn Zayd, both of whom said together: The woman whose husband has died may go out during her waiting period wherever she wishes.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ - هُوَ الْمَدِينِيُّ - أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ، وَأَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ، قَالَا جَمِيعًا: الْمُتَوَفَّى عَنْهَا تَخْرُجُ فِي عِدَّتِهَا حَيْثُ شَاءَتْ.

[19] **Qur’an references (L35223):** Qur’an 2:234 (Al-Baqarah).
[20] **Qur’an references (L35224):** Qur’an 2:234 (Al-Baqarah).

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ حَبِيبٍ الْمُعَلِّمِ قَالَ: سَأَلْت عَطَاءً عَنْ الْمُطَلَّقَةِ ثَلَاثًا وَالْمُتَوَفَّى عَنْهَا أَيَحُجَّانِ فِي عِدَّتِهِمَا؟ قَالَ: نَعَمْ، وَكَانَ الْحَسَنُ يَقُولُ مِثْلَ ذَلِكَ.

L35231 From the chain of Ismāʿīl ibn Isḥāq: Abū Bakr ibn Abī Shaybah narrated from ʿAbd al-Wahhāb al-Thaqafī, from Ḥabīb al-Muʿallim, who said: I asked ʿAṭāʾ about a woman divorced three times and a widow—are they permitted to perform Hajj during their waiting period? He replied: Yes. Al-Ḥasan also held this view.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو ثَابِتٍ الْمَدَنِيُّ أَنَا ابْنُ وَهْبٍ أَنَا عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ قَالَ: سَأَلْنَا سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ الْمَرْأَةِ يَخْرُجُ بِهَا زَوْجُهَا إلَى بَلَدٍ فَيُتَوَفَّى الزَّوْجُ؟ فَقَالَ: تَعْتَدُّ حَيْثُ تُوُفِّيَ عَنْهَا زَوْجُهَا، أَوْ تَرْجِعُ إلَى بَيْتِ زَوْجِهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا.

L35232 And through the chain of Ismail ibn Ishaq: From Abu Thabit al-Madani, who said: From Ibn Wahb, from Amr ibn al-Harith, from Bukayr ibn al-Ashajj, who said: We asked Salim ibn Abdullah ibn Umar about a woman whose husband takes her to a place where he dies. He replied: She observes her waiting period where her husband died, or she returns to her husband's house until her waiting period elapses.

- قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي ابْنُ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ بِهَذَا.

L35233 Ibn Wahb said: Ibn Lahiʿah informed me from Yazīd ibn Abī Ḥabīb, from al-Qāsim ibn Muḥammad, with this.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي ابْنُ لَهِيعَةَ عَنْ حُسَيْنِ بْنِ أَبِي حَكِيمٍ أَنَّ امْرَأَةَ مُزَاحِمٍ لَمَّا تُوُفِّيَ عَنْهَا زَوْجُهَا بِخَنَاصِرَةَ سَأَلْت عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَأَمْكُثُ حَتَّى تَنْقَضِيَ عِدَّتِي؟ فَقَالَ لَهَا: بَلْ الْحَقِي بِقَرَارِك وَدَارِ أَبِيك فَاعْتَدِّي فِيهَا.

L35234 Ibn Wahb said: Ibn Lahīʿah informed me from Ḥusayn ibn Abī Ḥakīm that the wife of Muzāḥim, when her husband died in Khanāṣirah, asked ʿUmar ibn ʿAbd al-ʿAzīz: "Shall I remain until my waiting period concludes?" He replied: "Rather, go to your settlement and your father's household, and observe your waiting period there."

وَبِهِ يَقُولُ ابْنُ وَهْبٍ - أَنَا يَحْيَى بْنُ أَيُّوبَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ فِي رَجُلٍ تُوُفِّيَ بِالْإِسْكَنْدَرِيَّةِ وَمَعَهُ امْرَأَتُهُ وَلَهُ بِالْفُسْطَاطِ دَارٌ فَقَالَ: إنْ أَحَبَّتْ أَنْ تَعْتَدَّ حَيْثُ تُوُفِّيَ زَوْجُهَا فَلْتَعْتَدَّ، وَإِنْ أَحَبَّتْ أَنْ تَرْجِعَ إلَى دَارِ زَوْجِهَا وَقَرَارِهِ بِالْفُسْطَاطِ فَتَعْتَدَّ فِيهَا فَلْتَرْجِعْ.

L35235–35236 Ibn Wahb relates—I am Yahya ibn Ayyub, narrating from Yahya ibn Saʿid al-Ansari—that he said regarding a man who died in Alexandria while his wife was with him, and who owned a house in Fustat: If she wishes to complete her waiting period where her husband died, let her do so. If she wishes to return to her husband's house and residence in Fustat to complete her waiting period there, let her return.

وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L35237 This is the view stated by Abū Sulaymān and all our companions.

وَقَوْلٌ آخَرُ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي الْمَبْتُوتَةِ إنْ كَانَتْ غَيْرَ حُبْلَى فَلَا نَفَقَةَ لَهَا، وَيُنْفِقُ عَلَى الْحُبْلَى مِنْ أَجْلِ وَلَدِهِ.

L35238 Another opinion—as conveyed to us through the chain of Abd al-Razzaq, from Ibn Jurayj, from Ata—concerning the irrevocably divorced woman: if

she is not pregnant, she has no right to maintenance, and he is obligated to provide for the pregnant woman because of his child.

L35239 And through the chain of ʿAbd al-Razzāq from Maʿmar, who narrated from ʿAṭāʾ and Qatāda, both stated together regarding the irrevocably divorced woman (al-mabtutah): She is entitled to maintenance until she delivers her child.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَطَاءٍ، وَقَتَادَةَ، قَالَا جَمِيعًا فِي الْمَبْتُوتَةِ: لَهَا النَّفَقَةُ حَتَّى تَضَعَ حَمْلَهَا

L35240 From the transmission of ʿAbd al-Razzāq, from Ibn Jurayj, from Hishām ibn ʿUrwah, from his father (ʿUrwah ibn al-Zubayr): No post-divorce financial support is obligatory for the finally divorced woman unless she is pregnant.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ لَا نَفَقَةَ لِلْمَبْتُوتَةِ إِلَّا أَنْ تَكُونَ حَامِلًا.

L35241 From the chain of Ibn Wahb, ʿAmr ibn al-Ḥārith informed me from Yazīd ibn Abī Ḥabīb that ʿUmar ibn ʿAbd al-ʿAzīz ordered maintenance to be provided for the irrevocably divorced pregnant woman until she delivers her child, then he must give her the compensation for breastfeeding and grant her the mutʿah.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَمَرَ بِالنَّفَقَةِ عَلَى الْمَبْتُوتَةِ الْحَامِلِ حَتَّى تَضَعَ حَمْلَهَا، ثُمَّ يُعْطِيهَا أَجْرَ الرَّضَاعِ، ثُمَّ يُمَتِّعُهَا.

L35242 And through the chain of Ibn Wahb, Ibn Samʿān reported to me that Ibn Qusayṭ informed him that Ibn al-Musayyib would say: “There is no maintenance for an irrevocably divorced woman unless she is pregnant, in which case she is entitled to maintenance until she delivers her child.” He further stated: “This is in the Book of Allah, the Almighty and Majestic, and the Prophetic Sunnah. This is what the Companions of the Messenger of Allah (peace be upon him) adhered to.”

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي ابْنُ سَمْعَانَ: أَنَّ ابْنَ قُسَيْطٍ أَخْبَرَهُ أَنَّ ابْنَ الْمُسَيِّبِ كَانَ يَقُولُ: لَا نَفَقَةَ لِلْمَبْتُوتَةِ إِلَّا أَنْ تَكُونَ حَامِلًا فَلَهَا النَّفَقَةُ حَتَّى تَضَعَ حَمْلَهَا، وَيَقُولُ: هَذَا فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، وَهِيَ السُّنَّةُ، وَعَلَى ذَلِكَ كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L35243 It is authentically reported from Rabiʿah: She has no right to maintenance unless she is pregnant. If maintenance is ruled for her due to her pregnancy, then it becomes evident she is not pregnant, she must return what she received as maintenance. The rulings that maintenance is obligatory for her if she is pregnant, and that residence is obligatory in all circumstances, are held by Mālik, al-Shāfiʿī, Abū ʿUbayd, and ʿAbd al-Raḥmān ibn Mahdī.

وَصَحَّ عَنْ رَبِيعَةَ: لَا نَفَقَةَ لَهَا إِلَّا أَنْ تَكُونَ حَامِلًا، فَإِنْ قُضِيَ لَهَا بِالنَّفَقَةِ لِحَمْلِهَا ثُمَّ ظَهَرَ أَنَّهُ لَا حَمْلَ بِهَا رَدَّتْ مَا أَخَذَتْ مِنَ النَّفَقَةِ وَبِإِيجَابِ النَّفَقَةِ لَهَا إِنْ كَانَتْ حَامِلًا - وَبِإِيجَابِ السُّكْنَى بِكُلِّ حَالٍ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو عُبَيْدٍ وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ.

L35244–35245 It has been transmitted to us through the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Ibn Abi Layla, that he ruled concerning the divorced woman and the pregnant woman: Each is entitled to housing and full financial maintenance.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ ابْنِ أَبِي لَيْلَى أَنَّهُ قَالَ فِي الْمُطَلَّقَةِ وَالْحَامِلِ: لَهَا السُّكْنَى وَالنَّفَقَةُ.

L35246 A third opinion—she is entitled to lodging but not maintenance. Some people have cited traditions in this regard which we shall mention, and it is as reported to us through ʿAbd al-Razzāq, who reported that Ibn Jurayj informed him: from Ibn Shihāb, from ʿUrwah ibn al-Zubayr, who said: "'Ā'ishah criticized Fāṭimah bint Qays regarding that—meaning the relocation of a thrice-divorced woman."

وَقَوْلٌ ثَالِثٌ - لَهَا السُّكْنَى وَلَا نَفَقَةَ لَهَا، أَتَى قَوْمٌ فِي هَذَا بِآثَارٍ نَذْكُرُهَا، وَهُوَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَخْبَرَنِي ابْنُ جُرَيْجٍ عَنِ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: إِنَّ عَائِشَةَ أَنْكَرَتْ ذَلِكَ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ يَعْنِي انْتِقَالَ الْمُطَلَّقَةِ ثَلَاثًا.

L35247 Narrated through Sa'id ibn Mansur: I [heard from] Abu Mu'awiyah, I [heard from] al-A'mash, from Ibrahim ibn Masruq, who said: A man came to Ibn Mas'ud and said, "I divorced my wife thrice, yet she refuses to observe her waiting period in her home." Ibn Mas'ud said, "Do not permit her to leave." The man said, "She insists on departing." He said, "Restrain her in the house." The man said, "She has thick-necked brothers." He said, "Seek the authorities' assistance against them."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو مُعَاوِيَةَ أَنَا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ بْنِ مَسْرُوقٍ قَالَ: جَاءَ رَجُلٌ إِلَى ابْنِ مَسْعُودٍ فَقَالَ: إِنِّي طَلَّقْت امْرَأَتِي ثَلَاثًا فَأَبَتْ أَنْ تَعْتَدَّ فِي بَيْتِهَا؟ قَالَ: لَا تَدَعْهَا، قَالَ: أَبَتْ إلَّا بِالْخُرُوجِ، قَالَ: فَقَيِّدْهَا، قَالَ: إنَّ لَهَا إخْوَةً غَلِيظَةً رِقَابُهُمْ، قَالَ: اسْتَعِنْ عَلَيْهِمْ بِالسُّلْطَانِ.

L35248 And from the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, who said: A woman irrevocably divorced (mabtūtah) must not move from her husband's house until her ʿiddah period has expired.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ: لَا تَنْتَقِلُ الْمَبْتُوتَةُ مِنْ بَيْتِ زَوْجِهَا حَتَّى يَخْلُوَ أَجَلُهَا.

L35249 Reported via the chain of Ismāʿīl ibn Isḥāq: from Abū Bakr ibn Abī Shaybah, from Yazīd ibn Hārūn, from Saʿīd ibn Abī ʿArūbah, from Yaʿlā ibn Abī Ḥakīm, from Nāfiʿ, from Ibn ʿUmar, who said concerning the irrevocably divorced woman (mabtūṭah): "She has no right to financial support."

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا يَزِيدُ بْنُ هَارُونَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ يَعْلَى بْنِ أَبِي حَكِيمٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ فِي الْمَبْتُوتَةِ: أَنَّهُ لَا نَفَقَةَ لَهَا.

L35250 And via the chain of ʿAbd al-Razzāq from Ibrāhīm ibn Muḥammad – he is the son of Abī Yaḥyā – from Jaʿfar ibn Muḥammad from his father: that ʿAlī ibn Abī Ṭālib said regarding the irrevocably divorced woman: "There is no maintenance for her."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ مُحَمَّدٍ - هُوَ ابْنُ أَبِي يَحْيَى - عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْمَبْتُوتَةِ: لَا نَفَقَةَ لَهَا.

L35251 From the chain of Wakīʿ through Jaʿfar ibn Burqān through Maymūn ibn Mihrān, who said: I asked Saʿīd ibn al-Musayyab: "Where does a woman divorced three times observe her waiting period?" He replied: "In her husband's house."

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ مَيْمُونِ بْنِ مِهْرَانَ قَالَ: قُلْت لِسَعِيدِ بْنِ الْمُسَيِّبِ: الْمُطَلَّقَةُ ثَلَاثًا أَيْنَ تَعْتَدُّ؟ قَالَ: فِي بَيْتِ زَوْجِهَا.

L35252 Narrated through the chain of Sa'id ibn Mansur: Hammad ibn Zayd from Yahya ibn Sa'id from Sa'id ibn al-Musayyib regarding a divorced woman in

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ فِي الْمُطَلَّقَةِ فِي بَيْتٍ مُكْتَرًى، قَالَ: تَعْتَدُّ فِيهِ، وَعَلَى زَوْجِهَا الْكِرَاءُ.

a rented house. He said: She observes her waiting period in it, and the rent is incumbent upon her husband.

وَأَمَّا الْمُتَوَفَّى عَنْهَا -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ رَدَّ نِسْوَةً مِنْ ذِي الْحُلَيْفَةِ حَاجَّاتٍ، أَوْ مُعْتَمِرَاتٍ تُوُفِّيَ عَنْهُنَّ أَزْوَاجُهُنَّ.

L35253 As for the woman whose husband has died—it is narrated to us through the chain from Waki‘, from Sufyan al-Thawri, from Mansur, from Mujahid, from Sa‘id ibn al-Musayyab, that ‘Umar sent back women from Dhu al-Hulayfah who were performing Hajj or ‘Umrah and whose husbands had died.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَنَا حُمَيْدٌ الْأَعْرَجُ عَنْ مُجَاهِدٍ قَالَ: كَانَ عُمَرُ، وَعُثْمَانُ يُرْجِعَانِهِنَّ حَوَاجَّ أَوْ مُعْتَمِرَاتٍ مِنَ الْجُحْفَةِ، وَمِنْ ذِي الْحُلَيْفَةِ.

L35254–35255 Through the chain of ‘Abd al-Razzāq: Ibn Jurayj said: I [heard] from Humayd al-A‘raj, who reported from Mujāhid, who said: “Umar and Uthman would send back women who were female Ḥajj pilgrims or ‘Umrah pilgrims assuming iḥrām from Al-Juhfah and Dhū al-Ḥulayfah.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ يُوسُفَ بْنِ مَاهَكَ عَنْ أُمِّهِ مُسَيْكَةَ: أَنَّ امْرَأَةً مُتَوَفًّى عَنْهَا زَارَتْ أَهْلَهَا فِي عِدَّتِهَا فَضَرَبَهَا الطَّلْقُ فَأَتَوْا عُثْمَانَ؟ فَقَالَ: احْمِلُوهَا إِلَى بَيْتِهَا وَهِيَ تُطْلَقُ.

L35256 From the narration of ‘Abd al-Razzāq, from Ma‘mar, from Ayyūb, from Yūsuf ibn Māhak, from his mother Musaykah: A woman whose husband had died visited her family during her waiting period, and was struck by labor pains. They came to Uthman, and he said: “Take her to her house while she is giving birth.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ: كَانَتْ لَهُ ابْنَةٌ تَعْتَدُّ مِنْ وَفَاةِ زَوْجِهَا فَكَانَتْ تَأْتِيهِمْ بِالنَّهَارِ فَتَتَحَدَّثُ إِلَيْهِمْ، فَإِذَا كَانَ اللَّيْلُ أَمَرَهَا أَنْ تَرْجِعَ إِلَى بَيْتِهَا.

L35257 And from the narration of Abd al-Razzaq, from Ma’mar, from Ayyub, from Nafi’, from Ibn Umar, who said: He had a daughter observing the *‘iddah* after her husband’s death. She would come to them during the day and converse with them. When night fell, he would order her to return to her house.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنِ ابْنِ ثَوْبَانَ أَنَّ عُمَرَ رَخَّصَ لِلْمُتَوَفَّى عَنْهَا أَنْ تَأْتِيَ أَهْلَهَا بَيَاضَ يَوْمِهَا.

L35258 Via the chain of Ismail ibn Ishaq: Abu Bakr ibn Abi Shaybah said: Waki‘ narrated from Ali ibn al-Mubarak, from Yahya ibn Abi Kathir, from Ibn Thawban, that Umar granted a concession to the widow to visit her family during the daytime of her waiting period.

وَأَنَّ زَيْدَ بْنَ ثَابِتٍ لَمْ يُرَخِّصْ لَهَا إِلَّا فِي بَيَاضِ يَوْمِهَا أَوْ لَيْلَتِهَا.

L35259 And that Zayd ibn Thābit only granted her a concession during the bright part of her day or her night.

L35260 From the narration of Abd al-Razzaq, from Sufyan al-Thawri, from Mansur

ibn al-Mu'tamir, from Ibrahim al-Nakha'i, from Alqamah, who said: Women from Hamdan, whose husbands' deaths had been announced to them, asked Ibn Mas'ud, "We feel lonely." Ibn Mas'ud replied, "They should gather during the day, then each woman among them should return to her home at night."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ قَالَ: سَأَلَ ابْنَ مَسْعُودٍ نِسَاءٌ مِنْ هَمْدَانَ نُعِيَ إِلَيْهِنَّ أَزْوَاجُهُنَّ فَقُلْنَ: إِنَّا نَسْتَوْحِشُ؟ فَقَالَ ابْنُ مَسْعُودٍ: يَجْتَمِعْنَ بِالنَّهَارِ ثُمَّ تَرْجِعُ كُلُّ امْرَأَةٍ مِنْهُنَّ إِلَى بَيْتِهَا بِاللَّيْلِ.

L35261 And through the chain of Al-Hajjaj ibn Al-Minhal: I, Abu Awanah, narrated from Mansur from Ibrahim that a woman sent a message to Umm Salamah, the Mother of the Believers, saying: "My father is ill, and I am in my waiting period. May I go to tend to him?" She replied, "Yes, but spend one end of the night in my house."

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ أَنَّ امْرَأَةً بَعَثَتْ إِلَى أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ: إِنَّ أَبِي مَرِيضٌ، وَأَنَا فِي عِدَّةٍ أَفَآتِيهِ أُمَرِّضُهُ؟ قَالَتْ: نَعَمْ، وَلَكِنْ بِبَيْتِي أَحَدَ طَرَفَيْ اللَّيْلِ فِي بَيْتِك.

L35262 From the narration of Hammad ibn Salamah, Hisham ibn Urwah reported that his father said: A woman whose husband has passed away observes her waiting period in her marital home unless her family relocates, in which case she may relocate with them.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أرنا هِشَامُ بْنُ عُرْوَةَ أَنَّ أَبَاهُ قَالَ: الْمُتَوَفَّى عَنْهَا زَوْجُهَا تَعْتَدُّ فِي بَيْتِهَا إِلَّا أَنْ يَنْتَوِيَ أَهْلُهَا فَتَنْتَوِي مَعَهُمْ.

L35263–35265 And through the chain of Saʿīd ibn Manṣūr: I am Hushaym; Ismāʿīl ibn Abī Khālid reported to us from al-Shaʿbī that he was asked about the widow: "Does she leave during her waiting period?" He said: "Most of Ibn Masʿūd's associates were stricter." They say something about this: "She should not go out," and the Elder—meaning Ali ibn Abi Talib, may Allah be pleased with him—would prepare her mount.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أرنا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ أَنَّهُ سُئِلَ عَنْ الْمُتَوَفَّى عَنْهَا: أَتَخْرُجُ فِي عِدَّتِهَا؟ فَقَالَ: كَانَ أَكْثَرُ أَصْحَابِ ابْنِ مَسْعُودٍ أَشَدَّ شَيْءٍ فِي ذَلِكَ يَقُولُونَ: لَا تَخْرُجُ، وَكَانَ الشَّيْخُ - يَعْنِي: عَلِيَّ بْنَ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -: يُرَحِّلُهَا.

L35266 Narrated via the chain of Saʿīd ibn Manṣūr: I am Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from ʿAṭāʾ and Jābir ibn Zayd. Both of them stated concerning the woman whose husband has died [and is in her waiting period]: She should not leave her home.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَطَاءٍ، وَجَابِرِ بْنِ زَيْدٍ، كِلَاهُمَا قَالَ فِي الْمُتَوَفَّى عَنْهَا: لَا تَخْرُجُ.

L35267 From the chain of Saʿīd ibn Manṣūr: I am Hushaym, I am Yaḥyā ibn Saʿīd—he is the Anṣārī—that al-Qāsim ibn Muḥammad, Sālim ibn ʿAbd Allāh, and Saʿīd ibn al-Musayyab said concerning the woman whose husband has died: She must not leave until her ʿiddah concludes.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - أَنَّ الْقَاسِمَ بْنَ مُحَمَّدٍ، وَسَالِمَ بْنَ عَبْدِ اللَّهِ، وَسَعِيدَ بْنَ الْمُسَيِّبِ قَالُوا فِي الْمُتَوَفَّى عَنْهَا: لَا تَخْرُجُ حَتَّى تَنْقَضِيَ عِدَّتُهَا.

L35268 From the chain via Waki‘, from al-Ḥasan ibn Ṣāliḥ, from al-Mughīrah, from Ibrāhīm: that he said regarding the widow: There is no harm in her going out during the day, provided she does not spend the night away from her home.

وَمِنْ طَرِيقِ وَكِيعٍ عَنِ الْحَسَنِ بْنِ صَالِحٍ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ: أَنَّهُ قَالَ فِي الْمُتَوَفَّى عَنْهَا: لَا بَأْسَ بِأَنْ تَخْرُجَ بِالنَّهَارِ وَلَا تَبِيتَ عَنْ بَيْتِهَا.

L35269 Through the chain of Sa’id ibn Mansur: Jarir reported from al-Mughirah from Ibrahim concerning a widow in a rented house. He said: “It is best that the rent be paid, and she shall observe her waiting period in the house where she was.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا جَرِيرٌ عَنِ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ فِي الْمُتَوَفَّى عَنْهَا فِي بَيْتٍ بِأُجْرَةٍ؟ قَالَ: إِنْ أَحْسَنَ أَنْ يُعْطَى الْكِرَاءَ، وَتَعْتَدَّ فِي الْبَيْتِ الَّذِي كَانَتْ فِيهِ.

L35270 We have cited Ibrāhīm’s statement solely due to his statement regarding the conditions of departure and regarding lease; otherwise, his explicit statement is that she holds the right to residence and maintenance.

إِنَّمَا أَوْرَدْنَا كَلَامَ إِبْرَاهِيمَ لِقَوْلِهِ فِي صِفَةِ الْخُرُوجِ، وَفِي الْكِرَاءِ، وَإِلَّا فَإِنَّ قَوْلَهُ إِنَّ لَهَا السُّكْنَى، وَالنَّفَقَةَ.

L35271 And via the chain of narration of ‘Abd al-Razzāq from Ibn Jurayj: I heard Yaḥyā ibn Sa‘īd al-Anṣārī speak regarding the matter of the widow. He said: “We hold that she may remain the entire day in full, until night, outside her home if she wishes, and she may go back.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ سَمِعْت يَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ يَقُولُ فِي أَمْرِ الْمُتَوَفَّى عَنْهَا، قَالَ: فَنَحْنُ عَلَى أَنْ تَظَلَّ يَوْمَهَا أَجْمَعَ حَتَّى اللَّيْلَ فِي غَيْرِ بَيْتِهَا إِنْ شَاءَتْ وَتَنْقَلِبَ.

L35272 From the narration of Ismail ibn Ishaq: Abu Thabit al-Madini narrated from Ibn Wahb, who informed me that Amr ibn al-Harith narrated that Bukayr—Ibn al-Ashajj—related to him that the daughter of Habbār ibn al-Aswad; her husband died, and she wished to perform Hajj while still in her waiting period. She asked Sa‘id ibn al-Musayyib. He forbade her. Then another instructed her to proceed with Hajj, so she departed. When she reached al-Baydā’, she fell and suffered a fracture. Abu Muhammad remarked: It is astonishing how the ignorant cite this incident as proof of punishment. By Allah, if such reasoning were valid, then by that, the army of Musrif ibn ‘Uqbah—those who assaulted the people of Medina on the Day of al-Ḥarrah and waged war against Mecca—would have been punished. Sa‘id ibn al-Musayyib—may Allah have mercy on him—was tested with harsher trials than this woman’s ordeal. Trials for a Muslim are a source of reward and atonement, while Allah Almighty may delay the disbelievers and sinners until the Day of Resurrection.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو ثَابِتٍ الْمَدِينِيُّ عَنِ ابْنِ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ أَنَّ بُكَيْرًا - هُوَ ابْنُ الْأَشَجِّ - حَدَّثَهُ أَنَّ ابْنَةَ هَبَّارِ بْنِ الْأَسْوَدِ تُوُفِّيَ عَنْهَا زَوْجُهَا فَأَرَادَتْ الْحَجَّ وَهِيَ فِي عِدَّتِهَا، فَسَأَلَتْ سَعِيدَ بْنَ الْمُسَيِّبِ؟ فَنَهَاهَا، ثُمَّ أَمَرَهَا غَيْرُهُ بِالْحَجِّ، فَخَرَجَتْ فَلَمَّا كَانَتْ بِالْبَيْدَاءِ صُرِعَتْ فَانْكَسَرَتْ؟ قَالَ أَبُو مُحَمَّدٍ: مِنَ الْعَجَبِ احْتِجَاجُ أَهْلِ الْجَهْلِ بِهَذَا عَلَى أَنَّهَا عُقُوبَةٌ، وَتَاللَّهِ لَوْ جَرَتْ هَذِهِ الْقِصَّةُ أَوْ غَيْرُهَا عَلَى مَا ظَنُّوا لَكَانَ بِذَلِكَ عَسْكَرُ مُسْرِفِ بْنِ عُقْبَةَ الْمُوقِعُونَ بِأَهْلِ الْمَدِينَةِ يَوْمَ الْحَرَّةِ، الْمُحَارِبُونَ لِمَكَّةَ وَقَدْ امْتُحِنَ سَعِيدُ بْنُ الْمُسَيِّبِ - رَحِمَهُ اللَّهُ - بِأَشَدَّ مِنْ مِحْنَةِ هَذِهِ الْمَرْأَةِ، وَالْمِحَنُ لِلْمُسْلِمِ أَجْرٌ وَتَكْفِيرٌ، وَقَدْ يُمْهِلُ اللَّهُ تَعَالَى الْكُفَّارَ وَالْفُسَّاقَ إِلَى يَوْمِ الْقِيَامَةِ.

L35273–35274 It was narrated from Rabi’ah—though it is not authentic—that the woman

whose husband has died must resolve to stay with her family, and if she is in a place of danger, she must not remain there.

وَرُوِيَ عَنْ رَبِيعَةَ - وَلَمْ يَصِحَّ - أَنَّ الْمُتَوَفَّى عَنْهَا تَنْتَوِي مَعَ أَهْلِهَا، وَإِنْ كَانَتْ فِي مَوْضِعِ خَوْفٍ فَإِنَّهَا لَا تُقِيمُ فِيهِ.

L35275 It has been authentically narrated from Al-Zuhrī regarding one who initiates [marital life] and then dies that his wife returns to her husband's house if she is not in a dwelling she resides in.

وَصَحَّ عَنْ الزُّهْرِيِّ فِي الَّذِي يَبْتَدِئُ فَيَمُوتُ أَنَّ امْرَأَتَهُ تَرْجِعُ إلَى بَيْتِ زَوْجِهَا إذَا لَمْ تَكُنْ فِي مَسْكَنٍ تَسْكُنُهُ.

L35276 Through the chain of Ḥammād ibn Zayd, from Ayyūb al-Sakhtiyānī, from Muḥammad ibn Sīrīn: A woman whose husband died while she was ill, so her family moved her. Then they asked. All of them instructed them that she should be returned to her husband's house. Ibn Sīrīn said: So we returned her on a mat.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ امْرَأَةً تُوُفِّيَ عَنْهَا زَوْجُهَا - وَهِيَ مَرِيضَةٌ - فَنَقَلَهَا أَهْلُهَا، ثُمَّ سَأَلُوا؟ فَكُلُّهُمْ يَأْمُرُهُمْ أَنْ تُرَدَّ إلَى بَيْتِ زَوْجِهَا، قَالَ ابْنُ سِيرِينَ: فَرَدَدْنَاهَا فِي نَمَطٍ -.

L35277 And with this, Mālik, al-Shāfiʿī, ʿAbd al-Raḥmān ibn Mahdī, and Abū ʿUbayd say.

وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَأَبُو عُبَيْدٍ.

L35278 I am Aḥmad ibn Qāsim, from my father Qāsim ibn Muḥammad ibn Qāsim, from my grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn Shādhān, from al-Muʿallā ibn Manṣūr, from Yaʿqūb—who is Abū Yūsuf al-Qāḍī—and Ḥafṣ ibn Ghayyāth. Both narrated from Ibrāhīm, from al-Aswad, from ʿUmar ibn al-Khaṭṭāb: that he would assign to the woman divorced three times the right to housing and maintenance during her ʿiddah. Ḥafṣ appended: as long as she remains in her waiting period.

وَقَوْلٌ رَابِعٌ - أَنَّ لَهَا السُّكْنَى، وَالنَّفَقَةَ -: كَمَا أَنَا أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ شَاذَانَ أَنَا الْمُعَلَّى بْنُ مَنْصُورٍ أَنَا يَعْقُوبُ - هُوَ أَبُو يُوسُفَ الْقَاضِي - وَحَفْصُ بْنُ غِيَاثٍ، قَالَا: عَنْ إبْرَاهِيمَ عَنْ الْأَسْوَدِ عَنْ عُمَرَ بْنِ الْخَطَّابِ: أَنَّهُ كَانَ يَجْعَلُ لِلْمُطَلَّقَةِ ثَلَاثًا السُّكْنَى، وَالنَّفَقَةَ - زَادَ حَفْصٌ: مَا دَامَتْ فِي عِدَّتِهَا.

L35279 And we have narrated it via the route of Saʿīd ibn Manṣūr: from Abū Muʿāwiyah, from Al-Aʿmash, from Ibrāhīm, who said: "'Umar ibn Al-Khaṭṭāb and 'Abdullāh ibn Masʿūd used to assign three [rights] to a divorced woman: housing and maintenance."

وَرُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو مُعَاوِيَةَ أَنَا الْأَعْمَشُ عَنْ إبْرَاهِيمَ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ، وَعَبْدُ اللَّهِ بْنُ مَسْعُودٍ يَجْعَلَانِ لِلْمُطَلَّقَةِ ثَلَاثًا السُّكْنَى وَالنَّفَقَةَ.

L35280–35281 From the narration of ʿAbd al-Razzāq via Sufyān al-Thawrī, from al-Aʿmash, from Ibrāhīm, from Shurayh concerning the irrevocably divorced woman (thrice-divorced): He held that she is entitled to residence and financial maintenance.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ إبْرَاهِيمَ عَنْ شُرَيْحٍ فِي الْمُطَلَّقَةِ ثَلَاثًا، قَالَ: لَهَا السُّكْنَى، وَالنَّفَقَةُ.

L35282 Narrated by him to Sufyān, from Ḥammād ibn Abī Sulaymān, who said: "The thrice-divorced woman is granted residence and maintenance." And via the chain of Wakīʿ, from Shuʿbah, from Al-Ḥakam ibn ʿUtaybah, from Ibrāhīm al-Nakhaʿī, who said: "The thrice-divorced woman is granted residence and maintenance."

وَبِهِ إِلَى سُفْيَانَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: لِلْمُطَلَّقَةِ ثَلَاثًا السُّكْنَى وَالنَّفَقَةُ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: الْمُطَلَّقَةُ ثَلَاثًا لَهَا السُّكْنَى وَالنَّفَقَةُ.

L35283 From the narration chain of Isma'il ibn Ishaq: Abu Bakr ibn Abi Shaybah reported to us, Humaid reported to us from al-Hasan ibn Salih ibn Hayy from al-Suddi from al-Sha'bi regarding a woman irrevocably divorced three times. He said: She is entitled to lodging and maintenance—this is the opinion of Sufyan al-Thawri, al-Hasan ibn Hayy, Abu Hanifah, and his companions. As for the pregnant woman whose husband has died: A group held that if she is an heir, her maintenance is drawn from her share—whether she is pregnant or not—. If she is not an heir, it is drawn from the share of the possessor of her womb—if the possessor is an heir—. If neither of them is an heir, it is drawn from her own wealth—if she possesses any—. Otherwise, she is considered one of the poor among Muslims. If the possessor of her womb dies before being born alive, she is liable to repay what was spent on her from his share to the heirs.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا حُمَيْدٌ عَنْ الْحَسَنِ بْنِ صَالِحِ بْنِ حَيٍّ عَنْ السُّدِّيِّ عَنْ الشَّعْبِيِّ فِي الْمُطَلَّقَةِ ثَلَاثًا قَالَ: لَهَا السُّكْنَى، وَالنَّفَقَةُ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي حَنِيفَةَ وَأَصْحَابِهِ وَأَمَّا الْمُتَوَفَّى عَنْهَا الْحَامِلُ -: فَطَائِفَةٌ قَالَتْ: إنْ كَانَتْ وَارِثَةً فَمِنْ نَصِيبِهَا - حَامِلًا كَانَتْ أَوْ غَيْرَ حَامِلٍ - فَإِنْ لَمْ تَكُنْ وَارِثَةً فَمِنْ نَصِيبِ ذِي بَطْنِهَا - إنْ كَانَ وَارِثًا - فَإِنْ لَمْ يَكُونَا وَارِثَيْنِ فَمِنْ مَالِهَا نَفْسِهَا - إنْ كَانَ لَهَا مَالٌ - وَإِلَّا فَهِيَ أَحَدُ فُقَرَاءِ الْمُسْلِمِينَ، فَإِنْ مَاتَ ذُو بَطْنِهَا قَبْلَ أَنْ يَخْرُجَ حَيًّا رَدَّتْ مَا أُنْفِقَ عَلَيْهَا مِنْ نَصِيبِهِ إلَى الْوَرَثَةِ.

L35284 And the interpretation of our statement "if there is no heir" refers to a scenario where she embraced Islam after her husband's death—he being a disbeliever. Thus, the child becomes Muslim by virtue of his mother's conversion, for a Muslim does not inherit from a disbeliever. This is our position.

وَتَفْسِيرُ قَوْلِنَا: إنْ لَمْ يَكُنْ وَارِثًا، أَنْ تَكُونَ أَسْلَمَتْ بَعْدَ مَوْتِ زَوْجِهَا - وَهُوَ كَافِرٌ - فَيَكُونُ هُوَ مُسْلِمًا بِإِسْلَامِ أُمِّهِ، وَلَا يَرِثُ كَافِرًا مُسْلِمٌ - وَهَذَا قَوْلُنَا.

L35285 A group said: If the wealth is abundant, he should spend on her from her share, but if it is limited, he should spend from the entirety of the wealth.

وَقَالَتْ طَائِفَةٌ: إنْ كَانَ الْمَالُ كَثِيرًا أَنْفَقَ عَلَيْهَا مِنْ نَصِيبِهَا، وَإِنْ كَانَ قَلِيلًا فَمِنْ جَمِيعِ الْمَالِ.

L35286 A group said: Her maintenance is to be provided from the entirety of the wealth. Another group said: Whether she is an heir(ess) or not, her maintenance is her responsibility - from her own assets if she possesses any, and by her asking if she has none. It is neither from her inheritance, nor from the inheritance share allocated to the fetus in her womb, nor from the entirety of the wealth.

وَقَالَتْ طَائِفَةٌ: نَفَقَتُهَا مِنْ جَمِيعِ الْمَالِ، وَقَالَتْ طَائِفَةٌ: وَارِثَةً كَانَتْ أَوْ لَمْ تَكُنْ نَفَقَتُهَا عَلَيْهَا مِنْ مَالِهَا - إنْ كَانَ لَهَا مَالٌ - وَمِنْ سُؤَالِهَا إنْ كَانَ لَا مَالَ لَهَا، لَا مِنْ مِيرَاثِهَا، وَلَا مِنْ مِيرَاثِ ذِي بَطْنِهَا، وَلَا مِنْ جَمِيعِ الْمَالِ.

L35287–35288 The first opinion: It was narrated to us via Waki' from Sufyan al-Thawri

فَالْقَوْلُ الْأَوَّلُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: نَفَقَةُ الْمُتَوَفَّى عَنْهَا الْحَامِلِ مِنْ نَصِيبِهَا.

from Abu al-Zubayr from Jabir ibn ʻAbd Allah, who said: The financial support for the pregnant woman whose husband has died upon her shall be provided from her inheritance share.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَبَّادِ بْنِ أَبِي ذَكْوَانَ أَنَّ ابْنَ عَبَّاسٍ قَالَ فِي الْمُتَوَفَّى عَنْهَا الْحَامِلِ: نَفَقَتُهَا مِنْ نَصِيبِهَا.

L35289 Narrated through Ḥammād ibn Salamah from ʿAmr ibn Dīnār from ʿAbbād ibn Abī Dhakwān that Ibn ʿAbbās said concerning a pregnant widow: “Her maintenance is taken from her prescribed share.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الرَّبِيِّعِ عَنْ عَطَاءٍ قَالَ: الْمُتَوَفَّى عَنْهَا مِنْ نَصِيبِهَا يُنْفَقُ عَلَى الْحَامِلِ.

L35290 And from the narration of Wakiʿ through Rubayyʿ from ʿAṭāʾ, he said: What is to be spent on the pregnant woman [whose husband died] is taken from her share.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا قَالَ: يُنْفَقُ عَلَيْهَا مِنْ نَصِيبِهَا.

L35291 From the narration of Wakiʿ, from Shuʿbah, from al-Ḥakam ibn ʿUtaybah concerning the pregnant widow whose husband has died, al-Ḥakam said: “Maintenance for her is provided from her share.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَّ زِيَادًا الْأَعْلَمَ أَخْبَرَهُ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ أَرْسَلَ إِلَى عَبْدِ الْمَلِكِ بْنِ يَعْلَى - قَاضِي الْبَصْرَةِ - فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا؟ فَقَالَ: نَفَقَتُهَا مِنْ نَصِيبِهَا.

L35292 And through the chain of Ḥammād ibn Salama, Ziyād al-Aʿlam informed him from Muḥammad ibn Sīrīn that he sent to ʿAbd al-Malik ibn Yaʿlā—the judge of Basra—inquiring, “What about the pregnant woman whose husband has died?” He responded: “Her maintenance is from her share.”

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ عَنْ الْحَسَنِ قَالَ: نَفَقَتُهَا مِنْ نَصِيبِهَا.

L35293 And from the narrational path of Saʿīd ibn Manṣūr: via Hushaym, via Yūnus, via al-Ḥasan, who said: Her [obligatory] maintenance is to be provided from his obligated portion [of wealth].

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو شِهَابٍ عَنْ إِسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ فِي الْمُتَوَفَّى عَنْهَا، وَبَلَغَهَا الْخَبَرُ، وَقَدْ أَنْفَقَتْ مِنْ مَالِهِ قَالَ: يُحْسَبُ مَا أَنْفَقَتْ مِنْ مَالِهِ مِنْ يَوْمِ مَاتَ فَجُعِلَ مِنْ نَصِيبِهَا.

L35294 From the chain of Saʿīd ibn Manṣūr: I received from Abū Shihāb, from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī regarding a widow who learned of her husband’s death after spending from his wealth. Al-Shaʿbī said: The amount she spent from his wealth is calculated starting from the day he died and counted as part of her inheritance share.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَحْمَدُ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِهِمْ، وَهُوَ أَحَدُ قَوْلَيْ الشَّافِعِيِّ - وَأَحَدُ قَوْلَيْ سُفْيَانَ.

L35295 And this is the opinion of Abū Ḥanīfah, Aḥmad, Abū Sulaymān, and all their companions. It is one of the two views of al-Shāfiʿī—and one of the two views of Sufyān.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ جَعْفَرِ بْنِ بُرْقَانَ عَنْ الزُّهْرِيِّ قَالَ: قَالَ قَبِيصَةُ بْنُ ذُؤَيْبٍ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا: لَوْ أَنْفَقَتْ عَلَيْهَا مِنْ غَيْرِ نَصِيبِهَا أَنْفَقَتْ عَلَيْهَا مِنْ مَالِ ذِي بَطْنِهَا.

L35296 And through the narration of Waki‘ from Ja‘far ibn Burqān from al-Zuhrī, he said: Qabīṣah ibn Dhu’ayb stated concerning the pregnant widow: If she

were to spend on herself from other than her allotted share, she would be spending from the wealth of the child in her womb.

L35297 The second opinion: As we have narrated through the chain of Saʿīd ibn Manṣūr – I am Abū ʿAwānah, from Manṣūr, from Ibrāhīm al-Nakhaʿī – who said regarding the pregnant woman whose husband has died: "Our fellow scholars used to say: If the estate was large, he was commanded to provide for her from her allocated portion. If it was small, he was to provide for her from the entirety of the estate."

L35298–35300 The third opinion—those who hold it are divided into categories—: A group said: If she inherits, it is from the share of the owner of her womb, and if she does not inherit, it is from the entire estate.

L35301 A group maintained that the maintenance of the pregnant woman whose husband has died is to be provided from the entirety of the wealth.

L35302 A group held that she is entitled to maintenance from the principal of the estate (whether she was pregnant or not pregnant) as long as she remained in the waiting period. This is as we have narrated through the chain of Saʿīd ibn Manṣūr: "I report via Hushaym, who reports via Yūnus, from al-Ḥasan, who would state regarding the *umm al-walad* (enslaved woman bearing her master's child) whose master died while she was pregnant: 'If she delivers the child alive, her maintenance is drawn from the child's share. But if it is born dead, then from the entire estate.'" Yūnus added: "Ibn Sīrīn used to assert: 'Maintenance is provided for her from the entire estate.'" This had been his opinion until he became the executor of the estate of a nephew who died, leaving his *umm al-walad* pregnant. He then disliked acting upon his own opinion in her case and sent for ʿAbd al-Malik ibn Yaʿlā—the judge of Basra—who ruled: "She has no right to maintenance."

L35303 The second opinion—as reported through ʿAbd al-Razzāq from Ibn Jurayj, who said: Ibn Shihāb was asked regarding the woman whose husband has died—from whose wealth is her maintenance due? He replied: Ibn ʿUmar held that her maintenance—whether she was pregnant or not—should be provided from all the wealth her husband left. But the jurists rejected this view and ruled that she has no right to maintenance.

وَالْقَوْلُ الثَّانِي -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا: كَانَ أَصْحَابُنَا يَقُولُونَ: إِنْ كَانَ الْمَالُ كَثِيرًا أُمِرَ أَنْ يُنْفِقَ عَلَيْهَا مِنْ نَصِيبِهَا، وَإِنْ كَانَ قَلِيلًا أَنْفَقَ عَلَيْهَا مِنْ جَمِيعِ الْمَالِ.

وَالْقَوْلُ الثَّالِثُ -: انْقَسَمَ الْقَائِلُونَ بِهِ أَقْسَامًا -: فَقَالَتْ طَائِفَةٌ: إِنْ وَرِثَتْ فَمِنْ نَصِيبِ ذِي بَطْنِهَا وَإِنْ لَمْ تَرِثْ فَمِنْ جَمِيعِ الْمَالِ.

وَقَالَتْ طَائِفَةٌ: نَفَقَةُ الْحَامِلِ الْمُتَوَفَّى عَنْهَا مِنْ جَمِيعِ الْمَالِ.

وَقَالَتْ طَائِفَةٌ: لَهَا النَّفَقَةُ مِنْ رَأْسِ الْمَالِ - حَامِلًا كَانَتْ أَوْ غَيْرَ حَامِلٍ - مَا كَانَتْ فِي الْعِدَّةِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ عَنْ الْحَسَنِ أَنَّهُ كَانَ يَقُولُ فِي أُمِّ الْوَلَدِ إِذَا مَاتَ عَنْهَا سَيِّدُهَا وَهِيَ حَامِلٌ: إِنْ وَلَدَتْهُ حَيًّا فَنَفَقَتُهَا مِنْ نَصِيبِهِ، وَإِنْ كَانَ مَيِّتًا فَمِنْ جَمِيعِ الْمَالِ، قَالَ يُونُسُ: كَانَ ابْنُ سِيرِينَ يَقُولُ: يُنْفَقُ عَلَيْهَا مِنْ جَمِيعِ الْمَالِ - كَانَ ذَلِكَ رَأْيَهُ حَتَّى وَلِيَ تَرِكَةَ ابْنِ أَخٍ لَهُ مَاتَ وَتَرَكَ أُمَّ وَلَدِهِ حَامِلًا، فَكَرِهَ أَنْ يَعْمَلَ فِيهَا بِرَأْيِهِ، فَأَرْسَلَ إِلَى عَبْدِ الْمَلِكِ بْنِ يَعْلَى - قَاضِي الْبَصْرَةِ - فَقَالَ: لَا نَفَقَةَ لَهَا.

وَالْقَوْلُ الثَّانِي - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنْ الْمُتَوَفَّى عَنْهَا عَلَى مَنْ نَفَقَتُهَا؟ فَقَالَ: كَانَ ابْنُ عُمَرَ يَرَى نَفَقَتَهَا - حَامِلًا كَانَتْ أَوْ

غَيْرَ حَامِلٍ - مِنْ جَمِيعِ الْمَالِ الَّذِي تَرَكَ زَوْجُهَا؟ فَأَبَى الْأَئِمَّةُ ذَلِكَ وَقَضَوْا أَنْ لَا نَفَقَةَ لَهَا.

L35304 قَالَ أَبُو مُحَمَّد: التَّهْوِيلُ بِخِلَافِ الْأَئِمَّةِ هَاهُنَا كَلَامٌ فَارِغٌ، لِأَنَّهُ لَمْ يَكُنْ فِي الْأَئِمَّةِ - بَعْدَ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ: أَحَدٌ يَعْدِلُ ابْنَ عُمَرَ.

L35305 وَلَا شَكَّ فِي أَنَّ الزُّهْرِيَّ لَمْ يَعْنِ الْأَرْبَعَةَ الْمَذْكُورِينَ، إِنَّمَا عَنَى مَنْ بَعْدَهُمْ الَّذِينَ أَبَوْا قَوْلَ ابْنِ عُمَرَ: - أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَوْنِ اللَّهِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا مُحَمَّدُ بْنُ جَعْفَرَ غُنْدَرٌ أَنَا شُعْبَةُ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ، قَالَ سَمِعْت الزُّهْرِيَّ يُحَدِّثُ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا زَوْجُهَا: نَفَقَتُهَا مِنْ جَمِيعِ الْمَالِ.

L35306 وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَشْعَثَ عَنْ الشَّعْبِيِّ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ وَابْنَ مَسْعُودٍ كَانَا يَقُولَانِ: النَّفَقَةُ مِنْ جَمِيعِ الْمَالِ لِلْحَامِلِ.

L35307–35309 أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ قَالَ: سَأَلْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ الْحَامِلِ الْمُتَوَفَّى عَنْهَا؟ فَقَالَ: قَدْ كُنَّا نُنْفِقُ عَلَيْهَا حَتَّى نَبْتُمْ مَا نَبْتُمْ.

L35310 وَبِهِ إلَى الْخُشَنِيِّ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ حَدَّثَتْنِي أُمُّ دَاوُد الْوَابِشِيَّةِ قَالَتْ: تُوُفِّيَ زَوْجِي وَأَنَا حُبْلَى فِي ثَلَاثَةِ أَشْهُرٍ فَخَاصَمَنِي أَهْلُهُ إلَى شُرَيْحٍ فَعَرَضَ لِي خَمْسَةَ

L35304 Abu Muhammad said: Exaggerating disagreement with the caliphs here is baseless talk, for after Abu Bakr, Umar, Uthman, and Ali, there was none among the caliphs who equaled Ibn Umar.

L35305 There is no doubt that al-Zuhrī did not intend the four mentioned individuals, but rather those who came after them who rejected the statement of Ibn ʿUmar. The chain of transmission proceeds as follows: I am Muḥammad ibn Saʿīd ibn Nubāt; I am Aḥmad ibn ʿAwn Allāh; I am Qāsim ibn Aṣbagh; I am Muḥammad ibn ʿAbd al-Salām al-Khushanī; I am Muḥammad ibn Bashshār; I am Muḥammad ibn Jaʿfar Ghundur; I am Shuʿbah, from Sufyān ibn Ḥusayn, who said: "I heard al-Zuhrī narrating from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father, who said concerning the pregnant woman whose husband has died: her maintenance shall be drawn from the entirety of the estate."

L35306 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Ash'ath from al-Sha'bi: Ali ibn Abi Talib and Ibn Mas'ud used to say, "Maintenance for the pregnant wife is from the entirety of the wealth."

L35307–35309 Muhammad ibn Saʿīd ibn Nubāt narrated from Aḥmad ibn ʿAbdillāh 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. He said: I asked Salim ibn Abdullah ibn Umar about the pregnant woman whose husband had died, and he replied, "We used to provide maintenance for her until the matter was conclusively settled."

L35310 Through him to Al-Khushani—I am Muhammad ibn Bishar: Yahya ibn Sa'id Al-Qattan reported to me—Umm Dawud al-Wabishiyyah narrated to me, saying: "My husband died while I was three months pregnant. His family brought a lawsuit against me before Shuraih. He offered me fifteen dirhams from the entire estate each month, saying: 'This is for you until you de-

liver. When you give birth, if you keep the child, you shall receive the same amount.'"

عَشَرَ دِرْهَمًا مِنْ جَمِيعِ الْمَالِ فِي كُلِّ شَهْرٍ، وَقَالَ: هَذِهِ لَك حَتَّى تَلِدِي، فَإِذَا وَلَدْت فَإِنْ أَمْسَكْتِهِ فَلَكِ مِثْلُهَا.

L35311 And we have also narrated it through the chain of Waki' from the mentioned Umm Dawud, and he added: "until you grow."

وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ وَكِيعٍ عَنْ أُمِّ دَاوُد الْمَذْكُورَةِ، وَزَادَ: حَتَّى تَعْظُمِي.

L35312 And through the chain of Saʿīd ibn Manṣūr: I am Abū ʿAwānah, from Manṣūr from Ibrāhīm from Shurayḥ, who said: Maintenance for the pregnant woman whose husband has died shall be provided from the entirety of the estate.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو عَوَانَةَ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ عَنْ شُرَيْحٍ قَالَ: يُنْفَقُ عَلَى الْحَامِلِ الْمُتَوَفَّى عَنْهَا مِنْ جَمِيعِ الْمَالِ.

L35313 From the narration of Waki', who narrated from Shu'bah; Shu'bah narrated from Qatadah, Hammad ibn Abi Sulayman, and al-Mughirah. Al-Mughirah said: from Ibrahim. They all stated concerning the pregnant widow when her husband dies: maintenance for her is to be provided from the entire estate.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ شُعْبَةَ عَنْ قَتَادَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَالْمُغِيرَةِ، قَالَ الْمُغِيرَةُ: عَنْ إبْرَاهِيمَ، قَالُوا كُلُّهُمْ فِي الْحَامِلِ الْمُتَوَفَّى عَنْهَا: يُنْفَقُ عَلَيْهَا مِنْ جَمِيعِ الْمَالِ.

L35314 Narrated via Ḥammād ibn Salamah from Qaṭādah, who reported from Abī al-ʻĀliyah and Khilāṣ ibn ʻAmr—both of them said together regarding the woman whose husband died while she is pregnant: "Her maintenance is from the entirety of the wealth."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا قَتَادَةُ عَنْ أَبِي الْعَالِيَةِ، وَخِلَاسِ بْنِ عَمْرٍو، قَالَا جَمِيعًا فِي الْمُتَوَفَّى عَنْهَا زَوْجُهَا وَهِيَ حَامِلٌ -: إنَّ نَفَقَتَهَا مِنْ جَمِيعِ الْمَالِ.

L35315 From the chain of Saʿīd ibn Manṣūr: Hushaym narrated, "I [heard] from Sayyār, on the authority of Al-Shaʻbī, concerning the pregnant woman whose husband has died." He said: "Expenditure for her is to be provided from the entirety of the wealth."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا سَيَّارٌ عَنْ الشَّعْبِيِّ فِي الْمُتَوَفَّى عَنْهَا الْحَامِلِ، قَالَ: يُنْفَقُ عَلَيْهَا مِنْ جَمِيعِ الْمَالِ.

L35316 Through the chain of Hammad ibn Salamah from Qatadah—who narrates from al-Hasan and ʿAṭāʾ ibn Abī Rabāḥ—both al-Hasan and ʿAṭāʾ stated regarding a woman widowed while pregnant: "Her maintenance is to be provided from the entire estate."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ، وَعَطَاءِ بْنِ أَبِي رَبَاحٍ، قَالَا جَمِيعًا فِي الْمُتَوَفَّى عَنْهَا وَهِيَ حَامِلٌ -: إنَّ نَفَقَتَهَا مِنْ جَمِيعِ الْمَالِ.

L35317 This is the opinion of Ayyūb al-Sakhtiyānī, Ibn Abī Laylā, al-Ḥasan ibn Ḥayy, Abū ʿUbayd, one of the two opinions of Sufyān, and one of the two opinions of al-Shāfiʿī.

وَهُوَ قَوْلُ أَيُّوبَ السِّخْتِيَانِيِّ وَابْنِ أَبِي لَيْلَى، وَالْحَسَنِ بْنِ حَيٍّ، وَأَبِي عُبَيْدٍ وَأَحَدُ قَوْلَيْ سُفْيَانَ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L35318 Mālik said: No expenditure is to be made for her from her share, nor from

the unborn child's share, nor from the entire estate until she gives birth. And creditors are not to receive half from their debts until she gives birth.

وَقَالَ مَالِكٌ: لَا يُنْفَقُ عَلَيْهَا مِنْ نَصِيبِهَا، وَلَا مِنْ نَصِيبِ ذِي بَطْنِهَا، وَلَا مِنْ جَمِيعِ الْمَالِ حَتَّى تَضَعَ، وَلَا يَنْتَصِفُ الْغُرَمَاءُ مِنْ دُيُونِهِمْ حَتَّى تَضَعَ.

L35319 Al-Awza'i said: If the pregnant woman whose husband has died was a wife, there is no maintenance for her upon the heirs. But if she was an umm walad—an enslaved woman who bore her master's child—her maintenance must be provided from the entire estate until she gives birth.

وَقَالَ الْأَوْزَاعِيُّ: إِنْ كَانَتْ الْمُتَوَفَّى عَنْهَا الْحَامِلُ زَوْجَةً فَلَا نَفَقَةَ لَهَا عَلَى الْوَرَثَةِ، وَإِنْ كَانَتْ أُمَّ وَلَدٍ فَنَفَقَتُهَا مِنْ جَمِيعِ الْمَالِ حَتَّى تَضَعَ.

L35320–35321 Al-Layth said: The expenses for a pregnant umm al-walad [enslaved woman who has borne her master's child] shall be covered from the entirety of her deceased master's estate. If she gives birth, the amount spent on her shall be deducted from the child's share of the inheritance. If she does not deliver, she is required to repay what was given to her.

وَقَالَ اللَّيْثُ يُنْفَقُ عَلَى أُمِّ الْوَلَدِ الْحَامِلِ إِذَا مَاتَ سَيِّدُهَا مِنْ جَمِيعِ الْمَالِ، فَإِنْ وَلَدَتْ جُعِلَ مَا أُنْفِقَ عَلَيْهَا مِنْ حِصَّةِ وَلَدِهَا، وَإِنْ لَمْ تَلِدْ قُضِيَ عَلَيْهَا بِرَدِّ مَا أُعْطِيت.

L35322 Abu Hanifah said: The widow is allowed to go out during the day but must return to her home at night. As for the irrevocably divorced woman, she must not go out, neither at night nor during the day.

وَقَالَ أَبُو حَنِيفَةَ: تَخْرُجُ الْمُتَوَفَّى عَنْهَا نَهَارًا وَتَرْجِعُ لَيْلًا إِلَى مَنْزِلِهَا وَأَمَّا الْمُطَلَّقَةُ الْمَبْتُوتَةُ فَلَا تَخْرُجُ لَا لَيْلًا وَلَا نَهَارًا.

L35323 Abu Muhammad said: As for Abu Hanifah's opinion here, it is manifestly invalid and a categorization unsupported by evidence — the same applies to the opinions of Al-Awza'i and Malik.

قَالَ أَبُو مُحَمَّد: أَمَّا قَوْلُ أَبِي حَنِيفَةَ هُنَا فَظَاهِرُ الْفَسَادِ، وَتَقْسِيمٌ لَا دَلِيلَ عَلَى صِحَّتِهِ - كَذَلِكَ قَوْلُ الْأَوْزَاعِيِّ، وَقَوْلُ مَالِكٍ.

L35324 The most evidently flawed is Mālik's opinion in his prohibition of the creditors.

وَأَظْهَرُهَا فَسَادًا قَوْلُ مَالِكٍ فِي مَنْعِهِ الْغُرَمَاءَ.

L35325 The heirs have no share except in what remains after the creditors. If nothing remains for the creditors, then the heirs receive nothing. Why are they denied their due right? Similarly, anyone with a definite entitlement in the inheritance, if denied what must necessarily fall into their share, is subjected to a definite injustice of unknown origin. We have repeatedly questioned them about this and found no basis for them, except their assertion: "Death must be confirmed, the number of heirs determined, and an overseer appointed over the newborn." We responded: "This is a corrupt and invalid argument. Rather, there are countless necessities beyond this. As for debts, establishing death is entirely meaningless. Their rights must be adjudicated whether the debtor is alive or dead."

وَلَا حَظَّ لِلْوَرَثَةِ إِلَّا فِيمَا بَقِيَ لِلْغُرَمَاءِ فَإِنْ لَمْ يَبْقَ لِلْغُرَمَاءِ شَيْءٌ فَلَا شَيْءَ لِلْوَرَثَةِ فَلِأَيِّ مَعْنًى يُمْنَعُونَ حَقَّهُمْ الْوَاجِبَ، وَكَذَلِكَ كُلُّ مَنْ لَهُ حَقٌّ مُتَيَقَّنٌ فِي الْمِيرَاثِ فَمَنْعُهُ مِمَّا لَا بُدَّ لَهُ مِنْ أَنْ يَقَعَ فِي حِصَّتِهِ ظُلْمٌ مُتَيَقَّنٌ، لَا يُدْرَى مِنْ أَيْنَ وَقَعَ لَهُمْ؟ وَقَدْ أَكْثَرْنَا مُسَاءَلَتَهُمْ عَنْ ذَلِكَ فَمَا وَجَدْنَا لَهُمْ مُتَعَلَّقًا، إِلَّا أَنَّهُمْ قَالُوا: لَا بُدَّ مِنْ إثْبَاتِ الْمَوْتِ، وَعِدَّةِ الْوَرَثَةِ، وَمِنْ تَقْدِيمِ نَاظِرٍ عَلَى الْمَوْلُودِ؟ فَقُلْنَا لَهُمْ: هَذَا قَوْلٌ فَاسِدٌ بَاطِلٌ، بَلْ مِنْ

ذَلِكَ أَلْفُ بُدٍّ -: أَمَّا الدُّيُونُ - فَلَا مَعْنَى لِإِثْبَاتِ الْمَوْتِ أَصْلًا، بَلْ يُقْضَى لَهُمْ بِحُقُوقِهِمْ حَيًّا كَانَ أَوْ مَيِّتًا.

L35326 As for the heirs, there is no purpose in establishing their number in matters where there is no doubt that it applies to each one of them.

وَأَمَّا الْوَرَثَةُ - فَلَا مَعْنَى لِإِثْبَاتِ عَدَدِهِمْ فِيمَا لَا شَكَّ أَنَّهُ يَقَعُ لِكُلِّ وَاحِدٍ مِنْهُمْ.

L35327 As for what may or may not occur due to the large number of heirs or their scarcity, or the birth of a male or female child, this must necessarily be suspended until it is ascertained what the ruling will be? As for those who obligate maintenance from the entire estate for the deceased's wife or the irrevocably divorced woman—this is an unmistakable error, for the deceased's wealth no longer belongs to him but has passed to others. Therefore, it is impermissible to spend from the creditors' wealth, the heirs' wealth, or what he bequeathed to others for the maintenance of his wife or the mother of his child—and this is the very essence of injustice. The irrevocably divorced woman is not his wife; she holds the same status as a stranger. Thus, taking from his estate for her maintenance is impermissible.

وَأَمَّا مَا يَقَعُ لَهُ أَوْ لَا يَقَعُ، لِكَثْرَةِ الْوَرَثَةِ، أَوْ لِقِلَّتِهِمْ، وَبِوِلَادَةِ ذَكَرٍ أَوْ أُنْثَى، فَهَذَا يُوقَفُ وَلَا بُدَّ حَتَّى يُتَيَقَّنَ كَيْفَ يَكُونُ حُكْمُهُ؟ وَأَمَّا مَنْ أَوْجَبَ النَّفَقَةَ مِنْ جَمِيعِ الْمَالِ لِلْمُتَوَفَّى عَنْهَا، أَوْ لِلْمَبْتُوتَةِ -: فَخَطَأٌ لَا خَفَاءَ بِهِ؛ لِأَنَّ مَالَ الْمَيِّتِ لَيْسَ لَهُ، بَلْ قَدْ صَارَ لِغَيْرِهِ، فَلَا يَجُوزُ أَنْ يُنْفَقَ عَلَى امْرَأَتِهِ، أَوْ أُمِّ وَلَدِهِ مِنْ مَالِ الْغُرَمَاءِ، أَوْ مِنْ مَالِ الْوَرَثَةِ، أَوْ مِمَّا أَوْصَى بِهِ لِغَيْرِهِمْ - وَهَذَا عَيْنُ الظُّلْمِ - وَالْمَبْتُوتَةُ لَيْسَتْ لَهُ زَوْجَةً، فَهِيَ وَالْأَجْنَبِيَّةُ سَوَاءٌ، فَأَخْذُهُ بِالنَّفَقَةِ عَلَيْهَا لَا يَجُوزُ.

L35328–35330 And we shall mention, if Allah the Exalted wills, the contention of those who obligate housing and maintenance, or housing, for the irrevocably divorced woman. excluding the expenditure, or singled out the pregnant woman for this [exclusion] – and we clarify, by Allah's assistance, the invalidity of all such claims – and through Him, the Almighty and Majestic, we are sustained.

وَنَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى شَغَبَ مَنْ أَوْجَبَ لِلْمَبْتُوتَةِ السُّكْنَى، وَالنَّفَقَةَ، أَوْ السُّكْنَى دُونَ النَّفَقَةِ، أَوْ خَصَّ الْحَامِلَ بِذَلِكَ - وَنُبَيِّنُ بِعَوْنِ اللَّهِ تَعَالَى فَسَادَ كُلِّ ذَلِكَ - وَبِهِ عَزَّ وَجَلَّ نَتَأَيَّدُ.

L35331 As for the statement of those who say, "She has no maintenance nor housing unless she is pregnant," they argued by citing Allah's words: {If they are pregnant, provide for them until they deliver their burden. Then if they breastfeed your child, give them their compensation, and resolve matters between you equitably. But if you disagree, another woman will breastfeed [the child] on his behalf. Let the affluent spend according to their capacity, and let him whose provision is restricted spend from what Allah has given him. Allah does not burden any soul beyond what He has granted it} [At-Talaq: 6-7].[21]

أَمَّا قَوْلُ مَنْ قَالَ: لَا نَفَقَةَ لَهَا وَلَا سُكْنَى إِلَّا أَنْ تَكُونَ حَامِلًا؟ فَإِنَّهُمْ احْتَجُّوا بِقَوْلِ اللَّهِ تَعَالَى: {وَإِنْ كُنَّ أُولَاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ 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} [الطلاق: ٦ - ٧] الْآيَةَ.

[21] **Qur'an references (L35331):** Qur'an 65:6 (At-Talaq); Qur'an 65:7 (At-Talaq).

قَالُوا: وَهَذَا عُمُومٌ لِكُلِّ مُطَلَّقَةٍ حَامِلٍ؟ قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُمْ سَكَتُوا عَنْ أَوَّلِ الْآيَةِ، وَهُوَ قَوْلُهُ عَزَّ وَجَلَّ: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٦] فَالَّتِي أَمَرَ اللَّهُ عَزَّ وَجَلَّ بِالنَّفَقَةِ عَلَيْهَا إِنْ كَانَتْ حَامِلًا هِيَ الَّتِي أَمَرَ بِإِسْكَانِهَا وَلَا فَرْقَ، فَمَنْ أَوْجَبَ النَّفَقَةَ دُونَ السُّكْنَى فَقَدْ قَالَ بِلَا دَلِيلٍ، وَبَطَلَ قَوْلُهُ، وَلَمْ يَبْقَ إِلَّا قَوْلُنَا، أَوْ قَوْلُ مَنْ أَوْجَبَ لَهَا السُّكْنَى، وَالنَّفَقَةَ - إِنْ كَانَتْ حَامِلًا - وَسَنُبَيِّنُ وَجْهَ الْحَقِّ فِي ذَلِكَ إِنْ شَاءَ اللَّهُ تَعَالَى.

L35332 They said: “Is this a general ruling for every divorced pregnant woman?” Abu Muhammad responded: “This contains no valid proof for them, for they remained silent about the beginning of the verse - the words of the Almighty: {House them where you dwell according to your means, and do not harm them to restrict them. If they are pregnant, provide for them until they deliver their burden} (Quran 65:6). The pregnant woman whom Allah Almighty commanded to be provided sustenance is precisely the same one He commanded to be housed, with no distinction. Whoever obligates sustenance without housing provision has spoken without evidence, thus invalidating their claim. Only our position remains - or the position of those who obligate both housing provision and sustenance for her if she is pregnant. We shall clarify the correct position in this matter, if Allah, the Exalted, wills.”[22]

وَاحْتَجُّوا أَيْضًا - بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ قَالَ: أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: أَرْسَلَ مَرْوَانُ قَبِيصَةَ بْنَ ذُؤَيْبٍ إِلَى فَاطِمَةَ بِنْتِ قَيْسٍ يَسْأَلُهَا؟ فَأَخْبَرَتْهُ أَنَّهَا كَانَتْ تَحْتَ أَبِي عَمْرِو بْنِ حَفْصٍ الْمَخْزُومِيِّ - فَذَكَرَ الْحَدِيثَ - وَأَنَّهُ طَلَّقَهَا آخِرَ ثَلَاثِ تَطْلِيقَاتٍ، إِذْ خَرَجَ إِلَى الْيَمَنِ مَعَ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَأَنَّ عَيَّاشَ بْنَ أَبِي رَبِيعَةَ، وَالْحَارِثَ بْنَ هِشَامٍ، قَالَا: وَاللَّهِ مَا لَهَا نَفَقَةٌ إِلَّا أَنْ تَكُونَ حَامِلًا، قَالَ: فَذَكَرَتْ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: «لَا نَفَقَةَ لَكِ إِلَّا أَنْ تَكُونِي حَامِلًا - وَاسْتَأْذَنَتْهُ فِي الِانْتِقَالِ؟ فَأَذِنَ لَهَا» .

L35333–35335 They also cited as evidence—what we have narrated through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah ibn Masʿūd informed me, saying: Marwān sent Qabīṣah ibn Dhuʾayb to Fāṭimah bint Qays to question her? She informed him that she had been married to Abū ʿAmr ibn Ḥafṣ al-Makhzūmī—and he related the hadith—and that he divorced her with the third and final pronouncement of divorce when he departed for Yemen with ʿAlī ibn Abī Ṭālib. ʿAyyāṣ ibn Abī Rabīʿah and al-Ḥārith ibn Hishām said: “By Allāh, she has no right to maintenance unless...” He said: She mentioned that to the Messenger of Allah—peace and blessings be upon him—and he said, “No financial maintenance is due to you unless you are pregnant.” She asked his permission to move, and he allowed her.[23]

قَالَ أَبُو مُحَمَّدٍ: هَذِهِ اللَّفْظَةُ «إِلَّا أَنْ تَكُونِي حَامِلًا» لَمْ تَأْتِ إِلَّا مِنْ هَذِهِ الطَّرِيقِ وَلَمْ يَذْكُرْهَا أَحَدٌ مِمَّنْ رَوَى هَذَا الْخَبَرَ عَنْ فَاطِمَةَ غَيْرُ قَبِيصَةَ - وَعِلَّةُ هَذَا الْخَبَرِ: أَنَّهُ مُنْقَطِعٌ لَمْ يَسْمَعْهُ عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ - لَا مِنْ قَبِيصَةَ وَلَا مِنْ مَرْوَانَ - فَلَا نَدْرِي مِمَّنْ

L35336 Abu Muhammad said: This phrase, “except if you are pregnant,” has only come through this chain of transmission, and none of those who narrated this report from Fāṭimah mentioned it except Qabīṣah. The flaw in this report is that it constitutes a broken chain, as ʿUbayd Allāh ibn ʿAbd Allāh neither heard it from Qabīṣah nor from Marwān—so we do not know from whom he heard it. There is no valid proof in a broken chain. Had it been

[22] **Qur’an references (L35332):** Qur’an 65:6 (At-Talaq).
[23] **Hadith references (L35333):** Sunan Abi Dawud 2290.

continuous, we would have hastened to act upon it. Thus, this report is invalidated—and praise be to Allāh, Lord of the worlds.

L35337–35339 Then we examined the view of those who obligate residence for the divorced woman without maintenance. We found them invoking the aforementioned text as evidence, but there is no valid argument in it for anyone who reflects deeply. For Allah the Almighty introduced His truthful statement: "House them from where you reside according to your means" [Surah al-Talaq: 6], following His Exalted's statement in explaining the waiting periods when—The Almighty says: {As for those women who have ceased menstruation among your women, if you are in doubt, their waiting period is three months; and [also] those who have not yet menstruated; and those who are pregnant, their term is until they deliver their child. And whoever fears Allah, He will make ease for him in his matter.} [At-Talaq: 4] {That is the command of Allah, which He has revealed to you. And whoever fears Allah, He will expiate his sins for him and grant him a great reward.} [At-Talaq: 5] {Let them reside where you live according to your means, and do not harass them to restrict them. If they are pregnant, provide for them until they deliver their child.} [At-Talaq: 6] up to His saying, the Most High: {according to your means} [At-Talaq: 6].[24]

L35340 As we have established (with no disagreement among us) that this waiting period applies equally to irrevocably divorced women (mabtutah) and revocably divorced women (raj'iyyah) without distinction, it necessarily follows that Allah's statement "Provide residence for them where you dwell according to your means, and do not harass them to make life difficult for them. If they are pregnant, provide for them until they give birth to their children" (65:6) must have been intended by Him to include irrevocably divorced (mabtutah) and revocably divorced (raj'iyyah) women, or to apply to one of these two categories - this is beyond doubt.[25]

L35341 If you argue: "Indeed, He, the Exalted, intended both categories," we re-

[24]**Qur'an references (L35337):** Qur'an 65:6 (At-Talaq); Qur'an 65:4 (At-Talaq); Qur'an 65:5 (At-Talaq).

[25]**Qur'an references (L35340):** Qur'an 65:6 (At-Talaq).

سَمعَهُ؟ وَلَا حُجَّةَ فِي مُنْقَطِعٍ - وَلَوْ اتَّصَلَ لَسَارَعْنَا إلَى الْقَوْلِ بِهِ، فَبَطَلَ هَذَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ أَوْجَبَ لِلْمَبْتُوتَةِ السُّكْنَى دُونَ النَّفَقَةِ - فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِالنَّصِّ الْمَذْكُورِ، وَلَا حُجَّةَ لَهُمْ فِيهِ لِمَنْ تَأَمَّلَهُ؛ لِأَنَّ اللَّهَ عَزَّ وَجَلَّ ابْتَدَأَ قَوْلَهُ الصَّادِقَ: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ} [الطلاق: ٦] إثْرَ قَوْله تَعَالَى فِي بَيَانِ الْعِدَدِ إذْ يَقُولُ عَزَّ وَجَلَّ: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مِنْ أَمْرِهِ يُسْرًا} [الطلاق: ٤] {ذَلِكَ أَمْرُ اللَّهِ أَنْزَلَهُ إِلَيْكُمْ وَمَنْ يَتَّقِ اللَّهَ يُكَفِّرْ عَنْهُ سَيِّئَاتِهِ وَيُعْظِمْ لَهُ أَجْرًا} [الطلاق: ٥] {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٦] إلَى قَوْله تَعَالَى {مِنْ وُجْدِكُمْ} [الطلاق: ٦] الْآيَةَ.

كَمَا أَوْرَدْنَا وَنَحْنُ لَا نَخْتَلِفُ فِي أَنَّ هَذِهِ الْعِدَّةَ لِلْمَبْتُوتَةِ كَمَا هِيَ لِغَيْرِ الْمَبْتُوتَةِ، وَلَا فَرْقَ، فَوَجَبَ ضَرُورَةً أَنْ يَكُونَ قَوْله تَعَالَى: {أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وُجْدِكُمْ وَلا تُضَارُّوهُنَّ لِتُضَيِّقُوا عَلَيْهِنَّ وَإِنْ كُنَّ أُولاتِ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٦] أَرَادَ بِهِ تَعَالَى جَمِيعَ الْمُطَلَّقَاتِ مِنْ مَبْتُوتَةٍ وَرَجْعِيَّةٍ، أَوْ أَرَادَ أَحَدَ الْقِسْمَيْنِ، هَذَا مَا لَا شَكَّ فِيهِ.

ply: Then it necessarily follows that a non-irrevocably divorced woman has no right to maintenance unless she is pregnant—as you yourselves assert regarding the irrevocably divorced woman—and this conclusion is inescapable. For the scriptural text, according to your position, applies to both categories alike, yet this contradicts your doctrine. Thus, this argument is invalidated.

فَإِنْ قُلْتُمْ: إنَّهُ تَعَالَى أَرَادَ كِلَا الْقِسْمَيْنِ؟ قُلْنَا لَكُمْ: فَيَجِبُ عَلَى هَذَا أَنَّ غَيْرَ الْمَبْتُوتَةِ لَا نَفَقَةَ لَهَا إلَّا أَنْ تَكُونَ حَامِلًا، كَمَا قُلْتُمْ فِي الْمَبْتُوتَةِ وَلَا بُدَّ؛ لِأَنَّ النَّصَّ عِنْدَكُمْ فِيهِمَا جَمِيعًا - وَهَذَا خِلَافُ قَوْلِكُمْ - فَبَطَلَ هَذَا الْقَوْلُ.

L35342 If they say, "He intended only the irrevocably divorced women," we say: This is erroneous in two aspects:

فَإِنْ قَالُوا: أَرَادَ الْمَبْتُوتَاتِ فَقَطْ؟ قُلْنَا: هَذَا خَطَأٌ مِنْ وَجْهَيْنِ:

L35343 The first of these two is—a claim without proof and a specification of the Quran without proof; this is not permissible.

أَوَّلُهُمَا - أَنَّهُ دَعْوَى بِلَا بُرْهَانٍ، وَتَخْصِيصٌ لِلْقُرْآنِ بِلَا دَلِيلٍ، وَهَذَا لَا يَحِلُّ.

L35344 The second point is that the Sunnah from the Messenger of Allah (peace be upon him) has been authentically established in the report of Fāṭimah bint Qays that there is no maintenance due to her nor housing.

وَالْوَجْهُ الثَّانِي -: أَنَّ السُّنَّةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ صَحَّتْ فِي خَبَرِ فَاطِمَةَ بِنْتِ قَيْسٍ بِأَنَّهُ لَا نَفَقَةَ لَهَا وَلَا سُكْنَى.

L35345 Allah forbid that the Messenger of Allah—peace and blessings be upon him—should ever judge contrary to the Quran, except if it were an abrogation or an addition to what is in the Quran. And this is not an addition to what is in the verse.

وَمَعَاذَ اللَّهِ أَنْ يَحْكُمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخِلَافِ الْقُرْآنِ، إلَّا أَنْ يَكُونَ نَسْخًا أَوْ مُضَافًا إلَى مَا فِي الْقُرْآنِ، وَلَيْسَ هَذَا مُضَافًا إلَى مَا فِي الْآيَةِ.

L35346 It is not permissible to assert: "This constitutes abrogation," except through definitive proof, not by unsubstantiated claim—therefore, this claim is nullified.

وَلَا يَحِلُّ أَنْ يُقَالَ: هَذَا نَسْخٌ، إلَّا بِيَقِينٍ لَا بِالدَّعْوَى - فَبَطَلَ هَذَا الْقَوْلُ.

L35347 If they say: "Did Allah, the Exalted and Glorified, intend only revocable divorces?" We reply: "You are correct, and this is our position and evidence for it: the narration of Fatimah bint Qays and our having obligated maintenance upon the woman divorced with a revocable divorce (who is not pregnant), because she remains his wife - he inherits from her, and she inherits from him - without any difference of opinion."

فَإِنْ قَالُوا: أَرَادَ اللَّهُ عَزَّ وَجَلَّ الرَّجْعِيَّاتِ فَقَطْ؟ قُلْنَا: صَدَقْتُمْ، وَهَذَا قَوْلُنَا وَبُرْهَانُنَا عَلَى ذَلِكَ -: خَبَرُ فَاطِمَةَ بِنْتِ قَيْسٍ وَأَوْجَبْنَا النَّفَقَةَ عَلَى الْمُطَلَّقَةِ طَلَاقًا رَجْعِيًّا - لَيْسَتْ بِحَامِلٍ -؛ لِأَنَّهَا زَوْجَتُهُ يَرِثُهَا وَتَرِثُهُ بِلَا خِلَافٍ.

L35348–35349 The legal text states that wives are entitled to maintenance and clothing, as mentioned earlier in our discussion of "the rulings on maintenance."

وَقَدْ جَاءَ النَّصُّ بِأَنَّ لِلزَّوْجَاتِ النَّفَقَةَ، وَالْكِسْوَةَ بِنَصٍّ قَدْ ذَكَرْنَاهُ قَبْلُ فِي ذِكْرِنَا " حُكْمَ النَّفَقَاتِ ".

L35350 We have derived the ruling regarding breastfeeding by the irrevocably divorced, the woman whose marriage has been annulled, and the one whose

child's affiliation is established in a void marriage from the words of Allah the Exalted: {Mothers shall breastfeed their children for two complete years} [Al-Baqarah: 233]—the verses as they stand—as we will elaborate later in its dedicated chapter, if Allah the Exalted wills.[26]

وَأَخَذْنَا حُكْمَ إِرْضَاعِ الْمَبْتُوتَةِ، وَالْمُنْفَسِخَةِ النِّكَاحِ، وَالَّتِي يَلْحَقُ وَلَدُهَا فِي نِكَاحٍ فَاسِدٍ مِنْ قَوْلِهِ تَعَالَى: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ} [البقرة: ٢٣٣] الْآيَاتُ كَمَا هِيَ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا فِي بَابِهِ - إِنْ شَاءَ اللَّهُ تَعَالَى -.

L35351 Therefore, these are irrefutably essential proofs from which there is no escape—and divine success is from Allah, the Exalted.

فَهَذِهِ بَرَاهِينُ ضَرُورِيَّةٌ قَاطِعَةٌ لَا مَحِيدَ عَنْهَا -، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L35352 Therefore, the aforementioned statement is invalidated—and all praise is due to Allah, the Lord of the worlds.

فَسَقَطَ الْقَوْلُ الْمَذْكُورُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35353 As for what they have cited from the Companions and Followers—specifically ʿUmar and Ibn Masʿūd—they [the opponents] oppose both of them, since it is established from these two that an irrevocably divorced woman is entitled to maintenance, whereas they reject this position. It is baseless for them to cite them as proof in one matter while disregarding their authority in another.

وَأَمَّا مَا تَعَلَّقُوا بِهِ عَنْ الصَّحَابَةِ وَالتَّابِعِينَ - فَإِنَّمَا هُمْ: عُمَرُ، وَابْنُ مَسْعُودٍ، وَهُمْ مُخَالِفُونَ لَهُمَا، لِأَنَّ الثَّابِتَ عَنْهُمَا أَنَّ لِلْمَبْتُوتَةِ النَّفَقَةَ - وَهُمْ لَا يَقُولُونَ بِذَلِكَ، وَمِنْ الْبَاطِلِ: أَنْ يَحْتَجُّوا بِهِمَا فِي مَوْضِعٍ وَلَا يَرَوْنَهُمَا حُجَّةً فِي آخَرَ.

L35354 Ibn ʿUmar and ʿĀ'ishah—the Mother of the Believers—and among the Successors: Saʿīd ibn al-Musayyib and a group of them. Some said: "She has no financial support unless pregnant," but did not mention housing—while others mentioned housing without financial support.

وَابْنُ عُمَرَ، وَعَائِشَةُ أُمُّ الْمُؤْمِنِينَ -، وَمِنْ التَّابِعِينَ: سَعِيدُ بْنُ الْمُسَيِّبِ وَنَفَرٌ مِنْهُمْ، قَالَ بَعْضُهُمْ: لَا نَفَقَةَ لَهَا إلَّا أَنْ تَكُونَ حَامِلًا، وَلَمْ يَذْكُرُوا السُّكْنَى - وَذَكَرَ بَعْضُهُمْ: السُّكْنَى دُونَ النَّفَقَةِ.

L35355 As for Ibn Umar, it is authentically established from him that the maintenance of the deceased's widow is to be provided from the entire estate. Yet those who oppose him contradict him - and it is baseless for his opinion to be deemed authoritative proof in matters they desire, while not being proof in matters they do not desire.

فَأَمَّا ابْنُ عُمَرَ - فَقَدْ صَحَّ عَنْهُ: أَنَّ نَفَقَةَ الْمُتَوَفَّى عَنْهَا مِنْ جَمِيعِ الْمَالِ - وَهُمْ يُخَالِفُونَهُ، وَمِنْ الْبَاطِلِ: أَنْ يَكُونَ حُجَّةً حَيْثُ اشْتَهَوْا، غَيْرَ حُجَّةٍ حَيْثُ لَا يَشْتَهُونَ.

L35356 As for the Mother of the Believers, they disagreed with her regarding her expulsion after her husband's death. It is baseless for her to be a proof in one context but not in another. Furthermore, no report has been transmitted from her indicating she has no right to financial maintenance.

وَأَمَّا أُمُّ الْمُؤْمِنِينَ - فَقَدْ خَالَفُوهَا فِي إخْرَاجِهَا الْمُتَوَفَّى عَنْهَا زَوْجُهَا، وَمِنْ الْبَاطِلِ: أَنْ تَكُونَ حُجَّةً فِي مَوْضِعٍ، وَغَيْرَ حُجَّةٍ فِي آخَرَ، وَلَمْ يَأْتِ عَنْهَا أَيْضًا أَنَّهَا لَا نَفَقَةَ لَهَا.

L35357 The narration from ʿAlī is rejected because it is transmitted via Ibrāhīm

[26] **Qur'an references (L35350):** Qur'an 2:233 (Al-Baqarah).

ibn Abī Yaḥyā—who is noted as a liar—and its chain is also interrupted. Moreover, no statement has been transmitted from him declaring, “There is no financial support for her.”

L35358–35360 As for Sa’id ibn al-Musayyib, only the obligation to provide housing for the thrice-divorced woman has been transmitted from him. Nothing has been transmitted from him, nor from Aisha, nor from Ali stating that she has no entitlement to maintenance from the husband. Thus, their position is devoid of evidence. From the Quran, from the Sunnah, or from the statement of any Companion—except Ibn Umar alone. If it is established as such, there is no doubt about its invalidity and dismissal—and all praise is due to Allah, Lord of the worlds.[27]

L35361 What remains for us except our position and the stance of those who mandate housing and maintenance for the irrevocably divorced woman? We examined their argument but found they had no basis except unfounded objections regarding the report of Fāṭimah bint Qays. They based their position on the premise that if this report were invalidated, the aforementioned verses would then be understood to apply to every divorced woman: whether irrevocably or revocably divorced.

L35362 Abu Muhammad said: They objected to that report by citing what we narrated through the chain of Abd al-Razzaq from Ibn Jurayj, who reported: Ibn Shihab informed me from Urwah ibn al-Zubayr that Aisha, the Mother of the Believers, rejected Fatimah bint Qays’ position regarding that matter (by which we mean the relocation of the thrice-divorced woman).

L35363 Through the chain of Malik from Yahya ibn Sa’id from al-Qasim ibn Muhammad: Yahya ibn Sa’id ibn al-As divorced the daughter of Abd al-Rahman ibn al-Hakam, whereupon Abd al-Rahman took her away. Aisha sent a message to Marwan ibn al-Hakam—the governor of Medina—saying: “Fear Allah and return the woman to her home!” Marwan responded: “Has the case of Fatimah bint Qays not reached you?” Aisha retorted: “It does you no harm not to mention the narration of Fatimah.”

وَالرِّوَايَةُ عَنْ عَلِيٍّ سَاقِطَةٌ، لِأَنَّهَا مِنْ طَرِيقِ إِبْرَاهِيمَ بْنِ أَبِي يَحْيَى - وَهُوَ مَذْكُورٌ بِالْكَذِبِ - وَهِيَ مُنْقَطِعَةٌ أَيْضًا، ثُمَّ لَمْ يَأْتِ عَنْهُ: لَا نَفَقَةَ لَهَا.

وَأَمَّا سَعِيدُ بْنُ الْمُسَيِّبِ فَإِنَّمَا جَاءَ عَنْهُ إِيجَابُ السُّكْنَى لِلْمَبْتُوتَةِ، وَلَمْ يَأْتِ عَنْهُ، وَلَا عَنْ عَائِشَةَ، وَلَا عَنْ عَلِيٍّ: أَنَّهُ لَا نَفَقَةَ لَهَا عَلَى الزَّوْجِ - فَحَصَلَ قَوْلُهُمْ عَارِيًا مِنَ الْبُرْهَانِ: مِنْ قُرْآنٍ، أَوْ سُنَّةٍ، أَوْ قَوْلِ أَحَدٍ الصَّحَابَةِ، إِلَّا ابْنَ عُمَرَ وَحْدَهُ، وَمَا كَانَ هَكَذَا فَلَا شَكَّ فِي بُطْلَانِهِ وَسُقُوطِهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

فَلَمْ يَبْقَ لَنَا إِلَّا قَوْلُنَا، وَقَوْلُ مَنْ وَجَبَ لِلْمَبْتُوتَةِ السُّكْنَى، وَالنَّفَقَةَ؟ فَنَظَرْنَا فِي قَوْلِهِمْ فَلَمْ نَجِدْ لَهُمْ شَيْئًا يَشْغَبُونَ بِهِ إِلَّا الِاعْتِرَاضَ فِي خَبَرِ فَاطِمَةَ بِنْتِ قَيْسٍ وَبَنَوْا أَنَّهُمْ إِنْ سَقَطَ ذَلِكَ الْخَبَرُ كَانَتِ الْآيَاتُ الْمَذْكُورَاتُ مَحْمُولَاتٍ عَلَى كُلِّ مُطَلَّقَةٍ مَبْتُوتَةٍ، أَوْ غَيْرِ مَبْتُوتَةٍ.

قَالَ أَبُو مُحَمَّدٍ: فَاعْتَرَضُوا فِي ذَلِكَ الْخَبَرِ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ شِهَابٍ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَنْكَرَتْ ذَلِكَ عَلَى فَاطِمَةَ بِنْتِ قَيْسٍ - نَعْنِي انْتِقَالَ الْمُطَلَّقَةِ ثَلَاثًا.

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنِ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّ يَحْيَى بْنَ سَعِيدِ بْنِ الْعَاصِ طَلَّقَ بِنْتَ عَبْدِ الرَّحْمَنِ بْنِ الْحَكَمِ فَانْتَقَلَهَا عَبْدُ الرَّحْمَنِ فَأَرْسَلَتْ عَائِشَةُ إِلَى مَرْوَانَ بْنِ الْحَكَمِ - وَهُوَ أَمِيرُ الْمَدِينَةِ -: اتَّقِ اللَّهَ وَارْدُدِ الْمَرْأَةَ إِلَى بَيْتِهَا؟ فَقَالَ مَرْوَانُ: أَوَ مَا بَلَغَكِ شَأْنُ فَاطِمَةَ بِنْتِ قَيْسٍ؟ فَقَالَتْ عَائِشَةُ: لَا يَضُرُّكَ أَنْ لَا تَذْكُرَ حَدِيثَ فَاطِمَةَ.

[27] **Qur’an references (L35358):** Qur’an 37:182 (As-Saffat).

L35364 From the chain of al-Bukhārī: I am Muḥammad, I am Ghundar, I am Shuʿbah, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from his father, from ʿĀ'ishah the Mother of the Believers, that she said: "What is with Fāṭimah? Does she not fear Allah?" – meaning her statement: "No residence, no maintenance."

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا مُحَمَّدٌ أَنَا غُنْدَرٌ أَنَا شُعْبَةُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَالَتْ: مَا لِفَاطِمَةَ؟ لَا تَتَّقِي اللَّهَ - تَعْنِي فِي قَوْلِهَا: لَا سُكْنَى، وَلَا نَفَقَةَ -.

Via another chain of al-Bukhārī: I am ʿAmr ibn ʿAbbās, I am Ibn Mahdī, I am Sufyān, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad, from his father, that ʿUrwah said to ʿĀ'ishah the Mother of the Believers: "Did you not hear about Fāṭimah's statement?" She replied: "Indeed, she has no valid grounds in mentioning this ḥadīth."

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا عَمْرُو بْنُ عَبَّاسٍ أَنَا ابْنُ مَهْدِيٍّ أَنَا سُفْيَانُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدٍ عَنْ أَبِيهِ أَنَّ عُرْوَةَ قَالَ لِعَائِشَةَ أُمِّ الْمُؤْمِنِينَ: أَلَمْ تَسْمَعِي فِي قَوْلِ فَاطِمَةَ؟ فَقَالَتْ: أَمَا إِنَّهُ لَيْسَ لَهَا خَبَرٌ فِي ذِكْرِ هَذَا الْحَدِيثِ.

L35365 And through the chain of Ismāʿīl ibn Isḥāq the judge: Naṣr ibn ʿAlī reported from his father, from Hārūn, from Muḥammad ibn Isḥāq, who said: I believe he [Muḥammad ibn Isḥāq] reported from Muḥammad ibn Ibrāhīm that ʿĀ'ishah said to Fāṭimah bint Qays, "It was only this that expelled you"—meaning the tongue.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنَ إِسْحَاقَ الْقَاضِي أَنَا نَصْرُ بْنُ عَلِيٍّ أَنَا أَبِي عَنْ هَارُونَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، قَالَ: أَحْسَبُهُ عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ أَنَّ عَائِشَةَ قَالَتْ لِفَاطِمَةَ بِنْتِ قَيْسٍ: إِنَّمَا أَخْرَجَكِ هَذَا - تَعْنِي اللِّسَانَ.

L35366–35368 Abū Muḥammad said: As for this narration, it is rejected, and there is no valid reason to consider it, because its chain of transmission is doubtful as we have mentioned. Furthermore, it is disconnected, for Muḥammad ibn Ibrāhīm never heard from ʿĀ'ishah, the Mother of the Believers, at all. So none rejects the established ruling from the Messenger of Allah (may Allah bless him and grant him peace) by such means except one shrouded in ignorance or weak in faith - and we seek refuge in Allah from both of them.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا هَذَا الْخَبَرُ فَسَاقِطٌ، لَا وَجْهَ لِلِاشْتِغَالِ بِهِ، لِأَنَّهُ مَشْكُوكٌ فِي إِسْنَادِهِ كَمَا أَوْرَدْنَا - ثُمَّ مُنْقَطِعٌ أَيْضًا لَمْ يَسْمَعْ مُحَمَّدُ بْنُ إِبْرَاهِيمَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ قَطُّ، فَلَا يَرُدُّ الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِ هَذَا إِلَّا مُظْلِمُ الْجَهْلِ، أَوْ رَقِيقُ الدِّينِ - وَنَعُوذُ بِاللَّهِ مِنْ كِلَيْهِمَا.

L35369 And through the chain of Ismail ibn Ishaq: I [Abu Thabit al-Madini] am Ibn Wahb, I am Ibn Abi al-Zinad, from Hisham ibn Urwah, from his father, who said: Aisha strongly criticized this with the utmost censure, saying: Fatimah was in a desolate place, and fear arose for the safety of her vicinity. For this reason, the Prophet—peace be upon him (PBUH)—granted her a concession.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا أَبُو ثَابِتٍ الْمَدِينِيُّ أَنَا ابْنُ وَهْبٍ أَنَا ابْنُ أَبِي الزِّنَادِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: عَابَتْ ذَلِكَ عَائِشَةُ أَشَدَّ الْعَيْبِ، وَقَالَتْ: إِنَّ فَاطِمَةَ كَانَتْ فِي مَكَانٍ وَحْشٍ، فَخِيفَ عَلَى نَاحِيَتِهَا، فَلِذَلِكَ أَرْخَصَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L35370 Abū Muḥammad said: This is baseless, for it is from the narration of Ibn Abī al-Zinād—who is weak—the first to rigorously weaken him: Mālik ibn Anas.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا بَاطِلٌ، لِأَنَّهُ مِنْ رِوَايَةِ ابْنِ أَبِي الزِّنَادِ - وَهُوَ ضَعِيفٌ - أَوَّلُ مَنْ ضَعَّفَهُ جِدًّا: مَالِكُ بْنُ أَنَسٍ.

L35371 Whoever examines this report and the one preceding it will realize that they contradict each other, for if her expulsion was due to her slander, as mentioned in that report, then this report—which states "she was in a desolate wilderness area where fears were held for her safety in her vicinity, so the Prophet (peace be upon him) gave her a dispensation"—is invalidated.

وَمَنْ تَأَمَّلَ هَذَا الْخَبَرَ وَالَّذِي قَبْلَهُ عَلِمَ أَنَّهُمَا مُتَكَاذِبَانِ، لِأَنَّهَا إِنْ كَانَ إِخْرَاجُهَا مِنْ أَجْلِ لِسَانِهَا، كَمَا فِي ذَلِكَ الْخَبَرِ فَقَدْ بَطَلَ هَذَا الَّذِي فِيهِ " أَنَّهَا كَانَتْ فِي مَكَانٍ وَحْشٍ نَخِيفَ عَلَى نَاحِيَتِهَا فَلِذَلِكَ أَرْخَصَ لَهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L35372 For there is no doubt that if she is among people whom she harms with her tongue, she is not in a desolate place; or if she is in a desolate place where there is fear for her safety, then it is certain that there are no people there for her to harm with her tongue, thus she is expelled for that reason. And Allah refuses but to expose the disgrace of the liars.

إِذْ لَا شَكَّ أَنَّهَا إِذَا كَانَتْ بَيْنَ قَوْمٍ تُؤْذِيهِمْ بِلِسَانِهَا فَلَيْسَتْ فِي مَكَانٍ وَحْشٍ، أَوْ إِذَا كَانَتْ فِي مَكَانٍ وَحْشٍ يُخَافُ عَلَيْهَا فِيهِ، فَلَا شَكَّ أَنَّهُ لَيْسَ هُنَالِكَ قَوْمٌ تُؤْذِيهِمْ بِلِسَانِهَا فَتُخْرَجُ لِذَلِكَ - وَيَأْبَى اللَّهُ إِلَّا فَضِيحَةَ الْكَاذِبِينَ.

L35373 This is what they relied upon from Aisha, the Mother of the Believers, and they mentioned: Hamam ibn Ahmad narrated to us—I am Abbas ibn Asbagh, I heard from Muhammad ibn Abd al-Malik ibn Ayman, I heard from Muttalib, I heard from Abu Salih—who is Abdullah ibn Salih, the scribe of al-Layth—al-Layth ibn Sa'd narrated to me, saying: Ja'far related to me from Ibn Hurmuz, from Abu Salamah ibn Abd al-Rahman ibn Awf, who said: Muhammad ibn Usamah ibn Zayd used to report that whenever Fatimah mentioned anything regarding her relocation during her waiting period, his father Usamah would refute her with whatever [evidence] he had at hand?

فَهَذَا مَا تَعَلَّقُوا بِهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَذَكَرُوا: مَا نَاهُ حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا مُطَّلِبُ أَنَا أَبُو صَالِحٍ - هُوَ عَبْدُ اللَّهِ بْنُ صَالِحٍ - كَاتِبُ اللَّيْثِ حَدَّثَنِي اللَّيْثُ بْنُ سَعْدٍ حَدَّثَنِي جَعْفَرٌ عَنِ ابْنِ هُرْمُزَ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: كَانَ مُحَمَّدُ بْنُ أُسَامَةَ بْنِ زَيْدٍ يَقُولُ كَانَ أُسَامَةُ إِذَا ذَكَرَتْ فَاطِمَةُ شَيْئًا مِنْ ذَلِكَ - يَعْنِي مِنِ انْتِقَالِهَا فِي عِدَّتِهَا - رَمَاهَا بِمَا فِي يَدِهِ؟ .

L35374–35376 Abu Muhammad said: This is rejected; because its narrator is ʿAbdullāh ibn Ṣāliḥ, the scribe of al-Layth ibn Saʿd—and he is [text cut off]. Very weak—furthermore, even if it were authentic, it would only be Usama's rejection of that, like the rejection of Aisha and Umar—may Allah be pleased with both of them.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا سَاقِطٌ، لِأَنَّ رَاوِيَهُ عَبْدَ اللَّهِ بْنَ صَالِحٍ كَاتِبَ اللَّيْثِ - وَهُوَ ضَعِيفٌ جِدًّا - ثُمَّ لَوْ صَحَّ لَمَا كَانَ إِلَّا إِنْكَارُ أُسَامَةَ لِذَلِكَ كَإِنْكَارِ عَائِشَةَ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا -.

L35377 And the discussion will come regarding the refutation of the argument based on that, if Allah the Exalted wills, when we scrutinize all they have obscured—and there is no might nor power except with Allah, the Most High, the Almighty.

وَسَيَأْتِي الْكَلَامُ فِي إِبْطَالِ الِاحْتِجَاجِ بِذَلِكَ إِنْ شَاءَ اللَّهُ تَعَالَى إِذَا تَقَصَّيْنَا كُلَّ مَا مَوَّهُوا بِهِ - وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ الْعَلِيِّ الْعَظِيمِ.

L35378 From the chain of Sa'id ibn Mansur: I am Abu Mu'awiyah, I am Al-A'mash, from Ibrahim, who said: When the hadith of Fatimah bint Qays was mentioned before Umar ibn al-Khattab—that the Messenger of Allah (Allah's prayers and peace be upon him and his family) commanded her to observe her waiting period outside her husband's house?—he said: "We do not establish rulings in our religion based on the narration of a woman."

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا أَبُو مُعَاوِيَةَ أَنَا الْأَعْمَشُ عَنْ إِبْرَاهِيمَ قَالَ: كَانَ عُمَرُ بْنُ الْخَطَّابِ إِذَا ذُكِرَ عِنْدَهُ حَدِيثُ فَاطِمَةَ بِنْتِ قَيْسٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَرَهَا أَنْ تَعْتَدَّ فِي غَيْرِ بَيْتِ زَوْجِهَا؟ قَالَ: مَا كُنَّا نَعْتَدُّ فِي دِينِنَا بِشَهَادَةِ امْرَأَةٍ.

L35379 Abu Muhammad said: This is undoubtedly invalid because it is disconnected, for Ibrahim was not born until two years after Umar's death, and this Ibrahim took it from none except someone in whom there is no good—undoubtedly.

قَالَ أَبُو مُحَمَّدٍ: هَذَا بَاطِلٌ لَا شَكَّ، لِأَنَّهُ مُنْقَطِعٌ، وَلَمْ يُولَدْ إِبْرَاهِيمُ إِلَّا بَعْدَ مَوْتِ عُمَرَ بِسِنِينَ، وَمَا أَخَذَ إِبْرَاهِيمُ هَذَا إِلَّا عَمَّنْ لَا خَيْرَ فِيهِ بِلَا شَكٍّ.

L35380 Complete astonishment stems from the disgraceful persistence of those Hanafis, Malikis, and Shāfiʿīs who invoke this argument—and they are the foremost nullifiers of what is contained within the statement attributed to ʿUmar: "We do not consider—in matters of our religion—a woman's testimony valid." Yet they unanimously agree that Sunnī traditions are accepted from women just as they are accepted from men.

وَالْعَجَبُ كُلُّهُ مِنْ قَبِيحِ مُجَاهَرَةِ مَنْ يَحْتَجُّ بِهَذَا مِنَ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ وَالشَّافِعِيِّينَ، وَهُمْ أَوَّلُ مُبْطِلٍ لِمَا فِيهِ مَنْسُوبٌ إِلَى عُمَرَ مِنْ أَنْ لَا نَعْتَدَّ - فِي دِينِنَا - بِشَهَادَةِ امْرَأَةٍ، وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ السُّنَنَ تُؤْخَذُ عَنِ الْمَرْأَةِ كَمَا تُؤْخَذُ عَنِ الرَّجُلِ.

L35381 Should not one feel ashamed to cite this from Umar, who permits the solitary testimony of a midwife regarding breastfeeding, childbirth, marital defects in women, and the testimony of a single free woman or slave woman concerning the sighting of Ramadan's crescent? Do you not realize that none of this is part of the religion?

أَلَا يَسْتَحْيِي مِنَ الِاحْتِجَاجِ بِهَذَا عَنْ عُمَرَ مَنْ يُجِيزُ شَهَادَةَ الْقَابِلَةِ وَحْدَهَا فِي الرَّضَاعِ، وَالْوِلَادَةِ، وَعُيُوبِ النِّسَاءِ وَالْمَرْأَةِ الْوَاحِدَةِ الْحُرَّةِ أَوِ الْأَمَةِ فِي هِلَالِ رَمَضَانَ أَتَرَوْنَ كُلَّ هَذَا لَيْسَ مِنَ الدِّينِ.

L35382–35383 And whoever openly opposes the Quran [as stated] in the statement of Allah, the Most High: "Allah has permitted trade and forbidden usury" [al-Baqarah 2:275].[28]

وَمَنْ خَالَفَ الْقُرْآنَ جِهَارًا فِي قَوْلِ اللَّهِ تَعَالَى: {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥].

L35384 And His statement, the Exalted: {When you contract a debt for a specified term, write it down} [Al-Baqarah: 282] — that is forbidden based on the narration of an unknown woman: the wife of Abū Isḥāq—who narrated from Umm Maḥabbah, the Umm Walad of Zayd ibn Arqam—when no one knows her identity.[29]

وَقَوْلِهِ تَعَالَى: {إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ} [البقرة: ٢٨٢] مُحَرَّمٌ ذَلِكَ بِرِوَايَةِ امْرَأَةٍ مَجْهُولَةٍ لَا يَدْرِي أَحَدٌ مَنْ هِيَ امْرَأَةُ أَبِي إِسْحَاقَ عَنْ أُمِّ مَحَبَّةَ - أُمِّ وَلَدِ زَيْدِ بْنِ أَرْقَمَ -.

[28] **Qur'an references (L35383):** Qur'an 2:275 (Al-Baqarah).
[29] **Qur'an references (L35384):** Qur'an 2:282 (Al-Baqarah).

وَمَنْ أَبَاحَ مَنْزِلَةَ الْوَرَثَةِ مِنْ غَيْرِ حَقٍّ وَخَالَفَ السُّنَّةَ الثَّابِتَةَ فِي أَنَّ أَمْوَالَ النَّاسِ مُحَرَّمَةٌ إِلَّا بِإِذْنِهِمْ بِرِوَايَةِ امْرَأَةٍ مَجْهُولَةٍ لَا تُعْرَفُ [مَنْ هِيَ] وَهِيَ زَيْنَبُ بِنْتُ كَعْبٍ فَأَوْجَبُوا السُّكْنَى بِرِوَايَتِهَا لِلْمُتَوَفَّى عَنْهَا، وَلَمْ يَلْتَفِتُوا حِينَئِذٍ إِلَى عَمَلِ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، أَلَيْسَ هَذَا عَجَبًا؟ فَإِنْ قَالُوا: قَدْ اتَّصَلَ مِنْ بَيْنِ إِبْرَاهِيمَ، وَعُمَرَ فِي هَذَا الْحَدِيثِ كَمَا حَدَّثَكُمْ أَحْمَدُ بْنُ قَاسِمٍ قَالَ: أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ شَاذَانَ أَنَا الْمُعَلَّى بْنُ مَنْصُورٍ أَنَا أَبُو يُوسُفَ الْقَاضِي عَنِ الْأَعْمَشِ عَنْ إِبْرَاهِيمَ عَنِ الْأَسْوَدِ عَنْ عُمَرَ أَنَّهُ قَالَ: لَا يَجُوزُ فِي دِينِ الْمُسْلِمِينَ قَوْلُ امْرَأَةٍ؟ قُلْنَا: الْآنَ زَادَ وَهْيُ هَذَا الْإِسْنَادِ، وَقَدْ عَلِمْتُمْ مَحَلَّ أَبِي يُوسُفَ عِنْدَ الَّذِينَ شَاهَدُوهُ وَعَرَفُوهُ مِنْ أَئِمَّةِ الْمُسْلِمِينَ، وَعُلَمَاءِ الْحَدِيثِ، كَابْنِ الْمُبَارَكِ، وَعَبْدِ اللَّهِ بْنِ إِدْرِيسَ، وَأَبِي نُعَيْمٍ الْفَضْلِ بْنِ دُكَيْنٍ، وَوَكِيعِ بْنِ الْجَرَّاحِ، وَيَزِيدَ بْنِ هَارُونَ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَغَيْرِهِمْ.

L35385 Whoever permits the status of the heirs without legitimate justification—contradicting the established Sunnah that people's wealth is inviolable except with their consent—by relying on the report of an unknown woman who is Zaynab bint Kaʿb, thereby mandating residence rights for the widow of the deceased based on her narration while disregarding the practice of ʿĀʾishah, the Mother of the Believers: is this not astonishing? If they argue that the chain between Ibrāhīm and ʿUmar in this ḥadīth is continuous—as Aḥmad ibn Qāsim narrated to you, stating: "From my father Qāsim ibn Muḥammad ibn Qāsim, from my grandfather Qāsim ibn Aṣbagh, from Muḥammad ibn Shādhān, from al-Muʿallā ibn Manṣūr, from Abū Yūsuf the Judge, from al-Aʿmash, from Ibrāhīm, from al-Aswad, from ʿUmar, who said: 'The statement of a woman is inadmissible in the religion of Muslims'"—we respond: Now he has added this chain. You are well aware of Abū Yūsuf's standing among the Muslim Imams and ḥadīth scholars who witnessed him and knew him, such as Ibn al-Mubārak, ʿAbdullāh ibn Idrīs, Abū Nuʿaym al-Faḍl ibn Dukayn, Wakīʿ ibn al-Jarrāḥ, Yazīd ibn Hārūn, Aḥmad ibn Ḥanbal, and others.

وَقَدْ رُوِيَ هَذَا الْخَبَرُ عَنِ الْأَعْمَشِ الثِّقَةِ حَفْصِ بْنِ غِيَاثٍ بِهَذَا الْإِسْنَادِ، فَلَمْ يَذْكُرْ فِيهِ هَذِهِ الْفَضِيحَةَ الَّتِي إِنَّمَا هِيَ مَذْهَبُ الْخَوَارِجِ وَالْمُعْتَزِلَةِ.

L35386 This report has been narrated from Al-Aʿmash via the trustworthy Hafs ibn Ghiyath in this chain of transmission, yet Hafs ibn Ghiyath did not mention within it this scandal, which pertains solely to the doctrine of the Kharijites and the Muʿtazilites.

ثُمَّ لَا عَلَيْكُمْ إِنْ كُنْتُمْ تَحْتَجُّونَ بِهَذَا الْكَلَامِ وَتُصَحِّحُونَهُ عَنْ عُمَرَ، فَخُذُوا بِهِ، لِأَنَّكُمْ أَوَّلُ مُخَالِفٍ لَهُ، وَإِنْ عَصَيْتُمُوهُ وَاطَّرَحْتُمُوهُ، وَأَنْ تُجِيزُوا الْقَوْلَ بِهِ، فَبِأَيِّ وَجْهٍ اسْتَحْلَلْتُمُ الِاحْتِجَاجَ بِهِ؟ لَقَدْ كَانَ يَنْبَغِي لِلْحَيَاءِ، وَالدِّينِ، وَخَوْفِ الْعَارِ، وَالنَّارِ، أَنْ يَمْنَعَ كُلُّ ذَلِكَ مِنْ مِثْلِ هَذَا، وَلَكِنْ مَنْ يَضْلِلِ اللَّهُ فَلَا هَادِيَ لَهُ.

L35387–35389 Then, there is no blame upon you if you cite this statement as evidence and authenticate its attribution to ʿUmar. Take it. Because you are the first of those who oppose him, and if you disobey him, cast it aside, and yet endorse arguments derived from it – by what justification do you deem it permissible to invoke it as evidence? Verily, modesty, religious devotion, fear of shame, and the Hellfire should have prevented all such things. But whomsoever Allah leads astray has no guide.

وَذَكَرُوا - مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ عَمْرِو بْنِ جَبَلَةَ أَنَا أَبُو أَحْمَدَ - هُوَ الزُّبَيْرِيُّ - أَنَا عَمَّارُ بْنُ زُرَيْقٍ عَنْ أَبِي إِسْحَاقَ قَالَ: كُنْتُ مَعَ الْأَسْوَدِ بْنِ يَزِيدَ فِي الْمَسْجِدِ الْأَعْظَمِ

L35390 They mentioned—what was narrated to us through the chain of Muslim: I am Muhammad ibn Amr ibn Jabalah; Abu Ahmad—who is al-Zubayri—narrated to us; Ammar ibn Zurayq narrated from Abu Ishaq, who said: "I was with Al-Aswad ibn Yazid in the Grand Mosque, and Al-Shaʿbi was with

us. Al-Shaʿbi narrated the hadith of Fatimah bint Qays: 'The Messenger of Allah—peace and blessings be upon him and his family—did not grant her housing or maintenance.' Then Al-Aswad took a handful of pebbles and threw them at him, saying: 'Woe to you! Do you narrate such a thing?' Umar said: 'We will not abandon the Book of Allah and the Sunnah of our Prophet for the statement of a woman. We do not know whether she retained it accurately or forgot. She is entitled to housing and maintenance.' Allah Almighty said: 'Do not drive them out of their homes, nor should they leave unless they commit a clear immorality' (65:1)."[30]

L35391 Muslim said: And Aḥmad ibn ʿAbdah narrated to us: Abū Dāwūd narrated to us, Sulaymān ibn Muʿādh narrated to us, from Abū Isḥāq via this chain of transmission, similar to the ḥadīth of Abū Aḥmad from ʿAmmār ibn Zurayq.

L35392–35394 Through the chain of Abū Dāwūd al-Sijistānī: I, Naṣr ibn ʿAlī, report from Abū Aḥmad—he is al-Zubairī— I was in the Congregational Mosque with al-Aswad ibn Yazid when he mentioned that Fāṭimah bint Qays came to ʿUmar. ʿUmar said: "We would never abandon the Book of our Lord and the Sunnah of our Prophet for the statement of a woman—we do not know whether she remembered it correctly or forgot." Through the chain of Aḥmad ibn Shuʿayb: From Abū Bakr ibn Isḥāq, from Abū al-Jawāb al-Aḥwaṣ ibn Jawāb, from ʿAmmār—that is, ibn Zurayq—from al-Shaʿbī, from Fāṭimah bint Qays. He then mentioned the ḥadīth, whereupon al-Aswad threw pebbles at him and said: "Shame on you! Why do you issue such a legal opinion?" ʿUmar told her: "If you bring two witnesses who testify they heard this from the Messenger of Allah—peace and blessings be upon him and his family—then [we will accept it]. Otherwise, we will not abandon the Book of Allah for the statement of a woman: 'Do not evict them from their homes, nor should they leave unless they commit a clear immorality' [Sūrah al-Ṭalāq 65:1]."[31]

L35395 We said: All of this is correct. As for Umar's statement: "We would never abandon the Book of our Lord and the Sunnah of our Prophet for the word

[30] **Qur'an references (L35390):** Qur'an 65:1 (At-Talaq).
[31] **Qur'an references (L35392):** Qur'an 65:1 (At-Talaq).

وَمَعَنَا الشَّعْبِيُّ فَحَدَّثَ الشَّعْبِيُّ بِحَدِيثِ فَاطِمَةَ بِنْتِ قَيْسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَجْعَلْ لَهَا سُكْنَى، وَلَا نَفَقَةً» ، ثُمَّ أَخَذَ الْأَسْوَدُ كَفًّا مِنْ حَصًى فَحَصَبَهُ بِهِ، فَقَالَ: وَيْلَكَ تُحَدِّثُ بِمِثْلِ هَذَا؟ قَالَ عُمَرُ: لَا نَتْرُكُ كِتَابَ اللَّهِ وَسُنَّةَ نَبِيِّنَا لِقَوْلِ امْرَأَةٍ لَا نَدْرِي هَلْ حَفِظَتْ أَمْ نَسِيَتْ: لَهَا السُّكْنَى، وَالنَّفَقَةُ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ} [الطلاق: ١] .

قَالَ مُسْلِمٌ: ونا أَحْمَدُ بْنُ عَبْدَةَ أَنَا أَبُو دَاوُد أَنَا سُلَيْمَانُ بْنُ مُعَاذٍ عَنْ أَبِي إِسْحَاقَ بِهَذَا الْإِسْنَادِ نَحْوُ حَدِيثِ أَبِي أَحْمَدَ عَنْ عَمَّارِ بْنِ زُرَيْقٍ.

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا نَصْرُ بْنُ عَلِيٍّ أَخْبَرَنِي أَبُو أَحْمَدَ - هُوَ الزُّبَيْرِيُّ - أَنَا عَمَّارُ بْنُ زُرَيْقٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ قَالَ: كُنْتُ فِي الْمَسْجِدِ الْجَامِعِ مَعَ الْأَسْوَدِ بْنِ يَزِيدَ فَذَكَرَ: أَنَّ فَاطِمَةَ بِنْتِ قَيْسٍ أَتَتْ عُمَرَ فَقَالَ عُمَرُ: مَا كُنَّا لِنَدَعَ كِتَابَ رَبِّنَا وَسُنَّةَ نَبِيِّنَا لِقَوْلِ امْرَأَةٍ: لَا نَدْرِي أَحَفِظَتْ أَمْ نَسِيَتْ؟ وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَبُو بَكْرِ بْنُ إِسْحَاقَ أَنَا أَبُو الْجَوَابِ الْأَحْوَصُ بْنُ جَوَابٍ أَنَا عَمَّارٌ - هُوَ ابْنُ زُرَيْقٍ - عَنْ الشَّعْبِيِّ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ فَذَكَرَ الْحَدِيثَ، فَحَصَبَهُ الْأَسْوَدُ وَقَالَ: وَيْحَكَ لِمَ تُفْتِي بِمِثْلِ هَذَا؟ قَالَ عُمَرُ لَهَا: إِنْ جِئْتِ بِشَاهِدَيْنِ يَشْهَدَانِ أَنَّهُمَا سَمِعَاهُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَإِلَّا لَمْ نَتْرُكْ كِتَابَ اللَّهِ لِقَوْلِ امْرَأَةٍ: {لا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلا يَخْرُجْنَ إِلا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ} [الطلاق: ١] .

قُلْنَا: هَذَا كُلُّهُ صَحِيحٌ -: فَأَمَّا قَوْلُ عُمَرَ: مَا كُنَّا لِنَدَعَ كِتَابَ رَبِّنَا وَسُنَّةَ نَبِيِّنَا لِقَوْلِ امْرَأَةٍ لَا نَدْرِي أَحَفِظَتْ أَمْ نَسِيَتْ فَإِنَّ هَذَا يَجْمَعُ ثَلَاثَةَ مَعَانٍ -: أَمَّا سُنَّةُ رَسُولِ اللَّهِ - صَلَّى

of a woman - we do not know whether she remembered it or forgot" - this combines three meanings. As for the Sunnah of Allah's Messenger (peace be upon him), it is in the hands of Fatimah bint Qays. We categorically testify by Allah's authority that Umar had no Sunnah from Allah's Messenger (peace be upon him) in this matter except the general provision of residence for divorced women alone.

L35396 It is not permissible for a Muslim to suspect that Umar—may Allah be pleased with him—held a ruling from the Messenger of Allah (peace and blessings be upon him) in that matter, nor that there was clear evidence for the people, or to proceed with such suspicion, due to the severe divine warning in the Quran regarding this.

L35397 And here is a matter very close at hand - we have explicitly stated that there was no Sunnah from the Messenger of Allah (peace be upon him) regarding this matter with Umar that he concealed, neither stipulating nor clarifying it. Let them explicitly declare that there was with Umar concerning this matter a Sunnah from the Messenger of Allah (peace be upon him) which he did not convey to people through its explicit text, so they may see which of us fabricates lies against the Messenger of Allah (peace be upon him) and which of us ascribes to Umar what Allah the Exalted has absolved him of. We will accept nothing from them except their definitive proof that Umar (may Allah be pleased with him) received from the Prophet (peace be upon him) the ruling that a divorced woman is entitled to three things: residence, financial maintenance, and the waiting period throughout her waiting period.

L35398–35400 As for the Book of God Almighty, it has clarified, since it contains the aforementioned verse—a proof for Fāṭimah against him—for it contains: {You do not know—perhaps God will bring about a new matter after that} [65:1] {When they have fulfilled their term, retain them honorably or part with them honorably} [65:2]. Can anyone doubt that this verse pertains specifically to revocable divorce? Had 'Umar been reminded of this, he would have retracted, just as he retracted his opinion, since he had forbidden anyone from adding to... Four hundred dirhams in a woman's dowry, when a woman

اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهِيَ بِيَدِ فَاطِمَةَ بِنْتِ قَيْسٍ وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى قَطْعًا أَنَّهُ لَمْ يَكُنْ عِنْدَ عُمَرَ فِي ذَلِكَ سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرُ عُمُومِ سُكْنَى الْمُطَلَّقَاتِ فَقَطْ.

وَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَظُنَّ بِعُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فِي ذَلِكَ حُكْمٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا بَيِّنَةٌ لِلنَّاسِ، وَيَأْتِي بِهِ لِمَا فِي هَذَا مِنْ عَظِيمِ الْوَعِيدِ فِي الْقُرْآنِ.

وَهَا هُنَا أَمْرٌ قَرِيبٌ جِدًّا - نَحْنُ قَدْ صَرَّحْنَا بِأَنَّهُ لَمْ يَكُنْ فِي ذَلِكَ عِنْدَ عُمَرَ سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَتَمَهَا، وَلَمْ يَنُصَّهَا وَيُبَيِّنْهَا فَلْيُصَرِّحُوا بِأَنَّهُ كَانَ عِنْدَ عُمَرَ فِي ذَلِكَ سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُخْبِرْ بِنَصِّهَا النَّاسَ، حَتَّى يَرَوْا مَنْ مِنَّا الَّذِي يَكْذِبُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَيُّنَا يُضِيفُ إِلَى عُمَرَ مَا قَدْ نَزَّهَهُ اللَّهُ تَعَالَى عَنْهُ وَلَا نَقْنَعُ مِنْهُمْ إِلَّا بِالْقَطْعِ بِأَنَّهُ كَانَ عِنْدَهُ - رَضِيَ اللَّهُ عَنْهُ - عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ لِلْمُطَلَّقَةِ ثَلَاثًا السُّكْنَى وَالنَّفَقَةَ مُدَّةَ الْعِدَّةِ.

وَأَمَّا كِتَابُ اللَّهِ تَعَالَى فَقَدْ بَيَّنَهُ، إذْ أَتَى بِالْآيَةِ الْمَذْكُورَةِ وَهِيَ حُجَّةٌ لِفَاطِمَةَ عَلَيْهِ، لِأَنَّ فِيهَا {لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] {فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ} [الطلاق: ٢] فَهَلْ يَشُكُّ أَحَدٌ فِي أَنَّ هَذِهِ الْآيَةَ فِي الطَّلَاقِ الرَّجْعِيِّ خَاصَّةً؟ وَلَوْ ذُكِّرَ عُمَرُ بِذَلِكَ لَرَجَعَ كَمَا رَجَعَ عَنْ قَوْلِهِ،

reminded him of Allah's words, the Exalted: *"And you have given one of them a qinṭār [a vast sum]"* [Quran 4:20], so he remembered and retracted.[32]

إِذْ مَنَعَ مِنْ أَنْ يَزِيدَ أَحَدٌ عَلَى أَرْبَعِمِائَةِ دِرْهَمٍ فِي صَدَاقِ امْرَأَةٍ حِينَ ذَكَّرَتْهُ امْرَأَةٌ بِقَوْلِ اللَّهِ تَعَالَى: {وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا} [النساء: ٢٠] فَتَذَكَّرَ وَرَجَعَ.

L35401 And just as Abu Bakr reminded him when he drew his sword and said: "Let no one say that the Messenger of God (may God's blessings and peace be upon him) has died, except that I will strike him with the sword!" Then when Abu Bakr recited to him God's words: {Indeed, you are to die, and indeed, they are to die} [Az-Zumar: 30], he fell to the ground.[33]

وَكَمَا ذَكَّرَهُ أَبُو بَكْرٍ إِذْ سَلَّ سَيْفَهُ وَقَالَ: لَا يَقُولَنَّ أَحَدٌ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَاتَ إِلَّا ضَرَبْتُه بِالسَّيْفِ؟ فَلَمَّا تَلَا عَلَيْهِ أَبُو بَكْرٍ قَوْلَ اللَّهِ تَعَالَى: {إِنَّكَ مَيِّتٌ وَإِنَّهُمْ مَيِّتُونَ} [الزمر: ٣٠] سَقَطَ إِلَى الْأَرْضِ.

L35402 With this, Fatimah argued textually—as we have been narrated through the chain of Abd al-Razzaq from Ma'mar, from al-Zuhri, from Ubayd Allah ibn Abdullah—that when Marwan's statement in this report reached her, she said: "Between me and you all is the Book of Allah, the Mighty and Exalted. Allah the Exalted said: {Divorce them for their waiting period} [At-Talaq: 1], concluding with His words, Glorified is He: {You do not know; perhaps Allah will bring about after that a matter} [At-Talaq: 1]." She said: "So what matter could occur after the three?"[34]

وَبِهَذَا احْتَجَّتْ فَاطِمَةُ نَصًّا -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ أَنَّ فَاطِمَةَ قَالَتْ حِينَ بَلَغَهَا قَوْلُ مَرْوَانَ فِي هَذَا الْخَبَرِ بَيْنِي وَبَيْنَكُمْ كِتَابُ اللَّهِ عَزَّ وَجَلَّ قَالَ اللَّهُ تَعَالَى {فَطَلِّقُوهُنَّ لِعِدَّتِهِنَّ} [الطلاق: ١] إلَى قَوْلِهِ سُبْحَانَهُ {لا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا} [الطلاق: ١] قَالَتْ: فَأَيُّ أَمْرٍ يَحْدُثُ بَعْدَ الثَّلَاثِ.

L35403 As for his statement, "regarding a woman's statement, we do not know whether she retained or forgot," indeed, the possibility of forgetfulness applicable to Fāṭimah is equally applicable to ʿUmar without doubt.

وَأَمَّا قَوْلُهُ " لِقَوْلِ امْرَأَةٍ لَا نَدْرِي أَحَفِظَتْ أَمْ نَسِيَتْ " فَإِنَّ مَا أَمْكَنَ مِنْ النِّسْيَانِ عَلَى فَاطِمَةَ فَهُوَ مُمْكِنٌ عَلَى عُمَرَ بِلَا شَكٍّ.

L35404 The clearest example of this is when ʿAmmār reminded him of the Messenger of Allah's command—peace and blessings be upon him—to both of them to perform dry ablution due to major ritual impurity if one did not find water. Yet ʿUmar did not mention this and persisted in his view that he would not pray until he found water.

وَأَقْرَبُ ذَلِكَ تَذْكِيرُ عَمَّارٍ لَهُ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَهُمَا جَمِيعًا بِالتَّيَمُّمِ مِنْ الْجَنَابَةِ لِمَنْ لَمْ يَجِدْ الْمَاءَ، فَلَمْ يَذْكُرْ عُمَرُ ذَلِكَ، وَثَبَتَ عَلَى أَنَّهُ لَا يُصَلِّي حَتَّى يَجِدَ الْمَاءَ.

L35405 We have mentioned it through the chain of Al-Bukhari in our books. Just as one might forget what we mentioned earlier, the permissibility of forget-

وَقَدْ ذَكَرْنَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ فِي كُتُبِنَا وَكَمَا نَسِيَ مَا ذَكَرْنَا آنِفًا فَلَيْسَ جَوَازُ النِّسْيَانِ مَانِعًا مِنْ قَبُولِ رِوَايَةِ الْعَدْلِ الَّذِي قَدْ افْتَرَضَ اللَّهُ تَعَالَى قَبُولَ رِوَايَتِهِ، وَلَوْ كَانَ ذَلِكَ

[32] **Qur'an references (L35398):** Qur'an 65:1 (At-Talaq); Qur'an 65:2 (At-Talaq); Qur'an 4:20 (An-Nisa).

[33] **Qur'an references (L35401):** Qur'an 39:30 (Az-Zumar).

[34] **Qur'an references (L35402):** Qur'an 65:1 (At-Talaq).

fulness does not preclude accepting the narration of a reliable transmitter whose narration Allah the Exalted has obligated acceptance of. Were this principle valid, it would necessitate—by the methodological standards of our opponents—the wholesale abandonment of solitary narrations and the rejection of every legal witness's testimony in Islam due to the permissibility of forgetfulness in this matter.

لَوَجَبَ عَلَى أُصُولِ خُصُومِنَا تَرْكُ خَبَرِ الْوَاحِدِ جُمْلَةً وَرَدُّ شَهَادَةِ كُلِّ شَاهِدٍ فِي الْإِسْلَامِ لِجَوَازِ النِّسْيَانِ فِي هَذَا.

L35406–35407 Who is more astray than one who argues with what itself is the first invalidator of his stance, with tribal partisanship and obstinacy in falsehood?

فَمَنْ أَضَلُّ مِمَّنْ يَحْتَجُّ بِمَا هُوَ أَوَّلُ مُبْطِلٍ لَهُ عَصَبِيَّةً وَلَجَاجًا فِي الْبَاطِلِ.

L35408 And likewise, the same applies to his statement to her: "If you bring two witnesses who testify that the two of them heard it from the Messenger of Allah (peace and blessings be upon him)," would they not be the first ones to contradict this? If this were imposed on Fāṭimah, it would be imposed on ʿUmar regarding everything he narrated from the Messenger of Allah (peace and blessings be upon him), and on every one of the Companions without any distinction.

وَهَكَذَا الْقَوْلُ فِي قَوْلِهِ لَهَا " إنْ جِئْت بِشَاهِدَيْنِ يَشْهَدَانِ أَنَّهُمَا سَمِعَاهُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " فَهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا؟ وَلَوْ لَزِمَ هَذَا فَاطِمَةَ لَلَزِمَ عُمَرَ فِي كُلِّ مَا حَدَّثَ بِهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكُلَّ أَحَدٍ مِنْ الصَّحَابَةِ وَلَا فَرْقَ.

L35409 Who is more astray than one who deludes the Muslims with matters that contradict Allah's religion and are invalid? We seek refuge in Allah from being forsaken.

فَمَنْ أَضَلُّ مِمَّنْ يُمَوِّهُ عَلَى الْمُسْلِمِينَ بِأَشْيَاءَ هُوَ بِدِينِ اللَّهِ تَعَالَى بِخِلَافِهَا وَبُطْلَانِهَا - وَنَعُوذُ بِاَللَّهِ مِنْ الْخِذْلَانِ.

L35410 If it is said: You have narrated through the chain of Ḥammād ibn Salamah from Ḥammād ibn Abī Sulaymān that he informed Ibrāhīm al-Nakhaʿī of al-Shaʿbī's narration from Fāṭimah bint Qays, whereupon Ibrāhīm said to him: "'Umar was informed of her statement and declared: 'We will not abandon a verse from the Book of Allah Almighty or the saying of the Prophet (peace and blessings be upon him and his family) for the statement of a woman who may have misremembered. Perhaps she merely imagined she heard the Prophet (peace and blessings be upon him and his family) say, 'They are entitled to housing and maintenance.'"" We respond: This is a mursal narration, because Ibrāhīm was not born except years after ʿUmar's death.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّهُ أَخْبَرَ إبْرَاهِيمَ النَّخَعِيَّ بِحَدِيثِ الشَّعْبِيِّ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ فَقَالَ لَهُ إبْرَاهِيمُ: إنَّ عُمَرَ أُخْبِرَ بِقَوْلِهَا فَقَالَ: لَسْنَا بِتَارِكِي آيَةٍ مِنْ كِتَابِ اللَّهِ تَعَالَى وَقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِقَوْلِ امْرَأَةٍ لَعَلَّهَا أَوْهَمَتْ سَمِعَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ: لَهُمَا السُّكْنَى وَالنَّفَقَةُ؟ قُلْنَا: هَذَا مُرْسَلٌ؛ لِأَنَّ إبْرَاهِيمَ لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عُمَرَ بِسِنِينَ.

L35411 Furthermore, even if it were authentic, it would not constitute a proof, because it does not state that 'Umar heard the Prophet—may God bless him and his family and grant him peace—say, "An irrevocably divorced woman is due housing and maintenance."

ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ عُمَرَ سَمِعَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «لِلْمُطَلَّقَةِ ثَلَاثًا السُّكْنَى وَالنَّفَقَةُ» .

L35412 It is possible that the Prophet (peace be upon him) heard a man say to the divorced woman regarding residence and maintenance, and this is taken according to its general sense. This is impermissible. Rather, this must necessarily be applied alongside the ḥadīth of Fāṭimah, whereby the lesser is excluded by the greater. A clear established text cannot be rejected except by another clear established text - not by invalid problematic matters and ambiguous statements without clarification. Nothing remains from all this except that ʿUmar objected solely to Fāṭimah's position, though this discredited report is not accepted by the Mālikīs nor the Shāfiʿīs.

وَقَدْ يُمْكِنُ أَنْ يَسْمَعَهُ - عَلَيْهِ السَّلَامُ - يَقُولُ لِلْمُطَلَّقَةِ السُّكْنَى وَالنَّفَقَةُ، فَيُحْمَلُ ذَلِكَ عَلَى عُمُومِهِ، وَهَذَا لَا يَجُوزُ، بَلْ يَجِبُ اسْتِعْمَالُ ذَلِكَ مَعَ حَدِيثِ فَاطِمَةَ وَلَا بُدَّ، فَيُسْتَثْنَى الْأَقَلُّ مِنْ الْأَكْثَرِ، وَلَا يَجُوزُ رَدُّ نَصٍّ ثَابِتٍ بَيِّنٍ إلَّا بِنَصٍّ ثَابِتٍ بَيِّنٍ، لَا بِمُشْكَلَاتٍ لَا تَصِحُّ وَبِمُجْمَلَاتٍ لَا بَيَانَ فِيهَا، فَلَمْ يَبْقَ مِنْ كُلِّ ذَلِكَ إلَّا أَنَّ عُمَرَ أَنْكَرَ عَلَى فَاطِمَةَ فَقَطْ، مَعَ أَنَّ هَذَا الْخَبَرَ السَّاقِطَ لَا يَرْضَاهُ الْمَالِكِيُّونَ وَلَا الشَّافِعِيُّونَ.

L35413–35415 They also claimed—based on what was narrated to us through the path of Ibn Wahb: Ibn Samʿān informed me that Ibn Qusayṭ informed him that Ibn al-Musayyib used to say: If a man divorces his wife three times separately while of sound mind and body, she has no right to maintenance unless she is pregnant, in which case he must provide for her until she delivers her child; for the pregnant divorced woman, maintenance is prescribed in the Book of Allah, the Almighty and Majestic. The companions of the Messenger of Allah (may Allah bless him and grant him peace) were upon that, and it is the Sunnah.

وَمَوَّهُوا أَيْضًا - بِمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي ابْنُ سَمْعَانَ أَنَّ ابْنَ قُسَيْطٍ أَخْبَرَهُ أَنَّ ابْنَ الْمُسَيِّبِ كَانَ يَقُولُ: إذَا طَلَّقَ الرَّجُلُ امْرَأَتَهُ وَهُوَ صَحِيحٌ سَوِيٌّ ثَلَاثًا فَلَا نَفَقَةَ لَهَا إلَّا أَنْ تَكُونَ حَامِلًا فَيُنْفِقُ عَلَيْهَا حَتَّى تَضَعَ حَمْلَهَا، لِلْحَامِلِ الْمُطَلَّقَةِ النَّفَقَةُ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ وَعَلَى ذَلِكَ كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهِيَ السُّنَّةُ.

L35416 Abū Muḥammad said: This is utterly baseless, for Ibn Samʿān is noted for lying—Mālik and others rejected him. As for his argument that she is entitled to maintenance in the Book of Allah, the Mighty and Majestic, maintenance in His Book, the Exalted, is only for the revocably divorced woman.

قَالَ أَبُو مُحَمَّد: هَذَا فِي غَايَةِ السُّقُوطِ، لِأَنَّ ابْنَ سَمْعَانَ مَذْكُورٌ بِالْكَذِبِ أَسْقَطَهُ مَالِكٌ وَغَيْرُهُ، وَأَمَّا احْتِجَاجُهُ بِأَنَّ لَهَا النَّفَقَةَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَإِنَّمَا النَّفَقَةُ فِي كِتَابِ اللَّهِ تَعَالَى لِلْمُطَلَّقَةِ الرَّجْعِيَّةِ.

L35417 As for his statement that the Companions of the Messenger of Allah (peace and blessings be upon him and his family) held this view, all those from whom we have received any narration concerning this matter are of the view that she is entitled to maintenance—whether pregnant or not—or that she is not entitled to maintenance at all, except Ibn Umar alone.

وَأَمَّا قَوْلُهُ " عَلَى ذَلِكَ كَانَ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - " فَكُلُّ مَنْ رُوِّينَا عَنْهُ فِي ذَلِكَ شَيْئًا، فَإِنَّمَا هُمْ عَلَى أَنَّ لَهَا النَّفَقَةَ حَامِلًا أَوْ غَيْرَ حَامِلٍ، أَوْ عَلَى أَنَّهُ لَا نَفَقَةَ لَهَا أَصْلًا، إلَّا ابْنُ عُمَرَ وَحْدَهُ.

L35418 As for the revocable divorce, there is no doubt that maintenance is due to her according to the Companions of the Messenger of Allah (may Allah bless him and grant him peace).

وَأَمَّا الرَّجْعِيَّةُ فَلَا شَكَّ أَنَّ لَهَا النَّفَقَةَ عِنْدَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L35419 As for his statement, "and this ruling is the Sunnah," he made it regarding

the diyah for a woman's fingers, but the Hanafis and Shafi'is disregarded his statement on that matter.

وَأَمَّا قَوْلُهُ " وَهِيَ السُّنَّةُ " فَقَدْ قَالَهَا فِي دِيَةِ أَصَابِعِ الْمَرْأَةِ، فَلَمْ يَلْتَفِتْ إِلَى قَوْلِهِ فِي ذَلِكَ الْحَنَفِيُّونَ وَالشَّافِعِيُّونَ.

L35420 And someone better than him said: It was narrated to us via the chain of Abū Dāwūd: I am Muḥammad ibn Kathīr → I am Sufyān → Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf → Ṭalḥa ibn ʿAbd Allāh ibn ʿAwf, who said: "I prayed the funeral prayer with Ibn ʿAbbās, and he recited the Fātiḥah. He said: 'This is indeed from the Sunnah.'" The Ḥanafīs and Mālikīs did not take that statement of his into consideration.

وَقَالَ مَنْ هُوَ خَيْرٌ مِنْهُ مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ كَثِيرٍ أَنَا سُفْيَانُ عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ قَالَ صَلَّيْت مَعَ ابْنِ عَبَّاسٍ عَلَى جِنَازَةٍ فَقَرَأَ بِفَاتِحَةِ الْكِتَابِ فَقَالَ: إنَّهَا مِنْ السُّنَّةِ، فَلَمْ يَلْتَفِتْ إلَى قَوْلِهِ ذَلِكَ الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ.

L35421 Who is more astray than one who adheres to validating a statement unestablished from Saʿīd ibn al-Musayyab—"It is the Sunnah"—yet does not accept the firmly attested statement from Ibn ʿAbbās—"It is the Sunnah"? Indeed, thus let falsehood and misguidance be.

فَمَنْ أَضَلُّ مِمَّنْ يَدِينُ بِتَصْحِيحِ قَوْلٍ لَمْ يَثْبُتْ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ " هِيَ السُّنَّةُ " وَلَا يُصَدِّقُ الْقَوْلَ الثَّابِتَ عَنْ ابْنِ عَبَّاسٍ هِيَ السُّنَّةُ أَلَا هَكَذَا فَلْيَكُنْ الْبَاطِلُ وَالضَّلَالُ.

L35422 They mentioned: What was transmitted to us from the chain of Abī Dāwūd—I am Aḥmad ibn Zuhayr; he informed us Aḥmad ibn Yūnus; narrated by Zuhayr; narrated by Jaʿfar ibn Barqān; narrated by Maymūn ibn Mihrān, who said: I asked Saʿīd ibn al-Musayyib: "Fāṭimah bint Qays was divorced and left her house." Saʿīd replied: "That woman stirred discord among the people. She was indeed sharp-tongued, so she was placed under the guardianship of Ibn Umm Maktūm."

وَذَكَرُوا -: مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا أَحْمَدُ بْنُ زُهَيْرٍ نا أَحْمَدُ بْنُ يُونُسَ أَنَا زُهَيْرٌ أَنَا جَعْفَرُ بْنُ بَرْقَانَ أَنَا مَيْمُونُ بْنُ مِهْرَانَ قَالَ: قُلْت لِسَعِيدِ بْنِ الْمُسَيِّبِ فَاطِمَةُ بِنْتُ قَيْسٍ طَلُقَتْ فَخَرَجَتْ مِنْ بَيْتِهَا، فَقَالَ سَعِيدٌ: تِلْكَ الْمَرْأَةُ فَتَنَتْ النَّاسَ، إنَّهَا كَانَتْ لَسِنَةً، فَوُضِعَتْ عَلَى يَدِي ابْنِ أُمِّ مَكْتُومٍ.

L35423 Abū Muḥammad said: This is a Mursal narration; we do not know who reported it to Saʿīd, so it is discarded.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ لَا نَدْرِي مَنْ أَخْبَرَ سَعِيدًا بِذَلِكَ فَهُوَ سَاقِطٌ.

L35424–35426 The saying of the Messenger of Allah (peace be upon him and his progeny) concerning the thrice-divorced woman, "She has no right to lodging nor..." The "maintenance" which we previously cited through the most authentic chain of narration invalidates all these false assumptions and clarifies that that is not limited to Fāṭimah alone, but applies to every thrice-divorced woman.

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي الْمُطَلَّقَةِ ثَلَاثًا «لَيْسَ لَهَا سُكْنَى وَلَا نَفَقَةٌ» الَّذِي أَوْرَدْنَا قَبْلُ بِأَصَحِّ إسْنَادٍ يُبْطِلُ هَذِهِ الظُّنُونَ الْكَاذِبَةَ كُلَّهَا، وَيُبَيِّنُ أَنَّهُ لَيْسَ ذَلِكَ فِي فَاطِمَةَ وَحْدَهَا، بَلْ فِي كُلِّ مُطَلَّقَةٍ ثَلَاثًا.

L35427 And they mentioned—what Hammam transmitted: I am ʿAbbās ibn Aṣbagh—I am Muḥammad ibn ʿAbd al-Malik ibn Ayman—I am al-Muṭṭalib—I am Abū

وَذَكَرُوا -: مَا نَاهُ حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا مُطَّلِبُ أَنَا أَبُو صَالِحٍ - هُوَ عَبْدُ اللَّهِ بْنُ صَالِحٍ كَاتِبُ اللَّيْثِ حَدَّثَنِي اللَّيْثُ حَدَّثَنِي عُقَيْلٌ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ فَذَكَرَ حَدِيثَ فَاطِمَةَ.

Ṣāliḥ—who is ʿAbd Allāh ibn Ṣāliḥ, the scribe of al-Layth—al-Layth narrated to me: ʿUqayl narrated to me from Ibn Shihāb—Abū Salamah ibn ʿAbd al-Raḥmān reported to me—then he mentioned the ḥadīth of Fāṭimah.

L35428 ثُمَّ قَالَ: فَأَنْكَرَ النَّاسُ عَلَيْهَا مَا كَانَتْ تُحَدِّثُ مِنْ خُرُوجِهَا مِنْ قَبْلِ أَنْ تَحِلَّ.

Then he said: The people censured her for speaking about her departure before she had become lawful [after her ʿiddah].

L35429 قَالَ أَبُو مُحَمَّدٍ: وَهَذَا سَاقِطٌ، لِأَنَّهُ مِنْ رِوَايَةِ عَبْدِ اللَّهِ بْنِ صَالِحٍ - وَهُوَ ضَعِيفٌ جِدًّا - كَمَا ذَكَرْنَا قَبْلُ.

Abū Muḥammad said: This is rejected, as it comes from the narration of ʿAbd Allāh ibn Ṣāliḥ—who is extremely weak—as we mentioned previously.

L35430 وَلَا نَدْرِي مَنْ هَؤُلَاءِ النَّاسُ، وَإِنَّمَا نَدْرِي أَنَّ الْحُجَّةَ تَقُومُ عَلَى النَّاسِ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا أَنَّ الْحُجَّةَ تَقُومُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالنَّاسِ، وَإِنْكَارُ مَنْ أَنْكَرَ مِنَ النَّاسِ هُوَ الَّذِي يَجِبُ أَنْ يُنْكَرَ حَقًّا.

And we do not know who these people are. We only know that the divine proof is established upon the people through the Messenger of Allah (peace be upon him and his family), not that the divine proof is established upon the Messenger of Allah (peace be upon him and his family) through the people. The denial by those who deny among the people is itself what must rightfully be rejected.

L35431 وَذَكَرُوا -: مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ أَنَا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُتْبَةَ فَذَكَرَ حَدِيثَ فَاطِمَةَ هَذَا، فَقَالَ مَرْوَانُ: لَمْ يُسْمَعْ هَذَا الْحَدِيثُ إِلَّا مِنِ امْرَأَةٍ سَنَأْخُذُ بِالْعِصْمَةِ الَّتِي وَجَدْنَا النَّاسَ عَلَيْهَا.

They mentioned: What was narrated to us through the chain of Muslim—from Isḥāq ibn Ibrāhīm, from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from ʿUbayd Allāh ibn ʿUtbah—and he mentioned this ḥadīth of Fāṭimah. Marwān said: "This ḥadīth has only been heard from a woman. We will adhere to the criteria we found people upholding."

L35432–35434 قَالَ أَبُو مُحَمَّدٍ: لَوْ أَنَّ مَرْوَانَ تَوَرَّعَ هَذَا الْوَرَعَ حَيْثُ شَقَّ عَصَا الْمُسْلِمِينَ، وَخَرَجَ عَلَى ابْنِ الزُّبَيْرِ أَمِيرِ الْمُؤْمِنِينَ، بِلَا تَأْوِيلٍ وَلَا تَمْوِيهٍ، فَأَخَذَ بِالْعِصْمَةِ الَّتِي وَجَدَ جَمِيعَ النَّاسِ وَأَهْلَ الْإِسْلَامِ عَلَيْهَا مِنَ الْقَوْلِ بِإِمَامَةِ ابْنِ الزُّبَيْرِ مِنْ أَقْصَى أَعْمَالِ إِفْرِيقِيَّةَ إِلَى أَقْصَى خُرَاسَانَ - حَاشَا أَهْلِ الْأُرْدُنِّ - لَكَانَ أَوْلَى بِهِ وَأَنْجَى لَهُ فِي آخِرَتِهِ.

Abu Muhammad said: If only Marwan had shown such piety when he splintered the unity of the Muslims and revolted against Ibn al-Zubayr, the Commander of the Believers, without pretext or deception, and had instead held fast to the complete divine protection available to him in its entirety... The people and the Muslims adhered to the declaration of Ibn al-Zubayr's imamate, extending from the farthest districts of Ifriqiyah to the farthest regions of Khurasan—except for the people of Jordan—and it would have been more rightful for him and more salvific for him in his Hereafter.

L35435 وَقَدْ ذَكَرْنَا الْخِلَافَ فِي الصَّحَابَةِ - رِضْوَانُ اللَّهِ عَلَيْهِمْ - فِي الْمُدَّعِي الْعِصْمَةَ، وَاحْتَجَّ

We have mentioned the disagreement among the Companions—may Allah be pleased with them—regarding one who claimed infallibility. They cited

as evidence the narration relayed to us through the chain of transmission in Ṣaḥīḥ Muslim: Muhammad ibn al-Muthannā → Hafs ibn Ghiyāth → Hishām ibn ʿUrwah → his father → Fāṭimah bint Qays, who said: "I said, 'O Messenger of Allah, my husband has divorced me three times, and I fear I may be intruded upon.'" The Prophet commanded her to move out, so she did.

وَقَدْ ذَكَرْنَا اخْتِلَافَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِيمَا ادَّعَى فِيهِ الْعِصْمَةَ، وَاحْتَجُّوا بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا حَفْصُ بْنُ غِيَاثٍ أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ عَنْ فَاطِمَةَ بِنْتِ قَيْسٍ قَالَتْ «قُلْتُ يَا رَسُولَ اللَّهِ: إنَّ زَوْجِي طَلَّقَنِي ثَلَاثًا وَأَنَا أَخَافُ أَنْ يُقْتَحَمَ عَلَيَّ قَالَ: فَأَمَرَهَا فَتَحَوَّلَتْ» .

L35436 Abū Muḥammad said: This is as you observe. Therefore, reflect upon his statement, "he commanded her, so she moved." This phrase is neither from the speech of Allah's Messenger—may Allah bless him and his family and grant him peace—nor from Fāṭimah's speech, for its wording states: "he commanded her, so she moved." Thus, it is established that this is from ʿUrwah's speech. This report cannot but be considered as possibly being something ʿUrwah did not hear from Fāṭimah, thereby making it a *mursal* narration.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَمَا تَرَوْنَ فَتَأَمَّلُوا قَوْلَهُ «فَأَمَرَهَا فَتَحَوَّلَتْ» لَيْسَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَلَا مِنْ كَلَامِ فَاطِمَةَ؛ لِأَنَّ نَصَّهُ قَالَ: «فَأَمَرَهَا فَتَحَوَّلَتْ» فَصَحَّ أَنَّهُ مِنْ كَلَامِ عُرْوَةَ - وَلَا يَخْلُو هَذَا الْخَبَرُ مِنْ أَنْ يَكُونَ لَمْ يَسْمَعْهُ عُرْوَةُ مِنْ فَاطِمَةَ فَيَكُونُ مُرْسَلًا -:

L35437 This clarifies what Yunus ibn Abdullah ibn Mughith informed us, reporting: Muhammad ibn Ahmad ibn Khalid reported from his father, from Muhammad ibn Waddah, from Abu Bakr ibn Abi Shaybah, from Hafs ibn Ghiyath, from Hisham ibn Urwah, from his father, who said: "Fatimah bint Qays said: 'O Messenger of Allah, I fear intrusion upon me,' so he ordered her to relocate." If this constitutes the original report, it is a disconnected chain, and no valid proof exists in a disconnected narration. Even if Urwah heard it directly from Fatimah, it still holds no authority, for it does not explicitly state that the Messenger of Allah—peace and blessings be upon him—said: "I command you to relocate solely due to your fear of intrusion." Since he—peace and blessings be upon him—did not utter these words, it is impermissible for any Muslim who fears the Fire to assert that he—peace and blessings be upon him—commanded her relocation specifically for that reason, because this constitutes attributing to him—peace and blessings be upon him—a statement he never made about himself.[35]

وَيُوَضِّحُ ذَلِكَ -: أَنَّهُ مَا خَبَّرَنَا بِهِ يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ قَالَ أَنَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ خَالِدٍ أَنَا أَبِي أَنَا مُحَمَّدُ بْنُ وَضَّاحٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ حَفْصِ بْنِ غِيَاثٍ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ «قَالَتْ فَاطِمَةُ بِنْتُ قَيْسٍ: يَا رَسُولَ اللَّهِ إنِّي أَخَافُ أَنْ يُقْتَحَمَ عَلَيَّ فَأَمَرَهَا أَنْ تَتَحَوَّلَ» فَإِنْ كَانَ هَذَا هُوَ أَصْلَ الْخَبَرِ فَهُوَ مُنْقَطِعٌ، وَلَا حُجَّةَ فِي مُنْقَطِعٍ، أَوْ يَكُونُ عُرْوَةُ سَمِعَهُ مِنْ فَاطِمَةَ فَلَا حُجَّةَ فِيهِ أَيْضًا؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: إنَّمَا آمُرُك بِالتَّحَوُّلِ مِنْ أَجْلِ خَوْفِك أَنْ يُقْتَحَمَ عَلَيْك - وَإِذْ لَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - هَذَا فَلَا يَحِلُّ لِمُسْلِمٍ يَخَافُ النَّارَ أَنْ يَقُولَ: إنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنَّمَا أَمَرَهَا بِالتَّحَوُّلِ مِنْ أَجْلِ ذَلِكَ؛ لِأَنَّهُ إخْبَارٌ عَنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِمَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ.

L35438 In any case, it has been authentically established through the chain of Abu

[35] **Hadith references (L35437):** Sunan Ibn Majah 2033.

Salama ibn Abd al-Rahman, al-Sha'bi, and Abu Bakr ibn Abi al-Jahm that the Messenger of Allah—may Allah bless him and his family and grant him peace—said, "There is no lodging for her nor maintenance." Do you think maintenance has been abrogated out of fear of encroachment upon her? All of this is a scratch on Safa.

L35439 And his statement (peace and blessings be upon him), "Rather, the triply divorced woman has no right to housing nor financial support," suffices for all of this and renders unnecessary resorting to false assumptions—and with Allah the Exalted is success.

L35440 There remained nothing but the denial of Umar, and of Aisha, the Mother of the Believers (may Allah be pleased with her). What happened then?

L35441–35442 Jabir ibn Abdullah, Ibn Abbas, Ayyash ibn Abi Rabi'ah, and other Companions—may Allah be pleased with them—agreed with her. So what justifies considering the opinion of Aisha and Umar as part of those we mentioned? How can that be, when there is no conclusive proof in any of that? The only binding proof for everyone is what is authentically established from the Messenger of Allah—peace and blessings be upon him and his family.

L35443 We declare, proclaim, and affirm: that we do not take the opinion of the Mother of the Believers and of Umar, the Commander of the Believers, if what is authentically established from the Messenger of Allah—peace and blessings of Allah be upon him and his family—contradicts it. It is impermissible to adopt their opinions in such a case, nor should anyone claim in their presence regarding that matter that there exists a Sunnah of the Messenger of Allah—peace and blessings of Allah be upon him and his family—which the two of them concealed. They themselves declare by saying: "Indeed, the opinion of Umar and the Mother of the Believers is more deserving to be followed than what is authentically established from the Messenger of Allah—peace and blessings of Allah be upon him and his family—until they see their status before Allah the Exalted and in the eyes of the Muslim community."

L35444 I wish I knew where this submission from them to Umm al-Mu'minīn ʿĀ'isha

وَعَلَى كُلِّ حَالٍ فَقَدْ صَحَّ: مِنْ طَرِيقِ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، وَالشَّعْبِيِّ وَأَبِي بَكْرِ بْنِ أَبِي الْجَهْمِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «لَا سُكْنَى لَهَا وَلَا نَفَقَةَ» : أَفَتَرَوْنَ النَّفَقَةَ سَقَطَتْ خَوْفَ الِاقْتِحَامِ عَلَيْهَا؟ هَذَا كُلُّهُ خَدْشٌ فِي الصَّفَا.

وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «بَلْ الْمُطَلَّقَةُ ثَلَاثًا لَا سُكْنَى لَهَا وَلَا نَفَقَةَ» يُغْنِي عَنْ هَذَا كُلِّهِ، وَعَنْ تَكَلُّفِ الظُّنُونِ الْكَاذِبَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَلَمْ يَبْقَ إلَّا إنْكَارُ عُمَرَ، وَعَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَلَيْهَا، فَكَانَ مَاذَا؟

فَقَدْ وَافَقَهَا جَابِرُ بْنُ عَبْدِ اللَّهِ، وَابْنُ عَبَّاسٍ، وَعَيَّاشُ بْنُ أَبِي رَبِيعَةَ، وَغَيْرُهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَمَا الَّذِي جَعَلَ رَأْيَ عَائِشَةَ، وَعُمَرَ مِنْ رَأْيِ مَنْ ذَكَرْنَا؟ فَكَيْفَ وَلَا حُجَّةَ فِي شَيْءٍ مِنْ ذَلِكَ، إنَّمَا الْحُجَّةُ عَلَى كُلِّ أَحَدٍ مَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَنَحْنُ نُعْلِنُ وَنَهْتِفُ وَنَصْرُخُ: أَنَّ رَأْيَ أُمِّ الْمُؤْمِنِينَ، وَعُمَرَ أَمِيرِ الْمُؤْمِنِينَ لَا نَأْخُذُ بِهِ إذَا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خِلَافُهُ، وَلَا يَحِلُّ الْأَخْذُ بِرَأْيِهِمَا حِينَئِذٍ، وَلَا أَنْ يَقُولَ أَحَدٌ عِنْدَهُمَا فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سُنَّةٌ كَتَمَاهَا، وَيُصَرِّحُوا هُمْ بِأَنْ يَقُولُوا: إنَّ رَأْيَ عُمَرَ، وَأُمِّ الْمُؤْمِنِينَ أَحَقُّ أَنْ يُتَّبَعَ مِمَّا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَتَّى يَرَوْا حَالَهُمْ عِنْدَ اللَّهِ تَعَالَى، وَعِنْدَ أَهْلِ الْإِسْلَامِ.

had gone when they disregarded her statement prohibiting the suckling of adults. They ascribed to her what Allah—Exalted is He—has absolved her of: that she would allow entry into the veil of Allah—which He established over the wives of the Messenger of Allah (peace be upon him and his family)—to one who has no right to enter it. This is the grave sin that makes the skins of the believers shudder.

وَلَيْتَ شِعْرِي - أَيْنَ كَانَ عَنْهُمْ هَذَا الِانْقِيَادُ لِأُمِّ الْمُؤْمِنِينَ عَائِشَةَ، إِذْ لَمْ يَلْتَفِتُوا إِلَى قَوْلِهَا بِتَحْرِيمِ رَضَاعِ الْكَبِيرِ، إِذْ قَدْ نَسَبُوا إِلَيْهَا مَا قَدْ بَرَّأَهَا اللَّهُ تَعَالَى عَنْهُ مِنْ أَنَّهَا تُولِجُ حِجَابَ اللَّهِ تَعَالَى الَّذِي ضَرَبَهُ عَلَى نِسَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَنْ لَا يَحِلُّ لَهُ وُلُوجُهُ فَهَذِهِ هِيَ الْعَظِيمَةُ الَّتِي تَقْشَعِرُّ مِنْهَا جُلُودُ الْمُؤْمِنِينَ.

L35445 And in permitting the widow to observe her waiting period wherever she wishes—how far were they from obeying ʿUmar (may Allah be pleased with him) when they opposed him concerning wiping over the turban and caused him to issue a fatwa about praying without ablution?

وَفِي إِبَاحَتِهَا لِلْمُتَوَفَّى عَنْهَا أَنْ تَعْتَدَّ حَيْثُ شَاءَتْ وَأَيْنَ كَانُوا مِنْ هَذِهِ الطَّاعَةِ لِعُمَرَ - رَضِيَ اللَّهُ عَنْهُ - إِذْ خَالَفُوهُ فِي الْمَسْحِ عَلَى الْعِمَامَةِ وَجَعَلُوهُ يُفْتِي بِالصَّلَاةِ بِغَيْرِ وُضُوءٍ؟

L35446 And what we have compiled against them from matters in which they contradicted both of them is contained in a book we dedicated specifically for this purpose. When the reflective observer examines it, he will see them as if they are obsessed with opposing the Companion in matters where he aligned with the Sunnah, while blindly following him in opinions in which he was perpetually mistaken. But whoever does not count his speech as part of his deeds will multiply false speech - and Allah suffices us; how excellent is the Ultimate Trustee!

وَمَا قَدْ جَمَعْنَاهُ عَلَيْهِمْ مِمَّا قَدْ خَالَفُوهُمَا فِيهِ فِي كِتَابٍ أَفْرَدْنَاهُ لِذَلِكَ، إِذَا تَأَمَّلَهُ الْمُتَأَمِّلُ رَآهُمْ كَأَنَّهُمْ مُغْرَمُونَ بِخِلَافِ الصَّاحِبِ فِيمَا وَافَقَ فِيهِ السُّنَّةَ، وَتَقْلِيدُهُ فِي رَأْيٍ وَهِمَ فِيهِ أَبَدًا، وَلَكِنْ مَنْ لَمْ يَعُدَّ كَلَامَهُ مِنْ عَمَلِهِ كَثُرَ كَلَامُهُ بِالْبَاطِلِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L35447 So the report of Fāṭimah was confirmed like the sun because she was among the Emigrant Women who were the first to pledge allegiance.

فَصَحَّ خَبَرُ فَاطِمَةَ كَالشَّمْسِ؛ لِأَنَّهَا مِنْ الْمُهَاجِرَاتِ الْمُبَايِعَاتِ الْأُوَلِ:

L35448–35450 As we have transmitted via the route of Muslim: [I am ʿAbd al-Wārith ibn ʿAbd al-Ṣamad ibn ʿAbd al-Wārith, and Ḥajjāj ibn al-Shāʿir—both from ʿAbd al-Ṣamad ibn ʿAbd al-Wārith, from his father ʿAbd al-Wārith ibn Saʿīd al-Tannūrī.] From Al-Hasan ibn Zakwān: I am Abu Barīrah, from ʿĀmir al-Shaʿbī that he asked Fāṭimah bint Qays - and she was among the first female emigrants - and he narrated the ḥadīth.

كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ [أَنَا عَبْدُ الْوَارِثِ بْنُ عَبْدِ الصَّمَدِ بْنِ عَبْدِ الْوَارِثِ، وَحَجَّاجُ بْنُ الشَّاعِرِ، كِلَاهُمَا عَنْ عَبْدِ الصَّمَدِ بْنِ عَبْدِ الْوَارِثِ عَنْ أَبِيهِ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ التَّنُّورِيِّ عَنْ الْحَسَنِ بْنِ زَكْوَانَ أَنَا أَبُو بَرِيرَةَ] عَنْ عَامِرٍ الشَّعْبِيِّ أَنَّهُ سَأَلَ فَاطِمَةَ بِنْتَ قَيْسٍ - وَهِيَ مِنْ الْمُهَاجِرَاتِ الْأُوَلِ - وَذَكَرَ الْحَدِيثَ.

L35451 Abu Muhammad said: Allah, the Mighty and Majestic, has testified to the truthfulness of all of them—He, the Mighty and Majestic, said: *"For the poor emigrants who were driven out of their homes and their wealth, seek-

ing bounty from Allah and His pleasure, and supporting Allah and His Messenger—it is they who are the truthful."* [Al-Hashr: 8].[36]

قَالَ أَبُو مُحَمَّد: قَدْ شَهِدَ اللَّهُ عَزَّ وَجَلَّ لِكُلِّهِمْ بِالصِّدْقِ -: قَالَ عَزَّ وَجَلَّ: {لِلْفُقَرَاءِ الْمُهَاجِرِينَ الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ يَبْتَغُونَ فَضْلا مِنَ اللَّهِ وَرِضْوَانًا وَيَنْصُرُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ هُمُ الصَّادِقُونَ} [الحشر: ٨] .

L35452 Who is more astray than one who denies any one from among them? And we ask Allah for safety, and praise be to Allah, Lord of the worlds.

فَمَنْ أَضَلُّ مِمَّنْ يُكَذِّبُ مِنْهُمْ أَحَدًا -، وَنَسْأَلُ اللَّهَ الْعَافِيَةَ، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35453 We did not find anyone differing from him. They said regarding the report of Jābir's maternal aunt: He (peace and blessings be upon him) only commanded her to leave on the condition that she not spend the night there—thus, this was a lightly regarded falsehood and a report falsely attributed to the Messenger of Allah (peace and blessings be upon him and his family), fabricating without evidence.

وَلَمْ نَجِدْ لِأَحَدٍ خِلَافَهُ، وَقَالُوا: فِي خَبَرِ خَالَةِ جَابِرٍ إِنَّمَا أَمَرَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْخُرُوجِ عَلَى أَنْ لَا تَبِيتَ هُنَالِكَ - فَكَانَ هَذَا كَذِبًا مُسْتَسْهَلًا، وَإِخْبَارًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالِافْتِرَاءِ بِلَا دَلِيلٍ.

L35454 By my life, had there been no textual evidence, it would be obligatory to deny maintenance or housing to a woman whose divorce is final, for she is an unrelated woman and not his wife—she has no right to his property, neither for housing nor maintenance. The waiting period is an obligation Allah Almighty has imposed upon her; the husband holds no authority to annul the waiting period nor prolong it. And success comes only from Allah, the Most High.

وَلَعَمْرِي لَوْ لَمْ يَأْتِ أَثَرٌ لَكَانَ الْوَاجِبُ أَنْ لَا نَفَقَةَ لِمَبْتُوتَةٍ، وَلَا سُكْنَى؛ لِأَنَّهَا أَجْنَبِيَّةٌ لَيْسَتْ لَهُ بِزَوْجَةٍ، فَلَا حَقَّ لَهَا فِي مَالِهِ - لَا فِي إِسْكَانٍ، وَلَا فِي نَفَقَةٍ - وَالْعِدَّةُ شَيْءٌ أَلْزَمَهَا اللَّهُ تَعَالَى إِيَّاهَا، لَا مَدْخَلَ لِلزَّوْجِ فِي إِسْقَاطِهِ، وَلَا الزِّيَادَةِ فِيهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L35455 As for the woman whose husband has died—those who affirm her right to the matrimonial home cite the narration we reported through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Saʿīd ibn Isḥāq ibn Kaʿb ibn ʿUjrah, from his paternal aunt Zaynab bint Kaʿb, from Furayʿah bint Mālik: "Her husband was killed with an axe, so she came to the Prophet—may Allah's blessings be upon him and his family—and said, 'Do I have dependents?' He ordered her to relocate. When she turned to leave, he called her back and said, 'Remain in your home until the Book decrees the completion of its term: four months and ten days.'"

وَأَمَّا الْمُتَوَفَّى عَنْهَا - فَإِنَّ مَنْ أَوْجَبَ لَهَا السُّكْنَى احْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ سَعِيدِ بْنِ إِسْحَاقَ بْنِ كَعْبِ بْنِ عُجْرَةَ عَنْ عَمَّتِهِ زَيْنَبَ بِنْتِ كَعْبٍ عَنْ فُرَيْعَةَ بِنْتِ مَالِكٍ «أَنَّ زَوْجَهَا قُتِلَ بِالْقَدُّومِ فَأَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَتْ: إِنَّ لَهَا أَهْلًا؟ فَأَمَرَهَا أَنْ تَنْتَقِلَ، فَلَمَّا أَدْبَرَتْ دَعَاهَا فَقَالَ: امْكُثِي فِي بَيْتِك حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا» .

L35456–35458 And from the chain of Abd al-Razzaq, from Ma'mar, from al-Zuhri, from Ibn Ka'b ibn Ujrah, who said: My paternal aunt (who was married to Abu Sa'id

[36] **Qur'an references (L35451):** Qur'an 59:8 (Al-Hashr).

al-Khudri) narrated to me that Furay'ah narrated to her that her husband went out in... Her husband was in pursuit of non-Arabs until he reached the edge of Al-Qadum Mountain. They overtook him there and killed him. She came to the Messenger of Allah—may Allah bless him and his family and grant him peace—informing him that her husband had been killed, that he had left her in a dwelling not owned by him, and sought permission to relocate. He permitted her, so she departed. When she reached the entrance to the chamber, he had her summoned back and instructed her not to leave until the waiting period ordained by the Book had concluded.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ ابْنِ كَعْبِ بْنِ عُجْرَةَ قَالَ: حَدَّثَتْنِي عَمَّتِي - وَكَانَتْ تَحْتَ أَبِي سَعِيدٍ الْخُدْرِيِّ «أَنَّ فُرَيْعَةَ حَدَّثَتْهَا أَنَّ زَوْجَهَا خَرَجَ فِي طَلَبِ أَعْلَاجٍ حَتَّى إذَا كَانَ بِطَرَفِ الْقَدُومِ - وَهُوَ جَبَلٌ - أَدْرَكَهُمْ فَقَتَلُوهُ فَأَتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَتْ لَهُ: أَنَّ زَوْجَهَا قُتِلَ، وَأَنَّهُ تَرَكَهَا فِي مَسْكَنٍ لَيْسَ لَهُ، وَاسْتَأْذَنَتْهُ فِي الِانْتِقَالِ؟ فَأَذِنَ لَهَا، فَانْطَلَقَتْ حَتَّى إذَا كَانَتْ بِبَابِ الْحُجْرَةِ أَمَرَ بِهَا فَرُدَّتْ، فَأَمَرَهَا أَنْ لَا تَخْرُجَ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ» .

L35459 And from the path of Mālik, from Saʿd ibn Isḥāq ibn Kaʿb ibn ʿUjrah, from his paternal aunt Zaynab bint Kaʿb ibn ʿUjrah, from al-Furaiʿah bint Mālik ibn Sinān, the sister of Abū Saʿīd al-Khudrī—and he mentioned it, wherein she said: "I asked the Messenger of Allah—peace be upon him and his family and grant him peace—to return to my family in Banī Khadrah, for my husband did not leave me in a dwelling that he owns."

وَمِنْ طَرِيقِ مَالِكٍ عَنْ سَعْدِ بْنِ إسْحَاقَ بْنِ كَعْبِ بْنِ عُجْرَةَ عَنْ عَمَّتِهِ زَيْنَبَ بِنْتِ كَعْبِ بْنِ عُجْرَةَ عَنْ الْفُرَيْعَةِ بِنْتِ مَالِكِ بْنِ سِنَانٍ أُخْتِ أَبِي سَعِيدٍ الْخُدْرِيِّ فَذَكَرَهُ - وَفِيهِ قَالَتْ: «فَسَأَلْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ أَرْجِعَ إلَى أَهْلِي فِي بَنِي خُدْرَةَ فَإِنَّ زَوْجِي لَمْ يَتْرُكْنِي فِي مَسْكَنٍ يَمْلِكُهُ» .

L35460 In the narration: "He—peace and blessings be upon him—said to her: 'Remain in your home until the term prescribed by the Book is fulfilled.'" He said: So she observed her waiting period therein for four months and ten days.

وَفِيهِ: «أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لَهَا: اُمْكُثِي فِي بَيْتِكِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ» ، قَالَ: فَاعْتَدَّتْ فِيهِ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L35461 From the narration of Abd al-Razzaq, from Ibn Jurayj, from Abdullah ibn Kathir, who said: Mujahid said, "Men were martyred on the day of Uhud, and their wives came to the Messenger of Allah (peace and blessings of Allah be upon him and his household) and said, 'O Messenger of Allah, we feel lonely at night. May we spend the night at the home of one of us until morning comes, at which point we disperse to our houses?' The Messenger of Allah (peace and blessings of Allah be upon him and his household) replied, 'Converse at the home of one of you as you wish. Then, when you intend to sleep, let every woman among you return to her own home.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ كَثِيرٍ قَالَ: قَالَ مُجَاهِدٌ «اُسْتُشْهِدَ رِجَالٌ يَوْمَ أُحُدٍ فَجَاءَ نِسَاؤُهُمْ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقُلْنَ: إنَّا نَسْتَوْحِشُ يَا رَسُولَ اللَّهِ بِاللَّيْلِ فَنَبِيتُ عِنْدَ إحْدَانَا حَتَّى إذَا أَصْبَحْنَا تَبَدَّدْنَا فِي بُيُوتِنَا؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: تَحَدَّثْنَ عِنْدَ إحْدَاكُنَّ مَا بَدَا لَكُنَّ حَتَّى إذَا أَرَدْتُنَّ النَّوْمَ فَلْتَؤُبْ كُلُّ امْرَأَةٍ مِنْكُنَّ إلَى بَيْتِهَا» .

L35462 Abu Muhammad said: As for the narration of Mujāhid, it is disconnected and there is no proof in it.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا حَدِيثُ مُجَاهِدٍ فَمُنْقَطِعٌ لَا حُجَّةَ فِيهِ.

وَأَمَّا حَدِيثُ فُرَيْعَةَ - فَفِيهِ زَيْنَبُ بِنْتُ كَعْبِ بْنِ عُجْرَةَ - وَهِيَ مَجْهُولَةٌ لَا تُعْرَفُ - وَلَا رَوَى عَنْهَا أَحَدٌ غَيْرُ سَعْدِ بْنِ إِسْحَاقَ - وَهُوَ غَيْرُ مَشْهُورٍ بِالْعَدَالَةِ - عَلَى أَنَّ النَّاسَ أَخَذُوا عَنْهُ هَذَا الْحَدِيثَ لِغَرَابَتِهِ، وَلِأَنَّهُ لَمْ يُوجَدْ عِنْدَ أَحَدٍ سِوَاهُ - فَسُفْيَانُ يَقُولُ: سَعِيدٌ، وَمَالِكٌ، وَغَيْرُهُ يَقُولُونَ: سَعْدٌ، وَالزُّهْرِيُّ يَقُولُ: عَنْ ابْنِ كَعْبِ بْنِ عُجْرَةَ - فَبَطَلَ الِاحْتِجَاجُ بِهِ.

L35463–35465 As for the ḥadīth of Furayʿah—it is transmitted through Zaynab bint Kaʿb ibn ʿUjrah, a non-established narrator unrecognized in tradition. No one narrated from her except Saʿd ibn Isḥāq, who is not renowned for reliability. People nevertheless accepted this ḥadīth from him due to its rarity and because no other source preserved it. Sufyān cites "Saʿīd," while Mālik and others cite "Saʿd," and al-Zuhrī states: "from Ibn Kaʿb ibn ʿUjrah"—thus the narration is rendered void. Citing it as evidence.

إِذْ لَا يَحِلُّ أَنْ يُؤْخَذَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِلَّا مَا لَيْسَ فِي إِسْنَادِهِ مَجْهُولٌ، وَلَا ضَعِيفٌ.

L35466 For it is impermissible to transmit anything from the Messenger of Allah—may Allah's peace and blessings be upon him and his family—unless its isnād has neither unknown nor weak narrators.

ثُمَّ لَوْ صَحَّ لَكَانَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، مُخَالِفِينَ لَهُ؛ لِأَنَّ مَالِكًا يَقُولُ: إِنْ كَانَ الْمَنْزِلُ لَيْسَ لِلْمَيِّتِ فَإِنْ كَانَ بِكِرَاءٍ فَهِيَ أَوْلَى بِهِ، وَإِنْ كَانَ لَيْسَ إِلَّا إِسْكَانًا، أَوْ كَانَ قَدْ تَمَّتْ فِيهِ مُدَّةُ الْكِرَاءِ: فَلِصَاحِبِ الْمَنْزِلِ إِخْرَاجُهَا مِنْهُ، وَلَوْ طَلَبَ مِنْهَا الْكِرَاءَ فَغَلَى عَلَيْهَا لَمْ يَلْزَمْهَا أَنْ تُكْرِيَهُ، وَلَا يَلْزَمُ الْوَرَثَةَ أَنْ يُكْرُوهُ لَهَا مِنْ مَالِ الْمَيِّتِ.

L35467 Then, if it were valid, the Hanafis and Malikis would oppose it; for Malik states: If the dwelling is not owned by the deceased, then if it was rented, she has the strongest claim to it. But if it was merely occupancy, or the rental period had expired: the owner of the dwelling may evict her. If he demands rent from her and raises it excessively, she is not obligated to rent it, nor are the heirs obligated to rent it to her from the deceased's estate.

وَقَالَ أَبُو حَنِيفَةَ: لَا سُكْنَى لَهَا فِي مَالِ الْمَيِّتِ أَصْلًا، سَوَاءٌ كَانَ الْمَنْزِلُ لَهُ أَوْ بِكِرَاءٍ - فَقَدْ خَالَفُوا نَصَّ هَذَا الْخَبَرِ.

L35468 Abu Hanifah said: She has no right of residence in the deceased's estate whatsoever, whether the dwelling was his or rented, for they have contradicted the explicit wording of this hadith.

وَمِنْ الْمُحَالِ احْتِجَاجُ قَوْمٍ بِخَبَرِهِمْ أَوَّلَ عَاصِينَ لَهُ.

L35469 Among the impossibilities is a community invoking their own report as evidence while being the foremost to contravene it.

وَمَوَّهُوا فِيمَا صَحَّ مِنْ ذَلِكَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ بِمَا رُوِّينَاهُ مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ زَيْدٍ قَالَ: سَمِعْت أَيُّوبَ السِّخْتِيَانِيَّ ذَكَرَ لَهُ نَقْلَهُ أُمُّ كُلْثُومٍ بِنْتُ عَلِيٍّ؟ فَقَالَ أَيُّوبُ: إنَّمَا نَقَلَهَا مِنْ دَارِ الْإِمَارَةِ.

L35470 They embellished what was authentically established from ʿĀʾishah, Mother of the Believers, and ʿAlī ibn Abī Ṭālib through the narration chain we reported via Ismāʿīl ibn Isḥāq: Sulaymān ibn Ḥarb; Ḥammād ibn Zayd, who said: I heard Ayyūb al-Sakhtiyānī mention to him the narration of Umm Kulthūm bint ʿAlī (questionably attributed). Ayyūb said: "It was only transmitted from the seat of governance."

L35471 Hammad said: I heard Jarīr ibn Ḥāzim narrate to Ayyūb the ḥadīth of ʿAṭāʾ: "Did ʿĀʾishah perform ḥajj with her sister Umm Kulthūm during her waiting

period after divorcing Ṭalḥah ibn ʿUbayd Allāh?" Ayyūb said: "She [ʿĀʾishah] merely relocated her [Umm Kulthūm] to her [ʿĀʾishah's] homeland."

وَقَالَ حَمَّادٌ: وَسَمِعْت جَرِيرَ بْنَ حَازِمٍ يُحَدِّثُ أَيُّوبَ بِحَدِيثِ عَطَاءٍ: أَنَّ عَائِشَةَ حَجَّتْ بِأُخْتِهَا أُمِّ كُلْثُومٍ فِي عِدَّتِهَا مِنْ طَلْحَةَ بْنِ عُبَيْدِ اللَّهِ؟ فَقَالَ أَيُّوبُ: إنَّمَا نَقَلَتْهَا إلَى بِلَادِهَا.

L35472 And through him to Hammad ibn Zayd, from Yahya ibn Saʿīd, from al-Qasim ibn Muhammad, who said: "Aisha used to make a woman leave her house when her husband died, as she saw no harm in it. But the people refused to do anything but oppose her. Therefore, we do not adopt her opinion and disregard the people's view."

وَبِهِ إلَى حَمَّادِ بْنِ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ قَالَ: كَانَتْ عَائِشَةُ تُخْرِجُ الْمَرْأَةَ مِنْ بَيْتِهَا إذَا تُوُفِّيَ زَوْجُهَا لَا تَرَى بِهِ بَأْسًا - وَأَبَى النَّاسُ إلَّا خِلَافَهَا، فَلَا نَأْخُذُ بِقَوْلِهَا وَنَدَعُ قَوْلَ النَّاسِ.

L35473–35475 Abu Muhammad said: We do not know: Who are these people? The stipulation pertains to people, and there is no valid evidence among the people. Indeed, the speech of Allah, the Exalted, and the speech of His Messenger—may Allah's blessings and peace be upon him and his family—alone constitute the proof upon people. Allah, the Exalted, and His Messenger—may Allah's blessings and peace be upon him and his family—have prohibited the wealth of every person universally, except by right.

قَالَ أَبُو مُحَمَّدٍ: لَا نَدْرِي مَنْ هَؤُلَاءِ النَّاسُ؟ وَالشَّرْطُ نَاسٍ، وَلَا حُجَّةَ فِي النَّاسِ عَلَى اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إنَّمَا كَلَامُ اللَّهِ تَعَالَى وَكَلَامُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الْحُجَّةُ عَلَى النَّاسِ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَالَ كُلِّ أَحَدٍ عَلَى سَوَاءٍ إلَّا بِحَقٍّ.

L35476 The residence of the deceased—either for creditors or, after settling debts, for heirs—grants his wife no right to it if she is an heir, except the exact measure of her allotted share. Anything beyond this is forbidden to her unless the heirs willingly consent. As for Ayyūb's statement, it is a scholar's error against which warnings were issued long ago.

وَمَنْزِلُ الْمَيِّتِ - إمَّا لِلْغُرَمَاءِ، وَإِمَّا لِلْوَرَثَةِ - بَعْدَ الْوَصِيَّةِ - لَيْسَ لِامْرَأَتِهِ فِيهِ حَقٌّ إنْ كَانَتْ وَارِثَةً إلَّا مِقْدَارَ حِصَّتِهَا فَقَطْ، وَمَا عَدَا ذَلِكَ فَحَرَامٌ عَلَيْهَا إلَّا بِطِيبِ أَنْفُسِ الْوَرَثَةِ، وَأَمَّا كَلَامُ أَيُّوبَ فَزَلَّةُ عَالِمٍ قَدْ حُذِّرَ مِنْهَا قَدِيمًا.

L35477 As for the obfuscation of the disputant who knows the invalidity of his argument, this is a calamity. As for his statement, "He moved it from the house of authority"—alas, what a double disgrace! Could there ever have been a house of authority in Medina during the era of the Messenger of Allah (peace and blessings be upon him and his family), Abū Bakr, ʿUmar, ʿUthmān, ʿAlī, or Muʿāwiyah?

وَأَمَّا تَمْوِيهُ الْمُحْتَجِّ بِهِ وَهُوَ يَدْرِي بُطْلَانَهُ فَمُصِيبَةٌ، أَمَّا قَوْلُهُ " نَقَلَهَا عَنْ دَارِ الْإِمَارَةِ " فَوَا فَضِيحَتَاهُ؟ وَهَلْ كَانَ فِي الْمَدِينَةِ قَطُّ دَارُ إمَارَةٍ مُدَّةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَمُعَاوِيَةَ.

L35478 Did each of these individuals reside anywhere but in their own homes? However, when Ayyub—may Allah have mercy on him—saw the Governor's Residence in Basra, he assumed that the Governor's Residence in Medina was likewise, and that Umar ibn al-Khattab lived in the Governor's Residence in Medina. How astonishing!

وَهَلْ سَكَنَ كُلُّ وَاحِدٍ مِنْ هَؤُلَاءِ إلَّا فِي دَارِ نَفْسِهِ، لَكِنْ لَمَّا رَأَى أَيُّوبُ - رَحِمَهُ اللَّهُ - دَارَ الْإِمَارَةِ بِالْبَصْرَةِ ظَنَّ أَنَّهَا بِالْمَدِينَةِ كَذَلِكَ، وَأَنَّ عُمَرَ بْنَ الْخَطَّابِ سَكَنَ فِي دَارِ الْإِمَارَةِ بِالْمَدِينَةِ، فَيَا لَلْعَجَبِ؟ .

وَكَذَلِكَ قَوْلُهُ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ " إِنَّمَا نَقَلَتْهَا إِلَى بِلَادِهَا " فَهَذِهِ طَامَّةٌ أُخْرَى هُوَ يَسْمَعُ حَجَّتْ بِهَا فِي عِدَّتِهَا وَيَقُولُ " نَقَلَتْهَا إِلَى بِلَادِهَا " وَهِيَ الْمَدِينَةُ.

L35479 Similarly, his statement regarding ʿĀ'ishah, the Mother of the Believers—"she merely relocated her to her homeland"—this constitutes another calamity. He hears that she performed Hajj with her during her waiting period yet claims, "she relocated her to her homeland," referring to Medina.

وَهَلْ يَخْفَى عَلَى أَحَدٍ أَنَّهُ ضِدُّ قَوْلِ أَيُّوبَ، وَأَنَّهَا إِنَّمَا نَقَلَتْهَا عَنْ بِلَادِهَا - وَهِيَ الْمَدِينَةُ - وَعَنْ الْمَوْضِعِ الَّذِي قُتِلَ فِيهِ زَوْجُهَا طَلْحَةُ - رَضِيَ اللَّهُ عَنْهُ - وَهُوَ الْبَصْرَةُ إِلَى مَكَّةَ الَّتِي لَيْسَتْ لَهَا بَلَدًا، وَلَكِنْ مَنْ ذَا عُصِمَ مِنْ الْخَطَأِ مِنْ النَّاسِ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الَّذِي تَكَفَّلَ اللَّهُ تَعَالَى لَهُ بِالْعِصْمَةِ.

L35480 Is it hidden from anyone that this contradicts the statement of Ayyub, and that she merely relocated herself from her homeland—Medina—and from the place where her husband Talha—may Allah be pleased with him—was killed, namely Basra, to Mecca—which was not her homeland? But who among people after the Messenger of Allah—peace and blessings be upon him and his family—has been protected from error, when Allah the Exalted guaranteed him alone infallibility?

وَأَمَّا تَهْوِيلُهُمْ بِعُمَرَ، وَعُثْمَانَ، فَإِنَّمَا الرِّوَايَةُ عَنْهُمَا فِي ذَلِكَ، وَعَنْ أُمِّ سَلَمَةَ، وَزَيْدٍ: مُنْقَطِعَةٌ، وَنَحْنُ نَأْتِيهِمْ عَنْهُمْ بِمِثْلِهَا سَوَاءً سَوَاءً - قَدْ أَوْرَدْنَا فِي تِلْكَ الرِّوَايَةِ نَفْسِهَا: أَنَّ زَيْدَ بْنَ ثَابِتٍ أَرْخَصَ لِلْمُتَوَفَّى عَنْهَا أَنْ تَبْقَى عَنْ مَنْزِلِهَا بَيَاضَ يَوْمِهَا أَوْ لَيْلَتِهَا وَهَذَا خِلَافُ قَوْلِهِمْ.

L35481 As for their exaggeration concerning ʿUmar and ʿUthmān, the reports from them on that matter—and from Umm Salamah and Zayd—are disconnected. However, we bring forth from them reports of the same kind, exactly equivalent. Indeed, we have cited within that very report itself that Zayd ibn Thābit permitted a widow to remain away from her residence for the entirety of her day or her night—and this opposes their view.

وَعَنْ أُمِّ سَلَمَةَ أَنْ تَبْقَى عَنْ مَنْزِلِهَا أَحَدَ طَرَفَيْ اللَّيْلِ، فَلَيْتَ شِعْرِي مَا الْفَرْقُ بَيْنَ الطَّرَفِ الْوَاحِدِ، وَالطَّرَفِ الثَّانِي.

L35482–35483 It is narrated from Umm Salamah that she would refrain from entering her home during one of the two ends of the night. I wish I knew: What is the difference between the one end and the second end?

وَأَمَّا عُمَرُ - فَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْقَطَّانُ - عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ امْرَأَةً تُوُفِّيَ عَنْهَا زَوْجُهَا فَكَانَتْ فِي عِدَّتِهَا، فَمَاتَ أَبُوهَا، فَسُئِلَ لَهَا عُمَرُ بْنُ الْخَطَّابِ؟ فَرَخَّصَ لَهَا أَنْ تَبِيتَ اللَّيْلَةَ وَاللَّيْلَتَيْنِ - وَهَذَا خِلَافُ قَوْلِهِ - فَمَرَّةً عُمَرُ حُجَّةٌ، وَمَرَّةً لَيْسَ بِحُجَّةٍ مِنْ مِثْلِ تِلْكَ الرِّوَايَةِ نَفْسِهَا.

L35484 As for Umar—it has been narrated to us through the chain of Saeed ibn Mansoor: Yahya ibn Saeed—al-Qattan—from Ayyub ibn Musa from Saeed ibn al-Musayyib that a woman whose husband had died was in her waiting period when her father died. Was Umar ibn al-Khattab asked on her behalf? He permitted her to spend one night and two nights. This contradicts his own statement. At times Umar's ruling serves as a legal proof, and at times it does not—both deriving from the same narration itself.

وَقَدْ ذَكَرْنَا الرِّوَايَةَ الثَّابِتَةَ عَنْ ابْنِ عُمَرَ: نَفَقَةُ الْمُتَوَفَّى عَنْهَا مِنْ جَمِيعِ الْمَالِ وَقَوْلُ سَالِمٍ ابْنِهِ: كُنَّا نُنْفِقُ عَلَيْهِنَّ حَتَّى نُبْتُمْ مَا نُبْتُمْ.

L35485 We have mentioned the established narration from Ibn Umar: "The maintenance for the woman whose husband has died is to be provided from the

entirety of the estate," and the statement of his son Salim: "We used to provide for them until we ceased as we ceased."

L35486 They abandoned all of this, abandoning Umar, Uthman, the Mother of the Believers, and Ibn Masʿud as they desired. They vilified those who differed from these figures—even if their own opposition contradicted the established Sunnah transmitted by them—as they desired.

L35487 By Allah—a righteous oath—those present among them never followed ʻUmar, nor ʻUthmān, nor Ibn ʻUmar, nor Ibn Masʿūd, nor ʻĀ'ishah. They followed none but Abū Ḥanīfah, Mālik, and al-Shāfiʿī. Then they bear no burden in denying what they inwardly acknowledge of this, and Allah the Exalted knows it, and people among them are aware of it—and in Allah the Exalted we seek refuge from the like of this. Allah suffices us, and He is the best Trustee.

L35488 al-Āmiddī

L35489 **Al-Amidi: The bondwoman in her waiting period (ʿiddah) is not permissible to her master until her waiting period expires.**

L35490 2001 – Issue: A female slave in her waiting period is not lawful for her master until her waiting period concludes, due to the statement of Allah, the Exalted: {But do not make a secret promise to them except that you utter a proper declaration} [Al-Baqarah 2:235]. The "secret" [in the verse] refers to marriage – and "secret" also denotes the opposite of public declaration. Both [secret marriage and secret promises] are prohibited by the explicit text of the verse, with no disagreement on this matter.[37]

L35491 **A legal issue: There is no waiting period from an invalid marriage.**

L35492 2002. Issue: There is no waiting period arising from an invalid marriage.

[37] **Qur'an references (L35490):** Qur'an 2:235 (Al-Baqarah).

فَتَرَكُوا هَذَا كُلَّهُ، وَتَرَكُوا: عُمَرَ، وَعُثْمَانَ، وَأُمَّ الْمُؤْمِنِينَ، وَابْنَ مَسْعُودٍ حَيْثُ أَحَبُّوا، وَشَنَّعُوا بِخِلَافِهِمْ، وَإِنْ خَالَفَ مَا جَاءَ عَنْهُمْ السُّنَنَ الثَّابِتَةَ - حَيْثُ أَحَبُّوا -.

وَوَاللَّهِ - قَسَمًا بَرًّا - مَا اتَّبَعَ الْحَاضِرُونَ مِنْهُمْ قَطُّ عُمَرَ، وَلَا عُثْمَانَ، وَلَا ابْنَ عُمَرَ، وَلَا ابْنَ مَسْعُودٍ، وَلَا عَائِشَةَ - وَمَا اتَّبَعُوا إلَّا أَبَا حَنِيفَةَ، وَمَالِكًا، وَالشَّافِعِيَّ، ثُمَّ لَا مَئُونَةَ عَلَيْهِمْ فِي إنْكَارِ مَا يَعْرِفُونَهُ مِنْ أَنْفُسِهِمْ مِنْ ذَلِكَ، وَيَعْلَمُهُ اللَّهُ تَعَالَى وَالنَّاسُ مِنْهُمْ، - وَبِاَللَّهِ تَعَالَى نَعُوذُ مِنْ مِثْلِ هَذَا -، وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

الْآمِدِيّ

[الْآمِدِيّ الْأَمَةُ الْمُعْتَدَّةُ لَا تَحِلُّ لِسَيِّدِهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا]

٢٠٠١ - مَسْأَلَةٌ: وَالْأَمَةُ الْمُعْتَدَّةُ لَا تَحِلُّ لِسَيِّدِهَا حَتَّى تَنْقَضِيَ عِدَّتُهَا؛ لِقَوْلِ اللَّهِ تَعَالَى: {وَلَكِنْ لا تُوَاعِدُوهُنَّ سِرًّا إِلا أَنْ تَقُولُوا قَوْلا مَعْرُوفًا} [البقرة: ٢٣٥] وَالسِّرُّ النِّكَاحُ - وَالسِّرُّ أَيْضًا ضِدُّ الْإِعْلَانِ، وَكِلَاهُمَا مَمْنُوعٌ بِنَصِّ الْآيَةِ، وَلَا خِلَافَ فِي هَذَا.

[مَسْأَلَةٌ لَا عِدَّةَ مِنْ نِكَاحٍ فَاسِدٍ]

٢٠٠٢ - مَسْأَلَةٌ: وَلَا عِدَّةَ مِنْ نِكَاحٍ فَاسِدٍ.

L35493 The proof of that is: she is neither divorced nor has her husband died, and neither the Qur'an nor the Sunnah has brought an obligation of a waiting period upon her, nor is there a proof in other than these two.

L35494 Issue 2003: There is no waiting period for an umm walad (a slave woman who has borne her master's child) if she is emancipated or her master dies, nor for a female slave upon the death of her master or his emancipation of her. This is because neither the Quran nor the Sunnah has mandated such a waiting period. The two of them may be married whenever the two of them wish, as there is no waiting period incumbent upon the two of them. {And your Lord is never forgetful} [Maryam: 64]. However, if she suspects pregnancy, she must wait until she ascertains that she is pregnant or that she is not pregnant.[38]

L35495–35497 There has been disagreement regarding this. The first opinion is: "Just as I am Ḥumām, I am Abbas ibn Aṣbagh." From Muhammad ibn Abd al-Malik ibn Ayman, from Muhammad ibn Isma'il al-Sa'igh, from Abdullah ibn Bakr al-Sahmi, from Sa'id—meaning 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 us regarding the Sunnah of our Prophet (peace and blessings of Allah be upon him and his family). The ʿiddah of an umm al-walad when her master dies is the ʿiddah of a free woman whose husband has died: four months and ten days."

L35498 And through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah: ʿAmr ibn al-ʿĀṣ said regarding a female slave who has been manumitted after sexual intercourse - if her master had intercourse with her, even if she had not borne a child - her waiting period upon his death while she is under his ownership is four months and ten days.

L35499 Muhammad ibn Saʿīd ibn Nubāt reported from Aḥmad ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushaniyy, from Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Thawr ibn Zayd, from Rajāʾ ibn Ḥaywatu, that ʿAmr ibn al-ʿĀṣ said: "The waiting period for an *umm al-walad* [enslaved woman

[38] **Qur'an references (L35494):** Qur'an 19:64 (Maryam).

بُرْهَانُ ذَلِكَ -: أَنَّهَا لَيْسَتْ مُطَلَّقَةً، وَلَا مُتَوَفًّى عَنْهَا، وَلَمْ يَأْتِ بِإِيجَابِ عِدَّةٍ عَلَيْهَا قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا حُجَّةَ فِي سِوَاهُمَا.

٢٠٠٣ - مَسْأَلَةٌ: وَلَا عِدَّةَ عَلَى أُمِّ وَلَدٍ - إِنْ أُعْتِقَتْ أَوْ مَاتَ سَيِّدُهَا - وَلَا عَلَى أَمَةٍ مِنْ وَفَاةِ سَيِّدِهَا، أَوْ عِتْقِهِ لَهَا، لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَهُمَا أَنْ يُنْكَحَا مَتَى شَاءَتَا، لِأَنَّهُ لَا عِدَّةَ عَلَيْهِمَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] إِلَّا أَنَّهَا إِنْ خَافَتْ حَمْلًا تَرَبَّصَتْ حَتَّى تُوقِنَ بِأَنَّ بِهَا حَمْلًا، أَوْ أَنَّهَا لَا حَمْلَ بِهَا.

وَقَدْ اُخْتُلِفَ فِي هَذَا: فَقَوْلٌ أَوَّلٌ: كَمَا أَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ، أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الصَّائِغُ أَنَا عَبْدُ اللَّهِ بْنُ بَكْرٍ السَّهْمِيُّ أَنَا سَعِيدٌ - يَعْنِي ابْنَ أَبِي عَرُوبَةَ - عَنْ مَطَرٍ الْوَرَّاقِ عَنْ رَجَاءِ بْنِ حَيْوَةَ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ عَمْرِو بْنِ الْعَاصِ قَالَ: لَا تُلَبِّسُوا عَلَيْنَا سُنَّةَ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - عِدَّةُ أُمِّ الْوَلَدِ إِذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا عِدَّةُ الْحُرَّةِ الْمُتَوَفَّى عَنْهَا زَوْجُهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ أَنَّ عَمْرَو بْنَ الْعَاصِ قَالَ: فِي الْمُعْتَقَةِ عَنْ دُبُرٍ إِذَا كَانَ سَيِّدُهَا يَطَؤُهَا - وَإِنْ لَمْ تَلِدْ - فَعِدَّتُهَا إِذَا مَاتَ عَنْهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ ثَوْرِ بْنِ زَيْدٍ عَنْ رَجَاءِ بْنِ حَيْوَةَ أَنَّ عَمْرَو بْنَ الْعَاصِ قَالَ: عِدَّةُ أُمِّ الْوَلَدِ ثَلَاثَةُ قُرُوءٍ.

who bears her master's child and is entitled to emancipation upon his death]
is three menstrual cycles."

وَبِهِ إِلَى عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو قَالَ: إِنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ، وَالزُّهْرِيَّ، قَالَا جَمِيعًا: عِدَّةُ أُمِّ الْوَلَدِ مِنْ وَفَاةِ سَيِّدِهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

L35500–35502 And through him to Abd al-Rahman ibn Mahdi, I am Hammad ibn Salamah, from Muhammad ibn Amr, who said: “Verily...” Umar ibn Abd al-Aziz and al-Zuhrī jointly said: The waiting period for an *umm al-walad* following the death of her master is four months and ten days.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عِدَّةُ أُمِّ الْوَلَدِ مِنْ وَفَاةِ سَيِّدِهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ، فَإِنْ كَانَتْ أَمَةً يَطَؤُهَا - وَلَمْ تَلِدْ لَهُ - فَمَاتَ فَتُسْتَبْرَأُ بِشَهْرَيْنِ وَخَمْسِ لَيَالٍ.

L35503 From the transmission of Abd al-Razzaq from Ma’mar from al-Zuhri: The waiting period for an umm al-walad (mother of a child by her master) upon the death of her master is four months and ten days. If she was a slave woman whom he has intercourse with—and she had not borne him a child—and he died, she must observe a waiting period of two months and five nights to ascertain the absence of pregnancy.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَخْبَرَنَا حُمَيْدٌ قَالَ: سَأَلْتُ الْحَسَنَ الْبَصْرِيَّ عَنْ عِدَّةِ أُمِّ الْوَلَدِ إِذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا قَالَ: تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L35504 Via the chain of Hammad ibn Salamah, Humayd reported to us, saying: I asked al-Hasan al-Basri about the ʿiddah of the umm al-walad when her master dies. He said: She observes an ʿiddah of four months and ten days.

وَبِهِ إِلَى حُمَيْدٍ عَنْ عُمَارَةَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: عِدَّةُ أُمِّ الْوَلَدِ إِذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

L35505 And through him to Humaid from ‘Umarah from Sa‘id ibn Jubayr, who said: The waiting period for the umm al-walad when her master passes away from her is four months and ten.

وَبِهِ إِلَى حَمَّادٍ أَخْبَرَنَا قَيْسٌ عَنْ مُجَاهِدٍ فِي أُمِّ الْوَلَدِ إِذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا قَالَ: تَعْتَدُّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا.

L35506 And through him (the previous narrator) to Hammad: Qays informed us from Mujāhid regarding the umm al-walad when her master dies. He said: She observes a waiting period of four months and ten days.

وَبِهِ إِلَى حَمَّادٍ أَنَا دَاوُد - هُوَ ابْنُ أَبِي هِنْدٍ - عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: فِي أُمِّ الْوَلَدِ يُتَوَفَّى عَنْهَا سَيِّدُهَا عِدَّتُهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

L35507 From Dawud—son of Abi Hind—who narrated to Hammad, from Sa‘īd ibn al-Musayyib, who said: Regarding the umm al-walad [enslaved woman who bore her master’s child] when her master dies, her waiting period is four months and ten days.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حُمَامُ بْنُ يَحْيَى قَالَ: سُئِلَ قَتَادَةُ عَنْ عِدَّةِ أُمِّ الْوَلَدِ إِذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا؟ فَقَالَ: قَالَ سَعِيدُ بْنُ الْمُسَيِّبِ، وَخِلَاسُ بْنُ عَمْرٍو، وَأَبُو عِيَاضٍ: عِدَّتُهَا عِدَّةُ الْحُرَّةِ أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ.

L35508 Through the narration of Al-Hajjaj ibn Minhal, I, Humam ibn Yahya, said: Qatadah was asked about the waiting period of an umm al-walad when her master passes away. He replied, citing Sa‘id ibn al-Musayyib, Khilas ibn ‘Amr, and Abu ’Iyad: “Her waiting period is that of a free woman: four months and ten days.”

L35509 And through the chain of Ḥammād ibn Salamah: I am Muḥammad ibn

ʿAmr from ʿUbādah ibn Nusayy: that a letter was written to ʿAbd al-Malik ibn Marwān concerning an umm walad who married before four months and ten days had passed for her, [stating] that the two be separated and both subjected to discretionary punishment -

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا مُحَمَّدُ بْنُ عَمْرٍو عَنْ عُبَادَةَ بْنِ نُسَيٍّ: أَنَّ عَبْدَ الْمَلِكِ بْنَ مَرْوَانَ كُتِبَ إِلَيْهِ فِي أُمِّ وَلَدٍ تَزَوَّجَتْ قَبْلَ أَنْ تَمْضِيَ لَهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرٌ، أَنْ يُفَرَّقَ بَيْنَهُمَا وَيُعَزَّرَهُمَا -.

L35510 This is the view of Muḥammad ibn Sīrīn, al-Awzāʿī, and Isḥāq ibn Rāhawayh.

وَهُوَ قَوْلُ مُحَمَّدِ بْنِ سِيرِينَ وَالْأَوْزَاعِيِّ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L35511 A second opinion holds that her waiting period after emancipation or a spouse's death is three menstrual cycles.

وَقَوْلٌ ثَانٍ - يَجْعَلُ عِدَّتَهَا فِي الْعِتْقِ وَالْوَفَاةِ ثَلَاثَةَ قُرُوءٍ -:

L35512 It has been narrated to us via the chain of Abd al-Razzaq from Ibn al-Mubarak from al-Hajjaj ibn Arṭāʾah from al-Hakam ibn Utaybah from Ali ibn Abi Talib, who said: The waiting period for a female slave is three menstrual cycles.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ الْمُبَارَكِ عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: عِدَّةُ السُّرِّيَّةِ ثَلَاثُ حِيَضٍ.

L35513–35515 From the chain of Saʿīd ibn Manṣūr: I, Yazīd ibn Hārūn, reported from Ḥajjāj ibn Arṭāh, from al-Shaʿbī. It is reported from Ali ibn Abi Talib and Ibn Masʿud that they both said together regarding the umm al-walad: her waiting period when her master dies is three menstrual periods.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا يَزِيدُ بْنُ هَارُونَ عَنْ حَجَّاجِ بْنِ أَرْطَاةَ عَنِ الشَّعْبِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَابْنِ مَسْعُودٍ، قَالَا جَمِيعًا فِي أُمِّ الْوَلَدِ: عِدَّتُهَا إِذَا مَاتَ عَنْهَا سَيِّدُهَا ثَلَاثَةُ قُرُوءٍ.

L35516 Via the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAṭāʾ concerning one who manumits a concubine while she is pregnant, he said: She - now a free woman - must observe the ʿiddah of three menstrual cycles. This was also stated by ʿAmr ibn Dīnār.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِيمَنْ أَعْتَقَ سُرِّيَّةً - وَهِيَ حُبْلَى - قَالَ: تَعْتَدُّ ثَلَاثَ حِيَضٍ - وَهِيَ امْرَأَةٌ حُرَّةٌ - وَقَالَهُ أَيْضًا عَمْرُو بْنُ دِينَارٍ.

L35517 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Abu Ishaq al-Shaybani from al-Hakam ibn Utaybah, who said: If a master has intercourse with his female slave, and she did not bear a child for him, then he emancipated her, and her waiting period is three months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: الْأَمَةُ يُصِيبُهَا سَيِّدُهَا - فَلَمْ تَلِدْ - لَهُ فَأَعْتَقَهَا فَعِدَّتُهَا ثَلَاثَةُ أَشْهُرٍ.

L35518 And from the narration of Abd al-Razzaq, from Sufyan al-Thawri, from Habib ibn Abi Thabit, from Ibrahim al-Nakha'i, who said: The waiting period for a female slave when emancipated or when her master dies is three menstrual cycles—this is the opinion of Sufyan, Abu Hanifah, his companions, and al-Hasan ibn Hayy. It is recommended for her to observe ritual mourning.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حَبِيبِ بْنِ أَبِي ثَابِتٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: عِدَّةُ السُّرِّيَّةِ إِذَا أُعْتِقَتْ أَوْ مَاتَ عَنْهَا سَيِّدُهَا ثَلَاثُ حِيَضٍ - وَهُوَ قَوْلُ سُفْيَانَ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَالْحَسَنِ بْنِ حَيٍّ، وَاسْتُحِبَّ لَهَا الْإِحْدَادُ.

وَقَوْلٌ ثَالِثٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أرنا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ الشَّعْبِيِّ: أَنَّ ابْنَ عُمَرَ قَالَ فِي عِدَّةِ أُمِّ الْوَلَدِ إذَا أَعْتَقَهَا سَيِّدُهَا فِي مَرَضِهِ ثُمَّ تُوُفِّيَ: فَإِنَّهَا تَعْتَدُّ ثَلَاثَ حِيَضٍ، فَإِنْ لَمْ يُعْتِقْهَا فَحَيْضَةٌ وَاحِدَةٌ.

L35519 A third opinion: As we have been narrated through the chain of Ḥammād ibn Salamah, from Dāwūd ibn Abī Hind, from al-Shaʿbī, that Ibn ʿUmar said regarding the waiting period of an umm al-walad when her master emancipated her during his illness then died: she observes a waiting period of three menstrual cycles. If he did not emancipate her, she observes one menstrual cycle.

وَقَوْلٌ رَابِعٌ: رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا دَاوُد عَنْ الشَّعْبِيِّ عَنْ ابْنِ عُمَرَ قَالَ: تَعْتَدُّ حَيْضَةً وَاحِدَةً - يَعْنِي أُمَّ الْوَلَدِ - قَالَ هُشَيْمٌ: وَأَنَا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: عِدَّتُهَا حَيْضَةٌ وَاحِدَةٌ قَالَ إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ: وَهُوَ قَوْلُ أَبِي قِلَابَةَ.

L35520 A fourth opinion: It was narrated to us via the chain of Saʿīd ibn Manṣūr: “Hushaym narrated from Dāwūd, from al-Shaʿbī, from Ibn ʿUmar, who said: ’She observes one menstrual period as her waiting period”’ - referring to the umm al-walad. Hushaym said: “I also narrate from Ismāʿīl ibn Abī Khālid, from al-Shaʿbī, who said: ’Her waiting period is one menstrual period.”’ Ismāʿīl ibn Abī Khālid added: “This is the opinion of Abū Qilābah.”

وَرُوِّينَا مِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ قَالَ: سَمِعْت الْقَاسِمَ بْنَ مُحَمَّدٍ، وَذَكَرَ أَنْ ابْنَ يَزِيدَ بْنِ عَبْدِ الْمَلِكِ فَرَّقَ بَيْنَ رِجَالٍ وَنِسَائِهِمْ وَكُنَّ أُمَّهَاتِ أَوْلَادٍ فَتَزَوَّجْنَ بَعْدَ حَيْضَةٍ أَوْ حَيْضَتَيْنِ فَفَرَّقَ بَيْنَهُمْ حَتَّى يَعْتَدِدْنَ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فَقَالَ الْقَاسِمُ: عِدَّةُ أُمِّ الْوَلَدِ إذَا تُوُفِّيَ عَنْهَا سَيِّدُهَا حَيْضَةٌ.

L35521 It has been narrated to us through Malik’s transmission from Yahya ibn Saʿid, who said: I heard al-Qasim ibn Muhammad mention that Ibn Yazid ibn ʿAbd al-Malik separated men from their wives—who were *ummahat al-awlad* (mothers of their masters’ children)—when they married after one or two menstrual cycles. He separated them until they observed a waiting period of four months and ten days. Al-Qasim said: The waiting period for an *umm al-walad* (enslaved woman who bore her master a child) upon her master’s death is one menstrual cycle.

وَرُوِيَ أَيْضًا - عَنْ مَكْحُولٍ وَهُوَ قَوْلُ الشَّافِعِيِّ: وَأَبِي عُبَيْدٍ.

L35522 It has also been reported from Makḥūl—and this is the opinion of al-Shāfiʿī and Abū ʿUbayd.

وَقَوْلٌ خَامِسٌ -: عِدَّتُهَا حَيْضَةٌ، فَإِنْ لَمْ تَحِضْ فَثَلَاثَةُ أَشْهُرٍ -، وَهُوَ قَوْلُ مَالِكٍ.

L35523 A fifth opinion: her waiting period is one menstrual period; if she has not menstruated, then three months—and this is the opinion of Malik.

قَالَ أَبُو مُحَمَّدٍ: لَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ وَالْمَالِكِيِّينَ الْقَائِلِينَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ أَنْ يَقُولُوا بِمَا رُوِّينَا عَنْ عَمْرِو بْنِ الْعَاصِ.

L35524 Abū Muḥammad said: It was indeed incumbent upon the Ḥanafīs and Mālikīs—those who assert that the *mursal* is like the *musnad*—to state in accordance with what was narrated to us from ʿAmr ibn al-ʿĀṣ.

L35525–35526 It is astonishing that they say regarding Saʿīd ibn al-Musayyab’s statement on the blood money for a woman’s fingers—“it is the Sunnah”—“This is a chain that suffices as proof,” yet they did not say this regarding the statement of

ʿAmr ibn al-ʿĀṣ concerning the waiting period of the umm al-walad: “Do not obscure for us the Sunnah of our Prophet—may God’s blessings and peace be upon him and his family.”

وَمِنْ الْعَجَبِ قَوْلُهُمْ فِي قَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ فِي دِيَةِ أَصَابِعِ الْمَرْأَةِ هِيَ السُّنَّةُ: إنَّ هَذَا إسْنَادٌ تَقُومُ بِهِ الْحُجَّةُ، وَلَمْ يَقُولُوا ذَلِكَ فِي قَوْلِ عَمْرِو بْنِ الْعَاصِ فِي عِدَّةِ أُمِّ الْوَلَدِ: لَا تُلَبِّسُوا عَلَيْنَا سُنَّةَ نَبِيِّنَا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L35527 Would that I knew who is more entitled to knowledge of the Messenger of Allah—May Allah bless him and his family and grant him peace—and more deserving of credibility: ʿAmr ibn al-ʿĀṣ, the Companion of the Messenger of Allah—May Allah bless him and his family and grant him peace—or Saʿīd ibn al-Musayyib?

فَيَا لَيْتَ شِعْرِي مَنْ أَوْلَى بِمَعْرِفَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَوْلَى أَنْ يُصَدَّقَ عَمْرُو بْنُ الْعَاصِ صَاحِبُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ سَعِيدُ بْنُ الْمُسَيِّبِ؟

L35528 The wonder is that they claim to apply analogy, yet they analogized the invalid, annulled contract—which it is impermissible for them to uphold—to the established, valid marriage in requiring the ʿiddah in both cases, but did not analogize the umm al-walad whose master has died to the wife whose husband has died.

وَالْعَجَبُ أَنَّهُمْ يَدَّعُونَ الْعَمَلَ بِالْقِيَاسِ وَهُمْ قَدْ قَاسُوا الْعَقْدَ الْفَاسِدَ الْمَفْسُوخَ الَّذِي لَا يَحِلُّ عِنْدَهُمْ إقْرَارُهُ عَلَى النِّكَاحِ الثَّابِتِ الصَّحِيحِ فِي إيجَابِ الْعِدَّةِ فِيهِمَا، وَلَمْ يَقِيسُوا أُمَّ الْوَلَدِ الْمُتَوَفَّى عَنْهَا عَلَى الزَّوْجَةِ الْمُتَوَفَّى عَنْهَا؟ .

L35529 The astonishment lies in the Hanafis’ argument that God Almighty restricted the death-related waiting period solely to the widow—yet they did not apply the same reasoning to themselves by noting that God restricted the waiting period based on purity periods and months solely to a divorced woman. Yet are they not a people who lack understanding?

وَالْعَجَبُ مِنْ احْتِجَاجِ الْحَنَفِيِّينَ بِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ عِدَّةَ الْوَفَاةِ إلَّا عَلَى الزَّوْجَةِ - وَلَمْ يَحْتَجُّوا عَلَى أَنْفُسِهِمْ بِأَنَّ اللَّهَ تَعَالَى لَمْ يَجْعَلْ الْعِدَّةَ بِالْأَقْرَاءِ، وَبِالشُّهُورِ، إلَّا عَلَى مُطَلَّقَةٍ - وَلَكِنَّهُمْ قَوْمٌ لَا يَفْقَهُونَ؟ .

L35530 Abu Muhammad said: Were ʿAmr’s report supported by a complete chain, we would hasten to endorse it—and in its chain is also Matar, who is deficient in retention.

قَالَ أَبُو مُحَمَّدٍ: لَوْ صَحَّ خَبَرُ عَمْرٍو مُسْنَدًا لَسَارَعْنَا إلَى الْقَوْلِ بِهِ - وَفِيهِ أَيْضًا مَطَرٌ وَهُوَ سَيِّئُ الْحِفْظِ.

L35531 As for Mālik’s opinion, we know of no earlier jurists who upheld it, because he prescribed three months in place of a single menstrual period without textual evidence.

وَأَمَّا قَوْلُ مَالِكٍ فَمَا نَعْلَمُ لَهُ سَلَفًا إذْ عَوَّضَ مِنْ حَيْضَةٍ وَاحِدَةٍ ثَلَاثَةَ أَشْهُرٍ بِلَا بُرْهَانٍ.

L35532 Abū Muḥammad said: Allāh the Exalted has never obligated a waiting period except upon a wife whose husband has died, a divorced woman, or a woman given the choice upon being emancipated who then chooses to separate from her husband. {Your Lord is never forgetful} [19:64]; {Whoever transgresses the boundaries of Allāh has wronged himself} [65:1]. To analogize a woman

قَالَ أَبُو مُحَمَّدٍ: لَمْ يُوجِبْ اللَّهُ تَعَالَى قَطُّ عِدَّةً إلَّا عَلَى زَوْجَةٍ مُتَوَفًّى عَنْهَا، أَوْ مُطَلَّقَةٍ، أَوْ مُخَيَّرَةٍ إذَا أُعْتِقَتْ فَاخْتَارَتْ فِرَاقَ زَوْجِهَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] ،

who is not a wife to a wife is invalid in every circumstance—and success is from Allāh the Exalted.[1]

L35533 **A legal issue regarding the waiting period (ʿiddah) of a married female slave in cases of divorce or death.**

L35534 2004. Issue: The waiting period of a married slave woman following divorce or death is exactly the same as that of a free woman, with no distinction. This is because Allah Almighty has taught us the rulings on waiting periods in the Book, stating: _"And divorced women shall wait by themselves for three periods"_ [Quran 2:228].[2]

L35535–35536 And the Most High said: "And those of you who die and leave wives behind, they shall observe a waiting period of four months and ten days for themselves." [Al-Baqarah: 234][3]

L35537 And He, the Exalted, said: {As for those of your women who have ceased to menstruation—if you are in doubt, their waiting period is three months—and those who have not yet menstruated, and those who are pregnant, their waiting period is until they deliver their child} [At-Talaq: 4].[4]

L35538 Abu Muhammad said: Allah, the Mighty and Majestic, knew when He permitted us to marry female slaves that the mentioned waiting periods would apply to them. Thus, the Mighty and Majestic did not differentiate between a free woman and a slave woman in that matter, "And your Lord is not forgetful" [Maryam: 64].[5]

L35539 We seek refuge in Allah, the Most High, from presuming to correct what Allah, the Mighty and Majestic, has decreed, from attributing to Him what He has not said, and from legislating in the religion what Allah has not authorized.

{وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] وَقِيَاسُ مَنْ لَيْسَتْ زَوْجَةً عَلَى زَوْجَةٍ بَاطِلٌ بِكُلِّ حَالٍ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ عِدَّةُ الْأَمَةِ الْمُتَزَوِّجَةِ مِنْ الطَّلَاقِ وَالْوَفَاةِ]

٢٠٠٤ - مَسْأَلَةٌ: وَعِدَّةُ الْأَمَةِ الْمُتَزَوِّجَةِ مِنْ الطَّلَاقِ وَالْوَفَاةِ كَعِدَّةِ الْحُرَّةِ سَوَاءً سَوَاءً وَلَا فَرْقَ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ عَلَّمَنَا الْعِدَدَ فِي الْكِتَابِ فَقَالَ {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] .

وَقَالَ تَعَالَى: {وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا} [البقرة: ٢٣٤] .

وَقَالَ تَعَالَى: {وَاللائِي يَئِسْنَ مِنَ الْمَحِيضِ مِنْ نِسَائِكُمْ إِنِ ارْتَبْتُمْ فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] .

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ عَلِمَ اللَّهُ عَزَّ وَجَلَّ إذْ أَبَاحَ لَنَا زَوَاجَ الْإِمَاءِ أَنَّهُ يَكُونُ عَلَيْهِنَّ الْعِدَدُ الْمَذْكُورَاتُ فَمَا فَرَّقَ عَزَّ وَجَلَّ بَيْنَ حُرَّةٍ وَلَا أَمَةٍ فِي ذَلِكَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

وَنَعُوذُ بِاَللَّهِ تَعَالَى مِنْ الِاسْتِدْرَاكِ عَلَى اللَّهِ عَزَّ وَجَلَّ، وَالْقَوْلِ عَلَيْهِ بِمَا لَمْ يَقُلْ، وَمِنْ أَنْ نُشَرِّعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ.

[1] **Qur'an references (L35532):** Qur'an 19:64 (Maryam); Qur'an 65:1 (At-Talaq).
[2] **Qur'an references (L35534):** Qur'an 2:228 (Al-Baqarah).
[3] **Qur'an references (L35536):** Qur'an 2:234 (Al-Baqarah).
[4] **Qur'an references (L35537):** Qur'an 65:4 (At-Talaq).
[5] **Qur'an references (L35538):** Qur'an 19:64 (Maryam).

وَقَدْ اُخْتُلِفَ فِي هَذَا -: فَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ عَمْرِو بْنِ أَوْسٍ الثَّقَفِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: لَوْ اسْتَطَعْت أَنْ أَجْعَلَ عِدَّةَ الْأَمَةِ حَيْضَةً وَنِصْفًا لَفَعَلْت؟ فَقَالَ لَهُ رَجُلٌ: يَا أَمِيرَ الْمُؤْمِنِينَ فَاجْعَلْهَا شَهْرًا وَنِصْفًا.

L35540 There has been a difference of opinion regarding this matter. It has been narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl: I [al-Ḥajjāj] narrate from Ḥammād ibn Zayd, who reported from ʿAmr ibn Aws al-Thaqafī that ʿUmar ibn al-Khaṭṭāb said, "Were it within my power to decree the waiting period for a female slave as one and a half menstrual cycles, I would do so." A man said to him, "O Commander of the Believers, then decree it as one and a half months."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ أَنَّهُ سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ يَقُولُ: جَعَلَ لَهَا عُمَرُ حَيْضَتَيْنِ - يَعْنِي الْأَمَةَ الْمُطَلَّقَةَ -.

L35541 From ʿAbd al-Razzāq: Ibn Jurayj said, "Abū al-Zubayr informed me that he heard Jābir ibn ʿAbd Allāh say: 'Umar prescribed for her two menstrual cycles'—referring to the divorced female slave."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ مَوْلَى آلِ طَلْحَةَ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: يَنْكِحُ الْعَبْدُ اثْنَتَيْنِ، وَيُطَلِّقُ تَطْلِيقَتَيْنِ، وَتَعْتَدُّ الْأَمَةُ حَيْضَتَيْنِ فَإِنْ لَمْ تَحِضْ فَشَهْرَيْنِ - وَقَالَ: فَشَهْرًا وَنِصْفًا.

L35542 And through the chain of Abd al-Razzaq from Sufyan ibn Uyaynah from Muhammad ibn Abd al-Rahman, the client of the family of Talha, from Sulayman ibn Yasar from Abdullah ibn Utbah ibn Masud from Umar ibn al-Khattab, who said: A male slave may marry two wives, may divorce by two pronouncements, and a female slave observes the iddah of two menstrual cycles. If she does not menstruate, then two months - and he said: then one and a half months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: يَكُونُ عَلَيْهَا نِصْفُ الْعَذَابِ وَلَا يَكُونُ لَهَا نِصْفُ الرُّخْصَةِ.

L35543 And through the chain of ʿAbd al-Razzāq from Maʿmar, from al-Mughīrah, from Ibrāhīm al-Nakhaʿī, from Ibn Masʿūd, who said: "Half the punishment is upon her, and half the concession is not for her."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: الْحُرُّ يُطَلِّقُ الْأَمَةَ تَطْلِيقَتَيْنِ، وَتَعْتَدُّ حَيْضَتَيْنِ.

L35544 Narrated via the chain of Hammad ibn Salamah from 'Ubayd Allah ibn 'Umar, from Nafi', from Ibn 'Umar, who said: A free man divorces a female slave with two pronouncements of divorce, and she undergoes a waiting period of two menstrual cycles.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي قَبِيصَةُ بْنُ ذُؤَيْبٍ أَنَّهُ سَمِعَ زَيْدَ بْنَ ثَابِتٍ يَقُولُ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ.

L35545 And from the narration of Ibn Wahb, from Yunus ibn Yazid, from Ibn Shihab: Qabisah ibn Dhu'ayb reported to me that he heard Zayd ibn Thabit say: The waiting period for a female slave is two menstruations.

L35546–35547 Through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Muḥammad ibn ʿAbd al-Raḥmān, from Sulaymān ibn Yasār, from ʿAbd Allāh ibn ʿUtbah ibn Masʿūd, who said: A male slave may marry two wives, and the

ʿiddah of a female slave is two menstrual cycles; Maʿmar said: This is the opinion of al-Zuhrī.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ قَالَ: يَنْكِحُ الْعَبْدُ اثْنَتَيْنِ، وَعِدَّةُ الْأَمَةِ حَيْضَتَانِ - قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ الزُّهْرِيِّ.

L35548 Reported via the chain of ʿAbd al-Razzāq, from Maʿmar, from Qatāda, from Saʿīd ibn al-Musayyab: The waiting period for a female slave is two menstrual cycles. Maʿmar said, "This is the view of al-Zuhrī."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عِدَّةُ الْأَمَةِ حَيْضَتَانِ - قَالَ مَعْمَرٌ: وَهُوَ قَوْلُ الزُّهْرِيِّ.

L35549 And via the chain of ʿAbd al-Razzāq from Dāwūd ibn Qays, who reported: "I asked Sālim ibn ʿAbd Allāh ibn ʿUmar about the ʿiddah of a female slave." He said: "Two menstrual cycles. If she does not menstruate, then one and a half months."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ دَاوُد بْنِ قَيْسٍ قَالَ: سَأَلْت سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ عِدَّةِ الْأَمَةِ قَالَ: حَيْضَتَانِ، وَإِنْ كَانَتْ لَا تَحِيضُ فَشَهْرٌ وَنِصْفٌ.

L35550 And from the chain of Ibn Wahb from Usamah ibn Zayd from Zayd ibn Aslam: The waiting period for a female slave is two menstrual cycles.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنْ زَيْدِ بْنِ أَسْلَمَ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ.

L35551 And via the chain of Ibn Wahb, scholars informed me that Nāfiʿ, Ibn Qusayṭ, Yaḥyā ibn Saʿīd, Rabīʿah, and several others among the Companions of the Messenger of Allah—peace and blessings be upon him and his family—and the Successors held that the waiting period for a female slave is two menstrual cycles.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ أَنَّ نَافِعًا، وَابْنَ قُسَيْطٍ وَيَحْيَى بْنَ سَعِيدٍ، وَرَبِيعَةَ، وَغَيْرَ وَاحِدٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالتَّابِعِينَ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ.

L35552 And through the chain of Hammad ibn Salamah: from Hammad ibn Abi Sulayman, Qatadah, and Dawud ibn Abi Hind. Hammad [ibn Abi Sulayman] said: from Ibrahim al-Nakha'i. Qatadah said: from al-Hasan. Dawud said: from al-Sha'bi. All of them said: The waiting period for a female slave is two menstrual cycles.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَقَتَادَةَ، وَدَاوُد بْنِ أَبِي هِنْدٍ قَالَ حَمَّادٌ: عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَقَالَ قَتَادَةُ عَنْ الْحَسَنِ، وَقَالَ دَاوُد: عَنْ الشَّعْبِيِّ، قَالُوا كُلُّهُمْ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ.

L35553 From the chain of Ibn Wahb, Hisham ibn Sa'd narrated to me from al-Qasim ibn Muhammad ibn Abi Bakr al-Siddiq, who said: "The waiting period for a female slave is two menstrual cycles." Al-Qasim said: "Though this is not in the Book of Allah (the Almighty and Majestic), nor do we know it to be a Sunnah from the Messenger of Allah (peace be upon him and his family), yet the practice of the people has persisted in this manner."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي هِشَامُ بْنُ سَعْدٍ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: عِدَّةُ الْأَمَةِ حَيْضَتَانِ: قَالَ الْقَاسِمُ: مَعَ أَنَّ هَذَا لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ، وَلَا نَعْلَمُهُ سُنَّةً عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَكِنْ قَدْ مَضَى أَمْرُ النَّاسِ عَلَى هَذَا.

L35554 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAṭāʾ regarding the prescribed waiting period (ʿiddah) of a female slave, whether she is prepubescent or non-menstruating.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي عِدَّةِ الْأَمَةِ صَغِيرَةً أَوْ قَاعِدًا.

L35555 He said, “Umar ibn al-Khattab said, ‘A month and a half.’”

قَالَ: عُمَرُ بْنُ الْخَطَّابِ: شَهْرٌ وَنِصْفٌ.

L35556 And through the chain of Ḥammād ibn Salamah, from Qatādah who narrated from Saʿīd ibn al-Musayyab and Abū Qilābah - both of whom stated together: “When a female slave is divorced (and she does not menstruate), she undergoes a waiting period of a month and a half.”

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي قِلَابَةَ أَنَّهُمَا قَالَا جَمِيعًا: الْأَمَةُ إِذَا طَلُقَتْ - وَهِيَ لَا تَحِيضُ - تَعْتَدُّ شَهْرًا وَنِصْفًا.

L35557–35559 And from the narration of Hammad ibn Salamah from Hammad ibn Abi Sulayman from Ibrahim al-Nakha’i, who said: The waiting period for a female slave who has been divorced is: if she wishes, a month and a half; if she wishes, two months; or if she wishes, three months.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: عِدَّةُ الْأَمَةِ الَّتِي طَلُقَتْ إِنْ شَاءَتْ شَهْرًا وَنِصْفًا، وَإِنْ شَاءَتْ شَهْرَيْنِ، وَإِنْ شَاءَتْ ثَلَاثَةَ أَشْهُرٍ.

L35560 And via ʿAbd al-Razzāq → Maʿmar → al-Zuhrī: The ʿiddah of a female slave is two months - a month for each menstruation.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ: عِدَّةُ الْأَمَةِ شَهْرَانِ لِكُلِّ حَيْضَةٍ شَهْرٌ.

L35561 From the chain of Al-Ḥajjāj ibn Al-Minhāl, from Ḥammād ibn Zayd, from ʿAmr ibn Dīnār: It was said to him, “Ibn Jurayj says from ʿAṭāʾ regarding the waiting period of the bondmaid who does not menstruate: forty-five nights.” ʿAmr replied, “I bear witness that ʿAṭāʾ said: Her waiting period is two months if she does not menstruate.”

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ قِيلَ لَهُ: إِنَّ ابْنَ جُرَيْجٍ يَقُولُ عَنْ عَطَاءٍ فِي عِدَّةِ الْأَمَةِ الَّتِي لَا تَحِيضُ خَمْسٌ وَأَرْبَعُونَ لَيْلَةً، فَقَالَ عَمْرٌو: أَشْهَدُ عَلَى عَطَاءٍ أَنَّهُ قَالَ: عِدَّتُهَا شَهْرَانِ إِذَا كَانَتْ لَا تَحِيضُ.

L35562 Abu Hanifa, his companions, Sufyan al-Thawri, al-Hasan ibn Ḥayy, al-Shafi‘i, and his companions said: The waiting period for a divorced slave woman who does not menstruate is one and a half months. All of them stated that her waiting period is two menstruations, except al-Shafi‘i, who said: two purity periods. When she sees blood from the second menstruation, that signifies the end of her waiting period.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، وَسُفْيَانُ الثَّوْرِيُّ، وَالْحَسَنُ بْنُ حَيٍّ، وَالشَّافِعِيُّ، وَأَصْحَابُهُ: عِدَّةُ الْأَمَةِ الْمُطَلَّقَةِ الَّتِي لَا تَحِيضُ: شَهْرٌ وَنِصْفٌ - وَقَالُوا كُلُّهُمْ: عِدَّتُهَا حَيْضَتَانِ إِلَّا الشَّافِعِيَّ فَإِنَّهُ قَالَ: طُهْرَانِ، فَإِذَا رَأَتْ الدَّمَ مِنَ الْحَيْضَةِ الثَّانِيَةِ فَهُوَ خُرُوجُهَا مِنَ الْعِدَّةِ.

L35563 By way of Abd al-Razzaq, from Sufyan al-Thawri, from Abd al-Karim al-Basri, from Mujahid, who said: The *ʿiddah* (waiting period) for the bondwoman who does not menstruate is three months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ الْكَرِيمِ الْبَصْرِيِّ عَنْ مُجَاهِدٍ قَالَ: عِدَّةُ الْأَمَةِ الَّتِي لَا تَحِيضُ ثَلَاثَةُ أَشْهُرٍ.

L35564 And via the chain of Abd al-Razzaq, from Sufyan al-Thawri, from Yunus ibn

Ubayd, who reported: Al-Hasan stated: The prescribed waiting period for a bondwoman who does not menstruate is three months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ قَالَ: قَالَ الْحَسَنُ: عِدَّةُ الْأَمَةِ الَّتِي لَا تَحِيضُ ثَلَاثَةُ أَشْهُرٍ.

L35565 Narrated by ʿAbd al-Razzāq, from Maʿmar, from Ṣadaqah ibn Yāsār, who said: I disputed with ʿUmar ibn ʿAbd al-ʿAzīz regarding a female slave who had not yet begun menstruating, so he set her *ʿiddah* [waiting period] as three months.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ صَدَقَةَ بْنِ يَسَارٍ قَالَ: خَاصَمْت إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي أَمَةٍ لَمْ تَحِضْ فَجَعَلَ عِدَّتَهَا ثَلَاثَةَ أَشْهُرٍ.

L35566 From the narration of Ibn Wahb through Yunus ibn Yazid, from Rabi'ah, who said regarding a female slave—whether she has menstruated, has not menstruated, or has ceased menstruating: "Three months are observed for her. Do we not determine her waiting period except by equating it to that of a free woman in this case?" Ibn Wahb said: Scholars informed me from Umar ibn al-Khattab, Ibn Shihab, Bukayr ibn al-Ashajj, and others: "The waiting period (ʿiddah) for a female slave who has ceased menstruation and for one who has not yet reached the age of menstruation is three months."

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ رَبِيعَةَ قَالَ فِي الْأَمَةِ حَاضَتْ أَوْ لَمْ تَحِضْ أَوْ قَعَدَتْ: يُنْتَظَرُ بِهَا ثَلَاثَةُ أَشْهُرٍ لَا نَعْلَمُ بَرَاءَتَهَا إلَّا بَرَاءَةَ الْحُرَّةِ هَاهُنَا؟ قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي رِجَالٌ مِنْ أَهْلِ الْعِلْمِ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ شِهَابٍ، وَبُكَيْرِ بْنِ الْأَشَجِّ، وَغَيْرِهِمْ: أَنَّ عِدَّةَ الْأَمَةِ الَّتِي يَئِسَتْ مِنْ الْمَحِيضِ وَالَّتِي لَمْ تَبْلُغْ ثَلَاثَةَ أَشْهُرٍ.

L35567 This is the opinion of Mālik, his companions, and al-Layth b. Saʿd.

- وَهُوَ قَوْلُ مَالِكٍ، وَأَصْحَابِهِ، وَاللَّيْثِ بْنِ سَعْدٍ.

L35568–35570 Abu Muhammad said: It has been reported from Ibn ʿUmar, Saʿīd ibn al-Musayyib, Sulaymān ibn Yasār, Rabīʿah, Yaḥyā ibn Saʿīd, and Ibn Qusayṭ through weak chains that the waiting period for an enslaved woman after her husband's death is two months. And five nights—this is established from ʿAṭā', Qatādah, and Al-Zuhrī, and it is the opinion of Abū Ḥanīfah, Al-Shāfiʿī, Mālik, and their followers.

قَالَ أَبُو مُحَمَّدٍ: وَرُوِيَ عَنْ ابْنِ عُمَرَ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ، وَرَبِيعَةَ، وَيَحْيَى بْنِ سَعِيدٍ، وَابْنِ قُسَيْطٍ مِنْ طُرُقٍ سَاقِطَةٍ عِدَّةُ الْأَمَةِ مِنْ الْوَفَاةِ شَهْرَانِ وَخَمْسُ لَيَالٍ - وَصَحَّ ذَلِكَ عَنْ عَطَاءٍ، وَقَتَادَةَ، وَالزُّهْرِيِّ وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَمَالِكٍ، وَأَصْحَابِهِمْ.

L35571 It has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn, he said: I do not consider the waiting period of a slave woman to be other than like that of a free woman, unless a Sunnah has passed in that matter, for the Sunnah is most deserving of being followed.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ قَالَ: مَا أَرَى عِدَّةَ الْأَمَةِ إلَّا كَعِدَّةِ الْحُرَّةِ إلَّا أَنْ تَكُونَ مَضَتْ فِي ذَلِكَ سُنَّةٌ، فَالسُّنَّةُ أَحَقُّ أَنْ تُتَّبَعَ.

L35572 It is reported from Ahmad ibn Hanbal that Makhūl's statement—that the

waiting period of the female slave in all respects is like that of the free woman—is the opinion of Abū Sulaymān and all of our companions.

وَذُكِرَ عَنْ أَحْمَدَ بْنِ حَنْبَلٍ: أَنَّ قَوْلَ مَكْحُولٍ إنَّ عِدَّةَ الْأَمَةِ فِي كُلِّ شَيْءٍ كَعِدَّةِ الْحُرَّةِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا.

L35573 Abu Muhammad said: Those who held the view that her waiting period is two menstrual cycles cited as evidence what we have narrated through the chain of Abu Dawud al-Sijistani - Muhammad ibn Mas'ud reported: Abu 'Asim reported from Ibn Jurayj from Muzahir ibn Aslam from al-Qasim ibn Muhammad ibn Abi-Bakr from 'Aishah, the Mother of the Believers, from the Prophet—peace be upon him—who said: "The divorce of a female slave is effected by two pronouncements, and her waiting period is two menstrual cycles."

قَالَ أَبُو مُحَمَّدٍ: احْتَجَّ مَنْ رَأَى أَنَّ عِدَّتَهَا حَيْضَتَانِ بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد - هُوَ السِّجِسْتَانِيُّ - أَنَا مُحَمَّدُ بْنُ مَسْعُودٍ أَنَا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ عَنْ مُظَاهِرِ بْنِ أَسْلَمَ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «طَلَاقُ الْأَمَةِ تَطْلِيقَتَانِ، وَقُرْؤُهَا حَيْضَتَانِ» .

L35574 And by what Humam ibn Ahmad transmitted to us: I, Yahya ibn Malik ibn 'A'idh, narrate on the authority of 'Abdullah ibn Abi Ghassan, on the authority of Abu Yahya Zakariyya ibn Yahya al-Saji, on the authority of Muhammad ibn Isma'il ibn Samurah, on the authority of 'Umar ibn Shabib al-Muslī, on the authority of 'Abdullah ibn 'Isa, from 'Atiyyah, from Ibn 'Umar, from the Messenger of Allah (ṣallallāhu ʿalayhi wa-ālihi wa-sallam), that he said: "The divorce of a bondwoman is twice, and her waiting period is two menstrual cycles."

وَبِمَا نَاهُ حُمَامُ بْنُ أَحْمَدَ أَنَا يَحْيَى بْنُ مَالِكِ بْنِ عَائِذٍ أَنَا عَبْدُ اللَّهِ بْنُ أَبِي غَسَّانَ أَنَا أَبُو يَحْيَى زَكَرِيَّا بْنُ يَحْيَى السَّاجِيُّ أَنَا مُحَمَّدُ بْنُ إسْمَاعِيلَ بْنِ سَمُرَةَ أَنَا عُمَرُ بْنُ شَبِيبٍ الْمُسْلِيُّ أَنَا عَبْدُ اللَّهِ بْنُ عِيسَى عَنْ عَطِيَّةَ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ «طَلَاقُ الْأَمَةِ ثِنْتَانِ وَعِدَّتُهَا حَيْضَتَانِ» .

L35575 Abū Muḥammad said: They only relied upon this from the transmitted reports – and these two reports are not permissible for the Mālikīs or the Shāfiʿīs to use as evidence, for they invalidate their doctrines. This is because divorce according to them is the prerogative of men, and "the menstrual cycles" refer to the purity periods. If they validate these reports, they would be compelled to abandon their doctrine on this matter. If they reject them, they have spared us the effort regarding these two reports.

قَالَ أَبُو مُحَمَّدٍ: مَا تَعَلَّقُوا مِنْ الْآثَارِ إلَّا بِهَذَا - وَهَذَانِ الْخَبَرَانِ لَا يَسُوغُ لِلْمَالِكِيَّيْنِ، وَلَا لِلشَّافِعِيَّيْنِ الِاحْتِجَاجُ بِهِمَا، لِأَنَّهُمَا مُبْطِلَانِ لِمَذْهَبِهِمَا، لِأَنَّ الطَّلَاقَ عِنْدَهُمَا لِلرِّجَالِ، وَالْأَقْرَاءُ: الْأَطْهَارُ، فَإِنْ صَحَّحُوهُمَا لَزِمَهُمَا تَرْكُ مَذْهَبِهِمَا فِي ذَلِكَ، وَإِنْ أَبْطَلُوهُمَا فَقَدْ كَفَوْنَا مُؤْنَتَهُمْ فِي هَذَيْنِ الْخَبَرَيْنِ.

L35576 As for the Ḥanafīs, they have cited both narrations—though both are dismissed—because one of them is narrated via the chain of Maẓāhir ibn Aslam, who is regarded as profoundly weak and unreliable.

وَأَمَّا الْحَنَفِيُّونَ - فَإِنَّهُمْ احْتَجُّوا بِهِمَا - وَهُمَا سَاقِطَانِ - لِأَنَّ أَحَدَهُمَا مِنْ طَرِيقِ مَظَاهِرِ ابْنِ أَسْلَمَ - وَهُوَ فِي غَايَةِ الضَّعْفِ وَالسُّقُوطِ -.

L35577 It is remarkable—that the Ḥanafīs, among their principles, hold that if a narrator contradicts a report he himself narrated, or it is mentioned to him

and he does not recognize it, this constitutes evidence for the invalidity of that report—they invoked this principle in the case of the oath with a witness.

وَالْعَجَبُ - أَنَّ الْحَنَفِيِّينَ مِنْ أُصُولِهِمْ أَنَّ الرَّاوِيَ إذَا خَالَفَ خَبَرًا رَوَاهُ أَوْ ذُكِرَ لَهُ فَلَمْ يَعْرِفْهُ فَإِنَّهُ دَلِيلٌ عَلَى سُقُوطِ ذَلِكَ الْخَبَرِ -: احْتَجُّوا بِذَلِكَ -: فِي خَبَرِ الْيَمِينِ مَعَ الشَّاهِدِ.

L35578–35579 And by the established narration: "Whoever dies with unfulfilled fasts, his guardian may fast on his behalf."

وَبِالْخَبَرِ الثَّابِتِ «مَنْ مَاتَ وَعَلَيْهِ صِيَامٌ صَامَ عَنْهُ وَلِيُّهُ» .

L35580 In the authentic report: "If any woman enters into a marriage contract without her guardians' permission, her marriage is null and void," and in the authentic report concerning raising the hands during bowing and upon rising from the bowing.

وَفِي الْخَبَرِ الثَّابِتِ «أَيُّمَا امْرَأَةٍ نَكَحَتْ بِغَيْرِ إذْنِ مَوَالِيهَا فَنِكَاحُهَا بَاطِلٌ» ، وَفِي الْخَبَرِ الثَّابِتِ فِي رَفْعِ الْيَدَيْنِ عِنْدَ الرُّكُوعِ وَالرَّفْعِ مِنْهُ.

L35581 In the authentically transmitted *ḥadīth* regarding washing the utensil seven times due to a dog's lapping.

وَفِي الْخَبَرِ الثَّابِتِ فِي غَسْلِ الْإِنَاءِ مِنْ وُلُوغِ الْكَلْبِ سَبْعًا.

L35582 Then they cling to this weak, meritless report. It has been authentically established from al-Qāsim ibn Muḥammad—as we mentioned earlier—that the ruling that a female slave's waiting period is two menstrual cycles has no basis in the Sunnah of the Messenger of Allah, peace and blessings be upon him and his family.

ثُمَّ يَتَعَلَّقُونَ بِهَذَا الْخَبَرِ السَّاقِطِ الَّذِي لَا خَيْرَ فِيهِ، وَقَدْ صَحَّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدٍ كَمَا ذَكَرْنَا آنِفًا أَنَّ الْحُكْمَ بِأَنَّ عِدَّةَ الْأَمَةِ حَيْضَتَانِ لَمْ يَأْتِ بِهِ سُنَّةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L35583 They reject the narrations by claiming they are additions to what is in the Quran - as they did with the established report regarding wiping over the turban - then they cite these two invalid narrations, which truly contradict what is in the Quran. So marvel at the profound contradiction of these people?

وَيَرُدُّونَ الْأَخْبَارَ بِأَنَّهَا زَائِدَةٌ عَلَى مَا فِي الْقُرْآنِ -: كَمَا فَعَلُوا فِي الْخَبَرِ الثَّابِتِ بِالْمَسْحِ عَلَى الْعِمَامَةِ ثُمَّ يَحْتَجُّونَ بِهَذَيْنِ الْخَبَرَيْنِ السَّاقِطَيْنِ - وَهُمَا مُخَالِفَانِ لِمَا فِي الْقُرْآنِ حَقًّا، فَاعْجَبُوا لِعَظِيمِ تَنَاقُضِ هَؤُلَاءِ الْقَوْمِ؟ .

L35584 The second report—from the chain of ʿUmar ibn Shabīb al-Muslī and ʿAṭiyyah, both consensually deemed weak (thus impermissible to rely upon)—even if they were authentic, they would not have preceded us in adopting their opinion. They said: This is the position of the majority of the pious predecessors from the Companions and the Followers.

وَالْخَبَرُ الثَّانِي - مِنْ طَرِيقِ عُمَرَ بْنِ شَبِيبٍ الْمُسْلِيِّ، وَعَطِيَّةَ وَهُمَا مُتَّفَقٌ عَلَى ضَعْفِهِمَا فَلَا يَحِلُّ الْأَخْذُ بِهِمَا - وَلَوْ صَحَّا لَمَا سَبَقُونَا إلَى الْقَوْلِ بِهِمَا وَقَالُوا: وَهُوَ قَوْلُ جُمْهُورِ السَّلَفِ الصَّالِحِ مِنْ الصَّحَابَةِ، وَالتَّابِعِينَ.

L35585 Abu Muhammad said: This also does not allow the Malikis or the Shafiʿis to cite this as evidence, for they contradict every Companion (may Allah be pleased with them) from whom a statement on this matter is reported. What is established from Umar ibn al-Khattab, his son, Zayd ibn Thabit, and what

قَالَ أَبُو مُحَمَّد: وَهَذَا أَيْضًا لَا يُمَكِّنُ الْمَالِكِيِّينَ، وَلَا الشَّافِعِيِّينَ الِاحْتِجَاجَ بِهَذَا؛ لِأَنَّهُمْ مُخَالِفُونَ لِكُلِّ مَنْ جَاءَ عَنْهُ فِي ذَلِكَ قَوْلٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؛ لِأَنَّ الثَّابِتَ

is transmitted from Ibn Masʿud is that the waiting period for a female slave is two menstrual periods - and this opposes the view of the Malikis and Shafiʿis. If they consider it permissible that the Companions erred regarding the number of periods for a female slave, then we cannot object to those who say the same regarding the duration of her waiting period.

L35586 As for the Ḥanafīs, that is authentically reported only from ʿUmar, his son, and Zayd ibn Thābit.

L35587 Moreover, Umar clarified that it was his opinion, and there is no authoritative evidence in opinion. It has been authentically reported from Umar, his son, and Zayd: the warning against opinion, and there is no authoritative evidence in anyone's opinion. Umar said: "If I could prescribe its waiting period as one and a half menstrual cycles, I would have done so."

L35588–35589 We do not know how this is? What prevents one from saying: If she observes that the majority of the menstrual period and its intensity have begun to subside, she has become permitted—since undoubtedly half of the menstrual period has elapsed?

L35590 We have stated: There is no conclusive proof in anyone other than the Messenger of Allah (Peace and blessings of Allah be upon him and his family).

L35591 In previous issues of this book prior to this matter, we have mentioned what they said in opposition—through their personal opinions—to the majority of the Companions (may Allah be pleased with them). Indeed, all those from whom statements have been narrated regarding such matters—statements of a kind unknown to have been voiced by anyone before them—are exceedingly numerous.

L35592 As their ruling on the condition permitting intercourse with the menstruating woman when she observes the signs of purity.

L35593 Similarly, their statements concerning the manner of widow's mourning (Iḥdād) and how numerous are other such matters! We have said: No authoritative evidence lies in anyone's opinion apart from the Quran and what is authentically transmitted from the Messenger of Allah, peace be upon him and his family.

عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِهِ، وَزَيْدِ بْنِ ثَابِتٍ، وَالْمَأْثُورُ عَنْ ابْنِ مَسْعُودٍ: أَنَّ عِدَّةَ الْأَمَةِ حَيْضَتَانِ - وَهَذَا خِلَافُ قَوْلِ الْمَالِكِيِّينَ، وَالشَّافِعِينَ، وَإِذَا جَازَ عِنْدَهُمْ أَنْ يُخْطِئَ الصَّحَابَةُ فِي مَئِيَّةِ الْأَقْرَاءِ مِنْ الْأَمَةِ فَلَا نُنْكِرُ عَلَى مَنْ قَالَ بِذَلِكَ فِي كَمِّيَّةِ عِدَّتِهَا.

وَأَمَّا الْحَنَفِيُّونَ - فَإِنَّمَا صَحَّ ذَلِكَ عَنْ عُمَرَ، وَابْنِهِ، وَزَيْدٍ، فَقَطْ.

وَأَيْضًا - فَإِنَّ عُمَرَ قَدْ بَيَّنَ أَنَّهُ رَأْيٌ مِنْهُ، وَلَا حُجَّةَ فِي رَأْيٍ - وَقَدْ صَحَّ عَنْ عُمَرَ، وَابْنِهِ، وَزَيْدٍ: التَّحْذِيرُ مِنْ الرَّأْيِ - وَلَا حُجَّةَ فِي رَأْيِ أَحَدٍ، وَعُمَرُ يَقُولُ: لَوْ اسْتَطَعْت أَنْ أَجْعَلَ عِدَّتَهَا حَيْضَةً وَنِصْفًا لَفَعَلْت.

وَمَا نَدْرِي كَيْفَ هَذَا؟ وَأَيُّ امْتِنَاعٍ فِي أَنْ يَقُولَ: إذَا رَأَتْ جُمْهُورَ الْحَيْضَةِ وَفَوْرَهَا قَدْ أَخَذَ فِي الِانْحِطَاطِ فَقَدْ حَلَّتْ، لِأَنَّهُ بِلَا شَكٍّ قَدْ مَضَى نِصْفُ الْحَيْضَةِ؟ .

وَقَدْ قُلْنَا: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَقَدْ ذَكَرْنَا فِيمَا خَلَا مِنْ الْمَسَائِلِ فِي كِتَابِنَا هَذَا قَبْلَ هَذِهِ الْمَسْأَلَةِ مَا قَالُوهُ مِمَّا خَالَفُوا فِيهِ بِآرَائِهِمْ جُمْهُورَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بَلْ كُلُّ مَنْ رُوِيَ عَنْهُ فِي ذَلِكَ قَوْلٌ مِمَّا لَا يُعْرَفُ أَنَّ أَحَدًا قَالَهُ قَبْلَهُمْ كَثِيرٌ جِدًّا -:

كَقَوْلِهِمْ فِيمَا يَحِلُّ بِهِ وَطْءُ الْحَائِضِ إذَا رَأَتْ الطُّهْرَ.

وَكَقَوْلِهِمْ فِي صِفَةِ الْإِحْدَادِ وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا؟ وَقَدْ قُلْنَا: لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ الْقُرْآنِ وَالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L35594 They argued that since the ḥadd punishment for the female slave is half that of the ḥurrah, it necessarily follows that her ʿiddah should be half the ʿiddah of the ḥurrah.

وَاحْتَجُّوا بِأَنَّهُ لَمَّا كَانَ حَدُّ الْأَمَةِ نِصْفَ حَدِّ الْحُرَّةِ وَجَبَ أَنْ تَكُونَ عِدَّتُهَا نِصْفَ عِدَّةِ الْحُرَّةِ.

L35595 Abu Muhammad said: And this is analogy, and all analogy is invalid. Furthermore, even if analogy were valid, this would be the most corrupt analogy and the most invalid due to what we will clarify regarding it—God Almighty willing.

قَالَ أَبُو مُحَمَّد: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ أَفْسَدَ قِيَاسٍ وَأَشَدَّ بُطْلَانًا لِمَا نُبَيِّنُهُ عَلَيْهِ - إِنْ شَاءَ اللَّهُ تَعَالَى.

L35596 It is astonishing that what is narrated—though unauthenticated—from Ibn Mas'ūd: "Do they impose upon her half the punishment yet fail to grant her half the concession? This is utterly implausible from a man of common status!" How then could this apply to someone like Ibn Mas'ūd—may Allah be pleased with him? For it would be said to the one who makes this statement and upholds it as valid: "We neither impose upon her half the punishment nor grant her half the concession. Rather, Allah the Exalted imposed upon her half the punishment where He willed and did not grant her half the concession. {And your Lord is never forgetful} [Maryam: 64]."[6]

وَالْعَجَبُ فِيمَا رُوِيَ - وَلَمْ يَصِحَّ - عَنْ ابْنِ مَسْعُودٍ أَيَجْعَلُونَ عَلَيْهَا نِصْفَ الْعَذَابِ وَلَا يَجْعَلُونَ لَهَا نِصْفَ الرُّخْصَةِ وَإِنَّ هَذَا لَبَعِيدٌ عَنْ رَجُلٍ مِنْ عُرْضِ النَّاسِ؟ فَكَيْفَ عَنْ مِثْلِ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ - لِأَنَّهُ يُقَالُ لِقَائِلِ هَذَا الْقَوْلِ وَمُصَوِّبِهِ: مَا نَحْنُ جَعَلْنَا عَلَيْهَا نِصْفَ الْعَذَابِ، وَلَا نَحْنُ نَجْعَلُ لَهَا نِصْفَ الرُّخْصَةِ، بَلْ اللَّهُ تَعَالَى جَعَلَ عَلَيْهَا نِصْفَ الْعَذَابِ حَيْثُ شَاءَ، وَلَمْ يَجْعَلْ لَهَا نِصْفَ الرُّخْصَةِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L35597 Now, suppose we were to impose upon it half the punishment—and it was permissible for us to do so—how could it then become obligatory for us to grant it half the concession? Truly, this is a marvel without parallel!

ثُمَّ هَبْكَ لَوْ جَعَلْنَا نَحْنُ عَلَيْهَا نِصْفَ الْعَذَابِ - وَكَانَ ذَلِكَ مُبَاحًا لَنَا أَنْ نَجْعَلَهُ - فَمِنْ أَيْنَ وَجَبَ عَلَيْنَا أَنْ نَجْعَلَ لَهَا نِصْفَ الرُّخْصَةِ؟ إِنَّ هَذَا لَعَجَبٌ لَا نَظِيرَ لَهُ؟ .

L35598–35600 As for the invalidity of this analogy: analogizing this waiting period to the ḥadd punishment for adultery is invalid because there is no resemblance between adultery that necessitates the ḥadd punishment and the husband's death or divorce. According to their jurists, analogy is invalid unless based on a resemblance. Between the subsidiary case (farʿ) and the original case (aṣl), the invalidity of this legal analogy was confirmed according to their juridical principles. What then of those who do not permit qiyas at all? And all praise is due to Allah, Lord of the worlds.

وَأَمَّا فَسَادُ هَذَا الْقِيَاسِ - فَإِنَّ قِيَاسَ هَذِهِ الْعِدَّةِ عَلَى حَدِّ الزِّنَى فَاسِدٌ، لِأَنَّهُ لَا شَبَهَ بَيْنَ الزِّنَى الْمُوجِبِ لِلْحَدِّ وَبَيْنَ مَوْتِ الزَّوْجِ وَطَلَاقِهِ، وَالْقِيَاسُ عِنْدَهُمْ بَاطِلٌ إِلَّا عَلَى شَبَهٍ بَيْنَ الْمَقِيسِ وَالْمَقِيسِ عَلَيْهِ - فَصَحَّ عَلَى أُصُولِهِمْ بُطْلَانُ هَذَا الْقِيَاسِ، فَكَيْفَ عِنْدَ مَنْ لَا يُجِيزُ الْقِيَاسَ أَصْلًا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35601 Then another flaw: that they imposed analogical reasoning based on half the prescribed punishment for the female slave in adultery, while they unan-

[6] **Qur'an references (L35596):** Qur'an 19:64 (Maryam).

imously agree that the punishment for the female slave regarding the amputation for theft equals that of the free woman. On what basis did it become obligatory for the punishment to be analogized in their view to the punishment for adultery, rather than analogizing it to the punishment for theft?

ثُمَّ فَسَادٌ آخَرُ - وَهُوَ أَنَّهُمْ أَوْجَبُوا الْقِيَاسَ عَلَى نِصْفِ الْحَدِّ فِي الْأَمَةِ وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ حَدَّ الْأَمَةِ فِي قَطْعِ السَّرِقَةِ كَحَدِّ الْحُرَّةِ، فَمِنْ أَيْنَ وَجَبَ أَنْ تُقَاسَ الْعِدَّةُ عِنْدَهُمْ عَلَى حَدِّ الزِّنَى دُونَ أَنْ يَقِيسُوهُ عَلَى السَّرِقَةِ؟

L35602 Then why did they not analogize the waiting period of the female slave in cases of divorce and death to menstrual cycles and months, based on what they do not dispute—that her waiting period in all such matters, if she is pregnant, is identical to that of a free woman? If analogy were ever valid, then analogizing the waiting period for death and divorce to the waiting period for death and divorce itself would undoubtedly, to anyone with basic understanding, be more appropriate than analogizing the waiting period to the ḥadd punishment for zinā. Thus, the flaw in their analogy has become as evident as the sun on a clear day—and all praise is due to Allah, Lord of the worlds.

ثُمَّ هَلَّا قَاسُوا عِدَّةَ الْأَمَةِ مِنَ الطَّلَاقِ وَالْوَفَاةِ بِالْأَقْرَاءِ وَبِالشُّهُورِ عَلَى مَا لَا يَخْتَلِفُونَ فِيهِ مِنْ أَنَّ عِدَّتَهَا مِنْ كُلِّ ذَلِكَ - إِنْ كَانَتْ حَامِلًا - كَعِدَّةِ الْحُرَّةِ، فَلَئِنْ صَحَّ الْقِيَاسُ يَوْمًا فَإِنَّ قِيَاسَ الْعِدَّةِ مِنَ الْوَفَاةِ وَالطَّلَاقِ عَلَى الْعِدَّةِ مِنَ الْوَفَاةِ وَالطَّلَاقِ لَا شَكَّ عِنْدَ مَنْ عِنْدَهُ أَدْنَى فَهْمٍ أَوْلَى مِنْ قِيَاسِ الْعِدَّةِ عَلَى حَدِّ الزِّنَى فَلَاحَ فَسَادُ قِيَاسِهِمْ فِي ذَلِكَ، كَظُهُورِ الشَّمْسِ يَوْمَ صَحْوٍ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35603 The entirety of the perplexity lies in Mālik's use of qiyās to derive the female slave's waiting period after death by analogy from her waiting period based on menstrual cycles as he holds it, while not applying the same qiyās to her waiting period after divorce (in months) by analogy from her waiting period after death (in months). Instead, he equated her waiting period in months after divorce to that of a free woman without distinction. These are contradictions and invalid opinions, unconcealed to anyone possessing a portion of understanding.

ثُمَّ الْعَجَبُ كُلُّهُ مِنْ قِيَاسِ مَالِكٍ عِدَّةَ الْأَمَةِ مِنَ الْوَفَاةِ عَلَى عِدَّتِهَا عِنْدَهُ بِالْأَقْرَاءِ، ثُمَّ لَمْ يَقِسْ عِدَّةَ الْأَمَةِ بِالشُّهُورِ مِنَ الطَّلَاقِ عَلَى عِدَّتِهَا بِالشُّهُورِ مِنَ الْوَفَاةِ، بَلْ جَعَلَ عِدَّةَ الْأَمَةِ بِالشُّهُورِ مِنَ الطَّلَاقِ كَعِدَّةِ الْحُرَّةِ وَلَا فَرْقَ - وَهَذِهِ مُنَاقَضَاتٌ، وَأَقْوَالٌ فَاسِدَةٌ، لَا تَخْفَى عَلَى ذِي حَظٍّ مِنْ فَهْمٍ.

L35604 Another perplexity is that they established the waiting period of a female slave after death as half that of a free woman - a hair-splitting distinction. They then differed: Abū Ḥanīfah and al-Shāfiʿī ruled that the female slave's waiting period calculated in months following divorce is half the free woman's waiting period calculated in months following divorce, while Mālik held that the female slave's waiting period calculated in months following divorce is exactly equal in every respect to the free woman's waiting period calculated in months following divorce.

ثُمَّ عَجَبٌ آخَرُ - وَهُوَ أَنَّهُمْ جَعَلُوا عِدَّةَ الْأَمَةِ مِنَ الْوَفَاةِ نِصْفَ عِدَّةِ الْحُرَّةِ مِنَ الْوَفَاةِ - شَقَّ الْأُنْمُلَةِ - ثُمَّ اخْتَلَفُوا فَجَعَلَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ عِدَّةَ الْأَمَةِ بِالشُّهُورِ مِنَ الطَّلَاقِ نِصْفَ عِدَّةِ الْحُرَّةِ بِالشُّهُورِ مِنَ الطَّلَاقِ، وَجَعَلَ مَالِكٌ عِدَّةَ الْأَمَةِ مِنَ الطَّلَاقِ بِالشُّهُورِ كَعِدَّةِ الْحُرَّةِ مِنَ الطَّلَاقِ بِالشُّهُورِ سَوَاءً سَوَاءً.

L35605 Then they established three positions for the female slave's waiting period by menstrual cycles as two-thirds of the free woman's by menstrual cycles.

Could there be any greater absurdity than this? At one time half the free woman's waiting period by menstrual cycles; at another time equal to the free woman's by menstrual cycles; at another time two-thirds of hers by menstrual cycles - all without Quran, Sunnah, or rationally valid analogy.

ثُمَّ جَعَلُوا ثَلَاثَتُهُمْ عِدَّةَ الْأَمَةِ بِالْأَقْرَاءِ ثُلُثَيْ عِدَّةِ الْحُرَّةِ بِالْأَقْرَاءِ، فَهَلْ فِي التَّلَاعُبِ أَكْثَرُ مِنْ هَذَا؟ مَرَّةً نِصْفَ عِدَّةِ الْحُرَّةِ، وَمَرَّةً مِثْلَ عِدَّةِ الْحُرَّةِ، وَمَرَّةً ثُلُثَيْ عِدَّةِ الْحُرَّةِ - كُلُّ هَذَا بِلَا قُرْآنٍ، وَلَا سُنَّةٍ وَلَا قِيَاسٍ يُعْقَلُ.

L35606 All of this has been a matter of disagreement among the predecessors, both earlier and later. On what basis did they analogize their ruling that her waiting period—measured by menstrual cycles—is two-thirds of a free woman's waiting period? Sufficient is Allah for us, and what an excellent Trustee He is. Much praise be to Allah for enabling us to attain the truth and facilitating what is correct.

وَكُلُّ هَذَا قَدْ اخْتَلَفَ فِيهِ السَّلَفُ، وَقَبْلُ وَبَعْدُ فَعَلَى أَيِّ شَيْءٍ قَاسُوا قَوْلَهُمْ فِي عِدَّتِهَا بِالْأَقْرَاءِ ثُلُثَيْ عِدَّةِ الْحُرَّةِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ، وَالْحَمْدُ لِلَّهِ كَثِيرًا عَلَى تَوْفِيقِهِ إِيَّانَا لِلْحَقِّ وَتَيْسِيرِهِ لِلصَّوَابِ.

L35607–35609 And indeed, it was incumbent upon them—when they analogized the waiting period of the female slave based on her prescribed legal punishment—to impose upon her only half. Purification constitutes half of the prayer and half of fasting by analogy to its definition. What is required of them exceeds what we have stated—and with Allah, the Exalted, is success.

وَلَقَدْ كَانَ يَلْزَمُهُمْ - إِذْ قَاسُوا عِدَّةَ الْأَمَةِ عَلَى حَدِّهَا - أَنْ لَا يُوجِبُوا عَلَيْهَا إِلَّا نِصْفَ الطَّهَارَةِ، وَنِصْفَ الصَّلَاةِ، وَنِصْفَ الصِّيَامِ: قِيَاسًا عَلَى حَدِّهَا، وَالَّذِي يَلْزَمُهُمْ أَكْثَرُ مِمَّا ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَعْتَدُّ الْمُطَلَّقَةُ مِنْ حِينِ يَأْتِيهَا خَبَرُ الطَّلَاقِ]

L35610 **A jurisprudential issue: The divorced woman begins her waiting period from the moment she is notified of the divorce.**

L35611 2005 - Issue: A divorced woman who is not pregnant observes her waiting period from the time she receives news of the divorce. A pregnant woman whose husband has died initially observes her waiting period from the time she receives news of his death, but her waiting period is instead counted only from the time of his death itself.

٢٠٠٥ - مَسْأَلَةٌ: وَتَعْتَدُّ الْمُطَلَّقَةُ غَيْرُ الْحَامِلِ، وَالْحَامِلُ الْمُتَوَفَّى عَنْهَا مِنْ حِينِ يَأْتِيهَا خَبَرُ الطَّلَاقِ، وَخَبَرُ الْوَفَاةِ، وَتَعْتَدُّ الْحَامِلُ الْمُتَوَفَّى عَنْهَا مِنْ حِينِ مَوْتِهِ فَقَطْ.

L35612 The proof of that is the statement of Allah, the Mighty and Majestic: "And those who are taken in death among you and leave wives behind – they shall wait with themselves four months and ten" (Al-Baqarah 2:234).[7]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَالَّذِينَ يُتَوَفَّوْنَ مِنْكُمْ وَيَذَرُونَ أَزْوَاجًا يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا} [البقرة: ٢٣٤] .

L35613 Allah, the Exalted, says: {Divorced women shall observe upon themselves a waiting period of three menstrual cycles} [Al-Baqarah: 228].[8]

وَقَوْله تَعَالَى: {وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ} [البقرة: ٢٢٨] .

[7] **Qur'an references (L35612):** Qur'an 2:234 (Al-Baqarah).
[8] **Qur'an references (L35613):** Qur'an 2:228 (Al-Baqarah).

وَقَالَ تَعَالَى: {فَعِدَّتُهُنَّ ثَلاثَةُ أَشْهُرٍ وَاللائِي لَمْ يَحِضْنَ} [الطلاق: ٤] فَلَا بُدَّ مِنْ أَنْ يُفْضُوْنَ إِلَى الْعِدَّةِ مِنْ الْوَفَاةِ وَالْقُرُوءِ، وَعِدَّةِ الْأَشْهُرِ بِنِيَّةٍ لَهَا، وَتَرَبُّصٍ مِنْهُنَّ، وَإِلَّا فَذَلِكَ عَلَيْهِنَّ بَاقٍ.

L35614 And He, the Exalted, said: {Their waiting period is three months, and those who have not menstruated} [At-Talaq: 4]. Thus, they must necessarily enter the waiting period for death [widowhood] and menstrual cycles [divorce]. The waiting period counted in months requires the intention to observe it and their residing [in waiting]; otherwise, that obligation remains incumbent upon them.[9]

وَأَمَّا الْحَامِلُ - فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَأُولاتُ الأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ} [الطلاق: ٤] فَلَيْسَ هَاهُنَا فِعْلٌ أُمِرْنَ بِقَصْدِهِ وَالنِّيَّةِ لَهُ، لَكِنَّ الْمُطَلَّقَةَ الْحَامِلَ خَرَجَتْ مِنْ ذَلِكَ مِمَّا ذَكَرْنَا قَبْلُ مِنْ أَنَّهُ لَا يَكُونُ طَلَاقُ الْغَائِبِ طَلَاقًا أَصْلًا حَتَّى يَبْلُغَهَا فَأَغْنَى ذَلِكَ عَنْ إِعَادَتِهِ.

L35615 As for the pregnant woman—Allah the Exalted says: {For pregnant women, their waiting period is until they deliver their pregnancy} [At-Talaq: 4]. Here, there is no action they are obligated to perform with deliberate intent. However, the pregnant divorcee is exempt from this ruling, as previously explained—that a divorce [issued] by an absent husband is not considered a valid divorce at all until it reaches her, making its repetition unnecessary.[10]

وَبَقِيَتْ الْمُتَوَفَّى عَنْهَا عَلَى وَضْعِ الْحَمْلِ إِثْرَ مَوْتِ الزَّوْجِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -.

L35616 The widow remained in the state of pregnancy following her husband's death—and with Allah, the Exalted, is success.

وَفِي هَذَا خِلَافٌ قَدِيمٌ صَحَّ عَنْ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ: أَنَّهَا تَعْتَدُّ مِنْ يَوْمِ مَاتَ، أَوْ طَلَّقَ.

L35617 There is an ancient disagreement regarding this matter. It is authentically reported from Ibn ʻUmar and Ibn ʻAbbās that she observes her waiting period (ʻiddah) from the day of his death or her divorce.

وَرُوِّينَاهُ عَنْ ابْنِ مَسْعُودٍ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو الْأَحْوَصِ سَلَامُ بْنُ سُلَيْمٍ عَنْ أَبِي إِسْحَاقَ عَنْ أَبِي الْأَحْوَصِ عَنْ ابْنِ مَسْعُودٍ.

L35618 We have narrated it from Ibn Mas'ud through the chain of Ibn Abi Shaybah: I am Abu al-Aḥwaṣ Salam ibn Sulaym, from Abu Ishaq, from Abdullah ibn al-Aḥwaṣ, from Ibn Mas'ud.

وَصَحَّ أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالنَّخَعِيِّ، وَالشَّعْبِيِّ، وَعَطَاءٍ، وَطَاوُسٍ، وَمُجَاهِدٍ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَأَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ، وَالزُّهْرِيِّ وَسُلَيْمَانَ بْنِ يَسَارٍ، وَأَبِي قِلَابَةَ، وَمُحَمَّدِ بْنِ سِيرِينَ، وَعِكْرِمَةَ، وَمَسْرُوقٍ، وَعَبْدِ الرَّحْمَنِ بْنِ يَزِيدَ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمْ.

L35619 It has also been authentically reported from Saʻīd ibn al-Musayyib, al-Nakhaʻī, al-Shaʻbī, ʻAṭā', Ṭāwus, Mujāhid, Saʻīd ibn Jubayr, Abū ash-Shaʻthā', Jābir ibn Zayd, al-Zuhrī, Sulaymān ibn Yasār, Abū Qilābah, Muḥammad ibn Sīrīn, ʻIkrimah, Masrūq, and ʻAbd al-Raḥmān ibn Yazīd. This is the opinion of Abū Ḥanīfah, Mālik, al-Shāfiʻī, and their followers.

وَقَالَ آخَرُونَ بِخِلَافِ ذَلِكَ -: كَمَا حَدَّثَنَا بِهِ مُحَمَّدُ بْنُ سَعِيدٍ

L35620–35622 And others said otherwise -: as narrated to us by Muḥammad ibn Saʻīd

[9] **Qur'an references (L35614):** Qur'an 65:4 (At-Talaq).
[10] **Qur'an references (L35615):** Qur'an 65:4 (At-Talaq).

ibn Nubāt: I am Aḥmad ibn ʿAwn Allāh. I am Qasim ibn Asbagh, I am Muhammad ibn Abd al-Salam al-Khushani, I am Muhammad ibn Bashshar Bundar, I am Abu Dawud al-Tayalisi, I am Shu'bah from Aban ibn Tha'labah from al-Hakam ibn Utaybah from Abu Sadiq from Rabi'ah ibn Najid from Ali ibn Abi Talib regarding the woman whose husband has died: he said, "Her waiting period is from the day the news reaches her."

وَقَالَ آخَرُونَ غَيْرَ ذَلِكَ -: كَمَا نَاهُ مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا أَحْمَدُ بْنُ عَوْنِ اللَّهِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ بَشَّارِ بُنْدَارٍ أَنَا أَبُو دَاوُد الطَّيَالِسِيُّ أَنَا شُعْبَةُ عَنْ أَبَانَ بْنِ ثَعْلَبَةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ أَبِي صَادِقٍ عَنْ رَبِيعَةَ بْنِ نَاجِدٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فِي الْمُتَوَفَّى عَنْهَا قَالَ: عِدَّتُهَا مِنْ يَوْمِ يَأْتِيهَا الْخَبَرُ.

L35623 From the chain of Wakiʿ, from Abu al-Ashhab, from al-Ḥasan al-Baṣrī, who said: She begins observing her waiting period from the day the news reaches her.

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ أَبِي الْأَشْهَبِ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: تَعْتَدُّ مِنْ يَوْمِ يَأْتِيهَا الْخَبَرُ.

L35624 And through the chain of Abd al-Razzaq: from Sufyan al-Thawri and Ma'mar. Sufyan narrated from Yunus ibn Ubayd, and Ma'mar narrated from Ayyub. Then Yunus and Ayyub agreed, both of them narrating from al-Hasan regarding divorce and death, that she observes her waiting period from the day the news reaches her from her husband.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، قَالَ سُفْيَانُ عَنْ يُونُسَ بْنِ عُبَيْدٍ، وَقَالَ مَعْمَرٌ عَنْ أَيُّوبَ، ثُمَّ اتَّفَقَ يُونُسُ، وَأَيُّوبُ كِلَاهُمَا عَنْ الْحَسَنِ فِي الطَّلَاقِ وَالْمَوْتِ: تَعْتَدُّ مِنْ يَوْمِ يَأْتِيهَا مِنْ زَوْجِهَا الْخَبَرُ -.

L35625 Ayyūb added in his narration: "And she is entitled to maintenance." Maʿmar said: "Qatādah also said it."

زَادَ أَيُّوبُ فِي رِوَايَتِهِ: وَلَهَا النَّفَقَةُ، قَالَ مَعْمَرٌ: وَقَالَهُ قَتَادَةُ.

L35626 And through the chain of Ḥammād ibn Salamah, from Qatādah, from Khilāṣ ibn ʿAmr, who said: She begins her ʿiddah from the day the news reaches her.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو قَالَ: تَعْتَدُّ مِنْ يَوْمِ يَأْتِيهَا الْخَبَرُ.

L35627 Others said: "From the day the conclusive evidence is established"—as transmitted through the chain of Ḥammād ibn Salamah from Qatādah, from Saʿīd ibn al-Musayyib, from Abū al-Shaʿthāʾ Jābir ibn Zayd, and from Abū Qilābah. They all said regarding a woman who has been divorced or faces death? "She observes her waiting period from the day the conclusive evidence is established."

وَقَالَ آخَرُونَ: مِنْ يَوْمِ تَقُومُ الْبَيِّنَةُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَبِي الشَّعْثَاءِ جَابِرِ بْنِ زَيْدٍ، وَأَبِي قِلَابَةَ، قَالُوا كُلُّهُمْ فِي امْرَأَةٍ جَاءَهَا طَلَاقٌ أَوْ مَوْتٌ؟ قَالُوا: تَعْتَدُّ مِنْ يَوْمِ قَامَتْ الْبَيِّنَةُ.

L35628 From the path of Ibn Abi Shaybah: Abu Khalid al-Ahmar and al-Thaqafi (Abd al-Wahhab ibn Abd al-Majid). Abu Khalid reported from Dawud from Sa'id ibn al-Musayyib and al-Sha'bi. Abd al-Wahhab reported from Yazid from Makḥūl. They all stated concerning a man who divorces his wife or dies: If valid testimony is established, she observes her waiting period from

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ أَنَا أَبُو خَالِدٍ الْأَحْمَرُ، وَالثَّقَفِيُّ - هُوَ عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ - قَالَ أَبُو خَالِدٍ عَنْ دَاوُد عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَالشَّعْبِيِّ، وَقَالَ عَبْدُ الْوَهَّابِ

the day he dies. If no valid testimony is established in her case, then from the day the news reaches her.

عَنْ يَزِيدَ عَنْ مَكْحُولٍ، قَالُوا كُلُّهُمْ فِي الرَّجُلِ يُطَلِّقُ أَوْ يَمُوتُ: إذَا قَامَتْ الْبَيِّنَةُ فَتَعْتَدُّ مِنْ يَوْمِ يَمُوتُ، وَإِنْ لَمْ تَقُمْ لَهَا بَيِّنَةٌ فَمِنْ يَوْمِ يَأْتِيهَا الْخَبَرُ.

L35629 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī, who reported that Ḥammād ibn Abī Sulaymān and Manṣūr ibn al-Muʿtamir narrated from Ibrāhīm al-Nakhaʿī, who said: Whatever she consumed after his death—while unaware of his death—remains permissible for her; whatever she restrained herself from [consuming] after [learning of his death] is hers.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، قَالَ: قَالَ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ، وَمَنْصُورُ بْنُ الْمُعْتَمِرِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: مَا أَكَلَتْ بَعْدَ مَوْتِهِ - وَهِيَ لَا تَدْرِي بِمَوْتِهِ - فَهُوَ لَهَا مَا حَبَسَتْ نَفْسَهَا عَلَيْهِ.

L35630 It has been authentically reported from Al-Shaʿbi that only the amount of her inheritance is taken from her.

وَصَحَّ عَنْ الشَّعْبِيِّ: أَنَّهُ يُؤْخَذُ مِنْهَا إلَّا قَدْرَ مِيرَاثِهَا.

L35631 Narrated by Abd al-Razzaq from Ma'mar, who said: "They do not inherit from each other, and he has no right to revoke the divorce concerning her during the waiting period according to the opinion of both groups—as narrated by Qatadah from Ali and Ibn Mas'ud."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: لَا يَتَوَارَثَانِ، وَلَا رَجْعَةَ لَهُ عَلَيْهَا فِي قَوْلِ الْفَرِيقَيْنِ جَمِيعًا - قَالَهُ قَتَادَةُ عَنْ عَلِيٍّ، وَابْنِ مَسْعُودٍ.

L35632–35634 Abu Muhammad said: Qatadah did not meet ʿAlī, nor Ibn Masʿūd, nor have we found any narration from reliable sources. Our legal opinion is that they inherit from one another, and he retains the right to revoke the divorce against her as long as his pronouncement of the irrevocable triple divorce has not been communicated to her. She is not required to return what she consumed during the divorce, for she remains his wife until the divorce is formally communicated to her or she receives notification of it.

قَالَ أَبُو مُحَمَّد: لَمْ يُدْرِكْ قَتَادَةُ عَلِيًّا، وَلَا ابْنَ مَسْعُودٍ، وَلَا وَجَدْنَا ذَلِكَ عَنْ غَيْرِهِ - وَالَّذِي نَقُولُ بِهِ: إنَّهُمَا يَتَوَارَثَانِ، وَلَهُ الرَّجْعَةُ عَلَيْهَا مَا لَمْ يَبْلُغْهَا طَلَاقُهُ بِالثَّلَاثِ - وَلَا تَرُدُّ مَا أَكَلَتْ فِي الطَّلَاقِ، لِأَنَّهَا زَوْجَتُهُ مَا لَمْ يَبْلُغْهَا أَوْ يَأْتِهَا الْخَبَرُ.

L35635 In the case of death, the ruling differs from that, and she must return what she has consumed, for she has taken the property of the heirs or creditors—and she has no right with them. Her right is solely in the husband's property. As long as the property remains his, her right to it endures—and with Allah, the Exalted, lies all success.

وَأَمَّا فِي الْمَوْتِ فَبِخِلَافِ ذَلِكَ، وَتَرُدُّ مَا أَكَلَتْ، لِأَنَّهَا أَكَلَتْ مَالَ الْوَرَثَةِ أَوْ مَالَ الْغُرَمَاءِ - وَلَا حَقَّ لَهَا عِنْدَهُمْ - إنَّمَا حَقُّهَا فِي مَالِ الزَّوْجِ، فَمَا دَامَ الْمَالُ مَالَهُ فَحَقُّهَا فِيهِ بَاقٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L35636 A Legal Issue Where the Spouses Have Disputed Over Household Chattels During the Marriage or After Divorce.

[مَسْأَلَةٌ تَنَازَعَ الزَّوْجَانِ فِي مَتَاعِ الْبَيْتِ فِي حَالِ الزَّوْجِيَّةِ أَوْ بَعْدَ الطَّلَاقِ]

L35637 2006. Legal Question: If the spouses dispute over household belongings during the marriage, after the divorce, or if one of them disputes with the heirs of the deceased among them after the death, or their heirs jointly after

٢٠٠٦ - مَسْأَلَةٌ: وَإِذَا تَنَازَعَ الزَّوْجَانِ فِي مَتَاعِ الْبَيْتِ فِي حَالِ الزَّوْجِيَّةِ أَوْ بَعْدَ الطَّلَاقِ، أَوْ تَنَازَعَ أَحَدُهُمَا مَعَ وَرَثَةِ الْآخَرِ بَعْدَ الْمَوْتِ، أَوْ وَرَثَتِهِمَا جَمِيعًا بَعْدَ مَوْتِهِمَا، فَكُلُّ ذَلِكَ سَوَاءٌ، وَكُلُّ ذَلِكَ بَيْنَهُمَا مَعَ أَيْمَانِهِمَا، أَوْ يَمِينِ الْبَاقِي مِنْهُمَا، أَوْ وَرَثَةِ الْمَيِّتِ مِنْهُمَا، أَوْ أَيْمَانِ وَرَثَتِهِمَا مَعًا - وَسَوَاءٌ فِي ذَلِكَ السِّلَاحُ، وَالْحُلِيُّ، وَمَا لَا يَصْلُحُ إِلَّا لِلرِّجَالِ، أَوْ إِلَّا لِلنِّسَاءِ، أَوْ لِلرِّجَالِ وَالنِّسَاءِ، إِلَّا مَا عَلَى ظَهْرِ كُلِّ وَاحِدٍ مِنْهُمَا فَهُوَ لَهُ مَعَ يَمِينِهِ.

both have died—all these cases are equivalent. In all such instances, the matter is determined by their oaths: the oath of the surviving party, the oath of the heirs of the deceased among them, or the oaths of the heirs of both. This applies equally to weapons, jewelry, items suitable exclusively for men or exclusively for women, or items suitable for both—except for what is worn on the person of each individual, which belongs to them upon their oath.

وَقَدْ اخْتَلَفَ السَّلَفُ فِي هَذَا عَلَى أَقْوَالٍ -: فَقَوْلٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ أَنَّهُ قَالَ فِي تَدَاعِي الزَّوْجَيْنِ: الْبَيْتُ بَيْتُ الْمَرْأَةِ، إِلَّا مَا عُرِفَ لِلرَّجُلِ.

L35638 The Salaf differed on several opinions regarding this matter. One opinion—as we have been narrated from ʿAbd al-Razzāq: Maʿmar reported from al-Zuhrī—concerning mutual claims between spouses: "The house belongs to the wife, except what is recognized as belonging to the man."

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ فِي ذَلِكَ مِثْلُ قَوْلِ الزُّهْرِيِّ.

L35639 And via the route of Maʿmar, from Ayyūb al-Sikhtiyānī, from Abū Qilābah concerning this matter—akin to the statement of al-Zuhrī.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مُعْتَمِرُ بْنُ سُلَيْمَانَ التَّيْمِيُّ عَنْ أَبِيهِ عَنِ الْحَسَنِ الْبَصْرِيِّ قَالَ: لِلْمَرْأَةِ مَا أُغْلِقَ عَلَيْهَا بَابُهَا إِذَا مَاتَ زَوْجُهَا.

L35640 From the narration of Abd al-Razzaq: I [narrate] from Mu'tamir ibn Sulayman al-Taymi, from his father, from al-Hasan al-Basri, who said: A woman must remain in her house with her door closed when her husband dies.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنِ الْحَسَنِ قَالَ: لَيْسَ لِلرَّجُلِ إِلَّا سِلَاحُهُ وَثِيَابُ جِلْدِهِ.

L35641 And through the chain of Abd al-Razzaq from Sufyan al-Thawri from Yunus ibn Ubayd from al-Hasan, who said: A man has nothing except his weapons and his leather garments.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: أَيُّمَا مَا أَحْدَثَ الرَّجُلُ مِنْ مَتَاعٍ فَهُوَ لَهُ إِذَا أَقَامَ عَلَيْهِ الْبَيِّنَةَ.

L35642 Narrated by ʿAbd al-Razzāq from Maʿmar from Qatādah, who said: Any item a man newly acquires belongs to him, provided he establishes clear proof for it.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنِ الْحَسَنِ فِي رَجُلٍ طَلَّقَ امْرَأَتَهُ أَوْ مَاتَ عَنْهَا - وَقَدْ أَحْدَثَتْ فِي بَيْتِهِ أَشْيَاءَ - فَقَالَ الْحَسَنُ: لَهَا مَا أَغْلَقَتْ عَلَيْهِ بَابَهَا، إِلَّا سِلَاحَ الرَّجُلِ وَمُصْحَفَهُ.

L35643–35644 From the narration of Saʿīd ibn Manṣūr: I am Hushaym, from Manṣūr, from Al-Ḥasan regarding a man who divorced his wife or died leaving her—when she had introduced things into his house. Al-Ḥasan said: "She is entitled to whatever she secured behind her door, except the man's arms and his Muṣḥaf."

وَقَالَتْ طَائِفَةٌ: غَيْرَ هَذَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنْ ابْنِ سِيرِينَ قَالَ: مَا كَانَ مِنْ صَدَاقٍ فَهُوَ لَهَا وَمَا كَانَ مِنْ غَيْرِ صَدَاقٍ فَهُوَ مِيرَاثٌ.

L35645 A group said differing from this: as we have been narrated via the chain of Saʿīd ibn Manṣūr—I am Hushaym, via Manṣūr, from Ibn Sīrīn—who said: "Whatever is of dowry belongs to her, and whatever is not of dowry is part of the inheritance."

وَقَالَ ثَالِثٌ - كُلُّ شَيْءٍ لِلرَّجُلِ إِلَّا مَا عَلَى الْمَرْأَةِ مِنْ الثِّيَابِ أَوْ الدِّرْعِ، وَالْخِمَارِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى.

L35646 A third scholar said, "Everything belongs to the man except what is on the woman: her clothing, her tunic, or her khimar (head-covering)"—and this is the opinion of Ibn Abi Layla.

وَقَوْلٌ رَابِعٌ - كَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَصِيرِ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى ثنا الضَّحَّاكُ بْنُ مَخْلَدٍ - هُوَ أَبُو عَاصِمٍ - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عُبَيْدَةَ بْنِ مُغِيثٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي الرَّجُلِ إذَا مَاتَ فَادَّعَتْ الْمَرْأَةُ مَتَاعَ الْبَيْتِ أَجْمَعَ؟ قَالَ: إنْ كَانَ مِنْ مَتَاعِ الرَّجُلِ فَهُوَ لِلرَّجُلِ - وَأَمَّا مَا كَانَ مِنْ مَتَاعِ النِّسَاءِ فَهُوَ لِلْمَرْأَةِ وَمَا كَانَ مِمَّا يَكُونُ لِلرَّجُلِ وَلِلْمَرْأَةِ فَهُوَ لِلْبَاقِي مِنْهُمَا، فَإِنْ كَانَ فُرْقَةً - وَلَيْسَ مَوْتًا - فَهُوَ لِلرَّجُلِ.

L35647 A fourth statement—narrated by Muḥammad ibn Saʿīd ibn Nubāt → Aḥmad ibn ʿAbd Allāh ibn ʿAbd al-Baṣīr → Qāsim ibn Aṣbagh → Muḥammad ibn al-Salām al-Khushanī → Muḥammad ibn al-Muthannā → al-Ḍaḥḥāk ibn Makhlad (who is Abū ʿĀṣim) → Sufyān al-Thawrī → ʿUbaydah ibn Mughīth → Ibrāhīm al-Nakhaʿī—who said regarding a man who dies and his wife claims all the household belongings: "If it was from the man's belongings, it belongs to the man. As for what was from women's belongings, it belongs to the wife. Whatever is shared between the man and the wife belongs to the surviving one of them. If the separation was due to divorce (not death), then it belongs to the man."

وَقَوْلٌ خَامِسٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُوَيْدُ بْنُ عَبْدِ الْعَزِيزِ قَالَ: سَأَلْت ابْنَ شُبْرُمَةَ عَنْ تَدَاعِي الزَّوْجَيْنِ فَقَالَ: مَتَاعُ النِّسَاءِ لِلنِّسَاءِ، وَمَتَاعُ الرِّجَالِ لِلرِّجَالِ وَمَا كَانَ مِنْ مَتَاعٍ يَكُونُ لِلرِّجَالِ وَالنِّسَاءِ فَهُوَ بَيْنَهُمَا - وَسَأَلْت ابْنَ أَبِي لَيْلَى عَنْ ذَلِكَ؟ فَقَالَ مِثْلَ قَوْلِ ابْنِ شُبْرُمَةَ - وَزَادَ: فِي الْحَيَاةِ وَالْمَوْتِ.

L35648 A fifth opinion—as we were narrated through the chain of Saʿīd ibn Manṣūr: From Suwayd ibn ʿAbd al-ʿAzīz, who said: I asked Ibn Shubrumah about disputes between spouses. He replied: "Women's belongings belong to women, men's belongings belong to men, and whatever belongings are shared between men and women are divided between them." I asked Ibn Abī Laylā about that. He said the same as Ibn Shubrumah's statement, adding: in life and death.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مَنْ سَمِعَ ابْنَ ذَكْوَانَ الْمَدَنِيَّ، وَعُثْمَانَ الْبَتِّيَّ يَقُولَانِ: مَا كَانَ لِلرِّجَالِ وَالنِّسَاءِ فَهُوَ بَيْنَهُمَا -.

L35649 From the chain of Saʿīd ibn Manṣūr: I am Hushaym, the one who heard Ibn Dhakwān al-Madanī and ʿUthmān al-Battī saying, "What was for men and women is between the two of them."

وَهُوَ قَوْلُ عُبَيْدِ اللَّهِ بْنِ الْحَسَنِ، وَالْحَسَنِ بْنِ حَيٍّ - وَأَحَدُ قَوْلَيْ زُفَرَ - وَأَوْجَبُوا الْأَيْمَانَ مَعَ ذَلِكَ كُلِّهِ.

L35650 This is the opinion of Ubayd Allah ibn al-Hasan, al-Hasan ibn Ḥayyin—and one of the two opinions of Zufar—and they held oaths obligatory alongside all of that.

وَقَوْلٌ سَادِسٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ عَنِ ابْنِ شُبْرُمَةَ، وَابْنِ أَبِي لَيْلَى، قَالَا جَمِيعًا: مَا كَانَ لِلرِّجَالِ فَهُوَ لِلرَّجُلِ، وَمَا كَانَ لِلنِّسَاءِ فَهُوَ لِلْمَرْأَةِ، وَمَا كَانَ مِمَّا يَكُونُ لِلرِّجَالِ وَالنِّسَاءِ فَهُوَ لِلرَّجُلِ وَهُوَ قَوْلُ الْحَكَمِ - وَهُوَ قَوْلُ مَالِكٍ - الْفُرْقَةُ وَالْمَوْتُ سَوَاءٌ فِي ذَلِكَ عِنْدَهُ - وَيَحْلِفُ كُلُّ وَاحِدٍ مِنْهُمَا فِي كُلِّ ذَلِكَ.

L35651–35653 A sixth opinion—as transmitted through the chain of Sa'īd ibn Manṣūr: Hushaym reported from Ibn Shubrumah and Ibn Abī Laylā, both of whom said: What applies to men as a group applies to each man, and what applies to women as a group applies to each woman. Whatever pertains to both men and women belongs to the man—this is the opinion of al-Ḥakam—and it is the opinion of Mālik. Divorce and death are equivalent in this regard according to him, and each of the two parties must swear an oath in all such cases.

وَقَوْلٌ سَابِعٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ: أَخْبَرَنَا مَنْ سَمِعَ الْحَكَمَ بْنَ عُتَيْبَةَ، وَسَعِيدَ بْنَ أَشْوَعَ يَقُولَانِ: مَا كَانَ لِلرِّجَالِ فَهُوَ لِلرَّجُلِ، وَمَا كَانَ لِلنِّسَاءِ فَهُوَ لِلْمَرْأَةِ، وَمَا كَانَ لِلرِّجَالِ وَالنِّسَاءِ فَهُوَ لِلْمَرْأَةِ - وَبِهَذَا يَقُولُ هُشَيْمٌ.

L35654 The seventh opinion—as we were narrated through the chain of Sa'īd ibn Manṣūr: I am Ḥushaym—who reported from someone who heard both al-Ḥakam ibn 'Utaybah and Sa'īd ibn Ashwa' saying: "What is designated for men belongs to the man, what is designated for women belongs to the woman, and what is designated for both men and women belongs to the woman." This is the opinion Ḥushaym states.

وَقَوْلٌ ثَامِنٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا غُنْدَرٌ عَنْ شُعْبَةَ عَنْ حَمَّادٍ أَنَّهُ سُئِلَ عَنْ مَتَاعِ الْبَيْتِ؟ قَالَ: ثِيَابُ الْمَرْأَةِ لِلْمَرْأَةِ، وَثِيَابُ الرَّجُلِ لِلرَّجُلِ، وَمَا تَشَاجَرَا فِيهِ وَلَمْ يَكُنْ لِهَذَا وَلَا لِهَذَا بَيِّنَةٌ فَهُوَ لِلَّذِي فِي يَدَيْهِ.

L35655 And an eighth opinion—as reported to us through Abu Bakr ibn Abi Shaybah: I am Gundar, from Shu'bah, from Hammad—who was asked about household effects. He said: "A woman's clothes belong to her, and a man's clothes belong to him. As for that over which they quarreled, where neither this one nor that one could produce evidence, it belongs to the one in whose possession it is found."

وَقَالَ أَبُو حَنِيفَةَ: إِنْ كَانَ أَحَدُ الزَّوْجَيْنِ مَمْلُوكًا وَالْآخَرُ حُرًّا، فَالْمَالُ كُلُّهُ لِمَنْ كَانَ مِنْهُمَا حُرًّا مَعَ يَمِينِهِ - وَكَذَلِكَ قَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ، إِلَّا أَنْ يَكُونَ الْعَبْدُ مَأْذُونًا لَهُ فِي التِّجَارَةِ فَهُوَ كَالْحُرِّ فِي حُكْمِهِ فِي ذَلِكَ.

L35656 Abu Hanifa said: If one of the spouses is enslaved and the other is free, all property belongs to the free spouse with his oath. Similarly, Abu Yusuf and Muhammad ruled, except when the male slave is authorized to engage in trade, in which case he is subject to the same legal ruling as a free person in this matter.

ثُمَّ اخْتَلَفُوا - فَقَالَ أَبُو يُوسُفَ: فَإِنْ كَانَا حُرَّيْنِ، أَوْ مُكَاتَبَيْنِ، أَوْ مَأْذُونَيْنِ لَهُمَا فِي التِّجَارَةِ، أَوْ أَحَدُهُمَا حُرًّا وَالْآخَرُ مُكَاتَبًا، أَوْ مَأْذُونًا لَهُ فِي التِّجَارَةِ، أَوْ مُسْلِمَيْنِ، أَوْ أَحَدُهُمَا، فَإِنَّهُ يُقْضَى لِلْمَرْأَةِ بِمِثْلِ مَا تُجَهَّزُ بِهِ إِلَى زَوْجِهَا، فَمَا بَقِيَ بَعْدَ ذَلِكَ، فَسَوَاءٌ كَانَ

L35657 Then they differed. Abu Yusuf said: If they are both free, or both mukatabs, or both permitted to engage in trade, or one is free and the other a mukatab, or one is free and the other permitted to engage in trade, or both are Muslims, or one of them is Muslim—then the woman is granted the equivalent of what was provided to her husband. Whatever remains after that—whether it is suitable exclusively for men, exclusively for women, or for both—it makes no

difference: all of that belongs to the man with his oath in cases of separation and death.

مِمَّا لَا يَصْلُحُ إِلَّا لِلرِّجَالِ، أَوْ لَا يَصْلُحُ إِلَّا لِلنِّسَاءِ، أَوْ يَصْلُحُ لِلرِّجَالِ وَالنِّسَاءِ -: فَكُلُّ ذَلِكَ لِلرَّجُلِ مَعَ يَمِينِهِ فِي الْفُرْقَةِ وَالْمَوْتِ.

L35658 Abu Hanifa said concerning all these matters: What is of men's belongings belongs to the man with his oath, and what is of women's belongings belongs to the woman with her oath—this applies in cases of divorce and death. What is suitable for both men and women belongs to the men with his oath in cases of divorce—and it belongs to the remaining spouse, whichever of the two it may be. Muhammad ibn al-Hasan agreed with him on all of that except in the case of death, for he assigned what is suitable for both men and women to the man or his heirs with his oath or their oaths.

وَقَالَ أَبُو حَنِيفَةَ فِي كُلِّ هَؤُلَاءِ: مَا كَانَ مِنْ مَتَاعِ الرِّجَالِ فَهُوَ لِلرَّجُلِ مَعَ يَمِينِهِ، وَمَا كَانَ مِنْ مَتَاعِ النِّسَاءِ فَهُوَ لِلْمَرْأَةِ مَعَ يَمِينِهَا - هَذَا فِي الْفُرْقَةِ وَالْمَوْتِ، وَمَا صَلُحَ لِلرِّجَالِ وَالنِّسَاءِ فَهُوَ لِلرِّجَالِ مَعَ يَمِينِهِ فِي الْفُرْقَةِ - وَهُوَ لِلْبَاقِي مِنْهُمَا أَيُّهُمَا كَانَ - وَوَافَقَهُ عَلَى كُلِّ ذَلِكَ: مُحَمَّدُ بْنُ الْحَسَنِ إِلَّا فِي الْمَوْتِ، فَإِنَّهُ جَعَلَ مَا يَصْلُحُ لِلرِّجَالِ وَالنِّسَاءِ لِلرَّجُلِ، أَوْ لِوَرَثَتِهِ مَعَ يَمِينِهِ أَوْ أَيْمَانِهِمْ.

L35659 The ninth opinion—as we have stated—is the view of Sufyān al-Thawrī, al-Qāsim ibn Maʿn ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Masʿūd al-Qāḍī, Sharīk ibn ʿAbd Allāh al-Qāḍī, al-Shāfiʿī, Abū Sulaymān, and the companions of both of them, as well as one of the two opinions of Zufar ibn al-Hudhayl and the opinion of al-Ṭaḥāwī.

وَقَوْلٌ تَاسِعٌ - كَمَا قُلْنَا نَحْنُ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَالْقَاسِمِ بْنِ مَعْنِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ الْقَاضِي، وَشَرِيكِ بْنِ عَبْدِ اللَّهِ الْقَاضِي، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ وَأَصْحَابِهِمَا -، وَأَحَدُ قَوْلَيْ: زُفَرَ بْنِ الْهُذَيْلِ، وَقَوْلُ الطَّحَاوِيِّ.

L35660–35661 Abu Muhammad said, "Those who held this opinion argued that what is suited to men belongs to men, and what is suited to women belongs to women."

قَالَ أَبُو مُحَمَّدٍ احْتَجَّ مَنْ قَالَ بِأَنَّ مَا صَلُحَ لِلرِّجَالِ فَهُوَ لِلرَّجُلِ، وَمَا صَلُحَ لِلنِّسَاءِ فَهُوَ لِلْمَرْأَةِ.

L35662 Through what we have transmitted via the chain of Saʿīd ibn Manṣūr: Suwayd ibn ʿAbd al-ʿAzīz al-Dimashqī reported to us: Abū Nūḥ al-Madanī (from the family of Abū Bakr) said: Al-Ḥaḍramī—a man he named—narrated from ʿAlī ibn Abī Ṭālib, who said: The Messenger of Allāh—peace and blessings be upon him—said: "Women's personal effects belong to women, and men's personal effects belong to men."

بِمَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا سُوَيْدُ بْنُ عَبْدِ الْعَزِيزِ الدِّمَشْقِيُّ أَنَا أَبُو نُوحٍ الْمَدَنِيُّ - مِنْ آلِ أَبِي بَكْرٍ - قَالَ: أَنَا الْحَضْرَمِيُّ - رَجُلٌ قَدْ سَمَّاهُ - عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَتَاعُ النِّسَاءِ لِلنِّسَاءِ، وَمَتَاعُ الرِّجَالِ لِلرِّجَالِ» .

L35663 Abu Muhammad said: This is a fabricated, false narration. It is not permissible for anyone to relate it except with an explanation of its fabrication: Suwayd ibn Abd al-Aziz is known for falsehood. As for Abu Nuh, no one knows who he is. And al-Hadhrami is similarly unknown.

قَالَ أَبُو مُحَمَّدٍ: هَذَا خَبَرٌ مَوْضُوعٌ مَكْذُوبٌ لَا يَحِلُّ لِأَحَدٍ أَنْ يَرْوِيَهُ إلَّا عَلَى بَيَانِ وَضْعِهِ -: سُوَيْدُ بْنُ عَبْدِ الْعَزِيزِ مَذْكُورٌ بِالْكَذِبِ - وَأَبُو نُوحٍ لَا يَدْرِي أَحَدٌ مَنْ هُوَ؟ وَالْحَضْرَمِيُّ مِثْلُ ذَلِكَ.

L35664 ثُمَّ لَوْ صَحَّ لَكَانَ غَيْرَ حُجَّةٍ لَهُمْ؛ لِأَنَّ ظَاهِرَهُ أَنَّ لِكُلِّ أَحَدٍ مَتَاعَهُ الَّذِي بِيَدِهِ؛ لِأَنَّهُ لَمْ يَقُلْ فِيهِ: إنْ اخْتَلَفَ الزَّوْجَانِ، وَلَا قَالَ فِيهِ: مَا صَلُحَ لِلرِّجَالِ، وَلَا مَا صَلُحَ لِلنِّسَاءِ - وَإِنَّمَا فِيهِ: مَتَاعُ النِّسَاءِ، وَمَتَاعُ الرِّجَالِ، وَالْمَتَاعُ: هُوَ مَتَاعُ الْمَرْءِ الَّذِي فِي مِلْكِهِ - سَوَاءٌ صَلُحَ لَهُ أَوْ لَمْ يَصْلُحْ لَهُ - وَإِذَا لَمْ يَخُصَّ بِهِ اخْتِلَافَ الزَّوْجَيْنِ، فَلَيْسَ لِأَحَدٍ أَنْ يَخُصَّ هَذَا الْبَابَ دُونَ اخْتِلَافِ الْأَخِ وَالْأُخْتِ - فَبَطَلَ تَمْوِيهُهُمْ بِهَذَا الْخَبَرِ الْمَكْذُوبِ.

L35665 قَالَ أَبُو مُحَمَّدٍ: وَلَا يَخْتَلِفُ الْمُخَالِفُونَ لَنَا مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ فِي أَخٍ وَأُخْتٍ سَاكِنَيْنِ فِي بَيْتٍ، فَتَدَاعَيَا مَا فِيهِ أَنَّهُ بَيْنَهُمَا بِنِصْفَيْنِ مَعَ أَيْمَانِهِمَا، وَلَمْ يَحْكُمُوا فِي ذَلِكَ بِمَا حَكَمُوا بِهِ فِي الزَّوْجَيْنِ.

L35666 وَكَذَلِكَ لَمْ يَخْتَلِفُوا فِي عَطَّارٍ، وَدَبَّاغٍ، أَوْ بَزَّازٍ، سَاكِنِينَ فِي بَيْتٍ: فِي أَنَّ كُلَّ مَا فِي الْبَيْتِ بَيْنَهُمَا - مَعَ أَيْمَانِهِمَا - وَلَمْ يَحْكُمُوا أَنَّ مَا كَانَ مِنْ عِطْرٍ فَلِلْعَطَّارِ، وَمَا كَانَ مِنْ آلَةِ الدَّبَّاغِ فَلِلدَّبَّاغِ، وَمَا كَانَ مِنْ آلَةِ الْبَزِّ فَلِلْبَزَّازِ - فَظَهَرَ تَنَاقُضُهُمْ، وَفَسَادُ قَوْلِهِمْ بِيَقِينٍ، وَأَنَّهُ ظَنٌّ كَاذِبٌ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» .

L35667–35669 The proof for the validity of our statement is that the man's responsibility and the woman's responsibility apply to what is in the house they both inhabit. Or the house of their residence—whatever it may be—neither of

them has a greater right to it; it belongs to both of them, since it is in their possession along with their oaths.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: أَنَّ يَدَ الرَّجُلِ، وَيَدَ الْمَرْأَةِ عَلَى مَا فِي الْبَيْتِ الَّذِي يَسْكُنَانِهِ، أَوْ دَارِ سُكْنَاهُمَا - أَيِّ شَيْءٍ كَانَ - فَلَيْسَ أَحَدُهُمَا أَوْلَى بِهِ، فَهُوَ لَهُمَا إذْ هُوَ بِأَيْدِيهِمَا مَعَ أَيْمَانِهِمَا.

L35670 We do not deny a woman's right to own weapons or a man's right to own adornments, and success comes from Allah, the Most High.

وَلَا نُنْكِرُ مِلْكَ الْمَرْأَةِ لِلسِّلَاحِ، وَلَا مِلْكَ الرَّجُلِ لِلْحُلِيِّ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[الِاسْتِبْرَاءُ] [مَسْأَلَةٌ كَانَتْ لَهُ جَارِيَةٌ يَطَؤُهَا وَهِيَ مِمَّنْ تَحِيضُ فَأَرَادَ بَيْعَهَا]

L35671–35672 **Istibrā' (pregnancy confirmation period): A case where a man owned a female slave with whom he had intercourse, and she was among those who menstruate, so he intended to sell her.**

٢٠٠٧ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: وَقَدْ ذَكَرْنَا فِي " كِتَابِ اللِّعَانِ " مِنْ دِيوَانِنَا هَذَا حُكْمَ الْوَلَدِ يَدَّعِيهِ اثْنَانِ فَصَاعِدًا إذَا لَمْ يُعْرَفْ أَيُّهُمْ كَانَ مَعَهَا أَوَّلًا - سَوَاءٌ مِنْ أَمَةٍ كَانَ أَوْ مِنْ حُرَّةٍ وَنَذْكُرُ هَاهُنَا إنْ شَاءَ اللَّهُ تَعَالَى حُكْمَ ذَلِكَ إذَا كَانَ يُعْرَفُ أَيُّهُمَا الْأَوَّلُ مِنْ الْأَزْوَاجِ، أَوْ السَّادَاتِ فِي مِلْكِ الْيَمِينِ.

L35673 Issue 2007: Abū Muḥammad said: We have previously mentioned in the "Book of Liʿān" within this compilation of ours the ruling regarding a child claimed by two or more men when it is unknown which of them was with the mother first—regardless of whether the child is born to an enslaved woman or a free woman. Here, by the will of Allāh the Most High, we will mention the ruling on this matter when it is known which of the two—husbands or masters in the possession of the right hand—was the first.

قَالَ أَبُو مُحَمَّدٍ: مَنْ كَانَتْ لَهُ جَارِيَةٌ يَطَؤُهَا - وَهِيَ مِمَّنْ تَحِيضُ - فَأَرَادَ بَيْعَهَا، فَالْوَاجِبُ عَلَيْهِ أَنْ لَا يَبِيعَهَا حَتَّى تَحِيضَ حَيْضًا يَتَيَقَّنُهُ، وَكَذَلِكَ إنْ أَرَادَ إنْكَاحَهَا، أَوْ هِبَتَهَا، أَوْ صَدَاقَهَا، فَإِنْ كَانَتْ مِمَّنْ لَا تَحِيضُ فَلَا يَبِعْهَا حَتَّى يُوقِنَ أَنَّهُ لَا حَمْلَ بِهَا - ثُمَّ عَلَى الَّذِي انْتَقَلَ مِلْكُهَا إلَيْهِ أَنْ لَا يَطَأَهَا حَتَّى يَسْتَبْرِئَهَا بِحَيْضَةٍ، وَيُوقِنَ أَنَّهَا حَيْضَةٌ، أَوْ حَتَّى يُوقِنَ أَنَّهُ لَا حَمْلَ بِهَا، إلَّا أَنْ يَصِحَّ عِنْدَهُ أَنَّهَا قَدْ حَاضَتْ عِنْدَ الَّذِي انْتَقَلَ مِلْكُهَا عَنْهُ حَيْضًا مُتَيَقَّنًا، وَأَنَّهُ لَمْ يُخْرِجْهَا عَنْ مِلْكِهِ حَتَّى أَيْقَنَ أَنَّهُ لَا حَمْلَ بِهَا فَلَيْسَ عَلَيْهِ أَنْ يَسْتَبْرِئَهَا حِينَئِذٍ، وَلَا يَجُوزُ أَنْ يُجْبَرَ عَلَى مُوَاضَعَتِهَا عَلَى يَدَيْ ثِقَةٍ، وَلَا أَنْ يُمْنَعَ مِنْهَا؛ لِأَنَّ كِلَا الْأَمْرَيْنِ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ تَعَالَى.

L35674 Abu Muhammad said: If a man owns a female slave with whom he has intercourse—and she is of menstruating age—he must not sell her until she menstruates a period he has verified. The same applies if he wishes to marry her off, gift her, or use her as dowry. If she does not menstruate, he must not sell her until he ascertains she is not pregnant. The new owner must then refrain from intercourse with her until he either observes a verified menstrual period confirming non-pregnancy or ascertains her non-pregnancy—unless it is confirmed to him that she menstruated a verified period under the previous owner, and that the previous owner did not transfer her out of his ownership until confirming her non-pregnancy. In such cases, the new owner need not verify her non-pregnancy. It is impermissible to force him to have intercourse with her under the supervision of a trustworthy person or to prohibit him from doing so, as both stipulations constitute conditions not stipulated in the Book of Allah Almighty.

L35675 The Messenger of Allah—peace be upon him and his family—said: "Every condition not in the Book of Allah, the Almighty, the Majestic, is invalid."

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: «كُلُّ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَهُوَ بَاطِلٌ» .

L35676 Allah the Exalted has permitted right-hand possession, so it is not lawful to prevent an owner from his female slave.

وَقَدْ أَبَاحَ اللَّهُ تَعَالَى مِلْكَ الْيَمِينِ فَلَا يَحِلُّ مَنْعُ الْمَالِكِ مِنْ أَمَتِهِ.

L35677 It is astonishing that the Mālikīs who require mutual stipulation unanimously agree that no benefit is derived from it when pregnancy becomes evident in her. What purpose does an action serve that has no benefit, and doubt cannot be dispelled unless a scriptural text obligates it?

وَالْعَجَبُ أَنَّ الْمَالِكِيِّينَ الْمُوجِبِينَ لِلْمُوَاضَعَةِ مُتَّفِقُونَ عَلَى أَنَّهُ لَا يُنْتَفَعُ بِذَلِكَ مَتَى ظَهَرَ بِهَا حَمْلٌ، فَأَيُّ مَعْنًى لِعَمَلٍ لَا فَائِدَةَ فِيهِ، وَلَا تَنْقَطِعُ الرِّيبَةُ دُونَ أَنْ يُوجِبَهُ نَصٌّ.

L35678–35679 Abu Muhammad said: No waiting period to ascertain pregnancy is required for a virgin at all. If pregnancy becomes apparent to the buyer, the transferee, or the spouse, she remains as per her condition until she delivers or until certainty is established that the pregnancy existed prior to the transfer of ownership. If this is confirmed, the sale, gift, bridal gift (mahr), and marriage are annulled, and she is restored to her original owner. If he married her while she was a slave, he is instructed not to consummate the marriage until she delivers, though the marriage remains valid, as we have previously detailed in the Book of Marriage within this diwan of ours.

قَالَ أَبُو مُحَمَّدٍ وَلَا يَجِبُ فِي الْبِكْرِ اسْتِبْرَاءٌ أَصْلًا، فَإِنْ ظَهَرَ بِهَا عِنْدَ الْمُشْتَرِي، أَوْ الَّذِي انْتَقَلَ مِلْكُهَا إلَيْهِ، أَوْ الَّذِي تَزَوَّجَهَا حَمْلٌ بَقِيَتْ بِحَسَبِهَا حَتَّى تَضَعَ، أَوْ حَتَّى تُوقِنَ بِأَنَّ الْحَمْلَ كَانَ قَبْلَ انْتِقَالِ مِلْكِهَا إلَيْهِ، فَإِنْ تَيَقَّنَ بِذَلِكَ فُسِخَ الْبَيْعُ، وَالْهِبَةُ، وَالْإِصْدَاقُ، وَالنِّكَاحُ، وَرُدَّتْ إلَى الَّذِي كَانَتْ لَهُ، فَإِنْ كَانَ تَزَوَّجَهَا وَهِيَ أَمَةٌ: أُمِرَ بِأَنْ لَا يَطَأَهَا حَتَّى تَضَعَ وَلَمْ يُفْسَخْ النِّكَاحُ، لِمَا قَدْ ذَكَرْنَاهُ فِي " كِتَابِ النِّكَاحِ " مِنْ دِيوَانِنَا هَذَا.

L35680 The summary of this ruling is that a female slave without a husband has no waiting period. If she is not in a waiting period, her marriage is permissible. If certainty is not achieved by the time she gives birth - an assessment is conducted - should her delivery occur less than nine months from when the first husband denied having had intercourse with her, or less than six months from when the second husband had intercourse with her, the child is unquestionably attributed to the first husband.

وَجُمْلَتُهُ: أَنَّهُ لَا عِدَّةَ عَلَى أَمَةٍ مِنْ غَيْرِ زَوْجٍ، فَإِذَا لَمْ تَكُنْ فِي عِدَّةٍ فَنِكَاحُهَا جَائِزٌ، فَإِنْ لَمْ يُوقِنْ ذَلِكَ حَتَّى تَضَعَ -: نُظِرَ - فَإِنْ كَانَ وَضْعُهَا لِأَقَلَّ مِنْ تِسْعَةِ أَشْهُرٍ مِنْ حِينِ أَنْكَرَ الْأَوَّلُ وَطْأَهَا، أَوْ لِأَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ مِنْ حَيْثُ وَطِئَهَا الثَّانِي: فَالْوَلَدُ لِلْأَوَّلِ بِلَا شَكٍّ.

L35681 If she gives birth to the child even a moment beyond nine months from the time of the second intercourse, the child is legally attributed to the latter without doubt.

إنْ وَلَدَتْهُ لِأَكْثَرَ مِنْ تِسْعَةِ أَشْهُرٍ بِطَرْفَةِ عَيْنٍ مِنْ حِينِ وَطِئَهَا الثَّانِي: فَالْوَلَدُ لِلثَّانِي بِلَا شَكٍّ.

L35682 If she gives birth after more than nine months since the first was able to have intercourse with her and less than six months since the second had intercourse with her, the child is not legally affiliated with the first nor the

second. The child is owned by the second if his mother is an enslaved woman, except that she is necessarily emancipated because of him, as per the rulings we detailed in the Book of Emancipation.

فَإِنْ وَلَدَتْهُ لِأَكْثَرَ مِنْ تِسْعَةِ أَشْهُرٍ مِنْ حِينِ أَمْكَنَ الْأَوَّلُ وَطْأَهَا، وَلِأَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ مِنْ حِينِ وَطِئَهَا الثَّانِي: فَهُوَ غَيْرُ لَاحِقٍ بِالْأَوَّلِ وَلَا بِالثَّانِي، وَهُوَ مَمْلُوكٌ لِلثَّانِي إِنْ كَانَتْ أُمُّهُ أَمَةً، إِلَّا أَنَّهَا تَعْتِقُ عَلَيْهِ وَلَا بُدَّ، لِمَا ذَكَرْنَا فِي " كِتَابِ الْعِتْقِ ".

L35683 If she gives birth to the child less than nine months from when intercourse became possible with the first [husband] and more than six months from when the second husband had intercourse with her, then the child necessarily belongs to the first husband. This is because his marital bed preceded that of the second husband, and paternity cannot be reassigned from him except by a definitive text or certainty necessitated by direct observation. The Messenger of Allah (peace and blessings be upon him) said: "The child belongs to the holder of the marital bed."

فَلَوْ وَلَدَتْهُ لِأَقَلَّ مِنْ تِسْعَةِ أَشْهُرٍ مِنْ حِينِ أَمْكَنَ الْأَوَّلُ وَطْأَهَا، وَلِأَكْثَرَ مِنْ سِتَّةِ أَشْهُرٍ مِنْ حِينِ وَطِئَهَا الثَّانِي: فَهُوَ لِلْأَوَّلِ وَلَا بُدَّ، لِأَنَّ فِرَاشَهُ كَانَ قَبْلَ فِرَاشِ الثَّانِي، فَلَا يَنْتَقِلُ عَنْهُ إِلَّا بِنَصٍّ، أَوْ يَقِينٍ مِنْ ضَرُورَةِ مُشَاهَدَةٍ وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْوَلَدُ لِصَاحِبِ الْفِرَاشِ» .

L35684 Since there is no doubt about this, it is impermissible to invalidate the first marital bond (which is the one established with certainty) and validate a second bond based on conjecture. However, this may only occur with a certainty that leaves no room for doubt.

فَإِذْ لَا شَكَّ فِي هَذَا فَلَا يَجُوزُ أَنْ يُبْطَلَ الْفِرَاشُ الْأَوَّلُ الَّذِي هُوَ الْمُتَيَقَّنُ وَيَصِحُّ فِرَاشٌ ثَانٍ بِظَنٍّ، لَكِنْ بِيَقِينٍ لَا مَجَالَ لِلشَّكِّ فِيهِ.

L35685 If it is ascertained, due to a deficiency in the child's formation, that the child is six months, seven months, or eight months [old], and this period was completed with the second, confirming that it does not belong to the first, then it undoubtedly belongs to the second without doubt.

فَإِنْ تَيَقَّنَ بِضُؤُولَةِ خِلْقَتِهِ أَنَّهُ لِسِتَّةِ أَشْهُرٍ، أَوْ سَبْعَةِ أَشْهُرٍ، أَوْ ثَمَانِيَةٍ، وَكَانَتْ هَذِهِ الْمُدَّةُ قَدْ اسْتَوْفَتْهَا عِنْدَ الثَّانِي وَتَيَقَّنَ بِذَلِكَ أَنَّهُ لَيْسَ لِلْأَوَّلِ، فَهُوَ لِلثَّانِي بِلَا شَكٍّ.

L35686 A pregnancy cannot validly be longer than nine months or shorter than six months; based on the words of Allah the Exalted: "And the child's gestation and weaning total thirty months" [Al-Ahqaf: 15].[11]

وَلَا يَجُوزُ أَنْ يَكُونَ حَمْلٌ أَكْثَرَ مِنْ تِسْعَةِ أَشْهُرٍ وَلَا أَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ؛ لِقَوْلِ اللَّهِ تَعَالَى: {وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا} [الأحقاف: ١٥] .

L35687–35688 And the Almighty said: {Mothers shall breastfeed their children for two complete years for those who wish to complete the breastfeeding period} [Al-Baqarah: 233]. Thus, whoever claims that a pregnancy and weaning can occur in more than thirty months has spoken falsehood and impossibility, openly rejecting the words of Allah, the Exalted and Glorious.[12]

وَقَالَ تَعَالَى: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ} [البقرة: ٢٣٣] فَمَنْ ادَّعَى أَنَّ حَمْلًا وَفِصَالًا يَكُونُ فِي أَكْثَرَ مِنْ ثَلَاثِينَ شَهْرًا: فَقَدْ قَالَ الْبَاطِلَ وَالْمُحَالَ، وَرَدَّ كَلَامَ اللَّهِ عَزَّ وَجَلَّ جِهَارًا.

[11] **Qur'an references (L35686):** Qur'an 46:15 (Al-Ahqaf).
[12] **Qur'an references (L35688):** Qur'an 2:233 (Al-Baqarah).

L35689 Abu Hanifah said: “Pregnancy can last two years.” His companions supported this with a ḥadīth transmitted by al-Ḥārith ibn Ḥaṣīrah (a discredited narrator) claiming Ibn Ṣayyād was born after two years of pregnancy. This is a lie and a falsehood. This Ibn Ḥaṣīrah (al-Ḥārith) was a Shiʿi who upheld the doctrine of the Return of ʿAlī to this world before the Judgment Day.

وَقَدْ قَالَ أَبُو حَنِيفَةَ: يَكُونُ الْحَمْلُ عَامَيْنِ، وَاحْتَجَّ لَهُ أَصْحَابُهُ بِحَدِيثٍ فِيهِ الْحَارِثُ بْنُ حَصِيرَةَ - وَهُوَ هَالِكٌ - أَنَّ ابْنَ صَيَّادٍ وُلِدَ لِسَنَتَيْنِ - وَهَذَا كَذِبٌ وَبَاطِلٌ - وَابْنُ حَصِيرَةَ هَذَا شِيعِيٌّ يَقُولُ بِرَجْعَةِ عَلِيٍّ إِلَى الدُّنْيَا.

L35690 They also mentioned—as we have narrated through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from al-Aʿmash from Abū Sufyān from their elders from ʿUmar: that a case was brought to him concerning a woman whose husband had been absent for two years. When he returned, she was pregnant. ʿUmar intended to stone her, but Muʿādh ibn Jabal said: “O Commander of the Faithful, if you have a claim against her, do you not also have a claim against what is in her womb?” ʿUmar therefore spared her until she gave birth to a boy whose incisors had grown in. Her husband recognized his likeness in the child, and ʿUmar declared: “Women fall short of being like Muʿādh! Had it not been for Muʿādh, ʿUmar would have perished!”

وَذَكَرُوا أَيْضًا - مَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ أَبِي سُفْيَانَ عَنْ أَشْيَاخٍ لَهُمْ عَنْ عُمَرَ: أَنَّهُ رُفِعَ إلَيْهِ امْرَأَةٌ غَابَ عَنْهَا زَوْجُهَا سَنَتَيْنِ فَجَاءَ - وَهِيَ حُبْلَى - فَهَمَّ عُمَرُ بِرَجْمِهَا، فَقَالَ لَهُ مُعَاذُ بْنُ جَبَلٍ: يَا أَمِيرَ الْمُؤْمِنِينَ، إنْ يَكُ السَّبِيلُ لَك عَلَيْهَا، فَلَا سَبِيلَ لَك عَلَى مَا فِي بَطْنِهَا؟ فَتَرَكَهَا عُمَرُ حَتَّى وَلَدَتْ غُلَامًا - قَدْ نَبَتَتْ ثَنَايَاهُ - فَعَرَفَ زَوْجُهَا شَبَهَهُ، فَقَالَ عُمَرُ: عَجَزَ النِّسَاءُ أَنْ تَكُونَ مِثْلَ مُعَاذٍ، لَوْلَا مُعَاذٌ هَلَكَ عُمَرُ.

L35691 Abu Muhammad said: “This is also invalid because it is from Abu Sufyan—who is weak—from their elders, and they are unknown [in reliability].”

قَالَ أَبُو مُحَمَّد: وَهَذَا أَيْضًا بَاطِلٌ، لِأَنَّهُ عَنْ أَبِي سُفْيَانَ - وَهُوَ ضَعِيفٌ - عَنْ أَشْيَاخٍ لَهُمْ، وَهُمْ مَجْهُولُونَ.

L35692 From the chain of Saʿīd ibn Manṣūr: I am Dāwūd ibn ʿAbd al-Raḥmān, from Ibn Jurayj, from Jamīlah bint Saʿd, from ʿĀ’ishah, the Mother of the Believers, who said: “A woman’s pregnancy cannot exceed two years by the amount it takes for the shadow of this spindle to shift.” —Jamīlah bint Saʿd is unknown as a narrator: her reliability is not established—therefore, this statement is invalid—and all praise is due to Allah, Lord of the worlds.

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا دَاوُد بْنُ عَبْدِ الرَّحْمَنِ عَنْ ابْنِ جُرَيْجٍ عَنْ جَمِيلَةَ بِنْتِ سَعْدٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: مَا تَزِيدُ الْمَرْأَةُ فِي الْحَمْلِ عَلَى سَنَتَيْنِ قَدْرَ مَا يَتَحَوَّلُ ظِلُّ هَذَا الْمِغْزَلِ - جَمِيلَةُ بِنْتُ سَعْدٍ مَجْهُولَةٌ: لَا يُدْرَى مَنْ هِيَ؟ فَبَطَلَ هَذَا الْقَوْلُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35693 A group has maintained that pregnancy can extend beyond four years: we have transmitted this from Saʿīd ibn al-Musayyab through a chain containing ʿAlī ibn Zayd ibn Judʿān—and he is weak—and this is the position of al-Shāfiʿī. We are unaware of any plausible basis whatsoever for this opinion upon which they could have relied.

وَقَالَتْ طَائِفَةٌ: يَكُونُ الْحَمْلُ أَكْثَرَ مِنْ أَرْبَعِ سِنِينَ -: رُوِّينَاهُ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِنْ طَرِيقٍ فِيهَا عَلِيُّ بْنُ زَيْدِ بْنِ جُدْعَانَ - وَهُوَ ضَعِيفٌ - وَهُوَ قَوْلُ الشَّافِعِيِّ - وَلَا نَعْلَمُ لِهَذَا الْقَوْلِ شُبْهَةً تَعَلَّقُوا بِهَا أَصْلًا.

وَقَالَتْ طَائِفَةٌ: يَكُونُ الْحَمْلُ خَمْسَ سِنِينَ وَلَا يَكُونُ أَكْثَرَ أَصْلًا - وَهُوَ قَوْلُ عَبَّادِ بْنِ الْعَوَّامِ، وَاللَّيْثِ بْنِ سَعْدٍ - وَرُوِيَ عَنْ مَالِكٍ أَيْضًا - وَلَا نَعْلَمُ لِهَذَا الْقَوْلِ مُتَعَلَّقًا أَصْلًا.

L35694 A group held that pregnancy may last up to five years and cannot exceed that at all—this being the opinion of ʿAbbād ibn al-ʿAwwām and al-Layth ibn Saʿd, and it is also attributed to Mālik. We find no foundational basis for this opinion.

وَقَالَتْ طَائِفَةٌ: يَكُونُ الْحَمْلُ سَبْعَ سِنِينَ وَلَا يَكُونُ أَكْثَرَ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَمَالِكٍ، وَاحْتَجَّ مُقَلِّدُوهُ: بِأَنَّ مَالِكًا وُلِدَ لِثَلَاثَةِ أَعْوَامٍ.

L35695 A group said: The pregnancy period is seven years and cannot exceed this—this being the opinion of al-Zuhrī and Mālik; their adherents cited as evidence that Mālik was born following a three-year gestational period.

وَأَنَّ نِسَاءَ بَنِي الْعِجْلَانِ وَلَدْنَ لِثَلَاثِينَ شَهْرًا.

L35696–35697 And that the women of Banū al-ʿIjlān gave birth after thirty months of pregnancy.

وَأَنَّ مَوْلَاةً لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ حَمَلَتْ ثَلَاثَ سِنِينَ.

L35698 And that a freed female slave of Umar ibn Abd al-Aziz carried a pregnancy for three years.

وَأَنَّ هَرِمَ بْنَ حَيَّانَ، وَالضَّحَّاكَ بْنَ مُزَاحِمَ حُمِلَ بِكُلِّ وَاحِدٍ مِنْهُمَا سَنَتَيْنِ -.

L35699 It is reported that both Haram ibn Hayyan and al-Ḍaḥḥāk ibn Muzāḥim gestated for two years each.

وَقَالَ مَالِكٌ: بَلَغَنِي عَنْ امْرَأَةٍ حَمَلَتْ سَبْعَ سِنِينَ.

L35700 And Mālik said: It has reached me that a woman carried a pregnancy for seven years.

قَالَ أَبُو مُحَمَّد: وَكُلُّ هَذِهِ أَخْبَارٌ مَكْذُوبَةٌ رَاجِعَةٌ إلَى مَنْ لَا يُصَدَّقُ، وَلَا يُعْرَفُ مَنْ هُوَ؟ لَا يَجُوزُ الْحُكْمُ فِي دِينِ اللَّهِ تَعَالَى بِمِثْلِ هَذَا.

L35701 Abu Muhammad said: All of these are fabricated reports traced back to an untrustworthy source, and it is not known who he is. It is impermissible to rule in the religion of Allah the Exalted based on such things.

وَمِمَّنْ رُوِيَ عَنْهُ مِثْلُ قَوْلِنَا: عُمَرُ بْنُ الْخَطَّابِ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيَّبِ يَقُولُ: قَالَ عُمَرُ بْنُ الْخَطَّابِ أَيُّمَا رَجُلٍ طَلَّقَ امْرَأَتَهُ فَحَاضَتْ حَيْضَةً أَوْ حَيْضَتَيْنِ ثُمَّ قَعَدَتْ فَلْتَجْلِسْ تِسْعَةَ أَشْهُرٍ حَتَّى يَسْتَبِينَ حَمْلُهَا، فَإِنْ لَمْ يَسْتَبِنْ حَمْلُهَا فِي تِسْعَةِ أَشْهُرٍ فَلْتَعْتَدَّ بَعْدَ التِّسْعَةِ الْأَشْهُرِ ثَلَاثَةَ أَشْهُرٍ عِدَّةَ الَّتِي قَدْ قَعَدَتْ عَنْ الْمَحِيضِ.

L35702 Among those from whom a similar opinion to ours has been narrated is ʿUmar ibn al-Khaṭṭāb—as reported through ʿAbd al-Razzāq from Ibn Jurayj, who narrated: Yaḥyā ibn Saʿīd al-Anṣārī informed me that he heard Saʿīd ibn al-Musayyab say: ʿUmar ibn al-Khaṭṭāb stated, “Any man who divorces his wife and she menstruates once or twice must then wait nine months until her pregnancy becomes evident. If her pregnancy does not become evident within nine months, she must thereafter observe a three-month waiting period—the waiting period for a woman who has ceased menstruation.”

قَالَ أَبُو مُحَمَّد: فَهَذَا عُمَرُ لَا يَرَى الْحَمْلَ أَكْثَرَ مِنْ تِسْعَةِ أَشْهُرٍ، وَهُوَ قَوْلُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L35703 Abū Muḥammad said: Thus, this ʿUmar does not hold the view that pregnancy lasts beyond nine months, and this is the opinion of Muḥammad ibn ʿAbd Allāh ibn ʿAbd al-Ḥakam, Abū Sulaymān, and our associates.

L35704 Ali said: However, a child may die in its mother's womb and remain there indefinitely until she expels it in pieces over several years. If this is confirmed, it is a valid pregnancy, and her waiting period only concludes upon delivering it entirely. However, no inheritance is withheld for it, nor is paternity established at all, because there is no possibility of it being born alive. If she were to act upon certainty of this to abort it initially, it would be permissible, as it is undoubtedly dead—and success is from Allah, the Exalted.

قَالَ عَلِيٌّ: إِلَّا أَنَّ الْوَلَدَ قَدْ يَمُوتُ فِي بَطْنِ أُمِّهِ فَيَتَمَادَى بِلَا غَايَةٍ حَتَّى تُلْقِيَهُ مُتَقَطِّعًا فِي سِنِينَ، فَإِنْ صَحَّ هَذَا فَإِنَّهُ حَمْلٌ صَحِيحٌ لَا تَنْقَضِي عِدَّتُهَا إِلَّا بِوَضْعِهِ كُلِّهِ إِلَّا أَنَّهُ لَا يُوقَفُ لَهُ مِيرَاثٌ، وَلَا يُلْحَقُ أَصْلًا؛ لِأَنَّهُ لَا سَبِيلَ إِلَى أَنْ يُولَدَ حَيًّا، وَلَوْ سَعَتْ عِنْدَ تَيَقُّنِ ذَلِكَ فِي إِسْقَاطِهِ بَدْوًا لَكَانَ مُبَاحًا؛ لِأَنَّهُ مَيِّتٌ بِلَا شَكٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L35705 As for the child of the wife born no more than nine months after her husband's last intercourse with her, it is definitively attributed to him without *liʿān*. Similarly, if she delivers the child in less than six months (unless it is a non-viable fetus), it belongs to him. The enslaved woman becomes an *umm walad* through this child, and the waiting period of the divorced woman and the widow concludes upon its birth.

وَأَمَّا وَلَدُ الزَّوْجَةِ لَا أَكْثَرُ مِنْ تِسْعَةِ أَشْهُرٍ مِنْ آخِرِ وَطْءٍ وَطِئَهَا زَوْجُهَا فَهُوَ مُتَيَقَّنٌ بِلَا لِعَانٍ، وَكَذَلِكَ إِنْ وَلَدَتْهُ لِأَقَلَّ مِنْ سِتَّةِ أَشْهُرٍ إِلَّا أَنْ يَكُونَ سِقْطًا فَهُوَ لَهُ وَتَصِيرُ الْأَمَةُ بِهِ أُمَّ، وَلَدِهِ، وَتَنْقَضِي بِهِ عِدَّةُ الْمُطَلَّقَةِ، وَالْمُتَوَفَّى عَنْهَا.

L35706–35707 Regarding the istibraʾ (waiting period) for a female slave with transferring ownership, differences of opinion have also been recorded - as we narrated through Abd al-Razzaq's transmission: I [Ibn Jurayj] said: Ata reported that three merchants traded a female slave among themselves, and she gave birth. Umar ibn al-Khattab summoned the lineage experts, who attributed the child's parentage to one of them. Umar then ruled: "Whoever purchases a female slave who has reached menstruation must observe a waiting period with her until she menstruates. If she has not menstruated, he must wait forty-five nights with her."

وَأَمَّا اسْتِبْرَاءُ الْأَمَةِ الْمُتَنَقِّلَةِ الْمِلْكِ فَقَدْ اُخْتُلِفَ فِي ذَلِكَ أَيْضًا - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ: تَدَاوَلَ ثَلَاثَةٌ مِنْ التُّجَّارِ جَارِيَةً فَوَلَدَتْ، فَدَعَا عُمَرُ بْنُ الْخَطَّابِ الْقَافَةَ فَأَلْحَقُوا وَلَدَهَا بِأَحَدِهِمْ. ثُمَّ قَالَ عُمَرُ: مَنْ ابْتَاعَ جَارِيَةً قَدْ بَلَغَتْ الْمَحِيضَ فَلْيَتَرَبَّصْ بِهَا حَتَّى تَحِيضَ، فَإِنْ كَانَتْ لَمْ تَحِضْ فَلْيَتَرَبَّصْ بِهَا خَمْسًا وَأَرْبَعِينَ لَيْلَةً.

L35708 And through the chain of Al-Ḥajjāj ibn Al-Minhāl: Hushaym said: I heard from Al-Ḥajjāj and Manṣūr. Al-Ḥajjāj reported from ʿAṭāʾ, while Manṣūr reported from Saʿīd ibn Al-Musayyib. They both said: A female slave who has not menstruated must undergo *istibrāʾ* of one and a half months.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا هُشَيْمٌ أَنَا الْحَجَّاجُ، وَمَنْصُورٌ، قَالَ الْحَجَّاجُ عَنْ عَطَاءٍ، وَقَالَ مَنْصُورٌ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَا جَمِيعًا: تُسْتَبْرَأُ الْأَمَةُ الَّتِي لَمْ تَحِضْ بِشَهْرٍ وَنِصْفٍ.

L35709 A second opinion—as narrated to us through ʿAbd al-Razzāq, who reported two chains: one from Sufyān al-Thawrī and another from Maʿmar. Sufyān reported from Firās, from al-Shaʿbī, from ʿAlqamah, from Ibn Masʿūd; and Maʿmar reported from Ayyūb, from Nāfiʿ, from Ibn ʿUmar. They both stated

collectively: A female slave must undergo istibrāʾ (a waiting period) of one menstrual cycle to confirm she is not pregnant.

وَقَوْلٌ ثَانٍ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، قَالَ سُفْيَانُ عَنْ فِرَاسٍ عَنْ الشَّعْبِيِّ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ، وَقَالَ مَعْمَرٌ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، قَالَا جَمِيعًا: تُسْتَبْرَأُ الْأَمَةُ بِحَيْضَةٍ.

L35710 Via the chain of ʿAbd al-Razzāq, from Ibn Jurayj: I asked ʿAṭāʾ, "What is the ʿiddah of a female slave when she is sold?" He replied, "One menstrual cycle." ʿAmr ibn Dīnār also stated this.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: كَمْ عِدَّةُ الْأَمَةِ تُبَاعُ؟ قَالَ: حَيْضَةٌ - وَقَالَهُ أَيْضًا عَمْرُو بْنُ دِينَارٍ.

L35711 And through the chain of ʿAbd al-Razzāq from Maʿmar from Qatādah regarding the female slave sold after having menstruated: The seller must subject her to *istibrā'* (a waiting period to confirm non-pregnancy), and the buyer must perform *istibrā'* by awaiting another menstrual cycle. Al-Thawrī maintained this ruling.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي الْأَمَةِ تُبَاعُ وَقَدْ حَاضَتْ قَالَ: يَسْتَبْرِئُهَا الَّذِي بَاعَهَا، وَيَسْتَبْرِئُهَا الَّذِي اشْتَرَاهَا بِحَيْضَةٍ أُخْرَى - وَقَالَ بِهِ الثَّوْرِيُّ.

L35712 And via the chain of Ḥammād ibn Salamah, from Ḥumayd, from al-Ḥasan regarding the female slave whose master sells her—while he has intercourse with her—[al-Ḥasan] said: The master must ascertain her non-pregnancy by [waiting for] one menstrual cycle before selling her, and the buyer must ascertain her non-pregnancy by [waiting for] another menstrual cycle. This is the view of al-Shāfiʿī and Abū Sulaymān.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ فِي الْأَمَةِ إذَا بَاعَهَا سَيِّدُهَا - وَهُوَ يَطَؤُهَا - قَالَ: يَسْتَبْرِئُهَا بِحَيْضَةٍ قَبْلَ أَنْ يَبِيعَهَا، وَيَسْتَبْرِئُهَا الْمُشْتَرِي بِحَيْضَةٍ أُخْرَى - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ.

L35713 A third opinion—as transmitted to us through Al-Ḥajjāj ibn Minhal's chain: Hushaym reported to us from Manṣūr from Al-Ḥasan that he was asked about the istibrā' (pregnancy waiting period) for a female slave who does not menstruate. He answered: "She undergoes istibrā' for three months." We then came to Ibn Sīrīn and asked him about this, to which he replied: "Three months." Hushaym said: Khalid al-Ḥadhā' reported to us from Abū Qilābah, who said: "The female slave undergoes istibrā' for three months."

وَقَوْلٌ ثَالِثٌ - كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ أَنَا هُشَيْمٌ أَنَا مَنْصُورٌ عَنْ الْحَسَنِ: أَنَّهُ سُئِلَ عَنْ اسْتِبْرَاءِ الْأَمَةِ الَّتِي لَمْ تَحِضْ؟ قَالَ: تُسْتَبْرَأُ بِثَلَاثَةِ أَشْهُرٍ، فَأَتَيْنَا ابْنَ سِيرِينَ فَسَأَلْنَاهُ عَنْ ذَلِكَ؟ فَقَالَ: ثَلَاثَةُ أَشْهُرٍ، قَالَ هُشَيْمٌ: وَأَرَنَا خَالِدٌ الْحَذَّاءُ عَنْ أَبِي قِلَابَةَ قَالَ: تُسْتَبْرَأُ الْأَمَةُ بِثَلَاثَةِ أَشْهُرٍ.

L35714–35715 From the path of Abd al-Razzaq from Ma'mar from Ayyub from Nafi' from Ibn Umar, who said: If the female slave is a virgin, he does not need to observe the waiting period (istibra') to ascertain her non-pregnancy if he wishes. Ayyub said: He must ascertain her non-pregnancy by observing the waiting period before having intercourse with her.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ: إذَا كَانَتْ الْأَمَةُ عَذْرَاءَ لَمْ يَسْتَبْرِئْهَا إنْ شَاءَ - قَالَ أَيُّوبُ: يَسْتَبْرِئُهَا قَبْلَ أَنْ يَقَعَ عَلَيْهَا.

L35716 And through him to Ma’mar from Qatadah, who said regarding a virgin slave girl purchased from a woman: “He is not required to subject her to istibra’. But if he purchases her from a man, he must subject her to istibra’.”

وَبِهِ إِلَى مَعْمَرٍ عَنْ قَتَادَةَ قَالَ فِي أَمَةٍ عَذْرَاءَ اشْتَرَاهَا مِنْ امْرَأَةٍ قَالَ: لَا يَسْتَبْرِئُهَا، فَإِنْ اشْتَرَاهَا مِنْ رَجُلٍ فَلْيَسْتَبْرِئْهَا.

L35717 Sufyan al-Thawri said: The female who has not reached puberty is subjected to *istibra’* just as the old woman is subjected to *istibra’*.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: تُسْتَبْرَأُ الَّتِي لَمْ تَبْلُغْ كَمَا تُسْتَبْرَأُ الْعَجُوزُ.

L35718 Abu Hanifa and his companions said: A man must not have sexual intercourse with a female slave he purchases her until he observes the waiting period to confirm non-pregnancy through one menstrual cycle. If she does not menstruate, the waiting period is one month. It is not lawful for him to derive any pleasure from her before completing this istibra’.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يَطَأُ الرَّجُلُ الْجَارِيَةَ يَشْتَرِيهَا حَتَّى يَسْتَبْرِئَهَا بِحَيْضَةٍ، فَإِنْ كَانَتْ لَا تَحِيضُ فَشَهْرٌ، وَلَا يَحِلُّ لَهُ أَنْ يَتَلَذَّذَ مِنْهَا بِشَيْءٍ قَبْلَ الِاسْتِبْرَاءِ.

L35719 They said: If he purchased her but did not take custody of her until she menstruated, it would not be permissible for him to count that menstruation as the waiting period (istibrā’). Rather, he must require her to observe the waiting period with another menstruation without exception.

قَالُوا: فَلَوْ اشْتَرَاهَا فَلَمْ يَقْبِضْهَا حَتَّى حَاضَتْ لَمْ يَجُزْ لَهُ أَنْ يَعُدَّ تِلْكَ الْحَيْضَةَ اسْتِبْرَاءً، بَلْ يَسْتَبْرِئُهَا بِحَيْضَةٍ أُخْرَى وَلَا بُدَّ.

L35720 They said: If the guardian marries her to a man, neither the guardian nor the husband is required to ensure she observes the waiting period except in the report of Al-Hasan ibn Ziyad from Abu Hanifa, for he said: He must not consummate the marriage until he ensures she undergoes one menstrual cycle for istibrā’.

قَالُوا: فَلَوْ زَوَّجَهَا مِنْ رَجُلٍ لَمْ يَكُنْ عَلَيْهِ أَنْ يَسْتَبْرِئَهَا لَا هُوَ وَلَا النَّاكِحُ إِلَّا فِي رِوَايَةِ الْحَسَنِ بْنِ زِيَادٍ عَنْ أَبِي حَنِيفَةَ، فَإِنَّهُ قَالَ: لَا يَطَؤُهَا حَتَّى يَسْتَبْرِئَهَا بِحَيْضَةٍ.

L35721 Scholars differed concerning a woman who is sold while menstruating, then her menstruation ceases—not due to a pregnancy identifiable by that cessation. Abū Ḥanīfa and Abū Yūsuf said: He must not have intercourse with her until four months have elapsed.

وَاخْتَلَفُوا فِي الَّتِي تَحِيضُ تُبَاعُ فَتَرْتَفِعُ حَيْضَتُهَا لَا مِنْ حَمْلٍ يُعْرَفُ بِهَا؟ قَالَ أَبُو حَنِيفَةَ، وَأَبُو يُوسُفَ: لَا يَطَؤُهَا حَتَّى تَمْضِيَ أَرْبَعَةُ أَشْهُرٍ.

L35722 Muhammad ibn al-Hasan said: “He must not cohabit with her until she has completed two months and five nights”—then he revised his opinion and said: “He must not cohabit with her until she has completed four months and ten nights.”

وَقَالَ مُحَمَّدُ بْنُ الْحَسَنِ: لَا يَطَؤُهَا حَتَّى يَمْضِيَ عَلَيْهَا شَهْرَانِ وَخَمْسُ لَيَالٍ - ثُمَّ رَجَعَ فَقَالَ: لَا يَطَؤُهَا حَتَّى تَمْضِيَ لَهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرُ لَيَالٍ.

L35723 And Zufar said: He must not consummate the marriage with her until two years have passed for her—and this is the opinion of Sufyān al-Thawrī.

وَقَالَ زُفَرُ: لَا يَطَؤُهَا حَتَّى يَمْضِيَ لَهَا سَنَتَانِ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ -

L35724 These statements are utterly corrupt because they are without proof.

وَهَذِهِ أَقْوَالٌ فِي غَايَةِ الْفَسَادِ، لِأَنَّهَا بِلَا بُرْهَانٍ.

L35725 Abu Muhammad said: Those who held the view requiring istibrā' (ensuring absence of pregnancy) – as we mentioned – cited as evidence the narration we transmitted through Abu Dawud's chain: 'Ubaydullah ibn 'Umar ibn Maysarah, Yazid ibn Zurai', Sa'id—that is, Ibn Abi 'Arubah—from Qatadah, from Ṣāliḥ ibn Rustum al-Khazzāz, from Abu 'Alqamah al-Hāshimī, from Abu Sa'īd al-Khudrī: Some Companions of the Messenger of Allah (peace be upon him) took female captives at Awṭās. People hesitated to engage in sexual relations with them due to their husbands being among the polytheists. Thereupon Allah the Almighty revealed: "And forbidden to you are married women except those whom your right hands possess" [4:24] – meaning they are lawful for you once their waiting period has ended.[13]

قَالَ أَبُو مُحَمَّد: وَاحْتَجَّ مَنْ رَأَى الِاسْتِبْرَاءَ - كَمَا ذَكَرْنَا -: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ أَنَا يَزِيدُ بْنُ زُرَيْعٍ أَنَا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ صَالِحِ بْنِ رُسْتُمَ الْخَزَّازِ عَنْ أَبِي عَلْقَمَةَ الْهَاشِمِيِّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ بَعْضَ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصَابُوا سَبَايَا بِأَوْطَاسٍ فَكَانَ النَّاسُ تَحَرَّجُوا مِنْ غِشْيَانِهِنَّ مِنْ أَجْلِ أَزْوَاجِهِنَّ مِنْ الْمُشْرِكِينَ، فَأَنْزَلَ اللَّهُ عَزَّ وَجَلَّ: {وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلا مَا مَلَكَتْ} [النساء: ٢٤] أَيْ فَهُنَّ لَكُمْ حَلَالٌ إِذَا انْقَضَتْ عِدَّتُهُنَّ.

L35726–35728 And from the chain of Abū Dāwūd: We are ʿAmr ibn ʿAwn who narrated to us from Sharīk, who narrated from Qays ibn Wahb, from Abū al-Waddāk, from Abū Saʿīd al-Khudrī who elevated it to the Prophet. Regarding the captives of Awṭās, the Prophet said: "A pregnant woman should not be had intercourse with until she gives birth, and a non-pregnant woman [should not be had intercourse with] until she menstruates."

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا عَمْرُو بْنُ عَوْنٍ أَنَا شَرِيكٌ عَنْ قَيْسِ بْنِ وَهْبٍ عَنْ أَبِي الْوَدَّاكِ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ رَفَعَهُ أَنَّهُ قَالَ فِي سَبَايَا أَوْطَاسٍ «لَا تُوطَأُ حَامِلٌ حَتَّى تَضَعَ، وَلَا غَيْرُ ذَاتِ حَمْلٍ حَتَّى تَحِيضَ» .

L35729 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Ṭāwus: The Messenger of Allah—peace and blessings be upon him—sent a caller during some of his military expeditions, declaring, "No man shall have sexual intercourse with a pregnant woman until she delivers or with a non-pregnant woman until she has menstruated."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ طَاوُسٍ أَرْسَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُنَادِيًا فِي بَعْضِ مَغَازِيهِ: «لَا يَقَعَنَّ رَجُلٌ عَلَى حَامِلٍ، وَلَا عَلَى حَائِلٍ حَتَّى تَحِيضَ» .

L35730 From the narration of Abd al-Razzaq, from Sufyan al-Thawri, from Zakariya, from al-Sha'bi: "The Muslims captured female captives on the day of Awṭās, so the Messenger of Allah (peace be upon him) commanded them not to approach a pregnant woman until she delivers, nor a non-pregnant woman until she menstruates once." We are not aware of any other reports on this matter apart from what we have mentioned.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ زَكَرِيَّا عَنْ الشَّعْبِيِّ «أَصَابَ الْمُسْلِمُونَ سَبَايَا يَوْمَ أَوْطَاسٍ فَأَمَرَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يَقَعُوا عَلَى حَامِلٍ حَتَّى تَضَعَ، وَلَا غَيْرِ حَامِلٍ حَتَّى تَحِيضَ حَيْضَةً» لَا نَعْلَمُ وَرَدَ فِي هَذَا غَيْرُ مَا ذَكَرْنَا.

L35731 Abū Muḥammad said: The ḥadīth of Ṭāwus and al-Sha'bī are mursal, and

قَالَ أَبُو مُحَمَّد حَدِيثُ طَاوُسٍ، وَالشَّعْبِيُّ: مُرْسَلَانِ، وَلَا حُجَّةَ فِي مُرْسَلٍ - وَخَبَرُ أَبِي الْوَدَّاكِ - سَاقِطٌ، لِأَنَّ أَبِي الْوَدَّاكِ وَشَرِيكًا ضَعِيفَانِ.

[13] **Qur'an references (L35725):** Qur'an 4:24 (An-Nisa).

there is no proof in a mursal. The narration of Abū al-Waddāk is rejected because Abū al-Waddāk and Shurayk are weak narrators.

L35732 Then, if it were authentic, it would constitute a proof against those who cite it as evidence, for it contains the prohibition of intercourse with a woman who is not pregnant until she menstruates. Yet they do not hold this opinion; rather, they prescribe limits not found in these transmitted reports. Among the major sins is opposing a narration one cites as evidence and deems sound.

L35733 As for the report of Abū ʻAlqamah, it is the only authentic narration in this chapter. It contains no mention of the waiting period (istibrāʾ) whatsoever—neither by explicit text nor inferential evidence—and no indication permitting intercourse with enslaved chaste women solely upon acquiring them through ownership. Thus, the report is against them, not in their favor.

L35734 As for the statement at the end—"Are they lawful for you once their waiting period has ended?"—there is no doubt that it is not from the speech of Allah's Messenger, peace and blessings be upon him. The highest level it could occupy is that it originates from the speech of Abū Saʿīd, and no authoritative evidence can be derived from the words of anyone besides those of Allah's Messenger, peace and blessings be upon him.

L35735–35737 Then, even if it were established—and it can never be established—that it is from the words of the Messenger of Allah, may Allah's peace and blessings be upon him, they would have no proof in it. Because it only states "when their waiting periods have concluded," while the well-known waiting period in the religion is none other than four months and ten days for widows, three menstrual cycles for menstruating divorced women, three months for divorced women who have not yet menstruated or those who do not menstruate, delivery of pregnancy for a divorced or widowed woman—with no extension—yet here they have equated istibrāʾ—waiting to confirm non-pregnancy—with a single menstruation cycle? This does not constitute a valid waiting period—thus their claim to any basis for it is invalidated.

L35738 As for Mālik, he deemed the waiting period (istibrāʾ) through stipulated terms in the case of female slaves but did not require it for livestock and did

ثُمَّ لَوْ صَحَّتْ لَكَانَتْ حُجَّةً عَلَى مَنْ احْتَجَّ بِهَا؛ لِأَنَّ فِيهَا الْمَنْعَ مِنْ وَطْءِ الَّتِي لَيْسَتْ حَامِلًا حَتَّى تَحِيضَ، وَهُمْ لَا يَقُولُونَ بِهَذَا بَلْ يَحُدُّونَ حُدُودًا لَيْسَتْ فِي هَذِهِ الْآثَارِ، وَمِنْ الْكَبَائِرِ مُخَالَفَةُ أَثَرٍ يَحْتَجُّ بِهِ الْمَرْءُ وَيُصَحِّحُهُ.

وَأَمَّا خَبَرُ أَبِي عَلْقَمَةَ فَهُوَ الَّذِي لَا يَصِحُّ فِي هَذَا الْبَابِ غَيْرُهُ، فَلَيْسَ فِيهِ ذِكْرٌ لِلِاسْتِبْرَاءِ أَصْلًا، لَا بِنَصٍّ وَلَا بِدَلِيلٍ فِيهِ إبَاحَةُ وَطْءِ الْمُحْصَنَاتِ إذَا مَلَكَهُنَّ فَقَطْ - فَهُوَ عَلَيْهِمْ لَا لَهُمْ.

وَأَمَّا الَّذِي فِي آخَرَ - أَيْ فَهِيَ لَكُمْ حَلَالٌ إذَا انْقَضَتْ عِدَّتُهُنَّ؟ فَلَا شَكَّ فِي أَنَّهُ لَيْسَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَعْلَى مَرَاتِبِهِ أَنْ يَكُونَ مِنْ كَلَامِ أَبِي سَعِيدٍ - وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

ثُمَّ لَوْ صَحَّ أَنَّهُ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ لَا يَصِحُّ أَبَدًا لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ إنَّمَا فِيهِ " إذَا انْقَضَتْ عِدَّتُهُنَّ " وَالْعِدَّةُ الْمَعْرُوفَةُ فِي الدِّينِ لَيْسَتْ إلَّا أَرْبَعَةَ أَشْهُرٍ وَعَشْرًا فِي الْوَفَاةِ، وَثَلَاثَةُ قُرُوءٍ لِلَّتِي تَحِيضُ مِنْ الْمُطَلَّقَاتِ، أَوْ ثَلَاثَةُ أَشْهُرٍ لِلَّتِي لَمْ تَحِضْ أَوْ لَا تَحِيضُ مِنْ الْمُطَلَّقَاتِ، أَوْ وَضْعُ الْحَمْلِ لِمُطَلَّقَةٍ، أَوْ مُتَوَفًّى عَنْهَا - وَلَا مَزِيدَ - وَهُمْ هَاهُنَا جَعَلُوا الِاسْتِبْرَاءَ بِحَيْضَةٍ؟ وَلَيْسَ هَذَا عِدَّةً - فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ فِيهِ أَصْلًا.

not permit stipulating cash payment in that matter. He also held that the expenses for her upkeep during the stipulated period are incumbent upon the seller.

L35739 He held that what occurred during the period of the stipulated agreement would fall upon the seller, and he affirmed the validity of such agreements concerning virgins—yet despite all this, he did not hold that the stipulated agreement absolves from pregnancy. These are opinions unattributed to any scholar before him, and they reach the utmost contradiction and corruption in reasoning.

L35740 And the first of that is establishing as an obligation the condition of mutual agreement—a condition not found in the Book of Allah the Almighty and Majestic—and invalidating the condition of cash payment of the price, which is a right for the seller commanded in the Quran to fulfill it to him, since Allah the Exalted says: "And do not deprive people of their rightful possessions" [Al-A'raf: 85], and His statement the Exalted: "unless it is a trade by mutual consent among you" [An-Nisa: 29].[14]

L35741 The second matter is that he differentiated it by making a distinction in that regard between the high-quality [animals] and the defective ones—and this is utterly astonishing! Do you suppose they are unaware that the defective [animal] bears [it] just as the high-quality [animal] bears it, with no difference?

L35742 The third issue is obligating maintenance upon the seller, which constitutes unlawful consumption of wealth. The transaction between them must either be valid or invalid. If it were valid, what rationale would obligate the seller to provide maintenance regarding another's female slave? If it were invalid, for what reason was the mutual agreement obligated?

L35743–35745 If they were to say, "Because her pregnancy became evident, the sale is invalid?" We would reply, "This [claim] cannot be reliably upheld by your position regarding intercourse after a menstrual cycle, and thus they obligated her maintenance in that case." The obligation lies on the seller; otherwise, the unsoundness of your assertion has been conclusively established. Simi-

وَأَمَّا مَالِكٌ - فَإِنَّهُ رَأَى الِاسْتِبْرَاءَ بِالْمُوَاضَعَةِ فِي عِلِّيَّةِ الرَّقِيقِ وَلَمْ يَرَهَا فِي الْوَخْشِ وَلَمْ يَجُزْ اشْتِرَاطَ النَّقْدِ فِي ذَلِكَ - وَرَأَى نَفَقَتَهَا مُدَّةَ الْمُوَاضَعَةِ عَلَى الْبَائِعِ.

وَرَأَى مَا حَدَثَ فِيهَا مُدَّةَ الْمُوَاضَعَةِ عَلَى الْبَائِعِ، وَرَأَى الْمُوَاضَعَةَ فِي الْبِكْرِ - وَلَمْ يَرَ مَعَ هَذَا كُلِّهِ أَنَّ الْمُوَاضَعَةَ تُبْرِئُ مِنْ الْحَمْلِ - وَهَذِهِ أَقْوَالٌ لَا تُعْرَفُ عَنْ أَحَدٍ قَبْلَهُ، وَهِيَ مَعَ ذَلِكَ فِي غَايَةِ الْمُنَاقَضَةِ وَالْفَسَادِ.

وَأَوَّلُ ذَلِكَ - إيجَابُهُ فَرْضًا شَرْطَ الْمُوَاضَعَةِ، وَهُوَ شَرْطٌ لَيْسَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ وَأَبْطَلَ شَرْطَ نَقْدِ الثَّمَنِ وَهُوَ حَقٌّ لِلْبَائِعِ مَأْمُورٌ فِي الْقُرْآنِ بِإِيفَائِهِ إيَّاهُ إذْ يَقُولُ اللَّهُ تَعَالَى: {وَلا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ} [الأعراف: ٨٥] وقَوْله تَعَالَى: {إلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَثَانِيهَا - فَرَّقَهُ بِتَفْرِيقِهِ فِي ذَلِكَ بَيْنَ الْعَالِيَةِ وَالْوَخْشِ وَهَذَا عَجَبٌ جِدًّا؟ أَتَرَاهُمْ يَجْهَلُونَ أَنَّ الْوَخْشَ يَحْمِلُ كَمَا تَحْمِلُ الْعَالِيَةُ وَلَا فَرْقَ.

وَثَالِثُهَا - إيجَابُهُ النَّفَقَةَ عَلَى الْبَائِعِ وَهَذَا أَكْلُ مَالٍ بِالْبَاطِلِ، وَلَا يَخْلُو أَنْ يَكُونَ صَحَّ بَيْنَهُمَا بَيْعٌ أَوْ لَمْ يَصِحَّ، فَإِنْ كَانَ صَحَّ بَيْنَهُمَا بَيْعٌ فَأَيُّ شَيْءٍ يُوجِبُ النَّفَقَةَ عَلَى الْبَائِعِ عَلَى أَمَةِ غَيْرِهِ، وَإِنْ كَانَ لَمْ يَصِحَّ بَيْنَهُمَا بَيْعٌ فَلِأَيِّ مَعْنًى أَوْجَبَ الْمُوَاضَعَةَ.

فَإِنْ قَالُوا: بِمَا ظَهَرَ بِهَا حَمْلٌ فَبَطَلَ الْبَيْعُ؟ قُلْنَا: هَذَا لَا يُؤْمَنُ مِنْ عِنْدِكُمْ بَعْدَ الْحَيْضَةِ فِي الْمُوَاضَعَةِ فَأَوْجَبُوا فِي ذَلِكَ نَفَقَتَهَا عَلَى الْبَائِعِ وَإِلَّا فَقَدْ ظَهَرَ فَسَادُ قَوْلِكُمْ يَقِينًا، وَكَذَلِكَ لَا يُؤْمَنُ ظُهُورُ عَيْبٍ يُوجِبُ الرَّدَّ وَلَا فَرْقَ.

[14] **Qur'an references (L35740):** Qur'an 7:85 (Al-A'raf); Qur'an 11:85 (Hud); Qur'an 26:183 (Ash-Shu'ara); Qur'an 4:29 (An-Nisa).

larly, there is no assurance against the emergence of a defect that obligates the right to return, and no distinction is made.

L35746 The fourth is the obligation upon the seller for whatever occurred during the period of mutual agreement, thereby binding him to what we have established regarding the seller's liability to cover expenses, uniformly and without exception.

وَرَابِعُهَا - إيجَابُهُ مَا حَدَثَ فِيهَا مُدَّةَ الْمُوَاضَعَةِ عَلَى الْبَائِعِ فَيَلْزَمُهُ فِيهَا مَا أَلْزَمْنَاهُ فِي إيجَابِهِ النَّفَقَةَ عَلَى الْبَائِعِ سَوَاءً سَوَاءً.

L35747 It has been narrated to us through the chain of Hammad ibn Salamah: from Ali ibn Yazid, from Ayyub ibn Abdullah al-Lakhmi, from Ibn Umar, who said: "A slave girl fell into my share during the Battle of Jalula - her neck was like a silver pitcher." Ibn Umar said: "I could not restrain myself from kissing her while people were watching." He thereby permitted sexual relations before the waiting period (istibra') - and success comes from Allah, the Exalted.

وَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا عَلِيُّ بْنُ يَزِيدَ عَنْ أَيُّوبَ بْنِ عَبْدِ اللَّهِ اللَّخْمِيِّ عَنْ ابْنِ عُمَرَ قَالَ: وَقَعَتْ فِي سَهْمِي جَارِيَةٌ يَوْمَ جَلُولَاءَ كَأَنَّ عُنُقَهَا إبْرِيقُ فِضَّةٍ، قَالَ ابْنُ عُمَرَ: فَمَا مَلَكْت نَفْسِي أَنْ جَعَلْت أُقَبِّلُهَا - وَالنَّاسُ يَنْظُرُونَ - فَقَدْ أَجَازَ التَّلَذُّذَ قَبْلَ الِاسْتِبْرَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L35748 **Issue: He retroactively claimed paternity of a child born to his female servant, whom he later sold, without having previously acknowledged through clear legal proof that he had intercourse with her.**

[مَسْأَلَةٌ اسْتَلْحَقَ وَلَدَ خَادِمٍ لَهُ بَاعَهَا وَلَمْ يَكُنْ عَرَفَ قَبْلَ ذَلِكَ بِبَيِّنَةٍ أَنَّهُ وَطِئَهَا]

L35749–35751 2008: Issue: If someone claims paternity of a child born to his female slave whom he sold, without having established through conclusive proof or his own admission prior to his sale of her that he had intercourse with her, his claim is neither accepted nor is the child attributed to him—regardless of whether he sold her while pregnant, the pregnancy occurred after his sale of her, he sold her without her child, or he sold her child. Excluding her—all of that is the same. If it is established by evidence from just witnesses that he had intercourse with her prior to selling her, or by his acknowledgment before selling her of having done so, and if she is found pregnant with a pregnancy whose origin indisputably preceded his sale of her, the sale is annulled in all cases. The *umm al-walad* is returned to him, and her child is legally ascribed to him—whether he likes or dislikes, acknowledges or denies.

٢٠٠٨ - مَسْأَلَةٌ: وَمَنْ اسْتَلْحَقَ وَلَدَ خَادِمٍ لَهُ بَاعَهَا وَلَمْ يَكُنْ عَرَفَ قَبْلَ ذَلِكَ بِبَيِّنَةٍ أَنَّهُ وَطِئَهَا، أَوْ بِإِقْرَارٍ مِنْهُ قَبْلَ بَيْعِهِ لَهَا بِوَطْئِهِ إيَّاهَا - لَمْ يُصَدَّقْ وَلَمْ يُلْحَقْ بِهِ سَوَاءٌ بَاعَهَا حَامِلًا، أَوْ حَدَثَ الْحَمْلُ بِهَا بَعْدَ بَيْعِهِ لَهَا، أَوْ بَاعَهَا دُونَ وَلَدِهَا، أَوْ بَاعَ وَلَدَهَا دُونَهَا - كُلُّ ذَلِكَ سَوَاءٌ، فَلَوْ صَحَّ بِبَيِّنَةِ عَدْلٍ أَنَّهُ وَطِئَهَا قَبْلَ بَيْعِهِ لَهَا، أَوْ بِأَنَّهُ أَقَرَّ قَبْلَ أَنْ يَبِيعَهَا بِوَطْئِهِ لَهَا، فَإِنْ ظَهَرَ بِهَا حَمْلٌ كَانَ مَبْدَؤُهُ قَبْلَ بَيْعِهِ لَهَا - بِلَا شَكٍّ - فُسِخَ الْبَيْعُ بِكُلِّ حَالٍ، وَرُدَّتْ إلَيْهِ أُمُّ الْوَلَدِ، وَلَحِقَ بِهِ وَلَدُهَا - أَحَبَّ أَمْ كَرِهَ - أَقَرَّ بِهِ أَوْ لَمْ يُقِرَّ.

L35752 And every female slave owned by a man, if it is established through evidence or his own admission that he had intercourse with her, then whatever child

she bears is attributed to him - whether he likes it or not. He cannot gain any advantage by asserting the observance of the waiting period (istibrāʾ) or by claiming withdrawal. And success comes only from Allah, the Exalted.

L35753 The proof of that is the statement of Allah, the Almighty: {No soul earns [anything] except against itself} [Al-An'am 6:164], and the statement of the Messenger of Allah—peace and blessings be upon him: "Indeed, your blood and your wealth are inviolable to you." There is no doubt that the ownership of the female slave, or the ownership of her child, or the ownership of both has been confirmed for the buyer. Hence, Allah, the Almighty, has prohibited accepting the seller's claim to invalidate the buyer's ownership based on his own ownership, because he is acquiring at the expense of another and claiming against the wealth of another without evidence.[15]

L35754 Malik said: If he sells her while pregnant and then claims her child is his, the sale is rescinded. He added: But if he makes this claim after she has been emancipated, neither the emancipation nor the emancipator's act of purchasing her is rescinded.

L35755 Abu Muhammad said: This is an evident contradiction, for if the claimant's assertion is accepted—thereby annulling a Muslim's ownership and his contract—then it becomes obligatory to accept his claim and thereby annul the emancipation of a female slave, with no distinction between the two cases. If it is impermissible to validate his claim in annulling emancipation, then it is equally impermissible to validate his claim in annulling a Muslim's contract and invalidating his ownership. By Allah the Exalted we seek strength.

L35756 If they ask: "Is a sale annulled due to a defect?" We reply: "Similarly, manumission is annulled due to [another's] entitlement." As for the permissibility of intercourse with her while she is under his ownership, or the validity of his acknowledgment of intercourse at that time.

L35757 Thus, the proof of our statement regarding the child's legal affiliation to him, and the annulment of manumission, sale, and procreation in these two matters is:

وَكُلُّ أَمَةٍ لِإِنْسَانٍ صَحَّ أَنَّهُ وَطِئَهَا بِبَيِّنَةٍ، أَوْ بِإِقْرَارٍ مِنْهُ، فَإِنَّهُ يَلْحَقُ بِهِ مَا وَلَدَتْ - أَحَبَّ أَمْ كَرِهَ - وَلَا يَنْتَفِعُ بِأَنْ يَدَّعِيَ اسْتِبْرَاءً، أَوْ بِدَعْوَاهُ الْعَزْلَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَلَا شَكَّ فِي أَنَّ الْأَمَةَ قَدْ صَحَّ مِلْكُهَا، أَوْ مِلْكُ وَلَدِهَا، أَوْ مِلْكُهُمَا لِلْمُشْتَرِي فَقَدْ مَنَعَ اللَّهُ عَزَّ وَجَلَّ مِنْ قَبُولِ دَعْوَى الْبَائِعِ فِي إبْطَالِ مِلْكِ الْمُشْتَرِي بِالْمِلْكِ، لِأَنَّهُ كَاسِبٌ عَلَى غَيْرِهِ، وَمُدَّعٍ فِي مَالِ سِوَاهُ بِلَا بَيِّنَةٍ.

وَقَالَ مَالِكٌ: إنْ بَاعَهَا حَامِلًا ثُمَّ ادَّعَى أَنَّ وَلَدَهَا مِنْهُ فُسِخَ الْبَيْعُ - قَالَ: فَلَوْ ادَّعَاهُ وَقَدْ أُعْتِقَتْ لَمْ يُفْسَخْ الْعِتْقُ وَلَا ابْتِيَاعُ الْمُعْتِقِ لَهَا.

قَالَ أَبُو مُحَمَّد: وَهَذِهِ مُنَاقَضَةٌ لَا خَفَاءَ بِهَا، لِأَنَّهُ إذَا صُدِّقَ فِي دَعْوَاهُ فَفُسِخَ بِهَا مِلْكُ مُسْلِمٍ وَصَفْقَتُهُ فَوَاجِبٌ أَنْ يُصَدَّقَ وَيُفْسَخَ بِهَا عِتْقُ الْأَمَةِ وَلَا فَرْقَ، وَلَئِنْ لَمْ يَجُزْ أَنْ يُصَدَّقَ فِي فَسْخِ الْعِتْقِ فَإِنَّهُ لَا يَجُوزُ أَنْ يُصَدَّقَ فِي فَسْخِ صَفْقَةِ مُسْلِمٍ وَإِبْطَالِ مِلْكِهِ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

فَإِنْ قَالُوا: الْبَيْعُ يُفْسَخُ بِالْعَيْبِ؟ قُلْنَا: وَالْعِتْقُ يُفْسَخُ بِالِاسْتِحْقَاقِ، وَأَمَّا إذَا صَحَّ وَطْؤُهُ لَهَا إذَا كَانَتْ فِي مِلْكِهِ أَوْ صَحَّ حِينَئِذٍ إقْرَارُهُ بِوَطْئِهَا.

فَبُرْهَانُ قَوْلِنَا فِي لِحَاقِ الْوَلَدِ بِهِ، وَفَسْخِ الْعِتْقِ وَالْبَيْعِ وَالْإِيلَادِ فِيهِمَا -:

[15] **Qur'an references (L35753):** Qur'an 6:164 (Al-An'am).

L35758 What has been narrated to us through Abu Dawud al-Sijistani's chain: Musaddad narrated from Sufyan ibn Uyaynah, who narrated from al-Zuhri, from Urwah, from Aisha, the Mother of the Believers, who said: Sa'd ibn Abi Waqqas and Abd ibn Zam'ah disputed before the Messenger of Allah (peace and blessings be upon him) regarding the son of Zam'ah's concubine. Ibn Zam'ah said: "He is my brother - the son of my father's concubine, born on my father's bed." The Messenger of Allah (peace and blessings be upon him) ruled: "The child belongs to the [marital] bed. Observe hijab from him, O Sawdah. He is your brother, O Abd."

مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا مُسَدَّدٌ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ: اخْتَصَمَ سَعْدُ بْنُ أَبِي وَقَّاصٍ وَعَبْدُ بْنُ زَمْعَةَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ابْنِ أَمَةِ زَمْعَةَ فَقَالَ ابْنُ زَمْعَةَ: أَخِي ابْنُ أَمَةِ أَبِي وُلِدَ عَلَى فِرَاشِ أَبِي فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْوَلَدُ لِلْفِرَاشِ احْتَجِبِي مِنْهُ يَا سَوْدَةُ هُوَ أَخُوكَ يَا عَبْدُ» .

L35759–35760 I am Ahmad ibn Qasim. My father Qasim ibn Muhammad ibn Qasim narrated to me, from my grandfather Qasim ibn Asbagh. I am Ahmad ibn Zuhayr ibn Harb. My father narrated to me, from Jarir, from al-Mughirah ibn Miqsam, from Abu Wa'il, from Abdullah ibn Mas'ud, from the Prophet—peace and blessings of Allah be upon him—who said: "The child is ascribed to the legal husband."

أَنَا أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ ثنا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا أَحْمَدُ ابْنُ زُهَيْرِ بْنِ حَرْبٍ أَنَا أَبِي أَنَا جَرِيرٌ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ أَبِي وَائِلٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْوَلَدُ لِصَاحِبِ الْفِرَاشِ» .

L35761 Narrated by Humam ibn Ahmad, from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Bakr ibn Hammad al-Tamaranti, from Musaddad, from Yahya ibn Sa'id al-Qattan, from Shu'bah, from Muhammad ibn Ziyad, that he heard Abu Hurairah narrating from the Prophet—peace and blessings be upon him and his family, and grant him peace—that he said: "The child belongs to the one to whom the bed belongs."

نا حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا بَكْرُ بْنُ حَمَّادٍ التَّمَرَنْتِيُّ أَنَا مُسَدَّدٌ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ شُعْبَةَ عَنْ مُحَمَّدِ بْنِ زِيَادٍ أَنَّهُ سَمِعَ أَبَا هُرَيْرَةَ يُحَدِّثُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «الْوَلَدُ لِصَاحِبِ الْفِرَاشِ» .

L35762 Abu Muhammad said: The Messenger of Allah (peace be upon him) ruled that the child belongs to the owner of the bed after his death in the case of a female slave whose master's acknowledgment of that child was not preserved. Had he acknowledged it, Abd Ibn Zamʿah would not have needed anything other than that.

قَالَ أَبُو مُحَمَّدٍ: فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْوَلَدِ لِصَاحِبِ الْفِرَاشِ بَعْدَ مَوْتِهِ فِي أَمَةٍ لَمْ يَحْفَظْ إقْرَارَ سَيِّدِهَا بِذَلِكَ الْوَلَدِ، وَلَوْ أَقَرَّ بِهِ لَمْ يَحْتَجَّ عَبْدُ بْنُ زَمْعَةَ لِسِوَى ذَلِكَ.

L35763 The Prophet (peace and blessings be upon him) ruled that a female slave is a lawful conjugal partner and that the child belongs to her master. She is only deemed a lawful partner when valid evidence establishes that her master had intercourse with her, or when evidence confirms his explicit acknowledgment of paternity.

وَحَكَمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ الْأَمَةَ فِرَاشٌ وَأَنَّ الْوَلَدَ لِصَاحِبِ الْفِرَاشِ، وَإِنَّمَا تَكُونُ الْأَمَةُ فِرَاشًا إذَا صَحَّ أَنَّ سَيِّدَهَا افْتَرَشَهَا بِبَيِّنَةٍ بِذَلِكَ، أَوْ بِبَيِّنَةٍ بِإِقْرَارِهِ بِذَلِكَ.

L35764 The ruling of the Prophet (peace and blessings be upon him) concerning Sawdah, the Mother of the Believers, secluding herself from him was never rooted in imposing hardship upon her, nor does a sister's seclusion from her brother negate their siblinghood in the slightest. For it is not obligatory upon a woman to see her brother; her duty is solely to uphold familial bonds with him. The Prophet (PBUH) never commanded her to sever ties with him—and whoever claims otherwise has lied. He (PBUH) said: "He is your brother, O Servant [of God]," and this suffices for those of understanding.

وَلَيْسَ أَمْرُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - سَوْدَةَ أُمَّ الْمُؤْمِنِينَ بِالِاحْتِجَابِ مِنْهُ بِكَادِحٍ فِي ذَلِكَ أَصْلًا وَلَا احْتِجَابُ الْأُخْتِ عَنْ أَخِيهَا بِمُبْطِلٍ أُخُوَّتَهُ لَهَا أَلْبَتَّةَ؛ لِأَنَّهُ لَيْسَ فَرْضًا عَلَى الْمَرْأَةِ رُؤْيَةُ أَخِيهَا لَهَا، إنَّمَا الْفَرْضُ عَلَيْهَا صِلَةُ رَحِمِهِ فَقَطْ، وَلَمْ يَأْمُرْهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ بِأَنْ لَا تَصِلَهُ - وَمَنْ ادَّعَى ذَلِكَ فَقَدْ كَذَبَ، وَقَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «هُوَ أَخُوكَ يَا عَبْدُ» وَهَذَا يَكْفِي مَنْ لَهُ عَقْلٌ.

L35765 Some of those who carelessly utter falsehood in matters of religion have claimed: "The sole meaning of his statement - peace be upon him - 'He is yours, O servant' is that he is your servant?"

وَقَدْ قَالَ بَعْضُ مَنْ لَا يُبَالِي بِمَا أَطْلَقَ بِهِ لِسَانَهُ مِنْ الْكَذِبِ فِي الدِّينِ: إنَّمَا مَعْنَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «هُوَ لَكَ يَا عَبْدُ» أَيْ هُوَ عَبْدُك؟

L35766 So we said: The established [ruling] is that he stated "He is your brother" as we presented. Even if he had decreed him to be a slave, she would not be required to observe hijab from him by the explicit text. So be appalled at the severity of these people's stance. Thus, what we said is established explicitly - and all praise belongs to Allah, Lord of the worlds.[16]

فَقُلْنَا: الثَّابِتُ أَنَّهُ قَالَ «هُوَ أَخُوكَ» كَمَا أَوْرَدْنَا، وَلَوْ قَضَى بِهِ عَبْدًا لَمْ يَلْزَمْهَا أَنْ تَحْتَجِبَ عَنْهُ بِنَصِّ الْقُرْآنِ، فَاعْجَبُوا لِهَوْلِ هَؤُلَاءِ الْقَوْمِ فَوَجَبَ مَا قُلْنَا نَصًّا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L35767 And if it is confirmed that the pregnancy is from him, then it is obligatory to annul the sale of the free person, the sale of the umm al-walad, annulment of the emancipation by the one who emancipated them both, and annulment of the establishment of parentage for the one who fathered her child thereafter—and with Allah, the Most High, is success.

وَإِذَا صَحَّ أَنَّ الْحَمْلَ مِنْهُ فَوَاجِبٌ فَسْخُ بَيْعِ الْحُرِّ، وَبَيْعُ أُمِّ الْوَلَدِ، وَفَسْخُ عِتْقِ مَنْ أَعْتَقَهُمَا، وَفَسْخُ إيلَادِ مَنْ أَوْلَدَهَا بَعْدَ ذَلِكَ، - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -.

L35768–35770 And with this came the report from the Salaf: It has been reported to us through the chain of Abd al-Razzaq, who said: Ma'mar and Ibn Jurayj—both of them—narrated from al-Zuhri, from Salim ibn Abd Allah ibn Umar, from his father, from Umar ibn al-Khattab, who said: "It has reached me that some men among you practice withdrawal. When the woman becomes pregnant, the man says: 'This child is not mine.' By Allah, no man among you who does this will be brought before me except that I will assign the child to him! Let whoever wishes practice withdrawal do so, and whoever wishes not to, let him abstain."

وَبِهَذَا جَاءَ الْأَثَرُ عَنْ السَّلَفِ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ، وَابْنُ جُرَيْجٍ كِلَاهُمَا عَنْ الزُّهْرِيِّ عَنْ سَالِمِ ابْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: بَلَغَنِي أَنَّ رِجَالًا مِنْكُمْ يَعْزِلُونَ، فَإِذَا حَمَلَتْ الْجَارِيَةُ قَالَ: لَيْسَ مِنِّي، وَاَللَّهِ لَا أُوتَى بِرَجُلٍ مِنْكُمْ فَعَلَ ذَلِكَ إلَّا أَلْحَقْت بِهِ الْوَلَدَ فَمَنْ شَاءَ فَلْيَعْزِلْ وَمَنْ شَاءَ لَا يَعْزِلُ.

[16] **Qur'an references (L35766):** Qur'an 37:182 (As-Saffat).

L35771 From the narration of Abd al-Razzaq, from Abdullah ibn Umar, from Nafi', from Safiyya bint Abi Ubayd, that Umar ibn al-Khattab said: "Whoever among you has relations with his slave woman, let him free her, for none of you would admit to having relations with his slave woman except when the child is attributed to him."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ عَنْ صَفِيَّةَ بِنْتِ أَبِي عُبَيْدٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: مَنْ كَانَ مِنْكُمْ يَطَأُ جَارِيَتَهُ فَلْيُحْصِنْهَا فَإِنَّ أَحَدَكُمْ لَا يُقِرُّ بِإِصَابَتِهِ جَارِيَتَهُ إِلَّا أَلْحَقَتْ بِهِ الْوَلَدَ.

L35772 We are not aware of any disagreement by a Companion [of the school] on this matter except for what has been narrated to us through the chain of Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqrī, who said: I [heard] from Sufyān ibn ʿUyaynah, from Abū al-Zinād, from Khārijah ibn Zayd ibn Thābit that his father had a slave girl with whom he practiced coitus interruptus, yet she came to him with a pregnancy. He denied this, and he mentioned the ḥadīth.

وَمَا نَعْلَمُ فِي هَذَا خِلَافًا لِصَاحِبٍ إِلَّا مَا رُوِّينَا مِنْ طَرِيقِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَبِي الزِّنَادِ عَنْ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ أَنَّ أَبَاهُ كَانَتْ لَهُ جَارِيَةٌ يَعْزِلُ عَنْهَا وَأَنَّهَا جَاءَتْهُ بِحَمْلٍ فَأَنْكَرَ ذَلِكَ وَذَكَرَ الْحَدِيثَ.

L35773 And from the path of Abd al-Razzaq, from Sufyan al-Thawri, from Ibn Dhakwan—he being Abu al-Zinad—from Kharijah ibn Zayd ibn Thabit, who said: Zayd ibn Thabit would have relations with a female slave he owned and practiced withdrawal. When she gave birth, he disavowed the child, flogged her one hundred times, and thereafter emancipated the boy.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنِ ابْنِ ذَكْوَانَ - هُوَ أَبُو الزِّنَادِ - عَنْ خَارِجَةَ بْنِ زَيْدِ بْنِ ثَابِتٍ قَالَ: كَانَ زَيْدُ بْنُ ثَابِتٍ يَقَعُ عَلَى جَارِيَةٍ لَهُ، وَكَانَ يَعْزِلُهَا فَلَمَّا وَلَدَتْ انْتَفَى مِنْ وَلَدِهَا وَضَرَبَهَا مِائَةً ثُمَّ أَعْتَقَ الْغُلَامَ.

L35774 From the chain of Abd al-Razzāq via Muhammad ibn Umar, and Amr ibn Dinar informed me that Ibn Abbas had intercourse with his female slave—with whom he practiced *coitus interruptus*—and he disavowed paternity of her child.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ عُمَرَ، وَأَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّ ابْنَ عَبَّاسٍ وَقَعَ عَلَى جَارِيَةٍ لَهُ - وَكَانَ يَعْزِلُهَا - فَانْتَفَى مِنْ وَلَدِهَا.

L35775 Abu Muhammad said. Abu Hanifah stated that the child of a slave woman is not legally affiliated with her master—whether she is an *umm walad* or not—except through his explicit claim; otherwise, the child is disavowed by him.

قَالَ أَبُو مُحَمَّدٍ: وَقَالَ أَبُو حَنِيفَةَ: لَا يَلْحَقُ وَلَدُ الْأَمَةِ بِسَيِّدِهَا سَوَاءٌ كَانَتْ أُمَّ وَلَدٍ أَوْ لَمْ تَكُنْ إِلَّا بِأَنْ يَدَّعِيَهُ وَإِلَّا فَهُوَ مُنْتَفٍ عَنْهُ.

L35776 Malik said: The child is legally ascribed to him as his offspring due to his intercourse with her, unless he substantiates his claim that she observed the *istibrāʾ* (waiting period) and afterward refrained from intercourse with her.

وَقَالَ مَالِكٌ: يَلْحَقُ بِهِ لِوَطْئِهِ إِيَّاهَا إِلَّا أَنْ يَدَّعِيَ أَنَّهَا اسْتَبْرَأَتْ ثُمَّ لَمْ يَطَأْهَا.

L35777 Abu Muhammad said: All that has been narrated in this chapter from the Companions contradicts the opinions of the two of them.

قَالَ أَبُو مُحَمَّدٍ: كُلُّ مَا رُوِيَ فِي هَذَا الْبَابِ عَنِ الصَّحَابَةِ مُخَالِفٌ لِقَوْلِهِمَا.

L35778 The height of astonishment is that these two opinions are entirely without any evidence—neither from the Quran, nor from the Sunnah, nor from a

weak narration, nor from the statement of a Companion, nor from analogy, nor from any opinion with a valid basis.

L35779 What is utterly astonishing is that Mālik does not consider the waiting period to ascertain pregnancy (istibrā') to prevent conception, yet here he maintains it denies paternity through it—and this is even more astonishing than the original amazement?

L35780 **Legal Issue: In both valid and invalid marriage contracts, the child is legally attributed to the unaware party.**

L35781–35783 Issue 2009: A child's lineage is attributed to both a valid marriage and a defective contract concluded by an ignorant party, and not... The ruling applies to the knowledgeable one due to his invalidity, applies to valid ownership, and to ownership acquired through a void contract for the ignorant one. It does not apply to the knowledgeable one despite his invalidity, because the Messenger of Allah (peace and blessings be upon him) attributed children to those born from the women they married and those they owned in the pre-Islamic era. There is no doubt that among them were invalid marriages and invalid ownerships, yet he entirely rejected children born of fornication by his statement (peace and blessings be upon him): "The adulterer is to be stoned." Thus, our position is confirmed.

L35784 As for the one aware of the invalidity of the marriage contract or the valid ownership contract, he is deemed a fornicator liable to the ḥadd punishment, and the child is not affiliated with him. The child is affiliated with the woman if she committed fornication and conceived him, but not with the man. The child inherits from his mother, and she inherits from him, because the Prophet (peace and blessings be upon him) ruled in the liʿān procedure that the child is affiliated with the woman and negated affiliation from the man.

L35785 The woman in establishing a child's legal affiliation to herself is equivalent to the man. Rather, her claim is stronger in this matter due to what we mentioned - that the child is affiliated with her whether from lawful or

وَالْعَجَبُ كُلُّهُ أَنَّ هَذَيْنِ قَوْلَانِ بِلَا دَلِيلٍ أَصْلًا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ.

وَالْعَجَبُ كُلُّهُ أَنَّ مَالِكًا لَا يَرَى الِاسْتِبْرَاءَ يَمْنَعُ مِنَ الْحَمْلِ، ثُمَّ يَرَاهُ هَاهُنَا يَنْفِي النَّسَبَ بِهِ - وَهَذَا أَعْجَبُ مِنَ الْعَجَبِ؟ .

[مَسْأَلَةُ الْوَلَدُ يَلْحَقُ فِي النِّكَاحِ الصَّحِيحِ وَالْعَقْدِ الْفَاسِدِ بِالْجَاهِلِ]

٢٠٠٩ - مَسْأَلَةٌ: وَالْوَلَدُ يَلْحَقُ فِي النِّكَاحِ الصَّحِيحِ، وَالْعَقْدِ الْفَاسِدِ بِالْجَاهِلِ، وَلَا يَلْحَقُ بِالْعَالِمِ بِفَسَادِهِ، وَيَلْحَقُ فِي الْمِلْكِ الصَّحِيحِ، وَفِي الْمُتَمَلَّكَةِ بِعَقْدٍ فَاسِدٍ بِالْجَاهِلِ، وَلَا يَلْحَقُ بِالْعَالِمِ بِفَسَادِهِ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلْحَقَ النَّاسَ بِمَنْ وُلِدُوا مِمَّنْ تَزَوَّجُوا مِنَ النِّسَاءِ، وَمِمَّنْ تَمَلَّكُوا فِي الْجَاهِلِيَّةِ، وَلَا شَكَّ فِي أَنَّهُ كَانَ فِيهِمْ مِنْ نِكَاحِهِ فَاسِدٌ، وَمِلْكُهُ فَاسِدٌ، وَنَفَى أَوْلَادَ الزِّنَى جُمْلَةً بِقَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: «وَلِلْعَاهِرِ الْحَجَرُ» فَصَحَّ مَا قُلْنَا.

وَأَمَّا الْعَالِمُ بِفَسَادِ عَقْدِ النِّكَاحِ، أَوْ عَقْدِ الْمِلْكِ، فَهُوَ عَاهِرٌ عَلَيْهِ الْحَدُّ، فَلَا يَلْحَقُ بِهِ الْوَلَدُ، وَالْوَلَدُ يَلْحَقُ بِالْمَرْأَةِ إِذَا زَنَتْ وَحَمَلَتْ بِهِ، وَلَا يَلْحَقُ بِالرَّجُلِ، وَيَرِثُ أُمَّهُ وَتَرِثُهُ؛ لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَلْحَقَ الْوَلَدَ بِالْمَرْأَةِ فِي اللِّعَانِ وَنَفَاهُ عَنِ الرَّجُلِ.

unlawful relations - and because there is no doubt regarding her motherhood when pregnancy is confirmed. And success comes only from Allah, the Most High.

وَالْمَرْأَةُ فِي اسْتِلْحَاقِ الْوَلَدِ بِنَفْسِهِ كَالرَّجُلِ، بَلْ هِيَ أَقْوَى سَبَبًا فِي ذَلِكَ لِمَا ذَكَرْنَا مِنْ أَنَّهُ يَلْحَقُ بِهَا مِنْ حَلَالٍ كَانَ أَوْ مِنْ حَرَامٍ، وَلِأَنَّهُ لَا شَكَّ مِنْهَا إذَا صَحَّ أَنَّهَا حَمَلَتْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Custody: The mother has greater priority in caring for a young male child and a young female child.

[الْحَضَانَةُ] [مَسْأَلَةٌ الْأُمُّ أَحَقُّ بِحَضَانَةِ الْوَلَدِ الصَّغِيرِ وَالِابْنَةِ الصَّغِيرَةِ]

L35786–35787

2010. Issue: The mother has the greatest right to custody of the young male child and young female child until the female reaches menstruation or the male reaches nocturnal emission or pubic hair growth—provided they achieve discernment and physical soundness. This applies equally whether she is a slave woman or free, married or unmarried, and regardless of whether the father has left that place or remains. The grandmother is a mother.

٢٠١٠ - مَسْأَلَةٌ: الْأُمُّ أَحَقُّ بِحَضَانَةِ الْوَلَدِ الصَّغِيرِ وَالِابْنَةِ الصَّغِيرَةِ حَتَّى يَبْلُغَا الْمَحِيضَ، أَوْ الِاحْتِلَامَ، أَوْ الْإِنْبَاتَ مَعَ التَّمْيِيزِ، وَصِحَّةِ الْجِسْمِ - سَوَاءٌ كَانَتْ أَمَةً أَوْ حُرَّةً، تَزَوَّجَتْ أَوْ لَمْ تَتَزَوَّجْ، رَحَلَ الْأَبُ عَنْ ذَلِكَ الْبَلَدِ أَوْ لَمْ يَرْحَلْ - وَالْجَدَّةُ أُمٌّ.

L35789

If the mother is not trustworthy in her religion or worldly affairs, the interests of the minor boy or girl must be assessed by adopting the most precautionary approach in their religious matters, then their worldly matters. Precautionary care for them in both aspects is incumbent upon the father, brother, sister, paternal aunt, maternal aunt, paternal uncle, or maternal uncle - with blood relatives always taking precedence over others in every circumstance. Religion is prioritized over worldly matters.

فَإِنْ لَمْ تَكُنْ الْأُمُّ مَأْمُونَةً فِي دِينِهَا وَدُنْيَاهَا نُظِرَ لِلصَّغِيرِ أَوْ الصَّغِيرَةِ بِالْأَحْوَطِ فِي دِينِهِمَا ثُمَّ دُنْيَاهُمَا، فَحَيْثُمَا كَانَتْ الْحِيَاطَةُ لَهُمَا فِي كِلَا الْوَجْهَيْنِ وَجَبَتْ هُنَالِكَ عِنْدَ الْأَبِ، أَوْ الْأَخِ، أَوْ الْأُخْتِ، أَوْ الْعَمَّةِ، أَوْ الْخَالَةِ، أَوْ الْعَمِّ، أَوْ الْخَالِ - وَذُو الرَّحِمِ أَوْلَى مِنْ غَيْرِهِمْ بِكُلِّ حَالٍ، وَالدِّينُ مُغَلَّبٌ عَلَى الدُّنْيَا.

L35790

If they are equal in suitability of condition, then the mother and the grandmother, followed by the father and the grandfather, then the brother and the sister, then the closest relative, then the next closest.

فَإِنْ اسْتَوَوْا فِي صَلَاحِ الْحَالِ فَالْأُمُّ وَالْجَدَّةُ، ثُمَّ الْأَبُ وَالْجَدُّ، ثُمَّ الْأَخُ وَالْأُخْتُ، ثُمَّ الْأَقْرَبُ فَالْأَقْرَبُ.

L35791

The disbelieving mother has greater custody rights over the two young children during the breastfeeding period. Once they reach the level of understanding in terms of age and self-sufficiency, no custody is given to a disbelieving woman or a sinful woman.

وَالْأُمُّ الْكَافِرَةُ أَحَقُّ بِالصَّغِيرَيْنِ مُدَّةَ الرَّضَاعِ، فَإِذَا بَلَغَا مِنْ السِّنِّ وَالِاسْتِغْنَاءِ مَبْلَغَ الْفَهْمِ فَلَا حَضَانَةَ لِكَافِرَةٍ وَلَا لِفَاسِقَةٍ.

L35792

The evidence for this is the statement of Allah, the Exalted and Majestic: {And relatives by kinship are closer to one another in Allah's decree} [Al-Anfāl:75]. As for the mother, the child is in her custody because he is in her womb and then under her custody during the breastfeeding period, by the

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَى بِبَعْضٍ فِي كِتَابِ اللَّهِ} [الأنفال: ٧٥] فَأَمَّا الْأُمُّ فَإِنَّهُ فِي يَدِهَا، لِأَنَّهُ فِي بَطْنِهَا ثُمَّ فِي حِجْرِهَا مُدَّةَ الرَّضَاعِ بِنَصِّ

explicit statement of Allah, the Exalted and Majestic: {Mothers shall nurse their children for two complete years} [Al-Baqarah:233]. Therefore, it is impermissible to move the child or relocate the mother from the position Allah the Most High has ordained for them without a textual ruling. No authentic textual evidence exists stating that the mother's custody right is nullified if she remarries, nor that her custodial right ceases if the father moves away from that city.[17]

قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ} [البقرة: ٢٣٣] فَلَا يَجُوزُ نَقْلُهُ أَوْ نَقْلُهَا عَنْ مَوْضِعٍ جَعَلَهُمَا اللَّهُ تَعَالَى فِيهِ بِغَيْرِ نَصٍّ، وَلَمْ يَأْتِ نَصٌّ صَحِيحٌ قَطُّ بِأَنَّ الْأُمَّ إِنْ تَزَوَّجَتْ يَسْقُطُ حَقُّهَا فِي الْحَضَانَةِ، وَلَا بِأَنَّ الْأَبَ إِنْ رَحَلَ عَنْ ذَلِكَ الْبَلَدِ سَقَطَ حَقُّ الْأُمِّ فِي الْحَضَانَةِ.

L35793–35794 We were informed via Muslim's narration: Qutaybah ibn Saʿīd and Zuhayr ibn Ḥarb both said together: We were told by Jarīr ibn Ḥāzim, who reported from ʿUmārah ibn al-Qaʿqāʿ, from Abū Zurʿah, from Abū Hurayrah (may Allah be pleased with him), who said: A man asked, "O Messenger of Allah" – peace and blessings be upon him – "Who is most deserving of my good treatment?" He replied: "Your mother." The man asked: "Then who?" He said: "Your mother." The man asked again: "Then who?" He said: "Your mother." The man inquired once more: "Then who?" He responded: "Your father."

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَزُهَيْرُ بْنُ حَرْبٍ قَالَا جَمِيعًا: أَنَا جَرِيرُ بْنُ حَازِمٍ عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ عَنْ أَبِي زُرْعَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: «قَالَ رَجُلٌ يَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ أَحَقُّ النَّاسِ بِحُسْنِ صَحَابَتِي؟ قَالَ: أُمُّكَ، قَالَ: ثُمَّ مَنْ؟ قَالَ: أُمُّكَ، قَالَ: ثُمَّ مَنْ؟ قَالَ: أُمُّكَ، قَالَ: ثُمَّ مَنْ؟ قَالَ: أَبُوكَ» .

L35795 From the narration of Muslim: I am Abu Kurayb Muhammad ibn al-ʻAla' al-Hamadani – from Ibn Fudayl, from his father, from ʻUmarah ibn al-Qaʻqaʻ, from Abu Zurʻah, from Abu Hurayrah, who said: "A man asked: 'O Messenger of Allah, who is most deserving of good companionship among people?' He replied: 'Your mother, then your mother, then your mother, then your father, then those closest to you in kinship, then the next closest.'" This is an explicit textual proof affirming the obligation of custody, as it constitutes companionship.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ الْهَمْدَانِيُّ أَنَا ابْنُ فُضَيْلٍ عَنْ أَبِيهِ عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ عَنْ أَبِي زُرْعَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ «قَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ مَنْ أَحَقُّ النَّاسِ بِحُسْنِ الصُّحْبَةِ؟ قَالَ: أُمُّكَ ثُمَّ أُمُّكَ ثُمَّ أُمُّكَ ثُمَّ أَبَاكَ ثُمَّ أَدْنَاكَ أَدْنَاكَ» فَهَذَا نَصٌّ جَلِيٌّ عَلَى إيجَابِ الْحَضَانَةِ؛ لِأَنَّهَا صُحْبَةٌ.

L35796 As for prioritizing religion, it is based on Allah's statement, the Almighty: "Cooperate in righteousness and piety, and do not aid one another in sin and aggression." [Al-Mā'idah 5:2][18]

وَأَمَّا تَقْدِيمُ الدِّينِ - فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L35797 Allah the Exalted says: "Be upholders of justice" [An-Nisā': 135], and He says: "Abandon sin in both its outward and inward forms" [Al-Anʻām: 120].

وَقَوْله تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] . وَقَوْله تَعَالَى: {وَذَرُوا ظَاهِرَ الإِثْمِ وَبَاطِنَهُ} [الأنعام: ١٢٠] . فَمَنْ تَرَكَ الصَّغِيرَ وَالصَّغِيرَةَ حَيْثُ يُدَرَّبَانِ عَلَى سَمَاعِ الْكُفْرِ، وَيَتَمَرَّنَانِ عَلَى جَحْدِ نُبُوَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى تَرْكِ الصَّلَاةِ،

[17] **Qur'an references (L35792):** Qur'an 8:75 (Al-Anfal); Qur'an 33:6 (Al-Ahzab); Qur'an 2:233 (Al-Baqarah).

[18] **Qur'an references (L35796):** Qur'an 5:2 (Al-Ma'idah).

وَالْأَكْلِ فِي رَمَضَانَ، وَشُرْبِ الْخَمْرِ وَالْأُنْسِ إِلَيْهَا حَتَّى يَسْهُلَ عَلَيْهِمَا شَرَائِعُ الْكُفْرِ، أَوْ عَلَى صُحْبَةِ مَنْ لَا خَيْرَ فِيهِ، وَالِانْهِمَاكِ عَلَى الْبَلَاءِ: فَقَدْ عَاوَنَ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَلَمْ يُعَاوِنْ عَلَى الْبِرِّ وَالتَّقْوَى، وَلَمْ يَقُمْ بِالْقِسْطِ، وَلَا تَرَكَ ظَاهِرَ الْإِثْمِ وَبَاطِنَهُ - وَهَذَا حَرَامٌ وَمَعْصِيَةٌ.

Whoever neglects a young boy or girl when they are being trained to listen to disbelief, practicing the denial of the prophethood of Allah's Messenger—peace and blessings be upon him—abandoning prayer, eating during Ramadan, drinking wine and becoming accustomed to it until the laws of disbelief become easy for them, or associating with those in whom there is no good and plunging into corruption—such a person has indeed collaborated in sin and aggression, failed to collaborate in righteousness and piety, neglected to uphold justice, and failed to abandon sin in both its outward and inward forms. This is forbidden and sinful.[19]

وَمَنْ أَزَالَهُمَا عَنْ الْمَكَانِ الَّذِي فِيهِ مَا ذَكَرْنَا إلَى حَيْثُ يُدَرَّبَانِ عَلَى الصَّلَاةِ وَالصَّوْمِ، وَتَعَلُّمِ الْقُرْآنِ، وَشَرَائِعِ الْإِسْلَامِ، وَالْمَعْرِفَةِ بِنُبُوَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَالتَّنْفِيرِ عَنْ الْخَمْرِ وَالْفَوَاحِشِ: فَقَدْ عَاوَنَ عَلَى الْبِرِّ وَالتَّقْوَى، وَلَمْ يُعَاوِنْ عَلَى الْإِثْمِ وَالْعُدْوَانِ، وَتَرَكَ ظَاهِرَ الْإِثْمِ وَبَاطِنَهُ، وَأَدَّى الْفَرْضَ فِي ذَلِكَ.

L35798 Whoever removes both of them from the place containing what we described to a location where they are trained in prayer, fasting, learning the Quran, the laws of Islam, knowledge of the prophethood of Allah's Messenger—may Allah bless him and his family and grant him peace—and discouragement from intoxicants and immoral acts, has indeed collaborated in righteousness and piety. Such a person did not collaborate in sin and aggression, abandoned sin in both its outward and inward forms, and fulfilled the obligatory duty in this matter.

وَأَمَّا مُدَّةُ الرَّضَاعِ فَلَا نُبَالِي عَنْ ذَلِكَ - لِقَوْلِ اللَّهِ تَعَالَى: {وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ} [البقرة: ٢٣٣] .

L35799 As for the duration of breastfeeding, we do not prescribe any ruling beyond that, in accordance with the decree of Allah, the Exalted: "And mothers shall breastfeed their children for two complete years" (Al-Baqarah 2:233).[20]

وَلِأَنَّ الصَّغِيرَيْنِ فِي هَذِهِ السِّنِّ وَمَنْ زَادَ عَلَيْهَا - بِعَامٍ أَوْ عَامَيْنِ - لَا فَهْمَ لَهُمَا، وَلَا مَعْرِفَةَ بِمَا يُشَاهِدَانِ، فَلَا ضَرَرَ عَلَيْهِمَا فِي ذَلِكَ.

L35800 And because the two young children at this specified age—and those who exceed it by a year or two—lack comprehension and awareness of what they witness, no harm is incurred by them both in such a case.

فَإِنْ كَانَتْ الْأُمُّ مَأْمُونَةً فِي دِينِهَا وَالْأَبُ كَذَلِكَ: فَهِيَ أَحَقُّ مِنْ الْأَبِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي ذَكَرْنَا، ثُمَّ الْجَدَّةُ كَالْأُمِّ، فَإِنْ لَمْ تَكُنْ مَأْمُونَةً - لَا الْأُمُّ، وَلَا الْجَدَّةُ فِي دِينِهَا - أَوْ تَزَوَّجَتْ غَيْرَ مَأْمُونٍ فِي دِينِهِ، وَكَانَ الْأَبُ مَأْمُونًا: فَالْأَبُ أَوْلَى، ثُمَّ الْجَدُّ.

L35801–35802 If the mother is trustworthy in her religion and the father is likewise, then she has greater right than the father, according to the statement of the Messenger of Allah—peace and blessings be upon him—that we mentioned. Then the grandmother is like the mother. If she is not trustworthy—neither the mother nor the grandmother in her religion—or if either the mother or grandmother marries someone untrustworthy in his religion, while the father was trustworthy, then the father takes precedence, then the grandfather.

[19] **Qur'an references (L35797):** Qur'an 4:135 (An-Nisa); Qur'an 6:120 (Al-An'am).

[20] **Qur'an references (L35799):** Qur'an 2:233 (Al-Baqarah).

L35803 If none of those we mentioned are trustworthy in their religion, and the minor boy or girl has a brother trustworthy in his religion or a sister trustworthy in her religion, then the trustworthy sibling takes precedence. This same rule applies to the relatives after the siblings.

فَإِنْ لَمْ يَكُنْ أَحَدٌ مِمَّنْ ذَكَرْنَا مَأْمُونًا فِي دِينِهِ، وَكَانَ لِلصَّغِيرِ أَوْ الصَّغِيرَةِ أَخٌ مَأْمُونٌ فِي دِينِهِ، أَوْ أُخْتٌ مَأْمُونَةٌ فِي دِينِهَا: فَالْمَأْمُونُ أَوْلَى، وَهَكَذَا فِي الْأَقَارِبِ بَعْدَ الْإِخْوَةِ.

L35804 If there are two from among the brothers, sisters, or relatives who are both trustworthy in their faith and equal in that trustworthiness.

فَإِنْ كَانَ اثْنَانِ مِنْ الْإِخْوَةِ أَوْ الْأَخَوَاتِ، أَوْ الْأَقَارِبِ مَأْمُونَيْنِ فِي دِينِهِمَا مُسْتَوِيَيْنِ فِي ذَلِكَ.

L35805 If one parent is more cautious in safeguarding the minor's worldly affairs, that parent takes precedence. If one is more cautious in safeguarding the minor's religion while the other is more cautious in worldly affairs, custody is granted to the one more cautious in religion due to what we have previously mentioned.

فَإِنْ كَانَ أَحَدُهُمَا أَحْوَطَ لِلصَّغِيرِ فِي دُنْيَاهُ: فَهُوَ أَوْلَى، فَإِنْ كَانَ أَحَدُهُمَا أَحْوَطَ فِي دِينِهِ وَالْآخَرُ أَحْوَطَ فِي دُنْيَاهُ: فَالْحَضَانَةُ لِذِي الدِّينِ لِمَا ذَكَرْنَا قَبْلُ.

L35806 And due to the saying of Allah, the Most High: "Indeed, the life of this world is but play and diversion, adornment, mutual boasting and rivalry in increasing wealth and children among you—as a parable of rain whose growth pleases the tillers, then it dries up and you see it turn yellow, then it becomes debris." [Al-Hadid: 20][21]

وَلِقَوْلِ اللَّهِ تَعَالَى: {أَنَّمَا الْحَيَاةُ الدُّنْيَا لَعِبٌ وَلَهْوٌ وَزِينَةٌ وَتَفَاخُرٌ بَيْنَكُمْ وَتَكَاثُرٌ فِي الْأَمْوَالِ وَالْأَوْلادِ كَمَثَلِ غَيْثٍ أَعْجَبَ الْكُفَّارَ نَبَاتُهُ ثُمَّ يَهِيجُ فَتَرَاهُ مُصْفَرًّا ثُمَّ يَكُونُ حُطَامًا} [الحديد: ٢٠] .

L35807 The interpretation of diligent care in worldly life is that a guardian should provide the utmost comfort in their child's living conditions, food, clothing, sleeping arrangements, care, kindness, honor, and devoted attention—this constitutes proper treatment of the young boy and girl. It is therefore obligatory to observe this after religious duties, in accordance with the statement of the Exalted: *"And be good to parents and relatives"* [An-Nisā': 36].[22]

وَتَفْسِيرُ الْحِيَاطَةِ فِي الدُّنْيَا -: أَنْ يَكُونَ أَحَدُهُمْ أَشَدَّ رَفَاهِيَةً فِي عَيْشِهِ، وَمَطْعَمِهِ وَمَلْبَسِهِ، وَمَرْقَدِهِ وَخِدْمَتِهِ، وَبِرِّهِ وَإِكْرَامِهِ، وَالِاهْتِبَالِ بِهِ - فَهَذَا فِيهِ إحْسَانٌ إلَى الصَّغِيرِ وَالصَّغِيرَةِ، فَوَاجِبٌ أَنْ يُرَاعَى بَعْدَ الدِّينِ لِقَوْلِهِ تَعَالَى {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى} [النساء: ٣٦] .

L35808 It has been reported to us through the chain of Waki' from al-Hasan ibn 'Utbah from Sa'id ibn al-Harith, who said: A maternal uncle and a paternal uncle disputed before Shuraih regarding a child, and he ruled the child to the paternal uncle. The maternal uncle said: "Shall I not spend on him from my wealth?" So Shuraih handed the child over to the maternal uncle. And this is the explicit text of our position.

وَرُوِّينَا مِنْ طَرِيقِ وَكِيعٍ عَنْ الْحَسَنِ بْنِ عُتْبَةَ عَنْ سَعِيدِ بْنِ الْحَارِثِ قَالَ: اخْتَصَمَ خَالٌ وَعَمٌّ إلَى شُرَيْحٍ فِي صَبِيٍّ فَقَضَى بِهِ لِلْعَمِّ، فَقَالَ الْخَالُ: لَا أُنْفِقُ عَلَيْهِ مِنْ مَالِي؟ فَدَفَعَهُ إلَيْهِ شُرَيْحٌ - وَهَذَا نَصُّ قَوْلِنَا.

[21] **Qur'an references (L35806):** Qur'an 57:20 (Al-Hadid).
[22] **Qur'an references (L35807):** Qur'an 4:36 (An-Nisa).

L35809 Abū Muḥammad said: If the sisters, brothers, or relatives are equal in all those matters, and they mutually agree that the minor boy or girl stays with each of them for a duration, this is permissible for them. If there is harm to the minor boy or girl, and the child was already in the custody of one of them, the child must not be removed from their custody. If they refuse to agree, the decision is by drawing lots.

قَالَ أَبُو مُحَمَّد: فَإِنْ اسْتَوَوْا الْأَخَوَاتُ أَوْ الْإِخْوَةُ فِي كُلِّ ذَلِكَ، أَوْ الْأَقَارِبُ، فَإِنْ تَرَاضَوْا فِي أَنْ يَكُونَ الصَّغِيرُ أَوْ الصَّغِيرَةُ عِنْدَ كُلِّ وَاحِدٍ مِنْهُمْ مُدَّةً فَذَلِكَ لَهُمْ، فَإِنْ كَانَ فِي ذَلِكَ ضَرَرٌ عَلَى الصَّغِيرِ أَوْ الصَّغِيرَةِ: فَإِنْ كَانَ تَقَدَّمَ كَوْنُهُ عِنْدَ أَحَدِهِمْ لَمْ يَزُلْ عَنْ يَدِهِ،، فَإِنْ أَبَوْا فَالْقُرْعَةُ.

L35810 As for our statement that the female slave and the free woman are equal, this is because neither the Quran nor the Sunnah contains textual evidence differentiating between them. Therefore, ruling on matters without textual evidence is legislation that Allah the Exalted has not sanctioned.

وَأَمَّا قَوْلُنَا - إنَّ الْأَمَةَ وَالْحُرَّةَ سَوَاءٌ - فَلِأَنَّ الْقُرْآنَ وَالسُّنَّةَ لَمْ يَأْتِ فِي أَحَدِهِمَا نَصٌّ فِي التَّفْرِيقِ بَيْنَهُمَا فَالْحُكْمُ فِيمَا لَا نَصَّ فِيهِ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L35811–35812 As for our statement—"whether the father relocates or does not"—this is because neither a Quranic text nor Sunnah has stipulated the revocation of the mother's custody due to the father's relocation. Thus, it constitutes an invalid legal ruling from those who assert this view: a specification of the Quran and the Sunnah we have cited, a contradiction of both through corrupt reasoning, poor consideration for the two minors, and harm inflicted upon them through forced displacement and removal from the mother and grandmother. This is an unmistakable injustice and undeniable oppression.

وَأَمَّا قَوْلُنَا - سَوَاءٌ رَحَلَ الْأَبُ أَوْ لَمْ يَرْحَلْ - فَلِأَنَّهُ لَمْ يَأْتِ نَصٌّ قُرْآنٍ، وَلَا سُنَّةٍ بِسُقُوطِ حَضَانَةِ الْأُمِّ مِنْ أَجْلِ رَحِيلِ الْأَبِ فَهُوَ شَرْعٌ بَاطِلٌ مِمَّنْ قَالَ بِهِ، وَتَخْصِيصٌ لِلْقُرْآنِ وَالسُّنَنِ الَّتِي أَوْرَدْنَا، وَمُخَالِفٌ لَهُمَا بِالرَّأْيِ الْفَاسِدِ وَسُوءُ نَظَرٍ لِلصَّغِيرَيْنِ وَإِضْرَارٌ بِهِمَا، فِي تَكْلِيفِ الْحَلِّ وَالتَّرْحَالِ وَالْإِزَالَةِ عَنْ الْأُمِّ وَالْجَدَّةِ - وَهَذَا ظُلْمٌ لَا خَفَاءَ بِهِ، وَجَوْرٌ لَا شَكَّ فِيهِ.

L35813 As for our statement that the mother's right to custody is not forfeited by her marriage if she is trustworthy and the one she married is trustworthy, this is based on the texts we have cited, and the Prophet—peace and blessings be upon him—did not distinguish between her marriage and her non-marriage.

وَأَمَّا قَوْلُنَا - إنَّهُ لَا يَسْقُطُ حَقُّ الْأُمِّ فِي الْحَضَانَةِ بِزَوَاجِهَا إذَا كَانَتْ مَأْمُونَةً وَكَانَ الَّذِي تَزَوَّجَهَا مَأْمُونًا - فَلِلنُّصُوصِ الَّتِي ذَكَرْنَا وَلَمْ يَخُصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - زَوَاجَهَا مِنْ غَيْرِ زَوَاجِهَا.

L35814 And according to what was narrated to us through the chain of Al-Bukhari: I am Ya'qub ibn Ibrāhīm ibn Kathīr; I am Ibn 'Ulayyah; I am 'Abd al-'Azīz, from Anas ibn Mālik, who said: "When the Messenger of Allah—may Allah's blessings and peace be upon him—came to Medina, he had no servant. Abū Ṭalḥah took my hand and brought me to the Messenger of Allah—may Allah's blessings and peace be upon him and his family—saying: 'O Messenger of Allah, Anas is a sensible boy. Let him serve you.' Anas said: Thus I served

وَلِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا يَعْقُوبُ بْنُ إبْرَاهِيمَ بْنِ كَثِيرٍ أَنَا ابْنُ عُلَيَّةَ أَنَا عَبْدُ الْعَزِيزِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ «قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ لَيْسَ لَهُ خَادِمٌ فَأَخَذَ أَبُو طَلْحَةَ بِيَدِي فَانْطَلَقَ بِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنَّ أَنَسًا غُلَامٌ كَيِّسٌ فَلْيَخْدُمْك؟ قَالَ: فَخَدَمْته فِي السَّفَرِ وَالْحَضَرِ»

him while traveling and at home." Anas mentioned the report. This Anas was in the custody of his mother while she had a husband—Abū Ṭalḥah—with the knowledge of the Messenger of Allah—may Allah's blessings and peace be upon him and his family.

وَذَكَرَ الْخَبَرَ - فَهَذَا أَنَسٌ فِي حَضَانَةِ أُمِّهِ، وَلَهَا زَوْجٌ وَهُوَ أَبُو طَلْحَةَ بِعِلْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -

L35815 There is no distinction in consideration and safeguarding between the stepson (the son of the mother's husband) and the stepdaughter (the daughter of the father's wife). Rather, in most cases, the stepson is more compassionate and less harmful than the stepdaughter. In all such matters, religious commitment is prioritized, followed solely by worldly well-being.

وَلَا فَرْقَ فِي النَّظَرِ وَالْحِيَاطَةِ بَيْنَ الرَّبِيبِ زَوْجِ الْأُمِّ وَالرَّبِيبَةِ زَوْجَةِ الْأَبِ، بَلْ فِي الْأَغْلَبِ الرَّبِيبُ أَشْفَقُ، وَأَقَلُّ ضَرَرًا مِنَ الرَّبِيبَةِ، وَإِنَّمَا يُرَاعَى فِي كُلِّ ذَلِكَ الدِّينُ، ثُمَّ صَلَاحُ الدُّنْيَا فَقَطْ.

L35816 Those who prohibit this cited as evidence what was narrated to us through Abd al-Razzaq's chain: From Ibn Jurayj, from Abu al-Zubayr, from an unnamed righteous man among the people of Medina, from Abu Salama ibn Abd al-Rahman, who said: "There was a woman from the Ansar married to a man from the Ansar who was killed at Uhud, leaving her with their child. The paternal uncle of her child and another man sought her hand through her father, but her father gave her in marriage to the other man. She came to the Prophet—peace and blessings be upon him—and said: 'My father gave me in marriage to a man I do not want, rejecting the paternal uncle of my child—and so he would take my child from me.' Allah's Messenger—peace and blessings be upon him—summoned her father and told him: 'You have no right to arrange this marriage. Go and marry the paternal uncle of your child.'"

وَاحْتَجَّ الْمَانِعُونَ مِنْ ذَلِكَ بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَنَا أَبُو الزُّبَيْرِ عَنْ رَجُلٍ صَالِحٍ مِنْ أَهْلِ الْمَدِينَةِ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ قَالَ «كَانَتْ امْرَأَةٌ مِنَ الْأَنْصَارِ تَحْتَ رَجُلٍ مِنَ الْأَنْصَارِ فَقُتِلَ عَنْهَا يَوْمَ أُحُدٍ وَلَهُ مِنْهَا وَلَدٌ فَخَطَبَهَا عَمُّ وَلَدِهَا وَرَجُلٌ آخَرُ إِلَى أَبِيهَا فَأَنْكَحَ الْآخَرَ، فَجَاءَتْ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَتْ: أَنْكَحَنِي أَبِي رَجُلًا لَا أُرِيدُهُ وَتَرَكَ عَمَّ وَلَدِي فَيَأْخُذُ مِنِّي وَلَدِي فَدَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَبَاهَا فَقَالَ لَهُ: أَنْتَ الَّذِي لَا نِكَاحَ لَكَ اذْهَبِي فَأَنْكِحِي عَمَّ وَلَدِكِ» .

L35817–35819 Abū Muḥammad said: This is mursal and contains a majhūl (unknown), and the like of this cannot be used as evidence—and they mentioned what was narrated to us. From the path of Abū Dāwūd: Narrated by Maḥmūd ibn Khālid al-Sulamī, from al-Walīd—he being Ibn Muslim—from Abū ʿAmr al-Awzāʿī, who narrated to me: ʿAmr ibn Shuʿayb reported from his father, from his grandfather ʿAbdullāh ibn ʿAmr: "A woman was divorced by her husband, and he sought to deprive her of custody of his child. The Messenger of Allāh (peace and blessings be upon him) said to her: 'You are more entitled to him as long as you do not contract a new marriage.'" This is a written record that is not used as evidence.

قَالَ أَبُو مُحَمَّدٍ: هَذَا مُرْسَلٌ وَفِيهِ مَجْهُولٌ، وَمِثْلُ هَذَا لَا يُحْتَجُّ بِهِ - وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مَحْمُودُ بْنُ خَالِدٍ السُّلَمِيُّ أَنَا الْوَلِيدُ - هُوَ ابْنُ مُسْلِمٍ - عَنْ أَبِي عَمْرٍو الْأَوْزَاعِيِّ حَدَّثَنِي عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرٍو «أَنَّ امْرَأَةً طَلَّقَهَا زَوْجُهَا وَأَرَادَ انْتِزَاعَ وَلَدِهِ مِنْهَا فَقَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْتِ أَحَقُّ بِهِ مَا لَمْ تَنْكِحِي» وَهَذِهِ صَحِيفَةٌ لَا يُحْتَجُّ بِهَا ".

وَقَدْ ذَكَرْنَا فِي " كِتَابَنَا الْمَوْسُومِ بِالْإِعْرَابِ " وَفِي " كِتَابِ الْإِيصَالِ " مَا تَرَكُوا فِيهِ رِوَايَةَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ وَلَمْ يَعِيبُوهُ إِلَّا بِأَنَّهُ صَحِيفَةٌ.

L35820 We have mentioned in our book *Al-Iʿrāb* and in *Al-Īṣāl* the instances where they excluded the narration of ʿAmr ibn Shuʿayb from his father, from his grandfather, and they only criticized it for being a written document.

فَإِنْ قِيلَ: فَهَلَّا قُلْتُمْ: الْخَالَةُ كَالْجَدَّةِ، لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَرَفَعَ أَبَوَيْهِ عَلَى الْعَرْشِ} [يوسف: ١٠٠] وَإِنَّمَا كَانَتْ خَالَتُهُ وَأَبَاهُ؟

L35821 If it is said: Why did you not assert that the maternal aunt is equivalent to the grandmother, based on the statement of Allah—Exalted and Majestic is He—{And he raised his parents upon the throne} [Yusuf 12:100], when it was in fact his maternal aunt and his father?[23]

قُلْنَا: لَمْ يَأْتِ قَطُّ نَصٌّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهَا كَانَتْ خَالَتَهُ وَإِنَّمَا هِيَ مِنْ أَخْبَارِ بَنِي إِسْرَائِيلَ وَهِيَ ظَاهِرَةُ الْكَذِبِ، وَلَعَلَّهَا كَانَتْ أُمَّهُ مِنْ الرَّضَاعَةِ، فَهُمَا أَبَوَانِ عَلَى هَذَا.

L35822 We said: There has never come any text from the Messenger of Allah—peace be upon him and his family—stating that she was his maternal aunt. Rather, this is among the reports of the Children of Israel, and it is manifestly false. It is plausible that she was his milk mother, in which case they would both be milk parents according to this.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ عَنْ أَبِي دَاوُد أَنَا عَبَّادُ بْنُ مُوسَى أَنَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ إِسْرَائِيلَ عَنْ أَبِي إِسْحَاقَ عَنْ هَانِئٍ، وَهُبَيْرَةَ «عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فَذَكَرَ أَخْذَهُ بِنْتَ حَمْزَةَ مِنْ مَكَّةَ، وَأَنَّ جَعْفَرَ بْنَ أَبِي طَالِبٍ قَالَ: ابْنَةُ عَمِّي وَخَالَتُهَا عِنْدِي فَقَضَى بِهَا - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِخَالَتِهَا وَقَالَ: الْخَالَةُ بِمَنْزِلَةِ الْأُمِّ» .

L35823 If it is said: You have indeed narrated from Abū Dāwūd—I am ʿAbbād ibn Mūsā, who narrated from Ismāʿīl ibn Jaʿfar, from Isrāʾīl, from Abū Isḥāq, from Hāniʾ and Hubayrah—that ʿAlī ibn Abī Ṭālib mentioned his taking custodial responsibility of Ḥamzah's daughter from Makkah, and that Jaʿfar ibn Abī Ṭālib said: "She is my cousin, and her maternal aunt is in my custody." The Prophet—may Allah's blessings and peace be upon him and his family—then ruled to grant her to her maternal aunt and said: "The maternal aunt holds the status of the mother."

قُلْنَا: لَا يَصِحُّ؛ لِأَنَّ إِسْرَائِيلَ ضَعِيفٌ - وَهَانِئٌ، وَهُبَيْرَةُ مَجْهُولَانِ.

L35824–35825 We said: It is not valid because Isrāʾīl is weak; Hāniʾ and Hubayrah are both unknown.

فَإِنْ قِيلَ: فَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ عِيسَى أَنَا سُفْيَانُ عَنْ أَبِي فَرْوَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَضَى بِبِنْتِ حَمْزَةَ لِجَعْفَرٍ» ؛ لِأَنَّ خَالَتَهَا عِنْدَهُ؟

L35826 If it is said: "You have narrated through the transmission chain of Abū Dāwūd: Muḥammad ibn ʿĪsā narrated from Sufyān, from Abī Farwah, from ʿAbd al-Raḥmān ibn Abī Laylā that 'the Messenger of Allāh (peace be upon him and his family) awarded custody of Ḥamzah's daughter to Jaʿfar'" - because her maternal aunt was with him?

قُلْنَا: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ - وَأَبُو فَرْوَةَ - هُوَ مُسْلِمُ بْنُ سَالِمٍ الْجُهَنِيُّ - وَلَيْسَ بِالْمَعْرُوفِ.

L35827 We said: This is a mursal narration, and there is no valid evidence in a mursal narration. As for Abu Farwah—Muslim ibn Salim al-Juhani—he is not well-known.

[23] **Qur'an references (L35821):** Qur'an 12:100 (Yusuf).

L35828 If it is said: Yusuf ibn Abdullah al-Namari narrated to you, stating: Abdullah ibn Muhammad Yusuf al-Azdi reported from Ishaq ibn Ahmad, who reported from al-Uqayli, who reported from Ahmad ibn Dawud, who reported from Imran al-Hisni, who reported from Yusuf ibn Khalid al-Samti, who reported from Abu Hurayrah al-Madani via Mujahid, from Abu Hurayrah: "The Messenger of Allah—may Allah bless him and his family and grant him peace—said: The maternal aunt is a mother."

فَإِنْ قِيلَ: قَدْ حَدَّثَكُمْ يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ قَالَ أَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ يُوسُفُ الْأَزْدِيُّ أَنَا إِسْحَاقُ بْنُ أَحْمَدَ أَنَا الْعُقَيْلِيُّ أَنَا أَحْمَدُ بْنُ دَاوُد أَنَا عِمْرَانُ الْحِصْنِيُّ أَنَا يُوسُفُ بْنُ خَالِدٍ السَّمْتِيُّ " أَنَا أَبُو هُرَيْرَةَ الْمَدَنِيُّ عَنْ مُجَاهِدٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: الْخَالَةُ أُمٌّ» ؟ .

L35829 We said: This is too weak to concern oneself with, for it includes Yusuf ibn Khalid al-Samti—a shunned, abandoned figure notorious for lying—and Abu Hurayrah al-Madani, whom no one knows: who is he?

قُلْنَا: هَذَا أَسْقَطُ مِنْ أَنْ يَشْتَغِلَ بِهِ، لِأَنَّ فِيهِ يُوسُفَ بْنَ خَالِدٍ السَّمْتِيَّ، وَهُوَ مَرْغُوبٌ عَنْهُ مَتْرُوكٌ مَذْكُورٌ بِالْكَذِبِ - وَأَبُو هُرَيْرَةَ الْمَدَنِيُّ لَا يَدْرِي أَحَدٌ مَنْ هُوَ؟ .

L35830–35832 If it is said: Aḥmad ibn Muḥammad al-Ṭalamankī narrated to you: Muḥammad ibn Aḥmad ibn Mufarrij, I am... Muhammad ibn Ayyub as-Samut: I am Ahmad ibn Amr ibn Abd al-Khaliq al-Bazzar, from Muhammad ibn al-Muthanna, from Abu Amir al-Aqadi, from Abdul Aziz ibn Muhammad al-Darawardi, from Yazid ibn Abdullah - meaning Ibn al-Hadi - from Muhammad ibn Ibrahim, from Nafi ibn Ujair, from his father: From Ali ibn Abi Talib that he, his brother Jaʿfar, and Zayd ibn Harithah disputed over the custody of Hamzah's daughter. The Messenger of Allah - peace and blessings be upon him and his family - said: "As for the girl, I judge her to be with Jaʿfar because she will remain with her maternal aunt. Indeed, the maternal aunt holds the status of a mother."

فَإِنْ قِيلَ: فَقَدْ حَدَّثَكُمْ أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ أَنَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ أَنَا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ أَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا أَبُو عَامِرٍ الْعَقَدِيُّ أَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ - يَعْنِي ابْنَ الْهَادِي - عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ عَنْ نَافِعِ بْنِ عُجَيْرٍ عَنْ أَبِيهِ «عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ اخْتَصَمَ هُوَ وَأَخُوهُ جَعْفَرٌ وَزَيْدُ بْنُ حَارِثَةَ فِي حَضَانَةِ بِنْتِ حَمْزَةَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَمَّا الْجَارِيَةُ فَأَقْضِي بِهَا لِجَعْفَرٍ تَكُونُ مَعَ خَالَتِهَا وَإِنَّمَا الْخَالَةُ أُمٌّ» .

L35833 We said: Nāfiʿ ibn ʿUjayr and his father ʿUjayr are unknown, and there is no valid evidence in an unknown [person]. However, this narration in every respect serves as evidence against the Ḥanafīs, Mālikīs, and Shāfiʿīs, for her maternal aunt was married to Jaʿfar—who was the most handsome youth among Quraysh—and he was not a maḥram to the daughter of Ḥamzah. We do not deny the Prophet's ruling—peace and blessings be upon him—in her case for Jaʿfar due to her aunt, as that was a greater safeguard for her.

قُلْنَا: نَافِعُ بْنُ عُجَيْرٍ وَأَبُوهُ عُجَيْرٌ مَجْهُولَانِ، وَلَا حُجَّةَ فِي مَجْهُولٍ إلَّا أَنَّ هَذَا الْخَبَرَ بِكُلِّ وَجْهٍ حُجَّةٌ عَلَى الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ، لِأَنَّ خَالَتَهَا كَانَتْ مُتَزَوِّجَةً بِجَعْفَرٍ - وَهُوَ أَجْمَلُ شَابٍّ فِي قُرَيْشٍ - وَلَيْسَ هُوَ ذَا مَحْرَمٍ مِنْ بِنْتِ حَمْزَةَ - وَنَحْنُ لَا نُنْكِرُ قَضَاءَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِهَا لِجَعْفَرٍ مِنْ أَجْلِ خَالَتِهَا، لِأَنَّ ذَلِكَ أَحْوَطُ لَهَا.

L35834 If it is asked: Why do you not hold the opinion of granting him the choice when he has attained the age of discernment, based on what Ḥumām ibn Aḥmad conveyed to you—I am ʿAbbās ibn Aṣbagh, I am Muḥammad ibn ʿAbd

فَإِنْ قِيلَ: فَهَلَّا قُلْتُمْ بِتَخْيِيرِهِ إذَا عَقَلَ لِمَا حَدَّثَكُمْ بِهِ - حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ أَنَا أَبِي أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ

al-Malik ibn Ayman, I am Aḥmad ibn Zuhayr ibn Ḥarb, from my father, from Sufyān ibn ʿUyaynah, from Ziyād ibn Saʿd, from Hilāl ibn Usāmah, from Abū Maymūnah—who said: I witnessed Abū Hurayrah granting a boy the choice between his father and his mother.

عَنْ زِيَادِ بْنِ سَعْدٍ عَنْ هِلَالِ بْنِ أُسَامَةَ عَنْ " أَبِي مَيْمُونَةَ قَالَ: شَهِدْت أَبَا هُرَيْرَةَ خَيَّرَ غُلَامًا بَيْنَ أَبِيهِ وَأُمِّهِ.

L35835–35836 From the path of Abu Bakr ibn Abi Shaybah: I [narrate] from Waki‘, from ‘Ali ibn al-Mubarak, from Yahya ibn Abi Kathir, from Abu Maimunah, from Abu Hurayrah—that a woman came to the Prophet (prayers and peace be upon him and his family) whose husband had divorced her; she sought to take her child. The Messenger of Allah (prayers and peace be upon him and his family) said: “Cast lots between yourselves for him.” Then he (prayers and peace be upon him and his family) said to the boy: “Choose whichever of them you wish,” and he chose his mother?

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ عَلِيِّ بْنِ الْمُبَارَكِ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي مَيْمُونَةَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ امْرَأَةً جَاءَتْ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ طَلَّقَهَا زَوْجُهَا فَأَرَادَتْ أَنْ تَأْخُذَ وَلَدَهَا فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - اسْتَهِمَا عَلَيْهِ ثُمَّ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِلْغُلَامِ: تَخَيَّرْ أَيَّهُمَا شِئْتَ فَاخْتَارَ أُمَّهُ» ؟ .

L35837 We said: This Abu Maimunah is unknown (as a narrator); he is not the father of Hilal—the one from whom narrations are reported. Moreover, upon reflection, there is no proof in it, because it does not state that if he had chosen his father, it would have been ruled in his favor.

قُلْنَا: أَبُو مَيْمُونَةَ هَذَا مَجْهُولٌ لَيْسَ هُوَ وَالِدُ هِلَالٍ الَّذِي رُوِيَ عَنْهُ ثُمَّ إذَا تَدَبَّرَ لَمْ تَكُنْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ لَوْ تَخَيَّرَ أَبَاهُ قُضِيَ لَهُ بِهِ.

L35838 Moreover, we do not deny allowing him to choose if one of the parents is more compassionate toward him. There is no doubt that the Messenger of Allah—peace and blessings be upon him—does not offer a choice between good and evil, and no doubt that he—upon him be peace and blessings—only offers a choice between two good options.

وَأَيْضًا - فَنَحْنُ لَا نُنْكِرُ تَخْيِيرَهُ إذَا كَانَ أَحَدُ الْأَبَوَيْنِ أَرْفَقَ بِهِ، وَلَا شَكَّ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُخَيِّرُ بَيْنَ خَيْرٍ وَشَرٍّ، وَلَا شَكَّ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يُخَيِّرُ إلَّا بَيْنَ خَيْرَيْنِ.

L35839 Likewise, we are certain that he (peace and blessings be upon him) would not leave anyone to follow their own choice in matters that constitute corruption for them in their religion or their personal condition. For the minor’s choice for himself may be flawed, as he leans toward comfort and negligence. Thus, there is no doubt that if he (peace and blessings be upon him) gave the child the choice, the child’s choice would not be implemented unless he had chosen what he was obligated to choose. No other option is permissible whatsoever.

وَكَذَلِكَ نَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يَتْرُكُ أَحَدًا عَلَى اخْتِيَارِهِ مَا هُوَ فَسَادٌ لَهُ فِي دِينِهِ أَوْ فِي حَالَتِهِ، فَقَدْ يَسُوءُ اخْتِيَارُ الصَّغِيرِ لِنَفْسِهِ، وَيَمِيلُ إلَى الرَّاحَةِ وَالْإِهْمَالِ، فَلَا شَكَّ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إنْ كَانَ خَيَّرَ الصَّبِيَّ فَلَمْ يَنْفُذْ اخْتِيَارُهُ إلَّا وَقَدْ اخْتَارَ الَّذِي يَجِبُ أَنْ يَخْتَارَ - لَا يَجُوزُ غَيْرُ ذَلِكَ أَصْلًا.

L35840 If it is objected: “You have cited what ʿAbdullāh ibn Rabīʿ al-Tamīmī narrated to us—I [am] Muḥammad ibn Muʿāwiyah al-Qurashī—I [am] Aḥmad ibn Shuʿayb al-Nasāʾī—I [am] Maḥmūd ibn Ghaylān—[from] ʿAbd al-Razzāq who informed us: Sufyān al-Thawrī—[from] ʿUthmān al-Battī—[from] ʿAbd

فَإِنْ قِيلَ: فَقَدْ ذَكَرْتُمْ مَا حَدَّثَكُمْ عَبْدُ اللَّهِ بْنُ رَبِيعٍ التَّمِيمِيُّ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ الْقُرَشِيُّ أَنَا أَحْمَدُ بْنُ شُعَيْبٍ النَّسَائِيِّ أَنَا مَحْمُودُ بْنُ غَيْلَانَ أَنَا عَبْدِ الرَّزَّاقِ أرنا سُفْيَانُ هُوَ الثَّوْرِيُّ

عَنْ عُثْمَانَ الْبَتِّيِّ عَنْ عَبْدِ الْحَمِيدِ الْأَنْصَارِيِّ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّهُ لَمَّا أَسْلَمَ وَأَبَتْ امْرَأَتُهُ أَنْ تُسْلِمَ فَجَاءَ ابْنٌ لَهُمَا صَغِيرٌ لَمْ يَبْلُغْ ثُمَّ خَيَّرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَيْنَهُمَا فَاخْتَارَ أُمَّهُ، فَقَالَ: اللَّهُمَّ اهْدِهِ؟ فَذَهَبَ إلَى أَبِيهِ» .

قُلْنَا: هَذَا خَبَرٌ لَمْ يَصِحَّ قَطُّ، لِأَنَّ الرُّوَاةَ لَهُ اخْتَلَفُوا فَقَالَ عُثْمَانُ الْبَتِّيُّ: عَبْدُ الْحَمِيدِ الْأَنْصَارِيُّ عَنْ أَبِيهِ عَنْ جَدِّهِ.

وَقَالَ مَرَّةً أُخْرَى: عَبْدُ الْحَمِيدِ بْنُ يَزِيدَ بْنِ سَلَمَةَ: أَنَّ جَدَّهُ أَسْلَمَ.

وَقَالَ مَرَّةً أُخْرَى: عَبْدُ الْحَمِيدِ بْنُ سَلَمَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ.

وَقَالَ عِيسَى: عَبْدُ الْحَمِيدِ بْنُ جَعْفَرٍ أَخْبَرَنِي أَبِي عَنْ جَدِّي رَافِعِ بْنِ سِنَانٍ.

وَكُلُّ هَؤُلَاءِ مَجْهُولُونَ وَلَا يَجُوزُ تَخْيِيرٌ بَيْنَ كَافِرٍ وَمُسْلِمٍ أَصْلًا -.

فَهَذَا مَا يُذْكَرُ مِنْ الْآثَارِ فِي هَذَا الْبَابِ.

وَأَمَّا مَا جَاءَ عَنْ السَّلَفِ فِيهِ -: فَرُوِّينَا مِنْ طَرِيقِ الزُّهْرِيِّ، وَعِكْرِمَةَ أَنَّهُ قَضَى بِحَضَانَةِ ابْنٍ لِعُمَرَ بْنِ الْخَطَّابِ لِأُمِّ الصَّبِيِّ وَقَالَ: هِيَ أَحَقُّ بِهِ مَا لَمْ تَتَزَوَّجْ وَكَانَ عُمَرُ نَازَعَهَا فِيهِ وَخَاصَمَهَا إلَى أَبِي بَكْرٍ - وَهَذَانِ مُنْقَطِعَانِ.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ غَيْرِ وَاحِدٍ مِنْ الْأَنْصَارِ، وَغَيْرِهِمْ: أَنَّ أُمَّ عَاصِمِ بْنِ عُمَرَ تَزَوَّجَتْ فَقَضَى أَبُو بَكْرٍ بِعَاصِمٍ لِأُمِّ أُمِّهِ، وَقَدْ كَانَ عُمَرُ يُخَاصِمُهَا فِيهِ، وَهَذَا لَا شَيْءَ؛ لِأَنَّ ابْنَ لَهِيعَةَ سَاقِطٌ، فَكَيْفَ وَهُوَ عَمَّنْ لَا يُدْرَى.

al-Ḥamīd al-Anṣārī—[from] his father—[from] his grandfather: ’When the grandfather embraced Islam while his wife refused to do so, they had a young son who had not reached puberty. The Prophet—peace and blessings be upon him—presented him the choice between them, and he chose his mother. The Prophet said: ”O Allah, guide him“—whereupon the boy subsequently went to his father.”’

L35841–35842 We said: This narration has never been authenticated, as its narrators disagreed. Uthman al-Batti stated: ‘Abd al-Hamid al-Ansari, from his father, from his grandfather.’

L35843 And he said on another occasion: Abd al-Hamid ibn Yazid ibn Salama’s grandfather embraced Islam.

L35844 He also said on another occasion: Abd al-Hamid ibn Salamah from his father, from his grandfather.

L35845 And ʿĪsā said: ʿAbd al-Ḥamīd ibn Jaʿfar informed me, my father from my grandfather Rāfiʿ ibn Sinān.

L35846 All of these are unknown individuals, and it is impermissible in principle to allow a choice between a disbeliever and a Muslim—

L35847 This is what has been cited among the narrations in this chapter.

L35848 As for what has been reported from the Salaf regarding this matter: It has been narrated to us through the chains of al-Zuhri and Ikrimah that Abu Bakr ruled in favor of the child’s mother concerning the custody of a son of Umar ibn al-Khattab, declaring: “She has greater right to him so long as she does not marry.” Umar had disputed her claim and brought the case to Abu Bakr - and these two chains are disconnected.

L35849 From the transmission of Ibn Wahb, from Ibn Lahīʿah, from multiple Anṣārī narrators and others: Umm ʿĀṣim ibn ʿUmar married, and Abū Bakr ruled that ʿĀṣim belonged to his maternal grandmother, while ʿUmar had disputed her claim over him. This [narration] is invalid, for Ibn Lahīʿah is disregarded; how then [can it be accepted] when he transmits from someone unknown?

L35850–35851 And via the chain of ʿAbd al-Razzāq from Ibn Jurayj: Aṭāʾ al-Khurāsānī

reported to me from Ibn ʿAbbās that ʿUmar disputed with his wife, the mother of his son ʿĀṣim, before Abū Bakr when he divorced her, claiming, “I have a greater right to him.” Abū Bakr responded, “Her fragrance, her warmth, and her care are better for him than you until he reaches puberty and chooses for himself.” And Abū Bakr ruled in her favor regarding him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَطَاءٌ الْخُرَاسَانِيُّ عَنْ ابْنِ عَبَّاسٍ أَنَّ عُمَرَ خَاصَمَ امْرَأَتَهُ أُمَّ ابْنِهِ عَاصِمٍ إِلَى أَبِي بَكْرٍ إِذْ طَلَّقَهَا وَقَالَ: أَنَا أَحَقُّ بِهِ، فَقَالَ لَهُ أَبُو بَكْرٍ: رِيحُهَا وَحَرُّهَا وَفِرَاشُهَا خَيْرٌ لَهُ مِنْكَ حَتَّى يَشِبَّ وَيَخْتَارَ لِنَفْسِهِ - وَقَضَى أَبُو بَكْرٍ لَهَا بِهِ.

L35852 From the narration of Al-Qāsim ibn Muḥammad: Abū Bakr (may Allah be pleased with him) ruled in favor of ʿĀṣim ibn ʿUmar’s maternal grandmother, though ʿUmar disputed her claim regarding it. This chain is disconnected. Such is what is known from Abū Bakr, may Allah be pleased with him.

وَمِنْ طَرِيقِ الْقَاسِمِ بْنِ مُحَمَّدٍ أَنَّ أَبَا بَكْرٍ قَضَى لِجَدَّةِ عَاصِمِ بْنِ عُمَرَ أُمِّ أُمِّهِ وَقَدْ جَاذَبَهَا عُمَرُ فِيهِ، وَهَذَا مُنْقَطِعٌ - فَهَذَا مَا يُعْرَفُ عَنْ أَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ -.

L35853 As for ʿUmar (may Allah be pleased with him), it has been narrated to us via ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAbd Allāh ibn ʿUbayd ibn ʿUmayr, who said: ʿUmar offered a young boy the choice between his father and his mother. He chose his mother, so she took him away.

وَأَمَّا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ اللَّهِ بْنِ عُبَيْدِ بْنِ عُمَيْرٍ قَالَ: خَيَّرَ عُمَرُ غُلَامًا بَيْنَ أَبِيهِ وَأُمِّهِ؟ فَاخْتَارَ أُمَّهُ فَانْطَلَقَتْ بِهِ.

L35854 A dispute regarding a boy was brought to ʿUmar ibn al-Khaṭṭāb, who ruled: “He remains with his mother until he can articulate clearly about himself, then he may choose.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ إِسْمَاعِيلَ بْنِ عُبَيْدِ اللَّهِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ غُنَيْمٍ قَالَ: اخْتَصَمَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فِي غُلَامٍ فَقَالَ: هُوَ مَعَ أُمِّهِ حَتَّى يُعْرِبَ عَنْهُ لِسَانُهُ فَيَخْتَارَ.

L35855 And through the narration of Ḥammād ibn Salamah from al-Agharr ibn Suwayd, from ʿUmayr ibn Saʿīd: ʿUmar (may Allah be pleased with him) ruled that the child belonged to the paternal uncle rather than the mother, then returned the child to the mother. This is what has reached us from ʿUmar.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْأَغَرِّ بْنِ سُوَيْدٍ عَنْ عُمَيْرِ بْنِ سَعِيدٍ أَنَّ عُمَرَ قَضَى بِالْوَلَدِ لِلْعَمِّ دُونَ الْأُمِّ، ثُمَّ رَدَّهُ إِلَى الْأُمِّ - فَهَذَا مَا بَلَغَنَا عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ -.

L35856 As for Ali—may Allah be pleased with him—we have been narrated through Yahya ibn Sa‘id al-Qattan’s chain: I am Yunus ibn ‘Ubayd Allah al-Harami—‘Umarah ibn Rabi‘ah reported to me that he disputed with his mother and uncle before Ali ibn Abi Talib regarding it. He said: “Ali gave me the choice three times? Each time I chose my mother. With us was a minor brother of mine. Ali said: ’When this one reaches the age of this one, he will be given the choice.”’

وَأَمَّا عَلِيٌّ - رَضِيَ اللَّهُ عَنْهُ -: فَرُوِّينَا مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا يُونُسُ بْنُ عُبَيْدِ اللَّهِ الْحَرَمِيُّ حَدَّثَنِي عُمَارَةُ بْنُ رَبِيعَةَ أَنَّهُ خَاصَمَ فِيهِ أُمَّهُ وَعَمَّهُ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فَخَيَّرَنِي عَلِيٌّ ثَلَاثًا؟ كُلَّهُنَّ أَخْتَارُ أُمِّي وَمَعَنَا أَخٌ لِي صَغِيرٌ، فَقَالَ عَلِيٌّ: هَذَا إِذَا بَلَغَ مَبْلَغَ هَذَا خُيِّرَ.

L35857 As for Abu Hurairah, we have previously mentioned his view on granting

the legal option. This is what we have presented from the Companions, may Allah be pleased with them.

وَأَمَّا أَبُو هُرَيْرَةَ فَقَدْ ذَكَرْنَا عَنْهُ التَّخْيِيرَ قَبْلُ، فَهَذَا مَا حَضَرْنَا فِيهِ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L35858 It has been narrated to us from ʿUmar and Ibn ʿUmar that when you sell two brothers, do not separate them.

وَرُوِّينَا عَنْ عُمَرَ، وَابْنِ عُمَرَ: إذَا بِعْتُمْ أَخَوَيْنِ فَلَا تُفَرِّقُوا بَيْنَهُمَا.

L35859 As for the Followers: It has been narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb al-Sikhtiyānī from Muḥammad ibn Sīrīn from Shurayḥ, who said: "The mother is more compassionate, and the father is more entitled." He ruled that the boy is to be with his mother if they reside in the same household and possess sufficient financial means to sustain themselves.

وَأَمَّا التَّابِعُونَ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ قَالَ: الْأُمُّ أَرْفَقُ، وَالْأَبُ أَحَقُّ، وَقَضَى: أَنَّ الصَّبِيَّ مَعَ أُمِّهِ إذَا كَانَتْ الدَّارُ وَاحِدَةً وَيَكُونُ مَعَهُمْ مِنْ النَّفَقَةِ مَا يُصْلِحُهُمْ.

L35860 And through the chain of ʿAbd al-Razzāq from Ibn Jurayj from Ajlaḥ: that Shurayh ruled to grant custody of the child to the grandmother if his mother marries.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ أَجْلَحَ: أَنَّ شُرَيْحًا قَضَى بِالصَّبِيِّ لِلْجَدَّةِ إذَا تَزَوَّجَتْ أُمُّهُ.

L35861–35862 Through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: The mother has the greatest right to the child so long as she does not marry. If she marries, the father takes him.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: الْأُمُّ أَحَقُّ بِالْوَلَدِ مَا لَمْ تَتَزَوَّجْ فَإِذَا تَزَوَّجَتْ أَخَذَهُ أَبُوهُ.

L35863 From the transmission of ʿAbd al-Razzāq, from Ibn Jurayj: I heard that Aṭāʾ was asked about the child of a mukatab [from a free woman] and the child of a slave [from a free woman]. He said: "The mother has more right to him because she is free."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ سَمِعْت عَطَاءً سُئِلَ عَنْ وَلَدِ الْمُكَاتَبِ وَالْعَبْدِ مِنْ الْحُرَّةِ فَقَالَ: الْأُمُّ أَحَقُّ بِهِ؛ لِأَنَّهَا حُرَّةٌ.

L35864 From the narration of Ibn Wahb from Al-Layth ibn Saʿd, who said: Yahya ibn Saʿid said: When a woman is divorced, she has greater right to the child—whether male or female—as long as she does not remarry. If the father travels to a land where he intends to reside, he would assume greater right to the child even if they are young. But if he departs as a ghāzī (one engaged in a military expedition) or as a trader, the mother retains greater right to her child unless he leaves for a campaign of severed return. We know of no differing view from a successor (Tābiʿī) other than what we have mentioned.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ اللَّيْثِ بْنِ سَعْدٍ قَالَ: أَنَا يَحْيَى بْنُ سَعِيدٍ أَنَّ الْمَرْأَةَ إذَا طَلُقَتْ فَهِيَ أَوْلَى بِالْوَلَدِ الذَّكَرِ وَالْأُنْثَى مَا لَمْ تَتَزَوَّجْ، فَإِذَا خَرَجَ الْوَالِدُ إلَى أَرْضٍ يَسْكُنُهَا كَانَ أَوْلَى بِالْوَلَدِ - وَإِنْ كَانُوا صِغَارًا وَإِنْ هُوَ خَرَجَ غَازِيًا أَوْ تَاجِرًا - فَالْأُمُّ أَحَقُّ بِوَلَدِهَا إلَّا أَنْ يَكُونَ غَزَا غَزْوَةَ انْقِطَاعٍ - لَا نَعْلَمُ عَنْ تَابِعٍ غَيْرَ مَا ذَكَرْنَا.

L35865 We are unaware of any exceptions to the prohibition of marrying one's mother except [the opinions] attributed to Shurayh, al-Zuhri, and Yaḥyā ibn

Saʿīd al-Anṣārī. However, al-Zuhri ruled in favor of the father on this matter, while Shurayh ruled in favor of the grandmother.

وَمَا نَعْلَمُ اسْتِثْنَاءَ الزَّوَاجِ فِي الْأُمِّ إِلَّا عَنْ شُرَيْحٍ، وَالزُّهْرِيِّ وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ إِلَّا أَنَّ الزُّهْرِيَّ قَضَى بِهِ فِي ذَلِكَ لِلْأَبِ وَقَضَى بِهِ شُرَيْحٌ لِلْجَدَّةِ.

L35866 If they say: Perhaps al-Zuhri ruled in favor of the father if the child had no grandmother or maternal aunt? We say: Perhaps Shurayh ruled in favor of the grandmother if the child had no father. We have not found the permissibility of the father taking the child away except from Yahya ibn Saʿid alone - and Shurayh's statement on that matter is unclear. Would he then be more of a liar than one who claims consensus in this? We seek refuge in Allah from abandonment and trivializing falsehood.

فَإِنْ قَالُوا: لَعَلَّ الزُّهْرِيَّ قَضَى بِهِ لِلْأَبِ إِذَا لَمْ يَكُنْ لَهُ جَدَّةٌ وَلَا خَالَةٌ؟ قُلْنَا: وَلَعَلَّ شُرَيْحًا إِنَّمَا قَضَى بِهِ لِلْجَدَّةِ إِذَا لَمْ يَكُنْ لِلْوَلَدِ أَبٌ وَمَا وَجَدْنَا إِبَاحَةَ رَحِيلِ الْأَبِ بِالْوَلَدِ إِلَّا عَنْ يَحْيَى بْنِ سَعِيدٍ وَحْدَهُ - وَكَلَامُ شُرَيْحٍ فِي ذَلِكَ وَلَيْسَ بِالْبَيِّنِ، أَفَيَكُونُ أَكْذَبَ مِمَّنْ ادَّعَى الْإِجْمَاعَ فِي هَذَا - وَنَعُوذُ بِاللَّهِ مِنْ الْخِذْلَانِ وَاسْتِسْهَالِ الْكَذِبِ.

L35867 As for the later jurists, Sufyān al-Thawrī stated: "If the mother marries, the maternal aunt has priority." Al-Awzāʿī said: "If the mother marries, the paternal grandmother has priority over the child. If she does not exist, then the paternal uncle has priority over the child rather than his maternal grandmother (the mother of the child's mother). If the mother is divorced [after remarriage], she does not return to custody."

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ سُفْيَانَ الثَّوْرِيَّ قَالَ: إِنْ تَزَوَّجَتْ الْأُمُّ فَالْخَالَةُ أَحَقُّ - وَقَالَ الْأَوْزَاعِيُّ: إِذَا تَزَوَّجَتْ الْأُمُّ فَالْجَدَّةُ لِلْأَبِ أَحَقُّ بِالْوَلَدِ، فَإِنْ لَمْ تَكُنْ فَالْعَمُّ أَحَقُّ بِالْوَلَدِ مِنْ جَدَّتِهِ أُمِّ أُمِّهِ فَإِنْ طَلُقَتْ الْأُمُّ لَمْ تَرْجِعْ إِلَى الْحَضَانَةِ.

L35868 Layth ibn Saʿd said: The mother has the greatest right to the son until he reaches eight years of age and to the daughter until she reaches her designated age. Thereafter, the father has the greater right to her, unless the mother is found unsuitable, in which case the daughter is removed from her care before reaching that age.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ: الْأُمُّ أَحَقُّ بِالِابْنِ حَتَّى يَبْلُغَ ثَمَانِي سِنِينَ وَبِالِابْنَةِ حَتَّى تَبْلُغَ، ثُمَّ الْأَبُ أَوْلَى بِهَا، إِلَّا أَنْ تَكُونَ الْأُمُّ غَيْرَ مَرْضِيَّةٍ فَتُنْتَزَعُ الِابْنَةُ مِنْهَا قَبْلَ ذَلِكَ.

L35869–35871 Al-Ḥasan ibn Ḥayy said: The mother has priority until the daughter's ankles become prominent (takʿub) and the boy grows pubic hair (yayʿ), at which point they are granted the choice. Between their two parents, so whichever one the son chooses, it is decided for him accordingly. Then, if after that the son and daughter wish to return to the other parent, that is permissible for both of them. If the mother marries, she loses her right to custody. If she is divorced before the time of the son and daughter's being granted the choice, her right to custody is restored. He said: When the daughter reaches maturity—provided she is of sound character—she may reside wherever she wishes. Similarly, the son, when he reaches maturity and his sound judgment is recognized.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: الْأُمُّ أَوْلَى حَتَّى تَكْعُبَ الِابْنَةُ، وَيَيْفَعَ الْغُلَامُ فَيُخَيَّرَانِ بَيْنَ أَبَوَيْهِمَا، فَأَيَّهُمَا اخْتَارَ قُضِيَ لَهُ بِذَلِكَ، ثُمَّ إِنْ بَدَا لِلْوَلَدِ وَالِابْنَةِ بَعْدَ ذَلِكَ فَأَرَادَ الرُّجُوعَ إِلَى الْآخَرِ فَذَلِكَ لَهُمَا، فَإِنْ تَزَوَّجَتْ الْأُمُّ فَلَا حَقَّ لَهَا فِي الْحَضَانَةِ، فَإِنْ طَلُقَتْ قَبْلَ وَقْتِ تَخْيِيرِ الْوَلَدِ وَالِابْنَةِ عَادَتْ عَلَى حَقِّهَا فِي الْحَضَانَةِ، قَالَ: فَإِذَا بَلَغَتْ الِابْنَةُ - وَهِيَ مَأْمُونَةٌ - فَلَهَا أَنْ تَسْكُنَ حَيْثُ شَاءَتْ، كَذَلِكَ الِابْنُ إِذَا بَلَغَ وَأُونِسَ رُشْدُهُ.

وَقَالَ أَبُو حَنِيفَةَ: الْأُمُّ أَحَقُّ بِالِابْنِ وَالِابْنَةِ الصَّغِيرَيْنِ، ثُمَّ الْجَدَّةُ أُمُّ الْأُمِّ ثُمَّ أُمُّ الْأَبِ، ثُمَّ الْأُخْتُ الشَّقِيقَةُ، ثُمَّ الْأُخْتُ لِلْأُمِّ.

L35872 Abu Hanifa said: The mother is most entitled to custody of the minor son and daughter, then the maternal grandmother, then the paternal grandmother, then the full sister, then the maternal half-sister.

ثُمَّ اخْتَلَفَ قَوْلُهُ - فَمَرَّةً قَالَ: ثُمَّ الْخَالَةُ، ثُمَّ الْأُخْتُ لِلْأَبِ، ثُمَّ الْعَمَّةُ - وَبِهِ يَأْخُذُ زُفَرُ - وَمَرَّةً قَالَ: ثُمَّ الْأُخْتُ لِلْأَبِ، ثُمَّ الْخَالَةُ، ثُمَّ الْعَمَّةُ، وَبِهِ يَأْخُذُ أَبُو يُوسُفَ.

L35873 Then his statements differed—on one occasion stating: next the maternal aunt, followed by the paternal sister, then the paternal aunt—a position adopted by Zufar—and on another occasion stating: next the paternal sister, followed by the maternal aunt, then the paternal aunt—a position adopted by Abū Yūsuf.

ثُمَّ لَمْ يَخْتَلِفْ قَوْلُهُ فِي أَنَّ الْخَالَةَ الشَّقِيقَةَ أَحَقُّ مِنْ الْخَالَةِ لِلْأَبِ، وَأَنَّ الْخَالَةَ لِلْأَبِ أَحَقُّ مِنْ الْخَالَةِ لِلْأُمِّ، وَالْخَالَةُ لِلْأُمِّ أَحَقُّ مِنْ الْعَمَّةِ الشَّقِيقَةِ، وَالْعَمَّةُ الشَّقِيقَةُ أَحَقُّ مِنْ الْعَمَّةِ لِلْأَبِ، وَأَنَّ الْعَمَّةَ لِلْأَبِ أَحَقُّ مِنْ الْعَمَّةِ لِلْأُمِّ.

L35874 Then his position did not differ in affirming that the full maternal aunt has greater entitlement than the maternal aunt through the father, the maternal aunt through the father has greater entitlement than the maternal aunt through the mother, the maternal aunt through the mother has greater entitlement than the full paternal aunt, the full paternal aunt has greater entitlement than the paternal aunt through the father, and the paternal aunt through the father has greater entitlement than the paternal aunt through the mother.

وَقَالَ أَبُو حَنِيفَةَ: وَالْكَافِرَةُ وَالْمُؤْمِنَةُ سَوَاءٌ.

L35875 Abū Ḥanīfah said: The disbelieving woman and the believing woman are the same.

قَالَ: فَالْأُمُّ وَالْجَدَّتَانِ أَحَقُّ بِالْجَارِيَةِ حَتَّى تَحِيضَ، وَبِالْغُلَامِ حَتَّى يَأْكُلَ وَحْدَهُ وَيَشْرَبَ وَحْدَهُ وَيَلْبَسَ ثِيَابَهُ وَحْدَهُ.

L35876 He said: So the mother and the two grandmothers have a greater right to the female child until she reaches puberty, and to the male child until he can eat, drink, and dress himself independently.

وَأَمَّا الْأَخَوَاتُ، وَالْخَالَاتُ، وَالْعَمَّاتُ - فَهُنَّ أَحَقُّ بِالْجَارِيَةِ وَالْغُلَامِ حَتَّى يَأْكُلَا وَحْدَهُمَا، وَيَشْرَبَا وَحْدَهُمَا وَيَلْبَسَا ثِيَابَهُمَا وَحْدَهُمَا فَقَطْ.

L35877 As for sisters, maternal aunts, and paternal aunts—they have the foremost right over the girl and the boy, but only until the two can eat by themselves, drink by themselves, and dress themselves in their clothes independently.

وَلَا حَقَّ لِمَنْ ذَكَرْنَا فِي الْحَضَانَةِ إنْ تَزَوَّجْنَ إلَّا أَنْ يَكُونَ زَوْجُ الْجَدَّةِ هُوَ الْجَدُّ، وَيَكُونَ زَوْجُ سَائِرِ مَنْ ذَكَرْنَا ذَا رَحِمٍ مَحْرَمَةٍ مِنْ الْجَارِيَةِ وَالْغُلَامِ فَلَا يَسْقُطُ بِذَلِكَ حَقُّ الْحَضَانَةِ لَهُنَّ.

L35878 And those women we mentioned regarding custody have no right if they marry, except when the grandmother's husband is the grandfather, and the husband of the remaining women we mentioned is a mahram through a forbidden blood relation to the young girl or boy. In such cases, their marriage does not nullify their right to custody.

L35879 He said: After all those we have mentioned, custody is incumbent upon the

قَالَ: وَبَعْدَ كُلِّ مَنْ ذَكَرْنَا تَجِبُ الْحَضَانَةُ لِلْأَبِ، ثُمَّ لِأَبِ الْأَبِ، ثُمَّ لِلْأَخِ الشَّقِيقِ، ثُمَّ لِلْأَخِ لِلْأَبِ، ثُمَّ لِلْعَمِّ الشَّقِيقِ، ثُمَّ لِلْعَمِّ لِلْأَبِ.

father, then upon the paternal grandfather, then upon the full brother, then upon the paternal half-brother, then upon the full paternal uncle, then upon the paternal half-uncle.

L35880–35881 قَالَ: وَلَا حَقَّ فِي الْحَضَانَةِ لِلْأَخِ لِلْأُمِّ، وَلَا لِلْعَمِّ لِلْأُمِّ، وَلَا لِلْجَدِّ لِلْأُمِّ، وَلَا لِلْخَالِ جُمْلَةً، وَلَا لِلرَّجُلِ تَكُونُ قَرَابَتُهُ مِنْ قِبَلِ الْأُمِّ.

He said: There is no right to custody for the uterine brother, nor for the mother's paternal uncle, nor for the maternal grandfather, nor for the maternal uncle whatsoever, nor for any male relative whose kinship is through the mother's side.

L35882 وَقَدْ رُوِيَ عَنْ زُفَرَ: أَنَّ الْخَالَةَ أَوْلَى مِنْ الْجَدَّةِ لِلْأَبِ، وَأَنَّ الْأُخْتَ الشَّقِيقَةَ وَالْأُخْتَ لِلْأُمِّ سَوَاءٌ لَا تُقَدَّمُ إحْدَاهُمَا عَلَى الْأُخْرَى قَالُوا: فَإِنْ أُمَّتْ أَوْ طَلُقَتْ إحْدَى مَنْ ذَكَرْنَا رَجَعَتْ عَلَى حَقِّهَا فِي الْحَضَانَةِ.

It has been reported from Zufar that the maternal aunt holds a stronger claim to custody than the paternal grandmother, and that the full sister and the uterine sister are equal - neither is given precedence over the other. The scholars stated: If one of the aforementioned relatives assumes maternal responsibility or is divorced, she regains her right to custody.

L35883 وَقَالَ مَالِكٌ: الْأُمُّ أَحَقُّ بِحَضَانَةِ الْوَلَدِ، ثُمَّ الْجَدَّةُ أُمُّ الْأُمِّ، ثُمَّ الْخَالَةُ، ثُمَّ الْجَدَّةُ مِنْ قِبَلِ الْأَبِ، ثُمَّ الْأُخْتُ، ثُمَّ الْعَمَّةُ، ثُمَّ ابْنَةُ الْأَخِ.

Malik said: The mother holds the primary right to custody of the child, followed by the maternal grandmother, then the maternal aunt, then the paternal grandmother, then the sister, then the paternal aunt, and finally the niece.

L35884 قَالَ: وَكُلُّ هَؤُلَاءِ أَحَقُّ بِالذَّكَرِ حَتَّى يَبْلُغَ الْحُلُمَ، وَبِالِابْنَةِ حَتَّى تُزَوَّجَ.

He said: All of these have a greater right to the son until he reaches puberty and to the daughter until she is married.

L35885 قَالَ: فَإِنْ تَزَوَّجَتْ الْأُمُّ سَقَطَ حَقُّهَا فِي الْحَضَانَةِ فَإِنْ كَانَ زَوْجُ الْجَدَّةِ الْجَدَّ لَمْ يَسْقُطْ حَقُّهَا فِي الْحَضَانَةِ قَالَ: ثُمَّ بَعْدَ ابْنَةِ الْأَخِ الْأَبُ، ثُمَّ الْعَصَبَةُ.

He said: If the mother marries, her right to custody is forfeited. If the grandmother's husband is the grandfather, her custody right does not lapse. He added: After the brother's daughter comes the father, then the agnates.

L35886–35888 وَقَالَ الشَّافِعِيُّ: الْأُمُّ أَحَقُّ بِالِابْنِ وَالِابْنَةِ مَا لَمْ تَتَزَوَّجْ، ثُمَّ الْجَدَّةُ مِنْ قِبَلِ الْأُمِّ وَإِنْ عَلَتْ، ثُمَّ الْأَبُ، ثُمَّ الْجَدُّ أَبُو الْأَبِ وَإِنْ عَلَا، ثُمَّ سَائِرُ الْعَصَبَةِ: الْأَخُ وَابْنُ الْأَخِ، وَالْعَمُّ وَابْنُ الْعَمِّ، ثُمَّ الْجَدَّةُ أُمُّ الْأَبِ، ثُمَّ أُمَّهَاتُهَا، ثُمَّ الْجَدَّةُ أُمُّ أَبِ الْأَبِ، ثُمَّ أُمَّهَاتُهَا وَإِنْ عَلَتْ، ثُمَّ الْأُخْتُ الشَّقِيقَةُ، ثُمَّ الْأُخْتُ لِلْأَبِ، ثُمَّ الْأُخْتُ لِلْأُمِّ، ثُمَّ الْخَالَةُ الشَّقِيقَةُ، ثُمَّ الْخَالَةُ لِلْأَبِ، ثُمَّ الْعَمَّةُ.

Al-Shafi'i said: The mother has the greatest right to the son and daughter as long as she has not remarried, then the maternal grandmother and her ascendants, then the father, then the paternal grandfather and his ascendants, then the rest of the agnates: the brother and the brother's son, the paternal uncle and the paternal uncle's son, then the paternal grandmother (the father's mother), then her ascendants, then the paternal great-grandmother, then her ascendants. The female ascendant, then the full sister, then the paternal sister, then the maternal sister, then the maternal aunt, then the paternal aunt, then the paternal aunt.

L35889 He said: When the minor reaches seven years of age and possesses under-

قَالَ: فَإِذَا بَلَغَ الصَّغِيرُ سَبْعَ سِنِينَ وَهُوَ يَعْقِلُ عَقْلَ مِثْلِهِ خُيِّرَ بَيْنَ أَبِيهِ وَأُمِّهِ، فَحَيْثُ اخْتَارَ جُعِلَ فَإِنْ تَزَوَّجَتْ الْأُمُّ خَرَجَتْ عَنْ الْحَضَانَةِ فَإِنْ أُمَّتْ عَادَتْ إلَى حَقِّهَا فِي الْحَضَانَةِ.

وَاخْتَلَفُوا فِي رَحِيلِ الْأَبِ - فَقَالَ أَبُو حَنِيفَةَ: إنْ كَانَ النِّكَاحُ وَقَعَ فِي مِصْرٍ فَأَرَادَتْ الْمَرْأَةُ أَنْ تَشْخَصَ بِوَلَدِهَا الصِّغَارِ فَالْوَالِدُ أَحَقُّ فَإِنْ سَكَنَتْ فِي غَيْرِ الْمَوْضِعِ الَّذِي وَقَعَ فِيهِ عَقْدُ النِّكَاحِ فَأَرَادَتْ الرُّجُوعَ إلَى الْمَكَانِ الَّذِي وَقَعَ فِيهِ عَقْدُ النِّكَاحِ فَلَهَا ذَلِكَ - وَهِيَ فِي ذَلِكَ أَحَقُّ بِهِمْ مِنْ الْأَبِ - وَلَهَا أَنْ تَرْحَلَ بِهِمْ إلَى مَا يَقْرُبُ مِنْ الْمِصْرِ الَّذِي وَقَعَ فِيهِ عَقْدُ النِّكَاحِ إنْ كَانَ يُمْكِنُ عَصَبَةُ الْوَلَدِ أَنْ يَنْهَضُوا إلَى رُؤْيَةِ الصَّغِيرِ أَوْ الصَّغِيرَةِ وَيَرْجِعُوا مِنْ نَهَارِهِمْ، وَقَالَ ابْنُ أَبِي لَيْلَى: نَحْوَ ذَلِكَ.

وَقَالَ مَالِكٌ: لِلْأَبِ أَنْ يَرْحَلَ بِبَنِيهِ إذَا كَانَ رَاحِلًا رِحْلَةَ إقَامَةٍ لَا رُجُوعَ لَهُ - صِغَارًا كَانُوا أَوْ كِبَارًا - قَالَ: وَالْعَصَبَةُ كَالْأَبِ فِي ذَلِكَ إذَا مَاتَ الْأَبُ، قَالَ: وَلَيْسَ لِلْأُمِّ أَنْ تُرَحِّلَهُمْ إلَى الْبَرِيدِ وَنَحْوِهِ.

وَقَالَ اللَّيْثُ، وَالشَّافِعِيُّ نَحْوَ ذَلِكَ.

قَالَ أَبُو مُحَمَّد: كُلُّ مَا ذَكَرْنَا مِنْ حَقِّ الْحَضَانَةِ فِي الزَّوْجَاتِ فَهُوَ فِي الْمَمَالِيكِ الْمَسْبِيِّينَ، وَالْمَبِيعِينَ، كُلُّ ذَلِكَ سَوَاءٌ سَوَاءٌ؛ لِأَنَّ النُّصُوصَ الَّتِي أَوْرَدْنَا تَقْتَضِي ذَلِكَ، وَلَا يُفْسَخُ الْبَيْعُ، لَكِنْ يُخَيَّرُ مَنْ لَهُ مِلْكُ الصَّغِيرِ وَالصَّغِيرَةِ عَلَى أَنْ يَدَعَهُمَا عِنْدَ مَنْ لَهُ حَضَانَتُهُمَا؛ لِأَنَّهُ لَمْ يَأْتِ نَصٌّ بِفَسْخِ الْبَيْعِ.

standing equivalent to his peers, he is given the choice between his father and mother. Whichever he chooses, he is placed there. If the mother marries, she loses custody. If she becomes single again, she regains her rightful claim to custody.

L35890 The jurists differed concerning the father's relocation. Abū Ḥanīfah said: If the marriage was contracted in a city and the woman wishes to depart with her young children, the father has a greater right. However, if she resides in a place other than where the marriage contract was concluded and wishes to return to the location of the marriage contract, she is entitled to do so—and in that case, she holds greater right over them than the father. She may move with them to a place near the city where the marriage was contracted, provided the child's paternal male relatives are able to journey to visit the minor boy or girl and return on the same day. Ibn Abī Laylā held a similar view.

L35891 Malik said: A father has the right to relocate with his sons if he undertakes a relocation journey for permanent settlement with no intention of return—whether they are minors or adults. He added: The male paternal relatives (agnates) hold the same authority as the father in this matter if the father dies. He further stated: The mother does not have the right to relocate them to a distance of one barīd [approximately 12 miles] or similar distances.

L35892 Al-Layth said, and Al-Shāfiʿī similarly.

L35893 Abu Muhammad said: All that we have mentioned regarding the right of custody concerning wives applies equally to captives and those sold into slavery—all of it is exactly the same in every respect. This is because the texts we have cited necessitate that, and the sale is not invalidated. However, the owner of the minor boy or girl is given the choice to leave them with the person entitled to their custody, as no explicit text prescribes the invalidation of the sale.

L35894 Abu Hanifah said: No distinction is made between the minor boy and the minor girl, nor between them and their mahram relatives. If the minor boy

or girl is sold without her mahram relatives or his mahram relative, the sale is not invalidated.

وَقَالَ أَبُو حَنِيفَةَ: لَا يُفَرَّقُ بَيْنَ الصَّغِيرِ وَالصَّغِيرَةِ وَبَيْنَ ذَوِي رَحِمِهَا الْمَحْرَمَةِ، فَإِنْ بِيعَ الصَّغِيرُ أَوْ الصَّغِيرَةُ دُونَ ذَوِي رَحِمِهَا أَوْ ذَاتِ رَحِمِهِ لَمْ يُفْسَخْ الْبَيْعُ.

L35895 Abū Yūsuf said: "The marriage is annulled specifically in the case of the mother and the child." Mālik, al-Layth, and al-Shāfiʿī said: "Separation is mandated between two minors [in a marriage] and between all prohibited mahram relatives, except the parents alone; hence, no separation is mandated between the parents and their child."

قَالَ أَبُو يُوسُفَ: يُفْسَخُ فِي الْأُمِّ وَالْوَلَدِ خَاصَّةً وَقَالَ مَالِكٌ، وَاللَّيْثُ، وَالشَّافِعِيُّ: يُفَرَّقُ بَيْنَ الصَّغِيرَيْنِ وَبَيْنَ كُلِّ ذِي رَحِمٍ مَحْرَمَةٍ إلَّا الْأَبَوَيْنِ فَقَطْ فَلَا يُفَرَّقُ بَيْنَهُمَا وَبَيْنَ وَلَدِهِمَا.

L35896–35897 Ahmad ibn Hanbal said: No separation should be made between the two minors from the captives and their mahram relatives.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: لَا يُفَرَّقُ بَيْنَ الصَّغِيرَيْنِ مِنْ السَّبْيِ وَبَيْنَ ذَوِي رَحِمِهِ الْمَحْرَمَةِ.

L35898 Muhammad ibn Abdullah ibn Abd al-Hakam said: A child should not be separated from their mother, even if they have reached puberty.

وَقَالَ مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ: لَا يُفَرَّقُ بَيْنَ الْوَلَدِ وَأُمِّهِ وَإِنْ كَانَ بَالِغًا.

L35899 Abu Muhammad said: We have presented these statements only to bring awareness to their weakness, contradictions, and invalidity, and to demonstrate that they are arbitrary preferences without meaning, and to expose the falsehood of whoever claims consensus in any aspect of this matter.

قَالَ أَبُو مُحَمَّد: إنَّمَا أَوْرَدْنَا هَذِهِ الْأَقْوَالَ لِيُوقَفَ عَلَى تَخَاذُلِهَا وَتَنَاقُضِهَا وَفَسَادِهَا، وَأَنَّهَا اسْتِحْسَانَاتٌ لَا مَعْنَى لَهَا، وَلِيَظْهَرَ كَذِبُ مَنْ ادَّعَى الْإِجْمَاعَ فِي شَيْءٍ مِنْ ذَلِكَ.

L35900 It has been narrated to us through the chain of Shuʻbah from ʻAmr ibn Dīnār, from ʻAbd al-Raḥmān ibn Farrūkh, from his father, from ʻUmar ibn al-Khaṭṭāb, who said: "If you sell two brothers, do not separate between them."

وَرُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ فَرُّوخَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: إذَا بِعْتُمْ أَخَوَيْنِ فَلَا تُفَرِّقُوا بَيْنَهُمَا.

L35901 I am Muḥammad ibn Saʿīd ibn Nubāt. I am Aḥmad ibn ʿAwn Allāh. I am Qāsim ibn Aṣbagh. Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us: I am Muḥammad ibn Bashshār. ʿUthmān ibn ʿUmar narrated to us from Ibn Abī Dhiʾb, from someone who heard Sālim ibn ʿAbd Allāh ibn ʿUmar relate from his father that he said: "If you sell two brother slaves, do not separate them." I said to him: "Then the division is not fair?" He said: "No, it has become fair."

أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ أَنَا أَحْمَدُ بْنُ عَوْنِ اللَّهِ أَنَا قَاسِمُ بْنُ أَصْبَغَ ثنا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا عُثْمَانُ بْنُ عُمَرَ عَنْ ابْنِ أَبِي ذِئْبٍ عَمَّنْ سَمِعَ سَالِمَ بْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ يَذْكُرُ عَنْ أَبِيهِ أَنَّهُ قَالَ: إذَا بِعْتُمْ أَخَوَيْنِ فَلَا تُفَرِّقُوا بَيْنَهُمَا، قُلْت لَهُ: إذًا لَا يَعْتَدِلُ الْقَسْمُ؟ قَالَ: لَا اعْتَدَلَ.

L35902 It is narrated from Uthman—may Allah be pleased with him—that captives should not be sold except in intact family units; and it is narrated from Umar ibn Abd al-Aziz that a sale contrary to that [prohibition] is annulled.

وَعَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - أَنْ لَا يُبَاعَ السَّبِيُّ إلَّا أَعْشَاشًا - وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَسْخُ الْبَيْعِ بِخِلَافِ ذَلِكَ.

An issue where the son or daughter under custodianship, both being of sound mind, attain legal maturity.

2011 - Issue: When a child, whether a son or daughter, reaches the age of sound judgment, they both have greater entitlement over themselves and may reside wherever they choose. However, if they cannot be trusted to avoid sins such as drinking alcohol, immodest display, or indiscriminate gender mixing, the father, other agnatic kin, the ruler, or neighbors may restrain them from such acts and resettle them under supervision. We have previously cited analogous statements from Abū Ḥanīfah and al-Ḥasan ibn Ḥayy regarding this matter.

The proof of the soundness of our statement is Allah's declaration - the Almighty, the Majestic: *"No soul earns [evil] except against itself"* [Al-An'am 6:164].[24]

And his endorsement—peace and blessings be upon him—of Salmān's statement: "Give every possessor of a right his right."

There is no significance to differentiating between male and female in this matter, nor to considering a daughter's marriage, since this constitutes legislation not permitted by God the Exalted—for she might have been married while in the cradle, or she might never marry even as a ninety-year-old woman.

Perhaps a virgin is more righteous and observant than married women, and by necessity of innate perception, everyone knows that marriage has not granted her reason or righteousness she did not already possess.

As for when mixing or sin becomes apparent in a male or female, preventing that is obligatory, based on Allah's statement, the Most High: "Be staunch maintainers of justice, witnesses for Allah" [An-Nisa: 135], and His saying: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" [Al-Ma'idah: 2].[25]

[24]**Qur'an references (L35905):** Qur'an 6:164 (Al-An'am).

[25]**Qur'an references (L35910):** Qur'an 4:135 (An-Nisa); Qur'an 5:2 (Al-Ma'idah).

[مَسْأَلَةٌ بَلَغَ الْوَلَدُ أَوْ الِابْنَةُ المحضونين عَاقِلَيْنِ]

٢٠١١ - مَسْأَلَةٌ: وَإِذَا بَلَغَ الْوَلَدُ أَوْ الِابْنَةُ عَاقِلَيْنِ، فَهُمَا أَمْلَكُ بِأَنْفُسِهِمَا، وَيَسْكُنَانِ أَيْنَمَا أَحَبَّا، فَإِنْ لَمْ يُؤْمَنَا عَلَى مَعْصِيَةٍ مِنْ شُرْبِ خَمْرٍ، أَوْ تَبَرُّجٍ، أَوْ تَخْلِيطٍ، فَلِلْأَبِ أَوْ غَيْرِهِ مِنْ الْعَصَبَةِ، أَوْ لِلْحَاكِمِ، أَوْ لِلْجِيرَانِ أَنْ يَمْنَعَاهُمَا مِنْ ذَلِكَ، وَيُسْكِنَاهُمَا حَيْثُ يُشْرِفَانِ عَلَى أُمُورِهِمَا، وَقَدْ ذَكَرْنَا قَوْلَ أَبِي حَنِيفَةَ، وَالْحَسَنِ بْنِ حَيٍّ بِمِثْلِ هَذَا.

بُرْهَانُ صِحَّةِ قَوْلِنَا -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] .

وَتَصْوِيبُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَوْلُ سَلْمَانَ «أَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ» .

وَلَا مَعْنَى لِلْفَرْقِ بَيْنَ الذَّكَرِ وَالْأُنْثَى فِي ذَلِكَ، وَلَا لِمُرَاعَاةِ زَوَاجِ الِابْنَةِ؛ لِأَنَّهُ شَرْعٌ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى - وَقَدْ تَزَوَّجَ وَهِيَ فِي الْمَهْدِ وَقَدْ لَا تَتَزَوَّجُ وَهِيَ بِنْتُ تِسْعِينَ سَنَةً.

وَرُبَّ بِكْرٍ أَصْلَحُ وَأَنْظَرُ مِنْ ذَوَاتِ الْأَزْوَاجِ وَبِضَرُورَةِ الْحِسِّ يَدْرِي كُلُّ أَحَدٍ أَنَّ الزَّوَاجَ لَمْ يَزِدْهَا عَقْلًا لَمْ يَكُنْ وَلَا صَلَاحًا لَمْ يَكُنْ.

وَأَمَّا إذَا ظَهَرَ مِنْ الذَّكَرِ أَوْ الْأُنْثَى تَخْلِيطٌ أَوْ مَعْصِيَةٌ فَالْمَنْعُ مِنْ ذَلِكَ وَاجِبٌ: لِقَوْلِ اللَّهِ تَعَالَى: {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ} [النساء: ١٣٥] ، وقَوْله تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L35911 And the saying of the Most High: “Let there be among you a community calling to good, enjoining what is right, and forbidding what is wrong. They are the successful ones” [Āl ʿImrān: 104].[26]

وقَوْله تعَالَى: {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ} [آل عمران: ١٠٤] .

L35912 **An issue where the father and mother were in need of service from the son or daughter.**

[مَسْأَلَةٌ كَانَ الْأَبُ وَالْأُمُّ مُحْتَاجَيْنِ إِلَى خِدْمَةِ الِابْنِ أَوْ الِابْنَةِ]

L35913 2012 - Issue: If the father and mother require care from their son or daughter—whether married or unmarried—it becomes impermissible for the son or daughter to depart nor to neglect the parents in any way. Their right takes precedence over the right of the spouse. If the father and mother have no essential need for such care, the husband may relocate his wife wherever he wishes, provided this relocation causes no harm to the parents.

٢٠١٢ - مَسْأَلَةٌ: وَإِنْ كَانَ الْأَبُ، وَالْأُمُّ مُحْتَاجَيْنِ إِلَى خِدْمَةِ الِابْنِ أَوْ الِابْنَةِ - النَّاكِحِ أَوْ غَيْرِ النَّاكِحِ - لَمْ يَجُزْ لِلِابْنِ وَلَا لِلِابْنَةِ الرَّحِيلُ، وَلَا تَضْيِيعُ الْأَبَوَيْنِ أَصْلًا، وَحَقُّهُمَا أَوْجَبُ مِنْ حَقِّ الزَّوْجِ وَالزَّوْجَةِ - فَإِنْ لَمْ يَكُنْ بِالْأَبِ وَالْأُمِّ ضَرُورَةٌ إلَى ذَلِكَ فَلِلزَّوْجِ إرْحَالُ امْرَأَتِهِ حَيْثُ شَاءَ مِمَّا لَا ضَرَرَ عَلَيْهِمَا فِيهِ.

L35914 The proof of this is the saying of Allah, the Mighty and Majestic: “Be grateful to Me and to your parents” [Luqman: 14]. Thus, the Exalted has joined gratitude to them with gratitude to Him, the Mighty and Majestic.[27]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ} [لقمان: ١٤] فَقَرَنَ تَعَالَى الشُّكْرَ لَهُمَا بِالشُّكْرِ لَهُ عَزَّ وَجَلَّ.

L35915 And the statement of the Almighty: {And if they strive to make you associate with Me that of which you have no knowledge, then do not obey them but accompany them in this world kindly} [Luqman: 15]. Thus, Allah Almighty has obligated that one accompany their parents kindly—even if they are disbelievers both calling him to disbelief—and whoever neglects them and did not accompany them in this world kindly.[28]

وقَوْله تعَالَى: {وَإِنْ جَاهَدَاكَ عَلَى أَنْ تُشْرِكَ بِي مَا لَيْسَ لَكَ بِهِ عِلْمٌ فَلا تُطِعْهُمَا وَصَاحِبْهُمَا فِي الدُّنْيَا مَعْرُوفًا} [لقمان: ١٥] فَافْتَرَضَ اللَّهُ عَزَّ وَجَلَّ أَنْ يَصْحَبَ الْأَبَوَيْنِ بِالْمَعْرُوفِ - وَإِنْ كَانَا كَافِرَيْنِ يَدْعُوَانِهِ إلَى الْكُفْرِ - وَمَنْ ضَيَّعَهُمَا فَلَمْ يَصْحَبْهُمَا فِي الدُّنْيَا مَعْرُوفًا.

L35916 And His statement, the Most High: “And show kindness to parents. If they reach old age with you—one of them or both—do not say to them, ‘Uff’ (a word of disgust), nor rebuke them harshly, but speak to them a kind and generous word.” [Al-Isrā’: 23] “And lower to them the wing of gentle submission out of mercy.” [Al-Isrā’: 24].[29]

وقَوْله تعَالَى: {وَبِالْوَالِدَيْنِ إِحْسَانًا إِمَّا يَبْلُغَنَّ عِنْدَكَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلاهُمَا فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا وَقُلْ لَهُمَا قَوْلا كَرِيمًا} [الإسراء: ٢٣] {وَاخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ} [الإسراء: ٢٤] .

[26] **Qur’an references (L35911):** Qur’an 3:104 (Ali ’Imran).
[27] **Qur’an references (L35914):** Qur’an 31:14 (Luqman).
[28] **Qur’an references (L35915):** Qur’an 31:15 (Luqman).
[29] **Qur’an references (L35916):** Qur’an 17:23 (Al-Isra); Qur’an 17:24 (Al-Isra).

وَقَدْ ذَكَرْنَا آنِفًا قَوْلَ الرَّجُلِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَحَقُّ النَّاسِ بِحُسْنِ الصُّحْبَةِ؟ قَالَ: أُمُّكَ ثُمَّ أُمُّكَ ثُمَّ أَبَاكَ» . وَقَوْلُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «عُقُوقُ الْوَالِدَيْنِ مِنْ الْكَبَائِرِ» ، وَقَدْ اخْتَلَفَ قَوْمٌ فِيمَا ذَكَرْنَا وَاحْتَجُّوا بِأَخْبَارٍ سَاقِطَةٍ -:

L35917 We have previously mentioned the statement of the man who asked the Messenger of Allah—peace and blessings be upon him—"Who among people is most deserving of my good companionship?" He replied: "Your mother, then your mother, then your father." And his statement—peace and blessings be upon him—"Disobedience to parents is among the major sins." And indeed, some people have differed regarding what we have mentioned and have argued using weak narrations:

مِنْهَا - خَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ الْحَارِثِ بْنِ أَبِي أُسَامَةَ عَنْ يَزِيدَ بْنِ هَارُونَ عَنْ يُوسُفَ عَطِيَّةَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ رَجُلًا غَزَا وَتَرَكَ امْرَأَتَهُ فِي عُلْوٍّ وَأَبُوهَا فِي سُفْلٍ وَأَمَرَهَا أَنْ لَا تَخْرُجَ مِنْ بَيْتِهَا فَاشْتَكَى أَبُوهَا فَاسْتَأْذَنَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَمْرِهِ؟ فَقَالَ لَهَا: اتَّقِي اللَّهَ وَأَطِيعِي زَوْجَكِ - ثُمَّ كَذَلِكَ إذْ مَاتَ أَبُوهَا وَلَمْ تَشْهَدْهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ اللَّهَ غَفَرَ لِأَبِيكِ بِطَوَاعِيَتِكِ لِزَوْجِكِ» . يُوسُفُ بْنُ عَطِيَّةَ مَتْرُوكُ الْحَدِيثِ وَلَا يُكْتَبُ حَدِيثُهُ.

L35918–35920 Among them is a report we have transmitted through the chain of transmission of Al-Harith ibn Abi Usamah from Yazid ibn Harun from Yusuf Atiyyah from Thabit al-Bunaniyy from Anas ibn Malik that a man went on a military expedition and left his wife upstairs. Her father was in a weakened state and had ordered her not to leave her house. When her father fell ill, she sought permission from the Messenger of Allah—peace be upon him—to attend to him. He said to her: "Fear Allah and obey your husband." Later, when her father died and she did not witness his death, the Messenger of Allah—peace be upon him—said: "Allah has forgiven your father because of your obedience to your husband." Yusuf ibn 'Atiyyah is abandoned in hadith narration, and his narrations are not to be recorded.

وَمِنْ طَرِيقِ مُسَدَّدٍ عَنْ عَبْدِ الْوَاحِدِ بْنِ زِيَادٍ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ عَطَاءٍ عَنْ ابْنِ عُمَرَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ حَقِّ الرَّجُلِ عَلَى زَوْجَتِهِ؟ فَقَالَ كَلَامًا مِنْهُ: أَنْ لَا تَخْرُجَ مِنْ بَيْتِهَا إلَّا بِإِذْنِهِ، فَإِنْ فَعَلَتْ لَعَنَتْهَا مَلَائِكَةُ اللَّهِ وَمَلَائِكَةُ الرَّحْمَةِ وَمَلَائِكَةُ الْعَذَابِ حَتَّى تَرْجِعَ إلَى بَيْتِهَا أَوْ تَتُوبَ، قِيلَ: يَا رَسُولَ اللَّهِ وَإِنْ ظَلَمَهَا؟ قَالَ: وَإِنْ ظَلَمَهَا» .

L35921 Narrated through the chain of Musaddad from Abd al-Wahid ibn Ziyad from Laith ibn Abi Sulaim from Ata' from Ibn Umar: The Messenger of Allah (peace be upon him) was asked about a man's right over his wife. He replied: "She must not leave her house except with his permission. If she does so, the angels of Allah, the angels of mercy, and the angels of punishment curse her until she returns to her house or seeks repentance." It was asked: "O Messenger of Allah, even if he wrongs her?" He said: "Even if he wrongs her."

لَيْثٌ ضَعِيفٌ، وَحَاشَ لِلَّهِ أَنْ يُبِيحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الظُّلْمَ، وَهِيَ زِيَادَةٌ مَوْضُوعَةٌ لَيْسَتْ لِلَّيْثِ بِلَا شَكٍّ.

L35922 Layth is weak, and far be it from Allah that the Messenger of Allah (may Allah bless him and grant him peace) would permit injustice. This is a fabricated addition, and it is without any doubt not from Layth.

L35923 Through the chain of Qasim ibn Asbagh: Ibn Abi al-Awwam reported to us that Ubayd ibn Ishaq—he is the perfumer—narrated to us. Hayyan ibn Ali al-Anazi narrated from Salih ibn Hayyan, from Ibn Buraidah, from Buraidah,

that the Messenger of Allah—peace and blessings be upon him and his family—said: “If I were to command any human to prostrate to another human, I would command the woman to prostrate to her husband to honor his due right.”

وَمِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا ابْنُ أَبِي الْعَوَّامِ ثنا عُبَيْدُ بْنُ إِسْحَاقَ - هُوَ الْعَطَّارُ - أَنَا حَيَّانُ بْنُ عَلِيٍّ الْعَنَزِيُّ عَنْ صَالِحِ بْنِ حَيَّانَ عَنْ ابْنِ بُرَيْدَةَ عَنْ بُرَيْدَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: لَوْ كُنْتُ آمِرًا بَشَرًا أَنْ يَسْجُدَ لِبَشَرٍ لَأَمَرْتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا تَعْظِيمًا لِحَقِّهِ» .

L35924–35925 And through the chain of Wakiʿ from al-Aʿmash, from Abū Zabyān, from Muʿādh ibn Jabal, from the Messenger of Allah (may Allah’s peace and blessings be upon him), verbatim, letter for letter. It does not contain the phrase “honoring His right.”

وَمِنْ طَرِيقِ وَكِيعٍ عَنْ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ عَنْ مُعَاذِ بْنِ جَبَلٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِثْلُهُ حَرْفًا حَرْفًا، لَيْسَ فِيهِ " تَعْظِيمًا لِحَقِّهِ ".

L35926 Through the chain of Khalaf ibn Khalifah from Hafs—the nephew of Anas ibn Malik—from Anas, from the Messenger of Allah (peace and blessings be upon him and his family): “If it were proper for a created being to prostrate to another, I would have commanded the wife to prostrate to her husband because of the immense right he holds over her.”

وَمِنْ طَرِيقِ خَلَفِ بْنِ خَلِيفَةَ عَنْ حَفْصٍ ابْنِ أَخِي أَنَسِ بْنِ مَالِكٍ عَنْ أَنَسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَوْ صَلَحَ لِبَشَرٍ أَنْ يَسْجُدَ لِبَشَرٍ لَأَمَرْتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا مِنْ عَظِيمِ حَقِّهِ عَلَيْهَا» .

L35927 Narrated by Abū Dāwūd via ʿAmr ibn ʿAwn, Isḥāq ibn Yūsuf al-Azraq, Sharīk ibn ʿAbd Allāh the judge, Ḥuṣayn, al-Shaʿbī, Qays ibn Saʿd, from the Messenger of Allāh—peace and blessings of Allāh be upon him—: “If I were to command anyone to prostrate before another, I would command women to prostrate before their husbands due to the rights Allāh has granted husbands over wives.”[30]

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا عَمْرُو بْنُ عَوْنٍ أَنَا إِسْحَاقُ بْنُ يُوسُفَ الْأَزْرَقُ عَنْ شَرِيكِ بْنِ عَبْدِ اللَّهِ الْقَاضِي عَنْ حُصَيْنٍ عَنْ الشَّعْبِيِّ عَنْ قَيْسِ بْنِ سَعْدٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ كُنْتُ آمِرًا أَحَدًا أَنْ يَسْجُدَ لِأَحَدٍ لَأَمَرْتُ النِّسَاءَ أَنْ يَسْجُدْنَ لِأَزْوَاجِهِنَّ لِمَا جَعَلَ اللَّهُ لَهُمْ عَلَيْهِنَّ مِنْ الْحَقِّ» .

L35928 I am Aḥmad ibn Muḥammad ibn Aḥmad ibn al-Jasūr. I am Aḥmad ibn al-Faḍl al-Dīnawarī. I am Muḥammad ibn Jarīr al-Ṭabarī. I am Ibrāhīm ibn al-Mustamir. I am Wahb ibn Jarīr ibn Ḥāzim. I am Mūsā ibn ʿAlī ibn Rabāḥ, from his father, from Suraqah ibn Juʿshum, that he heard the Messenger of Allah (peace be upon him) say: “If I had ever commanded anyone to prostrate to another, I would have commanded the woman to prostrate to her husband.”[31]

أَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ أَحْمَدَ بْنِ الْجَسُورِ أَنَا أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ أَنَا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ أَنَا إِبْرَاهِيمُ بْنُ الْمُسْتَمِرِّ أَنَا وَهْبُ بْنُ جَرِيرِ بْنِ حَازِمٍ أَنَا مُوسَى بْنُ عَلِيِّ بْنِ رَبَاحٍ عَنْ أَبِيهِ عَنْ سُرَاقَةَ بْنِ جُعْشُمٍ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَوْ كُنْتُ آمُرُ أَحَدًا أَنْ يَسْجُدَ لِأَحَدٍ لَأَمَرْتُ الْمَرْأَةَ أَنْ تَسْجُدَ لِزَوْجِهَا» .

[30] **Hadith references (L35927):** Sunan Abi Dawud 2140.
[31] **Hadith references (L35928):** Mishkat al-Masabih 3255.

L35929 Abu Muhammad said: All of this is invalid. As for the hadith of Buraidah—it contains ʾUbayd ibn Isḥāq, known as the so-called Perfumer of Triply Divorced Women, a Kufan who narrates falsehoods. He is worthless—the same one who transmitted "Your children's teachers are the worst among you"—and this is pure falsehood, given the authenticity of the Messenger of Allah's—peace and blessings be upon him and his family—statement: "The best of you are those who learn the Quran and teach it." As for the hadith of Mu'adh—it is a discontinuous chain, for Abū Ẓabyān neither met Mu'adh nor encountered him.

قَالَ أَبُو مُحَمَّد: كُلُّ هَذَا بَاطِلٌ -: أَمَّا حَدِيثُ بُرَيْدَةَ - فَفِيهِ عُبَيْدُ بْنُ إِسْحَاقَ يُعْرَفُ بِعَطَّارِ الْمُطَلَّقَاتِ كُوفِيٌّ يُحَدِّثُ بِالْبَاطِلِ لَيْسَ بِشَيْءٍ وَهُوَ الَّذِي أَسْنَدَ " مُعَلِّمُو صِبْيَانِكُمْ شِرَارُكُمْ " وَهَذَا هُوَ الْكَذِبُ الْبَحْتُ، لِصِحَّةِ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «خَيْرُكُمْ مَنْ تَعَلَّمَ الْقُرْآنَ وَعَلَّمَهُ» . وَأَمَّا حَدِيثُ مُعَاذٍ - فَمُنْقَطِعٌ؛ لِأَنَّ أَبَا ظَبْيَانَ لَمْ يَلْقَ مُعَاذًا وَلَا أَدْرَكَهُ.

L35930 As for the ḥadīth of Anas—it mentions Ḥafṣ, the son of his brother, though it is not known that Anas had a brother's son named Ḥafṣ, nor did Anas have any brother except al-Barā' ibn Mālik from his father.

وَأَمَّا حَدِيثُ أَنَسٍ - فَفِيهِ حَفْصُ ابْنُ أَخِي أَنَسٍ وَلَا يُعْرَفُ لِأَنَسٍ ابْنُ أَخٍ اسْمُهُ حَفْصٌ، وَلَا أَخٌ لِأَنَسٍ، إِلَّا الْبَرَاءُ بْنُ مَالِكٍ مِنْ أَبِيهِ.

L35931–35932 Abdullah ibn Abi Talhah is known through his mother. Neither he nor his mother is recorded to have had a child named Hafs. Khalaf ibn Khalifah is not recognized as a ḥāfiẓ (reliable hadith memorizer).

وَعَبْدُ اللَّهِ بْنُ أَبِي طَلْحَةَ مِنْ أُمِّهِ وَلَا يُعْرَفُ لِوَاحِدٍ مِنْهُمَا وَلَدٌ اسْمُهُ حَفْصٌ - وَخَلَفُ بْنُ خَلِيفَةَ لَيْسَ بِالْحَافِظِ.

L35933 As for the ḥadīth of Suraqah ibn Juʿshum, it is broken because ʿAlī ibn Rabāḥ never met Suraqah.

وَأَمَّا حَدِيثُ سُرَاقَةَ بْنِ جُعْشُمٍ - فَمُنْقَطِعٌ؛ لِأَنَّ عَلِيَّ بْنَ رَبَاحٍ لَمْ يُدْرِكْ سُرَاقَةَ قَطُّ.

L35934 As for the ḥadīth of Qays ibn Saʿd, in its chain is Sharīk ibn ʿAbdullāh the judge—and he is a mudallis (one who engages in tadlīs by concealing objectionable matters)—narrating from someone of no merit except [when he transmits from] the trustworthy authorities.

وَأَمَّا حَدِيثُ قَيْسِ بْنِ سَعْدٍ فَفِيهِ شَرِيكُ بْنُ عَبْدِ اللَّهِ الْقَاضِي - وَهُوَ مُدَلِّسٌ يُدَلِّسُ الْمُنْكَرَاتِ - عَمَّنْ لَا خَيْرَ فِيهِ إِلَّا الثِّقَاتِ.

L35935 From the path of Aḥmad ibn Shuʿayb: I am Shuʿayb ibn Shuʿayb ibn Isḥāq, from ʿAbd al-Wahhāb, who narrated to me from Shuʿayb ibn Isḥāq, from al-Awzāʿī, who informed me from Yaḥyā—that is, Ibn Saʿīd al-Anṣārī—that Bashīr ibn Yasār informed him that ʿAbd Allāh ibn Miḥṣan informed him from his paternal aunt, that she mentioned her husband to the Messenger of Allāh—peace and blessings be upon him—and he said to her: "Consider where you stand regarding him, for he is your Paradise or your Fire."

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا شُعَيْبُ بْنُ شُعَيْبِ بْنِ إِسْحَاقَ أَنَا عَبْدُ الْوَهَّابِ حَدَّثَنِي شُعَيْبُ بْنُ إِسْحَاقَ أَنَا الْأَوْزَاعِيُّ أَخْبَرَنِي يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْأَنْصَارِيِّ - أَنْ بَشِيرَ بْنَ يَسَارٍ أَخْبَرَهُ أَنَّ عَبْدَ اللَّهِ بْنَ مِحْصَنٍ أَخْبَرَهُ عَنْ عَمَّةٍ لَهُ «أَنَّهَا ذَكَرَتْ زَوْجَهَا لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: انْظُرِي أَيْنَ أَنْتِ مِنْهُ فَإِنَّهُ جَنَّتُكِ أَوْ نَارُكِ» .

L35936–35938 From the chain of Aḥmad Ibn Shuʿayb: Qutaybah Ibn Saʿīd, Muḥammad

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، وَمُحَمَّدُ بْنُ مَنْصُورٍ، وَأَحْمَدَ بْنِ سُلَيْمَانَ، وَمُحَمَّدُ بْنُ بَشَّارٍ، وَمُحَمَّدِ بْنِ الْمُثَنَّى، وَيُونُسَ بْنِ عَبْدِ الْأَعْلَى وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ - قَالَ قُتَيْبَةُ: أَنَا اللَّيْثُ بْنُ سَعْدٍ وَقَالَ مُحَمَّدُ بْنُ مَنْصُورٍ: أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ - وَقَالَ أَحْمَدُ بْنُ سُلَيْمَانَ أَنَا يَعْلَى، وَيَزِيدُ، وَقَالَ ابْنُ الْمُثَنَّى، وَابْنُ بَشَّارٍ: أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ - وَقَالَ يُونُسُ أَنَا ابْنُ وَهْبٍ أَنَا مَالِكٌ - وَقَالَ ابْنُ عَبْدِ الْحَكَمِ أَنَا شُعَيْبُ بْنُ اللَّيْثِ أَنَا اللَّيْثُ - وَقَالَ يُونُسُ أَنَا خَالِدٌ عَنْ سَعِيدِ بْنِ أَبِي هِلَالٍ - ثُمَّ اتَّفَقَ اللَّيْثُ، وَسُفْيَانُ، وَيَعْلَى، وَيَزِيدُ وَيَحْيَى، وَمَالِكٌ، وَابْنُ أَبِي هِلَالٍ، كُلُّهُمْ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ بَشِيرِ بْنِ يَسَارٍ عَنْ حُصَيْنِ بْنِ مِحْصَنٍ عَنْ عَمَّةٍ لَهُ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِهِ.

Ibn Manṣūr, Aḥmad Ibn Sulaymān, Muḥammad Ibn Bashshār, Muḥammad Ibn al-Muthannā, Yūnus Ibn ʿAbd al-Aʿlā, and Muḥammad Ibn ʿAbd Allāh Ibn ʿAbd al-Ḥakam. Qutaybah said: From al-Layth ibn Sa‘d. Muhammad ibn Mansur said: From Sufyan ibn ‘Uyaynah. Ahmad ibn Sulayman said: From Ya‘la and Yazid. Ibn al-Muthanna and Ibn Bashshar said: From Yahya ibn Sa‘id al-Qattan. Yunus said: From Ibn Wahb, from Malik. Ibn ‘Abd al-Hakam said: From Shu‘ayb ibn al-Layth, from al-Layth. Yunus said: From Khalid, from Sa‘id ibn Abi Hilal. Then al-Layth, Sufyan, Ya‘la, Yazid, Yahya, Malik, and Ibn Abi Hilal concurred—all of them narrating from Yahya ibn Sa‘id al-Ansari, from Bashir ibn Yasar, from Husayn ibn Mihsan, from his paternal aunt, who reported the same narration from the Prophet—peace and blessings be upon him.

L35939 وَهَكَذَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ حُصَيْنِ بْنِ مِحْصَنٍ - فَهَذَا كُلُّهُ لَا يَصِحُّ، لِأَنَّ عَبْدَ اللَّهِ بْنَ مِحْصَنٍ، وَحُصَيْنَ بْنَ مِحْصَنٍ مَجْهُولَانِ، لَا يَدْرِي أَحَدٌ مَنْ هُمَا؟ .

Similarly, we have transmitted it through the chain of Ḥammād ibn Zayd from Yaḥyā ibn Saʿīd al-Anṣārī from Ḥuṣayn ibn Miḥṣan—all of this is unreliable, because ʿAbdullāh ibn Miḥṣan and Ḥuṣayn ibn Miḥṣan are unknown; no one knows who they are.

L35940 وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مَحْمُودُ بْنُ غَيْلَانَ أَنَا أَبُو أَحْمَدَ - هُوَ الزُّبَيْرِيُّ - أَنَا مِسْعَرٌ - هُوَ ابْنُ كِدَامٍ - عَنْ أَبِي عُتْبَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «سَأَلْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَيُّ النَّاسِ أَعْظَمُ حَقًّا عَلَى الْمَرْأَةِ؟ قَالَ: زَوْجُهَا قُلْتُ: فَأَيُّ النَّاسِ أَعْظَمُ حَقًّا عَلَى الرَّجُلِ؟ قَالَ: أُمُّهُ» . قَالَ أَبُو مُحَمَّدٍ: أَبُو عُتْبَةَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَالْقُرْآنُ كَمَا أَوْرَدْنَا، وَالثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا صَدَّرْنَا بِهِ يُبْطِلُ هَذَا.

From the chain of Ahmad ibn Shuʿayb: from Maḥmūd ibn Ghaylān, from Abū Aḥmad—he is al-Zubayrī—, from Misʿar—he is ibn Kidām—, from Abū ʿUtbah, from ʿĀ’ishah, the Mother of the Believers, who said: “I asked the Prophet—peace be upon him—: ’Who among people holds the greatest right over a woman?’ He said: ’Her husband.’ I asked: ’And who among people holds the greatest right over a man?’ He said: ’His mother.’” Abū Muḥammad said: Abū ʿUtbah is unknown; it is not known who he is? The Quran, as we have cited, and what is conclusively established from the Messenger of Allah—peace be upon him—as we have prefaced earlier, invalidates this.

L35941 From the path of Ahmad ibn Shu’ayb: I am Ahmad ibn Uthman ibn Hakim

al-Kufi. Ja’far ibn Awn narrated to me from Rabi’ah ibn Uthman from Muhammad ibn Yahya ibn Hibban from Nahar al-Abdi—a Medinan narrator with no criticism against him—from Abu Sa’id from the Prophet, peace and blessings of Allah be upon him and his family, who said: “The right of the husband over his wife is such that if he had a sore and she licked it, she would still not have fulfilled his due.” Rabi’ah ibn Uthman is an unknown narrator.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عُثْمَانَ بْنِ حَكِيمٍ الْكُوفِيُّ أَنَا جَعْفَرُ بْنُ عَوْنٍ حَدَّثَنِي رَبِيعَةُ بْنُ عُثْمَانَ عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حِبَّانَ عَنْ نَهَارٍ الْعَبْدِيِّ - مَدَنِي لَا بَأْسَ بِهِ - عَنْ أَبِي سَعِيدٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «حَقُّ الزَّوْجِ عَلَى زَوْجَتِهِ لَوْ كَانَتْ بِهِ قُرْحَةٌ فَلَحِسَتْهَا مَا أَدَّتْ حَقَّهُ» . رَبِيعَةُ بْنُ عُثْمَانَ مَجْهُولٌ.

L35942–35943 From the narration of Khalaf ibn Khalifa, from Abu Hashim, from Sa’id ibn Jubayr, from Ibn Abbas, who said: The Messenger of Allah—peace and blessings be upon him—said, “Shall I inform you about your women among the people of Paradise? The affectionate, the fertile, the one who constantly returns to her husband—she who, when she harms or is harmed, comes to take her husband’s hand and says, ’By Allah, I will not taste a bone until you are pleased!’”

وَمِنْ طَرِيقِ خَلَفِ بْنِ خَلِيفَةَ عَنْ أَبِي هَاشِمٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَلَا أُخْبِرُكُمْ بِنِسَائِكُمْ مِنْ أَهْلِ الْجَنَّةِ الْوَدُودُ الْوَلُودُ الْعَئُودُ عَلَى زَوْجِهَا الَّتِي إِذَا آذَتْ أَوْ أُوذِيَتْ جَاءَتْ حَتَّى تَأْخُذَ بِيَدِ زَوْجِهَا، ثُمَّ تَقُولُ: وَاللَّهِ لَا أَذُوقُ عَضْمًا حَتَّى تَرْضَى» .

L35944 This is a report that is not problematic—and in my book, it is written as “‘aḍman” (with a ḍād), and it is the bone of the bow, which has no relevance here.

هَذَا خَبَرٌ لَا بَأْسَ بِهِ - وَهَكَذَا فِي كِتَابِي " عَضْمًا " بِالضَّادِ، وَهُوَ عَظْمُ الْقَوْسِ، وَلَا مَدْخَلَ لَهُ هَاهُنَا.

L35945–35947 And from the transmission path of Aḥmad ibn Shuʿayb: ʿAmr ibn Manṣūr narrated to us: I am Muḥammad ibn Maḥbūb; I narrated [...] Sarār ibn Mujashshar ibn Qabīṣah al-Baṣrī narrated from Saʿīd ibn Abī ʿArūbah from Qatādah from Saʿīd ibn al-Musayyib from ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ, who said: The Messenger of Allah—may Allah’s blessings and peace be upon him and his family—said, “Allah will not regard with mercy a woman who does not show gratitude to her husband and she cannot do without him.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أرنا عَمْرُو بْنُ مَنْصُورٍ أَنَا مُحَمَّدُ بْنُ مَحْبُوبٍ أَنَا سَرَّارُ بْنُ مُجَشِّرِ بْنِ قَبِيصَةَ الْبَصْرِيُّ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يَنْظُرُ اللَّهُ إِلَى امْرَأَةٍ لَا تَشْكُرُ لِزَوْجِهَا وَهِيَ لَا تَسْتَغْنِي عَنْهُ» .

L35948 Ahmad ibn Shu’ayb said: Sarār ibn Mujashshir is reliable. Both he and Yazid ibn Zurayʿ are foremost in Saʿid ibn Abi ʿArubah. The name is written thus: [Sarār] with a “Sin” and two Ra’s [between them is an Alif].

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ، سَرَّارُ بْنُ مُجَشِّرٍ ثِقَةٌ هُوَ وَيَزِيدُ بْنُ زُرَيْعٍ مُقَدَّمَانِ فِي سَعِيدِ بْنِ أَبِي عَرُوبَةَ هَكَذَا [سَرَّارُ] بِالسِّينِ وَرَاءَيْنِ [بَيْنَهُمَا أَلِفٌ] .

L35949 Abu Muhammad said: This is a ḥasan ḥadīth, and gratitude toward every one who does good is obligatory.

قَالَ أَبُو مُحَمَّدٍ: هَذَا حَدِيثٌ حَسَنٌ، وَالشُّكْرُ لِكُلِّ مُحْسِنٍ وَاجِبٌ.

L35950 From the chain of Ahmad ibn Shuʿayb: I [heard] from ʿAmr ibn ʿAlī, from Yaḥyā—who is Ibn Saʿīd al-Qaṭṭān—from Ibn ʿIjlān, from Saʿīd ibn Abī Saʿīd

al-Maqburī, from Abū Hurayrah, from the Prophet—peace and blessings of Allah be upon him and his family—that he was asked about the best of women. He said: “She who obeys her husband when he commands, pleases him when he looks, and guards him in her chastity and his wealth.”

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ أَنَا يَحْيَى - هُوَ ابْنُ سَعِيدٍ الْقَطَّانُ - أَنَا ابْنُ عَجْلَانَ أَنَا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّهُ سُئِلَ عَنْ خَيْرِ النِّسَاءِ؟ فَقَالَ: الَّتِي تُطِيعُ زَوْجَهَا إِذَا أَمَرَ، وَتَسُرُّهُ إِذَا نَظَرَ، وَتَحْفَظُهُ فِي نَفْسِهَا وَمَالِهِ» .

L35951 This is an authentic narration, and what we have transmitted has been authenticated through the chain of Muslim: I am Muḥammad ibn al-Muthannā, from Muḥammad ibn Jaʿfar, from Shuʿbah, from Zubayd al-Yāmī, from Saʿīd ibn ʿUbaydah, from Abū ʿAbd al-Raḥmān al-Sulamī, from ʿAlī ibn Abī Ṭālib, from the Messenger of Allah (may Allah bless him and grant him peace, and upon his family), who said: “No obedience is due in acts of disobedience; obedience lies only in what is morally right.”[32]

هَذَا خَبَرٌ صَحِيحٌ، وَقَدْ صَحَّ مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ أَنَا شُعْبَةُ عَنْ زُبَيْدٍ اليامي عَنْ سَعِيدِ بْنِ عُبَيْدَةَ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «لَا طَاعَةَ فِي مَعْصِيَةٍ إِنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ» .

L35952 As for the Salaf: It has been narrated to us via the chain of Abd al-Razzaq from Ibn Jurayj, who said: I asked Ata, “If a man is absent from his wife without having sought his permission to leave, may she go out to perform circumambulation of the Kaaba, to visit a sick blood relative, or to attend her dying father?” Ata refused to permit her to go out for any of these matters.

وَأَمَّا السَّلَفُ -: فَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: رَجُلٌ غَابَ عَنْ امْرَأَتِهِ وَلَمْ تَكُنْ اسْتَأْذَنَتْهُ فِي الْخُرُوجِ أَتَخْرُجُ فِي طَوَافِ الْكَعْبَةِ، أَوْ فِي عِيَادَةِ مَرِيضٍ ذِي رَحِمٍ، أَوْ أَبُوهَا يَمُوتُ؟ فَأَبَى عَطَاءٌ أَنْ تَخْرُجَ فِي شَيْءٍ مِنْ ذَلِكَ.

L35953 Ibn Jurayj said: I maintain that it applies to every near kinsman.

قَالَ ابْنُ جُرَيْجٍ: وَأَقُولُ أَنَا: تَأْتِي كُلَّ ذِي رَحِمٍ قَرِيبٍ.

[32] **Hadith references (L35951):** Sahih al-Bukhari 7257; Mishkat al-Masabih 3665.