

AL-MUHALLA

كِتَابُ الدِّمَاءِ وَالْقِصَاصِ وَالدِّيَاتِ

The Book of Homicide, Retaliation and Blood Money

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The Book of Homicide, Retaliation, and Diyat Chapter on the Intentional Killing of a Male Believer or Female Believer Without Just Cause

In the name of Allah, the Most Gracious, the Most Merciful. May Allah send blessings upon Muhammad and his family.

The Book of Laws of Bloodshed, Retaliation, and Blood Money (2022) – Issue: Abu Muhammad – may Allah be pleased with him – said: "After polytheism, no sin is greater before Allah the Almighty than two matters: the first is willfully neglecting an obligatory prayer until its designated time expires."

The second offense is the intentional killing of a Muslim man or Muslim woman without lawful right.

As for prayer, we have already mentioned it in *The Book of Prayer*.

As for killing — the Almighty and Majestic said: "And it is not for a believer to kill a believer except unintentionally" [An-Nisa: 92].[1]

And the words of the Most High: {And whoever kills a believer intentionally, his recompense shall be Hellfire, wherein he will remain forever. Allah has become wrathful toward him, and He has cursed him and prepared for him a tremendous punishment} [An-Nisā': 93].[2]

From the chain of al-Bukhārī: It has been narrated to us from ʿAlī ibn ʿAbdullāh, from Isḥāq ibn Saʿīd ibn ʿAmr ibn Saʿīd ibn al-ʿĀṣ, from his father, from ʿAbdullāh ibn ʿUmar ibn al-Khaṭṭāb, who said: The Messenger of Allāh—may Allāh's peace and blessings be upon him and his family—said, "A believer will remain within the bounds of his religion so long as he does not shed unlawful blood."

[كِتَابُ الدِّمَاءِ وَالْقِصَاصِ وَالدِّيَاتِ] [مَسْأَلَةٌ قَتْلُ مُؤْمِنٍ أَوْ مُؤْمِنَةٍ عَمْدًا بِغَيْرِ حَقٍّ]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ وَآلِهِ

كِتَابُ الدِّمَاءِ وَالْقِصَاصِ وَالدِّيَاتِ ٢٠٢٢ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَا ذَنْبَ عِنْدَ اللَّهِ عَزَّ وَجَلَّ بَعْدَ الشِّرْكِ أَعْظَمُ مِنْ شَيْئَيْنِ -: أَحَدُهُمَا - تَعَمُّدُ تَرْكِ صَلَاةِ فَرْضٍ حَتَّى يَخْرُجَ وَقْتُهَا.

الثَّانِي - قَتْلُ مُؤْمِنٍ أَوْ مُؤْمِنَةٍ عَمْدًا بِغَيْرِ حَقٍّ.

أَمَّا الصَّلَاةُ فَقَدْ ذَكَرْنَاهَا فِي " كِتَابِ الصَّلَاةِ ".

وَأَمَّا الْقَتْلُ - فَقَالَ عَزَّ وَجَلَّ: {وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلا خَطَأً} [النساء: ٩٢] .

وقَوْله تَعَالَى: {وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا} [النساء: ٩٣] .

رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا عَلِيٌّ - هُوَ ابْنُ عَبْدِ اللَّهِ - أَنَا إِسْحَاقُ بْنُ سَعِيدِ بْنِ عَمْرِو بْنِ سَعِيدِ بْنِ الْعَاصِ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يَزَالُ الْمُؤْمِنُ فِي فُسْحَةٍ مِنْ دِينِهِ مَا لَمْ يُصِبْ دَمًا حَرَامًا» .

[1] **Qur'an references (L36351):** Qur'an 4:92 (An-Nisa).
[2] **Qur'an references (L36352):** Qur'an 4:93 (An-Nisa).

L36354–36355 Al-Bukhari said: Ahmad ibn Ya‘qub informed us: Ishaq narrated to us—he being the son of Sa‘id, the previously mentioned—from his father, that he heard him relate from Ibn ‘Umar that he said: “Among the inescapable perils from which there is no escape for one who casts himself into them is shedding inviolable blood without lawful cause.”

قَالَ الْبُخَارِيُّ: ونا أَحْمَدُ بْنُ يَعْقُوبَ أَنَا إِسْحَاقُ - هُوَ ابْنُ سَعِيدٍ الْمَذْكُورُ - عَنْ أَبِيهِ أَنَّهُ سَمِعَهُ يُحَدِّثُ عَنِ ابْنِ عُمَرَ أَنَّهُ قَالَ " إِنَّ مَنْ وَرَطَاتِ الْأُمُورِ الَّتِي لَا مَخْرَجَ لِمَنْ أَوْقَعَ نَفْسَهُ فِيهَا: سَفْكَ الدَّمِ الْحَرَامِ بِغَيْرِ حِلِّهِ ".

L36356 **The legal issue: The killing is divided into two categories—premeditated and unintentional.**

[مَسْأَلَةُ الْقَتْلُ قِسْمَانِ عَمْدٌ وَخَطَأٌ]

L36357 Question 2023: Homicide is divided into two categories: intentional and accidental.

٢٠٢٣ - مَسْأَلَةٌ: وَالْقَتْلُ قِسْمَانِ: عَمْدٌ، وَخَطَأٌ.

L36358 The proof of that is the two verses we mentioned earlier, for He, the Almighty and Majestic, did not establish a third category in killing—though some people claimed there exists a third category here, being semi-intentional killing. This is an invalid opinion, as no textual evidence whatsoever supports it. We have demonstrated the invalidity of those textual narrations in *Kitāb al-Iṣāl*, and all praise belongs to Allah, Lord of the worlds.

بُرْهَانُ ذَلِكَ -: الْآيَتَانِ اللَّتَانِ ذَكَرْنَا آنِفًا، فَلَمْ يَجْعَلْ عَزَّ وَجَلَّ فِي الْقَتْلِ قِسْمًا ثَالِثًا - وَادَّعَى قَوْمٌ أَنَّ هَاهُنَا قِسْمًا ثَالِثًا، وَهُوَ عَمْدُ الْخَطَأِ - وَهُوَ قَوْلٌ فَاسِدٌ، لِأَنَّهُ لَمْ يَصِحَّ فِي ذَلِكَ نَصٌّ أَصْلًا، وَقَدْ بَيَّنَّا سُقُوطَ تِلْكَ الْآثَارِ فِي " كِتَابِ الْإِيصَالِ " وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L36359 Although the Hanafis and Shafi’is who affirm quasi-deliberate acts oppose those invalid narrations that others have used as a pretext regarding the description of diyah contained in them and other matters—as we clarified elsewhere—in their view, it is divided into two categories: the first consists of what a person intentionally commits from acts that may cause death in similar cases, though such acts may not necessarily do so.

مَعَ أَنَّ الْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ الْقَائِلِينَ بِشِبْهِ الْعَمْدِ هُمْ مُخَالِفُونَ لِتِلْكَ الْآثَارِ السَّاقِطَةِ الَّتِي مَوَّهُوا بِهَا فِيمَا فِيهَا مِنْ صِفَةِ الدِّيَةِ، وَغَيْرِ ذَلِكَ عَلَى مَا بَيَّنَّا فِي غَيْرِ هَذَا الْمَوْضِعِ - وَهُوَ عِنْدَهُمْ يَنْقَسِمُ قِسْمَيْنِ -: أَحَدُهُمَا - مَا تَعَمَّدَ بِهِ الْمَرْءُ مِمَّا قَدْ يُمَاتُ مِنْ مِثْلِهِ - وَقَدْ لَا يُمَاتُ مِنْ مِثْلِهِ.

L36360 Abū Muḥammad—may Allāh be pleased with him—said: This is an intentional act, and it entails retaliation or blood money (diyah), as in all intentional acts, because it constitutes aggression. The Almighty and Majestic has said: “So whoever commits aggression against you, then retaliate against him in the same manner as he has committed aggression against you” [al-Baqarah 2:194].[3]

قَالَ أَبُو مُحَمَّد: - رَضِيَ اللَّهُ عَنْهُ -: هَذَا عَمْدٌ وَفِيهِ الْقَوَدُ أَوْ الدِّيَةُ، كَمَا فِي سَائِرِ الْعَمْدِ، لِأَنَّهُ عُدْوَانٌ، وَقَالَ عَزَّ وَجَلَّ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L36361 The second [type] is that which one intentionally commits, from which no

[3] **Qur’an references (L36360):** Qur’an 2:194 (Al-Baqarah).

death at all would result from its like. This constitutes neither intentional killing nor unintentional killing, and nothing is incurred except disciplinary punishment alone.

وَالثَّانِي - مَا تَعَمَّدَ بِهِ مِمَّا لَا يَمُوتُ أَحَدٌ أَصْلًا مِنْ مِثْلِهِ، فَهَذَا لَيْسَ قَتْلَ عَمْدٍ وَلَا خَطَأً - وَلَا شَيْءَ فِيهِ إلَّا الْأَدَبُ فَقَطْ.

L36362 Among the astonishing statements here is that the Ḥanafīs state: If someone takes a stone from a qinṭār [large weight] and intentionally strikes a Muslim's head with it, then continues striking him relentlessly until he shatters his entire head, qisas does not apply in this case, nor is it considered intentional killing.

وَمِنْ عَجَائِبِ الْأَقْوَالِ هَاهُنَا أَنَّ الْحَنَفِيِّينَ يَقُولُونَ: مَنْ أَخَذَ حَجَرًا مِنْ قِنْطَارٍ فَضَرَبَ مُتَعَمِّدًا رَأْسَ مُسْلِمٍ، ثُمَّ لَمْ يَزَلْ يَضْرِبُهُ بِهِ حَتَّى شَدَخَ رَأْسَهُ كُلَّهُ: فَإِنَّهُ لَا قَوَدَ فِيهِ، وَلَيْسَ قَتْلَ عَمْدٍ.

L36363 Similarly, if he intentionally strikes his head with a thick stick, breaking it entirely and causing his brain to spill out, leading to his death; there is no difference.

وَكَذَلِكَ لَوْ تَعَمَّدَ ضَرْبَ رَأْسِهِ بِعُودٍ غَلِيظٍ حَتَّى يَكْسِرَهُ كُلَّهُ وَيُسِيلَ دِمَاغَهُ وَيَمُوتَ وَلَا فَرْقَ.

L36364 The Malikis stated: If someone strikes the thigh of a Muslim with his hand, and the struck individual dies as a result of the blow, retaliatory execution is mandated, and the striker is to be executed.

وَقَالَ الْمَالِكِيُّونَ مَنْ ضَرَبَ بِيَدِهِ فِي فَخِذِ مُسْلِمٍ فَمَاتَ الْمَضْرُوبُ إثْرَ الضَّرْبَةِ -: فَفِيهِ الْقَوَدُ، وَيُقْتَلُ الضَّارِبُ.

L36365 Hearing these two statements suffices to dispense with the effort of refuting them.

وَسَمَاعُ هَذَيْنِ الْقَوْلَيْنِ يَكْفِي مِنْ تَكَلُّفِ الرَّدِّ عَلَيْهِمَا.

L36366–36367 Abū Muḥammad—may Allāh be pleased with him—said: Unintentional killing is when someone throws an object that could cause death when used in such a manner, unintentionally striking a Muslim they did not intend to harm, resulting in the struck person's death; or when one falls upon a Muslim, causing death from the impact. There is no disagreement that all such cases constitute unintentional killing, for which no qawad is due.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: فَالْخَطَأُ مَنْ رَمَى شَيْئًا فَأَصَابَ مُسْلِمًا لَمْ يُرِدْهُ بِمَا قَدْ يُمَاتُ مِنْ مِثْلِهِ فَمَاتَ الْمُصَابُ، أَوْ وَقَعَ عَلَى مُسْلِمٍ فَمَاتَ مِنْ وَقْعَتِهِ - فَهَذَا كُلُّهُ لَا خِلَافَ فِي أَنَّهُ قَتْلُ خَطَأٍ لَا قَوَدَ فِيهِ.

L36368 Or if he killed in Dar al-Harb (territory of war) a person he deemed to be a disbeliever, but it was later established he was a Muslim, or he killed a person exercising independent legal reasoning without following a school of jurisprudence (while believing him to be in error), but it was later established he was correct.

أَوْ قَتَلَ فِي دَارِ الْحَرْبِ إنْسَانًا يَرَى أَنَّهُ كَافِرٌ فَإِذَا بِهِ مُسْلِمٌ، أَوْ قَتَلَ إنْسَانًا مُتَأَوِّلًا غَيْرَ مُقَلِّدٍ - وَهُوَ يَرَى أَنَّهُ عَلَى الْحَقِّ فَإِذَا بِهِ عَلَى الْخَطَأِ.

L36369 The evidence for our statement regarding the killer in the abode of war is the word of Allah the Exalted: {Whoever kills a believer unintentionally, [the penalty is] the freeing of a believing slave and a blood payment delivered to

his family unless they relinquish it as charity. If he belonged to a people hostile to you and was a believer, then [the penalty is] the freeing of a believing slave} [An-Nisa: 92].[4]

L36370 The preposition “min” here carries the meaning of “fi” (in), as there is no disagreement among anyone that if a person from a group of belligerent disbelievers embraces Islam and emigrates to the abode of Islam, and a Muslim then kills him unintentionally. Indeed, in this case there is blood money for his child and expiation. Thus, what we have said is validated. All praise is due to Allah, the Lord of the worlds.

L36371 As for the jurist—regarding what was transmitted to us through the chain of Abū Dāwūd al-Sijistānī: Narrated by Musaddad from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Ibn Abī Dhi’b, from Saʿīd—who is Saʿīd ibn Abī Saʿīd al-Maqburī—who said: I heard Abū Shurayḥ al-Kaʿbī state: “Allah’s Messenger (peace and blessings be upon him and his family) said: ‘O assembly of Khuzāʿah! You have slain this man from Hudhayl, and I will pay his blood money. Whoever suffers the killing of a kinsman after this statement of mine, his family must choose between two options: either to accept the blood money or to kill [in retaliation].’”

L36372 Abu Muhammad—may Allah be pleased with him—said: There is no doubt that Khuzāʿah killed him while interpreting that his killing was permissible for them. This is our position regarding one against whom proof established by the text has been presented, yet he persists in his corrupt interpretation contradicting the text, or in following someone who interpreted erroneously—he is subject to qisas.

L36373 This report supplements the reports of Usāmah ibn Zayd and Khālid—may Allah be pleased with them both—regarding Khālid’s killing of members of Banū Khudhaymah based on his interpretation of the law, and regarding Usāmah’s killing of the man who had said, “There is no god but Allah.” The addition must not be omitted.

[4]**Qur’an references (L36369):** Qur’an 4:92 (An-Nisa).

بُرْهَانُ قَوْلِنَا فِي الْقَاتِلِ فِي دَارِ الْحَرْبِ -: قَوْلُ اللَّهِ تَعَالَى: {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ إِلا أَنْ يَصَّدَّقُوا فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ} [النساء: ٩٢] .

“ مِنْ ” هَاهُنَا بِمَعْنَى “ فِي ” لِأَنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ فِي أَنَّ قَوْمًا كُفَّارًا حَرْبِيِّينَ أَسْلَمَ مِنْهُمْ إنْسَانٌ وَخَرَجَ إلَى دَارِ الْإِسْلَامِ فَقَتَلَهُ مُسْلِمٌ خَطَأً: فَإِنَّ فِيهِ الدِّيَةَ لِوَلَدِهِ، وَالْكَفَّارَةَ - فَصَحَّ بِذَلِكَ مَا قُلْنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

وَأَمَّا الْمُتَأَوِّلُ - فَلَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا مُسَدَّدٌ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ أَنَا ابْنُ أَبِي ذِئْبٍ حَدَّثَنِي سَعِيدٌ - هُوَ ابْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ - سَمِعْت أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُولُ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَا مَعْشَرَ خُزَاعَةَ قَتَلْتُمْ هَذَا الْقَتِيلَ مِنْ هُذَيْلٍ وَإِنِّي عَاقِلُهُ وَمَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ: أَنْ يَأْخُذُوا الْعَقْلَ، وَبَيْنَ أَنْ يَقْتُلُوا» .

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: فَلَا شَكَّ أَنَّ خُزَاعَةَ قَتَلُوهُ مُتَأَوِّلِينَ أَنَّ لَهُمْ قَتْلَهُ - وَهَكَذَا نَقُولُ فِيمَنْ قَامَتْ عَلَيْهِ الْحُجَّةُ مِنْ النَّصِّ ثُمَّ قَتَلَ مُتَمَادِيًا عَلَى تَأْوِيلِهِ الْفَاسِدِ، الْمُخَالِفِ لِلنَّصِّ، أَوْ عَلَى تَقْلِيدِ مَنْ تَأَوَّلَ فَأَخْطَأَ: فَعَلَيْهِ الْقَوَدُ.

وَهَذَا الْخَبَرُ زَائِدٌ عَلَى خَبَرِ أُسَامَةَ بْنِ زَيْدٍ - وَخَالِدٍ - رَضِيَ اللَّهُ عَنْهُمَا - فِي قَتْلِ خَالِدٍ مَنْ قَتَلَ مِنْ بَنِي خُذَيْمَةَ مُتَأَوِّلًا - وَفِي قَتْلِ أُسَامَةَ: الرَّجُلَ الَّذِي قَالَ: لَا إلَهَ إلَّا اللَّهُ - وَالزِّيَادَةُ لَا يَجُوزُ تَرْكُهَا.

[مَسْأَلَةٌ لَا قَوَدَ عَلَى مَجْنُونٍ وَلَا عَلَى سَكْرَانَ]

مَسْأَلَةٌ: وَلَا قَوَدَ عَلَى مَجْنُونٍ فِيمَا أَصَابَ فِي جُنُونِهِ، وَلَا عَلَى سَكْرَانَ فِيمَا أَصَابَ فِي سُكْرِهِ - الْمُخْرِجِ لَهُ مِنْ عَقْلِهِ - وَلَا عَلَى مَنْ لَمْ يَبْلُغْ، وَلَا عَلَى أَحَدٍ مِنْ هَؤُلَاءِ: دِيَةٌ، وَلَا ضَمَانٌ، وَهَؤُلَاءِ وَالْبَهَائِمُ سَوَاءٌ لِمَا ذَكَرْنَا فِي " الطَّلَاقِ " وَغَيْرِهِ مِنْ الْخَبَرِ الثَّابِتِ فِي رَفْعِ الْقَلَمِ عَنْ الصَّبِيِّ حَتَّى يَبْلُغَ وَعَنْ الْمَجْنُونِ حَتَّى يُفِيقَ وَالسَّكْرَانِ لَا يَعْقِلُ وَقَدْ ذَكَرْنَا «خَبَرَ حَمْزَةَ - رَضِيَ اللَّهُ عَنْهُ - فِي قَوْلِهِ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا لَوْ قَالَهُ فِي صِحَّتِهِ لَخَرَجَ بِذَلِكَ عَنْ الْإِسْلَامِ وَعَقْرُهُ نَاقَتَيْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فَلَمْ يَجْعَلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي ذَلِكَ مَلَامَةً وَلَا غَرَامَةً» .

وَقَالَ بَعْضُهُمْ: لَوْ كَانَ هَذَا مَا شَاءَ وَاحِدٌ أَنْ يَقْتُلَ أَحَدًا أَوْ يُفْسِدَ مَالَهُ إلَّا تَسَاكَرَ حَتَّى يَبْلُغَ مَا يُرِيدُ؟ فَقُلْنَا لَهُمْ: فَقُولُوا هَذَا الْكَلَامَ فِي الْمَجْنُونِ، فَقُولُوا: لَوْ كَانَ هَذَا لَمَا شَاءَ أَحَدٌ أَنْ يَقْتُلَ أَحَدًا، أَوْ يُتْلِفَ مَالَهُ إلَّا تَحَامَقَ وَتَجَنَّنَ، حَتَّى يَبْلُغَ مِنْ ذَلِكَ مَا يُرِيدُ وَلَا فَرْقَ.

فَقَالُوا: وَمَنْ يَعْرِفُ أَنَّهُ سَكْرَانُ؟ فَقُلْنَا: وَمَنْ يَعْرِفُ أَنَّهُ مَجْنُونٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَالْحَقُّ الْمُتَيَقَّنُ فِي هَذَا: أَنَّ الْأَحْكَامَ لَازِمَةٌ لِكُلِّ بَالِغٍ حَتَّى يُوقَنَ أَنَّهُ ذَاهِبُ الْعَقْلِ بِجُنُونٍ أَوْ سُكْرٍ.

An issue: There is no qawad against an insane person or an intoxicated one.

Issue: There is no legal retaliation (qisas) upon an insane person for harm inflicted during their insanity, nor upon an intoxicated person for harm caused during their intoxication—which removes their rationality—nor upon a minor. None of these individuals incur blood money (diyah) or compensation. These individuals and animals are equivalent in legal consideration, based on what we established in "Divorce" and other contexts regarding the authentic report about the lifting of accountability: from the child until puberty, the insane until sanity returns, and the intoxicated who lacks rational capacity. We also referenced the report concerning Hamza—may Allah be pleased with him—when he addressed the Messenger of Allah (peace and blessings of Allah be upon him and his family) with words that, had he uttered them in his sane state, would have taken him beyond Islam. Likewise, his hamstringing of Ali's two she-camels (may Allah be pleased with him) led the Messenger of Allah (peace and blessings of Allah be upon him and his family) to impose neither blame nor financial penalty.

Some of them said: If this were valid, would anyone who wishes to kill someone or spoil his property do so only by getting drunk until he achieves his aim? We responded: Then apply this same reasoning to the insane person - [say]: If this were valid, would anyone who wishes to kill someone or destroy his property do so only by feigning foolishness or insanity until he attains what he desires? There is no distinction.

They said, "And who can determine if someone is intoxicated?" We responded, "And who can determine if someone is insane?" Abū Muḥammad—may Allāh be pleased with him—stated: "The indubitable truth in this matter is that legal obligations apply to every legally responsible person until it is conclusively established that he has lost his mental capacity due to insanity or intoxication."

As for cases where this certainty is absent, the legal rulings remain binding upon him, and the state of mental incapacity arising from one of these two causes is evident to anyone who witnesses it. Our opponents have concurred

with us in this matter that an intoxicated person is not held liable for apostasy from Islam—yet this [ruling] is more reprehensible than any other.

وَأَمَّا مَا لَمْ يُوقَنْ ذَلِكَ - فَالْأَحْكَامُ لَهُ لَازِمَةٌ وَحَالُ ذَهَابِ الْعَقْلِ بِأَحَدِ هَذَيْنِ الْوَجْهَيْنِ لَا يَخْفَى عَلَى مَنْ يُشَاهِدُهُ، وَقَدْ وَافَقَنَا الْمُخَالِفُونَ لَنَا فِي هَذَا الْمَكَانِ عَلَى أَنْ لَا يُؤْخَذَ السَّكْرَانُ بِارْتِدَادِهِ عَنْ الْإِسْلَامِ - وَهَذَا أَشْنَعُ مِنْ كُلِّ مَا سِوَاهُ.

L36380 If they were to say: "Why have you not stipulated blood money for that?" We would respond: Due to the statement of Allah's Messenger (peace and blessings be upon him and his family), "Your blood, your wealth, your honor, and your bodies are inviolable upon you." Thus, the wealth of minors, the insane, and intoxicated persons remains inviolable without explicit textual evidence - like the prohibition against shedding their blood - with no distinction [between these cases]. Nor is there any textual basis whatsoever establishing the obligation of a financial penalty upon them at all.

فَإِنْ قَالُوا: فَهَلَّا جَعَلْتُمْ فِي ذَلِكَ دِيَةً؟ قُلْنَا: لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَأَمْوَالُ الصَّبِيِّ وَالْمَجْنُونِ وَالسَّكْرَانِ حَرَامٌ بِغَيْرِ نَصٍّ، كَتَحْرِيمِ دِمَائِهِمْ وَلَا فَرْقَ وَلَا نَصَّ فِي وُجُوبِ غَرَامَةٍ عَلَيْهِمْ أَصْلًا.

L36381–36383 There are traditions reported from those below the rank of the Messenger of Allah—may Allah bless him and his family and grant him peace—concerning that: Regarding the case of boys, there is a tradition narrated from ʿAlī ibn Abī Ṭālib that six boys plunged into the river, where one drowned. Two testified against three, and three testified against the two. ʿAlī consequently assigned three-fifths of the blood money to the two and two-fifths of the blood money to the three.

وَجَاءَتْ عَمَّنْ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي ذَلِكَ آثَارٌ -: أَمَّا الصَّبِيُّ - فَجَاءَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَثَرٌ بِأَنَّ سِتَّةَ صِبْيَانٍ تَغَاطَّوا فِي النَّهْرِ فَغَرِقَ أَحَدُهُمْ فَشَهِدَ اثْنَانِ عَلَى ثَلَاثَةٍ، وَشَهِدَ الثَّلَاثَةُ عَلَى الِاثْنَيْنِ، فَجَعَلَ عَلِيٌّ عَلَى الِاثْنَيْنِ ثَلَاثَةَ أَخْمَاسِ الدِّيَةِ، وَجَعَلَ عَلَى الثَّلَاثَةِ خُمُسَيْ الدِّيَةِ -.

L36384 This is absolutely invalid because it is a narration from Salama ibn Kuhayl or Hammad ibn Abi Sulayman—both of whom were only born after Ali's death—claiming that Ali ibn Abi Talib...

وَهَذَا لَا يَصِحُّ أَلْبَتَّةَ؛ لِأَنَّهُ مِنْ رِوَايَةِ سَلَمَةَ بْنِ كُهَيْلٍ، أَوْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ - وَكِلَاهُمَا لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ عَلِيٍّ.

L36385 And from the chain of Al-Ḥajjāj ibn Arṭāʾah—and he is rejected—. Furthermore, even if it were authentic, the Mālikīs, Ḥanafīs, and Shāfiʿīs would contradict it. For something only serves as evidence against those who have authenticated it, not against those who have not.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ هَالِكٌ -. ثُمَّ لَوْ صَحَّ لَكَانَ الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ مُخَالِفُونَ لَهُ، وَإِنَّمَا يَكُونُ الشَّيْءُ حُجَّةً عَلَى مَنْ صَحَّحَهُ، لَا عَلَى مَنْ لَمْ يُصَحِّحْهُ.

L36386 It is reported that the imposition of the fine upon the minor's male agnatic kin is attributed to al-Zuhrī, Ḥammād ibn Abī Sulaymān, Ibrāhīm al-Nakhaʿī, and Qatādah—and this is the position upheld by Abū Ḥanīfah.

وَرُوِيَ إيجَابُ الْغَرَامَةِ عَلَى عَاقِلَةِ الصَّبِيِّ عَنْ الزُّهْرِيِّ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَقَتَادَةَ - وَبِهِ يَقُولُ أَبُو حَنِيفَةَ.

L36387 It has been narrated from Rabiʿah that he said: If the boy is very young,

there is no liability upon his ʿāqilah nor in his wealth—and if he is legally responsible, then the diyah (blood money) is upon his ʿāqilah.

وَرُوِيَ عَنْ رَبِيعَةَ أَنَّهُ قَالَ: إذَا كَانَ الصَّبِيُّ صَغِيرًا جِدًّا فَلَا شَيْءَ عَلَى عَاقِلَتِهِ، وَلَا فِي مَالِهِ - وَإِنْ كَانَ يَعْقِلُ فَالدِّيَةُ عَلَى عَاقِلَتِهِ.

L36388 Mālik also holds this opinion - Al-Shāfiʿī said: "It is in his property under all circumstances."

وَبِهِ يَقُولُ مَالِكٌ - وَقَالَ الشَّافِعِيُّ: هِيَ فِي مَالِهِ بِكُلِّ حَالٍ.

L36389 Abū Muḥammad—may Allah be pleased with him—said: "These are manifest contradictions and assertions devoid of evidence—neither from the Quran, nor a sound Sunnah, nor a weak one, nor any narration from a Companion at all, nor analogical reasoning. Whatever is thus is indubitably invalid."

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: فَهَذِهِ مُنَاقَضَاتٌ ظَاهِرَةٌ، وَأَقْوَالٌ بِلَا دَلِيلٍ، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا رِوَايَةٍ عَنْ صَاحِبٍ أَصْلًا، وَلَا قِيَاسٍ، وَمَا كَانَ هَكَذَا فَهُوَ بَاطِلٌ مُتَيَقَّنٌ.

L36390 They have unanimously agreed that it is impermissible to apply analogy to the intentional act, and analogizing the intentional act to the unintentional one is invalid—even if analogy were valid—because, according to them, a thing is only analogized to its equivalent or similar counterpart. There is absolutely no resemblance between a sane adult on one hand, and a minor or an insane person on the other. Thus, all their arguments are rendered void. And success comes from Allah, the Exalted.

وَقَدْ اتَّفَقُوا عَلَى أَنَّهُ لَا يَجُوزُ أَنْ يُقَاسَ عَلَى الْعَامِدِ، وَقِيَاسُهُ عَلَى الْخَطَأِ بَاطِلٌ لَوْ كَانَ الْقِيَاسُ حَقًّا، لِأَنَّهُ لَا يُقَاسُ عِنْدَهُمْ الشَّيْءُ إلَّا عَلَى نَظِيرِهِ وَمُشْبِهِهِ، وَلَا شَبَهَ بَيْنَ الْعَاقِلِ الْبَالِغِ وَبَيْنَ الصَّبِيِّ الْمَجْنُونِ أَصْلًا - فَبَطَلَ كُلُّ مَا قَالُوهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36391 They have unanimously agreed upon the waiver of expiation from him regarding that matter. If analogy were valid, then waiving blood money by analogy to the waiver of expiation in that matter would be the soundest existing analogy. Yet they neither follow the textual sources, nor correctly apply analogy, nor emulate the Companions.

وَقَدْ أَجْمَعُوا عَلَى سُقُوطِ الْكَفَّارَةِ فِي ذَلِكَ عَنْهُ، فَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ إسْقَاطُ الدِّيَةِ قِيَاسًا عَلَى سُقُوطِ الْكَفَّارَةِ فِي ذَلِكَ أَصَحَّ قِيَاسٍ يُوجَدُ، وَلَكِنَّهُمْ لَا النُّصُوصَ يَتَّبِعُونَ، وَلَا الْقِيَاسَ يُحْسِنُونَ، وَلَا الصَّحَابَةَ يُقَلِّدُونَ.

L36392–36394 As for the insane person - Aḥmad ibn ʿUmar ibn Anas narrated to us, from ʿAbdullāh ibn al-Ḥusayn ibn ʿIqāl, from Ibrāhīm ibn Muḥammad al-Dīnawarī, from Muḥammad ibn Aḥmad ibn al-Jahm, from Jaʿfar ibn Muḥammad al-Ṣāʾigh, from me. Affan—he is Ibn Muslim—I, Sakhr ibn Juwayriyah, report from Nāfiʿ, the freedman of Ibn ʿUmar, who said: An insane man during the era of Ibn Az-Zubayr entered the Sacred House with a dagger and stabbed his cousin, killing him. Ibn Az-Zubayr ruled that compensation should be taken from his wealth and given to the slain man's family. Via the narration of Hammād ibn Salamah, from Hishām ibn ʿUrwah ibn Az-Zubayr, from his

وَأَمَّا الْمَجْنُونُ - فَحَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ أَنَا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ أَنَا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ أَنَا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ أَنَا جَعْفَرُ بْنُ مُحَمَّدٍ الصَّائِغُ أَنَا عَفَّانُ - هُوَ ابْنُ مُسْلِمٍ - أَنَا صَخْرُ بْنُ جُوَيْرِيَةَ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ قَالَ: إنَّ مَجْنُونًا عَلَى عَهْدِ ابْنِ الزُّبَيْرِ دَخَلَ الْبَيْتَ بِخِنْجَرٍ فَطَعَنَ ابْنَ عَمِّهِ فَقَتَلَهُ؟ فَقَضَى ابْنُ الزُّبَيْرِ بِأَنْ

father: ʿAbdullāh ibn Az-Zubayr said: The liability for the insane person's offense is from his wealth.

يُخْلَعَ مِنْ مَالِهِ وَيُدْفَعَ إِلَى أَهْلِ الْمَقْتُولِ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ: أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ قَالَ: جِنَايَةُ الْمَجْنُونِ فِي مَالِهِ.

L36395 Abū Muḥammad—may Allāh be pleased with him—said: "And these two narrations are of the highest degree of authenticity."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَانِ الْأَثَرَانِ فِي غَايَةِ الصِّحَّةِ.

L36396 The liability for the criminal act of a minor or an insane person is borne by their respective agnates.

وَمِنْ طَرِيقِ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضَمْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيٍّ قَالَ: جِنَايَةُ الصَّبِيِّ، وَالْمَجْنُونِ عَلَى عَاقِلَتِهِمَا -.

L36397 And this is invalid, for Al-Husayn ibn Abdullah, his father, and his grandfather: there is no good in them.

وَهَذَا لَا يَصِحُّ؛ لِأَنَّ الْحُسَيْنَ بْنَ عَبْدِ اللَّهِ، وَأَبَاهُ، وَجَدَّهُ: لَا خَيْرَ فِيهِمْ.

L36398 Narrated by Malik from Yahya ibn Sa'id al-Ansari: Marwan wrote to Mu'awiyah concerning a mentally ill man who had killed someone. Mu'awiyah wrote to him: "Confine him, and do not exact retaliation from him."

وَمِنْ طَرِيقِ مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ مَرْوَانَ كَتَبَ إِلَى مُعَاوِيَةَ فِي مَجْنُونٍ قَتَلَ رَجُلًا؟ فَكَتَبَ إِلَيْهِ مُعَاوِيَةُ: اعْقِلْهُ، وَلَا تُقِدْ مِنْهُ -.

L36399 This is invalid because Yaḥyā ibn Saʿīd al-Anṣārī was not born until after the death of Muʿāwiyah.

وَهَذَا لَا يَصِحُّ؛ لِأَنَّ يَحْيَى بْنَ سَعِيدٍ الْأَنْصَارِيَّ لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ مُعَاوِيَةَ.

L36400 It has been narrated to us from Saʿīd ibn al-Musayyib and Sulaymān ibn Yasār that the blood money liability (ʿaql) applies to the insane person. However, this is not authentically established from them, as it is transmitted via Makhramah ibn Bukayr from his father, and Makhramah did not hear anything from his father.

وَرُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَسُلَيْمَانَ بْنِ يَسَارٍ عَلَى الْمَجْنُونِ الْعَقْلُ - وَلَا يَصِحُّ عَنْهُمَا؛ لِأَنَّهُ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ، وَلَمْ يَسْمَعْ مِنْ أَبِيهِ شَيْئًا.

L36401 We have also narrated from Yaḥyā ibn Saʿīd al-Anṣārī and Muḥammad ibn Jaʿfar ibn al-Zubayr that the criminal liability of the insane person is borne by his ʿāqila.

وَرُوِّينَاهُ أَيْضًا - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَمُحَمَّدِ بْنِ جَعْفَرِ بْنِ الزُّبَيْرِ جِنَايَةُ الْمَجْنُونِ عَلَى عَاقِلَتِهِ -.

L36402 And it is not authentically reported from both of them, because it is from an unnamed narrator from them [i.e., the two], except that it is authentic from al-Zuhri and Abu al-Zinad. There is no authoritative proof in anyone apart from the Messenger of Allah (may Allah bless him and his family and grant him peace.)

وَلَا يَصِحُّ عَنْهُمَا؛ لِأَنَّهُ عَمَّنْ لَمْ يُسَمِّ عَنْهُمَا إِلَّا أَنَّهُ صَحِيحٌ عَنْ الزُّهْرِيِّ، وَأَبِي الزِّنَادِ، وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L36403 The Hanafis, Malikis, and Shafi'is have opposed what has been authentically

reported from Ibn al-Zubayr in this matter, and no disagreement with him from any of the Companions has ever been authenticated.

وَقَدْ خَالَفَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ فِي هَذَا مَا صَحَّ عَنْ ابْنِ الزُّبَيْرِ، وَلَمْ يَصِحَّ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُ.

L36404–36406 They have no valid proof in what is narrated from Muʿāwiyah, for it does not state that the financial liability is to be paid from the insane person's wealth nor that it is incumbent upon his agnatic relatives. Rather, it only mentions that he ordered Marwān to have the agnatic relatives pay it. The apparent meaning of the command is that he had it paid from the public treasury. Financial liability, and if the Imam were to do this, it would be commendable though not obligatory—this is what they contradicted in the texts. Among the authentically established positions of a Companion whose statement none of them validly opposed is the matter of qiyās (legal analogy): since they applied qiyās by equating the liability of an insane person erroneously presumed to have intent with its opposite—the liability of a sane person who erred—yet they did not extend this analogy to waiving the blood money (diyah) as they did to waiving the expiation (kaffārah) in that case. And success is from Allah, the Exalted.

وَلَا حُجَّةَ لَهُمْ فِيمَا رُوِيَ عَنْ مُعَاوِيَةَ؛ لِأَنَّهُ لَيْسَ فِيهِ: أَنَّ الْغَرَامَةَ فِي مَالِ الْمَجْنُونِ، وَلَا أَنَّهَا عَلَى عَاقِلَتِهِ: إنَّمَا فِيهَا: أَنَّهُ أَمَرَ مَرْوَانَ بِأَنْ يَعْقِلَهُ - وَظَاهِرُ الْأَمْرِ أَنَّهُ عَقَلَهُ مِنْ بَيْتِ الْمَالِ، وَلَوْ فَعَلَ الْإِمَامُ هَذَا لَكَانَ حَسَنًا، وَلَيْسَ وَاجِبًا - وَهَذَا مَا خَالَفُوا فِيهِ النُّصُوصَ، وَمِمَّا صَحَّ عَنْ الصَّاحِبِ الَّذِي لَا يَصِحُّ لِقَوْلِهِ خِلَافٌ عَنْ أَحَدٍ مِنْهُمْ، وَالْقِيَاسُ: إذْ قَاسُوا مَا جَنَى الْمَجْنُونُ الْقَاصِدُ عَلَى ضِدِّهِ - وَهُوَ مَا جَنَاهُ الْعَاقِلُ الْمُخْطِئُ - وَلَمْ يَقِيسُوا إسْقَاطَ الدِّيَةِ عَلَى إسْقَاطِهِمْ الْكَفَّارَةَ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36407 As for the intoxicated man, it was narrated to us from Ali ibn Abi Talib that intoxicated men fought with knives. They were four individuals: two were wounded, and two died. Ali imposed the diyah for the two slain men upon their tribes and upon the tribes of the two who did not die, and offset from the two living parties the diyah corresponding to their wounds. It was narrated that Hasan ibn Ali deemed qisas should be enforced against the two living parties for the two dead, but Ali did not hold this view, stating: "Perhaps each of the two slain men killed the other." This narration is not sound from Ali, as its chain includes Simak ibn Harb narrating from an unknown man—reported by Hammad ibn Salama from Simak, who said: "From Ubayd ibn al-Qaʿqaʿ."

فَأَمَّا السَّكْرَانُ فَرُوِّينَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّ سُكَارَى تَضَارَبُوا بِالسَّكَاكِينِ. وَهُمْ أَرْبَعَةٌ فَجُرِحَ اثْنَانِ، وَمَاتَ اثْنَانِ: فَجَعَلَ عَلِيٌّ دِيَةَ الِاثْنَيْنِ الْمَقْتُولَيْنِ عَلَى قَبَائِلِهِمَا، وَعَلَى قَبَائِلِ اللَّذَيْنِ لَمْ يَمُوتَا، وَقَاصَّ الْحَيَّيْنِ مِنْ ذَلِكَ بِدِيَةِ جِرَاحِهِمَا - وَأَنَّ الْحَسَنَ بْنَ عَلِيٍّ رَأَى أَنْ يُقِيدَ لِلْحَيَّيْنِ لِلْمَيِّتَيْنِ وَلَمْ يَرَ عَلِيٌّ ذَلِكَ، وَقَالَ: لَعَلَّ الْمَيِّتَيْنِ قَتَلَ كُلُّ وَاحِدٍ مِنْهُمَا الْآخَرَ - وَهَذَا لَا يَصِحُّ عَنْ عَلِيٍّ؛ لِأَنَّهُ مِنْ طَرِيقٍ فِيهَا سِمَاكُ بْنُ حَرْبٍ عَنْ رَجُلٍ مَجْهُولٍ، رَوَاهُ حَمَّادُ بْنُ سَلَمَةَ عَنْ سِمَاكٍ، فَقَالَ: عَنْ عُبَيْدِ بْنِ الْقَعْقَاعِ.

L36408 Abu al-Ahwash narrated it from Simak, who cited ʿAbd al-Raḥmān ibn al-Qaʿqaʿ—both of whom are unknown—and Simak is susceptible to talqīn (coaching/prompting).

وَرَوَاهُ أَبُو الْأَحْوَصِ عَنْ سِمَاكٍ فَقَالَ: عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَعْقَاعِ، وَكِلَاهُمَا لَا يُدْرَى مَنْ هُوَ - وَسِمَاكٌ يَقْبَلُ التَّلْقِينَ.

L36409 If it had been valid, it would have conflicted with the doctrines of the Hanafis,

the Shafi'is, and the Malikis.

وَلَوْ صَحَّ لَكَانَ مُخَالِفًا لِقَوْلِ الْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ، وَالْمَالِكِيِّينَ.

L36410 From the transmission chains of Yaḥyā ibn Saʿīd al-Anṣārī and ʿAbd al-Raḥmān ibn Abī al-Zināد: Muʿāwiyah exacted legal retribution from an intoxicated person. Ibn Abī al-Zināد stated: The killer was Muḥammad ibn al-Nuʿmān al-Anṣārī, and the slain was ʿUmārah ibn Zayd ibn Thābit. Abū Muḥammad—may Allāh be pleased with him—commented: This account is inauthentic, for Yaḥyā was born only after Muʿāwiyah's death, while ʿAbd al-Raḥmān ibn Abī al-Zināد stands at the extreme end of unreliability—the first to deem him weak was Mālik. We know of no other reports from the Companions on this matter beyond what we have cited. And authenticated reports derive from al-Zuhrī and Rabīʿa.

وَمِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ: أَنَّ مُعَاوِيَةَ أَقَادَ مِنْ السَّكْرَانِ، قَالَ ابْنُ أَبِي الزِّنَادِ: وَكَانَ الْقَاتِلُ مُحَمَّدَ بْنَ النُّعْمَانِ الْأَنْصَارِيَّ - وَالْمَقْتُولُ عُمَارَةَ بْنَ زَيْدِ بْنِ ثَابِتٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا لَا يَصِحُّ؛ لِأَنَّ يَحْيَى لَمْ يُولَدْ إلَّا بَعْدَ مَوْتِ مُعَاوِيَةَ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ فِي غَايَةِ الضَّعْفِ، أَوَّلُ مَنْ ضَعَّفَهُ: مَالِكٌ، وَلَا نَعْلَمُ فِي هَذَا الْبَابِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ شَيْئًا غَيْرَ مَا ذَكَرْنَا - وَصَحَّ عَنْ الزُّهْرِيِّ، وَرَبِيعَةَ.

L36411 And with this, Abu Hanifah, Malik, and al-Shafi'i say: retaliation is taken from the intoxicated person—and no argument is valid from anyone other than the Messenger of Allah, may Allah's blessings and peace be upon him and his family. This is among the matters in which they opposed the texts, what was narrated from the Companions, and analogical reasoning, as we mentioned.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: يُقَادُ مِنْ السَّكْرَانِ - وَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَهَذَا مِمَّا خَالَفُوا فِيهِ النُّصُوصَ وَمَا رُوِيَ عَنْ الصَّحَابَةِ، وَالْقِيَاسَ، كَمَا ذَكَرْنَا.

L36412–36413 Abu Muhammad—may Allah be pleased with him—said: It was narrated to us through the chain of Abd al-Razzaq, from Ibn Jurayj, who informed me that Abd al-Aziz ibn Umar ibn Abd al-Aziz reported: In a book of his father, it is reported from Umar ibn al-Khattab that he said: There is no retaliation for killing, no legal retribution, no prescribed punishment, no compensation for injuries, no execution, and no exemplary punishment against one who has not reached puberty until he understands his rights and obligations in Islam.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ فِي كِتَابٍ لِأَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: لَا قَوَدَ، وَلَا قِصَاصَ، وَلَا حَدَّ، وَلَا جِرَاحَ، وَلَا قَتْلَ، وَلَا نَكَالَ عَلَى مَنْ لَمْ يَبْلُغْ الْحُلُمَ حَتَّى يَعْلَمَ مَا لَهُ فِي الْإِسْلَامِ، وَمَا عَلَيْهِ.

L36414 It has been authentically established from Uthman ibn Affan that a divorce pronounced by an intoxicated person is not binding upon him - thereby establishing that in his view the drunkard holds the same legal status as the insane. This position is maintained by Abu Sulayman, al-Muzani, al-Tahawi, and others.

وَقَدْ صَحَّ عَنْ عُثْمَانَ بْنِ عَفَّانَ: أَنَّ السَّكْرَانَ لَا يَلْزَمُهُ طَلَاقٌ - فَصَحَّ أَنَّهُ عِنْدَهُ بِمَنْزِلَةِ الْمَجْنُونِ - وَبِهَذَا يَقُولُ أَبُو سُلَيْمَانَ، وَالْمُزَنِيُّ، وَالطَّحَاوِيُّ، وَغَيْرُهُمْ.

L36415 The imposition of a fine constitutes divine legislation. If established without

a textual basis from the Quran or Sunnah, it is legislation in the religion which Allah has not sanctioned, and we seek refuge in Allah from this.

وَإِيجَابُ الْغَرَامَةِ شَرْعٌ، فَإِذَا كَانَ بِغَيْرِ نَصِّ قُرْآنٍ أَوْ سُنَّةٍ - فَهُوَ شَرْعٌ مِنْ الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ - وَنَعُوذُ بِاَللَّهِ مِنْ هَذَا.

L36416 Abu Muhammad—may Allah be pleased with him—said: However, if a child, an insane person, or an intoxicated person does this regarding blood, a wound, or property, confinement is imposed on him in a house to prevent his harm until the intoxicated person sobers up, the insane person regains consciousness, and the child reaches puberty.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: إلَّا أَنَّ مَنْ فَعَلَ هَذَا مِنْ الصِّبْيَانِ، أَوْ الْمَجَانِينِ، أَوْ السُّكَارَى فِي: دَمٍ، أَوْ جُرْحٍ، أَوْ مَالٍ: فَفُرِضَ ثِقَافُهُ فِي بَيْتٍ لِيَكُفَّ أَذَاهُ، حَتَّى يَتُوبَ السَّكْرَانُ، وَيُفِيقَ الْمَجْنُونُ، وَيَبْلُغَ الصَّبِيُّ.

L36417 Due to the saying of Allah, the Most High: *"Cooperate in righteousness and piety, and do not cooperate in sin and transgression"* [Al-Mā'idah 5:2]. Educating them constitutes cooperation in righteousness and piety, while neglecting them constitutes cooperation in sin and transgression. And with Allah, the Most High, lies all success.[5]

لِقَوْلِ اللَّهِ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَتَثْقِيفُهُمْ تَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى، وَإِهْمَالُهُمْ تَعَاوُنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36418 Issue: If a sane adult Muslim kills a dhimmi or a musta'man.

[مَسْأَلَةٌ قَتَلَ مُسْلِمٌ عَاقِلٌ بَالِـغٌ ذِمِّيًّا أَوْ مُسْتَأْمَنًا]

L36419 **٢٠٢٥** – Issue: If a sane, adult Muslim kills a dhimmi or musta'man—whether intentionally or accidentally—no qawad (retribution), diyah (blood money), or kaffarah (expiation) is required. However, he is disciplined specifically for intentional acts and detained until he repents to prevent his harm.

٢٠٢٥ - مَسْأَلَةٌ: وَإِنْ قَتَلَ مُسْلِمٌ عَاقِلٌ بَالِـغٌ: ذِمِّيًّا، أَوْ مُسْتَأْمَنًا - عَمْدًا، أَوْ خَطَأً - فَلَا قَوَدَ عَلَيْهِ، وَلَا دِيَةَ، وَلَا كَفَّارَةَ - وَلَكِنْ يُؤَدَّبُ فِي الْعَمْدِ خَاصَّةً، وَيُسْجَنُ حَتَّى يَتُوبَ كَفًّا لِضَرَرِهِ.

L36420 The proof of that is the statement of Allah, the Most High: "And whoever kills a believer by mistake must free a believing slave and deliver blood-money to the deceased's family, unless they donate it as charity" up to His words, the Most High: "And Allah has ever been All-Knowing, All-Wise" [An-Nisa': 92].[6]

بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى: {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ إِلا أَنْ يَصَّدَّقُوا} [النساء: ٩٢] إلَى قَوْله تَعَالَى: {وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا} [النساء: ٩٢] .

L36421–36423 All of this regarding the believer is with certainty. The pronoun in "If he belonged to a people with whom you have a treaty, then a compensation must be delivered to his family and the freeing of a believing slave. But

فَهَذَا كُلُّهُ فِي الْمُؤْمِنِ بِيَقِينٍ - وَالضَّمِيرُ الَّذِي فِي {كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِنَ اللَّهِ} [النساء: ٩٢] رَاجِعٌ ضَرُورَةً - لَا يُمْكِنُ غَيْرُ هَذَا - إلَى الْمُؤْمِنِ الْمَذْكُورِ أَوَّلًا،

[5] **Qur'an references (L36417):** Qur'an 5:2 (Al-Ma'idah).
[6] **Qur'an references (L36420):** Qur'an 4:92 (An-Nisa).

whoever cannot find the means, then fasting for two consecutive months as expiation from Allah" [4:92] necessarily refers back—there is no alternative to this—to the believer mentioned initially, and not to others. The mention in this verse does not pertain to a dhimmi at all, nor to a musta'min. Thus, it is certainly correct that imposing diyah on the Muslim in such a case is not permissible whatsoever, and likewise imposing qisas upon him, with no distinction.[7]

وَلَا ذِكْرَ فِي هَذِهِ الْآيَةِ لِذِمِّيٍّ أَصْلًا، وَلَا لِمُسْتَأْمَنٍ - فَصَحَّ يَقِينًا أَنَّ إِيجَابَ الدِّيَةِ عَلَى الْمُسْلِمِ فِي ذَلِكَ لَا يَجُوزُ أَلْبَتَّةَ، وَكَذَلِكَ إِيجَابُ الْقَوَدِ عَلَيْهِ وَلَا فَرْقَ.

L36424 People have differed regarding this matter. A group among them—Abū Ḥanīfah—said: A Muslim may be subjected to retaliation (qiṣāṣ) for intentionally killing a dhimmi, and he is obligated to pay blood money (diyah) and perform expiation (kaffārah) in cases of accidental killing. However, he is not executed for killing a muʿāhad even if done intentionally. We know of no precedent or basis for this opinion of his.

وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -: فَقَالَتْ طَائِفَةٌ - مِنْهُمْ: أَبُو حَنِيفَةَ: يُقَادُ الْمُسْلِمُ بِالذِّمِّيِّ فِي الْعَمْدِ، وَعَلَيْهِ فِي قَتْلِهِ خَطَأً الدِّيَةِ وَالْكَفَّارَةِ، وَلَا يُقْتَلُ بِالْمُعَاهَدِ - وَإِنْ تَعَمَّدَ قَتْلَهُ وَلَا نَعْلَمُ لَهُ فِي قَوْلِهِ هَذَا سَلَفًا أَصْلًا.

L36425 A group of scholars—among them Mālik—said: A Muslim is not subject to *qisas* for killing a *dhimmi* unless he kills him through treachery (*ghīlah*) or highway robbery (*ḥirābah*), in which case *qisas* is obligatory. If the killing is accidental or intentional killing not involving treachery, he is liable for only blood money (*diyah*), and expiation (*kaffārah*) applies only in accidental killing.

وَقَالَتْ طَائِفَةٌ - مِنْهَا مَالِكٌ: لَا يُقَادُ الْمُسْلِمُ بِالذِّمِّيِّ إِلَّا أَنْ يَقْتُلَهُ غِيلَةً، أَوْ حِرَابَةً، فَيُقَادُ بِهِ وَلَا بُدَّ - وَعَلَيْهِ فِي قَتْلِهِ خَطَأً أَوْ عَمْدًا - غَيْرَ غِيلَةٍ - الدِّيَةُ فَقَطْ، وَالْكَفَّارَةُ فِي الْخَطَأِ.

L36426 A group—including al-Shāfiʿī—said: A Muslim is not subject to retaliation for killing a *dhimmi* fundamentally. However, he is liable for *diyah* and *kaffarah* if he kills him intentionally or unintentionally.

وَقَالَتْ طَائِفَةٌ - مِنْهَا الشَّافِعِيُّ: لَا يُقَادُ الْمُسْلِمُ بِالذِّمِّيِّ أَصْلًا، لَكِنْ عَلَيْهِ فِي قَتْلِهِ إِيَّاهُ - عَمْدًا أَوْ خَطَأً - الدِّيَةُ، وَالْكَفَّارَةُ.

L36427 And it has been reported regarding that from the Salaf: what was narrated to us through the chain of Wakīʿ—I am Sufyān al-Thawrī, from Ḥammād ibn Abī Sulaymān, from Ibrāhīm al-Nakhaʿī: That a Muslim man killed a man from al-Ḥīrah? So ʿUmar ibn al-Khaṭṭāb enforced retaliation against him. Wakīʿ said: And we have it from Abū al-Ashhab, from Abū Naḍrah, with the same report, exactly the same, without any difference. And this is a mursal report.

وَجَاءَ فِي ذَلِكَ عَنْ السَّلَفِ - مَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ: أَنَّ رَجُلًا مُسْلِمًا قَتَلَ رَجُلًا مِنْ أَهْلِ الْحِيرَةِ؟ فَأَقَادَهُ عُمَرُ بْنُ الْخَطَّابِ - قَالَ وَكِيعٌ: ونا أَبُو الْأَشْهَبِ عَنْ أَبِي نَضْرَةَ بِمِثْلِهِ سَوَاءً سَوَاءً - وَهَذَا مُرْسَلٌ.

L36428 I am Muḥammad ibn Saʿīd ibn Nubāt: I am Qāsim ibn Aṣbagh: I am Muḥam-

[7] **Qur'an references (L36421):** Qur'an 4:92 (An-Nisa).

mad ibn ʿAbd al-Salām al-Khushanī: I am Muḥammad ibn al-Muthannā: I am ʿAbdullāh ibn Idrīs al-Awdī, from Layth ibn Abī Sulaym, from al-Ḥakam ibn ʿUtaybah: that ʿAlī ibn Abī Ṭālib and Ibn Masʿūd both jointly stated: "Whoever kills a Jew or a Christian is to be killed in retaliation for it"—and this is also a *mursal* [report with an interrupted chain].

أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا قَاسِمُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ الْأَوْدِيُّ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ، وَابْنَ مَسْعُودٍ، قَالَا جَمِيعًا: مَنْ قَتَلَ يَهُودِيًّا، أَوْ نَصْرَانِيًّا قُتِلَ بِهِ - وَهَذَا مُرْسَلٌ أَيْضًا -.

L36429–36431 This was authentically reported from ʿUmar ibn ʿAbd al-ʿAzīz—as we have narrated through the chain of ʿAbd al-Razzāq from Maʿmar from ʿAmr ibn Maymūn, who said: "I witnessed the letter of ʿUmar ibn ʿAbd al-ʿAzīz to one of his governors concerning a Muslim who killed a dhimmi. He commanded him to hand the killer over to the victim's next of kin (wali). If the wali wished, he could execute him, or if he wished, pardon him." Maymūn said: "He was handed over to the wali, who struck his neck in my presence." This was also authentically reported from Ibrāhīm al-Nakhaʿī—as we have narrated through the chain of Ḥammād ibn Salama from Ḥammād ibn Abī Sulaymān from Ibrāhīm al-Nakhaʿī. A free Muslim is killed in retaliation for killing a Jew or a Christian – and a similar narration is attributed to Al-Shaʿbi – and this is the opinion of Ibn Abi Layla, Uthman al-Batti, and one of the two opinions of Abu Yusuf.

وَصَحَّ هَذَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَمْرِو بْنِ مَيْمُونٍ، قَالَ: شَهِدْتُ كِتَابَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِلَى بَعْضِ أُمَرَائِهِ فِي مُسْلِمٍ قَتَلَ ذِمِّيًّا: فَأَمَرَهُ أَنْ يَدْفَعَهُ إِلَى وَلِيِّهِ، فَإِنْ شَاءَ قَتَلَهُ، وَإِنْ شَاءَ عَفَا عَنْهُ - قَالَ مَيْمُونٌ: فَدُفِعَ إِلَيْهِ فَضَرَبَ عُنُقَهُ وَأَنَا أَنْظُرُهُ - وَصَحَّ أَيْضًا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ: الْمُسْلِمُ الْحُرُّ يُقْتَلُ بِالْيَهُودِيِّ وَالنَّصْرَانِيِّ - وَرُوِيَ عَنِ الشَّعْبِيِّ مِثْلُهُ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَعُثْمَانَ الْبَتِّيِّ، وَأَحَدُ قَوْلَيْ أَبِي يُوسُفَ.

L36432 There are differing reports from Umar ibn Abd al-Aziz regarding this matter. As we have narrated through the chain of Abd al-Razzaq from Ma'mar from Simak ibn al-Fadl, the judge of Yemen, who said: Umar ibn Abd al-Aziz wrote concerning Ziyad ibn Muslim—who had killed an Indian in Yemen—that he should be fined five hundred, and he should not be subjected to retaliation for it. Another opinion—we have also narrated from Umar ibn al-Khattab regarding a Muslim who kills a protected non-Muslim (dhimmi): If this was done by him as a character trait and habit, and he was a habitual thief, then execute him by beheading—but if this was done in anger or superstition, then require him to pay blood money—and it is narrated: require him to pay four thousand—though this is not authentic from Umar, because it is through the chain of Abdullah ibn Muharrar—who is an abandoned narrator—from Abu Mulayh ibn Usamah: that Umar—and this is a disconnected report (mursal)—

وَقَدْ اخْتُلِفَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي ذَلِكَ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ قَاضِي الْيَمَنِ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي زِيَادِ بْنِ مُسْلِمٍ - وَكَانَ قَدْ قَتَلَ هِنْدِيًّا بِالْيَمَنِ -: أَنْ أَغْرِمْهُ خَمْسَمِائَةٍ، وَلَا تُقِدْهُ بِهِ. وَقَوْلٌ آخَرُ - رُوِّيناهُ أَيْضًا عَنْ عُمَرَ بْنِ الْخَطَّابِ فِي الْمُسْلِمِ يَقْتُلُ الذِّمِّيَّ: إِنْ كَانَ ذَلِكَ مِنْهُ خُلُقًا وَعَادَةً، وَكَانَ لِصًّا عَادِيًا فَأَقِدْهُ بِهِ - وَرُوِيَ: فَاضْرِبْ عُنُقَهُ - وَإِنْ كَانَ ذَلِكَ فِي غَضَبِهِ، أَوْ طِيَرَةً، فَأَغْرِمْهُ الدِّيَةَ - وَرُوِيَ فَأَغْرِمْهُ أَرْبَعَةَ آلَافٍ - وَلَا يَصِحُّ - عَنْ عُمَرَ؛ لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ مُحَرَّرٍ - وَهُوَ هَالِكٌ - عَنْ أَبِي مُلَيْحِ بْنِ أُسَامَةَ: أَنَّ

and through the chain of Abd al-Aziz ibn Umar ibn Abd al-Aziz in a book by his father: that Umar...

عُمَرَ - وَهَذَا مُرْسَلٌ، وَمِنْ طَرِيقِ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي كِتَابٍ لِأَبِيهِ: أَنَّ عُمَرَ.

L36433 And through the chain of Hammad ibn Zayd, from Amr ibn Dinar, from al-Qasim ibn Abi Bazzah narrating from ʾUmar—and this chain is mursal.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ زَيْدٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ الْقَاسِمِ بْنِ أَبِي بَزَّةَ أَنَّ عُمَرَ، وَهَذَا مُرْسَلٌ.

L36434 Or from a defective chain within it: ʿAbd al-Malik ibn Ḥabīb al-Andalusī from Asad ibn Mūsā from Saʿīd ibn Abī Arūba from ʿAmr ibn Dīnār: that ʿUmar—and this is a mursal isnād.

أَوْ مِنْ طَرِيقٍ سُوءٍ فِيهَا: عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ الْأَنْدَلُسِيُّ عَنْ أَسَدِ بْنِ مُوسَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ عَمْرِو بْنِ دِينَارٍ: أَنَّ عُمَرَ - وَهَذَا مُرْسَلٌ.

L36435–36437 Another opinion—which states that a Muslim is not killed in retaliation for a *dhimmi* unless he kills him through treachery—has been narrated from ʿUthmān ibn ʿAffān through a defective, mursal chain containing ʿAbd al-Malik ibn Ḥabīb al-Andalusī, from Muṭarrif, from Ibn Abī Dhiʾb, from Muslim ibn Jundub al-Hudhalī, who said: ʿAbdullāh ibn ʿĀmir wrote to ʿUthmān, “A Muslim man attacked a village chief and killed him for his wealth.” ʿUthmān wrote back to him, “Execute him in retaliation, for this treacherous killing constitutes ḥirābah (highway robbery).” It has also been narrated from Abān ibn ʿUthmān, Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, and many sons of the Companions of the Messenger of Allah—peace and blessings be upon him and his family—except that all [...] That is from the narration of ʿAbd al-Malik ibn Ḥabīb al-Andalusī - and in some of them Ibn Abī al-Zinād - who is weak - and some of them are mursal, and none of them is authentic.

وَقَوْلٌ آخَرُ - وَهُوَ أَنَّهُ لَا يُقْتَلُ الْمُسْلِمُ بِالذِّمِّيِّ إلَّا أَنْ يَقْتُلَهُ غِيلَةً -: رُوِّينَاهُ عَنْ عُثْمَانَ بْنِ عَفَّانَ مِنْ طَرِيقٍ هَالِكَةٍ مُرْسَلَةً فِيهَا: عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ الْأَنْدَلُسِيُّ عَنْ مُطَرِّفٍ عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ الْهُذَلِيِّ قَالَ: كَتَبَ عَبْدُ اللَّهِ بْنُ عَامِرٍ إلَى عُثْمَانَ: أَنَّ رَجُلًا مِنْ الْمُسْلِمِينَ عَدَا عَلَى دِهْقَانٍ فَقَتَلَهُ عَلَى مَالِهِ؟ فَكَتَبَ إلَيْهِ عُثْمَانُ: أَنْ اُقْتُلْهُ بِهِ - فَإِنَّ هَذَا قَتْلُ غِيلَةٍ عَلَى الْحِرَابَةِ -: وَرُوِّينَاهُ أَيْضًا - عَنْ أَبَانَ بْنِ عُثْمَانَ، وَأَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، وَرِجَالٍ كَثِيرٍ مِنْ أَبْنَاءِ الصَّحَابَةِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَّا أَنَّ كُلَّ ذَلِكَ مِنْ رِوَايَةِ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ الْأَنْدَلُسِيِّ - وَفِي بَعْضِهَا ابْنُ أَبِي الزِّنَادِ - وَهُوَ ضَعِيفٌ - وَبَعْضُهَا مُرْسَلٌ، وَلَا يَصِحُّ مِنْهَا شَيْءٌ.

L36438 Another opinion states that he is not to be killed for it, as we have narrated through a sound chain from Shuʻbah: I am ʻAbd al-Malik ibn Maysarah, from al-Nazzal ibn Sabrah, that a Muslim man killed a man from the people of al-Hirah. So ʻUmar ibn al-Khattab wrote: “He is to be retaliated against.” Then ʻUmar wrote another letter afterward: “Do not kill him, but restrain him.” From the chain of Isma‘il ibn Ishaq: I am Sulayman ibn Harb, I am Hammad ibn Zayd, from Kathir ibn Ziyad, from al-Hasan al-Basri, who said: ʻUmar ibn al-Khattab said: “A believer is not killed for an unbeliever.” From the chain

وَقَوْلٌ آخَرُ - لَا يُقْتَلُ بِهِ، كَمَا رُوِّينَا بِالرِّوَايَةِ الثَّابِتَةِ مِنْ طَرِيقِ شُعْبَةَ أَنَا عَبْدُ الْمَلِكِ بْنُ مَيْسَرَةَ عَنْ النَّزَّالِ بْنِ سَبْرَةَ أَنَّ رَجُلًا مُسْلِمًا قَتَلَ رَجُلًا مِنْ أَهْلِ الْحِيرَةِ؟ فَكَتَبَ عُمَرُ بْنُ الْخَطَّابِ: أَنْ يُقَادَ بِهِ - ثُمَّ كَتَبَ عُمَرُ كِتَابًا بَعْدَهُ: أَنْ لَا تَقْتُلُوهُ، وَلَكِنْ اعْقِلُوهُ. وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ كَثِيرِ بْنِ زِيَادٍ

of Isma'il: I am Yahya ibn Khalaf, I am Abu 'Asim al-Nabil, from Ibn Jurayj, who informed me that Ibn Shihab, regarding a Muslim killing a Christian, said that 'Uthman ibn 'Affan ruled: "He is not to be killed for it, but he is to be punished." From the chain of 'Abd al-Razzaq: I am Ma'mar, from al-Zuhri, from Salim ibn 'Abd Allah ibn 'Umar, from his father: A Muslim man intentionally killed a man from the people of the dhimma. He was brought to 'Uthman ibn 'Affan, who did not execute him for it, but imposed upon him the stringent blood money equivalent to that of a Muslim. Al-Zuhri said: Khalid ibn al-Muhajir—he is the son of Khalid ibn al-Walid—killed a dhimmi man during the time of Mu'awiyah? So he [the authority] did not execute him for it, but imposed upon him a blood money of one thousand dinars. Abu Muhammad—may Allah be pleased with him—said: This is of the highest authenticity from 'Uthman, and nothing else authentic on this matter is reported from any of the Companions except what we mentioned from 'Umar as well, through the chain of al-Nazzal ibn Sabrah.

عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ. وَمِنْ طَرِيقِ إِسْمَاعِيلَ أَنَا يَحْيَى بْنُ خَلَفٍ أَنَا أَبُو عَاصِمٍ النَّبِيلُ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ شِهَابٍ فِي قَتْلِ الْمُسْلِمِ النَّصْرَانِيَّ أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَضَى: أَنْ لَا يُقْتَلَ بِهِ، وَأَنْ يُعَاقَبَ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ: أَنَّ رَجُلًا مُسْلِمًا قَتَلَ رَجُلًا مِنْ أَهْلِ الذِّمَّةِ عَمْدًا؟ فَدُفِعَ إلَى عُثْمَانَ بْنِ عَفَّانَ فَلَمْ يَقْتُلْهُ بِهِ، وَغَلَّظَ عَلَيْهِ الدِّيَةَ كَدِيَةِ الْمُسْلِمِ - قَالَ الزُّهْرِيُّ: وَقَتَلَ خَالِدُ بْنُ الْمُهَاجِرِ - هُوَ ابْنُ خَالِدِ بْنِ الْوَلِيدِ - رَجُلًا ذِمِّيًّا فِي زَمَنِ مُعَاوِيَةَ؟ فَلَمْ يَقْتُلْهُ بِهِ، وَغَلَّظَ عَلَيْهِ الدِّيَةَ أَلْفَ دِينَارٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا فِي غَايَةِ الصِّحَّةِ عَنْ عُثْمَانَ - وَلَا يَصِحُّ فِي هَذَا شَيْءٌ غَيْرَ هَذَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ إلَّا مَا ذَكَرْنَا عَنْ عُمَرَ أَيْضًا مِنْ طَرِيقِ النَّزَّالِ بْنِ سَبْرَةَ.

L36439 From the chain of ʿAbd al-Razzāq: Rabāḥ ibn ʿAbd Allāh ibn ʿUmar informed us from Ḥumayd al-Ṭawīl, who heard Anas ibn Mālik narrate that a Jew was killed treacherously, so ʿUmar ibn al-Khaṭṭāb ruled in his case with twelve thousand dirhams. From the chain of Ismāʿīl ibn Isḥāq: Sulaymān ibn Ḥarb reported from Abū Hilāl, from al-Ḥasan al-Baṣrī, that ʿAlī ibn Abī Ṭālib said: "A believer is not to be executed in retaliation for a disbeliever." This has been transmitted through mursal reports collectively from the Companions, including Abū ʿUbaydah ibn al-Jarrāḥ, Muʿādh ibn Jabal, Zayd ibn Thābit, and Abū Mūsā al-Ashʿarī. From the chain of ʿAbd al-Razzāq, from Maʿmar, from Yaḥyā ibn Abī Kathīr, from ʿIkrimah, the client of Ibn ʿAbbās, who said regarding a Muslim who kills a protected non-Muslim: "He is not to be executed for killing him, but blood money is owed instead."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا رَبَاحُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ أَخْبَرَنِي حُمَيْدٌ الطَّوِيلُ: أَنَّهُ سَمِعَ أَنَسَ بْنَ مَالِكٍ يُحَدِّثُ أَنَّ يَهُودِيًّا قُتِلَ غِيلَةً فَقَضَى فِيهِ عُمَرُ بْنُ الْخَطَّابِ بِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ. وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا أَبُو هِلَالٍ أَنَا الْحَسَنُ الْبَصْرِيُّ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ. وَرُوِيَتْ بِذَلِكَ مُرْسَلَاتٌ مِنْ طَرِيقِ الصَّحَابَةِ جُمْلَةً، وَعَنْ أَبِي عُبَيْدَةَ بْنِ الْجَرَّاحِ، وَمُعَاذِ بْنِ جَبَلٍ، وَزَيْدِ بْنِ ثَابِتٍ، وَأَبِي مُوسَى الْأَشْعَرِيِّ - وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ قَالَ فِي الْمُسْلِمِ يَقْتُلُ الذِّمِّيَّ: لَا يُقْتَلُ بِهِ، وَفِيهِ الدِّيَةُ.

L36440–36441 Abu Muhammad—may Allah be pleased with him—said: It has also been

narrated from Umar ibn Abd al-Aziz—and this is the view of Sufyan al-Thawri, Ibn Shubruma, al-Awza'i, al-Shafi'i, Ahmad ibn Hanbal, Abu Thawr, Ishaq, Abu Sulayman, Ibn al-Mundhir, and all their companions—. Zufar ibn al-Hudhayl reverted to this opinion.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: وَرُوِيَ أَيْضًا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَابْنِ شُبْرُمَةَ، وَالْأَوْزَاعِيِّ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ وَأَبِي ثَوْرٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَابْنِ الْمُنْذِرِ، وَجَمِيعِ أَصْحَابِهِمْ - وَإِلَيْهِ رَجَعَ زُفَرُ بْنُ الْهُذَيْلِ -.

L36442 That was narrated to us: through the chain of Abū 'Ubayd from 'Abd al-Raḥmān ibn Mahdīin from him.

رُوِّينَا ذَلِكَ: مِنْ طَرِيقِ أَبِي عُبَيْدٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْهُ.

L36443 Abu Muhammad—may Allah be pleased with him—said: As for Abu Hanifah's distinction between the *dhimmi* and the *mu'ahid*, we know of no evidence for it—neither from the Quran, nor the Sunnah, nor a weak narration, nor a narration from any of the Companions, nor a narration from the Successors, nor analogy, nor any sound opinion. Thus, it is undoubtedly invalid.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: أَمَّا قَوْلُ أَبِي حَنِيفَةَ - فِي تَفْرِيقِهِ بَيْنَ الذِّمِّيِّ، وَالْمُعَاهِدِ، فَمَا نَعْلَمُ لَهُ حُجَّةً لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ وَلَا مِنْ رِوَايَةٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ، وَلَا مِنْ التَّابِعِينَ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ - فَسَقَطَ بِيَقِينٍ.

L36444 Similarly, we have found those who differentiate between a single occurrence and the frequent repetition of that act. They have no evidence from the Quran, nor from the Sunnah, nor from a weak narration, nor from an authentic narration from any of the Companions (may Allah be pleased with them), nor from analogical reasoning, nor from any considered opinion.

وَكَذَلِكَ وَجَدْنَا مَنْ فَرَّقَ بَيْنَ الْمَرَّةِ، وَبَيْنَ الْإِكْثَارِ مِنْ ذَلِكَ، لَا حُجَّةَ لَهُمْ مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ رِوَايَةٍ سَقِيمَةٍ، وَلَا مِنْ رِوَايَةٍ ثَابِتَةٍ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ لَهُ وَجْهٌ.

L36445 As for Mālik's statement regarding the distinction between *ghīlah* (stealth murder) and other [crimes]—and likewise, "they are entirely equal, entirely equal"—except they said: "Did we kill him only for *ḥirābah* (highway robbery)?" We replied: "You do not uphold the sequential application in the ḥadd punishment for *ḥirābah*. Were you to do so, you would be self-contradictory, for there is no disagreement among proponents of the sequence that a highway robber is not executed if he kills during ḥirābah someone whose killer would not warrant execution outside ḥirābah. Yet you do not execute a Muslim in retaliation for a *dhimmi* outside ḥirābah." Thus, the invalidity of this distinction becomes conclusively evident.

وَأَمَّا قَوْلُ مَالِكٍ - فِي الْفَرْقِ بَيْنَ الْغِيلَةِ وَغَيْرِهَا - وَكَذَلِكَ أَيْضًا سَوَاءً سَوَاءً، إلَّا أَنَّهُمْ قَالُوا: إنَّمَا قَتَلْنَاهُ لِلْحِرَابَةِ؟ فَقُلْنَا: أَنْتُمْ لَا تَقُولُونَ بِالتَّرْتِيبِ فِي حَدِّ الْحِرَابَةِ، وَلَوْ قُلْتُمُوهُ لَكُنْتُمْ مُتَنَاقِضِينَ أَيْضًا؛ لِأَنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِمَّنْ قَالَ بِالتَّرْتِيبِ فِي أَنَّهُ لَا يُقْتَلُ الْمُحَارِبُ إنْ قُتِلَ فِي حِرَابَةٍ، مَنْ لَا يُقْتَلُ بِهِ إنْ قَتَلَهُ فِي غَيْرِ الْحِرَابَةِ، وَأَنْتُمْ لَا تَقْتُلُونَ الْمُسْلِمَ بِالذِّمِّيِّ فِي غَيْرِ الْحِرَابَةِ - فَظَهَرَ فَسَادُ هَذَا التَّقْسِيمِ بِيَقِينٍ.

L36446 As for the well-known position of the Mālikīs that the Imam may choose between executing the brigand, crucifying him, amputating him, or exiling him—how can they mandate killing a Muslim for a *dhimmī* when

وَأَمَّا الْمَشْهُورُ مِنْ قَوْلِ الْمَالِكِيِّينَ أَنَّهُمْ يَقُولُونَ بِتَخْيِيرِ الْإِمَامِ فِي قَتْلِ الْمُحَارِبِ، أَوْ صَلْبِهِ، أَوْ قَطْعِهِ، أَوْ نَفْيِهِ - فَمِنْ أَيْنَ أَوْجَبُوا قَتْلَ الْمُسْلِمِ بِالذِّمِّيِّ - وَلَا بُدَّ - فِي الْحِرَابَةِ وَتَرَكُوا

brigandage inherently necessitates [punishment], yet they abandon their own principle of the Imam's discretionary choice in this matter? Thus, the corruption of their position becomes undeniably evident with absolute certainty, and they have no valid proof whatsoever. Success lies with Allāh, the Exalted.

L36447 Then we examined the statement of those who assert: "A Muslim is to be killed in retaliation for a *dhimmi* or a *mu'āhad*." We found them citing as evidence the words of Allah, the Almighty: "And We ordained upon them therein that a life is for a life" [Al-Mā'idah: 45]. They argued: "This is a general principle."[8]

L36448–36449 And by His statement, the Most High: *"Retaliation is prescribed for violations of the sacred months. So whoever aggresses against you, retaliate against him to the same extent as he has aggressed against you"* [Al-Baqarah: 194].[9]

L36450 And the word of He, the Exalted: "The recompense for an evil deed is an evil deed equivalent to it" (42:40).[10]

L36451 And the statement of the Almighty, the Majestic: {If you retaliate, retaliate in the same measure as you were harmed} [An-Naḥl: 126], and His saying: {As for those who retaliate after being wronged, there is no accountability upon them} [Ash-Shūrā: 41], {Accountability lies only with those who oppress people and spread corruption in the land wrongfully} [Ash-Shūrā: 42].[11]

L36452 Retaliation has been ordained for you in cases of intentional killing: a free person for a free person, a slave for a slave, and a female for a female [Al-Baqarah: 178].[12]

L36453 Allah, the Exalted, says, "And whoever is slain unjustly, We have indeed

قَوْلُهُمْ فِي تَخْيِيرِ الْإِمَامِ فِيهِ - فَوَضَحَ فَسَادُ قَوْلِهِمْ بِيَقِينٍ لَا إشْكَالَ فِيهِ، وَأَنَّهُ لَا حُجَّةَ لَهُمْ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ثُمَّ نَظَرْنَا - فِي قَوْلِ مَنْ قَالَ: يُقْتَلُ الْمُسْلِمُ بِالذِّمِّيِّ، وَبِالْمُعَاهَدِ، فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ} [المائدة: ٤٥] قَالُوا: هَذَا عُمُومٌ.

وَبِقَوْلِهِ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

وقَوْله تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] .

وقَوْله تَعَالَى: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] وَبِقَوْلِهِ عَزَّ وَجَلَّ: {وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ} [الشورى: ٤١] {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ} [الشورى: ٤٢] .

وَبِقَوْلِهِ تَعَالَى: {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَى بِالْأُنْثَى} [البقرة: ١٧٨] .

وقَوْله تَعَالَى: {وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا فَلا يُسْرِفْ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا} [الإسراء: ٣٣] .

[8] **Qur'an references (L36447):** Qur'an 5:45 (Al-Ma'idah).
[9] **Qur'an references (L36449):** Qur'an 2:194 (Al-Baqarah).
[10] **Qur'an references (L36450):** Qur'an 42:40 (Ash-Shuraa).
[11] **Qur'an references (L36451):** Qur'an 16:126 (An-Nahl); Qur'an 42:41 (Ash-Shuraa); Qur'an 42:42 (Ash-Shuraa).
[12] **Qur'an references (L36452):** Qur'an 2:178 (Al-Baqarah).

granted his guardian authority. So let him not exceed in killing. Truly, he will be supported." [Al-Isra 17:33].[13]

L36454 They said: As for the one under a covenant—even if he is a disbeliever—verily, if he is killed unjustly, he is undoubtedly wronged.

L36455 And by the authentically narrated report from the Messenger of Allah—may Allah bless him and his family and grant him peace—: "Whoever has a slain person, then they have the best of two options: either blood money is paid or retaliation is enacted."

L36456 And by the authentically transmitted report from him—may Allah's blessings and peace be upon him and his family—it is also stated: "The blood of a Muslim man cannot be shed lawfully except in three categories," and among these he mentioned "a soul for a soul."

L36457 Ali said: "And we will mention both of them with their chains of transmission—if Allah, the Exalted, wills—after this."

L36458 Abū Muḥammad—may Allah be pleased with him—said: They cited as evidence what we have narrated through the chain of ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Rabīʿah ibn Abī ʿAbd al-Raḥmān, from ʿAbd al-Raḥmān al-Baylamānī, who attributed it to the Prophet—peace and blessings be upon him and his family—"that he executed qisas against a Muslim who killed a Jew, declaring: I am the most entitled to fulfill the covenant owed to him."

L36459–36461 Some people narrated it from Yaḥyā ibn Salām from Muḥammad ibn Abī Ḥumayd al-Madanī from Muḥammad ibn al-Munkadir, who said: "The Messenger of Allah—peace be upon him and his family—and they mentioned matters in which they claimed consensus: that when the father of ʿUbayd Allāh ibn ʿUmar ibn al-Khaṭṭāb, may Allah be pleased with him, died, he killed al-Hurmuzān, who was a Muslim, and Jufaynah, who was a Christian, and he killed Bunayyah." The young girl belonging to Abu Lu'lu'ah—who herself professed Islam—so the Muhajirun counseled Uthman to execute him? They said: The apparent meaning indicates they advised his execution along with their three [associates]. They said: Just as there is no dispute that a Mus-

قَالُوا: وَذُو الْعَهْدِ - وَإِنْ كَانَ كَافِرًا - فَإِنَّهُ إنْ قُتِلَ بِغَيْرِ حَقٍّ فَهُوَ مَظْلُومٌ بِلَا شَكٍّ.

وَبِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مِنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إمَّا يُودَى وَإِمَّا يُقَادُ» .

وَبِالْخَبَرِ الثَّابِتِ عَنْهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَيْضًا «لَا يَحِلُّ دَمُ رَجُلٍ مُسْلِمٍ إلَّا ثَلَاثَةُ نَفَرٍ، فَذَكَرَ فِيهِمْ النَّفْسَ بِالنَّفْسِ» .

قَالَ عَلِيٌّ: وَسَنَذْكُرُهُمَا بِأَسَانِيدِهِمَا - إنْ شَاءَ اللَّهُ تَعَالَى بَعْدَ هَذَا.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَاحْتَجُّوا - بِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْبَيْلَمَانِيِّ يَرْفَعُهُ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّهُ أَقَادَ مُسْلِمًا قَتَلَ يَهُودِيًّا، وَقَالَ: أَنَا أَحَقُّ مَنْ وَفَّى بِذِمَّتِهِ» .

وَرَوَاهُ بَعْضُ النَّاسِ عَنْ يَحْيَى بْنِ سَلَامٍ عَنْ مُحَمَّدِ بْنِ أَبِي حُمَيْدٍ الْمَدَنِيِّ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ قَالَ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَذَكَرُوا أَشْيَاءَ ادَّعَوْا فِيهَا الْإِجْمَاعَ - وَهُوَ أَنَّ عُبَيْدَ اللَّهِ بْنَ عُمَرَ بْنِ الْخَطَّابِ لَمَّا مَاتَ أَبُوهُ - رَضِيَ اللَّهُ عَنْهُ - قَتَلَ الْهُرْمُزَانِ وَكَانَ مُسْلِمًا، وَقَتَلَ جُفَيْنَةَ وَكَانَ نَصْرَانِيًّا، وَقَتَلَ بُنَيَّةً صَغِيرَةً لِأَبِي لُؤْلُؤَةَ وَكَانَتْ تَدَّعِي الْإِسْلَامَ - فَأَشَارَ الْمُهَاجِرُونَ عَلَى عُثْمَانَ بِقَتْلِهِ؟ قَالُوا: فَظَاهِرُ الْأَمْرِ أَنَّهُمْ أَشَارُوا بِقَتْلِهِ بِهِمْ ثَلَاثَتِهِمْ. وَقَالُوا: كَمَا لَا خِلَافَ فِي أَنَّ الْمُسْلِمَ يُقْطَعُ إنْ سَرَقَ مِنْ

[13] **Qur'an references (L36453):** Qur'an 17:33 (Al-Isra).

lim is amputated if he steals from the property of a dhimmi or a musta'min [a non-Muslim under temporary protection], his execution in retaliation for both [a dhimmi and a musta'min] is more imperative—for blood holds greater sanctity than property. They directed their argument specifically at us: You apply the hadd punishment to a Muslim who falsely accuses a dhimmi or a musta'min of adultery, yet you prohibit executing him for killing either of them—and this is utterly astonishing? They contended against the Shafi'is with their view: If a dhimmi kills a dhimmi then embraces Islam, you mandate his execution for it—so what distinction exists between your execution of a Muslim for killing a disbeliever in one case and your execution of a Muslim for a disbeliever in the other matter? Abu Muhammad—may Allah be pleased with him—said: None of this holds any argumentative weight for them in any respect. As for Allah's statement—Exalted is He: "And We prescribed for them therein that a life is for a life" [5:45]—this pertains to what Allah ordained in the Torah. We are not bound by the legal codes of those preceding our Prophet—peace and blessings be upon him. Even if it were valid that we are obligated thereby, the ruling concerning this verse would align with the rulings of the other verses we cited thereafter and the authenticated reports we presented—which state "or a life for a life."[14]

مَالِ الذِّمِّيِّ، وَالْمُسْتَأْمَنِ، فَقَتْلُهُ بِهِمَا أَوْلَى؛ لِأَنَّ الدَّمَ أَعْظَمُ حُرْمَةً مِنْ الْمَالِ، وَقَالُوا لَنَا خَاصَّةً: أَنْتُمْ تَحُدُّونَ الْمُسْلِمَ إنْ قَذَفَ الذِّمِّيَّ، وَالْمُسْتَأْمَنَ، وَتَمْنَعُونَ مِنْ قَتْلِهِ بِقَتْلِهِ لَهُمَا - وَهَذَا عَجَبٌ جِدًّا؟ وَاحْتَجُّوا عَلَى الشَّافِعِيِّينَ بِقَوْلِهِمْ: إنْ قَتَلَ ذِمِّيٌّ ذِمِّيًّا ثُمَّ أَسْلَمَ فَإِنَّهُ يُقْتَلُ بِهِ عِنْدَكُمْ، وَلَا فَرْقَ بَيْنَ قَتْلِكُمْ مُسْلِمًا بِكَافِرٍ، وَبَيْنَ قَتْلِكُمْ مُسْلِمًا بِكَافِرٍ فِي الْمَسْأَلَةِ الْأُخْرَى؟ قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ: أَمَّا قَوْلُ اللَّهِ عَزَّ وَجَلَّ: {وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ} [المائدة: ٤٥] فَإِنَّ هَذَا مِمَّا كَتَبَ اللَّهُ عَزَّ وَجَلَّ فِي التَّوْرَاةِ، وَلَا تَلْزَمُنَا شَرَائِعُ مَنْ قَبْلَ نَبِيِّنَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - ثُمَّ لَوْ صَحَّ أَنَّنَا مُلْزَمُونَ ذَلِكَ لَكَانَ الْقَوْلُ فِي هَذِهِ الْآيَةِ كَالْقَوْلِ فِي الْآيَاتِ الْأُخَرِ الَّتِي ذَكَرْنَاهَا بَعْدَهَا، وَفِي الْأَخْبَارِ الثَّابِتَةِ الَّتِي أَوْرَدْنَا، وَفِيهَا «أَوْ نَفْسٌ بِنَفْسٍ» .

L36462 Moreover, the end of this verse clarifies that it pertains exclusively to believers in relation to believers, as Allah, the Almighty and Majestic, states at its conclusion: {Whoever offers it as charity, it will be an expiation for him} [Al-Ma'idah: 45]. There is no disagreement between us and them that the disbeliever's charity to the guardian of a dhimmi killed intentionally does not serve as an expiation for him—thus their reliance on this verse is invalidated.[15]

وَأَيْضًا - فَفِي آخِرِ هَذِهِ الْآيَةِ بَيَانُ أَنَّهَا فِي الْمُؤْمِنِينَ بِالْمُؤْمِنِينَ خَاصَّةً؛ لِأَنَّهُ قَالَ عَزَّ وَجَلَّ فِي آخِرِهَا: {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] وَلَا خِلَافَ بَيْنَنَا وَبَيْنَهُمْ فِي أَنَّ صَدَقَةَ الْكَافِرِ عَلَى وَلِيِّ الْكَافِرِ الذِّمِّيِّ الْمَقْتُولِ عَمْدًا لَا تَكُونُ كَفَّارَةً لَهُ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ.

L36463 As for the statement of the Almighty: {Retaliation is prescribed for violations of sanctity. So whoever transgresses against you, retaliate against him in equal measure to the manner he transgressed against you} [Al-Baqarah: 194], the address in these verses is directed to the believers, not the disbelievers. The believers are those addressed at the beginning and end of the verse,

وَأَمَّا قَوْلُهُ عَزَّ وَجَلَّ: {وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَإِنَّ الْخِطَابَ فِي هَذِهِ الْآيَاتِ لِلْمُؤْمِنِينَ لَا لِلْكَافِرِينَ، فَالْمُؤْمِنُونَ هُمْ الْمُخَاطَبُونَ فِي أَوَّلِ الْآيَةِ، وَآخِرِهَا بِأَنْ يَعْتَدُوا عَلَى مَنْ اعْتَدَى عَلَيْهِمْ،

[14] **Qur'an references (L36459):** Qur'an 5:45 (Al-Ma'idah).
[15] **Qur'an references (L36462):** Qur'an 5:45 (Al-Ma'idah).

commanding them to retaliate against whoever transgressed against them, to the same extent and manner of his transgression. The verse does not permit disbelievers to retaliate against believers for an initial transgression committed by believers against them.[16]

L36464 Indeed, retaliation is obligatory for a dhimmi against another dhimmi by the command of Allah, the Exalted: "And judge between them by what Allah has revealed" [Surah Al-Mā'idah 5:49], not by the previously mentioned verse.[17]

L36465–36467 As for Allah's statement, the Exalted: {And the recompense for an evil deed is an evil deed like it} [42:40], this ruling also applies to the believer. He [the disbeliever] is specifically wronged, for its text states: {The recompense for an evil deed is an evil deed like it, but whoever pardons and seeks reconciliation, his reward rests with Allah} [Ash-Shura: 40]. There is no disagreement that this [ruling] does not apply to disbelievers, nor will they receive any reward whatsoever.[18]

L36468 As for the statement of Allah, the Almighty and Majestic: {And if you punish, then punish with the equivalent of that with which you were punished} [16:126], this, likewise, is an address directed specifically to the believers. This is necessarily clarified by His statement, the Exalted, within the same verse: {And if you punish, then punish with the equivalent of that with which you were punished. But if you endure patiently—it is indeed better for those who are patient} [16:126]. There is no good whatsoever for a disbeliever, whether he shows patience or not, as Allah, the Almighty and Majestic, said: {And We will present whatever deeds they have done, rendering them like scattered dust} [25:23].[19]

L36469 As for His statement—Exalted is He—"And whoever retaliates after being wronged—there is no blame upon them" [Ash-Shura 42:41]. "Blame is only upon those who wrong the people and act oppressively in the land without right" [Ash-Shura 42:42]. And His statement—Exalted is He—"And whoever

بِمِثْلِ مَا اعْتَدَى بِهِ عَلَيْهِمْ - وَلَيْسَ فِيهَا: أَنْ يَعْتَدِيَ غَيْرُ الْمُؤْمِنِينَ عَلَى الْمُؤْمِنِينَ بِاعْتِدَاءٍ يَكُونُ مِنْ الْمُؤْمِنِينَ عَلَيْهِمْ أَصْلًا.

وَإِنَّمَا وَجَبَ الْقِصَاصُ مِنْ الذِّمِّيِّ لِلذِّمِّيِّ بِقَوْلِ اللَّهِ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] لَا بِالْآيَةِ الْمَذْكُورَةِ.

وَأَمَّا قَوْله تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] فَهُوَ أَيْضًا فِي الْمُؤْمِنِ يُسَاءُ إلَيْهِ خَاصَّةً؛ لِأَنَّ نَصَّهَا {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] وَلَا خِلَافَ فِي أَنَّ هَذَا لَيْسَ لِلْكُفَّارِ وَلَا أَجْرَ لَهُمْ أَلْبَتَّةَ.

وَأَمَّا قَوْلُهُ عَزَّ وَجَلَّ: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] فَكَذَلِكَ أَيْضًا إنَّمَا هُوَ خِطَابٌ لِلْمُؤْمِنِينَ خَاصَّةً، يُبَيِّنُ ذَلِكَ ضَرُورَةً قَوْله تَعَالَى فِيهَا: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ وَلَئِنْ صَبَرْتُمْ لَهُوَ خَيْرٌ لِلصَّابِرِينَ} [النحل: ١٢٦] وَلَا خَيْرَ لِكَافِرٍ أَصْلًا صَبَرَ أَوْ لَمْ يَصْبِرْ -: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَقَدِمْنَا إِلَى مَا عَمِلُوا مِنْ عَمَلٍ فَجَعَلْنَاهُ هَبَاءً مَنْثُورًا} [الفرقان: ٢٣] .

وَأَمَّا قَوْله تَعَالَى: {وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ} [الشورى: ٤١] {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ} [الشورى: ٤٢] وَقَوْله تَعَالَى: {وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا فَلَا يُسْرِفْ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا} [الإسراء: ٣٣] .

[16] **Qur'an references (L36463):** Qur'an 2:194 (Al-Baqarah).
[17] **Qur'an references (L36464):** Qur'an 5:49 (Al-Ma'idah).
[18] **Qur'an references (L36465):** Qur'an 42:40 (Ash-Shuraa).
[19] **Qur'an references (L36468):** Qur'an 16:126 (An-Nahl); Qur'an 25:23 (Al-Furqan).

is killed unjustly—We have granted his heir authority. Let him not exceed limits in killing, for he was indeed avenged" [Al-Isra 17:33].[20]

L36470 And His saying, the Most High: "Then, after he is oppressed, Allah will surely grant him victory." [Al-Hajj 22:60][21]

L36471 And the words of Allah, the Mighty and Majestic: "Equal retaliation has been prescribed for you regarding the slain—a free person for a free person, a slave for a slave, and a woman for a woman" [Al-Baqarah: 178] the verse.[22]

L36472 And the established narrations containing "a soul for a soul" and "the kin of a slain person: either blood money is to be paid or retaliation is to be enforced."

L36473 For indeed, all of that is specifically addressed by the words of Allah, the Mighty and Majestic: "Shall We treat the Muslims like the wicked?" [The Pen: 35] "What is the matter with you? How do you pass judgment?" [The Pen: 36].[23]

L36474 And by His saying, the Most High: {Is one who is a believer like one who is a transgressor? They are not equal} (As-Sajdah: 18), and by His saying, the Most High: {Allah will never grant the disbelievers a way to prevail over the believers} (An-Nisa: 141).[24]

L36475 It is therefore conclusively established that a Muslim does not resemble a disbeliever in anything whatsoever, nor does he equal him in any matter. Since this is the case, it is invalid for the Muslim's blood to equate with the disbeliever's blood, his limb with the disbeliever's limb, or his skin with the disbeliever's skin. Thus, seeking retaliation against a believer on behalf of a disbeliever, or exacting retribution for the disbeliever in cases less than homicide, is nullified—for there is no equality between them whatsoever.

وقَوْله تَعَالَى: {ثُمَّ بُغِيَ عَلَيْهِ لَيَنْصُرَنَّهُ اللَّهُ} [الحج: ٦٠] .

وَقَوْلُهُ عَزَّ وَجَلَّ: {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالأُنْثَى بِالأُنْثَى} [البقرة: ١٧٨] الْآيَةَ.

وَالْأَخْبَارُ الثَّابِتَةُ الَّتِي فِيهَا «النَّفْسُ بِالنَّفْسِ» وَ «مَنْ قُتِلَ لَهُ قَتِيلٌ فَإِمَّا يُودَى وَإِمَّا يُقَادُ» .

فَإِنَّ كُلَّ ذَلِكَ يُخَصُّ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {أَفَنَجْعَلُ الْمُسْلِمِينَ كَالْمُجْرِمِينَ} [القلم: ٣٥] {مَا لَكُمْ كَيْفَ تَحْكُمُونَ} [القلم: ٣٦] .

وَبِقَوْلِهِ تَعَالَى: {أَفَمَنْ كَانَ مُؤْمِنًا كَمَنْ كَانَ فَاسِقًا لا يَسْتَوُونَ} [السجدة: ١٨] وَبِقَوْلِهِ تَعَالَى: {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] .

فَوَجَبَ يَقِينًا أَنَّ الْمُسْلِمَ لَيْسَ كَالْكَافِرِ فِي شَيْءٍ أَصْلًا، وَلَا يُسَاوِيهِ فِي شَيْءٍ، فَإِذْ هُوَ كَذَلِكَ فَبَاطِلٌ أَنْ يُكَافِئَ دَمُهُ بِدَمِهِ، أَوْ عُضْوُهُ بِعُضْوِهِ أَوْ بَشَرَتُهُ بِبَشَرَتِهِ - فَبَطَلَ أَنْ يُسْتَقَادَ لِلْكَافِرِ مِنْ الْمُؤْمِنِ، أَوْ يُقْتَصَّ لَهُ مِنْهُ - فِيمَا دُونَ النَّفْسِ - إذْ لَا مُسَاوَاةَ بَيْنَهُمَا أَصْلًا.

[20]**Qur'an references (L36469):** Qur'an 42:41 (Ash-Shuraa); Qur'an 42:42 (Ash-Shuraa); Qur'an 17:33 (Al-Isra).

[21]**Qur'an references (L36470):** Qur'an 22:60 (Al-Hajj).

[22]**Qur'an references (L36471):** Qur'an 2:178 (Al-Baqarah).

[23]**Qur'an references (L36473):** Qur'an 68:35 (Al-Qalam); Qur'an 37:154 (As-Saffat); Qur'an 68:36 (Al-Qalam).

[24]**Qur'an references (L36474):** Qur'an 32:18 (As-Sajdah); Qur'an 4:141 (An-Nisa).

وَلَمَّا مَنَعَ اللَّهُ عَزَّ وَجَلَّ أَنْ يَجْعَلَ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا وَجَبَ ضَرُورَةً أَنْ لَا يَكُونَ لَهُ عَلَيْهِ سَبِيلٌ فِي قَوَدِهِ، وَلَا فِي قِصَاصٍ، أَصْلًا - وَوَجَبَ ضَرُورَةً اسْتِعْمَالُ النُّصُوصِ كُلِّهَا، إِذْ لَا يَحِلُّ تَرْكُ شَيْءٍ مِنْهَا.

L36476–36477 Since Allah, the Mighty and Majestic, has prevented disbelievers from having any means over believers, it is obligatory by necessity that no disbeliever may have a means over a believer in retaliation (qisas) against him, nor in qisas at all. It is also obligatory by necessity to apply all textual proofs, as it is impermissible to abandon any part of them.

وَمِنْ فَضَائِحِ الْحَنَفِيِّينَ - الْمُخْزِيَةِ لِقَائِلِهَا فِي الدُّنْيَا وَالْآخِرَةِ - قَطْعُهُمْ يَدَ الْمُسْلِمِ بِيَدِ الذِّمِّيِّ الْكَافِرِ، وَمَنْعُهُمْ مِنْ قَطْعِ يَدِ الرَّجُلِ الْمُسْلِمِ بِيَدِ الْمَرْأَةِ الْحُرَّةِ الْمُسْلِمَةِ، نَعَمْ، وَلَا يَقْطَعُونَ يَدَ الذِّمِّيِّ الْكَافِرِ إِنْ تَعَمَّدَ قَطْعَ يَدِ امْرَأَةٍ حُرَّةٍ مُسْلِمَةٍ، فَاعْجَبُوا لِهَذِهِ الْمَصَائِبِ مَعَ قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] .

L36478 Among the disgraceful scandals of the Hanafis—shameful to their proponents in this world and the Hereafter—is their ruling to amputate a Muslim's hand in retribution for the hand of a dhimmi non-Muslim, while prohibiting the amputation of a Muslim man's hand in retribution for the hand of a free Muslim woman. Moreover, they do not amputate the hand of a dhimmi non-Muslim even if he deliberately amputates the hand of a free Muslim woman. Be appalled, then, at these calamities despite Allah's decree: "The believers are but brothers" [Al-Hujurat: 10].[25]

فَإِنْ اعْتَرَضُوا فِي الْآيَةِ الْمَذْكُورَةِ - بِمَا رُوِّينَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ زِرٍّ عَنْ يَسِيعَ الْكِنْدِيِّ قَالَ: جَاءَ رَجُلٌ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَ لَهُ: كَيْفَ تَقْرَأُ هَذِهِ الْآيَةَ {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] وَهُمْ يَقْتُلُونَ - يَعْنِي الْمُسْلِمِينَ - فَقَالَ عَلِيٌّ: فَاللَّهُ يَحْكُمُ بَيْنَهُمْ يَوْمَ الْقِيَامَةِ، وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ - يَوْمَ الْقِيَامَةِ - عَلَى الْمُؤْمِنِينَ سَبِيلًا. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: يَسِيعُ الْكِنْدِيُّ مَجْهُولٌ لَا يَدْرِي أَحَدٌ مَنْ هُوَ؟ وَجَوَابُ هَذَا السَّائِلِ: أَنَّ هَذِهِ الْآيَةَ حَقٌّ وَاجِبٌ فِي الدُّنْيَا وَالْآخِرَةِ، إِنَّمَا مَنَعَ اللَّهُ تَعَالَى مِنْ أَنْ يَكُونَ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلٌ بِحَقٍّ يَجْعَلُهُ اللَّهُ تَعَالَى لَهُ، وَيَأْمُرُ بِإِنْفَاذِهِ لِلْكَافِرِ عَلَى الْمُسْلِمِ فِي الدُّنْيَا وَيَوْمَ الْقِيَامَةِ.

L36479 If they raise an objection regarding the aforementioned verse - based on what we have narrated through the chain of Sufyān al-Thawrī from al-Aʿmash from Zarr from Yasīʿ al-Kindī, who said: A man came to ʿAlī ibn Abī Ṭālib and said to him: "How do you recite this verse: {And never will Allāh grant the disbelievers a way over the believers} [4:141], while they are killing them—meaning the Muslims?" ʿAlī replied: "Allāh will judge between them on the Day of Resurrection, and never will Allāh grant the disbelievers—on the Day of Resurrection—a way over the believers." Abū Muḥammad—may Allāh be pleased with him—said: Yasīʿ al-Kindī is of unknown status; no one knows who he is. The answer to this questioner is that this verse is an established truth and binding in both this world and the Hereafter. Allāh the Exalted has only prevented the disbelievers from having a way over the believers through a right that He establishes for the disbeliever and commands that it be enforced against the Muslim in this world and on the Day of Resurrection.[26]

وَأَمَّا بِالظُّلْمِ وَالتَّعَدِّي - فَلَمْ يُؤَمِّنَّا اللَّهُ تَعَالَى - قَطُّ - مِنْ ذَلِكَ، كَمَا أَطْلَقَ أَيْدِي الْكُفَّارِ فِيمَا خَلَا عَلَى بَعْضِ الْأَنْبِيَاءِ - عَلَيْهِمْ الصَّلَاةُ وَالسَّلَامُ - فَقَتَلُوهُمْ، وَعَلَى رَسُولِهِ مُحَمَّدٍ

L36480 As for oppression and transgression—Allah the Exalted has never protected us from that, just as He unleashed the hands of disbelievers in past times against some prophets (peace be upon them) by killing them, and against His

[25] **Qur'an references (L36478):** Qur'an 49:10 (Al-Hujurat).

[26] **Qur'an references (L36479):** Qur'an 4:141 (An-Nisa); Qur'an 2:113 (Al-Baqarah).

Messenger Muhammad (may Allah's blessings and peace be upon him) by wounding his sanctified face and breaking his incisor tooth—by my soul, he is, and by my father and mother.

L36481–36483 Just as He freed the tongues of the Hanafi jurists and empowered those who agreed with them to legitimize falsehood by imposing retaliation for a disbeliever against a Muslim—and all of this constitutes injustice that Allah the Exalted has neither commanded, nor approved, nor established as rightful. Rather, He, the Almighty, has denounced it most vehemently? Indeed, in the verse: "Retaliation is prescribed for you in cases of killing: the free for the free, the enslaved for the enslaved, and the female for the female. But if pardon is offered by the victim's heir, then let the pursuit be in fairness, and payment to him with kindness" [Al-Baqarah 2:178]—this constitutes an explicit text confirming its application exclusively among believers, some against others. Only because they are all brothers—their sinners and righteous, their slaves and free people—and the Dhimmis are not brothers to us, nor do they have any honor.[27]

L36484 Similarly, His Exalted saying: _"We have indeed granted his heir authority"_ [Al-Isra: 33]. Allah forbid that this would be for a disbeliever! By Allah, He the Exalted has never granted them, by the ruling of His religion, any authority. Rather, He has decreed for them humiliation. He the Mighty and Majestic has said: _"Until they pay the jizyah with their own hands while they are humbled"_ [At-Tawbah: 29].[28]

L36485 If they say: "Since they are not equal to us, why do you kill the non-Muslim in retribution for the Muslim?" We respond: "It is not a matter of honor for us to kill him as qisas (retribution). Rather, we kill him because he violated the covenant of protection and transgressed the pact by renouncing the subjugation [of his status]. Similarly, we kill him if he strikes a Muslim or insults him; we seize all his wealth as reparation thereby, and we enslave his adult family members and take his young children as captives."

L36486 If they say: Why do you rule that the Muslim must return what he usurped

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَجَرَحُوا وَجْهَهُ الْمُقَدَّسَ، وَكَسَرُوا ثَنِيَّتَهُ - بِنَفْسِي هُوَ، وَبِأَبِي وَأُمِّي.

وَكَمَا أَطْلَقَ أَلْسِنَةَ الْحَنَفِيِّينَ، وَأَيْدِي مَنْ وَافَقَهُمْ بِإِيجَابِ الْبَاطِلِ فِي الْقِصَاصِ لِلْكَافِرِ مِنْ الْمُسْلِمِ - وَكُلُّ ذَلِكَ ظُلْمٌ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ، وَلَا رَضِيَهُ وَلَا جَعَلَهُ حَقًّا، بَلْ أَنْكَرَهُ عَزَّ وَجَلَّ أَشَدَّ الْإِنْكَارِ؟ نَعَمْ، وَفِي الْآيَةِ الَّتِي فِيهَا {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَى بِالْأُنْثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] وَهَذَا نَصٌّ جَلِيٌّ بِأَنَّهَا فِي الْمُؤْمِنِينَ خَاصَّةً، بَعْضُهُمْ فِي بَعْضٍ فَقَطْ؛ لِأَنَّهُمْ إخْوَةٌ كُلُّهُمْ، فَاسِقُهُمْ وَصَالِحُهُمْ، عَبْدُهُمْ وَحُرُّهُمْ، وَلَيْسَ أَهْلُ الذِّمَّةِ إخْوَةً لَنَا - وَلَا كَرَامَةَ لَهُمْ.

وَكَذَلِكَ قَوْله تَعَالَى: {فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا} [الإسراء: ٣٣] فَمَعَاذَ اللَّهِ أَنْ يَكُونَ هَذَا لِكَافِرٍ، وَاَللَّهِ مَا جَعَلَ تَعَالَى لَهُمْ قَطُّ - بِحُكْمِ دِينِهِ - سُلْطَانًا، بَلْ جَعَلَ لَهُمْ الصَّغَارَ، قَالَ عَزَّ وَجَلَّ: {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] .

فَإِنْ قَالُوا: فَإِذْ لَا يُسَاوُونَنَا فَلِمَ قَتَلْتُمْ الْكَافِرَ بِالْمُؤْمِنِ؟ قُلْنَا: وَلَا كَرَامَةَ أَنْ نَقْتُلَهُ بِهِ قَوَدًا، بَلْ قَتَلْنَاهُ؛ لِأَنَّهُ نَقَضَ الذِّمَّةَ، وَخَالَفَ الْعَهْدَ بِخُرُوجِهِ عَنْ الصَّغَارِ، وَكَذَلِكَ نَقْتُلُهُ إنْ لَطَمَ مُسْلِمًا أَوْ سَبَّهُ، وَنَسْتَفِيءُ جَمِيعَ مَالِهِ بِذَلِكَ، وَنَسْبِي أَهْلَهُ وَصِغَارَ وَلَدِهِ.

[27] **Qur'an references (L36481):** Qur'an 2:178 (Al-Baqarah).
[28] **Qur'an references (L36484):** Qur'an 17:33 (Al-Isra); Qur'an 9:29 (At-Tawbah).

from the Dhimmi or wrongfully withheld the wealth from him? We say: The Dhimmi has no legal recourse against the Muslim in this matter. It is merely an injustice from which the Muslim purifies himself by relinquishing the wealth, thereby clearing himself of retaining it.

فَإِنْ قَالُوا: فَلِمَ تَحْكُمُونَ عَلَى الْمُسْلِمِ بِرَدِّ مَا غَصَبَهُ مِنْ الذِّمِّيِّ أَوْ مَنَعَهُ إيَّاهُ مِنْ الْمَالِ؟ قُلْنَا: لَيْسَ فِي هَذَا سَبِيلٌ لَهُ عَلَى الْمُسْلِمِ، إنَّمَا هِيَ مَظْلَمَةٌ يَبْرَأُ مِنْهَا الْمُسْلِمُ تَنْزِيهًا لَهُ عَنْ حَبْسِهَا فَقَطْ.

L36487 Abu Muhammad—may Allah be pleased with him—said: This matter is clarified with utmost clarity: what we have narrated through the chain of Abu Dawud al-Sijistani who said: Ahmad ibn Hanbal from Yahya ibn Sa'id al-Qattan from Sa'id ibn Abi 'Arubah from Qatadah from al-Hasan al-Basri from Qays ibn 'Abbad, who said: "I and another person—whose name he mentioned—went to 'Ali ibn Abi Talib and asked: 'Did the Messenger of Allah—peace and blessings be upon him—entrust to you any specific instruction he did not convey to the general people?' He replied: 'None except what is in this book of mine.' In it is written: 'The believers are equal in their blood. They are united against others, and the least in rank among them may undertake their protection. Know that a believer must not be killed in retaliation for a disbeliever, nor may a covenanted person be killed during the validity of his covenant. Whoever introduces an innovation or shelters an innovator shall incur the curse of Allah, the angels, and all people collectively.'"

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَيُوَضِّحُ هَذَا غَايَةَ الْوُضُوحِ -: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ قَالَ: أَنَا أَحْمَدُ بْنُ حَنْبَلٍ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ أَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ الْحَسَنِ الْبَصْرِيِّ «عَنْ قَيْسِ بْنِ عَبَّادٍ قَالَ: انْطَلَقْتُ أَنَا وَآخَرُ - ذَكَرَهُ - إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقُلْنَا: هَلْ عَهِدَ إلَيْكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَهْدًا لَمْ يَعْهَدْهُ إلَى النَّاسِ عَامَّةً؟ قَالَ: لَا، إلَّا مَا فِي كِتَابِي هَذَا، فَإِذَا فِيهِ الْمُؤْمِنُونَ تَتَكَافَأُ دِمَاؤُهُمْ وَهُمْ يَدٌ عَلَى مَنْ سِوَاهُمْ وَيَسْعَى بِذِمَّتِهِمْ أَدْنَاهُمْ أَلَا لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ وَلَا ذُو عَهْدٍ فِي عَهْدِهِ مَنْ أَحْدَثَ حَدَثًا أَوْ آوَى مُحْدِثًا فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ» .

L36488–36490 Himām ibn Aḥmad ibn Himām al-Qāḍī narrated, on the authority of ʿAbbās ibn Aṣbagh, on the authority of Muḥammad ibn ʿAbd al-Malik ibn Ayman. I am Abdullah ibn Ahmad ibn Hanbal, and Muhammad ibn Isma'il al-Tirmidhi. Abdullah said: "I am [from] my father," and al-Tirmidhi said: "I am [from] al-Humaidi." Then the chains of Ahmad ibn Hanbal and al-Humaidi converged—with the wording being al-Humaidi's—both saying: "From Sufyan ibn Uyaynah, from Mutarrif ibn Tarif, who said: I heard al-Sha'bi say: I am Abu Juhaifah—al-Suwa'i—who said: I asked Ali ibn Abi Talib: 'Do you possess anything from Allah's Messenger—peace and blessings be upon him—besides the Quran?' Ali replied: 'No, by Him who split the seed and created living beings, except what Allah grants a servant: understanding of His Book, or what is in the scroll.' I asked: 'What is in the scroll?' He said: 'Blood money, the ransom of captives, and that a Muslim is not to be killed in retaliation for [the death of] a disbeliever.'"

أَنَا حِمَامُ بْنُ أَحْمَدَ بْنِ حِمَامٍ الْقَاضِي أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ، وَمُحَمَّدُ بْنُ إسْمَاعِيلَ التِّرْمِذِيُّ، قَالَ عَبْدُ اللَّهِ: أَنَا أَبِي، وَقَالَ التِّرْمِذِيُّ: أَنَا الْحُمَيْدِيُّ، ثُمَّ اتَّفَقَ أَحْمَدُ بْنُ حَنْبَلٍ، وَالْحُمَيْدِيُّ - وَاللَّفْظُ لَهُ - قَالَا جَمِيعًا: أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ أَنَا مُطَرِّفُ بْنُ طَرِيفٍ قَالَ: سَمِعْت الشَّعْبِيَّ يَقُولُ: أَنَا أَبُو جُحَيْفَةَ - هُوَ السُّوَائِيُّ - قَالَ: قُلْت لِعَلِيِّ بْنِ أَبِي طَالِبٍ: هَلْ عِنْدَكُمْ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سِوَى الْقُرْآنِ؟ قَالَ عَلِيٌّ " لَا، وَالَّذِي فَلَقَ الْحَبَّةَ، وَبَرَأَ النَّسَمَةَ،

إِلَّا أَنْ يُعْطِيَ اللَّهُ عَبْدًا فَهْمًا فِي كِتَابِهِ، أَوْ مَا فِي الصَّحِيفَةِ؟ قُلْت: وَمَا فِي الصَّحِيفَةِ؟ قَالَ: الْعَقْلُ، وَفِكَاكُ الْأَسِيرِ، وَأَنْ لَا يُقْتَلَ مُسْلِمٌ بِكَافِرٍ ".

L36491 Abu Muhammad — may Allah be pleased with him — said: **And this** is not permissible for any Muslim to oppose.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا لَا يَحِلُّ لِمُسْلِمٍ خِلَافُهُ.

L36492 The people of misguided ignorance objected by saying: This report has been narrated through the chain of Aḥmad ibn Shuʿayb—Muḥammad ibn Bashshār narrated from al-Ḥajjāj ibn al-Minhāl, from Hammām, from Qatādah, from Abū Ḥassān, who said: "'Alī ibn Abī Ṭālib said: 'Did the Messenger of Allāh—peace and blessings be upon him—entrust anything to me privately that was not shared with the people except a scroll in my sword's scabbard?' They did not cease persisting in their demand until he produced it. Within it was written: 'Believers' blood are equal in value. The lowest among them may act to fulfill their covenant of protection, and they are one hand against whoever opposes them. No believer shall be killed in retribution for a disbeliever, nor shall a covenanted person be slain during the term of his covenant.'"

فَاعْتَرَضَ فِيهِ أَهْلُ الْجَهَالَةِ الْمُضِلَّةِ بِأَنْ قَالُوا: قَدْ رُوِيَ هَذَا الْخَبَرُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا الْحَجَّاجُ بْنُ الْمِنْهَالِ أَنَا هَمَّامٌ عَنْ قَتَادَةَ عَنْ أَبِي حَسَّانَ، قَالَ: «قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ مَا عَهِدَ إِلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْئًا دُونَ النَّاسِ إِلَّا صَحِيفَةً فِي قِرَابِ سَيْفِي؟ فَلَمْ يَزَالُوا بِهِ حَتَّى أَخْرَجَهَا؟ فَإِذَا فِيهَا الْمُؤْمِنُونَ تَتَكَافَأُ دِمَاؤُهُمْ، وَيَسْعَى بِذِمَّتِهِمْ أَدْنَاهُمْ، وَهُمْ يَدٌ عَلَى مَنْ سِوَاهُمْ، لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ، وَلَا ذُو عَهْدٍ فِي عَهْدِهِ» .

L36493 They said: "At one time Qatadah narrated it from al-Ḥasan, and at another time he narrated it from Abū Ḥassān as a mursal report—is this a defect in the narration?" We replied: "So what is that? None would deem such a matter defective except one with a defect in his religion. We find no valid objection to Qatadah's narration of the report—once from Abū Ḥassān and once from al-Ḥasan—except from one devoid of shame who stubbornly denies what is as glaring as the sun itself."

قَالُوا: فَمَرَّةً رَوَاهُ قَتَادَةُ عَنْ الْحَسَنِ، وَمَرَّةً رَوَاهُ عَنْ أَبِي حَسَّانَ مُرْسَلًا - وَهَذِهِ عِلَّةٌ فِي الْخَبَرِ؟ فَقُلْنَا: فَكَانَ مَاذَا؟ مَا جَعَلَ مِثْلَ هَذَا عِلَّةً، إِلَّا ذُو عِلَّةٍ فِي دِينِهِ، وَمَا نَدْرِي فِي رِوَايَةِ قَتَادَةَ لِلْخَبَرِ - مَرَّةً عَنْ أَبِي حَسَّانَ، وَمَرَّةً عَنْ الْحَسَنِ -: وَجْهًا يَعْتَرِضُ بِهِ، إِلَّا مَنْ عَدِمَ الْحَيَاءَ، وَكَابَرَ عَيْنَ الشَّمْسِ.

L36494 They also said: You have narrated from the chain of Waki': "I am Abu Bakr al-Hudhali," from Sa'id ibn Jubayr, who said: The Messenger of Allah (peace be upon him) only said, "A Muslim is not to be killed in retaliation for a disbeliever"—for the people of Jahiliyyah used to demand blood vengeance from one another. When Islam came, the Messenger of Allah (peace be upon him) said, "No Muslim man shall be executed for blood he had shed during the Jahiliyyah."

وَقَالُوا أَيْضًا: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ وَكِيعٍ أَنَا أَبُو بَكْرٍ الْهُذَلِيِّ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: إِنَّمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُقْتَلُ مُسْلِمٌ بِكَافِرٍ - إِنَّ أَهْلَ الْجَاهِلِيَّةِ كَانُوا يَتَطَالَبُونَ بِالدِّمَاءِ، فَلَمَّا جَاءَ الْإِسْلَامُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يُقْتَلُ رَجُلٌ مِنْ الْمُسْلِمِينَ بِدَمٍ أَصَابَهُ فِي الْجَاهِلِيَّةِ» .

L36495–36496 Abū Muḥammad—may Allāh be pleased with him—said: "This is utterly astonishing: Abū Bakr al-Hudhalī—a notorious liar?! Even if Ayyūb had

narrated it from Saʿīd ibn Jubayr, there would be no ambiguity in it for an opponent of the truth to exploit. For either he saw what Saʿīd ibn Jubayr saw—in which case, it would be like any other opinion; no objection can be raised against the Sunnah through it, nor is there any dignity—or he heard it from someone unknown [as to who he is], and this would make it even less plausible for him to depend upon."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا عَجَبٌ جِدًّا، أَبُو بَكْرٍ الْهُذَلِيّ: كَذَّابٌ مَشْهُورٌ؟ ثُمَّ لَوْ رَوَاهُ أَيُّوبُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ لَمَا كَانَتْ فِيهِ شُبْهَةٌ يَتَعَلَّقُ بِهَا مُخَالِفٌ لِلْحَقِّ؛ لِأَنَّهُ إمَّا رَأَى مَا رَآهُ سَعِيدُ بْنُ جُبَيْرٍ فَهُوَ كَسَائِرِ الْآرَاءِ، لَا يُعْتَرَضُ بِهَا عَلَى السُّنَنِ، وَلَا كَرَامَةَ - وَإِمَّا سَمِعَهُ مِمَّنْ لَا يُدْرَى [مَنْ هُوَ] فَهَذَا أَبْعَدُ لَهُ مِنْ أَنْ يَتَعَلَّقَ بِهِ.

L36497 Then, even if it were valid that the Messenger of Allah—peace and blessings be upon him—had said it, this would have been an independent report standing on its own, like his abolition—peace and blessings be upon him—of the blood feuds of pre-Islamic ignorance during the Farewell Pilgrimage. What was in the document of Ali ibn Abi Talib would have constituted another independent report standing on its own, impermissible to specify it by that report, for this would be a corrupt practice without proof, a claim without textual evidence, and pitting parts of the Sunnah against one another—like one who permits eating pork and drinking wine based on Allah Almighty's words: {Eat and drink} [Al-Baqarah: 187], with no valid distinction.[29]

ثُمَّ لَوْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَهُ لَكَانَ هَذَا خَبَرًا قَائِمًا بِنَفْسِهِ، كَوَضْعِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - دِمَاءَ الْجَاهِلِيَّةِ فِي " حَجَّةِ الْوَدَاعِ " وَكَانَ مَا فِي صَحِيفَةِ عَلِيِّ بْنِ أَبِي طَالِبٍ خَبَرًا آخَرَ قَائِمًا بِنَفْسِهِ لَا يَحِلُّ تَخْصِيصُهُ بِذَلِكَ الْخَبَرِ؛ لِأَنَّهُ عَمَلٌ فَاسِدٌ بِلَا بُرْهَانٍ، وَدَعْوَى بِلَا بِدَلِيلٍ، وَضَرْبٌ لِلسُّنَنِ بَعْضِهَا بِبَعْضٍ، كَمَنْ أَبَاحَ أَكْلَ الْخِنْزِيرِ، وَشُرْبَ الْخَمْرِ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَكُلُوا وَاشْرَبُوا} [البقرة: ١٨٧] وَلَا فَرْقَ.

L36498 They also said: You have transmitted this report through the chain of Abū Dāwūd al-Sijistānī, who said: From Muslim ibn Ibrāhīm, from Muḥammad ibn Rāshid, from Sulaymān ibn Mūsā, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, from the Prophet—peace and blessings of Allah be upon him—who said: "A believer is not to be killed in retaliation for an unbeliever. Whoever kills intentionally is delivered to the guardians of the slain; if they wish, they may execute him, and if they wish, they may take the diyah."

وَقَالُوا أَيْضًا: قَدْ رَوَيْتُمْ هَذَا الْخَبَرَ مِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ، قَالَ: أَنَا مُسْلِمُ بْنُ إبْرَاهِيمَ أَنَا مُحَمَّدُ بْنُ رَاشِدٍ أَنَا سُلَيْمَانُ بْنُ مُوسَى عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ فَمَنْ قَتَلَ مُتَعَمِّدًا دُفِعَ إلَى أَوْلِيَاءِ الْمَقْتُولِ فَإِنْ شَاءُوا قَتَلُوهُ وَإِنْ شَاءُوا أَخَذُوا الدِّيَةَ» .

L36499 Abu Muhammad—may Allah be pleased with him—said:

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -:

[29] **Qur'an references (L36497):** Qur'an 2:187 (Al-Baqarah).

L36500 The narration of ʿAmr ibn Shuʿayb through his father, from his grandfather, constitutes a written compilation that is impermissible to adduce as evidence, for it is filled with rejected reports.

حَدِيثُ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ صَحِيفَةٌ لَا يَجُوزُ الِاحْتِجَاجُ بِهَا وَهِيَ مَمْلُوءَةٌ مَنَاكِيرَ.

L36501 Then, even if it were valid, they would have no proof within it. Rather, it would instead serve as proof for us against them, for it states that a believer must not be killed for [the killing of] an unbeliever. This constitutes a sound, self-contained legal principle in its own right - and such is our position.

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَتْ لَهُمْ فِيهَا حُجَّةٌ، بَلْ كَانَتْ تَكُونُ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ فِيهَا أَنْ لَا يُقْتَلَ مُؤْمِنٌ بِكَافِرٍ، فَهَذِهِ قَضِيَّةٌ صَحِيحَةٌ قَائِمَةٌ بِنَفْسِهَا وَهِيَ قَوْلُنَا.

L36502 Then, in it is the ruling concerning one intentionally killed. If the believer who intentionally kills a *dhimmi* were included in this ruling, it would contradict the prior ruling – and this is invalid – for if it were valid, it would undoubtedly apply to the case of a believer intentionally killing another believer, not to what was previously invalidated regarding retaliation against a believer for killing a disbeliever.

ثُمَّ فِيهَا حُكْمُ مَنْ قُتِلَ عَمْدًا فَلَوْ دَخَلَ فِي هَذِهِ الْقَضِيَّةِ الْمُؤْمِنُ يَقْتُلُ الذِّمِّيَّ عَمْدًا لَكَانَتْ مُخَالِفَةً لِلْحُكْمِ الَّذِي قَبْلَهَا - وَهَذَا بَاطِلٌ - فَلَوْ صَحَّتْ لَكَانَتْ بِلَا شَكٍّ فِي الْمُؤْمِنِ يَقْتُلُ الْمُؤْمِنَ عَمْدًا، لَا فِيمَا قَدْ أَبْطَلَهُ قَبْلُ مِنْ أَنْ يُقْتَلَ مُؤْمِنٌ بِكَافِرٍ.

L36503–36505 They said: Its meaning is that a believer is not to be killed in retaliation for a ḥarbī disbeliever, or if he killed him accidentally. Yet this is among the most absurd things they have asserted. How could one possessing even a trace of reason deem this permissible, when we are indeed urged to kill the ḥarbī disbelievers? They are promised the greatest reward for their killing. Could one possessing a shred of reason imagine that the Prophet—peace and blessings be upon him—amidst such circumstances and his command for jihad, would strain to inform us that we cannot be slain by hostile combatants if we kill them—"What Allah wills, occurs"? Likewise, their absurd interpretation—that he, peace and blessings be upon him, intended a believer should not be killed in retaliation for a disbeliever slain by mistake—this, by Allah, is sheer falsehood against Allah's Messenger—peace and blessings be upon him—meriting Hellfire. How could this enter the mind of anyone possessing a grain of intellect: that since Allah sent His Prophet—peace and blessings be upon him—until the Day of Resurrection, we have been immune from any among us being slain for a thousand disbelievers killed unintentionally? Then the Prophet—peace and blessings be upon him—would labor to inform us that a believer is not to be executed for a disbeliever slain by accident, yet only convey this through vague wording from which none could grasp such a meaning? None would advance this except those who fabricate distortions

وَقَالُوا: مَعْنَاهُ لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ حَرْبِيٍّ، أَوْ إِذَا قَتَلَهُ خَطَأً، فَكَانَ هَذَا مِنْ أَسْخَفِ مَا أَتَوْا بِهِ، وَكَيْفَ يَجُوزُ أَنْ يَظُنَّ هَذَا ذُو مِسْكَةِ عَقْلٍ، وَنَحْنُ مَنْدُوبُونَ إِلَى قَتْلِ الْحَرْبِيِّينَ، مَوْعُودُونَ عَلَى قَتْلِهِمْ بِأَعْظَمِ الْأَجْرِ، أَيُمْكِنُ أَنْ يَظُنَّ مَنْ بِهِ طَبَاخٌ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَ هَذَا الْحَالِ وَأَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْجِهَادِ يَتَكَلَّفُ أَنْ يُخْبِرَنَا أَنَّنَا لَا نُقْتَلُ بِالْحَرْبِيِّينَ إِذَا قَتَلْنَاهُمْ، مَا شَاءَ اللَّهُ كَانَ؟ وَكَذَلِكَ الْقَوْلُ فِي تَأْوِيلِهِمْ السَّخِيفِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَرَادَ أَنْ لَا يُقْتَلَ مُؤْمِنٌ بِكَافِرٍ إِذَا قَتَلَهُ خَطَأً - هَذَا وَاَللَّهِ يَقِينُ الْكَذِبِ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُوجِبِ لِلنَّارِ، وَكَيْفَ يُمْكِنُ أَنْ يَسَعَ هَذَا فِي دِمَاغِ مَنْ بِهِ مِسْكَةُ عَقْلٍ أَنْ يَكُونَ مُذْ بَعَثَ اللَّهُ نَبِيَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِلَى يَوْمِ الْقِيَامَةِ قَدْ أَمِنَّا أَنْ يُقْتَلَ مِنَّا أَحَدٌ بِأَلْفِ كَافِرٍ قَتَلَهُمْ خَطَأً ثُمَّ يَتَكَلَّفُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِخْبَارَنَا بِأَنْ لَا يُقْتَلَ الْمُؤْمِنُ بِكَافِرٍ قَتَلَهُ خَطَأً ثُمَّ لَا يُبَيِّنُ لَنَا ذَلِكَ إِلَّا بِكَلَامٍ مُجْمَلٍ لَا يَفْهَمُ أَحَدٌ مِنْهُ هَذَا الْمَعْنَى، إِنَّمَا يَأْتِي

to uphold falsehood. As for Allah's Messenger—peace and blessings be upon him—who was granted concise eloquence, and whose Lord, Exalted is He, commanded him to clarify matters for us: No, and no respect! Allah the Almighty has wholly absolved him of this and made it inconceivable for any Muslim to harbor such a suspicion against him.

L36506 They said concerning his statement—peace and blessings be upon him—"A believer is not killed in retribution for a disbeliever, nor a covenanted person during their covenant period," that the wording involves rearrangement. He truly meant to say: "A believer is not killed in retribution for a disbeliever, nor is a covenanted person during their covenant period killed in retribution for a disbeliever." It has been soundly established—without disagreement—that killing a covenanted person in retribution for a dhimmi is obligatory.

L36507 Thus, it was established that by "the disbeliever" he specifically intended the ḥarbī combatant.

L36508 Abū Muḥammad—may Allāh be pleased with him—said: This is another lie against the Messenger of Allāh—peace and blessings of Allāh be upon him—which necessitates its perpetrator's entry into the Fire and [Allāh's] curse. For they presumed to arbitrate in his speech—peace and blessings of Allāh be upon him—without evidence. It is not valid that, merely because a text exists for which proof has been established that it contains transposition [of words], one may declare another text to have transposition without evidence. Just as when a text is found to be abrogated, it is impermissible for anyone to claim that another text—for which no evidence of abrogation exists—is abrogated. This is the characteristic of the lying, immoral fabricators who attribute lies through falsehood against Allāh—the Mighty and Majestic—and against His Messenger—peace and blessings of Allāh be upon him.

L36509 They said: "Al-Sha'bi is one of the narrators of that report, and he holds the view that a Muslim may be executed in retaliation for killing a Dhimmi?" We replied: "This has never been authentically attributed to Al-Sha'bi, because only Ibn Abi Layla—who has a poor memory—and Dawud ibn Yazid al-Zaghafiri—who is discredited—narrated it."

بِهِ الْمُتَكَلِّفُونَ لِنَصْرِ الْبَاطِلِ، وَأَمَّا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي أُعْطِيَ جَوَامِعَ الْكَلِمِ، وَأَمَرَهُ رَبُّهُ تَعَالَى بِالْبَيَانِ لَنَا: فَلَا، وَلَا كَرَامَةَ، لَقَدْ نَزَّهَهُ اللَّهُ عَزَّ وَجَلَّ عَنْ هَذَا وَبَاعَدَهُ عَنْ أَنْ يَظُنَّ بِهِ ذَلِكَ مُسْلِمٌ.

وَقَالُوا فِي قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ وَلَا ذُو عَهْدٍ فِي عَهْدِهِ» تَقْدِيمٌ وَتَأْخِيرٌ، إنَّمَا أَرَادَ أَنْ يَقُولَ: لَا يُقْتَلُ مُؤْمِنٌ، وَلَا ذُو عَهْدٍ فِي عَهْدِهِ بِكَافِرٍ - وَقَدْ صَحَّ - بِلَا خِلَافٍ - وُجُوبُ قَتْلِ الْمُعَاهَدِ بِالذِّمِّيِّ.

فَصَحَّ أَنَّهُ إنَّمَا أَرَادَ بِالْكَافِرِ: الْحَرْبِيَّ.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا كَذِبٌ آخَرُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُوجِبٌ لِصَاحِبِهِ وُلُوجَ النَّارِ وَاللَّعْنَةَ، إذْ تَحَكَّمُوا فِي كَلَامِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِلَا دَلِيلٍ، وَلَيْسَ إذَا وُجِدَ نَصٌّ قَدْ قَامَ الْبُرْهَانُ: بِأَنَّ فِيهِ تَقْدِيمًا وَتَأْخِيرًا وَجَبَ أَنْ يَحْكُمَ فِي نَصٍّ آخَرَ بِالتَّقْدِيمِ وَالتَّأْخِيرِ بِلَا دَلِيلٍ، كَمَا أَنَّهُ إذْ وُجِدَ نَصٌّ مَنْسُوخٌ لَمْ يَحِلَّ لِأَحَدٍ أَنْ يَقُولَ فِي نَصٍّ آخَرَ لَمْ يَأْتِ دَلِيلٌ بِأَنَّهُ مَنْسُوخٌ: هَذَا مَنْسُوخٌ - هَذِهِ صِفَةُ الْكَذَّابِينَ الْفُسَّاقِ الْمُفْتَرِينَ عَلَى اللَّهِ عَزَّ وَجَلَّ، وَعَلَى رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْكَذِبِ.

وَقَالُوا: إنَّ الشَّعْبِيَّ هُوَ أَحَدُ رُوَاةِ ذَلِكَ الْخَبَرِ وَهُوَ يَرَى قَتْلَ الْمُؤْمِنِ بِالذِّمِّيِّ؟ فَقُلْنَا: هَذَا لَمْ يَصِحَّ قَطُّ عَنْ الشَّعْبِيِّ؛ لِأَنَّهُ لَمْ يَرْوِهِ إلَّا ابْنُ أَبِي لَيْلَى - وَهُوَ سَيِّئُ الْحِفْظِ، وَدَاوُد بْنُ يَزِيدَ الزَّغَافِرِيُّ - وَهُوَ سَاقِطٌ.

L36510–36511 Then, if this were authentically established from him, it would be obligatory to reject his opinion, cast it aside, and adhere to his transmitted narration.

ثُمَّ لَوْ صَحَّ ذَلِكَ عَنْهُ لَكَانَ الْوَاجِبُ رَفْضَ رَأْيِهِ وَاطِّرَاحَهُ وَالْأَخْذَ بِرِوَايَتِهِ.

L36512 Because he and other imams are trusted regarding their truthfulness due to their virtue, but not trusted in their immunity from error. Rather, every person after Allah's Messenger—peace and blessings be upon him—is inevitably fallible, for none is infallible from mistakes. No one errs in religious matters except by opposing an explicit Quranic text or an explicit prophetic tradition through an interpretation wherein they intended truth but missed it. We dedicated a substantial chapter in our book titled *Al-I'rab* concerning the sunnah traditions adopted by Hanafi jurists which were contradicted by those who narrated them from the Companions—may Allah be pleased with them. This is among the most futile arguments they deceptively disguised.

لِأَنَّهُ وَغَيْرُهُ مِنْ الْأَئِمَّةِ مَوْثُوقٌ بِهِمْ فِي أَنَّهُمْ لَا يَكْذِبُونَ لِفَضْلِهِمْ غَيْرَ مَوْثُوقٍ بِهِمْ بِأَنَّهُمْ لَا يُخْطِئُونَ، بَلْ كُلُّ أَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - غَيْرُ مَعْصُومٍ مِنْ الْخَطَأِ وَلَا بُدَّ، وَلَيْسَ يُخْطِئُ أَحَدٌ فِي الدِّينِ إلَّا لِمُخَالَفَةِ نَصِّ قُرْآنٍ، أَوْ نَصِّ سُنَّةٍ بِتَأْوِيلٍ مِنْهُ قَصَدَ بِهِ الْحَقَّ فَأَخْطَأَهُ - وَقَدْ أَفْرَدْنَا بَابًا ضَخْمًا فِي كِتَابِنَا الْمَوْسُومِ " بِالْإِعْرَابِ " فِيمَا أَخَذَ بِهِ الْحَنَفِيُّونَ مِنْ السُّنَنِ الَّتِي خَالَفَهَا مَنْ رَوَاهَا مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَهَذَا مِنْ أَبْرَدِ مَا مَوَّهُوا بِهِ.

L36513 So this is what they objected to; we have clarified the fallaciousness of their statements in this matter.

فَهَذَا مَا اعْتَرَضُوا بِهِ قَدْ أَوْضَحْنَا سُقُوطَ أَقْوَالِهِمْ فِيهِ.

L36514 As for their argument based on the report of Ibn al-Munkadir...

وَأَمَّا احْتِجَاجُهُمْ بِخَبَرِ ابْنِ الْمُنْكَدِرِ.

L36515 And Rabiʿah from Ibn al-Baylamānī: hence both are mursal, and there is no valid proof in a mursal report.

وَرَبِيعَةَ عَنْ ابْنِ الْبَيْلَمَانِيِّ فَمُرْسَلَانِ وَلَا حُجَّةَ فِي مُرْسَلٍ.

L36516 If they persisted, we said to them: Here is a mursal report comparable to both—I am Humaam ibn Ahmad, I am Ibn Mufarrij, I am Ibn al-Aʿrabī, I am al-Dabari, I am ʿAbd al-Razzāq, from Ibn Jurayj, who said: "'Amr ibn Shuʿayb informed me: The Messenger of Allah—peace and blessings be upon him—ordained upon every Muslim who killed a man from the People of the Book a payment of four thousand dirhams, and that he be exiled from his land to another."

فَإِنْ لَجُّوا: قُلْنَا لَهُمْ: دُونَكُمْ مُرْسَلًا مِثْلَهُمَا - أَنَا حُمَامُ بْنُ أَحْمَدَ أَنَا ابْنُ مُفَرِّجٍ أَنَا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ أَنَا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ شُعَيْبٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَضَ عَلَى كُلِّ مُسْلِمٍ قَتَلَ رَجُلًا مِنْ أَهْلِ الْكِتَابِ أَرْبَعَةَ آلَافِ دِرْهَمٍ، وَأَنَّهُ يُنْفَى مِنْ أَرْضِهِ إلَى غَيْرِهَا» .

L36517 He mentioned that ʿUmar ibn ʿAbd al-ʿAzīz ruled in accordance with that.

وَذَكَرَ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَضَى بِذَلِكَ.

L36518 As for the account of Ubayd Allāh ibn ʿUmar ibn al-Khaṭṭāb, his killing of al-Hurmuzān, Jufayna, and the daughter of Abū Luʾluʾah—there exists no explicit textual basis in the report, nor any indication that any authority sanctioned the killing of Jufayna. Thus, their assertion is thereby rendered void.

وَأَمَّا قِصَّةُ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ، وَقَتْلُهُ الْهُرْمُزَانَ، وَجُفَيْنَةَ وَبِنْتَ أَبِي لُؤْلُؤَةَ - فَلَيْسَ فِي الْخَبَرِ نَصٌّ، وَلَا دَلِيلٌ عَلَى أَنَّ أَحَدًا قَالَ بِقَتْلِ جُفَيْنَةَ -: فَبَطَلَ بِذَلِكَ دَعْوَاهُمْ.

L36519 It has been established that he was only demanded for the blood of Hormuzan, and he was a Muslim. There is no disagreement regarding retaliation by a Muslim against a Muslim. Therefore, it is impermissible to introduce into the report what is not mentioned in it without a text or consensus.

وَصَحَّ أَنَّهُ إنَّمَا طُولِبَ بِدَمِ الْهُرْمُزَانِ فَقَطْ، وَكَانَ مُسْلِمًا - وَلَا خِلَافَ فِي الْقَوَدِ لِلْمُسْلِمِ مِنْ الْمُسْلِمِ، فَلَا يَجُوزُ أَنْ يُقْحَمَ فِي الْخَبَرِ مَا لَيْسَ فِيهِ بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ.

L36520 As for their argument that just as a Muslim's hand must be cut off if he steals a Dhimmi's property, so too must he be executed for it—this is a corrupt analogy, and all qiyas (analogical reasoning) is invalid. Even if qiyas were valid, this would constitute sheer invalidity, for according to their view, the right to seek retaliation (qawad) and retribution (qisas) from the Muslim belongs to the Dhimmi. The Dhimmi may demand it, abandon it, or pardon him.

وَأَمَّا احْتِجَاجُهُمْ بِأَنَّهُ كَمَا يَجِبُ قَطْعُ يَدِ الْمُسْلِمِ إذَا سَرَقَ مَالَ ذِمِّيٍّ، فَكَذَلِكَ يَجِبُ قَتْلُهُ بِهِ، فَقِيَاسٌ فَاسِدٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ - ثُمَّ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ الْقَوَدَ، وَالْقِصَاصَ لِلْمُسْلِمِ مِنْ الذِّمِّيِّ حَقٌّ لِلذِّمِّيِّ عِنْدَهُمْ، لَهُ طَلَبُهُ، وَلَهُ تَرْكُهُ وَالْعَفْوُ عَنْهُ.

L36521–36522 This is the right which Allah, the Mighty and Majestic, has prohibited for us, and He has not granted this authority to a disbeliever over a Muslim. This is not the case with the punishment of amputation for theft, for it is not among the rights of the one whose property was stolen, nor does he hold exclusive authority to demand its enforcement over others, nor can he forgive the offense. Rather, it is a right reserved for Allah, the Mighty and Majestic, which He has commanded—whether the one whose property was stolen wills it or refuses. Thus, a dhimmi holds no legal authority over a Muslim in this matter whatsoever.

وَهَذَا هُوَ السَّبِيلُ الَّذِي مَنَعَ اللَّهُ عَزَّ وَجَلَّ مِنَّا، وَلَمْ يَجْعَلْهَا لِكَافِرٍ عَلَى مُسْلِمٍ - وَلَيْسَ كَذَلِكَ الْقَطْعُ فِي السَّرِقَةِ، لَيْسَ هُوَ مِنْ حُقُوقِ الْمَسْرُوقِ مِنْهُ الْمَالُ، وَلَا لَهُ طَلَبُهُ دُونَ غَيْرِهِ، وَلَا لَهُ الْعَفْوُ عَنْهُ، إنَّمَا هُوَ حَقٌّ لِلَّهِ عَزَّ وَجَلَّ أَمَرَ بِهِ - شَاءَ الْمَسْرُوقُ مِنْهُ أَوْ أَبَى - فَلَا سَبِيلَ فِيهِ لِلذِّمِّيِّ عَلَى الْمُسْلِمِ أَصْلًا.

L36523 As for their statement: "Do we impose the *ḥadd* punishment on a Muslim if he slanders a *Dhimmī*?" We respond: Yes, and likewise we impose the *ḥadd* punishment on him if he slanders a *Ḥarbī* without distinction, due to what we mentioned regarding amputation for theft—that neither of the two matters constitutes a right for the *Dhimmī*, the slandered individual, or the victim of theft, nor do either of these two cases grant the authority to pardon it, nor to seek it to the exclusion of the rest of the people.

وَأَمَّا قَوْلُهُمْ: إنَّا نَحُدُّ الْمُسْلِمَ إذَا قَذَفَ الذِّمِّيَّ؟ قُلْنَا: نَعَمْ، وَكَذَلِكَ نَحُدُّهُ إذَا قَذَفَ الْحَرْبِيَّ وَلَا فَرْقَ، لِمَا ذَكَرْنَا فِي الْقَطْعِ فِي السَّرِقَةِ مِنْ أَنَّهُ لَيْسَ كِلَا الْأَمْرَيْنِ حَقًّا لِلذِّمِّيِّ، وَلَا لِلْمَقْذُوفِ، وَلَا لِلْمَسْرُوقِ مِنْهُ، وَلَا لَهُمَا الْعَفْوُ عَنْهُ، وَلَا طَلَبُهُ دُونَ سَائِرِ النَّاسِ.

L36524 The prescribed punishment for slander (qadhf) is exclusively a right of Allah, the Exalted, which He ordained—just as the punishment for intoxicants (khamr) is [a right of Allah]—whether it applies to a dhimmi or a ḥarbī, with no distinction.

إِنَّمَا الْحَدُّ فِي الْقَذْفِ حَقُّ اللَّهِ تَعَالَى أَمَرَ بِهِ - كَمَا هُوَ الْحَدُّ فِي الْخَمْرِ لِذِمِّيٍّ - كَانَتْ - أَوْ لِحَرْبِيٍّ، وَلَا فَرْقَ.

L36525 If they say: "Do you impose a financial penalty upon the Muslim for the debt owed to a dhimmi (protected non-Muslim citizen), enforcing it through imprisonment and disciplinary punishment if he refuses to pay despite being capable?"

فَإِنْ قَالُوا: إِنَّكُمْ تُغَرِّمُونَ الْمُسْلِمَ الْمَالَ إِذَا وَجَبَ لِلذِّمِّيِّ قِبَلَهُ، وَتَأْخُذُونَهُ مِنْ الْمُسْلِمِ بِالسَّجْنِ وَالْأَدَبِ إِذَا امْتَنَعَ مِنْ أَدَائِهِ، وَهُوَ قَادِرٌ عَلَيْهِ؟

L36526 We said: Yes, and this has no connection to retaliation or qisas whatsoever, for property taken without legitimate right is forbidden to its taker—whoever they may be—and since this is so, it is null and void. We have invalidated it from him and stripped him of possession, just as we prohibit him from killing a dhimmi without legitimate right, and there is no distinction between them.

قُلْنَا: نَعَمْ، وَلَيْسَ هَذَا مِنْ الْقَوَدِ وَالْقِصَاصِ فِي شَيْءٍ؛ لِأَنَّ الْمَالَ الْمَأْخُوذَ بِغَيْرِ حَقٍّ هُوَ مُحَرَّمٌ عَلَى آخِذِهِ - كَائِنًا مَنْ كَانَ - وَإِذْ هُوَ كَذَلِكَ، فَإِنَّمَا هُوَ بَاطِلٌ مَنَعْنَاهُ مِنْهُ، وَأَزَلْنَاهُ عَنْ يَدِهِ، كَمَا نَمْنَعُهُ مِنْ قَتْلِ الذِّمِّيِّ بِلَا حَقٍّ وَلَا فَرْقَ.

L36527 If we could compel him to resurrect the *dhimmi* he killed, we would do so. Since he cannot achieve this, nothing is incumbent upon him except disciplinary punishment for transgressing what Allah the Exalted has forbidden him—solely. This is akin to disciplining someone who usurps property if they cannot return it nor provide fair compensation at all. Not every transgressor against what Allah the Almighty has forbidden is liable for execution, limb amputation, or qisas (retribution in kind).

وَلَوْ قَدَرْنَا عَلَى تَكْلِيفِهِ إحْيَاءَ الذِّمِّيِّ الَّذِي قَتَلَ لَفَعَلْنَا ذَلِكَ بِهِ، فَإِذْ لَا يَقْدِرُ عَلَى ذَلِكَ فَلَا شَيْءَ عَلَيْهِ، إلَّا الْأَدَبُ؛ لِتَعَدِّيهِ إلَى مَا حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِ فَقَطْ كَمَا نُؤَدِّبُهُ فِي غَصْبِهِ مَالَهُ إذَا لَمْ يَقْدِرْ عَلَى رَدِّهِ، وَلَا عَلَى إنْصَافِهِ فَقَطْ، وَلَيْسَ كُلُّ مُتَعَدٍّ إلَى مَا حَرَّمَ عَلَيْهِ اللَّهُ عَزَّ وَجَلَّ يَلْزَمُهُ قَتْلٌ وَلَا قَطْعُ عُضْوٍ وَلَا قِصَاصٌ.

L36528 As for their argument against those who assert: "If a dhimmi kills another dhimmi and then the killer embraces Islam, retaliation (qisas) remains obligatory against him"—this claimant has erred. Rather, retaliation and legal retribution are waived from him, for it constitutes killing a believer in retaliation for a disbeliever. Allah the Exalted has prohibited this through the words of His Messenger—peace be upon him.

وَأَمَّا احْتِجَاجُهُمْ عَلَى مَنْ قَالَ: إذَا قَتَلَ ذِمِّيٌّ ذِمِّيًّا ثُمَّ أَسْلَمَ الْقَاتِلُ: فَالْقَوَدُ عَلَيْهِ بَاقٍ - فَقَدْ أَخْطَأَ هَذَا الْقَائِلُ، بَلْ قَدْ سَقَطَ الْقَوَدُ وَالْقِصَاصُ عَنْهُ؛ لِأَنَّهُ قَتْلُ مُؤْمِنٍ بِكَافِرٍ، وَقَدْ حَرَّمَ اللَّهُ تَعَالَى ذَلِكَ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36529 Then these invalid analogies are turned back against them, and it is said to them: Just as you do not impose the hadd punishment on a Muslim who slanders a protected non-Muslim, yet impose it on a protected non-Muslim who slanders a Muslim, so too must you kill the protected non-Muslim for killing a Muslim, and do not kill the Muslim for killing a protected

ثُمَّ يُعْكَسُ عَلَيْهِمْ هَذِهِ الْقِيَاسَاتُ الْفَاسِدَةُ فَيُقَالُ لَهُمْ: كَمَا لَا تَحُدُّونَ أَنْتُمْ الْمُسْلِمَ إذَا قَذَفَ الذِّمِّيَّ، وَتَحُدُّونَ الذِّمِّيَّ إذَا قَذَفَ الْمُسْلِمَ، فَكَذَلِكَ اُقْتُلُوا الذِّمِّيَّ بِالْمُسْلِمِ، وَلَا

non-Muslim - and this is the soundest analogy possible - were analogical reasoning valid - because they are an inviolability and an inviolability.

تَقْتُلُوا الْمُسْلِمَ بِالذِّمِّيِّ - وَهَذَا أَصَحُّ قِيَاسٍ يَكُونُ - لَوْ كَانَ الْقِيَاسُ حَقًّا - لِأَنَّهَا حُرْمَةٌ وَحُرْمَةٌ.

L36530–36531 And among the peculiarities of their legal doctrine is the Ḥanafīs' argument for distinguishing between the killer of a musta'min—against whom they do not enforce retaliation based on this distinction—and the killer of a dhimmī—against whom they do enforce retaliation based on it.

وَمِنْ غَرَائِبِ الْقَوْلِ: احْتِجَاجُ الْحَنَفِيِّينَ فِي الْفَرْقِ بَيْنَ قَاتِلِ الْمُسْتَأْمَنِ فَلَا يُقِيدُونَهُ بِهِ، وَبَيْنَ قَاتِلِ الذِّمِّيِّ فَيُقِيدُونَهُ بِهِ.

L36532 If they argue: The dhimmi's blood is inviolable indefinitely, while the musta'min's blood is inviolable only temporarily—then his blood becomes permissible again if he returns to the abode of war—how does this distinction necessitate nullifying qisas, when both are forbidden in bloodshed: a prohibition equal to the other's inviolability?

فَإِنْ قَالُوا: الذِّمِّيُّ مَحْقُونُ الدَّمِ بِغَيْرِ وَقْتٍ، وَالْمُسْتَأْمَنُ مَحْقُونُ الدَّمِ بِوَقْتٍ ثُمَّ يَعُودُ دَمُهُ حَلَالًا إذَا رَجَعَ إلَى دَارِ الْحَرْبِ؟ وَلَا نَدْرِي مِنْ أَيْنَ وَجَبَ إسْقَاطُ الْقَوَدِ بِهَذَا الْفَرْقِ، وَكِلَاهُمَا مُحَرَّمُ الدَّمِ إذَا قُتِلَ: تَحْرِيمًا مُسَاوِيًا لِتَحْرِيمِ الْآخَرِ.

L36533 The ruling is considered solely at the moment of the offense that necessitates it—not afterward. It is possible the *musta'man* may not return to the abode of war, or the *dhimmi* may violate the covenant and join the abode of war, rendering his blood permissible. There is no distinction—and let it suffice you that a people whose knowledge amounts merely to this [level] permit the shedding of Muslims' blood. Sufficient for us is Allah, the Best Trustee.

وَإِنَّمَا يُرَاعَى الْحُكْمُ وَقْتَ الْجِنَايَةِ الْمُوجِبَةِ لِلْحُكْمِ - لَا بَعْدَ ذَلِكَ - وَلَعَلَّ الْمُسْتَأْمَنَ لَا يَرْجِعُ إلَى دَارِ الْحَرْبِ، وَلَعَلَّ الذِّمِّيَّ يَنْقُضُ الذِّمَّةَ وَيَلْحَقُ بِدَارِ الْحَرْبِ فَيَعُودُ دَمُهُ حَلَالًا وَلَا فَرْقَ - وَحَسْبُك بِقَوْمٍ هَذَا مِقْدَارُ عِلْمِهِمْ الَّذِي بِهِ يُحِلُّونَ دِمَاءَ الْمُسْلِمِينَ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

L36534 Abu Muhammad—may Allah be pleased with him—said: As for our statement that no blood money is due from a Muslim for intentionally killing a *dhimmi*, nor from his [the Muslim's] agnatic kin for the Muslim's accidental killing of the *dhimmi*, nor is expiation required of him also—this is because of what we clarified earlier at the outset of our discourse on this issue: that the verse obligating blood money and expiation for accidental killing applies exclusively to the accidental killing of a believer. No text has ever been revealed obligating blood money or expiation for the accidental killing of a *dhimmi* unbeliever.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَأَمَّا قَوْلُنَا: لَا دِيَةَ عَلَى الْمُسْلِمِ فِي قَتْلِهِ الذِّمِّيَّ عَمْدًا، وَلَا عَلَى عَاقِلَتِهِ فِي قَتْلِهِ إيَّاهُ خَطَأً، وَلَا كَفَّارَةَ عَلَيْهِ أَيْضًا - فَلِمَا قَدْ بَيَّنَّا قَبْلُ فِي أَوَّلِ كَلَامِنَا فِي هَذِهِ الْمَسْأَلَةِ مِنْ أَنَّ الْآيَةَ الَّتِي فِيهَا إيجَابُ الدِّيَةِ وَالْكَفَّارَةِ فِي قَتْلِ الْخَطَأِ إنَّمَا هِيَ فِي الْمُؤْمِنِ الْمَقْتُولِ خَطَأً فَقَطْ، وَلَمْ يَأْتِ قَطُّ نَصٌّ فِي إيجَابِ دِيَةٍ، وَلَا كَفَّارَةٍ، فِي قَتْلِ الْكَافِرِ الذِّمِّيِّ خَطَأً.

L36535 The Messenger of Allah—peace and blessings of Allah be upon him—said, "Indeed, your blood and wealth are inviolable upon you." According to the foundational principles of the proponents of analogy, nothing may be analo-

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَلَا يَجُوزُ عَلَى أُصُولِ أَصْحَابِ الْقِيَاسِ أَنْ يُقَاسَ الشَّيْءُ إلَّا عَلَى نَظِيرِهِ، وَلَيْسَ الْكَافِرُ

gized except to its counterpart. The disbeliever is neither a counterpart nor a comparable example to the believer. Thus, analogizing the disbeliever to the believer is invalid according to the principles of those who affirm analogy and those who reject it—and with Allah, the Most High, lies all success.

نَظِيرَ الْمُؤْمِنِ وَلَا مَثَلًا، فَقِيَاسُهُ عَلَيْهِ بَاطِلٌ عَلَى أُصُولِ الْقَائِلِينَ بِالْقِيَاسِ، وَالْمَانِعِينَ مِنْهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L36536 We have only obligated blood money for a Muslim's accidental killing of a disbeliever based on the general application of Allah's statement: {Whoever kills a believer by mistake} [4:92]. This verse applies the ruling to every case of accidental killing without distinguishing between a believer or disbeliever as the victim. No evidence from the Quran, Sunnah, or consensus exists to restrict this ruling specifically to believers - therefore, it remains obligatory to uphold blood money according to the verse's unrestricted generality.[1]

وَإِنَّمَا أَوْجَبْنَا الدِّيَةَ فِي قَتْلِ الْكَافِرِ الْمُسْلِمَ خَطَأً بِعُمُومِ قَوْلِ اللَّهِ تَعَالَى: {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً} [النساء: ٩٢] الْآيَةَ فَعَمَّ بِهَذَا قَاتِلَ الْمُؤْمِنِ خَطَأً، وَلَمْ يَخُصَّ بِذَلِكَ مُؤْمِنًا مِنْ كَافِرٍ، وَلَمْ يَأْتِ دَلِيلٌ مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ يَخُصُّ ذَلِكَ - فَوَجَبَ إمْضَاؤُهَا عَلَى عُمُومِهِ.

L36537–36538 As for this verse, there is no valid proof for them in it whatsoever, because its explicit text states that Allah the Exalted says: "It is not for a believer to kill a believer except by mistake" up to His words: "an enemy to you while he is a believer, then the freeing of a believing female slave" [An-Nisa: 92].[2]

وَأَمَّا هَذِهِ الْآيَةُ فَلَا حُجَّةَ لَهُمْ فِيهَا أَصْلًا، لِأَنَّ نَصَّهَا أَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إلا خَطَأً} [النساء: ٩٢] إلَى قَوْله تَعَالَى: {عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ} [النساء: ٩٢] .

L36539 The text of these two verses has been validated as a clear text, precluding any allegorical interpretation, confirming that this ruling applies exclusively to a believer killed unintentionally.

فَصَحَّ بِنَصِّ هَاتَيْنِ الْآيَتَيْنِ نَصًّا جَلِيًّا لَا يُمْكِنُ أَنْ يُتَأَوَّلَ فِيهِ شَيْءٌ، أَنَّ هَذَا الْحُكْمَ إنَّمَا هُوَ فِي الْمُؤْمِنِ الْمَقْتُولِ خَطَأً فَقَطْ.

L36540 Then the Almighty said: {If he was from a people hostile to you while being a believer, then the freeing of a believing slave; and if he was from a people with whom you have a covenant, then blood money must be delivered to his family along with the freeing of a believing slave} [An-Nisa: 92]. This necessarily and indubitably establishes that the verb *كَانَ* (was) in God's statement {If he was from a people} contains an implicit pronoun referring exclusively to the first mentioned antecedent – the believer killed by mistake – with no possible alternative. Since pronouns in Arabic grammar refer only to the nearest preceding antecedent unless evidence dictates otherwise, and

ثُمَّ قَالَ عَزَّ وَجَلَّ: {فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ} [النساء: ٩٢] فَصَحَّ بِالضَّرُورَةِ الَّتِي لَا مَدْخَلَ لِلشَّكِّ فِيهَا أَنَّ فِي {كَانَ} [النساء: ٩٢] مِنْ قَوْله تَعَالَى: {فَإِنْ كَانَ مِنْ قَوْمٍ} [النساء: ٩٢] ضَمِيرٌ رَاجِعٌ إلَى أَوَّلِ مَذْكُورٍ، لَا يُمْكِنُ غَيْرُ ذَلِكَ أَلْبَتَّةَ، فَإِذْ لَا بُدَّ مِنْ هَذَا، وَالضَّمِيرُ فِي لُغَةِ الْعَرَبِ لَا يَرْجِعُ إلَّا إلَى أَقْرَبِ

[1] **Qur'an references (L36536):** Qur'an 4:92 (An-Nisa).
[2] **Qur'an references (L36538):** Qur'an 4:92 (An-Nisa).

given that these verses mention no other antecedent, whether near or far, except the believer killed unintentionally alone.[3]

مَذْكُورٍ قَبْلَهُ، إِلَّا بِبُرْهَانٍ يَدُلُّ عَلَى غَيْرِ ذَلِكَ، فَلَيْسَ فِي هَذِهِ الْآيَاتِ أَقْرَبُ مَذْكُورٍ وَلَا أَبْعَدُ مَذْكُورٍ، إِلَّا الْمُؤْمِنَ الْمَقْتُولَ خَطَأً فَقَطْ.

L36541 It has been established with certainty, free from ambiguity, that Allah the Exalted's intent in His saying, "And if he belonged to a people with whom you have a covenant" [An-Nisa': 92], is that it refers to a believer who was killed unintentionally, as affirmed by al-Ḥasan and Jābir ibn Zayd.[4]

فَصَحَّ بِيَقِينٍ لَا إِشْكَالَ فِيهِ: أَنَّ مُرَادَ اللَّهِ تَعَالَى بِقَوْلِهِ: {وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ} [النساء: ٩٢] أَنَّهُ مُؤْمِنٌ يُقْتَلُ خَطَأً، كَمَا قَالَ الْحَسَنُ، وَجَابِرُ بْنُ زَيْدٍ.

L36542 It has been established that the meaning of Allah's statement, the Exalted, *"From a people with whom you have a covenant"* [Quran 4:92] specifically pertains to a people when his residence is established among them. This is because the Messenger of Allah (peace be upon him) ruled that a disbeliever does not inherit a Muslim, and that diyah (blood money) is subject to inheritance.[5]

وَصَحَّ أَنَّ مَعْنَى قَوْلِ اللَّهِ تَعَالَى: {مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ} [النساء: ٩٢] إِنَّمَا هُوَ فِي قَوْمٍ إِذَا كَانَ سُكْنَاهُ فِيهِمْ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ حَكَمَ بِأَنْ لَا يَرِثَ الْكَافِرُ الْمُسْلِمَ، وَأَنَّ الدِّيَةَ مَوْرُوثَةٌ -.

L36543 Thus, it became invalid with certainty that the dhimmi non-believers inherit their believing paternal cousin.

فَبَطَلَ بِيَقِينٍ أَنْ يَرِثَ الْكُفَّارُ الذِّمِّيُّونَ ابْنَ عَمِّهِمْ الْمُؤْمِنَ.

L36544 The blood money in intentional homicide is obligated solely by the words of Allah the Almighty: {O you who believe, retribution is ordained for you concerning the slain—the free for the free, the enslaved for the enslaved, and the female for the female. But if anything is pardoned by one's brother, then let there be pursuit [of compensation] with fairness, and payment to him in a commendable manner} [Al-Baqarah 2:178], and by the saying of Allah's Messenger (peace and blessings be upon him): "Whoever has a slain relative may choose the better of two options: either to receive blood money (diyah) or to enforce retaliation (qisas)." Thus, it is established by the explicit texts of the Quran and the Sunnah that there is no blood money in intentional homicide except where retaliation is certain.[6]

وَالدِّيَةُ فِي الْعَمْدِ إِنَّمَا وَجَبَتْ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنْثَى بِالْأُنْثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] وَبِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إِمَّا أَنْ يُودَى، وَإِمَّا يُقَادَ» فَصَحَّ بِنَصِّ الْقُرْآنِ، وَالسُّنَّةِ: أَنَّهُ لَا دِيَةَ فِي الْعَمْدِ إِلَّا حَيْثُ يَكُونُ الْقَوَدُ يَقِينًا.

L36545–36546 We have clarified that there is no qisas (retribution) against a Muslim for killing a protected non-Muslim. Since there is no qisas due to the dhimmi

وَقَدْ بَيَّنَّا أَنَّهُ لَا قَوَدَ مِنْ الْمُسْلِمِ لِلذِّمِّيِّ فَإِذْ لَا قَوَدَ لَهُ مِنْهُ فَلَا دِيَةَ لَهُ عَلَيْهِ، إِذْ لَمْ يُوجِبْ الدِّيَةَ دُونَ الْقَوَدِ فِي الْعَمْدِ قَطُّ قُرْآنٌ، وَلَا سُنَّةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[3] **Qur'an references (L36540):** Qur'an 4:92 (An-Nisa).
[4] **Qur'an references (L36541):** Qur'an 4:92 (An-Nisa).
[5] **Qur'an references (L36542):** Qur'an 4:92 (An-Nisa).
[6] **Qur'an references (L36544):** Qur'an 2:178 (Al-Baqarah).

from the Muslim, there is no blood money owed to him by him, as neither the Quran nor the Sunnah has ever mandated blood money without qisas in cases of intentional killing—and success is from Allah, the Exalted.

L36547 From Hummām, from Abū Muḥammad al-Bājī, from ʿAbd Allāh ibn Yūnus, from Baqī ibn Makhlad, from Abū Bakr ibn Abī Shaybah, from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Ashʿath ibn ʿAbd al-Malik al-Ḥumrānī, from al-Ḥasan al-Baṣrī, who said: If a Muslim kills a dhimmī, he is not obligated to perform expiation.

أَنَا حُمَامٌ أَنَا أَبُو مُحَمَّدٍ الْبَاجِيَّ أَنَا عَبْدُ اللَّهِ بْنُ يُونُسَ أَنَا بَقِيُّ بْنُ مَخْلَدٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ أَشْعَثَ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا قَتَلَ الْمُسْلِمُ الذِّمِّيَّ فَلَيْسَ عَلَيْهِ كَفَّارَةٌ.

L36548 And through the chain of Ismāʿīl ibn Isḥāq: from Muḥammad ibn al-Minhāl, from Yazīd ibn Zuraiʿ, from Yūnus - that is, Ibn Yazīd - from al-Ḥasan that he only considered manumission obligatory for killing the Muslim dhimmi - and this is the opinion of Abū ʿIyāḍ and Jābir ibn Zayd. If they object by citing what al-Ṭalamankī transmitted: from Ibn Mufarrij, from al-Ṣamūṭ Muḥammad ibn Ayyūb, from al-Bazzār, from Muḥammad ibn Muʿāwiyah al-Zanādī, from Abū Dāwūd, from Yaʿqūb ibn ʿAbd Allāh ibn Nujayd who reported: My father narrated from his father from ʿImrān ibn al-Ḥuṣayn, who said: "A man from Khuzāʿah killed a man from Hudhayl, so the Messenger of Allāh - peace and blessings be upon him - said: 'If I were to kill a believer for a disbeliever, I would kill him. Therefore, produce his blood money.'" Yet Yaʿqūb, his father, and his grandfather are unknown narrators.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ أَنَا مُحَمَّدُ بْنُ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ زُرَيْعٍ أَنَا يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنْ الْحَسَنِ أَنَّهُ كَانَ لَا يَرَى الْعِتْقَ إلَّا فِي قَتْلِ الْمُسْلِمِ الذِّمِّيَّ - وَهُوَ قَوْلُ أَبِي عِيَاضٍ، وَجَابِرِ بْنِ زَيْدٍ. فَإِنْ شَغَبُوا بِمَا نَاهَ الطَّلَمَنْكِيُّ أَنَا ابْنُ مُفَرِّجٍ أَنَا الصَّمُوتُ مُحَمَّدُ بْنُ أَيُّوبَ أَنَا الْبَزَّارُ أَنَا مُحَمَّدُ بْنُ مُعَاوِيَةَ الزَّنَادِيُّ أَنَا أَبُو دَاوُد أَنَا يَعْقُوبُ بْنُ عَبْدِ اللَّهِ بْنِ نُجَيْدٍ حَدَّثَنِي أَبِي عَنْ أَبِيهِ عَنْ عِمْرَانَ بْنِ الْحُصَيْنِ قَالَ «إنَّ رَجُلًا مِنْ خُزَاعَةَ قَتَلَ رَجُلًا مِنْ هُذَيْلٍ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ كُنْتُ قَاتِلًا مُؤْمِنًا بِكَافِرٍ لَقَتَلْتُهُ فَأَخْرِجُوا عَقْلَهُ» فَإِنَّ يَعْقُوبَ وَأَبَاهُ وَجَدَّهُ مَجْهُولُونَ.

L36549 As for his disciplinary action and imprisonment—what is established from the Messenger of Allah (peace be upon him) is the prohibition of flogging anyone beyond ten lashes except in cases of prescribed punishments. This is based on his saying (peace be upon him): "Whoever among you witnesses wrongdoing must physically prevent it if able." Killing a dhimmi wrongfully constitutes wrongdoing, thus obligating its prevention through direct action. Allah the Exalted said: "Cooperate in righteousness and piety, and do not cooperate in sin and transgression" [5:2]. Imprisoning the killer restrains him from oppression and constitutes cooperation in righteousness, while releasing him aids him in sin and transgression—and with Allah the Exalted lies all success.[7]

وَأَمَّا أَدَبُهُ وَسَجْنُهُ - فَالثَّابِتُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَنْعُ مِنْ أَنْ يُجْلَدَ أَحَدٌ فِي غَيْرِ حَدٍّ أَكْثَرَ مِنْ عَشْرِ جَلَدَاتٍ، وَلِقَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ» وَقَتْلُ الذِّمِّيِّ بِغَيْرِ حَقٍّ مُنْكَرٌ فَوَاجِبٌ تَغْيِيرُهُ بِالْيَدِ وَقَالَ تَعَالَى: {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] فَسَجْنُ الْقَاتِلِ مَنْعٌ لَهُ مِنْ الظُّلْمِ وَتَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى وَإِطْلَاقُهُ عَوْنٌ لَهُ عَلَى الْإِثْمِ وَالْعُدْوَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[7] **Qur'an references (L36549):** Qur'an 5:2 (Al-Ma'idah).

[مَسْأَلَةٌ قَتَلَ الْمُسْلِمُ أَوْ الذِّمِّيُّ مُسْلِمًا خَطَأً]

A case where a Muslim or a dhimmi killed a Muslim by mistake.

٢٠٢٦ - مَسْأَلَةٌ: وَإِنْ قَتَلَ الْمُسْلِمُ، أَوْ الذِّمِّيُّ - الْبَالِغَانِ الْعَاقِلَانِ - مُسْلِمًا خَطَأً فَالدِّيَةُ وَاجِبَةٌ عَلَى عَاقِلَةِ الْقَاتِلِ - وَهِيَ عَشِيرَتُهُ، وَقَبِيلَتُهُ.

2026 – Issue: If a Muslim or a Dhimmi—each being an adult male of sound mind—kills a Muslim by mistake, then the diyah is obligatory upon the killer's ʻaqilah, which are his clan and tribe.

وَعَلَى الْقَاتِلِ فِي نَفْسِهِ - إنْ كَانَ بَالِغًا عَاقِلًا مُسْلِمًا -: عِتْقُ رَقَبَةٍ مُؤْمِنَةٍ وَلَا بُدَّ، فَإِنْ لَمْ يَقْدِرْ عَلَيْهَا لِفَقْرِهِ: فَعَلَيْهِ صِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، لَا يَحُولُ بَيْنَهُمَا شَهْرُ رَمَضَانَ، وَلَا بِيَوْمِ فِطْرٍ، وَلَا بِيَوْمِ أَضْحَى، وَلَا بِمَرَضٍ، وَلَا بِأَيَّامِ حَيْضٍ - إنْ كَانَتْ امْرَأَةً -.

And upon one who kills himself—if he is an adult, sane Muslim—it is obligatory to free a believing slave. If he cannot do so due to poverty, he must fast two consecutive months. The month of Ramadan should not intervene between them, nor the day of Eid al-Fitr, nor the day of Eid al-Adha, nor illness, nor—if she is a woman—menstrual days.

وَذَلِكَ - وَاجِبٌ عَلَى الذِّمِّيِّ، لَا أَنَّهُ لَا يَقْدِرُ فِي حَالِهِ تِلْكَ عَلَى عِتْقِ رَقَبَةٍ مُؤْمِنَةٍ، وَلَا عَلَى صِيَامٍ حَتَّى يُسْلِمَ، فَإِنْ أَسْلَمَ يَوْمًا مَا لَزِمَهُ الْعِتْقُ، أَوْ الصِّيَامُ فَإِنْ لَمْ يُسْلِمْ حَتَّى مَاتَ لَقِيَ اللَّهَ عَزَّ وَجَلَّ.

And that is obligatory upon the dhimmi, not that he is not able - in that situation of his - to free a believing slave, nor... He must fast until he converts to Islam. If he converts on any day, he is required to either free a slave or fast. If he dies without converting, he will meet Allah, the Almighty, the Majestic.

وَذَلِكَ زَائِدٌ فِي إثْمِهِ وَعَذَابِهِ، وَلَا يَصُومُ عَنْهُ وَلِيُّهُ - هَذَا كُلُّهُ نَصُّ الْقُرْآنِ الَّذِي لَا يَجْهَلُهُ مَنْ لَهُ فِي الْعِلْمِ أَقَلُّ حَظٍّ.

And that adds to his sin and punishment, nor does his guardian fast in his stead—all of this is the unequivocal text of the Qur'an, which no one with even the slightest share of knowledge would be ignorant of.

وَأَمَّا كَوْنُ الدِّيَةِ عَلَى عَشِيرَتِهِ - فَلِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ ابْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِ امْرَأَةٍ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ أَوْ أَمَةٍ، ثُمَّ إنَّ الْمَرْأَةَ الَّتِي قَضَى عَلَيْهَا بِالْغُرَّةِ تُوُفِّيَتْ؟ فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مِيرَاثَهَا لِبَنِيهَا، وَزَوْجِهَا، أَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا» .

As for the ruling that the blood money is incumbent upon his clan, it is based on what was narrated to us through the chain of Ahmad ibn Shuʿayb: From Qutaybah ibn Saʿīd, from Al-Layth ibn Saʿd, from Ibn Shihāb, from Ibn al-Musayyab, from Abū Hurayrah: "The Messenger of Allah (peace and blessings of Allah be upon him) ruled regarding the fetus of a woman who miscarried dead that a *ghurrah* (a male or female slave) was due. Then the woman upon whom the *ghurrah* was ruled died. So the Messenger of Allah (peace and blessings of Allah be upon him) ruled that her inheritance belonged to her children and husband, and that the liability for blood money fell upon her agnatic kin."

وَأَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ: الدِّيَةُ فِي مَالِ الْقَاتِلِ

Abū Muḥammad—may Allāh be pleased with him—said: The Ḥanafīs and the Mālikīs asserted that the financial liability for blood money falls upon the

people of the state registry (dīwān), claiming that ʿUmar issued such a ruling. This, however, is not valid. Even if it were valid, it would not constitute proof, for no proof lies with anyone apart from the Messenger of Allāh—Peace and blessings of Allāh be upon him. Allāh the Exalted forbid that ʿUmar would ever nullify the ruling of the Messenger of Allāh—Peace and blessings of Allāh be upon him—and institute another ruling without revelation from Allāh the Exalted, for that would be an enormity beyond measure.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَقَالَ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ: الْعَقْلُ عَلَى أَهْلِ الدِّيوَانِ - وَادَّعَوْا أَنَّ عُمَرَ قَضَى بِذَلِكَ، وَذَلِكَ لَا يَصِحُّ، وَلَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ؛ لِأَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيُعِيذُ اللَّهُ تَعَالَى عُمَرَ مِنْ أَنْ يَكُونَ يُحِيلُ حُكْمَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَيُحْدِثُ حُكْمًا آخَرَ بِغَيْرِ وَحْيٍ مِنْ اللَّهِ تَعَالَى وَهَذَا عَظِيمٌ جِدًّا.

L36559 Abu Muhammad—may Allah be pleased with him—said: Whoever lacks agnatic kin among Muslims is to be supported from the share of those burdened by debt or from every endowment designated for all communal interests of Muslims, in accordance with Allah's decree: "The believing men and believing women are allies of one another" [At-Tawbah: 71]. No portion of the mentioned wealth is allocated to a disbeliever—whether a dhimmi or otherwise. And with Allah, the Most High, is success.[8]

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: فَمَنْ لَمْ يَكُنْ لَهُ مِنْ الْمُسْلِمِينَ خَاصَّةً عَصَبَةٌ فَمِنْ سَهْمِ الْغَارِمِينَ، أَوْ مِنْ كُلِّ مَالٍ مَوْقُوفٍ لِجَمِيعِ مَصَالِحِ الْمُسْلِمِينَ؛ لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] وَلَا حَظَّ فِي الْمَالِ الْمَذْكُورِ لِكَافِرٍ ذِمِّيًّا كَانَ أَوْ غَيْرَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36560 As for our statement: Nothing intervenes between the two months due to Ramadan, Eid al-Adha, illness, or days of menstruation - this is because Allah, the Mighty and Majestic, commanded them to be consecutive. If any of the aforementioned things intervene between them, they are no longer consecutive, and Allah has not distinguished between an intervention without a valid excuse and one with an excuse.

وَأَمَّا قَوْلُنَا: لَا يَحُولُ بَيْنَ الشَّهْرَيْنِ بِرَمَضَانَ، وَلَا بِأَضْحَى، وَلَا بِمَرَضٍ وَلَا أَيَّامِ حَيْضٍ - فَلِأَنَّ اللَّهَ عَزَّ وَجَلَّ أَمَرَ بِهِمَا مُتَتَابِعَيْنِ، وَأَمَّا إذَا حَالَ بَيْنَهُمَا شَيْءٌ مِمَّا ذَكَرْنَا فَلَيْسَا مُتَتَابِعَيْنِ، وَلَمْ يَخُصَّ اللَّهُ عَزَّ وَجَلَّ حَيْلُولَةً بِغَيْرِ عُذْرٍ مِنْ حَيْلُولَةٍ بِعُذْرٍ.

L36561 A woman must delay her fasting until her menstruation ends because she is unable to continue. Thus, her obligation is to delay fasting until she becomes capable, like the sick and others.

وَتُؤَخِّرُ الْمَرْأَةُ صِيَامَهَا حَتَّى تَرْتَفِعَ حَيْضَتُهَا؛ لِأَنَّهَا لَا تَقْدِرُ عَلَى الْمُتَابَعَةِ، فَفَرْضُهَا أَنْ تُؤَخِّرَ حَتَّى تَقْدِرَ كَالْمَرِيضِ وَغَيْرِهِ.

L36562 If he began the two months at the start of Sha'bān, then traveled throughout all of Ramadan, completing the two months during his journey suffices him. Thereafter, he must make up Ramadan as Allah the Exalted has commanded him.

وَلَوْ بَدَأَهُمَا فِي أَوَّلِ شَعْبَانَ ثُمَّ سَافَرَ رَمَضَانَ كُلَّهُ أَجْزَأَهُ إتْمَامُ الشَّهْرَيْنِ فِيهِ ثُمَّ يَقْضِي رَمَضَانَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى.

L36563–36565 As for the Dhimmi—indeed, every disbeliever, whether jinn or human—it is obligatory upon them to abandon all religions, return to Islam, and adhere

وَأَمَّا الذِّمِّيُّ - فَإِنَّ كُلَّ كَافِرٍ مِنْ جِنٍّ أَوْ إنْسٍ فَفَرْضٌ عَلَيْهِمْ تَرْكُ كُلِّ دِينٍ وَالرُّجُوعُ إلَى الْإِسْلَامِ، وَالْتِزَامُ شَرَائِعِهِ لَا يَقْبَلُ غَيْرَ هَذَا مُسْلِمٌ؛ لِأَنَّهُ بِهَذَا جَاءَ الْقُرْآنُ وَعَلَيْهِ حَارَبَ

[8] **Qur'an references (L36559):** Qur'an 9:71 (At-Tawbah).

to its laws. No Muslim would say otherwise, for the Qur'an has come with this command, and upon this the Messenger waged war. He who opposes Allah - and does not believe in His Messenger (peace be upon him) - thus eternal abode in the Fire is decreed for those who do not submit to Islam. Therefore, every disbeliever is obligated to adhere to the religion of Islam and is commanded to follow it. Its rulings are binding upon them, and its laws likewise, except that among these obligations are acts not accepted from them until they submit to Islam, such as prayer which is obligatory upon the person in major impurity and the one without ablution. However, it is not accepted from either of them until the person in major impurity performs ritual bathing and the one in minor impurity performs ablution.

L36566 As for our statement that the guardian does not fast on behalf of the disbeliever—unlike the Muslim who dies while owing fasts—this is because the guardian only fasts what would have sufficed the deceased had he fasted it. This is not an attribute of the disbeliever, and success is from Allah, the Most High.

L36567 **Issue: He killed a believer intentionally while knowing he was a Muslim.**

L36568 Issue 2027: Whoever intentionally kills a believer in the Abode of Islam or the Abode of War—while knowing he is Muslim—the guardian of the slain may choose: if he wishes, he may kill him in the same manner he killed him: by striking, stabbing, shooting, throwing from a height, burning, drowning, crushing, starving, depriving of water, strangling, suffocating, trampling by a horse, or any other means—excluding nothing.

L36569 If he wishes, he may pardon him—whether the killer consents or objects—as he holds no authority in this matter. The guardian's pardon of retaliation (qisas) and silence regarding the blood money (diya) do not, by those very acts, invalidate the diya. Rather, it remains obligatory for the guardian to receive it, even if unmentioned, unless he verbally declares pardon of the diya itself.

L36570 If the legal guardian wishes, they may pardon the killer based on mutual

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ خَالَفَهُ وَلَمْ يُؤْمِنْ بِهِ، وَبِذَلِكَ وَجَبَ الْخُلُودُ فِي النَّارِ عَلَى مَنْ لَمْ يُسْلِمْ، فَإِذْ كُلُّ كَافِرٍ فَمُلْزَمٌ دِينَ الْإِسْلَامِ، وَمَأْمُورٌ بِهِ، فَحُكْمُهُ لَازِمٌ لَهُمْ، وَشَرَائِعُهُ كَذَلِكَ، إِلَّا أَنَّ مِنْهَا مَا لَا يُقْبَلُ مِنْهُمْ حَتَّى يُسْلِمُوا، كَالصَّلَاةِ هِيَ فَرْضٌ عَلَى الْجُنُبِ، وَغَيْرُ الْمُتَوَضِّئِ، إِلَّا أَنَّهَا لَا تُقْبَلُ مِنْهُمَا إِلَّا حَتَّى يَغْتَسِلَ الْجُنُبُ وَيَتَوَضَّأَ الْمُحْدِثُ.

وَأَمَّا قَوْلُنَا: لَا يَصُومُ عَنْ الْكَافِرِ وَلِيُّهُ بِخِلَافِ الْمُسْلِمِ يَمُوتُ وَعَلَيْهِ صِيَامٌ، لِأَنَّهُ لَا يَصُومُ الْوَلِيُّ إِلَّا مَا لَوْ صَامَهُ الْمَيِّتُ لَأَجْزَأَهُ، وَلَيْسَ هَذَا صِفَةَ الْكَافِرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ قَتَلَ مُؤْمِنًا عَمْدًا وَهُوَ يَدْرِي أَنَّهُ مُسْلِمٌ]

٢٠٢٧ - مَسْأَلَةٌ: وَمَنْ قَتَلَ مُؤْمِنًا عَمْدًا فِي دَارِ الْإِسْلَامِ أَوْ فِي دَارِ الْحَرْبِ - وَهُوَ يَدْرِي أَنَّهُ مُسْلِمٌ - فَوَلِيُّ الْمَقْتُولِ مُخَيَّرٌ إِنْ شَاءَ قَتَلَهُ بِمِثْلِ مَا قَتَلَ هُوَ بِهِ وَلِيَّهُ: مِنْ ضَرْبٍ، أَوْ طَعْنٍ، أَوْ رَمْيٍ، أَوْ صَبٍّ مِنْ حَالِقٍ، أَوْ تَحْرِيقٍ أَوْ تَغْرِيقٍ، أَوْ شَدْخٍ، أَوْ إِجَاعَةٍ أَوْ تَعْطِيشٍ، أَوْ خَنْقٍ أَوْ غَمٍّ، أَوْ وَطْءِ فَرَسٍ، أَوْ غَيْرِ ذَلِكَ - لَا تُحَاشَ شَيْئًا.

وَإِنْ شَاءَ عَفَا عَنْهُ - أَحَبَّ الْقَاتِلُ أَمْ كَرِهَ - لَا رَأْيَ لَهُ فِي ذَلِكَ، وَلَيْسَ عَفْوُ الْوَلِيِّ عَنْ الْقَوَدِ وَسُكُوتُهُ عَنْ ذِكْرِ الدِّيَةِ بِذَلِكَ بِمُسْقِطٍ لِلدِّيَةِ، بَلْ هِيَ وَاجِبَةٌ لِلْوَلِيِّ، وَإِنْ لَمْ يَذْكُرْهَا، إِلَّا أَنْ يَلْفِظَ بِالْعَفْوِ عَنْ الدِّيَةِ أَيْضًا.

agreement. In this case, if the killer does not satisfy the legal guardian, the guardian is not obligated to accept, and may choose between retaliation or blood money. If the legal guardian insists on demanding more than the blood money, the killer is not obligated to pay beyond it, not even a voluntary payment or anything exceeding that.

وَإِنْ شَاءَ عَفَا عَنْهُ بِمَا يَتَّفِقَانِ عَلَيْهِ، فَهَاهُنَا خَاصَّةً إِنْ لَمْ يُرْضِهِ الْقَاتِلُ لَمْ يَلْزَمْهُ، وَيَكُونُ لِلْوَلِيِّ الْقَوَدُ، أَوْ الدِّيَةُ، فَإِنْ أَبَى الْوَلِيُّ إلَّا أَكْثَرَ مِنْ الدِّيَةِ لَمْ يَلْزَمْ الْقَاتِلَ أَنْ يَزِيدَهُ عَلَى الدِّيَةِ وَبَرَةً فَمَا فَوْقَهَا.

L36571 Abu Muhammad—may Allah be pleased with him—said: "Indeed, the people have differed regarding this—"

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَقَدْ اخْتَلَفَ النَّاسُ فِي هَذَا -:

L36572 A group said: The guardian of the slain has only retaliation or pardon, and blood money is not owed to him except with the killer's consent. If the guardian insists on more than the blood money—even many multiples—and if the killer consents to that, it is permissible; otherwise, it is not permissible. This opinion is authentically reported from Ibrāhīm al-Nakhaʿī and Abū al-Zināد, and it is the opinion of Abū Ḥanīfah, Sufyān al-Thawrī, Mālik, Ibn Shubrumah, al-Ḥasan ibn Ḥayy, and their companions.

فَقَالَتْ طَائِفَةٌ: لَيْسَ لِوَلِيِّ الْمَقْتُولِ إلَّا الْقَوَدُ فَقَطْ، أَوْ الْعَفْوُ، وَلَا تَجِبُ لَهُ الدِّيَةُ إلَّا بِرِضَا الْقَاتِلِ، فَإِنْ أَبَى الْوَلِيُّ إلَّا أَكْثَرَ مِنْ الدِّيَةِ - وَلَوْ أَضْعَافًا كَثِيرَةً فَإِنْ رَضِيَ بِذَلِكَ الْقَاتِلُ جَازَ ذَلِكَ، وَإِلَّا فَلَا - صَحَّ هَذَا الْقَوْلُ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، وَعَنْ أَبِي الزِّنَادِ - وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ وَمَالِكٍ، وَابْنِ شُبْرُمَةَ، وَالْحَسَنِ بْنِ حَيٍّ، وَأَصْحَابِهِمْ.

L36573 Our position is validated through the narration from Ibn Abbas: We have been narrated through Al-Bukhari's chain—Qutaybah ibn Saʿīd → Sufyān ibn ʿUyaynah → ʿAmr ibn Dīnār → Mujāhid → Ibn Abbas—regarding Allah's verse: *"But whoever is pardoned by his brother for something, then let there be pursuit [of compensation] in a proper manner and payment to him with graciousness"* [al-Baqarah 2:178]. He said: "Among the Children of Israel, capital retaliation (*al-qawad*) was enforced, but blood money (*diyah*) did not exist among them." He clarified: "Pardoning here means accepting blood money for intentional [acts], seeking it through proper channels and fulfilling it with excellence."[9]

وَصَحَّ قَوْلُنَا عَنْ ابْنِ عَبَّاسٍ: رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] قَالَ: كَانَ فِي بَنِي إسْرَائِيلَ الْقَوَدُ، وَلَمْ تَكُنْ فِيهِمْ الدِّيَةُ، قَالَ: فَالْعَفْوُ -: أَنْ يَقْبَلَ الدِّيَةَ فِي الْعَمْدِ يَطْلُبُ بِمَعْرُوفٍ، وَيُؤَدِّي بِإِحْسَانٍ.

L36574–36575 From the path of Hammad ibn Salamah: From Amr ibn Dinar, from Jabir ibn Zayd, from Ibn Abbas concerning the mentioned verse: "This refers to intentional killing—the legal guardians may accept blood money through the claimant's adherence on the part of what is fair and the dutiful fulfillment by the one liable in a commendable manner." It has also been authentically reported from Mujahid, Al-Shaʿbi, and Umar ibn Abd al-Aziz, as we have narrated through the path of Abd al-Razzaq, from Maʿmar, from Simak ibn

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا عَمْرُو بْنُ دِينَارٍ عَنْ جَابِرِ بْنِ زَيْدٍ عَنْ ابْنِ عَبَّاسٍ فِي الْآيَةِ الْمَذْكُورَةِ هُوَ الْعَمْدُ يَرْضَى أَهْلُهُ بِالدِّيَةِ اتِّبَاعًا مِنْ الطَّالِبِ بِالْمَعْرُوفِ وَأَدَاءً إلَيْهِ مِنْ الْمَطْلُوبِ بِإِحْسَانٍ. وَصَحَّ أَيْضًا عَنْ مُجَاهِدٍ، وَالشَّعْبِيِّ، وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ قَاضِي صَنْعَاءَ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي امْرَأَةٍ قَتَلَتْ رَجُلًا - إنْ أَحَبَّ الْأَوْلِيَاءُ أَنْ يَعْفُوا عَفَوْا

[9] **Qur'an references (L36573):** Qur'an 2:178 (Al-Baqarah).

al-Fadl, the judge of Sana'a, who said: Umar ibn Abd al-Aziz wrote regarding a woman who killed a man: "If the legal guardians wish to pardon, let them pardon; if they wish to kill, let them kill; and if they wish to take the blood money, let them take it. They are to give his wife her inheritance share from the blood money."

L36576 And via the chain of Abd al-Razzāq from Ma'mar from Qatadah, he said: The killer is legally compelled to give the diyah. If they agree to three diyahs, then it is permissible, for they have purchased immunity for their companion with it. This is the opinion of Sa'id ibn al-Musayyib, Muhammad ibn Sirin, al-Awza'i, al-Shafi'i, Abu Thawr, Ahmad ibn Hanbal, Ishaq, Abu Sulayman, their companions, and the majority of Ahl al-Hadith.

L36577 Abu Muhammad—may Allah be pleased with him—said: We examined what the proponents of this view argued? Then we found the statement of Allah, the Almighty and Majestic: "Retaliation is prescribed for you concerning the slain: the free person for the free person, the slave for the slave, and the woman for the woman. But if pardon is granted to anyone by his brother [in faith], then let there be fair recourse and payment to him with kindness." [Al-Baqarah 2:178].[10]

L36578 The pronoun in the words of Him, the Exalted—"for him" and "from his brother" (Al-Baqarah: 178)—refers to the killer. No other interpretation is valid, for he is the one pardoned for him from his sin in killing his Muslim brother.[11]

L36579 And what was narrated to us through al-Bukhārī's chain: I am Abū Nu'aym - he is al-Faḍl ibn Dukayn - narrating from Shaybān, from Yaḥyā - he is Ibn Abī Kathīr - from Abū Salamah ibn 'Abd al-Raḥmān ibn 'Awf, from Abū Hurayrah, and he mentioned a ḥadīth wherein the Messenger of Allāh - peace and blessings of Allāh be upon him - said: "Whoever has a kinsman killed may choose the better of two options: either blood-money is paid or retaliation is carried out."

- وَإِنْ أَحَبُّوا أَنْ يَقْتُلُوا قَتَلُوا، وَإِنْ أَحَبُّوا أَنْ يَأْخُذُوا الدِّيَةَ أَخَذُوهَا، وَأَعْطُوا امْرَأَتَهُ مِيرَاثَهَا مِنْ الدِّيَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، قَالَ: يُجْبَرُ الْقَاتِلُ عَلَى إعْطَاءِ الدِّيَةِ، فَإِنْ اتَّفَقُوا عَلَى ثَلَاثِ دِيَاتٍ: فَهُوَ جَائِزٌ، إنَّمَا اشْتَرَوْا بِهِ صَاحِبَهُمْ. وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَمُحَمَّدِ بْنِ سِيرِينَ، وَالْأَوْزَاعِيِّ، وَالشَّافِعِيِّ وَأَبِي ثَوْرٍ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَإِسْحَاقَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ، وَجُمْهُورِ أَصْحَابِ الْحَدِيثِ.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ أَهْلُ هَذَا الْقَوْلِ؟ فَوَجَدْنَا قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالأُنْثَى بِالأُنْثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] .

فَالضَّمِيرُ فِي قَوْله تَعَالَى: {لَهُ} [البقرة: ١٧٨] وَفِي {مِنْ أَخِيهِ} [البقرة: ١٧٨] رَاجِعٌ إلَى الْقَاتِلِ، لَا يَجُوزُ غَيْرُ ذَلِكَ؛ لِأَنَّهُ هُوَ الَّذِي عُفِيَ لَهُ مِنْ ذَنْبِهِ فِي قَتْلِ أَخِيهِ الْمُسْلِمِ.

وَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - أَنَا شَيْبَانُ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ فَذَكَرَ حَدِيثًا وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إمَّا يُودَى وَإِمَّا أَنْ يُقَادَ» .

[10] **Qur'an references (L36577):** Qur'an 2:178 (Al-Baqarah).
[11] **Qur'an references (L36578):** Qur'an 2:178 (Al-Baqarah).

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا مُسَدَّدٌ أَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ أَنَا ابْنُ أَبِي ذِئْبٍ أَنَا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ قَالَ: سَمِعْت أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُولُ فِي خَبَرِ «فَمَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ: بَيْنَ أَنْ يَأْخُذُوا الْعَقْلَ وَبَيْنَ أَنْ يَقْتُلُوا» فَهَذَا نَصٌّ جَلِيٌّ لَا يَحْتَمِلُ تَأْوِيلًا بِأَنَّ الْخِيَارَ فِي الدِّيَةِ أَوْ الْقَوَدِ إلَى وَلِيِّ الْمَقْتُولِ لَا إلَى الْقَاتِلِ، وَقَدْ وَافَقُونَا عَلَى أَنَّهُ إنْ عَفَا وَاحِدٌ مِنْ الْأَوْلِيَاءِ فَأَكْثَرُ: أَنَّ الدِّيَةَ وَاجِبَةٌ لِلْبَاقِينَ - أَحَبَّ الْقَاتِلُ أَمْ كَرِهَ - وَكَذَلِكَ عِنْدَهُمْ: إذَا بَطَلَ الْقَوَدُ بِأَيِّ وَجْهٍ بَطَلَ، كَالْأَبِ قَتَلَ ابْنَهُ، أَوْ نَحْوِ ذَلِكَ، فَأَيُّ فَرْقٍ بَيْنَ امْتِنَاعِ الْقَوَدِ بِهَذَا وَبَيْنَ امْتِنَاعِهِ بِعَفْوِ الْوَلِيِّ.

L36580–36581 From the path of Abū Dāwūd al-Sijistānī: I am Musaddad, I am Yaḥyā ibn Saʿīd al-Qaṭṭān, I am Ibn Abī Dhiʾb, I am Saʿīd ibn Abī Saʿīd al-Maqburī, who said: I heard Abū Shurayḥ al-Kaʿbī say regarding the report: "Whoever is killed after this statement of mine, his family has two good choices: to accept the *diya* or to seek retribution." This is an explicit text that admits no interpretation, as the choice between *diya* or *qiṣāṣ* lies with the heir of the slain, not the killer. They have concurred with us that if one or more of the guardians pardon, the *diya* remains obligatory for the remaining heirs—whether the killer desires it or not. Similarly, according to them: if *qiṣāṣ* is nullified for any reason—such as a father killing his son or similar cases—it becomes void. What distinction then exists between *qiṣāṣ* being prevented by such circumstances and its prevention by the heir's pardon?

قَالُوا: وَلَا يَصِحُّ خِلَافُ ابْنِ عَبَّاسٍ فِي ذَلِكَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L36582 They said: No valid disagreement of Ibn Abbas regarding that matter is established through any report from the Companions, may Allah be pleased with them.

ثُمَّ نَظَرْنَا فِيمَا يَشْغَبُ بِهِ أَهْلُ الْقَوْلِ الَّذِي ذَكَرْنَا أَوَّلًا، فَوَجَدْنَاهُمْ يَحْتَجُّونَ -: بِمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي هِلَالُ بْنُ الْعَلَاءِ أَنَا سَعِيدُ بْنُ سُلَيْمَانَ أَنَا سُلَيْمَانُ بْنُ كَثِيرٍ أَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ فِي رِمِّيَّا أَوْ عِمِّيَّا يَكُونُ بَيْنَهُمْ بِحَجَرٍ أَوْ بِسَوْطٍ أَوْ عَصًا فَعَقْلُهُ عَقْلُ خَطَأٍ وَمَنْ قَتَلَ عَمْدًا فَقَوَدُ يَدَيْهِ، فَمَنْ حَالَ بَيْنَهُ وَبَيْنَهُ فَعَلَيْهِ لَعْنَةُ اللَّهِ» ، وَذَكَرَ الْحَدِيثَ.

L36583 Then we examined the arguments put forth by the proponents of the aforementioned doctrine, and found them invoking as proof the narration transmitted to us through the chain of Aḥmad ibn Shuʿayb: Hilāl ibn al-ʿAlāʾ informed me, from Saʿīd ibn Sulaymān, from Sulaymān ibn Kathīr, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ibn ʿAbbās, who said: The Messenger of Allah—peace and blessings be upon him—said: "Whoever is killed in accidental projectile throwing or blind striking—occurring among people through a stone, whip, or stick—his blood money (diya) is that of unintentional killing. Whoever kills intentionally shall face retaliation in kind (qisas). Whoever intervenes between him [the killer] and it [retaliation] shall incur Allah's curse." He then related the ḥadīth in full.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ أَخْبَرَنِي سُفْيَانُ الثَّوْرِيُّ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ اغْتَبَطَ مُؤْمِنًا قَتْلًا فَهُوَ مُودِيهِ إلَّا أَنْ يَرْضَى وَلِيُّ الْمَقْتُولِ وَذَكَرَ الْحَدِيثَ -

L36584–36586 From the transmission of Ibn Wahb: Sufyan al-Thawri informed me through Muhammad ibn Abd al-Rahman ibn Abi Layla, from al-Hakam ibn Utaybah, from Abd al-Rahman ibn Abi Layla, that the Messenger of Allah (peace and blessings be upon him) said: "Whoever kills a believer out of envy must surrender him, unless the guardian of the slain is satisfied." He mentioned

the hadith—concluding with: {Whatever you differ about regarding anything, its judgment belongs to Allah} [42:10]—and to the Messenger.

As conveyed by Ahmad ibn Qasim: From my father Qasim ibn Muhammad ibn Qasim, from my grandfather Qasim ibn Asbagh, from Ahmad ibn Zuhayr, from al-Hakam ibn Musa, from Yahya ibn Hamzah, from Sulayman ibn Dawud al-Jazari. From al-Zuhri, from Abu Bakr ibn Muhammad ibn Amr ibn Hazm, from his father, from his grandfather: "That the Messenger of Allah—peace and blessings of Allah be upon him—wrote in his letter to the people of Yemen sent with Amr ibn Hazm: Whoever kills a believer through an act of killing established by clear evidence, retaliation is required unless the legal guardians of the slain consent."[12]

L36587 And according to what was narrated to us through the chain of Abu Dawud: We were narrated by Ubaydullah ibn Umar ibn Maysarah, from Yahya ibn Sa'id—al-Qattan—from Awf al-A'rabi, from Hamzah Abu Umar al-'Aydhi al-Dabbi, who said: Alqamah ibn Wa'il narrated to me, who said: Wa'il ibn al-Awza'i narrated to me, saying: "I was with the Messenger of Allah (peace be upon him) when a killer was brought with a palm-fiber rope around his neck. The Prophet (peace be upon him) said to the guardian of the slain: 'Will you pardon?' He said: 'No.' He said: 'Will you take the blood money?' He said: 'No.' He said: 'Will you kill?' He said: 'Yes.' At the end of the hadith: The Prophet (peace be upon him) said to him: 'If you pardon him, he will bear the burden of your sin and the sin of your companion.' So he pardoned him."

And through another chain of Abu Dawud: We were narrated by Muhammad ibn Awf al-Ta'i, from Abdul-Quddus ibn al-Hajjaj, from Yazid ibn Ata al-Wasiti, from Simak ibn Harb, from Alqamah ibn Wa'il ibn Hujr, from his father: "A killer was brought to the Messenger of Allah (peace be upon him), and he said to him: 'Do you have wealth to pay his blood money?' He said: 'No.' He said: 'What if I send you to ask the people to gather his blood money?' He said: 'No.' He said: 'Will your kinsmen give you [the means] to pay his blood money?' He said: 'No.' The Prophet (peace be upon him) then

[12] **Qur'an references (L36584):** Qur'an 42:10 (Ash-Shuraa).

وَفِي آخِرِهِ: {وَمَا اخْتَلَفْتُمْ فِيهِ مِنْ شَيْءٍ فَحُكْمُهُ إِلَى اللَّهِ} [الشورى: ١٠] وَالرَّسُولِ.»

وَبِمَا نَاهُ أَحْمَدُ بْنُ قَاسِمٍ حَدَّثَنِي أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَنَا جَدِّي قَاسِمُ بْنُ أَصْبَغَ أَنَا أَحْمَدُ بْنُ زُهَيْرٍ أَنَا الْحَكَمُ بْنُ مُوسَى أَنَا يَحْيَى بْنُ حَمْزَةَ عَنْ سُلَيْمَانَ بْنِ دَاوُد الْجَزَرِيِّ عَنْ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ فِي كِتَابِهِ إِلَى أَهْلِ الْيَمَنِ مَعَ عَمْرِو بْنِ حَزْمٍ فَمَنْ اعْتَبَطَ مُؤْمِنًا قَتْلًا عَنْ بَيِّنَةٍ فَإِنَّهُ قَوَدٌ إِلَّا أَنْ يَرْضَى أَوْلِيَاءُ الْمَقْتُولِ» .

وَبِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا عُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ أَنَا يَحْيَى بْنُ سَعِيدٍ - هُوَ الْقَطَّانُ - عَنْ عَوْفٍ الْأَعْرَابِيِّ عَنْ حَمْزَةَ أَبِي عُمَرَ الْعَايِذِيِّ الضَّبِّيِّ حَدَّثَنِي عَلْقَمَةُ بْنُ وَائِلٍ حَدَّثَنِي وَائِلُ بْنُ الْأَوْزَاعِيِّ، قَالَ: «كُنْتُ عِنْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذْ جِيءَ بِقَاتِلٍ فِي عُنُقِهِ النِّسْعَةُ فَقَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِمَوْلَى الْمَقْتُولِ: أَتَعْفُو؟ قَالَ: لَا، قَالَ: أَتَأْخُذُ الدِّيَةَ؟ قَالَ: لَا، قَالَ: أَفَتَقْتُلُ؟ قَالَ: نَعَمْ، وَفِي آخِرِ الْحَدِيثِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لَهُ أَمَا إِنَّكَ إِنْ عَفَوْتَ عَنْهُ فَإِنَّهُ يَبُوءُ بِإِثْمِكَ وَإِثْمِ صَاحِبِكَ فَعَفَا عَنْهُ.» وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ عَوْفٍ الطَّائِيُّ أَنَا عَبْدُ الْقُدُّوسِ بْنُ الْحَجَّاجِ ثنا يَزِيدُ بْنُ عَطَاءٍ الْوَاسِطِيُّ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ عَلْقَمَةَ بْنِ وَائِلِ بْنِ حُجْرٍ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِقَاتِلٍ فَقَالَ لَهُ: هَلْ لَكَ مِنْ مَالٍ تُؤَدِّي دِيَتَهُ؟ قَالَ: لَا، قَالَ: أَفَرَأَيْتَ إِنْ أَرْسَلْتُكَ تَسْأَلُ النَّاسَ تَجْمَعُ دِيَتَهُ؟ قَالَ: لَا، قَالَ: فَمَوَالِيكَ يُعْطُونَكَ دِيَتَهُ؟ قَالَ: لَا، قَالَ لِوَلِيِّ الْمَقْتُولِ: خُذْهُ - ثُمَّ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَمَا إِنَّهُ إِنْ قَتَلَهُ كَانَ مِثْلَهُ، وَذَكَرَ بَاقِيَ الْحَدِيثِ - وَفِيهِ: أَنَّهُ - عَلَيْهِ

said to the guardian of the slain: ‘Take him.’ Then he (peace be upon him) added: ‘If you kill him, you will be like him.’ The remainder of the hadith states that the Prophet (peace be upon him) said: ‘Release him, and he will bear the burden of his sin and the sin of your companion, becoming among the dwellers of the Fire.’ So he released him.”

الصَّلَاةُ وَالسَّلَامُ - قَالَ لَهُ أَرْسِلْهُ يَبُوءُ بِإِثْمِ صَاحِبِك وَإِثْمِهِ، فَيَكُونُ مِنْ أَصْحَابِ النَّارِ؟ فَأَرْسَلَهُ» .

L36588 From the chain of Ahmad ibn Shu’ayb: From Isa ibn Yunus al-Fakhuri, from Damrah, from Abdullah ibn Shawdhab, from Thabit al-Bunani, from Anas ibn Malik: A man came to the Messenger of Allah (peace and blessings be upon him) with the killer of his heir. The Prophet (peace and blessings be upon him) said to him: “Grant him pardon?” But he refused. He said: “Accept the blood money?” But he refused. He said: “Go kill him, for you are like him.” He then mentioned the rest of the hadith, which states that the Prophet (peace and blessings be upon him) sent him away.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا عِيسَى بْنُ يُونُسَ الْفَاخُورِيُّ أَنَا ضَمْرَةُ عَنْ عَبْدِ اللَّهِ بْنِ شَوْذَبَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ، «أَنَّ رَجُلًا أَتَى بِقَاتِلِ وَلِيِّهِ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَعْفُ عَنْهُ؟ فَأَبَى، فَقَالَ: خُذْ الدِّيَةَ؟ فَأَبَى، قَالَ: اذْهَبْ فَاقْتُلْهُ، فَإِنَّك مِثْلُهُ فَذَكَرَ الْحَدِيثَ - وَفِيهِ أَنَّهُ أَرْسَلَهُ» .

L36589–36590 They said: In the hadith narrated by Ibn Abbas, Abd al-Rahman ibn Abi Layla, and Amr ibn Hazm: Retaliation is required unless the legal guardians of the slain consent to forgo it.

قَالُوا: فَفِي حَدِيثِ ابْنِ عَبَّاسٍ، وَعَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، وَعَمْرِو بْنِ حَزْمٍ: الْقَوَدُ إلَّا أَنْ يَرْضَى أَوْلِيَاءُ الْمَقْتُولِ.

L36591 And in the ḥadīth of Wā’il ibn Ḥujr and Anas: the distinction between pardon and between taking the blood money.

وَفِي حَدِيثِ وَائِلِ بْنِ حُجْرٍ، وَأَنَسٍ: الْفَرْقُ بَيْنَ الْعَفْوِ، وَبَيْنَ أَخْذِ الدِّيَةِ.

L36592 If the diyah were obligatory despite pardon, even when the lay guardian does not mention it, he (PBUH) would have dispensed with reiterating it.

قَالُوا: فَلَوْ كَانَتْ الدِّيَةُ وَاجِبَةً بِالْعَفْوِ وَإِنْ لَمْ يَذْكُرْهَا الْوَلِيُّ الْعَامِّيُّ لَاسْتَغْنَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَنْ إعَادَةِ ذِكْرِهَا.

L36593 They said: In one of the two hadiths of Wa’il, that he consulted with the killer concerning the payment of the *diyah*. Had it been obligatory upon him, he would not have consulted him concerning that.

قَالُوا: وَفِي أَحَدِ حَدِيثَيْ وَائِلٍ أَنَّهُ اسْتَشَارَ الْقَاتِلَ فِي إعْطَاءِ الدِّيَةِ، فَلَوْ كَانَتْ وَاجِبَةً عَلَيْهِ مَا اسْتَشَارَهُ فِي ذَلِكَ.

L36594 They said: And you have narrated through the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from Ibn Ṭāwūs, who said: In the book that is with my father, which is from the Messenger of Allah—peace be upon him—like what is in the ḥadīth of Maʿmar, and it concerns quasi-intentional killing: thirty she-camels in their fifth year, thirty she-camels in their fourth year, and forty pregnant she-camels, young and well-fattened. If they mutually agree

قَالُوا: وَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ طَاوُسٍ قَالَ: فِي الْكِتَابِ الَّذِي هُوَ عِنْدَ أَبِي، وَهُوَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَالَّذِي فِي حَدِيثِ مَعْمَرٍ، وَهِيَ فِي شِبْهِ الْعَمْدِ: ثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ بِنْتَ لَبُونٍ، وَأَرْبَعُونَ خَلِفَةً فَتِيَّةً

regarding intentional killing, it is according to what they have settled upon. They said: But no blood-money is mentioned for intentional killing.

سَمِينَةً - إِذَا اصْطَلَحُوا فِي الْعَمْدِ، فَهُوَ عَلَى مَا اصْطَلَحُوا عَلَيْهِ - قَالُوا - فَلَمْ يُذْكَرْ فِي الْعَمْدِ دِيَةٌ.

L36595 They said, "Allah, the Almighty, the Majestic, said: 'Do not devour one another's wealth wrongfully' [Al-Baqarah: 188]."[13]

وَقَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

L36596 The Messenger of Allah—may Allah bless him and grant him peace—said, "It is not lawful to appropriate the property of a Muslim man without his willing consent."

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ بِغَيْرِ طِيبِ نَفْسٍ مِنْهُ» .

L36597 They said: These two texts indicate that it is impermissible to take anything from the killer's property except with his voluntary consent.

قَالُوا: فَدَلَّ هَذَانِ النَّصَّانِ عَلَى أَنَّ مَالَ الْقَاتِلِ لَا يَجُوزُ أَخْذُ شَيْءٍ مِنْهُ إِلَّا بِطِيبِ نَفْسٍ مِنْهُ.

L36598 And they said: Allah, the Almighty and Majestic, stated: "So whoever aggresses against you, repel them in like manner to their aggression against you" [Al-Baqarah: 194], and He, the Exalted, said: "If you punish [in response], then punish with the equivalent of what you were punished with" [An-Nahl: 126].[14]

وَقَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] ، وَقَالَ تَعَالَى: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] .

L36599 They said: The equivalent of killing is only killing itself; thus, blood money is inadmissible here unless both parties mutually consent.

وَقَالُوا: وَلَيْسَ مِثْلُ الْقَتْلِ إِلَّا الْقَتْلَ، فَلَا مَدْخَلَ لِلدِّيَةِ هَاهُنَا إِلَّا بِرِضَاهُمَا مَعًا.

L36600 They said: Allah, the Exalted and Glorified, said: "And whoever is slain unjustly, We have certainly granted his guardian authority. So let him not transgress in killing." [Al-Isra: 33][15]

وَقَالُوا: قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا فَلا يُسْرِفْ فِي الْقَتْلِ} [الإسراء: ٣٣] .

L36601–36602 They said: The Exalted and Glorified One mentioned nothing but killing alone.

قَالُوا: فَلَمْ يَذْكُرْ عَزَّ وَجَلَّ إِلَّا الْقَتْلَ فَقَطْ.

L36603 They said, "The guardian of the deceased must have either the right to retaliation (qiṣāṣ) or also the right to take diyah (blood money) instead. So if you say this?"

وَقَالُوا " لَا يَخْلُو وَلِيُّ الْمَقْتُولِ مِنْ أَنْ يَكُونَ لَهُ الْقِصَاصُ أَوْ يَكُونَ لَهُ أَيْضًا أَخْذُ الدِّيَةِ بَدَلًا مِنْ الْقِصَاصِ، فَإِنْ قُلْتُمْ هَذَا؟

L36604 We said: We have never found any right for a person to take compensation

قُلْنَا: لَمْ نَجِدْ قَطُّ حَقًّا لِإِنْسَانٍ أَنْ يَكُونَ لَهُ أَخْذُ بَدَلٍ مِنْهُ إِلَّا بِرِضَا الَّذِي عَلَيْهِ الْحَقُّ، فَإِنْ قُلْتُمْ: لَهُ إِمَّا الْقِصَاصُ وَإِمَّا الدِّيَةُ؟ .

[13] **Qur'an references (L36595):** Qur'an 2:188 (Al-Baqarah).
[14] **Qur'an references (L36598):** Qur'an 2:194 (Al-Baqarah); Qur'an 16:126 (An-Nahl).

from another except with the consent of the obligated party. If you argue, "He has either retaliation (qisas) or blood money (diyah),"

L36605 We said: Were that the case, then if he were to forgive either of them, his forgiveness would not be valid, for it had not yet become specifically incumbent for him. Rather, his forgiveness of him is only valid when he chooses him, then forgives him after it becomes specifically incumbent for him.

L36606 They said: It has been narrated from Umar ibn al-Khattab—as narrated through the chain of Abd al-Razzaq from Ibn Jurayj from Abd al-Aziz ibn Umar ibn Abd al-Aziz from his father from Umar ibn al-Khattab—who said: The ruler must neither prevent the victim's heir from pardoning if he wishes, nor from taking diya if they reconcile upon it, nor prevent him from killing if he refuses except killing after the right to kill in intentional homicide has been established for him. They raised objections based on the words of Allah Almighty: "But whoever is pardoned by his brother for something, then following it with fairness..." [Al-Baqarah 2:178].[16]

L36607 They said: The pronoun in {lahu} [Al-Baqarah 2:178] and in {min akhīhi} [Al-Baqarah 2:178] refers back to the guardian of the slain person, not to the killer, meaning: so whoever is granted the diyah (blood money) by the killer.[17]

L36608 They objected to the narration of Abū Hurayrah by saying: "You have transmitted this very narration with wording contrary to its own. However, as you transmitted through the chain of Aḥmad ibn Shuʿayb: I am al-ʿAbbās ibn al-Walīd ibn Mazyad - my father narrated to me: al-Awzāʿī narrated to me: I am Yaḥyā ibn Abī Kathīr - Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf narrated to me that Abū Hurayrah informed him: The Messenger of Allah—peace and blessings be upon him—said: 'Whoever has a slain person [entitling them to justice], they may choose the better of two options: either retaliatory execution is carried out, or diya (blood money) is paid.'"

قُلْنَا: لَوْ كَانَ ذَلِكَ لَكَانَ إِنْ عَفَا عَنْ أَحَدِهِمَا لَمْ يَجُزْ عَفْوُهُ، لِأَنَّهُ لَمْ يَجِبْ لَهُ بَعْدُ بِعَيْنِهِ - وَإِنَّمَا يَجُوزُ عَفْوُهُ عَنْهُ إِذَا اخْتَارَهُ ثُمَّ عَفَا عَنْهُ بَعْدَ وُجُوبِهِ لَهُ بِعَيْنِهِ.

وَقَالُوا: قَدْ رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ كَمَا رَوَيْتُمْ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: لَا يَمْنَعُ السُّلْطَانُ وَلِيَّ الدَّمِ أَنْ يَعْفُوَ - إِنْ شَاءَ - أَوْ يَأْخُذَ الْعَقْلَ - إِنْ اصْطَلَحُوا عَلَيْهِ - وَلَا يَمْنَعُهُ أَنْ يَقْتُلَ إِنْ أَبَى إِلَّا الْقَتْلَ بَعْدَ أَنْ يَحِقَّ لَهُ الْقَتْلُ فِي الْعَمْدِ. وَاعْتَرَضُوا فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ} [البقرة: ١٧٨] .

وَقَالُوا: إِنَّ الضَّمِيرَ الَّذِي فِي {لَهُ} [البقرة: ١٧٨] وَفِي {مِنْ أَخِيهِ} [البقرة: ١٧٨] رَاجِعٌ إِلَى وَلِيِّ الْمَقْتُولِ، لَا إِلَى الْقَاتِلِ، بِمَعْنَى: فَمَنْ سَمَحَ لَهُ الْقَاتِلُ بِالدِّيَةِ.

وَاعْتَرَضُوا فِي خَبَرِ أَبِي هُرَيْرَةَ بِأَنْ قَالُوا: قَدْ رَوَيْتُمْ هَذَا الْخَبَرَ بِعَيْنِهِ بِخِلَافِ ذَلِكَ اللَّفْظِ، لَكِنْ كَمَا رَوَيْتُمْ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ بْنِ مَزْيَدٍ أَنَا أَبِي حَدَّثَنِي الْأَوْزَاعِيُّ أَنَا يَحْيَى بْنُ أَبِي كَثِيرٍ حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنُ عَوْفٍ أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إِمَّا يُقَادُ، وَإِمَّا يُفَادَى» .

[15] **Qur'an references (L36600):** Qur'an 17:33 (Al-Isra).
[16] **Qur'an references (L36606):** Qur'an 2:178 (Al-Baqarah).
[17] **Qur'an references (L36607):** Qur'an 2:178 (Al-Baqarah).

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا الْحَسَنُ بْنُ مُوسَى عَنْ شَيْبَانَ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ أَخْبَرَنِي أَبُو سَلَمَةَ بْنُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُ فِي حَدِيثٍ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يَقْتُلَ، وَإِمَّا أَنْ يُفَادِيَ أَهْلَ الْقَتِيلِ» قَالُوا: فَلَمْ يَذْكُرْ دِيَةً - وَهَذَا قَوْلُنَا.

L36609–36611 And through the chain of Abu Bakr ibn Abi Shaybah: I, Al-Hasan ibn Musa, narrate from Shayban, from Yahya ibn Abi Kathir, from Abu Salamah ibn Abd al-Rahman ibn Awf, that Abu Hurairah informed him in a hadith that... The Messenger of Allah - peace and blessings be upon him - said: “For whoever has a slain relative, he may choose the better of two options: either to seek retribution or to accept blood money paid to the slain person’s family.” They said: “But he did not mention blood money?” And this is our doctrine.

وَاعْتَرَضُوا فِي خَبَرِ أَبِي شُرَيْحٍ الْكَعْبِيِّ بِأَنْ قَالُوا: قَدْ رَوَيْتُمُوهُ كَمَا حَدَّثَكُمْ أَحْمَدُ بْنُ قَاسِمٍ أَنَا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ قَالَ حَدَّثَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ قَالَ: أَنَا عَبْدُ اللَّهِ بْنُ رَوْحٍ أَنَا يَزِيدُ بْنُ هَارُونَ أَنَا ابْنُ إِسْحَاقَ عَنْ الْحَارِثِ بْنِ فُضَيْلٍ عَنْ سُفْيَانَ بْنِ أَبِي الْعَوْجَاءِ السُّلَمِيِّ عَنْ أَبِي شُرَيْحٍ الْخُزَاعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أُصِيبَ بِدَمٍ أَوْ خَبْلٍ - وَالْخَبْلُ الْجِرَاحُ - فَهُوَ بِالْخِيَارِ فِي إِحْدَى ثَلَاثِ أَشْيَاءَ: إِمَّا أَنْ يَعْفُوَ، وَإِمَّا أَنْ يَقْتَصَّ، وَإِمَّا أَنْ يَأْخُذَ الْعَقْلَ» .

L36612 They objected regarding the narration of Abū Shurayh al-Kaʿbī by saying: “You have transmitted it as Aḥmad ibn Qāsim related to you: I am, my father Qāsim ibn Muḥammad ibn Qāsim, who said: My grandfather Qāsim ibn Aṣbagh narrated to me: ʿAbdullāh ibn Rawḥ related to us: from Yazīd ibn Hārūn: from Ibn Isḥāq: from al-Ḥārith ibn Fuḍayl: from Sufyān ibn Abī al-ʿAwjāʾ al-Sulamī: from Abū Shurayh al-Khuzāʿī, who said: The Messenger of Allah—peace and blessings be upon him—said: ‘Whoever suffers a killing or wounding (al-khabl meaning wounds) may choose one of three things: either to pardon, to seek retaliation, or to accept blood money.’”

قَالُوا: فَلَوْ وَجَبَتْ الدِّيَةُ بِالْعَفْوِ - وَإِنْ لَمْ تُذْكَرْ - لَمَا كَانَ لِذِكْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِلدِّيَةِ مَعَ ذِكْرِهِ لِلْعَفْوِ مُخَيِّرًا بَيْنَهُمَا مَعْنًى.

L36613 They said: If blood money were obligatory due to forgiveness—even if not explicitly mentioned—there would have been no significance in the Prophet’s mention (peace and blessings be upon him) of blood money alongside his mention of forgiveness while offering a choice between the two.

قَالُوا: وَمَعْنَى قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - " إِمَّا أَنْ يُقَادَ وَإِمَّا أَنْ يَعْقِلَ " أَنْ يَرْضَى الْقَاتِلُ كَمَا تَقُولُ: خُذْ بِسِلْعَتِك كَذَا وَكَذَا، أَيْ يَرْضَى الْبَائِعُ.

L36614 They said: The meaning of the Prophet’s statement—peace and blessings be upon him—“Either retaliation (qisas) is enacted or he pays blood money (diya)” is that it requires the killer’s consent, just as one might say, “Accept such-and-such for your item,” meaning the seller’s agreement is required.

هَذَا كُلُّ مَا مَوَّهُوا بِهِ قَدْ تَقَصَّيْنَاهُ لَهُمْ، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ عَلَى مَا نَذْكُرُ إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاَللَّهِ الْعَلِيِّ الْعَظِيمِ.

L36615 This is all they have disguised; We have thoroughly examined it for them, and they have no argument against what We will mention, if Allah, the Exalted and Majestic, wills. And there is no might nor power except with Allah, the Most High, the Most Great.

L36616 As for the ḥadīth of Saʿīd ibn Sulaymān from Saʿīd ibn Kathīr from ʿAmr ibn Dīnār from Ṭāwūs from Ibn ʿAbbās: There is no valid argument for them in

it, for by consensus from us and them, it did not mention any pardon within it, but rather mentioned only legal retribution.

أَمَّا حَدِيثُ سَعِيدِ بْنِ سُلَيْمَانَ عَنْ سَعِيدِ بْنِ كَثِيرٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ: فَلَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ لَمْ يَذْكُرْ فِيهِ عَفْوًا، وَإِنَّمَا ذَكَرَ فِيهِ الْقَوَدَ فَقَطْ.

L36617 If they say, “Has he mentioned forgiveness elsewhere?”

فَإِنْ قَالُوا: قَدْ ذَكَرَ الْعَفْوَ فِي غَيْرِ هَذَا الْمَكَانِ؟

L36618 We said: Blood money has been mentioned in contexts other than this one, and there is no distinction—for the increase in justice must not be abandoned. The Ḥanafīs oppose this report, as they do not recognize retribution for a child [seeking justice] from a parent, thereby restricting it without proof. Similarly, the Mālikīs oppose it, as they do not recognize retribution for a slave [seeking justice] from a free person, thus also restricting it without proof.

قُلْنَا: وَقَدْ ذُكِرَتْ الدِّيَةُ فِي غَيْرِ هَذَا الْمَكَانِ، وَلَا فَرْقَ - وَزِيَادَةُ الْعَدْلِ لَا يَجُوزُ تَرْكُهَا - وَالْحَنَفِيُّونَ يُخَالِفُونَ هَذَا الْخَبَرَ، لِأَنَّهُمْ لَا يَرَوْنَ الْقَوَدَ لِلْوَلَدِ مِنْ الْوَالِدِ، فَخَصَّهُ بِلَا بُرْهَانٍ - وَكَذَلِكَ الْمَالِكِيُّونَ، لِأَنَّهُمْ لَا يَرَوْنَ الْقَوَدَ لِلْعَبْدِ مِنْ الْحُرِّ فَخَصُّوهُ أَيْضًا بِلَا بُرْهَانٍ.

L36619 As for the hadith of Ibn Abi Layla, it is mursal, and no conclusive proof exists in a mursal [hadith]. Then, it is narrated from Muhammad ibn Abd al-Rahman, who is deficient in hadith retention.

وَأَمَّا حَدِيثُ ابْنِ أَبِي لَيْلَى فَمُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ - ثُمَّ هُوَ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ، وَهُوَ سَيِّئُ الْحِفْظِ.

L36620–36621 As for the ḥadīth of ʿAmr ibn Ḥazm, it is invalid because Sulaymān ibn Dāwūd—who narrated it from al-Zuhrī—is weak in ḥadīth transmission and obscure in status, as stated by Ibn Maʿīn and others. Furthermore, even if this narration and the ḥadīth of Ibn Abī Laylā were authentic, they would serve as evidence for our position, not theirs, since the text specifies: “unless the heirs of the slain consent”—and we do not reject this. Rather, we assert: If they consent to diyah or to more than diyah, they are entitled to their consent.

وَأَمَّا حَدِيثُ عَمْرِو بْنِ حَزْمٍ فَسَاقِطٌ، لِأَنَّ سُلَيْمَانَ بْنَ دَاوُد الَّذِي رَوَاهُ عَنْ الزُّهْرِيِّ - ضَعِيفُ الْحَدِيثِ مَجْهُولُ الْحَالِ - قَالَ ابْنُ مَعِينٍ وَغَيْرُهُ: ثُمَّ لَوْ صَحَّ هُوَ وَحَدِيثُ ابْنِ أَبِي لَيْلَى لَكَانَا حُجَّةً لَنَا لَا لَهُمْ، لِأَنَّ فِيهِ: إلَّا أَنْ يَرْضَى أَوْلِيَاءُ الْمَقْتُولِ - وَنَحْنُ لَا نُنْكِرُ هَذَا، بَلْ نَقُولُ: إنَّهُمْ إنْ رَضُوا بِالدِّيَةِ أَوْ بِأَكْثَرَ مِنْ الدِّيَةِ، فَلَهُمْ رِضَاهُمْ.

L36622 The narrations of Abu Shuraih and Abu Hurairah contain an additional reliable narrator compared to these two reports, along with two additional reliable narrators that must not be omitted. Numerous legal rulings are established in the aforementioned narration of ʿAmr ibn Ḥazm—yet scholars opposed them on the basis of their personal reasoning, as we mentioned in *the Book of Zakat*. And with Allah, the Exalted, lies all success.

وَخَبَرُ أَبِي شُرَيْحٍ، وَأَبِي هُرَيْرَةَ: فِيهِمَا زِيَادَةُ عَدْلٍ عَلَى هَذَيْنِ الْخَبَرَيْنِ، وَزِيَادَةُ عَدْلَيْنِ لَا يَجُوزُ تَرْكُهَا - وَكَمْ قَضِيَّةً فِي خَبَرِ عَمْرِو بْنِ حَزْمٍ الْمَذْكُورِ، وَقَدْ خَالَفُوهَا بِآرَائِهِمْ كَمَا ذَكَرْنَا فِي " كِتَابِ الزَّكَاةِ " - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36623 As for the two hadiths of Wā’il ibn Ḥujr, they are rejected. One of them is

from the narration of Abū ʻAmr al-ʻĀyidhī—who is unknown—and it has also been narrated from ʻAwf, from Abū ʻAmr al-Ḍabbī. If that is not the case, then it is weak. This report has been narrated with concealment (tadlis), and we will clarify it—if Allah Almighty wills, upon Him—so that it may not be exploited to deceive those ignorant of the sciences of Hadith. This is as we have been narrated through the chain of Aḥmad ibn Shuʻayb: from Muḥammad ibn Ismāʻīl ibn Ibrāhīm, from Isḥāq ibn Yūsuf al-Azraq, from ʻAwf al-Aʻrābī, from ʻAlqamah ibn Wā'il, from his father, who said: "The killer was brought"—and he mentioned the same hadith—but omitted the aforementioned Abū ʻAmr between ʻAwf and ʻAlqamah.

وَأَمَّا حَدِيثَا وَائِلِ بْنِ حُجْرٍ فَسَاقِطَانِ -: أَحَدُهُمَا - مِنْ رِوَايَةِ أَبِي عَمْرٍو الْعَايِذِيِّ - وَهُوَ مَجْهُولٌ - وَقَدْ رُوِيَ عَنْ عَوْفٍ أَيْضًا عَنْ أَبِي عَمْرٍو الضَّبِّيِّ، فَإِنْ لَمْ يَكُنْ ذَلِكَ فَهُوَ ضَعِيفٌ - وَقَدْ رُوِيَ هَذَا الْخَبَرُ مُدَلَّسًا، وَنَحْنُ نُبَيِّنُهُ - إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ عَلَيْهِ لِئَلَّا يُمَوَّهَ بِهِ عَلَى جَاهِلٍ بِعُلُومِ الْحَدِيثِ، وَهُوَ كَمَا رُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ أَنَا إِسْحَاقُ بْنُ يُوسُفَ الْأَزْرَقُ عَنْ عَوْفٍ الْأَعْرَابِيِّ عَنْ عَلْقَمَةَ بْنِ وَائِلٍ عَنْ أَبِيهِ، قَالَ: جِيءَ بِالْقَاتِلِ - وَذَكَرَ الْحَدِيثَ نَفْسَهُ - فَأَسْقَطَ بَيْنَ عَوْفٍ، وَعَلْقَمَةَ: أَبَا عَمْرٍو الْمَذْكُورَ.

L36624 And the second [opinion]—from the narration of Simak ibn Harb—admits talqīn (prompting to affirm the declaration of faith).

وَالثَّانِي - مِنْ رِوَايَةِ سِمَاكِ بْنِ حَرْبٍ - وَهُوَ يَقْبَلُ التَّلْقِينَ.

L36625 Then, if they were authentic, they would both serve as an argument for us against them, because in one of them, he - peace be upon him - said to the killer's guardian: "Do you forgive?" The guardian replied: "No." He asked: "Will you accept the blood money?" The guardian said: "No." He inquired: "Will you demand retribution?" The guardian answered: "Yes."

ثُمَّ لَوْ صَحَّا لَكَانَا حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ فِي أَحَدِهِمَا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لِوَلِيِّ الْقَاتِلِ: أَتَعْفُو؟ قَالَ: لَا، قَالَ: أَفَتَأْخُذُ الدِّيَةَ؟ قَالَ: لَا، قَالَ: أَفَتَقْتُلُ؟ قَالَ: نَعَمْ.

L36626 The Messenger of Allah—peace and blessings be upon him—granted the guardian of the murdered person the choice of forgiveness, qisas (retaliation), or diyah (blood money), without consulting the killer or requiring his consent. This is our opinion, not theirs.

فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْخِيَارَ فِي الْعَفْوِ أَوْ الْقَوَدِ أَوْ أَخْذِ الدِّيَةِ لِوَلِيِّ الْمَقْتُولِ دُونَ أَنْ يَسْتَشِيرَ الْقَاتِلَ، أَوْ يَلْتَفِتَ إلَى رِضَاهُ - وَهَذَا قَوْلُنَا لَا قَوْلُهُمْ.

L36627 The other scenario is one in which the Prophet (peace be upon him) said to the killer: "Do you possess wealth to pay the diyah?" He replied: "No." He said: "What do you think if I send you to ask people to collect the diyah?" He replied: "No." He said: "Will your kinsmen give you the diyah?" He replied: "No." Abu Muhammad (may Allah be pleased with him) said: "For someone who has no wealth and no means to collect the diyah - neither through people nor through his kinsmen who bear absolutely no responsibility for his crime - it is impermissible to obligate him to do what he cannot bear."

وَالْآخَرُ - أَنَّ فِيهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ لِلْقَاتِلِ: «أَلَكَ مَالٌ تُؤَدِّي دِيَتَهُ؟ قَالَ: لَا: قَالَ: أَفَرَأَيْتَ إنْ أَرْسَلْتُكَ تَسْأَلُ النَّاسَ تَجْمَعُ دِيَتَهُ؟ قَالَ: لَا، قَالَ: فَمَوَالِيكَ يُعْطُونَكَ دِيَتَهُ؟ قَالَ: لَا.» قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَمَنْ لَا مَالَ لَهُ وَلَا يَطْمَعُ فِي أَنْ يَجْمَعَ لَهُ الدِّيَةَ، لَا النَّاسُ وَلَا مَوَالِيهِ الَّذِينَ لَا شَيْءَ عَلَيْهِمْ مِنْ جِنَايَتِهِ فَلَا يَجُوزُ تَكْلِيفُهُ مَا لَا يُطِيقُ.

وَأَمَّا خَبَرُ أَنَسٍ فَسَاقِطٌ، لِأَنَّهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ شَوْذَبَ - وَهُوَ مَجْهُولٌ - ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا كَمَا قُلْنَا فِي خَبَرِ وَائِلٍ؛ لِأَنَّ فِيهِ تَخْيِيرَ الْوَلِيِّ بَيْنَ أَخْذِ الدِّيَةِ أَوْ الْقَوَدِ أَوْ الْعَفْوِ، فَكَيْفَ وَهُمَا خَبَرَانِ مَوْضُوعَانِ بِلَا شَكٍّ؛ لِأَنَّ فِيهِمَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَا يُمْكِنُ أَنْ يَقُولُوهُ مِنْ إيجَابِ النَّارِ عَلَى مَنْ أَخَذَ حَقَّهُ الَّذِي أَعْطَاهُ إيَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمِنْ أَمْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إيَّاهُ فَقَتَلَ مَنْ نَهَاهُ عَنْ قَتْلِهِ - فَهَذَا تَنَاقُضٌ قَدْ نَزَّهَ اللَّهُ عَزَّ وَجَلَّ نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْهُ.

L36628–36629 As for the report of Anas, it is invalid because it is transmitted through Abdullah ibn Shawdhab—who is unknown. Even if it were authentic, it would serve as evidence for our position, as we stated regarding the report of Wa'il, since it grants the guardian the choice between taking diyah, retribution (qawad), or pardon. How could this be, when both reports are undoubtedly fabricated? For they contain statements attributed to the Messenger of Allah—peace be upon him—that he could not possibly have uttered: decreeing Hellfire upon one who took his right which the Messenger of Allah—peace be upon him—had given him, and his command—peace be upon him—to kill someone whom he had previously forbidden to be killed. This is a contradiction from which Allah, the Exalted and Majestic, has declared His Prophet—peace be upon him—free.

وَأَمَّا قَوْلُهُمْ: لَوْ كَانَتْ الدِّيَةُ وَاجِبَةً بِالْعَفْوِ - وَإِنْ لَمْ يَذْكُرْ - لَمَا كَرَّرَهَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلَيْسَ كَمَا ظَنُّوا، وَإِنَّمَا ذَكَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَفْوًا مُطْلَقًا عَامًّا لَا عَفْوًا خَاصًّا عَنْ الدَّمِ فَقَطْ - وَكَذَلِكَ نَقُولُ: إنْ عَفَا عَنْ الدَّمِ وَحْدَهُ خَاصَّةً، فَالدِّيَةُ بَاقِيَةٌ لَهُ، وَإِنْ عَفَا عَفْوًا عَامًّا عَنْ الدَّمِ وَالدِّيَةِ فَذَلِكَ لَهُ.

L36630 As for their assertion: "If the blood money were obligatory upon pardon—even if unspecified—he (peace and blessings be upon him) would not have reiterated the blood money," this is not as they supposed. Rather, he (peace and blessings be upon him) mentioned an unrestricted, comprehensive pardon—not a specific pardon limited to blood alone. Similarly, we state: If one pardons regarding the blood alone specifically, the blood money remains due. But if one issues a general pardon encompassing both blood and blood money, then that is his prerogative.

وَأَمَّا خَبَرُ ابْنِ طَاوُسٍ عَنْ أَبِيهِ فَمُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ، ثُمَّ هُوَ أَعْظَمُ حُجَّةً عَلَى الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ لِخِلَافِهِمْ لِمَا فِيهِ.

L36631 As for the report of Ibn Ṭāwūs from his father, it is a mursal narration, and there is no proof in a mursal narration. Moreover, it is a greater argument against the Ḥanafīs and Mālikīs due to their disagreement and because of what it contains.

أَمَّا الْحَنَفِيُّونَ فَالدِّيَةُ عِنْدَهُمْ فِي شِبْهِ الْعَمْدِ بِخِلَافِ مَا فِيهِ، لَكِنْ أَرْبَاعًا جِذَاعٌ، وَحِقَاقٌ، وَبَنَاتُ لَبُونٍ، وَبَنَاتُ مَخَاضٍ، وَأَمَّا الْمَالِكِيُّونَ فَلَا يَرَوْنَ فِي شِبْهِ الْعَمْدِ شَيْئًا أَصْلًا.

L36632 As for the Ḥanafīs, the blood money in quasi-intentional homicide according to them differs from that in intentional homicide, being divided into four parts: *jidhaʿ* camels, *ḥiqāq* camels, *banāt labūn* camels, and *banāt makhāḍ* camels. As for the Mālikīs, they do not recognize any blood money at all in quasi-intentional homicide.

فَمَنْ أَعْجَبُ مِمَّنْ يَحْتَجُّ بِمَا هُوَ أَوَّلُ مُخَالِفٍ لَهُ، وَيُصَحِّحُهُ عَلَى مَنْ لَا يُصَحِّحُهُ - ثُمَّ لَيْسَ فِيهِ إلَّا كَمَا فِي الْعَمْدِ مَا اصْطَلَحُوا عَلَيْهِ إذَا اصْطَلَحُوا، وَنَحْنُ نَقُولُ بِهَذَا وَلَا نُخَالِفُهُ.

L36633 Who is more astonishing than one who cites as evidence something he himself was the first to oppose, and asserts its validity upon those who do not accept it? For this contains nothing beyond what they have agreed upon

regarding intentional acts - agreements they themselves adhere to when they do agree. We affirm this and do not oppose it.

L36634 As for their mention of the words of Allah, the Mighty and Majestic: "And do not devour your wealth unjustly among yourselves" [Al-Baqarah 188].[18]

وَأَمَّا ذِكْرُهُمْ قَوْلَ اللَّهِ عَزَّ وَجَلَّ: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

L36635 The statement of the Messenger of Allah (may Allah's peace and blessings be upon him), "It is not lawful to appropriate the wealth of a Muslim except with his willing consent"—all of this is sound, and it is our doctrine.

وَقَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا بِطِيبِ نَفْسٍ مِنْهُ» فَصَحِيحٌ كُلُّ ذَلِكَ - وَهُوَ قَوْلُنَا.

L36636 Allah, the Exalted and Majestic, has said: "No believing man or woman has the right to have any choice from their matter once Allah and His Messenger have decided it" [Al-Ahzab: 36].[19]

وَقَدْ قَالَ اللَّهُ عَزَّ وَجَلَّ: {وَمَا كَانَ لِمُؤْمِنٍ وَلا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ} [الأحزاب: ٣٦] .

L36637–36638 When Allah, Exalted is He, or His Messenger—may Allah bless him and grant him peace—obligates blood money, it is obligated by one of them despite the claimant's objection—whether the one from whom it is taken consents or resents, and whether his soul is pure or impure, as we have stated.

فَإِذَا أَوْجَبَ اللَّهُ تَعَالَى الدِّيَةَ، أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ وَجَبَ أَحَدُهُمَا عَلَى رَغْمِ أَنْفِ الزَّاعِمِ - رَضِيَ الَّذِي يُؤْخَذُ مِنْهُ أَوْ كَرِهَ - طَابَتْ نَفْسُهُ، أَوْ خَبُثَتْ كَمَا قُلْنَا.

L36639 They opined regarding the agnatic group (al-ʿāqilah), zakah (al-zakāh), obligatory expenditures, and other such matters.

وَقَالُوا فِي الْعَاقِلَةِ، وَالزَّكَاةِ، وَالنَّفَقَاتِ الْوَاجِبَاتِ، وَغَيْرِ ذَلِكَ.

L36640 If only they had held themselves accountable through these two texts—where they imposed blood money upon the ʿāqila of the minor and the insane, even if they objected, their souls unwilling and unaccepting, and neither Allah the Exalted nor His Messenger (peace be upon him) ever obligated it—it would have been more fitting for them. This is truly the unlawful usurpation of wealth.

وَلَوْ أَنَّهُمْ احْتَجُّوا عَلَى أَنْفُسِهِمْ بِهَذَيْنِ النَّصَّيْنِ حَيْثُ أَوْجَبُوا الدِّيَةَ عَلَى عَاقِلَةِ الصَّبِيِّ، وَالْمَجْنُونِ، وَإِنْ كَرِهُوا وَلَمْ تَطِبْ أَنْفُسُهُمْ وَلَا رَضُوا وَلَا أَوْجَبَهَا اللَّهُ تَعَالَى قَطُّ، وَلَا رَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَكَانَ أَوْلَى بِهِمْ - وَهَذَا هُوَ الْأَكْلُ لِلْمَالِ بِالْبَاطِلِ حَقًّا.

L36641 As for the statement of Almighty Allah: "So punish in the same manner you were punished" (16:126), "Violations of sacred ordinances are subject to retaliation" (2:194), and "Retaliate proportionally against him in equivalence

وَأَمَّا قَوْلُهُ عَزَّ وَجَلَّ: {فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] وَ {فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَحَقٌّ كُلُّ ذَلِكَ.

[18] **Qur'an references (L36634):** Qur'an 2:188 (Al-Baqarah).
[19] **Qur'an references (L36636):** Qur'an 33:36 (Al-Ahzab).

to how he transgressed against you" (2:194): all of this constitutes a rightful decree.[20]

L36642 The statement of Allah, may He be glorified and exalted: {So whoever is pardoned by his brother for something, then [it requires] pursuing fairness and proper compensation to him in a commendable manner} [Al-Baqarah: 178], and the statement of the Messenger of Allah—peace and blessings of Allah be upon him—"Either retaliation is exacted or blood money is paid," constitute a supplementary ruling to those verses. All the rulings of Allah, may He be glorified and exalted, and the rulings of His Messenger—peace and blessings of Allah be upon him—are truths that complement one another, and it is impermissible to contravene any part of them.[21]

L36643 If only they had argued against themselves using these verses when they contravened them by waiving qisas for a child against his father; waiving qisas for the perpetrator because one heir pardoned, even if others did not; and some of them waiving qisas for a slave against a free person—it would have been more fitting for them.

L36644 As for the statement of the Almighty: "We have granted his heir authority, so he must not exceed the limits in killing" [Al-Isrāʾ 17:33], it is the truth, and this is our position: If the guardian chooses retaliation, he must kill the killer of his relative, and it is not permissible for him to exceed the bounds by killing someone other than the killer. The mention of blood money, whose ruling has indeed been established in another text, is not mentioned here.[22]

L36645 As for their statement: The legal guardian of the slain person must either exercise *qisas* or accept *diyah* as a substitute for *qisas*.

L36646 "They said: 'We have never recognized any legitimate right whereby a person may take compensation without the consent of the entitled claimant' - this is delirious nonsense, for they have neglected their own invalid assertions."

وَقَوْلُهُ عَزَّ وَجَلَّ: {فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] ، وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إمَّا أَنْ يُقَادَ وَإِمَّا أَنْ يُودَى» حُكْمٌ زَائِدٌ عَلَى تِلْكَ الْآيَاتِ، وَأَحْكَامُ اللَّهِ عَزَّ وَجَلَّ، وَأَحْكَامُ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلُّهَا حَقٌّ يُضَمُّ بَعْضُهَا إلَى بَعْضٍ - وَلَا يَحِلُّ خِلَافُ شَيْءٍ مِنْهَا.

وَلَوْ أَنَّهُمْ احْتَجُّوا عَلَى أَنْفُسِهِمْ بِهَذِهِ الْآيَاتِ حَيْثُ خَالَفُوهَا مِنْ إسْقَاطِهِمْ الْقَوَدَ لِلْوَلَدِ مِنْ أَبِيهِ، وَإِسْقَاطِ الْقَوَدِ لِمَنْ لَمْ يَعْفُ مِنْ أَجْلِ عَفْوِ وَاحِدٍ مِنْهُمْ، وَإِسْقَاطِ بَعْضِهِمْ الْقَوَدَ لِلْعَبْدِ مِنْ الْحُرِّ -: لَكَانَ أَوْلَى بِهِمْ.

وَأَمَّا قَوْلُهُ عَزَّ وَجَلَّ: {فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا فَلا يُسْرِفْ فِي الْقَتْلِ} [الإسراء: ٣٣] فَحَقٌّ، وَبِهِ نَقُولُ: إذَا اخْتَارَ الْقَوَدَ فَلْيَقْتُلْ قَاتِلَ وَلِيِّهِ، وَلَا يَحِلُّ لَهُ أَنْ يُسْرِفَ فَيَقْتُلَ غَيْرَ قَاتِلِهِ - وَلَيْسَ هَاهُنَا ذِكْرُ الدِّيَةِ الَّتِي قَدْ وَرَدَ حُكْمُهَا فِي نَصٍّ آخَرَ.

وَأَمَّا قَوْلُهُمْ: لَا يَخْلُو وَلِيُّ الْمَقْتُولِ مِنْ أَنْ يَكُونَ لَهُ الْقِصَاصُ، أَوْ أَخْذُ الدِّيَةِ بَدَلًا مِنْ الْقِصَاصِ.

قَالُوا: وَلَمْ نَجِدْ قَطُّ حَقًّا لِإِنْسَانٍ يَكُونُ لَهُ أَخْذُ بَدَلٍ مِنْهُ بِغَيْرِ رِضَا الَّذِي عَلَيْهِ الْحَقُّ - فَهَذَيَانٌ نَسَوْا فِيهِ أَقْوَالَهُمْ الْفَاسِدَةَ.

[20] **Qur'an references (L36641):** Qur'an 16:126 (An-Nahl); Qur'an 2:194 (Al-Baqarah).
[21] **Qur'an references (L36642):** Qur'an 2:178 (Al-Baqarah).
[22] **Qur'an references (L36644):** Qur'an 17:33 (Al-Isra).

إِذْ قَالُوا: مَنْ كَسَرَ قَلْبَ فِضَّةٍ لِغَيْرِهِ فَصَاحِبُ الْقَلْبِ يُخَيَّرُ بَيْنَ أَخْذِ قَلْبِهِ كَمَا هُوَ وَلَا شَيْءَ لَهُ، وَإِنْ شَاءَ ضَمِنَ قِيمَتَهُ مَصُوغًا غَيْرَ مَكْسُورٍ مِنَ الذَّهَبِ - أَحَبَّ الْكَاسِرُ أَوْ أَبَى.

L36647–36648 When they stated: Whoever breaks a silver ingot belonging to another, the owner may choose between taking his ingot as-is with no compensation, or if he wishes, the breaker must compensate its value equivalent to a crafted, unbroken gold item, regardless of whether the breaker is willing or not.

وَإِذْ قَالُوا: مَنْ غَصَبَ ثَوْبًا لِآخَرَ فَقَطَعَهُ قِطَعًا اسْتَهْلَكَهُ بِهِ، كَخَرْقٍ أَوْ خَرْقٍ فِي بَعْضِهِ؟ فَإِنَّ صَاحِبَ الثَّوْبِ مُخَيَّرٌ بَيْنَ أَنْ يَأْخُذَ ثَوْبَهُ وَقِيمَةَ نُقْصَانِهِ، وَإِنْ شَاءَ أَعْطَاهُ لِلْغَاصِبِ وَأَلْزَمَهُ قِيمَتَهُ صَحِيحًا - بِخِلَافِ الْحُكْمِ لَوْ قَطَعَهُ قَمِيصًا.

L36649 And when they said: "What if someone unlawfully seizes another's garment, cuts it into pieces to the point of destroying it—such as by burning or partially tearing it?" Then the owner of the garment has the choice between taking his garment and the value of its diminution, or if he wishes, surrendering it to the usurper and compelling him to pay its full value as if intact—unlike the ruling if he had cut it into a shirt.

بِخِلَافِ الْقَمْحِ إِذَا طَحَنَهُ دَقِيقًا وَالدَّقِيقِ إِذَا خَبَزَهُ خُبْزًا، وَاللَّحْمِ إِذَا طَبَخَهُ أَوْ شَوَاهُ، فَلَمْ يَرَوْا لِلْمَغْصُوبِ فِي كُلِّ هَذَا إِلَّا قِيمَةَ مَا غُصِبَ مِنْهُ فَقَطْ - وَجَعَلُوا الْقَمِيصَ، وَالْخُبْزَ، وَالطَّبْخَ، وَالشِّوَاءَ: حَلَالًا لِلْغَاصِبِ، بِحُكْمِ إِبْلِيسَ اللَّعِينِ.

L36650 Contrary to wheat when ground into flour, flour when baked into bread, and meat when cooked or roasted, they granted the victim of usurpation in all these cases nothing except the value of the usurped property itself. They deemed the shirt, bread, cooked dish, and roasted meat permissible for the usurper by the ruling of the accursed Satan.

فَهَذِهِ أَبْدَالٌ أَوْجَبُوهَا بِآرَائِهِمْ الْفَاسِدَةِ فَرْضًا مِنْ حُقُوقٍ وَاجِبَةٍ بِغَيْرِ رِضَا الَّذِي أَلْزَمُوهَا إِيَّاهَا، وَلَا طِيبِ نَفْسِهِ.

L36651 Thus, these are substitutes they imposed as obligations through their corrupt opinions—derived from obligatory rights—without the consent of the one they enforced them upon, nor his willing consent.

وَأَمَّا نَحْنُ فَلَا نَعْتَرِضُ عَلَى أَحْكَامِ اللَّهِ عَزَّ وَجَلَّ وَأَحْكَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِهَذِهِ الْقَضَايَا الْخَبِيثَةِ - وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

L36652 As for us, we do not oppose the decrees of Allah, the Mighty and Majestic, and the decrees of His Messenger (peace and blessings of Allah be upon him) with these vile matters, and by Allah, the Exalted, we seek support.

وَأَمَّا قَوْلُهُمْ: إِنْ كَانَ لَهُ الْقَوَدُ أَوْ الدِّيَةُ فَلَا يَجُوزُ عَفْوُهُ عَنْ أَحَدِهِمَا حَتَّى يَخْتَارَهُ؟ فَقَوْلٌ سَخِيفٌ، بَلْ عَفْوُهُ عَنْ الْقَوَدِ جَائِزٌ، وَتَبْقَى لَهُ الدِّيَةُ، إِلَّا أَنَّ الْعَفْوَ عَنْهَا كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا أَنَّهُ إِذَا اخْتَارَ الْقَوَدَ: فَقَدْ أَسْقَطَ حَقَّهُ فِي الدِّيَةِ، وَإِذَا اخْتَارَ الدِّيَةَ فَقَدْ أَسْقَطَ حَقَّهُ فِي الْقَوَدِ، وَإِذَا عَفَا عَنْ الْقَوَدِ بَقِيَ حُكْمُهُ فِي الْقِسْمِ الْآخَرِ - وَهُوَ الدِّيَةُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L36653 As for their statement: "If he is entitled to retaliation (qawad) or blood money (diyah), he cannot pardon either until he chooses one?" — this is a baseless claim. Rather, his pardon of retaliation is permissible, and the diyah remains for him, except that pardoning it is as commanded by Allah, the Exalted, and His Messenger—may Allah bless him and grant him peace—just as when he chooses retaliation, he forfeits his right to diyah; when he chooses diyah, he forfeits his right to retaliation; and when he pardons retaliation, the ruling for the other category (diyah) remains. And with Allah, the Exalted, is success.

L36654 As for their statement: "Indeed, granting choice constitutes an addition to

وَأَمَّا قَوْلُهُمْ: إِنَّ التَّخْيِيرَ زِيَادَةٌ فِي النَّصِّ، وَلَا تَجُوزُ الزِّيَادَةُ فِي النَّصِّ إِلَّا بِمَا يَجُوزُ بِهِ النَّسْخُ: فَصَحِيحٌ، وَالنَّسْخُ جَائِزٌ؛ لِمَا فِي الْقُرْآنِ بِقُرْآنٍ، أَوْ سُنَّةٍ ثَابِتَةٍ بِخَبَرِ الْوَاحِدِ.

the text, and additions to the text are impermissible except by that which renders abrogation permissible"—this is correct. Abrogation is permissible because what is in the Quran may be abrogated by a Quranic text, or by an established Sunnah through a solitary report.

وَهُوَ جَائِزٌ أَيْضًا لِلسُّنَّةِ بِالْقُرْآنِ، وَبِخَبَرٍ ثَابِتٍ مِنْ طَرِيقِ الثِّقَاتِ أَيْضًا.

L36655 It is also permissible for the Sunnah through the Qur'an and through an established report via reliable narrators.

فَلَوْ أَنَّهُمْ احْتَجُّوا عَلَى أَنْفُسِهِمْ بِهَذَا الْقَوْلِ حَيْثُ زَادُوا عَلَى النَّسْخِ بِالْأَخْبَارِ الْوَاهِيَةِ لَكَانَ أَوْلَى بِهِمْ، كَالْوُضُوءِ بِالنَّبِيذِ، وَالْمَسْحِ عَلَى الْجَبَائِرِ، وَالتَّدْلِيكِ فِي الْغُسْلِ - وَكَإِيجَابِ الدِّيَاتِ فِي كَثِيرٍ مِنَ الْأَعْضَاءِ بِقِيَاسٍ، أَوْ رِوَايَةٍ سَاقِطَةٍ أَوْ تَقْلِيدٍ بِغَيْرِ نَصٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L36656 If only they had argued against themselves using this statement when they augmented abrogation through weak narrations—it would have been more appropriate for them—such as performing ablution with nabidh, wiping over splints, thorough rubbing during the ritual bath, and obligating blood money for many body parts based on analogy, a defective narration, or blind adherence without textual evidence—and success is by Allah, the Exalted.

وَأَمَّا رِوَايَتُهُمْ ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ فَلَا تَصِحُّ؛ لِأَنَّهَا عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، عَنْ عُمَرَ بْنِ الْخَطَّابِ - وَلَمْ يُولَدْ عُمَرُ - رَحِمَهُ اللَّهُ تَعَالَى - إِلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - بِنَحْوِ سَبْعٍ وَعِشْرِينَ سَنَةً - وَلَوْ صَحَّ لَكَانَ الثَّابِتُ عَنِ ابْنِ عَبَّاسٍ خِلَافًا لَهُ.

L36657–36658 As for their narration of that from ʿUmar ibn al-Khaṭṭāb, it is invalid because it is transmitted via ʿUmar ibn ʿAbd al-ʿAzīz on the authority of ʿUmar ibn al-Khaṭṭāb – and ʿUmar ibn ʿAbd al-ʿAzīz (may Allah, Exalted, have mercy on him) was not born until approximately twenty-seven years after the death of ʿUmar ibn al-Khaṭṭāb (may Allah, Exalted, be pleased with him). Even if it were authentic, the established position from Ibn ʿAbbās would oppose it.

وَأَمَّا تَعَلُّقُهُمْ فِي قَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ} [البقرة: ١٧٨] أَنَّ الضَّمِيرَ رَاجِعٌ إِلَى الْقَاتِلِ، فَدَعْوَى كَاذِبَةٌ، وَمُحَالٌ لَا يَجُوزُ؛ لِأَنَّهَا دَعْوَى بِلَا دَلِيلٍ، وَتَكَلُّفٌ ظَاهِرُ الْبُطْلَانِ - مَعَ أَنَّهُ خِلَافٌ لِقَوْلِ الْمَالِكِيِّينَ مِنْهُمْ؛ لِأَنَّ فِي الْآيَةِ: {فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] فَقَالُوا هُمْ: بَلْ نَتْبَعُ بِضَرْبِ مِائَةٍ سَوْطٍ وَنَفْيِ سَنَةٍ بِلَا نَصٍّ أَوْجَبَ ذَلِكَ أَصْلًا، وَلَا رِوَايَةٍ عَنْ صَاحِبٍ - وَلَا يَشُكُّ ذُو فَهْمٍ أَنَّ الْمَعْفُوَّ لَهُ مِنْ دِيَتِهِ فِي أَخِيهِ هُوَ الْقَاتِلُ، وَأَمَّا وَلِيُّ الْمَقْتُولِ فَلَمْ يُعْفَ لَهُ شَيْءٌ مِنْ أَخِيهِ، وَحَتَّى لَوْ كَانَ مَعْنَاهُ مَا تَأَوَّلُوهُ بِالْبَاطِلِ لَكَانَ مُخَالِفًا لِأَقْوَالِهِمْ؛ لِأَنَّهُ لَا يُوجِبُ

L36659 As for their argument based on Allah's statement—Exalted is He—{So whoever is pardoned by his brother for anything} [Al-Baqarah: 178], claiming the pronoun refers to the killer, this is a false claim, an impossibility, and an impermissible stance—for it is an assertion without evidence and a contrived interpretation evidently void. Moreover, it contradicts the position of the Mālikīs among their own ranks, for the verse states: {Then adherence with fairness and fulfillment to him with kindness} [Al-Baqarah: 178]. Yet they assert, "We follow by administering one hundred lashes and exiling for a year"—without any textual proof establishing this as a foundational ruling or any transmitted report from a Companion. No person of sound intellect doubts that the one pardoned from paying his blood money in relation to his brother (the killer) is the killer himself. As for the guardian of the slain, nothing from his brother (the killer) has been pardoned for him. Even if their interpretation—grounded in falsehood—were hypothetically valid, it would

still contradict their own doctrines, as it would not require consideration of the guardian's consent. Rather, the choice would then lie solely with the killer—a position no one on earth, neither they nor others, upholds. Thus, it is confirmed that their interpretation of the verse is impossible, invalid, inadmissible, and fundamentally impermissible to assert—and all praise is due to Allah, Lord of the worlds.[23]

ذَلِكَ مُرَاعَاةَ رِضَا الْوَلِيِّ، بَلْ كَانَ يَكُونُ الْخِيَارُ حِينَئِذٍ لِلْقَاتِلِ فَقَطْ - وَهَذَا لَا يَقُولُهُ أَحَدٌ عَلَى ظَهْرِ الْأَرْضِ لَا هُمْ وَلَا غَيْرُهُمْ - فَصَحَّ أَنَّ تَأْوِيلَهُمْ فِي الْآيَةِ مُحَالٌ بَاطِلٌ مُمْتَنِعٌ لَا يَحِلُّ الْقَوْلُ بِهِ أَصْلًا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L36660 As for their objection regarding the report of Abū Hurayrah—wherein he also transmitted: "Either retaliation is enacted or the slain's kin are ransomed"—this is authentic and constitutes a third legal meaning. This is our position. It denotes the unanimous agreement of all parties—the killer and the victim's guardians—to redeem the killer through a ransom exceeding the blood money. It is impermissible to disregard anything valid or to contradict some with others—for this constitutes trifling with the religion and openly plotting against Islam—and we seek refuge with Allah from such conduct.

وَأَمَّا اعْتِرَاضُهُمْ فِي خَبَرِ أَبِي هُرَيْرَةَ بِأَنَّهُ قَدْ رَوَى فِيهِ أَيْضًا: إِمَّا أَنْ يُقَادَ وَإِمَّا أَنْ يُفَادَى أَهْلُ الْقَتِيلِ: فَصَحِيحٌ، وَهُوَ مَعْنًى ثَالِثٌ، وَبِهِ نَقُولُ، وَهُوَ اتِّفَاقُهُمْ كُلُّهُمْ - الْقَاتِلُ وَأَوْلِيَاءُ الْقَتِيلِ - عَلَى فِدَاءِ الْقَاتِلِ بِأَكْثَرَ مِنْ الدِّيَةِ، وَلَا يَحِلُّ تَرْكُ شَيْءٍ مِمَّا صَحَّ، وَلَا ضَرْبُ بَعْضِهِ بِبَعْضٍ - فَهَذَا هُوَ التَّلَاعُبُ بِالدِّينِ، وَكَيْدُ الْإِسْلَامِ جِهَارًا - وَنَعُوذُ بِاَللَّهِ مِنْ ذَلِكَ.

L36661 The abandonment of the sound ruling present in that report—whether retaliation (qiṣāṣ) or blood money (diya)—is not more deserving than another opinion contradicting the truth, despite the established validity of retaliation or ransom (fidyā). Hence, discarding the Prophet's directive (peace and blessings be upon him) "to ransom" because of his statement "or pay blood money"—all such abandonment being invalid—establishes that accepting all these rulings and integrating them constitutes the binding truth that cannot lawfully be opposed.

وَلَيْسَ تَرْكُ الصَّحِيحِ مِمَّا فِي ذَلِكَ الْخَبَرِ مِنْ أَنْ يُقَادَ أَوْ يُودَى مِنْ أَجْلِ مَا قَدْ صَحَّ أَيْضًا مِنْ أَنْ يُقَادَ أَوْ يُفَادَى بِأَوْلَى مِنْ آخَرَ خَالَفَ الْحَقَّ، فَتَرَكَ قَوْلَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أَنْ يُفَادَى مِنْ أَجْلِ قَوْلِهِ: أَوْ يُودَى - وَكُلُّ ذَلِكَ بَاطِلٌ - فَصَحَّ أَنَّ أَخْذَ كُلِّ ذَلِكَ، وَضَمَّ بَعْضِهِ إِلَى بَعْضٍ: هُوَ الْحَقُّ الَّذِي لَا يَجُوزُ خِلَافُهُ.

L36662–36664 As for their objection regarding the report of Abū Shurayḥ in the narration transmitted by Sufyān ibn Abī al-ʿAwjāʾ: Sufyān is a narrator of unknown reliability. It is not known who he is. Yet the greater astonishment lies in their citing it as evidence while contradicting its content—for it mandates retaliation (qisās) for wounds in general, whereas they recognize qisās only for the exposed bone (al-muwadiḥah). O Muslims! By what rationale can one cite evidence against an opponent using a text they themselves contradict—when the claimant deems it valid, but the opponent does not?

وَأَمَّا اعْتِرَاضُهُمْ فِي خَبَرِ أَبِي شُرَيْحٍ بِرِوَايَةِ سُفْيَانَ بْنِ أَبِي الْعَوْجَاءِ: فَسُفْيَانُ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ - ثُمَّ الْعَجَبُ كُلُّهُ مِنْ احْتِجَاجِهِمْ بِهِ، وَهُمْ مُخَالِفُونَ مَا فِيهِ، لِأَنَّ فِيهِ: إِيجَابَ الْقَوَدِ فِي الْجِرَاحِ جُمْلَةً، وَهُمْ لَا يَرَوْنَ الْقَوَدَ فِي شَيْءٍ مِنْ الْجِرَاحِ إِلَّا فِي الْمُوضِحَةِ وَحْدَهَا فَقَطْ، فَيَا لِلْمُسْلِمِينَ فِي أَيِّ بَابٍ يَقَعُ احْتِجَاجُ الْمَرْءِ عَلَى خَصْمِهِ بِمَا يُخَالِفُ - وَهُوَ يُصَحِّحُهُ وَخَصْمُهُ لَا يُصَحِّحُهُ -.

[23] **Qur'an references (L36659):** Qur'an 2:178 (Al-Baqarah); Qur'an 37:182 (As-Saffat).

L36665 Then, if it were valid, it would serve as proof for us against them, because it grants the wounded person or the guardian of the slain the choice among retaliation, blood money, or pardon without requiring the offender's consent - and this is another astonishing matter, reflecting consent to the scandalous obfuscation evident recently - and we ask Allah the Exalted for protection.

ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ فِيهِ التَّخْيِيرَ لِلْمَجْرُوحِ، أَوْ لِوَلِيِّ الْمَقْتُولِ بَيْنَ الْقَوَدِ، أَوْ الدِّيَةِ، أَوْ الْعَفْوِ دُونَ اشْتِرَاطِ رِضَا الْجَانِي - وَهَذَا عَجَبٌ آخَرُ، وَرِضًا بِالتَّمْوِيهِ الْمُفْتَضَحِ مِنْ قُرْبٍ - وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ.

L36666 As for our statement—that all we have mentioned refers to whoever intentionally kills a Muslim in the Abode of War while knowing him to be a Muslim therein, just as if he had committed this in the Abode of Islam, and there is no difference—this derives from the generality of the Quranic text and the Sunnah we cited regarding this matter, which do not distinguish between the two abodes. {And your Lord is not forgetful} [Maryam: 64].[24]

وَأَمَّا قَوْلُنَا - بِأَنَّ كُلَّ مَا ذَكَرْنَا فَهُوَ مَنْ قَتَلَ عَمْدًا مُسْلِمًا فِي دَارِ الْحَرْبِ، وَهُوَ يَدْرِي أَنَّهُ مُسْلِمٌ فِي دَارِ الْحَرْبِ، كَمَا لَوْ فَعَلَ ذَلِكَ فِي دَارِ الْإِسْلَامِ وَلَا فَرْقَ، فَلِعُمُومِ نَصِّ الْقُرْآنِ، وَالسُّنَّةِ الَّتِي أَوْرَدْنَا فِي ذَلِكَ، وَلَمْ يَخُصَّ إحْدَى الدَّارَيْنِ مِنْ الْأُخْرَى {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L36667 This is the opinion of Mālik, al-Shāfiʿī, Abū Sulaymān, and all their adherents—and this is the view we adopt.

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِهِمْ - وَبِهِ نَأْخُذُ.

L36668 As for Abū Ḥanīfah, he said: If a Muslim intentionally kills another Muslim in the land of war - if the slain was not residing in the land of war - there is absolutely no qisas (retaliation) whatsoever; only diyah (blood money) is required. If the slain Muslim was residing in the land of war, then the intentional killer - who knows he is a Muslim - must offer kaffarah (expiation) alone, with neither qisas nor diyah required.

وَأَمَّا أَبُو حَنِيفَةَ فَقَالَ: إنْ قَتَلَ مُسْلِمٌ مُسْلِمًا عَمْدًا فِي أَرْضِ الْحَرْبِ - وَكَانَ الْمَقْتُولُ غَيْرَ سَاكِنٍ فِي أَرْضِ الْحَرْبِ - فَلَا قَوَدَ فِيهِ أَصْلًا، إنَّمَا فِيهِ الدِّيَةُ - فَإِنْ كَانَ الْمُسْلِمُ الْمَقْتُولُ سَاكِنًا فِي أَرْضِ الْحَرْبِ فَعَلَى قَاتِلِهِ عَمْدًا - وَهُوَ يَدْرِي أَنَّهُ مُسْلِمٌ - الْكَفَّارَةُ فَقَطْ، وَلَا قَوَدَ فِيهِ، وَلَا دِيَةَ.

L36669 Abū Muḥammad—may Allāh be pleased with him—said: "We do not know from where he derived this absurd statement, nor who preceded him in it—what astonishes us is that those afflicted by Allāh the Exalted with blind adherence to him have falsified this matter—through what we have transmitted via Muslim's chain: I [am] Abū Bakr ibn Abī Shaybah, from Abū Khālid al-Aḥmar, from al-Aʿmash, from Abū Ẓabiyān, from Usāmah ibn Zayd, who said: "The Messenger of Allāh—peace and blessings of Allāh be upon him—sent us forth, and we raided the Ḥuraqāt of Juhaynah at dawn. I overtook a man who said: "There is no deity but Allāh," so I stabbed him. This troubled my conscience, and I mentioned it to the Messenger of Allāh—peace and

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَلَا نَدْرِي مِنْ أَيْنَ أَخْرَجَ هَذَا الْقَوْلَ السَّخِيفَ، وَلَا مَنْ تَقَدَّمَهُ إلَيْهِ - وَالْعَجَبُ أَنَّ الْمُبْتَلَيْنَ مِنْ اللَّهِ تَعَالَى بِتَقْلِيدِهِ مَوَّهُوا فِي ذَلِكَ -: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ الْأَعْمَشِ عَنْ أَبِي ظَبْيَانَ عَنْ أُسَامَةَ بْنِ زَيْدٍ، قَالَ: «بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَبَّحْنَا الْحُرَقَاتِ مِنْ جُهَيْنَةَ فَأَدْرَكْتُ رَجُلًا فَقَالَ: لَا إلَهَ إلَّا اللَّهُ، فَطَعَنْتُهُ فَوَقَعَ فِي نَفْسِي مِنْ ذَلِكَ، فَذَكَرْتُهُ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ رَسُولُ اللَّهِ - صَلَّى

[24] **Qur'an references (L36666):** Qur'an 19:64 (Maryam).

blessings of Allāh be upon him. He said: ”Did he say ’There is no deity but Allāh,’ and you killed him¿‘ I replied: ”O Messenger of Allāh, he only said it out of fear of the weapon.“ He said: ”Did you not split open his heart to ascertain whether he meant it or not¿‘ He kept repeating this to me until I wished I had embraced Islam that very day.““[25]

L36670–36672 And by what has been narrated to us through the chain of ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Sālim ibn ʿAbd Allāh ibn ʿUmar, from his father. He said: “The Messenger of Allah—peace and blessings of Allah be upon him—sent Khalid ibn al-Walid to Banu Jadhima. He invited them to Islam, but they failed to properly articulate, ’We have embraced Islam.’ Instead, they kept saying, ’We have apostatized, we have apostatized.’ Khalid initiated the taking of captives and carrying out killings among them, assigning each man among us a prisoner. When morning came one day, Khalid ibn al-Walid ordered every one of us to kill his prisoner. Ibn Umar declared: ’By Allah, I will not kill my prisoner, nor shall any of my companions kill theirs.’ When we returned to the Messenger of Allah—peace and blessings of Allah be upon him—Khalid’s deeds were mentioned to him. The Prophet—peace and blessings of Allah be upon him—said: ’O Allah, I disavow to You what Khalid has done.’”

L36673 Through the chain of Abu Dawud: Hannad ibn al-Sari narrated from Abu Mu’awiyah, from Isma’il ibn Abi Khalid, from Qays ibn Abi Hazim, from Jarir ibn Abdullah al-Bajali, who said: “The Messenger of Allah—peace and blessings of Allah be upon him—dispatched a military expedition to Khathʿam. They sought refuge by prostrating, but the killing was hastened against them. When this reached the Prophet—peace and blessings of Allah be upon him and his family—he ordered half the blood money to be paid for them and said: ’I disavow any Muslim who settles among the polytheists.’ They asked: ’O Messenger of Allah, why?’ He replied: ’The fires of Muslims and polytheists must not be visible to one another.’”

L36674 Abu Muhammad (may Allah be pleased with him) said: “Nothing is valid in this chapter except these hadiths. As for the hadith of al-Yamani, the father

اللَّهُ عَلَيْهِ وَسَلَّمَ - أَقَالَ: لَا إِلَهَ إِلَّا اللَّهُ وَقَتَلْتَهُ؟ قُلْتُ: يَا رَسُولَ اللَّهِ إِنَّمَا قَالَهَا خَوْفًا مِنْ السِّلَاحِ قَالَ: أَفَلَا شَقَقْتَ عَنْ قَلْبِهِ حَتَّى تَعْلَمَ أَقَالَهَا أَمْ لَا؟ فَمَا زَالَ يُكَرِّرُهَا عَلَيَّ حَتَّى تَمَنَّيْت أَنِّي أَسْلَمْتُ يَوْمَئِذٍ» .

وَبِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ قَالَ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَالِدَ بْنَ الْوَلِيدِ إلَى بَنِي جَذِيمَةَ فَدَعَاهُمْ إلَى الْإِسْلَامِ فَلَمْ يُحْسِنُوا أَنْ يَقُولُوا: أَسْلَمْنَا - فَجَعَلُوا يَقُولُونَ: صَبَأْنَا، صَبَأْنَا، وَجَعَلَ خَالِدٌ فِيهِمْ أَسْرًا وَقَتْلًا، وَدَفَعَ إلَى كُلِّ رَجُلٍ مِنَّا أَسِيرًا، حَتَّى إذَا أَصْبَحَ يَوْمًا أَمَرَنَا خَالِدُ بْنُ الْوَلِيدِ أَنْ يَقْتُلَ كُلُّ وَاحِدٍ مِنَّا أَسِيرَهُ، فَقَالَ ابْنُ عُمَرَ: وَاَللَّهِ لَا أَقْتُلُ أَسِيرِي، وَلَا يَقْتُلُ أَحَدٌ مِنْ أَصْحَابِي أَسِيرَهُ، فَقَدِمْنَا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذُكِرَ لَهُ صَنِيعُ خَالِدٍ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اللَّهُمَّ إنِّي أَبْرَأُ إلَيْكَ مِمَّا صَنَعَ خَالِدٌ» .

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا هَنَّادُ بْنُ السَّرِيِّ أَنَا أَبُو مُعَاوِيَةَ عَنْ إسْمَاعِيلَ بْنِ أَبِي خَالِدٍ عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ عَنْ جَرِيرِ بْنِ عَبْدِ اللَّهِ الْبَجَلِيِّ قَالَ: «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَرِيَّةً إلَى خَثْعَمَ فَاعْتَصَمُوا بِالسُّجُودِ، فَأَسْرَعَ فِيهِمْ الْقَتْلَ فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَمَرَ لَهُمْ بِنِصْفِ الْعَقْلِ وَقَالَ: أَنَا بَرِيءٌ مِنْ كُلِّ مُسْلِمٍ يُقِيمُ بَيْنَ أَظْهُرِ الْمُشْرِكِينَ، قَالُوا: يَا رَسُولَ اللَّهِ لِمَ؟ قَالَ: لَا تَرَاءَى نَارَاهُمَا» .

[25] **Hadith references (L36669):** Riyad as-Salihin 393.

of Ḥudhayfah (may Allah be pleased with both of them)—in it is Ziyād ibn ʿAbdullāh al-Bakkāʾī, and he is not strong."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَا يَصِحُّ فِي هَذَا الْبَابِ شَيْءٌ غَيْرُ هَذِهِ الْأَحَادِيثِ -: وَأَمَّا حَدِيثُ الْيَمَانِ وَالِدِ حُذَيْفَةَ - رَضِيَ اللَّهُ عَنْهُمَا - فَفِيهِ زِيَادُ بْنُ عَبْدِ اللَّهِ الْبَكَّائِيُّ - وَلَيْسَ بِالْقَوِيِّ.

L36675 As for the narration of Muljim ibn Qudāmah and his killing of ʿĀmir ibn al-Aḍbaṭ, along with the Prophet's (peace be upon him) payment of blood money in the matter while withholding legal retaliation, its chain includes Ziyād ibn Ḍumayrah—who is unknown. Rather, the narration concerning the aforementioned Muljim is authenticated via the following chain: Ḥumām ibn Aḥmad narrated to us from ʿAbbās ibn Aṣbagh from Muḥammad ibn ʿAbd al-Malik ibn Ayman from Aḥmad ibn Zuhayr ibn Ḥarb from Abū Bakr ibn Abī Shaybah from Abū Khālid al-Aḥmar from Muḥammad ibn Isḥāq from Yazīd ibn ʿAbdullāh ibn Quṣayṭ from al-Qaʿqāʿ from ʿAbdullāh ibn Abī Ḥadrad, who said: "The Messenger of Allah (peace be upon him) dispatched us to a fortified structure. We encountered ʿĀmir ibn al-Aḍbaṭ—a member of the Ashjaʿ tribe—who greeted us with the Islamic salutation. Muljim ibn Jaththāmah—a Laythī from Kinānah—rose toward him, killed him, and seized his belongings. When we came before the Messenger of Allah (peace be upon him) and informed him, the verse was revealed: 'O you who believe, when you venture forth in Allah's cause, verify thoroughly. Do not say to one who offers you peace, "You are not a believer," seeking the fleeting gains of worldly life. With Allah are abundant spoils. You yourselves were once like this, then Allah bestowed favor upon you. Therefore, verify thoroughly' (4:94)."[26]

وَأَمَّا حَدِيثُ مُلْجَمِ بْنِ قُدَامَةَ وَقَتْلُهُ عَامِرَ بْنَ الْأَضْبَطِ، وَإِعْطَاءُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّيَةَ فِيهِ، وَمَنْعُهُ مِنَ الْقَوَدِ، فَفِيهِ زِيَادُ بْنُ ضُمَيْرَةَ - وَهُوَ مَجْهُولٌ - بَلْ إِنَّهُ يَصِحُّ فِي حَدِيثِ مُلْجَمٍ الْمَذْكُورِ -: مَا نَاهُ حُمَامُ بْنُ أَحْمَدَ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا أَبُو خَالِدٍ الْأَحْمَرُ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ عَنْ الْقَعْقَاعِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي حَدْرَدٍ قَالَ: «بَعَثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَى أُطُمٍ، فَلَقِينَا عَامِرُ بْنُ الْأَضْبَطِ - هُوَ أَشْجَعِيٌّ - فَحَيَّانَا بِتَحِيَّةِ الْإِسْلَامِ فَقَامَ إِلَيْهِ الْمُلْجَمُ بْنُ جَثَّامَةَ - هُوَ لَيْثِيٌّ كِنَانِيٌّ - فَقَتَلَهُ ثُمَّ سَلَبَهُ، فَلَمَّا قَدِمْنَا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخْبَرْنَاهُ فَنَزَلَتْ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا ضَرَبْتُمْ فِي سَبِيلِ اللَّهِ فَتَبَيَّنُوا وَلا تَقُولُوا لِمَنْ أَلْقَى إِلَيْكُمُ السَّلامَ لَسْتَ مُؤْمِنًا تَبْتَغُونَ عَرَضَ الْحَيَاةِ الدُّنْيَا فَعِنْدَ اللَّهِ مَغَانِمُ كَثِيرَةٌ كَذَلِكَ كُنْتُمْ مِنْ قَبْلُ فَمَنَّ اللَّهُ عَلَيْكُمْ فَتَبَيَّنُوا} [النساء: ٩٤] ».

L36676–36677 Abu Muhammad—may Allah be pleased with him—said: All these reports constitute proof against them, for Khalid only killed Banī Jadhīmah based on a juristic interpretation that they were disbelievers, not realizing their statement "We have embraced Islam, we have embraced Islam" constituted valid conversion. Similarly, Usāmah—without doubt—and let it suffice you that he referred the matter to the Messenger of Allah (peace and blessings be upon him), who said: "He only uttered it out of fear of weapons." By Allah, the

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: كُلُّ هَذِهِ الْأَخْبَارِ حُجَّةٌ عَلَيْهِمْ؛ لِأَنَّ خَالِدًا لَمْ يَقْتُلْ بَنِي جَذِيمَةَ إِلَّا مُتَأَوِّلًا أَنَّهُمْ كُفَّارٌ، وَلَمْ يَعْرِفْ أَنْ قَوْلَهُمْ: صَبَأْنَا، صَبَأْنَا - إِسْلَامٌ صَحِيحٌ، وَكَذَلِكَ أُسَامَةُ بِلَا شَكٍّ، وَحَسْبُك بِمُرَاجَعَتِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ، وَقَوْلِهِ: إنَّمَا قَالَهَا مِنْ خَوْفِ السِّلَاحِ - وَهُوَ وَاَللَّهِ الثِّقَةُ الصَّادِقُ الَّذِي ثَبَتَ أَنَّهُ لَمْ

[26] **Qur'an references (L36675):** Qur'an 4:94 (An-Nisa).

Prophet is the trustworthy truth-teller whose established status confirms he only declared what reflected his sincere conviction. Likewise, the military detachment that hastened to kill in Khath'am while people were devoutly clinging to prostration [in prayer]—since they acted upon juristic interpretation, they were undoubtedly mistaken killers. Thus legal retribution (qiṣāṣ) was waived. Upon examining their case, we found them all residing in hostile enemy territory during warfare. Therefore, blood-money (diyah) was nullified by Quranic decree, leaving only atonement (kaffārah). Necessarily, one of two scenarios must apply: either the Prophet (peace and blessings be upon him) commanded them to perform it, and the narrator omitted this detail.

يَقُلْ إِلَّا مَا فِي نَفْسِهِ. وَكَذَلِكَ السَّرِيَّةُ الَّتِي أَسْرَعَتْ بِالْقَتْلِ فِي خَثْعَمَ وَهُمْ مُعْتَصِمُونَ بِالسُّجُودِ، وَإِذْ هُمْ مُتَأَوِّلُونَ فَهُمْ قَاتِلُو خَطَأٍ بِلَا شَكٍّ، فَسَقَطَ الْقَوَدُ. ثُمَّ نَظَرْنَا فِيهِمْ فَوَجَدْنَاهُمْ كُلَّهُمْ فِي دَارِ الْحَرْبِ فِي قَوْمٍ عَدُوٍّ لَنَا، فَسَقَطَتْ الدِّيَةُ بِنَصِّ الْقُرْآنِ، وَلَمْ يَبْقَ إِلَّا الْكَفَّارَةُ، فَلَا بُدَّ مِنْ أَحَدِ أَمْرَيْنِ ضَرُورَةً: إمَّا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَهُمْ بِهَا فَسَكَتَ الرَّاوِي عَنْ ذَلِكَ.

L36678 Alternatively, if the verse containing: {But if he was from a people hostile to you and he was a believer, then the freeing of a slave} [An-Nisa': 92] had not yet been revealed, they would be obligated only to seek forgiveness and call upon Allah, the Exalted and Majestic.[27]

وَإِمَّا أَنَّ الْآيَةَ الَّتِي فِيهَا: {فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ} [النساء: ٩٢] لَمْ تَكُنْ نَزَلَتْ بَعْدُ، فَلَا شَيْءَ عَلَيْهِمْ إِلَّا الِاسْتِغْفَارُ وَالدُّعَاءُ إلَى اللَّهِ عَزَّ وَجَلَّ فَقَطْ.

L36679 If it is said: How can one say as an interpreter that the Messenger of Allah—peace and blessings be upon him and his family—dissociates himself before Allah the Exalted from the interpreter's action? We respond: Yes, the Messenger of Allah—peace and blessings be upon him and his family—has dissociated himself from every error contradicting the truth, and we dissociate ourselves before Allah Almighty from it, even if the one who committed it is rewarded once. The Messenger of Allah—peace and blessings be upon him and his family—never dissociated himself from Khalid whatsoever; he only dissociated himself from his action. Similarly, we say: We dissociate ourselves before Allah Almighty from every erroneous interpretation made by the interpreter, but we do not dissociate from the interpreter himself—even if the Prophet—peace and blessings be upon him—had dissociated from Khalid, he would not have commanded him afterward. Thus, our statement is valid—and all praise is to Allah, Lord of the worlds.

فَإِنْ قِيلَ: كَيْفَ يَقُولُ مُتَأَوِّلًا وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ فِعْلِهِ؟ قُلْنَا: نَعَمْ، قَدْ بَرِئَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ كُلِّ خَطَأٍ خَالَفَ الْحَقَّ، وَنَحْنُ نَبْرَأُ إلَى اللَّهِ عَزَّ وَجَلَّ مِنْهُ وَإِنْ كَانَ فَاعِلُهُ مَأْجُورًا أَجْرًا وَاحِدًا، وَلَمْ يَبْرَأْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ خَالِدٍ قَطُّ، إنَّمَا بَرِئَ مِنْ فِعْلِهِ، وَهَكَذَا نَقُولُ نَبْرَأُ إلَى اللَّهِ عَزَّ وَجَلَّ مِنْ كُلِّ تَأْوِيلٍ أَخْطَأَ فِيهِ الْمُتَأَوِّلُ، وَلَا نَبْرَأُ مِنْ الْمُتَأَوِّلِ - وَلَوْ بَرِئَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ خَالِدٍ لَمَا أَمَرَهُ بَعْدَهَا - فَصَحَّ قَوْلُنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L36680–36681 If it is asked: What is the rationale for the Messenger of Allah—peace and blessings be upon him—granting the tribe of Khath'am half the diyah? We

[27] **Qur'an references (L36678):** Qur'an 4:92 (An-Nisa).

respond: He did this as an act of grace, to foster kinship, and solely to reconcile them to Islam. Had they been entitled to the full diyah, he—peace and blessings be upon him—would not have withheld from them even a hair's worth of it, or more.

فَإِنْ قِيلَ: فَمَا وَجْهُ إِعْطَاءِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَثْعَمًا نِصْفَ الدِّيَةِ؟ قُلْنَا: فَعَلَ ذَلِكَ تَفَضُّلًا، وَصِلَةً وَاسْتِئْلَافًا عَلَى الْإِسْلَامِ فَقَطْ، وَلَوْ وَجَبَتْ لَهُمْ دِيَةٌ لَمَا مَنَعَهُمْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْهَا وَبَرَةً فَمَا فَوْقَهَا.

L36682 When the argument of the Hanafis for their vile assertion was invalidated by these reports concerning the waiver of retribution and blood money from one who intentionally kills a Muslim while knowing he is a Muslim—even if he resides in enemy territory—and their waiving of retribution alone for those who intentionally kill a Muslim within the Muslim military camp in enemy territory, given the confirmation that all such cases constitute unintentional killing rather than intentional killing, the invalidity of their opinion became evident with certainty.

فَلَمَّا بَطَلَ احْتِجَاجُ الْحَنَفِيِّينَ لِقَوْلِهِمْ الْخَبِيثِ بِهَذِهِ الْأَخْبَارِ فِي إسْقَاطِ الْقَوَدِ، وَالدِّيَةِ عَمَّنْ تَعَمَّدَ قَتْلَ مُسْلِمٍ يَدْرِي أَنَّهُ مُسْلِمٌ - وَإِنْ كَانَ سَاكِنًا فِي أَرْضِ الْحَرْبِ - وَفِي إسْقَاطِهِمْ الْقَوَدَ فَقَطْ عَنْ الْمُتَعَمِّدِ قَتْلَ الْمُسْلِمِ فِي عَسْكَرِ الْمُسْلِمِينَ فِي دَارِ الْحَرْبِ، إذْ قَدْ صَحَّ أَنَّهَا كُلُّهَا قَتْلُ خَطَأٍ لَا قَتْلُ عَمْدٍ - فَظَهَرَ فَسَادُ قَوْلِهِمْ بِيَقِينٍ.

L36683 If it is said: The Prophet—peace and blessings be upon him—has disassociated himself from every Muslim who resides among the people of the abode of war, we say: Were this a justification for intentionally killing him, your assertion regarding the obligation of expiation would be invalid. Rather, its meaning is that he is a wrongdoer against himself by this act. If someone kills him without knowing he is a Muslim, there is neither retribution nor blood money—only expiation is required, by the explicit text of the Qur'an.

فَإِنْ قِيلَ: فَقَدْ بَرِئَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ كُلِّ مُسْلِمٍ سَكَنَ بَيْنَ أَهْلِ دَارِ الْحَرْبِ؟ قُلْنَا: لَوْ كَانَ هَذَا مُبِيحًا لِتَعَمُّدِ قَتْلِهِ لَبَطَلَ قَوْلُكُمْ فِي إيجَابِ الْكَفَّارَةِ فِي ذَلِكَ، وَإِنَّمَا مَعْنَاهُ: أَنَّهُ جَانٍ عَلَى نَفْسِهِ بِذَلِكَ، فَإِنْ قَتَلَهُ مَنْ لَا يَدْرِي أَنَّهُ مُسْلِمٌ فَلَا قَوَدَ، وَلَا دِيَةَ، إنَّمَا فِيهِ الْكَفَّارَةُ فَقَطْ؛ بِنَصِّ الْقُرْآنِ.

L36684 They further strayed into misguidance by invoking a rejected and fabricated report: that the Prophet—peace and blessings of Allah be upon him—said, "Hands are not amputated during travel." This was astounding, for they are the foremost violators of this very report, amputating hands during travel. Thus, we cannot comprehend how they arrived at restricting this ruling specifically to the abode of war. Even if this claim were valid for them, their dismissal of retaliatory punishment (qiṣāṣ) and blood money (diyah)—or qiṣāṣ alone—on the pretext of abandoning hand amputation would constitute manifest absurdity. Allah has indeed protected His Messenger—peace and blessings of Allah be upon him—from prohibiting retaliatory punishment and blood money for the intentional killing of a Muslim in the land of war, while neglecting to mention that and limiting himself to forbidding hand amputation during travel. None attributes this to the Messenger of Allah—

ثُمَّ زَادُوا ضَلَالًا فَاحْتَجُّوا فِي ذَلِكَ بِخَبَرٍ سَاقِطٍ مَوْضُوعٍ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا تُقْطَعُ الْأَيْدِي فِي السَّفَرِ» فَكَانَ هَذَا عَجَبًا؛ لِأَنَّهُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ، فَيَقْطَعُونَ الْأَيْدِيَ فِي السَّفَرِ، فَلَا نَدْرِي مِنْ أَيْنَ وَقَعَ لَهُمْ تَخْصِيصُ دَارِ الْحَرْبِ بِذَلِكَ؟ ثُمَّ لَوْ صَحَّ لَهُمْ ذَلِكَ لَكَانَ إسْقَاطُهُمْ الْقَوَدَ، وَالدِّيَةَ، أَوْ الْقَوَدَ فَقَطْ عَلَى تَرْكِ قَطْعِ الْأَيْدِي هَوَسًا ظَاهِرًا - وَقَدْ أَعَاذَ اللَّهُ رَسُولَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِنْ أَنْ يُرِيدَ النَّهْيَ عَنْ الْقَوَدِ، وَالدِّيَةِ فِي قَتْلِ نَفْسِ الْمُسْلِمِ عَمْدًا فِي أَرْضِ الْحَرْبِ فَيَدَعَ ذِكْرَ ذَلِكَ

peace and blessings of Allah be upon him—except a cursed, deliberate liar who fabricates falsehood against him—peace and blessings of Allah be upon him.

وَيَقْتَصِرَ عَلَى النَّهْيِ عَنْ قَطْعِ الْأَيْدِي فِي السَّفَرِ - هَذَا لَا يُضِيفُهُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا كَذَّابٌ مَلْعُونٌ مُتَعَمِّدُ الْكَذِبِ عَلَيْهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L36685 Abū Muḥammad—may Allāh be pleased with him—said: As for our statement that the intentional killer is to be slain by whatever means he used to kill—people have differed regarding all of this—: a group held the same view as us—as we have been informed through the chain of Abū Bakr ibn Abī Shaybah: from Ḥafṣ—he is Ibn Ghīyāth—from Ashʿath, from al-Shaʿbī, who said: ʿAlī ibn Abī Ṭālib declared: "All intentional killing entails *qisas*."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَأَمَّا قَوْلُنَا يُقْتَلُ قَاتِلُ الْعَمْدِ بِأَيِّ شَيْءٍ قَتَلَ بِهِ فَإِنَّهُ قَدْ اخْتَلَفَ النَّاسُ فِي كُلِّ ذَلِكَ -: فَقَالَتْ طَائِفَةٌ كَمَا قُلْنَا -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا حَفْصٌ - هُوَ ابْنُ غِيَاثٍ - عَنْ أَشْعَثَ عَنِ الشَّعْبِيِّ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: الْعَمْدُ كُلُّهُ قَوَدٌ.

L36686–36687 And through the chain of Abū Bakr ibn Abī Shaybah: We cite ʿAbd al-Raḥīm from Ashʿath from al-Shaʿbī, al-Ḥasan, Ibn Sīrīn, and ʿAmr ibn Dīnār—all of whom said: "Intentional killing entails qawad (retaliatory punishment)." Through the chain of Wakīʿ from Sufyān al-Thawrī, from one who heard al-Shaʿbī say: "If one mutilates a man then kills him, he shall be mutilated then killed." Through the chain of Ḥammād ibn Salamah from Iyās ibn Muʿāwiyah, who said: "For any object used to kill—such as a massive stone or large wooden beam—retaliation is exacted as qawad with it." Through the chain of Ḥammād ibn Salamah from Hishām ibn ʿUrwah, who narrated: A son of Ṣuhayb seized a son of Ḥāṭib ibn Abī Baltaʿah and struck him with a wooden plank until he presumed him dead—he then related the ḥadīth—and the victim died from the blows. The Ṣuhaybī—al-Ḥasan ibn ʿUthmān—was handed over to Ḥāṭib's avenger of blood (walī al-dam), who struck the Ṣuhaybī's head with a staff until the parts of his head scattered, causing death. ʿUrwah ibn al-Zubayr witnessed this without objection. The Ḥāṭibite was named Yazīd ibn al-Mughīrah.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الرَّحِيمِ عَنْ أَشْعَثَ عَنِ الشَّعْبِيِّ، وَالْحَسَنِ، وَابْنِ سِيرِينَ، وَعَمْرِو بْنِ دِينَارٍ، قَالُوا كُلُّهُمْ: الْعَمْدُ قَوَدٌ. وَمِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَمَّنْ سَمِعَ الشَّعْبِيَّ يَقُولُ: إذَا مَثَّلَ بِالرَّجُلِ ثُمَّ قَتَلَهُ فَإِنَّهُ يُمَثَّلُ بِهِ ثُمَّ يُقْتَلُ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ إيَاسِ بْنِ مُعَاوِيَةَ قَالَ: كُلُّ شَيْءٍ يَقْتُلُهُ فَإِنَّهُ يُقَادُ بِهِ نَحْوُ الْحَجَرِ الْعَظِيمِ وَالْخَشَبَةِ الْعَظِيمَةِ الَّتِي تَقْتُلُ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ أَنَّهُ حَدَّثَهُ أَنَّ ابْنًا لِصُهَيْبٍ أَخَذَ ابْنًا لِحَاطِبِ بْنِ أَبِي بَلْتَعَةَ فَضَرَبَهُ بِخَشَبَةٍ مَعَهُ حَتَّى ظَنَّ أَنَّهُ قَدْ قَتَلَهُ - فَذَكَرَ الْحَدِيثَ - وَأَنَّهُ مَاتَ مِنْهَا، وَأَنَّ الصُّهَيْبِيَّ دُفِعَ إلَى وَلِيِّ حَاطِبٍ، فَضَرَبَهُ بِعَصًا مَعَهُ فِي الرَّأْسِ حَتَّى تَطَايَرَتْ شُؤُونُ رَأْسِهِ فَمَاتَ، وَعُرْوَةُ بْنُ الزُّبَيْرِ جَالِسٌ لَا يُنْكِرُهُ - كَانَ اسْمُ الصُّهَيْبِيِّ: الْحَسَنَ بْنَ عُثْمَانَ - وَكَانَ اسْمُ الْحَاطِبِيِّ: يَزِيدَ بْنَ الْمُغِيرَةِ.

L36688 Through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī the Judge: Sulaymān ibn Ḥarb from Ḥammād ibn Salamah from Abū Rajāʾ, who said: Qatādah said, "If one kills with a stone, he is killed with a stone; if one kills with a stick, he is killed with a stick." This is the opinion of Abān ibn ʿUthmān and Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm.

وَمِنْ طَرِيقِ إسْمَاعِيلَ بْنِ إسْحَاقَ الْقَاضِي أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَبِي رَجَاءٍ قَالَ: قَالَ قَتَادَةُ: إنْ قَتَلَ بِحَجَرٍ قُتِلَ بِحَجَرٍ، وَإِنْ قَتَلَ بِخَشَبَةٍ قُتِلَ بِخَشَبَةٍ. وَهُوَ قَوْلُ أَبَانَ بْنِ عُثْمَانَ، وَأَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ.

L36689 Narrated through Ḥammād ibn Salamah, from Ḥumayd, from Maymūn ibn Mihrān: A Jew was killed by a Muslim with a stone. Maymūn wrote regarding this matter to ʿUmar ibn ʿAbd al-ʿAzīz, who then instructed him to hand the Muslim over to the Jew's mother. He delivered him to her, and she killed him with a stone. This is the ruling upheld by Mālik, al-Shāfiʿī, Abū Thawr, Aḥmad ibn Ḥanbal, Isḥāq, Ibn al-Mundhir, their companions, and others.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ أَنَا حُمَيْدٌ عَنْ مَيْمُونِ بْنِ مِهْرَانَ: أَنَّ يَهُودِيًّا قَتَلَهُ مُسْلِمٌ بِفِهْرٍ؟ فَكَتَبَ مَيْمُونٌ فِي ذَلِكَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَكَتَبَ إلَيْهِ عُمَرُ يَأْمُرُهُ بِدَفْعِهِ إلَى أُمِّ الْيَهُودِيِّ، فَدَفَعَهُ إلَيْهَا، فَقَتَلَتْهُ بِفِهْرٍ. وَبِهِ يَأْخُذُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، وَابْنُ الْمُنْذِرِ، وَأَصْحَابُهُمْ، وَغَيْرُهُمْ.

L36690 Mālik said: If he kills him with a stone, a stick, fire, or by drowning, he is killed in the same manner, and the punishment is repeated upon him continuously until he dies.

وَقَالَ مَالِكٌ: إنْ قَتَلَهُ بِحَجَرٍ، أَوْ عَصًا، أَوْ بِالنَّارِ، أَوْ بِالتَّغْرِيقِ: قُتِلَ بِمِثْلِ ذَلِكَ، يُكَرَّرُ عَلَيْهِ أَبَدًا حَتَّى يَمُوتَ.

L36691 Al-Shafiʿi said: If one strikes another with a stone until he dies, the striker is to be struck with a stone indefinitely until he dies. If one confines him without food or drink until he dies, the confiner is confined for the same duration until death. If he does not die, he is to be killed by the sword. Similarly, if one drowns him, and similarly if one throws him from a high precipice. If one severs his hands and feet and he dies, the perpetrator's hands and feet are to be severed. If he dies—otherwise, he is to be killed by the sword.

وَقَالَ الشَّافِعِيُّ: إنْ ضَرَبَهُ بِحَجَرٍ حَتَّى مَاتَ: ضَرَبَهُ بِحَجَرٍ أَبَدًا حَتَّى يَمُوتَ، وَإِنْ حَبَسَهُ بِلَا طَعَامٍ وَلَا شَرَابٍ حَتَّى يَمُوتَ: حُبِسَ مِثْلُ تِلْكَ الْمُدَّةِ حَتَّى يَمُوتَ، فَإِنْ لَمْ يَمُتْ: قُتِلَ بِالسَّيْفِ، وَهَكَذَا إنْ غَرَّقَهُ، وَهَكَذَا إنْ أَلْقَاهُ مِنْ مَهْوَاةٍ عَالِيَةٍ - فَإِنْ قَطَعَ يَدَيْهِ وَرِجْلَيْهِ فَمَاتَ: قُطِعَتْ يَدَا الْقَاطِعِ وَرِجْلَاهُ، فَإِنْ مَاتَ وَإِلَّا قُتِلَ بِالسَّيْفِ.

L36692–36693 Abu Muhammad (may Allah be pleased with him) said: If he does not die, he is left as he is until he dies. He is not fed nor given drink. Similarly, if he is killed by hunger or thirst, he is starved and deprived of water until he dies necessarily. The time period is not taken into account at all.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: إنْ لَمْ يَمُتْ تُرِكَ كَمَا هُوَ حَتَّى يَمُوتَ: لَا يُطْعَمُ وَلَا يُسْقَى - وَكَذَلِكَ إنْ قَتَلَهُ جُوعًا أَوْ عَطَشًا: جُوِّعَ وَعُطِّشَ حَتَّى يَمُوتَ وَلَا بُدَّ - وَلَا تُرَاعَى الْمُدَّةُ أَصْلًا.

L36694 Ibn Shubrumah said: If one immerses him in water until he dies - "I immersed him in it until he died" - and if he kills him by beating, "I beat him in the same manner as his beating, no more than what he inflicted." They used to condemn disfiguring retaliation and would say: "The sword fulfills the legal requirement for all such matters."

وَقَالَ ابْنُ شُبْرُمَةَ: إنْ غَمَسَهُ فِي الْمَاءِ حَتَّى يَمُوتَ: غَمَسْتُهُ فِيهِ حَتَّى يَمُوتَ - وَإِنْ قَتَلَهُ ضَرْبًا ضَرَبْتُهُ مِثْلَ ضَرْبِهِ لَا أَكْثَرَ مِنْ ذَلِكَ. وَقَدْ كَانُوا يَكْرَهُونَ الْمُثْلَةَ، وَيَقُولُونَ: السَّيْفُ يُجْزِئُ مِنْ ذَلِكَ كُلِّهِ.

L36695 Abu Muhammad - may Allah be pleased with him - said: "Rather, I will strike him until he dies." A group said: "One is not to be killed in any such case except by the sword" - as we have narrated through the chain of Hammad ibn Salamah from Yunus ibn Ubayd from al-Hasan al-Basri that he

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: بَلْ أَضْرِبُهُ حَتَّى يَمُوتَ، وَقَالَتْ طَائِفَةٌ: لَا يُقْتَلُ فِي كُلِّ ذَلِكَ إلَّا بِالسَّيْفِ -: كَمَا رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ

said: “There is no retaliation except with an iron weapon.” From the chain of Waki’: I, Sufyan, from al-Mughirah from Ibrahim al-Nakha’i regarding one who kills with a piece of wood or with something else? He said: “The sword is the proper means for that.” From the chain of Shu’bah from al-Mughirah from Ibrahim: “There is no retaliation except by the sword.” From the chain of Abu Bakr ibn Abi Shaybah: I am Waki’, from Muhammad ibn Qays from al-Sha’bi: “There is no retaliation except with an iron weapon.” Similar to this has been reported from Sufyan.

الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ: لَا قَوَدَ إِلَّا بِحَدِيدَةٍ. وَمِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِيمَنْ قَتَلَ بِخَشَبَةٍ أَوْ بِالشَّيْءِ؟ قَالَ: السَّيْفُ مَحَلُّ ذَلِكَ. وَمِنْ طَرِيقِ شُعْبَةَ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ لَا قَوَدَ إِلَّا بِالسَّيْفِ. وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا وَكِيعٌ عَنْ مُحَمَّدِ بْنِ قَيْسٍ عَنْ الشَّعْبِيِّ لَا قَوَدَ إِلَّا بِحَدِيدَةٍ، وَرُوِيَ نَحْوُ هَذَا عَنْ سُفْيَانَ.

L36696 Abu Hanifa and his companions said: By whatever means he killed him—from those that necessitate retaliation—retaliation is only to be exacted with the sword. This is the opinion of Abu Sulaiman.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: بِأَيِّ شَيْءٍ قَتَلَهُ - مِمَّا يُوجِبُ الْقَوَدَ - فَلَا يُقَادُ إِلَّا بِالسَّيْفِ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ.

L36697 Abu Muhammad—may Allah be pleased with him—said: The apparent meaning of what has been reported to us from al-Ḥasan and al-Shaʿbī indicates the obligation of legal retribution through the sword, spear, knife, or hammer. We then examined the evidence cited by the first group and found them relying on the words of Allah, the Almighty: *“The sacred months are [governed by] legal retribution. So whoever aggresses against you, retaliate against him in like manner as he aggressed against you”* (Al-Baqarah 2:194).[28]

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: ظَاهِرُ مَا رُوِّينَا عَنْ الْحَسَنِ، وَالشَّعْبِيِّ: إيجَابُ الْقَوَدِ بِالسَّيْفِ، وَالرُّمْحِ، وَالسِّكِّينِ، وَالْمِطْرَقَةِ -: فَنَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْأُولَى فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L36698 By the words of Allah, the Exalted and Majestic: *“The recompense of an evil is an evil like it”* [Ash-Shura 42:40], and by His words, the Most High: *“If you retaliate, then retaliate with the like of what you were harmed with”* [An-Nahl 16:126].[29]

وَبِقَوْلِهِ عَزَّ وَجَلَّ: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] ، وَبِقَوْلِهِ تَعَالَى: {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] .

L36699 And by His words, the Almighty and Majestic: {And whoever retaliates after being wronged—there is no blame upon them} [42:41]. {Blame lies only on those who wrong people and act oppressively in the land without right—for them there is a grievous punishment} [42:42].[30]

وَبِقَوْلِهِ عَزَّ وَجَلَّ: {وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ} [الشورى: ٤١] {إِنَّمَا السَّبِيلُ عَلَى الَّذِينَ يَظْلِمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ أُولَئِكَ لَهُمْ عَذَابٌ أَلِيمٌ} [الشورى: ٤٢] .

وَبِقَوْلِهِ عَزَّ وَجَلَّ: {تِلْكَ حُدُودُ اللَّهِ فَلا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ} [البقرة: ٢٢٩] .

[28] **Qur’an references (L36697):** Qur’an 2:194 (Al-Baqarah).
[29] **Qur’an references (L36698):** Qur’an 42:40 (Ash-Shuraa); Qur’an 16:126 (An-Nahl).
[30] **Qur’an references (L36699):** Qur’an 42:41 (Ash-Shuraa); Qur’an 42:42 (Ash-Shuraa).

L36700–36701 And by His statement, the Almighty and Majestic: “These are the limits of Allah, so do not transgress them. Whoever transgresses the limits of Allah, those are the unjust”[Surah Al-Baqarah 2:229].[31]

وَبِقَوْلِهِ تَعَالَى: {وَلا تَعْتَدُوا إِنَّ اللَّهَ لا يُحِبُّ الْمُعْتَدِينَ} [البقرة: ١٩٠] .

L36702 And by His saying—the Most High—: “And do not transgress. Indeed, Allah does not love the transgressors.” [al-Baqarah 2:190][32]

قَالُوا: فَكَلَامُ اللَّهِ تَعَالَى كَمَا أَوْرَدْنَا: مُوجِبٌ أَنَّ الْغَرَضَ فِي الْقِصَاصِ فِي الْقَتْلِ فَمَا دُونَهُ إِنَّمَا هُوَ بِمِثْلِ مَا اعْتَدَى بِهِ، وَأَنَّهُ لَا يَحِلُّ تَعَدِّي ذَلِكَ إِلَى غَيْرِ مَا اعْتَدَى بِهِ.

L36703 They said: The speech of God, the Exalted, as we have cited necessitates that the purpose of retaliation in killing and what is below it is solely equivalence to what was transgressed, and that it is impermissible to exceed this to anything beyond what was transgressed.

قَالُوا: فَمَنْ قَتَلَ بِالسَّيْفِ مَنْ قَتَلَ مُتَعَدِّيًا بِغَيْرِ السَّيْفِ، فَقَاتِلُهُ بِمَا لَمْ يَقْتُلْ بِهِ، مُتَعَدٍّ ظَالِمٌ بِنَصِّ الْقُرْآنِ، عَاصٍ لِلَّهِ عَزَّ وَجَلَّ فِيمَا أُمِرَ بِهِ.

L36704 If someone kills with a sword a person who killed as a transgressor using a means other than the sword, then combat him with what he did not kill with—for he is a transgressor and oppressor by the explicit text of the Quran, disobeying Allah Almighty in the commands he was given.

وَاحْتَجُّوا أَيْضًا - بِمَا قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L36705 They also cited as evidence what is authentically established from the Messenger of Allah—peace be upon him—in his statement: “Indeed, your blood, your wealth, your honor, and your bodies are sacred and forbidden for you to violate.”

قَالُوا: فَمَنْ قَتَلَ أَحَدًا بِغَيْرِ السَّيْفِ ظَالِمًا عَامِدًا: فَبَشَرَةُ غَيْرِ الْقَاتِلِ مُحَرَّمَةٌ عَلَى الْمُسْتَقِيدِ، وَغَيْرِهِ، إِذْ قَدْ صَحَّ تَحْرِيمُهَا، وَلَمْ يَأْتِ نَصٌّ، وَلَا إِجْمَاعٌ بِإِبَاحَتِهَا، إِنَّمَا حَلَّ مِنْ بَشَرَةِ الْقَاتِلِ، وَمِنْ التَّعَدِّي عَلَيْهِ مِثْلُ مَا انْتَهَكَ هُوَ مِنْ بَشَرَةِ غَيْرِهِ، وَمِثْلُ مَا تَعَدَّى عَلَيْهِ بِهِ قَطُّ - وَمَنْ خَالَفَ هَذَا فَهُوَ كَمَنْ أَفْتَى مَنْ فُقِئَتْ عَيْنَاهُ ظُلْمًا بِأَنْ يَجْدَعَ هُوَ أَشْرَفَ أُذُنَيْ فَاقِئِ عَيْنَيْهِ - وَلَا فَرْقَ.

L36706 They said: Whoever kills someone by means other than the sword wrongfully and intentionally—the person of anyone other than the killer is forbidden to the one seeking legal retribution and others, since its prohibition has been established, and no textual evidence or consensus exists to permit it. Only the killer’s person is permissible to violate, and from transgressing against him an equivalent to what he violated in another’s person, and exactly as he transgressed entirely. Whoever opposes this is like one who issues a fatwa permitting a person whose eyes were unjustly gouged out to amputate the most noble part of the ears of the one who gouged his eyes—and there is no difference.

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا هَدَّابُ بْنُ خَالِدٍ أَنَا هَمَّامٌ أَنَا قَتَادَةُ عَنْ أَنَسِ بْنِ مَالِكٍ: «أَنَّ جَارِيَةً قَدْ وُجِدَ رَأْسُهَا قَدْ رُضَّ بَيْنَ حَجَرَيْنِ، فَسَأَلُوهَا مَنْ صَنَعَ هَذَا بِكِ؟ فُلَانٌ؟ فُلَانٌ؟ حَتَّى ذَكَرُوا لَهَا يَهُودِيًّا، فَأَوْمَأَتْ بِرَأْسِهَا؟ فَأُخِذَ الْيَهُودِيُّ فَأَقَرَّ، فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ

L36707 From the chain of Muslim: Haddāb ibn Khālid reported from Hammām, who reported from Qatādah, from Anas ibn Mālik: “A girl’s head was found

[31] **Qur’an references (L36701):** Qur’an 2:229 (Al-Baqarah).

[32] **Qur’an references (L36702):** Qur’an 2:190 (Al-Baqarah); Qur’an 5:87 (Al-Ma’idah).

crushed between two stones. They questioned her: 'Who did this to you? Was it so-and-so? So-and-so?' until they mentioned a Jew to her. She nodded her head. The Jew was apprehended, and then he confessed. The Prophet (peace be upon him) commanded that his head be crushed between the stones." Shu'bah narrated it from Hishām ibn Zayd from Anas, and Ma'mar from Ayyūb al-Sakhtiyānī from Abu Qilābah from Anas.

عَلَيْهِ وَسَلَّمَ - أَنْ تُرَضَّ رَأْسُهُ بَيْنَ الْحِجَارَةِ.» وَرَوَاهُ أَيْضًا - شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدٍ عَنْ أَنَسٍ، وَمَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ.

L36708–36709 From the narration of Muslim: Abu Ja'far ibn al-Ṣabbāḥ and Abū Bakr ibn Abī Shaybah—and the wording is his—narrated from Ibn 'Ulayyah from al-Ḥajjāj ibn Abī 'Uthmān from Abū Rajā', the freed slave of Abū Qilābah, who said: Anas ibn Mālik narrated to me: "Eight men from the tribe of 'Ukl came to the Messenger of Allah—peace and blessings be upon him—and pledged allegiance to Islam. They found the land's air harmful, and their bodies became ill. The Messenger of Allah—peace and blessings be upon him—said to them: 'Will you not go out with our shepherd to his camels and drink from their urine and milk?' They replied: 'Yes.' They went out, drank from their urine and milk, and recovered. Then they killed the shepherd and drove away the camels. When this news reached the Messenger of Allah—peace and blessings be upon him—he sent men in pursuit until they were apprehended. They were brought before him, and he ordered their hands and feet to be severed, their eyes cauterized with hot irons, then they were cast under the sun until they died."

وَمِنْ طَرِيقِ مُسْلِمٍ: أَنَا أَبُو جَعْفَرِ بْنِ الصَّبَّاحِ وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ - وَاللَّفْظُ لَهُ - أَنَا ابْنُ عُلَيَّةَ عَنِ الْحَجَّاجِ بْنِ أَبِي عُثْمَانَ أَنَا أَبُو رَجَاءٍ - مَوْلَى أَبِي قِلَابَةَ - حَدَّثَنِي أَنَسُ بْنُ مَالِكٍ: «أَنَّ نَفَرًا مِنْ عُكْلٍ - ثَمَانِيَةً - قَدِمُوا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَايَعُوهُ عَلَى الْإِسْلَامِ، فَاسْتَوْخَمُوا الْأَرْضَ، وَسَقِمَتْ أَجْسَامُهُمْ، فَقَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: أَلَا تَخْرُجُونَ مَعَ رَاعِينَا فِي إِبِلِهِ فَتُصِيبُونَ مِنْ أَبْوَالِهَا وَأَلْبَانِهَا؟ فَقَالُوا: بَلَى: فَخَرَجُوا فَشَرِبُوا مِنْ أَبْوَالِهَا وَأَلْبَانِهَا، فَصَحُّوا، فَقَتَلُوا الرَّاعِيَ، وَطَرَدُوا الْإِبِلَ، فَبَلَغَ ذَلِكَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَعَثَ فِي آثَارِهِمْ فَأُدْرِكُوا، فَجِيءَ بِهِمْ، فَأَمَرَ بِهِمْ فَقُطِعَتْ أَيْدِيهِمْ، وَأَرْجُلُهُمْ، وَسَمَلَ أَعْيُنَهُمْ، ثُمَّ نُبِذُوا فِي الشَّمْسِ حَتَّى مَاتُوا».

L36710 Muslim said: Al-Fadl ibn Sahl al-A'raj al-Marwazi reported to me: Yahya ibn Ghaylan reported to me: Yazid ibn Zuray' reported to me: Sulayman al-Taymi reported to me, from Anas ibn Malik, who said: "The Messenger of Allah (peace be upon him) only gouged out the eyes of those people because they had gouged out the eyes of the shepherds." This is the ruling of the Messenger of Allah (peace be upon him) and his command, which no one may disregard.

قَالَ مُسْلِمٌ: حَدَّثَنِي الْفَضْلُ بْنُ سَهْلٍ الْأَعْرَجُ - مَرْوَزِيٌّ - أَنَا يَحْيَى بْنُ غَيْلَانَ أَنَا يَزِيدُ بْنُ زُرَيْعٍ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «إِنَّمَا سَمَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْيُنَ أُولَئِكَ؛ لِأَنَّهُمْ سَمَلُوا أَعْيُنَ الرِّعَاءِ» فَهَذَا حُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَمْرُهُ الَّذِي لَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْهُ.

L36711 Narrated through the chain of Abū Bakr ibn Abī Shaybah: ʿAbd al-Raḥmān ibn Sulaymān reported from Ismāʿīl ibn Muslim, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ibn ʿAbbās, who said: The Messenger of Allah (peace and blessings be upon him) stated, "Intentional homicide necessitates retaliation unless the slain person's guardian grants pardon."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا عَبْدُ الرَّحْمَنِ بْنُ سُلَيْمَانَ أَنَا إسْمَاعِيلُ بْنُ مُسْلِمٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَمْدُ قَوَدٌ إلَّا أَنْ يَعْفُوَ وَلِيُّ الْمَقْتُولِ» .

L36712 Through the chain of Al-Bukhārī: From Abū Nuʿaym—he is Al-Faḍl ibn Dukayn—from Shaybān, from Yaḥyā—he is Ibn Abī Kathīr—from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, from Abū Hurayrah, that the Messenger of Allāh—peace and blessings of Allāh be upon him—said: "For whom someone is slain, he is entitled to the better of two options: either to be compensated with diyah or to have qiṣāṣ exacted."

وَمِنْ طَرِيقِ الْبُخَارِيِّ أَنَا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - أَنَا شَيْبَانُ عَنْ يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «وَمَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ إمَّا أَنْ يُودَى، وَإِمَّا أَنْ يُقَادَ» .

L36713–36715 Abu Muhammad—may Allah be pleased with him—said: *Al-qawd* [retribution] in the language of the Arabs is reciprocal retaliation equivalent to the initial act. There is no disagreement among anyone that cutting a hand for a hand, an eye for an eye, a nose for a nose, and a life for a life—all of this is termed "qawd" (retaliation in exact equivalence). It has been established with certainty that when the Messenger of Allah—peace be upon him—commanded us to enforce qawd, he commanded that the aggressor—in cases of murder or injuries less than murder—be subjected to the exact same action he committed, identically, identically. This is a ruling necessitated by the Sharia and the language's usage, and it is indispensable.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: الْقَوَدُ فِي لُغَةِ الْعَرَبِ: الْمُقَارَضَةُ بِمِثْلِ مَا ابْتَدَأَهُ بِهِ، لَا خِلَافَ بَيْنَ أَحَدٍ فِي أَنَّ قَطْعَ الْيَدِ بِالْيَدِ، وَالْعَيْنِ بِالْعَيْنِ، وَالْأَنْفِ بِالْأَنْفِ، وَالنَّفْسِ بِالنَّفْسِ، كُلُّ ذَلِكَ يُسَمَّى " قَوَدًا ". فَقَدْ صَحَّ يَقِينًا - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذَا أَمَرَنَا بِالْقَوَدِ فَإِنَّهُ إنَّمَا أَمَرَنَا بِأَنْ يُعْمَلَ بِالْمُعْتَدِي فِي الْقَتْلِ فَمَا دُونَهُ: مِثْلُ مَا عَمِلَ هُوَ سَوَاءً سَوَاءً - هَذَا أَمْرٌ تَقْتَضِيهِ الشَّرِيعَةُ وَاللُّغَةُ وَلَا بُدَّ.

L36716 Then we examined the evidence cited by the other group: we found them basing their argument on what we have narrated through the chain of Abū Bakr ibn Abī Shaybah - who said: "I [Abū Bakr] heard from ʿĪsā ibn Yūnus, from Ashʿath and ʿAmr ibn ʿUbayd, each transmitting from al-Ḥasan" - who said: "The Messenger of Allah (peace be upon him) declared: 'No legal retribution applies except in cases involving the sword.'"

ثُمَّ نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْأُخْرَى -: فَوَجَدْنَاهُمْ يُعَوِّلُونَ عَلَى مَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَنَا عِيسَى بْنُ يُونُسَ عَنْ أَشْعَثَ، وَعَمْرِو بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا قَوَدَ إلَّا بِالسَّيْفِ» .

L36717 Abu Muhammad—may Allah be pleased with him—said: This is mursal, and it is not permissible to rely on a mursal.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا مُرْسَلٌ، وَلَا يَحِلُّ الْأَخْذُ بِمُرْسَلٍ.

L36718 They said: The two narrations from Anas - regarding those who killed the shepherds and the one who crushed the girl's head - were applicable

only when mutilation was permissible. Then mutilation itself was abrogated through its prohibition.

وَقَالُوا: الْخَبَرَانِ عَنْ أَنَسٍ فِي الَّذِينَ قَتَلُوا الرِّعَاءَ، وَفِي الَّذِي رَضَخَ رَأْسَ الْجَارِيَةِ، فَإِنَّمَا كَانَا إِذْ كَانَتْ الْمُثْلَةُ مُبَاحَةً، ثُمَّ نَسَخَهَا بِتَحْرِيمِ الْمُثْلَةِ.

L36719 This is indicated in the narration of Ayyub from Abu Qilabah from Anas regarding that report: "The Messenger of Allah (peace and blessings be upon him) commanded that he be stoned until he died, and he was stoned until he died."

وَيَدُلُّ عَلَى ذَلِكَ: أَنَّ فِي رِوَايَةِ أَيُّوبَ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ لِذَلِكَ الْخَبَرِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِأَنْ يُرْجَمَ حَتَّى يَمُوتَ، فَرُجِمَ حَتَّى مَاتَ» .

L36720 They said: "Stoning may not strike the head, for they killed him using a method different from the one he used to kill the girl."

قَالُوا: وَالرَّجْمُ قَدْ لَا يُصِيبُ الرَّأْسَ، فَقَدْ قَتَلَهُ بِغَيْرِ مَا قَتَلَ هُوَ بِهِ الْجَارِيَةَ.

L36721 You have narrated through the chain of Abu Dawud: Muhammad ibn al-Muthanna narrated from Mu'adh ibn Hisham al-Dastuwa'i, who narrated from his father from Qatadah from al-Hasan from al-Sabah ibn 'Imran—he being al-Burjumi—that he heard Samurah ibn Jundub and 'Imran both say: "The Messenger of Allah—peace and blessings of Allah be upon him—would urge us to give charity and forbid us from mutilation."[33]

وَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُعَاذُ بْنُ هِشَامٍ الدَّسْتُوَائِيُّ حَدَّثَنِي أَبِي عَنْ قَتَادَةَ عَنْ الْحَسَنِ عَنْ الصَّبَاحِ بْنِ عِمْرَانَ - هُوَ الْبُرْجُمِيّ - أَنَّهُ سَمِعَ سَمُرَةَ بْنَ جُنْدُبٍ، وَعِمْرَانَ يَقُولَانِ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَحُثُّنَا عَلَى الصَّدَقَةِ وَيَنْهَانَا عَنْ الْمُثْلَةِ.»

L36722–36723 And a similar narration has also been narrated to us through the chain of Al-Hasan from Abu Barzah, Abu Bakrah, Anas ibn Malik, and Ma'qil ibn Yasar, all of them from the Messenger of Allah (peace and blessings of Allah be upon him).

وَرُوِّينَا نَحْوَهُ أَيْضًا: مِنْ طَرِيقِ الْحَسَنِ عَنْ أَبِي بَرْزَةَ، وَأَبِي بَكْرَةَ، وَأَنَسِ بْنِ مَالِكٍ، وَمَعْقِلِ بْنِ يَسَارٍ كُلُّهُمْ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36724 They said: "We never heard him—upon him be prayers and peace—address us in a sermon except that he enjoined charity and prohibited mutilation." I am Ahmad ibn Umar al-Udhri; I am Ahmad ibn Ali ibn al-Hasan al-Kisai; I am Ali ibn Ghaylan al-Harrani; I am al-Mufaddal ibn Muhammad; I am Ali ibn Ziyad; Abu Qurrah narrated to us from Ibn Jurayj, who informed me: Ismail ibn Ulayyah reported from Ma'mar, from Ayyub al-Sakhtiyani, from Ikrimah, from Ibn Abbas, who said: The Messenger of Allah—peace and blessings of Allah be upon him—said: "Whoever alters his religion or abandons his religion: execute him, and do not inflict upon anyone the pun-

قَالُوا: «مَا سَمِعْنَاهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَطُّ خَطَبَنَا إلَّا وَهُوَ يَأْمُرُ بِالصَّدَقَةِ وَيَنْهَى عَنْ الْمُثْلَةِ» : أَنَا أَحْمَدُ بْنُ عُمَرَ الْعُذْرِيُّ أَنَا أَحْمَدُ بْنُ عَلِيِّ بْنِ الْحَسَنِ الْكِسَائِيُّ أَنَا عَلِيُّ بْنُ غَيْلَانَ الْحَرَّانِيُّ أَنَا الْمُفَضَّلُ بْنُ مُحَمَّدٍ أَنَا عَلِيُّ بْنُ زِيَادٍ ثنا أَبُو قُرَّةَ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ بَدَّلَ دِينَهُ، أَوْ رَجَعَ عَنْ دِينِهِ: فَاقْتُلُوهُ وَلَا تُعَذِّبُوا بِعَذَابِ اللَّهِ أَحَدًا» يَعْنِي بِالنَّارِ، وَنَهَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - عَنْ الْمُثْلَةِ.

[33] **Hadith references (L36721):** Sunan Abi Dawud 2667.

ishment of Allah," meaning the Fire. He—upon him be prayers and peace—also prohibited mutilation.

قَالُوا: وَالنَّهْيُ عَنْ الْمُثْلَةِ ثَابِتٌ مِنْ طُرُقٍ. قَالُوا: وَقَدْ رَوَيْتُمْ مِنْ طَرِيقِ الْبُخَارِيِّ أَنَا مُوسَى بْنُ إسْمَاعِيلَ أَنَا هَمَّامٌ عَنْ قَتَادَةَ عَنْ أَنَسٍ فَذَكَرَ حَدِيثَ الَّذِينَ قَتَلُوا الرِّعَاءَ وَقَدْ أَوْرَدْنَاهُ آنِفًا.

L36725 They said: The prohibition against mutilation is established through multiple chains of transmission. They said: You have narrated through the chain of Al-Bukhari: I am Musa ibn Isma'il, I am Hammam, from Qatadah, from Anas—who mentioned the hadith concerning those who killed the shepherds, which we previously related.

قَالَ قَتَادَةُ: فَحَدَّثَنِي مُحَمَّدُ بْنُ سِيرِينَ أَنَّ ذَلِكَ كَانَ قَبْلَ نُزُولِ الْحُدُودِ.

L36726 Qatadah said: Muhammad ibn Sirin narrated to me that this occurred before the revelation of the divinely ordained penalties.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَمْ نُخَالِفْهُمْ قَطُّ فِي أَنَّ الْمُثْلَةَ لَا تَحِلُّ، لَكِنْ قُلْنَا: إنَّهُ لَا مُثْلَةَ إلَّا مَا حَرَّمَ اللَّهُ عَزَّ وَجَلَّ وَأَمَّا مَا أَمَرَ بِهِ عَزَّ وَجَلَّ لَيْسَ مُثْلَةً.

L36727 Abu Muhammad—may Allah be pleased with him—said: We have never disagreed with them that mutilation is impermissible. However, we said: Indeed, there is no mutilation except what Allah, the Mighty and Majestic, has prohibited. As for what He, the Mighty and Majestic, has commanded, it is not mutilation.

لَيْتَ شِعْرِي: مَا الْفَرْقُ عِنْدَ هَؤُلَاءِ الْقَوْمِ، بَيْنَ مَنْ قَتَلَ عَامِدًا ظَالِمًا بِالْحِجَارَةِ فَقُتِلَ هُوَ كَذَلِكَ؟ فَقَالُوا: هَذِهِ مُثْلَةٌ؟ وَبَيْنَ مَنْ زَنَى وَهُوَ مُحْصَنٌ فَقُتِلَ بِالْحِجَارَةِ؟ فَقَالُوا: لَيْسَ هُوَ مُثْلَةً، أَلَا يَسْتَحِي ذُو دِينٍ مِنْ هَذَا الْكَلَامِ الظَّاهِرِ فَسَادُهُ؟ فَإِنْ قَالُوا: إنَّ اللَّهَ عَزَّ وَجَلَّ أَمَرَ بِالرَّجْمِ فِي الزِّنَى، وَالْإِحْصَانِ، وَرَجَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36728 I wish I knew: What is the difference according to these people between one who intentionally and unjustly kills with stones and is killed similarly? They say, "Is this mutilation?" And between one who commits adultery when he is a muḥṣan (a chaste married person) and is stoned to death? They say, "This is not mutilation." Shouldn't a person of religion feel ashamed of this speech whose evident corruption is apparent? If they say: "Allah Almighty commanded stoning for adultery when one is a muḥṣan, and the Messenger of Allah (peace be upon him) carried out stoning."

قُلْنَا: وَاَللَّهُ سُبْحَانَهُ وَتَعَالَى أَمَرَ بِالِاعْتِدَاءِ عَلَى الْمُعْتَدِي بِمِثْلِ مَا اعْتَدَى بِهِ، وَبِالْمُعَاقَبَةِ بِمِثْلِ مَا عُوقِبَ بِهِ ظَالِمًا - وَقَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالشَّدْخِ بِالْحَجَرِ مَنْ قَتَلَ ظَالِمًا كَذَلِكَ، فَهَلْ مِنْ فَرْقٍ؟

L36729 We said: Allah, glorified and exalted, has commanded retaliation against the aggressor equivalent to his aggression, and to punish him equivalently for his wrongful act. The Messenger of Allah—peace be upon him—killed by crushing with a stone one who had killed an oppressor using the same method. Is there any difference?

وَلَيْتَ شِعْرِي: عَلَى مَا يَعْهَدُ النَّاسُ أَيَكُونُ مُثْلَةً أَعْظَمَ مِنْ قَطْعِ الْيَدِ وَالرِّجْلِ مِنْ خِلَافٍ، وَفَقْءِ الْعَيْنَيْنِ، وَجَدْعِ الْأَنْفِ، وَالْأُذُنَيْنِ، وَبَرْدِ الْأَسْنَانِ، وَقَطْعِ الشَّفَتَيْنِ -

L36730–36731 I wish I knew: Upon what do people consider that there could be a greater punitive mutilation than amputating the hand and foot from opposite limbs (such as the right hand and left foot), gouging out both eyes, severing the nose and ears, grinding down the teeth, and cutting off the lips - while they concur with us that all these punishments must be imposed on anyone who

unjustly commits such acts against another? Would it not be more appropriate if they relinquished arbitrary judgments? They have indeed asserted: If a brigand has his hand and foot amputated from opposite sides, then resumes brigandage afterward, neither his remaining hand nor his other foot is to be amputated.

وَهُمْ مُوَافِقُونَ لَنَا عَلَى أَنَّ كُلَّ ذَلِكَ وَاجِبٌ أَنْ يُفْعَلَ بِمَنْ فَعَلَهُ بِغَيْرِهِ ظَالِمًا، فَلَوْ تَرَكُوا التَّحَكُّمَ لَكَانَ أَوْلَى؟ وَلَقَدْ قَالُوا: إِنَّ مَنْ قَطَعَ الطَّرِيقَ فَقُطِعَتْ يَدُهُ وَرِجْلُهُ مِنْ خِلَافٍ، فَإِنْ قَطَعَ بَعْدَ ذَلِكَ الطَّرِيقَ لَمْ تُقْطَعْ يَدُهُ الثَّانِيَةُ وَلَا رِجْلُهُ.

L36732 We assert that they hold the following view: "Whoever cuts off another's hand and leg - his hand and leg must be cut off." If they say this, their inconsistency is exposed; but if they do not say it, they further entrench themselves in falsehood and obstruct the truth.

وَنَظُنُّ أَنَّهُمْ يَقُولُونَ: إِنَّهُ مَنْ قَطَعَ يَدَ آخَرَ وَرِجْلَهُ: أَنَّهُ تُقْطَعُ يَدُهُ وَرِجْلُهُ فَإِنْ قَالُوا ذَلِكَ، لَاحَ تَنَاقُضُهُمْ، وَإِنْ لَمْ يَقُولُوهُ زَادُوا فِي الْبَاطِلِ وَمَنْعِ الْحَقِّ.

L36733 As for the statement of Ibn Sirīn—"This was before the revelation of the hudud"—it is mistaken, and the words of one who neither witnessed those historical events nor mentioned that someone who had witnessed them had informed him are baseless.

؟ وَأَمَّا قَوْلُ ابْنِ سِيرِينَ: كَانَ ذَلِكَ قَبْلَ نُزُولِ الْحُدُودِ خَطَأً، وَكَلَامُ مَنْ لَمْ يَحْضُرْ تِلْكَ الْمَشَاهِدَ، وَلَا ذَكَرَ أَنَّهُ أَخْبَرَهُ مَنْ شَهِدَهَا: فَهُوَ لَا شَيْءَ.

L36734 The narration of Anas, which they deceptively cited, states that the Messenger of Allah—peace and blessings be upon him—never delivered a sermon without prohibiting mutilation. This constitutes the strongest argument against their falsehood that it abrogates his action—peace and blessings be upon him—regarding those who killed the shepherds. For Anas accompanied the Messenger of Allah—peace and blessings be upon him—and remained as his servant from the time he—peace be upon him—entered Medina until his death—peace and blessings be upon him. Thus, it is established with absolute, decisive certainty beyond doubt that Anas heard his sermon—peace and blessings be upon him—and his prohibition of mutilation prior to his action—peace and blessings be upon him—against those who killed the shepherds. Consequently, it becomes impossible for the earlier to abrogate the later. By Allah, verily striking the neck with a sword is the gravest form of mutilation—we witnessed it ourselves and saw it as a horrifying spectacle, as if the body were a torso with four severed limbs.

وَحَدِيثُ أَنَسٍ الَّذِي مَوَّهُوا بِهِ لَمْ يُسْمَعْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ يَخْطُبُ إِلَّا نَهَى عَنْ الْمُثْلَةِ أَعْظَمُ حُجَّةً عَلَيْهِمْ فِي كَذِبِهِمْ أَنَّهُ نَاسِخٌ لِفِعْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالَّذِينَ قَتَلُوا الرِّعَاءَ، لِأَنَّ أَنَسًا صَحِبَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَازَمَهُ خَادِمًا لَهُ مِنْ حِينِ قَدِمَ - عَلَيْهِ السَّلَامُ - الْمَدِينَةَ إلَى حِينِ مَوْتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَصَحَّ يَقِينًا قَطْعًا بِلَا شَكٍّ أَنَّهُ سَمِعَ أَنَسٌ خُطْبَتَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَنَهْيَهُ عَنْ الْمُثْلَةِ قَبْلَ فِعْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالَّذِينَ قَتَلُوا الرِّعَاءَ - فَبَطَلَ ضَرُورَةً أَنْ يَكُونَ الْمُتَقَدِّمُ نَاسِخًا لِلْمُتَأَخِّرِ، وَبِاَللَّهِ إنَّ ضَرْبَ الْعُنُقِ بِالسَّيْفِ لَأَعْظَمُ مُثْلَةً - وَلَقَدْ شَاهَدْنَاهُ فَرَأَيْنَاهُ مَنْظَرًا وَحْشًا، وَكَأَنَّهُ جَسَدٌ بِأَرْبَعَةِ أَنْخَاذٍ.

L36735 The invalidity of their argument based on mutilation is now evident and confirmed, for all that he (peace and blessings be upon him) commanded does not constitute mutilation. Rather, mutilation arises solely from overstepping what Allah the Exalted has prohibited, and nothing beyond that.

فَظَهَرَ فَسَادُ احْتِجَاجِهِمْ بِالْمُثْلَةِ - وَصَحَّ أَنَّ كُلَّ مَا أَمَرَ بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلَيْسَ هُوَ مُثْلَةً، إنَّمَا الْمُثْلَةُ مِنْ فِعْلِ مَا نَهَاهُ اللَّهُ تَعَالَى عَنْهُ مُتَعَدِّيًا وَلَا مَزِيدَ.

L36736–36738 As for their statement: “Indeed, in the narration of Ayyūb: ’The Messenger of Allah—peace and blessings be upon him—ordered him, so he was stoned with stones until he died,”’ there is no doubt, nor disagreement, that all these narrations pertain to a single incident, in a single context, regarding a single individual. The narration of Ayyūb from Abū Qilābah from Anas states: “He ordered him, so he was stoned until he died.” The narration of Shu‘bah from Hishām ibn Zayd from Anas states: “He ordered him, so his head was crushed between two stones.” The narration of Hammām from Qatādah from Anas states: “The Messenger of Allah—peace and blessings be upon him—ordered that his head be crushed between the stones.” Narrations concerning a single ruling: If his head is crushed between two stones, thus it is confirmed he was crushed with stones, and his head was stoned until he died.

وَأَمَّا قَوْلُهُمْ: إنَّ فِي رِوَايَةِ أَيُّوبَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِهِ فَرُجِمَ بِالْحِجَارَةِ حَتَّى مَاتَ» فَلَا شَكَّ، وَلَا خِلَافَ، فِي أَنَّ تِلْكَ الرِّوَايَاتِ كُلَّهَا هِيَ فِي قِصَّةٍ وَاحِدَةٍ، فِي مَقَامٍ وَاحِدٍ، فِي إنْسَانٍ وَاحِدٍ، فَقَوْلُ أَيُّوبَ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسٍ: «فَأَمَرَ بِهِ فَرُجِمَ حَتَّى مَاتَ.» وَقَوْلُ شُعْبَةَ عَنْ هِشَامِ بْنِ زَيْدٍ عَنْ أَنَسٍ: «فَأَمَرَ بِهِ فَرُضَّ رَأْسُهُ بَيْنَ حَجَرَيْنِ.» وَقَوْلُ هَمَّامٍ عَنْ قَتَادَةَ عَنْ أَنَسٍ: «فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُرَضَّ رَأْسُهُ بَيْنَ الْحِجَارَةِ:» أَخْبَارٌ عَنْ عَمَلٍ وَاحِدٍ، وَإِذَا رُضَّ رَأْسُهُ بَيْنَ حَجَرَيْنِ فَقَدْ رُضَّ بِالْحِجَارَةِ، وَقَدْ رُجِمَ رَأْسُهُ حَتَّى مَاتَ.

L36739 Thus, their reliance on discrepancies in the narrators’ wordings is invalid, for all of them are one meaning—and all praise is due to Allah, the Exalted—and all are trustworthy. This is merely a pretext to oppose the Messenger of Allah, peace be upon him, through falsehood.

فَبَطَلَ تَعَلُّقُهُمْ بِاخْتِلَافِ أَلْفَاظِ الرُّوَاةِ، إذْ كُلُّهَا مَعْنًى وَاحِدٌ - وَلِلَّهِ تَعَالَى الْحَمْدُ - وَكُلُّهُمْ ثِقَةٌ، وَإِنَّمَا هَذَا تَعَلُّلٌ فِي مُخَالَفَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْبَاطِلِ.

L36740 They also cited as evidence what was reported through the chain of Abu Dawud: Muslim ibn Ibrahim from Shu’bah from Khalid al-Hadhdha’ from Abu Qilabah from Abu al-Ash’ath from Shaddad ibn Aws, who said: “Two traits I heard from the Messenger of Allah (peace and blessings of Allah be upon him): ’Allah has ordained proficiency upon all things. When you kill, kill in the best manner; when you slaughter, slaughter in the best manner. Let each of you sharpen his blade and let him relieve his sacrificial animal.”’[34]

وَاحْتَجُّوا أَيْضًا بِمَا رُوِيَ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُسْلِمُ بْنُ إبْرَاهِيمَ أَنَا شُعْبَةُ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبِي قِلَابَةَ عَنْ أَبِي الْأَشْعَثِ عَنْ شَدَّادِ بْنِ أَوْسٍ قَالَ: «خَصْلَتَانِ سَمِعْتُهُمَا مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ فَإِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ وَإِذَا ذَبَحْتُمْ فَأَحْسِنُوا الذِّبْحَ وَلْيُحِدَّ أَحَدُكُمْ شَفْرَتَهُ وَلْيُرِحْ ذَبِيحَتَهُ» .

L36741 Abu Muhammad—may Allah be pleased with him—said: “This is correct. The utmost perfection in execution methods is to kill the offender in the manner he committed murder—this being the essence of justice and fairness: {Violations are subject to fair retribution} [Al-Baqarah: 194]. As for one who strikes with a sword the neck of someone who killed another by strangulation, drowning, or skull-crushing, he has not perfected the execution method—rather, he has committed the gravest mishandling by opposing

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا صَحِيحٌ، وَغَايَةُ الْإِحْسَانِ فِي الْقِتْلَةِ هُوَ أَنْ يَقْتُلَهُ بِمِثْلِ مَا قَتَلَ هُوَ - وَهَذَا هُوَ عَيْنُ الْعَدْلِ وَالْإِنْصَافِ {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] وَأَمَّا مَنْ ضَرَبَ بِالسَّيْفِ عُنُقَ مَنْ قَتَلَ آخَرَ خَنْقًا، أَوْ تَغْرِيقًا، أَوْ شَدْخًا، فَمَا أَحْسَنَ الْقِتْلَةَ، بَلْ إنَّهُ أَسَاءَهَا أَشَدَّ الْإِسَاءَةِ، إذْ خَالَفَ مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ بِهِ، وَتَعَدَّى حُدُودَهُ، وَعَاقَبَ بِغَيْرِ مَا عُوقِبَ بِهِ وَلِيُّهُ، وَإِلَّا فَكُلُّهُ قَتْلٌ، وَمَا الْإِيقَافُ لِضَرْبِ

[34] **Hadith references (L36740):** Sunan an-Nasai 4412.

what Allah the Almighty commanded, transgressing His boundaries, and retaliating differently than what the victim's guardian suffered. Otherwise, all forms constitute killing. Carrying out execution by striking the neck with a sword is no less severe than suffocation or strangulation—indeed, one might not die from multiple successive strikes (a matter we have witnessed ourselves—we seek Allah's protection)—thus this narration stands as proof against them."[35]

الْعُنُقِ بِالسَّيْفِ بِأَهْوَنَ مِنْ الْغَمِّ، وَالْخَنْقِ، وَقَدْ لَا يَمُوتُ مِنْ عِدَّةِ ضَرَبَاتٍ وَاحِدَةٍ بَعْدَ أُخْرَى - هَذَا أَمْرٌ قَدْ شَاهَدْنَاهُ - وَنَسْأَلُ اللَّهَ الْعَافِيَةَ - فَعَادَ هَذَا الْخَبَرُ حُجَّةً عَلَيْهِمْ.

L36742 They cited as evidence what we narrated through the chain of Abu Dawud—Abu Dawud al-Tayalisi reported: I heard from Shu'bah, who heard from Hishām ibn Zayd, who heard from Anas, that he was with him, and he said: "The Messenger of Allah—peace and blessings be upon him—forbade restraining livestock."

وَاحْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد أَنَا أَبُو دَاوُد الطَّيَالِسِيُّ أَنَا شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدٍ عَنْ أَنَسٍ: أَنَّهُ كَانَ مَعَهُ فَقَالَ «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ أَنْ تُصْبَرَ الْبَهَائِمُ» .

L36743 Abū Muḥammad—may Allah be pleased with him—said: This is among the strange deceptions they embellished. When we differ from them regarding their assertion that wanton interference with animals or other than animals is impermissible, is it not that they only obscure by claiming to argue while producing nothing except what they were forbidden?

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا مِنْ طَرِيفِ مَا مَوَّهُوا بِهِ - وَمَتَى خَالَفْنَاهُمْ فِي أَنَّ الْعَبَثَ بِالْبَهَائِمِ، وَبِغَيْرِ الْبَهَائِمِ لَا يَحِلُّ، إنَّمَا بِهِمْ أَنْ يُمَوِّهُوا أَنَّهُمْ يَحْتَجُّونَ وَهُمْ لَا يَأْتُونَ إلَّا بِمَا نُهُوا عَنْهُ؟ .

L36744–36746 As for falsehood—indeed, restraining animals is impermissible except where Allah the Exalted has commanded it regarding slaughtering. Slaughtering, shooting with arrows and spears at scattered game, releasing dogs, and using birds of prey—all of this is permissible and commendable by the consensus of both our jurists and theirs.

وَأَمَّا بِالْبَاطِلِ - نَعَمْ، صَبْرُ الْبَهَائِمِ لَا يَحِلُّ، إلَّا حَيْثُ أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ الذَّبْحِ، وَالنَّحْرِ وَالرَّمْيِ فِيمَا شَرَدَ بِالنَّبْلِ، وَالرِّمَاحِ، وَإِرْسَالِ الْكِلَابِ، وَسِبَاعِ الطَّيْرِ عَلَيْهَا - فَهَذَا كُلُّهُ حَلَالٌ حَسَنٌ بِإِجْمَاعٍ مِنَّا وَمِنْهُمْ.

L36747 Similarly, it is impermissible to commit wanton harm against a human being. If he commits such harm unjustly, retaliation (qisas) equivalent to his act is exacted from him—and this is a rightful and just obligation. The entire astonishment lies in the fact that beheading is undoubtedly a form of execution (ṣabr), while crucifixion is the most abhorrent form of execution. Yet they are aware of all this! If they were to return to the truth, it would be far more appropriate for them.

وَكَذَلِكَ لَا يَحِلُّ الْعَبَثُ بِابْنِ آدَمَ، فَإِذَا عَبِثَ هُوَ ظَالِمًا: اُقْتُصَّ مِنْهُ بِمِثْلِ فِعْلِهِ - وَكَانَ حَقًّا وَعَدْلًا؛ وَالْعَجَبُ كُلُّهُ أَنَّ ضَرْبَ الْعُنُقِ صَبْرٌ بِلَا شَكٍّ، وَالصَّلْبُ أَشْنَعُ الصَّبْرِ، وَهُمْ يَرَوْنَ كُلَّ ذَلِكَ، فَلَوْ رَاجَعُوا الْحَقَّ لَكَانَ أَوْلَى بِهِمْ.

L36748 Similarly, the ruling applies to what they have obscured from what we nar-

[35] **Qur'an references (L36741):** Qur'an 2:194 (Al-Baqarah).

rated through the chain of ʿAbd Allāh ibn Wahb: ʿAmr ibn al-Ḥārith reported to me from Bukayr ibn al-Ashajj from Yaʿlā, who said: "We raided with ʿAbd al-Raḥmān ibn Khālid ibn al-Walīd, and Abū Ayyūb al-Anṣārī said: I heard the Messenger of Allah—peace and blessings be upon him and his family—prohibit killing by confinement until death." They mentioned what we narrated through the chain of Abū Dāwūd: Saʿīd ibn Manṣūr reported to us, al-Mughīrah ibn ʿAbd al-Raḥmān al-Ḥidhāmī reported to us from Abū al-Zināد: Muḥammad ibn Ḥamzah al-Aslamī reported to me from his father: "The Messenger of Allah—peace and blessings be upon him and his family—put him in charge of an expedition and said: If you find so-and-so, kill him but do not burn him, for none may punish with fire except the Lord of the Fire."[36]

وَهَكَذَا الْقَوْلُ فِيمَا مَوَّهُوا بِهِ مِمَّا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ وَهْبٍ: أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ يَعْلَى قَالَ: «غَزَوْنَا مَعَ عَبْدِ الرَّحْمَنِ بْنِ خَالِدِ بْنِ الْوَلِيدِ فَقَالَ أَبُو أَيُّوبَ الْأَنْصَارِيُّ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَنْهَى عَنْ قَتْلِ الصَّبْرِ.» وَذَكَرُوا - مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا سَعِيدُ بْنُ مَنْصُورٍ نا الْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ الْحِزَامِيُّ عَنْ أَبِي الزِّنَادِ حَدَّثَنِي مُحَمَّدُ بْنُ حَمْزَةَ الْأَسْلَمِيُّ عَنْ أَبِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَمَّرَهُ عَلَى سَرِيَّةٍ وَقَالَ: إنْ وَجَدْتُمْ فُلَانًا فَاقْتُلُوهُ وَلَا تُحَرِّقُوهُ، فَإِنَّهُ لَا يُعَذِّبُ بِالنَّارِ إلَّا رَبُّ النَّارِ» .

We have also narrated it—through the route of Abū Dāwūd: I, Qutaybah ibn Saʿīd, narrate that al-Layth ibn Saʿd narrated to them from Bukayr ibn al-Ashajj, from Sulaymān ibn Yasār, from Abū Hurayrah, from the Messenger of Allah—peace and blessings be upon him and his family.

L36749

وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ أَبِي دَاوُد أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: أَنَّ اللَّيْثَ بْنَ سَعْدٍ حَدَّثَهُمْ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

Abū Muḥammad—may Allāh be pleased with him—said: This is authentic, and it is not permissible to burn anyone with fire as an initial punishment. Only when a person commits what Allāh the Exalted has forbidden does retaliation equivalent to his act become obligatory, as Allāh, the Mighty and Majestic, has commanded.

L36750

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا صَحِيحٌ، وَلَا يَحِلُّ أَنْ يُحْرَقَ أَحَدٌ بِالنَّارِ ابْتِدَاءً، حَتَّى إذَا فَعَلَ الْمَرْءُ مِنْ ذَلِكَ مَا حَرَّمَهُ اللَّهُ تَعَالَى عَلَيْهِ: وَجَبَ الْقِصَاصُ عَلَيْهِ بِمِثْلِ مَا فَعَلَ، كَمَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ.

They mentioned, what was narrated to us through the chain of Shuʿbah from ʿAdī ibn Thābit from Saʿīd ibn Jubayr from Ibn ʿAbbās: that the Prophet—peace and blessings of God be upon him and his family—said, "Do not take anything possessing a soul as a target."

L36751

وَذَكَرُوا - مَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ عَدِيِّ بْنِ ثَابِتٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «لَا تَتَّخِذُوا شَيْئًا فِيهِ الرُّوحُ غَرَضًا» .

Through the chain of Muslim: From Abu Kamil, from Abu Awanah, from Abu Bashir, from Sa'id ibn Jubayr, who said: "Ibn Umar passed by people who had set up a hen as a target they were shooting at. Ibn Umar said: 'Allah has cursed whoever does this, for the Messenger of Allah—peace be

L36752–36753

وَمِنْ طَرِيقِ مُسْلِمٍ أَنَا أَبُو كَامِلٍ أَنَا أَبُو عَوَانَةَ عَنْ أَبِي بِشْرٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ «مَرَّ ابْنُ عُمَرَ بِنَفَرٍ قَدْ نَصَبُوا دَجَاجَةً يَرْمُونَهَا؟ فَقَالَ ابْنُ عُمَرَ: لَعَنَ اللَّهُ مَنْ فَعَلَ هَذَا،

[36] **Hadith references (L36748):** Sunan Abi Dawud 2673.

upon him and his family—said: "Allah has cursed whoever uses a living being as a target.""

إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: لَعَنَ اللَّهُ مَنْ اتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا» .

L36754 Abu Muhammad (may Allah be pleased with him) said: "We hold that Allah curses whoever takes any living being as a target, except where Allah the Exalted has commanded it – as in legal retribution (qisas). Thus, whoever merits Allah's curse for performing this act and for aggressing against the creature through the same transgression he committed (while they agree with us regarding shooting enemies with arrows and catapults, and using them as targets) – this exception falls outside what Allah's Messenger (peace be upon him) prohibited."

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: وَنَحْنُ نَقُولُ: لَعَنَ اللَّهُ مَنْ اتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا إِلَّا حَيْثُ أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ الْقِصَاصِ، فَمَنْ اسْتَحَقَّ لَعْنَةَ اللَّهِ لِفِعْلِهِ ذَلِكَ، وَالِاعْتِدَاءِ عَلَيْهِ بِمِثْلِ مَا اعْتَدَى هُوَ بِهِ - وَهُمْ يُوَافِقُونَنَا فِي رَمْيِ الْعَدُوِّ بِالنَّبْلِ، وَالْمَجَانِيقِ، وَاتِّخَاذِهِمْ غَرَضًا - وَهَذَا خَارِجٌ عَنْ مَا نَهَى عَنْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36755 Such is the ruling regarding what is established from the Messenger of Allah—peace and blessings be upon him—that he prohibited killing any creature by confinement. We know that slaughtering camels by nahr, slaughtering animals by dhabh, and execution by the sword in legal retribution all constitute forms of killing through restraint. Yet all these are excluded from the prohibited confinement forbidden by him. Likewise, all other forms of divinely ordained legal retribution follow this ruling, and there is no distinction.

هَكَذَا الْقَوْلُ فِيمَا ثَبَتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى أَنْ يُقْتَلَ شَيْءٌ مِنْ الدَّوَابِّ صَبْرًا - وَقَدْ عَلِمْنَا: أَنَّ نَحْرَ الْإِبِلِ، وَذَبْحَ الْحَيَوَانِ، وَالْقَتْلَ بِالسَّيْفِ فِي الْقِصَاصِ: كُلُّ ذَلِكَ قَتْلُ صَبْرٍ، وَكُلُّ ذَلِكَ خَارِجٌ عَنْ قَتْلِ الصَّبْرِ الْمَنْهِيِّ عَنْهُ وَهَكَذَا سَائِرُ وُجُوهِ الْقِصَاصِ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهِ، وَلَا فَرْقَ.

L36756 They mentioned: as narrated to us via the chain of Abū Dāwūd - Ziyād ibn Ayyūb narrated to us, Hushaym narrated to us from Simāk, from Ibrāhīm, from Hanī' ibn Nuwayrah, from 'Alqamah, from Ibn Mas'ūd, who said: The Messenger of Allāh, peace and blessings be upon him, said, "The most scrupulous in killing are the people of faith."

وَذَكَرُوا - مَا رُوِّينَا مِنْ طَرِيقِ أَبِي دَاوُد أَنَا زِيَادُ بْنُ أَيُّوبَ أَنَا هُشَيْمٌ عَنْ سِمَاكٍ عَنْ إبْرَاهِيمَ عَنْ هَنِيءِ بْنِ نُوَيْرَةَ عَنْ عَلْقَمَةَ عَنْ ابْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَعَفُّ النَّاسِ قِتْلَةً أَهْلُ الْإِيمَانِ» .

L36757 Abū Muḥammad—may Allāh be pleased with him—said: Even if the wording of this is unsound, it contains [mention of] Hanī' ibn Nuwayrah—who is unknown—yet its meaning is valid. No killing is more excusable than that of one who, after killing as Allāh the Almighty commanded, then transgresses against the legal guardian of the one against whom retaliation was sought by committing injustice equivalent to what that retaliated-against party had committed. Nor is there ever a more excusable killing than one who strikes the neck of someone whose own legal guardian's neck was not struck. Rather,

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: هَذَا وَإِنْ لَمْ يَصِحَّ لَفْظُهُ، فَإِنَّ فِيهِ هَنِيءَ بْنَ نُوَيْرَةَ - وَهُوَ مَجْهُولٌ - فَمَعْنَاهُ صَحِيحٌ، وَلَا أَعَفَّ قِتْلَةً مِمَّنْ قَتَلَ كَمَا أَمَرَهُ اللَّهُ عَزَّ وَجَلَّ فَاعْتَدَى بِمِثْلِ مَا اعْتَدَى الْمُقْتَصُّ مِنْهُ عَلَى وَلِيِّهِ ظُلْمًا، وَمَا أَعَفَّ قَطُّ فِي قِتْلَةٍ مَنْ ضَرَبَ عُنُقَ مَنْ لَمْ يَضْرِبْ عُنُقَ وَلِيِّهِ، بَلْ هُوَ مُعْتَدٍ، ظَالِمٌ، فَاعِلٌ مَا لَمْ يُبِحْهُ اللَّهُ تَعَالَى قَطُّ.

such a killer is a transgressor, an oppressor, committing what Allāh the Exalted has never permitted at all.

L36758–36760 They also adulterated [the narration] with what was transmitted to us through the chain of Ismāʿīl ibn Isḥāq al-Qāḍī: I am Ḥajjāj ibn al-Minhāl, I am Ṣāliḥ al-Murrī, from Sulaymān al-Taymī, from Abu ʿUthmān, from Abu Hurayrah: "That the Messenger of..." Allah's Messenger (peace and blessings of Allah be upon him) stood over Hamza (may Allah be pleased with him) when he was martyred, and he spoke words wherein he (upon him be peace and blessings) said: "By Allah, even so, I will surely mutilate seventy of them in your place." Then Gabriel (peace be upon him) descended while the Messenger of Allah (peace and blessings of Allah be upon him) remained standing, with the concluding verses of Surah An-Nahl: "And if you punish, then punish with the like of that with which you were punished" [16:126].[37]

وَمَوَّهُوا أَيْضًا - بِمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنَ إِسْحَاقَ الْقَاضِي أَنَا حَجَّاجُ بْنُ الْمِنْهَالِ أَنَا صَالِحٌ الْمُرِّيُّ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَبِي عُثْمَانَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَفَ عَلَى حَمْزَةَ - رَضِيَ اللَّهُ عَنْهُ - حِينَ اسْتُشْهِدَ، فَذَكَرَ كَلَامًا - وَفِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: وَاَللَّهِ، مَعَ ذَلِكَ، لَأُمَثِّلَنَّ بِسَبْعِينَ مِنْهُمْ مَكَانَكَ، فَنَزَلَ جِبْرِيلُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَاقِفٌ بَعْدُ بِخَوَاتِيمِ سُورَةِ النَّحْلِ {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] » .

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا لَوْ صَحَّ وَلَمْ يَكُنْ مِنْ طَرِيقِ صَالِحٍ الْمُرِّيِّ، وَيَحْيَى الْحِمَّانِيُّ، وَأَمْثَالِهِمَا: لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ؛ لِأَنَّ فِيهِ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَ أَنْ يُعَاقَبَ بِمِثْلِ مَا عُوقِبَ بِهِ - وَهَذِهِ إبَاحَةُ التَّمْثِيلِ بِمَنْ مَثَّلَ بِحَمْزَةَ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّمَا نَهَاهُ اللَّهُ عَزَّ وَجَلَّ عَنْ أَنْ يُمَثِّلَ بِسَبْعِينَ مِنْهُمْ لَمْ يُمَثِّلُوا بِحَمْزَةَ - وَهَذَا قَوْلُنَا لَا قَوْلُهُمْ.

L36761 Abū Muḥammad—may Allāh be pleased with him—said: Had this been authentic and not transmitted through the chain of Ṣāliḥ al-Murrī, Yaḥyā al-Ḥimmānī, and their like, it would have constituted proof for us against them. For it states that the Prophet—peace and blessings be upon him—commanded that one should retaliate with the equivalent of what the victim suffered. This permits retaliatory mutilation against whoever mutilated Ḥamzah—may Allāh be pleased with him. Allāh the Exalted only forbade the Prophet from mutilating seventy among them who had not mutilated Ḥamzah. This is our doctrine, not theirs.

L36762 Abu Muhammad—may Allah be pleased with him—said: They attempted to legitimize [their position] with a weak, fabricated narration—namely, the one reported through the chain of transmission of Asad ibn Musa from Sulayman ibn Hayyan from Yahya ibn Abi Unaysah from Abu al-Zubayr from Jabir: "The Prophet—peace and blessings be upon him—commanded that a waiting period of one year be observed in cases of injury."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَمَوَّهُوا بِخَبَرٍ سَاقِطٍ مَوْضُوعٍ، وَهُوَ -: مَا رُوِيَ مِنْ طَرِيقِ أَسَدِ بْنِ مُوسَى عَنْ سُلَيْمَانَ بْنِ حَيَّانَ عَنْ يَحْيَى بْنِ أَبِي أُنَيْسَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ أَنْ يُسْتَأْنَى بِالْجِرَاحِ سَنَةً» .

L36763 An Asad is weak [in hadith narration], and Yahya ibn Abi Unaysah is a liar.

وَأَسَدٌ ضَعِيفٌ، وَيَحْيَى بْنُ أَبِي أُنَيْسَةَ كَذَّابٌ.

L36764 Then they are the first to oppose this report, for they do not recognize

[37] **Qur'an references (L36758):** Qur'an 16:126 (An-Nahl).

retaliation for wounds requiring a year's recovery. How could any Muslim, or person of integrity, deem it permissible to cite something they are first to invalidate - being foremost in rejecting its implementation? Consider the ḥadīth transmitted through Ibn al-Mubārak's chain from 'Anbasah ibn Sa'īd, from al-Sha'bī, from Jābir, from the Prophet - peace and blessings of Allah be upon him: "Retaliation is not enforced for a wound until it heals."

ثُمَّ هُمْ أَوَّلُ مُخَالِفٍ لِهَذَا الْخَبَرِ، لِأَنَّهُمْ لَا يَرَوْنَ الِاسْتِيفَاءَ بِالْجِرَاحِ سَنَةً، فَكَيْفَ يَسْتَحِلُّ مُسْلِمٌ، أَوْ مَنْ لَهُ حَيَاءٌ: أَنْ يَحْتَجَّ بِشَيْءٍ هُوَ أَوَّلُ مُبْطِلٍ لَهُ، وَأَوَّلُ مَنْ لَا يَرَى الْعَمَلَ بِمَا فِيهِ؟ وَبِحَدِيثٍ مِنْ طَرِيقِ ابْنِ الْمُبَارَكِ عَنْ عَنْبَسَةَ بْنِ سَعِيدٍ عَنْ الشَّعْبِيِّ عَنْ جَابِرٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يُسْتَقَادُ مِنْ الْجُرْحِ حَتَّى يَبْرَأَ» .

L36765 Abu Muhammad (may Allah be pleased with him) said: This is invalid because this ʿAnbasah is unknown - he is not ʿAnbasah ibn Saʿid ibn al-ʿAs, for Ibn al-Mubarak did not meet him. Rather, the contrary of this is authentically established from the Prophet (peace and blessings be upon him).

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا بَاطِلٌ، لِأَنَّ عَنْبَسَةَ هَذَا مَجْهُولٌ - وَلَيْسَ هُوَ عَنْبَسَةُ بْنُ سَعِيدِ بْنِ الْعَاصِ، لِأَنَّ ابْنَ الْمُبَارَكِ لَمْ يُدْرِكْهُ، بَلْ قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خِلَافُ هَذَا.

L36766–36767 I, Ahmad ibn Muhammad ibn al-Jasur, said: Wahb ibn Masarrah reported to us: Ibn Waddah reported to us: Abu Bakr ibn Abi Shaybah reported to us: Isma'il ibn Ulayyah reported to us from Ayyub al-Sakhtiyani from Amr ibn Dinar from Jabir ibn Abdullah, who said: "A man struck another man with a horn in his knee. The injured man came to the Prophet (peace be upon him) seeking retaliation. He was told: 'Wait until you recover.' But he refused, hastened to demand retaliation, and his leg became disabled. Meanwhile, the leg of the retaliated party healed. When he returned to the Prophet (peace be upon him), he was told: 'You have no right [to claim] now, for you refused [to wait].'"

كَمَا أَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ قَالَ: أَنَا وَهْبُ بْنُ مَسَرَّةَ نا ابْنُ وَضَّاحٍ أَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ أَنَا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: «إِنَّ رَجُلًا طَعَنَ رَجُلًا بِقَرْنٍ فِي رُكْبَتِهِ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْتَقِيدُ؟ فَقِيلَ لَهُ: حَتَّى تَبْرَأَ، فَأَبَى وَعَجِلَ فَاسْتَقَادَ، فَعَنِتَتْ رِجْلُهُ وَبَرِئَتْ رِجْلُ الْمُسْتَقَادِ مِنْهُ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقِيلَ لَهُ: لَيْسَ لَك شَيْءٌ إنَّك أَبَيْتَ» .

L36768 It was established that hastening retaliation or delaying it is referred to the victim. These are the reports they deceptively presented.

فَصَحَّ أَنَّ تَعْجِيلَ الْقَوَدِ أَوْ تَأْخِيرَهُ إلَى الْمَجْنِيِّ عَلَيْهِ، فَهَذَا مَا مَوَّهُوا بِهِ مِنْ الْأَخْبَارِ.

L36769 They argued through analogical reasoning by stating: We find that if someone unintentionally severs another's hand, if the victim recovers, he is entitled to the diyah for the hand, but if he dies, he is entitled to the diyah for the life, and the ruling for the hand is nullified. Thus, should intentional acts be treated similarly by analogy to the unintentional act?

وَاحْتَجُّوا مِنْ طَرِيقِ النَّظَرِ بِأَنْ قَالُوا: وَجَدْنَا مَنْ قَطَعَ يَدَ آخَرَ خَطَأً أَنَّهُ إنْ بَرِئَ فَلَهُ دِيَةُ الْيَدِ، وَإِنْ مَاتَ فَلَهُ دِيَةُ النَّفْسِ وَيَسْقُطُ حُكْمُ الْيَدِ، فَوَجَبَ أَنْ يَكُونَ الْعَمْدُ كَذَلِكَ قِيَاسًا عَلَى الْخَطَأِ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ لَا يَجُوزُ إلَّا عَلَى نَظِيرِهِ، لَا عَلَى خِلَافِهِ وَضِدِّهِ، وَالْعَمْدُ ضِدُّ الْخَطَأِ، فَلَا يَجُوزُ أَنْ يُقَاسَ عَلَيْهِ عِنْدَ مَنْ يَقُولُ بِالْقِيَاسِ،

Abū Muḥammad—may Allāh be pleased with him—responded: All analogical reasoning is invalid. Even if it were valid, this would be invalid in its very essence, for analogical reasoning—according to its proponents—is only

permissible when applied to equivalent cases, not to their opposites or contradictions. The intentional act is the opposite of the unintentional act, so it cannot be analogized to it according to those who accept analogical reasoning—how can this be, when all analogical reasoning is invalid?

They argued further: By your logic, if someone shoots another with an arrow and kills him, you must shoot him with an arrow. If he does not die, shoot him again, and so on. Similarly, if he inflicts a fatal wound, you must repeatedly inflict fatal wounds until he dies—this exceeds the original act. And this is not permissible?

We replied: This is a corrupt distortion and an absurd argument. Rather, he is struck with an identical arrow in the precise spot where his own arrow wrongfully struck, until he dies. Likewise, he is inflicted with a fatal wound certain to cause death—there is absolutely no distinction.

L36770 Then we reverse this question upon them by saying: If a sword is swung at his neck but does not sever it, or severs it partially and is then struck repeatedly - and this is more severe than your assertion and more possible - it remains an observable matter that occurs very frequently.

L36771–36772 They said: "What do you think if he were to turn his back to it with the strings?" We replied: "He would turn his back to it with the same [strings], and that is not difficult for Allah."

L36773 They said: "What if he engages in intercourse with him until death?" We replied: "He must be compelled to turn away [from the act] with a stake until death, for its equivalent is forbidden to him—and success is from Allah, the Most High."

L36774–36775 A Chapter on Quasi-Intentional Acts: The Concept of Intentional Error.

L36776 Abu Muhammad—may Allah be pleased with him—said: We have previously mentioned this matter but did not clarify the corruption of the reports they embellished, and the three schools—the Malikis, Hanafis, and Shafi'is—contradict one another regarding them. Therefore, it is imperative that we

فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ؟ وَقَالُوا: يَلْزَمُكُمْ إِنْ رَمَى إِنْسَانٌ آخَرَ بِسَهْمٍ فَقَتَلَهُ أَنْ تَرْمُوهُ بِسَهْمٍ، فَإِنْ لَمْ يَمُتْ فَبِآخَرَ، ثُمَّ بِآخَرَ - وَكَذَلِكَ إِنْ أَجَافَهُ أَنْ يُوَالِيَ عَلَيْهِ بِالْجَوَائِفِ حَتَّى يَمُوتَ - وَهَذَا أَكْثَرُ مِمَّا فَعَلَ، وَهَذَا لَا يَجُوزُ؟ فَقُلْنَا: هَذَا تَمْوِيهٌ فَاسِدٌ، وَكَلَامٌ مُحَالٌ، بَلْ يُطْعَنُ بِسَهْمٍ مِثْلِهِ، فِي الْمَوْضِعِ الَّذِي صَادَفَ فِيهِ سَهْمُهُ ظُلْمًا حَتَّى يَمُوتَ، وَكَذَلِكَ يُجَافُ بِجَائِفَةٍ مُوقَنٌ أَنَّهُ يَمُوتُ مِنْهَا - وَلَا فَرْقَ.

ثُمَّ نَعْكِسُ عَلَيْهِمْ هَذَا السُّؤَالَ، فَنَقُولُ لَهُمْ: إِنْ ضُرِبَ بِالسَّيْفِ فِي عُنُقِهِ فَلَمْ يَقْطَعْ، أَوْ قَطَعَ قَلِيلًا فَأُعِيدَ عَلَيْهِ مِرَارًا - وَهَذَا أَشَدُّ مِمَّا قُلْتُمْ وَأَمْكَنُ - فَهُوَ أَمْرٌ مُشَاهَدٌ يَقَعُ كَثِيرًا جِدًّا.

وَقَالُوا: أَرَأَيْتُمْ إِنْ اسْتَدْبَرَهُ بِالْأَوْتَارِ؟ فَقُلْنَا: يَسْتَدْبِرُهُ بِمِثْلِهَا، وَمَا ذَلِكَ عَلَى اللَّهِ بِعَزِيزٍ.

فَقَالُوا: فَإِنْ نَكَحَهُ حَتَّى يَمُوتَ؟ قُلْنَا: يَسْتَدْبِرُهُ بِوَتَدٍ حَتَّى يَمُوتَ؛ لِأَنَّ الْمِثْلَ مُحَرَّمٌ عَلَيْهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[بَابٌ مِنَ الْكَلَامِ فِي شِبْهِ الْعَمْدِ وَهُوَ عَمْدُ الْخَطَأِ]

address this omission, as we have done in other matters. And success is from Allah, the Most High.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: وَقَدْ ذَكَرْنَاهُ قَبْلُ وَلَمْ نُوَضِّحْ فَسَادَ الْأَخْبَارِ الَّتِي مَوَّهُوا بِهَا، وَتُنَاقِضُ الطَّوَائِفُ الثَّلَاثُ الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ فِيهَا؛ فَوَجَبَ أَنْ نَسْتَدْرِكَ ذَلِكَ، كَمَا فَعَلْنَا فِي سَائِرِ الْمَسَائِلِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L36777 Abu Muhammad said: The Hanafis and Shafi'is—those who uphold the doctrine of deliberate acts classified as error—raised vehement objections based on what we transmitted through the chain of Shuʿbah and Sufyān al-Thawrī, both of whom narrated from Jābir al-Juʿfī, from Abū ʿĀzib, from al-Nuʿmān ibn Bashīr, who said: The Messenger of Allah—peace and blessings of Allah be upon him—declared, "Every act is [considered] a mistake except intentional acts of the sword, and for every mistake there is compensation (arsh) for injury."

قَالَ أَبُو مُحَمَّد: شَغَبَ الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ، الْقَائِلُونَ بِعَمْدِ الْخَطَأِ -: بِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنْ جَابِرٍ الْجُعْفِيِّ عَنْ أَبِي عَازِبٍ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَيْءٍ خَطَأٌ إلَّا السَّيْفَ، وَفِي كُلِّ خَطَأٍ أَرْشٌ» .

L36778 Abu Muhammad—may Allah be pleased with him—said: "Jābir al-Juʿfī is a liar. The first to testify against him for lying was Abū Ḥanīfah. Yet Abū Ḥanīfah's companions disregarded this, invoking his narrations as proof wherever they desired. The greatest astonishment is that the Ḥanafīs and Shāfiʿīs oppose this report and disobey it."

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: جَابِرٌ الْجُعْفِيُّ كَذَّابٌ، وَأَوَّلُ مَنْ شَهِدَ عَلَيْهِ بِالْكَذِبِ أَبُو حَنِيفَةَ، ثُمَّ لَمْ يُبَالِ بِذَلِكَ أَصْحَابُهُ، فَاحْتَجُّوا بِرِوَايَتِهِ حَيْثُ اشْتَهَوْا، ثُمَّ الْعَجَبُ كُلُّهُ أَنَّ الْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ: مُخَالِفُونَ لِهَذَا الْخَبَرِ، عَاصُونَ لَهُ.

L36779 The Shafiʿis hold that retaliation in intentional killing applies by any means that could similarly cause death. The Hanafis maintain that retaliation is due against one who slaughters with a sharpened cane blade, burns with fire, or strangles three times or more—all these methods do not involve killing by the sword. Who is more astray than one who cites evidence that itself first contradicts his own position!

فَالشَّافِعِيُّونَ: يَرَوْنَ الْقَوَدَ فِي الْعَمْدِ بِكُلِّ مَا يُمْكِنُ أَنْ يُمَاتَ مِنْ مِثْلِهِ، وَالْحَنَفِيُّونَ: يَرَوْنَ الْقَوَدَ عَلَى مَنْ ذَبَحَ بِلِيطَةِ الْقَصَبِ، وَعَلَى مَنْ أَحْرَقَ بِالنَّارِ، وَعَلَى مَنْ خَنَقَ ثَلَاثَ مَرَّاتٍ، فَصَاعِدًا - وَكُلُّ هَذَا لَيْسَ فِيهِ قَتْلٌ بِالسَّيْفِ، فَمَنْ أَضَلُّ مِمَّنْ يَحْتَجُّ بِمَا هُوَ أَوَّلُ مُخَالِفٍ لَهُ.

L36780–36782 As for the Mālikīs, they argued against the established Sunnah of the Messenger of Allah's prayer (peace and blessings be upon him) with the people while seated during his final prayer that he performed with his companions (may Allah be pleased with them), citing the *mursal* (disconnected) narration of Jābir al-Juʿfī—the aforementioned liar—also: "No one should ever lead prayer seated after me." They deemed this narration at that time a binding proof to refute. The reliable narrations of the people of Medina, supported by

وَأَمَّا الْمَالِكِيُّونَ: فَإِنَّهُمْ احْتَجُّوا بِخِلَافِ السُّنَّةِ الثَّابِتَةِ مِنْ صَلَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالنَّاسِ جَالِسًا آخَرَ صَلَاةٍ صَلَّاهَا بِأَصْحَابِهِ - رَضِيَ اللَّهُ عَنْهُمْ - بِرِوَايَةِ جَابِرٍ الْجُعْفِيِّ الْكَذَّابِ الْمَذْكُورِ الْمُرْسَلَةِ أَيْضًا «لَا يَؤُمَّنَّ أَحَدٌ بَعْدِي جَالِسًا» وَرَأَوْهُ حِينَئِذٍ حُجَّةً لَازِمَةً، تُرَدُّ بِهِ رِوَايَةُ أَهْلِ الْمَدِينَةِ الثِّقَاتِ، الْمُسْنَدَةِ، وَآخِرُ عَمَلِهِ - عَلَيْهِ الصَّلَاةُ

chains of narration, and his final action—peace and blessings be upon him—when they conform to Malik's opinion, yet they do not deem it serious to discredit Jabir and reject his report when it contradicts Malik's opinion—what religion remains with this? Is this not but following desires, with nothing beyond? Abu Muhammad—may Allah be pleased with him—said: "This report has also been narrated through the chain of Abd al-Baqi ibn Qani, a narrator of every fabricated report, whose hadith was eventually discarded, from Muhammad ibn Uthman ibn Abi Shaybah, from Uqbah ibn Makram, from Yunus ibn Bukayr, from Qays ibn al-Rabi', from Abu Husayn, from Ibrahim, the maternal grandson of al-Nu'man ibn Bashir, from al-Nu'man ibn Bashir, from the Messenger of Allah—peace and blessings be upon him: 'Every act is an error except the sword, and for every error there is blood money.'"

L36783 Abu Muhammad—may Allah be pleased with him—said: "Abd al-Baqi is unreliable. As for Qays ibn al-Rabi': Ibn Ma'in, Affan, and Waki' weakened him. Al-Qattan and Abd al-Rahman ibn Mahdi abandoned his hadith (which is implausible) transmitted from Ibrahim ibn Bint al-Nu'man—whose identity remains unknown. They also cited as evidence the narration we transmitted through Abu Bakr ibn Abi Shaybah's chain: from Abd al-Rahman ibn Sulayman, from Isma'il ibn Muslim, from Amr ibn Dinar, from Tawus, from Ibn Abbas, from the Messenger of Allah—peace and blessings be upon him: 'Intentional killing necessitates retaliation (qisas) by hand unless the legal guardian of the slain pardons.' The hadith states: 'Any killing by throwing [a weapon], striking with a staff, or hurling a stone entails an increased blood money penalty, determined by the maturity of camels (as gauged by their teeth).'"

L36784 We have also narrated it—via the chain of ʿAbd al-Razzāq from al-Ḥasan ibn ʿUmāra from ʿAmr ibn Dīnār from Ṭāwūs from his father from Ibn ʿAbbās—from the Prophet (peace and blessings be upon him): "Whoever is killed in the act of throwing a stone, striking with a stick, or lashing with a whip, the blood money for accidental killing applies. But whoever is killed with premeditation, then it is retribution."

L36785–36787 And via the chain of Ibn al-Aʿrabī from ʿAbd al-Razzāq, Ibn al-Aʿrabī said:

وَالسَّلَامُ - إِذَا وَافَقَ رَأْيَ مَالِكٍ، ثُمَّ لَمْ يَكْبُرْ عَلَيْهِمْ تَكْذِيبُ جَابِرٍ وَرَدُّ رِوَايَتِهِ، إِذَا خَالَفَ رَأْيَ مَالِكٍ - فَأَيُّ دِينٍ يَبْقَى مَعَ هَذَا؟ وَهَلْ هَذَا إِلَّا اتِّبَاعُ الْهَوَى، وَلَا مَزِيدَ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَقَدْ رُوِيَ هَذَا الْخَبَرُ أَيْضًا - مِنْ طَرِيقِ عَبْدِ الْبَاقِي بْنِ قَانِعٍ رَاوِي كُلِّ بَلِيَّةٍ وَتُرِكَ حَدِيثُهُ بِأُخَرَةٍ عَنْ مُحَمَّدُ بْنُ عُثْمَانَ بْنِ أَبِي شَيْبَةَ عَنْ عُقْبَةَ بْنِ مَكْرَمٍ عَنْ يُونُسَ بْنِ بُكَيْرٍ عَنْ قَيْسِ بْنِ الرَّبِيعِ عَنْ أَبِي حُصَيْنٍ عَنْ إِبْرَاهِيمَ ابْنِ بِنْتِ النُّعْمَانِ بْنِ بَشِيرٍ عَنْ النُّعْمَانِ بْنِ بَشِيرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ شَيْءٍ خَطَأٌ إِلَّا السَّيْفَ وَلِكُلِّ خَطَأٍ أَرْشٌ» .

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: عَبْدُ الْبَاقِي لَا شَيْءَ، وَقَيْسُ بْنُ الرَّبِيعِ: ضَعَّفَهُ ابْنُ مَعِينٍ، وَعَفَّانُ، وَوَكِيعٌ - وَتَرَكَ حَدِيثَهُ الْقَطَّانُ، وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ - وَهُوَ بُعْدٌ - عَنْ إِبْرَاهِيمَ بْنِ بِنْتِ النُّعْمَانِ الَّذِي لَا يَدْرِي أَحَدٌ مَنْ هُوَ؟ وَاحْتَجُّوا أَيْضًا - بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ سُلَيْمَانَ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَمْدُ قَوَدُ الْيَدِ إِلَّا أَنْ يَعْفُوَ وَلِيُّ الْمَقْتُولِ» وَفِيهِ: فَمَا كَانَ مِنْ رَمْيٍ، أَوْ ضَرْبَةٍ بِعَصَا، أَوْ رَمْيَةٍ بِحَجَرٍ، فَهُوَ مُغَلَّظٌ فِي أَسْنَانِ الْإِبِلِ.

وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحَسَنِ بْنِ عُمَارَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنْ أَبِيهِ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ فِي رِمِّيَّا رَمْيًا بِحَجَرٍ أَوْ ضَرْبًا بِعَصًا أَوْ سَوْطٍ، فَعَلَيْهِ عَقْلُ الْخَطَأِ، وَمَنْ قُتِلَ اعْتِبَاطًا فَهُوَ قَوَدٌ» .

"Perhaps it is from Ibn Jurayj. Ibn Ṭāwūs informed me from his father: 'There is a book in his possession which was brought by revelation to the Messenger of Allah (peace and blessings of Allah be upon him), containing: The killing of a blind woman – her blood money is that of accidental killing – the stone, the whip, and the staff – provided the killer did not carry a weapon.'" We have narrated it via the chain of Aḥmad ibn Shuʿayb: Hilāl ibn al-ʿAlāʾ informed me, from Saʿīd ibn Sulaymān, from Sulaymān ibn Kathīr, from ʿAmr ibn Dīnār, from Ṭāwūs, from Ibn ʿAbbās, from the Messenger of Allah (peace and blessings of Allah be upon him): "Whoever is killed..." In cases of unintentional harm (ʿimmiyyā) or projectile harm (rimmiyyā), if injury occurs with a stone, whip, or staff, the blood money (diya) is equivalent to that for accidental killing. Whoever is killed intentionally, retaliation (qisas) is required against the perpetrator.

وَمِنْ طَرِيقِ ابْنِ الْأَعْرَابِيِّ عَنْ عَبْدِ الرَّزَّاقِ، قَالَ ابْنُ الْأَعْرَابِيِّ: لَعَلَّهُ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ: «أَنَّ عِنْدَهُ كِتَابًا جَاءَ بِهِ الْوَحْيُ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ: قَتْلُ الْعَمِيَّةِ - دِيَتُهُ دِيَةُ الْخَطَأِ، الْحَجَرُ، وَالسَّوْطُ، وَالْعَصَا - مَا لَمْ يَحْمِلْ سِلَاحًا.» وَرُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَخْبَرَنِي هِلَالُ بْنُ الْعَلَاءِ أَنَا سَعِيدُ بْنُ سُلَيْمَانَ أَنَا سُلَيْمَانُ بْنُ كَثِيرٍ أَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ فِي عِمِّيَّا أَوْ رِمِّيَّا يَكُونُ بَيْنَهُمْ بِحَجَرٍ أَوْ بِسَوْطٍ أَوْ بِعَصًا فَعَقْلُهُ عَقْلُ خَطَأٍ وَمَنْ قُتِلَ عَمْدًا فَقَوَدُ يَدَيْهِ» .

From the chain of Ahmad ibn Shuʿayb: I [received it] from Muhammad ibn Maʿmar, I from Muhammad ibn Kathir, I from Sulayman ibn Kathir, from ʿAmr ibn Dinar, from Tawus, from Ibn Abbas - who elevated it to the Prophet (marfuʿ) - with similar wording.

وَمِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَعْمَرٍ أَنَا مُحَمَّدُ بْنُ كَثِيرٍ أَنَا سُلَيْمَانُ بْنُ كَثِيرٍ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ - رَفَعَهُ - بِنَحْوِهِ.

And what we have narrated via the route of Al-Bazzar: From Muḥammad ibn Miskīn, from Bakr ibn Muḍar, from ʿAmr ibn Dīnār, who said: Ṭāwus reported from Abū Hurayrah from the Prophet—peace and blessings of Allah be upon him—: "Whoever is killed in a blind quarrel with a stone or a stick, it is accidental; his blood-money is the blood-money of an accidental killing. And whoever is killed intentionally, it is qawad."

وَمَا رُوِّينَاهُ مِنْ طَرِيقِ الْبَزَّارِ أَنَا مُحَمَّدُ بْنُ مِسْكِينٍ أَنَا بَكْرُ بْنُ مُضَرَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: قَالَ طَاوُسٌ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ فِي عِمِّيَّةٍ بِحَجَرٍ أَوْ عَصًا فَهُوَ خَطَأٌ عَقْلُهُ عَقْلُ خَطَأٍ وَمَنْ قُتِلَ عَمْدًا فَهُوَ قَوَدٌ» .

Abū Muḥammad—may Allāh be pleased with him—said: None of this constitutes proof for them. As for the report we introduced through Ibn Abī Shaybah's transmission, it contains Ismāʿīl ibn Muslim—a weak Meccan narrator from the Makhzūm clan. Even if it were authentic, they would all oppose it. Regarding the Ḥanafīs: this report stipulates aggravated blood money according to camel teeth for cases involving throwing, a strike with a stick, or casting a stone. Yet they assert that legal retaliation applies to injuries caused by arrows or spears, while this report does not specify one type of throwing over another in this category. Rather, it differentiates between unrestricted throwing, stone-throwing, and striking with a stick. Thus, it

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ -: أَمَّا الْخَبَرُ الَّذِي صَدَّرْنَا بِهِ مِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ فَفِيهِ إِسْمَاعِيلُ بْنُ مُسْلِمٍ - وَهُوَ مَخْزُومِيٌّ مَكِّيٌّ ضَعِيفٌ - ثُمَّ لَوْ صَحَّ لَكَانُوا كُلُّهُمْ مُخَالِفِينَ لَهُ -: أَمَّا الْحَنَفِيُّونَ - فَإِنَّ فِي هَذَا الْخَبَرِ مَا كَانَ مِنْ رَمْيٍ، أَوْ ضَرْبَةٍ بِعَصًا، أَوْ رَمْيَةٍ بِحَجَرٍ، فَهُوَ مُغَلَّظٌ فِي أَسْنَانِ الْإِبِلِ - وَهُمْ يَقُولُونَ: مَنْ رُمِيَ بِسَهْمٍ، أَوْ رُمْحٍ، فَفِيهِ الْقَوَدُ، وَلَمْ يَخُصَّ فِي هَذَا الْبَابِ رَمْيًا مِنْ رَمْيٍ، بَلْ فَرَّقَ بَيْنَ

is confirmed that the ruling pertains to throwing with a spear or arrow—a position they do not uphold.

الرَّمْيِ الْمُطْلَقِ، وَالرَّمْيِ بِالْحَجَرِ، وَالضَّرْبَةِ بِالْعَصَا - فَصَحَّ أَنَّهُ الرَّمْيُ بِالرُّمْحِ وَالسَّهْمِ - وَهُمْ لَا يَقُولُونَ ذَلِكَ.

L36791 Similarly, the Shāfiʿīs also differed from him regarding stoning with any object of the kind that causes death.

وَكَذَلِكَ خَالَفَهُ الشَّافِعِيُّونَ أَيْضًا فِي الرَّمْيِ مِنْ كُلِّ مَا يُمَاتُ مِنْ مِثْلِهِ.

L36792 And the Malikis oppose him as a whole.

وَالْمَالِكِيُّونَ مُخَالِفُونَ لَهُ جُمْلَةً.

L36793 As for the two reports transmitted by ʿAbd al-Razzāq—as for the first, it contains al-Ḥasan ibn ʿUmārah, who is abandoned. As for the second, it is *mursal*. Moreover, even if both were authentic, they would still have contradicted them, for both assert that the blood money (diyah) due is that of an unintentional killing—and none of them upholds this position.

وَأَمَّا خَبَرَا عَبْدِ الرَّزَّاقِ - أَمَّا الْأَوَّلُ، فَفِيهِ: الْحَسَنُ بْنُ عُمَارَةَ - وَهُوَ هَالِكٌ - وَأَمَّا الثَّانِي - فَمُرْسَلٌ، ثُمَّ إنَّهُ لَوْ صَحَّا جَمِيعًا لَكَانُوا أَيْضًا قَدْ خَالَفُوهُمَا؛ لِأَنَّ فِيهِمَا: أَنَّ عَقْلَهُ عَقْلُ الْخَطَأِ - وَلَا يَرَى هَذَا أَحَدٌ مِنْهُمْ.

L36794 As for the Ḥanafīs and Shāfiʿīs, they impose a heavier blood money (diyah) payable in camels, unlike the ʿaql (blood money) for accidental killing; whereas the Mālikīs deem retaliation (qiwad) applicable in this case.

أَمَّا الْحَنَفِيُّونَ، وَالشَّافِعِيُّونَ - فَيُغَلِّظُونَ فِيهِ الدِّيَةَ فِي الْإِبِلِ، بِخِلَافِ عَقْلِ الْخَطَأِ؛ وَأَمَّا الْمَالِكِيُّونَ - فَيَرَوْنَ فِيهِ الْقَوَدَ.

L36795–36797 As for the two reports of Sulaymān ibn Kathīr and Bakr ibn Muḍar—they are authentic, and we uphold them, and they are... The difference in their ruling arises because in cases of *ʿimmiyyah* or *ʿimmiya* [unclear circumstances], the blood money for one killed is that of accidental killing. Therefore, this slain person's killer is unknown, and since this is the case, nothing is due except the blood money, which is the blood money for accidental killing.

وَأَمَّا خَبَرَا سُلَيْمَانَ بْنِ كَثِيرٍ، وَبَكْرِ بْنِ مُضَرَ - فَصَحِيحَانِ، وَبِهِمَا نَقُولُ، وَهُمَا خِلَافُ قَوْلِهِمْ؛ لِأَنَّ فِيهِمَا: أَنَّ مَنْ قُتِلَ فِي عِمِّيَّةٍ، أَوْ عِمِّيَّا، فَهُوَ خَطَأٌ عَقْلُهُ عَقْلُ خَطَأٍ - فَهَذَا قَتِيلٌ لَا يُعْرَفُ قَاتِلُهُ، وَإِذْ هُوَ كَذَلِكَ فَلَيْسَ فِيهِ إلَّا الدِّيَةُ، وَدِيَتُهُ دِيَةُ قَتْلِ الْخَطَأِ.

L36798 In both cases—if someone is killed intentionally, retaliation (qawd) is obligatory. The Prophet, peace and blessings be upon him, did not single out a sword over other weapons, nor an iron implement over others. Rather, he mandated retaliation with the equivalent of what the perpetrator struck with his own hand—this is our view, not the view of others. And success is from Allah, the Most High.

وَفِيهِمَا - مَنْ قُتِلَ عَمْدًا فَهُوَ قَوَدٌ، فَلَمْ يَخُصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - سَيْفًا مِنْ غَيْرِهِ، وَلَا حَدِيدَةً مِنْ غَيْرِهَا، بَلْ أَوْجَبَ فِيهِ الْقَوَدَ بِمِثْلِ مَا أَصَابَ بِيَدِهِ - وَهُوَ قَوْلُنَا، لَا قَوْلُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L36799 They also substantiated [their position] with a narration we reported via the chain of ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Shuʿayb, who said: The Messenger of Allah (peace and blessings be upon him) said, "Quasi-intentional acts incur an aggravated penalty, but their perpetrator is not

وَمَوَّهُوا أَيْضًا - بِخَبَرٍ رُوِّينَاهُ: مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «شِبْهُ الْعَمْدِ مُغَلَّظٌ وَلَا يُقْتَلُ بِهِ صَاحِبُهُ»

executed." This refers to when Satan incites discord among people, leading to blind, indiscriminate striking—done without prior enmity or carrying a weapon.

وَذَلِكَ أَنْ يَنْزِوَ الشَّيْطَانُ بَيْنَ النَّاسِ، فَيَكُونُ رَمْيًا فِي عَمْيَاءَ، عَنْ غَيْرِ ضَغِينَةٍ، وَلَا حَمْلِ سِلَاحٍ.

L36800 Abu Muhammad—may Allah be pleased with him—said: This is a mursal narration containing no valid proof, and all sects have contradicted their own foundational principles in this matter. As for the Hanafis—they forcibly included in it one who intentionally kills a Muslim by strangulation, drowning, or smashing his head with a stone of a qintar's weight—though none of this is mentioned in the narration at all.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا مُرْسَلٌ لَا حُجَّةَ فِيهِ، وَجَمِيعُ الطَّوَائِفِ نَقَضَتْ أُصُولَهَا فِيهِ -: أَمَّا الْحَنَفِيُّونَ - فَأَقْحَمُوا فِيهِ مَنْ تَعَمَّدَ قَتْلَ مُسْلِمٍ بِالْخَنْقِ، أَوْ بِالتَّغْرِيقِ، أَوْ بِشَدْخِ رَأْسِهِ بِحَجَرٍ فِيهِ قِنْطَارٌ - وَلَيْسَ هَذَا مِمَّا فُسِّرَ فِي هَذَا الْخَبَرِ فِي شَيْءٍ.

L36801 As for the Mālikīs, they say: "The *mursal* is like the *musnad*"—but this is a *mursal* they have abandoned.

وَأَمَّا الْمَالِكِيُّونَ فَهُمْ يَقُولُونَ: الْمُرْسَلُ كَالْمُسْنَدِ - وَهَذَا مُرْسَلٌ قَدْ تَرَكُوهُ.

L36802 The Shafiʿi scholars do not consider valid the acceptance of the *mursal* [hadith], yet they have adopted a *mursal* in this instance.

وَالشَّافِعِيُّونَ لَا يَرَوْنَ الْأَخْذَ بِالْمُرْسَلِ - وَأَخَذُوا هَاهُنَا بِمُرْسَلٍ.

L36803 And by what we have narrated—via the narration of Abū Dāwūd: from Muḥammad ibn Yaḥyā ibn Fāris, from Muḥammad ibn Bakkār ibn Bilāl, from Muḥammad ibn Rāshid, from Sulaymān ibn Mūsā, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, from the Messenger of Allah—peace and blessings be upon him—who said: "The compensation for quasi-intentional injury is aggravated, equivalent to the compensation for intentional injury, but its perpetrator is not executed."[38]

وَبِمَا رُوِّينَاهُ - مِنْ طَرِيقِ أَبِي دَاوُد أَنَا مُحَمَّدُ بْنُ يَحْيَى بْنُ فَارِسٍ أَنَا مُحَمَّدُ بْنُ بَكَّارِ بْنِ بِلَالٍ أَنَا مُحَمَّدُ بْنُ رَاشِدٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «عَقْلُ شِبْهِ الْعَمْدِ مُغَلَّظٌ مِثْلُ عَقْلِ الْعَمْدِ وَلَا يُقْتَلُ صَاحِبُهُ» .

L36804 Muhammad ibn Yahya ibn Faris said, adding: I am Khalil, narrating from Ibn Rashid through his chain of transmission in this report: And that is like Satan leaping among the people, turning into blood in a blind chaos—without enmity or weapon-carrying.

قَالَ مُحَمَّدُ بْنُ يَحْيَى بْنُ فَارِسٍ: وَزَادَ: أَنَا خَلِيلٌ عَنْ ابْنِ رَاشِدٍ فِي هَذَا الْخَبَرِ بِإِسْنَادِهِ: وَذَلِكَ مِثْلُ أَنْ يَنْزِوَ الشَّيْطَانُ بَيْنَ النَّاسِ فَيَكُونُ دَمًا فِي عَمْيَاءَ، فِي غَيْرِ ضَغِينَةٍ، وَلَا حَمْلِ سِلَاحٍ.

L36805–36806 Abū Muḥammad—may Allah be pleased with him—said: This is a *mursal* document; it is impermissible to cite it as evidence. Moreover, they have all contradicted what is in this report.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذِهِ صَحِيفَةٌ مُرْسَلَةٌ لَا يَجُوزُ الِاحْتِجَاجُ بِهَا - ثُمَّ إنَّهُمْ كُلَّهُمْ قَدْ خَالَفُوا مَا فِي هَذَا الْخَبَرِ.

L36807 As for Abu Hanifah and his companions, they improperly incorporate into this category a ruling contrary to the hadith, for they equate the legal judg-

[38] **Hadith references (L36803):** Sunan Abi Dawud 4565; Mishkat al-Masabih 3501.

ment of one killed due to concealed rancor while armed—and slain deliberately and intentionally with an iron rod—to those mentioned in this hadith, though this openly contradicts it.

أَمَّا أَبُو حَنِيفَةَ وَأَصْحَابُهُ فَيُقْحِمُونَ فِي هَذَا الْقِسْمِ خِلَافَ مَا فِي الْخَبَرِ؛ لِأَنَّهُمْ يَجْعَلُونَ مَنْ قُتِلَ فِي ضَغِينَةٍ وَحَمْلِ سِلَاحٍ فَقُتِلَ بِعَمُودِ حَدِيدٍ عَمْدًا قَصْدًا حُكْمُهُ حُكْمُ مَنْ ذُكِرَ فِي هَذَا الْخَبَرِ - وَهُوَ خِلَافُهُ جِهَارًا.

L36808 The Shāfiʿī jurists did not include in this category one who is intentionally killed in a blind manner by an object similar to that which may cause death, such as a stick or the like, whereas the Mālikīs disagreed with his opinion entirely.

وَلَمْ يُدْخِلْ الشَّافِعِيُّونَ فِيهِ: مَنْ قُتِلَ فِي عِمِّيَّا قَصْدًا بِمَا قَدْ يُمَاتُ مِنْ مِثْلِهِ مِنْ عَصًا وَنَحْوِهَا - وَخَالَفَهُ الْمَالِكِيُّونَ جُمْلَةً.

L36809 They also obscured by what was narrated through Shuʿbah from Ayyūb al-Sakhtiyānī, who heard al-Qāsim ibn Rabīʿah from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ from the Prophet, peace and blessings be upon him, who said: "Quasi-intentional killing - such as the killing by a whip or a stick - requires one hundred camels, forty of which are pregnant with their offspring."

وَمَوَّهُوا أَيْضًا - بِمَا رُوِّينَا مِنْ طَرِيقِ شُعْبَةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ سَمِعْت الْقَاسِمَ بْنَ رَبِيعَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «قَتْلُ الْخَطَأِ شِبْهِ الْعَمْدِ قَتِيلُ السَّوْطِ وَالْعَصَا مِائَةٌ مِنْ الْإِبِلِ أَرْبَعُونَ مِنْهَا فِي بُطُونِهَا أَوْلَادُهَا» .

L36810 Abū Muḥammad—may Allah be pleased with him—said: This is a narration affected by tadlīs; a man between al-Qāsim ibn Rabīʿah and ʿAbdullāh ibn ʿUmar was dropped from it.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا خَبَرٌ مُدَلَّسٌ، سَقَطَ مِنْهُ بَيْنَ الْقَاسِمِ بْنِ رَبِيعَةَ وَبَيْنَ عَبْدِ اللَّهِ بْنِ عُمَرَ رَجُلٌ -.

L36811 As we narrated it through the chain of Aḥmad ibn Shuʿayb: from Yaḥyā ibn Ḥabīb ibn ʿArabī, from Ḥammād ibn Zayd, from Khālid al-Ḥadhāʾ (the Cobbler), from al-Qāsim ibn Rabīʿah, from ʿUqbah ibn Aws, from ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, from the Prophet (peace and blessings be upon him), wherein he mentioned this identical report.

كَمَا رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا يَحْيَى بْنُ حَبِيبِ بْنِ عَرَبِيٍّ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ الْقَاسِمِ بْنِ رَبِيعَةَ عَنْ عُقْبَةَ بْنِ أَوْسٍ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ فِيهِ هَذَا الْخَبَرَ بِعَيْنِهِ.

L36812 Uqbah ibn Aws is unknown, and his identity remains undocumented. No authentic transmission to al-Qāsim ibn Rabīʿah from ʿAbdullāh ibn ʿAmr has been established.

وَعُقْبَةُ بْنُ أَوْسٍ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَلَا يَصِحُّ لِلْقَاسِمِ بْنِ رَبِيعَةَ سَمَاعٌ مِنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو.

L36813 We have also narrated it through another chain from al-Qasim ibn Rabi'ah contrary to this account: I am Humam, I am Abbas ibn Asbagh, I am Muhammad ibn Abd al-Malik ibn Ayman, I am Ahmad ibn Zuhayr ibn Harb - Ubay narrated to us, Ibn Ulayyah narrated to us from Khalid al-Hadhdha' from al-Qasim ibn Rabi'ah from Ya'qub ibn Aws, a man among the Companions of

وَقَدْ رُوِّينَاهُ أَيْضًا: عَنْ الْقَاسِمِ بْنِ رَبِيعَةَ بِخِلَافِ هَذَا كَمَا أَنَا حُمَامٌ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ أَنَا أَحْمَدُ بْنُ زُهَيْرِ بْنِ حَرْبٍ ثنا أُبَيٌّ ثنا ابْنُ عُلَيَّةَ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ الْقَاسِمِ بْنِ رَبِيعَةَ عَنْ يَعْقُوبَ بْنِ أَوْسٍ رَجُلٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ

- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «خَطَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ فَتْحِ مَكَّةَ فَقَالَ: أَلَا إِنَّ قَتِيلَ خَطَأِ الْعَمْدِ» قَالَ خَالِدٌ: أَوْ قَالَ «قَتِيلُ الْخَطَأِ شِبْهِ الْعَمْدِ قَتِيلُ السَّوْطِ، وَالْعَصَا مِنْهَا أَرْبَعُونَ فِي بُطُونِهَا أَوْلَادُهَا» .

Allah's Messenger (peace be upon him), who said: "Allah's Messenger (peace be upon him) delivered a sermon on the Day of Mecca's Conquest and declared: 'Verily, the victim of quasi-intentional killing...'" Khalid interjected: "Or he said: 'The victim of quasi-intentional killing is one slain by a whip and staff, requiring forty [camels] as blood-money, of which are those pregnant with their offspring.'"

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: يَعْقُوبُ بْنُ أَوْسٍ مَجْهُولٌ لَا صُحْبَةَ لَهُ.

L36814 Abū Muḥammad—may Allāh be pleased with him—said: Yaʿqūb ibn Aws is unknown as a narrator and was not a Companion.

كَمَا رُوِّينَا هَذَا الْخَبَرَ نَفْسَهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا إِسْمَاعِيلُ بْنُ مَسْعُودٍ - هُوَ الْجَحْدَرِيُّ - أَنَا بِشْرُ بْنُ الْمُفَضَّلِ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ الْقَاسِمِ بْنِ رَبِيعَةَ عَنْ يَعْقُوبَ بْنِ أَوْسٍ عَنْ رَجُلٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَذَكَرَ هَذَا الْخَبَرَ نَفْسَهُ.

L36815–36817 Similarly, this same report was conveyed to us through the chain of Aḥmad ibn Shuʿayb: I [heard] from Ismāʿīl ibn Masʿūd—known as al-Jaḥdarī— I am Bishr ibn al-Mufaḍḍal, from Khālid the Cobbler, from al-Qāsim ibn Rabīʿah, from Yaʿqūb ibn Aws, from a man among the Companions of the Messenger of Allah (peace and blessings be upon him and his family), and he mentioned this same report.

وَقَدْ رُوِّينَاهُ أَيْضًا - مِنْ طَرِيقٍ أَسْقَطَ مِنْ هَذِهِ.

L36818 And indeed, we have also transmitted it through a chain that omitted from this.

كَمَا رُوِّينَا - مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، قَالَ حَمَّادٌ: أَنَا عَلِيُّ بْنُ زَيْدِ بْنِ جُدْعَانَ عَنْ يَعْقُوبَ السَّدُوسِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو - هُوَ ابْنُ الْعَاصِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطَبَ يَوْمَ الْفَتْحِ فَقَالَ أَلَا إِنَّ دِيَةَ الْعَمْدِ الْخَطَأِ بِالسَّوْطِ وَالْعَصَا: دِيَةٌ مُغَلَّظَةٌ مِائَةٌ مِنْ الْإِبِلِ فِيهَا أَرْبَعُونَ خَلِفَةً فِي بُطُونِهَا أَوْلَادُهَا» .

L36819 As we have been narrated through the chain of Hammad ibn Salamah and Sufyan ibn Uyaynah—Hammad said: **I** narrate from Ali ibn Zayd ibn Judʿan, from Yaʿqub al-Sadusi, from ʿAbdullah ibn ʿAmr (son of al-ʿĀṣ)—that the Prophet (peace be upon him) delivered a sermon on the Day of the Conquest and said: "Behold, the blood money for **intentional-but-erroneous killing** **with a whip or stick** is an enhanced blood money **of** one hundred camels, among which are forty **pregnant camels in their final trimester**."

وَقَالَ سُفْيَانُ: أَنَا ابْنُ جُدْعَانَ سَمِعَهُ مِنْ الْقَاسِمِ بْنِ رَبِيعَةَ عَنْ ابْنِ عَمْرٍو فَذَكَرَهُ - وَابْنِ جُدْعَانَ هَذَا هُوَ عَلِيُّ بْنُ زَيْدٍ ضَعِيفٌ جِدًّا - وَيَعْقُوبُ السَّدُوسِيُّ مَجْهُولٌ - وَلَمْ يَلْقَ الْقَاسِمُ بْنُ رَبِيعَةَ ابْنَ عَمْرٍو قَطُّ - فَسَقَطَ جُمْلَةً - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L36820 Sufyan said: I am Ibn Judʿan – he heard it from al-Qasim ibn Rabiʿah, from Ibn ʿAmr, and he mentioned it – and this Ibn Judʿan is ʿAli ibn Zayd, who is extremely weak – and Yaʿqub al-Sadūsī is unknown. Al-Qasim ibn Rabiʿah never met Ibn ʿAmr at all – thus, the entire chain collapses – and all praise is due to Allah, Lord of all creation.

L36821 Nevertheless, the three schools have contradicted their own principles in this matter. As for the Ḥanafīs—excluding Muḥammad ibn al-Ḥasan—they

hold the blood money for a quasi-intentional act as consisting of twenty-five _bint makhāḍ_ (one-year-old she-camels entering their second year), twenty-five _bint labūn_ (two-year-old she-camels entering their third year), twenty-five _ḥiqāq_ (four-year-old male camels), and twenty-five _jadhaʿa_ (four-year-old she-camels), contrary to what is mentioned in this narration.

وَمَعَ ذَلِكَ فَإِنَّ الطَّوَائِفَ الثَّلَاثَ نَقَضَتْ فِيهِ أُصُولَهَا -: أَمَّا الْحَنَفِيُّونَ - حَاشَا مُحَمَّدِ بْنِ الْحَسَنِ - فَلَا يَرَوْنَ دِيَةَ عَمْدِ الْخَطَأِ إِلَّا خَمْسًا وَعِشْرِينَ بِنْتَ مَخَاضٍ، وَخَمْسًا وَعِشْرِينَ بِنْتَ لَبُونٍ، وَخَمْسًا وَعِشْرِينَ حِقَاقًا وَخَمْسًا وَعِشْرِينَ جَذَعَةٍ - بِخِلَافِ مَا فِي هَذَا الْخَبَرِ.

L36822 As for the Mālikīs, they opposed him entirely.

وَأَمَّا الْمَالِكِيُّونَ - فَخَالَفُوهُ كُلَّهُ.

L36823 As for the Shāfiʿīs—they do not accept that ruling in the case of a stick where a blow of similar force would cause death, nor in intentional beating with a whip until he dies. Rather, they consider retaliation in this scenario to contradict this ḥadīth, despite their adherence to affirming only narrations with complete chains (musnad) transmitted by renowned narrators—and this ḥadīth does not belong to that pattern.

وَأَمَّا الشَّافِعِيُّونَ - فَلَا يَرَوْنَ ذَلِكَ فِي الْعَصَا الَّتِي يُمَاتُ مِنْ مِثْلِ ضَرْبَتِهَا، وَلَا فِي الضَّرْبِ بِالسَّوْطِ عَمْدًا، حَتَّى يَمُوتَ، بَلْ يَرَوْنَ فِي هَذَا الْقَوَدَ خِلَافًا لِهَذَا الْخَبَرِ، مَعَ أَنَّهُمْ لَا يَقُولُونَ إِلَّا بِالْمُسْنَدِ مِنْ رِوَايَةِ الْمَشْهُورِينَ - وَلَيْسَ هَذَا الْخَبَرُ مِنْ هَذَا النَّمَطِ.

L36824 They vehemently objected by citing the well-known, established report of the Hudhalis—in which one woman struck the other with a stone (or, in some narrations, a tent pole), causing her and her fetus to die. Thereupon, the Messenger of God (peace be upon him) ruled that the *ghurrah* (compensation for fetal death) and blood money were to be paid by the assailant's male kin responsible for compensation.

وَشَغَبُوا بِخَبَرِ الْهُذَلِيِّينَ الْمَشْهُورِ الثَّابِتِ لِمَا فِيهِ بِأَنَّ إِحْدَاهُمَا ضَرَبَتِ الْأُخْرَى بِحَجَرٍ - وَفِي بَعْضِ الرِّوَايَاتِ بِعَمُودِ فُسْطَاطٍ فَمَاتَتْ هِيَ وَجَنِينُهَا فَجَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْغُرَّةَ وَالدِّيَةَ عَلَى عَاقِلَةِ الضَّارِبَةِ.

L36825–36827 They then split into two groups—Abū Ḥanīfah and those who followed him said: "This report contains clarification that whoever kills another with a stick shall be executed by means of its equivalent." Or by a stone from which death results, there is no retribution (qisas), but it is deemed a semi-intentional act, obligating the kinship group (al-ʿāqilah) to pay blood money.

ثُمَّ افْتَرَقُوا فِرْقَتَيْنِ -: قَالَ أَبُو حَنِيفَةَ وَمَنْ قَلَّدَهُ: فِي هَذَا الْخَبَرِ بَيَانُ أَنَّ مَنْ قَتَلَ آخَرَ بِعَصًا يُمَاتُ مِنْ مِثْلِهَا أَوْ بِحَجَرٍ يُمَاتُ مِنْهُ، فَلَا قَوَدَ، وَلَكِنَّهُ عَمْدُ خَطَأٍ عَلَى الْعَاقِلَةِ.

L36828 Abu Yusuf, Muhammad ibn al-Hasan, al-Shafi'i, and his companions said: This report demonstrates that if someone dies from a cause that would not typically kill one of his peers, the *diyah* falls upon the *ʿaqila*.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَالشَّافِعِيُّ، وَأَصْحَابُهُ: فِي هَذَا الْخَبَرِ بَيَانُ أَنَّ مَنْ مَاتَ بِمَا لَا يُمَاتُ مِنْ مِثْلِهِ فَفِيهِ الدِّيَةُ عَلَى الْعَاقِلَةِ.

L36829 Abu Muhammad (may Allah be pleased with him) said: As for the assertion of those who claim, "That pillar and stone were among things impervious to eradication by their equivalent," this is a manifestly invalid claim. For a tent's pillar cannot possibly be among those things immune to destruction through

a strike by its equivalent in a harmful act. Thus, this claim is invalidated - and all praise belongs to Allah, Lord of the worlds.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: أَمَّا قَوْلُ مَنْ قَالَ: إنَّ ذَلِكَ الْعَمُودَ وَالْحَجَرَ كَانَا مِمَّا لَا يُمَاتُ مِنْ مِثْلِهِ، فَقَوْلٌ ظَاهِرُ الْفَسَادِ، لِأَنَّ عَمُودَ فُسْطَاطٍ لَا يُمْكِنُ أَلْبَتَّةَ أَنْ يَكُونَ مِمَّا لَا يُمَاتُ مِنْ الضَّرْبِ - فِي الشَّرِّ - بِمِثْلِهِ، فَسَقَطَ هَذَا الْقَوْلُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L36830 As for those who claim that this report indicates there is no retribution for the pillar and the stone (which typically cause fatal injuries) - even if intentionally used to harm - but rather blood money is owed by the agnatic male relatives, this is a corrupt assumption from them. This is clarified by what we have reported through the chain of Abū Dāwūd and Aḥmad ibn Shuʿayb. Abū Dāwūd said: "I am Muḥammad ibn Masʿūd - Abū ʿĀṣim narrated to us from Ibn Jurayj, who said: ʿAmr ibn Dīnār informed me that he heard Ṭāwūs narrate from Ibn ʿAbbās that ʿUmar ibn al-Khaṭṭāb inquired about the Prophet's ruling - peace be upon him - regarding that matter. Hamal ibn Mālik ibn al-Nābighah stood up and said: 'I was between two women; one struck the other with a flat stone, killing her and her fetus.' The Messenger of Allāh - peace be upon him - ruled that a ghurrah be paid for her fetus and that she be executed." Aḥmad ibn Shuʿayb said: "Yūsuf ibn Saʿīd ibn Muslim al-Miṣṣīṣī narrated to us: Ḥajjāj - that is, ibn Muḥammad - narrated to us from Ibn Jurayj: ʿAmr ibn Dīnār informed me that he heard Ṭāwūs narrate from Ibn ʿAbbās from ʿUmar ibn al-Khaṭṭāb," and he mentioned the identical account except he stated: "The Messenger of Allāh - peace be upon him - ruled that a ghurrah be paid for her fetus and that she be executed for it." This chain of narration is of the utmost authenticity.

وَأَمَّا الْقَائِلُونَ بِأَنَّ فِي هَذَا الْخَبَرِ دَلِيلًا عَلَى أَنَّ الْعَمُودَ وَالْحَجَرَ اللَّذَيْنِ يُمَاتُ مِنْ مِثْلِهِمَا لَا قَوَدَ فِيهِمَا - وَإِنْ تَعَمَّدَ الضَّرْبَ بِهِمَا - فِي الشَّرِّ، لَكِنْ فِيهِمَا الدِّيَةُ عَلَى الْعَاقِلَةِ، فَهَذَا ظَنٌّ فَاسِدٌ مِنْهُمْ، يُبَيِّنُ ذَلِكَ - مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد، وَأَحْمَدَ بْنِ شُعَيْبٍ، قَالَ أَبُو دَاوُد -: أَنَا مُحَمَّدُ بْنُ مَسْعُودٍ أَنَا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ: أَنَّهُ سَمِعَ طَاوُسًا عَنْ ابْنِ عَبَّاسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ «أَنَّهُ سَأَلَ عَنْ قَضِيَّةِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ؟ فَقَامَ حَمَلُ بْنُ مَالِكِ بْنِ النَّابِغَةِ فَقَالَ: كُنْت بَيْنَ امْرَأَتَيْنِ فَضَرَبَتْ إحْدَاهُمَا الْأُخْرَى بِمِسْطَحٍ فَقَتَلَتْهَا وَجَنِينَهَا؟ فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِهَا بِغُرَّةٍ، وَأَنْ تُقْتَلَ.» وَقَالَ أَحْمَدُ بْنُ شُعَيْبٍ أَنَا يُوسُفُ بْنُ سَعِيدِ بْنِ مُسْلِمٍ الْمِصِّيصِيُّ أَنَا حَجَّاجٌ - هُوَ ابْنُ مُحَمَّدٍ - عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ: سَمِعَ طَاوُسًا يُحَدِّثُ عَنْ ابْنِ عَبَّاسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ، فَذَكَرَ مِثْلَهُ سَوَاءً سَوَاءً - إلَّا أَنَّهُ قَالَ: «فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِهَا بِغُرَّةٍ، وَأَنْ تُقْتَلَ بِهَا.» فَهَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ.

L36831 They said: It has been established that the Messenger of Allah—may Allah's peace and blessings be upon him—placed the blood money for the beaten woman upon the agnatic relatives of the female killer. Is this not impermissible in cases requiring retaliation? We replied: It has equally been established that he—may peace and blessings be upon him—commanded retaliation in that matter, and all his injunctions are true. It is impermissible to disregard any of them in favor of another; rather, the objective is to synthesize all of

فَقَالُوا: قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ دِيَةَ الْمَضْرُوبَةِ عَلَى عَاقِلَةِ الْقَاتِلَةِ، وَلَا يَجُوزُ هَذَا فِيمَا فِيهِ الْقَوَدُ؟ قُلْنَا: وَقَدْ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَمَرَ فِي ذَلِكَ بِالْقَوَدِ، وَكُلُّ أَوَامِرِهِ حَقٌّ، وَلَا يَجُوزُ تَرْكُ شَيْءٍ مِنْهَا لِشَيْءٍ، بَلْ الْغَرَضُ الْجَمْعُ

بَيْنَ جَمِيعِهَا - وَوَجْهُ ذَلِكَ بَيِّنٌ، وَهُوَ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - حَكَمَ فِي ذَلِكَ بِحُكْمِ الْعَمْدِ، إذْ حَكَمَ بِالْقَوَدِ، ثُمَّ حَكَمَ فِيهِ.

بِحُكْمِ قَتْلِ الْخَطَأِ، إذْ حَكَمَ بِالدِّيَةِ عَلَى الْعَاقِلَةِ، فَلَا يَجُوزُ أَنْ يَكُونَ هَذَا إلَّا بِأَنَّهُ أَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّهَا ضَرَبَتْهَا فَقَتَلَتْهَا: فَحَكَمَ بِالْقَوَدِ عَلَى ظَاهِرِ الْأَمْرِ، ثُمَّ صَحَّ أَنَّ ضَرْبَهَا لَهَا كَانَ خَطَأً عَنْ غَيْرِ قَصْدٍ، فَرَجَعَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَى الْحُكْمِ بِمَا يُحْكَمُ بِهِ قَتْلُ الْخَطَأِ، إذْ لَا يَحِلُّ أَنْ يُحْمَلَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَّا عَلَى الْحَقِّ الَّذِي لَا يَقْتَضِي مَا حَكَمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِيهِ غَيْرَ مَا حَكَمَ بِهِ.

وَقَدْ ادَّعَى قَوْمٌ: أَنَّ ابْنَ جُرَيْجٍ أَخْطَأَ فِيهِ، وَقَالُوا: قَدْ رَوَى سُفْيَانُ بْنُ عُيَيْنَةَ هَذَا الْخَبَرَ عَنْ عَمْرِو بْنِ دِينَارٍ، فَلَمْ يَذْكُرْ فِيهِ مَا ذَكَرَ ابْنُ جُرَيْجٍ؟ فَقُلْنَا: بَلْ الْمُخْطِئُ مَنْ خَطَّأَ الْأَئِمَّةَ بِرَأْيِهِ الْفَاسِدِ، وَإِذْ لَمْ يَرْوِ ابْنُ عُيَيْنَةَ مَا رَوَى ابْنُ جُرَيْجٍ، فَكَانَ مَاذَا؟ ابْنُ جُرَيْجٍ أَجَلُّ مِنْ ابْنِ عُيَيْنَةَ - وَكِلَاهُمَا جَلِيلٌ - وَابْنُ جُرَيْجٍ زَادَ عَلَى ابْنِ عُيَيْنَةَ مَا لَمْ يَعْرِفْ ابْنُ عُيَيْنَةَ، وَزِيَادَةُ الْعَدْلِ لَا يَحِلُّ رَدُّهَا.

وَقَدْ أَتَى قَوْمٌ بِمَا يَمْلَأُ الْفَمَ، فَقَالُوا: حَمَلُ بْنُ النَّابِغَةِ لَا يُحْتَجُّ بِرِوَايَتِهِ؟ .

فَقُلْنَا: هَذَا حُكْمُ إبْلِيسَ، تُرَدُّ رِوَايَةُ حَمَلٍ - رَضِيَ اللَّهُ عَنْهُ - وَهُوَ صَاحِبٌ ثَابِتُ الصُّحْبَةِ، وَقَدْ أَخَذَ عَنْهُ عُمَرُ أَمِيرُ الْمُؤْمِنِينَ، وَكُلُّ مَنْ بِحَضْرَتِهِ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْ جَمِيعِهِمْ.

وَيُؤْخَذُ بِتَخْلِيطِ أَبِي حَنِيفَةَ الَّذِي لَا يُسَاوِي الِاشْتِغَالَ بِهِ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

them. The rationale for this is evident: he—may peace and blessings be upon him—adjudicated this case under the ruling of intentional homicide, since he prescribed retaliation, then he ruled on it.

L36832–36834 In the judgment regarding accidental killing, since he ruled that blood money was due upon the agnatic kin, this can only be because he (peace and blessings be upon him) stated that she struck her and killed her. Thus, he ruled for retribution based on the apparent circumstances, then it was established that her striking... In that case, since it was an unintentional error, the Prophet—peace be upon him—applied the ruling applicable to accidental killing. For it is impermissible to interpret his judgment except according to the divine truth, which entails no ruling in the matter other than what he—peace be upon him—had decreed.

L36835 A group of people claimed that Ibn Jurayj erred in this matter, arguing that Sufyan ibn ʻUyaynah narrated this report from ʻAmr ibn Dinar but did not mention what Ibn Jurayj mentioned. We replied: Rather, the one who errs is he who deems the Imams to have erred based on his corrupt opinion. Since Ibn ʻUyaynah did not narrate what Ibn Jurayj narrated, so what? Ibn Jurayj is more eminent than Ibn ʻUyaynah—though both are distinguished—and Ibn Jurayj added to Ibn ʻUyaynah what Ibn ʻUyaynah himself was unaware of. The addition by a reliable narrator is impermissible to reject.

L36836 And indeed, a group came forward with speech that fills the mouth, saying: “Is Ḥamal ibn al-Nābighah’s narration not to be relied upon as proof?”

L36837 So we said: This is the judgment of Iblis. The narration of Haml (may Allah be pleased with him) is rejected, though he was a Companion of established companionship. Indeed, Umar, the Commander of the Faithful, took knowledge from him, along with all the Companions present with him (may Allah be pleased with them all).

L36838 Account is taken of the inconsistencies in Abu Hanifah’s legal methodology, which do not merit the effort devoted to them—Sufficient for us is Allah, and He is the Best Trustee.

L36839 They said: A group of the Companions—may Allah be pleased with them—Umar ibn al-Khattab, Uthman ibn Affan, Ali ibn Abi Talib, Ibn Mas'ud, Zayd ibn Thabit, and Abu Musa al-Ash'ari—have indeed held the opinion concerning quasi-intentional.

وَقَالُوا: قَدْ قَالَ بِشِبْهِ الْعَمْدِ طَائِفَةٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: عُمَرُ بْنُ الْخَطَّابِ، وَعُثْمَانُ بْنُ عَفَّانَ، وَعَلِيُّ بْنُ أَبِي طَالِبٍ، وَابْنُ مَسْعُودٍ، وَزَيْدُ بْنُ ثَابِتٍ، وَأَبُو مُوسَى الْأَشْعَرِيُّ.

L36840 They said: Such a matter is not determined by opinion, and this is also—the position of the majority of the jurists after the Companions—may Allah be pleased with them—such as al-Nakhaʿī, al-Shaʿbī, ʿAṭāʾ, Ṭāwūs, Masrūq, al-Ḥakam ibn ʿUtaybah, ʿUmar ibn ʿAbd al-ʿAzīz, and al-Ḥasan.

قَالُوا: وَمِثْلُ هَذَا لَا يُقَالُ بِالرَّأْيِ، وَهُوَ أَيْضًا - قَوْلُ الْجُمْهُورِ مِنْ الْفُقَهَاءِ بَعْدَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَالنَّخَعِيِّ، وَالشَّعْبِيِّ، وَعَطَاءٍ، وَطَاوُسٍ، وَمَسْرُوقٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَالْحَسَنِ.

L36841 Ibn al-Musayyib, Qatādah, al-Zuhrī, Abū al-Zinād, and Ḥammād b. Abī Sulaymān.

وَابْنِ الْمُسَيِّبِ وَقَتَادَةَ، وَالزُّهْرِيِّ، وَأَبِي الزِّنَادِ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ.

L36842 This is also the opinion of the majority of jurists: Sufyan al-Thawri, Ibn Shubrumah, Uthman al-Batti, al-Hasan ibn Hayy, al-Awza'i, Abu Hanifah, al-Shafi'i, and the followers of Abu Hanifah and al-Shafi'i.

وَهُوَ أَيْضًا - قَوْلُ جُمْهُورِ الْفُقَهَاءِ، كَسُفْيَانَ الثَّوْرِيِّ، وَابْنِ شُبْرُمَةَ، وَعُثْمَانَ الْبَتِّيِّ، وَالْحَسَنِ بْنِ حَيٍّ، وَالْأَوْزَاعِيِّ، وَأَبِي حَنِيفَةَ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا.

L36843–36844 Abu Muhammad—may Allah be pleased with him—said: There is no valid proof in anyone other than the Messenger of Allah—peace and blessings of Allah be upon him—and nothing is authentically established regarding this matter from any of the Companions—may Allah be pleased with them—except from Ali ibn Abi Talib and Zayd ibn Thabit. As for the narration from Umar ibn al-Khattab, it has a broken chain, as it is transmitted via Sufyan al-Thawri from Ibn Abi Najih from Mujahid: that Umar ibn al-Khattab ruled concerning semi-intentional killing—thirty hiqqah she-camels (five-year-old), thirty jadh'ah she-camels (four-year-old), and forty camels aged between one and two years, all of them pregnant. As for the narration from Uthman—it is transmitted via Abd al-Razzaq from Uthman ibn Matar from Sa'id ibn Abi Arubah from Qatadah from Sa'id ibn al-Musayyab: that Uthman ibn Affan ruled concerning semi-intentional killing—forty jadh'ah she-camels (four-year-old pregnant) up to the completion of their first year, thirty hiqqah she-camels (five-year-old), and thirty bint labūn (two-year-old she-camels)—and Uthman ibn Matar is a weak transmitter.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَصِحُّ فِي ذَلِكَ شَيْءٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، إلَّا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَنْ زَيْدِ بْنِ ثَابِتٍ. أَمَّا الرِّوَايَةُ عَنْ عُمَرَ بْنِ الْخَطَّابِ فَمُنْقَطِعَةٌ؛ لِأَنَّهَا مِنْ طَرِيقِ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي شِبْهِ الْعَمْدِ: ثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ جَذَعَةً، وَأَرْبَعُونَ مَا بَيْنَ ثَنِيَّةٍ إلَى بَازِلِ عَامِهَا كُلُّهَا خَلِفَةٌ. وَأَمَّا عَنْ عُثْمَانَ - فَإِنَّهَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُثْمَانَ بْنِ مَطَرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَالَ فِي شِبْهِ الْعَمْدِ: أَرْبَعُونَ جَذَعَةً خَلِفَةً إلَى بَازِلِ عَامِهَا، وَثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ بِنْتَ لَبُونٍ - وَعُثْمَانُ بْنُ مَطَرٍ ضَعِيفٌ.

وَأَمَّا عَنْ عَلِيٍّ - فَإِنَّهَا مِنْ طَرِيقِ وَكِيعٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: شِبْهُ الْعَمْدِ: الضَّرْبَةُ بِالْخَشَبَةِ، أَوْ الْقَذْفَةُ بِالْحَجَرِ الْعَظِيمِ. وَمِنْ طَرِيقِ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: فِي الْخَطَأِ شِبْهِ الْعَمْدِ - الضَّرْبُ بِالْخَشَبَةِ، وَالْحَجَرِ الضَّخْمِ - ثَلَاثُ حِقَاقٍ، وَثَلَاثُ جِذَاعٍ، وَثَلَاثُ مَا بَيْنَ ثَنِيَّةٍ إِلَى بَازِلِ عَامِهَا. وَأَمَّا عَنْ زَيْدِ بْنِ ثَابِتٍ فَمِنْ طَرِيقِ وَكِيعٍ أَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ، قَالَ: قَالَ زَيْدُ بْنُ ثَابِتٍ: فِي شِبْهِ الْعَمْدِ ثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ جَذَعَةً، وَأَرْبَعُونَ مَا بَيْنَ ثَنِيَّةٍ إِلَى بَازِلِ عَامِهَا، كُلُّهَا خَلِفَةٌ. وَرُوِّينَاهُ أَيْضًا - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ.

L36845 As for what is reported from Ali, it is through the chain of Wakiʿ from Sufyan al-Thawri from Abu Ishaq al-Sabiʿi from ʿAsim ibn Damrah from Ali, who said: The quasi-intentional act is a strike with a wooden implement or a throw with a large stone. Through the chain of ʿAbd al-Rahman ibn Mahdi from Sufyan al-Thawri from Abu Ishaq al-Sabiʿi from ʿAsim ibn Damrah from Ali, who said: Regarding the quasi-intentional error – striking with a wooden implement or a bulky stone – three Hiqqah, three Jadhaʿ, and three between Thaniyyah and Bazil of their year.

As for what is reported from Zayd ibn Thabit, it is through the chain of Wakiʿ: I, Ismaʿil ibn Abi Khalid, report from al-Shaʿbi, who said: Zayd ibn Thabit said: In the quasi-intentional act, thirty Hiqqah, thirty Jadhaʿ, and forty between Thaniyyah and Bazil of their year – all being pregnant she-camels. We also narrated it through the chain of ʿAbd al-Razzaq from Sufyan al-Thawri from Abu Ishaq al-Shaybani from al-Shaʿbi from Zayd ibn Thabit.

وَقَدْ صَحَّ أَيْضًا - عَنْ زَيْدِ بْنِ ثَابِتٍ عَنْ غَيْرِ هَذَا، لَكِنْ مِثْلُ مَا رُوِّينَا عَنْ عُثْمَانَ كَمَا أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ أَنَا عَبَّاسُ بْنُ أَصْبَغَ أَنَا مُحَمَّدُ بْنُ قَاسِمِ بْنِ مُحَمَّدٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْأَنْصَارِيُّ الْقَاضِي أَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ فِي دِيَةِ الْمُغَلَّظَةِ: أَرْبَعُونَ جَذَعَةً خَلِفَةً، وَثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ بَنَاتَ لَبُونٍ. وَأَمَّا الرِّوَايَةُ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ فَمُنْقَطِعَةٌ عَنْهُ؛ لِأَنَّهَا مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ، وَسُلَيْمَانُ - هُوَ أَبُو إِسْحَاقَ الشَّيْبَانِيُّ - كِلَاهُمَا عَنْ الشَّعْبِيِّ: أَنَّ أَبَا مُوسَى الْأَشْعَرِيَّ قَالَ: دِيَةُ شِبْهِ الْعَمْدِ ثَلَاثُونَ حِقَّةً، وَثَلَاثُونَ جَذَعَةً، وَأَرْبَعُونَ مَا بَيْنَ ثَنِيَّةٍ إِلَى بَازِلِ عَامِهَا كُلُّهَا خَلِفَةٌ - وَالشَّعْبِيُّ لَمْ يُدْرِكْ أَبَا مُوسَى بِعَقْلِهِ.

L36846–36848 It has also been authenticated—from Zaid ibn Thabit regarding matters other than this, but resembling what has been narrated to us from Uthman—as [follows]. Narrated by Muḥammad ibn Saʿīd ibn Nubāt, from ʿAbbās ibn Aṣbagh, from Muḥammad ibn Qāsim ibn Muḥammad, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from Muḥammad ibn ʿAbd Allāh al-Anṣārī the judge, from Saʿīd ibn Abī ʿArūbah, from Qatādah, from Saʿīd ibn al-Musayyib, from Zayd ibn Thābit, who said regarding the aggravated blood money: "Forty pregnant she-camels (jadhʿah) in their fourth year, thirty she-camels in their fifth year (ḥiqqah), and thirty lactating female camels (banāt labūn)." As for the narration from Abū Mūsā al-Ashʿarī, it is disconnected from him, as it comes through the path of Ibn Wahb from Sufyān al-Thawrī from al-Mughīrah ibn Miqsam, and Sulaymān (Abū Isḥāq al-Shaybānī) – both from al-Shaʿbī: that Abū Mūsā al-Ashʿarī said: "The blood money for quasi-intentional killing is thirty she-camels in their fifth year (ḥiqqah), thirty she-camels in their fourth year (jadhʿah), and forty camels ranging in age from three-year-old she-camels (thaniyyah) to six-year-old male camels (bāzil) in their respective years – all of them pregnant she-camels (khalīfah)." Al-Shaʿbī did not meet Abū Mūsā al-Ashʿarī.

وَأَمَّا ابْنُ مَسْعُودٍ - فَرُوِّينَاهَا عَنْهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْكَرِيمِ عَنِ ابْنِ مَسْعُودٍ: أَنَّهُ قَالَ: الْعَمْدُ السِّلَاحُ، وَشِبْهُ الْعَمْدِ الْحَجَرُ، وَالْعَصَا. قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى: أَنَّ ابْنَ مَسْعُودٍ قَالَ: شِبْهُ الْعَمْدِ: الْحَجَرُ، وَالْعَصَا، وَالسَّوْطُ، وَالدَّفْعَةُ، وَكُلُّ شَيْءٍ عَمَدْته بِهِ: فَفِيهِ التَّغْلِيظُ - وَالْخَطَأُ: أَنْ يَرْمِيَ شَيْئًا فَيُخْطِئَ بِهِ. وَمِنْ طَرِيقِ وَكِيعٍ، وَسَعِيدِ بْنِ مَنْصُورٍ، قَالَ وَكِيعٌ: أَنَا إسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنِ الشَّعْبِيِّ، وَقَالَ سَعِيدُ بْنُ مَنْصُورٍ أَنَا أَبُو عَوَانَةَ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنِ النَّخَعِيِّ - ثُمَّ اتَّفَقَ الشَّعْبِيُّ، وَالنَّخَعِيُّ: أَنَّ ابْنَ مَسْعُودٍ قَالَ فِي دِيَةِ شِبْهِ الْعَمْدِ: أَرْبَاعًا: خَمْسٌ وَعِشْرُونَ جَذَعَةً، وَخَمْسٌ وَعِشْرُونَ حِقَّةً، وَخَمْسٌ وَعِشْرُونَ بَنَاتَ مَخَاضٍ، وَخَمْسٌ وَعِشْرُونَ بَنَاتَ لَبُونٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَلَمْ يُولَدْ الشَّعْبِيُّ، وَالنَّخَعِيُّ، وَابْنُ أَبِي لَيْلَى، وَعَبْدُ الْكَرِيمِ إلَّا بَعْدَ مَوْتِ ابْنِ مَسْعُودٍ.

L36849 As for Ibn Masʿūd—we have narrated from him through ʿAbd al-Razzāq's chain from Ibn Jurayj, who informed me that ʿAbd al-Karīm reported from Ibn Masʿūd: "Intentional killing involves weapons, while semi-intentional killing involves stones and sticks." Ibn Jurayj added: "Muḥammad ibn ʿAbd al-Raḥmān ibn Abī Laylā informed me that Ibn Masʿūd said: 'Semi-intentional acts include stones, sticks, whips, a sudden push, and anything one deliberately employs—these require aggravated compensation. Unintentional [harm] occurs when one aims at a target but accidentally strikes [a person].'" Through the chains of Wakīʿ and Saʿīd ibn Manṣūr: Wakīʿ reported via Ismāʿīl ibn Abī Khālid from al-Shaʿbī, while Saʿīd ibn Manṣūr reported via Abū ʿAwānah from Manṣūr ibn al-Muʿtamir from al-Nakhaʿī—both al-Shaʿbī and al-Nakhaʿī agreed that Ibn Masʿūd ruled regarding semi-intentional blood money: "Divided into quarters: twenty-five each of four-year-old she-camels, five-year-old she-camels, one-year-old she-camels (banāt makhāḍ), and two-year-old she-camels (banāt labūn), totaling one hundred camels." Abū Muḥammad—may Allah be pleased with him—remarked: "Al-Shaʿbī, al-Nakhaʿī, Ibn Abī Laylā, and ʿAbd al-Karīm were only born after Ibn Masʿūd's death."

وَأَمَّا التَّابِعُونَ - فَرُوِيَ عَنِ النَّخَعِيِّ، وَالشَّعْبِيِّ: رِوَايَةٌ سَاقِطَةٌ فِيهَا الْحَجَّاجُ بْنُ أَرْطَاةَ، مِثْلُ قَوْلِ عَلِيٍّ فِي دِيَةِ شِبْهِ الْعَمْدِ.

L36850 As for the Followers (Tābiʿūn)—it is narrated from al-Nakhaʿī and al-Shaʿbī: a weak narration due to al-Ḥajjāj ibn Arṭāh's presence in its chain, matching ʿAlī's ruling on the blood money for semi-intentional killing.

وَقَدْ صَحَّ - عَنْ عَطَاءٍ، وَالزُّهْرِيِّ، مِثْلُ الْقَوْلِ الَّذِي رُوِّينَا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَأَبِي مُوسَى، وَأَحَدِ قَوْلَيْ زَيْدِ بْنِ ثَابِتٍ.

L36851 An opinion similar to that which was narrated to us from ʿUmar ibn al-Khaṭṭāb, Abū Mūsā, and one of the two opinions of Zayd ibn Thābit has been authentically reported from ʿAṭā and al-Zuhrī.

وَصَحَّ أَيْضًا - عَنْ طَاوُسٍ، وَعَطَاءٍ، وَالْحَسَنِ الْبَصْرِيِّ، وَعَنِ الزُّهْرِيِّ مِثْلُ الْقَوْلِ الَّذِي ذَكَرْنَا عَنْ عُثْمَانَ، وَأَحَدِ قَوْلَيْ زَيْدِ بْنِ ثَابِتٍ.

L36852–36853 It has also been authentically reported from Ṭāwūs, ʿAṭāʾ, al-Ḥasan al-Baṣrī, and al-Zuhrī – the same opinion we mentioned from ʿUthmān, and one of the two opinions of Zayd ibn Thābit.

L36854 It has also been authentically reported from Abū al-Zinād through the chain of Ibn Wahb from Yūnus ibn ʿUbayd, who narrated from him, regarding one who intentionally kills another while jesting with him, strikes him with a whip or stick, punches him, or playfully hurls an object at him—this con-

stitutes semi-deliberate (shibh al-ʿamd) injury, requiring aggravated blood money increased in quarters over three years, precisely as was narrated to us earlier from Ibn Masʿūd, being wholly identical in ruling, wholly identical.

وَصَحَّ أَيْضًا - عَنْ أَبِي الزِّنَادِ مِنْ طَرِيقِ ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْهُ: فِيمَنْ عَمَدَ بِآخَرَ لَاعِبًا مَعَهُ، أَوْ ضَرَبَهُ بِسَوْطٍ، أَوْ عَصًا، أَوْ لَكَزَهُ، أَوْ رَمَاهُ لَاعِبًا - فَهَذَا هُوَ شِبْهُ الْعَمْدِ، فِيهِ الدِّيَةُ مُغَلَّظَةٌ أَرْبَاعًا، كَالَّذِي رُوِّينَا آنِفًا عَنْ ابْنِ مَسْعُودٍ سَوَاءً سَوَاءً.

L36855 This is all we know that has been reported from the Companions and the Followers concerning the diyah for quasi-intentional homicide, and from the Companions regarding the description of quasi-intentional homicide. As for what has been reported from the Followers regarding its description, we shall mention it if Allah the Exalted wills.

هَذَا كُلُّ مَا نَعْلَمُهُ جَاءَ عَنْ الصَّحَابَةِ وَالتَّابِعِينَ فِي دِيَةِ شِبْهِ الْعَمْدِ، وَعَنْ الصَّحَابَةِ فِي صِفَةِ شِبْهِ الْعَمْدِ - وَجَاءَ عَنْ التَّابِعِينَ فِي صِفَةِ شِبْهِ الْعَمْدِ مَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى.

L36856 It has been authentically reported from Ibrahim that quasi-intentional homicide refers to any act intentionally carried out using a stone or piece of wood instead of an iron tool, and this applies solely to homicide. However, a differing opinion on this matter has also been authentically reported from Ibrahim, as we shall subsequently clarify, if Allah, the Exalted and Glorified, wills.

صَحَّ عَنْ إبْرَاهِيمَ شِبْهُ الْعَمْدِ كُلُّ شَيْءٍ يَعْمِدُ بِهِ بِغَيْرِ حَدِيدَةٍ، لَكِنْ بِالْحَجَرِ وَالْخَشَبَةِ - وَلَا يَكُونُ إلَّا فِي النَّفْسِ. وَقَدْ صَحَّ عَنْ إبْرَاهِيمَ خِلَافُ هَذَا، عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

L36857 As for al-Ḥakam ibn ʿUtaybah, we have narrated from him via a weak chain regarding a man who struck another with two blows using a stick, and he died? He said, "Aggravated blood money."

وَأَمَّا الْحَكَمُ بْنُ عُتَيْبَةَ فَرُوِّينَا عَنْهُ مِنْ طَرِيقٍ سَاقِطَةٍ فِي رَجُلٍ ضَرَبَ آخَرَ ضَرْبَتَيْنِ بِعَصًا فَمَاتَ؟ قَالَ: دِيَةٌ مُغَلَّظَةٌ.

L36858 It is authentically reported from Al-Hakam ibn Utaybah through Shu'bah's narration from him: If the perpetrator repeats striking the victim with a stick and the latter dies, there is no retaliation for that. It is also authentically reported from ʿAta that intentional [homicide] is that committed with a weapon—as has reached us. Semi-intentional acts are the stone and the stick, being equivalent in rulings concerning both life and what is less than life—we know of no other ruling in that regard. And if a man were to break another's teeth with a stone or gouge his eye with a rod, he would not be subject to retaliation for it.

وَصَحَّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ مِنْ طَرِيقِ شُعْبَةَ عَنْهُ: إنْ أَعَادَ عَلَيْهِ الضَّرْبَ بِالْعَصَا فَمَاتَ فَلَا قَوَدَ فِي ذَلِكَ. وَصَحَّ عَنْ عَطَاءٍ الْعَمْدُ السِّلَاحُ، كَذَلِكَ بَلَغَنَا، وَشِبْهُ الْعَمْدِ الْحَجَرُ وَالْعَصَا سَوَاءٌ فِي ذَلِكَ النَّفْسُ، وَمَا دُونَ النَّفْسِ - مَا عَلِمْنَا غَيْرَ ذَلِكَ. وَلَوْ أَنَّ رَجُلًا كَسَرَ أَسْنَانَ آخَرَ بِحَجَرٍ، أَوْ فَقَأَ عَيْنَهُ بِعُودٍ، فَإِنَّهُ لَا يُقَادُ مِنْهُ.

L36859 Ibn Jurayj said: "And I say: Rather, retaliation is exacted from him because it is intentional, unlike one who strikes another on the head with a stone without intending to kill him, and he dies from that."

قَالَ ابْنُ جُرَيْجٍ: وَأَنَا أَقُولُ: بَلْ يُقَادُ مِنْهُ، لِأَنَّهُ عَمْدٌ، وَلَيْسَ كَمَنْ شَجَّ آخَرَ بِحَجَرٍ لَا يُرِيدُ قَتْلَهُ فَمَاتَ مِنْ ذَلِكَ.

L36860–36862 It is authentically reported from ʿAṭāʾ: A single retaliatory push by one man

against another - this does not constitute quasi-intentional [act]. It is authentically reported from Ṭāwūs: Intentionality lies with the weapon. It is authentically reported from his son ʿAbd Allāh ibn Ṭāwūs: Whoever deliberately splits another's head with a stone - this is intentional. It is transmitted to us from Saʿīd ibn al-Musayyib through ʿAbd al-Razzāq's chain from Abū Bakr ibn ʿUbayd Allāh... Amr ibn Sulaym, their client, narrated from Al-Musayyib, who said: Intentional killing is with an iron implement—even if it is a needle or anything beyond it among weapons. It was reported to us from Masruq through a chain lacking reliability: "Intentional killing is only with an iron implement." It was authentically reported from Umar ibn Abd al-Aziz: "If someone strikes another on the head with a stone, causing death, legal retribution is due. But if he throws a stone at him, there is no legal retribution." It was authentically reported from Qatadah: "Quasi-intentional homicide is striking with a massive piece of wood or an enormous stone. Involuntary [harm] is when a person aims at someone but hits another, or aims at something but misses." It was authentically reported from Al-Hasan Al-Basri: "Legal retribution is not imposed on a striker unless he strikes with an iron implement. In quasi-intentional [acts], enhanced blood money is due." It was authentically reported from Hammad ibn Abi Sulayman: "If someone strangles another to death, it is deemed involuntary; but if someone strikes another with a stick and repeats the strike with it, causing death, legal retribution is due." All these narrations were reported by Shu'bah.

وَصَحَّ عَنْ عَطَاءٍ: الدَّفْعَةُ يَسْتَقِيدُ بِهَا الرَّجُلُ غَيْرَهُ، لَيْسَ هَذَا شِبْهَ الْعَمْدِ وَصَحَّ عَنْ طَاوُسٍ: الْعَمْدُ السِّلَاحُ. وَصَحَّ عَنْ ابْنِهِ عَبْدِ اللَّهِ بْنِ طَاوُسٍ: مَنْ تَعَمَّدَ فَضْخَ رَأْسِ آخَرَ بِحَجَرٍ: هَذَا عَمْدٌ. وَرُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي بَكْرِ بْنِ عُبَيْدِ اللَّهِ عَنْ عَمْرِو بْنِ سُلَيْمٍ مَوْلَاهُمْ عَنْ الْمُسَيِّبِ قَالَ: الْعَمْدُ الْحَدِيدَةُ - وَلَوْ بِإِبْرَةٍ فَمَا فَوْقَهَا مِنْ السِّلَاحِ. وَرُوِّينَا عَنْ مَسْرُوقٍ مِنْ طَرِيقٍ - لَا خَيْرَ فِيهَا -: لَيْسَ الْعَمْدُ إلَّا بِحَدِيدَةٍ. وَصَحَّ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: مَنْ دَمَغَ آخَرَ بِحَجَرٍ أُقِيدَ مِنْهُ، فَإِنْ رَمَاهُ بِالْحَجَرِ فَلَا قَوَدَ. وَصَحَّ عَنْ قَتَادَةَ: شِبْهُ الْعَمْدِ: الضَّرْبُ بِالْخَشَبَةِ الضَّخْمَةِ، وَالْحَجَرِ الْعَظِيمِ وَالْخَطَأُ أَنْ يَرْمِيَ إنْسَانًا فَيُصِيبَ غَيْرَهُ، أَوْ يَرْمِيَ شَيْئًا فَيُخْطِئَ بِهِ. وَصَحَّ عَنْ الْحَسَنِ الْبَصْرِيِّ لَا يُقَادُ مِنْ ضَارِبٍ إلَّا أَنْ يَضْرِبَ بِحَدِيدَةٍ، وَفِي الْخَطَأِ شِبْهِ الْعَمْدِ: دِيَةٌ مُغَلَّظَةٌ. وَصَحَّ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ: مَنْ خَنَقَ آخَرَ حَتَّى يَمُوتَ فَهُوَ خَطَأٌ - وَمَنْ ضَرَبَ آخَرَ بِعَصًا فَأَعَادَ عَلَيْهِ الضَّرْبَ بِهَا فَمَاتَ فَعَلَيْهِ الْقَوَدُ - رَوَى كُلَّ ذَلِكَ عَنْهُ شُعْبَةُ.

L36863 And that which we pledged to mention from Ibrāhīm and Al-Shaʿbī—we have narrated from Al-Shaʿbī via an unreliable chain—states: If one strangles another and persists until death ensues, retaliation is mandated. If he releases him and death subsequently occurs, an aggravated ransom is required. Another narration from him states: If he resumes striking with a stone or stick, retaliation is mandated. The authenticated report from Ibrāhīm states: If one strangles another until death, or strikes him with a piece of wood until death, retaliation is mandated. If he deliberately struck him with a stone, retaliation is mandated. Abū Muḥammad—may Allah be pleased with him—said: "This is our position." As for the regional jurists, Ibn Shubrumah held: Blood money for quasi-intentional homicide is payable from the perpetra-

وَالَّذِي وَعَدْنَا أَنْ نَذْكُرَهُ عَنْ إبْرَاهِيمَ، وَالشَّعْبِيِّ -: فَرُوِّينَا عَنْ الشَّعْبِيِّ - مِنْ طَرِيقٍ لَا تَصِحُّ -: مَنْ خَنَقَ آخَرَ فَلَمْ يُقْلِعْ عَنْهُ حَتَّى يَمُوتَ أُقِيدَ مِنْهُ - فَلَوْ رَفَعَ عَنْهُ ثُمَّ مَاتَ فَدِيَةٌ مُغَلَّظَةٌ. وَرُوِيَ عَنْهُ: إذَا أَعَادَ عَلَيْهِ الضَّرْبَ بِالْحَجَرِ وَالْعَصَا: فَهُوَ قَوَدٌ. وَصَحَّ عَنْ إبْرَاهِيمَ: إذَا خَنَقَهُ حَتَّى يَمُوتَ، أَوْ ضَرَبَهُ بِخَشَبَةٍ حَتَّى يَمُوتَ: أُقِيدَ بِهِ، فَإِنْ تَعَمَّدَ ضَرْبَهُ بِحَجَرٍ، فَفِيهِ الْقَوَدُ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا قَوْلُنَا - وَأَمَّا فُقَهَاءُ الْأَمْصَارِ، فَإِنَّ ابْنَ شُبْرُمَةَ قَالَ: الدِّيَةُ فِي شِبْهِ الْعَمْدِ فِي مَالِ الْجَانِي، فَإِنْ لَمْ يَفِ مَالُهُ بِهَا فَعَلَى

tor's wealth. If his wealth does not suffice, the collective liability group bears it. Al-Awzāʿī concurred, defining quasi-intentional homicide as: "When one strikes another with a stick or whip in a single blow resulting in death." He added: "If he strikes again and death occurs immediately, retaliation is mandated." Al-Ḥasan ibn Ḥayy expressed the same view, except he stated: "If he strikes again and death does not occur immediately, it is quasi-intentional, and the blood money for this falls upon the collective liability group."

L36864–36865 Sufyan al-Thawri said: Intentional [homicide] is that committed with a weapon, entailing qisas for life or lesser injuries. Semi-intentional act occurs when one strikes another with a single blow of a stick or whip causing death, or sharpens a stick or bone and wounds another's abdomen with it - in such cases qisas does not apply, and he holds that semi-intentional act is not recognized for offenses below homicide. Abu Hanifah said: Qisas applies only to killing by cutting with an iron weapon, with a pointed reed, or by burning someone in fire until they die.

L36866 Even if someone strangles another until death, there is no liability for *qawad* (retaliation) in that case unless the perpetrator strangles people repeatedly, in which case *qisas* is enforced against him.

L36867 If he intentionally crushes his head with an enormous stone resulting in death, or drowns him in water of unfathomable depth within a river, sea, well, or pool until death occurs, or strikes him continuously with a massive wooden beam causing death, or compulsively opens his mouth and administers lethal poison into his throat leading to death, then no qisas (retaliatory punishment) applies for any of these acts—rather, it entails the diyah (blood money) equivalent to that for intentional killing.

L36868 As it has been narrated to us from Ibn Mas'ud and Abi al-Zinad: the responsibility [for blood money] lies upon the 'aqilah (the collective kin), while the kaffārah (religious expiation) is from his wealth, as with accidental killing.

L36869 He said: If someone intentionally demolishes a structure upon another and the victim dies, there is no liability upon him unless conclusive legal proof establishes that the victim was alive during the demolition. In that case, blood money and expiation are then required. We hold his opinion likewise

الْعَاقِلَةِ. وَقَالَ الْأَوْزَاعِيُّ: كَذَلِكَ، وَفَسَّرَ شِبْهَ الْعَمْدِ: أَنَّهُ أَنْ يَضْرِبَ آخَرَ بِعَصًا أَوْ سَوْطٍ ضَرْبَةً وَاحِدَةً فَيَمُوتَ؟ قَالَ: فَإِنْ ثَنَّى عَلَيْهِ فَمَاتَ مَكَانَهُ، فَهُوَ قَوَدٌ. وَقَالَ الْحَسَنُ بْنُ حَيٍّ مِثْلَ ذَلِكَ، إِلَّا أَنَّهُ قَالَ: إِنْ ثَنَّى عَلَيْهِ فَلَمْ يَمُتْ مَكَانَهُ فَهُوَ شِبْهُ الْعَمْدِ، وَالدِّيَةُ فِي ذَلِكَ عَلَى الْعَاقِلَةِ.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: الْعَمْدُ: مَا كَانَ بِسِلَاحٍ، وَفِيهِ الْقَوَدُ فِي النَّفْسِ فَمَا دُونَهَا - وَشِبْهُ الْعَمْدِ: هُوَ أَنْ يَضْرِبَهُ بِعَصًا أَوْ سَوْطٍ ضَرْبَةً وَاحِدَةً فَيَمُوتَ، أَوْ يُحَدِّدَ عُودًا أَوْ عَظْمًا فَيَجْرَحَ بِهِ بَطْنَ آخَرَ - فَهَذَا لَا قَوَدَ فِيهِ، وَلَيْسَ فِيمَا دُونَ النَّفْسِ عِنْدَهُ شِبْهُ عَمْدٍ. وَقَالَ أَبُو حَنِيفَةَ: لَا قَوَدَ إِلَّا فِيمَا قَتَلَ بِحَدِيدَةٍ بِقَطْعٍ، أَوْ بِلِيطَةِ قَصَبٍ، أَوْ أَحْرَقَهُ فِي النَّارِ حَتَّى مَاتَ.

وَلَوْ خَنَقَهُ حَتَّى يَمُوتَ فَلَا قَوَدَ فِي ذَلِكَ إِلَّا أَنْ يَخْنُقَ النَّاسَ مِرَارًا فَيُقَادُ مِنْهُ.

فَلَوْ شَدَخَ رَأْسَهُ عَمْدًا بِحَجَرٍ عَظِيمٍ حَتَّى يَمُوتَ، أَوْ غَرَّقَهُ فِي مَاءٍ بَعِيدِ الْقَعْرِ فِي نَهْرٍ أَوْ بَحْرٍ أَوْ بِئْرٍ أَوْ بِرْكَةٍ حَتَّى مَاتَ، أَوْ ضَرَبَهُ بِخَشَبَةٍ ضَخْمَةٍ أَبَدًا حَتَّى مَاتَ، أَوْ فَتَحَ فَمَهُ كُرْهًا وَرَمَى فِي حَلْقِهِ سُمًّا قَاتِلًا فَمَاتَ، فَلَا قَوَدَ عَلَيْهِ فِي شَيْءٍ مِنْ ذَلِكَ - وَإِنَّمَا فِيهِ الدِّيَةُ، كَدِيَةِ الْعَمْدِ.

كَمَا رُوِّينَا عَنْ ابْنِ مَسْعُودٍ وَأَبِي الزِّنَادِ، عَلَى الْعَاقِلَةِ، وَفِي مَالِهِ الْكَفَّارَةُ كَقَتْلِ الْخَطَإِ.

regarding one who traps someone inside a house until he dies of starvation and exhaustion.

قَالَ: فَلَوْ هَدَمَ عَلَيْهِ هَدْمًا فَمَاتَ عَامِدًا لِذَلِكَ فَلَا شَيْءَ عَلَيْهِ، إِلَّا أَنْ تَقُومَ بَيِّنَةٌ بِأَنَّهُ كَانَ حَيًّا حِينَ الْهَدْمِ، فَفِيهِ حِينَئِذٍ الدِّيَةُ، وَالْكَفَّارَةُ - وَنَرَى قَوْلَهُ كَذَلِكَ: فِيمَنْ طَمَسَ عَلَيْهِ بَيْتًا حَتَّى مَاتَ جُوعًا وَجَهْدًا.

L36870–36872 Abū Muḥammad—may Allāh be pleased with him—said: Whoever examines Abū Ḥanīfah's opinion will know it contradicts every tradition reported on this matter and the statements of all those we have mentioned, except the unreliable narration from Ibn Masʿūd. We know of none who agreed with Abū Ḥanīfah on this except Abū al-Zināد—though he differed with him regarding the description of quasi-intentional killing. Do we know any calamity or disgrace upon Islam graver than someone who does not deem legal retaliation applicable to those who kill Muslims by crushing with boulders, drowning, or smashing with stones—then is there no retaliation upon him nor a fine? Rather, his agnatic kin are charged with the blood money in such cases, along with... The magnitude of his contradiction is evident, for he restricted semi-deliberate acts exclusively to homicide, denying their applicability to lesser offenses. Should he argue: "The transmitted rulings pertain only to homicide?" We counter: You have opposed all such texts in their substance, as we previously elucidated, and the invalidity of his categorization, which is undeniably evident, stands exposed. He restricted the application of aggravated penalties exclusively to injuries caused by camel teeth, excluding dinars and dirhams. Where then lies his analogical reasoning by which he legislates prohibitions and permissions, while neglecting the Quran and the Sunnah? Uthman al-Batti ruled that blood money in such cases is to be paid from the offender's wealth. Al-Batti himself, along with Abu Yusuf and Muhammad ibn al-Hasan, recognized semi-deliberate acts only when one strikes with an instrument not ordinarily fatal in similar circumstances. As for instruments typically causing death, they upheld retaliation (qisas) – this being the opinion of al-Shafiʿi.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: قَوْلُ أَبِي حَنِيفَةَ مَنْ تَأَمَّلَهُ عَلِمَ أَنَّهُ مُخَالِفٌ لِكُلِّ خَبَرٍ رُوِيَ فِي ذَلِكَ، وَلِقَوْلِ كُلِّ مَنْ ذَكَرْنَا، إِلَّا الرِّوَايَةَ السَّاقِطَةَ عَنْ ابْنِ مَسْعُودٍ، وَمَا نَعْلَمُ أَحَدًا وَافَقَ أَبَا حَنِيفَةَ عَلَى ذَلِكَ إِلَّا أَبَا الزِّنَادِ، وَخَالَفَهُ فِي صِفَةِ شِبْهِ الْعَمْدِ، مَا نَعْلَمُ مُصِيبَةً، وَلَا فَضِيحَةً عَلَى الْإِسْلَامِ أَشَدَّ مِمَّنْ لَمْ يَرَ الْقَوَدَ فِيمَنْ يَقْتُلُ الْمُسْلِمِينَ بِالصَّخْرِ، وَالتَّغْرِيقِ، وَالشَّدْخِ بِالْحِجَارَةِ - ثُمَّ لَا قَوَدَ عَلَيْهِ وَلَا غَرَامَةَ؟ بَلْ تُكَلَّفُ الدِّيَاتِ فِي ذَلِكَ عَاقِلَتُهُ مَعَ عَظِيمِ تَنَاقُضِهِ، إِذْ لَمْ يَرَ عَمْدَ الْخَطَأِ إِلَّا فِي النَّفْسِ، وَلَمْ يَرَهُ فِيمَا دُونَهَا؟ فَإِنْ قَالَ: لَمْ تَرِدْ الْأَخْبَارُ إِلَّا فِي النَّفْسِ؟ قُلْنَا: قَدْ خَالَفْتَهَا كُلَّهَا فِيمَا فِيهَا كَمَا بَيَّنَّا قَبْلُ، وَفَسَادُ تَقْسِيمِهِ الَّذِي لَا خَفَاءَ بِهِ، وَلَمْ يَرَ فِي ذَلِكَ تَغْلِيظًا إِلَّا فِي أَسْنَانِ الْإِبِلِ خَاصَّةً، لَا فِي الدَّنَانِيرِ، وَلَا فِي الدَّرَاهِمِ، فَأَيْنَ قِيَاسُهُ الَّذِي يُحَرِّمُ بِهِ وَيُحَلِّلُ، وَيَتْرُكُ لَهُ الْقُرْآنَ، وَالسُّنَنَ؟ وَرَأَى عُثْمَانُ الْبَتِّيُّ: الدِّيَةَ فِي ذَلِكَ فِي مَالِ الْجَانِي، وَلَمْ يَرَ هُوَ - يَعْنِي الْبَتِّيَّ - وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ شِبْهَ الْعَمْدِ، إِلَّا مَنْ ضَرَبَ بِمَا لَا يُمَاتُ مِنْ مِثْلِهِ - وَأَمَّا مَا يُمَاتُ مِنْ مِثْلِهِ فَفِيهِ عِنْدَهُمْ الْقَوَدُ - وَهُوَ قَوْلُ الشَّافِعِيِّ.

L36873 The diyah in cases of quasi-intentional homicide according to them: as has been reported to us previously from ʿUmar ibn al-Khaṭṭāb, Abū Mūsā al-Ashʿarī, Zayd ibn Thābit, ʿAṭāʾ, Ṭāwus, al-Ḥasan, and al-Zuhrī.

وَالدِّيَةُ عِنْدَهُمْ فِي شِبْهِ الْعَمْدِ - كَمَا رُوِّينَا آنِفًا عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَأَبِي مُوسَى الْأَشْعَرِيِّ، وَزَيْدِ بْنِ ثَابِتٍ، وَعَطَاءٍ، وَطَاوُسٍ، وَالْحَسَنِ، وَالزُّهْرِيِّ.

وَمِمَّنْ رُوِيَ عَنْهُ نَحْوُ قَوْلِنَا جَمَاعَةٌ -: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ عَنْ شَرِيكِ بْنِ عَبْدِ اللَّهِ عَنْ زَيْدِ بْنِ جُبَيْرٍ عَنْ جَرْوَةَ بْنِ حَمِيلٍ عَنْ أَبِيهِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: يَعْمِدُ أَحَدُكُمْ إلَى أَخِيهِ فَيَضْرِبُهُ بِمِثْلِ آكِلَةِ اللَّحْمِ، لَا أُوتَى بِرَجُلٍ فَعَلَ ذَلِكَ فَقَتَلَ إلَّا أَقَدْته بِهِ. وَرُوِّينَا أَيْضًا عَنْهُ: أَنَّهُ أَقَادَ مِنْ رَجُلٍ جَبَذَ شَعْرَ آخَرَ جَبْذًا شَدِيدًا فَوَرِمَ عُنُقُهُ فَمَاتَ مِنْ يَوْمِهِ.

L36874 Among those from whom a statement resembling our position has been narrated is a group of scholars: as transmitted to us through the chain of Abū Bakr ibn Abī Shaybah from Sharīk ibn ʿAbdullāh from Zayd ibn Jubayr from Jarwah ibn Ḥumayd from his father, who said: ʿUmar ibn al-Khaṭṭāb declared, “One of you would strike his brother with an instrument akin to a meat-cutting tool. If a man does this and kills, I will not spare him—I will exact retaliation from him.” It has also been transmitted from him that he enforced retaliation against a man who forcefully pulled another’s hair, causing his neck to swell and resulting in his death that same day.

وَمِنْ طَرِيقِ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ أَقَادَ مِنْ رَجُلٍ خَنَقَ صَبِيًّا حَتَّى مَاتَ. وَصَحَّ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ الْقَوَدُ مِمَّنْ قَتَلَ بِحَجَرٍ، أَوْ عَصًا - وَهُوَ قَوْلُ رَبِيعَةَ، وَمَالِكٍ، وَعَبْدِ الْعَزِيزِ بْنِ أَبِي سَلَمَةَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِنَا.

L36875 Through the narration of Ma’mar from Simak ibn al-Fadl: that Umar ibn Abd al-Aziz applied qisas (retaliation) against a man who strangled a boy resulting in his death. It is reliably narrated from Ubayd ibn Umayr that qisas applies to one who kills with a stone or stick - this being the position of Rabi’ah, Malik, Abd al-Aziz ibn Abi Salamah, Abu Sulayman, and our school’s scholars.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: أَمَّا الْمَالِكِيُّونَ فَقَدْ تَنَاقَضُوا هَاهُنَا؛ لِأَنَّ الْمُرْسَلَ عِنْدَهُمْ كَالْمُسْنَدِ، وَخَالَفُوا هَاهُنَا الْمَرَاسِيلَ، وَجُمْهُورَ الصَّحَابَةِ، وَغَيْرِهِمْ.

L36876 Abu Muhammad—may Allah be pleased with him—said: As for the Malikis, they have contradicted themselves here because, according to them, the *mursal* (hadith with an incomplete chain) is equivalent to the *musnad* (hadith with a connected chain). Yet in this matter, they have contradicted the *mursal* narrations, the majority of the Companions, and other scholars.

وَأَمَّا قَوْلُنَا “ إنْ أَبَى الْوَلِيُّ إلَّا أَكْثَرَ مِنْ الدِّيَةِ: لَمْ يَلْزَمْ الْقَاتِلَ ذَلِكَ، إلَّا بِتَرَاضٍ مِنْهُ مَعَ الْوَلِيِّ، وَإِلَّا فَلَا ” فَلِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ لِلْوَلِيِّ: قُرْآنٌ، وَلَا سُنَّةٌ، وَإِنَّمَا أَلْزَمْنَا الْقَاتِلَ ذَلِكَ إذَا رَضِيَ بِهِ هُوَ وَالْوَلِيُّ: فَلِلْأَثَرِ الصَّحِيحِ الَّذِي ذَكَرْنَا مِنْ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: “ أَوْ يُفَادَى ” فَهَذَا فِعْلٌ مِنْ فَاعِلَيْنِ، فَهُوَ لَازِمٌ بِتَرَاضِيهِمَا.

L36877–36879 As for our statement, “If the guardian refuses to accept anything except more than the diyah, the killer is not bound to comply except by mutual agreement between him and the guardian; otherwise, there is no obligation”—this is because neither the Quran nor the Sunnah has imposed such a requirement on the guardian. We have only imposed this obligation on the killer. That is when he and the guardian consent to it, based on the authentic report we cited from his statement—peace and blessings be upon him—“or he is ransomed.” This is an act by the contracting parties, obligatory by their mutual consent.

[مَسْأَلَةُ الدِّيَةُ فِي الْعَمْدِ وَالْخَطَأِ]

The Issue of Diyah in Intentional and Accidental Killing

L36880

L36881 Issue 2028: The blood money for intentional and accidental [acts] is one

hundred camels. If unavailable, their value - determined as if available in the jurisdiction where the ruling applies, based on medium-quality camels, regardless of how high that value may be - regardless of how high that value may be - is owed. In cases of accidental [acts], this responsibility falls upon the ʿāqila (liable kin group) of the perpetrator.

L36882 In the case of intentional killing, the blood money is solely from the killer's own wealth. In both intentional and unintentional scenarios, the ruling is the same, with no specified time limit for any of it. If the perpetrator has no wealth or liable kinship group, the blood money is taken from the share allocated to debtors in zakah funds. The same applies if the killer is unknown. The blood money for both intentional and unintentional killing consists of five categories: twenty yearling she-camels (female camels in their second year), twenty male two-year-old camels, twenty female two-year-old camels, twenty three-year-old she-camels, and twenty four-year-old she-camels. These must exclusively be camels, whether from settled or nomadic herds. If the debtor opts to provide all female camels, it is commendable. Similarly, if he provides four-year-old camels, no more, that is acceptable.

L36883 As for our statement: "The blood money for intentional and unintentional killing is one hundred camels," this is due to the statement of Allah, the Mighty and Majestic: {And whoever kills a believer by mistake must free a believing slave and pay blood money in full to his family} [An-Nisa: 92].[39]

L36884 The authentic report we have previously mentioned from the Messenger of Allah—may Allah's peace and blessings be upon him—states: "If someone is killed, their family is between two choices: either to have retribution exacted (qisas) or to take the diyah (monetary compensation)."

L36885 Through the narration of Abū Hurayrah and Abū Shurayḥ al-Kaʿbī from the Messenger of Allah—peace and blessings of Allah be upon him and his family—the obligation of *diyah* in cases of intentional and unintentional killing is established. It is absolutely impossible to know the meaning of what Allah the Exalted and His Messenger—upon him be peace and blessings of

[39]**Qur'an references (L36883):** Qur'an 4:92 (An-Nisa).

٢٠٢٨ - مَسْأَلَةٌ: وَالدِّيَةُ فِي الْعَمْدِ وَالْخَطَأِ مِائَةٌ مِنْ الْإِبِلِ، فَإِنْ عُدِمَتْ فَقِيمَتُهَا لَوْ وُجِدَتْ فِي مَوْضِعِ الْحُكْمِ - بَالِغَةً مَا بَلَغَتْ - مِنْ أَوْسَطِ الْإِبِلِ - بَالِغَةً مَا بَلَغَتْ - وَهِيَ فِي الْخَطَأِ عَلَى عَاقِلَةِ الْقَاتِلِ.

وَأَمَّا فِي الْعَمْدِ فَهِيَ فِي مَالِ الْقَاتِلِ وَحْدَهُ وَهِيَ فِي كُلِّ ذَلِكَ حَالَةَ الْعَمْدِ وَالْخَطَأِ سَوَاءٌ لَا أَجَلَ فِي شَيْءٍ مِنْهَا، فَمَنْ لَمْ يَكُنْ لَهُ مَالٌ وَلَا عَاقِلَةٌ، فَهِيَ فِي سَهْمِ الْغَارِمِينَ فِي الصَّدَقَاتِ - وَكَذَلِكَ مَنْ لَمْ يُعْرَفْ قَاتِلُهُ، وَالدِّيَةُ فِي الْعَمْدِ، وَالْخَطَأِ: أَخْمَاسٌ وَلَا بُدَّ: عِشْرُونَ بِنْتَ مَخَاضٍ، وَعِشْرُونَ بَنِي لَبُونٍ، وَعِشْرُونَ بَنَاتَ لَبُونٍ، وَعِشْرُونَ حِقَّةً، وَعِشْرُونَ جَذَعَةً لَا تَكُونُ أَلْبَتَّةَ مِنْ غَيْرِ الْإِبِلِ الْحَاضِرَةِ وَالْبَادِيَةِ سَوَاءً، فَلَوْ تَطَوَّعَ الْغَارِمُ بِأَنْ يُعْطِيَهَا كُلَّهَا إنَاثًا فَحَسَنٌ، وَكَذَلِكَ إذَا أَعْطَاهَا أَرْبَاعًا لَا أَكْثَرَ.

وَأَمَّا قَوْلُنَا: " إنَّ الدِّيَةَ فِي الْعَمْدِ وَالْخَطَأِ مِائَةٌ مِنْ الْإِبِلِ فَلِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ} [النساء: ٩٢] .

وَالْخَبَرُ الثَّابِتُ الَّذِي قَدْ أَوْرَدْنَاهُ قَبْلُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ قُتِلَ لَهُ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ إمَّا أَنْ يُقَادَ وَإِمَّا أَنْ يَأْخُذَ الْعَقْلَ» .

وَمِنْ طَرِيقِ أَبِي هُرَيْرَةَ، وَأَبِي شُرَيْحٍ الْكَعْبِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَصَحَّ وُجُوبُ الدِّيَةِ فِي الْعَمْدِ وَالْخَطَأِ، وَلَا يُمْكِنُ أَلْبَتَّةَ أَنْ يُعْلَمَ مَعْنَى مَا أَمَرَ اللَّهُ عَزَّ وَجَلَّ بِهِ وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَّا مِنْ بَيَانِ الْقُرْآنِ، أَوْ السُّنَّةِ قَالَ اللَّهُ عَزَّ وَجَلَّ: {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] وَلَيْسَتْ لَفْظَةُ " الْعَقْلِ، وَالدِّيَةِ "

Allah—have commanded except through the clarification of the Quran or the Sunnah. Allah the Exalted said: *"To make clear to mankind what was sent down to them"* (16:44). The terms *al-ʿaql* and *diyah* are not among the words that have a defined measure, a restricted category, or a specified duration in the Arabic language. Therefore, it is obligatory to refer to the textual sources for all such matters. We sought this and found the well-known authentic report we narrated through Muslim: from Muḥammad ibn ʿAbdullāh ibn Numayr, from his father, from Saʿīd ibn ʿUbayd, from Bashīr ibn Yasār al-Anṣārī, from Sahl ibn Abī Ḥathmah al-Anṣārī, who informed him that a group of them went to Khaybar and dispersed there, then found one of their men slain—and he narrated the ḥadīth, which includes: *"The Messenger of Allah—peace and blessings of Allah be upon him—disapproved of nullifying his blood, so he paid one hundred camels from the charity camels as his diyah."*[40]

مِنْ الْأَلْفَاظِ الَّتِي لَهَا مِقْدَارٌ مَحْدُودٌ فِي اللُّغَةِ، أَوْ جِنْسٌ مَحْدُودٌ فِي اللُّغَةِ، أَوْ أَمَدٌ مَحْدُودٌ فِي اللُّغَةِ، فَوَجَبَ الرُّجُوعُ فِي كُلِّ ذَلِكَ إلَى النَّصِّ، فَطَلَبْنَا ذَلِكَ؟ فَوَجَدْنَا الْخَبَرَ الثَّابِتَ الْمَشْهُورَ الَّذِي رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ أَنَا أَبِي أَنَا سَعِيدُ بْنُ عُبَيْدٍ أَنَا بَشِيرُ بْنُ يَسَارٍ الْأَنْصَارِيُّ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ الْأَنْصَارِيِّ: أَنَّهُ أَخْبَرَهُ «أَنَّ نَفَرًا مِنْهُمْ انْطَلَقُوا إلَى خَيْبَرَ فَتَفَرَّقُوا فِيهَا، فَوَجَدُوا أَحَدَهُمْ قَتِيلًا وَسَاقَ الْحَدِيثَ، وَفِيهِ فَكَرِهَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُبْطِلَ دَمَهُ فَوَدَاهُ مِائَةً مِنْ إبِلِ الصَّدَقَةِ» .

L36886–36887 From the chain of narration of Malik ibn Anas, he said: Abu Layla ibn Abdullah ibn Abd al-Rahman ibn Sahl narrated to me from Sahl ibn Abi Hathmath that he informed him from men among the elders of his tribe that Abdullah ibn Sahl and Muhayyisa went out to Khaybar due to hardship that had afflicted them. Then Muhayyisa came and reported that Abdullah ibn Sahl had been killed and thrown into a spring or a dry well. He went to the Jews and said: "By Allah, you have killed him!" They replied: "By Allah, we did not kill him." He then related the account, and at its conclusion: "The Messenger of Allah (peace and blessings be upon him and his family) said: 'Either they pay the blood-money for your companion or they will be notified of war.'" He mentioned further discourse, ending with: "Thus the Messenger of Allah (peace and blessings be upon him and his family) paid one hundred she-camels as blood-money for him until the camels were brought into the courtyard of the family. Indeed, a red she-camel among them kicked me."

وَمِنْ طَرِيقِ مَالِكِ بْنِ أَنَسٍ قَالَ: حَدَّثَنِي أَبُو لَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَهْلٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كُبَرَاءِ قَوْمِهِ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ وَمُحَيِّصَةَ خَرَجَا إلَى خَيْبَرَ مِنْ جَهْدٍ أَصَابَهُمْ، فَأَتَى مُحَيِّصَةُ، فَأَخْبَرَ: أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَدْ قُتِلَ وَطُرِحَ فِي عَيْنٍ أَوْ فَقِيرٍ فَأَتَى يَهُودَ؟ فَقَالَ: أَنْتُمْ وَاَللَّهِ قَتَلْتُمُوهُ؟ قَالُوا: وَاَللَّهِ مَا قَتَلْنَاهُ - فَذَكَرَ الْخَبَرَ، وَفِي آخِرِهِ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: إمَّا أَنْ يَدُوا صَاحِبَكُمْ وَإِمَّا أَنْ يُؤْذِنُوا بِحَرْبٍ فَذَكَرَ كَلَامًا، وَفِي آخِرِهِ «فَوَدَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِائَةَ نَاقَةٍ حَتَّى أُدْخِلَ عَلَيْهِمْ الدَّارَ، فَلَقَدْ رَكَضَتْنِي مِنْهَا نَاقَةٌ حَمْرَاءُ» .

L36888 Abū Muḥammad—may Allāh be pleased with him—said: It has been established that the blood money is one hundred camels. This is a ruling from him—peace and blessings be upon him—regarding the blood money of a settled person who made a claim against settled people, not in the case of a

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: فَصَحَّ أَنَّ الدِّيَةَ مِائَةٌ مِنْ الْإِبِلِ، وَهَذَا حُكْمٌ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي دِيَةِ حَضَرِيٍّ ادَّعَى عَلَى حَضَرِيِّينَ، لَا فِي بَدْوِيٍّ، فَبَطَلَ أَنْ تَكُونَ الدِّيَةُ مِنْ غَيْرِ الْإِبِلِ.

[40] **Qur'an references (L36885):** Qur'an 16:44 (An-Nahl).

Bedouin. Thus, it is invalid for the blood money to consist of anything other than camels.

وَأَيْضًا فَقَدْ صَحَّ أَنَّ الْإِجْمَاعَ مُتَيَقَّنٌ عَلَى أَنَّ الدِّيَةَ تَكُونُ مِنْ الْإِبِلِ.

L36889 Furthermore, it is definitively established that consensus exists that *diyah* is to be paid in camels.

وَاخْتَلَفُوا فِي هَلْ تَكُونُ مِنْ غَيْرِ ذَلِكَ؟ وَالشَّرِيعَةُ لَا يَحِلُّ أَخْذُهَا بِاخْتِلَافٍ لَا نَصَّ فِيهِ.

L36890 They differed concerning whether it can be from other than that, and it is not permissible to take the Sharia based on a disagreement unsupported by textual evidence.

فَإِنْ قِيلَ: فَمَا وَجْهُ إعْطَائِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّيَةَ فِي هَذَا الْخَبَرِ مِنْ إبِلِ الصَّدَقَةِ وَلَمْ يَدَّعِ الْقَتْلَ إلَّا عَلَى يَهُودٍ؟ قُلْنَا: وَجْهُ ذَلِكَ بَيِّنٌ لَا خَفَاءَ بِهِ، وَهُوَ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ - قَدْ صَحَّ قَتْلُهُ بِلَا شَكٍّ، ثُمَّ لَا شَكَّ فِي أَنَّهُ قُتِلَ عَمْدًا أَوْ خَطَأً، لَا بُدَّ مِنْ أَحَدِهِمَا، وَالدِّيَةُ وَاجِبَةٌ فِي الْخَطَأِ بِكُلِّ حَالٍ بِنَصِّ الْقُرْآنِ، وَوَاجِبَةٌ فِي الْعَمْدِ إذَا بَطَلَ الْقَوَدُ لِمَا قَدَّمْنَا مِنْ أَنَّ لِوَلِيِّهِ الْقَوَدَ وَقَدْ بَطَلَ، أَوْ الدِّيَةُ وَهِيَ مُمْكِنَةٌ، وَالْقَوَدُ هَاهُنَا قَدْ بَطَلَ؛ لِأَنَّهُ لَا يُعْرَفُ قَاتِلُهُ فَصَحَّتْ الدِّيَةُ فِيهِ بِكُلِّ حَالٍ.

L36891 If it is asked: What is the rationale for him—peace and blessings of Allah be upon him—giving the diyah in this report from the zakāh camels when the accusation of killing was directed solely at Jews? We say: The rationale for this is evident and unambiguous. It is that the killing of ʿAbdullāh ibn Sahl—may Allah be pleased with him—has been confirmed without doubt. Furthermore, there is no doubt that he was killed either intentionally or unintentionally; it must be one of the two. The diyah is obligatory in cases of unintentional killing in all circumstances by the explicit text of the Quran. It is also obligatory in intentional killing if retaliation is nullified, as we earlier established—that his legal heir holds the right to retaliation (which has been nullified) or to the diyah (which remains applicable). Retaliation here is nullified because the killer is unknown. Thus, the diyah is applicable in this case without exception.

ثُمَّ لَا بُدَّ - ضَرُورَةً - مِنْ أَنْ يَكُونَ قَاتِلُهُ مُسْلِمًا أَوْ غَيْرَ مُسْلِمٍ، وَلَسْنَا عَلَى يَقِينٍ مِنْ أَنَّ قَاتِلَهُ غَيْرُ مُسْلِمٍ، وَالنَّاسُ كُلُّهُمْ مَحْمُولُونَ عَلَى الْإِسْلَامِ حَتَّى يَصِحَّ مِنْ أَحَدٍ مِنْهُمْ كُفْرٌ.

L36892 It is an absolute necessity that his killer be a Muslim or a non-Muslim. We are not certain that his killer is a non-Muslim, and all people are presumed to be Muslim until disbelief is validly proven for one of them.

لِقَوْلِ اللَّهِ عَزَّ وَجَلَّ: {فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا} [الروم: ٣٠] .

L36893 Due to the statement of Allah, the Mighty and Majestic: *"Therefore devote your face to the religion as a ḥanīf—the innate nature of Allah upon which He has created people"* {Ar-Rum: 30}.[41]

وَلِقَوْلِهِ عَزَّ وَجَلَّ: {وَإِذْ أَخَذَ رَبُّكَ مِنْ بَنِي آدَمَ مِنْ ظُهُورِهِمْ ذُرِّيَّتَهُمْ وَأَشْهَدَهُمْ عَلَى أَنْفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَى شَهِدْنَا أَنْ تَقُولُوا يَوْمَ الْقِيَامَةِ إِنَّا كُنَّا عَنْ هَذَا غَافِلِينَ} [الأعراف: ١٧٢] .

L36894–36895 And due to the statement of Him, the Almighty, the Majestic: {When your Lord took from the backs of the children of Adam their descendants and made them bear witness against themselves: "Am I not your Lord?" They

[41] **Qur'an references (L36893):** Qur'an 30:30 (Ar-Rum).

replied: “Yes! We testify”—lest you should say on the Day of Resurrection: “We were unaware of this.”} [Al-A’raf: 172].[42]

L36896 And [the evidence includes] the statement of Allah’s Messenger—may Allah’s peace and blessings be upon him—authentically established from him: “Every newborn is born upon the divine creed and this innate disposition (*fitrah*), until his parents make him a Jew, a Christian, a Zoroastrian, or cause him to associate partners with Allah.”

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الثَّابِتِ عَنْهُ: «كُلُّ مَوْلُودٍ يُولَدُ عَلَى الْمِلَّةِ وَعَلَى هَذِهِ الْفِطْرَةِ حَتَّى يَكُونَ أَبَوَاهُ يُهَوِّدَانِهِ وَيُنَصِّرَانِهِ وَيُمَجِّسَانِهِ وَيُشَرِّكَانِهِ» .

L36897 And for the established report from ‘Iyād ibn Himār al-Mujāshi‘ī, from the Messenger of Allah (peace be upon him), who narrated from Allah, Blessed and Exalted is He, that He said: “I created all My servants as monotheists, but the devils diverted them from their religion.”

وَلِلْخَبَرِ الثَّابِتِ عَنْ عِيَاضِ بْنِ حِمَارٍ الْمُجَاشِعِيِّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللَّهِ تَبَارَكَ وَتَعَالَى أَنَّهُ قَالَ: «خَلَقْتُ عِبَادِي كُلَّهُمْ حُنَفَاءَ فَاجْتَالَتْهُمْ الشَّيَاطِينُ عَنْ دِينِهِمْ» .

L36898 We have mentioned all of that with its chain of transmission in *Kitāb al-Jihād* and others.

وَقَدْ ذَكَرْنَا كُلَّ ذَلِكَ بِإِسْنَادِهِ فِي " كِتَابِ الْجِهَادِ " وَغَيْرِهِ.

L36899 Therefore, it is obligatory to compel the killer of Abdullah to embrace Islam without exception, until certainty of the contrary is established. If the killer of Abdullah committed accidental homicide, the diyah is incumbent upon his agnatic kin. If the killing was intentional, is the diyah to be paid from his own wealth—thereby making him a debtor—or from his agnatic kin? The right of debtors to receive charitable funds is established by the Quranic text. Allah Almighty stated: “Charitable funds are only for the poor, the needy, those administering them, those whose hearts are to be reconciled, for emancipating slaves, for debtors, in the cause of Allah, and for travelers—an obligation ordained by Allah” [Quran 9:60]. Thus, what we have asserted is confirmed with certainty.[43]

فَالْوَاجِبُ أَنْ يُحْمَلَ قَاتِلُ عَبْدِ اللَّهِ عَلَى الْإِسْلَامِ وَلَا بُدَّ، حَتَّى يُوقَنَ خِلَافُهُ - ثُمَّ إنْ كَانَ قَاتِلُ عَبْدِ اللَّهِ قَتَلَهُ خَطَأً فَالدِّيَةُ عَلَى عَاقِلَتِهِ، وَإِنْ كَانَ قَتَلَهُ عَمْدًا فَالدِّيَةُ فِي مَالِهِ؟ فَهُوَ غَارِمٌ أَوْ عَاقِلَتُهُ، وَحَقُّ الْغَارِمِينَ فِي الصَّدَقَاتِ بِنَصِّ الْقُرْآنِ، قَالَ اللَّهُ عَزَّ وَجَلَّ: {إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِنَ اللَّهِ} [التوبة: ٦٠] فَصَحَّ بِهَذَا مَا قُلْنَاهُ يَقِينًا.

L36900 Among those from whom it has been reported that the blood money (diyah) in camels accords with our opinion—with nothing else reported from them—a group, as has been narrated to us through Waki‘’s chain: Ismā‘īl ibn Abī Khālid reported from al-Sha‘bī, who reported from Zayd ibn Thābit, ‘Alī ibn

وَمِمَّنْ رُوِيَ عَنْهُ أَنَّ الدِّيَةَ فِي الْإِبِلِ كَقَوْلِنَا، وَلَمْ يُرْوَ عَنْهُ غَيْرُ ذَلِكَ -: فَطَائِفَةٌ كَمَا رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ أَنَا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ عَنْ زَيْدِ بْنِ ثَابِتٍ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَعَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالُوا كُلُّهُمْ: فِي الدِّيَةِ مِائَةٌ مِنْ الْإِبِلِ.

[42] **Qur’an references (L36895):** Qur’an 7:172 (Al-A’raf).
[43] **Qur’an references (L36899):** Qur’an 9:60 (At-Tawbah).

Abī Ṭālib, and ʿAbdullāh ibn Masʿūd. All of them said: "The blood money (diyah) is one hundred camels."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: فِي الدِّيَةِ مِائَةُ بَعِيرٍ: أَوْ قِيمَةُ ذَلِكَ مِنْ عُسْرِهِ.

L36901 And through the chain of Abd al-Razzaq from Ma'mar from Abd Allah ibn Tawus from his father, who said: The blood money is one hundred camels, or its equivalent value due to the hardship thereof.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: يَعْنِي مِنْ عُسْرِهِ فِي وُجُودِ الْإِبِلِ.

L36902 Abū Muḥammad—may Allāh be pleased with him—said: It refers to his hardship due to the scarcity of camels.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَنَا ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّهُ كَانَ يَقُولُ عَلَى النَّاسِ أَجْمَعِينَ - أَهْلِ الْقَرْيَةِ، وَأَهْلِ الْبَادِيَةِ - مِائَةٌ مِنْ الْإِبِلِ، فَمَنْ لَمْ يَكُنْ عِنْدَهُ إبِلٌ فَعَلَى أَهْلِ الْوَرِقِ الْوَرِقُ، وَعَلَى أَهْلِ الْبَقَرِ الْبَقَرُ، وَعَلَى أَهْلِ الْغَنَمِ الْغَنَمُ، وَعَلَى أَهْلِ الْبَزِّ الْبَزُّ - يُعْطُونَ مِنْ أَيِّ صِنْفٍ كَانَ بِقِيمَةِ الْإِبِلِ مَا كَانَتْ - إنْ ارْتَفَعَتْ أَوْ انْخَفَضَتْ - قِيمَتُهَا يَوْمَئِذٍ، فَمَنْ اتَّقَى بِالْإِبِلِ مِنْ النَّاسِ فَهُوَ حَقُّ الْمَعْقُولِ لَهُ الْإِبِلُ.

L36903–36905 From the path of ʿAbd al-Razzāq: I [Ibn Jurayj] report from Ibn Ṭāwūs, from his father, who would say: All people collectively—villagers and Bedouins alike—are obligated to provide one hundred camels. For those who do not possess camels: those who own silver must give silver, those who own cattle must give cattle, those who own sheep must give sheep, and those who possess textiles must give textiles. They must give from whichever category of wealth it was, calculated according to the camels' value at the time—whether their value has risen or fallen. On that Day, whoever shows piety by means of camels among the people, the camels are rightfully his, in accordance with reasonable jurisprudential norms.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَنَّ عَطَاءَ بْنَ أَبِي رَبَاحٍ قَالَ لَهُ: كَانَتْ الدِّيَةُ الْإِبِلَ حَتَّى كَانَ عُمَرُ، قَالَ ابْنُ جُرَيْجٍ فَقُلْت لَهُ: فَإِنْ شَاءَ الْقَرَوِيُّ أَعْطَى مِائَةَ نَاقَةٍ، أَوْ مِائَتَيْ بَقَرَةٍ، أَوْ أَلْفَيْ شَاةٍ؟ فَقَالَ عَطَاءٌ: إنْ شَاءَ أَعْطَى الْإِبِلَ وَلَمْ يُعْطِ ذَهَبًا - هَذَا هُوَ الْأَمْرُ الْأَوَّلُ، لَا يَتَعَاقَلُ أَهْلُ الْقُرَى مِنْ الْمَاشِيَةِ غَيْرِ الْإِبِلِ، هُوَ عَقْلُهُمْ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L36906 From the narration of Abd al-Razzaq via Ibn Jurayj, that Ata ibn Abi Rabah said to him: "Blood money was paid in camels until the era of Umar." Ibn Jurayj said: "I asked him: If a villager wishes, can he offer one hundred she-camels, two hundred cows, or two thousand sheep?" Ata responded: "If he wishes, he may give camels instead of gold—this is the first ruling. Villagers do not use livestock other than camels for blood money payments; this was their established practice during the time of Allah's Messenger, peace and blessings be upon him."

فَهَذَا عَطَاءٌ لَمْ يَأْخُذْ قَضَاءَ عُمَرَ - وَقَدْ عَرَفَهُ - إذْ رَأَى أَنَّهُ رَأْيٌ مِنْهُ قَطُّ، لَمْ يُمْضِهِ إلَّا عَلَى مَنْ رَضِيَهُ لِنَفْسِهِ فَقَطْ.

L36907 This is 'Aṭā'—he did not adopt the judicial ruling of 'Umar, though he was aware of it—since he considered it nothing but an opinion from him. He did not enforce it except upon those who consented to it only for themselves.

L36908 From the chain of Ismaʿil ibn Ishaq: From Muhammad ibn al-Minhal, from Yazid ibn Zurayʿ, from Shuʿbah, from Qatadah, who said: In the book of

ʿUmar ibn ʿAbd al-ʿAziz, the blood money is one hundred camels (the value of each camel being one hundred dirhams); thus, this is his stipulation for the camels.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا مُحَمَّدُ بْنُ الْمِنْهَالِ أَنَا يَزِيدُ بْنُ زُرَيْعٍ أَنَا شُعْبَةُ عَنْ قَتَادَةَ، قَالَ: فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ الدِّيَةُ مِائَةُ بَعِيرٍ - قِيمَةُ كُلِّ بَعِيرٍ مِائَةُ دِرْهَمٍ - فَهَذِهِ صِفَةٌ مِنْهُ لِلْإِبِلِ.

L36909 From Muḥammad ibn Saʿīd ibn Nubāt, from Aḥmad ibn ʿAbd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ʿAbd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakhaʿī, who said: "The ruling stipulated camels as blood money, with each camel valued at twenty and one hundred dirhams." Abū Muḥammad (may Allāh be pleased with him) stated: "This is his description regarding camels—this being the opinion of al-Shāfiʿī, which he firmly upheld, and it is the view of al-Muzanī, Ibn al-Mundhir, Abū Sulaymān, and all our companions. A group opposed this position: a faction asserted, 'Blood money for camel-owners must be paid in camels, for gold-owners in gold, and for silver-owners in silver dirhams,' rejecting the validity of blood money outside these specified categories."

أَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ 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 الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ يُقْضَى بِالْإِبِلِ فِي الدِّيَةِ يُقَوَّمُ كُلُّ بَعِيرٍ عِشْرِينَ وَمِائَةَ دِرْهَمٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: فَهَذِهِ صِفَةٌ مِنْهُ لِلْإِبِلِ - وَهُوَ قَوْلُ الشَّافِعِيِّ الَّذِي ثَبَتَ عَلَيْهِ - وَهُوَ قَوْلُ الْمُزَنِيِّ، وَابْنِ الْمُنْذِرِ، وَأَبِي سُلَيْمَانَ، وَجَمِيعِ أَصْحَابِنَا - وَخَالَفَ ذَلِكَ قَوْمٌ -: فَقَالَتْ طَائِفَةٌ: الدِّيَةُ عَلَى أَهْلِ الْإِبِلِ الْإِبِلُ، وَعَلَى أَهْلِ الذَّهَبِ الذَّهَبُ، وَعَلَى أَهْلِ الْوَرِقِ الْوَرِقُ - وَلَمْ يَرَوْا أَنْ تَكُونَ الدِّيَةُ مِنْ غَيْرِ هَذِهِ الْأَصْنَافِ.

L36910 Then these [scholars] disagreed: one faction maintained, "The obligation upon silver-currency holders is twelve thousand dirhams."

ثُمَّ اخْتَلَفَ هَؤُلَاءِ -: فَقَالَتْ طَائِفَةٌ: هِيَ عَلَى أَهْلِ الْوَرِقِ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ.

L36911 Another group opined, "Rather, ten thousand dirhams."

وَقَالَتْ طَائِفَةٌ: بَلْ عَشَرَةُ آلَافِ دِرْهَمٍ.

L36912–36914 The two groups concurred that one thousand dinars are obligatory upon those liable for gold. A group held that blood money is incumbent upon the people of camels to be paid in camels, upon the people of gold as one thousand dinars, upon the people of silver as silver dirhams, upon the people of cattle as two hundred cows, upon the people of sheep as two thousand sheep, and upon the people of garments as two thousand garments—with blood money being permissible only through these specified categories.

وَاتَّفَقَتْ الطَّائِفَتَانِ: عَلَى أَنَّهَا عَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ وَقَالَتْ طَائِفَةٌ: الدِّيَةُ عَلَى أَهْلِ الْإِبِلِ مِنْ الْإِبِلِ، وَعَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ الْوَرِقُ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَا بَقَرَةٍ، وَعَلَى أَهْلِ الْغَنَمِ أَلْفَا شَاةٍ، وَعَلَى أَهْلِ الْحُلَلِ أَلْفَا حُلَّةٍ - وَلَا تَكُونُ الدِّيَةُ إلَّا مِنْ هَذِهِ الْأَصْنَافِ.

L36915 A group said: In the same manner as that—and they added that the *diyah* is upon the providers of the food from the food.

وَقَالَتْ طَائِفَةٌ: بِمِثْلِ ذَلِكَ - وَزَادُوا: أَنَّ الدِّيَةَ عَلَى أَهْلِ الطَّعَامِ مِنْ الطَّعَامِ.

L36916 As for those who said, “Upon the people of gold is one thousand dinars,” it was narrated to us through the chain of Ismāʿīl ibn Isḥāq: Ibn Abī Uways → ʿAbd al-Raḥmān ibn Abī al-Zināد → his father in *The Book of the Seven Jurists* that they ruled: “The diyah upon the people of gold is one thousand dinars.”

فَأَمَّا الَّذِينَ قَالُوا: عَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ -: فَرُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا ابْنُ أَبِي أُوَيْسٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ فِي " كِتَابِ السَّبْعَةِ " أَنَّهُمْ كَانُوا يَقُولُونَ: الدِّيَةُ عَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ.

L36917 Also via the chain of Ismaʿīl: I am Sulayman ibn Harb, [narrating] from Hammad ibn Zayd, who said: Matar al-Warraq stated: The blood money is established for camels, dinars, and dirhams—and it is waived for cows. Abu Muhammad—may Allah be pleased with him—said: The statement of the seven is confined to Ibn Abi al-Zinad—and he is weak. The first to declare him weak was Malik.

وَمِنْ طَرِيقِ إِسْمَاعِيلَ أَيْضًا أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ زَيْدٍ قَالَ: قَالَ مَطَرٌ الْوَرَّاقُ: ثَبَتَتْ الدِّيَةُ فِي الْإِبِلِ وَالدَّنَانِيرِ وَالدَّرَاهِمِ - وَسَقَطَتْ فِي الْبَقَرِ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَقَوْلُ السَّبْعَةِ مَقْصُورٌ عَلَى ابْنِ أَبِي الزِّنَادِ - وَهُوَ ضَعِيفٌ، أَوَّلُ مَنْ ضَعَّفَهُ مَالِكٌ.

L36918 It is a disgrace and a cause of hatred for his companions to cite a narration that those whom they imitated in their religion were the first to invalidate and expose as fabricated.

فَمِنْ الْعَارِ وَالْمَقْتِ عَلَى أَصْحَابِهِ أَنْ يَحْتَجُّوا بِرِوَايَةٍ كَانَ مَنْ قَلَّدُوهُ دِينَهُمْ أَوَّلَ مَنْ أَسْقَطَ رِوَايَتَهُ، وَأَشَارَ إلَى تَكْذِيبِهِ.

L36919 As for Matar’s statement, it is utterly baseless. Would that I knew what established blood money in dinars and dirhams yet excluded it from cattle? Verily, this is indeed astonishing!

وَأَمَّا قَوْلُ مَطَرٍ فَفِي غَايَةِ السُّقُوطِ، لَيْتَ شِعْرِي مَا الَّذِي أَثْبَتَ الدِّيَةَ فِي الدَّنَانِيرِ، وَالدَّرَاهِمِ، وَأَسْقَطَهَا مِنْ الْبَقَرِ؟ إنَّ هَذَا لَعَجَبٌ -.

L36920 And it is the opinion of Abū Ḥanīfah, Zufar, Mālik, and al-Layth.

وَهُوَ قَوْلُ أَبِي حَنِيفَةَ، وَزُفَرَ، وَمَالِكٍ، وَاللَّيْثِ.

L36921 As for their differing opinions regarding the amount of diyah in silver: a group stated that it is twelve thousand dirhams. This has been narrated to us through the chain of Ibn Abi al-Zinad from his father from the seven. It was also narrated to us through the chain of Ibn Abi Wahb from Makhramah ibn Bukayr from his father that he said that.

وَأَمَّا اخْتِلَافُهُمْ فِي مِقْدَارِ الدِّيَةِ مِنْ الْوَرِقِ -: فَطَائِفَةٌ قَالَتْ: إنَّهَا اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ -: رُوِّينَا ذَلِكَ مِنْ طَرِيقِ ابْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ عَنْ السَّبْعَةِ - وَرُوِّينَاهُ أَيْضًا مِنْ طَرِيقِ ابْنِ أَبِي وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرٍ عَنْ أَبِيهِ أَنَّهُ قَالَ ذَلِكَ.

L36922 It has been authentically reported from Urwah ibn al-Zubayr and al-Hasan al-Basri - and this is the opinion of Malik, Ahmad, and Ishaq.

وَصَحَّ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، وَالْحَسَنِ الْبَصْرِيِّ - وَهُوَ قَوْلُ مَالِكٍ، وَأَحْمَدَ، وَإِسْحَاقَ.

L36923 As for those who said ten thousand dirhams: it was narrated to us via the chain of narration from Hammad ibn Salamah from Humaid, who said:

"Umar ibn Abd al-Aziz issued a decree setting the *diyah* at ten thousand dirhams."

وَأَمَّا الَّذِينَ قَالُوا: عَشَرَةُ آلَافِ دِرْهَمٍ -: فَرُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ حُمَيْدٍ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي الدِّيَةِ عَشَرَةُ آلَافِ دِرْهَمٍ -.

L36924 This is the opinion of Sufyan al-Thawri, Abu Hanifa and his companions, and Abu Thawr, the companion of al-Shafi'i.

وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَأَبِي ثَوْرٍ صَاحِبِ الشَّافِعِيِّ.

L36925 A group maintained that it is eight thousand dirhams—as we will elaborate hereafter, if Allah, the Almighty and Majestic, wills.

وَقَالَتْ طَائِفَةٌ: بَلْ هِيَ ثَمَانِيَةُ آلَافِ دِرْهَمٍ - عَلَى مَا نُورِدُ بَعْدَ هَذَا - إِنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ.

L36926–36927 As for those who said that blood money can also be paid in cows, sheep and goats, and garments: as reported to us through Abd al-Razzaq's chain from Ibn Jurayj, from Ata, "The blood money in cows is two hundred cows. It used to be said: 'The owners of cows must pay in cows, and the owners of sheep and goats must pay in sheep and goats.'" And via Abd al-Razzaq's chain from Ma'mar, who narrated from al-Zuhri and Qatadah—both of whom said: "The blood money in cows is two hundred cows." Qatadah added: "Cows that have reached their third year or older."

وَأَمَّا الَّذِينَ قَالُوا: إِنَّ الدِّيَةَ أَيْضًا تَكُونُ مِنَ الْبَقَرِ، وَالْغَنَمِ، وَالْحُلَلِ -: فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ الدِّيَةُ مِنَ الْبَقَرِ مِائَتَا بَقَرَةٍ، كَانَ يُقَالُ: عَلَى أَهْلِ الْبَقَرِ الْبَقَرُ، وَعَلَى أَهْلِ الشَّاءِ الشَّاءُ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ، وَقَتَادَةَ، قَالَا جَمِيعًا: الدِّيَةُ مِنَ الْبَقَرِ مِائَتَا بَقَرَةٍ، قَالَ قَتَادَةُ: الثَّنِيَّةُ فَصَاعِدًا -.

L36928 Qatadah said: Those who own gold must give gold, those who own silver must give silver, those who own sheep and goats must give sheep and goats, and those who own cloth must give fine garments. This constitutes a rigorously authenticated chain of transmission from al-Zuhri and Qatadah.

قَالَ قَتَادَةُ: عَلَى أَهْلِ الذَّهَبِ الذَّهَبُ، وَعَلَى أَهْلِ الْوَرِقِ الْوَرِقُ، وَعَلَى أَهْلِ الْغَنَمِ الْغَنَمُ، وَعَلَى أَهْلِ الْبَزِّ الْحُلَلُ. وَهَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ عَنِ الزُّهْرِيِّ، وَقَتَادَةَ.

L36929 And through the chain of ʿAbd al-Razzāq from Maʿmar from a man from Makhūl, concerning the diyah (blood money) being two hundred cows.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ مَكْحُولٍ فِي الدِّيَةِ مِائَتَا بَقَرَةٍ.

L36930 And through the chain of Abd al-Razzaq from Ibn Jurayj from Amr ibn Dinar, I heard Tawus say: The blood money for donkeys is three hundred sets of three garments. Ibn Jurayj said: I asked Ata: The Bedouin owner of cows and sheep—may he be given camels if he wishes, even if the liable party objects? He replied: The blood money due to him is his right. He is entitled to the liable party's livestock—whatever its form—and it cannot be diverted to other assets if he insists. Through the chain of Hammad ibn Salama from Hisham ibn Urwah from his father, he said: Owners of camels must pay in camels, owners of cows in cows, owners of sheep in sheep, and

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ دِينَارٍ سَمِعْتُ طَاوُسًا يَقُولُ: دِيَةُ الْحِمَارِ فِي ثَلَاثِمِائَةِ حُلَّةٍ مِنْ حُلَلِ الثَّلَاثِ. وَقَالَ ابْنُ جُرَيْجٍ: قُلْتُ لِعَطَاءٍ: الْبَدْوِيُّ صَاحِبُ الْبَقَرِ، وَالشَّاةِ، أَلَهُ أَنْ يُعْطَى إِبِلًا إِنْ شَاءَ، وَإِنْ كَرِهَ الْمُتْبِعُ؟ فَقَالَ: الْمَعْقُولُ لَهُ هُوَ حَقُّهُ، لَهُ مَاشِيَةُ الْعَاقِلِ - كَائِنَةً مَا كَانَتْ - لَا تُصْرَفُ إِلَى غَيْرِهَا إِنْ شَاءَ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ قَالَ: عَلَى أَهْلِ الْإِبِلِ الْإِبِلُ، وَعَلَى أَهْلِ

owners of garments in garments. Through the chain of Waki' from Zakariyya ibn Abi Za'idah from al-Sha'bi: Wealth owners pay in wealth, camel owners in camels, sheep owners in sheep—for a male camel fifteen sheep, and for a female camel twenty sheep. Through the chain of Waki' from Abu Hilal from Qatadah from Sa'id ibn al-Musayyab, he said: We used to take five sheep for a cow and ten sheep for a male camel. Among those who held that blood money may be paid in camels, gold, silver, sheep, cows, or garments are al-Hasan al-Basri—and this is the opinion of Sufyan al-Thawri, Abu Yusuf, and Muhammad ibn al-Hasan.

الْبَقَرِ الْبَقَرُ، وَعَلَى أَهْلِ الْغَنَمِ الْغَنَمُ، وَعَلَى أَهْلِ الْحُلَلِ الْحُلَلُ. وَمِنْ طَرِيقِ وَكِيعٍ أَنَا زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ الشَّعْبِيِّ: يُعْطِي أَهْلُ الْمَالِ الْمَالَ، وَأَهْلُ الْإِبِلِ الْإِبِلَ، وَأَهْلُ الْغَنَمِ الْغَنَمَ - فِي الْبَعِيرِ الذَّكَرِ خَمْسَ عَشَرَةَ شَاةً، وَفِي النَّاقَةِ عِشْرُونَ شَاةً. وَمِنْ طَرِيقِ وَكِيعٍ أَنَا أَبُو هِلَالٍ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: كُنَّا نَأْخُذُ عَنْ الْبَقَرِ خَمْسَ شِيَاهٍ، وَعَنْ الْجَزُورِ عَشَرَ شِيَاهٍ. وَمِمَّنْ قَالَ: تَكُونُ الدِّيَةُ مِنْ الْإِبِلِ، وَمِنْ الذَّهَبِ، وَمِنْ الْفِضَّةِ، وَمِنْ الْغَنَمِ، وَمِنْ الْبَقَرِ، وَمِنْ الْحُلَلِ: الْحَسَنُ الْبَصْرِيُّ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ.

L36931–36932 Abū Muḥammad—may Allāh be pleased with him—said: As for those who restricted blood money to gold and silver alone, and did not consider it valid in cows, sheep, or sets of garments, they protested against this by saying: "The scholars have unanimously agreed that blood money is to be from gold and silver."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: أَمَّا مَنْ اقْتَصَرَ بِالدِّيَةِ عَلَى الذَّهَبِ وَالْوَرِقِ فَقَطْ، وَلَمْ يَرَهَا فِي بَقَرٍ، وَلَا غَنَمٍ، وَلَا حُلَلٍ، فَإِنَّهُمْ شَغَبُوا فِي ذَلِكَ، بِأَنْ قَالُوا: قَدْ أَجْمَعُوا عَلَى الدِّيَةِ تَكُونُ مِنْ الذَّهَبِ، وَالْفِضَّةِ.

L36933 Through this, it becomes evident that blood money is divinely ordained rather than substitutable equivalents. For if they were substitutes, the value of camels would have to be taken into account—leading to increases and decreases—yet scholars never agreed that blood money could be paid in cattle, sheep, or garments. Moreover, blood money cannot be legally required except in forms established by unanimous scholarly agreement.

فَصَحَّ بِهَذَا أَنَّهَا تَوْقِيفٌ، وَأَنَّهَا لَيْسَتْ أَبْدَالًا، إذْ لَوْ كَانَتْ أَبْدَالًا لَوَجَبَ أَنْ تُرَاعَى قِيمَةُ الْإِبِلِ - فَتَزِيدَ وَتَنْقُصَ - وَلَمْ يُجْمِعُوا عَلَى أَنَّ الدِّيَةَ تَكُونُ مِنْ بَقَرٍ، أَوْ مِنْ غَنَمٍ، أَوْ مِنْ حُلَلٍ، وَلَمْ تَجِبْ أَنْ تَكُونَ دِيَةٌ إلَّا مَا أَجْمَعُوا عَلَيْهِ.

L36934 Abu Muhammad—may Allah be pleased with him—said: This is sheer falsehood. They have never unanimously agreed that diyah is not to be paid in silver, gold, or anything other than camels. We have already mentioned the opinions of Ali, Zayd, Ibn Mas'ud, Tawus, and 'Ata, and their view that dinars and dirhams in such cases are only assessed according to the value of camels, whether they increase or decrease, as well as the opinion of al-Shafi'i and others on this matter.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا كَذِبٌ بَحْتٌ، وَمَا أَجْمَعُوا قَطُّ، عَلَى أَنَّ الدِّيَةَ لَا تَكُونُ مِنْ فِضَّةٍ، وَلَا مِنْ ذَهَبٍ، وَلَا مِنْ غَيْرِ الْإِبِلِ، وَقَدْ ذَكَرْنَا قَوْلَ عَلِيٍّ، وَزَيْدٍ، وَابْنِ مَسْعُودٍ، وَطَاوُسٍ، وَعَطَاءٍ، وَقَوْلَهُمَا: إنَّ الدَّنَانِيرَ، وَالدَّرَاهِمَ فِي ذَلِكَ إنَّمَا تَكُونُ بِقِيمَةِ الْإِبِلِ زَادَتْ أَوْ نَقَصَتْ، وَقَوْلَ الشَّافِعِيِّ وَغَيْرِهِ فِي ذَلِكَ.

L36935 We have mentioned the discrepancy in camel valuations in the opinions of

ʿUmar ibn ʿAbd al-ʿAzīz and Ibrāhīm al-Nakhaʿī, thereby nullifying their false claim against the entire Ummah that they had reached a consensus (ijmāʿ).

وَقَدْ ذَكَرْنَا اخْتِلَافَ قِيمَةِ الْإِبِلِ فِي قَوْلِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِبْرَاهِيمَ النَّخَعِيِّ، فَبَطَلَ بِذَلِكَ دَعْوَاهُمْ الْكَاذِبَةُ عَلَى جَمِيعِ الْأُمَّةِ فِي دَعْوَاهُمْ أَنَّهُمْ أَجْمَعُوا.

L36936 Rather, the correct position in this matter is to say: Since the indisputable consensus and established textual evidence confirm that blood money consists of camels—and they disagreed regarding anything beyond that—it is obligatory that blood money be only from that upon which they have agreed.

بَلْ الْحَقُّ فِي هَذَا أَنْ يُقَالَ: لَمَّا صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ، وَالنَّصُّ الثَّابِتُ: أَنَّ الدِّيَةَ تَكُونُ مِنْ الْإِبِلِ - وَاخْتَلَفُوا فِيمَا عَدَا ذَلِكَ -: وَجَبَ أَنْ لَا تَكُونَ الدِّيَةُ إلَّا مِمَّا أَجْمَعُوا عَلَيْهِ فَقَطْ.

L36937 They also obscured [the matter] by arguing: "Since the diyah was originally [established] in camels and then transferred to gold and silver as a standardized measure, and since the recognized valuation standard exists only in gold and silver, it becomes obligatory that diyah must not be [calculated] except through gold and silver."

وَمَوَّهُوا أَيْضًا - بِأَنْ قَالُوا: لَمَّا كَانَتْ الدِّيَةُ مِنْ الْإِبِلِ ثُمَّ نُقِلَتْ إلَى الذَّهَبِ وَالْفِضَّةِ عَلَى سَبِيلِ التَّقْوِيمِ، وَكَانَتْ الْقِيمَةُ الْمَعْهُودَةُ لَا تَكُونُ إلَّا مِنْ الذَّهَبِ وَالْفِضَّةِ: وَجَبَ أَنْ لَا تَكُونَ الدِّيَةُ إلَّا مِنْ الذَّهَبِ وَالْفِضَّةِ.

L36938 Abū Muḥammad—may Allāh be pleased with him—said: This second falsehood exposes their previous falsehood which they had embellished before this. For there they aimed to establish gold and silver in diyah as a scripturally determined obligation, not a substitute equivalent in value, while here they have acknowledged it is a substitute equivalent in value. If only these people felt shame from openly mixing in their support of falsehood, it would have been better for them.

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: هَذَا الْبَاطِلُ الثَّانِي يُكَذِّبُ بَاطِلَهُمْ الَّذِي مَوَّهُوا قَبْلَ هَذَا بِهِ؛ لِأَنَّ هُنَالِكَ رَامُوا أَنْ يَجْعَلُوا الذَّهَبَ، وَالْفِضَّةَ، فِي الدِّيَةِ تَوْقِيفًا لَا بَدَلًا بِقِيمَةٍ، وَهُنَا أَقَرُّوا أَنَّهَا بَدَلٌ بِقِيمَةٍ، فَلَوْ اسْتَحَى هَؤُلَاءِ الْقَوْمُ مِنْ الْمُجَاهَرَةِ بِالتَّخْلِيطِ فِي نَصْرِ الْبَاطِلِ لَكَانَ خَيْرًا لَهُمْ.

L36939 Then we say to them: Since you have acknowledged that it is a substitute based on value, it is proportionate to the extent of the value's increase and decrease, and we do not know exactly what they have agreed upon regarding the substitute and assessment.

ثُمَّ نَقُولُ لَهُمْ: إذْ قَدْ أَقْرَرْتُمْ أَنَّهَا بَدَلٌ بِقِيمَةٍ فَهِيَ عَلَى قَدْرِ ارْتِفَاعِ الْقِيمَةِ وَانْخِفَاضِهَا، وَلَا نَدْرِي أَيَّ شَيْءٍ اتَّفَقُوا عَلَيْهِ فِي الْبَدَلِ وَالتَّقْوِيمِ؟ .

L36940–36941 They also obscured the matter by arguing: Since it has been established that blood money cannot consist of horses, donkeys, or commodities, it must likewise not consist of cattle, sheep, or garments.

وَمَوَّهُوا أَيْضًا - بِأَنْ قَالُوا: لَمَّا صَحَّ أَنَّ الدِّيَةَ لَا تَكُونُ مِنْ الْخَيْلِ، وَلَا مِنْ الْحَمِيرِ، وَلَا مِنْ الْعُرُوضِ: وَجَبَ أَنْ لَا تَكُونَ أَيْضًا مِنْ الْبَقَرِ، وَلَا مِنْ الْغَنَمِ، وَلَا مِنْ الثِّيَابِ.

L36942 Abu Muhammad—may God be pleased with him—said: "This is an analogy, and the entirety of analogy is invalid. Then we reverse upon them their corrupt analogy and say to them: Since it has been established according to

you that blood money can be from other than camels, it is obligatory that it be from everything except what you have agreed cannot be from it."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ نَعْكِسُ عَلَيْهِمْ قِيَاسَهُمْ الْفَاسِدَ فَنَقُولُ لَهُمْ: لَمَّا صَحَّ عِنْدَكُمْ أَنَّ الدِّيَةَ تَكُونُ مِنْ غَيْرِ الْإِبِلِ وَجَبَ أَنْ تَكُونَ مِنْ كُلِّ شَيْءٍ إلَّا مِمَّا اتَّفَقْتُمْ عَلَى أَنْ لَا تَكُونَ مِنْهُ.

L36943 Moreover, camels are animals upon which zakat is obligatory, and it is authentically established that diyya (blood money) may be paid using them. Therefore, cattle and sheep must be subjected to analogical reasoning (qiyas) based on camels, as they too are animals liable for zakat purification.

وَأَيْضًا - فَإِنَّ الْإِبِلَ حَيَوَانٌ تَجِبُ فِيهِ الزَّكَاةُ، وَقَدْ صَحَّ أَنَّ الدِّيَةَ تَكُونُ مِنْهَا، فَوَجَبَ أَنْ يُقَاسَ عَلَيْهَا الْبَقَرُ وَالْغَنَمُ؛ لِأَنَّهُمَا حَيَوَانٌ يُزَكَّى.

L36944 The correct position in this matter is that since it has been established that blood money cannot be in horses, donkeys, or merchandise, it must also not be in gold, silver, or anything other than what is specified by the text (naṣṣ) and agreement (ijmāʿ).

وَالْحَقُّ مِنْ هَذَا - هُوَ أَنَّهُ لَمَّا صَحَّ أَنَّ الدِّيَةَ لَا تَكُونُ مِنْ الْخَيْلِ، وَلَا مِنْ الْحَمِيرِ، وَلَا مِنْ الْعُرُوضِ، وَجَبَ أَيْضًا أَنْ لَا تَكُونَ مِنْ الذَّهَبِ، وَلَا مِنْ الْفِضَّةِ، وَلَا مِمَّا عَدَا مَا جَاءَ بِهِ النَّصُّ وَالِاتِّفَاقُ.

L36945 It is astonishing that the Ḥanafīs assert a weak narration (athar) takes precedence over qiyās, yet here they contradict this very foundational principle they had previously upheld.

وَالْعَجَبُ - أَنَّ الْحَنَفِيِّينَ يَقُولُونَ: إنَّ ضَعِيفَ الْأَثَرِ أَوْلَى مِنْ الْقِيَاسِ، وَهَا هُنَا نَقَضُوا هَذَا الْأَصْلَ الَّذِي صَحَّحُوهُ.

L36946 The Malikis among them objected by citing narrations that we shall mention, God, the Exalted, willing. Among them is a narration that was narrated to us through the chain of Zayd ibn al-Ḥubāb al-ʿUklī: Muḥammad ibn Muslim al-Ṭāʾifī, from ʿAmr ibn Dīnār, from ʿIkrimah, from Ibn ʿAbbās, from the Messenger of God—peace and blessings be upon him—"that he ruled the diyah as twelve thousand dirhams?" Abū Muḥammad—may God be pleased with him—said: Muḥammad ibn Muslim al-Ṭāʾifī is rejected; his ḥadīth is not used as evidence.

وَشَغَبَ الْمَالِكِيُّونَ مِنْهُمْ بِآثَارٍ نَذْكُرُهَا إنْ شَاءَ اللَّهُ تَعَالَى: وَهِيَ أَثَرٌ - رُوِّينَا مِنْ طَرِيقِ زَيْدِ بْنِ الْحُبَابِ الْعُكْلِيِّ أَنَا مُحَمَّدُ بْنُ مُسْلِمٍ الطَّائِفِيُّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّهُ قَضَى بِالدِّيَةِ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ؟» قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: مُحَمَّدُ بْنُ مُسْلِمٍ الطَّائِفِيُّ سَاقِطٌ لَا يُحْتَجُّ بِحَدِيثِهِ.

L36947 Among them is a narration—we transmitted it through the chain of Aḥmad ibn Shuʿayb: from Muḥammad ibn Maymūn, from Sufyān ibn ʿUyaynah, from ʿAmr ibn Dīnār, from ʿIkrimah—I heard Murrah say, from Ibn ʿAbbās: "The Messenger of Allah—may Allah's peace and blessings be upon him—ruled for twelve thousand dirhams, i.e., in the diyah (blood money)."

وَمِنْهَا أَثَرٌ - رُوِّينَاهُ مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مَيْمُونٍ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ سَمِعْت مُرَّةَ يَقُولُ: عَنْ ابْنِ عَبَّاسٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ - يَعْنِي فِي الدِّيَةِ» .

L36948–36950 Abu Muhammad (may Allah be pleased with him) said: This contains no proof, because his statement in the aforementioned narration – referring to blood money – is neither from the words of the Messenger of Allah (may Allah bless him and grant him peace) nor does the narration clarify that it is from Ibn Abbas's statement. The definitive assertion that his statement constitutes a ruling based on conjecture—and conjecture is the most deceitful speech—if it originates from someone other than Ibn Abbas, then it lacks evidentiary weight. The Prophet (peace be upon him) would issue rulings of twelve thousand in debts or blood money through mutual consent between the debtor and creditor. This narration contains no textual clarification that he (peace be upon him) ruled blood money to be twelve thousand dirhams. It is therefore impermissible to introduce into the narration what it does not contain.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا لَا حُجَّةَ فِيهِ، لِأَنَّ قَوْلَهُ فِي الْخَبَرِ الْمَذْكُورِ - يَعْنِي فِي الدِّيَةِ - لَيْسَ مِنْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا فِي الْخَبَرِ بَيَانُ أَنَّهُ مِنْ قَوْلِ ابْنِ عَبَّاسٍ، فَالْقَطْعُ بِأَنَّهُ قَوْلُهُ حُكْمٌ بِالظَّنِّ، وَالظَّنُّ أَكْذَبُ الْحَدِيثِ، فَإِنْ كَانَ مِنْ قَوْلِ مَنْ دُونَ ابْنِ عَبَّاسٍ فَلَا حُجَّةَ فِيهِ، وَقَدْ يَقْضِي - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِاثْنَيْ عَشَرَ أَلْفًا فِي دَيْنٍ، أَوْ فِي دِيَةٍ بِتَرَاضِي الْغَارِمِ وَالْمَقْضِيِّ لَهُ، فَإِنْ لَيْسَ فِي هَذَا الْخَبَرِ بَيَانُ أَنَّهُ قَضَاءٌ مِنْهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ الدِّيَةَ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ - فَلَا يَجُوزُ أَنْ يُقْحَمَ فِي الْخَبَرِ مَا لَيْسَ فِيهِ.

L36951 Attributing anything to the Messenger of Allah—may Allah pray upon him and grant him peace—based on conjecture is lying against him, and this necessitates Hellfire. We seek refuge in Allah from what leads to it.

وَالْقَوْلُ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالظَّنِّ كَذِبٌ عَلَيْهِ، وَهَذَا يُوجِبُ النَّارَ - وَنَعُوذُ بِاللَّهِ مِمَّا أَدَّى إِلَيْهَا.

L36952 The narration transmitted by the eminent companions of Ibn ʿUyaynah from him concerning this report is solely from ʿIkrimah, with no mention of Ibn ʿAbbas in it, as we have narrated it via the chain of ʿAbd al-Razzaq from Sufyan ibn ʿUyaynah from ʿAmr ibn Dinar from ʿIkrimah, who stated: "A freed slave of Banu ʿAdi ibn Kaʿb killed a man from the Ansar, so the Prophet—peace and blessings of Allah be upon him—ruled that the blood money for him (the victim) be twelve thousand." A mursal narration does not constitute valid evidence.

وَالَّذِي رَوَاهُ مَشَاهِيرُ أَصْحَابِ ابْنِ عُيَيْنَةَ عَنْهُ فِي هَذَا الْخَبَرِ فَإِنَّمَا هُوَ عَنْ عِكْرِمَةَ لَمْ يُذْكَرْ فِيهِ ابْنُ عَبَّاسٍ، كَمَا رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ عِكْرِمَةَ قَالَ: «قَتَلَ مَوْلَى لِبَنِي عَدِيِّ بْنِ كَعْبٍ رَجُلًا مِنَ الْأَنْصَارِ فَقَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي دِيَتِهِ بِاثْنَيْ عَشَرَ أَلْفًا» وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ.

L36953 They also mentioned—what we have narrated through the chain of Al-Awzāʿī from ʿAmr ibn Saʿīd from Yazīd al-Raqāshī from Anas, who said: "The Messenger of Allah—peace and blessings of Allah be upon him—said: 'For me to sit with people who remember Allah, the Mighty and Majestic, after the ʿAṣr prayer until sunset is more beloved to me than freeing eight from the descendants of Ishmael, each of them having a blood money of twelve thousand.'"

وَذَكَرُوا أَيْضًا - مَا رُوِّينَاهُ مِنْ طَرِيقِ الْأَوْزَاعِيِّ عَنْ عَمْرِو بْنِ سَعِيدٍ عَنْ يَزِيدَ الرَّقَاشِيِّ عَنْ أَنَسٍ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَأَنْ أَجْلِسَ مَعَ قَوْمٍ يَذْكُرُونَ اللَّهَ عَزَّ وَجَلَّ مِنْ بَعْدِ صَلَاةِ الْعَصْرِ إِلَى أَنْ تَغِيبَ الشَّمْسُ أَحَبُّ إِلَيَّ مِنْ أَنْ أَعْتِقَ ثَمَانِيَةً مِنْ وَلَدِ إِسْمَاعِيلَ دِيَةُ كُلِّ وَاحِدٍ مِنْهُمْ اثْنَا عَشَرَ أَلْفًا» .

L36954 Abu Muhammad (may Allah be pleased with him) said: Yazid al-Raqashi is weak; he is not to be taken as proof.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: يَزِيدُ الرَّقَاشِيُّ ضَعِيفٌ لَا يُحْتَجُّ بِهِ.

وَذَكَرُوا مَا رُوِّينَاهُ مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَرَأَ بِخَمْسِمِائَةٍ إلَى أَلْفِ آيَةٍ أَصْبَحَ وَلَهُ قِنْطَارٌ فِي الْآخِرَةِ، وَالْقِنْطَارُ دِيَةُ أَحَدِكُمْ اثْنَا عَشَرَ أَلْفًا» .

L36955 They mentioned what has been narrated through our chain from Hammad ibn Salamah, from Yunus ibn ʻUbayd, from al-Hasan, who said: The Messenger of Allah—peace and blessings be upon him—said, "Whoever recites between five hundred to one thousand verses will attain a qintar in the Hereafter. The qintar is equivalent to the blood money for one of you—twelve thousand dirhams."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ إلَّا أَنَّ الْحَنَفِيِّينَ نَقَضُوا هَاهُنَا أُصُولَهُمْ أَقْبَحَ نَقْضٍ؛ لِأَنَّهُمْ يَقُولُونَ: الْمُرْسَلُ وَالْمُسْنَدُ سَوَاءٌ، وَكِلَاهُمَا أَوْلَى مِنْ النَّظَرِ، وَتَرَكُوا هَاهُنَا هَذِهِ الْمَرَاسِيلَ، وَهُمْ يَحْتَجُّونَ فِي نَصْرِ رَأْيِ أَبِي حَنِيفَةَ بِمِثْلِهَا، وَبِأَسْقَطَ مِنْهَا.

L36956 Abū Muḥammad—may Allah be pleased with him—said: This is *mursal*, and no valid proof can be based on a *mursal*. Yet the Ḥanafīs have here undermined their own principles in the most reprehensible manner, for they assert that *mursal* and *musnad* hold equal weight, considering both preferable to speculative reasoning. Nevertheless, they discard these *mursal* reports here while citing similar—and even weaker—*mursal* reports to defend Abū Ḥanīfah's opinions.

فَصَحَّ أَنَّهُمْ مُتَلَاعِبُونَ لَا تَحْقِيقَ عِنْدَهُمْ إلَّا فِي نَصْرِ رَأْيِ أَبِي حَنِيفَةَ الَّذِي رَضُوا بِهِ بَدَلًا مِنْ الْقُرْآنِ، وَمِنْ بَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟

L36957 Thus, has it not become clear that they are triflers who pursue no genuine inquiry except in championing the opinion of Imam Abū Ḥanīfah—which they have adopted as a substitute for the Quran and the elucidations of the Messenger of Allah, may Allah bless him and grant him peace?

وَقَالُوا: لَعَلَّ هَذِهِ الْآثَارَ إنَّمَا أَرَادَ فِيهَا بِذِكْرِ الِاثْنَيْ عَشَرَ أَلْفًا أَنَّهَا وَزْنُ كُلِّ عَشَرَةٍ مِنْهَا وَزْنُ سِتَّةِ مَثَاقِيلَ.

L36958–36959 They said: Indeed, these narrations only intended, by the mention of twelve thousand in them, that every ten of them weigh six mithqals.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَهَذَا مِنْ أَسْخَفِ كَلَامٍ فِي الْأَرْضِ؛ لِأَنَّ الْعَشَرَةَ آلَافِ دِرْهَمٍ عِنْدَهُمْ لَا يَخْتَلِفُونَ أَنَّهَا وَزْنُ سَبْعَةِ آلَافِ مِثْقَالٍ.

L36960 Abū Muḥammad—may Allah be pleased with him—said: "This is among the basest statements on earth, for they unanimously agree that ten thousand dirhams weigh seven thousand mithqals."

وَلَا يَخْتَلِفُ الْمَالِكِيُّونَ فِي أَنَّ الِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ هِيَ وَزْنُ ثَمَانِيَةِ آلَافِ مِثْقَالٍ وَأَرْبَعِمِائَةٍ، فَعَادَ قَوْلُهُمْ: وَزْنُ سِتَّةِ مَثَاقِيلَ فِي الْعَشَرَةِ هَذَيَانًا لَمْ يُعْقَلْ قَطُّ قَدِيمًا وَلَا حَدِيثًا.

L36961 The Malikis do not differ in that twelve thousand dirhams equal the weight of eight thousand four hundred mithqals. Thus their assertion that "six mithqals in ten [dirhams]" constitutes absurdity has never been rationally understood, neither in ancient nor modern times.

L36962 The Malikis also objected with a report—we have transmitted it through the chain of ʿAbd Allāh ibn Aḥmad ibn Ḥanbal: from ʿAbd Allāh ibn ʿAwn al-Kharrāz, from ʿAfīf ibn Sālim al-Mawṣilī, from ʿAbd Allāh ibn al-Muʾammal,

from ʿAbd Allāh ibn Abī Mulaykah, from ʿĀʾishah bint Ṭalḥah, who said: A jinn would appear to ʿĀʾishah, the Mother of the Believers. She confronted him repeatedly, but he persisted in manifesting himself. She struck him with an iron tool and killed him. In her dream, she was approached and told: "Have you killed so-and-so? He witnessed Badr with the Messenger of Allah—peace and blessings be upon him—and never appeared to you bare-headed or unclothed. He merely listened to the Prophet's teachings—peace and blessings be upon him. Has all that preceded and all that will follow overwhelmed her?" She mentioned this to her father, who said: "Give twelve thousand dirhams in charity as his blood money." Abū Muḥammad—may Allah be pleased with him—said: This is baseless. ʿAfīf ibn Sālim is unknown—his identity is indeterminable. ʿAbd Allāh ibn al-Muʾammal, the Meccan, is weak and cannot serve as a valid proof.

وَشَغَبَ الْمَالِكِيُّونَ أَيْضًا بِخَبَرٍ -: رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا عَبْدُ اللَّهِ بْنُ عَوْنٍ الْخَرَّازُ أَنَا عَفِيفُ بْنُ سَالِمٍ الْمَوْصِلِيُّ عَنْ عَبْدِ اللَّهِ بْنِ الْمُؤَمَّلِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ عَنْ عَائِشَةَ بِنْتِ طَلْحَةَ قَالَتْ: كَانَ جَانٌّ يَطْلُعُ عَلَى عَائِشَةَ أُمِّ الْمُؤْمِنِينَ فَخَرَجَتْ عَلَيْهِ مَرَّةً بَعْدَ مَرَّةٍ، فَأَبَى إلَّا أَنْ يَظْهَرَ فَعَدَتْ عَلَيْهِ بِحَدِيدَةٍ فَقَتَلَتْهُ، فَأُتِيَتْ فِي مَنَامِهَا، فَقِيلَ لَهَا: أَقَتَلْت فُلَانًا، أَمَا إنَّهُ قَدْ كَانَ شَهِدَ بَدْرًا مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَانَ لَا يَطْلُعُ عَلَيْك لَا حَاسِرًا وَلَا مُتَجَرِّدًا إلَّا أَنَّهُ كَانَ يَسْمَعُ حَدِيثَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخَذَهَا مَا تَقَدَّمَ وَمَا تَأَخَّرَ؟ فَذَكَرَتْ ذَلِكَ لِأَبِيهَا؟ فَقَالَ: تَصَدَّقِي بِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ دِيَتِهِ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا لَا شَيْءَ - عَفِيفُ بْنُ سَالِمٍ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ؟ وَعَبْدُ اللَّهِ بْنُ الْمُؤَمَّلِ هُوَ الْمَكِّيُّ: ضَعِيفٌ لَا يُحْتَجُّ بِهِ.

L36963 The most similar case in this chapter is a report we transmitted through the chain of Yahyā ibn Saʿīd al-Qaṭṭān, from Abū Yūnus Ḥātim ibn Abī Ṣaghīra, from Ibn Abī Mulayka, from ʿĀʾisha bint Ṭalḥa, from ʿĀʾisha the Mother of the Believers, that she killed a jinn. She was approached in her dream and told: "By Allah, did you kill him while he was a Muslim?" She replied: "If he were a Muslim, he would not have entered upon the wives of the Prophet—peace and blessings of Allah be upon him." It was said: "Would he have entered upon you except when you were clothed?" She awoke terrified and commanded twelve thousand dirhams to be allocated for the cause of Allah, the Mighty and Majestic. Abū Muḥammad—may Allah be pleased with him—said: "There is no proof for them in this, for this report does not indicate she intended this as blood money obligated upon her. Ascribing that additional claim to her is a falsehood—it is impermissible. It was merely charity she gave."

وَأَشْبَهُ مَا فِي هَذَا الْبَابِ - فَخَبَرٌ رُوِّينَاهُ مِنْ طَرِيقِ يَحْيَى بْنِ سَعِيدٍ الْقَطَّانِ أَنَا أَبُو يُونُسَ حَاتِمُ بْنُ أَبِي صَغِيرَةَ عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنْ عَائِشَةَ بِنْتِ طَلْحَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّهَا قَتَلَتْ جَانًّا، فَأُتِيَتْ فِي مَنَامِهَا، وَقِيلَ لَهَا: وَاَللَّهِ لَقَدْ قَتَلْته مُسْلِمًا؟ قَالَتْ: لَوْ كَانَ مُسْلِمًا لَمْ يَدْخُلْ عَلَى أَزْوَاجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقِيلَ: أَوَ كَانَ يَدْخُلُ عَلَيْك إلَّا وَعَلَيْك ثِيَابُك؟ فَأَصْبَحَتْ فَزِعَةً، فَأَمَرَتْ بِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ فَجُعِلَتْهَا فِي سَبِيلِ اللَّهِ عَزَّ وَجَلَّ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَا حُجَّةَ لَهُمْ فِي هَذَا، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ أَنَّهَا قَصَدَتْ بِذَلِكَ قَصْدَ دِيَةٍ وَجَبَتْ عَلَيْهَا، فَزِيَادَةُ ذَلِكَ عَلَيْهَا كَذِبٌ لَا يَحِلُّ، وَإِنَّمَا هِيَ صَدَقَةٌ تَصَدَّقَتْ بِهَا.

L36964–36966 The Maliki jurists unanimously maintain that killing is only either inten-

tional or accidental. If her killing of him was accidental, it does not require her to expiate by freeing a slave—which is the obligation stipulated in the Quran—nor the twelve thousand. If his killing of her was intentional, they [the scholars] do not disagree that there is no blood money for intentional killing; rather, it is retaliation, forgiveness, or mutual agreement. There is no doubt she—may Allah be pleased with her—did not settle with the offender's agnatic clan on twelve thousand dirhams. Thus, blood money is invalid here. These are merely the dreams of a sleeper; religious rulings cannot be established through them. The most evident view is that this stems from personal inclinations. Therefore, it is valid that this was voluntary charity solely from her—may Allah be pleased with her—as nothing else is permissible at all.

وَلَا يَخْتَلِفُ الْمَالِكِيُّونَ فِي أَنَّ الْقَتْلَ لَيْسَ إِلَّا عَمْدًا أَوْ خَطَأً، فَإِنْ كَانَ قَتْلُهَا لَهُ خَطَأً فَلَيْسَ فِيهِ أَنَّهَا كَفَّرَتْ بِعِتْقِ رَقَبَةٍ - وَهِيَ الْمُفْتَرَضَةُ فِي الْقُرْآنِ - لَا الِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ -: وَإِنْ كَانَ قَتْلُهَا لَهُ عَمْدًا، فَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّهُ لَا دِيَةَ فِي الْعَمْدِ، إِنَّمَا هُوَ الْقَوَدُ، أَوِ الْعَفْوُ، أَوْ مَا تَرَاضَوْا عَلَيْهِ، وَلَا شَكَّ فِي أَنَّهَا - رَضِيَ اللَّهُ عَنْهَا - لَمْ تُرَاضِ مَعَ عَصَبَةِ الْجَنِّيِّ عَلَى الِاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ: فَبَطَلَ أَنْ يَكُونَ لِلدِّيَةِ هَاهُنَا مَدْخَلٌ، وَإِنَّمَا هِيَ أَحْلَامُ نَائِمٍ لَا يَجُوزُ أَنْ تُشَرَّعَ بِهَا الشَّرَائِعُ، وَالْأَظْهَرُ أَنَّهَا مِنْ حَدِيثِ النَّفْسِ - فَصَحَّ: أَنَّهَا صَدَقَةُ تَطَوُّعٍ مِنْهَا - رَضِيَ اللَّهُ عَنْهَا - فَقَطْ، لَا يَجُوزُ غَيْرُ ذَلِكَ أَصْلًا.

L36967 They obscured by citing what was narrated to us through the chain of Ismāʿīl ibn Isḥāq: from Ibrāhīm ibn al-Ḥajjāj, from ʿAbd al-Wārith ibn Saʿīd al-Tannūrī, from Ḥusayn al-Muʿallim, from ʿAmr ibn Shuʿayb, that ʿUmar ibn al-Khaṭṭāb established the blood money upon those using gold [as currency] at one thousand dīnārs—and this chain is disconnected.

وَمَوَّهُوا بِمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا إِبْرَاهِيمُ بْنُ الْحَجَّاجِ أَنَا عَبْدُ الْوَارِثِ بْنُ سَعِيدٍ التَّنُّورِيُّ أَنَا حُسَيْنٌ الْمُعَلِّمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَعَلَ الدِّيَةَ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ - وَهَذَا مُنْقَطِعٌ.

L36968 Through the narration of Waki': Sufyan al-Thawri → Ayyub ibn Musa → Makhul, who said: "The Messenger of Allah (peace and blessings be upon him) passed away while the diyah was eight hundred dinars. 'Umar, may Allah be pleased with him, fearing for later times, set the diyah at twelve thousand and one thousand dinars." Abu Muhammad, may Allah be pleased with him, said: "We testify by the testimony of Allah, the Almighty, the Majestic, that this is a fabrication. Allah the Exalted protected 'Umar, may Allah be pleased with him, from altering the ruling the Messenger of Allah (peace and blessings be upon him) died upon while it remained firmly established. Then Abu Bakr, may Allah be pleased with him, passed away adhering to it."

وَمِنْ طَرِيقِ وَكِيعٍ أَنَا سُفْيَانُ الثَّوْرِيُّ عَنْ أَيُّوبَ بْنِ مُوسَى عَنْ مَكْحُولٍ قَالَ: تُوُفِّيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالدِّيَةُ ثَمَانُمِائَةِ دِينَارٍ، فَخَشِيَ عُمَرُ مَنْ بَعْدَهُ فَجَعَلَ الدِّيَةَ اثْنَيْ عَشَرَ أَلْفًا، وَأَلْفَ دِينَارٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: نَشْهَدُ بِشَهَادَةِ اللَّهِ عَزَّ وَجَلَّ أَنَّ هَذَا كَذِبٌ مَوْضُوعٌ، وَقَدْ أَعَاذَ اللَّهُ تَعَالَى عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - مِنْ أَنْ يُبَدِّلَ مَا مَاتَ عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ مُسْتَقِرُّ الْحُكْمِ، ثُمَّ مَاتَ أَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - عَلَيْهِ.

L36969 The height of foolishness is the statement of one who fabricated this report: "Umar feared those after him, so he set the diyah (blood money) at one thousand dinars and twelve thousand dirhams." If only I knew what he feared from those after him! How could he fear them for leaving it at eight

وَأَحْمَقُ الْحُمْقِ قَوْلُ مَنْ وَضَعَ هَذَا الْخَبَرَ " خَشِيَ عُمَرُ مَنْ بَعْدَهُ فَجَعَلَهَا أَلْفَ دِينَارٍ وَاثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ " لَيْتَ شِعْرِي مَاذَا خَشِيَ مِمَّنْ بَعْدَهُ، وَكَيْفَ خَشِيَ مَنْ بَعْدَهُ إِنْ

hundred dinars, yet not fear them when increasing it to one thousand dinars or twelve thousand? Is there greater nonsense than these words? What Allah wills occurs. The religion of Islam has indeed been undermined in every respect, but Allah refuses except to perfect His light.

تَرَكَ الدِّيَةَ ثَمَانِمِائَةِ دِينَارٍ، وَلَمْ يَخْشَ مَنْ بَعْدَهُ إِذْ بَلَغَهَا أَلْفَ دِينَارٍ أَوْ اثْنَيْ عَشَرَ أَلْفًا؟ هَلْ فِي النُّوكِ أَكْثَرُ مِنْ هَذَا الْكَلَامِ؟ مَا شَاءَ اللَّهُ كَانَ، لَقَدْ كِيدَتْ مِلَّةُ الْإِسْلَامِ مِنْ كُلِّ وَجْهٍ، وَيَأْبَى اللَّهُ إِلَّا أَنْ يُتِمَّ نُورَهُ.

L36970 By Allah, if it had been permissible for Umar to add to what the Messenger of Allah—peace and blessings of Allah be upon him—and Abu Bakr after him had already enacted, then it would undeniably be permissible for those after Umar to add to Umar's actions. Rather, adding to Umar's ruling is less severe than adding to the ruling of the Messenger of Allah—peace and blessings of Allah be upon him—and the ruling of Abu Bakr after him. We disavow before Allah Almighty this misguidance, and this is a flaw in the transmitted ruling—so reflect upon it.

وَتَاللَّهِ لَوْ جَازَ لِعُمَرَ أَنْ يَزِيدَ فِيمَا مَضَى عَلَيْهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَبُو بَكْرٍ بَعْدَهُ لَتُجُوِّزَنَّ لِمَنْ بَعْدَ عُمَرَ الزِّيَادَةَ عَلَى فِعْلِ عُمَرَ قَطْعًا، بَلْ الزِّيَادَةُ عَلَى حُكْمِ عُمَرَ أَخَفُّ مِنْ الزِّيَادَةِ عَلَى حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمِ أَبِي بَكْرٍ بَعْدَهُ - وَنَحْنُ نَبْرَأُ إلَى اللَّهِ تَعَالَى مِنْ هَذِهِ الضَّلَالَةِ، وَهَذَا عَيْبُ الْمُرْسَلِ، فَتَأَمَّلُوهُ؟ .

L36971–36973 And through the narration of Ḥammād ibn Salamah from Yaḥyā ibn Saʿīd al-Anṣārī that ʿUmar ibn al-Khaṭṭāb when He observed the differing compensation values for camels and declared: "I will most certainly decree concerning them a decree that will not be disputed after me." He then decreed upon the holders of gold one thousand dinars, and upon the holders of silver twelve thousand dirhams. Abu Muhammad—may Allah be pleased with him—said: "Yahya ibn Sa'id al-Ansari was not born except just over forty years after 'Umar's death."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ لَمَّا رَأَى أَثْمَانَ الْإِبِلِ تَخْتَلِفُ قَالَ: لَأَقْضِيَنَّ فِيهَا بِقَضَاءٍ لَا يُخْتَلَفُ فِيهِ بَعْدِي، فَقَضَى عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: لَمْ يُولَدْ يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ إلَّا بَعْدَ مَوْتِ عُمَرَ بِنَحْوِ نَيِّفٍ وَأَرْبَعِينَ عَامًا.

L36974 By Allah—there is no deity but Him—Umar never once uttered these words, nor was it fitting for his noble character—may Allah be pleased with him—to pass judgment on what would occur after him, particularly when the falsehood of this statement they ascribed to Umar has become manifest. For the disagreement concerning this matter is so evident that even one with the slightest knowledge cannot be unaware of it, and this is among the flaws of the *mursal*—so beware of it?

وَبِاَللَّهِ الَّذِي لَا إلَهَ إلَّا هُوَ مَا قَالَ عُمَرُ قَطُّ هَذَا الْكَلَامَ، وَمَا كَانَ فِي فَضْلِهِ - رَضِيَ اللَّهُ عَنْهُ - لِيَقْطَعَ عَلَى مَا يَكُونُ بَعْدَهُ، لَا سِيَّمَا وَقَدْ ظَهَرَ كَذِبُ هَذَا الْقَوْلِ الَّذِي أَضَافُوهُ إلَى عُمَرَ، فَإِنَّ الْخِلَافَ فِي ذَلِكَ لَأَظْهَرُ مِنْ أَنْ يَجْهَلَهُ مَنْ لَهُ أَقَلُّ عِلْمٍ، وَهَذَا مِنْ عُيُوبِ الْمُرْسَلِ فَاحْذَرُوهُ؟ .

L36975 They mentioned—as we have narrated through the chain of Saʿīd ibn Manṣūr: Hushaym reported to us from Yūnus ibn ʿUbayd, from al-Ḥasan, that ʿUmar ibn al-Khaṭṭāb appraised camels for diyah (compensatory payment for homicide) at twenty and one hundred dirhams per camel—this is a

وَذَكَرُوا - مَا رُوِّينَاهُ مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا يُونُسُ بْنُ عُبَيْدٍ عَنْ الْحَسَنِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَوَّمَ الْإِبِلَ فِي الدِّيَةِ عِشْرِينَ وَمِائَةَ دِرْهَمٍ كُلَّ بَعِيرٍ - هَذَا مُرْسَلٌ،

mursal report (where the chain of narration is incomplete). Then, he merely cited a valuation, not a fixed or legislated amount. Other narrations differing from this have been transmitted from ʿUmar, as we shall mention later in this text, God willing.

ثُمَّ إِنَّمَا ذَكَرَ قِيمَةً لَا حَدًّا مَحْدُودًا، ثُمَّ قَدْ رُوِيَ عَنْ عُمَرَ غَيْرُ هَذَا عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L36976 They cited what was transmitted to us through the chain of Ismāʿīl ibn Isḥāq: Sulaymān ibn Ḥarb narrated to us, Ḥammād ibn Zayd narrated to us from Ibn Abī Najīḥ from his father, that a woman was killed within the sacred sanctuary (al-Ḥaram), so ʿUthmān ibn ʿAffān established her blood money as eight thousand dirhams: equivalent to one full blood money (6,000 dirhams) plus a third. Through the chain of Ḥammād ibn Salama from Muḥammad ibn Isḥāq from Abī Najīḥ, it was narrated that a woman was killed within the sacred sanctuary (al-Ḥaram), so ʿUthmān set her blood money at six thousand dirhams and allocated two thousand dirhams to the sanctuary (al-Ḥaram).

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ أَبِيهِ أَنَّ امْرَأَةً قُتِلَتْ فِي الْحَرَمِ فَجَعَلَ عُثْمَانُ بْنُ عَفَّانَ دِيَتَهَا ثَمَانِيَةَ آلَافِ دِرْهَمٍ دِيَةً وَثُلُثَ دِيَةٍ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ أَبِي نَجِيحٍ أَنَّ امْرَأَةً قُتِلَتْ فِي الْحَرَمِ فَجَعَلَ عُثْمَانُ دِيَتَهَا سِتَّةَ آلَافِ دِرْهَمٍ، وَأَلْفَيْنِ لِلْحَرَمِ.

L36977 Abu Muhammad—may Allah be pleased with him—said: Both factions oppose this ruling and nullify it. Who is more misguided and disgraced than one who obscures matters in the religion of Allah, the Almighty and Majestic, by citing as evidence something that is itself the foremost invalidator of it? We seek refuge in Allah from misguidance.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: كِلْتَا الطَّائِفَتَيْنِ مُخَالِفَةٌ لِهَذَا الْحُكْمِ مُبْطِلَةٌ لَهُ، فَمَنْ أَضَلُّ وَأَخْزَى مِمَّنْ يُمَوِّهُ فِي دِينِ اللَّهِ عَزَّ وَجَلَّ بِالِاحْتِجَاجِ بِشَيْءٍ هُوَ أَوَّلُ مُبْطِلٍ لَهُ - نَعُوذُ بِاَللَّهِ مِنْ الضَّلَالِ.

L36978 They fabricated the narration via the chain of Ismāʿīl ibn Isḥāq, from Sulaymān ibn Ḥarb, from Ḥammād ibn Salamah, from Ḥammād Abū al-Ḥasan, who said: Abū Sulaymān narrated to me that he witnessed ʿAlī ibn Abī Ṭālib ruling regarding the woman's incisor against her husband for three hundred dirhams. They said: "The three hundred dirhams are half of one-tenth of the woman's blood money." Abū Muḥammad—may Allāh be pleased with him—said: "Abū Sulaymān is unknown; no one knows his identity." It was also narrated via the chain of al-Ḥārith al-Aʿwar from ʿAlī—and al-Ḥārith is a liar.

وَمَوَّهُوا - بِمَا رُوِّينَا مِنْ طَرِيقِ إِسْمَاعِيلَ بْنِ إِسْحَاقَ أَنَا سُلَيْمَانُ بْنُ حَرْبٍ أَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَمَّادٍ أَبِي الْحَسَنِ حَدَّثَنِي أَبُو سُلَيْمَانَ أَنَّهُ شَهِدَ عَلِيَّ بْنَ أَبِي طَالِبٍ قَضَى فِي ثَنِيَّةِ امْرَأَةٍ عَلَى زَوْجِهَا بِثَلَاثِمِائَةِ دِرْهَمٍ قَالُوا: وَالثَّلَاثِمِائَةِ نِصْفُ عُشْرِ دِيَةِ الْمَرْأَةِ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: أَبُو سُلَيْمَانَ مَجْهُولٌ لَا يَدْرِي أَحَدٌ مَنْ هُوَ - وَقَدْ رُوِيَ أَيْضًا مِنْ طَرِيقِ الْحَارِثِ الْأَعْوَرِ عَنْ عَلِيٍّ - وَالْحَارِثُ كَذَّابٌ.

L36979–36980 From the chain of Hammad ibn Salamah, from Muhammad ibn Ishaq, from al-Zuhri: A man in Kufah was killed unintentionally. The family of the killer said, "Take the camels from us," while camels at that time were inexpensive, priced at twenty or thirty [dirhams] each. Al-Mughirah ibn Shuʿbah wrote to Muʿawiyah regarding this matter. Muʿawiyah responded, "How should I im-

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ الزُّهْرِيِّ أَنَّ رَجُلًا بِالْكُوفَةِ قُتِلَ خَطَأً فَقَالَ أَهْلُ الْقَاتِلِ: خُذُوا مِنَّا الْإِبِلَ؟ وَكَانَتْ الْإِبِلُ يَوْمَئِذٍ رِخَاصًا بِعِشْرِينَ وَثَلَاثِينَ، فَكَتَبَ الْمُغِيرَةُ بْنُ شُعْبَةَ فِي ذَلِكَ إلَى مُعَاوِيَةَ؟ فَكَتَبَ إلَيْهِ مُعَاوِيَةُ: وَكَيْفَ أَصْنَعُ بِقَضَاءِ

plement ‘Umar’s ruling in this case?” He then ruled that they must pay twelve thousand as blood money. Abu Muhammad (may Allah be pleased with him) said: This is a mursal narration through the chain of Ibn al-Jahm: From ‘Abdullah ibn Ahmad ibn Hanbal, from his father, from Isma‘il ibn ‘Ulayyah, from Khalid—the Cobbler—from ‘Ikrimah, who said: Abu Hurayrah said, “I glorify Allah twelve thousand times daily, equivalent in value to my blood money.” Abu Muhammad said: This provides no evidence for their position, for Abu Hurayrah did not state that blood money is twelve thousand dirhams. He only said regarding twelve thousand glorifications, “equivalent in value to my blood money,” as he hoped it would serve as his ransom from the Fire—just as blood money is a ransom from killing. No one doubts that glorification is not blood money.

L36981 Moreover, there is no proof from anyone other than the Messenger of Allah (peace and blessings be upon him).

L36982 From the narration of Ḥammād ibn Salamah, from Muḥammad ibn Isḥāq, from ʿAbd al-Raḥmān ibn Abī Zayd, from Nāfiʿ ibn Jubayr, who said: “A man was killed in the Sacred City during a sacred month?” Ibn ʿAbbās said: “His blood money is twelve thousand dirhams—four thousand dirhams for the sacred month, four thousand dirhams for the Sacred City, and four thousand dirhams [as the base amount].” Abū Muḥammad (may Allah be pleased with him) said: “The Ḥanafīs and Mālikīs oppose this ruling and defy it, thus invalidating any claim of connection to the Companions (may Allah be pleased with them).” The Ḥanafīs, however, countered them, saying: “You have narrated through Wakīʿ, from Ibn Abī Laylā, from al-Shaʿbī, from ʿUbaydah al-Salmānī, who said: ’Umar ibn al-Khaṭṭāb established blood money rates, imposing one thousand dinars on those dealing in gold and ten thousand dirhams on those dealing in silver.”’ Abū Muḥammad (may Allah be pleased with him) said: “Ibn Abī Laylā is weak in memory; their report is invalid like that of the Mālikīs. The report narrated by the Mālikīs holds no greater validity than this ḥadīth. These invalid reports, due to their contradictions, must be discarded.”

عُمَرَ فِي ذَلِكَ؟ فَقَضَى عَلَيْهِمْ بِاثْنَيْ عَشَرَ أَلْفًا. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا مُرْسَلٌ مِنْ طَرِيقِ ابْنِ الْجَهْمِ أَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ أَنَا أَبِي أَنَا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ أَنَا خَالِدٌ - هُوَ الْحَذَّاءُ - عَنْ عِكْرِمَةَ قَالَ: قَالَ أَبُو هُرَيْرَةَ: إِنِّي لَأُسَبِّحُ كُلَّ يَوْمٍ ثِنْتَيْ عَشْرَةَ أَلْفَ تَسْبِيحَةٍ قَدْرَ دِيَتِي. قَالَ أَبُو مُحَمَّدٍ: هَذَا لَا حُجَّةَ لَهُمْ فِيهِ؛ لِأَنَّ أَبَا هُرَيْرَةَ لَمْ يَقُلْ إِنَّ الدِّيَةَ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ إِنَّمَا قَالَ فِي اثْنَتَيْ عَشْرَةَ أَلْفَ تَسْبِيحَةٍ قَدْرُ دِيَتِي إِذْ أَنَّهَا يَرْجُو أَنْ تَكُونَ فِدَاءَهُ مِنْ النَّارِ - كَمَا أَنَّ الدِّيَةَ فِدَاءٌ مِنْ الْقَتْلِ، وَلَا يَشُكُّ أَحَدٌ فِي أَنَّ التَّسْبِيحَ لَيْسَ دِيَةً.

ثُمَّ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي زَيْدٍ عَنْ نَافِعِ بْنِ جُبَيْرٍ قَالَ: قُتِلَ رَجُلٌ فِي الْبَلَدِ الْحَرَامِ فِي شَهْرٍ حَرَامٍ؟ فَقَالَ ابْنُ عَبَّاسٍ: دِيَتُهُ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ، وَلِلشَّهْرِ الْحَرَامِ أَرْبَعَةُ آلَافٍ، وَلِلْبَلَدِ الْحَرَامِ أَرْبَعَةُ آلَافٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ مُخَالِفُونَ لِهَذَا الْحُكْمِ عَاصُونَ لَهُ - فَسَقَطَ أَنْ يَكُونَ لَهُمْ تَعَلُّقٌ بِأَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَعَارَضَهُمْ الْحَنَفِيُّونَ فَقَالُوا: قَدْ رَوَيْتُمْ مِنْ طَرِيقِ وَكِيعٍ عَنْ ابْنِ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: وَضَعَ عُمَرُ بْنُ الْخَطَّابِ الدِّيَاتِ فَوَضَعَ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ عَشَرَةَ آلَافِ دِرْهَمٍ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: ابْنُ أَبِي لَيْلَى سَيِّئُ الْحِفْظِ، فَخَبَرُهُمْ سَاقِطٌ كَخَبَرِ الْمَالِكِيِّينَ، وَلَيْسَ الَّذِي رَوَاهُ الْمَالِكِيُّونَ بِأَوْلَى مِنْ هَذَا الْحَدِيثِ، فَتَدَافَعَتْ هَذِهِ الْأَخْبَارُ السَّاقِطَةُ مَعَ تَنَاقُضِهَا فَوَجَبَ إِطْرَاحُهَا.

L36983–36984 The Ḥanafīs said: “Has our consensus on ten thousand dirhams been authenticated?” We responded: “You have lied and fabricated—We have been narrated through Ḥammād ibn Salama’s chain from al-Ḥajjāj ibn Arṭā’a from Makhūl that ʿUmar ibn al-Khaṭṭāb set the blood-money at eight thousand dirhams. If you say: ‘This chain is disconnected, and al-Ḥajjāj is weak?’ We reply: ‘Ibn Abī Laylā and all other narrations reported from ʿUmar on this matter are either disconnected or weak—as we clarified earlier—and there is no distinction.’”

وَقَالَ الْحَنَفِيُّونَ: قَدْ صَحَّ إِجْمَاعُنَا عَلَى عَشَرَةِ آلَافِ دِرْهَمٍ؟ فَقُلْنَا: كَذَبْتُمْ وَأَفَكْتُمْ - قَدْ رُوِّينَا مِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مَكْحُولٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَعَلَ الدِّيَةَ ثَمَانِيَةَ آلَافِ دِرْهَمٍ، فَإِنْ قُلْتُمْ: هَذَا مُنْقَطِعٌ، وَعَنْ الْحَجَّاجِ - وَهُوَ ضَعِيفٌ؟ قُلْنَا: وَابْنُ أَبِي لَيْلَى وَسَائِرُ مَا رُوِيَ فِي ذَلِكَ عَنْ عُمَرَ مُنْقَطِعٌ، أَوْ ضَعِيفٌ - كَمَا بَيَّنَّا قَبْلُ وَلَا فَرْقَ -.

L36985 They also said: It has been established that the dinar (gold currency) in zakāh equates to ten dirhams, so must this apply similarly in diyah (blood money)? Abū Muḥammad—may Allāh be pleased with him—said: We replied: You have lied and fabricated, for Ibn Abī Laylā, Sharīk ibn ʿAbd Allāh, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, and others do not recognize combining silver with gold in zakāh whatsoever. They unanimously hold that whoever possesses twenty mithqāls of gold excluding the minimum taxable amount, and two hundred dirhams of silver excluding the minimum taxable amount—with all of this remaining in their possession for a complete year—owes no zakāh on any portion of it.

وَقَالُوا أَيْضًا: قَدْ صَحَّ أَنَّ الدِّينَارَ فِي الزَّكَاةِ بِعَشَرَةِ دَرَاهِمَ فَوَجَبَ أَنْ يَكُونَ فِي الدِّيَةِ كَذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: قُلْنَا: كَذَبْتُمْ وَأَفَكْتُمْ؛ لِأَنَّ ابْنَ أَبِي لَيْلَى وَشَرِيكَ بْنَ عَبْدِ اللَّهِ، وَالْحَسَنَ بْنَ حَيٍّ، وَالشَّافِعِيَّ، وَغَيْرَهُمْ، لَا يَرَوْنَ جَمْعَ الْفِضَّةِ إلَى الذَّهَبِ فِي الزَّكَاةِ أَصْلًا، وَلَا يَخْتَلِفُونَ فِي أَنَّ مَنْ كَانَ مَعَهُ عِشْرُونَ مِثْقَالًا مِنْ ذَهَبٍ غَيْرَ حَبَّةٍ، وَمِائَتَا دِرْهَمٍ فِضَّةٍ غَيْرَ حَبَّةٍ، وَأَقَامَ كُلُّ ذَلِكَ عِنْدَهُ حَوْلًا كَامِلًا فَلَا زَكَاةَ عَلَيْهِ فِي شَيْءٍ مِنْ ذَلِكَ.

L36986 Abu Hanifah—whom you imitate in your religious practice—holds that combining gold and silver for zakāt is only valid if based on their monetary value, no matter how great, even if it entails exchanging a dirham in exchange for a dinar or a thousand dirhams in exchange for a dinar.

ثُمَّ أَبُو حَنِيفَةَ - الَّذِي قَلَّدْتُمُوهُ دِينَكُمْ - لَا يَرَى جَمْعَ الذَّهَبِ إلَى الْفِضَّةِ فِي الزَّكَاةِ إلَّا بِالْقِيمَةِ - بَالِغَةً مَا بَلَغَتْ - وَلَوْ أَنَّهَا دِرْهَمٌ بِدِينَارٍ، أَوْ أَلْفُ دِرْهَمٍ بِدِينَارٍ.

L36987 Aṭā’, al-Zuhrī, Sulaymān ibn Ḥarb, and others hold that gold is subject to zakat based on its value in silver—whatever that value may amount to.

وَعَطَاءٌ، وَالزُّهْرِيُّ، وَسُلَيْمَانُ بْنُ حَرْبٍ، وَغَيْرُهُمْ: يُزَكُّونَ الذَّهَبَ بِقِيمَةٍ مِنْ الْفِضَّةِ - بَالِغَةً مَا بَلَغَتْ -.

L36988 Thus their audacity in lying became manifest; we seek refuge in Allah from the evil inherent in their position.

فَظَهَرَتْ جُرْأَتُهُمْ عَلَى الْكَذِبِ، نَعُوذُ بِاَللَّهِ مِنْ سُوءِ مَقَامِهِمْ.

L36989 As for the Mālikīs—they contradicted themselves here in the most repugnant manner without proof, having arbitrarily fixed the dinar for blood money, the dinar for amputation in theft, and the dinar for bridal gift according to their opinion at twelve dirhams—while setting the dinar for zakāh at ten

dirhams. This is blatant manipulation and legislation in matters of religion for which Allah the Exalted granted no authority.

وَأَمَّا الْمَالِكِيُّونَ - فَتَنَاقَضُوا هَاهُنَا أَقْبَحَ تَنَاقُضٍ بِلَا بُرْهَانٍ، إِذْ قَدَّرُوا دِينَارَ الدِّيَةِ، وَدِينَارَ الْقَطْعِ فِي السَّرِقَةِ، وَدِينَارَ الصَّدَاقِ - بِرَأْيِهِمْ - بِاثْنَيْ عَشَرَ دِرْهَمًا - وَقَدَّرُوا دِينَارَ الزَّكَاةِ بِعَشَرَةِ دَرَاهِمَ؟ وَهَذَا تَلَاعُبٌ لَا خَفَاءَ بِهِ، وَشَرْعٌ فِي الدِّينِ لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى.

L36990 We countered an objection by the Ḥanafīs and Mālikīs, who argued: "If dinars and dirhams were substitutes for camels, this would constitute debt for debt, since 'Umar decreed their payment within three years." We replied: "Yet 'Umar ruled the diyah immediately payable in the Mudliji tribe's case (which is more reliably attributed to him than his stipulation of a three-year period for it). So why should one narration from him that is unsound take precedence over another?"

وَاسْتَدْرَكْنَا اعْتِرَاضًا لِلْحَنَفِيَّيْنِ، وَالْمَالِكِيِّينَ، وَهُوَ أَنَّهُمْ قَالُوا: لَوْ كَانَتْ الدَّنَانِيرُ وَالدَّرَاهِمُ أَبْدَالًا مِنْ الْإِبِلِ لَكَانَتْ دَيْنًا بِدَيْنٍ، لِأَنَّ عُمَرَ قَضَى بِهَا فِي ثَلَاثِ سِنِينَ؟ قُلْنَا: وَعُمَرُ قَضَى بِالدِّيَةِ حَالَّةً فِي قِصَّةِ الْمُدْلِجِيِّ الَّتِي هِيَ أَصَحُّ عَنْهُ مِنْ تَوْقِيتِهِ فِيهَا ثَلَاثَ سِنِينَ - فَمَا الَّذِي جَعَلَ رِوَايَةً لَا تَصِحُّ أَوْلَى مِنْ رِوَايَةٍ عَنْهُ أُخْرَى؟

L36991–36992 It is astonishing that they adhere to what was narrated from him regarding substituting the *ghurrah* with fifty dinars or five hundred dirhams, yet they do not consider it a case of debt-for-debt.

وَالْعَجَبُ أَنَّهُمْ يَأْخُذُونَ بِمَا رُوِيَ عَنْهُ مِنْ إبْدَالِ خَمْسِينَ دِينَارًا أَوْ خَمْسِمِائَةِ دِرْهَمٍ مِنْ الْغُرَّةِ، وَلَمْ يَرَوْهُ دَيْنًا بِدَيْنٍ.

L36993 The Hanafis state regarding one who marries stipulating a house and a servant: she is entitled to fifty dinars in place of the house or forty dinars in place of the servant, and they did not regard this as a debt-for-debt exchange. We do not know of any text that prohibits debt-for-debt arrangements in principle; we only know of the established text prohibiting the sale of what has not been delivered.

وَيَقُولُ الْحَنَفِيُّونَ فِيمَنْ تَزَوَّجَ عَلَى بَيْتٍ وَخَادِمٍ: أَنَّ لَهَا فِي الْبَيْتِ خَمْسِينَ دِينَارًا، أَوْ فِي الْخَادِمِ أَرْبَعِينَ دِينَارًا، وَلَمْ يَرَوْهُ دَيْنًا بِدَيْنٍ - وَمَا نَدْرِي نَصًّا مَنَعَ دَيْنًا بِدَيْنٍ أَصْلًا، إنَّمَا نَدْرِي النَّصَّ الثَّابِتَ الْمَانِعَ مِنْ بَيْعِ مَا لَمْ يُقْبَضْ؟ .

L36994 Abu Muhammad said: Then we say to the two factions: If the absurd narrations you have embellished as evidence are deemed valid in your view, then you have exposed yourselves to the gravest humiliation in this matter, for some of these—and other narrations—contain rulings that contradict what you rejected, while other jurists from Medina and Kufa have upheld them, as we previously mentioned—Sa'id ibn al-Musayyib, 'Urwah ibn al-Zubayr, al-Zuhri, al-Sha'bi, Abu Yusuf, and Muhammad ibn al-Hasan—those who asserted that diyah may be paid in cattle, sheep, or robes, as we cited earlier.

قَالَ أَبُو مُحَمَّد: ثُمَّ نَقُولُ لِلطَّائِفَتَيْنِ: إنْ كَانَتْ الْآثَارُ السَّخِيفَةُ الَّتِي مَوَّهْتُمْ بِهَا حُجَّةً عِنْدَكُمْ فَإِنَّكُمْ قَدْ افْتَضَحْتُمْ فِي ذَلِكَ أَقْبَحَ فَضِيحَةٍ، لِأَنَّ بَعْضَهَا وَغَيْرَهَا قَدْ جَاءَتْ بِمَا خَالَفْتُمُوهُ، وَأَخَذَ بِهِ غَيْرُكُمْ مِنْ فُقَهَاءِ الْمَدِينَةِ وَالْكُوفَةِ، كَمَا ذَكَرْنَا - كَسَعِيدِ بْنِ الْمُسَيِّبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ، وَالزُّهْرِيِّ، وَالشَّعْبِيِّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، الْقَائِلِينَ: بِأَنَّ الدِّيَةَ تَكُونُ مِنْ الْبَقَرِ، وَالْغَنَمِ، وَالْحُلَلِ، كَمَا أَوْرَدْنَا قَبْلُ.

L36995 Among what has been narrated to us through the path of Sa'īd ibn Manṣūr:

فَمِنْ ذَلِكَ - مَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ أَنَا هُشَيْمٌ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ: سَمِعْتُ عَطَاءَ بْنَ أَبِي رَبَاحٍ يُحَدِّثُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَضَ الدِّيَةَ فِي أَمْوَالِ الْمُسْلِمِينَ مَا كَانَتْ، فَجَعَلَهَا فِي الْإِبِلِ مِائَةَ بَعِيرٍ، وَفِي الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَفِي الْغَنَمِ أَلْفَيْ شَاةٍ، وَعَلَى أَهْلِ الذَّهَبِ الذَّهَبَ، وَعَلَى أَهْلِ الْوَرِقِ الْوَرِقَ - وَجَعَلَ فِي الطَّعَامِ شَيْئًا لَمْ يَحْفَظْهُ» .

I [Hushaym] narrated, I [Muḥammad ibn Isḥāq] heard ʻAṭāʾ ibn Abī Rabāḥ relate: "The Messenger of Allah—peace and blessings of Allah be upon him—imposed the blood-money upon the wealth of the Muslims according to their means. He established it as one hundred camels in camels, two hundred cows in cattle, two thousand sheep in sheep, gold for the people of gold, and silver for the people of silver. He also set something for grains, but he [the narrator] did not memorize it."

وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالدِّيَةِ عَلَى أَهْلِ الْإِبِلِ مِائَةَ بَعِيرٍ، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ.» وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ كَانَ عَقْلُهُ مِنْ الشَّاءِ فَأَلْفَا شَاةٍ» .

L36996 Through the chain of Ḥammād ibn Salamah, from Muḥammad ibn Isḥāq, from ʻAṭāʾ ibn Abī Rabāḥ: "The Messenger of Allāh (peace be upon him) ruled that the blood money for camel owners is one hundred camels, for those possessing garment sets two hundred sets, for cattle owners two hundred cows, and for sheep owners two thousand sheep." Through the chain of ʻAbd al-Razzāq, from Ibn Jurayj, who said: The Messenger of Allāh (peace be upon him) declared: "Whoever's blood debt is assessed in sheep must pay two thousand sheep."

فَهَذِهِ مَرَاسِيلُ أَحْسَنُ مِمَّا ذَكَرْتُمْ، أَوْ مِثْلِهِ.

L36997 Thus, these *mursal narrations* are of superior quality to what you have mentioned, or comparable to it.

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ: قَرَأْت عَلَى سَعِيدِ بْنِ يَعْقُوبَ الطَّالَقَانِيِّ: حَدَّثَكُمْ أَبُو تُمَيْلَةَ يَحْيَى بْنُ وَاضِحٍ أَنَا مُحَمَّدُ بْنُ إِسْحَاقَ أَنَا عَطَاءٌ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدِّيَةَ عَلَى أَهْلِ الْإِبِلِ مِائَةَ بَعِيرٍ، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ، وَعَلَى أَهْلِ الطَّعَامِ شَيْئًا لَا أَحْفَظُهُ» .

L36998 And from the chain of Abū Dāwūd al-Sijistānī: I recited to Saʿīd ibn Yaʿqūb al-Ṭālaqānī - he said: Abū Tumaylah Yaḥyā ibn Wāḍiḥ narrated to you all: Muḥammad ibn Isḥāq said: ʻAṭāʾ narrated to us from Jābir ibn ʻAbd Allāh: "The Messenger of Allah - may Allah bless him and grant him peace - ordained the blood-money upon camel owners as one hundred camels, upon owners of fine garments as two hundred garments, upon cow owners as two hundred cows, upon owners of small livestock (sheep and goats) as two thousand sheep, and upon those liable in food as an amount I do not retain in memory."

قَالَ أَبُو مُحَمَّد - رَضِيَ اللَّهُ عَنْهُ -: لَمْ يُسْنِدْهُ إلَّا أَبُو تُمَيْلَةَ يَحْيَى بْنُ وَاضِحٍ، وَلَيْسَ بِالْقَوِيِّ - وَلَوْ صَحَّ لَقُلْنَا بِهِ.

L36999–37000 Abū Muḥammad—may Allāh be pleased with him—said: No one narrated it with an isnad except Abū Tumaylah Yaḥyā ibn Wāḍiḥ, and he is not strong in reliability—had it been sound, we would have acted upon it.

L37001 From the path of Abu Dawud: I am a trustworthy companion of ours, I am Shayban, I am Muhammad ibn Rashid, I am Sulayman—son of Musa—from ʻAmr ibn Shuʻayb, from his father, from his grandfather, who said: "The Messenger of Allah—peace and blessings be upon him—ruled that those liable to pay blood money in cattle owe two hundred cows, and those whose blood money is assessed in sheep owe two thousand sheep. For the *ma'mumah* wound, one-third of the full blood money: thirty-three and one-third camels (33 1/3), or their equivalent value in gold, silver, cattle, or sheep. The *jā'ifah* wound is likewise assessed."

وَمِنْ طَرِيقِ أَبِي دَاوُد أَنَا صَاحِبٌ لَنَا ثِقَةٌ أَنَا شَيْبَانُ أَنَا مُحَمَّدُ بْنُ رَاشِد أَنَا سُلَيْمَانُ - هُوَ ابْنُ مُوسَى - عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَمَنْ كَانَ عَقْلُهُ فِي الشَّاءِ فَأَلْفَا شَاةٍ، وَفِي الْمَأْمُومَةِ ثُلُثُ الْعَقْلِ ثَلَاثَةٌ وَثَلَاثُونَ مِنَ الْإِبِلِ وَثُلُثٌ، أَوْ قِيمَتُهَا مِنَ الذَّهَبِ، أَوْ الْوَرِقِ، أَوْ الْبَقَرِ، أَوْ الشَّاءِ، وَالْجَائِفَةُ مِثْلُ ذَلِكَ» .

L37002 From the narration of Abū Dāwūd al-Sijistānī: From Yaḥyā ibn Ḥakīm, from ʿAbd al-Raḥmān ibn ʿUthmān, from al-Ḥusayn the Teacher, from ʿAmr ibn Shuʿayb, from his father, from his grandfather, who said: "The value of blood money during the time of the Messenger of Allāh—peace and blessings be upon him—was eight hundred dinars, eight thousand dirhams—the blood money of the People of the Book at that time being half of the blood money of Muslims—and it remained so until ʿUmar ibn al-Khaṭṭāb—may Allāh be pleased with him—assumed the caliphate. He stood to deliver a sermon and said: 'Behold, camels have become expensive.' ʿUmar then fixed the blood money for the people of gold at one thousand dinars, for the people of silver at twelve thousand dirhams, for the people of cattle at two hundred cows, for the people of goats at two thousand goats, and for the people of garments at two hundred sets of garments. He left the blood money of protected non-Muslims unchanged, not increasing it as he did for the people liable to pay blood money."

وَمِنْ طَرِيقِ أَبِي دَاوُد السِّجِسْتَانِيِّ أَنَا يَحْيَى بْنُ حَكِيمٍ أَنَا عَبْدِ الرَّحْمَنِ بْنِ عُثْمَانَ أَنَا الْحُسَيْنُ الْمُعَلِّمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ «: كَانَتْ قِيمَةُ الدِّيَةِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَمَانِمَائَةِ دِينَارٍ ثَمَانِيَةَ آلَافِ دِرْهَمٍ - وَدِيَةُ أَهْلِ الْكِتَابِ يَوْمَئِذٍ عَلَى النِّصْفِ مِنْ دِيَةِ الْمُسْلِمِ - وَكَانَتْ كَذَلِكَ حَتَّى اسْتُخْلِفَ عُمَرُ بْنُ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - فَقَامَ خَطِيبًا فَقَالَ: أَلَا إِنَّ الْإِبِلَ قَدْ غَلَتْ فَفَرَضَهَا عُمَرُ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ - وَتَرَكَ دِيَةَ أَهْلِ الذِّمَّةِ لَمْ يَرْفَعْهَا فِيمَا رَفَعَ مِنْ أَهْلِ الدِّيَةِ.» قَالُوا: فَهَذِهِ أَحَادِيثُ أَحْسَنُ مِنَ الَّتِي مَوَّهُوا بِهَا فِي أَنَّ الدِّيَةَ تَكُونُ مِنَ الذَّهَبِ وَالْفِضَّةِ، فَمَا الَّذِي مَنَعَهُمْ مِنْ أَنْ يَأْخُذُوا بِهَا، وَهُمْ يَأْخُذُونَ بِرِوَايَةِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ إِذَا وَافَقَتْ أَهْوَاءَهُمْ فِي تَقْلِيدِ مَالِكٍ، وَأَبِي حَنِيفَةَ، كَاحْتِجَاجِهِمْ بِهَا فِي أَنَّ الْمَرْأَةَ أَوْلَى بِحَضَانَةِ وَلَدِهَا مَا لَمْ تُنْكَحْ، وَالْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ دِرْهَمٌ، وَفِي الْمُوضِحَةِ خَمْسٌ، وَغَيْرِ ذَلِكَ - فَأَيُّ دِينٍ يَبْقَى مَعَ هَذَا؟ وَنَسْأَلُ اللَّهَ تَعَالَى التَّوْفِيقَ وَالْعَافِيَةَ.

They said: These narrations are superior to those they deceptively cited to assert that blood money must be paid in gold and silver. What prevented them from adopting these, when they do accept the narrations of ʿAmr ibn Shuʿayb from his father from his grandfather whenever it aligns with their uncritical adherence to Mālik and Abū Ḥanīfah? Such as their reliance on these narrations to argue that a woman retains priority in custody of her child unless she remarries, that a slave under manumission contract remains enslaved until the last dirham is paid, that five camels are due for a skull

fracture exposing the bone, and similar rulings. What religion remains with this? We ask Allāh the Exalted for success and well-being.

L37003 From the narration of Abd al-Razzaq, from Ma'mar, from al-Zuhri, he said: "The blood-money during the era of Allah's Messenger - peace be upon him - was one hundred camels, with one camel equivalent to each uqiyyah (of silver), totaling four thousand. When Umar assumed authority, silver became cheaper and camels became more expensive. Umar established the rate as one and a half uqiyyahs. Then camels became cheaper and silver became more expensive, so Umar set it at two uqiyyahs, totaling eight thousand. The value of camels continued to decrease and increase until Umar fixed the blood-money at twelve thousand dirhams or one thousand dinars. For cattle, the blood-money was two hundred cows, and for sheep, one thousand sheep." From the narration of Abd al-Razzaq, from Ma'mar, from a man, from Ikrimah: Abu Bakr al-Siddiq ruled that two cows should substitute each camel - meaning in blood-money payments.

L37004–37005 From the narration of ʻAbd al-Razzāq, from Ibn Jurayj, from ʻAmr ibn Shuʻayb, who said: Abū Bakr al-Ṣiddīq said, "Whose blood money is assessed in sheep, every camel shall be equivalent to ten sheep." From the narration of Ḥammād ibn Salamah, from al-Ḥajjāj ibn Arṭāh, from Makhūl: ʻUmar ibn al-Khaṭṭāb set the blood money at eight thousand dirhams, upon the people of cattle two hundred cows, upon the people of sheep two thousand sheep, and upon the people of garments two hundred garments. From the narration of Wakīʻ: From Muḥammad ibn ʻAbd al-Raḥmān ibn Abī Laylā, from al-Shaʻbī, from ʻUbaydah al-Salmānī, who said: ʻUmar ibn al-Khaṭṭāb established the blood money rates. He set upon the people of gold one thousand dīnārs, upon the people of silver ten thousand dirhams, upon the people of camels one hundred camels, upon the people of cattle two hundred cows—two-year-old and fully mature—upon the people of sheep one thousand sheep, and upon the people of garments two hundred garments. This is the Ḥanafīs' sole narration, beyond which they have none. Do they not feel shame for this disgrace? Sufficient for us is Allah, and He is the most excellent Trustee.

L37006–37008 From the narration of Abd al-Razzaq via Ibn Jurayj, who informed me that Abdul Aziz ibn Umar ibn Abdul Aziz said: In his father's writings: Umar

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ «: كَانَتْ الدِّيَةُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِائَةَ بَعِيرٍ بِكُلِّ أُوقِيَّةٍ بَعِيرٌ: فَذَلِكَ أَرْبَعَةُ آلَافٍ، فَلَمَّا كَانَ عُمَرُ رَخُصَتْ الْوَرِقُ وَغَلَتْ الْإِبِلُ: فَجَعَلَهَا عُمَرُ أُوقِيَّةً وَنِصْفًا - ثُمَّ غَلَتْ الْإِبِلُ وَرَخُصَتْ الْوَرِقُ، فَجَعَلَهَا عُمَرُ أُوقِيَّتَيْنِ: فَذَلِكَ ثَمَانِيَةُ آلَافٍ، ثُمَّ لَمْ تَزَلْ الْإِبِلُ تَرْخُصُ وَتَغْلُو حَتَّى جَعَلَهَا عُمَرُ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ، أَوْ أَلْفَ دِينَارٍ - وَمِنْ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَمِنْ الشَّاءِ أَلْفَ شَاةٍ.» وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ قَضَى أَبُو بَكْرٍ الصِّدِّيقُ مَكَانَ كُلِّ بَعِيرٍ بَقَرَتَيْنِ - يَعْنِي فِي الدِّيَةِ -.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَالَ أَبُو بَكْرٍ الصِّدِّيقُ مَنْ كَانَ عَقْلُهُ فِي الشَّاءِ فَكُلُّ بَعِيرٍ بِعَشْرِ شِيَاهٍ. وَمِنْ طَرِيقِ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مَكْحُولٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَعَلَ الدِّيَةَ ثَمَانِيَةَ آلَافٍ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ. وَمِنْ طَرِيقِ وَكِيعٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى عَنْ الشَّعْبِيِّ عَنْ عَبِيدَةَ السَّلْمَانِيِّ قَالَ: وَضَعَ عُمَرُ بْنُ الْخَطَّابِ الدِّيَاتِ فَوَضَعَ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ عَشَرَةَ آلَافِ دِرْهَمٍ، وَعَلَى أَهْلِ الْإِبِلِ مِائَةً مِنْ الْإِبِلِ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ ثَنِيَّةٍ وَمُسِنَّةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَ شَاةٍ، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْ حُلَّةٍ - فَهَذَا هُوَ حَدِيثُ الْحَنَفِيِّينَ الَّذِي لَا حَدِيثَ لَهُمْ غَيْرُهُ، أَفَلَا يَسْتَحْيُونَ مِنْ الْعَارِ - حَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

ibn al-Khattab consulted the early authorities when he conscripted troops, decreeing: “Upon gold owners: one thousand dinars; upon silver owners: twelve thousand dirhams; upon camel owners: one hundred camels; upon cattle owners: two hundred cows; upon sheep owners: two thousand sheep; and upon those dealing in Yemeni woven fabric: two hundred garments valued at five dinars each, or the equivalent value in non-garment commodities.” Uthman ibn Affan later ruled to increase the blood-money to four thousand dirhams.

Through another chain via Abd al-Razzaq from Ibn Jurayj, who said: Amr ibn Shu’ayb reported: “Allah’s Messenger—peace and blessings be upon him—assessed camel-based blood-money for rural dwellers at four hundred dinars or their silver equivalent, according to current camel prices. When prices rose, he raised the valuation, and when prices fell, he lowered the valuation for rural dwellers proportionally to eight hundred dirhams.” Umar ibn al-Khattab ruled blood-money for silver owners as twelve thousand dirhams, stating: “I observe how blood-money fluctuates with time—sometimes decreasing with camel values and sometimes increasing. As wealth grows abundant, I fear future rulers may mishandle rulings: if a Muslim is wronged, his blood-money might be neglected.” It is unjust to raise his blood money without right, thereby imposing it upon Muslim communities and devastating them. There is no increase in the severity of blood money imposed on the villagers, nor during the sacred month, nor in matters of sanctity. No additional severity is imposed on the villagers in this regard; it must not exceed twelve thousand dirhams. The blood money for Bedouins falls upon camel owners as one hundred camels of specified ages, as decreed by the Messenger of Allah—peace and blessings be upon him—upon cattle owners as two hundred cattle, and upon sheep owners as two thousand sheep. I have not imposed on the villagers except that their blood money be paid in gold and silver, which is levied upon them.

L37009 If the Messenger of Allah—peace and blessings be upon him—had imposed a fixed blood money amount upon the people of the villages in gold and silver,

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: فِي كِتَابِ أَبِيهِ: إِنَّ عُمَرَ بْنَ الْخَطَّابِ شَاوَرَ السَّلَفَ حِينَ جَنَّدَ الْأَجْنَادَ، فَكَتَبَ: إِنَّ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ، وَعَلَى أَهْلِ الْإِبِلِ مِائَةً مِنْ الْإِبِلِ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْ بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْ شَاةٍ، وَعَلَى أَهْلِ الْبَزِّ مِنْ الْبَزِّ مِنْ نَسْجِ الْيَمَنِ بِقِيمَةِ خَمْسَةِ خَمْسَةٍ - يَعْنِي دَنَانِيرَ - مِائَتَيْ حُلَّةٍ، أَوْ قِيمَةَ ذَلِكَ مِمَّا سِوَى الْحُلَلِ. وَقَضَى عُثْمَانُ بْنُ عَفَّانَ فِي تَغْلِيظِ الدِّيَةِ بِأَرْبَعَةِ آلَافِ دِرْهَمٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَمْرُو بْنُ شُعَيْبٍ: «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقَيِّمُ الْإِبِلَ عَلَى أَهْلِ الْقُرَى أَرْبَعَمِائَةِ دِينَارٍ، أَوْ عِدْلَهَا مِنْ الْوَرِقِ، وَبِقِيمَتِهَا عَلَى أَثْمَانِ الْإِبِلِ، فَإِذَا غَلَتْ رَفَعَ فِي ثَمَنِهَا، وَإِذَا هَانَتْ نَقَصَ مِنْ قِيمَتِهَا عَلَى أَهْلِ الْقُرَى عَلَى ثَمَانِمائَةٍ.» وَقَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الدِّيَةِ عَلَى أَهْلِ الْوَرِقِ اثْنَيْ عَشَرَ أَلْفًا، وَقَالَ: إِنِّي أَرَى الزَّمَانَ تَخْتَلِفُ فِيهِ الدِّيَةُ تَخْتَفِضُ فِيهِ مَرَّةً مِنْ قِيمَةِ الْإِبِلِ وَتَرْتَفِعُ مَرَّةً، وَإِنِّي أَرَى الْمَالَ قَدْ كَثُرَ، وَإِنِّي أَخْشَى عَلَيْكُمْ الْحُكَّامَ بَعْدِي، كَأَنْ يُصَابَ الرَّجُلُ الْمُسْلِمُ فَتَهْلِكَ دِيَتُهُ بِالْبَاطِلِ، وَأَنْ تَرْتَفِعَ دِيَتُهُ بِغَيْرِ حَقٍّ، فَتُحْمَلُ عَلَى أَقْوَامٍ مُسْلِمِينَ فَتَجْتَاحُهُمْ، وَلَيْسَ عَلَى أَهْلِ الْقُرَى زِيَادَةٌ فِي تَغْلِيظِ عَقْلٍ، وَلَا فِي الشَّهْرِ الْحَرَامِ، وَلَا فِي الْحُرْمَةِ، وَلَا عَلَى أَهْلِ الْقُرَى فِيهِ تَغْلِيظٌ، لَا يُزَادُ فِيهِ عَلَى اثْنَيْ عَشَرَ أَلْفَ دِرْهَمٍ، وَعَقْلُ أَهْلِ الْبَادِيَةِ عَلَى أَهْلِ الْإِبِلِ مِائَةٌ مِنْ الْإِبِلِ عَلَى أَسْنَانِهَا، كَمَا قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَى أَهْلِ الْبَقَرِ مِائَتَا بَقَرَةٍ، وَعَلَى أَهْلِ الشَّاءِ أَلْفَا شَاةٍ - وَلَمْ أَقْسِمْ عَلَى أَهْلِ الْقُرَى إِلَّا عَقْلَهُمْ يَكُونُ ذَهَبًا، وَوَرِقًا، فَيُقَامُ عَلَيْهِمْ.

without any increase, we would have followed the Messenger of Allah—peace and blessings be upon him—in that. However, he used to determine it according to the value of camels.

وَلَوْ كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى عَلَى أَهْلِ الْقُرَى فِي الذَّهَبِ وَالْوَرِقِ عَقْلًا مُسَمًّى لَا زِيَادَةَ فِيهِ اتَّبَعْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهِ، وَلَكِنَّهُ كَانَ يُقِيمُهُ عَلَى أَثْمَانِ الْإِبِلِ.

L37010 Abu Muhammad—may Allah be pleased with him—said: This is in my book from Humam: "Umar ruled regarding blood money upon those liable for cattle as twelve thousand dirhams"—which is undoubtedly an error—and the correct version is: "Umar ruled regarding blood money upon those liable for silver coins." Abu Muhammad—may Allah be pleased with him—said: This is the narration of the Malikis, which they distorted by selectively citing parts of it while ignoring the remainder. If those animals that died naturally and those gored to death are considered valid evidence according to them, then these strangled animals and those beaten to death are equivalent to them in every respect, and even better than them.

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَكَذَا فِي كِتَابِي عَنْ حُمَامٍ: قَضَى عُمَرُ فِي الدِّيَةِ عَلَى أَهْلِ الْبَقَرِ اثْنَيْ عَشَرَ أَلْفًا - وَهُوَ وَهْمٌ بِلَا شَكٍّ - وَإِنَّمَا هُوَ: قَضَى عُمَرُ فِي الدِّيَةِ عَلَى أَهْلِ الْوَرِقِ. قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: هَذَا حَدِيثُ الْمَالِكِيِّينَ الَّذِي مَوَّهُوا بِبَعْضِهِ وَتَرَكُوا سَائِرَهُ، فَإِنْ كَانَتْ تِلْكَ الْمَيِّتَاتُ وَالنَّطَائِحُ حُجَّةً عِنْدَهُمْ، فَهَذِهِ الْمُنْخَنِقَاتُ وَالْمَوْقُوذَاتُ مِثْلُهَا وَبِتَمَامِهَا وَأَحْسَنُ مِنْهَا.

L37011 If they obscured [the truth] there by citing invalid matters attributed to Abū Bakr, ʿUmar, and ʿUthmān, then this [conduct] is equivalent to what is ascribed to Abū Bakr, ʿUmar, and ʿUthmān in using such [arguments] as evidence while discarding these [invalid claims] - [being] misguidance and mockery of the religion, all of which contain no good. The fabrication is manifest in every one of them.

وَإِنْ مَوَّهُوا هُنَالِكَ بِمَا لَا يَصِحُّ مِمَّا ذُكِرَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، فَهَذَا مِثْلُهُ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ بِالِاحْتِجَاجِ بِذَلِكَ وَاطِّرَاحُ هَذِهِ: ضَلَالٌ وَتَلَاعُبٌ بِالدِّينِ - وَكُلُّهَا لَا خَيْرَ فِيهَا - الْوَضْعُ ظَاهِرٌ فِي جَمِيعِهَا.

L37012 They said: "Perhaps what was reported concerning the mention of cows, sheep, and textiles was based on mutual agreement between the two parties?" We replied: "Then perhaps what was reported concerning the mention of invalid gold and silver was also based on mutual agreement between the two parties, for otherwise, what difference would there be?" Thus, it is established that blood money is owed exclusively in camels—or their value if they are unavailable—only if they are found.

فَقَالُوا: لَعَلَّ مَا رُوِيَ مِنْ ذِكْرِ الْبَقَرِ، وَالشَّاءِ، وَالْحُلَلِ، إنَّمَا كَانَ عَلَى التَّرَاضِي مِنْ الْفَرِيقَيْنِ؟ قُلْنَا: فَلَعَلَّ مَا رُوِيَ مِنْ ذِكْرِ مَا لَا يَصِحُّ مِنْ الذَّهَبِ وَالْوَرِقِ إنَّمَا كَانَ عَلَى التَّرَاضِي مِنْ الْفَرِيقَيْنِ، وَإِلَّا فَمَا الْفَرْقُ؟ فَصَحَّ أَنْ لَا دِيَةَ إلَّا مِنْ الْإِبِلِ - أَوْ قِيمَتِهَا إنْ عُدِمَتْ - لَوْ وُجِدَتْ فَقَطْ.

L37013–37015 If we had wished to present a superior argument to theirs, we would have cited the hadith we previously mentioned via the transmission route of Qasim ibn Asbagh: Ahmad ibn Zuhayr reported from al-Hakam ibn Musa, who reported from Yahya ibn Hamzah, who reported from Sulayman ibn Dawud al-Jazari, from al-Zuhri, from Abu Bakr ibn Muhammad ibn Amr ibn Hazm,

وَلَوْ شِئْنَا أَنْ نَحْتَجَّ بِأَحْسَنَ مِمَّا احْتَجُّوا بِهِ لَذَكَرْنَا الْحَدِيثَ الَّذِي أَوْرَدْنَاهُ قَبْلُ مِنْ طَرِيقِ قَاسِمِ بْنِ أَصْبَغَ أَنَا أَحْمَدُ بْنُ زُهَيْرٍ أَنَا الْحَكَمُ بْنُ مُوسَى أَنَا يَحْيَى بْنُ حَمْزَةَ عَنْ سُلَيْمَانَ بْنِ

from his father. From his grandfather: “Indeed, the Messenger of Allah, peace and blessings of Allah be upon him, wrote to the people of Yemen in a letter containing inheritance laws, established practices, and blood money. He dispatched it with ʻAmr ibn Hazm, and it was read aloud in Yemen. This is a copy of it.” He mentioned therein: “And for a life: one hundred camels,” but he did not mention gold or silver. Allah forbid that we should rely on what is invalid. Success comes only from Allah, the Exalted.

دَاوُد الْجَزَرِيِّ عَنْ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ إلَى أَهْلِ الْيَمَنِ بِكِتَابٍ فِيهِ الْفَرَائِضُ وَالسُّنَنُ وَالدِّيَاتُ وَبَعَثَ بِهِ مَعَ عَمْرِو بْنِ حَزْمٍ فَقُرِئَتْ بِالْيَمَنِ وَهَذِهِ نُسْخَتُهَا، فَذَكَرَ فِيهِ: وَفِي النَّفْسِ: مِائَةٌ مِنْ الْإِبِلِ، وَلَمْ يَذْكُرْ ذَهَبًا، وَلَا وَرِقًا» وَلَكِنْ مَعَاذَ اللَّهِ أَنْ نَحْتَجَّ بِمَا لَا يَصِحُّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Diyah in Unintentional Killing

L37016–37017

[مَسْأَلَةُ الدِّيَةُ فِي قَتْلِ الْخَطَأِ]

In the name of Allah, the Most Gracious, the Most Merciful. My Lord, make easy and seal with goodness, O Generous.

L37018

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ رَبِّ يَسِّرْ وَاخْتِمْ بِخَيْرٍ يَا كَرِيمُ

Issue 2029: Abu Muhammad said: As for the blood money in accidental killing, it falls upon the agnates (al-ʿaṣabah)—meaning the liable kin group (al-ʿāqilah). There is unanimous agreement on this, except for something attributed to ʿUthmān al-Battī, who said: “I do not know what the liable kin group is.”

L37019

٢٠٢٩ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الدِّيَةُ فِي قَتْلِ الْخَطَأِ فَعَلَى الْعَصَبَةِ وَهُمْ الْعَاقِلَةُ، وَهَذَا مِمَّا لَا خِلَافَ فِيهِ، إلَّا شَيْءٌ ذُكِرَ عَنْ عُثْمَانَ الْبَتِّيِّ أَنَّهُ قَالَ: لَا أَدْرِي مَا الْعَاقِلَةُ.

Abu Muhammad said: It is possible to argue for this view on the basis of Allah the Exalted’s statement: “No soul bears [a burden] except against itself, and no bearer of burdens shall bear the burden of another” [al-Anʻam 6:164].[1]

L37020

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ يُمْكِنُ أَنْ يُحْتَجَّ لِهَذَا الْقَوْلِ بِقَوْلِ اللَّهِ تَعَالَى {ولا تكسب كل نفس إلا عليها ولا تزر وازرة وزر أخرى} [الأنعام: ١٦٤] .

Abu Muhammad said: Were it not for what has been transmitted from the Prophet—peace and blessings of Allah be upon him—this opinion would be incontestable. However, the Messenger of Allah—peace and blessings of Allah be upon him—is the one whom Allah appointed to clarify His exalted intent, as He stated: “To make clear to mankind what has been revealed to them” [16:44]. We have found through the transmission of Abdullah ibn Rabee’ from Muhammad ibn Muʻāwiyah from Ahmad ibn Shuʻayb from Qutaybah from Al-Layth ibn Saʻd from Ibn Shihāb from Ibn al-Musayyab from Abū Hurayrah—who said: “The Messenger of Allah—peace and bless-

L37021

قَالَ أَبُو مُحَمَّدٍ: لَوْلَا أُثِرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكَانَ هَذَا الْقَوْلُ الَّذِي لَا يَجُوزُ خِلَافُهُ، وَلَكِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هُوَ الَّذِي وَلَّاهُ اللَّهُ الْبَيَانَ عَنْ مُرَادِهِ تَعَالَى، فَقَالَ {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] فَوَجَدْنَا مَا نَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ ابْنِ شِهَابٍ عَنْ ابْنِ الْمُسَيَّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ أَوْ أَمَةٍ، ثُمَّ إنَّ الْمَرْأَةَ الَّتِي قَضَى عَلَيْهَا

[1] **Qur’an references (L37020):** Qur’an 6:164 (Al-An’am).

ings of Allah be upon him—ruled regarding the stillborn fetus of a woman from Banū Lihyān, imposing a ghurrah (compensation) of a male or female slave. When the woman subject to this ghurrah ruling died, the Messenger of Allah—peace and blessings of Allah be upon him—decreed that her inheritance belonged to her sons and husband, while the blood money fell upon her agnatic relatives." Thus, the Messenger of Allah—peace and blessings of Allah be upon him—ruled for the liability of blood money upon the agnates, as demonstrated here. It is therefore obligatory to adhere to this ruling—and with Allah, the Exalted, lies all success.[2][3]

بِالْغُرَّةِ تُوُفِّيَتْ، فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مِيرَاثَهَا لِبَنِيهَا وَزَوْجِهَا، وَأَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا» ، فَحَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْعَقْلِ عَلَى الْعَصَبَةِ كَمَا تَرَى فَوَجَبَ الْوُقُوفُ عِنْدَ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37022 Abū Muḥammad said: For whoever has no ʿaṣabah, then upon the public treasury according to what we shall mention in its dedicated chapter—God Almighty willing—and by Him we are strengthened.

قَالَ أَبُو مُحَمَّد: فَمَنْ لَمْ تَكُنْ لَهُ عَصَبَةٌ فَعَلَى بَيْتِ الْمَالِ عَلَى مَا نَذْكُرُهُ فِي بَابِهِ إنْ شَاءَ اللَّهُ تَعَالَى وَبِهِ نَتَأَيَّدُ.

L37023 An objection concerning the killing of the Muslim by the dhimmi.

اعْتِرَاضٌ فِي قَتْلِ الذِّمِّيِّ الْمُسْلِمَ

L37024–37026 Abu Muhammad said: If someone were to say, "You say that if a dhimmi intentionally kills a Muslim," His protection is invalidated, he reverts to being a belligerent, must be killed without exception, and his wealth is confiscated. What do you say regarding what Abdullah ibn Yusuf narrated to you? Ahmad ibn Fath narrated to us, Abdul Wahhab ibn Isa narrated to us, Ahmad ibn Muhammad narrated to us, Ahmad ibn Ali narrated to us, Muslim ibn Al-Hajjaj narrated to us, Ishaq ibn Mansur narrated to us: From Bishr ibn Umar, who said: I heard Malik ibn Anas say: Abu Layla ibn Abdullah ibn Abdul Rahman ibn Sahl related to me from Sahl ibn Abi Hathma that he informed him from men among the elders of his tribe: "Abdullah ibn Sahl and Muhayyisa set out for Khaybar due to hardship that afflicted them. Muhayyisa came and reported that Abdullah ibn Sahl had been killed and thrown into a spring or a pit. He went to the Jews and said: 'By Allah, you killed him!' They replied: 'By Allah, we did not kill him.' Then he returned to his people and informed them. Afterward, he came with his brother Huwayyisa—who was older than him—and Abdul Rahman ibn Sahl. Muhayyisa, who had

قَالَ أَبُو مُحَمَّد: فَإِنْ قَالَ قَائِلٌ: إنَّكُمْ تَقُولُونَ: إنَّ الذِّمِّيَّ إذَا قَتَلَ مُسْلِمًا عَمْدًا بَطَلَتْ ذِمَّتُهُ، وَعَادَ حَرْبِيًّا، وَقُتِلَ وَلَا بُدَّ، وَاسْتُفِيءَ مَالُهُ فَكَيْفَ تَقُولُونَ فِيمَا حَدَّثَكُمْ بِهِ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّد نَا أَحْمَدُ بْنُ عَلِيّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا بِشْرُ بْنُ عُمَرَ قَالَ: سَمِعْت مَالِكَ بْنَ أَنَسٍ يَقُولُ: ثَنِي أَبُو لَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَهْلٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كُبَرَاءِ قَوْمِهِ: «أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ، وَمُحَيِّصَةَ خَرَجَا إلَى خَيْبَرَ مِنْ جَهْدٍ أَصَابَهُمَا فَأَتَى مُحَيِّصَةُ فَأَخْبَرَ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَدْ قُتِلَ وَطُرِحَ فِي عَيْنٍ أَوْ فَقِيرٍ فَأَتَى يَهُودَ فَقَالَ: أَنْتُمْ وَاَللَّهِ قَتَلْتُمُوهُ؟ قَالُوا: وَاَللَّهِ مَا قَتَلْنَاهُ، ثُمَّ أَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ فَذَكَرَ ذَلِكَ لَهُمْ، ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ حُوَيِّصَةُ - وَهُوَ أَكْبَرُ مِنْهُ - وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ فَذَهَبَ مُحَيِّصَةُ لِيَتَكَلَّمَ، وَهُوَ الَّذِي كَانَ بِخَيْبَرَ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

[2] **Hadith references (L37021):** Sahih al-Bukhari 6740; Sunan an-Nasai 4817; Sahih Muslim 1681b.

[3] **Qur'an references (L37021):** Qur'an 16:44 (An-Nahl).

- لِمُحَيِّصَةَ: كَبِّرْ كَبِّرْ - يُرِيدُ السِّنَّ - فَتَكَلَّمَ حُوَيِّصَةُ ثُمَّ تَكَلَّمَ مُحَيِّصَةُ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا أَنْ يَدُوا صَاحِبَكُمْ، وَإِمَّا أَنْ يُؤْذِنُوا بِحَرْبٍ» وَذُكِرَ بَاقِي الْخَبَرِ فَهَذَا قَتْلُ كَافِرٍ لِمُؤْمِنٍ وَفِيهِ الدِّيَةُ.

been present in Khaybar, began to speak, but the Messenger of Allah—peace and blessings be upon him—said to Muhayyisa: 'Let the elder speak first'—referring to seniority in age. So Huwayyisa spoke, then Muhayyisa spoke. The Messenger of Allah—peace and blessings be upon him—said: 'Either they pay the blood money for your companion, or they will be declared war upon.'" The rest of the report is mentioned. This concerns the killing of a believer by a disbeliever, and in this case, the blood money applies.

L37027 قَالَ أَبُو مُحَمَّدٍ: فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّنَا عَلَى يَقِينٍ - وَلِلَّهِ الْحَمْدُ - مِنْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يُلْزِمُ أَحَدًا دِيَةً إلَّا قَاتِلًا عَمْدًا، أَوْ عَاقِلَةَ قَاتِلٍ خَطَأً أَوْ مِنْ بَيْتِ مَالِ الْمُسْلِمِينَ عَمَّنْ لَا عَاقِلَةَ لَهُ، فَإِلْزَامُهُ - عَلَيْهِ السَّلَامُ - الْيَهُودَ الدِّيَةَ لَا يَخْلُو بِيَقِينٍ لَا إشْكَالَ فِيهِ مَعَ أَحَدٍ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونُوا قَاتِلِي عَمْدٍ، أَوْ إمَّا أَنْ يَكُونُوا عَاقِلَةَ قَاتِلٍ خَطَأً - هَذَا مَا لَا يُمْكِنُ أَنْ يَكُونَ سِوَاهُ، فَوَجَبَ أَنْ يُنْظَرَ أَيُّ الْوَجْهَيْنِ هُوَ الْمُرَادُ فِي هَذَا الْمَكَانِ؟ فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا حُكْمَ قَاتِلِ الْعَمْدِ بَيَانٌ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمُهُ عِنْدَ غَيْرِنَا الْقَوَدُ، أَوْ الْعَفْوُ فَقَطْ، أَوْ مَا تَصَالَحُوا بِهِ، وَحُكْمُهُ عِنْدَ طَائِفَةٍ مِنْ أَهْلِ الْعِلْمِ أَيْضًا بِتَخْيِيرِ الْوَلِيِّ بَيْنَ الْقَوَدِ، أَوْ الْعَفْوِ، أَوْ الدِّيَةِ، وَحُكْمُهُ عِنْدَنَا التَّخْيِيرُ بَيْنَ الْقَوَدِ، أَوْ الْعَفْوِ، أَوْ الدِّيَةِ، أَوْ مَا تَصَالَحُوا عَلَيْهِ، فَالْقَوَدُ عَلَى كُلِّ هَذِهِ الْأَقْوَالِ حُكْمُ قَتْلِ الْعَمْدِ وَالدِّيَةِ - بِلَا خِلَافٍ فِيهِ - فِي مَالِ الْقَاتِلِ، وَحُكْمُ قَاتِلِ الْخَطَأِ الدِّيَةُ، أَوْ الْعَفْوُ عَنْهَا فَقَطْ.

Abū Muḥammad said: Our response—and by Allah's grace, the Exalted—is that we are certain—and all praise is due to Allah—that the Messenger of Allah, peace be upon him, does not impose blood money upon anyone except an intentional killer, the kinsmen liable for blood money of an unintentional killer, or from the Muslim treasury for one who has no liable kinsmen. Therefore, his imposition—peace be upon him—of blood money upon the Jews must, with absolute certainty, conform to one of two possibilities—no third exists: either they were intentional killers or the kinsmen liable for blood money of unintentional killers—this being the sole possible interpretation. It thus becomes necessary to determine which of the two applies here. Upon examination, we found that the ruling for intentional killing is established by the Messenger of Allah, peace be upon him. According to other schools, the ruling is retaliation, pardon only, or a negotiated settlement. A group of scholars holds that the guardian may choose between retaliation, pardon, or blood money. Our position permits choosing between retaliation, pardon, blood money, or a negotiated settlement. Thus, according to all these views, the ruling for intentional killing and blood money—without disagreement—is borne by the killer's wealth. The ruling for unintentional killing entails blood money or its pardon only.

L37028–37030 فَلَمَّا وَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَذْكُرْ قَوَدًا أَصْلًا فِي هَذِهِ الرِّوَايَةِ، وَمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُغْفِلَ حَقًّا لِلْحَارِثِيَّيْنِ إلَّا وَيَذْكُرُهُ لَهُمْ، وَلَا يَسْكُتَ عَنْهُ، فَيَبْطُلَ حَقُّهُمْ؟ عَلِمْنَا أَنَّ حُكْمَهُ بِالدِّيَةِ بِذَلِكَ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ -: مِنْ أَنْ يَكُونَ قَتْلَ عَمْدٍ وَلَا يُعْرَفُ قَاتِلُهُ، فَيُحْكَمُ فِيهِ بِحُكْمِ نَاقِضِ الذِّمَّةِ، أَوْ قَتْلِ

When we realized that the Messenger of Allah—peace and blessings be upon him—did not mention retribution (qisas) at all in this narration, and since it was impossible for the Messenger of Allah—peace be upon him—to neglect a right for the two Harithi men without informing them of it, nor would he remain silent about it, thereby invalidating their right, we concluded. The ruling concerning blood money in this matter is necessarily one of two scenarios: either an intentional killing where the perpetrator is

unknown, thereby applying the ruling pertaining to the violator of the protection covenant, or an unintentional killing. If it is an intentional killing and the perpetrator is unknown, we are certain that he (peace be upon him) does not obligate them to pay blood money, nor is it required of them.

خَطَأً - فَإِنْ كَانَ قَتْلَ عَمْدٍ لَا يُعْرَفُ قَاتِلُهُ، فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يُلْزِمُهُمْ دِيَةً لَا تَجِبُ عَلَيْهِمْ.

L37031 There is no disagreement among the present attendees from among our juristic opponents that the liable kin group (al-ʿāqila) does not pay on behalf of an intentional killer, nor has any scriptural text obligated this, thus this ruling is thereby nullified.

وَلَا خِلَافَ بَيْنَ الْحَاضِرِينَ مِنْ خُصُومِنَا فِي أَنَّ الْعَاقِلَةَ لَا تُؤَدِّي عَنْ قَاتِلِ عَمْدٍ، وَلَا أَوْجَبَ ذَلِكَ نَصٌّ، فَبَطَلَ هَذَا الْحُكْمُ.

L37032 There remains only the second opinion - which is accidental killing. This is the correct position, because the killing has been established beyond doubt, and it could have been intentional or unintentional. Therefore, it is impermissible to rule that they intended it except through conclusive proof such as witness testimony, a confession, or textual evidence that necessitates this. Thus, it remains that they did not intend it, and this constitutes accidental killing itself.

وَلَمْ يَبْقَ إِلَّا أَنَّهُ الْوَجْهُ الثَّانِي - وَهُوَ قَتْلُ الْخَطَأِ، وَهَذَا هُوَ الْحَقُّ، لِأَنَّ الْقَتْلَ قَدْ صَحَّ بِلَا شَكٍّ، وَمُمْكِنٌ أَنْ يَكُونَ بِقَصْدٍ، وَمُمْكِنٌ أَنْ لَا يَكُونَ بِقَصْدٍ، فَلَا يَجُوزُ أَنْ يُحْكَمَ عَلَيْهِمْ بِأَنَّهُمْ قَصَدُوهُ إِلَّا بِبُرْهَانٍ مِنْ بَيِّنَةٍ، أَوْ إِقْرَارٍ، أَوْ نَصٍّ مُوجِبٍ لِذَلِكَ - فَبَقِيَ أَنَّهُمْ لَمْ يَقْصِدُوهُ، وَهَذَا هُوَ الْخَطَأُ نَفْسُهُ.

L37033 Then the statement of the Prophet (peace and blessings of Allah be upon him) "or that they declare war" is evidence for the validity of what we have asserted: that by their departure from what is obligatory upon them, they violate the covenant and return to being enemies.

ثُمَّ قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «وَإِمَّا أَنْ يُؤْذِنُوا بِحَرْبٍ» دَلِيلٌ عَلَى صِحَّةِ مَا قُلْنَاهُ مِنْ أَنَّهُمْ بِخُرُوجِهِمْ عَمَّا يَجِبُ عَلَيْهِمْ يَنْقُضُونَ الذِّمَّةَ وَيَعُودُونَ حَرْبِيِّينَ.

L37034 Ali said: The Prophet—peace and blessings of Allah be upon him—clarified to them the ruling regarding accidental killing in cases of actual homicide if they acknowledged it. Then he informed them of the ruling on intentional killing in a narration other than this one, and instructed them that if they swore an oath accusing a man among them who had surrendered to them, the true aspect of the hadith would become clear—and success comes only from Allah, the Exalted.

قَالَ عَلِيٌّ: فَبَيَّنَ لَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمَ الْخَطَأِ فِي الْقَتْلِ الْمَوْجُودِ إِنْ اعْتَرَفُوا بِذَلِكَ، ثُمَّ أَعْلَمَهُمْ حُكْمَ الْعَمْدِ فِي غَيْرِ هَذِهِ الرِّوَايَةِ، وَأَعْلَمَهُمْ أَنَّهُمْ إِنْ حَلَفُوا عَلَى رَجُلٍ مِنْهُمْ أَسْلَمَ إِلَيْهِمْ وَلَاحَ وَجْهُ الْحَدِيثِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37035 If he says: How do you handle the other narration transmitted to you by ʿAbdullāh ibn Yūsuf – from Aḥmad ibn Fatḥ, from ʿAbd al-Wahhāb ibn ʿĪsā, from Aḥmad ibn Muḥammad, from Aḥmad ibn ʿAlī, from Muslim ibn al-Ḥajjāj, from ʿUbaydullāh ibn ʿUmar al-Qawārīrī, from Ḥammād ibn Zayd, from Yaḥyā ibn Saʿīd al-Anṣārī, from Bashīr ibn Yasār, from Sahl ibn Abī Ḥathmah and Rāfiʿ ibn Khadīj – concerning Muḥayyiṣah ibn Masʿūd and

فَإِنْ قَالَ: فَكَيْفَ تَصْنَعُونَ بِالرِّوَايَةِ الْأُخْرَى الَّتِي حَدَّثَكُمْ بِهَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى أَنَا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نا حَمَّادُ بْنُ زَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ الْأَنْصَارِيُّ عَنْ بَشِيرِ

‘Abdullāh ibn Sahl. He then mentioned the ḥadīth, which includes: “The Messenger of Allāh – peace and blessings be upon him – said to them: ‘Shall fifty of you swear against a man among them, so that he is made to pay his due?’ They replied: ‘This is a matter we did not witness – how can we swear?’” He then narrated the remainder of the report.

بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، وَرَافِعِ بْنِ خَدِيجٍ: أَنْ مُحَيِّصَةَ بْنَ مَسْعُودٍ، وَعَبْدَ اللَّهِ بْنَ سَهْلٍ فَذَكَرَ الْحَدِيثَ، وَفِيهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُمْ: يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ مِنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ؟ قَالُوا: أَمْرٌ لَمْ نَشْهَدْهُ كَيْفَ نَحْلِفُ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L37036 Abū Muḥammad said: Indeed, this statement is true—we seek refuge in Allah from opposing it. Rather, it is the explicit wording of our position. The Messenger of Allah—may Allah bless him and grant him peace—ruled that the killer among them should be surrendered in his entirety. This necessitates his execution and also necessitates his enslavement, as it constitutes a general ruling that cannot exclude anything falling under the scope of its literal implication except through a specific textual proof or consensus. Success comes solely from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: فَإِنَّ هَذَا الْقَوْلَ حَقٌّ، وَمَعَاذَ اللَّهِ أَنْ نُخَالِفَهُ، بَلْ هُوَ نَصُّ قَوْلِنَا، وَقَدْ حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُدْفَعَ الْقَاتِلُ مِنْهُمْ بِرُمَّتِهِ، وَهَذَا يَقْتَضِي قَتْلَهُ، وَيَقْتَضِي أَيْضًا اسْتِرْقَاقَهُ، لِأَنَّهُ عُمُومٌ لَا يُخْرِجُهُ مِنْهُ شَيْءٌ مِمَّا يَقَعُ عَلَيْهِ مُقْتَضَى لَفْظِهِ إِلَّا بِنَصٍّ أَوْ إِجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْقِصَاصَ وَاجِبٌ فِي كُلِّ مَا كَانَ بِعَمْدٍ مِنْ جُرْحٍ أَوْ كَسْرٍ]

Issue: Qisas is obligatory in every intentional case of a wound or fracture.

L37037–37038

بَابُ دِيَاتِ الْجِرَاحَةِ وَالْأَعْضَاءِ فِيمَا دُونَ النَّفْسِ فِي الْعَمْدِ وَالْخَطَأِ ٢٠٣٠ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: فَلْنَذْكُرْ الْآنَ - بِعَوْنِ اللَّهِ تَعَالَى وَتَأْيِيدِهِ - أَنَّ الْقِصَاصَ وَاجِبٌ فِي كُلِّ مَا كَانَ بِعَمْدٍ مِنْ جُرْحٍ أَوْ كَسْرٍ، لِإِيجَابِ الْقُرْآنِ ذَلِكَ فِي كُلِّ تَعَدٍّ، وَفِي كُلِّ حُرْمَةٍ، وَفِي كُلِّ عُقُوبَةٍ، وَفِي كُلِّ سَيِّئَةٍ، وَوُرُودِ السُّنَنِ الثَّابِتَةِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37039 Chapter on Blood Money for Injuries and Body Parts in Cases Less Than Homicide for Intentional and Accidental Acts. 2030 - Issue: Abu Muhammad said: Let us now mention—with the help of Allah, the Most High, and His support—that retribution is obligatory in every intentional wounding or fracturing, due to the Quran’s stipulation of this in every transgression, in every sanctity, in every punishment, and in every misdeed, and the presence of established Sunnahs from the Messenger of Allah, peace be upon him.

وَبَقِيَ الْكَلَامُ -: هَلْ فِي ذَلِكَ الْعَمْدِ دِيَةٌ يُخَيَّرُ الْمَجْنِيُّ عَلَيْهِ فِيهَا، أَوْ فِي الْقِصَاصِ أَمْ لَا؟ وَهَلْ فِي الْخَطَأِ فِي ذَلِكَ دِيَةٌ مُؤَقَّتَةٌ أَمْ لَا؟ قَالَ عَلِيٌّ: فَنَظَرْنَا فِي هَذَا فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥].

L37040 The remaining discussion is: In cases of intentional harm, does the victim have the choice between blood money or retaliation—or neither? And in cases of unintentional harm, is there a fixed blood money or not? Ali said: We deliberated on this and found that God Almighty states, *“There is no

blame on you for what you do unintentionally, but only for what your hearts deliberately intend”* [Quran 33:5].[4]

L37041 Ahmad ibn Umar ibn Anas narrated to us; al-Husayn ibn Abdullah al-Jurjani narrated to us: Abd al-Razzaq ibn Ahmad ibn Abd al-Hamid al-Shirazi narrated to us. Fatimah bint al-Hasan ibn al-Rayyan al-Makhzumi—scribe of Bakkar ibn Qutaybah—informed us. Al-Rabi ibn Sulayman the Muezzin narrated to us. Bishr ibn Bakr narrated to us from al-Awza’i, from Ata ibn Abi Rabah, from Ubayd ibn Umayr, from Ibn Abbas, who said: The Messenger of Allah—peace and blessings be upon him—said, “Allah has overlooked for my nation their mistakes, forgetfulness, and what they are compelled to do.”

L37042 Abu Muhammad said: This is a widely attested hadith transmitted through the chain of ar-Rabi‘ from Bishr ibn Bakr from al-Awza’i with this connected isnād—and the people have narrated it with this wording.

L37043 And Allah, the Exalted, has said: “Do not devour your wealth among yourselves unjustly, except when it is trade by mutual consent between you.” [An-Nisa 4:29][5]

L37044–37045 The Messenger of Allah said, “Your blood, your wealth, your honor, and your bodies are sacred and inviolable upon you.” Thus, it is established through all we have mentioned that all unintentional wrongs are forgiven; there is no blame on a person for it, and wealth alone is forbidden.

L37046 From this, it is valid that no liability is incurred upon anyone for an unintentional felony unless obligated by an authentic text or a definite consensus - otherwise, it is forgiven.

L37047 It is thus established that no one is obligated to pay a fine for deliberate or accidental acts unless an authentic text or indisputable consensus explicitly

نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نَا الْحُسَيْنُ بْنُ عَبْدِ اللَّهِ الْجُرْجَانِيِّ، قَالَ: نا عَبْدُ الرَّزَّاقِ بْنُ أَحْمَدَ بْنِ عَبْدِ الْحَمِيدِ الشِّيرَازِيُّ، قَالَ: أَخْبَرَتْنَا فَاطِمَةُ بِنْتُ الْحَسَنِ بْنِ الرَّيَّانِ الْمَخْزُومِيِّ - وَرَّاقِ بَكَّارِ بْنِ قُتَيْبَةَ - نا الرَّبِيعُ بْنُ سُلَيْمَانَ الْمُؤَذِّنُ نا بِشْرُ بْنُ بَكْرٍ عَنِ الْأَوْزَاعِيِّ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ اللَّهَ تَجَاوَزَ لِي عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ» .

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا حَدِيثٌ مَشْهُورٌ مِنْ طَرِيقِ الرَّبِيعِ عَنْ بِشْرِ بْنِ بَكْرٍ عَنِ الْأَوْزَاعِيِّ بِهَذَا الْإِسْنَادِ مُتَّصِلًا - وَبِهَذَا اللَّفْظِ رَوَاهُ النَّاسُ هَكَذَا.

وَقَالَ اللَّهُ تَعَالَى {لا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ} [النساء: ٢٩] .

وَقَالَ رَسُولُ اللَّهِ «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَصَحَّ بِكُلِّ مَا ذَكَرْنَا أَنَّ الْخَطَأَ كُلَّهُ مَعْفُوٌّ عَنْهُ، لَا جُنَاحَ عَلَى الْإِنْسَانِ فِيهِ، وَإِنَّمَا الْأَمْوَالُ مُحَرَّمَةٌ.

فَصَحَّ مِنْ هَذَا أَنْ لَا يُوجَبَ عَلَى أَحَدٍ حُكْمٌ فِي جِنَايَةٍ خَطَأً إِلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ صَحِيحٌ، أَوْ إِجْمَاعٌ مُتَيَقَّنٌ، وَإِلَّا فَهُوَ مَعْفُوٌّ عَنْهُ.

وَصَحَّ بِذَلِكَ أَنَّهُ لَا يَجِبُ عَلَى أَحَدٍ غَرَامَةٌ فِي عَمْدٍ وَلَا فِي خَطَأٍ إِلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ صَحِيحٌ، أَوْ إِجْمَاعٌ مُتَيَقَّنٌ، وَإِلَّا فَالْأَمْوَالُ مُحَرَّمَةٌ وَالْغَرَامَةُ سَاقِطَةٌ، لِمَا ذَكَرْنَا

[4] **Qur’an references (L37040):** Qur’an 33:5 (Al-Ahzab).
[5] **Qur’an references (L37043):** Qur’an 4:29 (An-Nisa).

mandates it. Otherwise, wealth is inviolable and the fine is nullified, for the reasons we have mentioned.

L37048 If someone says: Allah the Exalted has mandated full diyah, the freeing of a slave, or fasting two consecutive months for those unable—in cases of accidental killing—then if this ruling applies to accidental killing, does what is lesser than killing (such as injury) in accidental harm similarly obligate diyah? We respond—and with Allah alone is success—this is qiyās, and all qiyās is invalid. Even if qiyās were valid, this instance would be the very essence of falsehood, for four reasons:

First: It is an error in analogizing according to the principles of qiyās proponents. For one would argue to them: You uphold the identification of legal causes (ʿillah). What then do you say to one who asserts by your principles: "After polytheism, no sin is graver than killing a soul in Allah's sight. Thus, its gravity is magnified, and expiation is prescribed for its accidental killing—though the accidental killer bears no sin, undisputedly. As for lesser harms, they lack the soul's sanctity and gravity before Allah. Therefore, none of what applies to the soul applies to them, since the ʿillah inherent in the soul is absent in lesser harms."

L37049 The second is that you have invalidated this analogy and abandoned it entirely, for in some offenses you have established fixed blood money amounts, while in others you have not established any blood money at all—leaving either judicial assessment, the physician's fee, or nothing whatsoever. This constitutes your nullification of your own analogy of non-fatal injuries to lethal ones, and there is no analogy more flawed than one nullified by those who uphold it.

L37050 If you say: "We only made obligatory a fixed blood money when there is a textual proof from the Messenger of Allah (peace be upon him)"?

L37051–37052 We said to them: If that text is one for which valid proof is established due to the authenticity of its chain of transmission, then adhering to it is

فَإِنْ قَالَ قَائِلٌ: قَدْ أَوْجَبَ اللَّهُ تَعَالَى فِي قَتْلِ النَّفْسِ خَطَأً الدِّيَةَ كَامِلَةً، وَتَحْرِيرَ رَقَبَةٍ، أَوْ صِيَامَ شَهْرَيْنِ مُتَتَابِعَيْنِ لِمَنْ لَمْ يَجِدْ - فَإِذَا كَانَ حُكْمُ النَّفْسِ فِي الْخَطَأِ تَجِبُ فِيهِ الدِّيَةُ فَمَا دُونَهَا فِي الْخَطَأِ كَذَلِكَ تَجِبُ أَيْضًا؟ قُلْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ الْقِيَاسُ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِوُجُوهٍ أَرْبَعَةٍ -: أَوَّلُهَا: أَنَّهُ خَطَأٌ فِي الْقِيَاسِ عَلَى أُصُولِ أَصْحَابِ الْقِيَاسِ، لِأَنَّهُ يُقَالُ لَهُمْ: أَنْتُمْ أَصْحَابُ تَعْلِيلٍ، فَمَاذَا تَقُولُونَ لِمَنْ قَالَ لَكُمْ عَلَى أُصُولِكُمْ: إِنَّ النَّفْسَ لَا شَيْءَ أَعْظَمُ مِنْ قَتْلِهَا بَعْدَ الشِّرْكِ عِنْدَ اللَّهِ تَعَالَى، فَلِذَلِكَ عَظُمَ أَمْرُهَا، وَجُعِلَ فِي الْخَطَأِ فِيهَا كَفَّارَةٌ - وَإِنْ كَانَ لَا ذَنْبَ لِقَاتِلِ النَّفْسِ خَطَأً بِلَا خِلَافٍ، وَأَمَّا مَا دُونَ النَّفْسِ فَلَيْسَ لَهُ عِظَمُ النَّفْسِ عِنْدَ اللَّهِ تَعَالَى، وَلَا حُرْمَتُهَا، فَلَا يَجِبُ فِي شَيْءٍ مِنْ ذَلِكَ مَا يَجِبُ فِي النَّفْسِ، إِذْ لَيْسَ فِيمَا دُونَ النَّفْسِ الْعِلَّةُ الَّتِي فِي النَّفْسِ.

وَالثَّانِي: أَنَّكُمْ قَدْ نَقَضْتُمْ هَذَا الْقِيَاسَ وَتَرَكْتُمُوهُ جُمْلَةً، فَفِي بَعْضِ الْجِنَايَاتِ جَعَلْتُمْ دِيَاتٍ مُؤَقَّتَةً، وَفِي بَعْضِهَا لَمْ تَجْعَلُوا دِيَةً أَصْلًا، إِلَّا إِمَّا حُكُومَةٌ، وَإِمَّا أَجْرُ الطَّبِيبِ، وَإِمَّا لَا شَيْءَ، وَهَذَا نَقْضٌ مِنْكُمْ لِقِيَاسِكُمْ مَا دُونَ النَّفْسِ عَلَى النَّفْسِ، وَلَا قِيَاسَ أَفْسَدُ مِنْ قِيَاسٍ نَقَضَهُ الْقَائِلُونَ بِهِ.

فَإِنْ قُلْتُمْ: إِنَّمَا أَوْجَبْنَا دِيَةً مُؤَقَّتَةً حَيْثُ جَاءَ نَصٌّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟

obligatory, and obedience to it is binding. But if it is among those that are not authentic, like the document of ʿAmr ibn Ḥazm and the document of ʿAmr ibn Shuʿayb, then no valid proof is established for any of that. The first to testify to this are none other than yourselves, for you disregard much of what is contained in those two documents.

قُلْنَا لَهُمْ: إنْ كَانَ ذَلِكَ النَّصُّ مِمَّا تَقُومُ بِهِ الْحُجَّةُ لِصِحَّةِ إسْنَادِهِ فَالْقَوْلُ بِهِ فَرْضٌ، وَالطَّاعَةُ لَهُ وَاجِبَةٌ، وَإِنْ كَانَ مِمَّا لَا يَصِحُّ كَصَحِيفَةِ عَمْرِو بْنِ حَزْمٍ وَصَحِيفَةِ عَمْرِو بْنِ شُعَيْبٍ فَلَا حُجَّةَ تَقُومُ بِشَيْءٍ مِنْ ذَلِكَ، وَأَوَّلُ مَنْ يَشْهَدُ بِهَذَا فَأَنْتُمْ، لِأَنَّكُمْ تَتْرُكُونَ كَثِيرًا مِمَّا فِي تِلْكَ الصَّحِيفَتَيْنِ.

L37053 It is impossible for you to consider some portions of a ruling that originated as a single instance to be authoritative proof while dismissing others as non-authoritative without any foundational evidence—except weakening it: on one occasion when you desire and its ruling contradicts your *taqlīd* (doctrinal adherence), and affirming it on another when you desire and its ruling aligns with your *taqlīd*. We shall clarify all this section by section hereafter, God Almighty willing.

وَمِنْ الْمُحَالِ أَنْ تَجْعَلُوا بَعْضَ حُكْمٍ جَاءَ مَجِيئًا وَاحِدًا حُجَّةً وَبَعْضَهُ لَيْسَ بِحُجَّةٍ بِلَا دَلِيلٍ أَصْلًا إلَّا تَوْهِينُ ذَلِكَ: مَرَّةً إذَا اشْتَهَيْتُمْ وَلَمْ يُوَافِقْ حُكْمُهَا تَقْلِيدَكُمْ، وَتَوْثِيقُهَا مَرَّةً إذَا اشْتَهَيْتُمْ وَوَافَقَ تَقْلِيدَكُمْ حُكْمَهَا. وَنَحْنُ نُبَيِّنُ بَعْدَ هَذَا إنْ شَاءَ اللَّهُ تَعَالَى كُلَّ ذَلِكَ فَصْلًا فَصْلًا.

L37054 And if they say, "We only imposed the fixed blood money in the instances where the Companions imposed it (may Allah be pleased with them)."

وَإِنْ قَالُوا: إنَّمَا أَوْجَبْنَا الدِّيَةَ الْمُؤَقَّتَةَ حَيْثُ أَوْجَبَهَا الصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ -.

L37055 We said: And success is from Allah, the Exalted. If all the Companions—may Allah be pleased with them—have deemed that obligatory, then listening and obeying their consensus is obligatory, for their consensus is the incontrovertible truth established as valid—originating from the Messenger of Allah—peace and blessings of Allah be upon him—as conveyed from Allah, the Exalted. If it is an opinion attributed to some Companions, then you—O assembly of our current opponents—contradict this. Verily, some Companions specified blood money for injuries below the severity of a bone-exposing wound, yet you reject this. Thus, abandoning what you have validated is erroneous and invalidates your argument.

قُلْنَا: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنْ كَانَ أَوْجَبَ ذَلِكَ جَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَالسَّمْعُ وَالطَّاعَةُ لِإِجْمَاعِهِمْ، لِأَنَّ إجْمَاعَهُمْ هُوَ الْحَقُّ الْمَقْطُوعُ بِهِ عَلَى صِحَّتِهِ، وَأَنَّهُ مِنْ عِنْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ اللَّهِ تَعَالَى، وَإِنْ كَانَ هُوَ قَوْلًا عَنْ بَعْضِ الصَّحَابَةِ فَأَنْتُمْ مَعْشَرَ الْحَاضِرِينَ مِنْ خُصُومِنَا مُخَالِفُونَ لِذَلِكَ، فَقَدْ جَاءَ عَنْ بَعْضِ الصَّحَابَةِ فِيمَا دُونَ الْمُوضِحَةِ تَحْدِيدُ دِيَةٍ، وَأَنْتُمْ لَا تَقُولُونَ بِذَلِكَ فَالْإِضْرَابُ عَمَّا صَحَّحْتُمُوهُ خَطَأٌ وَإِفْسَادٌ لِاحْتِجَاجِكُمْ.

L37056 Thus, it has been established that you have not relied here on analogy, nor on the opinion of a Companion, nor on an authentic text, nor on a text you are bound by—even if it is unsound. Any such opinions are undeniably invalid with absolute certainty, and indeed, they are null and void in the sight of Allah the Exalted without doubt.

فَصَحَّ أَنَّكُمْ لَمْ تَتَعَلَّقُوا هَاهُنَا بِقِيَاسٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا بِنَصٍّ صَحِيحٍ، وَلَا بِنَصٍّ تَلْتَزِمُونَهُ - وَإِنْ لَمْ يَصِحَّ - وَمَا كَانَ مِنْ الْأَقْوَالِ هَكَذَا فَهُوَ غَيْرُ صَحِيحٍ بِيَقِينٍ مَقْطُوعٍ، عَلَى أَنَّهُ بَاطِلٌ عِنْدَ اللَّهِ تَعَالَى بِلَا شَكٍّ.

L37057 The third is that you have invalidated this analogy as well, for the Quranic text explicitly prescribes expiation for the unintentional killing of a person through freeing a believing female slave or fasting two consecutive months for one unable to afford it along with the blood money. Among the wonders of this world is that you analogize lesser harms than taking a life to the taking of life itself by requiring expiation in some instances or partial blood money in others, yet refuse to analogize lesser harms to life by imposing expiation where full blood money is obligatory, or partial expiation where partial blood money applies. This constitutes a capricious imposition in analogical reasoning—the most baseless application ever heard of.

L37058–37059 If the analogy for obligating blood money—or a portion of it—in cases less than taking a life, based on its obligation in cases of taking a life, is certainly valid, then the analogy for obligating kaffarah, or expiation—or a portion of it—in cases less than taking a life, based on its obligation in cases of taking a life, is undoubtedly valid.

L37060 If one of the two mentioned *qiyās* (analogical reasonings) is invalid and impermissible, then the other *qiyās* is likewise invalid and impermissible. This truth is not hidden from anyone who sincerely advises himself, especially since expiation is more obligatory and binding than blood money. For Allah the Exalted did not ordain blood money in the Quran without ordaining expiation alongside it, and He has indeed mandated expiation while annulling blood money. He said: *"Whoever kills a believer by mistake must free a believing slave and pay blood money to the victim's family - unless they donate it in charity"* [4:92]. Then He stated: *"If the victim belonged to a people hostile to you but was a believer, then freeing a believing slave suffices. If he belonged to a people with whom you have a covenant, then blood money must be paid to his family along with freeing a believing slave"* [4:92]. Thus, the Exalted ordained expiation for accidental homicide mentioned in the Quran, imposed blood money in two instances, and annulled it in the third instance.[6]

وَالثَّالِثُ: أَنَّكُمْ قَدْ أَبْطَلْتُمْ هَذَا الْقِيَاسَ أَيْضًا، لِأَنَّ النَّصَّ فِي الْقُرْآنِ جَاءَ فِي كَفَّارَةِ قَتْلِ النَّفْسِ بِالْخَطَأِ بِرَقَبَةٍ مُؤْمِنَةٍ، أَوْ بِصِيَامِ شَهْرَيْنِ مُتَتَابِعَيْنِ لِمَنْ لَمْ يَجِدْ مَعَ الدِّيَةِ؛ فَمِنْ عَجَائِبِ الدُّنْيَا أَنْ تَقِيسُوا مَا دُونَ النَّفْسِ عَلَى النَّفْسِ فِي إِيجَابِ كَفَّارَةٍ فِي بَعْضِ ذَلِكَ، أَوْ إِيجَابِ بَعْضِ الدِّيَةِ فِي بَعْضِ ذَلِكَ، ثُمَّ لَا تَقِيسُوا مَا دُونَ النَّفْسِ عَلَى النَّفْسِ فِي إِيجَابِ كَفَّارَةٍ فِي بَعْضِ ذَلِكَ حَيْثُ تَجِبُ الدِّيَةُ كَامِلَةً، أَوْ بَعْضِ كَفَّارَةٍ فِي بَعْضِ ذَلِكَ حَيْثُ تَجِبُ بَعْضُ الدِّيَةِ - فَهَذَا تَحَكُّمٌ فِي الْقِيَاسِ مَا سُمِعَ بِأَسْقَطَ مِنْهُ.

وَلَئِنْ كَانَ قِيَاسُ إِيجَابِ الدِّيَةِ أَوْ بَعْضِهَا فِيمَا دُونَ النَّفْسِ عَلَى وُجُوبِ ذَلِكَ فِي النَّفْسِ حَقًّا فَإِنَّ قِيَاسَ إِيجَابِ الْكَفَّارَةِ أَوْ بَعْضِهَا فِيمَا دُونَ النَّفْسِ عَلَى وُجُوبِ ذَلِكَ فِي النَّفْسِ لَحَقٌّ.

وَلَئِنْ كَانَ أَحَدُ الْقِيَاسَيْنِ الْمَذْكُورَيْنِ بَاطِلًا لَا يَجُوزُ فَإِنَّ الْقِيَاسَ الْآخَرَ بَاطِلٌ لَا يَجُوزُ، وَهَذَا مَا لَا خَفَاءَ بِهِ عَنْ نَاصِحٍ لِنَفْسِهِ، لَا سِيَّمَا وَالْكَفَّارَةُ أَوْجَبُ وَأَوْكَدُ مِنَ الدِّيَةِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبِ الدِّيَةَ فِي الْقُرْآنِ إِلَّا وَقَدْ أَوْجَبَ مَعَهَا الْكَفَّارَةَ، وَقَدْ أَوْجَبَ اللَّهُ تَعَالَى الْكَفَّارَةَ وَأَسْقَطَ الدِّيَةَ. قَالَ تَعَالَى {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ إِلا أَنْ يَصَّدَّقُوا} [النساء: ٩٢] ثُمَّ قَالَ تَعَالَى {فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ} [النساء: ٩٢] فَأَوْجَبَ تَعَالَى الْكَفَّارَةَ فِي قَتْلِ الْخَطَأِ الَّذِي ذُكِرَ فِي الْقُرْآنِ فَأَوْجَبَ الدِّيَةَ فِي مَوْضِعَيْنِ، وَأَسْقَطَ تَعَالَى فِي الْمَوْضِعِ الثَّالِثِ.

[6] **Qur'an references (L37060):** Qur'an 4:92 (An-Nisa).

L37061 If they say, “Consensus has indeed been established to waive expiation in that case?” we reply: If this is confirmed, consensus has invalidated this analogy. Thus, it is impermissible to apply it to blood money or expiation at all, since both belong to the same analogy and legal category.

L37062 Moreover, the majority of you do not require expiation in cases of intentional killing, and no consensus has been established to waive it. Thus, you have abandoned analogical reasoning in this matter without any consensus to prevent that.

L37063–37065 The fourth aspect is that Allah, the Exalted, has not mandated blood money for every accidental killing. Rather, there is the case of a believer being killed accidentally when he belongs to a people who are enemies to us, and no blood money is required for it. How did you arrive at the ruling by analogy regarding the killing for which Allah mandated blood money, without applying analogy to the killing for which He did not mandate it? What distinguishes you from one who says: “No blood money is required for any injury less than a life that is inflicted”? By analogy to the accidental killing of a believer from an enemy community, if your legal cause (’illah) lacks universal applicability, then analogical reasoning based on your principles is invalidated. Thus, the obligation of blood money for injuries short of death is negated—not through analogy, nor by a Companion’s opinion, nor by sound textual evidence, as none exists. Nor is there any binding textual basis for financial liability in accidental property damage—even if such a text were inauthentic.

L37066 If someone says: Allah the Exalted states, {The recompense for an evil is an evil like it} [42:40]. They replied: Injuries—even if accidental—are an evil, so their recompense must be equivalent to it. The equivalent evil could take the form of monetary compensation. So if *qisas* is not applicable, would the equivalent recompense be through monetary compensation?[7]

L37067 We said—and divine guidance is from Allah, the Exalted—: As for the statement of Allah, the Exalted, {The recompense of an evil deed is an evil deed

فَإِنْ قَالُوا: إِنَّ الْإِجْمَاعَ قَدْ صَحَّ عَلَى إِسْقَاطِ الْكَفَّارَةِ فِي ذَلِكَ؟ قُلْنَا لَهُمْ: إِذَا صَحَّ هَذَا، فَإِنَّ الْإِجْمَاعَ قَدْ أَبْطَلَ هَذَا الْقِيَاسَ فَلَا يَجُوزُ اسْتِعْمَالُهُ أَصْلًا فِي الدِّيَةِ، وَلَا فِي الْكَفَّارَةِ، إِذْ هُوَ كُلُّهُ قِيَاسٌ وَاحِدٌ وَبَابٌ وَاحِدٌ.

وَأَيْضًا: فَإِنَّ جُمْهُورَكُمْ لَا يُوجِبُونَ الْكَفَّارَةَ فِي قَتْلِ الْعَمْدِ، وَلَمْ يَأْتِ إِجْمَاعٌ بِإِسْقَاطِهَا، فَقَدْ تَرَكْتُمْ الْقِيَاسَ فِي هَذَا الْمَكَانِ دُونَ أَنْ يَمْنَعَ مِنْهُ إِجْمَاعٌ.

وَالْوَجْهُ الرَّابِعُ: أَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ دِيَةً فِي كُلِّ قَتْلٍ خَطَأً، بَلْ قَدْ جَاءَ قَتْلُ الْمُؤْمِنِ خَطَأً وَهُوَ مِنْ قَوْمٍ عَدُوٍّ لَنَا، وَلَا دِيَةَ فِيهِ، فَمِنْ أَيْنَ وَقَعَ لَكُمْ الْحُكْمُ بِالْقِيَاسِ عَلَى الْقَتْلِ الَّذِي أَوْجَبَ اللَّهُ تَعَالَى فِيهِ دِيَةً دُونَ أَنْ تَحْكُمُوا بِالْقِيَاسِ عَلَى الْقَتْلِ الَّذِي لَمْ يُوجِبْ اللَّهُ تَعَالَى فِيهِ دِيَةً؟ وَمَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ مَنْ قَالَ: بَلْ لَا تَجِبُ دِيَةٌ فِي شَيْءٍ مِمَّا دُونَ النَّفْسِ تُصَابُ خَطَأً، قِيَاسًا عَلَى قَتْلِ الْمُؤْمِنِ خَطَأً وَهُوَ مِنْ قَوْمٍ عَدُوٍّ لَنَا، فَإِذَا كَانَتْ عِلَّتُكُمْ غَيْرَ مُطَّرِدَةٍ فَالْقِيَاسُ عَلَى أُصُولِكُمْ لَا يَجُوزُ عَلَيْهَا، فَبَطَلَ أَنْ يَكُونَ فِيمَا دُونَ النَّفْسِ دِيَةٌ، لَا بِقِيَاسٍ، وَلَا بِقَوْلِ صَاحِبٍ، وَلَا بِنَصٍّ صَحِيحٍ، لِأَنَّهُ غَيْرُ مَوْجُودٍ، وَلَا لِضَمَانِ الْأَمْوَالِ فِي الْخَطَأِ بِنَصٍّ مُلْتَزَمٍ وَإِنْ لَمْ يَصِحَّ.

فَإِنْ قَالَ قَائِلٌ: قَالَ اللَّهُ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] . قَالُوا: وَالْجِرَاحُ وَإِنْ كَانَتْ خَطَأً فَهِيَ سَيِّئَةٌ فَجَزَاؤُهَا مِثْلُهَا، وَالسَّيِّئَةُ الْمُمَاثِلَةُ قَدْ تَكُونُ بِغَرَامَةِ الْمَالِ، فَإِذَا لَمْ يَكُنْ هُنَاكَ قَوَدٌ كَانَتْ الْمُمَاثَلَةُ بِالْغَرَامَةِ؟

قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: وَأَمَّا قَوْلُ اللَّهِ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] فَحَقٌّ، وَأَمَّا قَوْلُكُمْ: إِنَّ جِنَايَةَ الْخَطَأِ سَيِّئَةٌ فَبَاطِلٌ، مَا السَّيِّئَةُ إِلَّا مَا نَهَى اللَّهُ تَعَالَى

[7] **Qur’an references (L37066):** Qur’an 42:40 (Ash-Shuraa).

like it} [42:40], it is true; but your claim that the offense of inadvertence is an evil deed is false. An evil deed is nothing but what Allah, the Exalted, has prohibited, and inadvertence is not among what He has prohibited. This is because Allah, the Exalted, Himself says {Allah does not burden a soul beyond its capability} [2:286], and we know by necessity that it is not within anyone's capability to refrain from committing a mistake they neither deliberately intended nor consciously committed.[8]

عَنْهُ، وَلَيْسَ الْخَطَأُ مِمَّا نَهَى اللَّهُ تَعَالَى عَنْهُ، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] وَبِالضَّرُورَةِ نَدْرِي أَنَّهُ لَيْسَ فِي وُسْعِ أَحَدٍ أَنْ يَمْتَنِعَ مِنْ فِعْلِ الْخَطَأِ الَّذِي لَمْ يَتَعَمَّدْهُ وَلَا قَصَدَهُ.

L37068–37070

If it is said: The Ummah has unanimously agreed on liability for property destroyed by mistake or willfully, then what differentiates liability for offenses against property from liability for offenses against limbs and wounds? We respond—and with Allah's help and guidance—this is an analogy, and all analogy is invalid. Even if analogy were valid, this would represent the very form of invalidity, for consensus has been established to invalidate this analogy. There is no disagreement among any member of the entire Ummah regarding liability for any property harmed, whether minimal or extensive, whereas this is not the case for offenses against limbs and wounds. There is no dispute that many such offenses do not entail liability through fixed [limited] blood money. Every analogy inconsistent with its analogues, and every legal cause inapplicable to its effects, are both invalid according to analogy's proponents. Equivalence between properties is attainable, guaranteed, and recognized—whether by value, measure, weight, length, or description—whereas it cannot be ascertained for limbs and wounds. Equating limbs and injuries to property absolutely—except through an explicit text from Allah the Exalted concerning that—is a matter known by necessity. Rather, equivalence is entirely invalid in this matter, because it is impermissible to analogize what may be owned with what cannot be legitimately owned. Since this is the case, there is no valid basis for ruling by equivalence here except through an explicit text or consensus. Whoever does so has certainly erred with certainty, since they rule by equivalence between two things neither of which resembles the other. Ownership of property through error is possible; recovering its actual substance is possible, and recovering equivalents—if the original substance is lost—is possible. As for limbs and injuries: the offender

فَإِنْ قِيلَ: قَدْ اجْتَمَعَتْ الْأُمَّةُ عَلَى ضَمَانِ مَا أُتْلِفَ مِنْ الْأَمْوَالِ بِالْخَطَأِ وَبِالْعَمْدِ، فَمَا الْفَرْقُ بَيْنَ ضَمَانِ الْجِنَايَاتِ فِي الْأَمْوَالِ وَبَيْنَ ضَمَانِ الْجِنَايَاتِ فِي الْأَعْضَاءِ وَالْجِرَاحَاتِ؟ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ الْإِجْمَاعَ قَدْ صَحَّ عَلَى إبْطَالِ هَذَا الْقِيَاسِ، لِأَنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا فِي تَضْمِينِ كُلِّ مَا أُصِيبَ مِنْ الْأَمْوَالِ قَلَّ أَوْ كَثُرَ، وَلَيْسَ كَذَلِكَ الْجِنَايَاتُ عَلَى الْأَعْضَاءِ وَالْجِرَاحَاتِ إذْ لَا خِلَافَ فِي أَنَّ كَثِيرًا مِنْهَا لَيْسَ فِيهِ تَضْمِينٌ بِدِيَةٍ مُؤَقَّتَةٍ [مَحْدُودَةٍ] وَكُلُّ قِيَاسٍ لَمْ يَطَّرِدْ فِي نُظَرَائِهِ، وَكُلُّ عِلَّةٍ لَمْ تَجْرِ فِي مَعْلُولَاتِهَا فَهُمَا خَطَأٌ عِنْدَ أَصْحَابِ الْقِيَاسِ، وَأَنَّ الْمُمَاثَلَةَ بَيْنَ الْأَمْوَالِ مُدْرَكَةٌ مَضْمُونَةٌ مَعْرُوفَةٌ، إمَّا بِالْقِيمَةِ وَإِمَّا بِالْكَيْلِ، وَإِمَّا بِالْوَزْنِ، وَإِمَّا بِالذَّرْعِ، وَإِمَّا بِالصِّفَةِ، وَلَا تُدْرَكُ الْمُمَاثَلَةُ بَيْنَ الْأَعْضَاءِ وَالْجِرَاحَاتِ وَبَيْنَ الْأَمْوَالِ أَبَدًا، إلَّا بِنَصٍّ وَارِدٍ مِنْ اللَّهِ تَعَالَى فِي ذَلِكَ، هَذَا أَمْرٌ يُعْلَمُ بِالضَّرُورَةِ، بَلْ الْمُمَاثَلَةُ مُمْتَنِعَةٌ فِي ذَلِكَ جُمْلَةً، لِأَنَّهُ لَا يَجُوزُ أَنْ يُمَثَّلَ مَا يُتَمَلَّكُ مِمَّا لَا يَحِلُّ تَمَلُّكُهُ، فَإِذَا الْأَمْرُ كَذَلِكَ فَلَا سَبِيلَ إلَى الْحُكْمِ بِالْمُمَاثَلَةِ فِي ذَلِكَ، إلَّا بِمَا صَحَّ فِيهِ نَصٌّ أَوْ إجْمَاعٌ، وَمَنْ فَعَلَ ذَلِكَ فَقَدْ أَخْطَأَ بِيَقِينٍ، إذْ حَكَمَ بِالْمِثْلِيَّةِ فِي شَيْئَيْنِ لَيْسَ أَحَدُهُمَا مِثْلًا لِلْآخَرِ، وَأَنَّ تَمَلُّكَ الْأَمْوَالِ بِالْخَطَأِ مُمْكِنٌ، وَاسْتِرْجَاعَهَا بِأَعْيَانِهَا مُمْكِنٌ، وَاسْتِرْجَاعُ أَمْثَالِهَا - إنْ فَاتَتْ أَعْيَانُهَا - مُمْكِنٌ، وَالْأَعْضَاءُ وَالْجِرَاحُ لَا

[8] **Qur'an references (L37067):** Qur'an 42:40 (Ash-Shuraa); Qur'an 2:286 (Al-Baqarah).

cannot lawfully own them—neither intentionally nor unintentionally—nor can they be recovered in essence at all, nor can their equivalents be recovered. Therefore, analogizing one of these two cases to the other constitutes a corrupt analogy, for it is the analogy of opposites to opposites in ruling. Proponents of analogy only permit comparing a thing to its counterpart, not its opposite. They unanimously agree on invalidating this analogy, considering it closest to what they themselves prohibit. They do not differ regarding one who usurps a free person, claims ownership over them, and enslaves them—if the person dies under their ownership, they bear no liability for blood money (diyah) or value. However, it is narrated from Mālik that if the usurper sells them and they perish beyond recovery, he must pay their diyah. Since usurping a free person cannot be analogized to usurping property—neither in cases of error nor intent, without disagreement—then injuries, breaking limbs, or amputating them are even further removed from being analogized to property. This is evident without obscurity, and all praise is due to Allah, Lord of the worlds.

يَصِحُّ لِلْجَانِي تَمَلُّكُهَا - لَا عَمْدًا وَلَا خَطَأً، وَلَا يَصِحُّ اسْتِرْجَاعُهَا أَصْلًا، وَلَا اسْتِرْجَاعُ أَمْثَالِهَا، فَقِيَاسُ أَحَدِ هَذَيْنِ الْوَجْهَيْنِ عَلَى الْآخَرِ قِيَاسٌ فَاسِدٌ، لِأَنَّهُ قِيَاسُ الضِّدِّ عَلَى ضِدِّهِ فِي الْحُكْمِ، وَإِنَّمَا يَقُولُ أَصْحَابُ الْقِيَاسِ بِقِيَاسِ الشَّيْءِ عَلَى نَظِيرِهِ لَا عَلَى ضِدِّهِ، وَأَنَّهُمْ قَدْ أَطْبَقُوا عَلَى إِبْطَالِ هَذَا الْقِيَاسِ، مِنْ حَيْثُ هُوَ أَقْرَبُ شَبَهًا بِمَا قَاسُوهُ عَلَيْهِ، وَذَلِكَ أَنَّهُمْ لَا يَخْتَلِفُونَ فِيمَنْ غَصَبَ حُرًّا فَتَمَلَّكَهُ وَاسْتَرَقَّهُ، فَمَاتَ فِي تَمَلُّكِهِ، فَإِنَّهُ لَا يَضْمَنُهُ، وَلَا يَضْمَنُ فِيهِ قِيمَةً وَلَا دِيَةً، إِلَّا أَنَّهُ رُوِيَ عَنْ مَالِكٍ إِنْ بَاعَهُ فَفَاتَ فَلَمْ يَقْدِرْ عَلَيْهِ: أَنَّهُ يُؤَدِّي دِيَتَهُ - فَإِنْ كَانَ غَصْبُ الْحُرِّ لَا يُقَاسُ عَلَى غَصْبِ الْمَالِ - لَا فِي الْخَطَأِ، وَلَا فِي الْعَمْدِ، بِلَا خِلَافٍ، فَالْجِرَاحُ، وَكَسْرُ الْعُضْوِ، وَقَطْعُهُ أَبْعَدُ مِنْ أَنْ يُقَاسَ عَلَى الْأَمْوَالِ - وَهَذَا لَا خَفَاءَ بِهِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L37071 If they mention: What was narrated to us by Abu ʿUmar Ahmad ibn Qasim in his residence at Cordoba near the Mosque of the Clothiers - he said: My father Qasim ibn Muhammad ibn Qasim narrated to me; my grandfather Qasim ibn Asbagh narrated to me; ʿAbdullah ibn Rawh narrated to us; Yazid ibn Harun narrated to us; Muhammad ibn Ishaq narrated to us from al-Harith ibn Fudayl from Sufyan ibn Abi al-ʿAwja' al-Sulami from Abu Shurayh al-Khuzaʿi, who said: The Messenger of Allah said: "Whoever is wronged by murder or injury - and injury means wounds - may choose one of three options: either to pardon, to demand legal retribution, or to accept blood money. If he takes anything from these options and then transgresses afterward, he will have Hellfire as his eternal abode."

فَإِنْ ذَكَرُوا: مَا حَدَّثَنَاهُ أَبُو عُمَرَ أَحْمَدُ بْنُ قَاسِمٍ فِي مَنْزِلِهِ بِمَدِينَةِ قُرْطُبَةَ عِنْدَ مَسْجِدِ الْقَصَّارِينَ قَالَ: حَدَّثَنِي أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ حَدَّثَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا عَبْدُ اللَّهِ بْنُ رَوْحٍ نا يَزِيدُ بْنُ هَارُونَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنِ الْحَارِثِ بْنِ فُضَيْلٍ عَنْ سُفْيَانَ بْنِ أَبِي الْعَوْجَاءِ السُّلَمِيِّ عَنْ أَبِي شُرَيْحٍ الْخُزَاعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ: «مَنْ أُصِيبَ بِدَمٍ أَوْ خَبْلٍ - وَالْخَبْلُ الْجِرَاحُ - فَهُوَ بِالْخِيَارِ فِي إِحْدَى ثَلَاثٍ: إِمَّا أَنْ يَعْفُوَ، وَإِمَّا أَنْ يَقْتَصَّ، وَإِمَّا أَنْ يَأْخُذَ الْعَقْلَ. فَإِنْ أَخَذَ شَيْئًا مِنْ ذَلِكَ ثُمَّ عَدَا بَعْدَ ذَلِكَ فَإِنَّ لَهُ النَّارَ خَالِدًا فِيهَا» .

L37072–37074 Abdullāh ibn Rabīʿ narrated to us, saying: ʿUmar ibn ʿAbd al-Malik narrated to us; Muḥammad ibn Bakr al-Baṣrī narrated to us; Sulaymān ibn al-Ashʿath narrated to us; Mūsā ibn Ismāʿīl narrated to us; Ḥammād ibn Salamah narrated to us; Muḥammad ibn Isḥāq narrated from... Al-Harith ibn Fudayl reported from Sufyan ibn Abi al-Awja', from Abu Shurayh al-Khuza'i that the Prophet—peace and blessings of Allah be upon him—said: "Whoever is

وَحَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ قَالَ: نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ الْبَصْرِيُّ نا سُلَيْمَانُ بْنُ الْأَشْعَثِ نا مُوسَى بْنُ إِسْمَاعِيلَ نا حَمَّادُ بْنُ سَلَمَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنِ الْحَارِثِ بْنِ فُضَيْلٍ عَنْ سُفْيَانَ بْنِ أَبِي الْعَوْجَاءِ عَنْ أَبِي شُرَيْحٍ الْخُزَاعِيِّ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ

afflicted by a killing or injury may choose one of three options: either to retaliate, to pardon, or to take *diyah*. If he seeks a fourth option, restrain him, and if he transgresses after that, he will face a grievous punishment."

وَسَلَّمَ - قَالَ: «مَنْ أُصِيبَ بِقَتْلٍ أَوْ خَبْلٍ فَإِنَّهُ يَخْتَارُ إِحْدَى ثَلَاثٍ: إِمَّا أَنْ يَقْتَصَّ، وَإِمَّا أَنْ يَعْفُوَ، وَإِمَّا أَنْ يَأْخُذَ الدِّيَةَ. فَإِنْ أَرَادَ الرَّابِعَةَ فَخُذُوا عَلَى يَدَيْهِ فَإِنْ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ» .

L37075 Hammam narrated to us, Abbas ibn Asbagh narrated to us, Muhammad ibn Abd al-Malik ibn Ayman narrated to us, Habib ibn Khalaf narrated to us, Abu Thawr Ibrahim ibn Khalid narrated to us, Yazid ibn Harun narrated to us, Muhammad ibn Ishaq narrated from al-Harith ibn Fudayl, from Sufyan, from Abu al-'Awja', from Abu Shurayh al-Khuza'i, who said: The Messenger of Allah, peace be upon him, said: "Whoever suffers a wrongful killing or injury (khabl) has the better of two considerations: if he wishes to forgive, he may forgive, and if he wishes to take the diyah (blood money), he may take it."

نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا حَبِيبُ بْنُ خَلَفٍ نا أَبُو ثَوْرٍ إِبْرَاهِيمُ بْنُ خَالِدٍ نا يَزِيدُ بْنُ هَارُونَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ الْحَارِثِ بْنِ فُضَيْلٍ عَنْ سُفْيَانَ عَنْ أَبِي الْعَوْجَاءِ عَنْ أَبِي شُرَيْحٍ الْخُزَاعِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ أُصِيبَ بِقَتْلٍ أَوْ خَبْلٍ - يَعْنِي جِرَاحًا - فَهُوَ بِخَيْرِ النَّظَرَيْنِ إِنْ أَحَبَّ أَنْ يَعْفُوَ عَفَا، وَإِنْ أَحَبَّ أَنْ يَأْخُذَ الدِّيَةَ أَخَذَ» .

L37076 We said: This is not valid, as no one narrated it except Sufyān ibn Abī al-ʿAwjāʾ al-Sulamī, who is unknown (majhul) in terms of reliability—his identity is undetermined, and nothing is known from him apart this ḥadīth. Had it been authentic, we would have adhered to it with contentment in our hearts and would not have abandoned it for the opinion of any scholar. However, since it is not authentic, it is impermissible to adopt it. Moreover, even if it were authentic, it would constitute proof against all contemporary scholars and contradict their position, for it explicitly addresses intentional injuries and mandates qisas (retaliatory punishment) for them in general terms, without making any exception. Yet all of them reject qisas for injuries below the severity of the *muwadḥaḥah* (a wound exposing the bone), and the majority reject qisas except for the *muwadḥaḥah* alone. Thus, they have opposed this ḥadīth, as you observe.

قُلْنَا: هَذَا لَا يَصِحُّ، لِأَنَّهُ لَمْ يَرْوِهِ أَحَدٌ إِلَّا سُفْيَانُ بْنُ أَبِي الْعَوْجَاءِ السُّلَمِيُّ، وَهُوَ مَجْهُولٌ لَا يُدْرَى مَنْ هُوَ وَلَا يُعْرَفُ عَنْهُ غَيْرُ هَذَا الْحَدِيثِ، فَلَوْ صَحَّ لَقُلْنَا بِهِ مُنْشَرِحَةً صُدُورُنَا بِذَلِكَ، وَلَمَا تَرَكْنَاهُ لِقَوْلِ أَحَدٍ، وَأَمَّا إِذْ لَمْ يَصِحَّ فَلَا يَجُوزُ الْأَخْذُ بِهِ، ثُمَّ لَوْ صَحَّ لَكَانَ حُجَّةً عَلَى جَمِيعِ الْحَاضِرِينَ وَمُخَالِفًا لِقَوْلِهِمْ، لِأَنَّهُ إِنَّمَا جَاءَ فِي جِرَاحِ الْعَمْدِ وَفِيهِ الْقِصَاصُ مِنْهَا جُمْلَةً لَمْ يَسْتَثْنِ شَيْئًا، وَكُلُّهُمْ لَا يَرَى الْقَوَدَ مِنْهَا، فِيمَا دُونَ الْمُوضِحَةِ، وَجُمْهُورُهُمْ لَا يَرَى الْقَوَدَ مِنْهَا، إِلَّا فِي الْمُوضِحَةِ فَقَطْ فَقَدْ خَالَفُوا هَذَا الْحَدِيثَ كَمَا تَرَى.

L37077 Moreover, it has been established regarding intentional killing specifically, as we mentioned, because it involves the choice between retaliation (qisas) and blood money (diya). There is no disagreement among any of the scholars of the community that retaliation applies exclusively to intentional acts, with blood money remaining an option therein. All of them, or at least the

وَأَيْضًا - إِنَّهُ قَدْ جَاءَ فِي الْعَمْدِ فَقَطْ كَمَا ذَكَرْنَا، لِأَنَّ فِيهِ التَّخْيِيرَ بَيْنَ الْقَوَدِ وَالدِّيَةِ، وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ الْقَوَدَ لَيْسَ إِلَّا فِي الْعَمْدِ فَقَطْ وَفِيهِ الْخِيَارُ فِي الدِّيَةِ

majority, do not recognize limb amputation in cases of intentional injury as warranting anything except retaliation (qisas) alone—and they have contradicted this report in this regard.

L37078 Additionally, the Ḥanafīs and Mālikīs do not recognize a choice between qisas and diyah in cases of intentional killing.

L37079 Moreover, it does not contain any ruling pertaining to accidental injuries. If this report were sound, its conformity with us would be greater than its conformity with them, and they would contradict it in all aspects.

L37080 Abū Muḥammad said: All that they disruptively disputed in this chapter were invalidated, and all praise is due to Allah, Lord of the worlds.

L37081–37082 As for intentional offenses and their injuries, Mālik holds there is no general ruling except retaliation or pardon alone, and he does not recognize blood money in such cases—whether retaliation becomes unfeasible or not—except in a few instances where blood money applies due to the impossibility of retaliation. He affirms blood money in all accidental injuries except a limited number, where he maintains judicial assessment instead. This is the position of Abū Ḥanīfa, his followers, al-Shāfiʿī, and his school, except regarding subsidiary matters where they differed, which we will clarify, if God Almighty wills.

L37083 This is also the opinion of our companions, and we adhere to it. However, we do not recognize blood money or judicial discretion in any of these cases—whether retaliation is possible or not—unless supported by an explicit text from the Messenger of Allah (peace be upon him) or an unequivocal consensus. Even if there existed a consensus on any such matter unknown to us, we would undoubtedly be more excused, secure, and sincere before Allah, for we neither presume to judge what we do not understand nor uphold what we have no knowledge of—matters we would have affirmed had we known them.

L37084 Ali said: "We shall now mention—if Allah the Exalted wills—what has been reported from the Prophet (peace and blessings be upon him) regarding this matter, then what has been reported from the Companions (may Allah be

فِي الْعَمْدِ - وَكُلُّهُمْ أَوْ جُمْهُورُهُمْ لَا يَرَى فِي قَطْعِ الْأَعْضَاءِ فِي الْعَمْدِ إِلَّا الْقَوَدَ فَقَطْ - وَقَدْ خَالَفُوا هَذَا الْخَبَرَ فِي هَذَا الْوَجْهِ.

وَأَيْضًا - فَإِنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ لَا يَرَوْنَ خِيَارًا فِي قَوَدٍ أَوْ دِيَةٍ فِي قَتْلِ الْعَمْدِ.

وَأَيْضًا - إِنَّهُ لَيْسَ فِيهِ حُكْمُ شَيْءٍ مِنْ جِرَاحِ الْخَطَأِ، فَلَوْ صَحَّ هَذَا الْخَبَرُ لَكَانَ وِفَاقُهُ لَنَا أَكْثَرَ مِنْ وِفَاقِهِ لَهُمْ، وَلَكَانُوا مُخَالِفِينَ لَهُ مِنْ كُلِّ وَجْهٍ.

قَالَ أَبُو مُحَمَّدٍ: فَبَطَلَ كُلُّ مَا شَغَبُوا بِهِ فِي هَذَا الْبَابِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

فَأَمَّا جِنَايَاتُ الْعَمْدِ وَجِرَاحِهِ فَإِنَّ مَالِكًا لَا يَرَى فِيهَا جُمْلَةً، إِلَّا الْقَوَدَ أَوْ الْعَفْوَ فَقَطْ، وَلَا يَرَى فِيهَا دِيَةً، فَاتَ الْقَوَدُ أَوْ لَمْ يَفُتْ، إِلَّا فِي قَلِيلٍ مِنْهَا فَيَرَى فِيهَا الدِّيَةَ لِامْتِنَاعِ الْقَوَدِ وَيَرَى فِي سَائِرِ جِرَاحَاتِ الْخَطَأِ الدِّيَةَ إِلَّا قَلِيلًا مِنْهَا فَإِنَّهُ لَا يَرَى فِيهَا دِيَةً لَكِنْ حُكُومَةً - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَالشَّافِعِيِّ وَأَصْحَابِهِ، إِلَّا فِي فُرُوعٍ اخْتَلَفُوا فِيهَا نُبَيِّنُهَا - إِنْ شَاءَ اللَّهُ تَعَالَى.

وَهُوَ أَيْضًا قَوْلُ أَصْحَابِنَا، وَبِهِ نَأْخُذُ، إِلَّا أَنَّنَا لَا نَرَى فِي شَيْءٍ مِنْ ذَلِكَ دِيَةً، وَلَا حُكُومَةً - أَمْكَنَ الْقَوَدُ، أَوْ لَمْ يُمْكِنْ - إِلَّا أَنْ يَأْتِيَ بِهِ نَصٌّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ يَثْبُتَ بِهِ إِجْمَاعٌ مُتَيَقَّنٌ، وَحَتَّى لَوْ غَابَ عَنَّا فِي شَيْءٍ مِنْ ذَلِكَ إِجْمَاعٌ لَمْ نَعْلَمْهُ، لَكُنَّا بِلَا شَكٍّ عِنْدَ اللَّهِ أَعْذَرُ وَأَسْلَمُ وَأَخْلَصُ، إِذْ لَمْ نَقْتَحِمْ مَا لَمْ نَدْرِ وَلَمْ نَقِفْ مَا لَيْسَ لَنَا بِهِ عِلْمٌ مِمَّا لَوْ عَلِمْنَاهُ لَقُلْنَا بِهِ.

قَالَ عَلِيٌّ: وَنَحْنُ ذَاكِرُونَ الْآنَ - إِنْ شَاءَ اللَّهُ تَعَالَى - مَا جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ ثُمَّ مَا جَاءَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ - فِي ذَلِكَ، ثُمَّ مَا

pleased with them) regarding it, then what has been reported from the Successors (may Allah have mercy on them) regarding it, followed by whatever is readily available of the jurists' opinions after them. For the foundation in religion after the Quran and the rulings of Allah's Messenger (peace and blessings be upon him) lies in the consensus of the Companions (may Allah be pleased with them) and their disagreements—unlike those who came after them. It has been narrated to us through the chain from Imam Muslim's compilation: from Abū Bakr ibn Abī Shaybah, from Affān—that is Ibn Muslim—, from Hammād ibn Salamah, from Thābit al-Bunānī, from Anas: 'The sister of ar-Rubayyi', Umm Hārithah, injured someone. When they brought the dispute to the Prophet (peace and blessings be upon him), he declared: 'Retaliation is due! Retaliation is due!' Umm ar-Rubayyi' protested: 'O Messenger of Allah! Will retaliation be taken from so-and-so? By Allah, it shall not be taken from her!' The Prophet (peace and blessings be upon him) responded: 'Glory be to Allah, Umm ar-Rubayyi'! Retaliation is ordained in Allah's Book.' She insisted: 'No, by Allah! It shall never be taken from her!' She persisted until they accepted the blood money. Thereupon Allah's Messenger (peace and blessings be upon him) remarked: 'Among Allah's servants are those whom He would honor their oath if they swore by Him.'"

جَاءَ عَنْ التَّابِعِينَ - رَحِمَهُمُ اللَّهُ - فِي ذَلِكَ، ثُمَّ مَا تَيَسَّرَ مِنْ أَقْوَالِ الْفُقَهَاءِ بَعْدَهُمْ، إذْ الْعُمْدَةُ فِي الدِّينِ بَعْدَ الْقُرْآنِ وَحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا هُوَ إجْمَاعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَاخْتِلَافُهُمْ، وَلَيْسَ كَذَلِكَ مَنْ بَعْدَهُمْ، وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَفَّانُ - هُوَ ابْنُ مُسْلِمٍ - نا حَمَّادُ بْنُ سَلَمَةَ نا ثَابِتٌ الْبُنَانِيُّ عَنْ أَنَسٍ «أَنَّ أُخْتَ الرُّبَيِّعِ أُمَّ حَارِثَةَ جَرَحَتْ إنْسَانًا فَاخْتَصَمُوا إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْقِصَاصُ الْقِصَاصُ. فَقَالَتْ أُمُّ الرَّبِيعِ: يَا رَسُولَ اللَّهِ أَيُقْتَصُّ مِنْ فُلَانَةَ؟ وَاَللَّهِ لَا يُقْتَصُّ مِنْهَا؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُبْحَانَ اللَّهِ يَا أُمَّ الرَّبِيعِ، الْقِصَاصُ كِتَابُ اللَّهِ، قَالَتْ: لَا، وَاَللَّهِ لَا يُقْتَصُّ مِنْهَا أَبَدًا، قَالَ: فَمَا زَالَتْ حَتَّى قَبِلُوا الدِّيَةَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ مِنْ عِبَادِ اللَّهِ مَنْ لَوْ أَقْسَمَ عَلَى اللَّهِ لَأَبَرَّهُ» .

L37085–37087 Abdullah ibn Rabee' narrated to us: Muhammad ibn Ishaq ibn As-Salim narrated to us: Ibn Al-A'rabi narrated to us: Abu Dawud narrated to us: Musaddad narrated to us: Al-Mu'tamir (who is Ibn Sulayman) narrated from Humaid At-Tawil, from Anas ibn Malik, who said: "Ar-Rubayyi', the sister of Anas ibn An-Naḍr, broke the front tooth of a woman. They came to the Prophet—peace be upon him—and he ruled by the Book of Allah." Exalted is He who decreed retaliation. Anas ibn al-Nadr said: "By the One who sent you with the truth, will her front tooth not be broken today?" He replied: "O Anas, Allah's Book is retaliation." They agreed to blood money as compensation and took it. The Prophet - peace be upon him - marveled, and The Prophet - peace be upon him - said: "Indeed, among Allah's servants are those who, if he were to swear by Allah, Allah would fulfill it."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إسْحَاقَ بْنِ السَّلِيمِ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مُسَدَّدٌ نا الْمُعْتَمِرُ - هُوَ ابْنُ سُلَيْمَانَ - عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «كَسَرَتْ الرُّبَيِّعُ أُخْتُ أَنَسِ بْنِ النَّضْرِ ثَنِيَّةَ امْرَأَةٍ، فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَضَى بِكِتَابِ اللَّهِ تَعَالَى الْقِصَاصَ، فَقَالَ أَنَسُ بْنُ النَّضْرِ: وَالَّذِي بَعَثَكَ بِالْحَقِّ لَا تُكْسَرُ ثَنِيَّتُهَا الْيَوْمَ؟ فَقَالَ: يَا أَنَسُ كِتَابُ اللَّهِ الْقِصَاصُ، فَرَضُوا بِأَرْشٍ أَخَذُوهُ، فَعَجِبَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ مِنْ عِبَادِ اللَّهِ مَنْ لَوْ أَقْسَمَ عَلَى اللَّهِ لَأَبَرَّهُ» .

L37088 Abu Dawud said: I asked Ahmad ibn Hanbal, "How is retribution exacted for a tooth?" He replied: "It is filed down."

قَالَ أَبُو دَاوُد: سَأَلْت أَحْمَدَ بْنَ حَنْبَلٍ: كَيْفَ يُقْتَصُّ مِنْ السِّنِّ؟ قَالَ: يُبْرَدُ.

L37089 It has been narrated to us through the chain of al-Bukhārī: Muḥammad al-Fazārī—he is Abū Isḥāq—from Ḥumayd al-Ṭawīl from Anas, who said: "Ar-Rubayyi'—she was the paternal aunt of Anas ibn Mālik—broke the incisor of a girl from the Anṣār. The people demanded retaliation, so they came to the Prophet—peace and blessings of Allah be upon him—and the Messenger of Allah—peace and blessings of Allah be upon him—ordered retaliation. Anas ibn an-Naḍr—the paternal uncle of Anas ibn Mālik—said: 'By Allah, her incisor shall not be broken, O Messenger of Allah!' The Messenger of Allah—peace and blessings of Allah be upon him—responded: 'O Anas, the Book of Allah prescribes retaliation.' The people were satisfied and accepted the compensatory damages (Arsh). The Messenger of Allah—peace and blessings of Allah be upon him—then said: 'Indeed, among the servants of Allah are those whom, if they were to swear by Allah, He would fulfill their oath.'"

وَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدٌ الْفَزَارِيّ - هُوَ أَبُو إِسْحَاقَ - عَنْ حُمَيْدٍ الطَّوِيلِ عَنْ أَنَسٍ قَالَ: «كَسَرَتْ الرُّبَيِّعُ - وَهِيَ عَمَّةُ أَنَسِ بْنِ مَالِكٍ - ثَنِيَّةَ جَارِيَةٍ مِنْ الْأَنْصَارِ، فَطَلَبَ الْقَوْمُ الْقِصَاصَ. فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقِصَاصِ، فَقَالَ أَنَسُ بْنُ النَّضْرِ - عَمُّ أَنَسِ بْنِ مَالِكٍ -: وَاَللَّهِ لَا تُكْسَرُ ثَنِيَّتُهَا يَا رَسُولَ اللَّهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَا أَنَسُ كِتَابُ اللَّهِ الْقِصَاصُ، فَرَضِيَ الْقَوْمُ وَقَبِلُوا الْأَرْشَ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ مِنْ عِبَادِ اللَّهِ مَنْ لَوْ أَقْسَمَ عَلَى اللَّهِ لَأَبَرَّهُ» .

L37090–37092 Abu Muhammad said: These are two differing narrations and two rulings, two in number, within two distinct cases concerning a single bondwoman. One of the two rulings regarding an injury Umm al-Rubayyiʿ inflicted upon a person was that the Prophet (peace and blessings be upon him) decreed retaliation for that wound. Umm al-Rubayyiʿ's mother swore that retaliation would not be taken from her, so they accepted the blood money. Thus Allah the Exalted fulfilled her oath.

قَالَ أَبُو مُحَمَّد: فَهُمَا حَدِيثَانِ مُتَغَايِرَانِ، وَحُكْمَانِ اثْنَانِ، فِي قَضِيَّتَيْنِ مُخْتَلِفَتَيْنِ لِجَارِيَةٍ وَاحِدَةٍ: أَحَدُ الْحُكْمَيْنِ - فِي جِرَاحَةٍ جَرَحَتْهَا أُمُّ الرُّبَيِّعِ إنْسَانًا، فَقَضَى - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْقِصَاصِ مِنْ تِلْكَ الْجِرَاحَةِ، فَحَلَفَتْ أُمُّهَا أَنَّهَا لَا يُقْتَصُّ مِنْهَا، فَرَضُوا بِالدِّيَةِ، فَأَبَرَّ اللَّهُ تَعَالَى قَسَمَهَا

L37093 The second ruling concerns a woman's front tooth that was broken by Ar-Rubayyiʿ. The Messenger of Allah—may Allah bless him and grant him peace—ruled for retaliation. Her brother, Anas ibn An-Nadr, swore that retaliation should not be enacted upon her. They then agreed to accept compensatory payment, which they took, and Allah the Exalted fulfilled his oath.

وَالْحُكْمُ الثَّانِي - فِي ثَنِيَّةِ امْرَأَةٍ كَسَرَتْهَا الرُّبَيِّعُ فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقِصَاصِ فِي ذَلِكَ، فَحَلَفَ أَنَسُ بْنُ النَّضْرِ أَخُوهَا أَنْ لَا يُقْتَصَّ مِنْهَا، فَرَضُوا بِأَرْشٍ أَخَذُوهُ، وَأَبَرَّ اللَّهُ تَعَالَى قَسَمَهُ

L37094 It became evident—as you see—that they are two recent cases: an injury (جِرَاحَةٌ) requiring blood money (وَدِيَةٌ), and a front tooth injury (ثَنِيَّةٌ) requiring arsh (أَرْشٌ, compensation for injury). Her mother swore an oath in the first case, and her brother swore an oath in the second case. This occurred before the Battle of Uhud, for Anas ibn al-Nadr—may Allah be pleased with him—was killed on the day of Uhud without dispute.

فَلَاحَ - كَمَا تَرَى - أَنَّهُمَا حَدِيثَانِ: جِرَاحَةٌ، وَثَنِيَّةٌ - وَدِيَةٌ، وَأَرْشٌ، وَحَلَفَتْ أُمُّهَا فِي الْوَاحِدَةِ، وَحَلَفَ أَخُوهَا فِي الثَّانِيَةِ، وَكَانَ هَذَا قَبْلَ أُحُدٍ، لِأَنَّ أَنَسَ بْنَ النَّضْرِ - رَضِيَ اللَّهُ عَنْهُ - قُتِلَ يَوْمَ أُحُدٍ بِلَا خِلَافٍ.

L37095–37097 This hadith is clear and evident in establishing that everything the one entitled to qisas (retaliation) may claim—whether in cases of a wound or a life— It constitutes blood money, regardless of whether that is a temporary or limited thing, and they have mutually agreed upon it in forgoing the obligatory retribution in kind.

وَهَذَا الْحَدِيثُ بَيِّنٌ وَاضِحٌ أَنَّ كُلَّ مَا أَخَذَهُ مَنْ لَهُ الْقِصَاصُ مِنْ جُرْحٍ، أَوْ نَفْسٍ، فَهُوَ دِيَةٌ، سَوَاءٌ كَانَ ذَلِكَ شَيْئًا مُؤَقَّتًا مَحْدُودًا، وَكَانَ قَدْ تَرَاضَوْا بِهِ فِي تَرْكِ الْقِصَاصِ الْوَاجِبِ.

L37098 The proof of this is the statement of the Prophet—peace be upon him—that we have already mentioned in "the chapter on the diyah of the mukatab," making its repetition unnecessary. It is the diyah of a free person in proportion to what he has paid, and the diyah of a slave in proportion to what he has not paid. Thus, the Messenger of Allah—peace be upon him—termed what is given for killing a slave as diyah, which varies in amount and is not fixed.

بُرْهَانُ ذَلِكَ: قَوْلُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ فِي " بَابِ دِيَةِ الْمُكَاتَبِ " فَأَغْنَى عَنْ إعَادَتِهِ بِمِقْدَارِ مَا أَدَّى دِيَةَ حُرٍّ، وَبِمِقْدَارِ مَا لَمْ يُؤَدِّ دِيَةَ عَبْدٍ، فَسَمَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا يُعْطَى مِنْ قَتْلِ عَبْدٍ دِيَةً - وَهُوَ مُخْتَلِفُ الْمِقْدَارِ غَيْرُ مُؤَقَّتٍ.

L37099 For indeed, it is as such. We are certain that the one injured by Rubayyi' took property in lieu of retaliation for the wound, and it was never reported that what was taken constituted a fixed, limited number designated for that specific injury. Since this was not reported, we stand in certainty and serenity from Allah the Exalted that had there been a fixed blood money for that injury—neither increasing nor decreasing—and had such a ruling applied to one wound differing from another, Allah the Exalted would not have concealed this from us nor erased its trace so completely that none could relay it. Far is Allah above such a thing! He has guaranteed the preservation of the Reminder revealed to His Prophet—peace and blessings be upon him—being the revelation from which he—peace and blessings be upon him—utters nothing in the Law except through it.

فَإِنَّ ذَلِكَ كَذَلِكَ، فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ الَّذِي جَرَحَتْهُ الرُّبَيِّعُ قَدْ أَخَذَ مَالًا بَدَلَ اقْتِصَاصِهِ مِنْ الْجُرْحِ، وَلَمْ يَأْتِ قَطُّ: أَنَّ الَّذِي أُخِذَ كَانَ عَدَدًا مُؤَقَّتًا مَحْدُودًا فِي ذَلِكَ الْجُرْحِ، فَإِذْ لَمْ يَأْتِ ذَلِكَ فَنَحْنُ عَلَى يَقِينٍ وَثَلْجٍ مِنْ اللَّهِ تَعَالَى أَنَّهُ لَوْ كَانَ فِي تِلْكَ الْجِرَاحَةِ دِيَةٌ مُؤَقَّتَةٌ، لَا تَزِيدُ وَلَا تَنْقُصُ، وَكَانَ ذَلِكَ الْحُكْمُ فِي جِرَاحَةٍ مَا دُونَ جِرَاحَةٍ أُخْرَى، لَمَا طَمَسَ اللَّهُ تَعَالَى عَنَّا ذَلِكَ وَلَا عَفَى أَثَرَهُ حَتَّى لَا يَنْقُلَهُ أَحَدٌ، حَاشَ لِلَّهِ مِنْ هَذَا، وَقَدْ تَكَفَّلَ بِأَنَّهُ حَافِظٌ لِلذِّكْرِ الَّذِي أُنْزِلَ عَلَى نَبِيِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَهُوَ الْوَحْيُ الَّذِي لَا يَنْطِقُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الشَّرِيعَةِ إلَّا مِنْهُ

L37100 The blood money taken by the one whom al-Rubayyi injured served solely as compensation in place of retribution (qisas), and this is our position. Thus, it becomes clear that these two reports indicate nothing except that retaliation is permissible for every injury—including breaking a tooth—and that mutual compensation agreements in all such cases are valid based on whatever the two parties, whether the victim or his guardian and the perpetrator, mutually agree upon, because the ruling concerning the mentioned blood money is as we have stated. As for the ḥadīth of Ḥumayd regarding breaking a tooth,

فَصَحَّ أَنَّ تِلْكَ الدِّيَةَ الَّتِي أَخَذَ الَّذِي جَرَحَتْ الرُّبَيِّعُ كَانَ فِدَاءً عَنْ الْقِصَاصِ فَقَطْ، وَبِهَذَا نَقُولُ - فَوَضَحَ أَنَّهُ لَيْسَ فِي هَذَيْنِ الْخَبَرَيْنِ إلَّا أَنَّ الْقَوَدَ جَائِزٌ فِي كُلِّ جِرَاحَةٍ، وَفِي كَسْرِ السِّنِّ، وَأَنَّ الْمُفَادَاةَ فِي كُلِّ ذَلِكَ جَائِزَةٌ بِمَا تَرَاضَيَا بِهِ عَلَيْهِ - الْمَجْنِيُّ عَلَيْهِ

it solely states that they accepted taking the assured compensation (arsh). Success comes solely from Allah, the Exalted.

L37101–37103 Abdullah ibn Rabee narrated: Umar ibn Abdul-Malik narrated: Muhammad ibn Bakr narrated: Sulayman ibn al-Ashʿath narrated: Muhammad ibn Dawud ibn Sufyan narrated: Abd al-Razzaq narrated: Maʿmar narrated from al-Zuhri from Urwah from Aisha, the Mother of the Believers, that the Messenger of Allah—peace and blessings be upon him—sent Abu Jahm ibn Hudhayfa as a zakat collector. A man disputed intensely with him regarding the alms, so Abu Jahm struck him, inflicting a head wound. They came to the Prophet and demanded, "The retaliation (qisas), O Messenger of Allah!" The Prophet said, "You shall have such-and-such," but they rejected it. They insisted, "The retaliation (qisas), O Messenger of Allah!" He repeated, "You shall have such-and-such," but they refused. He then declared, "You shall have such-and-such," and they accepted. The Prophet said, "I will address the people this evening and inform them of your acceptance." They consented. The Messenger of Allah then delivered a sermon and said, "Indeed, these people..." The people of Layth came to me seeking qisas. I set terms for them, and they proposed their terms. He asked, "Are you satisfied?" They said, "No." The Muhajirun resolved to retaliate against them, but Allah's Messenger—peace and blessings be upon him—commanded them to restrain themselves. They restrained themselves. He summoned them and increased their compensation, asking, "Are you satisfied?" They replied, "Yes." He said, "I shall address from the pulpit and inform them of your satisfaction." They agreed. The Prophet—peace and blessings be upon him—delivered a sermon and asked, "Are you satisfied?" They answered, "Yes."

L37104 Abu Muhammad said: There is nothing in this hadith except what is mentioned in the hadith of Anas narrated by Thabit: namely, the compensation for a head wound that exposes the bone where retaliation is mandated - with no addition.

L37105 This narration addresses the excuse of the ignorant, indicating that one does not exit Islam by an act that—if committed by a knowledgeable person

أَوْ وَلِيُّهُ وَالْجَانِي - لِأَنَّ الْقَوْلَ فِي الدِّيَةِ الْمَذْكُورَةِ هُوَ مَا ذَكَرْنَا - وَأَمَّا حَدِيثُ حُمَيْدٍ فِي كَسْرِ السِّنِّ فَإِنَّمَا فِيهِ: أَنَّهُمْ رَضُوا بِأَرْشٍ أَخَذُوهُ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا سُلَيْمَانُ بْنُ الْأَشْعَثِ نا مُحَمَّدُ بْنُ دَاوُد بْنِ سُفْيَانَ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعَثَ أَبَا جَهْمِ بْنِ حُذَيْفَةَ مُصَدِّقًا فَلَاجَّهُ رَجُلٌ فِي صَدَقَتِهِ فَضَرَبَهُ أَبُو جَهْمٍ فَشَجَّهُ فَأَتَوْا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالُوا: الْقَوَدَ يَا رَسُولَ اللَّهِ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكُمْ كَذَا وَكَذَا، فَلَمْ يَرْضَوْا، فَقَالُوا: الْقَوَدَ يَا رَسُولَ اللَّهِ، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَكُمْ كَذَا وَكَذَا؟ فَلَمْ يَرْضَوْا، فَقَالَ: لَكُمْ كَذَا وَكَذَا، فَرَضُوا، فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنِّي خَاطِبٌ الْعَشِيَّةَ عَلَى النَّاسِ فَمُخْبِرُهُمْ بِرِضَاكُمْ، قَالُوا: نَعَمْ، فَخَطَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إنَّ هَؤُلَاءِ اللَّيْثِيِّينَ أَتَوْنِي يُرِيدُونَ الْقَوَدَ، فَفَرَضْتُ عَلَيْهِمْ كَذَا، وَكَذَا فَرَضُوا، أَرَضِيتُمْ؟ قَالُوا: لَا، فَهَمَّ الْمُهَاجِرُونَ بِهِمْ، فَأَمَرَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَكُفُّوا عَنْهُمْ، فَكَفُّوا عَنْهُمْ، فَدَعَاهُمْ فَزَادَهُمْ، فَقَالَ: أَرَضِيتُمْ؟ قَالُوا: نَعَمْ، قَالَ: إنِّي خَاطِبٌ عَلَى الْمِنْبَرِ فَمُخْبِرُهُمْ بِرِضَاكُمْ، قَالُوا: نَعَمْ، فَخَطَبَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: أَرَضِيتُمْ؟ فَقَالُوا: نَعَمْ»

قَالَ أَبُو مُحَمَّد: فَلَيْسَ فِي هَذَا الْحَدِيثِ إلَّا مَا جَاءَ فِي حَدِيثِ أَنَسٍ الَّذِي رَوَاهُ ثَابِتٌ وَهُوَ الْمُفَادَاةُ فِي الشَّجَّةِ الَّتِي وَجَبَ فِيهَا الْقَوَدُ وَلَا مَزِيدَ.

for whom the proof has been conclusively established—would render him a disbeliever. For these Laythiyyun denied the Prophet (peace be upon him), and denying him constitutes pure disbelief without any difference of opinion. However, due to their ignorance and Bedouin disposition, they were excused on grounds of ignorance and thus did not become disbelievers.

وَفِي هَذَا الْخَبَرِ عُذْرُ الْجَاهِلِ، وَأَنَّهُ لَا يَخْرُجُ مِنَ الْإِسْلَامِ بِمَا لَوْ فَعَلَهُ الْعَالِمُ الَّذِي قَامَتْ عَلَيْهِ الْحُجَّةُ، لَكَانَ كَافِرًا، لِأَنَّ هَؤُلَاءِ اللَّيْثِيِّينَ كَذَّبُوا النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَكْذِيبُهُ كُفْرٌ مُجَرَّدٌ بِلَا خِلَافٍ، لَكِنَّهُمْ بِجَهْلِهِمْ وَأَعْرَابِيَّتِهِمْ عُذِرُوا بِالْجَهَالَةِ، فَلَمْ يَكْفُرُوا

L37106 Hammam narrated to us, from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Muhammad ibn Sulayman al-Munqiri, from Sulayman ibn Dawud, from Yazid ibn Zurai‘, from Sa‘id ibn Abi ‘Arubah, from Qatadah, from Ikrimah, from Ibn Abbas, who said: The Messenger of Allah - peace and blessings be upon him - stated: “For the fingers, ten [camels] each as blood money.” Abu Muhammad said: This is an authentic hadith without defect. Al-Munqiri is trustworthy. Sulayman ibn Dawud al-Hashimi was one of the imams and peers of Ahmad ibn Hanbal. Yazid ibn Zurai‘ is beyond reproach. His transmission from Sa‘id is valid, because Yazid heard directly from Ayyub.

ثنا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ سُلَيْمَانَ الْمُنْقِرِيُّ نا سُلَيْمَانُ بْنُ دَاوُد نا يَزِيدُ بْنُ زُرَيْعٍ نا سَعِيدٌ - هُوَ ابْنُ أَبِي عَرُوبَةَ - عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فِي الْأَصَابِعِ عَشْرٌ عَشْرٌ» قَالَ أَبُو مُحَمَّد: هَذَا حَدِيثٌ صَحِيحٌ لَا دَاخِلَةَ فِيهِ، الْمُنْقِرِيُّ ثِقَةٌ، وَسُلَيْمَانُ بْنُ دَاوُد هُوَ الْهَاشِمِيُّ أَحَدُ الْأَئِمَّةِ مِنْ نُظَرَاءِ أَحْمَدَ بْنِ حَنْبَلٍ، وَيَزِيدُ بْنُ زُرَيْعٍ لَا يُسْأَلُ عَنْهُ، وَسَمَاعُهُ مِنْ سَعِيدٍ صَحِيحٌ، لِأَنَّهُ سَمِعَ مِنْ أَيُّوبَ.

L37107 It has been transmitted to us via the chain of Ibn Waddāḥ: Mūsā ibn Mu‘āwiyah from Wakī‘, from Shu‘bah, from Qatādah, from ‘Ikrimah, from Ibn ‘Abbās, who reported that the Messenger of Allah (peace be upon him) said: “These two are equal,” and he demonstrated this by joining his thumb and little finger.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نَا وَكِيعٌ عَنْ شُعْبَةَ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «هَذِهِ وَهَذِهِ سَوَاءٌ» وَجَمَعَ بَيْنَ إِبْهَامِهِ وَخِنْصَرِهِ.

L37108–37110 From the chain of Abu Dawud: Abbas ibn Abd al-Azim al-Anbari narrated to us, Abd al-Samad ibn Abd al-Warith al-Tannuri narrated to us, Shu’bah narrated to us from Qatadah from Ikrimah from Ibn Abbas that the Messenger of Allah—peace and blessings be upon him—said: “The fingers are equal, and the teeth are equal, the incisor and the molar are equal, and this one and that one are equal.” Abu Muhammad said: We do not know of any authentic report in the blood money (diyah) rulings concerning the limbs that quantifies or clarifies them except... This and all such matters are only addressed by referring to consensus and the inferential reasoning derived from it, as well as the scriptural text pertaining to what we clarify, God the Most High willing.

وَمِنْ طَرِيقِ أَبِي دَاوُد نا عَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ الْعَنْبَرِيُّ نا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ التَّنُّورِيُّ نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْأَصَابِعُ سَوَاءٌ وَالْأَسْنَانُ سَوَاءٌ، الثَّنِيَّةُ وَالضِّرْسُ سَوَاءٌ، وَهَذِهِ وَهَذِهِ سَوَاءٌ» قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ فِي الدِّيَاتِ فِي الْأَعْضَاءِ أَثَرًا يَصِحُّ فِي تَوْقِيتِهَا وَبَيَانِهَا إِلَّا هَذَا، وَسَائِرُ ذَلِكَ إِنَّمَا يُرْجَعُ فِيهِ إِلَى الْإِجْمَاعِ وَالِاسْتِدْلَالِ مِنْهُ، وَمِنَ النَّصِّ عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى.

L37111 Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us, Muḥammad ibn Aḥmad ibn Mufarrij narrated to us, Ibrāhīm ibn Aḥmad ibn Fīrās narrated to us, Muḥammad ibn ʿAlī ibn Zayd narrated to us, Saʿīd ibn Manṣūr narrated to us, Hushaym narrated to us, Ibn Abī Laylā—who is Muḥammad ibn ʿAbd al-Raḥmān—narrated from ʿIkrimah ibn Khālid al-Makhzūmī, who said: "The Messenger of Allāh, peace be upon him, ruled regarding the nose if completely severed: the full *diyah*; regarding the tongue: the full *diyah*; regarding the penis: the full *diyah*; regarding the eye: fifty; regarding the leg: fifty; regarding the wound exposing the bone: five; regarding the wound dislocating the bone: fifteen; regarding the penetrating wound: one-third of the *diyah* for a life; regarding the head wound reaching the membrane: one-third of the *diyah* for a life; regarding the teeth: five for each; and regarding the fingers in those parts: ten for each."

نا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ بْنِ فِرَاسٍ نا مُحَمَّدُ بْنُ عَلِيِّ بْنِ زَيْدٍ نا سَعِيدُ بْنُ مَنْصُورٍ نا هُشَيْمٌ نا ابْنُ أَبِي لَيْلَى - هُوَ مُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ - عَنْ عِكْرِمَةَ بْنِ خَالِدٍ الْمَخْزُومِيِّ قَالَ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَنْفِ إِذَا اُسْتُؤْصِلَ بِالدِّيَةِ، وَفِي اللِّسَانِ الدِّيَةُ، وَفِي الذَّكَرِ الدِّيَةُ، وَفِي الْعَيْنِ خَمْسِينَ، وَفِي الرِّجْلِ خَمْسِينَ، وَفِي الْمُوضِحَةِ بِخَمْسٍ مِنْ الْإِبِلِ وَفِي الْمُنَقِّلَةِ بِخَمْسَ عَشْرَةَ، وَفِي الْجَائِفَةِ ثُلُثُ دِيَةِ النَّفْسِ، وَفِي الْمَأْمُومَةِ ثُلُثُ دِيَةِ النَّفْسِ، وَفِي الْأَسْنَانِ خَمْسًا خَمْسًا، وَفِيمَا هُنَالِكَ مِنْ الْأَصَابِعِ عَشْرًا عَشْرًا» .

L37112 Ahmad ibn Qasim narrated: My father Qasim ibn Muhammad ibn Qasim narrated: My grandfather Qasim ibn Asbagh narrated: Ahmad ibn Zuhayr and Muhammad ibn Sulayman al-Munqiri both narrated together: Al-Hakam ibn Musa narrated: Yahya ibn Hamzah narrated from Sulayman ibn Dawud al-Jazari from al-Zuhri from Abu Bakr ibn Muhammad ibn Amr ibn Hazm from his father from his grandfather: "The Messenger of Allah—peace and blessings be upon him—wrote to the people of Yemen in a letter containing rulings on inheritance, Sunnahs, and blood compensations. He sent it with Amr ibn Hazm, and it was recited in Yemen. This is its copy. In his letter, he stated: Whoever kills a believer deliberately upon clear evidence must face retribution, unless the guardians of the slain accept compensation. For a life, the blood money is one hundred camels. For a nose if completely severed, the full blood money applies. For the tongue, the full blood money applies. For the two lips, the full blood money applies. For the two testicles, the full blood money applies. For the penis, the full blood money applies. For the spine, the full blood money applies. For the two eyes, the full blood money applies. For one leg, half the blood money. For a skull fracture reaching the brain membrane, one-third of the blood money. For a dislocated bone wound, fifteen camels. For a stab wound penetrating the body cavity, one-third of the blood money. For each finger of the hands and feet, ten camels.

نا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ، وَمُحَمَّدُ بْنُ سُلَيْمَانَ الْمُنْقِرِيُّ قَالَا جَمِيعًا: نَا الْحَكَمُ بْنُ مُوسَى نا يَحْيَى بْنُ حَمْزَةَ عَنْ سُلَيْمَانَ بْنِ دَاوُد الْجَزَرِيِّ عَنْ الزُّهْرِيِّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ إِلَى أَهْلِ الْيَمَنِ بِكِتَابٍ فِيهِ الْفَرَائِضُ وَالسُّنَنُ وَالدِّيَاتُ وَبَعَثَ بِهِ مَعَ عَمْرِو بْنِ حَزْمٍ فَقُرِئَتْ بِالْيَمَنِ وَهَذِهِ نُسْخَتُهَا، وَكَانَ فِي كِتَابِهِ: مَنْ اعْتَبَطَ مُؤْمِنًا قَتْلًا عَنْ بَيِّنَةٍ، فَإِنَّهُ قَوَدٌ، إِلَّا أَنْ يَرْضَى أَوْلِيَاءُ الْمَقْتُولِ وَفِي النَّفْسِ الدِّيَةُ مِائَةٌ مِنْ الْإِبِلِ، وَفِي الْأَنْفِ إِذَا أُوعِبَ جَدْعًا الدِّيَةُ، وَفِي اللِّسَانِ الدِّيَةُ، وَفِي الشَّفَتَيْنِ الدِّيَةُ، وَفِي الْبَيْضَتَيْنِ الدِّيَةُ، وَفِي الذَّكَرِ الدِّيَةُ، وَفِي الصُّلْبِ الدِّيَةُ، وَفِي الْعَيْنَيْنِ الدِّيَةُ، وَفِي الرِّجْلِ الْوَاحِدَةِ نِصْفُ الدِّيَةِ، وَفِي الْمَأْمُومَةِ ثُلُثُ الدِّيَةِ وَفِي الْمُنَقِّلَةِ خَمْسَةَ عَشَرَ مِنْ الْإِبِلِ، وَفِي الْجَائِفَةِ ثُلُثُ الدِّيَةِ، وَفِي كُلِّ أُصْبُعٍ مِنْ الْأَصَابِعِ مِنْ الْيَدِ

For a tooth, five camels. A man is executed for [killing] a woman. For those who pay in gold, the blood money is one thousand dinars."

وَالرِّجْلِ عَشَرَةٌ مِنْ الْإِبِلِ، وَفِي السِّنِّ خَمْسٌ مِنْ الْإِبِلِ - وَإِنَّ الرَّجُلَ يُقْتَلُ بِالْمَرْأَةِ - وَعَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ الدِّيَةُ»

L37113–37115 In the hadith of Ahmad ibn Shuʿayb: ʿAmr ibn Mansur narrated to us, Al-Hakam ibn Musa—he is the son of Ṣāliḥ, a reliable narrator—narrated to us. Yaḥyā ibn Ḥamzah narrated to us from Sulaymān ibn Dāwūd. Al-Zuhrī narrated to me from Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm, from his father, from his grandfather: "The Messenger of Allah (peace and blessings be upon him) wrote to the people of Yemen." From Muhammad the Prophet, in a book containing inheritance shares, sunnah practices, and blood money regulations, sent with ʿAmr ibn Ḥazm which was recited to the people of Yemen – and this is its copy: To Shuraḥbīl ibn ʿAbd Kulāl, Al-Ḥārith ibn ʿAbd Kulāl, Nuʿaym ibn ʿAbd Kulāl, the Qayl of Dhu Ruʿayn, Maʿāfir, and Hamdān. To proceed. He then mentioned the exact wording of the ḥadīth letter by letter, with no addition, omission, alteration in sequence, or delay, except that he stated regarding a single man: "killing based on clear evidence" – and in these narrations there are additional details and extended accounts in the reporting.

وَفِي حَدِيثِ أَحْمَدَ بْنِ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نا الْحَكَمُ بْنُ مُوسَى - هُوَ ابْنُ صَالِحٍ - ثِقَةٌ نا يَحْيَى بْنُ حَمْزَةَ عَنْ سُلَيْمَانَ بْنَ دَاوُد حَدَّثَنِي الزُّهْرِيُّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَتَبَ إلَى أَهْلِ الْيَمَنِ بِكِتَابٍ فِيهِ الْفَرَائِضُ، وَالسُّنَنُ، وَالدِّيَاتُ، وَبَعَثَ بِهِ مَعَ عَمْرِو بْنِ حَزْمٍ فَقُرِئَتْ عَلَى أَهْلِ الْيَمَنِ، وَهَذِهِ نُسْخَتُهَا» مِنْ مُحَمَّدٍ النَّبِيِّ إلَى شُرَحْبِيلَ بْنِ عَبْدِ كُلَالٍ، وَالْحَارِثِ بْنِ عَبْدِ كُلَالٍ، وَنُعَيْمِ بْنِ عَبْدِ كُلَالٍ قَيْلِ ذِي رُعَيْنٍ، وَمَعَافِرَ، وَهَمْدَانَ، أَمَّا بَعْدُ " ثُمَّ ذَكَرَ نَصَّ الْحَدِيثِ حَرْفًا حَرْفًا، لَا زِيَادَةَ فِيهِ وَلَا نَقْصَ، وَلَا تَقْدِيمَ وَلَا تَأْخِيرَ، إلَّا أَنَّهُ قَالَ فِي الرَّجُلِ الْوَاحِدِ، وَقَالَ: قَتْلًا عَنْ بَيِّنَةٍ - وَفِي هَذِهِ الْأَحَادِيثِ زِيَادَةٌ فِي الرِّوَايَةِ وَطُولٌ

L37116 Abu Muhammad said: All of this is compiled in the book of Ibn Ḥazm, the Mursal narration of ʿIkrimah, the ḥadīth of ʿAmr ibn Shuʿayb, the ḥadīth of Zayd ibn Thābit, the ḥadīth of a man from the family of ʿUmar, and the ḥadīth of Ibn Ṭāwūs narrated from his father; as for the ḥadīth of Masrūq ibn Aws from Abū Mūsā and the ḥadīth of Abū Tumaylah from Yāsār the teacher from Yazīd al-Naḥwī from ʿIkrimah from Ibn ʿAbbās, we have no need for them, for they contain nothing except what is in the ḥadīth of Yazīd ibn Zuraiʿ from Saʿīd ibn Abī ʿArūbah from Qatādah from ʿIkrimah from Ibn ʿAbbās. The authoritative transmission relied upon is that of Shuʿbah and Saʿīd, due solely to the authenticity of the two narrations. And with Allāh, the Exalted, lies success.

قَالَ أَبُو مُحَمَّدٍ: فَيَجْمَعُ هَذَا كُلَّهُ كِتَابُ ابْنِ حَزْمٍ، وَمُرْسَلُ عِكْرِمَةَ، وَحَدِيثُ عَمْرِو بْنِ شُعَيْبٍ، وَحَدِيثُ زَيْدِ بْنِ ثَابِتٍ، وَحَدِيثُ رَجُلٍ مِنْ آلِ عُمَرَ، وَحَدِيثُ ابْنِ طَاوُسٍ عَنْ أَبِيهِ؛ فَأَمَّا حَدِيثُ مَسْرُوقِ بْنِ أَوْسٍ عَنْ أَبِي مُوسَى، وَحَدِيثُ أَبِي تُمَيْلَةَ عَنْ يَسَارٍ الْمُعَلِّمِ عَنْ يَزِيدَ النَّحْوِيِّ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ، فَلَا حَاجَةَ بِنَا إلَيْهِمَا لِأَنَّهُ لَيْسَ فِيهِمَا إلَّا مَا فِي حَدِيثِ يَزِيدَ بْنِ زُرَيْعٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ - وَالْمُعْتَمَدُ عَلَيْهِ رِوَايَةُ شُعْبَةَ، وَسَعِيدٍ، لِصِحَّتِهِمَا فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37117 As for the ḥadīth of Shuʿbah: Narrated by Muḥammad ibn Saʿīd ibn Nabāt,

narrated by ʿAbdullāh ibn Naṣr, narrated by Qāsim ibn Aṣbagh, narrated by Ibn Waḍḍāḥ, narrated by Mūsā ibn Muʿāwiyah, narrated by Wakīʿ, narrated by Shuʿbah from Ghālib al-Tammār from Masrūq ibn Aws ibn Masrūq from Abū Mūsā, who said: "The Messenger of Allah (peace be upon him) ruled that the blood money for fingers is equal."

أَمَّا حَدِيثُ شُعْبَةَ نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا شُعْبَةُ عَنْ غَالِبٍ التَّمَّارِ عَنْ مَسْرُوقِ بْنِ أَوْسِ بْنِ مَسْرُوقٍ عَنْ أَبِي مُوسَى قَالَ: «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي دِيَةِ الْأَصَابِعِ سَوَاءً»

L37118 Abu Muhammad said: Ghalib did not hear it from Masruq.

قَالَ أَبُو مُحَمَّدٍ: لَمْ يَسْمَعْهُ غَالِبٌ مِنْ مَسْرُوقٍ.

L37119 Abdullah ibn Rabiʿ narrated: Muhammad ibn Muʿawiyah narrated: Ahmad ibn Shuʿayb narrated: Amr ibn Ali narrated: Muhammad ibn Jaʿfar, known as Ghundar, narrated: Saʿid ibn Abi Arubah narrated from Ghalib al-Tammar from Humaid ibn Hilal from Masruq from Abu Musa from the Prophet (peace be upon him), who said: "The fingers are equal, ten." As for the narrations of Ibn Hazm, Zayd ibn Thabit, a man from the lineage of ʿUmar, Ibn Tawus from his father, the narration of Makhul, and the mursal narration of Ikrimah, none of them are authentic.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عَمْرُو بْنُ عَلِيٍّ نا مُحَمَّدُ بْنُ جَعْفَرٍ غُنْدَرٌ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ غَالِبٍ التَّمَّارِ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ مَسْرُوقٍ عَنْ أَبِي مُوسَى عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْأَصَابِعُ سَوَاءٌ عَشْرٌ» وَأَمَّا حَدِيثُ ابْنِ حَزْمٍ، وَزَيْدِ بْنِ ثَابِتٍ، وَرَجُلٍ مِنْ آلِ عُمَرَ، وَابْنِ طَاوُسٍ عَنْ أَبِيهِ، وَخَبَرُ مَكْحُولٍ، وَمُرْسَلُ عِكْرِمَةَ، فَإِنَّهُ لَا يَصِحُّ مِنْهَا شَيْءٌ.

L37120–37122 As for the ḥadīth of Ibn Ḥazm, it is a manuscript—and its chain of transmission lacks merit—because he did not provide a chain for it except... Sulayman ibn Dawud al-Jazari and Sulayman ibn Qarm—both are unreliable. Yahya ibn Ma'in was asked about Sulayman al-Jazari, who transmits from al-Zuhri and from whom Yahya ibn Hamzah transmitted. He replied, "He is not reliable."

أَمَّا حَدِيثُ ابْنِ حَزْمٍ فَإِنَّهُ صَحِيفَةٌ - وَلَا خَيْرَ فِي إِسْنَادِهِ - لِأَنَّهُ لَمْ يَسْنُدْهُ إِلَّا سُلَيْمَانُ بْنُ دَاوُد الْجَزَرِيُّ، وَسُلَيْمَانُ بْنُ قَرْمٍ - وَهُمَا لَا شَيْءَ - وَقَدْ سُئِلَ يَحْيَى بْنَ مَعِينٍ عَنْ سُلَيْمَانَ الْجَزَرِيِّ الَّذِي يُحَدِّثُ عَنِ الزُّهْرِيِّ وَرَوَى عَنْهُ يَحْيَى بْنُ حَمْزَةَ؟ فَقَالَ: لَيْسَ بِشَيْءٍ.

L37123 As for Sulaymān ibn Qarm, he is wholly dismissed.

وَأَمَّا سُلَيْمَانُ بْنُ قَرْمٍ فَسَاقِطٌ بِالْجُمْلَةِ.

L37124 Similarly, via Mālik from ʿAbd Allāh ibn Abī Bakr: There is no valid proof in a *Mursal*, and thus that book was abandoned as a whole.

وَكَذَلِكَ مِنْ طَرِيقِ مَالِكٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرٍ وَلَا حُجَّةَ فِي مُرْسَلٍ فَسَقَطَ ذَلِكَ الْكِتَابُ جُمْلَةً.

L37125 Abu Muhammad said: It has become clear—and these reports all [support

this]—. As for what has been narrated concerning this matter from the Companions (may Allah be pleased with them), the Followers, and those after them: We were narrated through the chain of al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Yaḥyā ibn Saʿīd al-Anṣārī, from Saʿīd ibn al-Musayyib, that ʿUmar ibn al-Khaṭṭāb determined the compensation for front teeth as five camels, and for each molar a camel. When Muʿāwiyah assumed authority, his molars fell out, so he said: "Do I know more about molars than ʿUmar?" He then standardized their compensation as equal.

قَالَ أَبُو مُحَمَّد: فَظَهَرَ وَهِيَ هَذِهِ الْأَخْبَارُ كُلُّهَا - وَأَمَّا مَا جَاءَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالتَّابِعِينَ وَمَنْ بَعْدَهُمْ -: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِيمَا أَقْبَلَ مِنْ الْأَسْنَانِ بِخَمْسَةِ أَبْعِرَةٍ، وَفِي الْأَضْرَاسِ بَعِيرًا بَعِيرًا، فَلَمَّا كَانَ مُعَاوِيَةُ وَقَعَتْ أَضْرَاسُهُ فَقَالَ: أَنَا أَعْلَمُ بِالْأَضْرَاسِ مِنْ عُمَرَ؟ فَجَعَلَهُنَّ سَوَاءً.

L37126 Yusuf ibn Abdullah an-Namari narrated to us: Ahmad ibn Muhammad ibn al-Jasur narrated to us: Qasim ibn Asbagh narrated to us: Mutarrif ibn Qays narrated to us: Yahya ibn Bukayr narrated to us: Malik reported from Zayd ibn Aslam from Muslim ibn Jundub from Aslam, the freed slave of Umar ibn al-Khattab, that Umar ruled regarding the molar [to be compensated with] a camel.

نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا قَاسِمُ بْنُ أَصْبَغَ نَا مُطَرِّفُ بْنُ قَيْسٍ نا يَحْيَى بْنُ بُكَيْرٍ نا مَالِكٌ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ عَنْ أَسْلَمَ مَوْلَى لِعُمَرَ بْنِ الْخَطَّابِ عَنْ عُمَرَ أَنَّهُ قَضَى فِي الضِّرْسِ بِجَمَلٍ

L37127 Through him [the chain] to Malik, from Yahya ibn Saʿid, who heard Saʿid ibn al-Musayyab say: "Umar ibn al-Khattab ruled that for each molar, [the compensation is] one camel, one camel. Muʿawiyah ibn Abi Sufyan ruled that for each molar, [the compensation is] five camels, five camels." Saʿid remarked: "Thus, the diyah is diminished under Umar's ruling and amplified under Muʿawiyah's. Were I to decide, I would assign two camels, two camels for each molar, thereby balancing the diyah equally."

وَبِهِ إِلَى مَالِكٍ عَنْ يَحْيَى بْنِ سَعِيدٍ أَنَّهُ سَمِعَ سَعِيدَ بْنَ الْمُسَيِّبِ يَقُولُ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الْأَضْرَاسِ بِبَعِيرٍ بَعِيرٍ. وَقَضَى مُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ فِي الْأَضْرَاسِ بِخَمْسَةِ أَبْعِرَةٍ خَمْسَةِ أَبْعِرَةٍ، قَالَ سَعِيدٌ: فَالدِّيَةُ تَنْقُصُ فِي قَضَاءِ عُمَرَ وَتَزِيدُ فِي قَضَاءِ مُعَاوِيَةَ، فَلَوْ كُنْت أَنَا لَجَعَلْت فِي الْأَضْرَاسِ بَعِيرَيْنِ بَعِيرَيْنِ، فَتِلْكَ الدِّيَةُ سَوَاءٌ.

L37128 There has also come from ʿUmar other than this—as narrated via the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from Jābir from al-Shaʿbī from Shurayḥ, that ʿUmar wrote to him: "The teeth are to be considered equal."

وَقَدْ جَاءَ عَنْ عُمَرَ غَيْرُ هَذَا - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ أَنَّ عُمَرَ كَتَبَ إلَيْهِ أَنَّ الْأَسْنَانَ سَوَاءٌ.

L37129–37131 Also through the chain of Abd al-Razzaq, from Ma'mar, from Ibn Shubrumah: Umar ibn al-Khattab assigned five camels per tooth. Via the narration chain of Waki', who narrated to us: Sufyān reported from Abī Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who stated in *al-Sunan*: "Five camels are subject to zakat."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ أَيْضًا عَنْ مَعْمَرٍ عَنْ ابْنِ شُبْرُمَةَ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَعَلَ فِي كُلِّ ضِرْسٍ خَمْسًا مِنْ الْإِبِلِ وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ فِي السُّنَنِ: خَمْسٌ مِنْ الْإِبِلِ.

L37132 From Waki', from Mālik ibn Anas, from Dāwūd ibn al-Ḥuṣayn, from

وَعَنْ وَكِيعٍ نا مَالِكُ بْنُ أَنَسٍ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: الْأَسْنَانُ سَوَاءٌ اعْتَبِرُوهَا بِالْأَصَابِعِ عَقْلُهَا سَوَاءٌ.

'Ikrimah, from Ibn 'Abbās that he said: "The teeth are equal; consider them in relation to the fingers. Their blood money is the same."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَالِكٍ عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ أَبِي غَطَفَانَ: أَنَّ مَرْوَانَ أَرْسَلَهُ إلَى ابْنِ عَبَّاسٍ يَسْأَلُهُ مَاذَا جَعَلَ فِي الضِّرْسِ؟ قَالَ: فِيهِ خَمْسٌ مِنْ الْإِبِلِ، قَالَ: فَرَدَّنِي إلَى ابْنِ عَبَّاسٍ قَالَ: أَتَجْعَلُ مُقَدَّمَ الْفَمِ كَالْأَضْرَاسِ قَالَ: لَوْ لَمْ نَعْتَبِرْ ذَلِكَ إلَّا بِالْأَصَابِعِ عَقْلُهَا سَوَاءٌ.

L37133 From the chain of transmission of Abd al-Razzaq, from Malik, from Dawud ibn al-Husayn, from Abu Ghutafan: Marwan sent him to Ibn Abbas to ask, "What blood money is set for a molar?" He replied: "Five camels." Marwan then sent me back to Ibn Abbas, asking: "Do you consider the front teeth equal to the molars?" He responded: "If we only determined this by analogy to the fingers, their blood money would be equal."

قَالَ أَبُو مُحَمَّد: ادَّعَى قَوْمٌ أَنَّ مَعْنَى قَوْلِ ابْنِ عَبَّاسٍ اعْتَبِرُوهَا بِالْأَصَابِعِ إنَّمَا هُوَ قِيسُوهَا بِالْأَصَابِعِ، وَهَذَا بَاطِلٌ، لِأَنَّا قَدْ ذَكَرْنَا قَبْلَ هَذَا بِنَحْوِ وَرَقَتَيْنِ فِي الْآثَارِ الرِّوَايَةَ الثَّابِتَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنَّ الْأَصَابِعَ سَوَاءٌ، وَأَنَّ الْأَضْرَاسَ سَوَاءٌ، وَأَنَّ الثَّنَايَا سَوَاءٌ» .

L37134 Abu Muhammad said: A group claimed that the meaning of Ibn Abbas's statement "Apply analogy using the fingers" was "Measure it with the fingers." This is false, for we have previously mentioned in approximately two pages of the earlier reports the authentically transmitted narration from Ibn Abbas from the Prophet (peace be upon him): "The fingers are equal in compensatory value, the molars are equal in compensatory value, and the incisors are equal in compensatory value."

وَقَدْ ذَكَرْنَا آنِفًا اخْتِلَافَ الصَّحَابَةِ فِي التَّفْضِيلِ بَيْنَ الْأَسْنَانِ وَسَنَذْكُرُ فِي بَابِ الْأَصَابِعِ اخْتِلَافَهُمْ فِي الْأَصَابِعِ، فَمِنْ الْبَاطِلِ الْبَحْتِ: أَنْ يَأْمُرَ ابْنُ عَبَّاسٍ بِقِيَاسِ الْأَضْرَاسِ عَلَى الْأَصَابِعِ، وَالنَّصُّ قَدْ جَاءَ فِيهِمَا مَعًا مَجِيئًا وَاحِدًا، وَالْخِلَافُ فِيهِمَا مَعًا مَوْجُودٌ، وَإِنَّمَا مَعْنَى قَوْلِ ابْنِ عَبَّاسٍ " اعْتَبِرُوهَا بِالْأَصَابِعِ " إنَّمَا هُوَ أَنَّهُ كَانُوا يُخَالِفُونَهُ، فَيَرَوْنَ الْمُفَاضَلَةَ بَيْنَ الْأَسْنَانِ وَالْأَضْرَاسِ، لِتَفَاضُلِ مَنَافِعِهِمَا، وَلَا يَرَوْنَ ذَلِكَ فِي الْأَصَابِعِ - وَإِنْ كَانَتْ مُخْتَلِفَةَ الْمَنَافِعِ - فَكَانَ يُبَكِّتُهُمْ ابْنُ عَبَّاسٍ بِذَلِكَ، وَيُرِيهِمْ تَنَاقُضَهُمْ فِي تَعْلِيلِهِمْ وَيُبْطِلُ تَعْلِيلَهُمْ بِذَلِكَ، وَيَأْمُرُهُمْ بِأَنْ يَتَفَكَّرُوا فِيهَا بِقَوْلِهِمْ فِي الْأَصَابِعِ، لِأَنَّ الْعِبْرَةَ فِي كَلَامِ الْعَرَبِ إنَّمَا هُوَ التَّفَكُّرُ، وَالتَّعَجُّبُ وَالتَّدَبُّرُ فَقَطْ.

L37135 We previously mentioned the Companions' disagreement concerning gradation between teeth, and we will mention in the chapter on fingers their disagreement regarding fingers. It is absolute falsehood to claim Ibn Abbas instructed the analogizing of molars to fingers, when the textual ruling addressed both simultaneously in the same manner, and disagreement exists concerning both. The meaning of Ibn Abbas's statement "Analogize them to the fingers" is that they opposed him, believing in gradation between teeth and molars due to the varying degrees of their benefits, while rejecting this for fingers—despite the fingers' varying benefits. Thus, Ibn Abbas reproached them by exposing their contradictory reasoning, invalidating their rationale, and commanding them to reflect using their own reasoning about the fingers. For the lesson in Arabic discourse lies solely in reflection, wonder, and contemplation.

L37136 As for the Successors: Muḥammad ibn Saʿīd ibn Nabāt narrated to us:

ʿAbdullāh ibn Naṣr narrated to us: Qāsim ibn Aṣbagh narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated to us: Hishām ibn ʿUrwah reported from his father, that he equalized all teeth in diyah, stating: "If the incisor has beauty, the molar has a benefit."

وَأَمَّا التَّابِعُونَ - فَحَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ: أَنَّهُ كَانَ يُسَوِّي بَيْنَ الْأَسْنَانِ فِي الدِّيَةِ، وَيَقُولُ: إِنْ كَانَ لِلثَّنِيَّةِ جَمَالٌ فَإِنَّ لِلضِّرْسِ مَنْفَعَةً.

L37137–37139 And through him to Waki', Shu'bah narrated from Salamah ibn Kuhayl, from Shurayh, who said: "The teeth are equivalent." And through the chain of Abd al-Razzaq from Ma'mar, from al-Zuhri and Qatadah, they both declared collectively: For every tooth, five camels are due - molars and front teeth are considered equal.

وَبِهِ إِلَى وَكِيعٍ نَا شُعْبَةُ عَنْ سَلَمَةَ بْنِ كُهَيْلٍ عَنْ شُرَيْحٍ قَالَ: الْأَسْنَانُ سَوَاءٌ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ، وَقَتَادَةَ، قَالَا جَمِيعًا: فِي كُلِّ سِنٍّ خَمْسٌ مِنَ الْإِبِلِ - الْأَضْرَاسُ وَالْأَسْنَانُ سَوَاءٌ.

L37140 From [Muḥammad ibn Rāshid], transmitted through him to 'Abd al-Razzāq, who said: I heard Makḥūl say, "The fingers are equal, and the teeth are equal."

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ [عَنْ مُحَمَّدِ بْنِ رَاشِدٍ] قَالَ سَمِعْت مَكْحُولًا يَقُولُ: الْأَصَابِعُ سَوَاءٌ وَالْأَسْنَانُ سَوَاءٌ.

L37141 And through him to 'Abd al-Razzāq from Ibn Jurayj from Sulaymān ibn Mūsā, who said in a book by 'Umar ibn 'Abd al-'Azīz: "For teeth [as compensation], five camels for each tooth?" Abū Muḥammad said: This is the opinion of Abū Ḥanīfah, Mālik, al-Shāfi'ī, Aḥmad, Abū Sulaymān, their companions, Sufyān al-Thawrī, and Isḥāq ibn Rāhawayh.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ فِي كِتَابٍ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: فِي الْأَسْنَانِ خَمْسٌ خَمْسٌ مِنَ الْإِبِلِ؟ قَالَ أَبُو مُحَمَّدٍ: وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ - وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ، وَسُفْيَانُ الثَّوْرِيُّ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L37142 And here is another statement—as has been narrated to us—through the chain of Abd al-Razzaq from Sufyan ibn Uyaynah from Abdullah ibn Tawus from his father: "that the Prophet, peace and blessings be upon him, ruled that the compensation for a tooth is five camels."

وَهُنَا قَوْلٌ آخَرُ - كَمَا رُوِّينَا - مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي السِّنِّ بِخَمْسٍ مِنَ الْإِبِلِ» .

L37143 Tawus said: Each age surpasses the one that follows it, according to the judgment of the people of opinion and consultation.

قَالَ طَاوُسٌ: وَتَفْضُلُ كُلُّ سِنٍّ عَلَى الَّتِي تَلِيهَا بِمَا يَرَى أَهْلُ الرَّأْيِ وَالْمَشُورَةِ.

L37144 And via him to Abd al-Razzaq, from Ibn Jurayj, from Ibn Tawus, who said: I asked my father, "Where should one begin?" He responded, "Starting with the two incisors is preferable to the other teeth."

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ طَاوُسٍ قَالَ: قُلْت لِأَبِي: مِنْ أَيْنَ يُبْدَأُ؟ قَالَ: الثَّنِيَّتَانِ خَيْرٌ مِنَ الْأَسْنَانِ.

L37145 Ibn Jurayj said: ʿAmr ibn Muslim reported to me that he heard Ṭāwūs say, "The canine teeth in the upper and lower jaw are preferable to the molars." He said, "And for the molars, young camels are required."

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَمْرُو بْنُ مُسْلِمٍ أَنَّهُ سَمِعَ طَاوُسًا يَقُولُ: يُفَضَّلُ النَّابُ فِي أَعْلَى الْفَمِ وَأَسْفَلِهِ عَلَى الْأَضْرَاسِ، قَالَ: وَفِي الْأَضْرَاسِ صِغَارُ الْإِبِلِ.

L37146 Abu Muhammad—may Allah be pleased with him—said: We have been narrated through the chain of Abd al-Razzaq from Ibn Jurayj, who said: I asked Ata ibn Abi Rabah: "The teeth [in compensation]?" Ata replied: "For the two incisors, the two canines, and the two canines—five five. For the remaining teeth, two two—the upper jaw and lower jaw being equal—all these are equal, and the molars are equal." Ibn Jurayj said: I asked Ata: "If a woman's teeth are wholly struck?" He answered: "Fifty."

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءِ بْنِ أَبِي رَبَاحٍ: الْأَسْنَانُ؟ قَالَ عَطَاءٌ: فِي الثَّنِيَّتَيْنِ وَالرَّبَاعِيَتَيْ نِ وَالنَّابَيْنِ خَمْسٌ خَمْسٌ، وَفِيمَا بَقِيَ بَعِيرَانِ بَعِيرَانِ - أَعْلَى الْفَمِ وَأَسْفَلُهُ سَوَاءٌ - كُلُّ ذَلِكَ سَوَاءٌ، وَالْأَضْرَاسُ سَوَاءٌ، قَالَ ابْنُ جُرَيْجٍ: قُلْت لِعَطَاءٍ: أَسْنَانُ الْمَرْأَةِ تُصَابُ جَمِيعًا؟ قَالَ: خَمْسُونَ.

L37147 Ali said: These statements, as we have cited, are statements from Umar, Ali, Muawiyah, and Ibn Abbas—may Allah be pleased with them—that the blood money for a front tooth and a molar is equal, five each.

قَالَ عَلِيٌّ: فَهَذِهِ الْأَقْوَالُ كَمَا أَوْرَدْنَا قَوْلٌ عَنْ عُمَرَ، وَعَلِيٍّ، وَمُعَاوِيَةَ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ -: أَنَّ دِيَةَ السِّنِّ وَالضِّرْسِ سَوَاءٌ خَمْسٌ خَمْسٌ.

L37148–37149 This is also the view of Urwah ibn al-Zubayr, Shurayḥ, al-Zuhrī, Qatādah, Makḥūl, and ʿUmar ibn ʿAbd al-ʿAzīz.

وَهُوَ قَوْلُ عُرْوَةَ بْنِ الزُّبَيْرِ، وَشُرَيْحٍ، وَالزُّهْرِيِّ، وَقَتَادَةَ، وَمَكْحُولٍ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L37150 Another opinion is that the incisors, premolars, and canines are each valued at five camels, while the rest of the molars—which are the grinders—are each valued at one camel. This is the ruling confirmed by Umar ibn al-Khattab.

وَقَوْلٌ آخَرُ - أَنَّ الثَّنَايَا وَالرَّبَاعِيَّاتِ وَالْأَنْيَابِ خَمْسٌ خَمْسٌ، وَفِي سَائِرِ الْأَضْرَاسِ - وَهِيَ الطَّوَاحِنُ - بَعِيرٌ بَعِيرٌ - وَهُوَ الثَّابِتُ عَنْ عُمَرَ بْنِ الْخَطَّابِ.

L37151 Another opinion is that the molars are preferred over the incisors and premolars. This is a view soundly narrated from Muʿāwiyah, as we have cited.

وَقَوْلٌ آخَرُ - إنَّ الطَّوَاحِنَ مُفَضَّلَةٌ عَلَى الثَّنَايَا وَالرَّبَاعِيَاتِ. وَهُوَ قَوْلٌ صَحَّ عَنْ مُعَاوِيَةَ، كَمَا أَوْرَدْنَا.

L37152 A fourth opinion—held by Saʿīd ibn al-Musayyib, Mujāhid, and ʿAṭāʾ—states that five camels are due for each tooth and two camels for each molar.

وَقَوْلٌ رَابِعٌ - وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَمُجَاهِدٍ، وَعَطَاءٍ: إنَّ فِي الْأَسْنَانِ خَمْسًا خَمْسًا، وَفِي الْأَضْرَاسِ بَعِيرَانِ بَعِيرَانِ.

L37153 Another opinion states that for an incisor, five camels are due as compensation. Then each subsequent tooth exceeds the one preceding it, and the next exceeds the one before it, continuing in this manner until the last tooth in the mouth. This is the view held by Tāwus.

وَقَوْلٌ آخَرُ - وَهُوَ أَنَّ فِي الثَّنِيَّةِ خَمْسًا مِنْ الْإِبِلِ، ثُمَّ تَفْضُلُ عَلَى الَّتِي تَلِيهَا وَتَفْضُلُ الَّتِي تَلِيهَا عَلَى الَّتِي تَلِيهَا، وَهَكَذَا إلَى آخِرِ الْفَمِ وَهُوَ قَوْلُ طَاوُسٍ.

قَالَ عَلِيٌّ: فَلَمْ يُحْصَلْ مِنْ هَذِهِ الْمَسْأَلَةِ إِلَّا عَلَى أَخْبَارٍ مُرْسَلَةٍ لَا تَصِحُّ، وَلَوْ صَحَّتْ لَكَانَ الْحَاضِرُونَ مِنْ خُصُومِنَا مُخَالِفِينَ لَهَا كَمَا ذَكَرْنَا - وَمِنَ الْبَاطِلِ احْتِجَاجُ الْمَرْءِ بِخَبَرٍ لَا يَرَاهُ عَلَى نَفْسِهِ حُجَّةً، وَهُوَ عِنْدَهُ حُجَّةٌ، لَا حُجَّةَ عَلَى مَنْ لَا يَرَاهُ حُجَّةً فِي شَيْءٍ أَصْلًا.

L37154 Ali said: Nothing has been established concerning this issue except reports with incomplete chains of transmission that lack authenticity. Even if they were authentic, those present among our opponents would contradict them as we have stated. It is invalid for a person to argue using a report he does not consider binding upon himself while deeming it a proof, for there is no proof against one who does not regard it as a proof in any matter whatsoever.

قَالَ أَبُو مُحَمَّدٍ: لَكِنَّا نَقُولُ - قَوْلَ مَنْ يَدْرِي وَيُوقِنُ أَنَّ قَوْلَهُ وَكِتَابَهُ مَعْرُوضَانِ عَلَيْهِ [فِي] يَوْمِ الْقِيَامَةِ، وَهُوَ مَسْئُولٌ عَنْهُمَا -: إِنَّ الْخَطَأَ فِي السُّكُوتِ بِالْجَهْلِ أَسْلَمُ مِنَ الْخَطَأِ فِي الْحُكْمِ فِي الدِّينِ بِالْجَهْلِ، بَلِ السُّكُوتُ لِمَنْ لَمْ يَعْلَمْ فَرْضٌ عَلَيْهِ وَاجِبٌ، وَالْقَوْلُ بِمَا لَا يَعْلَمُ حَرَامٌ عَلَى النَّاسِ.

L37155 Abu Muhammad said: We affirm—the position of one who knows and is certain that his speech and writings will be presented to him on the Day of Resurrection, and he will be questioned about them—that erring in silence due to ignorance is more sound than erring in religious judgment due to ignorance. Rather, silence is an obligatory duty for one who does not know, while speaking without knowledge is forbidden for people.

فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: وَإِنَّهُ إِنْ لَمْ يَصِحَّ فِي إِيجَابِ الدِّيَةِ فِي الْخَطَأِ فِي السِّنِّ إِجْمَاعٌ مُتَيَقَّنٌ، فَلَا يَجِبُ فِي ذَلِكَ شَيْءٌ أَصْلًا، لِمَا قَدْ ذَكَرْنَاهُ مِنْ قَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

L37156 We say—and with Allah, the Exalted, is success—that if no certain consensus exists regarding the obligation of diyah for error concerning age, then nothing is obligatory in that matter at all, due to what we have cited from the verse of Allah, the Exalted: “There is no blame on you for what you have done in error, but only for what your hearts have intended” [Al-Ahzab: 5].[9]

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ لِأَحَدٍ إِيجَابُ غَرَامَةٍ عَلَى أَحَدٍ إِلَّا أَنْ يُوجِبَهَا نَصٌّ صَحِيحٌ، أَوْ إِجْمَاعٌ مُتَيَقَّنٌ - فَأَمَّا النَّصُّ الصَّحِيحُ فَقَدْ أَمِنَّا وُجُودَهُ بِيَقِينٍ هَاهُنَا، فَكُلُّ مَا رُوِيَ فِي ذَلِكَ مُنْذُ أَرْبَعمِائَةِ عَامٍ وَنَيِّفٍ وَأَرْبَعِينَ عَامًا مِنْ شَرْقِ الْأَرْضِ إِلَى غَرْبِهَا قَدْ جَمَعْنَاهُ فِي الْكِتَابِ الْكَبِيرِ الْمَعْرُوفِ بِ " كِتَابِ الْإِيصَالِ " وَلِلَّهِ الْحَمْدُ - وَهُوَ الَّذِي أَوْرَدْنَا مِنْهُ مَا شَاءَ اللَّهُ تَعَالَى، فَإِنْ وُجِدَ شَيْءٌ غَيْرُ ذَلِكَ فَمَا لَا خَيْرَ فِيهِ أَصْلًا، لَكِنْ مِمَّا لَعَلَّهُ مَوْضُوعٌ مُحْدَثٌ.

L37157–37159 And due to the saying of the Messenger of Allah (peace be upon him): “Indeed, your blood and your wealth are inviolable to you.” It is not permissible for anyone to impose compensation upon another unless mandated by a sound textual evidence or a definite scholarly consensus. As for the sound textual evidence, we have ascertained its existence with certainty here. All that has been transmitted regarding this matter over four hundred and forty years, from the eastern to the western regions of the earth, we have compiled in the major work known as *The Book of Transmission* (Kitāb al-Īṣāl)—and all praise belongs to Allah. From this work, we have cited what Allah the Exalted willed. Should anything beyond this be found, it is utterly without merit, being perhaps a fabricated and baselessly innovated matter.

وَأَمَّا الْإِجْمَاعُ - فَلَسْنَا نَعْرِفُهُ، وَقَدْ قَالَتِ الْمَلَائِكَةُ {لا عِلْمَ لَنَا إِلا مَا عَلَّمْتَنَا} [البقرة: ٣٢] وَلَوْ صَحَّ عِنْدَنَا فِي ذَلِكَ إِجْمَاعٌ لَبَادَرْنَا إِلَى الطَّاعَةِ لَهُ، وَمَا تَرَدَّدْنَا فِي ذَلِكَ طَرْفَةَ

L37160 As for consensus (ijmāʿ), we do not acknowledge it. The angels said, “We have no knowledge except what You have taught us” [Al-Baqarah: 32]. If an

[9] **Qur’an references (L37156):** Qur’an 33:5 (Al-Ahzab).

established consensus were confirmed to us regarding that, we would hasten to obey it and would not hesitate for even the blink of an eye. Therefore, whoever has an established consensus confirmed to him regarding that, let him be mindful of Allah and not oppose it. And whoever does not have an established consensus or explicit text confirmed to him, his obligation is to abstain, and it is not permissible for him to lie and claim a consensus.[10]

L37161 Abū Muḥammad said: Then we say—and success comes only from Allāh, the Exalted—if a consensus were established that the incisor incurs five camels, the ruling in such a case would be: if a definitive consensus were established that five camels are due as compensation for the incisor, then it would become obligatory to assign five for every tooth and five for every molar. This is because it has been authentically established that the Messenger of Allāh—peace and blessings be upon him—said: "Teeth are equal in compensation; the incisor and the molar are equally the same."

L37162 This universality is not permissible for anyone to oppose or specify exceptions to; it is obligatory to apply it according to its apparent meaning, as it pertains to the qisas which Allah the Exalted commanded in the Quran and which he (the Prophet) commanded—peace and blessings be upon him—without any doubt.

L37163 As for intentional injury, it is permissible for the fracturer and the one whose tooth was fractured, and the extractor and the one whose tooth was extracted, to mutually agree upon compensation (diyah) for it, as authenticated and established in the hadith of al-Rubayyiʿ.

L37164 And with Allah, the Exalted, is success.

L37165 **Issue: The blood money for a molar tooth that blackens and trembles.**

L37166–37168 The molar blackens and shakes. Ali said: It was narrated to us through the chain of Abd al-Razzaq from al-Hajjaj ibn Arṭāṭ from Makhul from Zayd ibn Thabit, who said regarding the tooth: One must wait with it for a year. If it blackens completely, the full compensation is due for it. Otherwise,

[10] **Qur'an references (L37160):** Qur'an 2:32 (Al-Baqarah).

عَيْنٍ، فَمَنْ صَحَّ عِنْدَهُ فِي ذَلِكَ إِجْمَاعٌ فَلْيَتَّقِ اللَّهَ وَلَا يُخَالِفْهُ، وَمَنْ لَمْ يَصِحَّ عِنْدَهُ إِجْمَاعٌ وَلَا نَصٌّ، فَفَرْضُهُ التَّوَقُّفُ، وَلَا يَحِلُّ لَهُ أَنْ يَكْذِبَ فَيَدَّعِيَ إِجْمَاعًا.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: إِنَّهُ لَوْ صَحَّ فِي ذَلِكَ إِجْمَاعٌ بِأَنَّ فِيهَا خَمْسًا، فَوَجْهُ الْعَمَلِ فِي ذَلِكَ أَنَّهُ لَوْ صَحَّ الْإِجْمَاعُ الْمُتَيَقَّنُ عَلَى أَنَّ فِي الثَّنِيَّةِ خَمْسًا مِنْ الْإِبِلِ، فَوَاجِبٌ كَانَ أَنْ يَكُونَ فِي كُلِّ سِنٍّ، وَكُلِّ ضِرْسٍ خَمْسٌ خَمْسٌ، لِأَنَّهُ قَدْ صَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «الْأَسْنَانُ سَوَاءٌ، الثَّنِيَّةُ وَالضِّرْسُ سَوَاءٌ» .

وَهَذَا الْعُمُومُ لَا يَحِلُّ لِأَحَدٍ خِلَافُهُ، وَلَا تَخْصِيصُهُ، فَوَاجِبٌ حَمْلُهُ عَلَى ظَاهِرِهِ، وَأَنَّهُ فِي الْقِصَاصِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْقُرْآنِ، وَأَمَرَ هُوَ بِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِلَا شَكٍّ.

وَأَمَّا فِي الْعَمْدِ فَجَائِزٌ تَرَاضِي الْكَاسِرِ وَالْمَكْسُورِ سِنُّهُ، وَالْقَالِعِ وَالْمَقْلُوعِ سِنُّهُ عَلَى الْفِدَاءِ فِي ذَلِكَ، عَلَى مَا صَحَّ وَثَبَتَ فِي حَدِيثِ الرُّبَيِّعِ.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةِ الضِّرْسِ تَسْوَدّ وَتَرْجُفُ]

الضِّرْسُ تَسْوَدُّ وَتَرْجُفُ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ فِي السِّنِّ: يُسْتَأْنَى بِهَا سَنَةً، فَإِنْ اسْوَدَّتْ فَفِيهَا الْعَقْلُ كَامِلًا، وَإِلَّا فَمَا اسْوَدَّ مِنْهَا فَبِالْحِسَابِ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ

compensation is calculated proportionally based on the portion that blackens. Abd al-Karim narrated to me through the chain of Ibn Jurayj from Abd al-Razzaq that Ali ibn Abi Talib said regarding a tooth that is damaged and they fear it may blacken: It is to be observed for a year. If it blackens, its full value is due, but if it does not blacken, nothing is due. Abd al-Karim said: And they say: If it blackens after a year, nothing is due.

أَخْبَرَنِي عَبْدُ الْكَرِيمِ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي السِّنِّ تُصَابُ فَيَخْشَوْنَ أَنْ تَسْوَدَّ: يُنْتَظَرُ بِهَا سَنَةً، فَإِنْ اسْوَدَّتْ فَفِيهَا قَدْرُهَا وَافِيًا، وَإِنْ لَمْ تَسْوَدَّ فَلَيْسَ فِيهَا شَيْءٌ. قَالَ عَبْدُ الْكَرِيمِ: وَيَقُولُونَ: فَإِنْ اسْوَدَّتْ بَعْدَ سَنَةٍ فَلَيْسَ فِيهَا شَيْءٌ.

L37169 From the transmission of Abd al-Razzaq, from Ibn Jurayj: Abd al-Aziz informed me that in a document of Umar ibn Abd al-Aziz from Umar ibn al-Khattab, it states: For a tooth - five camels, or their equivalent in gold or silver. If it blackens, the full compensation is owed. If a part of it is broken (since it has not blackened), then the compensation is calculated accordingly.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ: أَنَّ فِي كِتَابٍ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ الْخَطَّابِ: فِي السِّنِّ خَمْسٌ مِنَ الْإِبِلِ، أَوْ عَدْلُهَا مِنَ الذَّهَبِ، أَوْ الْوَرِقِ، فَإِنْ اسْوَدَّتْ فَقَدْ تَمَّ عَقْلُهَا، فَإِنْ كُسِرَ مِنْهَا - إِذْ لَمْ تَسْوَدَّ - فَبِحِسَابِ ذَلِكَ.

L37170 From Saʿīd ibn al-Musayyib: When a tooth turns black, the full compensation becomes due. If it is knocked out afterward, the compensation remains obligatory in full.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ إِذَا اسْوَدَّتِ السِّنُّ فَقَدْ تَمَّ عَقْلُهَا، فَإِنْ طُرِحَتْ بَعْدَ ذَلِكَ، فَفِيهَا الْعَقْلُ أَيْضًا كَامِلًا.

L37171 Ibn Wahb said: Yunus reported to me from Rabīʿah with a similar narration.

[قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي يُونُسُ عَنْ رَبِيعَةَ بِمِثْلِهِ] .

L37172 Ibn Wahb said: I heard Hanzala ibn Abi Sufyan say: I heard al-Qasim ibn Muhammad ask about a tooth that was shaking but had not turned black. He said: The full liability is required for it.

قَالَ ابْنُ وَهْبٍ: وَسَمِعْتُ حَنْظَلَةَ بْنَ أَبِي سُفْيَانَ يَقُولُ: سَمِعْتُ الْقَاسِمَ بْنَ مُحَمَّدٍ يَسْأَلُ عَنْ سِنٍّ كَانَتْ تَرْجُفُ وَلَمْ تَسْوَدَّ؟ قَالَ: فَفِيهَا الْعَقْلُ كَامِلًا.

L37173 It is narrated from ʿUmar ibn ʿAbd al-ʿAzīz that he wrote to the troops: “When a tooth blackens, the full blood money for it is established. Any tooth broken thereafter shall be assessed proportionally [based on that amount].”

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، أَنَّهُ كَتَبَ إِلَى الْأَجْنَادِ: أَنَّ السِّنَّ إِذَا اسْوَدَّتْ فَقَدْ تَمَّ عَقْلُهَا وَمَا كُسِرَ مِنْهَا بَعْدَ ذَلِكَ فَبِحِسَابِ ذَلِكَ.

L37174 On the authority of Ibn Wahb, who said: ’Umar ibn Qays informed me from ’Aṭā’ ibn Abī Rabāḥ that a man asked him about a case where someone broke another man’s tooth, so retaliation was exacted from him. The offender then took the tooth and replaced it, and it became fixed. The other party subsequently brought a legal case against him, but ’Aṭā’ ruled: “He has no right to anything.”

وَعَنِ ابْنِ وَهْبٍ أَنَّهُ قَالَ: أَخْبَرَنِي عُمَرُ بْنُ قَيْسٍ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ سَأَلَهُ رَجُلٌ عَنْ رَجُلٍ كَسَرَ سِنَّ رَجُلٍ فَأُقِيدَ مِنْهُ فَأَخَذَ سِنَّهُ فَرَدَّهَا فَثَبَتَتْ، فَخَاصَمَهُ الْآخَرُ، فَقَالَ: لَيْسَ لَهُ شَيْءٌ.

L37175 From Shurayh: He ruled regarding a fractured tooth that the assessment

is deferred for one year. If it blackens, the full blood money is due; if not, blood money is owed proportionally to the damage sustained by it.

وَعَنْ شُرَيْحٍ أَنَّهُ قَالَ فِي السِّنِّ إذَا كُسِرَتْ: يُؤَجَّلُ صَاحِبُهَا سَنَةً، فَإِنْ اسْوَدَّتْ فَدِيَتُهَا كَامِلَةٌ، وَإِنْ لَمْ تَسْوَدَّ فَبِقَدْرِ مَا نَقَصَ مِنْهَا.

L37176 From Ata, he said: If a tooth falls out, becomes blackened, or becomes loose, blood money is assessed. Ibn Juraij said: Ibn Shihab told me: Regarding the tooth, if it becomes blackened, the full blood money for it is due.

وَعَنْ عَطَاءٍ قَالَ: إنْ سَقَطَتْ سِنٌّ، أَوْ اسْوَدَّتْ، أَوْ رَجَفَتْ قُوِّمَتْ - قَالَ ابْنُ جُرَيْجٍ: وَقَالَ لِي ابْنُ شِهَابٍ: فِي السِّنِّ إذَا اسْوَدَّتْ فَقَدْ تَمَّ عَقْلُهَا.

L37177–37179 Abdul Aziz ibn Abi Salamah and Al-Layth said: If a tooth is struck and turns black, then its blood money (diya) is due. The full compensation is due. If the tooth is dislodged again afterward, the full indemnity applies once more. And Mālik said: When a tooth blackens, the full compensation for it becomes due. If it is dislodged again, the indemnity remains complete. And here is another opinion—narrated from Ibn ʿAbbās—that ʿUmar ibn al-Khaṭṭāb said: For a blackened tooth that is removed, a third of its blood money (diyah) is owed.

وَقَالَ عَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ، وَاللَّيْثُ: إذَا ضُرِبَتْ السِّنُّ فَاسْوَدَّتْ فَفِيهَا عَقْلُهَا كَامِلًا، فَإِنْ طُرِحَتْ بَعْدَ ذَلِكَ فَفِيهَا الْعَقْلُ كَامِلًا مَرَّةً أُخْرَى وَقَالَ مَالِكٌ: إذَا اسْوَدَّتْ السِّنُّ فَقَدْ تَمَّ عَقْلُهَا، فَإِنْ طُرِحَتْ مَرَّةً أُخْرَى فَعَقْلُهَا أَيْضًا تَامٌّ وَهَاهُنَا قَوْلٌ آخَرُ - عَنْ ابْنِ عَبَّاسٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: فِي السِّنِّ السَّوْدَاءِ إذَا سَقَطَتْ ثُلُثُ دِيَتِهَا.

L37180 Abū Muḥammad said: This is established from ʿUmar ibn al-Khaṭṭāb due to the continuity of its chain, the reliability of its narration, and its unbroken transmission. Yunus ibn ʿAbd Allāh narrated to us: Aḥmad ibn ʿAbd al-Raḥīm narrated to us, Aḥmad ibn Khālid narrated to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us, Muḥammad ibn Bashshār narrated to us, Yaḥyā ibn Saʿīd al-Qaṭṭān narrated to us, Hishām al-Dastuwāʾī narrated to us, Qatādah narrated from ʿAbd Allāh ibn Buraydah from Yaḥyā ibn Yaʿmur from Ibn ʿAbbās: That ʿUmar ibn al-Khaṭṭāb - and this is the position upheld by Aḥmad ibn Ḥanbal and Isḥāq ibn Rāhawayh.

قَالَ أَبُو مُحَمَّد: وَهَذَا هُوَ الثَّابِتُ عَنْ عُمَرَ بْنِ الْخَطَّابِ لِاتِّصَالِ سَنَدِهِ، وَجَوْدَةِ رِوَايَتِهِ وَاتِّصَالِهِ حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا هِشَامٌ الدَّسْتُوَائِيُّ نا قَتَادَةُ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ يَحْيَى بْنِ يَعْمُرَ عَنْ ابْنِ عَبَّاسٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ - وَبِهِ يَقُولُ أَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L37181 It is narrated from Saʿīd ibn al-Musayyib that he said: “For [the loss of] a molar tooth, one-third of the *diyah* [is due].”

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: فِي السِّنِّ السَّوْدَاءِ ثُلُثُ الدِّيَةِ.

L37182 Narrated from Mujāhid that he said: If a tooth becomes blackened or loose and then falls out, is the compensatory value half, even if its full value was in it initially?

وَعَنْ مُجَاهِدٍ أَنَّهُ قَالَ: إذَا اسْوَدَّتْ السِّنُّ، أَوْ رَجَفَتْ ثُمَّ طُرِحَتْ فَنِصْفُ قَدْرِهَا - وَإِنْ كَانَ فِيهَا قَدْرُهَا أَوَّلَ مَرَّةٍ؟ .

L37183 Ibn Abī Najīḥ narrated from Mujāhid that concerning the black tooth, its *diyah* (blood money) is a quarter.

وَذَكَرَ ابْنُ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ فِي السِّنِّ السَّوْدَاءِ رُبْعَ دِيَتِهَا.

L37184 On the authority of Yazīd ibn ʿAbdillāh ibn Quṣayṭ that he said: Regarding the black tooth - if it is broken, a fifth of its diyah (blood money) is owed, and likewise for every limb.

وَعَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ أَنَّهُ قَالَ: فِي السِّنِّ السَّوْدَاءِ إِذَا كُسِرَتْ خُمْسُ دِيَتِهَا، وَفِي كُلِّ عُضْوٍ.

L37185 Abū Muḥammad said: Thus, regarding its blackening—as is evident—therein has been disagreement.

قَالَ أَبُو مُحَمَّدٍ: فَفِي اسْوِدَادِهَا - كَمَا تَرَى - أَقْوَالٌ اُخْتُلِفَ فِيهَا.

L37186 As for specifying [the amount] as one-third of the diyah (blood money), half of it, or a quarter of it, this constitutes an opinion unsupported by the Quran, Sunnah, or scholarly consensus. Such a position is invalid and cannot be endorsed.

أَمَّا التَّوْقِيتُ بِثُلُثِ الدِّيَةِ وَنِصْفِهَا وَرُبْعِهَا، فَقَوْلٌ لَا يُعَضِّدُهُ قُرْآنٌ وَلَا سُنَّةٌ وَلَا إجْمَاعٌ، وَمَا كَانَ هَكَذَا فَلَا يَجُوزُ الْقَوْلُ بِهِ.

L37187–37189 If the blackening, discoloration, reddening, yellowing, cracking, or fracture of the tooth occurred unintentionally—given that no Quranic text stipulates compensation for it, nor any authentic (sahih) or weak (da'if) Sunnah, nor any Consensus (Ijmaʿ) at all regarding any of these matters—then it is impermissible to mandate any compensation whatsoever for it, because... Mistakes are nullified by the explicit text of the Quran, and wealth is inviolable by the Quran and the Sunnah. Therefore, it is absolutely impermissible to impose any penalty (gharāmah) in such matters, as this would entail imposing a Sharia injunction. Sharia rulings can only be established based on an explicit text or consensus, and this is beyond any doubt or hesitation. All praise is due to Allah, the Lord of all the worlds.

فَإِذَا كَانَ سَوَادُ السِّنِّ وَاخْضِرَارُهَا وَاحْمِرَارُهَا وَاصْفِرَارُهَا وَصَدْعُهَا وَكَسْرُهَا - إذَا كَانَ كُلُّ ذَلِكَ خَطَأً: لَا قُرْآنَ جَاءَ فِيهِ بِإِيجَابِ غَرَامَةٍ، وَلَا سُنَّةَ صَحِيحَةَ، وَلَا سَقِيمَةَ، وَلَا إجْمَاعَ عَلَى شَيْءٍ مِنْ ذَلِكَ أَصْلًا: لَمْ يَجُزْ أَنْ يُوجَبَ فِي ذَلِكَ شَيْءٌ أَصْلًا، لِأَنَّ الْخَطَأَ مَرْفُوعٌ بِنَصِّ الْقُرْآنِ، وَالْأَمْوَالُ مُحَرَّمَةٌ بِالْقُرْآنِ وَبِالسُّنَّةِ، فَلَا يَجُوزُ أَلْبَتَّةَ إيجَابُ غَرَامَةٍ فِي ذَلِكَ، لِأَنَّهُ إيجَابُ شَرْعٍ وَالشَّرْعُ لَا يَجِبُ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَهَذَا مِمَّا لَا يُشَكُّ فِيهِ وَلَا يُتَرَدَّدُ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. .

L37190 It has been reported to us through the chain of Abd al-Razzaq from Ibn Jurayj from Makhul, who said: Zayd ibn Thabit stated regarding the extra tooth, "One-third of its *diyah*." And from al-Hasan al-Basri, who said: "A ruling applies to it." This is the opinion held by al-Thawri, Abu Hanifah, Malik, al-Shafi'i, and their companions.

رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ مَكْحُولٍ قَالَ: قَالَ زَيْدُ بْنُ ثَابِتٍ فِي السِّنِّ الزَّائِدَةِ ثُلُثُ دِيَتِهَا. وَعَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: فِيهَا حُكْمٌ. وَبِهَذَا يَقُولُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ.

L37191 As for the age of the minor—it was narrated to us through the chain of Al-Ḥajjāj ibn Al-Minhāl who reported: Ḥammād ibn Salamah narrated to us → Al-Ḥajjāj ibn Arṭā'ah → Al-Walīd ibn Abī Mālik → his brother: that ʿUmar ibn Al-Khaṭṭāb ruled regarding the developmental stage of a minor whose tooth was broken before the eruption of his permanent incisors (i.e., pre-puberty), with compensation equivalent to [the value of] a camel.

وَأَمَّا سِنُّ الصَّغِيرِ - فَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الْوَلِيدِ بْنِ أَبِي مَالِكٍ عَنْ أَخِيهِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي سِنِّ صَبِيٍّ كُسِرَتْ قَبْلَ أَنْ يُثْغِرَ بِبَعِيرٍ.

L37192 And it was narrated to us through the chain of Abd al-Razzaq from Abu Hanifah, who said: Zaid ibn Thabit ruled regarding the boy whose molars have not erupted: ten dinars.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ أَبِي حَنِيفَةَ قَالَ: قَالَ زَيْدُ بْنُ ثَابِتٍ فِي سِنِّ الصَّبِيِّ الَّذِي لَمْ يُثْغِرْ عَشَرَةُ دَنَانِيرَ.

L37193 Abū Muḥammad said: “It is the value of the camel among them in the diyah”—ʿAbd al-Razzāq reported from Maʿmar that—“and this is the opinion of some scholars of Kufa.” It is related from al-Ḥasan that he said regarding the age of a boy who has not grown molars: “Should two upright assessors evaluate him? If hair has grown, something is allocated to him; but if it has not grown, he is assessed as equivalent to an adult.”

قَالَ أَبُو مُحَمَّدٍ: وَهِيَ قِيمَةُ الْبَعِيرِ عِنْدَهُمْ فِي الدِّيَةِ - قَالَ عَبْدُ الرَّزَّاقِ قَالَ مَعْمَرٌ - وَهُوَ قَوْلُ بَعْضِ عُلَمَاءِ الْكُوفَةِ وَعَنْ الْحَسَنِ قَالَ فِي سِنِّ الصَّبِيِّ إذَا لَمْ يُثْغِرْ، قَالَ: يَنْظُرُ فِيهِ ذَوَا عَدْلٍ؟ فَإِنْ نَبَتَتْ جُعِلَ لَهُ شَيْءٌ وَإِنْ لَمْ تَنْبُتْ كَانَ كَسِنِّ الرَّجُلِ.

L37194 And from Sulaymān ibn Yasār that he asked for a legal opinion regarding a boy who had not reached puberty whose tooth was injured—is there any blood money for it? He said: No. Abū Ḥanīfa said: There is a discretionary assessment [by the judge]. Mālik and al-Shāfiʿī said: If it grew, there is no blood money for it. Mālik said: If it grew partially, blood money is owed proportionate to its deficiency compared to the next in the hierarchy. If it did not grow, then five fixed portions of blood money are owed.

وَعَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّهُ اسْتَفْتَى فِي غُلَامٍ لَمْ يُثْغِرْ أُصِيبَتْ سِنُّهُ هَلْ فِيهَا مِنْ عَقْلٍ؟ قَالَ: لَا، وَقَالَ أَبُو حَنِيفَةَ: فِيهَا حُكُومَةٌ - وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: إنْ نَبَتَتْ فَلَا شَيْءَ فِيهَا، وَقَالَ مَالِكٌ: إنْ نَبَتَتْ نَاقِصَةً أُعْطِيَ بِقَدْرِ نَقْصِهَا عَنْ الَّتِي تَلِيهَا، فَإِنْ لَمْ تَنْبُتْ فَفِيهَا خَمْسُ فَرَائِضَ.

L37195–37197 This is among the matters in which Abū Ḥanīfah, Mālik, and al-Shāfiʿī each differed from ʿUmar ibn al-Khaṭṭāb. And Zayd ibn Thabit - may Allah be pleased with them both - regarding what has been narrated from them in this chapter, with no opposing opinion from the Companions - may Allah be pleased with them - being known. Abu Muhammad said: Since authentic disagreement exists in this matter, it is impermissible to obligate any compensation except through textual evidence or consensus. As there is neither textual evidence nor consensus requiring anything regarding the age of a child, no obligation whatsoever exists for an error in that matter - and success is from Allah alone.

وَهَذَا مِمَّا خَالَفَ فِيهِ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: عُمَرَ بْنَ الْخَطَّابِ، وَزَيْدَ بْنَ ثَابِتٍ - رَضِيَ اللَّهُ عَنْهُمَا - فِيمَا رُوِيَ عَنْهُمَا فِي هَذَا الْبَابِ، وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ صَحَّ الْخِلَافُ فِي ذَلِكَ فَلَا يَجُوزُ أَنْ يُكَلَّفَ أَحَدٌ غَرَامَةً إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَلَا نَصَّ وَلَا إجْمَاعَ فِي إيجَابِ شَيْءٍ فِي سِنِّ الصَّبِيِّ فَلَا يَجُوزُ أَنْ يَجِبَ فِي الْخَطَأِ فِي ذَلِكَ شَيْءٌ أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

Issue regarding the diyah of the eye.

[مَسْأَلَةٌ دِيَةِ الْعَيْنِ]

L37198 The eye. Abū Muḥammad said: We have previously clarified that the blood money for one eye or both eyes is only attested in the document of ʿAmr ibn Ḥazm, the report of a man from the clan of ʿUmar, the narration of Makhūl, and Ṭāwūs—none of which are reliable, as we have explained. We shall now

. الْعَيْنُ قَالَ أَبُو مُحَمَّدٍ: قَدْ ذَكَرْنَا أَنَّ دِيَةَ الْعَيْنِ وَالْعَيْنَيْنِ لَمْ يَأْتِ إلَّا فِي صَحِيفَةِ عَمْرِو بْنِ حَزْمٍ، وَخَبَرِ رَجُلٍ مِنْ آلِ عُمَرَ، وَخَبَرِ مَكْحُولٍ، وَطَاوُسٍ وَكُلُّهَا لَا يَصِحُّ مِنْهَا شَيْءٌ،

relate, if Allah—the Exalted—wills, what Allah—the Almighty and Majestic—has facilitated for us to recount from the transmissions of the Companions—may Allah be pleased with them—and the Successors—may Allah have mercy on them.

لِمَا ذَكَرْنَا وَنَذْكُرُ إِنْ شَاءَ اللَّهُ تَعَالَى مَا يَسَّرَ اللَّهُ عَزَّ وَجَلَّ لِذِكْرِهِ مِمَّا جَاءَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَعَنْ التَّابِعِينَ رَحْمَةُ اللَّهِ عَلَيْهِمْ.

L37200 Hummam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq narrated **to us** from Sufyān al-Thawrī and Maʿmar, both of them from Abū Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: Regarding the eye, half.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ، وَمَعْمَرٍ، كِلَاهُمَا عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي الْعَيْنِ النِّصْفُ.

L37201 And through him to Abd al-Razzaq from Ibn Jurayj from Abd al-Aziz ibn Umar ibn Abd al-Aziz from Umar ibn al-Khattab, who said: The compensation for an eye is half the *diyah*, or the equivalent of that in gold or silver. The compensation for a woman's eye is half her *diyah*, or the equivalent of that in gold or silver.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: فِي الْعَيْنِ نِصْفُ الدِّيَةِ، أَوْ عَدْلُ ذَلِكَ مِنْ الذَّهَبِ أَوْ الْوَرِقِ، وَفِي عَيْنِ الْمَرْأَةِ نِصْفُ دِيَتِهَا، أَوْ عَدْلُ ذَلِكَ مِنْ الذَّهَبِ أَوْ الْوَرِقِ.

L37202 As for the eye of the one-eyed man—in that regard, ʿAbdullāh ibn Rabīʿ narrated to us from ʿAbdullāh ibn ʿUthmān, who narrated from Aḥmad ibn Khālid, who narrated from ʿAlī ibn ʿAbd al-ʿAzīz, who narrated from al-Ḥajjāj ibn al-Minhāl, who narrated from Ḥammād ibn Salamah, from Qatādah, from Abū Mijlaz, who said: A man asked Ibn ʿUmar about a one-eyed man whose [remaining] eye was unintentionally gouged out. ʿAbdullāh ibn Ṣafwān said: "'Umar ruled full blood money for it." The man replied: "I am not asking *you*—I am asking Ibn ʿUmar!" Ibn Ṣafwān retorted: "He [Ibn ʿUmar] narrates to you from ʿUmar—and you ask *me*?"

وَأَمَّا عَيْنُ الْأَعْوَرِ - فَفِي ذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ أَبِي مِجْلَزٍ قَالَ: إنَّ رَجُلًا سَأَلَ ابْنَ عُمَرَ عَنْ أَعْوَرَ فُقِئَتْ عَيْنُهُ خَطَأً؟ فَقَالَ عَبْدُ اللَّهِ بْنُ صَفْوَانَ: قَضَى فِيهَا عُمَرُ بِالدِّيَةِ كَامِلَةً، فَقَالَ الرَّجُلُ: إنِّي لَسْت إيَّاكَ أَسْأَلُ، إنَّمَا أَسْأَلُ ابْنَ عُمَرَ؟ فَقَالَ: ابْنُ عُمَرَ يُحَدِّثُك عَنْ عُمَرَ وَتَسْأَلُنِي.

L37203 And through him to Hammad ibn Salamah, we narrated from Qatadah from Abd Rabbihi from Abu Iyad that he was asked about a one-eyed man who intentionally gouged out the eye of a man with two sound eyes. He said: The commander—meaning Uthman—ruled that the full diyah must be paid for it, because retaliation cannot be exacted from the one-eyed man.

وَبِهِ إِلَى حَمَّادِ بْنِ سَلَمَةَ نا قَتَادَةُ عَنْ عَبْدِ رَبِّهِ عَنْ أَبِي عِيَاضٍ أَنَّهُ قَالَ فِي رَجُلٍ أَعْوَرَ فَقَأَ عَيْنَ صَحِيحِ الْعَيْنَيْنِ عَمْدًا؟ فَقَالَ: قَضَى فِيهَا الْأَمِيرُ بِالدِّيَةِ كَامِلَةً - يَعْنِي عُثْمَانَ - لِأَنَّهُ لَا يُقْتَصُّ مِنْ الْأَعْوَرِ.

L37204–37206 Narrated to us by Abdullah ibn Rabiʿ, Ibn Mufarrij narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waddah narrated to us, Sahnun narrated to us, narrated to us. Ibn Wahb narrated from Ibn Samʿān from Ibn ʿAbbās,

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونَ نا ابْنُ وَهْبٍ عَنْ ابْنِ سَمْعَانَ عَنْ ابْنِ عَبَّاسٍ قَالَ: دِيَةُ عَيْنِ الْأَعْوَرِ أَلْفُ دِينَارٍ.

who said: The diyah (blood money) for the loss of the remaining eye of a one-eyed person is one thousand dinars.

L37207 Malik reported to me on the authority of Ibn Shihāb that he used to say: "The full diyah is due for the eye of a one-eyed person." Malik said: "I have been informed that Sulaymān ibn Yasār used to say that."

وَأَخْبَرَنِي مَالِكٌ عَنْ ابْنِ شِهَابٍ أَنَّهُ كَانَ يَقُولُ: فِي عَيْنِ الْأَعْوَرِ الدِّيَةُ كَامِلَةٌ قَالَ مَالِكٌ: بَلَغَنِي عَنْ سُلَيْمَانَ بْنِ يَسَارٍ أَنَّهُ كَانَ يَقُولُ ذَلِكَ.

L37208 Ibn Wahb said: Yunus and Malik reported to me from Rabiʿah ibn Abi ʿAbd al-Raḥmān the same report.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي يُونُسُ، وَمَالِكٌ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ مِثْلَهُ.

L37209 Ibn Wahb said: It was reported to me by ʿUmar ibn Qays, Yazīd ibn ʿIyāḍ, and Ibn Lahīʿah. ʿUmar ibn Qays reported from ʿAṭāʾ, from ʿAlī ibn Abī Ṭālib. Ibn Lahīʿah reported from Yazīd ibn Abī Ḥabīb, from Muḥammad ibn Jaʿfar ibn al-Zubayr, from ʿUrwah ibn al-Zubayr. Yazīd ibn ʿIyāḍ said, reporting from ʿAbd al-Malik ibn ʿUbayd, from Saʿīd ibn al-Musayyib. They all said the same as that.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي عُمَرُ بْنُ قَيْسٍ، وَيَزِيدُ بْنُ عِيَاضٍ، وَابْنُ لَهِيعَةَ قَالَ عُمَرُ بْنُ قَيْسٍ: عَنْ عَطَاءٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ ابْنُ لَهِيعَةَ: عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ مُحَمَّدِ بْنِ جَعْفَرِ بْنِ الزُّبَيْرِ عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، وَقَالَ يَزِيدُ بْنُ عِيَاضٍ: عَنْ عَبْدِ الْمَلِكِ بْنِ عُبَيْدٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، قَالُوا كُلُّهُمْ مِثْلَ ذَلِكَ.

L37210 Ibn Wahb said: Al-Layth ibn Sa'd informed me from Yahya ibn Sa'id al-Ansari that he said: The Sunnah and the opinion of the righteous people is that if a one-eyed man's eye is gouged out, the value of the one-eyed man's eye is one thousand dinars. And if the one-eyed man gouges out the eye of a person with two sound eyes, he must pay him one thousand dinars.

وَقَالَ ابْنُ وَهْبٍ: أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ: السُّنَّةُ، وَرَأْيُ الصَّالِحِينَ: أَنَّ الْأَعْوَرَ إِذَا فُقِئَتْ عَيْنُهُ ثَمَنُ عَيْنِ الْأَعْوَرِ أَلْفُ دِينَارٍ، وَأَنَّهُ إِذَا فَقَأَ الْأَعْوَرُ عَيْنَ صَحِيحِ الْعَيْنَيْنِ غَرِمَ لَهُ أَلْفَ دِينَارٍ.

L37211 It has been reported to us through the chain of Abd al-Razzaq from Ma'mar from Qatāda regarding the eye of a one-eyed person: one thousand dinars. Ma'mar said: Qatāda and al-Zuhrī both stated: If a one-eyed person deliberately gouges out the eye of a sighted individual, he must pay blood money of one thousand dinars. If done unintentionally, he must pay blood money of five hundred dinars. Al-Zuhrī also addressed the case of a man who had whiteness in one eye and whose healthy eye was injured. He said: We hold that the blood money for both eyes should be increased by the amount the other, uninjured eye had already lost in value due to its pre-existing impairment.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي عَيْنِ الْأَعْوَرِ أَلْفُ دِينَارٍ قَالَ مَعْمَرٌ: وَقَالَ قَتَادَةُ، وَالزُّهْرِيُّ مَعًا: إِذَا فَقَأَ الْأَعْوَرُ عَيْنَ صَحِيحِ الْعَيْنَيْنِ عَمْدًا أُغْرِمَ أَلْفَ دِينَارٍ، وَإِذَا فَقَأَهَا خَطَأً أُغْرِمَ خَمْسَمِائَةِ دِينَارٍ وَقَالَ الزُّهْرِيُّ فِي رَجُلٍ فِي إِحْدَى عَيْنَيْهِ بَيَاضٌ فَأُصِيبَتْ عَيْنُهُ الصَّحِيحَةُ، قَالَ: نَرَى أَنْ يُزَادَ فِي عَقْلِ عَيْنَيْهِ مَا نَقَصَ مِنْ الْأُخْرَى الَّتِي لَمْ تُصَبْ.

L37212 And with it adopt Al-Ḥasan al-Baṣrī, Mālik, al-Layth, Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhwayh.

وَبِهِ يَأْخُذُ الْحَسَنُ الْبَصْرِيُّ، وَمَالِكٌ، وَاللَّيْثُ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

وَقَالَ آخَرُونَ: فِيهَا نِصْفُ الدِّيَةِ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ بَعْضِ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «فِي عَيْنِ الْأَعْوَرِ خَمْسُونَ» .

L37213 Others said: In it is half the diyah, as we were narrated via Abd al-Razzaq's chain from Ibn Jurayj - Abd al-Aziz informed me from al-Hakam ibn Utaybah from one of the companions of the Prophet (peace be upon him) who said: "For the eye of the one-eyed person is fifty."

وَعَنْ مَسْرُوقٍ أَنَّهُ قَالَ: فِي عَيْنِ الْأَعْوَرِ نِصَابٌ، أَنَا أَدِي قَتِيلَ اللَّهِ فِيهَا نِصْفَ الدِّيَةِ - وَبِهِ يَقُولُ الشَّعْبِيُّ وَعَنْ عَبْدِ اللَّهِ بْنِ مُغَفَّلٍ أَنَّهُ سُئِلَ عَنْ الرَّجُلِ يَفْقَأُ عَيْنَ الْأَعْوَرِ قَالَ: مَا أَنَا فَقَأْت عَيْنَهُ الْأُخْرَى فِيهَا نِصْفُ الدِّيَةِ.

L37214–37216 Masruq stated: For the eye of a one-eyed person, the standard diyya applies. If an injury to it results in death, half the diyya is owed for the killing of a human being under God's protection. This is also the opinion of Al-Sha'bi. From Abdullah ibn Mughaffal: He was asked about a man who gouges out the eye of a one-eyed person. He said, "I did not gouge his other eye; in this case, half the diyah is owed."

وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ قَالَ: فِي عَيْنِ الْأَعْوَرِ نِصْفُ الدِّيَةِ، [وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي عَيْنِ الْأَعْوَرِ تُفْقَأُ عَيْنُهُ خَطَأً قَالَ: نِصْفُ الدِّيَةِ] .

L37217 It is narrated from 'Ata ibn Abi Rabah that he said: For the eye of a one-eyed person, half the *diyah* is due. [It is narrated from Ibrahim al-Nakha'i that he said regarding the eye of a one-eyed person whose eye is gouged out by mistake: Half the *diyah* is due].

قَالَ أَبُو مُحَمَّدٍ: قَوْلُنَا فِي الْعَيْنِ هُوَ قَوْلُنَا فِي السِّنِّ سَوَاءً سَوَاءً، وَأَنَّهُ إنَّمَا جَاءَتْ فِي دِيَةِ الْعَيْنِ بِالْخَطَأِ آثَارٌ، وَقَدْ تَقَصَّيْنَاهَا - وَلِلَّهِ الْحَمْدُ - لَيْسَ مِنْهَا شَيْءٌ يَصِحُّ.

L37218 Abu Muhammad said: Our ruling regarding the eye is exactly the same as our ruling regarding the tooth. Only traditions concerning blood money for the eye in cases of accidental injury have been transmitted—and we have scrutinized them thoroughly, all praise is due to Allah—but none of them is sound.

وَأَمَّا قَوْلُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي ذَلِكَ فَإِنَّمَا جَاءَ ذَلِكَ عَنْ عُمَرَ، وَعَلِيٍّ، وَعُثْمَانَ، وَابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، وَبَعْضِ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، وَعَنْ نَفَرٍ مِنْ التَّابِعِينَ نَحْوَ الْعَشَرَةِ، وَمِثْلُ هَذَا لَا يَجُوزُ أَنْ يُقْطَعَ بِهِ عَلَى جَمِيعِ الْأُمَّةِ إلَّا غَافِلٌ، أَوْ مُسْتَسْهِلٌ لِلْكَذِبِ وَالْقَطْعِ بِمَا لَا عِلْمَ لَهُ بِهِ فَإِنْ صَحَّ إجْمَاعٌ مُتَيَقَّنٌ فِي دِيَةِ الْعَيْنِ، فَنَحْنُ قَائِلُونَ بِهِ، وَإِلَّا فَقَدْ حَصَلْنَا عَلَى السَّلَامَةِ، فَالْإِجْمَاعُ الْمُتَيَقَّنُ فِي هَذَا بَعِيدٌ مُمْتَنِعٌ أَنْ يُوجَدَ فِي مِثْلِ هَذَا، لِأَنَّ الْإِجْمَاعَ حُجَّةٌ مِنْ حُجَجِ اللَّهِ تَعَالَى الْمُتَيَقَّنَةِ الظَّاهِرَةِ الَّتِي قَدْ قَطَعَ اللَّهُ تَعَالَى بِهَا الْعُذْرَ، وَأَبَانَ بِهَا الْحُجَّةَ، وَحَسَمَ فِيهَا الْعِلَّةَ، وَمِثْلُ هَذَا

L37219 As for the statements of the Companions—may Allah be pleased with them—regarding this matter, such reports came only from Umar, Ali, Uthman, Ibn Umar, Ibn Abbas, and some of the Prophet's Companions—peace and blessings of Allah be upon him—along with around ten of the Successors. Such [reports] cannot justify imposing a decisive ruling upon the entire Ummah except by one who is negligent or who trivializes falsehood and asserts matters without knowledge. If an indisputable consensus regarding diyah for the eye (blood-money) were established, we would uphold it. Otherwise, we have secured acquittal [from error]. An indisputable consensus in this matter is far-fetched and impossible to establish, for consensus constitutes one of Allah's certain, manifest proofs through which He has eliminated excuses, clarified arguments, and removed pretexts. Such matters cannot remain hidden from scholars of rigorous inquiry, and truth is not established through

unsubstantiated claims. Since no consensus exists on this issue, nothing is obligatory for unintentional acts, in accordance with Allah's statement: "There is no blame on you for what you do unintentionally, but only for what your hearts deliberately intend" [Al-Ahzab 33:5].[11]

لَا يَسْتَتِرُ عَلَى أَهْلِ الْبَحْثِ، وَالْحَقَائِقُ لَا تُؤْخَذُ بِالدَّعَاوَى، فَإِذْ لَا إِجْمَاعَ فِي ذَلِكَ فَلَا يَجِبُ فِي الْخَطَأِ شَيْءٌ، لِقَوْلِ اللَّهِ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] .

L37220 Abu Muhammad said: As for Malik's ruling that the full diyah is due for [injuring] the eye of a one-eyed person—although he based his opinion on what was reported and authenticated from some Companions—he contradicted the principles of legal analogy (qiyas).

قَالَ أَبُو مُحَمَّد: فَأَمَّا قَوْلُ مَالِكٍ فِي أَنَّ فِي عَيْنِ الْأَعْوَرِ الدِّيَةَ فَإِنَّهُ وَإِنْ تَعَلَّقَ بِمَا جَاءَ وَصَحَّ عَنْ بَعْضِ الصَّحَابَةِ، فَإِنَّهُ قَدْ تَنَاقَضَ فِي الْقِيَاسِ.

L37221–37223 It is astonishing that some of his followers attribute to him the view that analogical reasoning holds greater weight than a solitary report, yet here he has abandoned the analogy—which, if any analogy in the world were to hold true, this would be the one that holds true—by making a distinction between the auditory capacity of someone who hears only with one ear, the hand of someone with an amputated hand, and the foot of someone with an amputated foot, in all of which he ruled only half the blood money, while he deemed the full blood money for the eye of a one-eyed person. They cannot claim consensus in this matter, for there exists disagreement concerning it, which we will mention if God the Exalted wills. In the chapter *On the Amputee's Hand and the Hearing of a Person Lacking One Ear* – and by Allah, the Exalted, we seek aid.

وَالْعَجَبُ - أَنَّ قَوْلًا يَنْسُبُهُ بَعْضُ أَصْحَابِهِ إِلَيْهِ مِنْ أَنَّهُ يَرَى أَنَّ الْقِيَاسَ أَقْوَى مِنْ خَبَرِ الْوَاحِدِ، ثُمَّ هَاهُنَا قَدْ تَرَكَ الْقِيَاسَ الَّذِي لَوْ صَحَّ قِيَاسٌ فِي الْعَالَمِ لَكَانَ هَذَا هُوَ ذَلِكَ الَّذِي يَصِحُّ وَهُوَ أَنَّهُ فَرَّقَ بَيْنَ سَمْعِ امْرِئٍ لَا يَسْمَعُ إِلَّا بِأُذُنٍ وَاحِدَةٍ وَيَدِ إِنْسَانٍ أَقْطَعَ وَرِجْلِ أَقْطَعَ فَلَمْ يَرَ فِي كُلِّ ذَلِكَ إِلَّا نِصْفَ الدِّيَةِ، وَرَأَى فِي عَيْنِ الْأَعْوَرِ الدِّيَةَ كَامِلَةً، وَلَيْسَ لَهُمْ أَنْ يَدَّعُوا فِي هَذَا إِجْمَاعًا، لِأَنَّ فِي هَذَا اخْتِلَافًا سَنَذْكُرُهُ إِنْ شَاءَ اللَّهُ تَعَالَى فِي " بَابِ يَدِ الْأَقْطَعِ، وَسَمْعِ ذِي الْأُذُنِ الْوَاحِدَةِ " وَبِاللَّهِ تَعَالَى نَتَأَيَّدُ.

L37224 If they say: "We only said that because the one-eyed person's eye constitutes their entire sight - does the obligation in this case equal what is required for the entire sight?" We would reply: This is invalidated against you on two grounds. First: If it were as you claim, you would be obligated to exact retaliation by taking both eyes of the sound-eyed person together, because it is 'sight for sight' - contrary to your own position which you yourselves do not affirm.

فَإِنْ قَالُوا: إِنَّمَا قُلْنَا ذَلِكَ، لِأَنَّ عَيْنَ الْأَعْوَرِ - هِيَ بَصَرُهُ كُلُّهُ - فَالْوَاجِبُ فِي ذَلِكَ مَا يَجِبُ فِي الْبَصَرِ كُلِّهِ؟ قُلْنَا لَهُمْ: هَذَا يَبْطُلُ عَلَيْكُمْ مِنْ وَجْهَيْنِ: أَحَدُهُمَا: أَنَّهُ إِنْ كَانَ كَمَا تَقُولُونَ فَيَجِبُ عَلَيْكُمْ أَنْ تُقِيدُوهُ مِنْ عَيْنَيْ الصَّحِيحِ مَعًا، لِأَنَّهُ بَصَرٌ بِبَصَرٍ، لَا عَلَى قَوْلِكُمْ وَأَنْتُمْ لَا تَقُولُونَ ذَلِكَ.

L37225 The second: It may be said to you - the hearing of one with a single deaf ear constitutes his entire hearing capacity, being more beneficial, stronger, and nearer to complete hearing than the sight of a one-eyed person. For

وَالثَّانِي: أَنَّهُ يُقَالُ لَكُمْ: وَسَمْعُ ذِي الْأُذُنِ الْوَاحِدَةِ الصَّمَّاءِ هُوَ سَمْعُهُ كُلُّهُ، وَهُوَ لَهُ أَنْفَعُ وَأَقْوَى، وَأَقْرَبُ مِنْ تَمَامِ السَّمْعِ مِنْ عَيْنِ الْأَعْوَرِ، فَإِنَّ الْأَعْوَرَ لَا يَرَى إِلَّا مِنْ جِهَةٍ

[11] **Qur'an references (L37219):** Qur'an 33:5 (Al-Ahzab).

the one-eyed sees only from one direction alone, thereby possessing half his vision. Similarly, the hand of an amputee serves as the site of his use, and likewise the leg of an amputee. So assign blood money for all these cases, yet you do not do so?

وَاحِدَةٍ فَقَطْ، فَإِنَّمَا هُوَ نِصْفُ بَصَرِهِ، وَكَذَلِكَ يَدُ الْأَقْطَعِ هِيَ مَحَلُّ تَصَرُّفِهِ، وَرِجْلُ الْأَقْطَعِ أَيْضًا، فَاجْعَلُوا فِي كُلِّ ذَلِكَ دِيَةً، وَأَنْتُمْ لَا تَفْعَلُونَ ذَلِكَ؟

L37226 A third perspective is that, according to your foundational principle, you are not obligated to exact retaliation against a one-eyed person who gouges out one eye of a sighted individual, as this would entail retaliating against the one-eyed person. There is no consensus here, for you would thereby exact retaliation for a complete eye with half an eye. It has been narrated through Abd al-Razzaq's chain from Uthman ibn Sa'id, from Qatadah, from Abu Iyad, that Uthman ibn Affan ruled regarding a one-eyed man who gouged out the eye of a sighted person: "No retaliation applies against him, but he must pay the full diyah for the eye." Sa'id ibn al-Musayyib said: "Retaliation is not exacted from the one-eyed person, but he owes a complete diyah even if the act was intentional." From Abd al-Razzaq, from Ibn Jurayj: I asked 'Ata', "If a one-eyed person intentionally strikes another's eye, is retaliation exacted from him?" He replied: "I do not deem retaliation permissible against him; he must pay the full diyah." From Abd al-Razzaq, who narrated from Ibn Jurayj, from Muhammad ibn Abi Iyad: Umar and Uthman concurred that if a one-eyed person gouges out another's eye, he must pay diyah equivalent to the value of both eyes [of the victim].

وَوَجْهٌ ثَالِثٌ: وَهُوَ أَنَّهُ لَا يَجِبُ عَلَى أَصْلِكُمْ هَذَا أَنْ تُقِيدُوا ذَا عَيْنَيْنِ فَقَأَ إِحْدَاهُمَا أَعْوَرُ فَأَنْتُمْ تُقِيدُونَ مِنَ الْأَعْوَرِ، وَلَا إِجْمَاعَ فِي هَذَا، فَقَدْ أَقَدْتُمْ بَصَرًا كَامِلًا بِنِصْفِ بَصَرٍ؟ وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُثْمَانَ بْنِ سَعِيدٍ عَنْ قَتَادَةَ عَنْ أَبِي عِيَاضٍ: أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَضَى فِي رَجُلٍ أَعْوَرَ فَقَأَ عَيْنَ صَحِيحٍ قَالَ: لَا قَوَدَ عَلَيْهِ وَعَلَيْهِ دِيَةُ عَيْنِهِ وَقَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: لَا يُقَادُ مِنَ الْأَعْوَرِ وَعَلَيْهِ دِيَةٌ كَامِلَةٌ وَإِنْ كَانَ عَمْدًا - وَعَنْ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: الْأَعْوَرُ يُصِيبُ عَيْنَ إِنْسَانٍ عَمْدًا أَيُقَادُ مِنْهُ؟ قَالَ: مَا أَرَى أَنْ يُقَادَ مِنْهُ، أَرَى لَهُ الدِّيَةَ وَافِيَةً وَعَنْ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ مُحَمَّدِ بْنِ أَبِي عِيَاضٍ أَنَّ عُمَرَ، وَعُثْمَانَ اجْتَمَعَا عَلَى أَنَّ الْأَعْوَرَ إِذَا فَقَأَ عَيْنَ آخَرَ فَعَلَيْهِ مِثْلُ دِيَةِ عَيْنَيْهِ.

L37227 And Ali ibn Abi Talib said: Allah the Exalted has established retribution in His Book - "an eye for an eye," as this is known. Thus retribution is required of the offender, for Allah the Exalted does not forget anything.

وَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: أَقَامَ اللَّهُ تَعَالَى الْقِصَاصَ فِي كِتَابِهِ الْعَيْنَ بِالْعَيْنِ وَقَدْ عُلِمَ هَذَا، فَعَلَيْهِ الْقِصَاصُ، فَإِنَّ اللَّهَ تَعَالَى لَمْ يَكُنْ لِيَنْسَى شَيْئًا.

L37228–37229 Abu Muhammad said: As for the Hanafis and Shafi'is, they greatly emphasize the disagreement of a companion when no opposing view is known. Yet here they have deviated from the positions of Umar, Ibn Umar, Ali, and Ibn Abbas—may Allah be pleased with them—with no known opponent among the companions—may Allah be pleased with them—except a weak narration we previously mentioned from an unspecified source. Thus, every group undermines its own foundations and demolishes what it builds. Should any pious person accept this for himself? We praise Allah the Exalted for the

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْحَنَفِيُّونَ وَالشَّافِعِيُّونَ فَإِنَّهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَهُمْ قَدْ خَالَفُوا هَاهُنَا: عُمَرَ، وَابْنَ عُمَرَ، وَعَلِيًّا، وَابْنَ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ فِي هَذَا مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - مُخَالِفٌ، إِلَّا رِوَايَةٌ ضَعِيفَةٌ قَدْ ذَكَرْنَاهَا عَمَّنْ لَمْ يُسَمَّ فَكُلُّ طَائِفَةٍ تَنْقُضُ أَصْلَهَا وَتَهْدِمُ مَا تَبْنِي، وَمَا يَنْبَغِي

أَنْ يَرْضَى لِنَفْسِهِ بِهَذَا ذُو وَرَعٍ؟ وَنَحْمَدُ اللَّهَ تَعَالَى عَلَى عَظِيمِ نِعَمِهِ وَأَمَّا الْعَيْنُ الْعَوْرَاءُ - قَالَ عَلِيٌّ: نَذْكُرُ الْآنَ حَدِيثَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْعَيْنِ الْقَائِمَةِ السَّادَّةِ لِمَكَانِهَا بِثُلُثِ الدِّيَةِ» وَقَالَ بِهَذَا طَائِفَةٌ مِنْ السَّلَفِ الطَّيِّبِ.

greatness of His favors. As for the blind eye—Ali said: We now cite the hadith of Amr ibn Shu'ayb from his father through his grandfather: "Allah's Messenger—peace and blessings be upon him—ruled regarding an existing eye afflicted by a cataract in its place to be compensated with one-third of the diyah." A group of the righteous predecessors held this opinion.[12]

L37230 كَمَا حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ الرَّحِيمِ نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا هِشَامٌ هُوَ الدَّسْتُوَائِيُّ نا قَتَادَةُ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ يَحْيَى بْنِ يَعْمُرَ عَنْ ابْنِ عَبَّاسٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي الْعَيْنِ الْعَوْرَاءِ إِذَا فُضِخَتْ وَالْيَدِ الشَّلَّاءِ إِذَا قُطِعَتْ وَالسِّنِّ السَّوْدَاءِ إِذَا سَقَطَتْ ثُلُثَ دِيَتِهَا وَعَنْ ابْنِ عَبَّاسٍ فِي الْعَيْنِ الْعَوْرَاءِ إِذَا خُسِفَتْ ثُلُثُ الدِّيَةِ.

As narrated to us by Yunus ibn Abdullah, who narrated to us Ahmad ibn Abd al-Rahim, who narrated to us Ahmad ibn Khalid, who narrated to us Muhammad ibn Abd al-Salam al-Khushani, who narrated to us Muhammad ibn Bashshar, who narrated to us Yahya ibn Sa'id al-Qattan, who narrated to us Hisham—that is, al-Dastuwa'i—who narrated to us Qatadah, from Abdullah ibn Buraydah, from Yahya ibn Ya'mur, from Ibn Abbas, that Umar ibn al-Khattab ruled that for a blind eye if ruptured, a paralyzed hand if severed, and a blackened tooth if dislodged: a third of its *diyah*. And from Ibn Abbas regarding a blind eye if sunken: a third of the *diyah*.

L37231 وَقَوْلٌ آخَرُ رُوِّينَا مِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ يَحْيَى بْنِ سَعِيدٍ - هُوَ الْأَنْصَارِيُّ - عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ قَالَ: قَضَى زَيْدُ بْنُ ثَابِتٍ فِي الْعَيْنِ الْقَائِمَةِ إِذَا بُخِصَتْ بِمِائَةِ دِينَارٍ.

Another opinion has been narrated to us through the chain of Waki'—Sufyan al-Thawri—Yahya ibn Sa'id (al-Ansari)—Bukayr ibn 'Abd Allah ibn al-Ashajj—Sulayman ibn Yasar, who said: Zayd ibn Thabit ruled regarding the sound eye - when gouged out - to be compensated with one hundred dinars.

L37232–37234 وَعَنْ سَعِيدِ بْنِ الْمُسَيَّبِ يَقُولُ فِي الْعَيْنِ الْقَائِمَةِ تُبْخَصُ عُشْرُ الدِّيَةِ - وَقَالَ بِهِ غَيْرُهُ -: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ نا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ أَنَّهُ قَالَ فِي الْعَيْنِ الْقَائِمَةِ إِذَا بُخِصَتْ خُمْسُ دِيَتِهَا - وَبِهِ يَقُولُ اللَّيْثُ بْنُ سَعْدٍ وَغَيْرُهُ.

And from Sa'īd ibn al-Musayyab, who said concerning the blind eye that remains intact: a tenth of the *diyah* is assessed—and others ruled likewise—as narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl, narrated to us from Ḥammād ibn Salamah, who narrated from Muḥammad ibn Isḥāq. Narrated from Yazid ibn Abdullah ibn Qusayt that he said regarding a sound eye: if its vision is partially impaired, one-fifth of its *diyah* is owed. This ruling is upheld by al-Layth ibn Sa'd and others.

L37235 وَقَوْلٌ آخَرُ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، وَمَعْمَرٍ قَالَا جَمِيعًا: نا ابْنُ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ فِي الْعَيْنِ الْقَائِمَةِ الَّتِي لَا تُبْصِرُ: إِنْ ثُقِبَتْ، أَوْ بُخِصَتْ فَفِيهَا

Another opinion—as transmitted to us through Abd al-Razzaq's chain from Ibn Jurayj and Ma'mar, both of whom jointly stated: Ibn Abi Najih narrated to us from Mujahid, who ruled regarding an intact eye that cannot see: If

[12] **Hadith references (L37229):** Sunan Abi Dawud 4567; Mishkat al-Masabih 3502.

it is pierced or enucleated, half the value of the diyah for the eye is due—twenty-five camels—even if the assessment had been made initially.

نِصْفُ قَدْرِ الْعَيْنِ - خَمْسٌ وَعِشْرُونَ بَعِيرًا مِنْ الْإِبِلِ - وَإِنْ كَانَ قَدْ أُخِذَ نَذْرُهَا أَوَّلَ مَرَّةٍ.

L37236 Another opinion—as transmitted to us through the chain of Abd al-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz—states in the book of Umar ibn Abd al-Aziz: If an eye is struck and produces tears that cannot be stopped, two-thirds of the diyah for the eye is owed. If it sheds a tear that does not dry—being a less severe case than the first—half the diyah for the eye is owed. If the eye sheds a tear that flows intermittently, and at times causes loss of vision during the tearing, the compensation is five hundred dinars. From Ibrahim al-Nakhaʿi: For the functional eye of a one-eyed person if injured, the diyah applies. If the eye is gouged out and collapses inward while remaining intact, the compensation requires an amicable settlement.

وَقَوْلٌ آخَرُ - كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: إنْ كَانَ لُطِمَتْ الْعَيْنُ فَدَمَعَتْ دُمُوعًا لَا تُرْقَأُ، فَلَهَا ثُلُثَا دِيَةِ الْعَيْنِ، وَإِنْ كَانَتْ دَمْعَةً لَا تَجِفُّ دَمْعُهَا - وَهِيَ دُونَ الدَّمْعَةِ الْأُولَى - فَنِصْفُ دِيَةِ الْعَيْنِ، وَإِنْ كَانَتْ دَمْعَةً مِنْ الْعَيْنِ تَسْحَلُ أَحْيَانًا، وَأَحْيَانًا يَذْهَبُ فِيهَا بَصَرُهُ - فَفِيهَا خَمْسُمِائَةِ دِينَارٍ وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي الْعَيْنِ الْعَوْرَاءِ الْقَائِمَةِ إذَا أُصِيبَتْ الدِّيَةُ، فَإِذَا كَانَتْ مَفْقُوءَةً قَائِمَةً نُخْسِفَتْ فَفِيهَا صُلْحٌ.

L37237 And from Ibrāhīm al-Nakhaʿī, via the chain of Jābir al-Juʿfī, there is a ruling concerning the defective eye.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ مِنْ طَرِيقِ جَابِرٍ الْجُعْفِيِّ فِي الْعَيْنِ الْعَوْرَاءِ حُكْمٌ.

L37238 This is also the view of Abū Ḥanīfah, Mālik, al-Shāfiʿī, and their respective schools.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ.

L37239 This is the statement of al-Zuhrī. We have transmitted it through the chain of Ibn Wahb. Abū Muḥammad said: This is among the marvels of the world that the Ḥanafīs and Mālikīs claim to follow the report of ʿAmr ibn Shuʿayb from his father from his grandfather when it aligns with their inclinations, yet here they contradict the report of ʿAmr ibn Shuʿayb from his father from his grandfather from the Prophet—peace and blessings of Allah be upon him—and oppose a well-established saying from ʿUmar ibn al-Khaṭṭāb and Ibn ʿAbbās regarding it. ʿAlī said: Muḥammad ibn Saʿīd ibn Nabāt narrated to us, from ʿAbd Allāh ibn Naṣr, from Qāsim ibn Aṣbagh [from Ibn Waḍḍāḥ], from Mūsā ibn Muʿāwiyah, from Wakīʿ, from Hishām al-Dastuwāʾī, from Qatādah, from Saʿīd ibn al-Musayyab, who said concerning a blind eye if it is gouged out: one-third of the diyah is owed.

وَهُوَ قَوْلُ الزُّهْرِيِّ، رُوِّينَاهُ مِنْ طَرِيقِ ابْنِ وَهْبٍ قَالَ أَبُو مُحَمَّدٍ: هَذَا مِنْ عَجَائِبِ الدُّنْيَا أَنَّ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ: يَدَّعُونَ أَنَّهُمْ يَقُولُونَ بِرِوَايَةِ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ إذَا وَافَقَ أَهْوَاءَهُمْ، وَهُمْ هَاهُنَا قَدْ خَالَفُوا رِوَايَةَ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعُمَرَ بْنِ الْخَطَّابِ، وَابْنِ عَبَّاسٍ فِي قَوْلٍ ثَابِتٍ عَنْهُمَا قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ [نا ابْنُ وَضَّاحٍ] نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا هِشَامٌ الدَّسْتُوَائِيُّ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ فِي الْعَيْنِ الْعَوْرَاءِ إذَا تَشَتَّرَتْ ثُلُثُ الدِّيَةِ.

L37240–37241 Hummam narrated to us: Ibn Mufarrij narrated to us, Ibn al-A’rabi narrated to us, al-Dabari narrated to us, Abd al-Razzāq narrated to us, Ibn Jurayj

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إلَى أُمَرَاءِ الْأَجْنَادِ أَنْ يَكْتُبُوا إلَيْهِ بِعِلْمِ عُلَمَائِهِمْ، قَالَ: مِمَّا اجْتَمَعَ عَلَيْهِ فُقَهَاؤُهُمْ: فِي شَتْرِ الْعَيْنِ ثُلُثُ الدِّيَةِ وَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ قَالَ: فِي التَّشَتُّرِ فِي الْعَيْنِ رُبْعُ الدِّيَةِ.

informed me from Abd al-Azīz ibn Umar ibn Abd al-Azīz, who said: Umar ibn Abd al-Azīz wrote to the commanders of the military districts instructing them to write to him with the knowledge of their scholars. He said: Among the matters their jurists unanimously agreed upon is that cutting the eyelid requires a third of the diyah. It was narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl: Ḥammād ibn Salamah narrated to us from Qatādah, who said: Splitting of the eyelid requires a quarter of the diyah.

L37242 قَالَ أَبُو مُحَمَّدٍ: لَوْ وَجَدَ الْمَالِكِيُّونَ وَالْحَنَفِيُّونَ أَقَلَّ مِنْ هَذَا لَمَا تَرَدَّدُوا؟ وَأَيُّ إجْمَاعٍ عَلَى أُصُولِهِمْ يَكُونُ أَقْوَى مِنْ هَذَا الْإِجْمَاعِ بِهَذَا السَّنَدِ الثَّابِتِ إلَى أَمِيرِ الْمُؤْمِنِينَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ يَكْتُبُ إلَى أُمَرَاءِ الْأَجْنَادِ يَسْأَلُهُمْ عَنْ إجْمَاعِهِمْ - وَهُوَ خَلِيفَةٌ - لَا يَشِذُّ عَنْ طَاعَتِهِ مُسْلِمٌ فِي شَيْءٍ مِنْ أَقْطَارِ الْأَرْضِ كُلِّهَا أَوَّلِهَا عَنْ آخِرِهَا، مِنْ آخِرِ الْأَنْدَلُسِ، وَطَنْجَةَ، إلَى بِلَادِ السُّودَانِ إلَى آخِرِ السِّنْدِ، وَآخِرِ خُرَاسَانَ، وَآخِرِ أَرْمِينِيَةَ، وَآخِرِ الْيَمَنِ، فَمَا بَيْنَ ذَلِكَ يُجْمِعُ لَهُ فُقَهَاؤُهُمْ: عَلَى أَنَّ فِي شَتْرِ الْعَيْنِ ثُلُثُ الدِّيَةِ - وَلَكِنْ مَا عَلَى الْمُهَوِّلِينَ بِالْإِجْمَاعِ مُؤْنَةٌ فِي خِلَافِ هَذَا الْإِجْمَاعِ فَلَا يَرَوْنَ فِي ذَلِكَ إلَّا حُكُومَةً؟ وَلَكِنْ لِلَّهِ دَرُّ الْإِمَامِ أَبِي عَبْدِ اللَّهِ أَحْمَدَ بْنِ حَنْبَلٍ - رَضِيَ اللَّهُ عَنْهُ - إذْ يَقُولُ: مَا حَدَّثَنَا بِهِ حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ قَالَ: سَمِعْت أَبِي يَقُولُ فِيمَا يَدَّعِي فِيهِ الْإِجْمَاعَ: هَذَا الْكَذِبُ، مَنْ ادَّعَى الْإِجْمَاعَ فَهُوَ كَاذِبٌ، لَعَلَّ النَّاسَ اخْتَلَفُوا، وَلَمْ يَنْتَهِ إلَيْهِ، فَيَقُولُ: لَا نَعْلَمُ النَّاسَ اخْتَلَفُوا، هَذَا دَعْوَى بِشْرٍ الْمَرِيسِيِّ، وَالْأَصَمِّ - وَلَكِنْ نَقُولُ: لَا نَعْلَمُ النَّاسَ اخْتَلَفُوا، وَلَمْ يَبْلُغْنِي ذَلِكَ قَالَ أَبُو مُحَمَّدٍ: هَذَا هُوَ الدِّينُ وَالْوَرَعُ لَا الْجُسْرُ بِلَا عِلْمٍ، كَمَا كَانَ يَقُولُ الشَّعْبِيُّ -

Abu Muhammad said: Had the Malikis and Hanafis found even less than this, would they have hesitated? What consensus on their foundational principles could be stronger than this consensus with its verified chain linking to the Commander of the Faithful Umar ibn Abd al-Aziz? While he was caliph—with no Muslim in any region of the entire earth, from the farthest ends of Andalusia and Tangier to the lands of the Sudan, the extremities of Sindh, Khurasan, Armenia, and Yemen, diverging from his obedience—he wrote to military commanders asking about their consensus. Their jurists unanimously agreed that one-third of blood money applies to the gashing of the eye. Yet those who rashly invoke consensus feel no burden in opposing this consensus—do they not see in this except arbitrary judgment? How magnificent is Allah's gift of Imam Abu Abdullah Ahmad ibn Hanbal—may Allah be pleased with him—when he said, as reported by Humam, reported by Abbas ibn Asbagh, reported by Muhammad ibn Abd al-Malik ibn Ayman, reported by Abdullah ibn Ahmad ibn Hanbal: "I heard my father say regarding those who falsely claim consensus: This is a lie. Whoever claims consensus is a liar. Perhaps people disagreed without his knowledge. Let him instead say: 'We are unaware of people disagreeing.' This is the baseless claim of Bishr al-Marisi and al-Asamm. Rather, we say: We know of no disagreement, nor has any reached us." Abu Muhammad said: This constitutes true religion and scrupulousness—not boldness without knowledge—as al-Sha'bi, may Allah have mercy on him, would respond when asked about a legal ruling: "What did that flawed judgment say? You reckless questioner! I will call you Fisfas (a term of contempt) unless you stop!"

رَحِمَهُ اللَّهُ - إذَا سُئِلَ عَنْ مَسْأَلَةٍ مَاذَا قَالَ فِيهَا الْحُكْمُ الْبَائِسُ أَجْسَرُ جَسَّارًا سَمَّيْتُك الْفِسْفَاسَ إنْ لَمْ تَقْطَعْ.

L37243–37245 Ali said: “Except in matters where two Muslims do not differ—for whoever opposes it is not a Muslim—this...” A sound consensus, such as the consensus on the statement: “There is no god but Allah, Muhammad is the Messenger of Allah,” and the five daily prayers, the month of Ramadan, the Hajj, the comprehensive obligation of Zakat, and matters of this nature—what is known with certainty without doubt, namely the knowledge of all the Companions and their affirmation of it. And with Allah, the Most High, lies all success.

قَالَ عَلِيٌّ: إلَّا مَا لَا يَخْتَلِفُ فِيهِ مُسْلِمَانِ فِي أَنَّ مَنْ خَالَفَهُ فَلَيْسَ مُسْلِمًا - فَهَذَا إجْمَاعٌ صَحِيحٌ، كَالْإِجْمَاعِ عَلَى قَوْلِ: لَا إلَهَ إلَّا اللَّهُ مُحَمَّدٌ رَسُولُ اللَّهِ، وَكَالصَّلَوَاتِ الْخَمْسِ وَشَهْرِ رَمَضَانَ، وَالْحَجِّ، وَجُمْلَةِ الزَّكَاةِ، وَمَا كَانَ هَكَذَا وَمَا تُيُقِّنَ بِلَا شَكٍّ عِلْمُ جَمِيعِ الصَّحَابَةِ وَقَوْلُهُمْ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37246 An issue concerning the diyah for the eyelid.

[مَسْأَلَةٌ دِيَةِ شَفْرِ الْعَيْنِ]

L37247 The margin of the eyelid. As for the margin of the eyelid - it has been transmitted to us through the chain of ʿAbd al-Razzāq, from Muḥammad ibn Rāshid, from Makhūl, from Qabīṣa ibn Dhuʾayb, from Zayd ibn Thābit, that he said: “For the eyelid - a quarter of the diyah.”

شَفْرُ الْعَيْنِ وَأَمَّا شَفْرُ الْعَيْنِ - فَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ: فِي جَفْنِ الْعَيْنِ رُبْعُ الدِّيَةِ.

L37248 From al-Ḥasan al-Baṣrī: A quarter of the *diyya* applies for each incised wound exposing the bone.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ: فِي كُلِّ شَفْرٍ رُبْعُ الدِّيَةِ.

L37249 From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz, who said: Consensus was reached under ʿUmar ibn ʿAbd al-ʿAzīz regarding the upper eyelid if plucked: half the *diyah* of the eye, and regarding the lower eyelid if plucked: a third of the *diyah* of the eye. ʿAbd al-ʿAzīz ibn ʿUmar said: My father wrote to the commanders of the military districts to write to him with the knowledge of their scholars. He said: Their jurists unanimously agreed that regarding the eye socket, a third of the *diyah* is warranted.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نَا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: اجْتَمَعَ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي شَفْرِ الْعَيْنِ الْأَعْلَى إذَا نُتِفَ: نِصْفُ دِيَةِ الْعَيْنِ، وَفِي شَفْرِ الْعَيْنِ الْأَسْفَلِ إذَا نُتِفَ: ثُلُثُ دِيَةِ الْعَيْنِ، قَالَ عَبْدُ الْعَزِيزِ بْنُ عُمَرَ: وَكَتَبَ أَبِي إلَى أُمَرَاءِ الْأَجْنَادِ أَنْ يَكْتُبُوا إلَيْهِ بِعِلْمِ عُلَمَائِهِمْ قَالَ: وَمَا اجْتَمَعَ عَلَيْهِ فُقَهَاؤُهُمْ فِي حَجَاجِ الْعَيْنِ ثُلُثُ الدِّيَةِ.

L37250 And through him to Abd al-Razzaq from Ma’mar from Qatada, who said: For every labia, a quarter of the diyah is due if it is severed and the hair in that area does not grow back.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: فِي كُلِّ شَفْرٍ رُبْعُ الدِّيَةِ إذَا قُطِعَ وَلَمْ يَنْبُتْ شَعْرُهُ.

وَبِهِ إِلَى مَعْمَرٍ عَنْ بَعْضِ أَصْحَابِهِ عَنِ الشَّعْبِيِّ قَالَ فِي كُلِّ شَفْرٍ: رُبْعُ دِيَةِ الْعِوَضِ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا دَاوُد بْنُ أَبِي هِنْدٍ قَالَ: قَالَ الشَّعْبِيُّ: فِي الْجَفْنِ الْأَعْلَى ثُلُثُ دِيَةِ الْعَيْنِ، وَفِي الْجَفْنِ الْأَسْفَلِ: ثُلُثَا دِيَةٍ، لِأَنَّهَا تَرُدُّ الْحَدَقَةَ وَمَا قُطِعَ مِنْهَا، فَيُقَدَّرُ ذَلِكَ.

L37251 And through him to Ma’mar from some of his companions from al-Sha‘bi, who said regarding each eyelid: a quarter of the diyah of the eye. Abdullah ibn Rabi‘ narrated to us: Abdullah ibn Muhammad ibn Uthman, Ahmad ibn Khalid, Ali ibn Abdulaziz, al-Hajjaj ibn al-Minhal, Hammad ibn Salamah, Dawud ibn Abi Hind said: al-Sha‘bi said: In the upper eyelid is a third of the diyah of the eye, and in the lower eyelid: two-thirds of the diyah of the eye, because it restrains the eyeball and what is severed from it, and this is taken into account.

وَعَنِ الشَّعْبِيِّ قَالَ: كَانُوا لَا يُوقِنُونَ فِي الشَّعْرِ شَيْئًا.

L37252 And from al-Sha‘bī, he said: They held no certainty whatsoever in poetry.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ: فِي كُلِّ جَفْنٍ مِنْ أَجْفَانِ الْعَيْنِ نِصْفُ دِيَةِ الْعَيْنِ قَالَ الشَّافِعِيُّ: فَإِنْ نُتِفَتْ الْأَهْدَابُ فَلَمْ تَنْبُتْ فَفِيهَا حُكُومَةٌ.

L37253–37254 Abu Hanifa, Sufyan al-Thawri, al-Shafi’i, and their companions said: For each eyelid of the eye, half the diyah of the eye is due. Al-Shafi’i said: If the eyelashes are plucked out and fail to regrow, assessed compensation is required.

وَقَالَ مَالِكٌ، وَأَصْحَابُهُ: لَيْسَ فِي شَفْرِ الْعَيْنِ وَحَاجِبِهَا إِلَّا اجْتِهَادُ الْإِمَامِ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا قَوْلُ مَالِكٍ فَمُخَالِفٌ لِأُصُولِ أَصْحَابِهِ، لِأَنَّهُمْ يُعَظِّمُونَ عَلَى خُصُومِهِمْ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ إِذَا وَافَقَ تَقْلِيدَهُمْ، وَهَاهُنَا خَالَفُوا قَوْلَ زَيْدِ بْنِ ثَابِتٍ، وَلَا يُعْرَفُ لَهُ مِنَ الصَّحَابَةِ مُخَالِفٌ.

L37255 Malik and his followers said: There is nothing regarding the eyelid and its covering except the Imam’s independent reasoning. Abu Muhammad said: As for Malik’s statement, it contradicts the principles of his own school members, because they stress to their opponents the disagreement of a Companion—who has no known dissenter—when the Companion’s opinion aligns with their practice of emulation. Yet here they opposed the ruling of Zayd ibn Thābit, though no dissenter among the Companions is known to have contradicted him.

وَيَحْتَجُّونَ بِقَوْلِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِذَا خَالَفَ قَوْلَ خُصُومِهِمْ وَوَافَقَهُمْ - وَهَاهُنَا خَالَفُوا حُكْمَهُ، وَقَوْلَهُ، وَإِجْمَاعَ فُقَهَاءِ الْأَمْصَارِ، وَأَهْلِ عَصْرِهِ لَهُ بِأَصَحِّ إِسْنَادٍ يُمْكِنُ أَنْ يَكُونَ، ثُمَّ أَوْجَبُوا غَرَامَةَ حُكُومَةٍ فِي ذَلِكَ - وَلَا يُعْرَفُ هَذَا الْقَوْلُ عَنْ أَحَدٍ قَبْلَهُمْ.

L37256 They cite as evidence the statement of Umar ibn Abd al-Aziz when his opinion contradicted the opinion of their opponents and aligned with them—yet here they opposed his legal ruling, his statement, the consensus of the jurists of the major cities, and the scholars of his time who supported him with the most authentic chain of transmission possible. Then they imposed a judicially assessed fine in that matter—a view not known to have been held by anyone before them.

L37257 Ali said: As for us, there is no authoritative evidence in our view in anyone’s statement apart from the words of Allah the Exalted and the words of His

Messenger, peace be upon him. Otherwise, wealth would be forbidden. Thus, there is no obligation here for error, based on the words of Allah the Exalted: "There is no blame upon you for what you do by mistake, but only for what your hearts deliberately intend" [al-Ahzab: 5], and the words of the Messenger of Allah, peace be upon him: "Your blood and your wealth are forbidden to you."[13]

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ - فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ كَلَامِ اللَّهِ تَعَالَى، وَكَلَامِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِلَّا فَالْأَمْوَالُ مُحَرَّمَةٌ، فَلَا يَجِبُ هَاهُنَا فِي الْخَطَأِ شَيْءٌ، لِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] ، وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L37258 He gouged out the eye of a person, then the one who gouged died.

فَقَأَ عَيْنَ إِنْسَانٍ ثُمَّ مَاتَ الْفَاقِئُ

L37259 Ali said: Abdullah ibn Rabee narrated to us, from Ibn Mufarrij, from Qasim ibn Asbagh, from Ibn Waddah, from Sahnun, from Ibn Wahb, who informed me: Yunus ibn Yazid reported to me from Rabīʿah ibn Abi Abd al-Rahman, who said regarding a man who gouged out another man's eye, whereupon the victim's cousin rose and killed the gouger out of anger for his cousin: "The killer is killed in retribution for the one he killed, and nothing is due to the one whose eye was gouged out - as the right to retribution has lapsed."

قَالَ عَلِيٌّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونَ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ أَنَّهُ قَالَ فِي رَجُلٍ فَقَأَ عَيْنَ رَجُلٍ فَقَامَ ابْنُ عَمٍّ لَهُ فَقَتَلَ الْفَاقِئَ غَضَبًا لِابْنِ عَمِّهِ؟ قَالَ: يُقْتَلُ الْقَاتِلُ بِمَنْ قَتَلَ، وَلَا شَيْءَ لِلْمَفْقُوءَةِ عَيْنُهُ - وَقَدْ فَاتَهُ الْقَوَدُ.

L37260 Ibn Wahb said: It was reported to me from Rabiʿah that he ruled regarding a blind person who gouged out the eye(s) of a sighted person - whether one eye or both eyes: There is no grounds for retaliation here: he must pay blood money. ʿAli stated: These are two contradictory legal opinions, for he mandated blood money for an intentionally gouged eye in one case because retaliation was impossible, yet did not obligate blood money in the other case due to the same impossibility of retaliation. This constitutes an evident contradiction unsupported by any textual authority, legal analogy, or a report from a Companion.

قَالَ ابْنُ وَهْبٍ: وَبَلَغَنِي عَنْ رَبِيعَةَ: أَنَّهُ قَالَ فِي أَعْمَى فَقَأَ عَيْنَ صَحِيحٍ، أَوْ عَيْنَيْهِ جَمِيعًا؟ قَالَ: مَا فِيهِ مَأْخَذٌ لِقَوَدٍ: عَلَيْهِ الدِّيَةُ قَالَ عَلِيٌّ: هَاتَانِ فُتْيَانِ مُتَنَاقِضَتَانِ، لِأَنَّهُ أَوْجَبَ الدِّيَةَ فِي عَيْنٍ فُقِئَتْ عَمْدًا لِأَجْلِ امْتِنَاعِ الْقَوَدِ فِي إِحْدَى الْمَسْأَلَتَيْنِ، وَلَمْ يُوجِبْ فِي الْأُخْرَى دِيَةً لِأَجْلِ امْتِنَاعٍ مِنْ الْقَوَدِ أَيْضًا - هَذَا تَنَاقُضٌ ظَاهِرٌ، لَا يُؤَيِّدُهُ نَصٌّ، وَلَا قِيَاسٌ، وَلَا خَبَرٌ عَنْ صَاحِبٍ.

L37261–37262 The valid ruling in this matter is that retaliation in kind is obligatory when feasible, as Allah the Exalted has commanded, stating: *"Retaliation is ordained in sacred months"* (Quran 2:194). If retaliation becomes impossible due to death, lack of the [corresponding] limb, refusal, or flight, then if there

وَالْحَقُّ مِنْ هَذَا: أَنَّ الْقَوَدَ وَاجِبٌ مَا أَمْكَنَ، كَمَا أَمَرَ اللَّهُ تَعَالَى، إِذْ يَقُولُ {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَإِذَا تَعَذَّرَ الْقِصَاصُ بِمَوْتٍ، أَوْ بِعَدَمِ الْعُضْوِ، أَوْ بِامْتِنَاعٍ، أَوْ بِفِرَارٍ، فَإِنْ كَانَ فِي ذَلِكَ دِيَةٌ مُؤَقَّتَةٌ ثَابِتَةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهِيَ

[13] **Qur'an references (L37257):** Qur'an 33:5 (Al-Ahzab).

exists specified blood money established from the Messenger of Allah—peace and blessings be upon him—it becomes obligatory for whoever seeks it, as a substitute for the unfulfilled retaliation, because the textual proof obligates it for them. If no such specified blood money established from the Messenger of Allah—peace and blessings be upon him—exists, then nothing is owed, for rulings are only ordained by Allah the Exalted through the words of His Messenger—peace and blessings be upon him—or through an indisputable consensus.[14]

وَاجِبَةٌ لِمَنْ أَرَادَهَا، مَكَانَ قِصَاصِهِ الْفَائِتِ، لِأَنَّ النَّصَّ أَوْجَبَهَا لَهُ - وَإِنْ لَمْ تَكُنْ هُنَاكَ دِيَةٌ مُؤَقَّتَةٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثَابِتَةٌ فَلَا شَيْءَ لَهُ، لِأَنَّ الْأَحْكَامَ لَا يُوجِبُهَا إِلَّا اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ إِجْمَاعٍ مُتَيَقَّنٍ.

L37263 Given that this is so—as we have mentioned—one of the two legal opinions of Rabi'ah is correct, and the other is erroneous. As for the correct opinion: his ruling concerning the case where someone gouged another's eye, and the paternal cousin of the injured party retaliated by killing the perpetrator, is that the killer is liable for Retaliation [while the blinded person is entitled to nothing, since Retaliation is no longer attainable for him, and he had no alternative recourse except Retaliation].

فَإِذْ ذَلِكَ كَذَلِكَ - كَمَا ذَكَرْنَا - فَإِحْدَى فُتْيَا رَبِيعَةَ صَوَابٌ، وَالْأُخْرَى خَطَأٌ فَأَمَّا الصَّوَابُ - فَفُتْيَاهُ فِي الَّذِي فَقَأَ عَيْنَ آخَرَ فَوَثَبَ ابْنُ عَمِّ الْمَفْقُوءَةِ عَيْنُهُ فَقَتَلَ الْفَاقِئَ: أَنَّ عَلَى الْقَاتِلِ الْقَوَدَ [وَلَا شَيْءَ لِلْمَفْقُوءَةِ عَيْنُهُ، لِأَنَّهُ قَدْ فَاتَهُ الْقَوَدُ، وَلَمْ يَكُنْ لَهُ غَيْرُ الْقَوَدِ] .

L37264 As for the error—his ruling regarding a blind person who gouges out the eye of a sighted individual, or both eyes: that qisas is not applicable, only blood money—this constitutes error because he imposed blood money which neither Allah the Exalted nor His Messenger (peace be upon him) ordained, nor is supported by any valid analogy or sound explicit text, while denying the qisas that Allah the Exalted mandated in the explicit text of the Quran. True success in correct judgment comes only from Allah, the Exalted.

وَأَمَّا الْخَطَأُ - فَقَوْلُهُ فِي أَعْمَى فَقَأَ عَيْنَ صَحِيحٍ، أَوْ عَيْنَيْهِ: أَنَّهُ لَا قَوَدَ عَلَيْهِ، وَإِنَّمَا عَلَيْهِ الدِّيَةُ؟ وَذَلِكَ: أَنَّهُ أَوْجَبَ دِيَةً لَمْ يُوجِبْهَا اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا قِيَاسٌ، وَلَا نَصٌّ صَحِيحٌ، وَمَنَعَ الْقَوَدَ الَّذِي أَوْجَبَهُ اللَّهُ تَعَالَى فِي نَصِّ الْقُرْآنِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ جَنَى عَلَى عَيْنٍ ثُمَّ فُقِئَتْ]

A case concerning liability for injuring an eye that subsequently ruptured.

L37265

L37266 2031 - Issue: If someone causes injury to an eye, then it is subsequently gouged out? ʿAlī said: ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us via Aḥmad ibn Khālid, via ʿAlī ibn ʿAbd al-ʿAzīz, via al-Ḥajjāj ibn al-Minhāl, via Ḥammād ibn Salamah from al-Ḥajjāj ibn Arṭāʾa, that Masrūq, Shurayḥ, al-Shaʿbī, and Ibrāhīm al-Nakhaʿī ruled regarding a man whose eye was gouged out after

٢٠٣١ - مَسْأَلَةٌ: جَنَى عَلَى عَيْنٍ ثُمَّ فُقِئَتْ؟ قَالَ عَلِيٌّ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ أَنَّ مَسْرُوقًا، وَشُرَيْحًا، وَالشَّعْبِيَّ، وَإِبْرَاهِيمَ النَّخَعِيّ

[14] **Qur'an references (L37262):** Qur'an 2:194 (Al-Baqarah).

part of it had previously been impaired: The compensation owed by him is deducted by the proportion of vision already lost from it.

L37267–37269 Ali said: This contains neither Quran, nor Sunnah, nor consensus. This narration is invalid because it comes from al-Ḥajjāj ibn Arṭāʾah. Even if it were authentic, no authority lies in anyone's statement apart from the Messenger of Allah (peace be upon him). We have stated: Wealth is prohibited except through textual evidence or consensus. If all we have mentioned was unintentional, there is no liability. But if intentional, retaliation applies to the extent possible. If it is feasible to cause a loss of eyesight equivalent to what he caused, as he lost it, this should be enforced as a substitute or to the possible extent. If this proves unattainable, Allah the Exalted has said: "Allah does not burden a soul beyond its capacity" (2:286). Therefore, the obligatory duty in this matter is to uphold due etiquette, as the Messenger of Allah (peace be upon him) said: "Whoever among you sees an evil act, let him correct it by physically intervening if he is able," and as Allah, the Most High, says: "And the recompense for an evil deed is an evil like it" (Quran 42:40).[15]

L37270 If we are incapable of attaining the most precise equivalent, we must strive for the closest possible equivalence to the mentioned verse within our capacity. Disciplinary punishment and imprisonment are an evil; thus, they serve as retribution for another evil of a lesser kind that we were unable to match. And with Allah, the Most High, lies success.

L37271 **A juristic question: A person inflicted a head wound on another, causing the victim's sight to be lost. The perpetrator then said, "He was blind."**

L37272 2032 - Issue: A man struck another, causing him to lose his sight. The question arose: "Was he already blind?" Ali said: It was narrated to us through the chain of Abu Bakr ibn Abi Shaybah, via Zayd ibn al-Hubab, via Sufyan al-Thawri, via Khalid al-Nili, from al-Hakam ibn ʻUtaybah and Hammad ibn

[15] **Qur'an references (L37267):** Qur'an 2:286 (Al-Baqarah); Qur'an 42:40 (Ash-Shuraa).

قَالُوا فِي رَجُلٍ فُقِئَتْ عَيْنُهُ، وَقَدْ كَانَ ذَهَبَ مِنْهَا شَيْءٌ: إنَّهُ يُلْقَى عَنْهُ بِقَدْرِ مَا ذَهَبَ مِنْهَا.

قَالَ عَلِيٌّ: هَذَا لَيْسَ فِيهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَهَذِهِ رِوَايَةٌ سَاقِطَةٌ، لِأَنَّهَا عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ، وَلَوْ صَحَّتْ فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قُلْنَا: إنَّ الْأَمْوَالَ مُحَرَّمَةٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، فَإِنْ كَانَ كُلُّ مَا ذَكَرْنَا خَطَأً فَلَا شَيْءَ فِيهِ، وَإِنْ كَانَ عَمْدًا فَالْقَوَدُ مَا أَمْكَنَ، وَإِنْ أَمْكَنَ ذَهَابُ شَيْءٍ مِنْ قُوَّةِ الْبَصَرِ كَمَا ذَهَبَ هُوَ أُنْفِذَ ذَلِكَ بُدُوءًا، أَوْ بِمَا أَمْكَنَ، وَإِنْ لَمْ يَكُنْ ذَلِكَ، فَقَدْ قَالَ اللَّهُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] فَالْوَاجِبُ فِي ذَلِكَ الْأَدَبُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ» ، وَلِقَوْلِ اللَّهِ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] .

فَإِذَا عَجَزْنَا عَنْ الْمِثْلِ الْأَخَصِّ لَزِمَنَا أَنْ نَأْتِيَ بِأَقْصَى مَا نَقْدِرُ عَلَيْهِ مِنْ التَّمَاثُلِ لِلْآيَةِ الْمَذْكُورَةِ، وَالْأَدَبُ وَالسِّجْنُ سَيِّئَةٌ، فَهُمَا جَزَاءُ سَيِّئَةٍ أُخْرَى عَجَزْنَا عَنْ مِثْلِهَا مِنْ نَوْعِهَا الْأَدْنَى - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ شَجَّ إنْسَانًا فَذَهَبَ بَصَرُهُ فَقَالَ كَانَ أَعْمَى]

٢٠٣٢ - مَسْأَلَةٌ: شَجَّ إنْسَانًا فَذَهَبَ بَصَرُهُ فَقَالَ: كَانَ أَعْمَى؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ خَالِدٍ النِّيلِيِّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ، أَنَّهُمَا قَالَا فِي رَجُلٍ شَجَّ رَجُلًا فَذَهَبَتْ عَيْنُهُ - مِنْ

Abi Sulayman, that they both ruled regarding a man who inflicted a head injury on another, resulting in the loss of his eye—which was unrelated to that head injury. Al-Hakam said: "If witnesses testify that the eye was lost due to the strike, it is acceptable." Hammad said: "If witnesses testify that he struck him on the day he inflicted the injury while the eye was sound, it is acceptable."

غَيْرِ تِلْكَ الشَّجَّةِ - فَقَالَ الْحَكَمُ: إنْ شَهِدُوا أَنَّهَا ذَهَبَتْ مِنْ الضَّرْبَةِ فَهُوَ جَائِزٌ، وَقَالَ حَمَّادٌ: إنْ شَهِدُوا أَنَّهُ ضَرَبَهُ - يَوْمَ ضَرَبَهُ - وَهِيَ صَحِيحَةٌ، فَهُوَ جَائِزٌ.

L37273 Ali stated: Even if he was sound, it is possible that his eye was lost due to a cause other than that specific wound, so testimony is necessary for that, as Al-Ḥakam stated that the eye was lost due to that wound. If the witnesses testified to that—and it was intentional—then retaliation in kind is required in both cases: for the eye, he must lose his eye, and for the wound, he must be inflicted with a wound as he inflicted.

قَالَ عَلِيٌّ: وَإِنْ كَانَ صَحِيحًا فَقَدْ يُمْكِنُ أَنْ تَذْهَبَ عَيْنُهُ مِنْ غَيْرِ تِلْكَ الشَّجَّةِ فَلَا بُدَّ مِنْ الشَّهَادَةِ فِي ذَلِكَ كَمَا قَالَ الْحَكَمُ إنَّهَا ذَهَبَتْ مِنْ تِلْكَ الشَّجَّةِ، فَإِنْ شَهِدَ الشُّهُودُ بِذَلِكَ - وَكَانَ عَمْدًا - فَالْقَوَدُ فِي ذَلِكَ مِنْ كِلَا الْأَمْرَيْنِ، وَمِنْ الْعَيْنِ، فَلَا بُدَّ مِنْ إذْهَابِ عَيْنِهِ، وَمِنْ شَجِّهِ كَمَا شَجَّ.

L37274 Ali said: The proof of that is the word of Allah the Most High: "So whoever commits aggression against you, retaliate against him in the same manner as he aggressed against you" [Al-Baqarah: 194]. This is an aggression involving two acts on his part: inflicting a head wound and destroying an eye. Therefore, both acts of retribution must necessarily be enforced.[16]

قَالَ عَلِيٌّ: بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَهَذَا اعْتِدَاءٌ مِنْهُ بِفِعْلَيْنِ: شَجِّهِ، وَإِذْهَابِ عَيْنِهِ، فَلَا بُدَّ مِنْ الْقَوَدَيْنِ كِلَيْهِمَا.

L37275–37277 If they argue using what we have narrated through the chain of Abū Bakr ibn Abī Shaybah—who narrated from Ismāʿīl ibn ʿUlayyah, from Ayyūb al-Sakhtiyānī, from ʿAmr ibn Dīnār, from Jābir ibn ʿAbdullāh—regarding "a man who struck another man with a horn in his knee. The injured man came to the Prophet—peace and blessings be upon him—seeking retaliation. He was told: 'Wait until he recovers.' But he refused and hastened. Consequently, his leg became disabled, while the leg of the one against whom retaliation was taken healed. When he returned to the Prophet—peace and blessings be upon him—he said: 'You have no claim—since you refused.'" We maintain: This report is our decisive evidence and mainstay, for the Messenger of Allah—peace and blessings be upon him—explicitly commanded him to delay. Until he recovers so that retaliation may be exacted from him to the extent of the condition he reaches upon recovery. But he refused to wait, so the

فَإِنْ احْتَجُّوا بِمَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا إسْمَاعِيلُ بْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ «أَنَّ رَجُلًا طَعَنَ رَجُلًا بِقَرْنٍ فِي رُكْبَتِهِ فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْتَقِيدُ، فَقِيلَ لَهُ: حَتَّى تَبْرَأَ، فَأَبَى وَعَجَّلَ، فَاسْتَقَادَ فَعَنِتَتْ رِجْلُهُ وَبَرِئَتْ رِجْلُ الْمُسْتَقَادِ مِنْهُ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ: لَيْسَ لَكَ شَيْءٌ، قَدْ أَبَيْتَ» ؟ قُلْنَا: هَذَا الْخَبَرُ هُوَ حُجَّتُنَا وَعُمْدَتُنَا، وَذَلِكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَمَرَهُ بِالتَّأْخِيرِ حَتَّى يَبْرَأَ فَيُقَادَ لَهُ بِمَا تَبْلُغُهُ تِلْكَ الْحَالُ الَّتِي يَبْرَأُ عَلَيْهَا، فَأَبَى، فَأَعْطَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَقَّهُ، فَلَمَّا عَنِتَتْ رِجْلُهُ - وَالْعَنَتُ: الْبُرْءُ عَلَى عِوَجٍ لَمْ يُمْكِنْ أَنْ يَسْتَقِيدَ مِنْ الْعِوَجِ أَصْلًا فَلَا

[16] **Qur'an references (L37274):** Qur'an 2:194 (Al-Baqarah).

Messenger of Allah—peace and blessings of Allah be upon him—granted him his right. When his leg healed with a deformity causing hardship—and "hardship" here refers to recovery with a deformity that makes retaliation entirely impossible, and thus he is entitled to nothing. Were it not for the obligation to enforce retaliation in all possible instances, there would be no justification for delaying it. And success is from Allah, the Exalted.

L37278 **A jurisprudential case regarding a criminal injury to one limb that results from it in the invalidity of another limb.**

L37279 Issue 2033: The opinion of later scholars regarding an injury to one limb causing permanent disablement of another limb. Ali said: Abū Ḥanīfah said: If someone inflicts a *muwaddiḥah* wound (one that exposes the bone) on another, causing the loss of both eyes; or if his finger is severed and another finger becomes disabled; or if one of his hands is severed and the other becomes disabled - whichever of the two it may be; or if his finger is severed and his hand becomes disabled; or if part of his finger is severed and the entire finger is rendered useless; or if he inflicts a *muwaddiḥah* wound on him which develops into a displaced fracture - there is no retaliation for any of these, and the perpetrator is liable for *arsh* (fixed compensation).

L37280 Abū Yūsuf and Muḥammad ibn al-Ḥasan—his two companions—said: For a single limb, an injury such as a muwāḍiḥah wound (exposing bone) that becomes a transferring wound, or cutting off a fingertip resulting in paralysis of the finger. They stated: If one inflicts a muwāḍiḥah head wound (exposing bone) causing the loss of an eye, or severs a finger leading to the impairment of another finger or another hand, retaliation (qiṣāṣ) is due for the first injury and prescribed compensation (arsh) is due for the second.

L37281 It has been reported from Abū Yūsuf, Muḥammad, and Abū Ḥanīfah as well: that if he cuts off his fingertip and the finger detaches from the joint, or his entire hand detaches from the joint, or part of his tooth is fractured and the entire tooth dislodges, retaliation was applicable for the whole tooth, the entire hand, or all the fingers. And if he cuts off his finger and the palm is severed from the mid-forearm and he healed, no retaliation is due from him - as though he began cutting it from the mid-forearm.

شَيْءَ لَهُ، وَلَوْلَا وُجُوبُ الْقَوَدِ مِنْ كُلِّ مَا يُمْكِنُ لَمَا كَانَ لِتَأْخِيرِهِ مَعْنًى - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ جِنَايَةٍ عَلَى عُضْوٍ بَطَلَ مِنْهُ عُضْوٌ آخَرُ]

٢٠٣٣ - مَسْأَلَةٌ: قَوْلُ الْمُتَأَخِّرِينَ فِي جِنَايَةٍ عَلَى عُضْوٍ بَطَلَ مِنْهُ عُضْوٌ آخَرُ؟ قَالَ عَلِيٌّ: قَالَ أَبُو حَنِيفَةَ: إذَا شَجَّ آخَرَ مُوضِحَةً فَذَهَبَتْ عَيْنَاهُ، أَوْ قُطِعَتْ أُصْبُعُهُ فَشُلَّتْ أُصْبُعٌ لَهُ أُخْرَى، أَوْ قُطِعَتْ إحْدَى يَدَيْهِ فَشُلَّتْ الْأُخْرَى - أَيَّتُهُمَا كَانَتْ - أَوْ قُطِعَتْ أُصْبُعُهُ فَشُلَّتْ يَدُهُ، أَوْ قُطِعَ بَعْضُ أُصْبُعِهِ فَبَطَلَتْ الْأُصْبُعُ كُلُّهَا، أَوْ شَجَّهُ مُوضِحَةً فَصَارَتْ مُنْقَلَةً، فَلَا قِصَاصَ فِي شَيْءٍ مِنْ ذَلِكَ، وَعَلَيْهِ الْأَرْشُ.

وَقَالَ أَبُو يُوسُفَ وَمُحَمَّدُ بْنُ الْحَسَنِ صَاحِبَاهُ: مِثْلَ هَذَا فِي الْعُضْوِ الْوَاحِدِ كَالْمُوضِحَةِ تَصِيرُ مُنْقَلَةً، أَوْ قَطَعَ أُنْمُلَةً فَشُلَّتْ أُصْبُعُهُ، قَالَا: وَأَمَّا إذَا شَجَّ مُوضِحَةً فَبَطَلَتْ عَيْنُهُ، أَوْ قَطَعَ أُصْبُعَهُ فَبَطَلَتْ أُصْبُعٌ أُخْرَى، أَوْ يَدٌ أُخْرَى، فَعَلَيْهِ الْقِصَاصُ فِي الْأُولَى، وَعَلَيْهِ الْأَرْشُ فِي الْأُخْرَى.

وَقَدْ رُوِيَ عَنْ أَبِي يُوسُفَ، وَمُحَمَّدٍ، وَأَبِي حَنِيفَةَ أَيْضًا: أَنَّهُ إنْ قَطَعَ لَهُ أُنْمُلَةً فَسَقَطَتْ مِنْ الْمَفْصِلِ أُصْبُعُهُ، أَوْ يَدُهُ كُلُّهَا مِنْ الْمَفْصِلِ أَوْ كُسِرَ بَعْضُ سِنِّهِ فَسَقَطَتْ السِّنُّ كُلُّهَا: كَانَ الْقِصَاصُ فِي السِّنِّ كُلِّهَا، وَفِي جَمِيعِ الْيَدِ، وَفِي جَمِيعِ الْأَصَابِعِ، وَأَنَّهُ إنْ

قَطَعَ أُصْبُعَهُ فَسَقَطَتْ الْكَفُّ مِنْ نِصْفِ السَّاعِدِ وَبَرِئَ فَلَا قِصَاصَ لَهُ، كَأَنَّهُ ابْتَدَأَ قَطْعَهَا مِنْ نِصْفِ السَّاعِدِ.

L37282 They distinguished between disablement and the extinction of obligations.

وَفَرَّقُوا بَيْنَ الشَّلَلِ وَالسُّقُوطِ.

L37283–37285 Uthman al-Batti said: If someone intentionally gouges out another's eye and the other eye is lost, retaliation (qisas) is enforced by gouging out both eyes of the perpetrator. Malik said: If someone cuts off another's finger, causing their hand to become paralyzed, the perpetrator is liable for retribution (qisas) for the finger, and the victim is entitled to prescribed indemnity (arsh) for the hand. In his view, both monetary compensation (diya) and retribution can be applied together to a single limb.

وَقَالَ عُثْمَانُ الْبَتِّيُّ: إذَا فَقَأَ عَيْنَهُ عَمْدًا فَذَهَبَتْ الْعَيْنُ الْأُخْرَى اُقْتُصَّ مِنْهُ وَفُقِئَتْ عَيْنَا الْفَاقِئِ جَمِيعًا وَقَالَ مَالِكٌ إذَا قَطَعَ أُصْبُعَهُ فَشُلَّتْ يَدُهُ فَعَلَيْهِ الْقِصَاصُ مِنْ الْأُصْبُعِ، وَلَهُ الْأَرْشُ فِي الْيَدِ - وَيَجْتَمِعُ فِي قَوْلِهِ الْعَقْلُ وَالْقِصَاصُ جَمِيعًا فِي عُضْوٍ وَاحِدٍ.

L37286 Al-Shafi'i said: If someone cuts one of the two testicles and the other is destroyed, retaliation is exacted from him for the one he cut, and he is liable for the monetary compensation for the other.

وَقَالَ الشَّافِعِيُّ: إنْ قَطَعَ إحْدَى أُنْثَيَيْهِ فَذَهَبَتْ الْأُخْرَى اُقْتُصَّ مِنْهُ فِي الَّتِي قَطَعَ، وَعَلَيْهِ الدِّيَةُ فِي الْأُخْرَى.

L37287 Abu Muhammad said: The ruling concerning all of this is what is confirmed to have originated from an intentional crime. By necessity, we know that it is entirely intentional crime and aggression. Therefore, retaliation or compensation is obligatory in such cases, applying equally to loss of life and lesser injuries.

قَالَ أَبُو مُحَمَّد: الْحُكْمُ فِي هَذَا كُلِّهِ مَا تَيَقَّنَ أَنَّهُ تَوَلَّدَ مِنْ جِنَايَةِ الْعَمْدِ فَبِالضَّرُورَةِ نَدْرِي أَنَّهُ كُلَّهُ جِنَايَةُ عَمْدٍ وَعُدْوَانٍ، فَالْوَاجِبُ فِي ذَلِكَ الْقَوَدُ أَوْ الْمُفَادَاةُ، سَوَاءٌ فِي ذَلِكَ النَّفْسُ وَمَا دُونَهَا.

L37288 The height of astonishment is that they all claim to be proponents of analogy—as they purport—yet they unanimously agree that if one severs another's finger, resulting in death, qisas for the life is obligatory. But those among them who prohibit qisas argue that when severing a finger results in the loss of the palm, retaliation for the palm cannot be enforced. Is there a more egregious contradiction than this? As for when another criminal act arises not stemming from the first—such as severing someone's hand, causing his other hand to become paralyzed—there is no liability here, neither qisas nor anything else. If it is not conclusively established that the second act originated from the first criminal injury, we cannot affirm any obligation upon the perpetrator. Since we lack certainty that anything binds him, it is im-

وَالْعَجَبُ كُلُّهُ أَنَّهُمْ كُلُّهُمْ أَصْحَابُ قِيَاسٍ - بِزَعْمِهِمْ - وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ قَطَعَ أُصْبُعَ آخَرَ فَمَاتَ مِنْهَا، فَإِنَّ عَلَيْهِ الْقَوَدَ فِي النَّفْسِ، ثُمَّ يَمْنَعُ - مَنْ مَنَعَ مِنْهُمْ - فِيمَنْ قَطَعَ أُصْبُعَ آخَرَ فَذَهَبَتْ كَفُّهُ مِنْهَا: أَنْ يُقَادَ مِنْهُ فِي الْكَفِّ - فَهَلْ فِي التَّنَاقُضِ أَفْحَشُ مِنْ هَذَا؟ وَأَمَّا إذَا أَمْكَنَ أَنْ تَتَوَلَّدَ الْجِنَايَةُ الْأُخْرَى مِنْ غَيْرِ الْأُولَى فَلَا شَيْءَ فِيهَا، لَا قَوَدَ وَلَا غَيْرَهُ، مِثْلُ أَنْ يَقْطَعَ لَهُ يَدًا فَتُشَلَّ لَهُ الْأُخْرَى، فَهَذَا إنْ لَمْ يُتَيَقَّنْ أَنَّهُ تَوَلَّدَ مِنْ الْجِنَايَةِ الْأُولَى فَلَسْنَا عَلَى يَقِينٍ مِنْ وُجُوبِ شَيْءٍ عَلَى الْجَانِي، وَإِذَا لَمْ نَكُنْ عَلَى يَقِينٍ

permissible to hold him liable for anything—whether against his body or his wealth—due to the saying of Allah's Messenger (peace be upon him): "Your blood, your wealth, your honor, and your bodies are inviolable among you."

مِنْ أَنَّهُ يَلْزَمُهُ شَيْءٌ فَلَا يَجُوزُ أَنْ يَلْزَمَ شَيْئًا، لَا فِي بَشَرَتِهِ وَلَا فِي مَالِهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ».

L37289 Ali said: There was among our companions a young man named Yabqā ibn ʿAbd al-Malik. His teacher struck him with a pen on his cheek during his childhood, causing his eye to atrophy. This constitutes an intentional act necessitating legal retribution (qawad for injury), because the strike was on the nerve bundle connected to vision. And with Allah, the Exalted, is success.

قَالَ عَلِيٌّ: وَكَانَ فِي أَصْحَابِنَا فَتًى اسْمُهُ: يَبْقَى بْنُ عَبْدِ الْمَلِكِ ضَرَبَهُ مُعَلِّمُهُ فِي صِبَاهُ بِقَلَمٍ فِي خَدِّهِ فَيَبِسَتْ عَيْنُهُ، فَهَذَا عَمْدٌ يُوجِبُ الْقَوَدَ، لِأَنَّ الضَّرْبَةَ كَانَتْ فِي الْعَصَبَةِ الْمُتَّصِلَةِ بِالنَّاظِرِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37290 **Issue: If someone detains another until their eye is gouged out or their limb is severed.**

[مَسْأَلَةٌ أَمْسَكَ آخَرَ حَتَّى فُقِئَتْ عَيْنُهُ أَوْ قُطِعَ عُضْوُهُ]

L37291–37293 2034 - Issue: If someone restrains another until his eye is gouged, his limb severed, or he is beaten, ʿAlī said: ʿAbdullāh ibn Rabīʿ narrated from Ibn Mufarrij, Qāsim ibn Aṣbagh narrated from Ibn Waḍḍāḥ, who narrated from Sahnūn, who narrated from Ibn Wahb. Ibn Wahb reported from Yūnus ibn Yazīd, on the authority of Ibn Shihāb, that he ruled regarding a group who collectively restrain a man - while one among them gouges his eye, breaks his legs or hands, knocks out his teeth, or inflicts injuries of this nature - that legal retaliation (qisas) is applied against the one who physically perpetrated the act. As for the others who restrained him, they shall be punished with a painful and humiliating punishment. If the victim opts for diyya, the diyya becomes obligatory upon all of them - they are held financially responsible to pay it in full, jointly and equally liable.

٢٠٣٤ - مَسْأَلَةٌ: مَنْ أَمْسَكَ آخَرَ حَتَّى فُقِئَتْ عَيْنُهُ، أَوْ قُطِعَ عُضْوُهُ، أَوْ ضُرِبَ قَالَ عَلِيٌّ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونَ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنِ ابْنِ شِهَابٍ أَنَّهُ كَانَ يَقُولُ فِي الرَّهْطِ يَجْتَمِعُونَ عَلَى الرَّجُلِ فَيُمْسِكُونَهُ فَيَفْقَأُ أَحَدُهُمْ عَيْنَهُ، أَوْ يَكْسِرُ رِجْلَيْهِ، أَوْ يَدَيْهِ، أَوْ أَسْنَانَهُ، أَوْ نَحْوَ هَذَا: أَنَّهُ يُقَادُ مِنَ الَّذِي بَاشَرَ ذَلِكَ مِنْهُ وَأَمَّا الْآخَرُونَ الَّذِينَ أَمْسَكُوهُ فَيُعَاقَبُونَ عُقُوبَةً مُوجِعَةً مُنَكِّلَةً، فَإِنْ اسْتَحَبَّ الْمُصَابُ الدِّيَةَ كَانَتِ الدِّيَةُ عَلَيْهِمْ كُلِّهِمْ يَغْرَمُونَهَا جَمِيعًا سَوَاءً.

Yunus reported: Rabiʿah said, "If the one whose eyes were gouged desires diyah, he is entitled to twelve thousand dirhams for his eyes. If those who restrained him did so solely to gouge his eyes, the diyah is collectively incumbent upon all of them. But if they restrained him to slap or beat him without intending to gouge his eyes, diyah is only incumbent upon the one who gouged his eyes, excluding his accomplices."

قَالَ يُونُسُ: وَقَالَ رَبِيعَةُ إِنْ أَحَبَّ الَّذِي فُقِئَتْ عَيْنَاهُ الدِّيَةَ فَلَهُ اثْنَا عَشَرَ أَلْفَ دِرْهَمٍ فِي عَيْنَيْهِ - فَإِنْ كَانَ الَّذِي أَمْسَكُوهُ إِنَّمَا أَمْسَكُوهُ لِيَفْقَأَ عَيْنَيْهِ فَعَلَيْهِمُ الدِّيَةُ جَمِيعًا - وَإِنْ كَانُوا أَمْسَكُوهُ لِيَصُكَّهُ، أَوْ لِيَضْرِبَهُ، لَا يُرِيدُونَ بِذَلِكَ فَقْءَ عَيْنَيْهِ، فَالدِّيَةُ عَلَى الَّذِي فَقَأَ عَيْنَيْهِ دُونَ أَصْحَابِهِ.

L37295 Ibn Wahb said: Ibn Samʿān said: Rabīʿah said: If he seeks retaliation for mur-

der, retaliation shall be applied to all of them: those who directly committed the act and those who restrained the victim.

قَالَ ابْنُ وَهْبٍ: قَالَ ابْنُ سَمْعَانَ: قَالَ رَبِيعَةُ: إِنْ أَرَادَ الْقَوَدَ أُقِيدَ مِنْهُمْ جَمِيعًا، مِمَّنْ بَاشَرَ ذَلِكَ، وَمِمَّنْ أَمْسَكَهُ.

L37296 Abū Muḥammad said: As for obligating blood money upon all of them and prohibiting qisas (retaliation) against all of them, this is undoubtedly an error and a manifest contradiction. This is because they must either have all gouged both his eyes, or not all of them did so—only those who directly perpetrated it, as there is no third possibility. If they all gouged both his eyes, then qisas (retaliation) is obligatory upon all of them, just as blood money is obligatory upon all of them, with no distinction. If not all of them gouged it, but only the direct perpetrator specifically, then imposing blood money on those who neither gouged, broke, nor severed is an error—and this is undeniably clear.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا إِيجَابُ الدِّيَةِ عَلَيْهِمْ كُلِّهِمْ، وَالْمَنْعُ مِنْ الْقَوَدِ مِنْهُمْ كُلِّهِمْ: فَخَطَأٌ لَا إشْكَالَ فِيهِ، وَتَنَاقُضٌ ظَاهِرٌ، لِأَنَّهُمْ لَا يَخْلُو مِنْ أَنْ يَكُونُوا كُلُّهُمْ فَقَأَهُ أَوْ لَمْ يَفْقَأْهُ كُلُّهُمْ، لَكِنْ مَنْ بَاشَرَهُ خَاصَّةً، لَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ - فَإِنْ كَانُوا كُلُّهُمْ فَقَأَ عَيْنَيْهِ فَالْقَوَدُ عَلَيْهِمْ كُلِّهِمْ، كَمَا الدِّيَةُ عَلَيْهِمْ كُلِّهِمْ وَلَا فَرْقَ - وَإِنْ كَانُوا لَيْسَ كُلُّهُمْ فَقَأَهُ، لَكِنَّ الْمُبَاشِرَ خَاصَّةً، فَإِلْزَامُ الدِّيَةِ فِي ذَلِكَ مَنْ لَمْ يَفْقَأْ وَلَا كَسَرَ وَلَا قَطَعَ خَطَأٌ - وَهَذَا لَا خَفَاءَ بِهِ.

L37297 As for Rabīʿah's statement regarding imposing retaliation upon all of them or blood money upon all of them, it is not contradictory but erroneous. This is because the restrainer—another person—intending to gouge out his eyes, cut off his hand, castrate him, commit a wrong against him, or strike him, is never referred to in linguistic or legal (sharīʿah) terms as "the gouger," "the cutter," "the breaker," or "the striker." If he is not designated by any of these terms, then retaliation does not apply to him for that act, since Allah the Exalted has said: "So whoever transgresses against you, retaliate against him in the same manner as he transgressed against you" [Al-Baqarah: 194]. Thus, this opinion is invalid without doubt.[17]

وَأَمَّا قَوْلُ رَبِيعَةَ فِي إيجَابِ الْقَوَدِ عَلَى جَمِيعِهِمْ، أَوْ الدِّيَةِ عَلَى جَمِيعِهِمْ، فَلَمْ يَتَنَاقَضْ وَلَكِنَّهُ خَطَأٌ، لِأَنَّ الْمُمْسِكَ آخَرَ لِيَفْقَأَ عَيْنَيْهِ، أَوْ لِيَقْطَعَ يَدَهُ، أَوْ لِيَخْصِيَ، أَوْ لِيَجْنِيَ عَلَيْهِ، أَوْ لِيَضْرِبَ، لَا يَقَعُ عَلَيْهِ أَلْبَتَّةَ فِي اللُّغَةِ، وَلَا فِي الشَّرِيعَةِ اسْمُ " فَاقِئٍ " وَلَا اسْمُ " قَاطِعٍ " وَلَا اسْمُ " كَاسِرٍ " وَلَا اسْمُ " ضَارِبٍ " وَإِذَا لَمْ يَكُنْ شَيْئًا مِنْ هَذَا فَلَا قَوَدَ عَلَيْهِ فِي ذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا قَالَ {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَبَطَلَ هَذَا الْقَوْلُ بِلَا شَكٍّ.

L37298 This is among the matters in which Mālik disagreed with his two teachers, Rabiʿah and al-Zuhrī, for they held that in cases of intentional injury to the eye, the choice lies between qawad or diyah—whereas he maintained that only qawad applies. They were the two rams of Madinah.

وَهَذَا مِمَّا خَالَفَ فِيهِ مَالِكٌ شَيْخَيْهِ: رَبِيعَةَ، وَالزُّهْرِيَّ، لِأَنَّهُمَا جَعَلَا فِي جِنَايَةِ الْعَمْدِ فِي الْعَيْنِ الْخِيَارَ بَيْنَ الْقَوَدِ، أَوْ الدِّيَةِ - وَهُوَ لَا يَرَى فِيهَا إلَّا الْقَوَدَ فَقَطْ - وَهُمَا كَبْشَا الْمَدِينَةِ.

L37299–37301 Ali said: The judgment in this is that *qisas* is applied to the gouger,

[17] **Qur'an references (L37297):** Qur'an 2:194 (Al-Baqarah).

the bone-breaker, and the limb-severer. As for the one who strikes similarly to what was done, the one who withholds action shall be disciplined through discretionary punishment and imprisoned—according to what the judge deems appropriate—in compliance with the statement of Allah's Messenger (peace be upon him): "Whoever among you witnesses evil, let him rectify it with his hand."

L37302 Regarding his command—peace and blessings be upon him—to administer discretionary punishment for offenses below the prescribed penalty, which are punishable by ten lashes or fewer, as we will mention in the "Chapter on Discretionary Punishment," God, the Exalted willing, in the "Book of Prescribed Penalties."

L37303 If someone says: "You assert that concerning one who detains another for killing and he is killed, he must be imprisoned until he dies. Is this contrary to what you have stated here, or not?"

L37304 Our response—and success is from Allah, the Most High—is that this does not contradict anything from it, for the ruling in this matter is Allah's statement: *"So whoever aggressed against you, retaliate against him in like manner to his aggression"* [Al-Baqarah: 194]. Thus, whoever commits an act described as aggression—thereby becoming an aggressor—must have retaliation exacted upon him in like manner by Allah's command. Therefore, one who detains another until they die must be detained in the same manner, and one who confines until death occurs—this does not constitute killing. Hence, it is obligatory to confine him until he dies, as this constitutes equivalence to his aggression. We disregard whether the duration is long or short, since neither a textual proof nor consensus exists that requires consideration of this—and success is from Allah, the Most High.[18]

L37305 **A legal issue regarding the diyah (compensation) for an animal's eye.**

L37306 Issue 2035: The eye of an animal? Ali said: Abu Umar Ahmad ibn Qasim narrated to us: My father Qasim ibn Muhammad ibn Qasim in-

[18] **Qur'an references (L37304):** Qur'an 2:194 (Al-Baqarah).

قَالَ عَلِيٌّ: وَالْحُكْمُ فِي هَذَا هُوَ أَنْ يُقْتَصَّ مِنْ الْفَاقِئِ، وَالْكَاسِرِ، وَالْقَاطِعِ وَالضَّارِبِ بِمِثْلِ مَا فَعَلَ، وَيُعَزَّرُ الْمُمْسِكُ، وَيُسْجَنُ، عَلَى مَا يَرَاهُ الْحَاكِمُ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ» .

وَلِأَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالتَّعْزِيرِ فِي كُلِّ مَا دُونَ الْحَدِّ عَشَرَةَ أَسْوَاطٍ فَأَقَلَّ، عَلَى مَا نَذْكُرُهُ فِي " بَابِ التَّعْزِيرِ " إنْ شَاءَ اللَّهُ تَعَالَى مِنْ " كِتَابِ الْحُدُودِ ".

فَإِنْ قَالَ قَائِلٌ: إنَّكُمْ تَقُولُونَ فِيمَنْ أَمْسَكَ آخَرَ لِلْقَتْلِ فَقُتِلَ: إنَّهُ يُسْجَنُ حَتَّى يَمُوتَ، فَهَذَا خِلَافٌ لِمَا قُلْتُمْ هَاهُنَا أَمْ لَا؟

فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّهُ لَيْسَ ذَلِكَ مُخَالِفًا لِشَيْءٍ مِنْهُ، لِأَنَّ الْحُكْمَ فِي هَذَا قَوْلُ اللَّهِ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَكُلُّ مَنْ فَعَلَ فِعْلًا يُوصَفُ بِهِ - وَكَانَ بِهِ مُتَعَدِّيًا - فَإِنَّهُ يَجِبُ أَنْ يُتَعَدَّى عَلَيْهِ بِمِثْلِهِ بِأَمْرِ اللَّهِ تَعَالَى، فَالْمُمْسِكُ آخَرَ حَتَّى قُتِلَ، مُمْسِكٌ لَهُ، وَحَابِسٌ حَتَّى مَاتَ، وَلَيْسَ قَاتِلًا، فَالْوَاجِبُ أَنْ يُحْبَسَ حَتَّى يَمُوتَ، فَهُوَ مِثْلُ مَا اعْتَدَى بِهِ، وَلَا نُبَالِي بِطُولِ الْمُدَّةِ مِنْ قِصَرِهَا إذْ لَمْ يَأْتِ بِمُرَاعَاةِ ذَلِكَ نَصٌّ وَلَا إجْمَاعٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةٌ دِيَةُ عَيْنُ الدَّابَّةِ]

٢٠٣٥ - مَسْأَلَةٌ: عَيْنُ الدَّابَّةِ؟ قَالَ عَلِيٌّ: نا أَبُو عُمَرَ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ أَخْبَرَنِي جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا زَكَرِيَّا بْنُ يَحْيَى النَّاقِدُ نا سَعِيدُ بْنُ سُلَيْمَانَ عَنْ

formed me, reporting from my grandfather Qasim ibn Asbagh who narrated to us: Zakariyya ibn Yahya al-Naqid narrated to us, from Sa'id ibn Sulayman, from Abu Umayyah ibn Ya'la, from Abu al-Zinad, from Amr ibn Wahb, from his father, from Zayd ibn Thabit: "The Prophet—peace and blessings be upon him—did not rule regarding head injuries except in three cases: the bone-displacing wound (al-munaqqilah), the bone-exposing wound (al-muwaddihah), and the extensive wound (al-ammah). As for the eye of a horse: a quarter of its value is due." Muhammad ibn Sa'id ibn Nabat narrated to us: Abdullah ibn Nasr narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waddah narrated to us, Musa ibn Mu'awiyah narrated to us, Waki' narrated to us, from Abu Janab—who is Yahya ibn Abi Hayyah al-Kalbi—from Abu Awn Muhammad ibn Ubaydullah al-Thaqafi, from Shurayh: Umar ibn al-Khattab wrote to him concerning a horse whose eye was gouged out, instructing to appraise the horse's value, then a quarter of its value is due for the eye.

أَبِي أُمَيَّةَ بْنِ يَعْلَى نا أَبُو الزِّنَادِ عَنْ عَمْرِو بْنِ وَهْبٍ عَنْ أَبِيهِ عَنْ زَيْدِ بْنِ ثَابِتٍ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَقْضِ فِي الرَّأْسِ إِلَّا فِي ثَلَاثٍ: الْمُنَقِّلَةِ، وَالْمُوضِحَةِ، وَالْآمَّةِ - وَفِي عَيْنِ الْفَرَسِ بِرُبْعِ ثَمَنِهِ» : نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا أَبُو جَنَابٍ - هُوَ يَحْيَى بْنُ أَبِي حَيَّةَ الْكَلْبِيُّ - عَنْ أَبِي عَوْنٍ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الثَّقَفِيِّ عَنْ شُرَيْحٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إِلَيْهِ فِي فَرَسٍ فُقِئَتْ عَيْنُهُ: أَنْ يُقَوِّمَ الْفَرَسَ، ثُمَّ يَكُونُ فِي عَيْنِهِ رُبْعُ قِيمَتِهِ.

L37307–37309 Narrated to us Abdullah ibn Rabee, narrated to us Abdullah ibn Muhammad ibn Uthman, narrated to us Ahmad ibn Khalid, narrated to us Ali ibn Abd al-Aziz. Al-Ḥajjāj ibn al-Minhāl reported to us from Ḥammād ibn Salamah, from ʿAbd al-Malik ibn ʿUmayr, who said: A dihqān gouged out the eye of a horse belonging to ʿUrwah ibn al-Jaʿd. Saʿd ibn Abī Waqqāṣ wrote to ʿUmar ibn al-Khaṭṭāb seeking his ruling. ʿUmar wrote back: "Offer the dihqān a choice: if he wishes to take the horse and pay al-sharwā, or pay a quarter of its price." The horse was appraised at twenty thousand, so the dihqān paid five thousand.

نَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ أَنَا عَبْدُ الْمَلِكِ بْنُ عُمَيْرٍ قَالَ: إِنَّ دِهْقَانًا فَقَأَ عَيْنَ فَرَسٍ لِعُرْوَةَ بْنِ الْجَعْدِ، فَكَتَبَ سَعْدُ بْنُ أَبِي وَقَّاصٍ إِلَى عُمَرَ بْنِ الْخَطَّابِ يَسْأَلُهُ عَنْ ذَلِكَ، فَكَتَبَ عُمَرُ إِلَيْهِ: أَنْ خَيِّرِ الدِّهْقَانَ، فَإِنْ شَاءَ أَخَذَ الْفَرَسَ، وَأَعْطَى الشَّرْوَى، وَإِنْ شَاءَ أَعْطَى رُبْعَ ثَمَنِهِ، فَقُوِّمَ الْفَرَسُ عِشْرِينَ أَلْفًا، فَغَرِمَ خَمْسَةَ آلَافٍ.

L37310 On the authority of Abd al-Razzaq from Ibn Jurayj from Abd al-Karim that Ali ibn Abi Talib said: One-fourth is owed for the eye of a beast of burden - meaning from its price.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: فِي عَيْنِ الدَّابَّةِ الرُّبْعُ - يَعْنِي مِنْ ثَمَنِهَا.

L37311 From Muhammad ibn Sirin that Shuraih said regarding a beast of burden whose eye is gouged out: Its owner holds the option (al-sharwa). If he agrees, he may receive compensation amounting to a quarter of its value.

وَعَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ شُرَيْحًا قَالَ فِي الدَّابَّةِ إِذَا فُقِئَتْ عَيْنُهَا لِصَاحِبِهَا الشَّرْوَى، فَإِنْ رَضِيَ جَبَرَهَا بِرُبْعِ ثَمَنِهَا.

L37312 From Ibn Jurayj: I asked 'Aṭā', "The actual animal [as compensation]?" He replied, "A quarter," as they claimed.

وَعَنِ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: عَيْنُ الدَّابَّةِ، قَالَ: الرُّبْعَ، زَعَمُوا.

L37313 And through the chain of Abd al-Razzaq from Sufyan ibn Uyayna from Mujalid from al-Sha'bi: Umar ibn al-Khattab ruled regarding a camel's eye that was injured for half its value. Then he examined it afterward and said: "I see no diminishment in its strength nor in its guidability," whereupon he ruled for a quarter of its value.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ مُجَالِدٍ عَنْ الشَّعْبِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي عَيْنِ جَمَلٍ أُصِيبَتْ بِنِصْفِ ثَمَنِهِ - ثُمَّ نَظَرَ إلَيْهِ بَعْدُ فَقَالَ: مَا أَرَاهُ نَقَصَ مِنْ قُوَّتِهِ، وَلَا مِنْ هِدَايَتِهِ، فَقَضَى فِيهِ بِرُبْعِ ثَمَنِهِ.

L37314 From Al-Ḥasan ibn Ḥayy concerning the eye of an animal: a quarter of its value is owed. If its tail is cut off, liability is imposed for the decrease in its value.

وَعَنْ الْحَسَنِ بْنِ حَيٍّ فِي عَيْنِ الدَّابَّةِ رُبْعُ ثَمَنِهَا، فَإِنْ قُطِعَ ذَنَبُهَا أُغْرِمَ مَا نَقَصَهَا.

L37315 Abu Hanifah and Zufar said: For a horse, camel, or cow whose eye is destroyed, the compensation is a quarter of their price. If the eye of a sheep is destroyed, there is no compensation except the decrease in its value. Malik, Al-Shafi'i, and Zufar – in one of his two opinions – said: There is no compensation for any of these except the decrease in price alone. This is the opinion of Abu Sulayman and our companions.

وَقَالَ أَبُو حَنِيفَةَ، وَزُفَرُ: فِي الْفَرَسِ، وَالْبَعِيرِ، وَالْبَقَرَةِ تُفْقَأُ عَيْنُ كُلِّ وَاحِدٍ مِنْهُمْ: رُبْعُ ثَمَنِهِ، فَإِنْ فَقَأَ عَيْنَ شَاةٍ فَلَيْسَ فِي ذَلِكَ [إلَّا مَا نَقَصَهَا - وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَزُفَرُ - فِي أَحَدِ قَوْلَيْهِ - لَيْسَ فِي كُلِّ ذَلِكَ] إلَّا مَا نَقَصَ مِنْ الثَّمَنِ فَقَطْ - وَهُوَ قَوْلُ أَبِي سُلَيْمَانَ، وَأَصْحَابِنَا -.

L37316 Al-Layth said: If someone gouges the eye of a beast, breaks its leg, or severs its tail, he must pay its full price or provide its equivalent.

وَقَالَ اللَّيْثُ: إنْ فَقَأَ عَيْنَ دَابَّةٍ، أَوْ كَسَرَ رِجْلَهَا، أَوْ قَطَعَ ذَنَبَهَا، فَعَلَيْهِ ثَمَنُهَا كُلُّهَا، أَوْ مِثْلُهَا.

L37317 Abū Muḥammad said: As for the mentioned ḥadīth, it is unsound, for it is transmitted through Abū Umayyah Ismāʿīl ibn Yaʿlā al-Thaqafī—who is considered unreliable.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْحَدِيثُ الْمَذْكُورُ فَلَا يَصِحُّ، لِأَنَّهُ مِنْ رِوَايَةِ أَبِي أُمَيَّةَ إسْمَاعِيلِ بْنِ يَعْلَى الثَّقَفِيِّ - وَلَيْسَ بِشَيْءٍ.

L37318–37319 As for the narration concerning this matter from ʿUmar ibn al-Khaṭṭāb, Saʿd ibn Abī Waqqāṣ, Shurayḥ, and ʿAṭā: it is established.

وَأَمَّا الرِّوَايَةُ فِي ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ، وَشُرَيْحٍ، وَعَطَاءٍ: فَثَابِتَةٌ.

L37320 As for the narration ascribed to Ali ibn Abi Talib—that he ruled in that matter with half the value—and the similar report from Umar, these are two weak ḥadīths. Regarding the one attributed to Ali, it is transmitted from an unknown narrator, from Muhammad ibn Jabir al-Yamami—an abandoned (matrūk) transmitter—from Jabir al-Ju'fi, a discarded narrator.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ: أَنَّهُ قَضَى فِي ذَلِكَ بِنِصْفِ الْقِيمَةِ - وَعَنْ عُمَرَ بِمِثْلِ ذَلِكَ، فَوَاهِيَتَانِ: أَمَّا الَّتِي عَنْ عَلِيٍّ - فَهِيَ عَمَّنْ لَا يُدْرَى عَنْ مُحَمَّدِ بْنِ جَابِرٍ الْيَمَامِيِّ - وَهُوَ هَالِكٌ - عَنْ جَابِرٍ الْجُعْفِيِّ - وَهُوَ مَفْرُوغٌ مِنْهُ.

L37321 As for the narration attributed to Umar ibn al-Khattab, the same applies, for it comes through Mujalid—a weak narrator—narrating from al-Sha'bi, who is cited as narrating from Umar, though al-Sha'bi was not born until approximately ten years after Umar's death.

وَأَمَّا الَّتِي عَنْ عُمَرَ بْنِ الْخَطَّابِ فَمِثْلُ ذَلِكَ، لِأَنَّهَا عَنْ مُجَالِدٍ - وَهُوَ ضَعِيفٌ - عَنْ الشَّعْبِيِّ عَنْ عُمَرَ، وَلَمْ يُولَدْ الشَّعْبِيُّ إلَّا بَعْدَ مَوْتِ عُمَرَ بِنَحْوِ عَشَرَةِ أَعْوَامٍ.

L37322 Abu Muhammad said: However, the Malikis may cite as evidence a hadith weaker than this one when it aligns with their school's doctrine, just as they cite the narration: "No one should lead the prayer sitting after me."

قَالَ أَبُو مُحَمَّدٍ: إلَّا أَنَّ الْمَالِكِيِّينَ قَدْ يَحْتَجُّونَ بِأَسْقَطَ مِنْ هَذَا الْحَدِيثِ - إذَا وَافَقَ تَقْلِيدَهُمْ - كَاحْتِجَاجِهِمْ بِـ «لَا يَؤُمَّنَّ أَحَدٌ بَعْدِي جَالِسًا» .

L37323 And with a ḥadīth prohibiting istizhār (seeking clarity/memorization), and with very many [matters]—we have previously mentioned them in scattered contexts—and we will compile them, if Allah, the Exalted, wills.

وَبِحَدِيثِ حَرَامٍ فِي الِاسْتِظْهَارِ، وَبِكَثِيرٍ جِدًّا - قَدْ ذَكَرْنَاهُ مُفَرَّقًا - وَسَنَجْمَعُهُ إنْ شَاءَ اللَّهُ تَعَالَى.

L37324 Ali said: "As for us, there is no valid proof in our view except in the explicit text of the Quran, an established Sunnah from the Messenger of Allah (peace and blessings be upon him), or an indisputable consensus—one with no disagreement from anyone. None of these evidences apply to this matter."

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ، فَإِنَّهُ لَا حُجَّةَ عِنْدَنَا إلَّا فِي نَصِّ قُرْآنٍ، أَوْ سُنَّةٍ ثَابِتَةٍ، عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ إجْمَاعٍ مُتَيَقَّنٍ، لَا خِلَافَ فِيهِ مِنْ أَحَدٍ، وَلَيْسَ فِي هَذِهِ الْمَسْأَلَةِ شَيْءٌ مِنْ هَذِهِ الْبَرَاهِينِ.

L37325 Since that is the case, the Messenger of Allah - May Allah's peace and blessings be upon him - said: "Your blood and your wealth are sacred and must not be violated." Therefore, it is impermissible to hold liable the one who gouges an animal's eye except for what is obligated by explicit textual evidence or consensus.

فَإِذْ ذَلِكَ كَذَلِكَ، فَإِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَجُوزُ إلْزَامُ فَاقِئِ عَيْنِ الدَّابَّةِ إلَّا مَا أَوْجَبَهُ نَصٌّ أَوْ إجْمَاعٌ.

L37326 Allah the Exalted has said: {So whoever transgresses against you, transgress against him in the same manner as he has transgressed against you} [Al-Baqarah: 194]. Therefore, it is obligatory according to this verse to make him liable only for the value of the loss incurred—and success comes from Allah alone.[19]

وَقَدْ قَالَ اللَّهُ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] فَوَاجِبٌ بِهَذِهِ الْآيَةِ إلْزَامُهُ قِيمَةَ مَا نَقَصَ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37327 A legal issue regarding the eyelid if it is injured, resulting in the loss of its hair.

[مَسْأَلَةٌ الْحَاجِبِ إذَا أُصِيبَ حَتَّى يَذْهَبَ شَعْرُهُ]

L37328 2036 - Issue: Abū Muḥammad said: People have differed regarding both

[19] **Qur'an references (L37326):** Qur'an 2:194 (Al-Baqarah).

eyebrows. Narrated by Ḥammām ibn Mufarrij from Ibn al-Aʿrābī from al-Dabarī from ʿAbd al-Razzāq from Ibn Jurayj from ʿAmr ibn Shuʿayb, who said: Abū Bakr al-Ṣiddīq ruled that if both eyebrows are injured until their hair is lost, the compensation shall be two muwadiḥat (equivalent to ten camels).

٢٠٣٦ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: قَدْ اخْتَلَفَ النَّاسُ فِي الْحَاجِبَيْنِ: نا حُمَامُ بْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ الصِّدِّيقُ فِي الْحَاجِبِ إذَا أُصِيبَ حَتَّى يَذْهَبَ شَعْرُهُ، فَقَضَى فِيهِ مُوضِحَتَيْنِ عَشْرًا مِنْ الْإِبِلِ.

L37329–37330 Others held a different opinion, as transmitted through the mentioned chain from Abd al-Razzaq via Ibn Jurayj: Abdul Karim informed us that it reached him from the Companions of the Prophet - peace and blessings of Allah be upon him - concerning an eyebrow experiencing partial hair loss, that a quarter of the diyah applies to it, with compensation for the lost portion calculated proportionally. If the eyebrow is injured in a manner that exposes the bone and removes its hair, the diyah applies solely to the eyebrow itself without compensation for the bone-exposing wound (al-mūḍiḥah). If injured by a dislocated bone (al-manqūlah), the diyah applies to both the eyebrow and the dislocation. It is reported from Zayd ibn Thabit that one-third of the diyah applies to a single eyebrow. Al-Shaʻbi said: The full diyah applies for both eyebrows.

وَقَالَ آخَرُونَ: غَيْرَ هَذَا: كَمَا رُوِّينَا بِالْإِسْنَادِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ: أَخْبَرَنَا عَبْدُ الْكَرِيمِ أَنَّهُ بَلَغَهُ عَنْ أَصْحَابِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْحَاجِبِ يَتَحَصَّصُ شَعْرُهُ أَنَّ فِيهِ الرُّبُعَ، وَفِيمَا ذَهَبَ مِنْهُ بِالْحِسَابِ، فَإِنْ أُصِيبَ الْحَاجِبُ بِمَا يُوضِحُ وَيُذْهِبُ شَعْرَهُ: كَانَ قَدْرَ الْحَاجِبِ فَقَطْ، وَلَمْ يَكُنْ لِلْمُوضِحَةِ قَدْرٌ، فَإِنْ أُصِيبَ بِمَنْقُولَةٍ: كَانَ قَدْرَ الْحَاجِبِ وَالْمَنْقُولَةِ جَمِيعًا وَرُوِيَ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّ فِي الْحَاجِبِ الْوَاحِدِ ثُلُثُ الدِّيَةِ وَقَالَ الشَّعْبِيُّ: فِي الْحَاجِبَيْنِ الدِّيَةُ.

L37331 From Saʻīd ibn al-Musayyab, who said: For the two eyebrows - if they necessitate full diyah, full diyah is due for both; and for one of the two, half the diyah is due.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ: فِي الْحَاجِبَيْنِ إذَا اسْتَوْعَبَا الدِّيَةَ - وَفِي أَحَدِهِمَا نِصْفُ الدِّيَةِ.

L37332 From Ibrahim al-Nakhāʿī, he said: It was said, "For two [parts/instances] of a human, the full diyah is due, and for one, half." I asked: "Two parts?" He replied: "Perhaps that is the case." Then he said: "But for each single [part/instance] of a human, the full diyah is due."

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَانَ يُقَالُ فِي كُلِّ اثْنَيْنِ مِنْ الْإِنْسَانِ الدِّيَةُ، وَفِي كُلِّ وَاحِدٍ النِّصْفُ؟ قُلْت: الثِّنْتَيْنِ؟ قَالَ: لَعَلَّ ذَلِكَ، قَالَ: وَفِي كُلِّ وَاحِدٍ مِنْ الْإِنْسَانِ الدِّيَةُ.

L37333 From al-Shaʻbi, he said: For every two in a human, the diyah applies. ʻAbdullāh ibn Rabīʻ reported from ʻAbdullāh ibn Muḥammad ibn ʻUthmān, who reported from Aḥmad ibn Khālid, who reported from ʻAlī ibn ʻAbd al-ʻAzīz, who reported from al-Ḥajjāj ibn al-Minhāl, who reported from Ḥammād ibn Salamah, who reported from al-Ḥajjāj ibn Arṭāh, from al-Ḥakam ibn ʻUtaybah, that Shurayḥ said: For the two eyebrows, two lips, two hands, and two

وَعَنْ الشَّعْبِيِّ قَالَ: فِي كُلِّ اثْنَيْنِ مِنْ الْإِنْسَانِ الدِّيَةُ نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا الْحَجَّاجُ بْنُ أَرْطَاةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّ شُرَيْحًا قَالَ: فِي الْحَاجِبَيْنِ، وَالشَّفَتَيْنِ، وَالْيَدَيْنِ، وَالرِّجْلَيْنِ: نِصْفُ الدِّيَةِ يَعْنِي فِي كُلِّ وَاحِدٍ مِنْهُمَا - وَفِي كُلِّ فَرْدٍ فِي الْإِنْسَانِ

legs—half the diyah applies, meaning for each individual one of them—and for each individual part in a human, the diyah applies. This is the opinion of al-Ḥasan al-Baṣrī, Qatādah, Abū Ḥanīfah, Aḥmad ibn Ḥanbal, and their followers. Others said: Only arbitration by experts applies in such cases. This is the opinion of Mālik, al-Shāfiʿī, and their followers.

الدِّيَةُ - وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَقَتَادَةَ، وَأَبِي حَنِيفَةَ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِمْ وَقَالَ آخَرُونَ: فِيهَا حُكُومَةٌ فَقَطْ. وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمَا.

L37334–37336 Others said: There is nothing regarding it, as we have narrated through the chain of ʿAbd al-Razzāq from Ibn Jurayj, who said: I asked ʿAṭāʾ ibn Abī Rabāḥ: "Is the eyelash to be purchased?" He replied: "I have not heard anything about it." Abū Muḥammad said: As for the Ḥanafīs, Mālikīs, and Shāfiʿīs, they have contradicted their own principles here by overemphasizing the severity of disagreeing with the Companion when it aligns with their adherence—yet here they have opposed what... It has been narrated from Abu Bakr al-Siddiq, Zayd ibn Thabit, and other Companions of the Messenger of Allah—peace and blessings be upon him—attributing to them statements that were never preserved from any Companion, and this is utterly blameworthy.

وَقَالَ آخَرُونَ: لَا شَيْءَ فِيهَا، كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءِ بْنِ أَبِي رَبَاحٍ: الْحَاجِبُ يُشْتَرُ؟ قَالَ: لَمْ أَسْمَعْ فِيهِ بِشَيْءٍ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فَقَدْ نَقَضُوا هَاهُنَا أُصُولَهُمْ فِي تَهْوِيلِهِمْ بِخِلَافِ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ - وَهُمْ هَاهُنَا قَدْ خَالَفُوا مَا رُوِيَ عَنْ أَبِي بَكْرٍ الصِّدِّيقِ، وَزَيْدِ بْنِ ثَابِتٍ، وَسَائِرِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى أَقْوَالٍ لَمْ تُحْفَظْ قَطُّ عَنْ صَاحِبٍ - وَهَذَا قَبِيحٌ جِدًّا.

L37337 As for the Ḥanafīs, they rejected qiyās here while assigning diyah to every two [organs] in humans by extending the analogy from the two hands - the eyebrows, for instance, being two.

فَأَمَّا الْحَنَفِيُّونَ، فَإِنَّهُمْ طَرَدُوا الْقِيَاسَ هَاهُنَا، إذْ جَعَلُوا فِي كُلِّ اثْنَيْنِ فِي الْإِنْسَانِ الدِّيَةَ، قِيَاسًا عَلَى الْيَدَيْنِ، وَالْحَاجِبَانِ اثْنَانِ.

L37338 As for the position of Mālik and al-Shāfiʿī, their followers face no difficulty in asserting the Ummah's consensus regarding matters in which they know no disagreement exists. Indeed, they go so far as to claim consensus even in cases where disagreement is widely recognized, as seen in their ruling on the wound that exposes the bone (al-mawḍiḥah) - as per what we will mention after this, God, the Exalted, willing.

وَأَمَّا قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، فَإِنَّ أَصْحَابَهُمَا لَا مُؤْنَةَ عَلَيْهِمْ فِي ادِّعَاءِ الْإِجْمَاعِ مِنْ الْأُمَّةِ، فِيمَا لَا يَعْرِفُونَ فِيهِ خِلَافًا، نَعَمْ، حَتَّى إنَّهُمْ لَيَدَّعُونَهُ فِيمَا فِيهِ الْخِلَافُ مَشْهُورٌ، كَفِعْلِهِمْ فِي الْمُوضِحَةِ عَلَى مَا نَذْكُرُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى.

L37339 We do not know of anyone before Mālik who held his opinion regarding a ruling on the two eyebrows. This view was not supported by any Quranic text, nor a sound Sunnah, nor a weak one, nor qiyās (analogical reasoning). Therefore, they should not disapprove of those who held an opinion based on following the Quran and the Sunnah of the Messenger of Allah (peace and blessings be upon him). For Allah the Exalted never at all permitted to

وَلَا نَعْلَمُ أَحَدًا قَالَ قَبْلَ مَالِكٍ بِقَوْلِهِ: فِي الْحَاجِبَيْنِ حُكُومَةٌ هَذَا وَلَمْ يُتَّبَعْ فِيهِ نَصُّ قُرْآنٍ، وَلَا سَنَةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا قِيَاسٌ، فَيَنْبَغِي لَهُمْ أَنْ لَا يُنْكِرُوا عَلَى مَنْ قَالَ بِقَوْلٍ اتَّبَعَ فِيهِ الْقُرْآنَ، وَسُنَّةَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَا أَبَاحَ اللَّهُ تَعَالَى قَطُّ لِمَالِكٍ، وَلَا لِأَبِي حَنِيفَةَ، وَلَا لِلشَّافِعِيِّ شَيْئًا حَرَّمَهُ اللَّهُ تَعَالَى عَلَى غَيْرِهِمْ.

Mālik, Abū Ḥanīfah, or al-Shāfiʿī anything He had forbidden to others apart from them.

L37340 Ali said: Since there is no valid text regarding the two eyebrows, nor any consensus in matters that are ascertained, the ruling is that nothing is obligatory in cases of intentional acts concerning them except retaliation or ransom.

L37341 As for unintentional harm, there is no liability, for property is inviolable except through explicit textual evidence or scholarly consensus. Since a judicial ruling imposes a penalty, it is impermissible to obligate anyone to it without such evidence or consensus - this being the opinion of ʿAṭāʾ, as we have mentioned.

L37342 ## The Rulings on the Diyah of the Nose

L37343 Issue 2037: ʿAlī said: Muḥammad ibn Saʿīd ibn Nabāt narrated to us: ʿAbdullāh ibn Naṣr narrated to us: Qāsim ibn Aṣbaġ narrated to us: Ibn Waḍḍāḥ narrated to us: Mūsā ibn Muʿāwiyah narrated to us: Wakīʿ narrated to us: Sufyān al-Thawrī narrated from Abū Isḥāq al-Sabīʿī, from ʿĀṣim ibn Ḍamrah, from ʿAlī ibn Abī Ṭālib that he said: "For the nose, the diyah."

L37344 Through him to Wakīʿ, Isrāʾīl reported to us from Jābir from al-Shaʿbī, who ruled that the *diyah* applies to the *ʿirnīn*. Through the same chain to Wakīʿ, Salām reported to us from al-Mughīrah from Ibrāhīm al-Nakhaʿī, who ruled that the *diyah* applies to the *mārin*.

L37345 On the authority of Yazīd ibn ʿAbdullāh ibn Quṣayṭ, who said: In a human being, five parts entail blood money: the nose, the tongue, the penis, the spine, and the heart.

L37346–37347 From the chain of ʿAbd al-Razzāq, from Maʿmar, from ʿIkrimah, who said regarding rawthah [dung as fuel]: "Half [a wasq]." ʿAbd al-Razzāq said: "I think he attributed it to ʿUmar."

L37348 From Ma'mar, from Ibn Abi Najih, from Mujāhid and Makḥūl - [Mujāhid] said regarding a nasal fracture (rawthah): "One-third of the *diyah* [is due]."

قَالَ عَلِيٌّ: فَإِذْ لَا نَصَّ فِي الْحَاجِبَيْنِ يَصِحُّ، وَلَا إجْمَاعَ فِيمَا يُتَيَقَّنُ، فَالْوَاجِبُ أَنْ لَا يَجِبَ فِيهِمَا فِي الْعَمْدِ إلَّا الْقَوَدُ أَوْ الْمُفَادَاةُ.

وَأَمَّا فِي الْخَطَأِ فَلَا شَيْءَ، لِأَنَّ الْأَمْوَالَ مُحَرَّمَةٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَالْحُكُومَةُ غَرَامَةٌ فَلَا يَجُوزُ إلْزَامُهَا أَحَدًا بِغَيْرِ نَصٍّ وَلَا إجْمَاعٍ - وَهُوَ قَوْلُ عَطَاءٍ، كَمَا أَوْرَدْنَا.

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ الْأَنْف]

٢٠٣٧ - مَسْأَلَةٌ: قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ قَالَ: فِي الْأَنْفِ الدِّيَةُ.

وَبِهِ إلَى وَكِيعٍ نا إسْرَائِيلُ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ قَالَ فِي الْعِرْنِينِ الدِّيَةُ وَبِهِ إلَى وَكِيعٍ نا سَلَامٌ عَنْ الْمُغِيرَةِ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي الْمَارِنِ الدِّيَةُ.

وَعَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ أَنَّهُ قَالَ: فِي الْإِنْسَانِ خَمْسُ دِيَاتٍ: الْأَنْفُ، وَاللِّسَانُ، وَالذَّكَرُ، وَالصُّلْبُ، وَالْفُؤَادُ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عِكْرِمَةَ قَالَ فِي الرَّوْثَةِ النِّصْفُ قَالَ عَبْدُ الرَّزَّاقِ: أَحْسَبُهُ ذَكَرَهُ عَنْ عُمَرَ.

وَعَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ، وَمَكْحُولٍ قَالَ فِي رَوْثَةِ الْأَنْفِ ثُلُثُ الدِّيَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ أَنَّهُ كَانَ يَقُولُ: فِي الرَّوْثَةِ الثُّلُثُ، فَإِذَا بَلَغَ مِنْ الْمَارِنِ الْعَظْمَ فَالدِّيَةُ وَافِيَةٌ، فَإِنْ أُصِيبَ مِنْ الرَّوْثَةِ الْأَرْنَبَةُ، أَوْ غَيْرُهَا لَمْ يَبْلُغْ الْعَظْمَ فَبِحِسَابِ الرَّوْثَةِ.

L37349 From the narration of Abd al-Razzaq, from Ibn Jurayj, from Ibn Abi Najih, from Mujahid, who said: For a superficial wound (rawthah), one-third [of the diyah] is due. If the injury extends from the nasal cartilage to the bone, the full diyah is owed. If the tip of the nose or another part within the area of the rawthah is injured without reaching the bone, it is assessed proportionally based on the rawthah.

وَعَنْ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ قَالَ: فِي الْأَنْفِ إذَا أَوْعَى جَدْعُهُ الدِّيَةُ كَامِلَةٌ، فَمَا أُصِيبَ مِنْ الْأَنْفِ دُونَ ذَلِكَ فَبِحِسَابِ ذَلِكَ.

L37350 From Ibn Jurayj, narrated by Sulayman ibn Musa, that Umar ibn Abd al-Aziz said: If the nose is completely severed, the full *diyah* is due. As for any injury to the nose less than that, it is assessed proportionally according to the full *diyah*.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِيهِ عَنْ الشَّعْبِيِّ قَالَ: مَا ذَهَبَ مِنْ الْأَنْفِ فَبِحِسَابِهِ.

L37351 And through the chain of ʿAbd al-Razzāq from Sufyān al-Thawrī from his father from al-Shaʿbī, who said: Whatever is removed from the nose is compensated proportionally.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مَكْحُولٍ أَنَّهُ قَالَ: فِي رَوْثَةِ الْأَنْفِ ثُلُثُ دِيَةِ الْأَنْفِ، وَفِي الْجَنَّابَتَيْنِ إذَا خُرِمَتَا - ثُمَّ لَمْ تَلْتَئِمَا - فِي كُلِّ وَاحِدٍ مِنْهُمَا ثُلُثُ دِيَةِ الْأَنْفِ، وَفِي الرَّوْثَةِ ثُلُثُ دِيَةِ الْأَنْفِ، وَفِي قَصَبَةِ الْأَنْفِ إذَا انْكَسَرَتْ - ثُمَّ انْجَبَرَتْ - ثَلَاثَةُ أَبْعِرَةٍ.

L37352 Abdullah ibn Rabee' narrated from Abdullah ibn Muhammad ibn Uthman, who narrated from Ahmad ibn Khalid, who narrated from Ali ibn Abdulaziz, who narrated from Al-Hajjaj ibn Al-Minhal, who narrated from Hammad ibn Salamah from Al-Hajjaj ibn Artah from Makhul that he said: For an injury to the fleshy tip of the nose, one-third of the blood money for the nose is due. For the two alae of the nose if they are lacerated and then do not heal, one-third of the blood money for the nose is due for each of them. For the fleshy tip of the nose, one-third of the blood money for the nose is due. For the bridge of the nose if it is broken and then heals, three camels are due.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عُثْمَانَ بْنِ سُلَيْمَانَ أَنَّ عَبْدًا كَسَرَ إحْدَى قَصَبَتَيْ أَنْفِ رَجُلٍ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَقَالَ عُمَرُ: وَجَدْنَا فِي كِتَابٍ لِعُمَرَ بْنِ الْخَطَّابِ أَيُّمَا عَظْمٍ كُسِرَ ثُمَّ جُبِرَ كَمَا كَانَ فَفِيهِ حِقَّتَانِ، فَرَاجَعَهُ ابْنُ سُرَاقَةَ؟ فَقَالَ: أَيُّمَا كَسْرٍ أُخِذَ مِنْ الْقَصَبَتَيْنِ؟ فَأَبَى عُمَرُ إلَّا أَنْ يَجْعَلَ فِيهِ الْحِقَّتَيْنِ.

L37353 From Humaam, from Ibn Mufarrij, from Ibn al-A'raabi, from al-Dabari, from Abd al-Razzaq, from Ibn Jurayj, from Uthman ibn Sulayman: A slave broke one of the two nasal bones of a man, and the matter was raised to Umar ibn Abd al-Aziz. Umar said: "We found in a written ruling of Umar ibn al-Khattab: 'For any bone that is broken, then set and heals properly, two compensations are owed.'" Ibn Suraqah questioned him: "Which of the two nasal bones was broken?" But Umar maintained that the two compensations must apply.

L37354–37356 And through him to Ibn Jurayj from Abd al-Aziz ibn Umar ibn Abd al-Aziz,

who said: If the nose is fractured in a manner causing disfigurement, one-sixth of his diyah is due. If the disfigurement is in both nostrils, one-third of the diyah for them is due. If the tip of the nose is lacerated with a tear, one-third of the diyah is due. And if it is crushed. If the voice becomes impaired like the eye, half the diyah is due for his eyes, and the compensation for the voice impairment is five hundred dinars. If there is no defect, adulteration, or odor detectable from it, he is owed a quarter of the diyah. If the nasal cartilage is injured and dries up, leaving a blemish - with no odor or any smell whatsoever - the diyah amounts to one hundred and twenty-five dinars. If his nose is struck and heals, but he cannot detect pleasant odors or any odor whatsoever, he is owed a tenth of the diyah.

وَبِهِ إِلَى ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: إِنْ كُسِرَ الْأَنْفُ كَسْرًا يَكُونُ شَيْنًا، فَسُدُسُ دِيَتِهِ، وَإِنْ كَانَ الْمَنْخِرَانِ مِنْهُمَا الشَّيْنُ، فَثُلُثُ دِيَةِ الْمَنْخِرَيْنِ، وَإِنْ كَانَ مَارِنُ الْأَنْفِ مَهْبُورًا هَبْرَةً، فَلَهُ ثُلُثُ الدِّيَةِ، وَإِنْ كَانَ مَهْشُومًا مُلْتَطِيًا يُبِحُّ صَوْتُهُ كَالْعَيْنِ، فَنِصْفُ الدِّيَةِ لِعَيْنَيْهِ، وَبَحَّتُهُ خَمْسُمِائَةِ دِينَارٍ، فَإِنْ كَانَ لَيْسَ فِيهِ عَيْبٌ، وَلَا غِشٌّ، وَلَا رِيحٌ تُوجَدُ مِنْهُ، فَلَهُ رُبْعُ الدِّيَةِ، فَإِنْ أُصِيبَ قَصَبَةُ الْأَنْفِ فَجَافَتْ، وَفِيهِ شَيْنٌ - وَلَا رِيحَ وَلَا يُوجَدُ رِيحُ شَيْءٍ - فَالدِّيَةُ مِائَةٌ وَخَمْسَةٌ وَعِشْرُونَ دِينَارًا - وَإِنْ ضَرَبَ أَنْفَهُ فَبَرَأَ - غَيْرَ أَنَّهُ لَا يَجِدُ رِيحًا طَيِّبَةً وَلَا رِيحَ شَيْءٍ - فَلَهُ عُشْرُ الدِّيَةِ.

L37357 I heard a freed slave affiliated with Sulaymān ibn Ḥabīb narrate, saying: Sulaymān ibn Ḥabīb ruled that for a nose injury, if twisted, the compensation is ten dinars; and if broken, one hundred dinar.

سَمِعْت مَوْلًى لِسُلَيْمَانَ بْنِ حَبِيبٍ يُحَدِّثُ قَالَ: قَضَى سُلَيْمَانُ بْنُ حَبِيبٍ فِي الْأَنْفِ إِذَا وُثِنَ بِعَشَرَةِ دَنَانِيرَ، وَإِذَا كُسِرَ بِمِائَةِ دِينَارٍ.

L37358 And through him to Ibn Jurayj, who said: I asked ʿAṭāʾ about a penetrating wound of the nose. He said: Yes. Ibn Jurayj said: Ibn Abī Najīḥ informed me from Mujāhid that he said: For a penetrating wound of the nose, one-third of the *diyah* is due. If it penetrates completely, two-thirds [of the *diyah*] are owed. And through him to ʿAbd al-Razzāq from Maʿmar from ʿAṭāʾ al-Khurāsānī: For the nose, if perforated, one hundred dinars.

وَبِهِ إِلَى ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ فِي الْأَنْفِ جَائِفَةٌ؟ قَالَ: نَعَمْ، قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي ابْنُ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ أَنَّهُ كَانَ يَقُولُ: فِي جَائِفَةِ الْأَنْفِ ثُلُثُ الدِّيَةِ فَإِنْ نَفَذَتْ فَالثُّلُثَانِ - وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ عَطَاءٍ الْخُرَاسَانِيِّ: فِي الْأَنْفِ إِذَا خُرِمَ مِائَةُ دِينَارٍ.

L37359–37361 Abu Muhammad said: It is established from Ali that the diyah applies to the nose—and likewise from Al-Shaʿbi, Umar ibn Abd al-Aziz, Ibn Qusayt, and Ibrahim. From Mujahid: the diyah applies to the marin (the entire fleshy part beneath the bone). From Umar ibn Abd al-Aziz: the marin incurs one-third of the diyah of the nose. From Al-Shaʿbi: the diyah applies to the ʿirnin (the part beneath the marin). From Mujahid: one-third of the diyah applies to the rawtha (the part beneath the ʿirnin)—and this is the view of Ibn Hanbal, Ishaq, and Qatadah. For the arnaba (the tip of the nose), compensation is calculated based on that proportion. From Mujahid and Makhul: one-third of the diyah applies to the rawtha. If the two sides of the nose are perforated

قَالَ أَبُو مُحَمَّد: فَحَصَلَ مِنْ هَذَا عَنْ عَلِيٍّ أَنَّ فِي الْأَنْفِ الدِّيَةَ - وَكَذَلِكَ عَنْ الشَّعْبِيِّ - وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - وَعَنْ ابْنِ قُسَيْطٍ وَعَنْ إبْرَاهِيمَ، وَمُجَاهِدٍ فِي الْمَارِنِ الدِّيَةُ - وَهُوَ كُلُّ مَا دُونَ الْعَظْمِ وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي الْمَارِنِ ثُلُثُ دِيَةِ الْأَنْفِ وَعَنْ الشَّعْبِيِّ فِي الْعِرْنِينِ الدِّيَةُ - وَهُوَ مَا دُونَ الْمَارِنِ. وَعَنْ مُجَاهِدٍ فِي الرَّوْثَةِ الثُّلُثُ - وَهِيَ دُونَ الْعِرْنِينِ - وَهُوَ قَوْلُ ابْنِ حَنْبَلٍ وَإِسْحَاقَ، وَقَتَادَةَ - وَفِي الْأَرْنَبَةِ بِحِسَابِ ذَلِكَ - وَهُوَ

and do not heal, one-third of the diyah of the nose is due for each perforation. From Makhul and Ishaq: one-third of the diyah of the nose applies to the watrah (the partition between the two nostrils). The nose: If the bridge of the nose is broken and then heals, three camels are due.

طَرَفُ الْأَنْفِ وَعَنْ مُجَاهِدٍ وَمَكْحُولٍ فِي الرَّوْثَةِ ثُلُثُ الدِّيَةِ، وَفِي خَرْمِ جَنْبَتَيْ الْأَنْفِ إذَا لَمْ يَلْتَئِمَا فِي كُلِّ وَاحِدٍ مِنْ الْخُرْمَيْنِ ثُلُثُ دِيَةِ الْأَنْفِ وَعَنْ مَكْحُولٍ، وَإِسْحَاقَ فِي الْوَتْرَةِ ثُلُثُ دِيَةِ الْأَنْفِ - وَهِيَ الْحَاجِزَةُ بَيْنَ ثُقْبَتَيْ الْأَنْفِ - وَفِي قَصَبَةِ الْأَنْفِ إذَا كُسِرَتْ ثُمَّ انْجَبَرَتْ ثَلَاثَةُ أَبْعِرَةٍ.

L37362 From ʿUmar ibn al-Khaṭṭāb and ʿUmar ibn ʿAbd al-ʿAzīz regarding this matter: two five-year-old she-camels (ḥiqqatān). Concerning the fracture of the two incisors, from ʿUmar ibn ʿAbd al-ʿAzīz: one-sixth of the *diyah* for the nose. If the injury affects both nostrils, it constitutes one-third of the *diyah* for the nose. If the nose is crushed until flattened, resulting in a hoarse voice, half the full blood money for a life is owed. If there is no foul odor or discharge, it is a quarter of the full blood money for a life. For a deep wound in the nose: one-tenth plus one-fortieth of the *diyah*. Concerning a penetrating nasal wound, from Mujāhid: one-third of the full blood money for a life. If it perforates completely, two-thirds are owed. From ʿAṭāʾ al-Khurāsānī regarding nasal perforation: one-tenth of the *diyah*.

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي ذَلِكَ بَعِيرَانِ حِقَّتَانِ - وَفِي كَسْرِ الثَّنِيَّتَيْنِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ سُدُسُ دِيَةِ الْأَنْفِ، فَإِنْ كَانَ فِي كِلَا الْمَنْخِرَيْنِ، فَثُلُثُ دِيَةِ الْأَنْفِ - وَفِي هَشْمِ الْأَنْفِ حَتَّى يَكُونَ لَاطِيًا يَبِحُّ صَوْتُهُ نِصْفُ دِيَةِ النَّفْسِ، وَإِنْ لَمْ يَكُنْ فِيهِ رِيحٌ مُنْتِنَةٌ وَلَا رَشْحٌ، فَرُبْعُ دِيَةِ النَّفْسِ - وَفِي جَائِفَتِهِ عُشْرُ دِيَةٍ وَرُبْعُ عُشْرِ دِيَةٍ - وَفِي جَائِفَةِ الْأَنْفِ عَنْ مُجَاهِدٍ ثُلُثُ دِيَةِ النَّفْسِ، فَإِنْ نَفَذَتْ فَالثُّلُثَانِ وَعَنْ عَطَاءٍ الْخُرَاسَانِيِّ فِي خَرْمِ الْأَنْفِ عُشْرُ الدِّيَةِ.

L37363 Mālik ruled regarding what is less than al-Mārin from all that we have mentioned, and al-Shāfiʿī and Abū Ḥanīfah held the same view.

وَقَالَ مَالِكٌ فِيمَا دُونَ الْمَارِنِ مِنْ كُلِّ مَا ذَكَرْنَا حُكْمٌ وَبِهِ قَالَ الشَّافِعِيُّ، وَأَبُو حَنِيفَةَ.

L37364 Abu Muhammad said: All of this contains nothing valid from him. As for what we maintain—and success is from Allah the Exalted—there is fundamentally no way to find an authentic report from the Messenger of Allah (peace be upon him) regarding this matter. Scholars have exhaustively searched for it from the farthest bounds of Khurasan to its nearest regions, including Persia, Isfahan, Kerman, Sijistan, Sind, the Mountains, Rayy, Iraq, Baghdad, Basra, Kufa, all their towns, Azerbaijan, Armenia, Ahwaz, Mecca, Medina, Yemen, the Arabian Peninsula, Egypt, Syria, and Andalusia. They have found nothing for four hundred and forty years except what we mentioned—none of which is considered valid by any scholar of hadith. Thus, it is baseless to claim any established report here that provides conclusive evidence, nor is there any Quranic basis whatsoever. We are certain that Allah the Exalted has established proof through the Quran, the Sunnah, and

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا يَصِحُّ مِنْهُ شَيْءٌ، وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّهُ لَا سَبِيلَ إلَى أَنْ يُوجَدَ فِي هَذَا خَبَرٌ صَحِيحٌ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَصْلًا، فَقَدْ بَحَثَ عَنْهُ الْبُحَّاثُ مِنْ أَقْصَى خُرَاسَانَ إلَى أَدْنَاهَا، وَأَهْلِ فَارِسَ، وَأَصْبَهَانَ، وَكَرْمَانَ، وَسِجِسْتَانَ وَالسِّنْدِ، وَالْجِبَالِ، وَالرَّيِّ، وَالْعِرَاقِ، وَبَغْدَادَ، وَالْبَصْرَةِ، وَالْكُوفَةِ، وَسَائِرِ مُدُنِهَا، وَأَذْرَبِيجَانَ وَأَرْمِينِيَةَ، وَالْأَهْوَازِ، وَمَكَّةَ، وَالْمَدِينَةِ، وَالْيَمَنِ، وَالْجَزِيرَةِ، وَمِصْرَ، وَالشَّامِ، وَالْأَنْدَلُسِ -: فَمَا وَجَدُوا شَيْئًا مُذْ أَرْبَعمِائَةِ عَامٍ وَأَرْبَعِينَ سَنَةً - غَيْرَ مَا ذَكَرْنَا مِمَّا لَا يَصِحُّ عِنْدَ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ بِالْحَدِيثِ، فَبَطَلَ أَنْ يَكُونَ

the clearest consensus—explained with such clarity that no one can miss it from start to end. Yet this very quality is entirely absent here.

هُنَا خَبَرٌ ثَابِتٌ تَقُومُ بِهِ الْحُجَّةُ، وَلَا قُرْآنَ فِي ذَلِكَ أَصْلًا، وَنَحْنُ نُوقِنُ أَنَّ اللَّهَ تَعَالَى قَدْ أَقَامَ الْحُجَّةَ مِنْ الْقُرْآنِ وَالسُّنَنِ وَأَوْضَحِ الْإِجْمَاعِ إيضَاحًا لَا يَخْفَى عَلَى أَحَدٍ مِنْ مُبْتَدَاهُ إلَى مُنْتَهَاهُ، وَهَذِهِ الصِّفَةُ مَعْدُومَةٌ هَاهُنَا

L37365 Ali said: Our statement here—by which we devote ourselves to Allah the Exalted and meet Him in accordance with it—is that if a reliable narration from the predecessors were verified to us regarding that matter, we would uphold it without opposition. If a consensus were authenticated to us regarding it, we would uphold it without hesitation in obedience to it.

قَالَ عَلِيٌّ: فَقَوْلُنَا هَاهُنَا - الَّذِي نَدِينُ اللَّهَ تَعَالَى بِهِ وَنَلْقَاهُ عَلَيْهِ - أَنَّهُ لَوْ صَحَّ عِنْدَنَا فِي ذَلِكَ أَثَرٌ لَقُلْنَا بِهِ، وَلَمَا خَالَفْنَاهُ، وَلَوْ صَحَّ عِنْدَنَا فِي ذَلِكَ إجْمَاعٌ لَقُلْنَا بِهِ، وَلَمَا تَرَدَّدْنَا فِي الطَّاعَةِ لَهُ.

L37366 Since there is no established Sunnah regarding this matter, nor scholarly consensus, there remains only retaliation (qisas) for intentional harm or negotiated compensation (mufādāh), with no liability for accidental harm, in accordance with Allah's statement, the Most High: *"There is no blame upon you for that which you do unintentionally, but only for what your hearts deliberately intend"* (Quran 33:5). And with Allah, the Most High, lies all success.[20]

فَإِذْ لَا سُنَّةَ فِي ذَلِكَ، وَلَا إجْمَاعَ، فَلَيْسَ فِيهِ إلَّا الْقَوَدُ فِي الْعَمْدِ، أَوْ الْمُفَادَاةُ، وَلَا شَيْءَ فِي الْخَطَأِ، لِقَوْلِ اللَّهِ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Legal Issue: The Rulings on the Diyah of the Hair

L37367–37368

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ الشَّعْرِ]

L37369 A legal issue: Abū Muḥammad said: Narrated from Muḥammad ibn Saʿīd ibn Nabāt, narrated from ʿAbdullāh ibn Naṣr, narrated from Qāsim ibn Aṣbagh, narrated from Ibn Waḍḍāḥ, narrated from Mūsā ibn Muʿāwiyah, narrated from Wakīʿ, narrated from Minhāl ibn Khalīfah al-ʿIjlī, from Abū ʿAbdillāh Salamah ibn Tammām al-Shaqrī, who said: A man passed by a cooking pot, and it fell from him onto a man's head and burned his hair. The matter was raised to ʿAlī ibn Abī Ṭālib, who decreed a one-year delay. When it did not regrow, ʿAlī ruled against him to pay the diyah.

مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مِنْهَالُ بْنُ خَلِيفَةَ الْعِجْلِيّ عَنْ أَبِي عَبْدِ اللَّهِ سَلَمَةَ بْنِ تَمَّامٍ الشَّقَرِيِّ قَالَ: مَرَّ رَجُلٌ بِقِدْرٍ فَوَقَعَتْ مِنْهُ عَلَى رَأْسِ رَجُلٍ فَأَحْرَقَتْ شَعْرَهُ، فَرَفَعَ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ، فَأَجَّلَهُ سَنَةً، فَلَمْ يَنْبُتْ، فَقَضَى عَلِيٌّ عَلَيْهِ فِيهِ بِالدِّيَةِ.

L37370 Via the route of Saʿīd ibn Manṣūr: Abū Muʿāwiyah—the blind one—narrated

وَمِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا أَبُو مُعَاوِيَةَ - هُوَ الضَّرِيرُ - نا حَجَّاجٌ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي الشَّعْرِ الدِّيَةُ، إذَا لَمْ يَنْبُتْ.

[20] **Qur'an references (L37366):** Qur'an 33:5 (Al-Ahzab).

to us, from Ḥajjāj, from Makhūl, from Zayd ibn Thābit, who said: Diyah is owed for hair if it fails to grow.

L37371 They have cited this very narration as proof in many of these chapters, and this narration itself is the statement of Al-Shaʿbi.

L37372 Sufyan al-Thawri, Abu Hanifah, al-Hasan ibn Hiyy, Ahmad ibn Hanbal, and Ishaq ibn Rahuyah said: If the hair of the head does not grow, the diyah is owed. If the hair of the beard does not grow, the diyah is owed.

L37373 As for the Mālikīs and Shāfiʿīs, their only stance on this matter is arbitration. This constitutes one of the issues wherein they contradicted their own foundational principles through their condemnation of opposing a Companion whose position had no known challenger. Here we find reports from ʿAlī ibn Abī Ṭālib and Zayd ibn Thābit that are not known to have been opposed by any Companion or Follower. This shows that they adhere to no foundational principle. When some of them asked: "Does poetry have any basis in the Sunnah to be referenced?" it is countered: "Nor does any bodily limb for which you have obligated blood money - except the fingers alone - have a sound basis in the Sunnah."

L37374 **A legal inquiry on the rulings of diyah (blood money) pertaining to the two mustache regions.**

L37375–37377 2039 - Issue: ʿAlī narrated: Ḥumām reported to us, Ibn al-Aʿrabī reported to us, al-Ḍabarī reported to us, ʿAbd al-Razzāq reported to us. From Ibn Jurayj, he said: It was established for Umar ibn Abd al-Aziz that whoever overgrows his mustache must pay sixty dinars. If both [sides] are overgrown, the fine is one hundred and twenty dinars.

L37378 Abd al-Razzaq reported that Ma'mar said: It has been reported to me regarding both sides of the mustache: one hundred and twenty dinars, sixty dinars for each side.

L37379 Ali said: Our pact with them is that they cite Umar ibn Abd al-Aziz concerning al-battah and other matters—so why do they not follow him in what has

وَقَدْ احْتَجُّوا فِي كَثِيرٍ مِنْ هَذِهِ الْأَبْوَابِ بِهَذِهِ الرِّوَايَةِ نَفْسِهَا، وَهُوَ قَوْلُ الشَّعْبِيِّ.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَالْحَسَنُ بْنُ حَيٍّ، وَأَحْمَدُ بْنُ حَنْبَلٍ وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: فِي شَعْرِ الرَّأْسِ إِذَا لَمْ يَنْبُتْ: الدِّيَةُ. وَفِي شَعْرِ اللِّحْيَةِ إِذَا لَمْ يَنْبُتْ: الدِّيَةُ.

وَأَمَّا الْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، فَلَيْسَ عِنْدَهُمْ فِي ذَلِكَ إِلَّا حُكُومَةٌ، وَهَذَا مِمَّا نَقَضُوا فِيهِ أُصُولَهُمْ فِي تَشْنِيعِهِمْ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ، وَقَدْ جَاءَ هَاهُنَا عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ ثَابِتٍ: مَا لَا يُعْرَفُ عَنْ أَحَدٍ مِنَ الصَّحَابَةِ، وَلَا مِنَ التَّابِعِينَ مُخَالِفٌ - وَهَذَا يُرِيكَ أَنَّهُمْ لَا يَضْبِطُونَ أَصْلًا وَقَدْ قَالَ بَعْضُهُمْ: لَيْسَ لِلشَّعْرِ أَصْلٌ يُرْجَعُ عَلَيْهِ فِي السُّنَّةِ؟ فَيُقَالُ لَهُمْ: وَلَا فِي شَيْءٍ مِمَّا أَوْجَبْتُمْ فِيهِ الدِّيَةَ، مِنَ الْأَعْضَاءِ أَصْلٌ مِنَ السُّنَّةِ يَصِحُّ، حَاشَا الْأَصَابِعِ فَقَطْ.

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ الشَّارِبَانِ]

٢٠٣٩ - مَسْأَلَةٌ: قَالَ عَلِيٌّ نا حُمَامٌ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: اجْتَمَعَ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ مَنْ مَرَطَ الشَّارِبَ فَفِيهِ سِتُّونَ دِينَارًا - فَإِنْ مَرَطَا جَمِيعًا، فَفِيهِمَا مِائَةٌ وَعِشْرُونَ دِينَارًا.

قَالَ عَبْدُ الرَّزَّاقِ وَقَالَ مَعْمَرٌ: بَلَغَنِي فِي الشَّارِبَيْنِ مِائَةٌ وَعِشْرُونَ دِينَارًا فِي كُلِّ وَاحِدٍ سِتُّونَ دِينَارًا.

been collectively agreed upon here regarding him? Yet they rarely agree on any opinion except in rare instances, and there is nothing in either of these two matters according to us concerning error, for there is no revealed text on that matter, nor is there consensus—except regarding retaliation (qisas) for intentional killings alone. And by Allah, the Exalted, is success attained.

قَالَ عَلِيٌّ: عَهْدِنَا بِهِمْ يَحْتَجُّونَ بِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي أَلْبَتَّةَ وَغَيْرِهَا، فَمَا لَهُمْ لَا يَتَّبِعُونَهُ فِيمَا اجْتَمَعَ لَهُ عَلَيْهِ هَاهُنَا؟ وَلَكِنَّهُمْ لَا يَتَّفِقُ لَهُمْ قَوْلٌ إِلَّا فِي النَّادِرِ، وَلَيْسَ فِيهِمَا شَيْءٌ عِنْدَنَا فِي الْخَطَأِ، لِأَنَّهُ لَا نَصَّ فِي ذَلِكَ، وَلَا إِجْمَاعَ إِلَّا الْقَوَدَ فِي الْعَمْدِ فَقَطْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37380 **A Question Concerning the Rulings on Blood Money for Mental Impairment.**

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ الْعَقْلُ]

L37381 Issue 2040: Muḥammad ibn Saʿīd ibn Nabāt narrated to us, ʿAbdullāh ibn Naṣr narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us, Sufyān—that is, al-Thawrī—from ʿAwf, who said: I heard a shaykh narrating in the mosque, so I seated him. They said: That is Abū al-Muhallab, the uncle of Abū Qilābah. He said: A man threw a stone at another man's head, causing his hearing, tongue, and intellect to be lost—and his penis withered? ʿUmar ruled against him for four diyāt (while the victim was still alive). And through him to Sufyān from Ibn Abī Najīḥ from Mujāhid, who said: For the intellect, the diyah is due.

٢٠٤٠ - مَسْأَلَةٌ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ عَوْفٍ قَالَ: سَمِعْت شَيْخًا يُحَدِّثُ فِي الْمَسْجِدِ فَجَلَسْته، فَقَالُوا: ذَاكَ أَبُو الْمُهَلَّبِ عَمُّ أَبِي قِلَابَةَ، قَالَ: رَمَى رَجُلٌ رَجُلًا بِحَجَرٍ فِي رَأْسِهِ، فَذَهَبَ سَمْعُهُ، وَلِسَانُهُ، وَعَقْلُهُ، وَيَبِسَ ذَكَرُهُ؟ فَقَضَى فِيهِ عُمَرُ بِأَرْبَعِ دِيَاتٍ - وَهُوَ حَيٌّ، وَبِهِ إلَى سُفْيَانَ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: فِي الْعَقْلِ الدِّيَةُ.

L37382 From the chain of Abd al-Razzaq, through Muhammad ibn Rashid, through Makhul, through Qabisa ibn Dhu'ayb, through Zayd ibn Thabit, who said: For Ar-Rābiʿah (a wound exposing bone), one camel is due; for Al-Bāḍiʿah (a wound splitting the bone), two camels; for Al-Mutalāḥimah (a wound fracturing the bone), three camels from the camels; for As-Simḥāq (a wound penetrating the skull), four camels; for Al-Mūḍiḥah (a wound exposing the brain), five camels; for Al-Hāshimah (a wound shattering the skull), ten camels; for Al-Munaqqilah (a dislocated bone), fifteen camels; for Al-Ma'mūmah (a wound reaching the brain), one-third of the full diyah is due. If a man is struck until he loses his sanity, the full diyah is due; or if he is struck until he babbles incoherently and does not understand, the full diyah is due; or if he is struck until he becomes mute and cannot communicate, the full diyah

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي الرَّابِيَةِ بَعِيرٌ، وَفِي الْبَاضِعَةِ بَعِيرَانِ، وَفِي الْمُتَلَاحِمَةِ ثَلَاثَةُ أَبْعِرَةٍ، مِنْ الْإِبِلِ، وَفِي السِّمْحَاقِ أَرْبَعٌ، وَفِي الْمُوضِحَةِ خَمْسٌ، وَفِي الْهَاشِمَةِ عَشْرٌ، وَفِي الْمُنَقِّلَةِ خَمْسَ عَشَرَةَ، وَفِي الْمَأْمُومَةِ ثُلُثُ الدِّيَةِ، وَفِي الرَّجُلِ يُضْرَبُ حَتَّى يَذْهَبَ عَقْلُهُ الدِّيَةُ كَامِلَةً - أَوْ يُضْرَبُ حَتَّى يَغَنَّ فَلَمْ يُفْهَمْ: الدِّيَةُ كَامِلَةٌ، أَوْ حَتَّى يُبَحَّ فَلَا يُفْهِمُ: الدِّيَةُ كَامِلَةٌ - وَفِي جَفْنِ الْعَيْنِ رُبْعُ الدِّيَةِ - وَفِي حَلَمَةِ الثَّدْيِ رُبْعُ الدِّيَةِ.

is due. For the eyelid, a quarter of the diyah is due; and for the nipple of the breast, a quarter of the diyah is due.

قَالَ أَبُو مُحَمَّد: وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَابْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ - وَهَذَا كَالَّذِي قَبْلَهُ وَمَا فِيهِ عَنْ أَحَدِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - إِلَّا أَقَلَّ مِمَّا فِي الْعَيْنِ الْعَوْرَاءِ.

L37383–37385 Abū Muḥammad said: Sufyān al-Thawrī, Abū Ḥanīfah, Mālik, and al-Shāfiʿī concur with this view... Ibn Hanbal and his companions—and this is like the one before it, with nothing in it from any of the Companions (may Allah be pleased with them) except less than what is in the blind eye.

وَقَدْ خَالَفَهُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، فَلَيْتَ شِعْرِي أَيُّ فَرْقٍ بَيْنَ الْأَمْرَيْنِ إِلَّا الدَّعْوَى الْكَاذِبَةَ الْمُفْتَضِحَةَ فِي الْإِجْمَاعِ؟ وَقَدْ خَالَفَ الْمَالِكِيُّونَ فِي هَذَا الْخَبَرِ زَيْدَ بْنَ ثَابِتٍ فِي الدَّامِيَةِ، وَالْبَاضِعَةِ وَالْمُتَلَاحِمَةِ، وَالسِّمْحَاقِ، وَالْهَاشِمَةِ، وَفِي جَفْنِ الْعَيْنِ، وَحَلَمَةِ الثَّدْيِ، فَمَا الَّذِي جَعَلَ بَعْضَ قَوْلِهِ حُجَّةً وَبَعْضَهُ لَا حُجَّةً؟ إِنَّ هَذَا لَعَجَبٌ.

L37386 Abu Hanifah, Malik, and al-Shafi'i have opposed him. If only I knew: what distinction exists between the two matters except the scandalously exposed claim within the consensus? The Malikis, in this report, opposed Zayd ibn Thabit's rulings concerning the bleeding wound, the gaping wound, the adhering wound, the periosteal wound, the fractured bone, the eyelid, and the nipple. What then causes some of his statements to be authoritative proofs while others are not? Verily, this is astonishing!

فَإِنْ قَالُوا: أَخَذْنَا بِقَوْلِ عُمَرَ فِي ذَلِكَ؟ قِيلَ لَهُمْ: فَهَلَّا أَخَذْتُمْ بِقَوْلِ عُمَرَ فِي الْعَيْنِ الْعَوْرَاءِ، وَالسِّنِّ السَّوْدَاءِ، وَسَائِرِ مَا ذَكَرْنَاهُ قَبْلُ؟ فَمَرَّةً يَكُونُ قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَزَيْدٍ حُجَّةً، وَمَرَّةً يَكُونُ قَوْلُهُمَا لَا حُجَّةَ فِيهِ - وَنَعُوذُ بِاللَّهِ مِنْ التَّدَيُّنِ بِمِثْلِ هَذِهِ الْأَقْوَالِ.

L37387 If they say: "We have adopted the opinion of ʿUmar concerning this?" It is said to them: "Then why did you not adopt the opinion of ʿUmar regarding the defective eye, the blackened tooth, and all the other matters we previously mentioned? Sometimes the opinion of ʿUmar ibn al-Khaṭṭāb and Zayd is taken as authoritative evidence, and at other times their opinions hold no evidence in them—and we seek refuge in Allah from adhering to such statements in matters of religion."

قَالَ أَبُو مُحَمَّد: فَإِذْ لَا نَصَّ فِي الْعَقْلِ وَلَا إجْمَاعَ يَثْبُتُ فِيهِ فَلَا شَيْءَ فِي ذَهَابِهِ بِالْخَطَأِ، وَأَمَّا بِالْعَمْدِ فَإِنَّمَا هِيَ ضَرْبَةٌ كَضَرْبَةٍ، وَلَا مَزِيدَ - فَإِنْ لَمْ يَذْهَبْ عَقْلُ الْمُقْتَصِّ مِنْهُ فَلَا شَيْءَ عَلَيْهِ، فَقَدْ اعْتَدَى بِمِثْلِ مَا اُعْتُدِيَ بِهِ عَلَيْهِ.

L37388 Abu Muhammad said: Since there is no textual ruling or established Consensus regarding mental capacity, there is no liability for its loss due to error. As for intentional acts, it is strictly retaliation in kind—blow equivalent to blow, with absolutely no increase. If the mental capacity of the retaliated party is not impaired, then nothing is incumbent upon him, for he transgressed by retaliating with the equivalent of what was inflicted upon him.

وَأَيْضًا - فَالْخَبَرُ فِي هَذَا عَنْ عُمَرَ لَا يَصِحُّ، لِأَنَّ أَبَا الْمُهَلَّبِ عَبْدَ الرَّحْمَنِ بْنَ عَمْرٍو لَمْ يُدْرِكْ عُمَرَ بْنَ الْخَطَّابِ فَزَادَ الْأَمْرُ وَهَنًا عَلَى وَهَنٍ.

L37389 Moreover, the narration attributed to Umar in this matter is inauthentic, as Abu al-Muhallab, Abd al-Rahman ibn Amr, was not a contemporary of Umar ibn al-Khattab, thus compounding weakness upon weakness.

A juridical question on the rulings of blood money for the

L37390

two jawbones and the chin.

L37391 2041 - Issue: Narrated by Abdullah ibn Rabee' from Abdullah ibn Muhammad ibn Uthman, who narrated from Ahmad ibn Khalid, who narrated from Ali ibn Abd al-Aziz, who narrated from Al-Hajjaj ibn al-Minhal, who narrated from Hammad ibn Salamah, from Makhul that he said: "Regarding the two jawbones: if they are fractured and then knit together, the compensation is seven camels."

L37392 And through the chain of ʿAbd al-Razzāq—who narrated from both Maʿmar and Ibn Jurayj, each transmitting from an unnamed man who reported from al-Shaʿbī—regarding [injuries to] the jaw: if fractured, forty dinars [are owed].

L37393–37395 From ʿAbd al-Razzāq, from Maʿmar, from Ibn Jurayj, from a man, from Saʿīd ibn al-Musayyib who said: In the case of a mouth injury to a person, he said: He bends his thumb, then their lower grip is formed, and his mouth is opened. He places it between his jaws. Whatever shortens the opening of his mouth relative to the length of his lower thumb is calculated. ʿAlī said: This also conforms to all previous rulings, with no distinction. Nothing therein is due to error, and it entails retribution (qisas) for intentional harm.

L37396 **Issue: rulings on blood money for finger injuries**

L37397 2042. Issue: We have mentioned what is established from the Messenger of Allah—peace and blessings be upon him—at the outset of our discussion in the chapter on limbs. It is authentically reported that he—peace and blessings be upon him—said: "The fingers are equal; these [fingers] and these are equal," referring to the little finger and the thumb. It is also authentically reported that he—peace and blessings be upon him—said: "The fingers are ten, ten each." This constitutes an explicit text that none may contravene. Abu Muhammad said: We know with certainty that this matter pertains solely to intentional acts or mistakes. It is authentically reported from the Messenger of Allah—peace and blessings be upon him—that he said: "Mistakes are lifted from my nation." The statement of Allah the Exalted remains established: "There is no blame upon you for that in which you have erred,

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ اللَّحْيَانِ وَالذَّقَنُ]

٢٠٤١ - مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ مَكْحُولٍ أَنَّهُ قَالَ: فِي اللَّحْيَيْنِ إذَا كُسِرَ ثُمَّ انْجَبَرَ: سَبْعَةُ أَبْعِرَةٍ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ، كِلَاهُمَا عَنْ رَجُلٍ عَنْ الشَّعْبِيِّ: فِي اللَّحْيِ إذَا كُسِرَ أَرْبَعُونَ دِينَارًا.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ جُرَيْجٍ عَنْ رَجُلٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ قَالَ فِي فَقَمِ الْإِنْسَانِ قَالَ: يُثْنِي إبْهَامَهُ، ثُمَّ تُجْعَلُ قَبْضَتُهُمَا السُّفْلَى، وَيُفْتَحُ فَاهُ، فَيَجْعَلُهَا بَيْنَ لَحْيَيْهِ فَمَا نَقَصَ مِنْ فَتْحَةِ فَاهُ مِنْ قَصَبَةِ إبْهَامِهِ السُّفْلَى، فَبِالْحِسَابِ قَالَ عَلِيٌّ: وَهَذَا أَيْضًا كَسَائِرِ مَا سَلَفَ، وَلَا فَرْقَ وَلَا شَيْءَ فِي ذَلِكَ بِالْخَطَأِ، وَفِيهِ الْقَوَدُ بِالْعَمْدِ.

[مَسْأَلَةٌ أَحْكَامُ دِيَةُ الْأَصَابِعُ]

٢٠٤٢ - مَسْأَلَةٌ: قَدْ ذَكَرْنَا الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ابْتِدَاءِ كَلَامِنَا فِي بَابِ الْأَعْضَاءِ، وَأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - صَحَّ عَنْهُ أَنَّهُ قَالَ «الْأَصَابِعُ سَوَاءٌ، هَذِهِ وَهَذِهِ سَوَاءٌ» يَعْنِي الْخِنْصَرَ وَالْإِبْهَامَ وَأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَالَ: «الْأَصَابِعُ عَشْرٌ عَشْرٌ» فَهَذَا نَصٌّ لَا يَسَعُ أَحَدًا الْخُرُوجُ عَنْهُ قَالَ أَبُو مُحَمَّدٍ: وَبِالْيَقِينِ نَدْرِي أَنَّهُ لَيْسَ هَاهُنَا إلَّا عَمْدٌ أَوْ خَطَأٌ وَقَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ» . وَصَحَّ قَوْلُ اللَّهِ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا

but only for what your hearts have intended" (33:5). These two texts have been reported—though each could have been an exception to the other. The intended meaning could be: "There is no blame upon you for that in which you have erred," and "Mistakes are lifted from my nation"—except in the diyah for fingers.[21]

L37398 It was possible that the intended meaning was: ten ten per finger in cases of intentional harm specifically, not accidental harm. No one may adopt either exception except through certainty of an explicit text or consensus, for this constitutes a report about Allah—the Exalted—and His Messenger (peace and blessings be upon him). It is not permissible to report about Allah—the Exalted—except through an established text in the Qur'an or through His Messenger (peace and blessings be upon him) who clarifies from Him.

L37399–37401 We are upon clear vision and certainty from Allah, the Most High—Who does not leave us in blindness concerning this ruling in religion—for He says: "an explanation of all things and guidance" [An-Nahl: 89]. And He, the Exalted, said: {to make clear to the people what has been sent down to them} [An-Nahl: 44]. So we examined that in humble entreaty to Allah the Exalted, that He might manifest the truth to us in that matter, for there is no guidance except from Him, the Exalted. Thus, we began with premeditated acts, and we found the people in disagreement.[22]

L37402 A group of scholars said: In cases of intentional killing, only qawd applies, and no blood money is owed therein.

L37403 A group has stated: In it is retaliation (al-qawd) or diyah.

L37404 We found disagreement concerning the obligation of blood money in intentional acts in that matter. Then we referred back to unintentional acts in that matter and found no conclusive consensus on its obligation in such cases.

L37405 Then we found that those who opine on blood money differed regarding

أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] فَوَرَدَ هَذَانِ النَّصَّانِ - وَكَانَ مُمْكِنًا أَنْ يُسْتَثْنَى كُلُّ وَاحِدٍ مِنْهُمَا مِنْ الْآخَرِ. يُمْكِنُ أَنْ يَكُونَ الْمُرَادُ: لَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ، وَرُفِعَ عَنْ أُمَّتِي الْخَطَأُ إلَّا فِي دِيَةِ الْأَصَابِعِ.

وَكَانَ مُمْكِنًا أَنْ يَكُونَ الْمُرَادُ: فِي الْأَصَابِعِ عَشْرٌ عَشْرٌ فِي الْعَمْدِ خَاصَّةً، لَا فِي الْخَطَأِ - وَلَمْ يَجُزْ لِأَحَدٍ أَنْ يَصِيرَ إلَى أَحَدِ الِاسْتِثْنَاءَيْنِ إلَّا بِيَقِينِ نَصٍّ أَوْ إجْمَاعٍ، لِأَنَّهُ خَبَرٌ عَنْ اللَّهِ تَعَالَى، وَعَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَحِلُّ الْخَبَرُ عَنْ اللَّهِ تَعَالَى إلَّا بِنَصٍّ ثَابِتٍ فِي الْقُرْآنِ، أَوْ عَنْ رَسُولِهِ الْمُبِينِ عَنْهُ - عَلَيْهِ السَّلَامُ -.

وَنَحْنُ عَلَى بَصِيرَةٍ وَيَقِينٍ مِنْ اللَّهِ تَعَالَى لَا يَدَعُنَا فِي عَمًى مِنْ هَذَا الْحُكْمِ فِي الدِّينِ، لِأَنَّهُ تَعَالَى يَقُولُ {تِبْيَانًا لِكُلِّ شَيْءٍ وَهُدًى} [النحل: ٨٩] وَقَالَ تَعَالَى {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إلَيْهِمْ} [النحل: ٤٤] فَنَظَرْنَا فِي ذَلِكَ ضَارِعِينَ إلَى اللَّهِ تَعَالَى فِي أَنْ يُلِيحَ لَنَا الْحَقَّ فِي ذَلِكَ، فَلَا هُدًى إلَّا مِنْ قِبَلِهِ تَعَالَى، فَابْتَدَأْنَا بِالْعَمْدِ، فَوَجَدْنَا النَّاسَ مُخْتَلِفِينَ.

فَطَائِفَةٌ قَالَتْ: لَا شَيْءَ فِي الْعَمْدِ إلَّا الْقَوَدُ فَقَطْ، وَلَا دِيَةَ هُنَالِكَ.

وَقَالَتْ طَائِفَةٌ: فِيهِ الْقَوَدُ أَوْ الدِّيَةُ.

فَوَجَدْنَا الِاخْتِلَافَ فِي وُجُوبِ الدِّيَةِ فِي الْعَمْدِ فِي ذَلِكَ - ثُمَّ رَجَعْنَا إلَى الْخَطَأِ فِي ذَلِكَ، فَلَمْ نَجِدْ إجْمَاعًا مُتَيَقَّنًا عَلَى وُجُوبِ الدِّيَةِ فِي الْخَطَأِ فِي ذَلِكَ.

ثُمَّ وَجَدْنَا الْقَائِلِينَ بِالدِّيَةِ فِي ذَلِكَ مُخْتَلِفِينَ فِيمَا دُونَ الثُّلُثِ: فَطَائِفَةٌ قَالَتْ: هِيَ فِي مَالِ الْجَانِي.

[21] **Qur'an references (L37397):** Qur'an 33:5 (Al-Ahzab).
[22] **Qur'an references (L37399):** Qur'an 16:89 (An-Nahl); Qur'an 16:44 (An-Nahl).

cases involving less than a third. One faction held that the compensation is to be borne by the perpetrator's property.

L37406 A group said: It is upon his kinsmen. However, we did not find consensus among them regarding this matter either. It is impermissible to impose a financial liability upon the offender that neither a textual ruling nor consensus has obligated him to pay. Indeed, Allah the Exalted has with certainty removed sin from him in this matter. It is also impermissible to impose a financial liability upon his kinsmen in such cases without a textual ruling or consensus. Rather, the textual ruling absolves them of this by Allah's statement: "No soul earns except against itself, nor does any bearer of sins bear the sins of another" [Al-An'ām 6:164].[23]

L37407–37409 It is definitively invalid to deem anything obligatory for an error in this matter, as there exists no revealed text specifying: "Upon whom are these ten [obligations] incumbent?" When neither textual evidence nor consensus clarifies upon whom they are incumbent, it is certainly false to claim that Allah the Exalted would obligate a penalty on one whom He has not clarified to us as being liable for it. We categorically affirm that Allah the Exalted has never subjected us to such a practice. He, the Exalted, is the One who declared graciously: *"He has not placed upon you any hardship in religion"* [Al-Hajj: 78], and who commanded us when He said: *"Do not burden us with obligations as You burdened those before us"* [Al-Baqarah: 286]—up to His words—*"what we cannot bear"* [Al-Baqarah: 286]. Allah, the Exalted, says: "Allah does not burden any soul beyond its capacity" [2:286]. With certainty, we know that it is not within anyone's capacity nor ability to comprehend Allah's intent without Allah, the Exalted, enabling them to understand it. Thus, there is absolutely no compensation for error in cases involving injuries short of death. Consequently, no blood money is due for such errors. We then examined cases of intentional harm, where it became legally necessary to impose blood money for finger injuries, in accordance with the command of the Messenger of Allah (peace be upon him) - whether imposed on the intentional perpetrator, the mistaken party, or the mistaken party's liable kin (ʿāqilah). Since the Quranic texts we cited nullify any obli-

وَطَائِفَةٌ قَالَتْ: هِيَ عَلَى عَاقِلَتِهِ، فَلَمْ نَجِدْ إجْمَاعًا مِنْهُمْ أَيْضًا فِي هَذَا، وَلَمْ يَجُزْ أَنْ يُلْزَمَ الْجَانِي غَرَامَةً لَمْ يُوجِبْهَا عَلَيْهِ نَصٌّ، وَلَا إجْمَاعٌ، بَلْ قَدْ أَسْقَطَ اللَّهُ تَعَالَى عَنْهُ الْجُنَاحَ بِيَقِينٍ فِي ذَلِكَ، وَلَمْ يَجُزْ أَيْضًا - أَنْ تُلْزَمَ عَاقِلَتُهُ غَرَامَةً فِي ذَلِكَ بِغَيْرِ نَصٍّ، وَلَا إجْمَاعٍ، بَلْ النَّصُّ مُسْقِطٌ عَنْهُمْ ذَلِكَ بِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] .

فَبَطَلَ بِيَقِينٍ أَنْ يَجِبَ فِي الْخَطَأِ فِي ذَلِكَ شَيْءٌ، لِأَنَّهُ لَا نَصَّ يُبَيِّنُ هَذِهِ الْعَشَرَةَ عَلَى مَنْ هِيَ؟ وَإِذَا لَمْ يُبَيِّنْ النَّصُّ، وَلَا الْإِجْمَاعُ عَلَى مَنْ هِيَ، فَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَكُونَ اللَّهُ تَعَالَى يُلْزِمُ غَرَامَةَ مَنْ لَا يُبَيِّنُ لَنَا مَنْ هُوَ الْمُلْزَمُ إيَّاهَا؟ هَذَا أَمْرٌ نَقْطَعُ وَنَبُتُّ أَنَّ اللَّهَ تَعَالَى لَمْ يَفْعَلْ بِنَا ذَلِكَ قَطُّ وَهُوَ تَعَالَى الْقَائِلُ مُتَفَضِّلًا عَلَيْنَا {وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ} [الحج: ٧٨] وَالْآمِرُ تَعَالَى لَنَا إذْ يَقُولُ: {وَلا تَحْمِلْ عَلَيْنَا إصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا} [البقرة: ٢٨٦]- إلَى قَوْله تَعَالَى - {مَا لا طَاقَةَ لَنَا بِهِ} [البقرة: ٢٨٦] وَالْقَائِلُ تَعَالَى: {لا يُكَلِّفُ اللَّهُ نَفْسًا إلا وُسْعَهَا} [البقرة: ٢٨٦] وَبِيَقِينٍ نَدْرِي أَنَّهُ لَيْسَ فِي وُسْعِ أَحَدٍ، وَلَا فِي طَاقَتِهِ: أَنْ يَفْهَمَ مُرَادَ اللَّهِ تَعَالَى مِنْ غَيْرِ أَنْ يُفْهِمَهُ اللَّهُ تَعَالَى إيَّاهُ؟ فَسَقَطَ أَنْ يَكُونَ فِي الْخَطَأِ غَرَامَةٌ أَصْلًا فِيمَا دُونَ النَّفْسِ. فَسَقَطَ أَنْ يَكُونَ فِي الْخَطَأِ فِي ذَلِكَ دِيَةٌ أَصْلًا فَرَجَعْنَا إلَى الْعَمْدِ فَلَمْ يَكُنْ بُدٌّ مِنْ إيجَابِ دِيَةِ الْأَصَابِعِ كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا عَلَى الْعَامِدِ، وَإِمَّا عَلَى الْمُخْطِئِ، أَوْ عَلَى عَاقِلَةِ الْمُخْطِئِ وَقَدْ سَقَطَ أَنْ يَجِبَ فِي ذَلِكَ عَلَى الْمُخْطِئِ، أَوْ عَلَى

[23] **Qur'an references (L37406):** Qur'an 6:164 (Al-An'am).

gation upon the mistaken party or their liable kin, nothing remains in this regard except the intentional perpetrator. Thus, blood money is undoubtedly obligatory on the intentional perpetrator, since nothing remains except him.[24]

L37410 Moreover, Allah the Exalted says, "The recompense for an evil deed is an evil deed like it" (42:40). Since the intentional offender is a wrongdoer by his evil deed, it is obligatory—by the explicit text of the Quran—that he be subjected to an equivalent harm. As for blood money, when Allah the Exalted ordains it as conveyed by His Messenger—peace and blessings be upon him—in the case of harm caused by a wrongdoer, it is equivalent to the evil deed of that wrongdoer without doubt. Similarly, when Allah the Exalted commands the prescribed punishments, if equivalence through retaliation becomes unattainable regarding fingers, equivalence through blood money becomes obligatory in that matter.[25]

[A Jurisprudential Issue Regarding the Blood Money (Diyah) for Fingers]

L37411

L37412 Issue 2043: Abu Muhammad said: Abdullah ibn Rabīʿ narrated to us that Abdullah ibn Muhammad ibn Uthman narrated to us, Ahmad ibn Khalid narrated to us, Ali ibn Abd al-Aziz narrated to us, Al-Hajjaj ibn Al-Minhal narrated to us, Hammad ibn Salamah narrated to us from Yahya ibn Saʿid, from Saʿid ibn Al-Musayyab: That Umar ibn Al-Khattab ruled that the thumb and the index finger are equivalent to half the *diyah* (blood money) of the hand, for the middle finger ten camels, for the ring finger nine camels, and for the little finger six camels.

L37413–37415 And through him to al-Ḥajjāj ibn al-Minhāl, from Hammām ibn Yaḥyā from Qatādah from Saʿīd ibn al-Musayyab that ʿUmar ibn al-Khaṭṭāb ruled: fifteen camels for the thumb; ten for the index finger; ten for the middle finger; nine for the al-banṣir; and six for the little finger. Others have concurred with him on that, as we have reported - through the aforementioned chain of transmission - from Ḥammād ibn Salamah, from Hishām ibn ʿUrwah, from

عَاقِلَتِه شَيْءٌ بِنُصُوصِ الْقُرْآنِ الَّتِي أَوْرَدْنَا فَلَمْ يَبْقَ فِي ذَلِكَ إلَّا الْعَامِدُ، فَالدِّيَةُ فِي ذَلِكَ وَاجِبَةٌ عَلَى الْعَامِدِ بِلَا شَكٍّ، إذْ لَمْ يَبْقَ إلَّا هُوَ.

أَيْضًا - فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] وَكَانَ الْعَامِدُ مُسِيئًا بِسَيِّئَتِه، فَالْوَاجِبُ - بِنَصِّ الْقُرْآنِ - أَنْ يُسَاءَ إلَيْهِ بِمِثْلِهَا، وَالدِّيَةُ إذَا أَوْجَبَهَا اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَفِي إسَاءَةِ مُسِيءٍ، فَهِيَ مِثْلُ سَيِّئَةِ ذَلِكَ الْمُسِيءِ بِلَا شَكٍّ - وَكَذَلِكَ الْحُدُودُ إذَا أَمَرَ اللَّهُ تَعَالَى بِهَا أَيْضًا، فَإِذَا فَاتَتْ الْمُمَاثَلَةُ بِالْقَوَدِ فِي الْأَصَابِعِ وَجَبَتْ الْمُمَاثَلَةُ بِالدِّيَةِ فِي ذَلِكَ.

[مَسْأَلَةٌ فِي دِيَةِ الْأَصَابِعِ]

٢٠٤٣ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي الْإِبْهَامِ وَالَّتِي تَلِيهَا نِصْفَ دِيَةِ الْيَدِ، وَفِي الْوُسْطَى عَشَرَةُ أَبْعِرَةٍ، وَفِي الْبِنْصِرِ تِسْعَةُ أَبْعِرَةٍ، وَفِي الْخِنْصَرِ سِتَّةُ أَبْعِرَةٍ.

وَبِهِ إلَى الْحَجَّاجِ بْنِ الْمِنْهَالِ نا هَمَّامُ بْنُ يَحْيَى عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي الْإِبْهَامِ خَمْسَةَ عَشَرَ بَعِيرًا، وَفِي السَّبَّابَةِ عَشْرًا، وَفِي الْوُسْطَى عَشْرًا، وَفِي الْبِنْصِرِ تِسْعًا، وَفِي الْخِنْصَرِ سِتًّا وَقَدْ وَافَقَهُ عَلَى ذَلِكَ غَيْرُهُ: كَمَا رُوِّينَا - بِالسَّنَدِ الْمَذْكُورِ - إلَى حَمَّادِ بْنِ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ أَنَّهُ قَالَ فِي الْإِبْهَامِ وَالَّتِي تَلِيهَا نِصْفُ الدِّيَةِ.

[24] **Qur'an references (L37407):** Qur'an 22:78 (Al-Hajj); Qur'an 2:286 (Al-Baqarah).
[25] **Qur'an references (L37410):** Qur'an 42:40 (Ash-Shuraa).

his father, that he said regarding the thumb and the finger that follows it: half of the *diyah*.

وَجَاءَ عَنْ عُرْوَةَ بَيَانٌ زَائِدٌ عَنْ أَبِيهِ، قَالَ: إِذَا قُطِعَتْ الْإِبْهَامُ وَالَّتِي تَلِيهَا فَفِيهَا نِصْفُ دِيَةِ الْيَدِ - وَإِذَا قُطِعَتْ إِحْدَاهُمَا فَفِيهَا عَشْرٌ مِنْ الْإِبِلِ.

L37416 Urwah reported an additional clarification from his father, stating: If the thumb and the index finger are severed, half the *diyah* of the hand is due; if one of them is severed, ten camels are due.

وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: الْأَصَابِعُ عَشْرٌ عَشْرٌ.

L37417 On the authority of Ali ibn Abi Talib, who said: “The fingers are ten (in total).”

وَعَنْ الشَّعْبِيِّ أَنَّهُ قَالَ: جَاءَ رَجُلٌ مِنْ مُرَادٍ إلَى شُرَيْحٍ فَقَالَ: يَا أَبَا أُمَيَّةَ مَا تَقُولُ فِي دِيَةِ الْأَصَابِعِ؟ قَالَ: سَوَاءٌ فِي كُلِّ أُصْبُعٍ - مِمَّا هُنَالِكَ - عَشْرٌ مِنْ الْإِبِلِ، فَجَمَعَ الْمُرَادِيُّ بَيْنَ إبْهَامَيْهِ وَخِنْصَرَيْهِ وَقَالَ: يَا سُبْحَانَ اللَّهِ، سَوَاءٌ هَاتَانِ؟ فَقَالَ شُرَيْحٌ: نَتَّبِعُ وَلَا نَبْتَدِعُ، فَإِنَّك لَنْ تَضِلَّ مَا أَخَذْت بِالْأَثَرِ يَدَك وَأُذُنَك - فِي الْيَدِ النِّصْفُ، وَفِي الْأُذُنِ النِّصْفُ، وَالْأُذُنُ يُوَارِيهَا الشَّعْرُ وَالْقَلَنْسُوَةُ وَالْعِمَامَةُ.

L37418 From Al-Sha’bi: A man from Murad came to Shurayh and asked: “O Abu Umayyah, what is your ruling regarding blood money for fingers?” He answered: “Ten camels each for every finger - for each of those fingers there.” The Muradi man then pressed together both his thumbs and little fingers and exclaimed: “Glory be to Allah! Are these two equal?” Shurayh replied: “We follow precedent without innovating. You will never stray if you hold fast to tradition with your hand and ear - half [the diyah] for the hand, half [the diyah] for the ear. The ear is concealed by hair, a cap, or a turban.”

وَعَنْ الشَّعْبِيِّ قَالَ: أَشْهَدُ عَلَى مَسْرُوقٍ وَشُرَيْحٍ، أَنَّهُمَا قَالَا: الْأَصَابِعُ سَوَاءٌ، عَشْرٌ عَشْرٌ مِنْ الْإِبِلِ.

L37419 Al-Sha‘bī narrated: I testify that Masruq and Shurayh both said, “The fingers are equal: ten camels are due for each.”

وَقَدْ رُوِّينَا هَذَا الْقَوْلَ عَنْ ابْنِ عَبَّاسٍ قَبْلُ وَعَنْ زَيْدِ بْنِ ثَابِتٍ - رَضِيَ اللَّهُ عَنْهُمْ - قَالَ أَبُو مُحَمَّد: وَلْيَعْلَمْ الْعَالِمُونَ أَنَّهُ لَمْ يَأْتِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّ هَذِهِ الدِّيَةَ فِي الْخَطَأِ، وَأَعْجَبُ مِنْ ذَلِكَ مَنْ لَا يَرَى هَذِهِ الدِّيَةَ فِي الْعَمْدِ أَصْلًا، وَلَا يَرَاهَا إلَّا فِي الْخَطَأِ، فَعَكَسَ الْحَقَّ عَكْسًا، وَنَحْمَدُ اللَّهَ عَلَى السَّلَامَةِ.

L37420 It has been narrated to us that this opinion was reported from Ibn Abbas and Zayd ibn Thabit (may Allah be pleased with them). Abu Muhammad said: Let the scholars know that no statement has come from any of the Companions (may Allah be pleased with them) indicating that this diyah applies to unintentional killing. More astonishing is the view of those who do not recognize this diyah in intentional killing at all, limiting it only to unintentional killing—thus completely inverting the truth. We praise Allah for preservation.

قَالَ عَلِيٌّ: وَأَمَّا مَفَاصِلُ الْأَصَابِعِ - فَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَعَنْ رَجُلٍ عَنْ عِكْرِمَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ: فِي كُلِّ أُنْمُلَةٍ ثُلُثُ دِيَةِ الْأُصْبُعِ.

L37421 Ali said: As for the joints of the fingers: it has been narrated to us through the chain of Abd al-Razzaq from Ma’mar from Qatadah, and from a man, from Ikrimah, from Umar ibn al-Khattab: For each phalanx, one-third of the *diyah* (blood money) of a finger.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إلَى الْأَجْنَادِ فِي كُلِّ قَصَبَةٍ مِنْ قَصَبِ الْأَصَابِعِ قُطِعَتْ أَوْ شُلَّتْ ثُلُثُ دِيَةِ الْأَصَابِعِ إلَّا مَا كَانَ مِنْ إبْهَامِهَا فَإِنَّمَا هِيَ قَصَبَتَانِ، فَفِي كُلِّ قَصَبَةٍ مِنْ الْإِبْهَامِ نِصْفُ دِيَتِهَا.

L37422 From Abd al-Razzaq, from Ibn Jurayj, from Sulayman ibn Musa, who mentioned in Umar ibn Abd al-Aziz's letter to the troops: "For each phalanx of the fingers that is severed or paralyzed, a third of the fingers' *diya* is owed, except for the thumb, which has two phalanges. Thus, for each phalanx of the thumb, half of its *diya* is due."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ، قَالَ: فِي كُلِّ مَفْصِلٍ مِنْ الْأَصَابِعِ ثُلُثُ دِيَةِ الْأُصْبُعِ إلَّا الْإِبْهَامَ فَإِنَّهَا مِفْصَلَانِ فِي كُلِّ مِفْصَلٍ النِّصْفُ.

L37423–37425 On the authority of ʿAbd al-Razzāq, on the authority of Sufyān al-Thawrī, on the authority of Manṣūr, on the authority of Ibrāhīm al-Nakhaʿī, who said concerning... Every joint of the fingers constitutes one-third of the diyah of a finger, except the thumb, which has two joints—each being half of the thumb's total diyah.

قَالَ عَلِيٌّ: لَا نَعْرِفُ فِي هَذَا خِلَافًا، وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: هُوَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ فِي كُلِّ أُصْبُعٍ بِعَشْرٍ مِنْ الْإِبِلِ، فَوَاجِبٌ بِلَا شَكٍّ أَنَّ الْعَشْرَ الْمَذْكُورَةَ مُقَابِلَةٌ لِلْأُصْبُعِ فَفِي كُلِّ جُزْءٍ مِنْ الْأُصْبُعِ جُزْءٌ مِنْ الْعَشْرِ، فَعَلَى هَذَا فِي نِصْفِ الْأُصْبُعِ نِصْفُ الْعَشْرِ، وَفِي ثُلُثِ الْأُصْبُعِ ثُلُثُ الْعَشْرِ - وَهَكَذَا فِي كُلِّ جُزْءٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37426 Ali said: "We know of no disagreement regarding this. What we hold - and with Allah the Exalted is success - is that the Prophet (peace be upon him) ruled ten camels for every finger. Therefore, it is obligatory without doubt that the mentioned ten corresponds to the finger. Thus, for every portion of the finger is a portion of the ten. Accordingly, half the finger requires half of the ten, a third of the finger requires a third of the ten - and so on for every part - and with Allah the Exalted is success."

وَأَمَّا الْأُصْبُعُ تُشَلُّ: فَقَدْ جَاءَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْأَصَابِعِ عَشْرٌ عَشْرٌ - فَهَذَا عُمُومٌ لَا يَخْرُجُ عَنْهُ إلَّا مَا أَخْرَجَهُ نَصٌّ أَوْ إجْمَاعٌ، وَقَدْ قِيلَ: إنَّ فِي شَلَلِ الْأُصْبُعِ دِيَتَهُ كَامِلَةً، فَالْوَاجِبُ الْقَوْلُ بِذَلِكَ، لِعُمُومِ النَّصِّ الَّذِي ذَكَرْنَا وَأَمَّا كَسْرُهُ فَيُفِيقُ عَنَتًا أَوْ صَحِيحًا، إلَّا أَنَّهُ لَمْ يَبْطُلْ، فَلَا شَيْءَ فِي ذَلِكَ عِنْدَنَا؟ قَالَ أَبُو مُحَمَّدٍ: فَهَذَا النَّصُّ الَّذِي ذَكَرْنَا يَقْتَضِي أَنَّ أَصَابِعَ الْيَدَيْنِ، وَالرِّجْلَيْنِ: سَوَاءٌ، لِعُمُومِ ذِكْرِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْأَصَابِعَ.

L37427 As for a paralyzed finger: It has been narrated from the Prophet—peace and blessings of Allah be upon him—regarding fingers: "Ten for each finger." This constitutes a general ruling from which nothing is exempt except what is excluded by explicit text or consensus. Some have stated that full *diyah* applies to a paralyzed finger, and it is obligatory to uphold this ruling due to the general nature of the prophetic text we cited. Regarding a fractured finger that heals with hardship or recovers fully but did not become dysfunctional—is there then no compensation due for this in our view? Abu Muḥammad said: This text we referenced demonstrates that the fingers of both hands and both feet are equivalent, due to the general scope of the Prophet's mention—peace and blessings of Allah be upon him—of "fingers" without specification.

L37428 It has been narrated to us through the chain of ʿAbd al-Razzāq, from Ibn

Jurayj, from a man, from Makḥūl, from Zayd ibn Thābit, that he said: “For a supernumerary finger, one-third of the diyah for a finger is payable.”

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ رَجُلٍ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ: فِي الْأُصْبُعِ الزَّائِدَةِ ثُلُثُ دِيَةِ الْأُصْبُعِ.

L37429 Ma’mar said: I have been informed that a third of their blood money is due for the extra finger and the extra tooth.

وَقَالَ مَعْمَرٌ: بَلَغَنِي أَنَّ فِي الْأُصْبُعِ الزَّائِدَةِ، وَالسِّنِّ الزَّائِدَةِ: ثُلُثُ دِيَتِهَا.

L37430 Others said: In it [there is] arbitration.

وَقَالَ آخَرُونَ: فِيهَا حُكُومَةٌ.

L37431 Others said: “There is nothing for it.” We considered and found the authentic text from the Prophet—peace and blessings be upon him—establishes that ten camels are for the finger. The term “finger” applies to an extra finger, and he—peace and blessings be upon him—did not distinguish an extra finger from others. {And your Lord is not forgetful} [19:64]. Had He intended such a distinction, He would have clarified it. Therefore, the same ruling that applies to all fingers must apply to the extra finger. And with Allah, the Most High, is success.[26]

وَقَالَ آخَرُونَ: لَا شَيْءَ فِيهَا. فَنَظَرْنَا فَوَجَدْنَا النَّصَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ صَحَّ بِأَنَّ فِي الْأُصْبُعِ عَشْرًا مِنْ الْإِبِلِ. وَاسْمُ أُصْبُعٍ يَقَعُ عَلَى زَائِدَةٍ، وَلَمْ يَخُصَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أُصْبُعًا زَائِدَةً مِنْ غَيْرِهَا {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَلَوْ أَرَادَ ذَلِكَ لَبَيَّنَهُ فَوَاجِبٌ أَنْ يَكُونَ فِيهَا مَا فِي سَائِرِ الْأَصَابِعِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مَا جَاءَ فِي الْيَدِ تُشَلُّ أَوْ تُقْطَعُ]

A juristic ruling pertaining to cases where a hand is paralyzed or amputated.

مَسْأَلَةٌ: قَالَ عَلِيٌّ: قَدْ ذَكَرْنَا مَا جَاءَ فِي الْيَدِ تُشَلُّ، أَوْ تُقْطَعُ فِي كِتَابِ ابْنِ حَزْمٍ، وَتِلْكَ الصَّحِيفَةُ وَأَنَّهُ لَا يَصِحُّ شَيْءٌ مِنْ ذَلِكَ.

L37434 Issue: Ali said: We have mentioned what is reported regarding the hand being paralyzed or amputated in Ibn Hazm’s book and that document, and that none of those reports are authentic.

رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نَا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: كَانَ فِي كِتَابِ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّ فِي الرِّجْلِ إذَا يَبِسَتْ فَلَمْ يَسْتَطِعْ أَنْ يَبْسُطَهَا، أَوْ بَسَطَهَا فَلَمْ يَسْتَطِعْ أَنْ يَقْبِضَهَا، أَوْ لَمْ تَنَلْ الْأَرْضَ: فَفِيهَا نِصْفُ الدِّيَةِ، فَإِنْ نَالَ مِنْهَا شَيْءٌ الْأَرْضَ فَبِقَدْرِ مَا نَقَصَ مِنْهَا - وَفِي الْيَدِ إذَا لَمْ يَأْكُلْ بِهَا، وَلَمْ يَشْرَبْ بِهَا، وَلَمْ يَأْتَزِرْ بِهَا وَلَمْ يَسْتَصْلِحْ بِهَا: فَفِيهَا نِصْفُ الدِّيَةِ.

L37435 We have been narrated through the chain of Al-Ḥajjāj ibn Al-Minhāl who narrated to us: Ḥammād ibn Salamah narrated to us from Muḥammad ibn Isḥāq from ʿAmr ibn Shuʿayb, who said: It was recorded in the ruling of Abū Bakr and ʿUmar—may Allah be pleased with them—that regarding the leg: if it stiffens so that one cannot extend it, or if it is extended and cannot be flexed, or if it fails to reach the ground, then half the blood money is due. If any part of it touches the ground, a portion of the blood money is due proportionate to the impairment. Regarding the hand: if one cannot eat with

[26] **Qur’an references (L37431):** Qur’an 19:64 (Maryam).

it, drink with it, gird himself with it, or use it for maintenance, then half the blood money is due.

L37436 Muhammad ibn Saʿīd ibn Nabāt reported from ʿAbdullāh ibn Naṣr, who reported from Qāsim ibn Aṣbagh, who reported from Ibn Waḍḍāḥ, who reported from Mūsā ibn Muʿāwiyah, who reported from Wakīʿ, who reported from Sufyān al-Thawrī, from Abū Isḥāq al-Sabīʿī, from ʿĀṣim, from ʿAlī ibn Abī Ṭālib, who said: "Regarding the hand, half is due."

نَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نَا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي الْيَدِ النِّصْفُ.

L37437 Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-Aʿrabī narrated to us: al-Dabarī narrated to us: ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz, from his father ʿUmar ibn ʿAbd al-ʿAzīz, from ʿUmar ibn al-Khaṭṭāb, who said: "The hand entails half the diyah (blood money). Whatever portion has been reduced [from the injury] shall be determined through proportional calculation."

وَحَدَّثَنَا حُمَامٌ نَا ابْنُ مُفَرِّجٍ نَا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: فِي الْيَدِ نِصْفُ الدِّيَةِ فَمَا نَقَصَتْ فَبِالْحِسَابِ.

L37438 And through him to Abd al-Razzaq from Ma'mar from al-Zuhri from Qatadah. And from a man from Ikrimah: If the hand is paralyzed, its blood money is full.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ قَتَادَةَ. وَعَنْ رَجُلٍ عَنْ عِكْرِمَةَ: فِي الْيَدِ إِذَا شُلَّتْ: دِيَتُهَا كَامِلَةً.

L37439 An Issue Concerning the Position of Hand Cutting in Qisas.

[مَسْأَلَةٌ مَوْضِعِ قَطْعِ الْيَدِ فِي الْقِصَاصِ]

L37440 2045. Issue: Regarding their disagreement on the site of cutting of the hand.

٢٠٤٥ - مَسْأَلَةٌ: فِي اخْتِلَافِهِمْ فِي مَوْضِعِ قَطْعِ الْيَدِ

L37441 Abu Muhammad said: Yunus ibn Abd Allah ibn Mughith narrated to us from Ahmad ibn Abd Allah 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 Bashshar, who narrated from Yahya ibn Saʿid al-Qattan, who narrated from Abu ʿAwanah, from Mughirah ibn Miqsam al-Dabbi, from Ibrahim al-Nakhaʿi, who said: If the hand is severed from the wrist, half the diyah is owed, and if it is severed from the shoulder, the full diyah is owed.

قَالَ أَبُو مُحَمَّدٍ: نا يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدَ الرَّحِيمِ نَا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا أَبُو عَوَانَةَ عَنْ مُغِيرَةَ بْنِ مِقْسَمٍ الضَّبِّيِّ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: إِنْ قُطِعَتِ الْيَدُ مِنَ الْكَفِّ فَنِصْفُ الدِّيَةِ، وَإِنْ قُطِعَتْ مِنَ الْمَنْكِبِ فَالدِّيَةُ.

L37442 From Amr al-Sha'bi, as narrated by Jabir al-Ju'fi, he said, "If the hand is severed at the wrist joint, half the diyah is due; if severed at the elbow, the full diyah is due."

وَعَنْ عَامِرٍ الشَّعْبِيِّ مِنْ رِوَايَةِ جَابِرٍ الْجُعْفِيِّ قَالَ: إِذَا قُطِعَتِ الْيَدُ مِنَ الْمِفْصَلِ فَفِيهَا نِصْفُ الدِّيَةِ، وَمِنَ الْمِرْفَقِ فَفِيهَا الدِّيَةُ.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي الْيَدِ إِذَا قُطِعَتْ مِنْ الْبَرَاجِمِ: فَفِيهَا الدِّيَةُ وَكَذَلِكَ لَوْ قُطِعَتْ مِنْ الرُّسْغِ أَوْ مِنْ الْمِرْفَقِ أَوْ مِنْ الْمَنْكِبِ كُلُّ ذَلِكَ الدِّيَةُ فَقَطْ.

L37443–37444 And from Ibrāhīm al-Nakhaʿī, who said: If the hand is severed at the knuckles, the full diyah is due. Likewise, if it is severed at the wrist, elbow, or shoulder - in all such cases, only the full diyah is due.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ أَنَّهُ قَالَ: فِي الْيَدِ تُسْتَأْصَلُ خَمْسُونَ مِنْ الْإِبِلِ إِذَا قُطِعَتْ مِنْ الْمَنْكِبِ، وَالرِّجْلُ مِثْلُ ذَلِكَ قَالَ ابْنُ جُرَيْجٍ قُلْت لَهُ: مِنْ أَيْنَ؟ أَمِنَ الْمَنْكِبِ أَوْ مِنْ الْكَفِّ؟ قَالَ: بَلْ مِنْ الْمَنْكِبِ.

L37445 Via the chain of transmission (isnad) of Abd al-Razzaq from Ibn Jurayj from Ata, who said: “If a hand is amputated from the shoulder joint, fifty camels are due. The leg is likewise.” Ibn Jurayj said: “I asked him: From which part? From the shoulder joint or the palm?” He replied: “Rather, from the shoulder joint.”

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: سَوَاءٌ قُطِعَتْ الْيَدُ مِنْ الْمَنْكِبِ أَوْ مِمَّا دُونَهُ إلَى مَوْضِعِ السِّوَارِ.

L37446 From the narration of ʿAbd al-Razzāq, from Maʿmar, from Qatādah, who said: The ruling is the same whether the arm is amputated as a legal punishment from the shoulder or from below it to the place of the bracelet (i.e., the wrist).

قَالَ أَبُو مُحَمَّدٍ: وَهَؤُلَاءِ الْحَاضِرُونَ مِنْ الْمُخَالِفِينَ مِنْ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ وَالشَّافِعِيِّينَ، لَا يَقُولُونَ بِهَذَا الَّذِي جَاءَ عَمَّنْ ذَكَرْنَا مِنْ الصَّحَابَةِ وَالتَّابِعِينَ، فَصَحَّ أَنَّهُ لَا حُجَّةَ فِي قَوْلِهِمْ، وَلَا فِي قَوْلِ غَيْرِهِمْ، إلَّا مَا صَحَّ بِهِ النَّصُّ، أَوْ تَيَقَّنَ فِيهِ الْإِجْمَاعُ فَقَطْ وَقَالَ مَالِكٌ: إنْ قُطِعَتْ أُصْبُعٌ أَوْ ذَهَبَتْ، ثُمَّ قُطِعَتْ الْكَفُّ: فَلَهُ دِيَةُ مَا بَقِيَ مِنْ الْأَصَابِعِ فَقَطْ فَإِنْ قُطِعَتْ أُنْمُلَةٌ، ثُمَّ قُطِعَتْ الْكَفُّ: فَلَهُ دِيَةُ الْأَصَابِعِ كُلِّهَا قَالَ عَلِيٌّ: وَهَذَا خَطَأٌ ظَاهِرٌ، لِأَنَّ الْأُنْمُلَةَ عِنْدَهُ لَهَا حَظُّهَا مِنْ الْعَقْلِ، كَمَا لِلْأُصْبُعِ، فَلِأَيِّ شَيْءٍ حَظَّ الْأُصْبُعَ وَلَمْ يَحُظَّ الْأُنْمُلَةَ؟

L37447 Abū Muḥammad said: These contemporary dissenters among the Ḥanafīs, Mālikīs, and Shāfiʿīs do not uphold the rulings transmitted from the Companions and Followers we mentioned. Thus, it is confirmed that there is no proof in their opinions nor in the opinions of others, except what is validated by an authentic textual source or a definitively established consensus alone. Mālik said: If a finger is severed or destroyed, then the hand is amputated: one is entitled only to the *diyah* for the remaining fingers. But if a fingertip is severed, then the hand is amputated: one is entitled to the *diyah* for all fingers. ʿAlī said: This is an evident error, for according to his own principle, the fingertip has its due compensation (*diyah*), just as the finger does. Why then should the finger receive its share while the fingertip is denied?

فَإِنْ قَالُوا: لِقِلَّتِهَا؟ قِيلَ لَهُمْ: الْقَلِيلُ وَالْكَثِيرُ مِنْ الْحَرَامِ حَرَامٌ [وَالْكَبِيرُ مِنْ الْكَثِيرِ حَرَامٌ] وَلَا يَحِلُّ مِنْ أَمْوَالِ النَّاسِ قَلِيلٌ وَلَا كَثِيرٌ إلَّا بِحَقٍّ، لَا سِيَّمَا إنْ كَانَ الَّذِي أَصَابَ الْأُنْمُلَةَ فَقَضَى عَلَيْهِ بِعَقْلِهَا هُوَ الَّذِي أَصَابَ الْكَفَّ بَعْدَ ذَلِكَ، فَقَدْ أَغْرَمُوهُ فِي الْكَفِّ دِيَةً كَامِلَةً وَثُلُثَ خُمْسِ الدِّيَةِ.

L37448 If they say: “Due to its small amount?” It is said to them: “The minor and major portions of forbidden matters remain forbidden, [and even a substantial portion from a larger quantity is forbidden]. It is impermissible to take anything from people’s possessions - whether insignificant or substantial - except through lawful entitlement.” This applies particularly when the one who inflicted the fingertip injury and was adjudged to pay its compensation subsequently caused the hand injury. In such a case, they have penalized him

for the hand injury by requiring payment of a complete blood money plus one-third of one-fifth of the blood money (1/15th).

A Jurisprudential Case: Breaking of the Hand and Ulna

L37449–37450

[مَسْأَلَةٌ كَسْرُ الْيَدِ وَالزَّنْدِ]

L37451 A legal issue: Abu Muḥammad said: Ḥumām from Ibn Mufarrij from Ibn al-Aʻrabī from al-Dabarī from ʻAbd al-Razzāq from Ibn Jurayj: Ikrimah ibn Khālid informed me that Nāfiʻ ibn ʻAlqamah was approached concerning a man's broken leg. He said: "We used to rule five hundred dirhams for such cases until ʻĀṣim ibn Sufyān informed me that Sufyān ibn ʻAbdullāh wrote to ʻUmar ibn al-Khaṭṭāb?" He wrote: "Five awāq are to be paid for a hand that is broken, then set and becomes straight." I asked Ikrimah: "So there is no deformity or paralysis in it?" He replied: "Yes." I said: "Then Ibn ʻAlqamah ruled two hundred dirhams for it."

مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عِكْرِمَةُ بْنُ خَالِدٍ أَنَّ نَافِعَ بْنَ عَلْقَمَةَ أُتِيَ فِي رِجْلِ رَجُلٍ كُسِرَتْ، فَقَالَ: كُنَّا نَقْضِي فِيهَا بِخَمْسمِائَةِ دِرْهَمٍ، حَتَّى أَخْبَرَنِي عَاصِمُ بْنُ سُفْيَانَ أَنَّ سُفْيَانَ بْنَ عَبْدِ اللَّهِ كَتَبَ إِلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَكَتَبَ بِخَمْسِ أَوَاقٍ فِي الْيَدِ تُكْسَرُ ثُمَّ تُجْبَرُ وَتَسْتَقِيمُ، قُلْتُ لِعِكْرِمَةَ: فَلَا يَكُونُ فِيهَا عِوَجٌ وَلَا شَلَلٌ، قَالَ: نَعَمْ، قُلْت: فَقَضَى فِيهَا ابْنُ عَلْقَمَةَ بِمِائَتَيْ دِرْهَمٍ.

L37452 Narrated by Abd al-Razzaq from Sufyan al-Thawri from Ibn Abi Layla from Ikrimah ibn Khalid from a man from Umar that he said: For a leg or arm - when it breaks, then heals straight without protrusion - twenty dinars or two two-year-old female horses.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ ابْنِ أَبِي لَيْلَى عَنْ عِكْرِمَةَ بْنِ خَالِدٍ عَنْ رَجُلٍ عَنْ عُمَرَ أَنَّهُ قَالَ: فِي السَّاقِ أَوْ الذِّرَاعِ إذَا انْكَسَرَتْ ثُمَّ جُبِرَتْ فَاسْتَوَتْ فِي غَيْرِ عَثْمٍ عِشْرُونَ دِينَارًا، أَوْ حِقَّتَانِ.

L37453 From him to ʿAbd al-Razzāq: Ibn Jurayj narrated to us from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz, from his father ʿUmar ibn ʿAbd al-ʿAzīz, who said: Sufyān ibn ʿAbd Allāh wrote to ʿUmar ibn al-Khaṭṭāb—while Sufyān was his governor in Ṭāʾif—seeking his counsel regarding a man's hand that had been broken. ʿUmar ibn al-Khaṭṭāb wrote back to him: "If it was set correctly, he has a right to two shares."

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: كَتَبَ سُفْيَانُ بْنُ عَبْدِ اللَّهِ إِلَى عُمَرَ بْنِ الْخَطَّابِ - وَهُوَ عَامِلُهُ بِالطَّائِفِ - يَسْتَشِيرُهُ فِي يَدِ رَجُلٍ كُسِرَتْ، فَكَتَبَ إلَيْهِ عُمَرُ بْنُ الْخَطَّابِ: إنْ كَانَتْ جُبِرَتْ صَحِيحَةً فَلَهُ حِقَّتَانِ.

L37454 And through him to ʻAbd al-Razzāq, from Maʻmar, from Qatādah, who said: If the hand or leg is broken, or if the forearm, upper arm, thigh, or shin is broken, then is set and heals straight, twenty dinars are due for each. And if there remains a permanent deformity in the limb, forty dinars are due.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: إذَا كُسِرَتْ الْيَدُ أَوْ الرِّجْلُ وَإِذَا كُسِرَتْ الذِّرَاعُ أَوْ الْعَضُدُ أَوْ الْفَخِذُ أَوْ السَّاقُ ثُمَّ جُبِرَتْ فَاسْتَوَتْ فَفِي كُلِّ وَاحِدٍ عِشْرُونَ دِينَارًا، فَإِنْ كَانَ فِيهَا عَثْمٌ فَأَرْبَعُونَ دِينَارًا.

L37455 And through him to ʻAbd al-Razzāq from Ibn Jurayj, who said: ʻAṭāʼ said to me regarding the breaking of a leg, hand, or collarbone: "If it is broken then set, something is due in that case—but I have not been informed of what it is." Shurayḥ used to say: "If it is set, nothing is due."

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَطَاءٌ فِي كَسْرِ الرِّجْلِ وَالْيَدِ وَالتَّرْقُوَةِ ثُمَّ تُجْبَرُ فِي ذَلِكَ شَيْءٌ، وَمَا بَلَغَنِي مَا هُوَ؟ وَكَانَ شُرَيْحٌ يَقُولُ: إِذَا جُبِرَتْ فَلَيْسَ فِيهَا شَيْءٌ

L37456 And through the chain of Al-Ḥajjāj ibn Al-Minhāl, Ḥammād ibn Salamah narrated to us from Al-Ḥajjāj from Makḥūl, who said regarding the leg: If one of its two forearm bones is fractured and subsequently heals, ten camels are due for it.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنِ الْحَجَّاجِ عَنْ مَكْحُولٍ قَالَ فِي الرِّجْلِ إِذَا كُسِرَ أَحَدُ زَنْدَيْهِ ثُمَّ انْجَبَرَ: فَفِيهِ عَشَرَةُ أَبْعِرَةٍ.

L37457–37459 This is among the matters in which the Hanafis, Malikis, and Shafiʻis differed regarding the position narrated from Umar ibn al-Khattab—may Allah be pleased with him. They condemn by the Companion's dissent when it aligns with their *taqlīd*—and success is from Allah, the Exalted.

وَهَذَا مِمَّا خَالَفَ فِيهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ الرِّوَايَةَ عَنْ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - وَهُمْ يُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ إِذَا وَافَقَ تَقْلِيدَهُمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37460 The legal case of one whose hand was severed in the path of Allah or in other circumstances.

[مَسْأَلَةٌ قُطِعَتْ يَدُهُ فِي سَبِيلِ اللَّهِ أَوْ فِي غَيْرِهِ]

L37461 2047 - Issue: One whose hand was cut off in the cause of Allah or otherwise.

٢٠٤٧ - مَسْأَلَةٌ: مَنْ قُطِعَتْ يَدُهُ فِي سَبِيلِ اللَّهِ، أَوْ فِي غَيْرِهِ

L37462 Narrated by Ḥumām, narrated by Ibn Mufarrij, narrated by Ibn al-Aʿrābī, narrated by al-Dabarī, narrated by ʿAbd al-Razzāq, narrated by Maʿmar, narrated by Qatādah, who said: If someone's hand was severed in the cause of Allah the Exalted, then another person severs their remaining hand, the offender is liable to pay them two diyahs. If their hand was severed as a legal punishment and another person severs their remaining hand, the offender must pay them the diyah for the hand he severed.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: مَنْ قُطِعَتْ يَدُهُ فِي سَبِيلِ اللَّهِ تَعَالَى ثُمَّ قَطَعَ إِنْسَانٌ يَدَهُ الْأُخْرَى: غَرِمَ لَهُ دِيَتَيْنِ فَإِنْ قُطِعَتْ يَدُهُ فِي حَدٍّ وَقَطَعَ إِنْسَانٌ يَدَهُ الْأُخْرَى غَرِمَ لَهُ دِيَةَ الَّتِي قَطَعَ.

L37463 And through him to ʻAbd al-Razzāq from Maʿmar from al-Zuhrī regarding a man whose hand was cut off, then the other was cut off after that? He said: If he were given blood money in lieu of a debt, I would consider that not far from being sound, and I have not heard any Sunnah in this matter.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي رَجُلٍ مَقْطُوعِ الْيَدِ قُطِعَتِ الْأُخْرَى، بَعْدَ ذَلِكَ؟ قَالَ: لَوْ أُعْطِيَ عَقْلَ بِدَيْنٍ رَأَيْت ذَلِكَ غَيْرَ بَعِيدٍ مِنَ السَّدَادِ، وَلَمْ أَسْمَعْ فِيهِ سُنَّةً.

L37464 Abu Muhammad said: It was incumbent upon those who upheld Malik's

opinion—that in the eye of the one-eyed [person] is the diyah of two eyes—to uphold al-Zuhri's opinion. But they contradict themselves.

L37465 As for us, we do not add to what the Messenger of Allah—peace and blessings be upon him—said regarding diyah for fingers: "It is the same whether the other finger was cut in the cause of Allah the Exalted or in a Ḥadd punishment." ("And your Lord is not forgetful" [19:64].) Had Allah the Exalted intended that, He would not have neglected it, nor overlooked it, and He would have clarified it.[27]

L37466 **A jurisprudential issue regarding the compensation for a woman's fingers under diyah (blood money) rulings.**

L37467 Issue 2048: We have previously mentioned the differing opinions among people on this matter, including those who held that the compensation for one of her fingers is ten camels, for two fingers twenty camels, for three fingers thirty camels, and for four fingers twenty-four camels.

L37468 And the opinion of those who hold that she is entitled to half of the man's share in all such cases.

L37469 Ali said: "It became obligatory upon us to act upon what Allah Almighty had ordained in cases of dispute—to refer back to the Book of Allah Almighty and the Sunnah of His Prophet (peace and blessings of Allah be upon him). So we did, and we found that he (peace and blessings of Allah be upon him) had said: 'The fingers are equal—these [fingers] and those [fingers] are equal.'"

L37470–37472 Thus, it is conclusively established that a woman's fingers are equal in value—by the explicit ruling of the Prophet (peace and blessings be upon him)—and that a man's fingers are likewise equal in value, by his explicit ruling (peace and blessings be upon him). Since that is the case, and consensus has been established that for four fingers of a woman and above, there is half the compensation prescribed for a man in the same case without disagreement,

[27] **Qur'an references (L37465):** Qur'an 19:64 (Maryam).

قَالَ أَبُو مُحَمَّد: كَانَ يَلْزَمُ مَنْ قَالَ بِقَوْلِ مَالِكٍ فِي أَنَّ فِي عَيْنِ الْأَعْوَرِ دِيَةَ عَيْنَيْنِ أَنْ يَقُولَ بِقَوْلِ الزُّهْرِيِّ، وَلَكِنَّهُمْ يَتَنَاقَضُونَ.

وَأَمَّا نَحْنُ فَلَا نَزِيدُ عَلَى مَا قَالَ رَسُولُ اللَّهِ «- صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي دِيَةِ الْأَصَابِعِ - سَوَاءٌ قُطِعَتْ الْأُخْرَى فِي سَبِيلِ اللَّهِ تَعَالَى أَوْ فِي حَدٍّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] » وَلَوْ أَنَّ اللَّهَ تَعَالَى أَرَادَ ذَلِكَ لَمَا أَهْمَلَهُ، وَلَا أَغْفَلَهُ، وَلَبَيَّنَهُ

[مَسْأَلَةٌ أَصَابِعُ الْمَرْأَةِ فِي الدِّيَةِ]

٢٠٤٨ - مَسْأَلَةٌ: وَقَدْ ذَكَرْنَا قَبْلُ اخْتِلَافَ النَّاسِ فِي هَذَا وَأَنَّ فِيهِمْ مَنْ رَأَى فِي أُصْبُعِهَا عَشْرًا مِنْ الْإِبِلِ، وَفِي اثْنَيْنِ عِشْرِينَ مِنْ الْإِبِلِ، وَفِي الثَّلَاثَةِ ثَلَاثِينَ مِنْ الْإِبِلِ، وَفِي الْأَرْبَعَةِ عِشْرِينَ مِنْ الْإِبِلِ.

وَقَوْلُ مَنْ رَأَى أَنَّهَا فِي كُلِّ ذَلِكَ عَلَى النِّصْفِ مِنْ الرَّجُلِ.

قَالَ عَلِيٌّ: فَوَجَبَ عَلَيْنَا مَا افْتَرَضَهُ اللَّهُ تَعَالَى عِنْدَ التَّنَازُعِ مِنْ الرَّدِّ إلَى كِتَابِ اللَّهِ تَعَالَى، وَسُنَّةِ نَبِيِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَفَعَلْنَا فَوَجَدْنَاهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ: «الْأَصَابِعُ سَوَاءٌ هَذِهِ وَهَذِهِ سَوَاءٌ» .

فَصَحَّ يَقِينًا أَنَّ أَصَابِعَ الْمَرْأَةِ سَوَاءٌ، نَصُّ حُكْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَأَنَّ أَصَابِعَ الرَّجُلِ سَوَاءٌ، بِنَصِّ حُكْمِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذْ ذَلِكَ كَذَلِكَ، وَقَدْ صَحَّ الْإِجْمَاعُ عَلَى أَنَّ فِي أَرْبَعَةِ أَصَابِعَ مِنْ الْمَرْأَةِ فَصَاعِدًا: نِصْفُ مَا فِي ذَلِكَ مِنْ الرَّجُلِ بِلَا خِلَافٍ، فَإِذْ بِلَا شَكٍّ فِي هَذَا وَقَدْ حَكَمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّ أَصَابِعَهَا سَوَاءٌ: فَوَاجِبٌ

then—as there is no doubt in this matter, and the Prophet (peace and blessings be upon him) ruled that her fingers are treated equally in compensation—it is required that in two fingers there is half the compensation of four without doubt, and in one finger half of what is in two. And success is from Allah, the Most High.

[Legal Case:] Diyah for the Permanently Disabled Hand

L37473

L37474 Issue 2049: 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 Bashshar, who narrated from Yahya ibn Sa'id al-Qattan, who narrated from Hisham al-Dastuwa'i, who narrated from Qatadah from Abdullah ibn Buraidah from Yahya ibn Ya'mur from Ibn Abbas that Umar ibn al-Khattab said: For a blind eye if it is destroyed, a paralyzed hand if it is severed, and a blackened tooth - if it falls out - one-third of the blood money for each.

L37475 Through the chain of Waki', Abu Hilal Muhammad ibn Sulaym al-Rasibi narrated **to us** from Abdullah ibn Buraidah from Yahya ibn Ya'mur from Ibn Abbas, who said: If a **paralyzed** hand is amputated, one-third of the diyah is owed.

L37476 From the narration of Abd al-Razzaq via Ibn Jurayj, Dawud ibn Abi Asim, and Sa'id ibn al-Musayyab: Umar ibn al-Khattab ruled regarding a withered hand (if severed) that its blood money is one-third of the full amount, and regarding a withered foot (if severed) that its blood money is one-third of the full amount.

L37477 From Mujāhid, who said: "Regarding the paralyzed arm: its diyah is one-third of the full blood money."

L37478 The same [opinion] is reported from Sa'īd ibn al-Musayyib — and this is the view of Ibn Shubrumah.

L37479 Abd al-Razzaq stated: Regarding a paralyzed finger, the ruling is: half its diyah is prescribed.

أَنْ يَكُونَ فِي أُصْبُعَيْنِ نِصْفُ مَا فِي الْأَرْبَعِ بِلَا شَكٍّ - وَفِي الْأُصْبُعِ الْوَاحِدَةِ نِصْفُ مَا فِي الِاثْنَيْنِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةَ الْيَدِ الشَّلَّاءِ]

٢٠٤٩ - مَسْأَلَةٌ: نَا يُونُسُ بْنُ عَبْدِ اللَّهِ نا أَحْمَدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدَ الرَّحِيمِ نَا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا هِشَامٌ الدَّسْتُوَائِيُّ نا قَتَادَةَ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ يَحْيَى بْنِ يَعْمُرَ عَنْ ابْنِ عَبَّاسٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: فِي الْعَيْنِ الْعَوْرَاءِ إِذَا فُضِخَتْ وَالْيَدِ الشَّلَّاءِ إِذَا قُطِعَتْ وَالسِّنِّ السَّوْدَاءِ - إِذَا سَقَطَتْ - ثُلُثُ دِيَتِهَا.

وَمِنْ طَرِيقِ وَكِيعٍ نا أَبُو هِلَالٍ مُحَمَّدُ بْنُ سُلَيْمٍ الرَّاسِبِيُّ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ عَنْ يَحْيَى بْنِ يَعْمُرَ عَنْ ابْنِ عَبَّاسٍ قَالَ: فِي الْيَدِ الشَّلَّاءِ إِذَا قُطِعَتْ: ثُلُثُ الدِّيَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ دَاوُد بْنِ أَبِي عَاصِمٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي الْيَدِ الشَّلَّاءِ - إِذَا قُطِعَتْ -: ثُلُثَ دِيَتِهَا، وَفِي الرِّجْلِ الشَّلَّاءِ -: ثُلُثَ دِيَتِهَا.

وَعَنْ مُجَاهِدٍ قَالَ: فِي الْيَدِ الشَّلَّاءِ -: ثُلُثُ دِيَتِهَا.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِثْلُ ذَلِكَ - وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ.

وَعَنْ عَبْدِ الرَّزَّاقِ أَنَّهُ قَالَ: فِي الْأُصْبُعِ الشَّلَّاءِ تُقْطَعُ: نِصْفُ دِيَتِهَا.

وَقَالَ آخَرُونَ غَيْرَ ذَلِكَ. كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ قُسَيْطٍ قَالَ: فِي الْيَدِ الشَّلَّاءِ - إِذَا قُطِعَتْ -: خُمْسُ دِيَتِهَا.

L37480 Others held a differing opinion, as narrated through the chain of Al-Ḥajjāj ibn Al-Minhāl, who reported from Ḥammād ibn Salamah, from Muḥammad ibn Isḥāq, from Yazīd ibn ʿAbdullāh ibn Quṣayṭ, who said: For a paralyzed hand, if severed, one-fifth of the full diyah is owed.

وَعَنْ مَسْرُوقٍ قَالَ: فِي الْيَدِ الشَّلَّاءِ -: حُكْمٌ.

L37481 From Masruq, he said: "There is a legal ruling concerning the paralyzed hand."

وَعَنْ النَّخَعِيِّ مِثْلُ ذَلِكَ -: حُكْمٌ.

L37482 And from Al-Nakhaʿī similarly — a legal ruling.

وَعَنْ ابْنِ جُرَيْجٍ قَالَ: فِي الْأُصْبُعِ الشَّلَّاءِ تُقْطَعُ: شَيْءٌ، لِجَمَالِهَا وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ.

L37483–37485 And from Ibn Jurayj, he said: Regarding the paralyzed finger, something is amputated for its beauty. And according to this, Abū Ḥanīfah, Mālik, al-Shāfiʿī, and their adherents maintain.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ جَاءَ هَذَا أَثَرٌ -: كَمَا رُوِّينَا - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا أَحْمَدُ بْنُ إِبْرَاهِيمَ بْنِ مُحَمَّدٍ نا ابْنُ عَائِذٍ نا الْهَيْثَمُ بْنُ جَمِيلٍ نا الْعَلَاءُ - هُوَ ابْنُ الْحَارِثِ - عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِي الْعَيْنِ الْعَوْرَاءِ - السَّادَةِ لِمَكَانِهَا - إِذَا طُمِسَتْ: ثُلُثَ دِيَتِهَا - وَفِي الْيَدِ الشَّلَّاءِ - إِذَا قُطِعَتْ: ثُلُثَ دِيَتِهَا - وَفِي السِّنِّ السَّوْدَاءِ - إِذَا نُزِعَتْ: ثُلُثَ دِيَتِهَا» .

L37486 Abū Muḥammad said: This report has been transmitted—as has been narrated to us—via ʿAbdullāh ibn Rabīʿ, from Muḥammad ibn Muʿāwiyah, from Aḥmad ibn Shuʿayb, from Aḥmad ibn Ibrāhīm ibn Muḥammad, from Ibn ʿĀʾidh, from al-Haytham ibn Jamīl, from al-ʿAlāʾ, who is Ibn al-Ḥārith, from ʿAmr ibn Shuʿayb, from his father, from his grandfather: "The Messenger of Allāh—peace and blessings of Allāh be upon him—ruled concerning the sightless eye with a cataract in its socket: if it is obliterated, [the compensation is] one-third of its *diyah*; concerning the paralyzed hand: if it is severed, one-third of its *diyah*; and concerning the tooth blackened by decay: if it is extracted, one-third of its *diyah*."

قَالَ عَلِيٌّ: فَجَاءَ هَذَا الْخَبَرُ كَمَا ذَكَرْنَا، وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، يَحْتَجُّونَ بِهِ إِذَا وَافَقَ أَهْوَاءَهُمْ وَجَاءَ بِمِثْلِ مَا فِيهِ الْأَثَرُ الصَّحِيحُ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ أَصْلًا - وَقَالَ بِذَلِكَ سَعِيدُ بْنُ الْمُسَيِّبِ، وَمُجَاهِدٌ - وَهُمْ يُهَوِّلُونَ وَيُشَنِّعُونَ بِخِلَافِ الصَّاحِبِ إِذَا وَافَقَ تَقْلِيدَهُمْ.

L37487 Ali said: This report came as we mentioned, and the Hanafis, Malikis, and Shafi'is cite it as evidence when it aligns with their inclinations and corresponds to the authentic reports from Umar ibn al-Khattab and Ibn Abbas—may Allah be pleased with them both—with no known opposition to them from any of the Companions at all. Sa'id ibn al-Musayyib and Mujahid also held this view. Yet, they exaggerate the gravity and harshly condemn disagreement with the Companion when such disagreement aligns with their own *taqlīd*.

[مَسْأَلَةُ الدِّيَةِ فِي أَصَابِعِ الرِّجْلِ]

L37488 **A Jurisprudential Issue Regarding the *Diyah* for the Toes**

L37489 2050. Legal Question: We have mentioned the reports transmitted regarding this matter, and that none of it is valid except what has been established concerning the fingers - with the ruling on toes being identical to that of the fingers in every respect, as we have stated. No aspect of the legal ruling differs in any of these matters due to the generality of his statement (peace be upon him): "The fingers are equal in compensatory rulings, and ten [units] for each finger," meaning each individual finger.

٢٠٥٠ - مَسْأَلَةٌ: وَقَدْ ذَكَرْنَا مَا جَاءَ عَنْ ذَلِكَ فِي الْأَثَرِ، وَأَنَّهُ لَا يَصِحُّ مِنْ ذَلِكَ شَيْءٌ إِلَّا مَا جَاءَ فِي الْأَصَابِعِ بِالْقَوْلِ فِي أَصَابِعِ الرِّجْلِ كَمَا قُلْنَا فِي أَصَابِعِ الْيَدِ سَوَاءٌ سَوَاءٌ، لَا يَفْتَرِقُ شَيْءٌ مِنْ الْحُكْمِ فِي ذَلِكَ فِي جَمِيعِ الْمَسَائِلِ لِعُمُومِ قَوْلِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «الْأَصَابِعُ سَوَاءٌ وَفِي الْأَصَابِعِ عَشْرٌ عَشْرٌ» يَعْنِي كُلَّ وَاحِدَةٍ.

L37490–37492 Abdullah ibn Rabiʿ narrated to us on the authority of Abdullah ibn Muhammad ibn Uthman, who narrated from Ahmad ibn Khalid, from Ali ibn Abdulaziz, from al-Hajjaj ibn al-Minhal, from Abu Awanah, from Asim ibn Ḍamrah, from Ali ibn Abi Talib, who said: "For the nose, the full diyah is due; for the tongue, the full diyah is due; for the male organ, the full diyah is due; for the eye, half the diyah is due; for the ear, half the diyah is due; for the hand, half the diyah is due; and for the leg, half the diyah is due." And through him to Al-Ḥajjāj ibn al-Minhāl, narrated to us Ḥammād ibn Salamah from Muḥammad ibn Isḥāq from ʿAmr ibn Shuʿayb, who said: It was in the legal register of Abū Bakr and ʿUmar that regarding the leg—if it becomes rigid and he is unable to extend it; or if he extends it but cannot flex it; or if it fails to touch the ground—then [compensation is due] according to the extent of its deficiency.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي الْأَنْفِ، وَفِي اللِّسَانِ الدِّيَةُ، وَفِي الذَّكَرِ الدِّيَةُ، وَفِي الْعَيْنِ النِّصْفُ، وَفِي الْأُذُنِ النِّصْفُ، وَفِي الْيَدِ النِّصْفُ، وَفِي الرِّجْلِ النِّصْفُ وَبِهِ إلَى الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: كَانَ فِي كِتَابِ أَبِي بَكْرٍ، وَعُمَرَ: أَنَّ فِي الرِّجْلِ إذَا يَبِسَتْ فَلَمْ يَسْتَطِعْ أَنْ يَبْسُطَهَا، أَوْ يَبْسُطُهَا فَلَمْ يَسْتَطِعْ أَنْ يَقْبِضَهَا، أَوْ لَمْ تَنَلْ الْأَرْضَ فَبِقَدْرِ مَا نَقَصَ مِنْهَا.

L37493 From the narration of Abd al-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz, from his father, from Umar ibn al-Khattab, who said: "For the leg, [the compensation is] half the diyah (blood money), or its equivalent in gold or silver. If the amount is reduced, it is calculated proportionally."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: وَفِي الرِّجْلِ نِصْفُ الدِّيَةِ، أَوْ عِدْلُ ذَلِكَ مِنْ الذَّهَبِ أَوْ الْوَرِقِ، فَإِذَا نَقَصَتْ، فَبِالْحِسَابِ.

L37494 From Ibn Jurayj, from ʿAṭāʾ regarding the hand: if it is completely amputated from the shoulder joint, fifty camels. And the leg is likewise.

وَعَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ فِي الْيَدِ تُسْتَأْصَلُ خَمْسُونَ مِنْ الْإِبِلِ إذَا قُطِعَتْ مِنْ الْمَنْكِبِ، وَالرِّجْلُ كَذَلِكَ.

L37495 Ali said: The diyah in that case applies solely to the fingers—just as we have stated regarding the hand, alike, alike—and divine success is from Allah, the Exalted.

قَالَ عَلِيٌّ: الدِّيَةُ فِي ذَلِكَ لِلْأَصَابِعِ فَقَطْ - عَلَى مَا قُلْنَا فِي الْيَدِ سَوَاءٌ سَوَاءٌ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A Question Regarding Diyya (Blood Money) Pertaining to the Tongue/Speech

2051 - Issue: We have previously mentioned the narration concerning this matter and that it is not authentic. Narrated by Ḥumām from Ibn Mufarrij from Ibn al-Aʿrābī from al-Dabarī from ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAmr ibn Shuʿayb, who said: Abū Bakr al-Ṣiddīq - may God be pleased with him - ruled regarding the tongue: if it is severed with full diyah when extracted from its root. And if it is cut from its extremity while the person retains speech, then half the diyah is owed.

And through him to ʿAbd al-Razzāq from Maʿmar from a man from ʿIkrimah, who said: Abū Bakr ruled concerning the tongue that if it is severed, the full blood-money is owed. But if its root is severed—such that some speech becomes clear while some remains unclear—then half the blood-money is owed.

And through him to Abd al-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz, from his father, from Umar ibn al-Khattab, who said: Regarding the tongue - if it is completely uprooted, the full diyah is due. As for any injury to the tongue that reaches the point of preventing speech, the full diyah is required for it.

[مَسْأَلَةٌ الدِّيَة فِي اللِّسَانِ]

٢٠٥١ - مَسْأَلَةٌ: قَدْ ذَكَرْنَا الْأَثَرَ فِي ذَلِكَ وَأَنَّهُ لَا يَصِحُّ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ الصِّدِّيقُ - رَضِيَ اللَّهُ عَنْهُ - فِي اللِّسَانِ إذَا قُطِعَ بِالدِّيَةِ - إذَا نُزِعَ مِنْ أَصْلِهِ - فَإِنْ قُطِعَ مِنْ أَسَلَتِهِ فَتَكَلَّمَ صَاحِبُهُ: فَفِيهِ نِصْفُ الدِّيَةِ.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ قَالَ: قَضَى أَبُو بَكْرٍ فِي اللِّسَانِ إذَا قُطِعَ الدِّيَةُ، فَإِنْ قُطِعَتْ أَسَلَتُهُ - فَبَيَّنَ بَعْضَ الْكَلَامِ وَلَمْ يُبَيِّنْ بَعْضَهُ - فَنِصْفُ الدِّيَةِ.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: فِي اللِّسَانِ إذَا اُسْتُؤْصِلَ دِيَةٌ كَامِلَةٌ، وَمَا أُصِيبَ مِنْ اللِّسَانِ - فَبَلَغَ أَنْ يَمْنَعَ الْكَلَامَ - فَفِيهِ الدِّيَةُ كَامِلَةً.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: فِي اللِّسَانِ الدِّيَةُ - وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ مِثْلُ ذَلِكَ وَعَنْ سُلَيْمَانَ بْنِ مُوسَى أَنَّهُ قَالَ فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي الْأَجْنَادِ مَا قُطِعَ مِنْ اللِّسَانِ فَبَلَغَ أَنْ يَمْنَعَ الْكَلَامَ كُلَّهُ - فَفِيهِ الدِّيَةُ كَامِلَةً، وَمَا نَقَصَ دُونَ ذَلِكَ فَبِحِسَابِهِ.

L37500–37502 And from the path of Al-Ḥajjāj ibn Al-Minhāl: Abū ʻAwanah narrated to us from Abū Isḥāq, from ʻĀṣim ibn Ḍamrah, from ʻAlī, who said: The diyah (blood money) is prescribed for [injuring] the tongue. And from Ibrāhīm an-Nakhaʻī: the same as that. Narrated from Sulaymān ibn Mūsā that he said in the written decree of ʻUmar ibn ʻAbd al-ʻAzīz concerning the troops: Whatever part of the tongue is severed to the extent that it entirely prevents speech—the full *diyah* is required for it. Whatever injury does not reach that severity is compensated proportionally.

وَعَنْ مُجَاهِدٍ قَالَ: فِي اللِّسَانِ الدِّيَةُ كَامِلَةً فَإِنْ قُطِعَتْ أَسَلَتُهُ فَتَبَيَّنَ بَعْضُ الْكَلَامِ، فَإِنَّهُ بِحَسَبِهِ بِالْحُرُوفِ - إِنْ بَيَّنَ نِصْفَ الْحُرُوفِ: فَنِصْفُ الدِّيَةِ - وَإِنْ بَيَّنَ الثُّلُثَ: فَثُلُثُ الدِّيَةِ.

L37503 From Mujāhid it is reported: For [injury to] the tongue, the full diyah (blood-money) is required. If its tip is severed and he can articulate some speech, the compensation is proportionally assessed according to the letters [he can pronounce]—if he articulates half the letters, half the diyah is due; and if he articulates a third of the letters, a third of the diyah is due.

وَعَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: اللِّسَانُ يُقْطَعُ كُلُّهُ، قَالَ: الدِّيَةُ، قُلْت: فَقُطِعَ مِنْهُ مَا يُذْهِبُ الْكَلَامَ، وَيَبْقَى مِنْ اللِّسَانِ، قَالَ: مَا أَرَى إلَّا أَنَّ فِيهِ الدِّيَةَ إذَا ذَهَبَ الْكَلَامُ.

L37504 It is reported from Ibn Jurayj that he said: I asked ʻAta': "Is the entire tongue to be cut off?" He replied: "The blood money is due." I said: "If part of it is cut such that speech is lost, while some of the tongue remains." He said: "In my view, the only ruling is that blood money is required in that case when speech is lost."

وَعَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ أَبِي نَجِيحٍ أَنَّ اللِّسَانَ إذَا قُطِعَ مِنْهُ مَا يُذْهِبُ الْكَلَامَ: أَنَّ فِيهِ الدِّيَةَ، قُلْت: عَمَّنْ؟ قَالَ: هُوَ قَوْلُ الْقِيَاسِ، قَالَ: فَإِنْ ذَهَبَ بَعْضُ الْكَلَامِ وَبَقِيَ بَعْضٌ: فَبِحِسَابِ الْكَلَامِ - وَالْكَلَامُ مِنْ ثَمَانِيَةٍ وَعِشْرِينَ حَرْفًا، قُلْت: عَمَّنْ؟ قَالَ: لَا أَدْرِي.

L37505 From Ibn Jurayj: Ibn Abi Najih informed me that if the part of the tongue responsible for speech is severed, thereby eliminating speech, the full diyah is incurred. I asked: "From whom [is this ruling]?" He said: "It is the ruling based on qiyas (analogical reasoning)." He said: "If some speech is lost while some remains, compensation is proportionate to the speech lost—and speech consists of twenty-eight phonetic units." I asked: "From whom [is this]?" He said: "I do not know."

قَالَ أَبُو مُحَمَّد: وَبِإِيجَابِ الدِّيَةِ فِي اللِّسَانِ وَفِي الْكَلَامِ يَقُولُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُهُمْ.

L37506 Abu Muhammad said: Abu Hanifah, Malik, al-Shafi'i, Ahmad, and their followers affirm the obligation of diyah pertaining to the tongue and speech.

وَأَمَّا الْأَثَرُ فِي ذَلِكَ فَلَا يَصِحُّ.

L37507 As for the tradition concerning that matter, it is not authentic.

L37508 As for the narration from Abū Bakr and ʻUmar – may Allah be pleased with

them – if later scholars authenticated it, they still disregarded Abū Bakr's individual ruling, for he – may Allah be pleased with him – ruled that the loss of the tongue's tip incurs half the *diyya*.

L37509 A ruling such as this cannot be conclusively established as a consensus, for it contains only two interrupted narrations from Abū Bakr and ʿUmar, and a third from ʿAlī—and yet they have contradicted far more instances than this in numerous cases.

L37510 Among these are the rulings of Umar and Ibn Abbas regarding the blind eye and the paralyzed hand.

L37511–37513 The opinion of ʿAlī regarding the clitoris, the opinions of Abū Bakr, ʿUmar, and others concerning retribution (qiwād) for a slap, and other such cases are exceedingly numerous. Thus, in cases involving the tongue if intentional, only retribution (qiwād) or compensation is obligatory, as it constitutes a wound with no further penalty. As for error, accountability is lifted by the explicit text of the Quran, and success comes only from Allah, the Exalted.

L37514 **A legal issue concerning the blood money for the loss of speech pertaining to a foreigner and a mute person.**

L37515 2052 - Issue: On the speech of the non-Arab and the mute.

L37516 Abu Muhammad said: Ahmad ibn ʿUmar narrated to us, from ʿAbdullah ibn al-Ḥusayn ibn ʿIqāl, from Ibrāhīm ibn Muḥammad al-Dīnawarī, from Ibn al-Jahm, from Mūsā ibn Isḥāq al-Anṣārī, from Abū Bakr ibn Abī Shaybah, from Muḥammad ibn Bakr, from Ibn Jurayj, from Qatādah, who said: For the tongue of a mute person, it is one-third of that for the tongue of a healthy person.

L37517 Narrated by Hammam, narrated by Ibn Mufarrij, narrated by Ibn al-A'rabi, narrated by al-Dabari, narrated by Abd al-Razzaq from Ibn Jurayj from a man from Makhul, who said: Umar ibn al-Khattab ruled that severing the tongue of a mute person incurs a third of the diyah as compensation.

L37518 And via him to Abd al-Razzaq, narrated by Ma'mar from Qatadah, who said

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - فَإِنْ صَحَّحُوهَا: فَرِوَايَةُ أَبِي بَكْرٍ قَدْ خَالَفُوهَا، لِأَنَّهُ - رَضِيَ اللَّهُ عَنْهُ - جَعَلَ فِي ذَهَابِ أَسَلَةِ اللِّسَانِ نِصْفَ الدِّيَةِ.

وَمِثْلُ هَذَا لَا يَجُوزُ أَنْ يُقْطَعَ فِيهِ عَلَى أَنَّهُ إجْمَاعٌ، إذْ لَيْسَ فِيهِ إلَّا أَثَرَانِ عَنْ أَبِي بَكْرٍ، وَعُمَرَ مُنْقَطِعَانِ - وَثَالِثٌ عَنْ عَلِيٍّ، وَهُمْ قَدْ خَالَفُوا أَضْعَافَ هَذَا فِي غَيْرِ مَا مَوْضِعٍ.

مِنْ ذَلِكَ قَوْلُ عُمَرَ، وَابْنِ عَبَّاسٍ، فِي الْعَيْنِ الْعَوْرَاءِ، وَالْيَدِ الشَّلَّاءِ.

وَقَوْلُ عَلِيٍّ فِي السِّمْحَاقِ، وَقَوْلُ أَبِي بَكْرٍ، وَعُمَرَ، وَغَيْرُهُمَا، فِي الْقَوَدِ مِنْ اللَّطْمَةِ، وَغَيْرُ ذَلِكَ كَثِيرٌ جِدًّا، فَالْوَاجِبُ أَنْ لَا يَجِبَ فِي اللِّسَانِ - إذَا كَانَ عَمْدًا - إلَّا الْقَوَدُ أَوْ الْمُفَادَاةُ، لِأَنَّهُ جُرْحٌ، وَلَا مَزِيدَ وَأَمَّا الْخَطَأُ - فَمَرْفُوعٌ بِنَصِّ الْقُرْآنِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةِ لِسَانِ الْأَعْجَمِ وَالْأَخْرَسِ]

٢٠٥٢ - مَسْأَلَةٌ: فِي لِسَانِ الْأَعْجَمِ وَالْأَخْرَسِ.

قَالَ أَبُو مُحَمَّدٍ: حَدَّثَنَا أَحْمَدُ بْنُ عُمَرَ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نا إبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا ابْنُ الْجَهْمِ نا مُوسَى بْنُ إسْحَاقَ الْأَنْصَارِيُّ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بَكْرٍ عَنْ ابْنِ جُرَيْجٍ عَنْ قَتَادَةَ قَالَ: فِي لِسَانِ الْأَخْرَسِ الثُّلُثُ مِمَّا فِي لِسَانِ الصَّحِيحِ.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ رَجُلٍ عَنْ مَكْحُولٍ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي لِسَانِ الْأَخْرَسِ يُسْتَأْصَلُ بِثُلُثِ الدِّيَةِ. .

regarding the tongue of a non-Arab [if injured]: "It is a third of the diyah." This is the opinion of Ibn Shubrumah. It has been narrated from Ibrahim al-Nakha'i that the full diyah is required for it.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ فِي لِسَانِ الْأَعْجَمِيِّ ثُلُثُ الدِّيَةِ وَهُوَ قَوْلُ ابْنِ شُبْرُمَةَ - وَقَدْ رُوِيَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّ فِيهِ الدِّيَةَ كُلَّهَا. .

L37519 Abu Hanifah, Malik, al-Shafi'i, and their companions said: There is nothing in it except arbitration.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ: لَيْسَ فِيهِ إِلَّا حُكُومَةٌ.

L37520 Abu Muhammad said: This is among the matters in which they contradicted the narration from Umar by citing as evidence one weaker than it - when it aligns with their opinions. No disagreement from any of the Companions (may Allah be pleased with them) is reported regarding this matter that contradicts what was narrated from Umar. Yet they magnify such things when it aligns with their opinions.

قَالَ أَبُو مُحَمَّد: وَهَذَا مِمَّا خَالَفُوا فِيهِ الرِّوَايَةَ عَنْ عُمَرَ الَّتِي يَحْتَجُّونَ بِأَضْعَفَ مِنْهَا - إِذَا وَافَقَ آرَاءَهُمْ - وَلَا يُرْوَى فِي ذَلِكَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافٌ لِمَا جَاءَ فِيهِ عَنْ عُمَرَ، وَهُمْ يُعَظِّمُونَ مِثْلَ هَذَا إِذَا وَافَقَ آرَاءَهُمْ.

L37521 Ali said: The tongue of a mute person is like that of others—the harm is equivalent, and qisas (retaliation) is obligatory, based on Allah's statement, the Exalted: "Sacred ordinances are subject to retaliation" [Al-Baqarah: 194], either through retaliation or compensation. The same ruling applies to the tongue of a minor. And success is from Allah, the Exalted.[1]

قَالَ عَلِيٌّ: لِسَانُ الْأَخْرَسِ كَغَيْرِهِ، وَالْأَلَمُ وَاحِدٌ، وَالْقَوَدُ وَاجِبٌ، لِقَوْلِ اللَّهِ تَعَالَى {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] أَوْ الْمُفَادَاةُ، وَكَذَلِكَ لِسَانُ الصَّغِيرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37522 **A legal issue: If one amputates a hand with gangrene, extracts a painful molar, or extracts a decayed molar without the owner's consent.**

[مَسْأَلَةٌ قَطَعَ يَدًا فِيهَا أَكَلَةٌ أَوْ قَلَعَ ضِرْسًا وَجِعَةً أَوْ مُتَأَكِّلَةً بِغَيْرِ إِذْنِ صَاحِبِهَا]

L37523 Issue 2053: Concerning one who amputates a hand afflicted with an ulcer, extracts an aching tooth or a decayed tooth without the person's permission.

٢٠٥٣ - مَسْأَلَةٌ: فِيمَنْ قَطَعَ يَدًا فِيهَا أَكَلَةٌ، أَوْ قَلَعَ ضِرْسًا وَجِعَةً، أَوْ مُتَأَكِّلَةً بِغَيْرِ إِذْنِ صَاحِبِهَا.

L37524–37526 Abu Muhammad said: Allah, the Exalted, said: "And cooperate in righteousness and piety, and do not cooperate in sin and aggression" [Al-Ma'idah 5:2]. And He, the Exalted, said: "So whoever transgresses against you, retaliate in the same manner he has transgressed against you" [Al-Baqarah: 194].[2]

قَالَ أَبُو مُحَمَّد: قَالَ اللَّهُ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَقَالَ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L37527 The obligation is to apply these two texts from the speech of Allah the

فَالْوَاجِبُ اسْتِعْمَالُ هَذَيْنِ النَّصَّيْنِ مِنْ كَلَامِ اللَّهِ تَعَالَى، فَيُنْظَرُ، فَإِنْ قَامَتْ بَيِّنَةٌ، أَوْ عَلِمَ الْحَاكِمُ أَنَّ تِلْكَ الْيَدَ لَا يُرْجَى لَهَا بُرْءٌ، وَلَا تَوَقُّفٌ، وَأَنَّهَا مُهْلِكَةٌ وَلَا بُدَّ، وَلَا دَوَاءَ لَهَا إِلَّا

[1] **Qur'an references (L37521):** Qur'an 2:194 (Al-Baqarah).
[2] **Qur'an references (L37524):** Qur'an 5:2 (Al-Ma'idah); Qur'an 2:194 (Al-Baqarah).

Exalted. The case is then evaluated: if clear evidence is presented, or the judge determines that the hand has no hope of healing, no possibility of halting the harm's progression, that it is inevitably fatal, and that no treatment exists except amputation, then there is no liability upon the amputator. He has acted rightly, for this constitutes treatment. Indeed, the Messenger of Allah—peace and blessings be upon him—commanded seeking treatment.

الْقَطْعُ، فَلَا شَيْءَ عَلَى الْقَاطِعِ، وَقَدْ أَحْسَنَ، لِأَنَّهُ دَوَاءٌ، وَقَدْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْمُدَاوَاةِ.

L37528 And likewise, the ruling applies to a tooth causing severe pain that prevents him from his prayer and attending to his necessary matters, for this is cooperation in righteousness and God-consciousness.

وَهَكَذَا الْقَوْلُ فِي الضِّرْسِ إِذَا كَانَ شَدِيدَ الْأَلَمِ قَاطِعًا بِهِ عَنْ صَلَاتِهِ، وَمَصَالِحِ أُمُورِهِ، فَهَذَا تَعَاوُنٌ عَلَى الْبِرِّ وَالتَّقْوَى.

L37529 Muhammad ibn Umar al-Udhri narrated to us: Abu Dharr al-Harawi narrated to us: Abdullah ibn Muhammad al-Saydalani (in Balkh) narrated to us: Abd al-Rahman ibn Abi Hatim narrated to us: al-Hasan ibn Arafah narrated to us: Waki' narrated to us from Mis'ar ibn Kidam and Sufyan al-Thawri from Ziyad ibn Ilaqah from Yahya ibn Usamah ibn Sharik, who said: The Messenger of Allah, peace and blessings be upon him, said, "Seek treatment, for Allah has not created a disease without creating a cure for it, except one disease." They asked, "What is it, O Messenger of Allah?" He replied, "Old age."

نا مُحَمَّدُ بْنُ عُمَرَ الْعُذْرِيُّ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الصَّيْدَلَانِيُّ بِبَلْخٍ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي حَاتِمٍ نا الْحَسَنُ بْنُ عَرَفَةَ نا وَكِيعٌ عَنْ مِسْعَرِ بْنِ كِدَامٍ وَسُفْيَانَ الثَّوْرِيِّ عَنْ زِيَادِ بْنِ عِلَاقَةَ عَنْ يَحْيَى بْنِ أُسَامَةَ بْنِ شَرِيكٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَدَاوَوْا فَإِنَّ اللَّهَ لَمْ يَضَعْ دَاءً إِلَّا وَضَعَ لَهُ شِفَاءً، غَيْرَ دَاءٍ وَاحِدٍ؟ قَالُوا: وَمَا هُوَ يَا رَسُولَ اللَّهِ؟ قَالَ: الْهَرَمُ» .

L37530 Ali said: "Whoever treats his Muslim brother medically as Allah the Exalted has commanded through the tongue of His Prophet (blessings and peace be upon him) has indeed done good. Allah the Exalted says: 'There is no blame upon those who do good' [At-Tawbah: 91]."[3]

قَالَ عَلِيٌّ: فَمَنْ دَاوَى أَخَاهُ الْمُسْلِمَ كَمَا أَمَرَهُ اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَقَدْ أَحْسَنَ، قَالَ اللَّهُ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] .

L37531 If the decayed tooth is expected to heal or cease progression, and the molar occasionally stops [causing pain] without fully disrupting his prayers or essential matters, then retaliation (qisas) is mandated for the one who cuts or extracts it, for he is then a transgressor. Allah the Exalted has ordained qisas for deliberate physical injury (qawd).

وَأَمَّا إِذَا كَانَ يُرْجَى لِلْأَكَلَةِ بُرْءٌ أَوْ تَوَقُّفٌ، وَكَانَ الضِّرْسُ تَتَوَقَّفُ أَحْيَانًا، وَلَا يَقْطَعُ شُغْلُهُ عَنْ صَلَاتِهِ، وَمَصَالِحِ أُمُورِهِ، فَعَلَى الْقَاطِعِ وَالْقَالِعِ: الْقَوَدُ، لِأَنَّهُ حِينَئِذٍ مُتَعَدٍّ، وَقَدْ أَمَرَ اللَّهُ تَعَالَى بِالْقِصَاصِ فِي الْقَوَدِ.

[مَسْأَلَةٌ دِيَةُ الْبَحَحِ وَالْغَنَنِ وَالصَّعَرِ وَالْحَدَبِ]

L37532 **A question regarding the blood money (diyah) for hoarseness, nasal speech, twisted neck, and hunchback.**

[3] **Qur'an references (L37530):** Qur'an 9:91 (At-Tawbah).

L37533–37535 2054. Issue: Abū Muḥammad said: Al-baḥaḥ - a coarseness arising from excess fluid descending within the tubes of the lung - causes speech not to become - entirely - clear, and it may intensify until speech becomes wholly unintelligible. Al-Ghunnah is the nasal emission of speech originating in the nostrils.

٢٠٥٤ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: الْبَحَحُ - هُوَ خُشُونَةٌ تَعْرِضُ مِنْ فَضْلٍ نَازِلٍ فِي أَنَابِيبِ الرِّئَةِ، فَلَا يَتَبَيَّنُ الْكَلَامُ - كُلَّ الْبَيَانِ - وَقَدْ يَزِيدُ حَتَّى لَا يَتَبَيَّنَ أَصْلًا وَالْغَنَنُ - هُوَ خُرُوجُ الْكَلَامِ مِنْ الْمَنْخَرَيْنِ.

L37536 Torticollis is the tilting of the entire face to one side due to a visible twisting.

وَالصَّعَرُ - هُوَ مِيلُ الْوَجْهِ كُلِّهِ إلَى نَاحِيَةٍ وَاحِدَةٍ بِانْفِتَالٍ ظَاهِرٍ.

L37537 Al-hadab (kyphosis) is a curvature and bending in the spinal or thoracic vertebrae, and both curvatures may occur together. It may affect the elderly just as it may affect the young. We ask Allah for well-being.

وَالْحَدَبُ - تَقَوُّسٌ، وَانْحَاءٌ فِي فَقَرَاتِ الصُّلْبِ، أَوْ فَقَرَاتِ الصَّدْرِ، وَقَدْ يَجْتَمِعَانِ مَعًا، وَقَدْ يَعْرِضُ لِلْكَبِيرِ كَمَا يَعْرِضُ لِلصَّغِيرِ - نَسْأَلُ اللَّهَ الْعَافِيَةَ.

L37538 Abdullah ibn Rabi' narrated to us from Abdullah ibn Muhammad ibn Uthman, from Ahmad ibn Khalid, from Ali ibn Abd al-Aziz, from al-Hajjaj ibn al-Minhal, from Hammad ibn Salamah, from al-Hajjaj, from Makḥūl, that Zayd ibn Thabit said: For spinal curvature, the full blood money is due; for hoarseness, the full blood money is due; for a tilted neck, half the blood money is due; and for nasal speech impairment, blood money is proportionate to the extent of the impairment.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا الْحَجَّاجُ عَنْ مَكْحُولٍ أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: فِي الْحَدَبِ الدِّيَةُ كَامِلَةٌ، وَفِي الْبَحَحِ الدِّيَةُ كَامِلَةٌ وَفِي الصَّعَرِ نِصْفُ الدِّيَةِ، وَفِي الْغَنَنِ بِقَدْرِ مَا غَنَّنَ.

L37539 Narrated by Humaam from Ibn Mufarrij from Ibn al-A'rabi from al-Dabari from Abd al-Razzaq from more than one transmitter from al-Hajjaj from Makhul from Zayd ibn Thabit, who said: Regarding torticollis - if it cannot be turned - the full diyah is due.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ غَيْرِ وَاحِدٍ عَنْ الْحَجَّاجِ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي الصَّعَرِ - إذَا لَمْ يُلْتَفَتْ - الدِّيَةُ كَامِلَةٌ.

L37540–37541 And through him, from Ibn Jurayj to Abd al-Razzaq, Abd al-Aziz ibn Umar ibn Abd al-Aziz reported to me, saying: Umar ibn Abd al-Aziz ruled regarding torticollis (al-sa'ar)—if a man cannot turn his head except by tilting it—that half the blood money amounts to five hundred dinars. Ma'mar also concurs with this ruling.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: قَالَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ فِي الصَّعَرِ - إذَا لَمْ يَلْتَفِتْ الرَّجُلُ إلَّا مُنْحَرِفًا - نِصْفُ الدِّيَةِ خَمْسُمِائَةِ دِينَارٍ - وَبِهِ يَقُولُ مَعْمَرٌ.

L37542 Aḥmad ibn Ḥanbal said: The *diyah* applies to wryneck.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: فِي الصَّعَرِ الدِّيَةُ.

L37543 Abu Muhammad said: Abu Hanifah, Malik, and Al-Shafi'i said: There is nothing in that except arbitration. This is among what they opposed in the

قَالَ أَبُو مُحَمَّد: وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: لَيْسَ فِي ذَلِكَ إلَّا حُكُومَةٌ - وَهَذَا مِمَّا خَالَفُوا فِيهِ الرِّوَايَةَ عَنْ زَيْدِ بْنِ ثَابِتٍ، وَلَا يُعْرَفُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ خِلَافُهُ.

narration from Zayd ibn Thabit, and no disagreement with it from any of the Companions is known.

أَمَّا نَحْنُ فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - إنَّهُ إنْ حَدَثَ كُلُّ ذَلِكَ مِنْ ضَرْبٍ عَمْدٍ

L37544 As for us, we say—and success is from Allah, the Exalted—if all of that occurs through an intentional strike, retaliation is exacted in kind to whatever extent it reaches. If the same occurs, then proceed; otherwise, there is nothing more upon the offender than being retaliated against with the same manner he perpetrated—and it is not permissible to retaliate against him with that which he did not perpetrate. If we were capable of making him reach the same extent he reached through his injustice, we would do so. But since we are incapable of that, what cannot be achieved is no longer incumbent upon us.

أُقْتُصَّ بِمِثْلِ ذَلِكَ بَالِغًا مَا بَلَغَ، فَإِنْ حَدَثَ مِثْلُ ذَلِكَ، وَإِلَّا فَلَا شَيْءَ عَلَى الْجَانِي أَكْثَرَ مِنْ أَنْ يُعْتَدَى عَلَيْهِ بِمِثْلِ مَا اعْتَدَى - وَلَا يَجُوزُ أَنْ يُعْتَدَى عَلَيْهِ بِمَا لَمْ يَعْتَدِ هُوَ بِهِ - وَلَوْ قَدَرْنَا عَلَى أَنْ نُبَلِّغَهُ حَيْثُ بَلَغَهُ هُوَ بِظُلْمِهِ لَفَعَلْنَا، وَلَكِنْ إذْ عَجَزْنَا عَنْ ذَلِكَ فَقَدْ سَقَطَ عَنَّا مَا لَا يُقْدَرُ عَلَيْهِ.

L37545 As Allah, the Most High, states: “Allah does not charge a soul except according to its capacity” [Al-Baqarah: 286].[4]

لِقَوْلِ اللَّهِ تَعَالَى {لا يُكَلِّفُ اللَّهُ نَفْسًا إِلا وُسْعَهَا} [البقرة: ٢٨٦] .

L37546 Due to the statement of the Messenger of Allah (peace and blessings be upon him), “When I command you with a matter, act upon it to the best of your ability,” and he has indeed commanded us to uphold _qisas_ [retaliation in kind] as a general principle.

وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا أَمَرْتُكُمْ بِأَمْرٍ فَأْتُوا مِنْهُ مَا اسْتَطَعْتُمْ» وَقَدْ أَمَرَنَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْقِصَاصِ جُمْلَةً.

[مَسْأَلَةُ الدِّيَةِ فِي الظُّفْرِ]

The Ruling on Diyah Pertaining to the Nail

L37547

٢٠٥٥ - مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي الظُّفْرِ إذَا أَعْوَرَ بَعِيرٌ، وَإِذَا ثَبَتَ: خُمُسَا بَعِيرٍ، وَفِي كُلِّ مِفْصَلٍ مِنْ مَفَاصِلِ الْأُصْبُعِ إذَا انْكَسَرَ ثُمَّ انْجَبَرَ: ثُلُثَا بَعِيرٍ، وَفِي قَصَبَةِ الْأَنْفِ إذَا انْكَسَرَتْ ثُمَّ انْجَبَرَتْ: ثَلَاثَةُ أَبْعِرَةٍ.

L37548 Reported by Abdullah ibn Rabi’, via Abdullah ibn Muhammad ibn Uthman, via Ahmad ibn Khalid, via Ali ibn Abdulaziz, via Al-Hajjaj ibn Al-Minhal, via Hammad ibn Salamah, from Al-Hajjaj, from Makhul, from Zayd ibn Thabit, who said: If a hoof injury causes a camel to lose an eye and the injury is confirmed, the compensation is two-fifths of a camel. For every joint in the toe—if it breaks and heals—the compensation is two-thirds of a camel. For a broken nasal bone that heals, the compensation is three camels.

وَعَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: فِي الظُّفْرِ إذَا أَعْوَرَ: خُمُسُ دِيَةِ الْأُصْبُعِ. .

L37549 Ibn Abbas said: For a nail, if it is destroyed, the compensation is one-fifth of the diyah for the finger.

[4] **Qur’an references (L37545):** Qur’an 2:286 (Al-Baqarah).

وَبِهِ يَقُولُ أَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ.

L37550 And with this say Aḥmad ibn Ḥanbal and Isḥāq.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ، قَالَ مَعْمَرٌ: عَنْ رَجُلٍ عَنْ عِكْرِمَةَ، وَقَالَ ابْنُ جُرَيْجٍ: عَنْ عَمْرِو بْنِ شُعَيْبٍ، ثُمَّ اتَّفَقَ عِكْرِمَةُ، وَعَمْرٌو: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ: فِي الظُّفْرِ إِذَا اعْرَنْجَمَ وَفَسَدَ: قَلُوصٌ.

L37551–37553 And from the chain of ʿAbd al-Razzāq from Maʿmar, and from Ibn Jurayj. Maʿmar said: From a man from… From ʿIkrimah, and Ibn Jurayj reported from ʿAmr ibn Shuʿayb. Then ʿIkrimah and ʿAmr concurred that ʿUmar ibn al-Khattab said regarding the fingernail when it becomes deformed and decayed: "A qalūṣ (young she-camel)."

وَبِهِ إِلَى ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ اجْتَمَعَ لَهُ فِي الظُّفْرِ إِذَا نُزِعَ فَعُرَّ أَوْ سَقَطَ أَوْ اسْوَدَّ: الْعُشْرُ مِنْ الدِّيَةِ عَشْرَةُ دَنَانِيرَ.

L37554 And through him to Ibn Jurayj from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz: that it was established for ʿUmar ibn ʿAbd al-ʿAzīz concerning the nail—if it is extracted and becomes exposed, or detaches, or blackens—the tenth of the diyah is ten dinars.

قَالَ أَبُو مُحَمَّدٍ: هَذَا الْقَلُوصُ عَلَى أَصْلِهِمْ، لِأَنَّهُ عُشْرُ دِيَةِ الْأُصْبُعِ مِنْ الْإِبِلِ.

L37555 Abu Muhammad said: This five-year-old she-camel conforms to their established principle, as it is one-tenth of the blood money for a finger from the camels.

وَبِهِ إِلَى عَبْدِ الرَّزَّاقِ قَالَ: قَالَ الْحَجَّاجُ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ فِي الظُّفْرِ يُقْلَعُ إِنْ خَرَجَ أَسْوَدَ أَوْ لَمْ يَخْرُجْ: فَفِيهِ عَشْرَةُ دَنَانِيرَ، وَإِنْ خَرَجَ أَبْيَضَ خَمْسَةُ دَنَانِيرَ.

L37556 And by him to ʿAbd al-Razzāq, who said: al-Ḥajjāj narrated from Makḥūl from Zayd ibn Thābit regarding a fingernail that is torn out—if it comes out black or is not removed, the compensation is ten dinars; and if it comes out white, the compensation is five dinars.

وَعَنْ مُجَاهِدٍ أَنَّهُ قَالَ: إِنْ اسْوَدَّ الظُّفْرُ أَوْ اعْوَرَّ: فَنَاقَةٌ.

L37557 And from Mujāhid that he said: If the hoof turns black or becomes defective, then a she-camel is due.

وَعَنْ مُجَاهِدٍ أَنَّهُ كَانَ يَقُولُ: إِنْ لَمْ يَنْبُتْ الظُّفْرُ: فَنَاقَةٌ.

L37558 And from Mujāhid that he used to say: "If the nail does not regrow, then a she-camel is owed as compensation."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا مُحَمَّدُ بْنُ الْحَارِثِ بْنِ سُفْيَانَ عَنْ أُذَيْنَةَ أَنَّهُ كَانَ يَقُولُ: فِي الظُّفْرِ إِذَا طُرِحَتْ، فَلَمْ تَنْبُتْ: بِنْتُ مَخَاضٍ، فَإِنْ لَمْ يَكُنْ: فَابْنُ لَبُونٍ.

L37559 From the chain of ʿAbd al-Razzāq → Ibn Jurayj → Muḥammad ibn al-Ḥārith ibn Sufyān → Udhaynah, who said: "Regarding [compensation for] a hoof that is detached and does not regrow: a *bint makhāḍ* (she-camel that has entered its second year). If none [of this category] is available, then an *ibn labūn* (male camel that has entered its third year)."

وَعَنْ عَطَاءٍ قَالَ: سَمِعْت فِي الظُّفْرِ شَيْئًا لَا أَدْرِي مَا هُوَ؟ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: فِيهِ حُكُومَةٌ.

L37560 Ata reported: "I heard something about the nail, but I do not know what it is?" Malik and Al-Shafi'i said: "It entails compensation assessment."

L37561 Ali said: We do not know of anyone before Mālik from whom a statement

endorsing arbitration in such cases was transmitted.

L37562 As for us, we do not accept any proof in the words of anyone apart from the Messenger of Allah—may Allah bless him and grant him peace. Therefore, since there is no textual evidence or consensus on this matter, there is nothing [in it] except qisāṣ (retaliation) in cases of intentional harm alone, or ransom, for it is a wound. As for accidental harm, nothing is due. And success comes only from Allah, the Exalted.

L37563 **An issue concerning the diyah (blood money) pertaining to the two lips.**

L37564–37566 2056 – Question: Narrated by ʿAbdullāh ibn Rabīʿ, via ʿAbdullāh ibn Muḥammad ibn ʿUthmān, on the authority of Aḥmad ibn Khālid. Ali ibn Abd al-Aziz narrated from Al-Hajjaj ibn Al-Minhal, who narrated from Hammad ibn Salamah, who said: **I** heard from Al-Hajjaj ibn Makḥūl, who reported from Zayd ibn Thabit, who said: For the **eyelid**, one-third of the *diyah* is due; for the upper lip, one-third of the *diyah* is due; and for the lower lip, two-thirds of the *diyah* is due, because it **prevents** food and drink from spilling.

L37567 And from Sa'id ibn al-Musayyib, the like of that.

L37568 And through the chain of Abd al-Razzaq from Ibn Jurayj from Amr ibn Shu'ayb, who said: Abu Bakr ruled that the diyah for both lips is one hundred camels.

L37569 Via the chain of al-Ḥajjāj ibn al-Minhāl: Abū ʿAwāna narrated to us from Abū Isḥāq from ʿĀṣim ibn Ḍamra from ʿAlī, who said: "For one of the lips: half" (meaning half the diyya).

L37570 And from the narration chain of Abd al-Razzaq, from Ibn Jurayj who said: I asked Ata', "The two lips?" He replied, "Fifty camels."

L37571 Narrated via Abd al-Razzaq, from Ma'mar, from Qatadah, who said: For an

قَالَ عَلِيٌّ: وَمَا نَعْلَمُ أَحَدًا قَبْلَ مَالِكٍ رُوِيَ عَنْهُ الْقَوْلُ بِالْحُكُومَةِ هَاهُنَا.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذْ لَا نَصَّ فِي هَذَا، وَلَا إجْمَاعَ: فَلَا شَيْءَ فِيهِ إلَّا الْقَوَدُ فِي الْعَمْدِ - فَقَطْ، أَوْ الْمُفَادَاةِ، فَإِنَّهُ جُرْحٌ - وَأَمَّا فِي الْخَطَأِ فَلَا شَيْءَ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الدِّيَةِ فِي الشَّفَتَيْنِ]

٢٠٥٦ - مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا الْحَجَّاجُ بْنُ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي الْحَاجِبِ ثُلُثُ الدِّيَةِ، وَفِي الشَّفَةِ الْعُلْيَا ثُلُثُ الدِّيَةِ، وَفِي الشَّفَةِ السُّفْلَى ثُلُثَا الدِّيَةِ، لِأَنَّهَا تَرُدُّ الطَّعَامَ وَالشَّرَابَ.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِثْلُ ذَلِكَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ فِي الشَّفَتَيْنِ الدِّيَةُ مِائَةٌ مِنْ الْإِبِلِ.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ قَالَ: فِي إحْدَى الشَّفَتَيْنِ النِّصْفُ - يَعْنِي: نِصْفَ الدِّيَةِ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: الشَّفَتَانِ؟ قَالَ: خَمْسُونَ مِنْ الْإِبِلِ.

injury to one of the lips, half the *diyah* is due.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: فِي إحْدَى الشَّفَتَيْنِ نِصْفُ الدِّيَةِ.

L37572 It has also been narrated to us - from Al-Shaʿbī and from Mujāhid, who said: "The two lips are equal, but the lower lip is given preference in the case of camels."

وَرُوِّينَا أَيْضًا - عَنْ الشَّعْبِيِّ، وَعَنْ مُجَاهِدٍ قَالَ: الشَّفَتَانِ سَوَاءٌ، وَإِنَّمَا تُفَضَّلُ السُّفْلَى فِي الْإِبِلِ.

L37573 Ali said: "This is a matter on which Ali and Zaid differed, as we have conveyed. There exists no definitive textual proof regarding rulings on the lips, nor any consensus whatsoever, nor is there any valid proof in the opinion of anyone apart from the Messenger of Allah—may Allah bless him and grant him peace—and ill-gotten wealth is inherently prohibited."

قَالَ عَلِيٌّ: هَذَا مَكَانٌ اخْتَلَفَ فِيهِ عَلِيٌّ، وَزَيْدٌ، كَمَا أَوْرَدْنَا، وَلَا يَصِحُّ فِي الشَّفَتَيْنِ نَصٌّ، وَلَا إجْمَاعٌ أَصْلًا، وَلَا حُجَّةٌ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْأَمْوَالُ مُحَرَّمَةٌ.

L37574 The followers of Abū Ḥanīfah, Mālik, and Al-Shāfiʿī opposed Zayd ibn Thābit on this issue and opposed [other positions] in many preceding chapters. They opposed Companions for whom no dissent is known from their peers, doing so without any valid proof from the Qur'ān, the Sunnah, or consensus. The obligatory ruling for injuries to the lips is retribution in cases of intentional harm or blood money, because the injury is classified as a wound.

وَأَصْحَابُ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، قَدْ خَالَفُوا هَاهُنَا زَيْدَ بْنَ ثَابِتٍ وَخَالَفُوا فِي كَثِيرٍ مِنْ الْأَبْوَابِ الْمُتَقَدِّمَةِ: صَحَابَةً لَا يُعْرَفُ لَهُمْ مُخَالِفٌ مِنْهُمْ بِلَا حُجَّةٍ، مِنْ قُرْآنٍ وَلَا مِنْ سُنَّةٍ، وَلَا مِنْ إجْمَاعٍ، فَالْوَاجِبُ فِي الشَّفَتَيْنِ: الْقَوَدُ فِي الْعَمْدِ، أَوْ الْمُفَادَاةُ، لِأَنَّهُ جُرْحٌ.

L37575 In the case of error, nothing is required, because blame is removed from the one who errs and property is inviolable except by definitive textual proof or consensus—and with Allah, the Most High, is success.

وَأَمَّا فِي الْخَطَأِ فَلَا شَيْءَ، لِرَفْعِ الْجَنَاحِ عَنْ الْمُخْطِئِ، وَتَحْرِيمِ الْأَمْوَالِ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Diyah Related to Hearing

[مَسْأَلَةُ الدِّيَةِ فِي السَّمْعِ]

L37576–37577

L37578 Issue: Muḥammad ibn Saʿīd ibn Nubāt narrated to us from ʿAbdullāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ from Sufyān, who reported from ʿAwf, who said: I heard a shaykh narrating in the mosque, so I seated him. They said, "That is Abū'l-Muhallab, the uncle of Abū Qilābah." He said: A man threw a stone at another man's head, causing him to lose his hearing, speech, and sanity, and his penis to wither. ʿUmar ibn al-Khaṭṭāb ruled that four diyāt were owed for this.

مَسْأَلَةٌ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ عَنْ عَوْفٍ قَالَ: سَمِعْت شَيْخًا يُحَدِّثُ فِي الْمَسْجِدِ فَجَلَسْته، فَقَالُوا: ذَاكَ أَبُو الْمُهَلَّبِ عَمُّ أَبِي قِلَابَةَ قَالَ: رَمَى رَجُلٌ رَجُلًا بِحَجَرٍ فِي رَأْسِهِ، فَذَهَبَ سَمْعُهُ، وَلِسَانُهُ، وَعَقْلُهُ، وَيَبِسَ ذَكَرُهُ فَقَضَى فِيهِ عُمَرُ بْنُ الْخَطَّابِ بِأَرْبَعِ دِيَاتٍ.

L37579 Ali said: There is nothing from any of the Companions—may Allah be pleased with them—regarding hearing except this, and it is not valid, for Abu al-Muhallab never met Umar at all. There is no narration from the Prophet—peace and blessings of Allah be upon him—concerning hearing—neither authentic nor weak—nor is it known that any of the Successors made blood money obligatory for it except Qatada alone, though others disagreed with him.

قَالَ عَلِيٌّ: لَيْسَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - شَيْءٌ فِي السَّمْعِ غَيْرَ هَذَا، وَهُوَ لَا يَصِحُّ، لِأَنَّ أَبَا الْمُهَلَّبِ لَمْ يُدْرِكْ عُمَرَ أَصْلًا، وَلَا فِي السَّمْعِ أَثَرٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا صَحِيحٌ وَلَا سَقِيمٌ، وَلَا يُعْرَفُ فِيهِ إيجَابُ الدِّيَةِ عَنْ أَحَدٍ مِنْ التَّابِعِينَ، إلَّا قَتَادَةَ وَحْدَهُ - وَقَدْ خَالَفَهُ غَيْرُهُ -.

L37580 As narrated to us by Hummam, from Ibn Mufarrij, from Ibn al-A'rabi, from al-Dabari, from Abd al-Razzaq, from Ibn Jurayj, from Ibn Abi Najih, from Mujahid, who said: In the loss of hearing, fifty.

كَمَا حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ عَنْ ابْنِ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: فِي ذَهَابِ السَّمْعِ خَمْسُونَ.

L37581 And through him to Ibn Jurayj from 'Aṭā', who said: Nothing has reached me concerning hearing. It has only been reported from 'Umar ibn 'Abd al-'Azīz, Ibrāhīm al-Nakha'ī, and Ibn 'Ulātha: his preferred claim is that his hearing was merely lost, with no liability for diyah at all. We mention this to preempt deceptive distortions by those who might obscure it, as we have been narrated through the chain of 'Abd al-Razzāq from Ibn Jurayj, who said: What was agreed upon for 'Umar ibn 'Abd al-'Azīz is that he said: I have not heard [any ruling] for injuries to the mouth and nostrils being generalized. But if a ringing sound is heard in the ear, then there is no harm.

وَبِهِ إلَى ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: لَمْ يَبْلُغْنِي فِي السَّمْعِ شَيْءٌ وَإِنَّمَا جَاءَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَابْنِ عُلَاثَةَ: اخْتِيَارُ دَعْوَاهُ فِي أَنَّهُ ذَهَبَ سَمْعُهُ فَقَطْ، لَا إيجَابَ دِيَةٍ أَصْلًا، وَنَذْكُرُهُ لِئَلَّا يُمَوِّهُ بِهِ مُمَوِّهٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: مَا اُجْتُمِعَ عَلَيْهِ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنْ قَالَ: لَا أَسْمَعُ فِي شَيْءٍ يُصَابُ بِهِ، عَمَمٌ بِهِ فَاهُ، وَمِنْخَرَيْهِ، فَإِنْ سُمِعَ صَرِيرٌ فِي الْأُذُنِ فَلَا بَأْسَ.

L37582 A man came to Umar ibn Abd al-Aziz and said: "So-and-so struck me until one of my ears became deaf." Umar asked him: "How do you know that?" The man said: "Summon the physicians." Umar summoned them, and they smelled it. They then said: "This is the deaf one."

وَجَاءَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ رَجُلٌ فَقَالَ: ضَرَبَنِي فُلَانٌ حَتَّى صُمَّتْ إحْدَى أُذُنَيْ، فَقَالَ لَهُ: كَيْفَ تَعْلَمُ ذَلِكَ؟ قَالَ: اُدْعُ الْأَطِبَّةَ؟ فَدَعَاهُمْ، فَشَمُّوهَا، فَقَالُوا لِلصَّمَّاءِ: هَذِهِ الصَّمَّاءُ.

L37583 From the chain of Abd al-Razzaq, from Sufyan al-Thawri, who said: It has reached me from Ibrahim and others that he said: He is examined, then it is observed whether he can hear or not.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: بَلَغَنِي عَنْ إبْرَاهِيمَ، وَغَيْرِهِ قَالَ: يُخْتَبَرُ، فَيُنْظَرُ هَلْ يَسْمَعُ أَمْ لَا؟

L37584–37586 From Abd al-Razzaq, from Ma'mar: I asked Ibn 'Ulātha the judge: "If a man claims against another that he deafened him by striking him, how can he establish that?" He said: "He must seek lapses [in his account]. If he is able to..." If there is a claim—otherwise he is made to swear an oath and then

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ سَأَلْتُ ابْنَ عُلَاثَةَ الْقَاضِي قُلْت: الرَّجُلُ يَدَّعِي عَلَى الرَّجُلِ أَنَّهُ أَصَمَّهُ مَنْ ضَرَبَهُ، كَيْفَ لَهُ أَنْ يَعْلَمَ ذَلِكَ؟ قَالَ: يَلْتَمِسُ - غَفَلَاتِهِ فَإِنْ قَدَرَ عَلَى

granted [the claim]—if he alleges deafness in one ear but not the other, it has reached me that the ear claimed not to be deaf is stuffed, and his lapses of attention are tested for.

L37587 Abu Hanifah, Malik, al-Shafi'i, and their respective followers stated that the *diyah* is due for the loss of hearing, as there is no explicit text or consensus on this matter due to the valid existence of disagreement, as we previously mentioned. Abu Hanifah also held that the *diyah* applies to the loss of smell.

L37588 Abu Muhammad said: This is the establishment of a Sharia obligation – and Sharia rulings are only established by Allah, the Exalted, in the Quran or through the tongue of His Messenger (peace and blessings be upon him). No weight is given to testimony invalidated by error, for wealth is prohibited unless justified by a textual proof or consensus.

L37589 As for intentional injury, if *qisas* can be exacted from him in the same manner he inflicted harm, it is obligatory. A substance that causes deafness—selected from those that ensure his death does not occur—must be poured into his ear. This constitutes *qisas*.

L37590 **[The Issue of Diyah Regarding the Ear]**

L37591 2058 - Issue: We have mentioned in the manuscript of Ibn Hazm and the narration of Makhul regarding the ears - the diyah applies. Reports concerning this have been transmitted from the Salaf. It has been narrated to us through Sa'id ibn Mansur: Sufyān ibn 'Uyaynah narrated from 'Abdullāh ibn Ṭāwūs, from his father, that Abū Bakr al-Ṣiddīq ruled fifteen camels as the prescribed diyah for an ear, with none having issued such a ruling before him. He said: "The hair, turban, and cap cover it."

L37592 It was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from Ayyūb al-Sikhtiyānī from ʿIkrimah that Abū Bakr al-Ṣiddīq ruled fifteen [camels] from the camels for an ear [injury], saying: "It is merely an injury

شَيْءٍ وَإِلَّا اسْتَحْلَفَ ثُمَّ أَعْطِي، فَإِنْ ادَّعَى صَمَمًا فِي إحْدَى أُذُنَيْهِ دُونَ الْأُخْرَى، فَإِنَّهُ بَلَغَنِي أَنَّهُ تُحْشَى الَّتِي لَمْ تُصَمَّ، وَتُلْتَمَسُ غَفَلَاتُهُ.

وَقَالَ أَبُو حَنِيفَةَ وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمْ: فِي ذَهَابِ السَّمْعِ الدِّيَةُ - وَهَذَا لَا نَصَّ فِيهِ، وَلَا إجْمَاعَ، لِصِحَّةِ وُجُودِ الْخِلَافِ كَمَا ذَكَرْنَا، وَقَالَ أَبُو حَنِيفَةَ: فِي ذَهَابِ الشَّمِّ الدِّيَةُ.

قَالَ أَبُو مُحَمَّد: وَهَذَا إيجَابُ شَرِيعَةٍ - وَالشَّرَائِعُ لَا يُوجِبُهَا إلَّا اللَّهُ تَعَالَى فِي الْقُرْآنِ، أَوْ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلَا شَيْءَ فِي ذَهَابِ السَّمْعِ بِالْخَطَأِ، لِأَنَّ الْأَمْوَالَ مُحَرَّمَةٌ، إلَّا بِنَصٍّ أَوْ إجْمَاعٍ.

وَأَمَّا فِي الْعَمْدِ، فَإِنْ أَمْكَنَ الْقِصَاصُ مِنْهُ بِمِثْلِ مَا ضَرَبَ فَوَاجِبٌ، وَيُصَبُّ فِي أُذُنِهِ مَا يُبْطِلُ سَمْعَهُ، مِمَّا يُؤْمَنُ مَعَهُ مَوْتُهُ، فَهَذَا هُوَ الْقِصَاصُ.

[مَسْأَلَةُ الدِّيَةِ فِي الْأُذُنِ]

٢٠٥٨ - مَسْأَلَةٌ: قَدْ ذَكَرْنَا فِي صَحِيفَةِ ابْنِ حَزْمٍ وَحَدِيثِ مَكْحُولٍ: فِي الْأُذُنَيْنِ الدِّيَةُ، وَجَاءَ فِي ذَلِكَ عَنْ السَّلَفِ: وَقَدْ رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَضَى فِي الْأُذُنِ بِخَمْسَ عَشْرَةَ فَرِيضَةً وَلَمْ يَقْضِ فِيهَا أَحَدٌ قَبْلَهُ، وَقَالَ: يُوَارِيهَا الشَّعْرُ وَالْعِمَامَةُ وَالْقَلَنْسُوَةُ.

that neither impairs hearing nor diminishes strength, which are concealed by the hair and turban."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عِكْرِمَةَ أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ قَضَى فِي الْأُذُنِ خَمْسَةَ عَشَرَ مِنْ الْإِبِلِ، وَقَالَ: إنَّمَا هُوَ شَيْءٌ لَا يَضُرُّ سَمْعًا، وَلَا يَنْقُصُ قُوَّةً يُغَيِّبُهَا الشَّعْرُ وَالْعِمَامَةُ.

L37593 And through him—(to Maʿmar) from Qatādah, who said: "If an ear is severed, Abū Bakr ruled for it fifteen camels." Thus, this is a ruling.

وَبِهِ - إلَى مَعْمَرٍ عَنْ قَتَادَةَ قَالَ: إذَا قُطِعَتْ الْأُذُنُ قَضَى فِيهَا أَبُو بَكْرٍ بِخَمْسَةَ عَشَرَ مِنْ الْإِبِلِ - فَهَذَا قَوْلٌ.

L37594 From Abd al-Razzaq, from Maʿmar, from Ibn Tawus, from his father: Umar ibn al-Khattab ruled that if an ear is completely removed, the compensation is half the diyah. Abd al-Razzaq said: And the people uphold it.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي الْأُذُنِ إذَا اُسْتُؤْصِلَتْ بِنِصْفِ الدِّيَةِ - قَالَ عَبْدُ الرَّزَّاقِ: وَالنَّاسُ عَلَيْهِ.

L37595–37597 And via the chain of ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAmr ibn Shuʿayb, who said that ʿUmar ibn al-Khaṭṭāb judged... For the ear, the compensation is half the *diyah*, or the equivalent in gold and silver.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الْأُذُنِ بِنِصْفِ الدِّيَةِ، أَوْ عِدْلِ ذَلِكَ مِنْ الذَّهَبِ وَالْوَرِقِ.

L37598 Through the chain of al-Ḥajjāj ibn al-Minhāl: Abū ʿAwānah reported to us from Abū Isḥāq from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: The full *diyah* is due for the nose, the tongue, and the male organ; half the *diyah* is due for the eye, the ear, the hand, the leg, and one lip.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي الْأَنْفِ الدِّيَةُ، وَفِي اللِّسَانِ الدِّيَةُ، وَفِي الذَّكَرِ الدِّيَةُ، وَفِي الْعَيْنِ النِّصْفُ، وَفِي الْأُذُنِ النِّصْفُ، وَفِي الْيَدِ النِّصْفُ، وَفِي الرِّجْلِ النِّصْفُ، وَفِي إحْدَى الشَّفَتَيْنِ النِّصْفُ.

L37599 And from Ash-Shaʿbī, from Shurayḥ, who said: For the ear, half the diyah.

وَعَنْ الشَّعْبِيِّ عَنْ شُرَيْحٍ قَالَ: فِي الْأُذُنِ نِصْفُ الدِّيَةِ.

L37600 Through the chain of ʿAbd al-Razzāq, from Ibn Jurayj, who said: ʿAṭāʾ ruled regarding the ear - if it is completely removed - that the compensation is fifty camels.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ فِي الْأُذُنِ - إذَا اُسْتُؤْصِلَتْ - خَمْسُونَ مِنْ الْإِبِلِ.

L37601 Narrated from Mujāhid: If extirpated, half the *diyah* is due.

وَعَنْ مُجَاهِدٍ إذَا اُسْتُؤْصِلَتْ: نِصْفُ الدِّيَةِ.

L37602 Through the chain of ʻAbd al-Razzāq from Ibn Jurayj from ʻAlqamah ibn

Qays, who said: Ibn Masʿūd said: For every two paired [body parts], the full blood money is due, and for each single [part], the full blood money is likewise due.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَلْقَمَةَ بْنِ قَيْسٍ قَالَ: قَالَ ابْنُ مَسْعُودٍ: كُلُّ زَوْجَيْنِ فَفِيهِمَا الدِّيَةُ، وَكُلُّ وَاحِدٍ فَفِيهِ الدِّيَةُ.

L37603 And according to this ruling state Ibrāhīm al-Nakhaʿī, Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad, and their companions. Through the chain of Abū Bakr ibn Abī Shaybah—ʿAbd al-Raḥīm (who is Ibn Sulaymān) and ʿUbayd Allāh ibn Numayr—both narrating from Ḥajjāj from Makhūl from Zayd ibn Thābit, who said: "The earlobe constitutes one-third of the *diyah* of the ear."

وَبِهِ يَقُولُ إِبْرَاهِيمُ النَّخَعِيُّ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، الشَّافِعِيُّ، وَأَحْمَدُ وَأَصْحَابُهُمْ: وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحِيمِ هُوَ ابْنُ سُلَيْمَانَ - وَعُبَيْدُ اللَّهِ بْنُ نُمَيْرٍ كِلَاهُمَا عَنْ حَجَّاجٍ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي شَحْمَةِ الْأُذُنِ ثُلُثُ دِيَةِ الْأُذُنِ

L37604 Abu Muhammad said: We know that the Mālikīs emphasize the Companion's differing opinion when it aligns with their taqlīd. However, in this case, they have contradicted Abū Bakr, ʿUmar, ʿAlī ibn Abī Ṭālib, Ibn Masʿūd, and Zayd ibn Thābit, accepting none of what was reported from them, and they contradicted their own foundational principles.

قَالَ أَبُو مُحَمَّدٍ: وَعَهْدُنَا بِالْمَالِكِيِّينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إِذَا وَافَقَ تَقْلِيدَهُمْ، وَهُمْ هَاهُنَا قَدْ خَالَفُوا أَبَا بَكْرٍ، وَعُمَرَ، وَعَلِيَّ بْنَ أَبِي طَالِبٍ، وَابْنَ مَسْعُودٍ وَزَيْدَ بْنَ ثَابِتٍ فَلَمْ يَقْبَلُوا بِشَيْءٍ مِمَّا رُوِيَ عَنْهُمْ، وَنَقَضُوا أُصُولَهُمْ.

L37605 We have presented this solely to prevent them from saying to us: "They only intended *hearing* (as-samʿ) by the word *ear* (al-udhun) in reference to those about whom these narrations are reported," for they frequently presume to make such claims. Thus, we have shown them that which they have no grounds for.

وَإِنَّمَا أَوْرَدْنَا هَذَا لِئَلَّا يَقُولُوا لَنَا: إِنَّمَا عَنَى هَؤُلَاءِ الَّذِينَ جَاءَتْ عَنْهُمْ هَذِهِ الرِّوَايَاتُ بِالْأُذُنِ السَّمْعَ، فَإِنَّهُمْ كَثِيرًا مَا يَقْتَحِمُونَ مِثْلَ هَذَا فَأَرَيْنَاهُمْ مَا لَا عَمَلَ لَهُمْ بِهِ.

L37606–37608 It is said to them: "That which has been narrated from Ali concerning the nose—that the blood money is due—perhaps he also meant only the sense of smell, not the external nose." And the narration from Zayd regarding the lobe of the ear invalidates this interpretation of yours. Ali said: "As for us, we accept no authoritative evidence except in the words of Allah the Exalted or the words of the Messenger of Allah (peace be upon him)." Or a definitively established consensus that admits no doubt. None of that applies here. Thus, there is nothing for the ears except retaliation or compensation in cases of intentional harm, because it is a wound. There is no liability for accidental harm in such cases, for the reasons we have mentioned.

وَيُقَالُ لَهُمْ: الَّذِي رُوِيَ عَنْ عَلِيٍّ فِي الْأَنْفِ الدِّيَةُ، لَعَلَّهُ أَيْضًا إِنَّمَا عَنَى الشَّمَّ فَقَطْ، لَا الْأَنْفَ الظَّاهِرَ - وَالرِّوَايَةُ عَنْ زَيْدٍ فِي شَحْمَةِ الْأُذُنِ تُبْطِلُ تَأْوِيلَكُمْ هَذَا. قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا إِلَّا فِي كَلَامِ اللَّهِ تَعَالَى، أَوْ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ إِجْمَاعٍ مُتَيَقَّنٍ لَا مَدْخَلَ لِلشَّكِّ فِيهِ، وَلَيْسَ هَاهُنَا شَيْءٌ مِنْ ذَلِكَ، فَلَا شَيْءَ فِي الْأُذُنَيْنِ إِلَّا الْقَوَدُ، أَوْ الْمُفَادَاةُ فِي الْعَمْدِ، لِأَنَّهُ جُرْحٌ وَلَا شَيْءَ فِي الْخَطَأِ فِي ذَلِكَ لِمَا ذَكَرْنَا.

L37609 **Issue: The blood money for a male and two females is equal.**

[مَسْأَلَةٌ دِيَةُ الذَّكَرِ وَالْأُنْثَيَيْنِ]

L37610 2059 - Issue: We have mentioned what has been reported on this matter in the document of ʿAmr ibn Ḥazm, the document of ʿAmr ibn Shuʿayb, the report of Makḥūl, and a man from the family of ʿUmar, and that none of it is authentic. We will mention—Allah the Exalted willing—what has been reported from the righteous predecessors (may Allah be pleased with them): Narrated by ʿAbd Allāh ibn Rabīʿ via ʿAbd Allāh ibn Muḥammad ibn ʿUthmān via Aḥmad ibn Khālid via ʿAlī ibn ʿAbd al-ʿAzīz via al-Ḥajjāj ibn al-Minhāl via Abū ʿAwānah from Abū Isḥāq from ʿĀṣim ibn Ḍamrah from ʿAlī ibn Abī Ṭālib, who said: "Regarding the penis, the Diyah is due." Narrated by Muḥammad ibn Saʿīd ibn Nabāt via ʿAbd Allāh ibn Naṣr via Qāsim ibn Aṣbagh via Ibn Waḍḍāḥ via Mūsā ibn Muʿāwiyah via Wakīʿ from Sufyān from ʿAwf from an elder from ʿUmar—a similar report.

٢٠٥٩ - مَسْأَلَةٌ: قَدْ ذَكَرْنَا مَا جَاءَ فِي ذَلِكَ فِي صَحِيفَةِ عَمْرِو بْنِ حَزْمٍ وَصَحِيفَةِ عَمْرِو بْنِ شُعَيْبٍ، وَخَبَرِ مَكْحُولٍ، وَرَجُلٍ مِنْ آلِ عُمَرَ، وَأَنَّ كُلَّ ذَلِكَ لَا يَصِحُّ مِنْهُ شَيْءٌ - وَنَحْنُ ذَاكِرُونَ - إنْ شَاءَ اللَّهُ تَعَالَى - مَا جَاءَ فِي ذَلِكَ عَنْ السَّلَفِ الطَّيِّبِ - رَضِيَ اللَّهُ عَنْهُمْ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا أَبُو عَوَانَةَ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: فِي الذَّكَرِ الدِّيَةُ، نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ عَنْ سُفْيَانَ عَنْ عَوْفٍ عَنْ شَيْخٍ عَنْ عُمَرَ مِثْلَهُ

L37611 And through him to Wakee', Sufyan narrated from Abu Ishaq from Asim ibn Damrah from Ali regarding one of the two testicles: half of the full diya. And through him to Wakee', Sufyan narrated from Awf, who said: I heard an elder narrating in the mosque, so I seated him. They said: That is Abu al-Muhallab, the paternal uncle of Abu Qilabah's father. He said: A man struck another man with a stone on his head, causing him to lose his hearing, speech, and reason, and his penis atrophied. Umar ruled in that case with four diyat.

وَبِهِ إلَى وَكِيعٍ نا سُفْيَانُ عَنْ أَبِي إِسْحَاقَ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ فِي إحْدَى الْبَيْضَتَيْنِ النِّصْفُ، وَبِهِ وَإِلَى وَكِيعٍ نا سُفْيَانُ عَنْ عَوْفٍ قَالَ: سَمِعْت شَيْخًا يُحَدِّثُ فِي الْمَسْجِدِ فَجَلَّسْتُهُ، فَقَالُوا: ذَاكَ أَبُو الْمُهَلَّبِ عَمُّ أَبِي قِلَابَةَ قَالَ: رَمَى رَجُلٌ رَجُلًا بِحَجَرٍ فِي رَأْسِهِ فَذَهَبَ سَمْعُهُ لِسَانُهُ وَعَقْلُهُ وَيَبِسَ ذَكَرُهُ فَقَضَى عُمَرُ فِي ذَلِكَ بِأَرْبَعِ دِيَاتٍ

L37612 From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAmr ibn Shuʿayb, who said: Abū Bakr ruled that the diyah for injury to a man's genitalia is one hundred camels.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ فِي ذَكَرِ رَجُلٍ مِائَةٌ مِنْ الْإِبِلِ.

L37613 And through him to ʿAbd al-Razzāq from Maʿmar from Abū Isḥāq al-Sabīʿī from ʿĀṣim ibn Ḍamrah from ʿAlī, that he ruled that an injury to the glans penis necessitates the full diyah as an obligatory compensation.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ أَبِي إِسْحَاقَ السَّبِيعِيِّ عَنْ عَاصِمِ بْنِ ضَمْرَةَ عَنْ عَلِيٍّ أَنَّهُ قَضَى فِي الْحَشَفَةِ بِالدِّيَةِ كَامِلَةٍ

L37614–37616 From ʿAmr ibn Shuʿayb, from his father, from his grandfather ʿAbdullāh ibn ʿAmr ibn al-ʿĀṣ, from ʿUmar ibn al-Khaṭṭāb that he... It was ruled regarding

وَعَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ حَكَمَ فِي الْبَيْضَةِ يُصَابُ صَافِنُهَا الْأَعْلَى بِسُدُسِ الدِّيَةِ.

the egg (al-bayḍah) that if its upper solid part is damaged, it entails one-sixth of the diyah (blood money).

L37617 Narrated from Makhūl: Umar ruled regarding a paralyzed hand, the loss of speech in a mute person, and the penis of a eunuch that their permanent disablement requires one-third of the diyya.

وَعَنْ مَكْحُولٍ يَقُولُ: قَضَى عُمَرُ فِي الْيَدِ الشَّلَّاءِ، وَلِسَانِ الْأَخْرَسِ، وَذَكَرِ الْخَصِيِّ يُسْتَأْصَلُ بِثُلُثِ الدِّيَةِ.

L37618 Amr ibn Shu’ayb reported that Amr ibn al-As wrote to Umar ibn al-Khattab asking about a woman who seized her husband’s testicles and then yanked them, tearing the skin but not the tunica albuginea. Umar ruled that she was obligated to pay a sixth of the diyah.

وَعَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ عَمْرَو بْنَ الْعَاصِ كَتَبَ إِلَى عُمَرَ بْنِ الْخَطَّابِ يَسْأَلُهُ عَنْ امْرَأَةٍ أَخَذَتْ بِأُنْثَيَيْ زَوْجِهَا فَجَبَذَتْهُ فَخَرَقَتْ الْجِلْدَ - وَلَمْ تَخْرِقْ الصِّفَاقَ فَقَضَى عَلَيْهَا بِسُدُسِ الدِّيَةِ

L37619 And through the chain of Abū Bakr ibn Abī Shaybah, Muḥammad ibn Fuḍayl narrated from Layth from ʿAmr ibn Shuʿayb, who said: ʿAmr ibn Shuʿayb consulted ʿUmar ibn al-Khaṭṭāb regarding a woman who seized her husband’s testicles and tore the skin—without rupturing the tunica vaginalis. ʿUmar asked his companions, “What is your opinion on this?” They replied, “Assign it the ruling of a gaping wound.” ʿUmar said, “But I hold a different view. I believe it merits half of what is in the gaping wound.”

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ فُضَيْلٍ عَنْ لَيْثٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: كَتَبَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فِي امْرَأَةٍ أَخَذَتْ بِأُنْثَيَيْ زَوْجِهَا فَخَرَقَتْ الْجِلْدَ - وَلَمْ تَخْرِقْ الصِّفَاقَ، فَقَالَ عُمَرُ لِأَصْحَابِهِ: مَا تَرَوْنَ فِي هَذَا؟ قَالُوا: اجْعَلْهَا فِي مَنْزِلَةِ الْجَائِفَةِ. قَالَ عُمَرُ: لَكِنِّي أَرَى غَيْرَ ذَلِكَ، أَرَى أَنَّ فِيهَا نِصْفَ مَا فِي الْجَائِفَةِ.

L37620 It is reported from Ibn Masʿud that he said: For every pair [bound by a contract], the *diyah* (blood money) applies to both, and for each individual, it applies singly.

وَعَنْ ابْنِ مَسْعُودٍ قَالَ: كُلُّ زَوْجَيْنِ فَفِيهِمَا الدِّيَةُ، وَكُلُّ وَاحِدٍ فَفِيهِ الدِّيَةُ.

L37621 From Al-Shaʿbi, from Ibn Masʿud, who said: “Two females are equivalent.”

وَعَنْ الشَّعْبِيِّ عَنْ ابْنِ مَسْعُودٍ قَالَ: الْأُنْثَيَانِ سَوَاءٌ.

L37622 From Zayd ibn Thabit: The two eggs are treated the same.

وَعَنْ زَيْدِ بْنِ ثَابِتٍ: الْبَيْضَتَانِ سَوَاءٌ

L37623 As for the Successors [generation]: Narrated via the chain of al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Qatādah, from Saʿīd ibn al-Musayyib, who said: “One-third of the *diyah* is owed for the right testicular egg, and two-thirds of the *diyah* for the left testicular egg, because the child is formed from it.”

وَأَمَّا التَّابِعُونَ: فَرُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: فِي الْبَيْضَةِ الْيُمْنَى ثُلُثُ الدِّيَةِ، وَفِي الْيُسْرَى ثُلُثَا الدِّيَةِ، لِأَنَّ الْوَلَدَ يَكُونُ مِنْهَا

L37624 From Ash-Shaʿbī, from Masrūq, who said: “The two testicles are equal; thus, the full diyah is owed for both.”

وَعَنْ الشَّعْبِيِّ عَنْ مَسْرُوقٍ قَالَ: الْبَيْضَتَانِ سَوَاءٌ، فَفِيهِمَا الدِّيَةُ.

L37625 And from Ibrāhīm al-Nakhaʿī: For the glans, the Diyah is due.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ: فِي الْحَشَفَةِ الدِّيَةُ.

L37626 It is reported from Ṭāwus: The diyah [blood money] is prescribed for males.

وَعَنْ طَاوُسٍ: فِي الذَّكَرِ الدِّيَةُ.

L37627 From ʻAta', he said: "Is there diyah for the glans if it is injured?" I asked: "What if the penis is completely removed?" He said: "Then the full diyah." I asked: "What if the glans is removed and then part of the remaining organ is later injured?" He said: "A concurrent wound accompanies it." I asked: "What about the penis of one who does not approach women?" He said: "The same as the penis of one who does approach women." I asked: "An old man who has lost that ability - is he not granted his full worth, meaning his diyah?" He said: "Yes." I asked: "And the two testicles - fifty for each?" Mujahid said: "They are not distinguished - compensation is not split between them."

وَعَنْ عَطَاءٍ أَنَّهُ قَالَ: فِي الْحَشَفَةِ الدِّيَةُ إِذَا أُصِيبَتْ؟ قُلْتُ: فَاسْتُؤْصِلَ الذَّكَرُ؟ قَالَ: فَالدِّيَةُ، قُلْتُ: أَرَأَيْت إِنْ اُسْتُؤْصِلَتْ الْحَشَفَةُ ثُمَّ أُصِيبَ شَيْءٌ مِمَّا بَقِيَ بَعْدُ؟ قَالَ: جُرْحٌ يُرَافِيهِ، قُلْتُ: فَذَكَرُ الَّذِي لَا يَأْتِي النِّسَاءَ؟ قَالَ: مِثْلُ مَا فِي ذَكَرِ الَّذِي يَأْتِي النِّسَاء. قُلْت: الْكَبِيرُ الَّذِي قَدْ ذَهَبَ ذَلِكَ مِنْهُ أَلَيْسَ يُوَفَّى قَدْرَهُ - يَعْنِي دِيَتَهُ؟ قَالَ: بَلَى، قُلْت: وَالْبَيْضَتَانِ فِي كُلِّ بَيْضَةٍ خَمْسُونَ خَمْسُونَ؟ قَالَ مُجَاهِدٌ: لَا يُفْصَلُ بَيْنَهُمَا.

L37628–37629 From Qatādah regarding the male organ incapable of intercourse: its diyah is one-third of that of one that does. He analogizes this to the tongue of a mute person, a decayed tooth, and an intact eye.

وَعَنْ قَتَادَةَ فِي ذَكَرِ الَّذِي لَا يَأْتِي النِّسَاءَ ثُلُثُ دِيَةِ ذَكَرِ الَّذِي يَأْتِي النِّسَاءَ، وَكَذَلِكَ يَقِيسُهُ عَلَى لِسَانِ الْأَخْرَسِ، وَالسِّنِّ السَّوْدَاءِ. وَالْعَيْنِ الْقَائِمَةِ.

L37630 It is narrated from Ibrāhīm [al-Nakhaʿī]: A legal ruling applies to the eunuch.

وَعَنْ إِبْرَاهِيمَ: فِي ذَكَرِ الْخَصِيِّ حُكْمٌ

L37631 In this chapter, there are narrations from Abu Bakr, Umar, Ali, Ibn Masʻud, and Zayd stating that the diyah applies to the male organ—except that Umar is reported to have ruled: the male organ of a eunuch is valued at a third of the diyah, the scrotum of the testicles at a sixth of the diyah, and from those present with him among the Companions: a third of the diyah.

فَفَصَلَ فِي هَذَا الْبَابِ رِوَايَاتٌ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعَلِيٍّ، وَابْنِ مَسْعُودٍ وَزَيْدٍ أَنَّ فِي الذَّكَرِ الدِّيَةَ - إلَّا أَنَّ عُمَرَ جَاءَ عَنْهُ: وَذَكَرُ الْخَصِيِّ ثُلُثُ دِيَةٍ، وَفِي صِفَاقِ الْبِيضِ سُدُسُ دِيَةٍ، وَعَمَّنْ بِحَضْرَتِهِ مِنْ الصَّحَابَةِ: ثُلُثُ الدِّيَةِ.

L37632 It has been reported from ʿAlī, Ibn Masʿūd, and Zayd: equal compensation for both testicles.

وَجَاءَ عَنْ عَلِيٍّ وَابْنِ مَسْعُودٍ وَزَيْدٍ: التَّسْوِيَةُ بَيْنَ الْبَيْضَتَيْنِ.

L37633 And what we have mentioned has been reported from the Followers.

وَجَاءَ عَنْ التَّابِعِينَ مَا ذَكَرْنَاهُ

L37634 Mālik, al-Thawrī, and Abū Ḥanīfah held that compensation applies for injuries to a boy's penis.

وَقَالَ مَالِكٌ: وَالثَّوْرِيُّ، وَأَبُو حَنِيفَةَ: فِي ذَكَرِ الصَّبِيِّ حُكُومَةٌ.

L37635 Abu Hanifa and his companions said: Arbitration [is prescribed] for a husband who does not engage in sexual intercourse with his wife.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: فِي ذَكَرِ [الَّذِي لَا يَأْتِي النِّسَاءَ حُكُومَةٌ.

L37636 Al-Shafi'ī said: For the eunuch, the boy, the decrepit old man, and the impotent man, the full diyah applies.

قَالَ الشَّافِعِيُّ:] فِي ذَكَرِ الْخَصِيِّ، وَالصَّبِيِّ، وَالْهَرِمِ، وَالْعِنِّينِ الدِّيَةُ كَامِلَةً.

L37637 Abu Muhammad said: There is nothing in this chapter except from five Companions—may Allah be pleased with them—and nothing from them in that matter is valid except what comes from Ali exclusively. Those who claim consensus here are foremost in lying against the entire ummah.

قَالَ أَبُو مُحَمَّدٍ: لَيْسَ فِي هَذَا الْبَابِ شَيْءٌ إلَّا عَنْ خَمْسَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يَصِحُّ عَنْ أَحَدٍ مِنْهُمْ شَيْءٌ مِنْ ذَلِكَ إلَّا عَنْ عَلِيٍّ وَحْدَهُ - وَمُدَّعِي الْإِجْمَاعَ هَاهُنَا مُقَدَّمٌ عَلَى الْكَذِبِ عَلَى جَمِيعِ الْأُمَّةِ.

L37638 If they cite in this regard what Ḥumām narrated to us—via Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, who informed me that Ibn Ṭāwūs reported from his father that he possessed a document from the Prophet (peace be upon him) stating: "If a penis is severed, the diyah [financial compensation] is one hundred camels (of specified value)—on condition that his sexual function has ceased and his progeny is lost"—this is a disconnected chain. Even if they authenticate it, it would necessitate that diyah is not owed for severing the penis of a man incapable of procreation or an aged man past procreation, though the jurists do not uphold this view.

فَإِنْ ذَكَرُوا فِي ذَلِكَ مَا حَدَّثَنَاهُ -: حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي ابْنُ طَاوُسٍ عَنْ أَبِيهِ أَنَّ عِنْدَهُ كِتَابًا عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا قُطِعَ الذَّكَرُ فَفِيهِ مِائَةُ نَاقَةٍ - قَدْ انْقَطَعَتْ شَهْوَتُهُ وَذَهَبَ نَسْلُهُ» فَهَذَا مُنْقَطِعٌ، وَإِنْ صَحَّحُوهُ فَإِنَّهُ يَلْزَمُ بِهِ أَنَّ الدِّيَةَ لَا تَجِبُ فِي ذَكَرِ الْعَقِيمِ، وَلَا فِي ذَكَرِ الشَّيْخِ الْكَبِيرِ - وَهُمْ لَا يَقُولُونَ بِهَذَا.

L37639 They differed from Umar regarding the penis of the castrated male, the blind eye, and the paralyzed hand: one-third of the diyah.

وَقَدْ خَالَفُوا عُمَرَ فِي ذَكَرِ الْخَصِيِّ، وَالْعَيْنِ الْعَوْرَاءِ، وَالْيَدِ الشَّلَّاءِ: ثُلُثُ الدِّيَةِ.

L37640–37642 They differed from Sa'id ibn al-Musayyib regarding his statement: "In the left testicle are two-thirds of the diyah, and in the right testicle is one-third of the diyah." Had this been a matter of consensus, Ibn al-Musayyib would not have permitted himself to contradict it. Ali said: As for his statement, "The child originates from the left testicle," Ahmad ibn Sa'id ibn Hassan ibn Haddaj al-Amiri—a trustworthy, reliable, and virtuous man—informed me that he developed an abscess in the left testicle that nearly caused his death. The entire testicle discharged completely, leaving no trace whatsoever. He then recovered and subsequently fathered a son and a daughter. Later, he developed another abscess in the right testicle, resulting in the loss of most of it. After recovering again, he fathered no more children. Since no valid ruling exists—neither textual nor consensus-based—regarding compensation for impairing the capacity to father male and female offspring, the obligation

وَخَالَفُوا سَعِيدَ بْنَ الْمُسَيِّبِ فِي قَوْلِهِ " إنَّ فِي الْبَيْضَةِ الْيُسْرَى ثُلُثَيْ الدِّيَةِ، وَفِي الْيُمْنَى ثُلُثُ الدِّيَةِ " وَلَوْ كَانَ هَذَا إجْمَاعًا لَمَا اسْتَجَازَ ابْنُ الْمُسَيِّبِ خِلَافَهُ قَالَ عَلِيٌّ: وَأَمَّا قَوْلُهُ " إنَّ الْوَلَدَ مِنْ الْيُسْرَى " فَقَدْ أَخْبَرَنِي أَحْمَدُ بْنُ سَعِيدِ بْنِ حَسَّانَ بْنِ هَدَّاجٍ الْعَامِرِيُّ - وَكَانَ ثِقَةً مَأْمُونًا فَاضِلًا - أَنَّهُ أَصَابَهُ خُرَاجٌ فِي الْبَيْضَةِ الْيُسْرَى أَشْرَفَ مِنْهُ عَلَى الْهَلَاكِ، وَسَالَتْ كُلُّهَا، وَلَمْ يَبْقَ لَهَا أَثَرٌ أَصْلًا، ثُمَّ بَرِئَ، وَوُلِدَ لَهُ بَعْدَ ذَلِكَ ذَكَرٌ وَأُنْثَى، ثُمَّ أَصَابَهُ خُرَاجٌ أَيْضًا فِي الْيُمْنَى فَذَهَبَ أَكْثَرُهَا، ثُمَّ بَرِئَ، وَلَمْ يُولَدْ لَهُ بَعْدَهَا شَيْءٌ - فَإِذْ لَا يَصِحُّ فِي الدِّيَةِ فِي الذَّكَرِ وَالْأُنْثَيَيْنِ شَيْءٌ، لَا نَصٌّ وَلَا إجْمَاعٌ، فَالْوَاجِبُ أَنْ لَا يَجِبَ فِي ذَلِكَ

is that no compensation is required for accidental harm. However, retaliation or negotiated compensation becomes obligatory in cases of intentional injury, as it constitutes a physical wound. Success comes only from Allah, the Exalted.

L37643 **An issue regarding the blood money for the spine and vertebrae.**

L37644 Issue 2060: Hammām narrated from Ibn Mufarrij, who narrated from Ibn al-Aʿrabī, who narrated from al-Dabarī, who narrated from ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAmr ibn Shuʿayb, who said: Abū Bakr ruled regarding a man's spine: if it is fractured and then set, [he is liable] with the full *diyah* if it does not bear weight for him, and with half the *diyah* if it bears weight for him.

L37645 And through him to Ibn Jurayj and Maʿmar, both of whom narrate from a man from ʿIkrimah: that Abu Bakr and ʿUmar ruled regarding spinal injuries—if no child was born to the injured person, the full diyah is due, but if a child was born to him, then half the diyah is due.

L37646 And from him to Ibn Jurayj: Muḥammad ibn al-Ḥārith ibn Sufyān informed me that Muḥammad ibn ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Abī Rabīʿah said: I was present when ʿAbd Allāh ibn al-Zubayr issued a ruling concerning a man whose spine was broken. He became hunched, could not sit, and walked while bent over, with two-thirds of the diyah due.

L37647 And through him to Abd al-Razzaq from Ibn Jurayj, who said: Al-Sha'bi said: Zayd ibn Thabit ruled that the entire blood money—one thousand dinars—applies to all vertebrae of the back, which number thirty-two. For each vertebra, thirty-one and a quarter dinars are owed if it is fractured and heals without lasting impairment. If it heals with lasting impairment, thirty-one and a quarter dinars are owed for the fracture itself, while the impairment incurs separate compensation according to the subsequent ruling applicable to it, distinct from the fracture compensation.

L37648–37650 It is narrated from Makḥūl that he said: For every vertebra, the amount is

شَيْءٌ فِي الْخَطَأِ، وَأَنْ يَجِبَ فِي ذَلِكَ الْقَوَدُ فِي الْعَمْدِ أَوْ الْمُفَادَاةُ، لِأَنَّهُ جُرْحٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ دِيَةِ الصُّلْبِ وَالْفَقَارَاتِ]

٢٠٦٠ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ فِي صُلْبِ الرَّجُلِ إذَا كُسِرَ ثُمَّ جُبِرَ بِالدِّيَةِ كَامِلَةً إذَا كَانَ لَا يَحْمِلُ لَهُ، وَبِنِصْفِ الدِّيَةِ إنْ كَانَ يَحْمِلُ لَهُ.

وَبِهِ إلَى ابْنِ جُرَيْجٍ، وَمَعْمَرٍ، كِلَاهُمَا عَنْ رَجُلٍ عَنْ عِكْرِمَةَ: أَنَّ أَبَا بَكْرٍ، وَعُمَرَ قَضَيَا فِي الصُّلْبِ إذَا لَمْ يُولَدْ لَهُ بِالدِّيَةِ، وَإِنْ وُلِدَ لَهُ فَنِصْفُ الدِّيَةِ.

وَبِهِ إلَى ابْنِ جُرَيْجٍ أَخْبَرَنِي مُحَمَّدُ بْنُ الْحَارِثِ بْنِ سُفْيَانَ أَنَّ مُحَمَّدَ بْنَ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ قَالَ: حَضَرْت عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ قَضَى فِي رَجُلٍ كُسِرَ صُلْبُهُ، فَاحْدَوْدَبَ هُوَ وَلَمْ يَقْعُدْهُ، وَهُوَ يَمْشِي مُحْدَوْدِبًا بِثُلُثَيْ الدِّيَةِ.

وَبِهِ إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ الشَّعْبِيُّ: قَضَى زَيْدُ بْنُ ثَابِتٍ فِي فَقَارِ الظَّهْرِ كُلِّهِ بِالدِّيَةِ كُلِّهَا - وَهِيَ أَلْفُ دِينَارٍ - وَهِيَ اثْنَتَانِ وَثَلَاثُونَ فَقَارَةً، فِي كُلِّ فَقَارَةٍ إحْدَى وَثَلَاثُونَ دِينَارًا وَرُبْعُ دِينَارٍ إذَا كُسِرَتْ ثُمَّ بَرِئَتْ عَلَى غَيْرِ عَثْمٍ فَإِنْ بَرِئَتْ عَلَى عَثْمٍ فَفِي كَسْرِهَا أَحَدٌ وَثَلَاثُونَ دِينَارًا وَرُبْعُ دِينَارٍ وَفِي الْعَثْمِ مَا فِيهِ مِنْ الْحُكْمِ الْمُسْتَقْبَلِ سِوَى ذَلِكَ.

thirty-one dinars and a quarter of a dinar. From Az-Zuhri, he said: If the spine is fractured, the full *diyah* is owed.

وَعَنْ مَكْحُولٍ أَنَّهُ قَالَ: فِي كُلِّ فَقَارٍ أَحَدٌ وَثَلَاثُونَ دِينَارًا وَرُبْعُ دِينَارٍ وَعَنْ الزُّهْرِيِّ قَالَ: فِي الصُّلْبِ إذَا كُسِرَ الدِّيَةُ كَامِلَةً.

L37651 The same is narrated from ʻAṭāʼ – and the same is narrated from Saʿīd ibn Jubayr.

وَعَنْ عَطَاءٍ مِثْلُ ذَلِكَ - وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ مِثْلُ ذَلِكَ.

L37652 This is the view of al-Ḥasan al-Baṣrī and Yazīd ibn Quṣayṭ.

وَهُوَ قَوْلُ الْحَسَنِ الْبَصْرِيِّ، وَيَزِيدَ بْنِ قُسَيْطٍ.

L37653 Al-Thawri and al-Shāfiʿī say this by it if he is prevented from walking.

وَبِهِ يَقُولُ الثَّوْرِيُّ، وَالشَّافِعِيُّ إذَا مَنَعَهُ الْمَشْيُ.

L37654 And with this, Ahmad and Isḥāq hold the opinion if no child was born to him. A tradition exists regarding this matter, as Ḥammām ibn Aḥmad narrated to us: Ibn Mufarrij narrated to us, Ibn al-Aʿrabī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated to us, Maʿmar narrated to us from Ibn Abī Najīḥ from Mujāhid, who said: "Concerning the spinal column - if it is fractured and his semen is discharged, the full *diyah* is owed. If the semen is not discharged, half the *diyah* is owed." The Messenger of Allah - peace and blessings be upon him - decreed this.

وَبِهِ يَقُولُ أَحْمَدُ، وَإِسْحَاقُ إذَا لَمْ يُولَدْ لَهُ: وَقَدْ جَاءَ فِي هَذَا أَثَرٌ: كَمَا حَدَّثَنَا حُمَامُ بْنُ أَحْمَدَ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: فِي الصُّلْبِ إذَا كُسِرَ فَذَهَبَ مَاؤُهُ الدِّيَةُ كَامِلَةً، فَإِنْ لَمْ يَذْهَبْ الْمَاءُ فَنِصْفُ الدِّيَةِ - قَضَى بِذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37655 Abu Muhammad said: This is a narration from four of the Companions—may Allah be pleased with them—with no dissenter among the Companions known to have opposed them: Abu Bakr, Umar, Ibn az-Zubayr, and Zayd—though the narration from Zayd is not authentic.

قَالَ أَبُو مُحَمَّدٍ: فَهَذِهِ رِوَايَةٌ عَنْ أَرْبَعَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْلَمُ لَهُمْ مِنْ الصَّحَابَةِ مُخَالِفٌ: أَبُو بَكْرٍ، وَعُمَرُ، وَابْنُ الزُّبَيْرِ، وَزَيْدٌ - وَهِيَ عَنْ زَيْدٍ غَيْرُ صَحِيحَةٍ.

L37656 The Hanafis and Malikis do not uphold this view—a contradiction—as they do not consider striking the back (which severs the fetus) to entail any legal consequence. They likewise reject the reports concerning spinal injuries transmitted from Zayd ibn Thābit, nor is any opposition to him on this matter known among the Companions. This position is also narrated from a group of the Successors, with no distinction between this issue and the other matters we previously mentioned.

وَلَا يَقُولُ بِهَذَا الْحَنَفِيُّونَ، وَلَا الْمَالِكِيُّونَ - وَهُوَ تَنَاقُضٌ - فَلَا يَرَوْنَ فِي ضَرْبِ الصُّلْبِ يَقْطَعُ الْوَلَدَ شَيْئًا - وَلَا يَرَوْنَ فِي الْفَقَارَاتِ أَيْضًا مَا جَاءَ عَنْ زَيْدِ بْنِ ثَابِتٍ فِيهَا، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ فِي هَذَا مُخَالِفٌ - وَهُوَ أَيْضًا عَنْ جَمَاعَةٍ مِنْ التَّابِعِينَ، وَلَا فَرْقَ بَيْنَ سَائِرِ مَا ذَكَرْنَا قَبْلُ.

L37657 In this matter, there is also a *mursal* report—as we have cited—stipulating full *diyah* (even if the deceased left no offspring) and half the *diyah* (if he had offspring). Yet they assert their reliance on *mursal* reports, showing no

وَفِي هَذَا أَيْضًا خَبَرٌ مُرْسَلٌ - كَمَا أَوْرَدْنَا - بِالدِّيَةِ وَإِنْ لَمْ يُولَدْ لَهُ، وَبِنِصْفِ الدِّيَةِ إنْ وُلِدَ لَهُ - وَهُمْ يَدَّعُونَ الْأَخْذَ بِالْمُرْسَلِ، وَلَا يُبَالُونَ بِالتَّنَاقُضِ وَالتَّشْنِيعِ عَلَى خُصُومِهِمْ.

regard for the inherent contradictions nor minding the condemnation they incur for vilifying their opponents.

L37658–37659 They assign blood money for each single tooth by analogy to a life, blood money for every two teeth, blood money for every four teeth, and blood money for every ten teeth. Why then do they not apply the same ruling for the vertebrae—as reported from Zayd? This is among the matters where they contradicted analogy. Ali said: "As for us, we accept no proof through mursal reports nor through anyone's opinion apart from the Messenger of Allah—peace and blessings be upon him. There is no authentic narration from the Prophet—peace and blessings be upon him—in this chapter, nor any definitive consensus. Property is forbidden except what is permitted by an explicit text or consensus. There is no liability for accidental injury—as previously established—thus no compensation applies for the spine or vertebrae in cases of error. As for intentional injury, only retaliation applies, with no ransom required, because it is not a wound. If it were considered a wound, then retaliation or ransom would apply, as we have explained."

وَهُمْ يَجْعَلُونَ فِي كُلِّ وَاحِدٍ فِي الْأَسْنَانِ الدِّيَةُ قِيَاسًا عَلَى النَّفْسِ، وَفِي كُلِّ اثْنَيْنِ الدِّيَةُ، وَفِي كُلِّ أَرْبَعٍ الدِّيَةُ، وَفِي كُلِّ عَشْرَةٍ الدِّيَةُ، فَمَا بَالُهُمْ لَا يَجْعَلُونَ فِي الْفَقَارَاتِ كَذَلِكَ - كَمَا جَاءَ عَنْ زَيْدٍ - وَهَذَا مِمَّا نَقَضُوا فِيهِ الْقِيَاسَ قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي مُرْسَلٍ، وَلَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ فِي هَذَا الْبَابِ خَبَرٌ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَصِحُّ، وَلَا إجْمَاعٌ مُتَيَقَّنٌ، وَالْأَمْوَالُ مُحَرَّمَةٌ، إلَّا مَا أَبَاحَهُ نَصٌّ، أَوْ إجْمَاعٌ، وَالْخَطَأُ مَرْفُوعٌ - كَمَا قَدْ تَقَدَّمَ - فَلَيْسَ فِي الصُّلْبِ، وَلَا فِي الْفَقَارَاتِ فِي الْخَطَأِ شَيْءٌ، وَأَمَّا فِي الْعَمْدِ فَالْقَوَدُ فَقَطْ، وَلَا مُفَادَاةَ فِيهِ، لِأَنَّهُ لَيْسَ جُرْحًا - فَإِنْ كَانَ ذَلِكَ جُرْحًا، فَفِيهِ الْقَوَدُ، أَوْ الْمُفَادَاةُ، عَلَى مَا ذَكَرْنَا

The Issue of Diyah for the Rib.

[مَسْأَلَةُ الدِّيَةِ فِي الضِّلْعِ]

L37660

L37661 2061 - Chapter: Ahmad ibn Muḥammad ibn al-Jasūr narrated to us via Aḥmad ibn Saʿīd ibn Ḥazm via ʿUbaydullāh ibn Yaḥyā via his father via Mālik via Zayd ibn Aslam via Muslim ibn Jundub via Aslam, the client of ʿUmar ibn al-Khaṭṭāb, who said: He ruled that the compensation for a molar is a camel, a camel for the collarbone, and a camel for the rib.

٢٠٦١ - مَسْأَلَةٌ: حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ سَعِيدِ بْنِ حَزْمٍ نا عُبَيْدُ اللَّهِ بْنُ يَحْيَى نا أَبِي نا مَالِكٌ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ عَنْ أَسْلَمَ مَوْلَى عُمَرَ بْنِ الْخَطَّابِ قَالَ: قَضَى فِي الضِّرْسِ بِجَمَلٍ، وَفِي التَّرْقُوَةِ بِجَمَلٍ، وَفِي الضِّلْعِ بِجَمَلٍ.

L37662 From the transmission of Wakīʿ: Sufyān reported to us from Zayd ibn Aslam from Muslim ibn Jundub from Aslam, the freed slave of ʿUmar ibn al-Khaṭṭāb, who said: I heard ʿUmar say upon the pulpit: "In the rib is a camel, in the tooth is a camel, and in the collarbone is a camel."

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ عَنْ أَسْلَمَ مَوْلَى عُمَرَ بْنِ الْخَطَّابِ قَالَ: سَمِعْت عُمَرَ يَقُولُ عَلَى الْمِنْبَرِ: فِي الضِّلْعِ جَمَلٌ، وَفِي الضِّرْسِ جَمَلٌ، وَفِي التَّرْقُوَةِ جَمَلٌ.

L37663 And via the chain of Abd al-Razzaq from Ma'mar from Ibn Abi Najih from Mujahid, who said: Regarding [compensation for] the rib—if a camel sustains a fracture.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ مُجَاهِدٍ قَالَ: فِي الضِّلْعِ إِذَا كُسِرَ بَعِيرٌ

L37664 Ibn Jurayj reported to me from ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz, from his father, that ʿUmar ibn al-Khaṭṭāb decreed a camel for the rib.

وَعَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَضَى فِي الضِّلْعِ بِبَعِيرٍ.

L37665–37667 Through the chain of Al-Ḥajjāj ibn Al-Minhāl: from Ḥammād ibn Salamah, from Al-Ḥajjāj ibn Arṭāʾah, from Dāwūd ibn Abī ʿĀṣim, from Saʿīd ibn Al-Musayyab that he said: For the collarbone, a camel [is due]; and for the rib, a camel [is due]. Hammad said: Qatadah informed us that ʿAbd al-Malik ibn Marwān ruled concerning a rib injury that a camel is owed as compensation. If expenses [for treatment] were incurred, then two camels are required.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ دَاوُد بْنِ أَبِي عَاصِمٍ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ أَنَّهُ قَالَ: فِي التَّرْقُوَةِ بَعِيرٌ، وَفِي الضِّلْعِ بَعِيرٌ - قَالَ حَمَّادٌ: وَأَخْبَرَنَا قَتَادَةُ أَنَّ عَبْدَ الْمَلِكِ بْنَ مَرْوَانَ قَضَى فِي الضِّلْعِ بِبَعِيرٍ، فَإِنْ كَانَ فِيهَا أُجُورٌ فَبَعِيرَانِ.

L37668 From the transmission of ʿAbd al-Razzāq, from Maʿmar, from Qatādah regarding the rib: If it is broken and then heals, [the compensation is] twenty dinars. If it heals with a deformity, [it is] forty dinars. For a woman's rib, if broken, [the compensation is] ten dinars.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي الضِّلْعِ إِذَا كُسِرَتْ ثُمَّ جُبِرَتْ عِشْرُونَ دِينَارًا، فَإِنْ كَانَ فِيهَا عَثْمٌ فَأَرْبَعُونَ دِينَارًا - وَفِي ضِلْعِ الْمَرْأَةِ إِذَا كُسِرَتْ عَشْرَةُ دَنَانِيرَ.

L37669 On the authority of Masruq: There is a legal ruling concerning the rib.

وَعَنْ مَسْرُوقٍ: فِي الضِّلْعِ حُكْمٌ.

L37670 Al-Shāfiʿī (in one of his two opinions), Aḥmad ibn Ḥanbal, and Isḥāq ibn Rāhawayh said: A camel is due for the rib and one for the clavicle.

قَالَ الشَّافِعِيُّ - فِي أَحَدِ قَوْلَيْهِ - وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: فِي الضِّلْعِ بَعِيرٌ، وَفِي التَّرْقُوَةِ بَعِيرٌ.

L37671 Malik, Abu Hanifah, their companions, and Al-Shafi'i—in one of his two opinions—said: There is nothing in that except a judgment.

وَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُمَا، وَالشَّافِعِيُّ - فِي أَحَدِ قَوْلَيْهِ لَيْسَ فِي ذَلِكَ إِلَّا حُكْمٌ.

L37672 Abū Muḥammad said: This is a chain of transmission of the utmost authenticity from ʿUmar ibn al-Khaṭṭāb, who addressed this matter from the pulpit in the presence of the Companions—may Allah be pleased with them—with none opposing him, establishing that the obligatory blood money for a rib is a camel, and for a molar tooth is a camel. Every Successor known to

قَالَ أَبُو مُحَمَّدٍ: هَذَا إِسْنَادٌ فِي غَايَةِ الصِّحَّةِ عَنْ عُمَرَ بْنِ الْخَطَّابِ يَخْطُبُ بِهِ عَلَى الْمِنْبَرِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُوجَدُ لَهُ مِنْهُمْ مُخَالِفٌ بِأَنَّ الْوَاجِبَ فِي الضِّلْعِ جَمَلٌ، وَفِي الضِّرْسِ جَمَلٌ قَالَ بِهِ كُلُّ مَنْ عُرِفَ لَهُ قَوْلٌ فِي ذَلِكَ مِنَ التَّابِعِينَ حَاشَ

have expressed an opinion on this matter upheld it, save for Masrūq and Qatādah. As for Qatādah, he diminished the blood money for it, exceeding ʿUmar's ruling, though he did not oppose the obligation of blood money in such cases. Yet the Mālikīs and Ḥanafīs considered it trivial to oppose all this based on their opinions.

مَسْرُوقًا، وَقَتَادَةَ، فَإِنَّ قَتَادَةَ أَضْعَفَ فِيهِ الدِّيَةَ، فَزَادَ عَلَى قَوْلِ عُمَرَ، وَلَمْ يُخَالِفْهُ فِي إِيجَابِ دِيَةٍ فِي ذَلِكَ، فَاسْتَسْهَلَ الْمَالِكِيُّونَ وَالْحَنَفِيُّونَ خِلَافَ كُلِّ ذَلِكَ بِآرَائِهِمْ.

L37673 As for us, we do not accept any opinion as authoritative evidence except that of the Messenger of Allah (peace and blessings be upon him).

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37674 A narration of this kind does not constitute consensus (Ijmaʿ), for a Companion may remain silent due to certain considerations, and a small number of them may be absent. There is no consensus except that which one is certain that every single one of them knew, practiced, and upheld—such as prayer, Zakāt, Hajj, fasting during Ramadan, and all other religious ordinances about which we are certain they reached consensus.

وَمِثْلُ هَذِهِ الرِّوَايَةِ لَيْسَتْ إِجْمَاعًا، لِأَنَّهُ قَدْ يَسْكُتُ الصَّاحِبُ لِبَعْضِ الْمَعَانِي، وَقَدْ يَغِيبُ النَّفَرُ مِنْهُمْ - وَلَا إِجْمَاعَ إِلَّا مَا تَيَقَّنَ أَنَّ كُلَّ وَاحِدٍ مِنْهُمْ عَلِمَهُ، وَدَانَ بِهِ، كَالصَّلَاةِ، وَالزَّكَاةِ، وَالْحَجِّ، وَصَوْمِ رَمَضَانَ، وَسَائِرِ الشَّرَائِعِ الَّتِي قَدْ تَيَقَّنَّا إِجْمَاعَهُمْ عَلَيْهَا.

L37675–37677 Since there is no textual evidence or consensus here, there is no ruling concerning the rib in cases of error, because error... It is lifted by the explicit texts of the Quran and the Sunnah, and wealth is prohibited by the explicit texts of the Quran and the Sunnah. If it is intentional, then qisas alone applies—unless it is with a wound, in which case qisas applies, or ransom as we previously mentioned. And with Allah, the Most High, is success.

فَإِذْ لَا نَصَّ، وَلَا إِجْمَاعَ هَاهُنَا فَلَا شَيْءَ فِي الضِّلْعِ إِذَا كَانَ خَطَأً لِأَنَّ الْخَطَأَ مَرْفُوعٌ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، وَالْأَمْوَالُ مُحَرَّمَةٌ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ فَإِنْ كَانَ عَمْدًا فَفِيهِ الْقَوَدُ فَقَطْ، إِلَّا أَنْ يَكُونَ بِجُرْحٍ فَفِيهِ الْقَوَدُ، أَوْ الْمُفَادَاةُ عَلَى مَا ذَكَرْنَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37678 A Question on the Diyah (Blood Money) for the Collarbone

[مَسْأَلَةٌ فِي التَّرْقُوَةِ الدِّيَةَ]

L37679 2062 - Issue: We have already mentioned the statement of ʿUmar - "The collarbone entails a camel" - in the chapter immediately preceding this one, connected to it, and his sermon regarding that from the pulpit, which suffices to avoid its repetition.

٢٠٦٢ - مَسْأَلَةٌ: قَدْ ذَكَرْنَا قَوْلَ عُمَرَ: فِي التَّرْقُوَةِ جَمَلٌ - فِي الْبَابِ الَّذِي قَبْلَ هَذَا مُتَّصِلًا بِهِ وَخُطْبَتُهُ بِذَلِكَ عَلَى الْمِنْبَرِ فَأَغْنَى عَنْ إِعَادَتِهِ.

L37680 And the legal view of Sa'id ibn al-Musayyib aligns with the aforementioned position.

وَقَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ بِمِثْلِ ذَلِكَ.

L37681 This was the opinion of Aḥmad and Isḥāq, and al-Shāfiʿī maintained it in one of his two positions.

وَبِهِ يَقُولُ أَحْمَدُ، وَإِسْحَاقُ، وَقَالَ بِهِ الشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ.

L37682 And another statement—we have narrated it through the chain of Al-Ḥajjāj

ibn al-Minhāl: Al-Ḥajjāj narrated to us from Makḥūl, from Zayd ibn Thābit, that he said: For the collarbone, four camels.

وَقَوْلٌ آخَرَ - رُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا الْحَجَّاجُ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ أَنَّهُ قَالَ: فِي التَّرْقُوَةِ أَرْبَعَةُ أَبْعِرَةٍ.

L37683 Al-Sha'bi and Mujahid both ruled that if the collarbone is broken, forty dinars are due. According to Abd al-Razzaq, twenty dinars are due for the collarbone.

وَعَنْ الشَّعْبِيِّ، وَمُجَاهِدٍ، قَالَا جَمِيعًا: فِي التَّرْقُوَةِ إنْ كُسِرَتْ أَرْبَعُونَ دِينَارًا، وَعَنْ عَبْدِ الرَّزَّاقِ فِي التَّرْقُوَةِ عِشْرُونَ دِينَارًا.

L37684 Abd al-Malik ibn Marwan ruled in the matter with two camels. If she heals but the injury involved exposed bones, then four camels.

وَقَضَى فِيهَا عَبْدُ الْمَلِكِ بْنُ مَرْوَانَ بِبَعِيرَيْنِ، فَإِنْ بَرِئَتْ وَفِيهَا أُجُورٌ فَأَرْبَعَةُ أَبْعِرَةٍ

L37685 From Sa'īd ibn Jubayr: For every body part there is a prescribed valuation, except the clavicle—for it there are two camels.

وَعَنْ سَعِيدِ بْنِ جُبَيْرٍ: فِي كُلِّ شَيْءٍ مِنْ الْأَعْضَاءِ حُكُومَةٌ إلَّا التَّرْقُوَةَ فَفِيهَا بَعِيرَانِ.

L37686 Abū Muḥammad said: This is an existing and established disagreement regarding the absence of fixed diyah for any bodily organs. The two eyes and the teeth are organs - thus invalidating the claim of consensus in that matter. From Masrūq: There is a ruling concerning the collarbone, and there is a ruling concerning the molar.

قَالَ أَبُو مُحَمَّد: وَهَذَا خِلَافٌ مَوْجُودٌ ثَابِتٌ فِي أَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ الْأَعْضَاءِ دِيَةٌ مُؤَقَّتَةٌ: وَالْعَيْنَانِ، وَالْأَسْنَانِ أَعْضَاءٌ - فَبَطَلَ دَعْوَى الْإِجْمَاعِ فِي ذَلِكَ - وَعَنْ مَسْرُوقٍ: فِي التَّرْقُوَةِ حُكْمٌ، وَفِي الضِّرْسِ حُكْمٌ

L37687 And with this, Abu Hanifah, Malik, al-Shafi'i—in one of his two opinions—and their companions each hold the position.

وَبِهِ يَأْخُذُ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ - فِي أَحَدِ قَوْلَيْهِ - وَأَصْحَابُهُمْ.

L37688 As for the narration from Zayd—it is weak because it is the transmission of Al-Ḥajjāj ibn Arṭāʾa—who is weak—then via Makhul from Zayd, and Makhul did not meet Zayd.

أَمَّا الرِّوَايَةُ عَنْ زَيْدٍ - فَوَاهِيَةٌ، لِأَنَّهُ نَقْلُ الْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ ضَعِيفٌ - ثُمَّ عَنْ مَكْحُولٍ عَنْ زَيْدٍ، وَمَكْحُولٌ لَمْ يُدْرِكْ زَيْدًا.

L37689 As for the narration from Umar—it is established. He stated it from the pulpit in the presence of the Companions—may Allah be pleased with them—and the Malikis and Hanafis opposed him based on their juristic reasoning.

وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ - فَثَابِتَةٌ، قَالَهَا عَلَى الْمِنْبَرِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهَذَا قَدْ خَالَفَهُ الْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ بِآرَائِهِمْ.

L37690–37692 Ali said: "As for us, we do not accept the words of anyone as proof except those of the Messenger of Allah (peace and blessings be upon him), nor is..." Here is the explicit ruling: No liability whatsoever is incurred for accidental injury to the collarbone due to what we have previously explained. As for intentional injury—the obligation in such cases is retribution (qisas) alone, unless the injury constitutes a wound, in which case either equivalence (qawd)

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَيْسَ هَاهُنَا نَصٌّ، فَلَا يَجِبُ فِي التَّرْقُوَةِ شَيْءٌ فِي الْخَطَأِ لِمَا ذَكَرْنَا وَأَمَّا فِي الْعَمْدِ -

or negotiated compensation applies, as we earlier elaborated. And success is from Allah, the Most High.

فَالْوَاجِبُ فِي ذَلِكَ الْقِصَاصُ فَقَطْ، إِلَّا إِنْ كَانَ جُرْحًا فَالْقَوَدُ، أَوْ الْمُفَادَاةُ لِمَا ذَكَرْنَا قَبْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A Legal Inquiry Concerning the Diyah for Injury to the Breast.

[مَسْأَلَةٌ فِي الثَّدْيِ الدِّيَةَ]

Issue 2063: Reported through the chain of ʿAbdullāh ibn Rabīʿ → ʿAbdullāh ibn Muḥammad ibn ʿUthmān → Aḥmad ibn Khālid → ʿAlī ibn ʿAbd al-ʿAzīz → al-Ḥajjāj ibn al-Minhāl → Ḥammād ibn Salamah → al-Ḥajjāj ibn Arṭāh → Makḥūl: That Zayd ibn Thābit ruled regarding the nipple of a man's breast - if severed, the compensation equals the full diyah prescribed for the areola. As for the nipple of a woman's breast - if severed, the compensation equals one-fourth of the diyah prescribed for her breast.

٢٠٦٣ - مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ مَكْحُولٍ: أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: فِي حَلَمَةِ ثَدْيِ الرَّجُلِ إذَا قُطِعَتْ ثَمَنُ دِيَةِ الثَّنْدُوَةِ، وَفِي حَلَمَةِ ثَدْيِ الْمَرْأَةِ إذَا قُطِعَتْ رُبْعُ دِيَةِ ثَدْيِهَا.

From Hammam, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabari, from ʿAbd al-Razzāq, from Muḥammad ibn Rāshid, from Makḥūl, from Qabīṣah ibn Dhuʾayb, from Zayd ibn Thābit, who said: A quarter of the diyah is prescribed for injury to the nipple of the breast.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ مَكْحُولٍ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ: فِي حَلَمَةِ الثَّدْيِ رُبْعُ الدِّيَةِ.

It has been reported to us through the aforementioned chain leading to Abd al-Razzaq, from Ma'mar, from a man, from Ikrimah: That Abu Bakr al-Siddiq assigned fifty dinars for the nipple of a man's breast and one hundred dinars for the nipple of a woman's breast. Ma'mar said: I heard Aṭā' al-Khurasani saying the same.

وَرُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ: أَنَّ أَبَا بَكْرٍ الصِّدِّيقَ جَعَلَ فِي حَلَمَةِ ثَدْيِ الرَّجُلِ خَمْسِينَ دِينَارًا، وَفِي حَلَمَةِ ثَدْيِ الْمَرْأَةِ مِائَةَ دِينَارٍ، قَالَ مَعْمَرٌ: سَمِعْت عَطَاءً الْخُرَاسَانِيَّ يَقُولُ مِثْلَ ذَلِكَ.

In his chain—to Abd al-Razzaq from Ibn Jurayj from Amr ibn Shu'ayb, who said: Abu Bakr ruled that ten camels are due for injury to a woman's breast if only the nipple is affected. If it is severed from its base, fifteen camels are owed.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ قَالَ: قَضَى أَبُو بَكْرٍ فِي ثَدْيِ الْمَرْأَةِ بِعَشْرَةٍ مِنْ الْإِبِلِ إذَا لَمْ يُصِبْ إلَّا حَلَمَةَ ثَدْيِهَا فَإِذَا قُطِعَ مِنْ أَصْلِهِ فَخَمْسَةَ عَشَرَ مِنْ الْإِبِلِ.

From al-Zuhri, he said: The blood money (diyah) for the nipple of a man's breast is five camels.

وَعَنْ الزُّهْرِيِّ قَالَ فِي حَلَمَةِ ثَدْيِ الرَّجُلِ خَمْسٌ مِنْ الْإِبِلِ.

And from ʿAṭāʾ that he said: "What is the ruling for a man's wet dream?" He said: "I do not know."

وَعَنْ عَطَاءٍ قَالَ: كَمْ فِي حَلَمَةِ الرَّجُلِ؟ قَالَ: لَا أَدْرِي

From Ash-Shaʿbī, who said: Half of the woman's diyah is assessed for one

of her two breasts.

وَعَنْ الشَّعْبِيِّ قَالَ: فِي أَحَدِ ثَدْيَيْ الْمَرْأَةِ نِصْفُ دِيَتِهَا

L37701–37703 From Ibrāhīm al-Nakhaʿī, he said: Regarding a woman's breast, the diyah applies, and regarding a man's breast, a discretionary assessment (ḥukūmah). Through the transmission of ʿAbd al-Razzāq: Sufyān al-Thawrī reported to us from Sulaymān al-Shaybānī from al-Shaʿbī, who said: Regarding a woman's breast, the diyah applies—a position held by Sufyān al-Thawrī, Mālik, Abū Ḥanīfah, and al-Shāfiʿī. Ahmad and his companions said: There is a ruling concerning a man's chest.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: فِي ثَدْيِ الْمَرْأَةِ الدِّيَةُ وَفِي ثَدْيِ الرَّجُلِ حُكُومَةٌ وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ سُلَيْمَانَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ قَالَ فِي ثَدْيِ الْمَرْأَةِ الدِّيَةُ - وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَمَالِكٌ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُهُمْ - وَقَالَ هَؤُلَاءِ: فِي ثَدْيِ الرَّجُلِ حُكُومَةٌ.

L37704 Ahmad and Isḥāq said: The full diyah applies in both of them.

وَقَالَ أَحْمَدُ، وَإِسْحَاقُ: فِيهِمَا الدِّيَةُ كَامِلَةً.

L37705 Abū Muḥammad said: When they differed—as we mentioned—it became obligatory to turn to what Allah the Exalted has commanded us to rely on from the Quran and the Sunnah in cases of dispute. We did so, yet found no explicit text in the Quran, nor any Sunnah—neither sound nor weak—nor any definitive consensus. Every ruling not found in these foundational principles is invalid [with certainty].

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ الرُّجُوعُ إلَى مَا أَمَرَ اللَّهُ تَعَالَى بِهِ الرُّجُوعَ إلَيْهِ مِنْ الْقُرْآنِ، وَالسُّنَّةِ عِنْدَ التَّنَازُعِ. فَفَعَلْنَا، فَلَمْ نَجِدْ فِي ذَلِكَ نَصَّ قُرْآنٍ، وَلَا سُنَّةً لَا صَحِيحَةً، وَلَا سَقِيمَةً، وَلَا إجْمَاعًا مُتَيَقَّنًا، وَكُلُّ حُكْمٍ لَمْ يَكُنْ فِي هَذِهِ الْعُمْدِ فَهُوَ بَاطِلٌ [بِيَقِينٍ] .

L37706 As for us, there is no authoritative evidence for us in the words of anyone other than the Messenger of Allah—peace and blessings of Allah be upon him.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37707 In the statements of the aforementioned Companions or Followers, there is no basis in the Sunnah, the Qur'an, or consensus. We have established that wealth is inviolable as per the statement of Allah the Exalted: "And do not consume one another's wealth unjustly" [Al-Baqarah: 188], and as per the statement of the Messenger of Allah—peace and blessings be upon him—"Indeed, your blood and your wealth are inviolable to you."[5]

وَلَيْسَ فِي أَقْوَالِ مَنْ ذَكَرْنَا مِنْ صَاحِبٍ أَوْ تَابِعٍ سُنَّةٌ، وَلَا قُرْآنٌ، وَلَا إجْمَاعٌ، وَقَدْ ذَكَرْنَا أَنَّ الْأَمْوَالَ مُحَرَّمَةٌ لِقَوْلِ اللَّهِ تَعَالَى: {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ»

L37708 It is therefore established that no financial penalty is incurred for the two breasts whatsoever. If the two breasts are harmed unintentionally, nothing is due in that case, as we have stated. But if the harm is intentional, retaliation

فَوَجَبَ أَنْ لَا يَجِبَ فِي الثَّدْيَيْنِ غَرَامَةٌ أَصْلًا، فَإِنْ أُصِيبَا خَطَأً فَلَا شَيْءَ فِي ذَلِكَ، لِمَا ذَكَرْنَا، وَإِنْ كَانَ عَمْدًا فَفِيهِ الْقَوَدُ - وَهَذَا قَوْلُ أَبِي سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا - وَبِهِ نَأْخُذُ.

[5] **Qur'an references (L37707):** Qur'an 2:188 (Al-Baqarah).

(*qisas*) applies. This is the opinion of Abū Sulaymān and all scholars of our school, and it is the position we adopt.

L37709 Ali said: If a man cuts off the nipple of a woman's breast, his entire breast must be cut off, because his entire breast is treated as a nipple (as he lacks a distinct breast). If she cuts off his breast, her nipple must be cut off. If he intentionally cuts off her entire breast—an equal measure of skin surrounding his breast must be cut off—in accordance with Allah's statement: "So whoever transgresses against you, retaliate against him with the equivalent of what he transgressed against you." [Al-Baqarah: 194].[6]

قَالَ عَلِيٌّ: فَإِنْ قَطَعَ الرَّجُلُ حَلَمَةَ ثَدْيِ الْمَرْأَةِ قُطِعَ ثَدْيُهُ كُلُّهُ، لِأَنَّهُ كُلُّهُ حَلَمَةٌ لَا ثَدْيَ لَهُ، فَإِنْ قَطَعَتْ هِيَ ثَدْيَهُ قُطِعَتْ حَلَمَتُهَا، فَإِنْ قَطَعَ جَمِيعَ ثَدْيِهَا عَمْدًا - قُطِعَ مِنْ جِلْدِهِ مَا حَوَالَيَّ ثَدْيِهِ مِقْدَارُ ذَلِكَ - لِقَوْلِ اللَّهِ تَعَالَى: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L37710 The issue of diyah (blood money) for a man's ifḍāʾ (traumatic intercourse causing vaginal-anal perforation) of a woman.

[مَسْأَلَةُ دِيَةُ إِفْضَاءِ الرَّجُلِ الْمَرْأَةَ]

L37711–37713 2064 - Issue: Hammam reported to us from Abdullah ibn Muhammad ibn Ali Al-Bajiyy, who reported to us from Abdullah ibn Yunus Al-Murādiyy. Narrated by Baqiyy ibn Makhlad from Abu Bakr ibn Abi Shaybah from Hushaym from Dawud from Amr ibn Shu'ayb: A man coerced a woman and deflowered her, whereupon Umar ibn al-Khattab applied the ḥadd punishment to him and fined him one-third of her diyah.

٢٠٦٤ - مَسْأَلَةٌ: نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ الْمُرَادِيُّ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ دَاوُد عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ رَجُلًا اسْتَكْرَهَ امْرَأَةً فَأَفْضَاهَا فَضَرَبَهُ عُمَرُ بْنُ الْخَطَّابِ الْحَدَّ، وَغَرَّمَهُ ثُلُثَ دِيَتِهَا

L37714 Narrated Humaam, narrated Ibn Mufarrij, narrated Ibn al-A'rabi, narrated al-Dabari, narrated Abd al-Razzaq from a man from Ikrimah who said: Umar ibn al-Khattab ruled concerning the woman who was forcibly overpowered and either raped or had her virginity taken: she is entitled to a third of her diyah, and no prescribed punishment is imposed upon her.

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ رَجُلٍ عَنْ عِكْرِمَةَ قَالَ: قَضَى عُمَرُ بْنُ الْخَطَّابِ فِي الْمَرْأَةِ إِذَا غُلِبَتْ عَلَى نَفْسِهَا فَأُفْضِيَتْ أَوْ ذَهَبَتْ عُذْرَتُهَا بِثُلُثِ دِيَتِهَا وَلَا حَدَّ عَلَيْهَا

L37715 And from him—to ʿAbd al-Razzāq from Maʿmar from a man from Qatādah regarding a man who fornicates with a woman, thereby deflowering her. He said, "One-third of the *diyah*."

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ قَتَادَةَ فِي الرَّجُلِ يُصِيبُ الْمَرْأَةَ فَيُفْضِيهَا؟ قَالَ ثُلُثُ الدِّيَةِ.

L37716 Another opinion—as we have been narrated through the aforementioned chain to ʿAbd al-Razzāq from ʿAbd Allāh ibn Muḥriz from Qatādah—that Zayd ibn Thābit said regarding a woman penetrated anally by her husband:

[6] **Qur'an references (L37709):** Qur'an 2:194 (Al-Baqarah).

If she retains the ability to control urination, defecation, and childbirth capability, then one-third of the diyah; but if she loses control of urination, defecation, and childbirth capability, then the diyah is complete.

وَقَوْلٌ آخَرَ - كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ مُحَرِّزٍ عَنْ قَتَادَةَ أَنَّ زَيْدَ بْنَ ثَابِتٍ قَالَ: فِي الْمَرْأَةِ يُفْضِيهَا زَوْجُهَا، إِنْ حَبَسَتْ الْحَاجَتَيْنِ وَالْوَلَدَ فَثُلُثُ الدِّيَةِ، وَإِنْ لَمْ تَحْبِسْ الْحَاجَتَيْنِ وَالْوَلَدَ فَالدِّيَةُ كَامِلَةً

L37717 And through him to Abd al-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz, that Umar ibn Abd al-Aziz said concerning the woman's joining of the circumcision scars, the full blood money is due because it prevents pleasure and intercourse.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّ عُمَرَ بْنَ عَبْدَ الْعَزِيزِ قَالَ فِي إفْضَاءِ الْمَرْأَةِ الدِّيَةُ كَامِلَةً مِنْ أَجْلِ أَنَّهَا تَمْنَعُ اللَّذَّةَ وَالْجِمَاعَ.

L37718–37720 From the chain of al-Ḥajjāj ibn al-Minhāl, through Ḥammād ibn Salamah, through Hishām ibn ʿAmr al-Fazārī, who said: I witnessed ʿUmar ibn ʿAbd al-ʿAzīz when a letter came to him from his governor in Najrān. After reading it, he said: "What is your view regarding a man of wealth and means who proposed marriage to the daughter of a destitute man, and the father married her to him? The groom said: 'Hand her over to me, for I will expand her provision in what I spend on her.' The father replied: 'I fear you might violate her.' He swore: 'Do not fear—I will not approach her.' Yet he took her, violated her, tore her, spilled her blood, and she died." ʿAbdullāh ibn Maʿqil ibn Muqarrin said: "By Allah, he is liable!" ʿAbdullāh ibn ʿAmr ibn ʿUthmān ibn ʿAffān said: "By Allah, he is liable!" ʿUmar ibn ʿAbd al-ʿAzīz then repeated: "Is it diyah and mahr? Diyah and mahr?" Abān ibn ʿUthmān ibn ʿAffān said: "If she had reached the age when women menstruate, no diyah is due. If she had not reached that age, her diyah is owed." ʿUmar then wrote this ruling to al-Walīd ibn ʿAbd al-Malik. From the narration of Abu Bakr ibn Abi Shaybah: Zayd ibn al-Hubab reported to us, from Khalid ibn Abdullah, from Khalid al-Hadhdha', from Aban ibn Uthman, that a case was presented to him concerning a man who married a young girl and consummated the marriage. He, along with Umar ibn Abd al-Aziz, ruled: If she is among those whose peers are considered suitable for intercourse, there is no liability upon him. But if she is among those whose peers are not considered suitable for intercourse, he must pay one-third of the diyah.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا هِشَامُ بْنُ عَمْرٍو الْفَزَارِيّ قَالَ: شَهِدْت عُمَرَ بْنَ عَبْدِ الْعَزِيزِ إذْ جَاءَهُ كِتَابٌ مِنْ عَامِلِهِ بِنَجْرَانَ، فَلَمَّا قَرَأَهُ قَالَ: مَا تَرَوْنَ فِي رَجُلٍ ذِي جِدَةٍ وَسَعَةٍ خَطَبَ إلَى رَجُلٍ ذِي فَاقَةٍ بِنْتَهُ فَزَوَّجَهُ إيَّاهَا، فَقَالَ: ادْفَعْهَا إلَيَّ فَإِنِّي أُوسِعُ لَهَا فِيمَا أُنْفِقُ عَلَيْهَا، فَقَالَ: إنِّي أَخَافُك عَلَيْهَا أَنْ تَقَعَ بِهَا، فَقَالَ: لَا تَخَفْ، لَا أَقْرَبُهَا، فَدَفَعَهَا إلَيْهِ، فَوَقَعَ بِهَا فَخَرَقَهَا، فَهُرِيقَتْ دَمًا وَمَاتَتْ. فَقَالَ عَبْدُ اللَّهِ بْنُ مَعْقِلِ بْنِ مُقَرِّنٍ: غَرِمَ وَاَللَّهِ وَقَالَ عَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ عُثْمَانَ بْنِ عَفَّانَ: غَرِمَ وَاَللَّهِ، فَقَالَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَعَقْلًا وَصَدَاقًا، أَعَقْلًا وَصَدَاقًا؟ وَقَالَ أَبَانُ بْنُ عُثْمَانَ بْنِ عَفَّانَ: إنْ كَانَتْ أَدْرَكَتْ مَا أَدْرَكَ النِّسَاءَ فَلَا دِيَةَ لَهَا، وَإِنْ لَمْ تَكُنْ أَدْرَكَتْ مَا أَدْرَكَ النِّسَاءَ فَلَهَا الدِّيَةُ. فَكَتَبَ عُمَرُ بِذَلِكَ إلَى الْوَلِيدِ بْنِ عَبْدِ الْمَلِكِ وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ عَنْ خَالِدِ بْنِ عَبْدِ اللَّهِ عَنْ خَالِدٍ الْحَذَّاءِ عَنْ أَبَانَ بْنِ عُثْمَانَ أَنَّهُ رُفِعَ إلَيْهِ رَجُلٌ تَزَوَّجَ جَارِيَةً فَأَفْضَاهَا فَقَالَ فِيهَا هُوَ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ: إنْ كَانَتْ مِمَّنْ يُجَامَعُ مِثْلُهَا فَلَا شَيْءَ عَلَيْهِ وَإِنْ كَانَتْ مِمَّنْ لَا يُجَامَعُ مِثْلُهَا فَعَلَيْهِ ثُلُثُ الدِّيَةِ.

L37721 Narrated by Ibn Jurayj: If one cannot retain feces, he must pay the full *diyah*.

وَعَنْ ابْنِ جُرَيْجٍ إذَا كَانَ لَا يَسْتَمْسِكُ الْغَائِطُ فَعَلَيْهِ الدِّيَةُ كَامِلَةً

L37722 And by it, Sufyān al-Thawrī and Abū Thawr maintain their position.

وَبِهِ يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو ثَوْرٍ.

L37723 Abu Hanifa held the same opinion and added: When there is retention of fecal matter, one-third of the blood money (diyah) is owed.

وَقَالَ أَبُو حَنِيفَةَ: مِثْلَ ذَلِكَ، وَزَادَ: فَإِذَا كَانَ الْغَائِطُ يُسْتَمْسَك فَثُلُثُ الدِّيَةِ.

L37724 No opinion is known from Mālik or al-Shāfiʿī regarding this matter. Abū Muḥammad said: As for what is transmitted concerning this from ʿUmar ibn al-Khaṭṭāb and Zayd ibn Thābit—may Allah be pleased with them both—it is textually stipulated (tawqīf), and such rulings can only be derived from Allah the Exalted through the tongue of His Prophet—peace and blessings be upon him.

وَلَا يُعْرَفُ لِمَالِكٍ، وَلَا لِلشَّافِعِيِّ فِيهَا قَوْلٌ. قَالَ أَبُو مُحَمَّدٍ: أَمَّا الْمَأْثُورُ فِي ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَزَيْدِ بْنِ ثَابِتٍ - رَضِيَ اللَّهُ عَنْهُمَا - فَإِنَّهُ تَوْقِيفٌ، وَالتَّوْقِيفُ لَا يُؤْخَذُ إلَّا عَنْ اللَّهِ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37725 Indeed, it was incumbent upon the Malikis—those who censure deviations by adhering to the Companion's opinion for which no dissent is known—to adopt here the positions of Umar and Zaid. Yet this is among the contradictions they exhibited. As for the Hanafis, they applied their principle consistently and adopted here what was narrated from Umar and Zaid. Why then did they not do so regarding suckling at the nipple of a man's or the woman's breast? This exposes the contradictions of the school and their failure to establish any legal principle.

وَلَقَدْ كَانَ يَلْزَمُ الْمَالِكِيِّينَ الْمُشَنِّعِينَ بِقَوْلِ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ أَنْ يَقُولُوا هَاهُنَا بِقَوْلِ عُمَرَ، وَزَيْدٍ، وَلَكِنْ هَذَا مِمَّا تَنَاقَضُوا فِيهِ. وَأَمَّا الْحَنَفِيُّونَ - فَإِنَّهُمْ طَرَدُوا أَصْلَهُمْ وَقَالُوا هَاهُنَا بِمَا رُوِيَ عَنْ عُمَرَ، وَزَيْدٍ، فَهَلَّا فَعَلُوا ذَلِكَ فِي حَلَمَةِ ثَدْيِ الرَّجُلِ وَالْمَرْأَةِ؟ وَلَكِنْ هَذَا يُرِيكُمْ تَنَاقُضَ الْقَوْمِ، وَأَنَّهُمْ لَا يُحَقِّقُونَ أَصْلًا

L37726 Ali said: As for us, we maintain that if such harm occurs from him toward his wife unintentionally, and she survives and recovers, there is no liability in this, for he is in error, and God Almighty has permitted him to have intercourse with his wife; thus he did not transgress God's boundaries in this matter. But if he did this intentionally—while knowing she cannot conceive—or if he did this to a slave woman similarly, or to a woman not lawfully related to him: then retaliation is incumbent upon him. He is to be incised with an iron instrument equivalent to the injury he inflicted upon her in equal measure as a transgressor. For the woman not lawfully related to him, the fixed punishment applies in addition to that. There is no financial compensation required in any of these cases whatsoever—except if he caused this unintentionally and she died, in which case the full diyah is due, for it concerns a life. And with God Almighty lies all success.

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَنَقُولُ: إنْ كَانَ ذَلِكَ وَقَعَ مِنْهُ فِي زَوْجَتِهِ مِنْ غَيْرِ قَصْدٍ فَعَاشَتْ وَبَرِئَتْ فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ مُخْطِئٌ، وَقَدْ أَبَاحَ اللَّهُ تَعَالَى لَهُ وَطْءَ زَوْجَتِهِ، فَلَمْ يَتَعَدَّ حُدُودَ اللَّهِ تَعَالَى فِي ذَلِكَ، وَإِنْ كَانَ فَعَلَ ذَلِكَ عَامِدًا - وَهُوَ يَدْرِي أَنَّهَا لَا تَحْمِلُ - أَوْ فَعَلَ ذَلِكَ بِأَمَةٍ كَذَلِكَ، أَوْ بِأَجْنَبِيَّةٍ: فَعَلَيْهِ الْقِصَاصُ، وَيُفْتَقُ مِنْهُ بِحَدِيدَةٍ مِقْدَارُ مَا فُتِقَ مِنْهَا مُتَعَدِّيًا، وَعَلَيْهِ فِي الْأَجْنَبِيَّةِ - مَعَ ذَلِكَ - الْحَدُّ، وَلَا غَرَامَةَ فِي شَيْءٍ مِنْ ذَلِكَ أَصْلًا، إلَّا إنْ فَعَلَ ذَلِكَ مُخْطِئًا فَمَاتَتْ، فَالدِّيَةُ كَامِلَةٌ، لِأَنَّهَا نَفْسٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةَ مَنْ قُطِعَ مِنْ جِلْدِهِ شَيْءٌ]

L37727–37728 **Legal Question: The Blood Money for Someone Whose**

Skin Was Partially Cut Off

L37729 Issue: ʻAbdullāh ibn Rabīʻ narrated: ʻAbdullāh ibn Muḥammad ibn ʻUthmān narrated: Aḥmad ibn Khālid narrated: ʻAlī ibn ʻAbd al-ʻAzīz narrated: al-Ḥajjāj narrated from Makhūl, who said: "If skin the size of a dirham is detached from the face or the head, three camels are owed; if from the body, one and a half camels are owed."

L37730 Abū Muḥammad said: This is a specification not established by a Quranic text, nor a Sunnah, nor consensus; thus, nothing is obligatory in that matter. As for the Ḥanafīs, the Mālikīs, and the Shāfiʻīs, they are proponents of analogy by their assertion, and this is a case where—based on their principles—they must analogize it to their ruling regarding al-muwāḍiḥah (the wound exposing the bone). Yet they contradicted themselves herein. As for us, retaliation applies in this case for intentional acts, and there is no obligation for accidental acts, per Allah the Exalted's statement: "There is no blame on you for what you do by mistake, but only for what your hearts intend" [Al-Aḥzāb: 5]. And by Allah the Exalted is success.[7]

The issue of the diyah of the fracture when it has healed

L37731

L37732 2066 – Issue: From Abdullah ibn Rabi', from Abdullah ibn Muhammad ibn Uthman, from Ahmad ibn Khalid, from Ali ibn Abd al-Aziz, from al-Hajjaj ibn al-Minhāl, from Hammad ibn Salamah, from Qatadah, from Sulayman ibn Yasar: That Umar ibn al-Khattab ruled concerning a man whose hand, leg, or thigh was broken and then set, awarding him two hiqqatayn.

L37733 Narrated by Hammad ibn Salamah, who informed us from Amr ibn Dinar, who said: A man had one of his forearms broken, then it healed. Umar adjudicated a compensation of two hundred dirhams for the injury.

[7] **Qur'an references (L37730):** Qur'an 33:5 (Al-Ahzab).

مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ عَنْ مَكْحُولٍ قَالَ: إذَا اخْتَلَفَ مِنْ جِلْدَةِ الْوَجْهِ وَالرَّأْسِ مِثْلُ الدِّرْهَمِ، فَفِيهِ ثَلَاثَةُ أَبْعِرَةٍ - وَإِنْ اخْتَلَفَ مِنْ الْجَسَدِ، فَبَعِيرٌ وَنِصْفٌ.

قَالَ أَبُو مُحَمَّدٍ: هَذَا تَحْدِيدٌ لَمْ يَأْتِ بِهِ نَصُّ قُرْآنٍ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، فَلَا يَجِبُ فِي ذَلِكَ شَيْءٌ - وَأَمَّا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ فَإِنَّهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ وَهَذَا مَكَانٌ يَجِبُ عَلَيْهِمْ عَلَى أُصُولِهِمْ أَنْ يَقِيسُوهُ عَلَى قَوْلِهِمْ فِي الْمُوضِحَةِ وَلَكِنَّهُ مِمَّا تَنَاقَضُوا فِيهِ - وَأَمَّا نَحْنُ فَالْقِصَاصُ فِي ذَلِكَ فِي الْعَمْدِ وَلَيْسَ فِي الْخَطَإِ فِي ذَلِكَ شَيْءٌ لِقَوْلِ اللَّهِ تَعَالَى: {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ} [الأحزاب: ٥] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةِ الْكَسْرِ إذَا انْجَبَرَ]

٢٠٦٦ - مَسْأَلَةٌ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا قَتَادَةُ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي رَجُلٍ كُسِرَتْ يَدُهُ، أَوْ رِجْلُهُ، أَوْ فَخِذُهُ، ثُمَّ انْجَبَرَتْ: فَقَضَى فِيهَا بِحِقَّتَيْنِ.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ نا عَمْرُو بْنُ دِينَارٍ قَالَ: إنَّ رَجُلًا كُسِرَ أَحَدُ زَنْدَيْهِ، ثُمَّ انْجَبَرَ: فَقَضَى فِيهِ عُمَرُ بِمِائَتَيْ دِرْهَمٍ

L37734 From Hammad ibn Salama, from al-Hajjaj, from Ikrimah ibn Khalid al-Makhzumi: Umar ibn al-Khattab ruled that two camels—valued at one hundred dirhams—be given, as part of a calculation based on ten thousand dirhams.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ الْحَجَّاجِ عَنْ عِكْرِمَةَ بْنِ خَالِدٍ الْمَخْزُومِيِّ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِيهِ بِبَعِيرَيْنِ - وَالْبَعِيرَانِ بِإِزَاءِ الْمِائَةِ دِرْهَمٍ مِنْ حِسَابِ عَشَرَةِ آلَافِ دِرْهَمٍ.

L37735 From Hammad ibn Salama, on the authority of Ayyub al-Sikhtiyani, Hisham ibn Hassan, and Habib ibn al-Shahid—all of them from Muhammad ibn Sirin—that Shuraih ruled regarding a fracture that had healed, stating: "This only increases it [the fracture] in severity. The physician's fees must be given, along with compensation for the time the injured person was prevented from practicing his occupation."

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ نا أَيُّوبُ السِّخْتِيَانِيُّ وَهِشَامُ بْنُ حَسَّانَ، وَحَبِيبُ بْنُ الشَّهِيدِ كُلُّهُمْ عَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ شُرَيْحًا قَضَى فِي الْكَسْرِ إذَا انْجَبَرَ، قَالَ: لَا يَزِيدُهُ ذَلِكَ إلَّا شِدَّةً يُعْطَى أَجْرَ الطَّبِيبِ، وَقَدْرَ مَا شُغِلَ عَنْ صَنْعَتِهِ.

L37736–37737 From Makhūl: Regarding a fracture in the upper arm that heals - eight camels. If one of the two forearm bones breaks and then heals - ten camels. For every joint of a finger that breaks and then heals - two-thirds of a camel. For the nail: if it is impaired - one-fifth of a camel. If it regrows - two-fifths of a camel.

وَعَنْ مَكْحُولٍ - أَنَّهُ قَالَ: فِي الصَّدْعِ فِي الْعَضُدِ إذَا انْجَبَرَ ثَمَانِيَةُ أَبْعِرَةٍ، فَإِذَا انْكَسَرَ أَحَدُ زَنْدَيْهِ، ثُمَّ انْجَبَرَ: فَعَشَرَةُ أَبْعِرَةٍ. وَفِي كُلِّ مِفْصَلٍ مِنْ مَفَاصِلِ الْأُصْبُعِ إذَا انْكَسَرَ ثُمَّ انْجَبَرَ ثُلُثَا بَعِيرٍ. وَفِي الظُّفْرِ - إذَا أَعْوَرَ بَعِيرٌ، فَإِذَا نَبَتَ خُمُسَا بَعِيرٍ.

L37738 These are precedents reported from ʿUmar ibn al-Khaṭṭāb, Shurayḥ, and Makhūl—the Ḥanafīs, Mālikīs, and Shāfiʿīs have opposed what came from ʿUmar based on their own opinions.

فَهَذِهِ آثَارٌ جَاءَتْ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَنْ شُرَيْحٍ، وَعَنْ مَكْحُولٍ - وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، قَدْ خَالَفُوا مَا جَاءَ عَنْ عُمَرَ بِآرَائِهِمْ.

L37739 Abu Muhammad said: In our view, there is nothing in that regard except retaliation in intentional cases only.

قَالَ أَبُو مُحَمَّدٍ: وَلَيْسَ فِي ذَلِكَ عِنْدَنَا إلَّا الْقِصَاصُ فِي الْعَمْدِ فَقَطْ.

L37740 As for unintentional errors, there is nothing [required], due to what we have previously cited from the words of Allah the Most High and the words of His Messenger (peace be upon him).

وَأَمَّا فِي الْخَطَأِ فَلَا شَيْءَ، لِمَا قَدْ ذَكَرْنَا مِنْ قَوْلِ اللَّهِ تَعَالَى، وَمِنْ قَوْلِ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

[مَسْأَلَةٌ دِيَةِ الْمَثَانَةِ إذَا انْفَتَقَتْ]

An issue regarding the diyah of the bladder when it ruptures.

L37741 2067 - Issue: Abdullah ibn Rabi' narrated to us, from Abdullah ibn Muhammad ibn Uthman, from Ahmad ibn Khalid, from Ali ibn Abd al-Aziz, from al-Hajjaj ibn al-Minhal, from Hammad ibn Salamah, from Qatadah, from Abi Mijlaz that he said regarding the bladder when it is ruptured: one-third of the *diyah*.

٢٠٦٧ - مَسْأَلَةٌ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا قَتَادَةُ عَنْ أَبِي مِجْلَزٍ أَنَّهُ قَالَ فِي الْمَثَانَةِ إذَا فُتِقَتْ: ثُلُثُ الدِّيَةِ.

L37743 From the chain of Waki‘, who narrated from Sufyan al-Thawri, from Azhar, from Abu Awn Muhammad ibn Ubayd Allah al-Thaqafi, from Shurayh, who said: For a gaping wound (fatq), one-third of the diyah (blood money) is due.

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ أَزْهَرَ عَنْ أَبِي عَوْنٍ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الثَّقَفِيِّ عَنْ شُرَيْحٍ قَالَ: فِي الْفَتْقِ ثُلُثُ الدِّيَةِ.

L37744 Narrated by Humaam, from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, from a man, from al-Shaʿbī, who said: “For a ruptured bladder: one-third of the *diyah*.”

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ رَجُلٍ عَنْ الشَّعْبِيِّ قَالَ: فِي الْمَثَانَةِ إذَا خُرِقَتْ: ثُلُثُ الدِّيَةِ.

L37745 Abd al-Razzaq said: Ibn Jurayj said—and I [myself] say—that in it—if one fails to retain urine—the full blood-money applies. This was said by the people of Syria, and Sufyan al-Thawri said the same.

قَالَ عَبْدُ الرَّزَّاقِ: قَالَ ابْنُ جُرَيْجٍ: وَأَنَا أَقُولُ: إنَّ فِيهَا - إذَا لَمْ تُمْسِكْ الْبَوْلَ - الدِّيَةَ كَامِلَةً قَالَهُ أَهْلُ الشَّامِ - وَقَالَ سُفْيَانُ الثَّوْرِيُّ مِثْلَ ذَلِكَ.

L37746 Ali said: There is nothing in that except retaliation for intentional acts or blood money, because it is a wound—and there is no liability for unintentional acts as we have mentioned.

قَالَ عَلِيٌّ: لَيْسَ فِي ذَلِكَ إلَّا الْقِصَاصُ فِي الْعَمْدِ أَوْ الْمُفَادَاةُ، لِأَنَّهُ جُرْحٌ - وَلَيْسَ فِي الْخَطَأِ شَيْءٌ لِمَا ذَكَرْنَا.

[مَسْأَلَةٌ دِيَةُ الْوِرْكِ إذَا انْكَسَرَتْ ثُمَّ انْجَبَرَتْ]

L37747 **Issue: The diyah for a fractured hip that heals.**

L37748–37750 2068 – Issue: It has been narrated to us through the chain of al-Ḥajjāj ibn al-Minhāl, who informed us: Ḥammād ibn Salamah from... Al-Ḥajjaj reported from Makḥūl from Zayd ibn Thābit regarding the hip when fractured and set: ten camels [as blood money] – this being the opinion of a Companion, with no dissenting view known among the Companions – while the Ḥanafīs, Mālikīs, and Shāfiʿīs vehemently condemn any opposition to the Companion’s position when it aligns with their adherence to precedent. As for our position, we uphold only qisas (retaliation) in cases of intentional injury – whereas in cases of accidental injury, there is no liability.

٢٠٦٨ - مَسْأَلَةٌ: رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ عَنْ مَكْحُولٍ عَنْ زَيْدِ بْنِ ثَابِتٍ قَالَ فِي الْوِرْكِ إذَا انْكَسَرَتْ ثُمَّ انْجَبَرَتْ: عَشْرَةُ أَبْعِرَةٍ - وَهُوَ قَوْلُ صَاحِبٍ لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، يُشَنِّعُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ - وَأَمَّا نَحْنُ فَلَيْسَ عِنْدَنَا إلَّا الْقَوَدُ فِي الْعَمْدِ فَقَطْ - وَأَمَّا فِي الْخَطَأِ فَلَا شَيْءَ فِيهِ.

[مَسْأَلَةٌ دِيَةُ الْمَقْعَدَةِ وَالشُّفْرَانِ وَالْأَلْيَتَانِ وَالْعَفَلَةِ وَالْمَنْكِبِ]

L37751 **Issue: The diyah (financial compensation) for injuries to the anus, the labia majora, the buttocks, the clitoral prepuce, and the shoulder.**

L37752 Issue 2069: Narrated by Ḥammām, narrated by Ibn Mufarrij, narrated by Ibn al-Aʿrābī, narrated by al-Dabarī, narrated by ʿAbd al-Razzāq, from Ibn Jurayj, from ʿAbd al-Karīm that he said regarding injury to the buttocks: If

one becomes unable to control his excretion, the blood money is due - and this is the opinion upheld by al-Thawrī.

٢٠٦٩ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ أَنَّهُ قَالَ فِي الْمَقْعَدَةِ إِذَا لَمْ يَسْتَطِعْ أَنْ يُمْسِكَ خَلَاهُ فَالدِّيَةُ - وَبِهِ يَقُولُ الثَّوْرِيُّ

L37753 And through him—to ʻAbd al-Razzāq, from Ibn Jurayj, from ʻAbd al-Karīm, from ʻAmr ibn Shuʻayb, who said: Full blood money is due for the two buttocks if they are severed until the bone becomes exposed; for one of them, half the blood money is due.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّهُ قَالَ: فِي الْأَلْيَتَيْنِ إِذَا قُطِعَتَا حَتَّى يَبْدُوَ الْعَظْمُ الدِّيَةُ كَامِلَةً، وَفِي إِحْدَاهُمَا نِصْفُ الدِّيَةِ.

L37754 And from Ibrāhīm al-Nakhaʻī: the diyah applies to the two buttocks.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي الْأَلْيَتَيْنِ الدِّيَةُ.

L37755 And through him—to ʿAbd al-Razzāq from Ibn Jurayj: Muḥammad ibn al-Ḥārith ibn Sufyān informed me, saying: The ruling for a woman's labium of the vulva, if entirely severed to the bone, requires half her *diyah*. For both labia severed to the bone, her full *diyah* is due. If she is barren and cannot conceive? Ibn Jurayj said: It was established by consensus for ʿUmar ibn ʿAbd al-ʿAzīz that severing a woman's clitoris entails the full *diyah* because it prevents her from experiencing the pleasure of intercourse.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي مُحَمَّدُ بْنُ الْحَارِثِ بْنِ سُفْيَانَ، قَالَ: يُقْضَى فِي شُفْرِ قُبُلِ الْمَرْأَةِ إِذَا أَوْعَبَ حَتَّى يَبْلُغَ الْعَظْمَ نِصْفُ دِيَتِهَا، وَفِي شُفْرَيْهَا بِدِيَتِهَا إِذَا بَلَغَ الْعَظْمَ - فَإِنْ كَانَتْ عَاقِرًا لَا تَحْمِلُ؟ قَالَ ابْنُ جُرَيْجٍ: وَاجْتَمَعَ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي رَكْبِ الْمَرْأَةِ إِذَا قُطِعَ بِالدِّيَةِ مِنْ أَجْلِ أَنَّهَا تَمْتَنِعُ مِنْ لَذَّةِ الْجِمَاعِ.

L37756–37760 Aṭāʾ said: "Do I not know anything concerning the woman's vaginal opening in our land?" Ibn Jurayj said: ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz informed me, saying: "The scholars convened with my father during his caliphate and agreed that for injuries to the vaginal opening caused by a blow, the full blood-money is obligatory because it prevents [procreation]." The compensation for pleasure and intercourse is forty dinars each, and the compensation for a shoulder fracture that is set without bone involvement is forty dinars. Ali said: Al-Shafiʻi stated regarding the ʿafala (clitoral hood): If intercourse is invalidated, the diyah is obligatory, and the same applies to the loss of both labia majora.

وَقَالَ عَطَاءٌ: مَا عَلِمْت فِي قُبُلِ الْمَرْأَةِ شَيْئًا بِبِلَادِنَا؟ قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: اجْتَمَعَ الْعُلَمَاءُ لِأَبِي فِي خِلَافَتِهِ عَلَى أَنَّ فِي الْعَفَلَةِ تَكُونُ مِنَ الضَّرْبَةِ الدِّيَةُ كَامِلَةً، لِأَنَّهَا تَمْنَعُ اللَّذَّةَ وَالْجِمَاعَ، وَعَلَى أَنَّ فِي الْمَنْكِبِ إِذَا كُسِرَ ثُمَّ جُبِرَ فِي غَيْرِ عَثْمٍ أَرْبَعُونَ دِينَارًا قَالَ عَلِيٌّ: وَقَالَ الشَّافِعِيُّ - فِي الْعَفَلَةِ إِذَا بَطَلَ الْجِمَاعُ الدِّيَةُ، وَفِي ذَهَابِ الشُّفْرَيْنِ كَذَلِكَ.

L37761 Abu Hanifah, al-Shafi'i, Ahmad, and their companions held that the diyah is owed for both buttocks.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُهُمْ: فِي الْأَلْيَتَيْنِ الدِّيَةُ.

L37762–37763 All of this has neither an explicit textual basis nor consensus; thus, there is nothing established in such matters regarding unintentional harm. As for

intentional acts: retaliation where possible, or financial compensation (diya) in cases involving wounds. And success is from Allah, the Most High.

A Legal Issue on Diyah (Compensation) for the Neck

Issue 2070: Reported by Ḥammām, from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from ʿAbd al-Razzāq, from Sufyān al-Thawrī, from Azhar, from Abū ʿAwn, from Shurayḥ, who said: "One-third of the diyah is prescribed for injuries to the neck."

Ali said: There is no liability in that matter regarding unintentional acts. As for intentional acts, retaliation (qawd) applies, and it is absolutely imperative.

A legal issue: The ruling [requires abstaining] from another pregnancy until [the child] is weaned.

2071 – Issue: From Ḥammām, from ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī, from ʿAbdullāh ibn Yūnus, from Baqī ibn Makhlad, from Abū Bakr ibn Abī Shaybah, from Yazīd ibn Hārūn, from Yaḥyā ibn Saʿīd al-Anṣārī: Two men disputed in Medina during the reign of ʿUmar ibn ʿAbd al-ʿAzīz. One said to his opponent, "I struck him until he discharged semen due to injury." The other responded, "Bear witness, for by Allah, he has spoken truthfully." ʿUmar ibn ʿAbd al-ʿAzīz sent to Saʿīd ibn al-Musayyab, inquiring whether any precedent or Sunnah had been established regarding a man who struck another until he discharged semen. Saʿīd replied, "'Uthmān ruled that a third of the *diyah* is due in such a case." Sufyān added: "This is not incumbent upon the *ʿāqilah*."

It has been narrated from 'Uthmān regarding this matter in another report: As transmitted to us via the chain of al-Ḥajjāj ibn al-Minhāl—Ḥammād ibn Salamah narrated to us from 'Umar ibn 'Abd Allāh ibn Ṭalḥah al-Khuzāʿī, who said: There was a man called Ibn 'Iqāb, who was large and obese. A short man seized him and trampled his stomach until he defecated. 'Umar ibn 'Abd al-'Azīz sent to Saʿīd ibn al-Musayyab inquiring about the ruling.

وَكُلُّ هَذَا لَا نَصَّ فِيهِ وَلَا إِجْمَاعَ، فَلَا شَيْءَ فِي ذَلِكَ فِي الْخَطَأِ، أَمَّا فِي الْعَمْدِ: فَالْقِصَاصُ فِيمَا أَمْكَنَ أَوْ الْمُفَادَاةُ فِيمَا كَانَ جُرْحًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةِ الْعُنُقِ]

٢٠٧٠ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَزْهَرَ عَنْ أَبِي عَوْنٍ عَنْ شُرَيْحٍ قَالَ: فِي الْعُنُقِ ثُلُثُ الدِّيَةِ.

قَالَ عَلِيٌّ: لَا شَيْءَ فِي ذَلِكَ فِي الْخَطَأِ. وَالْقَوَدُ فِي الْعَمْدِ وَلَا بُدَّ.

[مَسْأَلَةٌ الدَّرْسُ لِبَطْنِ آخَرَ حَتَّى يُسْلَحَ]

٢٠٧١ - مَسْأَلَةٌ: نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّ رَجُلَيْنِ اخْتَصَمَا بِالْمَدِينَةِ فِي زَمَنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فَقَالَ أَحَدُهُمَا لِصَاحِبِهِ: ضَرَبْته حَتَّى سَلَحَ، فَقَالَ: اشْهَدُوا فَقَدْ وَاَللَّهِ صَدَقَ، فَأَرْسَلَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ إلَى سَعِيدِ بْنِ الْمُسَيِّبِ يَسْأَلُ عَنْ رَجُلٍ ضَرَبَ رَجُلًا حَتَّى سَلَحَ، هَلْ مَضَى فِي ذَلِكَ أَثَرٌ أَوْ سُنَّةٌ؟ فَقَالَ سَعِيدٌ: قَضَى فِيهَا عُثْمَانُ بِثُلُثِ الدِّيَةِ - قَالَ سُفْيَانُ: وَلَيْسَ ذَلِكَ عَلَى الْعَاقِلَةِ.

وَقَدْ رُوِيَ عَنْ عُثْمَانَ فِي ذَلِكَ غَيْرُ هَذَا: كَمَا رُوِّينَا مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عُمَرَ بْنِ عَبْدِ اللَّهِ بْنِ طَلْحَةَ الْخُزَاعِيُّ قَالَ: كَانَ رَجُلٌ يُقَالُ لَهُ: ابْنُ عِقَابٍ كَانَ عَظِيمًا سَمِينًا فَأَخَذَهُ رَجُلٌ قَصِيرٌ فَوَطِئَ فِي بَطْنِهِ حَتَّى خَرِيَ، فَأَرْسَلَ عُمَرُ بْنُ

Sa'īd ibn al-Musayyab replied: 'Uthmān ibn 'Affān ruled in this case with forty dinars or forty prescribed compensations.

L37770–37771 From Hammad ibn Salamah from Abu al-Khattab from Humayd ibn Yazid from Nafi' that Uthman ibn Affan ruled in that matter with forty camels—referring to the one who struck [another] until the bone was exposed.

L37772 Ali said: As for us, we do not consider anyone's statement as proof, nor do we accept anyone's judgment over that of the Messenger of Allah (peace be upon him). In such matters, we recognize nothing but retaliation: a blow equivalent to a blow with no excess. The incident is not the striker's action against the struck party, thus no transgression is incurred in such a case. Physical constitutions differ in severity and leniency—and with Allah, the Exalted, lies all success.

L37773 ## The Issue of Diyah for Flatulence

L37774 Issue 2072: Hammam narrated to us, Ibn Mufarrij narrated to us, Ibn al-A'rabi narrated to us, al-Dabari narrated to us, Abd al-Razzaq reported from Ma'mar from Isma'il ibn Umayyah: A man used to trim the mustache of Umar ibn al-Khattab. Umar startled him, causing the man to break wind. Umar said, "We did not intend this, but we will pay blood money for it," and he gave him forty dirhams. He said: "I believe he mentioned a goat or a young female goat."

L37775 Ali said: "Umar ibn al-Khattab, who provided [a ruling] in that matter, termed it 'compensation' ('aql), and the Shafi'is, Malikis, and Hanafis oppose this and do not regard it as a foundational principle."

L37776 This is arbitrary imposition and mockery in religion, which is impermissible. If what is reported from the Companion – with no known opposition to it – is considered valid evidence, then they must adhere to all of this and everything we have cited. If they do so, they would abandon most of their school's doctrines and part ways with those they imitate in their religion. But

عَبْد الْعَزِيزِ إِلَى سَعِيد بْنِ الْمُسَيِّبِ يَسْأَلُهُ عَنْ ذَلِكَ؟ فَقَالَ سَعِيدُ بْنُ الْمُسَيِّبِ: قَضَى فِيهِ عُثْمَانُ بْنُ عَفَّانَ بِأَرْبَعِينَ دِينَارًا، أَوْ بِأَرْبَعِينَ فَرِيضَةً.

وَعَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ أَبِي الْخَطَّابِ عَنْ حُمَيْدِ بْنِ يَزِيدَ عَنْ نَافِعٍ أَنَّ عُثْمَانَ بْنَ عَفَّانَ قَضَى فِي ذَلِكَ بِأَرْبَعِينَ بَعِيرًا - يَعْنِي الَّذِي ضَرَبَ حَتَّى سَلَحَ.

قَالَ عَلِيٌّ: وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ، وَلَا حُكْمُهُ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَيْسَ عِنْدَنَا فِي ذَلِكَ إِلَّا الْقِصَاصُ: ضَرْبٌ كَضَرْبٍ وَلَا مَزِيدَ، وَالْحَدَثُ لَيْسَ فِعْلَ الضَّارِبِ بِالْمَضْرُوبِ، فَلَا اعْتِدَاءَ عَلَيْهِ فِي ذَلِكَ، وَالطَّبَائِعُ تَخْتَلِفُ فِي الشِّدَّةِ وَالِاسْتِرْخَاءِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ دِيَةُ الضَّرْطَةِ]

٢٠٧٢ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ أَنَّ رَجُلًا كَانَ يَقُصُّ شَارِبَ عُمَرَ بْنِ الْخَطَّابِ فَأَفْزَعَهُ عُمَرُ، فَضَرِطَ الرَّجُلُ، فَقَالَ: أَمَا إِنَّا لَمْ نُرِدْ هَذَا، وَلَكِنْ سَنَعْقِلُهَا، فَأَعْطَاهُ أَرْبَعِينَ دِرْهَمًا - قَالَ: وَأَحْسِبُهُ قَالَ: شَاةً أَوْ عَنَاقًا.

قَالَ عَلِيٌّ: قَدْ سَمَّى عُمَرُ بْنُ الْخَطَّابِ الَّذِي أَعْطَى فِي ذَلِكَ " عَقْلًا " وَالشَّافِعِيُّونَ، وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ، يُخَالِفُونَ هَذَا وَلَا يَرَوْنَهُ أَصْلًا

وَهَذَا تَحَكُّمٌ وَتَلَاعُبٌ فِي الدِّينِ لَا يَحِلُّ، فَإِنْ كَانَ مَا رُوِيَ عَنْ الصَّاحِبِ مِمَّا لَا يُعْرَفُ لَهُ مُخَالِفٌ حُجَّةً فَلْيَلْتَزِمُوا كُلَّ هَذَا، وَكُلَّ مَا أَوْرَدْنَا، فَإِنْ فَعَلُوا ذَلِكَ تَرَكُوا أَكْثَرَ مَذَاهِبِهِمْ، وَفَارَقُوا مَنْ قَلَّدُوا دِينَهُمْ - وَإِنْ كَانَ مَا رُوِيَ عَنْ الصَّاحِبِ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ

if what is reported from the Companion – with no known opposition among them – is not considered valid evidence, then this is our position. Let them cease intimidating those who oppose it and abandon their argumentation based on such reports.

L37777 ## A Jurisprudential Matter Regarding Diyah for the Forehead

L37778–37780 2073 - Issue: Hammam reported from Ibn Mufarrij, who reported from Ibn al-Aʿrabī, who reported from al-Dabari, who reported from ʿAbd al-Razzāq, from Ibn Jurayj, who informed me that ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz reported from ʿUmar ibn ʿAbd al-ʿAzīz that he said: For the forehead - if it is crushed with an internal indentation: one hundred and fifty dinars. If there is a fracture between the eyebrows that disfigures the face and the bones are not displaced, a quarter of the blood money is due. If what lies between... If an injury affects the ears and the molars of the jaws, and a hair enters the wound without aggravating it, and no bone is removed: the liability is 100 dinars.

L37781 Ali said: This is the most authentic chain of transmission, as you see, leading to ʿUmar ibn ʿAbd al-ʿAzīz—may Allah have mercy on him. If it is an opinion—as it unquestionably is—then by my life, the opinion of ʿUmar ibn ʿAbd al-ʿAzīz has a far greater claim to correctness without doubt than the opinions of Abū Ḥanīfa, Mālik, and al-Shāfiʿī. And if this [ruling] is applied to a person of merit who speaks thus—and it cannot be said to be based on opinion—then it is textually grounded. For ʿUmar ibn ʿAbd al-ʿAzīz is indeed more entitled to this legal derivation than those we have mentioned.

L37782 As for us, we say: Indeed, ʻUmar—may Allah have mercy on him—and others among the predecessors are excused for their errors and rewarded for their *ijtihad*. No one's opinion constitutes proof except that of the Messenger of Allah—peace and blessings be upon him. In this matter, there is neither an explicit text nor consensus; thus, issuing rulings on it is impermissible. Nothing is prescribed except *qisas* (retaliation) for intentional killing, except in

لَيْسَ حُجَّةً - فَهَذَا قَوْلُنَا، فَلْيَتْرُكُوا التَّهْوِيلَ عَلَى مَنْ خَالَفَ ذَلِكَ، وَلْيُسْقِطُوا الِاحْتِجَاجَ بِمَا احْتَجُّوا بِهِ مِنْ ذَلِكَ.

[مَسْأَلَةُ دِيَةِ الْجَبْهَةِ]

٢٠٧٣ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ قَالَ: فِي الْجَبْهَةِ إِذَا هُشِّمَتْ وَفِيهَا غَوْصٌ مِنْ دَاخِلٍ مِائَةٌ وَخَمْسُونَ دِينَارًا، فَإِنْ كَانَ بَيْنَ الْحَاجِبَيْنِ كَسْرٌ شَانَ الْوَجْهَ، وَلَمْ تَنْتَقِلْ مِنْهُ الْعِظَامُ فَرُبْعُ الدِّيَةِ، وَإِنْ كُسِرَ مَا بَيْنَ الْأُذُنَيْنِ يُصِيبُ مَاضِغَ اللَّحْيَيْنِ وَقَدْ آذَاهُ الشَّعْرُ فِي تَخَوُّصٍ لَمْ يَضُرَّ فِي الْجُرْحِ، وَلَمْ يُنْقَلْ مِنْهُ عَظْمٌ: فَفِيهِ مِائَةُ دِينَارٍ.

قَالَ عَلِيٌّ: هَذَا أَصَحُّ سَنَدٍ كَمَا تَرَى إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - رَحِمَهُ اللَّهُ - فَلَئِنْ كَانَ رَأْيًا - كَمَا هُوَ رَأْيٌ بِلَا شَكٍّ - فَلَعَمْرِي أَنَّ رَأْيَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ لَأَحَقُّ بِالسَّدَادِ بِلَا شَكٍّ مِنْ رَأْيِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَلَئِنْ كَانَ يُطْلَقُ فِي ذِي فَضْلٍ يَقُولُ مِثْلَ هَذَا، لَا يُقَالُ بِالرَّأْيِ، فَهُوَ تَوْقِيفٌ، فَإِنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ لَأَحَقُّ بِهَذِهِ الْمُخْرِجَةِ مِمَّنْ ذَكَرْنَا

وَأَمَّا نَحْنُ فَنَقُولُ: إِنَّ عُمَرَ - رَحِمَهُ اللَّهُ - وَغَيْرَهُ مِمَّنْ سَلَفَ مَعْذُورُونَ فِيمَا أَخْطَئُوا فِيهِ، وَمَأْجُورُونَ فِي اجْتِهَادِهِمْ، وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا لَا نَصَّ فِيهِ وَلَا إِجْمَاعَ، فَلَا يَجُوزُ الْقَوْلُ فِيهِ، وَلَيْسَ فِيهِ إِلَّا الْقَوَدُ فِي

cases of wounding where mutual compensation (*mufādāh*) applies. There is nothing [prescribed] in it for unintentional harm—and success comes only from Allah, the Exalted.

الْعَمْدِ فَقَطْ، إِلَّا أَنْ يَكُونَ جُرْحًا فَتَكُونَ فِيهِ الْمُفَادَاةُ، وَلَا شَيْءَ فِيهِ فِي الْخَطَأِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A Jurisprudential Issue Concerning the Diyah (Blood Money) for the Slap.

[مَسْأَلَةُ دِيَةِ اللَّطْمَةِ]

2074. Issue: Hammam narrated, Ibn Mufarrij narrated, Ibn al-A'rabi narrated, al-Dabari narrated, 'Abd al-Razzaq said: I heard a freed slave of Sulayman ibn Habib report from Ma'mar, who said: Sulayman ibn Habib ruled that for a strike injury that turns red, black, or green, six dinars are required.

٢٠٧٤ - مَسْأَلَةٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ قَالَ: سَمِعْت مَوْلًى لِسُلَيْمَانَ بْنِ حَبِيبٍ يُخْبِرُ عَنْ مَعْمَرٍ قَالَ: إنَّ سُلَيْمَانَ بْنَ حَبِيبٍ قَضَى فِي الصَّكَّةِ إذَا احْمَرَّتْ، أَوْ اسْوَدَّتْ، أَوْ اخْضَرَّتْ بِسِتَّةِ دَنَانِيرَ.

Abu Muhammad said: This is like the previous matter, and there is nothing in this except qisas alone. If evidence proves that, in any of the aforementioned cases, he intended something other than what was permissible for him, then it is an error and invalid.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كَالَّذِي قَبْلَهُ وَلَا شَيْءَ فِي هَذَا إلَّا الْقِصَاصُ فَقَطْ، فَلَوْ قَامَتْ بَيِّنَةٌ فِي شَيْءٍ مِمَّا ذَكَرْنَا أَنَّهُ أَرَادَ غَيْرَهُ مِمَّا أُبِيحَ لَهُ، فَهُوَ خَطَأٌ لَا شَيْءَ فِيهِ.

Injuries and Their Classifications

[الْجِرَاحُ وَأَقْسَامُهَا]

A Legal Question Regarding the Types of Wounds

[مَسْأَلَةٌ أَنْوَاعُ الْجِرَاحِ]

Injuries and their categories 2075 - Issue: Abu Muhammad said: The first is al-Harisah (the grazing injury) — then al-Damiyah (the bleeding injury) — then al-Dāmiʿah (the tear-inducing injury) — then al-Bāḍiʿah (the incising injury) — then al-Mutalāḥimah (the cohering injury) — then al-Simḥāq (the membrane-piercing injury), which is also called al-Milṭā.

الْجِرَاحُ وَأَقْسَامُهَا ٢٠٧٥ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ: أَوَّلُهَا الْحَارِصَةُ - ثُمَّ الدَّامِيَةُ - ثُمَّ الدَّامِعَةُ - ثُمَّ الْبَاضِعَةُ - ثُمَّ الْمُتَلَاحِمَةُ - ثُمَّ السِّمْحَاقُ - وَهِيَ أَيْضًا: الْمِلْطَا.

The bone-exposing wound, then the bone-fracturing wound, then the bone-displacing wound, then the brain-exposing wound, which is also known as Al-Ammah.

ثُمَّ الْمُوضِحَةُ - ثُمَّ الْهَاشِمَةُ - ثُمَّ الْمُنَقِّلَةُ - ثُمَّ الْمَأْمُومَةُ - وَهِيَ الْآمَّةُ أَيْضًا.

And in the cavity specifically: the al-ja'ifah - which is that which penetrates into the cavity.

وَفِي الْجَوْفِ وَحْدَهُ: الْجَائِفَةُ - وَهِيَ الَّتِي نَفَذَتْ إلَى الْجَوْفِ.

The splitting wound *(al-Ḥārisah)* is that which lightly splits the skin. It is said: "The fuller split the garment" when he splits it slightly. The blood-

visible wound *(al-Dāmiyah)* is that in which some blood appears but does not flow. The tear-flowing wound *(al-Dāmiʿah)* is that from which blood flows like a teardrop. The penetrating wound *(al-Bāḍiʿah)* is that which splits the skin and reaches the flesh. The initially penetrating wound *(al-Mutalāḥimah)* is that which splits the skin and begins to enter the flesh. The membrane-penetrating wound *(al-Simḥāq)*, known as *al-Milṭā*, is that which cuts through all the skin and flesh and reaches the thin membrane covering the bone. The bone-exposing wound *(al-Mūḍiḥah)* is that which splits the skin, flesh, and that membrane, thereby exposing the bone. The bone-shattering wound *(al-Hāshimah)* is that which cuts through the skin, flesh, and membrane, affects the bone, and causes fragmentation within it. The bone-displacing wound *(al-Munaqqilah)*, also referred to as *al-Manqūlah*, is that which accomplishes all of this, breaks the bone, and results in bone expulsion. The dura mater-piercing wound *(al-Maʾmūmah)* is that which penetrates all these layers, splits the entire bone, and reaches the brain's dura mater.

وَالْحَارِصَةُ - الَّتِي تَشُقُّ الْجِلْدَ شَقًّا خَفِيفًا - يُقَالُ: حَرَصَ الْقَصَّارُ الثَّوْبَ إذَا شَقَّهُ شَقًّا لَطِيفًا. وَالدَّامِيَةُ - هِيَ الَّتِي ظَهَرَ فِيهَا شَيْءٌ مِنْ دَمٍ وَلَمْ يَسِلْ. وَالدَّامِعَةُ - هِيَ الَّتِي سَالَ مِنْهَا شَيْءٌ مِنْ دَمٍ كَالدَّمْعِ. وَالْبَاضِعَةُ - هِيَ الَّتِي شَقَّتْ الْجِلْدَ وَوَصَلَتْ إلَى اللَّحْمِ وَالْمُتَلَاحِمَةُ - هِيَ الَّتِي شَقَّتْ الْجِلْدَ وَشَرَعَتْ فِي اللَّحْمِ. وَالسِّمْحَاقُ - هِيَ الْمِلْطَا: وَهِيَ الَّتِي قَطَعَتْ الْجِلْدَ وَاللَّحْمَ كُلَّهُ وَوَصَلَتْ إلَى الْقِشْرَةِ الرَّقِيقَةِ الَّتِي عَلَى الْعَظْمِ. وَالْمُوضِحَةُ - الَّتِي شَقَّتْ الْجِلْدَ وَاللَّحْمَ وَتِلْكَ الْقِشْرَةَ وَأَوْضَحَتْ عَنْ الْعَظْمِ. وَالْهَاشِمَةُ - الَّتِي قَطَعَتْ الْجِلْدَ وَاللَّحْمَ وَالْقِشْرَةَ وَأَثَّرَتْ فِي الْعَظْمِ فَهَشَّمَتْ فِيهِ. وَالْمُنَقِّلَةُ وَهِيَ الْمَنْقُولَةُ - أَيْضًا - الَّتِي فَعَلَتْ ذَلِكَ كُلَّهُ وَكَسَرَتْ الْعَظْمَ فَصَارَ يَخْرُجُ مِنْهَا الْعِظَامُ. وَالْمَأْمُومَةُ - الَّتِي نَفَذَتْ ذَلِكَ كُلَّهُ وَشَقَّتْ الْعَظْمَ كُلَّهُ، فَبَلَغَتْ أُمَّ الدِّمَاغِ

L37793 The entirety of this narration is transmitted as follows: Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Muḥammad ibn ʿĪsā ibn Rifāʿah reported to us: ʿAlī ibn ʿAbd al-ʿAzīz reported to us from Abū ʿUbayd, from al-Aṣmaʿī and others—and he mentioned it just as we have mentioned.

هَذَا الْكَلَامُ كُلُّهُ هَكَذَا حَدَّثَنَاهُ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ قَالَ: نا مُحَمَّدُ بْنُ عِيسَى بْنِ رِفَاعَةَ قَالَ: نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا أَبُو عُبَيْدٍ عَنْ الْأَصْمَعِيِّ، وَغَيْرِهِ، فَذَكَرَ كَمَا ذَكَرْنَا

L37794 Abū Muḥammad said: Some of the predecessors—as we earlier stated—held that there is no retaliation for intentional acts in any of them except in *al-muwḍiḥah* (the wound exposing the bone) alone, and they maintained that exact equivalence in such matters is unattainable. Others said: Rather, retaliation applies to all of them, and equivalence is achievable as Allah the Exalted has commanded.

قَالَ أَبُو مُحَمَّدٍ: فَقَالَ بَعْضُ السَّلَفِ - كَمَا قَدَّمْنَا -: لَا قِصَاصَ فِي الْعَمْدِ فِي شَيْءٍ مِنْهَا إلَّا فِي الْمُوضِحَةِ وَحْدَهَا، وَادَّعَوْا أَنَّ الْمُمَاثَلَةَ فِي ذَلِكَ مُتَعَذِّرَةٌ. وَقَالَ آخَرُونَ: بَلْ الْقِصَاصُ فِي كُلِّهَا، وَالْمُمَاثَلَةُ مُمْكِنَةٌ كَمَا أَمَرَ اللَّهُ تَعَالَى.

L37795 We have previously invalidated the position of those who prohibited retaliation (qisās) in this matter based on their personal opinion, making its repetition unnecessary.

وَقَدْ ذَكَرْنَا بُطْلَانَ قَوْلِ مَنْ مَنَعَ مِنْ الْقِصَاصِ فِيهَا بِرَأْيِهِ قَبْلُ، فَأَغْنَى عَنْ إعَادَتِهِ.

L37796–37798 It suffices in this regard the generality of Allah's statement—the Exalted—"And for wounds there is retaliation in kind" (Al-Māʾidah: 45), due to the ḥāʾ being in the nominative. And He, the Exalted, said: "Sacred matters are subject to retaliation. So whoever transgresses against you, retaliate against

him in the same measure as he transgressed against you" [Al-Baqarah: 194]. "And your Lord is not forgetful" [Maryam: 64].[8]

وَيَكْفِي مِنْ ذَلِكَ عُمُومُ قَوْلِ اللَّهِ تَعَالَى: {وَالْجُرُوحَ قِصَاصٌ} [المائدة: ٤٥] بِرَفْعِ الْحَاءِ وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

L37799 If Allah, the Exalted, had known that any aspect of this matter permits no equivalence, He would not have outlined for us the ruling of retaliation for wounds in general terms, nor would He have specified anything. We testify by Allah's complete, truthful testimony, and affirm with the unyielding certainty of the believer who confirms his Lord's words: that our Lord, Mighty and Majestic, had He intended to specify any wound for prohibition of retaliation in cases of deliberate harm, He would have clarified them for us—just as He declared about His Book that He revealed it as an exposition of every matter. Since He did not do so, we swear by Allah, the Exalted, a righteous oath: He never intended to specify any wound for prohibition of retaliation, except in cases of transgression through it. And success is by Allah, the Exalted.

فَلَوْ عَلِمَ اللَّهُ تَعَالَى أَنَّ شَيْئًا مِنْ ذَلِكَ لَا تُمْكِنُ فِيهِ مُمَاثَلَةٌ لَمَا أَجْمَلَ لَنَا أَمْرَهُ بِالْقِصَاصِ فِي الْجُرُوحِ جُمْلَةً، وَلَمْ يَخُصَّ شَيْئًا - فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى التَّامَّةِ الصَّادِقَةِ، وَنَقْطَعُ قَطْعَ الْمُوقِنِ الْمُصَدِّقِ بِكَلَامِ رَبِّهِ تَعَالَى: أَنَّ رَبَّنَا عَزَّ وَجَلَّ لَوْ أَرَادَ تَخْصِيصَ شَيْءٍ مِنْ الْجُرُوحِ بِالْمَنْعِ مِنْ الْقِصَاصِ فِي الْعَمْدِ لَبَيَّنَهَا لَنَا كَمَا أَخْبَرَ تَعَالَى عَنْ كِتَابِهِ أَنَّهُ أَنْزَلَهُ تِبْيَانًا لِكُلِّ شَيْءٍ، فَإِذْ لَمْ يَفْعَلْ ذَلِكَ، فَنَحْنُ نُقْسِمُ بِاَللَّهِ تَعَالَى قَسَمًا بِرًّا: أَنَّهُ مَا أَرَادَ قَطُّ تَخْصِيصَ شَيْءٍ مِنْ الْجُرُوحِ بِالْمَنْعِ مِنْ الْقِصَاصِ مِنْهُ، إلَّا فِي الِاعْتِدَاءِ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَتَلَ عَمْدًا فَعُفِيَ عَنْهُ وَأُخِذَ مِنْهُ الدِّيَةَ أَوْ الْمُفَادَاةَ]

A juristic issue where one intentionally killed [another], was pardoned, and the diyah or ransom settlement was taken from him.

L37801 Issue 2076: What is the ruling for one who commits intentional murder, is pardoned, and has blood money (diyah) or ransom (mufādāh) taken from him? Abū Muḥammad said: People differed regarding this matter. One group ruled he should be flogged one hundred lashes and exiled for a year, as narrated through Humaam, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, who reported from ʿAbbās ibn ʿAbdullāh that ʿUmar ibn al-Khaṭṭāb said concerning intentional killers: "Retaliation (qiṣāṣ) is not imposed on him by [merely] flogging one hundred lashes." I asked: "How so?" He replied: "For a free person who kills intentionally, or in similar cases to that."

٢٠٧٦ - مَسْأَلَةٌ: مَنْ قَتَلَ عَمْدًا فَعُفِيَ عَنْهُ وَأُخِذَ مِنْهُ الدِّيَةَ، أَوْ الْمُفَادَاةَ؟ قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ النَّاسُ فِي هَذَا فَقَالَتْ طَائِفَةٌ: يُجْلَدُ مِائَةً وَيُنْفَى سَنَةً كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبَّاسُ بْنُ عَبْدِ اللَّهِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَالَ فِي الَّذِي يَقْتُلُ عَمْدًا: أَنَّهُ لَا يَقَعُ الْقِصَاصُ عَلَيْهِ بِجَلْدِ مِائَةٍ، قُلْت: كَيْفَ؟ قَالَ - فِي الْحُرِّ يَقْتُلُ عَمْدًا، أَوْ فِي أَشْبَاهِ ذَلِكَ.

[8] **Qur'an references (L37796):** Qur'an 2:194 (Al-Baqarah); Qur'an 19:64 (Maryam); Qur'an 5:45 (Al-Ma'idah).

وَبِهِ - إِلَى ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ: أَنَّ عُمَرَ جَلَدَ حُرًّا قَتَلَ عَبْدًا مِائَةً وَنَفَاهُ عَامًا

L37802 From him [the previous narrator], via Ibn Jurayj on the authority of Amr ibn Shu'ayb: that Umar flogged a free man a hundred lashes for killing a slave and banished him for a year.

وَبِهِ - إِلَى ابْنِ جُرَيْجٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ قَالَ: سَمِعْت أَنَّ الَّذِي يَقْتُلُ عَبْدًا يُسْجَنُ سَنَةً وَيُضْرَبُ مِائَةً.

L37803 And through him, to Ibn Jurayj who narrates from Ismāʿīl ibn Umayyah, who said: "I heard that one who kills a slave is imprisoned for a year and lashed one hundred times."

وَبِهِ - إِلَى ابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ قَالَ: إنْ قَتَلَ الْحُرُّ عَبْدًا عُوقِبَ بِجَلْدٍ وَجِيعٍ، وَسِجْنٍ، وَبِعِتْقِ رَقَبَةٍ، فَإِنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ، وَلَمْ تَكُنْ عَلَيْهِ عُقُوبَةٌ

L37804 And through him—to Ibn Jurayj, from Ibn Shihāb, who said: If a free person kills a slave, he is punished with flogging that is severe, imprisonment, and the freeing of a slave. If he cannot find [a slave to free], then fasting two consecutive months is incumbent upon him, and no punishment remains upon him.

وَقَالَ الْأَوْزَاعِيُّ، وَاللَّيْثُ. وَمَالِكٌ: مَنْ قَتَلَ عَمْدًا فَعَفَا عَنْهُ الْأَوْلِيَاءُ، أَوْ فَادَوْهُ بِالدِّيَةِ، فَإِنَّهُ يُجْلَدُ مِائَةَ سَوْطٍ مَعَ ذَلِكَ، وَيُنْفَى سَنَةً - إلَى أَنْ قَالَ مَالِكٌ: فِي الْقَسَامَةِ يُدْعَى عَلَى جَمَاعَةٍ أَنَّهُمْ لَا يُقْسِمُونَ إلَّا عَلَى وَاحِدٍ فَإِنْ أَقْسَمُوا عَلَيْهِ قَتَلُوهُ، وَضَرَبَ الْبَاقُونَ كُلَّ وَاحِدٍ مِائَةَ سَوْطٍ، وَيُنْفَوْا كُلُّهُمْ سَنَةً سَنَةً.

L37805 Al-Awza'i, Al-Layth, and Malik said: Whoever kills intentionally and is pardoned by the guardians [of the victim] or compensated with *diyah* is to be lashed one hundred times in addition to that and exiled for a year. Moreover, Malik said regarding the *qasāmah* (collective oath procedure): If a group is called to take an oath but refuses to swear except against one individual, then if they swear against him, he is to be executed. The remaining members are each lashed one hundred times, and all of them are exiled for a full year, each of them.

وَقَالَ آخَرُونَ: لَا شَيْءَ عَلَيْهِ: كَمَا نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ فِي بَنِي إسْرَائِيلَ الْقِصَاصُ وَلَمْ تَكُنْ فِيهِمْ الدِّيَةُ - قَالَ اللَّهُ تَعَالَى: {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالأُنْثَى بِالأُنْثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ} [البقرة: ١٧٨] فَالْعَفْوُ: أَنْ تَقْبَلَ الدِّيَةَ فِي الْعَمْدِ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ.

L37806–37807 Others said: There is nothing upon him. As narrated to us by Hammām; narrated to us by ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī; narrated to us by ʿAbdullāh ibn Yūnus; narrated to us by Baqī ibn Makhlad; narrated to us by Abū Bakr ibn Abī Shaybah; narrated to us by Sufyān ibn ʿUyaynah from ʿAmr ibn Dīnār from Mujāhid from Ibn ʿAbbās, who said: "Among the Children of Israel, *qisas* (retaliation) was enforced, but *diyah* (blood money) did not exist among them. Allah the Exalted said: 'Retaliation is prescribed for you in cases of killing: the free for the free, the slave for the slave, and the female for the female. But if something is pardoned by his brother...' [2:178]. Thus, pardoning means accepting *diyah* for intentional killing. That is an alleviation from your Lord and a mercy."[9]

[9] **Qur'an references (L37807):** Qur'an 2:178 (Al-Baqarah).

L37808 He said: Therefore, it is incumbent upon this one to act in accordance with customary norms, and upon that one to fulfill it with kindness [Al-Baqarah: 178]. “So whoever transgresses after that, for him is a painful punishment” [Al-Baqarah: 178].[10]

قَالَ: فَعَلَى هَذَا أَنْ يَتْبَعَ بِالْمَعْرُوفِ، وَعَلَى ذَلِكَ أَنْ يُؤَدِّيَ {إِلَيْهِ بِإِحْسَانٍ} [البقرة: ١٧٨] {فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ} [البقرة: ١٧٨]

L37809 And this is the view held by Abū Ḥanīfah, Al-Shāfiʿī, Aḥmad Ibn Ḥanbal, Abū Suleiman, and their followers.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L37810 And with this say Isḥāq ibn Rāhawayh and all the companions of Hadith.

وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ وَسَائِرُ أَصْحَابِ الْحَدِيثِ.

L37811 When they disagreed, as we mentioned, we examined the evidence presented by the faction mandating disciplinary measures and exile in that context. We found them—or those among them who held this view—citing Allah’s words: “They do not kill the soul Allah has forbidden except by right, nor commit adultery. Whoever does this will bear a penalty—his punishment will be doubled on the Day of Resurrection, and he will abide therein eternally disgraced—except those who repent” (Quran 25:68-70).[11]

فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْمُوجِبَةُ لِلْأَدَبِ وَالنَّفْيِ فِي ذَلِكَ، فَوَجَدْنَاهُمْ يَقُولُونَ - أَوْ مَنْ قَالَ مِنْهُمْ -: قَالَ اللَّهُ تَعَالَى: {وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ وَلا يَزْنُونَ وَمَنْ يَفْعَلْ ذَلِكَ يَلْقَ أَثَامًا} [الفرقان: ٦٨] {يُضَاعَفْ لَهُ الْعَذَابُ يَوْمَ الْقِيَامَةِ وَيَخْلُدْ فِيهِ مُهَانًا} [الفرقان: ٦٩] {إِلا مَنْ تَابَ} [الفرقان: ٧٠]

L37812 He said: Allah, the Exalted, likened the killing to the sexual immorality.

قَالَ: فَشَبَّهَ اللَّهُ تَعَالَى الْقَتْلَ بِالزِّنَى.

L37813 We have established that adultery in this case entails stoning for the chaste married person. If he is not a chaste married person, the penalty is waived from him, and he is to be given one hundred lashes and exiled for a year.

وَوَجَدْنَا الزِّنَى فِيهِ الرَّجْمُ عَلَى الْمُحْصَنِ، فَإِذَا لَمْ يَكُنْ مُحْصَنًا سَقَطَ عَنْهُ الْعَقْلُ وَوَجَبَ عَلَيْهِ مِائَةُ جَلْدَةٍ وَنَفْيُ سَنَةٍ.

L37814 They said: The prescribed punishment upon one who killed, where the death penalty is waived from him, is likewise one hundred lashes and exile for one year.

قَالُوا: فَالْوَاجِبُ عَلَى مَنْ قَتَلَ فَسَقَطَ عَنْهُ الْقَتْلُ مِثْلُ ذَلِكَ أَيْضًا جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ.

L37815–37817 They mentioned: What was narrated to us by Aḥmad ibn ʿUmar ibn Anas al-ʿUdhri: ʿAbd Allāh ibn al-Ḥusayn ibn ʿIqāl narrated to us: Ibrāhīm ibn Muḥammad narrated to us: Muḥammad ibn Aḥmad ibn al-Jahm narrated to us: Muḥammad ibn ʿAbdūs narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Ismāʿīl ibn ʿAyyāsh narrated from Isḥāq ibn ʿAbd Allāh ibn Abī Farwah, from ʿAmr ibn Shuʿayb and Ibrāhīm ibn ʿAbd Allāh ibn Ḥunayn.

وَذَكَرُوا: مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ الْعُذْرِيُّ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ نا إِبْرَاهِيمُ بْنُ مُحَمَّدِ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا مُحَمَّدُ بْنُ عَبْدُوسٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا إِسْمَاعِيلُ بْنُ عَيَّاشٍ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي فَرْوَةَ عَنْ عَمْرِو بْنِ شُعَيْبٍ، وَإِبْرَاهِيمَ بْنِ عَبْدِ اللَّهِ بْنِ حُنَيْنٍ، قَالَ: عَمْرٌو عَنْ أَبِيهِ عَنْ جَدِّهِ، وَقَالَ إِبْرَاهِيمُ عَنْ أَبِيهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - ثُمَّ اتَّفَقَ عَلِيٌّ، وَجَدُّ عَمْرِو بْنِ شُعَيْبٍ كِلَاهُمَا قَالَ: «أُتِيَ النَّبِيُّ - صَلَّى

[10] **Qur’an references (L37808):** Qur’an 2:178 (Al-Baqarah); Qur’an 5:94 (Al-Ma’idah).

[11] **Qur’an references (L37811):** Qur’an 25:68 (Al-Furqan); Qur’an 25:69 (Al-Furqan); Qur’an 19:60 (Maryam); Qur’an 25:70 (Al-Furqan).

ʿAmr narrated from his father, from his grandfather, and Ibrāhīm narrated from his father, from ʿAlī ibn Abī Ṭālib. Then the chains of narration from both ʿAlī and the grandfather of ʿAmr ibn Shuʿayb agreed. He said: "The Prophet (peace be upon him) was brought a man who had intentionally killed his slave. He flogged him one hundred times, exiled him for a year, erased his share of spoils from the Muslims, and did not enforce retribution against him."

اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجُلٍ قَتَلَ عَبْدَهُ مُتَعَمِّدًا، فَجَلَدَهُ مِائَةً، وَنَفَاهُ سَنَةً، وَمَحَا سَهْمَهُ مِنْ الْمُسْلِمِينَ، وَلَمْ يُقِدْ مِنْهُ.»

L37818 Abu Muhammad said: They have no doubt other than this, except what we previously mentioned at the outset of this chapter from Umar ibn al-Khattab—may Allah be pleased with him—and there is no valid argument for them in any of this.

قَالَ أَبُو مُحَمَّدٍ: مَا لَهُمْ شُبْهَةٌ غَيْرَ هَذَا إلَّا مَا ذَكَرْنَا آنِفًا فِي صَدْرِ هَذَا الْبَابِ عَنْ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ.

L37819 As for their condemnation through invoking Allah's words, the Exalted: {And they do not kill the soul which Allah has forbidden except by right, nor do they commit adultery} [Al-Furqān: 68], and their analogizing what is obligatory upon the killer to what is obligatory upon the adulterer—this is utterly invalid, a distortion of Allah's speech, a displacement of His ruling from its proper contexts, and a pure error in multiple respects.[12]

أَمَّا تَشْنِيعُهُمْ بِذِكْرِ اللَّهِ تَعَالَى {وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إلا بِالْحَقِّ وَلا يَزْنُونَ} [الفرقان: ٦٨] الْآيَةَ. وَتَنْظِيرُهُمْ مَا يَجِبُ عَلَى الْقَاتِلِ بِمَا يَجِبُ عَلَى الزَّانِي فَفَاسِدٌ جِدًّا وَتَحْرِيفٌ لِكَلَامِ اللَّهِ تَعَالَى وَحُكْمُهُ عَنْ مَوَاضِعِهِ خَطَأٌ بَحْتٌ مِنْ عِدَّةِ وُجُوهٍ:

L37820 The first of them—that it is *qiyas*, and all *qiyas* is invalid.

أَوَّلُهَا - أَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L37821 The second point is that if analogy were valid, this would be the very essence of falsehood, because Allah the Exalted never equated the killer and the adulterer in the legal ruling. Rather, He equated them only in the threat of punishment in the Hereafter. The rulings of this world are not like the rulings of the Hereafter, for whoever repents from all such sins has the threat of punishment removed from him in the Hereafter, yet the worldly ruling is not lifted from him by their agreement with us.

وَالثَّانِي - أَنَّهُ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُسَوِّ قَطُّ بَيْنَ الْقَاتِلِ وَالزَّانِي فِي الْحُكْمِ، وَإِنَّمَا سَوَّى بَيْنَهُمَا فِي وَعِيدِ الْآخِرَةِ فَقَطْ، وَلَيْسَتْ أَحْكَامُ الدُّنْيَا كَأَحْكَامِ الْآخِرَةِ، لِأَنَّ مَنْ تَابَ مِنْ كُلِّ ذَلِكَ فَقَدْ سَقَطَ عَنْهُ الْوَعِيدُ فِي الْآخِرَةِ، وَلَمْ يَسْقُطْ عَنْهُ حُكْمُ الدُّنْيَا بِاتِّفَاقِهِمْ مَعَنَا.

L37822 The third point is that there is no disagreement that the ruling on the adulterer takes into account their status of iḥṣān (being lawfully married) or lack thereof in this matter, and there is no disagreement that this consideration does not apply in cases of homicide.

وَالثَّالِثُ - أَنَّهُ لَا خِلَافَ [فِي أَنَّ حُكْمَ الزَّانِي يُرَاعِي الْإِحْصَانَ فِي ذَلِكَ وَعَدَمَ الْإِحْصَانِ، وَلَا خِلَافَ] فِي أَنَّهُ لَا يُرَاعَى ذَلِكَ فِي الْقَتْلِ.

L37823 The fourth [point] is that the ruling for the fornicator—when capital pun-

[12] **Qur'an references (L37819):** Qur'an 25:68 (Al-Furqan).

ishment (specifically stoning) is unanimously mandated by recognized authorities—differs from the ruling for the killer when retaliation (qisas) is unanimously enforced against him, unless the killer used a stone to commit the murder.

وَالرَّابِعُ - أَنَّ حُكْمَ الزَّانِي إِذَا وَجَبَ عَلَيْهِ الْقَتْلُ بِلَا خِلَافٍ مِمَّنْ يَعْتَدُّ بِهِ الْقَتْلُ بِالرَّجْمِ خَاصَّةً، وَلَيْسَ ذَلِكَ حُكْمَ الْقَاتِلِ إِذَا اُسْتُقِيدَ مِنْهُ بِلَا خِلَافٍ، إِلَّا أَنْ يَكُونَ قَتَلَ بِحَجَرٍ.

L37824–37826 The fifth [point] is that Allah, the Exalted, stated at the beginning of this verse—which they obfuscated by citing a portion while omitting the rest—{And those who do not invoke another deity alongside Allah, nor kill the soul Allah has forbidden except by right, nor commit adultery} [Al-Furqān: 68]. If they equate the rulings of the killer and the adulterer—since Allah mentioned them together in this verse—it necessarily obliges them to also treat the unbeliever, the killer, and the adulterer equally. For Allah has mentioned them all together and equated them in the threat of the Hereafter, except for those who repent. Thus, if they... The disbeliever who embraces Islam and the apostate who returns to Islam are to be lashed one hundred times and exiled for a year, because the death penalty is waived for them, just as it is waived for a pardoned murderer and a non-muḥṣan fornicator.[13]

وَالْخَامِسُ - أَنَّ اللَّهَ تَعَالَى قَالَ فِي أَوَّلِ هَذِهِ الْآيَةِ الَّتِي مَوَّهُوا بِإِيرَادِ بَعْضِهَا دُونَ بَعْضٍ {وَالَّذِينَ لا يَدْعُونَ مَعَ اللَّهِ إِلَهًا آخَرَ وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ وَلا يَزْنُونَ} [الفرقان: ٦٨] فَيَلْزَمُهُمْ إِذَا سَاوَوْا بَيْنَ حُكْمِ الْقَاتِلِ وَالزَّانِي، لِأَنَّ اللَّهَ تَعَالَى قَدْ ذَكَرَهُمَا مَعًا فِي هَذِهِ الْآيَةِ أَنْ يُسَاوُوا أَيْضًا بَيْنَ الْكَافِرِ، وَالْقَاتِلِ، وَالزَّانِي، لِأَنَّ اللَّهَ تَعَالَى قَدْ ذَكَرَهُمْ كُلَّهُمْ مَعًا، وَسَاوَى بَيْنَهُمْ فِي وَعِيدِ الْآخِرَةِ إِلَّا مَنْ تَابَ، فَيَلْزَمُهُمْ إِذَا أَسْلَمَ الْكَافِرُ، وَالْمُرْتَدُّ، فَرَاجَعُ الْإِسْلَامِ أَنْ يُجْلَدَ مِائَةَ سَوْطٍ وَيُنْفَى سَنَةً، لِأَنَّ الْقَتْلَ قَدْ سَقَطَ عَنْهُ كَمَا قَدْ سَقَطَ عَنِ الْقَاتِلِ الْمَعْفُوِّ عَنْهُ، وَعَنِ الزَّانِي غَيْرِ الْمَحْصَنِ.

L37827 If they say, "Consensus has prohibited that," respond to them: "Then you have indeed admitted that consensus has prohibited your invalid analogy and invalidated it."

فَإِنْ قَالُوا: الْإِجْمَاعُ مَنَعَ ذَلِكَ. قِيلَ لَهُمْ: فَقَدْ أَقْرَرْتُمْ بِأَنَّ الْإِجْمَاعَ مَنَعَ مِنْ قِيَاسِكُمُ الْفَاسِدِ وَأَبْطَلَهُ.

L37828 Thus, the invalidity of this statement of theirs has become evident, and with Allah, the Exalted, is success.

فَظَهَرَ فَسَادُ كَلَامِهِمْ هَذَا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37829 As for the narration they relied upon, it is utterly baseless and rejected, for it comes through Ismāʿīl ibn ʿAyyāsh—who is profoundly weak—and this weakness is particularly intensified in what is reported from the Hijazi narrators. It holds no merit in the estimation of any scholar among the people of knowledge.

وَأَمَّا الْخَبَرُ - الَّذِي تَعَلَّقُوا بِهِ - فَفِي غَايَةِ الْبُطْلَانِ وَالسُّقُوطِ، لِأَنَّهُ عَنْ إِسْمَاعِيلَ بْنِ عَيَّاشٍ - وَهُوَ ضَعِيفٌ جِدًّا - وَلَا سِيَّمَا مَا رُوِيَ عَنِ الْحِجَازِيِّينَ، فَلَا خَيْرَ فِيهِ عِنْدَ أَحَدٍ مِنْ أَهْلِ الْعِلْمِ.

L37830 Then the narration is from Isḥāq ibn ʿAbdullāh ibn Farwah—a narrator abandoned in ḥadīth transmission. They had no recourse except to cling to what has been narrated to us regarding that matter from ʿUmar, may Allah

ثُمَّ هُوَ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ فَرْوَةَ وَهُوَ مَتْرُوكُ الْحَدِيثِ - وَلَمْ يَبْقَ لَهُمْ إِلَّا التَّعَلُّقُ بِمَا رُوِّينَا فِي ذَلِكَ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَنَظَرْنَا فِيهِ، فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِيهِ،

[13] **Qur'an references (L37824):** Qur'an 25:68 (Al-Furqan).

be pleased with him. We examined it and found no proof for their position within it, for it is entirely unauthentic from ʿUmar. This is because it is either narrated from ʿAmr ibn Shuʿayb that ʿUmar, or from al-ʿAbbās ibn ʿAbdullāh that ʿUmar—yet both of them were only born after ʿUmar's death, may Allah be pleased with him, by a substantial span of time.

لِأَنَّهُ لَا يَصِحُّ عَنْ عُمَرَ أَبَدًا، لِأَنَّهُ إِمَّا عَنْ عَمْرِو بْنِ شُعَيْبٍ: أَنَّ عُمَرَ، وَإِمَّا عَنْ الْعَبَّاسِ بْنِ عَبْدِ اللَّهِ أَنَّ عُمَرَ، وَكِلَاهُمَا لَمْ يُولَدْ إِلَّا بَعْدَ مَوْتِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - بِدَهْرٍ طَوِيلٍ.

L37831 Moreover, the differing opinion of Ibn Abbas has been authentically reported. When disagreement is authentically reported from the Companions (may Allah be pleased with them), the statement of some of them is not more worthy than the statement of others. Therefore, it becomes obligatory at that point to revert to what Allah the Exalted has commanded in the event of dispute, as He says: "If you disagree over anything, refer it to Allah and the Messenger" [An-Nisa: 59].[14]

وَأَيْضًا - فَقَدْ صَحَّ عَنْ ابْنِ عَبَّاسٍ خِلَافُهُ، وَإِذَا صَحَّ الْخِلَافُ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَيْسَ قَوْلُ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ، فَالْوَاجِبُ حِينَئِذٍ الرُّجُوعُ إلَى مَا أَمَرَ اللَّهُ تَعَالَى بِهِ عِنْدَ التَّنَازُعِ، إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩]

L37832 Every statement stripped of legal evidences is invalid with certainty. Allah, the Exalted, says: "Produce your conclusive evidence if you are truthful" [al-Baqarah 111].[15]

فَكُلُّ قَوْلٍ عَرِيٍّ مِنْ الْأَدِلَّةِ فَهُوَ بَاطِلٌ بِيَقِينٍ، قَالَ اللَّهُ تَعَالَى: {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١]

L37833–37835 Then we examined the opinion of those who do not deem flogging or exile obligatory upon the pardoned individual in cases involving blood money, ransom, or unconditional pardon, and found them declaring: Allah the Exalted said, "Whoever is granted pardon by his brother for an offense, let there be adherence to customary fairness and fulfillment of obligations with goodwill. This is an alleviation from your Lord and a mercy. Whoever transgresses thereafter - there awaits him a painful punishment" [Al-Baqarah: 178]. Allah, the Exalted, has ordained a clear text without ambiguity: that whoever kills intentionally, retaliation becomes obligatory upon him for the killing. Then if he is pardoned in exchange for compensation, it is incumbent upon the pardoning guardian to pursue the pardoned killer in a proper manner. Allah, the Exalted, has obligated the pardoned killer to fulfill the compensation for which he was pardoned with excellence. Striking with

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ لَمْ يَرَ عَلَى الْمَعْفُوِّ عَنْهُ بِالدِّيَةِ، أَوْ الْمُفَادَاةِ، أَوْ الْعَفْوِ الْمُطْلَقِ جَلْدًا وَلَا نَفْيًا - فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ} [البقرة: ١٧٨] فَأَوْجَبَ اللَّهُ تَعَالَى نَصًّا لَا خَفَاءَ بِهِ: أَنَّ مَنْ قَتَلَ عَمْدًا فَوَجَبَ عَلَيْهِ الْقِصَاصُ فِي الْقَتْلِ، ثُمَّ عُفِيَ عَنْهُ عَلَى مَالٍ، فَوَاجِبٌ عَلَى الْوَلِيِّ الْعَافِي أَنْ يَتْبَعَ الْقَاتِلَ الْمَعْفُوَّ عَنْهُ بِالْمَعْرُوفِ، وَأَوْجَبَ اللَّهُ تَعَالَى عَلَى الْقَاتِلِ الْمَعْفُوِّ عَنْهُ أَنْ يُؤَدِّيَ مَا عُفِيَ عَنْهُ عَلَيْهِ بِإِحْسَانٍ وَلَيْسَ مِنْ الْمَعْرُوفِ وَالْإِحْسَانِ الضَّرْبُ بِالسِّيَاطِ، وَالنَّفْيُ عَنْ الْأَوْطَانِ سَنَةً.

[14] **Qur'an references (L37831):** Qur'an 4:59 (An-Nisa).

[15] **Qur'an references (L37832):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).

whips and banishment from homelands for a year are not part of what is proper or excellent.[16]

L37836 We observed that they also mention the statement of the Messenger of Allah (peace be upon him): “Your blood, wealth, honor, and skins are sacred upon you.”

L37837 Thus, it is established that the killer’s skin is inviolable due to the sanctity decreed by Allah the Exalted; therefore, it is not permissible to flog him or exile him, as neither the Quran, the Sunnah, consensus, nor any evidence from the proofs has mandated this in any way.

L37838–37840 They mentioned—as narrated to us by Abdullah ibn Yusuf from Ahmad ibn Fath from Abdul Wahhab ibn Isa from Ahmad ibn Muhammad from Ahmad ibn Ali from Muslim ibn Al-Hajjaj from Muhammad ibn Hatim from Sa’id ibn Sulayman from Hushaym from Ismail ibn Salim from Alqamah ibn Wa’il ibn Al-Awza’i from his father, who said: “A man who had killed another was brought to the Messenger of Allah—peace and blessings be upon him—and the slain’s next of kin exacted retribution from him. He was led away with a halter around his neck dragging it. When the man began to leave, the Messenger of Allah—peace and blessings be upon him—said, ’The killer and the slain are in Hellfire.’ A man then approached the killer and conveyed the Prophet’s—peace and blessings be upon him—statement, so the next of kin released him.” Ismail ibn Salim said: “I mentioned this to Habib ibn Abi Thabit, and he said: Ibn Ashwa’ narrated to me that the Prophet—peace and blessings be upon him—had asked him to forgive the killer, but he refused.” Narrated by Abdullah ibn Rabi’ from Muhammad ibn Mu’awiyah from Ahmad ibn Shu’ayb from Muhammad ibn Bashshar from Yahya ibn Sa’id Al-Qattan from Awf ibn Abi Jamilah and Jami’ ibn Matar Al-Habati. Awf said: “Hamzah Al-A’idhi Abu Umar narrated to me,” then their chains converged via Alqamah ibn Wa’il ibn Hujr from Wa’il, who said: “I witnessed the Prophet—peace and blessings be upon him—when the killer was brought forward, led by the slain’s next of kin with a halter around his neck. The Messenger of Allah—peace and blessings be upon him—asked the slain’s next

[16] **Qur’an references (L37833):** Qur’an 2:178 (Al-Baqarah).

وَوَجَدْنَاهُمْ أَيْضًا - يَذْكُرُونَ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ»

فَصَحَّ أَنَّ بَشَرَةَ الْقَاتِلِ مُحَرَّمَةٌ بِتَحْرِيمِ اللَّهِ تَعَالَى فَلَا يَحِلُّ جَلْدُهُ، وَلَا نَفْيُهُ؛ إذْ لَمْ يُوجِبْ ذَلِكَ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ، وَلَا دَلِيلٌ مِنْ الْأَدِلَّةِ أَصْلًا

وَذَكَرُوا - مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا مُحَمَّدُ بْنُ حَاتِمٍ نا سَعِيدُ بْنُ سُلَيْمَانَ نا هُشَيْمٌ نا إسْمَاعِيلُ بْنُ سَالِمٍ عَنْ عَلْقَمَةَ بْنِ وَائِلِ بْنِ الْأَوْزَاعِيِّ عَنْ أَبِيهِ قَالَ: «أُتِيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِرَجُلٍ قَدْ قَتَلَ رَجُلًا فَأَقَادَ وَلِيَّ الْمَقْتُولِ مِنْهُ، فَانْطَلَقَ بِهِ وَفِي عُنُقِهِ نِسْعَةٌ يَجُرُّهَا، فَلَمَّا أَدْبَرَ الرَّجُلُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ» فَأَتَى رَجُلٌ إلَى الرَّجُلِ فَقَالَ لَهُ مَقَالَةَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَخَلَّى عَنْهُ - قَالَ إسْمَاعِيلُ بْنُ سَالِمٍ: فَذَكَرْت ذَلِكَ لِحَبِيبِ بْنِ أَبِي ثَابِتٍ. فَقَالَ: حَدَّثَنِي ابْنُ أَشْوَعَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّمَا سَأَلَهُ أَنْ يَعْفُوَ عَنْهُ فَأَبَى:» نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ بَشَّارٍ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ عَنْ عَوْفِ بْنِ أَبِي جَمِيلَةَ وَجَامِعِ بْنِ مَطَرٍ الْحَبَطِيِّ قَالَ عَوْفٌ: حَدَّثَنِي حَمْزَةُ الْعَائِذِيُّ أَبُو عُمَرَ، ثُمَّ اتَّفَقَ جَامِعٌ، وَحَمْزَةُ، كِلَاهُمَا عَنْ عَلْقَمَةَ بْنِ وَائِلِ بْنِ حُجْرٍ عَنْ وَائِلٍ قَالَ: «شَهِدْت النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حِينَ جِيءَ بِالْقَاتِلِ يَقُودُهُ وَلِيُّ الْمَقْتُولِ فِي نِسْعَتِهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِوَلِيِّ الْمَقْتُولِ أَتَعْفُو عَنْهُ؟

of kin, 'Will you forgive him?' He said, 'No.' He asked, 'Will you accept blood money?' He said, 'No.' He asked, 'Will you kill him?' He said, 'Yes.' He said, 'Take him away.' When he turned to leave, the Prophet called him back and asked, 'Will you forgive him?' He said, 'No.' He asked, 'Will you accept blood money?' He said, 'No.' He asked, 'Will you kill him?' He said…" Yes, he said: "Go." Then the Messenger of Allah (peace and blessings be upon him) said: "Verily, if you pardon him, he will bear his sin and the sin of your companion." So he pardoned him and left him. He said: "Then I saw him dragging its strap."[17]

قَالَ: لَا، قَالَ لَهُ: أَتَأْخُذُ الدِّيَةَ؟ قَالَ: لَا، قَالَ: فَتَقْتُلُهُ؟ قَالَ: نَعَمْ، قَالَ: اذْهَبْ بِهِ. فَلَمَّا تَوَلَّى مِنْ عِنْدِهِ دَعَاهُ قَالَ لَهُ: أَتَعْفُو عَنْهُ؟ قَالَ: لَا، قَالَ لَهُ: فَتَأْخُذُ الدِّيَةَ؟ قَالَ: لَا، قَالَ: فَتَقْتُلُهُ؟ قَالَ: نَعَمْ، قَالَ: اذْهَبْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِنْدَ ذَلِكَ: أَمَا إِنَّكَ إِنْ عَفَوْتَ عَنْهُ يَبُوءُ بِإِثْمِهِ وَإِثْمِ صَاحِبِكَ، فَعَفَا عَنْهُ وَتَرَكَهُ، قَالَ: فَأَنَا رَأَيْتُهُ يَجُرُّ نِسْعَتَهُ»

L37841 Yahya ibn Sa'id al-Qattan, after mentioning these two hadiths, said about the comprehensive hadith: "It is better than Hamza's hadith," meaning it is superior to the hadith transmitted by Hamza.

قَالَ يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ وَقَدْ ذَكَرَ هَذَيْنِ الْحَدِيثَيْنِ فَقَالَ عَنْ حَدِيثٍ جَامِعٍ: هُوَ أَحْسَنُ مِنْهُ: يَعْنِي: أَنَّهُ أَحْسَنُ مِنْ حَدِيثِ حَمْزَةَ

L37842 Ali said: And it is as such, because Hamzah al-'A'idhī is an unknown narrator, unrecognized. Ibn Ma'īn said, "No one we know has authenticated him." As for Jāmi' ibn Maṭar, Ahmad ibn Hanbal said regarding him: "There is no issue with him, and we know of none who criticized him." Leading scholars have narrated from him: Yaḥyā, 'Abd al-Ṣamad ibn 'Abd al-Wārith, Ḥafṣ ibn 'Umar al-Hawḍī, and others.

قَالَ عَلِيٌّ: وَهُوَ كَذَلِكَ، لِأَنَّ حَمْزَةَ الْعَائِذِيَّ شَيْخٌ مَجْهُولٌ لَا يُعْرَفُ - قَالَ ابْنُ مَعِينٍ، وَلَمْ يُوَثِّقْهُ أَحَدٌ نَعْلَمُهُ، وَأَمَّا جَامِعُ بْنُ مَطَرٍ فَقَالَ فِيهِ أَحْمَدُ بْنُ حَنْبَلٍ: لَا بَأْسَ بِهِ وَمَا عَلِمْنَا أَحَدًا جَرَحَهُ وَقَدْ رَوَى عَنْهُ أَئِمَّةٌ: يَحْيَى، وَعَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ، وَحَفْصُ بْنُ عُمَرَ الْحَوْضِيُّ، وَغَيْرُهُمْ.

L37843 Abdullah ibn Rabi' narrated from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Amr ibn Mansur from Hafs ibn Umar—he is Al-Hawdiyy—from Jaami' ibn Matar from Alqamah ibn Wa'il from his father, who said: "I was sitting with the Messenger of Allah—peace be upon him—when a man came with a palm-fiber rope around his neck and said, 'O Messenger of Allah, this man and my brother were digging a cistern. He raised the pickaxe and struck my brother's head with it, killing him.' The Messenger of Allah—peace be upon him—said, 'Pardon him,' but the man refused. He stood and said, 'O Prophet of Allah, this man and my brother were digging a well. He raised the pickaxe and struck my brother's head with it, killing him.' The Prophet said, 'Pardon him,' but he refused. The man repeated, 'O Messenger of Allah, this man and my brother were digging a cistern. He raised the

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عَمْرُو بْنُ مَنْصُورٍ نا حَفْصُ بْنُ عُمَرَ - هُوَ الْحَوْضِيُّ - نا جَامِعُ بْنُ مَطَرٍ عَنْ عَلْقَمَةَ بْنِ وَائِلٍ عَنْ أَبِيهِ قَالَ: «كُنْتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَاعِدًا عِنْدَهُ إِذْ جَاءَهُ رَجُلٌ فِي عُنُقِهِ نِسْعَةٌ فَقَالَ يَا رَسُولَ اللَّهِ إِنَّ هَذَا وَأَخِي كَانَا فِي جُبٍّ يَحْفِرَانِهَا، فَرَفَعَ الْمِنْقَارَ فَضَرَبَ بِهِ رَأْسَ صَاحِبِهِ فَقَتَلَهُ؟ فَقَالَ، رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اُعْفُ عَنْهُ، فَأَبَى وَقَامَ فَقَالَ: يَا نَبِيَّ اللَّهِ إِنَّ هَذَا وَأَخِي كَانَا فِي بِئْرٍ يَحْفِرَانِهَا فَرَفَعَ الْمِنْقَارَ فَضَرَبَ بِهَا رَأْسَ صَاحِبِهِ فَقَتَلَهُ؟ قَالَ: اُعْفُ عَنْهُ فَأَبَى، ثُمَّ قَالَ فَقَالَ: يَا رَسُولَ اللَّهِ هَذَا وَأَخِي

[17] **Hadith references (L37838):** Sahih Muslim 1680b.

كَانَا فِي جُبٍّ يَحْفِرَانِهَا فَرَفَعَ الْمِنْقَارَ - أُرَاهُ قَالَ: فَضَرَبَ بِهِ رَأْسَ صَاحِبِهِ فَقَتَلَهُ، قَالَ: أُعْفُ عَنْهُ فَأَبَى، قَالَ: اذْهَبْ إِنْ قَتَلْتَهُ كُنْتَ مِثْلَهُ، فَخَرَجَ بِهِ حَتَّى جَاوَزَ، فَنَادَيْنَاهُ: أَمَا تَسْمَعُ مَا يَقُولُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَجَعَ فَقَالَ: إِنْ قَتَلْتُهُ كُنْتُ مِثْلَهُ؟ قَالَ: نَعَمْ، أُعْفُ عَنْهُ، فَخَرَجَ يَجُرُّ نِسْعَتَهُ حَتَّى خَفِيَ عَلَيْنَا»

"pickaxe—I believe he added—and struck my brother's head with it, killing him.' The Prophet said, 'Pardon him,' but he refused. The Prophet then said, 'Go. If you kill him, you will be like him.' The man left with him, dragging him by the rope until they passed by. We called out, 'Do you not hear what the Messenger of Allah—peace be upon him—is saying?' He returned and asked, 'If I kill him, I will be like him?' The Prophet said, 'Yes. Pardon him.' The man left, dragging him by the palm-fiber rope until they vanished from our sight."

L37844 حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا عِيسَى بْنُ يُونُسَ الْفَاخُورِيُّ نا ضَمْرَةُ عَنْ عَبْدِ اللَّهِ بْنِ شَوْذَبَ عَنْ ثَابِتٍ الْبُنَانِيِّ عَنْ أَنَسٍ «أَنَّ رَجُلًا أَتَى بِقَاتِلِ وَلِيِّهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ لَهُ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -: أُعْفُ عَنْهُ فَأَبَى، فَقَالَ: خُذْ الدِّيَةَ فَأَبَى، قَالَ: اذْهَبْ فَاقْتُلْهُ فَإِنَّكَ مِثْلُهُ، فَخَلَّى سَبِيلَهُ، فَمَرَّ الرَّجُلُ وَهُوَ يَجُرُّ نِسْعَتَهُ»

L37844 Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Isa ibn Yunus al-Fakhoori narrated to us: Damrah narrated from Abdullah ibn Shawdhab from Thabit al-Bunani from Anas that a man came to the Messenger of Allah (peace and blessings be upon him) with the killer of his legal guardian. The Prophet (peace and blessings be upon him) said to him, "Pardon him," but he refused. He said, "Take the blood money," but he refused. He said, "Go and kill him, for you would be like him." So the legal guardian released him, and the killer departed dragging his sandal strap.

قَالَ أَبُو مُحَمَّد: أَمَّا حَدِيثُ إِسْمَاعِيلَ بْنِ سَالِمٍ، وَجَامِعِ بْنِ مَطَرٍ، كِلَاهُمَا عَنْ عَلْقَمَةَ، فَجَيِّدَانِ تَقُومُ الْحُجَّةُ بِهِمَا - وَفِي كِلَيْهِمَا إِطْلَاقُ الْقَاتِلِ الْمَعْفُوِّ عَنْهُ، وَمَسِيرُهُ حَتَّى غَابَ عَنْهُمْ، وَخَفِيَ عَنْهُمْ، لَا ضَرْبَ وَلَا نَفْيَ.

L37845–37847 Abu Muhammad said: As for the narration of Ismāʿīl ibn Sālim and Jāmiʿ ibn Maṭar, both of them transmit from... From Alqamah: two authentic narrations that establish the jurisprudential evidence—in both of them is the release of the pardoned killer, his departure until he vanished from their sight and was entirely concealed from them, with neither beating nor exile.

فَصَحَّ قَوْلُ مَنْ رَأَى أَنْ لَا جَلْدَ عَلَى الْقَاتِلِ وَلَا نَفْيَ إِذَا عُفِيَ عَنْهُ.

L37848 The correct position is that of those who maintain that no flogging is imposed upon the killer nor exile if he is pardoned.

وَهُوَ قَوْلُ ابْنِ عَبَّاسٍ، وَلَا يَصِحُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - خِلَافٌ لَهُ أَصْلًا - وَهَذَا مِمَّا يَسْتَشْنِعُهُ الْمَالِكِيُّونَ إِذَا وَافَقَ تَقْلِيدَهُمْ، وَإِذَا خَالَفَهُ لَمْ يُبَالُوا بِهِ.

L37849 This is the view of Ibn Abbas, and no authentic disagreement from any of the Companions—may Allah be pleased with them—is reported against it whatsoever. The Malikis consider this objectionable when it aligns with their school of thought, but when it contradicts their school, they pay no heed to it.

وَأَمَّا قَوْلُ مَالِكٍ بِذَلِكَ فِي الْقَسَامَةِ فَمَا عُرِفَ قَطُّ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37850 As for Mālik's position on this matter within qasāmah (oath-based liability in homicide cases), it has never at all been attributed to any of the Compan-

ions, may Allah be pleased with them. Success comes solely from Allah, the Exalted.

The meaning of the Prophet's saying: "The killer and the killed are in the Fire."

Issue 2077: Regarding the meaning of the Prophet's statement - peace be upon him - in these reports: "The killer and the killed one are in the Fire, and if you kill the killed one, you would be like him."

Ali said: We have become certain—and all praise is due to Allah—that the Messenger of Allah—peace and blessings of Allah be upon him—only speaks the certain truth, and we are certain that he—peace and blessings of Allah be upon him—does not judge by falsehood while knowing it to be false. Since there is no doubt regarding these two aspects, it is obligatory upon us to seek the basis of his ruling—peace and blessings of Allah be upon him—concerning qisas in these reports and his unrestricted application of it to killing in that context, despite his truthful statement: "If he kills him, he becomes his equal, and the killer and the slain are both in the Fire." The questioner may then say: How could the Messenger of Allah—peace and blessings of Allah be upon him—rule for him qisas that is not permissible for him while knowing it is not permissible for him? Allah is far above such a thing. Since this is not permissible, how can the one who demands qisas as the Messenger of Allah—peace and blessings of Allah be upon him—commanded him—and the one who seeks retribution by right—be in the Fire and equivalent to the killer?

Abu Muhammad said: As for the interpretation of Ibn Ashwa', which we previously mentioned through Muslim's narration from him—that this occurred because the Messenger of Allah—peace and blessings of Allah be upon him—asked him to pardon but he refused—this is an invalid interpretation that is entirely impermissible. This is because the Prophet—peace and blessings of Allah be upon him—in that situation must fall into one of two scenarios with no third: either he was interceding for pardon or he was commanding pardon. If he was interceding, then the one who declines to respond to his intercession—peace and blessings of Allah be upon him—is not disobey-

[مَعْنَى قَوْلِ النَّبِيِّ الْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ]

٢٠٧٧ - مَسْأَلَةٌ: فِي مَعْنَى قَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذِهِ الْأَخْبَارِ «الْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ وَإِنْ قَتَلْتَهُ كُنْتَ مِثْلَهُ»

قَالَ عَلِيٌّ: قَدْ أَيْقَنَّا - وَلِلَّهِ الْحَمْدُ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقُولُ إلَّا الْحَقَّ الْمُتَيَقَّنَ، وَأَيْقَنَّا أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقْضِي بِبَاطِلٍ - وَهُوَ يَدْرِي أَنَّهُ بَاطِلٌ - فَإِذْ لَا شَكَّ فِي هَذَيْنِ الْوَجْهَيْنِ، فَالْوَاجِبُ عَلَيْنَا طَلَبُ وَجْهِ حُكْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْقَوَدِ فِي هَذِهِ الْأَخْبَارِ، وَإِطْلَاقِهِ عَلَى الْقَتْلِ فِي ذَلِكَ، مَعَ قَوْلِهِ الصَّادِقِ «وَإِنْ قَتَلَهُ كَانَ مِثْلَهُ، وَالْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ» فَإِنَّ لِلسَّائِلِ أَنْ يَقُولَ: كَيْفَ يَقْضِي لَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَوَدٍ لَا يَحِلُّ لَهُ - وَهُوَ يَدْرِي أَنَّهُ لَا يَحِلُّ لَهُ - حَاشَ لِلَّهِ مِنْ هَذَا. وَإِذْ لَا يَجُوزُ هَذَا فَكَيْفَ يَكُونُ فِي النَّارِ، وَمِثْلًا لِلْقَاتِلِ، مَنْ اسْتَقَادَ كَمَا أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَمَنْ اقْتَصَّ بِالْحَقِّ قَالَ أَبُو مُحَمَّدٍ: أَمَّا تَفْسِيرُ ابْنِ أَشْوَعَ الَّذِي ذَكَرْنَاهُ آنِفًا مِنْ طَرِيقِ مُسْلِمٍ عَنْهُ أَنَّ ذَلِكَ كَانَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَهُ الْعَفْوَ عَنْهُ فَأَبَى، فَإِنَّهُ تَفْسِيرٌ فَاسِدٌ لَا يَجُوزُ أَلْبَتَّةَ؛ لِأَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَخْلُو فِي ذَلِكَ مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ شَافِعًا فِي الْعَفْوِ، وَإِمَّا أَنْ يَكُونَ آمِرًا بِالْعَفْوِ، فَإِنْ كَانَ شَافِعًا فَلَيْسَ الْمُمْتَنِعُ مِنْ إسْعَافِ شَفَاعَتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَاصِيًا لِلَّهِ تَعَالَى كَمَا فَعَلَتْ بَرِيرَةُ إذْ قَالَ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ خَيَّرَهَا فِي الْبَقَاءِ مَعَ زَوْجِهَا أَوْ فِرَاقِهِ فَاخْتَارَتْ

فِرَاقَهُ «لَوْ رَاجَعْتِيهِ فَإِنَّهُ أَبُو وَلَدِكِ. فَقَالَتْ: أَتَأْمُرُنِي يَا رَسُولَ اللَّهِ؟ قَالَ: لَا، إِنَّمَا أَنَا شَافِعٌ. فَقَالَتْ: لَا أَرْجِعُ إِلَيْهِ أَبَدًا» فَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ أَنَّ بَرِيرَةَ - رَضِيَ اللَّهُ عَنْهَا - لَمْ تَكُنْ عَاصِيَةً بِذَلِكَ.

ing Allah the Exalted, as was the case with Barirah when the Messenger of Allah—peace and blessings of Allah be upon him—said to her after giving her the choice to remain with her husband or divorce him, and she chose divorce: "What if you were to return to him, for he is the father of your child?" She said: "Are you commanding me, O Messenger of Allah?" He said: "No, I am merely interceding." She said: "I will never return to him." There is no disagreement among anyone in the Ummah that Barirah—may Allah be pleased with her—was not disobedient in that.

فَإِنْ كَانَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - شَافِعًا فِي هَذَا الْقَاتِلِ، فَلَيْسَ الْمُمْتَنِعُ عَاصِيًا فَإِذْ لَيْسَ عَاصِيًا فَلَيْسَ فِي النَّارِ، وَلَا هُوَ مِثْلُ الْقَاتِلِ الظَّالِمِ، وَإِنْ كَانَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - آمِرًا فَهُوَ بِيَقِينٍ لَا يَأْمُرُ إلَّا بِوَاجِبٍ فَرْضٍ.

L37854–37856 If he—peace and blessings be upon him—was interceding for this killer, then the refuser is not sinful; when... He who is not a sinner is not in the Fire, nor is he like the oppressive killer. And if he—may Allah bless him and grant him peace—commands, he commands with certainty nothing but an obligatory duty that is compulsory.

وَمِنْ الْبَاطِلِ أَنْ يَأْمُرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِشَيْءٍ وَيُطْلِقُ عَلَى خِلَافِهِ، وَلَا يَمْنَعُ مِنْ الْحَرَامِ الَّذِي هُوَ خِلَافُ أَمْرٍ - وَهَذَا هُوَ الْقَضَاءُ بِالْبَاطِلِ، وَقَدْ أَبْعَدَهُ اللَّهُ تَعَالَى عَنْ هَذَا.

L37857 And from falsehood is that he—peace and blessings be upon him—would command something then act contrary to it, and not forbid the forbidden that is contrary to a command. This is judging by falsehood, and Allah the Exalted has distanced him from this.

فَإِنْ قَالُوا: هُوَ أَمْرٌ عَلَى النَّدْبِ. قُلْنَا: لَا رَاحَةَ لَكُمْ فِي هَذَا، لِأَنَّ مَنْ تَرَكَ قَبُولَ الْأَمْرِ بِالنَّدْبِ الَّذِي لَيْسَ فَرْضًا فَلَيْسَ فِي النَّارِ، وَلَا هُوَ مِثْلُ الْقَاتِلِ الظَّالِمِ - فَبَطَلَ تَفْسِيرُ ابْنِ أَشْوَعَ.

L37858 If they say, "It is a command indicating recommendation," we reply: "This offers you no excuse, for one who neglects a recommended command—which is not obligatory—is neither in Hell nor comparable to the unjust killer." Thus, the interpretation of Ibn Ashwaʿ is rendered void.

وَهَكَذَا الْقَوْلُ فِيمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا عَلِيُّ بْنُ الْحَكَمِ الْبُنَانِيُّ عَنْ مُحَمَّدِ بْنِ زَيْدٍ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ «إنَّ الرَّجُلَ قَالَ: يَا رَسُولَ اللَّهِ قَتَلَ أَخِي فَدَخَلَ النَّارَ، وَإِنْ قَتَلْتُهُ دَخَلْتُ النَّارَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّهُ قَتَلَ أَخَاكَ فَدَخَلَ النَّارَ بِقَتْلِهِ إيَّاهُ، وَإِنِّي نَهَيْتُك عَنْ قَتْلِهِ، فَإِنْ قَتَلْتَهُ دَخَلْتَ النَّارَ

L37859 The same applies to the narration conveyed to us by ʿAbdullāh ibn Rabīʿ, who narrated from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, who narrated from Aḥmad ibn Khālid, who narrated from ʿAlī ibn ʿAbd al-ʿAzīz, who narrated from al-Ḥajjāj ibn al-Minhāl, who narrated from Ḥammād ibn Salamah, who narrated from ʿAlī ibn al-Ḥakam al-Bunānī, from Muḥammad ibn Zayd, from Saʿīd ibn Jubayr, who said: A man said, "O Messenger of God, he killed my brother and entered the Fire. If I kill him, will I enter the Fire?" The Messenger of God—peace and blessings be upon him—said, "He killed your brother and entered the Fire because he killed him. I forbade you from killing

him. If you kill him, you will enter the Fire due to your disobedience to me." Abū Muḥammad said: This is a disconnected narration, and a disconnected narration does not constitute proof. The ruling invalidating it is the same as that applied to the ḥadīth of Ibn Ashwaʿ, with no distinction.

L37860 And through him—to Hammad from Humayd from al-Hasan—that he meant by this report, "If you kill him, you are like him," he viewed this ruling as universally applicable. Similarly, what was narrated to us by Abdullah ibn Rabiʿ: narrated to us Ibn al-Salim, narrated to us Ibn al-Aʿrabi, narrated to us Abu Dawud, narrated to us Musa ibn Ismaʿil, narrated to us Abdullah ibn Bakr ibn Abdullah al-Muzani, narrated to us ʿAta ibn Abi Maymunah, from Anas ibn Malik, who said: "I never witnessed the Messenger of Allah (peace and blessings be upon him) having a case requiring legal retaliation presented to him without him enjoining forgiveness in it." He said: Were this an obligation and mandate, retaliation would be wholly prohibited—this being a matter of certainty that no Muslim would assert. If it is a recommended practice, then one who forsakes it without aversion does not enter the Fire nor become unjust. But if he abandons it out of aversion, he is a transgressor and may even fall into disbelief.

L37861–37863 Ali said: The ruling on this matter, according to our school, is what we found in another report—the one that was narrated to us. Abdullah ibn Rabi' narrated to us from Muhammad ibn Mu'awiyah, who narrated to us from Ahmad ibn Shu'ayb, who narrated to us from Abu Kurayb Muhammad ibn al-'Ala' al-Hamdani al-Kufi and Ahmad ibn Harb—and the wording is Ahmad ibn Harb's—they said: Abu Mu'awiyah narrated to us from al-A'mash from Abu Salih from Abu Hurayrah, who said: "A man was killed during the time of the Messenger of Allah—may Allah bless him and grant him peace—and the killer was brought to the Prophet—may Allah bless him and grant him peace. He handed him over to the slain man's legal guardian. The killer said, 'O Messenger of Allah, no, by Allah, I did not intend to kill him.' The Messenger of Allah—may Allah bless him and grant him peace—said to the legal guardian, 'If he is truthful **and you kill him**, you will enter the Fire.' So he released him—and he had been bound—and he went out dragging his

بِمَعْصِيَتِكَ إِيَّايَ.» قَالَ أَبُو مُحَمَّد: وَهَذَا مُرْسَلٌ، وَالْمُرْسَلُ لَا تَقُومُ بِهِ حُجَّةٌ، وَالْقَوْلُ فِي إِبْطَالِهِ كَالْقَوْلِ فِي حَدِيثِ ابْنِ أَشْوَعَ وَلَا فَرْقَ

وَبِهِ - إِلَى حَمَّادٍ عَنْ حُمَيْدٍ عَنْ الْحَسَنِ أَنَّهُ كَانَ يَعْنِي بِهَذَا الْخَبَرِ «إِنْ قَتَلْتَهُ فَأَنْتَ مِثْلُهُ» " كَانَ يَرَى ذَلِكَ عَامًّا - وَكَذَلِكَ مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ السَّلِيمِ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ نا عَبْدُ اللَّهِ بْنُ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيِّ عَنْ عَطَاءِ بْنِ أَبِي مَيْمُونَةَ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: «مَا رَأَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رُفِعَ إِلَيْهِ شَيْءٌ فِيهِ قِصَاصٌ إِلَّا أَمَرَ فِيهِ بِالْعَفْوِ» . قَالَ: فَلَوْ كَانَ هَذَا أَمْرَ فَرْضٍ وَإِيجَابٍ لَحَرُمَ الْقِصَاصُ جُمْلَةً - وَهَذَا أَمْرٌ مُتَيَقَّنٌ أَنَّهُ لَا يَقُولُهُ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ، فَإِنْ كَانَ أَمْرَ نَدْبٍ فَلَا يَدْخُلُ النَّارَ، وَلَا يَكُونُ ظَالِمًا مَنْ تَرَكَ النَّدْبَ غَيْرَ رَاغِبٍ عَنْهُ، فَإِنْ تَرَكَهُ رَاغِبًا عَنْهُ فَهُوَ فَاسِقٌ وَرُبَّمَا كَفَرَ.

قَالَ عَلِيٌّ: وَالْقَوْلُ فِي هَذَا عِنْدَنَا هُوَ مَا وَجَدْنَاهُ فِي خَبَرٍ آخَرَ - وَهُوَ الَّذِي حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ الْهَمْدَانِيُّ الْكُوفِيُّ، وَأَحْمَدُ بْنُ حَرْبٍ - وَاللَّفْظُ لَهُ - قَالَا: نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: «قُتِلَ رَجُلٌ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرُفِعَ الْقَاتِلُ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَدَفَعَهُ إِلَى وَلِيِّ الْمَقْتُولِ فَقَالَ الْقَاتِلُ: يَا رَسُولَ اللَّهِ لَا، وَاَللَّهِ مَا أَرَدْتُ قَتْلَهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِوَلِيِّ الْمَقْتُولِ: أَمَا إِنَّهُ إِنْ كَانَ صَادِقًا ثُمَّ قَتَلْتَهُ دَخَلْتَ النَّارَ، فَخَلَّى سَبِيلَهُ - وَكَانَ مَكْتُوفًا - فَخَرَجَ يَجُرُّ نِسْعَتَهُ، فَسُمِّيَ: ذَا النِّسْعَةِ» .

hobble rope. Thus, he was called Dhū al-Nisʿah (the Possessor of the Hobble Rope)."

L37864 Abu Muhammad said: This is the clarification of the reports concerning this ruling. Nothing else is permissible whatsoever: he (peace and blessings be upon him) ruled for qisas—retaliation in kind—through killing as retribution, based on clear evidence or an unequivocal confession.

قَالَ أَبُو مُحَمَّد: فَهَذَا بَيَانُ الْأَخْبَارِ الْوَارِدَةِ فِي هَذَا الْحُكْمِ، لَا يَجُوزُ غَيْرُ ذَلِكَ أَلْبَتَّةَ، وَهُوَ أَنَّهُ حَكَمَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْقَوَدِ وَالْقَتْلِ قِصَاصًا بِظَاهِرِ الْبَيِّنَةِ، أَوْ الْإِقْرَارِ التَّامِّ.

L37865 This is the certain truth incumbent upon the rulers—which Allah the Exalted has commanded them—without burdening them with knowledge of the unseen. The Prophet, peace and blessings be upon him, judged with truth in that matter. When he said, "I did not intend to kill him"—and that was possible—the Prophet, peace and blessings be upon him, informed him that if it were so, then his killer is in the Fire and he is like him, because it is not permissible for him to kill him at that point. Thus, his ruling, peace and blessings be upon him, was truth, and his word was truth.

وَهَذَا هُوَ الْحَقُّ الْمُفْتَرَضُ عَلَى الْحُكَّامِ الْمُتَيَقَّنُ أَنَّ اللَّهَ تَعَالَى أَمَرَهُمْ بِهِ، وَلَمْ يُكَلِّفْهُمْ عِلْمَ الْغَيْبِ، فَحَكَمَ النَّبِيُّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِالْحَقِّ فِي ذَلِكَ، فَلَمَّا قَالَ: إنِّي لَمْ أُرِدْ قَتْلَهُ - وَكَانَ ذَلِكَ مُمْكِنًا - أَخْبَرَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّهُ إنْ كَانَ كَذَلِكَ فَقَاتِلُهُ فِي النَّارِ وَهُوَ مِثْلُهُ، لِأَنَّهُ لَا يَحِلُّ لَهُ قَتْلُهُ حِينَئِذٍ، فَصَارَ حُكْمُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - حَقًّا، وَقَوْلُهُ حَقًّا.

L37866 As he also said—peace and blessings be upon him—"Whoever I decreed to receive something from his brother's rightful share, let him not take it, for verily I am cutting off for him a piece of the Hellfire."

كَمَا قَالَ أَيْضًا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فَمَنْ قَضَيْتُ لَهُ بِشَيْءٍ مِنْ حَقِّ أَخِيهِ فَلَا يَأْخُذْهُ، فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنْ النَّارِ» .

L37867 And he—peace and blessings be upon him—in the outward aspect of ruling through evidence, confession, or oath, judges by the certainly known truth rather than conjecture, but rather by that which Allah the Exalted has commanded him to judge by necessity, even if the hidden reality contradicts it—from that which, if he had known it (peace and blessings be upon him), he would neither have enforced it nor allowed it to take effect in the first place. And success is from Allah the Exalted.

وَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي ظَاهِرِ الْحُكْمِ بِالْبَيِّنَةِ، أَوْ الْإِقْرَارِ، أَوْ الْيَمِينِ حَاكِمٌ بِالْحَقِّ الْمُتَيَقَّنِ لَا بِالظَّنِّ، لَكِنْ بِمَا أَمَرَهُ اللَّهُ تَعَالَى أَنْ يَحْكُمَ بِهِ وَلَا بُدَّ، وَإِنْ كَانَ الْبَاطِنُ بِخِلَافِ ذَلِكَ مِمَّا لَوْ عَلِمَهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُنَفِّذْهُ، وَلَا تَرَكَهُ يَمْضِي أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37868–37870 If it is asked: This is the method of reconciling the ruling of the Prophet (peace and blessings be upon him) with his statement on the matter - then what explains his judgment (peace and blessings be upon him) that both the killer and the slain are in the Fire, and that he is like him? How could one who kills without intending murder be in the Fire? We respond - and success comes only from Allah, the Exalted -: This is a report from the Prophet

فَإِنْ قِيلَ: هَذَا وَجْهُ الْجَمْعِ بَيْنَ حُكْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَقَوْلِهِ فِي ذَلِكَ فَمَا وَجْهُ حُكْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بِأَنَّ الْقَاتِلَ وَالْمَقْتُولَ فِي النَّارِ، وَأَنَّهُ مِثْلُهُ؟ وَكَيْفَ يَكُونُ مَنْ قَتَلَ غَيْرَ مُرِيدٍ لِلْقَتْلِ فِي النَّارِ؟ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: هَذَا إخْبَارٌ مِنْ

(peace and blessings be upon him) concerning unseen matters which Allah, the Exalted, informed him of. Him alone [the Prophet], for he (peace be upon him) never speaks except the truth, nor does he speak based on conjecture while intending it. Whoever makes this claim against him or attributes it to him is an unbeliever. We therefore say: Indeed, that killer who did not intentionally commit murder was a wicked transgressor among the denizens of the Fire due to deeds other than this killing. Allah the Exalted informed His Prophet (peace be upon him) of his ultimate fate in this matter, and his blood was not lawful for the one seeking retaliation, because he did not intentionally kill his brother. Had he killed him under these circumstances, he would have become a killer without right, deserved the Fire, and been an oppressor like the slain - for not every oppressor deserves to be killed. Success comes solely from Allah the Exalted.

L37871 **A legal question: If someone is killed in a crowd, or it is not known who killed him.**

L37872 2078 - Issue: Whoever was killed in a crowd, or the killer remains unidentified, or the person was struck by an arrow or stone where it is not known who shot or threw it, or the killer fled:

L37873 Ali said: Hammam narrated to us via Abdullah ibn Muhammad ibn Ali al-Bājī, via Abdullah ibn Yunus, via Baqi ibn Makhled, via Abu Bakr ibn Abi Shaybah, via Waki', via Shu'bah from al-Hakam ibn Utaybah from Ibrahim al-Nakha'i: A man was killed during *ṭawāf*, so Umar consulted the people. Ali said, "His *diyah* is either upon the Muslims or in the public treasury."

L37874 And by his chain: via Wakīʿ, Wahb ibn ʿUqbah and Muslim ibn Yazīd ibn Madhkūr narrated from Yazīd ibn Madhkūr, who said: "People crowded intensely in the Grand Mosque of Kufa on Friday, then they parted to reveal a slain man. ʿAlī ibn Abī Ṭālib then paid his blood-money from the public treasury."

L37875 From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from

النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِغَيْبٍ أَعْلَمَهُ اللَّهُ تَعَالَى إيَّاهُ، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَا يَقُولُ أَلْبَتَّةَ إلَّا الْحَقَّ، وَلَا يَقُولُ بِالظَّنِّ قَاصِدًا إلَى ذَلِكَ - وَمَنْ قَالَ هَذَا عَلَيْهِ وَنَسَبَهُ إلَيْهِ: فَهُوَ كَافِرٌ، فَنَقُولُ: إنَّ ذَلِكَ الْقَاتِلَ الَّذِي لَمْ يَعْمِدْ الْقَتْلَ كَانَ فَاسِقًا مِنْ أَهْلِ النَّارِ بِعَمَلٍ لَهُ غَيْرَ هَذَا الْقَتْلِ، أَطْلَعَ اللَّهُ تَعَالَى نَبِيَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى عَاقِبَتِهِ فِيهِ، وَلَمْ يَكُنْ دَمُهُ يَحِلُّ لِهَذَا الْمُسْتَقِيدِ، لِأَنَّهُ لَمْ يَعْمِدْ قَتْلَ أَخِيهِ، فَلَوْ قَتَلَهُ عَلَى هَذَا الْوَجْهِ لَكَانَ قَاتِلًا بِغَيْرِ الْحَقِّ، وَلَاسْتَحَقَّ النَّارَ، وَلَكَانَ ظَالِمًا كَالْمَقْتُولِ، إذْ لَيْسَ كُلُّ ظَالِمٍ يَسْتَحِقُّ الْقَتْلَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قُتِلَ فِي الزِّحَامِ أَوْ لَمْ يُعْرَفْ مَنْ قَتَلَهُ]

٢٠٧٨ - مَسْأَلَةٌ: مَنْ قُتِلَ فِي الزِّحَامِ، أَوْ لَمْ يُعْرَفْ مَنْ قَتَلَهُ، أَوْ أَصَابَهُ سَهْمٌ، أَوْ حَجَرٌ، لَا يُدْرَى مَنْ رَمَاهُ، أَوْ هَرَبَ قَاتِلُهُ:

قَالَ عَلِيٌّ: نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ نا شُعْبَةُ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ: أَنَّ رَجُلًا قُتِلَ فِي الطَّوَافِ، فَاسْتَشَارَ عُمَرُ النَّاسَ. فَقَالَ عَلِيٌّ: دِيَتُهُ عَلَى الْمُسْلِمِينَ، أَوْ فِي بَيْتِ الْمَالِ.

وَبِهِ: إلَى وَكِيعٍ نا وَهْبُ بْنُ عُقْبَةَ، وَمُسْلِمُ بْنُ يَزِيدَ بْنِ مَذْكُورٍ - سَمِعَاهُ مِنْ يَزِيدَ بْنِ مَذْكُورٍ قَالَ: إنَّ النَّاسَ ازْدَحَمُوا فِي الْمَسْجِدِ الْجَامِعِ بِالْكُوفَةِ يَوْمَ الْجُمُعَةِ، فَأَفْرَجُوا عَنْ قَتِيلٍ، فَوَدَاهُ عَلِيُّ بْنُ أَبِي طَالِبٍ مِنْ بَيْتِ الْمَالِ.

ʿAbd al-Razzāq, from Sufyān al-Thawrī, from al-Ḥakam ibn ʿUtaybah, from Ibrāhīm al-Nakhaʿī, from al-Aswad: If a man was killed in the Kaaba, ʿUmar consulted ʿAlī, who said: “From the *Bayt al-Māl* (the treasury)”—referring to his *diyah* (blood money).

نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ إبْرَاهِيمَ النَّخَعِيِّ عَنْ الْأَسْوَدِ إنْ رَجُلٌ قُتِلَ فِي الْكَعْبَةِ فَسَأَلَ عُمَرُ عَلِيًّا، فَقَالَ: مِنْ بَيْتِ الْمَالِ - يَعْنِي دِيَتَهُ.

L37876 Narrated via the chain of Ibn Wahb: Saʿīd ibn ʿAbdillāh al-Thaqafī reported to me from his father from ʿUmar ibn ʿAbd al-ʿAzīz that he ruled regarding two men who died in a stampede: that blood money for both should be paid from the treasury, for they were killed by a hand or foot (of an unidentified person).

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ حَدَّثَنِي سَعِيدُ بْنُ عَبْدِ اللَّهِ الثَّقَفِيُّ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ كَتَبَ فِي رَجُلَيْنِ مَاتَا فِي الزِّحَامِ: أَنْ يُودَيَا مِنْ بَيْتِ الْمَالِ، فَإِنَّمَا قَتَلَهُ يَدٌ، أَوْ رِجْلٌ.

L37877 This has also been narrated from Saʿīd ibn al-Musayyib as well, and ʿUrwah ibn al-Zubayr.

وَقَدْ رُوِيَ هَذَا أَيْضًا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ أَيْضًا، وَعُرْوَةَ بْنِ الزُّبَيْرِ.

L37878 “Other narrations have been reported besides this. As it was narrated to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī, who said: ’Whoever is killed in a crowd, their diya (blood money) is incumbent upon the people—specifically those present at the time, whether during Friday or otherwise.”’

وَقَدْ رُوِيَ غَيْرُ هَذَا: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: مَنْ قُتِلَ فِي زِحَامٍ فَإِنَّ دِيَتَهُ عَلَى النَّاسِ - مَنْ حَضَرَ ذَلِكَ فِي جُمُعَةٍ، أَوْ غَيْرِهَا

L37879–37881 Ali said: When they differed as we mentioned, it became obligatory to examine the evidence each faction cites as proof. We found the proponents of the first opinion citing as evidence the narration conveyed to us by Humam, who narrated from Ibn Mufarrij, who narrated from Ibn al-A’rabi, who narrated from ad-Dabbari, who narrated from Abd ar-Razzaq, from Ibn Jurayj, from Abd al-Aziz ibn Umar ibn Abd al-Aziz, from a book of Umar ibn al-Aziz, who said: “It has reached us that the Messenger of Allah (peace and blessings be upon him) ruled regarding one slain on Eid al-Adha or Eid al-Fitr - his blood money is incumbent upon the people collectively.”

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا تَحْتَجُّ بِهِ كُلُّ طَائِفَةٍ فَوَجَدْنَا أَهْلَ الْقَوْلِ الْأَوَّلِ يَحْتَجُّونَ بِمَا حَدَّثَنَاهُ حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ عَنْ كِتَابٍ لِعُمَرَ بْنِ الْعَزِيزِ قَالَ: بَلَغَنَا «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِيمَنْ قُتِلَ يَوْمَ أَضْحَى، أَوْ يَوْمَ فِطْرٍ، فَإِنَّ دِيَتَهُ عَلَى النَّاسِ جَمَاعَةً» .

L37882 Because it is not known who killed him; this is a *mursal* report, and no conclusive proof exists in a *mursal* report.

لِأَنَّهُ لَا يُدْرَى مَنْ قَتَلَهُ - وَهَذَا خَبَرٌ مُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ.

L37883 The ruling we uphold is that if someone is crushed in a crowd until they die from that pressure, we affirm that the entire group involved in that specific incident collectively caused their death, as all pressed together until

وَالَّذِي نَقُولُ بِهِ: إنَّ مَنْ ضُغِطَ فِي زِحَامٍ حَتَّى مَاتَ مِنْ ذَلِكَ الضَّغْطِ فَقَدْ عَرَفْنَا أَنَّ الْجَمَاعَةَ تِلْكَ بِعَيْنِهَا كُلَّهُمْ قَتَلَهُ، إذْ كُلُّهُمْ تَضَاغَطُوا حَتَّى مَاتَ مِنْ ضَغْطِهِمْ، فَإِذْ قَدْ

عُرِفَ قَاتِلُوهُ فَالدِّيَةُ وَاجِبَةٌ عَلَى عَوَاقِلِهِمْ بِلَا شَكٍّ، فَإِنْ قَدَرَ عَلَى ذَلِكَ فَهُوَ عَلَيْهِمْ، وَإِنْ جَهِلُوهُ فَهُمْ غَارِمُونَ حَيْثُ كَانُوا، وَحَقُّ الْغَارِمِينَ وَاجِبٌ فِي صَدَقَاتِ الْمُسْلِمِينَ، وَفِي سَائِرِ الْأَمْوَالِ الْمَوْقُوفَةِ لِجَمِيعِ مَصَالِحِ الْمُسْلِمِينَ.

the person died from their collective pressure. Since those responsible for the killing have been identified, the blood money is undoubtedly obligatory upon their male relatives responsible for blood money. If the responsible kin are capable of paying it, it is their responsibility. If they are unaware of it, they become debtors wherever they may be, and the right of these debtors is obligatory to fulfill from the alms of Muslims and from all waqf properties designated for all the interests of Muslims.

لِقَوْلِ اللَّهِ تَعَالَى {إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسَاكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ} [التوبة: ٦٠] الْآيَةَ.

L37884 Based on the words of Allah, the Exalted: "Indeed, *Zakat* is only for the poor, the needy, those employed to collect it, and those whose hearts are to be reconciled..." [At-Tawbah 9:60] the verse.[18]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ تَرَكَ دَيْنًا أَوْ ضَيَاعًا فَإِلَيَّ وَعَلَيَّ» .

L37885 The Messenger of Allah (peace and blessings be upon him) said, "Whoever leaves behind a debt or dependents [without support], then to me is their recourse, and upon me is their provision."

وَإِنْ كَانَ مَاتَ مِنْ أَمْرٍ لَا يُدْرَى مَنْ أَصَابَهُ فَدِيَتُهُ وَاجِبَةٌ عَلَى جَمِيعِ الْأَمْوَالِ الْمَوْقُوفَةِ لِمَصَالِحِ الْمُسْلِمِينَ، لِأَنَّ مُصِيبَهُ غَارِمٌ، أَوْ عَاقِلَتِهِ، وَلَا بُدَّ.

L37886 If the death resulted from an unknown cause, the blood money is obligatory upon all dedicated funds allocated for the public interests of Muslims, as liability is incumbent upon the public treasury *ghārim* or his responsible kin group *ʿāqila*, and this is imperative.

وَهَذَا هُوَ نَصُّ الْخَبَرِ - وَإِنْ كَانَ لَا يُحْتَجُّ بِهِ بِإِرْسَالِهِ لَكِنْ مَعْنَاهُ صَحِيحٌ بِالنُّصُوصِ الَّتِي ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37887 This is the text of the narration—though it cannot be cited as authoritative due to its being *Mursal* (with an incomplete chain), yet its meaning is authentic according to the texts we have cited—and with Allah alone is all success.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ حَدَّثَنَاهُ حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: قَضَى هِشَامُ بْنُ سُلَيْمَانَ فِي قَوْمٍ كَانُوا فِي مَاءٍ فَتَمَاقَلُوا فَمَاتَ وَاحِدٌ مِنْهُمْ فِي الْمَاءِ، فَشَهِدَ اثْنَانِ عَلَى ثَلَاثَةٍ، وَثَلَاثَةٌ عَلَى اثْنَيْنِ، فَقَضَى بِدِيَتِهِ عَلَى جَمِيعِهِمْ.

L37888 Abu Muhammad said: Hammam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: Abd al-Razzaq narrated to us, from Ma'mar, who said: Hisham ibn Sulayman issued a judgment concerning people who were in water and quarreled, resulting in one of them dying in the water. Two witnesses testified against three individuals, and three witnesses testified against two. He ruled that the blood money for the deceased must be borne by all of them collectively.

L37889–37891 Hummam narrated to us; ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bajiyy narrated to us; ʿAbdullāh ibn Yūnus narrated to us; Baqiyy ibn Makhlad narrated

[18] **Qur'an references (L37884):** Qur'an 9:60 (At-Tawbah).

to us; Abū Bakr ibn Abī Shaybah narrated to us; Muḥammad ibn Abī ʿAdiyy narrated from Ashʿath from al-Ḥasan that he said: Regarding a group of people who exchanged arrows and struck someone, and it is not known which of them struck him. He ruled: The blood money is due upon them.

حَدَّثَنَا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ أَبِي عَدِيٍّ عَنْ أَشْعَثَ عَنِ الْحَسَنِ أَنَّهُ قَالَ فِي قَوْمٍ تَنَاضَلُوا فَأَصَابُوا إِنْسَانًا، لَا يُدْرَى أَيُّهُمْ أَصَابَهُ. قَالَ: الدِّيَةُ عَلَيْهِمْ.

L37892 We have narrated it through the chain of al-Ḥajjāj ibn al-Minhāl, who reported from Ḥammād ibn Salamah, who reported from Salamah ibn Kuhayl and Ḥammād ibn Abī Sulaymān that ʿAlī ibn Abī Ṭālib ruled regarding six youths who were struggling in the river, causing one of them to drown. Two witnesses testified against three that they had drowned him, while three witnesses testified against two that they had drowned him. ʿAlī ibn Abī Ṭālib obligated three-fifths of the blood money upon the two and two-fifths of the blood money upon the three. ʿAlī said: "As for the narration from ʿAlī ibn Abī Ṭālib, it is not authentic. Were it authentic, all present from our opponents would have opposed his ruling in this matter."

وَرُوِّينَاهُ مِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا سَلَمَةُ بْنُ كُهَيْلٍ وَحَمَّادُ بْنُ أَبِي سُلَيْمَانَ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَضَى فِي سِتَّةِ غِلْمَةٍ كَانُوا يَتَغَاطُّونَ فِي النَّهْرِ فَغَرِقَ أَحَدُهُمْ، فَشَهِدَ اثْنَانِ عَلَى ثَلَاثَةٍ أَنَّهُمْ غَرَّقُوهُ، وَشَهِدَ ثَلَاثَةٌ عَلَى اثْنَيْنِ أَنَّهُمَا غَرَّقَاهُ - فَجَعَلَ عَلِيُّ بْنُ أَبِي طَالِبٍ ثَلَاثَةَ أَخْمَاسِ الدِّيَةِ عَلَى الِاثْنَيْنِ، وَخُمُسَيِّ الدِّيَةِ عَلَى الثَّلَاثَةِ قَالَ عَلِيٌّ: أَمَّا الرِّوَايَةُ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ فَلَا تَصِحُّ، وَلَوْ صَحَّتْ لَكَانَ جَمِيعُ الْحَاضِرِينَ مِنْ خُصُومِنَا مُخَالِفِينَ لِحُكْمِهِ فِيهَا.

L37893 In our position, Allah the Exalted has prohibited [the unlawful acquisition of] wealth except with the certainty of a legitimate right, as He stated: "And do not consume your properties among yourselves wrongfully" [Al-Baqarah: 188].[19]

وَأَمَّا الْقَوْلُ عِنْدَنَا فَهُوَ أَنَّ اللَّهَ تَعَالَى حَرَّمَ الْأَمْوَالَ إِلَّا بِيَقِينِ الْحَقِّ، لِقَوْلِهِ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨]

L37894 The Messenger of Allah, peace and blessings be upon him, said, "Indeed, your blood, your wealth, and your honor are inviolable to you." Therefore, it is not valid to pass a judgment requiring blood money on anyone except where an explicit text [from the Quran or the Sunnah of the Messenger of Allah] obligates it.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَصِحُّ قَضَاءٌ بِدِيَةٍ عَلَى أَحَدٍ إِلَّا حَيْثُ أَوْجَبَهَا نَصٌّ [قُرْآنٌ أَوْ سُنَّةٌ] عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37895 If a person dies in drowning, struggle, or while seeking water, it is impermissible to impose any portion of his blood money on those present or their agnatic relatives, for we do not know: Did all of them kill him or only some? Since the killer remains unidentified, there is no distinction between those present and passersby on the path. Obliging them or their agnatic relatives to pay his blood money is injustice without doubt. Indeed, we are certain that

فَإِذَا مَاتَ إِنْسَانٌ فِي تَغَاطٍّ، أَوْ نِضَالٍ، أَوْ فِي وَجْهِ مَاءٍ، فَإِنَّهُ لَا يَحِلُّ أَنْ يَغْرَمَ مَنْ حَضَرَ شَيْئًا مِنْ دِيَتِهِ، وَلَا عَوَاقِلُهُمْ، لِأَنَّنَا لَا نَدْرِي أَجَمِيعُهُمْ قَتَلَهُ أَمْ بَعْضُهُمْ؟ وَإِذْ لَا نَدْرِي مَنِ الْقَاتِلُ لَهُ، فَلَا فَرْقَ بَيْنَ الْحَاضِرِينَ وَبَيْنَ الْعَابِرِينَ عَلَى السَّبِيلِ، وَإِلْزَامُهُمْ دِيَتَهُ، أَوْ عَوَاقِلُهُمْ ظُلْمٌ لَا شَكَّ، بَلْ نُوقِنُ أَنَّ جَمِيعَهُمْ لَمْ يَقْتُلْهُ، فَنَحْنُ عَلَى يَقِينٍ مِنْ

[19] **Qur'an references (L37893):** Qur'an 2:188 (Al-Baqarah).

all of them did not kill him, thus compelling them all to pay the blood money is injustice without doubt. The rightful course is for this blood money to be paid from the share for debtors or from charitable endowments designated for the welfare of all Muslims, as Allah the Exalted decreed blood money in His words: {Whoever kills a believer by mistake must free a believing slave and deliver blood money to his family} [4:92]. Therefore, blood money must assuredly be given to his family.[20]

أَنَّ إِلْزَامَ جَمِيعِهِمْ الدِّيَةَ ظُلْمٌ لَا شَكَّ فِيهِ - فَحَقُّ هَذَا أَنْ يُؤَدِّيَ مِنْ سَهْمِ الْغَارِمِينَ، أَوْ مِنْ الْأَمْوَالِ الْمَوْقُوفَةِ لِمَصَالِحِ جَمِيعِ الْمُسْلِمِينَ، لِأَنَّ اللَّهَ تَعَالَى افْتَرَضَ دِيَتَهُ بِقَوْلِهِ تَعَالَى {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ} [النساء: ٩٢] فَلَا بُدَّ مِنْ دِيَةٍ مُسَلَّمَةٍ إلَى أَهْلِهِ.

L37896 And by the statement of the Messenger of Allah—may Allah's peace and blessings be upon him—which we have cited with its chain of transmission in multiple sections of our book, and all praise is due to Allah: "For whom a killing has occurred after this very statement of mine, his family has two good choices: to retaliate or to accept blood money," or as he—peace and blessings be upon him—said.

وَبِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي قَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ فِي مَوَاضِعَ مِنْ كِتَابِنَا هَذَا وَلِلَّهِ الْحَمْدُ " مَنْ قُتِلَ لَهُ قَتِيلٌ بَعْدَ مَقَالَتِي هَذِهِ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ بَيْنَ أَنْ يَقْتُلُوا أَوْ يَأْخُذُوا الْعَقْلَ " أَوْ كَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

L37897–37898 Liability is obligatory in all cases, whether intentional or accidental, and no slain person exists outside these two categories. Abu Muhammad said: Likewise, if someone is struck by a stone whose thrower is unknown, or an arrow similarly with no distinction—even if a man were pursued by an enemy on a path who killed him, with a group of trustworthy individuals observing this yet unable to identify the killer. When the killer saw them, he fled behind a mound, into a house, or into a caravanserai. The group pursued him and found behind the mound, caravanserai, or house a number of people—two or more—among whom were trustworthy and untrustworthy individuals. They asked them: "Who entered here moments ago?" Each person among them replied: "We do not know; each of us was occupied with his own affairs." As for the Malikis, they assert that everyone present in the caravanserai, everyone in the house, and everyone behind the mound must be imprisoned for an indefinitely long duration until death becomes preferable to them than life. This is undeniably a grave injustice and unquestionably a sin before Allah the Exalted, for they are certain that all but one among them are wronged. Thus, they knowingly wrong a thousand people with certainty, aware they are unjustly harming them out of fear that a single unidentified wrongdoer might escape. Abu Muhammad said: By this logic, one would inevitably be

فَالْعَقْلُ وَاجِبٌ عَلَى كُلِّ حَالٍ فِي الْعَمْدِ وَالْخَطَأِ، وَلَا يَخْلُو قَتِيلٌ مِنْ أَحَدِ هَذَيْنِ الْوَجْهَيْنِ. قَالَ أَبُو مُحَمَّد: وَهَكَذَا مَنْ أَصَابَهُ حَجَرٌ لَا يُدْرَى مَنْ رَمَاهُ، أَوْ سَهْمٌ كَذَلِكَ وَلَا فَرْقَ - وَلَوْ أَنَّ امْرَأً خَرَجَ إلَيْهِ عَدُوٌّ فِي طَرِيقٍ فَقَتَلَهُ، وَجَمَاعَةٌ ثِقَاتٌ يَنْظُرُونَ إلَى ذَلِكَ، إلَّا أَنَّهُمْ لَا يَعْرِفُونَ الْقَاتِلَ مَنْ هُوَ؟ فَلَمَّا رَآهُمْ الْقَاتِلُ هَرَبَ وَصَارَ خَلْفَ رَبْوَةٍ، أَوْ فِي بَيْتٍ، أَوْ فِي خَانٍ، فَاتَّبَعَتْهُ الْجَمَاعَةُ فَوَجَدُوا خَلْفَ الرَّابِيَةِ أَوْ الْخَانِ أَوْ الْبَيْتِ: جَمَاعَةً مِنْ النَّاسِ، أَوْ اثْنَيْنِ فَصَاعِدًا، فِيهِمْ ثِقَاتٌ وَغَيْرُ ثِقَاتٍ، فَسَأَلُوهُمْ: مَنْ دَخَلَ عِنْدَكُمْ السَّاعَةَ؟ فَقَالَ كُلُّ امْرِئٍ مِنْهُمْ: لَا نَدْرِي، كُلُّ امْرِئٍ مِنَّا مَشْغُولٌ بِأَمْرِهِ. فَأَمَّا الْمَالِكِيُّونَ يَقُولُونَ: يُقْذَفُ كُلُّ مَنْ كَانَ فِي الْخَانِ، وَكُلُّ مَنْ كَانَ فِي الْبَيْتِ، وَكُلُّ مَنْ كَانَ خَلْفَ الرَّابِيَةِ فِي السِّجْنِ الدَّهْرَ الطَّوِيلَ، حَتَّى يَكُونَ مَوْتُهُمْ خَيْرًا لَهُمْ مِنْ الْحَيَاةِ - وَهَذَا ظُلْمٌ عَظِيمٌ مُتَيَقَّنٌ، وَخَطَأٌ عِنْدَ اللَّهِ تَعَالَى بِلَا شَكٍّ، لِأَنَّهُمْ عَلَى يَقِينٍ مِنْ أَنَّهُمْ كُلُّهُمْ مَظْلُومُونَ إلَّا وَاحِدًا، فَقَدْ أَقْدَمُوا عَلَى ظُلْمِ أَلْفِ إنْسَانٍ بِيَقِينٍ، وَهُمْ يَدْرُونَ أَنَّهُمْ ظَالِمُونَ لَهُمْ خَوْفَ

[20] **Qur'an references (L37895):** Qur'an 4:92 (An-Nisa).

obliged to apprehend the people of every marketplace and imprison them, since we know with certainty that among them are practitioners of usury and consumers of intoxicants.

أَنْ يُفْلِتَ ظَالِمٌ وَاحِدٌ لَا يَعْرِفُونَهُ بِعَيْنِهِ. قَالَ أَبُو مُحَمَّدٍ: وَيَلْزَمُ مَنْ قَالَ بِهَذَا الْقَوْلِ عَلَى كُلِّ حَالٍ أَنْ يَقْصِدَ إلَى أَهْلِ كُلِّ سُوقٍ فَيَقْذِفَهُمْ فِي الْحَبْسِ، لِأَنَّنَا نَدْرِي أَنَّ فِيهِمْ آكِلَ رِبًا بِيَقِينٍ، وَشَارِبَ خَمْرٍ بِيَقِينٍ.

L37899 Similarly, in the case of a slain person found in a city or island, it is incumbent upon them to imprison all the people of that city or the people of the island; otherwise, they have contradicted themselves in the most severe manner.

وَكَذَلِكَ يَلْزَمُهُمْ فِي قَتِيلٍ وُجِدَ فِي مَدِينَةٍ أَوْ جَزِيرَةٍ أَنْ يَسْجُنُوا جَمِيعَ أَهْلِ تِلْكَ الْمَدِينَةِ، وَأَهْلَ الْجَزِيرَةِ، وَإِلَّا فَقَدْ تَنَاقَضُوا أَفْحَشَ تَنَاقُضٍ.

L37900–37902 The Messenger of Allah—peace and blessings be upon him—nullified this corrupt ruling through his action concerning the people of Khaybar, when Abdullah ibn Sahl—may Allah be pleased with him—was killed among them. None of them were imprisoned; rather, he accepted only oaths—either from those making claims against them or by their own oaths. Abu Muhammad said: This also nullifies the saying of Allah the Exalted: “They follow nothing but conjecture and what their souls desire” [53:23]. And the saying of the Most High: “They follow nothing but conjecture, and indeed conjecture avails nothing against the truth.” [An-Najm: 28][21]

وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَبْطَلَ هَذَا الْحُكْمَ الْفَاسِدَ بِفِعْلِهِ فِي أَهْلِ خَيْبَرَ، إذْ قُتِلَ فِيهِمْ عَبْدُ اللَّهِ بْنُ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ - فَمَا سُجِنَ أَحَدٌ مِنْهُمْ، بَلْ قَنَعَ مِنْهُمْ بِالْأَيْمَانِ فَقَطْ عَلَى مَنْ ادَّعَى عَلَيْهِ مِنْهُمْ أَوْ بِأَيْمَانِهِمْ. قَالَ أَبُو مُحَمَّدٍ: وَيُبْطِلُ هَذَا أَيْضًا قَوْلُ اللَّهِ تَعَالَى {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَمَا تَهْوَى الأَنْفُسُ} [النجم: ٢٣] وقَوْله تَعَالَى {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨]

L37903 The Messenger of Allah (peace be upon him) said: “Beware of suspicion, for suspicion is the most deceitful speech.” Thus, it is not lawful for anyone to take action against another based on suspicion. How, then, can they proceed here with sheer injustice and certain oppression?

وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» فَلَا يَحِلُّ لِأَحَدٍ الْإِقْدَامُ عَلَى أَحَدٍ بِالظَّنِّ، فَكَيْفَ وَهُمْ هَاهُنَا قَدْ أَقْدَمُوا بِالْجَوْرِ الْمَحْضِ وَالظُّلْمِ الْمُتَيَقَّنِ.

L37904 The obligation in this matter is that none of them should be imprisoned. However, for the one against whom a claim is made, the claimants swear an oath under the ruling of *qasāmah*. If the claimants refuse, he then swears a single oath.

وَالْوَاجِبُ فِي هَذَا أَنْ لَا يُسْجَنَ وَاحِدٌ مِنْهُمْ، لَكِنْ مَنْ أُدُّعِيَ عَلَيْهِ حَلَفَ الْمُدَّعُونَ عَلَى حُكْمِ الْقَسَامَةِ، فَإِنْ نَكَلُوا حَلَفَ هُوَ يَمِينًا وَاحِدَةً.

L37905 Similarly, if a claim is made against a group of individuals individually identified by their persons, each of them must swear one oath and thereby be cleared. This is based on the statement of the Messenger of Allah (peace

[21] **Qur’an references (L37900):** Qur’an 53:23 (An-Najm); Qur’an 53:28 (An-Najm).

and blessings be upon him): “If people were granted what they claim based solely on their allegations, one group would lay claim to the blood and wealth of another group. But the oath is incumbent upon the one against whom the claim is made.”

وَكَذَلِكَ لَوْ ادَّعُوا عَلَى جَمَاعَةٍ بِأَعْيَانِهِمْ كُلُّ وَاحِدٍ مِنْهُمْ يَحْلِفُ يَمِينًا وَاحِدَةً وَيَبْرَأُ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ أُعْطِي النَّاسُ بِدَعْوَاهُمْ لَادَّعَى قَوْمٌ دِمَاءَ قَوْمٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى مَنْ أُدُّعِيَ عَلَيْهِ»

L37906 And if it was also found in the dwelling of a community, the ruling of *qasāma* was applied.

وَإِنْ كَانَ وُجِدَ فِي دَارِ قَوْمٍ أَيْضًا حُكِمَ هُنَالِكَ بِحُكْمِ الْقَسَامَةِ

L37907 And with Allah, the Exalted, lies all success.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L37908 **A legal issue: if someone orders another to amputate their own hand, kill their own child or slave, kill the commander, or kill themselves.**

[مَسْأَلَةٌ أَمَرَ آخَرَ بِقَطْعِ يَدِهِ أَوْ بِقَتْلِ وَلَدِهِ أَوْ عَبْدِهِ أَوْ بِقَتْلِهِ نَفْسَهُ]

L37909 2079 - Issue: Concerning one who orders another to cut off his hand, kill his child, his slave, or to kill himself: ʿAbdullāh ibn Rabīʿ narrated to us, ʿAbdullāh ibn Muḥammad ibn ʿUthmān narrated to us, Aḥmad ibn Khālid narrated to us, ʿAlī ibn ʿAbd al-ʿAzīz narrated to us, al-Ḥajjāj ibn al-Minhāl narrated to us, Ḥammād ibn Salamah narrated from ʿAmr ibn Dīnār, who said: A man said to a slave, “Cut off my ear, and you will be my partner in liability for the diyah,” so the slave did it. They brought their dispute to Ibn al-Zubayr, and conclusive evidence confirmed the man’s statement, so he nullified the man’s diyah. ʿAlī said: Allah the Exalted has ordained diyah for a life—if the legal guardian of the slain demands it—through the words of His Prophet (ﷺ).

٢٠٧٩ - مَسْأَلَةٌ: فِيمَنْ أَمَرَ آخَرَ بِقَطْعِ يَدِهِ أَوْ بِقَتْلِ وَلَدِهِ، أَوْ عَبْدِهِ أَوْ بِقَتْلِهِ نَفْسَهُ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: إنَّ رَجُلًا قَالَ لِعَبْدِ: اقْطَعْ أُذُنِي وَأَنْتَ شَرِيكِي فِي الدِّيَةِ فَفَعَلَ. فَاخْتَصَمُوا إلَى ابْنِ الزُّبَيْرِ فَقَامَتْ الْبَيِّنَةُ عَلَى قَوْلِهِ فَأَبْطَلَ دِيَتَهُ، قَالَ عَلِيٌّ: قَدْ أَوْجَبَ اللَّهُ تَعَالَى فِي النَّفْسِ الدِّيَةَ - إنْ أَرَادَهَا وَلِيُّ الْمَقْتُولِ - عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L37910 Allah, the Exalted, has also made obligatory the blood money for the fingers, according to what we have previously mentioned.

وَأَوْجَبَ اللَّهُ تَعَالَى أَيْضًا كَذَلِكَ دِيَةَ الْأَصَابِعِ عَلَى مَا ذَكَرْنَا قَبْلُ.

L37911 Allah has forbidden obedience to anyone in disobedience to Allah, the Exalted, and we have mentioned all of that with its chain of transmission in the previous volumes of our dīwān.

وَحَرَّمَ اللَّهُ طَاعَةَ أَحَدٍ مِنْ النَّاسِ فِي مَعْصِيَةِ اللَّهِ تَعَالَى -، وَقَدْ ذَكَرْنَا كُلَّ ذَلِكَ بِإِسْنَادِهِ فِيمَا سَلَفَ مِنْ دِيوَانِنَا.

L37912–37914 Abdullah ibn Yusuf narrated to us: Ahmad ibn Fath informed us, Abdul Wahhab ibn Isa informed us, Ahmad ibn Muhammad informed us. Aḥmad ibn ʿAlī narrated to us: Muslim ibn al-Ḥajjāj narrated to us: Quṭaybah nar-

rated to us: Layth — that is, Ibn Saʿd — narrated to us: ʿUbayd Allāh — that is, Ibn ʿUmar — narrated to us, from Nāfiʿ, from Ibn ʿUmar, from the Prophet — peace and blessings of Allāh be upon him — that he said: "It is incumbent upon a Muslim to listen and obey in matters he loves or hates, unless he is commanded to commit a sin, for then there is no listening nor obedience."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا أَحْمَدُ بْنُ فَتْحٍ نا عَبْدُ الْوَهَّابِ بْنُ عِيسَى نا أَحْمَدُ بْنُ مُحَمَّدٍ نا أَحْمَدُ بْنُ عَلِيٍّ نا مُسْلِمُ بْنُ الْحَجَّاجِ نا قُتَيْبَةُ نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ عُبَيْدِ اللَّهِ - هُوَ ابْنُ عُمَرَ - عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «عَلَى الْمَرْءِ الْمُسْلِمِ السَّمْعُ وَالطَّاعَةُ فِيمَا أَحَبَّ أَوْ كَرِهَ، إلَّا أَنْ يُؤْمَرَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ»

L37915 And through him to [the book] Ṣaḥīḥ Muslim: Muḥammad ibn al-Muthannā narrated to us, Muḥammad ibn Jaʿfar Ghundar narrated to us, Shuʿbah narrated from Zubayd, from Saʿd ibn ʿUbayd, from Abū ʿAbd al-Raḥmān al-Sulamī, from ʿAlī ibn Abī Ṭālib that the Messenger of Allah—peace and blessings be upon him—said, "Obedience is only in that which is good."

وَبِهِ إلَى مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرَ غُنْدَرٌ نا شُعْبَةُ عَنْ زُبَيْدٍ عَنْ سَعْدِ بْنِ عُبَيْدٍ عَنْ أَبِي عَبْدِ الرَّحْمَنِ السُّلَمِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّمَا الطَّاعَةُ فِي الْمَعْرُوفِ»

L37916 Abu Muhammad said: It is forbidden for anyone commanded to commit disobedience to comply with it. If he does so, he becomes a transgressor - defiantly disobedient to Allah the Exalted - and has no excuse for this.

قَالَ أَبُو مُحَمَّدٍ: فَحَرَامٌ عَلَى كُلِّ مَنْ أُمِرَ بِمَعْصِيَةٍ أَنْ يَأْتَمِرَ لَهَا، فَإِنْ فَعَلَ فَهُوَ فَاسِقٌ عَاصٍ لِلَّهِ تَعَالَى وَلَيْسَ لَهُ بِذَلِكَ عُذْرٌ.

L37917 Similarly, the one who commands on his own initiative what Allah the Exalted has not permitted is disobedient to Allah the Exalted—a transgressor—and there is no justification for the subordinate in obeying him. Rather, the commander and the commanded are equal in this regard. It is obligatory that the commander, as a person, incurs liability for amputating his own hand without legitimate authority, killing his slave, or killing his son, just as he would be liable for retaliation (qisāṣ) or diyah had he not issued the command. For the existence of his command in such matters is invalid and has no legal effect in rendering [the act] permissible whatsoever.

وَكَذَلِكَ الْآمِرُ فِي نَفْسِهِ بِمَا لَمْ يُبِحْ اللَّهُ تَعَالَى لَهُ فَهُوَ عَاصٍ لِلَّهِ تَعَالَى فَاسِقٌ وَلَا عُذْرَ لِلْمَأْمُورِ فِي طَاعَتِهِ، بَلْ الْآمِرُ وَالَّذِي يُؤْمَرُ سَوَاءٌ فِي ذَلِكَ، فَالْوَاجِبُ أَنْ يَجِبَ لِلْآمِرِ إنْسَانًا بِقَطْعِ يَدِ الْآمِرِ نَفْسِهِ بِغَيْرِ حَقٍّ، أَوْ بِقَتْلِ عَبْدِهِ، أَوْ بِقَتْلِ ابْنِهِ، مَا يَجِبُ لَهُ لَوْ لَمْ يَأْمُرْ بِذَلِكَ مِنْ الْقَوَدِ أَوْ الدِّيَةِ، لِأَنَّ وُجُودَ أَمْرِهِ بِذَلِكَ بَاطِلٌ لَا حُكْمَ لَهُ فِي الْإِبَاحَةِ أَصْلًا

L37918 And similarly, if someone permits another to kill him and the latter does so, the legal guardians of the slain are entitled to qawad (retaliation) or diyah (blood money).

وَكَذَلِكَ مَنْ أَبَاحَ لِآخَرَ أَنْ يَقْتُلَهُ فَفَعَلَ فَلِأَوْلِيَاءِ الْمَقْتُولِ الْقَوَدُ أَوْ الدِّيَةُ.

L37919 Malik said: If a person orders someone else to kill his slave and he kills him, then nothing is upon the commanded one.

وَقَدْ قَالَ مَالِكٌ: مَنْ أَمَرَ آخَرَ بِقَتْلِ عَبْدِهِ فَقَتَلَهُ فَلَا شَيْءَ عَلَى الْمَأْمُورِ.

L37920 Al-Shafi'i said: "If someone orders another to amputate the hand of the orderer, there is nothing upon the amputator."

وَقَالَ الشَّافِعِيُّ: مَنْ أَمَرَ آخَرَ بِقَطْعِ يَدِ الْآمِرِ فَلَا شَيْءَ عَلَى الْقَاطِعِ.

L37921 Ali said: These two opinions are utterly corrupt due to what we have mentioned. It is astonishing that they—who claim to be proponents of analogy—do not differ regarding someone who commands another person to commit adultery with his own female slave and it is carried out, that the ḥadd punishment applies to him.

قَالَ عَلِيٌّ: وَهَذَانِ الْقَوْلَانِ فِي غَايَةِ الْفَسَادِ لِمَا ذَكَرْنَا، وَالْعَجَبُ أَنَّهُمْ أَصْحَابُ قِيَاسٍ بِزَعْمِهِمْ، وَهُمْ لَا يَخْتَلِفُونَ فِيمَنْ أَمَرَ إنْسَانًا بِأَنْ يَزْنِيَ بِأَمَةِ نَفْسِهِ فَفَعَلَ أَنَّ الْحَدَّ عَلَيْهِ.

L37922 If they say: "He has the right to pardon after the amputation of the offender's hand, the killing of his [the pardoner's] father, and his male servant, but he may not pardon after [someone commits] fornication with his female slave?" It is said to them: "The time for pardon has not yet arrived, so he may not pardon." They do not disagree that if someone declares: "Whoever kills my cousin, Fulān ibn Fulān, I have pardoned him," and then a killer slays him, the heir retains the right to retaliation (qisas). Thus their analogy is invalidated—and success comes only from Allah, the Exalted.

فَإِنْ قَالُوا: إنَّ لَهُ بَعْدَ قَطْعِ يَدِهِ، وَقَتْلِ أَبِيهِ، وَغُلَامِهِ: أَنْ يَعْفُوَ وَلَيْسَ لَهُ أَنْ يَعْفُوَ بَعْدَ الزِّنَى بِأَمَتِهِ؟ قِيلَ لَهُمْ: إنَّ وَقْتَ الْعَفْوِ لَمْ يَأْتِ بَعْدُ، فَلَيْسَ لَهُ أَنْ يَعْفُوَ، وَهُمْ لَا يَخْتَلِفُونَ فِيمَنْ قَالَ: مَنْ قَتَلَ ابْنَ عَمِّي فُلَانَ بْنَ فُلَانٍ فَقَدْ عَفَوْتُ عَنْهُ فَقَتَلَهُ قَاتِلٌ، فَإِنَّ لَهُ الْقَوَدَ، فَبَطَلَ تَنْظِيرُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي قَوْلِ اللَّهِ تَعَالَى فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ]

A question regarding the statement of Allah, the Exalted: "Whoever gives it in charity, then it is an expiation for him."[22]

L37923–37924

L37925 Allah the Exalted said: "And We prescribed for them therein: a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds retaliation applies. Whoever forgoes retaliation as charity, it will serve as expiation for him" (Al-Ma'idah 45). Ali, may Allah be pleased with him, said: "Whoever recites 'an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds retaliation applies' with all these terms in the nominative case - not grammatically conjoined to 'a life for a life' - then this constitutes a ruling established upon us and binding for us. Whoever recites them all in the accusative case, it is conjoined to 'a life for a life,' and that this is from the rulings of the Torah."[23]

قَالَ اللَّهُ تَعَالَى {وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالأَنْفَ بِالأَنْفِ وَالأُذُنَ بِالأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] ، قَالَ عَلِيٌّ: مَنْ قَرَأَ {وَالْعَيْنَ بِالْعَيْنِ وَالأَنْفَ بِالأَنْفِ وَالأُذُنَ بِالأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ} [المائدة: ٤٥] بِالرَّفْعِ فِي ذَلِكَ كُلِّهِ، لَا بِالْعَطْفِ عَلَى النَّفْسَ بِالنَّفْسِ، فَهُوَ حُكْمٌ ثَابِتٌ عَلَيْنَا لَازِمٌ لَنَا، وَمَنْ قَرَأَهَا بِالنَّصْبِ فِي كُلِّ ذَلِكَ، فَهُوَ مَعْطُوفٌ عَلَى أَنَّ النَّفْسَ بِالنَّفْسِ وَأَنَّ ذَلِكَ مِنْ حُكْمِ التَّوْرَاةِ.

L37926 Abu Muhammad said: Both Qira'at are a well-known truth originating from Allah, the Exalted, therefore both meanings are valid, as recorded in the Torah.

قَالَ أَبُو مُحَمَّد: وَكِلْتَا الْقِرَاءَتَيْنِ حَقٌّ مَشْهُورٌ مِنْ عِنْدِ اللَّهِ تَعَالَى، فَكِلَا الْمَعْنَيَيْنِ حَقٌّ، فَكَانَ ذَلِكَ مَكْتُوبًا فِي التَّوْرَاةِ.

[22] **Qur'an references (L37924):** Qur'an 5:45 (Al-Ma'idah).
[23] **Qur'an references (L37925):** Qur'an 5:45 (Al-Ma'idah).

كُلُّ ذَلِكَ أَيْضًا مَكْتُوبٌ عَلَيْنَا بِحَقٍّ، فَإِذْ ذَلِكَ كَذَلِكَ فَوَاجِبٌ أَنْ يُنْظَرَ فِي مَعْنَى قَوْلِه تَعَالَى {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] ، فَوَجَدْنَا مَا ناه حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ الْمُرَادِيُّ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ قَيْسِ بْنِ مُسْلِمٍ عَنْ طَارِقِ بْنِ شِهَابٍ عَنْ الْهَيْثَمِ بْنِ الْأَسْوَدِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو فِي قَوْلِه تَعَالَى {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] قَالَ: هُدِمَ عَنْهُ مِنْ ذُنُوبِهِ مِثْلُ ذَلِكَ.

L37927 All of that is also decreed upon us in truth. Since that is the case, it becomes obligatory to examine the meaning of Allah's statement: {Whoever donates it [the penalty] as charity, it will be an atonement for him} [Al-Mā'idah: 45]. We found that Ḥumām narrated to us from ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī, from ʿAbdullāh ibn Yūnus al-Murādī, from Baqī ibn Makhlad, from Abū Bakr ibn Abī Shaybah, from Wakīʿ, from Sufyān al-Thawrī, from Qays ibn Muslim, from Ṭāriq ibn Shihāb, from al-Haytham ibn al-Aswad, from ʿAbdullāh ibn ʿAmr regarding Allah's statement: {Whoever donates it as charity, it will be an atonement for him} [Al-Mā'idah: 45]. He said: "The equivalent of that is demolished from his sins."[24]

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا يَدُلُّ عَلَى أَنَّهُ كَفَّارَةٌ لِذُنُوبِ الْمَجْرُوحِ الْمُتَصَدِّقِ بِحَقِّهِ.

L37928 Abu Muhammad said: This indicates that it is an expiation for the sins of the injured party - the one who donates his rightful due as charity.

وَبِهِ: إِلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ مُغِيرَةَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي قَوْلِه تَعَالَى {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] قَالَ: لِلْمَجْرُوحِ.

L37929 And through him up to Abu Bakr ibn Abi Shaybah: Hushaym narrated to us from Mughīrah from Ibrāhīm al-Nakhaʿī regarding Allah's statement {Whoever gives it in charity, it will be an expiation for him} [5:45]. He said: "For the injured party."[25]

وَبِهِ: إِلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا يَزِيدُ بْنُ هَارُونَ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ عَنْ الْحَسَنِ قَالَ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ قَالَ: لِلْمَجْرُوحِ،

L37930 And through him: From Abu Bakr ibn Abi Shaybah, who narrated to us from Yazid ibn Harun, from Sufyan ibn Husayn, from Al-Hasan, who said: "Whoever donates it as charity, it will serve as expiation for him." It was said: "For the criticized narrator."

وَعَنْ الشَّعْبِيِّ قَالَ: لِلَّذِي تَصَدَّقَ بِهِ.

L37931 It belongs to the one who gave it in charity.

قَالَ عَلِيٌّ: وَقِيلَ غَيْرُ هَذَا: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا الْفَضْلُ بْنُ دُكَيْنٍ، وَيَحْيَى بْنُ آدَمَ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ سَعِيدِ بْنِ جُبَيْرٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِه تَعَالَى {فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] قَالَ: لِلْمَجْرُوحِ، وَأَجْرُ الْمُتَصَدِّقِ عَلَى اللَّهِ تَعَالَى.

L37932–37934 Ali said: Other than this has also been stated, as narrated to us through the mentioned chain to Abu Bakr ibn Abi Shaybah - who received it from Al-Fadl ibn Dukayn and Yahya ibn Adam - from Sufyan al-Thawri, from Ata' ibn al-Sa'ib, from... Sa'id ibn Jubayr reported from Ibn Abbas concerning the words of Allah, the Exalted, *"Then it is an expiation for him"* [5:45]. Ibn Abbas said: "[This applies] to the injured party, and the reward of the charitable person is guaranteed by Allah, the Exalted."[26]

[24] **Qur'an references (L37927):** Qur'an 5:45 (Al-Ma'idah).
[25] **Qur'an references (L37929):** Qur'an 5:45 (Al-Ma'idah).
[26] **Qur'an references (L37932):** Qur'an 5:45 (Al-Ma'idah).

وَعَنْ جَابِرِ بْنِ زَيْدٍ قَالَ: لِلْمَجْرُوحِ - وَعَنْ مُجَاهِدٍ فِي قَوْلِهِ تَعَالَى {فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] وَأَجْرُ الْمُتَصَدِّقِ عَلَى اللَّهِ.

L37935 It is reported from Jabir ibn Zayd that he said: "For the injured person." It is also reported from Mujahid concerning Allah's statement {Then it is an expiation for him} [Al-Mā'idah 5:45]: "The reward of the charitable person is incumbent upon Allah."[27]

وَمِنْ طَرِيقِ وَكِيعٍ نا سُفْيَانُ عَنْ زَيْدِ بْنِ أَسْلَمَ أَنَّهُ سَمِعَهُ يَقُولُ: إنْ عَفَا عَنْهُ، أَوْ اقْتَصَّ مِنْهُ، أَوْ قَبِلَ مِنْهُ الدِّيَةَ فَهُوَ كَفَّارَةٌ لَهُ.

L37936 From the chain of Waki', who reported from Sufyān, from Zayd ibn Aslam, that he heard him saying: "If he pardons him, exacts retaliation (qiṣāṣ) from him, or accepts the diyah from him, then each of these acts serves as an expiation for him."

وَمِنْ طَرِيقِ ابْنِ أَبِي شَيْبَةَ نا جَرِيرٌ، وَوَكِيعٌ، قَالَ وَكِيعٌ: عَنْ سُفْيَانَ، ثُمَّ اتَّفَقَ جَرِيرٌ، وَسُفْيَانُ كِلَاهُمَا عَنْ مَنْصُورٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: كَفَّارَةٌ لِلَّذِي تَصَدَّقَ عَلَيْهِ، وَأَجْرُ الَّذِي أُصِيبَ عَلَى اللَّهِ تَعَالَى.

L37937 From the chain of Ibn Abi Shaybah: Narrated to us by Jarīr and Wakīʿ. Wakīʿ said: From Sufyān. Then Jarīr (directly) and Sufyān (via Wakīʿ) both report from Manṣūr from Ibrāhīm al-Nakhaʿī, who said: "Atonement for the recipient of charity, and the reward for the one who suffered a loss rests with Allah, the Exalted."

قَالَ أَبُو مُحَمَّدٌ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا وَجَبَ أَنْ نَفْعَلَ مَا أَمَرَنَا اللَّهُ تَعَالَى بِهِ إذْ يَقُولُ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ؟ فَفَعَلْنَا، فَوَجَدْنَا نَصَّ قَوْلِهِ تَعَالَى {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] جَاءَ بِلُغَةِ الْعَرَبِ.

L37938 Abū Muḥammad said: When they differed—as we mentioned—was it not obligatory for us to act upon what Allah the Exalted commanded us when He says: {If you dispute over any matter, refer it to Allah and the Messenger} [Quran 4:59]? We did so and found the explicit text of Allah the Exalted's statement {Whoever offers it as charity, it shall serve as an expiation for him} [Quran 5:45] came in the Arabic language.[28]

كَمَا قَالَ تَعَالَى {بِلِسَانٍ عَرَبِيٍّ مُبِينٍ} [الشعراء: ١٩٥] . وَوَجَدْنَا فِي لُغَةِ الْعَرَبِ الضَّمِيرَ رَاجِعًا - وَلَا بُدَّ - إلَى أَقْرَبِ مَذْكُورٍ إلَّا بِدَلِيلٍ. وَوَجَدْنَا أَقْرَبَ مَذْكُورٍ إلَى {فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] الضَّمِيرَ الَّذِي فِي {تَصَدَّقَ بِهِ} [المائدة: ٤٥] وَهُوَ ضَمِيرُ الْمَجْنِيِّ عَلَيْهِ الْمُتَصَدِّقِ، فَلَا يَجُوزُ إخْرَاجُهُ عَنْ هَذَا إلَّا بِدَلِيلٍ، وَلَا دَلِيلَ عَلَى ذَلِكَ.

L37939 As the Almighty has said, {in a clear Arabic tongue} [Ash-Shu'ara: 195]. We find in the Arabic language that the pronoun necessarily refers back to the nearest antecedent unless there is evidence [to the contrary]. We find that the nearest antecedent to {then it shall be an expiation for him} [Al-Ma'idah: 45] is the pronoun in {who gave it in charity} [Al-Ma'idah: 45], which is the pronoun referring to the victim—the one upon whom the offense was committed who gave charity. Thus, it is impermissible to remove it from this [reference] without evidence; there is no evidence for that.[29]

وَأَمَّا الْمُتَصَدَّقُ عَلَيْهِ فَإِنَّ الْجَانِيَ فِيمَا دُونَ النَّفْسِ إذَا عَفَا عَنْهُ الْمَجْنِيُّ عَلَيْهِ فَإِنْ غَفَرَ لَهُ، وَتَصَدَّقَ بِحَقِّهِ عَلَيْهِ، فَلَا شَكَّ فِي أَنَّهُ مَغْفُورٌ لَهُ، وَمُكَفَّرٌ عَنْهُ، لِأَنَّ صَاحِبَ الْحَقِّ قَدْ أَسْقَطَ حَقَّهُ قِبَلَهُ.

L37940 As for the one to whom the right is relinquished as charity, regarding offenses less than homicide—if the victim pardons him for the offense and grants him

[27] **Qur'an references (L37935):** Qur'an 5:45 (Al-Ma'idah).
[28] **Qur'an references (L37938):** Qur'an 4:59 (An-Nisa); Qur'an 5:45 (Al-Ma'idah).
[29] **Qur'an references (L37939):** Qur'an 26:195 (Ash-Shu'ara); Qur'an 5:45 (Al-Ma'idah).

forgiveness for the sin, and waives his right as an act of charity toward him, there is no doubt that the offender is pardoned and his sin is expiated, for the right-holder has nullified his claim against him.

L37941 As for when He does not forgive him but postpones his claim to the Hereafter and waives it in this world, then without doubt we know that his right remains a valid claim against him, and that he will exact retribution on the Day of Resurrection from the debtor's good deeds.

L37942–37944 As for one who kills another, two rights are incumbent upon them: the right of the slain for the injustice done to them, and the right of the guardian to exact qisas. If the guardian pardons, they only relinquish their own right; they have no authority to pardon the right owed to others... For a slain person, the right of the slain remains upon the killer unchanged, based on Allah's statement: "And no soul bears except against itself" [al-An'am 6:164], and as the Prophet—peace and blessings be upon him—conveyed.[30]

L37945 We have been narrated through the chain of Muslim: Qutaybah and Ibn Ḥajar both narrated to us, saying: Ismāʿīl—who is Ibn Jaʿfar—narrated to us from al-ʿAlāʾ—who is Ibn ʿAbd al-Raḥmān—from his father, from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him and his family—said, "Do you know who the bankrupt one is?" They replied, "The bankrupt among us is one who has no dirham nor possessions." He said, "The bankrupt of my Ummah will come on the Day of Resurrection with prayers, fasting, and zakah—yet he will come having insulted this one, slandered that one, consumed the wealth of this one, shed the blood of that one, and struck another. Then, this one will be given from his good deeds, and that one from his good deeds. If his good deeds are exhausted before he fulfills what is due, the sins of those he wronged will be taken and loaded onto him, then he will be cast into the Fire. You shall most assuredly settle the rights to their rightful owners on the Day of Resurrection—until retribution is exacted for the hornless sheep from the horned sheep."[31]

وَأَمَّا إِذَا لَمْ يَغْفِرْ لَهُ، وَلَكِنَّهُ أَخَّرَ طَلَبَهُ إِلَى الْآخِرَةِ، وَأَسْقَطَهُ فِي الدُّنْيَا، فَبِلَا شَكٍّ نَدْرِي أَنَّ حَقَّهُ بَاقٍ لَهُ قِبَلَهُ، وَأَنَّهُ سَيَقْتَصُّ يَوْمَ الْقِيَامَةِ مِنْ حَسَنَاتِهِ.

وَأَمَّا مَنْ قَتَلَ آخَرَ - فَعَلَيْهِ حَقَّانِ: حَقُّ الْمَقْتُولِ فِي ظُلْمِهِ إِيَّاهُ، وَحَقُّ الْوَلِيِّ فِي أَخْذِ الْقَوَدِ - فَإِنْ عَفَا الْوَلِيُّ فَإِنَّمَا عَفَا عَنْ حَقِّ نَفْسِهِ، وَلَا عَفْوَ لَهُ فِي حَقِّ غَيْرِهِ - وَهُوَ لِلْمَقْتُولِ - فَحَقُّ الْمَقْتُولِ بَاقٍ عَلَيْهِ كَمَا كَانَ، لِقَوْلِ اللَّهِ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] وَكَمَا أَخْبَرَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ، وَابْنُ حَجَرٍ، قَالَا جَمِيعًا: نا إِسْمَاعِيلُ - هُوَ ابْنُ جَعْفَرٍ - عَنْ الْعَلَاءِ - هُوَ ابْنُ عَبْدِ الرَّحْمَنِ - عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَتَدْرُونَ مَنْ الْمُفْلِسُ؟ قَالُوا: الْمُفْلِسُ فِينَا مَنْ لَا دِرْهَمَ لَهُ وَلَا مَتَاعَ، فَقَالَ: إِنَّ الْمُفْلِسَ مِنْ أُمَّتِي يَأْتِي يَوْمَ الْقِيَامَةِ بِصَلَاةٍ وَصِيَامٍ وَزَكَاةٍ - وَيَأْتِي قَدْ شَتَمَ هَذَا وَقَذَفَ هَذَا وَأَكَلَ مَالَ هَذَا وَسَفَكَ دَمَ هَذَا وَضَرَبَ هَذَا - فَيُعْطَى هَذَا مِنْ حَسَنَاتِهِ، وَهَذَا مِنْ حَسَنَاتِهِ فَإِنْ فَنِيَتْ حَسَنَاتُهُ - قَبْلَ أَنْ يَقْضِيَ مَا عَلَيْهِ - أُخِذَ مِنْ خَطَايَاهُمْ فَطُرِحَتْ عَلَيْهِ ثُمَّ طُرِحَ فِي النَّارِ، لَتُؤَدُّنَّ الْحُقُوقَ إِلَى أَهْلِهَا يَوْمَ الْقِيَامَةِ، حَتَّى يُقَادَ لِلشَّاةِ الْجَلْحَاءِ مِنْ الشَّاةِ الْقَرْنَاءِ» .

[30] **Qur'an references (L37942):** Qur'an 6:164 (Al-An'am).

[31] **Hadith references (L37945):** Sahih Muslim 2581; Sahih Muslim 2582; Riyad as-Salihin 218.

L37946 Through Al-Bukhari's transmission: 'Umar ibn Hafs ibn Ghiyath informed us, his father informed us, Al-A'mash informed us, who narrated to me from Shaqiq, who said: "I heard 'Abdullah ibn Mas'ud say: 'The Prophet—peace and blessings be upon him—said: "The first matter to be adjudicated among people will be cases of bloodshed."'"""

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي نا الْأَعْمَشُ حَدَّثَنِي شَقِيقٌ قَالَ: سَمِعْت عَبْدَ اللَّهِ بْنَ مَسْعُودٍ يَقُولُ " قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَوَّلُ مَا يُقْضَى بَيْنَ النَّاسِ فِي الدِّمَاءِ» .

L37947 And through him to Al-Bukhari: Ismāʿīl—he is Ibn Abī Uways—narrated to us, Mālik narrated to us from Saʿīd ibn Abī Saʿīd al-Maqburī from Abū Hurayrah that the Messenger of Allah—peace be upon him and his family—said: "Whoever has wronged his brother, let him seek absolution from him, for there will be neither dinar nor dirham. Before some of his good deeds are taken for his brother—if he has no good deeds, some of the bad deeds of his brother will be taken and cast upon him."

وَبِهِ إلَى الْبُخَارِيِّ نا إسْمَاعِيلُ - هُوَ ابْنُ أَبِي أُوَيْسٍ - نا مَالِكٌ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ عَنْ أَبِي هُرَيْرَةَ " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «مَنْ كَانَتْ لَهُ مَظْلِمَةٌ لِأَخِيهِ فَلْيَتَحَلَّلْهُ مِنْهَا فَإِنَّهُ لَيْسَ ثَمَّ دِينَارٌ وَلَا دِرْهَمٌ مِنْ قَبْلِ أَنْ يُؤْخَذَ لِأَخِيهِ مِنْ حَسَنَاتِهِ فَإِنْ لَمْ تَكُنْ لَهُ حَسَنَاتٌ يُؤْخَذُ مِنْ سَيِّئَاتِ صَاحِبِهِ فَطُرِحَتْ عَلَيْهِ» .

L37948 From the path of al-Bukhārī, reported to us al-Ṣalt ibn Muḥammad, reported to us Yazīd ibn Zurai', reported to us Saʿīd ibn Abī ʿArūbah from Qatādah from Abū al-Mutawakkil al-Nājī that Abū Saʿīd al-Khudrī said: The Messenger of Allah—peace and blessings of Allah be upon him—said, "The believers will be rescued from the Fire and detained on a bridge between Paradise and Hell. Retribution will be exacted among them for injustices they committed against one another in the world until they are refined and purified. Then permission will be granted for them to enter Paradise. By the One in whose Hand lies the soul of Muhammad, each will find their way to their Paradise abode more easily than they did to their worldly homes." ʿAlī said: As for when someone is slain in lawful retaliation, justice has been served against him as Allah the Exalted commanded, so no liability remains upon him. And success is from Allah the Exalted.

وَمِنْ طَرِيقِ الْبُخَارِيِّ نا الصَّلْتُ بْنُ مُحَمَّدٍ نا يَزِيدُ بْنُ زُرَيْعٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَبِي الْمُتَوَكِّلِ النَّاجِي أَنَّ أَبَا سَعِيدٍ الْخُدْرِيِّ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «يَخْلُصُ الْمُؤْمِنُونَ مِنْ النَّارِ فَيُحْبَسُونَ عَلَى قَنْطَرَةٍ بَيْنَ الْجَنَّةِ وَالنَّارِ فَيُقْتَصُّ لِبَعْضِهِمْ مِنْ بَعْضٍ مَظَالِمُ كَانَتْ بَيْنَهُمْ فِي الدُّنْيَا حَتَّى إذَا هُذِّبُوا وَنُقُّوا أُذِنَ لَهُمْ فِي دُخُولِ الْجَنَّةِ، فَوَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ لَأَحَدُهُمْ أَهْدَى إلَى مَنْزِلِهِ فِي الْجَنَّةِ مِنْهُ بِمَنْزِلِهِ كَانَ فِي الدُّنْيَا» . قَالَ عَلِيٌّ: وَأَمَّا إذَا قُتِلَ قَوَدًا فَقَدْ انْتَصَفَ مِنْهُ كَمَا أَمَرَ اللَّهُ تَعَالَى فَلَا تَبِعَةَ عَلَيْهِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L37949 **A legal case concerning a woman who slept near her son or another individual, and the individual was found dead.**

[مَسْأَلَةٌ امْرَأَةٍ نَامَتْ بِقُرْبِ ابْنِهَا أَوْ غَيْرِهِ فَوُجِدَ مَيِّتًا]

L37950–37952 Case 2081: Concerning a woman who slept near her son or another male, and he was found dead. Ali narrated: Muḥammad ibn Saʿīd ibn Nabāt narrated to us, Aḥmad ibn ʿAbd al-Baṣīr narrated to us, Qāsim ibn Aṣbagh narrated to us, Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us, Muḥammad ibn al-Muthannā narrated to us, ʿAbd al-Raḥmān ibn Mahdī nar-

٢٠٨١ - مَسْأَلَةٌ: فِي امْرَأَةٍ نَامَتْ بِقُرْبِ ابْنِهَا أَوْ غَيْرِهِ فَوُجِدَ مَيِّتًا قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ

rated to us, Sufyān al-Thawrī narrated to us from al-Mughīra ibn Miqsam from Ibrāhīm al-Nakhaʿī regarding a woman who drank a medicinal substance and miscarried her child. He said: "She must atone." He was questioned about a woman who placed her child to sleep beside her, covered him with a garment, and awoke in the morning to find him dead. He said: "It is most preferable to us that she atones."

L37953 Muhammad ibn Sa'id ibn Nabaat narrated to us: Abdullah ibn Nasr narrated to us, Qasim ibn Asbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Musa ibn Mu'awiyah narrated to us, Waki' narrated to us, Mughirah narrated from Ibrahim that he was asked about a woman who covered her child's face during sleep, causing his death. Then he said: She must free a slave.

L37954 Abū Muḥammad said: If he dies due to her action—such as when she pulls the blanket over his face, then he sleeps, turns over, and dies of suffocation; or her arm falls upon his mouth; or her breast falls upon his mouth; or she unintentionally lies upon him—there is no doubt that she has killed him accidentally. Thus, expiation is obligatory upon her, and blood money is obligatory upon her agnatic relatives or the public treasury. If he did not die from her action, then she bears no responsibility for that, or no blood money at all. If she doubts whether he died from her action or not, then there is no blood money in that case and no expiation, for we are certain of her innocence regarding his death, yet uncertain whether he died from her action. Property is inviolable except with certainty, and expiation is a legally mandated obligation. The law is only established through textual evidence or consensus—thus it is impermissible to impose a financial penalty, fasting, or to obligate her agnatic relatives to pay blood money based on baseless suspicion. And success is by Allah, the Exalted.

L37955 **Legal Issue: Does legal retribution (Qisas) apply between a worker and their employer?**

L37956 2082 - Issue: Is there retribution between a hired worker and his employer? Ali said: It is reported from some of the Tabi'in: There is no retribution between a hired worker and his employer unless he transgresses, in which case diya becomes obligatory after the oath-taking—this [opinion] is erroneous,

نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي امْرَأَةٍ شَرِبَتْ دَوَاءً فَأَلْقَتْ وَلَدَهَا قَالَ: تُكَفِّرُ. وَقَالَ فِي امْرَأَةٍ أَنَامَتْ صَبِيَّهَا إلَى جَنْبِهَا فَطَرَحَتْ عَلَيْهِ ثَوْبًا فَأَصْبَحَتْ وَقَدْ مَاتَ؟ قَالَ: أَحَبُّ إلَيْنَا أَنْ تُكَفِّرَ.

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مُغِيرَةُ عَنْ إبْرَاهِيمَ أَنَّهُ قَالَ فِي امْرَأَةٍ غَطَّتْ وَجْهَ صَبِيٍّ لَهَا فَمَاتَ فِي نَوْمِهِ؟ فَقَالَ: تُعْتِقُ رَقَبَةً.

قَالَ أَبُو مُحَمَّدٍ: إنْ مَاتَ مِنْ فِعْلِهَا مِثْلَ - أَنْ تَجُرَّ اللِّحَافَ عَلَى وَجْهِهِ ثُمَّ يَنَامَ فَيَنْقَلِبَ فَيَمُوتَ غَمًّا، أَوْ وَقَعَ ذِرَاعُهَا عَلَى فَمِهِ، أَوْ وَقَعَ ثَدْيُهَا عَلَى فَمِهِ، أَوْ رَقَدَتْ عَلَيْهِ - وَهِيَ لَا تَشْعُرُ - فَلَا شَكَّ أَنَّهَا قَاتِلَتُهُ خَطَأً فَعَلَيْهَا الْكَفَّارَةُ، وَعَلَى عَاقِلَتِهَا الدِّيَةُ، أَوْ عَلَى بَيْتِ الْمَالِ، وَإِنْ كَانَ لَمْ يَمُتْ مِنْ فِعْلِهَا فَلَا شَيْءَ عَلَيْهَا فِي ذَلِكَ، أَوْ لَا دِيَةَ أَصْلًا، فَإِنْ شَكَّتْ أَمَاتَ مِنْ فِعْلِهَا أَمْ مِنْ غَيْرِ فِعْلِهَا؟ فَلَا دِيَةَ فِي ذَلِكَ، وَلَا كَفَّارَةَ، لِأَنَّنَا عَلَى يَقِينٍ مِنْ بَرَاءَتِهَا مِنْ دَمِهِ، ثُمَّ عَلَى شَكٍّ أَمَاتَ مِنْ فِعْلِهَا أَمْ لَا؟ وَالْأَمْوَالُ مُحَرَّمَةٌ إلَّا بِيَقِينٍ، وَالْكَفَّارَةُ إيجَابُ شَرْعٍ، وَالشَّرْعُ لَا يَجِبُ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - فَلَا يَحِلُّ أَنْ تُلْزَمَ غَرَامَةٌ، وَلَا صِيَامًا، وَلَا أَنْ تُلْزَمَ عَاقِلَتُهَا دِيَةً بِالظَّنِّ الْكَاذِبِ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ بَيْنَ الْأَجِيرِ وَمُسْتَأْجِرِهِ قِصَاصٌ]

٢٠٨٢ - مَسْأَلَةٌ: هَلْ بَيْنَ الْأَجِيرِ وَمُسْتَأْجِرِهِ قِصَاصٌ؟ قَالَ عَلِيٌّ: رُوِيَ عَنْ بَعْضِ التَّابِعِينَ: لَيْسَ بَيْنَ الْأَجِيرِ وَمُسْتَأْجِرِهِ قِصَاصٌ إلَّا أَنْ يَتَعَدَّى فَيَجِبُ الْعَقْلُ بَعْدَ الْقَسَامَةِ

because Allah, the Exalted, did not differentiate between the employer and others. There is only an unintentional act or intentional act. Therefore, in the case of an unintentional act, there is nothing except what Allah, the Exalted, has ordained regarding a life [taken].

L37957 As for intentional homicide—retaliation applies equally to the hired person and the hirer, as Allah the Exalted says: "So whoever attacks you, retaliate in the same manner as they attacked you" [Al-Baqarah 2:194].[32]

L37958 An Issue in the Inheritance of the Diyah

L37959–37961 2083 - Ali said: People have disagreed about how diyah (blood money) is inherited.

L37962 A group said: The blood money is for the male agnatic heirs (al-ʿaṣabah).

L37963 Others said: It is for all the heirs. As narrated to us by Muḥammad ibn Saʿīd ibn Nabāt, from ʿAbd Allāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from Abū Muʿāwiyah Muḥammad ibn Khāzim al-Ḍarīr, from Layth ibn Abī Sulaym, from Abū ʿAmr al-ʿAbdī, from ʿAlī ibn Abī Ṭālib, who said: "The blood money is divided according to the manner in which the inheritance is divided."

L37964 Through him to Qāsim ibn Aṣbagh: Ibn Waḍḍāḥ narrated to us, Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us, Sufyān narrated from ʿAmmār from one who heard ʿAlī say: "He has indeed wronged those who deprived the maternal brothers of their share of the diyah."

L37965 From the transmission of Abū Bakr ibn Abī Shaybah, narrated by ʿAbd al-Raḥīm ibn Sulaymān from Muḥammad ibn Sālim from al-Shaʿbī from ʿUmar ibn al-Khaṭṭāb, who said: All heirs, including the husband and wife, inherit from the diyah (blood money) in cases of khaṭaʾ, unintentional, and ʿamd, intentional.

[32] **Qur'an references (L37957):** Qur'an 2:194 (Al-Baqarah).

- وَهَذَا خَطَأٌ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُفَرِّقْ بَيْنَ الْمُسْتَأْجِرِ وَغَيْرِهِ، وَلَيْسَ إِلَّا خَطَأٌ أَوْ عَمْدٌ، فَلَا شَيْءَ فِي الْخَطَأِ إِلَّا مَا أَوْجَبَهُ اللَّهُ تَعَالَى فِي النَّفْسِ.

وَأَمَّا الْعَمْدُ - فَفِيهِ الْقِصَاصُ سَوَاءٌ الْأَجِيرُ وَالْمُسْتَأْجِرُ، كَمَا قَالَ اللَّهُ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤]

[مَسْأَلَةٌ فِي مِيرَاثِ الدِّيَةِ]

٢٠٨٣ - قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي كَيْفَ تُوَرَّثُ الدِّيَةُ.

فَقَالَتْ طَائِفَةٌ: الدِّيَةُ لِلْعَصَبَةِ.

وَقَالَ آخَرُونَ: هِيَ لِجَمِيعِ الْوَرَثَةِ - كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا أَبُو مُعَاوِيَةَ مُحَمَّدُ بْنُ خَازِمٍ الضَّرِيرُ عَنْ لَيْثِ بْنِ أَبِي سُلَيْمٍ عَنْ أَبِي عَمْرٍو الْعَبْدِيِّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: تُقَسَّمُ الدِّيَةُ عَلَى مَا يُقَسَّمُ عَلَيْهِ الْمِيرَاثُ.

وَبِهِ - إِلَى قَاسِمِ بْنِ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ عَنْ عَمَّارٍ عَمَّنْ سَمِعَ عَلِيًّا يَقُولُ: لَقَدْ ظَلَمَ مَنْ مَنَعَ الْإِخْوَةَ مِنَ الْأُمِّ نَصِيبَهُمْ مِنَ الدِّيَةِ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ عَنْ مُحَمَّدِ بْنِ سَالِمٍ عَنِ الشَّعْبِيِّ عَنْ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ قَالَ: يَرِثُ مِنَ الدِّيَةِ كُلُّ وَارِثٍ، وَالزَّوْجُ، وَالزَّوْجَةُ، فِي الْخَطَأِ وَالْعَمْدِ.

وَبِهِ - إِلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ مُغِيرَةَ عَنْ إِبْرَاهِيمَ قَالَ فِي الرَّجُلِ يُقْتَلُ عَمْدًا فَيَعْفُو بَعْضُ الْوَرَثَةِ؟ قَالَ: لِامْرَأَتِهِ مِيرَاثُهَا مِنْ الدِّيَةِ.

L37966 And through him, up to Abu Bakr ibn Abi Shaybah: Jarir narrated to us from Mughira from Ibrahim, who said concerning a man killed intentionally and some of the heirs pardon. He said: "His wife inherits her share of the diyyah."

مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا أَسْبَاطُ بْنُ مُحَمَّدٍ عَنْ هِشَامٍ عَنْ الْحَسَنِ قَالَ: تَرِثُ الْمَرْأَةُ مِنْ دَمِ زَوْجِهَا.

L37967 Through the chain of Abu Bakr ibn Abi Shaybah, who narrated to us from Asbat ibn Muhammad, from Hisham, from Al-Hasan, who said: "The woman inherits from her husband's blood money."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا مَعْنُ بْنُ عِيسَى عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ قَالَ: إذَا قُبِلَ الْعَقْلُ فِي الْعَمْدِ كَانَ مِيرَاثًا تَرِثُهُ الزَّوْجَةُ وَغَيْرُهَا.

L37968 And from the chain of Abū Bakr ibn Abī Shaybah: Maʿn ibn ʿĪsá narrated from Ibn Abī Dhiʾb from al-Zuhrī, who said: If blood money (diya) is accepted in cases of intentional homicide, it becomes part of the inheritance, which the wife and other heirs inherit.

وَعَنْ أَبِي قِلَابَةَ أَنَّهُ كَانَ يَتَحَدَّثُ أَنَّ الدِّيَةَ سَبِيلُهَا سَبِيلُ الْمِيرَاثِ.

L37969 It is narrated from Abu Qilabah that he used to mention that the diyah (compensation) follows the same method as inheritance.

وَعَنْ الشَّعْبِيِّ قَالَ: الدِّيَةُ لِلْمِيرَاثِ.

L37970 From Al-Shaʿbī, who said: The diyah is part of the inheritance.

وَعَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: الْعَقْلُ كَهَيْئَةِ الْمِيرَاثِ؟ قَالَ: نَعَمْ، قُلْت: وَتَرِثُ الْإِخْوَةُ مِنْ الْأُمِّ مِنْهُ؟ قَالَ: نَعَمْ.

L37971 Ibn Jurayj said: I asked ʿAṭāʾ, "Is the diya structured like inheritance?" He replied, "Yes." I asked, "Do uterine brothers inherit from it?" He said, "Yes."

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنَّهُ كَتَبَ فِي الْإِخْوَةِ مِنْ الْأُمِّ يَرِثُونَ فِي الدِّيَةِ، وَكُلُّ وَارِثٍ.

L37972 It is reported from Umar ibn Abd al-Aziz that he wrote regarding maternal brothers inheriting a share of the diya (blood money), and this applies to every heir.

قَالَ أَبُو مُحَمَّدٍ: وَالْقَوْلُ الثَّانِي - كَمَا حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ ابْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: مَا أَرَى الدِّيَةَ إلَّا لِلْعَصَبَةِ، لِأَنَّهُمْ يَعْقِلُونَ عَنْهُ، فَهَلْ سَمِعَ أَحَدٌ مِنْكُمْ فِي ذَلِكَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْئًا؟ فَقَالَ الضَّحَّاكُ بْنُ سُفْيَانَ الْكِلَابِيُّ - وَكَانَ النَّبِيُّ -

L37973–37974 Abu Muhammad said: The second opinion—as narrated to us by Ḥumām from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Ḍabarī, from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, from Ibn al-Musayyab—who said: ʿUmar ibn al-Khaṭṭāb declared: "I hold that the diya belongs solely to the agnates, for they are the ones who pay it on his behalf. Has any of you heard anything from the Messenger of Allah—peace and blessings of Allah be upon him—concerning this?" Al-Ḍaḥḥāk ibn Sufyān al-Kilābī (whom the Prophet—peace and blessings of Allah be upon him—had appointed over the Bedouin) replied: "The Messenger of Allah—peace and blessings of Allah be upon him—wrote

to me commanding that the wife of Ashaym al-Ḍabābī inherit from her husband's diya." Thereupon, ʿUmar accepted this ruling.[33]

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتَعْمَلَهُ عَلَى الْأَعْرَابِ -: «كَتَبَ إِلَيَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ أُوَرِّثَ امْرَأَةَ أَشْيَمَ الضَّبَابِيِّ مِنْ دِيَةِ زَوْجِهَا -» فَأَخَذَ عُمَرُ بِذَلِكَ.

L37975 And via him to ʿAbd al-Razzāq: Maʿmar narrated to us from Yaḥyā ibn Abī Kathīr from Abū Salama ibn ʿAbd al-Raḥmān ibn ʿAwf that he did not allocate any portion of the diyah as inheritance to the maternal brothers.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ نا مَعْمَرٌ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ أَنَّهُ كَانَ لَا يُوَرِّثُ الْإِخْوَةَ مِنْ الْأُمِّ مِنْ الدِّيَةِ شَيْئًا.

L37976 Abū Muḥammad said: When they differed—as we have mentioned—it became incumbent upon us to examine the matter of their disagreement, so that we may ascertain the proof of each faction among them and thereby follow the truth wherever it may be—by the assistance of Allah, the Most High.

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِيمَا اخْتَلَفُوا فِيهِ لِنَعْلَمَ حُجَّةَ كُلِّ طَائِفَةٍ مِنْهُمْ فَنَتَّبِعَ الْحَقَّ حَيْثُ كَانَ - بِعَوْنِ اللَّهِ تَعَالَى.

L37977 We found the argument of those who held that only male agnates inherit from the blood money valid, as they cited the narration transmitted to us by ʿAbd Allāh ibn Rabīʿ: Muḥammad ibn Isḥāq narrated to us, from Ibn al-Aʿrābī, from Abū Dāwūd, from Musaddad, from Yaḥyā ibn Saʿīd al-Qaṭṭān, from Ibn Abī Dhiʾb, from Saʿīd ibn Abī Saʿīd al-Maqburī, who said: I heard Abū Shurayḥ al-Kaʿbī say: The Messenger of Allah—may Allah bless him and grant him peace—said: "If someone belonging to a person is killed after this statement of mine, his family is presented with two good options: to accept the monetary compensation or to seek retribution."

فَوَجَدْنَا حُجَّةَ مَنْ قَالَ: لَا يَرِثُ مِنْ الدِّيَةِ إلَّا الْعَصَبَةُ: أَنْ ذَكَرُوا مَا حَدَّثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مُسَدَّدٌ نا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ نا ابْنُ أَبِي ذِئْبٍ نا سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمَقْبُرِيُّ قَالَ: سَمِعْت أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «فَمَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيَرَتَيْنِ، بَيْنَ أَنْ يَأْخُذُوا الْعَقْلَ وَبَيْنَ أَنْ يَقْتُلُوا» .

L37978 Ali said: We found that this report contains no valid proof for them, for the Prophet—may God's blessings and peace be upon him—assigned the diyah (blood money) to those entitled to demand retribution, and he stated that they are his ahl (legal kin), maternal brothers, husband, and wife—all of whom fall under the term ahl (legal kin), as we will clarify, God willing, in the chapter *On Those Entitled to Pardon or Demand Retaliation*.

قَالَ عَلِيٌّ: فَوَجَدْنَا هَذَا الْخَبَرَ لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الدِّيَةَ لِمَنْ لَهُ أَنْ يَسْتَقِيدَ، وَأَخْبَرَ أَنَّهُمْ أَهْلُهُ وَالْإِخْوَةُ لِلْأُمِّ وَالزَّوْجُ وَالزَّوْجَةُ يَقَعُ عَلَيْهِمْ اسْمُ " أَهْلٍ " عَلَى مَا نَذْكُرُ إنْ شَاءَ اللَّهُ تَعَالَى فِي " بَابِ مَنْ لَهُ عَنْ الْقَوَدِ الْعَفْوُ أَوْ الْقِصَاصُ ".

L37979 An authenticated text has been established from the Messenger of Allah—peace and blessings be upon him—contrary to your claim, as narrated in Ṣaḥīḥ Muslim through the chain: Qutaybah ibn Saʿīd narrated to us, Layth—

وَقَدْ صَحَّ النَّصُّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِخِلَافِ مَا قُلْتُمْ: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا لَيْثٌ - هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ سَعِيدِ

[33] **Hadith references (L37974):** Sunan Abi Dawud 2927.

Ibn Saʿd—narrated to us, from Ibn Shihāb, from Saʿīd ibn al-Musayyab, from Abū Hurayrah, that the Messenger of Allah—peace and blessings be upon him—ruled regarding the dead fetus of a woman from Banū Lihyān, mandating a ghurrah (a male or female slave) as compensation. However, when the woman against whom the ghurrah was ruled died, the Messenger of Allah—peace and blessings be upon him—judged that her inheritance belongs to her children and husband, and that the blood money is incumbent upon her male agnatic relatives.

بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ سَقَطَ مَيِّتًا بِغُرَّةٍ عَبْدٍ، أَوْ أَمَةٍ، غَيْرَ أَنَّ الْمَرْأَةَ الَّتِي قُضِيَ عَلَيْهَا بِالْغُرَّةِ تُوُفِّيَتْ، فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنَّ مِيرَاثَهَا لِبَنِيهَا وَزَوْجِهَا وَأَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا» .

L37980–37981 Abu Muhammad said: It has been established that the Messenger of Allah—may Allah's blessings and peace be upon him—decreed the inheritance to be awarded to someone other than the one against whom blood money was adjudged, thus nullifying their claim with certainty.

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى بِالْمِيرَاثِ لِغَيْرِ مَنْ قُضِيَ عَلَيْهِ بِالْعَقْلِ - فَبَطَلَ قَوْلُهُمْ بِيَقِينٍ.

L37982 The Messenger of Allah—peace and blessings of Allah be upon him—ruled regarding accidental killing that the diyah must be given to the family of the slain, and that in intentional killing, the diyah is an obligatory right for the family of the slain if they choose to claim it. It has been established that there is no category of killing except intentional or accidental, thus the diyah is definitively established for the family of the slain, and the wife is part of his family.

وَقَدْ حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي قَتْلِ الْخَطَأِ بِأَنَّ الدِّيَةَ لِأَهْلِ الْمَقْتُولِ مُسَلَّمَةٌ وَأَنَّ الدِّيَةَ فِي الْعَمْدِ لِأَهْلِ الْمَقْتُولِ وَاجِبَةٌ لَهُمْ - إنْ أَرَادُوا أَخْذَهَا - وَصَحَّ أَنَّهُ لَيْسَ لِلْقَتْلِ نَوْعٌ إلَّا عَمْدٌ أَوْ خَطَأٌ، فَصَحَّتْ الدِّيَةُ بِيَقِينٍ لِأَهْلِ الْمَقْتُولِ وَالزَّوْجَةُ مِنْ أَهْلِهِ.

L37983 As narrated through the chain of Al-Bukhari: Al-Uwaysī narrated to us, Ibrāhīm (who is Ibn Saʿd) narrated to us from Ṣāliḥ ibn Kaysān from Ibn Shihāb, who said: ʿUrwah, Ibn Al-Musayyab, ʿAlqamah ibn Waqqāṣ, and ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah informed me regarding ʿĀ'ishah when the people of the Slander uttered what they uttered. She said: When the revelation was delayed, the Messenger of Allāh—peace and blessings be upon him—summoned ʿAlī ibn Abī Ṭālib (may Allāh be pleased with him) and Usāmah ibn Zayd (may Allāh be pleased with him), questioning them and seeking their counsel concerning separating from his household. As for Usāmah, he advised based on his certainty of her innocence. As for ʿAlī, he said: "Allāh has not constrained you, and there are many women besides her. Ask the servant girl [Barirah]—she will tell you the truth." He then asked her: "Have you noticed anything suspicious?" She replied: "I have seen nothing except that she is a young girl who neglects the dough of her household [while sleep-

كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا الْأُوَيْسِيُّ نا إبْرَاهِيمُ - هُوَ ابْنُ سَعْدٍ - عَنْ صَالِحِ بْنِ كَيْسَانَ عَنْ ابْنِ شِهَابٍ قَالَ أَخْبَرَنِي عُرْوَةُ، وَابْنُ الْمُسَيِّبِ، وَعَلْقَمَةُ بْنُ وَقَّاصٍ، وَعُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ «عَنْ عَائِشَةَ حِينَ قَالَ لَهَا أَهْلُ الْإِفْكِ مَا قَالُوا، قَالَتْ: وَدَعَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلِيَّ بْنَ أَبِي طَالِبٍ، وَأُسَامَةَ بْنَ زَيْدٍ حِينَ اسْتَلْبَثَ الْوَحْيُ يَسْأَلُهُمَا، وَهُوَ يَسْتَشِيرُهُمَا فِي فِرَاقِ أَهْلِهِ. فَأَمَّا أُسَامَةُ - فَأَشَارَ بِالَّذِي يَعْلَمُ مِنْ بَرَاءَةِ أَهْلِهِ. وَأَمَّا عَلِيٌّ - فَقَالَ: لَمْ يُضَيِّقْ اللَّهُ عَلَيْكَ، وَالنِّسَاءُ سِوَاهَا كَثِيرٌ، وَاسْأَلْ الْجَارِيَةَ تَصْدُقْكَ، فَقَالَ: هَلْ رَأَيْتِ مِنْ شَيْءٍ يَرِيبُكِ؟ قَالَتْ: مَا رَأَيْتُ شَيْئًا أَكْثَرَ مِنْ

أَنَّهَا جَارِيَةٌ حَدِيثَةُ السِّنِّ تَنَامُ عَنْ عَجِينِ أَهْلِهَا، فَتَأْتِي الدَّاجِنُ فَتَأْكُلُهُ. فَقَامَ عَلَى الْمِنْبَرِ فَقَالَ: يَا مَعْشَرَ الْمُسْلِمِينَ مَنْ يَعْذِرُنِي مِنْ رَجُلٍ بَلَغَنِي أَذَاهُ فِي أَهْلِي وَأَنَّهُ مَا عَلِمْتُ مِنْ أَهْلِي إِلَّا خَيْرًا» .

ing], so the domestic animal comes and eats it." He then ascended the pulpit and proclaimed: "O assembly of Muslims, who will vindicate me against a man whose harm toward my family has reached me? I have known nothing but goodness from my household."

وَمِنْ طَرِيقِ عُرْوَةَ قَالَ: «لَمَّا أُخْبِرَتْ عَائِشَةُ بِالْأَمْرِ، قَالَتْ: يَا رَسُولَ اللَّهِ أَتَأْذَنُ لِي أَنْ أَنْطَلِقَ إِلَى أَهْلِي؟ فَأَذِنَ لَهَا وَأَرْسَلَ مَعَهَا الْغُلَامَ» .

L37984 From the narration of ʿUrwah, he said: "When ʿĀ'ishah was informed of the matter, she said: 'O Messenger of Allah, do you permit me to go to my family?' So he permitted her and sent the young servant with her."[34]

فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ سَمَّى زَوْجَتَهُ " أَهْلًا " وَأَخْبَرَ أَنَّهَا " أَهْلُهُ ".

L37985 The Messenger of Allah—may the peace and blessings of Allah be upon him—referred to his wife as his "family" and affirmed that she is indeed his family.

وَقَدْ قَالَتْ لَهُ بَرِيرَةُ: تَنَامُ عَنْ عَجِينِ " أَهْلِهَا ".

L37986 And Bareerah said to him: "You sleep away from the dough of 'her family'."

وَبِلَا شَكٍّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ لَهُ فِي ذَلِكَ الْعَجِينِ نَصِيبٌ فَهُوَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - " أَهْلُهَا " أَيْضًا.

L37987 And without a doubt, the Messenger of Allah (peace and blessings of Allah be upon him) had a portion in that dough, so he (upon him be prayers and peace) is also deserving of it.

وَقَدْ أَسْتَأْذَنَتْهُ فِي الِانْطِلَاقِ إِلَى " أَهْلِهَا " وَقَدْ كَانَ لَهَا أَخٌ لِأُمٍّ مَعْرُوفٌ فَصَحَّ أَنَّ هَؤُلَاءِ كُلَّهُمْ دَاخِلُونَ فِي " الْأَهْلِ ".

L37988–37989 She had sought his permission to depart for her "family," and she had an acknowledged maternal half-brother. Thus, it was confirmed that all of them are considered part of "the family."

فَإِذْ الدِّيَةُ بِنَصِّ الْقُرْآنِ، وَنَصِّ السُّنَّةِ لِلْأَهْلِ، وَالزَّوْجَةِ، وَالزَّوْجِ، وَالْإِخْوَةِ لِلْأُمِّ " أَهْلٌ " فَحَظُّهُمْ فِي الدِّيَةِ وَاجِبٌ كَسَائِرِ الْوَرَثَةِ، وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا فِي أَنَّ الدِّيَةَ مَوْرُوثَةٌ عَلَى حَسَبِ الْمَوَارِيثِ لِمَنْ وَجَبَتْ لَهُ، وَعَلَى هَذَا اعْتِمَادُنَا فِي تَوْرِيثِ مَنْ ذَكَرْنَا مِنْ الدِّيَةِ.

L37990 Therefore, since the blood money (diyah) is explicitly stipulated by the Qur'an and the Sunnah for the "family"—the wife, husband, and maternal siblings—their share in the diyah is obligatory like all other heirs. There is no disagreement whatsoever among the entire Ummah that the diyah is inherited according to inheritance shares for those to whom it is due. This forms the basis of our position in applying inheritance rules to the diyah for those we have mentioned.

L37991 As for the other hadiths reported concerning this matter apart from what we have mentioned, they are weak. The best of them is the hadith of al-Ḍaḥḥāk

[34] **Hadith references (L37984):** Sahih al-Bukhari 7370.

ibn Sufyān al-Ḍabābī al-Kilābī which we cited earlier - yet it is disconnected, as Saʿīd ibn al-Musayyib did not hear it from him.

وَأَمَّا الْأَحَادِيثُ الْوَارِدَةُ فِي ذَلِكَ غَيْرُ مَا ذَكَرْنَا فَوَاهِيَةٌ لَا تَصِحُّ، وَأَحْسَنُ مَا فِيهَا حَدِيثُ الضَّحَّاكِ بْنِ سُفْيَانَ الضَّبَابِيِّ الْكِلَابِيِّ الَّذِي ذَكَرْنَا آنِفًا وَهُوَ مُنْقَطِعٌ - لَمْ يَسْمَعْهُ مِنْهُ سَعِيدُ بْنُ الْمُسَيِّبِ.

L37992 Abū Muḥammad said: If a person vows to God Almighty to give all that he inherits from so-and-so as charity, and then that so-and-so is killed—whether intentionally or unintentionally—he is not obligated to give the blood money he receives (for unintentional killing) as charity, for he did not inherit it from him.

قَالَ أَبُو مُحَمَّدٍ: فَلَوْ أَنَّ امْرَأً نَذَرَ نَذْرًا لِلَّهِ تَعَالَى أَنْ يَتَصَدَّقَ بِكُلِّ مَا وَرِثَ عَنْ فُلَانٍ ثُمَّ قُتِلَ ذَلِكَ الْفُلَانُ خَطَأً أَوْ عَمْدًا فَإِنَّهُ لَا يَلْزَمُهُ أَنْ يَتَصَدَّقَ بِمَا يَقَعُ لَهُ مِنْ دِيَتِهِ فِي الْعَمْدِ، وَالْخَطَأِ، لِأَنَّهُ لَمْ يَرِثْهُ عَنْهُ.

L37993 **A Legal Issue on the Detention of Combatants.**

[مَسْأَلَةٌ فِي الْمُقْتَتِلِينَ أَنْ يُحْتَجَزُوا]

L37994 2084 - Issue: Regarding what has been narrated from the Prophet—peace and blessings be upon him—concerning separating the combatants: Abdullah ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us; Aḥmad ibn Shuʿayb narrated to us; Isḥāq ibn Ibrāhīm—that is, Ibn Rāhwayh—narrated to us; Al-Walīd ibn Muslim narrated to us from Al-Awzāʿī, who said: Ḥiṣn narrated to me, from Abū Salamah, from ʿĀʾishah, that the Messenger of Allah—peace and blessings be upon him—said: "The combatants must be separated, starting with the first and proceeding in order—even if one of them is a woman."

٢٠٨٤ - مَسْأَلَةٌ: فِي ذِكْرِ مَا رُوِيَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْمُقْتَتِلِينَ أَنْ يُحْتَجَزُوا: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - نا الْوَلِيدُ بْنُ مُسْلِمٍ عَنِ الْأَوْزَاعِيِّ حَدَّثَنِي حِصْنٌ حَدَّثَنِي أَبُو سَلَمَةَ عَنْ عَائِشَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «وَعَلَى الْمُقْتَتِلِينَ أَنْ يُحْتَجَزُوا الْأَوَّلَ فَالْأَوَّلَ - وَإِنْ كَانَتْ امْرَأَةً» .

L37995 Abu Muhammad said: "Did the people become perplexed over the interpretation of this narration?" Ahmad ibn Muhammad al-Tahawi reported that he asked Muhammad ibn Abdullah ibn Abd al-Hakam, Ahmad ibn Abi Imran, and Ibrahim al-Muzani about the interpretation of this narration.

قَالَ أَبُو مُحَمَّدٍ: فَمَاجَ النَّاسُ فِي تَفْسِيرِ هَذَا الْخَبَرِ؟ وَحَكَى أَحْمَدُ بْنُ مُحَمَّدٍ الطَّحَاوِيُّ أَنَّهُ سَأَلَ عَنْ تَفْسِيرِ هَذَا الْخَبَرِ مُحَمَّدَ بْنَ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ، وَأَحْمَدَ بْنَ أَبِي عِمْرَانَ وَإِبْرَاهِيمَ الْمُزَنِيَّ.

L37996 As for Muhammad ibn Abdullah ibn Abd al-Hakam, he did not answer him with anything and acknowledged to him that he did not know its meaning.

فَأَمَّا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْحَكَمِ فَلَمْ يُجِبْهُ بِشَيْءٍ وَاعْتَرَفَ لَهُ بِأَنَّهُ لَا يَدْرِي مَا مَعْنَاهُ.

L37997 As for Aḥmad ibn Abī ʿImrān, he stated: This leads to the permissibility of women relinquishing their right to blood money (diyah).

وَأَمَّا أَحْمَدُ بْنُ أَبِي عِمْرَانَ فَقَالَ لَهُ: هَذَا يَخْرُجُ مِنْهُ جَوَازُ عَفْوِ النِّسَاءِ عَنِ الدَّمِ.

L37998 As for Al-Muzani, he said: Its meaning is the prohibition of fighting without

just cause.

وَأَمَّا الْمُزَنِيّ فَقَالَ لَهُ: مَعْنَاهُ النَّهْيُ عَنْ الْقِتَالِ فِي غَيْرِ الْحَقِّ.

L37999–38000 Abu Muhammad said: As for Ibn Abd al-Hakam, he acted rightly by remaining silent about something whose reasoning was not evident to him.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا ابْنُ عَبْدِ الْحَكَمِ فَأَحْسَنَ، إذْ سَكَتَ عَنْ شَيْءٍ لَمْ يَتَبَيَّنْ لَهُ وَجْهُهُ.

L38001 As for Ibn Abī ʿImrān, he advanced a corrupt opinion, because no one can understand from someone's statement "combatants must be detained—the first then the first, even if she is a woman"—whether women's pardon in bloodshed is permissible or not. This is utterly crude, for nothing prevents anyone from asserting whatever they wish on any matter they please if not restrained by piety or shame.

وَأَمَّا ابْنُ أَبِي عِمْرَانَ فَقَالَ قَوْلًا فَاسِدًا، لِأَنَّهُ لَا يَفْهَمُ أَحَدٌ مِنْ قَوْلِ قَائِلٍ " عَلَى الْمُقْتَتِلِينَ أَنْ يُحْتَجَزُوا الْأَوَّلَ فَالْأَوَّلَ - وَإِنْ كَانَتْ امْرَأَةً " أَنَّهُ يَجُوزُ عَفْوُ النِّسَاءِ مِنْ الدَّمِ أَوْ لَا يَجُوزُ، وَهَذَا سَمِجٌ جِدًّا، وَمَا يَعْجِزُ أَحَدٌ مِنْ أَنْ يَدَّعِيَ فِيمَا شَاءَ مَا شَاءَ إذَا لَمْ يَحْجِزْهُ وَرَعٌ أَوْ حَيَاءٌ

L38002 As for Al-Muzani, he articulated the correct position that no one may oppose, which derives from the implication of the narration's wording and its unequivocal meaning. This entails that combatants must withdraw from one another and cease fighting, with the obligation to withdraw applying first to each preceding combatant in turn. This is because the initial combatants clash before those behind them, making withdrawal incumbent first upon each preceding combatant—even if it were a woman—since fighting among us is forbidden. This ruling is based on the narration being unauthenticated, and Hisn is an unknown narrator.

وَأَمَّا الْمُزَنِيّ فَإِنَّهُ قَالَ الْكَلَامَ الصَّحِيحَ الَّذِي لَا يَجُوزُ لِأَحَدٍ أَنْ يَقُولَ غَيْرَهُ، وَهُوَ مُقْتَضَى لَفْظِ الْخَبَرِ وَمَفْهُومُهُ الَّذِي لَا يُفْهَمُ مِنْهُ غَيْرُهُ، وَهُوَ أَنَّهُ وَاجِبٌ عَلَى الْمُقْتَتِلِينَ أَنْ يَحْجِزَ بَعْضُهُمْ عَنْ بَعْضٍ فَلَا يَقْتَتِلُونَ، وَأَنْ يَبْدَأَ بِالِانْحِجَازِ الْأَوَّلُ فَالْأَوَّلُ، لِأَنَّ الْأَوَّلِينَ مِنْ الْمُقْتَتِلِينَ هُمْ الْمُتَصَادِمُونَ قَبْلَ الَّذِينَ مِنْ خَلْفِهِمْ - فَعَرَضُ الِانْحِجَازِ وَاقِعٌ عَلَى الْأَوَّلِ فَالْأَوَّلِ - مِنْ الْمُقْتَتِلِينَ - وَلَوْ أَنَّهُ امْرَأَةٌ - لِأَنَّ الْقِتَالَ فِيمَا بَيْنَنَا مُحَرَّمٌ. هَذَا عَلَى أَنَّ الْخَبَرَ لَا يَصِحُّ، وَحِصْنٌ: مَجْهُولٌ.

[مَسْأَلَةٌ مَنْ لَهُ الْعَفْوُ عَنْ الدَّمِ وَمَنْ لَا عَفْوَ لَهُ]

A Legal Issue Concerning Those Entitled to Pardon in Cases of Homicide and Those Without Such a Right.

L38004 2085 - Issue: Concerning those entitled to pardon regarding blood and those not entitled. People have differed regarding this matter. A group held: Pardon is permissible for all heirs, including the wife, the husband, and others beyond them. If any of those we mentioned pardons, then retaliation (qisas) is prohibited, and diyah (blood money) becomes obligatory upon the perpetrator to be paid to those who did not pardon.

٢٠٨٥ - مَسْأَلَةٌ: فِيمَنْ لَهُ الْعَفْوُ عَنْ الدَّمِ وَمَنْ لَا عَفْوَ لَهُ؟ اخْتَلَفَ النَّاسُ فِي هَذَا فَقَالَتْ طَائِفَةٌ: الْعَفْوُ جَائِزٌ لِكُلِّ أَحَدٍ مِمَّنْ يَرِثُ، وَلِلزَّوْجَةِ، وَالزَّوْجِ، وَغَيْرِهِمَا، فَإِنْ عَفَا أَحَدٌ مِمَّنْ ذَكَرْنَا فَقَدْ حُرِّمَ الْقِصَاصُ وَوَجَبَتْ الدِّيَةُ لِمَنْ لَمْ يَعْفُ.

L38005 Others said: Pardon is exclusively for men, not women.

وَقَالَ آخَرُونَ: الْعَفْوُ لِلرِّجَالِ خَاصَّةً دُونَ النِّسَاءِ.

L38006 A group said: Whoever seeks retaliation, that is for him, and no attention is paid to those who seek blood money or pardon unless they agree on it.

وَقَالَتْ طَائِفَةٌ: مَنْ أَرَادَ الْقِصَاصَ فَذَلِكَ لَهُ، وَلَا يُلْتَفَتُ إلَى مَنْ أَرَادَ الدِّيَةَ أَوْ الْعَفْوَ، مَا لَمْ يَتَّفِقُوا عَلَى ذَلِكَ.

L38007 The first opinion—as narrated to us through the chain of Saʿīd ibn Manṣūr

from Hushaym from al-Aʿmash from Zayd ibn Wahb—is that a man killed his wife, who had brothers. One of them pardoned [the killer], so ʿUmar ibn al-Khaṭṭāb approved this ruling. He exempted the killer from liability for the pardoning brother's share and held him liable for the share of the brother who did not pardon.

فَالْقَوْلُ الْأَوَّلُ - كَمَا رُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ مَنْصُورٍ نا هُشَيْمٌ نا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ أَنَّ رَجُلًا قَتَلَ امْرَأَتَهُ وَلَهَا إِخْوَةٌ فَعَفَا أَحَدُهُمْ فَأَجَازَ ذَلِكَ عُمَرُ بْنُ الْخَطَّابِ وَرَفَعَ عَنْ الْقَاتِلِ نَصِيبَ الَّذِي عَفَا وَغَرَّمَهُ نَصِيبَ الَّذِي لَمْ يَعْفُ.

L38008 Saʿīd said: Sufyān ibn ʿUyaynah and Abū ʿAwānah narrated to us, both of them transmitting from al-Aʿmash, from Zayd ibn Wahb, in a similar manner.

قَالَ سَعِيدٌ: ونا سُفْيَانُ بْنُ عُيَيْنَةَ، وَأَبُو عَوَانَةَ، كِلَاهُمَا عَنْ الْأَعْمَشِ عَنْ زَيْدِ بْنِ وَهْبٍ بِمِثْلِهِ.

L38009–38010 It has been narrated to us through the chain of Abū Bakr ibn Abī Shaybah, from Wakīʿ, from al-Aʿmash, from Zayd ibn Wahb, who said: A man saw another man with his wife, so he killed her? The case was brought to ʿUmar ibn al-Khaṭṭāb. One of her brothers waived his share of the blood money to the killer, so ʿUmar ordered the remaining brothers to accept their portions of the blood money.

وَرُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ قَالَ: رَأَى رَجُلٌ مَعَ امْرَأَتِهِ رَجُلًا فَقَتَلَهَا؟ فَرُفِعَ إلَى عُمَرَ بْنِ الْخَطَّابِ، فَوَهَبَ بَعْضُ إخْوَتِهَا نَصِيبَهُ لَهُ، فَأَمَرَ عُمَرُ سَائِرَهُمْ أَنْ يَأْخُذُوا الدِّيَةَ.

L38011 And from Ibrahim al-Nakha'i regarding a man who intentionally killed another man, so some guardians pardoned. The matter was raised as a question to Umar ibn al-Khattab? He said to Abdullah ibn Mas'ud: "Speak on it." He replied: "You are more deserving to speak, O Commander of the Faithful." Then Abdullah said: "When some guardians pardon, there is no retaliation. The liability is reduced from him by the share of the pardoning guardian, and they retain the remainder of the blood money." Umar said: "That is the opinion - you have agreed with what I had in mind."

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ فِي رَجُلٍ قَتَلَ رَجُلًا مُتَعَمِّدًا فَعَفَا بَعْضُ الْأَوْلِيَاءِ، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَقَالَ لِعَبْدِ اللَّهِ بْنِ مَسْعُودٍ: قُلْ فِيهَا، فَقَالَ: أَنْتَ أَحَقُّ أَنْ تَقُولَ يَا أَمِيرَ الْمُؤْمِنِينَ، فَقَالَ عَبْدُ اللَّهِ: إذَا عَفَا بَعْضُ الْأَوْلِيَاءِ فَلَا قَوَدَ، يُحَطُّ عَنْهُ بِحِصَّةِ الَّذِي عَفَا وَلَهُمْ بَقِيَّةُ الدِّيَةِ، فَقَالَ عُمَرُ: ذَلِكَ الرَّأْيُ، وَافَقْتَ مَا فِي نَفْسِي.

L38012 From the narration of Abd al-Razzaq, from Ma'mar, from al-A'mash, from Zayd ibn Wahb: A man who killed another was brought before Umar ibn al-Khattab. The relatives of the slain man came seeking to execute him. The sister of the slain man (who was the killer's wife) said: "I have forgiven my share against my husband." Umar then declared: "The man is exempted from execution."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الْأَعْمَشِ عَنْ زَيْدِ بْنِ وَهْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ رُفِعَ إلَيْهِ رَجُلٌ قَتَلَ رَجُلًا، فَجَاءَ أَوْلِيَاءُ الْمَقْتُولِ، فَأَرَادُوا قَتْلَهُ، فَقَالَتْ أُخْتُ الْمَقْتُولِ - وَهِيَ امْرَأَةُ الْقَاتِلِ: قَدْ عَفَوْت عَنْ حِصَّتِي مِنْ زَوْجِي، فَقَالَ عُمَرُ: عَتَقَ الرَّجُلُ مِنْ الْقَتْلِ.

L38013 Ibrāhīm said: The relinquishment by every shareholder is permissible.

وَعَنْ إبْرَاهِيمَ قَالَ: عَفْوُ كُلِّ ذِي سَهْمٍ جَائِزٌ.

L38014 And from Ibn Jurayj, he said: ʿAṭāʾ said regarding a man who killed another

intentionally, if one of the slain man's sons forgave and the other refused, then half the *diyah* is given to the one who did not forgive.

وَعَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ عَطَاءٌ فِي رَجُلٍ قَتَلَ رَجُلًا عَمْدًا فَعَفَا أَحَدُ بَنِي الْمَقْتُولِ، وَأَبَى الْآخَرُ: فَإِنَّهُ يُعْطَى الَّذِي لَمْ يَعْفُ شَطْرَ الدِّيَةِ.

L38015 From Qatadah: If one of the legal guardians pardons, the pardon becomes blood money, and the killer's liability is reduced by the share of the pardoning guardian.

وَعَنْ قَتَادَةَ - إِذَا عَفَا أَحَدُ الْأَوْلِيَاءِ فَإِنَّمَا تَكُونُ دِيَةً، وَيَسْقُطُ عَنْ الْقَاتِلِ بِقَدْرِ حِصَّةِ الَّذِي عَفَا.

L38016 From Umar ibn Abd al-Aziz: If one of them pardons, then the diyah.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ إِذَا عَفَا أَحَدُهُمْ فَالدِّيَةُ.

L38017 As for the second opinion - as was narrated to us via the route of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī - he said: The pardon belongs to the guardians; the woman has no pardon.

وَأَمَّا الْقَوْلُ الثَّانِي - فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: الْعَفْوُ إلَى الْأَوْلِيَاءِ، لَيْسَ لِلْمَرْأَةِ عَفْوٌ.

L38018 And through the chain of Abū Bakr ibn Abī Shaybah: Abū Khālid narrated to us, on the authority of al-Ashʿath, from al-Zuhrī, who said: The owner of the blood has the foremost right to pardon.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا أَبُو خَالِدٍ عَنْ أَشْعَثَ عَنْ الزُّهْرِيِّ قَالَ: صَاحِبُ الدَّمِ أَوْلَى بِالْعَفْوِ.

L38019 From Qatādah: Women have no right to pardon; but if blood money is due, she is entitled to her share.

وَعَنْ قَتَادَةَ: لَا عَفْوَ لِلنِّسَاءِ، فَإِذَا كَانَتْ الدِّيَةُ فَلَهَا نَصِيبُهَا.

L38020 And from Al-Hasan Al-Basri: Women do not have the right to forgo retribution.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ: لَيْسَ لِلنِّسَاءِ عَفْوٌ.

L38021 From Umar ibn Abd al-Aziz: There is no forgiveness for a woman in cases of intentional crimes.

وَعَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ، لَا عَفْوَ لِلْمَرْأَةِ فِي الْعَمْدِ.

L38022–38023 And from Ibrāhīm al-Nakhaʿī: There is no right to waive [retribution] for the husband nor for the wife.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ: لَيْسَ لِلزَّوْجِ وَلَا لِلْمَرْأَةِ عَفْوٌ.

L38024 From Az-Zuhri, Rabi'ah, and Abu Az-Zinad: Rabi'ah said: A mother has no right to pardon. The guardian retains guardianship wherever he may be. A daughter may pardon alongside the blood guardians, and the guardians may not pardon without her.

وَعَنْ الزُّهْرِيِّ، وَرَبِيعَةَ، وَأَبِي الزِّنَادِ، قَالَ رَبِيعَةُ: لَيْسَ لِلْأُمِّ عَفْوٌ، وَالْوَلِيُّ وَلِيٌّ حَيْثُ كَانَ، وَالْبِنْتُ تَعْفُو مَعَ وُلَاةِ الدَّمِ، وَلَا تَعْفُو الْوُلَاةُ دُونَهَا.

L38025 Az-Zuhri said, "His wali (guardian) has the foremost right to that."

وَقَالَ الزُّهْرِيُّ: وَلِيُّهُ أَوْلَى بِذَلِكَ.

L38026 Abū al-Zināad said: As for pardoning, it is the right of the slain person's legal

heir—he may either demand retribution or grant pardon, as he wishes.

وَقَالَ أَبُو الزِّنَادِ: أَمَّا الْعَفْوُ فَلِوَلِيِّ الْمَقْتُولِ إِنْ شَاءَ قَتَلَ وَإِنْ شَاءَ عَفَا.

L38027 As for the later scholars—Abū Ḥanīfah, Sufyān al-Thawrī, al-Ḥasan ibn Ṣāliḥ ibn Ḥayy, al-Awzāʿī, and al-Shāfiʿī—they upheld the opinion transmitted from ʿUmar ibn al-Khaṭṭāb and Ibn Masʿūd: that each heir holds the right to pardon, and the killer is not executed unless all heirs unanimously agree to his execution.

أَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيَّ، وَالْحَسَنَ بْنَ حَيٍّ، وَالْأَوْزَاعِيَّ، وَالشَّافِعِيَّ، قَالُوا بِمَا رُوِيَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ مَسْعُودٍ: أَنَّ لِكُلِّ وَارِثٍ عَفْوًا وَلَا يُقْتَلُ إِلَّا بِاجْتِمَاعِهِمْ عَلَى قَتْلِهِ.

L38028 Ibn Shubrumah and Al-Layth said: Women do not possess the legal authority to waive retributive punishments.

وَقَالَ ابْنُ شُبْرُمَةَ، وَاللَّيْثُ: لَيْسَ لِلنِّسَاءِ عَفْوٌ.

L38029 Ibn Abi Layla said: Every heir has a surplus except the husband and wife, for they receive no surplus.

وَقَالَ ابْنُ أَبِي لَيْلَى: لِكُلِّ وَارِثٍ عَفْوٌ إِلَّا الزَّوْجَ وَالزَّوْجَةَ فَلَا عَفْوَ لَهُمَا.

L38030 Malik said: The consensus ruling among us concerning a man intentionally killed who has no guardians except women and agnates—if these two groups wish to pardon the bloodshed, but the slain man's daughters refuse—is that the agnates hold no right to pardon, and his killer is consequently executed.

قَالَ مَالِكٌ: الْأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَنَا فِي الرَّجُلِ يُقْتَلُ عَمْدًا وَلَيْسَ لَهُ وُلَاةٌ إِلَّا النِّسَاءَ وَالْعَصَبَةَ فَأَرَادَا أَنْ يَعْفُوَا عَنْ الدَّمِ، وَأَبَى بَنَاتُ الْمَقْتُولِ فَإِنَّهُ لَا عَفْوَ لِلْعَصَبَةِ، يُقْتَلُ بِهِ قَاتِلُهُ.

L38031 If the daughters of the slain wish to pardon [the killer] but the male agnates refuse, the daughters' pardon holds no validity. The ruling is determined by what the male agnates declare, and the killer is to be executed if no agreement is reached regarding pardon.

فَإِنْ أَرَادَ بَنَاتُ الْمَقْتُولِ أَنْ يَعْفُونَ وَأَبَى الْعَصَبَةُ فَلَا عَفْوَ لِلْبَنَاتِ، وَالْقَوْلُ مَا قَالَ الْعَصَبَةُ، وَيُقْتَلُ الْقَاتِلُ إِذَا لَمْ يُجْتَمَعْ عَلَى الْعَفْوِ.

L38032 Similarly, if he has one daughter and she demands qisas (retaliation), and the agnates pardon [the offender], he is to be executed, and the agnates' pardon is void.

وَكَذَلِكَ إِنْ كَانَتْ لَهُ ابْنَةٌ وَاحِدَةٌ فَأَرَادَتْ الْقَتْلَ وَعَفَا الْعَصَبَةُ فَيُقْتَلُ وَلَا عَفْوَ لِلْعَصَبَةِ.

L38033 Another opinion is that if the murdered person has a son and a daughter, the daughter's pardon is invalid alongside the son. However, if the son pardons, the daughter's pardon becomes valid.

وَرَأْيٌ: إِذَا كَانَ لِلْمَقْتُولِ ابْنٌ وَابْنَةٌ: أَنَّهُ لَا عَفْوَ لِلِابْنَةِ مَعَ الِابْنِ، وَلَكِنْ إِنْ عَفَا الِابْنُ جَازَ عَلَى الِابْنَةِ.

L38034 Another opinion: The waiver of the nearest, then the next nearest, among the agnatic heirs, is valid over the more distant ones.

وَرَأْيٌ: عَفْوُ الْأَقْرَبِ فَالْأَقْرَبِ مِنْ الْعَصَبَةِ جَائِزٌ عَلَى الْأَبْعَدِ مِنْهُمْ.

L38035–38037 Abū Muḥammad said: When they differed as we have mentioned, it became obligatory for us to examine the evidence each faction cited to support their position, so we might discern the truth in this matter. We therefore

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ: فَنَظَرْنَا فِيمَا قَالَتْ بِهِ الطَّائِفَةُ الْقَائِلَةُ بِأَنَّ عَفْوَ كُلِّ ذِي سَهْمٍ

scrutinized the doctrine of the group that asserts the permissibility of every heir entitled to a fixed share relinquishing their right, and we found them [...] They cite the words of Allah the Exalted: {And to pardon is closer to righteousness, and do not neglect kindness between you} [Al-Baqarah: 237]. Since pardoning is closer to righteousness, it is obligatory that whoever advocates for what is closer to righteousness, their argument is more deserving [of acceptance].[1]

جَائِزٌ، فَوَجَدْنَاهُمْ يَقُولُونَ بِقَوْلِ اللَّهِ تَعَالَى {وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَى وَلا تَنْسَوُا الْفَضْلَ بَيْنَكُمْ} [البقرة: ٢٣٧] فَلَمَّا كَانَ الْعَفْوُ أَقْرَبَ لِلتَّقْوَى وَجَبَ أَنَّ مَنْ دَعَى إِلَى مَنْ هُوَ أَقْرَبُ لِلتَّقْوَى كَانَ قَوْلُهُ أَوْلَى.

L38038 They mentioned in that context what was narrated from Anas ibn Mālik, that he said: "I never saw the Messenger of Allah (peace and blessings be upon him) have any matter involving retaliation (qiṣāṣ) presented to him except that he enjoined forgiveness." They said: "This shows the Messenger of Allah (peace and blessings be upon him) enjoined forgiveness in every case of retaliation brought before him. Therefore, forgiveness must be given precedence over retaliation (qawd)."

وَذَكَرُوا فِي ذَلِكَ مَا رُوِيَ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّهُ قَالَ: مَا رَأَيْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رُفِعَ إلَيْهِ شَيْءٌ فِيهِ قِصَاصٌ إلَّا أَمَرَ بِالْعَفْوِ؟ قَالُوا: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَمَرَ فِي كُلِّ قِصَاصٍ رُفِعَ إلَيْهِ بِالْعَفْوِ، فَوَجَبَ أَنْ يَكُونَ الْعَفْوُ مُغَلَّبًا عَلَى الْقَوَدِ.

L38039 This too is a ruling reported from ʿUmar and Ibn Masʿūd in the presence of the Companions—may Allah be pleased with them—with no dissenter against them known.

وَهَذَا أَيْضًا حُكْمٌ قَدْ جَاءَ عَنْ عُمَرَ، وَابْنِ مَسْعُودٍ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا يُعْرَفُ لَهُمَا مُخَالِفٌ.

L38040 Thus, this is all they have cited as evidence; we know of nothing else besides it on their part whatsoever.

فَهَذَا كُلُّ مَا احْتَجُّوا بِهِ، مَا نَعْرِفُ لَهُمْ شَيْئًا غَيْرَهُ أَصْلًا.

L38041 Then we examined the statement of those who claim: "The pardon [for blood money liability] applies to all heirs except the husband and wife," and we found no plausible grounds for their argument except their assertion that these two are not among the agnatic heirs, nor do they pay blood money alongside the ʾaqilah (agnatic group responsible for diyah).

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: الْعَفْوُ لِجَمِيعِ الْوَرَثَةِ إلَّا الزَّوْجَ وَالزَّوْجَةَ فَلَمْ نَجِدْ لَهُمْ شُبْهَةً إلَّا أَنْ يَقُولُوا لَيْسَا مِنْ الْعَصَبَةِ، وَلَا يَعْقِلَانِ مَعَ الْعَاقِلَةِ.

L38042 We examined the opinion of those who claim that the waiver is exclusive to men to the exclusion of women, and found they possess no semblance of an argument whatsoever, except that they argue: "Women do not inherit rights of clientage nor guardianship in marriage, so similarly, there is no waiver for them?" As for those who distinguish between spouses and other heirs on

وَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ: الْعَفْوُ لِلرِّجَالِ خَاصَّةً دُونَ النِّسَاءِ، فَلَمْ نَجِدْ لَهُمْ شُبْهَةً أَصْلًا، إلَّا أَنْ يَقُولُوا: إنَّهُنَّ لَا يَرِثْنَ الْوَلَاءَ، وَلَا الْوِلَايَةَ فِي الْإِنْكَاحِ فَكَذَلِكَ لَا عَفْوَ لَهُنَّ؟ وَأَمَّا مَنْ قَالَ بِالْفَرْقِ بَيْنَ الزَّوْجَيْنِ وَبَيْنَ سَائِرِ الْوَرَثَةِ مِنْ أَجْلِ أَنَّ الزَّوْجَيْنِ لَيْسَا مِنْ الْعَصَبَةِ، فَقَوْلٌ فِي غَايَةِ الْفَسَادِ.

[1] **Qur'an references (L38035):** Qur'an 2:237 (Al-Baqarah).

the grounds that spouses are not among the agnatic heirs – this is an utterly baseless view.

L38043 And from where did they derive that this matter belongs to the agnate relatives? For this ruling—what has not come as a command from Allah the Exalted nor from the Messenger of Allah (may Allah bless him and grant him peace)—is invalid.

L38044 As for the assertion that these two do not pay blood money alongside the liable kinship group? Indeed, but what does that entail? What rationale introduces the ruling of kinship liability into the ruling of waiver concerning blood money? Kinship liability applies solely to unintentional killing, while waiver pertains exclusively to intentional killing. What then justifies merging the rulings for intentional and unintentional killing? We then considered the opinion of those who restrict waiver to men and exclude women, finding it invalid, for it is *qiyas*—and all *qiyas* is inherently null.

L38045–38046 Then we examined Mālik's opinion and found it utterly contradictory without any evidence whatsoever, for he sometimes favored those advocating killing, as in the case of the daughter alongside the agnates: he held that if the agnates called for killing while the daughter pardoned, the decision would follow the agnates. He argued that her husband might influence her toward pardoning and that her position was weak. Yet if the agnates pardoned and the daughter called for killing, the decision would follow the daughter, arguing that she was the one aggrieved by her father's loss. At times, he accounted for her vulnerability and her husband's influence toward pardoning, yet ignored her status as the aggrieved party? At other times, he favored those advocating pardon, as when one son pardoned while others did not. And at another time, he prioritized men over women, as in the case of daughters alongside a son? These are manifestly contradictory statements, each nullifying the others, with no proof for any of them—neither in the Quran, nor in a sound or weak Sunnah, nor in analogy, nor in consensus, nor in the opinion of a Companion. Thus, this opinion is the most untenable of all opinions.

L38047 Then we examined the argument of those who permit any heir's pardon and

وَمِنْ أَيْنَ خَرَجَ لَهُمْ أَنَّ هَذَا الْأَمْرَ لِلْعَصَبَةِ، وَهَذَا حُكْمٌ مَا جَاءَ بِهِ مِنْ عِنْدِ اللَّهِ تَعَالَى أَمْرٌ، وَلَا مِنْ عِنْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ بَاطِلٌ.

وَأَمَّا أَنَّهُمَا لَا يَعْقِلَانِ مَعَ الْعَاقِلَةِ؟ فَنَعَمْ، فَكَانَ مَاذَا؟ وَمَا الَّذِي أَدْخَلَ حُكْمَ الْعَاقِلَةِ فِي حُكْمِ الْعَفْوِ مِنْ الدَّمِ؟ وَالْعَاقِلَةُ إنَّمَا هِيَ فِي الْقَتْلِ فِي الْخَطَأِ خَاصَّةً وَالْعَفْوُ إنَّمَا هُوَ فِي الْعَمْدِ خَاصَّةً، فَمَا الَّذِي جَمَعَ بَيْنَ حُكْمِ الْعَمْدِ وَالْخَطَأِ؟ ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ رَأَى الْعَفْوَ لِلرِّجَالِ دُونَ النِّسَاءِ، فَوَجَدْنَاهُ أَيْضًا فَاسِدًا، لِأَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ - فَوَجَدْنَاهُ فِي غَايَةِ التَّنَاقُضِ بِلَا دَلِيلٍ أَصْلًا، لِأَنَّهُ مَرَّةً غَلَّبَ مَنْ دَعَا إلَى الْقَتْلِ، وَذَلِكَ فِي الِابْنَةِ مَعَ الْعَصَبَةِ " فَرَأَى: إنْ دَعَا الْعَصَبَةُ إلَى الْقَتْلِ وَعَفَتْ الِابْنَةُ أَنَّ الْقَوْلَ قَوْلُ الْعَصَبَةِ - وَاحْتَجَّ بِأَنَّهَا قَدْ يُدْخِلُهَا زَوْجُهَا إلَى الْعَفْوِ، وَأَمْرُهَا إلَى الضَّعْفِ، وَإِنْ عَفَا الْعَصَبَةُ وَدَعَتْ الِابْنَةُ إلَى الْقَتْلِ فَالْقَوْلُ قَوْلُ الِابْنَةِ - وَاحْتَجَّ بِأَنَّهَا الْمُصَابَةُ بِأَبِيهَا؟ فَمَرَّةً رَاعَى ضَعْفَهَا، وَإِدْخَالَ زَوْجِهَا لَهَا إلَى الْعَفْوِ، وَلَمْ يُرَاعِ مُصِيبَتَهَا؟ وَمَرَّةً غَلَّبَ مَنْ دَعَا إلَى الْعَفْوِ، وَذَلِكَ فِي الْبَنِينَ يَعْفُو أَحَدُهُمْ دُونَ الْآخَرِينَ وَمَرَّةً غَلَّبَ الرِّجَالَ عَلَى النِّسَاءِ وَذَلِكَ فِي الْبَنَاتِ مَعَ الِابْنِ؟ وَهَذِهِ أَقْوَالٌ ظَاهِرَةُ التَّنَاقُضِ يَهْدِمُ بَعْضُهَا بَعْضًا، لَا حُجَّةَ لِشَيْءٍ مِنْهَا، لَا فِي قُرْآنٍ وَلَا سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا قِيَاسٍ، وَلَا فِي إجْمَاعٍ، وَلَا فِي قَوْلِ صَاحِبٍ - فَكَانَ هَذَا الْقَوْلُ أَسْقَطَ مِنْ سَائِرِ الْأَقْوَالِ.

prioritize it. We found them arguing: Allah the Exalted said, *"To pardon is nearer to piety"* [Al-Baqarah: 237], and He said, *"In retaliation there is life for you"* [Al-Baqarah: 179]. The highest objective of this view's proponents is that pardoning yields greater reward, while retaliation (undeniably permissible) is lawful. Since both are permissible, it is unanimously impermissible to compel someone who neither desires nor consents to adopt the superior option. Therefore, it is invalid to cite this verse as proof for the lapse of the right of those demanding retaliation when one heir pardons.[2]

ثُمَّ نَظَرْنَا فِي حُجَّةِ مَنْ أَجَازَ عَفْوَ كُلِّ وَارِثٍ وَغَلَبَهُ، فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {وَأَنْ تَعْفُوا أَقْرَبُ لِلتَّقْوَى} [البقرة: ٢٣٧] ، وَقَالَ تَعَالَى {وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ} [البقرة: ١٧٩] فَأَعْلَى مَا يُرِيدُهُ أَهْلُ هَذَا الْقَوْلِ أَنْ يَكُونَ الْعَفْوُ أَعْظَمَ أَجْرًا، وَالْقِصَاصُ - بِلَا شَكٍّ مُبَاحٌ - وَإِذَا كَانَ كِلَاهُمَا مُبَاحًا فَلَا يَجُوزُ بِلَا خِلَافٍ أَنْ يُجْبَرَ عَلَى الْأَفْضَلِ مَنْ لَا يُرِيدُهُ غَيْرَ رَاغِبٍ - فَبَطَلَ أَنْ يَكُونَ فِي هَذِهِ الْآيَةِ دَلِيلٌ عَلَى سُقُوطِ حَقِّ مَنْ أَرَادَ الْقِصَاصَ إذَا عَفَا أَحَدُ الْوَرَثَةِ.

L38048 And such is the case regarding the ḥadīth of Anas—if authentic—that "the Messenger of Allah (peace be upon him) was never presented with a matter involving legal retribution without enjoining forgiveness." This is because no two members of the Ummah have differed that if authentic, it constitutes a recommended injunction, not a binding obligation. Given this, there is no dispute that one who does not desire the preferable course—yet is not averse to it, provided they intend what is permissible for them—may not be compelled to adopt it. Thus, any reliance upon this report is rendered void.

وَهَكَذَا الْقَوْلُ فِي حَدِيثِ أَنَسٍ إنْ صَحَّ أَنَّهُ «لَمْ يُرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ رُفِعَ إلَيْهِ شَيْءٌ فِيهِ قِصَاصٌ إلَّا أَمَرَ فِيهِ بِالْعَفْوِ -» لِأَنَّهُ لَمْ يَخْتَلِفْ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّهُ إنْ صَحَّ فَإِنَّهُ أَمْرُ نَدْبٍ لَا أَمْرُ إلْزَامٍ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَا خِلَافَ فِي أَنَّهُ لَا يَجُوزُ أَنْ يُجْبَرَ عَلَى الْأَفْضَلِ مَنْ لَا يُرِيدُهُ غَيْرَ رَاغِبٍ عَنْهُ - إذَا أَرَادَ مَا أُبِيحَ لَهُ - فَبَطَلَ أَنْ يَكُونَ لَهُمْ فِي هَذَا الْخَبَرِ تَعَلُّقٌ.

L38049–38051 Abu Muhammad said: When all these arguments were discredited and stripped of evidence, it became incumbent upon us since... They disputed whether we should return to what Allah the Exalted obligated us to revert to in cases of dispute, for He says: "If you disagree over something, refer it to Allah and the Messenger" [4:59]. So we did that. We found Allah the Exalted had decreed: "In qisas there is life for you" [2:179], and the Messenger of Allah—peace and blessings be upon him—said: "Whoever has a slain relative, their family chooses between two options: either to accept diya or to demand retaliation." Thus Allah the Exalted established qisas as a right, and the Messenger of Allah—peace and blessings be upon him—placed the slain's

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا سَقَطَتْ هَذِهِ الْأَقْوَالُ كُلُّهَا وَتَعَرَّتْ مِنْ الْأَدِلَّةِ وَجَبَ عَلَيْنَا إذْ تَنَازَعُوا أَنْ نَرْجِعَ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا الرُّجُوعَ إلَيْهِ عِنْدَ التَّنَازُعِ إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ، فَفَعَلْنَا؟ فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ قَالَ {وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ} [البقرة: ١٧٩] ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ لَهُ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيَرَتَيْنِ بَيْنَ أَنْ يَأْخُذُوا الْعَقْلَ وَبَيْنَ أَنْ يَقْتُلُوا» فَجَعَلَ اللَّهُ تَعَالَى الْقِصَاصَ حَقًّا، وَجَعَلَ رَسُولُ اللَّهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَهْلَ الْقَتِيلِ بَيْنَ خِيَرَتَيْنِ - إمَّا أَخْذُ الْعَقْلِ، وَإِمَّا الْقَتْلُ، فَسَاوَى بَيْنَ الْأَمْرَيْنِ أَيَّهُمَا شَاءُوا؟

[2] **Qur'an references (L38047):** Qur'an 2:237 (Al-Baqarah); Qur'an 2:179 (Al-Baqarah).

family before two choices: either to take diya or to kill. Did He thereby equate both options, leaving them free to choose whichever they will?[3]

L38052 As related to us through Muslim's chain: Isḥāq ibn Manṣūr reported to us that Bishr ibn ʻUmar al-Zahrānī said: I heard Mālik ibn Anas say: Abū Laylā ibn ʻAbdullāh ibn ʻAbd al-Raḥmān ibn Sahl ibn Abī Ḥathma narrated to me that he was informed by prominent men of his tribe: "'Abdullāh ibn Sahl and Muḥayyiṣah set out for Khaybar due to hardship that had afflicted them. Muḥayyiṣah came to the Messenger of Allāh (peace be upon him) and informed him that 'Abdullāh ibn Sahl had been killed and thrown into a spring or a pit. Muḥayyiṣah went to the Jews and said: 'By Allāh, you killed him!' They replied: 'By Allāh, we did not kill him.' He then returned to his people and informed them of what had happened. Thereafter, he and his brother Muḥayyiṣah—who was older than him—and 'Abd al-Raḥmān ibn Sahl went back [to the Prophet]. Muḥayyiṣah (who had been in Khaybar) began to speak, but the Messenger of Allāh (peace be upon him) said: 'Let the elder speak! Let the elder speak!' He then declared: 'Either they pay the diyah for your companion, or war will be declared against them.' The Messenger of Allāh (peace be upon him) wrote to them concerning this matter, and they wrote back: 'By Allāh, we did not kill him.' The Messenger of Allāh (peace be upon him) asked: 'Will you swear an oath and claim entitlement to your companion's blood?' They replied: 'No.'"

L38053 He cited the hadith through the chain of ʿUbayd Allāh ibn ʿUmar al-Qawārīrī who reported to us: Ḥammād ibn Zayd reported to us, Yaḥyā ibn Saʿīd reported from Bashīr ibn Yasār from Sahl ibn Abī Ḥathma and Rāfiʿ ibn Khadīj: "Muḥayyiṣah ibn Masʿūd and ʿAbd Allāh ibn Sahl set out toward Khaybar and separated among the palm trees. ʿAbd Allāh ibn Sahl was killed, and they accused the Jews. His brother ʿAbd al-Raḥmān (the youngest among them) and his cousins Ḥuwayyiṣah and Muḥayyiṣah came to the Messenger of Allāh (peace and blessings be upon him). When ʿAbd al-Raḥmān spoke about his brother's matter, the Messenger of Allāh (peace and blessings be upon him) said: 'Let the eldest speak first—or should the eldest begin?' The two

[3] **Qur'an references (L38049):** Qur'an 4:59 (An-Nisa); Qur'an 2:179 (Al-Baqarah).

وَكَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا إِسْحَاقُ بْنُ مَنْصُورٍ أَنَا بِشْرُ بْنُ عُمَرَ - هُوَ الزَّهْرَانِيُّ - سَمِعْت مَالِكَ بْنَ أَنَسٍ يَقُولُ: حَدَّثَنِي أَبُو لَيْلَى بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَهْلِ بْنِ أَبِي حَثْمَةَ: أَنَّهُ أَخْبَرَهُ عَنْ رِجَالٍ مِنْ كُبَرَاءِ قَوْمِهِ: «أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ، وَمُحَيِّصَةَ خَرَجَا إلَى خَيْبَرَ مِنْ جُهْدٍ أَصَابَهُمَا فَأَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُحَيِّصَةُ وَأَخْبَرَ: أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قُتِلَ وَطُرِحَ فِي عَيْنٍ أَوْ فَقِيرٍ فَأَتَى يَهُودَ فَقَالَ: أَنْتُمْ وَاَللَّهِ قَتَلْتُمُوهُ، قَالُوا: وَاَللَّهِ مَا قَتَلْنَاهُ، ثُمَّ أَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ فَذَكَرَ لَهُمْ ذَلِكَ، ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ مُحَيِّصَةُ - وَهُوَ أَكْبَرُ مِنْهُ - وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ، فَذَهَبَ مُحَيِّصَةُ لِيَتَكَلَّمَ - وَهُوَ الَّذِي كَانَ بِخَيْبَرَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْكُبْرَ، الْكُبْرَ، إمَّا أَنْ يَدُوا صَاحِبَكُمْ، وَإِمَّا أَنْ يُؤْذَنُوا بِحَرْبٍ، فَكَتَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَيْهِمْ فِي ذَلِكَ، فَكَتَبُوا: إنَّا وَاَللَّهِ مَا قَتَلْنَاهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَحْلِفُونَ وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ؟ قَالُوا: لَا» .

وَذَكَرَ الْحَدِيثَ وَبِهِ: إلَى مُسْلِمٍ حَدَّثَنِي عُبَيْدُ اللَّهِ بْنُ عُمَرَ الْقَوَارِيرِيُّ نا حَمَّادُ بْنُ زَيْدٍ نا يَحْيَى بْنُ سَعِيدٍ عَنْ بَشِيرِ بْنِ يَسَارٍ عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، وَرَافِعِ بْنِ خَدِيجٍ «أَنَّ مُحَيِّصَةَ بْنَ مَسْعُودٍ، وَعَبْدَ اللَّهِ بْنَ سَهْلٍ انْطَلَقَا قِبَلَ خَيْبَرَ فَتَفَرَّقَا فِي النَّخْلِ، فَقُتِلَ عَبْدُ اللَّهِ بْنُ سَهْلٍ، فَاتَّهَمُوا الْيَهُودَ، فَجَاءَ أَخُوهُ عَبْدُ الرَّحْمَنِ، وَابْنَا عَمِّهِ حُوَيِّصَةُ، وَمُحَيِّصَةُ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَتَكَلَّمَ عَبْدُ الرَّحْمَنِ فِي أَمْرِ أَخِيهِ - وَهُوَ أَصْغَرُ مِنْهُمْ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَبِّرْ، الْكُبْرَ، أَوْ قَالَ: لِيَبْدَأْ الْأَكْبَرُ؟ فَتَكَلَّمَا

cousins then spoke about their companion's case. The Messenger of Allāh (peace and blessings be upon him) said: 'Shall fifty of you swear against a man from them, causing his blood money to be paid?' They replied: 'How can we swear about a matter we did not witness?'" He then mentioned the remainder of the report.

فِي أَمْرِ صَاحِبِهِمَا، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ عَنْهُمْ فَيُدْفَعُ بِرُمَّتِهِ؟ فَقَالُوا: أَمْرٌ لَمْ نَشْهَدْهُ كَيْفَ نَحْلِفُ؟» وَذَكَرَ بَاقِيَ الْخَبَرِ.

L38054–38055 In this established hadith—that the Messenger of Allah, peace and blessings be upon him, assigned the right to demand *qisas* (retribution) for bloodshed to the paternal cousin [of the same degree], just as he assigned it to the paternal uncle, the inheriting heir, to the exclusion of the paternal cousin—and that he, peace be upon him, prioritized the paternal cousin [of the same degree] first, this invalidates the claim of those who maintain that the right belongs to the closest relative then the next closest, or to the heir to the exclusion of others.

فَفِي هَذَا الْخَبَرِ الثَّابِتِ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ الْحَقَّ فِي طَلَبِ الدَّمِ لِابْنِ الْعَمِّ [لِسِنِّهِ] كَمَا جَعَلَهُ لِلْأَخِ لِلْأَبِ الْوَارِثِ دُونَ ابْنِ الْعَمِّ، وَأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - بَدَأَ ابْنُ الْعَمِّ لِسِنِّهِ - فَبَطَلَ بِهَذَا قَوْلُ مَنْ رَاعَى أَنَّ الْحَقَّ لِلْأَقْرَبِ فَالْأَقْرَبِ، أَوْ لِلْوَارِثِ دُونَ غَيْرِهِ.

L38056 It has been established that the right belongs to the kin, as stated in the Qur'an and the authentic Sunnah. The paternal cousin is undoubtedly among the kin in Arabic linguistic usage—and this constitutes the valid consensus, because it occurred with the knowledge of the Companions in Medina. The occurrence of a case like the killing of 'Abdullāh ibn Sahl and the Banū Ḥārithah's pursuit of blood retaliation could not have been concealed from any of his people or the Muhājirīn. Therefore, the right belongs to all equally. It is invalid to prioritize any one of them over others without explicit textual evidence or consensus—and there exists neither textual evidence nor consensus in this matter.

وَصَحَّ أَنَّ الْحَقَّ " لِلْأَهْلِ " كَمَا جَاءَ فِي الْقُرْآنِ، وَالسُّنَّةِ الصَّحِيحَةِ، وَابْنُ الْعَمِّ مِنْ " الْأَهْلِ " بِلَا شَكٍّ فِي لُغَةِ الْعَرَبِ - وَهَذَا هُوَ الْإِجْمَاعُ الصَّحِيحُ، لِأَنَّهُ كَانَ بِعِلْمِ الصَّحَابَةِ بِالْمَدِينَةِ، إذْ قَتْلُ مِثْلِ عَبْدِ اللَّهِ بْنِ سَهْلٍ، وَقِيَامُ بَنِي حَارِثَةَ فِي طَلَبِ دَمِهِ لَا يُمْكِنُ اسْتِتَارُ مِثْلِهِ عَنْ أَحَدٍ مِنْ قَوْمِهِ، وَعَنْ الْمُهَاجِرِينَ، فَإِذَا الْحَقُّ لِلْجَمِيعِ سَوَاءٌ، فَمِنْ الْبَاطِلِ أَنْ يُغَلِّبَ أَحَدُهُمْ عَلَى الْآخَرِينَ مِنْهُمْ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - وَلَا نَصَّ، وَلَا إجْمَاعَ فِي ذَلِكَ.

L38057 Then we considered the case where one of the family members pardoned while others did not after the validity of the agreement—based on the consensus of the *Ummah* [community of believers] that if they all agree on *qisas* [retribution], it is enacted; if they unanimously agree on pardon, it is enacted—and the established proof that if they agree on *diyah* [blood money] or *mufādāh* [compensation], it is enacted. We found that *qisas* and *diyah* were presented as equally valid options, neither prioritized over the other. Thus, it is impermissible to allow the pardon of the pardoning family member to override the will of those who sought *qisas* [retribution] in favor of the pardon, except through a textual ruling or consensus.

ثُمَّ نَظَرْنَا إذَا عَفَا أَحَدُ " الْأَهْلِ " وَلَمْ يَعْفُ غَيْرُهُ مِنْهُمْ بَعْدَ صِحَّةِ الِاتِّفَاقِ مِنْ إجْمَاعِ الْأُمَّةِ عَلَى أَنَّهُمْ كُلَّهُمْ إنْ اتَّفَقُوا عَلَى الْقَوَدِ نَفَذَ، وَإِنْ اتَّفَقُوا عَلَى الْعَفْوِ نَفَذَ - وَقِيَامُ الْبُرْهَانِ عَلَى أَنَّهُمْ إنْ اتَّفَقُوا عَلَى الدِّيَةِ أَوْ الْمُفَادَاةِ نَفَذَ ذَلِكَ فَوَجَدْنَا الْقَوَدَ وَالدِّيَةَ قَدْ وَرَدَ التَّخْيِيرُ فِيهِمَا وُرُودًا وَاحِدًا لَيْسَ أَحَدُهُمَا مُقَدَّمًا عَلَى الْآخَرِ، فَلَمْ يَجُزْ أَنْ يُغَلَّبَ عَفْوُ الْعَافِي [عَلَى إرَادَةِ مَنْ أَرَادَ الْقِصَاصَ عَلَى عَفْوِ الْعَافِي] إلَّا بِنَصٍّ " أَوْ إجْمَاعٍ -

Yet there is neither a textual ruling nor consensus granting precedence to the pardoning party. Reflecting on this, we found Allah the Exalted stating: *"No soul bears the burden of another, and no bearer shall bear another's load"* (6:164). By this verse, it became obligatory that the pardon of the pardoning family member cannot apply to those who did not pardon.[4]

L38058–38060 We found that it becomes lawful to shed the killer's blood by the very act of killing: As narrated to us by Abdullah ibn Rabee'ah from Umar ibn Abd al-Malik from Muhammad ibn Bakr from Abu Dawud Sulayman ibn Harb from Hammad ibn Zayd from Yahya ibn Sa'eed al-Ansari from Abu Umamah ibn Sahl ibn Hunayf, who said: We were with Uthman ibn Affan—may Allah be pleased with him—during his siege. He emerged before us with his face pale and said: "They have just threatened to kill me. But for what reason would they kill me? I heard Allah's Messenger—peace and blessings be upon him—say: 'It is unlawful to shed a Muslim person's blood except in one of three [cases]: a man who disbelieves after accepting Islam, or..." If one commits zinā after attaining legal immunity (iḥṣān) or kills a soul without [lawful] retaliation for a soul, he is to be killed. By Allah, I did not commit zinā in the pre-Islamic era nor after embracing Islam, nor have I ever desired to replace my faith with anything else since Allah the Exalted first guided me, and I have not killed any soul.

L38061 Abu Muhammad said: The statement of the Prophet—peace and blessings of Allah be upon him—validated that whoever kills a soul, his blood transitions from inviolability to permissibility through the killer's own act of killing. Since this is established, the killer's blood is conclusively deemed permissible, and the advocate for enforcing qisas advocates for what has been incontrovertibly confirmed as a rightful claim. The one who relinquishes [the right to qisas] seeks to prohibit blood whose permissibility has been decisively established—a right he possesses only through explicit textual evidence or juristic consensus. Whoever demands diyah without the agreement of the other entitled parties seeks to legitimize the appropriation of wealth, though wealth remains inviolable by the decree of Allah's Messenger—peace and blessings of Allah be upon him—who declared: "Your blood and your wealth are sa-

وَلَا نَصَّ، وَلَا إجْمَاعَ فِي تَغْلِيبِ الْعَافِي - فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا وَلا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى} [الأنعام: ١٦٤] فَوَجَبَ بِهَذِهِ الْآيَةِ أَنْ لَا يَجُوزَ عَفْوُ الْعَافِي عَمَّنْ لَمْ يَعْفُ.

وَوَجَدْنَا الْقَاتِلَ قَدْ حَلَّ دَمُهُ بِنَفْسِ الْقَتْلِ: كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ قَالَ: كُنَّا مَعَ عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - وَهُوَ مَحْصُورٌ - فَخَرَجَ إلَيْنَا وَهُوَ مُتَغَيِّرٌ لَوْنُهُ فَقَالَ: يَتَوَاعَدُونِي بِالْقَتْلِ آنِفًا، وَبِمَ يَقْتُلُونَنِي؟ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: رَجُلٌ كَفَرَ بَعْدَ إسْلَامِهِ، أَوْ زَنَا بَعْدَ إحْصَانٍ، أَوْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ، فَيُقْتَلُ -» فَوَاَللَّهِ مَا زَنَيْت فِي جَاهِلِيَّةٍ وَلَا إسْلَامٍ قَطُّ، وَلَا أَحْبَبْتُ أَنَّ لِي بِدِينِي بَدَلًا مُذْ هَدَانِي اللَّهُ تَعَالَى، وَلَا قَتَلْتُ نَفْسًا ".

قَالَ أَبُو مُحَمَّدٍ: فَصَحَّ بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ مَنْ قَتَلَ نَفْسًا خَرَجَ دَمُهُ مِنْ التَّحْرِيمِ إلَى التَّحْلِيلِ بِنَفْسِ قَتْلِهِ مَنْ قَتَلَ، فَإِذْ صَحَّ هَذَا فَالْقَاتِلُ مُتَيَقَّنٌ تَحْلِيلُ دَمِهِ وَالدَّاعِي إلَى أَخْذِ الْقَوَدِ دَاعٍ إلَى مَا قَدْ صَحَّ بِيَقِينٍ وَذَلِكَ لَهُ، وَالْعَافِي مُرِيدٌ تَحْرِيمَ دَمٍ قَدْ صَحَّ تَحْلِيلُهُ بِيَقِينٍ فَلَيْسَ لَهُ ذَلِكَ، إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ، وَمُرِيدُ أَخْذِ الدِّيَةِ دُونَ مَنْ مَعَهُ مُرِيدٌ إبَاحَةَ أَخْذِ مَالٍ، وَالْأَمْوَالُ مُحَرَّمَةٌ بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَالنَّصُّ قَدْ جَاءَ بِإِبَاحَةِ دَمِ الْقَاتِلِ، كَمَا قُلْنَا بِيَقِينٍ قَتْلِهِ، وَلَمْ يَأْتِ نَصٌّ بِإِبَاحَةِ الدِّيَةِ إلَّا بِأَخْذِ " الْأَهْلِ " لَهَا، وَهَذَا لَفْظٌ يَقْتَضِي

[4] **Qur'an references (L38057):** Qur'an 6:164 (Al-An'am).

cred to you." The textual evidence explicitly permits the killer's blood, as we affirmed regarding the certainty of his guilt, but no text permits diyah except through the family's collective acceptance. This wording entails their unanimous agreement to receive it. Thus, diyah—unless the family unanimously agrees to accept it, given the absence of textual or juristic consensus permitting it—is conclusively nullified.

إِجْمَاعَهُمْ عَلَى أَخْذِهَا فَالدِّيَةُ مَا لَمْ يُجْمِعْ " الْأَهْلُ " عَلَى أَخْذِهَا، إِذْ لَمْ يُجْهَا نَصٌّ، وَلَا إِجْمَاعٌ - فَبَطَلَ بِيَقِينٍ.

L38062 It is legally affirmed that whoever demands retaliation is entitled to it—this is Mālik's ruling concerning daughters alongside male agnatic heirs, though he contradicted this ruling in cases involving sons and daughters together, and among certain sons relative to others.

وَصَحَّ أَنَّ مَنْ دَعَا إِلَى الْقَوَدِ فَهُوَ لَهُ - وَهُوَ قَوْلُ مَالِكٍ فِي الْبَنَاتِ مَعَ الْعَصَبَةِ، إِلَّا أَنَّهُ نَاقَضَ فِي ذَلِكَ مَعَ الْبَنِينَ وَالْبَنَاتِ، وَفِي بَعْضِ الْبَنِينَ مَعَ بَعْضٍ.

L38063 Abu Muhammad said: The position we uphold is that all of this is the same, and that the right to decide belongs to the family—those to whom the slain person is recognized by affiliation, just as Abdullah ibn Sahl was recognized by his affiliation to Banu Harithah. They are the ones the Prophet—may Allah's blessings and peace be upon him—directly commanded that fifty of them must swear an oath, and they are entitled to demand retribution or blood money. Whoever among them seeks retribution—be it a child, paternal male cousin, daughter, sister, mother, husband, wife, paternal female cousin, or paternal aunt—retribution becomes obligatory. No regard is given to the forgiveness of those who pardon, whether they are closer in kinship, more distant, or greater in number, for the reason we have mentioned.

قَالَ أَبُو مُحَمَّد: وَالَّذِي نَقُولُ بِهِ أَنَّ كُلَّ ذَلِكَ سَوَاءٌ وَأَنَّ الْحُكْمَ لِلْأَهْلِ وَهُمْ الَّذِينَ يُعْرَفُ الْمَقْتُولُ بِالِانْتِمَاءِ إلَيْهِمْ، كَمَا كَانَ يُعْرَفُ عَبْدُ اللَّهِ بْنُ سَهْلٍ بِالِانْتِمَاءِ إلَى بَنِي حَارِثَةَ وَهُمْ الَّذِينَ أَمَرَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَنْ يُقْسِمَ مِنْهُمْ خَمْسُونَ وَيَسْتَحِقُّونَ الْقَوَدَ أَوْ الدِّيَةَ، وَأَنَّ مَنْ أَرَادَ مِنْهُمْ الْقَوَدَ سَوَاءٌ كَانَ وَلَدًا أَوْ ابْنَ عَمٍّ [أَوْ ابْنَةً] أَوْ أُخْتًا، أَوْ غَيْرَ ذَلِكَ مِنْ أُمٍّ، أَوْ زَوْجٍ، أَوْ زَوْجَةٍ، أَوْ بِنْتِ عَمٍّ، أَوْ عَمَّةٍ - فَالْقَوَدُ وَاجِبٌ، وَلَا يُلْتَفَتُ إلَى عَفْوِ مَنْ عَفَا مِمَّنْ هُوَ أَقْرَبُ، أَوْ أَبْعَدُ، أَوْ أَكْثَرُ فِي الْعَدَدِ لِمَا ذَكَرْنَا.

L38064 If all heirs unanimously agree to pardon retaliation, they are entitled to the blood money, and retaliation becomes prohibited. If an heir wishes to relinquish their claim to blood money, they may do so—specifically regarding their share—as it is wealth from their own possession. And with Allah, the Exalted, lies success.

فَإِنْ اتَّفَقَ الْوَرَثَةُ كُلُّهُمْ عَلَى الْعَفْوِ فَلَهُمْ الدِّيَةُ حِينَئِذٍ وَيُحَرَّمُ الدَّمُ، فَإِنْ أَرَادَ أَحَدُ الْوَرَثَةِ الْعَفْوَ عَنْ الدِّيَةِ فَلَهُ ذَلِكَ، فِي حِصَّتِهِ خَاصَّةً، إذْ هُوَ مَالٌ مِنْ مَالِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38065 A case where among the slain person's guardians there were those who were absent, minor, or insane.

[مَسْأَلَةٌ مَقْتُولٌ كَانَ فِي أَوْلِيَائِهِ غَائِبٌ أَوْ صَغِيرٌ أَوْ مَجْنُونٌ]

L38066 2086 - Issue: If a slain person has among his guardians someone absent, a minor, or insane—what is the ruling? Scholars differed on this. Abū Ḥanīfah said: If the slain has sons among whom one is an adult and the rest are

minors, the sole adult may carry out retribution and need not await the minors' attainment of puberty.

٢٠٨٦ - مَسْأَلَةٌ: مَقْتُولٌ كَانَ فِي أَوْلِيَائِهِ غَائِبٌ، أَوْ صَغِيرٌ، أَوْ مَجْنُونٌ؟ اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَ أَبُو حَنِيفَةَ: إِذَا كَانَ لِلْمَقْتُولِ بَنُونَ وَفِيهِمْ وَاحِدٌ كَبِيرٌ وَغَيْرُهُمْ صِغَارٌ: إِنَّ لِلْوَاحِدِ الْكَبِيرِ أَنْ يَقْتُلَ، وَلَا يَنْتَظِرَ بُلُوغَ الصِّغَارِ.

L38067–38068 قَالَ: فَإِنْ كَانَ فِيهِمْ غَائِبٌ لَمْ يَكُنْ لِلْحَاضِرِينَ أَنْ يَقْتُلُوا حَتَّى يَقْدَمَ الْغَائِبُ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ - وَبِهِ يَقُولُ حَمَّادُ بْنُ أَبِي سُلَيْمَانَ.

L38069 وَقَالَ مَالِكٌ مِثْلَ ذَلِكَ، سَوَاءٌ سَوَاءٌ - وَزَادَ أَنَّ الْمَقْتُولَ إِذَا كَانَ لَهُ وَلَدٌ صَغِيرٌ، وَأَخٌ كَبِيرٌ، أَوْ أُخْتٌ كَبِيرَةٌ، فَلِلْأَخِ، أَوْ لِلْأُخْتِ أَنْ يَقْتُلَا قَوَدًا، وَلَا يَنْتَظِرُ بُلُوغُ الصَّغِيرِ، وَكَذَلِكَ لِلْعَصَبَةِ أَيْضًا - وَهُوَ قَوْلُ الْأَوْزَاعِيِّ.

L38070 وَرَأَى مَالِكٌ: لِلْعَصَبَةِ - إِذْ كَانَ الْوَلَدُ صَغِيرًا - أَنْ يُصَالِحُوا عَلَى الدِّيَةِ، وَيَنْفُذَ حُكْمُهُمْ.

L38071 وَقَالَ ابْنُ أَبِي لَيْلَى، وَالْحَسَنُ بْنُ حَيٍّ، وَأَبُو يُوسُفَ، وَمُحَمَّدٌ، وَالشَّافِعِيُّ: لَا يَسْتَقِيدُ الْكَبِيرُ مِنْ الْبَنِينَ حَتَّى يَبْلُغَ الصَّغِيرُ - وَرُوِيَ هَذَا الْقَوْلُ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ.

L38072 قَالَ أَبُو مُحَمَّدٍ: وَالظَّاهِرُ مِنْ قَوْلِهِمْ: أَنَّ الْمَجْنُونَ كَالصَّغِيرِ، فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ: فَنَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ فَوَجَدْنَاهُ ظَاهِرَ التَّنَاقُضِ إِذْ فَرَّقَ بَيْنَ الْغَائِبِ وَالصَّغِيرِ، وَوَجَدْنَا حُجَّتَهُمْ فِي هَذَا: أَنَّ الْغَائِبَ لَا يُوَلَّى عَلَيْهِ، وَالصَّغِيرُ يُوَلَّى عَلَيْهِ.

L38073 قَالُوا: وَكَمَا كَانَ أَحَدُ الْوَلِيَّيْنِ يُزَوِّجُ إِذَا كَانَ هُنَالِكَ صَغِيرٌ مِنْ الْأَوْلِيَاءِ، فَكَذَلِكَ يَقْتُلُ - وَقَالُوا: قَدْ قَتَلَ الْحَسَنُ بْنُ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - عَبْدَ الرَّحْمَنِ بْنِ مُلْجَمٍ قَاتِلَ عَلِيٍّ،

the Companions—may Allah be pleased with them—with no known dissenter among them.

وَلِعَلِيٍّ بَنُونَ صِغَارٌ وَهُمْ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - دُونَ مُخَالِفٍ يُعْرَفُ لَهُ مِنْهُمْ.

L38074 Ali said: As for their argument based on the action of al-Hasan ibn Ali, it is applicable to the Shafiʿis and those Hanafis who agreed - Abu Yusuf and Muhammad ibn al-Hasan - because they act similarly when it conforms to their doctrinal adherence.

قَالَ عَلِيٌّ: أَمَّا احْتِجَاجُهُمْ بِفِعْلِ الْحَسَنِ بْنِ عَلِيٍّ فَهُوَ لَازِمٌ لِلشَّافِعِيِّينَ، وَلِمَنْ وَافَقَ مِنْ الْحَنَفِيِّينَ: أَبَا يُوسُفَ، وَمُحَمَّدَ بْنَ الْحَسَنِ، لِأَنَّهُمْ مِثْلُ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L38075–38077 Abu Muhammad said: If something like this is deemed consensus, then the Ḥanafīs have indeed testified against their own scholar contrary to consensus. Should they declare both of them disbelievers for this, or accuse them of innovation, it would be unlawful for them to accept blood money for them from a disbeliever. Nor from an innovator—even if they excused them both in that—then we have a share of the excuse akin to that of Ya'qub and Muhammad. Indeed, the condemnation of both has been rendered void forever by something like this, and this is clear. And all praise belongs to Allah.

قَالَ أَبُو مُحَمَّد: فَلَئِنْ كَانَ مِثْلُ هَذَا إجْمَاعًا فَلَقَدْ شَهِدَ الْحَنَفِيُّونَ عَلَى شَيْخِهِمْ بِخِلَافِ الْإِجْمَاعِ، فَإِنْ كَفَّرُوهُمَا بِهَذَا، أَوْ بَدَّعُوهُمَا فَمَا يَحِلُّ لَهُمْ أَخْذُ دِيَتِهِمْ عَنْ كَافِرٍ، وَلَا عَنْ مُبْتَدِعٍ - وَإِنْ عَذَرُوهُمَا فِي ذَلِكَ - فَلَنَا مِنْ الْعُذْرِ مَا لِيَعْقُوبَ، وَمُحَمَّدٍ - وَقَدْ بَطَلَ تَشْنِيعُهُمْ فِي الْأَبَدِ بِمِثْلِ هَذَا، وَهَذَا وَاضِحٌ. وَلِلَّهِ الْحَمْدُ.

L38078 Abū Muḥammad said: Among the objections raised by the Shāfiʿīs was their claim: "Al-Ḥasan ibn ʿAlī—may Allah be pleased with them both—was an Imam, so he examined this matter by the right of the Imamate, or his killer killed him under the pretext of warfare, not as lawful retaliation (qisas)." This is invalid, for ʿAbd al-Raḥmān ibn Muljam neither engaged in warfare nor endangered the road.

وَقَالَ أَبُو مُحَمَّد: فَكَانَ مِنْ اعْتِرَاضِ الشَّافِعِيِّينَ أَنْ قَالُوا: إنَّ الْحَسَنَ بْنَ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُمَا - كَانَ إمَامًا فَنَظَرَ فِي ذَلِكَ بِحَقِّ الْإِمَامَةِ، أَوْ قَتَلَهُ بِالْمُحَارَبَةِ لَا قَوَدًا - وَهَذَا لَيْسَ بِشَيْءٍ، لِأَنَّ عَبْدَ الرَّحْمَنِ بْنَ مُلْجَمٍ لَمْ يُحَارِبْ، وَلَا أَخَافَ السَّبِيلَ.

L38079 According to the Shāfiʿīs, neither the Imam nor the guardian may exact retaliation for a minor until he reaches adulthood. Thus, their vilification is invalidated, except that this case rebounds upon the Ḥanafīs in the same manner they denounced the Shāfiʿīs—exactly the same, exactly the same—because they and the Mālikīs unanimously hold that whoever kills another based on juristic interpretation incurs no retaliation for it.

وَلَيْسَ لِلْإِمَامِ - عِنْدَ الشَّافِعِيِّينَ - وَلَا لِلْوَصِيِّ، أَنْ يَأْخُذَ الْقَوَدَ لِصَغِيرٍ حَتَّى يَبْلُغَ - فَبَطَلَ تَشْنِيعُهُمْ إلَّا أَنَّ هَذِهِ الْقِصَّةَ عَائِدَةٌ عَلَى الْحَنَفِيِّينَ بِمِثْلِ مَا شَغَبُوا بِهِ عَلَى الشَّافِعِيِّينَ سَوَاءً سَوَاءً، لِأَنَّهُمْ وَالْمَالِكِيُّونَ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ قَتَلَ آخَرَ عَلَى تَأْوِيلٍ فَلَا قَوَدَ فِي ذَلِكَ.

L38080 There is no disagreement between any members of the Ummah that ʿAbd al-Raḥmān ibn Muljam did not kill ʿAlī—may Allah be pleased with him—except as someone interpreting (ta'wīl), exercising independent legal reasoning (ijtihād), and considering he was correct.

وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ عَبْدَ الرَّحْمَنِ بْنَ مُلْجَمٍ لَمْ يَقْتُلْ عَلِيًّا - رَضِيَ اللَّهُ عَنْهُ - إلَّا مُتَأَوِّلًا مُجْتَهِدًا مُقَدِّرًا أَنَّهُ عَلَى صَوَابٍ.

وَفِي ذَلِكَ يَقُولُ عِمْرَانُ بْنُ حِطَّانَ شَاعِرُ الصِّفْرِيَّةِ:

يَا ضَرْبَةً مِنْ تَقِيٍّ مَا أَرَادَ بِهَا ... إِلَّا لِيَبْلُغَ مِنْ ذِي الْعَرْشِ رِضْوَانًا

إِنِّي لَأَذْكُرُهُ حِينًا فَأَحْسَبُهُ ... أَوْفَى الْبَرِيَّةِ عِنْدَ اللَّهِ مِيزَانًا

L38081 And in that, Imran ibn Ḥiṭṭān, the poet of the Ṣufriyya, says:

L38082 What a strike from a devout one! He intended nothing by it but to attain the pleasure of the Possessor of the Throne.

L38083 Verily, there are times I recall him, and I deem him the most faithful of creation in God's Scale.

أَيْ لَا أُفَكِّرُ فِيهِ ثُمَّ أَحْسِبُهُ - فَقَدْ حَصَلَ الْحَنَفِيُّونَ مِنْ خِلَافِ الْحَسَنِ بْنِ عَلِيٍّ عَلَى مِثْلِ مَا شَغَبُوا بِهِ عَلَى الشَّافِعِيِّينَ، وَمَا يَنْقُلُونَ أَبَدًا مِنْ رُجُوعِ سِهَامِهِمْ عَلَيْهِمْ، وَمِنَ الْوُقُوعِ فِيمَا حَفَرُوهُ.

L38084 That is, I do not contemplate it and then calculate it—for the Ḥanafīs, due to al-Ḥasan ibn ʿAlī's disagreement with them, have incurred the same consequence they criticized the Shāfiʿīs for. They ceaselessly report the return of their own arrows upon themselves, and their falling into what they themselves dug.

فَظَهَرَ تَنَاقُضُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ فِي الْفَرْقِ بَيْنَ الْغَائِبِ وَالصَّغِيرِ.

L38085 Thus, the contradiction of the Ḥanafīs and the Mālikīs became evident in the distinction between the absent person and the minor.

وَأَمَّا قَوْلُهُمْ: إِنَّ الصَّغِيرَ يُوَلَّى عَلَيْهِ، وَالْغَائِبَ لَا يُوَلَّى عَلَيْهِ، فَلَا شُبْهَةَ [لَهُمْ] فِي هَذَا، لِأَنَّ الْغَائِبَ يُوَكَّلُ لَهُ أَيْضًا كَمَا يُوَلَّى عَلَى الصَّغِيرِ.

L38086 As for their statement that guardianship is appointed over a minor but not over an absent person, there is no ambiguity for them in this matter, for an absent person similarly has a *wakīl* (agent) appointed on his behalf, just as guardianship is established over a minor.

وَأَيْضًا - فَإِنَّ الْوَصِيَّ عِنْدَهُمْ لَا يَقْتَصُّ لِلصَّغِيرِ - فَبَطَلَ تَمْوِيهُهُمْ جُمْلَةً.

L38087–38088 Moreover, since the guardian, according to them, cannot pursue qisas (legal retaliation) on behalf of the minor, their misrepresentation is nullified entirely.

قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَقُولُ بِهِ قَدْ قَدَّمْنَا فِي الْبَابِ الَّذِي قَبْلَ هَذَا أَنَّ الْقَوْلَ قَوْلُ مَنْ دَعَا إِلَى الْقَوَدِ فَلِلْكَبِيرِ، وَلِلْحَاضِرِ الْعَاقِلِ: أَنْ يَقْتُلَ وَلَا يَسْتَأْنِي بُلُوغَ الصَّغِيرِ، وَلَا إِفَاقَةَ الْمَجْنُونِ، وَلَا قُدُومَ الْغَائِبِ فَإِنْ عَفَا الْحَاضِرُونَ الْبَالِغُونَ لَمْ يَجُزْ ذَلِكَ عَلَى الصَّغِيرِ، وَلَا عَلَى الْغَائِبِ، وَلَا عَلَى الْمَجْنُونِ، بَلْ هُمْ عَلَى حَقِّهِمْ فِي الْقَوَدِ حَتَّى يَبْلُغَ الصَّغِيرُ، وَيُفِيقَ الْمَجْنُونُ، فَإِذَا كَانَ ذَلِكَ فَإِنْ طَلَبَ أَحَدُهُمُ الْقَوَدَ؟ قُضِيَ لَهُ بِهِ، وَإِنِ اتَّفَقُوا كُلُّهُمْ عَلَى الْعَفْوِ جَازَ ذَلِكَ حِينَئِذٍ، لِمَا ذَكَرْنَا فِي الْبَابِ الَّذِي قَبْلَ هَذَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38089 Abū Muḥammad said: Regarding the position we uphold, we have previously stated in the chapter preceding this one that the authority to demand retaliation lies with the adult and the present individual of sound mind. He may carry out retaliation without awaiting the minor's coming of age, the insane person's recovery, or the absentee's return. If the present adults pardon, this pardon is not valid for the minor, the absentee, or the insane person. Rather, their right to retaliation remains intact until the minor reaches adulthood and the insane person recovers. When that occurs, if one of them seeks retaliation, it must be granted. If they all collectively agree to pardon at that point, it becomes permissible, as we elaborated in the preceding chapter—and success is from Allah, the Exalted.

L38090 Ali said: If the minor, the absent one, or the insane person dies, the matter then reverts to the remaining legal heirs. That pardon which has been nullified does not bind the pardoning party (since the pardon was ineffective); rather, they may retract it, for there is no legal ruling pertaining to such a pardon in an explicit text or consensus. A binding pardon is solely one validated by a ratified text or consensus, in accordance with the Prophet's saying—peace and blessings be upon him: "Whoever performs an action not in accordance with our command, it is rejected."[5]

قَالَ عَلِيٌّ: فَإِنْ مَاتَ الصَّغِيرُ أَوْ الْغَائِبُ أَوْ الْمَجْنُونُ كَانَ حِينَئِذٍ رُجُوعُ الْأَمْرِ إلَى مَنْ بَقِيَ مِنْ الْوَرَثَةِ، وَلَا يَلْزَمُ مَنْ عَفَا - فَلَمْ يَنْفُذْ عَفْوُهُ - ذَلِكَ الْعَفْوُ الَّذِي قَدْ بَطَلَ، بَلْ لَهُ الرُّجُوعُ فِيهِ، لِأَنَّهُ لَا حُكْمَ لَهُ فِي نَصٍّ، وَلَا إجْمَاعٍ، وَإِنَّمَا الْعَفْوُ اللَّازِمُ عَفْوٌ صَحَّ بِإِمْضَائِهِ نَصٌّ، أَوْ إجْمَاعٌ فَقَطْ، لِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» .

L38091 Whoever pardons while excluding the rest of the family has done an action not based on the command of the Messenger of Allah (peace be upon him), and such an action is rejected.

وَمَنْ عَفَا دُونَ سَائِرِ " الْأَهْلِ " فَقَدْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ رَدٌّ.

L38092 Ali said: "If any of the family members dies, the option is not inherited from them, for the option belongs to the family by the explicit ruling of the Messenger of Allah (peace be upon him). Thus, whoever is among the family has the option, while whoever is not among the family has no option whatsoever, as neither an explicit text nor consensus mandates this. The option is not property to be inherited. Allah has ordained inheritance only for what the deceased leaves behind, and the option is not inherited property."

قَالَ عَلِيٌّ: وَمَنْ مَاتَ مِنْ " الْأَهْلِ " لَمْ يُورَّثْ عَنْهُ الْخِيَارُ، لِأَنَّ الْخِيَارَ لِلْأَهْلِ بِنَصِّ حُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ كَانَ مِنْ الْأَهْلِ فَلَهُ الْخِيَارُ، وَمَنْ لَمْ يَكُنْ مِنْ الْأَهْلِ فَلَا خِيَارَ لَهُ أَصْلًا، إذْ لَمْ يُوجِبْ ذَلِكَ نَصٌّ، وَلَا إجْمَاعٌ، وَالْخِيَارُ لَيْسَ مَالًا فَيُورَّثُ، وَإِنَّمَا جَعَلَ اللَّهُ الْمِيرَاثَ فِيمَا تَرَكَ الْمَوْرُوثُ وَالْخِيَارُ لَيْسَ مَالًا مَوْرُوثًا.

L38093 If the discretionary portion were inherited property, the right of the testamentary beneficiaries to up to a third of it or less would be obligatory.

وَلَوْ كَانَ الْخِيَارُ مَالًا مَوْرُوثًا لَوَجَبَ فِيهِ حَقُّ أَهْلِ الْوَصِيَّةِ بِالثُّلُثِ فَدُونَهُ.

L38094 Abu Muhammad said: If the heir is a minor, insane, or absent—and there is no other heir in such a situation—then retribution is undoubtedly obligatory. Neither the blood money nor the compensation are required except with the heir's consent or by mutual consent between him and the killer.

قَالَ أَبُو مُحَمَّد: فَإِنْ كَانَ الْوَارِثُ صَغِيرًا، أَوْ مَجْنُونًا، أَوْ غَائِبًا - وَلَا وَارِثَ هُنَالِكَ غَيْرُهُ -: فَقَدْ وَجَبَ الْقَوَدُ بِلَا شَكٍّ، وَلَا تَجِبُ الدِّيَةُ، وَلَا الْمُفَادَاةُ، إلَّا بِرِضَا الْوَارِثِ، أَوْ بِتَرَاضٍ مِنْهُ، وَمِنْ الْقَاتِلِ.

L38095–38097 We know that minors and those lacking legal discernment cannot consent, and qisas (legal retribution) is a right rightfully incumbent upon both. With certainty, taking it is obligatory in all circumstances; the guardian or the

وَقَدْ عَلِمْنَا أَنَّ الصَّغِيرَ، وَالْأَحْمَقَ، لَا رِضَا لَهُمَا، وَالْقَوَدُ حَقٌّ قَدْ وَجَبَ لَهُمَا بِيَقِينٍ، فَأَخْذُهُ وَاجِبٌ عَلَى كُلِّ حَالٍّ، يَأْخُذُهُ لَهُمَا الْوَلِيُّ أَوْ السُّلْطَانُ، وَهَكَذَا الْغَائِبُ، وَلَا فَرْقَ بَيْنَ أَخْذِ حَظِّهِمْ فِي الْقَوَدِ، وَأَخْذِ حَظِّهِمْ فِي الْأَمْوَالِ وَالْعَفْوُ جَائِزٌ وَالْإِبْرَاءُ لِلْغَائِبِ

[5] **Hadith references (L38090):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

authority takes it for both of them, and similarly for the absent party. There is no distinction between taking their share in retaliation (qisas) and taking their share in monetary compensation. Pardoning is permissible, and waiver for the absent party is equally permissible in both matters, as all of that is a right one may abandon. The same ruling applies equally to minors and the mentally incompetent. This is not an analogy—Allah forbid such a thing—but rather a single ruling for two rights, both of which are obligated equally. It is obligatory for the authorized person to pardon both precisely the same. Neither is a fundamental principle while the other is a derivative; rather, both are fundamental together. Neither is explicitly mentioned while the other is not; rather, both are explicitly mentioned, due to the obligation of exacting justice through retaliation (qisas) and monetary compensation—and success is from Allah.

L38098 **A legal issue regarding the father's waiver of compensation for the wounding inflicted upon his minor son.**

L38099 2087 – Issue: A father's pardon of retaliation for an injury inflicted on his minor son, his claiming retaliation for him, or similarly in the case of an insane person. It has been narrated to us via the chain of Abū Bakr ibn Abī Shaybah, from Ḥafṣ ibn Ghiyāth, from Abū Isḥāq al-Shaybānī, from al-Shaʿbī, who said: If a father pardons a minor wound inflicted on his son, the waiver is binding on him.

L38100 Ali said: Al-Shabi's distinction—may Allah have mercy on him—between minor and major head injuries has no basis, for Allah the Exalted has stated: *"No soul earns [sin] except against itself"* (al-Anʿām 6:164). The right of the minor and the insane is an established obligation; thus, it is impermissible for another to nullify it on their behalf, because it constitutes a sin against them. This is a matter with no difficulty.[6]

L38101 They have unanimously agreed that the father and the guardian may demand and exact every right for the minor and the insane within their [the father and guardian's] property, and that neither the father nor the guardian may pardon

[6] **Qur'an references (L38100):** Qur'an 6:164 (Al-An'am).

فِي كِلَا الْأَمْرَيْنِ جَوَازًا وَاحِدًا، إِذْ كُلُّ ذَلِكَ حَقٌّ لَهُ تَرْكُهُ، وَكَذَلِكَ الْقَوْلُ فِي الصَّغِيرِ، وَالْمَجْنُونِ سَوَاءٌ سَوَاءٌ، وَلَيْسَ هَذَا قِيَاسًا - وَمَعَاذَ اللَّهِ مِنْ ذَلِكَ - لَكِنَّهُ حُكْمٌ وَاحِدٌ فِي حَقَّيْنِ وَجَبَا وُجُوبًا وَاحِدًا، وَوَجَبَ لِمَنْ يَجُوزُ أَمْرُهُ الْعَفْوُ عَنْهُمَا سَوَاءٌ سَوَاءٌ، وَلَيْسَ أَحَدُهُمَا أَصْلًا وَالثَّانِي فَرْعًا، بَلْ هُمَا أَصْلَانِ مَعًا، وَلَا أَحَدُهُمَا مَنْصُوصًا عَلَيْهِ وَالْآخَرُ غَيْرُ مَنْصُوصٍ عَلَيْهِ، بَلْ كِلَاهُمَا مَنْصُوصٌ عَلَيْهِ، لِوُجُوبِ الِانْتِصَافِ مِنْ الْقَوَدِ وَمِنْ الْمَالِ - وَبِاَللَّهِ التَّوْفِيقُ.

[مَسْأَلَةٌ عَفْوُ الْأَبِ عَنْ جُرْحِ ابْنِهِ الصَّغِيرِ]

٢٠٨٧ - مَسْأَلَةٌ: عَفْوُ الْأَبِ عَنْ جُرْحِ ابْنِهِ الصَّغِيرِ، أَوْ اسْتِقَادَتُهُ لَهُ أَوْ فِي الْمَجْنُونِ كَذَلِكَ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ الشَّعْبِيِّ قَالَ: إذَا وَهَبَ الشَّجَّةَ الصَّغِيرَةَ الَّتِي تُصِيبُ ابْنَهُ جَازَتْ عَلَيْهِ.

قَالَ عَلِيٌّ: تَفْرِيقُ الشَّعْبِيِّ - رَحِمَهُ اللَّهُ - بَيْنَ الشَّجَّةِ الصَّغِيرَةِ وَالْكَبِيرَةِ لَا مَعْنَى لَهُ، وَقَدْ قَالَ اللَّهُ تَعَالَى: {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] ، وَحَقُّ الصَّغِيرِ وَالْمَجْنُونِ قَدْ وَجَبَ، فَلَا يَجُوزُ أَنْ يُسْقِطَهُ لَهُ غَيْرُهُ، لِأَنَّهُ كَسْبٌ عَلَيْهِ، وَهَذَا مَا لَا إشْكَالَ فِيهِ.

or waive any such right. Why then do they not apply analogy (qiyas) to qisas [retaliation in kind] for them [the father and guardian], as they do regarding property? Yet they neither properly apply analogy (qiyas) nor adhere to the revealed texts (nass).

L38102 Abu Muhammad said: The ruling concerning that is that Allah the Exalted said: “An eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and wounds are subject to retaliation. Whoever pardons it as charity, it shall be an expiation for him” [Al-Ma’idah: 45]. He also said: “Violations of sacred ordinances warrant retaliation” [Al-Baqarah: 194]. And He said: “The recompense for an evil deed is an equivalent evil deed” [Ash-Shura: 40].[7]

L38103–38104 Thus, it is established by these texts that retribution is necessarily obligatory, and that forgiveness is valid only with the consent of the injured party. The minor and the mentally incompetent possess no valid consent, no capacity to forgive, and no enforceable order regarding blood money. Consequently, this aspect is invalidated, leaving only the retribution conclusively established as obligatory. The father, guardian, or executor must necessarily enforce retribution on behalf of the injured party. If they neglect this until the minor reaches maturity or the mentally incompetent regains sanity, the retribution—which had been conclusively established as obligatory—becomes his right to claim, and he may then choose to forgive if he wishes. Neither the father nor the guardian may accept blood money or negotiate settlements for any injuries, for all such actions interfere with the obligation of retribution. Forgiveness is valid only with the consent of the injured party or through mutual agreement between the offender and the injured party.

L38105 **[A legal issue concerning the pardon granted by the victim of a criminal act that causes his death]**

L38106 2088. Issue:

وَقَدْ أَجْمَعُوا عَلَى أَنَّ لِلْأَبِ وَالْوَلِيِّ أَنْ يَطْلُبَا، وَأَنْ يَقْتَصَّا كُلَّ حَقٍّ لِلصَّغِيرِ وَالْمَجْنُونِ، فِي مَالِهِمَا، وَأَنَّهُ لَيْسَ لِلْأَبِ، وَلَا لِلْوَلِيِّ، فِي ذَلِكَ عَفْوٌ، وَلَا إِبْرَاءٌ - فَهَلَّا قَاسُوا أَمْرَ الْقِصَاصِ لَهُمَا عَلَى أَمْرِ الْمَالِ؟ وَلَكِنَّهُمْ لَا الْقِيَاسَ يُحْسِنُونَ وَلَا النَّصَّ يَتْبَعُونَ

قَالَ أَبُو مُحَمَّد: وَالْقَوْلُ فِي ذَلِكَ أَنَّ اللَّهَ تَعَالَى قَالَ: {وَالْعَيْنَ بِالْعَيْنِ وَالأَنْفَ بِالأَنْفِ وَالأُذُنَ بِالأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] وَقَالَ تَعَالَى: {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] وَقَالَ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] .

فَصَحَّ بِهَذِهِ النُّصُوصِ أَنَّ الْقَوَدَ قَدْ وَجَبَ وَلَا بُدَّ، وَأَنَّ الْعَفْوَ لَا يَصِحُّ إِلَّا بِرِضَا الْمَجْنِيِّ عَلَيْهِ، وَالصَّبِيُّ وَالْمَجْنُونُ لَا رِضَا لَهُمَا، وَلَا عَفْوَ، وَلَا أَمْرَ نَافِذٌ بِصَدَقَةٍ - فَسَقَطَ هَذَا الْوَجْهُ، وَبَقِيَ الَّذِي وَجَبَ بِيَقِينٍ مِنْ الْقَوَدِ، فَيَسْتَقِيدُ لَهُ أَبُوهُ، أَوْ وَلِيُّهُ، أَوْ وَصِيُّهُ وَلَا بُدَّ، فَإِنْ أَغْفَلَ ذَلِكَ حَتَّى بَلَغَ الصَّبِيُّ، وَعَقَلَ الْمَجْنُونُ، كَانَ لَهُ الْقَوَدُ الَّذِي قَدْ وَجَبَ أَخْذُهُ لَهُ بَعْدُ، وَحَدَثَ لَهُ جَوَازُ الْعَفْوِ إِنْ شَاءَ، وَلَيْسَ لِلْأَبِ، وَلَا لِلْوَلِيِّ أَخْذُ الدِّيَةِ، وَلَا أَنْ يُفَادِيَ فِي شَيْءٍ مِنْ الْجُرُوحِ، لِأَنَّ كُلَّ هَذَا دَاخِلٌ عَلَى وُجُوبِ الْقَوَدِ [وَالْعَفْوُ] لَا يَكُونُ إِلَّا بِرِضَا الْمَجْنِيِّ عَلَيْهِ أَوْ بِتَرَاضٍ مِنْ الْجَانِي وَالْمَجْنِيِّ عَلَيْهِ.

[مَسْأَلَةٌ عَفْوُ الْمَجْنِيِّ عَلَيْهِ جِنَايَةً يَمُوتُ مِنْهَا]

٢٠٨٨ - مَسْأَلَةٌ:

[7] **Qur’an references (L38102):** Qur’an 5:45 (Al-Ma’idah); Qur’an 42:40 (Ash-Shuraa); Qur’an 2:194 (Al-Baqarah).

L38107 Is it permissible for the victim of a felony resulting in death—whether unintentional or intentional—to pardon concerning their diyah (blood money) and other matters pertaining to their blood, or not?

هَلْ يَجُوزُ عَفْوُ الْمَجْنِيِّ عَلَيْهِ جِنَايَةً يَمُوتُ مِنْهَا خَطَأً أَوْ عَمْدًا عَنْ دِيَتِهِ وَغَيْرِهَا عَنْ دَمِهِ أَمْ لَا؟

L38108 It was narrated to us through Abu Bakr ibn Abi Shaybah, from Hafs ibn Ghiyath, from Ashʿath ibn Sawwar, from Abu Bakr ibn Hafs, who said: There was fighting between a group from Banu ʿAdiyy and another clan, involving stone-throwing and striking with sandals. A boy from the family of ʿUmar was struck and met his end. As his soul was about to depart, he said: "I have pardoned, hoping for reward and reconciliation among my people." Ibn ʿUmar then approved it.

رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ بْنِ سَوَّارٍ عَنْ أَبِي بَكْرِ بْنِ حَفْصٍ قَالَ: كَانَ بَيْنَ قَوْمٍ مِنْ بَنِي عَدِيٍّ وَبَيْنَ حَيٍّ مِنْ الْأَحْيَاءِ قِتَالٌ، وَرَمْيٌ بِالْحِجَارَةِ، وَضَرْبٌ بِالنِّعَالِ، فَأُصِيبَ غُلَامٌ مِنْ آلِ عُمَرَ، فَأَتَى عَلَى نَفْسِهِ، فَلَمَّا كَانَ قَبْلَ خُرُوجِ نَفْسِهِ قَالَ: إنِّي قَدْ عَفَوْت رَجَاءَ الثَّوَابِ وَالْإِصْلَاحِ بَيْنَ قَوْمِي، فَأَجَازَهُ ابْنُ عُمَرَ.

L38109 And through him to Abu Bakr ibn Abi Shaybah, it was narrated to us by Hushaym from Yunus ibn ʿUbayd from al-Hasan al-Basri, who said: If a man pardons his killer for intentional killing before he dies, then it is permissible.

وَبِهِ - إلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا هُشَيْمٌ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: إذَا عَفَا الرَّجُلُ عَنْ قَاتِلِهِ فِي الْعَمْدِ قَبْلَ أَنْ يَمُوتَ فَهُوَ جَائِزٌ.

L38110 From Ibn Ṭāwūs: I asked my father, "If one is slain intentionally or accidentally, does one forgive his blood?" He answered, "Yes."

وَعَنْ ابْنِ طَاوُسٍ قُلْت لِأَبِي: يُقْتَلُ عَمْدًا أَوْ خَطَأً فَيَعْفُو عَنْ دَمِهِ؟ قَالَ: نَعَمْ.

L38111 On the authority of al-Shaʿbī: If a man is killed and he forgave [the claim to] his blood, then the heirs are not entitled to kill [in retaliation].

وَعَنْ الشَّعْبِيِّ قَالَ: إذَا قُتِلَ الرَّجُلُ فَعَفَا عَنْ دَمِهِ فَلَيْسَ لِلْوَرَثَةِ أَنْ يَقْتُلُوا.

L38112 From Ibn Jurayj: I said to ʿAṭāʾ, "If the one killed unintentionally were to donate his diya to his killer, the killer would only be entitled to a third of it, for it is property to be bequeathed."

وَعَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: إنْ وَهَبَ الَّذِي يُقْتَلُ خَطَأً دِيَتَهُ لِمَنْ قَتَلَهُ، فَإِنَّمَا لَهُ مِنْهَا ثُلُثُهَا، إنَّمَا هُوَ مَالٌ يُوصِي بِهِ.

L38113–38115 From the chain of ʿAbd al-Razzāq, from Maʿmar, from Simāk ibn al-Faḍl, who said: ʿUmar ibn ʿAbd al-ʿAzīz wrote that no one is to give charity. A man is liable for his diya (blood money). If he is killed accidentally, one-third of it is permissible to be paid, provided he possesses no other wealth.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ قَالَ: كَتَبَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ أَنْ لَا يَتَصَدَّقَ الرَّجُلُ بِدِيَتِهِ فَإِنْ قُتِلَ خَطَأً فَالثُّلُثُ مِنْ ذَلِكَ جَائِزٌ إذَا لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ.

L38116 From the transmission of ʿAbd al-Razzāq from Sufyān al-Thawrī from Yūnus ibn ʿUbayd from al-Ḥasan regarding one who is intentionally struck with

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ فِيمَنْ يُضْرَبُ بِالسَّيْفِ عَمْدًا ثُمَّ يَعْفُو عَنْهُ قَبْلَ أَنْ يَمُوتَ؟ قَالَ: هُوَ جَائِزٌ، وَلَيْسَ فِي الثُّلُثِ.

a sword and then pardons [the perpetrator] before dying: He said, "It is permissible, and the third does not apply."

L38117 And he said—Hishām reported from al-Ḥasan that he said, "If it was an unintentional error, it applies to the third."

وَقَالَ - هِشَامٌ عَنْ الْحَسَنِ: إذَا كَانَ خَطَأً فَهُوَ فِي الثُّلُثِ.

L38118 From the chain of Abū Bakr ibn Abī Shaybah: Qabīṣah ibn ʿUqbah narrated to us, Sufyān narrated to us from Ibn Jurayj from Abū ʿUbayd Allāh from Ibn ʿAbbās regarding a man whose hand was cut off, who reached a settlement concerning it, then the settlement was annulled against him and he died? He said: The settlement is invalid, and the *diyah* must be paid.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا قَبِيصَةُ بْنُ عُقْبَةَ نا سُفْيَانُ عَنْ ابْنِ جُرَيْجٍ عَنْ أَبِي عُبَيْدِ اللَّهِ عَنْ ابْنِ عَبَّاسٍ فِي رَجُلٍ قُطِعَتْ يَدُهُ فَصَالَحَ عَلَيْهَا، ثُمَّ انْتَقَضَتْ بِهِ فَمَاتَ؟ قَالَ: الصُّلْحُ مَرْدُودٌ: وَيُؤْخَذُ بِالدِّيَةِ.

L38119 Abu Muhammad said: As for the later scholars: Abu Hanifah and Zufar stated: If one waives the right to claim compensation for a deliberate injury or skull fracture, and for whatever arises from it, this is legally valid, and nothing is incumbent upon the killer. But if he waives the right to claim compensation for the injury, amputation, or skull fracture, then dies, the diyah (blood money) becomes obligatory upon the killer.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ، وَزُفَرَ قَالَا: إذَا عَفَا عَنْ الْجِرَاحَةِ الْعَمْدِ، أَوْ الشَّجَّةِ، وَعَمَّا يَحْدُثُ مِنْهَا فَهُوَ جَائِزٌ، وَلَا شَيْءَ عَلَى الْقَاتِلِ، فَإِنْ عَفَا عَنْ الْجِرَاحَةِ، أَوْ الْقَطْعِ، أَوْ الشَّجَّةِ، ثُمَّ مَاتَ فَعَلَيْهِ الدِّيَةُ.

L38120 Abu Yusuf and Muhammad said: The killer bears no liability in any of these cases. They said: If the victim's family forgoes the killer's blood money in accidental killing, this applies to the third.

قَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: لَا شَيْءَ عَلَى الْقَاتِلِ فِي كُلِّ ذَلِكَ - قَالُوا: فَإِنْ عَفَا عَنْ دِيَتِهِ فِي الْخَطَأِ فَذَلِكَ فِي الثُّلُثِ.

L38121 Mālik said: If someone settles regarding a wound or amputation and subsequently dies, the settlement is invalidated and retaliation becomes obligatory. If he forgave his right to blood money for an accidental injury, this applies only to a third of his estate.

وَقَالَ مَالِكٌ: مَنْ صَالَحَ مِنْ جِرَاحَةٍ، أَوْ مِنْ قَطْعٍ ثُمَّ مَاتَ: بَطَلَ الصُّلْحُ وَوَجَبَ الْقَوَدَ - فَإِنْ عَفَا عَنْ دِيَتِهِ فِي الْخَطَأِ فَذَلِكَ فِي ثُلُثِهِ.

L38122 Sufyan al-Thawri said: If the injured party pardons the injury and then dies, there is no retribution, but the offender is liable to pay the blood money (diyah) after the arsh (fixed compensation) for the injury is subtracted from it.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إذَا عَفَا عَنْ الْجِرَاحَةِ ثُمَّ مَاتَ فَلَا قَوَدَ، لَكِنْ يُغَرَّمُ الْجَانِي الدِّيَةَ بَعْدَ أَنْ يَسْقُطَ مِنْهَا أَرْشُ الْجِرَاحَةِ.

L38123 Al-Shafiʿi said: If the victim pardons the injury and whatever may ensue from it of blood money (diyah) or retaliation (qisas), then dies, no retaliation (qisas) applies. His position differed regarding the blood money (diyah) – at times he held the view of Sufyan al-Thawri as we mentioned previously, and at times he stated that the full blood money (diyah) is due.

وَقَالَ الشَّافِعِيُّ: إذَا عَفَا عَنْ الْجِرَاحَةِ وَعَمَّا يَحْدُثُ مِنْهَا مِنْ عَقْلٍ، أَوْ قَوَدٍ ثُمَّ مَاتَ فَلَا قَوَدَ - ثُمَّ اخْتَلَفَ قَوْلُهُ فِي الدِّيَةِ، فَمَرَّةً قَالَ كَقَوْلِ سُفْيَانَ الثَّوْرِيِّ الَّذِي ذَكَرْنَا قَبْلُ وَمَرَّةً قَالَ: يُؤْخَذُ بِجَمِيعِ الدِّيَةِ.

وَقَالَ الشَّافِعِيُّ فِي أَحَدِ قَوْلَيْهِ - وَبِهِ يَقُولُ أَبُو ثَوْرٍ، وَأَحْمَدُ، وَإِسْحَاقُ: لَا عَفْوَ لَهُ فِي الْعَمْدِ.

L38124 Al-Shāfiʿī stated in one of his two opinions—a position held by Abū Thawr, Aḥmad, and Isḥāq—that there is no pardon for him in intentional acts.

قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَنَظَرْنَا فِي ذَلِكَ، لِنَعْلَمَ الْحَقَّ فَنَتْبَعَهُ، فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] ، وَقَالَ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] ، وَقَالَ تَعَالَى {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] الْآيَةَ.

L38125–38126 Abu Muhammad said: When they differed (as we mentioned) and we examined the matter to know the truth so that we may thereby follow it, we found them saying: Allah the Exalted said, “And for wounds there is retaliation in kind. So whoever forgoes it, it becomes an expiation for him” (Al-Mā’idah 5:45). He also said, “The recompense of an evil is an evil like it. But whoever pardons and makes reconciliation, his reward lies with Allah” (Ash-Shūrā 42:40). He also said, “If you decide to punish, then punish with the like of what you were afflicted with” (An-Naḥl 16:126), the verse.[8]

وَذَكَرُوا مَا حَدَّثَنَا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بِشْرٍ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ «أَنَّ عُرْوَةَ بْنَ مَسْعُودٍ الثَّقَفِيَّ دَعَا قَوْمَهُ إِلَى اللَّهِ وَرَسُولِهِ فَرَمَاهُ رَجُلٌ مِنْهُمْ بِسَهْمٍ فَمَاتَ فَعَفَا عَنْهُ فَرُفِعَ ذَلِكَ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَجَازَ عَفْوَهُ، وَقَالَ: هُوَ كَصَاحِبِ يَاسِينَ» .

L38127 They mentioned what Hammam narrated to us from Abdullah ibn Muhammad ibn Ali al-Baji, from Abdullah ibn Yunus, from Baqi ibn Makhlad, from Abu Bakr ibn Abi Shaybah, from Muhammad ibn Bishr, from Sa’id ibn Abi Arubah, from Qatadah, “Urwah ibn Mas’ud al-Thaqafi called his people to Allah and His Messenger, and a man among them shot him with an arrow, so he died. He forgave him, and this matter was raised to the Messenger of Allah (peace be upon him), who validated his pardon and said, ’He is like the companion of Ya-Sin.’”

نا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ نا عِمْرَانُ بْنُ ظَبْيَانَ عَنْ عَدِيِّ بْنِ ثَابِتٍ قَالَ: قَالَ رَجُلٌ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: سَمِعْتُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «مَنْ تَصَدَّقَ بِدَمٍ فَمَا دُونَهُ كَانَ كَفَّارَةً لَهُ مِنْ يَوْمِ وُلِدَ إِلَى يَوْمِ تَصَدَّقَ بِهِ» .

L38128 Yahya ibn ʿAbd al-Raḥmān ibn Masʿūd narrated: Aḥmad ibn Duhaym narrated: Ibrāhīm ibn Ḥammād narrated: Ismāʿīl ibn Isḥāq narrated: ʿAlī ibn ʿAbd Allāh narrated: ʿImrān ibn Ẓabyān narrated from ʿAdī ibn Thābit, who said: A man from the companions of the Messenger of Allah—peace be upon him—said: I heard the Prophet—peace be upon him—say: “Whoever gives charity with blood (i.e., a sacrifice) or less than that, it will atone for his sins from the day he was born until the day he performed this act of charity.”

قَالَ عَلِيٌّ: وَقَالُوا: هَذَا حُكْمُ ابْنِ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ - وَقَالُوا: هَذَا هُوَ الْمَجْنِيُّ عَلَيْهِ فَهُوَ أَوْلَى بِنَفْسِهِ.

L38129 Ali said: They said, “This is the ruling of Ibn Umar in the presence of the Companions—may Allah be pleased with them—and no dissenter from among them is known.” They said, “This is the victim, so he has the foremost right regarding himself.”

[8] **Qur’an references (L38126):** Qur’an 5:45 (Al-Ma’idah); Qur’an 42:40 (Ash-Shuraa); Qur’an 16:126 (An-Nahl).

L38130 So, is this all they have presented on the matter? We then examined what they cited as evidence and found it contains no proof for them in any of it whatsoever.

L38131–38133 As for the statement of Allah, the Exalted: {But whoever forgoes it as charity, it will be an expiation for him} [Al-Ma'idah: 45], He, the Exalted, said this after His statement {And the eye for the eye} [Al-Ma'idah: 45] up to His words {it will be an expiation for him} [Al-Ma'idah: 45]. This entire passage is a new passage following the completion of His, the Exalted's, statement {And We ordained for them therein that a life is for a life} [Al-Ma'idah: 45]. Thus, the definitive text of Allah, the Exalted, establishes charity in lieu of retaliation for wounds and limbs. Similarly, we say: The victim has the right to give in charity the blood money he is entitled to in such cases, thereby nullifying retribution entirely. This verse does not contain a ruling regarding giving blood money as charity for the soul, for "a soul for a soul" — this ruling is only in the Torah as stated in the text of the verse.[9]

L38134 That is not an address to us. Rather, we are addressed by what follows it when all of that is recited specifically in the nominative case. If it is recited in the accusative case, then it is not an address to us. Both Recitations are true as originating from Allah, the Exalted. Therefore, their reliance on this verse is rendered invalid.

L38135 As for the statement of Allah the Exalted: _"And the recompense of an evil deed is an evil like it, but whoever pardons and reforms, his reward rests with Allah"_ [Ash-Shūrā 42:40], and His statement the Exalted: _"If you decide to punish, then punish with the equivalent of what you were punished with"_ [An-Naḥl 16:126] — these verses, by their explicit wording, clearly indicate that they pertain only to offenses not involving loss of life. This is because the one addressed in them—who is commanded to punish with the equivalent of what he was punished with—is the one who was personally

[9] **Qur'an references (L38131):** Qur'an 5:45 (Al-Ma'idah).

فَهَذَا كُلُّ مَا أَوْرَدُوهُ فِي ذَلِكَ؟ فَنَظَرْنَا فِي الَّذِي احْتَجُّوا بِهِ، فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ أَصْلًا.

أَمَّا قَوْلُ اللَّهِ تَعَالَى: {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] فَإِنَّمَا قَالَ تَعَالَى ذَلِكَ عَقِبَ قَوْله تَعَالَى {وَالْعَيْنَ بِالْعَيْنِ} [المائدة: ٤٥] إلَى قَوْله تَعَالَى {فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] ، وَهَذَا كُلُّهُ كَلَامٌ مُبْتَدَأٌ بَعْدَ تَمَامِ قَوْله تَعَالَى {وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ} [المائدة: ٤٥] فَإِنَّمَا جَاءَ نَصُّ اللَّهِ تَعَالَى عَلَى الصَّدَقَةِ بِالْجُرُوحِ بِالْأَعْضَاءِ وَهَكَذَا نَقُولُ: إنَّ لِلْمَجْنِيِّ عَلَيْهِ أَنْ يَتَصَدَّقَ بِمَا أُصِيبَ بِهِ مِنْ ذَلِكَ، فَيَبْطُلُ الْقَوَدُ جُمْلَةً فِي ذَلِكَ، وَلَيْسَ فِي هَذِهِ الْآيَةِ حُكْمُ الصَّدَقَةِ بِالدَّمِ فِي النَّفْسِ، لِأَنَّ النَّفْسَ بِالنَّفْسِ، إنَّمَا هُوَ فِي التَّوْرَاةِ بِنَصِّ الْآيَةِ.

وَلَيْسَ ذَلِكَ خِطَابًا لَنَا، وَإِنَّمَا خُوطِبْنَا بِمَا بَعْدَهُ إذَا قُرِئَ كُلُّ ذَلِكَ بِالرَّفْعِ خَاصَّةً، فَإِذَا قُرِئَ بِالنَّصْبِ فَلَيْسَ خِطَابًا لَنَا، وَكِلَا الْقِرَاءَتَيْنِ حَقٌّ مِنْ عِنْدِ اللَّهِ تَعَالَى - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ.

وَأَمَّا قَوْله تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] وقَوْله تَعَالَى {وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ} [النحل: ١٢٦] الْآيَةَ، فَهِيَ بِنَصِّهَا بَيَانٌ جَلِيٌّ بِأَنَّهَا إنَّمَا هِيَ فِيمَا دُونَ النَّفْسِ، لِأَنَّ الْمُخَاطَبَ فِيهَا بِأَنْ يُعَاقِبَ بِمِثْلِ مَا عُوقِبَ بِهِ، هُوَ الَّذِي عُوقِبَ نَفْسُهُ - هَذَا هُوَ ظَاهِرُ الْآيَةِ الَّذِي لَا يَحِلُّ صَرْفُهَا عَنْهُ بِالدَّعْوَى، وَهَكَذَا نَقُولُ.

subjected to punishment. This is the apparent meaning of the verse, which it is impermissible to divert from by mere claim. This is our position.[10]

وَلَيْسَ فِيهَا جَوَازُ الْعَفْوِ عَنْ النَّفْسِ أَصْلًا، وَإِنَّمَا فِيهَا جَوَازُ الصَّبْرِ عَنْ أَنْ يُعَاقِبَ بِمِثْلِ مَا عُوقِبَ بِهِ فَقَطْ.

L38136 It does not permit self-forgiveness whatsoever. Rather, it only permits restraining oneself from retaliating in kind for the harm one has endured.

وَأَمَّا قَوْله تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] إلَى قَوْلِهِ {فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] فَهُوَ عُمُومٌ يَدْخُلُ فِيهِ الْعَفْوُ عَنْ النَّفْسِ وَمَا دُونَهَا وَعَفْوُ الْوَلِيِّ أَيْضًا دَاخِلٌ فِيهَا فَإِنْ وَجَدْنَا مِنْهَا دَلِيلًا يَخُصُّ مِنْهَا مَا ذَكَرُوهُ وَجَبَ الْمَصِيرُ إلَيْهِ، وَإِلَّا فَقَدْ صَحَّ قَوْلُهُمْ.

L38137 As for the words of Allah Almighty: {The recompense of an evil is an evil like it} [42:40] up to His statement {then his reward is with Allah} [42:40], this constitutes a general principle encompassing pardoning wrongs against oneself and lesser offenses. The legal guardian's pardon is also included within it. If we find evidence specifying from this general principle what they have mentioned, it becomes obligatory to adhere to it; otherwise, their opinion is sound.[11]

وَأَمَّا حَدِيثُ عُرْوَةَ بْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّمَا قَامَ بِدَعْوَةِ قَوْمِهِ إلَى الْإِسْلَامِ وَهُمْ كُفَّارٌ حَرْبِيُّونَ قَدْ حَارَبَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَجَعَ عَنْهُمْ - وَهُمْ أَطْغَى مَا كَانُوا - فَتَوَجَّهَ إلَيْهِمْ عُرْوَةُ دَاعِيًا إلَى الْإِسْلَامِ كَمَا فِي نَصِّ الْحَدِيثِ الْمَذْكُورِ - فَرَمَوْهُ فَقَتَلُوهُ - وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّهُ لَا قَوَدَ عَلَى قَاتِلِهِ إذَا أَسْلَمَ وَلَا دِيَةَ، فَأَيُّ مَعْنًى لِلْعَفْوِ هَاهُنَا؟ وَهَكَذَا شَبَّهَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِصَاحِبِ يَاسِينَ فَبَطَلَ أَنْ يَكُونَ لَهُمْ مُتَعَلَّقٌ بِهِ أَصْلًا وَإِنَّمَا هِيَ تَمْوِيهَاتٌ يُرْسِلُونَهَا لَا يُفَكِّرُونَ فِي الْمَخْرَجِ مِنْهَا يَوْمَ الْمَوْقِفِ بَيْنَ يَدَيْ اللَّهِ تَعَالَى.

L38138 As for the narration of Urwah ibn Mas'ud—may Allah be pleased with him—he undertook calling his people to Islam while they were belligerent disbelievers whom the Prophet—peace and blessings be upon him—had fought and withdrawn from, while they were at the height of their transgression. Urwah went to them inviting them to Islam as in the text of the hadith, but they threw at him and killed him. There is no disagreement among any in the Ummah that neither retribution nor blood money applies to his killer if he embraces Islam. What meaning does pardon have here? Similarly, the Prophet—peace and blessings be upon him—likened him to the companion mentioned in Surah Yasin, thus invalidating any basis for them to rely on it at all. These are merely deceptions they propagate without reflecting on how they will escape them on the Day they stand before Allah the Exalted.

وَأَمَّا حَدِيثُ عَدِيِّ بْنِ ثَابِتٍ - فَعَهْدُنَا بِإِسْمَاعِيلَ يَرُدُّ الْمُسْنَدَ الصَّحِيحَ عَنْ عَدِيِّ بْنِ ثَابِتٍ إذَا خَالَفَ رَأْيُهُ فِيمَنْ سَمِعَ الْأَذَانَ فَارِغًا صَحِيحًا فَلَمْ يُجِبْ فَلَا صَلَاةَ لَهُ إلَّا مِنْ عُذْرٍ، وَيُوهِنُ رِوَايَتَهُ بِأَنَّهُ مُنْكَرُ الْحَدِيثِ، وَمَنْ أَيْقَنَ أَنَّهُ مَسْئُولٌ عَنْ كَلَامِهِ، لَا سِيَّمَا فِي الدِّينِ وَيُفَكِّرُ فِي قَوْله تَعَالَى {مَا يَلْفِظُ مِنْ قَوْلٍ إلا لَدَيْهِ رَقِيبٌ عَتِيدٌ} [ق: ١٨]

L38139–38140 As for the ḥadīth of ʿAdī ibn Thābit—our understanding of Ismāʿīl's stance is that he rejects the rigorously authenticated report from ʿAdī ibn Thābit when it contradicts his view regarding one who hears the call to prayer while free and healthy yet fails to respond: their prayer is invalid unless excused. He weakens its narration by deeming it a discredited ḥadīth. Whoever is certain

[10] **Qur'an references (L38135):** Qur'an 42:40 (Ash-Shuraa); Qur'an 16:126 (An-Nahl).
[11] **Qur'an references (L38137):** Qur'an 42:40 (Ash-Shuraa).

they will be accountable for their speech—particularly in matters of religion—and contemplates Allah's words, {Not a word does he utter without a vigilant observer present, prepared [to record]} [50:18], would never dare such audacity. To those familiar with their statements, this immediate disgrace is nearer—and praise be to Allah for what He has granted of submission to the truth—and abandoning partisan zeal for opinions that neither benefit us before Allah, nor the opinions themselves, nor those who uphold them.[12]

لَمْ يَجْتَرِئْ عَلَى مِثْلِ هَذَا، وَأَقْرَبُ مِنْ هَذِهِ الْفَضِيحَةِ الْعَاجِلَةِ عِنْدَ مَنْ طَالَعَ أَقْوَالَهُمْ - وَالْحَمْدُ لِلَّهِ عَلَى مَا مَنَّ بِهِ مِنَ الْإِذْعَانِ لِلْحَقِّ - وَتَرْكِ الْعَصَبِيَّةِ لِلْأَقْوَالِ الَّتِي لَا تُغْنِي عَنَّا مِنَ اللَّهِ شَيْئًا، لَا هِيَ، وَلَا الْقَائِلُ بِهَا.

L38141 Then we return to the aforementioned hadith and say (and divine enablement is from Allah, the Exalted): Indeed, there are defects in it that preclude citing it as proof.

ثُمَّ نَرْجِعُ إِلَى الْحَدِيثِ الْمَذْكُورِ فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -: إِنَّ فِيهِ عِلَلًا تَمْنَعُ مِنَ الِاحْتِجَاجِ بِهِ:

L38142 One [reason] is that the narration comes from ʿImrān ibn Ẓabyān—who is not recognized as reliable. Aḥmad said: "He is subject to scrutiny."

أَحَدُهَا: أَنَّهُ مِنْ رِوَايَةِ عِمْرَانَ بْنِ ظَبْيَانَ - وَلَيْسَ مَعْرُوفَ الْعَدَالَةِ - قَالَ أَحْمَدُ: فِيهِ نَظَرٌ.

L38143 Secondly, the chain is broken because ʿAdī ibn Thābit did not mention hearing it from the Companion.

وَالثَّانِي: أَنَّهُ مُنْقَطِعٌ لِأَنَّ عَدِيَّ بْنَ ثَابِتٍ لَمْ يَذْكُرْ سَمَاعَهُ إِيَّاهُ مِنَ الصَّاحِبِ.

L38144 And the third is that we do not know whether that companion's companionship was valid or not.

وَالثَّالِثُ: أَنَّنَا لَا نَدْرِي ذَلِكَ الصَّاحِبَ أَصَحَّتْ صُحْبَتُهُ أَمْ لَا؟

L38145 Fourthly: If it were valid, it would be treated as a general principle, as we stated concerning the words of the Almighty: {The recompense of an evil deed is an evil deed like it, but whoever pardons and reconciles, his reward lies with Allah} [Ash-Shura: 40]. If evidence is found that specifies this generality, it takes precedence; otherwise, it is obligatory to apply both in their general sense - and success comes only through Allah, the Exalted.[13]

وَالرَّابِعُ: أَنَّهُ لَوْ صَحَّ لَكَانَ عُمُومًا كَمَا قُلْنَا فِي قَوْلِهِ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] ، فَإِنْ وُجِدَ دَلِيلٌ يَخُصُّ مِنْ هَذَا الْعُمُومِ لَهُ وَإِلَّا فَوَاجِبٌ حَمْلُهُمَا عَلَى عُمُومِهِمَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38146 As for their claim—that this was Ibn Umar's view in the presence of the Companions, may Allah be pleased with them—they have no argument for this, for several reasons:

وَأَمَّا قَوْلُهُمْ - أَنَّهُ قَوْلُ ابْنِ عُمَرَ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ لَهُمْ فِي هَذَا، لِوُجُوهٍ:

L38147 The first is that we have mentioned matters in which they opposed the majority of the Companions—among whom no dissenter is known—if it did not conform to their opinions. The closest example is the ruling of ʿUmar ibn al-Khaṭṭāb and Ibn ʿAbbās (may Allah be pleased with them) concerning the

أَوَّلُهَا: أَنَّنَا قَدْ ذَكَرْنَا مَا خَالَفُوا فِيهِ جُمْهُورَ الصَّحَابَةِ الَّذِينَ لَا يُعْرَفُ لَهُ مِنْهُمْ مُخَالِفٌ إِذَا لَمْ يُوَافِقْ آرَاءَهُمْ، أَقْرَبُ ذَلِكَ حُكْمُ عُمَرَ بْنِ الْخَطَّابِ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ - فِي الْيَدِ الشَّلَّاءِ تُقْطَعُ، وَالسِّنِّ السَّوْدَاءِ تُكْسَرُ، بِثُلُثِ دِيَةٍ.

[12] **Qur'an references (L38140):** Qur'an 50:18 (Qaf).

[13] **Qur'an references (L38145):** Qur'an 42:40 (Ash-Shuraa).

amputation of a withered hand and the breaking of a black tooth, entailing a third of the diyah (blood-money).

L38148 When a Companion's statement aligns with their desires, they treat it as incontrovertible proof that cannot be opposed. But when it contradicts their desires and blind imitation, they dismiss it as no proof at all, deeming its contradiction permissible. And this is a judgment whose proponent has no claim to piety or moral integrity.

L38149–38150 The second is that it is narrated from Ashʿath ibn Sawwār, and he is weak.

L38151 The third [issue] is that the chain is also disconnected—because it is narrated through Abū Bakr ibn Ḥafṣ, who did not contemporize with Ibn ʿUmar.

L38152 The fourth is that the matter was not as such—this being a well-known incident concerning him. Rather, conflict and fighting had arisen among the sons of al-Jahm ibn Ḥudhayfah al-ʿAdawī, leading households of Banū ʿAdī to take sides among them. The aforementioned youth—who was Zayd ibn ʿUmar ibn al-Khaṭṭāb, his mother being Umm Kulthūm bint ʿAlī ibn Abī Ṭālib (may Allah be pleased with them all)—came at night while fighting had broken out between them in the darkness. A stone struck him, with none knowing its thrower. It was conjectured that Khālid ibn Aslam—brother of Zayd ibn Aslam, the freed slave of ʿUmar ibn al-Khaṭṭāb—was the one who struck him, though he did not recognize whom he was striking in the darkness. His brother Ibn ʿUmar said to him as he lay dying: "Fear Allah, O Zayd! You do not know who struck you, for it occurred in darkness and chaos." Such was the account of his case.

L38153 As for their statement, "Indeed, he is the one against whom the crime was committed, so he has the foremost right over himself"—this is a feeble obfuscation. For the criminal act against him, over which he has priority, pertains only to what he has jurisdiction over after it has befallen him. This is valid, but only applies if he survives it, so he may choose what he is entitled to choose. However, after his death—since, in our view, he ceases to exist—he has no choice regarding a criminal act that has not yet occurred.

فَقَوْلُ الصَّاحِبِ إِذَا وَافَقَ أَهْوَاءَهُمْ كَانَ عِنْدَهُمْ حُجَّةً لَا يَحِلُّ خِلَافُهَا وَإِذَا خَالَفَ أَهْوَاءَهُمْ وَتَقْلِيدَهُمْ لَمْ يَكُنْ عِنْدَهُمْ حُجَّةً وَحَلَّ خِلَافُهُ - وَهَذَا حُكْمٌ لَا طَرِيقَ لِلتَّقْوَى وَلَا لِلْحَيَاءِ إِلَى قَائِلِهِ.

وَثَانِيهَا: أَنَّهُ عَنْ أَشْعَثَ بْنِ سَوَّارٍ، وَهُوَ ضَعِيفٌ.

وَثَالِثُهَا: أَنَّهُ مُنْقَطِعٌ أَيْضًا - لِأَنَّهُ عَنْ أَبِي بَكْرِ بْنِ حَفْصٍ وَلَمْ يُدْرِكْ ابْنَ عُمَرَ.

وَرَابِعُهَا: أَنَّ الْأَمْرَ لَمْ يَكُنْ كَذَلِكَ وَهِيَ قِصَّةٌ مَشْهُورَةٌ لَهُ وَإِنَّمَا كَانَ بَيْنَ أَوْلَادِ الْجَهْمِ بْنِ حُذَيْفَةَ الْعَدَوِيِّ شَرٌّ وَمُقَاتَلَةٌ فَتَعَصَّبَتْ بُيُوتَاتُ بَنِي عَدِيٍّ بَيْنَهُمْ فَأَتَى الْغُلَامُ الْمَذْكُورُ لَيْلًا وَالضَّرْبُ قَدْ وَقَعَ بَيْنَهُمْ فِي الظَّلَامِ - وَهَذَا الْغُلَامُ هُوَ زَيْدُ بْنُ عُمَرَ بْنِ الْخَطَّابِ - وَأُمُّهُ أُمُّ كُلْثُومٍ بِنْتُ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُمْ - فَأَصَابَهُ حَجَرٌ لَا يُدْرَى مَنْ رَمَاهُ وَقَدْ قِيلَ - ظَنًّا -: إِنَّ خَالِدَ بْنَ أَسْلَمَ أَخَا زَيْدِ بْنِ أَسْلَمَ مَوْلَى عُمَرَ بْنِ الْخَطَّابِ هُوَ الَّذِي ضَرَبَهُ - وَهُوَ لَا يَعْرِفُ مَنْ هُوَ فِي الظُّلْمَةِ - وَكَانَ ابْنُ عُمَرَ أَخُوهُ يَقُولُ لَهُ عِنْدَ الْمَوْتِ: اتَّقِ اللَّهَ يَا زَيْدُ فَإِنَّك لَا تَعْرِفُ مَنْ أَصَابَك، فَإِنَّك كُنْت فِي ظُلْمَةٍ وَاخْتِلَاطٍ - فَهَكَذَا كَانَتْ قِصَّتُهُ.

وَأَمَّا قَوْلُهُمْ: إنَّهُ هُوَ الْمَجْنِيُّ عَلَيْهِ فَهُوَ أَوْلَى بِنَفْسِهِ: فَتَمْوِيهٌ ضَعِيفٌ - لِأَنَّ الْجِنَايَةَ عَلَيْهِ الَّتِي هُوَ أَوْلَى بِهَا إنَّمَا هِيَ مَا كَانَ حَاكِمًا فِيهَا بَعْدَ حُلُولِهَا بِهِ، وَهَذَا حَقٌّ، وَإِنَّمَا ذَلِكَ فِيمَا عَاشَ بَعْدَهَا، فَاخْتَارَ مَا لَهُ أَنْ يَخْتَارَ، وَأَمَّا بَعْدَ مَوْتِهِ فَهُوَ غَيْرُ مَوْجُودٍ عِنْدَنَا بَعْدَ الْمَوْتِ، وَلَا خِيَارَ لَهُ فِي جِنَايَةٍ لَمْ تَحْدُثْ بَعْدُ.

L38154 Abu Muhammad said: When no basis remained for them except the Exalted's statement regarding accidental killing: "The recompense of an evil deed is an equivalent evil" [Ash-Shura 42:40], and whoever forgoes retaliation for bloodshed, we consider that matter.[14]

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا لَمْ يَبْقَ لَهُمْ مُتَعَلَّقٌ إِلَّا قَوْله تَعَالَى فِي قَتْلِ الْخَطَأِ {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] وَمَنْ تَصَدَّقَ بِدَمٍ نَظَرْنَا فِي ذَلِكَ.

L38155 We found the words of the Exalted concerning accidental killing: {And whoever kills a believer by mistake must free a believing slave} [An-Nisa': 92] as far as His statement {and blood money to be paid to his family} [An-Nisa': 92].[15]

فَوَجَدْنَا قَوْله تَعَالَى فِي قَتْلِ الْخَطَأِ {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ} [النساء: ٩٢] إلَى قَوْله تَعَالَى {وَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ} [النساء: ٩٢]

L38156–38158 We find Him, Exalted be He, stating regarding intentional killing: {And whoever is slain unjustly - We have granted his guardian authority} [Al-Isrā': 33] up to His statement, Exalted be He: {Indeed, he shall be avenged} [Al-Isrā': 33]. There is no killing except intentional or accidental. Thus, it is established that the blood money for accidental killing is an obligation to be delivered to the perpetrator's family. Since this is the case, it is forbidden for the slain person's guardian to nullify its delivery except to those whom Allah, Exalted be He, has ordained it to be delivered. It is also forbidden for anyone to enforce the guardian's ruling in nullifying the delivery of blood money to the perpetrator's family. This is a clear explanation without ambiguity. It is established by the explicit text of Allah's speech and His irrevocable decree that Allah, Exalted be He, has granted the guardian of the slain person authority, has entrusted him with the right to retribution, and has forbidden him from excess. Thus, it is undeniably false that... It is permissible for the slain to have a ruling concerning the nullification of the authority God Almighty granted to his guardian. Enforcing the slain's judgment contrary to God's command is sheer falsehood—this is the injustice and sin stemming from the testamentary bequest.[16]

وَوَجَدْنَاهُ تَعَالَى يَقُولُ فِي قَتْلِ الْعَمْدِ {وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَلِيِّهِ سُلْطَانًا} [الإسراء: ٣٣] إلَى قَوْله تَعَالَى {إِنَّهُ كَانَ مَنْصُورًا} [الإسراء: ٣٣] وَلَا قَتْلَ إلَّا عَمْدٌ أَوْ خَطَأٌ. فَصَحَّ أَنَّ الدِّيَةَ فِي الْخَطَأِ فَرْضٌ أَنْ تُسَلَّمَ إلَى أَهْلِهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَحَرَامٌ عَلَى الْمَقْتُولِ أَنْ يُبْطِلَ تَسْلِيمَهَا إلَّا مَنْ أَمَرَ اللَّهُ تَعَالَى بِتَسْلِيمِهَا إلَيْهِمْ، وَحَرَامٌ عَلَى كُلِّ أَحَدٍ أَنْ يُنَفِّذَ حُكْمَ الْمَقْتُولِ فِي إبْطَالِ تَسْلِيمِ الدِّيَةِ إلَى أَهْلِهِ - فَهَذَا بَيَانٌ لَا إشْكَالَ فِيهِ. وَصَحَّ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى وَحُكْمِهِ الَّذِي لَا يُرَدُّ أَنَّ اللَّهَ تَعَالَى جَعَلَ لِوَلِيِّ الْمَقْتُولِ - سُلْطَانًا، وَجَعَلَ إلَيْهِ الْقَوَدَ، وَحَرَّمَ عَلَيْهِ أَنْ يُسْرِفَ، فَمِنْ الْبَاطِلِ الْمُتَيَقَّنِ أَنْ يَجُوزَ لِلْمَقْتُولِ حُكْمٌ فِي إبْطَالِ السُّلْطَانِ الَّذِي جَعَلَهُ اللَّهُ تَعَالَى لِوَلِيِّهِ، وَمِنْ الْبَاطِلِ الْبَحْتِ إنْفَاذُ حُكْمِ الْمَقْتُولِ فِي خِلَافِ أَمْرِ اللَّهِ تَعَالَى، وَهَذَا هُوَ الْحَيْفُ وَالْإِثْمُ مِنْ الْوَصِيَّةِ.

L38159 In the same manner, Allah the Exalted has ordained through the words of His Messenger—may Allah's blessings and peace be upon him—that the family of the slain are given the choice between retribution, blood money, or ransom. We testify by Allah's witness, conveyed through His Messenger's words—

وَكَذَلِكَ جَعَلَ اللَّهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَهْلِ الْمَقْتُولِ الْخِيَارَ فِي الْقَوَدِ، أَوْ الدِّيَةِ، أَوْ الْمُفَادَاةِ، فَنَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ لَا يَحِلُّ لِلْمَقْتُولِ أَنْ يُبْطِلَ خِيَارًا جَعَلَهُ اللَّهُ وَرَسُولُهُ - عَلَيْهِ

[14] **Qur'an references (L38154):** Qur'an 42:40 (Ash-Shuraa).
[15] **Qur'an references (L38155):** Qur'an 4:92 (An-Nisa).
[16] **Qur'an references (L38156):** Qur'an 17:33 (Al-Isra).

may Allah's blessings and peace be upon him—that it is not permissible for the slain to invalidate a choice granted by Allah and His Messenger—may Allah's blessings and peace be upon him—to his family after his death, nor is it permissible for anyone to enforce the slain's legal ruling in this matter, and that this is a certain error in the sight of Allah the Exalted.

الصَّلَاةُ وَالسَّلَامُ - لِأَهْلِهِ بَعْدَ مَوْتِهِ، وَأَنَّهُ لَا يَحِلُّ لِأَحَدٍ إنْفَاذُ حُكْمِ الْمَقْتُولِ فِي ذَلِكَ، وَأَنَّ هَذَا خَطَأٌ مُتَيَقَّنٌ عِنْدَ اللَّهِ تَعَالَى.

L38160 Thus, it was certain that the slain's pardon regarding blood money—which Allah the Exalted designated for his family after him, not for himself—was invalid. Allah the Exalted said, "And no soul bears [sin] except against itself" (6:164). Therefore, the slain's pardon concerning blood money, which Allah the Exalted obligated to deliver to his family, or concerning retribution for blood or financial compensation—matters over which He granted his family after him the choice—constitutes a burden upon his family. This is invalid by the explicit text of the Quran.[17]

فَكَانَ بِيَقِينٍ عَفْوُ الْمَقْتُولِ عَنْ دِيَةٍ جَعَلَهَا اللَّهُ تَعَالَى لِأَهْلِهِ بَعْدَهُ لَا لَهُ، قَالَ اللَّهُ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] ، فَكَانَ عَفْوُ الْمَقْتُولِ عَنْ دِيَةٍ أَوْجَبَ اللَّهُ تَعَالَى تَسْلِيمَهَا إلَى أَهْلِهِ، وَعَنْ دَمٍ، أَوْ مَالٍ، خَيَّرَ اللَّهُ تَعَالَى فِيهِمَا أَهْلَهُ بَعْدَهُ: كَسْبًا عَلَى أَهْلِهِ - وَهَذَا بَاطِلٌ بِنَصِّ الْقُرْآنِ.

L38161 Similarly, the Messenger of Allah—may Allah bless him and grant him peace—said, "Verily, your blood and your wealth are forbidden upon you." The blood money is only by the explicit text of the Quran and the words of the Messenger of Allah—may Allah bless him and grant him peace—for the family of the slain. Therefore, it is forbidden for the slain to dispose of any part of that, for it is the property of his family.

وَكَذَلِكَ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» وَالدِّيَةُ إنَّمَا هِيَ، بِنَصِّ الْقُرْآنِ، وَكَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَهْلِ الْمَقْتُولِ، فَحَرَامٌ عَلَى الْمَقْتُولِ التَّصَرُّفُ فِي، شَيْءٍ مِنْ ذَلِكَ، لِأَنَّهَا مَالُ أَهْلِهِ.

L38162 Abu Muhammad said: No text has ever come from Allah, the Exalted, nor from His Messenger (peace be upon him) stating that the slain person possesses the right to demand retaliation for himself, nor that he has the choice between monetary compensation or retaliation, nor that obligatory monetary compensation is due to him.

قَالَ أَبُو مُحَمَّد: وَلَمْ يَأْتِ قَطُّ نَصٌّ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّ لِلْمَقْتُولِ سُلْطَانًا فِي الْقَوَدِ فِي نَفْسِهِ، وَلَا أَنَّ لَهُ خِيَارًا فِي دِيَةٍ، أَوْ قَوَدٍ، وَلَا أَنَّ لَهُ دِيَةً وَاجِبَةً.

L38163 Thus, he is thereby barred from having any right, opinion, oversight, or authority in anything pertaining to that.

فَبَطَلَ أَنْ يَكُونَ لَهُ فِي شَيْءٍ مِنْ ذَلِكَ حَقٌّ، أَوْ رَأْيٌ، أَوْ نَظَرٌ، أَوْ أَمْرٌ.

L38164 Since that is undeniably the case, the statement of the Exalted - "The recompense for an evil deed is an evil deed like it; but whoever pardons and reforms, his reward lies with Allah" [42:40] - applies only to offenses committed against a person in matters less than life, and to cases where those whom Allah the Exalted and His Messenger (peace and blessings be upon

فَإِذْ ذَلِكَ كَذَلِكَ بِلَا شَكٍّ فَقَوْلُهُ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] إنَّمَا هُوَ فِيمَا جُنِيَ عَلَيْهِ فِيمَا دُونَ النَّفْسِ، وَفِيمَا عَفَا عَنْهُ

[17] **Qur'an references (L38160):** Qur'an 6:164 (Al-An'am).

him) have entrusted the right of pardon - namely the legal heirs - choose to forgive after the slain person's death. Similarly, the ruling would apply to the aforementioned report if it were authentic.[18]

مَنْ جَعَلَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْعَفْوَ إلَيْهِ - وَهُمْ الْأَهْلُ - بَعْدَ مَوْتِ الْمَقْتُولِ وَهَكَذَا يَكُونُ الْقَوْلُ فِي الْخَبَرِ الْمَذْكُورِ لَوْ صَحَّ.

L38165 Another proof is that blood money is a substitute for retaliation without doubt in intentional [killing] and a substitute for the life with certainty in accidental [killing]. There is no disagreement among anyone in the Ummah that as long as the victim is alive, he has no right to retaliation. Therefore, since he has no right in that matter, there can be no pardon from him, nor any authority in what he holds no right to.

وَبُرْهَانٌ آخَرُ - أَنَّ الدِّيَةَ عِوَضٌ مِنْ الْقَوَدِ بِلَا شَكٍّ فِي الْعَمْدِ وَعِوَضٌ مِنْ النَّفْسِ فِي الْخَطَأِ بِيَقِينٍ، وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ الْمَقْتُولَ مَا دَامَ حَيًّا فَلَيْسَ لَهُ حَقٌّ فِي الْقَوَدِ، فَإِذْ لَا حَقَّ لَهُ فِي ذَلِكَ، فَلَا عَفْوَ لَهُ، وَلَا أَمْرَ فِيمَا لَا حَقَّ لَهُ فِيهِ.

L38166–38167 Similarly, one whose soul has not yet departed, because blood money in cases of unintentional homicide serves as compensation thereof, nothing has yet become obligatory. Thus, he has no right to what is not yet legally binding. With certainty, every person of sound mind knows that neither retribution (qawad) nor blood money (diyah) becomes obligatory except after death. If he does not die, then neither retribution, nor blood money, nor any obligation upon the ʿāqilah has yet become due.

وَكَذَلِكَ مَنْ لَمْ تَذْهَبْ نَفْسُهُ بَعْدُ، لِأَنَّ الدِّيَةَ فِي الْخَطَأِ عِوَضٌ مِنْهَا، فَلَمْ يَجِبْ بَعْدُ شَيْءٌ، فَلَا حَقَّ لَهُ فِيمَا لَمْ يَجِبْ بَعْدُ، وَبِيَقِينٍ يَدْرِي كُلُّ ذِي عَقْلٍ أَنَّ الْقَوَدَ لَا يَجِبُ، وَلَا الدِّيَةُ، إلَّا بَعْدَ الْمَوْتِ، وَهُوَ إذَا لَمْ يَمُتْ فَلَمْ يَجِبْ لَهُ بَعْدُ عَلَى الْقَاتِلِ لَا قَوَدٌ، وَلَا دِيَةٌ، وَلَا عَلَى الْعَاقِلَةِ.

L38168 With certainty, every person of sound perception knows that no one has a right to anything not yet established as obligatory. When all such obligations take effect upon his death, the ruling at that time devolves upon the family, not him.

وَبِيَقِينٍ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّهُ لَا حَقَّ لِأَحَدٍ فِي شَيْءٍ لَمْ يَجِبْ بَعْدُ، فَإِذَا وَجَبَ كُلُّ ذَلِكَ بِمَوْتِهِ فَالْحُكْمُ حِينَئِذٍ لِلْأَهْلِ لَا لَهُ.

L38169 Abū Muḥammad said: It is invalidated that the slain person—whether killed by mistake or intentionally—could have pardon, legal ruling, or a will concerning retribution or blood money. Since this is the case, it is merely property that became the family's after his death, which they never inherited from him, as none of it was ever owed to him during his lifetime. Therefore, it is invalid to settle his debt from the heirs' property—which he never owned in his lifetime—or to carry out his will regarding it. Although this property became due to them because of his death, it is like the property of a mawlā who dies following his death: it is owed to the heirs due to the deceased's death, and it was never owed to the deceased himself. And success is with Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: فَبَطَلَ أَنْ يَكُونَ لِلْمَقْتُولِ خَطَأً، أَوْ عَمْدًا: عَفْوٌ، أَوْ حُكْمٌ، أَوْ وَصِيَّةٌ فِي الْقَوَدِ، أَوْ فِي الدِّيَةِ، فَإِذْ ذَلِكَ كَذَلِكَ فَإِنَّمَا هِيَ مَالٌ لِلْأَهْلِ حَدَثَ لَهُمْ بَعْدَ مَوْتِهِ، وَلَمْ يَرِثُوهُ قَطُّ عَنْهُ، إذْ لَمْ يَجِبْ لَهُ قَطُّ شَيْءٌ مِنْهُ فِي حَيَاتِهِ، فَمِنْ الْبَاطِلِ أَنْ يُقْضَى دَيْنُهُ مِنْ مَالِ الْوَرَثَةِ الَّذِي لَمْ يَمْلِكْهُ هُوَ قَطُّ فِي حَيَاتِهِ، وَأَنْ يُنَفَّذَ فِيهِ وَصِيَّتُهُ، وَهُوَ وَإِنْ كَانَ إنَّمَا وَجَبَ لَهُمْ مِنْ أَجْلِ مَوْتِهِ، فَهُوَ كَمَالِ مَوْلًى لَهُ مَاتَ إثْرَ مَوْتِهِ، فَوَجَبَ لِلْوَرَثَةِ مِنْ أَجْلِ الْمَيِّتِ، وَلَمْ يَجِبْ لِلْمَيِّتِ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[18] **Qur'an references (L38164):** Qur'an 42:40 (Ash-Shuraa).

L38170 Abū Muḥammad said: If the heirs or one of them forgive their share of the accidental homicide's diyah before the death of the slain person, or if they all forgive qisas before the death of the slain person, all of this is invalid. This is because nothing from that had yet become obligatory for them, as it only becomes obligatory for them upon his death. Since this is the case, their forgiveness amounts to nothing and does not bind them. The diyah is obligatory for them, or the one who forgives does so after the death of the slain person. Similarly, qisas is also obligatory for them—and this is the opinion of Abū Ḥanīfah and his companions. We find no view except that of the Mālikīs and Shāfiʿīs as well. Among the world's wonders is that they invalidate the heirs' forgiveness before qisas or diyah becomes obligatory for them—though they are undeniably the entitled claimants—yet they permit the slain person's forgiveness of something never obligatory for him during his lifetime (namely diyah and qisas), nor does it become obligatory for him after his death. This is the extent of their reasoning. And success comes only from Allah, the Most High.

قَالَ أَبُو مُحَمَّد: فَلَوْ عَفَا الْوَرَثَةُ أَوْ أَحَدُهُمْ عَنْ نَصِيبِهِ مِنْ دِيَةِ الْخَطَأِ قَبْلَ مَوْتِ الْمَقْتُولِ، أَوْ عَفَوْا كُلُّهُمْ عَنْ الْقَوَدِ قَبْلَ مَوْتِ الْمَقْتُولِ، فَهُوَ كُلُّهُ بَاطِلٌ، وَذَلِكَ لِأَنَّهُ لَمْ يَجِبْ لَهُمْ بَعْدُ شَيْءٌ مِنْ ذَلِكَ، وَإِنَّمَا يَجِبُ لَهُمْ بِمَوْتِهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَعَفْوُهُمْ لَا شَيْءَ، وَلَا يَلْزَمُهُمْ، وَالدِّيَةُ وَاجِبَةٌ لَهُمْ، أَوْ الْعَافِي بَعْدَ مَوْتِ الْمَقْتُولِ، وَكَذَلِكَ الْقَوَدُ وَاجِبٌ لَهُمْ أَيْضًا - وَهَذَا قَوْلُ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، وَمَا نَرَاهُ إلَّا قَوْلَ الْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ أَيْضًا، فَمِنْ عَجَائِبِ الدُّنْيَا أَنْ يُسْقِطُوا عَفْوَ الْوَرَثَةِ قَبْلَ أَنْ يَجِبَ لَهُمْ الْقَوَدُ أَوْ الدِّيَةُ - وَهُمْ أَهْلُ ذَلِكَ وَمُسْتَحِقُّوهُ بِلَا خِلَافٍ - ثُمَّ يُجِيزُونَ عَفْوَ الْمَقْتُولِ فِي شَيْءٍ لَمْ يَجِبْ لَهُ قَطُّ فِي حَيَاتِهِ - وَهِيَ الدِّيَةُ وَالْقَوَدُ - وَلَا يَجِبُ لَهُ أَيْضًا بَعْدَ وَفَاتِهِ - فَهَذَا مِقْدَارُ نَظَرِهِمْ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38171 Abu Muhammad said: As for one upon whom a wound, cutting off, or fracture is inflicted, and he forgives him solely for it, or forgives him and what ensues from it, then his forgiveness concerning what ensues from it is void - as we previously established - because it has not yet become legally obligatory.

قَالَ أَبُو مُحَمَّد: وَأَمَّا مَنْ جُنِيَ عَلَيْهِ جُرْحٌ، أَوْ قَطْعٌ، أَوْ كَسْرٌ، فَعَفَا عَنْهُ فَقَطْ، أَوْ عَنْهُ وَعَمَّا يَحْدُثُ عَنْهُ، فَعَفْوُهُ عَمَّا يَحْدُثُ مِنْهُ بَاطِلٌ كَمَا قَدَّمْنَا لِأَنَّهُ لَمْ يَجِبْ لَهُ بَعْدُ.

L38172–38174 As for his pardoning the harm inflicted upon him, it is permissible and binding. This is because retaliation for the fracture or compensation for the wound had become a right owed to him. If he pardons, he only relinquishes the right that had subsequently been established in his favor. If the victim dies from that injury or another limb is rendered useless as a consequence, the right to qisas (retaliation) for the additional limb belongs to him and his heirs. This is because the right to execute the perpetrator by sword—not by the same method he used to kill their slain kin—now becomes obligatory for them. The reason is that the perpetrator previously held liability for qisas regarding those injuries, but they pardoned him, thereby suspending those rights. Only the homicide itself remains unresolved. The perpetrator cannot pardon this offense, as the right to retaliation belongs solely to the

وَأَمَّا عَفْوُهُ عَمَّا جُنِيَ عَلَيْهِ فَهُوَ جَائِزٌ، وَهُوَ لَهُ لَازِمٌ، وَذَلِكَ لِأَنَّهُ قَدْ وَجَبَ لَهُ الْقَوَدُ فِي الْكَسْرِ، أَوْ الْمُفَادَاةُ فِي الْجِرَاحَةِ، فَإِنْ عَفَا فَإِنَّمَا عَفَا عَنْ حَقِّهِ الَّذِي وَجَبَ لَهُ بَعْدُ، فَإِنْ مَاتَ مِنْ ذَلِكَ أَوْ حَدَثَ عَنْهُ بُطْلَانُ عُضْوٍ آخَرَ، فَلَهُ الْقَوَدُ فِي الْعُضْوِ الْآخَرِ، لِأَنَّهُ الْآنَ وَجَبَ لَهُ وَلِأَوْلِيَائِهِ الْقَتْلُ بِالسَّيْفِ خَاصَّةً - لَا بِمِثْلِ مَا جَنَى عَلَى مَقْتُولِهِمْ - لِأَنَّ تِلْكَ الْجِنَايَاتِ كَانَ لَهُ الْقَوَدُ فِيهَا فَعَفَا عَنْهَا فَسَقَطَتْ وَبَقِيَ قَتْلُ النَّفْسِ فَقَطْ، وَلَا عَفْوَ لَهُ فِيهِ، فَهُوَ لِلْوَرَثَةِ، فَلَهُمْ قَتْلُهُ، وَإِذْ لَهُمْ قَتْلُهُ، وَبَطَلَ أَنْ يُقْتَصَّ مِنْهُ بِمِثْلِ مَا جَنَى عَلَيْهِ، فَلَا خِلَافَ فِي أَنَّ الْجِنَايَةَ لَمْ يُقَدْ مِنْهَا، فَإِنَّمَا الْقَتْلُ بِالسَّيْفِ فَقَطْ.

heirs. They may therefore execute him. Once their right to execute him is established, it becomes invalid to retaliate in the same manner he committed the crime. There is unanimous agreement that qisas remains unfulfilled for the original offense, as execution must occur exclusively by sword.

L38175 And likewise, if the victim exacted retaliation from the offender for the harm inflicted upon him and then died, the offender is to be put to death by the sword alone, because retaliation was already exacted from him for the offense, so no further retaliation shall be imposed upon him.

L38176 Ali said: If a perpetrator commits a criminal act against a person—whether it is one from which survival is possible, or impossible—and the guardian of the victim retaliates by killing the perpetrator before the victim dies, then the heirs of the slain perpetrator may kill the retaliating guardian. If the victim subsequently dies, no liability applies, for any offense where the victim survives the perpetrator incurs no liability. This is because the right to retaliation is nullified by the perpetrator's death, and the financial compensation (*diya*) becomes due during the victim's lifetime to parties other than the perpetrator—namely, the victim's heirs. Thus, it becomes part of their wealth, and the perpetrator holds no claim to it. Moreover, the perpetrator possesses no wealth at all, so his offense is invalidated. Allah the Exalted says, "No soul bears the burden of another" (Quran 6:164, al-Anʿām). And success is from Allah, the Exalted.[19]

L38177 **A legal issue: If the guardian pardons [the offender] or accepts the diyah (blood money) and then proceeds to kill them.**

L38178 2089 - Issue: The guardian pardons or takes the blood money, then kills [him]? ʿAlī said: People differed regarding this. A group said: He is to be killed - as narrated to us by ʿAbdullāh ibn Rabīʿ via Ibn Mufarrij via Qāsim ibn Aṣbagh via Ibn Waḍḍāḥ via Sahnūn via Ibn Wahb via Yūnus, who said: I asked Ibn Shihāb about a man who killed someone, then settled by paying the blood money, then killed him. He said: We hold that he should be executed

[19] **Qur'an references (L38176):** Qur'an 6:164 (Al-An'am).

وَهَكَذَا لَوْ اسْتَقَادَ الْمَجْنِيُّ عَلَيْهِ مِمَّا جَنَى عَلَيْهِ الْجَانِي ثُمَّ مَاتَ الْمَجْنِيُّ عَلَيْهِ، فَإِنَّ الْجَانِيَ يُقْتَلُ بِالسَّيْفِ فَقَطْ، لِأَنَّهُ قَدْ اُسْتُقِيدَ مِنْهُ فِي الْجِنَايَةِ فَلَا يُعْتَدَى عَلَيْهِ بِأُخْرَى.

قَالَ عَلِيٌّ: وَلَوْ أَنَّ جَانِيًا جَنَى عَلَى إنْسَانٍ جِنَايَةً قَدْ يُعَاشُ مِنْهَا، أَوْ لَا سَبِيلَ إلَى الْعَيْشِ مِنْهَا، فَقَامَ وَلِيُّ هَذَا الْمَجْنِيِّ عَلَيْهِ فَقَتَلَ الْجَانِي قَبْلَ مَوْتِ الْمَجْنِيِّ عَلَيْهِ، فَلِأَوْلِيَاءِ الْجَانِي الْمَقْتُولِ قَتْلُ قَاتِلِ وَلِيِّهِمْ، ثُمَّ إنْ مَاتَ الْجَانِي عَلَيْهِ فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّ كُلَّ جِنَايَةٍ لَمْ يَمُتْ صَاحِبُهَا حَتَّى مَاتَ الْجَانِي فَلَا شَيْءَ فِيهَا، لِأَنَّ الْقَوَدَ قَدْ بَطَلَ بِمَوْتِهِ، وَقَدْ صَارَ الْمَالُ فِي حَيَاةِ الْمَجْنِيِّ عَلَيْهِ لِغَيْرِ الْجَانِي، وَهُمْ الْوَرَثَةُ، فَهُوَ مَالٌ مِنْ مَالِهِمْ، وَلَا حَقَّ لَهُ عِنْدَهُمْ، وَلَا مَالَ لِلْجَانِي أَصْلًا، فَجِنَايَتُهُ بَاطِلٌ، قَالَ تَعَالَى {وَلا تَكْسِبُ كُلُّ نَفْسٍ إِلا عَلَيْهَا} [الأنعام: ١٦٤] ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْوَلِيُّ يَعْفُو أَوْ يَأْخُذُ الدِّيَةَ ثُمَّ يَقْتُلُ]

٢٠٨٩ - مَسْأَلَةٌ: وَالْوَلِيُّ يَعْفُو أَوْ يَأْخُذُ الدِّيَةَ ثُمَّ يَقْتُلُ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: يُقْتَلُ - كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ نا يُونُسُ قَالَ: سَأَلْت ابْنَ شِهَابٍ عَنْ رَجُلٍ قَتَلَ

in retribution while degraded, and the guardian retains the right to pardon him if he wishes.

L38179 Hammam narrated to us: Abdullah ibn Muhammad ibn Ali al-Bājiyy narrated to us: Abdullah ibn Yunus narrated to us: Baqī ibn Makhlad narrated to us: Abu Bakr ibn Abi Shaybah narrated to us: Abd al-Rahman ibn Mahdi narrated to us from al-Qasim ibn al-Fadl, from Harun, from Ikrimah regarding a man who killed after receiving the diyah (blood money). He said: "He must be executed. Have you not heard the words of the Exalted: {But whoever transgresses after that will have a painful punishment} [Al-Baqarah 2:178]."[20]

L38180–38181 A group held that the killer is not to be killed, as has been narrated to us through the mentioned chain of transmission to Abū Bakr ibn Abī Shaybah: ʿAbd al-Raḥmān ibn Mahdī narrated to us from Ḥammād ibn Salamah from Yūnus ibn ʿUbayd from al-Ḥasan regarding one who has killed after the blood money was taken. He said: "The blood money is taken from him, and the killer is not to be killed."

L38182 Abū Muḥammad said: When they differed—as we have mentioned—it became obligatory for us to examine this matter to know the truth so that we may follow it—with the aid of Allah, the Exalted, and from Him. We examined it and found that the Messenger of Allah—peace and blessings of Allah be upon him—had said: "Whoever has a slain person after this statement of mine, his family has two choices: either to take the blood money or to seek retaliation," or words to this effect.

L38183 Thus, it is established that the Messenger of Allah—peace and blessings be upon him—permitted the family only one of two options: either blood money or retaliation, and he did not allow both together. Therefore, if he is executed [in retaliation], there is no blood money for him; and if they accept the blood money, there is no retaliation against him—this is the explicit ruling of his decree—peace and blessings be upon him.

L38184 We found that when the family of the slain person pardoned [the offender]

رَجُلًا ثُمَّ صَالَحَ، فَأَدَّى الدِّيَةَ ثُمَّ قَتَلَهُ؟ قَالَ: نَرَى أَنْ يُقَادَ بِهِ صَاغِرًا، وَلِوَلِيِّهِ أَنْ يَعْفُوَ عَنْهُ إِنْ شَاءَ.

حَدَّثَنَا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ الْقَاسِمِ بْنِ الْفَضْلِ عَنْ هَارُونَ عَنْ عِكْرِمَةَ فِي رَجُلٍ قَتَلَ بَعْدَ أَخْذِ الدِّيَةِ، قَالَ: يُقْتَلُ، أَمَا سَمِعْت قَوْله تَعَالَى {فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ} [البقرة: ١٧٨] .

وَقَالَتْ طَائِفَةٌ: لَا يُقْتَلُ - كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ عَنْ حَمَّادِ بْنِ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ فِيمَنْ قَتَلَ بَعْدَ أَخْذِ الدِّيَةِ، قَالَ: تُؤْخَذُ مِنْهُ الدِّيَةُ وَلَا يُقْتَلُ.

قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى وَمِنْهُ - فَنَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ «مَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيَرَتَيْنِ إمَّا أَنْ يَأْخُذُوا الْعَقْلَ وَإِمَّا أَنْ يَقْتُلُوا» أَوْ كَلَامًا هَذَا مَعْنَاهُ.

فَصَحَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَجْعَلْ لِلْأَهْلِ إلَّا أَحَدَ الْأَمْرَيْنِ: إمَّا الدِّيَةُ، وَإِمَّا الْقَوَدُ وَلَمْ يَجْعَلْ الْأَمْرَيْنِ مَعًا، فَإِذَا قَتَلَ فَلَا دِيَةَ لَهُ، وَإِذَا أَخَذَ الدِّيَةَ فَلَا قَتْلَ لَهُ - هَذَا نَصُّ حُكْمِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ -.

[20] **Qur'an references (L38179):** Qur'an 2:178 (Al-Baqarah); Qur'an 5:94 (Al-Ma'idah).

and accepted the blood money, it became permissible for them and became their right, while their entitlement to qisas was nullified. They are not entitled to both rights simultaneously according to the textual ruling. Thus, when their right to qisas is nullified by this action, qisas becomes prohibited and blood money becomes permissible.

فَوَجَدْنَا أَهْلَ الْمَقْتُولِ لَمَّا عَفَوْا وَأَخَذُوا الدِّيَةَ حَلَّتْ لَهُمْ، وَصَارَتْ حَقَّهُمْ، وَبَطَلَ مَا كَانَ لَهُمْ مِنْ الْقَوَدِ، لَيْسَ لَهُمْ جَمِيعُ الْأَمْرَيْنِ بِالنَّصِّ، فَإِذَا بَطَلَ حَقُّهُمْ فِي الْقَوَدِ بِذَلِكَ حُرِّمَ الْقَوَدُ وَحَلَّتْ الدِّيَةُ.

L38185 And were it not that retaliation had been forbidden, blood money would not have been permissible. When retaliation is forbidden, they have killed a soul whose killing Allah, the Exalted, has forbidden. When they kill a soul whose killing is forbidden by Allah, retaliation becomes obligatory in that case, according to the statement of the Messenger of Allah (peace be upon him): "It is not lawful to shed the blood of a Muslim except for one of three: a man who apostatizes after having believed, commits adultery after being lawfully married, or kills a soul without [just] retaliation."

وَلَوْلَا أَنَّ الْقَوَدَ حُرِّمَ لَمَّا حَلَّتْ الدِّيَةُ، فَإِذَا حُرِّمَ الْقَوَدُ فَقَدْ قَتَلُوا نَفْسًا مُحَرَّمَةً حَرَّمَهَا اللَّهُ تَعَالَى، وَإِذْ قَتَلُوا نَفْسًا مُحَرَّمَةً فَالْقَوَدُ وَاجِبٌ فِي ذَلِكَ، بِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: رَجُلٌ كَفَرَ بَعْدَ إيمَانِهِ، أَوْ زَنَى بَعْدَ إحْصَانِهِ، أَوْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ» .

L38186 If it is said: "This one has killed a person in retaliation for a person?" The reply would be: "A person may not be lawfully taken for a person except where Allah the Exalted has ordained it through the tongue of His Prophet—peace and blessings of Allah be upon him. Allah has only ordained this when they choose retaliation instead of diyah. As for when they choose diyah, Allah has forbidden them that person, for He has not granted them except one of the two options."

فَإِنْ قِيلَ: هَذَا قَتَلَ نَفْسًا بِنَفْسٍ؟ قِيلَ لَهُ: لَا تَحِلُّ النَّفْسُ بِالنَّفْسِ إلَّا حَيْثُ أَحَلَّهَا اللَّهُ تَعَالَى عَلَى لِسَانِ نَبِيِّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا أَحَلَّهَا اللَّهُ تَعَالَى إذَا اخْتَارُوا ذَلِكَ دُونَ الدِّيَةِ، وَأَمَّا إذَا اخْتَارُوا الدِّيَةَ فَقَدْ حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِمْ تِلْكَ النَّفْسَ، إذْ لَمْ يَجْعَلْ لَهُمْ إلَّا أَحَدَ الْأَمْرَيْنِ.

L38187–38189 And whoever claims that legalizing what was prohibited is valid, his claim is invalid unless he brings forth... His claim thereof is based on a primary textual source or consensus, and it has been established with certainty that the blood money is permissible for them as lawful property from their own assets when they take it. It has also been established with certainty that retaliation (qisas) is thereby prohibited for them without any differing opinion, since no jurist asserts that they may claim both the blood money and retaliation simultaneously.

وَمَنْ ادَّعَى فِي ذَلِكَ شَيْئًا صَحَّ تَحْلِيلُهُ أَنَّهُ حُرِّمَ فَهُوَ مُبْطِلٌ، إلَّا أَنْ يَأْتِيَ فِي دَعْوَاهُ ذَلِكَ بِنَصٍّ، أَوْ إجْمَاعٍ، وَقَدْ صَحَّ بِيَقِينٍ كَوْنُ الدِّيَةِ لَهُمْ حَلَالًا، وَمَالًا مِنْ مَالِهِمْ إذَا أَخَذُوهَا، وَصَحَّ تَحْرِيمُ الْقَوَدِ عَلَيْهِمْ بِذَلِكَ بِلَا خِلَافٍ، إذْ لَا يَقُولُ أَحَدٌ فِي الْأَرْضِ، إنَّهُمْ يَجْمَعُونَ الْأَمْرَيْنِ مَعًا الدِّيَةَ وَالْقَوَدَ.

L38190 Since there is no doubt regarding what we have mentioned, whoever claims that the blood whose prohibition was confirmed for them has again become lawful and that the blood money they took—which became lawful for them—has now been prohibited shall not be accepted unless by Quran or Sunnah.

فَإِذْ لَا شَكَّ فِيمَا ذَكَرْنَا فَمَنْ ادَّعَى أَنَّ الدَّمَ الَّذِي قَدْ صَحَّ تَحْرِيمُهُ عَلَيْهِمْ عَادَ حَلَالًا لَهُمْ، وَأَنَّ الدِّيَةَ الَّتِي أَخَذُوا فَحَلَّتْ لَهُمْ قَدْ حُرِّمَتْ عَلَيْهِمْ، لَمْ يُصَدَّقْ إلَّا بِقُرْآنٍ أَوْ سُنَّةٍ، وَلَا سَبِيلَ لَهُمْ إلَى وُجُودِ ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

They have no means of producing such evidence, and with Allah, the Exalted, is success.

L38191 **Issue: Whether retaliation is to be enforced within the Haram?**

L38192 2090 - The Issue: Is legal retaliation enforced within the sacred precinct? ʿAlī said: "People have differed on this. A group said: Legal retaliation is not carried out within the sacred precinct." As narrated to us by Ḥammām from Ibn Mufarrij from Ibn al-Aʿrābī from al-Dabarī from ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwūs from his father from Ibn ʿAbbās, who said: "Whoever kills or steals within the sacred precinct or outside it, then enters, he is not to be sat with, spoken to, or harmed. He is to be called upon repeatedly until he exits, so that the *ḥadd* punishment may be carried out against him."

L38193 And whoever kills or steals and is apprehended in the non-sanctified area, then is brought into the sanctuary, and they intend to execute the punishment he deserves, they must remove him from the sanctuary to the non-sanctified area. And if he killed within the sanctuary or stole within the sanctuary, the punishment is carried out upon him within the sanctuary.

L38194 Ibn Abbas censured Ibn al-Zubayr regarding a man whom he seized in al-Ḥill, then brought into al-Ḥaram, later took him back to al-Ḥill, and killed him there.

L38195 And through him: To ʿAbd al-Razzāq – Ibn ʿUyaynah narrated to me from Ibrāhīm ibn Maysarah from Ṭāwūs from Ibn ʿAbbās concerning one who kills in a non-sacred area then enters the sacred precinct. He said: He is not to be sat with, nor spoken to, nor traded with, nor harmed. He is to be summoned and told: "O so-and-so, fear Allah concerning the bloodshed of so-and-so. Depart from the sacred precincts."

L38196–38198 From Yaḥyā ibn ʿAbd al-Raḥmān ibn Masʿūd, from Aḥmad ibn Duḥaym, from Ibrāhīm ibn Ḥammād, from Ismāʿīl ibn Isḥāq, from ʿAlī ibn ʿAbd Allāh ibn al-Madīnī, from Sufyān ibn ʿUyaynah, who reported to me. Ibrahim ibn Maysarah - a trustworthy and reliable narrator - said: I heard Tawus

[مَسْأَلَةٌ هَلْ يُسْتَقَادُ فِي الْحَرَمِ]

٢٠٩٠ - الْمَسْأَلَةُ: وَهَلْ يُسْتَقَادُ فِي الْحَرَمِ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا، فَقَالَتْ طَائِفَةٌ: لَا يُقَادُ فِي الْحَرَمِ: كَمَا حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ قَالَ: مَنْ قَتَلَ أَوْ سَرَقَ فِي الْحَرَمِ، أَوْ فِي الْحِلِّ، ثُمَّ دَخَلَ، فَإِنَّهُ لَا يُجَالَسُ، وَلَا يُكَلَّمُ، وَلَا يُؤْذَى، وَيُنَاشَدُ حَتَّى يَخْرُجَ فَيُقَامَ عَلَيْهِ الْحَدُّ.

وَمَنْ قَتَلَ أَوْ سَرَقَ فَأَخَذَ فِي الْحِلِّ ثُمَّ أُدْخِلَ الْحَرَمَ، فَأَرَادُوا أَنْ يُقِيمُوا عَلَيْهِ مَا أَصَابَ أَخْرَجُوهُ مِنَ الْحَرَمِ إِلَى الْحِلِّ، فَإِنْ قَتَلَ فِي الْحَرَمِ أَوْ سَرَقَ أُقِيمَ عَلَيْهِ فِي الْحَرَمِ.

وَعَابَ ابْنُ عَبَّاسٍ عَلَى ابْنِ الزُّبَيْرِ فِي رَجُلٍ أَخَذَهُ فِي الْحِلِّ ثُمَّ أَدْخَلَهُ الْحَرَمَ ثُمَّ أَخْرَجَهُ إِلَى الْحِلِّ فَقَتَلَهُ.

وَبِهِ: إِلَى عَبْدِ الرَّزَّاقِ حَدَّثَنِي ابْنُ عُيَيْنَةَ عَنْ إِبْرَاهِيمَ بْنِ مَيْسَرَةَ عَنْ طَاوُسٍ عَنِ ابْنِ عَبَّاسٍ فِيمَنْ قَتَلَ فِي الْحِلِّ ثُمَّ أُدْخِلَ الْحَرَمَ، قَالَ: لَا يُجَالَسُ، وَلَا يُكَلَّمُ، وَلَا يُبَايَعُ، وَلَا يُؤْذَى - يُؤْتَى إِلَيْهِ فَيُقَالُ: يَا فُلَانُ اتَّقِ اللَّهَ فِي دَمِ فُلَانٍ اُخْرُجْ مِنَ الْمَحَارِمِ.

نا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ اللَّهِ بْنِ الْمَدِينِيِّ نا سُفْيَانُ بْنُ عُيَيْنَةَ أَخْبَرَنِي إِبْرَاهِيمُ بْنُ مَيْسَرَةَ -

وَكَانَ ثِقَةً مَأْمُونًا - قَالَ: سَمِعْت طَاوُسًا يَقُولُ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ: مَنْ أَصَابَ حَدًّا ثُمَّ دَخَلَ الْحَرَمَ، لَمْ يُجَالَسْ، وَلَمْ يُبَايَعْ، وَيَأْتِيه الَّذِي يَطْلُبُهُ، فَيَقُولُ: أَيْ فُلَانُ اتَّقِ اللَّهَ فِي دَمِ فُلَانٍ، اُخْرُجْ عَنْ الْمَحَارِمِ، فَإِذَا خَرَجَ أُقِيمَ عَلَيْهِ الْحَدُّ.

وَبِهِ: إلَى إسْمَاعِيلَ نا سُلَيْمَانُ بْنُ حَرْبٍ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ تَعَالَى: {مَقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] . قَالَ: إذَا أَحْدَثَ الرَّجُلُ حَدَثًا ثُمَّ دَخَلَ الْحَرَمَ، لَمْ يُجَالَسْ، وَلَمْ يُبَايَعْ، وَلَمْ يُطْعَمْ، وَلَمْ يُسْقَ، حَتَّى يَخْرُجَ مِنْ الْحَرَمِ، فَيُؤْخَذَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ قَالَ: قَالَ ابْنُ جُرَيْجٍ: سَمِعْت ابْنَ أَبِي حُسَيْنٍ يُحَدِّثُ عَنْ عِكْرِمَةَ بْنِ خَالِدٍ، قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَوْ وَجَدْت فِيهِ - يَعْنِي حَرَمَ مَكَّةَ - قَاتِلَ الْخَطَّابِ مَا مَسِسْته حَتَّى يَخْرُجَ مِنْهُ.

قَالَ ابْنُ جُرَيْجٍ: وَحَدَّثَنِي أَبُو الزُّبَيْرِ قَالَ: قَالَ ابْنُ عُمَرَ: لَوْ وَجَدْت فِيهِ - يَعْنِي حَرَمَ مَكَّةَ - قَاتِلَ عُمَرَ مَا نَدَهْته.

وَعَنْ عَطَاءٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: لَوْ وَجَدْت قَاتِلَ أَبِي فِي الْحَرَمِ مَا عَرَضْته.

قَالَ عَطَاءٌ: وَالشَّهْرُ الْحَرَامُ كَذَلِكَ مِثْلُ الْحَرَمِ فِي ذَلِكَ كُلِّهِ.

وَقَالَ الزُّهْرِيُّ: مَنْ قَتَلَ فِي الْحَرَمِ قُتِلَ فِي الْحَرَمِ، وَمَنْ قَتَلَ فِي الْحِلِّ ثُمَّ دَخَلَ الْحَرَامَ أُخْرِجَ إلَى الْحِلِّ فَقُتِلَ فِي الْحِلِّ - قَالَ الزُّهْرِيُّ: تِلْكَ السُّنَّةُ.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ.

say: I heard Ibn Abbas say: Whoever incurs a ḥadd punishment then enters the sacred sanctuary should not be associated with, nor should allegiance be pledged to him. The one pursuing him comes to him and says: O so-and-so, fear Allah regarding the bloodshed of so-and-so. Leave the sacred boundaries. When he exits, the ḥadd punishment is carried out against him.

L38199 And through him, up to Ismail: Sulayman ibn Harb narrated to us from Hammad ibn Salama from Amr ibn Dinar from Ibn Abbas regarding Allah's statement: {The standing place of Abraham, and whoever enters it shall be safe} [3:97]. He said, "If a man commits a crime and enters the sanctuary, he is not to be kept company with, pledged allegiance to, fed, or given drink until he leaves the sanctuary, at which point he is to be seized."[21]

L38200 Narrated through the chain of ʿAbd al-Razzāq, who said: Ibn Jurayj said: I heard Ibn Abī Ḥusayn narrating from ʿIkrimah ibn Khālid, who said: ʿUmar ibn al-Khaṭṭāb said: "If I found within it—meaning the Sacred Precinct of Mecca—the killer of al-Khaṭṭāb, I would not harm him until he exits from it."

L38201 Ibn Jurayj said: Abu al-Zubayr narrated to me, saying: Ibn Umar said: If I found within it—meaning the Sanctuary of Mecca—the killer of Umar, I would not have struck him.

L38202 From 'Aṭā' on the authority of Ibn 'Abbās, who said: "If I were to find my father's killer within the sacred precinct, I would not confront him."

L38203 'Aṭā' said: The sacred month is like al-Ḥaram (the sacred sanctuary) in all of that.

L38204 Al-Zuhri said: Whoever kills within the sacred precincts is to be executed within the sacred precincts, and whoever kills in the non-sacred area then enters the sacred precincts is to be expelled to the non-sacred area and executed there. Al-Zuhri said: That is the Sunnah.

L38205 And by this, Abu Hanifah, Ahmad ibn Hanbal, and Ishaq ibn Rahwayh state.

[21] **Qur'an references (L38199):** Qur'an 3:97 (Ali 'Imran).

L38206–38208 Abū Muḥammad said: It has been narrated from certain people that there are contrary opinions to this [and matters presumed to contradict this], as transmitted to us by Yaḥyā ibn ʿAbd al-Raḥmān ibn Masʿūd, who narrated from Aḥmad ibn Duhaym, who narrated from Ibrāhīm ibn Ḥammād, who narrated from Ismāʿīl ibn Isḥāq, who narrated from ʿAbd Allāh ibn Muʿādh, who narrated from his father, who narrated from Ashʿath [Ibn ʿAbd al-Malik], from al-Ḥasan regarding Allah's statement: {Whoever enters it is safe} [Āl ʿImrān 3:97]. He said: A man would be in... In the Age of Ignorance, a man would kill another, then hang a woollen cord around his neck, then enter the Haram. The slain man's son or father would encounter him yet would not move against him.[22]

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِيَ عَنْ قَوْمٍ خِلَافُ هَذَا [وَشَيْءٌ يُظَنُّ أَنَّهُ خِلَافُ هَذَا] وَهُوَ كَمَا حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا عَبْدُ اللَّهِ بْنُ مُعَاذٍ نا أَبِي نا أَشْعَثُ - هُوَ ابْنُ عَبْدِ الْمَلِكِ - عَنْ الْحَسَنِ فِي قَوْلِ اللَّهِ تَعَالَى {وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] قَالَ: كَانَ الرَّجُلُ فِي الْجَاهِلِيَّةِ يَقْتُلُ الرَّجُلَ، ثُمَّ يُعَلِّقُ فِي رَقَبَتِهِ الصُّوفَةَ، ثُمَّ يَدْخُلُ الْحَرَمَ فَيَلْقَاهُ ابْنُ الْمَقْتُولِ أَوْ أَبُوهُ فَلَا يُحَرِّكُهُ.

L38209 From Qatadah regarding the statement of Allah, the Exalted: {And whoever enters it is safe} [Āl ʿImrān: 97], he said: That was during the pre-Islamic era. But now, if someone steals within it, he is cut off; if he kills, he is killed; and if polytheists are apprehended within it, they are killed.[23]

وَعَنْ قَتَادَةَ فِي قَوْلِ اللَّهِ تَعَالَى {وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] قَالَ: كَانَ ذَلِكَ فِي الْجَاهِلِيَّةِ، فَأَمَّا الْيَوْمَ فَلَوْ سَرَقَ فِيهِ أَحَدٌ قُطِعَ، وَإِنْ قَتَلَ قُتِلَ، وَلَوْ قُدِرَ عَلَى الْمُشْرِكِينَ فِيهِ قُتِلُوا.

L38210 It is narrated from Rabiʿah ibn Abī ʿAbd al-Raḥmān that he said regarding a man who wounds another within the sacred precincts: he is retaliated against there. Likewise, if he were to wound someone outside the sacred precincts, retaliation is to be carried out against him within the sacred precincts, and wherever he is found.

وَعَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ أَنَّهُ قَالَ فِي رَجُلٍ جَرَحَ رَجُلًا فِي الْحَرَمِ: أَنَّهُ يُقَادُ بِهِ، وَكَذَلِكَ لَوْ جَرَحَ فِي الْحِلِّ أُقِيدَ بِهِ فِي الْحَرَمِ، وَحَيْثُ وُجِدَ.

L38211 And by this say Mālik, al-Shāfiʿī, Abū Sulaymān, and their respective followers.

وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

L38212 Abu Muhammad said: Among the Companions are these: ʿUmar ibn al-Khaṭṭāb, his son ʿAbd Allāh, Ibn ʿAbbās, Ibn al-Zubayr, and Abū Shurayḥ—according to what we will mention after this, if Allah the Exalted wills—with no dissenter among the Companions—may Allah be pleased with them—.

قَالَ أَبُو مُحَمَّدٍ: فَهَؤُلَاءِ مِنْ الصَّحَابَةِ عُمَرُ بْنُ الْخَطَّابِ، وَابْنُهُ عَبْدِ اللَّهِ، وَابْنُ عَبَّاسٍ، وَابْنُ الزُّبَيْرِ، وَأَبُو شُرَيْحٍ - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا، إنْ شَاءَ اللَّهُ تَعَالَى - وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L38213 Among the Successors—ʿAṭāʾ, ʿUbayd ibn ʿUmayr, Mujāhid, Saʿīd ibn Jubayr, al-Zuhrī, and others—they report this from their scholars, who were the

[22] **Qur'an references (L38206):** Qur'an 3:97 (Ali 'Imran).
[23] **Qur'an references (L38209):** Qur'an 3:97 (Ali 'Imran).

Successors from the people of Medina. They further report that the Sunnah was established in this manner. As for those who adhered to a contrary opinion, this was only permissible through a narration from Rabiʿah.

وَمِنْ التَّابِعِينَ - عَطَاءٌ، وَعُبَيْدُ بْنُ عُمَيْرٍ، وَمُجَاهِدٌ، وَسَعِيدُ بْنُ جُبَيْرٍ، وَالزُّهْرِيُّ، وَغَيْرُهُمْ، وَيُخْبِرُ بِذَلِكَ عَنْ عُلَمَائِهِمْ، وَهُمْ التَّابِعُونَ مِنْ أَهْلِ الْمَدِينَةِ، وَيُخْبِرُ: أَنَّ السُّنَّةَ مَضَتْ بِذَلِكَ فِيمَا تَعَلَّقَ مَنْ تَعَلَّقَ بِخِلَافِ ذَلِكَ إلَّا بِرِوَايَةٍ عَنْ رَبِيعَةَ.

L38214 As for Qatādah and Al-Ḥasan, their statements do not contradict those we have mentioned. Al-Ḥasan only narrated [practices] of those in the pre-Islamic era and did not assert that Islam inherently opposes this except by its own rulings. As for Qatādah, he did not state that one who commits homicide in non-sanctified land should be subject to retaliation for it within the sanctified precincts.

وَأَمَّا قَتَادَةُ، وَالْحَسَنُ، فَلَيْسَ فِي قَوْلِهِمَا خِلَافٌ لِمَنْ ذَكَرْنَا، لِأَنَّ الْحَسَنَ إنَّمَا أَخْبَرَ عَمَّنْ كَانَ فِي الْجَاهِلِيَّةِ، وَلَمْ يَقُلْ إنَّ الْإِسْلَامَ جَاءَ بِخِلَافِ ذَلِكَ إلَّا بِهِ، وَأَمَّا قَتَادَةُ فَلَمْ يَقُلْ: إنَّ مَنْ أَصَابَ فِي الْحِلِّ دَمًا أُقِيدَ بِهِ فِي الْحَرَمِ.

L38215 Thus, their attachment to Qatādah and al-Ḥasan was nullified.

فَبَطَلَ تَعَلُّقُهُمْ بِقَتَادَةَ، وَالْحَسَنِ.

L38216–38218 Abū Muḥammad said: Some of them openly professed the most disgraceful declaration. He mentioned the narration transmitted by Aḥmad ibn ʿUmar, who narrated to us from ʿAbdullāh ibn al-Ḥusayn, who narrated to us from Ibrāhīm ibn Muḥammad, who narrated to us from Muḥammad ibn al-Jahm, who narrated to us from Aḥmad ibn al-Haytham, who narrated to us from ʿAbbād ibn al-ʿAwwām, from Sufyān ibn al-Ḥusayn, from al-Ḥakam, from Mujāhid, from Ibn ʿAbbās, who said: "Two verses were abrogated from this surah—referring to al-Mā'idah—the verse of the qalā'id (garland-markers)." "If they come to you, judge between them or turn away from them" [Al-Mā'idah: 42]. He concealed by claiming this was a difference in the statement of Ibn Abbas.[24]

وَقَالَ أَبُو مُحَمَّد: وَجَاهَرَ بَعْضُهُمْ أَقْبَحَ مُجَاهِرَةٍ، فَذَكَرَ: مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ نا إبْرَاهِيمُ بْنُ مُحَمَّدٍ نا مُحَمَّدُ بْنُ الْجَهْمِ نا أَحْمَدُ بْنُ الْهَيْثَمِ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ سُفْيَانَ بْنِ الْحُسَيْنِ عَنْ الْحَكَمِ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: آيَتَانِ نُسِخَتَا مِنْ هَذِهِ السُّورَةِ - يَعْنِي الْمَائِدَةَ - آيَةُ الْقَلَائِدِ {فَإِنْ جَاءُوكَ فَاحْكُمْ بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ} [المائدة: ٤٢] فَمَوَّهَ بِأَنَّ هَذَا اخْتِلَافٌ مِنْ قَوْلِ ابْنِ عَبَّاسٍ.

L38219 Abū Muḥammad said: This is an outright falsehood and sheer lie. Yes, it has been said that only "the garlands" from His Exalted's statement, *"Do not violate the rites of Allah, nor the sacred month, nor the sacrificial animals, nor the garlands, nor those coming to the Sacred House seeking the bounty and pleasure of their Lord"* (5:2), were abrogated—as narrated by Abū Saʿīd al-Jaʿfarī from Muḥammad ibn ʿAlī al-Maqburī from Abū Jaʿfar Aḥmad ibn Muḥammad ibn Ismāʿīl from Abū Jaʿfar al-Ṭaḥāwī from Salamah ibn Shabīb

قَالَ أَبُو مُحَمَّد: وَهَذَا الْبَهْتُ الْفَاضِحُ وَالْكَذِبُ الْمُجَرَّدُ، وَنَعَمْ: إنْ قَوْله تَعَالَى {لا تُحِلُّوا شَعَائِرَ اللَّهِ وَلا الشَّهْرَ الْحَرَامَ وَلا الْهَدْيَ وَلا الْقَلائِدَ وَلا آمِّينَ الْبَيْتَ الْحَرَامَ يَبْتَغُونَ فَضْلا مِنْ رَبِّهِمْ وَرِضْوَانًا} [المائدة: ٢] قَدْ قِيلَ: إنَّهُ نُسِخَ مِنْهُ " الْقَلَائِدُ " فَقَطْ: كَمَا حَدَّثَنَا أَبُو سَعِيدٍ الْجَعْفَرِيُّ نا مُحَمَّدُ بْنُ عَلِيٍّ الْمَقْبُرِيُّ نا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إسْمَاعِيلَ نا أَبُو جَعْفَرٍ الطَّحَاوِيُّ نا سَلَمَةُ بْنُ شَبِيبٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ قَتَادَةَ - وَذَكَرَ هَذِهِ

[24] **Qur'an references (L38216):** Qur'an 5:42 (Al-Ma'idah).

from ʿAbd al-Razzāq from Maʿmar, who reported from Qatādah (mentioning this verse). He said: "It is abrogated. In the pre-Islamic era, when a man departed for Hajj, he would wear a garland made of hair, and no one would confront him. If he wore a hair garland, no one would confront him. At that time, polytheists were not expelled from the House. Allah the Exalted had initially commanded that polytheists not be fought during the sacred month or near the House. This ruling was later abrogated by Allah's statement, *'So kill the polytheists wherever you find them'* (9:5)." This is the explicit statement of Qatādah.[25]

الْآيَةَ - فَقَالَ: مَنْسُوخٌ، كَانَ الرَّجُلُ فِي الْجَاهِلِيَّةِ إِذَا خَرَجَ إِلَى الْحَجِّ يُقَلِّدُ مِنْ الشَّعْرِ، فَلَا يَعْرِضُ لَهُ أَحَدٌ، وَإِذَا تَقَلَّدَ قِلَادَةَ شَعْرٍ لَمْ يَعْرِضْ لَهُ أَحَدٌ، وَكَانَ الْمُشْرِكُ يَوْمَئِذٍ لَا يُصْدَرُ عَنْ الْبَيْتِ، فَأَمَرَ اللَّهُ تَعَالَى أَنْ لَا يُقَاتَلَ الْمُشْرِكُونَ فِي الشَّهْرِ الْحَرَامِ، وَلَا عِنْدَ الْبَيْتِ، ثُمَّ نَسَخَهَا قَوْلُ اللَّهِ تَعَالَى {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] وَهَذَا نَصُّ قَوْلِ قَتَادَةَ.

L38220 Suppose, then, that the abrogation of "the collars" has been established—how does this imply that whoever asserts the abrogation of "the collars" thereby contradicts, through his own statement, those who say: "Prescribed punishments are not enforced in the Sacred Precinct, nor is anyone killed therein"? Indeed, anyone who holds faith should feel ashamed of embracing such blindness and pursuing false desires to this extent! As for "the collars" here, they are strictly literal—"the collars of sacrificial animals"—whose removal is impermissible.

فَهَبْكَ أَنَّهُ قَدْ صَحَّ نَسْخُ " الْقَلَائِدِ " فَأَيُّ شَيْءٍ فِي ذَلِكَ مِمَّا يُوجِبُ أَنَّ مَنْ قَالَ بِنَسْخِ " الْقَلَائِدِ " فَقَدْ خَالَفَ ذَلِكَ مِنْ قَوْلِهِ قَوْلَ مَنْ قَالَ: لَا يُقَامُ الْحَدُّ فِي الْحَرَمِ، وَلَا يُقْتَلُ أَحَدٌ فِي الْحَرَمِ، لَقَدْ كَانَ يَنْبَغِي لِمَنْ كَانَ لَهُ دِينٌ أَنْ يَسْتَحْيِيَ مِنْ أَنْ يَعْمَى هَذَا الْعَمَى؟ وَأَنْ يَتَّبِعَ هَوَاهُ فِي الْبَاطِلِ هَذَا الِاتِّبَاعِ، وَ " الْقَلَائِدُ " هَاهُنَا إِنَّمَا هِيَ عَلَى ظَاهِرِهَا " قَلَائِدُ الْهَدْيِ " الَّتِي لَا يَحِلُّ إِحْلَالُهَا.

L38221 Abu Muhammad said: Our experience with the Malikis and Shafiʿis is that they honor the disagreement of a Companion when it aligns with their school's doctrine. Yet here they have opposed five Companions, with no known dissent from any of the Companions against them.

قَالَ أَبُو مُحَمَّدٍ: وَعَهْدُنَا بِالْمَالِكِيِّينَ، وَالشَّافِعِيِّينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إِذَا وَافَقَ تَقْلِيدَهُمْ، وَهُمْ قَدْ خَالَفُوا هَاهُنَا خَمْسَةً مِنْ الصَّحَابَةِ لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ.

L38222 And they contradicted the Qur'an and the established Sunnah—as we shall elaborate later, if Allah, the Exalted, wills.

وَخَالَفُوا الْقُرْآنَ وَالسُّنَّةَ الثَّابِتَةَ - عَلَى مَا نَذْكُرُ بَعْدَ هَذَا إِنْ شَاءَ اللَّهُ تَعَالَى.

L38223 And more astonishing than all of this is their citing as evidence Ibn Khatal—who was clinging to the curtains of the Kaaba—for this is an incident that the Messenger of Allah—peace and blessings be upon him—explicitly stated that it was exclusively for him, and it is not permissible for anyone after him, as we will clarify hereafter, if Allah the Exalted wills.

وَأَعْجَبُ مِنْ هَذَا كُلِّهِ: احْتِجَاجُهُمْ بِابْنِ خَطَلٍ - وَهُوَ مُتَعَلِّقٌ بِأَسْتَارِ الْكَعْبَةِ - فَهَذِهِ قِصَّةٌ نَصَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنَّهَا لَهُ خَاصَّةً، وَلَا تَحِلُّ لِأَحَدٍ بَعْدَهُ، كَمَا نُبَيِّنُ بَعْدَ هَذَا، إِنْ شَاءَ اللَّهُ تَعَالَى.

L38224–38226 Ali said: Allah, the Most High, said, "The Station of Ibrahim, and whoever enters it shall be secure" (3:97), and this. A command from Allah, the Exalted,

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى {مَقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] وَهَذَا أَمْرٌ مِنْ اللَّهِ تَعَالَى مَخْرَجُهُ مَخْرَجُ الْخَبَرِ - هَذَا لَا يَخْلُو الْقَوْلُ مِنْ أَنْ يَكُونَ خَبَرًا أَوْ أَمْرًا

[25] **Qur'an references (L38219):** Qur'an 5:2 (Al-Ma'idah); Qur'an 9:5 (At-Tawbah).

structured like a declarative statement—since this [utterance] cannot but be either a statement or a command—it thus cannot be a declarative statement. For we have observed that the disbelieving Qarmatians—may Allah curse them—killed the Muslims therein.[26]

L38227 We found Yazīd ibn Muʿāwiyah and the transgressor al-Ḥajjāj had killed the inviolable souls in it, so it was confirmed with certainty that this was a decree from Allah the Exalted, since none other than Him remained.

L38228 And that whoever claims this is nothing but a report from Allah, the Exalted, about the pre-Islamic era has lied, for he has attributed to Allah, the Exalted, what He never said at all.

L38229 And He, the Exalted, has said: "And to associate with Allah that for which He has not sent down any proof, and to say about Allah what you do not know" [Al-Aʿraf 7:33]. And He, the Exalted, has said: "He only commands you to evil and immorality and to say about Allah what you do not know" [Al-Baqarah 2:169]. Far be it from Allah that the Sacred Sanctuary would possess a merit in the Age of Ignorance which Allah, the Exalted, deprived it of in Islam. Rather, Allah, the Exalted, has only increased the Sacred Sanctuary in Islam but by bestowing veneration, sanctity, and honor.[27]

L38230 It has been narrated to us via Al-Bukhārī's chain: Ubayd ibn Ismāʿīl narrated to us, Usāmah narrated to us from Hishām ibn ʿUrwah from his father, who mentioned the ḥadīth of the Conquest. In it: "Saʿd ibn ʿUbādah said to Abū Sufyān: 'O Abū Sufyān, today is the day of massacre. Today the inviolability of the sanctified Kaaba will be violated!' When the Messenger of Allah (peace be upon him) passed by Abū Sufyān, he said: 'Have you not learned what Saʿd ibn ʿUbādah said?' He replied: 'What did he say?' He answered: 'He said such-and-such.' The Messenger of Allah (peace be upon him) responded: 'Saʿd lied. Rather, this is a day in which Allah glorifies the Kaaba, and a day when the Kaaba is adorned.'" He mentioned the ḥadīth.[28]

- فَبَطَلَ أَنْ يَكُنْ خَبَرًا، لِأَنَّنَا قَدْ وَجَدْنَا " الْقَرَامِطَةَ " الْكَفَرَةَ لَعَنَهُمْ اللَّهُ قَدْ قَتَلُوا فِيهِ أَهْلَ الْإِسْلَامِ.

وَوَجَدْنَا يَزِيدَ بْنَ مُعَاوِيَةَ، وَالْفَاسِقَ الْحَجَّاجَ قَدْ قَتَلَا فِيهِ النُّفُوسَ الْمُحَرَّمَةَ - فَصَحَّ يَقِينًا أَنَّهُ أَمْرٌ مِنْ اللَّهِ تَعَالَى، إذْ لَمْ يَبْقَ غَيْرُهُ.

وَأَنَّ مَنْ ادَّعَى أَنَّ هَذَا إنَّمَا هُوَ خَبَرٌ مِنْ اللَّهِ تَعَالَى عَنْ الْجَاهِلِيَّةِ فَقَدْ كَذَبَ، لِأَنَّهُ أَخْبَرَ عَنْ اللَّهِ تَعَالَى، بِمَا لَمْ يَقُلْهُ قَطُّ.

وَقَدْ قَالَ تَعَالَى {وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [الأعراف: ٣٣] ، وَقَالَ تَعَالَى {إِنَّمَا يَأْمُرُكُمْ بِالسُّوءِ وَالْفَحْشَاءِ وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [البقرة: ١٦٩] ، حَاشَ لِلَّهِ أَنْ يَكُونَ الْحَرَمُ لَهُ فَضْلٌ فِي الْجَاهِلِيَّةِ بَخَسَهُ اللَّهُ تَعَالَى إيَّاهُ فِي الْإِسْلَامِ، بَلْ مَا زَادَ اللَّهُ تَعَالَى الْحَرَمَ فِي الْإِسْلَامِ إلَّا تَعْظِيمًا، وَحُرْمَةً، وَإِكْرَامًا.

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عُبَيْدُ بْنُ إسْمَاعِيلَ نا أُسَامَةُ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ فَذَكَرَ حَدِيثَ الْفَتْحِ، وَفِيهِ «إنَّ سَعْدَ بْنَ عُبَادَةَ قَالَ لِأَبِي سُفْيَانَ: يَا أَبَا سُفْيَانَ الْيَوْمَ يَوْمُ الْمَلْحَمَةِ، الْيَوْمَ تُسْتَحَلُّ الْكَعْبَةُ الْمُحَرَّمَةُ، فَلَمَّا مَرَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَبِي سُفْيَانَ قَالَ: أَلَمْ تَعْلَمْ مَا قَالَ سَعْدُ بْنُ عُبَادَةَ؟ قَالَ: مَا قَالَ؟ قَالَ: قَالَ كَذَا وَكَذَا. فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَذَبَ سَعْدٌ، وَلَكِنَّ هَذَا يَوْمٌ يُعَظِّمُ اللَّهُ فِيهِ الْكَعْبَةَ، وَيَوْمٌ تُكْسَى فِيهِ الْكَعْبَةُ» وَذَكَرَ الْحَدِيثَ.

[26] **Qur'an references (L38224):** Qur'an 3:97 (Ali 'Imran).
[27] **Qur'an references (L38229):** Qur'an 7:33 (Al-A'raf); Qur'an 2:169 (Al-Baqarah).
[28] **Hadith references (L38230):** Sahih al-Bukhari 4280.

وَاحْتَجَّ بَعْضُهُمْ: بِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُحَمَّدُ بْنُ مُقَاتِلٍ أَنَا عَبْدُ اللَّهِ - هُوَ ابْنُ الْمُبَارَكِ - نا يُونُسُ عَنِ الزُّهْرِيِّ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ قَالَ «إِنَّ امْرَأَةً سَرَقَتْ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزْوَةِ الْفَتْحِ فَفَزِعَ قَوْمُهَا إِلَى أُسَامَةَ بْنِ زَيْدٍ يَسْتَشْفِعُونَ بِهِ قَالَ عُرْوَةُ: فَلَمَّا كَلَّمَهُ أُسَامَةُ فِيهَا تَلَوَّنَ وَجْهُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: تُكَلِّمُنِي فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟ قَالَ أُسَامَةُ: فَاسْتَغْفِرْ لِي يَا رَسُولَ اللَّهِ - فَلَمَّا كَانَ الْعَشِيُّ قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَطِيبًا فَأَثْنَى عَلَى اللَّهِ تَعَالَى بِمَا هُوَ أَهْلُهُ، ثُمَّ قَالَ: أَمَّا بَعْدُ، فَإِنَّمَا هَلَكَ النَّاسُ قَبْلَكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكُوهُ، وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَالَّذِي نَفْسُ مُحَمَّدٍ بِيَدِهِ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا - ثُمَّ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتِلْكَ الْمَرْأَةِ فَقُطِعَتْ يَدُهَا» وَذَكَرَتْ عَائِشَةُ الْحَدِيثَ.

L38231–38233 Some of them argued by citing what was reported to us via al-Bukhārī's narration: Muḥammad ibn Muqātil reported to us that 'Abdullāh—meaning Ibn al-Mubārak—reported to us from Yūnus, from al-Zuhrī, who informed me that 'Urwah ibn al-Zubayr said: "A woman committed theft during the era of Allah's Messenger—peace and blessings be upon him—in the Conquest campaign. Her kinspeople urgently approached Usāmah ibn Zayd to seek his intercession." 'Urwah continued: "When Usāmah pleaded with him regarding her, the countenance of Allah's Messenger—peace and blessings be upon him—altered. He responded: 'Do you intervene with me concerning a *hadd* punishment?'" Usama said, "Is this among the boundaries ordained by Allah? Seek forgiveness for me, O Messenger of Allah!" When evening came, the Messenger of Allah—peace and blessings be upon him—rose to deliver a sermon. He praised Allah the Exalted as He deserves, then said: "To proceed, those before you were destroyed solely because when a nobleman among them stole, they spared him, but when a lowly person among them stole, they enforced the ḥadd punishment upon him. By the One in Whose Hand is the soul of Muḥammad, if Fāṭimah, daughter of Muḥammad, were to steal, I would cut off her hand." Then the Messenger of Allah—peace and blessings be upon him—ordered that woman's hand to be cut off. 'Ā'ishah narrated the ḥadīth.[29]

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا مُتَعَلَّقَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِي هَذَا الْخَبَرِ أَنَّهَا قُطِعَتْ يَدُهَا فِي الْحَرَمِ، فَإِذْ لَيْسَ ذَلِكَ فِيهِ لَا يَجُوزُ أَنْ يُعْتَرَضَ عَلَى نَصِّ الْقُرْآنِ، وَنَصِّ بَيَانِ السُّنَنِ بِظَنٍّ لَا حَقِيقَةَ فِيهِ - وَلَعَلَّ أَمْرَهَا كَانَ فِي غَيْرِ الْحَرَمِ أَوْ فِي الطَّرِيقِ. قَالَ اللَّهُ تَعَالَى {إِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [يونس: ٣٦] ، وَأَيْضًا - فَإِنَّ هَذَا الْخَبَرَ ظَاهِرُهُ الْإِرْسَالُ.

L38234 Abu Muhammad said: They have no valid basis in this matter, because this report does not state that her hand was amputated within the sacred precinct. Since this is not mentioned, it is impermissible to oppose the explicit text of the Quran and the clarifying texts of the Sunnah with mere conjecture devoid of truth – and perhaps her case occurred outside the sacred precinct or on the road. Allah the Exalted said: {Indeed, conjecture avails nothing against the truth} [Yunus: 36]. Moreover, this report is ostensibly mursal (a disconnected chain of narration).[30]

وَقَالَ بَعْضُ مَنْ لَا يُبَالِي بِمَا أَطْلَقَ بِهِ لِسَانَهُ: إِنَّمَا مَعْنَى قَوْلِهِ تَعَالَى {مَقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] إِنَّمَا عَنَى الصَّيْدَ - وَهَذَا مَعَ أَنَّهُ كَذِبٌ عَلَى اللَّهِ

L38235 Some of those who carelessly let their tongues speak freely said: "The meaning of Allah the Exalted's statement {The Station of Abraham, and whoever

[29] **Hadith references (L38231):** Sunan an-Nasai 4903.
[30] **Qur'an references (L38234):** Qur'an 10:36 (Yunus).

enters it shall be secure} [3:97] refers only to hunting." This claim - being a lie against Allah the Exalted, an audacious falsehood, and a scandal in grammatical error - is flawed because in the Arabic language, the term 'whoever' (man) does not inform except about rational beings, not non-human animals.[31]

L38236 If someone asks: "Does this apply solely to 'the Station' alone by the explicit text of the verse?" He is told: Allah the Exalted does not address His servants with the impossible nor with what cannot be. Every person of sound perception knows with certainty that 'the Station of Abraham' is a single stone no one enters, nor is anyone able to do so. Rather, 'the Station of Abraham' is the entire Haram, as Mujahid stated, saying: "The Station of Abraham is the entire Haram."

L38237–38239 If someone were to say: "Indeed, Allah the Exalted has said: {And do not fight them at the Sacred Mosque unless they fight you there. But if they fight you, then kill them} [Al-Baqarah: 191]," we would respond: "Yes, thus has Allah the Exalted said, and this is our stance. It is not permissible to fight anyone—neither a polytheist nor..." As for others within the Sanctuary of Mecca, we expel them from it. If they leave and enter non-sacred territory, we enforce upon them what is due upon them - whether killing, captivity, or punishment. If they resist and fight us, we then fight them within the Sanctuary - as Allah the Exalted has commanded - and fight them therein. This is how we treat every rebellious and oppressive Muslim without any distinction.[32]

L38240 If they say, "Allah the Exalted has said {So kill the polytheists wherever you find them} [Quran 9:5]," we reply: He who said this also said {And do not fight them at the Sacred Mosque unless they fight you there} [Quran 2:191]. All His words and binding obligations are obligatory, and it is impermissible to abandon any part of His speech for another except through definitively established abrogation. Thus, it is obligatory upon us to apply such texts collectively, making exceptions for the lesser from the greater, since nothing else is permissible.[33]

تَعَالَى وَجُرْأَةٌ عَلَى الْبَاطِلِ فَضِيحَةٌ فِي اللَّحْنِ، لِأَنَّهُ لَا يُخْبِرُ فِي لُغَةِ الْعَرَبِ لَفْظَةُ " مَنْ " إِلَّا عَمَّنْ يَعْقِلُ، لَا عَنْ الْحَيَوَانِ غَيْرِ الْآدَمِيِّ.

فَإِنْ قَالَ قَائِلٌ: إِنَّمَا هَذَا فِي " الْمَقَامِ " وَحْدَهُ بِنَصِّ الْآيَةِ؟ قِيلَ لَهُ: إِنَّ اللَّهَ تَعَالَى لَا يُكَلِّمُ عِبَادَهُ بِالْمُحَالِ، وَلَا بِمَا لَا يُمْكِنُ، وَبِالْيَقِينِ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ " مَقَامَ إِبْرَاهِيمَ " حَجَرٌ وَاحِدٌ لَا يَدْخُلُهُ أَحَدٌ، وَلَا يَقْدِرُ أَحَدٌ عَلَى ذَلِكَ، وَإِنَّمَا " مَقَامُ إِبْرَاهِيمَ " الْحَرَمُ كُلُّهُ، كَمَا قَالَ مُجَاهِدٌ، إِنَّهُ قَالَ " مَقَامُ إِبْرَاهِيمَ " الْحَرَمُ كُلُّهُ.

فَإِنْ قَالَ قَائِلٌ: إِنَّ اللَّهَ تَعَالَى قَالَ {وَلا تُقَاتِلُوهُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ حَتَّى يُقَاتِلُوكُمْ فِيهِ فَإِنْ قَاتَلُوكُمْ فَاقْتُلُوهُمْ} [البقرة: ١٩١] . قُلْنَا: نَعَمْ، هَكَذَا قَالَ اللَّهُ تَعَالَى وَبِهَذَا نَقُولُ، وَلَا يَحِلُّ قِتَالُ أَحَدٍ لَا مُشْرِكٍ وَلَا غَيْرِهِ فِي حَرَمِ مَكَّةَ، لَكِنَّنَا نُخْرِجُهُمْ مِنْهُ، فَإِنْ خَرَجُوا وَصَارُوا فِي الْحِلِّ نَفَّذْنَا عَلَيْهِمْ مَا يَجِبُ عَلَيْهِمْ مِنْ قَتْلٍ، أَوْ أَسْرٍ، أَوْ عُقُوبَةٍ، فَإِنْ امْتَنَعُوا وَقَاتَلُونَا قَاتَلْنَاهُمْ حِينَئِذٍ فِي الْحَرَمِ - كَمَا أَمَرَ اللَّهُ تَعَالَى - وَقَاتَلْنَاهُمْ فِيهِ، وَهَكَذَا نَفْعَلُ بِكُلِّ بَاغٍ وَظَالِمٍ مِنْ الْمُسْلِمِينَ وَلَا فَرْقَ.

فَإِنْ قَالُوا: فَقَدْ قَالَ اللَّهُ تَعَالَى {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] الْآيَةَ؟ قُلْنَا: الَّذِي قَالَ هَذَا قَالَ {وَلا تُقَاتِلُوهُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ حَتَّى يُقَاتِلُوكُمْ فِيهِ} [البقرة: ١٩١] وَكَلَامُهُ كُلُّهُ وَعُهُودُهُ كُلُّهَا فَرْضٌ، وَلَا يَحِلُّ تَرْكُ شَيْءٍ مِنْ كَلَامِهِ لِشَيْءٍ آخَرَ إِلَّا بِنَسْخٍ مُتَيَقَّنٍ - فَوَاجِبٌ عَلَيْنَا أَنْ نَسْتَعْمِلَ مِثْلَ هَذِهِ النُّصُوصِ وَنَجْمَعَهَا، وَنَسْتَثْنِيَ الْأَقَلَّ مِنْهَا مِنْ الْأَكْثَرِ، إِذْ لَا يَحِلُّ غَيْرُ ذَلِكَ.

[31] **Qur'an references (L38235):** Qur'an 3:97 (Ali 'Imran).
[32] **Qur'an references (L38237):** Qur'an 2:191 (Al-Baqarah).
[33] **Qur'an references (L38240):** Qur'an 9:5 (At-Tawbah); Qur'an 2:191 (Al-Baqarah).

فَنَحْنُ نَقْتُلُ الْمُشْرِكِينَ حَيْثُ وَجَدْنَاهُمْ إِلَّا عِنْدَ الْمَسْجِدِ الْحَرَامِ. فَنَحْنُ إِذَا فَعَلْنَا هَذَا كُنَّا عَلَى يَقِينٍ مِنْ أَنَّا قَدْ أَطَعْنَا اللَّهَ تَعَالَى فِي كُلِّ مَا أَمَرَنَا بِهِ، وَمَنْ خَالَفَ هَذَا الْعَمَلَ فَقَدْ عَصَى اللَّهَ تَعَالَى فِي إِحْدَى الْآيَتَيْنِ؟ وَهَذَا لَا يَحِلُّ أَصْلًا.

L38241 We kill the idolaters wherever we find them except in the vicinity of the Sacred Mosque. By doing so, we are certain that we have obeyed God Almighty in all He has commanded us. Whoever opposes this action has disobeyed God Almighty in one of the two Quranic verses. This is fundamentally impermissible.

وَكَمَا قُلْنَا - فَعَلَ أَمِيرُ الْمُؤْمِنِينَ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّهُ لَمَّا ابْتَدَأَهُ الْفُسَّاقُ بِالْقِتَالِ فِي حَرَمِ مَكَّةَ: يَزِيدُ، وَعَمْرُو بْنُ سَعِيدٍ، وَالْحُصَيْنُ بْنُ نُمَيْرٍ، وَالْحَجَّاجُ، وَمَنْ بَعَثَهُ وَمَنْ كَانَ مَعَهُمْ - مِنْ جُنُودِ السُّلْطَانِ - قَاتَلَهُمْ مُدَافِعًا لِنَفْسِهِ وَأَحْسَنَ فِي ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38242 Just as we have said, the Commander of the Faithful Abdullah ibn al-Zubayr—may Allah be pleased with him—responded when the immoral ones—Yazid, Amr ibn Sa'id, al-Husayn ibn Numayr, al-Hajjaj, those sent by the Sultan, and those who accompanied them from the Sultan's soldiers—initiated fighting against him within Mecca's sacred precincts. He fought them while defending himself and performed excellently in doing so—and success is by Allah, the Exalted.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا جَرِيرٌ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ مُجَاهِدٍ عَنْ طَاوُسٍ عَنْ ابْنِ عَبَّاسٍ قَالَ: «قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ افْتَتَحَ مَكَّةَ لَا هِجْرَةَ، وَلَكِنْ جِهَادٌ وَنِيَّةٌ، وَإِذَا اسْتُنْفِرْتُمْ فَانْفِرُوا، فَإِنَّ هَذَا بَلَدٌ حَرَّمَهُ اللَّهُ تَعَالَى يَوْمَ خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ، فَهُوَ حَرَامٌ بِحُرْمَةِ اللَّهِ تَعَالَى إِلَى يَوْمِ الْقِيَامَةِ، وَإِنَّهُ لَمْ يَحِلَّ الْقِتَالُ فِيهِ لِأَحَدٍ قَبْلِي، وَلَمْ يَحِلَّ لِي إِلَّا سَاعَةً مِنْ نَهَارٍ، فَهُوَ حَرَامٌ بِحُرْمَةِ اللَّهِ إِلَى يَوْمِ الْقِيَامَةِ، لَا يُعْضَدُ شَوْكُهُ، وَلَا يُنَفَّرُ صَيْدُهُ، وَلَا يَلْتَقِطُ لُقَطَتَهُ إِلَّا مَنْ عَرَّفَهَا، وَلَا يُخْتَلَى خَلَاهَا - قَالَ الْعَبَّاسُ: يَا رَسُولَ اللَّهِ إِلَّا الْإِذْخِرَ فَإِنَّهُ لِقَيْنِهِمْ وَلِبُيُوتِهِمْ؟ قَالَ: إِلَّا الْإِذْخِرَ» .

L38243 Abd al-Rahman ibn Abd Allah ibn Khalid reported to us: Ibrahim ibn Ahmad reported to us: al-Farbari reported to us: al-Bukhari reported to us: Uthman ibn Abi Shaybah reported to us: Jarir reported from Mansur ibn al-Mu'tamir from Mujahid from Tawus from Ibn Abbas, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said on the day Mecca was conquered: "There is no migration, but jihad and intention. When you are summoned to mobilize, then mobilize. Verily, this is a city Allah the Exalted made sacred on the day He created the heavens and the earth. It is sacred by the sanctity of Allah the Exalted until the Day of Resurrection. Fighting was never permitted in it for anyone before me, nor was it permitted for me except for a short period of the day. It is sacred by the sanctity of Allah the Exalted until the Day of Resurrection. Its thorny trees shall not be cut, its game shall not be disturbed, and lost items found there shall not be picked up except by one who announces them publicly. Its fresh grass shall not be cut." Al-Abbas said: "O Messenger of Allah, except for the *idhkhir* plant, for it is used by their blacksmiths and for their homes." He replied: "Except for the *idhkhir*."

وَمِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا زُهَيْرُ بْنُ حَرْبٍ نا الْوَلِيدُ بْنُ مُسْلِمٍ نا الْأَوْزَاعِيُّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَوْفٍ نا أَبُو هُرَيْرَةَ قَالَ «لَمَّا فَتَحَ اللَّهُ تَعَالَى عَلَى رَسُولِ

L38244–38245 And through the chain of Muslim ibn al-Hajjaj: Zuhayr ibn Harb narrated to us, al-Walid ibn Muslim narrated to us, al-Awza'i narrated to us from Yahya ibn Abi Kathir, who said: Abu Salama ibn 'Awf narrated to me from Abu Hurayra, who said: "When Allah the Exalted granted victory to the

Messenger of Allah (peace and blessings be upon him) over Mecca, he stood among the people, praised Allah, and extolled Him. Then he said: 'Allah the Exalted restrained the elephant from Mecca and granted authority over it to His Messenger and the believers. Indeed, it was not lawful for anyone before me, and it was made lawful for me for a period of the day. It will never be lawful for anyone after me. Therefore, its game is not to be scared away, its thorny plants are not to be cut, and its fallen items are not permissible except for a proclaimer.'" He mentioned the remainder of the hadith with the mention of al-idhkhir.

اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَكَّةَ قَامَ فِي النَّاسِ فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ، ثُمَّ قَالَ: إِنَّ اللَّهَ تَعَالَى حَبَسَ الْفِيلَ عَنْ مَكَّةَ وَسَلَّطَ عَلَيْهَا رَسُولَهُ وَالْمُؤْمِنِينَ، وَإِنَّهَا لَمْ تَحِلَّ لِأَحَدٍ كَانَ قَبْلِي، وَإِنَّهَا حَلَّتْ لِي سَاعَةً مِنْ نَهَارٍ، وَإِنَّهَا لَنْ تَحِلَّ لِأَحَدٍ بَعْدِي، فَلَا يُنَفَّرُ صَيْدُهَا، وَلَا يُخْتَلَى شَوْكُهَا، وَلَا تَحِلُّ سَاقِطَتُهَا إِلَّا لِمُنْشِدٍ» وَذَكَرَ بَاقِيَ الْحَدِيثَ بِذِكْرِ الْإِذْخِرِ.

L38246 It has been narrated to us through the chain of Muslim: Qutaybah ibn Layth narrated to us - he is the son of Sa'd - from Sa'id ibn Abi Sa'id, from Abu Shurayh al-'Adawi that he said to 'Amr ibn Sa'id - while he was dispatching troops to Mecca: "Grant me permission, O Leader, to relate to you words proclaimed by the Messenger of Allah (peace be upon him) on the day after the Conquest, which my ears heard, my heart preserved, and my eyes witnessed when he uttered them: He praised Allah the Exalted and extolled Him, then said: 'Indeed Allah has sanctified Mecca - not the people. Therefore, it is not lawful for any person who believes in Allah and the Last Day to shed blood therein or cut down its trees. Should anyone presume to fight the Messenger of Allah (peace be upon him) within it, say: Allah permitted His Messenger but has not permitted you. He only granted me permission therein for an hour during the day, and its sanctity has now been restored today as it was sacred yesterday. Let those present convey to those absent.'"

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ لَيْثٍ - هُوَ ابْنُ سَعْدٍ - عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ عَنْ أَبِي شُرَيْحٍ الْعَدَوِيِّ أَنَّهُ قَالَ لِعَمْرِو بْنِ سَعِيدٍ - وَهُوَ يَبْعَثُ الْبُعُوثَ إِلَى مَكَّةَ: ائْذَنْ لِي أَيُّهَا الْأَمِيرُ أُحَدِّثْكَ قَوْلًا قَامَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْغَدَ مِنْ يَوْمِ الْفَتْحِ، سَمِعَتْهُ أُذُنَايَ، وَوَعَاهُ قَلْبِي، وَأَبْصَرَتْهُ عَيْنَايَ حِينَ تَكَلَّمَ بِهِ: أَنَّهُ حَمِدَ اللَّهَ تَعَالَى، وَأَثْنَى عَلَيْهِ، ثُمَّ قَالَ «إِنَّ مَكَّةَ حَرَّمَهَا اللَّهُ وَلَمْ يُحَرِّمْهَا النَّاسُ فَلَا يَحِلُّ لِامْرِئٍ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ أَنْ يَسْفِكَ بِهَا دَمًا، وَلَا يَعْضِدَ بِهَا شَجَرَةً، فَإِنْ أَحَدٌ تَرَخَّصَ بِقِتَالِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيهَا فَقُولُوا: إِنَّ اللَّهَ أَذِنَ لِرَسُولِهِ وَلَمْ يَأْذَنْ لَكُمْ، وَإِنَّمَا أَذِنَ لِي فِيهَا سَاعَةً مِنْ نَهَارٍ، وَقَدْ عَادَتْ حُرْمَتُهَا الْيَوْمَ كَحُرْمَتِهَا بِالْأَمْسِ، وَلْيُبَلِّغْ الشَّاهِدُ الْغَائِبَ» .

L38247 Abu Shuraih was asked, "What did Amr say to you?" He replied, "Amr said: 'I know more about this than you, O Abu Shuraih. Indeed, the Sanctuary does not grant protection to a sinner, nor to one fleeing with ruin.'"

قِيلَ لِأَبِي شُرَيْحٍ: مَاذَا قَالَ لَك عَمْرٌو؟ قَالَ: قَالَ: أَنَا أَعْلَمُ بِذَلِكَ مِنْك يَا أَبَا شُرَيْحٍ، إنَّ الْحَرَمَ لَا يُعِيذُ عَاصِيًا، وَلَا فَارًّا بِخَرِبَةٍ.

L38248–38250 Abu Muhammad said: There is no honor for Satan's cursed enforcer—the sinful Amr ibn Sa'id—who seeks to be more knowledgeable than the Companion of Allah's Messenger (peace be upon him) regarding what that Companion (may Allah be pleased with him) heard directly from the mouth of Allah's Messenger (peace be upon him). Truly, to Allah we belong and to

قَالَ أَبُو مُحَمَّدٍ: وَلَا كَرَامَةَ لِلَطِيمِ الشَّيْطَانِ شُرْطِيِّ الْفَاسِقِ يُرِيدُ أَنْ يَكُونَ أَعْلَمَ مِنْ صَاحِبِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمَا سَمِعَهُ ذَلِكَ الصَّاحِبُ - رَضِيَ اللَّهُ عَنْهُ - مِنْ فَمِ

Him we return—for the immense calamity in Islam, then for the multiplied tragedy from those who witnessed him arguing in this very matter by citing the words of the sinful Amr ibn Sa'id, thereby opposing Allah's Messenger (peace be upon him). He then speaks about the religion of Allah the Exalted, deceiving the weak by posing as a scholar. None disobeys Allah the Exalted and His Messenger (peace be upon him) except the sinful Amr ibn Sa'id, those who appoint him, entrust him, authorize him, support him, and approve his speech. None bears the burden of ruin in this world and the Hereafter except him and those who appoint or endorse him.

Abu Muhammad said: This is a consecutively transmitted narration from three Companions of Allah's Messenger (peace be upon him)—Abu Hurayrah, Ibn 'Abbas, and Abu Shurayh—all of whom report from Allah's Messenger (peace be upon him) that he said: "Allah the Exalted has sanctified Mecca." Thus, we know with certainty that Allah's Messenger (peace be upon him) did not specifically designate fighting as a prohibition unique to Mecca's sanctity. Due to injustice—for it is forbidden in every place on earth—yet he (peace and blessings be upon him) specified that the commanded warfare is only prohibited outside Makkah, since he (PBUH) fought within Makkah, where no killing is permitted except by rightful justification. He explicitly prohibited that specific fighting itself while permitting other than it, forbade using it as a pretext in similar cases, affirmed that cutting hands therein is bloodshed, and retribution is likewise [prohibited]. Thus, it is not permissible there at all.

L38251 Some people have become obsessed with what we narrated through Muslim's chain: Yahya ibn Yahya narrated to us: I said to Malik, who narrated from Ibn Shihab from Anas: "The Prophet (PBUH) entered Mecca wearing a helmet. When he removed it, a man came and said: 'Ibn Khatal is clinging to the Kaaba's curtains.' He responded: 'Kill him.'" He said: "Yes." This provides no valid evidence for their stance, for this occurred during his entry to Mecca in the Year of Conquest—the specific time when Allah the Exalted had sanctioned it for him. Then the Prophet (PBUH) informed them on the following day that its sanctity had been restored until the Day of Resurrection.

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّا لِلَّهِ وَإِنَّا إِلَيْهِ رَاجِعُونَ، عَلَى عَظِيمِ الْمُصَابِ فِي الْإِسْلَامِ ثُمَّ عَلَى تَضَاعُفِ الْمُصِيبَةِ مِمَّنْ شَاهِدُهُ يَحْتَجُّ فِي هَذِهِ الْقِصَّةِ بِعَيْنِهَا بِقَوْلِ الْفَاسِقِ عَمْرِو بْنِ سَعِيدٍ مُعَارِضَةً لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ يَتَكَلَّمُ فِي دِينِ اللَّهِ تَعَالَى، وَيَغُرُّ الضُّعَفَاءَ بِأَنَّهُ عَالِمٌ، وَمَا الْعَاصِي لِلَّهِ تَعَالَى وَلِرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا الْفَاسِقُ عَمْرُو بْنُ سَعِيدٍ، وَمَنْ وَلَّاهُ وَقَلَّدَهُ، وَمَا حَامِلُ الْخَرِبَةِ فِي الدُّنْيَا وَالْآخِرَةِ إِلَّا هُوَ، وَمَنْ أَمَّرَهُ وَأَيَّدَهُ، وَصَوَّبَ قَوْلَهُ؟ قَالَ أَبُو مُحَمَّد: فَهَذَا نَقْلٌ تَوَاتَرَ ثَلَاثَةٍ مِنْ الصَّحَابَةِ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَبُو هُرَيْرَةَ وَابْنُ عَبَّاسٍ، وَأَبُو شُرَيْحٍ، كُلُّهُمْ يَرْوِي عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «إِنَّ مَكَّةَ حَرَّمَهَا اللَّهُ تَعَالَى» فَبِيَقِينٍ نَدْرِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُحَرِّمْ مَكَّةَ خُصُوصًا الْقِتَالَ الْمُحَرَّمَ بِالظُّلْمِ، لِأَنَّهُ مُحَرَّمٌ فِي كُلِّ مَكَانٍ فِي الْأَرْضِ، لَكِنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - نَصَّ عَلَى أَنَّهُ إنَّمَا حُرِّمَ الْقِتَالُ الْمَأْمُورُ بِهِ فِي غَيْرِهَا، لِأَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْمُقَاتِلُ فِي مَكَّةَ، وَلَا قَتْلَ إلَّا بِحَقٍّ، وَنَهَى عَنْ ذَلِكَ الْقِتَالِ بِعَيْنِهِ غَيْرَهُ، وَحَرَّمَ أَنْ يُحْتَجَّ بِهِ فِي مِثْلِهِ، وَقَطْعُ الْأَيْدِي فِيهِ سَفْكُ دَمٍ، وَالْقِصَاصُ كَذَلِكَ، فَلَا يَحِلُّ فِيهَا أَلْبَتَّةَ.

وَقَدْ شَغَفَ قَوْمٌ: بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى قُلْت لِمَالِكٍ: نا ابْنُ شِهَابٍ عَنْ أَنَسٍ: «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَخَلَ مَكَّةَ عَلَى رَأْسِهِ الْمِغْفَرُ، فَلَمَّا نَزَعَهُ جَاءَهُ رَجُلٌ فَقَالَ: إنَّ ابْنَ خَطَلٍ مُتَعَلِّقٌ بِأَسْتَارِ الْكَعْبَةِ؟ فَقَالَ: اُقْتُلُوهُ.» قَالَ: نَعَمْ، وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ هَذَا كَانَ حِينَ دُخُولِهِ مَكَّةَ عَامَ الْفَتْحِ - وَهِيَ السَّاعَةُ الَّتِي أَحَلَّهَا اللَّهُ تَعَالَى لَهُ - ثُمَّ أَخْبَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فِي الْيَوْمِ الثَّانِي أَنَّهَا قَدْ عَادَتْ إلَى حُرْمَتِهَا إلَى يَوْمِ الْقِيَامَةِ.

L38252 Since the ambiguity has been resolved, it is obligatory to grant comprehensive immunity to anyone entering Mecca from all killing, retaliation (qisas), and prescribed punishments (hudud)—and success is by Allah, the Exalted.

فَإِذْ قَدْ ارْتَفَعَ الْإِشْكَالُ وَجَبَ تَأْمِينُ مَنْ دَخَلَ مَكَّةَ جُمْلَةً مِنْ كُلِّ قَتْلٍ وَقِصَاصٍ وَحَدٍّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38253 If one advocating this view argues: "Allah the Exalted states {Sanctities are subject to retaliation} [2:194]. Does this mean whoever violates a sanctity within the Sanctuary must have the same [violation] inflicted upon them therein?" We respond: This general principle is restricted by Allah's decree {Whoever enters it shall be secure} [3:97], further restricted by the Messenger of Allah—peace and blessings be upon him—who prohibited bloodshed therein entirely except for polytheists who combat us within it, and by juristic consensus permitting self-defense against injustice.[34]

فَإِنْ قَالَ قَائِلٌ مِمَّنْ يَحْتَجُّ لِهَذَا الْقَوْلِ: إنَّ اللَّهَ تَعَالَى يَقُولُ {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] فَمَنْ انْتَهَكَ حُرْمَةً فِي الْحَرَمِ وَجَبَ أَنْ يُنْتَهَكَ مِنْهُ مِثْلُ ذَلِكَ فِي الْحَرَمِ؟ قُلْنَا لَهُ: هَذَا عُمُومٌ يَخُصُّهُ قَوْلُ اللَّهِ تَعَالَى {وَمَنْ دَخَلَهُ كَانَ آمِنًا} [آل عمران: ٩٧] ، وَيَخُصُّهُ قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَحْرِيمِهَا أَنْ لَا يُسْفَكَ فِيهَا دَمٌ أَصْلًا، إلَّا مَنْ قَاتَلَنَا فِيهِ مِنْ الْمُشْرِكِينَ، وَبِالْإِجْمَاعِ فِي الدِّفَاعِ عَنْ النَّفْسِ الظُّلْمَ.

L38254 Thus, it is established that Allah, the Exalted, has never intended that we should also violate the sanctity of the Sacred Precinct as retaliation against whoever transgresses it, and that the punishment is not imposed upon him until he exits into the non-sanctified area, *al-Hill*.

فَصَحَّ أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ أَنَّ مَنْ انْتَهَكَ حُرْمَةَ الْحَرَمِ أَنْ نَنْتَهِكَهَا نَحْنُ أَيْضًا قِصَاصًا مِنْهُ، وَأَنَّهُ لَا يُقَامُ عَلَيْهِ حَتَّى يَخْرُجَ إلَى الْحِلِّ.

L38255 And this is the opinion of Umar ibn al-Khattab, Abdullah ibn Umar, Ibn Abbas, al-Sha'bi, Sa'id ibn Jubayr, and al-Hakam ibn 'Utaybah—and it is also narrated from 'Ata'—and this is the opinion we follow.

وَهَذَا قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَعَبْدِ اللَّهِ بْنِ عُمَرَ، وَابْنِ عَبَّاسٍ، وَالشَّعْبِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، وَالْحَكَمِ بْنِ عُتَيْبَةَ - وَرُوِيَ أَيْضًا عَنْ عَطَاءٍ - وَبِهِ نَأْخُذُ.

L38256 As for prohibiting people from his trading or his speaking, Allah the Exalted says: "Allah has permitted trade and forbidden usury" [Al-Baqarah: 275]. Thus, it is impermissible to prevent him from selling unless based on textual evidence or consensus.[35]

وَأَمَّا نَهْيُ النَّاسِ عَنْ مُبَايَعَتِهِ وَمُكَالَمَتِهِ، فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥] فَلَا يَجُوزُ مَنْعُهُ مِنْ الْبَيْعِ بِغَيْرِ نَصٍّ، وَلَا إجْمَاعٍ.

L38257–38258 Similarly, Allah the Exalted has commanded the spreading of the greeting of peace (salam), so it is not permissible to prohibit it except by textual evidence or scholarly consensus.

وَكَذَلِكَ أَمَرَ اللَّهُ تَعَالَى بِإِفْشَاءِ السَّلَامِ فَلَا يَجُوزُ مَنْعُهُ، إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ.

L38259 If they cite as evidence the statement of Abd al-Rahman ibn Farrukh, who said: Nafi' ibn Abd al-Harith, the governor of Mecca appointed by Umar ibn al-Khattab, bought the prison house from Safwan ibn Umayyah ibn Khalaf

فَإِنْ احْتَجُّوا بِقَوْلِ عَبْدِ الرَّحْمَنِ بْنِ فَرُّوخَ، قَالَ: اشْتَرَى نَافِعُ بْنُ عَبْدِ الْحَارِثِ عَامِلُ عُمَرَ بْنِ الْخَطَّابِ عَلَى مَكَّةَ مِنْ صَفْوَانَ بْنِ أُمَيَّةَ بْنِ خَلَفٍ دَارَ السِّجْنِ بِأَرْبَعَةِ آلَافٍ، فَإِنْ رَضِيَ عُمَرُ فَالْبَيْعُ لَهُ، وَإِنْ لَمْ يَرْضَ عُمَرُ فَلِصَفْوَانَ أَرْبَعُ مِائَةٍ؟ .

[34] **Qur'an references (L38253):** Qur'an 3:97 (Ali 'Imran); Qur'an 2:194 (Al-Baqarah).
[35] **Qur'an references (L38256):** Qur'an 2:275 (Al-Baqarah).

for four thousand—if Umar consents, the sale is valid for him; but if Umar does not consent, then Safwan is entitled to four hundred.

L38260 We said: Some of the Salaf have expressed a difference of opinion regarding this, as narrated from Ṭāwus that he disapproved of imprisonment in Mecca, stating: “It is unfitting that a House of Punishment should exist within the House of Mercy”—and this is the position we adopt.

L38261 If they object to our disagreement with ’Umar, Nāfi’, and Ṣafwān regarding this matter, we respond: We do not reject this position if established by the Quran or Sunnah. However, since you yourselves reject this ruling while deeming it impermissible according to your principles, how then do you justify opposing ’Umar in this very report containing his explicit verdict: “He retains the right to sell it; if dissatisfied, four hundred belong to Ṣafwān”? Yet all present opponents consider this to constitute pure usury. Thus, the sin and disgrace revert to them due to their opposition—forbidding dissent against him while themselves opposing ’Umar, his son, Abū Shurayḥ, Ibn ’Abbās, and Ibn al-Zubayr in their position that retribution is categorically not enforced in Mecca, with no opponent to them among the Companions (may Allah be pleased with them). The Quran and Sunnah support their position, as does the Messenger of Allah (peace be upon him), who announced this to the people on the second day of the Conquest.

L38262 So this is the established, indisputable consensus among all the Companions that they held this view.

L38263 As for us, we hold no argument against the words of Allah the Exalted, the words of the Messenger of Allah—may Allah bless him and grant him peace—and his rulings. And with Allah alone is success.

L38264 **Question: Are retributive punishments (Qiṣāṣ) or the fixed penalties (Ḥudūd) carried out during the Sacred Month?**

L38265 Issue 2091: Is retribution (qisas) or the fixed punishments (hudud) carried out during the sacred month or not?

L38266–38268 Ali said: Allah the Exalted declared {The sacred month is for the sacred month, and violations of sanctities require retaliation. So whoever trans-

قُلْنَا: قَدْ جَاءَ لِبَعْضِ السَّلَفِ خِلَافٌ لِهَذَا، كَمَا رُوِيَ عَنْ طَاوُسٍ أَنَّهُ كَرِهَ السِّجْنَ بِمَكَّةَ، وَقَالَ: لَا يَنْبَغِي أَنْ يَكُونَ بَيْتُ عَذَابٍ فِي بَيْتِ رَحْمَةٍ - وَبِهَذَا نَأْخُذُ.

فَإِنْ أَنْكَرُوا عَلَيْنَا خِلَافَ عُمَرَ، وَنَافِعٍ، وَصَفْوَانَ فِي ذَلِكَ. قُلْنَا لَهُمْ: نَحْنُ لَا نُنْكِرُ هَذَا إذَا أَوْجَبَهُ قُرْآنٌ أَوْ سُنَّةٌ، وَلَكِنْ إذْ تُنْكِرُونَ هَذَا وَلَا يَحِلُّ عِنْدَكُمْ فَكَيْفَ اسْتَجَزْتُمْ خِلَافَهُ فِي هَذَا الْخَبَرِ نَفْسِهِ، فِي أَنَّهُ نَصُّ عُمَرَ " فَلَهُ بَيْعُهُ وَإِنْ لَمْ يَرْضَ فَلِصَفْوَانَ أَرْبَعُ مِائَةٍ "؟ وَهَذَا عِنْدَ جَمِيعِ الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ رِبًا مَحْضٌ، فَعَادَ الْإِثْمُ عَلَيْهِمْ وَالْعَارُ أَيْضًا فِي خِلَافِهِمْ مَا لَا يَسْتَحِلُّونَ خِلَافَهُ إلَى خِلَافِهِمْ: عُمَرَ، وَابْنِهِ، وَأَبِي شُرَيْحٍ، وَابْنِ عَبَّاسٍ، وَابْنِ الزُّبَيْرِ، فِي أَنْ لَا يُقَامَ قَوَدٌ بِمَكَّةَ أَصْلًا، وَلَا مُخَالِفَ لَهُمْ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالْقُرْآنُ مَعَهُمْ، وَالسُّنَّةُ، وَرَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَعَهُمْ يَهْتِفُ بِذَلِكَ عَلَى النَّاسِ ثَانِيَ يَوْمِ الْفَتْحِ.

فَهَذَا هُوَ الْإِجْمَاعُ الثَّابِتُ الْمَقْطُوعُ بِهِ عَلَى جَمِيعِ الصَّحَابَةِ أَنَّهُمْ قَالُوا بِهِ.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ اللَّهِ تَعَالَى، وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحُكْمِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ يُقَامُ الْقِصَاصُ أَوْ الْحُدُودُ فِي الشَّهْرِ الْحَرَامِ]

٢٠٩١ - مَسْأَلَةٌ: هَلْ يُقَامُ الْقِصَاصُ أَوْ الْحُدُودُ فِي الشَّهْرِ الْحَرَامِ أَمْ لَا؟

gresses against you, then retaliate against him in the same manner as he transgressed against you} [Al-Baqarah: 194]. He the Exalted also stated {They ask you about fighting during the sacred month. Say: 'Fighting during it is a major sin'} [Al-Baqarah: 217] up to His Exalted's statement {And persecution is greater than killing} [Al-Baqarah: 217]. Abu Muhammad said: We have been narrated through the narration of Abd al-Razzaq from Ibn Jurayj: I said to Ata: What is the ruling for a man killed in the Sacred Precinct—where should his killer be slain? He said: Wherever the slain man's heirs choose. He said: If he was killed in profane territory and not in the Sacred Precinct—'Aṭā' said: The same applies to the sacred month.[36]

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى {الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] وَقَالَ تَعَالَى {يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ} [البقرة: ٢١٧] إلَى قَوْله تَعَالَى: {وَالْفِتْنَةُ أَكْبَرُ مِنَ الْقَتْلِ} [البقرة: ٢١٧] . قَالَ أَبُو مُحَمَّد: وَقَدْ رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: أَرَأَيْت الرَّجُلَ يُقْتَلُ فِي الْحَرَمِ أَيْنَ يُقْتَلُ قَاتِلُهُ؟ قَالَ: حَيْثُ شَاءَ أَهْلُ الْمَقْتُولِ؟ قَالَ: فَإِنْ قُتِلَ فِي الْحِلِّ وَلَمْ يُقْتَلْ فِي الْحَرَمِ؟ قَالَ عَطَاءٌ: وَكَذَلِكَ الشَّهْرُ الْحَرَامُ.

L38269 And through his chain: from 'Abd al-Razzāq from Ma'mar from al-Zuhrī, who said: "The Deaf Month of Allah is Rajab. Muslims revered the sacred months because wrongdoing therein is graver." He added: "Whoever kills in a non-sacred month or inflicts injury is not to be killed in a sacred month until a non-sacred month arrives." Allah the Exalted said: *"The sacred month for the sacred month"* [Al-Baqarah 2:194].[37]

وَبِهِ: إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: شَهْرُ اللَّهِ الْأَصَمُّ رَجَبٌ، قَالَ - فَكَانَ الْمُسْلِمُونَ يُعَظِّمُونَ الْأَشْهُرَ الْحُرُمَ، لِأَنَّ الظُّلْمَ فِيهَا أَعْظَمُ قَالَ: وَمَنْ قَتَلَ فِي شَهْرٍ حَلَالٍ أَوْ جَرَحَ لَمْ يُقْتَلْ فِي شَهْرٍ حَرَامٍ حَتَّى يَجِيءَ شَهْرٌ حَلَالٌ، قَالَ اللَّهُ تَعَالَى {الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ} [البقرة: ١٩٤] .

L38270 And through him—to Abd al-Razzaq from Ibn Jurayj, who said: Ata' informed me that a man was wounded during an ordinary month. Uthman ibn Muhammad ibn Abi Sufyan—who was the governor during a sacred month—sought to carry out retaliation against him. Ubayd ibn Umayr—while present with a contingent in the residence—sent word to him: "Do not carry out retaliation against him until an ordinary month begins." Abu Muhammad said: This is Ubayd ibn Umayr and Al-Zuhri—they do not consider it permissible to carry out retaliation in a sacred month against one who committed an offense during an ordinary month.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ أَخْبَرَنِي عَطَاءٌ أَنَّ رَجُلًا جُرِحَ فِي شَهْرٍ حَلَالٍ فَأَرَادَ عُثْمَانُ بْنُ مُحَمَّدِ بْنِ أَبِي سُفْيَانَ أَنْ يُقِيدَهُ - وَهُوَ أَمِيرٌ فِي شَهْرٍ حَرَامٍ - فَأَرْسَلَ إلَيْهِ عُبَيْدُ بْنُ عُمَيْرٍ - وَهُوَ فِي طَائِفَةٍ مِنْ الدَّارِ: لَا تُقِدْهُ حَتَّى يَدْخُلَ شَهْرٌ حَلَالٌ؟ قَالَ أَبُو مُحَمَّد: فَهَذَا عُبَيْدُ بْنُ عُمَيْرٍ، وَالزُّهْرِيُّ لَا يَرَيَانِ أَنْ يُقَادَ فِي شَهْرٍ حَرَامٍ مَنْ جَنَى فِي شَهْرٍ حَلَالٍ.

L38271 Aṭā' ibn Abī Rabāḥ maintains the view that whoever kills during a sacred month must be executed in a sacred month. If the killing occurs in a non-

[36] **Qur'an references (L38266):** Qur'an 2:194 (Al-Baqarah); Qur'an 2:217 (Al-Baqarah).
[37] **Qur'an references (L38269):** Qur'an 2:194 (Al-Baqarah).

sacred month, retaliation should not be carried out against him during a sacred month. These scholars are among the greatest of the Successors and the jurists of Mecca and Medina.

وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ يَرَى مَنْ قَتَلَ فِي شَهْرٍ حَرَامٍ أَنْ يُقْتَلَ فِي شَهْرٍ حَرَامٍ فَإِنْ قَتَلَ فِي شَهْرٍ حَلَالٍ لَمْ يُقَدْ مِنْهُ فِي شَهْرٍ حَرَامٍ. فَهَؤُلَاءِ مِنْ أَكَابِرِ التَّابِعِينَ وَفُقَهَاءِ مَكَّةَ وَالْمَدِينَةِ.

L38272 Ali said: Allah the Exalted has said, {Indeed, the number of months with Allah is twelve months in the Book of Allah, on the day He created the heavens and the earth; of these, four are sacred. That is the upright religion, so do not wrong yourselves during them} [At-Tawbah: 36]. Indeed, Allah the Exalted forbade injustice in them, so injustice in them is graver than injustice in other months. It is not permissible to attribute to Allah the Exalted what He has not decreed.[38]

قَالَ عَلِيٌّ: قَالَ اللَّهُ تَعَالَى {إِنَّ عِدَّةَ الشُّهُورِ عِنْدَ اللَّهِ اثْنَا عَشَرَ شَهْرًا فِي كِتَابِ اللَّهِ يَوْمَ خَلَقَ السَّمَاوَاتِ وَالأَرْضَ مِنْهَا أَرْبَعَةٌ حُرُمٌ ذَلِكَ الدِّينُ الْقَيِّمُ فَلا تَظْلِمُوا فِيهِنَّ أَنْفُسَكُمْ} [التوبة: ٣٦] فَإِنَّمَا نَهَى اللَّهُ تَعَالَى فِيهَا عَنْ الظُّلْمِ، فَكَانَ الظُّلْمُ فِيهَا أَوْكَدَ مِنْ الظُّلْمِ فِي غَيْرِهَا، وَلَا يَحِلُّ أَنْ يُزَادَ عَلَى اللَّهِ تَعَالَى مَا لَمْ يَقُلْ.

L38273 Then we considered the statement of Allah, the Exalted: "The sacred month for the sacred month" [Al-Baqarah: 194]. The requirement of this verse is that if someone kills or injures during a sacred month but is not apprehended until a non-sacred month, the guardian authorized to seek retaliation for bloodshed or injury is given a choice: if he wishes to delay retaliation until a sacred month, this is permissible for him by the explicit text of the verse. If he does not desire this, it is part of his right, which he may forgo out of forbearance, and the verse does not prohibit him from doing so—and this is the position we uphold. Success comes only from Allah, the Exalted.[39]

ثُمَّ نَظَرْنَا فِي قَوْلِهِ تَعَالَى {الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ} [البقرة: ١٩٤] فَكَانَ مُوجَبُ هَذِهِ الْآيَةِ أَنَّ مَنْ قَتَلَ أَوْ جَرَحَ فِي شَهْرٍ حَرَامٍ فَلَمْ يُظْفَرْ بِهِ إِلَّا فِي شَهْرٍ حَلَالٍ، فَإِنَّ وَلِيَّ الِاسْتِقَادَةِ مِنْ الدَّمِ، أَوْ الْجُرْحِ مُخَيَّرٌ: إِنْ شَاءَ تَأْخِيرَهُ إِلَى شَهْرٍ حَرَامٍ فَذَلِكَ لَهُ بِنَصِّ الْآيَةِ، وَإِنْ لَمْ يُرِدْ ذَلِكَ فَهُوَ بَعْضُ حَقِّهِ تَجَافَى عَنْهُ وَلَمْ تَمْنَعْهُ الْآيَةُ مِنْ ذَلِكَ - وَبِهَذَا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38274 As for the statement of the Exalted, {They ask you about the Sacred Month—fighting in it} [Al-Baqarah: 217], is this [ruling] specific to fighting and in no way applicable to retaliatory punishment?[40]

وَأَمَّا قَوْلُهُ تَعَالَى {يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ} [البقرة: ٢١٧] إِنَّمَا هَذَا فِي الْقِتَالِ، وَلَيْسَ فِي الْقَوَدِ فِي شَيْءٍ؟

L38275–38276 Abu Muhammad said: The one liable for qisas (legal retribution) is to be detained if the victim or the blood heir delays its enforcement until a sacred month arrives, because it is obligatory to exact retribution from him for his crime. It is impermissible to release him; rather, he is to be detained unanimously pending the enforcement of qisas and prevented from departing.

قَالَ أَبُو مُحَمَّدٍ: وَيُحْبَسُ الَّذِي وَجَبَ عَلَيْهِ الْقَوَدُ فَأَخَّرَهُ الْمَجْنِيُّ عَلَيْهِ أَوْ وَلِيُّ الدَّمِ حَتَّى يَأْتِيَ شَهْرٌ حَرَامٌ، لِأَنَّهُ قَدْ وَجَبَ أَخْذُهُ بِمَا جَنَى، فَلَا يَنْبَغِي تَسْرِيحُهُ، بَلْ يُوقَفُ بِلَا خِلَافٍ لِلْقَوَدِ، وَيُمْنَعُ مِنْ الِانْطِلَاقِ.

[38] **Qur'an references (L38272):** Qur'an 9:36 (At-Tawbah).
[39] **Qur'an references (L38273):** Qur'an 2:194 (Al-Baqarah).
[40] **Qur'an references (L38274):** Qur'an 2:217 (Al-Baqarah).

L38277 Abu Muhammad said: As for the prescribed punishments, all of them—including stoning and others—are to be enforced during the sacred month, for neither Allah the Exalted nor His Messenger—peace and blessings be upon him—have provided any textual prohibition against this. Hastening the obligatory compliance in enforcing prescribed punishments is binding with certainty. We know that had Allah the Exalted willed to delay this beyond the sacred month, He would have clarified it through His Messenger—peace and blessings of Allah be upon him—just as He clarified that regarding the Haram in Mecca. Since He did not do so, we testify by Allah the Exalted's own testimony that He never intended prescribed punishments to be enforced only during the sacred months. The same ruling applies to the Haram of Medina. *"And your Lord is never forgetful"* [19:64]. And success is by Allah the Exalted.[41]

L38278 **Issue: The permissibility of fighting those who pass in front of a worshipper [during prayer].**

L38279 **Issue:** Fighting someone who passes in front of a person praying. Ali said: "If someone intends to pass in front of a worshiper—whether toward a prayer screen or elsewhere—and another person seeks to pass between the worshiper and his screen, or in front of him if there is no screen, the worshiper should repel him. If the passer desists, well and good; otherwise, the worshiper should fight him. If the worshiper repels him and the passer's death coincides [with the act], the passer's blood is forfeited. There is no liability—no retaliation, blood money, or expiation. The same applies if a limb is broken, without distinction. If the worshiper's death coincides [with the act], however, retaliation, blood money, or ransom applies."

L38280 The evidence for this is what we have narrated as transmitted through Abu Dawud's chain: Musa ibn Isma'il reported to us, Sulayman (Ibn al-Mughirah) narrated from Humayd, who said: Abu Salih stated, "I will relate to you what I observed of Abu Sa'id and heard from him: Abu Sa'id came to Marwan and said, 'I heard the Messenger of Allah—peace and blessings be upon him—declare: "When any of you prays toward an object screening him

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْحُدُودُ فَتُقَامُ فِي الشَّهْرِ الْحَرَامِ كُلُّهَا مِنْ رَجْمٍ وَغَيْرِهِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَأْتِ عَنْهُ نَصٌّ بِالْمَنْعِ مِنْ ذَلِكَ، وَلَا مِنْ رَسُولِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَتَعْجِيلُ الطَّاعَةِ الْمُفْتَرَضَةِ فِي إقَامَةِ الْحُدُودِ وَاجِبٌ بِيَقِينٍ، نَدْرِي أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ تَأْخِيرَ ذَلِكَ عَنْ الشَّهْرِ الْحَرَامِ لَبَيَّنَهُ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا بَيَّنَ ذَلِكَ فِي الْحَرَمِ بِمَكَّةَ، فَإِذَا لَمْ يَفْعَلْ فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى أَنَّهُ مَا أَرَادَ قَطُّ أَنْ لَا تُقَامَ الْحُدُودُ إلَّا فِي الْأَشْهُرِ الْحُرُمِ. وَهَكَذَا الْقَوْلُ فِي حَرَمِ الْمَدِينَةِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ مُقَاتَلَةُ مَنْ مَرَّ أَمَامَ الْمُصَلِّي]

٢٠٩٢ - مَسْأَلَةٌ: مُقَاتَلَةُ مَنْ مَرَّ أَمَامَ الْمُصَلِّي؟ قَالَ عَلِيٌّ: مَنْ أَرَادَ الْمُرُورَ أَمَامَ الْمُصَلِّي إلَى سُتْرَةٍ أَوْ غَيْرِ سُتْرَةٍ، فَأَرَادَ إنْسَانٌ أَنْ يَمُرَّ بَيْنَهُ وَبَيْنَ سُتْرَتِهِ، أَوْ بَيْنَ يَدَيْهِ، وَإِنْ لَمْ يَكُنْ إلَى سُتْرَةٍ فَلْيَدْفَعْهُ، فَإِنْ انْدَفَعَ وَإِلَّا فَلْيُقَاتِلْهُ، فَإِنْ دَفَعَهُ فَوَافَقَتْ مَنِيَّةُ الْمُرِيدِ لِلْمُرُورِ فَدَمُهُ هَدَرٌ، وَلَا شَيْءَ فِيهِ، لَا قَوَدَ، وَلَا دِيَةَ، وَلَا كَفَّارَةَ، وَكَذَا إنْ كُسِرَ لَهُ عُضْوٌ وَلَا فَرْقَ، فَإِنْ وَافَقَ فِي ذَلِكَ مَنِيَّةَ الْمُصَلِّي: فَفِيهِ الْقَوَدُ، أَوْ الدِّيَةُ أَوْ الْمُفَادَاةُ.

بُرْهَانُ ذَلِكَ: مَا رُوِّينَاهُ مِنْ طَرِيقِ أَبِي دَاوُد نا مُوسَى بْنُ إسْمَاعِيلَ نا سُلَيْمَانُ - هُوَ ابْنُ الْمُغِيرَةِ - عَنْ حُمَيْدٍ قَالَ: قَالَ أَبُو صَالِحٍ: أُحَدِّثُك عَمَّا رَأَيْت مِنْ أَبِي سَعِيدٍ، وَسَمِعْته مِنْهُ: دَخَلَ أَبُو سَعِيدٍ عَلَى مَرْوَانَ فَقَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ

[41] **Qur'an references (L38277):** Qur'an 19:64 (Maryam).

from people, and someone attempts to pass before him, let him push against his throat. If he resists, let him fight him, for he is indeed a devil.’”’

«إِذَا صَلَّى أَحَدُكُمْ إِلَى مَا يَسْتُرُهُ مِنْ النَّاسِ فَأَرَادَ أَحَدٌ أَنْ يَجْتَازَ بَيْنَ يَدَيْهِ فَلْيَدْفَعْ فِي نَحْرِهِ، فَإِنْ أَبَى فَلْيُقَاتِلْهُ، فَإِنَّمَا هُوَ شَيْطَانٌ» .

L38281–38283 It has been narrated to us through the chain of Ahmad ibn Shu‘ayb: from Muḥammad ibn Muḥammad ibn Muṣ‘ab al-Ṣūrī, from Muḥammad ibn al-Mubārak [al-Ṣūrī], from ‘Abd al-‘Azīz ibn Muḥammad [al-Darāwardī], from Ṣafwān ibn Sulaym, from ‘Aṭā’ ibn Yasār, from Abū Sa‘īd al-Khudrī: He was praying when a son of Marwān attempted to pass in front of him. He pushed him back, but he did not retreat, so he struck him. The boy went out crying until he came to Marwan and informed him. Marwan said to Abu Sa‘id, “Why did you strike your nephew?” He replied, “I did not strike him; rather, I struck the Shaytan. I heard the Messenger of Allah—peace and blessings be upon him—say, ’When any of you is in prayer and someone wishes to pass in front of him, he should prevent him as much as he can. If he refuses, let him fight him, for he is indeed a Shaytan.’”

وَرُوِّينَا مِنْ طَرِيقِ أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مُحَمَّدِ بْنِ مُصْعَبٍ الصُّورِيُّ نا مُحَمَّدُ بْنُ الْمُبَارَكِ - هُوَ الصُّورِيُّ - نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - هُوَ الدَّرَاوَرْدِيُّ - عَنْ صَفْوَانَ بْنِ سُلَيْمٍ عَنْ عَطَاءِ بْنِ يَسَارٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ: أَنَّهُ كَانَ يُصَلِّي فَأَرَادَ ابْنُ لِمَرْوَانَ أَنْ يَمُرَّ بَيْنَ يَدَيْهِ فَدَرَأَهُ فَلَمْ يَرْجِعْ، فَضَرَبَهُ، فَخَرَجَ الْغُلَامُ يَبْكِي حَتَّى أَتَى مَرْوَانَ فَأَخْبَرَهُ؟ فَقَالَ مَرْوَانُ لِأَبِي سَعِيدٍ: لِمَ ضَرَبْتَ ابْنَ أَخِيكَ؟ قَالَ: مَا ضَرَبْتُهُ، إِنَّمَا ضَرَبْتُ الشَّيْطَانَ، سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «إِذَا كَانَ أَحَدُكُمْ فِي صَلَاتِهِ فَأَرَادَ إِنْسَانٌ أَنْ يَمُرَّ بَيْنَ يَدَيْهِ فَيَدْرَؤُهُ مَا اسْتَطَاعَ فَإِنْ أَبَى فَلْيُقَاتِلْهُ، فَإِنَّمَا هُوَ شَيْطَانٌ» .

L38284 And from the narration of Muslim, from the Messenger of Allah—peace and blessings be upon him—he said: “If he refuses, then let him fight him, for indeed with him is the devil companion.”

وَمِنْ طَرِيقِ مُسْلِمٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «فَإِنْ أَبَى فَلْيُقَاتِلْهُ فَإِنَّ مَعَهُ الْقَرِينَ» .

L38285 Whoever fights in the manner commanded by the Messenger of Allah (peace and blessings be upon him) is a doer of good. Allah the Exalted said, “There is no blame upon the doers of good” [Quran 9:91]. Thus, since he is a doer of good, he is not a transgressor; and since he is not a transgressor, there is no retaliation (qawd) against him nor diyya.[42]

وَمَنْ قَاتَلَ كَمَا أَمَرَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ مُحْسِنٌ، قَالَ اللَّهُ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] ، فَإِذْ هُوَ مُحْسِنٌ فَلَيْسَ مُتَعَدِّيًا، وَإِذْ لَيْسَ مُتَعَدِّيًا فَلَا قَوَدَ عَلَيْهِ وَلَا دِيَةَ.

L38286 The unintentional killer does not incur expiation. If he could have prevented the death but deliberately killed, he becomes liable for retaliation, for he is then deemed an aggressor by what he was not commanded [to do]. As for one who passes before a praying person, he is an aggressor by passing, an aggressor by fighting, thus requiring retaliation against him. Success comes solely from Allah, the Exalted.

وَلَيْسَ قَاتِلُ خَطَأٍ فَتَكُونَ عَلَيْهِ كَفَّارَةٌ، فَلَوْ أَمْكَنَهُ دَفْعُهُ فَعَمَدَ قَتْلَهُ أُقِيدَ بِهِ، لِأَنَّهُ مُعْتَدٍ حِينَئِذٍ بِمَا لَمْ يُؤْمَرْ - وَأَمَّا الْمَارُّ بَيْنَ يَدَيْ الْمُصَلِّي فَمُعْتَدٍ بِالْمُرُورِ مُعْتَدٍ بِالْمُقَاتَلَةِ، فَعَلَيْهِ الْقَوَدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[42] **Qur’an references (L38285):** Qur’an 9:91 (At-Tawbah).

[مَسْأَلَةٌ الْجَمَاعَةُ تَضْرِبُ الْوَاحِدَ فَيُقْتَلُ وَلَا يُدْرَى مَنْ أَصَابَهُ مِنْهُمْ]

٢٠٩٣ - مَسْأَلَةٌ: الْجَمَاعَةُ تَضْرِبُ الْوَاحِدَ فَيُقْتَلُ وَلَا يُدْرَى مَنْ أَصَابَهُ مِنْهُمْ، وَالْمُصْطَدِمَانِ، وَمَنْ وَقَعَ عَلَى آخَرَ، وَمَنْ تَعَلَّقَ بِآخَرَ فَسَقَطَ، وَالْحَفَّارُونَ، وَالْمُتَصَارِعَانِ، وَالْمُتَلَاعِبَانِ

قَالَ أَبُو مُحَمَّد: أَمَّا الْجَمَاعَةُ تَضْرِبُ الْوَاحِدَ فَيَمُوتُ وَلَا يُدْرَى مَنْ مِنْهُمْ أَصَابَهُ؟ فَإِنَّهُ إنْ وُجِدَ مَقْتُولًا فِي دَارِ قَوْمٍ فَادَّعَى أَهْلُهُ عَلَى أَهْلِ تِلْكَ الدَّارِ - وَكَانَ الَّذِينَ ضَرَبُوهُ مِنْ أَهْلِ تِلْكَ الدَّارِ -: فَفِيهِ الْقَسَامَةُ عَلَى مَا نَذْكُرُهُ بَعْدَ هَذَا - إنْ شَاءَ اللَّهُ تَعَالَى وَإِنْ كَانَ الَّذِينَ ضَرَبُوهُ مِنْ غَيْرِ أَهْلِ تِلْكَ الدَّارِ -: فَلَيْسَ هَاهُنَا حُكْمُ الْقَسَامَةِ، وَلَكِنْ حُكْمُ التَّدَاعِي فَالْبَيِّنَةُ هَاهُنَا عَلَى مُدَّعِي الدَّمِ، فَإِنْ جَاءَ بِهَا فَلَهُ الْقَوَدُ، وَإِنْ لَمْ يَأْتِ بِهَا حَلَفُوا لَهُ، إنْ ادَّعَى عَلَى جَمِيعِهِمْ؛ أَوْ حَلَفَ لَهُ مَنْ ادَّعَى عَلَيْهِ مِنْهُمْ، وَبَرِئُوا، وَسَنَذْكُرُ هَذَا كُلَّهُ فِي " بَابِ الْقَسَامَةِ ".

[مَسْأَلَةٌ اقْتَتَلَ اثْنَانِ فَقَتَلَ أَحَدُهُمَا الْآخَرَ]

٢٠٩٤ - مَسْأَلَةٌ: وَإِذَا اقْتَتَلَ اثْنَانِ، فَقَتَلَ أَحَدُهُمَا الْآخَرَ؟ فَقَدْ قَالَ قَوْمٌ: عَلَى الْحَيِّ نِصْفُ الدِّيَةِ، لِأَنَّهُ مَاتَ الْمَقْتُولُ مِنْ فِعْلِهِ وَفِعْلِ غَيْرِهِ وَهَذَا لَيْسَ بِشَيْءٍ، لِأَنَّ الْمَقْتُولَ - وَإِنْ كَانَ عَاصِيًا لِلَّهِ تَعَالَى، وَفِي النَّارِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا الْتَقَى الْمُسْلِمَانِ بِسَيْفَيْهِمَا فَالْقَاتِلُ وَالْمَقْتُولُ فِي النَّارِ» فَإِنَّهُ لَيْسَ كُلُّ عَاصٍ يَحِلُّ دَمُهُ وَلَا يُغَرَّمُ دِيَةً، لَكِنَّ الْقَاتِلَ الْحَيَّ هُوَ قَاتِلُ الْآخَرِ بِلَا شَكٍّ، فَإِذْ هُوَ قَاتِلُهُ بِيَقِينٍ عَلَيْهِ مَا

An issue: A group collectively strikes an individual, causing his death, and it cannot be determined which of them inflicted the fatal injury.

2093. Issue: A group strikes a single person, resulting in his death where the specific assailant is unknown; two people colliding; one who falls upon another; one who clings to another and falls; diggers; two wrestlers; and two play-fighters.

Abū Muḥammad said: Regarding a group striking a single person who then dies—with uncertainty as to which struck the fatal blow—if the slain is found in a household and his heirs accuse its residents, and the assailants were indeed from that household, then the qasamah oath-swearing applies here, as we shall later clarify—God Almighty willing. If the assailants were from outside that household, the ruling of qasamah does not apply. Instead, the ruling pertains to reciprocal allegations. Here, the burden of proof lies with the blood claimant. If he produces evidence, he is entitled to retaliation. If he fails, the accused must swear: if he accuses all collectively, they all swear; if he accuses specific individuals, only those swear—thereby acquitting themselves. We shall elaborate on this in the "Chapter on Qasamah."

A case in which two individuals fought each other, so one of them killed the other.

Issue 2094: If two men engage in combat and one kills the other, some scholars have ruled that the survivor is liable for half the *diyah* (blood money), because the deceased died as a result of his own action and the action of the killer. This is baseless, because the killed person—even if he is disobedient to Allah the Exalted and will be in the Fire, according to the statement of the Messenger of Allah, peace and blessings be upon him: "When two Muslims confront each other with their swords, both the killer and the killed are in the Fire"—does not mean that every disobedient person's blood may be shed freely, nor is he exempt from paying blood money. However, the living killer is undoubtedly the killer of the other. Thus, he is

his killer with certainty, bearing what is incumbent upon a killer. For what was narrated to us through the chain of Abd al-Razzaq from Ibn Jurayj, who said: Ibn Shihab was asked about the first one who imposed half of his blood money on the two combatants. Ibn Shihab replied: "We hold that the full blood money is due from the remaining one, and that was the Sunnah in what we have witnessed."[43]

L38294 Abu Muhammad said: If the slain person inflicts an injury upon his killer from which the killer dies after the slain's death, retaliation must be promptly executed against the living party (whether both were wrongful together, or only the living one was wrongful while the slain was wronged). Retaliation is thus enforced against the living party for taking the slain's life and for the wounds he inflicted upon them—or blood money is taken from him or his estate, whether he dies or survives. No liability is imposed on the deceased's estate (neither blood money nor any other liability), except if the slain had severed a finger [of the killer], fingers, hand, or foot, in which case the blood money for that injury is due from the deceased's estate.

L38295 The proof of this is: whatever blood money became due during the offender's lifetime remains obligatory thereafter, so his death does not nullify it, for what is established with certainty is not nullified by mere claims. As for what had not yet become due during his lifetime, we know with certainty that his wealth has passed upon his death to his heirs or creditors without doubt.

L38296 When it becomes their property, it forms part of their wealth. Diyah is only obligatory upon the death of the slain. If it becomes obligatory due to their death—while the offender possesses no property—then demanding diyah from the property of one who neither killed nor committed an offense against the victim constitutes absolute, definitive invalidity. Similarly, the diyah owed by a killer who died before this obligation took effect—since legal rulings do not apply to the deceased but only to the living—and with

[43] **Hadith references (L38291):** Sahih al-Bukhari 31; Sahih al-Bukhari 6875; Sahih Muslim 2888b.

عَلَى الْقَاتِلِ: لِمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: سُئِلَ ابْنُ شِهَابٍ عَنْ أَوَّلِ مَنْ جَعَلَ عَلَى الْمُصْطَدِمَيْنِ نِصْفَ عَقْلِهِ؟ فَقَالَ ابْنُ شِهَابٍ: نَرَى أَنَّ الْعَقْلَ تَامًّا عَلَى الْبَاقِي مِنْهُمَا، وَتِلْكَ السُّنَّةُ فِيمَا أَدْرَكْنَا.

قَالَ أَبُو مُحَمَّدٍ: فَإِنْ جَنَى الْمَقْتُولُ عَلَى قَاتِلِهِ جِنَايَةً مَاتَ مِنْهَا بَعْدَ مَوْتِ الْمَقْتُولِ؟ فَالْقَوَدُ وَاجِبٌ تَعْجِيلُهُ عَلَى الْحَيِّ، إذْ كَانَا ظَالِمَيْنِ مَعًا، أَوْ كَانَ الْحَيُّ مِنْهُمَا ظَالِمًا وَالْمَقْتُولُ مَظْلُومًا؟ فَيُسْتَقَادُ مِنْ الْحَيِّ فِي نَفْسِهِ، وَفِي الْجِرَاحِ الَّتِي جَرَحَ الْمَقْتُولَ بِهَا - أَوْ تُؤْخَذُ الدِّيَةُ مِنْهُ، أَوْ مِنْ مَالِهِ - مَاتَ أَوْ عَاشَ - وَلَا شَيْءَ فِي مَالِ الْمَقْتُولِ - لَا دِيَةَ وَلَا غَيْرَهَا - إلَّا إنْ كَانَ قَطَعَ لَهُ أُصْبُعًا، أَوْ أَصَابِعَ، أَوْ يَدًا، أَوْ رِجْلًا، فَالدِّيَةُ فِي ذَلِكَ فِي مَالِ الْمَيِّتِ.

بُرْهَانُ ذَلِكَ: أَنَّ مَا وَجَبَ فِي حَيَاةِ الْجَانِي مِنْ دِيَةٍ فَهِيَ وَاجِبَةٌ بَعْدُ، فَلَا يُسْقِطُهَا مَوْتُهُ، إذْ مَا صَحَّ بِيَقِينٍ فَلَا يَسْقُطُ بِالدَّعْوَى - وَأَمَّا مَا لَمْ يَجِبْ فِي حَيَاتِهِ بَعْدُ، فَبِيَقِينٍ نَدْرِي أَنَّ مَالَهُ قَدْ صَارَ بِمَوْتِهِ لِوَرَثَتِهِ، أَوْ لِلْغُرَمَاءِ بِلَا شَكٍّ.

فَإِذْ صَارَ لَهُمْ، فَهُوَ مَالٌ مِنْ مَالِهِمْ، وَالدِّيَةُ لَا تَجِبُ إلَّا بِمَوْتِ الْمَقْتُولِ، فَإِذَا وَجَبَتْ بِمَوْتِهِ - وَلَا مَالَ لِلْجَانِي - فَمِنْ الْبَاطِلِ الْبَحْتِ الْمَقْطُوعِ بِهِ: أَنْ تُؤْخَذَ دِيَةٌ مِنْ مَالِ مَنْ لَمْ يَقْتُلْهُ، وَلَا جَنَى عَلَيْهِ - وَكَذَلِكَ دِيَةُ الْقَاتِلِ الَّذِي قَدْ مَاتَ قَبْلَ وُجُوبِ الدِّيَةِ عَلَيْهِ، وَالْأَحْكَامُ لَا تَلْحَقُ الْمَوْتَى، وَإِنَّمَا تَلْحَقُ الْأَحْيَاءَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - فَهَذَا حُكْمُ الظَّالِمَيْنِ.

Allah, the Exalted, lies all success—this constitutes the ruling pertaining to the two transgressors in this case.

وَأَمَّا إِنْ كَانَ الْقَاتِلُ الْحَيُّ مَظْلُومًا وَالْمَقْتُولُ ظَالِمًا، فَقَدْ مَضَى إِلَى لَعْنَةِ اللَّهِ تَعَالَى وَلَا شَيْءَ عَلَى الْقَاتِلِ الْجَارِحِ - لَا قَوَدَ، وَلَا دِيَةَ - لِمَا سَنَذْكُرُهُ فِي " كِتَابِ أَهْلِ الْبَغْيِ ".

L38297 If the living killer is the wronged party and the slain is the oppressor, the slain has entered the curse of Allah the Exalted. Nothing is incumbent upon the injuring killer—neither qisas (retaliation) nor diyah (blood money)—as we will elaborate in *The Book of the People of Baghy (Rebellion)*.

قَالَ أَبُو مُحَمَّد: وَأَمَّا الْمُصْطَدِمَانِ: رَاجِلَيْنِ، أَوْ عَلَى دَابَّتَيْنِ، أَوْ السَّفِينَتَيْنِ يَصْطَدِمَانِ، فَرُوِيَ عَنْ الشَّعْبِيِّ: فِي السَّفِينَتَيْنِ يَصْطَدِمَانِ لَا ضَمَانَ فِي شَيْءٍ مِنْ ذَلِكَ.

L38298–38299 Abu Muhammad said: As for the two colliding parties—whether two pedestrians, two riding animals, or two ships—it was narrated from Al-Sha'bi regarding the two ships colliding that there is no liability in any of such cases.

وَقَالَ الشَّافِعِيُّ: لَا يَجُوزُ فِيهِ إلَّا أَحَدُ قَوْلَيْنِ: إمَّا أَنَّهُ يَضْمَنُ مُدَبِّرُ السَّفِينَةِ نِصْفَ مَا أَصَابَتْ سَفِينَتُهُ لِغَيْرِهِ، أَوْ أَنَّهُ لَا يَضْمَنُ أَلْبَتَّةَ، إلَّا أَنْ يَكُونَ قَادِرًا عَلَى صَرْفِهَا بِنَفْسِهِ، أَوْ بِمَنْ يُطِيعُهُ فَلَا يَفْعَلُ فَيَضْمَنُ، وَالْقَوْلُ قَوْلُهُ مَعَ يَمِينِهِ: أَنَّهُ مَا قَدَرَ عَلَى صَرْفِهَا، وَضَمَانُ الْأَمْوَالِ إذَا ضَمِنَ فِي ذِمَّتِهِ، وَضَمَانُ النُّفُوسِ عَلَى عَاقِلَتِهِ.

L38300 Al-Shafi'i said: Only two opinions are permissible in this matter: either the ship's operator is liable for half of what his ship caused to others, or he bears no liability whatsoever unless he was capable of averting it himself or through someone under his authority yet failed to do so, thereby incurring liability. The ruling is based on his assertion, provided he swears that he could not avert it. Liability for property falls upon his personal obligation, while liability for loss of life rests upon his ʿāqilah (agnatic kin group).

قَالَ أَبُو مُحَمَّد: وَقَالَ بَعْضُ أَصْحَابِنَا: إذَا اصْطَدَمَتْ السَّفِينَتَانِ بِغَيْرِ قَصْدٍ مِنْ رُكَّابِهِمَا، لَكِنْ بِغَلَبَةٍ، أَوْ غَفْلَةٍ فَلَا ضَمَانَ فِي ذَلِكَ أَصْلًا.

L38301 Abu Muhammad said: Some of our companions stated: If two ships collide without intent from their passengers or crew, but rather due to force majeure or inadvertence, there is no financial liability whatsoever in that matter.

فَإِنْ حَمَلَا سَفِينَتَهُمَا عَلَى التَّصَادُمِ فَهَلَكَتَا: ضَمِنَ كُلُّ وَاحِدٍ نِصْفَ قِيمَةِ السَّفِينَةِ الْأُخْرَى، لِأَنَّهَا هَلَكَتْ مِنْ فِعْلِهَا، وَمِنْ فِعْلِ رُكَّابِهَا.

L38302 If they steered their two ships toward collision and both were destroyed, each party is liable for half the value of the other's ship, because they were destroyed by the action of both and the action of their passengers.

وَأَمَّا الْفَارِسَانِ يَصْطَدِمَانِ - فَإِنَّ أَبَا حَنِيفَةَ، وَمَالِكًا، وَالْأَوْزَاعِيَّ، وَالْحَسَنَ بْنَ حَيٍّ، قَالُوا: إنْ مَاتَا فَعَلَى عَاقِلَةِ كُلِّ وَاحِدٍ مِنْهُمَا دِيَةُ الْآخَرِ كَامِلَةً.

L38303 As for two horsemen colliding: Abū Ḥanīfah, Mālik, al-Awzāʿī, and al-Ḥasan ibn Ḥayy held the opinion that if both die, the kinship group of each must pay the full blood money of the other.

وَقَالَ عُثْمَانُ الْبَتِّيُّ وَزُفَرُ، وَالشَّافِعِيُّ: عَلَى كُلِّ وَاحِدٍ مِنْهُمَا نِصْفُ دِيَةِ صَاحِبِهِ.

L38304 Uthman al-Batti, Zufar, and al-Shafi'i said: Each of the two individuals is obligated to pay half the *diyah* of his companion.

L38305 Some of our companions held—in accordance with Al-Shāfiʿī's opinion on

this matter—and likewise obligated that if the two diyats (or one of them) perish, half of their value is also obligatory.

وَقَالَ بَعْضُ أَصْحَابِنَا - بِمِثْلِ قَوْلِ الشَّافِعِيِّ فِي ذَلِكَ - وَكَذَلِكَ أَوْجَبُوا إِنْ هَلَكَتْ الدِّيَتَانِ - أَوْ إِحْدَاهُمَا - فَنِصْفُ قِيمَتِهَا أَيْضًا.

L38306 Similarly, if they launched a stone with a catapult and it rebounded, striking and killing one of them, the blood money (diyah) falls upon their agnates. The share attributable to the deceased's agnates is excluded from it, as his death resulted from his own action combined with others'.

كَذَلِكَ - لَوْ رَمَوْا بِالْمَنْجَنِيقِ فَعَادَ الْحَجَرُ عَلَى أَحَدِهِمْ فَمَاتَ، فَإِنَّ الدِّيَةَ عَلَى عَوَاقِلِهِمْ، وَتَسْقُطُ مِنْهَا حِصَّةُ الْمَقْتُولِ، لِأَنَّهُ مَاتَ مِنْ فِعْلِهِ وَفِعْلِ غَيْرِهِ.

L38307 If one of them merely collides with the other, and the struck person dies, his blood money is incumbent upon the agnatic kin of the striker if the act was accidental, and upon the assets of the killer if the death resulted from intentional homicide.

قَالُوا: فَلَوْ صَدَمَ أَحَدُهُمَا الْآخَرَ فَقَطْ، فَمَاتَ الْمَصْدُومُ فَدِيَتُهُ عَلَى عَاقِلَةِ الصَّادِمِ إِنْ كَانَ خَطَأً، وَفِي مَالِ الْقَاتِلِ إِنْ قُتِلَتْ فِي الْعَمْدِ.

L38308–38310 Abu Muhammad said: The ruling on this matter—and success comes from Allah, the Exalted—is that if two ships collide due to force majeure winds or inadvertence, no liability is incurred, as it was not caused by those operating the ships. Actions are fundamentally so, and they have not incurred anything upon themselves; their wealth and the wealth of their male kin responsible for blood money is prohibited, except by explicit text or consensus.

قَالَ أَبُو مُحَمَّد: وَالْقَوْلُ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - أَنَّ السَّفِينَتَيْنِ إذَا اصْطَدَمَتَا بِغَلَبَةِ رِيحٍ أَوْ غَفْلَةٍ، فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَكُنْ مِنْ الرُّكَّبَانِ فِي ذَلِكَ عَمَلٌ أَصْلًا وَلَمْ يَكْسِبُوا عَلَى أَنْفُسِهِمْ شَيْئًا، وَأَمْوَالُهُمْ وَأَمْوَالُ عَوَاقِلِهِمْ مُحَرَّمَةٌ، إلَّا بِنَصٍّ أَوْ إجْمَاعٍ.

L38311 If they collided while sailing—with each ship's crew unaware of the other's position due to darkness, seeing nothing—this constitutes a criminal offense, and the property is liable for compensation, as they initiated the act of damage. Allah says, *"The recompense for an evil deed is its equivalent"* (Quran 42:40). As for loss of life, it falls upon all their kin, as it is considered unintentional killing. If they acted deliberately, the property remains liable—as previously mentioned—and those exempt from liability among them face retaliation (qisas) or full diya (blood money). The ruling applies similarly to two riders or two men colliding in the same manner. Likewise, catapult operators: the diya is divided between the shooter and the others involved, with the shooter's kin and the others' kin equally bearing the payment.[44]

فَإِنْ كَانُوا تَصَادَمُوا وَحَمَلُوا - وَكُلُّ أَهْلِ سَفِينَةٍ غَيْرُ عَارِفَةٍ بِمَكَانِ الْأُخْرَى لَكِنْ فِي ظُلْمَةٍ لَمْ يَرُوا شَيْئًا - فَهَذِهِ جِنَايَةٌ، وَالْأَمْوَالُ مَضْمُونَةٌ، لِأَنَّهُمْ تَوَلَّوْا إفْسَادَهَا، وَقَالَ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] ، وَأَمَّا الْأَنْفُسُ - فَعَلَى عَوَاقِلِهِمْ كُلِّهِمْ، لِأَنَّهُ قَتْلُ خَطَأٍ، وَإِنْ كَانُوا تَعَمَّدُوا فَالْأَمْوَالُ مَضْمُونَةٌ - كَمَا ذَكَرْنَا - وَعَلَى مَنْ سَلِمَ مِنْهُمْ الْقَوَدُ أَوْ الدِّيَةُ كَامِلَةً، وَالْقَوْلُ فِي الْفَارِسَيْنِ، أَوْ الرَّجُلَيْنِ يَصْطَدِمَانِ كَذَلِكَ، وَكَذَلِكَ - أَيْضًا - الرُّمَاةُ بِالْمَنْجَنِيقِ تُقَسَّمُ الدِّيَةُ عَلَيْهِ وَعَلَيْهِمْ، وَتُؤَدِّي عَاقِلَتُهُ وَعَاقِلَتُهُمْ دِيَتَهُ سَوَاءً.

L38312 The proof of this is that in cases of unintentional killing, the one who kills himself shares liability with the killer of the soul. We previously stated that *diyah* is incumbent upon the one who kills himself, based on the explicit

[44] **Qur'an references (L38311):** Qur'an 42:40 (Ash-Shuraa).

text of Allah the Exalted regarding the unintentional killer. Thus, the Exalted has encompassed all instances of killing and did not limit it to unintentional acts, *“And your Lord is not forgetful”* [Maryam 19:64].[45]

بُرْهَانُ ذَلِكَ: أَنَّهُ فِي الْخَطَأِ قَاتِلٌ نَفْسَهُ مَعَ مَنْ قَتَلَهَا وَقَدْ ذَكَرْنَا قَبْلُ: أَنَّ فِي قَاتِلِ نَفْسِهِ الدِّيَةَ بِنَصِّ قَوْلِ اللَّهِ تَعَالَى فِي قَاتِلِ الْخَطَأِ، فَعَمَّ تَعَالَى كُلَّ مَقْتُولٍ، وَلَمْ يَخُصَّ خَطَأً {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L38313 Abu Muhammad said: Then we return to our question and say: As for their statement regarding the two colliding parties—that the deceased died from his own action and from the action of another—this is incorrect. The action is solely the direct engagement of the doer and what he does in it. For he did not directly engage in the collision of another upon himself in any way.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَرْجِعُ إِلَى مَسْأَلَتِنَا فَنَقُولُ: أَمَّا قَوْلُهُمْ فِي الْمُصْطَدِمَيْنِ إِنَّ الْمَيِّتَ مَاتَ مِنْهُمَا مِنْ فِعْلِ نَفْسِهِ، وَمِنْ فِعْلِ غَيْرِهِ - فَهُوَ خَطَأٌ، وَالْفِعْلُ إِنَّمَا هُوَ مُبَاشَرَةُ الْفَاعِلِ وَمَا يَفْعَلُهُ فِيهِ - وَهُوَ لَمْ يُبَاشِرْ بِصَدْمَةِ غَيْرِهِ فِي نَفْسِهِ شَيْئًا.

L38314 They do not differ concerning one who hands over a wrongdoer to another wrongdoer to fight him, resulting in one of them killing the other: that the killer among them is liable for qisas or the full diyah—if qisas is rendered unattainable due to some impediments—for he caused his own death by initiating combat, just as he would cause his own death through intentional striking, since there is no distinction between the two—this constitutes a contradiction in their position.

وَلَا يَخْتَلِفُونَ فِيمَنْ دَفَعَ ظَالِمًا إِلَى ظَالِمٍ آخَرَ لِيُقَاتِلَهُ فَقَتَلَ أَحَدُهُمَا الْآخَرَ: أَنَّ عَلَى الْقَاتِلِ مِنْهُمَا الْقَوَدَ، أَوْ الدِّيَةَ كُلَّهَا - إِنْ فَاتَ الْقَوَدُ بِبَعْضِ الْعَوَارِضِ - وَهُوَ قَدْ تَسَبَّبَ فِي مَوْتِ نَفْسِهِ بِابْتِدَاءِ الْقِتَالِ، كَمَا تَسَبَّبَ فِي مَوْتِ نَفْسِهِ فِي الصَّدْمِ، وَلَا فَرْقَ - وَهَذَا تَنَاقُضٌ مِنْهُمْ.

L38315 Abu Muhammad said: The same ruling applies to wrestlers and those engaged in playful combat, and there is no difference. What Allah the Exalted has permitted in play, He does not prohibit in earnestness.

قَالَ أَبُو مُحَمَّدٍ: وَكَذَلِكَ الْقَوْلُ فِي الْمُتَصَارِعَيْنِ، وَالْمُتَلَاعِبَيْنِ، وَلَا فَرْقَ وَمَا أَبَاحَ اللَّهُ تَعَالَى فِي اللَّعِبِ شَيْئًا حَظَرَهُ فِي الْجِدِّ.

L38316–38318 As for one who falls from a height onto a person, resulting in both their deaths; or the death of either the one who fell or the one fallen upon, then the one who fell is undoubtedly the direct cause of the death of the one fallen upon, as observed, because the fall... The act resulted in the death of the victim without any action from the deceased: the blood money for the victim—if death occurs—is incumbent upon the agnatic kin of the one who committed the act, provided the act was unintentional, as this constitutes accidental homicide. If the act was intentional, qisas (retaliatory punishment) applies against the perpetrator if he survives, otherwise blood money is owed.

وَأَمَّا مَنْ سَقَطَ مِنْ عُلُوٍّ عَلَى إِنْسَانٍ فَمَاتَا جَمِيعًا، أَوْ مَاتَ الْوَاقِعُ، أَوْ الْمَوْقُوعُ عَلَيْهِ، فَإِنَّ الْوَاقِعَ هُوَ الْمُبَاشِرُ لِإِتْلَافِ الْمَوْقُوعِ عَلَيْهِ بِلَا شَكٍّ، وَبِالْمُشَاهَدَةِ، لِأَنَّ الْوَقْعَةَ قَتَلَتْ الْمَوْقُوعَ عَلَيْهِ، وَلَمْ يَعْمَلْ الْمَوْقُوعُ عَلَيْهِ شَيْئًا: فَدِيَةُ الْمَوْقُوعِ عَلَيْهِ - إِنْ هَلَكَ - عَلَى عَاقِلَةِ الْوَاقِعِ - إِنْ لَمْ يَتَعَمَّدْ الْوُقُوعَ عَلَيْهِ - لِأَنَّهُ قَاتِلُ خَطَأٍ، فَإِنْ تَعَمَّدَ، فَالْقَوَدُ وَاقِعٌ عَلَيْهِ إِنْ سَلِمَ، أَوْ الدِّيَةُ - وَكَذَلِكَ الدِّيَةُ فِي مَالِهِ إِنْ مَاتَ الْمَوْقُوعُ عَلَيْهِ قَبْلَهُ.

[45] **Qur’an references (L38312):** Qur’an 19:64 (Maryam).

Similarly, blood money is owed from the perpetrator's own wealth if the victim dies before him.

فَإِنْ مَاتَا مَعًا، أَوْ مَاتَ الْوَاقِعُ قَبْلُ، فَلَا شَيْءَ فِي ذَلِكَ، لِمَا ذَكَرْنَا مِنْ أَنَّ الدِّيَةَ إِنَّمَا تَجِبُ بِمَوْتِ الْمَقْتُولِ الْمَجْنِيِّ عَلَيْهِ لَا قَبْلَ ذَلِكَ. فَإِذَا مَاتَ فِي حَيَاةِ قَاتِلَةٍ فَقَدْ وَجَبَتْ الدِّيَةُ أَوْ الْقَوَدُ فِي مَالِ الْقَاتِلِ. وَإِذَا مَاتَ مَعَ قَاتِلِهِ أَوْ بَعْدَ قَاتِلِهِ، فَلَمْ يَجِبْ لَهُ بَعْدُ شَيْءٌ - لَا قَوَدَ وَلَا دِيَةَ - فِي حَيَاةِ الْقَاتِلِ، فَإِذَا مَاتَ فَالْقَاتِلُ غَيْرُ مَوْجُودٍ، وَالْمَالُ قَدْ صَارَ لِلْوَرَثَةِ، وَهَذَا لَا حَقَّ لَهُ عِنْدَهُمْ - وَلَيْسَ هَكَذَا قَتْلُ الْخَطَأِ، لِأَنَّ الدِّيَةَ لَا تَجِبُ فِي مَالِ الْجَانِي، وَإِنَّمَا تَجِبُ عَلَى عَاقِلَتِهِ، فَسَوَاءٌ مَاتَ الْقَاتِلُ قَبْلَ الْمَقْتُولِ، أَوْ مَعَهُ، أَوْ بَعْدَهُ: لَا يَسْقُطُ بِذَلِكَ وُجُوبُ الدِّيَةِ - إِمَّا عَلَى الْعَاقِلَةِ إِنْ عُلِمَتْ، وَإِمَّا فِي كُلِّ مَالِ الْمُسْلِمِينَ، كَمَا جَاءَ فِي سَهْمِ الْغَارِمِينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38319 If they both die simultaneously, or the perpetrator dies first, there is no liability in that case, due to what we mentioned—that blood money is only obligatory upon the death of the victim of the offense, not before. If the victim dies during the female killer's lifetime, blood money or retribution becomes incumbent on the killer's property. If the victim dies simultaneously with his killer or after his killer's death, nothing is owed—neither retribution nor blood money—for during the killer's lifetime, no obligation had yet arisen. When the victim dies, the killer no longer exists, the property has been transferred to the heirs, and the victim holds no valid claim against them. This differs from cases of accidental killing, for blood money is not incumbent on the perpetrator's personal wealth but rather on his agnatic relatives. Thus, whether the killer dies before, simultaneously with, or after the victim, the obligation of blood money does not lapse—either upon the agnatic relatives if established, or from the collective wealth of Muslims, as stipulated in the debtors' share. And with Allah, the Exalted, is success.

وَلَا شَيْءَ لِوَارِثِ الْوَاقِعِ إِنْ مَاتَ فِي جَمِيعِ هَذِهِ الْوُجُوهِ - لَا دِيَةَ وَلَا غَيْرَهَا - لِأَنَّهُ لَمْ يَجْنِ أَحَدٌ عَلَيْهِ شَيْئًا، وَسَوَاءٌ وَقَعَ عَلَى سِكِّينٍ بِيَدِ الْمَدْفُوعِ عَلَيْهِ، أَوْ عَلَى رُمْحٍ، أَوْ غَيْرِ ذَلِكَ، لَا شَيْءَ فِي ذَلِكَ أَصْلًا، لِأَنَّهُ إِنْ عَمَدَ فَهُوَ قَاتِلُ نَفْسِهِ عَمْدًا، وَلَا شَيْءَ فِي ذَلِكَ بِلَا خِلَافٍ - وَإِنْ كَانَ لَمْ يَعْمِدْ فَلَمْ يُبَاشِرْ فِي نَفْسِهِ جِنَايَةً، وَإِنَّمَا هُوَ قَتِيلُ حَجَرٍ أَوْ حَدِيدَةٍ أَوْ نَحْوِ ذَلِكَ، وَمَا كَانَ هَكَذَا فَلَا شَيْءَ فِي ذَلِكَ كُلِّهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38320 The heir of the deceased [who caused their own death] is entitled to nothing if they die in any of these scenarios—neither blood money nor other compensations—because no one has committed any criminal act against them. This applies equally whether they fall onto a knife held by the person being pushed against, a spear, or any other object. There is absolutely no liability in such cases, for if they acted intentionally, they intentionally killed themselves, and there is no liability in this matter by unanimous agreement. If they did not act intentionally, then they did not perpetrate any criminal act against themselves; rather, they are killed by a stone, an iron object, or the like. In all such instances, there is no liability whatsoever. And success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا الْمُتَمَاقِلُونَ فِي الْمَاءِ فَإِنْ عُرِفَ أَيُّهُمْ غَطَّسَهُ فِي الْمَاءِ حَتَّى مَاتَ، فَإِنْ كَانَ عَمْدًا فَالْقَوَدُ، وَإِنْ كَانَ غَيْرَ قَاصِدٍ لَكِنْ غَطَسَ أَحَدُهُمْ، فَلَمَّا جَاءَ لِيَخْرُجَ لَقِيَ سَاقَيْ آخَرَ فَمَنَعَتَاهُ الْخُرُوجَ غَيْرَ قَاصِدٍ لِذَلِكَ: فَالدِّيَةُ عَلَى عَاقِلَتِهِ وَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُ

L38321 Abū Muḥammad said: As for those struggling in water, if it is determined who submerged him until he died, then if intentional, qiṣās (retaliatory punishment) applies. If unintentional—such as when someone submerged him, and when he came to exit, encountered another's two legs which inadvertently prevented his exit—then diyah (blood money) is owed by his ʿāqi-

lah (agnatic kin) along with obligatory expiation, for he directly caused this without intent, constituting accidental killing. If he submerged him with a submersion that by its very nature would never cause death—yet coincided with his appointed time—there is no liability here, for he neither killed him intentionally nor accidentally, but rather he died at his predetermined term (ajal), a natural death (ḥatf anfih).

بَاشَرَ ذَلِكَ فِيهِ غَيْرَ قَاصِدٍ فَهُوَ قَتْلُ خَطَأٍ، فَإِنْ كَانَ غَطَّسَهُ تَغْطِيسَةً - لَا يُمَاتُ أَلْبَتَّةَ مِنْ مِثْلِهَا - فَوَافَقَ مَنِيَّتَهُ، فَهَذَا لَا شَيْءَ فِيهِ، لِأَنَّهُ لَمْ يَقْتُلْهُ - لَا عَمْدًا وَلَا خَطَأً - بَلْ مَاتَ بِأَجَلِهِ حَتْفَ أَنْفِهِ.

L38322 If the perpetrator is unknown, the claimant is made to swear an oath, and the accused is absolved. If no clear evidence is established against him—and there is no *qasamah* (collective oath-swearing) applicable here—as it is not among the matters in which the Messenger of Allah, peace be upon him and his family, ruled by *qasamah*.

فَإِنْ جُهِلَ مَنْ عَمِلَ ذَلِكَ بِهِ، فَمَنْ ادَّعَى عَلَيْهِ أُحْلِفَ وَبُرِّئَ، وَإِنْ لَمْ تَقُمْ عَلَيْهِ بَيِّنَةٌ - وَلَا قَسَامَةَ هَاهُنَا، لِأَنَّهُ لَيْسَ مِمَّا حَكَمَ فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِالْقَسَامَةِ.

L38323–38324 Abu Muhammad said: The position we uphold is that the ruling of *qasāmah* is obligatory in this case, for it is what the Messenger of Allah (peace and blessings be upon him) applied through *qasāmah*. This is because both scenarios involve a killed person who was found, and he (peace and blessings be upon him) did not state, "I ruled with *qasāmah* due to the House," nor did he say it was for reasons unrelated to the House. It is therefore impermissible to ascribe to him (peace and blessings be upon him) what he did not say. Rather, we rule in such circumstances according to the judgment he established for them. And success comes from Allah alone. The same applies to one killed in the turmoil of combat, at night, or wherever they were killed. And success comes from Allah alone.

قَالَ أَبُو مُحَمَّدٍ: وَالَّذِي نَقُولُ بِهِ إِنَّ حُكْمَ الْقَسَامَةِ وَاجِبٌ هَاهُنَا، لِأَنَّهُ هُوَ الَّذِي حَكَمَ فِيهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقَسَامَةِ، لِأَنَّ كِلْتَا الْحَالَتَيْنِ قَتِيلٌ وُجِدَ، وَلَمْ يَقُلْ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إِنِّي حَكَمْت بِالْقَسَامَةِ مِنْ أَجْلِ الدَّارِ، وَلَا مِنْ غَيْرِ أَجْلِ الدَّارِ، فَلَا يَجُوزُ أَنْ يَقُولَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مَا لَمْ يَقُلْ، لَكِنْ نَحْكُمُ فِي نَوْعِ تِلْكَ الْحَالِ مِثْلَ حُكْمِهِ فِيهَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَكَذَلِكَ مَنْ قُتِلَ فِي اخْتِلَاطِ قِتَالٍ، أَوْ لَيْلًا، أَوْ أَيْنَ قُتِلَ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38325 If a group of people dug in a wall—whether rightfully or wrongfully—or in a mine or well, and the wall or embankment collapsed upon them, causing their death or the death of some of them: if they acted deliberately, intending to cause its collapse on themselves, then this constitutes intentional killing. Retribution (qisas) applies to the survivors [as perpetrators], or full blood money (diyah) is owed for each deceased individual, because each is considered to have caused their own death. This is the ruling for one who intentionally kills a person.

وَلَوْ أَنَّ قَوْمًا حَفَرُوا فِي حَائِطٍ - بِحَقٍّ أَوْ بِبَاطِلٍ - أَوْ فِي مَعْدِنٍ، أَوْ بِئْرٍ فَتَرَدَّى عَلَيْهِمْ الْحَائِطُ، أَوْ الْجُرُفُ فَمَاتُوا، أَوْ مَاتَ بَعْضُهُمْ؟ فَإِنْ كَانُوا عَامِدِينَ قَاصِدِينَ إلَى هَدْمِهِ عَلَى أَنْفُسِهِمْ: فَهُوَ قَتْلُ عَمْدٍ، وَالْقَوَدُ عَلَى مَنْ عَاشَ، أَوْ دِيَةٌ كَامِلَةٌ، لِجَمِيعِ مَنْ مَاتَ لِكُلِّ وَاحِدٍ مِنْهُمْ دِيَةٌ، لِأَنَّ كُلَّ وَاحِدٍ مِنْهُمْ قَاتِلُ نَفْسٍ، وَهَذَا حُكْمُ قَاتِلِ النَّفْسِ عَمْدًا.

L38326 If they did not intend except the act itself, not its destruction upon themselves, then they are considered unintentional killers. A diyah is due for each person who died only, incumbent upon all their responsible male kin. If they

have no responsible male kin, it is to be paid from the share allocated for debtors or from every property belonging to all Muslims.

وَإِنْ كَانُوا لَمْ يَقْصِدُوا إِلَّا الْعَمَلَ لَا هَدْمَهُ عَلَى أَنْفُسِهِمْ، فَهُمْ قَتَلَةُ خَطَأٍ عَلَى عَوَاقِلِهِمْ كُلِّهِمْ دِيَةٌ دِيَةٌ لِكُلِّ مَنْ مَاتَ فَقَطْ - فَإِنْ لَمْ يَكُنْ لَهُمْ عَوَاقِلُ فَمِنْ سَهْمِ الْغَارِمِينَ، أَوْ مِنْ كُلِّ مَالٍ لِجَمِيعِ الْمُسْلِمِينَ.

L38327 If a group of people were standing on a cliff edge and it collapsed beneath one of them, causing him to cling to someone nearby, and that person clung to another, leading them to fall and die, then the one who clung to his companion is considered an accidental killer. Consequently, the blood money is owed by the agnatic kin of the one who clung. For example, if Zaid clung to Khalid, and Khalid clung to Muhammad, then the blood money for Khalid is owed by Zaid's agnatic kin, and the blood money for Muhammad is owed solely by Khalid's agnatic kin. This principle applies forever, because clinging to someone in a manner leading to their demise constitutes accidental killing—unless it is done intentionally without any doubt, in which case it is intentional killing. In such a scenario, the only recourse is retaliation, blood money, or ransom if the falling person is rescued.

وَلَوْ أَنَّ قَوْمًا وَقَفُوا عَلَى جُرُفٍ فَانْهَارَ بِأَحَدِهِمْ فَتَعَلَّقَ بِمَنْ يَقْرُبُهُ، وَتَعَلَّقَ ذَلِكَ بِآخَرَ فَسَقَطُوا فَمَاتُوا، فَالْمُتَعَلِّقُ بِصَاحِبِهِ قَاتِلُ خَطَأٍ، فَالدِّيَةُ عَلَى عَاقِلَةِ الْمُتَعَلِّقِ - فَكَأَنَّ زَيْدًا تَعَلَّقَ بِخَالِدٍ، وَتَعَلَّقَ خَالِدٌ بِمُحَمَّدٍ، فَعَلَى عَاقِلَةِ زَيْدٍ دِيَةُ خَالِدٍ، وَعَلَى عَاقِلَةِ خَالِدٍ دِيَةُ مُحَمَّدٍ فَقَطْ، وَكَذَلِكَ أَبَدًا، لِأَنَّ الْمُتَعَلِّقَ بِإِنْسَانٍ إِلَى مَهْلَكَةٍ قَاتِلُ خَطَأٍ، إِلَّا أَنْ يَتَعَمَّدَ بِلَا شُبْهَةٍ فَهُوَ قَاتِلُ عَمْدٍ، لَيْسَ فِيهِ إِلَّا - لَوْ خُلِّصَ الْمُتَرَدِّي - الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ.

L38328–38330 If they were to attack in such a manner and fell upon a lion or snake, and it killed them—then if this occurred accidentally, there is no liability, for he is not liable as the killing was accidental (by the animal). But if it was intentional, retaliation is due against him—if proven—and he is to be thrown to a similar animal so that it kills him, just as he did to his brother, according to the words of Allah, the Exalted. Sacred ordinances warrant equitable retribution. So whoever transgresses against you, retaliate against them to the extent of their transgression.[46]

فَلَوْ تَعَلَّقُوا هَكَذَا فَوَقَعُوا عَلَى أَسَدٍ، أَوْ ثُعْبَانٍ فَقَتَلَهُمْ؟ فَإِنْ كَانَ خَطَأً فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ لَيْسَ قَاتِلَ خَطَأٍ، وَإِنَّمَا قَتَلَتْ الْبَهِيمَةُ - وَإِنْ كَانَ عَمْدًا فَعَلَيْهِ الْقَوَدُ - إِنْ خُلِّصَ - وَيُرْمَى إِلَى مِثْلِ الْبَهِيمَةِ حَتَّى تَقْتُلَهُ، كَمَا فَعَلَ هُوَ بِأَخِيهِ لِقَوْلِ اللَّهِ تَعَالَى {وَالْحُرُمَاتُ قِصَاصٌ فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤]

L38331 Abu Muhammad said: It has been narrated to us through the chain of Abu Bakr ibn Abi Shaybah, from Ali ibn Mushir, from Sa'id ibn Abi Arubah, from Qatadah, from Khilas, who said: A man hired four men to dig a well for him. They dug it, but the well collapsed on them, causing one of them to die. This case was referred to Ali ibn Abi Talib, who ruled that the three

قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَلِيُّ بْنُ مُسْهِرٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ خِلَاسٍ قَالَ: اسْتَأْجَرَ رَجُلٌ أَرْبَعَةَ رِجَالٍ لِيَحْفِرُوا لَهُ بِئْرًا لِيَحْفِرُوهَا فَانْخَسَفَتْ بِهِمْ الْبِئْرُ فَمَاتَ أَحَدُهُمْ؟ فَرُفِعَ ذَلِكَ إلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَضَمِنَ الثَّلَاثَةُ ثَلَاثَةَ أَرْبَاعِ الدِّيَةِ وَطُرِحَ عَنْهُ رُبْعُ الدِّيَةِ.

[46] **Qur'an references (L38328):** Qur'an 2:194 (Al-Baqarah).

[surviving workers] were liable for three-quarters of the blood money, while one-quarter of the blood money was waived from them.

L38332 Ali said: As for the narration concerning Ali's imposition of blood money in the incident of the excavators, it is firmly established from him and aligns with the opinion of al-Shāfiʿī and the scholars of our school. Yet how can they condemn those who oppose the Companion when it aligns with their views, while here they contradict the well-established report from Ali—with no opposing stance from any of the Companions—may Allah be pleased with them—known in this matter? This exposes the great contradiction in their position. Success comes from Allah, the Exalted.

L38333 As for us, we recognize no juristic argument in anyone's statement except that of the Messenger of Allah—may Allah bless him and grant him peace. All the diggers directly participated in the demolition that buried those who perished among them. Thus, the blood money is incumbent upon their entire ʿaqīlah—the male agnatic kin of all [the diggers], whether living or deceased.

L38334 Similarly, if all of them were to die, a diyah, a diyah is due for each one who dies—meaning that for each deceased person, only one diyah is paid to the collective male agnates of all of them, with the deceased's agnatic group being among their collective—and success is from Allah, the Exalted alone.

L38335 Through the narration of Abu Bakr ibn Abi Shaybah, from ʿAbd al-Aʿla, from Maʿmar, from al-Zuhri: He was asked about workers hired to demolish a wall that collapsed on them, causing some of them to die. He ruled that the survivors are mutually liable to pay the diyah for those who died, with the burden falling upon those who remained.

L38336 Through the chain of transmission of Abu Bakr ibn Abi Shaybah: Wakiʿ narrated to us from Musa ibn ʿAli ibn Rabah, from his father, who said: A blind man approached, petitioning the people during the time of ʿUmar, saying:

L38337 O people, I have encountered an evil— Can the blind comprehend the healthy and seeing?

L38338–38340 The two collapsed as one, shattered utterly. Wakīʿ said: They ruled that if a

قَالَ عَلِيٌّ: أَمَّا الْأَثَرُ فِي وَضْعِ عَلِيٍّ الدِّيَةَ فِي قِصَّةِ الْحَفَّارِينَ فَهِيَ ثَابِتَةٌ عَنْهُ، وَهِيَ مُوَافِقَةٌ لِقَوْلِ الشَّافِعِيِّ، وَأَصْحَابِنَا - وَهُمْ يُشَنِّعُونَ عَلَى مَنْ خَالَفَ الصَّاحِبَ إِذَا وَافَقَ آرَاءَهُمْ؟ وَهُمْ قَدْ خَالَفُوا هَاهُنَا الرِّوَايَةَ الثَّابِتَةَ عَنْ عَلِيٍّ وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنَ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَهَذَا يُوضِحُ عَظِيمَ تَنَاقُضِهِمْ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَالْحَفَّارُونَ كُلُّهُمْ بَاشَرَ هَدْمَ مَا انْهَارَ عَلَى الَّذِي هَلَكَ مِنْهُمْ، فَعَلَى عَوَاقِلِهِمْ كُلِّهِمْ عَوَاقِلِ الْأَحْيَاءِ وَالْأَمْوَاتِ.

وَكَذَلِكَ لَوْ مَاتُوا كُلُّهُمْ دِيَةٌ دِيَةٌ لِكُلِّ مَنْ مَاتَ - يَعْنِي أَنَّ فِي كُلِّ مَيِّتٍ دِيَةٌ وَاحِدَةٌ فَقَطْ تُؤَدَّى إِلَى عَوَاقِلِ جَمِيعِهِمْ وَعَاقِلَةُ الْمَيِّتِ فِي جُمْلَتِهِمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ أَنَّهُ سُئِلَ عَنْ أُجَرَاءَ اُسْتُؤْجِرُوا لِيَهْدِمُوا حَائِطًا فَخَرَّ عَلَيْهِمْ فَمَاتَ بَعْضُهُمْ: أَنَّهُ يَغْرَمُ بَعْضُهُمْ لِبَعْضٍ الدِّيَةَ عَلَى مَنْ بَقِيَ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا مُوسَى بْنُ عَلِيِّ بْنِ رَبَاحٍ عَنْ أَبِيهِ قَالَ: جَاءَ أَعْمَى يُنْشِدُ النَّاسَ فِي زَمَانِ عُمَرَ يَقُولُ:

يَا أَيُّهَا النَّاسُ لَقِيت مُنْكَرَا ... هَلْ يَعْقِلُ الْأَعْمَى الصَّحِيحَ الْمُبْصِرَا

خَرَّا مَعًا كِلَاهُمَا تَكَسَّرَا قَالَ وَكِيعٌ: كَانُوا يَرُونَ أَنَّ رَجُلًا صَحِيحًا كَانَ يَقُودُ أَعْمَى فَوَقَعَا فِي بِئْرٍ فَخَرَّ عَلَيْهِ؟ فَإِمَّا قَتَلَهُ، وَإِمَّا جَرَحَهُ، فَضَمِنَ الْأَعْمَى.

وَمِنْ طَرِيقِ ابْنِ وَهْبٍ نا اللَّيْثُ بْنُ سَعْدٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَضَى فِي رَجُلٍ أَعْمَى قَادَهُ رَجُلٌ فَخَرَّا مَعًا فِي بِئْرٍ فَمَاتَ الصَّحِيحُ وَلَمْ يَمُتْ الْأَعْمَى؟ فَقَضَى عُمَرُ عَلَى عَاقِلَةِ الْأَعْمَى بِالدِّيَةِ، فَكَانَ الْأَعْمَى يَتَمَثَّلُ بِأَبْيَاتِ شَعْرٍ قَالَهَا، وَهِيَ الَّتِي ذَكَرْنَاهَا آنِفًا قَبْلَ هَذَا.

وَقَالَ ابْنُ وَهْبٍ: سَمِعْت مَالِكًا يَقُولُ فِي الْبَصِيرِ يَقُودُ الْأَعْمَى فَيَقَعُ الْبَصِيرُ فِي بِئْرٍ، وَيَقَعُ الْأَعْمَى عَلَى الْبَصِيرِ، فَيَمُوتُ الْبَصِيرُ؟ فَإِنَّ دِيَةَ الْبَصِيرِ عَلَى عَاقِلَةِ الْأَعْمَى.

قَالَ أَبُو مُحَمَّد: الرِّوَايَةُ عَنْ عُمَرَ لَا تَصِحُّ فِي أَمْرِ الْأَعْمَى، لِأَنَّهُ عَنْ عَلِيِّ بْنِ رَبَاحٍ، وَاللَّيْثِ، وَكِلَاهُمَا لَمْ يُدْرِكْ عُمَرَ أَصْلًا.

وَالْقَوْلُ فِي هَذَا عِنْدَنَا أَنَّ مَنْ وَقَعَ عَلَى آخَرَ فَلَا يَخْلُو مِنْ أَحَدِ ثَلَاثَةِ أَوْجُهٍ: إمَّا أَنْ يَكُونَ دَفَعَهُ غَيْرُهُ فَمَاتَ الْوَاقِعُ أَوْ الْمَوْقُوعُ عَلَيْهِ وَإِمَّا أَنْ يَكُونَ الْمَوْقُوعُ عَلَيْهِ هُوَ الَّذِي جَرَّ الْوَاقِعَ فَوَقَعَ عَلَيْهِ، كَبَصِيرٍ يَقُودُ أَعْمَى - وَهُوَ يُمْسِكُهُ - فَوَقَعَ الْبَصِيرُ، وَانْجَبَذَ بِجَبْذِهِ الْأَعْمَى، أَوْ الْمَرِيضُ فَوَقَعَ عَلَيْهِ فَمَاتَ الْأَسْفَلُ، أَوْ الْأَعْلَى - أَوْ يَكُونَ وَقَعَ مِنْ غَيْرِ فِعْلِ أَحَدٍ، لَكِنْ عَمَدَ رَمْيَ نَفْسِهِ أَوْ لَمْ يَعْمِدْ، لَكِنْ عَثَرَ إذْ خَرَّ فَإِنْ دَفَعَهُ غَيْرُهُ، فَالدَّافِعُ هُوَ الْقَاتِلُ، فَإِنْ كَانَ عَمْدًا فَعَلَيْهِ الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ، فِي أَيِّهِمَا مَاتَ فَإِنْ كَانَ خَطَأً فَعَلَى عَاقِلَتِهِ الدِّيَةُ وَعَلَيْهِ الْكَفَّارَةُ، إذْ هُوَ الْقَاتِلُ خَطَأً - وَالْمَدْفُوعُ حِينَئِذٍ وَالْحَجَرُ سَوَاءٌ - فَهَذَا وَجْهٌ.

healthy man were guiding a blind man, and they both fell into a well—and the blind man collapsed onto him, causing either death or injury—would the blind man be liable?

L38341 And from the chain of Ibn Wahb, Al-Layth ibn Saʿd narrated that ʿUmar ibn al-Khaṭṭāb ruled regarding a blind man whom a sighted man led, and they both fell into a well, resulting in the death of the sighted man while the blind man survived. ʿUmar obligated the blind man's agnatic kin to pay the blood money. The blind man would often recite poetic verses he had uttered, those we had mentioned earlier.

L38342 Ibn Wahb said: I heard Malik say regarding a sighted person leading a blind person - if the sighted one falls into a well and the blind person falls upon him, causing the sighted person's death - then the blood money for the sighted person is owed by the male kin of the blind person.

L38343 Abu Muhammad said: The narration from Umar is not authentic regarding the matter of the blind person, as it is from Ali ibn Rabah and al-Layth—neither of whom met Umar at all.

L38344 The ruling in this matter according to our school is that when a person falls upon another, it must conform to one of three scenarios: First, that another person pushed the faller, causing the death of either the faller or the one fallen upon. Second, that the one fallen upon pulled the faller onto himself—such as a sighted person leading a blind man while holding him, where the sighted person falls and drags the blind man due to the faller's pull—or a sick person falls upon someone, causing the death of either the lower one or the upper one. Third, that the fall occurred without anyone's direct action, whether through deliberate self-leaping or unintentional stumbling. If another person pushed the faller, the pusher is considered the killer. If intentional, retribution, blood money, or redemption payment applies to whichever party died. If accidental, blood money is incumbent upon his agnatic relatives along with atonement, since he is an unintentional killer—the pushed person in this case being treated as equivalent to a stone. This constitutes the first scenario.

وَإِنْ كَانَ الْمَدْفُوعُ عَلَيْهِ هُوَ جَبَذَ الْوَاقِعَ فَإِنْ كَانَ عَامِدًا فَهُوَ قَاتِلُ عَمْدٍ، فَإِنْ مَاتَ الْمَجْبُوذُ فَعَلَيْهِ الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ - وَإِنْ مَاتَ هُوَ فَهُوَ قَاتِلُ نَفْسِهِ، وَلَا شَيْءَ عَلَى الْمَجْبُوذِ، لِأَنَّهُ لَمْ يَعْمِدْ، وَلَا أَخْطَأَ، فَإِنْ كَانَ لَمْ يَعْمِدْ جَبْذَهُ - وَلَكِنْ اسْتَمْسَكَ بِهِ - فَوَقَعَ فَمَاتَ، فَعَلَى عَاقِلَةِ الْجَابِذِ دِيَةُ الْمَجْبُوذِ إنْ مَاتَ، وَالْكَفَّارَةُ، لِأَنَّهُ قَاتِلُ خَطَأٍ - فَإِنْ مَاتَ هُوَ فَلَيْسَ عَلَى الْمَجْبُوذِ شَيْءٌ، وَلَا عَلَى عَاقِلَتِهِ، لِأَنَّهُ لَيْسَ عَامِدًا وَلَا مُخْطِئًا، لَكِنْ عَلَى عَاقِلَةِ الْجَابِذِ دِيَةُ نَفْسِهِ، لِأَنَّهُ قَاتِلُ نَفْسِهِ خَطَأً - فَهَذَا وَجْهٌ ثَانٍ.

L38345 If the person being pushed is the one who pulled the fallen individual, then if he acted intentionally, he is considered an intentional killer. If the pulled person dies, the puller becomes liable for either retribution, blood money, or compensation. If the puller dies, he is deemed to have intentionally killed himself, with no liability upon the pulled person, as he neither acted deliberately nor erred. If the puller did not intend to pull him but merely held onto him, resulting in a fatal fall, the puller's relatives must pay the blood money of the pulled person if he dies, along with mandatory expiation, because this constitutes accidental killing. If the puller dies, neither the pulled person nor his relatives bear any liability, since he was neither deliberate nor negligent. However, the puller's relatives must pay the blood money for his death, as he is considered to have accidentally killed himself. This constitutes a second legal perspective.

وَإِنْ كَانَ وَقَعَ مِنْ غَيْرِ فِعْلِ أَحَدٍ، فَإِنْ كَانَ عَمْدًا فَهُوَ قَاتِلُ عَمْدٍ - إنْ سَلِمَ فَالْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ - وَإِنْ مَاتَ فَهُوَ قَاتِلُ نَفْسِهِ عَمْدًا، وَلَا شَيْءَ عَلَى الْمَوْقُوعِ عَلَيْهِ، وَإِنْ كَانَ لَمْ يَعْمِدْ فَهُوَ قَاتِلُ خَطَأٍ إمَّا نَفْسَهُ وَإِمَّا الْآخَرَ، فَالدِّيَةُ عَلَى عَاقِلَتِهِ وَلَا بُدَّ، وَعَلَيْهِ إنْ سَلِمَ هُوَ وَمَاتَ الْآخَرُ: كَفَّارَةٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - وَالْأَعْمَى وَالْبَصِيرُ فِي ذَلِكَ سَوَاءٌ.

L38346–38348 And if harm occurred without any human action, then if it was intentional, he is an intentional killer. If [the accused] is acquitted [of unintentional harm], qisas (retaliation) is due. Or the blood money, or the compensatory payment. If he dies, he is an intentional killer of himself (suicide), and nothing is required of the affected party. If he did not act intentionally, he is an accidental killer - either of himself or the other person. The blood money is inescapably obligatory upon his agnatic kin. If he survives while the other dies, expiation is required of him. And success is from Allah, the Most High. The blind and the sighted are equal in this ruling.

[مَسْأَلَةٌ قَالَ إنَّ صَوْمَ الشَّهْرَيْنِ فِي كَفَّارَةِ قَتْلِ الْخَطَأِ عِوَضٌ مِنْ الدِّيَةِ وَالْعِتْقِ]

Issue: He [the jurist] stated that fasting two months as expiation for unintentional killing serves as a substitute for the diyah (monetary compensation) and freeing a slave.

٢٠٩٥ - مَسْأَلَةٌ: مَنْ قَالَ إنَّ صَوْمَ الشَّهْرَيْنِ فِي كَفَّارَةِ قَتْلِ الْخَطَأِ عِوَضٌ مِنْ الدِّيَةِ وَالْعِتْقِ إنْ لَمْ يَجِدْ؟ قَالَ عَلِيٌّ: نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا زَكَرِيَّا عَنْ الشَّعْبِيِّ قَالَ: سُئِلَ مَسْرُوقٌ عَمَّنْ {قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ}

L38349 **Issue: He [the jurist] stated that fasting two months as expiation for unintentional killing serves as a substitute for the diyah (monetary compensation) and freeing a slave.**

L38350 2095 - Issue: If someone says that fasting two months in expiation for accidental killing serves as a substitute for both the blood money and manumission when one cannot afford it, what is the ruling? Ali said: Narrated from Muḥammad ibn Saʿīd ibn Nabāt, narrated from ʿAbdullāh ibn Naṣr, narrated from Qāsim ibn Aṣbagh, narrated from Ibn Waḍḍāḥ, narrated from Sahnūn, narrated from Mūsā ibn Muʿāwiyah, narrated from Wakīʿ, narrated from Zakariyyā, from al-Shaʿbī, who said: Masrūq was asked about [the

verse], {If anyone kills a believer by mistake, he must free a believing slave and pay delivered blood money to the victim's family} [Quran 4:92] up to God's words, {If anyone cannot afford [it], he must fast for two consecutive months} [Quran 4:92]: does the fasting substitute for freeing the slave alone or for both the blood money and freeing the slave? He replied: If one cannot afford, it substitutes for both the blood money and freeing the slave.[47]

[النساء: ٩٢] إِلَى قَوْله تَعَالَى {فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ} [النساء: ٩٢] عَنْ الرَّقَبَةِ وَحْدَهَا، أَمْ عَنْ الدِّيَةِ وَالرَّقَبَةِ قَالَ: مَنْ لَمْ يَجِدْ فَعَنْ الدِّيَةِ وَالرَّقَبَةِ.

L38351 And through him (up to Wakiʿ), Isrāʾīl narrated to us from Jabr, from ʿĀmir, who said: Whoever does not find [the means], then it is incumbent upon him [to provide] blood money or free a slave.

وَبِهِ - إلَى وَكِيعٍ نا إسْرَائِيلُ عَنْ جَبْرٍ عَنْ عَامِرٍ قَالَ: مَنْ لَمْ يَجِدْ فَعَنْ الدِّيَةِ وَالرَّقَبَةِ.

L38352 Ali said: Masruq and al-Shaʿbī here cited the words of the Almighty, {But whoever cannot find [the means] must fast for two consecutive months} [4:92], meaning—if its meaning is sound—"whoever cannot find" refers to one who cannot find the diyya (blood money) and [free] a slave. Ali said: Were it not for an evidence we shall cite—God willing—their opinion would have been correct, for it is a general statement that cannot be restricted except by evidence. However, since we know that the diyya for accidental killing is not upon the killer but upon his ʿāqila (kin-group liable for diyya), the view of Masruq and al-Shaʿbī is invalidated, for we do not concern ourselves with whether the killer finds the diyya or not. Thus, it is confirmed that what Allah the Almighty intended by {whoever cannot find} [4:92] pertains only to what depends on the obligated person's capacity [to fulfill it], not to what does not depend on his capacity. This applies solely to freeing a slave, which is an obligation from his own wealth. If he cannot fulfill this, then fasting is required, as commanded by Allah the Almighty.[48]

قَالَ عَلِيٌّ: ذَهَبَ مَسْرُوقٌ، وَالشَّعْبِيُّ هَاهُنَا إلَى قَوْله تَعَالَى {فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ} [النساء: ٩٢] إنْ صَحَّ مَعْنَاهُ فَمَنْ لَمْ يَجِدْ الدِّيَةَ وَالرَّقَبَةَ؟ قَالَ عَلِيٌّ: وَلَوْلَا دَلِيلٌ نَذْكُرُهُ - إنْ شَاءَ اللَّهُ تَعَالَى - لَكَانَ الْقَوْلُ قَوْلَهُمَا، وَذَلِكَ لِأَنَّهُ عُمُومٌ لَا يَجُوزُ أَنْ يُخَصَّ إلَّا بِدَلِيلٍ، لَكِنْ لَمَّا عَلِمْنَا أَنَّ الدِّيَةَ فِي قَتْلِ الْخَطَأِ لَيْسَتْ عَلَى الْقَاتِلِ وَإِنَّمَا هِيَ عَلَى عَاقِلَتِهِ بَطَلَ مَا قَالَ مَسْرُوقٌ، وَعَامِرٌ، لِأَنَّ الدِّيَةَ لَا نُبَالِي وَجَدَهَا الْقَاتِلُ أَوْ لَمْ يَجِدْهَا - فَصَحَّ بِذَلِكَ أَنَّ مُرَادَ اللَّهِ تَعَالَى بِقَوْلِهِ {فَمَنْ لَمْ يَجِدْ} [النساء: ٩٢] إنَّمَا هُوَ فِيمَا يُنْظَرُ فِيهِ إلَى وُجُودِ الْمُكَلَّفِ لَا فِيمَا لَا يُنْظَرُ فِيهِ إلَى وُجُودِهِ، وَلَيْسَ ذَلِكَ إلَّا فِي الرَّقَبَةِ الَّتِي هِيَ وَاجِبَةٌ عَلَيْهِ فِي صُلْبِ مَالِهِ، فَإِنْ لَمْ يَجِدْهَا فَالصِّيَامُ، كَمَا أَمَرَ اللَّهُ تَعَالَى.

L38353 Abu Muhammad said: As for one who has no responsible kin group, the diya is obligatory in such cases upon the wealth of all Muslims, for Allah the Exalted has ordained in cases of accidental killing a diya to be handed over to the family of the slain.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا مَنْ لَا عَاقِلَةَ لَهُ فَالدِّيَةُ وَاجِبَةٌ فِي ذَلِكَ عَلَى كُلِّ مَالٍ لِجَمِيعِ الْمُسْلِمِينَ، لِأَنَّ اللَّهَ تَعَالَى افْتَرَضَ فِي قَتْلِ الْخَطَأِ دِيَةً مُسَلَّمَةً إلَى أَهْلِ الْمَقْتُولِ.

L38354 And He, the Exalted, has said, "There is no sin upon you in that wherein

وَقَدْ قَالَ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ} [الأحزاب: ٥] .

[47] **Qur'an references (L38350):** Qur'an 4:92 (An-Nisa); Qur'an 58:4 (Al-Mujadila).
[48] **Qur'an references (L38352):** Qur'an 4:92 (An-Nisa); Qur'an 58:4 (Al-Mujadila).

you have erred” [Al-Ahzab 33:5].[49]

L38355–38356 The Messenger of Allah (peace be upon him) said, “The error and forgetfulness have been lifted from my Ummah.”

L38357 We observed that people have differed: Is the diya (blood money) for accidental killing obligatory on the killer or not? The verse of Allah, the Exalted, *“There is no blame on you for what you do by mistake”* [Al-Ahzab 33:5] necessitates that the diya is not incumbent upon him.[50]

L38358 Furthermore, since Allah the Exalted mandated the blood money (diyah) in such a case but did not impose it on the killer himself, there is no justification for obligating him to pay a diyah that Allah the Exalted did not impose, nor by His Messenger (peace be upon him), nor by the consensus of the Ummah. Indeed, the textual evidence and consensus have been soundly established in imposing the expiation (kaffarah) upon him through freeing a slave or fasting. Thus, we limit ourselves strictly to the textual evidence and consensus in this matter, imposing the diyah on the ʻaqilah (liable kinship group) based on the explicit text pertaining to it—as we will elaborate in the chapters on the ʻaqilah, Allah the Exalted willing—and we have obligated it in all forms of property.

L38359 **A legal issue: he ordered another to kill a person.**

L38360 Question 2096: If someone instructs another to kill a person, and the one commanded carries out the killing, ʿAlī said: People have differed concerning this matter. A group stated: Only the instructing party is to be executed.

L38361 A group of jurists held: Only the commanded individual is to be killed.

L38362 A group said: They are both to be killed together.

L38363 A group said: Not one of the two is to be killed. The first view - as narrated to us by Abdullah ibn Rabee‘, narrated to us by Abdullah ibn Muhammad ibn

[49] **Qur’an references (L38354):** Qur’an 33:5 (Al-Ahzab).
[50] **Qur’an references (L38357):** Qur’an 33:5 (Al-Ahzab).

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «رُفِعَ عَنْ أُمَّتِي الْخَطَأُ وَالنِّسْيَانُ» .

وَوَجَدْنَا النَّاسَ قَدْ اخْتَلَفُوا: هَلْ دِيَةُ الْخَطَأِ عَلَى الْقَاتِلِ الْمُخْطِئِ أَمْ لَا؟ فَوَجَبَ بِقَوْلِ اللَّهِ تَعَالَى {وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ} [الأحزاب: ٥] أَنَّهُ لَا يَلْزَمُهُ الدِّيَةُ.

وَأَيْضًا - فَإِنَّ اللَّهَ تَعَالَى إذْ أَوْجَبَ الدِّيَةَ فِي ذَلِكَ لَمْ يُلْزِمْهَا الْقَاتِلَ، فَلَا سَبِيلَ إلَى إلْزَامِهِ دِيَةً لَمْ يُلْزِمْهُ اللَّهُ تَعَالَى إيَّاهَا، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا إجْمَاعُ الْأُمَّةِ، وَقَدْ صَحَّ النَّصُّ، وَالْإِجْمَاعُ عَلَى: إلْزَامِهِ الْكَفَّارَةَ بِالْعِتْقِ، أَوْ الصِّيَامِ، فَوَقَفْنَا عِنْدَ النَّصِّ، وَالْإِجْمَاعِ فِي ذَلِكَ وَأَلْزَمْنَا الدِّيَةَ الْعَاقِلَةَ بِالنَّصِّ الْوَارِدِ فِي ذَلِكَ عَلَى مَا نَذْكُرُ فِي أَبْوَابِ الْعَاقِلَةِ - إنْ شَاءَ اللَّهُ تَعَالَى - وَأَلْزَمْنَاهَا فِي كُلِّ مَالٍ.

[مَسْأَلَةٌ أَمَرَ غَيْرَهُ بِقَتْلِ إنْسَانٍ]

٢٠٩٦ - مَسْأَلَةٌ: مَنْ أَمَرَ غَيْرَهُ بِقَتْلِ إنْسَانٍ فَقَتَلَهُ الْمَأْمُورُ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: يُقْتَلُ الْآمِرُ وَحْدَهُ.

وَقَالَتْ طَائِفَةٌ: يُقْتَلُ الْمَأْمُورُ وَحْدَهُ.

وَقَالَتْ طَائِفَةٌ: يُقْتَلَانِ جَمِيعًا.

وَقَالَتْ طَائِفَةٌ: لَا يُقْتَلُ وَاحِدٌ مِنْهُمَا: فَالْقَوْلُ الْأَوَّلُ - كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ

Uthman, narrated to us by Ahmad ibn Khalid, narrated to us by Ali ibn Abdul Aziz, narrated to us by Al-Hajjaj ibn Al-Minhal, narrated to us by Hammad ibn Salamah from Qatadah from Khilas - is that Ali ibn Abi Talib said: If a man orders his slave to kill a man and he kills him, then the slave is like his sword and whip.

نا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ عَنْ خِلَاسٍ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: إِذَا أَمَرَ الرَّجُلُ عَبْدَهُ أَنْ يَقْتُلَ رَجُلًا فَقَتَلَهُ، فَهُوَ كَسَيْفِهِ وَسَوْطِهِ.

L38364 As for the free person, he is to be executed; as for the slave, he is to be confined indefinitely in prison.

أَمَّا السَّيِّدُ فَيُقْتَلُ - وَأَمَّا الْعَبْدُ فَيُسْتَوْدَعُ فِي السِّجْنِ.

L38365 And through the chain of narration via ʿAbd al-Razzāq from Ibn Jurayj, who said: I asked ʿAṭāʾ: "What if a man orders his slave to kill a man?" He replied: "The punishment lies with the one who ordered. I heard Abū Hurayrah say: 'The free person who issues the order is to be executed, but the slave is not to be executed.'" Abū Hurayrah said: "Consider if a man sent a gift with his slave to another—who is deemed to have offered it?" Ibn Jurayj said: I asked: "What about his hired worker?" He responded: "Is that not like his slave?" I asked: "What if he orders a free man or a slave he does not own, and they are not hired workers?" He replied: "The punishment lies with the one commanded—if he does not own them—for if he orders a free man to kill a man, the killer is to be executed, and no liability falls upon the one who ordered."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: رَجُلٌ أَمَرَ عَبْدَهُ فَقَتَلَ رَجُلًا؟ فَقَالَ: عَلَى الْآمِرِ، سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: يُقْتَلُ الْحُرُّ الْآمِرُ، وَلَا يُقْتَلُ الْعَبْدُ، قَالَ أَبُو هُرَيْرَةَ: أَرَأَيْت لَوْ أَنَّ رَجُلًا بَعَثَ بِهَدِيَّةٍ مَعَ عَبْدِهِ إلَى رَجُلٍ، مَنْ أَهْدَاهَا؟ قَالَ ابْنُ جُرَيْجٍ: فَقُلْت: فَأَجِيرُهُ؟ قَالَ: ذَلِكَ مِثْلُ عَبْدِهِ؟ قُلْت: فَأَمَرَ رَجُلًا حُرًّا أَوْ عَبْدًا لَا يَمْلِكُهُ، وَلَيْسَا بِأَجِيرَيْنِ، قَالَ: عَلَى الْمَأْمُورِ - إذَا لَمْ يَمْلِكْهُمَا - إذَا أَمَرَ حُرًّا فَقَتَلَ رَجُلًا، فَإِنَّهُ يُقْتَلُ الْقَاتِلُ وَلَيْسَ عَلَى الْآمِرِ شَيْءٌ.

L38366–38367 The second opinion—as reported to us through the chain of Ibn Waḍḍāḥ: Mūsā ibn Muʿāwiyah narrated to us, Wakīʿ narrated to us, Shuʿbāh said: I asked al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān about a man who commands another man to kill, and he kills. They both responded together: The killer is to be executed, and no retributive punishment (qiṣāṣ) is imposed on the commander.

وَالْقَوْلُ الثَّانِي - كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا شُعْبَةُ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ الرَّجُلِ يَأْمُرُ الرَّجُلَ فَيَقْتُلُ؟ فَقَالَا جَمِيعًا: يُقْتَلُ الْقَاتِلُ، وَلَيْسَ عَلَى الْآمِرِ قَوَدٌ.

L38368 And with him—to Wakīʿ—Sufyān al-Thawrī narrated to us from Jābir from ʿĀmir al-Shaʿbī regarding one who commands his slave to kill a man. He said: "Is the slave to be killed?" Al-Shaʿbī has another additional statement: And the master is punished.

وَبِهِ - إلَى وَكِيعٍ نا سُفْيَانُ الثَّوْرِيُّ عَنْ جَابِرٍ عَنْ عَامِرٍ الشَّعْبِيِّ فِي الَّذِي يَأْمُرُ عَبْدَهُ فَيَقْتُلُ رَجُلًا قَالَ: يُقْتَلُ الْعَبْدُ؟ وَلِلشَّعْبِيِّ كَلَامٌ آخَرُ زَائِدٌ وَيُعَاقَبُ السَّيِّدُ.

L38369 The third opinion—that of Qatādah—is: both of them are to be killed together.

وَالْقَوْلُ الثَّالِثُ - هُوَ قَوْلُ قَتَادَةَ: أَنَّهُمَا يُقْتَلَانِ جَمِيعًا.

L38370 The fourth opinion—it was narrated to us from Sulaymān ibn Mūsā, who

said: If a man commands his slave to kill someone, the commander is not executed, but his hands, and he is punished and imprisoned. If he commands a free person, then the free person may choose to obey or refuse; thus, the commander is not executed.

وَالْقَوْلُ الرَّابِعُ - رُوِّينَا عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ: لَوْ أَمَرَ رَجُلٌ عَبْدًا لَهُ فَقَتَلَ رَجُلًا لَمْ يُقْتَلْ الْآمِرُ، وَلَكِنْ يَدِيهِ، وَيُعَاقَبُ، وَيُحْبَسُ - فَإِنْ أَمَرَ حُرًّا فَإِنَّ الْحُرَّ إنْ شَاءَ أَطَاعَهُ، وَإِنْ شَاءَ لَا، فَلَا يُقْتَلُ الْآمِرُ.

L38371 As for the later scholars, Sufyan al-Thawri stated: The slave is to be killed, and the master who issued the command is to be punished. If a man orders a boy to kill a person and the boy kills him, the blood money is to be paid from the boy's funds, and recovered from the one who commanded him. The one who gave the order is not to be killed.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ سُفْيَانَ الثَّوْرِيَّ قَالَ: يُقْتَلُ الْعَبْدُ، وَيُعَاقَبُ السَّيِّدُ الْآمِرُ - وَلَوْ أَمَرَ رَجُلٌ صَبِيًّا بِقَتْلِ إنْسَانٍ فَقَتَلَهُ الصَّبِيُّ، فَالدِّيَةُ فِي مَالِ الصَّبِيِّ، وَيُرْجَعُ بِهَا عَلَى الَّذِي أَمَرَهُ وَلَا يُقْتَلُ الْآمِرُ.

L38372 Ahmad ibn Hanbal said: If a master orders his slave to kill a person, the master is to be executed, and the slave is to be disciplined. But if he orders a free man and he kills him, then only the one who was ordered is executed. Ishaq concurred with this ruling.

وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: إنْ أَمَرَ عَبْدَهُ بِقَتْلِ إنْسَانٍ قُتِلَ الْآمِرُ، وَيُؤَدَّبُ الْعَبْدُ - فَإِنْ أَمَرَ حُرًّا فَقَتَلَهُ قُتِلَ الْمَأْمُورُ وَحْدَهُ - وَبِهِ قَالَ إِسْحَاقُ.

L38373 Abu Hanifa and Muhammad ibn al-Hasan ruled regarding an interdicted slave who commanded another interdicted slave to kill a man, and he killed him: The master of the killer has the choice. If he wishes, he may surrender his slave to the legal guardians of the slain, or if he wishes, pay blood money to the heirs. If the commanding slave is emancipated, the master of the commanded slave may reclaim from the emancipated commanding slave the value of his slave whom he surrendered or for whom he paid blood money.

وَقَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ فِي عَبْدٍ مَحْجُورٍ عَلَيْهِ أَمَرَ عَبْدًا مَحْجُورًا عَلَيْهِ أَنْ يَقْتُلَ رَجُلًا فَقَتَلَهُ، فَسَيِّدُ الْقَاتِلِ بِالْخِيَارِ إنْ شَاءَ دَفَعَ عَبْدَهُ إلَى أَوْلِيَاءِ الْمَقْتُولِ، وَإِنْ شَاءَ فَدَاهُ، فَإِنْ أُعْتِقَ الْعَبْدُ الْآمِرُ رَجَعَ سَيِّدُ الْمَأْمُورِ عَلَيْهِ، فَأَخَذَ مِنْهُ قِيمَةَ عَبْدِهِ الَّذِي أَسْلَمَ، أَوْ الَّذِي فَدَاهُ.

L38374 Abu Yusuf said: If a slave commands another slave to kill someone or destroy property, and the commanding slave is later emancipated, he becomes liable for the destruction of property ordered by him but not for the killing he instigated. This is similar to when a slave acknowledges a debt or criminal liability while enslaved and is then freed: the debt remains binding upon him, but the criminal liability does not.

وَقَالَ أَبُو يُوسُفَ: إذَا أَمَرَ عَبْدٌ عَبْدًا بِإِتْلَافِ نَفْسٍ أَوْ مَالٍ، فَإِنَّهُ إذَا أُعْتِقَ الْآمِرُ لَزِمَهُ الْمَالُ الْمُتْلَفُ بِأَمْرِهِ، وَلَمْ يَلْزَمْهُ الدَّمُ الْمُتْلَفُ بِأَمْرِهِ، كَمَا لَوْ أَقَرَّ بِجِنَايَةٍ، أَوْ دَيْنٍ فِي رَقَبَةٍ ثُمَّ أُعْتِقَ فَإِنَّ الدَّيْنَ يَلْزَمُهُ وَلَا تَلْزَمُهُ الْجِنَايَةُ.

L38375–38377 Zufar and al-Ḥasan ibn Ziyād ruled concerning a slave who commanded a child to kill a person, and he killed him: the liability lies with the ʿāqilah. The blood money is owed to the minor. Then the minor's _ʿāqila_ (agnatic responsible kin) reclaim it from the slave's master. The master is instructed:

وَقَالَ زُفَرُ، وَالْحَسَنُ بْنُ زِيَادٍ، فِي عَبْدٍ أَمَرَ صَبِيًّا بِقَتْلِ إنْسَانٍ فَقَتَلَهُ، فَعَلَى عَاقِلَةِ الصَّبِيِّ الدِّيَةُ، ثُمَّ تَرْجِعُ بِهَا عَاقِلَةُ الصَّبِيِّ عَلَى سَيِّدِ الْعَبْدِ، فَيُقَالُ لَهُ: ادْفَعْ الْعَبْدَ إلَى الْعَاقِلَةِ أَوْ افْدِهِ بِالدِّيَةِ.

"Hand over the slave to the _ʿāqila_ or redeem him by paying the blood money."

L38378 Al-Shafiʿi said: If a free man orders another's slave to kill a person and he kills him, or orders a minor not under his guardianship to do so and he kills him, then if the slave or minor can discern that the orderer is a stranger and that obedience to him is not obligatory for them, the orderer is punished, but neither retaliation nor blood money is imposed on him. The killer in this case is the slave or the minor. If they cannot discern that he is a stranger and that obedience to him is not obligatory, then the orderer is subject to retaliation.

وَقَالَ الشَّافِعِيُّ: إنْ أَمَرَ حُرٌّ عَبْدَ غَيْرِهِ بِقَتْلِ إنْسَانٍ فَقَتَلَهُ، أَوْ أَمَرَ بِذَلِكَ صَبِيًّا أَجْنَبِيًّا فَقَتَلَ، فَإِنْ كَانَ الْعَبْدُ وَالصَّبِيُّ يُمَيِّزَانِ أَنَّهُ أَجْنَبِيٌّ، وَأَنَّ طَاعَتَهُ لَيْسَتْ عَلَيْهِمَا: عُوقِبَ الْآمِرُ وَلَا قَوَدَ عَلَيْهِ، وَلَا دِيَةَ، وَالْقَاتِلُ هَاهُنَا هُوَ الْعَبْدُ أَوْ الصَّبِيُّ، قَالَ: فَإِنْ كَانَا لَا يُمَيِّزَانِ ذَلِكَ فَعَلَى الْآمِرِ الْقَوَدُ.

L38379 Abu Muhammad said: When they differed as we have mentioned, it became incumbent upon us to examine this matter. So should we consider the opinions of Abu Hanifah and his companions? We found they possessed no valid evidence in any of their claims - rather, their assertions were feeble and contradictory.

قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ عَلَيْنَا أَنْ نَنْظُرَ فِي ذَلِكَ: فَنَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ؟ فَوَجَدْنَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ، بَلْ هِيَ أَقْوَالٌ مُتَخَاذِلَةٌ.

L38380 Then we examined Sufyan's statement and found it also to be erroneous, because he distinguished between a master who orders his slave to kill a person and the slave executes his command - thus considering the slave alone as the killer while not regarding the commanding master as a co-killer.

ثُمَّ نَظَرْنَا فِي قَوْلِ سُفْيَانَ فَوَجَدْنَاهُ أَيْضًا خَطَأً، لِأَنَّهُ فَرَّقَ بَيْنَ السَّيِّدِ يَأْمُرُ عَبْدَهُ بِقَتْلِ إنْسَانٍ فَيُنَفِّذُ أَمْرَهُ، فَجَعَلَ الْعَبْدَ هُوَ الْقَاتِلَ، وَلَمْ يَرَ السَّيِّدَ الْآمِرَ قَاتِلًا.

L38381 As for the statements of Al-Shāfiʿī, Aḥmad, and Abū Sulaymān, they are encompassed within the opinions of the Companions and Followers we previously mentioned. We therefore deemed it unnecessary to specify them separately, as our discourse on those four opinions suffices - and with Allāh, the Exalted, lies success.

وَأَمَّا قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، فَدَاخِلَةٌ فِي أَقْوَالِ مَنْ ذَكَرْنَا قَبْلُ مِنْ الصَّحَابَةِ وَالتَّابِعِينَ، فَتَرَكْنَا أَنْ نَخُصَّهَا بِالذِّكْرِ اكْتِفَاءً بِكَلَامِنَا فِي تِلْكَ الْأَقْوَالِ الْأَرْبَعَةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38382 As for the statement of Sulaymān ibn Mūsā that "the orderer and the one who is ordered are not to be killed," this is erroneous, for in this case there is intentional killing, and Allah, the Exalted, has mandated qisas (retributive punishment) for it.

وَأَمَّا قَوْلُ سُلَيْمَانَ بْنِ مُوسَى " لَا يُقْتَلُ الْآمِرُ وَلَا الْمَأْمُورُ " فَخَطَأٌ، لِأَنَّ هَاهُنَا قَتْلَ عَمْدٍ، وَقَدْ أَوْجَبَ اللَّهُ تَعَالَى فِيهِ الْقَوَدَ.

L38383 As for the statements of al-Hakam, Hammad, al-Sha'bi, Ibrahim, and Abu Sulayman, they argued that the killer is the one responsible for the killing and directly carries it out, and thus retribution applies exclusively to him.

وَأَمَّا قَوْلُ الْحَكَمِ، وَحَمَّادٍ، وَالشَّعْبِيِّ، وَإِبْرَاهِيمَ، وَأَبِي سُلَيْمَانَ، فَإِنَّهُمْ احْتَجُّوا بِأَنَّ الْقَاتِلَ هُوَ الْمُتَوَلِّي لِلْقَتْلِ الْمُبَاشِرُ لِلْقَتْلِ، فَهُوَ الَّذِي عَلَيْهِ الْقَوَدُ خَاصَّةً.

وَأَمَّا قَوْلُ عَلِيٍّ، وَأَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُمَا - فَإِنَّهُمَا جَعَلَا الْآمِرَ هُوَ الْقَاتِلَ، فَهُوَ الَّذِي عَلَيْهِ الْقَوَدُ، وَجَعَلُوا الْمَأْمُورَ آلَةً لَهُ مُصَرَّفَةً - هَذِهِ حُجَّتُهُمْ؟ قَالَ أَبُو مُحَمَّدٍ: وَقَدَّمُوهُ أَصْحَابُ الْقِيَاسِ هَاهُنَا بِأَنَّ هَذَا الْقَوْلَ مِنْ عَلِيٍّ، وَأَبِي هُرَيْرَةَ قِيَاسٌ - يَعْنِي قَوْلَ عَلِيٍّ: إنَّ الْمَأْمُورَ هُوَ كَسَيْفِ الْآمِرِ وَسَوْطِهِ.

L38384 As for the statement of Ali and Abu Hurairah—may Allah be pleased with them both—they deemed the commander to be the actual killer, he being the one upon whom the qawad is due, and considered the commanded one as an instrument directed by him—is this their argument? Abu Muhammad said: The proponents of analogy advanced it here, asserting that this statement of Ali and Abu Hurairah constitutes analogy—referring to Ali's saying: "The commanded one is like the commander's sword or his whip."

وَقَوْلُ أَبِي هُرَيْرَةَ " أَرَأَيْت لَوْ أَرْسَلَ مَعَهُ هَدِيَّةً، مَنْ الْمُهْدِي لَهَا؟ ".

L38385 And the statement of Abū Hurayrah: "Have you considered—if he were to send a gift with him, who would be the one presenting it to her?"

وَهَذَا لَا مُتَعَلَّقَ لَهُمْ بِهِ، وَلَا هُوَ مِنْ الْقِيَاسِ، لَا فِي وِرْدٍ وَلَا فِي صَدْرٍ، لِأَنَّ الْقِيَاسَ عِنْدَ جَمِيعِ الْقَائِلِينَ بِهِ إنَّمَا هُوَ حُكْمٌ لِمَسْكُوتٍ عَنْهُ بِحُكْمٍ مَنْصُوصٍ عَلَيْهِ، أَوْ بِحُكْمٍ مُخْتَلَفٍ فِيهِ بِحُكْمٍ مُجْمَعٍ عَلَيْهِ، وَأَنْ يُرَدَّ الْفَرْعَ إلَى الْأَصْلِ بِنَوْعٍ مِنْ الشَّبَهِ، وَلَيْسَ هَاهُنَا شَيْءٌ مِنْ هَذِهِ الْوُجُوهِ أَصْلًا - فَبَطَلَ بِإِقْرَارِهِمْ أَنْ يَكُونَ قِيَاسًا، إذْ بِيَقِينٍ نَدْرِي أَنَّ الْمَأْمُورَ لَيْسَ حُكْمُهُ حُكْمَ السَّيْفِ، وَالسَّوْطِ، لِأَنَّ عَلِيًّا رَأَى عَلَى الْمَأْمُورِ السَّجْنَ، وَلَا خِلَافَ فِي أَنَّهُ لَا سَجْنَ عَلَى السَّيْفِ، وَلَا السَّوْطِ.

L38386–38388 And this is something they have no basis for, nor does it relate to analogy (qiyās)—neither prospectively nor retrospectively—because... According to all proponents of analogy, it is solely a ruling for an unaddressed matter derived from a textually established ruling, or for a disputed matter derived from a consensus-backed ruling, entailing the subordination of the subsidiary case to the root case through a form of resemblance. None of these aspects exist here whatsoever—thereby invalidating it as an analogy by their own acknowledgment. For we know with certainty that the ruling for the obligated person differs from that of the sword or the whip, since Ali decreed imprisonment for the obligated person, and there is no dispute that imprisonment is not prescribed for the sword or the whip.

فَصَحَّ أَنَّهُ لَمْ يَحْكُمْ عَلِيٌّ قَطُّ لِلْمَأْمُورِ بِالْحُكْمِ فِي السَّيْفِ، وَالسَّوْطِ، فَبَطَلَ الْإِيهَامُ جُمْلَةً.

L38389 Thus, it is established that 'Alī never ruled for the one commanded to pass judgment regarding the sword and the whip, thereby nullifying any ambiguity altogether.

وَأَمَّا قَوْلُ أَبِي هُرَيْرَةَ " أَرَأَيْت لَوْ أَهْدَى مَعَهُ هَدِيَّةً، مَنْ الَّذِي أَهْدَاهَا؟ " فَكَذَلِكَ أَيْضًا، وَمَا حُكْمُ أَبِي هُرَيْرَةَ قَطُّ لِلْقَاتِلِ الْمَأْمُورِ بِمِثْلِ الْحُكْمِ فِي حَامِلِ الْهَدِيَّةِ، بَلْ الْحُكْمُ فِيهِمَا مُخْتَلَفٌ بِلَا خِلَافٍ، لِأَنَّ حَامِلَ الْهَدِيَّةِ، وَمُهْدِيَهَا: يُشْكَرَانِ، وَالْآمِرُ، وَالْقَاتِلُ: يُقْتَلُ، وَيُلَامَانِ - وَهَذَا لَوْ كَانَ قِيَاسًا لَكَانَ قِيَاسًا لِلشَّيْءِ عَلَى ضِدِّهِ، وَلَوْ كَانَ قِيَاسًا لَا يُوجِبُ اتِّفَاقًا فِي الْحُكْمِ - وَهَذَا هُوَ تَرْكُ الْقِيَاسِ حَقًّا، وَإِنَّمَا هُوَ تَشْبِيهٌ فَقَطْ؟ قَالَ أَبُو مُحَمَّدٍ: ثُمَّ

L38390 As for the statement of Abū Hurayrah: "Have you considered if he had sent a gift with him—who would be considered its sender?" The same applies here. Abū Hurayrah never applied the same ruling to the commanded killer as to the bearer of the gift. Rather, their rulings are undoubtedly distinct, for the bearer of the gift and its sender are to be commended, while the commander and killer are to be executed and condemned. If this were analogy, it would equate a thing to its opposite. Even if deemed analogy, it would not necessitate uniformity in ruling—this constitutes the true abandonment of analogical reasoning, being merely a superficial resemblance.

Abū Muḥammad said: We then return to the original matter and state: Since they differed—as we mentioned—it became obligatory upon us to act upon what Allah the Exalted has ordained, as He says: "If you dispute over any matter, refer it to Allah and the Messenger" [4:59]. We did so and found the narration transmitted to us via Muslim's chain: Abū al-Ṭāhir and Ḥarmalah both narrated: Ibn Wahb reported to us, Yunus narrated from Ibn Shihāb, who reported that 'Ubaydullāh ibn 'Abdillāh ibn 'Utbah heard 'Abdullāh ibn 'Abbās say: 'Umar ibn al-Khaṭṭāb—while seated on the pulpit of Allah's Messenger (peace and blessings be upon him)—declared: "Allah sent Muḥammad with the truth, revealed the Book to him, and among what He revealed was the Verse of Stoning. We recited it, memorized it, and comprehended it. Allah's Messenger (peace and blessings be upon him) carried out stoning, and we did so after him."

In another narration in Ṣaḥīḥ Muslim: From Abū Hurayrah that "a man from the Muslims came to Allah's Messenger (peace and blessings be upon him) and said: 'O Messenger of Allah, I have committed adultery.' He related the ḥadīth—in which the Messenger of Allah (peace and blessings be upon him) asked him: 'Are you a muḥṣan (a married person)?' He replied: 'Yes.' The Messenger of Allah (peace and blessings be upon him) then said: 'Take him forth and stone him.'"[51]

L38391–38393 From Ibrāhīm al-Nakhaʿī, who said: Al-Ḍaḥḥāk ibn Qays sought to appoint Masrūq to a position. ʿUmārah ibn ʿUqbah said to him: "Are you appointing a man from the remnants of ʿUthmān's killers?" Masrūq responded: "He narrated to us..." Abdullah ibn Mas'ud narrated that when the Messenger of Allah—peace and blessings be upon him—commanded the killing of your father, someone asked, "Who will care for the children?" He replied, "They are destined for Hellfire." Masruq said, "I am content for you with what the Messenger of Allah—peace and blessings be upon him—has decreed."

L38394 And via Muslim's chain of transmission: "The Messenger of Allah (peace be upon him) ordered that the hand of the woman who stole be severed, and her hand was severed."

نَرْجِعُ إِلَى الْمَسْأَلَةِ الَّتِي كُنَّا فِيهَا فَنَقُولُ: إِنَّهُمْ لَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ عَلَيْنَا أَنْ نَفْعَلَ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا، إِذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] فَفَعَلْنَا فَوَجَدْنَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو الطَّاهِرِ، وَحَرْمَلَةُ، قَالَا جَمِيعًا: نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنِ ابْنِ شِهَابٍ أَخْبَرَنِي عُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عَبَّاسٍ يَقُولُ: قَالَ عُمَرُ بْنُ الْخَطَّابِ - وَهُوَ جَالِسٌ عَلَى مِنْبَرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّ اللَّهَ بَعَثَ مُحَمَّدًا بِالْحَقِّ، فَأَنْزَلَ عَلَيْهِ الْكِتَابَ، وَكَانَ مِمَّا أَنْزَلَ اللَّهُ عَلَيْهِ آيَةَ الرَّجْمِ، قَرَأْنَاهَا وَوَعَيْنَاهَا وَعَقَلْنَاهَا، فَرَجَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرَجَمْنَا بَعْدَهُ. وَمِنْ طَرِيقِ مُسْلِمٍ - أَيْضًا - عَنْ أَبِي هُرَيْرَةَ " أَنَّهُ «أَتَى رَجُلٌ مِنَ الْمُسْلِمِينَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي زَنَيْت فَذَكَرَ الْحَدِيثَ - وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهُ: هَلْ أَحْصَنْتَ؟ قَالَ: نَعَمْ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اذْهَبُوا بِهِ فَارْجُمُوهُ» .

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ أَرَادَ الضَّحَّاكُ بْنُ قَيْسٍ أَنْ يَسْتَعْمِلَ مَسْرُوقًا، فَقَالَ لَهُ عُمَارَةُ بْنُ عُقْبَةَ: أَتَسْتَعْمِلُ رَجُلًا مِنْ بَقَايَا قَتَلَةِ عُثْمَانَ؟ فَقَالَ مَسْرُوقٌ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مَسْعُودٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا أَمَرَ بِقَتْلِ أَبِيك قَالَ: مَنْ لِلصِّبْيَةِ؟ قَالَ: النَّارُ، قَالَ مَسْرُوقٌ: فَرَضِيتُ لَكَ مَا جَعَلَ لَكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

وَمِنْ طَرِيقِ مُسْلِمٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِقَطْعِ يَدِ الْمَرْأَةِ الَّتِي سَرَقَتْ فَقُطِعَتْ يَدُهَا» .

[51] **Qur'an references (L38390):** Qur'an 4:59 (An-Nisa).

L38395 Ali said: In these reports, it is established that the one who commands is linguistically termed a “doer” under certain circumstances - in accordance with the conventions of the language [in which the Quran was revealed]. Thus, Umar ibn al-Khattab, in the presence of the Companions - who are the authoritative source for the language - referred to someone who ordered the stoning of another and then carried it out as “the stoner of the stoned.” He also called himself “a stoner” and termed the Messenger of Allah - peace and blessings be upon him - “a stoner,” even though he did not attend a stoning. This is as narrated by Abdullah ibn Rabi’ from Muhammad ibn Mu’awiyah, from Ahmad ibn Shu’ayb, from Hamad ibn Sulayman al-Rahawi, from Yazid ibn Harun, from Muhammad ibn ’Amr, from Abu Salamah, from Abu Hurairah, who said:

Ma’iz ibn Malik came to the Messenger of Allah - peace and blessings be upon him - and said, “O Messenger of Allah, I have committed adultery.” He related the hadith, in which the Messenger of Allah - peace and blessings be upon him - said, “Take him away and stone him.” They took him, and when the stones touched him, he turned and fled in haste. A man met him carrying a camel’s jawbone, struck him, and knocked him down. When the Prophet - peace and blessings be upon him - was informed of his fleeing after the stones touched him, he said, “Why did you not leave him?”

قَالَ عَلِيٌّ: فَفِي هَذِهِ الْأَخْبَارِ: أَنَّ الْآمِرَ يُسَمَّى فِي اللُّغَةِ [الَّتِي بِهَا نَزَلَ الْقُرْآنُ] فَاعِلًا فِي بَعْضِ الْأَحْوَالِ - عَلَى حَسَبِ مَا جَاءَتْ بِهِ اللُّغَةُ - فَسَمَّى عُمَرُ بْنُ الْخَطَّابِ بِحَضْرَةِ الصَّحَابَةِ - وَهُمْ الْحُجَّةُ فِي اللُّغَةِ - مَنْ أَمَرَ بِرَجْمِ آخَرَ فَرَجَمَ - رَاجِمًا لِلْمَرْجُومِ. وَسَمَّى أَيْضًا نَفْسَهُ - رَاجِمًا - وَسَمَّى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَاجِمًا - وَهُوَ لَمْ يَحْضُرْ رَجْمًا -: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا حَمَدُ بْنُ سُلَيْمَانَ الرَّهَاوِيُّ نا يَزِيدُ بْنُ هَارُونَ نا مُحَمَّدُ بْنُ عَمْرٍو عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ: «جَاءَ مَاعِزُ بْنُ مَالِكٍ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنِّي قَدْ زَنَيْتُ؟ فَذَكَرَ الْحَدِيثَ - وَفِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: انْطَلِقُوا بِهِ فَارْجُمُوهُ، فَانْطَلَقُوا بِهِ، فَلَمَّا مَسَّتْهُ الْحِجَارَةُ أَدْبَرَ يَشْتَدُّ، فَلَقِيَهُ رَجُلٌ فِي يَدِهِ لَحْيُ جَمَلٍ فَضَرَبَهُ فَصَرَعَهُ، فَذُكِرَ ذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَارُهُ حِينَ مَسَّتْهُ الْحِجَارَةُ؟ فَقَالَ: فَهَلَّا تَرَكْتُمُوهُ؟» .

L38396 Abu Muhammad said: The Messenger of Allah—peace and blessings of Allah be upon him—referred to himself as “the cutter of the thief’s hand,” though the amputation was carried out by another. There is no disagreement between two persons that the Messenger of Allah—peace and blessings of Allah be upon him—killed ’Uqbah ibn Abi Mu’ayt, though the killing was executed by another by the command of the Messenger of Allah—peace and blessings of Allah be upon him.

قَالَ أَبُو مُحَمَّد: وَسَمَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَفْسَهُ - قَاطِعًا يَدَ السَّارِقِ - وَإِنَّمَا تَوَلَّى الْقَطْعَ غَيْرُهُ - وَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَتَلَ عُقْبَةَ بْنَ أَبِي مُعَيْطٍ، وَإِنَّمَا تَوَلَّى قَتْلَهُ غَيْرُهُ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L38397 Similarly, it is reported from Ali (may Allah be pleased with him) as was narrated to us from Al-Sha‘bi that Ali flogged Shurahah on Thursday and stoned her on Friday, saying: “I flogged you according to the Book of Allah, and I stoned you according to the Sunnah of the Messenger of Allah—peace and blessings of Allah be upon him—.”

وَهَكَذَا جَاءَ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - كَمَا رُوِّينَا عَنْ الشَّعْبِيِّ أَنَّ عَلِيًّا جَلَدَ شُرَاحَةَ يَوْمَ الْخَمِيسِ، وَرَجَمَهَا يَوْمَ الْجُمُعَةِ، وَقَالَ: جَلَدْتُكِ بِكِتَابِ اللَّهِ، وَرَجَمْتُكِ بِسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L38398 Ali said: When someone orders killing, and the executor carrying out the killing obeys the commander and implements his order—and had the commander not ordered him, he would not have killed—both are termed in language and Islamic law as "killer" and "amputator." It is established that they are both killers, amputators, and floggers. Since this is the case, both are equally liable for qisas (legal retaliation) as the killer, amputator, and flogger. In this matter, the coercer, the commander, and the subordinate are equal. This constitutes an irrefutable axiomatic proof.

قَالَ عَلِيٌّ: فَإِذْ مَنْ أَمَرَ بِالْقَتْلِ وَكَانَ مُتَوَلِّي الْقَتْلِ مُطِيعًا لِلْآمِرِ مُنَفِّذًا لِأَمْرِهِ، وَلَوْلَا أَمْرُهُ إيَّاهُ لَمْ يَقْتُلْهُ يُسَمَّى فِي اللُّغَةِ وَالشَّرِيعَةِ - قَاتِلًا - وَقَاطِعًا - صَحَّ أَنَّهُمَا جَمِيعًا قَاتِلَانِ، وَقَاطِعَانِ، وَجَالِدَانِ، فَإِذْ ذَلِكَ كَذَلِكَ فَعَلَيْهِمَا جَمِيعًا مَا عَلَى الْقَاتِلِ، وَالْقَاطِعِ، وَالْجَالِدِ، مِنْ الْقَوَدِ، وَسَوَاءٌ فِي ذَلِكَ الْمُكْرِهُ، وَالْآمِرُ، وَالْمُنْطَاعُ - وَهَذَا بُرْهَانٌ ضَرُورِيٌّ لَا مَحِيدَ عَنْهُ.

L38399–38400 Abū Muḥammad said: It is the same whether he commands his own slave, another's slave, a minor, an adult, or an insane person—if the one undertaking the killing, the offense involving amputation, bone-breaking, striking, or taking property did so solely by the orderer's command—for without his command, he would not have done it—then both the orderer and the direct actor are jointly liable for all these actions collectively.

قَالَ أَبُو مُحَمَّد: فَسَوَاءٌ أَمَرَ عَبْدَهُ، أَوْ عَبْدَ غَيْرِهِ، أَوْ صَبِيًّا، أَوْ بَالِغًا، أَوْ مَجْنُونًا - إذَا كَانَ مُتَوَلِّي الْقَتْلِ، أَوْ الْجِنَايَةِ بِالْقَطْعِ، أَوْ الْكَسْرِ، أَوْ الضَّرْبِ أَوْ أَخْذِ الْمَالِ: إنَّمَا فَعَلَ ذَلِكَ بِأَمْرِ الْآمِرِ - وَلَوْلَا أَمْرُهُ لَمْ يَفْعَلْهُ - فَالْآمِرُ، وَالْمُبَاشِرُ: فَاعِلَانِ لِكُلِّ ذَلِكَ جَمِيعًا.

L38401 As for when someone commands another, and the latter performs the act by his own choice in willing obedience to the commander: the direct perpetrator alone—the killer, amputator, one who fractures bones, eye-gouger, or offender—is solely liable for qisas (retaliatory punishment), and nothing is incumbent upon the commander. This is because there is no dispute that the commander is not termed here as a killer, amputator, lasher, bone-fracturer, or eye-gouger. Indeed, legal rulings pertain only to these specific terms.

وَأَمَّا إذَا أَمَرَهُ فَفَعَلَ ذَلِكَ بِاخْتِيَارِهِ طَاعَةً لِلْآمِرِ: فَالْمُبَاشِرُ وَحْدَهُ: الْقَاتِلُ، وَالْقَاطِعُ وَالْكَاسِرُ، وَالْفَاقِئُ، وَالْجَانِي: فَعَلَيْهِ الْقَوَدُ وَحْدَهُ، وَلَا شَيْءَ عَلَى الْآمِرِ، لِأَنَّهُ لَا خِلَافَ فِي أَنَّهُ لَا يَقَعُ عَلَيْهِ هَاهُنَا اسْمُ - قَاتِلٍ، وَلَا قَاطِعٍ، وَلَا جَالِدٍ، وَلَا كَاسِرٍ وَلَا فَاقِئٍ - وَإِنَّمَا الْأَحْكَامُ لِلْأَسْمَاءِ فَقَطْ.

L38402 As for the child and the insane person: nothing is required of them. The one who commands - being the killer, the amputator, the flogger, the bone-breaker, or the blinder: retaliation falls upon him alone.

أَمَّا الصَّبِيُّ، وَالْمَجْنُونُ: فَلَا شَيْءَ عَلَيْهِمَا، وَالْآمِرُ - هُوَ الْقَاتِلُ، الْقَاطِعُ، الْجَالِدُ، الْكَاسِرُ، الْفَاقِئُ: فَالْقَوَدُ عَلَيْهِ وَحْدَهُ.

L38403 As for one who commands his own slave, another's slave, or a free person, while they are unknowing and unaware of the prohibition of what they are commanded to do: the commander alone is the guilty killer in all such cases, and legal retribution is incumbent upon him, while the unknowing person bears no responsibility. Allah the Exalted said: "To warn you thereby and those to whom the warning reaches" [Al-An'am 6:19].[52]

وَأَمَّا مَنْ أَمَرَ عَبْدًا لَهُ، أَوْ لِغَيْرِهِ، أَوْ حُرًّا، وَكَانُوا جُهَّالًا لَا يَدْرُونَ تَحْرِيمَ مَا أَمَرَهُمْ بِهِ: فَالْآمِرُ وَحْدَهُ هُوَ الْقَاتِلُ الْجَانِي فِي كُلِّ ذَلِكَ - وَعَلَيْهِ الْقَوَدُ، وَلَا شَيْءَ عَلَى الْجَاهِلِ، قَالَ اللَّهُ تَعَالَى {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] .

[52] **Qur'an references (L38403):** Qur'an 6:19 (Al-An'am).

L38404 Abu Muhammad said: There is no distinction between His commanding His servant and His commanding others besides Him—nor any difference between the command of the Sultan and the command of someone other than the Sultan. For Allah the Exalted has only obligated obedience to the ruler and obedience to masters in what constitutes obedience to Allah the Exalted, and He has forbidden obedience to created beings in disobedience to the Creator, as the Messenger of Allah—peace and blessings of Allah be upon him—said: "Obedience is solely required in matters of obedience. When any of you is commanded to commit disobedience, there is no hearing nor obedience."

قَالَ أَبُو مُحَمَّدٍ: وَلَا فَرْقَ بَيْنَ أَمْرِهِ عَبْدَهُ، وَبَيْنَ أَمْرِهِ غَيْرَهُ - وَلَا فَرْقَ بَيْنَ أَمْرِ السُّلْطَانِ وَبَيْنَ أَمْرِ غَيْرِ السُّلْطَانِ، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا افْتَرَضَ طَاعَةَ السُّلْطَانِ وَطَاعَاتِ السَّادَاتِ فِيمَا هُوَ طَاعَةٌ لِلَّهِ تَعَالَى، وَحَرَّمَ طَاعَةَ الْمَخْلُوقِينَ فِي مَعْصِيَةِ الْخَالِقِ، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا الطَّاعَةُ فِي الطَّاعَةِ، فَإِذَا أُمِرَ أَحَدُكُمْ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ» .

L38405 We have cited it with its isnād in multiple places.

وَقَدْ أَوْرَدْنَاهُ بِإِسْنَادِهِ فِي غَيْرِ مَا مَوْضِعٍ.

L38406 Ali said: "Whoever commands another to kill himself, and the commanded person kills himself by his command—if he did so in obedience to the command, and had it not been for that, he would not have killed himself—then the commander is a killer, and retaliation in kind (qisas) is obligatory upon him, as we stated regarding killing another person, there being no distinction. Thus, if he commanded him, saying, 'Kill me,' and the commanded person killed the commander in compliance with his command, then he is also a killer, and retaliation in kind (qisas) is obligatory upon him. And success comes only from Allah, the Most High."

قَالَ عَلِيٌّ: وَمَنْ أَمَرَ آخَرَ بِقَتْلِ نَفْسِهِ فَقَتَلَ نَفْسَهُ بِأَمْرِهِ فَإِنْ كَانَ فَعَلَ ذَلِكَ مُطِيعًا لِلْأَمْرِ وَلَوْلَا ذَلِكَ لَمْ يَقْتُلْ نَفْسَهُ فَالْآمِرُ قَاتِلٌ وَعَلَيْهِ الْقَوَدُ كَمَا قُلْنَا فِي قَتْلِ غَيْرِهِ وَلَا فَرْقَ - فَلَوْ أَمَرَهُ فَقَالَ: اُقْتُلْنِي، فَقَتَلَهُ مُؤْتَمِرًا لِأَمْرِهِ فَهُوَ أَيْضًا قَاتِلٌ، وَعَلَيْهِ الْقَوَدُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْمُمْسِكِ لِلْقَتْلِ]

An issue concerning the one who restrains for the purpose of killing.

L38408 2097 - Issue: Is qisas (retribution) mandated for the one who restrains [a victim] to enable killing, or not? Similarly [what is the ruling for] the bystander, the one who aims [the weapon], the one who directs [to the victim], the pursuer, and the aggressor?

٢٠٩٧ - مَسْأَلَةٌ: هَلْ عَلَى الْمُمْسِكِ لِلْقَتْلِ قَوَدٌ؟ أَمْ لَا؟ وَكَذَلِكَ الْوَاقِفُ وَالْمُصَوِّبُ وَالدَّالُّ، وَالْمُتَّبِعُ وَالْبَاغِي؟

L38409–38410 Ali said: People have differed regarding this matter. A group held that only the withholder should be correctively disciplined.

قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: يُؤَدَّبُ الْمُمْسِكُ فَقَطْ.

L38411 A group said: The killer is to be executed, and the one who withholds is to be imprisoned until he dies.

وَقَالَتْ طَائِفَةٌ: يُقْتَلُ الْقَاتِلُ وَيُسْجَنُ الْمُمْسِكُ حَتَّى يَمُوتَ.

L38412 Some jurists said: The one who withholds is also to be executed.

قَالَتْ طَائِفَةٌ: يُقْتَلُ الْمُمْسِكُ أَيْضًا.

L38413 Those who hold the opinion of imprisoning him until death. As transmitted to us through the chain of Abū Bakr ibn Abī Shaybah, who narrated from ʿĪsā ibn Yūnus, from al-Awzāʿī, from Yaḥyā ibn Abī Kathīr, who said: “Two men were brought before ʿAlī ibn Abī Ṭālib. One had killed, while the other had apprehended. He executed the killer and said to the apprehending man: ’You apprehended for death, so I will imprison you in the prison until you die.”’

فَالْقَائِلُونَ بِحَبْسِهِ حَتَّى يَمُوتَ: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عِيسَى بْنُ يُونُسَ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: إنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِرَجُلَيْنِ قَتَلَ أَحَدُهُمَا وَأَمْسَكَ الْآخَرُ، فَقَتَلَ الَّذِي قَتَلَ، وَقَالَ لِلَّذِي أَمْسَكَ: أَمْسَكْت لِلْمَوْتِ، فَأَنَا أَحْبِسُك فِي السِّجْنِ حَتَّى تَمُوتَ. .

L38414 The second opinion—as was narrated to us from Al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān regarding the detainer and the killer?—they both said: “The killer shall be killed.”

وَالْقَوْلُ الثَّانِي - كَمَا رُوِّينَا عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ الْمُمْسِكِ وَالْقَاتِلِ؟ فَقَالَا جَمِيعًا: يُقْتَلُ الْقَاتِلُ.

L38415 Ibn Shihab ruled that if a group collectively seizes and restrains a man, then one among them gouges out his eyes, breaks his legs, hands, teeth, or commits similar harm against him: retaliation (*qisas*) is enforced against the one who directly perpetrates the act, while the others who restrained him are punished with a severe penalty. If the injured party opts for compensation instead of retaliation, the *diyah* (blood money) is imposed on all of them equally, to be paid in full collectively.

وَعَنْ ابْنِ شِهَابٍ أَنَّهُ كَانَ يَقُولُ فِي الرَّهْطِ يَجْتَمِعُونَ عَلَى الرَّجُلِ فَيُمْسِكُونَهُ، فَيَفْقَأُ أَحَدُهُمْ عَيْنَيْهِ، أَوْ يَكْسِرُ رِجْلَيْهِ، أَوْ يَدَيْهِ، أَوْ أَسْنَانَهُ، أَوْ نَحْوَ هَذَا مِنْهُ: إنَّهُ يُقَادُ مِنْ الَّذِي يُبَاشِرُ ذَلِكَ مِنْهُ، وَيُعَاقَبُ الْآخَرُونَ الَّذِينَ أَمْسَكُوهُ عُقُوبَةً مُوجِعَةً - فَإِنْ اسْتَحَبَّ الْمُصَابُ كَانَتْ الدِّيَةُ عَلَيْهِمْ كُلِّهِمْ يَغْرَمُونَهَا جَمِيعًا سَوَاءً.

L38416 Abu Hanifah and al-Shafiʿi said: The killer shall be executed, and one who unlawfully detains shall be punished.

وَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: يُقْتَلُ الْقَاتِلُ، وَيُعَاقَبُ الْمُمْسِكُ.

L38417 As for the third opinion - it has been transmitted to us through the chain of Abū Bakr ibn Abī Shaybah, from Muḥammad ibn Bakr, from Ibn Jurayj, who said: I heard Sulaymān ibn Mūsā state: “The collaborative act in our judgment concerning the slain is that if one man restrains him while another strikes him, they are both partners in the crime of his bloodshed according to us, and they shall be executed together.”

وَأَمَّا الْقَوْلُ الثَّالِثُ - فَكَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ بَكْرٍ عَنْ ابْنِ جُرَيْجٍ قَالَ: سَمِعْت سُلَيْمَانَ بْنَ مُوسَى يَقُولُ: الِاجْتِمَاعُ فِينَا عَلَى الْمَقْتُولِ هُوَ أَنْ يُمْسِكَ الرَّجُلُ وَيَضْرِبَهُ الْآخَرُ، فَهُمَا شَرِيكَانِ عِنْدَنَا فِي دَمِهِ: يُقْتَلَانِ جَمِيعًا.

L38418 And from Rabiʿah that he said regarding a group who gather against a man, restrain him, and then one of them gouges out his eyes, breaks his legs, hands, or teeth, or inflicts similar harm upon him: retaliation is taken from the one who directly committed the act and from the one who restrained him; it is taken from both of them.

وَعَنْ رَبِيعَةَ أَنَّهُ قَالَ فِي الرَّهْطِ يَجْتَمِعُونَ عَلَى الرَّجُلِ فَيُمْسِكُونَهُ فَيَفْقَأُ أَحَدُهُمْ عَيْنَيْهِ، أَوْ يَكْسِرُ رِجْلَيْهِ، أَوْ يَدَيْهِ، أَوْ أَسْنَانَهُ، أَوْ نَحْوَ هَذَا مِنْهُ: أَنَّهُ يُقَادُ مِنْ الَّذِي بَاشَرَ، وَمِنْ الَّذِي أَمْسَكَ، يُقَادُ مِنْهُمَا جَمِيعًا.

وَبِهِ يَقُولُ مَالِكٌ فِي الْقَتْلِ إنْ أَمْسَكَهُ - وَهُوَ يَدْرِي أَنَّهُ يُرِيدُ قَتْلَهُ - فَقَتَلَهُ: فَالْقَوَدُ عَلَيْهِمَا جَمِيعًا - وَبِهِ يَقُولُ اللَّيْثُ بْنُ سَعْدٍ.

L38419 And with this, Mālik states regarding killing: If he restrains him—while knowing that he intends to kill him—then killed him, *qisas* is required against both of them collectively. Al-Layth ibn Saʿd also states this.

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْرِفَ صَوَابَ ذَلِكَ مِنْ خَطَئِهِ: فَوَجَدْنَا مَنْ قَالَ بِقَتْلِ الْمُمْسِكِ يَقُولُ: قَدْ جَاءَ عَنْ عُمَرَ: لَوْ تَمَالَأَ عَلَيْهِ أَهْلُ صَنْعَاءَ لَقَتَلْتُهُمْ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّهُ لَيْسَ فِيهِ ذِكْرٌ لِلْمُمْسِكِ أَصْلًا، وَنَعَمْ، وَنَحْنُ نَقُولُ: لَوْ بَاشَرَ قَتْلَهُ أَهْلُ صَنْعَاءَ لَوَجَبَ قَتْلُهُمْ

L38420–38421 Abu Muhammad said: When they differed—as we mentioned—it became necessary for us to examine this matter to discern what is correct from what is erroneous. We found those who argue for killing the withholder citing Umar's statement: "If the people of Sana'a conspired against him, I would kill them." Abu Muhammad responded: This provides no evidence for their position, as it contains no mention whatsoever of the withholder. Indeed, but we hold: If the people of Sana'a had directly carried out his killing, it would then be obligatory to kill them.

وَالثَّانِي - أَنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L38422 The second is that no statement constitutes authoritative evidence except that of the Messenger of Allah—peace be upon him.

وَالثَّالِثُ - أَنَّا قَدْ ذَكَرْنَا مِنْ أَقْوَالِ عُمَرَ الَّتِي خَالَفُوهُ فِيهَا عَشَرَاتٍ: كَخُطْبَتِهِ عَلَى الْمِنْبَرِ فِي الضِّرْسِ جَمَلًا، وَفِي الضِّلْعِ جَمَلًا، وَفِي التَّرْقُوَةِ جَمَلًا وَحُكْمِهِ فِي الْعَيْنِ الْعَوْرَاءِ بِثُلُثِ دِيَتِهَا وَفِي السِّنِّ السَّوْدَاءِ بِثُلُثِ دِيَتِهَا وَفِي الْيَدِ الشَّلَّاءِ بِثُلُثِ دِيَتِهَا كُلُّ ذَلِكَ عَنْهُ بِأَصَحِّ إسْنَادٍ، وَأَوْضَحِ بَيَانٍ.

L38423 The third [point] is that we have mentioned dozens of ʿUmar's rulings in which they opposed him, such as his sermon on the pulpit regarding the molar being [compensated with] a camel, the rib being [compensated with] a camel, and the collarbone being [compensated with] a camel; his ruling concerning the blind eye as one-third of its blood money, the blackened tooth as one-third of its blood money, and the disabled hand as one-third of its blood money, all of this transmitted from him through the most authentic transmission chains and clearest exposition.

فَمِنْ عَجَائِبِ الدُّنْيَا: أَنْ يَكُونَ مَا قَالَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - وَخَطَبَ بِهِ، وَحَكَمَ بِهِ بِحَضْرَةِ الصَّحَابَةِ، لَا يُعْرَفُ لَهُ عَنْهُمْ مُخَالِفٌ فِيهِ لَا يَكُونُ: حُجَّةً، وَيَكُونُ مَا لَمْ يَقُلْ، وَلَا دَلَّ عَلَيْهِ، وَلَا أَشَارَ إلَيْهِ: حُجَّةً.

L38424 Among the wonders of the worldly life is this: that what ʿUmar—may Allah be pleased with him—declared, publicly addressed, and adjudicated in the presence of the Companions—with no opposition known from them—is not deemed authoritative evidence, while what he did not state, indicate, or allude to is deemed authoritative evidence.

وَقَدْ خَالَفَهُ فِي ذَلِكَ غَيْرُهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَوْ صَحَّ ذَلِكَ عَنْهُ، فَكَيْفَ وَهُوَ لَا يَصِحُّ؟ فَإِنْ قَالُوا: إنَّ الْمُمْسِكَ مُعِينٌ؟ قُلْنَا: نَعَمْ، وَمَا جَاءَتْ قَطُّ سُنَّةٌ، وَلَا

L38425 Other Companions—may Allah be pleased with them—opposed him in that matter if it were authentically reported from him. So how could this hold true when it is not authentic? If they say: "The restrainer is an aider," we reply: Yes, but there has never been established a Sunnah, nor Qur'an, nor analogy, nor any statement from a Companion that an aider is to be killed. Thus, this claim is invalidated due to its being devoid of proofs.

قُرْآنٌ، وَلَا قِيَاسٌ، وَلَا قَوْلُ صَاحِبٍ: بِأَنَّ الْمُعِينَ يُقْتَلُ - فَبَطَلَ هَذَا الْقَوْلُ لِتَعَرِّيهِ مِنْ الْحُجَجِ.

L38426 Then we found it invalidated by definitive proof, namely that the Prophet—peace and blessings of Allah be upon him—explicitly stated: “A Muslim’s blood is not lawful except for one of three [reasons]: a man who abandons his religion, commits adultery while married, or kills a soul.” Moreover, one who withholds [life-sustaining provisions] is not termed a “killer” linguistically or in Islamic law.

ثُمَّ وَجَدْنَاهُ يُبْطِلُهُ الْبُرْهَانُ: وَذَلِكَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ نَصَّ: عَلَى أَنْ «لَا يَحِلَّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: رَجُلٌ تَرَكَ دِينَهُ، أَوْ زَنَى بَعْدَ إحْصَانٍ، أَوْ قَتَلَ نَفْسًا» وَالْمُمْسِكُ لَا يُسَمَّى فِي اللُّغَةِ، وَلَا فِي الشَّرِيعَةِ " قَاتِلًا ".

L38427 Then we asked them about the one who detains a woman until another commits adultery with her—is the prescribed punishment for adultery imposed upon him, and is he designated as an “adulterer,” or not? There is no disagreement among them that he is not an “adulterer,” nor is he designated as one, nor is the punishment for adultery applied to him. Thus, it is confirmed that the detainer is not labeled with the name of the perpetrator for the act he detained her to enable another.

ثُمَّ سَأَلْنَاهُمْ عَنْ الْمُمْسِكِ لِلْمَرْأَةِ حَتَّى يَزْنِيَ بِهَا غَيْرُهُ أَعَلَيْهِ حَدُّ الزِّنَا وَيُسَمَّى " زَانِيًا " أَمْ لَا؟ فَلَا خِلَافَ مِنْهُمْ فِي أَنَّهُ لَيْسَ " زَانِيًا " وَلَا يُسَمَّى " زَانِيًا " وَلَا عَلَيْهِ حَدُّ زِنًى - فَصَحَّ أَنَّهُ لَا يُسَمَّى الْمُمْسِكُ بِاسْمِ الْفَاعِلِ عَلَى مَا أَمْسَكَ لَهُ.

L38428–38429 Then if they mentioned the statement of al-Walīd ibn ʿUqbah:

فَإِنْ ذَكَرُوا قَوْلَ الْوَلِيدِ بْنِ عُقْبَةَ:

L38430 If you are not his killers, then... it is indifferent to us whether [it be] those who seize him or the one who strikes him.

فَإِنْ لَمْ تَكُونُوا قَاتِلِيهِ فَإِنَّهُ ... سَوَاءٌ عَلَيْنَا مُمْسِكُوهُ وَضَارِبُهُ

L38431 They were told: This is an unjust and transgressive statement, merely revealing its intention—not about the language, nor about the religion.

قِيلَ لَهُمْ: هَذَا قَوْلٌ جَائِرٌ مُتَعَدٍّ، مُخْبِرٌ عَنْ نِيَّتِهِ فَقَطْ، لَا عَنْ اللُّغَةِ، وَلَا عَنْ الدِّيَانَةِ.

L38432 And the proof of this is his statement in this poem following this line:

وَبُرْهَانُ هَذَا: قَوْلُهُ فِي هَذَا الشِّعْرِ بَعْدَ هَذَا الْبَيْتِ:

L38433 O Banū Hāshim, return the weapon of your sister’s son, And do not plunder him—his forcible takings are impermissible.

بَنِي هَاشِمٍ رُدُّوا سِلَاحَ ابْنِ أُخْتِكُمْ ... وَلَا تَنْهَبُوهُ لَا تَحِلَّ مَنَاهِبُهُ

L38434 O Banū Hāshim, how can truce be spoken of between us, while with Ali lie his armor and noble she-camels?

بَنِي هَاشِمٍ كَيْفَ الْهَوَادَةُ بَيْنَنَا ... وَعِنْدَ عَلِيٍّ دِرْعُهُ وَنَجَائِبُهُ

L38435 If you were not his killers, then indeed... it is the same to us whether they fought him or his despoiler.

فَإِنْ لَمْ تَكُونُوا قَاتِلِيهِ فَإِنَّهُ ... سَوَاءٌ عَلَيْنَا قَاتَلُوهُ وَسَالِبُهُ

L38436 They killed him to take his place - never did Kisra’s marzbans ever betray him one day.

هُمُو قَتَلُوهُ كَيْ يَكُونُوا مَكَانَهُ ... مَا غَدَرَتْ يَوْمًا بِكِسْرَى مَرَازِبُهُ

L38437 Abu Muhammad said: Far be it from Allah—Allah forbid—and Allah refused that Ali would possess Uthman's spoils, his armor, or his she-camels, as the lying Walid claimed. Allah forbid that Ali would kill Uthman to take his place or for any worldly gain, for Ali was too God-fearing to kill Uthman, and Uthman was too God-fearing to be killed by Ali.

قَالَ أَبُو مُحَمَّدٍ: حَاشَ لِلَّهِ، وَمَعَاذَ اللَّهِ، وَأَبَى اللَّهُ أَنْ يَكُونَ عِنْدَ عَلِيٍّ سَلَبُ عُثْمَانَ وَدِرْعُهُ وَنَجَائِبُهُ، كَمَا قَالَ الْوَلِيدُ الْكَاذِبُ، وَمَعَاذَ اللَّهِ أَنْ يَكُونَ عَلِيٌّ قَتَلَ عُثْمَانَ لَأَنْ يَكُونَ مَكَانَهُ، أَوْ لِشَيْءٍ فِي الدُّنْيَا، وَعَلِيٌّ أَتْقَى لِلَّهِ مِنْ أَنْ يَقْتُلَ عُثْمَانَ، وَعُثْمَانَ أَتْقَى لِلَّهِ مِنْ أَنْ يَقْتُلَهُ عَلِيٌّ.

L38438 Then, if we were to cite this couplet as evidence, it would serve as a proof in our favor against them, for it states: "If you are not his killers, then those who detain him and those who strike him are the same to us." This informs that those who detain are not killers. Thus, this constitutes an argument against them - and success is from Allah, the Exalted.

ثُمَّ لَوْ احْتَجَجْنَا بِهَذَا الْبَيْتِ لَكَانَ حُجَّةً لَنَا عَلَيْهِمْ، لِأَنَّ فِيهِ: فَإِنْ لَمْ تَكُونُوا قَاتِلِيهِ فَإِنَّهُ سَوَاءٌ عَلَيْنَا مُمْسِكُوهُ وَضَارِبُهُ فَقَدْ أَخْبَرَ أَنَّ الْمُمْسِكِينَ لَيْسُوا قَاتِلِينَ، فَهَذَا حُجَّةٌ عَلَيْهِمْ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38439 Abu Muhammad said: Then we examined other aspects of it and found that the detainer is not a killer, but he detained a person until he died.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَظَرْنَا فِي غَيْرِهِ فَوَجَدْنَا الْمُمْسِكَ لَيْسَ قَاتِلًا، لَكِنَّهُ حَبَسَ إنْسَانًا حَتَّى مَاتَ.

L38440 Allah the Exalted has said, {Violation of sacred ordinances is subject to retaliation} [Al-Baqarah: 194]. Thus, the one who prevents retaliation for killing becomes a means [of harm] and a transgressor. Therefore, retaliation in kind is incumbent upon him. He must face the equivalent of what he committed: he shall be imprisoned until death. This is our position.[53]

وَقَدْ قَالَ اللَّهُ تَعَالَى {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] ، فَكَانَ الْمُمْسِكُ لِلْقَتْلِ سَبَبًا وَمُتَعَدِّيًا، فَعَلَيْهِ مِثْلُ مَا فَعَلَ، فَوَاجِبٌ أَنْ يُفْعَلَ بِهِ مِثْلُ مَا فَعَلَ، فَيُمْسَكَ مَحْبُوسًا حَتَّى يَمُوتَ - وَبِهَذَا نَقُولُ.

L38441 And it is the view of ʿAlī ibn Abī Ṭālib (may Allah be pleased with him), with no opposition recorded from any of the Companions (may Allah be pleased with them). A mursal report (which lacks a complete chain of transmission) has been narrated regarding this matter.

وَهُوَ قَوْلُ عَلِيِّ بْنِ أَبِي طَالِبٍ وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَقَدْ رُوِيَ فِي ذَلِكَ أَثَرٌ مُرْسَلٌ.

L38442–38443 As narrated by Muhammad ibn Sa'id ibn Nabaat, from Abdullah ibn Nasr, from Qasim ibn Asbagh, from Ibn Waḍḍāḥ, from Musa ibn Mu'awiyah, from Waki', who said: Sufyan narrated from Isma'il ibn Umayyah, who said: "The Messenger of Allah (peace be upon him) ruled concerning a man whom a man restrains and another kills that the killer is to be executed and the restrainer is to be imprisoned."

كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ، قَالَ: نا سُفْيَانُ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ قَالَ «قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي رَجُلٍ يُمْسِكُهُ رَجُلٌ وَقَتَلَهُ آخَرُ بِأَنْ يُقْتَلَ الْقَاتِلُ وَيُحْبَسَ الْمُمْسِكُ» .

[53] **Qur'an references (L38440):** Qur'an 2:194 (Al-Baqarah).

L38444 And through the chain of Abd al-Razzaq from Ibn Jurayj, Isma'il ibn Umayyah informed me of a confirmed report that the Messenger of Allah (peace be upon him) said: "The one who is patient toward death will be detained as he detained, and the killer will be killed."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي إِسْمَاعِيلُ بْنُ أُمَيَّةَ خَبَرًا أَثْبَتُه " أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «يُحْبَسُ الصَّابِرُ لِلْمَوْتِ كَمَا حَبَسَ وَيُقْتَلُ الْقَاتِلُ» .

L38445 Abu Muhammad said: The distinction made by the Messenger of Allah (peace be upon him) between the ruling on the withholder and the ruling on the killer is a clear clarification.

قَالَ أَبُو مُحَمَّدٍ: تَفْرِيقُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَيْنَ حُكْمِ الْحَابِسِ وَبَيْنَ حُكْمِ الْقَاتِلِ: بَيَانٌ جَلِيٌّ.

L38446 We have observed that the Hanafis and Malikis assert the equivalence between the *mursal* and *musnad* - though this is a *mursal* hadith among the finest *marasil*, they contradict it. Yet they condemn those who oppose a Companion's opinion when it aligns with their desires - and with Allah, the Exalted, lies success.

وَعَهِدْنَا بِالْحَنَفِيِّينَ وَالْمَالِكِيِّينَ، يَقُولُونَ: إنَّ الْمُرْسَلَ وَالْمُسْنَدَ سَوَاءٌ - وَهَذَا مُرْسَلٌ مِنْ أَحْسَنِ الْمَرَاسِيلِ، وَقَدْ خَالَفُوهُ، وَيُشَنِّعُونَ عَلَى مَنْ خَالَفَ قَوْلَ الصَّاحِبِ إذَا وَافَقَ أَهْوَاءَهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ فِي قَتْلِ الْعَمْدِ كَفَّارَةٌ أَمْ لَا]

Issue: Is there expiation for intentional killing or not?

L38447

L38448 2098 – Issue: Is there an expiation for intentional killing or not? Ali said: Scholars have differed regarding this. A faction of scholars said: Expiation is incumbent upon the intentional killer, just as it is incumbent upon the accidental killer. This is the opinion of al-Hakam ibn Utaibah and al-Shafi'i.

٢٠٩٨ - مَسْأَلَةٌ: هَلْ فِي قَتْلِ الْعَمْدِ كَفَّارَةٌ أَمْ لَا؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: عَلَى قَاتِلِ الْعَمْدِ كَفَّارَةٌ، كَمَا هِيَ عَلَى قَاتِلِ الْخَطَأِ، وَهُوَ قَوْلُ الْحَكَمِ بْنِ عُتَيْبَةَ، وَالشَّافِعِيِّ.

L38449 Mālik and al-Layth said: He should free a slave or fast two months, and seek closeness to God Almighty by doing as much good as he can.

وَقَالَ مَالِكٌ، وَاللَّيْثُ: يُعْتِقُ رَقَبَةً أَوْ يَصُومُ شَهْرَيْنِ، وَيَتَقَرَّبُ إلَى اللَّهِ تَعَالَى بِمَا أَمْكَنَهُ مِنْ الْخَيْرِ.

L38450 Abu Hanifa, Abu Sulayman, and our associates said: There is no atonement for that, but he should seek forgiveness from Allah the Exalted, repent to Him, and abound in performing good deeds.

وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُنَا: لَا كَفَّارَةَ فِي ذَلِكَ، وَلَكِنْ يَسْتَغْفِرُ اللَّهَ تَعَالَى، وَيَتُوبُ إلَيْهِ، وَيُكْثِرُ مِنْ فِعْلِ الْخَيْرِ.

L38451 Abū Muḥammad said: When they differed as we have mentioned, it became necessary for us to examine the matter so that the truth might become evident from it. We thus considered the opinions of Mālik and al-Layth, and found that they must have necessarily held one of two positions: either they deemed it obligatory or not. If they did not consider it obligatory, then what meaning

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الْحَقُّ مِنْ ذَلِكَ؟ فَنَظَرْنَا فِي قَوْلِ مَالِكٍ، وَاللَّيْثِ، فَوَجَدْنَاهُمَا لَا يَخْلُوَانِ مِنْ أَنْ يَكُونَا رَأَيَا ذَلِكَ وَاجِبًا

could there be in their specifying the manumission of a slave or fasting two months—to the exclusion of other aspects of righteousness such as jihad, remembrance of God Almighty, and charity?

L38452–38453 If they both deemed it obligatory, they have given him the choice between manumission and fasting. This does not reflect the characteristic of the expiation that Allah the Exalted commanded for accidental killing, for that is sequential, whereas they have granted him a choice. Thus, this opinion is invalidated—and with Allah the Exalted lies all success.

L38454 Then we examined those who deemed expiation obligatory in that matter, and found them citing as evidence the narration relayed by Abdullah ibn Rabīʿ: Muhammad ibn Muʿāwiyah narrated to us from Aḥmad ibn Shuʿayb, who narrated to us: Muḥammad ibn ʿAbdillāh ibn Yazīd al-Muqrī said: My father narrated to us from Ibn al-Mubārak, who narrated from Ibrāhīm ibn ʿUlayyah, from al-Gharif ibn ʿAyyāsh, from Wāthilah ibn al-Asqaʿ, who said: "A group from Banū Sulaym came to the Prophet (peace be upon him) and said, 'Our companion has incurred the obligation of expiation.' He responded, 'Let him emancipate a slave, and Allāh will ransom each limb of his from the Fire with a limb of hers.'"

L38455 Aḥmad ibn Shuʿayb said: Al-Rabīʿ ibn Sulaymān—the muʾadhdhin (the caller to prayer) and companion of al-Shāfiʿī—narrated to us: ʿAbd Allāh ibn Yūsuf narrated to us: ʿAbd Allāh ibn Sālim reported to me: Ibrāhīm ibn Abī ʿUlayyah said: I was sitting in Jericho when Wāthilah ibn al-Asqaʿ passed by me, leaning on ʿAbd Allāh ibn al-Daylamī. He seated him, then came to me and said: "I marveled at what the Shaykh—meaning Wāthilah ibn al-Asqaʿ—narrated to me." I asked: "What did he narrate?" He said: "We were with the Prophet—peace and blessings of Allāh be upon him—during the Tabūk campaign when a group from Banū Sulaym came to him and said: 'Our companion has incurred an obligation [requiring expiation].' The Messenger of Allāh—peace and blessings of Allāh be upon him—said: 'Free a slave on his behalf, and Allāh will free a limb of his from the Fire for every limb of hers.'"

L38456 And it was narrated to us by Aḥmad ibn Muḥammad ibn ʿAbd Allāh al-

أَمْ لَا؟ فَإِنْ كَانَا لَمْ يَرَيَاهُ وَاجِبًا، فَأَيُّ مَعْنًى لِتَخْصِيصِهِمَا عِتْقَ رَقَبَةٍ، أَوْ صَوْمَ شَهْرَيْنِ دُونَ سَائِرِ وُجُوهِ الْبِرِّ مِنْ الْجِهَادِ، وَذِكْرِ اللَّهِ تَعَالَى، وَالصَّدَقَةِ.

وَإِنْ كَانَا رَأَيَاهُ وَاجِبًا، فَقَدْ خَيَّرَاهُ بَيْنَ الْعِتْقِ، وَالصَّوْمِ، وَلَيْسَتْ هَذِهِ صِفَةَ الْكَفَّارَةِ الَّتِي أَمَرَ اللَّهُ تَعَالَى بِهَا فِي الْقَتْلِ الْخَطَأِ، لِأَنَّ تِلْكَ مُرَتَّبَةٌ، وَهُمْ قَدْ خَيَّرُوهُ، فَسَقَطَ هَذَا الْقَوْلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ثُمَّ نَظَرْنَا فِيمَنْ أَوْجَبَ الْكَفَّارَةَ فِي ذَلِكَ؟ فَوَجَدْنَاهُمْ يَحْتَجُّونَ: بِمَا ثَنَاهُ عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ يَزِيدَ الْمُقْرِي نا أَبِي نا ابْنُ الْمُبَارَكِ نا إبْرَاهِيمُ بْنُ عُلَيَّةَ عَنْ الْغَرِيفِ بْنِ عَيَّاشٍ عَنْ وَاثِلَةَ بْنِ الْأَسْقَعِ قَالَ «أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَفَرٌ مِنْ بَنِي سُلَيْمٍ فَقَالُوا: إنَّ صَاحِبًا لَنَا قَدْ أَوْجَبَ؟ قَالَ: فَلْيُعْتِقْ رَقَبَةً يَفُكَّ اللَّهُ بِكُلِّ عُضْوٍ مِنْهَا عُضْوًا مِنْهُ مِنْ النَّارِ» .

قَالَ أَحْمَدُ بْنُ شُعَيْبٍ: وَأَرَنَا الرَّبِيعُ بْنُ سُلَيْمَانَ - الْمُؤَذِّنُ صَاحِبُ الشَّافِعِيِّ - نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا عَبْدُ اللَّهِ بْنُ سَالِمٍ حَدَّثَنِي إبْرَاهِيمُ بْنُ أَبِي عُلَيَّةَ قَالَ: كُنْت جَالِسًا بِأَرِيحَاءَ فَمَرَّ بِي وَاثِلَةُ بْنُ الْأَسْقَعِ مُتَوَكِّئًا عَلَى عَبْدِ اللَّهِ بْنِ الدَّيْلَمِيِّ فَأَجْلَسَهُ، ثُمَّ جَاءَ إلَيَّ فَقَالَ: عَجِبْت مِمَّا حَدَّثَنِي الشَّيْخُ - يَعْنِي وَاثِلَةَ بْنَ الْأَسْقَعِ - قُلْت: مَا حَدَّثَك؟ قَالَ: «كُنَّا مَعَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي غَزْوَةِ تَبُوكَ فَأَتَاهُ نَفَرٌ مِنْ بَنِي سُلَيْمٍ، فَقَالُوا: إنَّ صَاحِبًا لَنَا قَدْ أَوْجَبَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اعْتِقُوا عَنْهُ رَقَبَةً يُعْتِقْ اللَّهُ بِكُلِّ عُضْوٍ مِنْهَا عُضْوًا مِنْهُ مِنْ النَّارِ» .

Ṭalamankī, from Ibn Mufarrij, from Muḥammad ibn Ayyūb al-Ṣamūt al-Raqqī, from Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār, from al-Ḥasan ibn Mahdī, from ʿAbd al-Razzāq, from Isrāʾīl, from al-Nuʿmān, from ʿUmar ibn al-Khaṭṭāb, who said: "Qays ibn ʿĀṣim came to the Messenger of Allāh, peace and blessings of Allāh be upon him, and said: 'O Messenger of Allāh, I buried my daughters alive during the Age of Ignorance.' He replied: 'Free a slave for each.' Qays said: 'O Messenger of Allāh, I am a camel owner.' He said: 'Then sacrifice a sacrificial camel for each.'"

وَبِمَا حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيِّ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا الْحَسَنُ بْنُ مَهْدِيٍّ نا عَبْدُ الرَّزَّاقِ نا إِسْرَائِيلُ عَنِ النُّعْمَانِ عَنْ عُمَرَ بْنِ الْخَطَّابِ قَالَ: «جَاءَ قَيْسُ بْنُ عَاصِمٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنِّي وَأَدْتُ بَنَاتٍ لِي فِي الْجَاهِلِيَّةِ؟ فَقَالَ اعْتِقْ عَنْ كُلِّ وَاحِدَةٍ مِنْهُنَّ رَقَبَةً؟ قَالَ: يَا رَسُولَ اللَّهِ إِنِّي صَاحِبُ إِبِلٍ؟ قَالَ: فَانْحَرْ عَنْ كُلِّ وَاحِدَةٍ مِنْهُنَّ بَدَنَةً» .

L38457–38458 And they said: Since Allah, the Exalted, imposed upon the unintentional killer—who bears no sin—an expiation for that act, the intentional sinner is more deserving of expiation.

وَقَالُوا: لَمَّا أَوْجَبَ اللَّهُ تَعَالَى عَلَى قَاتِلِ الْخَطَأِ - وَلَا ذَنْبَ لَهُ - كَفَّارَةً فِي ذَلِكَ، كَانَ الْعَامِدُ الْمُذْنِبُ أَحَقَّ بِالْكَفَّارَةِ.

L38459 Abu Muhammad said: As for the hadith of Wathilah—it is not authentic, because al-Gharīf is unknown. Some people assumed that he was Abdullah ibn Fayruz al-Daylami—but this is a mistake, because Ibn al-Mubarak attributed al-Gharīf's narration to Ibn ʿUlayyah. Ibn Ayyash said: "There was no one among the descendants of Abdullah ibn Fayruz named Ayyash"—and Ibn al-Mubarak is more reliable and precise than Abdullah ibn Salim.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا حَدِيثُ وَاثِلَةَ - فَلَا يَصِحُّ، لِأَنَّ الْغَرِيفَ مَجْهُولٌ، وَقَدْ ظَنَّ قَوْمٌ أَنَّهُ عَبْدُ اللَّهِ بْنُ فَيْرُوزَ الدَّيْلَمِيُّ - وَهَذَا خَطَأٌ، لِأَنَّ ابْنَ الْمُبَارَكِ نَسَبَ الْغَرِيفَ عَنِ ابْنِ عُلَيَّةَ فَقَالَ ابْنُ عَيَّاشٍ: وَلَمْ يَكُنْ فِي بَنِي عَبْدِ اللَّهِ بْنِ فَيْرُوزَ أَحَدٌ يُسَمَّى عَيَّاشًا - وَابْنُ الْمُبَارَكِ أَوْثَقُ وَأَضْبَطُ مِنْ عَبْدِ اللَّهِ بْنِ سَالِمٍ.

L38460 Moreover, if this report were valid, they would have no argument in it, because there is nothing in it indicating that he had killed intentionally. Therefore, since that is not in it, there is no doubt at all for them in this hadith.

ثُمَّ لَوْ صَحَّ هَذَا الْخَبَرُ لَمَا كَانَتْ لَهُمْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ أَنَّهُ كَانَ قَتَلَ عَمْدًا، فَإِذْ لَيْسَ فِيهِ ذَلِكَ: فَلَا شُبْهَةَ لَهُمْ فِي هَذَا الْحَدِيثِ أَصْلًا.

L38461 The issue here is whether it merely means that one of our scholars has deemed [it] obligatory, when it is not known in the language that "awjaba" signifies intentional killing. Thus, this interpretation becomes sheer falsehood—a baseless assertion against the language that lacks any foundation.

وَإِنَّمَا فِيهِ - أَنَّ صَاحِبًا لَنَا قَدْ أَوْجَبَ؟ وَلَا يُعْرَفُ فِي اللُّغَةِ أَنَّ " أَوْجَبَ " بِمَعْنَى قَتَلَ عَمْدًا، فَصَارَ هَذَا التَّأْوِيلُ كَذِبًا مُجَرَّدًا، وَدَعْوَى عَلَى اللُّغَةِ لَا تُعْرَفُ.

L38462 The meaning of "أوجب" could be that he has obligated the Fire for himself due to his numerous sins, while the meaning of "قد أوجب" could be that his

death has come. Thus, one might say: “Is this the obligation of so-and-so?” meaning “he has died”—thereby invalidating their argument.

وَقَدْ يَكُون مَعْنَى " أَوْجَبَ " أَيْ أَوْجَبَ لِنَفْسِه النَّارَ بِكَثْرَةِ مَعَاصِيهِ، وَيَكُونُ مَعْنَى " قَدْ أَوْجَبَ " أَيْ قَدْ حَضَرَتْ مَنِيَّتُهُ فَقَدْ يُقَالُ: هَذَا أَوْجَبُ فُلَانٍ؟ بِمَعْنَى مَاتَ - فَبَطَلَ قَوْلُهُمْ.

L38463 A group of people have said: The Prophet’s silence—peace and blessings be upon him—in this report regarding the mention of “freeing a slave” being a believer and regarding the prescribing of two months [of fasting] serves as evidence to invalidate the opinion of those who obligate expiation in intentional killing.

وَقَدْ قَالَ قَوْمٌ: إنَّ سُكُوتَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي هَذَا الْخَبَرِ عَنْ ذِكْرِ " الرَّقَبَةِ " أَنْ تَكُونَ مُؤْمِنَةً، وَعَنْ تَعْوِيضِ الشَّهْرَيْنِ: دَلِيلٌ عَلَى بُطْلَانِ قَوْلِ مَنْ أَوْجَبَ الْكَفَّارَةَ فِي قَتْلِ الْعَمْدِ.

L38464 Abu Muhammad said: As for the report of Umar ibn al-Khattab, it is not authentic, because its chain of transmission includes Isra’il—who is weak—and Simak ibn Harb—who was prone to prompting.

قَالَ أَبُو مُحَمَّد: وَأَمَّا خَبَرُ عُمَرَ بْنِ الْخَطَّابِ، فَلَا يَصِحُّ، لِأَنَّ فِي طَرِيقِهِ إسْرَائِيلَ - وَهُوَ لَيْسَ بِالْقَوِيِّ - وَسِمَاكُ بْنُ حَرْبٍ - وَكَانَ يَقْبَلُ التَّلْقِينَ -.

L38465 Moreover, this would obligate every ḥarbī disbeliever [combatant from a non-Muslim polity] who killed a person during the pre-Islamic era—as was Qays ibn ʿĀṣim, the one commanded to perform this expiation in the hadith—whereas they do not uphold this view at all. Thus, their reliance on this report is nullified.

وَأَيْضًا - فَكَانَ يَكُونُ فِي إيجَابِ ذَلِكَ عَلَى كُلِّ مَنْ قَتَلَ نَفْسًا فِي الْجَاهِلِيَّةِ وَهُوَ كَافِرٌ حَرْبِيٌّ كَمَا كَانَ قَيْسُ بْنُ عَاصِمٍ الْمَأْمُورُ بِهَذِهِ الْكَفَّارَةِ فِي هَذَا الْحَدِيثِ وَهُمْ لَا يَقُولُونَ بِهَذَا أَصْلًا - فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا الْخَبَرِ.

L38466 As for Al-Shafiʿī—though he rejected their opinions due to the error in their statements—he also erred with them in this matter, for among their principles is that a thing is only analogized to its equivalent and what resembles it, not to its opposite nor to what does not resemble it. Thus, the error here lies in applying analogy between intentional action and the unintentional act, which is its opposite.

وَأَمَّا الشَّافِعِيُّ - فَإِنَّهُ وَإِنْ كَانَ أَطْرَدَ مِنْهُمْ لِلْخَطَأِ فِي قَوْلِهِمْ، فَقَدْ أَخْطَأَ مَعَهُمْ فِيهِ أَيْضًا، لِأَنَّ مِنْ أَصْلِهِمْ أَنْ لَا يُقَاسَ الشَّيْءُ إلَّا عَلَى نَظِيرِهِ، وَمَا يُشْبِهُهُ لَا عَلَى ضِدِّهِ، وَمَا لَا يُشْبِهُهُ، فَالْخَطَأُ هَاهُنَا فِي قِيَاسِ الْعَمْدِ عَلَى الْخَطَأِ وَهُوَ ضِدُّهُ.

L38467–38469 All of them, along with him, also erred in their flawed analogy concerning hunting: that killing game while in a state of iḥrām (consecration) is permissible. If a pilgrim in the sacred state of iḥrām intentionally kills someone, the jurists also drew an analogy there between the accidental killing and the intentional killing - even though they are opposites.

وَأَخْطَئُوا - أَيْضًا - كُلُّهُمْ مَعَهُ فِي قِيَاسِهِمْ الْمُخْطِئَ فِي الصَّيْدِ يَقْتُلُهُ مُحْرِمًا عَلَى الْمُحْرِمِ يَقْتُلُهُ عَامِدًا، فَقَاسُوا - أَيْضًا - هُنَالِكَ الْخَطَأَ عَلَى الْعَمْدِ، وَهُوَ ضِدُّهُ.

L38470 All of them also erred with him in their analogy of the intentional neglect

وَأَخْطَئُوا - أَيْضًا - مَعَهُ كُلُّهُمْ فِي قِيَاسِهِمْ تَرْكَ الصَّلَاةِ عَمْدًا عَلَى تَرْكِهَا نِسْيَانًا.

of prayer to its unintentional neglect.

L38471 Al-Shafi'i also committed another error alongside them in this chapter—their collective assertion that one who intentionally says the salām to conclude the prayer before completing it should not be analogized, regarding the obligation of the two prostrations upon him, to one who concludes the prayer before completing it out of forgetfulness. This is the nature of analogy and of all their statements in their analogies: each part demolishes another and invalidates another? Abu Muhammad said: Since there is no evidence—neither from the Qur'an nor from the Sunnah—for imposing expiation on an intentional killer, then indeed Allah the Exalted says, "We have omitted nothing in the Book" (6:38), and He says, "This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion" (5:3), and the Messenger of Allah (peace and blessings be upon him) said, "Your blood and your wealth are sacred to you."[54]

L38472 Thus, it is established that the entire religion has indeed been perfected, and Allah, the Exalted, and His Messenger, peace be upon him, have clarified it.

L38473 And with certainty, we are convinced that if there were a specified expiation for intentional killing, Allah the Most High would have ordained it, just as He has ordained for us the expiation in cases of involuntary homicide.

L38474 As the Messenger of Allah (peace and blessings be upon him) has clarified to us, retaliation, blood money (diyah), or compensation apply in such cases.

L38475 Since God Almighty did not inform us of any of that, nor did He or His Messenger—peace be upon him—make it obligatory, we testify by God's testimony that He never at any point intended a specified expiation for it. Rather, God Almighty says, "We will set up the scales of justice on the Day of Resurrection" [Al-Anbiyā' 21:47] up to His words, "and sufficient are We as reckoners" [Al-Anbiyā' 21:47]. He also says, "Indeed, good deeds erase misdeeds" [Hūd 11:114]. Thus, whoever is tested by committing the intentional

وَقَدْ شَارَكَهُمَا الشَّافِعِيُّ - أَيْضًا - فِي خَطَأٍ آخَرَ فِي هَذَا الْبَابِ، وَهُوَ قَوْلُهُمْ كُلُّهُمْ: أَنْ لَا يُقَاسَ مُتَعَمِّدُ التَّسْلِيمِ مِنْ الصَّلَاةِ قَبْلَ إتْمَامِهَا فِي إيجَابِ السَّجْدَتَيْنِ عَلَيْهِ عَلَى الْمُسَلِّمِ مِنْ الصَّلَاةِ قَبْلَ إتْمَامِهَا نِسْيَانًا فَهَذِهِ صِفَةُ الْقِيَاسِ، وَصِفَةُ أَقْوَالِهِمْ فِي قِيَاسَاتِهِمْ كُلِّهَا: يَهْدِمُ بَعْضُهَا بَعْضًا، وَيَنْقُضُ بَعْضُهَا بَعْضًا؟ قَالَ أَبُو مُحَمَّدٍ: فَإِذْ لَا حُجَّةَ فِي إيجَابِ الْكَفَّارَةِ عَلَى قَاتِلِ الْعَمْدِ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ، فَإِنَّ اللَّهَ تَعَالَى يَقُولُ {مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ} [الأنعام: ٣٨] ، وَقَالَ تَعَالَى {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الإِسْلامَ دِينًا} [المائدة: ٣] ، وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَصَحَّ أَنَّ الدِّينَ كُلَّهُ قَدْ كَمُلَ وَبَيَّنَهُ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

وَبِيَقِينٍ نَدْرِي أَنَّهُ لَوْ كَانَ فِي قَتْلِ الْعَمْدِ كَفَّارَةٌ مَحْدُودَةٌ لَبَيَّنَهَا اللَّهُ تَعَالَى، كَمَا بَيَّنَ لَنَا الْكَفَّارَةَ فِي قَتْلِ الْخَطَأِ.

وَكَمَا بَيَّنَ لَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وُجُودَ الْقَوَدِ، أَوْ الدِّيَةِ، أَوْ الْمُفَادَاةِ، فِي ذَلِكَ.

فَإِذْ لَمْ يُخْبِرْنَا اللَّهُ تَعَالَى بِشَيْءٍ مِنْ ذَلِكَ، وَلَا أَوْجَبَهُ هُوَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى: أَنَّهُ مَا أَرَادَ قَطُّ كَفَّارَةً مَحْدُودَةً فِي ذَلِكَ، وَلَكِنَّ اللَّهَ تَعَالَى يَقُولُ {وَنَضَعُ الْمَوَازِينَ الْقِسْطَ لِيَوْمِ الْقِيَامَةِ} [الأنبياء: ٤٧] إلَى قَوْله تَعَالَى {وَكَفَى بِنَا حَاسِبِينَ} [الأنبياء: ٤٧] ، وَقَالَ تَعَالَى: {إنَّ الْحَسَنَاتِ يُذْهِبْنَ السَّيِّئَاتِ} [هود: ١١٤] ، فَمَنْ ابْتُلِيَ بِقَتْلِ مُسْلِمٍ عَمْدًا فَقَدْ ابْتُلِيَ بِأَكْبَرِ الْكَبَائِرِ بَعْدَ الشِّرْكِ، وَتَرْكِ

[54] **Qur'an references (L38471):** Qur'an 6:38 (Al-An'am); Qur'an 5:3 (Al-Ma'idah).

killing of a Muslim has committed the gravest major sins after polytheism, namely abandoning prayer. It is incumbent upon him to strive for his deliverance from the Fire. Let him increase his acts of goodness: freeing slaves, giving charity, engaging in jihad, performing pilgrimage, fasting, praying, and remembering God Almighty—so that he may bring forth from these deeds an equivalent measure to his sin of killing, thereby expiating it.[55]

L38476–38477 We ask Allah for well-being and protection.

A current case where a woman's condition nullifies the menstrual/postpartum excuse of another woman, or a man who nullifies it through sexual intercourse or other means.

L38478

L38479 Issue: A female slave caused another to lose her virginity, or a man did so through intercourse or other means? Abū Muḥammad said: Narrated by ʿAbdullāh ibn Rabīʿ → ʿAbdullāh ibn Muḥammad ibn ʿUthmān → Aḥmad ibn Khālid → ʿAlī ibn ʿAbd al-ʿAzīz → al-Ḥajjāj ibn al-Minhāl → Ḥammād ibn Salamah → Jaʿfar ibn Abī Waḥshiyyah → al-Shaʿbī: Some young girls from Ḥimṣ used to visit one another and exchange gifts. They were shown something and gestured in response, then played the mock-fighting game. One girl climbed onto another, and a third jabbed her sharply, causing her to fall and lose her virginity. ʿAbd al-Malik ibn Marwān asked Qabīṣah ibn Dhuʾayb and Faḍālah ibn ʿUbayd about this. They both said: The blood money is divided into thirds, and her share of liability remains, because she contributed to her own harm. He wrote to Iraq and asked ʿAbdullāh ibn Maʿqil ibn Muqarrin about it. He said: They are absolved of responsibility except the one who jabbed her. Al-Shaʿbī concurred with ʿAbdullāh's opinion. Al-Shaʿbī added: She is entitled to the blood money for the injury.

L38480 Narrated by Ḥammād ibn Dāwūd from ʿAbdullāh ibn Qays: Three slave girls were disputing—one declared "I am the husband," another "I am the wife," and the third "I am the father." The one claiming to be the husband prodded the one claiming to be the wife, resulting in the loss of her virginity. ʿAbd al-

الصَّلَاةِ: فَفَرْضٌ عَلَيْهِ أَنْ يَسْعَى فِي خَلَاصِ نَفْسِهِ مِنْ النَّارِ فَلْيُكْثِرْ مِنْ فِعْلِ الْخَيْرِ: الْعِتْقِ، وَالصَّدَقَةِ، وَالْجِهَادِ، وَالْحَجِّ، وَالصَّوْمِ وَالصَّلَاةِ، وَذِكْرِ اللَّهِ تَعَالَى - فَلَعَلَّهُ يَأْتِي مِنْ ذَلِكَ بِمِقْدَارٍ يُوَازِي إسَاءَتَهُ فِي الْقَتْلِ، فَيَسْقُطَ عَنْهُ.

وَنَسْأَلُ اللَّهَ الْعَافِيَةَ.

[مَسْأَلَةٌ جَارِيَةٌ أَذْهَبَتْ عُذْرَةَ أُخْرَى أَوْ رَجُلٌ فَعَلَ ذَلِكَ بِجِمَاعٍ أَوْ غَيْرِهِ]

٢٠٩٩ - مَسْأَلَةٌ: جَارِيَةٌ أَذْهَبَتْ عُذْرَةَ أُخْرَى، أَوْ رَجُلٌ فَعَلَ ذَلِكَ بِجِمَاعٍ، أَوْ غَيْرِهِ؟ قَالَ أَبُو مُحَمَّدٍ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ أَنَا جَعْفَرُ بْنُ أَبِي وَحْشِيَّةَ عَنْ الشَّعْبِيِّ: أَنَّ جَوَارِيَ مِنْ أَهْلِ حِمْصَ كُنَّ يَتَزَاوَرْنَ، وَيَتَهَادَيْنَ، فَأُرِينَ، وَأَشَرْنَ، فَلَعِبْنَ الْأَخْرِقَةَ فَرَكِبَتْ وَاحِدَةٌ عَلَى الْأُخْرَى، وَنَخَسَتْهَا الثَّالِثَةُ، فَوَقَعَتْ: فَذَهَبَتْ عُذْرَتُهَا، فَسَأَلَ عَبْدُ الْمَلِكِ بْنُ مَرْوَانَ قَبِيصَةَ بْنَ ذُؤَيْبٍ، وَفَضَالَةَ بْنَ عُبَيْدٍ عَنْ ذَلِكَ؟ فَقَالَا جَمِيعًا: الدِّيَةُ ثَلَاثَةُ أَثْلَاثٍ، وَتَبْقَى حِصَّتُهَا، لِأَنَّهَا أَعَانَتْ عَلَى نَفْسِهَا؟ فَكَتَبَ إلَى الْعِرَاقِ: فَسَأَلَ عَبْدَ اللَّهِ بْنَ مَعْقِلِ بْنِ مُقَرِّنٍ عَنْ ذَلِكَ؟ فَقَالَ: بُرِينَ مِنْ نَطْفِهَا إلَّا مَنْ نَخَسَتْهَا - وَقَالَ الشَّعْبِيُّ مِثْلَ قَوْلِ عَبْدِ اللَّهِ - وَقَالَ الشَّعْبِيُّ: لَهَا الْعُقْرُ.

وَبِهِ - إلَى حَمَّادِ بْنِ دَاوُد عَنْ عَبْدِ اللَّهِ بْنِ قَيْسٍ أَنَّ ثَلَاثَ جَوَارٍ قَالَتْ إحْدَاهُنَّ: أَنَا الزَّوْجُ، وَقَالَتْ الْأُخْرَى: أَنَا الزَّوْجَةُ، وَقَالَتْ الْأُخْرَى: أَنَا الْأَبُ، فَنَخَسَتْ الَّتِي قَالَتْ:

[55] **Qur'an references (L38475):** Qur'an 21:47 (Al-Anbya); Qur'an 11:114 (Hud).

Malik ibn Marwān ruled that blood money was collectively due from them. Al-Shaʿbī said: "She is entitled to *al-ʿuqr* (compensation for reproductive injury)."

أَنَا الزَّوْجُ الَّتِي قَالَتْ: أَنَا الزَّوْجَةُ، فَذَهَبَتْ عُذْرَتُهَا، فَقَضَى عَبْدُ الْمَلِكِ بْنُ مَرْوَانَ، بِالدِّيَةِ عَلَيْهِنَّ - وَقَالَ الشَّعْبِيُّ: لَهَا الْعُقْرُ.

L38481 From Hammad, who narrated to us through Humaid from Bakr ibn Abdullah: Two female servants entered the bathhouse, and one pushed the other, causing the loss of her virginity. Shurayh ruled: She is entitled to her *uqr*.

وَبِهِ - إِلَى حَمَّادٍ نا حُمَيْدٌ عَنْ بَكْرِ بْنِ عَبْدِ اللَّهِ: أَنَّ جَارِيَتَيْنِ دَخَلَتَا الْحَمَّامَ فَدَفَعَتْ إِحْدَاهُمَا الْأُخْرَى، فَذَهَبَتْ عُذْرَتُهَا؟ فَقَالَ شُرَيْحٌ: لَهَا عُقْرُهَا.

L38482 And through him (from Hammad): Dawud ibn Abi Hind narrated to us from Amr ibn Shuʿayb that a man coerced a female slave and deflowered her. Umar ibn al-Khattab said, "This is a penetrating wound (jāʾifah)," and he ruled she was entitled to one-third of the blood money (diyah).

وَبِهِ - إِلَى حَمَّادٍ نا دَاوُد بْنُ أَبِي هِنْدٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ: أَنَّ رَجُلًا اسْتَكْرَهَ جَارِيَةً فَافْتَضَّهَا؟ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ هِيَ جَائِفَةٌ، فَقَضَى لَهَا عُمَرُ بِثُلُثِ الدِّيَةِ.

L38483 Abu Muhammad said: These are two issues: in one of them is the statement of Fadalah ibn ʿUbayd—who was a Companion from among the judges of the Companions (may Allah be pleased with them)—with no dissenter among them known to oppose his position on that matter.

قَالَ أَبُو مُحَمَّدٍ: هَاتَانِ مَسْأَلَتَانِ: فِي إِحْدَاهُمَا - قَوْلُ فَضَالَةَ بْنِ عُبَيْدٍ - وَهُوَ صَاحِبٌ مِنْ قُضَاةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْهُمْ.

L38484 And the other [issue] contains the statement of ʿUmar ibn al-Khaṭṭāb, and no dissenter against him from the Companions is known in that matter, either.

وَالْأُخْرَى - فِيهَا قَوْلُ عُمَرَ بْنِ الْخَطَّابِ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ أَيْضًا.

L38485–38487 All dissenting attendees from among the Maliki, Hanafi, and Shafi'i jurists: They oppose them in this matter—do they magnify the disagreement of a Companion when it aligns with their taqlīd, yet disregard it when it contradicts their taqlīd? Ali said: As for a woman who removes the hymen of another woman through piercing or similar means, this constitutes aggression. Retaliation is exacted from her in the same manner if she is a virgin. If she is non-virgin, there remains no basis for retaliation in this matter, leaving only disciplinary correction. The evidence for this is Allah's statement: "So whoever transgresses against you, retaliate against him in the same manner he transgressed against you" [Al-Baqarah: 194], and the declaration of Allah's Messenger (peace be upon him): "Whoever among you witnesses a reprehensible act, let him rectify it with his hand if he is able."[56]

وَجَمِيعُ الْحَاضِرِينَ الْمُخَالِفِينَ مِنْ الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ: مُخَالِفُونَ لَهُمَا فِي ذَلِكَ، وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَلَا يُبَالُونَ بِهِ إذَا خَالَفَ تَقْلِيدَهُمْ؟ قَالَ عَلِيٌّ: أَمَّا الْمَرْأَةُ تُذْهِبُ عُذْرَةَ الْمَرْأَةِ بِنَخْسَةٍ، أَوْ نَحْوِ ذَلِكَ فَإِنَّهُ عُدْوَانٌ يُقْتَصُّ مِنْهَا بِمِثْلِ ذَلِكَ إنْ كَانَتْ بِكْرًا، فَإِنْ كَانَتْ ثَيِّبًا فَقَدْ عَدِمَتْ مَا يُقْتَصُّ مِنْهَا فِيهِ، فَلَيْسَ إلَّا الْأَدَبُ؟ بُرْهَانُ ذَلِكَ -: قَوْلُ اللَّهِ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] ، وَقَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ» .

[56] **Qur'an references (L38485):** Qur'an 2:194 (Al-Baqarah).

L38488 Thus, the obligation of qisas is established in what one is capable of, and disciplinary punishment by hand is valid as a rebuke and elimination of the reprehensible in cases where qisas cannot be enforced, and with Allah, the Exalted, is success. There is no financial penalty in this matter at all, because wealth is protected; thus, no fine may be legitimately imposed without scriptural evidence or consensus.

L38489 Similarly, *ʿuqr* has no relevance here, because *ʿuqr* is the dower, and the dower applies exclusively to marriage, not to anything else. By Allah, Allah the Exalted certainly knew that this issue would occur and come to pass.

L38490 And we swear by Allah: If Allah the Exalted had willed that there be any financial penalty in that matter, He would have clarified it and He would not have neglected it. Since He, the Exalted, did not do so, He did not intend to impose any liability in it whatsoever—and no one's statement constitutes a valid proof except the Messenger of Allah, peace and blessings be upon him. And divine enablement is from Allah, the Exalted.

L38491 ## The Issue of Virtuous Rivalry

L38492 2100 - Issue: Competing Claims? ʿAlī said: Humām narrated to us: ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī narrated to us: ʿAbdullāh ibn Yūnus narrated to us: Baqī ibn Makhlad narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Wakīʿ narrated to us: al-Masʿūdī reported from al-Qāsim ibn ʿAbd al-Raḥmān, who said: A man approached with a slave girl from al-Qādisiyyah and passed by a man standing on a mount. The man prodded the mount, causing it to lift its leg and strike the girl's eye directly without missing. The case was brought before Salmān ibn Rabīʿah al-Bāhilī, who ruled the man on the mount liable for compensation. When Ibn Masʿūd learned of this, he said: "The liability rests upon the man—only the prodder is liable."

L38493–38494 From Shuraih: The piercer is liable for it – and from Ash-Sha'bi: the same as that.

L38495 Abū Muḥammad said: This is an issue wherein they differed as you observe: Salmān ibn Rabīʿah imposed liability on the rider, while Ibn Masʿūd imposed

فَصَحَّ وُجُوبُ الْقَوَدِ فِيمَا قَدَرَ عَلَيْهِ، وَصَحَّ الْأَدَبُ بِالْيَدِ إنْكَارًا وَتَغْيِيرًا لِلْمُنْكَرِ فِيمَا عَجَزَ عَنْ الْقَوَدِ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَلَا غَرَامَةَ فِي ذَلِكَ أَصْلًا، لِأَنَّ الْأَمْوَالَ مَحْظُورَةٌ، فَلَا تَحِلُّ غَرَامَةٌ بِغَيْرِ نَصٍّ وَلَا إجْمَاعَ.

وَكَذَلِكَ لَا مَدْخَلَ لِلْعُقْرِ هَاهُنَا، لِأَنَّ الْعُقْرَ هُوَ الْمَهْرُ، وَالْمَهْرُ إنَّمَا هُوَ فِي النِّكَاحِ لَا فِيمَا عَدَاهُ - وَبِاَللَّهِ لَقَدْ عَلِمَ اللَّهُ تَعَالَى أَنَّ هَذِهِ الْمَسْأَلَةَ سَتَقَعُ وَتَكُونُ.

وَنَحْنُ نُقْسِمُ بِاَللَّهِ: لَوْ أَرَادَ اللَّهُ تَعَالَى أَنْ تَكُونَ فِي ذَلِكَ غَرَامَةٌ لَبَيَّنَهَا، وَلَمَا أَغْفَلَهَا، فَإِذْ لَمْ يَفْعَلْ تَعَالَى ذَلِكَ فَمَا أَرَادَ أَنْ يَجْعَلَ فِيهَا غُرْمًا أَصْلًا - وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ التَّنَافُسُ]

٢١٠٠ - مَسْأَلَةٌ: التَّنَافُسُ؟ قَالَ عَلِيٌّ: نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا وَكِيعٌ نا الْمَسْعُودِيُّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: أَقْبَلَ رَجُلٌ بِجَارِيَةٍ مِنْ الْقَادِسِيَّةِ فَمَرَّ عَلَى رَجُلٍ وَاقِفٍ عَلَى دَابَّةٍ، فَنَخَسَ الرَّجُلُ الدَّابَّةَ، فَرَفَعَتْ الدَّابَّةُ رِجْلَهَا فَلَمْ تُخْطِئْ عَيْنَ الْجَارِيَةِ، فَرُفِعَ إلَى سَلْمَانَ بْنِ رَبِيعَةَ الْبَاهِلِيِّ، فَضَمَّنَ الرَّاكِبَ، فَبَلَغَ ذَلِكَ ابْنَ مَسْعُودٍ، فَقَالَ: عَلَى الرَّجُلِ، إنَّمَا يَضْمَنُ النَّاخِسُ.

عَنْ شُرَيْحٍ: يَضْمَنُهَا النَّاخِسُ - وَعَنْ الشَّعْبِيِّ مِثْلُ ذَلِكَ.

liability on the prodder? ʿAlī said: The prodder is the one directly involved in spurring the animal, thus he bears liability for whatever harm it causes. Therefore, liability applies to property. As for persons – if he intended to spur it to strike a specific individual or some members of a group whose presence the prodder was aware of, he is an intentional killer and wrongdoer, subject to retaliation (qiwād) in all such cases – he is liable for the blood money or ransom for the life. If he did not know anyone was present there, he is an unintentional killer – the blood money falls upon the liable kin-group (ʿāqilah), and he must perform expiation (kaffārah). Success comes solely from Allāh, the Exalted.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ مَسْأَلَةٌ اخْتَلَفُوا فِيهَا كَمَا تَرَى: سَلْمَانَ بْنَ رَبِيعَةَ ضَمَّنَ الرَّاكِبَ، وَابْنُ مَسْعُودٍ ضَمَّنَ النَّاخِسَ؟ قَالَ عَلِيٌّ: النَّاخِسُ هُوَ الْمُبَاشِرُ لِتَحْرِيكِ الدَّابَّةِ، فَهُوَ ضَامِنٌ مَا أَصَابَتْ، فَفِي الْمَالِ الضَّمَانُ. وَأَمَّا فِي الرَّجُلِ - فَإِنْ كَانَ قَصَدَ إلَى تَحْرِيكِهَا لِتَضْرِبَ إنْسَانًا بِعَيْنِهِ، أَوْ بَعْضَ جَمَاعَةٍ عَلِمَ بِهَا النَّاخِسُ: فَهُوَ قَاتِلٌ عَمْدٌ، وَجَانٍ، عَلَيْهِ الْقَوَدُ فِي ذَلِكَ كُلِّهِ، وَعَلَيْهِ فِي النَّفْسِ الدِّيَةُ، أَوْ الْمُفَادَاةُ - وَإِنْ كَانَ لَا يَدْرِي أَنَّ هُنَالِكَ أَحَدًا: فَهُوَ قَاتِلٌ خَطَأً، وَالدِّيَةُ عَلَى الْعَاقِلَةِ، وَعَلَيْهِ الْكَفَّارَةُ. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

A legal case: killing a person who willingly surrenders himself to death.

[مَسْأَلَةٌ قَتَلَ إنْسَانًا يَجُودُ بِنَفْسِهِ لِلْمَوْتِ]

Question 2101: Concerning one who kills a person in the act of surrendering his soul to death. Ali said: We received a narration via the chain of Abu Bakr ibn Abi Shaybah – Yahya ibn Azhar – Zuhayr – Jabir – al-Sha'bi regarding a man who killed another whose soul had left half his body. He said: He is liable for his blood money (diyah).

٢١٠١ - مَسْأَلَةٌ: فِيمَنْ قَتَلَ إنْسَانًا يَجُودُ بِنَفْسِهِ لِلْمَوْتِ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا يَحْيَى بْنُ أَزْهَرَ نا زُهَيْرٌ عَنْ جَابِرٍ عَنْ الشَّعْبِيِّ فِي رَجُلٍ قَتَلَ رَجُلًا قَدْ ذَهَبَتْ الرُّوحُ مِنْ نِصْفِ جَسَدِهِ؟ قَالَ: يَضْمَنُهُ.

Ali said: No two individuals from the entire Ummah disagree that whoever nears the departure of his soul due to illness, injury, intentional offense, or unintentional harm—and a deceased person [for whom he is entitled to inherit] dies—he inherits him. If he was a slave who was emancipated, he inherits him, then his free heirs inherit from him. If he was capable of speech and embraced Islam while previously being a disbeliever—while retaining discernment thereafter—he is considered a Muslim, and his Muslim family members inherit him. If he witnesses [his condition] and perceives [reality], even if only a single breath separates him from death, and the legatee to whom he bequeathed a legacy dies, the legacy becomes rightfully due, and the legatee's heirs inherit it from him.

قَالَ عَلِيٌّ: لَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ كُلِّهَا فِي أَنَّ مَنْ قَرُبَتْ نَفْسُهُ مِنْ الزَّهُوقِ بِعِلَّةٍ، أَوْ بِجِرَاحَةٍ، أَوْ بِجِنَايَةٍ بِعَمْدٍ، أَوْ خَطَأٍ، فَمَاتَ لَهُ مَيِّتٌ، فَإِنَّهُ يَرِثُهُ - وَإِنْ كَانَ عَبْدًا فَأُعْتِقَ، فَإِنَّهُ يَرِثُهُ وَرَثَتُهُ مِنْ الْأَحْرَارِ - وَأَنَّهُ إنْ قَدَرَ عَلَى الْكَلَامِ فَأَسْلَمَ - وَكَانَ كَافِرًا - وَهُوَ يُمَيِّزُ بَعْدُ - فَإِنَّهُ مُسْلِمٌ يَرِثُهُ أَهْلُهُ مِنْ الْمُسْلِمِينَ، وَأَنَّهُ إنْ عَايَنَ وَشَخَّصَ وَلَوْ يَكُنْ بَيْنَهُ وَبَيْنَ الْمَوْتِ إلَّا نَفَسٌ وَاحِدٌ، فَمَاتَ مَنْ أَوْصَى لَهُ بِوَصِيَّةٍ، فَإِنَّهُ قَدْ اسْتَحَقَّ الْوَصِيَّةَ، وَيَرِثُهَا عَنْهُ وَرَثَتُهُ.

Thus, it is confirmed that he remains alive without doubt, for no two people among the people of the Sharia or others disagree that there are only two states: alive or dead, with no third option. Since this is established, and

we are certain that Allah the Exalted has prohibited hastening his death, causing him distress, or depriving him of breath, we know with absolute certainty and necessity that his killer is unquestionably a killer of a person. Therefore, whoever intentionally kills him in that state is an intentional killer, and whoever kills him unintentionally is an unintentional killer. For the intentional killer: retribution (qisas), blood money, or ransom apply. For the unintentional killer: expiation is required, with blood money imposed on his agnatic relatives. Similarly, retribution (qisas) applies to injuries against limbs in cases of intentional harm. And with Allah, the Exalted, is success.

فَصَحَّ أَنَّهُ حَيٌّ بَعْدُ بِلَا شَكٍّ، إذْ لَا يَخْتَلِفُ اثْنَانِ مِنْ أَهْلِ الشَّرِيعَةِ وَغَيْرِهِمْ، فِي أَنَّهُ لَيْسَ إلَّا حَيٌّ أَوْ مَيِّتٌ، وَلَا سَبِيلَ إلَى الْقَسَمِ، فَإِذْ هُوَ كَذَلِكَ، وَكُنَّا عَلَى يَقِينٍ مِنْ أَنَّ اللَّهَ تَعَالَى قَدْ حَرَّمَ إعْجَالَ مَوْتِهِ وَغَمِّهِ، وَمَنْعَهُ النَّفَسَ: فَبِيَقِينٍ وَضَرُورَةٍ نَدْرِي أَنَّ قَاتِلَهُ قَاتِلُ نَفْسٍ بِلَا شَكٍّ، فَمَنْ قَتَلَهُ فِي تِلْكَ الْحَالِ عَمْدًا: فَهُوَ قَاتِلُ نَفْسٍ عَمْدًا، وَمَنْ قَتَلَهُ خَطَأً فَهُوَ قَاتِلٌ خَطَأً - وَعَلَى الْعَامِدِ: الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ، وَعَلَى الْمُخْطِئِ الْكَفَّارَةُ، وَالدِّيَةُ عَلَى عَاقِلَتِهِ، وَكَذَلِكَ فِي أَعْضَائِهِ الْقَوَدُ فِي الْعَمْدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ لِلْوَلِيِّ عَفْوٌ فِي قَتْلِ الْغِيلَةِ أَوْ الْحِرَابَةِ]

مَسْأَلَةٌ:

هَلْ لِلْوَلِيِّ عَفْوٌ فِي قَتْلِ الْغِيلَةِ، أَوْ الْحِرَابَةِ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَا عَفْوَ فِي ذَلِكَ لِلْوَلِيِّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ نا ابْنُ أَبِي الزِّنَادِ عَنْ أَبِيهِ أَنَّهُ قَالَ فِي قَتْلِ الْغِيلَةِ: إذَا بُلِّــغَ الْإِمَامُ، فَلَيْسَ لِوَلِيِّ الْمَقْتُولِ أَنْ يَعْفُوَ، وَلَيْسَ لِلْإِمَامِ أَنْ يَعْفُوَ، وَإِنَّمَا هُوَ حَدٌّ مِنْ حُدُودِ اللَّهِ تَعَالَى.

قَالَ عَلِيٌّ: وَبِهَذَا يَقُولُ مَالِكٌ، وَرَأَى ذَلِكَ أَيْضًا فِي قَاتِلِ الْحِرَابَةِ حَتَّى إنَّهُ رَأَى فِي ذَلِكَ أَنْ يُقْتَلَ الْمُؤْمِنَ بِالْكَافِرِ.

وَقَالَ آخَرُونَ: بَلْ لِوَلِيِّهِ مَا لِوَلِيِّ غَيْرِهِ مِنْ الْقَتْلِ، أَوْ الْعَفْوِ، أَوْ الدِّيَةِ.

كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سِمَاكِ بْنِ الْفَضْلِ: أَنَّ عُرْوَةَ كَتَبَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي رَجُلٍ خَنَقَ صَبِيًّا عَلَى أَوْضَاحٍ لَهُ حَتَّى قَتَلَهُ، فَوَجَدُوهُ وَالْحَبْلُ فِي يَدِهِ، فَاعْتَرَفَ بِذَلِكَ، فَكَتَبَ: أَنْ ادْفَعُوهُ إلَى أَوْلِيَاءِ الصَّبِيِّ، فَإِنْ شَاءُوا قَتَلُوهُ.

وَبِهَذَا يَقُولُ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ.

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الصَّوَابُ فِي ذَلِكَ مِنْ الْخَطَأِ؟ فَوَجَدْنَا الْقَائِلِينَ فِي ذَلِكَ بِأَنَّهُ لَيْسَ لِلْوَلِيِّ عَفْوٌ فِي ذَلِكَ يَحْتَجُّونَ: بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي

Issue: Is the heir entitled to pardon in cases of ghilah (premeditated ambush killing) or ḥirābah (banditry/unlawful warfare)?

Issue:

Does the legal guardian have the right to pardon in cases of stealth killing (al-ghīlah) or banditry/terrorism (al-ḥirābah)? ʿAlī said: "People have differed on this matter. A school of thought held that there is no pardon for the legal guardian in such cases." ʿAbdullāh ibn Rabīʿ narrated to us; Ibn Mufarrij narrated to us; Qāsim ibn Aṣbagh narrated to us; Ibn Waḍḍāḥ narrated to us; Saḥnūn narrated to us; Ibn Wahb narrated to us; Ibn Abī al-Zinād reported from his father regarding stealth killing: "Once the Imam has been notified, the legal guardian of the slain may not pardon, nor may the Imam pardon. It is solely a ḥadd among the ḥudūd of Allah the Exalted."

Ali said: Malik also holds this opinion, and he further maintained this view concerning the killer in ḥirābah, even to the extent that he held that a believer should be executed for [the killing of] a disbeliever.

Others have said: Rather, the guardian has the same options as the guardian of another—retribution, pardon, or blood money.

As it was narrated to us through the chain of Abd al-Razzaq from Simak ibn al-Fadl: Urwah wrote to Umar ibn Abd al-Aziz concerning a man who strangled a boy over his belongings until he killed him. They found him with the rope in his hand, and he confessed to that. Umar wrote: "Hand him over to the boy's guardians; if they wish, they may kill him."

And with this, Abu Hanifah, al-Shafi'i, Abu Sulayman, and their companions said.

Abu Muhammad said: When they differed as we have mentioned, it became incumbent upon us to examine this matter so that correctness in it might become distinguished from error? We found those who assert that the guardian holds no right to pardon in such cases citing as evidence what was narrated to us through the chain of transmission of Imam Muslim: Abdullah ibn Hu-

maid reported to us; Abd al-Razzaq reported to us; Ma’mar narrated from Ayyub al-Sikhtiyani from Abu Qilabah from Anas: “A Jewish man killed a girl from the Ansar over jewelry she possessed, then threw her into a well and crushed her head with stones. He was seized and brought to the Messenger of Allah (peace and blessings be upon him), where he confessed. The Prophet ordered him to be stoned, and he was stoned to death.”

قِلَابَةَ عَنْ أَنَسٍ «أَنَّ رَجُلًا مِنَ الْيَهُودِ قَتَلَ جَارِيَةً مِنَ الْأَنْصَارِ عَلَى حُلِيٍّ لَهَا، ثُمَّ أَلْقَاهَا فِي الْقَلِيبِ، وَرَضَخَ رَأْسَهَا بِالْحِجَارَةِ، فَأُخِذَ وَأُتِيَ بِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَقَرَّ، فَأَمَرَ بِهِ أَنْ يُرْجَمَ، فَرُجِمَ حَتَّى مَاتَ» .

L38509 Through the chain of Muslim: Haddab ibn Khalid narrated to us, from Hammam, from Qatadah, from Anas ibn Malik: “A young girl was found with her head crushed between two stones. They asked her: ’Who did this to you? Was it so-and-so? So-and-so?’ until they mentioned a Jew. She nodded her head. The Jew was seized and confessed. The Messenger of Allah (peace be upon him) then commanded that his head be crushed with stones.”

وَمِنْ طَرِيقِ مُسْلِمٍ نا هَدَّابُ بْنُ خَالِدٍ نا هَمَّامٌ نا قَتَادَةُ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ جَارِيَةً وُجِدَتْ قَدْ رُضَّ رَأْسُهَا بَيْنَ حَجَرَيْنِ فَسَأَلُوهَا مَنْ صَنَعَ هَذَا بِكِ؟ فُلَانٌ، فُلَانٌ؟ حَتَّى ذَكَرُوا يَهُودِيًّا، فَأَوْمَأَتْ بِرَأْسِهَا، فَأُخِذَ الْيَهُودِيُّ فَأَقَرَّ فَأَمَرَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يُرَضَّ رَأْسُهُ بِالْحِجَارَةِ» .

L38510–38511 And from the narration of Muslim in the hadith of al-ʿUrayniyyīn, he mentioned the hadith: “Their hands and feet were cut off, their eyes were gouged out, then they were abandoned under the sun until they died.”

وَمِنْ طَرِيقِ مُسْلِمٍ فِي حَدِيثِ الْعُرَنِيِّينَ فَذَكَرَ الْحَدِيثَ - وَفِيهِ “ فَقُطِعَتْ أَيْدِيهِمْ وَأَرْجُلُهُمْ وَسُمِلَ أَعْيُنُهُمْ، ثُمَّ نُبِذُوا فِي الشَّمْسِ حَتَّى مَاتُوا.

L38512 They mentioned what Ahmad ibn Umar narrated to us: al-Husayn ibn Yaʿqub narrated to us, Saʿd ibn Falḥūn narrated to us, Yusuf ibn Yahya al-Maʿafiri narrated to us, ʿAbd al-Malik ibn Habib narrated from Muṭarrif from Ibn Abi Dhi’b from Muslim ibn Habib al-Hudhali: that ʿAbdullah ibn ʿAmir wrote to ʿUthman ibn ʿAffan asking about a Muslim man who attacked a landowner (dihqan) and killed him for his wealth—what should be done? ʿUthman wrote back to him: “Execute him as retribution—for this man killed treacherously in an act of highway robbery (ḥirābah).”

وَذَكَرُوا مَا حَدَّثَنَاهُ أَحْمَدُ بْنُ عُمَرَ نا الْحُسَيْنُ بْنُ يَعْقُوبَ نا سَعْدُ بْنُ فَلْحُونٍ نا يُوسُفُ بْنُ يَحْيَى الْمَعَافِرِيُّ نا عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ عَنْ مُطَرِّفٍ عَنِ ابْنِ أَبِي ذِئْبٍ عَنْ مُسْلِمِ بْنِ حَبِيبٍ الْهُذَلِيِّ: أَنَّ عَبْدَ اللَّهِ بْنَ عَامِرٍ كَتَبَ إِلَى عُثْمَانَ بْنِ عَفَّانَ: أَنَّ رَجُلًا مِنَ الْمُسْلِمِينَ عَدَا عَلَى دِهْقَانٍ فَقَتَلَهُ عَلَى مَالِهِ؟ فَكَتَبَ إِلَيْهِ عُثْمَانُ: أَنْ اقْتُلْهُ بِهِ - فَإِنَّ هَذَا قَتَلَ غِيلَةً عَلَى الْحِرَابَةِ.

L38513 And through him—to ʿAbd al-Malik ibn Habib from Mutarrif from his maternal uncle al-Harith ibn ʿAbd al-Rahman: A Muslim man during the time of Aban ibn ʿUthman ibn ʿAffan killed a Nabaṭī at Dhu Humaid over wealth he had. I saw Aban ibn ʿUthman order the Muslim to be executed in retaliation for the Nabaṭī, as he had killed him treacherously. I witnessed this until the Muslim’s neck was struck.

وَبِهِ - إِلَى عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ مُطَرِّفٍ عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ: أَنَّ رَجُلًا مُسْلِمًا فِي زَمَانِ أَبَانَ بْنِ عُثْمَانَ بْنِ عَفَّانَ قَتَلَ نَبَطِيًّا بِذِي حُمَيْتٍ عَلَى مَالٍ مَعَهُ، فَرَأَيْتُ أَبَانَ بْنَ عُثْمَانَ أَمَرَ بِالْمُسْلِمِ فَقُتِلَ بِالنَّبَطِيِّ، لِقَتْلِهِ إِيَّاهُ غِيلَةً فَرَأَيْتُه حَتَّى ضُرِبَتْ عُنُقُهُ.

وَعَنْ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ عَنْ مُطَرِّفٍ عَنْ ابْنِ أَبِي الزِّنَادِ عَنْ أَبِيهِ أَنَّهُ شَهِدَ أَبَانَ بْنَ عُثْمَانَ، إذْ قَتَلَ مُسْلِمًا بِنَصْرَانِيٍّ قَتَلَهُ قَتْلَ غِيلَةً.

L38514 From Abdul-Malik ibn Habib, from Mutarrif, from Ibn Abi al-Zinad, from his father, that he witnessed Aban ibn Uthman kill a Muslim in retribution for a Christian whom he killed by treacherous killing.

قَالَ عَلِيٌّ: فَقَالُوا: هَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَتَلَ الْيَهُودِيَّ، وَلَمْ يَجْعَلْ ذَلِكَ خِيَارًا لِأَوْلِيَاءِ الْجَارِيَةِ.

L38515 Ali said: They said, "This is the Messenger of Allah (may Allah's blessings and peace be upon him); he killed the Jew, yet he did not grant that option to the heirs of the female slave."

وَكَذَلِكَ قَتَلَ الْعُرَنِيِّينَ الَّذِينَ قَتَلُوا الرِّعَاءَ قَتْلَ حِرَابَةٍ وَغِيلَةٍ - وَلَمْ يَذْكُرُوا أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - جَعَلَ فِي ذَلِكَ خِيَارًا لِأَوْلِيَاءِ الرِّعَاءِ.

L38516 Similarly, he killed the al-ʿUrayniyyīn who killed the shepherds in the manner of highway robbery (ḥirābah) and treacherous ambush (ghīlah)—and they did not mention that he (peace and blessings be upon him) gave the shepherds' kinsmen entitled to retribution an option regarding that matter.

قَالُوا: وَهَذَا عُثْمَانُ - رَضِيَ اللَّهُ تَعَالَى عَنْهُ - قَدْ قَتَلَ الْمُسْلِمَ بِالْكَافِرِ، إذْ قَتَلَهُ غِيلَةً، وَلَمْ يَجْعَلْ فِي ذَلِكَ خِيَارًا لِوَلِيِّهِ، وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ؟ قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ شَيْئًا يَشْغَبُونَ بِهِ إلَّا هَذَا، وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ: أَمَّا حَدِيثُ الْيَهُودِيِّ الَّذِي رَضَخَ رَأْسَ الْجَارِيَةِ عَلَى أَوْضَاحِهَا فَلَيْسَ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُشَاوِرْ وَلِيَّهَا، وَلَا أَنَّهُ شَاوَرَهُ، وَلَا أَنَّهُ قَالَ " اخْتَرْ " لِوَلِيِّ الْمَقْتُولِ فِي الْغِيلَةِ، أَوْ الْحِرَابَةِ، فَإِذَا لَمْ يَقُلْ ذَلِكَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَنْسِبَ ذَلِكَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَيَكْذِبَ عَلَيْهِ، وَيَقُولَ عَلَيْهِ مَا لَمْ يَقُلْ.

L38517–38519 They said: "And this is Uthmān—may Allah the Exalted be pleased with him—who killed a Muslim in place of a disbeliever by slaying him treacherously, without granting his legal guardian the option in that matter, nor is any opposition to him known regarding this?" Abū Muḥammad said: "We know of nothing they dispute except this, and none of it contains any valid proof for them. As for the account of the Jew who crushed the girl's head for her jewelry, it does not state that..." The Messenger of Allah (peace and blessings of Allah be upon him) did not consult the slain's guardian, nor did he consult the guardian, nor did he say "choose" to the guardian of the slain in cases of stealth killing or highway robbery. Since he (peace and blessings of Allah be upon him) did not say this, it is not permissible for any Muslim to attribute such a statement to the Messenger of Allah (peace and blessings of Allah be upon him), thereby falsely attributing to him and ascribing to him what he did not say.

فَكَيْفَ وَهَذَا الْخَبَرُ حُجَّةٌ عَلَيْهِمْ فَإِنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ قَاتِلَ الْغِيلَةِ، أَوْ الْحِرَابَةِ لَا يَجُوزُ أَلْبَتَّةَ أَنْ يُقْتَلَ رَضْخًا فِي الرَّأْسِ بِالْحِجَارَةِ، وَلَا رَجْمًا، وَهَذَا مَا لَا يَقُولُهُ أَحَدٌ مِنْ النَّاسِ.

L38520 How then, when this narration is a proof against them? For they unanimously agree that it is impermissible for the killer in treachery or highway robbery to be killed by crushing the head with stones or by stoning, and this is something no one among the scholars asserts.

فَصَحَّ يَقِينًا إذْ قَتَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَضْخًا بِالْحِجَارَةِ أَنَّهُ إنَّمَا قَتَلَهُ قَوَدًا بِالْحِجَارَةِ وَإِذْ قَتَلَهُ قَوَدًا بِهَا، فَحُكْمُ قَتْلِ الْقَوَدِ أَنْ يَكُونَ بِالْخِيَارِ فِي ذَلِكَ، أَوْ الْعَفْوِ لِلْوَلِيِّ،

L38521 It was firmly established with certainty that when the Messenger of Allah—peace and blessings of Allah be upon him—killed him by crushing him with stones, he did so solely as retaliation (qawd) through stoning. When

he carried out this retaliation with stones, the ruling for retaliatory killing dictates that the guardian holds the choice in this matter—to retaliate or pardon. Since this is undeniably established, it is authentically reported from the Prophet—peace and blessings of Allah be upon him—that he said: "Whoever is slain, their family has two options..." and so on.

وَإِذْ ذَلِكَ كَذَلِكَ بِلَا شَكٍّ، فَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «مَنْ قُتِلَ لَهُ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ» إلَى آخِرِهِ.

L38522 We are certain that it is obligatory upon everyone to incorporate this ruling with this report. The narrators' silence about the Messenger of Allah—peace and blessings be upon him—granting the guardian the choice does not nullify what he—peace and blessings be upon him—established regarding murder concerning the guardian's choice. Without doubt, he—peace and blessings be upon him—did not contradict what he commanded, nor is this matter devoid of what we mentioned about accepting the transmitted addition in other texts entirely—for had this action been a specification or abrogation, he—peace and blessings be upon him—would have clarified it. Thus their argument collapses—and success comes solely from Allah, the Exalted.

فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّ فَرْضًا عَلَى كُلِّ أَحَدٍ أَنْ يَضُمَّ هَذَا الْحُكْمَ إلَى هَذَا الْخَبَرِ وَلَيْسَ سُكُوتُ الرُّوَاةِ عَنْ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - خَيَّرَ وَلِيَّهَا بِمُسْقِطٍ مَا أَوْجَبَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْقَتْلِ مِنْ تَخْيِيرِ وَلِيِّهِ، بَلْ بِلَا شَكٍّ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُخَالِفْ مَا أَمَرَ بِهِ، وَلَا يَخْلُو هَذَا مِمَّا ذَكَرْنَا مِنْ قَبُولِ الزِّيَادَةِ الْمَرْوِيَّةِ فِي سَائِرِ النُّصُوصِ أَصْلًا - وَلَوْ كَانَ هَذَا الْفِعْلُ تَخْصِيصًا أَوْ نَسْخًا لَبَيَّنَهُ - عَلَيْهِ السَّلَامُ -، فَبَطَلَ تَعَلُّقُهُمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38523 As for the ḥadīth of the ʿUrānīyīn, there is no proof for them in it either—due to what we have mentioned concerning this report. It is the same, it is the same—in that it does not contain any indication that he (peace and blessings be upon him) did not consult the guardians of the shepherds (if they had guardians), nor that he said: "There is no choice in this for the guardian of the slain one." Since none of this is present within it, there is no proof for them nor for us in this report specifically pertaining to this issue. Therefore, we are obligated to seek its ruling from another place.

وَأَمَّا حَدِيثُ الْعُرَنِيِّينَ - فَلَا حُجَّةَ لَهُمْ فِيهِ أَيْضًا، لِمَا ذَكَرْنَا فِي هَذَا الْخَبَرِ - سَوَاءٌ سَوَاءٌ - مِنْ أَنَّهُ لَيْسَ فِيهِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُشَاوِرْ أَوْلِيَاءَ الرِّعَاءِ - إنْ كَانَ لَهُمْ أَوْلِيَاءُ - وَلَا أَنَّهُ قَالَ: لَا خِيَارَ فِي هَذَا لِوَلِيِّ الْمَقْتُولِ، فَإِذْ لَيْسَ فِيهِ شَيْءٌ مِنْ هَذَا فَلَا حُجَّةَ لَهُمْ وَلَا لَنَا بِهَذَا الْخَبَرِ فِي هَذِهِ الْمَسْأَلَةِ خَاصَّةً - فَوَجَبَ عَلَيْنَا طَلَبُ حُكْمِهَا بِمَوْضِعٍ آخَرَ.

L38524–38526 Then, this narration stands as evidence against them, based on what we transmitted through Muslim's chain: Yahyā ibn Yahyā al-Tamīmī reported to us from Hushaym, from ʿAbd al-ʿAzīz ibn Ṣuhayb and Ḥumayd, from Anas: that some men from ʿUraynah arrived — and he mentioned the ḥadīth — and in it: "They killed the shepherds, apostatized from Islam, and drove the herd of camels." The Messenger of Allah - may Allah bless him and grant him peace - sent after them, and they were brought to him. He cut off their hands and feet, gouged out their eyes, and left them in al-Harrah until they died.

ثُمَّ إنَّ هَذَا الْخَبَرَ حُجَّةٌ عَلَيْهِمْ، لِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ نا هُشَيْمٌ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ، وَحُمَيْدٍ عَنْ أَنَسٍ: أَنَّ نَاسًا مِنْ عُرَيْنَةَ قَدِمُوا - وَذَكَرَ الْحَدِيثَ، وَفِيهِ: «أَنَّهُمْ قَتَلُوا الرِّعَاءَ، وَارْتَدُّوا عَنْ الْإِسْلَامِ، وَسَاقُوا ذَوْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَعَثَ فِي آثَارِهِمْ فَأُتِيَ بِهِمْ، فَقَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَسَمَلَ أَعْيُنَهُمْ وَتَرَكَهُمْ فِي الْحَرَّةِ حَتَّى مَاتُوا» .

L38527 Abu Muhammad said: These people apostatized from Islam, and the Malikis disagree with this ruling on three grounds:

قَالَ أَبُو مُحَمَّدٍ: فَهَؤُلَاءِ ارْتَدُّوا عَنْ الْإِسْلَامِ، وَالْمَالِكِيُّونَ هُمْ عَلَى خِلَافِ هَذَا الْحُكْمِ مِنْ وُجُوهٍ ثَلَاثَةٍ:

L38528 One of them is that the apostate is not to be killed in their view nor in our view; this type of killing is fundamentally impermissible at all.

أَحَدُهَا - أَنَّهُ لَا يُقْتَلُ الْمُرْتَدُّ عِنْدَهُمْ وَلَا عِنْدَنَا هَذِهِ الْقِتْلَةَ أَصْلًا.

L38529 The second ruling is that retribution (qisas) is not applied to the apostate in their view; rather, the punishment is either execution or sparing [him] if he repents.

وَالثَّانِي - أَنَّهُ لَا يُقْتَصُّ عِنْدَهُمْ مِنْ الْمُرْتَدِّ، وَإِنَّمَا هُوَ عِنْدَهُمْ الْقَتْلُ أَوْ التَّرْكُ، إنْ تَابَ.

L38530 The third [point] is that they assert the necessity of seeking repentance from the apostate, yet this hadith makes absolutely no mention of seeking his repentance whatsoever. Thus, it becomes evidence against them and contradicts their doctrine on this issue and others.

وَالثَّالِثُ - أَنَّهُمْ يَقُولُونَ بِاسْتِتَابَةِ الْمُرْتَدِّ، وَلَيْسَ فِي هَذَا الْحَدِيثِ ذِكْرُ اسْتِتَابَتِهِ أَلْبَتَّةَ، فَعَادَ حُجَّةً عَلَيْهِمْ، وَمُخَالِفًا لِقَوْلِهِمْ فِي هَذِهِ الْمَسْأَلَةِ وَغَيْرِهَا.

L38531 Ali said: As for the narration from Uthman—it is very weak—because it is from Abdul Malik ibn Habib, and he is utterly abandoned in narration, then from Muslim ibn Jundub—and Muslim ibn Jundub did not meet Uthman.

قَالَ عَلِيٌّ: وَأَمَّا الرِّوَايَةُ عَنْ عُثْمَانَ - فَضَعِيفَةٌ جِدًّا - لِأَنَّهَا عَنْ عَبْدِ الْمَلِكِ بْنِ حَبِيبٍ وَهُوَ سَاقِطُ الرِّوَايَةِ جِدًّا - ثُمَّ عَنْ مُسْلِمِ بْنِ جُنْدُبٍ - وَلَمْ يُدْرِكْ عُثْمَانَ.

L38532 Moreover, there is no proof in the statement of anyone apart from the Messenger of Allah—peace and blessings be upon him. How many cases exist where they opposed Uthman—may Allah be pleased with him—with a chain of narration stronger than this? Such as his ruling regarding one-third of the blood money for someone who struck another until they discharged fluid, with no known opposition from the Companions—may Allah be pleased with them. It is inconceivable that what is not authentically attributed to him could serve as proof for permitting bloodshed, while what is authentically attributed to him would not serve as proof in other matters. Abu Muhammad said: Since their reliance on the two narrations has been invalidated by what we have mentioned, and because the Ansari woman might have a guardian who is a minor with no right to choose, the Prophet—peace and blessings be upon him and his family—chose qisas (retaliation). This would apply if it were authentic that he—peace and blessings be upon him—did not grant the guardian a choice, but how could that be when it is never authenticated?

وَأَيْضًا - فَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَمْ قِصَّةٍ خَالَفُوا فِيهَا عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - بِأَصَحَّ مِنْ هَذَا السَّنَدِ؟ كَقَضَائِهِ فِي ثُلُثِ الدِّيَةِ فِيمَنْ ضَرَبَ آخَرَ حَتَّى سَلَحَ وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَمِنْ الْمُحَالِ أَنْ يَكُونَ مَا لَمْ يَصِحَّ عَنْهُ حُجَّةً فِي إبَاحَةِ الدِّمَاءِ، وَلَا يَكُونُ مَا صَحَّ عَنْهُ حُجَّةً فِي غَيْرِ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ: فَإِذْ قَدْ بَطَلَ تَعَلُّقُهُمْ بِالْخَبَرَيْنِ بِمَا ذَكَرْنَا، وَبِأَنَّهُ قَدْ يَكُونُ لِلْأَنْصَارِيَّةِ وَلِيٌّ صَغِيرٌ لَا خِيَارَ لَهُ؟ فَاخْتَارَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْقَوَدَ - هَذَا لَوْ صَحَّ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يُخَيِّرْ الْوَلِيَّ فَكَيْفَ وَهُوَ لَا يَصِحُّ أَبَدًا.

L38533–38535 Similarly, it is possible that wards are strangers who have no guardian.

وَكَذَلِكَ الرِّعَاءُ قَدْ يُمْكِنُ أَنْ يَكُونُوا غُرَبَاءَ لَا وَلِيَّ لَهُمْ فَالْوَاجِبُ الرُّجُوعُ إلَى قَوْلِهِ تَعَالَى، وَقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ، فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى} [البقرة: ١٧٨] إلَى قَوْله تَعَالَى {ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ} [البقرة: ١٧٨] فَعَمَّ تَعَالَى كُلَّ قَتْلٍ، كَمَا ذَكَرَ تَعَالَى، وَجَعَلَ الْعَفْوَ فِي ذَلِكَ لِلْوَلِيِّ.

Therefore, the obligatory act is to refer to the statement of Allah the Exalted and the statement of the Messenger of Allah—peace and blessings be upon him and his family—when He says: {If you disagree about anything, refer it to Allah and the Messenger} [An-Nisa: 59]. We find that Allah the Exalted states: {Retaliation in kind is ordained for you concerning the slain} [Al-Baqarah: 178] up to the verse where He says: {That is a relief from your Lord and a mercy} [Al-Baqarah: 178]. The Most High has encompassed all killings, as He, the Exalted, mentioned, and He assigned forgiveness in this matter to the legal guardian.[1]

L38536 وَصَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ: «وَمَنْ قُتِلَ لَهُ قَتِيلٌ بَعْدَ مَقَالَتِي هَذِهِ فَأَهْلُهُ بَيْنَ خِيَرَتَيْنِ» فَذَكَرَ الدِّيَةَ، أَوْ الْقَوَدَ، أَوْ الْمُفَادَاةَ - وَالدِّيَةُ لَا تَكُونُ إلَّا بِالْعَفْوِ عَنْ الْقَوَدِ بِلَا شَكٍّ، فَعَمَّ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - وَلَمْ يَخُصَّ.

It has been authentically reported from the Messenger of Allah—peace and blessings be upon him and his family—that he said: "Whoever has a relative killed after this statement of mine, their family must choose between two options." He mentioned [either] blood money or retaliation, or [the third scenario of] ransom—for blood money only becomes applicable, without doubt, when retaliation is waived. Thus, the Prophet—peace and blessings be upon him—spoke in general terms without specifying [exceptions].

L38537 وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى: أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ أَنْ يَخُصَّ مِنْ ذَلِكَ قَتْلَ غِيلَةٍ، أَوْ حِرَابَةٍ، لَمَا أَغْفَلَهُ وَلَا أَهْمَلَهُ وَلَبَيَّنَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

And we bear witness by the testimony of Allah, the Most High, that had Allah, the Most High, willed to specify among such acts the killing by stealth or banditry, He would not have neglected nor disregarded it and would have certainly made it clear—peace and blessings be upon him and his family.

L38538 وَوَجَدْنَا اللَّهَ تَعَالَى قَدْ حَدَّ الْحِرَابَةَ {أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلافٍ أَوْ يُنْفَوْا مِنَ الأَرْضِ} [المائدة: ٣٣] ، فَلَا تَخْلُو هَذِهِ الْآيَةُ مِنْ أَنْ تَكُونَ عَلَى التَّرْتِيبِ، أَوْ التَّخْيِيرِ، فَإِنْ كَانَتْ عَلَى التَّرْتِيبِ، فَالْمَالِكِيُّونَ لَا يَقُولُونَ بِهَذَا " وَإِنْ كَانَتْ عَلَى التَّخْيِيرِ - وَهُوَ قَوْلُهُمْ - فَلَيْسَ فِي الْآيَةِ مَا يَدَّعُونَهُ مِنْ أَنَّ قَاتِلَ الْحِرَابَةِ، وَالْغِيلَةِ لَا خِيَارَ فِيهِ لِوَلِيِّ الْقَتِيلِ - فَخَرَجَ قَوْلُهُمْ عَنْ أَنْ يَكُونَ لَهُ مُتَعَلَّقٌ، أَوْ سَبَبٌ يَصِحُّ، فَبَطَلَ مَا قَالُوهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38538 We found that Allah, the Exalted, has prescribed the punishment for ḥirābah (highway robbery) as "being killed, crucified, having their hands and feet amputated crosswise, or exiled from the land" [Quran 5:33]. This verse must necessarily be interpreted as either indicating an ordered sequence or offering a choice. If it is taken to indicate an ordered sequence—a position the Malikis do not uphold—then this is invalid. If it is taken to indicate choice (which is their doctrine), the verse contains no basis for their claim that the guardian of the slain has no option regarding killers in ḥirābah (highway robbery) or ghīlah (treacherous ambush). Thus, their argument lacks any

[1] **Qur'an references (L38533):** Qur'an 4:59 (An-Nisa); Qur'an 2:178 (Al-Baqarah).

valid connection or legitimate reason to stand, rendering their claim void. And success comes solely from Allah, the Exalted.[2]

The Issue of Khulʿ from a Wrongdoing Spouse

L38539

L38540–38542 2103 - An Issue: The Expulsion of the Offender? Abū Muḥammad said: ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid al-Hamadānī narrated to us, Ibrāhīm ibn Aḥmad narrated to us, al-Farabarī narrated to us, al-Bukhārī narrated to us, Qutaybah ibn Saʿīd narrated to us, Abū Bishr Ismāʿīl ibn Ibrāhīm al-Asadī narrated to us, al-Ḥajjāj ibn Abī ʿUthmān narrated to me: Abū Rajāʾ—from the family of Abī Qilābah—narrated to us, Abū Qilābah said: ʿUmar ibn ʿAbd al-ʿAzīz gathered the people—among them was Abū Qilābah—and mentioned a ḥadīth, in which it was stated that Abū Qilābah said to ʿUmar ibn ʿAbd al-ʿAzīz: "Hudhayl had expelled an outcast of theirs in the pre-Islamic era. He came upon a Yemeni household by night at al-Baṭḥāʾ, and a man from them awoke to his presence and struck him with a sword, killing him. Hudhayl came and seized the Yemeni, bringing him to ʿUmar ibn al-Khaṭṭāb during the pilgrimage season, saying: 'He killed our companion.' ʿUmar said: 'They have expelled him.' ʿUmar then ruled: 'Fifty men from Hudhayl must swear they expelled him.' Forty-nine from Hudhayl swore, and a man from them arrived from Syria. They asked him to swear, but he ransomed his oath from them for a thousand dirhams. They replaced him with another man. ʿUmar handed the Yemeni over to the brother of the slain man, and the Yemeni's hand was bound to the brother's hand." He said: "The two bound men departed with the fifty who had sworn. When they reached Nakhlah, a storm struck them. They took refuge in a mountain cave, and the cave collapsed upon the fifty who had sworn, killing them all. The two bound men alone survived." A stone pursued them both and broke the leg of the slain man's brother, whereupon he survived for an entire year before dying.

L38543 From the narration of Abd al-Razzaq, from Umar, from Ayyub al-Sikhtiyani, from Abu Qilabah, who said: A group from Hudhayl disowned a thief of

[2]**Qur'an references (L38538):** Qur'an 5:33 (Al-Ma'idah).

[مَسْأَلَةٌ خَلْعُ الْجَانِي]

٢١٠٣ - مَسْأَلَةٌ: خَلْعُ الْجَانِي؟ قَالَ أَبُو مُحَمَّدٍ: نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ الْهَمْدَانِيُّ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا أَبُو بِشْرٍ إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ الْأَسَدِيُّ نا الْحَجَّاجُ بْنُ أَبِي عُثْمَانَ حَدَّثَنِي أَبُو رَجَاءٍ - مِنْ آلِ أَبِي قِلَابَةَ - نا أَبُو قِلَابَةَ: أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ جَمَعَ النَّاسَ - وَفِيهِمْ أَبُو قِلَابَةَ - فَذَكَرَ حَدِيثًا - وَفِيهِ: أَنَّ أَبَا قِلَابَةَ قَالَ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ: وَقَدْ كَانَتْ هُذَيْلٌ خَلَعَتْ خَلِيعًا لَهُمْ فِي الْجَاهِلِيَّةِ فَطَرَقَ أَهْلَ بَيْتٍ مِنَ الْيَمَنِ بِالْبَطْحَاءِ فَانْتَبَهَ لَهُ رَجُلٌ مِنْهُمْ فَخَذَفَهُ بِالسَّيْفِ فَقَتَلَهُ، فَجَاءَتْ هُذَيْلٌ فَأَخَذُوا الْيَمَانِيَّ فَرَفَعُوهُ إِلَى عُمَرَ بْنِ الْخَطَّابِ بِالْمَوْسِمِ، وَقَالُوا: قَتَلَ صَاحِبَنَا، فَقَالَ: إِنَّهُمْ قَدْ خَلَعُوهُ، فَقَالَ عُمَرُ: يُقْسِمُ خَمْسُونَ مِنْ هُذَيْلٍ مَا خَلَعُوهُ، فَأَقْسَمَ تِسْعَةٌ وَأَرْبَعُونَ مِنْ هُذَيْلٍ، وَقَدِمَ رَجُلٌ مِنْهُمْ مِنَ الشَّامِ فَسَأَلُوهُ أَنْ يُقْسِمَ، فَافْتَدَى يَمِينَهُ مِنْهُمْ بِأَلْفِ دِرْهَمٍ، فَأَدْخَلُوا مَكَانَهُ رَجُلًا آخَرَ، فَدَفَعَهُ عُمَرُ إِلَى أَخِي الْمَقْتُولِ فَقُرِنَتْ يَدُهُ بِيَدِهِ - قَالَ: فَانْطَلَقَا وَالْخَمْسُونَ الَّذِينَ أَقْسَمُوا حَتَّى إِذَا كَانُوا بِنَخْلَةَ أَخَذَتْهُمُ السَّمَاءُ فَدَخَلُوا فِي غَارٍ فِي جَبَلٍ، فَانْهَدَمَ الْغَارُ عَلَى الْخَمْسِينَ الَّذِينَ أَقْسَمُوا، فَمَاتُوا جَمِيعًا، وَأَفْلَتَ الْقَرِينَانِ، فَاتَّبَعَهُمَا حَجَرٌ فَكَسَرَ رِجْلَ أَخِي الْمَقْتُولِ، فَعَاشَ حَوْلًا ثُمَّ مَاتَ.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ أَبِي قِلَابَةَ قَالَ: خَلَعَ قَوْمٌ مِنْ هُذَيْلٍ سَارِقًا لَهُمْ كَانَ يَسْرِقُ الْحَجِيجَ، فَقَالُوا: قَدْ خَلَعْنَاهُ، فَمَنْ وَجَدَهُ بِسَرِقَةٍ فَدَمُهُ

هَدَرٌ؟ فَوَجَدَتْهُ رُفْقَةٌ مِنْ أَهْلِ الْيَمَنِ يَسْرِقُهُمْ فَقَتَلُوهُ، فَجَاءَ قَوْمُهُ عُمَرَ بْنَ الْخَطَّابِ فَحَلَّفُوا: بِاللَّهِ مَا خَلَعْنَاهُ، وَلَقَدْ كَذَبَ النَّاسُ عَلَيْنَا، فَأَحْلَفَهُمْ عُمَرُ خَمْسِينَ يَمِينًا، ثُمَّ أَخَذَ عُمَرُ بِيَدِ رَجُلٍ مِنْ الرُّفْقَةِ فَقَالَ: أَقْرِنُوا هَذَا إلَى أَحَدِكُمْ حَتَّى يُؤَدِّيَ دِيَةَ صَاحِبِكُمْ، فَانْطَلَقُوا حَتَّى إذَا دَنَوَا مِنْ أَرْضِهِمْ أَصَابَهُمْ مَطَرٌ شَدِيدٌ وَاسْتَتَرُوا بِجَبَلٍ طَوِيلٍ وَقَدْ أَمْسَوْا فَلَمَّا نَزَلُوا كُلُّهُمْ انْقَضَّ عَلَيْهِمْ الْجَبَلُ، فَلَمْ يَنْجُ مِنْهُمْ أَحَدٌ، وَلَا مِنْ رِكَابِهِمْ إلَّا الشَّرِيدَ، وَصَاحِبَهُ، فَكَانَ يُحَدِّثُ بِمَا لَقِيَ قَوْمُهُ.

theirs who used to steal from pilgrims. They declared, “We have disowned him, so whoever finds him stealing – his blood is lawful (without penalty).” A group from Yemen encountered him stealing from them and killed him. His people came to Umar ibn al-Khattab, swearing, “By Allah, we did not disown him, and people have falsely accused us.” Umar compelled them to swear fifty oaths. Then Umar took the hand of a man from the group and said, “Assign this man to one of you until he pays the blood money for your companion.” They departed, and when they neared their land, they were struck by heavy rain. They sought shelter under a tall mountain as night fell. When they settled, the mountain collapsed upon them. None of the people or their mounts survived except the fugitive and his companion. The fugitive would later recount what befell his people.

قَالَ أَبُو مُحَمَّد: وَعَهْدُنَا بِالْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ - إذَا وَافَقَ أَهْوَاءَهُمْ - وَيَقُولُونَ: إنَّ الْمُرْسَلَ كَالْمُسْنَدِ، وَهَذَا مِنْ أَحْسَنِ الْمَرَاسِيلِ إلَى عُمَرَ بْنِ الْخَطَّابِ بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا مُخَالِفَ لَهُ مِنْهُمْ، وَلَا نَكِيرَ مِنْ أَحَدِهِمْ، فَيَلْزَمُهُمْ عَلَى أُصُولِهِمْ أَنْ يُجِيزُوا خَلْعَ عَشِيرَةِ الرَّجُلِ لَهُ، فَلَا يَكُونُ لَهُمْ طَلَبٌ بِدَمِهِ إنْ قُتِلَ - وَهَذَا مَا لَا يَقُولُونَهُ أَصْلًا - فَقَدْ هَانَ عَلَيْهِمْ خِلَافُ هَذَا الْأَصْلِ.

L38544 Abu Muhammad said: We have observed that the Malikis and Hanafis exaggerate the solitary opinion of a Companion for whom no opposition is recorded—when it suits their personal inclinations—while claiming that the *mursal* (uncorroborated report) holds the status of the *musnad* (authenticated report). This is among the most elevated *mursal* reports, attributed to ʿUmar ibn al-Khaṭṭāb in the presence of the Companions—may Allah be pleased with them—with none opposing him or objecting. By their own principles, they must logically concede that a man’s clan may legally disavow him, thereby forfeiting any claim to his *diyah* (blood money) if he is killed—a ruling they categorically reject. Thus, they casually disregard the contradiction of this foundational principle.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، فَإِذْ لَمْ يَأْتِ عَنْهُ إجَازَةُ خَلْعٍ، فَالْخَلْعُ بَاطِلٌ لَا مَعْنَى لَهُ، فَكُلُّ جَانٍ بِعَمْدٍ فَلَيْسَ عَلَى عَشِيرَتِهِ مِنْ جِنَايَتِهِ تَبِعَةٌ، وَكُلُّ جَانٍ بِخَطَأٍ فَكَذَلِكَ، إلَّا مَا أَوْجَبَهُ نَصٌّ أَوْ إجْمَاعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38545 As for us, we recognize no binding authority in the words of anyone apart from the Messenger of Allah (may Allah bless him and his family and grant him peace). Since no endorsement of *khulʿ* has been transmitted from him, *khulʿ* is invalid and meaningless. Thus, for every intentional offender, his clan bears no responsibility for his offense, and likewise for every unintentional offender—except what is mandated by an explicit text or consensus. Success lies with Allah, the Most High.

[مَسْأَلَةٌ اسْتَسْقَى قَوْمًا فَلَمْ يَسْقُوهُ حَتَّى مَاتَ]

L38546 **A jurisprudential issue: someone asked a group for drinking water, but they refused until he died.**

L38547–38549 Issue 2104: If a man requests water from a people and they refuse to give him water until he died. Ali said: It was narrated to us through the chain of narration of Abu Bakr Ibn Abi Shaybah – narrated by Hafs Ibn Ghiyath, from al-Ashʿath, from al-Hasan – that a man sought water at the door of a people. They refused to give him water, thirst overtook him, and he died. So Umar Ibn al-Khattab held them liable for his *diyah*. Abu Muhammad said: The ruling according to our school – and success comes only from Allah, the Exalted – is that those who withheld water from him shall be liable if they knew he possessed absolutely no water except what they held, and that he had no means whatsoever to attain it until... If he dies, they have killed him intentionally, and retaliation (qisas) is incumbent upon them by denying them water until they die—whether they are numerous or few. Those unaware of the situation or unable to provide him water are excluded. If they did not know this and presumed he would reach water, they are unintentional killers: expiation (kaffārah) is obligatory upon them, and the blood money (diyah) must necessarily be paid by their ʿāqilah (liable male kin) without fail.

٢١٠٤ - مَسْأَلَةٌ: مَنْ اسْتَسْقَى قَوْمًا فَلَمْ يَسْقُوهُ حَتَّى مَاتَ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا حَفْصُ بْنُ غِيَاثٍ عَنْ الْأَشْعَثِ عَنْ الْحَسَنِ أَنَّ رَجُلًا اسْتَسْقَى عَلَى بَابِ قَوْمٍ؟ فَأَبَوْا أَنْ يَسْقُوهُ، فَأَدْرَكَهُ الْعَطَشُ فَمَاتَ، فَضَمَّنَهُمْ عُمَرُ بْنُ الْخَطَّابِ عَنْ دِيَتِهِ؟ قَالَ أَبُو مُحَمَّدٍ: الْقَوْلُ فِي هَذَا عِنْدَنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - هُوَ أَنَّ الَّذِينَ لَمْ يَسْقُوهُ إنْ كَانُوا يَعْلَمُونَ أَنَّهُ لَا مَاءَ لَهُ أَلْبَتَّةَ إلَّا عِنْدَهُمْ، وَلَا يُمْكِنُهُ إدْرَاكُهُ أَصْلًا حَتَّى يَمُوتَ، فَهُمْ قَتَلُوهُ عَمْدًا وَعَلَيْهِمْ الْقَوَدُ بِأَنْ يُمْنَعُوا الْمَاءَ حَتَّى يَمُوتُوا - كَثُرُوا أَوْ قَلُّوا - وَلَا يَدْخُلُ فِي ذَلِكَ مَنْ لَمْ يَعْلَمْ بِأَمْرِهِ، وَلَا مَنْ لَمْ يُمْكِنْهُ أَنْ يَسْقِيَهُ، فَإِنْ كَانُوا لَا يَعْلَمُونَ ذَلِكَ وَيُقَدِّرُونَ أَنَّهُ سَيُدْرِكُ الْمَاءَ، فَهُمْ قَتَلَةُ خَطَأٍ، وَعَلَيْهِمْ الْكَفَّارَةُ، وَعَلَى عَوَاقِلِهِمْ الدِّيَةُ وَلَا بُدَّ.

L38550 The proof of this is Allah Almighty's statement: "And cooperate in righteousness and piety, and do not cooperate in sin and aggression" [Al-Mā'idah: 2], and His statement: "So whoever transgresses against you, then transgress against him in the same manner as he transgressed against you" [Al-Baqarah: 194], and His statement: "Retaliation is ordained for violations during the sacred months" [Al-Baqarah: 194]. With certainty, every Muslim in the world knows that if a Muslim asks another for water—while the latter is capable of giving it—but deliberately withholds it until the seeker dies of thirst, then he has indeed transgressed against him, without any disagreement from anyone in the Ummah. When such transgression occurs, it becomes obligatory—by the explicit decree of the Quran—to transgress against the transgressor in the same manner as he transgressed. Thus, our statement stands confirmed with unequivocal certainty.[3]

بُرْهَانُ ذَلِكَ: قَوْله تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَقَالَ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] ، وَقَالَ تَعَالَى {وَالْحُرُمَاتُ قِصَاصٌ} [البقرة: ١٩٤] ، وَبِيَقِينٍ يَدْرِي كُلُّ مُسْلِمٍ - فِي الْعَالَمِ - أَنَّ مَنْ اسْتَقَاهُ مُسْلِمٌ - وَهُوَ قَادِرٌ عَلَى أَنْ يَسْقِيَهُ - فَتَعَمَّدَ أَنْ لَا يَسْقِيَهُ إلَى أَنْ مَاتَ عَطَشًا فَإِنَّهُ قَدْ اعْتَدَى عَلَيْهِ، بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأُمَّةِ، وَإِذَا اعْتَدَى فَوَاجِبٌ - بِنَصِّ الْقُرْآنِ - أَنْ يُعْتَدَى عَلَى الْمُعْتَدِي بِمِثْلِ مَا اعْتَدَى بِهِ - فَصَحَّ قَوْلُنَا بِيَقِينٍ لَا إشْكَالَ فِيهِ.

L38551 If he did not know that, he has killed him by depriving him of that without which life cannot exist. Thus, he is a killer by mistake, and upon him is what is incumbent upon a killer by mistake.

وَأَمَّا إذَا لَمْ يَعْلَمْ بِذَلِكَ فَقَدْ قَتَلَهُ، إذْ مَنَعَهُ مَا لَا حَيَاةَ لَهُ إلَّا بِهِ، فَهُوَ قَاتِلٌ خَطَأً، فَعَلَيْهِ مَا عَلَى قَاتِلِ الْخَطَأِ.

[3] **Qur'an references (L38550):** Qur'an 5:2 (Al-Ma'idah); Qur'an 2:194 (Al-Baqarah).

L38552 Abu Muhammad said: Such is the ruling regarding the starving person and the unclothed person—there is no difference, for all of that constitutes aggression. This case differs from one whom predators pursued but they failed to protect him until a predator devoured him, for the predator itself is the killer. He did not die due to their criminal act nor from consequences generated by their criminal act. However, if they abandoned him and a predator seized him while they were capable of saving him, they are deliberate murderers, for his death arose purely from their action. This is equivalent to those who confined him in a house and restrained him until he died—there is no difference. All these cases constitute a single legal principle. Success comes from Allah, the Exalted.

قَالَ أَبُو مُحَمَّد: وَهَكَذَا الْقَوْلُ، فِي الْجَائِعِ، وَالْعَارِي، وَلَا فَرْقَ - وَكُلُّ ذَلِكَ عُدْوَانٌ، وَلَيْسَ هَذَا كَمَنْ اتَّبَعَهُ سَبُعٌ فَلَمْ يؤْوِهِ حَتَّى أَكَلَهُ السَّبُعُ، لِأَنَّ السَّبُعَ هُوَ الْقَاتِلُ لَهُ، وَلَمْ يَمُتْ فِي جِنَايَتِهِمْ، وَلَا مِمَّا تَوَلَّدَ مِنْ جِنَايَتِهِمْ، وَلَكِنْ لَوْ تَرَكُوهُ فَأَخَذَهُ السَّبُعُ - وَهُمْ قَادِرُونَ عَلَى إِنْقَاذِهِ - فَهُمْ قَتَلَةُ عَمْدٍ، إِذْ لَمْ يَمُتْ مِنْ شَيْءٍ إِلَّا مِنْ فِعْلِهِمْ - وَهَذَا كَمَنْ أَدْخَلُوهُ فِي بَيْتٍ وَمَنَعُوهُ حَتَّى مَاتَ، وَلَا فَرْقَ وَهَذَا كُلُّهُ وَجْهٌ وَاحِدٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Legal Issue of Compensation for a Dog

[مَسْأَلَةٌ دِيَةُ الْكَلْبِ]

L38553

L38554–38556 Abu Muhammad said: Ahmad ibn ‘Umar reported to us: Abu Dharr al-Harawi reported to us: Ahmad ibn ‘Abdan, al-Hafiz al-Naysaburi, reported to us in his home in al-Ahwaz. Muhammad ibn Sahl al-Muqri reported to us: Muhammad ibn Isma’il al-Bukhari reported to us: Abu Nu’aym – who is al-Fadl ibn Dukayn – said to me: Qutaybah narrated to us: Hushaym reported from Ya’la ibn ’Ata’ from Isma’il – who is Ibn Jassas – that he heard ’Abdullah ibn ’Amr issue the ruling: “The compensation for a hunting dog is forty Dirhams.”

قَالَ أَبُو مُحَمَّد: نا أَحْمَدُ بْنُ عُمَرَ نا أَبُو ذَرٍّ الْهَرَوِيُّ نا أَحْمَدُ بْنُ عَبْدَانَ الْحَافِظُ النَّيْسَابُورِيُّ فِي دَارِهِ بِالْأَهْوَازِ نا مُحَمَّدُ بْنُ سَهْلٍ الْمُقْرِئُ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ الْبُخَارِيُّ نا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - قَالَ لِي قُتَيْبَةُ: نا هُشَيْمٌ عَنْ يَعْلَى بْنِ عَطَاءٍ عَنْ إِسْمَاعِيلَ - هُوَ ابْنُ جَسَّاسٍ - أَنَّهُ سَمِعَ عَبْدَ اللَّهِ بْنَ عَمْرٍو: قَضَى فِي كَلْبِ الصَّيْدِ أَرْبَعِينَ دِرْهَمًا.

L38557 From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Ya’la ibn Ata, from Ismail ibn Jassas, who said: I was with Abdullah ibn Amr when a man asked him, “What is the compensation for a hunting dog?” He replied: “Forty dirhams.” The man asked: “What is the compensation for a sheepdog?” He said: “A sheep from the flock.” He asked: “What is the compensation for a crop-guarding dog?” He answered: “A measure (farq) of the crop.” He inquired: “What is the compensation for a house dog?” He responded: “A measure (farq) of soil. It is an obligation upon the killer to pay it, and an obligation upon its owner to accept it, though this payment reduces the owed compensation. As for the dog that barks but does not guard crops or a house—if its owner demands compensation—then a measure of soil. By Allah, we indeed find this ruling in the Book of Allah, the Exalted.” Abu

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ يَعْلَى بْنِ عَطَاءٍ عَنْ إِسْمَاعِيلَ بْنِ جَسَّاسٍ قَالَ: كُنْت عِنْدَ عَبْدِ اللَّهِ بْنِ عَمْرٍو فَسَأَلَهُ رَجُلٌ مَا عَقْلُ كَلْبِ الصَّيْدِ؟ قَالَ: أَرْبَعُونَ دِرْهَمًا، قَالَ: فَمَا عَقْلُ كَلْبِ الْغَنَمِ؟ قَالَ شَاةٌ مِنْ الْغَنَمِ، قَالَ: فَمَا عَقْلُ كَلْبِ الزَّرْعِ؟ قَالَ: فَرَقٌ مِنْ الزَّرْعِ قَالَ: فَمَا عَقْلُ كَلْبِ الدَّارِ؟ قَالَ: فَرَقٌ مِنْ تُرَابٍ حَقٌّ عَلَى الْقَاتِلِ أَنْ يُؤَدِّيَهُ، وَحَقٌّ عَلَى صَاحِبِهِ أَنْ يَقْبَلَهُ، وَهُوَ يُنْقِصُ مِنْ الْأَجْرِ - وَفِي الْكَلْبِ الَّذِي يَنْبَحُ، وَلَا يَمْنَعُ زَرْعًا، وَلَا دَارًا - إِنْ طَلَبَهُ صَاحِبُهُ؟ فَفَرَقٌ مِنْ تُرَابٍ، وَاَللَّهِ

Muhammad remarked: This is the ruling of a companion—with no known opposition from other companions, may Allah be pleased with them, except regarding the hunting dog specifically—not other categories. As narrated to us from Uqbah ibn Amir, who said: During Uthman's caliphate, a man killed a hunting dog unparalleled among dogs, and its value was assessed at eight hundred dirhams. Uthman legally mandated him to pay that valuation.

إِنَّا لَنَجِدُ هَذَا فِي كِتَابِ اللَّهِ تَعَالَى؟ قَالَ أَبُو مُحَمَّد: فَهَذَا حُكْمُ صَاحِبٍ لَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُ - مُخَالِفٌ إلَّا فِي الصَّائِدِ خَاصَّةً لَا فِيمَا سِوَاهُ كَمَا رُوِّينَا عَنْ عُقْبَةَ بْنِ عَامِرٍ قَالَ: قَتَلَ رَجُلٌ فِي خِلَافَةِ عُثْمَانَ كَلْبًا لِصَيْدٍ لَا يُعْرَفُ مِثْلُهُ فِي الْكِلَابِ، فَقُوِّمَ بِثَمَانِمِائَةِ دِرْهَمٍ، فَأَلْزَمَهُ عُثْمَانُ تِلْكَ الْقِيمَةَ.

L38558 Abu Muhammad said: There remain the sheepdog, the farm dog, and the guard dog. We know of no opposition to any part of Abdullah ibn Amr ibn al-As's position, though they regard differing from a Companion—whose view is not known to have been contradicted by other Companions, especially in a matter such as this—as grave. Yet here they have contradicted Abdullah ibn Amr, as is evident, without any hesitation.

قَالَ أَبُو مُحَمَّد: وَبَقِيَ كَلْبُ الْغَنَمِ، وَكَلْبُ الزَّرْعِ، وَكَلْبُ الدَّارِ، لَا نَعْرِفُ مُخَالِفًا فِي شَيْءٍ مِنْهُ لِعَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ، وَهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ وَلَا سِيَّمَا مِثْلُ هَذَا، وَهُمْ قَدْ خَالَفُوا هَاهُنَا عَبْدَ اللَّهِ بْنَ عَمْرٍو كَمَا تَرَى بِلَا مَئُونَةٍ.

L38559 As for us, we accept no proof in the words of anyone apart from the Messenger of Allah (peace and blessings be upon him and his family). No compensation is due for killing a dog unless it is a dog of similar kind, as He the Exalted said: "The recompense for an evil is an evil like it" [42:40]—except if it is a black dog with two spots, in which case no compensation is due at all. Indeed, whoever kills it has done well.[4]

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -. وَلَيْسَ فِي الْكَلْبِ إلَّا كَلْبٌ مِثْلُهُ، قَالَ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] ، إلَّا أَنْ يَكُونَ أَسْوَدَ ذَا نُقْطَتَيْنِ فَلَا شَيْءَ فِيهِ أَصْلًا، وَقَدْ أَحْسَنَ مَنْ قَتَلَهُ.

L38560–38561 Similarly, if it is a dog that does not benefit crops, livestock, or hunting, there is nothing concerning it at all, because these two are wholly forbidden to be kept—and with Allah alone is success.

وَكَذَلِكَ إنْ كَانَ كَلْبًا لَا يُغْنِي زَرْعًا، وَلَا ضَرْعًا، وَلَا صَيْدًا، فَلَا شَيْءَ فِيهِ أَصْلًا، لِأَنَّ هَذَيْنِ يُنْهَى عَنْ اتِّخَاذِهِمَا جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38562 **The ruling on the mutual rescission of his error by a person of standing.**

[مَسْأَلَةٌ إقَالَةُ ذِي الْهَيْئَةِ عَثْرَتَهُ]

L38563 2106 - Issue: Should the slip of a person of good demeanor be pardoned? Ali said: Yūsuf ibn ʿAbdullāh al-Namarī narrated to us, Yūsuf ibn Aḥmad narrated to us, al-ʿUqaylī narrated to us, al-Ḥasan ibn ʿAlī narrated to us, Saʿīd ibn Abī Maryam narrated to us, al-ʿAṭṭāf narrated to us, ʿAbd al-Raḥmān ibn Muḥammad ibn Abī Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm narrated

٢١٠٦ - مَسْأَلَةٌ: إقَالَةُ ذِي الْهَيْئَةِ عَثْرَتَهُ؟ قَالَ عَلِيٌّ: نا يُوسُفُ بْنُ عَبْدِ اللَّهِ النَّمَرِيُّ نا يُوسُفُ بْنُ أَحْمَدَ نا الْعُقَيْلِيُّ نا الْحَسَنُ بْنُ عَلِيٍّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا الْعَطَّافُ ثني عَبْدُ

[4] **Qur'an references (L38559):** Qur'an 42:40 (Ash-Shuraa).

to us from his father, from ʿAmrah, from ʿĀ'ishah, who said: The Messenger of Allah (peace and blessings be upon him and his family) said, "Pardon the slips of those of good demeanor."

الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ عَمْرَةَ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ» .

L38564 Aḥmad ibn ʿUmar ibn Anas narrated to us: Aḥmad ibn ʿAlī al-Kisā'ī the Grammarian narrated to us: Aḥmad ibn Ibrāhīm ibn Muḥammad al-Sarī narrated to us: Ismāʿīl ibn Muḥammad ibn Qīrāṭ narrated to us: Sulaymān ibn ʿAbd al-Raḥmān narrated to us: ʿUthmān narrated: ʿAbd al-ʿAzīz ibn ʿAbd Allāh ibn ʿAbd Allāh ibn ʿUmar ibn al-Khaṭṭāb narrated from Abu Bakr ibn ʿAmr ibn Ḥazm from ʿAmrah from ʿĀ'ishah from the Messenger of Allāh—peace and blessings be upon him and his family—who said: "Excuse the stumbles of people of dignity."

نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا أَحْمَدُ بْنُ عَلِيٍّ الْكِسَائِيُّ النَّحْوِيُّ نا أَحْمَدُ بْنُ إِبْرَاهِيمَ بْنِ مُحَمَّدٍ السَّرِيُّ نا إِسْمَاعِيلُ بْنُ مُحَمَّدِ بْنِ قِيرَاطٍ نا سُلَيْمَانُ بْنُ عَبْدِ الرَّحْمَنِ نا عُثْمَانُ نا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ عَنْ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ عَنْ عَائِشَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ» .

L38565 Ali said: From Al-ʻUqaylī – "Nothing is authentically established regarding this matter; Al-ʻAṭṭāf is weak, and ʿAbd al-Raḥmān ibn Muḥammad is unknown and weak" – and likewise the other chain is also weak.

قَالَ عَلِيٌّ: عَنْ الْعُقَيْلِيِّ - لَا يَصِحُّ فِي هَذَا شَيْءٌ، وَالْعَطَّافُ ضَعِيفٌ، وَعَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدٍ مَجْهُولٌ ضَعِيفٌ - وَكَذَلِكَ الْإِسْنَادُ الْآخَرُ أَيْضًا ضَعِيفٌ.

L38566 Ali said: There is no nullification of a prescribed penalty nor does it permit qiṣāṣ. The Messenger of Allah (peace and blessings be upon him and his family) said: "The blood of believers is of equal worth," and Allah the Exalted said: "The believers are but brothers" (Quran 49:10). If they are brothers, then they are peers in all legal judgments.[5]

قَالَ عَلِيٌّ: وَلَيْسَ فِيهِ إسْقَاطُ حَدٍّ، وَلَا قِصَاصٍ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «الْمُؤْمِنُونَ تَتَكَافَأُ دِمَاؤُهُمْ» ، وَقَالَ اللَّهُ تَعَالَى {إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ} [الحجرات: ١٠] فَإِذَا كَانُوا إخْوَةً فَهُمْ نُظَرَاءُ فِي الْحُكْمِ كُلِّهِ.

L38567 The Messenger of Allah (peace be upon him) said: "They are just like the Children of Israel. When a nobleman among them stole, they would let him go, but when a weak person stole, they would apply the ḥadd to him. By Him in whose hand is my soul, if Fāṭimah bint Muḥammad were to steal, I would cut off her hand"—or as he (peace be upon him) said—as we have mentioned with its chain of transmission in earlier sections. Success is from Allah alone.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا هُمْ كَذَلِكَ بَنُو إسْرَائِيلَ كَانُوا إذَا سَرَقَ فِيهِمْ الشَّرِيفُ تَرَكُوهُ وَإِذَا سَرَقَ فِيهِمْ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَالَّذِي نَفْسِي بِيَدِهِ لَوْ سَرَقَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ لَقَطَعْتُ يَدَهَا» أَوْ كَمَا قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - مِمَّا ذَكَرْنَاهُ بِإِسْنَادِهِ فِيمَا خَلَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38568 Abū Muḥammad said: If this were sound—and it is not sound—then this would be interpreted according to its apparent meaning regarding a minor

قَالَ أَبُو مُحَمَّدٍ: فَلَوْ صَحَّ هَذَا - وَهُوَ لَا يَصِحُّ - لَكَانَ ذَلِكَ مَحْمُولًا عَلَى ظَاهِرِهِ فِي الْعَثْرَةِ تَكُونُ مِمَّا لَا يُوجِبُ حَدًّا وَلَا حُكْمًا فِي قَوَدٍ، أَوْ قِصَاصٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[5]**Qur'an references (L38566):** Qur'an 49:10 (Al-Hujurat).

lapse that does not necessitate a prescribed punishment (ḥadd) nor a legal ruling pertaining to qawd (retribution) or qiṣāṣ (retaliation in kind)—and with Allāh, the Exalted, lies all success.

[مَسْأَلَةٌ قَوْمٌ أَقَرَّ كُلُّ وَاحِدٍ مِنْهُمْ بِقَتْلِ قَتِيلٍ وَبَرَّأَ أَصْحَابَهُ]

Issue: A group where each individual confessed to killing a victim but absolved their companions.

L38569–38570

L38571 ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي رَجُلٍ اُتُّهِمَ بِقَتْلِهِ رَجُلَانِ أَخَوَانِ فَخَافَ أَبُوهُمَا أَنْ يُقْتَلَا، فَقَالَ أَبُوهُمَا: أَنَا قَتَلْته؟ فَقَالَ كُلُّ وَاحِدٍ مِنْ الْأَخَوَيْنِ: أَنَا قَتَلْتُهُ؟ وَبَرَّأَ بَعْضُهُمْ بَعْضًا؟ فَقَالَ الزُّهْرِيُّ فِي ذَلِكَ إلَى أَوْلِيَاءِ الْمَقْتُولِ فَيَحْلِفُونَ قَسَامَةَ الدَّمِ عَلَى أَحَدِهِمْ.

L38572 قَالَ أَبُو مُحَمَّدٍ: لَسْنَا نَقُولُ هَذَا، بَلْ نَقُولُ: إنَّ أَوْلِيَاءَ الْمَقْتُولِ إنْ صَدَّقُوهُمْ كُلَّهُمْ فَلَهُمْ الْقَوَدُ مِنْ جَمِيعِهِمْ، أَوْ مِمَّنْ شَاءُوا، وَلَهُمْ الدِّيَةُ عَلَى مَا قَدَّمْنَا أَوْ الْمُفَادَاةُ فَإِنْ كَذَّبُوا بَعْضَهُمْ وَصَدَّقُوا بَعْضَهُمْ فَلَهُمْ عَلَى مَنْ صَدَّقُوهُ الْقَوَدُ، أَوْ الدِّيَةُ، أَوْ الْمُفَادَاةُ، وَقَدْ بَرِئَ مَنْ كَذَّبُوهُ.

L38573 بُرْهَانُ ذَلِكَ: أَنَّهُمْ إذَا صَدَّقُوهُمْ كُلَّهُمْ فَقَدْ صَحَّ لَهُمْ حَقُّ الْقَوَدِ أَوْ الدِّيَةِ، بِإِقْرَارِ كُلِّ وَاحِدٍ مِنْهُمْ، وَكُلُّ حَقٍّ وَجَبَ فَلَا يَسْقُطُ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ، وَمَنْ أَقَرَّ بِحَقٍّ فَلَا يَجُوزُ تَحْلِيفُ الْمُقَرِّ لَهُ بِالْحَقِّ، إذْ إنَّمَا يَحْلِفُ الْمُدَّعَى عَلَيْهِ إذَا أَنْكَرَ لَا الْمُدَّعِي، فَلَا يَجُوزُ هَاهُنَا تَحْلِيفُ مَنْ صُدِّقَتْ دَعْوَاهُ.

L38574 وَأَمَّا إذَا كَذَّبُوا مِنْهُمْ بَعْضًا فَقَدْ بَرَّءُوا مَنْ أَكْذَبُوهُ وَسَقَطَ حُكْمُ الْإِقْرَارِ إذَا لَمْ يُصَدِّقْهُ الْمُقَرُّ لَهُ، كَسَائِرِ الْحُقُوقِ وَلَا فَرْقَ.

L38575 Similarly, if all [the others] reject their admissions, then those who have

admitted are absolved and their admission becomes invalid, since the one to whom the admission was made has waived the admitters' right in that matter. And success is from Allah, the Most High.

وَكَذَلِكَ لَوْ كَذَّبُوهُمْ كُلُّهُمْ فَقَدْ بَرِئَ الْمُقِرُّونَ وَبَطَلَ إِقْرَارُهُمْ، إِذْ قَدْ أَسْقَطَ الْمَقَرُّ لَهُمْ حَقَّهُمْ فِي ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38576 Ali said: The case of the confessor who states, "I alone killed so-and-so, and this person with me did not kill him," while the other denies the acquittal [the confessor] granted him yet admits to killing the slain individual—it is obligatory to hold each accountable for what they confessed to, as each is a complete confession. His absolution of the one he acquitted is invalid, for he is not a credible witness whose testimony would therefore be accepted. Even if he were a credible witness, his testimony could not be accepted here, as testimony is only admissible for affirming claims, not for negating them.

قَالَ عَلِيٌّ: وَقَوْلُ الْمُقِرِّ: أَنَا وَحْدِي قَتَلْت فُلَانًا وَلَمْ يَقْتُلْهُ هَذَا مَعِي، وَالْآخَرُ مُنْكِرٌ لِتَبْرِئَتِهِ إيَّاهُ، وَمُقِرٌّ بِقَتْلِ ذَلِكَ الْمَقْتُولِ، فَوَاجِبٌ أَنْ يَلْزَمَ كُلَّ وَاحِدٍ مِنْهُمَا مَا أَقَرَّ بِهِ عَلَى نَفْسِهِ، لِأَنَّهُ إقْرَارٌ تَامٌّ، وَتَكُونُ تَبْرِئَتُهُ لِمَنْ أَبْرَأَ بَاطِلًا، لِأَنَّهُ لَيْسَ عَدْلًا فَتُقْبَلُ شَهَادَتُهُ، وَحَتَّى لَوْ كَانَ عَدْلًا لَمَا جَازَ هَاهُنَا قَبُولُ شَهَادَتِهِ، لِأَنَّ الشَّهَادَةَ إنَّمَا تُقْبَلُ فِي الْإِيجَابِ لَا فِي النَّفْيِ.

L38577–38579 There is no disagreement between two people that if a man were to claim against Zaid regarding money or a right, and upright witnesses testified that nothing of his is held by him (Zaid), their testimony would be invalid and inadmissible, nor would it absolve the one testified for (the claimant) unless... they add to their testimony an affirmation, such as by saying: "This is because we affirm he has released him from the obligation, or that he has paid it to him," or something like this. And success is from Allah, the Most High.

وَلَا يَخْتَلِفُ اثْنَانِ فِي أَنَّ رَجُلًا لَوْ ادَّعَى عَلَى زَيْدٍ مَالًا أَوْ حَقًّا فَشَهِدَ لَهُ عُدُولٌ بِأَنَّهُ لَا شَيْءَ لَهُ عِنْدَهُ لَكَانَتْ شَهَادَتُهُ فَاسِدَةً لَا تُقْبَلُ، وَلَا تُبْرِئُ الْمَشْهُودَ لَهُ بِهَا إلَّا بِأَنْ يَزِيدُوا فِي شَهَادَتِهِمْ إيجَابًا، مِثْلَ أَنْ يَقُولُوا: وَذَلِكَ أَنَّنَا نَدْرِي أَنَّهُ أَبْرَأَهُ مِنْ الْحَقِّ، أَوْ قَدْ أَدَّاهُ إلَيْهِ أَوْ نَحْوَ هَذَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ إخْرَاجُ شَيْءٍ فِي طَرِيقِ الْمُسْلِمِينَ]

The issue of removing something from the public thoroughfare of Muslims.

L38580

٢١٠٨ - مَسْأَلَةٌ: الْخَشَبَةُ تَخْرُجُ مِنْ الْحَائِطِ - وَالْقَصَّارُ يَنْضَحُ - وَالْقَصَّابُ كَذَلِكَ - وَإِخْرَاجُ شَيْءٍ فِي طَرِيقِ الْمُسْلِمِينَ، وَالرَّحَى، وَالْخُفَّانِ، وَالنَّعْلَانِ فِي الْمَسْجِدِ، وَالْقَاعِدُ فِيهِ، وَالْقِنْدِيلُ، وَظِلَالُ السُّوقِ، وَمَنْ رَشَّ أَمَامَ بَابِهِ؟ قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا عَنْ إبْرَاهِيمَ النَّخَعِيِّ: إذَا أَخْرَجَ الرَّجُلُ الصَّلَايَةَ أَوْ الْخَشَبَةَ، فِي حَائِطِهِ ضَمِنَ.

L38581 Issue 2108: A wooden beam protruding from a wall, a dyer sprinkling water, a butcher doing likewise, extending something into the Muslims' pathway, a millstone, two leather socks and two shoes in the mosque, someone sitting there, a lantern, shaded structures in the market, and one who sprinkles before his door. Abū Muḥammad said: It has been narrated to us from Ibrāhīm al-Nakhaʿī: "If a man extends a prayer mat or wooden beam from his wall, he bears liability."

وَعَنْ وَكِيعٍ نا سُفْيَانُ عَنْ عَطَاءِ بْنِ السَّائِبِ عَنْ شُرَيْحٍ أَنَّهُ كَانَ يُضَمِّنُ بُورِيَّ السُّوقِ وَعُمُودَهُ.

L38582 And from Waki', from Sufyan, from 'Ata' ibn al-Sa'ib, from Shurayh, that he would hold liable for damage to the market's palm-leaf mats and its support beams.

وَعَنْ وَكِيعٍ نا سُفْيَانُ عَنْ جَابِرٍ عَنْ عَامِرٍ قَالَ: إِذَا نَضَحَ الْقَصَّارُ، أَوْ الْقَصَّابُ ضَمِنَ.

L38583 From Waki‘, reported to us from Sufyan, from Jabir, from Amir, who said: If the launderer or the butcher splashes, they are liable.

وَعَنْ الْحَسَنِ أَبِي مُسَافِرٍ قَالَ: إِنَّ كَنِيفًا وَقَعَ عَلَى صَبِيٍّ فَقَتَلَهُ أَوْ جَرَحَهُ؟ قَالَ شُرَيْحٌ: لَوْ أُتِيتُ بِهِ لَضَمَّنْتُهُ.

L38584 It is narrated from Al-Hasan Abu Musafir that he said: “A latrine fell on a boy, killing or injuring him.” Shurayh said: “If it were presented to me, I would impose liability for it.”

وَعَنْ مُحَمَّدٍ النُّفَيْلِيِّ: أَنَّ رَجُلًا أَخْرَجَ صَلَايَةً فِي حَائِطِهِ فَمَزَّقَتْ مَزَادَةً مِنْ أُدْمٍ؟ فَضَمَّنَهُ شُرَيْحٌ.

L38585 From Muhammad al-Nufayli: A man removed a prayer niche from his wall, and it tore a tanned leather waterskin. Shuraih ruled him liable to compensate.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: مَنْ أَخْرَجَ رَحًى مِنْ رُكْنِ دَارِهِ فَعَقَرَتْ رَجُلًا ضَمِنَ.

L38586 From the narration of Al-Ḥajjāj ibn Arṭāʾah, from Al-Ḥakam ibn ʿUtaybah, from ʿAlī ibn Abī Ṭālib, who said: “Whoever removes a millstone from the corner of their house, and it injures a person, they are liable.”

وَعَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ عَنْ قَتَادَةَ عَنْ شُرَيْحٍ مِثْلَهُ.

L38587 And from Al-Ḥajjāj ibn Arṭāṭah, from Qatādah, from Shurayḥ: the like of it (to the foregoing).

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ مُجَاهِدٍ عَنْ أَبِيهِ قَالَ: قَالَ عَلِيٌّ: مَنْ حَفَرَ بِئْرًا، أَوْ فَرَضَ غَوْرًا ضَمِنَ.

L38588 Through the chain of ʿAbd al-Razzāq, from Ibn Mujāhid, from his father, who said: ʿAlī said, “Whoever digs a well or establishes a deep pit incurs liability.”

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَطَاءِ بْنِ السَّائِبِ قَالَ: ضَمَّنَ شُرَيْحٌ الْبَادِيَ، وَظِلَالَ أَهْلِ السُّوقِ، إذَا لَمْ يَكُنْ فِي مِلْكِهِمْ، وَضَمَّنَ أَهْلَ الْعَمُودِ.

L38589 From Abd al-Razzaq, from Sufyan al-Thawri, from Ata ibn al-Sa’ib, who said: Shuraih held the Bedouin liable, held the market people liable for their awnings when they were not within their ownership, and held the people of the columns liable.

وَعَنْ الْحَكَمِ بْنِ عُتَيْبَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ عَنْ رَجُلٍ تَوَضَّأَ وَصَبَّ مَاءَهُ فِي الطَّرِيقِ؟ قَالَ حَمَّادٌ: يُضَمَّنُ - وَقَالَ الْحَكَمُ: لَا يُضَمَّنُ.

L38590 Narrated through Al-Hakam ibn ‘Utaybah, via Hammad ibn Abi Sulayman, from a man who performed ablution and poured his water onto the road. Hammad said: “He is liable”—and Al-Hakam said: “He is not liable.”

وَعَنْ شُعْبَةَ عَنْ الْحَكَمِ، وَحَمَّادٍ فِي الرَّجُلِ السُّوقِيِّ يَنْضَحُ بَيْنَ يَدَيْ بَابِهِ مَاءً فَيَمُرُّ بِهِ إنْسَانٌ فَيُزَلَقُ؟ قَالَ حَمَّادٌ: يَضْمَنُ - وَقَالَ الْحَكَمُ: لَا يَضْمَنُ.

L38591–38592 From Shu’bah, from al-Ḥakam and Ḥammād regarding a man in the marketplace who sprinkles water in front of his door, whereupon a passerby slips. [What is the ruling?] Ḥammād said: “He is liable” - while al-Ḥakam said: “He is not liable.”

قَالَ أَبُو مُحَمَّدٍ: فَهَذَا عَنْ عَلِيٍّ، وَشُرَيْحٍ، وَالنَّخَعِيِّ، وَحَمَّادٍ.

L38593 Abu Muhammad said: Thus, this is transmitted from ʿAlī, Shurayḥ, al-Nakhaʿī, and Ḥammād.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: مَنْ أَحْدَثَ فِي الطَّرِيقِ حَدَثًا مِنْ نَضْحٍ، أَوْ مَاءٍ، أَوْ حَجَرٍ، أَوْ شَيْئًا أَخْرَجَهُ مِنْ دَارِهِ فِي الطَّرِيقِ مِنْ ظُلَّةٍ، أَوْ جَنَاحٍ: فَهُوَ ضَامِنٌ لِمَا عَطِبَ فِيهِ.

L38594 Al-Ḥasan ibn Ḥayy said: Whoever causes an occurrence on the road - whether through sprinkling, water, a stone, or anything they remove from their home onto the road from an awning or projection - is liable for any damage resulting from it.

وَقَالَ الْأَوْزَاعِيِّ: مَنْ أَخْرَجَ كَنِيفًا أَوْ جِذْعًا إِلَى الطَّرِيقِ فَأَعْنَتَ أَحَدًا ضَمِنَ ذَلِكَ.

L38595 Al-Awzaʿī said: Whoever places a latrine or a palm trunk onto the road and thereby causes harm to someone is liable for it.

وَقَالَ اللَّيْثُ: إِنْ أَخْرَجَ عُودًا، أَوْ حَجَرًا، أَوْ خَشَبَةً، مِنْ جِدَارِهِ، فَمَرَّ بِهِ إِنْسَانٌ فَجَرَحَهُ، أَوْ قَتَلَهُ، فَإِنْ كَانَ لَا يُعْرَفُ مِنْ صَنِيعِ النَّاسِ ضَمِنَ بِهِ.

L38596 Al-Layth said: If someone removes a stick, a stone, or a piece of wood from his wall, and a person passes by it and it injures or kills them, then if it is not attributable to human action, he is liable for it.

وَقَالَ الشَّافِعِيُّ: وَاضِعُ الْحَجَرِ فِي أَرْضٍ لَا يَمْلِكُهَا ضَامِنٌ.

L38597 Al-Shāfiʿī said: Anyone who places a boundary marker on land they do not own is financially liable.

وَأَمَّا أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، فَلَهُمْ هَاهُنَا أَقْوَالٌ طَرِيفَةٌ نَذْكُرُ مِنْهَا مَا يَسَّرَ اللَّهُ تَعَالَى: فَمِنْهَا - أَنَّهُ قَالَ: مَنْ قَعَدَ فِي مَسْجِدٍ فِي غَيْرِ صَلَاةٍ فَعَطِبَ بِهِ إِنْسَانٌ ضَمِنَ، فَإِنْ كَانَ فِي صَلَاةٍ لَمْ يَضْمَنْ، وَإِنْ كَانَ فِي غَيْرِ صَلَاةٍ ضَمِنَ.

L38598 As for Abū Ḥanīfah and his companions, they hold distinctive rulings here, from which we mention what Allah, the Exalted, has graciously enabled. Among these is his statement: If someone sits in a mosque without praying and someone is harmed because of it, he is financially responsible. If he is praying, he incurs no liability, but if he is not praying, he is obligated to compensate.

وَقَالَ أَبُو يُوسُفَ، وَمُحَمَّدٌ: لَا يَضْمَنُ فِي كِلَا الْوَجْهَيْنِ.

L38599 Abū Yūsuf and Muḥammad said: There is no financial liability in either opinion.

وَقَالُوا كُلُّهُمْ: مَنْ أَخْرَجَ مِنْ دَارِهِ مِيزَابًا فَسَقَطَ عَلَى إِنْسَانٍ فَقَتَلَهُ، فَإِنْ أَصَابَهُ مَا كَانَ خَارِجًا مِنْ الْحَائِطِ ضَمِنَ، وَإِنْ أَصَابَهُ مَا كَانَ فِي الْحَائِطِ فَلَا شَيْءَ عَلَيْهِ، فَإِنْ جَهِلَ مَا أَصَابَهُ فَالْقِيَاسُ أَنْ لَا يَضْمَنَ - وَلَكِنْ قَالُوا: نَدَعُ الْقِيَاسَ وَنَسْتَحْسِنُ فَنُضَمِّنُهُ.

L38600 They all said: Whoever projects a gutter from his house, and it falls on a person and kills him—if that which struck him was projecting beyond the wall, he is liable. But if that which struck him was within the wall, there is no liability. If he does not know which part struck him, the analogy dictates no liability. However, they said: “We set aside analogy and invoke juristic preference, thus imposing liability.”

وَإِنْ وَضَعَ فِي الطَّرِيقِ حَجَرًا ضَمِنَ مَا أَصَابَهُ.

L38601 And if he places a stone on the road, he is liable for the harm it causes.

قَالُوا: فَإِنْ اسْتَأْجَرَ رَجُلًا عَلَى شَيْءٍ يُحْدِثُهُ فِي فِنَائِهِ، فَعَطِبَ بِهِ إِنْسَانٌ ضَمِنَ، الْمُسْتَأْجِرُ - فَلَوْ اسْتَأْجَرَهُ لِيَحْفُرَ فِي غَيْرِ فِنَائِهِ، فَإِنَّ الضَّامِنَ لِمَا يُتْلَفُ بِذَلِكَ الْأَجِيرُ.

L38602 They said: If a man hires someone to perform a task he commissions in his courtyard, and a person is harmed thereby, the hirer is liable. But if he hires him to dig outside his courtyard, then the worker is liable for what is damaged through that digging.

L38603 Abu Muhammad said: As for the position of our companions, none is held liable for any of that according to their judgment. When they disagreed as we have mentioned, it became incumbent upon us to investigate this matter, so that we may discern the truth therein and thereby follow it.

قَالَ أَبُو مُحَمَّد: أَمَّا عِنْدَ أَصْحَابِنَا فَلَا يَضْمَنُ عِنْدَهُمْ أَحَدٌ فِي شَيْءٍ مِنْ ذَلِكَ، فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ عَلَيْنَا أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتْبَعَهُ.

L38604–38606 We examined the statements of those who upheld compensation and found them mentioning the following narration: “What has been transmitted to us through the chain of ʿAbd al-Razzāq...” From Ibn ʻUyaynah, from ʻAmr, from Al-Ḥasan, who said: The Messenger of Allah (peace be upon him) said, “Whoever exceeds a prescribed limit and thereby harms a person is liable.”

فَنَظَرْنَا فِي قَوْلِ مَنْ قَالَ بِالتَّضْمِينِ فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ عُيَيْنَةَ عَنْ عَمْرٍو عَنْ الْحَسَنِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ أَخْرَجَ مِنْ حَدِّهِ شَيْئًا فَأَصَابَ إنْسَانًا فَهُوَ ضَامِنٌ» .

L38607 Ahmad ibn Muhammad al-Talamanki narrated to us: Ibn Mufarrij narrated to us: Muhammad ibn Ayyub al-Raqqi narrated to us: Ahmad ibn Amr ibn Abd al-Khaliq al-Bazzar narrated to us: Amr ibn Malik al-Sa’igh narrated from al-Hasan from Abu Bakrah from the Prophet—peace and blessings be upon him—who said: “Whoever exceeds the limit in something and thereby harms a person is liable.”

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيّ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا عَمْرُو بْنُ مَالِكٍ الصَّائِغُ عَنْ الْحَسَنِ عَنْ أَبِي بَكْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ أَخْرَجَ عَنْ حَدِّهِ شَيْئًا فَأَصَابَ بِهِ إنْسَانًا فَهُوَ ضَامِنٌ» .

L38608 This has been reported from Ali, and no opposing Companion—may Allah be pleased with them—is known.

وَقَدْ رُوِيَ ذَلِكَ عَنْ عَلِيٍّ، وَلَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L38609 Abu Muhammad said: We know nothing for them besides this, and all of this amounts to nothing. As for the mentioned narration, it is not valid because it is a mursal narration from Al-Hasan, and a mursal narration cannot be used as evidence. No one transmitted it with a complete chain except Hammad ibn Malik, who is not strong, according to Al-Bazzar and others. Thus, reliance upon it is invalidated.

قَالَ أَبُو مُحَمَّد: مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ هَذَا، وَكُلُّ هَذَا لَا شَيْءَ: أَمَّا الْخَبَرُ الْمَذْكُورُ فَلَا يَصِحُّ، لِأَنَّهُ مُرْسَلٌ عَنْ الْحَسَنِ، وَالْمُرْسَلُ لَا حُجَّةَ فِيهِ، وَلَمْ يُسْنِدْهُ أَحَدٌ إلَّا حَمَّادُ بْنُ مَالِكٍ، وَلَيْسَ بِالْقَوِيِّ، قَالَهُ الْبَزَّارُ وَغَيْرُهُ - فَسَقَطَ التَّعَلُّقُ بِهِ.

L38610 As for the narration attributed to ʿAlī, it is invalid because it is transmitted through al-Ḥajjāj ibn Arṭāʾa and ʿAbd al-Wahhāb ibn Mujāhid (both of whom are extremely weak), then from al-Ḥakam and Mujāhid (neither of whom met ʿAlī ibn Abī Ṭālib). Thus the report is wholly invalidated, except narrations from Ibrāhīm, Shurayḥ, and Ḥammād. A statement attributed to al-Shāfiʿī is unauthentic. It has been claimed to be authentically reported from al-Ḥakam regarding some aspects of this matter that he incurs no liability.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فَبَاطِلَةٌ، لِأَنَّهَا عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ، وَعَبْدِ الْوَهَّابِ بْنِ مُجَاهِدٍ - وَكِلَاهُمَا فِي غَايَةِ السُّقُوطِ - ثُمَّ عَنْ الْحَكَمِ، وَمُجَاهِدٍ - وَكِلَاهُمَا لَمْ يُدْرِكْ عَلِيَّ بْنَ أَبِي طَالِبٍ - فَسَقَطَ الْخَبَرُ جُمْلَةً، إلَّا عَنْ إبْرَاهِيمَ، وَشُرَيْحٍ، وَحَمَّادٍ، وَقَوْلٌ عَنْ الشَّافِعِيِّ لَا يَصِحُّ - وَقَدْ صَحَّ عَنْ الْحَكَمِ فِي بَعْضِ ذَلِكَ أَنَّهُ لَا يَضْمَنُ.

L38611 Ali said: Thus, there remains no argument whatsoever for those who impose

liability—since it has been established that wealth is inviolable, it is impermissible to impose a fine on anyone unless mandated by a text or scholarly consensus (ijmaʿ). Therefore, no liability shall apply in any such matters—and success is from Allah, the Exalted.

قَالَ عَلِيٌّ: فَلَمْ يَبْقَ لِلْمُضَمِّنِينَ حُجَّةٌ أَصْلًا - وَقَدْ صَحَّ أَنَّ الْأَمْوَالَ مُحَرَّمَةٌ، فَلَا يَحِلُّ إِلْزَامُ أَحَدٍ غَرَامَةً لَمْ يُوجِبْهَا نَصٌّ، أَوْ إِجْمَاعٌ، فَوَجَبَ أَنْ لَا ضَمَانَ فِي شَيْءٍ مِنْ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue: If a wall collapses and causes damage to a person or property...

[مَسْأَلَةٌ الْحَائِطُ يَقَعُ فَيُتْلِفُ نَفْسًا أَوْ مَالًا]

L38613 Legal Case 2109: If a wall collapses and causes loss of life or property, what is the ruling? Ali said: It was narrated to us via ʿAbd al-Razzāq from Sufyān from Jābir al-Juʿfī from al-Shaʿbī from Shurayḥ regarding the wall if it is leaning. He said: If they testify regarding it [the wall], he is liable.

٢١٠٩ - مَسْأَلَةٌ: الْحَائِطُ يَقَعُ فَيُتْلِفُ نَفْسًا أَوْ مَالًا؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ عَنْ جَابِرٍ الْجُعْفِيِّ عَنِ الشَّعْبِيِّ عَنْ شُرَيْحٍ فِي الْحَائِطِ إِذَا كَانَ مَائِلًا، قَالَ: إِنْ شَهِدُوا عَلَيْهِ ضَمِنَ.

L38614 From Abd al-Razzaq, from Ma’mar, from Qatadah regarding a leaning wall: If witnesses testify against its owner, and it collapses on a person and kills him, then he is liable.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ فِي الْجِدَارِ إِذَا كَانَ مَائِلًا إِذَا شَهِدُوا عَلَى صَاحِبِهِ فَوَقَعَ عَلَى إِنْسَانٍ فَقَتَلَهُ، فَإِنَّهُ يَضْمَنُ.

L38615 And from Ibrāhīm al-Nakhāʿī comes an opinion similar to that of Shurayḥ regarding the leaning wall.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ مِثْلُ قَوْلِ شُرَيْحٍ فِي الْجِدَارِ الْمَائِلِ.

L38616–38618 And others said other than this, as narrated to us through Ibn Waḍḍāḥ’s chain: from Sahnun, from Ibn Wahb. Yunus—that is, Ibn Yazid—narrated to me from Ibn Shihab, who said regarding a man whose neighbor’s wall tilted or cracked: He said to him, “Demolish this wall of yours, for we fear it!” But the man refused. Then the wall collapsed and killed a slave belonging to the one who had warned him, or a free member of his household. He said, “We deem no liability upon him, and he was negligent and committed a wrongful act.”

وَقَالَ آخَرُونَ غَيْرَ هَذَا: كَمَا رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنِ ابْنِ شِهَابٍ أَنَّهُ قَالَ فِي رَجُلٍ مَالَ جِدَارٌ لِجَارِهِ، أَوْ انْصَدَعَ، فَقَالَ لَهُ: اكْسِرْ جِدَارَكَ هَذَا فَإِنَّا نَخَافُهُ؟ فَأَبَى عَلَيْهِ، ثُمَّ إِنَّ الْجِدَارَ سَقَطَ فَقَتَلَ عَبْدَ الَّذِي نَهَاهُ، أَوْ حُرًّا مِنْ أَهْلِهِ؟ قَالَ: لَا نَرَى عَلَيْهِ شَيْئًا، وَقَدْ فَرَّطَ وَأَسَاءَ.

L38619 As for the later jurists, Ibn Abī Laylā stated: If the owner of the wall knew of its leaning and weakness and neglected it, he bears liability. If he did not know, he did not bear liability. Abū Thawr also holds this opinion.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ ابْنَ أَبِي لَيْلَى قَالَ: إِنْ عَلِمَ صَاحِبُ الْجِدَارِ بِمَيْلِهِ وَضَعْفِهِ فَتَرَكَهُ فَهُوَ ضَامِنٌ، وَإِنْ لَمْ يَعْلَمْ لَمْ يَضْمَنْ - وَبِهِ يَقُولُ أَبُو ثَوْرٍ.

L38620 Sufyan al-Thawri said: If they do not call witnesses against him, he is not

held responsible. Even if it is properly aligned - and it is split - he cannot be compelled to demolish it.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إِنْ لَمْ يُشْهِدُوا عَلَيْهِ لَمْ يَضْمَنْ، وَإِنْ كَانَ مُعْتَدِلًا - وَهُوَ مَشْقُوقٌ - لَمْ يُجْبَرْ عَلَى نَقْضِهِ.

L38621 Ishaq ibn Rahwayh said: He is liable for any damage caused by his wall, whether he had witnesses attest to it or not.

وَقَالَ إِسْحَاقُ بْنُ رَاهْوَيْهِ: يَضْمَنُ مَا أَصَابَ جِدَارُهُ - أَشْهَدَ عَلَيْهِ أَوْ لَمْ يُشْهِدْ.

L38622 Abu Hanifah, Malik, their companions, and al-Ḥasan ibn Ḥayyin said: If he testifies against him in this matter, he is liable; if he does not testify, he incurs no liability.

وَقَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَأَصْحَابُهُمَا، وَالْحَسَنُ بْنُ حَيٍّ: إِنْ أَشْهَدَ عَلَيْهِ بِهَذَا ضَمِنَ، وَإِنْ لَمْ يُشْهِدْ عَلَيْهِ لَمْ يَضْمَنْ.

L38623 Al-Shāfiʿī, Abū Sulaymān, and their adherents said: There is no financial responsibility incumbent upon him—whether he demands a witness [to testify] against him or not.

وَقَالَ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: لَا ضَمَانَ عَلَيْهِ - أَشْهَدَ عَلَيْهِ أَوْ لَمْ يُشْهِدْ عَلَيْهِ.

L38624 Ali said: When they differed as we mentioned, it became imperative to examine this matter so the truth might become evident from it, enabling us to follow it—by the help of Allah, the Exalted. We then considered those who distinguished between the ruling of requiring attestation against him and the ruling of not requiring attestation. We found no basis for this distinction in the Quran, an authentic or weak Sunnah, consensus, a Companion's opinion, analogy, or rational consideration—except that they said: "It has been reported from a group of the Successors." This, however, holds no weight, for we have presented instances where these Successors contradicted groups of the Companions—may Allah be pleased with them—among whom no widespread opposition to them is recognized. How then can the disagreement of a few Successors merit consideration? Earlier, we cited Al-Zuhri's statement that there is no liability upon a person—even though these people, by their own assertion, are proponents of analogy? They do not dispute that if someone places an animal on his property and it escapes, causing death without his direct action, there is no liability on him—whether he attested or not. What then distinguishes this from a wall collapsing without his action? Thus, this opinion is nullified, its corruption becomes evident, and success is granted by Allah, the Exalted.

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الْحَقُّ مِنْ ذَلِكَ فَنَتْبَعَهُ - بِعَوْنِ اللَّهِ تَعَالَى - فَنَظَرْنَا فِيمَنْ فَرَّقَ بَيْنَ حُكْمِ الْإِشْهَادِ عَلَيْهِ وَحُكْمِ تَرْكِ الْإِشْهَادِ عَلَيْهِ، فَلَمْ نَجِدْ لَهُمَا مُتَعَلَّقًا لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ وَلَا سَقِيمَةٍ، وَلَا إِجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا نَظَرٍ إِلَّا أَنَّهُمْ قَالُوا: قَدْ رُوِيَ عَنْ جَمَاعَةٍ مِنْ التَّابِعِينَ - وَهَذَا لَيْسَ بِشَيْءٍ، لِأَنَّنَا قَدْ أَوْرَدْنَا مِمَّا خَالَفُوا فِيهِ الطَّوَائِفَ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ كَثِيرًا جِدًّا، فَكَيْفَ مَا اخْتَلَفَ فِيهِ نَفَرٌ مِنْ التَّابِعِينَ؟ وَقَدْ أَوْرَدْنَا آنِفًا قَوْلَ الزُّهْرِيِّ: أَنَّهُ لَا ضَمَانَ عَلَيْهِ - مَعَ أَنَّ الْقَوْمَ بِزَعْمِهِمْ أَصْحَابُ قِيَاسٍ؟ وَلَا يَخْتَلِفُونَ فِيمَنْ وَضَعَ دَابَّةً فِي مِلْكِهِ فَخَرَجَتْ فَقَتَلَتْ مِنْ غَيْرِ فِعْلِهِ أَنَّهُ لَا ضَمَانَ عَلَيْهِ - أَشْهَدَ أَوْ لَمْ يُشْهِدْ عَلَيْهِ - فَمَا الْفَرْقُ بَيْنَ هَذَا وَبَيْنَ الْجِدَارِ يَنْهَدِمُ مِنْ غَيْرِ فِعْلِهِ؟ فَبَطَلَ هَذَا الْقَوْلُ وَظَهَرَ فَسَادُهُ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38625–38626 There remains only the opinion of those who imposed liability for what the wall caused—whether testimony was presented against him or not—or the

opinion of those who did not impose liability for what it caused—whether testimony was presented against him or not—since it has been definitively established that distinguishing between cases with testimony and those without testimony is entirely devoid of any meaning whatsoever.

وَلَمْ يَبْقَ إِلَّا قَوْلُ مَنْ ضَمَّنَ مَا أَصَابَ الْجِدَارُ - أَشْهَدَ عَلَيْهِ أَوْ لَمْ يُشْهِدْ عَلَيْهِ - أَوْ قَوْلُ مَنْ لَمْ يُضَمِّنْهُ مَا أَصَابَ - أَشْهَدَ عَلَيْهِ أَوْ لَمْ يُشْهِدْ - إِذْ قَدْ صَحَّ أَنَّ التَّفْرِيقَ بَيْنَ الْإِشْهَادِ وَغَيْرِ الْإِشْهَادِ: لَا مَعْنَى لَهُ أَلْبَتَّةَ.

L38627 We examined this matter and found that the owner of the leaning wall is not termed a “killer” in the Arabic language for one killed by the wall. He might be in the farthest east while the wall is in the farthest west. Since he is not called an intentional killer nor an unintentional killer, there is no blood money, no expiation, and no liability for property destroyed—for property is inviolable. It is impermissible to impose a fine on anyone unless required by an explicit text or consensus. Success is from Allah, the Most High.

فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَا صَاحِبَ الْجِدَارِ الْمَائِلِ لَا يُسَمَّى " قَاتِلًا " لِمَنْ قَتَلَهُ الْجِدَارُ فِي لُغَةِ الْعَرَبِ؟ وَقَدْ يَكُونُ غَائِبًا بِأَقْصَى الْمَشْرِقِ وَالْحَائِطُ بِأَقْصَى الْمَغْرِبِ، فَإِذْ لَا يُسَمَّى قَاتِلَ عَمْدٍ، وَلَا قَاتِلَ خَطَأٍ فَلَا دِيَةَ فِي ذَلِكَ، وَلَا كَفَّارَةَ، وَلَا ضَمَانَ لِمَا تَلِفَ مِنْ مَالٍ، إِذْ الْأَمْوَالُ مُحَرَّمَةٌ، وَلَا يَجُوزُ الْحُكْمُ بِغَرَامَةٍ عَلَى أَحَدٍ لَمْ يُوجِبْهَا عَلَيْهِ نَصٌّ وَلَا إِجْمَاعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْجَرَّةُ تُوضَعُ إِلَى بَابٍ أَوْ إِنْسَانٌ يَسْتَنِدُ إِلَى بَابٍ فَيَفْتَحُ الْبَابَ فَاتِحٌ فَيَقَعُ الْإِنْسَانُ فَيَمُوتُ]

L38628 **Jurisprudential Issue: If a jar is placed near a door and a person opens the door, causing someone to fall and die; or if a person leans against a door and someone opens it, causing that person to fall and die.**

٢١١٠ - مَسْأَلَةٌ: الْجَرَّةُ تُوضَعُ إِلَى بَابٍ، أَوْ إِنْسَانٍ يَسْتَنِدُ إِلَى بَابٍ، فَيَفْتَحُ الْبَابَ فَاتِحٌ فَيُفْسِدُ الْمَتَاعَ، أَوْ يَقَعُ الْإِنْسَانُ فَيَمُوتُ؟ قَالَ عَلِيٌّ: قَالَ قَوْمٌ بِالتَّضْمِينِ فِي هَذَا، وَأَسْقَطَ قَوْمٌ فِيهِ الضَّمَانَ، وَالظَّاهِرُ عِنْدَنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - أَنَّهُ ضَامِنٌ لِلْمَتَاعِ، وَالدِّيَةُ عَلَى عَاقِلَتِهِ، وَالْكَفَّارَةُ عَلَيْهِ، لِأَنَّهُ مُبَاشِرٌ لِإِسْقَاطِ الْمَتَاعِ، وَإِسْقَاطِ الْمُسْنَدِ قَاصِدًا إِلَى ذَلِكَ - وَإِنْ لَمْ يَعْلَمْ - بِخِلَافِ مَا ذَكَرْنَا قَبْلُ مِمَّا لَمْ يُبَاشِرْ الْإِتْلَافَ فِيهِ، وَلَوْ أَنَّهُ فَعَلَ هَذَا عَمْدًا لَكَانَ عَلَيْهِ الْقَوَدُ، وَهَذَا وَالَّذِي يُزْحِمُ دَابَّتَهُ فِي الطَّرِيقِ فَيَدْفَعُهَا عَنْ طَرِيقِهِ فَتَدُوسُ إِنْسَانًا، أَوْ تُفْسِدُ مَتَاعًا، فَإِنَّهُ يَضْمَنُ، لِأَنَّهُ مُبَاشِرٌ لِلْإِفْسَادِ، وَلَا نُبَالِي بِتَعَدِّي مُسْنِدِ الْجَرَّةِ، وَالْمُتَّكِئِ إِلَى الْبَابِ لَوْ كَانَا مُتَعَدِّيَيْنِ فَكَيْفَ وَلَا عُدْوَانَ فِي هَذَا.

L38629 2110 - Issue: If a jar is placed near a door, or a person leans against a door, and someone opens the door, causing the property to fall or the person to fall and die? ʿAlī said: Some scholars upheld liability in this case, while others nullified it. The apparent ruling according to us—and success comes only from Allah, the Exalted—is that the opener is liable for the property, the blood money (diyah) falls upon his agnatic relatives, and the expiation (kaffarah) is incumbent upon him, because he directly caused the property’s fall and the collapse of the one leaning [against the door], intending the act itself—even if unaware—unlike the previous cases we mentioned where there was no direct causation of harm. Had he done this intentionally, retaliation (qisas) would apply. This is analogous to one who forces his mount into a crowded path, pushing it aside, causing it to trample a person or damage property—he is liable, as he directly caused the harm. We disregard any transgression by the one who leaned the jar or the one who reclined against

the door, even if they were transgressors—how much more so when there is no transgression in this case.

L38630 If a person were to sleep at night in a pathway and someone were to tread on him, killing him, then the treader is undoubtedly an accidental killer.

L38631 Similarly, if someone enters a person's home to steal, and the homeowner tramples him and kills him, he is the direct perpetrator of the killing, thus subject to qisas in cases of intentional killing, because he did not kill him while [the thief] was fighting him. Blood money applies in such a case, and expiation is required of the agnatic kin in cases of unintentional killing. And with Allah alone is success, the Most High.

L38632–38633 A legal case wherein a mentally incompetent person was provoked to anger by a cause that warrants provocation, then threw stones and killed either the one who provoked him or another person.

L38634 Issues from this chapter: One issue. Abu Muhammad said: If someone provokes a foolish person with something that would incite anger, and he then hurls stones that kill the one who provoked him or another person, or if someone gives a foolish person a sword and he kills people with it, there is no liability in any of these cases, because he did not directly commit any crime, nor is he called a killer in linguistic terms.

L38635 If he were to command a fool to kill a specific individual and the fool kills him, then if the fool acted in obedience to him and this obedience was acknowledged, the one who ordered is liable and subject to retaliation (qisas). But if the fool did not act in obedience to him, there is no liability, because the act did not occur due to his command or his own action.

L38636 If he threw a stone that struck another stone, dislodging it, and this dislodged stone tumbled down, causing death and damage, there is no liability for that, because only the dislodging of the stone resulted from his throw. He is liable to restore it only if it had been positioned for a specific purpose. A person is liable solely for what results directly from his action, and not for what results from the consequences of his action.

وَلَوْ أَنَّ امْرَأً رَقَدَ لَيْلًا فِي طَرِيقٍ فَدَاسَهُ إِنْسَانٌ فَقَتَلَهُ فَإِنَّهُ قَاتِلُ خَطَأٍ بِلَا شَكٍّ.

وَكَذَلِكَ لَوْ دَخَلَ دَارَ إِنْسَانٍ لِيَسْرِقَ فَدَاسَهُ صَاحِبُ الْمَنْزِلِ فَقَتَلَهُ فَهُوَ مُبَاشِرٌ لِقَتْلِهِ، فَعَلَيْهِ الْقَوَدُ فِي الْعَمْدِ، لِأَنَّهُ لَمْ يَقْتُلْهُ مُحَارِبًا لَهُ، وَالدِّيَةُ فِي ذَلِكَ، وَالْكَفَّارَةُ عَلَى الْعَاقِلَةِ فِي غَيْرِ الْعَمْدِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَغْضَبَ أَحْمَقَ بِمَا يُغْضَبُ مِنْهُ فَقَذَفَ بِالْحِجَارَةِ فَقَتَلَ الْمُغْضِبَ لَهُ أَوْ غَيْرَهُ]

مَسَائِلُ مِنْ هَذَا الْبَابِ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد: مَنْ أَغْضَبَ أَحْمَقَ بِمَا يُغْضَبُ مِنْهُ فَقَذَفَ بِالْحِجَارَةِ فَقَتَلَ الْمُغْضِبَ لَهُ أَوْ غَيْرَهُ، أَوْ أَعْطَى أَحْمَقَ سَيْفًا فَقَتَلَ بِهِ قَوْمًا، فَلَا شَيْءَ فِي كُلِّ ذَلِكَ، لِأَنَّهُ لَمْ يُبَاشِرْ شَيْئًا مِنْ الْجِنَايَةِ، وَلَا يُسَمَّى فِي اللُّغَةِ قَاتِلًا.

فَلَوْ أَنَّهُ أَمَرَ الْأَحْمَقَ بِقَتْلِ إِنْسَانٍ بِعَيْنِهِ فَقَتَلَهُ، فَإِنْ كَانَ الْأَحْمَقُ فَعَلَ ذَلِكَ طَاعَةً لَهُ، وَكَانَ ذَلِكَ مَعْرُوفًا فَهُوَ آمِرٌ، فَالْآمِرُ عَلَيْهِ الْقَوَدُ، وَإِنْ كَانَ لَمْ يَفْعَلْ طَائِعًا لَهُ فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَكُنْ، لَا عَنْ أَمْرِهِ وَلَا عَنْ فِعْلِهِ.

فَلَوْ رَمَى حَجَرًا فَأَصَابَ ذَلِكَ الْحَجَرُ حَجَرًا فَقَلَعَهُ، فَتَدَهْدَهَ ذَلِكَ الْحَجَرُ فَقَتَلَ وَأَفْسَدَ: فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ إِنَّمَا تَوَلَّدَ عَنْ رَمْيِهِ انْقِلَاعُ الْحَجَرِ فَقَطْ، فَهُوَ ضَامِنٌ لِرَدِّهِ إِنْ كَانَ

مَوْضُوعًا لِمَعْنًى مَا فَقَطْ، وَإِنَّمَا يَضْمَنُ الْمَرْءُ مَا تَوَلَّدَ عَنْ فِعْلِهِ، وَلَا يَضْمَنُ مَا تَوَلَّدَ عَمَّا تَوَلَّدَ عَنْ فِعْلِهِ.

L38637 There is no disagreement between any two members of the Ummah that if someone shoots an arrow intending to hunt game but strikes a person or property and destroys it, he is liable. However, if the arrow encounters a running wild donkey and kills a person, or if the donkey—when struck by the arrow—falls and kills a person, he bears no liability at all.

وَلَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّ مَنْ رَمَى سَهْمًا يُرِيدُ صَيْدًا فَأَصَابَ إنْسَانًا أَوْ مَالًا فَأَتْلَفَهُ فَإِنَّهُ يَضْمَنُ، وَلَوْ أَنَّهُ صَادَفَ حِمَارَ وَحْشٍ يَجْرِي فَقَتَلَ إنْسَانًا أَوْ سَقَطَ الْحِمَارُ - إذْ أَصَابَهُ السَّهْمُ فَقَتَلَ إنْسَانًا فَإِنَّهُ لَا يَضْمَنُ شَيْئًا.

L38638 If a man is working inside a well while another draws water, and the rope snaps, causing the bucket to fall and kill the one in the well, then if this occurred due to the rope's weakness, the one drawing water is liable for unintentional homicide. The diyah is incumbent upon his agnatic relatives, and he must perform expiation, as he directly caused the killing. However, if he was overpowered and unable to hold the bucket, releasing his grip, he bears no liability in that instance, since he neither directly caused the killing nor performed any action.

وَلَوْ أَنَّ إنْسَانًا يَعْمَلُ فِي بِئْرٍ وَآخَرَ يَسْتَقِي فَانْقَطَعَ الْحَبْلُ فَوَقَعَتْ الدَّلْوُ فَقَتَلَتْ الَّذِي فِي الْبِئْرِ، فَإِنْ كَانَ ذَلِكَ لِضَعْفِ الْحَبْلِ فَهُوَ قَاتِلٌ خَطَأً وَالدِّيَةُ عَلَى الْعَاقِلَةِ، وَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُ مُبَاشِرٌ لِقَتْلِهِ، فَلَوْ غُلِبَ فَلَمْ يَقْدِرْ عَلَى إمْسَاكِهِ الدَّلْوَ ففَتَحَ يَدَيْهِ فَلَا شَيْءَ عَلَيْهِ فِي ذَلِكَ، لِأَنَّهُ لَمْ يُبَاشِرْ قَتْلَهُ وَلَا عَمِلَ شَيْئًا.

L38639–38641 Narrated to us ʿAbdullāh ibn Rabīʿ from Ibn Mufarrij from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Saḥnūn from Ibn Wahb. Ibn Lahīʿah narrated from ʿAbd Allāh ibn Hubayrah al-Sabāʾī: "A man shot a kite, and the kite fell onto a child, killing him." He said: "The liability lies with the shooter, for everything resulting from a man's action is his responsibility." He said: "I was informed that Yaḥyā ibn Saʿīd ruled regarding a man who passed by another carrying a stone on his back which then fell and struck a man, killing him: 'The stone-carrier owes the blood money for the slain.'" Saḥnūn said: "Is this a reprehensible case?" Ibn Wahb said: "I heard Mālik say regarding a man holding a rope for another clinging to it in a well: 'If the rope breaks, he bears no liability. But if it slips from the holder's hand, causing the clinging man to fall and die, he is liable for him.'"

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي ابْنُ لَهِيعَةَ عَنْ عَبْدِ اللَّهِ بْنِ هُبَيْرَةَ السَّبَائِيِّ أَنَّ رَجُلًا رَمَى حِدَأَةً فَخَرَّتْ الْحِدَأَةُ عَلَى صَبِيٍّ فَقَتَلَتْهُ؟ قَالَ: هُوَ عَلَى الَّذِي رَمَى، وَكُلُّ شَيْءٍ يَكُونُ مِنْ فِعْلِ رَجُلٍ فَهُوَ عَلَيْهِ - قَالَ: وَبَلَغَنِي عَنْ يَحْيَى بْنِ سَعِيدٍ أَنَّهُ قَالَ فِي رَجُلٍ مَرَّ بِرَجُلٍ وَهُوَ يَحْمِلُ عَلَى ظَهْرِهِ حَجَرًا فَسَقَطَ مِنْهُ فَأَصَابَ رَجُلًا فَقَتَلَهُ؟ فَعَلَيْهِ دِيَةُ الْمَقْتُولِ - قَالَ سَحْنُونٌ: هَذِهِ مَسْأَلَةُ سُوءٍ؟ قَالَ ابْنُ وَهْبٍ: وَسَمِعْت مَالِكًا يَقُولُ فِي الرَّجُلِ يُمْسِكُ الْحَبْلَ لِلرَّجُلِ يَتَعَلَّقُ بِهِ فِي الْبِئْرِ؟ قَالَ: إنْ انْقَطَعَ الْحَبْلُ فَلَا شَيْءَ عَلَيْهِ، وَإِنْ انْفَلَتَ مِنْ يَدِ الْمُمْسِكِ فَسَقَطَ الْمُتَعَلِّقُ فَمَاتَ فَهُوَ ضَامِنٌ لَهُ.

L38642 Ali said: We do not assert anything of all this. As for the kite's landing, the

one who released it did not directly carry out its release, as we previously stated.

قَالَ عَلِيٌّ: لَسْنَا نَقُولُ بِشَيْءٍ مِنْ هَذَا كُلِّهِ: أَمَّا الْحِدَأَةُ تَقَعُ، فَإِنَّ الرَّامِيَ بِهَا لَمْ يُبَاشِرْ إلْقَاءَهَا كَمَا ذَكَرْنَا.

L38643 As for the one from whose back the stone fell—not because he threw it, but due to weakness or stumbling—there is no liability in that. If he intentionally threw it and caused a person's death, then if it was deliberate and he was aware, he is an intentional killer, and retaliation (qisas) is obligatory upon him. If he did not know a person was present, he is an accidental killer, obligated to perform expiation (kaffarah), with the blood money (diyah) due from his agnatic kin, because he directly caused the death without doubt.

وَأَمَّا الَّذِي سَقَطَ الْحَجَرُ عَنْ ظَهْرِهِ دُونَ أَنْ يَكُونَ هُوَ أَلْقَاهُ لَكِنْ ضَعُفَ أَوْ عَثَرَ فَلَا شَيْءَ فِي ذَلِكَ - وَلَوْ أَنَّهُ هُوَ تَعَمَّدَ إلْقَاءَهُ فَمَاتَ بِهِ إنْسَانٌ، فَإِنْ كَانَ عَمْدًا - وَهُوَ يَدْرِي - فَقَاتِلُ عَمْدٍ، وَعَلَيْهِ الْقَوَدُ، وَإِنْ كَانَ لَمْ يَعْرِفْ أَنَّ هُنَالِكَ إنْسَانًا فَهُوَ قَاتِلُ خَطَأٍ وَعَلَيْهِ الْكَفَّارَةُ، وَعَلَى عَاقِلَتِهِ الدِّيَةُ، لِأَنَّهُ مُبَاشِرٌ قَتْلَهُ بِلَا شَكٍّ.

L38644 As for a man holding onto a rope that another person is grasping, there is no liability—neither if the rope breaks nor if the holder lacks strength to maintain their grip. If the rope breaks, the man becomes a wrongdoer against himself through pulling it, for indeed its severance results solely from his own action, not from the action of the one standing by the well. If the rope slips, the one standing at the well's edge did not take responsibility for securing it but lacked the capacity to control it and did not engage in any action whatsoever. It has been narrated to us through Ibn Waḍḍāḥ's chain: Sahnun narrated to us from Ibn Wahb, who informed me: Yazīd ibn Iyāḍ and Ibn Lahīʿah narrated from Ibn Abī Jaʿfar from Bukayr ibn al-Ashajj that ʿAbdullāh ibn ʿAmr—and Yazīd ibn Iyāḍ said: from ʿAbd al-Malik ibn ʿUbayd from Mujāhid from Ibn ʿAbbās—then the two chains converge: whoever brandishes a sword at a woman or child to frighten them, causing their death, incurs the blood money (diyah) for unintentional homicide.

وَأَمَّا تَعَلُّقُ الرَّجُلِ بِحَبْلٍ يُمْسِكُ عَلَيْهِ آخَرُ فَلَا شَيْءَ فِي ذَلِكَ، لَا فِي انْقِطَاعِ الْحَبْلِ، وَلَا فِي ضَعْفِ الْمُمْسِكِ عَنْ إمْسَاكِهِ، لِأَنَّهُ فِي انْقِطَاعِ الْحَبْلِ جَانٍ عَلَى نَفْسِهِ بِجَذْبِ الْحَبْلِ، فَإِنَّمَا انْقَطَعَ مِنْ فِعْلِهِ لَا مِنْ فِعْلِ الْوَاقِفِ عَلَى الْبِئْرِ فَأَمَّا انْفِلَاتُ الْحَبْلِ فَلَمْ يَتَوَلَّ الْوَاقِفُ عَلَى رَأْسِ الْبِئْرِ إبْقَاءَهُ، لَكِنْ غَلَبَ عَلَيْهِ فَلَمْ يُبَاشِرْ فِيهِ شَيْئًا أَصْلًا: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يَزِيدُ بْنُ عِيَاضٍ، وَابْنُ لَهِيعَةَ عَنْ ابْنِ أَبِي جَعْفَرٍ عَنْ بُكَيْرِ بْنِ الْأَشَجِّ أَنَّ عَبْدَ اللَّهِ بْنَ عَمْرٍو وَقَالَ يَزِيدُ بْنُ عِيَاضٍ: عَنْ عَبْدِ الْمَلِكِ بْنِ عُبَيْدٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ، ثُمَّ اتَّفَقَا: أَنَّ مَنْ سَلَّ سَيْفًا عَلَى امْرَأَةٍ، أَوْ صَبِيٍّ، لِيُفْزِعَهُمَا بِهِ، فَمَاتَا مِنْهُ فَفِيهِ دِيَةُ الْخَطَأِ.

L38645–38647 Ali said: "This is invalid and not valid." [Ibn Lahīʿah is extremely weak, and Yazīd ibn Iyāḍ is known for lying.] "They do not differ that whoever performs this action without intending to..." If he startles the two of them, and they are frightened and die, there is no liability upon him. There is no disagreement that intention and knowledge are not considered in cases of error; rather, they are disregarded therein. There is no disagreement that if the killer acts with deliberate intent, then it is intentional homicide.

قَالَ عَلِيٌّ: وَهَذَا بَاطِلٌ لَا يَصِحُّ - وَابْنُ لَهِيعَةَ فِي غَايَةِ الضَّعْفِ، وَيَزِيدُ بْنُ عِيَاضٍ مَذْكُورٌ بِالْكَذِبِ - وَهَذَا الْعَمَلُ لَا يَخْتَلِفُونَ فِي أَنَّ مَنْ فَعَلَهُ غَيْرُ قَاصِدٍ إلَى إفْزَاعِهِمَا فَفَزِعَا فَمَاتَا فَلَا شَيْءَ عَلَيْهِ - وَلَا خِلَافَ فِي أَنَّ النِّيَّةَ، وَالْمَعْرِفَةَ لَا يُرَاعَى شَيْءٌ مِنْهُمَا فِي الْخَطَأِ، بَلْ هُمَا مُطَّرَحَانِ فِيهِ، وَلَا خِلَافَ فِي أَنَّ الْقَاتِلَ إذَا قَصَدَ بِهِ وَنَوَى فَإِنَّهُ عَمْدٌ.

L38648 As for one who brandishes a sword against a woman or child intending to

frighten them, and they die, every sound-minded person is certain he acted with deliberate intent toward them through this deed. Since there is no dispute that he incurs neither qisas nor the ruling of intentional homicide—which is the closest legal characterization to his act—it becomes absolutely and utterly impossible to judge this as accidental, for his action has no basis in accidental killing whatsoever. This is perfectly clear. Success comes from Allah, the Exalted. Only disciplinary correction applies in this case.

وَالَّذِي سَلَّ سَيْفًا عَلَى امْرَأَةٍ أَوْ صَبِيٍّ يُرِيدُ بِذَلِكَ إِفْزَاعَهُمَا فَمَاتَا، فَبِيَقِينٍ يَدْرِي كُلُّ ذِي عَقْلٍ سَلِيمٍ أَنَّهُ عَامِدٌ قَاصِدٌ إِلَيْهِمَا بِهَذَا الْفِعْلِ، فَإِذْ لَا خِلَافَ فِي أَنَّهُ لَيْسَ عَلَيْهِ قَوَدٌ، وَلَا لَهُ حُكْمُ الْعَمْدِ الَّذِي هُوَ أَقْرَبُ الصِّفَاتِ إِلَى فِعْلِهِ فَمِنَ الْمُحَالِ الْمُمْتَنِعِ أَنْ يَكُونَ عَلَيْهِ حُكْمُ الْخَطَأِ الَّذِي لَيْسَ لِفِعْلِهِ فِيهِ مَدْخَلٌ أَصْلًا - وَهَذَا فِي غَايَةِ الْبَيَانِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - وَلَيْسَ فِيهِ إِلَّا الْأَدَبُ فَقَطْ.

A case: If someone causes a person to enter a house, and harm befalls them.

[مَسْأَلَةٌ أَدْخَلَ إِنْسَانًا دَارًا فَأَصَابَهُ شَيْءٌ]

2112 - Issue: If a man brings another man into his home and something befalls him? Ali said: It was narrated to us through the chain of Ibn Waḍḍāḥ, from Musa ibn Mu'awiyah, from Waki', from Muhammad ibn Qays, from Al-Sha'bi, who said: When a man brings another man into his home, he remains liable until he removes him as he brought him in.

٢١١٢ - مَسْأَلَةٌ: مَنْ أَدْخَلَ إِنْسَانًا دَارًا فَأَصَابَهُ شَيْءٌ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مُحَمَّدُ بْنُ قَيْسٍ عَنِ الشَّعْبِيِّ، قَالَ: إِذَا أَدْخَلَ الرَّجُلُ الرَّجُلَ دَارِهِ فَهُوَ ضَامِنٌ حَتَّى يُخْرِجَهُ كَمَا أَدْخَلَهُ.

It has been reported to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī regarding a man who entered another man's house where there was a knife. He stepped on it, and it killed him. Al-Zuhrī said: "There is nothing upon the owner of the house, is there?" ʿAlī said: "We hold to the opinion of al-Zuhrī, for the Prophet (peace and blessings of Allah be upon him) said: 'Your blood and your wealth are inviolable upon you.' Therefore, it is impermissible to obligate anyone to pay a financial penalty without an explicit text or consensus. If it is not definitively established that this person committed it intentionally or through negligence, there is no liability upon him, for his blood and wealth are inviolable. If a slain person is found in his home, the ruling of _qasāmah_ applies to him."

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي رَجُلٍ دَخَلَ بَيْتَ رَجُلٍ، وَفِي الْبَيْتِ سِكِّينٌ فَوَطِئَ عَلَيْهَا فَقَتَلَتْهُ، قَالَ: لَيْسَ عَلَى صَاحِبِ الْبَيْتِ شَيْءٌ؟ قَالَ عَلِيٌّ: وَبِقَوْلِ الزُّهْرِيِّ نَقُولُ، لِأَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَلَا يَحِلُّ إِلْزَامُ أَحَدٍ غَرَامَةَ مَالٍ بِغَيْرِ نَصٍّ، أَوْ إِجْمَاعٍ وَمَا لَمْ يُتَيَقَّنْ أَنَّ هَذَا الْإِنْسَانَ جَنَاهُ بِعَمْدٍ، أَوْ بِخَطَأٍ، فَلَا شَيْءَ عَلَيْهِ، لِأَنَّ دَمَهُ وَمَالَهُ حَرَامٌ، فَإِنْ وُجِدَ فِي دَارِهِ مَقْتُولًا فَلَهُ حُكْمُ الْقَسَامَةِ.

If he makes a claim—while alive—against the property owner, the ruling of mutual claim applies. If he is found dead with no visible traces on him—since death comes and goes unpredictably, leaving no indication except the mutual claim itself—for it is possible he was overcome without showing signs, then this falls under mutual claim if such a possibility exists. Even if we were

وَإِنْ ادَّعَى - وَهُوَ حَيٌّ - عَلَى صَاحِبِ الدَّارِ فَعَلَيْهِ حُكْمُ التَّدَاعِي، وَإِنْ لَمْ يَخْرُجْ إِلَّا مَيِّتًا لَا أَثَرَ فِيهِ، فَالْمَوْتُ يَغْدُو وَيَرُوحُ، وَلَا شَيْءَ بِهِ إِلَّا التَّدَاعِيَ، إِذْ قَدْ يُمْكِنُ أَنْ يُغَمَّ

certain he died of natural causes (lit. 'by the tip of his nose'), there would be no basis for action whatsoever. Success comes solely from Allah the Exalted.

فَلَا يَظْهَرَ فِيهِ أَثَرٌ، فَإِذَا أَمْكَنَ فَهُوَ مِنْ بَابِ التَّدَاعِي - وَلَوْ أَيْقَنَّا أَنَّهُ مَاتَ حَتْفَ أَنْفِهِ لَمْ يَكُنْ هُنَالِكَ شَيْءٌ أَصْلًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Harmful Acts by Animals

[مَسْأَلَةُ جِنَايَاتُ الْحَيَوَانِ]

L38653

2113 - Issue: Criminal offenses involving animals, including the rider, the groom, and the handler.

٢١١٣ - مَسْأَلَةُ - جِنَايَاتُ الْحَيَوَانِ، وَالرَّاكِبِ، وَالسَّائِسِ، وَالْقَائِدِ.

L38654

Ali said: We have mentioned the established [teachings] from the Messenger of Allah—peace and blessings be upon him—from his statement, "The injury caused by a dumb animal is without liability."

قَالَ عَلِيٌّ: قَدْ ذَكَرْنَا الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ» .

L38655

It was narrated to us via Ibn Waḍḍāḥ: Mūsā ibn Muʿāwiyah narrated to us, Ismāʿīl ibn Abī Khālid narrated to us from al-Shaʿbī, who said: A man said to Shurayḥ, "This sheep damaged my spun yarn." He asked, "By night or by day? If by day, he is absolved; if by night, he is liable." Then Shurayḥ recited: {"When their sheep grazed in it"} [21:78], and said, "The grazing occurred only at night."[6]

رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا إِسْمَاعِيلُ بْنُ أَبِي خَالِدٍ عَنْ الشَّعْبِيِّ قَالَ: قَالَ رَجُلٌ لِشُرَيْحٍ إنَّ شَاةَ هَذَا قَطَعَتْ غَزْلِي؟ فَقَالَ: لَيْلًا أَوْ نَهَارًا، فَإِنْ كَانَ نَهَارًا فَقَدْ بَرِئَ، وَإِنْ كَانَ لَيْلًا فَقَدْ ضَمِنَ، ثُمَّ قَرَأَ {إِذْ نَفَشَتْ فِيهِ غَنَمُ الْقَوْمِ} [الأنبياء: ٧٨] قَالَ: إنَّمَا كَانَ النَّفْشُ بِاللَّيْلِ.

L38656–38657

Ali reported that Malik and Al-Shafiʿī said: If livestock cause damage at night, their owners are financially responsible; but if they cause damage during the day, there is no financial liability.

قَالَ عَلِيٌّ: قَالَ مَالِكٌ، وَالشَّافِعِيُّ: مَا أَفْسَدَتْ الْمَوَاشِي لَيْلًا فَهُوَ مَضْمُونٌ عَلَى أَهْلِهَا، وَمَا أَفْسَدَتْ نَهَارًا فَلَا ضَمَانَ فِيهِ.

L38658

It was narrated from Sufyan al-Thawri [a report] similar to the opinion of Abu Hanifah.

وَرُوِيَ عَنْ سُفْيَانَ الثَّوْرِيِّ مِثْلُ قَوْلِ أَبِي حَنِيفَةَ.

L38659

Abu Hanifah, Abu Sulayman, and their companions held that livestock owners bear no liability for damage caused by their animals, whether by night or by day.

وَقَالَ أَبُو حَنِيفَةَ: وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: لَا ضَمَانَ عَلَى أَرْبَابِ الْمَاشِيَةِ فِيمَا أَفْسَدَتْ لَيْلًا أَوْ نَهَارًا.

L38660

And they are not liable for more than the value of the livestock—and it has been narrated from him that they are liable for what it caused during the daytime.

وَلَا يَضْمَنُونَ أَكْثَرَ مِنْ قِيمَةِ الْمَاشِيَةِ - وَرُوِيَ عَنْهُ أَنَّهُمْ يَضْمَنُونَ مَا أَصَابَتْ نَهَارًا.

L38661

[6] **Qur'an references (L38657):** Qur'an 21:78 (Al-Anbya).

L38662 Al-Layth said: The owners of livestock are liable for the damage their animals cause at night, but their liability does not exceed the market value of the livestock.

وَقَالَ اللَّيْثُ: يَضْمَنُ أَهْلُ الْمَاشِيَةِ مَا أَصَابَتْ لَيْلًا، وَلَا يَضْمَنُونَ أَكْثَرَ مِنْ قِيمَةِ الْمَاشِيَةِ.

L38663 Ali said: Those held liable for nighttime damages cited as evidence what was transmitted to us through the chain of Abu Bakr ibn Abi Shaybah from Muʻawiyah ibn Hisham from Sufyan from ʻAbdullah ibn ʻIsa from al-Zuhri from Ḥarām ibn Muḥayyiṣah from al-Bara' ibn ʻAzib: "A she-camel belonging to al-Bara's family caused damage at night. The Messenger of Allah—peace and blessings be upon him—ruled that crop protection during daytime falls upon their owners, while livestock owners bear liability for damages caused by their animals during the night."

قَالَ عَلِيٌّ: احْتَجَّ الْمُضَمِّنُونَ مَا جَنَتْ لَيْلًا: بِمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا مُعَاوِيَةُ بْنُ هِشَامٍ نا سُفْيَانُ عَنْ عَبْدِ اللَّهِ بْنِ عِيسَى عَنْ الزُّهْرِيِّ عَنْ حَرَامِ بْنِ مُحَيِّصَةُ عَنْ الْبَرَاءِ بْنِ عَازِبٍ «أَنَّ نَاقَةً لِأَهْلِ الْبَرَاءِ أَفْسَدَتْ شَيْئًا فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ حِفْظَ الثِّمَارِ عَلَى أَهْلِهَا بِالنَّهَارِ، وَضَمَّنَ أَهْلَ الْمَاشِيَةِ مَا أَفْسَدَتْ مَاشِيَتُهُمْ بِاللَّيْلِ» .

L38664 It has been reported to us through the chain of ʿAbd al-Razzāq from Maʿmar from al-Zuhrī from Ḥarām ibn Muḥayyiṣah from his father that a camel belonging to al-Barāʾ ibn ʿĀẓib entered a walled garden and caused damage therein. The Prophet (peace be upon him) judged that property owners are responsible for guarding their properties during the day, while livestock owners are responsible for guarding their animals during the night.

وَرُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ حَرَامِ بْنِ مُحَيِّصَةُ عَنْ أَبِيهِ أَنَّ «نَاقَةً لِلْبَرَاءِ بْنِ عَازِبٍ دَخَلَتْ حَائِطًا فَأَفْسَدَتْ فِيهِ، فَقَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ الْأَمْوَالِ بِحِفْظِهَا بِالنَّهَارِ وَعَلَى أَهْلِ الْمَوَاشِي حِفْظَهَا بِاللَّيْلِ» .

L38665 From the narration of ʿAbd al-Razzāq, from Ibn Jurayj, who said: Ibn Shihāb related to me that Abū Umāmah ibn Sahl reported, "A she-camel entered the walled garden of a people and damaged it. The owners of the garden went to the Prophet (peace be upon him). The Messenger of Allah (peace be upon him) said: 'Property owners are responsible for safeguarding their property during the day, and livestock owners are responsible for safeguarding their livestock during the night. They bear responsibility for whatever damage it causes.'"

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قَالَ ابْنُ شِهَابٍ حَدَّثَنِي أَبُو أُمَامَةَ بْنُ سَهْلٍ «أَنَّ نَاقَةً دَخَلَتْ فِي حَائِطِ قَوْمٍ فَأَفْسَدَتْهُ فَذَهَبَ أَصْحَابُ الْحَائِطِ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَهْلِ الْأَمْوَالِ حِفْظُ أَمْوَالِهِمْ بِالنَّهَارِ، وَعَلَى أَهْلِ الْمَاشِيَةِ حِفْظُ مَوَاشِيهِمْ بِاللَّيْلِ وَعَلَيْهِمْ مَا أَفْسَدَتْهُ» .

L38666 Some people mentioned that al-Walīd ibn Muslim narrated this ḥadīth from al-Zuhrī, from Ḥarām ibn Muḥayyiṣah, that al-Barā' informed him.

وَذَكَرَ بَعْضُ النَّاسِ: أَنَّ الْوَلِيدَ بْنَ مُسْلِمٍ رَوَى هَذَا الْحَدِيثَ عَنْ الزُّهْرِيِّ عَنْ حَرَامِ بْنِ مُحَيِّصَةَ: أَنَّ الْبَرَاءَ أَخْبَرَهُ.

L38667–38668 Ali said: This is a *mursal* narration. The strongest of its chains is through Malik and Ma'mar, who narrated from Sufyan, from al-Zuhri, from Sa'id ibn al-Musayyab: that a she-camel belonged to al-Barā'.

قَالَ عَلِيٌّ: هَذَا خَبَرٌ مُرْسَلٌ، أَحْسَنُ طُرُقِهِ: مَا رَوَاهُ مَالِكٌ، وَمَعْمَرٌ عَنْ سُفْيَانَ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ نَاقَةً لِلْبَرَاءِ.

L38669 And what Ibn Jurayj reported from al-Zuhri from Abu Umamah ibn Sahl: that a she-camel entered. No one ever established an isnād for these two chains which—had an isnād been established from them or from either of them—would have constituted a valid proof requiring adherence. Rather, it was transmitted through the chain of Haram ibn Sa'd ibn Muḥayyiṣah once from his father (his father had no companionship) and once solely from al-Barā'. Haram ibn Sa'd ibn Muḥayyiṣah is an unknown narrator (majhūl); none narrated from him except al-Zuhri, and we know of no report from al-Zuhri through him other than this ḥadīth. Al-Zuhri did not authenticate him, though he does narrate from those not authenticated, such as his narration from Sulaymān ibn Qarm, Nabhān the freed slave of Umm Salamah, and others among the unknown and rejected narrators. It is impermissible to definitively ascribe any religious ruling to the Messenger of Allah (peace be upon him) except through narrators of established reliability. Thus, this report cannot be relied upon.

وَمَا رَوَاهُ ابْنُ جُرَيْجٍ عَنِ الزُّهْرِيِّ عَنْ أَبِي أُمَامَةَ بْنِ سَهْلٍ: أَنَّ نَاقَةً دَخَلَتْ. فَلَمْ يُسْنِدْ أَحَدٌ قَطُّ مِنْ هَاتَيْنِ الطَّرِيقَتَيْنِ اللَّتَيْنِ لَوْ أُسْنِدَ مِنْهُمَا، أَوْ مِنْ إِحْدَاهُمَا لَكَانَ حُجَّةً يَجِبُ الْأَخْذُ بِهَا، وَإِنَّمَا أُسْتُنِدَ مِنْ طَرِيقِ حَرَامِ بْنِ سَعْدِ بْنِ مُحَيِّصَةَ مَرَّةً عَنْ أَبِيهِ - وَلَا صُحْبَةَ لِأَبِيهِ - وَمَرَّةً عَنِ الْبَرَاءِ فَقَطْ، وَحَرَامُ بْنُ سَعْدِ بْنِ مُحَيِّصَةَ - مَجْهُولٌ - لَمْ يَرْوِ عَنْهُ أَحَدٌ إِلَّا الزُّهْرِيُّ، وَمَا نَعْلَمُ لِلزُّهْرِيِّ عَنْهُ غَيْرَ هَذَا الْحَدِيثِ، وَلَمْ يُوَثِّقْهُ الزُّهْرِيُّ - وَهُوَ قَدْ يَرْوِي عَمَّنْ لَا يُوَثَّقُ، كَرِوَايَتِهِ عَنْ سُلَيْمَانَ بْنِ قَرْمٍ، وَنَبْهَانَ مَوْلَى أُمِّ سَلَمَةَ، وَغَيْرِهِمَا مِنَ الْمَجَاهِيلِ، وَالْهَلْكَى. وَلَا يَحِلُّ أَنْ يُقْطَعَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الدِّينِ إِلَّا بِمَنْ تُعْرَفُ عَدَالَتُهُ - فَسَقَطَ التَّعَلُّقُ بِهَذَا الْخَبَرِ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ إِدْرِيسَ الْأَوْدِيُّ عَنْ حُصَيْنِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَامِرٍ الشَّعْبِيِّ، قَالَ: اُخْتُصِمَ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فِي ثَوْرٍ نَطَحَ حِمَارًا فَقَتَلَهُ، فَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إِنْ كَانَ الثَّوْرُ دَخَلَ عَلَى الْحِمَارِ فَقَتَلَهُ فَقَدْ ضَمِنَ - وَإِنْ كَانَ الْحِمَارُ دَخَلَ عَلَى الثَّوْرِ فَقَتَلَهُ فَلَا ضَمَانَ عَلَيْهِ.

Ali said: It was narrated to us through the chain of Abu Bakr ibn Abi Shaybah, from 'Abdullāh ibn Idrīs al-Awdī, from Ḥuṣayn ibn 'Abd al-Raḥmān ibn 'Āmir al-Sha'bī, who said: A dispute was brought before Ali ibn Abi Talib regarding an ox that gored and killed a donkey. Ali ibn Abi Talib ruled: "If the ox entered upon the donkey and killed it, its owner bears liability. But if the donkey entered upon the ox and was killed, there is no liability."

L38670 Ali said: This is a ruling from Ali ibn Abi Talib—may Allah be pleased with him—and our position regarding all of this accords with what the Messenger of Allah—peace and blessings be upon him—judged and established: "An animal's injury incurs no liability, and its action incurs no liability." Thus, there is no liability for harm to persons or property caused by an animal, whether by night or by day—and success comes only from Allah, the Exalted. However, if someone brings an animal, drives it toward something, and releases it upon that thing: he is held liable at that point, for this constitutes his own action, whether by night or by day.

قَالَ عَلِيٌّ: فَهَذَا حُكْمٌ مِنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - وَالْقَوْلُ عِنْدَنَا فِي هَذَا كُلِّهِ هُوَ مَا حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَثَبَتَ عَنْهُ مِنْ أَنَّ «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ وَعَمَلُهَا جُبَارٌ» فَلَا ضَمَانَ فِيمَا أَفْسَدَهُ الْحَيَوَانُ مِنْ دَمٍ أَوْ مَالٍ لَا لَيْلًا وَلَا نَهَارًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. فَإِنْ أَتَى بِهَا وَحَمَلَهَا عَلَى شَيْءٍ، وَأَطْلَقَهَا فِيهِ: ضَمِنَ حِينَئِذٍ، لِأَنَّهُ فِعْلُهُ لَيْلًا كَانَ أَوْ نَهَارًا.

L38671 As for grazing animals, there are transmitted reports concerning them, as we have narrated through the chain of 'Abd al-Razzāq from Ibn Jurayj, who reported that 'Abd al-Karīm said: "Umar ibn al-Khattāb used to rule that

camels, cows, donkeys, or grazing animals must be returned to their owners three times when the enclosure is secured, after which they must be hamstrung."

وَأَمَّا الْحَيَوَانُ الضَّارِيَةُ فَقَدْ جَاءَتْ فِيهَا آثَارٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْكَرِيمِ أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَقُولُ بِرَدِّ الْبَعِيرِ، أَوْ الْبَقَرَةِ، أَوْ الْحِمَارِ، أَوْ الضَّوَارِي، إلَى أَهْلِهِنَّ ثَلَاثًا إذَا حُظِرَ الْحَائِطُ، ثُمَّ يُعْقَرْنَ.

L38672–38674 Ibn Jurayj said: Someone who examined the book of Umar ibn Abd al-Aziz during his caliphate informed me that it directed al-Hajjaj ibn Dhu'ayb to fortify the wall so that it would reach approximately the height of a camel. Ibn Jurayj said: I heard Abd al-Aziz ibn Abdullah ibn Abdullah ibn Umar that Umar ibn al-Khattab... He would order that the wall be protected, enforcing the restriction against the persistent aggressor. Then it would be returned to its owners three times, after which it would be destroyed.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي مَنْ نَظَرَ فِي كِتَابِ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي خِلَافَتِهِ إلَى الْحَجَّاجِ بْنِ ذُؤَيْبٍ أَنْ يُحَصَّنَ الْحَائِطُ حَتَّى يَكُونَ إلَى نَحْوِ الْبَعِيرِ. قَالَ ابْنُ جُرَيْجٍ: وَسَمِعْت عَبْدَ الْعَزِيزِ بْنَ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ كَانَ يَأْمُرُ بِالْحَائِطِ أَنْ تُحْظَرَ وَيُسَدَّ الْحَظْرُ مِنْ الضَّارِي الْمُدِلِّ، ثُمَّ يُرَدَّ إلَى أَهْلِهِ ثَلَاثَ مَرَّاتٍ، ثُمَّ يُعْقَرَ.

L38675 Ibn Jurayj said: I said to ʿAṭāʾ: The barrier is blocked and fortified on the wall, yet it fails to repel the overbearing predator. Has anything reached you regarding this? He said: No.

قَالَ ابْنُ جُرَيْجٍ: وَقُلْت لِعَطَاءٍ: الْحَظْرُ يُسَدُّ، وَيُحَصَّنُ عَلَى الْحَائِطِ، ثُمَّ لَا يُمْتَنَعُ مِنْ الضَّارِي الْمُدِلِّ، أَبَلَغَك فِيهِ شَيْءٌ؟ قَالَ: لَا.

L38676 Abu Muhammad said: This is the ruling of Umar ibn al-Khattab (may Allah be pleased with him): the trained predatory animal is returned to its owner three times without liability, without specifying night or day, then it is hamstrung. Yet they opposed both rulings from the judgment of Umar ibn al-Khattab, while they revere matters far lesser than this when they conform to their uncritical following.

قَالَ أَبُو مُحَمَّد: فَهَذَا حُكْمُ عُمَرَ بْنِ الْخَطَّابِ: يُرَدُّ الضَّارِي ثَلَاثَ مَرَّاتٍ إلَى صَاحِبِهِ دُونَ تَضْمِينٍ، وَلَمْ يَخُصَّ لَيْلًا وَلَا نَهَارًا ثُمَّ يُعْقَرُ. فَخَالَفُوا كِلَا الْحُكْمَيْنِ مِنْ حُكْمِ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - وَهُمْ يُعَظِّمُونَ أَقَلَّ مِنْ هَذَا إذَا وَافَقَ تَقْلِيدَهُمْ.

L38677 From the narration of Abd al-Razzaq through Ma'mar, who said: Ismail ibn Abi Sa'id al-San'ani narrated to me that he heard Ikrimah, the freedman of Ibn Abbas, relate: The Messenger of Allah—peace and blessings be upon him—said: "The least punished among Hell's inhabitants is a man who treads on an ember causing his brains to boil." Abu Bakr asked: "What was his crime, O Messenger of Allah?" He replied: "He owned livestock that trampled crops and caused harm. Allah has forbidden [trespassing on] crops and their surrounding areas within an arrow's throw. Beware lest one squander his wealth in this world, thereby ruining himself in the Hereafter. Therefore, do not squander your wealth in this world and destroy yourselves in the Hereafter."

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، قَالَ: أَخْبَرَنِي إسْمَاعِيلُ بْنُ أَبِي سَعِيدٍ الصَّنْعَانِيُّ: أَنَّهُ سَمِعَ عِكْرِمَةَ مَوْلَى ابْنِ عَبَّاسٍ يُحَدِّثُ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ أَهْوَنَ أَهْلِ النَّارِ عَذَابًا رَجُلٌ يَطَأُ جَمْرَةً يَغْلِي مِنْهَا دِمَاغُهُ، قَالَ أَبُو بَكْرٍ: وَمَا كَانَ ذَنْبُهُ يَا رَسُولَ اللَّهِ؟ قَالَ: كَانَتْ لَهُ مَاشِيَةٌ يَعِيثُ بِهَا الزَّرْعَ وَيُؤْذِيهِ، وَحَرَّمَ اللَّهُ الزَّرْعَ وَمَا حَوْلَهُ غُلَاةَ سَهْمٍ، فَاحْذَرُوا أَنْ لَا يَسْحَبَ الرَّجُلُ مَالَهُ فِي الدُّنْيَا وَيُهْلِكَ نَفْسَهُ فِي الْآخِرَةِ، فَلَا تَسْحَبُوا أَمْوَالَكُمْ فِي الدُّنْيَا وَتُهْلِكُوا أَنْفُسَكُمْ فِي الْآخِرَةِ» .

L38678 Ali said: This is a Mursal report, and no valid proof exists in Mursal reports. Our position is that any animal—regardless of type—that causes harm by ruining crops or fruits obligates its owner to be disciplined with whipping and imprisoned if he neglects it. If he restrains it, he has fulfilled his obligation. But if he returns to neglecting it, the animal must be sold on his behalf or slaughtered with its meat sold, whichever course proves more beneficial—that measure shall be enforced against him.

قَالَ عَلِيٌّ: وَهَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ، وَالْقَوْلُ عِنْدَنَا فِي هَذَا أَنَّ الْحَيَوَانَ - أَيَّ حَيَوَانٍ كَانَ - إذَا أَضَرَّ فِي إفْسَادِ الزَّرْعِ أَوْ الثِّمَارِ، فَإِنَّ صَاحِبَهُ يُؤَدَّبُ بِالسَّوْطِ وَيُسْجَنُ، إنْ أَهْمَلَهُ، فَإِنْ ثَقَّفَهُ فَقَدْ أَدَّى مَا عَلَيْهِ، وَإِنْ عَادَ إلَى إهْمَالِهِ بِيعَ عَلَيْهِ وَلَا بُدَّ، أَوْ ذُبِحَ وَبِيعَ لَحْمُهُ، أَيُّ ذَلِكَ كَانَ أَعْوَدَ عَلَيْهِ أُنْفِذَ عَلَيْهِ ذَلِكَ.

L38679 The proof for this is the statement of Allah, the Most High: "And cooperate in righteousness and piety, and do not cooperate in sin and transgression" [Al-Mā'idah: 2]. Among the acts of righteousness and piety is preventing harm to people's crops and fruits. Among the acts of sin and transgression is neglecting that.[7]

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {وتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] ، وَمِنْ الْبِرِّ وَالتَّقْوَى: الْمَنْعُ مِنْ أَذَى النَّاسِ فِي زَرْعِهِمْ وَثِمَارِهِمْ. وَمِنْ الْإِثْمِ وَالْعُدْوَانِ: إهْمَالُ ذَلِكَ.

L38680 An assessment is made regarding measures that ensure the protection of the Muslims' wealth—from options causing no harm to the animal owner, to the extent he cannot adopt a more suitable alternative—as Allah the Exalted has commanded.

فَيُنْظَرُ فِي ذَلِكَ بِمَا فِيهِ حِمَايَةُ أَمْوَالِ الْمُسْلِمِينَ - مِمَّا لَا ضَرَرَ فِيهِ عَلَى صَاحِبِ الْحَيَوَانِ بِمَا لَا يَقْدِرُ عَلَى أَصْلَحَ مِنْ ذَلِكَ - كَمَا أَمَرَ اللَّهُ تَعَالَى.

L38681–38683 As for one who sows in barren land, pastures, or plants there, he is held liable. That restrictions be imposed on his crops and cultivations by measures such as construction or similar safeguards, as he incurs no harm from these restrictions. The boundary wall is his right, and this serves to avert the waste of his property.

وَأَمَّا مَنْ زَرَعَ فِي الشَّعْوَاءِ، أَوْ حَيْثُ الْمَسْرَحُ، أَوْ غَرَسَ هُنَالِكَ غَرْسًا فَإِنَّهُ يُكَلَّفُ أَنْ يُحْظَرَ عَلَى زَرْعِهِ وَغَرْسِهِ بِمَا يَدْفَعُ عَنْ ذَلِكَ مِنْ بِنَاءٍ أَوْ غَيْرِهِ إذْ لَا ضَرَرَ عَلَيْهِ فِي ذَلِكَ، بَلْ الْحَائِطُ لَهُ، وَدَفْعُ الْإِضَاعَةِ عَنْ مَالِهِ.

L38684 It is not permissible to prevent people from grazing their livestock there, just as it is not permissible to prevent someone from reviving dead land they are capable of revitalizing. No one can reasonably be expected to keep livestock away from crops or fruits within grazing areas. Since this is impossible (being beyond human capacity), it becomes invalid to obligate people to restrain their animals or prevent grazing, in accordance with Allah's statement: "No soul is burdened beyond its capacity" (Qur'an 2:233). The same ruling applies when livestock owners find it impossible to prevent their animals from accessing crops or fruits while passing along pathways bordered by people's cultivated lands on their way to pastures. In such cases, the owners of crops

وَلَا يَجُوزُ أَنْ يَمْنَعَ النَّاسَ عَنْ إرْعَاءِ مَوَاشِيهِمْ هُنَالِكَ، كَمَا لَا يَجُوزُ أَنْ يَمْنَعَ هُوَ مِنْ إحْيَاءِ مَا قَدَرَ عَلَى إحْيَائِهِ مِنْ ذَلِكَ الْمَوَاتِ، وَلَيْسَ فِي طَاقَةِ أَحَدٍ مَنْعُ الْمَوَاشِي عَنْ زَرْعٍ، أَوْ ثَمَرٍ فِي وَسَطِ الْمَسْرَحِ، فَإِذْ ذَلِكَ مُمْتَنِعٌ - لَيْسَ فِي الْوُسْعِ - فَقَدْ بَطَلَ أَنْ يُكَلَّفُوا ضَبْطَهَا، أَوْ مَنْعَهَا: بِقَوْلِ اللَّهِ تَعَالَى {لا تُكَلَّفُ نَفْسٌ إلا وُسْعَهَا} [البقرة: ٢٣٣] ، وَهَكَذَا الْقَوْلُ فِيمَا تَعَذَّرَ عَلَى أَهْلِ الْمَاشِيَةِ مَنْعُ مَاشِيَتِهِمْ مِنْهُ فِي مُرُورِهَا فِي طَرِيقِهَا إلَى

[7] **Qur'an references (L38679):** Qur'an 5:2 (Al-Ma'idah).

and fruits are obligated to erect barriers around the portions of their produce bordering the pathways.[8]

L38685 As for attached crops and planted trees where there is no grazing area, the owners are not obligated to erect enclosures. If one intentionally or carelessly releases his livestock there, he shall be given a severe disciplinary punishment. His livestock shall be sold if he repeats the act, and he is liable for direct damages caused by releasing them onto the crops. Success is from Allah, the Most High.

L38686 Predatory animals must not be maimed at all, for the Messenger of Allah—peace and blessings be upon him—prohibited slaughtering animals except for their consumption, and he prohibited the squandering of wealth. Maiming constitutes squandering, whether its meat is [lawfully] consumed or not—and with Allah lies all success.

L38687 As for the handler, rider, and drover – Yahya ibn Abd al-Rahman ibn Mas'ud said: Ahmad ibn Duhaym narrated to us, Ibrahim ibn Hammad narrated to us, Isma'il ibn Ishaq narrated to us, Ibrahim al-Harawi narrated to us, Hushaym narrated to us, Ash'ath narrated to us from Muhammad ibn Sirin from Shuraih: He would hold the rider (among the handler, rider, and drover) liable for damage caused by his mount's trampling with its front legs or hind legs, but absolve him from injuries caused by goring.

L38688 Hushaym said: Yunus and al-Mughīrah—Yunus said, reporting from al-Ḥasan al-Baṣrī, and al-Mughīrah said, reporting from Ibrāhīm—that they both held liable for damage caused by an animal's treading with a limb or leg, but did not hold liable for a kick.

L38689 It is reported from Ibrāhīm and Shurayh that they said: If an animal swishes its leg [in a harmless motion], its owner is not liable.

L38690–38691 Al-Ḥakam and Al-Sha'bī said: He is financially liable, and the blood of a Muslim must not be left unavenged.

L38692 From Muhammad ibn Sirin: A man had two camels that escaped. Another

الْمَسْرَحِ بَيْنَ زَرْعِ النَّاسِ وَثِمَارِهِمْ، فَإِنَّ أَهْلَ الزَّرْعِ وَالثِّمَارِ يُكَلَّفُونَ هَاهُنَا بِحَظِيرِ مَا وَلِيَ الطَّرِيقَ مِنْ زُرُوعِهِمْ وَثِمَارِهِمْ.

وَأَمَّا الثِّمَارُ الْمُتَّصِلَةُ مِنَ الزَّرْعِ وَالْغَرْسِ الَّتِي لَا مَسْرَحَ فِيهَا فَلَيْسَ عَلَيْهِمْ تَكْلِيفُ الْحَظْرِ، فَإِنْ أَطْلَقَ مَوَاشِيَهُ هُنَالِكَ عَامِدًا، أَوْ مُهْمِلًا: أُدِّبَ الْأَدَبَ الْمُوجِعَ، وَبِيعَتْ عَلَيْهِ مَوَاشِيهِ إِنْ عَادَ، وَضَمِنَ مَا بَاشَرَ إِطْلَاقَهَا عَلَيْهِ. وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

وَلَا يُعْقَرُ الْحَيَوَانُ الضَّارِي أَلْبَتَّةَ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ ذَبْحِ الْحَيَوَانِ إِلَّا لِمَأْكَلِهِ، وَنَهَى عَنْ إِضَاعَةِ الْمَالِ، وَالْعَقْرُ إِضَاعَةٌ فِيمَا يُؤْكَلُ لَحْمُهُ، وَفِيمَا لَا يُؤْكَلُ لَحْمُهُ - وَبِاللَّهِ التَّوْفِيقُ.

وَأَمَّا الْقَائِدُ، وَالرَّاكِبُ، وَالسَّائِقُ - فَإِنَّ يَحْيَى بْنَ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ قَالَ: نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا إِبْرَاهِيمُ الْهَرَوِيُّ نا هُشَيْمٌ نا أَشْعَثُ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ شُرَيْحٍ: أَنَّهُ كَانَ يُضَمِّنُ الْفَارِسَ مَا أَوْطَأَتْ دَابَّتُهُ بِيَدٍ أَوْ رِجْلٍ، وَيُبَرِّئُهُ مِنَ النَّفْحَةِ.

قَالَ هُشَيْمٌ: ونا يُونُسُ، وَالْمُغِيرَةُ، قَالَ يُونُسُ عَنِ الْحَسَنِ الْبَصْرِيِّ، وَقَالَ الْمُغِيرَةُ عَنْ إِبْرَاهِيمَ أَنَّهُمَا كَانَا يُضَمِّنَانِ مَا أَوْطَأَتِ الدَّابَّةُ بِيَدٍ أَوْ رِجْلٍ، وَلَا يُضَمِّنَانِ مِنَ النَّفْحَةِ.

وَعَنْ إِبْرَاهِيمَ، وَشُرَيْحٍ أَنَّهُمَا قَالَا: إِذَا نَفَحَتِ الدَّابَّةُ بِرِجْلِهَا فَإِنَّ صَاحِبَهَا لَا يَضْمَنُ.

وَقَالَ الْحَكَمُ وَالشَّعْبِيُّ: يَضْمَنُ وَلَا يُطَلُّ دَمُ الْمُسْلِمِ.

[8] **Qur'an references (L38684):** Qur'an 2:233 (Al-Baqarah).

man took them, yoked them together with a rope, and choked one of them until it died. Shurayh ruled: “He merely intended to do good. Liability only applies to one who is leading [an animal] or riding it.”

وَعَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّ رَجُلًا شَرَدَ لَهُ بَعِيرَانِ فَأَخَذَهُمَا رَجُلٌ فَقَرَنَهُمَا فِي حَبْلٍ فَأَخْنَقَ أَحَدَهُمَا فَمَاتَ؟ فَقَالَ شُرَيْحٌ: إِنَّمَا أَرَادَ الْإِحْسَانَ، لَا يَضْمَنُ إِلَّا قَائِدٌ أَوْ رَاكِبٌ.

L38693 Muhammad ibn Sirin said regarding an animal that is startled and thereby tramples: its owner is liable. But if it kicks with its leg without being startled, the owner is not liable.

وَقَالَ مُحَمَّدُ بْنُ سِيرِينَ فِي الدَّابَّةِ أُفْزِعَتْ فَوَطِئَتْ يَضْمَنُ صَاحِبُهَا، وَإِذَا نَفَحَتْ بِرِجْلِهَا مِنْ غَيْرِ أَنْ تُفْزَعَ لَمْ يَضْمَنْ.

L38694 It is reported from Al-Sha‘bi that he was asked about a man who tied a biting horse on a public thoroughfare, and it maimed. Al-Sha‘bi replied: He is liable; he has no right to tie a biting horse on the public thoroughfare of the Muslims.

وَعَنِ الشَّعْبِيِّ أَنَّهُ سُئِلَ عَنْ رَجُلٍ أَوْثَقَ عَلَى الطَّرِيقِ فَرَسًا عَضُوضًا فَعَقَرَ؟ فَقَالَ الشَّعْبِيُّ: يَضْمَنُ، لَيْسَ لَهُ أَنْ يَرْبِطَ كَلْبًا عَضُوضًا عَلَى طَرِيقِ الْمُسْلِمِينَ.

L38695 Narrated from Ibrāhīm al-Nakha‘ī and Shurayḥ, both of whom said: The rider, the driver, and the handler are liable.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَشُرَيْحٍ قَالَا جَمِيعًا: يَضْمَنُ الرَّاكِبُ، وَالسَّائِقُ، وَالْقَائِدُ.

L38696 From Abu Awn al-Thaqafi: Two men were spreading out a garment when a man passed by, and another pushed him, causing him to fall onto the garment and tear it. They brought the case to Shurayh, who held the pusher liable and absolved the pushed man, treating him as an inanimate object (like a stone).

وَعَنْ أَبِي عَوْنٍ الثَّقَفِيِّ أَنَّ رَجُلَيْنِ كَانَا يَنْشُرَانِ ثَوْبًا فَمَرَّ رَجُلٌ فَدَفَعَهُ آخَرُ فَوَقَعَ عَلَى الثَّوْبِ فَخَرَقَهُ، فَارْتَفَعُوا إِلَى شُرَيْحٍ فَضَمَّنَ الدَّافِعَ، وَأَبْرَأَ الْمَدْفُوعَ، بِمَنْزِلَةِ الْحَجَرِ.

L38697 And it is reported from Al-Sha’bi that he said: They are two partners - meaning the rider and the second rider.

وَعَنِ الشَّعْبِيِّ قَالَ: هُمَا شَرِيكَانِ - يَعْنِي الرَّاكِبَ وَالرَّدِيفَ.

L38698 It is also reported from Al-Sha‘bi that he said: Whoever leaves his animal in a public pathway or places something [there] is liable for its harmful act.

وَعَنِ الشَّعْبِيِّ أَيْضًا قَالَ: مَنْ أَوْقَفَ دَابَّتَهُ فِي طَرِيقِ الْمُسْلِمِينَ أَوْ وَضَعَ شَيْئًا فَهُوَ ضَامِنٌ بِجِنَايَتِهِ.

L38699 From Ibrahim al-Nakha’i and al-Sha’bi, both of whom said: “Whoever ties his animal on a road is financially liable.” From Ibrahim, regarding a man who borrowed a horse from another and urged it to gallop until it died, he said: “He is not liable, because a man urges his horse to gallop.”

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ، قَالَا جَمِيعًا: مَنْ رَبَطَ دَابَّتَهُ فِي طَرِيقٍ فَهُوَ ضَامِنٌ - وَعَنْ إِبْرَاهِيمَ فِي رَجُلٍ اسْتَعَارَ مِنْ رَجُلٍ فَرَسًا فَرَكَضَهُ حَتَّى قَتَلَهُ، قَالَ: لَيْسَ عَلَيْهِ ضَمَانٌ، لِأَنَّ الرَّجُلَ يُرَكِّضُ فَرَسَهُ.

L38700 From ’Ata’, he said: “The handler and the rider are held liable for damages caused by its foreleg in situations where they would not be liable for its hind leg.” I asked: “If the animal was habitually aggressive and struck with its

foreleg while being led?" He replied: "Yes, and the handler is liable." I asked: "Is the handler held liable for both the foreleg and hind leg?" He said: "They supposed so," so I repeated the question. He responded: "He says: 'Make way! Make way!'"

وَعَنْ عَطَاءٍ قَالَ: يُغَرَّمُ الْقَائِدُ، وَالرَّاكِبُ، عَنْ يَدِهَا مَا لَا يُغَرَّمَانِ عَنْ رِجْلَهَا، قُلْت: كَانَتْ الدَّابَّةُ عَادِيَةً فَضَرَبَتْ بِيَدِهَا إنْسَانًا وَهِيَ تُقَادُ؟ قَالَ: نَعَمْ، وَيُغَرَّمُ الْقَائِدُ، قُلْت: السَّائِقُ يُغَرَّمُ عَنْ الْيَدِ وَالرِّجْلِ، قَالَ: زَعَمُوا، فَرَادَدْته؟ قَالَ: يَقُولُ: الطَّرِيقَ الطَّرِيقَ.

L38701–38702 From Qatadah, he said: The person leading the animal is liable to pay compensation for whatever it tramples with its front or hind legs. If it causes harm by striking, the leader is not liable. The rider is similarly responsible, except when the animal is under rein control yet still strikes, in which case compensation becomes due.

وَعَنْ قَتَادَةَ قَالَ: يُغَرَّمُ الْقَائِدُ مَا أَوْطَأَتْ بِيَدٍ أَوْ رِجْلٍ، فَإِذَا نَفَحَتْ لَمْ يُغَرَّمْ، وَالرَّاكِبُ كَذَلِكَ، إلَّا أَنْ تَكُونَ بِالْعَنَانِ فَتَنْفَحُ فَيُغَرَّمُ.

L38703 And from Ash-Sha'bī, he said: The pillion rider is held liable alongside his companion.

وَعَنْ الشَّعْبِيِّ قَالَ: يُضَمَّنُ الرَّدِيفُ مَعَ صَاحِبِهِ.

L38704 And from Shurayḥ, he said: The handler, the driver, and the rider are held liable, but the beast of burden is not held liable if it retaliates. I asked, "What is 'retaliates'?" He said, "If a man strikes it and it strikes him back." And from Mujāhid, he said: A young servant girl rode another girl, then another girl prodded her, causing her to fall and die. So 'Alī ibn Abī Ṭālib held accountable both the one who prodded and the one who was prodded.

وَعَنْ شُرَيْحٍ قَالَ: يُضَمَّنُ الْقَائِدُ، وَالسَّائِقُ، وَالرَّاكِبُ، وَلَا يُضَمَّنُ الدَّابَّةُ إذَا عَاقَبَتْ، قُلْت: وَمَا عَاقَبَتْ؟ قَالَ: إذَا ضَرَبَهَا رَجُلٌ فَأَصَابَتْهُ. وَعَنْ مُجَاهِدٍ قَالَ: رَكِبَتْ جَارِيَةٌ جَارِيَةً فَنَخَسَتْهَا أُخْرَى فَوَقَعَتْ فَمَاتَتْ؟ فَضَمَّنَ عَلِيُّ بْنُ أَبِي طَالِبٍ النَّاخِسَةَ وَالْمَنْخُوسَةَ.

L38705 Malik and al-Shāfi'ī said: The goader, conductor, and rider are financially liable for any harm caused by the animal, unless it acts uncontrollably without their provocation - in which case, they bear no liability.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ: يُضَمَّنُ السَّائِقُ، وَالْقَائِدُ، وَالرَّاكِبُ مَا أَصَابَتْ الدَّابَّةُ، إلَّا أَنْ تَرْمَحَ مِنْ غَيْرِ فِعْلِهِمْ، فَلَا ضَمَانَ عَلَيْهِمْ.

L38706 Malik and Abū Ḥanīfah said: The passenger rider bears financial responsibility jointly with the main rider.

وَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ: يَضْمَنُ الرَّدِيفُ مَعَ الرَّاكِبِ.

L38707 Ishaq ibn Rahawayh said: The pillion rider does not incur liability.

وَقَالَ إسْحَاقُ بْنُ رَاهْوَيْهِ لَا يَضْمَنُ الرَّدِيفُ.

L38708 Aḥmad said: "I hold that there is no responsibility upon him if someone with him is holding the reins."

وَقَالَ أَحْمَدُ: أَرْجُو أَنْ لَا شَيْءَ عَلَيْهِ إذَا كَانَ أَمَامَهُ مَنْ يُمْسِكُ الْعَنَانَ.

L38709 Abū Muḥammad said: Therefore, what is obligatory upon us when people disagree is what Allah the Exalted has obligated upon us, as He states: *"If you dispute over anything, refer it to Allah and the Messenger if you believe in Allah and the Last Day"* [4:59]. We examined the case of the rider and found him steering his mount and managing it. For harm caused by his control of

قَالَ أَبُو مُحَمَّدٍ: فَالْوَاجِبُ عَلَيْنَا عِنْدَ تَنَازُعِهِمْ مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا، إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ إنْ كُنْتُمْ تُؤْمِنُونَ بِاَللَّهِ وَالْيَوْمِ الآخِرِ}

the animal: if he acts intentionally, he is liable for qisas (retaliation) in cases of homicide or lesser injuries, because he is a transgressor directly committing the offense—even if the act itself does not normally incur liability. If this occurs while he is unaware of what lies ahead, it constitutes unintentional injury: he is liable for financial compensation, with diyah (blood money) for loss of life incumbent upon his ʿāqilah (kinship group), and expiation required from him, as he is liable for unintentional homicide. For harm caused by the animal's head, bite, tail, kick with its leg, or a limb movement unrelated to walking: this is not attributable to his action, thus he bears no liability. This is based on the ruling of the Messenger of Allah—peace be upon him: *"Injuries caused by animals entail no liability."*[9]

[النساء: ٥٩] ، فَنَظَرْنَا فِي الرَّاكِبِ فَوَجَدْنَاهُ مُصَرِّفًا لِدَابَّتِهِ حَامِلًا لَهَا فَمَا أَصَابَتْ مِمَّا حَمَلَهَا عَلَيْهِ، فَإِنْ عَمَدَ فَعَلَيْهِ الْقِصَاصُ فِي النَّفْسِ فَمَا دُونَهَا، لِأَنَّهُ مُتَعَدٍّ مُبَاشِرٌ لِلْجِنَايَةِ - وَإِنْ كَانَ مِمَّا لَا يَضْمَنُهُ، فَإِنْ كَانَ ذَلِكَ - وَهُوَ لَا يَعْلَمُ بِمَا بَيْنَ يَدَيْهِ - فَهُوَ إِصَابَةُ خَطَأٍ يَضْمَنُ الْمَالَ، وَعَلَى عَاقِلَتِهِ الدِّيَةُ فِي النَّفْسِ وَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُ قَاتِلُ خَطَأٍ، وَمَا أَصَابَتْ بِرَأْسِهَا، أَوْ بِعَضَّتِهَا، أَوْ بِذَنَبِهَا، أَوْ بِنَفْحَتِهَا بِالرِّجْلِ، أَوْ ضَرَبَتْ بِيَدِهَا فِي غَيْرِ الْمَشْيِ: فَلَيْسَ مِنْ فِعْلِهِ فَلَا ضَمَانَ عَلَيْهِ فِيهِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ» .

As for the animal handler: if he holds the reins or halter, he is responsible for the animal's movement. If he acts deliberately, *qisas* (retaliation in kind) applies—as we mentioned—along with monetary compensation. If he does not act deliberately, he is considered liable for unintentional killing. The blood money is incumbent upon the male agnates (al-ʿāqila), while the expiation remains his personal obligation from his wealth, and he is liable for the property. If the animals are tethered together in sequence, the same ruling applies, with no distinction. It makes no difference whether the led animal has a rider or not: no liability falls upon the rider unless he urges it onward or assists, in which case he and the leader share liability; otherwise, none applies. If the leader holds neither rein nor halter, there is no liability whatsoever upon him, for he assumed no responsibility and had no direct involvement whatsoever in causing loss of life or property. The Prophet (peace and blessings be upon him) said, "The wound caused by a free-roaming animal is non-compensable (jubār)."

L38710–38712

وَأَمَّا الْقَائِدُ: فَإِنْ كَانَ يُمْسِكُ الرَّسَنَ أَوْ الْخِطَامَ فَهُوَ حَامِلٌ لِلدَّابَّةِ عَلَى مَا مَشَتْ عَلَيْهِ، فَإِنْ عَمَدَ فَالْقَوَدُ - كَمَا قُلْنَا - وَالضَّمَانُ فِي الْمَالِ، وَإِنْ لَمْ يَعْمِدْ فَهُوَ قَاتِلُ خَطَأٍ، فَالدِّيَةُ عَلَى الْعَاقِلَةِ، وَالْكَفَّارَةُ عَلَيْهِ فِي مَالِهِ، وَيَضْمَنُ الْمَالَ، فَإِنْ كَانَتْ الدَّوَابُّ مَقْصُورَةً بَعْضُهَا إلَى بَعْضٍ كَذَلِكَ، فَكَذَلِكَ أَيْضًا وَلَا فَرْقَ. وَسَوَاءٌ كَانَ عَلَى الدَّابَّةِ الْمَقُودَةِ رَاكِبٌ أَوْ لَمْ يَكُنْ: لَا ضَمَانَ عَلَى الرَّاكِبِ، إلَّا إنْ حَمَلَهَا أَوْ أَعَانَ، فَهُوَ وَالْقَائِدُ شَرِيكَانِ، وَإِلَّا فَلَا، فَإِنْ كَانَ الْقَائِدُ لَا رَسَنَ بِيَدِهِ، وَلَا عِقَالَ، فَلَا ضَمَانَ عَلَيْهِ أَلْبَتَّةَ؛ لِأَنَّهُ لَمْ يَتَوَلَّ شَيْئًا، وَلَا بَاشَرَ فِيمَا أَتْلَفَ مِنْ دَمٍ، أَوْ مَالٍ شَيْئًا أَصْلًا - وَقَدْ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «وَالْعَجْمَاءُ جُرْحُهَا جُبَارٌ» .

As for the rear rider: if he alone is holding the reins and the rider in front does not hold them at all, then the one restraining the reins bears sole liability. In cases of intentional harm, retaliation (qisas) applies; in cases of accidental harm, expiation (kaffarah) is required, and the blood money is incumbent

L38713

وَأَمَّا الرَّدِيفُ - فَإِنْ كَانَ يُمْسِكُ الْعِنَانَ هُوَ وَحْدَهُ وَلَا يُمْسِكُهُ الْمُتَقَدِّمُ: فَحَابِسُ الْعِنَانِ هُوَ الضَّامِنُ وَحْدَهُ، وَعَلَيْهِ فِي الْعَمْدِ الْقَوَدُ، وَفِي الْخَطَأِ الْكَفَّارَةُ، وَالدِّيَةُ عَلَى الْعَاقِلَةِ، وَلَا ضَمَانَ، وَلَا شَيْءَ عَلَى الْمُتَقَدِّمِ، إلَّا أَنْ يُعِينَ فِي ذَلِكَ.

[9] **Qur'an references (L38709):** Qur'an 4:59 (An-Nisa).

upon the agnatic kin. No liability or obligation rests on the rider in front unless he assisted in causing the harm.

L38714 As for the animal herder—if he drives the animal by striking, prodding, or shouting to make it act, then if he acts intentionally, retribution and compensation are required. If he does not act intentionally, he is considered an unintentional killer as we stated. If he does not compel it to act, there is no liability upon him, for he did not directly cause [the harm]. The Messenger of Allah—peace and blessings be upon him—said: "No liability is incurred for injuries caused by animals."

L38715 Whoever tethers his animal on the public pathway incurs no liability. Likewise, if he releases it while he is walking. Not every wrongdoer is held liable.

L38716 We know, and every Muslim knows, that the manufacturer of weapons and their seller during times of civil strife are transgressors, oppressors, and wrongdoers who thereby aid in the killing of people. There is no disagreement that no liability is incumbent upon them.

L38717 If it is argued that someone else is the responsible party, they are told: "The animal is likewise the responsible party, and its injury is non-compensable. Similarly, whoever releases an animal or a bird from its restraint bears no liability for the harm it causes, as he neither intended [the harm], nor directly caused it, nor assumed responsibility."

L38718 As for one who rides his mount that has a young offspring following it, and the offspring harms a person or damages property, the rider is liable for its actions. If the rider acted intentionally, retaliation (qisas) applies; if unintentional, he is deemed responsible for unintentional killing (requiring diya).

L38719–38721 The evidence for this is that if someone urges him to walk behind his mother when she departs, he is immediately obligated to do so. To keep it close, if the colt stops following its mother to play or strays away, there is no liability in principle upon the rider of its mother.

وَأَمَّا السَّائِقُ - فَإِنْ حَمَلَهَا بِضَرْبٍ، أَوْ نَخْسٍ، أَوْ زَجْرٍ عَلَى شَيْءٍ مَا، فَإِنْ عَمَدَ فَالْقَوَدُ وَالضَّمَانُ، وَإِنْ لَمْ يَعْمِدْ فَهُوَ قَاتِلٌ خَطَأً كَمَا قُلْنَا، فَإِنْ لَمْ يَحْمِلْهَا عَلَى شَيْءٍ فَلَا ضَمَانَ عَلَيْهِ، لِأَنَّهُ لَمْ يُبَاشِرْ - وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «جُرْحُ الْعَجْمَاءِ جُبَارٌ» .

وَمَنْ أَوْثَقَ دَابَّتَهُ عَلَى طَرِيقِ الْمُسْلِمِينَ فَلَا ضَمَانَ عَلَيْهِ، وَكَذَلِكَ لَوْ أَرْسَلَهَا وَهُوَ يَمْشِي، وَلَيْسَ كُلُّ مُسِيءٍ ضَامِنًا.

وَقَدْ عَلِمْنَا وَعَلِمَ كُلُّ مُسْلِمٍ: أَنَّ عَامِلَ السِّلَاحِ، وَبَائِعَهَا فِي الْفِتَنِ: فَمُخَالِفٌ ظَالِمٌ، وَمُسِيءٌ، وَمُعِينٌ بِذَلِكَ عَلَى قَتْلِ النَّاسِ، وَلَا خِلَافَ فِي أَنَّهُ لَا ضَمَانَ عَلَيْهِ.

فَإِنْ قِيلَ: إنَّ غَيْرَهُ هُوَ الْمُتَوَلِّي؟ قِيلَ لَهُمْ: وَالدَّابَّةُ هِيَ الْمُتَوَلِّيَةُ أَيْضًا، وَجُرْحُهَا جُبَارٌ، وَكَذَلِكَ مَنْ حَلَّ دَابَّةً، أَوْ طَائِرًا عَنْ رِبَاطِهَا: فَلَا ضَمَانَ عَلَيْهِ فِيمَا أَصَابَتْ، لِأَنَّهُ لَمْ يَعْمِدْ، وَلَا بَاشَرَ، وَلَا تَوَلَّى.

وَأَمَّا مَنْ رَكِبَ دَابَّتَهُ وَلَهَا فِلْوٌ يَتْبَعُهَا فَأَصَابَ الْفِلْوُ إنْسَانًا، أَوْ مَالًا: فَهُوَ الْحَامِلُ لَهُ عَلَى ذَلِكَ، فَإِنْ عَمَدَ فَالْقَوَدُ، وَإِنْ لَمْ يَعْمِدْ فَهُوَ قَاتِلٌ خَطَأً.

بُرْهَانُ ذَلِكَ: أَنَّهُ فِي إزَالَتِهِ أُمَّهُ عِنْدَ مُسْتَدْعٍ لَهُ إلَى الْمَشْيِ وَرَاءَهَا، فَهُوَ مُبَاشِرٌ لِاسْتِجْلَابِهِ، فَلَوْ تَرَكَ الْفِلْوُ اتِّبَاعَ أُمِّهِ، وَأَخَذَ يَلْعَبُ، أَوْ خَرَجَ عَنْ اتِّبَاعِهَا، فَلَا ضَمَانَ عَلَى رَاكِبِ أُمِّهِ أَصْلًا.

L38722 Similarly, if someone lures an animal with something it would eat while knowing that in its path there is property it would damage or a sleeping person, and it comes to him and destroys something along its path, then retaliation (qisas) applies in cases of intent. If he did not intend it, he is deemed an unintentional killer.

وَكَذَلِكَ مَنْ اسْتَدْعَى بَهِيمَةً بِشَيْءٍ تَأْكُلُهُ وَهُوَ يَدْرِي أَنَّ فِي طَرِيقِهَا مَتَاعًا تُتْلِفُهُ، أَوْ إنْسَانًا رَاقِدًا فَأَتَتْهُ، فَأَتْلَفَتْ فِي طَرِيقِهَا شَيْئًا، فَالْقَوَدُ فِي الْعَمْدِ، وَهُوَ قَاتِلٌ خَطَأً إنْ لَمْ يَعْمِدْ.

L38723 Similarly, whoever unleashes a lion or a venomous snake toward a person is held accountable. However, this does not apply to one who merely releases them without intending them to harm a person.

وَكَذَلِكَ مَنْ أَشْلَى أَسَدًا عَلَى إنْسَانٍ أَوْ حَنَشًا - وَلَيْسَ كَذَلِكَ مَنْ أَطْلَقَهُمَا دُونَ أَنْ يَقْصِدَ بِهِمَا إنْسَانًا.

L38724 Because in releasing both of them against a human, he is directly engaged in causing his harm while intending to do so, and in their release there exists no perpetrator of even the slightest harm toward anyone whatsoever.

لِأَنَّهُ فِي إطْلَاقِهِمَا عَلَى الْإِنْسَانِ مُبَاشِرٌ لِإِتْلَافِهِ، قَاصِدٌ لِذَلِكَ - وَلَيْسَ فِي إطْلَاقِهِمَا جَانِيًا عَلَى أَحَدٍ شَيْئًا أَصْلًا.

L38725 As for what Shurayh stated concerning the joining of two camels, it is sound, and one who does what he is lawfully permitted is not liable unless a textual evidence or scholarly consensus obliges it.

وَأَمَّا مَا قَالَهُ شُرَيْحٌ فِي قَارِنِ الْبَعِيرَيْنِ فَصَحِيحٌ وَلَا ضَمَانَ عَلَى مَنْ فَعَلَ مَا أُبِيحَ لَهُ فِعْلُهُ، إلَّا أَنْ يُوجِبَ ذَلِكَ نَصٌّ أَوْ إجْمَاعٌ.

L38726 As for what has been reported from ʿAlī—may Allah be pleased with him—regarding the liability of the goader, it is sound, because she is the one who causes the other to fall to the ground. And success comes from Allah, the Exalted, alone.

وَأَمَّا مَا جَاءَ عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فِي تَضْمِينِ النَّاخِسَةِ فَصَحِيحٌ، لِأَنَّهَا هِيَ الْمُلْقِيَةُ لِلْأُخْرَى فِي الْأَرْضِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38727 And others, and the bolting of the animal.

[٠ وَغَيْرِهِ وَنِفَارِ الدَّابَّةِ]

L38728 2114 - Issue: Concerning criminal liability for injury caused by a dog or similar cases, and the bolting of mounts or comparable incidents - does this fall under the chapter preceding this one? Ali said: It was narrated by Ibn Waddāḥ from Saḥnūn, from Ibn Wahb, from Al-Ḥārith ibn Nabḥān, from Muḥammad ibn ʿUbayd Allāh al-ʿArzamī, from Anas ibn Sīrīn: A man was traveling at night with his mother mounted on a donkey. Another man came galloping on a horse, causing the donkey to bolt at the sound of the horse's hooves. The donkey leaped, throwing the woman to her death. The man sought a ruling from ʿUmar ibn al-Khaṭṭāb. ʿUmar - may Allah be pleased with him - asked: "Did the donkey strike anything?" He answered: "No." ʿUmar asked: "Did the horse cause any injury to the donkey?" He replied:

٢١١٤ - مَسْأَلَةٌ: مِنْ جِنَايَةِ الْكَلْبِ وَغَيْرِهِ، وَنِفَارِ الدَّابَّةِ وَغَيْرِ ذَلِكَ، مِنْ الْبَابِ الَّذِي قَبْلَ هَذَا؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي الْحَارِثُ بْنُ نَبْهَانَ عَنْ مُحَمَّدِ بْنِ عُبَيْدِ اللَّهِ الْعَرْزَمِيِّ عَنْ أَنَسِ بْنِ سِيرِينَ أَنَّ رَجُلًا كَانَ يَسْرِي بِأُمِّهِ فَجَاءَ رَجُلٌ عَلَى فَرَسٍ يَرْكُضُ فَنَفَرَ الْحِمَارُ مِنْ وَقْعِ حَافِرِ الْفَرَسِ فَوَثَبَ فَوَقَعَتْ الْمَرْأَةُ فَمَاتَتْ؟ فَاسْتَأْذَنَ عُمَرَ بْنَ الْخَطَّابِ؟ فَقَالَ عُمَرُ - رَضِيَ اللَّهُ عَنْهُ -: ضَرَبَ الْحِمَارُ؟

"No." ʿUmar concluded: "Your mother has met her predestined end. Accept this as a [divinely] accounted loss."

فَقَالَ: لَا، فَقَالَ: أَصَابَ الْحِمَارَ مِنْ الْفَرَسِ شَيْءٌ؟ قَالَ: لَا، قَالَ: أُمُّك أَتَتْ عَلَى أَجَلِهَا فَاحْتَسِبْهَا.

L38729–38731 Ibn Wahb said: Yunus informed me that he asked Abu al-Zinād about the blood money (diya) for [harm caused by] a dog, a cheetah, a domesticated lion, a ram known for butting, a bull's goring, a camel, or a biting horse that injures someone - whether a poor person, a musician, or someone engaged in worship. Abu al-Zinād replied: If any of these animals kills a person, breaks a hand or leg, gouges an eye, or causes any such injury to anyone, the owner is [liable for blood money]. The Messenger of Allah (ﷺ) ruled that "injuries caused by livestock are divinely absorbed [without liability]," unless the owner had been ordered by the authority to restrain the animal yet failed to do so. In such a case, the owner must compensate for the harm inflicted on others. As for damage caused to the animal itself, if the authority had not previously instructed its owner to restrain it, the one who caused the injury bears liability for the harm he inflicted upon it.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي يُونُسُ أَنَّهُ سَأَلَ أَبَا الزِّنَادِ عَنْ عَقْلِ الْكَلْبِ، أَوْ الْفَهْدِ، أَوْ السَّبُعِ الدَّاجِنِ، أَوْ الْكَبْشِ النَّطَّاحِ، أَوْ نَطْحِ الثَّوْرِ، أَوْ الْبَعِيرِ، أَوْ الْفَرَسِ الَّذِي يَعَضُّ، فَيَعْقُرُ مِسْكِينًا، أَوْ زَامِرًا، أَوْ عَابِدًا؟ فَقَالَ أَبُو الزِّنَادِ: إنْ قَتَلَ وَاحِدٌ مِنْ هَذِهِ الدَّوَابِّ، أَوْ أَصَابَ كَسْرَ يَدٍ، أَوْ رِجْلٍ، أَوْ فَقَأَ عَيْنًا، أَوْ أَيَّ أَمْرٍ جَرَحَ مِنْ ذَلِكَ بِأَحَدٍ مِنْ النَّاسِ فَهُوَ هَدْرٌ قَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ «الْعَجْمَاءَ جُرْحُهَا جُبَارٌ» إلَّا أَنْ يَكُونَ قَدْ اسْتَعْدَى فِي شَيْءٍ مِنْ ذَلِكَ، فَأَمَرَهُ السُّلْطَانُ بِإِيثَاقِ ذَلِكَ فَلَمْ يَفْعَلْ، فَإِنَّ عَلَيْهِ أَنْ يَغْرَمَ مَا جَرَحَ بِالنَّاسِ - فَأَمَّا مَا أُصِيبَ بِهِ الدَّابَّةُ أَوْ بِشَيْءٍ مِنْهَا، فَلَمْ يَكُنْ السُّلْطَانُ يَتَقَدَّمُ إلَى صَاحِبِهِ، فَإِنَّ عَلَى مَنْ أَصَابَهَا غُرْمُ مَا أَصَابَهَا بِهِ.

L38732 Malik said regarding one who keeps a dog in a desert dwelling and the dog then mauled a person: If he kept it while knowing that it mauls people, and it did maul them, he is liable for whatever the dog has mauled.

وَقَالَ مَالِكٌ: فِيمَنْ اقْتَنَى كَلْبًا فِي دَارِ الْبَادِيَةِ فَعَقَرَ ذَلِكَ الْكَلْبُ إنْسَانًا: إنَّهُ إنْ اقْتَنَاهُ - وَهُوَ يَدْرِي أَنَّهُ يَفْتَرِسُ النَّاسَ فَعَقَرَهُمْ - فَهُوَ ضَامِنٌ لِمَا فَرَسَ الْكَلْبُ.

L38733 Abu Muhammad said: As for the narration attributed to Umar - though unauthenticated in its chain of transmission - its meaning is sound, and we adopt this position. For whoever neither physically acts nor commands [an action] bears no liability. When an animal startles, is the one who caused its fright blameworthy? Unless he intentionally provoked it: then he incurs legal retribution (qisas) for the death caused if he intended thereby to make it trample the victim. If he lacked such intent, it constitutes accidental killing - the blood money (diyah) falls upon the male agnates, expiation obligations rest upon him, and he bears financial liability in both scenarios when he deliberately provoked the animal, for he is the one who set it in motion.

قَالَ أَبُو مُحَمَّدٍ: أَمَّا الرِّوَايَةُ عَنْ عُمَرَ - فَهِيَ وَإِنْ لَمْ تَصِحَّ - مِنْ طَرِيقِ النَّقْلِ فَمَعْنَاهَا صَحِيحٌ - وَبِهِ نَأْخُذُ، لِأَنَّ مَنْ لَمْ يُبَاشِرْ وَلَا أَمَرَ: فَلَا ضَمَانَ عَلَيْهِ، وَالدَّابَّةُ إذَا نَفَرَتْ فَلَيْسَ لِلَّذِي نَفَرَتْ مِنْهُ ذَنْبٌ؟ إلَّا أَنْ يَكُونَ نَفَّرَهَا عَامِدًا: فَإِنَّ عَلَيْهِ الْقَوَدَ فِيمَا قَتَلَتْ إذَا قَصَدَ بِذَلِكَ أَنْ تَطَأَ الَّذِي أَصَابَتْ، فَإِنْ لَمْ يَكُنْ قَصَدَ ذَلِكَ فَهُوَ قَاتِلٌ خَطَأً، وَالدِّيَةُ عَلَى الْعَاقِلَةِ، وَالْكَفَّارَةُ عَلَيْهِ، وَيَضْمَنُ الْمَالَ فِي كِلْتَا الْحَالَتَيْنِ، إذَا تَعَمَّدَ تَنْفِيرَهَا، لِأَنَّهُ الْمُحَرِّكُ لَهَا.

L38734 As for the statement of Abū al-Zinād—it is entirely valid, because injuries

caused by beasts entail no liability by the judgment of the Messenger of Allah—peace and blessings be upon him—and the owner did not intentionally cause any harm in that regard.

وَأَمَّا قَوْلُ أَبِي الزِّنَادِ - فَصَحِيحٌ كُلُّهُ، لِأَنَّ جُرْحَ الْعَجْمَاءِ جُبَارٌ بِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ لَمْ يَتَعَمَّدْ إشْلَاءَ شَيْءٍ مِنْ ذَلِكَ.

L38735 As for his statement "unless the Sultan has issued a prior command regarding that," this is baseless. The Sultan's prior command does not impose a penalty that Allah the Exalted or His Messenger—may Allah bless him and grant him peace—has not ordained. The Sultan is only an enforcer of divinely mandated obligations against those who refuse [to comply], and he is not a legislator of new divine law.

وَأَمَّا قَوْلُهُ «إلَّا أَنْ يَتَقَدَّمَ إلَيْهِ السُّلْطَانُ فِي ذَلِكَ» فَلَيْسَ بِشَيْءٍ، وَتَقَدُّمُ السُّلْطَانِ لَا يُوجِبُ غَرَامَةً لَمْ يُوجِبْهَا اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنَّمَا السُّلْطَانُ مُنَفِّذٌ لِلْوَاجِبِ عَلَى مَنْ امْتَنَعَ فَقَطْ، وَلَيْسَ شَارِعًا شَرِيعَةً.

L38736 As for Mālik's statement, it is also erroneous because the owner's knowledge that the dog mauls people does not constitute a legal basis for imposing compensation upon him—a ruling neither the Quran nor the Sunnah has imposed. Even if he transgressed by keeping the dog, he did not directly participate in what the dog destroyed.

وَأَمَّا قَوْلُ مَالِكٍ خَطَأً أَيْضًا، لِأَنَّهُ لَيْسَ عِلْمُ الْمُقْتَنِي لِلْكَلْبِ بِأَنَّهُ يَفْتَرِسُ النَّاسَ بِمُوجِبٍ عَلَيْهِ غَرَامَةً لَمْ يُوجِبْهَا الْقُرْآنُ وَلَا السُّنَّةُ، وَهُوَ وَإِنْ كَانَ مُتَعَدِّيًا بِاقْتِنَائِهِ فَإِنَّهُ لَمْ يُبَاشِرْ شَيْئًا فِي الَّذِي أَتْلَفَهُ الْكَلْبُ.

L38737 Similarly, whoever shelters a combatant engaged in warfare who commits a criminal offense, he—even if he was transgressing by sheltering him—is not directly committing aggression in the harm.

وَهَكَذَا مَنْ آوَى رَجُلًا قَتَّالًا مُحَارِبًا فَجَنَى جِنَايَةً، فَهُوَ وَإِنْ كَانَ مُتَعَدِّيًا بِإِيوَائِهِ إيَّاهُ فَلَيْسَ مُبَاشِرًا عُدْوَانًا فِي الْمُصَابِ.

L38738–38740 All of this constitutes a single chapter, and it is not analogical reasoning. However, our opponents adhere to his opinion yet contradict him in [...] That very action itself, when we compile both opinions for them, their contradiction in these matters becomes evident—thus, we present such issues not as proof standing on its own, for the proof in this matter is the statement of the Messenger of Allah: "The injury caused by an animal entails no liability." And success is from Allah, the Most High.

وَكُلُّ هَذَا بَابٌ وَاحِدٌ، وَلَيْسَ قِيَاسًا، وَلَكِنَّ خُصُومَنَا يَقُولُونَ بِقَوْلِهِ وَيُخَالِفُونَهُ فِي ذَلِكَ الْعَمَلِ نَفْسِهِ، فَإِذَا جَمَعْنَا لَهُمْ الْقَوْلَيْنِ لَاحَ لَهُمْ تَنَاقُضُهُمْ فِيهَا - فَعَلَى هَذَا نُورِدُ مِثْلَ هَذِهِ الْمَسَائِلِ لَا عَلَى أَنَّهَا حُجَّةٌ قَائِمَةٌ بِنَفْسِهَا، وَإِنَّمَا الْحُجَّةُ فِي هَذَا قَوْلُ رَسُولِ اللَّهِ «جُرْحُ الْعَجْمَاءِ جُبَارٌ» . وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38741 It was narrated to us through the chain of Abū Bakr ibn Abī Shaybah: ʿAbbād ibn al-ʿAwwām narrated from Ḥajjāj, from Qatādah, from Kaʿb ibn Sawwār: A man riding a donkey encountered another man on a camel in a narrow alley. The donkey bolted, causing the rider to fall and suffer harm? Kaʿb ibn Sawwār did not hold the camel's owner liable for anything. Abū Muḥammad said: "This is as we have stated."

رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ حَجَّاجٍ عَنْ قَتَادَةَ عَنْ كَعْبِ بْنِ سَوَّارٍ: أَنَّ رَجُلًا كَانَ عَلَى حِمَارٍ فَاسْتَقْبَلَهُ رَجُلٌ عَلَى بَعِيرٍ فِي زُقَاقٍ فَنَفَرَ الْحِمَارُ فَصُرِعَ الرَّجُلُ فَأَصَابَهُ شَيْءٌ؟ فَلَمْ يُضَمِّنْ كَعْبُ بْنُ سَوَّارٍ صَاحِبَ الْبَعِيرِ شَيْئًا؟ قَالَ أَبُو مُحَمَّدٍ: وَهَذَا كَمَا قُلْنَا - وَعَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ طَارِقٍ قَالَ: كُنْت عِنْدَ شُرَيْحٍ فَأَتَاهُ سَائِلٌ

From Sufyān al-Thawrī, from Ṭāriq, who said: "I was with Shurayḥ when a petitioner came and stated: 'I entered a people's property, and their dog attacked me, tearing my sack?' Shurayḥ ruled: 'If you entered with their consent, they are liable. If you entered without their consent, they bear no liability.'"

فَقَالَ: إِنِّي دَخَلْت دَارَ قَوْمٍ فَعَقَرَنِي كَلْبُهُمْ وَخَرَقَ جِرَابِي؟ فَقَالَ: إِنْ كُنْت دَخَلْت بِإِذْنِهِمْ فَهُمْ ضَامِنُونَ، وَإِنْ كُنْت دَخَلْت بِغَيْرِ إِذْنِهِمْ فَلَيْسَ عَلَيْهِمْ شَيْءٌ.

L38742 From Al-Sha'bi: If a dog is in a house and the residents permit a man to enter, then if the dog attacks him, they are liable. But if he enters without permission and the dog attacks him, there is no liability upon them. If any group trespasses upon a flock of sheep in their enclosures and the dogs attack them, there is no liability upon the sheep owners. However, if the dogs confront them on the road and attack them there, they are liable.

وَعَنْ الشَّعْبِيِّ قَالَ: إذَا كَانَ الْكَلْبُ فِي الدَّارِ فَأَذِنَ أَهْلُ الدَّارِ لِلرَّجُلِ فَعَقَرَهُ الْكَلْبُ ضَمِنُوا، وَإِنْ دَخَلَ بِغَيْرِ إذْنٍ فَعَقَرَهُ فَلَا ضَمَانَ عَلَيْهِمْ - وَأَيُّمَا قَوْمٍ غَشَوْا غَنَمًا فِي مَرَابِضِهَا فَعَقَرَتْهُمْ الْكِلَابُ فَلَا ضَمَانَ عَلَى أَصْحَابِ الْغَنَمِ، وَإِنْ عَرَضَتْ لَهُمْ الْكِلَابُ فِي الطَّرِيقِ فَعَقَرَتْهُمْ الْكِلَابُ فِي الطَّرِيقِ ضَمِنُوا.

L38743 As for the later jurists—Abū Ḥanīfah, Sufyān al-Thawrī, al-Ḥasan ibn Ḥayy, al-Shāfiʿī, and Abū Sulaymān—they said: If a person keeps a dog in his house and someone enters—whether with his permission or without it—and the dog kills the person, there is no financial liability for this. Ibn Abī Dhi'b likewise stated the same.

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيَّ، وَالْحَسَنَ بْنَ حَيٍّ، وَالشَّافِعِيَّ، وَأَبَا سُلَيْمَانَ، قَالُوا: مَنْ كَانَ فِي دَارِهِ كَلْبٌ فَدَخَلَ إنْسَانٌ بِإِذْنِهِ أَوْ بِغَيْرِ إذْنِهِ فَقَتَلَهُ الْكَلْبُ فَلَا ضَمَانَ فِي ذَلِكَ - وَكَذَلِكَ قَالَ ابْنُ أَبِي ذِئْبٍ.

L38744 Al-Wāqidī narrated a similar account from Mālik. Ibn Wahb reported from him that he said: If someone acquires a dog while knowing that it mauls people, he is liable; but if he was unaware of this, he is not liable—unless the authority has previously warned him. Abū Muḥammad said: The stipulation of prior action by the authority or his knowledge that the dog is vicious has no basis, as this is not established by any explicit Quranic text, Sunnah, or consensus.

وَقَدْ رَوَى الْوَاقِدِيُّ نَحْوَ هَذَا عَنْ مَالِكٍ - وَرَوَى عَنْهُ ابْنُ وَهْبٍ: أَنَّهُ قَالَ: إنْ اتَّخَذَ الْكَلْبَ وَهُوَ يَدْرِي أَنَّهُ يَعْقِرُ النَّاسَ ضَمِنَ - وَأَنَّهُ إنْ لَمْ يَعْلَمْ ذَلِكَ لَمْ يَضْمَنْ - إلَّا أَنْ يَتَقَدَّمَ إلَيْهِ السُّلْطَانُ؟ قَالَ أَبُو مُحَمَّدٍ: اشْتِرَاطُ تَقَدُّمِ السُّلْطَانِ، أَوْ عِلْمِهِ بِأَنَّهُ عَقُورٌ لَا مَعْنَى لَهُ، لِأَنَّهُ لَمْ يُوجِبْ هَذَا نَصُّ قُرْآنٍ وَلَا سُنَّةٍ وَلَا إجْمَاعٌ.

L38745 If it is said, "He transgresses by keeping the vicious dog"—then similarly, he transgresses by keeping it because he is not legally permitted to do so.

فَإِنْ قِيلَ: إنَّهُ بِاتِّخَاذِهِ الْكَلْبَ الْعَقُورَ مُتَعَدٍّ - وَكَذَلِكَ هُوَ بِاتِّخَاذِهِ حَيْثُ لَمْ يُبَحْ لَهُ اتِّخَاذُهُ مُتَعَدٍّ أَيْضًا؟

L38746–38747 We said: He is a wrongdoer in his act of keeping the dog—in both cases—yet he is not transgressing in the destruction caused by the dog. Neither Allah the Exalted nor His Messenger (peace and blessings be upon him) has ever obligated absolute financial liability upon a wrongdoer.

قُلْنَا: هُوَ مُتَعَدٍّ فِي اتِّخَاذِهِ - فِي كِلْتَا الْحَالَتَيْنِ - ظَالِمٌ إلَّا أَنَّهُ لَيْسَ مُتَعَدِّيًا فِي إتْلَافِ مَا أَتْلَفَ الْكَلْبُ، وَلَا أَوْجَبَ اللَّهُ تَعَالَى وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطُّ عَلَى ظَالِمٍ غَرَامَةً مُطْلَقَةً.

L38748 We have stated that transgression necessitating liability, retaliation, or blood money is that for which a person is termed “a killer” or “a corrupter,” and this applies exclusively through direct action or explicit command. This principle applies to one who owns a dog—akin to someone who fashions a sword and gives it to a wrongdoer—or to one who acquired wine stored in a concealed jar; then, when a person sat near it, the jar broke and killed the person. All such cases do not designate this wrongdoer as “a killer” or “one who causes loss,” and thus there is no liability in any of these matters.

وَقَدْ قُلْنَا: إنَّ التَّعَدِّيَ الْمُوجِبَ لِلضَّمَانِ، أَوْ لِلْقَوَدِ، أَوْ لِلدِّيَةِ، هُوَ مَا سُمِّيَ بِهِ الْمَرْءُ " قَاتِلًا، أَوْ مُفْسِدًا " وَلَيْسَ كَذَلِكَ، إلَّا بِالْمُبَاشَرَةِ، أَوْ بِالْأَمْرِ، وَهِيَ فِي اتِّخَاذِهِ الْكَلْبَ، كَمَنْ عَمِلَ سَيْفًا وَأَعْطَاهُ لِظَالِمٍ، أَوْ اقْتَنَى خَمْرًا فِي خَابِيَةٍ فَجَلَسَ إنْسَانٌ إلَيْهَا فَانْكَسَرَتْ فَقَتَلَتْ الْإِنْسَانَ؟ فَكُلُّ هَذَا لَيْسَ يُسَمِّي هَذَا الظَّالِمَ " قَاتِلًا، وَلَا مُتْلِفًا " فَلَا ضَمَانَ فِي شَيْءٍ مِنْ ذَلِكَ.

L38749 It is reported from Ibrāhīm al-Nakhāʿī concerning a man whose horse bolted with him and killed a man: “He is financially liable. He is equivalent to one who shot his arrow at a bird but struck a man and killed him.”

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي رَجُلٍ جَمَحَ بِهِ فَرَسُهُ فَقَتَلَ رَجُلًا، قَالَ: يَضْمَنُ، هُوَ بِمَنْزِلَةِ الَّذِي رَمَى بِسَهْمِهِ طَائِرًا فَأَصَابَ رَجُلًا فَقَتَلَهُ.

L38750 Abu Muhammad said: If his horse bolts with him, and he is the one moving it and overpowering it, then he is liable for all the harm it causes by his act of moving it—for intentional [acts], *qisas*, retaliation in kind, applies, and for what he did not intend, liability for error applies. But if his mount overpowers him and he does not direct it to do anything, then he bears no liability at all in any respect for any harm it causes.

قَالَ أَبُو مُحَمَّد: إذَا جَمَحَ بِهِ فَرَسُهُ، فَإِنْ كَانَ هُوَ الْمُحَرِّكُ لَهُ، الْمُغَالِبُ لَهُ، فَإِنَّهُ يَضْمَنُ كُلَّ مَا جَنَى بِتَحْرِيكِهِ إيَّاهُ، فِي الْقَصْدِ الْقَوَدُ وَفِيمَا لَمْ يَقْصِدْهُ ضَمَانُ الْخَطَأِ - وَأَمَّا إذَا غَلَبَتْهُ دَابَّتُهُ فَلَمْ يُحْمِلْهَا عَلَى شَيْءٍ فَلَا شَيْءَ عَلَيْهِ أَصْلًا فِي كُلِّ مَا أَصَابَتْ.

L38751 If a person pursues an animal to capture it, then whatever damage the animal causes during its flight—due to the pursuer’s instigation, in cases where it is certain that the animal perceives him and flees—the pursuer is liable for what he intentionally and purposefully aimed at in retaliation (qisas). For unintended harm, the blood money (diyah) is owed by the ʿāqila (agnatic kin group), and the expiation obligation rests upon him. As for whatever that animal destroys during its flight while it does not perceive him, there is no liability upon the pursuer. And with Allah the Exalted is success.

وَلَوْ أَنَّ امْرَأً اتَّبَعَ حَيَوَانًا لِيَأْخُذَهُ؟ فَكُلُّ مَا أَفْسَدَ الْحَيَوَانُ فِي هُرُوبِهِ ذَلِكَ، مِمَّا هُوَ حَامِلُهُ عَلَيْهِ، مِمَّا يُوقِنُ أَنَّ ذَلِكَ الْحَيَوَانَ إنَّمَا يَرَاهُ وَيَهْرُبُ عَنْهُ: فَهُوَ ضَامِنٌ لَهُ مَا عَمَدَ وَقَصَدَ بِالْقَوَدِ، وَمَا لَمْ يَقْصِدْ: فَالدِّيَةُ عَلَى الْعَاقِلَةِ وَالْكَفَّارَةُ عَلَيْهِ - وَأَمَّا مَا أَتْلَفَ ذَلِكَ الْحَيَوَانُ فِي جَرْيِهِ - وَهُوَ لَا يَرَاهُ - فَلَا ضَمَانَ عَلَى مُتَّبِعِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38752 **A legal issue: If someone provokes a dog, releases a lion, or**

[مَسْأَلَةٌ هَيَّجَ كَلْبًا أَوْ أَطْلَقَ أَسَدًا أَوْ أَعْطَى أَحْمَقَ سَيْفًا فَقَتَلَ رَجُلًا]

٢١١٥ - مَسْأَلَةٌ: وَلَوْ أَنَّ إِنْسَانًا هَيَّجَ كَلْبًا، أَوْ أَطْلَقَ أَسَدًا، أَوْ أَعْطَى أَحْمَقَ سَيْفًا فَقَتَلَ رَجُلًا: كُلُّ مَنْ ذَكَرْنَا فَلَا ضَمَانَ عَلَى الْمُهَيِّجِ، وَلَا عَلَى الْمُطْلِقِ، وَلَا عَلَى الْمُعْطِي السَّيْفَ؛ لِأَنَّهُمْ لَمْ يُبَاشِرُوا الْجِنَايَةَ، وَلَا أَمَرُوا بِهَا مَنْ يُطِيعُهُمْ.

L38753 Issue 2115: If a person incites a dog, releases a lion, or gives a sword to a fool, and a man is killed as a result, none of the aforementioned parties—the inciter, the releaser, or the one who gave the sword—is liable. This is because they neither directly perpetrated the wrongful act nor commanded someone under their authority to commit it.

فَلَوْ أَنَّهُ أَشْلَى الْكَلْبَ عَلَى إِنْسَانٍ، أَوْ حَيَوَانٍ فَقَتَلَهُ: ضَمِنَ الْمَالَ وَعَلَيْهِ الْقَوَدُ مِثْلُ ذَلِكَ، وَيُطْلَقُ عَلَيْهِ كَلْبٌ مِثْلُهُ حَتَّى يَفْعَلَ بِهِ مِثْلَ مَا فَعَلَ الْكَلْبُ بِإِطْلَاقِهِ، لِأَنَّهُ هَاهُنَا هُوَ الْجَانِي الْقَاصِدُ إِلَى إِتْلَافِ مَا أَتْلَفَ الْكَلْبُ بِإِغْرَائِهِ.

L38754 If he unleashes a dog upon a human or an animal, causing its death, he must pay financial compensation and is subject to equivalent qisas. A dog equivalent to it shall be released upon him until it inflicts upon him the same harm his dog caused by his unleashing, for he is here the deliberate perpetrator who intended the destruction that the dog caused through his incitement.

وَلَوْ أَنَّ امْرَأً حَفَرَ حُفْرَةً وَغَطَّاهَا، وَأَمَرَ إِنْسَانًا أَنْ يَمْشِيَ عَلَيْهَا، فَمَشَى عَلَيْهَا ذَلِكَ الْإِنْسَانُ مُخْتَارًا لِلْمَشْيِ - عَالِمًا، أَوْ غَيْرَ عَالِمٍ -: فَلَا ضَمَانَ عَلَى آمِرِهِ بِالْمَشْيِ، وَلَا عَلَى الْحَافِرِ، وَلَا عَلَى الْمُعْطِي، لِأَنَّهُمْ لَمْ يُمْشُوهُ، وَلَا بَاشَرُوا إِتْلَافَهُ، وَإِنَّمَا هُوَ بَاشَرَ شَيْئًا بِاخْتِيَارِهِ - وَلَا فَرْقَ بَيْنَ هَذَا بَيْنَ مَنْ غَرَّ إِنْسَانًا فَقَالَ لَهُ: طَرِيقُ كَذَا أَمْنٌ هُوَ؟ فَقَالَ لَهُ: نَعَمْ، هُوَ فِي غَايَةِ الْأَمْنِ - وَهُوَ يَدْرِي أَنَّ فِي الطَّرِيقِ الْمَذْكُورِ أَسَدًا هَائِجًا، أَوْ جَمَلًا هَائِجًا، أَوْ كِلَابًا عَقَّارَةً، أَوْ قَوْمًا قُطَّاعِينَ لِلطَّرِيقِ، يَقْتُلُونَ النَّاسَ - فَنَهَضَ السَّائِلُ مُغْتَرًّا بِخَبَرِ هَذَا الْغَارِ لَهُ، فَقُتِلَ وَذَهَبَ مَالُهُ.

L38755–38757 If a person digs a pit, covers it, and instructs someone to walk upon it, and that individual then walks upon it of his own volition - whether aware or unaware of the pit - no liability is incurred by the one who instructed him to walk, nor... There is no liability upon the digger of the pit nor upon the giver, for they neither compelled him to proceed nor directly engaged in its destruction. Rather, he engaged in something by his own choice. This case is equivalent to one where a person deceives another by saying to him: "Is such-and-such path safe?" then confirming to him: "Yes, it is perfectly secure," while knowing the mentioned path contains an aggressive lion, a frenzied camel, vicious biting dogs, or bandits who waylay and kill people. Consequently, the questioner advances—deceived by the information about this pit for him—and is killed, losing his property.

وَكَذَلِكَ: مَنْ رَأَى أَسَدًا فَأَرَادَ الْهُرُوبَ عَنْهُ؟ فَقَالَ لَهُ إِنْسَانٌ مَنْ غَرَّ بِهِ: لَا تَخَفْ، فَإِنَّهُ مُقَيَّدٌ؟ فَاغْتَرَّ بِقَوْلِهِ وَمَشَى، فَقَتَلَهُ الْأَسَدُ - فَهَذَا كُلُّهُ لَا قَوَدَ عَلَى الْغَارِّ، وَلَا ضَمَانَ أَصْلًا فِي دَمٍ وَلَا مَالٍ، لِأَنَّهُ لَمْ يُبَاشِرْ شَيْئًا، وَلَا أَكْرَهَ؟ فَلَوْ أَنَّهُ أَكْرَهَهُ عَلَى الْمَشْيِ عَلَى الْحُفْرَةِ فَهَلَكَ فِيهَا، أَوْ طَرَحَهُ إِلَى الْأَسَدِ أَوْ إِلَى الْكَلْبِ؟ فَعَلَيْهِ الْقَوَدُ.

L38758 Similarly, if someone sees a lion and wants to flee from it, but a person who deludes him says, "Do not fear, for it is chained," and he is deluded by his words and proceeds, then the lion killed him—in all these cases, there is no qisas against the deluder, nor any liability whatsoever for loss of life or property, because he neither physically acted nor compelled. However, if he compelled him to walk into a pit and he perished in it, or threw him to the lion or to a dog, then qisas is obligatory upon him.

L38759 If someone throws another person to combatants or rebels, and they kill him, then they are the killers—not the thrower. This differs from throwing him to one lacking legal capacity, for such a person is merely an instrument of the thrower.

L38760 Similarly, if he restrained him for a lion resulting in the lion killing him, or for an insane person resulting in the insane person killing him, then the restrainer in this case is considered the killer—unlike restraining him for the killing of a sane person. And success is by Allah's grace, the Most High.

L38761 **A legal case: A man was pursuing an animal and called out to a man, "Restrain it for me!" Then it struck him, causing his death.**

L38762 2116 - Issue: It has been reported to us through the chain of Ibn Waḍḍāḥ: Sahnūn narrated to us; Ibn Wahb narrated to us. [Ibn Wahb] informed me from Yūnus ibn Yazīd, from Ibn Shihāb concerning a man who sought an animal and called to another man: "Restrain it for me!" Then, either the animal collided with him and killed him, or he threw something at it and killed it. Ibn Shihāb said: "In both cases, he is liable for damages."

L38763 And to him—to Ibn Wahb—Al-Layth ibn Sa'd and Ibn Lahi'ah reported: That Hisham issued a ruling regarding a man who embraced a female slave to himself from a mount, and the mount caused her to fall into his lap: "The man bears liability for her blood money." Ibn Lahi'ah said: "But the man is our freed slave?" Tawbah ibn Namir—the judge of the people of Egypt—wrote to Hisham about this matter, and he ruled with this, placing the blood money liability on us [the patrons].

L38764 Ibn Wahb said: Al-Layth ibn Sa'd informed me that Hisham wrote concerning a man who carried a child, then the child plunged into a deep pit and died: that the blood money liability rests upon the one who carried [the child]. Al-Layth said: People act upon this legal opinion. Ibn Wahb said: It was conveyed to me from Rabi'ah that he said the same. Rabi'ah said: If both perish, then no blood money is due for them.

L38765–38766 Abu Muhammad said: There is no authoritative proof in the statement of

فَلَوْ طَرَحَهُ إِلَى أَهْلِ الْحَرْبِ، أَوْ الْبُغَاةِ فَقَتَلُوهُ: فَهُمْ الْقَتَلَةُ لَا الطَّارِحُ - بِخِلَافِ طَرْحِهِ إِلَى مَنْ لَا يَعْقِلُ، لِأَنَّ مَنْ لَا يَعْقِلُ آلَةٌ لِلطَّارِحِ.

وَكَذَلِكَ - لَوْ أَمْسَكَهُ لِأَسَدٍ فَقَتَلَهُ، أَوْ لِمَجْنُونٍ فَقَتَلَهُ، فَالْمُمْسِكُ هَاهُنَا هُوَ الْقَاتِلُ - بِخِلَافِ إمْسَاكِهِ إيَّاهُ لِقَتْلِ مَنْ يَعْقِلُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ طَلَبَ دَابَّةً فَنَادَى رَجُلًا احْبِسْهَا عَلَيَّ فَصَدَمَتْهُ فَقَتَلَتْهُ]

٢١١٦ - مَسْأَلَةٌ: رُوِّينَا مِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَنَّهُ قَالَ فِي رَجُلٍ طَلَبَ دَابَّةً فَنَادَى رَجُلًا: احْبِسْهَا عَلَيَّ، فَصَدَمَتْهُ فَقَتَلَتْهُ، أَوْ رَمَاهَا فَقَتَلَهَا؟ فَقَالَ ابْنُ شِهَابٍ: كِلَاهُمَا يُغَرَّمُ.

وَبِهِ - إلَى ابْنِ وَهْبٍ أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ وَابْنُ لَهِيعَةَ: أَنَّ هِشَامًا كَتَبَ فِي رَجُلٍ ضَمَّ جَارِيَةً إلَيْهِ مِنْ دَابَّةٍ فَضَرَبَتْهَا فِي حِجْرِهِ: أَنَّ عَلَى الرَّجُلِ دِيَتَهَا - قَالَ ابْنُ لَهِيعَةَ: وَالرَّجُلُ مَوْلًى لَنَا؟ كَتَبَ تَوْبَةُ بْنُ نَمِرٍ - قَاضِي أَهْلِ مِصْرَ - إلَى هِشَامٍ فِي ذَلِكَ؟ فَكَتَبَ بِهَذَا، فَجَعَلَ الدِّيَةَ عَلَيْنَا

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ: أَنَّ هِشَامًا كَتَبَ فِي رَجُلٍ حَمَلَ صَبِيًّا فَخَرَّ فِي مَهْوَاةٍ، فَمَاتَ الصَّبِيُّ: أَنَّ ضَمَانَهُ عَلَى الْحَامِلِ، قَالَ اللَّيْثُ: وَعَلَى هَذِهِ الْفُتْيَا النَّاسُ - قَالَ ابْنُ وَهْبٍ: وَبَلَغَنِي عَنْ رَبِيعَةَ أَنَّهُ قَالَ مِثْلَ ذَلِكَ قَالَ: فَإِنْ هَلَكَا جَمِيعًا فَلَا عَقْلَ لَهُمَا.

any creature other than the Messenger of Allah—peace and blessings be upon him.

L38767 As for the one who instructed a man: "Restrain the animal for me," and it collided with him causing his death: there is no liability upon the one who ordered its restraint, because he neither transgressed against him nor directly participated in causing the destruction. If the commanded person tasked with restraining the animal were to strike it causing its death, or commit an offense against it, he would be fully liable in all circumstances, for he performed acts of destruction or criminal offenses against it that Allah the Exalted did not permit. Thus, he becomes a destroyer without right and a transgressor without right, while being directly responsible for it. Allah the Exalted said: "The requital of a misdeed is a misdeed like it" [42:40]. Similarly, if he ordered him to kill it or commit an offense against it and he complied, the commander would be liable, for he commanded what is unlawful and what he had no authority to order. He transgressed through the command, and the commanded one also transgressed through compliance. Therefore, the commander bears liability for the commanded person's direct execution of the criminal act.[10]

L38768 As for one who attaches a young female animal to another beast, and the latter kicks it, thereby killing it: there is no liability upon him, for he did not directly cause its destruction, as "injuries caused by beasts entail no liability."

L38769 As for the one carrying a child who fell into a pit, causing the child's death: If the death occurred due to the bearer collapsing onto the child, he is liable. The blood money (diyah) is incumbent upon his male agnatic relatives (aqilah), and he must perform religious expiation (kaffarah) for unintentional homicide. If the death resulted from the fall into the pit itself rather than the bearer's body collapsing onto the child, no liability is incurred.

L38770 If the pregnant woman dies at the time of the culpable act upon the boy or before the act occurs, there is no financial liability upon his aqilah (responsible male kin), because no liability is imposed on a deceased person. And success is with Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ فِي قَوْلِ مَخْلُوقٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

فَأَمَّا الَّذِي قَالَ لِلرَّجُلِ: احْبِسْ لِي الدَّابَّةَ فَصَدَمَتْهُ فَقَتَلَتْهُ: فَلَا ضَمَانَ عَلَى الَّذِي أَمَرَهُ بِحَبْسِهَا، لِأَنَّهُ لَمْ يَتَعَدَّ عَلَيْهِ، وَلَا بَاشَرَ فِيهِ إتْلَافَهُ. فَلَوْ أَنَّ الْمَأْمُورَ بِحَبْسِ الدَّابَّةِ رَمَاهَا فَقَتَلَهَا، أَوْ جَنَى عَلَيْهَا فَهُوَ ضَامِنٌ عَلَى كُلِّ حَالٍ، لِأَنَّهُ فَعَلَ مِنْ إتْلَافِهَا، وَمِنْ الْجِنَايَةِ عَلَيْهَا مَا لَمْ يُبِحْ اللَّهُ تَعَالَى لَهُ فِعْلَهُ، فَهُوَ مُتْلِفٌ بِغَيْرِ حَقٍّ وَجَانٍ بِغَيْرِ حَقٍّ، وَمُبَاشِرٌ لِذَلِكَ، قَالَ اللَّهُ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] ، وَكَذَلِكَ - لَوْ أَمَرَهُ بِقَتْلِهَا، أَوْ الْجِنَايَةِ عَلَيْهَا فَفَعَلَ لَضَمِنَ، لِأَنَّهُ أَمَرَهُ بِمَا لَا يَحِلُّ، وَبِمَا لَيْسَ لَهُ أَنْ يَأْمُرَهُ بِهِ، فَهُوَ مُتَعَدٍّ بِالْأَمْرِ، وَالْمَأْمُورُ أَيْضًا مُتَعَدٍّ بِالِائْتِمَارِ، فَهُوَ ضَامِنٌ لِمُبَاشَرَتِهِ الْجِنَايَةَ.

وَأَمَّا مَنْ ضَمَّ صَبِيَّةً مِنْ دَابَّةٍ فَرَمَحَتْهَا الدَّابَّةُ فَقَتَلَتْهَا: فَلَا ضَمَانَ عَلَيْهِ، لِأَنَّهُ لَمْ يُبَاشِرْ إتْلَافَهَا، وَ " جُرْحُ الْعَجْمَاءِ جُبَارٌ ".

وَأَمَّا الَّذِي حَمَلَ صَبِيًّا فَسَقَطَ فِي مَهْوَاةٍ فَمَاتَ الصَّبِيُّ، فَإِنْ كَانَ مَوْتُهُ مِنْ وُقُوعِ حَامِلِهِ عَلَيْهِ فَهُوَ ضَامِنٌ، وَالضَّمَانُ عَلَى الْعَاقِلَةِ، وَعَلَيْهِ الْكَفَّارَةُ، لِأَنَّهُ قَاتِلٌ خَطَأً - وَإِنْ كَانَ مَاتَ مِنْ الْوَقْعَةِ لَا مِنْ وُقُوعِ حَامِلِهِ عَلَيْهِ، فَلَا ضَمَانَ فِي ذَلِكَ.

فَلَوْ مَاتَ الْحَامِلُ حِينَ وُقُوعِهِ عَلَى الصَّبِيِّ، أَوْ قَبْلَ وُقُوعِهِ عَلَيْهِ: فَلَا ضَمَانَ عَلَى عَاقِلَتِهِ، لِأَنَّهُ لَا جِنَايَةَ عَلَى مَيِّتٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[10] **Qur'an references (L38767):** Qur'an 42:40 (Ash-Shuraa).

[مَسْأَلَةٌ اللِّصُّ يَدْخُلُ عَلَى الْإِنْسَانِ هَلْ لَهُ قَصْدُ قَتْلِهِ]

٢١١٧ - مَسْأَلَةٌ: اللِّصُّ يَدْخُلُ عَلَى الْإِنْسَانِ هَلْ لَهُ قَصْدُ قَتْلِهِ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبْدُ اللَّهِ بْنُ إدْرِيسَ الْأَوْدِيُّ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ عَنْ نَافِعٍ قَالَ: أَصْلَتَ ابْنُ عُمَرَ عَلَى لِصٍّ بِالسَّيْفِ، فَلَوْ تَرَكْنَاهُ لَقَتَلَهُ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ أَيْضًا نا ابْنُ عُلَيَّةَ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ حُجَيْرِ بْنِ الرَّبِيعِ قَالَ: قُلْت لِعِمْرَانَ بْنِ الْحُصَيْنِ أَرَأَيْت إنْ دَخَلَ عَلَيَّ دَاخِلٌ يُرِيدُ نَفْسِي وَمَالِي؟ قَالَ عِمْرَانُ: لَوْ دَخَلَ عَلَيَّ دَاخِلٌ يُرِيدُ نَفْسِي وَمَالِي لَرَأَيْت أَنْ قَدْ حَلَّ لِي قَتْلُهُ.

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا عَبَّادُ بْنُ عَوَّامٍ - هُوَ ابْنُ أَبِي جَمِيلَةَ - عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: اُقْتُلْ اللِّصَّ، وَالْحَرُورِيَّ، وَالْمُسْتَعْرِضَ.

وَعَنْ مُحَمَّدِ بْنِ سِيرِينَ أَنَّهُ قَالَ: مَا عَلِمْت أَنَّ أَحَدًا مِنْ الْمُسْلِمِينَ تَرَكَ قِتَالَ رَجُلٍ يَقْطَعُ عَلَيْهِ الطَّرِيقَ أَوْ يَطْرُقُهُ فِي بَيْتِهِ تَأَثُّمًا مِنْ ذَلِكَ.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا دَخَلَ اللِّصُّ دَارَ الرَّجُلِ فَقَتَلَهُ فَلَا ضِرَارَ عَلَيْهِ.

وَعَنْ الشَّعْبِيِّ قَالَ: الرَّجُلُ مُحَارِبٌ لِلَّهِ وَرَسُولِهِ فَاقْتُلْهُ، فَمَا أَصَابَك مِنْ شَيْءٍ فَعَلَيَّ.

وَعَنْ ابْنِ سِيرِينَ أَنَّهُ قَالَ: قُلْت لِعُبَيْدَةَ: أَرَأَيْت إنْ دَخَلَ عَلَيَّ رَجُلٌ يُرِيدُ بَيْتِي؟ قَالَ: إنَّ الَّذِي يَدْخُلُ عَلَيْك بَيْتَك لَا يَحِلُّ لَهُ مِنْك مَا حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِ، وَلَكِنْ يَحِلُّ لَك نَفْسُهُ.

A legal question: If a thief breaks into a person's dwelling, does he intend to kill him?

2117 - Issue: If a thief enters a person's home, does he intend to kill him? Ali said: "It was narrated to us through the chain of Abu Bakr ibn Abi Shaybah – from Abdullah ibn Idris al-Awdi – from Ubaydullah ibn Umar – from Nafi', who said: Ibn Umar brandished his sword at a thief. Had we not intervened, he would have killed him."

And via the chain of Abu Bakr ibn Abi Shaybah as well, narrated to us Ibn 'Ulayyah from Ayyub al-Sikhtiyānī from Humaid ibn Hilal from Hujayr ibn al-Rabi', who said: I said to Imran ibn al-Husayn, "What is your view if someone intrudes upon me intending my life and property?" Imran said: "If someone were to intrude upon me intending my life and property, I would hold that killing him is lawful."

And through the chain of Abū Bakr ibn Abī Shaybah, from ʿAbbād ibn ʿAwf (son of Abī Jamīlah), from al-Ḥasan al-Baṣrī, who said: Kill the thief, the Kharijite dissident (Ḥarūrī), and the highway robber (mustaʿriḍ).

And from Muhammad ibn Sirin that he said: I do not know of any Muslim who refrained from fighting a man who waylaid him on the road or raided his home out of fear of sinning thereby.

It is narrated from Ibrāhīm al-Nakhaʿī that he said: If a thief enters a man's home and he kills him, no liability is upon him.

From Al-Sha'bī, who said: "A man who wages war against Allah and His Messenger - kill him, and whatever thing befalls you, it is upon me."

From Ibn Sīrīn that he said: I asked 'Ubaydah, "What if a man enters my house intending to enter it?" He replied, "Whoever enters your house is not permitted to take from you anything Allah the Exalted has forbidden upon him. However, he himself is permissible for you."

From Mansur: He asked Ibrahim about a man who confronts another man

intending to take his wealth—should he fight him? Ibrahim replied: "If he refrains [from fighting], the aggressor would kill him." Abu Muhammad said: We were narrated through the chain of Muslim ibn al-Hajjaj → Abu Kurayb Muhammad ibn al-Ala' → Khalid ibn Makhlad → Muhammad ibn Ja'far → al-'Ala' ibn 'Abd al-Rahman → Abu Hurayrah, who said:

A man came to the Messenger of Allah (peace be upon him) and asked: "O Messenger of Allah, what if a man comes intending to take my wealth?" He replied: "Do not surrender your wealth to him." The man asked: "What if he attacks me?" He said: "Fight him." The man asked: "What if he kills me?" He answered: "You would be a martyr." The man asked: "What if I kill him?" He said: "He would be in the Fire."

L38781 Ali said: If someone intends to seize a person's property unjustly—whether a thief or others—and if it is feasible for him to drive him away from himself and prevent him, then it is not permissible for him to kill him. If he kills him in that case, qisas (retaliatory punishment) is incumbent upon him. But if he anticipates—even the slightest expectation—that the thief will immediately assault him, then he may kill him, and there is no liability upon him, for he is defending himself.

L38782 If it is said: "The thief is one who wages war (against society), so does the ruling for such a one apply to him?" We respond: If he acts defiantly and prevails, then he is one who wages war. The discretion to execute the one who wages war rests with the Imam, not others, or with whoever administers justice if there is no Imam present. But if he does not act defiantly nor prevail, but steals stealthily, he is not one who wages war, and it is categorically impermissible to kill him. Success is from Allah, the Most High.

L38783–38784 **Case: The owner of the crossing uses beasts of burden to operate the crossing, and the beasts drowned.**

L38785 The owner of the ferry transports animals, and they drowned. ʿAlī said: Ḥammām → ʿAbdullāh ibn Muḥammad ibn ʿAlī → ʿAbdullāh ibn Yūnus → Baqī ibn Makhlad → Abū Bakr ibn Abī Shaybah → Ḥumayd ibn ʿAbd al-Raḥmān → Ḥasan → Jābir → ʿĀmir, who said to me: "If the ferry owner

وَعَنْ مَنْصُورٍ أَنَّهُ سَأَلَ إِبْرَاهِيمَ عَنْ الرَّجُلِ يَعْرِضُ لِلرَّجُلِ يُرِيدُ مَالَهُ أَيُقَاتِلُهُ؟ فَقَالَ إِبْرَاهِيمُ: لَوْ تَرَكَهُ لَقَتَلَهُ؟ قَالَ أَبُو مُحَمَّدٍ: رُوِّينَا مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ نا خَالِدٌ - يَعْنِي ابْنَ مَخْلَدٍ - نا مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ يَا رَسُولَ اللَّهِ: أَرَأَيْتَ إنْ جَاءَ رَجُلٌ يُرِيدُ أَنْ يَأْخُذَ مَالِي؟ قَالَ: فَلَا تُعْطِهِ مَالَكَ، قَالَ: أَرَأَيْتَ إنْ قَاتَلَنِي؟ قَالَ: قَاتِلْهُ. قَالَ: أَرَأَيْتَ إنْ قَتَلَنِي، قَالَ: فَأَنْتَ شَهِيدٌ، قَالَ: أَرَأَيْتَ إنْ قَتَلْتُهُ؟ قَالَ: هُوَ فِي النَّارِ» .

قَالَ عَلِيٌّ: فَمَنْ أَرَادَ أَخْذَ مَالِ إنْسَانٍ ظُلْمًا مِنْ لِصٍّ، أَوْ غَيْرِهِ، فَإِنْ تَيَسَّرَ لَهُ طَرْدُهُ مِنْهُ وَمَنْعُهُ: فَلَا يَحِلُّ لَهُ قَتْلُهُ، فَإِنْ قَتَلَهُ حِينَئِذٍ: فَعَلَيْهِ الْقَوَدُ - وَإِنْ تَوَقَّعَ - أَقَلَّ تَوَقُّعٍ - أَنْ يُعَاجِلَهُ اللِّصُّ: فَلْيَقْتُلْهُ وَلَا شَيْءَ عَلَيْهِ، لِأَنَّهُ مُدَافِعٌ عَنْ نَفْسِهِ.

فَإِنْ قِيلَ: اللِّصُّ مُحَارِبٌ فَعَلَيْهِ مَا عَلَى الْمُحَارِبِ؟ قُلْنَا: فَإِنْ كَابَرَ وَغَلَبَ فَهُوَ مُحَارِبٌ، وَاخْتِيَارُ الْقَتْلِ فِي الْمُحَارِبِ إلَى الْإِمَامِ لَا إلَى غَيْرِهِ، أَوْ إلَى مَنْ قَامَ بِالْحَقِّ إنْ لَمْ يَكُنْ هُنَالِكَ إمَامٌ، وَإِنْ لَمْ يُكَابِرْ وَلَا غَلَبَ، لَكِنْ تَلَصَّصَ: فَلَيْسَ مُحَارِبًا، وَلَا يَحِلُّ قَتْلُهُ أَصْلًا. وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ صَاحِبُ الْمَعْبَرِ يَعْبُرُ بِدَوَابَّ فَغَرِقَتْ.]

صَاحِبُ الْمَعْبَرِ يَعْبُرُ بِدَوَابَّ فَغَرِقَتْ. قَالَ عَلِيٌّ: نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ

transports animals and they drown - what is the ruling?" He stated: "There is no liability upon him."

حَسَنٍ عَنْ جَابِرٍ عَنْ عَامِرٍ، قَالَ لِي: صَاحِبُ الْمَعْبَرِ يَعْبُرُ بِدَوَابَّ فَغَرِقَتْ؟ قَالَ: فَلَا ضَمَانَ عَلَيْهِ.

L38786 Ali said: "It is as he stated, unless he personally causes damage to the crossing point or the ship, in which case he is liable—and success is by Allah, the Exalted."

قَالَ عَلِيٌّ: وَهُوَ كَمَا قَالَ إِلَّا أَنْ يُبَاشِرَ تَعْطِيبَ الْمَعْبَرِ، أَوْ تَعْطِيبَ السَّفِينَةِ، فَيَضْمَنُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ اسْتَعَانَ صَبِيًّا أَوْ عَبْدًا بِغَيْرِ إِذْنِ أَهْلِهِ فَتَلِفَ]

L38787 **A case where someone enlisted the assistance of a minor or a slave without the permission of their guardians, resulting in damage.**

L38788 2118 - Issue: If someone enlists the aid of a minor or a slave without their respective guardian's permission, resulting in [the entrusted item's] destruction, [what is the ruling?] Muḥammad ibn Saʿīd ibn Nubāt narrated to us from ʿAbdullāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ from Isrāʾīl from Jābir from al-Shaʿbī that he said regarding a man who gave a minor a horse, and the minor caused its death: The man is liable to compensate.

٢١١٨ - مَسْأَلَةٌ: مَنْ اسْتَعَانَ صَبِيًّا أَوْ عَبْدًا بِغَيْرِ إِذْنِ أَهْلِهِ فَتَلِفَ؟ حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا إِسْرَائِيلُ عَنْ جَابِرٍ عَنِ الشَّعْبِيِّ أَنَّهُ قَالَ فِي رَجُلٍ أَعْطَى صَبِيًّا فَرَسًا فَقَتَلَهُ؟ قَالَ: يَضْمَنُ الرَّجُلُ.

L38789 Through the same chain up to Wakīʿ: Sufyān narrated to us from Ashʿath from al-Ḥakam from Ibrāhīm, who said: Whoever uses the services of a slave without the permission of his master and thereby causes harm, he is liable.

وَبِهِ - إِلَى وَكِيعٍ نا سُفْيَانُ عَنْ أَشْعَثَ عَنِ الْحَكَمِ عَنْ إِبْرَاهِيمَ قَالَ: مَنِ اسْتَعَانَ عَبْدًا بِغَيْرِ إِذْنِ أَهْلِهِ فَعَنِتَ فَهُوَ ضَامِنٌ.

L38790 And from Al-Shaʿbī regarding the slave of a man whom another man compelled to mount [an animal], so he caused the animal to tread on a man and killed him: he said, "The one who compelled the slave to mount must pay the diya."

وَعَنِ الشَّعْبِيِّ فِي عَبْدِ رَجُلٍ أَكْرَهَهُ رَجُلٌ فَحَمَلَهُ عَلَى دَابَّةٍ فَأَوْطَأَ رَجُلًا فَقَتَلَهُ؟ قَالَ: يَغْرَمُ الَّذِي حَمَلَ الْعَبْدَ.

L38791 Abu Muḥammad said: Whoever seeks the help of a minor—whether free or enslaved—and hardship ensues, he is liable.

قَالَ أَبُو مُحَمَّدٍ: مَنِ اسْتَعَانَ صَغِيرًا حُرًّا أَوْ عَبْدًا فَعَنِتَ، فَهُوَ ضَامِنٌ.

L38792 Whoever enlists the help of a free person of legal majority or a slave, and it (the horse) perishes, he is not liable. It was narrated to us through the chain of Abū Bakr ibn Abī Shaybah, who narrated to us from Wakīʿ, from Isrāʾīl, from Jābir, from al-Shaʿbī, that he said regarding a man who gave another

وَمَنِ اسْتَعَانَ كَبِيرًا حُرًّا أَوْ عَبْدًا فَعَنِتَ فَهُوَ غَيْرُ ضَامِنٍ: رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا إِسْرَائِيلُ عَنْ جَابِرٍ عَنِ الشَّعْبِيِّ أَنَّهُ قَالَ فِي رَجُلٍ أَعْطَى رَجُلًا فَرَسًا فَقَتَلَهُ: أَنَّهُ لَا يَضْمَنُ، إِلَّا أَنْ يَكُونَ عَبْدًا أَوْ صَبِيًّا.

man a horse and the latter killed it: he is not liable, except if the enlisted individual was a slave or a prepubescent child.

L38793 On the authority of Awf ibn Abi Jamilah, who said: Umar ibn Hayyan al-Himmani used to breed horses. He placed his son on a horse, which threw him off; he fell from it and died. The blood money for his death was assigned to his ʿāqila (kinship group) during the time of Ziyad in Basra.

وَعَنْ عَوْفِ بْنِ أَبِي جَمِيلَةَ، قَالَ: كَانَ عُمَرُ بْنُ حَيَّانَ الْحِمَّانِيُّ يَصْنَعُ الْخَيْلَ، وَأَنَّهُ حَمَلَ ابْنَهُ عَلَى فَرَسٍ نَفَّرَ، فَتَقَطَّرَ مِنْ الْفَرَسِ فَمَاتَ، فَجُعِلَتْ دِيَتُهُ عَلَى عَاقِلَتِهِ زَمَانَ زِيَادٍ بِالْبَصْرَةِ.

L38794 From Bukayr ibn al-Ashajj that Ibn ʿUmar said: Whoever takes away a boy who has not reached puberty without the permission of his family, and the boy dies from the fall, he is thereby liable to pay blood money.

وَعَنْ بُكَيْرِ بْنِ الْأَشَجِّ أَنَّ ابْنَ عُمَرَ قَالَ: مَنْ حَمَلَ غُلَامًا لَمْ يَبْلُغْ الْحُلُمَ بِغَيْرِ إذْنِ أَهْلِهِ فَسَقَطَ فَمَاتَ، فَقَدْ غَرِمَ.

L38795–38796 From Mujāhid, from Ibn ʿAbbās: Is this [opinion] akin to Ibn ʿUmar's statement? He [Ibn ʿAbbās] said, "He must pay his diyah if he injures him."

وَعَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ مِثْلُ قَوْلِ ابْنِ عُمَرَ هَذَا؟ وَقَالَ: يَغْرَمُ دِيَتَهُ لَوْ جَرَحَهُ.

L38797 From Rabi'ah and Abu al-Zinad, both of whom said jointly: Whoever employs a boy who has not reached puberty is liable for any harm the boy causes. They said concerning a free person with full legal capacity: There is no liability on anyone for seeking assistance in any matter if the act is done willingly. Rabi'ah added: Unless the person is deceived through negligence or exploited for perceived ignorance.

وَعَنْ رَبِيعَةَ، وَأَبِي الزِّنَادِ أَنَّهُمَا قَالَا جَمِيعًا: مَنْ اسْتَعَانَ غُلَامًا لَمْ يَبْلُغْ الْحُلُمَ فَهُوَ لِمَا أَصَابَهُ ضَامِنٌ - وَقَالَا فِي الْحُرِّ يَمْلِكُ نَفْسَهُ: لَيْسَ عَلَى أَحَدٍ اسْتِعَانَةُ شَيْءٍ إذَا أَتَى ذَلِكَ طَائِعًا؟ قَالَ رَبِيعَةُ: إلَّا أَنْ يُسْتَغْفَلَ، أَوْ يُسْتَجْهَلَ.

L38798 Ibn Wahb said: I heard al-Layth say the same as the statement of Abī al-Zināḍ.

قَالَ ابْنُ وَهْبٍ: وَسَمِعْت اللَّيْثَ يَقُولُ مِثْلَ قَوْلِ أَبِي الزِّنَادِ.

L38799 From Qatadah, from Khilās ibn 'Amr, that 'Alī ibn Abī Ṭālib said regarding a boy – who has not reached five spans in age – when a man enlists his assistance: "He [the man] is liable until the boy returns." But if he enlists his assistance with the permission of his family, there is no liability upon him.

وَعَنْ قَتَادَةَ عَنْ خِلَاسِ بْنِ عَمْرٍو أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ فِي الْغُلَامِ يَسْتَعِينُهُ رَجُلٌ - وَلَمْ يَبْلُغْ خَمْسَةَ أَشْبَارٍ -: فَهُوَ ضَامِنٌ حَتَّى يَرْجِعَ -، وَإِنْ اسْتَعَانَهُ بِإِذْنِ أَهْلِهِ فَلَا ضَمَانَ عَلَيْهِ.

L38800 From Ibrāhīm al-Nakhaʿī, who said: Whoever uses the service of a slave without the permission of their owners is liable.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: مَنْ اسْتَعَانَ مَمْلُوكًا بِغَيْرِ إذْنِ مَوَالِيهِ ضَمِنَ.

L38801 Abu Muhammad said: From these statements attributed to Ali ibn Abi Talib, it emerges that whoever employs a boy who has not attained five hand spans in height without his guardians' permission is financially liable for him. If he has attained five spans, there is no liability. If he employs him with his

قَالَ أَبُو مُحَمَّد: فَحَصَلَ مِنْ هَذِهِ الْأَقْوَالِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ مَنْ اسْتَعَانَ غُلَامًا - لَمْ يَبْلُغْ خَمْسَةَ أَشْبَارٍ - بِغَيْرِ إذْنِ أَهْلِهِ فَهُوَ لَهُ ضَامِنٌ، فَإِنْ بَلَغَ خَمْسَةَ أَشْبَارٍ فَلَا ضَمَانَ

guardians' permission—and this ruling is reliably transmitted from Ali ibn Abi Talib, may Allah be pleased with him. As for Ibn Abbas and Ibn Umar, may Allah be pleased with them both—whoever transports a boy without his guardians' permission, and he falls and dies, is financially liable—though this narration is not authentically established from them.

عَلَيْهِ -، وَإِنْ اسْتَعَانَهُ بِإِذْنِ أَهْلِهِ -، وَهَذَا صَحِيحٌ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -. وَعَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - مَنْ حَمَلَ غُلَامًا بِغَيْرِ إِذْنِ أَهْلِهِ فَسَقَطَ فَمَاتَ فَقَدْ غَرِمَ، إِلَّا أَنَّهُ لَا يَصِحُّ عَنْهُمَا.

L38802 As for Ibn ʿUmar, it was narrated by Ibn Lahīʿah—and this is unreliable—while as for Ibn ʿAbbās, it was narrated from him by Yazīd ibn Iyāḍ—who is known for lying.

أَمَّا عَنْ ابْنِ عُمَرَ فَرَوَاهُ ابْنُ لَهِيعَةَ - وَلَيْسَ بِشَيْءٍ، وَأَمَّا ابْنُ عَبَّاسٍ فَرَوَاهُ عَنْهُ يَزِيدُ بْنُ عِيَاضٍ - وَهُوَ مَذْكُورٌ بِالْكَذِبِ.

L38803 It has been reported from al-Shaʿbī: If a person gives a horse to a minor and the minor kills it, the giver is liable. A similar ruling is transmitted from Rabīʿah and Abū al-Zināد.

وَحَصَلَ عَنْ الشَّعْبِيِّ: مَنْ أَعْطَى صَبِيًّا فَرَسًا فَقَتَلَهُ، فَالْمُعْطِي ضَامِنٌ وَعَنْ رَبِيعَةَ، وَأَبِي الزِّنَادِ، نَحْوُ ذَلِكَ.

L38804 And from Ḥammād ibn Abī Sulaymān, similar to that.

وَعَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، نَحْوُ ذَلِكَ.

L38805 Thus, these individuals did not distinguish between the permission of his family and the absence of their permission.

فَلَمْ يُفَرِّقْ هَؤُلَاءِ بَيْنَ إِذْنِ أَهْلِهِ، وَلَا بَيْنَ غَيْرِ إِذْنِهِمْ.

L38806 It is established from the statement of al-Shaʿbī: "Whoever enlists an adult slave without his master's permission bears no legal liability if the slave is harmed." A similar position is reported from al-Zuhrī and ʿAṭāʾ.

وَحَصَلَ مِنْ قَوْلِ الشَّعْبِيِّ: مَنْ اسْتَعَانَ عَبْدًا بَالِغًا بِغَيْرِ إِذْنِ سَيِّدِهِ، فَلَا ضَمَانَ عَلَيْهِ إِنْ تَلِفَ - وَعَنْ الزُّهْرِيِّ، وَعَطَاءٍ، نَحْوُهُ.

L38807–38808 As for the latter jurists, Abū Ḥanīfa, Abū Yūsuf, and Muḥammad ibn al-Ḥasan ruled: If one seizes a free minor and the child dies of fever or sudden causes while with him, he bears no liability. But if the child is struck by lightning or bitten by a snake, the blood money is owed by the agnatic kin of the one who seized him. Zufar would say: "He incurs no liability in any of these cases."

وَأَمَّا الْمُتَأَخِّرُونَ - فَإِنَّ أَبَا حَنِيفَةَ، وَأَبَا يُوسُفَ، وَمُحَمَّدَ بْنَ الْحَسَنِ، قَالُوا: مَنْ غَصَبَ صَبِيًّا حُرًّا فَمَاتَ عِنْدَهُ بِحُمَّى أَوْ فُجَاءَةً فَلَا شَيْءَ عَلَيْهِ - فَإِنْ أَصَابَتْهُ صَاعِقَةٌ، أَوْ نَهَشَتْهُ حَيَّةٌ: فَدِيَتُهُ عَلَى عَاقِلَةِ الْغَاصِبِ، وَكَانَ زُفَرُ يَقُولُ: لَا يَضْمَنُ فِي شَيْءٍ مِنْ ذَلِكَ.

L38809 Sufyan al-Thawri said: If someone sends a child on an errand and the child commits an offense, the sender bears no responsibility for his offense. He said: If someone sends a slave on an errand and he commits an offense, then the offense is upon the sender. He said: If one employs a minor hired worker for an errand and a wolf eats him, the employer bears no liability.

وَقَالَ سُفْيَانُ الثَّوْرِيُّ: إِذَا أَرْسَلَ صَبِيًّا فِي حَاجَةٍ فَجَنَى الصَّبِيُّ جِنَايَةً، قَالَ: فَلَيْسَ عَلَى الَّذِي أَرْسَلَهُ شَيْءٌ مِنْ جِنَايَتِهِ، قَالَ: فَإِذَا أَرْسَلَ مَمْلُوكًا فِي حَاجَةٍ فَجَنَى، فَإِنَّ الْجِنَايَةَ عَلَى الَّذِي أَرْسَلَهُ، قَالَ: فَإِنْ اسْتَعْمَلَ أَجِيرًا صَغِيرًا فِي حَاجَةٍ فَأَكَلَهُ الذِّئْبُ فَلَا شَيْءَ عَلَيْهِ.

L38810 Al-Ḥasan ibn Ḥayy said: If someone instructs a minor or another's slave to

provide him drinking water or hand him water for ablution, there is no blame in that. He said: If they suffer harm in doing so, he is liable to compensate them.

وَقَالَ الْحَسَنُ بْنُ حَيٍّ: مَنْ أَمَرَ صَغِيرًا، أَوْ مَمْلُوكًا لِغَيْرِهِ بِأَنْ يَسْقِيَهُ مَاءً، أَوْ يُنَاوِلَهُ وَضُوءًا فَلَا بَأْسَ بِذَلِكَ، قَالَ: فَإِنْ عَنِتَا فِي ذَلِكَ فَعَلَيْهِ ضَمَانُهُمَا.

L38811 Mālik said: The position agreed upon among the jurists is that when a man enlists the help of a minor or an owned slave in a consequential matter without permission, he is liable for any harm that befalls them. If a man orders a free minor to descend into a well or climb a palm tree, and the minor perishes in doing so, the orderer is liable for the harm incurred. If he enlists the help of a free adult who assists him, there is no liability unless the adult is deceived due to gullibility or presumed ignorance.

وَقَالَ مَالِكٌ: الْأَمْرُ الَّذِي عَلَيْهِ الْفُقَهَاءُ مِنْهُمْ: أَنَّ الرَّجُلَ إِذَا اسْتَعَانَ صَغِيرًا، أَوْ عَبْدًا مَمْلُوكًا فِي شَيْءٍ لَهُ بَالٌ، فَإِنَّهُ ضَامِنٌ لِمَا أَصَابَهُمَا - إِذَا كَانَ ذَلِكَ بِغَيْرِ إِذْنٍ - وَإِذَا أَمَرَ الرَّجُلُ الصَّبِيَّ الْحُرَّ أَنْ يَنْزِلَ فِي بِئْرٍ، أَوْ يَرْقَى فِي نَخْلَةٍ، فَهَلَكَ فِي ذَلِكَ: أَنَّ الَّذِي أَمَرَهُ ضَامِنٌ لِمَا أَصَابَهُ - فَإِنْ اسْتَعَانَ كَبِيرًا حُرًّا فَأَعَانَهُ، فَلَا شَيْءَ عَلَيْهِ إِلَّا أَنْ يُسْتَغْفَلَ أَوْ يُسْتَجْهَلَ.

L38812 Abū Muḥammad said: It has been narrated to us from Mālik that if someone unlawfully seizes a free person, then sells him, and [if] the victim is sought but cannot be found, the usurper is liable for his diyah. As for al-Shāfiʿī, we know of no legal opinion from him on this matter.

قَالَ أَبُو مُحَمَّدٍ: وَقَدْ رُوِّينَا عَنْ مَالِكٍ: أَنَّ مَنْ غَصَبَ حُرًّا فَبَاعَهُ فَطُلِبَ؟ فَلَمْ يُوجَدْ: أَنَّهُ يَضْمَنُ دِيَتَهُ - وَأَمَّا الشَّافِعِيُّ - فَلَا نَعْلَمُ لَهُ فِي هَذَا قَوْلًا.

L38813–38815 It has been narrated from Umm Salamah, the Mother of the Believers—may God be pleased with her—that she sent a message to the teacher of the Book: “Send me boys to card wool, and do not send me a free person.” Abu Muhammad said: When they differed—as we mentioned—it became obligatory for us to examine this matter so that the truth might become evident from it, and we might follow it—with the help of God Almighty and His grace. We began with what was narrated concerning this from the Companions—may God be pleased with them. As for the narration from Umm Salamah—may God be pleased with her—regarding her request for boys to card wool for her, and her stipulation that there be no free person among them, there is no ruling on liability—neither minor nor major—in it. Thus, it has no place in this legal chapter—and God knows best what her intention was. Perhaps the carding of wool was done in her presence. She disliked that a free boy among the youths—and perhaps he had approached puberty, making it impermissible for him—might see her, while the sight of slaves seeing her is permissible. Carding wool can only be managed by those with strength among the boys—and God knows best—nor do we assert this

وَقَدْ رُوِيَ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّهَا بَعَثَتْ إِلَى مُعَلِّمِ الْكُتَّابِ، ابْعَثْ لِي غِلْمَانًا يَنْفُشُونَ صُوفًا وَلَا تَبْعَثْ إِلَيَّ حُرًّا؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الْحَقُّ مِنْ ذَلِكَ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ - فَابْتَدَأْنَا بِمَا رُوِيَ فِي ذَلِكَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -: فَأَمَّا الرِّوَايَةُ - عَنْ أُمِّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهَا - فِي طَلَبِهَا غِلْمَانًا يَنْفُشُونَ لَهَا الصُّوفَ، وَاشْتَرَطَتْ: أَنْ لَا يَكُونَ فِيهِمْ حُرٌّ؟ فَلَيْسَ فِيهِ مِنْ حُكْمِ التَّضْمِينِ قَلِيلٌ وَلَا كَثِيرٌ، فَلَا مَدْخَلَ لَهُ فِي هَذَا الْبَابِ - وَاَللَّهُ أَعْلَمُ بِمُرَادِهَا - وَلَعَلَّ نَفْشَ الصُّوفِ كَانَ بِحَضْرَتِهَا فَكَرِهَتْ أَنْ يَرَاهَا حُرٌّ مِنْ الصِّبْيَانِ - وَلَعَلَّهُ قَدْ قَارَبَ الْبُلُوغَ فَلَا يَحِلُّ لَهُ ذَلِكَ - وَرُؤْيَةُ الْعَبِيدِ لَهَا مُبَاحٌ، وَنَفْشُ

definitively, except that we definitively assert her account is not part of the ruling on guarantee.

الصُّوفِ لَا يُطِيقُهُ إِلَّا مَنْ لَهُ قُوَّةٌ مِنْ الْغِلْمَانِ - وَاَللَّهُ أَعْلَمُ - وَلَا نَقْطَعُ بِهَذَا أَيْضًا إِلَّا أَنَّا نَقْطَعُ أَنَّهُ لَيْسَ خَبَرُهَا هَذَا مِنْ حُكْمِ التَّضْمِينِ؟ .

L38816 Abu Muhammad said: Then we examined the statement of Ali ibn Abi Talib—may Allah be pleased with him—as no other narration from a Companion on this topic has been reliably established except his. We found that he determined the measure for the child's obligation in that matter at five spans. Yet the Hanafis, Malikis, and Shafi'is opposed him in this. It is baseless for them to cite as evidence against their opponents a position they themselves have opposed.

قَالَ أَبُو مُحَمَّدٍ: ثُمَّ نَظَرْنَا فِي قَوْلِ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - الَّذِي لَمْ يَصِحَّ عَنْ صَاحِبٍ فِي هَذَا الْبَابِ شَيْءٌ غَيْرُهُ، فَوَجَدْنَاهُ حَدَّ مِقْدَارَ الصَّبِيِّ فِي ذَلِكَ بِخَمْسَةِ أَشْبَارٍ - وَقَدْ خَالَفَهُ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ فِي ذَلِكَ، وَمِنْ الْبَاطِلِ أَنْ يَحْتَجُّوا عَلَى خُصُومِهِمْ بِقَوْلٍ قَدْ خَالَفُوهُ هُمْ.

L38817 Abu Muhammad said: There remained other opinions, which are divided into three categories. The first is imposing liability on one who employs a slave or minor without the permission of their respective guardians, and exempting the employer from liability if both were employed with the guardians' permission.

قَالَ أَبُو مُحَمَّدٍ: وَبَقِيَتْ الْأَقْوَالُ غَيْرُهَا، وَهِيَ تَنْقَسِمُ ثَلَاثَةَ أَقْسَامٍ: أَحَدُهَا - تَضْمِينُ مَنْ اسْتَعَانَ عَبْدًا أَوْ صَغِيرًا بِغَيْرِ إذْنِ أَهْلِهِمَا وَتَرْكُ تَضْمِينِهِ، إنْ اسْتَعْنَاهُمَا بِإِذْنِ أَهْلِهِمَا.

L38818 The second [point] is his financial liability for enlisting their assistance, whether with the permission of their guardians or without it.

وَالثَّانِي - تَضْمِينُهُ كَيْفَمَا اسْتَعَانَهُمَا بِإِذْنِ أَهْلِهِمَا، أَوْ بِغَيْرِ إذْنِهِمَا.

L38819 The third [opinion] is that of al-Shaʿbī: If someone enlists the assistance of an adult male enslaved person, the enlistment does not incur liability upon the enlister, but if they enlist a young enslaved person, liability is incurred upon the enlister.

وَالثَّالِثُ - قَوْلُ الشَّعْبِيِّ: أَنَّ الْعَبْدَ الْكَبِيرَ لَا يَضْمَنُ مَنْ اسْتَعَانَهُ، لَكِنْ مَنْ اسْتَعَانَ الصَّغِيرَ ضَمِنَ.

L38820 Then we examined the statement of Abū Ḥanīfa and his companions, and found it utterly corrupt, for he makes distinctions regarding a wrongfully seized minor between cases where the child dies a natural death, from fever, or suddenly - in which the usurper bears no liability - and cases where the child dies from a lightning strike that burns him or a snake bite, where the usurper becomes liable for his blood-money. This is an astonishing matter unprecedented in juristic discourse.

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، وَأَصْحَابِهِ، فَوَجَدْنَاهُ فِي غَايَةِ الْفَسَادِ؛ لِأَنَّهُ فَرَّقَ فِي الصَّغِيرِ يُغْصَبُ بَيْنَ أَنْ يَمُوتَ حَتْفَ أَنْفِهِ، أَوْ بِحُمَّى، أَوْ فَجْأَةً، فَلَا يَضْمَنُ غَاصِبُهُ شَيْئًا، وَبَيْنَ أَنْ يَمُوتَ بِصَاعِقَةٍ تَحْرِقُهُ، أَوْ حَيَّةٍ تَنْهَشُهُ فَيَضْمَنُ دِيَتَهُ - وَهَذَا عَجَبٌ لَا نَظِيرَ لَهُ.

L38821 This is an opinion unsupported by the Quran, nor by an authentic Sunnah, nor a correct Sunnah, nor consensus, nor the view of a Companion, nor analogy, nor sound opinion, nor rational justification, nor precaution—and

we know of no one who held this opinion before him, as this is something he uniquely asserted. Thus, this opinion is undoubtedly invalidated.

وَهَذَا قَوْلٌ لَا يَعْضُدُهُ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ وَلَا مُسْتَقِيمَةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ، وَلَا مَعْقُولٌ، وَلَا احْتِيَاطٌ - وَمَا نَعْلَمُ أَحَدًا قَالَ هَذَا الْقَوْلَ قَبْلَهُ، وَهَذَا مِمَّا انْفَرَدَ بِهِ - فَسَقَطَ هَذَا الْقَوْلُ بِلَا مِرْيَةٍ.

L38822–38824 Then we examined Mālik's statement and found it also erroneous, for he differentiated between seeking assistance from a minor or slave in a significant matter (where the one who seeks their assistance becomes liable) and seeking their help in an insignificant matter (where he incurs no liability). This distinction too lacks support from the Quran, any sound or weak Sunnah, consensus, or any opinion. There is no established precedent, nor analogy, nor sound independent reasoning, nor rational basis—and the legally incompetent minor seeking assistance inevitably either transgresses in doing so or does not transgress.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ فَوَجَدْنَاهُ أَيْضًا خَطَأً، لِأَنَّهُ فَرَّقَ بَيْنَ اسْتِعَانَةِ الصَّغِيرِ وَالْعَبْدِ فِي الْأَمْرِ ذِي الْبَالِ فَيَضْمَنُ، وَمَنْ اسْتَعَانَهُمَا فِي الْأَمْرِ غَيْرِ ذِي الْبَالِ فَلَا يَضْمَنُ - وَهَذَا أَيْضًا تَقْسِيمٌ لَا يُؤَيِّدُهُ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ، وَلَا قِيَاسٌ، وَلَا رَأْيٌ سَدِيدٌ وَلَا مَعْقُولٌ - وَلَا يَخْلُو مُسْتَعِينُ الصَّغِيرِ مِنْ أَنْ يَكُونَ مُتَعَدِّيًا بِذَلِكَ، أَوْ لَا يَكُونَ مُتَعَدِّيًا.

L38825 If the act involved transgression, the ruling applies equally to small and large amounts. If there was no transgression, acts - whether small or large - that do not involve transgression are treated equally. Similarly, how could blood money be obligated upon one who sold a free person who was subsequently not found? This has no justification, as he did not kill him.

-: فَإِنْ كَانَ مُتَعَدِّيًا فَحُكْمُ الْعُدْوَانِ فِي الْقَلِيلِ وَالْكَثِيرِ سَوَاءٌ - وَإِنْ كَانَ لَيْسَ مُتَعَدِّيًا، فَالْقَلِيلُ وَالْكَثِيرُ مِمَّا لَيْسَ عُدْوَانًا سَوَاءٌ -، وَكَذَلِكَ إيجَابُ الدِّيَةِ عَلَى مَنْ بَاعَ حُرًّا فَلَمْ يُوجَدْ الْحُرُّ؟ فَهَذَا لَا وَجْهَ لَهُ، لِأَنَّهُ لَمْ يَقْتُلْهُ.

L38826 As for the statement of al-Ḥasan ibn Ḥayyin, it is also incorrect because he saw no harm in a person requesting a minor and a slave belonging to someone else to fetch water for him, or tasking them to carry ablution water—yet he deemed him liable for them if they perished in doing so. How can liability be imposed for what occurred from an act he permitted its doer to perform, from that which he did not directly commit that wrongdoing himself? This is clear injustice.

وَأَمَّا قَوْلُ الْحَسَنِ بْنِ حَيٍّ فَخَطَأٌ أَيْضًا، لِأَنَّهُ لَمْ يَرَ بَأْسًا أَنْ يَسْتَسْقِيَ الْمَرْءُ الصَّبِيَّ، وَعَبْدَ غَيْرِهِ الْمَاءَ، أَوْ يُكَلِّفَهُمَا أَنْ يَحْمِلَا لَهُ وُضُوءًا - ثُمَّ رَأَى عَلَيْهِ ضَمَانَهُمَا إنْ تَلِفَا فِي ذَلِكَ، فَكَيْفَ يُجْعَلُ الضَّمَانُ فِيمَا حَدَثَ مِنْ فِعْلٍ قَدْ أَبَاحَهُ لِفَاعِلِهِ مِمَّا لَمْ يُبَاشِرْ هُوَ تِلْكَ الْجِنَايَةَ هَذَا ظُلْمٌ ظَاهِرٌ.

L38827 As for Sufyan's opinion, it is also erroneous in several aspects. The first is that he differentiated between a man sending a minor and a slave to another person for his own need without the permission of the minor's guardians or the slave's owner, and each commits an offense, so the sender is liable for the adult slave's offense but not for the free minor's offense—an opinion unsupported by any evidence.

وَأَمَّا قَوْلُ سُفْيَانَ فَخَطَأٌ أَيْضًا مِنْ وُجُوهٍ: أَوَّلُهَا - أَنَّهُ فَرَّقَ بَيْنَ الرَّجُلِ يُرْسِلُ الصَّغِيرَ وَالْعَبْدَ لِغَيْرِهِ فِي حَاجَتِهِ بِغَيْرِ إذْنِ أَهْلِهِمَا فَجَنَى كُلُّ وَاحِدٍ مِنْهُمَا جِنَايَةً فَيَضْمَنُ الْمُرْسِلُ

جِنَايَةَ الْعَبْدِ الْكَبِيرِ، وَلَا يَضْمَنُ جِنَايَةَ الْحُرِّ الصَّغِيرِ - وَهُوَ قَوْلٌ لَا يَعْضُدُهُ شَيْءٌ مِنْ الدَّلَائِلِ.

L38828 The second opinion is that if someone sends a minor for his task and a wolf eats the child, there is no liability upon him.

وَالْقَوْلُ الثَّانِي - مَنْ أَرْسَلَ صَغِيرًا فِي حَاجَتِهِ فَأَكَلَهُ الذِّئْبُ فَلَا شَيْءَ عَلَيْهِ.

L38829 If someone hires a minor for strenuous work and the child is harmed in it, the employer is liable. But if the hired worker is an adult, the employer is not liable. Are these distinctions unsupported by any scriptural text or scholarly consensus? Abu Muhammad said: We examined whether we could find any evidence from the Messenger of Allah—peace be upon him—regarding this matter. We discovered as narrated in al-Bukhari's collection via the chain: Amr ibn Zurarah → Ismail ibn Ibrahim → Abd al-Aziz → Anas, who said: "When the Messenger of Allah—peace be upon him—arrived in Medina, Abu Talha took my hand and brought me to the Messenger of Allah—peace be upon him—saying: 'O Messenger of Allah, Anas is a capable lad—let him serve you.' I served him during journeys and at home. By Allah, he never once asked me about anything I did: 'Why did you do it this way?' Nor about anything I neglected: 'Why didn't you do it that way?'"

فَإِنْ اسْتَأْجَرَ أَجِيرًا صَغِيرًا فِي عَمَلٍ شَاقٍّ فَتَلِفَ فِيهِ ضَمِنَ - وَإِنْ كَانَ الْأَجِيرُ كَبِيرًا لَمْ يَضْمَنْ - فَهَذِهِ فُرُوقٌ لَمْ يَأْتِ بِهَا نَصٌّ وَلَا إجْمَاعٌ؟ قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا، هَلْ نَجِدُ فِي شَيْءٍ مِنْ هَذَا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ فَوَجَدْنَا - مِنْ طَرِيقِ الْبُخَارِيِّ نا عَمْرُو بْنُ زُرَارَةَ نا إسْمَاعِيلُ بْنُ إبْرَاهِيمَ عَنْ عَبْدِ الْعَزِيزِ عَنْ أَنَسٍ قَالَ: «لَمَّا قَدِمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ أَخَذَ أَبُو طَلْحَةَ بِيَدِي فَانْطَلَقَ بِي إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إنَّ أَنَسًا غُلَامٌ كَيِّسٌ فَلْيَخْدُمْكَ، فَخَدَمْتُهُ فِي السَّفَرِ وَالْحَضَرِ، فَوَاَللَّهِ مَا قَالَ لِي لِشَيْءٍ صَنَعْتُهُ: لِمَ صَنَعْتَهُ هَكَذَا؟ وَلَا لِشَيْءٍ لَمْ أَصْنَعْهُ: لِمَ لَمْ تَصْنَعْ هَذَا هَكَذَا»

L38830 We found the Messenger of Allah (peace and blessings of Allah be upon him) had taken Anas ibn Mālik into his service when he was a ten-year-old orphan, engaging him in distant and nearby journeys, awe-inspiring military campaigns, and periods of settled residence.

فَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ اسْتَخْدَمَ أَنَسَ بْنَ مَالِكٍ وَهُوَ يَتِيمُ ابْنُ عَشْرِ سِنِينَ فِي الْأَسْفَارِ الْبَعِيدَةِ، وَالْقَرِيبَةِ، وَالْغَزَوَاتِ الْمُخِيفَةِ، وَفِي الْحَضَرِ.

L38831–38832 If someone were to say: "Indeed, that was with the permission of his mother, her husband (i.e., the boy's stepfather), and his family?" We would respond to him—and success comes from Allah, the Exalted—: Yes, this did occur, yet the Messenger of Allah (peace be upon him) did not state, "I only employed him because his family permitted me in that matter." Since he (peace be upon him) did not say this, their permission or lack thereof carries equal weight. The sole criterion in this matter is exercising sound judgment regarding the boy's welfare. If the task for which a stranger seeks his assistance involves due diligence for his benefit, it constitutes a virtuous act—whether his family

فَإِنْ قَالَ قَائِلٌ: إنَّ ذَلِكَ كَانَ بِإِذْنِ أُمِّهِ وَزَوْجِهَا وَأَهْلِهِ؟ قُلْنَا لَهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: نَعَمْ، قَدْ كَانَ هَذَا، وَلَمْ يَقُلْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنِّي إنَّمَا اسْتَخْدَمْته لِإِذْنِ أَهْلِهِ لِي فِي ذَلِكَ، فَإِذَا لَمْ يَقُلْ ذَلِكَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَإِذْنُهُمْ وَتَرْكُ إذْنِهِمْ عَلَى السَّوَاءِ وَإِنَّمَا الْمُرَاعَى فِي ذَلِكَ حُسْنُ النَّظَرِ لِلْغُلَامِ، فَإِنْ كَانَ مَا اسْتَعَانَهُ فِي

and his guardian permit it or not. If it lacks such consideration for him, it is injustice—whether his family permits it or not.

L38833 The proof of that is the statement of Allah, the Most High: “Be upholders of justice” (*An-Nisā’* 4:135).[11]

L38834 And the statement of the Exalted: *“And cooperate in righteousness and piety”* [Al-Mā’idah: 2]—He did not mention the consideration of the permission of the boy’s family. There is neither a Quranic verse, nor authentic Sunnah, nor consensus. Thus, the consideration of their permission is definitively nullified. The matter depends solely on whether the person employing the boy is looking out for the boy’s welfare in that employment or not. If he is looking out for his welfare, he is a doer of good. When he is a doer of good, he bears no liability for harm that occurs without his own wrongdoing, according to the Exalted’s statement: *“There is no blame upon the doers of good”* [At-Tawbah: 91]. If he is not looking out for the boy’s welfare in that matter, he wrongs him. However, not every wrongdoer is liable for the blood money of the wronged party.[12]

L38835 Do you not see them unanimously agreeing about one who wrongs a free person by compelling him to a distant place, leading to his death there? For the oppressor incurs no liability for his death, and no distinction is made here between minor or grave wrongdoing.

L38836 We have stated: There is no blood money except upon a killer, and the unjust assistant does not cause harm to the one assisted in that act. Indeed, the one who sought assistance is not considered his killer nor a direct perpetrator of his killing. Therefore, there is no liability upon him whatsoever—whether he is a minor or an adult—unless he directly perpetrates it, orders others to coerce him by casting him into a well, or forces him to ascend a precipice where he is trapped unwillingly with no choice in the matter. In such a case, this constitutes intentional killing requiring qisas (retaliation). Thus,

عَمَلِهِ لِلْأَجْنَبِيِّ نَظَرًا لَهُ فَهُوَ فِعْلُ خَيْرٍ - أَذِنَ أَهْلُهُ وَوَلِيُّهُ أَمْ لَمْ يَأْذَنُوا - وَإِنْ كَانَ لَيْسَ لَهُ نَظَرٌ لَهُ فَهُوَ ظُلْمٌ -: أَذِنَ أَهْلُهُ فِي ذَلِكَ أَمْ لَمْ يَأْذَنُوا.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] .

وقَوْله تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَلَمْ يَأْتِ بِمُرَاعَاةِ إذْنِ أَهْلِ الْغُلَامِ: لَا قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا إجْمَاعٌ - فَبَطَلَ مُرَاعَاةُ إذْنِهِمْ بِيَقِينٍ، وَلَمْ يَبْقَ إلَّا أَنْ يَكُونَ الْمُسْتَعِينُ بِالْغُلَامِ نَاظِرًا لِلْغُلَامِ فِي تِلْكَ الِاسْتِعَانَةِ أَوْ غَيْرَ نَاظِرٍ لَهُ -: فَإِنْ كَانَ نَاظِرًا لَهُ فَهُوَ مُحْسِنٌ، وَإِذَا هُوَ مُحْسِنٌ فَلَا ضَمَانَ عَلَيْهِ فِيمَا أَصَابَهُ مِمَّا لَمْ يَجْنِهِ هُوَ، لِقَوْلِهِ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] وَإِنْ كَانَ غَيْرَ نَاظِرٍ لَهُ فِي ذَلِكَ فَهُوَ ظَالِمٌ لَهُ، وَلَكِنْ لَيْسَ كُلُّ ظَالِمٍ يَضْمَنُ دِيَةَ الْمَظْلُومِ.

أَلَا تَرَاهُمْ لَا يَخْتَلِفُونَ فِيمَنْ ظَلَمَ إنْسَانًا حُرًّا يُسَخِّرُهُ إلَى مَكَانٍ بَعِيدٍ فَتَلِفَ هُنَالِكَ؟ فَإِنَّهُ لَا يَضْمَنُهُ الظَّالِمُ لَهُ، وَلَا فَرْقَ هَاهُنَا بَيْنَ ظُلْمٍ صَغِيرٍ أَوْ كَبِيرٍ.

وَقَدْ قُلْنَا: إنَّهُ لَا دِيَةَ إلَّا عَلَى قَاتِلٍ، وَالْمُسْتَعِينُ الظَّالِمُ لَمْ يُتْلِفْ الْمُسْتَعَانَ فِي ذَلِكَ الْعَمَلِ، فَإِنَّ الْمُسْتَعِينَ لَهُ لَا يُسَمَّى قَاتِلًا لَهُ، وَلَا مُبَاشِرَ قَتْلِهِ، فَلَا ضَمَانَ عَلَيْهِ أَصْلًا - صَغِيرًا كَانَ أَوْ كَبِيرًا - إلَّا أَنْ يُبَاشِرَ، أَوْ يَأْمُرَ بِإِكْرَاهِهِ وَإِدْخَالِهِ الْبِئْرَ، أَوْ تَطْلِيعِهِ فِي مَهْوَاةٍ فَيَطَّلِعُ كَرْهًا لَا اخْتِيَارَ لَهُ فِي ذَلِكَ - فَهَذَا قَاتِلُ عَمْدٍ عَلَيْهِ الْقَوَدُ، فَظَهَرَ أَمْرُ الصَّغِيرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[11] **Qur’an references (L38833):** Qur’an 4:135 (An-Nisa).

[12] **Qur’an references (L38834):** Qur’an 5:2 (Al-Ma’idah); Qur’an 9:91 (At-Tawbah).

the ruling regarding the minor is clarified—and success is from Allah, the Exalted.

L38837 As for a slave utilized by someone other than his master: If the employer did not coerce him but sought his assistance through incentive, and the slave complied then perished, there is absolutely no liability upon the employer, as he neither directly caused the destruction nor appropriated the slave by force. However, he must pay a rental fee equivalent to that of a comparable slave, for he benefited from using another's property without the owner's consent. It is impermissible to derive benefit from another's property without the owner's permission.

L38838–38839 Allah, the Exalted, said: "And do not consume your wealth among yourselves unlawfully" (2:188).[13]

L38840 The Messenger of Allah—peace be upon him—said, "Indeed, your blood and your property are inviolable to you."

L38841 If someone usurps a slave and employs him or coerces him through intimidation, they have indeed also committed usurpation. The coercer is liable for everything that occurs to the slave while in their possession - regardless of its nature - even if he dies a natural death unrelated to the tasks he was forced into or because of those tasks. The usurper is also liable to pay compensation equivalent to the fair wage for his labor, for the coercer has transgressed against another's property. They are obligated to return the slave to his owner without exception or provide replacement value if he is no longer available, as they are transgressors. Allah the Exalted says: "So whoever transgresses against you, transgress against them in the same manner as they transgressed against you" [Al-Baqarah 2:194]. However, if the owner permitted his use, there is no liability since no transgression occurred. This differs from the case of a minor whose guardians lack authority to permit actions except those exclusively benefiting the child; otherwise, such permission holds no validity. Success comes solely from Allah the Exalted.[14]

L38842 **A question regarding the statement of Allah, the Exalted:**

وَأَمَّا الْعَبْدُ - يُسَخِّرُهُ غَيْرُ سَيِّدِهِ، فَإِنْ كَانَ لَمْ يُكْرِهْهُ لَكِنْ اسْتَعَانَهُ بِرَغْبَةٍ فَأَعَانَهُ فَتَلِفَ، فَإِنَّهُ أَيْضًا لَمْ يُبَاشِرْ إتْلَافَهُ، وَلَا ضَمَّهُ بِغَصْبٍ، فَلَا غَرَامَةَ فِيهِ أَصْلًا، وَلَكِنْ عَلَيْهِ إجَارَةُ مِثْلِهِ؛ لِأَنَّهُ انْتَفَعَ بِهِ فِي ذَلِكَ الْعَمَلِ - وَهُوَ مَالُ غَيْرِهِ - فَلَا يَحِلُّ لَهُ الِانْتِفَاعُ بِمَالِ غَيْرِهِ إلَّا بِإِذْنِ رَبِّ الْمَالِ.

قَالَ اللَّهُ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَإِنْ غَصَبَ الْعَبْدَ فَاسْتَعْمَلَهُ، أَوْ أَكْرَهَهُ بِالتَّهْدِيدِ، فَقَدْ غَصَبَ أَيْضًا، وَقَدْ ضَمِنَ مُغْتَصِبُهُ كُلَّ مَا أَصَابَهُ عِنْدَهُ مِنْ أَيِّ شَيْءٍ كَانَ، وَإِنْ مَاتَ حَتْفَ أَنْفِهِ مِنْ غَيْرِ مَا سَخَّرَهُ فِيهِ، أَوْ مِمَّا سَخَّرَهُ فِيهِ، وَعَلَيْهِ مَعَ ذَلِكَ أُجْرَةُ مِثْلِهِ؛ لِأَنَّهُ مَالُ تَعَدَّى عَلَيْهِ هَذَا الْمُكْرِهُ، فَلَزِمَهُ رَدُّهُ إلَى صَاحِبِهِ وَلَا بُدَّ، أَوْ مِثْلِهِ إنْ فَاتَ، لِأَنَّهُ مُتَعَدٍّ - وَاَللَّهُ تَعَالَى يَقُولُ: {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] ، وَإِنْ كَانَ بِإِذْنِ أَهْلِهِ فَلَا شَيْءَ فِي ذَلِكَ، لِأَنَّهُ لَمْ يَعْتَدِّ، بِخِلَافِ الصَّغِيرِ الَّذِي لَا إذْنَ لَهُمْ فِيهِ، إلَّا فِيمَا هُوَ حَظٌّ لِلصَّبِيِّ فَقَطْ، وَإِلَّا فِي غَيْرِهِ سَوَاءٌ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي قَوْلِ اللَّهِ تَعَالَى وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا]

[13] **Qur'an references (L38839):** Qur'an 2:188 (Al-Baqarah).

“Whoever revives it [a soul], it is as though he has revived all of mankind.”[15]

L38843 2119 - Issue: Concerning the statement of Allah the Exalted, {And whoever gives life to a soul—it is as though he has given life to all mankind} [Al-Mā’idah: 32]? It was narrated to us through the chain of Abū Bakr ibn Abī Shaybah: from Wakīʿ, from Sufyān al-Thawrī, from Khuṣayf, from Mujāhid, from Ibn ʿAbbās regarding Allah’s statement, {Whoever kills a soul without [just cause of] a soul or corruption in the land—it is as though he slays all mankind} [Al-Mā’idah: 32]. He said: Whoever causes a soul to perish. {And whoever gives life to a soul—it is as though he has given life to all mankind} [Al-Mā’idah: 32]. He said: Whoever refrains from killing it.[16]

L38844 And with him (narrated by Sufyan, from Mansur, from Mujahid) regarding {Whoever saves a life, it is as though he has saved all mankind} [5:32], he said: Whoever saves a soul from drowning or burning has indeed given it life.[17]

L38845 And through him, Al-Ala ibn Abd al-Karim reported to us from Waki‘, who said: I heard Mujahid say regarding {And whoever revives it - it is as if he has revived all of mankind} [5:32]: “Whoever refrains from killing it has indeed revived it.”[18]

L38846 Ali said, “There is nothing in its interpretation from the Messenger of Allah—may Allah bless him and grant him peace—that can be reliably attributed to him. The narration from Ibn Abbas is transmitted through Khuṣayf, and he is not strong.”

L38847–38848 C:AH,AQ Abu Muhammed said: This is a ruling which Allāh, has only decreed for the Children of Israel and has not decreed for us. Allāh said, ‘For that reason,

[14]**Qur’an references (L38841):** Qur’an 2:194 (Al-Baqarah).
[15]**Qur’an references (L38842):** Qur’an 5:32 (Al-Ma’idah).
[16]**Qur’an references (L38843):** Qur’an 5:32 (Al-Ma’idah).
[17]**Qur’an references (L38844):** Qur’an 5:32 (Al-Ma’idah).
[18]**Qur’an references (L38845):** Qur’an 5:32 (Al-Ma’idah).

٢١١٩ - مَسْأَلَةٌ: فِي قَوْلِ اللَّهِ تَعَالَى {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] ؟ رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ خُصَيْفٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ عَبَّاسٍ فِي قَوْلِ اللَّهِ تَعَالَى {أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا} [المائدة: ٣٢] قَالَ: مَنْ أَوْبَقَهَا {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] قَالَ: مَنْ كَفَّ عَنْ قَتْلِهَا.

وَبِهِ - إلَى سُفْيَانَ عَنْ مَنْصُورٍ عَنْ مُجَاهِدٍ {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] قَالَ: مَنْ أَنْجَاهَا مِنْ غَرَقٍ أَوْ حَرْقٍ فَقَدْ أَحْيَاهَا.

وَبِهِ - إلَى وَكِيعٍ نا الْعَلَاءُ بْنُ عَبْدِ الْكَرِيمِ قَالَ: سَمِعْت مُجَاهِدًا يَقُولُ {وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا} [المائدة: ٣٢] قَالَ: مَنْ كَفَّ عَنْ قَتْلِهَا فَقَدْ أَحْيَاهَا.

قَالَ عَلِيٌّ هَذَا لَيْسَ فِي تَفْسِيرِهِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْءٌ فَيَسْلَمُ لَهُ، وَالرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فِيهَا خُصَيْفٌ، وَلَيْسَ بِالْقَوِيِّ.

قَالَ أَبُو مُحَمَّدٍ: وَهَذَا حُكْمٌ إنَّمَا كَتَبَهُ اللَّهُ تَعَالَى عَلَى بَنِي إسْرَائِيلَ وَلَمْ يَكْتُبْهُ عَلَيْنَا، قَالَ اللَّهُ تَعَالَى {مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الأَرْضِ} [المائدة: ٣٢] .

We decreed upon the Children of Israel that whoever kills a soul not in retaliation of murder, or for spreading corruption upon the land…' [5:32][19]

قَالَ عَلِيٌّ: فَهَذَا أَمْرٌ قَدْ كُفِينَاهُ - وَلِلَّهِ الْحَمْدُ - إِذْ لَوْ كَتَبَهُ اللَّهُ تَعَالَى عَلَيْنَا لَأَعْلَمَنَا بِذَلِكَ، فَلَهُ الْحَمْدُ كَثِيرًا، وَهَذَا - وَاللَّهُ أَعْلَمُ - إِذْ كَتَبَهُ اللَّهُ عَلَى بَنِي إِسْرَائِيلَ فَهُوَ مِنْ الْإِصْرِ الَّذِي حَمَلَهُ عَلَى مَنْ قَبْلَنَا.

L38849 C:AH,AQ Ali said: This is a matter that we have been spared from, and all praise is for Allāh. If Allāh had decreed it upon us, He would have made it known to us, so all praise is due to Him abundantly. And this - and Allāh knows best - as Allāh decreed it upon the Children of Israel, is part of the burden that was placed upon those before us.

وَأَمَرَنَا تَعَالَى أَنْ نَدْعُوَهُ فِي أَنْ لَا يَحْمِلَهُ عَلَيْنَا إِذْ يَقُولُ تَعَالَى {وَلا تَحْمِلْ عَلَيْنَا إِصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا} [البقرة: ٢٨٦] فَإِذْ لَمْ يَكْتُبْهُ اللَّهُ تَعَالَى عَلَيْنَا فَلَمْ نُكَلَّفْ مَعْرِفَةَ كَيْفِيَّتِهِ، إِلَّا أَنَّ الَّذِي كَتَبَ اللَّهُ تَعَالَى عَلَيْنَا: هُوَ تَحْرِيمُ الْقَتْلِ، وَالْوَعِيدُ الشَّدِيدُ فِيهِ، فَفَرَضَ عَلَيْنَا اجْتِنَابَهُ، وَاعْتِقَادَ أَنَّهُ مِنْ أَكْبَرِ الْكَبَائِرِ بَعْدَ الشِّرْكِ، وَهُوَ مَعَ تَرْكِ الصَّلَاةِ أَوْ بَعْدَهُ.

L38850 Our Exalted Lord has commanded us to supplicate Him concerning His not imposing it upon us, as He, the Exalted, says: *"And do not burden us with a burden as You imposed upon those before us"* [Al-Baqarah 2:286]. Since Allah has not ordained it upon us, we are not required to know its specifics. However, what He has ordained upon us is the prohibition of killing and the severe warning against it. Thus, He has enjoined us to avoid it and to believe that it is among the gravest major sins after polytheism, alongside abandoning prayer or ranking after it.[20]

وَمِمَّا كَتَبَهُ اللَّهُ تَعَالَى أَيْضًا عَلَيْنَا اسْتِنْقَاذَ كُلِّ مُتَوَرِّطٍ مِنْ الْمَوْتِ إِمَّا بِيَدِ ظَالِمٍ كَافِرٍ، أَوْ مُؤْمِنٍ مُتَعَدٍّ، أَوْ حَيَّةٍ أَوْ سَبُعٍ، أَوْ نَارٍ أَوْ سَيْلٍ، أَوْ هَدْمٍ أَوْ حَيَوَانٍ، أَوْ مِنْ عِلَّةٍ صَعْبَةٍ نَقْدِرُ عَلَى مُعَانَاتِهِ مِنْهَا، أَوْ مِنْ أَيِّ وَجْهٍ كَانَ، فَوَعَدَنَا عَلَى ذَلِكَ الْأَجْرَ الْجَزِيلَ الَّذِي لَا يُضَيِّعُهُ رَبُّنَا تَعَالَى، الْحَافِظُ عَلَيْنَا صَالِحَ أَعْمَالِنَا وَسَيِّئَهُ.

L38851 Among what Allah the Exalted has decreed upon us is rescuing every imperiled person from death—whether by the hand of an oppressive disbeliever, a transgressing believer, a snake, a predatory beast, fire, a flood, a collapse, an animal, a severe ailment we are capable of relieving him from, or from any cause whatsoever. He has promised us immense reward for this, which our Lord the Exalted—the Preserver over us, guarding the good of our deeds and their evil aspects—will not diminish.

فَفَرْضٌ عَلَيْنَا أَنْ نَأْتِيَ مِنْ كُلِّ ذَلِكَ مَا افْتَرَضَهُ اللَّهُ تَعَالَى عَلَيْنَا، وَأَنْ نَعْلَمَ أَنَّهُ قَدْ أَحْصَى أَجْرَنَا عَلَى ذَلِكَ مَنْ يُجَازِي عَلَى مِثْقَالِ الذَّرَّةِ مِنْ الْخَيْرِ وَالشَّرِّ.

L38852 It is incumbent upon us to fulfill of all that which Allah, the Exalted, has decreed upon us, and to know that He has indeed precisely recorded our reward for that—He is the One who recompenses for even an atom's weight of good or evil deeds.

نَسْأَلُ اللَّهَ تَعَالَى التَّوْفِيقَ لِمَا يُرْضِيهِ بِمَنِّهِ آمِينَ، وَبِاللَّهِ تَعَالَى نَعْتَصِمُ.

L38853 We ask Allah, the Most High, by His boundless favor, for success in what pleases Him. Amen, and in Allah, the Most High, we seek refuge.

[مَسْأَلَةُ شَقَّ نَهْرًا فَغَرَّقَ نَاسًا]

L38854 **Issue: One who dug a river and thereby drowned people.**

[19] **Qur'an references (L38848):** Qur'an 5:32 (Al-Ma'idah).
[20] **Qur'an references (L38850):** Qur'an 2:286 (Al-Baqarah).

L38855–38857 2120 - Issue: If someone digs a canal thereby drowning people, or starts a fire, or demolishes a building and kills someone? Ali said: Whoever digs a canal and drowns people—if he did so intentionally to drown them, then retribution (qisas) and blood monies (diyah) for killing multiple people are obligatory upon him. But if he dug it for a benefit or without benefit, while unaware that it would harm anyone, then those who perish due to it make him an unintentional killer. The diyah payments fall upon his male kin, and expiation is obligatory. He must provide a kaffarah (expiation) for each person and is liable in all such cases for what he destroyed of the property. The same ruling applies to one who starts a fire or demolishes a building, with no distinction made.

٢١٢٠ - مَسْأَلَةٌ: مَنْ شَقَّ نَهْرًا فَغَرَّقَ نَاسًا، أَوْ طَرَحَ نَارًا، أَوْ هَدَمَ بِنَاءً فَقَتَلَ؟ قَالَ عَلِيٌّ: مَنْ شَقَّ نَهْرًا فَغَرَّقَ قَوْمًا، فَإِنْ كَانَ فَعَلَ ذَلِكَ عَامِدًا لِيُغْرِقَهُمْ فَعَلَيْهِ الْقَوَدُ وَالدِّيَاتُ مِنْ قَتْلِ جَمَاعَةٍ، وَإِنْ كَانَ شَقَّهُ لِمَنْفَعَةٍ أَوْ لِغَيْرِ مَنْفَعَةٍ - وَهُوَ لَا يَدْرِي أَنَّهُ لَا يُصِيبُ بِهِ أَحَدًا - فَمَا هَلَكَ بِهِ فَهُوَ قَاتِلُ خَطَأٍ، وَالدِّيَاتُ عَلَى عَاقِلَتِهِ، وَالْكَفَّارَةُ عَلَيْهِ؛ لِكُلِّ نَفْسٍ كَفَّارَةٌ، وَيَضْمَنُ فِي كُلِّ ذَلِكَ مَا أَتْلَفَ مِنْ الْمَالِ وَهَكَذَا الْقَوْلُ فِيمَنْ أَلْقَى نَارًا أَوْ هَدَمَ بِنَاءً وَلَا فَرْقَ.

L38858 If he intentionally burns a group of people or kills them by causing collapse, he is liable to retribution (qawad). If he did not intend this, he is deemed an unintentional killer.

وَإِنْ عَمَدَ إحْرَاقَ قَوْمٍ أَوْ قَتْلَهُمْ بِالْهَدْمِ فَعَلَيْهِ الْقَوَدُ، وَإِنْ لَمْ يَعْمِدْ ذَلِكَ فَهُوَ قَاتِلُ خَطَأٍ.

L38859 If someone channels water that flows over a wall, causing the water to demolish the wall and result in a death, then—as we have stated—the ruling is equal, equal, with no distinction. This is because all those we have mentioned are directly responsible for the destruction of what was destroyed. Should a death occur due to this after the wrongdoer's death, or should property be destroyed by it after his death, there is no liability for that, since the wrongful act occurred posthumously, and no legal liability is imposed upon a deceased person.

وَلَوْ سَاقَ مَاءً فَمَرَّ عَلَى حَائِطٍ فَهَدَمَ الْمَاءُ الْحَائِطَ فَقَتَلَ: فَكَمَا قُلْنَا أَيْضًا سَوَاءً سَوَاءً وَلَا فَرْقَ؛ لِأَنَّ كُلَّ مَنْ ذَكَرْنَا مُبَاشِرٌ لِإِتْلَافِ مَا تَلِفَ، فَإِنْ مَاتَ أَحَدٌ بِذَلِكَ بَعْدَ مَوْتِ الْجَانِي، أَوْ تَلِفَ بِهِ مَالٌ بَعْدَ مَوْتِهِ، فَلَا ضَمَانَ فِي ذَلِكَ لِأَنَّ الْجِنَايَةَ حَدَثَتْ بَعْدَهُ، وَلَا جِنَايَةَ عَلَى مَيِّتٍ.

L38860 If a person throws a stone or an arrow and dies immediately after its release, and the stone or arrow strikes someone—whether he intended it or not—there is no liability upon him or his ʿāqilah. This is because the offense occurred only when he was among those incapable of acting, unlike a case where the projectile is unintentionally released and he subsequently dies, for the offense took place while he was alive. If he becomes insane immediately after throwing the arrow or stone, it is treated as if he had died, with no distinction. The same ruling applies if he loses consciousness.

وَلَوْ أَنَّ إنْسَانًا رَمَى حَجَرًا أَوْ سَهْمًا ثُمَّ مَاتَ إثْرَ خُرُوجِ السَّهْمِ أَوْ الْحَجَرِ فَأَصَابَ الْحَجَرُ أَوْ السَّهْمُ إنْسَانًا - عَمَدَهُ أَوْ لَمْ يَعْمِدْهُ - فَلَا ضَمَانَ عَلَيْهِ، وَلَا عَلَى عَاقِلَتِهِ؛ لِأَنَّ الْجِنَايَةَ لَمْ تَكُنْ إلَّا وَهُوَ مِمَّنْ لَا فِعْلَ لَهُ، بِخِلَافِ مَا خَرَجَ خَطَأً ثُمَّ مَاتَ؛ لِأَنَّ الْجِنَايَةَ قَدْ وَقَعَتْ وَهُوَ حَيٌّ، فَلَوْ جُنَّ إثْرَ رَمْيِ السَّهْمِ أَوْ الْحَجَرِ فَكَمَوْتِهِ وَلَا فَرْقَ، وَكَذَلِكَ لَوْ أُغْمِيَ عَلَيْهِ.

L38861 As for the sleeper, he differs from the unconscious and the insane, for he remains legally responsible while they are not. However, his act is uninten-

tional. If a sleeper were to turn over in his sleep onto someone and kill them, the blood money is the responsibility of his male paternal relatives, while the expiation is his personal obligation, to be paid from his own wealth. And success is from Allah, the Exalted.

وَأَمَّا النَّائِمُ فَبِخِلَافِ الْمُغْمَى عَلَيْهِ، وَالْمَجْنُونِ، لِأَنَّهُ مُخَاطَبٌ، وَهُمَا غَيْرُ مُخَاطَبِينَ، إِلَّا أَنَّهُ لَا عَمْدَ لَهُ، فَلَوْ أَنَّ نَائِمًا انْقَلَبَ فِي نَوْمِهِ عَلَى إِنْسَانٍ فَقَتَلَهُ فَالدِّيَةُ عَلَى عَاقِلَتِهِ، وَالْكَفَّارَةُ عَلَيْهِ فِي مَالِهِ، لِأَنَّهُ مُخَاطَبٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A case where a person lit a fire to warm himself, and the fire blazed, resulting in the destruction of property and injury to people.

[مَسْأَلَةٌ أَوْقَدَ نَارًا لِيَصْطَلِيَ فَاشْتَعَلَتْ تِلْكَ النَّارُ فَأَتْلَفَتْ أَمْتِعَةً وَنَاسًا]

2121 - Issue: Ali said: As for one who lights a fire to warm himself, to cook something, or lights a lamp, then falls asleep, and that fire ignites and destroys property and people, there is no legal responsibility upon him whatsoever.

٢١٢١ - مَسْأَلَةٌ: قَالَ عَلِيٌّ: وَأَمَّا مَنْ أَوْقَدَ نَارًا لِيَصْطَلِيَ، أَوْ لِيَطْبُخَ شَيْئًا، أَوْ أَوْقَدَ سِرَاجًا ثُمَّ نَامَ، فَاشْتَعَلَتْ تِلْكَ النَّارُ فَأَتْلَفَتْ أَمْتِعَةً وَنَاسًا، فَلَا شَيْءَ عَلَيْهِ فِي ذَلِكَ أَصْلًا.

In this issue, there are narrations: As transmitted through the chain of Abū Bakr ibn Abī Shaybah, who narrated to us from Wakīʿ, from Shuʿbah, who said, “I asked Al-Ḥakam ibn ʿUtaybah and Ḥammād ibn Abī Sulaymān about a man who set fire to a people’s dwelling, causing them to burn.” They both said, “There is no retaliation (qiṣāṣ) against him, nor is he to be executed.”

وَقَدْ جَاءَتْ فِي هَذَا آثَارٌ: كَمَا رُوِّينَا مِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ شُعْبَةَ قَالَ: سَأَلْت الْحَكَمَ بْنَ عُتَيْبَةَ، وَحَمَّادَ بْنَ أَبِي سُلَيْمَانَ عَنْ رَجُلٍ رَمَى نَارًا فِي دَارِ قَوْمٍ فَاحْتَرَقُوا، قَالَا جَمِيعًا: لَيْسَ عَلَيْهِ قَوَدٌ وَلَا يُقْتَلُ.

And by him—to Wakīʿ, from ʿAbd al-ʿAzīz ibn Ḥuṣayn, from Yaḥyā ibn Yaḥyā al-Ghassānī, who said: A man burned hay in his cultivated plots, and an ember from the fire flew out and burned something belonging to his neighbor. So I wrote concerning it to— Regarding Umar ibn Abd al-Aziz, he wrote to me that the Messenger of Allah (may Allah bless him and grant him peace) said, “Injuries caused by animals are without liability,” and I hold that fire is without liability.

وَبِهِ - إِلَى وَكِيعٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ حُصَيْنٍ عَنْ يَحْيَى بْنِ يَحْيَى الْغَسَّانِيِّ قَالَ: أَحْرَقَ رَجُلٌ تِبْنًا فِي فَرَاجٍ لَهُ فَخَرَجَتْ شَرَرَةٌ مِنْ نَارٍ فَأَحْرَقَتْ شَيْئًا لِجَارِهِ؟ فَكَتَبْت فِيهِ إلَى عُمَرَ بْنُ عَبْدِ الْعَزِيزِ؟ فَكَتَبَ إلَيَّ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ» وَأَرَى أَنَّ النَّارَ جُبَارٌ.

Ali—may Allah be pleased with him—said: “He spoke truthfully: ’Is the Fire mute, so is it overpowering?”’ Ali said: We then examined whether anything had been transmitted regarding this from the Messenger of Allah—peace and blessings be upon him. We found what Ahmad ibn Abdullah aṭ-Ṭalamankī reported. He said: Ibn Mufarrij narrated to us; Muḥammad ibn Ayyūb ar-Raqqī aṣ-Ṣamūt narrated to us; Aḥmad ibn ʿAmr ibn ʿAbdil-Khāliq al-Bazzār narrated to us; Salamah ibn Shabīb and Aḥmad ibn Manṣūr narrated [from] ʿAbdur-Razzāq, who narrated to us; Maʿmar narrated from Hammām ibn

قَالَ عَلِيٌّ: صَدَقَ - رَضِيَ اللَّهُ عَنْهُ -: النَّارُ عَجْمَاءُ فَهِيَ جُبَارٌ؟ قَالَ عَلِيٌّ: فَنَظَرْنَا، هَلْ رُوِيَ فِي ذَلِكَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَيْءٌ؟ فَوَجَدْنَا - مَا ناه أَحْمَدُ بْنُ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ قَالَ: نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الرَّقِّيُّ الصَّمُوتُ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا سَلَمَةُ بْنُ شَبِيبٍ، وَأَحْمَدُ بْنُ مَنْصُورٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ

Munabbih from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—said: “The Fire is overpowering.”

عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «النَّارُ جُبَارٌ» .

L38869 Abdullah ibn Rabi’ narrated from Umar ibn Abd al-Malik, who narrated from Muhammad ibn Bakr, who narrated from Abu Dawud, who narrated from Ja’far ibn Musafir, who narrated from Zayd ibn al-Mubarak, who narrated from Abd al-Malik as-San’ani, from Ma’mar, from Hammam ibn Munabbih, from Abu Hurairah, who said: The Messenger of Allah (may Allah’s prayers and peace be upon him) said, “The Fire is irresistible.”

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد نا جَعْفَرُ بْنُ مُسَافِرٍ نا زَيْدُ بْنُ الْمُبَارَكِ نا عَبْدُ الْمَلِكِ الصَّنْعَانِيُّ عَنْ مَعْمَرٍ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «النَّارُ جُبَارٌ» .

L38870 Ali said: This is an authentic report that constitutes definitive evidence, and it is impermissible to contradict it. Therefore, it is established by this that every property destroyed by fire is considered an irrecoverable loss, except in cases where there is unanimous scholarly agreement to hold liable the one who intentionally started the fire. This exception applies exclusively when a person deliberately ignites it for the purpose of mischief and destruction. Such an individual is a direct perpetrator who has overstepped legal bounds, making retaliation (qisas) obligatory for any persons he intentionally kills, while blood money (diyah) becomes payable by his agnatic relatives in cases of accidental killing.

قَالَ عَلِيٌّ: وَهَذَا خَبَرٌ صَحِيحٌ تَقُومُ بِهِ الْحُجَّةُ، وَلَا يَحِلُّ خِلَافُهُ، فَوَجَبَ بِهَذَا أَنَّ كُلَّ مَا تَلِفَ بِالنَّارِ فَهُوَ هَدْرٌ، إلَّا نَارًا اتَّفَقَ الْجَمِيعُ عَلَى تَضْمِينِ طَارِحِهَا، وَلَيْسَ ذَلِكَ إلَّا مَا تَعَمَّدَ الْإِنْسَانُ طَرْحَهَا لِلْإِفْسَادِ، وَالْإِتْلَافِ، فَهَذَا مُبَاشِرٌ مُتَعَدٍّ فَعَلَيْهِ الْقَوَدُ فِيمَا عَمَدَ قَتْلَهُ، وَالدِّيَةُ عَلَى الْعَاقِلَةِ فِي الْخَطَأِ.

L38871 As for a fire ignited without transgression, it is non-liable, as the Messenger of Allah (peace be upon him) stated. This is a general principle that cannot be particularized except by a text or consensus, and there is no consensus except in what we mentioned of intention—and success is by Allah, the Exalted.

وَأَمَّا نَارٌ أَوْقَدَهَا غَيْرَ مُتَعَدٍّ فَهِيَ جُبَارٌ، كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهَذَا عُمُومٌ لَا يَجُوزُ تَخْصِيصُهُ إلَّا مَا خَصَّهُ نَصٌّ أَوْ إجْمَاعٌ، وَلَا إجْمَاعَ إلَّا فِيمَا ذَكَرْنَا مِنْ الْقَصْدِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38872 [2122 - Issue: On What Is Mentioned About the Foot]

[٢١٢٢ - مَسْأَلَةٌ مَا جَاءَ فِي الرِّجْلِ]

L38873 Ali said: There is a report regarding the foot that we will cite, and we will mention what has been said about it, if Allah the Exalted wills. Ahmad ibn Muḥammad ibn ʿAbd Allāh al-Ṭalamankī reported to us via Ibn Mufarrij, via Muḥammad ibn Ayyūb al-Ṣamūt, via Aḥmad ibn ʿAmr ibn ʿAbd al-Khāliq al-Bazzār, via ʿAbd Allāh ibn Asad al-Bāhilī, via ʿAbbād ibn al-ʿAwwām, from Sufyān ibn Ḥusayn al-Zuhrī, from Saʿīd ibn al-Musayyib, from Abū Hurayrah,

؟ قَالَ عَلِيٌّ: جَاءَ فِي الرِّجْلِ أَثَرٌ نَذْكُرُهُ، وَنَذْكُرُ مَا قِيلَ فِيهِ إنْ شَاءَ اللَّهُ تَعَالَى: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا عَبْدُ اللَّهِ بْنُ أَسَدٍ الْبَاهِلِيُّ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ

who said: The Messenger of Allah—peace and blessings be upon him—said, “The foot is subject to fixed compensation.”

الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الرِّجْلُ جُبَارٌ» .

L38874–38875 Abdullah ibn Rabee’ narrated to us: Umar ibn Abdul-Malik narrated to us: Muhammad ibn Bakr narrated to us: Abu Dawud narrated to us: Uthman ibn Abi Shaybah narrated to us: Muhammad ibn Yazid narrated to us: Sufyan ibn Husayn reported from Az-Zuhri from Sa’eed ibn Al-Musayyib from Abu Hurairah from the Prophet (peace and blessings of Allah be upon him) who said: “The foot is oppressive.”

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد نا عُثْمَانُ بْنُ أَبِي شَيْبَةَ نا مُحَمَّدُ بْنُ يَزِيدَ نا سُفْيَانُ بْنُ حُسَيْنٍ عَنْ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الرِّجْلُ جُبَارٌ» .

L38876 Abū Muḥammad said: This has also been transmitted from some of the Salaf, as narrated to us by Muḥammad ibn Saʿīd ibn Nubāt from Ismāʿīl ibn Isḥāq al-Naṣrī from ʿĪsā ibn Ḥabīb from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Muḥammad ibn ʿAbd Allāh ibn Yazīd al-Muqrī from my grandfather Muḥammad ibn ʿAbd Allāh ibn Yazīd from Sufyān ibn ʿUyaynah from Abū Farwah—who is ʿUrwah ibn al-Ḥārith—from al-Shaʿbī, who said: “The man is a tyrant.”

قَالَ أَبُو مُحَمَّدٍ: وَجَاءَ هَذَا أَيْضًا عَنْ بَعْضِ السَّلَفِ، كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ 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 بْنِ يَزِيدَ نا سُفْيَانُ بْنُ عُيَيْنَةَ نا أَبُو فَرْوَةَ - هُوَ عُرْوَةُ بْنُ الْحَارِثِ - عَنْ الشَّعْبِيِّ قَالَ: الرِّجْلُ جُبَارٌ.

L38877 Ali said: Then a group said, “Sufyan ibn Husayn is weak in al-Zuhri.”

قَالَ عَلِيٌّ: فَقَالَ قَوْمٌ: سُفْيَانُ بْنُ حُسَيْنٍ ضَعِيفٌ فِي الزُّهْرِيِّ.

L38878 Ali said, “How do we not know the reason for this?” Sufyān ibn Ḥusayn is trustworthy; whoever claims he erred, let him substantiate it? Otherwise, his narration constitutes authoritative evidence, and this is an unbroken chain owing to the continuity of trustworthy narrators in it.

قَالَ عَلِيٌّ وَمَا نَدْرِي وَجْهَ هَذَا؟ وَسُفْيَانُ بْنُ حُسَيْنٍ ثِقَةٌ، فَمَنْ ادَّعَى عَلَيْهِ خَطَأً فَلْيُبَيِّنْهُ؟ وَإِلَّا فَرِوَايَتُهُ حُجَّةٌ، وَهَذَا إسْنَادٌ مُسْتَقِيمٌ لِاتِّصَالِ الثِّقَاتِ فِيهِ.

L38879 Abū Muḥammad said: People held differing opinions about this narration. One group stated: The meaning of “the hoof is exempt from liability” refers specifically to what an animal strikes with its hoof. Others said: It denotes harm caused by the foot unintentionally during tawāf or other acts.

قَالَ أَبُو مُحَمَّدٍ: فَاخْتَلَفَ النَّاسُ فِي هَذَا الْخَبَرِ: فَقَالَتْ طَائِفَةٌ: مَعْنَى " الرِّجْلُ جُبَارٌ ": إنَّمَا هُوَ مَا أَصَابَتْ الدَّابَّةُ بِرِجْلِهَا. وَقَالَ آخَرُونَ: هُوَ مَا أُصِيبَ بِالرِّجْلِ عَنْ غَيْرِ قَصْدٍ فِي الطَّوَافِ وَغَيْرِهِ.

L38880 Ali said: Both interpretations are correct, as they both conform to the wording of the Prophet (peace and blessings be upon him). It is not permissible to specify one of them over the other, for that would be a specification without proof and a claim without evidence.

قَالَ عَلِيٌّ: وَكِلَا التَّفْسِيرَيْنِ حَقٌّ؛ لِأَنَّهُمَا مُوَافِقَانِ لِلَفْظِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا يَجُوزُ أَنْ يَخُصَّ أَحَدَهُمَا دُونَ الْآخَرِ؛ لِأَنَّهُ تَخْصِيصٌ بِلَا بُرْهَانٍ [وَدَعْوَى] بِلَا دَلِيلٍ.

L38881 It has been established that any harm caused by the leg of a human or animal is invalid, requiring no compensation, retribution (qisas), or expiation—except what consensus has ruled by retribution (qisas), such as deliberate intent in the act. And with Allah alone is success.

فَصَحَّ أَنَّ كُلَّ مَا جُنِيَ بِرِجْلٍ مِنْ إنْسَانٍ، أَوْ حَيَوَانٍ، فَهُوَ هَدْرٌ لَا غَرَامَةَ فِيهِ، وَلَا قَوَدَ، وَلَا كَفَّارَةَ، إلَّا مَا صَحَّ الْإِجْمَاعُ بِهِ بِأَنَّهُ مَحْكُومٌ فِيهِ بِالْقَوَدِ، كَالتَّعَمُّدِ لِذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةُ الْجَانِي يُسْتَقَادُ مِنْهُ فَيَمُوتُ أَحَدُهُمَا]

L38882 **A jurisprudential issue: When *qisas* is enforced against the offender, resulting in the death of one of the two [parties].**

٢١٢٣ - مَسْأَلَةٌ: الْجَانِي يُسْتَقَادُ مِنْهُ فَيَمُوتُ أَحَدُهُمَا؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِي هَذَا - فَقَالَتْ طَائِفَةٌ: إذَا مَاتَ الْمُسْتَقِيدُ، فَكَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: رَجُلٌ اسْتَقَادَ مِنْ رَجُلٍ قَبْلَ أَنْ يَبْرَأَ ثُمَّ مَاتَ الْمُسْتَقِيدُ مِنْ الَّذِي أَصَابَهُ، قَالَ أَرَى: أَنْ يُودَى؟ قُلْت: فَمَاتَ الْمُسْتَقَادُ مِنْهُ، قَالَ: أَرَى أَنْ يُودَى، قَالَ ابْنُ جُرَيْجٍ: قَالَ عَمْرُو بْنُ دِينَارٍ: أَظُنُّ أَنَّهُ سَيُودَى.

L38883 2123 - Issue: What if retribution is exacted from an offender resulting in the death of one of them? ʿAlī said: People differed regarding this. A group said: If the claimant dies, then as we have been narrated through ʿAbd al-Razzāq's transmission from Ibn Jurayj: I asked ʿAṭāʾ, "A man exacted retribution from another before the victim recovered, then the claimant died from the inflicted injury." He said, "I hold that *diyah* must be paid." I said, "What if the defendant dies?" He said, "I hold that *diyah* must be paid." Ibn Jurayj said: ʿAmr ibn Dīnār remarked, "I think *diyah* will be paid."

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ طَاوُسٍ عَنْ أَبِيهِ قَالَ: لَوْ أَنَّ رَجُلًا اسْتَقَادَ مِنْ آخَرَ ثُمَّ مَاتَ الْمُسْتَقَادُ مِنْهُ غَرِمَ دِيَتَهُ.

L38884–38885 And from ʿAbd al-Razzāq from Maʿmar from Ibn Ṭāwūs from his father, who said: If a man demands retaliation against another, and the latter dies before enforcement, his estate becomes liable for paying his blood money.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ عَنْ ابْنِ شِهَابٍ قَالَ: السُّنَّةُ أَنْ يُودَى - يَعْنِي الْمُسْتَقَادَ مِنْهُ.

L38886 From the chain of ʿAbd al-Razzāq via Maʿmar, and Ibn Jurayj via Ibn Shihāb, who said: The Sunnah is that retaliation be exacted - meaning the one from whom it is taken.

L38887 Narrated through Maʿmar from al-Zuhrī concerning a man who disabled

another's finger: He said, "The victim may seek retaliation. If his finger becomes disabled, that suffices; otherwise, he must pay him the diyah."

وَبِهِ - إِلَى مَعْمَرٍ عَنِ الزُّهْرِيِّ فِي رَجُلٍ أَشَلَّ أُصْبُعَ رَجُلٍ؟ قَالَ يَسْتَقِيدُ مِنْهُ، فَإِنْ شُلَّتْ أُصْبُعُهُ، وَإِلَّا غَرِمَ لَهُ الدِّيَةَ.

L38888 From ʻAbd al-Razzāq from Hushaym from Abū Isḥāq al-Shaybānī or another - ʻAbd al-Razzāq expressed uncertainty about this - al-Shaʿbī ruled regarding a man who injured another man. When retaliation (qiṣāṣ) was enforced against the perpetrator, and the subjected person subsequently died, he said: The blood money (ʿaql) for his death rests upon the person subjected to retaliation. The blood money (diyah) for the victim's injury is deducted from that amount. Whatever remains outstanding becomes his liability.

وَعَنْ عَبْدِ الرَّزَّاقِ عَنْ هُشَيْمٍ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ أَوْ غَيْرِهِ - شَكَّ عَبْدُ الرَّزَّاقِ فِي ذَلِكَ - الشَّعْبِيُّ فِي رَجُلٍ جَرَحَ رَجُلًا فَاقْتَصَّ مِنْهُ ثُمَّ هَلَكَ الْمُسْتَقَادُ؟ قَالَ: عَقْلُهُ عَلَى الْمُسْتَقَادِ مِنْهُ وَيُطْرَحُ عَنْهُ دِيَةُ جُرْحِهِ مِنْ ذَلِكَ فَمَا فَضَلَ فَهُوَ عَلَيْهِ.

L38889 And through the chain of Abd al-Razzaq from Ma'mar from Ibn Shubruma from al-Harith al-Uqayli regarding the one who is subject to retaliation and then dies, he said: He must pay his blood money because the act against the life was unintentional.

وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ ابْنِ شُبْرُمَةَ عَنِ الْحَارِثِ الْعُقَيْلِيِّ فِي الَّذِي يُسْتَقَادُ مِنْهُ ثُمَّ يَمُوتُ، قَالَ: يَغْرَمُ دِيَتَهُ؛ لِأَنَّ النَّفْسَ خَطَأٌ.

L38890 From Ibrāhīm al-Nakhāʿī, from ʿAlqamah: He said concerning the claimant of retaliation: "Whichever of the two dies, blood money is to be paid."

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ عَلْقَمَةَ: أَنَّهُ قَالَ فِي الْمُقْتَصِّ مِنْهُ: أَيُّهُمَا مَاتَ وُدِيَ.

L38891 Through the narration chain of Abu Bakr ibn Abi Shaybah: Waki' narrated to us from Shuʻbah from al-Hakam ibn 'Utaybah, who said: "I sought permission from Ziyad ibn Jarir regarding Hajj. He asked me about a man who inflicted a head wound on another man, where retaliation was exacted from him for the victim. Then the one subjected to retaliation died. I said: 'The blood money is incumbent upon him, with the head wound's value subtracted from his liability.' Later I forgot this matter. When Ibrahim came, I asked him, and he replied: 'The blood money is incumbent upon him.'"

Shuʻbah said: "I then asked al-Hakam and Hammad about this." They both responded: "The blood money is incumbent upon him." Hammad added: "With the head wound's value subtracted from his liability."

وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ نا وَكِيعٌ عَنْ شُعْبَةَ عَنِ الْحَكَمِ بْنِ عُتَيْبَةَ قَالَ: اسْتَأْذَنْت زِيَادَ بْنَ جَرِيرٍ فِي الْحَجِّ فَسَأَلَنِي عَنْ رَجُلٍ شَجَّ رَجُلًا فَاقْتُصَّ لَهُ مِنْهُ فَمَاتَ الْمُقْتَصُّ مِنْهُ فَقُلْت: عَلَيْهِ الدِّيَةُ وَيُرْفَعُ عَنْهُ بِقَدْرِ الشَّجَّةِ، ثُمَّ نَسِيتُ ذَلِكَ، فَجَاءَ إِبْرَاهِيمُ فَسَأَلْته فَقَالَ: عَلَيْهِ الدِّيَةُ، قَالَ شُعْبَةُ فَسَأَلْت الْحَكَمَ وَحَمَّادًا عَنْ ذَلِكَ؟ فَقَالَا جَمِيعًا: عَلَيْهِ الدِّيَةُ. وَقَالَ حَمَّادٌ: وَيُرْفَعُ عَنْهُ بِقَدْرِ الشَّجَّةِ.

L38892 Abu Hanifa, Sufyan al-Thawri, and Ibn Abi Layla said: If retaliation is exacted for a hand or scalp wound, and the one subjected to retaliation dies, his blood money is incumbent upon the agnatic kin of the one for whom retaliation was sought.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ الثَّوْرِيُّ، وَابْنُ أَبِي لَيْلَى: إِذَا اقْتَصَّ مِنْ يَدٍ، أَوْ شَجَّةٍ، فَمَاتَ الْمُقْتَصُّ مِنْهُ فَدِيَتُهُ عَلَى عَاقِلَةِ الْمُقْتَصِّ لَهُ.

L38893 And indeed, that has been reported from Ibn Masʿūd, and from Ibrāhīm al-Nakhaʿī, from Ibn Masʿūd.

وَقَدْ رُوِيَ ذَلِكَ عَنْ ابْنِ مَسْعُودٍ، وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ عَنْ ابْنِ مَسْعُودٍ.

L38894 Abu Muhammad said: The blood money of the one from whom retaliation is enforced is owed to the claimant, except that the claimant deducts the blood money for his own injury from it.

قَالَ أَبُو مُحَمَّدٍ: الَّذِي يُقْتَصُّ مِنْهُ دِيَتُهُ عَلَى الْمُقْتَصِّ لَهُ غَيْرَ أَنَّهُ يَطْرَحُ عَنْهُ دِيَةَ جُرْحِهِ.

L38895 Others said: There is nothing applicable to the killing of the one from whom retribution is taken.

وَقَالَ آخَرُونَ: لَا شَيْءَ فِي هَلَاكِ الْمُقْتَصِّ مِنْهُ.

L38896–38897 As reported to us by Muḥammad ibn Saʿīd ibn Nubāt, who reported to us from ʿAbdullāh ibn Naṣr, who reported to us from Qāsim ibn Aṣbagh, who reported to us from Ibn Waḍḍāḥ, who reported to us from Mūsā ibn Muʿāwiyah, who reported to us from Wakīʿ, who reported to us from Saʿīd ibn Abī ʿArūbah, from Qatādah, from Ibn al-Musayyib, who said: ʿUmar ibn al-Khaṭṭāb said regarding a man who dies as a result of legal retribution: “He was killed by the Book of Allah, the Exalted, or [by] a rightful claim. No diyah (blood money) is due for him.”

كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنِ ابْنِ الْمُسَيِّبِ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ فِي الرَّجُلِ يَمُوتُ فِي الْقِصَاصِ: قَتَلَهُ كِتَابُ اللَّهِ تَعَالَى، أَوْ حَقٌّ، لَا دِيَةَ لَهُ.

L38898 Through the chain of Al-Ḥajjāj ibn Al-Minhāl: Ḥammād ibn Salamah narrated to us, Qatādah narrated to us from Khilāṣ ibn ʿAmr from ʿAlī ibn Abī Ṭālib and ʿUmar ibn Al-Khaṭṭāb, who collectively said: Whoever dies during retribution (qiṣāṣ) or a prescribed punishment (ḥadd), no blood money is due for him.

وَمِنْ طَرِيقِ الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ نا قَتَادَةُ عَنْ خِلَاسِ بْنِ عَمْرٍو عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَعُمَرَ بْنِ الْخَطَّابِ، قَالَا جَمِيعًا: مَنْ مَاتَ فِي قِصَاصٍ أَوْ حَدٍّ، فَلَا دِيَةَ لَهُ.

L38899 On his authority—from Qatādah, who narrated from al-Ḥasan: If someone dies as a result of qiṣāṣ or ḥadd, no diyah is due to them.

وَبِهِ - إِلَى قَتَادَةَ عَنِ الْحَسَنِ مَنْ مَاتَ فِي قِصَاصٍ أَوْ حَدٍّ، فَلَا دِيَةَ لَهُ.

L38900 From the chain of Ibn Waḍḍāḥ: Mūsā ibn Muʿāwiyah narrated to us from Wakīʿ, from Misʿar ibn Kidām and Sufyān, from Abī Ḥuṣayn, from ʿUmayr ibn Saʿd, who said: ʿAlī ibn Abī Ṭālib declared: “I would never impose a ḥadd punishment on a man—only for him to die and leave me uneasy—except in the case of the wine-drinker. Were he to die, I would pay his diyah.”

وَمِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مِسْعَرُ بْنُ كِدَامٍ وَسُفْيَانُ عَنْ أَبِي حُصَيْنٍ عَنْ عُمَيْرِ بْنِ سَعْدٍ قَالَ: قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: مَا كُنْت لِأُقِيمَ عَلَى رَجُلٍ حَدًّا فَيَمُوتُ فَأَجِدُ فِي نَفْسِي مِنْهُ شَيْئًا إِلَّا صَاحِبَ الْخَمْرِ، لَوْ مَاتَ وَدَيْتُهُ.

L38901 From Al-Ḥasan al-Baṣrī, from Al-Aḥnaf ibn Qays, from ʿUmar ibn al-Khaṭṭāb and ʿAlī ibn Abī Ṭālib, who both said regarding the death of one subjected to retaliation: “He was killed by the rightful judgment, and there is no diyah for him.”

وَعَنِ الْحَسَنِ الْبَصْرِيِّ عَنِ الْأَحْنَفِ بْنِ قَيْسٍ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، قَالَا جَمِيعًا فِي الْمُقْتَصِّ مِنْهُ يَمُوتُ؟ قَالَا جَمِيعًا: قَتَلَهُ الْحَقُّ وَلَا دِيَةَ لَهُ.

L38902 And from Sa’id ibn al-Musayyib a similar ruling: he was killed by the lawful punishment—he is not entitled to *diyah*.

وَعَنْ سَعِيدِ بْنِ الْمُسَيِّبِ مِثْلُ ذَلِكَ: قَتَلَهُ الْحَقُّ، لَا دِيَةَ لَهُ.

L38903 It is reported from Abu Sa‘id that Abu Bakr and ‘Umar said: Whoever is killed by a ḥadd punishment, there is no blood money for him.

وَعَنْ أَبِي سَعِيدٍ أَنَّ أَبَا بَكْرٍ، وَعُمَرَ، قَالَا: مَنْ قَتَلَهُ حَدٌّ فَلَا عَقْلَ لَهُ.

L38904 Ibn Wahb said: Al-Layth ibn Sa‘d reported to me from Yaḥyā ibn Sa‘īd al-Anṣārī that he stated: When lawful retribution is exacted from someone for harm equivalent to what he inflicted upon people, resulting in his execution, no blood money is due for him. Even if every individual lawfully subject to retribution had a valid claim of the people against him, and he died from it, the one who exacted retribution would owe his blood money - this would mean people would have abandoned their rights.

قَالَ ابْنُ وَهْبٍ: وَأَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَنَّهُ قَالَ: مَنْ اُسْتُقِيدَ مِنْهُ بِمِثْلِ مَا دَخَلَ عَلَى النَّاسِ مِنْهُ فَقَتَلَهُ الْقَوَدُ، فَلَيْسَ لَهُ عَقْلٌ - وَلَوْ أَنَّ كُلَّ مَنْ اُسْتُقِيدَ مِنْهُ حَقٌّ قِبَلَهُ لِلنَّاسِ فَمَاتَ مِنْهُ غَرِمَهُ الْمُسْتَقِيدُ: رَفَضَ النَّاسُ حُقُوقَهُمْ.

L38905 Ibn Wahb said: Yunus said: Rabi’ah said: If the first dies—he being the one seeking qisas—the injurer from whom retaliation is sought is killed for him. If the other dies—he being the one from whom qisas is sought—then it is by right taken from him, and the loss is borne by him.

قَالَ ابْنُ وَهْبٍ: قَالَ يُونُسُ: قَالَ رَبِيعَةُ: إِنْ مَاتَ الْأَوَّلُ - وَهُوَ الْمُقْتَصُّ - قُتِلَ بِهِ الْجَارِحُ الْمُقْتَصُّ مِنْهُ - وَإِنْ مَاتَ الْآخَرُ - وَهُوَ الْمُقْتَصُّ مِنْهُ - فَبِحَقٍّ أُخِذَ مِنْهُ كَانَ مِنْهُ التَّلَفُ.

L38906 And with it – says Mālik, ‘Abd al-‘Azīz ibn Abī Salama, al-Shāfi‘ī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, and Abū Sulaymān.

وَبِهِ - يَقُولُ مَالِكٌ، وَعَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ، وَالشَّافِعِيُّ، وَأَبُو يُوسُفَ وَمُحَمَّدُ بْنُ الْحَسَنِ، وَأَبُو سُلَيْمَانَ.

L38907 Abu Muhammad said: These are three opinions. The first is that if the claimant for retribution dies, diya (blood money) is owed; and if the one subject to retribution dies, diya is owed, and the penalty corresponding to his crime is lifted from him.

قَالَ أَبُو مُحَمَّد: فَهَذِهِ ثَلَاثَةُ أَقْوَالٍ. أَحَدُهَا - أَنَّهُ إِنْ مَاتَ الْمُقْتَصُّ وُدِيَ، وَإِنْ مَاتَ الْمُقْتَصُّ مِنْهُ وُدِيَ، وَرُفِعَ عَنْهُ قَدْرُ جِنَايَتِهِ.

L38908–38909 And it is a position transmitted from Ibn Mas‘ūd, as we have reported from Ibrāhīm al-Nakha‘ī, al-Sha‘bī, and Ḥammād ibn Abī Sulaymān—and by it say ‘Uthmān al-Battī and Ibn Abī Laylā.

وَهُوَ قَوْلٌ رُوِيَ عَنْ ابْنِ مَسْعُودٍ، كَمَا أَوْرَدْنَا عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، وَالشَّعْبِيِّ وَحَمَّادِ بْنِ أَبِي سُلَيْمَانَ - وَبِهِ يَقُولُ عُثْمَانُ الْبَتِّيُّ، وَابْنُ أَبِي لَيْلَى.

L38910 Another opinion is that blood-money is to be paid, and nothing of the penalty for his offense is waived—this is the opinion of ‘Aṭā’ and Ṭāwus. It is also reported from al-Ḥakam ibn ‘Utaybah—and this is the opinion of al-Zuhrī—as well as from ‘Amr ibn Dīnār, Abū Ḥanīfah, and Sufyān al-Thawrī.

وَقَوْلٌ آخَرُ: أَنَّهُ يُودَى، وَلَا يُرْفَعُ عَنْهُ لِجِنَايَتِهِ شَيْءٌ - وَهُوَ قَوْلُ عَطَاءٍ، وَطَاوُسٍ - وَرُوِيَ أَيْضًا عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ - وَهُوَ قَوْلُ الزُّهْرِيِّ، وَعَنْ عَمْرِو بْنِ دِينَارٍ، وَأَبِي حَنِيفَةَ، وَسُفْيَانَ الثَّوْرِيِّ.

L38911 A third opinion states that no *diyah* is due from the one from whom retaliation is taken. This is narrated from Abū Bakr and ʿUmar (may Allah be pleased with them) and is authentically established from ʿAlī ibn Abī Ṭālib (may Allah be pleased with him).

وَقَوْلٌ ثَالِثٌ -: أَنَّهُ لَا دِيَةَ لِلْمُقْتَصِّ مِنْهُ - وَرُوِيَ عَنْ أَبِي بَكْرٍ، وَعُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - وَصَحَّ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ -.

L38912 This is the opinion of al-Ḥasan, Ibn Sīrīn, al-Qāsim, Sālim, Saʿīd ibn al-Musayyib, Yaḥyā ibn Saʿīd al-Anṣārī, and Rabīʿah.

وَهُوَ قَوْلُ الْحَسَنِ، وَابْنِ سِيرِينَ، وَالْقَاسِمِ، وَسَالِمٍ، وَسَعِيدِ بْنِ الْمُسَيِّبِ، وَيَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ، وَرَبِيعَةَ.

L38913 This is the position of Mālik, al-Shāfiʿī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, and Abū Sulaymān. Abū Muḥammad said: When they differed as we mentioned, it became necessary to examine this matter so the truth may emerge and we may follow it with the help of God Almighty. We found those who stated that it must be paid in full: either the obligation is lifted from him in proportion to his offense, or it is not lifted in proportion to his offense.

وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَبِي يُوسُفَ، وَمُحَمَّدِ بْنِ الْحَسَنِ، وَأَبِي سُلَيْمَانَ؟ قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِيَلُوحَ الْحَقُّ فَنَتْبَعَهُ بِعَوْنِ اللَّهِ تَعَالَى فَوَجَدْنَا مَنْ قَالَ: أَنَّهُ يُودَى جُمْلَةً، فَإِمَّا يُرْفَعُ عَنْهُ بِقَدْرِ جِنَايَتِهِ، وَإِمَّا لَا يُرْفَعُ عَنْهُ بِقَدْرِ جِنَايَتِهِ.

L38914 They say: Indeed, Allah the Exalted has mandated qiṣāṣ exclusively upon the amputator, the wounder, the bone-breaker, the eye-gouger, or the striker for their specific acts alone, and He has not imposed killing upon them. Thus, their blood remains inviolable. There is no dispute that if the one subjected to qiṣāṣ for any such act intentionally commits killing, qiṣāṣ becomes obligatory upon him. If this is so, then should the one subjected to qiṣāṣ die as a consequence of the lawfully enacted retaliation against him, his blood has been taken unintentionally, and diyah is thereby due.

يَقُولُونَ: إنَّ اللَّهَ تَعَالَى إنَّمَا أَوْجَبَ عَلَى الْقَاطِعِ، وَالْجَارِحِ، وَالْكَاسِرِ، وَالْفَاقِئِ، وَالضَّارِبِ: الْقَوَدَ مِمَّا فَعَلُوا فَقَطْ، وَلَمْ يُوجِبْ عَلَيْهِمْ قَتْلًا، فَدِمَاؤُهُمْ مُحَرَّمَةٌ، وَلَا خِلَافَ فِي أَنَّ الْمُقْتَصَّ مِنْ شَيْءٍ مِنْ هَذَا لَوْ تَعَمَّدَ الْقَتْلَ فَلَزِمَهُ الْقَوَدُ، فَإِذْ هُوَ كَذَلِكَ فَمَاتَ الْمُقْتَصُّ مِنْهُ مِمَّا فَعَلَ بِهِ بِحَقٍّ، فَقَدْ أُصِيبَ دَمُهُ خَطَأً، فَفِيهِ الدِّيَةُ.

L38915 They also said: If a man disciplines his wife and she dies from it, diyah is due - though he only performed a permissible act. Why then is qisas enforced against him? If death results from a permissible act, is diyah incurred in such a case? Ali said: Do we know any argument for them other than these two? We examined the position of those who waived diyah in this matter.

وَقَالُوا أَيْضًا: إنَّ مَنْ أَدَّبَ امْرَأَتَهُ فَمَاتَتْ فِيهَا الدِّيَةُ، وَهُوَ إنَّمَا فَعَلَ مُبَاحًا، فَهَذَا الْمُقْتَصُّ مِنْهُ، وَإِنْ مَاتَ مِنْ مُبَاحٍ فَفِيهِ الدِّيَةُ؟ قَالَ عَلِيٌّ: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَاتَيْنِ؟ فَنَظَرْنَا فِي قَوْلِ مَنْ أَسْقَطَ الدِّيَةَ فِي ذَلِكَ، فَكَانَ مِنْ حُجَّتِهِمْ أَنْ قَالُوا: إنَّ الْقِصَاصَ مَأْمُورٌ بِهِ،

Their proof was that qisas is commanded, and whoever performs what is commanded has done well. Since he did well, Allah the Exalted said: “There is no blame upon those who do good” [9:91]. As no blame attaches to him, no financial liability falls upon him or his ʿāqilah.[21]

وَمَنْ فَعَلَ مَا أُمِرَ بِهِ فَقَدْ أَحْسَنَ، وَإِذْ أَحْسَنَ فَقَدْ قَالَ اللَّهُ تَعَالَى {مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ} [التوبة: ٩١] وَإِذْ لَا سَبِيلَ عَلَيْهِ فَلَا غَرَامَةَ تَلْحَقُهُ، وَلَا عَلَى عَاقِلَتِهِ مِنْ أَهْلِهِ.

L38916–38918 As for the analogy of the one seeking qisas regarding his wife’s death, it is invalid. Furthermore, even if it were valid, this analogy itself would constitute the very essence of invalidity due to two grounds: One of the two [arguments] is that this constitutes a deceptively framed analogy: whoever disciplines his wife must necessarily either be a transgressor—by imposing discipline in an inappropriate context—or acting within permissible bounds.

وَأَمَّا قِيَاسُ الْمُقْتَصِّ عَلَى مَوْتِ امْرَأَتِهِ فَالْقِيَاسُ بَاطِلٌ، ثُمَّ لَوْ صَحَّ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، لِوَجْهَيْنِ: أَحَدُهُمَا - أَنَّهُ قِيَاسٌ مُمَوَّهٌ وَذَلِكَ مَنْ أَدَّبَ امْرَأَتَهُ فَلَا يَخْلُو مِنْ أَنْ يَكُونَ مُتَعَدِّيًا - وَضَعَ الْأَدَبَ فِي غَيْرِ مَوْضِعِهِ - أَوْ غَيْرَ مُتَعَدٍّ.

L38919 If he transgressed, then retribution (qawad) applies. If he administered discipline appropriately, there is no possibility that death results from such permitted discipline, as he was never permitted to discipline her in a manner whereby death occurs with discipline of this kind. Whoever imposes this type of discipline is an unjust transgressor, and retribution for homicide or lesser injuries applies to him, for no one may administer flogging beyond ten lashes except in cases of prescribed legal punishments—as authentically reported from the Prophet (peace and blessings be upon him).

فَإِنْ كَانَ مُتَعَدِّيًا فَفِيهِ الْقَوَدُ، وَإِنْ كَانَ وَضَعَ الْأَدَبَ مَوْضِعَهُ، فَلَا سَبِيلَ إِلَى أَنْ يَمُوتَ مِنْ ذَلِكَ الْأَدَبِ الَّذِي أُبِيحَ لَهُ، إِذْ لَمْ يُبَحْ لَهُ قَطُّ أَنْ يُؤَدِّبَهَا أَدَبًا يَمُوتُ مَعَ مِثْلِهِ، وَمَنْ أَدَّبَ هَذَا النَّوْعَ مِنْ الْأَدَبِ فَهُوَ ظَالِمٌ مُتَعَدٍّ، وَالْقَوَدُ عَلَيْهِ فِي النَّفْسِ فَمَا دُونَهَا، لِأَنَّهُ لَا يَجُوزُ لِأَحَدٍ أَنْ يَجْلِدَ فِي غَيْرِ حَدٍّ أَكْثَرَ مِنْ عَشْرِ جَلَدَاتٍ - عَلَى مَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L38920 As was narrated to us through the chain of Al-Bukhārī: ʿAbdullāh ibn Yūsuf narrated to us, Al-Layth ibn Saʿd narrated to us, Yazīd ibn Abī Ḥabīb narrated to me from Bukayr ibn ʿAbdullāh ibn Al-Ashajj from Sulaymān ibn Yasār from ʿAbdur-Raḥmān ibn Jābir from ʿAbdullāh from Abū Burdah, who said: The Prophet—peace and blessings of Allāh be upon him—used to say, “No one is to be flogged more than ten lashes except in a ḥadd punishment among the ḥudūd prescribed by Allāh the Exalted.”

كَمَا رُوِّينَا - مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا اللَّيْثُ بْنُ سَعْدٍ حَدَّثَنِي يَزِيدُ بْنُ أَبِي حَبِيبٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَجِّ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ جَابِرٍ عَنْ عَبْدِ اللَّهِ عَنْ أَبِي بُرْدَةَ قَالَ كَانَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا يُجْلَدُ فَوْقَ عَشْرِ جَلَدَاتٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى» .

L38921 They said: He is not permitted in number to exceed ten lashes, nor is he permitted to lash her with anything that breaks a bone, lacerates the skin, or causes the flesh to rot, for all of this constitutes other than lashing, and he is permitted nothing except lashing alone.

قَالُوا: فَلَمْ يُبَحْ لَهُ فِي الْعَدَدِ أَكْثَرُ مِنْ عَشْرِ جَلَدَاتٍ، وَلَا أُبِيحَ لَهُ جَلْدُهَا بِمَا يَكْسِرُ عَظْمًا، وَيَجْرَحُ جِلْدًا، أَوْ يُعَفِّنُ لَحْمًا، لِأَنَّ كُلَّ هَذَا هُوَ غَيْرُ الْجَلْدِ، وَلَمْ يُبَحْ لَهُ إلَّا الْجَلْدُ وَحْدَهُ.

[21] **Qur’an references (L38915):** Qur’an 9:91 (At-Tawbah).

وَبِيَقِينٍ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ عَشْرَ جَلَدَاتٍ لِامْرَأَةٍ صَحِيحَةٍ غَيْرِ مَرِيضَةٍ، وَلَا ضَعِيفَةٍ، وَلَا صَغِيرَةٍ: لَا تَجْرَحُ، وَلَا تَكْسِرُ، وَأَنَّهُ لَا يَمُوتُ مِنْهَا أَحَدٌ.

L38922 And with certainty, every person of sound perception knows that ten lashes administered to a healthy woman (one who is neither sick, weak, nor a minor) do not wound or break, and that no one dies from them.

فَإِنْ وَافَقَتْ مَنِيَّةً فِي خِلَالِ ذَلِكَ أَوْ بَعْدَهُ: فَبِأَجَلِهَا مَاتَتْ، وَلَا دِيَةَ فِي ذَلِكَ، وَلَا قَوَدَ، لِأَنَّنَا عَلَى يَقِينٍ مِنْ أَنَّهَا لَمْ تَمُتْ مِنْ فِعْلِهِ أَصْلًا.

L38923 If her death coincides with that period or afterward, her death is due to that [injury/action], and neither diyah nor retaliation is required, because it is certain that her death did not result from his action at all.

وَإِنْ تَعَدَّى فِي الْعَدَدِ أَوْ ضَرَبَ بِمَا يَكْسِرُ، أَوْ يَجْرَحُ، أَوْ يُعَفِّنُ فَعَفَنَ، أَوْ جَرَحَ أَوْ كَسَرَ، فَالْقَوَدُ فِي كُلِّ ذَلِكَ فِي الْعَمْدِ، فِي النَّفْسِ فَمَا دُونَهَا، أَوْ الدِّيَةُ فِيمَا لَمْ يَعْمِدْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38924 If he exceeds the prescribed number, strikes with an object that breaks, wounds, causes decay and it does decay, or wounds or breaks, then qisas (retaliation) applies in all such cases of intentional harm—for loss of life or lesser injuries, or diyah (blood money) for what he did not intend. And success is from Allah, the Exalted.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا قَوْلُهُمْ: إنَّ الْمُقْتَصَّ مِنْهُ إنَّمَا أُبِيحَ عُضْوُهُ، أَوْ بَشَرَتُهُ وَلَمْ يُبَحْ دَمُهُ - فَصَحَّ أَنَّهُ إنْ مَاتَ مِنْ ذَلِكَ، فَإِنَّهُ مَقْتُولٌ خَطَأً، فَفِيهِ الدِّيَةُ - فَإِنَّ هَذَا قَوْلٌ غَيْرُ صَحِيحٍ؛ لِأَنَّ الْقِصَاصَ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِأَخْذِهِ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ: إمَّا أَنْ يَكُونَ مِمَّا يُمَاتُ مِنْ مِثْلِهِ، كَقَطْعِ الْيَدِ، أَوْ شَقِّ الرَّأْسِ، أَوْ كَسْرِ الْفَخِذِ، أَوْ غَيْرِ ذَلِكَ.

L38925–38927 Abu Muhammad said: As for their statement that when retaliation is taken against someone, only his limb or skin is permitted to be harmed while his blood is not—then it is correct that if he dies from that injury, he is considered killed by mistake, requiring the payment of *diyah*—verily, this is an invalid statement. It is valid because the retaliatory punishment mandated by Allah the Exalted must fall into one of two categories: either it is an injury from which death results due to its like—such as severing a hand, splitting the head, fracturing the thigh, or similar injuries—or it belongs to the second category.

أَوْ يَكُونَ مِمَّا لَا يُمَاتُ مِنْ مِثْلِهِ، كَاللَّطْمَةِ، وَضَرْبَةِ السَّوْطِ، وَنَحْوِ ذَلِكَ.

L38928 Or it is an act that does not cause death from the like of it, such as a slap, a whip strike, and the like thereof.

فَإِنْ كَانَ مِمَّا يُمَاتُ مِنْ مِثْلِهِ فَذَلِكَ الَّذِي قَصَدَ فِيهِ، لِأَنَّهُ قَدْ تَعَدَّى بِمَا قَدْ يُمَاتُ مِنْ مِثْلِهِ، فَوَجَبَ أَنْ يُتَعَدَّى عَلَيْهِ بِمَا قَدْ يُمَاتُ مِنْ مِثْلِهِ، فَإِنْ مَاتَ فَعَلَى ذَلِكَ بَنَى فِيهِ، وَعَلَى ذَلِكَ بَنَى هُوَ فِيمَا تَعَدَّى فِيهِ.

L38929 If it is from that which may result in death in similar cases, then that is the ruling intended therein; because he transgressed through an act from which death may occur in similar cases, thus it becomes obligatory that retaliation be enacted against him by means of that which may cause death in similar cases. If death occurs, then the ruling is established upon that principle, and upon this basis the ruling is determined in the matter wherein he transgressed.

L38930 The aspect from which death resulted is what Allah the Exalted has commanded us to perform intentionally. Since this is established, it is not a

transgression. As it is not a transgression against him, there is no retaliation nor blood money, for this was not an unintentional killing. If death resulted from an intentional act that Allah the Exalted has commanded us to perform, He has not obligated us to ensure survival from it—for had Allah the Exalted willed such prevention, He would not have neglected it, overlooked it, nor allowed it to be disregarded. Since He the Exalted has not clarified this to us, we know with certainty that He the Exalted did not will it at all.

وَالْوَجْهُ الَّذِي مَاتَ مِنْهُ أَمَرَنَا اللَّهُ تَعَالَى أَنْ نَتَعَمَّدَهُ فِيهِ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَيْسَ عُدْوَانًا، وَإِذْ لَيْسَ عُدْوَانًا عَلَيْهِ فَلَا قَوَدَ، وَلَا دِيَةَ؛ لِأَنَّهُ لَمْ يَقْتُلْ خَطَأً، فَإِنْ مَاتَ مِنْ عَمْدٍ أَمَرَنَا اللَّهُ تَعَالَى أَنْ نَتَعَمَّدَهُ فِيهِ، وَلَمْ يُكَلِّفْنَا أَنْ لَا يَمُوتَ مِنْ ذَلِكَ - وَلَوْ أَنَّ اللَّهَ تَعَالَى أَرَادَ ذَلِكَ لَمَا أَهْمَلَهُ، وَلَا أَغْفَلَهُ، وَلَا ضَيَّعَهُ، فَإِذْ لَمْ يُبَيِّنْ لَنَا تَعَالَى ذَلِكَ فَبِيَقِينٍ نَدْرِي أَنَّهُ تَعَالَى لَمْ يُرِدْهُ قَطُّ.

L38931 If the act by which he exacted retribution from him was inherently non-fatal by nature, and it coincided with his appointed time of death, then he died at his destined term and not due to the act he committed. There is neither qisas nor diyah.

وَإِنْ كَانَ الَّذِي اقْتَصَّ بِهِ مِنْهُ مِمَّا لَا يُمَاتُ مِنْهُ أَصْلًا فَوَافَقَ مَنِيَّتَهُ فَإِنَّمَا مَاتَ بِأَجَلِهِ، وَلَمْ يَمُتْ مِمَّا عَمِلَ بِهِ، لَا قَوَدَ، وَلَا دِيَةَ.

L38932 If the one seeking qisas intentionally transgresses the permitted bounds against the person subject to qisas, he becomes a transgressor. He is liable for qawad (retaliation) for life or injuries less than death. If he errs by committing an act not legally permitted, it is a mistake: the blood money falls upon his agnatic relatives, and expiation is obligatory upon him in cases involving death—and with Allah, the Exalted, lies all success.

فَإِنْ تَعَمَّدَ الْمُقْتَصُّ فَتَعَدَّى عَلَى الْمُقْتَصِّ مِنْهُ مَا لَمْ يُبَحْ لَهُ، فَهُوَ مُتَعَدٍّ، وَعَلَيْهِ الْقَوَدُ فِي النَّفْسِ فَمَا دُونَهَا، وَإِنْ أَخْطَأَ فَأَتَى بِمَا لَمْ يُبَحْ لَهُ عَمْلُهُ: فَهُوَ خَطَأٌ الدِّيَةُ عَلَى عَاقِلَتِهِ، وَعَلَيْهِ الْكَفَّارَةُ فِي النَّفْسِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَفْزَعَهُ السُّلْطَانُ فَتَلِفَ]

A legal case wherein the ruler terrified him, causing him to perish.

L38933

٢١٢٤ - مَسْأَلَةٌ: مَنْ أَفْزَعَهُ السُّلْطَانُ فَتَلِفَ؟ قَالَ عَلِيٌّ: رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ مَطَرٍ الْوَرَّاقِ وَغَيْرِهِ عَنْ الْحَسَنِ قَالَ: أَرْسَلَ عُمَرُ إلَى امْرَأَةٍ مُغَنِّيَةٍ كَانَ يُدْخَلُ عَلَيْهَا، فَأَنْكَرَ ذَلِكَ، فَقِيلَ لَهَا: أَجِيبِي عُمَرَ؟ فَقَالَتْ: يَا وَيْلَهَا مَالَهَا وَلِعُمَرَ؟ قَالَ: فَبَيْنَمَا هِيَ فِي الطَّرِيقِ فَزِعَتْ، فَضَمَّهَا الطَّلْقُ، فَدَخَلَتْ دَارًا فَأَلْقَتْ وَلَدَهَا فَصَاحَ الصَّبِيُّ صَيْحَتَيْنِ فَمَاتَ؟ فَاسْتَشَارَ عُمَرُ أَصْحَابَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَشَارَ عَلَيْهِ بَعْضُهُمْ: أَنْ لَيْسَ عَلَيْك شَيْءٌ، إنَّمَا أَنْتَ وَالٍ، وَمُؤَدِّبٌ، قَالَ: وَصَمَتَ عَلِيٌّ فَأَقْبَلَ

2124. Issue: If someone is frightened by the ruler and perishes? Ali said: It was narrated to us through the chain of Abd al-Razzaq, from Ma'mar, from Matar al-Warraq and others, from al-Hasan, who said: Umar sent for a female singer whom people frequented, disapproving of this. She was told: "Respond to Umar's summons!" She cried: "Woe to her! What concern is this of Umar?" While she was on the way, she panicked and was seized by labor pains. She entered a house and gave birth prematurely. The infant cried twice and then died. Umar sought counsel from the Companions of the Prophet (peace be upon him). Some advised him: "You bear no liability, for you are only a ruler acting in authority." A scholar said: Ali remained silent, so Umar turned to him and asked, "What do you say?" He replied, "If

L38934–38936

عَلَيْهِ عُمَرُ فَقَالَ: مَا تَقُولُ؟ فَقَالَ: إنْ كَانُوا قَالُوا بِرَأْيِهِمْ فَقَدْ أَخْطَأَ رَأْيُهُمْ، وَإِنْ كَانُوا قَالُوا فِي هَوَاكَ؟ فَلَمْ يَنْصَحُوا لَك، أَرَى أَنَّ دِيَتَهُ عَلَيْك لِأَنَّكَ أَنْتَ أَفْزَعْتَهَا، وَأَلْقَتْ وَلَدَهَا فِي سَبِيلِك، فَأَمَرَ عَلِيًّا أَنْ يَقْسِمَ عَقْلَهُ عَلَى قُرَيْشٍ - يَعْنِي: يَأْخُذَ عَقْلَهُ مِنْ قُرَيْشٍ؛ لِأَنَّهُ أَخْطَأَ. قَالَ أَبُو مُحَمَّدٍ: فَالصَّحَابَةُ - رَضِيَ اللَّهُ عَنْهُمْ - قَدْ اخْتَلَفُوا، فَالْوَاجِبُ الرُّجُوعُ إلَى مَا أَمَرَ اللَّهُ تَعَالَى بِهِ بِالرُّجُوعِ إلَيْهِ عِنْدَ التَّنَازُعِ إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] .

they spoke based on their own opinion, their opinion was mistaken. If they spoke to appease your desire, they did not advise you sincerely. I hold that her blood money is your responsibility, for you frightened her, causing her to miscarry her child in your pursuit." Umar then ordered Ali to apportion the blood money from Quraysh—meaning he should take the blood money from Quraysh, because he erred. Abu Muhammad said: The Companions—may Allah be pleased with them—differed in opinion, so it is obligatory to refer back to what Allah Almighty commanded by returning to His judgment when disputes arise, as He says: "If you disagree over something, refer it to Allah and the Messenger" (Quran 4:59).[22]

فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {كُونُوا قَوَّامِينَ بِالْقِسْطِ} [النساء: ١٣٥] ، {وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ} [آل عمران: ١٠٤] .

L38937 We have ascertained Allah, the Exalted, declaring: *"Stand firm in justice"* [4:135], and *"Let there arise from you a community inviting to good and enjoining recognized virtue"* [3:104].[23]

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ» .

L38938 The Messenger of Allah (peace be upon him) said, "Whoever among you witnesses an evil, let him rectify it with his hand if he is able; if he is unable, then with his tongue."

فَصَحَّ أَنَّ فَرْضًا عَلَى كُلِّ مُسْلِمٍ قَدَرَ عَلَى الْأَمْرِ بِالْمَعْرُوفِ وَالنَّهْيِ عَنْ الْمُنْكَرِ أَنْ يَأْمُرَ بِالْمَعْرُوفِ وَيَنْهَى عَنْ الْمُنْكَرِ.

L38939 Thus, it is confirmed that there is an obligation upon every Muslim capable of enjoining good and forbidding evil to enjoin good and forbid evil.

وَمِنْ الْمُحَالِ أَنْ يَفْتَرِضَ اللَّهُ تَعَالَى عَلَى الْأَئِمَّةِ أَوْ غَيْرِهِمْ أَمْرًا إنْ لَمْ يَعْمَلُوهُ عَصَوْا اللَّهَ تَعَالَى ثُمَّ يُؤَاخِذُهُمْ فِي ذَلِكَ؟ وَوَجَدْنَا هَذِهِ الْمَبْعُوثُ فِيهَا: بُعِثَ فِيهَا بِحَقٍّ، وَلَمْ يُبَاشِرْ الْبَاعِثُ فِيهَا شَيْئًا أَصْلًا فَلَا شَيْءَ عَلَيْهِ، وَإِنَّمَا كَانَ يَكُونُ عَلَيْهِ دِيَةُ وَلَدِهَا لَوْ بَاشَرَ ضَرْبَهَا أَوْ نَطْحَهَا - وَأَمَّا إذَا لَمْ يُبَاشِرْ فَلَمْ يَجْنِ شَيْئًا أَصْلًا.

L38940 It is inconceivable that Allah, the Exalted, would impose upon the Imams or others a command which, if they do not act upon it, they would have disobeyed Him, and He would then hold them accountable for it. We found that this envoy was sent truthfully in the matter, and the One who sent him did not personally carry out any act whatsoever—thus he bears no liability. The only liability he could incur would be the blood money for her child if he had personally struck or butted her. But if he did not act directly, he incurred no liability whatsoever.

وَلَا فَرْقَ بَيْنَ هَذَا، وَبَيْنَ مَنْ رَمَى حَجَرًا إلَى الْعَدُوِّ فَفَزِعَ مِنْ هُوِيِّهِ إنْسَانٌ فَمَاتَ، فَهَذَا لَا شَيْءَ عَلَيْهِ - وَكَذَلِكَ مَنْ بَنَى حَائِطًا فَانْهَدَمَ، فَفَزِعَ إنْسَانٌ فَمَاتَ وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38941 There is no distinction between this case and one where a person threw

[22] **Qur'an references (L38934):** Qur'an 4:59 (An-Nisa).
[23] **Qur'an references (L38937):** Qur'an 4:135 (An-Nisa); Qur'an 3:104 (Ali 'Imran).

a stone toward enemies, then a human was frightened by its descent and died - in such a case, nothing is incumbent upon him. Similarly, if someone built a wall that collapsed, then a human was frightened and died, nothing is incumbent upon him. And success is from Allah, the Exalted.

Issue: Designating Food for a Person

Issue 2125: If someone poisons food intended for a person, then invites them to eat it, and the person consumes it and dies - what the ruling? Ali said: Some scholars held that whoever poisons food, serves it to someone while saying "Eat," and if the person eats it and dies, then retaliation (qisas) is required against the poisoner. This is Mālik's opinion.

Other scholars said: He is not liable for retaliation, but his agnatic kin are responsible for the blood money.

Others said: There is no retaliation, blood money, or expiation required. Rather, he is only liable to compensate for the food he spoiled—if it belonged to someone else—and to receive disciplinary punishment, unless he had hired him to do it: then retaliation is obligatory. This is the opinion of our school's scholars. Al-Shafi'i's ruling did not differ regarding the case where one hires him for it—while knowing he would kill—stating that retaliation applies. As for when he did not hire him for it, he has two opinions: one following Malik's view, and the other following our school's scholars' opinion.

Ali said: When they differed as we mentioned, it became necessary for us to examine this matter—could there be a practiced Sunnah regarding it? And we found one.

From Abdullah ibn Rabee', from Muhammad ibn Ishaq, from Ibn al-A'rabī, from Abu Dawud, from Makhlad ibn Khalid, from Abd al-Razzaq, from Ma'mar via al-Zuhri via Ibn Ka'b ibn Malik from his father: "Umm Mubashshir said to the Prophet—peace and blessings of Allah be upon him—during the illness from which he died: 'We do not hold anyone responsible for you, O Messenger of Allah, for I blame none for my son's death except the poisoned sheep he ate with you at Khaybar.' The Prophet—peace and

[مَسْأَلَةٌ سَمَّ طَعَامًا لِإِنْسَانٍ]

٢١٢٥ - مَسْأَلَةٌ: مَنْ سَمَّ طَعَامًا لِإِنْسَانٍ، ثُمَّ دَعَاهُ إلَى أَكْلِهِ، فَأَكَلَهُ، فَمَاتَ؟ قَالَ عَلِيٌّ: ذَهَبَ قَوْمٌ إلَى أَنَّ مَنْ سَمَّ طَعَامًا وَقَدَّمَهُ إلَى إنْسَانٍ وَقَالَ لَهُ: كُلْ فَأَكَلَ فَمَاتَ، فَإِنَّ عَلَيْهِ الْقَوَدَ - وَهُوَ قَوْلُ مَالِكٍ.

وَقَالَ آخَرُونَ: لَيْسَ عَلَيْهِ الْقَوَدُ، لَكِنْ عَلَى عَاقِلَتِهِ الدِّيَةُ.

قَالَ آخَرُونَ: لَا قَوَدَ فِيهِ وَلَا دِيَةَ وَلَا كَفَّارَةَ، وَإِنَّمَا عَلَيْهِ ضَمَانُ الطَّعَامِ الَّذِي أَفْسَدَ - إنْ كَانَ لِغَيْرِهِ - وَالْأَدَبُ، إلَّا أَنْ يُؤَجِّرَهُ إيَّاهُ: فَعَلَيْهِ الْقَوَدُ - وَهُوَ قَوْلُ أَصْحَابِنَا وَلَمْ يَخْتَلِفْ قَوْلُ الشَّافِعِيِّ فِي إيجَارِهِ إيَّاهُ - وَهُوَ يَدْرِي - أَنَّهُ يَقْتُلُ: أَنَّ فِيهِ الْقَوَدَ - وَلَهُ فِي إذَا لَمْ يُؤَجِّرْهُ إيَّاهُ قَوْلَانِ: أَحَدُهُمَا: كَقَوْلِ مَالِكٍ، وَالْآخَرُ: كَقَوْلِ أَصْحَابِنَا.

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ [لَعَلَّ] فِي ذَلِكَ سُنَّةً جَرَتْ؟ فَوَجَدْنَا.

مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مَخْلَدُ بْنُ خَالِدٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ الزُّهْرِيِّ " عَنْ ابْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أَبِيهِ «أَنَّ أُمَّ مُبَشِّرٍ قَالَتْ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ: مَا نَتَّهِمُ بِكَ يَا رَسُولَ

blessings of Allah be upon him—replied: 'Nor do I hold anyone responsible for myself except that very thing. Now is the time for the severing of my aortas.'"

L38949 Abū Dāwūd said: Sometimes ʿAbd al-Razzāq narrated this ḥadīth as *mursal* from Maʿmar, from al-Zuhrī, from the Prophet (peace and blessings of Allāh be upon him). At other times, he narrated it from al-Zuhrī, from ʿAbd al-Raḥmān ibn Kaʿb. ʿAbd al-Razzāq mentioned that Maʿmar would narrate the ḥadīth to them at times as *mursal*, and they would record it, while at other times he would narrate it with an *isnād*, and they would record it. When Ibn al-Mubārak came to him, Maʿmar provided *isnāds* for ḥadīths he had previously transmitted as *mawqūf* (attributed to a Companion).

L38950 And by the same chain—to Abū Dāwūd: Aḥmad ibn Ḥanbal narrated to us, from Ibrāhīm ibn Khālid, from Rabāḥ, from Maʿmar, from al-Zuhrī, from ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Kaʿb ibn Mālik, from his mother Umm Mubashshir, who said: "I visited the Prophet (peace and blessings of Allāh be upon him)," and he related the version of the ḥadīth of Makhlad ibn Khālid. Ibn al-Aʿrābī noted: "He reported it thus from his mother, though the correct chain is from his father."

L38951–38953 And through him, via Abū Dāwūd: Sulaymān ibn Dāwūd al-Mahrī narrated to us → Ibn Wahb narrated to us → Yūnus informed me from... Ibn Shihab said: Jabir ibn Abdullah used to narrate that a Jewish woman from Khaybar poisoned a sheep. He then narrated the story at length—and in it: The Messenger of Allah (peace and blessings be upon him) said to her, "Did you poison this sheep?" She replied, "Yes." Thereupon, the Messenger of Allah (peace and blessings be upon him) pardoned her and did not punish her, while some of his companions who had eaten from the sheep died.

L38954 And through him to Abu Dawud: From Harun ibn Abdullah, from Sa'id ibn Sulayman, from 'Abbad ibn al-'Awwam, from Sufyan ibn Husayn, from al-Zuhri, from Sa'id ibn al-Musayyib and Abu Salamah ibn 'Abd al-Rahman

اللَّهِ، فَإِنِّي لَا أَتَّهِمُ بِابْنِي إِلَّا الشَّاةَ الْمَسْمُومَةَ الَّتِي أَكَلَ مَعَكَ بِخَيْبَرَ؟ قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَنَا لَا أَتَّهِمُ بِنَفْسِي إِلَّا ذَلِكَ فَهَذَا أَوَانُ قَطْعِ أَبْهَرِي» .

قَالَ أَبُو دَاوُد: وَرُبَّمَا حَدَّثَ عَبْدُ الرَّزَّاقِ بِهَذَا الْحَدِيثِ مُرْسَلًا عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَرُبَّمَا حَدَّثَ بِهِ عَنِ الزُّهْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ كَعْبٍ - وَذَكَرَ عَبْدُ الرَّزَّاقِ: أَنَّ مَعْمَرًا كَانَ يُحَدِّثُهُمْ بِالْحَدِيثِ مَرَّةً مُرْسَلًا فَيَكْتُبُونَهُ، وَيُحَدِّثُهُمْ مَرَّةً فَيُسْنِدُهُ فَيَكْتُبُونَهُ، فَلَمَّا قَدِمَ عَلَيْهِ ابْنُ الْمُبَارَكِ أَسْنَدَ لَهُ مَعْمَرٌ أَحَادِيثَ كَانَ يُوقِفُهَا.

وَبِهِ - إِلَى أَبِي دَاوُد نا أَحْمَدُ بْنُ حَنْبَلٍ أَنَا إِبْرَاهِيمُ بْنُ خَالِدٍ نا رَبَاحٌ عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ عَنْ أُمِّهِ أُمِّ مُبَشِّرٍ قَالَ: دَخَلْت عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ مَعْنَى حَدِيثِ مَخْلَدِ بْنِ خَالِدٍ، قَالَ ابْنُ الْأَعْرَابِيِّ: هَكَذَا قَالَ عَنْ أُمِّهِ، وَإِنَّمَا الصَّوَابُ عَنْ أَبِيهِ.

وَبِهِ إِلَى أَبِي دَاوُد نا سُلَيْمَانُ بْنُ دَاوُد الْمَهْرِيُّ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنِ ابْنِ شِهَابٍ قَالَ: كَانَ جَابِرُ بْنُ عَبْدِ اللَّهِ يُحَدِّثُ «أَنَّ يَهُودِيَّةً مِنْ أَهْلِ خَيْبَرَ سَمَّتْ شَاةً، ثُمَّ سَاقَ الْقِصَّةَ بِطُولِهَا - وَفِيهَا: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ لَهَا: أَسَمَمْتِ هَذِهِ الشَّاةَ؟ قَالَتْ: نَعَمْ، فَعَفَا عَنْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يُعَاقِبْهَا، وَتُوُفِّيَ بَعْضُ أَصْحَابِهِ الَّذِينَ أَكَلُوا مِنْ الشَّاةِ» .

وَبِهِ - إِلَى أَبِي دَاوُد نا هَارُونُ بْنُ عَبْدِ اللَّهِ نا سَعِيدُ بْنُ سُلَيْمَانَ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ عَنِ الزُّهْرِيِّ عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، وَأَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ

ibn ‘Awf, from Abu Hurayrah: “A Jewish woman presented a poisoned sheep as a gift to the Messenger of Allah (peace be upon him).”

عَوْفٍ عَنْ أَبِي هُرَيْرَةَ «أَنَّ امْرَأَةً مِنَ الْيَهُودِ أَهْدَتْ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - شَاةً مَسْمُومَةً» .

L38955 From him (the chain) up to Abu Dawud: From Yahya ibn Habib ibn Adi, from Khalid ibn al-Harith, from Shu’bah, from Hisham ibn Zayd, from Anas ibn Malik: “A Jewish woman came to the Messenger of Allah—peace and blessings be upon him—with a poisoned sheep, and he ate from it. She was then brought to the Messenger of Allah—peace and blessings be upon him—and he asked her about that? She said: ‘I intended to kill you.’ He replied: ‘Allah would not grant you power over that,’ or he said, ‘over me.’ They asked: ‘Should we not kill her?’ He said: ‘No.’ Anas said: ‘I continued to recognize it in the uvula of the Messenger of Allah—peace and blessings be upon him.’”

وَبِهِ - إِلَى أَبِي دَاوُد نا يَحْيَى بْنُ حَبِيبِ بْنِ عَدِيٍّ نا خَالِدُ بْنُ الْحَارِثِ نا شُعْبَةُ نا هِشَامُ بْنُ زَيْدٍ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ امْرَأَةً يَهُودِيَّةً أَتَتْ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِشَاةٍ مَسْمُومَةٍ فَأَكَلَ مِنْهَا، فَجِيءَ بِهَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَأَلَهَا عَنْ ذَلِكَ؟ فَقَالَتْ: أَرَدْتُ لِأَقْتُلَكَ؟ قَالَ: مَا كَانَ اللَّهُ لِيُسَلِّطَكِ عَلَى ذَلِكَ، أَوْ قَالَ عَلَيَّ، فَقَالُوا: أَلَا نَقْتُلُهَا؟ قَالَ: لَا. قَالَ أَنَسٌ: فَمَا زِلْتُ أَعْرِفُهَا فِي لَهْوَاةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -» .

L38956 Abu Muhammad said: These authentic reports have come forth: “A Jewish woman—may Allah curse her—prepared a sheep for the Messenger of Allah (peace and blessings of Allah be upon him), intending to kill him. He (peace be upon him) ate from it along with some of his companions, and they died from that. When it was said to the Messenger of Allah (peace and blessings of Allah be upon him), ’Will you not kill her?’ he replied, ’No.’” This constituted decisive proof that there is no retribution for one who poisons food intending to kill another and feeds it to them [if death results], nor is there blood money upon him, his male kin, or anything whatsoever. For the Messenger of Allah (peace and blessings of Allah be upon him) would never invalidate the blood claim of a companion if retribution or blood money were rightfully required. We then examined whether the opposing party had any objection. We found the narration transmitted by Abdullah ibn Rabi‘ from Umar ibn Abd al-Malik from Muhammad ibn Bakr from Abu Dawud from Wahb ibn Baqiyyah from Khalid from Muhammad ibn Amr from Abu Salama from Abu Hurairah, who said: “The Messenger of Allah (peace and blessings of Allah be upon him) accepted gifts but did not consume charity.”[24]

قَالَ أَبُو مُحَمَّد: فَجَاءَتْ هَذِهِ الْآثَارُ الصِّحَاحُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَمَّتْ لَهُ الْيَهُودِيَّةُ - لَعَنَهَا اللَّهُ - شَاةً وَأَهْدَتْهَا لَهُ مُرِيدَةً بِذَلِكَ قَتْلَهُ، فَأَكَلَ مِنْهَا - عَلَيْهِ السَّلَامُ - وَقَوْمٌ مِنْ أَصْحَابِهِ فَمَاتُوا مِنْ ذَلِكَ، وَقِيلَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَلَا تَقْتُلُهَا؟ قَالَ: لَا» فَكَانَتْ هَذِهِ حُجَّةً قَاطِعَةً، وَأَنْ لَا قَوَدَ عَلَى مَنْ سَمَّ طَعَامًا لِأَحَدٍ مُرِيدًا قَتْلَهُ فَأَطْعَمَهُ إِيَّاهُ [فَمَاتَ مِنْهُ] وَلَا دِيَةَ عَلَيْهِ، وَلَا عَلَى عَاقِلَتِهِ، وَلَا شَيْءَ - وَمَا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُبْطِلَ دَمَ رَجُلٍ مِنْ أَصْحَابِهِ قَدْ وَجَبَ فِيهِ قَوَدٌ وَدِيَةٌ فَنَظَرْنَا: هَلْ لِلطَّائِفَةِ الْأُخْرَى اعْتِرَاضٌ أَمْ لَا؟ فَوَجَدْنَا: مَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد نا وَهْبُ بْنُ بَقِيَّةَ عَنْ خَالِدٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْبَلُ الْهَدِيَّةَ وَلَا يَأْكُلُ الصَّدَقَةَ» .

[24] **Hadith references (L38956):** Sunan Abi Dawud 4512.

قَالَ أَبُو دَاوُد: ونا وَهْبُ بْنُ بَقِيَّةَ فِي مَوْضِعٍ آخَرَ عَنْ خَالِدٍ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ، وَلَمْ يَذْكُرْ أَبَا هُرَيْرَةَ قَالَ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْكُلُ الْهَدِيَّةَ وَلَا يَأْكُلُ الصَّدَقَةَ» زَادَ «فَأَهْدَتْ لَهُ يَهُودِيَّةٌ بِخَيْبَرَ شَاةً مَصْلِيَّةً سَمَّتْهَا فَأَكَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْهَا، وَأَكَلَ الْقَوْمُ، فَقَالَ: ارْفَعُوا أَيْدِيَكُمْ، فَإِنَّهَا أَخْبَرَتْنِي: أَنَّهَا مَسْمُومَةٌ - فَمَاتَ بِشْرُ بْنُ الْبَرَاءِ بْنِ مَعْرُورٍ الْأَنْصَارِيُّ، فَأَرْسَلَ إِلَى الْيَهُودِيَّةِ: مَا حَمَلَكِ عَلَى الَّذِي صَنَعْتِ؟ قَالَتْ: إِنْ كُنْتَ نَبِيًّا لَمْ يَضُرَّكَ، وَإِنْ كُنْتَ مَلِكًا أَرَحْتُ النَّاسَ مِنْكَ؟ فَأَمَرَ بِهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقُتِلَتْ، ثُمَّ قَالَ فِي وَجَعِهِ الَّذِي مَاتَ مِنْهُ: فَمَا زِلْتُ أَجِدُ مِنَ الْأَكْلَةِ الَّتِي أَكَلْتُ بِخَيْبَرَ، فَهَذَا أَوَانُ قَطْعِ أَبْهَرِي» .

L38957–38959 Abu Dawud said: And Wahb ibn Baqiyyah reported to us elsewhere from Khalid from Muhammad ibn Amr. From Abu Salama, who did not mention Abu Hurairah: “The Messenger of Allah (peace and blessings of Allah be upon him) would accept gifts but not eat from charity.” He added: “A Jewish woman in Khaybar presented him with a roasted sheep she had poisoned. The Prophet ate from it, and his companions ate too. He then declared: ’Lift your hands, for it has been revealed to me that this is poisoned.’ When Bishr ibn al-Bara’ ibn Ma‘rur al-Ansari died, the Prophet sent for the Jewish woman and demanded: ’What compelled you to do this?’ She replied: ’If you were a prophet, it would not harm you. If you were a king, I would have relieved people from you.’ The Messenger of Allah then ordered her execution, and she was killed. Later, during the illness that caused his death, he said: ’I have never ceased to feel the effect of that meal I ate at Khaybar. Now has come the time when my aorta is severed.’”

وَمَا حَدَّثَنَاهُ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ إِبْرَاهِيمَ بْنِ نُعْمَانَ - لَقِيتُهُ بِقَيْرَوَانَ إِفْرِيقِيَّةَ ثنا إِبْرَاهِيمُ بْنُ مُوسَى الْبَزَّازُ أَوْ الْبَزَّارُ - شَكَّ قَاسِمُ بْنُ أَصْبَغَ - نا أَبُو هَمَّامٍ نا عَبَّادُ بْنُ الْعَوَّامِ عَنْ مُحَمَّدِ بْنِ عَمْرٍو عَنْ أَبِي سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَتَلَهَا يَعْنِي: الَّتِي سَمَّتْهُ» .

L38960 What was narrated to us by Ahmad ibn Qasim—narrated to us his father Qasim ibn Muhammad ibn Qasim—narrated to us my grandfather Qasim ibn Asbagh—narrated to us Muhammad ibn Ibrahim ibn Nu’man (I met him in Qayrawan in Ifriqiya)—narrated to us Ibrahim ibn Musa al-Bazzaz or al-Bazzar (Qasim ibn Asbagh doubted)—narrated to us Abu Hammad—narrated to us ’Abbad ibn al-’Awwam—from Muhammad ibn ’Amr—from Abu Salama—from Abu Hurayrah: “That the Messenger of Allah (peace be upon him) killed her, meaning the one who poisoned him.”

قَالَ أَبُو مُحَمَّدٍ: فَنَظَرْنَا فِي الرِّوَايَةِ فَوَجَدْنَاهَا مَعْلُولَةً: أَمَّا رِوَايَةُ وَهْبِ بْنِ بَقِيَّةَ، فَإِنَّهَا مُرْسَلَةٌ، وَلَمْ يُسْنِدْ مِنْهَا وَهْبٌ فِي الْمَرَّةِ الَّتِي أَسْنَدَ إِلَّا أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ يَأْكُلُ الْهَدِيَّةَ وَلَا يَأْكُلُ الصَّدَقَةَ، فَقَطْ.

L38961 Abū Muḥammad said: We examined the narration and found it defective. As for the narration of Wahb ibn Baqiyyah, it is a *mursal* narration. Wahb did not provide a chain of transmission for it except in the instance where he did, and even then, it only mentioned that the Prophet (peace be upon him) would eat gifts but not eat charity. Nothing more.

وَأَمَّا سَائِرُ الْخَبَرِ، فَإِنَّهُ أَرْسَلَهُ وَلَا مَزِيدَ - هَكَذَا فِي نَصِّ الْخَبَرِ الَّذِي أَوْرَدْنَا لِمَا انْتَهَى إِلَى آخِرِ لَفْظِهِ «وَلَا يَأْكُلُ الصَّدَقَةَ» .

L38962 As for the remainder of the report, he transmitted it as mursal (a report with an incomplete chain) without addition—thus, this is how it appears in the text of the report we presented, ending with its final wording: “and he does not consume ṣadaqah (charity).”

قَالَ: وَزَادَ فَأَتَى بِخَبَرِ الشَّاةِ مُرْسَلًا فَقَطْ، وَلَا حُجَّةَ فِي مُرْسَلٍ.

L38963 He said: And he added, then he cited the report about the sheep solely in a

mursal form, and there is no authoritative evidence for a *mursal*.

L38964 As for the narration transmitted by Qāsim, it is reported through unknown men: Ibn Nuʿmān al-Qayrawānī—we do not recognize him; Ibrāhīm ibn Mūsā al-Bazzāz—similarly unknown; Abū Hammām—there are many [by this name], and we do not know which one he is; and Saʿīd ibn Sulaymān, who narrates via the chain of ʿAbbād ibn al-ʿAwwām with a musnad chain traced back to Abū Hurayrah—that the Messenger of Allah—peace and blessings be upon him—did not retaliate against the Jewish woman who poisoned him. Yet this very al-Qayrawānī narrates through the chain of ʿAbbād ibn al-ʿAwwām that the Prophet—peace and blessings be upon him—killed her. Thus, this narration is discarded in its entirety due to the obscurity of its transmitters.

وَأَمَّا رِوَايَةُ قَاسِمٍ، فَإِنَّهَا عَنْ رِجَالٍ مَجْهُولِينَ: ابْنِ نُعْمَانَ الْقَيْرَوَانِيِّ لَا نَعْرِفُهُ - وَإِبْرَاهِيمُ بْنُ مُوسَى الْبَزَّازُ كَذَلِكَ - وَأَبُو هَمَّامٍ كَثِيرٌ لَا نَدْرِي أَيُّهُمْ هُوَ - وَسَعِيدُ بْنُ سُلَيْمَانَ يَرْوِي مِنْ طَرِيقِ عَبَّادِ بْنِ الْعَوَّامِ مُسْنَدًا إِلَى أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَعْرِضْ لِلْيَهُودِيَّةِ الَّتِي سَمَّتْهُ - وَهَذَا الْقَيْرَوَانِيُّ يَرْوِي مِنْ طَرِيقِ عَبَّادِ بْنِ الْعَوَّامِ أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَتَلَهَا، فَسَقَطَتْ هَذِهِ الرِّوَايَةُ جُمْلَةً؛ لِجَهَالَةِ نَاقِلِيهَا.

L38965–38967 Then, even if it were authentic, there would be no authoritative evidence in it, as it is narrated from Abū Hurayrah as we have cited, and it has been authentically established from... From Abu Hurairah: that the Prophet (peace and blessings of Allah be upon him) did not confront her. The narration attributed to Abu Hurairah—even if hypothetically authentic, though it is invalid—contains contradictions: one occasion claiming he killed her, and another stating he did not confront her. If the report from Abu Hurairah asserting that he (peace and blessings of Allah be upon him) killed her were valid—while it is authentically established from Abu Hurairah that he (peace and blessings of Allah be upon him) did not confront her—the discussion would inevitably revolve around one of three juristic considerations with no fourth possibility: either both narrations are rejected entirely due to their mutual contradiction, since one must undoubtedly be erroneous, given this concerns a single incident involving one woman arising from a single cause; or preference is given to the accounts of those whose narrations remain consistent—namely Jabir and Anas, who agree that he (peace and blessings of Allah be upon him) did not kill her. This constitutes the first consideration.

ثُمَّ لَوْ صَحَّتْ لَمَا كَانَ فِيهَا حُجَّةٌ؛ لِأَنَّهَا عَنْ أَبِي هُرَيْرَةَ كَمَا أَوْرَدْنَا، وَقَدْ صَحَّ عَنْ أَبِي هُرَيْرَةَ أَنَّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَعْرِضْ لَهَا، وَكَانَتْ الرِّوَايَةُ لَوْ صَحَّتْ - وَهِيَ لَا تَصِحُّ - مُضْطَرِبَةً عَنْ أَبِي هُرَيْرَةَ: مَرَّةً أَنَّهُ قَتَلَهَا، وَمَرَّةً أَنَّهُ لَمْ يَعْرِضْ لَهَا - فَلَوْ صَحَّتْ الرِّوَايَةُ عَنْ أَبِي هُرَيْرَةَ فِي أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَتَلَهَا، كَمَا قَدْ صَحَّ عَنْ أَبِي هُرَيْرَةَ: أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَعْرِضْ لَهَا، لَكَانَ الْكَلَامُ فِي ذَلِكَ لَا يَخْلُو مِنْ أَحَدِ ثَلَاثَةِ أَوْجُهٍ لَا رَابِعَ لَهَا: إمَّا أَنْ تُتْرَكَ الرِّوَايَتَانِ مَعًا لِتَعَارُضِهِمَا؛ وَلِأَنَّ إحْدَاهُمَا وَهْمٌ، بِلَا شَكٍّ، لِأَنَّهَا قِصَّةٌ وَاحِدَةٌ، فِي امْرَأَةٍ وَاحِدَةٍ، فِي سَبَبٍ وَاحِدٍ، وَيَرْجِعُ إلَى رِوَايَةِ مَنْ لَمْ يَضْطَرِبْ عَنْهُ، وَهُمَا: جَابِرٌ وَأَنَسٌ، اللَّذَانِ اتَّفَقَا عَلَى أَنَّهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَقْتُلْهَا - فَهَذَا وَجْهٌ.

L38968 The second view is that both narrations are valid together, such that the Prophet (peace and blessings be upon him) did not kill her since she named him because she named him. Thus, this narration from Abū Hurayrah is valid and consistent with the narration of Jābir and the narration of Anas

ibn Mālik, and that the Prophet (peace and blessings be upon him) killed her for another reason. And Allah knows best.

وَالْوَجْهُ الثَّانِي: وَهُوَ أَنْ تَصِحَّ الرِّوَايَتَانِ مَعًا فَيَكُونَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لَمْ يَقْتُلْهَا إذْ سَمَّتْهُ مِنْ أَجْلِ أَنَّهَا سَمَّتْهُ، فَتَصِحُّ هَذِهِ عَنْ أَبِي هُرَيْرَةَ، وَتَكُونُ مُوَافِقَةً لِرِوَايَةِ جَابِرٍ، وَأَنَسِ بْنِ مَالِكٍ، وَيَكُونُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - قَتَلَهَا لِأَمْرٍ آخَرَ، وَاَللَّهُ أَعْلَمُ بِهِ.

L38969 Alternatively, the ruling may be considered through a third perspective—the soundest of the opinions—which asserts that both statements of Abū Hurayrah (may Allah be pleased with him): "Allah's Messenger (peace be upon him) ordered her execution" and "Allah's Messenger (peace be upon him) did not adjudicate her case," are his own explicit words. It is not improbable that an error arose from the Companion (may Allah be pleased with him).

أَوْ يَكُونُ الْحُكْمُ عَلَى وَجْهٍ ثَالِثٍ - وَهُوَ أَصَحُّ الْوُجُوهِ - وَهُوَ أَنَّ قَوْلَ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ -: قَتَلَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَوْلُهُ: لَمْ يَعْرِضْ لَهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُمَا جَمِيعًا لَفْظُ أَبِي هُرَيْرَةَ، لَا يَبْعُدُ الْوَهْمُ عَنْ الصَّاحِبِ.

L38970 The narration of Anas constitutes the precise wording of the Messenger of Allah—peace and blessings be upon him—whom falsehood cannot approach from before or behind, and whom his Lord, Exalted is He, does not permit to remain in any misconception or religious error whatsoever. This refers to a report where a man stated that someone asked the Prophet: "O Messenger of Allah, will you not kill her?" He replied: "No." This constitutes the definitive ruling that must not be opposed—a judgment impermissible to contradict. Thus, it is established that if someone feeds another poison resulting in the latter's death, neither retaliation nor diyah is mandated against the feeder or his kinsmen, for he performed no direct lethal act. Rather, the deceased himself directly ingested the poison. There is no distinction between this case and one who deceives another by directing him to a perilous path or inviting him to a lion's den which kills him.[25]

وَحَدِيثُ أَنَسٍ هُوَ لَفْظُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي لَا يَأْتِيهِ الْبَاطِلُ مِنْ بَيْنِ يَدَيْهِ، وَلَا مِنْ خَلْفِهِ، وَلَا يُقِرُّهُ رَبُّهُ تَعَالَى عَلَى الْوَهْمِ، وَلَا عَلَى الْخَطَأِ فِي الدِّينِ أَصْلًا وَهَذَا أَنَّ إنْسَانًا ذَكَرَ أَنَّهُ قِيلَ لَهُ: يَا رَسُولَ اللَّهِ أَلَا تَقْتُلُهَا؟ فَقَالَ: لَا، فَهَذَا هُوَ الْمُغَلَّبُ الْمَحْكُومُ بِهِ الَّذِي لَا يَحِلُّ خِلَافُهُ - فَصَحَّ أَنَّ مَنْ أَطْعَمَ آخَرَ سُمًّا فَمَاتَ مِنْهُ: أَنَّهُ لَا قَوَدَ عَلَيْهِ، وَلَا دِيَةَ عَلَيْهِ، وَلَا عَلَى عَاقِلَتِهِ؛ لِأَنَّهُ لَمْ يُبَاشِرْ فِيهِ شَيْئًا أَصْلًا، بَلْ الْمَيِّتُ هُوَ الْمُبَاشِرُ فِي نَفْسِهِ، وَلَا فَرْقَ بَيْنَ هَذَا وَبَيْنَ مَنْ غَرَّ آخَرَ يُورِي لَهُ طَرِيقًا أَوْ دَعَاهُ إلَى مَكَانٍ فِيهِ أَسَدٌ فَقَتَلَهُ.

L38971 And the report has been authenticated that the Messenger of Allah—may Allah bless him and grant him peace—did not impose retaliation or blood money upon the woman who poisoned him and his companions, so some of them died from that poison. Thus, juristic reasoning is invalidated in light of this text.

وَقَدْ صَحَّ الْخَبَرُ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُوجِبْ عَلَى الَّتِي سَمَّتْهُ وَأَصْحَابَهُ فَمَاتَ مِنْ ذَلِكَ السُّمِّ بَعْضُهُمْ: قَوَدًا وَلَا دِيَةً - فَبَطَلَ النَّظَرُ مَعَ هَذَا النَّصِّ.

L38972–38974 Another perspective is that the ruling is not applied to one who designates food for another, and the intended one then eats it. So, he did not die except

[25] **Qur'an references (L38970):** Qur'an 41:42 (Fussilat).

metaphorically, not in actuality, nor is it recognized in the Arabic language that he is a "killer." Rather, it is the laypeople who employ this term, and the definitive evidence is only in the language and the Sharia. And success is by Allah, the Exalted.

وَوَجْهٌ آخَرُ وَهُوَ أَنَّهُ لَا يُطْلَقُ عَلَى مَنْ سَمَّ طَعَامًا لِآخَرَ، فَأَكَلَهُ ذَلِكَ الْمَقْصُودُ فَمَاتَ أَنَّهُ قَتَلَهُ، إِلَّا مَجَازًا لَا حَقِيقَةً، وَلَا يُعْرَفُ فِي لُغَةِ الْعَرَبِ أَنَّهُ " قَاتِلٌ " وَإِنَّمَا يَسْتَعْمِلُ هَذَا الْعَوَامُّ، وَلَيْسَ الْحُجَّةُ إِلَّا فِي اللُّغَةِ، وَفِي الشَّرِيعَةِ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38975 As for when one compels another and makes him drink poison, or orders someone to make him drink it: he is undoubtedly a killer, directly perpetrates his killing, and is termed a "killer" in linguistic usage and in the prophetic traditions. As narrated to us by Humām, who narrated to us from ʿAbbās ibn Aṣbagh, who narrated to us from Muḥammad ibn ʿAbd al-Malik ibn Ayman, who narrated to us from Bakr ibn Ḥammād, who narrated to us from Musaddad, who narrated to us from Abū ʿAwānah, from al-Aʿmash, from Abī Ṣāliḥ, from Abī Hurayrah, who said: The Messenger of Allah (peace and blessings be upon him) said: "Whoever kills himself with a blade, his blade will be in his hand, thrusting it into his belly in the Fire of Hell, abiding therein eternally, forever. Whoever drinks poison and thereby kills himself, his poison will be in his hand, sipping it in the Fire of Hell, abiding therein eternally, forever. And whoever hurls himself from a mountain and kills himself, he will be hurling himself in the Fire of Hell, abiding therein eternally, forever."

وَأَمَّا إِذَا أَكْرَهَهُ وَأَوْجَرَهُ السُّمَّ، أَوْ أَمَرَ مَنْ يُوجِرُهُ: فَهُوَ قَاتِلٌ بِلَا شَكٍّ، وَمُبَاشِرٌ لِقَتْلِهِ، وَيُسَمَّى " قَاتِلًا " فِي اللُّغَةِ، وَفِي الْأَثَرِ: كَمَا نا حُمَامٌ حَدَّثَنَا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا بَكْرُ بْنُ حَمَّادٍ نا مُسَدَّدٌ نا أَبُو عَوَانَةَ عَنْ الْأَعْمَشِ عَنْ أَبِي صَالِحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قَتَلَ نَفْسَهُ بِحَدِيدَةٍ فَحَدِيدَتُهُ فِي يَدِهِ يَجَأُ بِهَا فِي بَطْنِهِ فِي نَارِ جَهَنَّمَ خَالِدًا فِيهَا مُخَلَّدًا أَبَدًا، وَمَنْ شَرِبَ سُمًّا فَقَتَلَ نَفْسَهُ فَسُمُّهُ فِي يَدِهِ يَتَحَسَّاهُ فِي نَارِ جَهَنَّمَ خَالِدًا فِيهَا، مُخَلَّدًا فِيهَا أَبَدًا، وَمَنْ تَرَدَّى مِنْ جَبَلٍ فَقَتَلَ نَفْسَهُ فَهُوَ يَتَرَدَّى فِي نَارِ جَهَنَّمَ خَالِدًا فِيهَا مُخَلَّدًا أَبَدًا» .

L38976 Ali said: The Messenger of Allah—peace and blessings be upon him—referred to one who drinks **the** poison intending to die by it as "a killer of himself." Thus, qisas (retribution) is mandated **upon** him, and the error of those who abolished **qisas** in this case is evident. And success comes only from Allah, the Exalted.

قَالَ عَلِيٌّ: فَقَدْ سَمَّى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ شَرِبَ السُّمَّ لِيَمُوتَ بِهِ " قَاتِلًا لِنَفْسِهِ ": فَوَجَبَ أَنْ يَكُونَ عَلَيْهِ الْقَوَدُ، وَظَهَرَ خَطَأُ مَنْ أَسْقَطَ هَاهُنَا الْقَوَدَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38977–38978 The Rulings on the Fetus: A case in which a pregnant woman was killed, whether she delivered her fetus dead or did not deliver it.

[أَحْكَامُ الْجَنِينِ] [مَسْأَلَةٌ قُتِلَتْ حَامِلٌ سَوَاءٌ طَرَحَتْ جَنِينَهَا مَيِّتًا أَوْ لَمْ تَطْرَحْهُ]

L38979 Issue: The rulings concerning the fetus. Ali said: There are rulings concerning the fetus, and they are: the financial penalties associated with the fetus.

مَسْأَلَةٌ: أَحْكَامُ الْجَنِينِ؟ قَالَ عَلِيٌّ: فِي الْجَنِينِ أَحْكَامٌ، وَهِيَ: مَا فِي الْجَنِينِ مِنْ الْغَرَامَةِ.

L38980 And matters concerning the description of the fetus.

وَمَا فِي صِفَةِ الْجَنِينِ.

L38981 The legal ruling pertains both before the soul is breathed into it and after it has been breathed into it.

وَحُكْمُهُ قَبْلَ نَفْخِ الرُّوحِ فِيهِ، أَوْ بَعْدَ نَفْخِهِ فِيهِ.

L38982 The woman induces an abortion by herself.

وَالْمَرْأَةُ تُولِدُ عَلَى نَفْسِهَا الْإِسْقَاطَ.

L38983 And if the fetus is more than one [...]

وَإِنْ كَانَ الْجَنِينُ أَكْثَرَ مِنْ وَاحِدٍ.

L38984 And if he exited alive and then died.

وَإِنْ خَرَجَ حَيًّا ثُمَّ مَاتَ.

L38985 The fetus is expelled from the woman with whom intercourse was performed after her death.

وَالْمَجْنِيُّ عَلَيْهَا تُلْقِي الْجَنِينَ بَعْدَ مَوْتِهَا.

L38986 And a woman administered treatment to a pregnant woman's abdomen, causing her to miscarry the fetus.

وَامْرَأَةٌ دَاوَتْ بَطْنَ حَامِلٍ فَأَلْقَتْ جَنِينًا.

L38987 Is there expiation for the fetus, or not? And [the case of] the fetus of an enslaved woman.

وَهَلْ فِي الْجَنِينِ كَفَّارَةٌ أَمْ لَا؟ وَجَنِينُ الْأَمَةِ.

L38988 The fetus of a Kitābīyyah (female People of the Book).

وَجَنِينُ الْكِتَابِيَّةِ.

L38989 A portion of the fetus emerged, but none of the rest did.

خَرَجَ بَعْضُ الْجَنِينِ وَلَمْ يَخْرُجْ كُلُّهُ.

L38990 The fetus of an animal.

وَجَنِينُ الدَّابَّةِ.

L38991 And we - if Allah, the Exalted, wills - will expound on all of this chapter by chapter, and with Allah, the Exalted, lies all tawfīq (divine enabling).

وَنَحْنُ - إِنْ شَاءَ اللَّهُ تَعَالَى - ذَاكِرُونَ كُلَّ ذَلِكَ بَابًا بَابًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L38992–38994 Issue 2127: Should a pregnant woman be executed? Ali said: If a woman with clear evidence of pregnancy is executed, it is irrelevant whether she expels the fetus dead or does not expel it at all. In it, a compensatory payment (ghurrah) is mandatory due to what we mentioned—that it is a destroyed fetus. People have disagreed about this, as narrated: Ḥammām narrated, from ʿAbd Allāh ibn Muḥammad ibn ʿAlī al-Bājī, who narrated from ʿAbd Allāh Yūnus, who narrated from Baqī ibn Makhlad, who narrated from Abū Bakr ibn Abī Shaybah, who narrated from al-Aʿlā, from Maʿmar, from al-Zuhrī—who used to say: If a woman is killed while pregnant, he [al-Zuhrī] said: "There is nothing [owed] for her fetus until she expels it." This is the opinion upheld by Mālik.

٢١٢٧ - مَسْأَلَةٌ - الْحَامِلُ تُقْتَلُ؟ قَالَ عَلِيٌّ: إِنْ قُتِلَتْ حَامِلٌ بَيِّنَةُ الْحَمْلِ، فَسَوَاءٌ طَرَحَتْ جَنِينَهَا مَيِّتًا أَوْ لَمْ تَطْرَحْهُ: فِيهِ غُرَّةٌ وَلَا بُدَّ، لِمَا ذَكَرْنَا مِنْ أَنَّهُ جَنِينٌ أُهْلِكَ - وَهَذَا قَدْ اخْتَلَفَ النَّاسُ فِيهِ: كَمَا نا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيُّ نا عَبْدُ اللَّهِ يُونُسُ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ الْأَعْلَى عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ أَنَّهُ كَانَ يَقُولُ: إِذَا قُتِلَتِ الْمَرْأَةُ وَهِيَ حَامِلٌ، قَالَ: لَيْسَ فِي جَنِينِهَا شَيْءٌ حَتَّى تَقْذِفَهُ - وَبِهَذَا يَقُولُ مَالِكٌ.

قَالَ عَلِيٌّ: لَمْ يَشْتَرِطْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجَنِينِ إلْقَاءَهُ، وَلَكِنَّهُ قَالَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - «فِي الْجَنِينِ غُرَّةُ عَبْدٍ أَوْ أَمَةٍ» كَيْفَمَا أُصِيبَ - أُلْقِيَ أَوْ لَمْ يُلْقَ - فَفِيهِ الْغُرَّةُ الْمَذْكُورَةُ.

L38995 Ali said: The Messenger of Allah, peace and blessings be upon him, did not stipulate the expulsion of the fetus, but he, upon him be peace and blessings, said: "For the fetus, there is a ghurrah—a compensation equivalent to the value of a male or female slave—regardless of how it is killed, whether expelled or not, for in it is the aforementioned ghurrah."

وَإِذَا قُتِلَتْ الْحَامِلُ فَقَدْ تَلِفَ جَنِينُهَا بِلَا شَكٍّ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L38996 And when a pregnant woman is killed, her fetus has perished without doubt, and with Allah, the Most High, is divine enablement.

[مَسْأَلَةٌ هَلْ فِي الْجَنِينِ كَفَّارَةٌ أَمْ لَا]

Issue: Is expiation required in the case of a fetus, or not?

٢١٢٨ - مَسْأَلَةٌ - هَلْ فِي الْجَنِينِ كَفَّارَةٌ أَمْ لَا؟ قَالَ عَلِيٌّ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ أَنَا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: مَا عَلَى مَنْ قَتَلَ مَنْ لَمْ يَسْتَهِلَّ؟ قَالَ: أَرَى أَنْ يُعْتِقَ أَوْ يَصُومَ.

L38998 2128 - Issue: Is there an expiation for a fetus or not? ʿAlī said: Ḥammām reported to us; Ibn Mufarrij reported to us; Ibn al-Aʿrābī reported to us. I am al-Dabarī: ʿAbd al-Razzāq reported to us from Ibn Jurayj, who said: I asked ʿAṭāʾ, "What is incumbent upon one who kills a fetus/newborn that has not cried out at birth?" He said, "I hold that he should emancipate a slave or fast [as expiation]."

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي رَجُلٍ ضَرَبَ امْرَأَتَهُ فَأَسْقَطَتْ؟ قَالَ: يَغْرَمُ غُرَّةً، وَعَلَيْهِ عِتْقُ رَقَبَةٍ، وَلَا يَرِثُ مِنْ تِلْكَ الْغُرَّةِ شَيْئًا، هِيَ لِوَارِثِ الصَّبِيِّ غَيْرِهِ.

L38999 And with it—from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī—regarding a man who struck his wife, causing her to miscarry. Al-Zuhrī said: He must pay a ghurrah [compensatory payment], emancipate a slave, and he inherits nothing from that ghurrah. It belongs to the heir of the miscarried child, excluding him.

L39000 And through him: To ʻAbd al-Razzāq, from Sufyān al-Thawrī, from al-Mughīrah, from Ibrāhīm al-Nakhaʻī. He ruled concerning a woman who drinks medicine or inserts something, thereby causing her child to miscarry: "She must perform expiation (kaffārah) and pay a ghurrah (compensatory payment)."

وَبِهِ: إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ قَالَ فِي الْمَرْأَةِ تَشْرَبُ الدَّوَاءَ أَوْ تَسْتَدْخِلُ الشَّيْءَ فَيَسْقُطُ وَلَدُهَا؟ قَالَ: تُكَفِّرُ وَعَلَيْهَا غُرَّةٌ.

L39001 Abu Muhammad said: We inquired, "Is this statement a valid legal proof or not?" We found them citing what was narrated through the aforementioned chain to Abd al-Razzaq, from Umar ibn Dhar, who said: I heard Mujahid say, "A woman massaged the abdomen of a pregnant woman, so she miscarried a fetus." The matter was brought to Umar ibn al-Khattab, and he ordered her to perform expiation by freeing a slave—meaning: the one who massaged.

قَالَ أَبُو مُحَمَّدٍ: فَطَلَبْنَا: هَلْ هَذَا الْقَوْلُ حُجَّةٌ أَمْ لَا؟ فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ عَنْ عُمَرَ بْنِ ذَرٍّ قَالَ: سَمِعْت مُجَاهِدًا يَقُولُ: مَسَحَتْ امْرَأَةٌ بَطْنَ امْرَأَةٍ حَامِلٍ فَأَسْقَطَتْ جَنِينًا؟ فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَمَرَهَا أَنْ تُكَفِّرَ بِعِتْقِ رَقَبَةٍ - يَعْنِي: الَّتِي مَسَحَتْ.

L39002–39004 Ali said: This is a narration from Umar – may Allah be pleased with him – and no opposing view from the Companions – may Allah be pleased with them – is known regarding this matter. In our time, the Ḥanafīs, Mālikīs, and Shāfiʻīs venerate. The disagreement of the Companion when it aligns with their *taqlīd*—this being a ruling issued by the Caliph Umar ibn al-Khattab (may Allah be pleased with him) in the presence of the Companions, with no record of any rejection from them—[demonstrates that] when they encounter such a matter, they eagerly uphold it and vehemently condemn their opponents for opposing him.

قَالَ عَلِيٌّ: هَذِهِ رِوَايَةٌ عَنْ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَلَا يُعْرَفُ لَهُ فِي هَذَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَعَهْدُنَا بِالْحَنَفِيِّينَ، وَالْمَالِكِينَ، وَالشَّافِعِيِّينَ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ إذَا وَافَقَ تَقْلِيدَهُمْ، وَهَذَا حُكْمُ إمَامٍ - وَهُوَ عُمَرُ بْنُ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - بِحَضْرَةِ الصَّحَابَةِ، لَا يُعْرَفُ أَنَّهُ أَنْكَرَهُ أَحَدٌ مِنْهُمْ - وَهُمْ إذَا وَجَدُوا مِثْلَ هَذَا طَارُوا بِهِ، وَشَنَّعُوا عَلَى خُصُومِهِمْ مُخَالَفَتَهُ.

L39005 As you see, they have deemed it trivial to oppose him here. They treated a ruling attributed to ʻUmar concerning the installment payment of blood money over three years—which has no authentic basis from him whatsoever—as definitive evidence, rejecting any contradiction of it. They similarly treated his ruling applying the principle of collective liability (al-ʻāqilah) to administrative departments as definitive evidence, rejecting any contradiction of it. Yet they did not treat his ruling here imposing expiation—through the emancipation of a slave—on a woman who rubbed a pregnant woman's abdomen causing her to abort a dead fetus as definitive evidence they would adhere to here. This amounts to arbitrary imposition in religious matters that no God-conscious person would permit, and with Allah the Exalted lies all success.

وَهُمْ كَمَا تَرَى قَدْ اسْتَسْهَلُوا خِلَافَهُ هَاهُنَا، وَقَدْ جَعَلُوا حُكْمًا مَأْثُورًا عَنْ عُمَرَ فِي تَنْجِيمِ الدِّيَةِ فِي ثَلَاثِ سِنِينَ لَا يَصِحُّ عَنْهُ أَصْلًا: حُجَّةً يُنْكِرُونَ خِلَافَهَا، وَجَعَلُوا حُكْمَهُ بِالْعَاقِلَةِ عَلَى الدَّوَاوِينِ: حُجَّةً يُنْكِرُونَ خِلَافَهَا، وَلَمْ يَجْعَلُوا إيجَابَهُ هَاهُنَا كَفَّارَةً عَلَى الَّتِي مَسَحَتْ بَطْنَ حَامِلٍ فَأَلْقَتْ جَنِينًا مَيِّتًا بِعِتْقِ رَقَبَةٍ: حُجَّةً هَاهُنَا يَقُولُونَ بِهَا، وَهَذَا تَحَكُّمٌ فِي الدِّينِ لَا يَسْتَحِلُّهُ ذُو وَرَعٍ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39006 Abū Muḥammad said: As for us, we hold no valid proof in the words of anyone other than the Messenger of Allah—peace be upon him. If no explicit text from the Messenger of Allah—peace be upon him—establishing the obligation of expiation in such cases exists as a universal ruling, then it is impermissible to make a general statement about it. However, we affirm—and success comes only from Allah, the Exalted—that Allah, the Exalted, says: *"Whoever kills a believer by mistake must free a believing slave and pay blood money to the victim's family"* [al-Nisā' 4:92].[1]

قَالَ أَبُو مُحَمَّدٍ: أَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِنْ لَمْ يَأْتِ بِإِيجَابِ الْكَفَّارَةِ فِي ذَلِكَ نَصٌّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْعُمُومِ، فَلَا يَجُوزُ أَنْ يُطْلَقَ - عَلَى الْعُمُومِ - الْقَوْلُ بِهَا، لَكِنَّا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: إنَّ اللَّهَ تَعَالَى يَقُولُ {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ} [النساء: ٩٢] .

L39007 The Messenger of Allah (peace be upon him) narrated from his Lord, the Most High, who said: "I created all My slaves inherently inclined to monotheism."

«وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ رَبِّهِ تَعَالَى خَلَقْتُ عِبَادِي كُلَّهُمْ حُنَفَاءَ» .

L39008 Allah the Exalted said, "Set your face uprightly toward the religion, [adhering to] the natural disposition of Allah upon which He created mankind" [Ar-Rum: 30]. The Messenger of Allah (peace be upon him) said, "Every newborn is born upon this *millah* (way)." We previously mentioned this with its chain of transmission. Thus, every newborn is upon the natural disposition and upon the *millah* of Islam.[2]

وَقَالَ تَعَالَى {فَأَقِمْ وَجْهَكَ لِلدِّينِ حَنِيفًا فِطْرَتَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا} [الروم: ٣٠] وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «كُلُّ مَوْلُودٍ يُولَدُ عَلَى هَذِهِ الْمِلَّةِ» وَقَدْ ذَكَرْنَاهُ قَبْلُ بِإِسْنَادِهِ، فَكُلُّ مَوْلُودٍ فَهُوَ عَلَى الْفِطْرَةِ، وَعَلَى مِلَّةِ الْإِسْلَامِ.

L39009 It has been established that if someone strikes a pregnant woman and causes her to miscarry a fetus before the completion of four months, no expiation is required. However, only the ghurrah is obligatory, because the Messenger of Allah—peace be upon him—ruled thus. He did not kill anyone, but only caused her to miscarry a fetus.

فَصَحَّ أَنَّ مَنْ ضَرَبَ حَامِلًا فَأَسْقَطَتْ جَنِينًا، فَإِنْ كَانَ قَبْلَ الْأَرْبَعَةِ الْأَشْهُرِ قَبْلَ تَمَامِهَا فَلَا كَفَّارَةَ فِي ذَلِكَ، لَكِنَّ الْغُرَّةَ وَاجِبَةٌ فَقَطْ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِذَلِكَ، وَلَمْ يَقْتُلْ أَحَدًا، لَكِنْ أَسْقَطَهَا جَنِينًا فَقَطْ.

L39010 And since he did not kill anyone—neither by mistake nor intentionally—there is no expiation for that, as there is no expiation except in accidental killing. Furthermore, no human possessing a soul is killed except [in such cases], and this [fetus] has not yet had the soul breathed into it.

وَإِذْ لَمْ يَقْتُلْ أَحَدًا - لَا خَطَأً وَلَا عَمْدًا - فَلَا كَفَّارَةَ فِي ذَلِكَ، إذْ لَا كَفَّارَةَ إلَّا فِي قَتْلِ الْخَطَأِ، وَلَا يُقْتَلُ إلَّا ذُو رُوحٍ، وَهَذَا لَمْ يُنْفَخْ فِيهِ الرُّوحُ بَعْدُ.

L39011–39013 If it was after the completion of four months, and she ascertained its movement without any doubt, and four [witnesses] attested to that. Competent and just witnesses, for the ruling entails compensation equivalent to the value

وَإِنْ كَانَ بَعْدَ تَمَامِ الْأَرْبَعَةِ الْأَشْهُرِ، وَتَيَقَّنَتْ حَرَكَتَهُ بِلَا شَكٍّ، وَشَهِدَ بِذَلِكَ أَرْبَعُ قَوَابِلَ عُدُولٍ، فَإِنَّ فِيهِ: غُرَّةَ عَبْدٍ أَوْ أَمَةٍ فَقَطْ، لِأَنَّهُ جَنِينٌ قُتِلَ، فَهَذِهِ هِيَ دِيَتُهُ، وَالْكَفَّارَةُ

[1] **Qur'an references (L39006):** Qur'an 4:92 (An-Nisa).
[2] **Qur'an references (L39008):** Qur'an 30:30 (Ar-Rum).

of a male or female slave exclusively, as it concerns a killed fetus. This is its blood money. The expiation is obligatory through freeing a slave. *"But whoever cannot afford it must fast two consecutive months"* [an-Nisā': 92], because he unintentionally killed a believer.[3]

L39014 It has been authentically reported from the Prophet—peace and blessings be upon him—that the soul is breathed into it after one hundred and twenty nights—as we have previously mentioned—and this is the explicit text of the Quran. Umar ibn al-Khattab—may Allah be pleased with him—agreed with us on this.

L39015 If someone were to say: "The Messenger of Allah (peace and blessings be upon him) did not prescribe expiation in this case?" We reply: The mention of expiation does not occur in the ḥadīth regarding the fetus, and not all aspects of the Sunnah are derived from a single verse, a single surah, or a single ḥadīth. Since Allah the Exalted has mandated expiation for the accidental killing of a believer, and the Messenger of Allah (peace and blessings be upon him) informed us that He created all His servants by their primordial nature as inherently monotheistic, then when Allah places the soul within the fetus, it becomes—by the Qur'an's explicit ruling—a believing monotheistic being. Therefore, expiation applies in this case.

L39016 This verse is an additional legal provision beyond what is mentioned in the hadith concerning the fetus. All commandments of Allah the Exalted must be accepted in their entirety; it is impermissible at all to reject any of them in favor of another. Whoever contradicts this has indeed disobeyed Allah the Exalted in what He has commanded.

L39017 If it is said: Then impose in it a hundred camels, since that is the diyah according to you?

L39018 We said—and with Allah, the Exalted, lies success—this is not permissible, for Allah, the Exalted, only stated, *{A ransom to be delivered to his family}* [An-Nisa: 92], and He did not specify in the Quran the measure of that blood money. Rather, He, the Exalted, entrusted its clarification to His Messenger—peace and blessings be upon him—who fulfilled this, peace and blessings be

[3] **Qur'an references (L39011):** Qur'an 4:92 (An-Nisa); Qur'an 58:4 (Al-Mujadila).

وَاجِبَةٌ بِعِتْقِ رَقَبَةٍ {فَمَنْ لَمْ يَجِدْ فَصِيَامُ شَهْرَيْنِ مُتَتَابِعَيْنِ} [النساء: ٩٢] ؛ لِأَنَّهُ قَتَلَ مُؤْمِنًا خَطَأً.

وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ الرُّوحَ يُنْفَخُ فِيهِ بَعْدَ مِائَةِ لَيْلَةٍ وَعِشْرِينَ لَيْلَةً - وَقَدْ ذَكَرْنَاهُ قَبْلُ وَهَذَا نَصُّ الْقُرْآنِ، وَقَدْ وَافَقَنَا عَلَيْهِ عُمَرُ بْنُ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ -.

فَإِنْ قَالَ قَائِلٌ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُوجِبْ هَاهُنَا كَفَّارَةً؟ قُلْنَا: لَمْ يَأْتِ لَهَا ذِكْرٌ فِي حَدِيثِ الْجَنِينِ، وَلَيْسَتْ السُّنَنُ كُلُّهَا مَأْخُوذَةً مِنْ آيَةٍ وَاحِدَةٍ، وَلَا مِنْ سُورَةٍ وَاحِدَةٍ، وَلَا مِنْ حَدِيثٍ وَاحِدٍ، وَإِذْ أَوْجَبَ اللَّهُ تَعَالَى فِي قَتْلِ الْمُؤْمِنِ خَطَأً كَفَّارَةً، وَأَخْبَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ تَعَالَى خَلَقَ عِبَادَهُ حُنَفَاءَ كُلَّهُمْ فَهُوَ إذْ خَلَقَ اللَّهُ فِيهِ الرُّوحَ فَهُوَ مُؤْمِنٌ حَنِيفٌ بِنَصِّ الْقُرْآنِ، فَفِيهِ الْكَفَّارَةُ.

وَهَذِهِ الْآيَةُ زَائِدَةُ شَرْعٍ عَلَى مَا فِي حَدِيثِ الْجَنِينِ، وَأَوَامِرُ اللَّهِ تَعَالَى مَقْبُولَةٌ كُلُّهَا، لَا يَحِلُّ رَدُّ شَيْءٍ لِشَيْءٍ مِنْهَا أَصْلًا - وَمَنْ خَالَفَ هَذَا فَقَدْ عَصَى اللَّهَ تَعَالَى فِيمَا أَمَرَ بِهِ.

فَإِنْ قِيلَ: فَأَوْجِبُوا فِيهِ حِينَئِذٍ مِائَةً مِنْ الْإِبِلِ، إذْ هِيَ الدِّيَةُ عِنْدَكُمْ؟ .

قُلْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - لَا يَجُوزُ هَذَا، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا قَالَ {فَدِيَةٌ مُسَلَّمَةٌ إلَى أَهْلِهِ} [النساء: ٩٢] وَلَمْ يُبَيِّنْ لَنَا تَعَالَى فِي الْقُرْآنِ مِقْدَارَ تِلْكَ الدِّيَةِ، لَكِنْ وَكَّلَ تَعَالَى ذَلِكَ إلَى بَيَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَفَعَلَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - فَبَيَّنَ لَنَا -

upon him. He, peace and blessings be upon him, made clear to us that the blood money for one who comes into the world and is slain is one hundred camels, as established in the authentic narration when he paid blood money for Abdullah ibn Sahl—may Allah be pleased with him—in that manner.[4]

L39019 And he clarified to us—peace and blessings be upon him—that the diyah for a fetus, by his explicit wording, is a ghurrah (a male or female slave), and he explicitly termed it "diyah."

L39020–39022 As we previously mentioned through the narration of Abū Hurayrah—may Allāh be pleased with him—with the most authentic chain of transmission, the blood-money varied to demonstrate the Messenger of Allāh's—peace and blessings be upon him—clarification for us, while the expiation remained uniform because the Messenger of Allāh—peace and blessings be upon him—did not differentiate between the rulings of expiation in that matter. If Allāh the Exalted had intended for the rulings of expiations to be in... That disputed matter has been made clear to us through the words of the Messenger of Allah—peace and blessings of Allah be upon him. If he had not done so, would Allah the Exalted have ever intended for the rulings regarding any of that to differ? These are essential matters that no one is permitted to oppose. We require the testimony of midwives solely to confirm that she has exceeded four months, one hundred and twenty complete nights. Otherwise, if we knew she had surpassed them by any amount—whether small or large—we would not need anyone's testimony regarding movement, for the most reliable witnesses, the most truthful people, and the most upright witnesses have testified to us that the soul is breathed into it after one hundred and twenty nights. After his testimony—peace and blessings be upon him—there is no need for anyone else's testimony. And all praise is due to Allah, Lord of the worlds.

L39023 If someone were to ask: What is your ruling regarding a woman who intentionally killed her fetus after it had unequivocally exceeded 120 nights—thereby killing it—or if a stranger intentionally killed it within her womb? Our position is that retribution (qisas) is absolutely obligatory in such a case,

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّ دِيَةَ مَنْ خَرَجَ إِلَى الدُّنْيَا فَقُتِلَ، مِائَةٌ مِنْ الْإِبِلِ فِي الْخَبَرِ الثَّابِتِ إِذْ وَدَى بِذَلِكَ عَبْدَ اللَّهِ بْنَ سَهْلٍ - رَضِيَ اللَّهُ عَنْهُ -.

وَبَيَّنَ لَنَا - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - أَنَّ دِيَةَ الْجَنِينِ بِنَصِّ لَفْظِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - " غُرَّةٌ " مِنْ الْعَبِيدِ أَوْ الْإِمَاءِ، وَسَمَّاهُ " دِيَةً ".

كَمَا أَوْرَدْنَا آنِفًا مِنْ طَرِيقِ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - بِأَصَحِّ إسْنَادٍ يَكُونُ فَكَانَتْ الدِّيَةُ مُخْتَلِفَةً لِبَيَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ذَلِكَ لَنَا وَكَانَتْ الْكَفَّارَةُ وَاحِدَةً، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُفَرِّقْ بَيْنَ أَحْكَامِ الْكَفَّارَةِ فِي ذَلِكَ؟ فَلَوْ أَرَادَ اللَّهُ تَعَالَى أَنْ يَكُونَ حُكْمُ الْكَفَّارَاتِ فِي ذَلِكَ مُخْتَلِفًا لَبَيَّنَ لَنَا ذَلِكَ عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَإِذَا لَمْ يَفْعَلْ ذَلِكَ فَمَا أَرَادَ اللَّهُ تَعَالَى قَطُّ أَنْ يَخْتَلِفَ حُكْمُ شَيْءٍ مِنْ ذَلِكَ؟ وَهَذِهِ أُمُورٌ ضَرُورِيَّةٌ لَا يَسَعُ أَحَدًا مُخَالَفَتُهَا، وَإِنَّمَا احْتَجْنَا إلَى شَهَادَةِ الْقَوَابِلِ لِيَثْبُتَ عِنْدَنَا أَنَّهَا قَدْ تَجَاوَزَتْ أَرْبَعَةَ أَشْهُرٍ مِائَةً وَعِشْرِينَ لَيْلَةً تَامَّةً - وَإِلَّا فَلَوْ عَلِمْنَا أَنَّهَا قَدْ تَجَاوَزَتْهَا - بِمَا قَلَّ أَوْ كَثُرَ - لَمَا احْتَجْنَا إلَى شَهَادَةِ أَحَدٍ بِالْحَرَكَةِ، لِأَنَّ أَوْثَقَ الشُّهُودِ، وَأَصْدَقَ النَّاسِ، وَأَثْبَتَ الْعُدُولِ: شَهِدَ عِنْدَنَا أَنَّ الرُّوحَ يُنْفَخُ فِيهِ بَعْدَ الْمِائَةِ وَعِشْرِينَ لَيْلَةً، فَمَا يَحْتَاجُ بَعْدَ شَهَادَتِهِ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - إلَى شَهَادَةِ أَحَدٍ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

فَإِنْ قَالَ قَائِلٌ: فَمَا تَقُولُونَ فِيمَنْ تَعَمَّدَتْ قَتْلَ جَنِينِهَا وَقَدْ تَجَاوَزَتْ مِائَةَ لَيْلَةٍ وَعِشْرِينَ لَيْلَةً بِيَقِينٍ: فَقَتَلَتْهُ، أَوْ تَعَمَّدَ أَجْنَبِيٌّ قَتْلَهُ فِي بَطْنِهَا فَقَتَلَهُ؟ فَمِنْ قَوْلِنَا: أَنَّ الْقَوَدَ وَاجِبٌ فِي ذَلِكَ وَلَا بُدَّ، وَلَا غُرَّةَ فِي ذَلِكَ حِينَئِذٍ، إلَّا أَنْ يَعْفِيَ عَنْهُ فَتَجِبُ الْغُرَّةُ فَقَطْ، لِأَنَّهَا

[4] **Qur'an references (L39018):** Qur'an 4:92 (An-Nisa).

and no ghurrah (a form of blood money) is due unless the heirs grant pardon, in which case only the ghurrah becomes obligatory. This is because the ghurrah constitutes blood money (diyah), and no expiation applies here, as the killing was deliberate. Retribution is obligatory because it involves the intentional killing of a believing soul—a life for a life. The heirs must choose between two options: either retribution or [accepting] blood money or ransom, as the Messenger of Allah—peace and blessings be upon him—ruled regarding the killing of a believer. And success comes solely from Allah, the Exalted.

L39024 **The issue of a woman intentionally inducing the miscarriage of her fetus.**

L39025 Issue 2129: A woman intentionally causes the miscarriage of her child? Ali said: Abdullah ibn Rabi‘ reported to us, Abdullah ibn Muhammad ibn Uthman reported to us, Ahmad ibn Khalid reported to us, Ali ibn Abdulaziz reported to us, al-Hajjaj ibn al-Minhal reported to us, Hammad ibn Salamah reported from al-Hajjaj from Abdah al-Dabbi that a pregnant woman attempted to induce an abortion, resulting in the miscarriage of her child. Ibrahim al-Nakha‘i said: She must emancipate a slave from her husband’s possession and pay a ghurrah: a male or female slave.

L39026 From Muḥammad ibn Sa‘īd ibn Nubāt, from ‘Abd al-‘Azīz ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Mūsā ibn Mu‘āwiyah, from Wakī‘, from Sufyān al-Thawrī, from al-Mughīrah ibn Miqsam, from Ibrāhīm al-Nakha‘ī, who said regarding a woman who drank medicine and miscarried: “She must free a slave and give the child’s father a ghurrah [as compensation].”

L39027 Abu Muhammad said: This is a narration (athar) of the highest authenticity.

L39028–39029 Ali said: “If the soul has not been breathed into him, she is liable for the ghurrah [compensation for fetal loss]. But if the soul has been breathed into him: then, if she did not deliberately kill him, she is liable for blood money.”

L39030 The ghurra (indemnity) also falls upon her agnatic kin, and the expiation falls upon her.

دِيَةٌ، وَلَا كَفَّارَةَ فِي ذَلِكَ، لِأَنَّهُ عَمْدٌ، وَإِنَّمَا وَجَبَ الْقَوَدُ، لِأَنَّهُ قَاتِلُ نَفْسٍ مُؤْمِنَةٍ عَمْدًا، فَهُوَ نَفْسٌ بِنَفْسٍ، وَأَهْلُهُ بَيْنَ خِيرَتَيْنِ: إِمَّا الْقَوَدُ، وَإِمَّا الدِّيَةُ، أَوْ الْمُفَادَاةُ، كَمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَنْ قَتَلَ مُؤْمِنًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ الْمَرْأَةُ تَتَعَمَّدُ إسْقَاطَ وَلَدِهَا]

٢١٢٩ - مَسْأَلَةٌ: الْمَرْأَةُ تَتَعَمَّدُ إسْقَاطَ وَلَدِهَا؟ قَالَ عَلِيٌّ: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ عَنْ عَبْدَةَ الضَّبِّيِّ أَنَّ امْرَأَةً كَانَتْ حُبْلَى فَذَهَبَتْ تَسْتَدْخِلُ فَأَلْقَتْ وَلَدَهَا؟ فَقَالَ إبْرَاهِيمُ النَّخَعِيُّ: عَلَيْهَا عِتْقُ رَقَبَةٍ لِزَوْجِهَا عَلَيْهَا غُرَّةٌ: عَبْدٍ، أَوْ أَمَةٍ.

نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ الْعَزِيزِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ فِي امْرَأَةٍ شَرِبَتْ دَوَاءً فَأَسْقَطَتْ؟ قَالَ: تُعْتِقُ رَقَبَةً، وَتُعْطِي أَبَاهُ غُرَّةً.

قَالَ أَبُو مُحَمَّدٍ: هَذَا أَثَرٌ فِي غَايَةِ الصِّحَّةِ.

قَالَ عَلِيٌّ: إنْ كَانَ لَمْ يُنْفَخْ فِيهِ الرُّوحُ فَالْغُرَّةُ عَلَيْهَا، وَإِنْ كَانَ قَدْ نُفِخَ فِيهِ الرُّوحُ: فَإِنْ كَانَتْ لَمْ تَعْمِدْ قَتْلَهُ.

فَالْغُرَّةُ أَيْضًا عَلَى عَاقِلَتِهَا، وَالْكَفَّارَةُ عَلَيْهَا.

L39031 If she intentionally killed him, she is liable for qisas (retaliation) or obligated to pay diya (blood money) from her wealth.

L39032 If she dies in all such cases before delivering the fetus and the fetus is then expelled afterward, the *ghurra* is obligatory in all such cases: in unintentional harm upon the agnatic kin of the offender—whether she was the one or another—and likewise in intentional harm before the soul is breathed into the fetus.

L39033 If the soul has been blown into it, retribution for homicide is required of the perpetrator provided they are someone other than the mother.

L39034 If it is her, then there is no retaliation (qisās), no ghurrah [compensatory payment], and nothing, because no ruling applies to a deceased person, and their wealth has already devolved to others—and success is from Allah, the Exalted.

L39035 **A case where a woman miscarries two or more fetuses.**

L39036 Issue 2130: Concerning a woman who aborts two fetuses or more. Ali said: Hammam narrated to us from Abdullah ibn Muhammad ibn Ali al-Baji, from Abdullah ibn Yunus, from Baqi ibn Makhlad, from Abu Bakr ibn Abi Shaybah, from Ma'n ibn Isa, from Ibn Abi Dhi'b, from al-Zuhri regarding a woman who was struck and aborted three fetuses. He said: "I hold that a ghurrah (compensatory payment) is due for each fetus, just as the full diya (blood-money) applies to each fetus."

L39037 From the transmission of Ibn Waddāḥ: Saḥnūn reported to us, Ibn Wahb reported to us from Yūnus ibn Yazīd that Rabī'ah said regarding a woman who was struck and miscarried two fetuses: "The liability for each of them is a ghurrah (compensation, typically a slave or its value) or a female slave."

L39038 Az-Zuhri said: If she miscarries three, a ghurrah is due for each one—whether its creation is discernible or not—as it is a pregnancy.

L39039 And through him: Al-Layth ibn Sa'd al-Ansari informed me through Ibn

وَإِنْ كَانَتْ عَمَدَتْ قَتْلَهُ فَالْقَوَدُ عَلَيْهَا، أَوْ الْمُفَادَاةُ فِي مَالِهَا.

فَإِنْ مَاتَتْ هِيَ فِي كُلِّ ذَلِكَ قَبْلَ إلْقَاءِ الْجَنِينِ ثُمَّ أَلْقَتْهُ: فَالْغُرَّةُ وَاجِبَةٌ فِي كُلِّ ذَلِكَ، فِي الْخَطَأِ عَلَى عَاقِلَةِ الْجَانِي - هِيَ كَانَتْ أَوْ غَيْرَهَا - وَكَذَلِكَ فِي الْعَمْدِ قَبْلَ أَنْ يُنْفَخَ فِيهِ الرُّوحُ.

وَأَمَّا إنْ كَانَ قَدْ نُفِخَ فِيهِ الرُّوحُ فَالْقَوَدُ عَلَى الْجَانِي إنْ كَانَ غَيْرَهَا.

وَأَمَّا إنْ كَانَتْ هِيَ فَلَا قَوَدَ، وَلَا غُرَّةَ، وَلَا شَيْءَ؛ لِأَنَّهُ لَا حُكْمَ عَلَى مَيِّتٍ، وَمَالُهُ قَدْ صَارَ لِغَيْرِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ أَلْقَتْ جَنِينَيْنِ فَصَاعِدًا]

٢١٣٠ - مَسْأَلَةٌ: فِيمَنْ أَلْقَتْ جَنِينَيْنِ فَصَاعِدًا؟ قَالَ عَلِيٌّ: حَدَّثَنَا حُمَامٌ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا عَبْدُ اللَّهِ بْنُ يُونُسَ نا بَقِيُّ بْنُ مَخْلَدٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا مَعْنُ بْنُ عِيسَى عَنْ ابْنِ أَبِي ذِئْبٍ عَنْ الزُّهْرِيِّ فِي امْرَأَةٍ ضُرِبَتْ فَأَسْقَطَتْ ثَلَاثَةَ أَسْقَاطٍ؟ قَالَ: أَرَى أَنَّ فِي كُلِّ وَاحِدٍ مِنْهُمْ غُرَّةً، كَمَا أَنَّ فِي كُلِّ وَاحِدٍ مِنْهُمْ الدِّيَةَ.

وَمِنْ طَرِيقِ ابْنِ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ أَنَّ رَبِيعَةَ قَالَ فِي امْرَأَةٍ ضُرِبَتْ فَأَلْقَتْ جَنِينَيْنِ: أَنَّهُ يَدِي كُلَّ وَاحِدٍ مِنْهُمَا بِغُرَّةٍ: أَوْ أَمَةٍ.

وَقَالَ الزُّهْرِيُّ: إنْ أَسْقَطَتْ ثَلَاثَةً فَفِي كُلِّ وَاحِدٍ مِنْهُمْ غُرَّةٌ - تَبَيَّنَ خَلْقُهُ أَوْ لَمْ يَتَبَيَّنْ: أَنَّهُ حَمْلٌ.

Wahb that he said regarding a fetus miscarried dead, the compensation is a ghurrah (the value of a male or female slave). If there are two fetuses, two ghurrahs are required.

وَبِهِ: إِلَى ابْنِ وَهْبٍ أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ الْأَنْصَارِيُّ أَنَّهُ قَالَ فِي الْجَنِينِ إِذَا طُرِحَ مَيِّتًا غُرَّةٌ: عَبْدٍ أَوْ وَلِيدَةٍ - فَإِنْ كَانَ اثْنَيْنِ فَفِيهِمَا غُرَّتَانِ.

L39040 Ali said: This is what we say, for the Messenger of Allah—peace and blessings of Allah be upon him—stated: "The blood money for her fetus is a male or female slave." Every fetus—even if they were ten—constitutes her fetus. Thus, a ghurrah—a male or female slave—is due for each fetus. If they are killed after attaining life, then full blood money and atonement apply to each one. Success comes from Allah, the Most High.

قَالَ عَلِيٌّ: وَبِهَذَا نَقُولُ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «دِيَةُ جَنِينِهَا عَبْدٌ، أَوْ أَمَةٌ» وَكُلُّ جَنِينٍ - وَلَوْ أَنَّهُمْ عَشَرَةٌ - فَهُوَ جَنِينٌ لَهَا، فَفِي كُلِّ جَنِينٍ غُرَّةٌ: عَبْدٍ أَوْ أَمَةٍ، فَلَوْ قُتِلُوا بَعْدَ الْحَيَاةِ فَفِي كُلِّ وَاحِدٍ دِيَةٌ، وَكَفَّارَةٌ، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

A legal issue: Who inherits the obligatory ghurra (prescribed compensation) pertaining to a fetus?

[مَسْأَلَةٌ مَنْ يَرِثُ الْغُرَّةَ الْوَاجِبَةَ فِي الْجَنِينِ]

L39041–39042

L39043 Issue: Who inherits the ghurrah? Ali said: People have differed regarding those entitled to the obligatory ghurrah for the fetus. Muhammad ibn Saʿīd ibn Nabāt narrated to us: from ʿAbdullāh ibn Naṣr: from Qāsim ibn Aṣbagh: from Ibn Waḍḍāḥ: from Mūsā ibn Muʿāwiyah: from Wakīʿ: from Sufyān al-Thawrī: from al-Mughīrah: from Ibrāhīm al-Nakhaʿī regarding a woman who drank medicine and miscarried. He said: She must free a slave and give the father the ghurrah.

مَسْأَلَةٌ: مَنْ يَرِثُ الْغُرَّةَ؟ قَالَ عَلِيٌّ: اخْتَلَفَ النَّاسُ فِيمَنْ تَجِبُ لَهُ الْغُرَّةُ الْوَاجِبَةُ فِي الْجَنِينِ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ فِي امْرَأَةٍ شَرِبَتْ دَوَاءً فَأَسْقَطَتْ؟ قَالَ: تُعْتِقُ رَقَبَةً وَتُعْطِي أَبَاهُ غُرَّةً.

L39044 Abdullah ibn Rabīʿ narrated from Ibn Mufarrij, who narrated from Qāsim ibn Aṣbagh, who narrated from Ibn Waḍḍāḥ, who narrated from Saḥnūn, who narrated from Ibn Wahb, who informed me: Yūnus ibn Yazīd informed me from Ibn Shihāb that he was asked about a man who struck his wife, causing her to miscarry. To whom does the diyah for the miscarriage belong? He said: "It has reached us through the Sunnah that the killer inherits nothing from the diyah. The fidya is according to Allah's ordained shares. The one who killed him [the fetus] has no right to any portion of it in this matter." This is the opinion of ʿAbd al-ʿAzīz ibn Abī Salama, Abū Ḥanīfa, Mālik, and al-Shāfiʿī.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَنَّهُ سُئِلَ فِي رَجُلٍ ضَرَبَ امْرَأَتَهُ فَأَسْقَطَتْ لِمَنْ دِيَةُ السِّقْطِ؟ قَالَ: بَلَغَنَا فِي السُّنَّةِ أَنَّ الْقَاتِلَ لَا يَرِثُ مِنْ الدِّيَةِ شَيْئًا، فِدْيَةٌ عَلَى فَرَائِضِ اللَّهِ تَعَالَى، لَيْسَ لِلَّذِي قَتَلَهُ فِي ذَلِكَ شَيْءٌ - وَهُوَ قَوْلُ عَبْدِ الْعَزِيزِ بْنِ أَبِي سَلَمَةَ، وَأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ.

L39045 Others held a differing opinion, as transmitted by Muḥammad ibn Saʿīd ibn Nubāt from ʿAbd Allāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ from Muḥammad ibn Qays from al-

وَقَالَ آخَرُونَ - غَيْرَ ذَلِكَ: كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا مُحَمَّدُ بْنُ قَيْسٍ عَنْ الشَّعْبِيِّ أَنَّهُ قَالَ

Shaʿbī, who said regarding a man who struck his wife until she miscarried: "He is liable for a *ghurrah* (a compensatory payment for fetal loss) that he inherits, and his hands are to be amputated." This is the opinion upheld by Abū Sulaymān and all our fellow scholars.

فِي رَجُلٍ ضَرَبَ امْرَأَتَهُ حَتَّى أَسْقَطَتْ، قَالَ الشَّعْبِيُّ: عَلَيْهِ غُرَّةٌ يَرِثُهَا، وَيَدِيهِ - وَبِهَذَا الْقَوْلِ يَقُولُ أَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا.

L39046 Ali said: When they disagreed—as we mentioned—it became obligatory for us to examine the matter to discern the truth from it so that we may follow it. We thus considered the view of those who held that the *ghurrah* is inherited as the entirety of the estate left by the deceased. We found them asserting that the *ghurrah* is classified as *diyah* (blood money) and thus follows its ruling. Since it is established that *diyah* is inherited according to the fixed shares of inheritance under Islamic law, the *ghurrah* is likewise.

قَالَ عَلِيٌّ: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتْبَعَهُ: فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى أَنَّ الْغُرَّةَ مَوْرُوثَةٌ، كَمَالِ تَرَكَهُ الْمَيِّتُ؟ فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ الْغُرَّةَ دِيَةٌ، فَهِيَ كَحُكْمِ الدِّيَةِ، وَالدِّيَةُ قَدْ صَحَّ أَنَّهَا مَوْرُوثَةٌ عَلَى فَرَائِضِ الْمَوَارِيثِ، فَالْغُرَّةُ كَذَلِكَ.

L39047 They said: The Messenger of Allah—peace and blessings be upon him—distinguished the compensation owed for the fetus from that owed for its mother: he ordained blood money for the mother and ghurrah (monetary compensation equivalent to a slave's value) for the fetus. Thus, it is valid that the ruling of the ghurrah is akin to the ruling of homicide compensation, not the ruling of compensation for bodily injuries.

وَقَالُوا: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَفْرَدَ مَا يَجِبُ فِي الْجَنِينِ عَمَّا يَجِبُ فِي أُمِّهِ: فَجَعَلَ فِي الْأُمِّ دِيَةً، وَجَعَلَ فِي الْجَنِينِ غُرَّةً - فَصَحَّ أَنَّ حُكْمَ الْغُرَّةِ كَحُكْمِ دِيَةِ النَّفْسِ، لَا كَحُكْمِ دِيَةِ الْأَعْضَاءِ.

L39048 They said: It has been validly established by consensus that if a man were harmed by an act necessitating diyah (blood money) and then died, the diyah is inherited from him. Similarly, the fetus is entitled to the diyah owed for the harm inflicted upon him.

وَقَالُوا: قَدْ صَحَّ الِاتِّفَاقُ عَلَى أَنَّ امْرَأً لَوْ جُنِيَ عَلَيْهِ مَا يُوجِبُ دِيَةً فَمَاتَ؟ فَإِنَّهُ مَوْرُوثُهُ عَنْهُ، فَكَذَلِكَ الْجَنِينُ فِيمَا وَجَبَ فِي الْجِنَايَةِ لَهُ.

L39049 They argued: If it were obligatory that a right belong to the mother, then if she were wrongfully killed and subsequently miscarried a fetus, nothing would be owed concerning the fetus—since the deceased is not entitled to anything after her death?

وَقَالُوا: لَوْ كَانَ وَاجِبًا أَنْ تَكُونَ لِلْأُمِّ لَوَجَبَ إذَا جُنِيَ عَلَيْهَا فَمَاتَتْ، ثُمَّ أَلْقَتْ جَنِينًا: أَنْ لَا يَجِبَ فِيهِ شَيْءٌ؛ لِأَنَّ الْمَيِّتَ لَا يَسْتَحِقُّ شَيْئًا بَعْدَ مَوْتِهِ؟

L39050–39051 Abū Muḥammad said: This is all they have cited as proof; we know of no other argument for them besides this. None of this constitutes proof for them, as we shall clarify—God, Exalted is He, willing. As for their statement that the *ghurrah* is blood money and thus follows its rulings—since it is established that blood money is inherited according to the shares of inheritance, and the *ghurrah* should likewise be inherited—this is analogy, and all analogy is invalid. Even if analogy were ever valid, this instance would

قَالَ أَبُو مُحَمَّد: هَذَا كُلُّ مَا احْتَجُّوا بِهِ، لَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا، وَكُلُّ هَذَا لَيْسَ لَهُمْ فِيهِ حُجَّةٌ، لِمَا نَذْكُرُهُ إنْ شَاءَ اللَّهُ تَعَالَى: أَمَّا قَوْلُهُمْ: إنَّ الْغُرَّةَ دِيَةٌ فَهِيَ كَحُكْمِ الدِّيَةِ، وَقَدْ صَحَّ أَنَّ الدِّيَةَ مَوْرُوثَةٌ عَلَى فَرَائِضِ الْمَوَارِيثِ، فَالْغُرَّةُ كَذَلِكَ - فَإِنَّ هَذَا قِيَاسٌ، وَالْقِيَاسُ

remain invalid, for proponents of analogy hold that it applies only where textual evidence is absent, not where such evidence exists.

كُلُّهُ فَاسِدٌ، ثُمَّ لَوْ صَحَّ الْقِيَاسُ يَوْمًا مَا لَكَانَ هَذَا مِنْهُ بَاطِلًا؛ لِأَنَّ حُكْمَ الْقِيَاسِ عِنْدَ الْقَائِلِينَ بِهِ إنَّمَا يَرَوْنَهُ فِيمَا عُدِمَ فِيهِ النَّصُّ، لَا فِيمَا فِيهِ النَّصُّ.

L39052 As for the textual ruling—it pertains solely to inherited blood money prescribed for cases where one killed intentionally or accidentally, not to someone who has not killed anyone. The fetus in which ensoulment has not occurred has never been killed at all. Therefore, the analogy between blood money for someone not killed and someone killed is invalid (even if analogy were valid, because it constitutes an analogy of something to its opposite). Thus, this analogy is invalid. And success comes only from Allah, the Exalted.

وَأَمَّا النَّصُّ - فَإِنَّمَا جَاءَ فِي الدِّيَةِ الْمَوْرُوثَةِ فِيمَنْ قَتَلَ عَمْدًا أَوْ خَطَأً، لَا فِيمَنْ لَمْ يَقْتُلْ أَحَدًا، وَالْجَنِينُ الَّذِي لَمْ يُنْفَخْ فِيهِ الرُّوحُ لَمْ يُقْتَلْ قَطُّ، فَقِيَاسُ دِيَةِ مَنْ لَمْ يُقْتَلْ، عَلَى دِيَةِ مَنْ قُتِلَ: بَاطِلٌ - لَوْ كَانَ الْقِيَاسُ حَقًّا؛ لِأَنَّهُ قِيَاسُ الشَّيْءِ عَلَى ضِدِّهِ - فَبَطَلَ هَذَا الْقِيَاسُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39053 Abū Muḥammad said: As for us, our position—and we seek support from Allah the Exalted—is that if we are certain the fetus has surpassed a gestation period of one hundred and twenty nights, the *ghurrah* is inherited by his heirs who would have inherited from him had he been born alive and died, in accordance with the rules of inheritance. But if it is not ascertained that the gestation period has surpassed one hundred and twenty nights, the *ghurrah* belongs solely to his mother.

قَالَ أَبُو مُحَمَّدٍ: وَأَمَّا نَحْنُ فَإِنَّ الْقَوْلَ عِنْدَنَا - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ - هُوَ أَنَّ الْجَنِينَ إنْ تَيَقَّنَّا أَنَّهُ قَدْ تَجَاوَزَ الْحَمْلَ بِهِ مِائَةً وَعِشْرِينَ لَيْلَةً، فَإِنَّ الْغُرَّةَ مَوْرُوثَةٌ لِوَرَثَتِهِ الَّذِينَ كَانُوا يَرِثُونَهُ لَوْ خَرَجَ حَيًّا فَمَاتَ، عَلَى حُكْمِ الْمَوَارِيثِ، وَإِنْ لَمْ يُوقِنْ أَنَّهُ تَجَاوَزَ الْحَمْلُ بِهِ مِائَةَ لَيْلَةٍ وَعِشْرِينَ لَيْلَةً فَالْغُرَّةُ لِأُمِّهِ فَقَطْ.

L39054 Our proof for that is that Allah, the Exalted, said: {Whoever kills a believer by mistake, then he must free a believing female slave and deliver diyah to his family} [An-Nisa: 92].[5]

بُرْهَانُنَا عَلَى ذَلِكَ: أَنَّ اللَّهَ تَعَالَى قَالَ {وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَى أَهْلِهِ} [النساء: ٩٢] .

L39055 The Messenger of Allah—peace and blessings be upon him—said, "Whoever has a slain person after this statement of mine, their family may choose between two good alternatives." He—peace and blessings be upon him—mentioned retaliation, blood money, or ransom—as we have mentioned before. Thus, it is established by the Quran and Sunnah that the blood money for a slain person—whether in cases of accidental or intentional killing—is rightfully granted to the slain person's family. A slain person must necessarily have been a living being: the killing transfers them from life to death, without any disagreement among the scholars of the language in which the Quran

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ لَهُ بَعْدَ مَقَالَتِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خِيرَتَيْنِ» فَذَكَرَ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - الْقَوَدَ، أَوْ الدِّيَةَ، أَوْ الْمُفَادَاةَ - عَلَى مَا ذَكَرْنَا قَبْلُ - فَصَحَّ بِالْقُرْآنِ، وَالسُّنَّةِ: أَنَّ دِيَةَ الْقَتِيلِ فِي الْخَطَأِ وَالْعَمْدِ مُسَلَّمَةٌ لِأَهْلِ الْقَتِيلِ، وَالْقَتِيلُ لَا يَكُونُ إلَّا فِي حَيٍّ: نَقَلَهُ الْقَتْلُ عَنْ الْحَيَاةِ إلَى الْمَوْتِ، بِلَا خِلَافٍ مِنْ أَهْلِ اللُّغَةِ الَّتِي بِهَا نَزَلَ الْقُرْآنُ، وَبِهَا خَاطَبَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

[5] **Qur'an references (L39054):** Qur'an 4:92 (An-Nisa).

was revealed and with which the Messenger of Allah—peace and blessings be upon him—addressed us.

L39056 The fetus after one hundred and twenty nights is alive by the explicit text of the narration of the truthful and trustworthy Messenger—peace and blessings be upon him. Since it is alive, it is a killed being that has been killed without doubt. Since it is undeniably a killed being, the *ghurrah*, which is its blood money, must be handed over to its family by the explicit text of the Quran. The Ummah has unanimously agreed that the heirs to whom the blood money is delivered must divide it according to the established norms of inheritance without any disagreement.

L39057–39058 If it is not certain that the fetus has exceeded one hundred and twenty nights, we are certain that it had never lived. If it had never lived, possessed no soul yet, and was not killed—being merely water, a blood clot, a morsel of flesh, or bones and meat—then in all these states, it is a part of the mother. Since it is undoubtedly not alive, it was not killed, for the lifeless or dead cannot be killed. Since it was not killed, it is not a killed being, and thus its diyah does not follow the ruling of a killed person's diyah. This is analogy, and all analogy is invalid. Even if analogy were valid, this would be the very essence of invalidity. The people of analogy compare a thing to its equivalent, not its opposite. What is not killed bears no resemblance to a killed person, so analogy here is impermissible according to the principles of the proponents of analogy. Since it is not a killed being, it is a part of her parts, blood of her blood, flesh of her flesh, and undoubtedly a portion of her entrails. Thus, the injury is against her, and the ghurrah is undoubtedly owed to her. If she dies and then the fetus is expelled without certainty that it completed one hundred and twenty nights, the fetus belongs to the mother's heirs, for it was owed to her by virtue of the injury itself, and her heirs inherit from her.

L39059 Abū Muḥammad said: The astonishment indeed grows great regarding those who consider the newborn's first cry as a criterion. If it does not cry, they neither offer a sacrifice for it nor does it inherit from anyone, yet they assign

وَالْجَنِينُ بَعْدَ مِائَةِ لَيْلَةٍ وَعِشْرِينَ لَيْلَةً: حَيٌّ بِنَصِّ خَبَرِ الرَّسُولِ الصَّادِقِ الْمَصْدُوقِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِذْ هُوَ حَيٌّ، فَهُوَ قَتِيلٌ قَدْ قُتِلَ بِلَا شَكٍّ، وَإِذْ هُوَ قَتِيلٌ بِلَا شَكٍّ، فَالْغُرَّةُ الَّتِي هِيَ دِيَتُهُ وَاجِبَةٌ أَنْ تُسَلَّمَ إلَى أَهْلِهِ بِنَصِّ الْقُرْآنِ، وَقَدْ اتَّفَقَتْ الْأُمَّةُ عَلَى أَنَّ الْوَرَثَةَ الَّذِينَ يُسَلَّمُ لَهُمْ الدِّيَةَ أَنَّهُمْ يَقْتَسِمُونَهَا عَلَى سُنَّةِ الْمَوَارِيثِ بِلَا خِلَافٍ.

وَأَمَّا إذَا لَمْ يُوقِنْ أَنَّهُ تَجَاوَزَ مِائَةَ لَيْلَةٍ وَعِشْرِينَ لَيْلَةً، فَنَحْنُ عَلَى يَقِينٍ مِنْ أَنَّهُ لَمْ يَحْيَا قَطُّ، فَإِذَا لَمْ يَحْيَا قَطُّ، وَلَا كَانَ لَهُ رُوحٌ بَعْدُ، وَلَا قُتِلَ، وَإِنَّمَا هُوَ مَاءٌ، أَوْ عَلَقَةٌ مِنْ دَمٍ، أَوْ مُضْغَةٌ مِنْ عَضَلٍ، أَوْ عِظَامٌ، وَلَحْمٌ: فَهُوَ فِي كُلِّ ذَلِكَ بَعْضُ أُمِّهِ، فَإِذْ لَيْسَ حَيًّا بِلَا شَكٍّ، فَلَمْ يُقْتَلْ، لِأَنَّهُ لَا يُقْتَلُ مَوَاتٌ، وَلَا مَيِّتٌ، وَإِذْ لَمْ يُقْتَلْ، فَلَيْسَ قَتِيلًا، فَلَيْسَ لِدِيَتِهِ حُكْمُ دِيَةِ الْقَتِيلِ؛ لِأَنَّ هَذَا قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ، وَلَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ، وَإِنَّمَا يُقَاسُ عِنْدَ أَهْلِ الْقِيَاسِ الشَّيْءُ عَلَى نَظِيرِهِ، لَا عَلَى ضِدِّهِ - وَمَنْ لَيْسَ قَتِيلًا فَهُوَ غَيْرُ مُشْبِهٍ لِلْقَتِيلِ، فَلَا يَجُوزُ الْقِيَاسُ هَاهُنَا عَلَى أُصُولِ أَصْحَابِ الْقِيَاسِ، وَإِذْ لَيْسَ قَتِيلًا، فَهُوَ بَعْضٌ مِنْ أَبْعَاضِهَا، وَدَمٌ مِنْ دَمِهَا، وَلَحْمٌ مِنْ لَحْمِهَا، وَبَعْضُ حَشْوَتِهَا بِلَا شَكٍّ، فَهِيَ الْمَجْنِيُّ عَلَيْهَا، فَالْغُرَّةُ لَهَا بِلَا شَكٍّ، فَإِنْ مَاتَتْ ثُمَّ طَرَحَتْ الْجَنِينَ - وَلَمْ يُوقِنْ أَنَّهُ أَتَمَّ عِشْرِينَ وَمِائَةَ لَيْلَةٍ - فَالْجَنِينُ لِوَرَثَةِ الْأُمِّ؛ لِأَنَّهُ بِنَفْسِ الْجِنَايَةِ وَجَبَ لَهَا، فَهِيَ مَوْرُوثَةٌ عَنْهَا.

the ghurrah for it - though it never lived at all. How then could it have cried? We ask them about a child born who suckles and moves without crying, then is killed intentionally or unintentionally: What is your opinion regarding this? Is it ghurrah or diyah? If they say "ghurrah," they have introduced a method unsupported by any prior authority. If they say "the diyah of its mother," they nullify their own principles by deeming full diyah or qisas applicable for killing one already dead.

L39060 If they say, "He is not dead?" We respond to them, "How astonishing it is that you do not grant inheritance to a living person!" All these assertions contradict one another. And success is by Allah, the Exalted.

L39061 We have been narrated via the compilation of Muslim: Abū Bakr ibn Abī Shaybah and Muḥammad ibn ʿAbdillāh ibn Numayr narrated to us—each of them said: Wakīʿ and Abū Muʿāwiyah narrated to us—both said: Al-Aʿmash narrated to us from Zayd ibn Wahb from ʿAbdullāh ibn Masʿūd, who said: "Allah's Messenger—peace and blessings be upon him, who is the Truthful, the Confirmed in Truth—narrated to us, saying: 'The creation of each of you is gathered in his mother's womb for forty days, then becomes a clot for a similar period, then becomes a chewed lump for a similar period. Then an angel is sent to him to breathe the soul into him, and he is commanded with four matters: his provision, his lifespan, his deeds, and whether he will be doomed or blessed.'" He then mentioned the remainder of the ḥadīth.

L39062–39063 Ali said: "What has not been ascertained to complete the 120 nights including all their days remains according to what we have ascertained about its death. It is not permissible to affirm definitively that it has transitioned to life from the ascertained death except with certainty. As for conjectures, it is not permissible." And success is from Allah, the Exalted.

L39064 **A legal question regarding the fetus of a female slave from her free master.**

L39065 2132: Issue: The fetus of a female slave by her master? Ali said: There is

قَالَ أَبُو مُحَمَّد: وَإِنَّ الْعَجَبَ لَيَكْثُرُ مِمَّنْ يُرَاعِي فِي الْمَوْلُودِ الِاسْتِهْلَالَ، فَإِنْ لَمْ يَسْتَهِلَّ لَمْ يُقَدْ بِهِ، وَلَا وَرِثَ مِنْهُ، ثُمَّ يُورِّثُ مِنْهُ الْغُرَّةَ - وَهُوَ لَمْ يَحْيَا قَطُّ، فَكَيْفَ أَنْ يَسْتَهِلَّ؟ وَنَسْأَلُهُمْ - عَنْ مَوْلُودٍ وُلِدَ فَرَضَعَ وَتَحَرَّكَ وَلَمْ يَسْتَهِلَّ، ثُمَّ قُتِلَ عَمْدًا أَوْ خَطَأً مَاذَا تَرَوْنَ فِيهِ؟ أَغُرَّةٌ أَمْ دِيَةٌ؟ فَإِنْ قَالُوا: غُرَّةٌ، أَتَوْا بِطَرِيقَةٍ لَهُ لَمْ يَقُلْهَا أَحَدٌ قَبْلَهُمْ - وَإِنْ قَالُوا: بَلْ دِيَةُ أُمِّهِ، نَقَضُوا أُصُولَهُمْ، إِذْ جَعَلُوا فِي قَتْلِ مَيِّتٍ دِيَةً كَامِلَةً أَوْ قَوَدًا.

فَإِنْ قَالُوا: لَيْسَ مَيِّتًا؟ قُلْنَا لَهُمْ: قَوِيَ الْعَجَبُ أَنْ لَا تُوَرِّثُوا حَيًّا وَكُلُّ هَذِهِ أَقْوَالٌ يَنْقُضُ بَعْضُهَا بَعْضًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ قَالَ كُلُّ وَاحِدٍ مِنْهُمَا: نا وَكِيعٌ، وَأَبُو مُعَاوِيَةَ، قَالَا جَمِيعًا: نا الْأَعْمَشُ عَنْ زَيْدِ بْنِ وَهْبٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «حَدَّثَنَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ الصَّادِقُ الْمَصْدُوقُ، قَالَ يُجْمَعُ أَحَدُكُمْ خَلْقُهُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا، ثُمَّ يَكُونُ عَلَقَةً مِثْلَ ذَلِكَ، ثُمَّ يَكُونُ فِي ذَلِكَ مُضْغَةً مِثْلَ ذَلِكَ، ثُمَّ يُرْسَلُ إِلَيْهِ الْمَلَكُ فَيَنْفُخُ فِيهِ الرُّوحَ وَيُؤْمَرُ بِأَرْبَعِ كَلِمَاتٍ: رِزْقُهُ وَأَجَلُهُ وَعَمَلُهُ وَشَقِيٌّ أَوْ سَعِيدٌ» وَذَكَرَ بَاقِيَ الْحَدِيثِ.

قَالَ عَلِيٌّ: وَمَا لَمْ يُوقَنْ تَمَامَ الْمِائَةِ وَالْعِشْرِينَ لَيْلَةً بِجَمِيعِ أَيَّامِهَا فَهُوَ عَلَى مَا تَيَقَّنَّاهُ مِنْ مُوَاتَيَتِهِ، وَلَا يَجُوزُ أَنْ نَقْطَعَ لَهُ بِانْتِقَالِهِ إِلَى الْحَيَاةِ عَنْ الْمُوَاتِيَةِ الْمُتَيَقَّنَةِ إِلَّا بِيَقِينٍ، وَأَمَّا بِالظُّنُونِ فَلَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ جَنِينِ الْأَمَةِ مِنْ سَيِّدِهَا الْحُرِّ]

no difference of opinion that the fetus of a female slave by her free master is like the fetus of a free woman, and there is no distinction.

٢١٣٢ - مَسْأَلَةٌ: جَنِينُ الْأَمَةِ مِنْ سَيِّدِهَا؟ قَالَ عَلِيٌّ: لَا خِلَافَ فِي أَنَّ جَنِينَ الْأَمَةِ مِنْ سَيِّدِهَا الْحُرِّ مِثْلُ جَنِينِ الْحُرَّةِ، وَلَا فَرْقَ.

L39066 Then they differed regarding the fetus of a slave woman conceived by someone other than her free master. A group ruled that it requires payment of one-tenth of its mother's market value - as transmitted by Muḥammad ibn Saʿīd ibn Nabāt from Aḥmad ibn ʿAbd al-Baṣīr from Qāsim ibn Aṣbagh from Muḥammad ibn ʿAbd al-Salām al-Khushanī from Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī from Muḥammad ibn Salamah from Yūnus ibn ʿUbayd from al-Ḥasan al-Baṣrī, who stated regarding the slave woman's fetus: "One-tenth of its mother's price." This ruling is upheld by Mālik, al-Shāfiʿī, Abū Thawr, the companions of these scholars, Aḥmad, his companions, and Isḥāq ibn Rāhwayh.

ثُمَّ اخْتَلَفُوا فِي جَنِينِ الْأَمَةِ مِنْ غَيْرِ سَيِّدِهَا الْحُرِّ: فَقَالَتْ طَائِفَةٌ: فِيهِ عُشْرُ قِيمَةِ أُمِّهِ - كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى أَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ أَنَا مُحَمَّدُ بْنُ سَلَمَةَ عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ الْحَسَنِ الْبَصْرِيِّ، قَالَ فِي جَنِينِ الْأَمَةِ عُشْرُ ثَمَنِ أُمِّهِ - وَبِهِ يَقُولُ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو ثَوْرٍ، وَأَصْحَابُهُمْ، وَأَحْمَدُ، وَأَصْحَابُهُ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L39067 A group said: The compensation for it is from the market price of its mother, equivalent to the portion allocated in the *diyah* of the free woman's mother's fetus - as narrated by Hammam from Ibn Mufarrij from Ibn Al-Aʿrabi from Ad-Dabari from ʿAbdur-Razzāq from Maʿmar from Az-Zuhrī, who said: "The fetus of a slave woman is assessed according to her market price, just as the fetus of a free woman is assessed according to the *diyah* of its mother." He was asked: "If a man emancipates the fetus of his slave woman, then the slave woman is killed?" He replied: "He must pay blood money for the slave woman and pay blood money for her fetus as a slave, whichever the case may be. The emancipation is only valid if it is born and cries out."

وَقَالَتْ طَائِفَةٌ: فِيهِ مِنْ ثَمَنِ أُمِّهِ كَقَدْرِ مَا فِي جَنِينِ الْحُرَّةِ مِنْ دِيَةِ أُمِّهِ - كَمَا حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ، قَالَ: جَنِينُ الْأَمَةِ فِي ثَمَنِ أُمِّهِ بِقَدْرِ جَنِينِ الْحُرَّةِ فِي دِيَةِ أُمِّهِ، قَالَ: فَلَوْ أَعْتَقَ رَجُلٌ جَنِينَ وَلِيدَتِهِ ثُمَّ قُتِلَتْ الْوَلِيدَةُ؟ قَالَ: يَعْقِلُ الْوَلِيدَةَ وَيَعْقِلُ جَنِينَهَا عَبْدًا، أَيَّمَا كَانَ تَمَامُ عِتْقِهِ أَنْ يُولَدَ وَيَسْتَهِلَّ صَارِخًا.

L39068 A group said: In it is half of one-tenth of the value of its mother, as narrated by Muḥammad ibn Saʿīd ibn Nubāt from Aḥmad ibn ʿAbd al-Baṣīr from Qāsim Aṣbagh from Muḥammad ibn al-Muthannā from ʿAbd al-Raḥmān ibn Mahdī and Yaḥyā ibn Saʿīd al-Qaṭṭān—both of them from Sufyān al-Thawrī from al-Mughīra ibn Miqsam from Ibrāhīm al-Nakhaʿī, who said regarding the fetus of a female slave: "Half of one-tenth of the value of its mother"—this being the view of Ibn Abī Laylā and al-Ḥajjāj ibn Arṭāʾa. This is also the view of Qatāda.

وَقَالَتْ طَائِفَةٌ: فِيهِ نِصْفُ عُشْرِ ثَمَنِ أُمِّهِ، كَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ، نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ، نا قَاسِمُ أَصْبَغَ، نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ، وَيَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ، كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ، قَالَ فِي جَنِينِ الْأَمَةِ: نِصْفُ عُشْرِ ثَمَنِ أُمِّهِ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَالْحَجَّاجِ بْنِ أَرْطَاةَ - وَهُوَ أَيْضًا قَوْلُ قَتَادَةَ.

وَقَالَتْ طَائِفَةٌ: فِيهِ نِصْفُ عُشْرِ قِيمَتِهِ إِنْ خَرَجَ مَيِّتًا، فَإِنْ خَرَجَ حَيًّا فَثَمَنُهُ كُلُّهُ - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ، رُوِّينَاهُ مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ - وَهُوَ قَوْلُ الْحَسَنِ بْنِ حَيٍّ.

L39069–39071 A group said: If extracted dead, it incurs one-twentieth of its value; but if extracted alive, its full value is due. All of it — and this is the opinion of Sufyan al-Thawri, we have narrated it via the transmission of Abd al-Razzaq — and this is the opinion of al-Ḥasan ibn Ḥayy.

وَقَالَ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَزُفَرُ بْنُ الْهُذَيْلِ: إِنْ كَانَ جَنِينُ الْأَمَةِ ذَكَرًا فَفِيهِ نِصْفُ عُشْرِ قِيمَتِهِ لَوْ كَانَ حَيًّا - وَإِنْ كَانَ أُنْثَى فَفِيهَا عُشْرُ قِيمَتِهَا لَوْ كَانَتْ حَيَّةً - قَالَ زُفَرُ: وَعَلَيْهِ مَعَ ذَلِكَ مَا نَقَصَ أُمَّهُ - وَقَالَ أَبُو يُوسُفَ: لَا شَيْءَ فِي جَنِينِ الْأَمَةِ إِلَّا أَنْ يَكُونَ نَقَصَ أُمَّهُ، فَفِيهِ مَا نَقَصَهَا.

L39072 Abu Hanifa, Muhammad ibn al-Hasan, and Zufar ibn al-Hudhayl said: If the fetus of a slave woman is male, the liability is half of one-tenth of his value had he been alive; if female, the liability is one-tenth of her value had she been alive. Zufar added: The responsible party is also liable for the reduction in her mother's value. Abu Yusuf said: There is no liability for the fetus of a slave woman unless it caused a reduction in her mother's value, in which case the liability equals the reduction incurred.

وَقَالَتْ طَائِفَةٌ: فِيهِ عَشَرَةُ دَنَانِيرَ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَابْنِ جُرَيْجٍ، قَالَ مَعْمَرٌ عَنِ الزُّهْرِيِّ، وَقَالَ ابْنُ جُرَيْجٍ عَنْ إِسْمَاعِيلَ بْنِ أُمَيَّةَ - ثُمَّ اتَّفَقَ الزُّهْرِيُّ، وَإِسْمَاعِيلُ، كِلَاهُمَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، قَالَ: فِي جَنِينِ الْأَمَةِ عَشَرَةُ دَنَانِيرَ.

L39073 A group said: In it are ten dinars: as informed by Ḥammām, informed by Ibn Mufarrij, informed by Ibn al-Aʿrābī, informed by al-Dabarī, informed by ʿAbd al-Razzāq from Maʿmar and Ibn Jurayj. Maʿmar reported from al-Zuhrī, while Ibn Jurayj reported from Ismāʿīl ibn Umayyah. Then the chains converge—both al-Zuhrī and Ismāʿīl ultimately narrating from Saʿīd ibn al-Musayyib, who said: Regarding the fetus of a female slave, the compensation is ten dinars.

وَقَالَتْ طَائِفَةٌ: فِيهِ حُكُومَةٌ - كَمَا حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ قَالَ: يَنْظُرُ مَا بَلَغَ ثَمَنُ جَنِينِ الْحُرَّةِ مِنْ جَمِيعِ ثَمَنِهَا، فَإِنْ كَانَتْ عُشْرًا أُعْطِيَتِ الْأَمَةُ عَشَرَةً، وَإِنْ كَانَتْ خُمْسًا، وَإِنْ كَانَتْ سُبْعًا، وَإِنْ كَانَتْ ثُمُنًا - يَعْنِي: فَكَذَلِكَ.

L39074 A group said: There is an assessment in it—as narrated to us by ʿAbdullāh ibn Rabīʿ, from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, from Aḥmad ibn Khālid, from ʿAlī ibn ʿAbd al-ʿAzīz, from al-Ḥajjāj ibn al-Minhāl, from Ḥammād ibn Salamah, from Ḥammād ibn Abī Sulaymān, who said: "One should assess the value of the free woman's fetus relative to her full value. If it constitutes a tenth of her value, the enslaved woman is given ten; if a fifth, five; if a seventh, seven; if an eighth, eight—meaning the same principle applies."

وَقَالَتْ طَائِفَةٌ: فِي جَنِينِ الْأَمَةِ غُرَّةُ عَبْدٍ أَوْ أَمَةٍ، كَمَا فِي جَنِينِ الْحُرَّةِ وَلَا فَرْقَ -: كَمَا رُوِّينَا قَبْلُ عَنِ ابْنِ سِيرِينَ، وَعُرْوَةَ، وَمُجَاهِدٍ، وَطَاوُسٍ، وَشُرَيْحٍ، وَالشَّعْبِيِّ، فَإِنَّهُمْ ذَكَرُوا الْجَنِينَ وَمَا فِيهِ، وَلَمْ يَخُصُّوا جَنِينَ حُرَّةٍ مِنْ أَمَةٍ، وَلَوْ كَانَ عِنْدَهُمْ فِي ذَلِكَ فَرْقٌ لَبَيَّنُوهُ؟

L39075 A group of scholars stated: Regarding the fetus of a slave woman, the compensation is the ghurrah [compensation in the form] of a male or female slave—just as in the case of a free woman's fetus, with no distinction. This is as we previously transmitted from Ibn Sīrīn, ʿUrwah, Mujāhid, Ṭāwūs, Shurayḥ, and al-Shaʿbī. They mentioned the fetus and its ruling without

specifying whether it belonged to a free woman or a slave. Had they recognized a distinction in this matter, would they not have clarified it? Whoever claims they intended only the free woman has falsely attributed to them what they did not say, reporting about them what they never stated about themselves. Whoever interprets their statement according to their actual words does so rightly and obligatorily, thereby including the fetus of a slave woman and others under the same ruling without distinction, since their statement necessitates: "There is nothing except what diminishes her value only."

وَمَنْ ادَّعَى أَنَّهُمْ أَرَادُوا الْحُرَّةَ خَاصَّةً فَقَدْ كَذَبَ عَلَيْهِمْ، وَحَكَى عَنْهُمْ مَا لَمْ يَقُولُوا، وَلَا أَخْبَرُوا بِهِ عَنْ أَنْفُسِهِمْ، وَمَنْ حَمَلَ قَوْلَهُمْ عَلَى مَا قَالُوهُ فَبِحَقٍّ وَاجِبٍ يَدْخُلُ فِيهِ جَنِينُ الْأَمَةِ، وَغَيْرُهُ، وَلَا فَرْقَ، إذْ هُوَ مُقْتَضَى قَوْلِهِمْ: لَيْسَ فِيهِ إلَّا مَا يَنْقُصُهَا فَقَطْ.

L39076–39077 Abu Muhammad said: When they disagreed as we have mentioned, it became necessary for us to examine this matter so we may discern the truth and follow it, by the aid of Allah the Most High and His grace.

قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ.

L39078 We examined the opinion of those who held that a tenth of the mother's value is due in this case, but found no valid argument for their position except their claim: "We found the ghurrah (compensation for a fetus) decreed for the fetus of the Hudhaliyyah woman was valued at fifty dinars - being a tenth of the value of her mother's diyah." It therefore became necessary to apply a tenth of the value of her mother's diyah to the fetus of a slave woman, since the diyah of a slave woman equals her value. This analogy led Mālik to rule that a tenth of an animal's value applies to its fetus, and for an ostrich egg by a muhrim (one in ritual consecration), a tenth of the value of a sacrificial camel.

فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى فِيهِ عُشْرَ قِيمَةِ أُمِّهِ - فَلَمْ نَجِدْ لَهُمْ حُجَّةً إلَّا أَنَّهُمْ قَالُوا: وَجَدْنَا الْغُرَّةَ الْمَحْكُومَ بِهَا فِي جَنِينِ الْهُذَلِيَّةِ وَقُوِّمَ بِخَمْسِينَ دِينَارًا - وَهُوَ عُشْرُ دِيَةِ أُمِّهِ فَوَجَبَ أَنْ يَكُونَ فِي جَنِينِ الْأَمَةِ عُشْرُ قِيمَةِ دِيَةِ أُمِّهِ أَيْضًا لِأَنَّ دِيَةَ الْأَمَةِ قِيمَتُهَا، حَتَّى أَنَّ مَالِكًا حَمَلَهُ هَذَا الْقِيَاسُ عَلَى أَنْ جَعَلَ فِي جَنِينِ الدَّابَّةِ عُشْرَ قِيمَتِهَا - وَفِي بَيْضَةِ النَّعَامَةِ عَلَى الْمُحْرِمِ عُشْرَ الْبَدَنَةِ.

L39079 Ali said: This argument is invalid, for valuing the *ghurrah* at fifty dinars or in dirhams is a mistaken and impermissible act, as it has not been made obligatory by the Quran, the Sunnah, consensus, nor authentically reported from a Companion.

قَالَ عَلِيٌّ: فَكَانَ هَذَا الِاحْتِجَاجُ سَاقِطًا، لِأَنَّ تَقْوِيمَ الْغُرَّةِ بِخَمْسِينَ دِينَارًا أَوْ بِالدَّرَاهِمِ خَطَأٌ لَا يَجُوزُ، لِأَنَّهُ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ - وَلَا صَحَّ عَنْ صَاحِبٍ.

L39080 Then we considered the position of Ibrāhīm al-Nakhaʿī and Qatādah that concerning the fetus of a female slave, there is half of one-tenth of her mother's value, but we found no substantiating basis for their view. Therefore, this opinion becomes invalid due to its complete absence of evidentiary supports.

ثُمَّ نَظَرْنَا فِي قَوْلِ إبْرَاهِيمَ النَّخَعِيِّ، وَقَتَادَةَ: أَنَّ فِي جَنِينِ الْأَمَةِ نِصْفَ عُشْرِ ثَمَنِ أُمِّهِ، لَمْ نَجِدْ لَهُمْ مُتَعَلَّقًا - فَسَقَطَ هَذَا الْقَوْلُ لِتَعَرِّيهِ عَنْ الْأَدِلَّةِ.

L39081 Then we examined the statements of Sufyān and al-Ḥasan ibn Ḥayy and

found they also had no proof whatsoever - therefore, their argument too is invalidated.

ثُمَّ نَظَرْنَا فِي قَوْلِ سُفْيَانَ وَالْحَسَنِ بْنِ حَيٍّ فَوَجَدْنَاهُ أَيْضًا لَا حُجَّةَ لَهُمْ أَصْلًا - فَسَقَطَ أَيْضًا.

L39082 Then we examined the statements of Abū Ḥanīfa, Zufar, and Muḥammad ibn al-Ḥasan. We found them stating: Since the ghurra (monetary compensation) for the fetus of a free woman is fixed at fifty dinars, this constitutes one-twentieth of his diyah had he been born alive as a male, or a tenth of her diyah had she been born alive as a female. Thus, the same ruling applies to the fetus of the female slave, for if it were alive and then killed, its market value would have been owed.

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي حَنِيفَةَ، وَزُفَرَ، وَمُحَمَّدِ بْنِ الْحَسَنِ؟ فَوَجَدْنَاهُمْ يَقُولُونَ: لَمَّا كَانَتْ الْغُرَّةُ فِي جَنِينِ الْحُرَّةِ مُقَدَّرَةً بِخَمْسِينَ دِينَارًا كَانَ ذَلِكَ نِصْفَ عُشْرِ دِيَتِهِ لَوْ خَرَجَ حَيًّا - وَكَانَ ذَكَرًا - أَوْ عُشْرَ دِيَتِهَا - لَوْ كَانَتْ أُنْثَى - وَخَرَجَتْ حَيَّةً، فَوَجَبَ فِي جَنِينِ الْأَمَةِ مِثْلُ ذَلِكَ أَيْضًا؛ لِأَنَّهُ لَوْ حَيًّا فَقُتِلَ لَكَانَتْ فِيهِ الْقِيمَةُ؟ .

L39083 Abu Muhammad said: This is all they have embellished, and all of this is invalid according to what we will explain—if Allah, the Exalted, wills.

قَالَ أَبُو مُحَمَّدٍ: هَذَا كُلُّ مَا مَوَّهُوا بِهِ، وَهَذَا كُلُّهُ بَاطِلٌ عَلَى مَا نَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى.

L39084–39086 We say—and with Allah, the Exalted, lies all success—their claim that "since the price of the ghurrah for the fetus of a free woman was fifty dinars, being half of one-tenth of his blood money if he had been born alive as a male, and one-tenth of her blood money if she had been born alive as a female, the same must necessarily apply to the fetus of an enslaved woman" is invalid for several reasons: The first of them is that it is qiyas, and all qiyas is invalid.

فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّ قَوْلَهُمْ: لَمَّا كَانَ ثَمَنُ الْغُرَّةِ فِي جَنِينِ الْحُرَّةِ خَمْسِينَ دِينَارًا وَهُوَ نِصْفُ عُشْرِ دِيَتِهِ، لَوْ خَرَجَ حَيًّا - وَكَانَ ذَكَرًا - وَعُشْرُ دِيَتِهَا، لَوْ خَرَجَتْ حَيَّةً - وَكَانَتْ أُنْثَى - فَوَجَبَ أَنْ يَكُونَ مَا فِي جَنِينِ الْأَمَةِ كَذَلِكَ، فَبَاطِلٌ مِنْ وُجُوهٍ: أَوَّلُهَا - أَنَّهُ قِيَاسٌ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

L39087 The second [point] is that if analogy were valid, this would epitomize falsehood, because valuing the *ghurrah* (compensation for involuntary manslaughter) at fifty dinars is baseless. It has never been established at all in the Qur'an, the Sunnah, or by any of the Companions—may Allah be pleased with them. Thus, their analogy here becomes an analogy of error upon error.

الثَّانِي - أَنَّهُ لَوْ صَحَّ الْقِيَاسُ لَكَانَ هَذَا مِنْهُ عَيْنَ الْبَاطِلِ؛ لِأَنَّ تَقْوِيمَ الْغُرَّةِ بِخَمْسِينَ دِينَارًا بَاطِلٌ، لَمْ يَصِحَّ قَطُّ فِي قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَصَارَ قِيَاسُهُمْ هَذَا قِيَاسًا لِلْخَطَأِ عَلَى الْخَطَأِ.

L39088 The third point is that even if their valuation of the *ghurrah* as fifty dinars were valid, how do they determine that the intended relation in this matter derives specifically from his *diyah* or his mother's *diyah*? It is asked of them: What is your basis for this? Why do you not say it is a temporary enforceable valuation—like the *ghurrah*—with no difference? Yet they persist in reiterating invalid claims without evidence.

وَالثَّالِثُ - أَنَّهُ لَوْ صَحَّ لَهُمْ تَقْوِيمُ الْغُرَّةِ بِخَمْسِينَ دِينَارًا فَمِنْ أَيْنَ لَهُمْ أَنَّ الْمَقْصُودَ فِي ذَلِكَ هُوَ أَنْ يَكُونَ نِسْبَتُهُ مِنْ دِيَتِهِ، أَوْ مِنْ دِيَةِ أُمِّهِ؟ وَيُقَالُ لَهُمْ: مِنْ أَيْنَ لَكُمْ هَذَا؟ وَهَلَّا قُلْتُمْ: إنَّهَا قِيمَةٌ نَافِذَةٌ مُؤَقَّتَةٌ: كَالْغُرَّةِ وَلَا فَرْقَ؟ وَلَكِنْ أَبَوْا إلَّا التَّرْدِيدَ مِنْ الدَّعَاوَى الْفَاسِدَةِ بِلَا بُرْهَانٍ.

وَالرَّابِعُ - أَنْ يُعَارَضَ قِيَاسُهُمْ بِمِثْلِهِ، فَيُقَالُ لَهُمْ: مَا الْفَرْقُ بَيْنَكُمْ وَبَيْنَ مَا رُوِيَ عَنْ مَالِكٍ، وَالْحَسَنِ: مِنْ أَنَّ الْخَمْسِينَ دِينَارًا الَّتِي قُوِّمَتْ بِهَا الْغُرَّةُ فِي جَنِينِ الْحُرَّةِ إِنَّمَا اُعْتُبِرَ بِهَا مِنْ دِيَةِ أُمِّهِ، لَا مِنْ دِيَةِ نَفْسِهِ؟ فَقَالُوا: إِنْ كَانَ جَنِينُ الْأَمَةِ - ذَكَرًا أَوْ أُنْثَى - فَفِيهِ عُشْرُ قِيمَةِ أُمِّهِ، كَمَا فِي جَنِينِ الْحُرَّةِ - ذَكَرًا كَانَ أَوْ أُنْثَى - عُشْرُ دِيَةِ أُمِّهِ، فَهَلْ هَاهُنَا إِلَّا دَعْوَى مُقَابَلَةً بِمِثْلِهَا؟ وَتَحَكُّمٌ بِلَا دَلِيلٍ؟ ثُمَّ نَظَرْنَا فِي قَوْلِ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ أَنَّ فِيهِ حُكْمًا، فَوَجَدْنَاهُ أَيْضًا قَوْلًا عَارِيًا مِنْ الْأَدِلَّةِ، فَوَجَبَ تَرْكُهُ، إِذْ مَا لَا دَلِيلَ عَلَى صِحَّتِهِ، فَهِيَ دَعْوَى سَاقِطَةٌ.

L39089 The fourth is that their analogy be countered with its equivalent. Thus, they are asked: What distinguishes your position from what is reported from Mālik and al-Ḥasan concerning the fifty dinars set as the *ghurra* (compensation for a fetus) of a free woman's unborn child, which they deemed based on the blood money of the mother, not that of the fetus itself? They responded: If the fetus of an enslaved woman—male or female—entails a tenth of her mother's value, just as the fetus of a free woman—male or female—entails a tenth of her mother's blood money, is this anything but a claim countered by its equivalent? Or an arbitrary judgment without proof? We then examined the opinion of Ḥammād ibn Abī Sulaymān that it contains a legal ruling, but we found it to be a statement entirely devoid of evidence. Thus, it must be discarded, for any claim lacking proof to validate it is invalid.

ثُمَّ نَظَرْنَا فِي قَوْلِ سَعِيدِ بْنِ الْمُسَيِّبِ، فَوَجَدْنَاهُ أَيْضًا لَا دَلِيلَ عَلَى صِحَّتِهِ، فَلَمْ يَجُزْ الْقَوْلُ بِهِ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {قُلْ هَاتُوا بُرْهَانَكُمْ إِنْ كُنْتُمْ صَادِقِينَ} [البقرة: ١١١] فَمَنْ لَا بُرْهَانَ لَهُ فَلَا يَجُوزُ الْأَخْذُ بِقَوْلِهِ.

L39090 Then we examined the statement of Sa'id ibn al-Musayyib and found no evidence to support its validity; thus, it is impermissible to adopt his statement, for Allah the Exalted says: *"Produce your proof, if you are truthful"* [Al-Baqarah: 111]. Therefore, it is impermissible to act upon the statement of anyone who lacks proof.[6]

ثُمَّ نَظَرْنَا فِي قَوْلِ أَبِي يُوسُفَ، وَبَعْضِ أَصْحَابِنَا: أَنَّهُ لَا شَيْءَ فِي جَنِينِ الْأَمَةِ إِلَّا مَا نَقَصَهَا، فَوَجَدْنَاهُ أَيْضًا قَوْلًا لَا دَلِيلَ عَلَى صِحَّتِهِ، وَقَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْجَنِينِ مَا قَدْ ذَكَرْنَاهُ.

L39091 Then we examined the statement of Abū Yūsuf and some of our companions that there is nothing pertaining to the fetus of a bondwoman except what diminishes her value, and we found this too to be a statement lacking evidence to substantiate it, while it has been authentically narrated from the Prophet—peace and blessings of Allah be upon him—regarding the fetus what we have already cited.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا سَقَطَتْ هَذِهِ الْأَقْوَالُ [كُلُّهَا] وَجَبَ أَنْ نَنْظُرَ عِنْدَ اخْتِلَافِ الْقَائِلِينَ بِهَا مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا إِذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] فَفَعَلْنَا.

L39092–39094 Abū Muḥammad (may Allah have mercy on him) said: Once these statements [all of them] were dismissed, it became incumbent upon us to scrutinize... When those who assert it disagree about what Allah has obligated upon us—as He says, "If you dispute over anything, return it to Allah and the Messenger" [An-Nisa: 59]—we have done so.[7]

فَوَجَدْنَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمِ بْنِ الْحَجَّاجِ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَأَبُو كُرَيْبٍ قَالَا: أَنَا وَكِيعٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ الْمِسْوَرِ بْنِ مَخْرَمَةَ قَالَ: اسْتَشَارَ عُمَرُ

L39095 We found—as transmitted through Muslim ibn al-Hajjaj's chain—that Abu Bakr ibn Abi Shaybah and Abu Kurayb narrated to us, both saying: "Waki'

[6] **Qur'an references (L39090):** Qur'an 2:111 (Al-Baqarah); Qur'an 27:64 (An-Naml).
[7] **Qur'an references (L39092):** Qur'an 4:59 (An-Nisa).

narrated to us from Hisham ibn Urwah, from his father, from al-Miswar ibn Makhramah," who said: "Umar ibn al-Khattab sought counsel regarding causing a woman's miscarriage." Al-Mughirah ibn Shu'bah said: "I witnessed the Messenger of Allah—peace and blessings be upon him—rule in such a case by requiring compensation equivalent to the value of a male or female slave." Umar said to him: "Bring me someone who can testify alongside you." So Muhammad ibn Maslamah testified for him.

بْنُ الْخَطَّابِ فِي إِمْلَاصِ الْمَرْأَةِ فَقَالَ الْمُغِيرَةُ بْنُ شُعْبَةَ: شَهِدْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَضَى فِيهِ بِغُرَّةِ عَبْدٍ أَوْ أَمَةٍ، فَقَالَ لَهُ عُمَرُ: ائْتِنِي بِمَنْ يَشْهَدُ مَعَك؟ فَشَهِدَ لَهُ مُحَمَّدُ بْنُ مَسْلَمَةَ.

L39096 Ahmad ibn Muhammad ibn Abdullah al-Ṭalmanakī narrated to us, from Ibn Mufarrij, from Muhammad ibn Ayyub al-Ṣamūt al-Raqqī, from Ahmad ibn Amr ibn Abd al-Khāliq al-Bazzār, from Muhammad ibn Maʿmar al-Baḥrānī, from Uthman ibn Umar, from Yunus ibn Yazīd, from al-Zuhrī, from Saʿīd ibn al-Musayyib, from Abu Hurayrah, who said: "Two women from Hudhayl fought, and one of them threw a stone at the other, killing her and what was in her womb. They brought their dispute to the Messenger of Allah (peace be upon him). He (peace be upon him) ruled: 'The diyah for her fetus is a male slave or a female slave,' and he decreed that the diyah must be paid by her ʿāqilah, and her child inherits her."

وَمَا ناه أَحْمَدُ بْنُ مُحَمَّدِ عَبْدِ اللَّهِ الطَّلْمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيُّ نا أَحْمَدُ بْنُ عَمْرِو بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا مُحَمَّدُ بْنُ مَعْمَرٍ الْبَحْرَانِيُّ نا عُثْمَانَ بْنُ عُمَرَ نا يُونُسُ بْنُ يَزِيدَ نا الزُّهْرِيُّ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ عَنْ أَبِي هُرَيْرَةَ قَالَ: «اقْتَتَلَتْ امْرَأَتَانِ مِنْ هُذَيْلٍ، فَرَمَتْ إحْدَاهُمَا الْأُخْرَى بِحَجَرٍ فَقَتَلَتْهَا وَمَا فِي بَطْنِهَا، فَاخْتَصَمُوا إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ - عَلَيْهِ السَّلَامُ -: دِيَةُ جَنِينِهَا عَبْدٌ أَوْ أَمَةٌ وَقَضَى بِالدِّيَةِ عَلَى عَاقِلَتِهَا وَوَرِثَهَا وَلَدُهَا» .

L39097 Abu Muhammad said: The hadith of Al-Mughīrah and Muḥammad ibn Maslamah establishes a general ruling regarding blood money for any woman's caused miscarriage—as explicitly stated in the words of the Messenger of Allah—peace and blessings be upon him—in the hadith of Abū Hurayrah, that the blood money for her fetus is a male or female slave. The Messenger of Allah—peace and blessings be upon him—did not say that this applies solely to the fetus of a free woman. Therefore, it is impermissible for anyone to ascribe to the Messenger of Allah—peace and blessings be upon him—statements he did not make or to report from him what he did not declare about himself. Whoever does this has ascribed to him what he did not say, and this necessitates the Fire.

قَالَ أَبُو مُحَمَّد: فَحَدِيثُ الْمُغِيرَةِ، وَمُحَمَّدِ بْنِ مَسْلَمَةَ عُمُومُ إمْلَاصِ كُلِّ امْرَأَةٍ - وَكَذَلِكَ نَصُّ كَلَامِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِ أَبِي هُرَيْرَةَ بِأَنَّ دِيَةَ جَنِينِهَا عَبْدٌ أَوْ وَلِيدَةٌ - وَلَمْ يَقُلْ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إنَّ هَذَا إنَّمَا هُوَ فِي جَنِينِ الْحُرَّةِ، فَلَا يَحِلُّ لِأَحَدٍ أَنْ يُقَوِّلَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِلْمَ مَا لَمْ يَقُلْ، وَلَا أَنْ يُخْبِرَ عَنْهُ بِمَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ، وَمَنْ فَعَلَ هَذَا فَقَدْ قَالَ عَلَيْهِ مَا لَمْ يَقُلْ، وَهَذَا يُوجِبُ النَّارَ.

L39098 If it is said: "The Messenger of Allah, peace and blessings be upon him, ruled thus only regarding the fetus of a free woman," it is replied to them: "The Messenger of Allah, peace and blessings be upon him, ruled thus regarding the fetus of a Hudhali-Lihyani woman named Mulaykah, whom her co-wife

فَإِنْ قِيلَ: إنَّمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ فِي جَنِينِ حُرَّةٍ؟ قِيلَ لَهُمْ: إنَّمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَلِكَ فِي جَنِينِ هُذَلِيَّةٍ لِحْيَانِيَّةٍ تُسَمَّى

Umm ’Afif killed. The distinction between your claim that this ruling applies because it was the fetus of a free woman, and one who says: ’Rather, because it was the fetus of a Hudhali woman,’ or ’because it was the fetus of a woman named Mulaykah,’ or ’because her co-wife killed her,’ or ’because the killer’s name is Umm ’Afif’—all of this is invalid and confused mixing. And success comes from Allah, the Most High.”

مُلَيْكَةَ قَتَلَتْهَا ضَرَّتُهَا أُمُّ عَفِيفٍ، الْفَرْقُ بَيْنَكُمْ فِي دَعْوَاكُمْ بِذَلِكَ لِأَنَّهُ جَنِينُ حُرَّةٍ، وَبَيْنَ مَنْ قَالَ: بَلْ لِأَنَّهُ جَنِينُ هُذَلِيَّةٍ؟ أَوْ لِأَنَّهُ جَنِينُ امْرَأَةٍ تُسَمَّى مُلَيْكَةَ، أَوْ لِأَنَّ ضَرَّتَهَا قَتَلَتْهَا، أَوْ لِأَنَّ الْقَاتِلَةَ اسْمُهَا أُمُّ عَفِيفٍ - هَذَا كُلُّهُ بَاطِلٌ وَتَخْلِيطٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

An issue concerning the fetus of a dhimmi woman: one-tenth of her *diyah*.

L39099–39100

[مَسْأَلَةٌ فِي جَنِينِ الذِّمِّيَّةِ عُشْرُ دِيَتِهَا]

L39101 Issue: The fetus of a dhimmi woman? Abu Muhammad—may Allah be pleased with him—said: Some have stated regarding the fetus of a dhimmi woman that its diyah amounts to one-tenth of her diyah. This opinion is solely based on their analogy to their view valuing the ghurrah—the compensation for a fetus—at fifty dinars, and this is a clearly erroneous opinion.

مَسْأَلَةٌ: جَنِينُ الذِّمِّيَّةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: قَالَ قَائِلُونَ فِي جَنِينِ الذِّمِّيَّةِ عُشْرُ دِيَتِهَا - وَهَذَا قَوْلٌ إنَّمَا قَاسُوهُ عَلَى قَوْلِهِمْ فِي تَقْوِيمِ الْغُرَّةِ بِخَمْسِينَ دِينَارًا - وَهُوَ قَوْلٌ ظَاهِرُ الْخَطَأِ.

L39102 The ruling according to our school is that for the fetus of a dhimmi woman, a male or female slave (ghurrah) must also be paid as compensation, imposed upon the responsible kin group of the striker. They must seek both a male and female slave—the slaves being non-Muslim—and deliver them to the rightful claimant. If neither is found, the compensation becomes the value of one such slave if available. The valuation in this matter—and for the ghurrah generally when unavailable—is set at the minimum possible worth, for it is impermissible to impose any monetary penalty except through explicit textual evidence or consensus, in accordance with the Prophet’s saying—peace be upon him: “Your blood and property are inviolable.” Thus, the minimum value the ghurrah would hold if a slave were available becomes obligatory upon the kin group by textual mandate. Any amount exceeding this is not obligatory, as neither text nor consensus supports it. Therefore, such excess is null and void, and ruling by it is impermissible.

وَالْقَوْلُ عِنْدَنَا أَنَّ فِي جَنِينِ الذِّمِّيَّةِ أَيْضًا غُرَّةَ عَبْدٍ أَوْ أَمَةٍ يُقْضَى عَلَى عَاقِلَةِ الضَّارِبِ بِهِ، فَيَطْلُبُونَ غُلَامًا أَوْ أَمَةً - كَافِرَيْنِ - فَيَدْفَعَانِهِ، أَوْ يَدْفَعَانِهَا إلَى مَنْ تَجِبُ لَهُ، فَإِنْ لَمْ يُوجَدَا فَبِقِيمَةِ أَحَدِهِمَا - لَوْ وُجِدَ - وَالْقِيمَةُ فِي هَذَا - وَفِي الْغُرَّةِ جُمْلَةً إذَا عُدِمَتْ أَقَلُّ مَا يُمْكِنُ، إذْ لَا يَجُوزُ أَنْ يَلْزَمَ أَحَدٌ غَرَامَةً، إلَّا بِنَصٍّ أَوْ إجْمَاعٍ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» فَأَقَلُّ مَا كَانَتْ تُسَاوِي الْغُرَّةُ - لَوْ وُجِدَتْ - وَاجِبٌ عَلَى الْعَاقِلَةِ بِالنَّصِّ، وَمَا زَادَ عَلَى ذَلِكَ غَيْرُ وَاجِبٍ، لَا بِنَصٍّ وَلَا إجْمَاعٍ - فَهُوَ سَاقِطٌ لَا يَجُوزُ الْحُكْمُ بِهِ.

L39103 If a dhimmī accidentally strikes a Muslim woman, causing her to miscarry, his liable kin (‘āqilah) must free a non-Muslim male slave or non-Muslim female slave—it is invalid to free a Muslim male or female slave. This emancipation of a non-Muslim slave fulfills the mandated ghurrah (compensation for miscarriage), regardless of whether the offender and his liable kin are

وَلَوْ أَنَّ ذِمِّيًّا ضَرَبَ امْرَأَةً مُسْلِمَةً خَطَأً فَأَسْقَطَتْ جَنِينًا: يُكَلَّفُ أَنْ تَبْتَاعَ عَاقِلَتُهُ عَبْدًا كَافِرًا أَوْ أَمَةً كَافِرَةً وَلَا بُدَّ - وَلَا يَجُوزُ أَنْ يَبْتَاعَ عَبْدًا مُسْلِمًا وَلَا أَمَةً مُسْلِمَةً - وَالرَّقَبَةُ الْكَافِرَةُ تُجْزِي فِي الْغُرَّةِ الْمَذْكُورَةِ - سَوَاءٌ كَانَ الْجَانِي وَعَاقِلَتُهُ: مُسْلِمِينَ، أَوْ كَانُوا كُفَّارًا

Muslims or non-believers. The obligatory compensation is strictly limited to freeing one male or female slave, as ruled by the Messenger of God—peace and blessings upon him—who "does not speak from personal desire. It is nothing but revelation sent down" (53:3-4), and "your Lord is never forgetful" (19:64).[8]

L39104 If Allah the Exalted had willed that the ghurrah be a believing [slave], the Messenger of Allah—may Allah bless him and grant him peace—would not have overlooked clarifying that matter, just as he did not neglect to clarify other matters, or he made clear that a male or female suffices for this. And success is from Allah the Exalted.

L39105 Abū Muḥammad—may Allah have mercy on him—said: As for the diminishment of the female slave's value due to causing a miscarriage, it is necessarily obligatory upon the wrongdoer to pay from his property in addition to the *ghurra*. This is because he impaired property, and he is liable for it as we have previously mentioned—and success is from Allah, the Exalted. [٢١٣٤]

L39106 A Jurisprudential Issue Regarding the Fetus of Livestock

L39107–39109 Abū Muḥammad—may Allah have mercy on him—said: From ʿAbdullāh ibn Rabīʿ, from Ibn Mufarrij, from Qāsim ibn Aṣbagh, from... Ibn Waddāḥ reported from Sahnūn, who reported from Ibn Wahb, who informed me from Yūnus ibn Yazīd from Abū al-Zinād, al-Zuhrī, and Rabīʿah. Abū al-Zinād said regarding the fetus of a livestock animal: "We hold that the livestock animal should be valued while carrying its offspring in its womb, then valued again after delivering its fetus. The difference between these two valuations constitutes what is owed to the one harmed until it had delivered its fetus." Al-Zuhrī said: "We hold that the fetus of a livestock animal is subject to a ruling based on its value, for the livestock animal is merely a commodity." Rabīʿah said: "I do not see regarding the fetus of a livestock animal anything broader than the Imam's ijtihād." Abū Muḥammad said: "The ruling on this

[8] **Qur'an references (L39103):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

- وَإِنَّمَا الْوَاجِبُ عَبْدٌ أَوْ أَمَةٌ فَقَطْ، كَمَا حَكَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

فَلَوْ أَرَادَ اللَّهُ تَعَالَى أَنْ تَكُونَ الْغُرَّةُ مُؤْمِنَةً لَمَا أَغْفَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عِلْمَ بَيَانِ ذَلِكَ - كَمَا لَمْ يَغْفُلْ، أَوْ بَيَّنَ أَنَّهُ يُجْزِي فِي ذَلِكَ ذَكَرٌ أَوْ أُنْثَى، وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا مَا نَقَصَ الْأَمَةَ إلْقَاءُ الْجَنِينِ، فَهُوَ الْوَاجِبُ عَلَى الْجَانِي فِي مَالِهِ وَلَا بُدَّ، زِيَادَةً عَلَى الْغُرَّةِ، لِأَنَّهُ مَالٌ أَفْسَدَهُ فَعَلَيْهِ ضَمَانُهُ عَلَى مَا قَدْ ذَكَرْنَا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ. ٢١٣٤ -

[مَسْأَلَةٌ جَنِينُ الْبَهِيمَةِ]

؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ أَبِي الزِّنَادِ، وَالزُّهْرِيِّ، وَرَبِيعَةَ، قَالَ أَبُو الزِّنَادِ فِي جَنِينِ الْبَهِيمَةِ: نَرَى أَنْ تُقَامَ الْبَهِيمَةُ فِي بَطْنِهَا وَلَدُهَا، ثُمَّ تُقَامَ بَعْدَ أَنْ تَطْرَحَ جَنِينَهَا، فَيَكُونُ فَضْلُ مَا بَيْنَ ذَلِكَ عَلَى الَّذِي أَصَابَهَا حَتَّى طَرَحَتْ جَنِينَهَا - وَقَالَ الزُّهْرِيُّ: نَرَى جَنِينَ الْبَهِيمَةِ إلَى الْحُكْمِ بِقِيمَةٍ إنَّمَا الْبَهِيمَةُ سِلْعَةٌ مِنْ السِّلَعِ - وَقَالَ رَبِيعَةُ: لَا أَرَى فِي جَنِينِ الْبَهِيمَةِ شَيْئًا أَوْسَعَ مِنْ اجْتِهَادِ الْإِمَامِ؟ قَالَ أَبُو مُحَمَّدٍ: الْقَوْلُ فِي هَذَا عِنْدَنَا هُوَ قَوْلُ أَبِي الزِّنَادِ، لِأَنَّهَا جِنَايَةٌ عَلَى مَالٍ فَقِيمَةُ مِثْلِهِ.

matter according to us is the view of Abū al-Zināد, because it constitutes a financial injury, thus the value of its equivalent."

L39110 As for the statement of Az-Zuhri and Rabi'ah that this matter involves the *ijtihād* of the Imam or the ruler: this is an invalid opinion, because there is no evidence that necessitates it. Neither Allah the Most High nor His Messenger—may peace and blessings be upon him—has granted the Imams the authority to exercise *ijtihād* regarding the taking of property from one person and giving it to another. Rather, Allah the Most High has prohibited this through the tongue of His Messenger—may peace and blessings be upon him. Therefore, no one is permitted to take from one person what he gives to another, except by definitive text or consensus. And success comes only from Allah, the Most High.

L39111 It has been narrated from Mālik and al-Ḥasan ibn Ḥayyin that the value of the fetus of a horse is one-tenth of its mother's value. Mālik stated regarding the fetus of livestock: "One-tenth of its mother's value." All of this is baseless; as it constitutes analogy, and all analogy is null and void.

L39112 **Issue: A non-Muslim dhimmi killed another dhimmi, then the killer embraced Islam.**

L39113 2135 - Issue: Abu Muhammad—may Allah have mercy on him—said: If a disbelieving dhimmi kills a dhimmi, then the killer embraces Islam after his killing of the victim or before the victim's death, no retribution (qisas) is imposed upon the killer whatsoever. This is based on the statement of Allah's Messenger—peace and blessings be upon him: "A believer is not to be executed in retaliation for a disbeliever."

L39114 They said: The blood money of the slain - if they chose compensation before the killer or their guardian embraced Islam, or accepted blood money from him and he later embraced Islam - the financial liability remained due to them from him, for it is property they rightfully claimed from him. Believers owe financial obligations to disbelievers, and disbelievers to believers. Verily, "Allah's Messenger (peace and blessings of Allah be upon him) died while

وَأَمَّا قَوْلُ الزُّهْرِيِّ، وَرَبِيعَةَ: إنَّ فِي ذَلِكَ اجْتِهَادَ الْإِمَامِ، أَوْ الْحَاكِمِ: فَقَوْلٌ لَا يَصِحُّ؛ لِأَنَّهُ لَا دَلِيلَ يُوجِبُهُ، وَلَمْ يَجْعَلْ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ - لِأَحَدٍ مِنْ الْأَئِمَّةِ اجْتِهَادًا فِي أَخْذِ مَالِ مِنْ إنْسَانٍ وَإعْطَائِهِ آخَرَ، بَلْ قَدْ حَرَّمَ اللَّهُ تَعَالَى ذَلِكَ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -، فَلَيْسَ لِأَحَدٍ أَنْ يَأْخُذَ مِنْ أَحَدٍ مَا يُعْطِيهِ لِآخَرَ، إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

وَقَدْ رُوِيَ عَنْ مَالِكٍ، وَالْحَسَنِ بْنِ حَيٍّ: أَنَّ فِي جَنِينِ الْفَرَسِ عُشْرَ قِيمَةِ أُمِّهِ، وَقَالَ مَالِكٌ فِي جَنِينِ الْبَهِيمَةِ عُشْرُ قِيمَةِ أُمِّهَا، وَهَذَا كُلُّهُ لَيْسَ بِشَيْءٍ؛ لِأَنَّهُ قِيَاسٌ، وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.

[مَسْأَلَةٌ كَافِرٌ ذِمِّيٌّ قَتَلَ ذِمِّيًّا ثُمَّ أَسْلَمَ الْقَاتِلُ]

٢١٣٥ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَوْ أَنَّ كَافِرًا ذِمِّيًّا قَتَلَ ذِمِّيًّا ثُمَّ أَسْلَمَ الْقَاتِلُ بَعْدَ قَتْلِهِ الْمَقْتُولَ، أَوْ قَبْلَ مَوْتِ الْمَقْتُولِ: فَلَا قَوَدَ عَلَى الْقَاتِلِ أَصْلًا؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ» .

قَالُوا: وَدِيَةُ الْمَقْتُولِ - إنْ اخْتَارُوا الدِّيَةَ قَبْلَ إسْلَامِ قَاتِلِ وَلِيِّهِمْ، أَوْ فَادُوهُ ثُمَّ أَسْلَمَ: بَقِيَتْ الْغَرَامَةُ لَهُمْ عَلَيْهِ؛ لِأَنَّهُ مَالٌ اسْتَحَقُّوهُ عِنْدَهُ، وَالْأَمْوَالُ تَجِبُ لِلْكَافِرِ عَلَى الْمُؤْمِنِ، وَلِلْمُؤْمِنِ عَلَى الْكَافِرِ - وَقَدْ «مَاتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَدِرْعُهُ مَرْهُونَةٌ

his armor remained pledged with a Jew for thirty ṣāʿ (a dry measure) of barley which he had taken to provide sustenance for his household." We have previously mentioned this with its chain of transmission before this.

عِنْدَ يَهُودِيٍّ فِي ثَلَاثِينَ صَاعًا مِنْ شَعِيرٍ أَخَذَهَا - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِقُوتِ أَهْلِهِ» وَقَدْ ذَكَرْنَاهُ بِإِسْنَادِهِ قَبْلَ هَذَا.

L39115–39116 If the injured person also converted to Islam and then died—while he was a Muslim—retaliation (qisas) is obligatory for his heirs, because it involves a believer [killed] in relation to a believer. The Messenger of Allah (peace and blessings be upon him) said, "Believers' lives are equal in sanctity."

فَلَوْ أَنَّ الْمَجْرُوحَ أَسْلَمَ أَيْضًا ثُمَّ مَاتَ - وَهُوَ مُسْلِمٌ - فَالْقَوَدُ لَهُ وَاجِبٌ؛ لِأَنَّهُ مُؤْمِنٌ بِمُؤْمِنٍ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «الْمُؤْمِنُونَ تَتَكَافَأُ دِمَاؤُهُمْ» .

L39117 Abū Muḥammad—may Allah have mercy on him—said: If a Muslim deliberately wounds a protected non-Muslim unjustly, then the non-Muslim embraces Islam and subsequently dies from that injury, retribution (qisas) in this case is specifically by the sword. There is no retribution for the wound itself—since it occurred while he was a disbeliever—nor does retribution apply to injuries inflicted upon a disbeliever, as Allah states: "Allah will never grant the disbelievers a means over the believers" [4:141]. When he embraced Islam and died as a Muslim—from an act of wrongful aggression that would cause death if similarly inflicted—he is considered intentionally slain while being a Muslim. Thus, the ruling applies as Allah the Exalted and His Messenger—peace be upon him—have ordained for one who kills a believer. And success is from Allah alone.[9]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَوْ أَنَّ مُسْلِمًا جَرَحَ ذِمِّيًّا عَمْدًا ظَالِمًا فَأَسْلَمَ الذِّمِّيُّ ثُمَّ مَاتَ مِنْ ذَلِكَ الْجُرْحِ فَالْقَوَدُ فِي ذَلِكَ بِالسَّيْفِ خَاصَّةً، وَلَا قَوَدَ فِي الْجُرْحِ لِأَنَّ الْجُرْحَ حَصَلَ، وَلَا قَوَدَ فِيهِ لِلْكَافِرِ {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] فَلَمَّا أَسْلَمَ ثُمَّ مَاتَ مُسْلِمًا مِنْ جِنَايَةِ ظُلْمٍ يُمَاتُ مِنْ مِثْلِهَا: حَصَلَ مَقْتُولًا عَمْدًا - وَهُوَ مُسْلِمٌ - فَفِيهِ مَا جَعَلَ اللَّهُ تَعَالَى وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى مَنْ قَتَلَ مُؤْمِنًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39118 If a child or an insane person were to injure someone, then the insane person regained sanity and the child reached puberty, and subsequently the injured party died, there is nothing due in this case—no diyah (blood money) and no qisas (retaliation)—because the death resulted from a legally null offense, which has no legal ruling.

فَلَوْ أَنَّ صَبِيًّا، أَوْ مَجْنُونًا جَرَحَا إنْسَانًا، ثُمَّ عَقَلَ الْمَجْنُونُ وَبَلَغَ الصَّبِيُّ، ثُمَّ مَاتَ الْمَجْرُوحُ، فَلَا شَيْءَ فِي ذَلِكَ، لَا دِيَةَ، وَلَا قَوَدَ، لِأَنَّهُ مَاتَ مِنْ جِنَايَةِ هَدَرٍ لَا حُكْمَ لَهَا.

L39119 If it is said: You have ruled regarding one who shoots a combatant (ḥarbī) then embraces Islam and dies that blood money (diyah) is incumbent upon his agnatic kin (ʿāqilah). How then do you impose blood money for one killed by an offense its perpetrator was commanded to commit, yet do not impose blood money for this individual's offense? We have said—and by Allah's grace—thus: We have said this because the offender commanded to commit that act is a legally addressed, obligated individual, bound to atone (kaffārah)

فَإِنْ قِيلَ: قَدْ قُلْتُمْ فِي الَّذِي يَرْمِي حَرْبِيًّا ثُمَّ يُسْلِمُ، ثُمَّ يَمُوتُ: إنَّ فِيهِ الدِّيَةَ عَلَى الْعَاقِلَةِ، فَكَيْفَ تَجْعَلُونَ الدِّيَةَ فِيمَنْ مَاتَ مِنْ جِنَايَةٍ مَأْمُورٍ بِهَا، وَلَا تَجْعَلُونَ الدِّيَةَ فِيمَنْ مَاتَ مِنْ جِنَايَةِ هَذَا؟ فَقَدْ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: هَكَذَا قُلْنَا؛ لِأَنَّ الْجَانِيَ الْمَأْمُورَ بِتِلْكَ الْجِنَايَةِ مُخَاطَبٌ مُكَلَّفٌ مُلْزَمٌ فِي قَتْلِ الْخَطَأِ كَفَّارَةً أَوْ كَفَّارَةً وَدِيَةً عَلَى عَاقِلَتِهِ،

[9] **Qur'an references (L39117):** Qur'an 4:141 (An-Nisa).

or to atone combined with blood money upon his agnatic kin in cases of accidental killing. The insane and the minor, however, are not addressed by the law at all, nor are they legally obligated in intentional killing or accidental killing. Thus, the rulings pertaining to all their actions are nullified, as they hold no legal standing in the Sharīʿah. What the legally addressed, obligated individual—subject to divine commands and prohibitions—has done is not nullified.

L39120 If a sane person commits murder or inflicts a wound, then becomes insane, and the victim subsequently dies from that injury: qisas applies to the insane perpetrator, or diyah is taken from his wealth—is no ransom applicable there? This is because qisas became obligatory when he committed the offense, and the ruling for that crime remains binding upon him. It is waived due to his loss of sanity, as no Quranic text, Sunnah, or consensus requires it. Similarly, a hadd punishment that became obligatory during his sanity is executed upon him even in insanity, but any hadd punishment incurred during insanity is not executed upon him in sanity—without disagreement within the Ummah. Is the intoxicated person considered insane?

An Issue Regarding the Breaking of a Deceased Person's Bone

L39121–39122

L39123 Abū Muḥammad—may Allah be pleased with him—said: ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Isḥāq narrated to us, Ibn al-Aʿrābī narrated to us, Abū Dāwūd narrated to us, al-Qaʿnabī narrated to us, ʿAbd al-ʿAzīz ibn Muḥammad (i.e., al-Darāwardī) narrated to us, from Saʿd (i.e., Ibn Saʿīd), from ʿAmrah bint ʿAbd al-Raḥmān, from ʿĀ'ishah that the Messenger of Allah, peace be upon him, said: "Breaking the bone of a dead person is akin to breaking it while alive."

L39124 Abū Muḥammad—may Allāh have mercy on him—said: This is only narrated through the chain of Saʿd ibn Saʿīd al-Anṣārī, the brother of Yaḥyā ibn Saʿīd. They were three brothers: Yaḥyā ibn Saʿīd, a trustworthy imam; ʿAbd Rabbihi ibn Saʿīd—there is no harm in him, though he does not reach the same stature in narration; and Saʿd ibn Saʿīd, who is extremely weak and cannot be relied upon as evidence. There is no disagreement on this. Therefore, it is invalid

وَلَيْسَ الْمَجْنُونُ وَالصَّبِيُّ مُخَاطَبَيْنِ أَصْلًا، وَلَا مُكَلَّفَيْنِ شَرِيعَةً فِي قَتْلِ عَمْدٍ، وَلَا فِي قَتْلِ خَطَأٍ: فَسَقَطَ حُكْمُ كُلِّ مَا عَمِلَا، وَلَمْ يَكُنْ لَهُ فِي الشَّرْعِ دُخُولٌ، وَلَمْ يَسْقُطْ مَا فَعَلَهُ الْمُخَاطَبُ الْمُكَلَّفُ الْمَأْمُورُ الْمَنْهِيُّ.

وَلَوْ أَنَّ عَاقِلًا قَتَلَ أَوْ جَرَحَ ثُمَّ جُنَّ فَمَاتَ الْمَجْرُوحُ مِنْ تِلْكَ الْجِنَايَةِ: فَالْقَوَدُ عَلَى الْمَجْنُونِ، أَوْ الدِّيَةُ فِي مَالِهِ، وَلَا مُفَادَاةَ هُنَالِكَ؟ ؛ وَذَلِكَ لِأَنَّ الْقَوَدَ قَدْ وَجَبَ عَلَيْهِ حِينَ جَنَى، وَحُكْمُ تِلْكَ الْجِنَايَةِ لَازِمٌ لَهُ، وَقَدْ يَسْقُطُ عَنْهُ بِذَهَابِ عَقْلِهِ، إذْ لَمْ يُوجِبْ ذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ - وَكَذَلِكَ يُقَامُ عَلَيْهِ فِي جُنُونِهِ حَدٌّ لَزِمَهُ فِي حَالِ عَقْلِهِ، وَلَا يُقَامُ عَلَيْهِ فِي حَالِ عَقْلِهِ كُلُّ حَدٍّ كَانَ مِنْهُ فِي حَالِ جُنُونِهِ، بِلَا خِلَافٍ مِنْ الْأُمَّةِ، وَالسَّكْرَانُ مَجْنُونٌ؟ .

[مَسْأَلَةٌ كَسْرُ عَظْمِ الْمَيِّتِ]

قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا الْقَعْنَبِيُّ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - هُوَ الدَّرَاوَرْدِيُّ - عَنْ سَعْدٍ - هُوَ ابْنُ سَعِيدٍ - عَنْ عَمْرَةَ بِنْتِ عَبْدِ الرَّحْمَنِ عَنْ عَائِشَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «كَسْرُ عَظْمِ الْمَيِّتِ كَكَسْرِهِ حَيًّا» .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا لَا يُسْنَدُ إلَّا مِنْ طَرِيقِ سَعْدِ بْنِ سَعِيدٍ الْأَنْصَارِيِّ أَخِي يَحْيَى بْنِ سَعِيدٍ - وَهُمْ ثَلَاثَةُ إخْوَةٍ: يَحْيَى بْنُ سَعِيدٍ إمَامٌ ثِقَةٌ، وَعَبْدُ رَبِّهِ بْنُ سَعِيدٍ لَا بَأْسَ بِهِ وَلَيْسَ بِالْمُنَالِكَ فِي الْإِمَامَةِ، وَسَعْدُ بْنُ سَعِيدٍ وَهُوَ ضَعِيفٌ جِدًّا لَا يُحْتَجُّ بِهِ -

to depend upon this ḥadīth. Even if it were authentic, we would only apply it to the specific case of bone-breaking. As for those who claim this pertains to prohibition, such an assertion would constitute a baseless claim without evidence and an arbitrary specification without proof.

لَا خِلَافَ فِي ذَلِكَ، فَبَطَلَ أَنْ يَتَعَلَّقَ بِهَذَا الْحَدِيثِ، وَلَوْ صَحَّ لَقُلْنَا بِهِ فِي كَسْرِ الْعَظْمِ خَاصَّةً، وَلَمَّا كَانَ لِقَوْلِ مَنْ قَالَ: إنَّ هَذَا فِي الْحُرْمَةِ مَعْنًى؛ لِأَنَّهُ كَانَ يَكُونُ دَعْوَى بِلَا دَلِيلٍ، وَتَخْصِيصًا بِلَا بُرْهَانٍ.

L39125 Abū Muḥammad—may God have mercy on him—said: Whoever injures a deceased person, breaks his bone, or burns him bears no liability for that. As for killing, there is no doubt about it, because it does not constitute killing. As for injury and bone-breaking, if disagreement were found regarding it, retaliation would be obligatory, as it is a transgression. If the consensus is validated that there is no retaliation for such acts, it becomes obligatory to adhere to the consensus. Otherwise, the Almighty has said, "And for wounds is retaliation" [Al-Mā'idah 45], for in this case, there is both a wound and a perpetrator.[10]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَمَنْ جَرَحَ مَيِّتًا، أَوْ كَسَرَ عَظْمَهُ، أَوْ أَحْرَقَهُ، فَلَا شَيْءَ عَلَيْهِ فِي ذَلِكَ - أَمَّا الْقَتْلُ فَلَا شَكَّ فِيهِ، لِأَنَّهُ لَيْسَ قَاتِلًا - وَأَمَّا الْجُرْحُ وَالْكَسْرُ، فَلَوْ وُجِدَ فِيهِ خِلَافٌ لَوَجَبَ الْقِصَاصُ، لِأَنَّهُ عُدْوَانٌ - وَإِنْ صَحَّ الْإِجْمَاعُ فِي أَنْ لَا قَوَدَ فِي ذَلِكَ وَجَبَ الْوُقُوفُ عِنْدَ الْإِجْمَاعِ، وَإِلَّا فَقَدْ قَالَ تَعَالَى {وَالْجُرُوحَ قِصَاصٌ} [المائدة: ٤٥] وَهَذَا جُرْحٌ وَجَارِحٌ.

L39126 And He—Exalted is He—said: *The recompense for an evil deed is an evil like it* [Ash-Shura 42:40], and He—Exalted is He—said: *So whoever transgresses against you, respond against him in the same manner as he transgressed against you* [Al-Baqarah 2:194]. This action toward the deceased is an evil deed and a transgression; thus, qisas is obligatory in this case unless there is a scholarly consensus preventing it.[11]

وَقَالَ تَعَالَى: {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا} [الشورى: ٤٠] ، وَقَالَ تَعَالَى {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] ، وَهَذَا الْفِعْلُ بِالْمَيِّتِ سَيِّئَةٌ وَاعْتِدَاءٌ، فَالْقِصَاصُ وَاجِبٌ فِي ذَلِكَ إلَّا أَنْ يَمْنَعَ مِنْهُ إجْمَاعٌ.

L39127 If it is said: Indeed, Allah the Exalted has stated, {And for wounds there is retaliation; so whoever forgoes it as a charitable act, it shall be an atonement for him} [Al-Mā'idah: 45], and He the Exalted has said, {The recompense for an evil act is an evil act of the same kind; but whoever pardons and seeks reconciliation, his reward is upon Allah} [Ash-Shūrā: 40]. Does this not indicate that all of this is for the living person?[12]

فَإِنْ قِيلَ: إنَّ اللَّهَ تَعَالَى قَالَ {وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] وَقَالَ تَعَالَى {وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] فَدَلَّ هَذَا عَلَى أَنَّ ذَلِكَ كُلَّهُ لِلْحَيِّ؟

L39128–39129 We said—and with Allah, the Exalted, is success—this offers you no valid argument for two reasons: First: The injunction regarding legal retribution for transgression is general in scope. However, some of the victims may be

قُلْنَا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: هَذَا لَا حُجَّةَ لَكُمْ فِيهِ لِوَجْهَيْنِ: أَحَدُهُمَا -: أَنَّ الْأَمْرَ بِالْقِصَاصِ وَالِاعْتِدَاءِ عُمُومٌ، ثُمَّ قَدْ يَخُصُّ بِالْعَفْوِ وَالصَّدَقَةِ بَعْضُ الْمُعْتَدَى عَلَيْهِمْ دُونَ بَعْضٍ.

[10] **Qur'an references (L39125):** Qur'an 5:45 (Al-Ma'idah).
[11] **Qur'an references (L39126):** Qur'an 42:40 (Ash-Shuraa); Qur'an 2:194 (Al-Baqarah).
[12] **Qur'an references (L39127):** Qur'an 5:45 (Al-Ma'idah); Qur'an 42:40 (Ash-Shuraa).

specified [for exclusion from retribution] through pardon or charity, while others are not.

L39130 The second consideration is that He, the Exalted, did not preclude—through His truthful decree {Whoever offers it as blood money, it will be an expiation for him} [5:45] or His truthful decree {Whoever pardons and reconciles, his reward is with Allah} [42:40]—that retaliation remains obligatory for those incapable of pardoning or offering blood money, such as the insane or the minor. Thus, the deceased is included within this general ruling.[13]

L39131 The third perspective is that Allah the Exalted said: *"So whoever pardons and sets right"* (42:40), and said: *"So whoever gives it as charity"* (5:45). He did not state, "If the wronged party alone gives charity," nor say, "Whoever pardens from those exclusively entitled to pardon," but rather left the matter general. Thus, the pardon and charity of the wronged party are permissible if they are among those entitled to pardon and give charity. Is the guardian's pardon permissible when the victim's right to pardon has ceased and there is no hope for it? Most contemporary opponents advocate hand amputation for stealing a deceased's shroud—a ruling we endorse—and for slandering a deceased person.[14]

L39132 Among the people are those who hold the view of imposing the prescribed punishment (ḥadd) upon one who fornicates with a corpse. Whoever differentiates between their assessment of such acts and the retaliation (qiṣāṣ) for wounds or fractures—this is not analogical reasoning (qiyās), since none of these matters serve as foundational bases for others. Rather, all of it constitutes a single category: whoever performs an act for which the scriptural text stipulates a specific legal ruling—then, is it obligatory to enforce that ruling upon whoever commits such an act?

L39133 Abū Muḥammad—may Allāh have mercy on him—said: This opinion is strengthened by rational analysis, and the Qur'ān and authentic Sunnah testify to its validity. Here, we know of no statement from any Companion—

وَالْوَجْهُ الثَّانِي - أَنَّهُ تَعَالَى لَمْ يَمْنَعْ بِقَوْلِهِ تَعَالَى الصَّادِقِ {فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ} [المائدة: ٤٥] وَلَا بِقَوْلِهِ الصَّادِقِ {فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ} [الشورى: ٤٠] مِنْ أَنْ يَكُونَ الْقِصَاصُ وَاجِبًا لِمَنْ لَا عَفْوَ لَهُ وَلَا صَدَقَةَ، كَالْمَجْنُونِ وَالصَّبِيِّ، فَيَكُونُ الْمَيِّتُ دَاخِلًا فِي هَذَا الْعُمُومِ.

وَوَجْهٌ ثَالِثٌ - وَهُوَ: أَنَّ اللَّهَ تَعَالَى قَالَ {فَمَنْ عَفَا وَأَصْلَحَ} [الشورى: ٤٠] وَقَالَ تَعَالَى {فَمَنْ تَصَدَّقَ بِهِ} [المائدة: ٤٥] وَلَمْ يَقُلْ تَعَالَى فَإِنْ تَصَدَّقَ الْمَجْرُوحُ وَحْدَهُ، وَلَا قَالَ فَمَنْ عَفَا مِنْ الَّذِينَ الْعَفْوُ إلَيْهِمْ خَاصَّةً، وَلَكِنْ أَجْمَلَ - عَزَّ وَجَلَّ - الْأَمْرَ، فَجَائِزٌ عَفْوُ الْمَجْنِيِّ عَلَيْهِ وَصَدَقَتُهُ إذَا كَانَ مِمَّنْ لَهُ عَفْوٌ وَصَدَقَةٌ، وَجَائِزٌ عَفْوُ الْوَلِيِّ إذَا بَطَلَ أَنْ يَكُونَ لِلْمَجْنِيِّ عَلَيْهِ عَفْوٌ وَيَئِسَ مِنْ ذَلِكَ؟ وَأَكْثَرُ الْحَاضِرِينَ مِنْ خُصُومِنَا يَرَوْنَ الْقَطْعَ عَلَى مَنْ سَرَقَ مِنْ مَيِّتٍ كَفَنَهُ - وَبِهِ نَأْخُذُ، وَعَلَى مَنْ قَذَفَ مَيِّتًا.

وَمِنْ النَّاسِ مَنْ يَرَى الْحَدَّ عَلَى مَنْ زَنَى بِمَيِّتَةٍ، فَإِنَّ مَنْ فَرَّقَ بَيْنَ مَا رَأَوْهُ مِنْ ذَلِكَ وَبَيْنَ الْقَوَدِ لَهُ مِنْ الْجُرْحِ وَالْكَسْرِ - وَلَيْسَ هَذَا قِيَاسًا؛ لِأَنَّهُ لَيْسَ بَعْضُ ذَلِكَ أَصْلًا لِبَعْضٍ، بَلْ كُلُّهُ بَابٌ وَاحِدٌ، مَنْ عَمِلَ عَمَلًا جَاءَ النَّصُّ بِإِيجَابِ حُكْمٍ عَلَى عَامِلِ ذَلِكَ الْعَمَلِ، فَوَاجِبٌ إنْفَاذُ ذَلِكَ الْحُكْمِ عَلَى مَنْ عَمِلَ ذَلِكَ الْعَمَلَ؟ .

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا قَوْلٌ يُؤَيِّدُهُ النَّظَرُ، وَيَشْهَدُ لَهُ الْقُرْآنُ وَالسُّنَنُ بِالصِّحَّةِ، وَمَا نَعْلَمُ هَاهُنَا قَوْلًا لِأَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - يَمْنَعُ مِنْهُ، فَكَيْفَ أَنْ يَصِحَّ الْإِجْمَاعُ مِنْ جَمِيعِهِمْ عَلَى الْمَنْعِ مِنْهُ؟ هَذَا أَمْرٌ لَا سَبِيلَ إلَى وُجُودِهِ أَبَدًا، وَلَوْ

[13] **Qur'an references (L39130):** Qur'an 5:45 (Al-Ma'idah); Qur'an 42:40 (Ash-Shuraa).
[14] **Qur'an references (L39131):** Qur'an 42:40 (Ash-Shuraa); Qur'an 5:45 (Al-Ma'idah).

may Allāh be pleased with them—that prohibits it. How then could a consensus from all of them to prohibit it be valid? This is a matter that can never exist. Were it true, it would undoubtedly exist without doubt and not remain concealed. Therefore, it is obligatory to adhere to what the Qur'ān and Sunnah have mandated—even if no one is known to have held that opinion—provided no confirmed consensus exists to specify or abrogate the text. And success comes solely from Allāh, the Most High.

كَانَ حَقًّا لَوُجِدَ بِلَا شَكٍّ، وَلَمَا اخْتَفَى، فَالْوَاجِبُ الْمَصِيرُ إِلَى مَا أَوْجَبَهُ الْقُرْآنُ وَالسُّنَّةُ - وَإِنْ لَمْ يُعْلَمْ قَائِلٌ بِذَلِكَ - إِذَا لَمْ يَصِحَّ إِجْمَاعٌ مُتَيَقَّنٌ بِتَخْصِيصِ النَّصِّ، أَوْ بِنَسْخِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Agency in Qisas.

L39134

L39135–39136 Abū Muḥammad—may Allah have mercy on him—said: The legal guardian's command to seek qisas on his behalf is permissible, supported by proofs. The first of these is the statement of Allah, the Most High: "And cooperate in righteousness and piety" [Al-Mā'idah 5:2]. The qisas is righteousness and piety; thus, cooperating in it is obligatory.[15]

[مَسْأَلَةُ الْوَكَالَةُ فِي الْقَوَدِ]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمْرُ الْوَلِيِّ بِأَنْ يُؤْخَذَ لَهُ الْقَوَدُ جَائِزٌ لِبَرَاهِينَ: أَوَّلُهَا: قَوْلُ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى} [المائدة: ٢] وَالْقَوَدُ: بِرٌّ وَتَقْوَى، فَالتَّعَاوُنُ فِيهِ وَاجِبٌ.

L39137 The second is what has been authentically established from the Messenger of Allah (peace be upon him) regarding his command to enforce *qisas* against the Jew who smashed the young girl's head with a stone. His ruling (peace be upon him) constituted a universal ruling applicable to all.

وَثَانِيهَا: مَا قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَمْرِهِ بِالْقَوَدِ مِنْ الْيَهُودِيِّ الَّذِي رَضَخَ رَأْسَ الْجَارِيَةِ بِالْحَجَرِ، فَكَانَ أَمْرُهُ - عَلَيْهِ السَّلَامُ - عُمُومًا لِكُلِّ مَنْ حَضَرَ.

L39138 And the third [point]: The consensus of the Ummah holds that if the ruler obligates for himself the authority a guardian holds in matters of killing, he orders someone to kill. The ruler is one of the guardians, so it is impermissible to restrict this authority to him alone, excluding the other guardians.

وَثَالِثُهَا: إِجْمَاعُ الْأُمَّةِ أَنَّ السُّلْطَانَ إِذَا أَوْجَبَ لَهُ مَا لِوَلِيٍّ مِنْ الْقَتْلِ فَإِنَّهُ يَأْمُرُ مَنْ يَقْتُلُ، وَالسُّلْطَانُ وَلِيٌّ مِنْ الْأَوْلِيَاءِ، فَلَا يَجُوزُ تَخْصِيصُهُ بِذَلِكَ دُونَ سَائِرِ الْأَوْلِيَاءِ.

L39139 Abū Muḥammad—may Allāh have mercy on him—said: Since this is the case, it is permissible if the legal guardian appoints someone to exact retribution on his behalf and subsequently becomes absent, allowing the appointed person to carry it out during the guardian's absence. This is because retribution has been made obligatory by the certain command of Allāh, the Exalted, and the command of His Messenger—may Allāh's blessings and peace be upon him—and the legal guardian has not stipulated any condition regarding absence in this matter. *"And your Lord is never forgetful"* (19:64).[16]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذَا كَانَ ذَلِكَ كَذَلِكَ، فَجَائِزٌ، إِذَا أَمَرَ الْمُولَى مَنْ يَأْخُذُ لَهُ الْقَوَدَ أَنْ يَغِيبَ فَيَسْتَقِيدَ الْمَأْمُورُ، وَهُوَ غَائِبٌ، إِذْ قَدْ وَجَبَ الْقَوَدُ بِيَقِينِ أَمْرِ اللَّهِ تَعَالَى، وَأَمْرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَمْ يَشْتَرِطْ الْوَلِيُّ فِي ذَلِكَ مِنْ مَغِيبٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

[15] **Qur'an references (L39136):** Qur'an 5:2 (Al-Ma'idah).

فَإِنْ غَابَ الْوَلِيُّ ثُمَّ عَفَا، فَلَيْسَ عَفْوُهُ بِشَيْءٍ، وَلَا شَيْءَ عَلَى الْقَاتِلِ - وَلَا يَصِحُّ عَفْوُ الْوَلِيِّ إِلَّا بِأَنْ يَبْلُغَ ذَلِكَ الْمَأْمُورَ بِالْقَوَدِ وَيَصِحَّ عِنْدَهُ.

L39140 If the guardian is absent and then pardons, his pardon is invalid, and the killer incurs no liability. The guardian's pardon is valid only if it reaches the one appointed to execute retaliation and is acknowledged by him.

بُرْهَانُ ذَلِكَ: أَنَّ اللَّهَ تَعَالَى قَدْ أَبَاحَ لِلْمَأْمُورِ بِأَخْذِ الْقَوَدِ، وَأَنْ يَأْتَمِرَ لِلْآمِرِ لَهُ بِذَلِكَ، وَأَبَاحَ لَهُ دَمَ الْمُسْتَقَادِ مِنْهُ، وَأَعْضَاءَهُ بِيَقِينٍ لَا شَكَّ بِهِ، فَإِذَا عَفَا الْوَلِيُّ فِي غَيْرِ عِلْمِ الْمَأْمُورِ بِالْقَوَدِ فَهُوَ مُضَارٌّ، وَالْمُضَارُّ مُتَعَدٍّ، وَالْمُتَعَدِّي ظَالِمٌ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ» فَلَا حَقَّ لِذَلِكَ الْعَفْوِ الَّذِي هُوَ مُضَارَّةٌ مَحْضَةٌ، وَهُوَ غَيْرُ الْعَفْوِ الَّذِي حَضَّ اللَّهُ تَعَالَى عَلَيْهِ وَرَسُولُهُ - عَلَيْهِ السَّلَامُ -؛ لِأَنَّ الْعَفْوَ الَّذِي حَضَّ اللَّهُ تَعَالَى عَلَيْهِ وَرَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَهُوَ طَاعَةٌ، وَعَفْوُ الْمُضَارَّةِ مَعْصِيَةٌ، وَالْمَعْصِيَةُ غَيْرُ الطَّاعَةِ، وَهَذَا الْعَفْوُ بَعْدَ الْأَمْرِ: هُوَ عَفْوٌ بِخِلَافِ الْعَفْوِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ نَادِبًا إِلَيْهِ، وَإِذْ هُوَ غَيْرُهُ، فَهُوَ بَاطِلٌ؛ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» فَهُوَ غَيْرُ لَازِمٍ لِذَلِكَ الْعَافِي، وَهُوَ بَاقٍ عَلَى قَوَدِهِ.

L39141 The proof for this is that Allah the Exalted has permitted the one commanded to carry out retaliation to obey the one ordering him to do so. He has made lawful for him the blood and limbs of the person subject to retaliation with certainty free from doubt. If the legal guardian pardons without the awareness of the one commanded to execute retaliation, this constitutes detriment. The one causing detriment is a transgressor, and the transgressor is unjust. Allah's Messenger—peace and blessings be upon him—said: "There is no right for an unjust claim." Therefore, such a pardon, being purely detrimental, has no validity, being distinct from the pardon Allah the Exalted and His Messenger—peace and blessings be upon him—encouraged. For the pardon they encouraged constitutes obedience, while detrimental pardon constitutes disobedience. Disobedience is not obedience. This pardon after being commanded contradicts the recommended pardon Allah the Exalted has urged, and being distinct from it, becomes invalid according to the saying of Allah's Messenger—peace and blessings be upon him: "Whoever performs an act not in accordance with our injunction, it is rejected." Thus, such pardon does not bind the pardoning guardian, and the right to retaliation remains in effect.[17]

فَلَوْ بَعَثَ رَسُولًا إِلَى الْمَأْمُورِ بِالْقَوَدِ فَلَا حُكْمَ لَهُ إِلَّا حَتَّى يَبْلُغَ إِلَيْهِ، فَحِينَئِذٍ يَصِحُّ وَيَلْزَمُ الْعَافِيَ، فَإِنْ قَتَلَهُ الْمَأْمُورُ بِالْقَوَدِ بَعْدَ صِحَّةِ الْخَبَرِ عِنْدَهُ بِعَفْوِ الْوَلِيِّ فَهُوَ قَاتِلُ عَمْدٍ، أَوْ خَائِنُ عَهْدٍ، وَعَلَيْهِ الْقَوَدُ، وَكَذَلِكَ لَوْ جُنَّ الْآمِرُ وَلَا فَرْقَ، فَالْأَخْذُ بِالْقَوَدِ وَاجِبٌ، كَمَا أَمَرَ بِهِ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L39142–39144 If he were to send a messenger to the person commanded with qisas (retaliation), the ruling does not apply to him until the message reaches him. Only then does it become valid. The pardoning guardian remains obligated. If the one commanded to enforce qisas kills him after confirming the validity of the report regarding the guardian's pardon to his satisfaction, he is deemed an intentional killer or a breaker of the covenant, and qisas becomes incumbent upon him. The ruling applies equally if the commanding authority becomes

[16] **Qur'an references (L39139):** Qur'an 19:64 (Maryam).

[17] **Hadith references (L39141):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

insane, with no distinction. Thus, enforcing qisas is obligatory, as He has decreed—and with Allah, the Exalted, lies all success.

L39145 **A juristic issue concerning the severing of the penis of a hermaphrodite of indeterminate sex and his two ovaries.**

L39146 Issue 2138: If someone severs the male genital and two female genital parts of an ambiguous hermaphrodite of uncertain gender, it makes no difference whether the person declares "I am a woman" or declares "I am a man": retaliation in kind is obligatory, as these are organs termed a male genital and two female parts. Similarly, if a woman severs both of her labia, there is no difference.

L39147 If someone has an extra tooth or an extra finger and another cuts it off, retaliation is exacted by removing the tooth closest to that tooth and the finger closest to that finger from the offender. This is because it is a tooth and a finger, with no distinction between a case where the defendant is left with four fingers while the claimant retains five fingers, and a case where the defendant has only the index finger remaining—the index finger of a person with otherwise intact fingers. There is no disagreement that retaliation applies in such cases, even if the claimant ends up with four fingers while the defendant is left with no finger. The same ruling applies to teeth without distinction. And success comes from Allah, the Exalted.

L39148 **A legal case in which the guardians competed to carry out the execution of the killer of their kinsman.**

L39149 2139 - Issue: Abu Muhammad—may Allah have mercy on him—said: When guardians dispute over undertaking the execution of their relative's murderer, it is said to them: If you agree upon one among yourselves or an outsider, that is permissible for you. Otherwise, we cast lots between you. Whichever of you draws the lot shall undertake the qisas—and this is the opinion of Al-Shafi'i, may Allah have mercy on him. Abu Muhammad—may Allah have mercy on him—said: The proof for this is that none of them holds greater entitlement than another, nor can two jointly undertake the qawad. Since one of them or a third party must necessarily perform it by their autho-

[مَسْأَلَةٌ قَطَعَ ذَكَرَ خُنْثَى مُشْكِلٍ وَأُنْثَيَيْهِ]

٢١٣٨ - مَسْأَلَةٌ: مَنْ قَطَعَ ذَكَرَ خُنْثَى مُشْكِلٍ وَأُنْثَيَيْهِ؟ فَسَوَاءٌ قَالَ: أَنَا امْرَأَةٌ، أَوْ قَالَ: أَنَا ذَكَرٌ: الْقَوَدُ وَاجِبٌ؛ لِأَنَّهُ عُضْوٌ يُسَمَّى ذَكَرًا وَأُنْثَيَيْنِ - وَكَذَلِكَ لَوْ قَطَعَتْ امْرَأَةٌ شَفْرَيْهِ وَلَا فَرْقَ.

وَمَنْ كَانَتْ لَهُ سِنٌّ زَائِدَةٌ أَوْ إِصْبَعٌ زَائِدَةٌ فَقَطَعَهَا قَاطِعٌ اُقْتُصَّ لَهُ مِنْهُ، مِنْ أَقْرَبِ سِنٍّ إِلَى تِلْكَ السِّنِّ، وَأَقْرَبِ إِصْبَعٍ إِلَى تِلْكَ الْإِصْبَعِ؛ لِأَنَّهَا سِنٌّ وَأُصْبُعٌ وَلَا فَرْقَ بَيْنَ أَنْ يَبْقَى الْمُقْتَصُّ مِنْهُ لَيْسَ لَهُ إِلَّا أَرْبَعُ أَصَابِعَ، وَيَبْقَى لِمُقْتَصٍّ لَهُ خَمْسُ أَصَابِعَ، وَبَيْنَ أَنْ يُقْطَعَ مَنْ لَيْسَتْ لَهُ إِلَّا السَّبَّابَةُ وَحْدَهَا - سَبَّابَةُ سَالِمِ الْأَصَابِعِ؟ لَا خِلَافَ فِي أَنَّ الْقِصَاصَ فِي ذَلِكَ، وَيَبْقَى الْمُقْتَصُّ ذَا أَرْبَعِ أَصَابِعَ وَيَبْقَى الْمُقْتَصُّ مِنْهُ لَا أُصْبُعَ لَهُ، وَهَكَذَا الْقَوْلُ فِي الْأَسْنَانِ وَلَا فَرْقَ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ تَشَاحَّ الْأَوْلِيَاءُ فِي تَوَلِّي قَتْلِ قَاتِلِ وَلِيِّهِمْ]

٢١٣٩ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَإِذَا تَشَاحَّ الْأَوْلِيَاءُ فِي تَوَلِّي قَتْلِ قَاتِلِ وَلِيِّهِمْ؟ قِيلَ لَهُمْ: إنْ اتَّفَقْتُمْ عَلَى أَحَدِكُمْ أَوْ عَلَى أَجْنَبِيٍّ، فَذَلِكَ لَكُمْ وَإِلَّا أَقْرَعْنَا بَيْنَكُمْ، فَأَيُّكُمْ خَرَجَتْ قُرْعَتُهُ تَوَلَّى الْقِصَاصَ - وَهَذَا قَوْلُ الشَّافِعِيِّ - رَحِمَهُ اللَّهُ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: بُرْهَانُ هَذَا: أَنَّهُ لَيْسَ بَعْضُهُمْ أَوْلَى مِنْ بَعْضٍ، وَلَا يُمْكِنُ أَنْ يَتَوَلَّى الْقَوَدَ اثْنَانِ مَعًا، فَإِذْ لَا بُدَّ مِنْ أَحَدِهِمَا، أَوْ مِنْ غَيْرِهِمَا بِأَمْرِهِمَا - وَلَا سَبِيلَ إِلَى ثَالِثٍ، فَأَمْرُ

غَيْرِهِمَا بِالْقَوَدِ إِسْقَاطٌ لِحَقِّهِمَا مَعًا فِي تَوَلِّي ذَلِكَ الْحُكْمِ، وَالْحُكْمُ هَاهُنَا بِالْقُرْعَةِ إِسْقَاطٌ لِحَقِّ أَحَدِهِمَا، وَإِبْقَاءٌ لِحَقِّ الْآخَرِ - وَلَا يَجُوزُ إِسْقَاطُ حَقِّ ذِي حَقٍّ إِلَّا لِضَرُورَةٍ مَانِعَةٍ لَا سَبِيلَ مَعَهَا إِلَى تَوْفِيَةِ الْحَقِّ، فَإِذَا كَانَ ذَلِكَ سَقَطَ الْحَقُّ؛ لِقَوْلِ اللَّهِ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

rization—with no third alternative—entrusting someone else to execute the ruling would waive both guardians' right to undertake this judgment. Resorting to lot-casting here waives one guardian's right while preserving the other's. It is impermissible to nullify a rightful claimant's entitlement except under constraining necessity that prevents fulfilling the right. When such necessity arises, the right is waived, in accordance with Allah's saying: "He has detailed for you what He has forbidden to you, except what you are compelled to" (Quran 6:119).[18]

وَنَحْنُ مُحَرَّمٌ عَلَيْنَا مَنْعُهُمَا مِنْ حَقِّهِمَا، وَنَحْنُ مُضْطَرُّونَ إِلَى إِسْقَاطِ حَقِّ أَحَدِهِمَا، إِذْ لَا سَبِيلَ إِلَى غَيْرِ ذَلِكَ، وَلَسْنَا مُضْطَرِّينَ إِلَى إِسْقَاطِ حَقِّهِمَا جَمِيعًا فَلَا يَجُوزُ لَنَا مَا لَمْ نَضْطَرَّ إِلَيْهِ فَقَدْ بَطَلَ أَنْ نَأْمُرَ غَيْرَهُمَا بِغَيْرِ رِضَاهُمَا، وَلَا يَجُوزُ أَنْ نَقْصِدَ إِلَى أَحَدِهِمَا فَنُسْقِطَ حَقَّهُ هَكَذَا مُطَارَفَةً فَيَكُونُ جَوْرًا وَمُحَابَاةً، فَوَجَبَتْ الْقُرْعَةُ وَلَا بُدَّ؛ لِأَنَّ الضَّرُورَةَ دَفَعَتْ إِلَيْهَا وَلَا يَحِلُّ إِيقَافُ الْأَمْرِ حَتَّى يَتَّفِقَا؛ لِأَنَّ فِي ذَلِكَ مَنْعَهُمَا جَمِيعًا مِنْ حَقِّهِمَا، وَهَذَا لَا يَجُوزُ، بِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L39150–39152 It is forbidden for us to withhold their rights from them, and we are compelled to relinquish the right of one of them, as no alternative exists. We are not compelled to relinquish the rights of both entirely. Therefore, we may not act without compulsion, for it is rendered invalid to direct others contrary to their consent, nor is it permissible for us to intend. To alternately forfeit the right of one of them in this manner would result in oppression and bias, thus necessitating the obligatory use of drawing lots without exception, as compelled by unavoidable need. It is impermissible to suspend the matter until mutual agreement is reached, for this would deprive both parties of their rightful claims—a practice deemed unlawful. Success is granted by Allah, the Exalted.

[مَسْأَلَةٌ أَخَافَ إِنْسَانًا فَقَطَعَ سَاقَهُ وَمَنْكِبَهُ وَأَنْفَهُ وَقَتَلَهُ]

L39153

A juristic issue: A person, fearing another, severed his leg, shoulder, and nose, then killed him.

٢١٤٠ - مَسْأَلَةٌ: مَنْ أَخَافَ إِنْسَانًا فَقَطَعَ سَاقَهُ وَمَنْكِبَهُ وَأَنْفَهُ وَقَتَلَهُ، فَلِوَلِيِّ الْمَقْتُولِ أَنْ يَفْعَلَ بِهِ كُلَّ ذَلِكَ، وَيَقْتُلَهُ - وَلَهُ أَنْ يَقْتُلَهُ دُونَ أَنْ يَفْعَلَ بِهِ شَيْئًا مِنْ ذَلِكَ، وَلَهُ أَنْ يَفْعَلَ بِهِ كُلَّ ذَلِكَ أَوْ بَعْضَهُ، وَلَا يَقْتُلَهُ، لَكِنْ يَعْفُوَ عَنْهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: بُرْهَانُ ذَلِكَ: أَنَّ كُلَّ هَذِهِ الْأَفْعَالِ قَدْ وَجَبَ لَهُ أَنْ يَفْعَلَهَا قِصَاصًا عَلَى مَا قَدَّمْنَا قَبْلُ، وَهَذَا أَيْضًا مَنْدُوبٌ إِلَى الْعَفْوِ عَنْ كُلِّ ذَلِكَ وَعَنْ بَعْضِهِ، فَأَيَّ حَقِّهِ فَعَلَ فَذَلِكَ لَهُ، وَأَيَّ حَقِّهِ تَرَكَ فَذَلِكَ لَهُ.

L39154 2140. Issue: If someone frightened a person, then cut his leg, shoulder, and nose, and killed him, the legal guardian of the slain may inflict all these injuries upon the perpetrator and then kill him. He may kill him without inflicting any of those injuries, or inflict all or some of those injuries without killing him—or may he pardon him? Abū Muḥammad—may Allah have mercy on him—said: The proof for this is that each of these acts is obligated for him to enact as retribution based on what we have presented earlier. This is also recommended to pardon—whether all or some of these acts. Therefore, whichever entitlement he acts upon is permissible for him, and whichever entitlement he relinquishes is likewise permissible for him.

[18] **Qur'an references (L39149):** Qur'an 6:119 (Al-An'am).

وَقَالَ الشَّافِعِيُّ: لَهُ أَنْ يَقْطَعَ ذِرَاعَهُ وَيُخِيفَهُ عَلَى أَنْ يَقْتُلَهُ، وَأَمَّا عَلَى أَنْ لَا يَقْتُلَهُ فَلَا.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا خَطَأٌ؛ لِأَنَّهُ تَخْصِيصٌ لَا بُرْهَانَ لَهُ بِهِ.

فَإِنْ قَالَ: فِي ذَلِكَ تَعْذِيبٌ لَهُ؟ قُلْنَا: نَعَمْ، فَكَانَ مَاذَا؟ وَإِذَا أَبَاحَ لَهُ تَعْذِيبَهُ فَأَتَى بِبَعْضِ مَا أُبِيحَ لَهُ وَعَفَا عَنْ الْبَعْضِ، فَقَدْ أَحْسَنَ فِي كُلِّ ذَلِكَ، وَلَمْ يَتَعَدَّ - وَمَا وَجَدْنَا اللَّهَ تَعَالَى قَطُّ أَلْزَمَ اسْتِيفَاءَ الْحَقِّ كُلِّهِ وَمَنَعَ مِنْ الْعَفْوِ عَنْ بَعْضِهِ.

بَلْ قَدْ صَحَّ النَّصُّ بِخِلَافِ قَوْلِ الشَّافِعِيِّ جُمْلَةً وَهُوَ «فِعْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْعُرَنِيِّينَ إذْ قَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَسَمَلَ أَعْيُنَهُمْ قِصَاصًا بِمَا فَعَلُوا بِالرُّعَاةِ وَتَرَكَهُمْ بِالْحَرَّةِ يَسْتَسْقُونَ فَلَا يُسْقَوْنَ حَتَّى مَاتُوا» .

وَقَدْ قَالَ اللَّهُ تَعَالَى {لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ} [الأحزاب: ٢١] وَقَدْ ذَكَرْنَا هَذَا الْحَدِيثَ بِإِسْنَادِهِ فِيمَا سَلَفَ مِنْ كِتَابِنَا هَذَا فَأَغْنَى عَنْ تَرْدَادِهِ وَأَبْطَلْنَا قَوْلَ مَنْ قَالَ كَاذِبًا: إنَّ هَذَا كَانَ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إذْ كَانَتْ الْمُثْلَةُ مُبَاحَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ قَطَعَ أُصْبُعَ آخَرَ عَمْدًا فَسَأَلَ الْقَوَدَ]

٢١٤١ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَضِيَ اللَّهُ عَنْهُ -: مَنْ قَطَعَ أُصْبُعَ آخَرَ عَمْدًا فَسَأَلَ الْقَوَدَ؟ أَقَدْنَا لَهُ مِنْ حِينِهِ عَلَى مَا ذَكَرْنَا قَبْلُ فَإِنْ تَآكَلَتْ الْيَدُ فَذَهَبَتْ وَبَرِئَ، فَلَهُ الْقَوَدُ مِنْ الْيَدِ؛ لِأَنَّهَا تَلِفَتْ بِعُدْوَانٍ وَظُلْمٍ.

L39155 Al-Shafi'i said: He may cut off his arm and intimidate him to compel him to kill, but as for compelling him not to kill, it is not permissible.

L39156 Abū Muḥammad—may Allāh have mercy on him—said: This is an error because it entails a specification without any proof to support it.

L39157 If it is said: "In that there is punishment for him?" We say: "Yes, so what?" And if God has permitted the person to punish him and he carries out some of what was permitted to him while forgoing the rest, he has indeed done well in all that and has not transgressed. We have never found God Almighty to ever enforce the full claiming of all rights or prohibit forgoing some of them.

L39158 Rather, the text has been authenticated contrary to al-Shāfiʿī's opinion in its entirety, and it is: "The action of the Messenger of Allah (peace be upon him) toward the ʿUrayniyyūn when he cut off their hands and feet, gouged their eyes as legal retaliation for what they did to the shepherds, and left them in Ḥarrah seeking water but were denied it until they died."

L39159 Allah the Exalted has said, "There has certainly been for you in the Messenger of Allah an excellent example" [Al-Ahzab 33:21]. We have already cited this Hadith with its chain of transmission earlier in our book, rendering its repetition unnecessary. We have refuted the claim of those who falsely assert: "This action of the Messenger of Allah (may Allah bless him and grant him peace) occurred **because** corpse mutilation was permissible"—and success is attained only through Allah, the Exalted.[19]

L39160 **A case: He intentionally cut another person's finger and demanded qisas.**

L39161–39163 Issue 2141: Abū Muḥammad—may Allāh be pleased with him—said: Whoever intentionally cut off another's finger and then asked... As for retaliation (qawad), we exacted it for him immediately according to what we previously stated. If the hand decays and is lost, and the injury heals, he is entitled to retaliation from the hand, for it was destroyed through wrongful aggression and injustice.

[19] **Qur'an references (L39159):** Qur'an 33:21 (Al-Ahzab).

L39164 Similarly, if he intentionally inflicts a wound exposing the bone upon him, resulting in the loss of both eyes, qisas is exacted from the perpetrator for the victim, corresponding to the wound and both eyes collectively. This principle applies universally—if the victim dies from these injuries, the perpetrator is subjected to retaliatory execution, as all consequences stem from a criminal act of aggression.

وَكَذَلِكَ لَوْ جَرَحَهُ مُوضِحَةً عَمْدًا فَذَهَبَتْ مِنْهَا عَيْنَاهُ اُقْتُصَّ لَهُ مِنْ الْمُوضِحَةِ وَمِنْ الْعَيْنَيْنِ مَعًا وَهَكَذَا فِي كُلِّ شَيْءٍ - فَلَوْ مَاتَ مِنْهَا قُتِلَ بِهِ؛ لِأَنَّ كُلَّ ذَلِكَ تَوَلَّدَ مِنْ جِنَايَةِ عُدْوَانٍ.

L39165 Al-Shafi'i said: "As for expediting retaliation for [injuries to] the finger and the exposed tooth? Yes. If the victim dies afterward, retaliation for the life is also obligatory."

وَقَالَ الشَّافِعِيُّ: أَمَّا تَعْجِيلُ الْقِصَاصِ مِنْ الْأُصْبُعِ وَالْمُوضِحَةِ؟ فَنَعَمْ، فَإِنْ مَاتَ بَعْدَ ذَلِكَ فَالْقَوَدُ فِي النَّفْسِ وَاجِبٌ أَيْضًا.

L39166 As for the loss of both eyes and a hand only, there is only diyah in such a case.

وَأَمَّا ذَهَابُ الْعَيْنَيْنِ وَالْيَدِ فَقَطْ فَإِنَّمَا فِي ذَلِكَ الدِّيَةُ فَقَطْ.

L39167 Abū Muḥammad—may Allāh have mercy on him—said: This is an error and a manifest contradiction. There is no distinction between what results from his offense—whether the loss of a life or the loss of a limb—for neither the text of the Qur'ān, nor a Sunnah, nor consensus, nor independent reasoning, nor analogy, nor the opinion of a Companion has differentiated between any aspect of this.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا خَطَأٌ وَمُنَاقَضَةٌ ظَاهِرَةٌ، وَلَا فَرْقَ بَيْنَ مَا تَوَلَّدَ عَنْ جِنَايَتِهِ مِنْ ذَهَابِ نَفْسٍ، أَوْ ذَهَابِ عُضْوٍ؟ إذْ لَمْ يُفَرِّقْ بَيْنَ شَيْءٍ مِنْ ذَلِكَ نَصُّ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ، وَلَا نَظَرٍ، وَلَا قِيَاسٍ، وَلَا قَوْلِ صَاحِبٍ.

L39168 If the victim amputates his own hand out of fear that the ulcer might spread, no liability falls upon the perpetrator, because the loss of the hand resulted from the victim's voluntary choice, not the perpetrator's act. Had he left it, it might have healed. If someone severs a finger segment containing two phalanxes, and each segment is severed at its base, two equivalent segments shall be amputated from his hand. If the severing occurs on the finger before the point where the two segments diverge, retaliation is limited to that exact spot, no further. No fixed compensation applies to the second segment, for Allah the Exalted says: *"So whoever transgresses against you, retaliate in kind proportionate to his transgression"* (2:194).[20]

فَلَوْ أَنَّ الْمَجْنِيَّ عَلَيْهِ قَطَعَ كَفَّ نَفْسِهِ، خَوْفَ سِرَايَةِ الْأَكَلَةِ فَلَا ضَمَانَ عَلَى الْجَانِي؛ لِأَنَّ ذَهَابَ الْيَدِ كَانَ بِاخْتِيَارِ قَاطِعِهَا، لَا مِنْ فِعْلِهِ، وَلَعَلَّهَا لَوْ تَرَكَهَا تَبْرَأُ - فَلَوْ قَطَعَ إنْسَانٌ أُنْمُلَةً لَهَا طَرَفَانِ، فَإِنْ قَطَعَ كُلَّ طَرَفٍ فِي أَصْلِهِ قُطِعَ مِنْ يَدِهِ أُنْمُلَتَانِ كَذَلِكَ، فَلَوْ قَطَعَ فِي الْأُصْبُعِ قَبْلَ افْتِرَاقِ الْأُنْمُلَتَيْنِ: قُطِعَ لَهُ مِنْ ذَلِكَ الْمَوْضِعِ فَقَطْ، وَلَا مَزِيدَ، وَلَا أَرْشَ لَهُ فِي الْأُنْمُلَةِ الثَّانِيَةِ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {فَمَنِ اعْتَدَى عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اعْتَدَى عَلَيْكُمْ} [البقرة: ١٩٤] .

L39169 The obligatory ruling is that iron is taken from him in the same manner he applied it, and he is made to suffer pain equal to what he caused without excess. Allah the Exalted said: "And do not transgress. Indeed, Allah does

فَالْوَاجِبُ أَنْ يُوضَعَ مِنْهُ الْحَدِيدُ حَيْثُ وُضِعَ، وَيُذَاقَ مِنْ الْأَلَمِ مَا أَذَاقَ وَلَا مَزِيدَ، قَالَ اللَّهُ تَعَالَى {وَلا تَعْتَدُوا إِنَّ اللَّهَ لا يُحِبُّ الْمُعْتَدِينَ} [البقرة: ١٩٠] وَقَالَ الشَّافِعِيُّ:

[20] **Qur'an references (L39168):** Qur'an 2:194 (Al-Baqarah).

not love transgressors” [Al-Baqarah: 190]. Al-Shāfiʿī said: “Retaliation applies for the finger, and estimated compensation for the extra finger?” Abū Muḥammad—may Allah have mercy on him—said: “Estimated compensation means a financial penalty, and taking wealth is prohibited except by textual evidence or consensus.”[21]

L39170 **A juristic case: If someone collapses a house upon a person [who is asleep] or strikes him with a sword while he is asleep, thereby cutting off his head.**

L39171–39173 2142 - Issue: Abū Muḥammad—may Allah have mercy on him—said: Whoever demolishes a house onto a person or strikes him with a sword—while he is asleep—and cuts off his head, or says, “Did I demolish the house?” and the person had died afterward, or... He said: If someone strikes a dead person with a sword, no consideration is given to his act, nor is an oath required from the deceased’s guardians regarding this matter. Retribution (qisas) equivalent to his action becomes obligatory upon him, because the deceased’s life is legally established as valid—thus, he remains under the presumption of life until his death is conclusively proven. The claimant of his death makes a false claim implying a change of status, and such a claim is disregarded unless supported by evidence. And success is from Allah, the Exalted.

L39174 **A case where a person sustained a mortal wound from which one dies, then treated himself with poison and died.**

L39175 **Issue 2143:** If someone is wounded with a fatal injury and then self-administers poison as treatment, resulting in death, retributive equivalence (qisas) is incumbent upon the killer. This is because although death occurred through his own action and the action of another, both are killers, and retributive equivalence applies to the killer—even if another caused it. If they opt for blood money (diyah), the full diyah remains obligatory upon him as we previously outlined. Success is from Allah the Exalted, and He suffices us.

لَهُ فِي الْأُصْبُعِ الْقَوَدُ، وَلَهُ فِي الْأُصْبُعِ الزَّائِدَةِ حُكُومَةٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْحُكُومَةُ غَرَامَةُ مَالٍ وَالْأَمْوَالُ مُحَرَّمَةٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ.

[مَسْأَلَةٌ هَدَمَ بَيْتًا عَلَى إنْسَانٍ أَوْ ضَرَبَهُ بِسَيْفٍ وَهُوَ رَاقِدٌ فَقَطَعَ رَأْسَهُ]

٢١٤٢ - مَسْأَلَةٌ - قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَنْ هَدَمَ بَيْتًا عَلَى إنْسَانٍ أَوْ ضَرَبَهُ بِسَيْفٍ - وَهُوَ رَاقِدٌ - فَقَطَعَ رَأْسَهُ، أَوْ قَالَ: هَدَمْت الْبَيْتَ؟ وَهُوَ قَدْ كَانَ مَاتَ بَعْدُ، أَوْ قَالَ: ضَرَبْته بِالسَّيْفِ وَهُوَ مَيِّتٌ: لَمْ يُلْتَفَتْ لَهُ، وَلَا يَمِينَ عَلَى أَوْلِيَائِهِ فِي ذَلِكَ، وَوَجَبَ الْقَوَدُ عَلَيْهِ بِمِثْلِ مَا فَعَلَ؛ لِأَنَّ الْمَيِّتَ قَدْ صَحَّتْ حَيَاتُهُ بِيَقِينٍ، فَهُوَ عَلَى الْحَيَاةِ حَتَّى يَصِحَّ مَوْتُهُ، وَمُدَّعِي مَوْتِهِ مُدَّعِي بَاطِلٍ، وَانْتِقَالُ حَالٍ، وَالدَّعْوَى لَا يُلْتَفَتُ إلَيْهَا إلَّا بِبَيِّنَةٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ جُرِحَ جُرْحًا يَمُوتُ مِنْ مِثْلِهِ فَتَدَاوَى بِسُمٍّ فَمَاتَ]

٢١٤٣ - مَسْأَلَةٌ: وَمَنْ جُرِحَ جُرْحًا يَمُوتُ مِنْ مِثْلِهِ فَتَدَاوَى بِسُمٍّ فَمَاتَ؟ فَالْقَوَدُ عَلَى الْقَاتِلِ؛ لِأَنَّهُ وَإِنْ مَاتَ مِنْ فِعْلِ نَفْسِهِ، وَفِعْلِ غَيْرِهِ: فَكِلَاهُمَا قَاتِلٌ، وَعَلَى الْقَاتِلِ الْقَوَدُ - وَإِنْ طَرَحَهُ غَيْرُهُ؟ فَإِنْ اخْتَارُوا الدِّيَةَ، فَالدِّيَةُ كُلُّهَا أَيْضًا لَازِمَةٌ لَهُ عَلَى مَا ذَكَرْنَا قَبْلُ، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ، وَهُوَ حَسْبُنَا.

[21] **Qur’an references (L39169):** Qur’an 2:190 (Al-Baqarah); Qur’an 5:87 (Al-Ma’idah).