

AL-MUHALLA

كِتَابُ الْمُحَارِبِينَ

The Book of Those Who Wage War

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The Book of Those Who Wage War

L41807–41808

[كِتَابُ الْمُحَارِبِينَ]

L41809

2256. Issue: Allah the Exalted said: {The recompense of those who wage war against Allah and His Messenger} [Al-Ma'idah: 33], the verse. Abu Muhammad said: People have differed regarding who the "muharib" (one who wages war) is, upon whom this ruling is obligatory. A group said: The "muharib" mentioned in this verse refers to the polytheists. It was narrated from Ibn Abbas and others – as narrated by Yahya ibn Abd al-Rahman ibn Mas'ud, from Ahmad ibn Duhaym, from Ibrahim ibn Hammad, from Isma'il ibn Ishaq, from Muhammad ibn Abi Bakr (he is Al-Muqaddami), from Yahya and Khalid—both Al-Qattan—and Abu Al-Harith, each of them from Ash'ath, from Al-Hasan Al-Basri regarding Allah's statement {The recompense of those who wage war against Allah and His Messenger} [Al-Ma'idah: 33], the verse. He said: It was revealed concerning the polytheists. Through the chain extending to Isma'il via Yahya ibn Abd al-Hamid Al-Himmani, from Hushaym, from Juwaybir, from Al-Dahhak, who said: There were people who had a covenant with the Prophet (peace be upon him), but they violated the covenant, waylaid travelers, and spread corruption in the land. Thus, Allah the Exalted gave His Prophet (peace be upon him) the choice regarding them: if he wished, he could kill them, crucify them, or cut off their hands and feet from opposite sides.[1]

٢٢٥٦ - مَسْأَلَةٌ: قَالَ اللَّهُ تَعَالَى: {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] الْآيَةَ قَالَ أَبُو مُحَمَّد: فَاخْتَلَفَ النَّاسُ، مَنْ هُوَ الْمُحَارِبُ الَّذِي يَلْزَمُهُ هَذَا الْحُكْمُ؟ فَقَالَتْ طَائِفَةٌ: الْمُحَارِبُ الْمَذْكُورُ فِي هَذِهِ الْآيَةِ: هُمْ الْمُشْرِكُونَ. رُوِيَ عَنْ ابْنِ عَبَّاسٍ وَغَيْرِهِ - كَمَا نا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إبْرَاهِيمُ بْنُ حَمَّادٍ نا إسْمَاعِيلُ بْنُ إسْحَاقَ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ - هُوَ الْمُقَدَّمِيُّ - نا يَحْيَى، وَخَالِدٌ - هُمَا الْقَطَّانُ - وَأَبُو الْحَارِثِ، كِلَاهُمَا عَنْ أَشْعَثَ عَنْ الْحَسَنِ الْبَصْرِيِّ فِي قَوْلِ اللَّهِ تَعَالَى {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] الْآيَةَ، قَالَ: نَزَلَتْ فِي أَهْلِ الشِّرْكِ. وَبِهِ - إلَى إسْمَاعِيلَ نا يَحْيَى بْنُ عَبْدِ الْحَمِيدِ الْحِمَّانِيُّ نا هُشَيْمٌ عَنْ جُوَيْبِرٍ عَنْ الضَّحَّاكِ قَالَ: كَانَ قَوْمٌ بَيْنَهُمْ وَبَيْنَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِيثَاقٌ فَنَقَضُوا الْعَهْدَ، وَقَطَعُوا السَّبِيلَ، وَأَفْسَدُوا فِي الْأَرْضِ، فَخَيَّرَ اللَّهُ تَعَالَى نَبِيَّهُ - عَلَيْهِ السَّلَامُ - فِيهِمْ إنْ شَاءَ أَنْ يَقْتُلَ، وَإِنْ شَاءَ أَنْ يَصْلُبَ، وَإِنْ شَاءَ قَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ مِنْ خِلَافٍ.

L41810–41814

And through him via Ismāʿīl: Muḥammad ibn Abī Bakr narrated to us, Ashʿath narrated to us, Sufyān narrated to us that he received a report from al-Ḍaḥḥāk ibn Muzāḥim concerning this verse. He said: "It was revealed regarding the People of the Book."

وَبِهِ - إلَى إسْمَاعِيلَ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ نا أَشْعَثُ نا سُفْيَانُ أَنَّهُ بَلَغَهُ عَنْ الضَّحَّاكِ بْنِ مُزَاحِمٍ فِي هَذِهِ الْآيَةِ قَالَ: نَزَلَتْ فِي أَهْلِ الْكِتَابِ. وَبِهِ - إلَى إسْمَاعِيلَ نا مُحَمَّدُ بْنُ عُبَيْدٍ وَإِبْرَاهِيمُ الْهَرَوِيُّ، قَالَ مُحَمَّدٌ: نا مُحَمَّدُ بْنُ ثَوْرٍ، وَقَالَ إبْرَاهِيمُ: نا سُفْيَانُ، ثُمَّ اتَّفَقَ مُحَمَّدُ بْنُ ثَوْرٍ، وَسُفْيَانُ، كِلَاهُمَا عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَعَطَاءٍ الْخُرَاسَانِيِّ، قَالَا جَمِيعًا فِي قَوْلِ اللَّهِ تَعَالَى {إلا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ} [المائدة: ٣٤] هَذِهِ الْآيَةَ لِأَهْلِ الشِّرْكِ، فَمَنْ أَصَابَ مِنْ الْمُشْرِكِينَ شَيْئًا مِنْ الْمُسْلِمِينَ - وَهُوَ لَهُمْ حَرْبٌ - فَأَخَذَ مَالًا،

And through him via Ismāʿīl: Muḥammad ibn ʿUbayd and Ibrāhīm al-Harawī narrated to us. Muḥammad said: Muḥammad ibn Thawr narrated to us. Ibrāhīm said: Sufyān narrated to us. Then their chains meet: both Muḥammad ibn Thawr and Sufyān narrate from Maʿmar, from Qatādah and ʿAṭāʾ al-Khurāsānī. They both said regarding Allah's statement (Exalted is He): {Except those who repent before you gain power over them} [5:34]: "This

[1] **Qur'an references (L41809):** Qur'an 5:33 (Al-Ma'idah).

verse pertains to the polytheists. As for whoever among..." The polytheists have nothing of [what belongs to] the Muslims—and such a person is at war with them—so if someone seizes property or sheds blood, then repents before being apprehended, his past offenses are waived. Hammam al-Qadi reported to us, Ibn Mufarrij reported to us, Abu Ali al-Hasan ibn Sa'd reported to us, Abu Ya'qub al-Dabari reported to us, Abd al-Razzaq reported to us from Ibn Jurayj, who said: Ata ibn Abi Rabah and Abd al-Karim said to me: Banditry constitutes polytheism. Ibn Jurayj said: I maintain that I know no one who wages war against the Prophet—peace and blessings of Allah be upon him—except that he has committed polytheism. A group held: He is the apostate, as reported to us by Abu Sa'id al-Ja'fari; Muhammad ibn Ali al-Idfawi reported to us; Abu Ja'far Ahmad ibn Muhammad ibn Isma'il al-Nahwi reported to us from Abdullah ibn Ahmad ibn Abd al-Salam; Abu al-Azhar reported to us; Rawh ibn Ubada reported to us from Ibn Jurayj; Hisham ibn Urwah reported to us from his father, who said: If a Muslim goes out and brandishes his weapon, then steals, then comes repentant, the legal punishment is imposed upon him—for if it were waived, penalties would become void—unless he joins the lands of polytheism and returns repentant, his repentance is accepted. A group held: The thief is not a Muslim, as reported to us by Abdullah ibn Rabi'; Ibn Mufarrij reported to us; Qasim ibn Asbagh reported to us; Ibn Waddah reported to us; Sahnoon reported to us; Ibn Wahb reported to us from Ibn Lahi'ah; Abdullah ibn Abi Ja'far said: I asked Nafi', freedman of Ibn Umar, about a Muslim thief or disbeliever who approaches a Muslim intending to seize his property and spill his blood. He replied: Were it me, I would resist—this one who attempts to subdue me to spill my blood and seize my property is no Muslim. A group held: Every thief is a muḥārib, as reported to us by Hammam; Ibn Mufarrij reported to us; al-Hasan ibn Sa'd reported to us; al-Dabari reported to us; Abd al-Razzaq reported to us from Ibn Jurayj via Abd al-Karim—or another—from al-Hasan al-Basri and Sa'id ibn Jubayr, both stating: Whoever destroys property is a muḥārib. Abu Muhammad said: The muḥārib is the thief. Hammam reported to us; Ibn Mufarrij reported to us; Ibn al-A'rabi reported to us; al-Dabari reported to us; Abd al-Razzaq reported to us from Sufyan al-Thawri via Jabir from al-Sha'bi, who said: The thief wages war against Allah and His Messenger—

وَأَصَابَ دَمًا، ثُمَّ تَابَ مِنْ قَبْلِ أَنْ يُقْدَرَ عَلَيْهِ أُهْدِرَ عَنْهُ مَا مَضَى نا حُمَامٌ الْقَاضِي نا ابْنُ مُفَرِّجٍ نا أَبُو عَلِيٍّ الْحَسَنُ بْنُ سَعْدٍ نا أَبُو يَعْقُوبَ الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَطَاءُ بْنُ أَبِي رَبَاحٍ، وَعَبْدُ الْكَرِيمِ: الْمُحَارَبَةُ شِرْكٌ - قَالَ ابْنُ جُرَيْجٍ: وَأَقُولُ أَنَا: لَا أَعْلَمُ أَحَدًا يُحَارِبُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِلَّا أَشْرَكَ. وَقَالَتْ طَائِفَةٌ: هُوَ الْمُرْتَدُّ كَمَا نا أَبُو سَعِيدٍ الْجَعْفَرِيُّ نا مُحَمَّدُ بْنُ عَلِيٍّ الإدفوي نا أَبُو جَعْفَرٍ أَحْمَدُ بْنُ مُحَمَّدِ بْنِ إِسْمَاعِيلَ النَّحْوِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَحْمَدَ بْنِ عَبْدِ السَّلَامِ عَنْ أَبِي الْأَزْهَرِ نا رَوْحُ بْنُ عُبَادَةَ عَنِ ابْنِ جُرَيْجٍ نا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ قَالَ: إِذَا خَرَجَ الْمُسْلِمُ فَشَهَرَ سِلَاحَهُ، ثُمَّ تَلَصَّصَ، ثُمَّ جَاءَ تَائِبًا أُقِيمَ عَلَيْهِ الْحَدُّ - وَلَوْ تُرِكَ لَبَطَلَتِ الْعُقُوبَاتُ، إِلَّا أَنْ يَلْحَقَ بِبِلَادِ الشِّرْكِ ثُمَّ يَأْتِيَ تَائِبًا: فَتُقْبَلُ مِنْهُ. وَقَالَتْ طَائِفَةٌ: اللِّصُّ لَيْسَ مُسْلِمًا - كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنِ ابْنِ لَهِيعَةَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي جَعْفَرٍ قَالَ: سَأَلْتُ نَافِعًا مَوْلَى ابْنِ عُمَرَ - عَنْ لِصٍّ مُسْلِمٍ، أَوْ كَافِرٍ أَتَى مُسْلِمًا وَأَرَادَ أَنْ يَأْخُذَ مَالَهُ، وَيُهْرِيقَ دَمَهُ؟ قَالَ: لَوْ كُنْتُ أَنَا امْتَنَعْتُ - هَذَا الَّذِي يَسْتَغِيلُنِي لِيُهْرِيقَ دَمِي، وَيَأْخُذَ مَالِي، لَيْسَ بِمُسْلِمٍ. وَقَالَتْ طَائِفَةٌ: كُلُّ لِصٍّ فَهُوَ مُحَارِبٌ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا الْحَسَنُ بْنُ سَعْدٍ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ عَبْدِ الْكَرِيمِ - أَوْ غَيْرِهِ - عَنِ الْحَسَنِ الْبَصْرِيِّ، وَسَعِيدِ بْنِ جُبَيْرٍ، قَالَا جَمِيعًا: مَنْ خَرَّبَ فَهُوَ مُحَارِبٌ قَالَ أَبُو مُحَمَّدٍ: الْمُحَارِبُ اللِّصُّ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ عَنِ الشَّعْبِيِّ قَالَ: اللِّصُّ مُحَارِبٌ لِلَّهِ وَلِرَسُولِهِ فَاقْتُلْهُ، فَمَا أَصَابَكَ فِيهِ مِنْ شَيْءٍ مِنْ دَمِهِ فَعَلَيَّ.

so kill him. Whatever consequences you face for shedding his blood, I am responsible. A group held: None is a muḥārib except one who terrorizes the highways, as reported to us by Yahya ibn Abd al-Rahman ibn Masʿud; Ahmad ibn Duhaym reported to us; Ibrahim ibn Hammad reported to us; Ismaʿil ibn Ishaq reported to us; Yahya ibn Abd al-Hamid al-Himmani reported to us; Sufyan ibn Uyaynah reported to us from Ammar al-Duhni, who said: A man came... Mis'ar ibn Fadkiyy—while disguised—entered the presence of Ali ibn Abi Talib. He inquired about every verse in Allah's Book containing strictness without exception, and Ali would respond, "He has repentance." Ali said, "Even if he were Mis'ar ibn Fadkiyy?" then repeated, "Even if he were Mis'ar ibn Fadkiyy." I said to him, "Then I am Mis'ar ibn Fadkiyy; grant me security?" He replied, "You are secure." He had been a highway robber who deemed it lawful to violate women's chastity.[2]

وَقَالَتْ طَائِفَةٌ: لَا يَكُونُ الْمُحَارِبُ إِلَّا مَنْ أَخَافَ السَّبِيلَ: كَمَا نا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا إِبْرَاهِيمُ بْنُ حَمَّادٍ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا يَحْيَى بْنُ عَبْدِ الْحَمِيدِ الْحِمَّانِيُّ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ عَمَّارٍ الدُّهْنِيِّ قَالَ: جَاءَ مِسْعَرُ بْنُ فَدْكِيٍّ - وَهُوَ مُتَنَكِّرٌ - حَتَّى دَخَلَ عَلَى عَلِيِّ بْنِ أَبِي طَالِبٍ، فَمَا تَرَكَ آيَةً مِنْ كِتَابِ اللَّهِ فِيهَا تَشْدِيدٌ إِلَّا سَأَلَهُ عَنْهَا، وَهُوَ يَقُولُ، لَهُ تَوْبَةٌ، قَالَ: وَإِنْ كَانَ مِسْعَرَ بْنَ فَدْكِيٍّ قَالَ: وَإِنْ كَانَ مِسْعَرَ بْنَ فَدْكِيٍّ، قَالَ: فَقُلْتُ لَهُ: فَأَنَا مِسْعَرُ بْنُ فَدْكِيٍّ فَأَمِّنِّي؟ قَالَ: أَنْتَ آمِنٌ، قَالَ: وَكَانَ يَقْطَعُ الطَّرِيقَ، وَيَسْتَحِلُّ الْفُرُوجَ.

From him to Ismāʿīl ibn Isḥāq: Muḥammad ibn Abī Bakr narrated to us; ʿUmar ibn ʿAlī narrated to us from Mujāhid from al-Shaʿbī from Saʿīd ibn Qays al-Hamdānī: Ḥārithah ibn Badr al-Tamīmī—who was an enemy of ʿAlī and reviled him—came to al-Ḥasan, al-Ḥusayn, and ʿAbdullāh ibn Jaʿfar (may Allah be pleased with them) to seek protection. But ʿAlī refused to grant him safety. Saʿīd said: "I went to ʿAlī and asked, 'What is **the recompense of those who wage war against Allah and His Messenger and strive to spread corruption in the land** [Al-Māʾidah 5:33]?' He replied, '**That they be killed or crucified, or that their hands and feet be cut off from opposite sides** [Al-Māʾidah 5:33].' I asked, 'What is the exception?' He said, '**Except those who repent before you apprehend them** [Al-Māʾidah 5:34].' I said, 'Ḥārithah ibn Badr has repented before we apprehended him.' ʿAlī said, 'He is granted protection.'" Saʿīd said: "I then took Ḥārithah to ʿAlī, and he granted him safety."[3]

L41815

وَبِهِ - إِلَى إِسْمَاعِيلَ بْنِ إِسْحَاقَ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ نا عُمَرُ بْنُ عَلِيٍّ عَنْ مُجَاهِدٍ عَنِ الشَّعْبِيِّ عَنْ سَعِيدِ بْنِ قَيْسٍ الْهَمْدَانِيِّ أَنَّ حَارِثَةَ بْنَ بَدْرٍ التَّمِيمِيَّ - كَانَ عَدُوًّا لِعَلِيٍّ وَكَانَ يَهْجُوهُ - فَأَتَى الْحَسَنَ، وَالْحُسَيْنَ، وَعَبْدَ اللَّهِ بْنَ جَعْفَرٍ - رَضِيَ اللَّهُ عَنْهُمْ - لِيَأْخُذُوا لَهُ أَمَانًا، فَأَبَى عَلِيٌّ أَنْ يُؤَمِّنَهُ، قَالَ سَعِيدٌ: فَانْطَلَقْتُ إِلَى عَلِيٍّ فَقُلْتُ: مَا {جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الأَرْضِ فَسَادًا} [المائدة: ٣٣] قَالَ {أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلافٍ} [المائدة: ٣٣] الْآيَةَ قُلْتُ: إِلَّا مَاذَا؟ قَالَ {إِلا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ} [المائدة: ٣٤] قُلْتُ: فَإِنَّ حَارِثَةَ بْنَ بَدْرٍ قَدْ تَابَ مِنْ قَبْلِ أَنْ نَقْدِرَ عَلَيْهِ، قَالَ: هُوَ آمِنٌ، قَالَ: فَانْطَلَقْتُ بِحَارِثَةَ إِلَى عَلِيٍّ فَآمَنَهُ.

Hammam narrated to us: From Ibn Mufarrij, from al-Hasan ibn Sa'd, from Abu Ya'qub al-Dabari, from 'Abd al-Razzaq, from Ma'mar, from Qatadah and 'Ata' al-Khurasani—both said unanimously regarding this verse: *"The

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حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا الْحَسَنُ بْنُ سَعْدٍ نا أَبُو يَعْقُوبَ الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، وَعَطَاءٍ الْخُرَاسَانِيِّ، قَالَا جَمِيعًا فِي هَذِهِ الْآيَةِ {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] قَالَ: هَذِهِ الْآيَةُ فِي اللِّصِّ الَّذِي يَقْطَعُ الطَّرِيقَ فَهُوَ مُحَارِبٌ

[2] **Qur'an references (L41810):** Qur'an 5:34 (Al-Ma'idah).

[3] **Qur'an references (L41815):** Qur'an 5:33 (Al-Ma'idah); Qur'an 5:34 (Al-Ma'idah).

recompense of those who wage war against Allah and His Messenger…”* (5:33): This verse concerns the highway robber who cuts off the road, thus becoming a muḥārib. Abu Muhammad said: Then these scholars differed. A group held that wherever one cuts off the road—whether in a city or elsewhere—he is a muḥārib. As Abu al-Murajja ibn Dhurwan al-Misri wrote to me: From Abu al-Hasan al-Rahabi, from Muslim the scribe, from ʻAbdullah ibn Ahmad ibn al-Mughallis, who said: Waki‘ reported from al-Hakam ibn ʻAtiyyah, who said: I asked al-Hasan about a man who struck another with a sword in Basra. Al-Hasan said: They would state, “Whoever brandishes a weapon is a muḥārib.” Hammam narrated to us: From Ibn Mufarrij, from Ibn al-A‘rabi, from al-Dabari, from ʻAbd al-Razzaq, from Ma‘mar, from Ibn Tawus, from his father, from al-Zubayr. Tawus said: I heard him declare, “Whoever raises a weapon then lowers it is a muḥārib: his blood may be shed without penalty.” He added: Tawus also upheld this view. ʻAbd al-Rahman ibn Salamah al-Kinani narrated to us: From Ahmad ibn Khalil, from Khalid ibn Sa‘d, from [...] Aḥmad ibn Khālid narrated to us: Yaḥyā ibn Ayyūb ibn Bādī al-ʿAllāf—the jurist of the people of Egypt—narrated to us: Saʿīd ibn Abī Maryam narrated to us: Sulaymān ibn Bilāl narrated to me from ʿAlqamah ibn Abī ʿAlqamah from his mother: “A slave boy belonged to Bāni, who would punish him by beating him for certain offenses. The slave boy harbored hostility toward his master, so Bāni sold him. One day, the slave boy encountered Bāni while carrying a sword—this occurred during the governorship of Saʿīd ibn al-ʿĀṣ. The slave boy brandished the sword at Bāni and lunged toward him, but people restrained him. Bāni then went to ʿĀ’ishah and informed her of what the slave had done to him. ʿĀ’ishah said: ’I heard the Messenger of Allah—peace and blessings be upon him—say: ”Whoever points an iron weapon at a Muslim intending to kill him, his blood is forfeit.“’ He mentioned the hadith, and in it is that the slave boy was killed.”[4]

L41819 Yahya ibn Abd al-Rahman ibn Mas‘ud narrated to us: Ahmad ibn Duhaym narrated to us: Hammad ibn Ibrahim narrated to us: Isma‘il ibn Ishaq narrated to us: Ali ibn Abd al-Aziz al-Madini narrated to us: Muhammad ibn

[4]**Qur’an references (L41816):** Qur’an 5:33 (Al-Ma’idah).

قَالَ أَبُو مُحَمَّد: ثُمَّ اخْتَلَفَ هَؤُلَاءِ: فَقَالَتْ طَائِفَةٌ: حَيْثُمَا قَطَعَ الطَّرِيقَ فِي مِصْرٍ أَوْ غَيْرِهِ فَهُوَ مُحَارِبٌ: كَمَا كَتَبَ إِلَيَّ أَبُو الْمُرَجَّى بْنُ ذَرْوَانَ الْمِصْرِيُّ نا أَبُو الْحَسَنِ الرَّحَبِيُّ نا مُسْلِمٌ الْكَاتِبُ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ الْمُغَلِّسِ قَالَ: ذَكَرَ وَكِيعٌ عَنِ الْحَكَمِ بْنِ عَطِيَّةَ قَالَ: سَأَلْت الْحَسَنَ عَنْ رَجُلٍ ضَرَبَ رَجُلًا بِالسَّيْفِ بِالْبَصْرَةِ؟ قَالَ: كَانُوا يَقُولُونَ: مَنْ شَهَرَ السِّلَاحَ فَهُوَ مُحَارِبٌ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ الزُّبَيْرِ قَالَ طَاوُسٌ: سَمِعْته يَقُولُ: مَنْ رَفَعَ السِّلَاحَ ثُمَّ وَضَعَهُ: مُحَارِبٌ، فَدَمُهُ هَدَرٌ - قَالَ: وَكَانَ طَاوُسٌ يَرَى هَذَا أَيْضًا. حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ سَلَمَةَ الْكِنَانِيُّ نا أَحْمَدُ بْنُ خَلِيلٍ نا خَالِدُ بْنُ سَعْدٍ نا أَحْمَدُ بْنُ خَالِدٍ نا يَحْيَى بْنُ أَيُّوبَ بْنِ بَادِي الْعَلَّافُ - فَقِيهُ أَهْلِ مِصْرَ - نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا سُلَيْمَانُ بْنُ بِلَالٍ نِي عَلْقَمَةُ بْنُ أَبِي عَلْقَمَةَ عَنْ أُمِّهِ: «أَنَّ غُلَامًا كَانَ لِبَانِي، فَكَانَ بَانِي يَضْرِبُهُ فِي أَشْيَاءَ يُعَاقِبُهُ فِيهَا، فَكَانَ الْغُلَامُ يُعَادِي سَيِّدَهُ، فَبَاعَهُ بَانِي، فَلَقِيَهُ الْغُلَامُ يَوْمًا وَمَعَ الْغُلَامِ سَيْفٌ يَحْمِلُهُ وَذَلِكَ فِي إِمْرَةِ سَعِيدِ بْنِ الْعَاصِ - فَشَهَرَ الْغُلَامُ السَّيْفَ عَلَى بَانِي وَتَفَلَّتَ بِهِ عَلَيْهِ، فَأَمْسَكَهُ عَنْهُ النَّاسُ، فَدَخَلَ بَانِي عَلَى عَائِشَةَ فَأَخْبَرَهَا بِمَا فَعَلَ بِهِ الْعَبْدُ، فَقَالَتْ عَائِشَةُ: سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ مَنْ أَشَارَ بِحَدِيدَةٍ إِلَى أَحَدٍ مِنَ الْمُسْلِمِينَ يُرِيدُ قَتْلَهُ فَقَدْ وَجَبَ دَمُهُ» فَذَكَرَ الْحَدِيثَ، وَفِيهِ: أَنَّ الْغُلَامَ قُتِلَ.

حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ دُحَيْمٍ نا حَمَّادُ بْنُ إِبْرَاهِيمَ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ الْمَدِينِيُّ نا مُحَمَّدُ بْنُ عَلِيِّ بْنِ مُقَدَّمٍ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ

Ali ibn Muqaddam narrated to us from Sufyan ibn Husayn from Ya'la ibn Muslim from Abu al-Sha'tha' (Jabir ibn Zayd) from Ibn Abbas, who said: "If someone climbs over into their houses armed, his hand and leg must be cut off."

عَنْ يَعْلَى بْنِ مُسْلِمٍ عَنْ أَبِي الشَّعْثَاءِ - جَابِرِ بْنِ زَيْدٍ - عَنْ ابْنِ عَبَّاسٍ قَالَ إِذَا تَسَوَّرَ عَلَيْهِمْ فِي بُيُوتِهِمْ بِالسِّلَاحِ قُطِعَتْ يَدُهُ وَرِجْلُهُ.

L41820 From Ismāʿīl: Naṣr ibn ʿAlī al-Jahḍamī reported to us from Khālid ibn al-Ḥārith from Ashʿath from al-Ḥasan, who said: "If a robber assails you at night, he is a combatant (muḥārib)."

From the same chain: Ismāʿīl reported to us: Muḥammad ibn Abī Bakr al-Muqaddamī reported to us from Muḥammad ibn Sawwār from Saʿīd ibn Abī ʿArūbah from Qatādah, who said: "If one enters upon you while carrying an iron weapon, he is a combatant (muḥārib)."

Ismāʿīl said: Naṣr ibn ʿAlī reported to us from Ḥarb ibn Maymūn from Saʿīd ibn Abī ʿArūbah from Qatādah, who said: "If a robber assails you at night, he is a combatant (muḥārib)."

وَبِهِ - إِلَى إِسْمَاعِيلَ نا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ نا خَالِدُ بْنُ الْحَارِثِ عَنْ أَشْعَثَ عَنْ الْحَسَنِ قَالَ: إِذَا طَرَقَك اللِّصُّ بِاللَّيْلِ فَهُوَ مُحَارِبٌ. وَبِهِ إِسْمَاعِيلُ نا مُحَمَّدُ بْنُ أَبِي بَكْرٍ الْمُقَدَّمِيُّ نا مُحَمَّدُ بْنُ سَوَّارٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ قَالَ: إِذَا دَخَلَ عَلَيْك وَمَعَهُ حَدِيدَةٌ فَهُوَ مُحَارِبٌ. قَالَ إِسْمَاعِيلُ: ونا نَصْرُ بْنُ عَلِيٍّ نا حَرْبُ بْنُ مَيْمُونٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ قَالَ: إِذَا طَرَقَك اللِّصُّ بِاللَّيْلِ فَهُوَ مُحَارِبٌ.

L41821–41827 Ash-Shāfiʿī, Abū Sulaymān, and their adherents hold this opinion regarding muḥārabah. Mālik's position is reported with differing narrations: in one narration, he stated, "Muḥārabah occurs only in the desert," and in another narration, he said, "Muḥārabah occurs in the desert and in urban centers (amsar)." Sufyān said, "Muḥārabah occurs only in the desert." Abū Ḥanīfah and his followers said, "Muḥārabah does not occur in a city (miṣr), nor in an urban center (amṣār), nor..." Near a town, nor near a city, nor between two cities, nor between Kufa and Hirah. Then it was narrated from Abū Yūsuf that he said: If they confronted the people of a city defiantly at night, they would fall under the ruling of brigandage (muḥārabah). Abū Ḥanīfah said: If someone brandishes a weapon against another—whether night or day—and the one threatened intentionally kills him, there is no penalty. If he brandishes a club against him during the day in a town and the threatened one intentionally kills him, the killer is subject to retaliation. If this occurs at night in a town, a city, or on a road outside a city, there is no penalty for the killer. Abū Muḥammad—may Allah have mercy on him—said: Since they differed as we mentioned, it became obligatory for us to seek the truth from their statements to discern the correct view and follow

وَبِهَذَا يَأْخُذُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا. وَاخْتَلَفَ فِيهِ قَوْلُ مَالِك، فَمَرَّةً قَالَ: لَا تَكُونُ الْمُحَارَبَةُ إلَّا فِي الصَّحْرَاءِ وَمَرَّةً قَالَ: تَكُونُ الْمُحَارَبَةُ فِي الصَّحْرَاءِ، وَفِي الْأَمْصَارِ. وَقَالَ سُفْيَانُ: لَا تَكُونُ الْمُحَارَبَةُ إلَّا فِي الصَّحْرَاءِ. قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا تَكُونُ الْمُحَارَبَةُ فِي مَدِينَةٍ، وَلَا فِي مِصْرٍ، وَلَا بِقُرْبِ مَدِينَةٍ، وَلَا بِقُرْبِ مِصْرٍ وَلَا بَيْنَ مَدِينَتَيْنِ، وَلَا بَيْنَ الْكُوفَةِ وَالْحِيرَةِ - ثُمَّ رُوِيَ عَنْ أَبِي يُوسُفَ أَنَّهُ قَالَ: إذْ كَابَرُوا أَهْلَ مَدِينَةٍ لَيْلًا، كَانُوا فِي حُكْمِ الْمُحَارَبَةِ. وَقَالَ أَبُو حَنِيفَةَ: مَنْ شَهَرَ عَلَى آخَرَ سِلَاحًا - لَيْلًا أَوْ نَهَارًا - فَقَتَلَهُ الْمَشْهُورُ عَلَيْهِ عَمْدًا فَلَا شَيْءَ عَلَيْهِ، فَإِنْ شَهَرَ عَلَيْهِ عَصًا نَهَارًا فِي مِصْرٍ فَقَتَلَهُ عَمْدًا قُتِلَ بِهِ - وَإِنْ كَانَ فِي اللَّيْلِ فِي مِصْرٍ، أَوْ فِي مَدِينَةٍ، أَوْ فِي طَرِيقٍ فِي غَيْرِ مَدِينَةٍ، فَلَا شَيْءَ عَلَى الْقَاتِلِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَطْلُبَ الْحَقَّ مِنْ أَقْوَالِهِمْ، لِنَعْلَمَ الصَّوَابَ فَنَتَّبِعُهُ - بِمَنِّ اللَّهِ تَعَالَى - فَنَظَرْنَا

it—by the grace of Allah Almighty. We examined the evidence each group cited for their opinion. We considered those who argued that a brigand (muḥārib) must be a polytheist or apostate, and found them citing: What ʻAbdullāh ibn Rabīʻ narrated, from Muḥammad ibn Muʻāwiyah, from Aḥmad ibn Shuʻayb al-Nasāʾī, who reported from al-ʻAbbās ibn Muḥammad, from Abū ʻĀmir al-ʻAqadī, from Ibrāhīm ibn Ṭahmān, from ʻAbd al-ʻAzīz ibn Rufayʻ, from ʻUbayd ibn ʻUmayr, from ʻĀʾishah, the Mother of the Believers, that the Messenger of Allah—peace and blessings be upon him—said: "The blood of a Muslim is not lawful except for one of three reasons: a married person (muḥṣan) who commits adultery and is stoned, a person who intentionally kills another and is thus executed, or one who abandons Islam and wages war against Allah and His Messenger, thereby being killed, crucified, or exiled from the land." They also cited Ibn Jurayj's earlier statement: "We do not know of anyone who waged war against the Messenger of Allah—peace and blessings be upon him—except a polytheist." Abū Muḥammad—may Allah have mercy on him—said: We examined their evidence and found the cited narration unreliable, as it was solely transmitted by Ibrāhīm ibn Ṭahmān, who is not a strong authority. As for Ibn Jurayj's statement, "We do not know of anyone who waged war against the Messenger of Allah except a polytheist," waging war against Allah Almighty and His Messenger—peace upon him—occurs in two forms: one by a person who deems it permissible, thus becoming a disbeliever by the consensus of all Muslims, with no dissent except from those unworthy of consideration in Islam; the other by a sinful transgressor who admits his crime, yet does not deem it lawful—such a person remains a Muslim, though a sinner. By that, a disbeliever—but like all other sins such as fornication, murder, forcible seizure, drinking wine, eating pork, carrion, blood, abandoning prayer, abandoning zakāh, abandoning the fast of Ramadan, and abandoning Hajj: this does not make one a disbeliever, as we have thoroughly investigated in *The Book of Distinction* and other works. The comprehensive proof for this is: If committing any of these grave sins rendered one a disbeliever through that act, he would undoubtedly be an apostate. If he were thereby an apostate, his execution would be obligatory under the command of Allah's Messenger—peace and blessings be

فِيمَا تَحْتَجُّ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا: فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ قَالَ: إنَّ الْمُحَارِبَ لَا يَكُونُ إلَّا مُشْرِكًا أَوْ مُرْتَدًّا، فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ النَّسَائِيّ، أَخْبَرَنَا الْعَبَّاسُ بْنُ مُحَمَّدٍ أَنَا أَبُو عَامِرٍ الْعَقَدِيُّ عَنْ إبْرَاهِيمَ بْنِ طَهْمَانَ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ عُبَيْدِ بْنِ عُمَيْرٍ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثِ خِصَالٍ: زَانٍ مُحْصَنٌ، يُرْجَمُ، أَوْ رَجُلٌ قَتَلَ مُتَعَمِّدًا، فَيُقْتَلُ - أَوْ رَجُلٌ يَخْرُجُ مِنْ الْإِسْلَامِ فَيُحَارِبُ اللَّهَ وَرَسُولَهُ، فَيُقْتَلُ أَوْ يُصَلَّبُ أَوْ يُنْفَى مِنْ الْأَرْضِ» . وَبِمَا ذَكَرَهُ ابْنُ جُرَيْجٍ آنِفًا مِنْ قَوْلِهِ: مَا نَعْلَمُ أَحَدًا حَارَبَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا أَشْرَكَ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِيمَا احْتَجُّوا بِهِ مِنْ ذَلِكَ فَوَجَدْنَا الْخَبَرَ الْمَذْكُورَ لَا يَصِحُّ، لِأَنَّهُ انْفَرَدَ بِهِ إبْرَاهِيمُ بْنُ طَهْمَانَ - وَلَيْسَ بِالْقَوِيِّ. وَأَمَّا قَوْلُ ابْنِ جُرَيْجٍ " مَا نَعْلَمُ أَحَدًا حَارَبَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَّا أَشْرَكَ " فَإِنَّ مُحَارَبَةَ اللَّهِ تَعَالَى، وَمُحَارَبَةَ رَسُولِهِ - عَلَيْهِ السَّلَامُ - تَكُونُ عَلَى وَجْهَيْنِ: أَحَدُهُمَا - مِنْ مُسْتَحِلٍّ لِذَلِكَ، فَهُوَ كَافِرٌ بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا، لَا خِلَافَ فِي ذَلِكَ إلَّا مِمَّنْ لَا يُعْتَدُّ بِهِ فِي الْإِسْلَامِ - وَتَكُونُ مِنْ فَاسِقٍ عَاصٍ مُعْتَرِفٍ بِجُرْمِهِ، فَلَا يَكُونُ بِذَلِكَ كَافِرًا، لَكِنْ كَسَائِرِ الذُّنُوبِ، مِنْ الزِّنَا، وَالْقَتْلِ، وَالْغَصْبِ، وَشُرْبِ الْخَمْرِ، وَأَكْلِ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَالدَّمِ، وَتَرْكِ الصَّلَاةِ، وَتَرْكِ الزَّكَاةِ، وَتَرْكِ صَوْمِ شَهْرِ رَمَضَانَ، وَتَرْكِ الْحَجِّ: فَهَذَا لَا يَكُونُ كَافِرًا، لِمَا قَدْ تَقَصَّيْنَاهُ فِي " كِتَابِ الْفَصْلِ " وَغَيْرِهِ. وَيَجْمَعُ الْحُجَّةَ فِي ذَلِكَ: أَنَّهُ لَوْ كَانَ فَاعِلُ شَيْءٍ مِنْ هَذِهِ الْعَظَائِمِ كَافِرًا بِفِعْلِهِ ذَلِكَ، لَكَانَ مُرْتَدًّا بِلَا شَكٍّ، وَلَوْ كَانَ بِذَلِكَ مُرْتَدًّا لَوَجَبَ قَتْلُهُ، لِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ مَنْ ارْتَدَّ،

upon him—to kill whoever apostatizes and changes his religion. No Muslim holds this position.

Abū Muḥammad said: If a speaker says, "We do not concede that one who disobeys without disbelief is not waging war against Allah the Exalted and His Messenger—peace be upon him," we reply—and by Allah's enablement we proceed—: Allah the Exalted states, *"O you who believe, fear Allah and relinquish what remains of usury, if you are truly believers. If you do not, then prepare for war from Allah and His Messenger"* [Al-Baqarah 2:278–279].

Abū al-Murajjā ibn Dharwān wrote to me, stating: Abū al-Ḥasan al-Raḥabī narrated to us: Abū Muslim al-Kātib narrated to us: ʿAbdullāh ibn Aḥmad ibn al-Mughallis narrated to us: ʿAbdullāh ibn Aḥmad ibn Ḥanbal narrated to us: My father narrated to us: Ḥammād ibn Khālid al-Khayyāṭ narrated to us: ʿAbd al-Wāḥid—client of ʿUrwah—narrated from ʿUrwah, from ʿĀ'ishah, who said: Allah's Messenger—peace and blessings be upon him—stated, *"Allah the Exalted declared: 'Whoever harms My ally has thereby incurred My lawful warfare against him.'"*

Allah the Exalted says, *"If two factions of believers fight one another, reconcile between them..."* [Al-Ḥujurāt 49:9] up to His words, *"...reconcile between your two brothers"* [Al-Ḥujurāt 49:10]. The Messenger of Allah—peace and blessings be upon him—said, *"The rebellious faction will kill ʿAmmār."* Thus, it is confirmed that not every sinner is one who wages war [against Allah], nor is every such person a disbeliever.

We further examined this matter and found that Allah the Exalted has ordained for those who wage war the penalties we mentioned: execution, crucifixion, amputation of hands and feet from opposite sides, or exile from the land— The remission of all that from him through repentance before gaining the capacity to act. If the belligerent subject to these rulings were a disbeliever, it would inevitably fall into one of three categories with absolutely no fourth possibility: either he was an enemy combatant from the beginning; or he was a *dhimmi* who breached the covenant of protection and waged war, thereby becoming an enemy combatant; or he was a Muslim who apo-

وَبَدَّلَ دِينَهُ - وَهَذَا لَا يَقُولُهُ مُسْلِمٌ قَالَ أَبُو مُحَمَّد: فَإِنْ قَالَ قَائِلٌ: إنَّنَا لَا نُسَلِّمُ أَنَّ مَنْ عَصَى بِغَيْرِ الْكُفْرِ لَا يَكُونُ مُحَارِبًا لِلَّهِ تَعَالَى وَلِرَسُولِهِ - عَلَيْهِ السَّلَامُ - قُلْنَا لَهُ: وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: قَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِنْ كُنْتُمْ مُؤْمِنِينَ - فَإِنْ لَمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ} [البقرة: ٢٧٨ - ٢٧٩] الْآيَةَ. كَتَبَ إلَيَّ أَبُو الْمُرَجَّى بْنُ ذَرْوَانَ قَالَ: نا أَبُو الْحَسَنِ الرَّحَبِيُّ نا أَبُو مُسْلِمٍ الْكَاتِبُ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ الْمُغَلِّسِ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ نا أَبِي نا حَمَّادُ بْنُ خَالِدٍ الْخَيَّاطُ نا عَبْدُ الْوَاحِدِ - مَوْلَى عُرْوَةَ - عَنْ عُرْوَةَ عَنْ عَائِشَةَ، قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «قَالَ اللَّهُ تَعَالَى مَنْ آذَى لِي وَلِيًّا فَقَدْ اسْتَحَلَّ مُحَارَبَتِي» . وَقَالَ اللَّهُ تَعَالَى {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا} [الحجرات: ٩] إلَى قَوْلِهِ {فَأَصْلِحُوا بَيْنَ أَخَوَيْكُمْ} [الحجرات: ١٠] . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَقْتُلُ عَمَّارًا الْفِئَةُ الْبَاغِيَةُ» فَصَحَّ أَنَّهُ لَيْسَ كُلُّ عَاصٍ مُحَارِبًا، وَلَا كُلُّ مُحَارِبٍ كَافِرًا، ثُمَّ نَظَرْنَا فِي ذَلِكَ أَيْضًا، فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ حَكَمَ فِي الْمُحَارِبِ مَا ذَكَرْنَا مِنْ الْقَتْلِ، أَوْ الصَّلْبِ، أَوْ قَطْعِ الْأَيْدِي وَالْأَرْجُلِ مِنْ خِلَافٍ، أَوْ النَّفْيِ مِنْ الْأَرْضِ - وَإِسْقَاطُ ذَلِكَ كُلِّهِ عَنْهُ بِالتَّوْبَةِ قَبْلَ الْقُدْرَةِ عَلَيْهِ، فَلَوْ كَانَ الْمُحَارِبُ الْمَأْمُورُ فِيهِ بِهَذِهِ الْأَوَامِرِ كَافِرًا: لَمْ يَخْلُ مِنْ ثَلَاثَةِ أَوْجُهٍ، لَا رَابِعَ لَهَا: إمَّا أَنْ يَكُونَ حَرْبِيًّا مُذْ كَانَ. وَإِمَّا أَنْ يَكُونَ ذِمِّيًّا فَنَقَضَ الذِّمَّةَ وَحَارَبَ فَصَارَ حَرْبِيًّا. وَإِمَّا أَنْ يَكُونَ مُسْلِمًا فَارْتَدَّ إلَى الْكُفْرِ. لَا بُدَّ مِنْ أَحَدِ هَذِهِ الْوُجُوهِ ضَرُورَةً، وَلَا يُمْكِنُ - وَلَا يُوجَدُ غَيْرُهَا، فَلَوْ كَانَ حَرْبِيًّا مُذْ كَانَ، فَلَا يَخْتَلِفُ مِنْ الْأُمَّةِ اثْنَانِ فِي أَنَّهُ لَيْسَ هَذَا حُكْمُ الْحَرْبِيِّينَ - وَإِنَّمَا حُكْمُ الْحَرْبِيِّينَ الْقَتْلُ فِي اللِّقَاءِ كَيْفَ أَمْكَنَ حَتَّى يُسْلِمُوا، أَوْ يُعْطُوا الْجِزْيَةَ عَنْ

statized to disbelief. This must necessarily be one of these categories, as no other exists. If he was an enemy combatant from the outset, no two scholars in the Ummah disagree that this is not the ruling applicable to enemy combatants. The established ruling for enemy combatants is to kill them in battle whenever possible until they embrace Islam or pay the *jizyah* directly and submissively while in a state of humiliation—applying to those among them who are People of the Book according to our position and that of certain groups, or to non-Arabs of any religion according to other opinions. Alternatively, they may be captured, in which case their ruling is unequivocally execution by beheading without disagreement, as the Messenger of Allah (peace be upon him) killed ʻUqbah ibn Abī Muʻayṭ, al-Naḍr ibn al-Ḥārith, the Banū Qurayẓah, and others. They may also be enslaved, released to their homeland—as the Messenger of Allah (peace be upon him) released Thumāmah ibn Athāl al-Ḥanafī, Abū al-ʿĀṣ ibn al-Rabīʿ, and others—or ransomed, as Allah the Exalted stated: "When you confront the disbelievers in battle, strike their necks until you have thoroughly subdued them, then bind them securely. Thereafter, either grant them grace or ransom them until the war lays down its burdens" (Surah Muhammad 47:4). Or they may be freed as protected non-Muslims under covenant, as the Messenger of Allah (peace be upon him) did with the people of Khaybar. These are the rulings for enemy combatants established by the explicit Qur'an, authenticated Sunnah, and definitive consensus. There is no disagreement that crucifixion, amputation of hands and feet, or banishment are not among their rulings. Thus, it is invalid to regard the belligerent mentioned in the verse as a disbelieving enemy combatant. If he was a *dhimmi* who violated the covenant, there are three opinions among scholars with no fourth: The first is that he transitions to the rulings applicable to enemy combatants in all that we have mentioned.[5]

يَدٍ وَهُمْ صَاغِرُونَ، وَمَنْ كَانَ مِنْهُمْ كِتَابِيًّا - فِي قَوْلِنَا وَقَوْلِ طَوَائِفَ مِنْ النَّاسِ. أَوْ مَنْ كَانَ مِنْهُمْ مِنْ أَيِّ دِينٍ كَانَ مَا لَمْ يَكُنْ عَرَبِيًّا فِي قَوْلِ غَيْرِنَا. أَوْ يُؤْسَرَ فَيَكُونُ حُكْمُهُ ضَرْبَ الْعُنُقِ فَقَطْ بِلَا خِلَافٍ، كَمَا قَتَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُقْبَةَ بْنَ أَبِي مُعَيْطٍ، وَالنَّضْرَ بْنَ الْحَارِثِ، وَبَنِي قُرَيْظَةَ، وَغَيْرَهُمْ، أَوْ يُسْتَرَقَّ، أَوْ يُطْلَقَ إلَى أَرْضِهِ، كَمَا أَطْلَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَامَةَ بْنَ أَثَالٍ الْحَنَفِيَّ، وَأَبَا الْعَاصِ بْنَ الرَّبِيعِ وَغَيْرَهُمَا. أَوْ يُفَادَى بِهِ - كَمَا قَالَ اللَّهُ تَعَالَى {فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّى إِذَا أَثْخَنْتُمُوهُمْ فَشُدُّوا الْوَثَاقَ فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً حَتَّى تَضَعَ الْحَرْبُ أَوْزَارَهَا} [محمد: ٤] . أَوْ نُطْلِقَهُمْ أَحْرَارًا ذِمَّةً، كَمَا فَعَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِأَهْلِ خَيْبَرَ. فَهَذِهِ أَحْكَامُ الْحَرْبِيِّينَ بِنَصِّ الْقُرْآنِ، وَالسُّنَنِ الثَّابِتَةِ، وَالْإِجْمَاعِ الْمُتَيَقَّنِ، وَلَا خِلَافَ فِي أَنَّهُ لَيْسَ الصَّلْبُ، وَلَا قَطْعُ الْأَيْدِي وَالْأَرْجُلِ، وَلَا النَّفْيُ، مِنْ أَحْكَامِهِمْ. فَبَطَلَ أَنْ يَكُونَ الْمُحَارِبُ الْمَذْكُورُ فِي الْآيَةِ حَرْبِيًّا كَافِرًا وَإِنْ كَانَ ذِمِّيًّا فَنَقَضَ الْعَهْدَ فَلِلنَّاسِ فِيهِ أَقْوَالٌ ثَلَاثَةٌ لَا رَابِعَ لَهَا: أَحَدُهَا - أَنَّهُ يَنْتَقِلُ إلَى حُكْمِ الْحَرْبِيِّينَ فِي كُلِّ مَا ذَكَرْنَا.

L41828–41829 The second is that he is a belligerent until subdued, whereupon he must inevitably be restored to his dhimma as it was. The third is that nothing is accepted from him except Islam or the sword. Some have differentiated

وَالثَّانِي - أَنَّهُ مُحَارِبٌ حَتَّى يُقْدَرَ عَلَيْهِ فَيُرَدَّ إلَى ذِمَّتِهِ كَمَا كَانَ وَلَا بُدَّ. وَالثَّالِثُ - أَنَّهُ لَا يُقْبَلُ مِنْهُ إلَّا الْإِسْلَامُ أَوْ السَّيْفُ. وَقَدْ فَرَّقَ بَعْضُ النَّاسِ بَيْنَ الذِّمِّيِّ يَنْقُضُ الْعَهْدَ فَيَصِيرُ حَرْبِيًّا وَبَيْنَ الذِّمِّيِّ يُحَارِبُ فَيَكُونُ لَهُ عِنْدَهُمْ حُكْمُ الْمُحَارِبِ الْمَذْكُورِ فِي

[5] **Qur'an references (L41821):** Qur'an 2:278 (Al-Baqarah); Qur'an 2:279 (Al-Baqarah); Qur'an 49:9 (Al-Hujurat); Qur'an 49:10 (Al-Hujurat); Qur'an 47:4 (Muhammad).

between a dhimmī who violates the covenant, thereby becoming hostile, and a dhimmī who wages war, who would—according to them—be subject to the ruling of the belligerent mentioned in the verse, not the ruling of the hostile combatant. Thus, it is decisively and undisputedly established that the dhimmī who breaches his dhimma and transitions to the ruling of hostile combatants does not fall under the ruling of the belligerent mentioned in the verse. This is clarified by Allah's statement: {If they break their oaths after their covenant and vilify your religion, then fight the leaders of disbelief} [9:12] until His words: {so that they may desist} [9:12]. Here, Allah commands fighting them if they violate their covenant until they desist—a universal command necessitating their abandonment of all deviation. This inherently requires that nothing be accepted from them except Islam alone. It is impermissible to restrict His words {so that they may desist} [9:12] to partial desistance instead of complete desistance, for doing so would entail falsely attributing to Allah what one has no knowledge of—an act He forbids, as stated: {And do not say about Allah what you do not know} [2:169]. If the belligerent mentioned in the verse were an apostate from Islam, the Messenger of Allah—peace and blessings be upon him—would have clarified the ruling for apostates with his statement: "Whoever changes his religion, kill him." Allah further elucidates this in His words: {Indeed, those who disbelieve after their faith, then increase in disbelief—their repentance will never be accepted} [3:90]. Thus, it is conclusively established that the ruling for apostates—decreed by Allah in the Quran and through His Messenger, peace be upon him—differs from His ruling for the belligerent. Hence, it is decisively certain that the belligerent is not an apostate.[6]

L41830–41831 Moreover, there is no disagreement among anyone in the Ummah that the ruling for an apostate under control is not crucifixion, amputation of the hand and foot, or exile from the land? Thus, it is firmly established by all we have mentioned that the muḥārib is not a disbeliever at all, since he shares none of the rulings of disbelief, nor does any disbeliever have the ruling of the muḥārib. The narration from Ibn Abbas here involves Al-Ḥasan ibn Wāqid—

[6]**Qur'an references (L41829):** Qur'an 9:12 (At-Tawbah); Qur'an 2:169 (Al-Baqarah); Qur'an 7:33 (Al-A'raf); Qur'an 3:90 (Ali 'Imran).

الْآيَةِ، لَا حُكْمُ الْحَرْبِيِّ فَصَحَّ بِلَا خِلَافٍ أَنَّ الذِّمِّيَّ النَّاقِضَ لِذِمَّتِهِ الْمُنْتَقِلَ إلَى حُكْمِ أَهْلِ الْحَرْبِ لَيْسَ لَهُ حُكْمُ الْمُحَارِبِ الْمَذْكُورِ فِي الْآيَةِ بِلَا خِلَافٍ. وَبَيَّنَ هَذَا قَوْلُ اللَّهِ تَعَالَى {وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ} [التوبة: ١٢] إلَى قَوْلِهِ: {لَعَلَّهُمْ يَنْتَهُونَ} [التوبة: ١٢] فَأَمَرَ اللَّهُ تَعَالَى بِقِتَالِهِمْ إذَا نَكَثُوا عَهْدَهُمْ حَتَّى يَنْتَهُوا - وَهَذَا عُمُومٌ يُوجِبُ الِانْتِهَاءَ عَنْ كُلِّ مَا هُمْ عَلَيْهِ مِنْ الضَّلَالِ، وَهَذَا يَقْتَضِي - وَلَا بُدَّ - أَنْ لَا يُقْبَلَ مِنْهُمْ إلَّا الْإِسْلَامُ وَحْدَهُ، وَلَا يَجُوزُ أَنْ يُخَصَّ بِقَوْلِهِ تَعَالَى {لَعَلَّهُمْ يَنْتَهُونَ} [التوبة: ١٢] انْتِهَاءٌ دُونَ انْتِهَاءٍ، فَيَكُونُ فَاعِلُ ذَلِكَ قَائِلًا عَلَى اللَّهِ تَعَالَى مَا لَا عِلْمَ لَهُ بِهِ، وَهَذَا حَرَامٌ، قَالَ اللَّهُ تَعَالَى {وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لا تَعْلَمُونَ} [البقرة: ١٦٩] . وَإِنْ كَانَ الْمُحَارِبُ الْمَذْكُورُ فِي الْآيَةِ مُرْتَدًّا عَنْ إسْلَامِهِ، فَقَدْ بَيَّنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حُكْمَ الْمُرْتَدِّ بِقَوْلِهِ «مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ» . وَبَيَّنَهُ اللَّهُ تَعَالَى بِقَوْلِهِ {إِنَّ الَّذِينَ كَفَرُوا بَعْدَ إِيمَانِهِمْ ثُمَّ ازْدَادُوا كُفْرًا لَنْ تُقْبَلَ تَوْبَتُهُمْ} [آل عمران: ٩٠] . فَصَحَّ يَقِينًا أَنَّ حُكْمَ الْمُرْتَدِّ الَّذِي أَوْجَبَ اللَّهُ تَعَالَى فِي الْقُرْآنِ، وَعَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - هُوَ غَيْرُ حُكْمِهِ تَعَالَى فِي الْمُحَارِبِ؟ فَصَحَّ يَقِينًا أَنَّ الْمُحَارِبَ لَيْسَ مُرْتَدًّا.

وَأَيْضًا - فَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّ حُكْمَ الْمُرْتَدِّ الْمَقْدُورِ عَلَيْهِ لَيْسَ هُوَ الصَّلْبُ، وَلَا قَطْعُ الْيَدِ وَالرِّجْلِ، وَلَا النَّفْيُ مِنْ الْأَرْضِ؟ فَصَحَّ بِكُلِّ مَا ذَكَرْنَا أَنَّ الْمُحَارِبَ لَيْسَ كَافِرًا أَصْلًا، إذْ لَيْسَ لَهُ شَيْءٌ مِنْ أَحْكَامِ الْكُفْرِ، وَلَا لِأَحَدٍ مِنْ الْكُفَّارِ: حُكْمُ الْمُحَارِبِ. وَالرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ فِيهَا الْحَسَنُ بْنُ وَاقِدٍ - وَلَيْسَ بِالْقَوِيِّ - وَهُوَ أَيْضًا مِنْ قَوْلِ ابْنِ عَبَّاسٍ لَا مُسْنَدًا، فَإِذْ قَدْ صَحَّ مَا ذَكَرْنَا يَقِينًا فَقَدْ

who is not strong in reliability—and it is attributed to Ibn Abbas as his opinion, not as a formally transmitted report. Therefore, since what we have mentioned is confirmed with certainty, it is established without doubt that the muḥārib is a disobedient Muslim. Given this, we must examine: What is the sin that necessitates labeling someone as a muḥārib and subjecting them to the rulings for muḥāribīn? We examined all sins—fornication, false accusation, theft, usurpation, sorcery, oppression, drinking alcohol, consuming prohibited things, fleeing from battle, fornication, and other such sins—and found none of these has a textual proof or consensus designating their perpetrator as a muḥārib. Thus, it is invalid to consider the perpetrator of any of these sins a muḥārib. Furthermore, all sins—whether mentioned or not—must be one of two possibilities with no third alternative: either they have a text specifying a fixed punishment or they do not. Those with a fixed punishment include apostasy, fornication, false accusation, drinking alcohol, theft, and denial of a loaned item. None of these carry the rulings mentioned in the Quranic verse regarding the muḥārib, invalidating the notion that any of these sins constitute muḥārabah. This is also a matter of certain consensus. As for sins without a divinely prescribed fixed punishment—neither in the Quran nor the Sunnah of the Messenger of Allah (peace be upon him)—it is impermissible to equate them with the punishment for muḥārabah, thereby legislating what Allah has not authorized. This is unlawful. The Messenger of Allah (peace be upon him) said: "Your blood, wealth, honor, and bodily integrity are inviolable." Thus, it is certain that no one's blood, body, wealth, or honor may be violated except by explicit textual proof from the Quran, the Sunnah, or a certain consensus of the Companions (may Allah be pleased with them) tracing back to the instruction of the Messenger of Allah (peace be upon him).

ثَبَتَ بِلَا شَكٍّ أَنَّ الْمُحَارِبَ إنَّمَا هُوَ مُسْلِمٌ عَاصٍ، فَإِذْ هُوَ كَذَلِكَ فَالْوَاجِبُ: أَنْ نَنْظُرَ مَا الْمَعْصِيَةُ الَّتِي بِهَا وَجَبَ أَنْ يَكُونَ مُحَارِبًا؟ وَأَنْ يَكُونَ لَهُ حُكْمُ الْمُحَارِبِ فَنَظَرْنَا فِي جَمِيعِ الْمَعَاصِي مِنْ الزِّنَا، وَالْقَذْفِ، وَالسَّرِقَةِ، وَالْغَصْبِ، وَالسِّحْرِ، وَالظُّلْمِ، وَشُرْبِ الْخَمْرِ، وَالْمُحَرَّمَاتِ، أَوْ أَكْلِهَا، وَالْفِرَارِ مِنْ الزَّحْفِ، وَالزِّنَا، وَغَيْرِ ذَلِكَ - فَوَجَدْنَا جَمِيعَ هَذِهِ الْمَعَاصِي لَيْسَ مِنْهَا شَيْءٌ جَاءَ نَصٌّ أَوْ إجْمَاعٌ فِي أَنَّهُ مُحَارِبٌ، فَبَطَلَ أَنْ يَكُونَ فَاعِلُ شَيْءٍ مِنْهَا مُحَارِبًا. وَأَيْضًا فَإِنَّ جَمِيعَ الْمَعَاصِي - الَّتِي ذَكَرْنَا وَالَّتِي لَمْ نَذْكُرْ - لَا تَخْلُو مِنْ أَحَدِ وَجْهَيْنِ لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ فِيهَا نَصٌّ بِحَدٍّ مَحْدُودٍ أَوْ لَا يَكُونَ فِيهَا نَصٌّ بِحَدٍّ مَحْدُودٍ، فَالَّتِي فِيهَا النَّصُّ بِحَدٍّ مَحْدُودٍ فَهِيَ الرِّدَّةُ، وَالزِّنَا، وَالْقَذْفُ، وَالْخَمْرُ، وَالسَّرِقَةُ، وَجَحْدُ الْعَارِيَّةِ - وَلَيْسَ لِشَيْءٍ مِنْهَا الْحُكْمُ الْمَذْكُورُ فِي الْآيَةِ فِي الْمُحَارِبِ - فَبَطَلَ أَنْ يَكُونَ شَيْءٌ مِنْ هَذِهِ الْمَعَاصِي مُحَارَبَةً وَهَذَا أَيْضًا إجْمَاعٌ مُتَيَقَّنٌ وَأَمَّا مَا لَيْسَ فِيهِ مِنْ اللَّهِ تَعَالَى حَدٌّ مَحْدُودٌ - لَا فِي الْقُرْآنِ وَلَا عَلَى لِسَانِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَا يَحِلُّ لِأَحَدٍ أَنْ يُلْحِقَهَا بِحَدِّ الْمُحَارَبَةِ، فَيَكُونُ شَارِعًا فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى، وَهَذَا لَا يَحِلُّ، بَلْ قَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» . فَوَجَبَ يَقِينًا أَنْ لَا يُسْتَبَاحَ دَمُ أَحَدٍ، وَلَا بَشَرَتُهُ، وَلَا مَالُهُ، وَلَا عِرْضُهُ إلَّا بِنَصٍّ وَارِدٍ فِيهِ بِعَيْنِهِ، مِنْ قُرْآنٍ، أَوْ سُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ إجْمَاعٍ مُتَيَقَّنٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - رَاجِعٍ إلَى تَوْقِيفِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L41832–41833 Thus, it is invalidated for any of the aforementioned sins to constitute "waging war." Since this is beyond doubt, only the highway robber and those who revolt remain. Both are combatants, and "combat" linguistically cor-

responds to “waging war.” Upon examining this, we found that those who revolt are explicitly addressed in the textual ruling: they are to be fought until they cease their rebellion, after which reconciliation between them and those they rebelled against is sought. Thus, those who revolt fall outside the ruling applicable to those who wage war. This leaves only the “highway robber” and “the one who terrorizes the highway”—the latter being a confirmed corrupter on earth. The majority of scholars assert that he is precisely the “one who wages war” mentioned in the verse, with no other possibility remaining. As established earlier, it is invalidated for the one who wages war to be a disbeliever, and no Muslim scholar has ever classified any sinner as the “one who wages war” mentioned in the verse except the highway robber who spreads fear on the path or the thief. Therefore, it is conclusively established that the one who terrorizes the highway and spreads corruption is unquestionably the “one who wages war” mentioned in the verse. As for the thief, we examined his case—with Allah’s help, the Exalted—and found that if he enters stealthily to steal, commit fornication, or kill, and commits any such act covertly, he is merely a thief, subject to the thief’s punishment, not that of the one who wages war, without any disagreement.

فَبَطَلَ أَنْ يَكُونَ شَيْءٌ مِنْ الْمَعَاصِي الْمَذْكُورَةِ هِيَ الْمُحَارَبَةُ، فَإِذْ لَا شَكَّ فِي هَذَا فَلَمْ يَبْقَ إلَّا قَاطِعُ الطَّرِيقِ، وَالْبَاغِي، فَهُمَا جَمِيعًا مُقَاتِلَانِ، الْمُقَاتَلَةُ هِيَ الْمُحَارَبَةُ فِي اللُّغَةِ: فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا " الْبَاغِي " قَدْ وَرَدَ فِيهِ النَّصُّ، بِأَنْ يُقَاتَلَ حَتَّى يَفِيءَ فَقَطْ، فَيُصْلَحُ بَيْنَهُ وَبَيْنَ الْمَبْغِيِّ عَلَيْهِ، فَخَرَجَ الْبَاغِي عَنْ أَنْ يَكُونَ لَهُ حُكْمُ الْمُحَارِبِينَ، فَلَمْ يَبْقَ إلَّا " قَاطِعُ الطَّرِيقِ، وَمُخِيفُ السَّبِيلِ " هَذَا مُفْسِدٌ فِي الْأَرْضِ بِيَقِينٍ، وَقَدْ قَالَ جُمْهُورُ النَّاسِ: إنَّهُ هُوَ الْمُحَارِبُ الْمَذْكُورُ فِي الْآيَةِ، وَلَمْ يَبْقَ غَيْرُهُ، وَقَدْ بَطَلَ - كَمَا قَدَّمْنَا - أَنْ يَكُونَ كَافِرًا، وَلَمْ يَقُلْ أَحَدٌ مِنْ أَهْلِ الْإِسْلَامِ فِي أَحَدٍ مِنْ أَهْلِ الْمَعَاصِي: إنَّهُ الْمُحَارِبُ الْمَذْكُورُ فِي الْآيَةِ، إلَّا قَاطِعُ الطَّرِيقِ الْمُخِيفِ فِيهَا، أَوْ فِي اللِّصِّ - فَصَحَّ أَنَّ مُخِيفَ السَّبِيلِ الْمُفْسِدَ فِيهَا: هُوَ الْمُحَارِبُ الْمَذْكُورُ فِي الْآيَةِ بِلَا شَكٍّ. وَبَقِيَ أَمْرُ اللِّصِّ فَنَظَرْنَا فِيهِ - بِعَوْنِ اللَّهِ تَعَالَى - فَوَجَدْنَاهُ إنْ دَخَلَ مُسْتَخْفِيًا لِيَسْرِقَ، أَوْ لِيَزْنِيَ، أَوْ لِيَقْتُلَ فَفَعَلَ شَيْئًا مِنْ ذَلِكَ مُخْتَفِيًا فَإِنَّمَا هُوَ سَارِقٌ، عَلَيْهِ مَا عَلَى السَّارِقِ، لَا مَا عَلَى الْمُحَارِبِ بِلَا خِلَافٍ.

L41834–41838 Or if he is merely an adulterer, he incurs the punishment prescribed for adultery, not that for *ḥirābah*, without disagreement. Or if he is a murderer, he incurs the punishment prescribed for intentional murder according to the explicit texts of the Quran and Sunnah—though some have disputed this with an untenable objection lacking evidence. If his crime becomes widely known, and he flees and is apprehended, he is not deemed a brigand (*muharib*), for he did not wage war against anyone; he is merely a transgressor. The legal ruling for *ḥirābah* does not apply to him, but only that for committing a reprehensible act, leaving him subject to nothing beyond discretionary punishment. However, if he resists with force and obstinately defies, he is unquestionably a brigand (*muharib*), having waged war, spread terror on the path, and caused corruption in the land. Thus, the ruling for brigands applies to him, as affirmed by Al-Sha‘bi and others. Abu

أَوْ إنَّمَا هُوَ زَانٍ، فَعَلَيْهِ مَا عَلَى الزَّانِي، لَا مَا عَلَى الْمُحَارِبِ بِلَا خِلَافٍ. أَوْ إنَّمَا هُوَ قَاتِلٌ، فَعَلَيْهِ مَا عَلَى الْقَاتِلِ بِنَصِّ الْقُرْآنِ وَالسُّنَّةِ، فِيمَنْ قَتَلَ عَمْدًا - وَإِنْ كَانَ قَدْ خَالَفَ فِي هَذَا قَوْمٌ خِلَافًا لَا تَقُومُ بِهِ حُجَّةٌ، فَإِنْ اُشْتُهِرَ أَمْرُهُ فَفَرَّ وَأَخَذَ، فَلَيْسَ مُحَارِبًا، لِأَنَّهُ لَمْ يُحَارِبْ أَحَدًا، وَإِنَّمَا هُوَ عَاصٍ فَقَطْ، وَلَا يَكُونُ عَلَيْهِ لَهُ حُكْمُ الْمُحَارَبَةِ، لَكِنْ حُكْمُ مَنْ فَعَلَ مُنْكَرًا، فَلَيْسَ عَلَيْهِ إلَّا التَّعْزِيرُ - وَإِنْ دَافَعَ وَكَابَرَ: فَهُوَ مُحَارِبٌ بِلَا شَكٍّ، لِأَنَّهُ قَدْ حَارَبَ وَأَخَافَ السَّبِيلَ، وَأَفْسَدَ فِي الْأَرْضِ، فَلَهُ حُكْمُ الْمُحَارِبِ كَمَا قَالَ الشَّعْبِيُّ، وَغَيْرُهُ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا قَوْلُ مَنْ قَالَ: لَا تَكُونُ الْمُحَارَبَةُ إلَّا فِي الصَّحْرَاءِ، أَوْ

مَنْ قَالَ: لَا تَكُونُ الْمُحَارَبَةُ فِي الْمُدُنِ إِلَّا لَيْلًا: فَقَوْلَانِ فَاسِدَانِ، وَدَعْوَتَانِ سَاقِطَتَانِ، بِلَا بُرْهَانٍ، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ صَحِيحَةٍ، وَلَا سَقِيمَةٍ، وَلَا مِنْ إِجْمَاعٍ، وَلَا مِنْ قَوْلِ صَاحِبٍ، وَلَا مِنْ قِيَاسٍ، وَلَا مِنْ رَأْيٍ سَدِيدٍ، وَمَا يَبْعُدُ أَنْ يَكُونَ فِيهِمْ مَنْ هَانَ عِنْدَهُ الْكَذِبُ عَلَى الْأُمَّةِ كُلِّهَا، فَيَقُولُ: مَنْ حَارَبَ فِي الصَّحْرَاءِ فَقَدْ صَحَّ عَلَيْهِ اسْمُ مُحَارِبٍ وَمِنْ كِتَابِ الْمُحَارِبِينَ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ اعْتَرَضَ مُعْتَرِضٌ فِي أَنَّ الْمُحَارِبَ لَا يَكُونُ إِلَّا مَنْ شَهَرَ السِّلَاحَ: بِمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ رَاهْوَيْهِ أرنا الْفَضْلُ بْنُ مُوسَى نا مَعْمَرٌ عَنْ عَبْدِ اللَّهِ بْنِ طَاوُسٍ عَنِ ابْنِ الزُّبَيْرِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ شَهَرَ سَيْفَهُ ثُمَّ وَضَعَهُ فَدَمُهُ هَدَرٌ» قَالَ إِسْحَاقُ: أرناه عَبْدُ الرَّزَّاقِ بِهَذَا الْإِسْنَادِ مِثْلَهُ، وَلَمْ يَرْفَعْهُ، يُرِيدُ، أَنَّهُ جَعَلَهُ مِنْ كَلَامِ ابْنِ الزُّبَيْرِ - قَالَ ابْنُ شُعَيْبٍ: وَأَنَا أَبُو دَاوُد نا أَبُو عَاصِمٍ عَنِ ابْنِ جُرَيْجٍ عَنِ ابْنِ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ الزُّبَيْرِ قَالَ: مَنْ رَفَعَ السِّلَاحَ ثُمَّ وَضَعَهُ فَدَمُهُ هَدَرٌ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ أَخْبَرَنِي أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ أَخْبَرَنِي ابْنُ وَهْبٍ أَنَا مَالِكٌ، وَأُسَامَةُ بْنُ زَيْدٍ، وَيُونُسُ بْنُ يَزِيدَ: أَنَّ نَافِعًا أَخْبَرَهُمْ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ حَمَلَ عَلَيْنَا السِّلَاحَ فَلَيْسَ مِنَّا» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا كُلُّهُ حَقٌّ، وَآثَارٌ صِحَاحٌ لَا يَضُرُّهَا إِيقَافُ مَنْ أَوْقَفَهَا، إِلَّا أَنَّهُ لَا حُجَّةَ فِيهَا لِمَنْ لَمْ يَرَ الْمُحَارِبَ إِلَّا مَنْ حَارَبَ بِسِلَاحٍ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنَّمَا ذَكَرَ فِي هَذَيْنِ الْأَثَرَيْنِ: مَنْ وَضَعَ سَيْفَهُ وَشَهَرَ سِلَاحَهُ فَقَطْ، وَسَكَتَ عَمَّا عَدَا ذَلِكَ فِيهَا، وَلَمْ يَقُلْ - عَلَيْهِ السَّلَامُ - أَنْ لَا مُحَارِبَ إِلَّا مَنْ هَذِهِ صِفَتُهُ، فَوَجَبَ مِنْ هَذَيْنِ الْأَثَرَيْنِ حُكْمُ مَنْ حَمَلَ السِّلَاحَ

Muhammad—may Allah have mercy on him—said: As for those who assert, "*Ḥirābah* is confined to deserts," or claim, "*Ḥirābah* in cities occurs only at night"—these are two invalid opinions and baseless assertions devoid of proof: neither from the Quran, nor a sound or weak Sunnah, nor consensus, nor a Companion's statement, nor analogy, nor valid juristic opinion. It is plausible that among them are those who trivialize fabricating lies against the entire Ummah, declaring, "Whoever wages war in a desert is rightfully labeled a brigand (*muharib*)." From the Book of Those Who Wage War, Abu Muhammad—may Allah have mercy on him—said: Should an objector argue that one who wages war is only he who brandishes weapons, we respond with what ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb informed us, Isḥāq ibn Rāhwayh informed us, al-Faḍl ibn Mūsā narrated to us, Maʿmar narrated from ʿAbdullāh ibn Ṭāwūs from Ibn al-Zubayr from the Messenger of Allah—peace and blessings be upon him—who said: "Whoever unsheathes his sword then sheathes it, his blood is forfeited." Isḥāq stated: ʿAbd al-Razzāq reported this to us via the same chain but did not attribute it to the Prophet, instead ascribing it to Ibn al-Zubayr's statement. Ibn Shuʿayb said: And I, Abū Dāwūd, narrated from Abū ʿĀṣim, from Ibn Jurayj, from Ibn Ṭāwūs, from his father, from Ibn al-Zubayr, who said: "Whoever raises a weapon then lowers it, his blood is forfeited." ʿAbdullāh ibn Rabīʿ narrated to us: Muḥammad ibn Muʿāwiyah informed me, Aḥmad ibn Shuʿayb informed me, Aḥmad ibn ʿAmr ibn al-Sarḥ informed me, Ibn Wahb informed me—Mālik, Usāmah ibn Zayd, and Yūnus ibn Yazīd reported that Nāfiʿ informed them from ʿAbdullāh ibn ʿUmar that the Messenger of Allah—peace and blessings be upon him—said: "Whoever bears arms against us is not of us."

Abu Muhammad—may Allah have mercy on him—said: All this constitutes valid, authentic reports whose reliability remains intact despite those who deemed them stopped. However, they offer no proof for restricting "one who wages war" solely to those who fight with weapons, for the Messenger of Allah—peace and blessings be upon him—specified in these two reports only those who sheathed swords or brandished weapons, remaining silent on others. He—peace be upon him—did not exclude those who wage war

beyond this description. Thus, these reports establish rulings for weapon-bearers, requiring that rulings for those not bearing weapons be sought from other sources. Upon doing so, we found:

What ʿAbdullāh ibn Yūsuf narrated to us: Aḥmad ibn Fatḥ narrated to us, ʿAbd al-Wahhāb ibn ʿĪsā narrated to us, Aḥmad ibn Muḥammad narrated to us, Aḥmad ibn ʿAlī narrated to us, Muslim ibn al-Ḥajjāj narrated to us: Zuhayr ibn Ḥarb narrated to us, ʿAbd al-Raḥmān ibn Mahdī narrated to us, Mahdī narrated to us, Ibn Maymūn narrated from Ghaylān ibn Jarīr from Ziyād ibn Rabāḥ from Abū Hurayrah, who said: The Messenger of Allah—peace and blessings be upon him—stated in his ḥadīth: "Whoever from my Ummah rises against my Ummah, striking their righteous..." The one who is wicked among them and does not refrain from harming a believer among them, nor fulfills the covenant with those under it, is not of me.

L41839 The Messenger of Allah—peace and blessings be upon him—generalized, as you have heard, "acts of brigandage" without specifying the use of a weapon or anything else. Thus, it is established that every act of brigandage—whether with a weapon or without any weapon at all—is equivalent. The author said: Therefore, it is established by what we have mentioned that the brigand is the arrogantly defiant one who terrifies travelers on the path, spreading corruption on earth—whether with a weapon or without any weapon at all, whether by night or day, in a city or wilderness, in the caliph's palace or a mosque, whether they appoint a leader for themselves or do not appoint anyone other than the caliph himself, whether he does this with his army or others, isolated in the desert, villagers in their homes, inhabitants of a fortress, residents of a large city or a small one, whether one individual or more. Anyone who wages war against passersby, instilling fear on the path through killing, seizing property, wounding, or violation of chastity: such a person is a brigand. The ruling of brigands specified in the verse applies to him and to them, whether they are many or few, for Allah the Exalted did not specify any of these aspects when He entrusted us with the ruling concerning brigands: {And your Lord is never forgetful} [19:64]. We solemnly testify by Allah's authority that if He—glory to Him—had intended to specify any of these aspects, He would not have neglected any of it, nor

وَبَقِيَ حُكْمُ مَنْ لَمْ يَحْمِلْ السِّلَاحَ أَنْ يُطْلَبَ فِي غَيْرِهِمَا؟ فَفَعَلْنَا، فَوَجَدْنَا: مَا نا 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 زُهَيْرُ بْنُ حَرْبٍ ثنا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا مَهْدِيٌّ ثنا ابْنُ مَيْمُونٍ عَنْ غَيْلَانِ بْنِ جَرِيرٍ عَنْ زِيَادِ بْنِ رَبَاحٍ عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي حَدِيثِهِ «وَمَنْ خَرَجَ مِنْ أُمَّتِي عَلَى أُمَّتِي يَضْرِبُ بَرَّهَا وَفَاجِرَهَا لَا يَتَحَاشَى مِنْ مُؤْمِنِهَا وَلَا يَفِي بِذِي عَهْدِهَا فَلَيْسَ مِنِّي.

» فَقَدْ عَمَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَمَا تَسْمَعُ " الضَّرْبَ " وَلَمْ يَقُلْ بِسِلَاحٍ، وَلَا غَيْرِهِ. فَصَحَّ أَنَّ كُلَّ حِرَابَةٍ بِسِلَاحٍ، أَوْ بِلَا سِلَاحٍ فَسَوَاءٌ؟ قَالَ: فَوَجَبَ بِمَا ذَكَرْنَا أَنَّ الْمُحَارِبَ: هُوَ الْمُكَابِرُ الْمُخِيفُ لِأَهْلِ الطَّرِيقِ، الْمُفْسِدُ فِي سَبِيلِ الْأَرْضِ - سَوَاءً بِسِلَاحٍ، أَوْ بِلَا سِلَاحٍ أَصْلًا - سَوَاءً لَيْلًا، أَوْ نَهَارًا - فِي مِصْرٍ، أَوْ فِي فَلَاةٍ - أَوْ فِي قَصْرِ الْخَلِيفَةِ، أَوْ الْجَامِعِ - سَوَاءً قَدَّمُوا عَلَى أَنْفُسِهِمْ إمَامًا، أَوْ لَمْ يُقَدِّمُوا سِوَى الْخَلِيفَةِ نَفْسِهِ - فَعَلَ ذَلِكَ بِجُنْدِهِ أَوْ غَيْرِهِ - مُنْقَطِعِينَ فِي الصَّحْرَاءِ، أَوْ أَهْلِ قَرْيَةٍ سُكَّانًا فِي دُورِهِمْ، أَوْ أَهْلِ حِصْنٍ كَذَلِكَ، أَوْ أَهْلِ مَدِينَةٍ عَظِيمَةٍ، أَوْ غَيْرِ عَظِيمَةٍ كَذَلِكَ - وَاحِدًا كَانَ أَوْ أَكْثَرَ - كُلُّ مَنْ حَارَبَ الْمَارَّ، وَأَخَافَ السَّبِيلَ بِقَتْلِ نَفْسٍ، أَوْ أَخْذِ مَالٍ، أَوْ لِجِرَاحَةٍ، أَوْ لِانْتِهَاكِ فَرْجٍ: فَهُوَ مُحَارِبٌ، عَلَيْهِ وَعَلَيْهِمْ - كَثُرُوا أَوْ قَلُّوا - حُكْمُ الْمُحَارِبِينَ الْمَنْصُوصُ فِي الْآيَةِ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ شَيْئًا مِنْ هَذِهِ الْوُجُوهِ، إذْ عَهِدَ إلَيْنَا بِحُكْمِ الْمُحَارِبِينَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ

forgotten it, nor burdened us with deliberately omitting its mention until someone else explains it to us through conjecture and false assumption.[7]

L41840 **The issue of granting belligerents that which does not unjustly harm those subject to a judicial ruling.**

L41841 2257. Issue: Abū Muḥammad—may Allāh have mercy on him—said: Some scholars held that combatants must be given an amount which does not unjustly burden those obligated to provide it, and they deemed this applicable to all wealth concerning non-combatants. Abū Muḥammad—may Allāh have mercy on him—said: As for our position—and with Allāh the Exalted we seek strength—it is impermissible to give those individuals anything on this basis, whether little or much, for it is the same whether they are combatants or devils. This is based on Allāh's words: "Cooperate in righteousness and piety, and do not cooperate in sin and aggression" (5:2), and His words: "Be upholders of justice, witnesses for Allāh, even if against yourselves" (4:135).[8]

L41842 **A legal question concerning one whose property was unjustly claimed.**

L41843–41847 2258. Issue: Abū Muḥammad—may Allah have mercy on him—said: The taking of property in the aforementioned manner cannot be free from being one of two possibilities: either injustice or wrongful seizure by force without right. There is no third possibility. Either it is righteousness and piety, or it is sin and transgression. There is no disagreement among anyone in the Ummah that it is neither righteousness nor piety, but rather it is sin and transgression without any disagreement. Cooperation in sin and transgression is forbidden and unlawful.

Abdullah ibn Yusuf narrated to us: 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: Abu Kuraib Muhammad ibn al-Ala narrated to us: Khalid—meaning ibn

[7] **Qur'an references (L41839):** Qur'an 19:64 (Maryam).

[8] **Qur'an references (L41841):** Qur'an 5:2 (Al-Ma'idah); Qur'an 4:135 (An-Nisa).

تَعَالَى أَنَّ اللَّهَ سُبْحَانَهُ لَوْ أَرَادَ أَنْ يَخُصَّ بَعْضَ هَذِهِ الْوُجُوهِ لَمَا أَغْفَلَ شَيْئًا مِنْ ذَلِكَ، وَلَا نَسِيَهُ وَلَا أَعْنَتَنَا بِتَعَمُّدِ تَرْكِ ذِكْرِهِ حَتَّى يُبَيِّنَهُ لَنَا غَيْرُهُ بِالتَّكَهُّنِ وَالظَّنِّ الْكَاذِبِ.

[مَسْأَلَةٌ إِعْطَاء المحاربين الشَّيْءَ الَّذِي لَا يُجْحِفُ بِالْمَقْطُوعِ عَلَيْهِمْ]

٢٢٥٧ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: قَالَ قَوْمٌ: يَجِبُ أَنْ يُعْطَى الْمُحَارِبُونَ الشَّيْءَ الَّذِي لَا يُجْحِفُ بِالْمَقْطُوعِ عَلَيْهِمْ، وَرَأَوْا ذَلِكَ فِي جَمِيعِ الْأَمْوَالِ لِغَيْرِ الْمُحَارِبِينَ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَالَّذِي نَقُولُ - وَبِاَللَّهِ تَعَالَى نَتَأَيَّدُ: إنَّهُ لَا يَجُوزُ أَنْ يُعْطَوْا عَلَى هَذَا الْوَجْهِ شَيْئًا - قَلَّ أَمْ كَثُرَ - سَوَاءٌ مُحَارِبًا كَانَ أَوْ شَيْطَانًا. لِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَقَوْله تَعَالَى {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ} [النساء: ١٣٥] .

[مَسْأَلَةٌ فِيمَنْ سُئِلَ مَاله بِغَيْرِ حَقّ]

٢٢٥٨ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَا يَخْلُو أَخْذُ الْمَالِ بِالْوَجْهِ الْمَذْكُورِ مِنْ الظُّلْمِ، وَالْغَلَبَةِ بِغَيْرِ حَقٍّ مِنْ أَحَدِ وَجْهَيْنِ، لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ بِرًّا وَتَقْوَى - أَوْ يَكُونَ إثْمًا وَعُدْوَانًا. وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ فِي أَنَّهُ لَيْسَ بِرًّا وَلَا تَقْوَى، وَلَكِنَّهُ إثْمٌ وَعُدْوَانٌ بِلَا خِلَافٍ، وَالتَّعَاوُنُ عَلَى الْإِثْمِ وَالْعُدْوَانِ: حَرَامٌ لَا يَحِلُّ: 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 أَبُو كُرَيْبٍ مُحَمَّدُ بْنُ الْعَلَاءِ نا خَالِدٌ - يَعْنِي ابْنَ مَخْلَدٍ - نا مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ قَالَ «جَاءَ رَجُلٌ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ أَرَأَيْتَ إنْ جَاءَ رَجُلٌ يُرِيدُ أَخْذَ مَالِي؟

قَالَ: فَلَا تُعْطِه مَالَكَ قَالَ: أَرَأَيْتَ إِنْ قَاتَلَنِي؟ قَالَ: قَاتِلْهُ قَالَ: أَرَأَيْتَ إِنْ قَتَلَنِي؟ قَالَ: فَأَنْتَ شَهِيدٌ، قَالَ: أَرَأَيْتَ إِنْ قَتَلْتُهُ؟ قَالَ: هُوَ فِي النَّارِ» . وَبِهِ - إِلَى مُسْلِمٍ نا الْحَسَنُ بْنُ عَلِيٍّ الْحُلْوَانِيُّ، وَمُحَمَّدُ بْنُ نَافِعٍ، قَالَا جَمِيعًا: نا عَبْدُ الرَّزَّاقِ أرنا ابْنُ جُرَيْجٍ أَنَا سُلَيْمَانُ الْأَحْوَلُ أَنَّ ثَابِتًا - مَوْلَى عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ - أَخْبَرَهُ أَنَّهُ «لَمَّا كَانَ بَيْنَ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ وَبَيْنَ عَنْبَسَةَ بْنِ أَبِي سُفْيَانَ مَا كَانَ تَيَسَّرُوا لِلْقِتَالِ، رَكِبَ خَالِدُ بْنُ الْعَاصِ إِلَى عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ، فَوَعَظَهُ خَالِدٌ، فَقَالَ عَبْدُ اللَّهِ بْنُ عَمْرٍو: أَمَا عَلِمْتَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا إِبْرَاهِيمُ بْنُ سَعْدٍ عَنْ أَبِيهِ - هُوَ سَعْدُ بْنُ إِبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ - عَنْ أَبِي عُبَيْدَةَ بْنِ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ عَنْ سَعِيدِ بْنِ زَيْدٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «مَنْ قَاتَلَ دُونَ مَالِهِ فَقُتِلَ فَهُوَ شَهِيدٌ، وَمَنْ قَاتَلَ دُونَ دَمِهِ فَهُوَ شَهِيدٌ، وَمَنْ قَاتَلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ» . وَبِهِ - إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ رَافِعٍ، وَمُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ إِبْرَاهِيمَ قَالَ: نا سَلْمَانُ - هُوَ ابْنُ دَاوُد الْهَاشِمِيُّ - نا إِبْرَاهِيمُ - هُوَ ابْنُ سَعْدِ بْنِ إِبْرَاهِيمَ - عَنْ أَبِيهِ عَنْ أَبِي عُبَيْدَةَ بْنِ مُحَمَّدِ بْنِ عَمَّارِ بْنِ يَاسِرٍ عَنْ طَلْحَةَ بْنِ عَبْدِ اللَّهِ بْنِ عَوْفٍ عَنْ سَعِيدِ بْنِ زَيْدٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ أَهْلِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دِينِهِ فَهُوَ شَهِيدٌ، وَمَنْ قُتِلَ دُونَ دَمِهِ فَهُوَ شَهِيدٌ» . وَبِهِ - إِلَى أَحْمَدَ بْنِ شُعَيْبٍ أَنَا الْقَاسِمُ بْنُ زَكَرِيَّا بْنِ دِينَارٍ نا سَعِيدُ بْنُ عَمْرٍو الْأَشْعَثِيُّ نا عَمْرٌو - هُوَ ابْنُ الْقَاسِمِ - عَنْ مُطَرِّفٍ - هُوَ ابْنُ أَبِي طَرِيفٍ - عَنْ سَوَادَةَ - هُوَ ابْنُ أَبِي

Makhlad—narrated to us: Muhammad ibn Ja'far narrated from al-Ala ibn Abd al-Rahman from his father from Abu Hurairah, who said: "A man came to the Messenger of Allah (PBUH) and said, 'O Messenger of Allah, what do you think if a man comes wanting to take my wealth?' He said, 'Do not give him your wealth.' The man asked, 'What do you think if he fights me?' He replied, 'Fight him.' The man asked, 'What do you think if he kills me?' He said, 'Then you are a martyr.' The man asked, 'What do you think if I kill him?' He replied, 'He is in the Fire.'"

Through the same chain via Muslim: al-Hasan ibn Ali al-Hulwani and Muhammad ibn Nafi' both narrated to us—they said: Abd al-Razzaq reported to us: Ibn Jurayj narrated: Sulayman al-Ahwal reported that Thabit—the freed slave of Umar ibn Abd al-Rahman—informed him that "when conflict arose between Abdullah ibn Amr ibn al-As and Anbasa ibn Abi Sufyan, they prepared for fighting. Khalid ibn al-As rode to Abdullah ibn Amr ibn al-As and admonished him. Abdullah ibn Amr said, 'Do you not know that the Messenger of Allah (PBUH) said, "Whoever is killed defending his wealth is a martyr"?'"

Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb reported to us: Amr ibn Ali narrated to us: Abd al-Rahman ibn Mahdi narrated to us: Ibrahim ibn Sa'd narrated from his father—Sa'd ibn Ibrahim ibn Abd al-Rahman ibn Awf—from Abu Ubaydah ibn Muhammad ibn Ammar ibn Yasir from Talhah ibn Abdullah ibn Awf from Sa'id ibn Zayd from the Prophet (PBUH), who said: "Whoever fights to defend his wealth and is killed is a martyr; whoever fights to defend his life and is killed is a martyr; and whoever fights to defend his family and is killed is a martyr."

Through the same chain via Ahmad ibn Shu'ayb: Muhammad ibn Rafi' and Muhammad ibn Isma'il ibn Ibrahim narrated: Salman—ibn Dawud al-Hashimi—narrated to us: Ibrahim—ibn Sa'd ibn Ibrahim—narrated from his father. On the authority of Abu Ubaydah ibn Muhammad ibn Ammar ibn Yasir, from Talhah ibn Abdullah ibn Awf, from Sa'id ibn Zayd, who said: The Messenger of Allah - peace and blessings be upon him - said: "Whoever is killed defending his wealth is a martyr; whoever is killed defending

his family is a martyr; whoever is killed defending his religion is a martyr; and whoever is killed defending his life is a martyr." And through him [the preceding narrator] to Ahmad ibn Shu'ayb: It is narrated by Al-Qasim ibn Zakariya ibn Dinar from Sa'id ibn Amr Al-Ash'athi, from Amr - that is, Ibn Al-Qasim - from Mutarrif - that is, Ibn Abi Tarif - from Sawadah - that is, Ibn Abi Al-Ja'd - from Abu Ja'far, who said: I was sitting with Suwayd ibn Muqrin when he said: The Messenger of Allah - peace and blessings be upon him - said: "Whoever is killed defending his right against wrongful oppression is a martyr." It is narrated from Abdurrahman ibn Abdullah ibn Khalid, from Ibrahim ibn Ahmad Al-Balkhi, from Al-Farabri, from Al-Bukhari, from Muhammad ibn Abdullah ibn Al-Muthanna Al-Ansari, from my father, from Thumamah ibn Abdullah ibn Anas, that Anas narrated to him: "Abu Bakr wrote this document for him when he dispatched him to Bahrain: 'In the name of Allah, the Most Gracious, the Most Merciful. This is the obligation of zakat prescribed by the Messenger of Allah - peace and blessings be upon him - upon the Muslims, which Allah Almighty enjoined upon His Messenger - peace and blessings be upon him - to establish. Whoever is asked for it by Muslims in its rightful manner must give it, but whoever is asked for more than that must not give it.'" He mentioned the rest of the hadith. Abu Muhammad - may Allah have mercy on him - said: Thus, the Messenger of Allah - peace and blessings be upon him - commands that whoever is wrongfully demanded for his wealth must not give it, and orders him to fight in its defense, either striking rightfully or being killed as an innocent martyr. He did not specify any particular type of wealth over another. Likewise, Abu Bakr As-Siddiq and Abdullah ibn Amr - may Allah be pleased with them - held that the ruling applies equally to authorities and others in this matter. Success is by Allah, the Exalted.[9][10]

الْجَعْدِ - عَنْ أَبِي جَعْفَرٍ قَالَ: كُنْت جَالِسًا عِنْدَ سُوَيْدِ بْنِ مُقْرِنٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ قُتِلَ دُونَ مَظْلِمَتِهِ فَهُوَ شَهِيدٌ» . نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ الْبَلْخِيّ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ الْمُثَنَّى الْأَنْصَارِيُّ نا أَبِي نا ثُمَامَةُ بْنُ عَبْدِ اللَّهِ بْنِ أَنَسٍ أَنَّ «أَنَسًا حَدَّثَهُ أَنَّ أَبَا بَكْرٍ كَتَبَ لَهُ هَذَا الْكِتَابَ لَمَّا وَجَّهَهُ إلَى الْبَحْرَيْنِ: بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ - هَذِهِ فَرِيضَةُ الصَّدَقَةِ الَّتِي فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمُسْلِمِينَ، وَالَّتِي أَمَرَ اللَّهُ عَزَّ وَجَلَّ بِهَا رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ سُئِلَهَا مِنْ الْمُسْلِمِينَ عَلَى وَجْهِهَا فَلْيُعْطِهَا، وَمَنْ سُئِلَ فَوْقَهَا فَلَا يُعْطِ» وَذَكَرَ الْحَدِيثَ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَأْمُرُ مَنْ سُئِلَ مَالَهُ بِغَيْرِ حَقٍّ أَنْ لَا يُعْطِيَهُ، وَأَمَرَ أَنْ يُقَاتِلَ دُونَهُ فَيُقْتَلُ مُصِيبًا سَدِيدًا، أَوْ يُقْتَلُ بَرِيئًا شَهِيدًا، وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - مَالًا مِنْ مَالٍ. وَهَذَا أَبُو بَكْرٍ الصِّدِّيقُ، وَعَبْدُ اللَّهِ بْنُ عَمْرٍو - رَضِيَ اللَّهُ عَنْهُمَا - يَرَيَانِ السُّلْطَانَ فِي ذَلِكَ وَغَيْرَ السُّلْطَانِ سَوَاءً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Discussion of What Has Been Said Regarding the Verse on Banditry

L41848

[مَسْأَلَة ذِكْرُ مَا قِيلَ فِي آيَةِ الْمُحَارَبَةِ]

L41849–41851

Mention of what was said concerning the verse of ḥirābah (2259) – An

ذِكْرُ مَا قِيلَ فِي آيَةِ الْمُحَارَبَةِ ٢٢٥٩ - مَسْأَلَةٌ: قَالَ عَلِيٌّ: قَالَ قَوْمٌ: آيَةُ الْمُحَارَبَةِ نَاسِخَةٌ لِفِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْعُرَنِيِّينَ، وَنَهْيٍ لَهُ عَنْ فِعْلِهِ بِهِمْ - وَاحْتَجُّوا

[9] **Hadith references (L41843):** Sahih Muslim 140; Riyad as-Salihin 1357; Sunan an-Nasai 4094; Sunan an-Nasai 4095.

issue: ʿAlī said: A group held that the verse of ḥirābah abrogates the action of the Messenger of Allah (peace and blessings be upon him) regarding the ʿUraniyyīn and prohibits him from his action toward them. They cited as evidence the narration of ʿAbdullāh ibn Rabīʿ: Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, who reported to me from ʿAmr ibn ʿUthmān ibn Saʿīd ibn Kathīr ibn Dīnār, from al-Walīd, from al-Awzāʿī, from Yaḥyā ibn Abī Kathīr, from Abī Qilābah, from Anas ibn Mālik. That a group from the tribe of ʻUkl came to the Messenger of Allah—peace and blessings be upon him—and embraced Islam. They then fell ill in Medina, so the Prophet—peace and blessings be upon him—commanded them to go to the zakat camels and drink from their urine and milk. They did so, then killed their shepherd and drove away the camels. The Prophet—peace and blessings be upon him—sent trackers in pursuit of them, and they were captured. He cut off their hands and feet, seared their eyes, and did not cauterize their wounds. He abandoned them until they died. Thereupon, Allah the Exalted revealed: {The recompense of those who wage war against Allah and His Messenger...} [Al-Mā'idah 5:33].[11]

L41852–41854 The verse. Abdullah ibn Rabee' reported to us: Muhammad ibn Mu'awiyah reported to us: Ahmad ibn Shu'ayb reported to us: I am Ahmad ibn 'Amr ibn Al-Sarh: I am Ibn Wahb; Al-Layth ibn Sa'd informed me from Ibn 'Ajlan from Abu Al-Zinad, who said: "When the Messenger of Allah—peace and blessings of Allah be upon him—cut off the hands of those who stole his camels and gouged out their eyes with fire, Allah the Exalted reproached him for that. Thereupon Allah revealed: {The recompense of those who wage war against Allah and His Messenger is execution, crucifixion, the amputation of hands and feet, or exile} [Al-Ma'idah 5:33]." Abdullah ibn Rabee' reported to us: Muhammad ibn Mu'awiyah reported to us: Ahmad ibn Shu'ayb reported to us: Muhammad ibn Al-Muthanna reported to us: 'Abd Al-Samad—who is Ibn 'Abd Al-Warith ibn Sa'id Al-Tannuri—reported to us: Hisham—who is Al-Dastawa'i—reported from Qatadah from Anas, who said: "The Messenger of Allah—peace and blessings of Allah be upon

[10]**Qur'an references (L41843):** Qur'an 1:1 (Al-Fatihah).

[11]**Qur'an references (L41849):** Qur'an 5:33 (Al-Ma'idah).

فِي ذَلِكَ بِمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي عَمْرُو بْنُ عُثْمَانَ بْنِ سَعِيدِ بْنِ كَثِيرِ بْنِ دِينَارٍ عَنْ الْوَلِيدِ عَنْ الْأَوْزَاعِيِّ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ عَنْ أَبِي قِلَابَةَ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ نَفَرًا مِنْ عُكْلٍ قَدِمُوا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَسْلَمُوا فَاجْتَوَوْا الْمَدِينَةَ فَأَمَرَهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَأْتُوا إبِلَ الصَّدَقَةِ فَيَشْرَبُوا مِنْ أَبْوَالِهَا وَأَلْبَانِهَا، فَفَعَلُوا، فَقَتَلُوا رَاعِيَهَا وَاسْتَاقُوهَا، فَبَعَثَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي طَلَبِهِمْ قَافَةً، فَأُتِيَ بِهِمْ، فَقَطَعَ أَيْدِيَهُمْ، وَأَرْجُلَهُمْ، وَسَمَلَ أَعْيُنَهُمْ، وَلَمْ يَحْسِمْهُمْ، وَتَرَكَهُمْ حَتَّى مَاتُوا فَأَنْزَلَ اللَّهُ تَعَالَى {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] »

الْآيَةَ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ أَنَا ابْنُ وَهْبٍ أَخْبَرَنِي اللَّيْثُ بْنُ سَعْدٍ عَنْ ابْنِ عَجْلَانَ عَنْ أَبِي الزِّنَادِ قَالَ: «إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمَّا قَطَعَ الَّذِينَ سَرَقُوا لِقَاحَهُ، وَسَمَلَ أَعْيُنَهُمْ بِالنَّارِ، عَاتَبَهُ اللَّهُ تَعَالَى فِي ذَلِكَ فَأَنْزَلَ اللَّهُ تَعَالَى {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] الْآيَةَ» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الصَّمَدِ - هُوَ ابْنُ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ التَّنُّورِيُّ - نا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - عَنْ قَتَادَةَ عَنْ أَنَسٍ قَالَ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَحُثُّ فِي خُطْبَتِهِ عَلَى الصَّدَقَةِ، وَيَنْهَى عَنْ الْمُثْلَةِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: كُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ، وَلَا يَجُوزُ أَنْ يُقَالَ فِي شَيْءٍ مِنْ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

him—would urge charity in his sermons and prohibit disfigurement (as retaliation)." Abu Muhammad—may Allah have mercy on him—said: "None of this constitutes proof for their claim. It is impermissible to assert that any action or saying of the Messenger of Allah—peace and blessings of Allah be upon him—is abrogated except through irrefutable certainty of its validity. Conjecture, being the most deceitful speech, holds no weight. We assert—and with Allah alone is success: As for the hadith we prefaced via Abu Qilabah from Anas, it contains no indication of abrogation whatsoever—neither explicitly nor implicitly. It merely states that the Messenger of Allah—peace and blessings of Allah be upon him—amputated the hands and feet of the ʻUrayniyyīn without cauterization, gouged out their eyes, and left them until they perished. Subsequently, Allah revealed the verse on ḥudūd (prescribed punishments). This clearly demonstrates that the revelation of the warfare verse marked either the inception of a ruling—as with the Quran's gradual revelation—or a divine confirmation of his action—peace be upon him—toward them, since the verse concurs with his amputation of their hands and feet while introducing the options of execution, crucifixion, or exile. As for the additional measures taken by the Messenger of Allah—peace and blessings of Allah be upon him—beyond amputation, such as gouging their eyes and leaving them uncauterized until death, this constituted retaliation (qisas) for their crimes against the shepherds." Abdullah ibn Rabīʻ narrated to us, Muḥammad ibn Muʻāwiyah narrated to us, Aḥmad ibn Shuʻayb narrated to us: I am Al-Faḍl ibn Sahl al-Aʻraj al-Marzuqī—a reliable narrator—Yaḥyā ibn Ghaylān—a trustworthy authority—narrated to us, Yazīd ibn Zuraiʻ narrated from Sulaymān at-Taymī from Anas ibn Mālik, who said: "The Messenger of Allah—peace and blessings of Allah be upon him—blinded the eyes of those al-ʻUraniyyīn solely because they had blinded the eyes of the shepherds. The previously cited ḥadīth mentions that they killed the shepherds, thereby confirming our assertion that those al-ʻUraniyyīn incurred multiple penalties [against them]: among these were waging war, blinding the shepherds, killing them, and apostasy. Thus, it became obligatory to enforce all these penalties upon them, as none of these punishments was more obligatory to implement than the others. Whoever waives some penalties in exchange for others has erred, judged falsely, spoken without evidence, opposed the action

وَسَلَّمَ - وَقَوْلِهِ إنَّهُ مَنْسُوخٌ إلَّا بِيَقِينٍ مَقْطُوعٍ عَلَى صِحَّتِهِ، وَأَمَّا بِالظَّنِّ، الَّذِي هُوَ أَكْذَبُ الْحَدِيثِ فَلَا. فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَمَّا الْحَدِيثُ الَّذِي صَدَّرْنَا بِهِ مِنْ طَرِيقِ أَبِي قِلَابَةَ عَنْ أَنَسٍ، فَلَيْسَ فِيهِ دَلِيلٌ عَلَى نَسْخٍ أَصْلًا - لَا بِنَصٍّ وَلَا بِمَعْنًى - وَإِنَّمَا فِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَطَعَ أَيْدِي الْعُرَنِيِّينَ وَأَرْجُلَهُمْ، وَلَمْ يَحْسِمْهُمْ، وَسَمَلَ أَعْيُنَهُمْ، وَتَرَكَهُمْ حَتَّى مَاتُوا، فَأَنْزَلَ اللَّهُ تَعَالَى آيَةَ الْمُحَارَبَةِ - وَهَذَا ظَاهِرٌ: أَنَّ نُزُولَ آيَةِ الْمُحَارَبَةِ ابْتِدَاءُ حُكْمٍ، كَسَائِرِ الْقُرْآنِ فِي نُزُولِهِ شَيْئًا بَعْدَ شَيْءٍ، أَوْ تَصْوِيبًا لِفِعْلِهِ - عَلَيْهِ السَّلَامُ - بِهِمْ؛ لِأَنَّ الْآيَةَ مُوَافِقَةٌ لِفِعْلِهِ - عَلَيْهِ السَّلَامُ - فِي قَطْعِ أَيْدِيهِمْ وَأَرْجُلِهِمْ، وَزَائِدَةٌ عَلَى ذَلِكَ تَخْيِيرًا فِي الْقَتْلِ، أَوْ الصَّلْبِ، أَوْ النَّفْيِ - وَكَانَ مَا زَادَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْقَطْعِ مِنْ السَّمْلِ، وَتَرْكِهِمْ لَمْ يَحْسِمْهُمْ حَتَّى مَاتُوا قِصَاصًا بِمَا فَعَلُوا بِالرِّعَاءِ: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا الْفَضْلُ بْنُ سَهْلٍ الْأَعْرَجِ - مَرْزُوقِيٌّ ثِقَةٌ - نا يَحْيَى بْنُ غَيْلَانَ - ثِقَةٌ مَأْمُونٌ - نا يَزِيدُ بْنُ زُرَيْعٍ عَنْ سُلَيْمَانَ التَّيْمِيِّ عَنْ أَنَسِ بْنِ مَالِكٍ، قَالَ: إنَّمَا سَمَلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَعْيُنَ أُولَئِكَ الْعُرَنِيِّينَ؛ لِأَنَّهُمْ سَمَلُوا أَعْيُنَ الرِّعَاءِ. وَقَدْ ذَكَرَ فِي الْحَدِيثِ الَّذِي أَوْرَدْنَا أَنَّهُمْ قَتَلُوا الرِّعَاءَ، فَصَحَّ مَا قُلْنَاهُ مِنْ أَنَّ أُولَئِكَ الْعُرَنِيِّينَ اجْتَمَعَتْ عَلَيْهِمْ حُقُوقٌ: مِنْهَا الْمُحَارَبَةُ، وَمِنْهَا سَمْلُهُمْ أَعْيُنَ الرِّعَاءِ، وَقَتْلُهُمْ إيَّاهُمْ، وَمِنْهَا الرِّدَّةُ - فَوَجَبَ عَلَيْهِمْ إقَامَةُ كُلِّ ذَلِكَ، إذْ لَيْسَ شَيْءٌ مِنْ هَذِهِ الْحُدُودِ أَوْجَبَ بِالْإِقَامَةِ عَلَيْهِمْ مِنْ سَائِرِهَا، وَمَنْ أَسْقَطَ بَعْضَهَا لِبَعْضٍ فَقَدْ أَخْطَأَ، وَحَكَمَ بِالْبَاطِلِ، وَقَالَ بِلَا بُرْهَانٍ، وَخَالَفَ فِعْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَرَكَ أَمْرَ اللَّهِ تَعَالَى بِالْقِصَاصِ فِي الْعُدْوَانِ بِمَا أَمَرَهُ بِهِ فِي الْمُحَارَبَةِ، فَقَطَعَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

of the Messenger of Allah—peace and blessings of Allah be upon him—and abandoned Allah's command to execute retaliation for transgression as He ordained concerning warfare. The Messenger of Allah—peace and blessings of Allah be upon him—amputated them for waging war, blinded them in retaliation, and left them in that state until they died—they sought water but were not given it until they perished—just as they themselves had killed the shepherds. Thus, the objection is lifted, and abundant praise belongs to Allah. As for the ḥadīth of Abū az-Zinād, it is a disconnected narration, and no valid proof lies in disconnected reports. Its wording is highly rejected, for it alleges that Allah reproached His Messenger in the verse concerning warfare, whereas no reproach whatsoever is discernible therein. The term 'reproach' applies only to instances such as Allah's saying: 'Allah has pardoned you. Why did you grant them permission?' [9:43], His saying: 'He frowned and turned away when the blind man came to him' [80:1-2], and His saying: 'Had it not been for a prior decree from Allah, a tremendous punishment would have afflicted you for what you seized' [8:68]. The narration on warfare contains no indication of reproach. As for the ḥadīth of Qatādah from Anas regarding the exhortation to charity and prohibition of disfigurement, it is authentic but unrelated to our subject—neither in substance nor form. Only those who trivialize falsehood against the Messenger of Allah—peace and blessings of Allah be upon him—would cite such a report to claim he mutilated the al-ʿUraniyyīn. Glory be to Allah! Rather, this supports their erroneous doctrine that if one is killed by a specific method, it is impermissible to execute him likewise, deeming it disfigurement. They assert that if someone amputates a man's nose, gouges another's eyes, severs a third's lips, extracts a fourth's molars, or cuts off a fifth's ears, all these must be inflicted upon him while leaving him alive. Could any disfigurement surpass this, if they had understood from their corrupt principles?"[12]

L41855–41856 Far be it from Allah that anything He, the Exalted, has commanded, or that His Messenger—may Allah's peace and blessings be upon him—has done, could be considered mutilation. Mutilation is only that which is initiated

[12]**Qur'an references (L41852):** Qur'an 5:33 (Al-Ma'idah); Qur'an 9:43 (At-Tawbah); Qur'an 80:1 ('Abasa); Qur'an 80:2 ('Abasa); Qur'an 8:68 (Al-Anfal).

لِلْمُحَارَبَةِ، وَسَمَلَهُمْ لِلْقِصَاصِ، وَتَرَكَهُمْ كَذَلِكَ حَتَّى مَاتُوا، يَسْتَسْقُونَ فَلَا يُسْقَوْنَ حَتَّى مَاتُوا؛ لِأَنَّهُمْ كَذَلِكَ قَتَلُوا هُمْ - الرِّعَاءَ - فَارْتَفَعَ الْإِشْكَالُ - وَالْحَمْدُ لِلَّهِ كَثِيرًا. وَأَمَّا حَدِيثُ أَبِي الزِّنَادِ فَمُرْسَلٌ، وَلَا حُجَّةَ فِي مُرْسَلٍ، وَلَفْظُهُ مُنْكَرٌ جِدًّا؛ لِأَنَّ فِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَاتَبَهُ رَبُّهُ فِي آيَةِ الْمُحَارَبَةِ، وَمَا يُسْمَعُ فِيهَا عِتَابٌ أَصْلًا؛ لِأَنَّ لَفْظَ " الْعِتَابِ " إِنَّمَا هُوَ مِثْلُ قَوْلِهِ تَعَالَى {عَفَا اللَّهُ عَنْكَ لِمَ أَذِنْتَ لَهُمْ} [التوبة: ٤٣] . وَمِثْلُ قَوْلِهِ تَعَالَى {عَبَسَ وَتَوَلَّى - أَنْ جَاءَهُ الْأَعْمَى} [عبس: ١ - ٢] الْآيَاتِ. وَمِثْلُ قَوْلِهِ تَعَالَى {لَوْلَا كِتَابٌ مِنَ اللَّهِ سَبَقَ لَمَسَّكُمْ فِيمَا أَخَذْتُمْ عَذَابٌ عَظِيمٌ} [الأنفال: ٦٨] وَأَمَّا حَدِيثُ الْمُحَارَبَةِ، فَلَيْسَ فِيهَا أَثَرٌ لِلْمُعَاتَبَةِ. وَأَمَّا حَدِيثُ قَتَادَةَ عَنْ أَنَسٍ فِي الْحَثِّ عَلَى الصَّدَقَةِ وَالنَّهْيِ عَنِ الْمُثْلَةِ فَحَقٌّ، وَلَيْسَ هَذَا مِمَّا نَحْنُ فِيهِ - فِي وِرْدٍ وَلَا صَدْرٍ - وَإِنَّمَا يَحْتَجُّ بِمِثْلِ هَذَا مَنْ يَسْتَسْهِلُ الْكَذِبَ عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ مَثَّلَ بِالْعُرَنِيِّينَ، وَحَاشَ لِلَّهِ مِنْ هَذَا، بَلْ هَذَا نَصٌّ لِمَذْهَبِهِمْ فِي أَنَّ مَنْ قُتِلَ بِشَيْءٍ مَا لَمْ يَجُزْ أَنْ يُقْتَلَ بِمِثْلِهِ؛ لِأَنَّهُ مُثْلَةٌ وَهُمْ يَرَوْنَ عَلَى مَنْ جَدَعَ أَنْفَ إِنْسَانٍ وَفَقَأَ عَيْنَيْ آخَرَ، وَقَطَعَ شَفَتَيْ ثَالِثٍ، وَقَلَعَ أَضْرَاسَ رَابِعٍ، وَقَطَعَ أُذُنَيْ خَامِسٍ: أَنْ يُفْعَلَ ذَلِكَ بِهِ كُلُّهُ، وَيُتْرَكَ، فَهَلْ فِي الْمُثْلَةِ أَعْظَمُ مِنْ هَذَا لَوْ عَقَلُوا عَنْ أُصُولِهِمُ الْفَاسِدَةِ؟

وَحَاشَ لِلَّهِ أَنْ يَكُونَ شَيْءٌ أَمَرَ اللَّهُ تَعَالَى بِهِ، أَوْ فَعَلَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مُثْلَةً، إِنَّمَا الْمُثْلَةُ مَا كَانَ ابْتِدَاءً فِيمَا لَا نَصَّ فِيهِ، وَأَمَّا مَا كَانَ قِصَاصًا أَوْ حَدًّا كَالرَّجْمِ لِلْمُحْصَنِ، وَكَالْقَطْعِ أَوِ الصَّلْبِ لِلْمُحَارِبِ، فَلَيْسَ مُثْلَةً - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

in matters where there is no textual ruling. As for what is carried out as retribution or a ḥadd punishment—such as stoning for the married person [who commits adultery], and amputation or crucifixion for the combatant—it is not mutilation. And with Allah, the Exalted, is success.

L41857 We have been narrated through the chain of Muslim: Abdullah ibn Yusuf narrated to us, 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, Yahya ibn Yahya al-Tamimi informed us from Hushaym from Abdul-Aziz ibn Suhayb and Humayd, both from Anas ibn Malik: "Some people from Uraynah came to the Messenger of Allah - peace and blessings of Allah be upon him - in Medina but found it disagreeable. The Messenger of Allah - peace and blessings of Allah be upon him - said to them: 'If you wish, you may go to the alms camels and drink from their milk and urine.' They did so and recovered. Then they attacked the shepherds, killed them, apostatized from Islam, and drove away the Messenger of Allah's camels. When the Prophet - peace and blessings of Allah be upon him - learned of this, he sent men in pursuit. They were captured, and he had their hands and feet cut off, their eyes seared with hot irons, and left them in the volcanic region of al-Ḥarrah until they died."

Abdullah ibn Rabi' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Ali ibn Hujr narrated to us, Isma'il ibn 'Ulayyah narrated to us, Humayd narrated from Anas, who said: "Some people from Uraynah came to the Prophet - peace and blessings of Allah be upon him. The Messenger of Allah - peace and blessings of Allah be upon him - said to them: 'If you would go to our camels and stay with them, drinking from their milk and urine?' They did so. When they recovered, they attacked the Messenger of Allah's shepherd, killed him, apostatized, and drove away his camels. He sent men to pursue them, and they were brought back. He had their hands and feet cut off and their eyes seared with hot irons."

Abu Muhammad - may Allah have mercy on him - said: "All these are narrations of utmost authenticity. Success is from Allah, the Exalted. The brigand is to be killed."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ مَا ناه 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 يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ أرنا هُشَيْمٌ عَنْ عَبْدِ الْعَزِيزِ بْنِ صُهَيْبٍ، وَحُمَيْدٍ، كِلَاهُمَا عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ نَاسًا مِنْ عُرَيْنَةَ قَدِمُوا عَلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمَدِينَةَ فَاجْتَوَوْهَا فَقَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِنْ شِئْتُمْ أَنْ تَخْرُجُوا إِلَى إِبِلِ الصَّدَقَةِ فَتَشْرَبُوا مِنْ أَلْبَانِهَا وَأَبْوَالِهَا؟ فَفَعَلُوا، فَصَحُّوا، ثُمَّ مَالُوا عَلَى الرِّعَاءِ فَقَتَلُوهُمْ وَارْتَدُّوا عَنْ الْإِسْلَامِ، وَسَاقُوا ذَوْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَلَغَ ذَلِكَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَعَثَ فِي آثَارِهِمْ فَأُتِيَ بِهِمْ، فَقَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ، وَسَمَلَ أَعْيُنَهُمْ، وَتَرَكَهُمْ فِي الْحَرَّةِ حَتَّى مَاتُوا» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَلِيُّ بْنُ حُجْرٍ نا إِسْمَاعِيلُ ابْنُ عُلَيَّةَ نا حُمَيْدٌ عَنْ أَنَسٍ قَالَ «قَدِمَ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاسٌ مِنْ عُرَيْنَةَ فَقَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَوْ خَرَجْتُمْ إِلَى ذَوْدِنَا فَكُنْتُمْ فِيهَا، فَشَرِبْتُمْ مِنْ أَلْبَانِهَا، وَأَبْوَالِهَا؟ فَفَعَلُوا، فَلَمَّا صَحُّوا قَامُوا إِلَى رَاعِي رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَتَلُوهُ وَرَجَعُوا كُفَّارًا، وَاسْتَاقُوا ذَوْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَرْسَلَ فِي طَلَبِهِمْ، فَأُتِيَ بِهِمْ فَقَطَعَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ، وَسَمَلَ أَعْيُنَهُمْ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذِهِ كُلُّهَا آثَارٌ فِي غَايَةِ الصِّحَّةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. الْمُحَارِبُ يُقْتَلُ

[مَسْأَلَة هَلْ لولي الْمُحَارَب المقتول مِنْ حَقّ عِنْد الْإِمَام]

Issue: Does the guardian of the executed *muḥārib* have any right recognized by the Imam?

٢٢٦٠ - مَسْأَلَةٌ: هَلْ لِوَلِيِّ الْمَقْتُولِ فِي ذَلِكَ حُكْمٌ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا الْحَسَنُ بْنُ سَعْدٍ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ قَالَ: إنَّ فِي كِتَابٍ لِعُمَرَ بْنِ الْخَطَّابِ " وَالسُّلْطَانُ وَلِيُّ مَنْ حَارَبَ الدِّينَ، وَإِنْ قَتَلَ أَبَاهُ، أَوْ أَخَاهُ، فَلَيْسَ إلَى طَالِبِ الدَّمِ مِنْ أَمْرِ مَنْ حَارَبَ الدِّينَ وَسَعَى فِي الْأَرْضِ فَسَادًا شَيْءٌ "

2260. Issue: Does the guardian of the slain person have a ruling in this matter or not? Abū Muḥammad—may Allāh have mercy on him—said: Narrated to us by Ḥumām, narrated to us by Ibn Mufarrij, narrated to us by Al-Ḥasan ibn Saʿd, narrated to us by Al-Dabarī, narrated to us by ʿAbd al-Razzāq, from Ibn Jurayj, who informed me that ʿAbd al-ʿAzīz ibn ʿUmar ibn ʿAbd al-ʿAzīz said: Verily, in a legal decree by ʿUmar ibn al-Khaṭṭāb: "The sovereign ruler is the guardian of whoever wages war against the religion, even if [the rebel] killed his own father or brother. Then there is no... [text cut off in the manuscript]." To the legal guardian entitled to demand retribution for bloodshed, regarding the ruling of one who wages war against the religion and spreads corruption in the land, there is a ruling [to be applied].

وَقَالَ ابْنُ جُرَيْجٍ: وَقَالَ لِي سُلَيْمَانُ بْنُ مُوسَى مِثْلَ هَذَا سَوَاءً سَوَاءً حَرْفًا حَرْفًا. وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: عُقُوبَةُ الْمُحَارِبِ إلَى السُّلْطَانِ، لَا تَجُوزُ عُقُوبَةُ وَلِيِّ الدَّمِ ذَلِكَ إلَى الْإِمَامِ، قَالَ: وَهُوَ قَوْلُ أَبِي حَنِيفَةَ وَمَالِك، وَالشَّافِعِيِّ، وَأَحْمَدَ، وَأَبِي سُلَيْمَانَ، وَأَصْحَابِهِمْ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهَذَا نَقُولُ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي الْخَبَرَيْنِ اللَّذَيْنِ رُوِّينَاهُمَا مِنْ طَرِيقِ ابْنِ عَبَّاسٍ ذَكَرْنَاهُمَا فِي " كِتَابِ الْحَجِّ " " وَكِتَابِ الصِّيَامِ " " وَبَابِ وُجُوبِ قَضَاءِ الْحَجِّ الْوَاجِبِ ". " وَقَضَاءِ الصِّيَامِ الْوَاجِبِ عَنْ الْمَيِّتِ ".

Ibn Jurayj said: Sulayman ibn Musa told me the same thing, exactly the same, exactly the same, word for word. Through him to Abd al-Razzaq, from Maʿmar, from al-Zuhri—he said: The punishment of the brigand rests with the Sultan; the punishment of the blood avenger is not permissible—this authority belongs to the Imam. He said: This is the opinion of Abu Hanifah, Malik, al-Shafiʿi, Ahmad, Abu Sulayman, and their companions. Abu Muhammad (may Allah have mercy on him) said: We hold this view because the Messenger of Allah (peace and blessings be upon him) said in the two narrations transmitted by us through Ibn Abbas, which we mentioned in the "Book of Hajj," the "Book of Fasting," the chapter on the obligation of fulfilling the obligatory Hajj, and fulfilling obligatory fasting on behalf of the deceased.

«اقْضُوا اللَّهَ فَهُوَ أَحَقُّ بِالْوَفَاءِ، دَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى» . وَبِقَوْلِهِ - عَلَيْهِ السَّلَامُ - فِي حَدِيثِ بُرَيْدَةَ «كِتَابُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اجْتَمَعَ حَقَّانِ: أَحَدُهُمَا لِلَّهِ، وَالثَّانِي لِوَلِيِّ الْمَقْتُولِ - كَانَ حَقُّ اللَّهِ تَعَالَى أَحَقَّ بِالْقَضَاءِ وَدَيْنُهُ أَوْلَى بِالْأَدَاءِ، وَشَرْطُهُ الْمُقَدَّمُ فِي الْوَفَاءِ عَلَى حُقُوقِ النَّاسِ، فَإِنْ قَتَلَهُ الْإِمَامُ، أَوْ

Fulfill the right of Allah, for He is most deserving of fulfillment. The debt owed to Allah is most deserving of being settled. By the Prophet's statement—peace be upon him—in the ḥadīth of Buraydah: "The Book of Allah has the greatest right, and Allah's covenant is firmer." Abu Muḥammad—may Allah have mercy on him—said: When two rights converge—one belonging to Allah and the other to the heir of the slain—the right of Allah, the Exalted, is most deserving of fulfillment, His debt is foremost in repayment, and His

stipulation takes precedence over the rights of people. If the Imam executes or crucifies him for brigandage, the heir may take the blood money from the slain's estate, because his right to retaliation has been nullified, leaving his right to blood money or forgiveness—as we clarified in *The Book of Retaliation*. And to Allah belongs all praise. If the Imam chooses to amputate the combatant's hand and foot or banish him, he may enforce that. At that point, the heir has the choice to kill him, demand blood money, compensation through negotiation, or forgive—for the Imam has fulfilled the authority Allah granted him to exercise. Here, nothing nullifies the heir's right, as it remains possible for him to exact his right after the fulfillment of Allah's right, the Exalted.

L41864–41866 Indeed, the Hanafis and Malikis have contradicted themselves here in the basest contradiction, for they do not differ regarding Hajj, fasting, Zakah, expiations, or vows—maintaining that the rights of people take precedence over the rights of Allah the Exalted, that creditors' debts are more obligatory to settle than the debts owed to Allah the Exalted, and that... The conditions of people are prioritized in fulfillment over the conditions of Allah, the Exalted. Yet they have abandoned these invalid statements here, prioritizing the rights of Allah, the Exalted, above the rights of people—and all success lies with Allah, the Exalted.

L41867 ## A Juristic Issue Regarding the Refusal to Pay Zakāt

L41868 Issue 2261: The One Who Withholds Zakāt Abū Muḥammad—may Allāh have mercy on him—said: Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn al-Faḍl al-Dīnawarī narrated to us: Abū Jaʿfar Muḥammad ibn Jarīr al-Ṭabarī narrated to us: Al-Ḥārith narrated to us: Muḥammad ibn Saʿd narrated to us: Muḥammad ibn ʿUmar al-Wāqidī narrated from ʿAbd al-Raḥmān ibn ʿAbd al-ʿAzīz from Ḥakīm ibn Ḥakīm ibn ʿAbbād ibn Ḥunayf from Fāṭimah bint Khushāf al-Sulamīyyah from ʿAbd al-Raḥmān ibn al-Rabīʿ al-Ṭafarī—who had companionship—who said: "The Messenger of Allāh—peace and blessings be upon him—sent a messenger to a man from Ashjaʿ to collect his zakāt. The messenger came to him, but the man turned him away. The messenger returned to the Prophet—peace and blessings be upon him—

صَلْبَهُ لِلْمُحَارَبَةِ، كَانَ لِلْوَلِيِّ أَخْذُ الدِّيَةِ فِي مَالِ الْمَقْتُولِ؛ لِأَنَّ حَقَّهُ فِي الْقَوَدِ قَدْ سَقَطَ، فَبَقِيَ حَقُّهُ فِي الدِّيَةِ، أَوْ الْعَفْوِ عَنْهَا، عَلَى مَا بَيَّنَّا فِي " كِتَابِ الْقِصَاصِ " وَلِلَّهِ الْحَمْدُ. فَإِنْ اخْتَارَ الْإِمَامُ قَطْعَ يَدِ الْمُحَارِبِ، وَرِجْلِهِ، أَوْ نَفْيِهِ: أَنْفَذَ ذَلِكَ، وَكَانَ حِينَئِذٍ لِلْوَلِيِّ الْخِيَارُ فِي قَتْلِهِ، أَوْ الدِّيَةِ، أَوْ الْمُفَادَاةِ، أَوْ الْعَفْوِ؛ لِأَنَّ الْإِمَامَ قَدْ اسْتَوْفَى مَا جَعَلَ اللَّهُ تَعَالَى لَهُ الْخِيَارَ فِيهِ - وَلَيْسَ هَاهُنَا شَيْءٌ يُسْقِطُ حَقَّ الْوَلِيِّ، إذْ مُمْكِنٌ لَهُ أَنْ يَسْتَوْفِيَ حَقَّهُ بَعْدَ اسْتِيفَاءِ حَقِّ اللَّهِ تَعَالَى.

وَلَقَدْ تَنَاقَضَ هَاهُنَا الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، أَسْمَجَ تَنَاقُضٍ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي الْحَجِّ، وَالصِّيَامِ، وَالزَّكَاةِ، وَالْكَفَّارَاتِ، وَالنُّذُورِ، بِأَنَّ حُقُوقَ النَّاسِ أَوْلَى مِنْ حُقُوقِ اللَّهِ تَعَالَى - وَأَنَّ دُيُونَ الْغُرَمَاءِ أَوْجَبُ فِي الْقَضَاءِ مِنْ دُيُونِ اللَّهِ تَعَالَى، وَأَنَّ شُرُوطَ النَّاسِ مُقَدَّمَةٌ فِي الْوَفَاءِ عَلَى شُرُوطِ اللَّهِ تَعَالَى - وَقَدْ تَرَكُوا هَاهُنَا هَذِهِ الْأَقْوَالَ الْفَاسِدَةَ، وَقَدَّمُوا حُقُوقَ اللَّهِ تَعَالَى عَلَى حُقُوقِ النَّاسِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِي مَانِعِ الزَّكَاة]

٢٢٦١ - مَسْأَلَةٌ: مَانِعُ الزَّكَاةِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ نا أَبُو جَعْفَرٍ - مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ - نا الْحَارِثُ أَنَا مُحَمَّدُ بْنُ سَعْدٍ نا مُحَمَّدُ بْنُ عُمَرَ الْوَاقِدِيُّ نِي عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ الْعَزِيزِ عَنْ حَكِيمِ بْنِ حَكِيمِ بْنِ عَبَّادِ بْنِ حُنَيْفٍ عَنْ فَاطِمَةَ بِنْتِ خُشَافٍ السُّلَمِيَّةِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الرَّبِيعِ الطَّفَرِيِّ وَكَانَتْ لَهُ صُحْبَةٌ قَالَ «بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إلَى رَجُلٍ مِنْ أَشْجَعَ تُؤْخَذُ صَدَقَتُهُ فَجَاءَهُ الرَّسُولُ فَرَدَّهُ، فَرَجَعَ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَخْبَرَهُ،

and informed him. The Messenger of Allāh—peace and blessings be upon him—said: 'Go back to him. If he does not give his zakāt, behead him.'"

ʿAbd al-Raḥmān said: I asked Ḥakīm, "I do not think Abū Bakr fought the apostates except based on this ḥadīth." He replied, "Yes."

Abū Muḥammad—may Allāh have mercy on him—said: This is a fabricated ḥadīth filled with defects, including unknown and accused narrators. The ruling regarding one who withholds zakāt is that it must be taken from him willingly or unwillingly. If he resists its collection, he is a combatant. If he denies its obligation, he is an apostate. If he conceals it without resistance, he is performing an evil act, and it is obligatory to discipline or strike him until he produces it or dies as one killed by Allāh the Exalted, leading to the curse of Allāh—as the Messenger of Allāh—peace and blessings be upon him—said: "Whoever among you sees an evil act, let him rectify it with his own hand if he is able." This is an evil act, so it is obligatory upon whoever is able to rectify it as we have mentioned. And success is by Allāh the Exalted.

L41869 **Issue: Whether one should act immediately toward the thief or implore him.**

L41870 2262 - Issue: Should one confront the thief immediately or appeal to him? Abu Muhammad—may God have mercy on him—said: Ahmad ibn Muhammad ibn al-Jasur narrated to us: Ahmad ibn al-Fadl al-Dinawari narrated to us: Muhammad ibn Jarir al-Tabari narrated to us from Muhammad ibn Bashar and Muhammad ibn al-Muthanna, who both said together: Abu Amir al-Aqadi narrated to us: Abdul Aziz ibn al-Muṭṭalib narrated from his brother al-Hakam ibn al-Muṭṭalib, from his father—who is al-Muṭṭalib ibn Hantab ibn Fuhaydh ibn Muṭarrif al-Ghifari—that "a man asked the Prophet—peace and blessings be upon him—'What if an aggressor attacks me?' The Prophet commanded him to warn him three times. The man said: 'If he refuses?' The Prophet then commanded him to fight him."

L41871–41872 He (peace be upon him) said: "If he kills you, you are in Paradise, and if you kill him, he is in the Fire."

L41873 Yusuf ibn Abd al-Barr al-Namari narrated to us: Abdullah ibn Muhammad

فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: اذْهَبْ إِلَيْهِ، فَإِنْ لَمْ يُعْطِ صَدَقَتَهُ فَاضْرِبْ عُنُقَهُ» قَالَ عَبْدُ الرَّحْمَنِ: فَقُلْت لِحَكِيمٍ: مَا أَرَى أَبَا بَكْرٍ قَاتَلَ أَهْلَ الرِّدَّةِ إِلَّا عَلَى هَذَا الْحَدِيثِ؟ فَقَالَ: أَجَلْ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا حَدِيثٌ مَوْضُوعٌ مَمْلُوءٌ آفَاتٍ مِنْ مَجْهُولِينَ، وَمُتَّهَمِينَ، وَحُكْمُ مَانِعِ الزَّكَاةِ إِنَّمَا هُوَ أَنْ تُؤْخَذَ مِنْهُ أَحَبَّ أَمْ كَرِهَ، فَإِنْ مَانَعَ دُونَهَا فَهُوَ مُحَارِبٌ، فَإِنْ كَذَّبَ بِهَا فَهُوَ مُرْتَدٌّ، فَإِنْ غَيَّبَهَا وَلَمْ يُمَانِعْ دُونَهَا فَهُوَ آتٍ مُنْكَرًا، فَوَاجِبٌ تَأْدِيبُهُ أَوْ ضَرْبُهُ حَتَّى يُحْضِرَهَا أَوْ يَمُوتَ قَتِيلَ اللَّهِ تَعَالَى، إلَى لَعْنَةِ اللَّهِ. كَمَا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ» وَهَذَا مُنْكَرٌ، فَفَرْضٌ عَلَى مَنْ اسْتَطَاعَ أَنْ يُغَيِّرَهُ كَمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ يُبَادِر اللِّصَّ أَمْ يُنَاشِدُ]

٢٢٦٢ - مَسْأَلَةٌ: هَلْ يُبَادِر اللِّصَّ أَمْ يُنَاشِدُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ، وَمُحَمَّدُ بْنُ الْمُثَنَّى، قَالَا جَمِيعًا: نا أَبُو عَامِرٍ الْعَقَدِيُّ نا عَبْدُ الْعَزِيزِ بْنُ الْمُطَّلِبِ عَنْ أَخِيهِ الْحَكَمِ بْنِ الْمُطَّلِبِ عَنْ أَبِيهِ - هُوَ الْمُطَّلِبُ بْنُ حَنْطَبِ - بْنِ فهيد بْنِ مُطَرِّفٍ الْغِفَارِيُّ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَهُ سَائِلٌ إنْ عَدَا عَلَيَّ عَادٍ؟ فَأَمَرَهُ أَنْ يَنْهَاهُ ثَلَاثَ مَرَّاتٍ، قَالَ: فَإِنْ أَبَى عَلَيَّ؟ فَأَمَرَهُ بِقِتَالِهِ» .

وَقَالَ - عَلَيْهِ السَّلَامُ -: «إنْ قَتَلَكَ فَأَنْتَ فِي الْجَنَّةِ، وَإِنْ قَتَلْتَهُ فَهُوَ فِي النَّارِ» .

ibn Yusuf ibn Ahmad al-Dabbi narrated to us: Al-Uqayli narrated to us: My grandfather narrated to us: Ya'la ibn Asad al-Ammi narrated to us: Muhammad ibn Kathir al-Sulami—known as Al-Qassab—narrated to us from Yunus ibn Ubayd from Muhammad ibn Sirin from Ubadah ibn al-Samit, who said: The Messenger of Allah—peace and blessings be upon him—said: "The home is inviolable; whoever enters your home, kill him." Abu Muhammad—may Allah have mercy on him—said: The first hadith is not strong, as it includes Al-Hakam ibn al-Muttalib, whose reliability is unknown. The second report includes Muhammad ibn Kathir al-Qassab, who is discredited in hadith transmission and not considered credible. Abu Muhammad—may Allah have mercy on him—said: The reliable basis for the reports we cited in *Our Book on the Muharibun* regarding the permissibility of killing without seizing property or committing other transgressions applies only if the individuals are those conclusively judged as such, a single convicted person, or one whose dwelling is entered within the city—day or night—to seize property, seek fornication: or other such crimes, provided there is opportunity for intervention. Exhortation is a virtuous act, as Allah says: *Invite to the way of your Lord with wisdom and good instruction, and argue with them in the best manner* (16:125). If there is no opportunity for intervention, it is obligatory upon the oppressed to immediately employ every means of self-defense available—even if this necessitates killing the thief or brigand from the outset. However, if one is certain that striking without killing would deter him, it is forbidden to kill him.[13]

حَدَّثَنَا يُوسُفُ بْنُ عَبْدِ الْبَرِّ النَّمَرِيُّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ بْنِ أَحْمَدَ الضَّبِّيُّ نا الْعُقَيْلِيُّ نا جَدِّي نا يَعْلَى بْنُ أَسَدٍ الْعَمِّيُّ نا مُحَمَّدُ بْنُ كَثِيرٍ السُّلَمِيُّ - هُوَ الْقَصَّابُ - عَنْ يُونُسَ بْنِ عُبَيْدٍ عَنْ مُحَمَّدِ بْنِ سِيرِينَ عَنْ عُبَادَةَ بْنِ الصَّامِتِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الدَّارُ حَرَمٌ فَمَنْ دَخَلَ عَلَيْكَ حَرَمَكَ فَاقْتُلْهُ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْحَدِيثُ الْأَوَّلُ لَيْسَ بِالْقَوِيِّ، فَفِيهِ: الْحَكَمُ بْنُ الْمُطَّلِبِ، وَلَا يُعْرَفُ حَالُهُ - وَالْخَبَرُ الثَّانِي فِيهِ: مُحَمَّدُ بْنُ كَثِيرٍ الْقَصَّابُ - وَهُوَ ذَاهِبُ الْحَدِيثِ، وَلَيْسَ بِشَيْءٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالْمُعْتَمَدُ عَلَيْهِ فِي الْأَخْبَارِ الَّتِي صَدَّرْنَا بِهَا فِي " كِتَابِنَا فِي الْمُحَارِبِينَ " مِنْ إبَاحَةِ الْقَتْلِ دُونَ الْمَالِ وَسَائِرِ الْمَظَالِمِ، لَكِنْ إنْ كَانَ عَلَى الْقَوْمِ الْمَقْطُوعِ عَلَيْهِمْ، أَوْ الْوَاحِدِ الْمَقْطُوعِ عَلَيْهِ، أَوْ الْمَدْخُولِ عَلَيْهِ مَنْزِلُهُ فِي الْمِصْرِ - لَيْلًا أَوْ نَهَارًا - فِي أَخْذِ مَالِهِ، أَوْ فِي طَلَبِ زِنًا: أَوْ غَيْرِ ذَلِكَ، مُهْلَةً، فَالْمُنَاشَدَةُ فِعْلٌ حَسَنٌ، لِقَوْلِ اللَّهِ تَعَالَى {ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ} [النحل: ١٢٥] فَإِنْ لَمْ يَكُنْ فِي الْأَمْرِ مُهْلَةٌ، فَفَرْضٌ عَلَى الْمَظْلُومِ أَنْ يُبَادِرَ إلَى كُلِّ مَا يُمْكِنُهُ بِهِ الدِّفَاعُ عَنْ نَفْسِهِ - وَإِنْ كَانَ فِي ذَلِكَ إتْلَافُ نَفْسِ اللِّصِّ وَالْقَاطِعِ مِنْ أَوَّلِ وَهْلَةٍ - فَإِنْ كَانَ عَلَى يَقِينٍ مِنْ أَنَّهُ إنْ ضَرَبَهُ وَلَمْ يَقْتُلْهُ ارْتَدَعَ، فَحَرَامٌ عَلَيْهِ قَتْلُهُ.

L41874 If he is not certain of this, is it not certain that repelling and fighting are permissible for him? There is no sin upon him if he kills him from the first strike or after it—whether intending to kill him or intending other than his killing—for Allah, the Exalted, has permitted him to fight and defend himself, whether killing or being killed. And with Allah, the Exalted, is success.

فَإِنْ لَمْ يَكُنْ عَلَى يَقِينٍ مِنْ هَذَا، فَقَدْ صَحَّ الْيَقِينُ بِأَنَّ مُبَاحًا لَهُ الدَّفْعُ وَالْمُقَاتَلَةُ؟ فَلَا شَيْءَ عَلَيْهِ إنْ قَتَلَهُ مِنْ أَوَّلِ ضَرْبَةٍ أَوْ بَعْدَهَا قَصْدًا إلَى مَقْتَلِهِ أَوْ إلَى غَيْرِ مَقْتَلِهِ، لِأَنَّ اللَّهَ تَعَالَى قَدْ أَبَاحَ لَهُ الْمُقَاتَلَةَ وَالْمُدَافَعَةَ قَاتِلًا وَمَقْتُولًا. - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L41875 As for if the thief is so weak that he cannot resist at all, or resists in a manner where the homeowner is certain the thief cannot kill him, and the

[13] **Qur'an references (L41873):** Qur'an 16:125 (An-Nahl).

homeowner kills him, qisas (retribution) is incumbent upon the homeowner; because he could have prevented him without killing, thus making him a transgressor.

فَأَمَّا لَوْ كَانَ اللِّصُّ مِنْ الضَّعْفِ بِحَيْثُ لَا يُدَافِعُ أَصْلًا، أَوْ يُدَافِعُ دِفَاعًا يُوقِنُ مَعَهُ أَنَّهُ لَا يَقْدِرُ عَلَى قَتْلِ صَاحِبِ الدَّارِ فَقَتَلَهُ صَاحِبُ الْمَنْزِلِ فَعَلَيْهِ الْقَوَدُ، لِأَنَّهُ قَادِرٌ عَلَى مَنْعِهِ بِغَيْرِ الْقَتْلِ، فَهُوَ مُتَعَدٍّ.

L41876–41878 Narrated to us Muhammad ibn Sa'id ibn Nabat; he narrated to us Ahmad ibn 'Abd al-Basir; he narrated to us Qasim ibn Asbagh; he narrated to us... Muhammad ibn Abd al-Salam al-Khushani narrated to us: Muhammad ibn al-Muthanna narrated to us: Musa ibn Isma'il narrated to us: Sufyan al-Thawri narrated to us from Muslim al-Dabbi, who said: Ibrahim al-Nakha'i stated: "If you fear a thief might preempt you, then preempt him first?" Abu Muhammad—may Allah have mercy on him—remarked: "And this parallels our view—and all praise belongs to Allah, Lord of the worlds?"

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُوسَى بْنُ إِسْمَاعِيلَ نا سُفْيَانُ الثَّوْرِيُّ عَنْ مُسْلِمٍ الضَّبِّيِّ قَالَ: قَالَ إِبْرَاهِيمُ النَّخَعِيُّ: إِنْ خَشِيتَ أَنْ يَبْتَدِرَكَ اللِّصُّ فَابْدُرْهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا نَظِيرُ قَوْلِنَا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: قُلْت لِلزُّهْرِيِّ: إنَّ هِشَامَ بْنَ عُرْوَةَ أَخْبَرَنِي أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ - إذْ هُوَ عَامِلٌ عَلَى الْمَدِينَةِ فِي زَمَانِ الْوَلِيدِ بْنِ عَبْدِ الْمَلِكِ - قَطَعَ يَدَ رَجُلٍ ضَرَبَ آخَرَ بِالسَّيْفِ؟ فَضَحِكَ الزُّهْرِيُّ وَقَالَ لِي: أَوَ هَذَا مِمَّا يُؤْخَذُ بِهِ؟ إنَّمَا كَتَبَ الْوَلِيدُ بْنُ عَبْدِ الْمَلِكِ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَنْ يَقْطَعَ يَدَ رَجُلٍ ضَرَبَ آخَرَ بِالسَّيْفِ؟ قَالَ الزُّهْرِيُّ: فَدَعَانِي عُمَرُ بْنُ عَبْدِ الْعَزِيزِ وَاسْتَفْتَانِي فِي قَطْعِهِ؟ فَقُلْت لَهُ: أَرَى أَنْ يَصْدُقَهُ الْحَدِيثَ، وَيُكْتَبَ إلَيْهِ: «أَنَّ صَفْوَانَ بْنَ الْمُعَطَّلِ ضَرَبَ حَسَّانَ بْنَ ثَابِتٍ بِالسَّيْفِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ يَقْطَعْ النَّبِيُّ - عَلَيْهِ السَّلَامُ - يَدَهُ» وَضَرَبَ فُلَانٌ فُلَانًا بِالسَّيْفِ زَمَنَ مَرْوَانَ فَلَمْ يَقْطَعْ مَرْوَانُ يَدَهُ، وَكَتَبَ إلَيْهِ عُمَرُ بِذَلِكَ، فَمَكَثَ حِينًا لَا يَأْتِيهِ رَجَعَ كِتَابُهُ - ثُمَّ كَتَبَ إلَيْهِ الْوَلِيدُ: أَنَّ حَسَّانًا كَانَ يَهْجُو صَفْوَانَ وَيَذْكُرُ أُمَّهُ وَنِسَاءَ أُخَرَ، قَدْ قَالَهُ الزُّهْرِيُّ. وَذَكَرْت: أَنَّ مَرْوَانَ لَمْ يَقْطَعْ يَدَهُ، وَلَكِنَّ عَبْدَ الْمَلِكِ قَطَعَ يَدَهُ، فَاقْطَعْ يَدَهُ؟

Abu Muhammad—may Allah have mercy on him—narrated to us: Humam narrated to us: Ibn Mufarrij narrated to us: Ibn al-A'rabi narrated to us: al-Dabari narrated to us: from Abd al-Razzaq, from Ma'mar, who said: I asked al-Zuhri: "Hisham ibn Urwah informed me that Umar ibn Abd al-Aziz—when he was governor of Medina during al-Walid ibn Abd al-Malik's reign—cut off the hand of a man who struck another with a sword?" Al-Zuhri laughed and said: "Is this even something to be acted upon? Al-Walid ibn Abd al-Malik merely wrote to Umar ibn Abd al-Aziz ordering him to amputate the hand of a man who struck another with a sword." Al-Zuhri continued: "Umar summoned me for a legal opinion regarding the amputation. I told him: 'I advise him to authenticate the report and write back: "Safwan ibn al-Mu'attal struck Hassan ibn Thabit with a sword during the Messenger of Allah's era—peace and blessings be upon him—yet the Prophet—peace be upon him—did not amputate his hand. Likewise, so-and-so struck another with a sword during Marwan's reign, and Marwan did not amputate his hand."' Umar wrote this to him. After some time passed without his letter being answered, al-Walid wrote again: 'Hassan had been satirizing Safwan, insulting his mother and other women'—as al-Zuhri stated. I added: 'Marwan did not amputate the hand, but Abd al-Malik did. Therefore, amputate

his hand.'" Al-Zuhri concluded: "Thus Umar amputated the hand—was this among the sins for which he later sought Allah's forgiveness?"

Abu Muhammad—may Allah have mercy on him—ruled: "If one brandishes a sword to intimidate travelers, he is a highway robber subject to the penalty for brigandage. If the assault constitutes mere aggression without highway robbery, only retaliation applies for the injured party. If no injury occurred, only discretionary punishment is warranted. Success comes solely from Allah, the Exalted."

L41879 **The jurisprudential issue of ḥirābah (highway robbery) committed by a Muslim against a Muslim or a *dhimmi*.**

L41880 Issue 2263: Is the prescribed punishment for Ḥirābah (highway robbery) committed by a Muslim against a Muslim and against a Dhimmi equivalent? This is because Allah the Exalted specifically ordained the ruling for those who commit Ḥirābah by waging war against Him and His Messenger (peace be upon him) or spread corruption in the land, without distinguishing between Muslim and Dhimmi in this matter. "And your Lord is never forgetful" (Quran 19:64).[14]

L41881 This is not killing a Muslim on account of a *dhimmi*—God forbid that!—but rather killing him for *ḥirābah* (banditry), and the blood of the *dhimmi* is forfeited with no penalty.

L41882–41883 Similarly, the punishment of cutting [for ḥirābah] applies to a woman, child, or insane person. All such acts constitute valid ḥirābah, thereby deserving the punishments we have mentioned for ḥirābah.

L41884 As for the dhimmi—if he wages war, he is not a combatant (muḥārib), but a violator of the covenant, for he has abandoned the state of submission (ṣaghār). Thus, it is impermissible except to kill him without exception, unless he embraces Islam. In that case, he bears no liability whatsoever for any bloodshed, sexual transgression, or property damage he caused, except

[14] **Qur'an references (L41880):** Qur'an 19:64 (Maryam).

قَالَ الزُّهْرِيُّ: فَقَطَعَ عُمَرُ يَدَهُ - وَكَانَ مِنْ ذُنُوبِهِ الَّتِي كَانَ يَسْتَغْفِرُ اللَّهَ تَعَالَى مِنْهَا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: إنْ كَانَ رَفَعَ السَّيْفَ عَلَى سَبِيلِ إخَافَةِ الطَّرِيقِ فَهُوَ مُحَارِبٌ، عَلَيْهِ حُكْمُ الْمُحَارِبِ، وَإِنْ كَانَ لِعُدْوَانٍ فَقَطْ، لَا قَطْعِ طَرِيقٍ - فَعَلَيْهِ الْقِصَاصُ فَقَطْ، إلَى الْمَجْرُوحِ، فَإِنْ لَمْ يَكُنْ هُنَالِكَ جُرْحٌ فَلَا شَيْءَ إلَّا التَّعْزِيرَ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَةُ قَطْعُ الطَّرِيقِ مِنْ الْمُسْلِمِ عَلَى الْمُسْلِمِ وَعَلَى الذِّمِّيِّ]

٢٢٦٣ - مَسْأَلَةٌ: قَطْعُ الطَّرِيقِ مِنْ الْمُسْلِمِ عَلَى الْمُسْلِمِ وَعَلَى الذِّمِّيِّ سَوَاءٌ؟ وَذَلِكَ؛ لِأَنَّ اللَّهَ تَعَالَى إنَّمَا نَصَّ عَلَى حُكْمِ مَنْ حَارَبَهُ وَحَارَبَ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَوْ سَعَى فِي الْأَرْضِ فَسَادًا وَلَمْ يَخُصَّ بِذَلِكَ مُسْلِمًا مِنْ ذِمِّيٍّ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

وَلَيْسَ هَذَا قَتْلًا لِلْمُسْلِمِ بِالذِّمِّيِّ، وَمَعَاذَ اللَّهِ مِنْ هَذَا، لَكِنَّهُ قَتْلٌ لَهُ بِالْحِرَابَةِ، وَيَمْضِي دَمُ الذِّمِّيِّ هَدَرًا.

وَكَذَلِكَ الْقَطْعُ عَلَى امْرَأَةٍ، أَوْ صَبِيٍّ، أَوْ مَجْنُونٍ، كُلُّ ذَلِكَ - مُحَارَبَةٌ صَحِيحَةٌ - يَسْتَحِقُّ بِهَا مَا ذَكَرْنَا مِنْ حُكْمِ الْمُحَارَبَةِ

وَأَمَّا الذِّمِّيُّ - إنْ حَارَبَ فَلَيْسَ مُحَارِبًا، لَكِنَّهُ نَاقِضٌ لِلذِّمَّةِ؛ لِأَنَّهُ قَدْ فَارَقَ الصَّغَارَ، فَلَا يَجُوزُ إلَّا قَتْلُهُ وَلَا بُدَّ، أَوْ يُسْلِمَ، فَلَا يَجِبُ عَلَيْهِ شَيْءٌ أَصْلًا فِي كُلِّ مَا أَصَابَ مِنْ دَمٍ، أَوْ فَرْجٍ، أَوْ مَالٍ، إلَّا مَا وُجِدَ فِي يَدِهِ فَقَطْ؛ لِأَنَّهُ حَرْبِيٌّ لَا مُحَارِبٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

for what is found in his possession alone, as he is an enemy combatant (ḥarbī), not a combatant (muḥārib). And success is by Allah, the Most High.

L41885 As for the Muslim who apostatizes and wages war, all rulings pertaining to one who wages ḥirābah apply to him in full, as per the precedent we cited from the Messenger of Allah (peace be upon him) regarding the Urayniyīn—from whom he exacted retribution (qiwad) and implemented the ruling of ḥirābah, as they were apostates waging war and transgressing. And success comes from Allah, the Most High.

L41886 **A jurisprudential issue regarding the prescribed manner of crucifixion for the *muhārib*.**

L41887 Issue 2264: The method of displaying [the body] after execution for those guilty of waging war [against society]? Abu Muhammad—may Allah have mercy on him—said: People have differed over the manner of post-execution display that Allah the Exalted has commanded regarding those guilty of waging war. Abu Hanifa and Al-Shafi'i said: His neck is struck with the sword, then he is displayed on a stake after being slain. Al-Shafi'i added: He is left for three days, then taken down and buried.

L41888 And Al-Layth ibn Sa'd, Al-Awza'i, and Abu Yusuf said: He is crucified alive, then stabbed with the spear until he dies.

L41889 Some of our Zahirite companions said: He is crucified alive and left until he dies, his entire body drying out and desiccating. When he has dried and desiccated, he is taken down, washed, shrouded, prayed over, and buried. Abu Muhammad—may Allah have mercy on him—said: When they differed, it became incumbent upon us to examine the evidence each group presented for their position to discern the truth therein and follow it—with the assistance of Allah, Exalted is He, and His favor. We examined this matter and found those who say "He is killed then crucified while dead" arguing through what we previously mentioned in "The Book of Blood" from our code regarding how retaliation is to be enacted, based on the Messenger of Allah's—peace and blessings be upon him—statement: "Allah has ordained excellence in all

وَأَمَّا الْمُسْلِمُ يَرْتَدُّ، فَيُحَارِبُ - فَعَلَيْهِ أَحْكَامُ الْمُحَارِبِ كُلِّهَا عَلَى مَا ذَكَرْنَا مِنْ فِعْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْعُرَنِيِّينَ الَّذِينَ اقْتَصَّ مِنْهُمْ قَوَدًا، وَأَقَامَ عَلَيْهِمْ حُكْمَ الْمُحَارَبَةِ وَكَانُوا مُرْتَدِّينَ مُحَارِبِينَ مُتَعَدِّينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسْأَلَة صِفَةُ الصَّلْبِ لِلْمُحَارِبِ]

٢٢٦٤ - مَسْأَلَةٌ: صِفَةُ الصَّلْبِ لِلْمُحَارِبِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي صِفَةِ الصَّلْبِ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْمُحَارِبُ؟ فَقَالَ أَبُو حَنِيفَةَ، وَالشَّافِعِيُّ: يُضْرَبُ عُنُقُهُ بِالسَّيْفِ ثُمَّ يُصْلَبُ مَقْتُولًا - زَادَ الشَّافِعِيُّ -: وَيُتْرَكُ ثَلَاثَةَ أَيَّامٍ ثُمَّ يُنْزَلُ فَيُدْفَنُ.

وَقَالَ اللَّيْثُ بْنُ سَعْدٍ، وَالْأَوْزَاعِيُّ، وَأَبُو يُوسُفَ: يُصْلَبُ حَيًّا ثُمَّ يُطْعَنُ بِالْحَرْبَةِ حَتَّى يَمُوتَ.

وَقَالَ بَعْضُ أَصْحَابِنَا الظَّاهِرِينَ: يُصْلَبُ حَيًّا وَيُتْرَكُ حَتَّى يَمُوتَ، وَيَيْبَسَ كُلُّهُ وَيَجِفَّ، فَإِذَا يَبِسَ وَجَفَّ أُنْزِلَ، فَغُسِّلَ، وَكُفِّنَ، وَصُلِّيَ عَلَيْهِ، وَدُفِنَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى وَمَنِّهِ - فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا مَنْ قَالَ: يُقْتَلُ ثُمَّ يُصْلَبُ مَقْتُولًا، يَحْتَجُّونَ بِمَا ذَكَرْنَاهُ قَبْلُ فِي " كِتَابِ الدِّمَاءِ " مِنْ دِيوَانِنَا كَيْفَ يَكُونُ الْقَوَدُ مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ

matters. When you kill, perform the killing in the best manner." And his saying—peace be upon him—: "The most merciful people in killing are the people of faith."[15]

L41890–41891 And among his prohibitions—peace be upon him—is using a living being as a target, and his curse—peace be upon him—on whoever does so.

L41892 We have already mentioned these hadiths there with their chains of narration, making it unnecessary to repeat them.

L41893 They said: "Fixing him to the wooden stake is neither a virtuous nor honorable execution, for it involves treating the soul as a target—thus this is impermissible." We examined the evidence cited by those who advocated crucifying him after killing him, and found them arguing: "Allah the Exalted commanded killing as a punitive measure to disgrace the rebel in this worldly life. Since that is the case, punishment and disgrace cannot be inflicted upon a corpse, for the humiliation of the dead pertains to the Afterlife, not this world. Therefore, given this reasoning, crucifying him after killing him as a deterrent to others becomes invalid." The first group countered them by stating: "He is to be crucified after being killed as a deterrent to others."

L41894 These opponents countered them by saying: It is not a deterrent, but rather a punishment for the perpetrator and humiliation according to the explicit text of the Quran—and does his crucifixion followed by killing not also constitute the greatest deterrent? Abu Muhammad—may Allah have mercy on him—said: This encompasses all the evidence presented by both factions together. The evidence cited by both groups is true, except that they drew conclusions unsupported by the sound premises they cited, thus deviating from the paths of truth into the misguidances of confusion and error. Abu Muhammad—may Allah have mercy on him—said: This is as we shall clarify, Allah willing: We say that the statement of the Messenger of Allah—peace and blessings be upon him—"The most restrained people in killing are the people of faith,"

[15]**Hadith references (L41889):** Sunan an-Nasai 4405; Sunan an-Nasai 4412; Sahih Muslim 1955a.

شَيْءٍ فَإِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ» . وَمِنْ قَوْلِهِ - عَلَيْهِ السَّلَامُ - «أَعَفُّ النَّاسِ قِتْلَةً أَهْلُ الْإِيمَانِ» .

وَمِنْ نَهْيِهِ - عَلَيْهِ السَّلَامُ - أَنْ يُتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا وَلَعْنِهِ - عَلَيْهِ السَّلَامُ - مَنْ فَعَلَ ذَلِكَ.

وَقَدْ ذَكَرْنَا هَذِهِ الْأَحَادِيثَ هُنَالِكَ بِأَسَانِيدِهَا فَأَغْنَى عَنْ إعَادَتِهَا.

وَقَالُوا: طَعْنُهُ عَلَى الْخَشَبَةِ لَيْسَ قِتْلَةً حَسَنَةً، وَلَا عَفِيفَةً، وَهُوَ اتِّخَاذُ الرُّوحِ غَرَضًا، فَهَذَا لَا يَحِلُّ؟ وَنَظَرْنَا فِيمَا احْتَجَّ بِهِ مَنْ رَأَى قَتْلَهُ مَصْلُوبًا فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ اللَّهَ تَعَالَى إنَّمَا أَمَرَنَا بِالْقَتْلِ عُقُوبَةً، وَخِزْيًا لِلْمُحَارِبِ فِي الدُّنْيَا، فَإِذْ ذَلِكَ كَذَلِكَ، فَالْعُقُوبَةُ وَالْخِزْيُ لَا يَقَعَانِ عَلَى مَيِّتٍ، وَإِنَّمَا خِزْيُ الْمَيِّتِ فِي الْآخِرَةِ لَا فِي الدُّنْيَا، فَلَمَّا كَانَ ذَلِكَ كَذَلِكَ بَطَلَ أَنْ يُصْلَبَ بَعْدَ قَتْلِهِ رَدْعًا لِغَيْرِهِ؟ فَعَارَضَهُمْ الْأَوَّلُونَ - بِأَنْ قَالُوا: يُصْلَبُ بَعْدَ قَتْلِهِ رَدْعًا لِغَيْرِهِ.

فَعَارَضَهُمْ هَؤُلَاءِ بِأَنْ قَالُوا: لَيْسَ رَدْعًا، وَإِنَّمَا هُوَ عُقُوبَةٌ لِلْفَاعِلِ، وَخِزْيٌ بِنَصِّ الْقُرْآنِ - وَفِي صَلْبِهِ، ثُمَّ قَتْلِهِ، أَعْظَمُ الرَّدْعِ أَيْضًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا احْتَجَّتْ بِهِ الطَّائِفَتَانِ مَعًا، وَالَّتِي احْتَجَّتْ بِهِ كِلْتَا الطَّائِفَتَيْنِ حَقٌّ، إلَّا أَنَّهُ انْتَجَوْا مِنْهُ مَا لَا تُوجِبُهُ الْقَضَايَا الصِّحَاحُ الَّتِي ذَكَرُوا، فَمَالُوا عَنْ شَوَارِعِ الْحَقِّ إلَى زَوَائِغِ التَّلْبِيسِ وَالْخَطَأِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَذَلِكَ عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى: فَنَقُولُ: إنَّ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ أَعَفَّ النَّاسِ قِتْلَةً أَهْلُ الْإِيمَانِ» وَ «إذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ» وَ «لَعَنَ اللَّهُ مَنْ اتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا» . وَالنَّهْيُ عَنْ

ذَلِكَ، فَهُوَ كُلُّهُ حَقٌّ، كَمَا قَالَهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَهُوَ كُلُّهُ مَانِعٌ مِنْ أَنْ يُقْتَلَ بَعْدَ الصَّلْبِ بِرُمْحٍ أَوْ بِرَمْيِ سِهَامٍ، أَوْ بِغَيْرِ ذَلِكَ كَمَا ذَكَرْنَا.

When you kill, do so in the best manner," and "Allah curses whoever takes a living being as a target," along with the prohibition against such acts—all of this is true, as stated by the Messenger of Allah—peace and blessings be upon him. All of this prohibits that one be killed after crucifixion with a spear, by shooting arrows, or any other method we have mentioned.

وَإِنَّمَا فِي هَذِهِ الْأَحَادِيثِ وُجُوبُ الْفَرْضِ فِي إحْسَانِ قَتْلِهِ إنْ اخْتَارَ الْإِمَامُ قَتْلَهُ فَقَطْ، وَلَيْسَ فِي شَيْءٍ مِنْ هَذِهِ الْأَخْبَارِ وُجُوبُ صَلْبِهِ بَعْدَ الْقَتْلِ، وَلَا إبَاحَةُ صَلْبِهِ بَعْدَ الْقَتْلِ أَلْبَتَّةَ، لَا بِنَصٍّ، وَلَا بِإِشَارَةٍ.

L41895 In these narrations, there is only the obligation to properly execute him if the Imam chooses only to kill him. None of these reports mentions an obligation to crucify him after his death, nor any permission to crucify him post-mortem whatsoever - neither by explicit text nor by textual allusion.

فَأَمَّا إحْسَانُ الْقَتْلِ فَحَقٌّ، وَأَمَّا صَلْبُهُ بَعْدَ الْقَتْلِ، فَدَعْوَى فَاسِدَةٌ، لَيْسَتْ فِي شَيْءٍ مِنْ الْآثَارِ الَّتِي ذَكَرُوا، وَلَا غَيْرِهَا - فَبَطَلَ بِيَقِينٍ - لَا شَكَّ فِيهِ - احْتِجَاجُهُمْ بِهَذِهِ الْأَخْبَارِ فِي النُّكْتَةِ الَّتِي عَلَيْهَا تَكَلَّمُوا - وَهِيَ الصَّلْبُ بَعْدَ الْقَتْلِ أَوْ قَبْلَهُ - وَسَقَطَ قَوْلُهُمْ، إذْ تَعَرَّى مِنْ الْبُرْهَانِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ثُمَّ نَظَرْنَا فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الثَّانِيَةُ الْمُوجِبَةُ قَتْلَهُ بَعْدَ الصَّلْبِ، فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ الصَّلْبَ عُقُوبَةٌ وَخِزْيٌ فِي الدُّنْيَا، كَمَا قَالَ اللَّهُ تَعَالَى، وَإِنَّ الْمَيِّتَ لَا يُخْزَى فِي الدُّنْيَا بَعْدَ مَوْتِهِ، وَلَا يُعَاقَبُ بَعْدَ مَوْتِهِ: قَوْلًا صَحِيحًا لَا شَكَّ فِيهِ - وَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ الرَّدْعَ يَكُونُ بِصَلْبِهِ حَيًّا قَوْلًا أَيْضًا خَارِجًا عَنْ أُصُولِهِمْ، إلَّا أَنَّهُ لَيْسَ فِي شَيْءٍ مِنْ ذَلِكَ كُلِّهِ إيجَابُ قَتْلِهِ بَعْدَ الصَّلْبِ، كَمَا قَالُوا، وَلَا إبَاحَةُ ذَلِكَ أَيْضًا - وَإِنَّمَا فِي كُلِّ مَا قَالُوهُ: إيجَابُ الصَّلْبِ فَقَطْ، فَأَقْحَمُوا فِيهِ الْقَتْلَ بَعْدَ الصَّلْبِ جَرْيًا عَلَى عَادَتِهِمْ، فِي التَّلْبِيسِ وَالزِّيَادَةِ بِالدَّعَاوَى الْكَاذِبَةِ، عَلَى النُّصُوصِ مَا لَيْسَ فِيهَا - فَبَطَلَ قَوْلُهُمْ أَيْضًا لِمَا ذَكَرْنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا بَطَلَ الْقَوْلَانِ مَعًا وَجَبَ الرَّدُّ إلَى الْقُرْآنِ، وَالسُّنَّةِ، كَمَا افْتَرَضَ اللَّهُ تَعَالَى عَلَيْنَا بِقَوْلِهِ عَزَّ

L41896–41898 As for the humane manner of killing, it is a right. As for crucifixion after killing, then it is an invalid claim—not found in any of the traditions they cited, nor in other reports. Thus, their argument relying on these reports is undeniably invalidated with certainty—leaving no doubt. Regarding the point they debated—whether crucifixion occurs after killing or before it—their argument collapsed, for was it not stripped of any evidentiary basis? Abu Muhammad—may Allah have mercy on him—said: Then we examined the evidence presented by the second group, who mandate his killing after crucifixion. We found them claiming: "Crucifixion is a worldly punishment and humiliation, as Allah the Exalted stated, and the deceased is neither humiliated in this world after death nor punished posthumously"—a sound statement beyond doubt. We also found them asserting: "Deterrence as a public measure is achieved by crucifying him alive"—a claim that further deviates from their own foundational principles. Yet none of this entails mandating his killing after crucifixion, as they alleged, nor does it permit such an act. All their arguments solely mandate crucifixion itself. Nevertheless, they forcibly inserted killing after crucifixion, following their habitual practice of obfuscation and adding false claims to texts that contain no such rulings. Does this not invalidate their argument for the reasons we have outlined? Abu Muhammad—may Allah have mercy on him—said: When both views were thus invalidated, it became obligatory to revert to the Quran and the Sunnah, as Allah the Exalted obligated us by His words: "If you disagree over something, refer it to Allah and the Messenger" (4:59). We did so and

found Allah the Exalted stating: “The recompense of those who wage war against Allah and His Messenger...” (5:33), citing the entire verse.[16]

وَجَلَّ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] فَفَعَلْنَا فَوَجَدْنَا اللَّهَ تَعَالَى قَدْ قَالَ {إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ} [المائدة: ٣٣] الْآيَةَ كُلَّهَا.

L41899 It is conclusively established that Allah the Exalted never imposed upon them two of these rulings, nor permitted combining two such disgraces upon them in this world. Rather, He obligated upon the combatant one of them - not all of them, nor two, nor three.

فَصَحَّ يَقِينًا أَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ قَطُّ عَلَيْهِمْ حُكْمَيْنِ مِنْ هَذِهِ الْأَحْكَامِ، وَلَا أَبَاحَ أَنْ يُجْمَعَ عَلَيْهِمْ خِزْيَانِ مِنْ هَذِهِ الْأَخْزَاءِ فِي الدُّنْيَا، وَإِنَّمَا أَوْجَبَ عَلَى الْمُحَارِبِ أَحَدَهَا لَا كُلَّهَا، وَلَا اثْنَيْنِ مِنْهَا، وَلَا ثَلَاثَةً

L41900 Thus, it is established with certainty beyond doubt that if he is killed, his crucifixion, amputation, and exile are prohibited.

فَصَحَّ بِهَذَا يَقِينًا لَا شَكَّ فِيهِ: أَنَّهُ إِنْ قُتِلَ فَقَدْ حَرُمَ صَلْبُهُ، وَقَطْعُهُ، وَنَفْيُهُ.

L41901 And that if the punishment [of amputation] is carried out, it is forbidden to kill him, crucify him, or exile him.

وَأَنَّهُ إِنْ قُطِعَ، فَقَدْ حَرُمَ قَتْلُهُ، وَصَلْبُهُ، وَنَفْيُهُ.

L41902 And that if he is exiled, then killing him, crucifying him, and amputating him are prohibited; and that if he is crucified, then killing him, amputating him, and his exile are prohibited—apart from this, nothing is permissible whatsoever. Thus, if he is killed, crucifying him is prohibited by the text of the Quran.

وَأَنَّهُ إِنْ نُفِيَ، فَقَدْ حَرُمَ قَتْلُهُ، وَصَلْبُهُ وَقَطْعُهُ وَأَنَّهُ إِنْ صُلِبَ، فَقَدْ حَرُمَ قَتْلُهُ، وَقَطْعُهُ، وَنَفْيُهُ - لَا يَجُوزُ أَلْبَتَّةَ غَيْرُ هَذَا، فَحَرُمَ بِنَصِّ الْقُرْآنِ صَلْبُهُ إِنْ قُتِلَ.

L41903–41905 It is also prohibited by the explicit text of the Quran to kill him even if he is crucified, and this aspect is likewise prohibited by the Sunnah of the Messenger of Allah—peace and blessings be upon him—which we cited, such as: “The most compassionate in carrying out executions are those who show restraint.” The people of faith,“ and ”When you kill, perfect the killing,“ and ”May Allah curse whoever takes a living being as a target,“ along with the prohibition thereof. Since killing through crucifixion is definitively prohibited—due to our earlier mention of the obligatory curse upon whoever takes a living being as a target—and since crucifying after killing is prohibited (as we established that combining both acts is impermissible), does it not necessarily follow that the crucifixion Allah the Exalted commanded for the combatant must be crucifixion without accompanying killing? If it were otherwise, what Allah ordained would be void, His speech would become entirely devoid of

وَحَرُمَ أَيْضًا بِنَصِّ الْقُرْآنِ قَتْلُهُ إِنْ صُلِبَ وَحَرُمَ هَذَا الْوَجْهُ أَيْضًا بِسُنَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّتِي ذَكَرْنَا مِنْ «إِنَّ أَعَفَّ النَّاسِ قِتْلَةً أَهْلُ الْإِيمَانِ» وَ «إِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ» وَ «لَعَنَ اللَّهُ مَنْ اتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا» وَالنَّهْيِ عَنْ ذَلِكَ. فَلَمَّا حَرُمَ قَتْلُهُ مَصْلُوبًا بِيَقِينٍ، لِمَا ذَكَرْنَا مِنْ وُجُوبِ اللَّعْنَةِ عَلَى مَنْ اتَّخَذَ شَيْئًا فِيهِ الرُّوحُ غَرَضًا - وَحَرُمَ صَلْبُهُ بَعْدَ الْقَتْلِ لِمَا ذَكَرْنَا أَنَّهُ لَا يَجُوزُ عَلَيْهِ جَمْعُ الْأَمْرَيْنِ مَعًا وَجَبَ ضَرُورَةً أَنَّ الصَّلْبَ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ فِي الْمُحَارِبِ إِنَّمَا هُوَ صَلْبٌ لَا قَتْلَ مَعَهُ؟ وَلَوْ لَمْ يَكُنْ هَكَذَا لَبَطَلَ الَّذِي أَمَرَ اللَّهُ تَعَالَى بِهِ، وَلَكَانَ كَلَامًا عَارِيًّا مِنْ الْفَائِدَةِ أَصْلًا، وَحَاشَ لِلَّهِ تَعَالَى مِنْ أَنْ يَكُونَ كَلَامُهُ تَعَالَى هَكَذَا؟ وَلَكَانَ أَيْضًا تَكْلِيفًا لِمَا لَا يُطَاقُ

[16] **Qur’an references (L41896):** Qur’an 4:59 (An-Nisa); Qur’an 5:33 (Al-Ma’idah).

benefit—far is Allah the Exalted from His speech being thus!—and it would constitute imposing an unbearable obligation, which is invalid. Thus, it is decisively established that the obligation requires the Imam must be given the choice to crucify him alive and leave him until his entire body dries out and withers entirely. For "crucifixion" in Arabic usage carries two meanings: one refers to binding the hands to the wooden structure, as Allah the Exalted states, quoting Pharaoh: "I will surely crucify you on the trunks of palm trees" [20:71].[17]

L41906 The other position is drying. The poet said—describing a trackless, misleading desert—

L41907 Within lie the carcasses of the grief-stricken - as for their bones, they are white; and as for their skin, it is rigid.

L41908 He wants her skin to be dry. And the other said:

L41909 Jadhimah al-Nahid atop a soaring peak... Behold the bones heaped into a cross, stark and bleak.

L41910 Is he referring to rendered fat? Abu Muhammad—may Allah have mercy on him—said: It becomes obligatory to combine both matters together, so that when we fulfill Allah the Exalted's command regarding it, this thereby obligates what Allah the Exalted has prescribed upon a Muslim for another Muslim: the washing, the shrouding, the prayer, and the burial, according to what we have mentioned before this.

L41911 If someone were to say: Is stoning (rajm) not taking a living being as a target? And likewise your statement regarding retribution (qisas) with the same means by which the victim was killed?

L41912–41913 Our response—and success is from Allah the Exalted—is: Yes, both are commanded acts. He—peace be upon him—ruled on both, necessitating their exemption from the prohibition against targeting the soul. As for stoning, it is established by textual evidence and consensus. As for retributive punishment for homicide, it is affirmed by the explicit text regarding compensation for

[17] **Qur'an references (L41903):** Qur'an 20:71 (Taha).

- وَهَذَا بَاطِلٌ. فَصَحَّ يَقِينًا أَنَّ الْوَاجِبَ أَنْ يُخَيَّرَ الْإِمَامُ صَلْبُهُ إِنْ صَلَبَهُ حَيًّا، ثُمَّ يَدَعُهُ حَتَّى يَيْبَسَ وَيَجِفَّ كُلُّهُ؛ لِأَنَّ الصَّلْبَ فِي كَلَامِ الْعَرَبِ يَقَعُ عَلَى مَعْنَيَيْنِ: أَحَدُهُمَا: مِنْ الْأَيْدِي، وَالرَّبْطِ عَلَى الْخَشَبَةِ، قَالَ اللَّهُ تَعَالَى حَاكِيًا عَنْ فِرْعَوْنَ {وَلَأُصَلِّبَنَّكُمْ فِي جُذُوعِ النَّخْلِ} [طه: ٧١]

وَالْوَجْهُ الْآخَرُ: التَّيْبِيسُ، قَالَ الشَّاعِرُ، يَصِفُ فَلَاةً مُضِلَّةً:

بِهَا جِيَفُ الْحَسْرَى فَأَمَّا عِظَامُهَا ... فَبِيضٌ وَأَمَّا جِلْدُهَا فَصَلِيبُ

يُرِيدُ أَنَّ جِلْدَهَا يَابِسٌ. وَقَالَ الْآخَرُ:

جَذِيمَةُ نَاهِضٍ فِي رَأْسِ نِيقٍ ... تَرَى لِعِظَامِ مَا جَمَعَتْ صَلِيبًا

يُرِيدُ: وَدَكًا سَائِلًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ جَمْعُ الْأَمْرَيْنِ مَعًا، حَتَّى إذَا أَنْفَذْنَا أَمْرَ اللَّهِ تَعَالَى فِيهِ وَجَبَ بِهِ مَا افْتَرَضَهُ اللَّهُ تَعَالَى لِلْمُسْلِمِ عَلَى الْمُسْلِمِ: مِنْ الْغُسْلِ، وَالتَّكْفِينِ، وَالصَّلَاةِ، وَالدَّفْنِ، عَلَى مَا قَدْ ذَكَرْنَا قَبْلَ هَذَا.

فَإِنْ قَالَ قَائِلٌ: أَلَيْسَ الرَّجْمُ اتِّخَاذُ مَا فِيهِ الرُّوحُ غَرَضًا؟ وَكَذَلِكَ قَوْلُكُمْ فِي الْقَوَدِ بِمِثْلِ مَا قُتِلَ؟

فَجَوَابُنَا، وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: نَعَمْ، وَهُمَا مَأْمُورٌ بِهِمَا، قَدْ حَكَمَ - عَلَيْهِ السَّلَامُ - بِكِلَيْهِمَا فَوَجَبَ أَنْ يَكُونَا مُسْتَثْنَيَيْنِ مِمَّا نَهَى عَنْهُ مِنْ اتِّخَاذِ الرُّوحِ غَرَضًا، فَأَمَّا الرَّجْمُ فَبِالنَّصِّ وَالْإِجْمَاعِ، وَأَمَّا الْقَوَدُ فَبِالنَّصِّ الْجَلِيِّ فِي رَضْخِ رَأْسِ الْيَهُودِيِّ وَفِي الْعُرَنِيِّينَ كَمَا قُلْتُمْ أَنْتُمْ وَنَحْنُ فِي أَنَّ الْقِصَاصَ مِنْ قَطْعِ الْأَيْدِي، وَالْأَرْجُلِ، وَسَمْلِ الْأَعْيُنِ، وَجَدْعِ الْأَنْفِ،

the Jew's head injury and the case of the 'Uraynah people as you yourselves mentioned. We are of the view that retribution for severing hands and feet, gouging eyes, amputating noses and ears, splitting lips and tongues, and uprooting molars constitutes an obligatory right requiring implementation. These acts are exempted from the ruling on unlawful disfigurement, with no distinction between these cases.

وَالْآذَانِ، وَقَطْعِ الشِّفَاهِ، وَالْأَلْسِنَةِ، وَقَلْعِ الْأَضْرَاسِ، حَقٌّ وَاجِبٌ إِنْفَاذُهُ، مُسْتَثْنَيَيْنِ مِنْ الْمُثْلَةِ الْمُحَرَّمَةِ، وَلَا فَرْقَ

L41914 If someone were to say: "You have heard the words of the Messenger of Allah—peace and blessings be upon him—'The most restrained in killing are the people of faith' and 'When you kill, do so in the best manner,' yet you kill him in the most savage and repugnant manner: through hunger, thirst, heat, and cold?" We would reply: "We did not kill him at all; rather, we crucified him as Allah the Exalted commanded. He died only of his natural end, and this is not termed 'killed' in the language."

فَإِنْ قَالَ قَائِلٌ: فَإِنَّكُمْ قَدْ سَمِعْتُمْ قَوْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَعَفُّ النَّاسِ قِتْلَةً أَهْلُ الْإِيمَانِ» وَ «إِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ» وَأَنْتُمْ تَقْتُلُونَهُ أَوْحَشَ قِتْلَةٍ وَأَقْبَحَهَا: جُوعًا، وَعَطَشًا، وَحَرًّا، وَبَرْدًا؟ فَنَقُولُ: وَمَا قَتَلْنَاهُ أَصْلًا، بَلْ صَلَبْنَاهُ كَمَا أَمَرَ اللَّهُ تَعَالَى: وَمَا مَاتَ إِلَّا حَتْفَ أَنْفِهِ، وَمَا يُسَمَّى هَذَا فِي اللُّغَةِ مَقْتُولًا

L41915 If they say: "You maintain that concerning one who imprisons a person and denies him food and drink until he dies, he must be imprisoned and denied food and drink until he dies. Is this retaliatory killing (*qisas*) for killing?" We respond: "This is neither killing nor retaliation for killing, but rather oppression and legal retaliation solely for the act of oppression itself."

فَإِنْ قَالُوا: فَإِنَّكُمْ تَقُولُونَ فِيمَنْ سَجَنَ إِنْسَانًا وَمَنَعَهُ الْأَكْلَ وَالشُّرْبَ حَتَّى مَاتَ إِنَّهُ يُسْجَنُ وَيُمْنَعُ الْأَكْلَ وَالشُّرْبَ حَتَّى يَمُوتَ، فَهَذَا قَتْلٌ بِقَتْلٍ؟ فَنَقُول: إِنَّ هَذَا لَيْسَ قَتْلًا، وَلَا قَوَدًا بِقَتْلٍ، بَلْ هُوَ ظُلْمٌ وَقَوَدٌ مِنْ الظُّلْمِ فَقَطْ.

L41916 The proof of this is: If a man were to close a door without transgression, while unaware of a person inside the dwelling who subsequently died there of hunger and thirst, no expiation whatsoever would be required from the door-closer, nor would blood money be incumbent upon his kinsmen – because he is not a killer. If it is objected: "Do you prevent him from prayer and purification?" We reply: "Yes, for when Allah the Exalted commanded his crucifixion, He knew prayer times would pass during it. Yet He did not command us to remove the crucifixion for that reason – {and your Lord is never forgetful} [19:64]. Thus, it is neither permissible for a Muslim nor lawful for him to oppose Allah the Exalted's command – {none can revise His judgment} [13:41], and {He will not be questioned about what He does, but they will be questioned} [21:23]."[18]

وَبُرْهَانُ ذَلِكَ: أَنَّ رَجُلًا لَوْ اتَّفَقَ لَهُ أَنْ يُقْفِلَ بَابًا بِغَيْرِ عُدْوَانٍ، فَإِذَا فِي دَاخِلِ الدَّارِ إِنْسَانٌ لَمْ يَشْعُرْ بِهِ، فَمَاتَ هُنَالِكَ جُوعًا وَعَطَشًا: أَنَّهُ لَا كَفَّارَةَ عَلَى قَافِلِ الْبَابِ أَصْلًا، وَلَا دِيَةَ عَلَى عَاقِلَتِهِ، لِأَنَّهُ لَيْسَ قَاتِلًا؟ فَإِنْ قِيلَ: إِنَّكُمْ تَمْنَعُونَهُ الصَّلَاةَ وَالطَّهَارَةَ؟ قُلْنَا: نَعَمْ، لِأَنَّ اللَّهَ تَعَالَى إِذْ أَمَرَ بِصَلْبِهِ قَدْ عَلِمَ أَنَّهُ سَتَمُرُّ عَلَيْهِ أَوْقَاتُ الصَّلَوَاتِ، فَلَمْ يَأْمُرْنَا بِإِزَالَةِ التَّصْلِيبِ عَنْهُ مِنْ أَجْلِ ذَلِكَ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] فَلَا يَسَعُ مُسْلِمًا، وَلَا يَحِلُّ لَهُ أَنْ يَعْتَرِضَ عَلَى أَمْرِ اللَّهِ تَعَالَى {لا مُعَقِّبَ لِحُكْمِهِ} [الرعد: ٤١] و {لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ} [الأنبياء: ٢٣] .

[18] **Qur'an references (L41916):** Qur'an 13:41 (Ar-Ra'd); Qur'an 21:23 (Al-Anbya); Qur'an 19:64 (Maryam).

The Manner of Killing the Muḥārib (One Who Wages Ḥirābah)

Issue 2265: Abu Muhammad—may Allah have mercy on him—said: There is no disagreement that the obligatory killing for the brigand is solely striking the neck with the sword. As for cutting off limbs, Allah the Exalted said: "Or that their hands and feet be cut off from opposite sides" (5:33). This confirms that it is not permissible to cut off his hands and his foot together, for if that were done, it would not be cutting from opposite sides. This is also a matter of consensus without doubt. Some have said: His right hand and left foot are cut off, then the wounds must be cauterized with fire. Abu Muhammad said: As for cauterization, it is obligatory, for if it is not cauterized, he will die—and this is a form of killing that Allah the Exalted did not command. We have stated that it is not permissible to combine both actions together, for Allah the Exalted commanded this with the term "or," which necessitates choice without exception.[19]

If Allah, the Exalted, had willed to combine those punishments, He would have said: "They are to be killed, crucified, and their hands and feet are to be cut off from opposite sides."

And similarly, His statement, the Exalted: "The expiation is feeding ten needy persons from the average of what you feed your families, or providing clothing for them, or freeing a slave" (Al-Ma'idah 5:89).[20]

And His Exalted statement: "Then an expiation of fasting, charity, or sacrifice" [Quran 2:196].[21]

If someone were to argue: "The Arabs have said, 'Sit with al-Ḥasan or Ibn Sīrīn,'" and "'Eat bread or dates,'" and Allah the Exalted said, _"And do not obey among them any sinful ingrate"_ [al-Insān 24], we respond: As for Allah's statement _"And do not obey among them any sinful ingrate"_ [al-

[19] **Qur'an references (L41919):** Qur'an 5:33 (Al-Ma'idah).
[20] **Qur'an references (L41921):** Qur'an 5:89 (Al-Ma'idah).
[21] **Qur'an references (L41922):** Qur'an 2:196 (Al-Baqarah).

[صِفَةُ الْقَتْلِ فِي الْمُحَارِبِ]

٢٢٦٥ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: لَا خِلَافَ عَلَى أَنَّ الْقَتْلَ الْوَاجِبَ فِي الْمُحَارِبِ إنَّمَا هُوَ ضَرْبُ الْعُنُقِ بِالسَّيْفِ فَقَطْ، وَأَمَّا قَطْعُهُ فَإِنَّ اللَّهَ تَعَالَى قَالَ {أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلافٍ} [المائدة: ٣٣] . فَصَحَّ بِهَذَا أَنَّهُ لَا يَجُوزُ قَطْعُ يَدَيْهِ وَرِجْلِهِ مَعًا، لِأَنَّهُ لَوْ كَانَ ذَلِكَ لَمْ يَكُنْ الْقَطْعُ مِنْ خِلَافٍ، وَهَذَا أَيْضًا إجْمَاعٌ لَا شَكَّ فِيهِ، فَقَالَ قَوْمٌ: يُقْطَعُ يَمِينُ يَدَيْهِ وَيُسْرَى رِجْلَيْهِ ثُمَّ يُحْسَمُ بِالنَّارِ وَلَا بُدَّ؟ قَالَ أَبُو مُحَمَّد: أَمَّا الْحَسْمُ فَوَاجِبٌ، لِأَنَّهُ إنْ لَمْ يُحْسَمْ مَاتَ، وَهَذَا قَتْلٌ لَمْ يَأْمُرْ اللَّهُ تَعَالَى بِهِ، وَقَدْ قُلْنَا: إنَّهُ لَا يَحِلُّ أَنْ يُجْمَعَ عَلَيْهِ الْأَمْرَانِ مَعًا، لِأَنَّ اللَّهَ تَعَالَى إنَّمَا أَمَرَ بِذَلِكَ بِلَفْظِ " أَوْ " وَهُوَ يَقْتَضِي التَّخْيِيرُ وَلَا بُدَّ.

وَلَوْ أَرَادَ اللَّهُ تَعَالَى جَمْعَ ذَلِكَ لَقَالَ: أَنْ يُقَتَّلُوا وَيُصَلَّبُوا وَتُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ.

وَهَكَذَا قَوْله تَعَالَى {فَكَفَّارَتُهُ إطْعَامُ عَشَرَةِ مَسَاكِينَ مِنْ أَوْسَطِ مَا تُطْعِمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ} [المائدة: ٨٩] .

وقَوْله تَعَالَى {فَفِدْيَةٌ مِنْ صِيَامٍ أَوْ صَدَقَةٍ أَوْ نُسُكٍ} [البقرة: ١٩٦] .

فَإِنْ قَالَ قَائِلٌ: فَإِنَّ الْعَرَبَ قَدْ قَالَتْ: جَالِسْ الْحَسَنَ، أَوْ ابْنَ سِيرِينَ - وَكُلْ خُبْزًا، أَوْ تَمْرًا - وَقَالَ تَعَالَى {وَلا تُطِعْ مِنْهُمْ آثِمًا أَوْ كَفُورًا} [الإنسان: ٢٤] . قُلْنَا: أَمَّا قَوْلُ اللَّهِ تَعَالَى {وَلا تُطِعْ مِنْهُمْ آثِمًا أَوْ كَفُورًا} [الإنسان: ٢٤] فَهُوَ عَلَى ظَاهِرِهِ، وَهُوَ - عَلَيْهِ

Insān 24], it is understood according to its apparent meaning. The Prophet (peace be upon him) is prohibited from obeying a sinner—even if that sinner is not an ingrate—for every ingrate is a sinner, but not every sinner is an ingrate. Thus, the Exalted's mention of the ingrate serves as a perpetual emphasis, otherwise the ingrate would already be encompassed within the category of the sinner.[22]

السَّلَامُ - مَنْهِيٌّ أَنْ يُطِيعَ الْآثِمَ - وَإِنْ لَمْ يَكُنْ كَفُورًا - وَكُلُّ كَفُورٍ آثِمٌ، وَلَيْسَ كُلُّ آثِمٍ كَفُورًا - فَصَحَّ أَنَّ ذِكْرَهُ تَعَالَى لِلْكَفُورِ تَأْكِيدٌ أَبَدًا، وَإِلَّا فَالْكَفُورُ دَاخِلٌ فِي الْآثِمِ.

L41924 As for the Arabs' saying: "Sit with Al-Hasan or Ibn Sīrīn," and "Eat bread or dates"—we do not prevent an expression from deviating from its literal meaning in the language when there is evidence, but we do prevent causing its deviation through baseless conjectures and false claims.

وَأَمَّا قَوْلُ الْعَرَبِ: جَالِسْ الْحَسَنَ، أَوْ ابْنَ سِيرِينَ - وَكُلْ خُبْزًا، أَوْ تَمْرًا، فَنَحْنُ لَا نَمْنَعُ خُرُوجَ اللَّفْظِ عَنْ مَوْضُوعِهِ فِي اللُّغَةِ بِدَلِيلٍ، وَإِنَّمَا نَمْنَعُ مِنْ إخْرَاجِهِ بِالظُّنُونِ وَالدَّعْوَى الْكَاذِبَةِ.

L41925–41926 We have concluded that the statement "Sit with al-Ḥasan or Ibn Sīrīn" indicates the permissibility of sitting with both of them together and the permissibility of sitting with each of them separately.

وَإِنَّمَا صِرْنَا إلَى أَنَّ قَوْلَ الْقَائِلِ: جَالِسْ الْحَسَنَ، أَوْ ابْنَ سِيرِينَ: إبَاحَةٌ لِمُجَالَسَتِهِمَا مَعًا، وَلِكُلِّ وَاحِدٍ مِنْهُمَا بِانْفِرَادِهِ.

L41927 Similarly, their statement: "Eat bread or dates as well," with no distinction—based on evidence that obligated this from the situation of the addressed party. Were it not for that evidence, it would not be permissible to depart from "or" in origin and its established meaning in the language—its established meaning being either choice or doubt. But God Almighty does not doubt, so nothing remains except choice alone? Abū Muḥammad said: If the judge were to amputate his left hands and right feet, this would not be prohibited, whether done intentionally or unintentionally, because God Almighty did not specify cutting off the right of his hands rather than the left. He only mentioned hands and feet: *"And your Lord is not forgetful" [Maryam: 64]*. Whoever claims consensus here has lied against the entire community, and he cannot find any basis for this from any of the Companions at all, nor do we know it from any of the Followers—and with God Almighty is success.[23]

وَكَذَلِكَ قَوْلُهُمْ: كُلْ خُبْزًا، أَوْ تَمْرًا أَيْضًا، وَلَا فَرْقَ - بِدَلِيلٍ أَوْجَبَ ذَلِكَ مِنْ حَالِ الْمُخَاطَبِ، وَلَوْلَا ذَلِكَ الدَّلِيلُ لَمَا جَازَ إخْرَاجُ " أَوْ " عَنْ مَوْضُوعِهَا فِي اللُّغَةِ - أَصْلًا وَمَوْضُوعُهَا، إنَّمَا هُوَ التَّخْيِيرُ أَوْ الشَّكُّ - وَاَللَّهُ تَعَالَى لَا يَشُكُّ، فَلَمْ يَبْقَ إلَّا التَّخْيِيرُ فَقَطْ؟ قَالَ أَبُو مُحَمَّدٍ: وَلَوْ قَطَعَ الْقَاطِعُ يُسْرَى يَدَيْهِ، وَيُمْنَى رِجْلَيْهِ، لَمْ يُمْنَعْ مِنْ ذَلِكَ، عَمْدًا فَعَلَهُ أَوْ غَيْرَ عَامِدٍ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَنُصَّ عَلَى قَطْعِ يُمْنَى يَدَيْهِ دُونَ يُسْرَى، وَإِنَّمَا ذَكَرَ تَعَالَى الْأَيْدِي وَالْأَرْجُلَ فَقَطْ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] . وَمَنْ ادَّعَى هَاهُنَا إجْمَاعًا فَقَدْ كَذَبَ عَلَى جَمِيعِ الْأُمَّةِ، وَلَا يَقْدِرُ عَلَى أَنْ يُوجِدَ ذَلِكَ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ أَصْلًا، وَمَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ التَّابِعِينَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[22] **Qur'an references (L41923):** Qur'an 76:24 (Al-Insan).
[23] **Qur'an references (L41927):** Qur'an 19:64 (Maryam).



AL-MUHALLA

كِتَابُ السَّرِقَةِ

The Book of Theft

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

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Book on Theft

L41928–41929

L41930 Issue 2266: Abū Muḥammad—may Allah have mercy on him—said: Allah the Exalted stated, “As for the thief, male or female, cut off their hands as a recompense for what they committed—an exemplary punishment from Allah” (Quran 5:38). Thus, amputation is obligatory in cases of theft by the explicit text of the Quran, the explicit text of the Sunnah, and the consensus of the Ummah. Then people have differed regarding certain points in the rulings on theft, which we will mention—if Allah wills. There is no power nor strength except with Allah.[1]

L41931 Issue: Defining theft and the ruling regarding protected property (ḥirz)—is it a requirement or not?

L41932 2267 - Issue: Explaining what constitutes theft and the ruling regarding *hirz*—whether it is taken into account (as a condition) or not. Abū Muḥammad—may Allāh have mercy on him—said: A group held: “Amputation is only prescribed for what is removed from its *hirz* (secure storage). If someone takes it from outside its *hirz* and carries it away, the amputation penalty does not apply to him.”

L41933 Similarly, if someone takes an item—and he has indeed taken it—from a secure place but is apprehended before removing it from the secure place and departs with it, then amputation is not imposed on him. As narrated by Muḥammad ibn Saʿīd ibn Nabāt from ʿAbdullāh ibn Naṣr, from Qāsim ibn Aṣbagh, from Ibn Waḍḍāḥ, from Mūsā ibn Muʿāwiyah, from Wakīʿ, from Ibn Jurayj, from Sulaymān ibn Mūsā and ʿAmr ibn Shuʿayb. Sulaymān said, “‘Uthmān stated,” and ʿAmr ibn Shuʿayb said, “Ibn ʿUmar stated.” Then the two concurred: “Amputation is not imposed on a thief until he removes the property.”

L41934 Narrated to us Humam: From Ibn Mufarrij, from Ibn al-A’rabi, from al-Dabari, from ’Abd al-Razzaq, from Ibn Jurayj, from Sulayman ibn Musa: That ’Uthman ruled there is no hand amputation for a thief—even if he gathered

[1] **Qur’an references (L41930):** Qur’an 5:38 (Al-Ma’idah).

[كِتَابُ السَّرِقَةِ]

٢٢٦٦ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ اللَّهُ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالا مِنَ اللَّهِ} [المائدة: ٣٨] فَوَجَبَ الْقَطْعُ فِي السَّرِقَةِ بِنَصِّ الْقُرْآنِ، وَنَصِّ السُّنَّةِ، وَإِجْمَاعِ الْأُمَّةِ، ثُمَّ اخْتَلَفَ النَّاسُ فِي مَوَاضِعَ مِنْ حُكْمِ السَّرِقَةِ نَذْكُرُهَا - إِنْ شَاءَ اللَّهُ تَعَالَى - وَلَا حَوْلَ وَلَا قُوَّةَ إِلَّا بِاللَّهِ.

[مَسْأَلَةٌ ذِكْرُ مَا السَّرِقَةُ وَحُكْمُ الْحِرْزِ أَيُرَاعَى أَمْ لَا]

٢٢٦٧ - مَسْأَلَةٌ: ذِكْرُ مَا السَّرِقَةُ وَحُكْمُ الْحِرْزِ أَيُرَاعَى أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَتْ طَائِفَةٌ: لَا قَطْعَ إِلَّا فِيمَا أُخْرِجَ مِنْ حِرْزِهِ، وَأَمَّا إِنْ أَخَذَهُ مِنْ غَيْرِ حِرْزِهِ وَمَضَى بِهِ، فَلَا قَطْعَ عَلَيْهِ.

وَكَذَلِكَ لَوْ أَخَذَ - وَقَدْ أَخَذَهُ - مِنْ حِرْزٍ فَأُدْرِكَ قَبْلَ أَنْ يُخْرِجَهُ مِنَ الْحِرْزِ وَيَمْضِيَ بِهِ، فَلَا قَطْعَ عَلَيْهِ. كَمَا نَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نَا عَبْدُ اللَّهِ بْنُ نَصْرٍ نَا قَاسِمُ بْنُ أَصْبَغَ نَا ابْنُ وَضَّاحٍ نَا مُوسَى بْنُ مُعَاوِيَةَ نَا وَكِيعٌ نَا ابْنُ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى، وَعَمْرِو بْنِ شُعَيْبٍ، قَالَ سُلَيْمَانُ: إِنَّ عُثْمَانَ، وَقَالَ عَمْرُو بْنُ شُعَيْبٍ: إِنَّ ابْنَ عُمَرَ، ثُمَّ اتَّفَقَا: لَا قَطْعَ عَلَى سَارِقٍ حَتَّى يُخْرِجَ الْمَتَاعَ.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى أَنَّ عُثْمَانَ قَضَى أَنَّهُ لَا قَطْعَ عَلَى سَارِقٍ - وَإِنْ كَانَ قَدْ جَمَعَ الْمَتَاعَ فَأَرَادَ أَنْ يَسْرِقَ - حَتَّى يَحْمِلَهُ وَيَخْرُجَ بِهِ. وَبِهِ - إِلَى ابْنِ جُرَيْجٍ عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ

the belongings and intended to steal—until he removes them and departs with them. Through the same chain, continuing to Ibn Jurayj, from ’Amr ibn Shu’ayb: That a thief breached the treasury of al-Muttalib ibn Wada’ah and penetrated it. He had gathered the belongings but did not depart with them. He was brought to Ibn al-Zubayr, who flogged him and ordered that his hand be amputated. The thief was taken past Ibn ’Umar, who inquired and was informed. Ibn ’Umar then went to Ibn al-Zubayr and said: “Did you order that his hand be amputated?”

سَارِقًا نَقَبَ خِزَانَةَ الْمُطَّلِبِ بْنِ وَدَاعَةَ وَالْطَعَنّ فِيهَا قَدْ جَمَعَ الْمَتَاعَ وَلَمْ يَخْرُجْ بِهِ، فَأُتِيَ بِهِ إِلَى ابْنِ الزُّبَيْرِ فَجَلَدَهُ وَأَمَرَ بِهِ أَنْ يُقْطَعَ، فَمَرَّ بِابْنِ عُمَرَ فَسَأَلَ فَأُخْبِرَ فَأَتَى ابْنَ الزُّبَيْرِ فَقَالَ: أَمَرْت بِهِ أَنْ يُقْطَعَ؟

He said: “Yes.” He asked: “What is the reason for the flogging?” He replied: “I became angry.” Ibn Umar said: “The hand is not to be cut until he takes it out of the house. Suppose you saw a man in a compromising position with a woman without intercourse—would you enforce the ḥadd on him?” He said: “No.” He said: “Perhaps he was relinquishing, repentant, and abandoning the property.” Abdullah ibn Rabi‘ narrated to us - Muhammad ibn Ahmad ibn Mufarrij narrated to us - Qasim ibn Asbagh narrated to us - Ibn Waddah narrated to us - Sahnun narrated to us - Ibn Wahb narrated from Ibn Lahi‘ah from Yazid ibn Abi Habib from Ali ibn Sulayman from Makhūl from Uthman ibn Affan, who said: “The thief’s hand is not cut—even if the property is found with him—unless he takes it out of the house.”

L41935–41936

فَقَالَ: نَعَمْ، قَالَ: فَمَا شَأْنُ الْجَلْدِ؟ قَالَ: غَضِبْت، فَقَالَ ابْنُ عُمَرَ: لَيْسَ عَلَيْهِ قَطْعٌ حَتَّى يَخْرُجَ بِهِ مِنْ الْبَيْتِ، أَرَأَيْت لَوْ رَأَيْت رَجُلًا بَيْنَ رِجْلَيْ امْرَأَةٍ لَمْ يُصِبْهَا أَكُنْت حَادَّهُ؟ قَالَ: لَا، قَالَ: لَعَلَّهُ قَدْ كَانَ نَازِعًا تَائِبًا وَتَارِكًا لِلْمَتَاعِ. حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ يَزِيدَ بْنِ أَبِي حَبِيبٍ عَنْ عَلِيِّ بْنِ سُلَيْمَانَ عَنْ مَكْحُولٍ عَنْ عُثْمَانَ بْنِ عَفَّانَ قَالَ: لَا تُقْطَعُ يَدُ السَّارِقِ - وَإِنْ وُجِدَ مَعَهُ الْمَتَاعُ - مَا لَمْ يَخْرُجْ بِهِ عَنْ الدَّارِ.

And from him—to Ibn Wahb: I heard Al-Shimr ibn Numayr narrate from Al-Husayn ibn Abdullah ibn Al-Ḍumayrah, from his father, from his grandfather, from Ali ibn Abi Talib, who said regarding a man found in a house he had breached, possessing the belongings: He is not to have his hand amputated until he carries the belongings and exits with them from the house.

L41937

وَبِهِ - إلَى ابْنِ وَهْبٍ سَمِعْتُ الشِّمْرَ بْنَ نُمَيْرٍ يُحَدِّثُ عَنْ الْحُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ فِي الرَّجُلِ يُوجَدُ فِي الْبَيْتِ - وَقَدْ نَقَبَهُ - مَعَهُ الْمَتَاعُ: أَنَّهُ لَا يُقْطَعُ حَتَّى يَحْمِلَ الْمَتَاعَ فَيَخْرُجَ بِهِ عَنْ الدَّارِ.

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: Zakariyya narrated from al-Sha’bi, who said: The thief’s hand shall not be cut off until he removes the goods.

L41938

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 زَكَرِيَّا عَنْ الشَّعْبِيِّ قَالَ: لَيْسَ عَلَى السَّارِقِ قَطْعٌ حَتَّى يُخْرِجَ الْمَتَاعَ.

It is narrated from ‘Aṭā’ that Ibn Jurayj asked him, “If a thief is found in a house after gathering belongings but before leaving with them?” He replied, “No hand amputation is imposed on him until he exits with them.”

L41939

وَعَنْ عَطَاءٍ - سَأَلَهُ ابْنُ جُرَيْجٍ السَّارِقُ يُوجَدُ فِي الْبَيْتِ قَدْ جَمَعَ الْمَتَاعَ وَلَمْ يَخْرُجْ بِهِ؟ قَالَ: لَا قَطْعَ عَلَيْهِ حَتَّى يَخْرُجَ بِهِ.

L41940 It is narrated from Rabi'ah that he said: If someone is apprehended in a community's residence with stolen property after having exited beyond the area secured by the keys of the house from which he took it, amputation is mandated. Whoever is not found possessing anything incurs no amputation, even if he intended theft.

وَعَنْ رَبِيعَةَ - أَنَّهُ قَالَ: مَنْ أُخِذَ فِي دَارِ قَوْمٍ مَعَهُ سَرِقَةٌ قَدْ خَرَجَ عَنْ مَفَاتِيحِ الْبَيْتِ الَّذِي أَخَذَ السَّرِقَةَ مِنْهُ فَعَلَيْهِ الْقَطْعُ، وَمَنْ لَمْ يُوجَدْ مَعَهُ شَيْءٌ فَلَا قَطْعَ عَلَيْهِ وَإِنْ كَانَ يُرِيدُ السَّرِقَةَ.

L41941 From Adī ibn Arṭā'ah: He wrote to ʿUmar ibn ʿAbd al-ʿAzīz regarding a man who tunneled into a people's house until he entered it and gathered their possessions. They seized him inside the house after he had collected the belongings. ʿUmar ibn ʿAbd al-ʿAzīz wrote back: "He did not tunnel into the house and gather the possessions for any good purpose. Therefore, punish him severely, then imprison him, and do not neglect to keep me reminded of his case." From Ibn Shihāb—he said: "Theft applies only to what is safeguarded. If something is safeguarded in a house, a protected storage, a wall, or tethered, and one undid its fastening and took it away, this constitutes the theft for which hand amputation is mandated." He said: "If someone steals a bird from a suspended safeguarded enclosure belonging to its owner, does the same punishment apply to him as to the thief?"

وَعَنْ عَدِيِّ بْنِ أَرْطَاةَ أَنَّهُ كَتَبَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي رَجُلٍ نَقَبَ بَيْتَ قَوْمٍ حَتَّى دَخَلَ الْبَيْتَ فَجَمَعَ مَتَاعَهُمْ فَأَخَذُوهُ فِي الْبَيْتِ قَدْ جَمَعَ الْمَتَاعَ، فَكَتَبَ إِلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: إِنَّهُ لَمْ يَنْقُبِ الْبَيْتَ وَيَجْمَعِ الْمَتَاعَ لِخَيْرٍ، فَعَاقِبْهُ عُقُوبَةً شَدِيدَةً ثُمَّ احْبِسْهُ وَلَا تَدَعْ أَنْ تُذَكِّرَنِيهِ. وَعَنِ ابْنِ شِهَابٍ - أَنَّهُ قَالَ: إِنَّمَا السَّرِقَةُ فِيمَا أُحْصِنَ، فَمَا كَانَ مُحْصَنًا فِي دَارٍ، أَوْ حِرْزٍ، أَوْ حَائِطٍ، أَوْ مَرْبُوطٍ، فَاحْتَلَّ رِبَاطَهُ فَذَهَبَ بِهِ، فَتِلْكَ مِنَ السَّرِقَةِ الَّتِي يُقْطَعُ فِيهَا، قَالَ: فَمَنْ سَرَقَ طَيْرًا مِنْ حِرْزٍ لَهُ مُعَلَّقٍ، فَعَلَيْهِ مَا عَلَى السَّارِقِ؟

L41942–41943 Abu Muhammad—may Allah have mercy on him—said: In this matter hold Sufyan al-Thawrī, Abu Hanifah, Malik, al-Shafiʿi, Ahmad ibn Hanbal, their companions, and Isḥāq ibn Rāhawayh.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهَذَا يَقُولُ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ.

L41944 A juristic school held that the prescribed amputation is obligatory, whether the theft was from a secure place or a non-secure one.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ الْقَطْعُ سَوَاءٌ مِنْ حِرْزٍ سَرَقَ أَوْ مِنْ غَيْرِ حِرْزٍ.

L41945 As reported by Aḥmad ibn Anas al-ʿUdhri, who reported from ʿAbdullāh ibn al-Ḥusayn ibn ʿIqāl—the Zubayrī—who reported from Ibrāhīm ibn Muḥammad al-Dīnawarī, who reported from Muḥammad ibn Aḥmad ibn al-Jahm, who reported from Mūsā ibn Isḥāq, who reported from Abū Bakr ibn Abī Shaybah, who reported from Abū Khālid, from Yaḥyā ibn Saʿīd al-Anṣārī, from ʿAbd al-Raḥmān ibn al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq, who said: News reached ʿĀ'ishah, the Mother of the Believers, that people were saying, "If the thief does not produce the stolen item, his hand is not amputated." ʿĀ'ishah responded, "If I found nothing but a knife, I would amputate it—theft by stealth, and with that..."

كَمَا نا أَحْمَدُ بْنُ أَنَسٍ الْعُذْرِيُّ نا عَبْدُ اللَّهِ بْنُ الْحُسَيْنِ بْنِ عِقَالٍ - هُوَ الزُّبَيْرِيُّ - نا إِبْرَاهِيمُ بْنُ مُحَمَّدٍ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْجَهْمِ نا مُوسَى بْنُ إِسْحَاقَ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا أَبُو خَالِدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ قَالَ: بَلَغَ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَنَّهُمْ يَقُولُونَ: إِذَا لَمْ يُخْرِجِ السَّارِقُ الْمَتَاعَ لَمْ يُقْطَعْ؟ فَقَالَتْ عَائِشَةُ: لَوْ لَمْ أَجِدْ إِلَّا سِكِّينًا لَقَطَعْتُهُ. اخْتِلَاسٌ وَبِهِ - إِلَى ابْنِ الْجَهْمِ نا

Up to Ibn al-Jahm: Muḥammad ibn Rumḥ reported from Yazīd ibn Hārūn, who reported from Sulaym ibn Ḥayyān, who reported from Saʿīd ibn Muslim, who said: ʿAbdullāh ibn al-Zubayr was responsible for al-Zubayr's charity funds, which were kept in a house entered by none except him and his servant girl. When some money went missing, he asked the girl, "No one entered this place except me and you. Who took this money?" The girl confessed. He then said to me, "O Saʿīd, take her away and amputate her hand, for if the money had not been her responsibility, amputation would still be mandated."

مُحَمَّدُ بْنُ رُمْحٍ نا يَزِيدُ بْنُ هَارُونَ نا سُلَيْمُ بْنُ حَيَّانَ نا سَعِيدُ بْنُ مُسْلِمٍ قَالَ: كَانَ عَبْدُ اللَّهِ بْنُ الزُّبَيْرِ يَلِي صَدَقَةَ الزُّبَيْرِ، فَكَانَتْ فِي بَيْتٍ لَا يَدْخُلُهُ أَحَدٌ غَيْرُهُ وَغَيْرُ جَارِيَةٍ لَهُ، فَفَقَدَ شَيْئًا مِنْ الْمَالِ؟ فَقَالَ لِلْجَارِيَةِ: مَا كَانَ يَدْخُلُ هَذَا الْمَكَانَ غَيْرِي وَغَيْرُكِ فَمَنْ أَخَذَ هَذَا الْمَالَ؟ فَأَقَرَّتْ الْجَارِيَةُ، فَقَالَ لِي: يَا سَعِيدُ انْطَلَقَ بِهَا فَاقْطَعْ يَدَهَا، فَإِنَّ الْمَالَ لَوْ كَانَ لَمْ يَكُنْ عَلَيْهَا، قَطْعٌ.

L41946 Muḥammad ibn Saʿīd ibn Nabāt reported to us; Aḥmad ibn ʿAbd al-Baṣīr reported to us; Qāsim reported to us; Aṣbagh reported to us; Muḥammad ibn ʿAbd al-Salām al-Khushanī reported to us; Muḥammad ibn al-Muthannā reported to us; ʿAbd al-Raḥmān ibn Mahdī reported to us; Sufyān al-Thawrī reported to us from al-Mughīra ibn Miqsam, who said: "When al-Shaʿbī's opinion regarding the thief - that his hand should not be severed until he exits with the stolen property - was mentioned in Ibrāhīm al-Nakhaʿī's presence, Ibrāhīm repudiated it."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمٌ نا أَصْبَغُ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ، قَالَ: ذُكِرَ عِنْدَ إبْرَاهِيمَ النَّخَعِيِّ قَوْلُ الشَّعْبِيِّ فِي السَّارِقِ لَا يُقْطَعُ حَتَّى يَخْرُجَ بِالْمَتَاعِ، فَأَنْكَرَهُ إبْرَاهِيمُ.

L41947 Hummam ibn Mufarrij narrated to us, Ibn al-Aʿrabī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated to us, Ibn Jurayj informed me: Abū Bakr said, "Khalid ibn Saʿīd ibn al-Musayyab and Ubayd Allāh ibn ʿAbd Allāh ibn ʿUtbah were asked about a thief who steals, discards the stolen item, and is found in the house from which he stole, without having left." They both agreed: "Amputation is obligatory [for him]."

حَدَّثَنَا حُمَامُ بْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي أَبُو بَكْرٍ قَالَ: نا خَالِدُ بْنُ سَعِيدِ بْنِ الْمُسَيَّبِ، وَعُبَيْدُ اللَّهِ بْنُ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّهُمَا سُئِلَا عَنْ السَّارِقِ يَسْرِقُ فَيَطْرَحُ السَّرِقَةَ، وَيُوجَدُ فِي الْبَيْتِ الَّذِي سَرَقَ مِنْهُ، لَمْ يَخْرُجْ؟ فَقَالَا جَمِيعًا: عَلَيْهِ الْقَطْعُ.

L41948–41950 This has also been narrated from al-Ḥasan al-Baṣrī. Rawḥ ibn ʿUbādah narrated it from Ashʿath ibn ʿAbd al-Malik al-Ḥumrānī, from al-Ḥasan, who said: "If a thief gathers the goods but does not depart with them, his hand shall be amputated." 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 to us, who said: "I, ʿAbd al-ʿAzīz ibn Abī Saʿīd al-Muzannī..." That ʿAmr ibn Abī Sayyārah al-Muzanī was standing praying at night when he heard a rustling in the house. He thought it was the sheep,

وَقَدْ رُوِيَ هَذَا أَيْضًا عَنْ الْحَسَنِ الْبَصْرِيِّ رَوَاهُ رَوْحُ بْنُ عُبَادَةَ عَنْ أَشْعَثَ بْنِ عَبْدِ الْمَلِكِ الْحُمْرَانِيِّ عَنْ الْحَسَنِ قَالَ: إذَا جَمَعَ السَّارِقُ الْمَتَاعَ وَلَمْ يَخْرُجْ بِهِ، قُطِعَ 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 عَبْدُ الْعَزِيزِ بْنُ أَبِي سَعِيدٍ الْمُزَنِيُّ أَنَّ عَمْرَو بْنَ أَبِي سَيَّارَةَ الْمُزَنِيَّ كَانَ قَائِمًا يُصَلِّي مِنْ اللَّيْلِ فَسَمِعَ خَشَفَةً فِي الْبَيْتِ، فَظَنَّ أَنَّهَا الشَّاةُ

then became certain there were thieves in the house. He took the sword and stood at the house door, and there was a bundle in the middle of the house. A figure resembling a camel with bound legs lunged at him. The thief struck his [‘Amr’s] face with the clothes, and ‘Amr slashed him with the sword once. He called his clients and slaves concerning the man, saying, “I’ve inflicted a grave wound on him.” He stayed in his place, thinking there were others in the house. They caught up with him under a covered passage belonging to Banū Layth as he fled. They captured him and brought him to ‘Ubayd Allāh ibn Abī Bakrah. The man said, “I am a butcher. I departed from my family at night heading to the bridge to cross with my sheep. ‘Amr struck me with the sword.” ‘Ubayd Allāh sent for ‘Amr and questioned him. He replied, “Rather, he entered my house and gathered the belongings.” When witnesses testified against him, ‘Ubayd Allāh ibn Abī Bakrah cut off his hand. Abū Muḥammad—may Allāh have mercy on him—said: This is the opinion of Abū Sulaymān and all our companions. From this category also is the stealth-thief—regarding whom people have differed. A group said: There is no cutting [of the hand] for him—as narrated to us by Muḥammad ibn Sa‘īd ibn Nabāt, from Aḥmad ibn ‘Abd al-Baṣīr, from Qāsim ibn Aṣbagh, from Muḥammad ibn ‘Abd al-Salām al-Khushanī, from Muḥammad ibn al-Muthannā, from ‘Abd al-Raḥmān ibn Mahdī, from Sufyān al-Thawrī, from Simāk ibn Ḥarb, from Dithār ibn Yazīd, from ‘Ubayd ibn al-Ab’raṣ: ‘Alī ibn Abī Ṭālib was brought a man who had snatched a garment from someone. The man said, “I was only playing with him.” ‘Alī asked, “Do you know him?” He said, “Yes.” So ‘Alī did not amputate his hand.

ثُمَّ اسْتَيْقَنَ أَنَّ فِي الْبَيْتِ لُصُوصًا، فَأَخَذَ السَّيْفَ فَقَامَ عَلَى بَابِ الْبَيْتِ، فَإِذَا كَارَّةٌ وَسَطَ الْبَيْتِ، فَخَرَجَ عَلَيْهِ مِثْلُ الْجَمَلِ الْمُحَجْرِمِ، فَضَرَبَ بِالثِّيَابِ وَجْهَهُ، وَحَذَفَهُ عَمْرٌو بِالسَّيْفِ حَذْفَةً، وَنَادَى مَوَالِيَهُ وَعَبِيدَهُ عَلَى الرَّجُلِ فَقَدْ أَثْقَلْتُهُ، وَأَقَامَ بِمَكَانِهِ يَرَى أَنَّ فِي الْبَيْتِ آخَرِينَ فَأَدْرَكُوهُ، وَهُوَ تَحْتَ سَابَاطٍ لِبَنِي لَيْثٍ يَشْتَدُّ، فَأَخَذُوهُ فَجَاءُوا بِهِ إِلَى عُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرَةَ، فَقَالَ: إِنِّي رَجُلٌ قَصَّابٌ، وَإِنِّي أَدْلَجْت مِنْ أَهْلِي أُرِيدُ الْجِسْرَ لِأُجِيزَ غَنَمًا لِي، وَإِنَّ عَمْرًا ضَرَبَنِي بِالسَّيْفِ، فَبَعَثَ عُبَيْدُ اللَّهِ إلَى عَمْرٍو فَسَأَلَهُ؟ فَقَالَ: بَلْ دَخَلَ عَلَيَّ بَيْتِي، وَجَمَعَ الْمَتَاعَ، فَشُهِدَ عَلَيْهِ فَقَطَعَ عُبَيْدُ اللَّهِ بْنُ أَبِي بَكْرَةَ يَدَهُ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَبِهِ يَقُولُ أَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا؟ وَمِنْ هَذَا أَيْضًا الْمُخْتَلِسُ - فَإِنَّ النَّاسَ اخْتَلَفُوا فِيهِ؟ فَقَالَتْ طَائِفَةٌ: لَا قَطْعَ عَلَيْهِ: كَمَا حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نَبَاتٍ نا أَحْمَدُ بْنُ عَبْدِ الْبَصِيرِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا سُفْيَانُ الثَّوْرِيُّ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ دِثَارِ بْنِ يَزِيدَ عَنْ عُبَيْدِ بْنِ الْأَبْرَصِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِرَجُلٍ اخْتَلَسَ مِنْ رَجُلٍ ثَوْبًا؟ فَقَالَ: إِنَّمَا كُنْت أَلْعَبُ مَعَهُ، قَالَ: تَعْرِفُهُ؟ قَالَ: نَعَمْ، فَلَمْ يَقْطَعْهُ.

L41951 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: Malik ibn Anas narrated from al-Zuhri that a man stole a necklace through snatching. Marwan asked Zayd ibn Thabit about it, and Zayd said: “There is no amputation for this.” From Ma’mar, from al-Zuhri, who said: “A man snatched goods, and Marwan intended to amputate his hand. Zayd ibn Thabit said to him: ’That is overt snatching; there is no amputation for it, but rather deterrent punishment.’” From the path of Abd al-Razzaq, from Sufyan al-Thawri, from Isma’il ibn

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 مَالِكُ بْنُ أَنَسٍ عَنْ الزُّهْرِيِّ أَنَّ رَجُلًا اخْتَلَسَ طَوْقًا، فَسَأَلَ عَنْهَا مَرْوَانُ زَيْدَ بْنَ ثَابِتٍ؟ فَقَالَ: لَيْسَ عَلَيْهِ قَطْعٌ. وَعَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: اخْتَلَسَ رَجُلٌ مَتَاعًا فَأَرَادَ مَرْوَانُ أَنْ يَقْطَعَ - يَدَهُ، فَقَالَ لَهُ زَيْدُ بْنُ ثَابِتٍ: تِلْكَ الْخِلْسَةُ الظَّاهِرَةُ، لَا قَطْعَ فِيهَا، لَكِنْ نَكَالٌ وَعُقُوبَةٌ. وَمِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ

Muslim, from al-Hasan, from Ali ibn Abi Talib (may Allah be pleased with him), when asked about theft by snatching, he replied: “That is a minor act; there is no amputation for it.”

سُفْيَانَ الثَّوْرِيِّ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ أَنَّهُ سُئِلَ عَنْ الْخِلْسَةِ، فَقَالَ: تِلْكَ الدَّعْوَةُ الْمُقِلَّةُ، لَا قَطْعَ فِيهَا.

L41952–41954 It is reported from Al-Shaʿbi that a man pilfered a necklace. They seized him while he was in his private quarters, and he was brought before ʿAmmār ibn Yāsir. He was in Kufa - so he wrote to Umar ibn al-Khattab. Then Umar wrote to him: “He returned at midday, and no penalty was imposed upon him.”

وَعَنْ الشَّعْبِيِّ أَنَّ رَجُلًا اخْتَلَسَ طَوْقًا فَأَخَذُوهُ - وَهُوَ فِي حُجْرَتِهِ فَرُفِعَ إلَى عَمَّارِ بْنِ يَاسِرٍ وَهُوَ عَلَى الْكُوفَةِ - فَكَتَبَ إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَكَتَبَ إلَيْهِ: أَنَّهُ عَادِي الظَّهِيرَةِ، وَلَا قَطَعَ عَلَيْهِ.

L41955 From ʻAdī ibn Arṭāʼa that he wrote to ʻUmar ibn Abd al-Aziz regarding a man who stole a gold necklace from the neck of a slave girl during the day. ʻUmar ibn Abd al-Aziz wrote back: “This is a transgressor whose act has become evident, but amputation is not mandated. Therefore, discipline him with discretionary punishment.”

وَعَنْ عَدِيِّ بْنِ أَرْطَاةَ أَنَّهُ كَتَبَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي رَجُلٍ اخْتَلَسَ طَوْقًا مِنْ ذَهَبٍ كَانَ فِي عُنُقِ جَارِيَةٍ نَهَارًا، فَكَتَبَ إلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: إنَّ ذَلِكَ عَادٍ ظَهَرَ لَيْسَ عَلَيْهِ قَطْعٌ، فَعَاقِبْهُ.

L41956 And from Al-Hasan al-Basri concerning **the** stealthy theft: **No amputation is prescribed for it.**

وَعَنْ الْحَسَنِ الْبَصْرِيِّ فِي الْخِلْسَةِ: لَا قَطْعَ فِيهَا

L41957 From Qatādah: There is no cutting [of the hand] for the snatcher, but he is imprisoned and punished—this is the view of al-Nakhaʿī, Abū Ḥanīfah, Mālik, al-Shāfiʿī, Aḥmad ibn Ḥanbal, and their companions—and this is the position upheld by Isḥāq ibn Rāhawayh.

وَعَنْ قَتَادَةَ: لَا قَطْعَ عَلَى الْمُخْتَلِسِ، وَلَكِنْ يُسْجَنُ وَيُعَاقَبُ - وَهُوَ قَوْلُ النَّخَعِيِّ، وَأَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَحْمَدَ بْنِ حَنْبَلٍ، وَأَصْحَابِهِمْ - وَبِهِ يَقُولُ إِسْحَاقُ بْنُ رَاهْوَيْهِ.

L41958 A group said: Upon him is amputation - as narrated by ʿAbdullāh ibn Rabīʿ from Ibn Mufarrij from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Sahnūn from Ibn Wahb from Qabbāth ibn Razīn, who heard ʿAlī ibn Rabāḥ al-Lakhmī say: The Sunnah dictates that the hand which steals covertly be amputated, while the hand that steals overtly is not amputated.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ الْقَطْعُ - كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ قَبَّاثِ بْنِ رَزِينٍ أَنَّهُ سَمِعَ عَلِيَّ بْنَ رَبَاحٍ اللَّخْمِيَّ يَقُولُ: السُّنَّةُ أَنْ تُقْطَعَ الْيَدُ الْمُسْتَخْفِيَةُ، وَلَا تُقْطَعُ الْيَدُ الْمُعْلِنَةُ.

L41959–41961 From Aṭā ibn Abī Rabāḥ, he said: The hand of the covert, settled thief is amputated, but the hand of the overt snatcher is not amputated. Through the chain of Abū Bakr ibn Abī Shaybah: ʿAbd al-Aʿlā narrated to us from Hishām that ʿAdī ibn Arṭāh was presented with a man who had snatched something in theft. Iyās ibn Muʿāwiyah said: “Is amputation required for him?” Abū Muḥammad—may Allah have mercy on him—said: When they differed as we mentioned, it became necessary to examine this matter. We

وَعَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ أَنَّهُ قَالَ: تُقْطَعُ يَدُ السَّارِقِ الْمُسْتَخْفِي الْمُسْتَقِرِّ - وَلَا تُقْطَعُ يَدُ الْمُخْتَلِسِ الْمُعْلِنِ. وَمِنْ طَرِيقِ أَبِي بَكْرِ بْنِ أَبِي شَيْبَةَ ثنا عَبْدُ الْأَعْلَى عَنْ هِشَامٍ: أَنَّ عَدِيَّ بْنَ أَرْطَاةَ رُفِعَ إلَيْهِ رَجُلٌ اخْتَلَسَ خِلْسَةً، فَقَالَ إيَاسُ بْنُ مُعَاوِيَةَ: عَلَيْهِ الْقَطْعُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ، فَنَظَرْنَا

reviewed the opinion of those who only mandated amputation for theft from a secured place. We found them mentioning: ʿAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Quṭaybah ibn Saʿīd narrated to us, al-Layth ibn Saʿd narrated to us from Muḥammad ibn ʿAjlān from ʿAmr ibn Shuʿayb from his father from his grandfather from ʿAbdullāh ibn ʿAmr: "The Messenger of Allah—peace and blessings be upon him—was asked about hanging dates. He said: 'Whoever takes from them out of need without dishonest intent incurs no liability. But whoever carries away anything must pay a penalty of double its value.'" As for the punishment: Whoever steals something from the threshing floor after it has been stored there, and the stolen item reaches the value of a shield, amputation is mandated. For theft below that threshold, the offender must pay a fine equivalent to the stolen item's value and face punishment.[2]

فِي قَوْلِ مَنْ لَمْ يَرَ الْقَطْعَ إِلَّا فِي أَخْذٍ مِنْ حِرْزٍ، فَوَجَدْنَاهُمْ يَذْكُرُونَ: مَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ عَنِ التَّمْرِ الْمُعَلَّقِ؟ فَقَالَ: مَنْ أَصَابَ مِنْهُ مِنْ ذِي حَاجَةٍ غَيْرَ مُتَّخِذٍ خُبْنَةً فَلَا شَيْءَ عَلَيْهِ، وَمَنْ خَرَجَ بِشَيْءٍ مِنْهُ فَعَلَيْهِ غَرَامَةُ مِثْلَيْهِ وَالْعُقُوبَةُ - وَمَنْ سَرَقَ شَيْئًا مِنْهُ بَعْدَ أَنْ يُؤْوِيَهُ الْجَرِينُ فَبَلَغَ ثَمَنَ الْمِجَنِّ فَعَلَيْهِ الْقَطْعُ - وَمَنْ سَرَقَ دُونَ ذَلِكَ فَعَلَيْهِ غَرَامَةُ مِثْلِهِ وَالْعُقُوبَةُ» .

L41962 Abdullah ibn Rabee' narrated from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from Qutaybah ibn Sa'eed from Abu 'Awanah from 'Ubaydullah ibn al-Akhras from 'Amr ibn Shu'ayb from his father from his grandfather, who said: "The Messenger of Allah (peace be upon him) was asked: 'For what amount is the hand to be cut?' He replied: 'The hand is not cut for hanging dates. However, when they are gathered in the drying area, the hand is cut if their value reaches that of a shield. The hand is not cut for livestock guarded in mountain pastures. However, when they are sheltered in the enclosure, the hand is cut if their value reaches that of a shield.'"

Abdullah ibn Rabee' narrated from Muhammad ibn Mu'awiyah from Ahmad ibn Shu'ayb from al-Harith ibn Miskin – recited to him while Ahmad listened – from Ibn Wahb from 'Amr ibn al-Harith from 'Amr ibn Shu'ayb from his father from 'Abdullah ibn 'Amr, who said: "A man from Muzaynah came to the Messenger of Allah (peace be upon him) and asked: 'O Messenger of Allah, what is your ruling concerning livestock guarded in mountain pastures?' He said: 'The thief must surrender the stolen animal and its equivalent, along with deterrent punishment. The hand is not cut for any livestock unless taken from the enclosure. If the stolen property reaches the value of

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا قُتَيْبَةُ بْنُ سَعِيدٍ نا أَبُو عَوَانَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ الْأَخْنَسِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ «سُئِلَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي كَمْ تُقْطَعُ الْيَدُ؟ فَقَالَ: لَا تُقْطَعُ الْيَدُ فِي تَمْرٍ مُعَلَّقٍ، فَإِذَا ضَمَّهُ الْجَرِينُ قُطِعَتْ فِي ثَمَنِ الْمِجَنِّ، وَلَا تُقْطَعُ فِي حَرِيسَةِ الْجَبَلِ، فَإِذَا آوَاهُ الْمُرَاحُ قُطِعَتْ فِي ثَمَنِ الْمِجَنِّ» . حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ عَنِ الْحَارِثِ بْنِ مِسْكِينٍ قِرَاءَةً عَلَيْهِ وَأَحْمَدُ يَسْمَعُ عَنِ ابْنِ وَهْبٍ أَخْبَرَنِي عَمْرُو بْنُ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ «إِنَّ رَجُلًا مِنْ مُزَيْنَةَ أَتَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ كَيْفَ تَرَى فِي حَرِيسَةِ الْجَبَلِ؟ قَالَ: هِيَ وَمِثْلُهَا، وَالنَّكَالُ، وَلَيْسَ فِي شَيْءٍ مِنَ الْمَاشِيَةِ قَطْعٌ إِلَّا فِيمَا آوَاهُ الْمُرَاحُ، فَبَلَغَ ثَمَنَ الْمِجَنِّ فَفِيهِ قَطْعُ الْيَدِ، وَمَا لَمْ يَبْلُغْ ثَمَنَ الْمِجَنِّ فَفِيهِ غَرَامَةُ مِثْلَيْهِ، وَجَلَدَاتُ نَكَالٍ، قَالَ: يَا رَسُولَ اللَّهِ كَيْفَ تَرَى فِي التَّمْرِ الْمُعَلَّقِ؟ قَالَ: هُوَ وَمِثْلُهُ مَعَهُ،

[2] **Hadith references (L41959):** Jami at-Tirmidhi 1289.

a shield, the hand is cut. If it does not reach this value, a double fine is imposed along with deterrent lashes.'

The man asked: 'O Messenger of Allah, what is your ruling concerning hanging dates?' He replied: 'The thief must surrender the stolen dates and their equivalent, along with deterrent punishment. The hand is not cut for any hanging dates unless taken from the drying area. If what is stolen from the drying area reaches the value of a shield, the hand is cut. If it does not reach this value, a double fine is imposed along with deterrent lashes.'"[3]

وَالنَّكَالُ، وَلَيْسَ فِي شَيْءٍ مِنْ التَّمْرِ الْمُعَلَّقِ قَطْعٌ إِلَّا فِيمَا آوَاهُ الْجَرِينُ، فَمَا أُخِذَ مِنْ الْجَرِينِ فَبَلَغَ ثَمَنَ الْمِجَنِّ فَفِيهِ الْقَطْعُ، وَمَا لَمْ يَبْلُغْ ثَمَنَ الْمِجَنِّ فَفِيهِ غَرَامَةُ مِثْلَيْهِ، وَجَلَدَاتُ نَكَالٍ» .

L41963 Abdullah ibn Rabi' informed us: Muhammad ibn Mu'awiyah informed us: Ahmad ibn Shu'ayb informed us: Abdullah ibn Abd al-Samad ibn Ali informed us from Makhlad, from Sufyan, from Abu al-Zubayr, from Jabir, from the Messenger of Allah, peace and blessings of Allah be upon him, who said: "There is no amputation for a traitor or a snatcher."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الصَّمَدِ بْنِ عَلِيٍّ عَنْ مَخْلَدٍ عَنْ سُفْيَانَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَيْسَ عَلَى خَائِنٍ وَلَا مُخْتَلِسٍ قَطْعٌ» .

L41964–41966 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Muhammad ibn Hatim narrated to us: Suwayd ibn Nasr narrated to us: Abdullah ibn al-Mubarak narrated from Ibn Jurayj, who informed me: Abu al-Zubayr narrated from Jabir that "the Messenger of Allah (peace and blessings be upon him) exempted the plunderer, the snatcher, and the embezzler from amputation." Abu Muhammad (may Allah have mercy on him) said: They said, "The Prophet (peace and blessings be upon him) did not impose amputation on a snatcher nor..." As for a betrayer of trust, amputation is thereby waived for all those entrusted [with property]. Amputation does not apply to unattended livestock in mountain pastures, nor to dates left hanging until they and the livestock are gathered into the threshing floor, nor to the grazing area, which serves as their secure enclosure.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ حَاتِمٍ نا سُوَيْدُ بْنُ نَصْرٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي أَبُو الزُّبَيْرِ عَنْ جَابِرٍ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَرَأَ عَنْ الْمُنْتَهِبِ، وَالْمُخْتَلِسِ، وَالْخَائِنِ، الْقَطْعَ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَقَالُوا: لَمْ يَجْعَلْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْقَطْعَ عَلَى مُخْتَلِسٍ، وَلَا عَلَى خَائِنٍ - فَسَقَطَ بِذَلِكَ الْقَطْعُ عَنْ كُلِّ مَنْ اُؤْتُمِنَ، وَسَقَطَ الْقَطْعُ عَنْ حَرِيسَةِ الْجَبَلِ، وَالتَّمْرِ الْمُعَلَّقِ، حَتَّى يُؤْوِيَهُمَا الْجَرِينُ، وَالْمِرَاحُ، وَهُوَ حِرْزُهُمَا.

L41967 They said: Whatever is found outside a secure enclosure is merely a lost item whose taking and safeguarding has been permitted. They also said: It has been reported from Umar ibn al-Khattab, Ali ibn Abi Talib, and Zayd ibn Thabit that there is no amputation penalty for an open thief, and no dissenting opinion among the Companions is known regarding their view.

وَقَالُوا: مَا وُجِدَ فِي غَيْرِ حِرْزٍ فَإِنَّمَا هُوَ لُقَطَةٌ قَدْ أُبِيحَ أَخْذُهَا وَتَحْصِينُهَا، وَقَالُوا: قَدْ جَاءَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَلِيِّ بْنِ أَبِي طَالِبٍ، وَزَيْدِ بْنِ ثَابِتٍ: أَنَّهُ لَا قَطْعَ عَلَى مُخْتَلِسٍ

[3] **Hadith references (L41962):** Sunan an-Nasai 4959.

- وَلَا يُعْرَفُ لَهُمْ مِنْ الصَّحَابَةِ مُخَالِفٌ، فَدَلَّ ذَلِكَ عَلَى اعْتِبَارِ الْحِرْزِ: فَنَظَرْنَا فِي ذَلِكَ فَوَجَدْنَاهُ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ: أَمَّا الْخَبَرَانِ اللَّذَانِ ذَكَرْنَا فَلَا يَصِحُّ مِنْهُمَا وَلَا وَاحِدٌ.

This indicates the legal requirement of secure storage. We examined this matter and found they have no valid evidence for any part of it. As for the two reports we mentioned, neither of them is authentic—not even one.

L41968 أَمَّا حَدِيثُ حَرِيسَةِ الْجَبَلِ، وَالتَّمْرِ الْمُعَلَّقِ، فَإِنَّهُ لَا يَصِحُّ، لِأَنَّ أَحَدَ طَرِيقَيْهِ مِنْ سَعِيدِ بْنِ الْمُسَيِّبِ مُرْسَلٌ، وَالْأُخْرَى: هِيَ أَيْضًا أَسْقَطُ، مُرْسَلَةً - مِنْ طَرِيقِ ابْنِ أَبِي حُسَيْنٍ - وَلَا حُجَّةَ فِي مُرْسَلٍ - وَالْأُخْرَى: مِمَّا انْفَرَدَ بِهِ عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ - وَهِيَ صَحِيفَةٌ لَا يُحْتَجُّ بِهَا - فَهَذَا وَجْهٌ يَسْقُطُ بِهِ. وَدَلِيلٌ آخَرُ - أَنَّهُ لَوْ صَحَّ لَكَانَ عَلَيْهِمْ لَا لَهُمْ؛ لِأَنَّهُمْ كُلَّهُمْ - يَعْنِي الْحَاضِرِينَ مِنْ الْمُخَالِفِينَ - مُخَالِفُونَ، لِمَا فِيهِ مِنْ ذَلِكَ أَنَّ فِيهِ: أَنَّ مَنْ خَرَجَ بِشَيْءٍ مِنْ التَّمْرِ الْمُعَلَّقِ فَفِيهِ غَرَامَةُ مِثْلَيْهِ - وَهُمْ لَا يَقُولُونَ بِهَذَا.

As for the ḥadīth concerning the guarding of the mountain and the suspended dates, it is not authentic because one of its two chains from Saʿīd ibn al-Musayyib is *mursal* (disconnected), and the other is also dropped, being *mursal* through the chain of Ibn Abī Ḥusayn. There is no valid proof in a *mursal* report. The other chain is that which ʿAmr ibn Shuʿayb uniquely narrated from his father, from his grandfather — and it is a document (*ṣaḥīfah*) not accepted as authoritative. Thus, this is a reason that invalidates it. Another proof is that even if it were authentic, it would count against them rather than support them, for all of them — meaning the opposing contemporaries — contradict its content, because it contains the stipulation that "whoever takes something from the suspended dates incurs a penalty of double its value" — a ruling they themselves do not uphold.

L41969 وَكَذَلِكَ إذَا آوَاهُ الْجَرِينُ فَلَمْ يَبْلُغْ ثَمَنَ الْمِجَنِّ فَفِيهِ أَيْضًا غَرَامَةُ مِثْلَيْهِ، وَهُمْ لَا يَقُولُونَ بِهَذَا أَيْضًا.

Similarly, if the grain is stored in the threshing floor and does not reach the value of a shield, a penalty of twice its value is incurred. Yet the scholars do not uphold this ruling either.

L41970–41972 وَفِيهِ أَيْضًا: أَنَّ فِي حَرِيسَةِ الْجَبَلِ غَرَامَةُ مِثْلِهَا، وَأَنَّ فِيهَا غَرَامَةُ مِثْلَيْهَا، وَأَنَّ فِيهَا - إنْ آوَاهُ الْمِرَاحُ فَلَمْ يَبْلُغْ ثَمَنَ الْمِجَنِّ - غَرَامَةُ مِثْلَيْهَا، فَهُمْ قَدْ خَالَفُوا هَذَا الْخَبَرَ الَّذِي احْتَجُّوا بِهِ فِي أَرْبَعَةِ مَوَاضِعَ مِنْ أَحْكَامِهِ، فَكَيْفَ يَسْتَجِيزُ ذُو وَرَعٍ يَدْرِي أَنَّ كَلَامَهُ مَحْسُوبٌ عَلَيْهِ، وَأَنَّهُ مُحَاسَبٌ بِهِ يَخَافُ لِقَاءَ اللَّهِ تَعَالَى، وَيَهَابُ عِقَابَهُ، أَنْ يَحْتَجَّ بِخَبَرٍ هُوَ يُصَحِّحُهُ، وَيُخَالِفُهُ فِي أَرْبَعَةِ أَحْكَامٍ مِنْ أَحْكَامِهِ، عَلَى مَنْ لَا يُصَحِّحُهُ أَصْلًا، فَلَا يَرَاهُ حُجَّةً، وَهَلْ فِي التَّعْجِيلِ بِالْإِثْمِ، وَالْفَضِيحَةِ الْعَاجِلَةِ أَكْثَرُ مِنْ هَذَا؟ فَإِنْ ادَّعَوْا فِي تَرْكِ هَذِهِ الْأَحْكَامِ الْأَرْبَعَةِ إجْمَاعًا؟ كَذَبُوا؛ لِأَنَّ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - قَدْ حَكَمَ بِهَا بِحَضْرَةِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ مِنْهُمْ لَهُ مُخَالِفٌ وَلَا يُدْرَى

In it also: that in the guarded mountain pasture there is a fine equivalent to the animal's value, that in it there is a fine of twice its value, and that in it – if the pastures shelter it without reaching the price of a shield – there is a fine amounting to twice its value. Thus they have contradicted this report which they cited as evidence in four aspects of its rulings. How can a scrupulous person who knows his speech is recorded against him, who will be held accountable for it, who fears meeting Allah the Exalted and dreads His punishment, deem it permissible to cite a report he authenticates while contradicting it in four of its rulings against someone who does not authenticate it at all and thus rejects it as evidence? Is there any greater instance of precipitating sin and immediate disgrace than this? If they claim consensus in abandoning these four rulings, they lie – for Umar ibn al-Khattab (may Allah be pleased with him) had ruled by them in the presence of the Companions (may Allah be pleased with them), with none of them

known to have opposed him. The violator [remains unchallenged] with no one known to contest him, so the lowest assessed value of the unlawfully slaughtered she-camel—stolen and unlawfully slaughtered by Hatib's slaves—is owed to the adulterer by Hatib's slaves.

مِنْهُمْ عَلَيْهِ مُنْكِرٌ، فَأَضْعَفُ قِيمَةِ النَّاقَةِ الْمُنْتَحَرَةِ لِلْمُزَنِيِّ عَلَى رَقِيقِ حَاطِبٍ الَّتِي سَرَقُوهَا وَانْتَحَرُوهَا.

L41973 We have been narrated through various chains, one of which is transmitted to us by Aḥmad ibn Muḥammad ibn al-Jasūr, from Qāsim ibn Aṣbagh, from Muṭarrif ibn Qays, from Yaḥyā ibn Bukayr, from Mālik ibn Anas, from Hishām ibn ʿUrwah ibn al-Zubayr, from his father, from Yaḥyā ibn ʿAbd al-Raḥmān ibn Ḥāṭib, that slaves belonging to Ḥāṭib stole a she-camel owned by al-Muzanī—a man from Muzaynah—and slaughtered it. The matter was raised to ʿUmar ibn al-Khaṭṭāb, who instructed Kathīr ibn al-Ṣalt to amputate their hands. ʿUmar said: "I observe you are depriving them of sustenance. By Allah, I will impose upon you a fine so severe it will strain you!" He then asked al-Muzanī: "What was your she-camel's value?" The man replied: "Four hundred dirhams." ʿUmar decreed: "Then give him eight hundred dirhams." Abū Muḥammad—may Allah have mercy on him—remarked: "Is this not a precedent from ʿUmar as luminous as the sun? As for the ḥadīth of Saʿīd ibn al-Musayyab—though they deem such matters consensus (ijmāʿ) when it aligns with their desires—it has been related from ʿUthmān ibn ʿAffān—may Allah be pleased with him—and others similarly regarding property destruction. Just as we have been narrated via ʿAbd al-Razzāq's chain, from Maʿmar, from al-Zuhrī, from Abān ibn ʿUthmān, that his father ʿUthmān levied a fine for a she-camel belonging to a person in the state of iḥrām that a man had destroyed, requiring him to pay a third over its value. Al-Zuhrī stated: 'Whatever is taken from people's wealth or livestock during the sacred months, an additional third is imposed for intentional harm.' This is a report of the highest authenticity from ʿUthmān—may Allah be pleased with him—and no opposition to him from the Companions—may Allah be pleased with them—is known concerning it."

وَقَدْ رُوِّينَا مِنْ طُرُقٍ مِنْهَا مَا ناه أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُطَرِّفُ بْنُ قَيْسٍ نا يَحْيَى بْنُ بُكَيْرٍ نا مَالِكُ بْنُ أَنَسٍ عَنْ هِشَامِ بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ عَنْ يَحْيَى بْنِ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ أَنَّ رَقِيقًا لِحَاطِبٍ سَرَقُوا نَاقَةً لِلْمُزَنِيِّ - رَجُلٍ مِنْ مُزَيْنَةَ - فَانْتَحَرُوهَا، فَرُفِعَ ذَلِكَ إلَى عُمَرَ بْنِ الْخَطَّابِ فَأَمَرَ عُمَرُ لِكَثِيرِ بْنِ الصَّلْتِ أَنْ يَقْطَعَ أَيْدِيَهُمْ، قَالَ عُمَرُ: إنِّي أَرَاك تُجِيعُهُمْ، وَاَللَّهِ لَأُغَرِّمَنَّكَ غُرْمًا يَشُقُّ عَلَيْك - ثُمَّ قَالَ لِلْمُزَنِيِّ: كَمْ ثَمَنُ نَاقَتِكَ؟ قَالَ: أَرْبَعمِائَةِ دِرْهَمٍ، قَالَ عُمَرُ: فَأَعْطِهِ ثَمَانمِائَةِ دِرْهَمٍ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذَا أَثَرٌ عَنْ عُمَرَ كَالشَّمْسِ؟ وَأَمَّا حَدِيثُ سَعِيدِ بْنِ الْمُسَيِّبِ - وَهُمْ يَعُدُّونَ مِثْلَ هَذَا إجْمَاعًا - إذَا وَافَقَ أَهْوَاءَهُمْ - وَقَدْ رُوِيَ عَنْ عُثْمَانَ بْنِ عَفَّانَ - رَضِيَ اللَّهُ عَنْهُ - وَغَيْرِهِ نَحْوُ هَذَا فِي إتْلَافِ الْأَمْوَالِ: كَمَا رُوِّينَا مِنْ طَرِيقِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ عَنْ أَبَانَ بْنِ عُثْمَانَ أَنَّ أَبَاهُ عُثْمَانَ أَغْرَمَ فِي نَاقَةِ مُحْرِمٍ أَهْلَكَهَا رَجُلٌ، فَأَغْرَمَهُ الثُّلُثَ زِيَادَةً عَلَى ثَمَنِهَا - قَالَ الزُّهْرِيُّ: مَا أُصِيبَ مِنْ أَمْوَالِ النَّاسِ وَمَوَاشِيهِمْ فِي الشَّهْرِ الْحَرَامِ، فَإِنَّهُ يُزَادُ الثُّلُثُ لِهَذَا فِي الْعَمْدِ - فَهَذَا أَثَرٌ فِي غَايَةِ الصِّحَّةِ عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L41974–41976 Al-Zuhri later held this opinion as well, yet they show no concern for claims of consensus in matters even lesser than this—audacity in lying. Then do they not care about opposing what they themselves acknowledge as consensus? Abu Muhammad—may Allah have mercy on him—said: We state—with Al-

وَقَالَ بِهِ الزُّهْرِيُّ بَعْدَ ذَلِكَ، وَهُمْ لَا يُبَالُونَ بِدَعْوَى الْإِجْمَاعِ فِي أَقَلَّ مِنْ هَذَا جُرْأَةً عَلَى الْكَذِبِ، ثُمَّ لَا يُبَالُونَ بِمُخَالَفَةِ مَا يُقِرُّونَ بِأَنَّهُ إجْمَاعٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نَقُولُ -

lah's guidance, the Exalted—that the report transmitted by Abu al-Zubayr from Jabir was narrated by none other than Abu al-Zubayr alone. Abu al-Zubayr was a *mudallis* (practitioner of *tadlis*) unless he explicitly stated "narrated to us" or "I heard," especially given his narrations from Jabir, for he himself admitted to *tadlis* in this context. As Yusuf ibn ʻAbdullah ibn ʻAbd al-Barr al-Namari narrated: ʻAbdullah ibn Muhammad ibn Yusuf al-Azdi narrated to us, Ishaq ibn Ahmad al-Saydalani narrated to us, Abu Jaʻfar al-ʻUqayli narrated to us, Zakariyya ibn Yahya al-Hulwani narrated to us. Narrated by Aḥmad ibn Saʿīd ibn Abī Maryam from his uncle, and Muḥammad ibn Ismāʿīl from al-Ḥasan ibn ʿAlī, and Saʿīd ibn Abī Maryam from al-Layth ibn Saʿd, who said: I came to Mecca and went to Abū al-Zubayr, who handed me two books. I left with them, then thought to myself: What if I return and ask him, "Did you hear all of this from Jābir?" So I went back to him and said, "Did you hear all of this from Jābir?" He replied, "Some of it I heard from him, and some was related to me." I said, "Indicate to me what you heard directly from him," so he identified it in the copy I had. ʿAlī ibn al-Madīnī said: Whatever al-Layth did not narrate from Abū al-Zubayr, or did not explicitly state "he narrated to us" or "I" in it, has an interrupted chain—for it is confirmed that Abū al-Zubayr did not hear this ḥadīth from Jābir. As for their argument citing what is transmitted from the Companions—may Allah be pleased with them—regarding the snatcher (mukhtalis), the narration from Zayd ibn Thābit is unsound, as it is interrupted through al-Zuhrī from him, for al-Zuhrī did not hear a single word from Zayd. As for the narrations from ʿUmar and ʿAmmār ibn Yāsir on this matter, they are interrupted, for they are transmitted through al-Shaʿbī from both—and al-Shaʿbī was not born until after the killing of ʿUmar ibn al-Khaṭṭāb—may Allah be pleased with him—and he had not reached the age of awareness when ʿAmmār ibn Yāsir died.

L41977 As for the narration from ʿAlī regarding this matter, it is transmitted through two chains of narrators: one of them from Simāk ibn Ḥarb—who accepts prompting.

وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - إِنَّ الْخَبَرَ الَّذِي رَوَاهُ أَبُو الزُّبَيْرِ عَنْ جَابِرٍ لَمْ يَرْوِهِ أَحَدٌ مِنْ النَّاسِ عَنْ جَابِرٍ إِلَّا أَبُو الزُّبَيْرِ فَقَطْ، وَأَبُو الزُّبَيْرِ مُدَلِّسٌ مَا لَمْ يُقِلْ فِيهِ: نا، أَوْ أَنَا، لَا سِيَّمَا فِي جَابِرٍ، فَقَدْ أَقَرَّ عَلَى نَفْسِهِ بِالتَّدْلِيسِ فِيهِ: كَمَا نا يُوسُفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْبَرِّ النَّمَرِيُّ قَالَ: نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يُوسُفَ الْأَزْدِيُّ نا إِسْحَاقُ بْنُ أَحْمَدَ الصَّيْدَلَانِيُّ نا أَبُو جَعْفَرٍ الْعُقَيْلِيُّ نا زَكَرِيَّا بْنُ يَحْيَى الْحُلْوَانِيُّ نا أَحْمَدُ بْنُ سَعِيدِ بْنِ أَبِي مَرْيَمَ نا عَمِّي ونا مُحَمَّدُ بْنُ إِسْمَاعِيلَ نا الْحَسَنُ بْنُ عَلِيٍّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ نا اللَّيْثُ بْنُ سَعْدٍ قَالَ: قَدِمْتُ مَكَّةَ، فَجِئْتُ أَبَا الزُّبَيْرِ فَدَفَعَ إِلَيَّ كِتَابَيْنِ، فَانْقَلَبْتُ بِهِمَا، فَقُلْت فِي نَفْسِي: لَوْ عَاوَدْته فَسَأَلْته: أَسَمِعَ هَذَا كُلَّهُ مِنْ جَابِرٍ؟ فَرَجَعْت إِلَيْهِ، فَقُلْت لَهُ: هَذَا كُلُّهُ سَمِعْتَهُ مِنْ جَابِرٍ؟ فَقَالَ: مِنْهُ مَا سَمِعْته، وَمِنْهُ مَا حُدِّثْتُ عَنْهُ، فَقُلْت لَهُ: أَعْلِمْ لِي مَا سَمِعْتَ مِنْهُ؟ فَأَعْلَمَ لِي عَلَى هَذَا الَّذِي عِنْدِي؟ قَالَ عَلِيٌّ: فَمَا لَمْ يَرْوِهِ اللَّيْثُ عَنْ أَبِي الزُّبَيْرِ، أَوْ لَمْ يَقُلْ فِيهِ: نا، أَوْ أَنَا، فَهُوَ مُنْقَطِعٌ - فَقَدْ صَحَّ أَنَّ هَذَا الْحَدِيثَ لَمْ يَسْمَعْهُ أَبُو الزُّبَيْرِ مِنْ جَابِرٍ. وَأَمَّا احْتِجَاجُهُمْ بِمَا جَاءَ عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي الْمُخْتَلِسِ - فَإِنَّ الرِّوَايَةَ فِي ذَلِكَ عَنْ زَيْدِ بْنِ ثَابِتٍ لَا تَصِحُّ؛ لِأَنَّهَا عَنْ الزُّهْرِيِّ عَنْهُ مُنْقَطِعَةٌ، وَلَمْ يَسْمَعْ الزُّهْرِيُّ مِنْ زَيْدٍ كَلِمَةً: وَأَمَّا الرِّوَايَةُ عَنْ عُمَرَ، وَعَمَّارِ بْنِ يَاسِرٍ فِي ذَلِكَ، فَإِنَّهَا مُنْقَطِعَةٌ؛ لِأَنَّهَا عَنْ الشَّعْبِيِّ عَنْهُمَا - وَلَمْ يُولَدْ الشَّعْبِيُّ إِلَّا بَعْدَ قَتْلِ عُمَرَ بْنِ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - وَلَمْ يَكُنْ يَعْقِلْ إِذْ مَاتَ عَمَّارُ بْنُ يَاسِرٍ.

وَأَمَّا الرِّوَايَةُ عَنْ عَلِيٍّ فِي ذَلِكَ - فَهِيَ مِنْ طَرِيقَيْنِ -: إحْدَاهُمَا - عَنْ سِمَاكِ بْنِ حَرْبٍ وَهُوَ يَقْبَلُ التَّلْقِينَ

L41978 The other [narration] is transmitted via Bukayr ibn Abi al-Sumayṭ the blind. A similar report is narrated from Qatādah and ʻAffān, though his reliability remains unspecified. The ruling concerning the snatcher must fall into one of two scenarios: either he snatched openly without concealing himself from people - in which case there is no disagreement that he is not deemed a thief, and no cutting is applied to him.

وَالْأُخْرَى - مِنْ طَرِيقِ بُكَيْرِ بْنِ أَبِي السُّمَيْطِ الْمَكْفُوفِ - وَقَدْ رُوِيَ نَحْوُهُ عَنْ قَتَادَةَ، وَعَفَّانَ، وَلَا يُعْرَفُ حَالُهُ، إلَّا أَنَّ الْقَوْلَ فِي الْمُخْتَلِسِ لَا يَخْلُو مِنْ أَحَدِ وَجْهَيْنِ: إمَّا أَنْ يَكُونَ اخْتَلَسَ جِهَارًا غَيْرَ مُسْتَخْفٍ مِنْ النَّاسِ - فَهَذَا لَا خِلَافَ فِيهِ أَنَّهُ لَيْسَ سَارِقًا، وَلَا قَطْعَ عَلَيْهِ.

L41979–41980 Or he may have done that while concealing himself from everyone present - there is no disagreement between us and our opponents present that he is a thief and that amputation [of the hand] is mandated for him.

أَوْ يَكُونُ فَعَلَ ذَلِكَ مُسْتَخْفِيًا عَنْ كُلِّ مَنْ حَضَرَ - فَهَذَا لَا خِلَافَ بَيْنَنَا وَبَيْنَ الْحَاضِرِينَ مِنْ خُصُومِنَا فِي أَنَّهُ سَارِقٌ، وَأَنَّ عَلَيْهِ الْقَطْعَ.

L41981 Therefore, everything they relied upon was invalidated, and their assertion concerning the maintenance of secure custody was stripped of any proof.

فَبَطَلَ كُلُّ مَا تَعَلَّقُوا بِهِ، وَعَرِيَ قَوْلُهُمْ فِي مُرَاعَاةِ الْحِرْزِ عَنْ أَنْ يَكُونَ لَهُ حُجَّةٌ أَصْلًا.

L41982 As for their statement that an item not secured is considered lost property, this is erroneous. For lost property specifically refers to what has fallen from its owner and becomes liable to loss or neglect—and similarly, stray animals. However, anything neither legally abandoned nor fallen cannot be classified as lost property or stray animals. There exist explicit texts regarding lost property and strays that prohibit transgression, leaving no grounds for theft in such cases. We are only addressing a thief who takes from secured property, not one who collects lost items or takes strays—for the collector of lost property is an embezzler. Thus, this invalid objection collapses.

وَأَمَّا قَوْلُهُمْ: إنَّ الشَّيْءَ إذَا لَمْ يَكُنْ مُحْرَزًا فَهُوَ لُقَطَةٌ فَخَطَأٌ؛ لِأَنَّ اللُّقَطَةَ إنَّمَا هِيَ مَا سَقَطَ عَنْ صَاحِبِهِ وَصَارَ بِدَارِ مَضْيَعَةٍ - وَكَذَلِكَ الضَّالَّةُ - وَأَمَّا مَا كَانَ غَيْرَ مُهْمَلٍ وَلَا سَاقِطٍ، فَقَدْ بَطَلَ عَنْ أَنْ يَكُونَ لُقَطَةً، أَوْ ضَالَّةً، وَقَدْ جَاءَ فِي اللُّقَطَةِ وَالضَّالَّةِ نُصُوصٌ لَا يَحِلُّ تَعَدِّيهَا، فَلَا مَدْخَلَ لِلسَّارِقِ فِيهَا، فَنَحْنُ إنَّمَا نُكَلِّمُهُمْ فِي سَارِقٍ مِنْ حِرْزٍ، لَا فِي مُلْتَقِطٍ، وَلَا فِي آخِذِ ضَالَّةٍ - فَإِنَّ الْمُلْتَقِطَ مُخْتَلِسٌ فَسَقَطَ هَذَا الِاعْتِرَاضُ الْفَاسِدُ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَبَ أَنْ نَنْظُرَ فِي الْقَوْلِ الثَّانِي فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالا مِنَ اللَّهِ} [المائدة: ٣٨] فَوَجَبَ بِنَصِّ الْقُرْآنِ أَنَّ كُلَّ مَنْ سَرَقَ فَالْقَطْعُ عَلَيْهِ، وَأَنَّ مَنْ اكْتَسَبَ سَرِقَةً فَقَدْ اسْتَحَقَّ بِنَصِّ كَلَامِ اللَّهِ تَعَالَى جَزَاءً لِكَسْبِهِ ذَلِكَ قَطْعَ يَدِهِ نَكَالًا.

L41983 By empirical necessity and linguistic understanding, anyone who knows the language *knows* that whoever steals—whether from a protected storage or

وَبِالضَّرُورَةِ الْحِسِّيَّةِ، وَبِاللُّغَةِ يَدْرِي كُلُّ أَحَدٍ يَدْرِي اللُّغَةَ أَنَّ مَنْ سَرَقَ - مِنْ حِرْزٍ أَوْ مِنْ غَيْرِ حِرْزٍ - فَإِنَّهُ " سَارِقٌ " وَأَنَّهُ قَدْ اكْتَسَبَ سَرِقَةً، لَا خِلَافَ فِي ذَلِكَ، فَإِذْ هُوَ

[4] **Qur'an references (L41982):** Qur'an 5:38 (Al-Ma'idah).

otherwise—is indeed a "thief" and has committed theft, with no disagreement on this. Since he is a thief who has committed theft, cutting off his hand is obligatory by the explicit text of the Quran. It is not permissible to restrict the Quran based on a false presumption or a baseless claim.

سَارِقٌ مُكْتَسِبٌ سَرِقَةً، فَقَطْعُ يَدِهِ وَاجِبٌ، بِنَصِّ الْقُرْآنِ، وَلَا يَحِلُّ أَنْ يُخَصَّ الْقُرْآنُ بِالظَّنِّ الْكَاذِبِ، وَلَا بِالدَّعْوَى الْعَارِيَةِ مِنْ الْبُرْهَانِ.

L41984 Indeed, whoever claims that Allah the Exalted only intended in this verse one who stole from a safeguarded place is thereby falsely ascribing assertions to Allah. For whoever informs about Allah what He has not revealed about Himself, nor has His Prophet (may Allah bless him and grant him peace) conveyed, has certainly lied against Allah, and uttered what he does not know, and asserted claims without knowledge—and this is an extremely grave offense.

فَإِنَّ مَنْ قَالَ: إنَّ اللَّهَ تَعَالَى إنَّمَا أَرَادَ فِي هَذِهِ الْآيَةِ مَنْ سَرَقَ مِنْ حِرْزٍ، فَإِنَّهُ مُخْبِرٌ عَنْ اللَّهِ تَعَالَى، وَالْمُخْبِرُ عَنْ اللَّهِ تَعَالَى بِمَا لَمْ يُخْبِرْ بِهِ عَنْ نَفْسِهِ، وَلَا أَخْبَرَ بِهِ عَنْهُ نَبِيُّهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَدْ قَالَ عَلَى اللَّهِ تَعَالَى الْكَذِبَ، وَقَالَ مَا لَا يَعْلَمُ، وَقَفَا مَا لَا عِلْمَ لَهُ بِهِ - وَهَذَا عَظِيمٌ جِدًّا.

L41985–41987 We have cited from ʻĀ'ishah, Ibn al-Zubayr, Saʻīd ibn al-Musayyib, ʻAbd Allāh ibn ʻUbayd Allāh, al-Ḥasan, Ibrāhīm al-Nakhaʻī, and ʻUbayd Allāh ibn Abī Bakrah: Is amputation prescribed for someone who steals, even if he did not take it out from the secure place? Abū Muḥammad—may Allāh have mercy on him—said: "This is the text of the Qur'ān. As for the traditions..." It has been narrated to us through the chain of al-Bukhārī: Abū al-Walīd, al-Ṭayālisī, and al-Layth—he is Ibn Saʿd—narrated from Ibn Shihāb from ʿUrwah from ʿĀ'ishah that the Quraysh were troubled by the Makhzūmī woman who stole. He mentioned the ḥadīth, which states: The Messenger of Allah (peace and blessings of Allah be upon him) stood to deliver a sermon and said, "O people, those before you were led astray only because when a nobleman among them stole, they would spare him, but when a weak person stole, they would enforce the ḥadd upon him. By Allah, if Fāṭimah bint Muḥammad were to steal, Muḥammad would cut off her hand!"

وَقَدْ أَوْرَدْنَا عَنْ عَائِشَةَ، وَابْنِ الزُّبَيْرِ، وَسَعِيدِ بْنِ الْمُسَيَّبِ، وَعَبْدِ اللَّهِ بْنِ عُبَيْدِ اللَّهِ، وَالْحَسَنِ، وَإِبْرَاهِيمَ النَّخَعِيِّ، وَعُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرَةَ الْقَطْعُ عَلَى مَنْ سَرَقَ، وَإِنْ لَمْ يَخْرُجْ بِهِ مِنْ الْحِرْزِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا نَصُّ الْقُرْآنِ، وَأَمَّا مِنْ السُّنَنِ فَرُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْوَلِيدِ - هُوَ الطَّيَالِسِيُّ - وَاللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَنَّ قُرَيْشًا أَهَمَّتْهُمْ الْمَرْأَةُ الْمَخْزُومِيَّةُ الَّتِي سَرَقَتْ - فَذَكَرَ الْحَدِيثَ - وَفِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَامَ فَخَطَبَ فَقَالَ: يَا أَيُّهَا النَّاسُ إنَّمَا ضَلَّ مَنْ كَانَ قَبْلَكُمْ أَنَّهُمْ كَانُوا إذَا سَرَقَ الشَّرِيفُ تَرَكُوهُ وَإِذَا سَرَقَ الضَّعِيفُ فِيهِمْ أَقَامُوا عَلَيْهِ الْحَدَّ، وَايْمُ اللَّهِ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعَ مُحَمَّدٌ يَدَهَا»

L41988 Through Al-Bukhari's chain: Musa ibn Isma'il narrated to us: Abd al-Wahid al-A'mash narrated to us, saying: I heard Abu Salih say: I heard Abu Hurayrah say: The Messenger of Allah (peace and blessings be upon him) said, "Allah curses the thief who steals an egg, so his hand must be cut off, and steals a rope, so his hand must be cut off." Abu Muhammad (may Allah have mercy on him) said: The Messenger of Allah (peace and blessings be upon him)

مِنْ طَرِيقِ الْبُخَارِيِّ نا مُوسَى بْنُ إسْمَاعِيلَ نا عَبْدُ الْوَاحِدِ الْأَعْمَشُ قَالَ: سَمِعْت أَبَا صَالِحٍ سَمِعْت أَبَا هُرَيْرَةَ يَقُولُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَعَنَ اللَّهُ السَّارِقَ يَسْرِقُ الْبَيْضَةَ فَتُقْطَعُ يَدُهُ، وَيَسْرِقُ الْحَبْلَ فَتُقْطَعُ يَدُهُ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -:

فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَطْعِ السَّارِقِ جُمْلَةً وَلَمْ يَخُصَّ - عَلَيْهِ السَّلَامُ - حِرْزًا مِنْ غَيْرِ حِرْزٍ {وَمَا يَنْطِقُ عَنِ الْهَوَى} [النجم: ٣] {إِنْ هُوَ إِلا وَحْيٌ يُوحَى} [النجم: ٤] ، {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

وَقَالَ تَعَالَى {الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ} [المائدة: ٣] .

وَقَالَ تَعَالَى {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ} [النحل: ٤٤] .

وَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى أَنَّ اللَّهَ عَزَّ وَجَلَّ لَوْ أَرَادَ أَنْ لَا يَقْطَعَ السَّارِقَ حَتَّى يَسْرِقَ مِنْ حِرْزٍ وَيُخْرِجَهُ مِنْ الدَّارِ لَمَا أَغْفَلَ ذَلِكَ، وَلَا أَهْمَلَهُ، وَلَا أَعْنَتَنَا بِأَنْ يُكَلِّفَنَا عِلْمَ شَرِيعَةٍ لَمْ يُطْلِعْنَا عَلَيْهِ، وَلَبَيَّنَهُ عَلَى لِسَانِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إمَّا فِي الْوَحْيِ، وَإِمَّا فِي النَّقْلِ الْمَنْقُولِ.

فَإِذْ لَمْ يَفْعَلْ اللَّهُ تَعَالَى ذَلِكَ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَنَحْنُ نَشْهَدُ، وَنَبُتُّ، وَنَقْطَعُ - بِيَقِينٍ لَا يُمَازِجُهُ شَكٌّ - أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اشْتِرَاطَ الْحِرْزِ فِي السَّرِقَةِ.

إذْ لَا شَكَّ فِي ذَلِكَ فَاشْتِرَاطُ الْحِرْزِ فِيهَا بَاطِلٌ بِيَقِينٍ لَا شَكَّ فِيهِ، وَشَرْعٌ لِمَا لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ، وَكُلُّ مَا ذَكَرْنَا فَإِنَّمَا يَلْزَمُ مَنْ قَامَتْ عَلَيْهِ الْحُجَّةُ وَوَقَفَ عَلَى مَا ذَكَرْنَا، لِأَنَّ مَنْ سَلَفَ مِمَّنْ اجْتَهَدَ فَأَخْطَأَ مَأْجُورٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

ruled categorically to cut off the thief's hand and did not specify—peace be upon him—a distinction between secured property and unsecured property. "Nor does he speak from [his own] inclination. It is not but a revelation revealed" (53:3-4). "And your Lord is not forgetful" (19:64).[5][6]

L41989 And He, the Exalted, said {Today I have perfected for you your religion} [The Table Spread: 3].[7]

L41990 And He, the Most High, said: "So that you may make clear to mankind what has been revealed to them" [An-Nahl: 44].[8]

L41991 We bear witness by the testimony of Allah—Exalted and Majestic—that if Allah had willed not to amputate the thief's hand until he steals from a secured premises and removes it from the property, He would not have neglected this, nor disregarded it, nor burdened us with knowing a Sharia ruling He did not disclose to us. Rather, He would have clarified it through the tongue of His Messenger—may Allah's blessings and peace be upon him—whether in revelation or in transmitted reports.

L41992 Since neither Allah, the Exalted, nor His Messenger—peace and blessings be upon him—did so, we bear witness, resolve definitively, and assert with certainty unmixed by doubt that Allah, the Exalted, never intended—nor did His Messenger, peace and blessings be upon him, intend—the stipulation of secure custody as a condition in theft.

L41993–41995 Since there is no doubt in that, stipulating custody in it is undeniably invalid with undoubted certainty, and constitutes legislating for that which Allah the Exalted has not permitted. All that we have mentioned only binds those upon whom the proof has been established and who have ascertained what... We

[5] **Hadith references (L41988):** Sahih al-Bukhari 6783; Sahih al-Bukhari 6799; Sunan Ibn Majah 2583.

[6] **Qur'an references (L41988):** Qur'an 53:3 (An-Najm); Qur'an 53:4 (An-Najm); Qur'an 19:64 (Maryam).

[7] **Qur'an references (L41989):** Qur'an 5:3 (Al-Ma'idah).

[8] **Qur'an references (L41990):** Qur'an 16:44 (An-Nahl).

have mentioned because those predecessors who engaged in *ijtihad* and erred are rewarded—and success is from Allah, the Exalted.

L41996 As for consensus, there is no disagreement among anyone in the entire Ummah that theft is the act of taking something one has no right to through concealment, that the thief is the one who takes what is not his in a concealed manner, and that safekeeping is irrelevant to the definition necessitated by the term 'theft.' Whoever imposes the requirement of safekeeping in this matter has opposed the consensus regarding the linguistic meaning of this term and has asserted in Islamic law a claim with no basis for its existence and no evidence of its validity.

L41997 As for the statements of the Companions: We have clarified that none of them ever stipulated custody as a principle. Rather, some of them mentioned "until he exits the residence," and some said "from the house." This does not constitute evidence for what they claimed regarding custody—despite the difference of opinion reported from ʿĀʾishah and Ibn al-Zubayr on that matter. Thus, it becomes evident that our opinion is one brought forth by the Qurʾān and the established Sunnahs of the Messenger of Allah—peace and blessings be upon him—and success is from Allah, the Most High.

L41998 ## Issues from the Chapter on Theft

L41999 Issue 2268: Concerning one who steals from the public treasury or from war spoils. Abū Muḥammad—may Allāh have mercy on him—said: 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; al-Masʿūdī narrated from al-Qāsim ibn ʿAbd al-Raḥmān, who said: A man stole from the public treasury, so Saʿd ibn Abī Waqqāṣ wrote to ʿUmar ibn al-Khaṭṭāb? ʿUmar wrote back to him: There is no amputation for him, because he has a share in it.

وَأَمَّا الْإِجْمَاعُ فَإِنَّهُ لَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ كُلِّهَا فِي أَنَّ السَّرِقَةَ هِيَ الِاخْتِفَاءُ بِأَخْذِ الشَّيْءِ لَيْسَ لَهُ، وَأَنَّ السَّارِقَ هُوَ الْمُخْتَفِي بِأَخْذِ مَا لَيْسَ لَهُ، وَأَنَّهُ لَا مَدْخَلَ لِلْحِرْزِ فِيمَا اقْتَضَاهُ الِاسْمُ، فَمَنْ أَقْحَمَ فِي ذَلِكَ اشْتِرَاطَ الْحِرْزِ فَقَدْ خَالَفَ الْإِجْمَاعَ عَلَى مَعْنَى هَذِهِ اللَّفْظَةِ فِي اللُّغَةِ، وَادَّعَى فِي الشَّرْعِ مَا لَا سَبِيلَ لَهُ إلَى وُجُودِهِ، وَلَا دَلِيلَ عَلَى صِحَّتِهِ.

وَأَمَّا قَوْلُ الصَّحَابَةِ: فَقَدْ أَوْضَحْنَا أَنَّهُ لَمْ يَأْتِ قَطُّ عَنْ أَحَدٍ مِنْهُمْ اشْتِرَاطُ الْحِرْزِ أَصْلًا وَإِنَّمَا جَاءَ عَنْ بَعْضِهِمْ " حَتَّى يَخْرُجَ مِنْ الدَّارِ " وَقَالَ بَعْضُهُمْ " مِنْ الْبَيْتِ " وَلَيْسَ هَذَا دَلِيلًا عَلَى مَا ادَّعَوْهُ مِنْ الْحِرْزِ - مَعَ الْخِلَافِ الَّذِي ذَكَرْنَا عَنْ عَائِشَةَ، وَابْنِ الزُّبَيْرِ فِي ذَلِكَ - فَلَاحَ أَنَّ قَوْلَنَا قَوْلٌ قَدْ جَاءَ بِهِ الْقُرْآنُ، وَالسُّنَنُ الثَّابِتَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ

[مَسَائِلُ مِنْ بَابِ السَّرِقَةِ]

٢٢٦٨ - مَسْأَلَةٌ: فِيمَنْ سَرَقَ مِنْ بَيْتِ الْمَالِ، أَوْ مِنْ الْغَنِيمَةِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: 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 الْمَسْعُودِيُّ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ قَالَ: إنَّ رَجُلًا سَرَقَ مِنْ بَيْتِ الْمَالِ، فَكَتَبَ فِيهِ سَعْدُ بْنُ أَبِي وَقَّاصٍ إلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَكَتَبَ عُمَرُ إلَيْهِ: أَنْ لَا قَطْعَ عَلَيْهِ؛ لِأَنَّ لَهُ فِيهِ نَصِيبًا.

وَبِهِ - إِلَى وَكِيعٍ نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ عُبَيْدِ بْنِ الْأَبْرَصِ أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِرَجُلٍ قَدْ سَرَقَ مِنْ الْخُمْسِ مِغْفَرًا فَلَمْ يَقْطَعْهُ عَلِيٌّ، وَقَالَ: إنْ لَهُ فِيهِ نَصِيبًا.

L42000 Through him [the preceding narrator], the chain ascends to Wakiʿ: Sufyān—that is, al-Thawrī—narrated to us from Simāk ibn Ḥarb, from Ubayd ibn al-Abraṣ, that Ali ibn Abi Talib was brought a man who had stolen a helmet from the *khums*. Ali did not amputate his hand, saying, “Indeed, he has a share in it.”

وَبِهِ - يَقُولُ إبْرَاهِيمُ النَّخَعِيُّ، وَالْحَكَمُ بْنُ عُتَيْبَةَ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا - وَقَالَ مَالِكٌ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ: عَلَيْهِ الْقَطْعُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: إنَّمَا احْتَجَّ مَنْ لَمْ يَرَ الْقَطْعَ فِي ذَلِكَ بِحُجَّتَيْنِ:

L42001 According to this view - which is held by Ibrāhīm al-Nakhaʿī, al-Ḥakam ibn ʿUtaybah, Abū Ḥanīfah, al-Shāfiʿī, and their followers - while Mālik, Abū Thawr, Abū Sulaymān, and their adherents said: “Is amputation obligatory upon him?” Abū Muḥammad - may Allah have mercy on him - said: Those who did not hold the view of amputation in this matter relied on two arguments.

إحْدَاهُمَا: أَنَّ لَهُ فِيهِ نَصِيبًا مُشَاعًا.

L42002 One of them is that he holds a common undivided share in it.

وَالثَّانِيَةُ: أَنَّهُ قَوْلُ صَاحِبَيْنِ لَا يُعْرَفُ لَهُمَا مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L42003–42004 The second is that it is the opinion of two Companions, with no dissenter known against their view among the Companions—may Allah be pleased with them.

أَمَّا الِاحْتِجَاجُ بِأَنَّهُ قَوْلُ طَائِفَةٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لَا يُعْرَفُ لَهُمْ مِنْهُمْ مُخَالِفٌ، فَإِنَّ هَذَا يَلْزَمُ الْمَالِكِيِّينَ الْمُحْتَجِّينَ بِمِثْلِ هَذَا إذَا وَافَقَ أَهْوَاءَهُمْ التَّارِكِينَ لَهُ إذَا اشْتَهَوْا؟ وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42005 As for the argument that this is the position of a group of the Companions (may Allah be pleased with them) with no known dissenter among them—this would obligate the Malikis who cite such evidence when it aligns with their desires, while those who abandon it do so when they desire. As for us, there is no valid proof for us in the opinion of anyone besides the Messenger of Allah (peace be upon him).

وَأَمَّا احْتِجَاجُهُمْ بِأَنَّ لَهُ فِي ذَلِكَ نَصِيبًا - فَهَذَا لَيْسَ حُجَّةً فِي إسْقَاطِ حَدِّ اللَّهِ تَعَالَى، إذْ لَيْسَتْ هَذِهِ الْقَضِيَّةُ مِمَّا جَاءَ بِهِ الْقُرْآنُ، وَلَا مِمَّا صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَا مِمَّا أَجْمَعَتْ عَلَيْهِ الْأُمَّةُ: فَلَا حُجَّةَ لَهُمْ فِي غَيْرِ هَذِهِ الْعُمَدِ الثَّلَاثِ.

L42006 As for their argument that he has a share in this matter—this constitutes no valid proof to nullify the Ḥadd punishment ordained by Allah Almighty, for this case forms no part of what the Qur’an has revealed, nor what has been authentically transmitted from the Messenger of Allah (peace be upon him), nor what the Ummah has unanimously agreed upon. Thus, they hold no valid evidence outside these three foundational sources.

وَكَوْنُهُ لَهُ فِي بَيْتِ الْمَالِ وَفِي الْمَغْنَمِ نَصِيبٌ لَا يُبِيحُ لَهُ أَخْذَ نَصِيبِ غَيْرِهِ، لِأَنَّهُ حَرَامٌ عَلَيْهِ بِإِجْمَاعٍ لَا خِلَافَ فِيهِ.

L42007 His having a share in the public treasury and in the spoils of war does not permit him to take another’s share, for this is forbidden by consensus with no disagreement about it.

L42008 And Allah, the Most High, says: “And do not devour one another’s wealth wrongfully” [Al-Baqarah: 188].[1]

وَبِقَوْلِ اللَّهِ تَعَالَى {وَلا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [البقرة: ١٨٨] .

L42009 Since the share of his partner is forbidden to him, there is no difference between stealing from him and stealing from a stranger with whom he shares no portion—while they claim *qiyas*. They say: “When the forbidden has been mixed with the permissible, all of it becomes forbidden—like wine mixed with water, pork ground with mutton, and many similar cases.” They also uphold the *hadd* punishment for one who drinks wine blended with lawful water. What distinguishes this from someone who steals something partly permissible for him and partly forbidden for others? Abū Muḥammad—may Allah have mercy on him—said: Since we found no fundamental evidence—whether from the Quran, the Sunnah, or consensus—to prohibit amputating the hand of one who steals from war spoils, the fifth share, or the public treasury, we had to consider the opposing view. We found Allah the Exalted stating: “As for the male thief and the female thief, cut off their hands as a recompense for what they earned—a deterrent punishment from Allah” (5:38).[2]

فَإِذْ نَصِيبُ شَرِيكِهِ عَلَيْهِ حَرَامٌ فَلَا فَرْقَ بَيْنَ سِرْقَتِهِ إيَّاهُ وَبَيْنَ سَرِقَتِهِ مِنْ أَجْنَبِيٍّ لَا نَصِيبَ لَهُ مَعَهُ، وَهُمْ يَدَّعُونَ الْقِيَاسَ. وَهُمْ يَقُولُونَ: إنَّ الْحَرَامَ إذَا امْتَزَجَ مَعَ الْحَلَالِ فَإِنَّهُ كُلُّهُ حَرَامٌ، كَالْخَمْرِ مَعَ الْمَاءِ، وَلَحْمِ الْخِنْزِيرِ يُدَقُّ مَعَ لَحْمِ الْكَبْشِ، وَغَيْرِ هَذَا كَثِيرٌ؟ وَيَرَوْنَ الْحَدَّ عَلَى مَنْ شَرِبَ خَمْرًا مَمْزُوجَةً بِمَاءٍ حَلَالٍ، فَمَا الْفَرْقُ بَيْنَهُ وَبَيْنَ مَنْ سَرَقَ شَيْئًا بَعْضُهُ لَهُ حَلَالٌ وَبَعْضُهُ حَرَامٌ لِغَيْرِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا لَمْ نَجِدْ فِي الْمَنْعِ مِنْ قَطْعِ مَنْ سَرَقَ مِنْ الْمَغْنَمِ، أَوْ مِنْ الْخُمُسِ، أَوْ مِنْ بَيْتِ الْمَالِ، حُجَّةً أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا سُنَّةٍ، وَلَا إجْمَاعٍ، وَجَبَ أَنْ نَنْظُرَ فِي الْقَوْلِ الْآخَرِ: فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالا مِنَ اللَّهِ} [المائدة: ٣٨] .

L42010–42012 We found that the Messenger of Allah (peace be upon him) established amputation as an obligatory punishment for theft in general terms. Neither Allah the Exalted nor His Messenger (peace be upon him) made any exception for a thief stealing from the public treasury or other sources, nor for a thief stealing from war spoils. nor a thief who takes from wealth of others in which he has a share—“And your Lord is not forgetful” (Quran 19:64)—and if Allah the Exalted had intended that, He would not have overlooked it nor neglected it.[3]

وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَوْجَبَ الْقَطْعَ عَلَى السَّارِقِ جُمْلَةً، وَلَمْ يَخُصَّ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - سَارِقًا مِنْ بَيْتِ الْمَالِ مِنْ غَيْرِهِ، وَلَا سَارِقًا مِنْ الْمَغْنَمِ، وَلَا سَارِقًا مِنْ مَالٍ لَهُ فِيهِ نَصِيبٌ مِنْ غَيْرِهِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] وَلَوْ أَنَّ اللَّهَ تَعَالَى أَرَادَ ذَلِكَ لَمَا أَغْفَلَهُ وَلَا أَهْمَلَهُ

L42013 The procedure in this matter is to consider one who steals from something in which he has a share from the public treasury, the fifth (khums), spoils of war, or other sources. If his share is a defined, known quantity—such as spoils of war, communal property acquired through sale or inheritance, or similar means, or if he belongs to those entitled to the fifth—then the

وَالْعَمَلُ فِي ذَلِكَ أَنْ نَنْظُرَ فِيمَنْ سَرَقَ مِنْ شَيْءٍ لَهُ فِيهِ نَصِيبٌ مِنْ بَيْتِ الْمَالِ أَوْ الْخُمُسِ، أَوْ الْمَغْنَمِ، أَوْ غَيْرِ ذَلِكَ، فَإِنْ كَانَ نَصِيبُهُ مَحْدُودًا مَعْرُوفَ الْمِقْدَارِ كَالْغَنِيمَةِ، أَوْ مَا اشْتَرَكَ فِيهِ بِبَيْعٍ، أَوْ مِيرَاثٍ، أَوْ غَيْرِ ذَلِكَ، أَوْ كَانَ مِنْ أَهْلِ الْخُمُسِ، نُظِرَ: فَإِنْ أَخَذَ زَائِدًا عَلَى نَصِيبِهِ مِمَّا يَجِبُ فِي مِثْلِهِ الْقَطْعُ قُطِعَ، وَلَا بُدَّ، فَإِنْ سَرَقَ أَقَلَّ فَلَا قَطْعَ عَلَيْهِ،

[1] **Qur’an references (L42008):** Qur’an 2:188 (Al-Baqarah).
[2] **Qur’an references (L42009):** Qur’an 5:38 (Al-Ma’idah).
[3] **Qur’an references (L42010):** Qur’an 19:64 (Maryam).

following applies: If he took an excess beyond his rightful share from that which, in similar cases, necessitates amputation, amputation must be carried out without fail. If he stole less than his share, no amputation is imposed on him unless his right to that share was withheld, or he needed it and could not obtain his right except through his means, and he could not obtain his rightful portion separately. In such a case, amputation is not carried out if this is verified, and he is only required to return the excess beyond his right. This is because he was compelled to take it if he could not obtain the exact measure of his right. Allah, the Most High, says: "He has already detailed to you what He has forbidden you, except when you are compelled to necessity" (6:119). Success is from Allah, the Most High.[4]

إِلَّا أَنْ يَكُونَ مُنعَ حَقُّهُ فِي ذَلِكَ أَوْ احْتَاجَ إِلَيْهِ فَلَمْ يَصِلْ إِلَى أَخْذِ حَقِّهِ إِلَّا بِمَا فَعَلَ وَلَا قَدَرَ عَلَى أَخْذِ حَقِّهِ خَالِصًا فَلَا يُقْطَعُ إِذَا عُرِفَ ذَلِكَ، وَإِنَّمَا عَلَيْهِ أَنْ يَرُدَّ الزَّائِدَ عَلَى حَقِّهِ فَقَطْ؛ لِأَنَّهُ مُضْطَرٌّ إِلَى أَخْذِ مَا أُخِذَ إِذَا لَمْ يَقْدِرْ عَلَى تَخْلِيصِ مِقْدَارِ حَقِّهِ، وَاَللَّهُ تَعَالَى يَقُولُ {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

An issue concerning one who stole from the bathhouse.

[مَسْأَلَة فِيمَنْ سَرَقَ مِنْ الْحَمَّامِ]

Issue 2269: Concerning one who stole from the bathhouse. Narrated by Muḥammad ibn Saʿīd ibn Nabāt from ʿAbd Allāh ibn Naṣr from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Mūsā ibn Muʿāwiyah from Wakīʿ from Saʿīd ibn ʿAbd al-ʿAzīz al-Tanūkhī from Bilāl ibn Saʿd: A man stole a burnus from the bathhouse, and the matter was referred to Abū al-Dardāʾ. He did not deem amputation applicable to him.

٢٢٦٩ - مَسْأَلَةٌ: فِيمَنْ سَرَقَ مِنْ الْحَمَّامِ؟ 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 سَعِيدُ بْنُ عَبْدِ الْعَزِيزِ التَّنُوخِيُّ عَنْ بِلَالِ بْنِ سَعْدٍ أَنَّ رَجُلًا سَرَقَ بُرْنُسًا مِنْ الْحَمَّامِ فَرُفِعَ إلَى أَبِي الدَّرْدَاءِ؟ فَلَمْ يَرَ عَلَيْهِ قَطْعًا.

And by him – says Abu Hanifah and his companions.

وَبِهِ - يَقُولُ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ

Malik, Ahmad, Ishaq, Abu Thawr, Abu Sulayman, and their companions said: "Is amputation obligatory if a guardian was present there?" Abu Muhammad—may Allah have mercy on him—said: "This is among the matters where the Hanafis and Malikis contradicted themselves, for they magnify the disagreement of a Companion—when no opposing view from other Companions is known—if it aligns with their opinions. Yet here they oppose the statement of Abu al-Darda', though no opposition to him from the Companions is known?" Abu Muhammad—may Allah have mercy on him—said: "As for us, we do not consider any statement as authoritative except that of

وَقَالَ مَالِكٌ، وَأَحْمَدُ، وَإِسْحَاقُ، وَأَبُو ثَوْرٍ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمْ: عَلَيْهِ الْقَطْعُ إذَا كَانَ هُنَالِكَ حَافِظٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا مِمَّا تَنَاقَضَ فِيهِ الْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ؛ لِأَنَّهُمْ يُعَظِّمُونَ خِلَافَ الصَّاحِبِ الَّذِي لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ إذَا وَافَقَ آرَاءَهُمْ، وَقَدْ خَالَفُوا هَاهُنَا قَوْلَ أَبِي الدَّرْدَاءِ، وَلَا يُعْرَفُ لَهُ مِنْ الصَّحَابَةِ مُخَالِفٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ قَالَ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا

[4] **Qur'an references (L42013):** Qur'an 6:119 (Al-An'am).

the Messenger of Allah—peace and blessings of Allah be upon him—for the Exalted has said: *‘As for the thief, male or female, cut off their hands as a recompense for what they earned, an exemplary punishment from Allah’* [5:38]. This is a thief, so amputation is obligatory by the Quran’s explicit text. Had Allah the Exalted intended to specify that, He would not have neglected it.”[5]

A jurisprudential question concerning one who stole from a mosque.

A group said: There is no cutting off the hand for one who steals from a mosque.

A group said: If there was a custodian present for that item, or if the doors were locked, amputation is carried out; otherwise, it is not. Similarly, if one uproots the door of the mosque, then if it was locked and fastened, amputation is carried out; otherwise, it is not. This same ruling applies to the door of a house. This is Mālik’s opinion.

Our companions said: Amputation is obligatory in all such cases. The basis for this ruling is the consideration of safekeeping, as we have mentioned, thereby invalidating the opinion of those who upheld the consideration of safekeeping. It is obligatory to amputate one who steals a door from a mosque—whether locked or unlocked—or a mat, a lamp, or something its owner placed there and forgot—whether the owner was present or not—if he took it covertly with intent to appropriate it for himself, not to safeguard it for its owner. This ruling is due to what we have explained, and success is by Allah, the Exalted.

Is amputation applicable to the grave exhumer?

2271 - Issue: Is amputation the prescribed punishment for the grave-exhumer or not? Abū Muḥammad—may Allah have mercy on him—said: People have differed regarding the grave-exhumer. One group said: He

[5] **Qur’an references (L42017):** Qur’an 5:38 (Al-Ma’idah).

نَكَالا مِنَ اللَّهِ} [المائدة: ٣٨] وَهَذَا سَارِقٌ فَالْقَطْعُ عَلَيْهِ بِنَصِّ الْقُرْآنِ، وَلَوْ أَرَادَ اللَّهُ تَعَالَى تَخْصِيصَ ذَلِكَ لَمَا أَغْفَلَهُ.

[مَسْأَلَةٌ فِيمَنْ سَرَقَ مِنْ مَسْجِدٍ]

؟ قَالَ قَوْمٌ: لَا قَطْعَ عَلَى مَنْ سَرَقَ مِنْ مَسْجِدٍ.

وَقَالَتْ طَائِفَةٌ: إذَا كَانَ هُنَالِكَ حَافِظٌ لِذَلِكَ الشَّيْءِ، أَوْ كَانَتْ الْأَبْوَابُ مُغْلَقَةً قُطِعَ، وَإِلَّا فَلَا - وَكَذَلِكَ لَوْ قَلَعَ بَابَ الْمَسْجِدِ فَإِنْ كَانَ مُغْلَقًا مَضْبُوطًا قُطِعَ، وَإِلَّا فَلَا - وَهَكَذَا الْقَوْلُ فِي بَابِ الدَّارِ - وَهُوَ قَوْلُ مَالِكٍ.

وَقَالَ أَصْحَابُنَا: الْقَطْعُ فِي كُلِّ ذَلِكَ وَاجِبٌ، وَالْأَصْلُ فِي ذَلِكَ أَمْرُ الْحِرْزِ كَمَا ذَكَرْنَا - وَقَدْ بَطَلَ قَوْلُ مَنْ قَالَ بِمُرَاعَاةِ الْحِرْزِ فَالْوَاجِبُ قَطْعُ مَنْ سَرَقَ مِنْ مَسْجِدٍ بَابًا - كَانَ مُغْلَقًا أَوْ غَيْرَ مُغْلَقٍ - أَوْ حَصِيرًا، أَوْ قِنْدِيلًا، أَوْ شَيْئًا وَضَعَهُ صَاحِبُهُ هُنَالِكَ وَنَسِيَهُ - كَانَ صَاحِبُهُ مَعَهُ أَوْ لَمْ يَكُنْ - إذَا أَخَذَهُ مُسْتَتِرًا بِأَخْذِهِ لِنَفْسِهِ، لَا لِيَحْفَظَهُ عَلَى صَاحِبِهِ، وَذَلِكَ لِمَا ذَكَرْنَا وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ عَلَى النَّبَّاشِ قَطْعٌ أَمْ لَا]

٢٢٧١ - مَسْأَلَةٌ: هَلْ عَلَى النَّبَّاشِ قَطْعٌ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي النَّبَّاشِ؟ فَقَالَتْ طَائِفَةٌ: عَلَيْهِ الْقَتْلُ. وَقَالَتْ طَائِفَةٌ: تُقْطَعُ يَدُهُ وَرِجْلُهُ.

should be put to death. Another group said: His hand and foot are to be cut off.

وَقَالَتْ طَائِفَةٌ: تُقْطَعُ يَدُهُ فَقَطْ.

L42025 A group stated: Only his hand is to be severed.

وَقَالَتْ طَائِفَةٌ: يُعَزَّرُ أَدَبًا - وَلَا شَيْءَ عَلَيْهِ غَيْرُ ذَلِكَ.

L42026 A group has stated: He should be disciplined as a corrective measure, with no further penalty imposed.

وَأَمَّا مَنْ رَأَى عَلَيْهِ الْقَتْلَ - فَكَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنِ ابْنِ جُرَيْجٍ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ: أَنَّ رَجُلًا مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَدَ رَجُلًا يَخْتَفِي فِي الْقُبُورِ فَقَتَلَهُ، فَأَهْدَرَ عُمَرُ بْنُ الْخَطَّابِ دَمَهُ.

L42027 Regarding one deemed liable for execution: From Ḥumām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Ibn Jurayj, from Ṣafwān ibn Sulaym: A man from the Companions of the Messenger of Allah (peace be upon him) encountered a man lurking among graves and killed him, whereupon ʿUmar ibn al-Khaṭṭāb held his blood to be without sanction.

وَأَمَّا مَنْ رَأَى قَطْعَ يَدِهِ وَرِجْلِهِ: فَكَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى ابْنِ جُرَيْجٍ قَالَ: قَالَ لِي عَمْرُو بْنُ دِينَارٍ: قَطَعَ عَبَّادُ بْنُ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ يَدَ غُلَامٍ وَرِجْلَهُ، اخْتَفَى؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: " عَبَّادٌ " هَذَا مِنَ التَّابِعِينَ أَدْرَكَ عَائِشَةَ، نَعَمْ، وَجَدُّهُ الزُّبَيْرُ، وَجُمْهُورُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

L42028 As for the one who ruled on cutting off his hand and leg: as narrated through the aforementioned chain of transmission to Ibn Jurayj, he said: ʿAmr ibn Dīnār told me: "Did ʿAbbād ibn ʿAbd Allāh ibn al-Zubayr cut off the hand and leg of a young servant who went into hiding?" Abū Muḥammad – may Allah have mercy on him – said: "This ʿAbbād was among the Tabi'un; he met ʿĀ'ishah. Indeed, his grandfather was al-Zubayr, and the majority of the Companions – may Allah be pleased with them –."

وَأَمَّا مَنْ رَأَى قَطْعَ يَدِهِ فَقَطْ: فَكَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى عَبْدِ الرَّزَّاقِ عَنْ إِبْرَاهِيمَ بْنِ مُحَمَّدِ بْنِ أَبِي يَحْيَى أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ أَبِي بَكْرٍ عَنْ عَبْدِ اللَّهِ بْنِ عَامِرِ بْنِ رَبِيعَةَ أَنَّهُ وَجَدَ قَوْمًا يَخْتَفُونَ الْقُبُورَ بِالْيَمَنِ، فَكَتَبَ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَكَتَبَ إِلَيْهِ عُمَرُ: أَنْ يُقْطَعَ أَيْدِيَهُمْ.

L42029–42030 As for the one who held the opinion of cutting off the hand alone: As was narrated to us through the aforementioned chain to Abd al-Razzaq, from Ibrahim ibn Muhammad ibn Abi Yahya: Abdullah ibn Abi Bakr informed me from Abdullah ibn Amir ibn Rabiʿah that he encountered people concealing the graves in Yemen. He wrote to Umar ibn al-Khattab, and Umar wrote to him that he should cut off their hands.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ عُثْمَانَ نا أَحْمَدُ بْنُ خَالِدٍ نا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ نا حَجَّاجُ بْنُ الْمِنْهَالِ نا هُشَيْمٌ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ قَالَ: شَهِدْتُ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ قَطَعَ يَدَ النَّبَّاشِ.

L42031 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Uthman from Ahmad ibn Khalid from Ali ibn Abd al-Aziz from Hajjaj ibn al-Minhal from Hushaym from Suhayl ibn Abi Salih, who said, "I witnessed Abdullah ibn al-Zubayr cutting off the hand of the grave robber."

L42032 Through him to Al-Hajjaj ibn Al-Minhal: Hammad ibn Salamah narrated to

us from Al-Hajjaj ibn Arta'a that Al-Sha'bi, Al-Nakha'i, Masruq ibn Al-Ajda', Zadhan, Abu Dhur'ah ibn Amr, and Amr ibn Hazm said regarding the grave robber when he takes the property: he is to be amputated.

وَبِهِ - إلَى الْحَجَّاجِ بْنِ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ الْحَجَّاجِ بْنِ أَرْطَاةَ: أَنَّ الشَّعْبِيَّ، وَالنَّخَعِيَّ، وَمَسْرُوقَ بْنَ الْأَجْدَعِ، وَزَاذَانَ، وَأَبَا ذُرْعَةَ بْنَ عَمْرٍو وَعَمْرَو بْنَ حَزْمٍ، قَالُوا فِي النَّبَّاشِ إذَا أَخَذَ الْمَتَاعَ: قُطِعَ.

L42033 Ibrahim an-Nakhai said: If a grave exhumer steals property equivalent to the amount that necessitates amputation, then amputation is incumbent upon him.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ: إذَا سَرَقَ النَّبَّاشُ قَدْرَ مَا يُقْطَعُ فِيهِ، فَعَلَيْهِ الْقَطْعُ.

L42034 And from Al-Sha'bi that he was asked about the grave robber, and he said: "Do we cut off the hands of our dead as we cut off those of our living?" Abu Muhammad—may Allah have mercy on him—said: "As for our position—and success comes only from Allah, the Exalted—all of this has no basis. Rather, the obligation lies in what Allah, the Exalted, and His Messenger—peace be upon him—have ordained as mandatory, to which recourse must be made in disputes. For He, the Exalted, says: {If you differ over anything, refer it to Allah and the Messenger} [4:59]. We acted accordingly: we observed that Allah, the Exalted, states: {As for the male thief and the female thief, cut off their hands} [5:38], and we observed that the Messenger of Allah—peace be upon him—imposed amputation upon whoever steals, as he—peace be upon him—declared: 'If Fāṭimah, the daughter of Muhammad, were to steal, Muhammad would cut off her right hand.'"[6]

وَعَنْ الشَّعْبِيِّ أَنَّهُ سُئِلَ عَنْ النَّبَّاشِ فَقَالَ: نَقْطَعُ فِي أَمْوَاتِنَا، كَمَا نَقْطَعُ فِي أَحْيَائِنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَالَّذِي نَقُولُ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَنَّ كُلَّ هَذَا لَا مَعْنَى لَهُ، لَكِنَّ الْفَرْضَ هُوَ مَا افْتَرَضَ اللَّهُ تَعَالَى وَرَسُولُهُ - عَلَيْهِ السَّلَامُ - الرُّجُوعَ إلَيْهِ عِنْد التَّنَازُعِ، إذْ يَقُولُ تَعَالَى {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ فَفَعَلْنَا: فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَوْجَبَ الْقَطْعَ عَلَى مَنْ سَرَقَ بِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «لَوْ سَرَقَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ لَقَطَعَ مُحَمَّدٌ يَدَهَا» .

L42035 We found the meaning of "thief" in the language in which the Quran was revealed and through which Allah the Exalted addresses us: it is one who takes what Allah the Exalted has not permitted him to take, claiming ownership of it while concealing the act. We found the grave robber to have these attributes.

وَوَجَدْنَا " " السَّارِقَ " فِي اللُّغَةِ الَّتِي نَزَلَ بِهَا الْقُرْآنُ وَبِهَا خَاطَبَنَا اللَّهُ تَعَالَى: هُوَ الْآخِذُ شَيْئًا لَمْ يُبِحْ اللَّهُ تَعَالَى لَهُ أَخْذَهُ، فَيَأْخُذُهُ مُتَمَلِّكًا لَهُ، مُسْتَخْفِيًا بِهِ - فَوَجَدْنَا النَّبَّاشَ هَذِهِ صِفَتُهُ.

L42036 Thus, it is established that he is a thief. Since he is a thief, amputation of the hand is prescribed [for such a crime]. Therefore, it is obligatory to amputate his hand—and this is the position we uphold.

فَصَحَّ أَنَّهُ سَارِقٌ، وَإِذْ هُوَ سَارِقٌ، فَقَطْعُ الْيَدِ عَلَى السَّارِقِ، فَقَطْعُ يَدِهِ وَاجِبٌ - وَبِهِ نَقُولُ.

L42037–42038 As for those who opine his killing or the amputation of his hand and foot, we

[6] **Qur'an references (L42034):** Qur'an 4:59 (An-Nisa); Qur'an 5:38 (Al-Ma'idah).

know of no valid proof for them unless they deem him a highway robber—and there is no proof here that he is a highway robber at all, for he did not spread fear on public roads. Thus, the ruling of a highway robber does not apply to him. Our blood is inviable; therefore, the grave robber's blood is equally inviolable. Success is from Allah, the Most High.

L42039 **The issue of what necessitates hand amputation for the taker in such a case.**

L42040 2272 - Issue: For what taking is amputation obligatory? Abu Muhammad—may Allah have mercy on him—said: People have disputed regarding certain things. Some said: There is no amputation in their theft.

L42041 A group said: Does cutting apply to these—dates, palm hearts, trees, and crops? Abū Muḥammad—may Allāh have mercy on him—said: ʿAbd Allāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us, Muḥammad ibn Khālid informed me, my father informed me, Salamah ibn ʿAbd al-Malik al-Ghawṣī narrated from al-Ḥasan—the son of Ṣāliḥ ibn Ḥayy—from Yaḥyā ibn Saʿīd al-Anṣārī from al-Qāsim ibn Muḥammad ibn Abī Bakr al-Ṣiddīq from Rāfiʿ ibn Khadīj, who said: I heard the Messenger of Allāh—peace and blessings be upon him—say: "There is no cutting for fruit or *kathar*"—and *al-kathar* means palm hearts. Many narrations exist on this matter which we have not cited to avoid prolonging by mentioning them. Had they been authentic, it would have been obligatory to act upon them, requiring that cutting not apply to any fruit or grains—whether harvested or unharvested, threshed or unthreshed, stored or unstored—due to the generality of this wording.

L42042 And because Allah, the Exalted, named the dried [produce] as fruit, He said, {And from the fruits of palm trees and grapevines} [Al-Naḥl: 67]. Thus, Allah named what the tree, the palm tree, and the cultivated plants bear as fruit by His statement: {He is the One Who created gardens, trellised and untrellised, and palm trees, the cultivated plants diverse in their fruits, and olives, and

وَأَمَّا مَنْ رَأَى قَتْلَهُ، أَوْ قَطْعَ يَدِهِ وَرِجْلِهِ، فَمَا نَعْلَمُ لَهُ حُجَّةً، إلَّا أَنْ يَكُونُوا رَأَوْهُ مُحَارِبًا - وَلَيْسَ هَاهُنَا دَلِيلٌ عَلَى أَنَّهُ مُحَارِبٌ أَصْلًا، لِأَنَّهُ لَمْ يُخِفْ طَرِيقًا، فَلَيْسَ لَهُ حُكْمُ الْمُحَارِبِ، وَدِمَاؤُنَا حَرَامٌ، فَدَمُ النَّبَّاشِ حَرَامٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَا يَجِبُ فِيهِ عَلَى آخِذِهِ الْقَطْعُ]

٢٢٧٢ - مَسْأَلَةٌ: مَا يَجِبُ فِيهِ عَلَى آخِذِهِ الْقَطْعُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: تَنَازَعَ النَّاسُ فِي أَشْيَاءَ، فَقَالَ قَوْمٌ: لَا قَطْعَ فِي سَرِقَتِهَا.

وَقَالَ قَوْمٌ: فِيهَا الْقَطْعُ، مِنْ ذَلِكَ: التَّمْرُ، وَالْجُمَّارُ، وَالشَّجَرُ، وَالزَّرْعُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَخْبَرَنِي مُحَمَّدُ بْنُ خَالِدٍ أَخْبَرَنِي أَبِي نا سَلَمَةُ بْنُ عَبْدِ الْمَلِكِ الْغَوْصِيُّ عَنْ الْحَسَنِ - هُوَ ابْنُ صَالِحِ بْنِ حَيٍّ - عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ الْقَاسِمِ بْنِ مُحَمَّدِ بْنِ أَبِي بَكْرٍ الصِّدِّيقِ عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: " سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «لَا قَطْعَ فِي ثَمَرٍ، وَلَا كَثَرٍ» وَالْكَثَرُ الْجُمَّارُ - وَفِي هَذَا آثَارٌ كَثِيرَةٌ لَمْ نَذْكُرْهَا، لِئَلَّا نُطَوِّلَ بِذِكْرِهَا، وَلَوْ صَحَّتْ لَوَجَبَ الْأَخْذُ بِهَا بِذَلِكَ، وَلَلَزِمَ حِينَئِذٍ أَنْ لَا يُقْطَعَ فِي شَيْءٍ مِنْ الثَّمَرِ، وَالْحُبُوبِ - سَوَاءٌ حُصِدَ أَوْ لَمْ يُحْصَدْ، جُدَّ أَوْ لَمْ يُجَدَّ - كَانَ فِي الْمَخَازِنِ أَوْ لَمْ يَكُنْ - لِعُمُومِ هَذَا اللَّفْظِ.

وَلِأَنَّ اللَّهَ تَعَالَى سَمَّى الْيَابِسَ ثَمَرًا، فَقَالَ {وَمِنْ ثَمَرَاتِ النَّخِيلِ وَالْأَعْنَابِ} [النحل: ٦٧] فَسَمَّى اللَّهُ تَعَالَى مَا تُثْمِرُهُ الشَّجَرَةُ، وَالنَّخْلَةُ، وَالزَّرْعُ، ثَمَرًا بِقَوْلِهِ تَعَالَى {وَهُوَ الَّذِي أَنْشَأَ جَنَّاتٍ مَعْرُوشَاتٍ وَغَيْرَ مَعْرُوشَاتٍ وَالنَّخْلَ وَالزَّرْعَ مُخْتَلِفًا أُكُلُهُ وَالزَّيْتُونَ وَالرُّمَّانَ} [الأنعام: ١٤١] الْآيَةَ إلَى قَوْلِهِ تَعَالَى: {وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ} [الأنعام: ١٤١] .

pomegranates} [Al-An'ām: 141]—the verse up to His words: {And give its due right on the day of its harvest} [Al-An'ām: 141].[7]

فَوَجَبَ الْحَقُّ فِيهِ يَوْمَ حَصَادِهِ - وَالْحَصَادُ لَا يَكُونُ إِلَّا فِي الْيَابِسِ - وَأَمَّا سَاقُ الشَّجَرِ، وَالنَّخْلِ، وَأَغْصَانُهُ، فَلَا يَقَعُ عَلَيْهِ اسْمُ ثَمَرٍ أَصْلًا، لَا فِي لُغَةٍ، وَلَا فِي شَرِيعَةٍ.

L42043 The obligation for it becomes due on the day of its harvest—and harvest applies only to dry crops. As for the trunks of trees, including palm trees, and their branches, the term "produce" does not apply to them whatsoever, neither in linguistic usage nor in divine legislation.

وَاخْتَلَفَ الْمُتَأَخِّرُونَ فِي هَذَا، فَقَالَ سُفْيَانُ الثَّوْرِيُّ: لَا قَطْعَ فِيمَا يَفْسُدُ مِنْ يَوْمِهِ مِنَ الطَّعَامِ، مِثْلَ: الثَّرِيدِ، وَاللَّحْمِ، وَمَا أَشْبَهَهُ، لَكِنْ يُعَزَّرُ. وَإِذَا كَانَتِ الثَّمَرَةُ فِي شَجَرَتِهَا لَمْ تُقْطَعِ الْيَدُ فِي سَرِقَتِهَا، لَكِنْ يُعَزَّرُ.

L42044 The later scholars differed regarding this. Sufyan al-Thawri said: There is no amputation for food that spoils within a day, such as tharid, meat, and similar items, but the offender is subjected to *taʿzīr*. If the fruit is on its tree, the hand is not amputated for stealing it, but the offender is subjected to *taʿzīr*.

قَالَ أَبُو حَنِيفَةَ: لَا يُقْطَعُ فِي شَيْءٍ مِنْ: الْإِبِلِ، وَلَا الْبَقَرِ، وَلَا الْغَنَمِ، وَلَا الْخَيْلِ، وَلَا الْبِغَالِ، وَلَا الْحَمِيرِ - إِذَا سُرِقَ كُلُّ ذَلِكَ مِنَ الْمَرْعَى، فَإِذَا كَانَتْ فِي الْمِرَاحِ، أَوْ فِي الدُّورِ فَفِيهَا الْقَطْعُ.

L42045–42046 Abu Hanifa said: There is no hand amputation for the theft of any of the following: camels, cattle, sheep, horses, mules, or donkeys—if all such animals are stolen from the pasture. But if they are taken from the animal fold or from enclosed dwellings, then hand amputation applies.

وَلَا يُقْطَعُ فِي شَيْءٍ مِنَ: الْفَوَاكِهِ الرَّطْبَةِ كَانَتْ فِي الدُّورِ أَوْ فِي الشَّجَرِ - فِي حِرْزٍ كَانَتْ أَوْ غَيْرِ حِرْزٍ - وَكَذَلِكَ الْبُقُولُ كُلُّهَا.

L42047 And cutting [of the hand] is not prescribed for any fresh fruits - whether in dwellings or on trees, in a secure place or not - and likewise for all vegetables.

وَكَذَلِكَ مَا يُسْرِعُ إِلَيْهِ الْفَسَادُ مِنَ اللَّحْمِ، وَالطَّعَامِ كُلِّهِ - كَانَ فِي حِرْزٍ أَوْ فِي غَيْرِ حِرْزٍ.

L42048 Similarly, what is prone to rapid spoilage—such as meat and all food—whether in a protected place or not.

وَلَا قَطْعَ فِي الْمِلْحِ، وَلَا فِي التَّوَابِلِ، وَلَا فِي الزُّرُوعِ كُلِّهَا، فَإِذَا يَبِسَ الزَّرْعُ وَحُمِلَ إِلَى الْأَنْدَرِ، أَوْ إِلَى الْبُيُوتِ وَجَبَ الْقَطْعُ فِي سَرِقَةِ شَيْءٍ مِنْهُ، إِذَا بَلَغَ مَا يَجِبُ فِيهِ الْقَطْعُ.

L42049 There is no amputation for salt, nor for spices, nor for any crops whatsoever. When the crop dries and is transported to the granaries or to the houses, amputation becomes obligatory for stealing any of it, if the stolen amount reaches the prescribed threshold requiring amputation.

وَقَالَ مَالِكٌ: كُلُّ مَا كَانَ مِنَ الْفَوَاكِهِ فِي أَشْجَارِهِ، وَالزَّرْعِ فِي مَزْرَعَتِهِ، فَلَا قَطْعَ فِي شَيْءٍ مِنْهُ - وَكَذَلِكَ الْأَنْعَامُ فِي مَسَارِحِهَا، فَإِذَا أُحْرِزَتِ الْأَنْعَامُ فِي مِرَاحٍ، أَوْ دَارٍ، فَفِيهَا الْقَطْعُ، فَإِذَا جُمِعَ الزَّرْعُ فِي أَنْدَرِهِ أَوْ فِي الدُّورِ فَفِيهِ الْقَطْعُ، وَإِذَا جُنِيَتِ الْفَوَاكِهُ،

L42050 Malik said: All fruits on their trees, crops in their fields—there is no hand amputation for stealing any of these. Likewise, livestock in their grazing areas are exempt. However, if livestock are secured in pens or enclosures, amputation is mandated for their theft. If crops are gathered in granaries

[7] **Qur'an references (L42042):** Qur'an 16:67 (An-Nahl); Qur'an 6:141 (Al-An'am).

or houses, amputation applies. If fruits are harvested and placed in secure storage, amputation is required. Similarly, amputation is mandated for theft of vegetables, all fruits, meat, and anything kept under protection—this being the view of al-Shāfiʿī as well. Abū Thawr said: Amputation applies to fruits on trees—whether fresh or dried—and saplings in walled gardens, provided they are protected and secured. In other cases, he concurred with Mālik and al-Shāfiʿī. Mālik, al-Shāfiʿī, and Abū Thawr ruled that stealing a camel or beast of burden from farmland warrants amputation. Our companions held regarding all aforementioned cases: Amputation applies—whether the property was protected or not—if the thief takes it secretly rather than openly? Abū Muḥammad—may Allāh have mercy on him—said: Given their disagreement as outlined, we examined this matter. Reviewing Abū Thawr's opinion, we found it valid except for his requirement of protection alone, for such protection holds no significance as we previously clarified.

وَأُدْخِلَتْ فِي الْحِرْزِ فَفِيهَا الْقَطْعُ، وَكَذَلِكَ تُقْطَعُ فِي الْبُقُولِ، وَالْفَوَاكِهِ كُلِّهَا، وَفِي اللَّحْمِ وَفِي كُلِّ شَيْءٍ إذَا كَانَ فِي حِرْزٍ - وَهَذَا قَوْلُ الشَّافِعِيِّ أَيْضًا. وَقَالَ أَبُو ثَوْرٍ: إذَا كَانَتْ الْفَوَاكِهُ فِي أَشْجَارِهَا - رَطْبَةً أَوْ غَيْرَ رَطْبَةٍ - وَكَانَ الْفَسِيلُ فِي حَائِطِهِ، وَكَانَ كُلُّ ذَلِكَ مُحْرَزًا مَمْنُوعًا، فَفِيهِ الْقَطْعُ - وَقَالَ - فِيمَا عَدَا ذَلِكَ - بِقَوْلِ مَالِكٍ، وَالشَّافِعِيِّ، وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ وَأَبُو ثَوْرٍ فِي الْبَعِيرِ، أَوْ الدَّابَّةِ تُسْرَقُ مِنْ الْفَدَّانِ، فَفِيهِ الْقَطْعُ. وَقَالَ أَصْحَابُنَا فِي كُلِّ مَا ذَكَرْنَا: الْقَطْعُ - مُحْرَزًا كَانَ أَوْ غَيْرَ مُحْرَزٍ - إذَا سَرَقَهُ السَّارِقُ وَلَمْ يَأْخُذْهُ مُعْلِنًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا نَظَرْنَا فِي ذَلِكَ، وَنَظَرْنَا فِي قَوْلِ أَبِي ثَوْرٍ فَوَجَدْنَاهُ صَحِيحًا، إلَّا اشْتِرَاطَهُ الْحِرْزَ فَقَطْ، فَإِنَّ الْحِرْزَ لَا مَعْنَى لَهُ عَلَى مَا بَيَّنَّا قَبْلُ.

L42051–42052 The statement of Abu Thawr is only valid because it conforms to the general scope of Allah's words, the Exalted: {As for the male thief and the female thief, cut off their hands} [Al-Ma'idah: 38], and to the ruling of the Messenger of Allah (peace and blessings be upon him) mandating the amputation of the thief's hand as a general rule without requiring secure custody. Yet Abu Thawr's opinion contradicts the previously mentioned hadiths because they are weak in authenticity, and no valid proof exists except in authentic hadiths.[8]

وَقَوْلُ أَبِي ثَوْرٍ هَذَا إنَّمَا صَحَّ لِمُوَافَقَتِهِ عُمُومَ قَوْلِ اللَّهِ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] . وَبِحُكْمِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَطْعِ السَّارِقِ عُمُومًا دُونَ اشْتِرَاطِ حِرْزٍ. وَقَوْلُ أَبِي ثَوْرٍ، مُخَالِفٌ لِلْأَحَادِيثِ الْمَذْكُورَةِ قَبْلَ هَذَا، لِأَنَّهَا وَاهِيَةٌ، وَلَا حُجَّةَ إلَّا فِي صَحِيحٍ.

L42053 Then we examined the statements of Mālik and al-Shāfiʿī, and found their evidence to be solely the narration of ʿAmr ibn Shuʿayb and Ibn al-Musayyib, and the narration of Ḥumayd ibn Qays and ʿAbd al-Raḥmān ibn ʿAbdullāh—they had no other proof. We have already demonstrated that these reports are of the utmost weakness, and that reliance on the weak [narration] is invalid. We have stated: These reports are not sound, and even if they were sound, none of them would contain evidence for what its proponents claimed regarding custody. Rather, the obligation in that case would be to

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ، وَالشَّافِعِيِّ، فَوَجَدْنَا حُجَّتَهُمَا إنَّمَا هِيَ خَبَرُ عَمْرِو بْنِ شُعَيْبٍ، وَابْنِ الْمُسَيَّبِ، وَخَبَرُ حُمَيْدِ بْنِ قَيْسٍ، وَعَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ، لَا حُجَّةَ لَهُمَا غَيْرُهَا، وَقَدْ بَيَّنَّا أَنَّ هَذِهِ الْأَخْبَارَ فِي غَايَةِ الْوَهْيِ، وَأَنَّ الِاحْتِجَاجَ بِالْوَاهِي بَاطِلٌ؛ وَقَدْ قُلْنَا: إنَّ هَذِهِ الْأَخْبَارِ لَا تَصِحُّ وَلَوْ صَحَّتْ لَمَا كَانَ فِي شَيْءٍ مِنْهَا دَلِيلٌ عَلَى مَا ادَّعَاهُ مَنْ ادَّعَاهُ مِنْ الْحِرْزِ، بَلْ كَانَ الْوَاجِبُ حِينَئِذٍ أَنْ لَا يُقْطَعَ فِي شَيْءٍ مِمَّا يَقَعُ عَلَيْهِ اسْمُ ثَمَرٍ، وَلَا

[8] **Qur'an references (L42052):** Qur'an 5:38 (Al-Ma'idah).

abstain from definitive rulings regarding anything designated as “fruit” or “abundance,” and to rule definitively only if stored in the granary—whether fresh or not. This would have been the ruling if the report were authentic. Anything beyond this is invalid, based on false conjecture.

اسْمُ كَثَرٍ، وَأَنْ يُقْطَعَ فِي ذَلِكَ إِنْ آوَاهُ الْجَرِينُ - رَطْبًا كَانَ أَوْ غَيْرَ رَطْبٍ - فَهَذَا كَانَ يَكُونُ الْحُكْمُ - لَوْ صَحَّ الْخَبَرُ - وَمَا عَدَا هَذَا فَبَاطِلٌ، بِظَنٍّ كَاذِبٍ

L42054 If the narrations are fundamentally unauthentic, then the obligatory position is what our companions have stated: that amputation is obligatory for every fruit and every grain—whether hanging on its tree, cut down, in a granary, or not in a granary—if taken by a thief who conceals his taking, acts without compulsion, and has no legitimate right to it. Amputation is indeed required for every food item, whether perishable or not, if taken surreptitiously in the manner of theft, neither out of necessity nor due to a right that necessitates his taking it. Amputation is also obligatory for crops if taken from his cultivated field (faddan) or its midst, through theft involving concealment or hiding his act, without necessity and without any legitimate claim to it.

فَإِذَا لَمْ تَصِحَّ الْآثَارُ أَصْلًا فَالْوَاجِبُ مَا قَالَهُ أَصْحَابُنَا مِنْ أَنَّ الْقَطْعَ وَاجِبٌ فِي كُلِّ ثَمَرٍ، وَفِي كُلِّ كَثَرٍ - مُعَلَّقًا كَانَ فِي شَجَرِهِ أَوْ مَجْذُوذًا، أَوْ فِي جَرِينٍ كَانَ أَوْ غَيْرِ جَرِينٍ - إِذَا أَخَذَهُ سَارِقًا لَهُ، مُسْتَخْفِيًا بِأَخْذِهِ، غَيْرَ مُضْطَرٍّ إِلَيْهِ، وَبِغَيْرِ حَقٍّ لَهُ، فَإِنَّ الْقَطْعَ فِي كُلِّ طَعَامٍ كَانَ مِمَّا يَفْسُدُ أَوْ لَا يَفْسُدُ - إِذَا أَخَذَهُ عَلَى وَجْهِ السَّرِقَةِ غَيْرَ مَشْهُورٍ بِأَخْذِهِ، لَا حَاجَةَ إِلَيْهِ، وَلَا عَنْ حَقٍّ أَوْجَبَ لَهُ أَخْذُهُ، فَإِنَّ الْقَطْعَ وَاجِبٌ فِي الزَّرْعِ، إِذَا أُخِذَ مِنْ فَدَّانِهِ، أَوْ هُوَ بِأَنْدَرِهِ، عَلَى وَجْهِ السَّرِقَةِ مُسْتَتِرًا، أَوْ مُخْتَفِيًا بِأَخْذِهِ، لَا عَنْ حَاجَةٍ إِلَيْهِ، وَلَا عَنْ حَقٍّ لَهُ.

L42055 As for livestock, amputation applies similarly, unless it is a stray animal taken openly. In that case, the taker is considered to be acting rightly when permitted to take it, but disobedient—not a thief—when not permitted. Thus, no amputation applies here, as he is not a thief, for amputation is mandated only for the thief. Our basis in this is the words of Allah, the Exalted: “As for the thief, male or female, cut off their hands” (Quran 5:38), and the universal ruling of the Messenger of Allah—peace and blessings of Allah be upon him—to amputate the thief. Success comes solely from Allah, the Exalted.[9]

وَأَمَّا الْمَاشِيَةُ - فَالْقَطْعُ فِيهَا أَيْضًا كَذَلِكَ، إِلَّا أَنْ تَكُونَ ضَالَّةً يَأْخُذُهَا مُعْلِنًا فَيَكُونُ مُحْسِنًا، حَيْثُ أُبِيحَ لَهُ أَخْذُهَا، وَعَاصِيًا لَا سَارِقًا، حَيْثُ لَمْ يُبَحْ لَهُ أَخْذُهَا، فَلَا قَطْعَ هَاهُنَا، لِأَنَّهُ لَيْسَ سَارِقًا، وَإِنَّمَا الْقَطْعُ عَلَى السَّارِقِ - وَعُمْدَتُنَا فِي ذَلِكَ قَوْلُ اللَّهِ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] وَحُكْمُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَطْعِ السَّارِقِ عُمُومًا وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of differing opinions concerning amputation for stealing a bird.

[مَسْأَلَةُ الِاخْتِلَافِ فِي الْقَطْعِ فِي الطَّيْرِ إِذَا سُرِقَ]

L42056

L42057 Case 2273: What is the legal ruling for one who steals a bird?

٢٢٧٣ - مَسْأَلَةٌ: الطَّيْرُ فِيمَنْ سَرَقَهَا؟

L42058–42059 Abu Muhammad—may Allah have mercy on him—said: People have differed regarding amputating the hand for stealing birds such as chickens, geese, and

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي الْقَطْعِ فِي الطَّيْرِ إِذَا سُرِقَ، كَالدَّجَاجِ، وَالْإِوَزِّ، وَغَيْرِهَا. فَقَالَتْ طَائِفَةٌ: لَا قَطْعَ فِي شَيْءٍ مِنْ ذَلِكَ: كَمَا نَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ

[9] **Qur’an references (L42055):** Qur’an 5:38 (Al-Ma’idah).

others. A group held that there is no amputation for any of that, as narrated by Muhammad ibn Sa'id ibn Nabat from 'Abdullah ibn Nasr from Qasim ibn Asbagh from Ibn Waddah from Musa ibn Mu'awiyah from Waki' from Sufyan al-Thawri from Jabir ibn Yazid al-Ju'fi from 'Abdullah ibn Yasar, who said: A man who stole chickens was brought to 'Umar ibn 'Abd al-'Aziz, and he intended to amputate his hand. Abu Salamah ibn 'Abd al-Rahman ibn 'Awf said: "'Uthman used to say: There is no amputation for birds." So 'Umar released him. Narrated by Hummam from Ibn Mufarrij from Ibn al-A'rabi from al-Dabari from 'Abd al-Razzaq from 'Abdullah ibn al-Mubarak from Sufyan al-Thawri from Jabir al-Ja'fari from 'Abdullah ibn Yasar, who said: 'Umar ibn 'Abd al-'Aziz intended to amputate the hand of a thief who stole a chicken. Abu Salamah ibn 'Abd al-Rahman ibn 'Awf said to him: "Verily, 'Uthman ibn 'Affan said: There is no amputation for birds."

نَبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا سُفْيَانُ الثَّوْرِيُّ عَنْ جَابِرِ بْنِ يَزِيدَ الْجُعْفِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يَسَارٍ قَالَ: أُتِيَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ بِرَجُلٍ قَدْ سَرَقَ دَجَاجًا، فَأَرَادَ أَنْ يَقْطَعَهُ، فَقَالَ أَبُو سَلَمَةَ بْنُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ كَانَ عُثْمَانُ يَقُولُ: لَا قَطْعَ فِي طَيْرٍ؟ فَخَلَّى عُمَرُ سَبِيلَهُ. حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ عَبْدِ اللَّهِ بْنِ الْمُبَارَكِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ جَابِرٍ الْجَعْفَرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ يَسَارٍ، قَالَ: أَرَادَ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ أَنْ يَقْطَعَ سَارِقًا سَرَقَ دَجَاجَةً، فَقَالَ لَهُ أَبُو سَلَمَةَ بْنُ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ: إِنَّ عُثْمَانَ بْنَ عَفَّانَ قَالَ: لَا قَطْعَ فِي طَيْرٍ.

L42060 And with this, Abu Hanifah, Ahmad ibn Hanbal, their companions, and Ishaq ibn Rahwayh hold the opinion. A group said: Amputation applies in this case if he steals from a safeguarded place—and this is the view of Malik, Al-Shafi'i, and their companions. Another group said: Amputation applies in the act under all circumstances if it is stolen. Abu Muhammad—may Allah have mercy on him—said: We examined their disagreements regarding that matter, and found that those who argued against amputation in this case cited the opinion of Uthman ibn Affan concerning the abolition of amputation for it—with no known dissenting opinion among the Companions regarding that.

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمَا، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ. وَقَالَتْ طَائِفَةٌ: الْقَطْعُ فِيهِ - إذَا سَرَقَ مِنْ حِرْزٍ - وَهُوَ قَوْلُ مَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابُهُمَا. وَقَالَتْ طَائِفَةٌ: الْقَطْعُ فِيهَا عَلَى كُلِّ حَالٍ، إذَا سُرِقَتْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِيمَا اخْتَلَفُوا مِنْ ذَلِكَ، فَوَجَدْنَا مَنْ احْتَجَّ بِقَوْلِ مَنْ لَمْ يَرَ الْقَطْعَ فِيهِ، فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ إبْطَالَ الْقَطْعِ فِيهِ قَدْ رُوِيَ عَنْ عُثْمَانَ بْنِ عَفَّانَ - وَلَا يُعْرَفُ لَهُ فِي ذَلِكَ مُخَالِفٌ مِنْ الصَّحَابَةِ.

L42061 And some of them claimed that he narrated something similar from ʿAlī. This is unattested.

وَادَّعَى بَعْضُهُمْ أَنَّهُ رَوَى نَحْوَ ذَلِكَ عَنْ عَلِيٍّ، هَذَا لَا يُعْرَفُ.

L42062–42064 They said: The foundational principle is that it is inherently insignificant and permissible. If owned, the thief of such property is not subjected to amputation. When an item bears these attributes, the thief is not subjected to amputation. As for a bird, if it is unowned and a fledgling, it has no value. It only gains value after becoming owned through training. This constitutes all they have used to obfuscate the issue. Do they possess any specious argu-

وَقَالُوا: إنَّ الْأَصْلَ فِيهِ أَنَّهُ تَافِهٌ فِي الْأَصْلِ مُبَاحٌ، فَإِذَا كَانَ مَمْلُوكًا لَمْ يُقْطَعْ سَارِقُهُ، إذَا كَانَ مَا هَذَا وَصْفُهُ لَمْ يُقْطَعْ سَارِقُهُ، وَالطَّيْرُ إذَا كَانَ مُبَاحًا، وَكَانَ فَرْخًا فَلَا قِيمَةَ لَهُ، وَإِنَّمَا تَصِيرُ لَهُ الْقِيمَةُ بَعْدَمَا يَصِيرُ مَمْلُوكًا بِالتَّعْلِيمِ. فَهَذَا كُلُّ مَا مَوَّهُوا بِهِ، مَا لَهُمْ

ment beyond this? Do they have any valid proof in this matter whatsoever? Abū Muḥammad—may Allah have mercy on him—said: Thus, their assertion stands devoid of proof, and the bird constitutes property from... As for properties that have been established as the rightful possession of their owner—such as chickens, pigeons, and the like—the amputation of the hand is prescribed, in accordance with the command of Allah, the Exalted: *"As for the male thief and the female thief, cut off each of their hands"* [al-Mā'idah 5:38].[10]

L42065 The Messenger of Allah (peace be upon him) prescribed the amputation of the hand for the one who steals.

L42066 Neither Allah the Exalted nor His Messenger—peace be upon him—specified any exception from that (ruling) for a bird or anything else. By Allah! Allah the Exalted—who knows the hidden reality of every created being, all that exists, all that occurs, of any movement, breath, or word, throughout the eternity of eternities, and all that would never exist—even if it were to exist in any conceivable way—if He had intended to specify an exception from amputation for one who steals a bird, He would not have neglected it, nor overlooked it.

L42067 We testify by the testimony of Allah, the Most High, that Allah, the Most High, never intended to abolish amputation for one who steals birds; rather, Allah, the Most High, has explicitly commanded it - and all praise is due to Allah, Lord of the worlds.

L42068 ## The Issue of Proper Slaughter During Hunting When Taking Possession

L42069 2274. Issue: On Hunting? Abu Muhammad (may Allah have mercy on him) said: Pertaining to this chapter is the matter of hunting. Abu Hanifa does not deem amputation applicable in cases of hunting if one has original ownership. He also does not deem amputation applicable to someone who steals camels that are owned from their enclosure, nor to one who steals a

[10]**Qur'an references (L42062):** Qur'an 5:38 (Al-Ma'idah).

شُبْهَةٌ غَيْرُ ذَلِكَ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَإِذَا قَدْ عَرَى قَوْلُهُمْ مِنْ حُجَّةٍ، وَكَانَ الطَّيْرُ مَالًا مِنْ الْأَمْوَالِ، فَقَدْ تَعَيَّنَ ذَلِكَ مِلْكًا لِصَاحِبِهِ، كَالدَّجَاجِ، وَالْحَمَامِ، وَشِبْهِهَا وَجَبَ فِيهِ الْقَطْعُ بِقَوْلِ اللَّهِ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

وَبِإِيجَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْقَطْعَ عَلَى مَنْ سَرَقَ.

وَلَمْ يَخُصَّ اللَّهُ تَعَالَى، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - مِنْ ذَلِكَ - طَيْرًا وَلَا غَيْرَهُ - وَتَاللَّهِ، أَرَادَ اللَّهُ تَعَالَى الَّذِي يَعْلَمُ سِرَّ كُلِّ مَنْ خَلَقَ، وَكُلَّ مَا هُوَ كَائِنٌ، وَحَادِثٌ، مِنْ حَرَكَةٍ أَوْ نَفَسٍ، وَكَلِمَةٍ، أَبَدَ الْأَبَدِ، وَكُلَّ مَا لَا يَكُونُ لَوْ كَانَ كَيْفَ كَانَ يَكُونُ، أَنْ يَخُصَّ مِنْ الْقَطْعِ مَنْ سَرَقَ الطَّيْرَ، لَمَا أَغْفَلَ ذَلِكَ، وَلَا أَهْمَلَهُ.

فَنَحْنُ نَشْهَدُ بِشَهَادَةِ اللَّهِ تَعَالَى أَنَّ اللَّهَ تَعَالَى لَمْ يُرِدْ قَطُّ إسْقَاطَ الْقَطْعِ عَنْ سَارِقِ الطَّيْرِ، بَلْ قَدْ أَمَرَ اللَّهُ تَعَالَى بِقَطْعِهِ نَصًّا - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

[مَسْأَلَةُ الْقَطْعِ فِي الصَّيْدِ إذَا تَمَلَّكَ]

٢٢٧٤ - مَسْأَلَةٌ: الصَّيْدُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: يَتَعَلَّقُ بِهَذَا الْبَابِ أَمْرُ الصَّيْدِ، فَإِنَّ أَبَا حَنِيفَةَ لَا يَرَى الْقَطْعَ فِي الصَّيْدِ إذَا تَمَلَّكَ أَصْلًا، وَلَا يَرَى الْقَطْعَ فِيمَنْ سَرَقَ إبِلًا مُتَمَلَّكًا مِنْ حِرْزِهِ، وَلَا عَلَى مَنْ سَرَقَ كَذَلِكَ غَزَالًا، أَوْ خَشْفًا، أَوْ ظَبْيًا، أَوْ حِمَارًا وَحْشِيًّا، أَوْ أَرْنَبًا، أَوْ غَيْرَ ذَلِكَ مِنْ الصَّيْدِ.

gazelle, a fawn, a gazelle, a wild donkey, a rabbit, or any other type of game animal.

L42070 Mālik, al-Shāfiʿī, and their followers held that amputation applies in all such cases according to the differing opinions we previously mentioned from them regarding the consideration of safeguarded property. Abū Muḥammad (may God have mercy on him) said: "This is a matter wherein we find no valid argument for the Ḥanafīs whatsoever, nor that anyone before their leading scholar ever upheld this position. Rather, it constitutes a rupture of consensus and a plain contradiction of the Quran. They claimed they analogized it to birds. If they argue that game resembles birds as wild animals inherently permissible [to take], they should be told: 'Then by this analogy, you must waive amputation for one who steals ruby, gold, silver, copper, iron, lead, tin, mercury, or sea wool (coral), for all these are inherently permissible substances unowned like game—with no distinction.' This comparison is broader than yours, and its effective cause more comprehensive than your rationale."

L42071–42072 Moreover, they have nullified this analogy, for they did not analogize the killer of domesticated chickens to prohibited hunting during the state of consecration (iḥrām), nor did they analogize livestock and horses—according to those who permit them—to four-legged game animals. All of this was established through textual evidence or definitive consensus. Thus, it is established that amputation is obligatory for one who steals owned hunted game, just as it is obligatory for other forms of property. And success comes only from Allah, the Exalted.

وَرَأَى مَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُهُمَا، الْقَطْعَ فِي كُلِّ ذَلِكَ عَلَى حَسَبِ الِاخْتِلَافِ الَّذِي أَوْرَدْنَاهُ عَنْهُمْ فِي مُرَاعَاةِ الْحِرْزِ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا مَكَانٌ مَا نَعْلَمُ لِلْحَنَفِيِّينَ فِيهِ حُجَّةً أَصْلًا، وَلَا أَنَّهُ قَالَ بِهِ أَحَدٌ قَبْلَ شَيْخِهِمْ، بَلْ هُوَ خَرْقٌ لِلْإِجْمَاعِ، وَخِلَافٌ لِلْقُرْآنِ مُجَرَّدٌ، إلَّا أَنَّهُمْ ادَّعُوا أَنَّهُمْ قَاسُوهُ عَلَى الطَّيْرِ؟ فَإِنْ قَالُوا: إنَّ الصَّيْدَ يُشْبِهُ الطَّيْرَ فِي أَنَّهُمَا حَيَوَانٌ وَحْشِيٌّ مُبَاحٌ فِي أَصْلِهِ؟ قِيلَ لَهُمْ: فَأَسْقِطُوا عَلَى هَذَا الْقِيَاسِ الْقَطْعَ عَمَّنْ سَرَقَ يَاقُوتًا، أَوْ ذَهَبًا، أَوْ فِضَّةً، أَوْ نُحَاسًا، أَوْ حَدِيدًا، أَوْ رَصَاصًا، أَوْ قَزْدِيرًا، أَوْ زِئْبَقًا، أَوْ صُوفَ الْبَحْرِ، لِأَنَّ هَذَا كُلَّهُ أَجْسَامٌ مُبَاحَةٌ فِي الْأَصْلِ، غَيْرُ مُتَمَلَّكَةٍ كَالصَّيْدِ، وَلَا فَرْقَ - فَهَذَا تَشْبِيهٌ أَعَمُّ مِنْ تَشْبِيهِكُمْ، وَعِلَّةٌ أَعَمُّ مِنْ عِلَّتِكُمْ.

وَأَيْضًا - فَإِنَّهُمْ قَدْ نَقَضُوا هَذَا الْقِيَاسَ، فَلَمْ يَقِيسُوا قَاتِلَ الدَّجَاجِ الْإِنْسِيِّ عَلَى الصَّيْدِ الْمُحَرَّمِ فِي الْإِحْرَامِ، وَلَا قَاسُوا الْأَنْعَامَ، وَالْخَيْلَ - عِنْدَ مَنْ يُبِيحُهَا - عَلَى ذَوَاتِ الْأَرْبَعِ مِنْ الصَّيْدِ، وَكَانَ هَذَا كُلُّهُ نَصًّا أَوْ إجْمَاعًا مُتَيَقَّنًا فَصَحَّ أَنَّ الْقَطْعَ وَاجِبٌ عَلَى مَنْ سَرَقَ صَيْدًا مُتَمَلَّكًا، كَمَا هُوَ وَاجِبٌ فِي سَائِرِ الْأَمْوَالِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِيمَنْ سَرَقَ خَمْرًا لِذِمِّيٍّ أَوْ لِمُسْلِمٍ أَوْ سَرَقَ خِنْزِيرًا أَوْ مَيْتَةً]

A jurisprudential issue concerning one who steals wine belonging to a *dhimmi* or a Muslim, or steals a pig or carrion.

L42073

L42074 2275 – Issue: Concerning one who steals wine belonging to a dhimmi or a Muslim, or steals a pig under the same circumstances, or carrion similarly? Abū Muḥammad—may Allāh have mercy on him—said: Ḥammām narrated to us, Ibn Mufarrij narrated to us, Ibn al-Aʿrabī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated from Ibn Jurayj from ʿAṭāʾ, who

٢٢٧٥ - مَسْأَلَةٌ: فِيمَنْ سَرَقَ خَمْرًا لِذِمِّيٍّ، أَوْ لِمُسْلِمٍ، أَوْ سَرَقَ خِنْزِيرًا كَذَلِكَ، أَوْ مَيْتَةً كَذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ عَنْ عَطَاءٍ قَالَ: مَنْ سَرَقَ خَمْرًا مِنْ أَهْلِ الْكِتَابِ، قَالَ

said: “Whoever steals wine from the People of the Book”—ʿAṭāʾ said: “It was asserted regarding wine and pigs: if a Muslim steals them from the People of the Book, his hand is to be cut off, because these are permissible for them in their religion. But if he steals such items from a Muslim, there is no cutting of the hand for him.”

عَطَاءٌ: زَعَمُوا فِي الْخَمْرِ، وَالْخِنْزِيرِ، يَسْرِقُهُ الْمُسْلِمُ مِنْ أَهْلِ الْكِتَابِ يُقْطَعُ، مِنْ أَجْلِ أَنَّهُ حَلَّ لَهُمْ فِي دِينِهِمْ، وَإِنْ سَرَقَ ذَلِكَ مِنْ مُسْلِمٍ فَلَا قَطْعَ عَلَيْهِ.

L42075 And via him, to Abd al-Razzaq, from Ma’mar, from Ibn Abi Najih, from Ata, who said: Whoever steals wine from the People of the Book is amputated.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ أَبِي نَجِيحٍ عَنْ عَطَاءٍ قَالَ: مَنْ سَرَقَ خَمْرًا مِنْ أَهْلِ الْكِتَابِ قُطِعَ.

L42076 A group said: There is no amputation upon him for that, but he must pay a fine equivalent to it—this being the view of Shurayḥ, Sufyān al-Thawrī, Mālik, Abū Ḥanīfa, and their followers. Another group said: There is no amputation upon him for that, nor any financial liability—this being the view of al-Shāfiʿī, Aḥmad, and their followers. Is this not the view of our companions? Abū Muḥammad—may Allah have mercy on him—said: We examined this matter and found the opinion of those who imposed financial liability while negating amputation to be utterly invalid. For wine and pork must either be considered property belonging to the dhimmī—they having monetary value—or not considered his property at all, with no third category existing. If wine and pork are deemed property of the dhimmī—they having monetary value—then amputation becomes obligatory regarding them according to their principles, when each reaches the threshold requiring amputation.

وَقَالَتْ طَائِفَةٌ: لَا قَطْعَ عَلَيْهِ فِي ذَلِكَ، وَلَكِنْ يَغْرَمُ لَهَا مِثْلَهَا - وَهَذَا قَوْلُ شُرَيْحٍ، وَسُفْيَانَ الثَّوْرِيِّ، وَمَالِكٍ، وَأَبِي حَنِيفَةَ، وَأَصْحَابِهِمْ. وَقَالَتْ طَائِفَةٌ: لَا قَطْعَ عَلَيْهِ ذَلِكَ، وَلَا ضَمَانَ - وَهُوَ قَوْلُ الشَّافِعِيِّ، وَأَحْمَدَ، وَأَصْحَابِهِمَا - وَبِهِ يَقُولُ أَصْحَابُنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي ذَلِكَ، فَرَأَيْنَا قَوْلَ مَنْ أَوْجَبَ الضَّمَانَ وَأَسْقَطَ الْقَطْعَ، فِي غَايَةِ الْفَسَادِ؛ لِأَنَّهُ لَا يَخْلُو الْخَمْرُ، وَالْخِنْزِيرُ، مِنْ أَنْ يَكُونَا مَالًا لِلذِّمِّيِّ لَهُ قِيمَةٌ، أَوْ لَا يَكُونَا مَالًا لَهُ، وَلَا سَبِيلَ إلَى قِسْمٍ ثَالِثٍ أَصْلًا، فَإِنْ كَانَتْ الْخَمْرُ، وَالْخِنْزِيرُ، مَالًا لِلذِّمِّيِّ، لَهُمَا قِيمَةٌ، فَالْقَطْعُ فِيهِمَا وَاجِبٌ - عَلَى أُصُولِهِمْ - إذَا بَلَغَ كُلُّ وَاحِدٍ مِنْهُمَا مَا فِيهِ الْقَطْعُ.

L42077–42079 If wine and pigs have no value and are not property of the dhimmi, then on what basis did they rule for liability over what has no value and is not property? Is this anything but an invalid judgment from them, and the transfer of property without [just cause?]... It is a right, especially since they state: If a Muslim steals wine belonging to a Muslim or a pig belonging to a Muslim, there is neither amputation nor liability, because they are not property for him, nor do they hold value. The utmost astonishment lies in how they impose liability upon him for these—even though he has no means to fulfill them—since in their view, such items fall under what is measured by volume or weight, and thus like-for-like compensation applies.

وَإِنْ كَانَ الْخَمْرُ، وَالْخِنْزِيرُ، لَا قِيمَةَ لَهُمَا، وَلَيْسَا مَالًا لِلذِّمِّيِّ، فَبِأَيِّ وَجْهٍ قَضَوْا بِضَمَانِ مَا لَا قِيمَةَ لَهُ، وَلَا هُوَ مَالٌ، وَهَلْ هَذَا مِنْهُمْ إلَّا قَضَاءٌ بِالْبَاطِلِ؟ وَإِيكَالُ مَالِ بِغَيْرِ حَقٍّ، لَا سِيَّمَا وَهُمْ يَقُولُونَ: إنَّ الْمُسْلِمَ إنْ سَرَقَ خَمْرًا لِمُسْلِمٍ، أَوْ خِنْزِيرًا لِمُسْلِمٍ، فَلَا قَطْعَ، وَلَا ضَمَانَ، لِأَنَّهُمَا لَيْسَا مَالًا لَهُ، وَلَا لَهُمَا قِيمَةٌ. وَالْعَجَبُ كُلُّهُ، كَيْفَ يَقْضُونَ بِضَمَانِهِمَا عَلَيْهِ - وَهُوَ لَا سَبِيلَ لَهُ إلَى قَضَائِهِمَا -؛ لِأَنَّهُ عِنْدَهُمْ مِمَّا يُكَالُ أَوْ يُوزَنُ - فَفِيهِمَا الْمِثْلُ عِنْدَهُمْ.

L42080 Then we examined the opinion of those who held that amputation and

financial liability apply in that matter, and the opinion of those who did not hold this view: there is neither amputation nor financial liability.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ رَأَى الْقَطْعَ فِي ذَلِكَ وَالضَّمَانَ، وَقَوْلَ مَنْ لَا يَرَى فِي ذَلِكَ - لَا قَطْعًا وَلَا ضَمَانًا.

L42081 We examined the position of those who held the opinion of amputation and compensation, yet found no foundational evidence for their stance whatsoever—unless they say: "It is their property and holds value in their view?" We responded: "Inform us—did they acquire ownership of it by a rightful claim from God, entitling them to its possession and consumption, or by falsehood?" There is no third alternative. If they say it is by a rightful claim and command from God Almighty, they disbelieve by consensus (though they do not make this claim), and they would be compelled to affirm that the religions of the Jews and Christians are true—a statement no Muslim would ever make.

فَنَظَرْنَا فِيمَنْ رَأَى الْقَطْعَ وَالضَّمَانَ، فَلَمْ نَجِدْ لَهُمْ حُجَّةً أَصْلًا. إِلَّا إِنْ قَالُوا: إِنَّهَا مَالٌ لَهُمْ، وَلَهَا قِيمَةٌ عِنْدَهُمْ؟ فَقُلْنَا لَهُمْ: أَخْبِرُونَا، أَبِحَقٍّ مِنَ اللَّهِ تَمَلَّكُوهَا، وَاسْتَحَقُّوا مِلْكَهَا وَشُرْبَهَا، أَوْ بِبَاطِلٍ؟ وَلَا سَبِيلَ إِلَى قِسْمٍ ثَالِثٍ؟ فَإِنْ قَالُوا: بِحَقٍّ، وَأَمْرٍ مِنَ اللَّهِ تَعَالَى، كَفَرُوا بِلَا خِلَافٍ - وَهُمْ لَا يَقُولُونَ هَذَا - وَيَلْزَمُهُمْ أَنْ يَقُولُوا: إِنَّ دِينَ الْيَهُودِ وَالنَّصَارَى حَقٌّ، وَهَذَا لَا يَقُولُهُ مُسْلِمٌ أَصْلًا.

L42082 Allah, the Exalted, said: "Indeed, the religion with Allah is Islam" [*Surah Āl ʿImrān 3:19*].[11]

قَالَ اللَّهُ تَعَالَى {إِنَّ الدِّينَ عِنْدَ اللَّهِ الإِسْلامُ} [آل عمران: ١٩] .

L42083 And He, the Exalted, said: "Whoever seeks a religion other than Islam, it will never be accepted from him" [Al-Imran 3:85].[12]

وَقَالَ تَعَالَى {وَمَنْ يَبْتَغِ غَيْرَ الإِسْلامِ دِينًا فَلَنْ يُقْبَلَ مِنْهُ} [آل عمران: ٨٥] .

L42084 Since what we have stated is confirmed, and it is confirmed that Allah the Exalted has prohibited the consumption of intoxicants, their sale, and their ownership for every Muslim and disbeliever alike, through His exalted statement commanding the Messenger (peace be upon him) to proclaim: "O mankind, I am the Messenger of Allah to you all" [Al-A'rāf 7:158].[13]

فَإِذْ قَدْ صَحَّ مَا قُلْنَا، وَصَحَّ أَنَّ اللَّهَ تَعَالَى حَرَّمَ شُرْبَ الْخَمْرِ، عَلَى كُلِّ مُسْلِمٍ وَكَافِرٍ، وَحَرَّمَ بَيْعَهَا عَلَى كُلِّ مُسْلِمٍ وَكَافِرٍ، وَحَرَّمَ مِلْكَهَا عَلَى كُلِّ مُسْلِمٍ وَكَافِرٍ بِقَوْلِهِ تَعَالَى آمِرًا لِلرَّسُولِ - عَلَيْهِ السَّلَامُ - أَنْ يَقُولَ {يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا} [الأعراف: ١٥٨] .

L42085 And by his statement—peace be upon him—"Every intoxicant is forbidden," and that He who prohibited its consumption also prohibited its sale, it is established that it is not legitimate property for anyone and that it has no value whatsoever. Likewise, the pig—due to the comprehensive prohibition that applies to it.

وَبِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «كُلُّ مُسْكِرٍ حَرَامٌ» وَأَنَّ الَّذِي حَرَّمَ شُرْبَهَا حَرَّمَ بَيْعَهَا، ثَبَتَ أَنَّهَا لَيْسَتْ مَالًا لِأَحَدٍ، وَأَنَّهُ لَا قِيمَةَ لَهَا أَصْلًا، وَكَذَلِكَ الْخِنْزِيرُ - لِلتَّحْرِيمِ الْوَارِدِ فِيهِ جُمْلَةً.

[11] **Qur'an references (L42082):** Qur'an 3:19 (Ali 'Imran).
[12] **Qur'an references (L42083):** Qur'an 3:85 (Ali 'Imran).
[13] **Qur'an references (L42084):** Qur'an 7:158 (Al-A'raf).

L42086–42088 Since He has entirely prohibited ownership of it, whoever stole it did not steal anyone's property. It has no value. Fundamentally, if he did not steal something permissible to retain in its entirety, then nothing is incumbent upon him - though the obligation to spill their blood (the swine's blood) applies universally, regardless of whether the individual is Muslim or non-Muslim, as does the killing of swine. Success comes solely from Allah the Exalted.

Abū Muḥammad - may Allah have mercy on him - stated: Regarding one who steals carrion, amputation is mandated for the thief because its hide remains the owner's property after tanning, enabling its use and sale. If it is objected: "What distinguishes swine from carrion? You mandate amputation for carrion due to its hide, yet not for swine. Why not mandate it for the swine's hide, when its hide - like all carrion hides - becomes permissible for use and sale after tanning?"

Our response - praise be to Allah - is that the distinction is abundantly clear: The animal that becomes carrion, during its lifetime, was wholly owned by its owner. Upon its death, ownership ceases over its flesh, fat, blood, entrails, dung, brain, and cartilage - all absolutely prohibited - but persists over what Allah permits for benefit: the hide, hair, wool, undercoat, and bones. These remain owned unless the owner explicitly permits another to take them or discards them entirely and renounces ownership of them. Thus, if stolen while undiscarded, the thief has taken legitimately owned property - property belonging to a Muslim or *dhimmi* - making hand amputation obligatory for that theft.

L42089 As for the pig, no one can own it during its lifetime, for it is entirely impure and forbidden. Whoever steals it alive or dead has merely taken ownerless property. As for what is impermissible to own, its hide belongs to whoever hastens to it, takes it, and tans it. Once tanned, it then becomes a type of ownable property. Whoever steals it becomes liable to hand amputation. The amputation penalty is obligatory for stealing elephant bones, and all carcasses are treated similarly, because the Messenger of Allah—peace be upon him—said, "Only their consumption is forbidden"—excluding the bones of the pig. Its hair and every part of it remain entirely forbidden; no one may lawfully

فَإِذْ قَدْ حَرَّمَ مِلْكَهَا جُمْلَةً، كَانَ مَنْ سَرَقَهَا لَمْ يَسْرِقْ مَالًا لِأَحَدٍ، لَا قِيمَةَ لَهَا أَصْلًا، وَلَا سَرَقَ شَيْئًا يَحِلُّ إبْقَاؤُهُ جُمْلَةً، فَلَا شَيْءَ عَلَيْهِ - وَالْوَاجِبُ هَرْقُهَا عَلَى كُلِّ حَالٍ لِمُسْلِمٍ وَكَافِرٍ، وَكَذَلِكَ قَتْلُ الْخَنَازِيرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا مَنْ سَرَقَ مَيْتَةً، فَإِنَّ فِيهَا الْقَطْعَ؛ لِأَنَّ جِلْدَهَا بَاقٍ عَلَى مِلْكِ صَاحِبِهَا، بِدَبْغِهِ فَيَنْتَفِعُ بِهِ وَيَبِيعُهُ. فَإِنْ قِيلَ: مَا الْفَرْقُ بَيْنَ الْخِنْزِيرِ وَالْمَيْتَةِ؟ أَوْجَبْتُمْ الْقَطْعَ فِي الْمَيْتَةِ مِنْ أَجْلِ جِلْدِهَا، وَلَمْ تُوجِبُوا الْقَطْعَ فِي الْخِنْزِيرِ؟ فَهَلَّا أَوْجَبْتُمُوهُ مِنْ أَجْلِ جِلْدِهِ، وَجِلْدُهُ وَجِلْدُ سَائِرِ الْمَيْتَاتِ سَوَاءٌ - فِي جَوَازِ الِانْتِفَاعِ بِهِ وَبَيْعِهِ - إذَا دُبِغَ؟ فَجَوَابُنَا: أَنَّ الْفَرْقَ بَيْنَهُمَا فِي غَايَةِ الْوُضُوحِ - وَلِلَّهِ الْحَمْدُ - وَهُوَ أَنَّ الْمَيْتَةَ كَانَتْ فِي حَيَاتِهَا مُتَمَلَّكَةً لِصَاحِبِهَا بِأَسْرِهَا، فَلَمَّا مَاتَتْ سَقَطَ مِلْكُهُ عَنْ لَحْمِهَا، وَشَحْمِهَا، وَدَمِهَا، وَمِعَاهَا، وَفَرْثِهَا، وَدِمَاغِهَا، وَغَضَارِيفِهَا؛ لِأَنَّ كُلَّ هَذَا حَرَامٌ مُطْلَقُ التَّحْرِيمِ، وَبَقِيَ مِلْكُهُ كَمَا كَانَ، عَلَى مَا أَبَاحَ اللَّهُ تَعَالَى لَهُ الِانْتِفَاعَ بِهِ مِنْهَا، وَهُوَ الْجِلْدُ، وَالشَّعْرُ، وَالصُّوفُ، وَالْوَبَرُ، وَالْعَظْمُ، فَلَا يَخْرُجُ عَنْ مِلْكِهِ، إلَّا بِإِبَاحَتِهِ إيَّاهُ لِإِنْسَانٍ بِعَيْنِهِ، أَوْ لِمَنْ أَخَذَهُ وَيَعْلَمُ ذَلِكَ بِطَرْحِهِ الْجَمِيعَ، وَتَبَرِّيهِ مِنْهُ، فَهُوَ مَا لَمْ يَطْرَحْهُ مَالِكٌ لِذَلِكَ، فَإِنْ سَرَقَ فَإِنَّمَا سَرَقَ شَيْئًا مُتَمَلَّكًا، مِلْكًا صَحِيحًا، وَمَالٌ مِنْ مَالِ مُسْلِمٍ، أَوْ ذِمِّيٍّ، فَالْقَطْعُ فِيهِ.

وَأَمَّا الْخِنْزِيرُ فَلَا يَقَعُ عَلَيْهِ فِي حَيَاتِهِ مِلْكٌ لِأَحَدٍ؛ لِأَنَّهُ رِجْسٌ مُحَرَّمٌ جُمْلَةً فَمَنْ سَرَقَهُ حَيًّا، أَوْ مَيِّتًا، فَإِنَّمَا أَخَذَ مَالًا لَا مَالِكَ لَهُ، وَمَا لَا يَحِلُّ لِأَحَدٍ تَمَلُّكُهُ فَجِلْدُهُ لِمَنْ بَادَرَ إلَيْهِ، وَأَخَذَهُ، وَدَبَغَهُ، فَإِذَا دُبِغَ صَارَ حِينَئِذٍ مِلْكًا مِنْ مَالٍ مُتَمَلَّكٍ، مَنْ سَرَقَهُ فَعَلَيْهِ فِيهِ الْقَطْعُ، وَالْقَطْعُ وَاجِبٌ فِي عِظَامِ الْفِيلِ كَمَا ذَكَرْنَا وَالْمَيْتَاتُ كُلُّهَا كَذَلِكَ؛ لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «إنَّمَا حَرُمَ أَكْلُهَا» حَاشَ عَظْمِ الْخِنْزِيرِ، وَشَعْرِهِ، وَكُلِّ

own anything from it except the hide alone after tanning, in accordance with the Messenger of Allah's statement—peace be upon him—"Any hide that is tanned becomes pure." And success is from Allah, the Exalted.

L42090 **A legal issue concerning one who kidnaps a free person, whether a minor or an adult.**

L42091–42093 2276 - Issue: Regarding one who steals a free person, whether young or old? Abu Muhammad (may Allah have mercy on him) said: We know of no disagreement that whoever steals a young slave who does not comprehend that the thief incurs amputation for stealing him. Scholars have differed regarding one who steals an adult slave who can speak, and regarding one who steals a free person—whether young or adult. As for the young slave who lacks understanding of this liability, the thief is deemed to have stolen property, incurring amputation. As for one who steals a comprehending slave, those who exempt the thief from amputation argue: "Were it not for the slave's compliance, how could the theft have been possible?" Abu Muhammad—may God have mercy on him—said: This should not be stated categorically, for the thief might steal the slave while he is asleep, intoxicated, unconscious, or by overpowering him and threatening with death, leaving him unable to resist or call for help. In such cases, the theft constitutes a legally valid act fully executed by the thief. Since it is valid, amputation is incumbent upon him by the Quran's text.

L42094 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 from Ibn Jurayj, who said: I was informed that Umar ibn al-Khattab cut off the hand of a man for stealing a slave boy.

L42095 And through him—to Abd al-Razzaq, from Sufyan al-Thawri, from Isma'il, from al-Hasan al-Basri, who said: Whoever steals a free minor or a slave has his hand amputated.

L42096 Ibrahim al-Nakhaʿī said: The Hudud penalty is enforced against the adult but not at all against the minor, meaning the adult's hand is cut off in the case of the minor's theft.

شَيْءٍ مِنْهُ حَرَامٌ جُمْلَةً، لَا يَحِلُّ لِأَحَدٍ تَمَلُّكُ شَيْءٍ مِنْهُ، إلَّا الْجِلْدَ فَقَطْ بِالدِّبَاغِ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَيُّمَا إهَابٍ دُبِغَ فَقَدْ طَهُرَ» وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؛

[مَسْأَلَةٌ فِيمَنْ سَرَقَ حُرًّا صَغِيرًا أَوْ كَبِيرًا]

٢٢٧٦ - مَسْأَلَةٌ: فِيمَنْ سَرَقَ حُرًّا صَغِيرًا، أَوْ كَبِيرًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَا نَعْلَمُ خِلَافًا فِي أَنَّ مَنْ سَرَقَ عَبْدًا صَغِيرًا لَا يَفْهَمُ أَنَّ عَلَيْهِ الْقَطْعَ، وَاخْتَلَفَ النَّاسُ فِيمَنْ سَرَقَ عَبْدًا كَبِيرًا يَتَكَلَّمُ، وَفِيمَنْ سَرَقَ حُرًّا صَغِيرًا أَوْ كَبِيرًا - فَأَمَّا الْعَبْدُ الصَّغِيرُ الَّذِي لَا يَفْهَمُ، فَإِنَّ الَّذِي سَرَقَهُ سَارِقُ مَالٍ، فَعَلَيْهِ الْقَطْعُ - وَأَمَّا مَنْ سَرَقَ الْعَبْدَ الَّذِي يَفْهَمُ، فَإِنَّمَا أَسْقَطَ عَنْهُ الْقَطْعَ مَنْ أَسْقَطَهُ، لِأَنَّهُ لَوْلَا أَنَّهُ أَطَاعَهُ مَا أَمْكَنَهُ سَرِقَتُهُ إيَّاهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا لَا يَنْبَغِي أَنْ يُطْلَقَ إطْلَاقًا، لِأَنَّ فِي الْمُمْكِنِ أَنْ يَسْرِقَهُ وَهُوَ نَائِمٌ، أَوْ سَكْرَانُ، أَوْ مُغْمًى عَلَيْهِ، أَوْ مُتَغَلِّبًا عَلَيْهِ مُتَهَدِّدًا بِالْقَتْلِ، فَلَا يَقْدِرُ عَلَى الِامْتِنَاعِ، وَلَا عَلَى الِاسْتِغَاثَةِ، فَإِذَا كَانَ هَكَذَا، فَهِيَ سَرِقَةٌ صَحِيحَةٌ قَدْ تَمَّتْ مِنْهُ، وَإِذْ هِيَ صَحِيحَةٌ فَالْقَطْعُ عَلَيْهِ بِنَصِّ الْقُرْآنِ.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ، قَالَ: أُخْبِرْت أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَطَعَ رَجُلًا فِي غُلَامٍ سَرَقَهُ.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ إسْمَاعِيلَ عَنْ الْحَسَنِ الْبَصْرِيِّ قَالَ: مَنْ سَرَقَ صَغِيرًا حُرًّا، أَوْ عَبْدًا، قُطِعَ.

قَالَ إبْرَاهِيمُ النَّخَعِيُّ: يُقَامُ الْحَدُّ عَلَى الْكَبِيرِ وَلَيْسَ عَلَى الصَّغِيرِ مِنْ شَيْءٍ - يَعْنِي أَنَّهُ يُقْطَعُ الْكَبِيرُ فِي سَرِقَةِ الصَّغِيرِ.

L42097 And through him—to ʻAbd al-Razzāq from Maʻmar, who said: I asked al-Zuhrī about someone who stole a non-Arab slave who does not comprehend [Arabic]. He said: His hand is to be amputated.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَمَّنْ سَرَقَ عَبْدًا أَعْجَمِيًّا لَا يَفْقَهُ؟ قَالَ: يُقْطَعُ.

L42098 Concerning amputation for stealing a small slave, the opinion is held by Abū Ḥanīfah, Muḥammad ibn al-Ḥasan, Mālik, al-Shāfiʻī, Aḥmad, their companions, Isḥāq, our school's scholars, and Sufyān al-Thawrī.

وَبِالْقَطْعِ فِي سَرِقَةِ الْعَبْدِ الصَّغِيرِ يَقُولُ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُهُمْ، وَإِسْحَاقُ، وَأَصْحَابُنَا، وَسُفْيَانُ الثَّوْرِيُّ.

L42099 It was related from Abu Yusuf that he deemed amputation preferable.

وَذُكِرَ عَنْ أَبِي يُوسُفَ أَنَّهُ اسْتَحْسَنَ أَنْ يُقْطَعَ.

L42100 As for one who steals a free person, Ḥammām ibn Aḥmad narrated to us → Ibn Mufarrij → Ibn al-Aʻrabī → al-Dabarī → ʻAbd al-Razzāq → Ibn Jurayj, who said: I was informed that ʻAlī amputated the seller—a seller of free persons—and proclaimed: "A free person cannot be made a slave." Ibn ʻAbbās said: "Amputation is not required for him, but he is subject to imprisonment—a penalty analogous to amputation."

وَأَمَّا مَنْ سَرَقَ حُرًّا - فَإِنَّ حُمَامَ بْنَ أَحْمَدَ نا قَالَ: نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أُخْبِرْت أَنَّ عَلِيًّا قَطَعَ الْبَائِعَ - بَائِعَ الْحُرِّ - وَقَالَ: لَا يَكُونُ الْحُرُّ عَبْدًا. وَقَالَ ابْنُ عَبَّاسٍ: لَيْسَ عَلَيْهِ قَطْعٌ، وَعَلَيْهِ شَبِيهٌ بِالْقَطْعِ الْحَبْسُ.

L42101–42102 Abu Hanifah, Sufyan, Ahmad, and Abu Thawr said: Amputation [for theft] is not imposed upon one who kidnaps a free person, whether the kidnapped person is a minor or an adult.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَأَحْمَدُ، وَأَبُو ثَوْرٍ: لَا قَطْعَ عَلَى مَنْ سَرَقَ حُرًّا صَغِيرًا كَانَ أَوْ كَبِيرًا.

L42103 Malik and Isḥāq ibn Rāhawayh said: Amputation is obligatory for one who steals from a free minor. This was also attributed to al-Ḥasan al-Baṣrī and al-Shaʻbī. Abū Muḥammad—may Allāh have mercy on him—said: A narration has been transmitted regarding this matter. We are not obligated to mention it, for the Ḥanafīs rely on less stringent evidence when it conforms to their views. The chain is as follows: From al-Qāḍī ʻAbdullāh ibn ʻAbd al-Raḥmān ibn Jaḥḥāf al-Maʻāfirī in Valencia, from Muḥammad, from Ibrāhīm in Toledo, from Bakr ibn al-ʻAlāʾ al-Qushayrī in Egypt, from Zakariyyā ibn Yaḥyā al-Sājī al-Baṣrī, from al-Qāsim ibn Isḥāq al-Anṣārī, from my father, from ʻAbdullāh ibn Muḥammad ibn Yaḥyā ibn ʻUrwah ibn al-Zubayr, from Hishām ibn ʻUrwah, from his father, from ʻĀʾishah: "A man who stole from children was brought to the Messenger of Allāh—peace and blessings be upon him—and he ordered that his hand be amputated." Abū Muḥammad—may Allāh have

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ قَالَ: سَأَلْت الزُّهْرِيَّ عَمَّنْ سَرَقَ عَبْدًا أَعْجَمِيًّا لَا يَفْقَهُ؟ قَالَ: يُقْطَعُ.

وَبِالْقَطْعِ فِي سَرِقَةِ الْعَبْدِ الصَّغِيرِ يَقُولُ أَبُو حَنِيفَةَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ، وَأَصْحَابُهُمْ، وَإِسْحَاقُ، وَأَصْحَابُنَا، وَسُفْيَانُ الثَّوْرِيُّ.

وَذُكِرَ عَنْ أَبِي يُوسُفَ أَنَّهُ اسْتَحْسَنَ أَنْ يُقْطَعَ.

وَأَمَّا مَنْ سَرَقَ حُرًّا - فَإِنَّ حُمَامَ بْنَ أَحْمَدَ نا قَالَ: نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: أُخْبِرْت أَنَّ عَلِيًّا قَطَعَ الْبَائِعَ - بَائِعَ الْحُرِّ - وَقَالَ: لَا يَكُونُ الْحُرُّ عَبْدًا. وَقَالَ ابْنُ عَبَّاسٍ: لَيْسَ عَلَيْهِ قَطْعٌ، وَعَلَيْهِ شَبِيهٌ بِالْقَطْعِ الْحَبْسُ.

وَقَالَ أَبُو حَنِيفَةَ، وَسُفْيَانُ، وَأَحْمَدُ، وَأَبُو ثَوْرٍ: لَا قَطْعَ عَلَى مَنْ سَرَقَ حُرًّا صَغِيرًا كَانَ أَوْ كَبِيرًا.

وَقَالَ مَالِكٌ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ: عَلَى مَنْ سَرَقَ حُرًّا صَغِيرًا، الْقَطْعُ - وَذُكِرَ هَذَا عَنْ الْحَسَنِ الْبَصْرِيِّ، وَالشَّعْبِيِّ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ جَاءَ فِي هَذَا أَثَرٌ، لَا عَلَيْنَا أَنْ نَذْكُرَهُ، لِأَنَّ الْحَنَفِيِّينَ يَأْخُذُونَ بِأَقَلَّ مِنْهُ، إذَا وَافَقَهُمْ، وَهُوَ: كَمَا نا الْقَاضِي عَبْدُ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ جَحَّافٍ الْمَعَافِرِيُّ بِبُلَنْسِيَةَ نا مُحَمَّدٌ نا إبْرَاهِيمُ بِطُلَيْطُلَةَ نا بَكْرُ بْنُ الْعَلَاءِ الْقُشَيْرِيُّ بِمِصْرَ نا زَكَرِيَّا بْنُ يَحْيَى السَّاجِيُّ الْبَصْرِيُّ نا الْقَاسِمُ بْنُ إسْحَاقَ الْأَنْصَارِيُّ نا أَبِي نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ يَحْيَى بْنِ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِرَجُلٍ كَانَ يَسْرِقُ الصِّبْيَانَ، فَأَمَرَ

mercy on him—said: This does not differentiate between a free person and a slave. Success comes only from Allāh, the Exalted.

A legal issue regarding someone who stole the Mushaf.

Issue 2277: Regarding one who steals a Mus'haf. Abu Muhammad—may Allah have mercy on him—said: Abu Hanifah and his companions stated: There is no amputation for one who steals a Mus'haf, whether it has silver ornamentation weighing two hundred dirhams, more than that, less than that, or none at all.

Malik, Al-Shafi'i, and our companions said: "Is amputation obligatory upon him?" Abu Muhammad—may Allah have mercy on him—said: Those who rejected amputation argued by stating: "He has a right to instruction regarding it, as he may not withhold it from those in need." He said: "Since he holds a right in it, this is akin to someone who steals from the public treasury." He said: "Silver is secondary, as silver is included in the sale, just as the leather and two covers are included in its sale." This argument is utterly corrupt and invalid. First among its flaws is their claim: "Because he has a right to instruction in it"—he has lied. The learner's right pertains solely to instruction, not to the people's Qur'anic copy whatsoever, as this obligation is established neither by the Qur'an, nor the Sunnah, nor scholarly consensus.

Indeed, Allah obligated the people to teach one another the Quran—through instruction and memorization—and such was the practice of all the Companions - may Allah be pleased with them - during the era of the Messenger of Allah - peace be upon him - without any disagreement. There was no Mushaf at that time; rather, they would teach one another through repetition and have each other recite it. Whoever among them needed to preserve what they memorized would write it on leather, palm stalks, wooden tablets, or shoulder bones only. Thus, the claim that "the thief has a right to the Mushaf" is invalidated, and it is confirmed that the owner of the Mushaf may prevent anyone from taking it, as no one has a necessity to possess it?

بِهِ فَقُطِعَ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَيْسَ فِيهِ تَخْصِيصُ حُرٍّ مِنْ عَبْدٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِيمَنْ سَرَقَ الْمُصْحَف]

٢٢٧٧ - مَسْأَلَةٌ: مَنْ سَرَقَ الْمُصْحَفَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ، لَا قَطْعَ عَلَى مَنْ سَرَقَ مُصْحَفًا - سَوَاءٌ كَانَتْ عَلَيْهِ حِلْيَةُ فِضَّةٍ تَزِنُ مِائَتَيْ دِرْهَمٍ، أَوْ أَكْثَرَ، أَوْ أَقَلَّ أَوْ لَمْ تَكُنْ.

وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَصْحَابُنَا: عَلَيْهِ الْقَطْعُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاحْتَجَّ مَنْ لَمْ يَرَ الْقَطْعَ بِأَنْ قَالَ: إنَّ لَهُ فِيهِ حَقَّ التَّعْلِيمِ، لِأَنَّهُ لَيْسَ لَهُ مَنْعُهُ عَمَّنْ احْتَاجَ إلَيْهِ. قَالَ: فَلَمَّا كَانَ لَهُ فِيهِ حَقٌّ كَانَ كَمَنْ سَرَقَ مِنْ بَيْتِ الْمَالِ. قَالَ: وَالْفِضَّةُ تَبَعٌ، لِأَنَّهَا تَدْخُلُ فِي بَيْعِهِ، كَمَا يَدْخُلُ فِي بَيْعِهِ الْجِلْدُ، وَالدَّفَّتَانِ - وَهَذَا كَلَامٌ فِي غَايَةِ الْفَسَادِ وَالْبَاطِلِ: أَوَّلُ ذَلِكَ - قَوْلُهُمْ: لِأَنَّ لَهُ فِيهِ حَقَّ التَّعْلِيمِ - وَقَدْ كَذَبَ، إنَّمَا حَقُّ الْمُتَعَلِّمِ فِي التَّلْقِينِ فَقَطْ، لَا فِي مُصْحَفِ النَّاسِ أَصْلًا، إذْ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ.

وَإِنَّمَا فَرَضَ عَلَى النَّاسِ تَعْلِيمَ بَعْضِهِمْ بَعْضًا الْقُرْآنَ - تَدْرِيسًا وَتَحْفِيظًا - وَهَكَذَا كَانَ جَمِيعُ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِلَا خِلَافٍ مِنْ أَحَدٍ، أَنَّهُ لَمْ يَكُنْ هُنَالِكَ مُصْحَفٌ، وَإِنَّمَا كَانُوا يُلَقِّنُهُ بَعْضُهُمْ بَعْضًا، وَيُقْرِئُهُ بَعْضُهُمْ بَعْضًا، فَمَنْ احْتَاجَ مِنْهُمْ أَنْ يُقَيِّدَ مَا حَفِظَ كَتَبَهُ فِي الْأَدِيمِ، وَفِي اللِّخَافِ، وَالْأَلْوَاحِ، وَالْأَكْتَافِ فَقَطْ. فَبَطَلَ قَوْلُهُ " إنَّ لِلسَّارِقِ حَقًّا فِي الْمُصْحَفِ " وَصَحَّ أَنَّ لِصَاحِبِ الْمُصْحَفِ مَنْعَهُ مِنْ كُلِّ أَحَدٍ، إذْ لَا ضَرُورَةَ بِأَحَدٍ إلَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -:

Abu Muhammad - may Allah have mercy on him - said: It is therefore confirmed that amputation is obligatory for stealing the Mushaf—whether adorned or not—based on Allah's statement: *"As for the male thief and the female thief, cut off their hands"* (5:38).

Abu Muhammad - may Allah have mercy on him - added: They are compelled to reject enforcing amputation for one who steals books of knowledge—but this is erroneous. Rather, amputation is obligatory in all such cases. Success comes solely through Allah.[14]

L42109 **Issue: As for thieves, people have differed regarding the obligation to amputate them.**

L42110 Issue 2278: Concerning thieves about whom people differ regarding the obligation of amputation - Abu Muhammad (may Allah have mercy on him) said: Abu Hanifa and his companions stated: "One who steals a cross or an idol - even if made of silver or gold - is not to be subjected to amputation. But if he steals dirhams containing images of idols or images of crosses, amputation becomes obligatory because those [objects] are worshipped, whereas these [dirhams] are not worshipped?" Abu Muhammad (may Allah have mercy on him) said: "This is erroneous, self-contradictory, and based on flawed reasoning."

L42111 As for error, it is the omission of the ḥadd punishment that Allah, the Exalted, has prescribed - which is amputation upon the thief.

L42112 Amputation is obligatory for the thief who steals a cross because he stole a material he is not permitted to take. What is obligatory regarding it is solely breaking it, while ownership of its substance remains valid. There is no distinction between him and one who steals a gold vessel or a silver vessel. The prohibition has been authentically established against possessing gold and silver vessels, just as it has been established against possessing crosses and idols, with no distinction. Amputation is obligatory in all such cases because he did not steal the image nor the form of the vessel. Rather, he stole

[14] **Qur'an references (L42108):** Qur'an 5:38 (Al-Ma'idah).

فَصَحَّ أَنَّ الْقَطْعَ وَاجِبٌ فِي سَرِقَةِ الْمُصْحَفِ - كَانَتْ عَلَيْهِ حِلْيَةٌ أَوْ لَمْ تَكُنْ - لِقَوْلِ اللَّهِ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَيَلْزَمُهُمْ أَنْ لَا يُوجِبُوا الْقَطْعَ عَلَى مَنْ سَرَقَ كُتُبَ الْعِلْمِ - وَهَذَا خَطَأٌ، بَلْ الْقَطْعُ فِي كُلِّ ذَلِكَ وَاجِبٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ سُرَّاقٌ اخْتَلَفَ النَّاسُ فِي وُجُوبِ الْقَطْعِ عَلَيْهِمْ]

٢٢٧٨ - مَسْأَلَةٌ: سُرَّاقٌ اخْتَلَفَ النَّاسُ فِي وُجُوبِ الْقَطْعِ عَلَيْهِمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا يُقْطَعُ مَنْ سَرَقَ صَلِيبًا، أَوْ وَثَنًا - وَلَوْ كَانَ مِنْ فِضَّةٍ، أَوْ ذَهَبٍ - قَالَ: فَإِنْ سَرَقَ دَرَاهِمَ فِيهَا صُوَرُ أَصْنَامٍ، أَوْ صُوَرُ صُلْبَانٍ، فَعَلَيْهِ الْقَطْعُ؛ لِأَنَّ ذَلِكَ يُعْبَدُ وَهَذَا لَا يُعْبَدُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا خَطَأٌ، وَتَنَاقُضٌ، وَاحْتِجَاجٌ فَاسِدٌ.

أَمَّا الْخَطَأُ، فَإِسْقَاطُ الْحَدِّ الَّذِي افْتَرَضَ اللَّهُ تَعَالَى مِنْ الْقَطْعِ عَلَى السَّارِقِ.

وَإِنَّمَا وَجَبَ الْقَطْعُ عَلَى سَارِقِ الصَّلِيبِ؛ لِأَنَّهُ سَرَقَ جَوْهَرًا لَا يَحِلُّ لَهُ أَخْذُهُ. وَإِنَّمَا الْوَاجِبُ فِيهِ كَسْرُهُ فَقَطْ، وَأَمَّا مِلْكُ جَوْهَرِهِ فَصَحِيحٌ - وَلَا فَرْقَ بَيْنَهُ وَبَيْنَ مَنْ سَرَقَ إنَاءَ ذَهَبٍ وَإِنَاءَ فِضَّةٍ، وَالنَّهْيُ قَدْ صَحَّ عَنْ اتِّخَاذِ آنِيَةِ الْفِضَّةِ وَالذَّهَبِ، كَمَا صَحَّ عَنْ اتِّخَاذِ الصَّلِيبِ وَالْوَثَنِ وَلَا فَرْقَ - وَالْقَطْعُ وَاجِبٌ فِي كُلِّ ذَلِكَ؛ لِأَنَّهُ لَمْ يَسْرِقْ الصُّورَةَ، وَلَا شَكْلَ الْإِنَاءِ، وَإِنَّمَا سَرَقَ الْجِسْمَ الْحَلَالَ تَمَلُّكُهُ، وَإِنَّمَا الْوَاجِبُ فِي الْآنِيَةِ الْمَذْكُورَةِ، وَالصُّلْبَانِ، وَالْأَوْثَانِ، الْكَسْرُ فَقَطْ.

the physical object that is permissible to own. What is obligatory regarding the mentioned vessels, crosses, and idols is solely breaking them.

فَإِنْ كَانَ الصَّلِيبُ، أَوْ الْوَثَنُ، مِنْ حَجَرٍ لَا قِيمَةَ لَهُ أَصْلًا بَعْدَ الْكَسْرِ، فَلَا قَطْعَ فِيهِ أَصْلًا، لِمَا ذَكَرْنَا قَبْلُ مِنْ قَوْلِ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - «إنَّ يَدَ السَّارِقِ لَمْ تَكُنْ تُقْطَعُ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الشَّيْءِ التَّافِهِ» وَسَنَسْتَقْصِي الْكَلَامَ فِي ذَلِكَ - إنْ شَاءَ اللَّهُ تَعَالَى - فِي كَلَامِنَا " فِي مِقْدَارِ مَا يُقْطَعُ فِيهِ السَّارِقُ ".

L42113–42114 If the cross or idol is made of stone and holds no value whatsoever after being broken, then there is no amputation at all in this case, due to what we previously cited from the statement of ʿĀ'ishah (raḍiya Allāhu ʿanhā): "The thief's hand was not amputated during the era of the Messenger of Allah (ṣallā Allāhu ʿalayhi wa-sallam) for a trivial item." We will elaborate in detail on this—Allah willing—in our discussion on "the threshold value warranting the amputation of a thief's hand."

وَأَمَّا التَّنَاقُضُ، فَظَاهِرٌ أَيْضًا؛ لِأَنَّهُ لَا فَرْقَ بَيْنَ صُورَةٍ وَصُورَةٍ بِلَا بُرْهَانٍ وَكِلَاهُمَا مُحَرَّمٌ تَصْوِيرُهُ، وَمُتَوَعَّدٌ عَلَيْهِ بِالْعَذَابِ الشَّدِيدِ يَوْمَ الْقِيَامَةِ. وَأَمَّا فَسَادُ احْتِجَاجِهِ، بِأَنَّ الصَّلِيبَ يُعْبَدُ، وَالصُّورَةُ الَّتِي فِي الدَّرَاهِمِ لَا تُعْبَدُ، فَإِنَّ الْهِنْدَ يَعْبُدُونَ الْبَقَرَ كَمَا يَعْبُدُ النَّصَارَى الصَّلِيبَ، وَيُعَظِّمُونَهَا كَمَا يُعَظِّمُ الصَّلِيبُ، وَلَا فَرْقَ - فَيَلْزَمُهُ أَيْضًا، أَنْ لَا يَقْطَعَ فِي سَرِقَةِ الْبَقَرِ.

L42115 As for the contradiction, it is also evident because there is no distinction between one image and another without evidence. Depicting both is prohibited, and it is threatened with severe punishment on the Day of Resurrection. Regarding the invalidity of his argument that the cross is worshipped while the image on dirhams is not worshipped—indeed, Hindus worship cows just as Christians worship the cross, and they venerate them as the cross is venerated, with no distinction. It necessarily follows that he must also not enforce amputation for the theft of cows.

فَإِنْ قَالُوا: إنَّا نَحْنُ لَا نَعْبُدُهَا؟ قُلْنَا لَهُمْ: وَإِنَّا نَحْنُ أَيْضًا لَا نَعْبُدُ الصَّلِيبَ، وَلَا نُعَظِّمُهُ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - وَالْعَجَبُ كُلُّ الْعَجَبِ مِنْ إسْقَاطِ أَبِي حَنِيفَةَ الْقَطْعَ عَنْ سَارِقِ الصَّلِيبِ، وَهُوَ يَقْتُلُ الْمُسْلِمَ إذَا قَتَلَ عَابِدَ الصَّلِيبِ؟ فَلَئِنْ كَانَ لِعَابِدِ الصَّلِيبِ مِنْ الْحُرْمَةِ عِنْدَهُمْ مَا يُسْتَبَاحُ بِهِ دَمُ الْمُسْلِمِ، فَإِنَّ لِمَالِ عَابِدِ الصَّلِيبِ مِنْ الْحُرْمَةِ مَا تُسْتَبَاحُ بِهِ يَدُ سَارِقِهِ، وَالصَّلِيبُ مَالٌ مِنْ مَالِهِ، هَذَا عَلَى أَنَّ النَّهْيَ قَدْ صَحَّ «أَنْ لَا يُقْتَلَ مُؤْمِنٌ بِكَافِرٍ» عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ".

L42116 If they say, "Indeed, we do not worship it?" We reply to them: "Indeed, we too do not worship the cross nor venerate it—praise be to Allah, Lord of the worlds. The greatest of all astonishments is Abu Hanifah's omission of amputating the hand of the cross thief, while he rules to kill the Muslim if he kills a cross-worshipper! For if the cross-worshipper holds such sanctity in their view that a Muslim's blood becomes permissible to shed for it, then the property of the cross-worshipper must hold such sanctity that the hand of its thief becomes permissible to sever—the cross being part of his possessions. This is despite the authentic prohibition from the Messenger of Allah—peace and blessings be upon him—'that a believer is not to be killed for a disbeliever.'"

نَعَمْ، وَعَنْ اللَّهِ تَعَالَى فِي الْقُرْآنِ، إذْ يَقُولُ {وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلا} [النساء: ١٤١] .

L42117 Indeed, as stated by Allah the Exalted in the Quran when He says, "And never will Allah grant the disbelievers a way over the believers" [al-Nisā' 4:141].[15]

[15] **Qur'an references (L42117):** Qur'an 4:141 (An-Nisa).

L42118 And when He, the Exalted, says: “Shall We treat the righteous like the wicked? What is the matter with you? How do you make such judgments?” [Al-Qalam: 35, 36].[16]

L42119 No prohibition has ever been issued against amputating the hand of one who steals the property of a Dhimmi; rather, Allah, the Exalted, commanded the amputation of their hands based on the generality of His verse: {As for the male thief and the female thief, cut off their hands} [Al-Mā’idah: 38].[17]

L42120–42122 Allah, the Exalted, knows that a thief steals from a Muslim and a Dhimmi. Therefore, we swear by Allah, the Exalted, that had He intended to make an exception for the thief who steals a Dhimmi’s property, He would not have remained silent about it, nor forgotten it, and He would have clarified it, just as... He has made clear to us that a believer is not to be executed in retaliation for killing a non-Muslim, and success comes from Allah, the Exalted.

The Legal Ruling on Presenting the Stolen Item

L42123

L42124–42126 2279 - Issue: Producing the Stolen Property. Abu Muhammad—may Allah have mercy on him—said: The Malikis said: If someone confesses to stealing dirhams—whether a large or small amount—or anything else, the punishment of cutting off the hand is not obligatory unless the stolen item they confessed to stealing is produced. Abu Muhammad—may Allah have mercy on him—said: This is also erroneous, for it rejects what Allah Almighty commanded regarding cutting off the thief’s hand. He did not stipulate producing the stolen property: {And your Lord is never forgetful} [Maryam: 64]. Rather, cutting it off is obligatory without exception. The thief must then produce what he stole to return it to its owner—if known—or for the general welfare of the Muslims—if the owner is unknown. If the stolen item is lost, he must compensate for it, as we will mention later, Allah Almighty willing. Abu Muhammad—may Allah have mercy on him—said: We do not know of any valid argument for those who oppose this. If they rely on the narration reported by Abdullah ibn Rabīʿ—from Ibn Mufarrij—from Qāsim ibn

[16] **Qur’an references (L42118):** Qur’an 68:35 (Al-Qalam); Qur’an 37:154 (As-Saffat); Qur’an 68:36 (Al-Qalam).

[17] **Qur’an references (L42119):** Qur’an 5:38 (Al-Ma’idah).

وَإِذْ يَقُولُ تَعَالَى {أَفَنَجْعَلُ الْمُسْلِمِينَ كَالْمُجْرِمِينَ} [القلم: ٣٥] {مَا لَكُمْ كَيْفَ تَحْكُمُونَ} [القلم: ٣٦] .

وَلَمْ يَأْتِ نَهْيٌ قَطُّ عَنْ قَطْعِ يَدِ مَنْ سَرَقَ مَالَ كَافِرٍ ذِمِّيٍّ بَلْ أَمَرَ اللَّهُ تَعَالَى بِقَطْعِهِ فِي عُمُومِ قَوْلِهِ {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

وَقَدْ عَلِمَ اللَّهُ تَعَالَى أَنَّ السَّارِقَ يَسْرِقُ مِنْ مُسْلِمٍ وَمِنْ ذِمِّيٍّ، فَنَحْنُ نُقْسِمُ بِاَللَّهِ تَعَالَى أَنَّهُ لَوْ أَرَادَ اسْتِثْنَاءَ سَارِقِ مَالِ الذِّمِّيِّ لَمَا سَكَتَ عَنْ ذَلِكَ، وَلَا نَسِيَهُ، وَلَبَيَّنَهُ، كَمَا بَيَّنَ لَنَا «أَنْ لَا يُقْتَلَ مُؤْمِنٌ بِكَافِرٍ» وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة إحْضَارُ السَّرِقَةِ]

٢٢٧٩ - مَسْأَلَةٌ: إحْضَارُ السَّرِقَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ الْمَالِكِيُّونَ: مَنْ أَقَرَّ بِسَرِقَةِ دَرَاهِمَ - كَثِيرَةٍ أَوْ قَلِيلَةٍ - أَوْ غَيْرِ ذَلِكَ، فَإِنَّ الْقَطْعَ لَا يَجِبُ بِذَلِكَ إلَّا حَتَّى يُحْضِرَ ذَلِكَ الشَّيْءَ الَّذِي أَقَرَّ بِسَرِقَتِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا أَيْضًا خَطَأٌ، لِأَنَّهُ رَدَّ لِمَا أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ قَطْعِ السَّارِقِ، وَلَمْ يَشْتَرِطْ إحْضَارَ السَّرِقَةِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] لَكِنَّ الْوَاجِبَ قَطْعُهُ وَلَا بُدَّ، ثُمَّ يَلْزَمُهُ إحْضَارُ مَا سَرَقَ لِيُرَدَّ إلَى صَاحِبِهِ - إنْ عُرِفَ - أَوْ لِيَكُونَ فِي جَمِيعِ مَصَالِحِ الْمُسْلِمِينَ - إنْ لَمْ يُعْرَفْ صَاحِبُهُ - فَإِنْ عَدِمَ الشَّيْءَ الْمَسْرُوقَ ضَمِنَهُ، عَلَى مَا نَذْكُرُ بَعْدَ هَذَا، إنْ شَاءَ اللَّهُ تَعَالَى؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَا نَعْلَمُ لِمَنْ خَالَفَ هَذَا حُجَّةً أَصْلًا؟ فَإِنْ تَعَلَّقُوا: بِمَا ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ ابْنِ أَبِي

Aṣbagh—from Ibn Waḍḍāḥ—from Sahnūn—from Ibn Wahb—from Ibn Abī Dhib—from Ibn Shihāb: Tāriq, whom Thaʿlabah al-Shāmī appointed as his deputy over Medina, was brought a man suspected of theft. He flogged him until he confessed. He then sought Ibn ʿUmar's verdict, who said: "Do not cut off his hand until he produces it." This holds no proof for them, for a confession extracted under torture or threat does not warrant cutting off the hand—whether the stolen item is produced or not. The item might have been deposited with him, and he may or may not have known it was stolen. In such a case, the custodian is not subject to cutting off the hand at all. Ibn ʿUmar's statement—"until he produces it"—could also be a mere assertion stripped of any confession under flogging. Moreover, no one's opinion constitutes proof against the Messenger of Allah—peace and blessings be upon him. How many of Ibn ʿUmar's positions have they opposed without evidence? If they cite what was narrated to us—via the aforementioned chain—to Ibn Wahb, he said: Yaḥyā ibn Ayyūb informed me: Yaḥyā ibn Saʿīd wrote to me: "If someone confesses to theft and corroborates it with evidence, their hand is to be cut off. But if someone confesses under threat or fear and does not produce..." based on what corroborates his confession, for there are people who assert that they should be amputated in such a case.[18]

ذِئْبٍ عَنْ ابْنِ شِهَابٍ: أَنَّ طَارِقًا كَانَ جَعَلَهُ ثَعْلَبَةُ الشَّامِيُّ عَلَى الْمَدِينَةِ يَسْتَخْلِفُهُ، فَأُتِيَ بِإِنْسَانٍ مُتَّهَمٍ بِسَرِقَةٍ، فَجَلَدَهُ، فَلَمْ يَزَلْ يَجْلِدُهُ حَتَّى اعْتَرَفَ بِالسَّرِقَةِ، فَأَرْسَلَ إِلَى ابْنِ عُمَرَ فَاسْتَفْتَاهُ؟ فَقَالَ ابْنُ عُمَرَ لَا تُقْطَعْ - يَدُهُ حَتَّى يُبْرِزَهَا؟ فَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ مَنْ أَقَرَّ تَحْتَ الْعَذَابِ وَبِالتَّهْدِيدِ فَلَا قَطْعَ عَلَيْهِ، وَسَوَاءٌ أَبْرَزَ السَّرِقَةَ أَوْ لَمْ يُبْرِزْهَا، لِأَنَّهُ قَدْ يَكُونُ أُودِعَتْ عِنْدَهُ، وَهُوَ يَدْرِي أَنَّهَا سَرِقَةٌ أَوْ لَا يَدْرِي، فَلَا يَكُونُ عَلَى الْمُودَعِ فِي ذَلِكَ قَطْعٌ أَصْلًا. وَيَحْتَمِلُ قَوْلُ ابْنِ عُمَرَ هَذَا - أَيْ حَتَّى يُبْرِزَ - قَوْلَتَهُ مُجَرَّدَةً مِنَ الْإِقْرَارِ بِالضَّرْبِ، مَعَ أَنَّهُ لَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَمْ قَوْلَةٌ لِابْنِ عُمَرَ قَدْ خَالَفُوهَا بِلَا بُرْهَانٍ فَإِنْ ذَكَرُوا مَا رُوِّينَا - بِالسَّنَدِ الْمَذْكُورِ - إِلَى ابْنِ وَهْبٍ قَالَ: أَخْبَرَنِي يَحْيَى بْنُ أَيُّوبَ، قَالَ: كَتَبَ إِلَيَّ يَحْيَى بْنِ سَعِيدٍ يَقُولُ: مَنْ اعْتَرَفَ بِسَرِقَةٍ، ثُمَّ أَتَى - مَعَ ذَلِكَ - بِمَا يُصَدِّقُ اعْتِرَافَهُ فَذَلِكَ الَّذِي تُقْطَعُ يَدُهُ، وَمَنْ اعْتَرَفَ عَلَى تَهَدُّدٍ وَتَخَوُّفٍ، ثُمَّ لَمْ يَأْتِ بِمَا يُصَدِّقُ اعْتِرَافَهُ، فَإِنَّ نَاسًا يَزْعُمُونَ أَنْ يُقْطَعُوا فِي مِثْلِ هَذَا.

L42127 And through him—to Ibn Wahb from Yunus ibn Yazid from Rabi'ah, who said: Whoever confesses after investigation, yet the matter is not found with him, nor is there any corroborating evidence from his actions, then his confession is not considered continuous, nor his persistence in confessing out of fear that the affliction he averted through his confession might still be imposed upon him. Thus, we hold that his confession should not be accepted unless there comes forth an aspect of clear evidence and certainty that he is the perpetrator of that theft. This provides no valid argument for them, for one who confesses to theft either does so without threat or torment, or confesses under threat and torment. If he confesses under threat and torment, there is no amputation of the hand for him at all—whether he produces the stolen item or not—since he may know its location or it was placed with him.

وَبِهِ - إِلَى ابْنِ وَهْبٍ عَنْ يُونُسَ بْنِ يَزِيدَ عَنْ رَبِيعَةَ، قَالَ: مَنْ اعْتَرَفَ بَعْدَ امْتِحَانٍ فَلَمْ يُوجَدْ ذَلِكَ عِنْدَهُ، وَلَمْ يُوجَدْ مَا يُصَدِّقُهُ مِنْ عَمَلِهِ، فَإِنَّ اعْتِرَافَهُ لَمْ يَكُنْ مُتَّصِلًا، وَلَا إِقَامَتُهُ عَلَى الِاعْتِرَافِ خَشْيَةَ أَنْ يَكُونَ عَلَيْهِ مِنَ الْبَلَاءِ مَا قَدْ دَفَعَ عَنْهُ مِنَ الْبَلَاءِ بِاعْتِرَافِهِ، فَنَرَى أَنْ لَا يُؤْخَذَ بِاعْتِرَافِهِ، إِلَّا أَنْ يَأْتِيَ وَجْهُ الْبَيِّنَةِ وَالْمَعْرِفَةِ أَنَّهُ صَاحِبُ تِلْكَ السَّرِقَةِ؟ وَهَذَا لَا حُجَّةَ لَهُمْ فِيهِ، لِأَنَّ مَنْ أَقَرَّ بِسَرِقَةٍ، فَلَا يَخْلُو مِنْ أَنْ يَكُونَ أَقَرَّ بِلَا تَهْدِيدٍ وَلَا عَذَابٍ، أَوْ أَقَرَّ بِتَهْدِيدٍ وَعَذَابٍ؟ فَإِنْ أَقَرَّ بِتَهْدِيدٍ وَعَذَابٍ، فَلَا قَطْعَ عَلَيْهِ أَصْلًا - أَحْضَرَ السَّرِقَةَ، أَوْ لَمْ يُحْضِرْهَا - إِذْ قَدْ يَدْرِي مَوْضِعَهَا، أَوْ جُعِلَتْ عِنْدَهُ، فَلَا

[18] **Qur'an references (L42124):** Qur'an 19:64 (Maryam).

Hence, no amputation applies to him. But if he confesses without threat or torment, then amputation of the hand is obligatory—whether he produces the stolen item or not—due to what we previously explained.

L42128 As for Rabiʿah's statement, "A compelled person under duress is not to be held accountable by confession unless there emerges the aspect of clear evidence and definitive knowledge that he is the perpetrator of that theft," this is an unquestionably sound position. If one brings forth evidence that establishes with certainty—free from doubt—that he stole it, then amputation becomes obligatory, regardless of whether he confessed under torture or without torture at that point. Similarly, if he was tortured or confessed, and conclusive evidence emerged testifying that they witnessed him stealing, amputating his hand for the theft would be obligatory—based on the evidence, not his confession. We have stated: Producing the stolen item does not constitute proof that he stole it; rather, it is mere conjecture, and it is impermissible to amputate a Muslim's hand based on conjecture. Allah the Exalted said: *"They follow nothing but conjecture, and indeed conjecture avails nothing against the truth"* (53:28).[19]

L42129–42131 The Messenger of Allah (peace and blessings of Allah be upon him) said: "Beware of suspicion, for suspicion is the most false of speech." Abu Muhammad (may Allah have mercy on him) said: It has been transmitted to us from Abu Bakr al-Siddiq in the presence of Umar ibn al-Khattab and all the Companions (may Allah be pleased with them) that cutting (the hand) is only enforced through a mere confession without requiring the stolen item to be presented as evidence, and that the stolen item was found either with the jeweler or with the accused, while it is possible that it was placed in his saddlebag without his knowledge: Hammad narrated to us; Ibn Mufarrij narrated to us; Ibn al-A'rabi narrated to us; al-Dabari narrated to us; Abd al-Razzaq narrated from Ma'mar and Sufyan al-Thawri - both of them transmitting from al-A'mash, from al-Qasim ibn Abd al-Rahman ibn Abd Allah ibn Mas'ud. On the authority of his father, who said: A man came to Ali ibn Abi Talib and said, "I have stolen." Ali dismissed him, but the man said again, "I have

[19] **Qur'an references (L42128):** Qur'an 53:28 (An-Najm).

قَطْعَ عَلَيْهِ؟ وَإِنْ كَانَ أَقَرَّ بِلَا تَهْدِيدٍ وَلَا عَذَابٍ، فَالْقَطْعُ عَلَيْهِ - أَخْرَجَ السَّرِقَةَ، أَوْ لَمْ يُخْرِجْهَا - لِمَا ذَكَرْنَا قَبْلُ.

وَأَمَّا قَوْلُ رَبِيعَةَ " أَنْ لَا يُؤْخَذَ الْمُكْرَهُ بِاعْتِرَافٍ إِلَّا أَنْ يَأْتِيَ وَجْهُ الْبَيِّنَةِ وَالْمَعْرِفَةِ أَنَّهُ صَاحِبُ تِلْكَ السَّرِقَةِ " فَقَوْلٌ صَحِيحٌ لَا شَكَّ فِيهِ، أَنَّهُ إِذَا جَاءَ بِبَيَانٍ يَتَيَقَّنُ بِهِ - دُونَ شَكٍّ - أَنَّهُ سَرَقَهَا، فَالْقَطْعُ وَاجِبٌ - وَسَوَاءٌ حِينَئِذٍ أَقَرَّ تَحْتَ الْعَذَابِ أَوْ دُونَ عَذَابٍ - وَكَذَلِكَ لَوْ عُذِّبَ أَوْ أَقَرَّ، وَجَاءَتْ بَيِّنَةٌ تَشْهَدُ بِأَنَّهُمْ رَأَوْهُ يَسْرِقُ لَوَجَبَ قَطْعُ يَدِهِ بِالسَّرِقَةِ، لَا بِإِقْرَارِهِ، وَقَدْ قُلْنَا: إِنَّ إِحْضَارَ الشَّيْءِ الْمَسْرُوقِ لَيْسَ بَيَانًا فِي أَنَّهُ هُوَ سَرَقَهُ، وَإِنَّمَا هُوَ ظَنٌّ، وَلَا يَحِلُّ قَطْعُ يَدِ مُسْلِمٍ بِالظَّنِّ، قَالَ اللَّهُ تَعَالَى {إِنْ يَتَّبِعُونَ إِلا الظَّنَّ وَإِنَّ الظَّنَّ لا يُغْنِي مِنَ الْحَقِّ شَيْئًا} [النجم: ٢٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ رُوِّينَا عَنْ أَبِي بَكْرٍ الصِّدِّيقِ بِحَضْرَةِ عُمَرَ بْنِ الْخَطَّابِ وَسَائِرِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - أَنَّهُ قَطْعٌ إِلَّا قَطْعٌ بِإِقْرَارٍ مُجَرَّدٍ دُونَ إِحْضَارِ السَّرِقَةِ، وَأَنَّ السَّرِقَةَ إِنَّمَا وُجِدَتْ عِنْدَ الصَّائِغِ، أَوْ عِنْدَهُ، وَقَدْ يُمْكِنُ أَنْ تُوضَعَ فِي رَحْلِهِ بِغَيْرِ عِلْمِهِ: حَدَّثَنَا حَمَّادٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانَ الثَّوْرِيِّ، كِلَاهُمَا عَنِ الْأَعْمَشِ عَنِ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: جَاءَ رَجُلٌ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ فَقَالَ: إِنِّي سَرَقْتُ، فَرُدَّهُ، فَقَالَ: إِنِّي سَرَقْتُ، فَقَالَ: شَهِدْتَ عَلَى نَفْسِكَ مَرَّتَيْنِ، فَقَطَعَهُ - قَالَ عَبْدُ الرَّحْمَنِ: فَرَأَيْتُ يَدَهُ فِي عُنُقِهِ مُعَلَّقَةً.

stolen." Ali said, "You have testified against yourself twice," and he cut off his hand. Abdul Rahman said: I saw his hand hanging from his neck.

L42132 And through him—to ʿAbd al-Razzāq from Ibn Jurayj, who said: I asked ʿAṭāʾ, "What if a man confesses against himself once?" He replied, "It is sufficient for him." Abū Muḥammad (may Allah have mercy on him) said: We cited this solely to prevent their specious objections regarding their claim about producing the stolen goods, based on what we mentioned from Ibn ʿUmar. We demonstrated conclusively that their reports from ʿAlī are decisively more sound than what they cited for Ibn ʿUmar in requiring amputation without producing the stolen goods. Similarly, from ʿAṭāʾ—otherwise, is there any valid proof in anyone apart from the Messenger of Allah (peace and blessings be upon him)? Abū Muḥammad (may Allah have mercy on him) said: Some who deny averting the punishment from the thief upon his retraction argued: "If he confesses then retracts, no amputation is imposed, but he must pay restitution for the stolen property he confessed to taking." This is contradictory and erroneous, for he did not confess to anything except in the context of theft? We responded: His confession inevitably entails one of two scenarios—no third exists. Either he is truthful in having stolen what he mentioned, or he is lying. If truthful, they invalidated the obligation by failing to enforce what Allah commanded—amputating the thief's hand. If lying, they wronged him by compelling him to pay for what he never owed, nor did his confession validate it. Thus, they are either invalidating an obligation or committing injustice by permitting forbidden wealth—both are impermissible. And success comes from Allah, the Exalted.

The Issue of Discrepancy in Testimony Regarding Theft

L42133

L42134 2280 - Issue: Discrepancy in testimony regarding this matter? Abū Muḥammad—may Allah have mercy on him—said: Al-Shāfiʿī, Abū Yūsuf, Muḥammad ibn al-Ḥasan, and Abū Thawr stated: If the two witnesses disagree—such that one says, "He stole a cow," while the other says, "No, a bull," or one says, "He stole a red cow," while the other says, "No, a black cow," or one says, "He stole on Thursday," while the other says, "No, on Friday"—

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: قُلْت لِعَطَاءٍ: رَجُلٌ شَهِدَ عَلَى نَفْسِهِ مَرَّةً وَاحِدَةً؟ قَالَ: حَسْبُهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: إنَّمَا أَوْرَدْنَا هَذَا لِئَلَّا يَشْغَبُوا فِيمَا يَذْكُرُونَهُ مِنْ إحْضَارِ السَّرِقَةِ بِمَا ذَكَرْنَا عَنْ ابْنِ عُمَرَ، فَأَوْجَدْنَاهُمْ عَنْ عَلِيٍّ أَصَحَّ مِمَّا وَجَدُوا لِابْنِ عُمَرَ قَطْعًا، بِغَيْرِ إحْضَارِ السَّرِقَةِ، وَكَذَلِكَ عَنْ عَطَاءٍ - وَإِلَّا فَلَا حُجَّةَ فِي أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَالَ بَعْضُ مَنْ لَا يَرَى دَرْءَ الْحَدِّ عَنْ السَّارِقِ بِرُجُوعِهِ: أَنَّهُ إنْ أَقَرَّ ثُمَّ رَجَعَ فَلَا قَطْعَ عَلَيْهِ، لَكِنْ يَغْرَمُ السَّرِقَةَ الَّذِي أَقَرَّ أَنَّهُ سَرَقَهَا مِنْهُ - وَهَذَا تَنَاقُضٌ وَخَطَأٌ، لِأَنَّهُ لَمْ يُقِرَّ لَهُ بِشَيْءٍ إلَّا عَلَى وَجْهِ السَّرِقَةِ؟ قُلْنَا: فَلَا يَخْلُو إقْرَارُهُ ذَلِكَ ضَرُورَةً مِنْ أَحَدِ وَجْهَيْنِ، لَا ثَالِثَ لَهُمَا: إمَّا أَنْ يَكُونَ صَادِقًا فِي أَنَّهُ سَرَقَ مِنْهُ مَا ذَكَرَ - أَوْ يَكُونَ كَاذِبًا فِي ذَلِكَ، فَإِنْ كَانَ صَادِقًا فَقَدْ عَطَّلُوا الْفَرْضَ، إذْ لَمْ يُنَفِّذُوا عَلَيْهِ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ مِنْ قَطْعِ - يَدِ السَّارِقِ - وَإِنْ كَانَ كَاذِبًا فَقَدْ ظَلَمُوهُ، إذْ غَرَّمُوهُ مَا لَمْ يَجِبْ لَهُ عِنْدَهُ قَطُّ، وَلَا صَحَّ إقْرَارُهُ بِهِ، فَهُمْ بَيْنَ تَعْطِيلِ الْفَرْضِ، أَوْ ظُلْمٍ فِي إبَاحَةِ مَالٍ مُحَرَّمٍ - وَكِلَاهُمَا لَا يَحِلُّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة أختلاف الشَّهَادَة فِي السَّرِقَة]

٢٢٨٠ - مَسْأَلَةٌ: اخْتِلَافُ الشَّهَادَةِ فِي ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَالَ الشَّافِعِيُّ، وَأَبُو يُوسُفَ، وَمُحَمَّدُ بْنُ الْحَسَنِ، وَأَبُو ثَوْرٍ: إنْ اخْتَلَفَ الشَّاهِدَانِ، فَقَالَ أَحَدُهُمَا: سَرَقَ بَقَرَةً، وَقَالَ الْآخَرُ: بَلْ ثَوْرًا - أَوْ قَالَ أَحَدُهُمَا: سَرَقَ بَقَرَةً حَمْرَاءَ، وَقَالَ الْآخَرُ: بَلْ

then amputation is not carried out against him; but if one says, “He stole a red cow,” and the other says, “No, a black cow,” then amputation is required against him.

L42135–42137 Mālik said: If one of the witnesses said, “He stole on Thursday,” and the other said, “Rather, on the day of...” On Friday, two said: “He committed adultery on Thursday,” and two said: “Rather, on Friday,” so the punishment for theft and the punishment for adultery were nullified against him.

L42138–42140 He said: If one of them states, “He slandered Zayd on Friday,” and the other says, “He slandered him on Thursday”—or if one says, “He drank wine on Thursday,” and the other says, “Rather, on Friday”—then the prescribed punishment (ḥadd) for slander and the prescribed punishment for drinking wine apply. All these are muddled assertions. We have only cited this to demonstrate—with Allah the Exalted’s help—to those who seek self-improvement and whom Allah wills to guide, the invalidity of their claims regarding analogical reasoning, which they consider the foundation of their false analogy. Would not one who discerns this readily counter their legal arguments with equivalent or stronger ones? Thus we ask them all: Inform us about a case where two witnesses testified against someone for stealing a red cow while another testified he stole a white cow. Or where two witnesses testified he slandered Zayd—one stating “yesterday” and the other “today”—or one said, “He drank wine yesterday,” and the other, “Rather, today.” Is this testimony concerning a single theft or two distinct thefts? A single slander or two differing slanders? A single drinking act or two separate acts? If they reply, “It is a single theft, a single drinking act, and a single slander,” they defiantly contradict manifest reality. No person of sound intellect doubts that Thursday’s drinking differs from Friday’s—being a separate act—or that stealing a yellow cow differs from stealing a black cow—constituting another theft. If they say, “These are two distinct thefts, two distinct drinking acts, and two distinct slanders,” we ask: What distinguishes this from testimonies differing in instances of adultery, stealing an ox versus a cow, or discrepancies in location? Here they have no escape whatsoever—no Quranic text, sound Sunnah, consensus, Companion’s opinion, valid analogy, or sound reasoning.

سَوْدَاءَ - أَوْ قَالَ أَحَدُهُمَا: سَرَقَ يَوْمَ الْخَمِيسِ، وَقَالَ الْآخَرُ: بَلْ يَوْمَ الْجُمُعَةِ، فَلَا قَطْعَ عَلَيْهِ - فَإِنْ قَالَ أَحَدُهُمَا: سَرَقَ بَقَرَةً حَمْرَاءَ، وَقَالَ الْآخَرُ: بَلْ سَوْدَاءَ فَعَلَيْهِ الْقَطْعُ.

وَقَالَ مَالِكٌ: إِنْ قَالَ: أَحَدُ الشَّاهِدَيْنِ: سَرَقَ يَوْمَ الْخَمِيسِ، وَقَالَ الْآخَرُ: بَلْ يَوْمَ الْجُمُعَةِ، وَقَالَ اثْنَانِ: زَنَى يَوْمَ الْخَمِيسِ، وَقَالَ اثْنَانِ: بَلْ يَوْمَ الْجُمُعَةِ، فَقَدْ بَطَلَ عَنْهُ حَدُّ السَّرِقَةِ، وَحَدُّ الزِّنَى.

قَالَ: فَلَوْ قَالَ أَحَدُهُمَا: قَذَفَ زَيْدًا يَوْمَ الْجُمُعَةِ، وَقَالَ الْآخَرُ: قَذَفَهُ يَوْمَ الْخَمِيسِ - أَوْ قَالَ أَحَدُهُمَا: شَرِبَ الْخَمْرَ يَوْمَ الْخَمِيسِ، وَقَالَ الْآخَرُ: بَلْ يَوْمَ الْجُمُعَةِ، فَعَلَيْهِ حَدُّ الْقَذْفِ، وَحَدُّ الْخَمْرِ. وَهَذَا كُلُّهُ تَخْلِيطٌ، وَإِنَّمَا أَوْرَدْنَاهُ لِنُرِيَ - بِعَوْنِ اللَّهِ تَعَالَى - مَنْ نَصَحَ نَفْسَهُ، وَأَرَادَ اللَّهُ تَعَالَى بِهِ خَيْرًا، بُطْلَانَ أَقْوَالِهِمْ فِي التَّشْبِيهِ، الَّذِي هُوَ عِنْدَهُمْ أَصْلٌ لِقِيَاسِهِمْ الْبَاطِلِ، وَأَنَّهُ مَنْ مَيَّزَهُ لَمْ يَعْجِزْ أَنْ يُعَارِضَ عِلَلَهُمْ بِمِثْلِهَا، أَوْ بِأَقْوَى مِنْهَا؟ فَنَقُولُ لِجَمِيعِهِمْ: أَخْبِرُونَا عَمَّنْ شَهِدَ عَلَيْهِ شَاهِدَانِ بِأَنَّهُ سَرَقَ بَقَرَةً حَمْرَاءَ، وَقَالَ الْآخَرُ: بَيْضَاءَ - وَعَمَّنْ شَهِدَ عَلَيْهِ شَاهِدَانِ بِأَنَّهُ قَذَفَ زَيْدًا، وَقَالَ أَحَدُهُمَا: أَمْسِ، وَقَالَ الْآخَرُ: بَلْ الْيَوْمَ - أَوْ قَالَ أَحَدُهُمَا: شَرِبَ خَمْرًا أَمْسِ، وَقَالَ الْآخَرُ: بَلْ الْيَوْمَ - أَهَذِهِ الشَّهَادَةُ عَلَى سَرِقَةٍ وَاحِدَةٍ؟ أَوْ عَلَى سَرِقَتَيْنِ مُخْتَلِفَتَيْنِ؟ وَعَلَى قَذْفٍ وَاحِدٍ، أَمْ عَلَى قَذْفَيْنِ مُتَغَايِرَيْنِ؟ وَعَلَى شُرْبٍ وَاحِدٍ، أَمْ عَلَى شُرْبَيْنِ مُفْتَرِقَيْنِ؟ فَإِنْ قَالُوا: بَلْ عَلَى سَرِقَةٍ وَاحِدَةٍ، وَشُرْبٍ وَاحِدٍ، وَقَذْفٍ وَاحِدٍ، كَابَرُوا الْعِيَانَ، لِأَنَّهُ لَا يَشُكُّ ذُو حِسٍّ سَلِيمٍ فِي أَنَّ شُرْبَ يَوْمِ الْخَمِيسِ لَيْسَ هُوَ شُرْبَ يَوْمِ الْجُمُعَةِ، وَإِنَّمَا هُوَ شُرْبٌ آخَرُ - وَأَنَّ سَرِقَةَ بَقَرَةٍ صَفْرَاءَ لَيْسَتْ هِيَ سَرِقَةَ بَقَرَةٍ سَوْدَاءَ، وَإِنَّمَا هِيَ سَرِقَةٌ أُخْرَى؟ وَإِنْ قَالُوا: بَلْ هِيَ سَرِقَتَانِ مُخْتَلِفَتَانِ، وَشُرْبَانِ مُخْتَلِفَانِ، وَقَذْفَانِ مُخْتَلِفَانِ مُتَغَايِرَانِ؟ قِيلَ لَهُمْ: فَأَيُّ فَرْقٍ بَيْنَ هَذَا

Thus, the view differentiating between these rulings collapses with certainty, leaving only the stance equating them—whether by observing distinctions in all cases or disregarding them entirely. Abū Muḥammad—may Allah have mercy on him—said: We find that those who consider distinctions in all such matters state: If... If the two witnesses differ in describing the stolen item, the time of theft, or its location, their testimonies constitute two conflicting accounts. Since that is the case, the outcome is reduced to the testimony of a single witness, and it is impermissible to establish a definitive judgment with a single witness. Similarly, it is impermissible to enforce the hadd punishment for slander nor the hadd punishment for wine consumption through a single witness. This is their sole argument; they have no other proof.

وَبَيْنَ الشَّهَادَاتِ بِزِنًا مُخْتَلِفٍ، أَوْ بِسَرِقَةِ ثَوْرٍ، أَوْ بَقَرَةٍ، أَوْ بِاخْتِلَافِ الشَّهَادَةِ فِي الْمَكَانِ - وَهَذَا مَا لَا سَبِيلَ لَهُمْ مِنْهُ إلَى التَّخَلُّصِ أَصْلًا، لَا بِنَصِّ قُرْآنٍ، وَلَا سُنَّةٍ صَحِيحَةٍ وَلَا إجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ سَدِيدٍ - فَسَقَطَ بِيَقِينٍ قَوْلُ مَنْ فَرَّقَ بَيْنَ الْأَحْكَامِ الَّتِي ذَكَرْنَا، وَلَمْ يَبْقَ إلَّا قَوْلُ مَنْ سَاوَى بَيْنَهُمَا، فَرَاعَى الِاخْتِلَافَ فِي كُلِّ ذَلِكَ، أَوْ لَمْ يُرَاعِ الِاخْتِلَافَ فِي شَيْءٍ مِنْ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَوَجَدْنَا مَنْ رَاعَى الِاخْتِلَافَ فِي كُلِّ ذَلِكَ يَقُولُ: إذَا اخْتَلَفَ الشَّاهِدَانِ فِي صِفَةِ الْمَسْرُوقِ، أَوْ فِي زَمَانِهِ، أَوْ فِي مَكَانِهِ فَإِنَّمَا حَصَلَ مِنْ قَوْلِهِمْ فِعْلَانِ مُتَغَايِرَانِ، فَإِذْ ذَلِكَ كَذَلِكَ، فَإِنَّمَا حَصَلَ عَلَى فِعْلِ شَاهِدٍ وَاحِدٍ، وَلَا يَجُوزُ الْقَطْعُ بِشَاهِدٍ وَاحِدٍ - وَكَذَلِكَ الْقَذْفُ، فَلَا يَجُوزُ إقَامَةُ حَدِّ قَذْفٍ، وَلَا حَدِّ خَمْرٍ، بِشَاهِدٍ وَاحِدٍ - فَهَذِهِ حُجَّتُهُمْ، مَا لَهُمْ حُجَّةٌ غَيْرُهَا.

L42141 We examined it and found it invalid, because what must be strictly defined in testimony and required of the witness is precisely that without which the testimony cannot be completed—that which, if deficient, renders the testimony nonexistent. Therefore, if the witness contradicts himself regarding this, the testimony is voided, as it was not completed.

فَنَظَرْنَا فِيهَا فَوَجَدْنَاهَا لَا تَصِحُّ؛ لِأَنَّ الَّذِي يَنْبَغِي أَنْ يُضْبَطَ فِي الشَّهَادَةِ، وَيُطْلَبَ بِهِ الشَّاهِدُ، إنَّمَا هُوَ مَا لَا تَتِمُّ الشَّهَادَةُ إلَّا بِهِ، وَالَّذِي إنْ نَقَصَ لَمْ تَكُنْ شَهَادَةٌ، فَهَذَا هُوَ الَّذِي إنْ اخْتَلَفَ الشَّاهِدُ فِيهِ بَطَلَتْ الشَّهَادَةُ؛ لِأَنَّهَا لَمْ تَتِمَّ.

L42142 As for matters that serve no purpose in testimony, are unnecessary for it, and where testimony remains complete without their mention—whether witnesses differ regarding them or not, mention them or remain silent—they should not be considered. Their disagreement in such matters equates to disagreement in an unrelated case, with no distinction. Since this principle applies, mentioning color in testimony has no significance. Similarly, specifying time in testimony regarding adultery, theft, slander, or alcohol consumption holds no relevance. Mentioning location in all such cases is equally meaningless. Therefore, their disagreement on these points carries the same weight as their agreement or silence, for testimony in these matters

وَأَمَّا مَا لَا مَعْنَى لِذِكْرِهِ فِي الشَّهَادَةِ، وَلَا يُحْتَاجُ إلَيْهِ فِيهَا، وَتَتِمُّ الشَّهَادَةُ مَعَ السُّكُوتِ عَنْهُ، فَلَا يَنْبَغِي أَنْ يُلْتَفَتَ إلَيْهِ - وَسَوَاءٌ اخْتَلَفَ الشُّهُودُ فِيهِ، أَوْ لَمْ يَخْتَلِفُوا، وَسَوَاءٌ ذَكَرُوهُ، أَوْ لَمْ يَذْكُرُوهُ - وَاخْتِلَافُهُمْ فِيهِ كَاخْتِلَافِهِمْ فِي قِصَّةٍ أُخْرَى لَيْسَتْ مِنْ الشَّهَادَةِ فِي شَيْءٍ، وَلَا فَرْقَ، فَلَمَّا وَجَبَ هَذَا كَانَ ذِكْرُ اللَّوْنِ فِي الشَّهَادَةِ لَا مَعْنَى لَهُ، وَكَانَ أَيْضًا ذِكْرُ الْوَقْتِ فِي الشَّهَادَةِ فِي الزِّنَا وَفِي السَّرِقَةِ، وَفِي الْقَذْفِ، وَفِي الْخَمْرِ لَا مَعْنَى لَهُ

requires none of these details. What then defines the ruling of testimony? It suffices for witnesses to declare: “He committed adultery with a foreign woman we recognize—we saw him insert his genitalia into hers. Nothing more.” It is irrelevant whether they describe her as dark-skinned, fair, blue-eyed, or kohl-eyed; whether she was coerced or willing; whether the act occurred yesterday, today, a year ago, in Egypt, or in Baghdad.

- وَكَانَ أَيْضًا ذِكْرُ الْمَكَانِ فِي كُلِّ ذَلِكَ لَا مَعْنَى لَهُ، فَكَانَ اخْتِلَافُهُمْ فِي كُلِّ ذَلِكَ كَاتِّفَاقِهِمْ، كَسُكُوتِهِمْ، وَلَا فَرْقَ؛ لِأَنَّ الشَّهَادَةَ فِي كُلِّ ذَلِكَ تَامَّةٌ دُونَ ذِكْرِ شَيْءٍ مِنْ ذَلِكَ، وَإِنَّمَا حُكْمُ الشَّهَادَةِ؟ وَحَسْبُ الشُّهُودِ أَنْ يَقُولُوا: إِنَّهُ زَنَى بِامْرَأَةٍ أَجْنَبِيَّةٍ نَعْرِفُهَا، أَوْلَجَ ذَكَرَهُ فِي قُبُلِهَا، رَأَيْنَا ذَلِكَ فَقَطْ، وَمَا نُبَالِي قَالُوا: إِنَّهَا سَوْدَاءُ، أَوْ بَيْضَاءُ، أَوْ زَرْقَاءُ أَوْ كَحْلَاءُ مُكْرَهَةٌ، أَوْ طَائِعَةٌ، أَمْسِ، أَوْ الْيَوْمِ، أَوْ مُنْذُ سَنَةٍ بِمِصْرَ، أَوْ بِبَغْدَادَ.

L42143 And likewise: if they differed regarding the color of his garment at that time, or the color of his turban.

وَكَذَلِكَ - لَوْ اخْتَلَفُوا فِي لَوْنِ ثَوْبِهِ حِينَئِذٍ، أَوْ لَوْنِ عِمَامَتِهِ.

L42144 Similarly, it suffices for them to state: “He stole a head of cattle by secretly taking it,” and it is not required for the two witnesses to specify: “horned,” “docked-tailed,” “tailless,” “full-tailed and white or full-tailed and black”—and so too in cases of slander and drinking wine; there is no distinction.

وَكَذَلِكَ - حَسْبُهُمْ أَنْ يَقُولُوا: سَرَقَ رَأْسًا مِنْ الْبَقَرِ مُخْتَفِيًا بِأَخْذِهِ، وَلَا عَلَيْهِمَا أَنْ يَقُولَا: أَقْرَنُ، أَوْ أَعْضَبُ، أَوْ أَبْتَرُ، أَوْ وَافِي الذَّنَبِ أَبْيَضَ أَوْ أَسْوَدَ - وَهَكَذَا فِي الْقَذْفِ، وَشُرْبِ الْخَمْرِ، وَلَا فَرْقَ.

L42145 It is established that testimony in all such matters remains valid despite differences among the witnesses, and what need not be explicitly mentioned in the testimony, if their testimony entails only the existence of adultery by him, theft, false accusation of unchastity (qadhf) by him, or his drinking of alcohol, because the witnesses have agreed on that.

فَصَحَّ أَنَّ الشَّهَادَةَ فِي كُلِّ ذَلِكَ تَامَّةٌ مَعَ اخْتِلَافِ الشُّهُودِ، وَمَا لَا يَحْتَاجُ إلَى ذِكْرِهِ فِي الشَّهَادَةِ، إذَا اقْتَضَتْ شَهَادَتُهُمْ وُجُودَ الزِّنَا مِنْهُ، أَوْ وُجُودَ السَّرِقَةِ، أَوْ وُجُودَ الْقَذْفِ مِنْهُ، أَوْ وُجُودَ شُرْبِ الْخَمْرِ مِنْهُ فَقَطْ؛ لِأَنَّهُمْ قَدْ اتَّفَقُوا فِي ذَلِكَ.

L42146–42147 This is what necessitates the prescribed punishment, for Allah the Exalted has obligated the punishment solely due to the occurrence of adultery, the established penalty for theft, or false accusation of adultery. If four witnesses establish adultery, the prescribed punishment becomes obligatory by the explicit text of the Quran and the Sunnah. Neither Allah the Exalted nor His Messenger—peace and blessings be upon him—ever stated: “Do not accept testimony unless they testify to a single act of adultery at one time and in one place, or to a single theft of one item at one time and in one place.” “And your Lord is not forgetful” (Quran 19:64).[20]

وَهَذَا هُوَ الْمُوجِبُ لِلْحَدِّ، فَإِنَّمَا أَوْجَبَ اللَّهُ تَعَالَى الْحَدَّ فِي كُلِّ ذَلِكَ بِوُقُوعِ الزِّنَا، وَوُجُوبِ السَّرِقَةِ، أَوْ الْقَذْفِ، وَأَثْبَتَ الْأَرْبَعَةُ الزِّنَا فَقَدْ وَجَبَ الْحَدُّ فِي ذَلِكَ بِنَصِّ الْقُرْآنِ، وَالسُّنَّةِ وَلَمْ يَقُلْ اللَّهُ تَعَالَى قَطُّ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا تَقْبَلُوا الشَّهَادَةَ حَتَّى يَشْهَدُوا عَلَى زِنًا وَاحِدٍ، فِي وَقْتٍ وَاحِدٍ، فِي مَكَانٍ وَاحِدٍ، وَعَلَى سَرِقَةٍ وَاحِدَةٍ لِشَيْءٍ وَاحِدٍ فِي وَقْتٍ وَاحِدٍ، فِي مَكَانٍ وَاحِدٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

L42148 And by Allah, if Allah the Exalted had willed that matter, He would not

[20] **Qur’an references (L42147):** Qur’an 19:64 (Maryam).

have neglected it nor overlooked it until it were expounded by so-and-so and so-and-so - Allah is utterly beyond such imperfection! Thus it stands confirmed that their stipulated condition in this regard is baseless and devoid of meaning - with Allah alone lies all success. Let them realize that their claim "We do not know this position to be reported from any Companion - may Allah be pleased with them - nor do we attribute it to any follower except for what is transmitted from Qatadah": 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 from Ma'mar from Qatadah concerning a man against whom one witness testified he stole in one region, and another testified he stole in a different region. He ruled: "No amputation is to be imposed upon him."

L42149 It has been authentically reported from some of the Followers—those we recognize as being of higher standing than Qatādah—that they held a differing opinion: ʿAbdullāh ibn Rabīʿ reported from ʿAbdullāh ibn Muḥammad ibn ʿUthmān, who reported from Aḥmad ibn Khālid, who reported from ʿAlī ibn ʿAbd al-ʿAzīz, who reported from al-Ḥajjāj ibn al-Minhāl, who reported from Ḥammād ibn Salamah, who reported from Hishām ibn ʿUrwah ibn al-Zubayr, from his father, who said: "A man's solitary testimony is permissible in theft"—we have previously mentioned a similar report from ʿUbaydullāh ibn Abī Bakrah—"even though we do not hold this opinion. We [present this] to show them that their obfuscation—by claiming it constitutes a single testimony regarding a single act—is invalid reasoning. Success is from Allah, the Exalted."

L42150 **The issue of theft in a state of necessity.**

L42151–42153 2281 - Issue: Is amputation applicable in cases of necessity? Abū Muḥammad—may Allāh have mercy on him—said: Ḥumām 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 Maʿmar from Yaḥyā ibn Abī Kathīr, who said: ʿUmar ibn al-Khaṭṭāb ruled: "Amputation is not to be imposed for a palm branch, nor during a year of famine." And via this chain to Maʿmar from Abān: A man came to ʿUmar ibn al-Khaṭṭāb regarding a she-camel that

وَتَاللَّهِ، لَوْ أَرَادَ اللَّهُ تَعَالَى ذَلِكَ لَمَا أَهْمَلَهُ، وَلَا أَغْفَلَهُ حَتَّى يُبَيِّنَهُ فُلَانٌ وَفُلَانٌ، وَحَاشَ لِلَّهِ مِنْ هَذَا. فَصَحَّ أَنَّ مَا اشْتَرَطُوهُ مِنْ ذَلِكَ خَطَأٌ لَا مَعْنَى لَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: فَلْيَعْلَمُوا أَنَّ قَوْلَهُمْ: لَا نَعْلَمُهُ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَلَا نَذْكُرُهُ عَنْ تَابِعٍ، إلَّا شَيْئًا وَرَدَ عَنْ قَتَادَةَ: وَحَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، فِي رَجُلٍ شَهِدَ عَلَيْهِ رَجُلٌ أَنَّهُ سَرَقَ بِأَرْضٍ، وَشَهِدَ عَلَيْهِ آخَرُ بِأَنَّهُ سَرَقَ بِأَرْضٍ أُخْرَى؟ قَالَ: لَا قَطْعَ عَلَيْهِ.

وَقَدْ صَحَّ عَنْ بَعْضِ التَّابِعِينَ مِمَّنْ نَعْلَمُهُ أَعْلَى مِنْ قَتَادَةَ خِلَافُ هَذَا: كَمَا 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 هِشَامُ بْنُ عُرْوَةَ بْنِ الزُّبَيْرِ عَنْ أَبِيهِ، قَالَ: تَجُوزُ شَهَادَةُ الرَّجُلِ وَحْدَهُ فِي السَّرِقَةِ - وَقَدْ ذَكَرْنَا مِثْلَ هَذَا عَنْ عُبَيْدِ اللَّهِ بْنِ أَبِي بَكْرَةَ - وَإِنْ كُنَّا لَا نَقُولُ بِهِ - وَلَكِنْ لِنُرِيَهُمْ أَنَّ تَمْوِيهَهُمْ بِأَنَّهَا شَهَادَةٌ وَاحِدَةٌ عَلَى فِعْلٍ وَاحِدٍ: كَلَامٌ فَاسِدٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة السَّرِقَة عِنْد الضرورة]

٢٢٨١ - مَسْأَلَةٌ: الْقَطْعُ فِي الضَّرُورَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ حَدَّثَنَا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ: لَا تُقْطَعُ فِي عِذْقٍ، وَلَا فِي عَامِ السَّنَةِ. وَبِهِ - إلَى مَعْمَرٍ عَنْ أَبَانَ: أَنَّ رَجُلًا جَاءَ إلَى عُمَرَ بْنِ الْخَطَّابِ فِي نَاقَةٍ نُحِرَتْ، فَقَالَ لَهُ عُمَرُ: هَلْ لَكَ فِي

had been slaughtered. Umar said to him: “What do you think of two ten-year-old she-camels, pastured and fattened, in exchange for your camel? For we do not amputate hands during a drought year”—and “pastured” refers to those made to rest? Abu Muhammad said: “Whoever steals due to dire need, if he takes an amount sufficient to relieve himself, nothing is imposed upon him, for he has taken his rightful due. If he finds only a single item in which there is abundant surplus—such as one garment, a pearl, a camel, or the like—and takes it, nothing is imposed upon him either, for he must return the surplus to whom it rightfully belongs, since he could not take beyond the surplus required for his sustenance. But if he could obtain precisely what sustains him until reaching a place where provision is attainable, yet takes more while having the means to refrain, hand amputation is required, for he stole without necessity. If a person is compelled to take what is indispensable for his livelihood yet fails to do so, he is causing his own destruction and disobeying Allah. Allah Almighty says: *Do not destroy yourselves* [4:29]—a universal ruling encompassing all that its wording entails.” And with Allah, the Most High, lies all success.[21]

The Issue of the Prohibition of Stealing from Relatives

Issue 2282: The case of one who steals from a mahram relative. Abu Muhammad—may Allah have mercy on him—said: Scholars have differed regarding one who steals from the property of any mahram relative. Malik, Abu Hanifah, al-Shafi’i, Ahmad ibn Hanbal, their followers, Sufyan al-Thawri, and Ishaq said: If parents steal from the property of their son or daughter, their hands are not to be amputated.

Al-Shafi’i said: Similarly, grandfathers and grandmothers—however they may be—are not subject to amputation for what they steal from the property of those born after them in their lineage.

All these jurists—except Mālik and Abū Thawr—stated that no amputa-

[21] **Qur’an references (L42151):** Qur’an 4:29 (An-Nisa).

نَاقَتَيْنِ عِشْرَاوَيْنِ، مُرْتَعَتَيْنِ، سَمِينَتَيْنِ، بِنَاقَتِكَ؟ فَإِنَّا لَا نَقْطَعُ فِي عَامِ السَّنَةِ - وَالْمُرْتَعَتَانِ: الْمُوَطَّأَتَانِ؟ قَالَ أَبُو مُحَمَّدٍ: مَنْ سَرَقَ مِنْ جَهْدٍ أَصَابَهُ، فَإِنْ أَخَذَ مِقْدَارَ مَا يَغِيثُ بِهِ نَفْسَهُ فَلَا شَيْءَ عَلَيْهِ، وَإِنَّمَا أَخَذَ حَقَّهُ، فَإِنْ لَمْ يَجِدْ إِلَّا شَيْئًا وَاحِدًا فَفِيهِ فَضْلٌ كَثِيرٌ، كَثَوْبٍ وَاحِدٍ أَوْ لُؤْلُؤَةٍ، أَوْ بَعِيرٍ، أَوْ نَحْوِ ذَلِكَ، فَأَخَذَهُ كَذَلِكَ فَلَا شَيْءَ عَلَيْهِ أَيْضًا؛ لِأَنَّهُ يَرُدُّ فَضْلَهُ لِمَنْ فَضَلَ عَنْهُ؛ لِأَنَّهُ لَمْ يَقْدِرْ عَلَى فَضْلِ قُوتِهِ مِنْهُ، فَلَوْ قَدَرَ عَلَى مِقْدَارِ قُوتِهِ يُبَلِّغُهُ إِلَى مَكَانِ الْمَعَاشِ فَأَخَذَ أَكْثَرَ مِنْ ذَلِكَ وَهُوَ مُمَكَّنٌ لَا يَأْخُذُهُ، فَعَلَيْهِ الْقَطْعُ؛ لِأَنَّهُ سَرَقَ ذَلِكَ عَنْ غَيْرِ ضَرُورَةٍ، وَإِنْ فُرِضَ عَلَى الْإِنْسَانِ أَخْذُ مَا اُضْطُرَّ إِلَيْهِ فِي مَعَاشِهِ، فَإِنْ لَمْ يَفْعَلْ فَهُوَ قَاتِلٌ نَفْسَهُ، وَهُوَ عَاصٍ لِلَّهِ قَالَ اللَّهُ تَعَالَى {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] وَهُوَ عُمُومٌ لِكُلِّ مَا اقْتَضَاهُ لَفْظُهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة السَّرِقَة مِنْ ذِي رَحِم محرم]

٢٢٨٢ - مَسْأَلَةٌ: مَنْ سَرَقَ مِنْ ذِي رَحِمٍ مَحْرَمَةٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِيمَنْ سَرَقَ مِنْ مَالِ كُلِّ ذِي رَحِمٍ مَحْرَمَةٍ؟ فَقَالَ مَالِكٌ، وَأَبُو حَنِيفَةَ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابُهُمْ، وَسُفْيَانُ الثَّوْرِيُّ، وَإِسْحَاقُ: إِنْ سَرَقَ الْأَبَوَانِ مِنْ مَالِ ابْنِهِمَا، أَوْ بِنْتِهِمَا فَلَا قَطْعَ عَلَيْهِمَا.

قَالَ الشَّافِعِيُّ: وَكَذَلِكَ الْأَجْدَادُ وَالْجَدَّاتُ - كَيْفَ كَانُوا - لَا قَطْعَ عَلَيْهِمْ فِيمَا سَرَقُوهُ مِنْ مَالِ مَنْ تَلِيهِ وِلَادَتُهُمْ.

tion applies to a son or daughter for stealing from the property of parents, grandfathers, or grandmothers. Mālik and Abū Thawr said: Amputation is required for them in that case.

وَقَالَ هَؤُلَاءِ كُلُّهُمْ - حَاشَا مَالِكًا، وَأَبَا ثَوْرٍ: لَا قَطْعَ عَلَى الْوَلَدِ، وَلَا عَلَى الْبِنْتِ فِيمَا سَرَقَاهُ مِنْ مَالِ الْوَالِدَيْنِ، أَوْ الْأَجْدَادِ، أَوْ الْجَدَّاتِ، قَالَ مَالِكٌ، وَأَبُو ثَوْرٍ: عَلَيْهِمَا الْقَطْعُ فِي ذَلِكَ.

L42158 Al-Thawri, Abu Hanifah, and his companions said: The ḥadd punishment of amputation is not imposed on anyone who steals property belonging to one of his mahram relatives.

وَقَالَ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا قَطْعَ عَلَى كُلِّ مَنْ سَرَقَ مَالًا لِأَحَدٍ مِنْ رَحِمِهِ الْمَحْرَمَةِ.

L42159 Our companions said: Amputation is obligatory upon one who steals from his child, his parents, his grandmother, his grandfather, or a relative—whether *mahram* or non-*mahram*.

وَقَالَ أَصْحَابُنَا: الْقَطْعُ وَاجِبٌ عَلَى مَنْ سَرَقَ مِنْ وَلَدِهِ، أَوْ مِنْ وَالِدَيْهِ، أَوْ مِنْ جَدَّتِهِ، أَوْ مِنْ جَدِّهِ، أَوْ مِنْ ذِي رَحِمٍ مَحْرَمَةٍ، أَوْ غَيْرِ مَحْرَمَةٍ.

L42160 Have they all agreed that the hand is to be cut off for stealing from a blood relative not within the prohibited degrees of marriage, for stealing from one's milk mother, for stealing from one's milk daughter, milk son, or milk brothers?

وَاتَّفَقُوا كُلُّهُمْ أَنَّهُ يُقْطَعُ فِيمَا سَرَقَ مِنْ ذِي رَحِمِهِ غَيْرِ الْمَحْرَمَةِ، وَفِيمَا سَرَقَ مِنْ أُمِّهِ مِنْ الرَّضَاعَةِ، وَابْنَتِهِ وَابْنِهِ مِنْ الرَّضَاعَةِ، وَإِخْوَتِهِ مِنْ الرَّضَاعَةِ؟

L42161–42162 Abū Muḥammad said: When they differed as we mentioned, it became obligatory for us to examine this matter to know the truth and follow it—with the help of Allah, the Exalted—so we examined the opinion of those who waived amputation from the parents regarding the child's property if he stole it. We found them citing what is established from the Messenger of Allah—peace and blessings be upon him—in his saying, "You and your property belong to your father." They said: "He only took his own property."

قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا، وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ لِنَعْلَمَ الْحَقَّ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى - فَنَظَرْنَا فِي قَوْلِ مَنْ أَسْقَطَ الْقَطْعَ عَنْ الْأَبَوَيْنِ فِي مَالِ الْوَلَدِ إذَا سَرَقَهُ؟ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ قَوْلِهِ «أَنْتَ وَمَالُكَ لِأَبِيكَ» قَالُوا: فَإِنَّمَا أَخَذَ مَالَهُ.

L42163 They said: If he killed his son, he would not be executed for it, and if he committed adultery with his son's female slave, he would not receive the *hadd* punishment for that. Similarly, if he stole from his son's wealth—He further stated: It is incumbent upon him to make his father self-sufficient if he becomes needy and dependent on others, for the father thereby has a rightful claim to his son's wealth.

وَقَالُوا: لَوْ قَتَلَ ابْنُهُ لَمْ يُقْتَلْ بِهِ، وَلَوْ زَنَى بِأَمَةِ ابْنِهِ لَمْ يُحَدَّ لِذَلِكَ، فَكَذَلِكَ إذَا سَرَقَ مِنْ مَالِهِ - قَالَ: وَفَرْضٌ عَلَيْهِ أَنْ يُعَفِّفَ أَبَاهُ إذَا احْتَاجَ إلَى النَّاسِ فَلَهُ فِي مَالِهِ حَقٌّ بِذَلِكَ.

L42164 And they said: For the needy, there is a right in the owner's wealth; when he needs it, the owner is obligated to spend on him.

وَقَالُوا: لَهُ فِي مَالِهِ حَقٌّ إذَا احْتَاجَ إلَيْهِ كُلِّفَ الْإِنْفَاقَ عَلَيْهِ.

L42165 And they said, “Allah, the Most High, said: ’And show good treatment to your parents’ [Al-Isra: 23].”[22]

وَقَالُوا: قَالَ اللَّهُ تَعَالَى {وَبِالْوَالِدَيْنِ إِحْسَانًا} [الإسراء: ٢٣] .

L42166 And He, the Exalted, said: {Give thanks to Me and to your parents} [Luqman: 14]. And He, the Exalted, said: {Do not say to them “Uff,” nor repel them} [Al-Isra: 23] up to His saying: {as they nurtured me in my childhood} [Al-Isra: 24]. Is cutting off their hands for what was taken from his wealth an act of mercy? This encompasses every baseless argument they raised in all these matters—and in all of that, there is no proof for them in any part of it; rather, it is against them, as I will clarify—Allah, the Exalted, willing.[23]

وَقَالَ تَعَالَى {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ} [لقمان: ١٤] . وَقَالَ تَعَالَى {فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا} [الإسراء: ٢٣] إلَى قَوْلِهِ: {كَمَا رَبَّيَانِي صَغِيرًا} [الإسراء: ٢٤] فَلَيْسَ قَطْعُ أَيْدِيهِمَا فِيمَا أُخِذَ مِنْ مَالِهِ رَحْمَةٌ؟ فَهَذَا كُلُّ مَا شَغَبُوا بِهِ فِي كُلِّ ذَلِكَ - وَكُلُّ ذَلِكَ لَا حُجَّةَ لَهُمْ فِي كُلِّ شَيْءٍ مِنْهُ، بَلْ هُوَ عَلَيْهِمْ، كَمَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى.

L42167 As for what they cited from the Quran, it is correct. However, it does not indicate their claim regarding the abolition of amputation for stealing from the child’s property, nor the abolition of flogging, stoning, or banishment—if one fornicates with the child’s slave girl—nor the abolition of the ḥadd punishment—if one falsely accuses the child of unchastity—nor the abolition of the penalty for ḥirābah (banditry)—if one commits highway robbery against the child. As for the statement of Allah, the Exalted: _And show kindness to parents_ [Al-Isra: 23], Allah the Exalted has indeed mandated kindness toward them, just as He has obligated us to show kindness to others as well.[24]

أَمَّا مَا ذَكَرُوا مِنْ الْقُرْآنِ فَحَقٌّ، إلَّا أَنَّهُ لَا يَدُلُّ عَلَى مَا ادَّعَوْا مِنْ إسْقَاطِ الْقَطْعِ فِيمَا سَرَقُوا مِنْ مَالِ الْوَلَدِ، وَلَا عَلَى إسْقَاطِ الْجَلْدِ، وَالرَّجْمِ، أَوْ التَّغْرِيبِ - إذَا زَنَى بِجَارِيَةِ الْوَلَدِ - وَلَا عَلَى إسْقَاطِ الْحَدِّ - إذَا قَذَفَ الْوَلَدَ - وَلَا عَلَى إسْقَاطِ الْمُحَارَبَةِ - إذَا قَطَعَ الطَّرِيقَ عَلَى الْوَلَدِ. أَمَّا قَوْله تَعَالَى {وَبِالْوَالِدَيْنِ إحْسَانًا} [الإسراء: ٢٣] فَإِنَّ اللَّهَ تَعَالَى أَوْجَبَ الْإِحْسَانَ إلَيْهِمَا، كَمَا أَوْجَبَهُ عَلَيْنَا أَيْضًا لِغَيْرِنَا.

L42168 Allah, the Exalted, said, “And to parents, kindness, and to near relatives of kinship, orphans, the needy, and the neighbor of kinship” [An-Nisa: 36].[25]

قَالَ اللَّهُ تَعَالَى {وَبِالْوَالِدَيْنِ إِحْسَانًا وَبِذِي الْقُرْبَى وَالْيَتَامَى وَالْمَسَاكِينِ وَالْجَارِ ذِي الْقُرْبَى} [النساء: ٣٦] .

L42169–42170 If the preceding part of the verse constitutes evidence for the obligation to show kindness to parents by exempting them from amputation when they steal from their child’s property, then it must also, inevitably, serve as evidence for exempting every relative, the wayfarer, the distant neighbor, and the companion at your side from amputation when they steal from our property. Yet this is a position they do not uphold? Thus their contradiction becomes evident, and their argument based on the verse is invalidated.

فَإِنْ كَانَتْ مُقَدِّمَةُ الْآيَةِ حُجَّةً بِوُجُوبِ الْإِحْسَانِ إلَى الْأَبَوَيْنِ فِي إسْقَاطِ الْقَطْعِ عَنْهُمَا - إذَا سَرَقَا مِنْ مَالِ الْوَلَدِ - فَهِيَ حُجَّةٌ أَيْضًا - وَلَا بُدَّ - فِي إسْقَاطِ الْقَطْعِ عَنْ كُلِّ ذِي قُرْبَى، وَعَنْ ابْنِ السَّبِيلِ، وَعَنْ الْجَارِ الْجُنُبِ، وَالصَّاحِبِ بِالْجَنْبِ - إذَا سَرَقُوا مِنْ أَمْوَالِنَا - وَهَذَا مَا لَا يَقُولُونَهُ؟ فَظَهَرَ تَنَاقُضُهُمْ، وَبَطَلَ احْتِجَاجُهُمْ بِالْآيَةِ.

[22] **Qur’an references (L42165):** Qur’an 17:23 (Al-Isra).

[23] **Qur’an references (L42166):** Qur’an 31:14 (Luqman); Qur’an 17:23 (Al-Isra); Qur’an 17:24 (Al-Isra).

[24] **Qur’an references (L42167):** Qur’an 17:23 (Al-Isra).

[25] **Qur’an references (L42168):** Qur’an 4:36 (An-Nisa).

L42171 Moreover, the command to do good does not entail prohibiting the enforcement of prescribed penalties. Rather, enforcing them upon those subject to them constitutes beneficence toward them, as per the explicit injunction of the Quran. For Allah the Exalted states: "Indeed, Allah commands justice and beneficence" [16:90]. He has commanded us to implement these penalties; thus, enforcing them upon offenders is an act of beneficence toward them. Verily, they serve as atonement and purification for those subjected to them.[26]

وَأَيْضًا - فَالْأَمْرُ بِالْإِحْسَانِ لَيْسَ فِيهِ مَنْعٌ مِنْ إقَامَةِ الْحُدُودِ، بَلْ إقَامَتُهَا عَلَيْهِمْ مِنْ الْإِحْسَانِ إلَيْهِمْ، بِنَصِّ الْقُرْآنِ، لِقَوْلِ اللَّهِ تَعَالَى: {إنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ} [النحل: ٩٠] وَقَدْ أَمَرَنَا بِإِقَامَةِ الْحُدُودِ، فَإِقَامَتُهَا عَلَى مَنْ أُقِيمَتْ عَلَيْهِ إحْسَانٌ إلَيْهِ، وَإِنَّهَا تَكْفِيرٌ وَتَطْهِيرٌ لِمَنْ أُقِيمَتْ عَلَيْهِ.

L42172 They do not differ in holding that if an imam's father or mother were to steal, it would be obligatory upon him to enforce the punitive amputation upon them. Thus their obfuscation with the verse is entirely invalidated, and it stands confirmed that it constitutes definitive proof against them. As for the statement of the Exalted, "Be grateful to Me and to your parents" [Luqman 31:14], it is an obligation—and part of gratitude is establishing Allah's command upon them. Gratitude toward them does not entail neglecting what Allah the Exalted has commanded concerning them. The One who enjoined gratitude to them—Blessed is His Name—is He who declares: "Be maintainers of justice, witnesses for Allah even against yourselves or your parents and kinsmen" [An-Nisa' 4:135].[27]

وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ إمَامًا لَوْ كَانَ لَهُ أَبٌ أَوْ أُمٌّ فَسَرَقَا، فَإِنَّ فَرْضًا عَلَيْهِ إقَامَةُ الْقَطْعِ عَلَيْهِمَا. فَبَطَلَ تَمْوِيهُهُمْ بِالْآيَةِ جُمْلَةً وَصَحَّ أَنَّهَا حُجَّةٌ عَلَيْهِمْ. وَأَمَّا قَوْله تَعَالَى {أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ} [لقمان: ١٤] فَحَقٌّ - وَمِنْ الشُّكْرِ إقَامَةُ أَمْرِ اللَّهِ تَعَالَى عَلَيْهِمَا، وَلَيْسَ يَقْتَضِي شُكْرُهُمَا إسْقَاطُ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ فِيهِمَا وَالَّذِي أَمَرَ بِشُكْرِهِمَا - تَبَارَكَ اسْمُهُ - هُوَ الَّذِي يَقُولُ {كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَى أَنْفُسِكُمْ أَوِ الْوَالِدَيْنِ وَالأَقْرَبِينَ} [النساء: ١٣٥] .

L42173 Thus, the command of Allah, the Exalted, was confirmed to uphold justice toward them and to give truthful testimony concerning them.

فَصَحَّ أَمْرُ اللَّهِ تَعَالَى بِالْقِيَامِ عَلَيْهِمْ بِالْقِسْطِ، وَبِأَدَاءِ الشَّهَادَةِ عَلَيْهِمْ.

L42174 And part of upholding justice is the establishment of hudud (divinely ordained penalties) against them—and with Allah, the Exalted, is success.

وَمِنْ الْقِيَامِ بِالْقِسْطِ إقَامَةُ الْحُدُودِ عَلَيْهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42175 Similarly, the ruling applies to the statement of Allah, the Exalted: "Do not say to them 'uff' and do not repel them" [Al-Isra: 23], the verse. None of this entails nullifying the prescribed punishment from them for theft from the child's property or other than that. And Allah, the Exalted, says: "Severe against the disbelievers, merciful between them" [Al-Fath: 29]. The obliga-

وَهَكَذَا الْقَوْلُ فِي قَوْله تَعَالَى {فَلا تَقُلْ لَهُمَا أُفٍّ وَلا تَنْهَرْهُمَا} [الإسراء: ٢٣] الْآيَةَ فَلَيْسَ فِي شَيْءٍ مِنْ هَذَا إسْقَاطُ الْحَدِّ عَنْهُمْ فِي سَرِقَةٍ مِنْ مَالِ الْوَلَدِ، وَلَا فِي غَيْرِ ذَلِكَ وَاَللَّهُ تَعَالَى يَقُولُ {أَشِدَّاءُ عَلَى الْكُفَّارِ رُحَمَاءُ بَيْنَهُمْ} [الفتح: ٢٩] وَلَمْ يَكُنْ وُجُوبُ الرَّحْمَةِ لِبَعْضِنَا مُسْقِطًا لِإِقَامَةِ الْحُدُودِ بَعْضُنَا عَلَى بَعْضٍ.

[26] **Qur'an references (L42171):** Qur'an 16:90 (An-Nahl).
[27] **Qur'an references (L42172):** Qur'an 31:14 (Luqman); Qur'an 4:135 (An-Nisa).

tion of mercy among some of us does not nullify the enforcement of the prescribed punishments by some of us against others.[28]

فَبَطَلَ تَعَلُّقُهُمْ بِالْآيَاتِ الْمَذْكُورَاتِ جُمْلَةً. وَأَمَّا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَنْتَ وَمَالُكَ لِأَبِيكَ» فَقَدْ أَوْضَحْنَا ذَلِكَ: أَنَّ ذَلِكَ خَبَرٌ مَنْسُوخٌ، قَدْ صَحَّ نَسْخُهُ بِآيَاتِ الْمَوَارِيثِ وَغَيْرِهَا.

L42176 Their attachment to the aforementioned verses is entirely nullified. As for the statement of the Messenger of Allah—peace and blessings be upon him—"You and your wealth are for your father," we have clarified that this is an abrogated report, as its abrogation is confirmed by the verses of inheritance and other verses.

وَأَوَّلُ مَنْ يَحْتَجُّ بِهَذَا الْخَبَرِ: فَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ الْأَبَ إِذَا أَخَذَ مِنْ مَالِ ابْنِهِ دِرْهَمًا - وَهُوَ غَيْرُ مُحْتَاجٍ إِلَيْهِ - فَإِنَّهُ يُقْضَى عَلَيْهِ بِرَدِّهِ، أَحَبَّ أَمْ كَرِهَ - كَمَا يُقْضَى بِذَلِكَ عَلَى الْأَجْنَبِيِّ وَلَا فَرْقَ، وَلَوْ كَانَ مَالُ الْوَلَدِ لِلْوَالِدِ لَمَا قُضِيَ عَلَيْهِ بِرَدِّ مَا أُخِذَ مِنْهُ.

L42177–42178 The first to cite this report as evidence are the Hanafis, Malikis, and Shafi'is, as they unanimously hold that if a father takes a dirham from his son's wealth without needing it, he is legally obligated to return it, whether willingly or unwillingly—just as a third party would be obligated to return it, with no distinction. If the child's wealth belonged to the parent, he would not be ordered to return what he took from it.

فَإِذْ قَدْ صَحَّ أَنَّ هَذَا الْخَبَرَ مَنْسُوخٌ، وَصَحَّ أَنَّ مَالَ الْوَلَدِ لِلْوَلَدِ لَا لِلْوَالِدِ، فَقَدْ صَحَّ أَنَّهُ كَمَالِ الْأَجْنَبِيِّ وَلَا فَرْقَ؟ فَإِنْ قَالُوا: إِنَّ لِلْوَالِدَيْنِ حَقًّا فِي مَالِ الْوَلَدِ؛ لِأَنَّهُمَا إِذَا احْتَاجَا أُجْبِرَ عَلَى أَنْ يُنْفِقَ عَلَيْهِمَا، وَعَلَى أَنْ يَعِفَّ أَبَاهُ، فَإِذْ لَهُ فِي مَالِهِ حَقٌّ، فَلَا يُقْطَعُ فِيمَا سَرَقَ مِنْهُ: فَهَذَا تَمْوِيهٌ ظَاهِرٌ وَلَمْ يُخَالِفْهُمْ أَحَدٌ فِي أَنَّ الْوَالِدَيْنِ إِذَا احْتَاجَا فَأَخَذَا مِنْ مَالِ وَلَدِهِمَا حَاجَتَهُمَا بِاخْتِفَاءٍ أَوْ بِقَهْرٍ أَوْ كَيْفَ أَخَذَاهُ - فَلَا شَيْءَ عَلَيْهِمَا، فَإِنَّمَا أَخَذَا حَقَّهُمَا - وَإِنَّمَا الْكَلَامُ فِيهِمَا إِذَا أَخَذَا مَا لَا حَاجَةَ بِهِمَا إِلَيْهِ - إِمَّا سِرًّا وَإِمَّا جَهْرًا - فَاحْتِجَاجُهُمَا بِمَا لَيْسَ مِنْ مَسْأَلَتِهِمَا تَمْوِيهٌ.

L42179 Since it has been confirmed that this report is abrogated, and established that the child's wealth belongs to the child rather than the parent, then isn't it confirmed that this wealth is equivalent to that of a stranger with no distinction? If they argue, "Parents hold a right to their child's wealth because when in need, the child is compelled to provide for them and support his father sufficiently. Since he has a right to this wealth, his hand is not to be amputated for stealing from it"—this constitutes blatant deception. No one disputes that if parents in need take from their child's wealth what meets their necessity—whether secretly, by force, or however they take it—they incur no penalty, for they merely take their rightful due. The debate concerns them taking what they do not need, whether secretly or openly. Their use of arguments irrelevant to their situation is pure deception.

وَهُمْ لَا يَخْتَلِفُونَ فِيمَنْ كَانَ لَهُ حَقٌّ عِنْدَ أَحَدٍ، فَأَخَذَ مِنْ مَالِهِ مِقْدَارَ حَقِّهِ، فَإِنَّهُ لَا يُقْطَعُ، وَلَا يُقْضَى عَلَيْهِ بِرَدِّهِ - فَلَوْ كَانَ وُجُوبُ الْحَقِّ لِلْأَبَوَيْنِ فِي مَالِ الْوَلَدِ إِذَا احْتَاجَا إِلَيْهِ مُسْقِطًا لِلْقَطْعِ عَنْهُمَا إِذَا سَرَقَا مِنْ مَالِهِ مَا لَا يَحْتَاجَانِ إِلَيْهِ وَلَا حَقَّ لَهُمَا فِيهِ،

L42180 They do not differ regarding one who has a right against another person and takes from his property the equivalent of his rightful claim - for he is neither subject to hand-cutting nor legally required to return it. If the parents' entitlement to their child's property when they need it were to nullify the

[28] **Qur'an references (L42175):** Qur'an 17:23 (Al-Isra); Qur'an 48:29 (Al-Fath).

hand-cutting penalty when they steal from his property what they neither need nor have any right to, it would necessarily follow that the penalty must be waived for a creditor with a valid claim to his debtor's property if he steals from him what he has no right to take. This they do not affirm.

L42181 Thus, their embellishment of that is invalid—and all praise is to Allah, Lord of the Worlds. As for their claim: "If he killed his son, he would not be killed for it; if he severed or fractured his limb, retaliation would not be enacted against him; if he accused him of adultery (qadhf), the hadd punishment would not be imposed on him; and if he committed adultery with his female slave, the hadd punishment would not be imposed on him"—then similarly, if he stole from his wealth, would the hadd punishment not be imposed on him? This is baseless argumentation and a defense of error by citing error.

L42182–42184 Rather, if he were to kill his son, he would be executed in retaliation. If he were to sever or fracture his limb, Qisas (retaliation) would be exacted from him. If he were to falsely accuse him, the hadd punishment would be imposed upon him. If he were to commit unlawful sexual intercourse with his female slave, the hadd punishment would be imposed on him just as it is imposed on the fornicator—and we have clarified all of this in its respective chapters in *The Book of Blood Money, Qisas (Retaliation), the Hadd Punishment for Unlawful Sexual Intercourse, and the Hadd Punishment for False Accusation*. Abu Muhammad—may Allah have mercy on him—said: Since no argument whatsoever remains for them, it is obligatory that we retract at... The dispute is to be referred to that which Allah the Exalted has obligated Muslims to return to, as He says: *"If you disagree over something, refer it to Allah and the Messenger"* [an-Nisa: 59], the verse. So we acted accordingly: We found Allah the Exalted saying: *"As for the male thief and the female thief, cut off their hands"* [al-Ma'idah: 38]. And we found the Messenger of Allah (peace and blessings be upon him) having obligated amputation for those who steal, and he said: *"Indeed, your blood and your wealth are inviolable to you."*[29]

L42185 Neither Allah the Exalted nor His Messenger—may Allah's peace and bless-

لَوَجَبَ ضَرُورَةً أَنْ يَسْقُطَ الْقَطْعُ عَنْ الْغَرِيمِ الَّذِي لَهُ الْحَقُّ فِي مَالِ غَرِيمِهِ إذَا سَرَقَ مِنْهُ مَا لَا حَقَّ لَهُ فِيهِ - وَهَذَا لَا يَقُولُونَهُ.

فَبَطَلَ مَا مَوَّهُوا بِهِ مِنْ ذَلِكَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ. وَأَمَّا قَوْلُهُمْ: لَوْ قَتَلَ ابْنَهُ لَمْ يُقْتَلْ بِهِ، وَلَوْ قَطَعَ لَهُ عُضْوًا أَوْ كَسَرَهُ لَمْ يُقْتَصَّ مِنْهُ، وَلَوْ قَذَفَ لَمْ يُحَدَّ لَهُ، وَلَوْ زَنَى بِأَمَتِهِ لَمْ يُحَدَّ، فَكَذَلِكَ إذَا سَرَقَ مِنْ مَالِهِ لَمْ يُحَدَّ؟ فَكَلَامٌ بَاطِلٌ، وَاحْتِجَاجٌ لِلْخَطَأِ بِالْخَطَأِ.

بَلْ لَوْ قَتَلَ ابْنَهُ لَقُتِلَ بِهِ، وَلَوْ قَطَعَ لَهُ عُضْوًا أَوْ كَسَرَهُ لَاقْتُصَّ مِنْهُ، وَلَوْ قَذَفَهُ لَحُدَّ لَهُ، وَلَوْ زَنَى بِأَمَتِهِ لَحُدَّ كَمَا يُحَدُّ الزَّانِي - وَقَدْ بَيَّنَّا كُلَّ هَذَا فِي أَبْوَابِهِ فِي " كِتَابِ الدِّمَاءِ، وَالْقِصَاصِ وَحَدِّ الزِّنَا وَحَدِّ الْقَذْفِ ". قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ لَمْ يَبْقَ لَهُمْ حُجَّةٌ أَصْلًا، فَالْوَاجِبُ أَنْ نَرْجِعَ عِنْدَ التَّنَازُعِ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى عَلَى الْمُسْلِمِينَ الرُّجُوعَ إلَيْهِ، إذْ يَقُولُ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ فَفَعَلْنَا: فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ: {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] . وَوَجَدْنَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ أَوْجَبَ الْقَطْعَ عَلَى مَنْ سَرَقَ، وَقَالَ «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» ؟ .

[29] **Qur'an references (L42182):** Qur'an 4:59 (An-Nisa); Qur'an 5:38 (Al-Ma'idah).

ings be upon him—singled out a son over a non-relative in that matter, nor did He single out a non-relative's wealth over a son's wealth in matters of wealth. *"And your Lord is never forgetful"* [19:64].[30]

L42186 With certainty we know that had Allah the Exalted intended to exempt the father from amputation, He would not have overlooked or neglected it. The Exalted says: "an explanation of all things" [16:89].[31]

L42187 Thus, it is established that the hadd punishment of hand amputation is obligatory for the father and mother if they steal from their child's property items they have no legitimate need for.

L42188 Then we examined the argument of those who argue for exempting a son from amputation if he steals from his parents' property and from any mahram relative. We found them invoking as evidence Allah's verse: {There is no blame upon you for eating in your own houses, the houses of your fathers, the houses of your mothers...} [24:61] up to {or the houses of your friends} [24:61]. They contended that Allah's permission to eat from the houses of these individuals logically entails permitting entry into their dwellings without their consent. If entering their homes without permission is lawful, their property is not considered secured from them, and amputation is not mandated for theft from a place not under secure custody.[32]

L42189 They also said: Permitting misappropriation from their wealth precludes the obligation of hand amputation because of the right they hold in it, as in the case of a co-owner.

L42190 They said: Furthermore, it is obligatory for a mahram relative to provide for his kin in times of need, thereby granting the kin a rightful claim to the relative's wealth without compensation—akin to a thief taking from the public treasury.

فَلَمْ يَخُصَّ اللَّهُ تَعَالَى فِي ذَلِكَ وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ابْنًا مِنْ أَجْنَبِيٍّ، وَلَا خَصَّ فِي الْأَمْوَالِ مَالَ أَجْنَبِيٍّ مِنْ مَالِ ابْنٍ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤]

وَبِيَقِينٍ نَدْرِي أَنَّ اللَّهَ تَعَالَى لَوْ أَرَادَ تَخْصِيصَ الْأَبِ مِنْ الْقَطْعِ لَمَا أَغْفَلَهُ وَلَا أَهْمَلَهُ، قَالَ تَعَالَى {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩]

فَصَحَّ أَنَّ الْقَطْعَ وَاجِبٌ عَلَى الْأَبِ، وَالْأُمِّ، إذَا سَرَقَا مِنْ مَالِ ابْنِهِمَا مَا لَا حَاجَةَ بِهِمَا إلَيْهِ.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ احْتَجَّ بِهِ مَنْ رَأَى إسْقَاطَ الْقَطْعِ عَنْ الِابْنِ إذَا سَرَقَ مِنْ مَالِ أَبَوَيْهِ، وَعَنْ كُلِّ ذِي رَحِمٍ مَحْرَمَةٍ؟ فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ تَعَالَى {وَلا عَلَى أَنْفُسِكُمْ أَنْ تَأْكُلُوا مِنْ بُيُوتِكُمْ أَوْ بُيُوتِ آبَائِكُمْ أَوْ بُيُوتِ أُمَّهَاتِكُمْ} [النور: ٦١] الْآيَةَ إلَى قَوْله تَعَالَى: {أَوْ صَدِيقِكُمْ} [النور: ٦١] . قَالَ: فَإِبَاحَةُ اللَّهِ تَعَالَى الْأَكْل مِنْ بُيُوتِ هَؤُلَاءِ يَقْتَضِي إبَاحَةَ دُخُولِ مَنَازِلِهِمْ بِغَيْرِ إذْنِهِمْ، فَإِذَا جَازَ لَهُمْ دُخُولُ مَنَازِلِهِمْ بِغَيْرِ إذْنِهِمْ لَمْ يَكُنْ مَالُهُمْ مُحْرَزًا عَنْهُمْ، وَلَا يَجِبُ الْقَطْعُ فِي السَّرِقَةِ مِنْ غَيْرِ حِرْزٍ.

وَقَالُوا أَيْضًا: فَإِنَّ إبَاحَةَ الْأَكْلِ مِنْ أَمْوَالِهِمْ تَمْنَعُهُمْ وُجُوبَ الْقَطْعِ لِمَا لَهُمْ فِيهِ مِنْ الْحَقِّ، كَالشَّرِيكِ.

قَالُوا: وَأَيْضًا فَإِنَّ عَلَى ذِي الرَّحِمِ الْمَحْرَمَةَ أَنْ يُنْفِقَ عَلَى ذِي رَحِمِهِ عِنْدَ الْحَاجَةِ، فَصَارَ لَهُ بِذَلِكَ حَقٌّ فِي مَالِهِ بِغَيْرِ بَدَلٍ، فَأَشْبَهَ السَّارِقَ مِنْ بَيْتِ الْمَالِ.

قَالُوا: وَلَمَّا كَانَ مُحْتَاجًا إلَى مَا يُنْفِقُهُ عَلَيْهِ لِإِحْيَاءِ نَفْسِهِ كَانَ ذَلِكَ لَازِمًا فِي جَمِيعِ أَعْضَائِهِ، فَلِذَلِكَ يَسْقُطُ الْقَطْعُ عَنْ الْيَدِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا كُلُّ مَا

[30] **Qur'an references (L42185):** Qur'an 19:64 (Maryam).
[31] **Qur'an references (L42186):** Qur'an 16:89 (An-Nahl).
[32] **Qur'an references (L42188):** Qur'an 24:61 (An-Nur).

مَوَّهُوا بِهِ، وَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ أَصْلًا، عَلَى مَا نُبَيِّنُ إِنْ شَاءَ اللَّهُ تَعَالَى، فَأَمَّا الْآيَةُ فَحَقٌّ، وَلَا دَلِيلَ فِيهَا عَلَى مَا ذَكَرُوا، بَلْ هِيَ حُجَّةٌ عَلَيْهِمْ، وَقَدْ كَذَبُوا فِيهَا أَيْضًا: أَمَّا كَوْنُهَا لَا دَلِيلَ فِيهَا عَلَى مَا ادَّعُوهُ، فَإِنَّهُ لَيْسَ فِيهَا إِسْقَاطُ الْقَطْعِ عَلَى مَنْ سَرَقَ مِنْ هَؤُلَاءِ - لَا بِنَصٍّ وَلَا بِدَلِيلٍ - وَإِنَّمَا فِيهَا إِبَاحَةُ الْأَكْلِ لَا إِبَاحَةُ الْأَخْذِ بِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأُمَّةِ؟ فَإِذَا قَالُوا: قِسْنَا الْأَخْذَ عَلَى الْأَكْلِ؟ قُلْنَا لَهُمْ: الْقِيَاسُ كُلُّهُ بَاطِلٌ، ثُمَّ لَوْ كَانَ حَقًّا لَكَانَ هَذَا مِنْهُ عَيْنُ الْبَاطِلِ، لِأَنَّ الْقِيَاسَ عِنْدَ الْقَائِلِينَ بِهِ قِيَاسُ الشَّيْءِ عَلَى نَظِيرِهِ فِي الْعِلَّةِ أَوْ فِي شَبَهٍ بِوَجْهٍ مَا، وَلَا يَجُوزُ عِنْدَ أَحَدٍ مِنْ الْأُمَّةِ - لَا مُجِيزِ قِيَاسٍ وَلَا مَانِعٍ - قِيَاسُ الضِّدِّ عَلَى ضِدِّهِ، وَلَا مُضَادَّةَ أَكْثَرَ وَمِنْ التَّحْرِيمِ وَالتَّحْلِيلِ، وَأَنْتُمْ مُجْمِعُونَ - مَعَنَا وَمَعَ النَّاسِ - عَلَى أَنَّ الْأَخْذَ لِعُرُوضِ الْأَخِ، وَالْأُخْتِ، وَالْعَمِّ، وَالْعَمَّةِ، وَالْخَالِ، وَالْخَالَةِ، وَالْأَبِ، وَالْأُمِّ، وَالصَّدِيقِ، مِنْ بُيُوتِهِمْ، وَنَقْلُ مَا فِيهَا حَرَامٌ، وَأَنَّ الْأَكْلَ حَلَالٌ، فَكَيْفَ اسْتَحْلَلْتُمْ قِيَاسَ حُكْمِ الْحَرَامِ الْمَمْنُوعِ عَلَى حُكْمِ الْحَلَالِ الْمُبَاحِ؟ وَأَمَّا قَوْلُهُمْ فِي الْآيَةِ، وَكَذِبُهُمْ فِيهَا، قَوْلُ هَذَا الْجَاهِلِ الْمُقَدَّمِ " إنَّ إبَاحَةَ اللَّهِ تَعَالَى الْأَكْلَ مِنْ بُيُوتِ هَؤُلَاءِ يَقْتَضِي إبَاحَةَ دُخُولِ مَنَازِلِهِمْ بِغَيْرِ إذْنِهِمْ ". فَلَيْتَ شِعْرِي أَيْنَ وَجَدُوا هَذَا فِي هَذِهِ الْآيَةِ أَوْ فِي غَيْرِهَا؟ فَيَدْخُلُ الصَّدِيقُ مَنْزِلَ صَدِيقِهِ بِغَيْرِ إذْنِهِ؟ هَذَا عَجَبٌ مِنْ الْعَجَبِ، أَمَا سَمِعُوا قَوْلَ اللَّهِ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لِيَسْتَأْذِنْكُمُ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا الْحُلُمَ} [النور: ٥٨] إلَى قَوْلِهِ تَعَالَى {فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ} [النور: ٥٩] .

L42191–42192 They said: Since he is in need of what he spends to sustain himself, this necessity applies to all his limbs; therefore, hand amputation is waived. Abu Muhammad—may Allah have mercy on him—responded: All these are their deceptive arguments, containing no valid proof whatsoever, as we shall clarify by Allah's Exalted will. As for the verse, it is true but offers no evidence for their claim—rather, it refutes them. They have also lied about it.

The verse's lack of support for their claim lies in its failure to mention amputation waiver for thieves among these people—neither explicitly nor implicitly. It merely permits eating, not taking, without any disagreement from the Ummah. Should they argue, "We analogize taking to eating," we counter: All analogy is invalid. Even if valid, this would remain utterly false, for analogy—according to its proponents—compares equivalents in causation or resemblance. No member of the Ummah permits analogizing opposites, nor greater opposition than that between prohibition and permissibility. You universally agree—with us and others—that taking from one's brother, sister, uncle, aunt, parent, or friend's possessions is forbidden, while eating is permitted. How then do you deem it permissible to analogize forbidden acts to permissible ones?

As for their false claim about the verse—this so-called prominent ignoramus's assertion that "Allah's permission to eat from their houses implies entering homes without consent"—where did they find this in the verse or elsewhere? Does a friend enter another's house uninvited? This is astounding! Have they not heard Allah's decree: *"O believers! Let those your right hands possess and children under puberty seek permission..."* [24:58] to *"...let them seek permission as their predecessors did"* [24:59]?[33]

L42193 Allah, the Exalted, has decreed that no adult may enter upon anyone without permission—and this ruling explicitly includes the father, the son, and others

[33] **Qur'an references (L42192):** Qur'an 24:58 (An-Nur); Qur'an 24:59 (An-Nur).

besides them. Excepted from this are enslaved persons and minors, for they are not required to seek permission except during these three specific times alone. And success comes only from Allah, the Exalted.

فَنَصَّ اللَّهُ تَعَالَى عَلَى أَنَّهُ لَا يَدْخُلُ بَالِـغٌ أَصْلًا عَلَى أَحَدٍ إلَّا بِإِذْنٍ - وَدَخَلَ فِي ذَلِكَ: الْأَبُ، وَالِابْنُ، وَغَيْرُهُمَا، حَاشَ مَا مَلَكَتْ أَيْمَانُنَا، وَالْأَطْفَالَ، فَإِنَّهُمْ لَا يَسْتَأْذِنُونَ إلَّا فِي هَذِهِ الْأَوْقَاتِ الثَّلَاثِ فَقَطْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

The issue of theft by one spouse from the other.

[مَسْأَلَةُ سَرِقَةُ أَحَدِ الزَّوْجَيْنِ مِنْ الْآخَرِ]

L42195–42196 Abū Muḥammad—may Allāh have mercy on him—said: People have differed regarding this. A group said: There is no hand amputation in this matter—as narrated by Ḥumām, narrated by Ibn Mufarrij, narrated by Ibn al-Aʿrābī, narrated by al-Dabarī, narrated by ʿAbd al-Razzāq, from Ibn Jurayj, who said: It has been reported to me from al-Shaʿbī that he said: A woman's husband is not subject to hand amputation for stealing her belongings.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: لَا قَطْعَ فِي ذَلِكَ - كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قَالَ: بَلَغَنِي عَنْ الشَّعْبِيِّ قَالَ: لَيْسَ عَلَى زَوْجِ الْمَرْأَةِ فِي سَرِقَةِ مَتَاعِهَا قَطْعٌ.

L42197 Abu Hanifah and his companions stated that there is no amputation for a man who steals from his wife's possessions, nor for a woman who steals from her husband's possessions.

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: لَا قَطْعَ عَلَى الرَّجُلِ فِيمَا سَرَقَ مِنْ مَالِ امْرَأَتِهِ وَلَا عَلَى الْمَرْأَةِ فِيمَا سَرَقَتْ مِنْ مَالِ زَوْجِهَا.

L42198 Malik, Ahmad ibn Hanbal, Ishaq, and Abu Thawr ruled that amputation is prescribed for each individual who steals from the other's property if the theft occurs from a secure place.

وَقَالَ مَالِكٌ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ، وَأَبُو ثَوْرٍ: عَلَى كُلِّ وَاحِدٍ مِنْهُمَا الْقَطْعُ فِيمَا سَرَقَ مِنْ مَالِ الْآخَرِ مِنْ حِرْزٍ.

L42199 Al-Shafi'i held three opinions: one of them—like the opinion of Abū Ḥanīfah.

وَقَالَ الشَّافِعِيُّ ثَلَاثَةَ أَقْوَالٍ: أَحَدُهَا - كَقَوْلِ أَبِي حَنِيفَةَ.

L42200 The second opinion—such as that of Mālik—is that if the husband steals from her wealth, his hand is severed. The third opinion holds that if she steals from his wealth, no amputation is imposed upon her. Abū Muḥammad said: When they differed as we have mentioned, we scrutinized the matter and found those who reject amputation citing as evidence the report we transmitted through Muslim's chain: Muḥammad ibn Rumḥ narrated to us from al-Layth ibn Saʿd, from Nāfiʿ, from Ibn ʿUmar, from the Prophet—peace be upon him—who said: "Every one of you is a guardian and accountable for those under his care. The ruler governing the people is a guardian and answerable for his subjects. The man is a guardian over his household and

وَالْآخَرُ - كَقَوْلِ مَالِكٍ، وَالثَّالِثُ - أَنَّ الزَّوْجَ إذَا سَرَقَ مِنْ مَالِهَا قُطِعَتْ يَدُهُ، وَإِنْ سَرَقَتْ هِيَ مِنْ مَالِهِ فَلَا قَطْعَ عَلَيْهَا؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا نَظَرْنَا فِي ذَلِكَ: فَوَجَدْنَا مَنْ لَا يَرَى الْقَطْعَ يَحْتَجُّ: بِمَا رُوِّينَاهُ مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ فَالْأَمِيرُ الَّذِي عَلَى النَّاسِ رَاعٍ وَهُوَ مَسْئُولٌ عَنْ رَعِيَّتِهِ

answerable for them. The woman is a guardian over her husband's home and children, and she is answerable for them. The slave is a guardian over his master's wealth and answerable for it. Behold, every one of you is a guardian, and every one of you is answerable for those entrusted to him."

وَالرَّجُلُ رَاعٍ عَلَى أَهْلِ بَيْتِهِ وَهُوَ مَسْئُولٌ عَنْهُمْ وَالْمَرْأَةُ رَاعِيَةٌ عَلَى بَيْتِ بَعْلِهَا وَوَلَدِهَا وَهِيَ مَسْئُولَةٌ عَنْهُمْ وَالْعَبْدُ رَاعٍ عَلَى مَالِ سَيِّدِهِ وَهُوَ مَسْئُولٌ عَنْهُ أَلَا كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ» .

L42201 And likewise, it was narrated by ʿAbdullāh ibn ʿUmar ibn Ḥafṣ, Ḥammād ibn Zayd, Ayyūb al-Sikhtiyānī, al-Ḍaḥḥāk ibn ʿUthmān, and Usāmah ibn Zayd: all of them from Nāfiʿ from Ibn ʿUmar from the Prophet, may God bless him and grant him peace.

وَهَكَذَا رَوَاهُ عَبْدُ اللَّهِ بْنُ عُمَرَ بْنِ حَفْصٍ وَحَمَّادُ بْنُ زَيْدٍ، وَأَيُّوبُ السِّخْتِيَانِيُّ، وَالضَّحَّاكُ بْنُ عُثْمَانَ، وَأُسَامَةُ بْنُ زَيْدٍ، كُلُّهُمْ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42202 Salim narrated it from his father from the Prophet (peace and blessings of Allah be upon him) and added: As it was narrated to us through the aforementioned chain to Muslim: Harmala narrated to me, Ibn Wahb narrated to me; Yunus ibn Yazid informed me from al-Zuhri, from Salim ibn Abdillah ibn Umar, from his father that he heard the Messenger of Allah - and he mentioned this hadith.

وَرَوَاهُ سَالِمٌ عَنْ أَبِيهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَزَادَ فِيهِ: كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إِلَى مُسْلِمٍ ثني حَرْمَلَةُ ثني ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنِ الزُّهْرِيِّ عَنْ سَالِمِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ أَبِيهِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَذَكَرَ هَذَا الْحَدِيثَ.

L42203 And he added in it, "A man is a guardian of his father's wealth and accountable for his dependents."

وَزَادَ فِيهِ «وَالرَّجُلُ رَاعٍ فِي مَالِ أَبِيهِ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ» .

L42204–42205 They said: Each spouse is a trustee over the other's property; thus, the punishment of amputation does not apply to them, as in the case of a bailee.

قَالُوا: فَكُلُّ وَاحِدٍ مِنَ الزَّوْجَيْنِ أَمِينٌ فِي مَالِ الْآخَرِ، فَلَا قَطْعَ عَلَيْهِ كَالْمُودَعِ.

L42206 Some of those deemed unreliable have added to this ḥadīth an unrecognized insertion and altered wording: "The woman is a custodian over her husband's wealth, and the man is a custodian over his wife's wealth." Abū Muḥammad—may Allah have mercy on him—stated: None of this constitutes valid evidence for them in the slightest.

وَزَادَ بَعْضُ مَنْ لَا يُعْبَأُ بِهِ فِي هَذَا الْحَدِيثِ زِيَادَةً لَا نَعْرِفُهَا، وَلَفْظًا مَبْدُولًا، وَهُوَ «الْمَرْأَةُ رَاعِيَةٌ فِي مَالِ زَوْجِهَا وَالرَّجُلُ رَاعٍ فِي مَالِ امْرَأَتِهِ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا.

L42207 As for the mentioned report, it is an established and binding truth that may not be transgressed, serving as the greatest proof against them. For the Prophet—peace be upon him—declared that all those we have mentioned are custodians in what we have described, and that they will be questioned regarding the responsibilities entrusted to them. Since they are accountable

أَمَّا الْخَبَرُ الْمَذْكُورُ فَحَقٌّ وَاجِبٌ لَا يَحِلُّ تَعَدِّيهِ، وَهُوَ أَعْظَمُ حُجَّةٍ عَلَيْهِمْ؛ لِأَنَّهُ - عَلَيْهِ السَّلَامُ - أَخْبَرَ: أَنْ كُلَّ مَنْ ذَكَرْنَا رَاعٍ فِيمَا ذَكَرَ، وَأَنَّهُمْ مَسْئُولُونَ عَمَّا اسْتُرْعُوا مِنْ ذَلِكَ - فَإِذْ هُمْ مَسْئُولُونَ عَنْ ذَلِكَ فَبِيَقِينٍ يَدْرِي كُلُّ مُسْلِمٍ أَنَّهُ لَمْ تُبَحْ لَهُمُ السَّرِقَةُ،

for this, every Muslim knows with certainty that theft and betrayal are not permitted to them concerning what was entrusted to them and handed over to their care. If they are not like strangers, distant parties, or those not entrusted with stewardship in this matter, they are undoubtedly more sinful, greater in offense, and worse in condition than strangers. Given this reality, is the least of their obligations not that they bear what strangers bear without exception? This constitutes the true ruling of this report in its definitive sense.

وَالْخِيَانَةُ، فِيمَا اُسْتُودِعُوهُ وَأُسْلِمَ إِلَيْهِمْ، وَأَنَّهُمْ فِي ذَلِكَ - إِنْ لَمْ يَكُونُوا كَالْأَجْنَبِيَّيْنِ وَالْأَبَاعِدِ وَمَنْ لَمْ يُسْتَرْعَ - فَهُمْ بِلَا شَكٍّ أَشَدُّ إِثْمًا، وَأَعْظَمُ جُرْمًا، وَأَسْوَأُ حَالَةً مِنَ الْأَجْنَبِيِّينَ، وَأَنَّ ذَلِكَ كَذَلِكَ، فَأَقَلُّ أُمُورِهِمْ أَنْ يَكُونَ عَلَيْهِمْ مَا عَلَى الْأَجْنَبِيِّينَ وَلَا بُدَّ؟ فَهَذَا حُكْمُ هَذَا الْخَبَرِ عَلَى الْحَقِيقَةِ.

L42208 Moreover, they do not differ in holding that those we mentioned concerning betrayal are subject to the same obligations as third parties—requiring the restitution of what they betrayed and liability for it, despite their claim to be adherents of analogy. Why then do they not analogize the disputed rulings on theft and amputation as a prescribed punishment to the agreed rulings on betrayal? But we have already stated that they neither followed the textual sources nor did they excel in analogy. Furthermore, this report contains no evidence whatsoever for abandoning amputation in theft. The ruling on their additional interpretations is the same—as we mentioned—whether valid or not, as there is no distinction.

وَأَيْضًا - فَإِنَّهُمْ لَا يَخْتَلِفُونَ أَنَّ عَلَى مَنْ ذَكَرْنَا فِي الْخِيَانَةِ مَا عَلَى الْأَجْنَبِيِّينَ مِنْ إِلْزَامِ رَدِّ مَا خَانُوا وَضَمَانِهِ، وَهُمْ أَهْلُ قِيَاسٍ بِزَعْمِهِمْ، فَهَلَّا قَاسُوا مَا اُخْتُلِفَ فِيهِ مِنَ السَّرِقَةِ وَالْقَطْعِ فِيهَا عَلَى مَا اتُّفِقَ عَلَيْهِ مِنْ حُكْمِ الْخِيَانَةِ، وَلَكِنَّهُمْ قَدْ قُلْنَا إِنَّهُمْ لَا النُّصُوصَ اتَّبَعُوا وَلَا الْقِيَاسَ أَحْسَنُوا؟ وَأَيْضًا - فَلَيْسَ فِي هَذَا الْخَبَرِ دَلِيلٌ أَصْلًا عَلَى تَرْكِ الْقَطْعِ فِي السَّرِقَةِ، وَالْقَوْلُ فِي الزِّيَادَةِ الَّتِي زَادُوهَا سَوَاءٌ - كَمَا ذَكَرْنَا - لَوْ صَحَّتْ وَلَا فَرْقَ.

L42209 As for their statement, “Both are like the depositary and like the one authorized to enter,” this constitutes the strongest argument against them. For they unanimously agree that if the depositary were to steal not from property entrusted to him but from property belonging to another depositary kept in the latter’s custody, or if the authorized entrant were to steal from safeguarded property belonging to the one whose premises he was permitted to enter, then hand amputation would be obligatory for both according to them without any disagreement.

وَأَمَّا قَوْلُهُمْ " إِنَّ كِلَيْهِمَا كَالْمُودَعِ، وَكَالْمَأْذُونِ لَهُ فِي الدُّخُولِ " فَأَعْظَمُ حُجَّةً عَلَيْهِمْ؛ لِأَنَّهُمْ لَا يَخْتَلِفُونَ أَنَّ الْمُودَعَ إِذَا سَرَقَ مِمَّا لَمْ يُودَعْ عِنْدَهُ لَكِنْ مِنْ مَالٍ لِمُودَعٍ آخَرَ فِي حِرْزِهِ، وَأَنَّ الْمَأْذُونَ لَهُ فِي الدُّخُولِ لَوْ سَرَقَ مِنْ مَالٍ مُحْرَزٍ عَنْهُ لِلْمَدْخُولِ عَلَيْهِ الْإِذْنُ لَهُ فِي الدُّخُولِ لَوَجَبَ الْقَطْعُ عَلَيْهِمَا عِنْدَهُمْ بِلَا خِلَافٍ.

L42210 By this ingenious analogy by contrast, it necessarily follows that they cannot exempt the spouses from amputation for theft committed by one against the other, except where the item was entrusted to him and not safeguarded from him. Amputation is not required for either spouse regarding items the owner did not entrust to them but safeguarded against them, such as the depositary or someone granted access—with no distinction—and this is an analogy, if valid: a fleeting analogy?

فَيَلْزَمُهُمْ بِهَذَا التَّشْبِيهِ الْبَدِيعِ بِالضِّدِّ أَنْ لَا يُسْقِطُوا الْقَطْعَ عَنِ الزَّوْجَيْنِ فِيمَا سَرَقَ أَحَدُهُمَا مِنَ الْآخَرِ إِلَّا فِيمَا أُؤْتُمِنَ عَلَيْهِ، وَلَمْ يُحْرَزْ مِنْهُ، وَإِنْ لَمْ يَجِبِ الْقَطْعُ عَلَى كُلِّ وَاحِدٍ مِنْهُمَا فِيمَا لَمْ يَأْمَنْهُ صَاحِبُهُ عَلَيْهِ، وَأُحْرِزَ عَنْهُ، كَالْمُودَعِ وَالْمَأْذُونِ لَهُ فِي الدُّخُولِ وَلَا فَرْقَ - وَهَذَا قِيَاسٌ لَوْ صَحَّ: قِيَاسُ سَاعَةٍ مِنَ الدَّهْرِ؟

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَبَطَلَ كُلُّ مَا مَوَّهُوا بِهِ مِنْ ذَلِكَ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ - ثُمَّ نَظَرْنَا فِي ذَلِكَ فِي قَوْلِ مَنْ فَرَّقَ بَيْنَ الزَّوْجِ وَالزَّوْجَةِ، فَرَأَى عَلَيْهِ الْقَطْعَ إذَا سَرَقَ مِنْ مَالِهَا، وَلَمْ يَرَ عَلَيْهَا الْقَطْعُ إذَا سَرَقَتْ مِنْ مَالِهِ.

L42211–42212 Abū Muḥammad—may Allāh have mercy on him—said: Thus, all that they have glossed over in this regard is invalidated—and praise be to Allāh, Lord of the worlds. Then we examined that in the opinion of those who distinguish between husband and wife, who held that the husband is subject to amputation if he steals from her property, but did not hold that the wife is subject to amputation if she steals from his property.

فَوَجَدْنَاهُمْ يَقُولُونَ " إنْ الرَّجُلَ لَا حَقَّ لَهُ فِي مَالِ الْمَرْأَةِ أَصْلًا، فَوَجَبَ الْقَطْعُ عَلَيْهِ إذَا سَرَقَ مِنْهُ شَيْئًا، لِأَنَّهُ فِي ذَلِكَ كَالْأَجْنَبِيِّ ".

L42213 We found them stating, "Indeed, a man has no right whatsoever in a woman's property. Thus, amputation is obligatory for him if he steals anything from it; for in this regard, he is like a stranger."

فَوَجَدْنَا الْمَرْأَةَ لَهَا فِي مَالِهِ حُقُوقًا مِنْ: صَدَاقٍ، وَنَفَقَةٍ، وَكِسْوَةٍ، وَإِسْكَانٍ، وَخِدْمَةٍ، فَكَانَتْ بِذَلِكَ كَالشَّرِيكِ - وَوَجَدْنَا «رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ قَالَ لِهِنْدَ بِنْتِ عُتْبَةَ إذْ أَخْبَرَتْهُ أَنَّ أَبَا سُفْيَانَ لَا يُعْطِيهَا مَا يَكْفِيهَا وَوَلَدَهَا، فَقَالَ لَهَا - عَلَيْهِ السَّلَامُ - خُذِي مَا يَكْفِيكِ وَوَلَدَكِ بِالْمَعْرُوفِ» .

L42214 We found that the woman has rights in his property consisting of: dowry, maintenance, clothing, housing, and household service - thus becoming through this like a partner. We also found that the Messenger of Allah - peace and blessings be upon him - said to Hind bint Utbah when she informed him that Abu Sufyan did not give her what sufficed her and her child - peace be upon him - "Take what suffices you and your child according to customary provision."

قَالُوا: فَقَدْ أَطْلَقَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدَهَا عَلَى مَالِ زَوْجِهَا تَأْخُذُ مِنْهُ مَا يَكْفِيهَا وَوَلَدَهَا، فَهِيَ مُؤْتَمَنَةٌ عَلَيْهِ كَالْمُسْتَوْدَعِ، وَلَا فَرْقَ.

L42215 They said: The Messenger of Allah—peace and blessings be upon him—authorized her to take from her husband's property what suffices her and her child. Thus, she is entrusted with it like a custodian, and there is no distinction.

قَالُوا: وَالزَّوْجُ بِخِلَافِ ذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى قَالَ {وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلا تَأْخُذُوا مِنْهُ شَيْئًا} [النساء: ٢٠] الْآيَةَ.

L42216 They said: The husband's case is different, for Allah, the Exalted, said in the verse, "And you have given one of them a qintār, then do not take anything from it" [An-Nisa: 20].[34]

وَقَالَ تَعَالَى {فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا} [النساء: ٤] فَبَيَّنَ اللَّهُ تَعَالَى تَحْرِيمَ الْقَلِيلِ مِنْ مَالِهَا وَالْكَثِيرِ عَلَيْهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا قَوْلُهُمْ - إنَّ لَهَا فِي مَالِهِ حُقُوقًا مِنْ صَدَاقٍ وَنَفَقَةٍ، وَكِسْوَةٍ، وَإِسْكَانٍ، وَخِدْمَةٍ.

L42217 And He, the Exalted, said: {But if they willingly relinquish to you anything of it, then consume it enjoyably and harmlessly.} [An-Nisa: 4]. Allah, the Exalted, clarified the prohibition of taking even a small amount from her wealth and the extensive obligations incumbent upon him. Abu Muhammad—may Allah have mercy on him—said: As for their assertion that she holds rights in his wealth—such as dowry, maintenance, clothing, housing, and service.[35]

[34] **Qur'an references (L42216):** Qur'an 4:20 (An-Nisa).
[35] **Qur'an references (L42217):** Qur'an 4:4 (An-Nisa).

L42218 And that the Messenger of God—peace and blessings be upon him—granted her unrestricted access to his property, whether in a safeguarded place or otherwise, to take from it what suffices her and her child according to customary norms—if he does not fulfill her rights and theirs—the children's—then yes, all of this is a binding right, and thus we state.

وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَطْلَقَ يَدَهَا عَلَى مَالِهِ حَيْثُ كَانَ مِنْ حِرْزٍ أَوْ غَيْرِ حِرْزٍ، لِتَأْخُذَ مِنْهُ مَا يَكْفِيهَا وَوَلَدَهَا بِالْمَعْرُوفِ - إذَا لَمْ يُوَفِّهَا وَإِيَّاهُمْ حُقُوقَهُمْ - فَنَعَمْ، كُلُّ هَذَا حَقٌّ وَاجِبٌ، وَهَكَذَا نَقُولُ.

L42219–42221 But no person endowed with sound judgment would doubt that the Messenger of Allah—may Allah bless him and grant him peace—did not permit her to freely dispose of her husband's wealth in matters where she has no rightful claim, nor beyond her lawful entitlement. Since this is beyond doubt, the permissibility... In the rulings pertaining to the taking of rights and what is permissible, there is no evidence whatsoever to justify dropping Allah's prescribed ḥudūd punishments against those who take what is forbidden and not permissible.

وَلَكِنْ لَا يَشُكُّ ذُو مُسْكَةٍ مِنْ حِسٍّ سَلِيمٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يُطْلِقْ يَدَهَا عَلَى مَا لَا حَقَّ لَهَا فِيهِ مِنْ مَالِ زَوْجِهَا، وَلَا عَلَى أَكْثَرَ مِنْ حَقِّهَا، فَإِذْ لَا شَكَّ فِي ذَلِكَ، فَإِبَاحَةُ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِأَخْذِ الْحَقِّ وَالْمُبَاحِ لَيْسَ فِيهِ دَلِيلٌ أَصْلًا عَلَى إسْقَاطِ حُدُودِ اللَّهِ تَعَالَى عَلَى مَنْ أَخَذَ الْحَرَامَ غَيْرَ الْمُبَاحِ.

L42222 If that were the case, then drinking permissible juice would nullify the prescribed punishment when one transgresses from its lawful portion into the forbidden intoxicant, with no distinction between these two cases. Since this is so, she retains what she rightfully took. However, she bears the obligation of cutting decreed by God Almighty for what she unlawfully seized under the pretext of theft - applying the due ruling to the obligatory right, the appropriate ruling to the permissible, and the prohibited ruling to the false and forbidden: *"Whoever transgresses God's limits has wronged themselves"* [Quran 65:1].[36]

وَلَوْ كَانَ ذَلِكَ، لَكَانَ شُرْبُ الْعَصِيرِ الْحَلَالِ مُسْقِطًا لِلْحَدِّ عَنْهُ، إذَا تَعَدَّى الْحَلَالَ مِنْهُ إلَى الْمُسْكِرِ الْحَرَامِ، وَلَا فَرْقَ بَيْنَ الْأَمْرَيْنِ، فَإِذْ ذَلِكَ كَذَلِكَ فَلَهَا مَا أَخَذَتْ بِالْحَقِّ، وَعَلَيْهَا مَا افْتَرَضَ اللَّهُ تَعَالَى مِنْ الْقَطْعِ فِيمَا أَخَذَتْ بِوَجْهِ السَّرِقَةِ لِلْحَقِّ الْوَاجِبِ حُكْمُهُ، وَلِلْمُبَاحِ حُكْمُهُ، وَلِلْبَاطِلِ الْمُحَرَّمِ حُكْمُهُ {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١].

L42223 In this regard, he is like a stranger—exactly equivalent—having entitlements against the thief. It is permissible for him to reclaim his due and the precise amount owed from the property of the indebted party, whether taken from a secured or unsecured location. He may combat the thief if obstructed, with the thief's bloodshed becoming lawful in this process, and he is divinely rewarded for all these actions. If he deliberately seizes what he has no right to—specifically, if he takes it through spreading corruption on earth—he becomes a combatant against societal order, subject to the ruling for such offenders. If he seizes it openly without spreading corruption, he falls under

وَهِيَ فِي ذَلِكَ كَالْأَجْنَبِيِّ - سَوَاءٌ سَوَاءٌ - يَكُونُ لَهُ حُقُوقٌ عِنْدَ السَّارِقِ، فَمُبَاحٌ لَهُ أَنْ يَأْخُذَ حَقَّهُ وَمِقْدَارَ حَقِّهِ مِنْ مَالِ الَّذِي لَهُ عِنْدَهُ الْحَقُّ مِنْ حِرْزٍ، أَوْ مِنْ غَيْرِ حِرْزٍ - نَعَمْ، وَيُقَاتِلُهُ عَلَيْهِ إنْ مَنَعَهُ، وَيَحِلُّ لَهُ بِذَلِكَ دَمُهُ، وَهُوَ مَأْجُورٌ فِي كُلِّ ذَلِكَ، فَإِنْ تَعَمَّدَ أَخْذَ مَا لَيْسَ لَهُ بِحَقٍّ، فَإِنْ تَعَمَّدَ أَخْذَهُ بِإِفْسَادِ طَرِيقٍ فَهُوَ مُحَارِبٌ، لَهُ حُكْمُ الْمُحَارِبِ، وَإِنْ أَخَذَهُ مُجَاهِرًا غَيْرَ مُفْسِدٍ فِي الْأَرْضِ فَلَهُ حُكْمُ الْغَاصِبِ، وَإِنْ أَخَذَهُ مُخْتَفِيًا فَلَهُ حُكْمُ السَّارِقِ، وَالْمُحَارِبِ.

[36] **Qur'an references (L42222):** Qur'an 65:1 (At-Talaq).

the ruling of a usurper. If he takes it covertly, he is subject to the rulings applicable to thieves and those waging war against society.

L42224 This also applies to the wife regarding her husband's property, because Allah the Exalted did not specify when He commanded the amputation of the male thief and female thief—except if it is a wife from the property of her husband, and a husband is not [exempt] from the property of his wife, "and your Lord is not forgetful" [Maryam 19:64].[37]

L42225 Thus, it is conclusively established that hand amputation is a divinely obligated duty incumbent upon the father and mother if they steal from their son's property, and upon the son and daughter if they steal from the property of their father or mother, provided they were not lawfully permitted to take it.

L42226 And likewise, every relative—whether a mahram or non-mahram—if he steals from the property of his relative or a non-relative, provided it is something he is not permitted to take, then the ruling applies.

L42227 The ruling of amputation applies to each of the spouses if they steal from the other's property what is not legally permissible for them to take, just as it applies to a stranger, with no distinction—when they steal what is prohibited. They are blameless if they take what is permissible (ḥalāl) for them to take, whether from a ḥirz (secured place) or elsewhere. And success comes from Allah, the Most High.

L42228 **Question: Is the thief liable to hand amputation on the first offense?**

L42229–42231 2284 - Issue: Is a thief's hand to be amputated upon the first offense or not? Abu Muhammad—may Allah have mercy on him—said: Narrated by Humām from Ibn Mufarrij from Ibn al-Aʿrabī from al-Dabarī from ʿAbd al-Razzāq. From Ibn Jurayj, it was reported to me by ʿAbd Rabbihi ibn Abī Umayyah that al-Ḥārith ibn ʿAbd Allāh ibn Abī Rabīʿah and Ibn Sābiṭ al-Aḥwal narrated: "The Prophet (peace be upon him) was brought a slave who had stolen. It was said: 'O Messenger of Allah, this slave stole - the stolen item was found with

[37] **Qur'an references (L42224):** Qur'an 19:64 (Maryam).

هَذَا وَالزَّوْجَةُ فِي مَالِ زَوْجِهَا كَذَلِكَ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَخُصَّ إذْ أَمَرَ بِقَطْعِ السَّارِقِ وَالسَّارِقَةِ، إلَّا أَنْ تَكُونَ زَوْجَةٌ مِنْ مَالِ زَوْجِهَا، وَلَا يَكُونَ زَوْجٌ مِنْ مَالِ زَوْجَتِهِ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] .

فَصَحَّ يَقِينًا - أَنَّ الْقَطْعَ فَرْضٌ وَاجِبٌ عَلَى الْأَبِ وَالْأُمِّ إذَا سَرَقَا مِنْ مَالِ ابْنِهِمَا، وَعَلَى الِابْنِ وَالْبِنْتِ إذَا سَرَقَا مِنْ مَالِ أَبِيهِمَا، وَأُمِّهِمَا، مَا لَمْ يُبَحْ لَهُمَا أَخْذُهُ.

وَهَكَذَا كُلُّ ذِي رَحِمٍ مَحْرَمَةٍ، أَوْ غَيْرِ مَحْرَمَةٍ، إذَا سَرَقَ مِنْ مَالِ ذِي رَحِمِهِ، أَوْ مِنْ غَيْرِ ذِي رَحِمِهِ، مَا لَمْ يُبَحْ لَهُ أَخْذُهُ.

فَالْقَطْعُ عَلَى كُلِّ وَاحِدٍ مِنْ الزَّوْجَيْنِ إذَا سَرَقَا مِنْ مَالِ صَاحِبِهِ مَا لَمْ يُبَحْ لَهُ أَخْذُهُ كَالْأَجْنَبِيِّ وَلَا فَرْقَ - إذَا سَرَقَ مَا لَمْ يُبَحْ - وَهُوَ مُحْسِنٌ إنْ أَخَذَ مَا أُبِيحَ لَهُ أَخْذُهُ مِنْ حِرْزٍ، أَوْ مِنْ غَيْرِ حِرْزٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ يُقْطَعُ السَّارِقُ فِي أَوَّلِ مَرَّةٍ]

٢٢٨٤ - مَسْأَلَةٌ: هَلْ يُقْطَعُ السَّارِقُ فِي أَوَّلِ مَرَّةٍ أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَبْدُ رَبِّهِ بْنُ أَبِي أُمَيَّةَ: أَنَّ الْحَارِثَ بْنَ عَبْدِ اللَّهِ بْنِ أَبِي رَبِيعَةَ حَدَّثَهُ، وَابْنَ سَابِطٍ الْأَحْوَلَ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِعَبْدٍ قَدْ سَرَقَ فَقِيلَ يَا رَسُولَ اللَّهِ هَذَا عَبْدٌ

him, and evidence was established against him.' A man said: 'O Messenger of Allah, this slave belongs to orphans of Banu Fulān who own nothing but him.' So he released him. He said: 'Then he was brought a second time as a thief, then a third, then a fourth. Each time, he [the Prophet] responded as he had the first time.' He said: 'When he was brought the fifth time, the Prophet cut off his hand. The sixth time, he cut off his leg. The seventh time, he cut off his hand. The eighth time, he cut off his leg.'"

L42232 Al-Harith said: "Four for four—did God pardon him four and punish him four?" Abu Muhammad—may God have mercy on him—said: "This is mursal, and there is no proof in a mursal."

L42233 The Hanafis and Malikis, who assert that a mursal report holds the status of a musnad one, are indeed obligated to uphold this position—particularly since they mandate warding off prescribed punishments through ambiguities. Is there any ambiguity stronger than a transmitted report they act upon when they desire? By Allah, this report—despite its weakness—is either superior to or equivalent to the report of Ibn al-Habashi, for which they contravened the apparent meaning of the Quran, and more secure than the report of al-Miswar, through which they waived liability for property wrongfully destroyed from the theft victim. They thereby opposed the Quran regarding His Exalted injunction to retaliate against the aggressor commensurate with his transgression, and permitted wrongful acquisition of property—and success is by Allah, the Exalted. Abu Muhammad—may Allah have mercy on him—said: Amputating the thief's hand is obligatory from the first offense under the Quran's general ruling, as we have stated. Sufficient for us is Allah, and He is the best Disposer of affairs.

L42234 **Issue regarding the threshold amount necessitating the amputation of a thief's hand.**

L42235 2285 - Question: The amount at which the amputation of the thief's hand becomes obligatory. Abū Muḥammad (may Allāh have mercy on him) said: People have differed over the amount that mandates the amputation of the

سَرَقَ وَأُخِذَتْ مَعَهُ سَرِقَتُهُ، وَقَامَتْ الْبَيِّنَةُ عَلَيْهِ فَقَالَ رَجُلٌ: يَا رَسُولَ اللَّهِ هَذَا عَبْدُ بَنِي فُلَانٍ، أَيْتَامٌ، لَيْسَ لَهُمْ مَالٌ غَيْرَهُ، فَتَرَكَهُ، قَالَ: ثُمَّ أُتِيَ بِهِ الثَّانِيَةَ سَارِقًا، ثُمَّ الثَّالِثَةَ، ثُمَّ الرَّابِعَةَ، كُلُّ ذَلِكَ يَقُولُ فِيهِ كَمَا قِيلَ لَهُ فِي الْأَوَّلِ، قَالَ: ثُمَّ أُتِيَ بِهِ الْخَامِسَةَ، فَقَطَعَ يَدَهُ، ثُمَّ أُتِيَ بِهِ السَّادِسَةَ، فَقَطَعَ رِجْلَهُ، ثُمَّ السَّابِعَةَ، فَقَطَعَ يَدَهُ، ثُمَّ الثَّامِنَةَ، فَقَطَعَ رِجْلَهُ» .

قَالَ الْحَارِثُ: أَرْبَعٌ بِأَرْبَعٍ، فَأَعْفَاهُ اللَّهُ أَرْبَعًا وَعَاقَبَهُ أَرْبَعًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا مُرْسَلٌ وَلَا حُجَّةَ فِي مُرْسَلٍ.

وَلَقَدْ كَانَ يَلْزَمُ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، الْقَائِلِينَ بِأَنَّ الْمُرْسَلَ كَالْمُسْنَدِ، أَنْ يَقُولُوا بِهِ، لَا سِيَّمَا وَهُمْ يَقُولُونَ بِوُجُوبِ دَرْءِ الْحُدُودِ بِالشُّبُهَاتِ، وَلَا شُبْهَةَ أَقْوَى مِنْ خَبَرٍ وَارِدٍ يَعْمَلُونَ بِمِثْلِهِ، إذَا اشْتَهَوْا؟ وَتَاللَّهِ، إنَّ هَذَا الْخَبَرَ - عَلَى وَهْيِهِ - لَأَرْفَعُ أَوْ مِثْلُ خَبَرِ ابْنِ الْحَبَشِيِّ الَّذِي خَالَفُوا لَهُ ظَاهِرَ الْقُرْآنِ، وَأَيْمَنُ مِنْ خَبَرِ الْمِسْوَرِ الَّذِي أَسْقَطُوا بِهِ ضَمَانَ مَا أُتْلِفَ بِالْبَاطِلِ مِنْ مَالِ الْمَسْرُوقِ مِنْهُ، وَخَالَفُوا بِهِ الْقُرْآنَ فِي إيجَابِهِ تَعَالَى الِاعْتِدَاءَ عَلَى الْمُعْتَدِي بِمِثْلِ مَا اعْتَدَى بِهِ، وَأَبَاحُوا بِهِ الْمَالَ بِالْبَاطِلِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَقَطْعُ السَّارِقِ وَاجِبٌ فِي أَوَّلِ مَرَّةٍ بِعُمُومِ الْقُرْآنِ كَمَا ذَكَرْنَا - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

[مَسْأَلَةٌ مِقْدَارُ مَا يَجِبُ فِيهِ قَطْعُ السَّارِقِ]

thief's hand. One group held: Amputation is mandated for anything possessing value, whether little or much.

٢٢٨٥ - مَسْأَلَةٌ: مِقْدَارُ مَا يَجِبُ فِيهِ قَطْعُ السَّارِقِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي مِقْدَارِ مَا يَجِبُ فِيهِ قَطْعُ يَدِ السَّارِقِ فَقَالَتْ طَائِفَةٌ: يُقْطَعُ فِي كُلِّ مَا لَهُ قِيمَةٌ، قَلَّ أَوْ كَثُرَ.

L42236 A school of thought held: As for gold, the hand is not amputated unless the stolen amount is a quarter dinar or more. As for other than gold, the hand is amputated for any item of value, whether small or large.

وَقَالَتْ طَائِفَةٌ: أَمَّا مِنْ الذَّهَبِ فَلَا تُقْطَعُ الْيَدُ فِيهِ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا، وَأَمَّا مِنْ غَيْرِ الذَّهَبِ فَفِي كُلِّ مَا لَهُ قِيمَةٌ، قَلَّتْ أَوْ كَثُرَتْ.

L42237 A group held that the hand must not be amputated except for a dirham or its equivalent or more.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إلَّا فِي دِرْهَمٍ أَوْ مَا يُسَاوِي دِرْهَمًا فَصَاعِدًا.

L42238–42239 A group maintained that the hand is severed only for two dirhams—or their equivalent—or more.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إلَّا فِي دِرْهَمَيْنِ - أَوْ مَا يُسَاوِي دِرْهَمَيْنِ - فَصَاعِدًا.

L42240 A group held the opinion that regarding gold, the hand is not amputated unless the stolen amount reaches a quarter dinar or more. As for items other than gold, the hand is not amputated unless their value equals three dirhams. If the gold amounts to a quarter dinar, half a dinar, or more but - due to gold's low value - does not equate to three dirhams, the hand is not amputated. Similarly, if a non-gold item equals three dirhams but - due to gold's high value - does not reach a tenth of a dinar, the hand is not amputated.

وَقَالَتْ طَائِفَةٌ: أَمَّا مِنْ الذَّهَبِ فَلَا تُقْطَعُ الْيَدُ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا، وَأَمَّا مِنْ غَيْرِ الذَّهَبِ فَلَا تُقْطَعُ الْيَدُ إلَّا فِيمَا قِيمَتُهُ ثَلَاثَةُ دَرَاهِمَ، فَإِنْ سَاوَى رُبْعَ دِينَارٍ أَوْ نِصْفَ دِينَارٍ فَأَكْثَرَ، وَلَمْ يُسَاوِ - لِرُخْصِ الذَّهَبِ - ثَلَاثَةَ دَرَاهِمَ، فَلَا تُقْطَعُ الْيَدُ فِيهِ وَإِنْ سَاوَى ثَلَاثَةَ دَرَاهِمَ، وَلَمْ يُسَاوِ عُشْرَ دِينَارٍ لِغَلَاءِ الذَّهَبِ فَلَا قَطْعَ فِيهِ.

L42241 A group held: In the case of gold items, the hand is not amputated for less than a quarter dinar. As for non-gold items, anything equivalent to a quarter dinar or more in value necessitates amputation. If the value [of the stolen item] equals ten dirhams—or more or less—but does not reach a quarter dinar due to gold's high valuation, or if it equals a quarter dinar but does not amount to half a dirham—due to the cheapness of gold—hand amputation is prescribed in all such cases.

وَقَالَتْ طَائِفَةٌ: أَمَّا مِنْ الذَّهَبِ فَلَا تُقْطَعُ الْيَدُ فِي أَقَلَّ مِنْ رُبْعِ دِينَارٍ، وَأَمَّا مِنْ غَيْرِ الذَّهَبِ، فَكُلُّ مَا يُسَاوِي رُبْعَ دِينَارٍ فَصَاعِدًا، فَفِيهِ الْقَطْعُ، فَإِنْ سَاوَى عَشَرَةَ دَرَاهِمَ - أَوْ أَكْثَرَ أَوْ أَقَلَّ - وَلَا يُسَاوِي رُبْعَ دِينَارٍ لِغَلَاءِ الذَّهَبِ، أَوْ سَاوَى رُبْعَ دِينَارٍ وَلَمْ يُسَاوِ نِصْفَ دِرْهَمٍ - لِرُخْصِ الذَّهَبِ - فَالْقَطْعُ فِي كُلِّ ذَلِكَ.

L42242 A group held the opinion: Regarding gold, amputation is not prescribed for less than a quarter dinar, but is mandated for a quarter dinar or more. As for non-gold items, if the value equals a quarter dinar but does not equal three dirhams, or equals three dirhams but does not equal a quarter dinar,

وَقَالَتْ طَائِفَةٌ: أَمَّا مِنْ الذَّهَبِ فَلَا قَطْعَ فِي أَقَلَّ مِنْ رُبْعِ دِينَارٍ، وَتُقْطَعُ فِي رُبْعِ دِينَارٍ فَأَكْثَرَ، وَأَمَّا مِنْ غَيْرِ الذَّهَبِ، فَإِنْ سَاوَى رُبْعَ دِينَارٍ وَلَمْ يُسَاوِ ثَلَاثَةَ دَرَاهِمَ، أَوْ سَاوَى

amputation is mandated in all such cases. If the value neither equals a quarter dinar nor three dirhams, no amputation applies.

ثَلَاثَةَ دَرَاهِمَ وَلَمْ يُسَاوِ رُبْعَ دِينَارٍ، قُطِعَ فِي كُلِّ ذَلِكَ، وَإِنْ لَمْ يُسَاوِ رُبْعَ دِينَارٍ وَلَا ثَلَاثَةَ دَرَاهِمَ، فَلَا قَطْعَ فِيهِ.

L42243 A group held that the hand is not severed except for [the theft of] four dirhams or their equivalent in value or more.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي أَرْبَعَةِ دَرَاهِمَ أَوْ مَا يُسَاوِيهَا فَصَاعِدًا.

L42244 A school of thought held: The hand is not amputated except for theft amounting to a quarter of a dinar or its equivalent value or more.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي ثُلُثِ دِينَارٍ أَوْ مَا يُسَاوِيه فَصَاعِدًا.

L42245 A group maintained that the hand is only amputated for [the value of] five dirhams or their equivalent or upwards.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي خَمْسَةِ دَرَاهِمَ أَوْ يُسَاوِيهَا فَصَاعِدًا.

L42246 A group maintained that amputation of the hand is only mandated for theft of a gold dinar or its equivalent value or more.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي دِينَارِ ذَهَبٍ أَوْ مَا يُسَاوِيه فَصَاعِدًا.

L42247 A group of scholars maintains that the hand is only amputated for [the theft of] a gold dinar, ten dirhams, or what equals or exceeds either of these two values. If the stolen property does not equal a gold dinar or ten dirhams, no amputation is mandated.

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي دِينَارِ ذَهَبٍ، أَوْ عَشَرَةِ دَرَاهِمَ، أَوْ مَا يُسَاوِي أَحَدَ الْعَدَدَيْنِ فَصَاعِدًا، فَإِنْ لَمْ يُسَاوِ لَا دِينَارًا وَلَا عَشَرَةَ دَرَاهِمَ، لَمْ تُقْطَعْ.

L42248–42250 A group has said: "The hand is not to be cut except for ten minted dirhams or their equivalent or more, and is it not to be cut for less than that?" Abū Muḥammad—may Allah have mercy on him—said: "We examined this matter and found the narration we transmitted via al-Bukhārī's chain: 'Umar ibn Ḥafṣ ibn Ghiyāth reported to us, [who reported] from his father, [who reported] from al-A'mash, who said: I heard Abū Ṣāliḥ as-Sammān the fat seller narrate from Abū Hurayrah, from the Prophet—peace and blessings of Allah be upon him—who said: 'Allah curses the thief who steals an egg, so his hand is cut off, and steals... [the text ends here]'" [If someone steals] the rope, his hand is to be severed. This likewise constituted an explicitly clear text establishing that there is no prescribed *ḥadd* penalty for acts requiring amputation in theft unless another clarifying text emerges. We found the following: From 'Abdullāh ibn Rabī'ah, from Muḥammad ibn Mu'āwiyah, from Aḥmad ibn Shu'ayb, from Ar-Rabī' ibn Sulaymān, from Ash'ath, from Al-Layth ibn Sa'd, from Muḥammad ibn 'Ajlān, from Al-Qa'qā' ibn Ḥakīm, from Abū Ṣāliḥ As-Sammān, from Abū Hurayrah, that the Prophet—peace be upon him—said: "A believer does not commit adultery at the moment of

وَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ الْيَدُ إِلَّا فِي عَشَرَةِ دَرَاهِمَ مَضْرُوبَةٍ، أَوْ مَا يُسَاوِيهَا فَصَاعِدًا، وَلَا تُقْطَعُ فِي أَقَلَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا - مَا رُوِّينَاهُ مِنْ طَرِيقِ الْبُخَارِيِّ نا عُمَرُ بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي نا الْأَعْمَشُ قَالَ: سَمِعْت أَبَا صَالِحٍ السَّمَّانَ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَعَنَ اللَّهُ السَّارِقَ يَسْرِقُ الْبَيْضَةَ فَتُقْطَعُ يَدُهُ وَيَسْرِقُ الْحَبْلَ فَتُقْطَعُ يَدُهُ» فَكَانَ هَذَا أَيْضًا نَصًّا بَيِّنًا جَلِيًّا عَلَى أَنَّهُ لَا حَدَّ فِيمَا يَجِبُ الْقَطْعُ فِيهِ فِي السَّرِقَةِ، إلَّا أَنْ يَأْتِيَ نَصٌّ آخَرُ مُبَيِّنٌ لِذَلِكَ: فَوَجَدْنَا - مَا، ناه عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا الرَّبِيعُ بْنُ سُلَيْمَانَ نا أَشْعَثُ نا اللَّيْثُ بْنُ سَعْدٍ عَنْ مُحَمَّدِ بْنِ عَجْلَانَ عَنْ الْقَعْقَاعِ بْنِ حَكِيمٍ عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ «لَا يَزْنِي الزَّانِي

committing it, nor steal at the moment of stealing, nor drink *khamr* at the moment of drinking it, nor seize a plunder of significant value—that people admire him for—at the moment of seizing it while he remains a believer."[38]

حِينَ يَزْنِي وَهُوَ مُؤْمِنٌ، وَلَا يَسْرِقُ السَّارِقُ حِينَ يَسْرِقُ وَهُوَ مُؤْمِنٌ وَلَا يَشْرَبُ الْخَمْرَ حِينَ يَشْرَبُهَا وَهُوَ مُؤْمِنٌ وَلَا يَنْتَهِبُ نُهْبَةً ذَاتَ شَرَفٍ يَرْفَعُ النَّاسُ إِلَيْهِ فِيهَا أَبْصَارَهُمْ وَهُوَ مُؤْمِنٌ» .

L42251 The Messenger of Allah—peace be upon him—applied [the ruling] to every theft comprehensively, without specifying a number from a number. Had he—peace be upon him—intended a specific measure, he would have clarified it, just as he clarified in the aforementioned ḥadīth regarding plundering—specifying the honorable item that people raise their eyes toward. Yet he did not specify in adultery, in theft, or in wine.

فَعَمَّ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلَّ سَرِقَةٍ، وَلَمْ يَخُصَّ عَدَدًا مِنْ عَدَدٍ، وَلَوْ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَرَادَ مِقْدَارًا مِنْ مِقْدَارٍ لَبَيَّنَهُ، كَمَا بَيَّنَ ذَلِكَ فِي النُّهْبَةِ فِي الْحَدِيثِ الْمَذْكُورِ، فَخَصَّ ذَاتَ الشَّرَفِ الَّتِي يَرْفَعُ النَّاسُ إِلَيْهِ فِيهَا أَبْصَارَهُمْ، وَلَمْ يَخُصَّ فِي الزِّنَى، وَلَا فِي السَّرِقَةِ، وَلَا فِي الْخَمْرِ.

L42252 Thus, these mass-transmitted, manifest, mutually reinforcing texts are in agreement with the Quranic text through which Allah the Exalted has clarified His intent for us.

فَكَانَتْ هَذِهِ النُّصُوصُ الْمُتَوَاتِرَةُ، الْمُتَظَاهِرَةُ، الْمُتَرَادِفَةُ، مُوَافِقَةً لِنَصِّ الْقُرْآنِ الَّذِي بِهِ عَرَّفَنَا اللَّهُ تَعَالَى مُرَادَهُ مِنَّا.

L42253 We then examined whether there exists in the Sunnah a specification for any of these general texts. We found the report we mentioned through the chain of ʿUrwah, ʿAmrah, al-Zuhrī, and Abū Bakr ibn Ḥazm—as transmitted by ʿAbdullāh ibn Yūsuf who narrated from Aḥmad ibn Fatḥ who narrated from ʿAbd al-Wahhāb ibn ʿĪsā who narrated from Aḥmad ibn Muḥammad who narrated from Aḥmad ibn ʿAlī who narrated from Muslim ibn al-Ḥajjāj who narrated from al-Walīd ibn Shujāʿ who presented to me [the narration] from Ibn Wahb who informed me from Yūnus from Ibn Shihāb from ʿUrwah and ʿAmrah from ʿĀ'ishah from the Messenger of Allah—peace and blessings be upon him—who said: "The hand of the thief is not cut off except for [the theft of] a quarter of a dinar and above."[39]

فَنَظَرْنَا، هَلْ نَجِدُ فِي السُّنَّةِ تَخْصِيصًا لِشَيْءٍ مِنْ هَذِهِ النُّصُوصِ؟ فَوَجَدْنَا الْخَبَرَ الَّذِي ذَكَرْنَاهُ مِنْ طَرِيقِ عُرْوَةَ، وَعَمْرَةَ، وَالزُّهْرِيِّ، وَأَبِي بَكْرِ بْنِ حَزْمٍ - كَمَا نا 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 الْوَلِيدُ بْنُ شُجَاعٍ أَرِنِي ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ عَنِ ابْنِ شِهَابٍ عَنْ عُرْوَةَ، وَعَمْرَةَ عَنْ عَائِشَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «لَا تُقْطَعُ يَدُ السَّارِقِ إِلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا» .

L42254–42256 And through him, up to Muslim: Bishr ibn al-Ḥakam al-ʿAbdī reported to us; ʿAbd al-ʿAzīz ibn Muḥammad al-Darāwardī reported to us; from Yazīd

وَبِهِ - إِلَى مُسْلِمٍ نا بِشْرُ بْنُ الْحَكَمِ الْعَبْدِيُّ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ عَنْ يَزِيدَ بْنِ عَبْدِ اللَّهِ بْنِ الْهَادِي عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ عَنْ عَائِشَةَ أَنَّهَا

[38] **Hadith references (L42248):** Sahih al-Bukhari 6783; Sahih al-Bukhari 6799; Sunan Ibn Majah 2583; Sahih Muslim 57a.

[39] **Hadith references (L42253):** Sunan an-Nasai 4936; Sahih Muslim 1684e; Sahih Muslim 1684c.

ibn ʻAbd Allāh ibn al-Hādī; from Abū Bakr ibn Muḥammad ibn ʻAmr ibn Ḥazm; from ʻAmrah. Aisha reported that she heard the Prophet—peace be upon him—say: "A thief's hand is not to be cut off except in a quarter of a dinar or more."[40]

L42257 Abū Muḥammad—may Allāh have mercy on him—said: Gold is excluded by this report from the general scope of the Quranic verse and from the broad application of the texts we previously mentioned. It is obligatory to act upon all of that and to make an exception for gold among all other items. Thus, the hand is not amputated except for a quarter of a dinar by Meccan weight or more, and no amputation applies specifically to gold for less than that amount.

L42258 Then we examined—do we find another text regarding anything besides gold? For this narration contains no mention of value or price whatsoever, nor evidence for that, nor does it refer to the ruling concerning anything other than gold itself. Yunus ibn Abdullah narrated to us, saying: Isa ibn Abi Isa—who is Yahya ibn Abdullah ibn Yahya—narrated to us: Ahmad ibn Khalid narrated to us, Muhammad ibn Waddah narrated to us, Abu Bakr ibn Abi Shaybah narrated to us, Abdur-Rahim ibn Sulayman narrated to us from Hisham ibn Urwah from his father from Aisha that "the hand of the thief was not cut during the time of Allah's Messenger—peace and blessings be upon him—for anything less than the price of a shield or protective gear, each of which had a price at that time. Indeed, the hand of the thief was not cut during the time of Allah's Messenger—peace and blessings be upon him—for a trifling item." This was an authentic ḥadīth that constitutes proof, being well-attested. For it clarifies that Allah's Messenger—peace and blessings be upon him—only cut the thief's hand for such [a value]. Furthermore, no one—neither believer nor disbeliever—could doubt that in Medina, where Aisha resided and witnessed these matters, no one would amputate hands for theft. No one's actions in Islam are taken as evidence except those of Allah's Messenger—peace and blessings be upon him—alone. Thus, this narration establishes three legal rulings:

سَمِعَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا تُقْطَعُ يَدُ السَّارِقِ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا» ؟ .

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَخَرَجَ الذَّهَبُ بِهَذَا الْخَبَرِ عَنْ جُمْلَةِ الْآيَةِ، وَعَنْ عُمُومِ النُّصُوصِ الَّتِي ذَكَرْنَا قَبْلُ، وَوَجَبَ الْأَخْذُ بِكُلِّ ذَلِكَ، وَأَنْ يُسْتَثْنَى الذَّهَبُ عَنْ سَائِرِ الْأَشْيَاءِ، فَلَا تُقْطَعُ الْيَدُ إلَّا فِي رُبْعِ دِينَارٍ بِوَزْنِ مَكَّةَ فَصَاعِدًا، وَلَا تُقْطَعُ فِي أَقَلَّ مِنْ ذَلِكَ مِنْ الذَّهَبِ خَاصَّةً.

ثُمَّ نَظَرْنَا - هَلْ نَجِدُ نَصًّا آخَرَ فِيمَا عَدَا الذَّهَبِ؟ إذْ لَيْسَ فِي هَذَا الْخَبَرِ ذِكْرُ قِيمَةٍ وَلَا ثَمَنٍ أَصْلًا، وَلَا دَلِيلَ عَلَى ذَلِكَ، وَلَا فِيهِ ذِكْرُ حُكْمِ شَيْءٍ غَيْرِ عَيْنِ الذَّهَبِ، فَإِذَا يُونُسُ بْنُ عَبْدِ اللَّهِ قَدْ حَدَّثَنَا: قَالَ: نا عِيسَى بْنُ أَبِي عِيسَى - هُوَ يَحْيَى بْنُ عَبْدِ اللَّهِ بْنِ يَحْيَى - قَالَ: نا أَحْمَدُ بْنُ خَالِدٍ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا عَبْدُ الرَّحِيمِ بْنُ سُلَيْمَانَ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ أَنَّ «يَدَ السَّارِقِ لَمْ تَكُنْ تُقْطَعُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَدْنَى مِنْ ثَمَنِ حَجَفَةٍ أَوْ تُرْسٍ، كُلُّ وَاحِدٍ مِنْهُمَا يَوْمَئِذٍ ذُو ثَمَنٍ، وَأَنَّ يَدَ السَّارِقِ لَمْ تَكُنْ تُقْطَعُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الشَّيْءِ التَّافِهِ» فَكَانَ هَذَا حَدِيثًا صَحِيحًا تَقُومُ بِهِ الْحُجَّةُ، وَهُوَ مُسْنَدٌ؛ لِأَنَّهَا ذُكِرَتْ عَمَّا كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقْطَعُ يَدَ السَّارِقِ إلَّا فِيهِ، وَلِأَنَّهُ لَا يَشُكُّ أَحَدٌ - لَا مُؤْمِنٌ وَلَا كَافِرٌ - فِي أَنَّهُ لَمْ يَكُنْ فِي الْمَدِينَةِ - حَيْثُ كَانَتْ عَائِشَةُ، وَحَيْثُ شَهِدَتْ الْأَمْرَ - أَحَدٌ يَقْطَعُ الْأَيْدِي فِي السَّرِقَاتِ، وَلَا يُحْتَجُّ

[40] **Hadith references (L42254):** Sunan an-Nasai 4936; Sahih Muslim 1684e; Sahih Muslim 1684c.

بِفِعْلِ أَحَدٍ فِي الْإِسْلَامِ إِلَّا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَحْدَهُ. فَصَحَّ بِهَذَا الْخَبَرِ أَحْكَامٌ ثَلَاثَةٌ:

L42259 One of these rulings is that amputation is only obligatory for the theft of non-gold items whose value is equivalent to that of a shield or buckler—regardless of whether the amount is small or large, without a specified limit.

أَحَدُهَا - أَنَّ الْقَطْعَ إِنَّمَا يَجِبُ فِي سَرِقَةِ مَا سِوَى الذَّهَبِ - فِيمَا يُسَاوِي ثَمَنَ جَحْفَةٍ أَوْ تُرْسٍ - قَلَّ ذَلِكَ أَوْ كَثُرَ دُونَ تَحْدِيدٍ.

L42260 The second is that anything less than that—which has no intrinsic value (being trifling)—amputation is not carried out for it at all.

وَالثَّانِي - أَنَّ مَا دُونَ ذَلِكَ مِمَّا لَا قِيمَةَ لَهُ أَصْلًا - وَهُوَ التَّافِهُ - لَا يُقْطَعُ فِيهِ أَصْلًا.

L42261–42263 The third [point] is clarifying the falsehood of those who claimed that the value of the shield requiring amputation refers exclusively to one specific, identifiable shield—the very one that was stolen, for which the Prophet—may God the Exalted bless him and his family and grant him peace—ordered the amputation. This is because ʿĀʾisha reported that the criterion in this matter is the value of a ḥajafa or a turs, both of which are [text cut off]. A price [is involved], so neither the small shield (al-turs) was singled out over the large shield (al-hajafa), nor vice versa. It was clarified that both have a value, though the price was not specified.

وَالثَّالِثُ - بَيَانُ كَذِبِ مَنْ ادَّعَى أَنَّ ثَمَنَ الْمِجَنِّ الَّذِي فِيهِ الْقَطْعُ، إِنَّمَا هُوَ مِجَنٌّ وَاحِدٌ بِعَيْنِهِ مَعْرُوفٌ، وَهُوَ الَّذِي سُرِقَ، فَقَطَعَ فِيهِ النَّبِيُّ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ -؛ لِأَنَّ عَائِشَةَ أَخْبَرَتْ بِأَنَّ الْمُرَاعَى فِي ذَلِكَ ثَمَنُ جَحْفَةٍ أَوْ تُرْسٍ، وَكِلَاهُمَا ذُو ثَمَنٍ، فَلَمْ يَخُصَّ التُّرْسَ دُونَ الْجَحْفَةِ، وَلَا الْجَحْفَةَ دُونَ التُّرْسِ، وَأَخْبَرَتْ أَنْ كِلَيْهِمَا ذُو ثَمَنٍ دُونَ تَحْدِيدِ الثَّمَنِ.

L42264 Thus, what we have said is certainly valid.

فَصَحَّ مَا قُلْنَاهُ يَقِينًا.

L42265 As for our statement that the dinar is according to Mecca's weight, this is based on the authentic report from the Prophet - may God bless him and his family and grant him peace - through the chain of ʿAbdullāh ibn Rabīʿ → Muḥammad ibn Muʿāwiyah → Aḥmad ibn Shuʿayb → Aḥmad ibn Sulaymān al-Zahrānī → Abū Nuʿaym (al-Faḍl ibn Dukayn) → Sufyān al-Thawrī → Ḥanẓalah ibn Abī Sufyān al-Jumaḥī → Ṭāwūs → Ibn ʿUmar → the Prophet - may God bless him and his family and grant him peace - who said: "The dry measure is the measure of Medina's people, and the weight is the weight of Mecca's people." Thus, the Meccan mithqāl equals eighty-two grains of unsorted barley: neither selecting large grains nor deliberately seeking out small ones. A quarter dinar weighs twenty and a half grains. No division is permitted in anything less than that of pure refined gold, free from any

وَأَمَّا قَوْلُنَا فِي الدِّينَارُ إِنَّهُ بِوَزْنِ مَكَّةَ، فَلِمَا صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِمَّا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَحْمَدُ بْنُ سُلَيْمَانَ الزَّهْرَانِيُّ نا أَبُو نُعَيْمٍ - هُوَ الْفَضْلُ بْنُ دُكَيْنٍ - نا سُفْيَانُ - هُوَ الثَّوْرِيُّ - عَنْ حَنْظَلَةَ بْنِ أَبِي سُفْيَانَ الْجُمَحِيِّ عَنْ طَاوُسٍ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الْمِكْيَالُ مِكْيَالُ أَهْلِ الْمَدِينَةِ، وَالْوَزْنُ وَزْنُ أَهْلِ مَكَّةَ» . فَالْمِثْقَالُ الْمَكِّيُّ: اثْنَانِ وَثَمَانُونَ حَبَّةً مِنْ حُبِّ الشَّعِيرِ الْمُجْمَلِ - لَا تُنْتَخَبُ كَبِيرَةٌ وَلَا تُتَحَرَّ صَغِيرَةٌ - فَرُبْعُ دِينَارٍ: وَزْنُهُ عِشْرُونَ حَبَّةً وَنِصْفُ حَبَّةٍ - لَا قَطْعَ فِي أَقَلَّ مِنْ ذَلِكَ مِنْ الذَّهَبِ الْمَحْضِ الصِّرْفِ،

detectable alloy - whether minimal or substantial - of silver, copper, or other substances. And success comes only from God, the Most High.[41]

الَّذِي لَا يَنْضَافُ إِلَيْهِ خَلْطٌ يَظْهَرُ لَهُ فِيهِ أَثَرٌ - قَلَّ أَوْ كَثُرَ - مِنْ وَرِقٍ، أَوْ نُحَاسٍ، أَوْ غَيْرِ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

Issue: Mentioning the Specific Hadiths Pertaining to Amputation

L42266

[مَسْأَلَة ذِكْرُ أَعْيَانِ الْأَحَادِيثِ الْوَارِدَةِ فِي الْقَطْعِ]

L42267 2286 - Issue: Mentioning the specific hadiths concerning amputation in brief? Abu Muhammad—may Allah have mercy on him—said: As for the hadith of Ibn Umar, "The Messenger of Allah—peace and blessings be upon him—ordered amputation regarding a shield whose value was three dirhams," none narrated it except Nāfiʿ, from Ibn ʿUmar, from the Prophet—peace and blessings be upon him. The trustworthy authorities narrated it from him thus: Ayyub al-Sakhtiyānī, Mūsā ibn ʿUqbah, Ayyub ibn Mūsā, Ḥanẓalah ibn Abī Sufyān al-Jumaḥī, ʿUbaydullāh ibn ʿUmar ibn Ḥafṣ, Ismāʿīl ibn Umayyah, Ismāʿīl ibn ʿUlayyah, Ḥammād ibn Zayd, Mālik ibn Anas, al-Layth ibn Saʿd, Muḥammad ibn Isḥāq, Juwayriyah ibn Asmāʾ, and others besides them who do not attain the rank of these. The wording does not differ except that some said "its value" and some said "its price."[42]

٢٢٨٦ - مَسْأَلَةٌ: ذِكْرُ أَعْيَانِ الْأَحَادِيثِ الْوَارِدَةِ فِي الْقَطْعِ بِاخْتِصَارٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا حَدِيثُ ابْنِ عُمَرَ «قَطَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي مِجَنٍّ ثَمَنُهُ ثَلَاثَةُ دَرَاهِمَ» ؟ فَلَمْ يَرْوِهِ أَحَدٌ إلَّا نَافِعٌ عَنْ ابْنِ عُمَرَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَكَذَا رَوَاهُ عَنْهُ الثِّقَاتُ الْأَئِمَّةُ: أَيُّوبُ السِّخْتِيَانِيُّ، وَمُوسَى بْنُ عُقْبَةَ، وَأَيُّوبُ بْنُ مُوسَى، وَحَنْظَلَةُ بْنُ أَبِي سُفْيَانَ الْجُمَحِيُّ، وَعُبَيْدُ اللَّهِ بْنُ عُمَرَ بْنِ حَفْصٍ، وَإِسْمَاعِيلُ بْنُ أُمَيَّةَ، وَإِسْمَاعِيلُ بْنُ عُلَيَّةَ، وَحَمَّادُ بْنُ زَيْدٍ، وَمَالِكُ بْنُ أَنَسٍ، وَاللَّيْثُ بْنُ سَعْدٍ، وَمُحَمَّدُ بْنُ إِسْحَاقَ، وَجُوَيْرِيَةُ بْنُ أَسْمَاءَ، وَغَيْرُ هَؤُلَاءِ مِمَّنْ لَا يَلْحَقُ بِهَؤُلَاءِ، وَلَا يَخْتَلِفُ فِي اللَّفْظِ، إلَّا أَنَّ بَعْضَهُمْ قَالَ: قِيمَتُهُ - وَبَعْضُهُمْ قَالَ: ثَمَنُهُ.

L42268 And some trustworthy narrators reported it from Ḥanẓalah ibn Abī Sufyān from Nāfiʿ from Ibn ʿUmar from the Messenger of Allah (peace and blessings of Allah be upon him and his family), who said: "Its value is five dirham."

وَرَوَاهُ بَعْضُ الثِّقَاتِ أَيْضًا عَنْ حَنْظَلَةَ بْنِ أَبِي سُفْيَانَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: قِيمَتُهُ خَمْسَةُ دَرَاهِمَ.

L42269 A ḥadīth was reported (which is not authentic because its narrator is Abū Ḥarmal—and it is not known who he is) that "a female servant stole a waterskin of wine whose value did not reach three dirhams, so the Messenger of Allāh—may Allāh bless him and grant him peace—did not amputate her hand."

وَجَاءَ حَدِيثٌ لَمْ يَصِحَّ؛ لِأَنَّ رَاوِيهِ أَبُو حَرْمَلٍ - وَلَا يُدْرَى مَنْ هُوَ - أَنَّ «جَارِيَةً سَرَقَتْ رِكْوَةَ خَمْرٍ لَمْ تَبْلُغْ ثَلَاثَةَ دَرَاهِمَ، فَلَمْ يَقْطَعْهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -».

L42270–42271 As for the ruling on amputation as a legal punishment for theft amounting

وَأَمَّا الْقَطْعُ فِي رُبْعِ دِينَارٍ، فَلَمْ يُرْوَ إلَّا عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - وَرُوِيَ عَنْهَا عَلَى ثَلَاثَةِ أَضْرُبٍ:

[41] **Hadith references (L42265):** Sunan an-Nasai 2520.
[42] **Hadith references (L42267):** Sunan an-Nasai 4907.

to a quarter of a dinar, it has exclusively been narrated from Aisha—may Allah be pleased with her—and was reported from her in three aspects.

L42272 One of them is that the Messenger of Allah (peace be upon him) said: "There is no cutting except for a quarter of a dinar."

أَحَدُهَا - أَنَّ رَسُولَ اللَّهِ قَالَ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا قَطْعَ إِلَّا فِي رُبْعِ دِينَارٍ» .

L42273 The second is that the Messenger of Allah (peace be upon him and his family) prescribed the punishment of cutting off the hand for stealing a quarter of a dinar, or he said: "The cutting of the hand is mandated for stealing a quarter of a dinar."

" وَالثَّانِي - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «قَطَعَ فِي رُبْعِ دِينَارٍ، أَوْ قَالَ: الْقَطْعُ فِي رُبْعِ دِينَارٍ» .

L42274 The third [ruling] is that "he—peace be upon him—mandates hand-cutting for [theft] worth less than the value of a shield—a ḥajafah or a turs [types of shields]—not for a trivial thing," or that the Prophet—peace be upon him—cut [the hand] for [theft of] a shield. None narrated these variant wordings from her—may Allah be pleased with her—except al-Qāsim ibn Muḥammad, ʿUrwah ibn al-Zubayr, ʿAmrah bint ʿAbd al-Raḥmān, and the wife of ʿIkrimah—her name was not named to us.

وَالثَّالِثُ - «أَنَّهُ - عَلَيْهِ السَّلَامُ - يُقْطَعُ فِي أَقَلَّ مِنْ ثَمَنِ الْمِجَنِّ - جَحَفَةٍ أَوْ تُرْسٍ» لَا فِي الشَّيْءِ التَّافِهِ، أَوْ قَطَعَ فِي مِجَنٍّ - وَلَمْ يَرْوِ هَذِهِ الْأَلْفَاظَ بِاخْتِلَافِهَا عَنْهَا - رَضِيَ اللَّهُ عَنْهَا - إِلَّا الْقَاسِمُ بْنُ مُحَمَّدٍ، وَعُرْوَةُ بْنُ الزُّبَيْرِ، وَعَمْرَةُ بِنْتُ عَبْدِ الرَّحْمَنِ، وَامْرَأَةُ عِكْرِمَةَ - لَمْ تُسَمَّ لَنَا -.

L42275 As for Al-Qāsim, he attributed it directly to ʿĀ'isha in her own words without providing an isnad; however, she stated: "The thief's hand is to be cut off for a quarter of a dinar."

فَأَمَّا الْقَاسِمُ، فَأَوْقَفَهُ عَلَى عَائِشَةَ مِنْ لَفْظِهَا، وَلَمْ يُسْنِدْهُ، لَكِنْ أَنَّهَا قَالَتْ: السَّارِقُ تُقْطَعُ يَدُهُ فِي رُبْعِ دِينَارٍ.

L42276 Abd al-Rahman's son objected to the one who had ascribed [the claim] to him and declared that person mistaken.

وَأَنْكَرَ عَبْدُ الرَّحْمَنِ ابْنُهُ عَلَى مَنْ رَفَعَهُ وَخَطَّأَهُ.

L42277 As for those who said, "There is no amputation except for a quarter of a dinar," no one we know of has reported this except Yunus from al-Zuhrī from ʿUrwah with a connected *isnād*, and ʿAmrah from ʿĀ'ishah with a connected *isnād*, and Abū Bakr ibn Muḥammad ibn ʿAmr ibn Ḥazm from ʿAmrah from ʿĀ'ishah with a connected *isnād*, and Muḥammad ibn ʿAbd al-Raḥmān from ʿAmrah from ʿĀ'ishah with a connected *isnād*.

وَأَمَّا مَنْ قَالَ: لَا قَطْعَ إِلَّا فِي رُبْعِ دِينَارٍ، فَلَمْ يَرْوِهِ أَحَدٌ نَعْلَمُهُ إِلَّا يُونُسُ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ، وَعَمْرَةَ عَنْ عَائِشَةَ مُسْنَدًا، وَأَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ عَنْ عَائِشَةَ مُسْنَدًا، وَمُحَمَّدُ بْنُ عَبْدِ الرَّحْمَنِ عَنْ عَمْرَةَ عَنْ عَائِشَةَ مُسْنَدًا.

L42278 As for those who transmitted the amputation punishment in the value of a shield—not for items of lesser value below the shield's threshold—and the specification by Hisham ibn Urwah from his father from Aisha, and Umm Ikrimah from Aisha as musnad. As for the hadith concerning ten dirhams or the dinar, there is absolutely no basis for it from the Messenger of Allah—

وَأَمَّا الَّذِينَ رَوَوْا الْقَطْعَ فِي ثَمَنِ الْمِجَنِّ لَا فِي التَّافِهِ الَّذِي هُوَ أَقَلُّ مِنْ ثَمَنِ الْمِجَنِّ، وَتَحْدِيدُ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ عَائِشَةَ، وَامْرَأَةِ عِكْرِمَةَ عَنْ عَائِشَةَ مُسْنَدًا. وَأَمَّا حَدِيثُ الْعَشَرَةِ دَرَاهِمَ أَوْ الدِّينَارِ، فَلَيْسَ فِيهِ شَيْءٌ أَصْلًا عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

peace and blessings of Allah be upon him. Therefore, it is impermissible to allow any deception regarding it. It only cites ten dirhams connected to it from the statement of ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ—and even this is not authentically established from him.

L42279 And from the statement of Abdullah ibn Abbas ibn Abdullah—which is also the view of Sa‘id ibn al-Musayyib and Ayman likewise—and it is soundly transmitted from them, except for a fabricated, false hadith—whose narrator is unknown—transmitted via Ibn Mas‘ud’s chain (musnad): “There is no amputation except for a quarter of a dinar or ten dirhams,” which contains no mention of value whatsoever, despite its defect.

Issue: Mentioning What Is Cut from the Thief

L42280–42281

L42282 Abu Muhammad—may Allah have mercy on him—said: People have differed regarding what is amputated from the thief. A group maintained: Only one hand is to be amputated, and nothing else is to be amputated from him thereafter.

L42283 A group held that only the hand and foot on opposite sides are to be amputated, then nothing else is amputated from him.

L42284 And a group said: The hand is cut off, then the left leg.

L42285 A group held that his hand is to be severed, then his opposite foot, then his second foot.

L42286 They also differed regarding how the hand is amputated, how the leg is amputated, what is done if he has nothing left to be amputated, and which of the two hands is amputated. We shall mention - if Allah, the Exalted, wills - each of these chapters, those who held such positions, and the evidence of each group, so the truth may become evident - and there is no might nor power except with Allah, the Most High, the Supreme. As for those who said: “Only his hand is amputated” - it is as narrated by Hammam, who narrated from Ibn Mufarrij, who narrated from Ibn al-A’rabi, who narrated from al-Dabari, who narrated from Abd al-Razzaq, from Ibn Jurayj, who said:

- فَلَا يَنْبَغِي أَنْ يَجُوزَ التَّمْوِيهُ فِيهِ عَلَى أَحَدٍ، إنَّمَا فِيهِ مَوْصُولًا بِهِ ذِكْرُ الْعَشَرَةِ دَرَاهِمَ مِنْ قَوْلِ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ - وَلَا يَصِحُّ عَنْهُ أَيْضًا.

وَمِنْ قَوْلِ عَبْدِ اللَّهِ بْنِ عَبَّاسِ بْنِ عَبْدِ اللَّهِ - وَهُوَ قَوْلُ سَعِيدِ بْنِ الْمُسَيِّبِ، وَأَيْمَنُ كَذَلِكَ - وَهُوَ عَنْهُمْ صَحِيحٌ، إلَّا حَدِيثًا مَوْضُوعًا مَكْذُوبًا - لَا يُدْرَى مَنْ رَوَاهُ - مِنْ طَرِيقِ ابْنِ مَسْعُودٍ مُسْنَدًا: لَا قَطْعَ إلَّا فِي رُبْعِ دِينَارٍ، أَوْ عَشَرَةِ دَرَاهِمَ، وَلَيْسَ فِيهِ - مَعَ عِلَّتِهِ - ذِكْرُ الْقِيمَةِ أَصْلًا.

[مَسْأَلَة ذِكْرُ مَا يُقْطَعُ مِنْ السَّارِقِ]

؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِيمَا يُقْطَعُ مِنْ السَّارِقِ: فَقَالَتْ طَائِفَةٌ: لَا تُقْطَعُ إلَّا الْيَدُ الْوَاحِدَةُ فَقَطْ، ثُمَّ لَا يُقْطَعُ مِنْهُ شَيْءٌ.

وَقَالَتْ طَائِفَةٌ: لَا يُقْطَعُ مِنْهُ إلَّا الْيَدُ وَالرِّجْلُ مِنْ خِلَافٍ، ثُمَّ لَا يُقْطَعُ مِنْهُ شَيْءٌ.

وَقَالَتْ طَائِفَةٌ: تُقْطَعُ الْيَدُ، ثُمَّ الرِّجْلُ الْأُخْرَى.

وَقَالَتْ طَائِفَةٌ: تُقْطَعُ يَدُهُ، ثُمَّ رِجْلُهُ مِنْ خِلَافٍ، ثُمَّ رِجْلُهُ الثَّانِيَةُ.

وَاخْتَلَفُوا أَيْضًا: كَيْفَ تُقْطَعُ الْيَدُ، وَكَيْفَ تُقْطَعُ الرِّجْلُ، وَمَاذَا يُفْعَلُ إذَا لَمْ يَبْقَ لَهُ مَا يُقْطَعُ، وَأَيُّ الْيَدَيْنِ تُقْطَعُ؟ وَسَنَذْكُرُ - إنْ شَاءَ اللَّهُ تَعَالَى - كُلَّ بَابٍ مِنْ هَذِهِ الْأَبْوَابِ، وَالْقَائِلِينَ بِذَلِكَ، وَحُجَّةَ كُلِّ طَائِفَةٍ، لِيَلُوحَ الْحَقُّ - وَلَا حَوْلَ وَلَا قُوَّةَ إلَّا بِاَللَّهِ الْعَلِيِّ الْعَظِيمِ: فَأَمَّا مَنْ قَالَ: لَا تُقْطَعُ إلَّا يَدُهُ فَقَطْ - فَكَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ قُلْت لِعَطَاءٍ: سَرَقَ الْأُولَى، قَالَ:

"I asked Ata: 'If he steals the first time?' He replied: 'His hand is amputated.' I asked: 'What about their statement concerning the fingers?' He said: 'I have only encountered the amputation of the entire hand.' I asked Ata: 'If he steals a second time?' He replied: 'I maintain that only the hand should be amputated for the first theft. Allah, the Exalted, says: {Cut off their hands} [5:38]. Had He willed, He would have commanded the leg, and Allah, the Exalted, is not forgetful.'" This is the explicit statement of Ata.[43]

L42287 As for those who say: the hand is to be cut off, then the other hand, while the foot is not to be cut off—this has been reported from Rabīʿah and others—and some of our companions said this.

L42288–42290 As for those who assert that his hand is amputated, then his opposite leg from the other limb, and then nothing further is to be severed: Muḥammad ibn Saʿīd ibn Nubāt narrated to us via ʿAbdullāh ibn Naṣr via Qāsim ibn Aṣbagh via Ibn Waḍḍāḥ via Mūsā ibn Muʿāwiyah via Wakīʿ via Sufyān al-Thawrī via Manṣūr ibn al-Muʿtamir via Abū al-Ḍuḥā, who said, "'Alī ibn Abī Ṭālib never imposed penalties for theft beyond amputating the hand and leg." Wakīʿ added: We also narrate via Shuʿbah via ʿAmr ibn Murrah via ʿAbdullāh ibn Salamah that a thief was brought to ʿAlī ibn Abī Ṭālib, who amputated his hand. When the thief was brought again, ʿAlī amputated his opposite leg. Upon being brought a third time, ʿAlī said, "I am restrained by honor from..." He cut off his hand—so with what will he eat? Or he cut off his leg—so upon what will he rely? Then he struck him and imprisoned him.

L42291 Through him (up to Waki') - Isra'il narrated to us via Simak ibn Harb from 'Abd al-Rahman ibn 'Abid al-Azdi, who said: A man called Sadum, who had amputated a hand and leg [of another], was brought to Umar ibn al-Khattab. Umar intended to amputate him, but Ali ibn Abi Talib said, "Only the amputation of his hand and leg is required." Thereupon, Umar detained him.

L42292 Hammam narrated to us: Ibn Mufarrij related to us: Ibn al-A'rabi reported to us: ad-Dabari conveyed to us: 'Abd al-Razzaq narrated from Ibn Jurayj,

[43] **Qur'an references (L42286):** Qur'an 5:38 (Al-Ma'idah).

تُقْطَعُ كَفُّهُ، قُلْت: فَمَا قَوْلُهُمْ: أَصَابِعُهُ، قَالَ: لَمْ أَدْرِكْ إلَّا قَطْعَ الْكَفِّ كُلِّهَا، قُلْت لِعَطَاءٍ: سَرَقَ الثَّانِيَةَ، قَالَ: مَا أَرَى أَنْ تُقْطَعَ إلَّا فِي السَّرِقَةِ الْأُولَى الْيَدَ فَقَطْ، قَالَ اللَّهُ تَعَالَى {فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] وَلَوْ شَاءَ أَمَرَ بِالرِّجْلِ، وَلَمْ يَكُنْ اللَّهُ تَعَالَى نَسِيًّا - هَذَا نَصُّ قَوْلِ عَطَاءٍ.

وَأَمَّا مَنْ قَالَ: تُقْطَعُ الْيَدُ، ثُمَّ الْيَدُ، وَلَا تُقْطَعُ الرِّجْلُ - فَرُوِيَ عَنْ رَبِيعَةَ وَغَيْرِهِ - وَبِهِ قَالَ بَعْضُ أَصْحَابِنَا.

وَأَمَّا مَنْ قَالَ: تُقْطَعُ يَدُهُ، ثُمَّ رِجْلُهُ مِنْ خِلَافٍ فَقَطْ، ثُمَّ لَا يُقْطَعُ مِنْهُ شَيْءٌ: فَكَمَا، 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 مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي الضُّحَى، قَالَ: كَانَ عَلِيُّ بْنُ أَبِي طَالِبٍ لَا يَزِيدُ فِي السَّرِقَةِ عَلَى قَطْعِ الْيَدِ وَالرِّجْلِ - قَالَ وَكِيعٌ: ونا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ عَبْدِ اللَّهِ بْنِ سَلَمَةَ: أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أُتِيَ بِسَارِقٍ فَقَطَعَ يَدَهُ، ثُمَّ أُتِيَ بِهِ فَقَطَعَ رِجْلَهُ، ثُمَّ أُتِيَ بِهِ الثَّالِثَةَ، فَقَالَ: إنِّي أَسْتَحْيِي أَنْ أَقْطَعَ يَدَهُ، فَبِأَيِّ شَيْءٍ يَأْكُلُ، أَوْ أَقْطَعَ رِجْلَهُ فَعَلَى أَيِّ شَيْءٍ يَعْتَمِدُ؟ فَضَرَبَهُ وَحَبَسَهُ.

وَبِهِ - إلَى وَكِيعٍ نا إسْرَائِيلُ عَنْ سِمَاكِ بْنِ حَرْبٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَابِدٍ الْأَزْدِيِّ قَالَ: أُتِيَ عُمَرُ بْنُ الْخَطَّابِ بِرَجُلٍ أَقْطَعِ الْيَدِ وَالرِّجْلِ - يُقَالُ لَهُ: سَدُومٌ - فَأَرَادَ أَنْ يَقْطَعَهُ، فَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إنَّمَا عَلَيْهِ قَطْعُ يَدِهِ وَرِجْلِهِ، فَحَبَسَهُ عُمَرُ.

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: كَتَبَ نَجْدَةُ بْنُ عَامِرٍ إلَى ابْنِ عَبَّاسٍ: السَّارِقُ يَسْرِقُ فَتُقْطَعُ يَدُهُ،

who informed me that ‘Amr ibn Dinar said: Najda ibn ‘Amir wrote to Ibn ‘Abbas: “The thief steals and his hand is cut off. Then he steals again and his other hand is cut off, for Allah the Exalted said: {Cut off the hands of both of them} [5:38].” Ibn ‘Abbas responded: “Yes, but his hand and foot from opposite sides.” ‘Amr ibn Dinar remarked: “Did I hear this from ‘Ata’ forty years ago?” Abu Muhammad—may Allah have mercy on him—commented: “This chain is supremely authentic, and Ibn ‘Abbas’s statement here bears two interpretations.”[44]

L42293 One said: “Indeed, Allah the Exalted has declared this, but the obligation is to amputate his hand and foot.” The other responded: “It may also be understood—indeed, Allah the Exalted has decreed this—and this is the truth—that the governing authority amputates the hand and foot. This is the second viewpoint—the only impermissible interpretation is to carry Ibn Abbas’ statement to anything other than this absolutely, for it is impermissible that Ibn Abbas could affirm this as Allah the Exalted’s decree yet oppose and contradict it.”

L42294 For it is not permissible to abandon the command of Allah the Exalted except for a Sunnah of the Messenger of Allah—peace and blessings be upon him and his family—that abrogates what is in the Quran, coming from Allah the Exalted through revelation to His Prophet—upon him be peace.

L42295 It is an inconceivable falsehood that Ibn Abbas’s statement would contradict the words of Allah the Exalted based on his own opinion or by adhering to the view of anyone other than the Messenger of Allah—peace and blessings be upon him and his family. He was the farthest of people from such behavior, and he summoned them to the *mubāhala* (ritual invocation of divine curse) regarding *ʿawl* (over-provision in inheritance) and other matters.

L42296 He spoke regarding the matter of Hajj tamattu’ and its conversion to ‘Umrah: “I can only envision that Allah will cause the earth to swallow you! Do I say to you: ‘The Messenger of Allah (peace and blessings be upon him) said,’ while you retort: ‘Abu Bakr and Umar said?’” It is implausible that he would possess knowledge of a Sunnah from the Messenger of Allah (peace and

[44]**Qur’an references (L42292):** Qur’an 5:38 (Al-Ma’idah).

ثُمَّ يَعُودُ فَتُقْطَعُ يَدُهُ الْأُخْرَى، قَالَ اللَّهُ تَعَالَى {فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] قَالَ ابْنُ عَبَّاسٍ: بَلَى، وَلَكِنَّ يَدَهُ وَرِجْلَهُ مِنْ خِلَافٍ، قَالَ عَمْرُو بْنُ دِينَارٍ: سَمِعْته مِنْ عَطَاءٍ مُنْذُ أَرْبَعِينَ سَنَةً؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا إسْنَادٌ فِي غَايَةِ الصِّحَّةِ، وَيَحْتَمِلُ قَوْلُ ابْنِ عَبَّاسٍ هَذَا وَجْهَيْنِ:

أَحَدُهُمَا - بَلَى، إنَّ اللَّهَ تَعَالَى قَالَ هَذَا، وَلَكِنَّ الْوَاجِبَ قَطْعُ يَدِهِ وَرِجْلِهِ - وَيَحْتَمِلُ أَيْضًا - بَلَى، إنَّ اللَّهَ تَعَالَى قَالَ هَذَا - وَهُوَ الْحَقُّ - وَلَكِنَّ السُّلْطَانَ يَقْطَعُ الْيَدَ وَالرِّجْلَ، وَهَذَا الْوَجْهُ الثَّانِي - هُوَ الَّذِي لَا يَجُوزُ أَنْ يُحْمَلَ قَوْلُ ابْنِ عَبَّاسٍ عَلَى غَيْرِهِ أَلْبَتَّةَ؛ لِأَنَّهُ لَا يَجُوزُ أَنْ يَكُونَ ابْنُ عَبَّاسٍ يُحَقِّقُ أَنَّ هَذَا قَوْلُ اللَّهِ تَعَالَى ثُمَّ يُخَالِفُهُ وَيُعَارِضُهُ.

إذْ لَا يَحِلُّ تَرْكُ أَمْرِ اللَّهِ تَعَالَى إلَّا لِسُنَّةٍ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَاسِخَةٍ لِمَا فِي الْقُرْآنِ، وَارِدَةٍ مِنْ عِنْدِ اللَّهِ تَعَالَى بِالْوَحْيِ، إلَى نَبِيِّهِ - عَلَيْهِ السَّلَامُ -.

فَمِنْ الْبَاطِلِ الْمُمْتَنِعِ أَنْ يُخَالِفَ قَوْلُ ابْنِ عَبَّاسٍ قَوْلَ اللَّهِ تَعَالَى بِرَأْيِهِ، أَوْ بِتَقْلِيدِهِ لِرَأْيِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؛ وَهُوَ أَبْعَدُ النَّاسِ مِنْ ذَلِكَ، وَقَدْ دَعَاهُمْ إلَى الْمُبَاهَلَةِ فِي " الْعَوْلِ " وَغَيْرِهِ.

وَقَالَ فِي أَمْرِ مُتْعَةِ الْحَجِّ وَفَسْخِهِ بِعُمْرَةٍ: مَا أَرَاكُمْ إلَّا سَيَخْسِفُ اللَّهُ بِكُمْ الْأَرْضَ أَقُولُ لَكُمْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَقُولُونَ: قَالَ أَبُو بَكْرٍ، وَعُمَرُ؟ وَمِنْ الْمُحَالِ أَنْ يَكُونَ عِنْدَهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُنَّةٌ فِي ذَلِكَ وَلَا يَذْكُرُهَا، وَقَدْ أَعَاذَهُ اللَّهُ تَعَالَى مِنْ ذَلِكَ.

blessings be upon him) concerning this matter and fail to mention it, for Allah the Exalted has protected him from that.

L42297–42298 It is inconceivable that ‘Aṭā’ would hear this ruling and comprehend from him the existence of a Sunnah concerning leg amputation that requires leaving the Qur’an, yet then refuse—as we have cited from him—to amputate the leg for theft while clinging to the Qur’an in this matter, declaring: “Your Lord is never heedless” [19:64]. Had Allah the Exalted willed, He would have commanded leg amputation.[45]

L42299 It was thus confirmed with certainty that Ibn Abbas, in his statement “Yes, but the hands and the feet,” only intended to validate the cutting of both hands only, in accordance with the Divine ruling in the Quran, and that his statement “but the hands and the feet” merely reported the practice of the people of his time.

L42300 From Al-Zuhri, Salim, and others: Abu Bakr al-Siddiq only amputated his foot, as his hand had already been amputated. Al-Zuhri said: “No precedent has been reported to us in the Sunnah except the amputation of the hand and foot. No additional amputation is mandated beyond this.”

L42301 And from Ibrāhīm an-Nakhaʿī, he said: They used to say: The son of Adam should not be left like a beast, having no hand to eat with or relieve himself. This is the opinion of Ḥammād ibn Abī Sulaymān, Sufyān al-Thawrī, Aḥmad ibn Ḥanbal, and their companions? Abū Muḥammad (may Allah have mercy on him) said: We examined the opinion of those who held that only the thief’s single hand should be amputated with no further amputation thereafter, and the opinion of those who held that amputating the hand after the hand alone, while not considering foot amputation in this matter at all. We found them saying: Allah the Exalted said, “As for the thief, male or female, cut off their hands” [5:38].[46]

L42302 The Messenger of Allah (peace be upon him) said, “If Fāṭimah, the daughter of Muhammad, were to steal, the Prophet Muhammad would cut off her

[45] **Qur’an references (L42298):** Qur’an 19:64 (Maryam).

[46] **Qur’an references (L42301):** Qur’an 5:38 (Al-Ma’idah).

وَمِنْ الْمُحَالِ أَنْ يَسْمَعَهُ عَطَاءٌ وَيَفْهَمَ عَنْهُ أَنَّ عِنْدَهُ فِي قَطْعِ الرِّجْلِ سُنَّةً يَنْبَغِي لَهَا تَرْكُ الْقُرْآنِ، ثُمَّ يَأْبَى عَطَاءٌ مِنْ قَطْعِ الرِّجْلِ فِي السَّرِقَةِ - كَمَا ذَكَرْنَا عَنْهُ - وَيَتَمَسَّكُ بِالْقُرْآنِ فِي ذَلِكَ، وَيَقُولُ {وَمَا كَانَ رَبُّكَ نَسِيًّا} [مريم: ٦٤] لَوْ شَاءَ اللَّهُ تَعَالَى أَمَرَ بِالرِّجْلِ.

فَصَحَّ يَقِينًا أَنَّ ابْنَ عَبَّاسٍ لَمْ يَرِدْ بِقَوْلِهِ " بَلَى، وَلَكِنَّ الْيَدَ وَالرِّجْلَ " إلَّا لِتَصْحِيحِ: قَطْعِ الْيَدَيْنِ فَقَطْ، عَلَى حُكْمِ اللَّهِ تَعَالَى فِي الْقُرْآنِ، وَأَنَّ قَوْلَهُ " وَلَكِنَّ الْيَدَ وَالرِّجْلَ " إنَّمَا أَخْبَرَ عَنْ فِعْلِ أَهْلِ زَمَانِهِ فَقَطْ.

وَعَنْ الزُّهْرِيِّ، وَسَالِمٍ، وَغَيْرِهِ: إنَّمَا قَطَعَ أَبُو بَكْرٍ الصِّدِّيقُ رِجْلَهُ، وَكَانَ مَقْطُوعَ الْيَدِ - قَالَ الزُّهْرِيُّ: فَلَمْ يَبْلُغْنَا فِي السُّنَّةِ إلَّا قَطْعُ الْيَدِ وَالرِّجْلِ، لَا يُزَادُ عَلَى ذَلِكَ.

وَعَنْ إبْرَاهِيمَ النَّخَعِيِّ قَالَ كَانُوا يَقُولُونَ: لَا يُتْرَكُ ابْنُ آدَمَ مِثْلَ الْبَهِيمَةِ، لَيْسَ لَهُ يَدٌ يَأْكُلُ بِهَا، وَيَسْتَنْجِي بِهَا - وَهُوَ قَوْلُ حَمَّادِ بْنِ أَبِي سُلَيْمَانَ، وَسُفْيَانَ الثَّوْرِيِّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَأَصْحَابِهِمْ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى قَطْعَ يَدِ السَّارِقِ الْوَاحِدَةِ فَقَطْ ثُمَّ لَا يُقْطَعُ مِنْهُ شَيْءٌ - وَقَوْلِ مَنْ رَأَى قَطْعَ الْيَدِ بَعْدَ الْيَدِ فَقَطْ، وَلَمْ يَرَ قَطْعَ الرِّجْلِ فِي ذَلِكَ أَصْلًا: فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى {وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَوْ سَرَقَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ لَقَطَعَ مُحَمَّدٌ يَدَهَا» . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُقْطَعُ الْيَدُ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا» . وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَعَنَ اللَّهُ السَّارِقَ يَسْرِقُ

hand." The Messenger of Allah (peace be upon him) said, "The hand is not cut except for a quarter of a dinar or above." The Messenger of Allah (peace be upon him and his family) said, "Allah has cursed the thief who steals an egg and has his hand cut off, and steals a rope and has his hand cut off." ʿĀ'ishah (may Allah be pleased with her) said, "Hands were not cut off during the time of the Messenger of Allah (peace be upon him) for something trivial."[47]

L42303–42304 So this Quran and the authentic established narrations from the Messenger of Allah—may Allah send blessings upon him and his family and grant him peace—have come with the cutting of hands, and in them there is no mention of the foot.

L42305 And He, the Exalted, said: "Follow what has been revealed to you from your Lord" [Al-Aʿrāf: 3]. We have clarified that no authentic report has been transmitted from the Messenger of Allah—may Allah bless him and his family and grant him peace—concerning amputating the thief's foot whatsoever. Had it been authentic, we would have ruled by it, and we do not overstep the bounds.[48]

L42306 Nothing has been reported regarding the amputation of the foot except from Abu Bakr, Umar, Uthman, Ali, and Ya'la ibn Munyah.

L42307 As for the narration from ʿUthmān—it is not authentic.

L42308 As for the narration from Abū Bakr, it is reported that he intended to amputate the second leg in the case of a third theft, but they do not uphold this ruling.

L42309 It has been authentically reported from ʿAlī that he did not permit amputating the second foot or the second hand.

L42310 Thus, the disagreement among them concerning that matter was affirmed valid – may Allah be pleased with them.

L42311 Muhammad ibn Sa'id ibn Nubat narrated from Abdullah ibn Nasr, who

الْبَيْضَةَ فَتُقْطَعُ يَدُهُ وَيَسْرِقُ الْحَبْلَ فَتُقْطَعُ يَدُهُ» وَقَالَتْ عَائِشَةُ - رَضِيَ اللَّهُ عَنْهَا -: «لَمْ تَكُنْ الْأَيْدِي تُقْطَعُ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الشَّيْءِ التَّافِهِ» .

فَهَذَا الْقُرْآنُ، وَالْآثَارُ الصِّحَاحُ الثَّابِتَةُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَاءَتْ بِقَطْعِ الْأَيْدِي، لَمْ يَأْتِ فِيهَا لِلرِّجْلِ ذِكْرٌ.

وَقَالَ تَعَالَى {اتَّبِعُوا مَا أُنْزِلَ إِلَيْكُمْ مِنْ رَبِّكُمْ} [الأعراف: ٣] . وَقَدْ بَيَّنَّا أَنَّهُ لَمْ يَصِحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي قَطْعِ رَجُلِ السَّارِقِ شَيْءٌ أَصْلًا وَلَوْ صَحَّ لَقُلْنَا بِهِ، وَمَا تَعَدَّيْنَا.

وَلَمْ يُرْوَ فِي قَطْعِ الرِّجْلِ شَيْءٌ إلَّا عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَيَعْلَى بْنِ مُنْيَةَ.

فَأَمَّا الرِّوَايَةُ عَنْ عُثْمَانَ - فَلَا تَصِحُّ.

وَأَمَّا الرِّوَايَةُ عَنْ أَبِي بَكْرٍ - فَقَدْ جَاءَ عَنْهُ أَنَّهُ أَرَادَ قَطْعَ الرِّجْلِ الثَّانِيَةِ فِي السَّرِقَةِ الثَّالِثَةِ - وَهُمْ لَا يَقُولُونَ بِهَذَا.

وَصَحَّ عَنْ عَلِيٍّ - أَنَّهُ لَمْ يَرَ قَطْعَ الرِّجْلِ الثَّانِيَةِ، وَلَا الْيَدِ الثَّانِيَةِ.

فَصَحَّ الِاخْتِلَافُ عَنْهُمْ فِي ذَلِكَ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَمَا نا 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 الثَّوْرِيُّ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْقَاسِمِ، وَمُحَمَّدِ بْنِ أَبِي

[47] **Hadith references (L42302):** Sunan Ibn Majah 2585; Sahih al-Bukhari 6783; Sahih al-Bukhari 6799; Sunan Ibn Majah 2583.

[48] **Qur'an references (L42305):** Qur'an 7:3 (Al-A'raf).

narrated from Qasim ibn Asbagh, who narrated from Ibn Waddah, who narrated from Musa ibn Mu'awiyah, who narrated from Waki', who narrated from Sufyan al-Thawri, from Abd al-Rahman ibn al-Qasim and Muhammad ibn Abi Bakr, from his father, who said: Abu Bakr intended to cut the foot after the hand. Umar then said, "The Sunnah specifies the hand." Thus, Umar, may Allah be pleased with him, did not recognize the Sunnah except for the hand. Abu Muhammad, may Allah have mercy on him, said: Thus, the matter became clear, and all praise is due to Allah.

بَكْرٍ عَنْ أَبِيهِ، قَالَ: أَرَادَ أَبُو بَكْرٍ قَطْعَ الرِّجْلِ بَعْدَ الْيَدِ وَالرِّجْلِ، فَقَالَ عُمَرُ: السُّنَّةُ فِي الْيَدِ - فَهَذَا عُمَرُ - رَضِيَ اللَّهُ عَنْهُ - لَمْ يَرَ السُّنَّةَ إلَّا فِي الْيَدِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَانْبَلَجَ الْأَمْرُ وَلِلَّهِ الْحَمْدُ.

L42312 We have been narrated through the chain of al-Bukhārī: Yaḥyā ibn Bukayr narrated to us; al-Layth narrated to us, from Yūnus, from Ibn Shihāb, from ʿUbayd Allāh ibn ʿAbd Allāh ibn ʿUtbah, that Ibn ʿAbbās used to relate: "A man came to the Messenger of Allah (peace be upon him and his family) and said, 'I saw last night...'—and he mentioned the Hadith—and that Abū Bakr (may Allah be pleased with him) interpreted the meaning of that dream. The Messenger of Allah (peace be upon him and his family) said to Abū Bakr (may Allah be pleased with him): 'You were correct in part and mistaken in part.' Thus, everyone besides the Messenger of Allah (peace be upon him and his family) may err and may be correct."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ عَنْ يُونُسَ عَنْ ابْنِ شِهَابٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ أَنَّ ابْنَ عَبَّاسٍ كَانَ يُحَدِّثُ: «أَنَّ رَجُلًا أَتَى إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: إنِّي رَأَيْتُ اللَّيْلَةَ - وَذَكَرَ الْحَدِيثَ - وَأَنَّ أَبَا بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - عَبَّرَ تِلْكَ الرُّؤْيَا، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ لِأَبِي بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - أَصَبْتَ بَعْضًا وَأَخْطَأْتَ بَعْضًا» فَكُلُّ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يُخْطِئُ وَيُصِيبُ.

L42313–42314 If someone were to say: The Messenger of Allah—blessings and peace be upon him and his family—said, "You must adhere to my Sunnah and the Sunnah of the Rightly Guided Caliphs after me," we would respond: The Sunnah of the Caliphs—may Allah be pleased with them—is the following of his Sunnah—peace be upon him. As for what they established through independent reasoning, it is not obligatory to follow their rulings in that regard.

فَإِنْ قَالَ قَائِلٌ: قَدْ جَاءَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «عَلَيْكُمْ بِسُنَّتِي وَسُنَّةِ الْخُلَفَاءِ الرَّاشِدِينَ مِنْ بَعْدِي؟» قُلْنَا: سُنَّةُ الْخُلَفَاءِ - رَضِيَ اللَّهُ عَنْهُمْ - هِيَ اتِّبَاعُ سُنَّتِهِ - عَلَيْهِ السَّلَامُ -، وَأَمَّا مَا عَمِلُوهُ - بِاجْتِهَادٍ فَلَا يَجِبُ اتِّبَاعُ اجْتِهَادِهِمْ فِي ذَلِكَ.

L42315 It has been authentically reported from Abu Bakr, ʿUmar, ʿUthman, ʿAli, Ibn al-Zubayr, Khalid Ibn al-Walid, and others that retaliation applies even for a slap. However, the Ḥanafīs, the Mālikīs, and the Shāfiʿīs do not uphold this ruling.

وَقَدْ صَحَّ عَنْ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَابْنِ الزُّبَيْرِ، وَخَالِدِ بْنِ الْوَلِيدِ، وَغَيْرِهِمْ: الْقَوَدُ مِنْ اللَّطْمَةِ - وَالْحَنَفِيُّونَ، وَالْمَالِكِيُّونَ، وَالشَّافِعِيُّونَ، لَا يَقُولُونَ بِذَلِكَ.

L42316 As for us, consensus in our view is only that which is confirmed—wherefrom the first to the last, they have declared it, acted upon it, and approved it,

without any silence from any of them or dissent from any of them. This, in truth, is the consensus—and success comes from Allah, the Most High.

وَأَمَّا نَحْنُ فَلَيْسَ الْإِجْمَاعُ عِنْدَنَا إلَّا الَّذِي تَيَقَّنَ أَنَّهُمْ أَوَّلُهُمْ عَنْ آخِرِهِمْ قَالُوا بِهِ، وَعَمِلُوهُ، وَصَوَّبُوهُ، دُونَ سُكُوتٍ مِنْ أَحَدٍ مِنْهُمْ، وَلَا خِلَافٍ مِنْ أَحَدٍ مِنْهُمْ، فَهَذَا حَقًّا هُوَ الْإِجْمَاعُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42317 Since the Qur'an and the Sunnah have only stipulated cutting off the hand of the thief, not his foot, it is fundamentally impermissible to cut off his foot at all, and this is beyond dispute—and praise be to Allah.

فَإِذْ إنَّمَا جَاءَ الْقُرْآنُ، وَالسُّنَّةُ، بِقَطْعِ يَدِ السَّارِقِ لَا بِقَطْعِ رِجْلِهِ، فَلَا يَجُوزُ قَطْعُ رِجْلِهِ أَصْلًا، وَهَذَا مَا لَا إشْكَالَ فِيهِ - وَالْحَمْدُ لِلَّهِ.

L42318 It is therefore obligatory, based on this, that if a man or woman steals, one hand must be severed from each of them. If either steals a second time, their other hand must be severed according to the explicit text of the Quran and the Sunnah. Should they steal a third time, they are disciplined, reformed, and people are shielded from their harm until their conduct becomes upright - with success granted solely by Allah, the Exalted.

فَوَجَبَ مِنْ هَذَا إذَا سَرَقَ الرَّجُلُ، أَوْ الْمَرْأَةُ، أَنْ يُقْطَعَ مِنْ كُلِّ وَاحِدٍ مِنْهُمَا يَدًا وَاحِدَةً، فَإِنْ سَرَقَ أَحَدُهُمَا ثَانِيَةً قُطِعَتْ يَدُهُ الثَّانِيَةُ، بِالنَّصِّ مِنْ الْقُرْآنِ، وَالسُّنَّةِ، فَإِنْ سَرَقَ فِي الثَّالِثَةِ عُذِّرَ، وَثُقِّفَ، وَمُنِعَ النَّاسُ ضُرَّهُ، حَتَّى يَصْلُحَ حَالُهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42319 Issue: The Method of Hand Amputation

[مَسْأَلَة صِفَةُ قَطْعِ الْيَدِ]

L42320 2288 - Issue: What is the method for cutting the hand? We have previously cited ʿAlī—may Allah be pleased with him—regarding cutting the fingers from the hand and cutting half of the foot from the leg.

٢٢٨٨ - مَسْأَلَةٌ: صِفَةُ قَطْعِ الْيَدِ؟ قَدْ ذَكَرْنَا عَنْ عَلِيٍّ - رَضِيَ اللَّهُ عَنْهُ - فِي قَطْعِ الْأَصَابِعِ مِنْ الْيَدِ، وَقَطْعِ نِصْفِ الْقَدَمِ مِنْ الرِّجْلِ.

L42321 We have mentioned the statement of Umar—may Allah be pleased with him—and others regarding the cutting of all such [matters] from the joint.

وَذَكَرْنَا قَوْلَ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَغَيْرِهِ فِي قَطْعِ كُلِّ ذَلِكَ مِنْ الْمَفْصَلِ.

L42322 As for the Kharijites—they advocated amputating the hand at the elbow or shoulder. Abū Muḥammad—may Allah have mercy on him—said: They cited as evidence for this the words of Allah, the Most High: *"So cut off their two hands"* [al-Mā'idah: 38].[49]

وَأَمَّا الْخَوَارِجُ - فَرَأَوْا فِي ذَلِكَ قَطْعَ الْيَدِ مِنْ الْمِرْفَقِ، أَوْ الْمَنْكِبِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاحْتَجُّوا فِي ذَلِكَ بِقَوْلِ اللَّهِ تَعَالَى {فَاقْطَعُوا أَيْدِيَهُمَا} [المائدة: ٣٨] .

L42323–42324 They said: The term "hand" in the Arabic language denotes what extends from the shoulder to the fingertips. While this accords with what we have previously cited from them, the term "hand" also applies to the palm and to

قَالُوا: وَالْيَدُ فِي لُغَةِ الْعَرَبِ اسْمٌ يَقَعُ عَلَى مَا بَيْنَ الْمَنْكِبِ إلَى طَرَفِ الْأَصَابِعِ، وَهَذَا - وَإِنْ كَانَ أَيْضًا كَمَا ذَكَرْنَا عَنْهُمْ - فَإِنَّ الْيَدَ أَيْضًا تَقَعُ عَلَى الْكَفِّ، وَتَقَعُ عَلَى مَا بَيْنَ

[49] **Qur'an references (L42322):** Qur'an 5:38 (Al-Ma'idah).

what extends from the fingertips to the elbow. Given this, we are obligated to adopt the minimal part to which the term "hand" applies, because amputating the hand is prohibited except in the case of theft - as the textual ruling explicitly prescribes hand-amputation. Thus, it is obligatory to exclude nothing from the established prohibition unless its exclusion is certain. There is no certainty except regarding the palm. Consequently, it is not permissible to amputate more than the palm.

الْأَصَابِعِ إِلَى الْمِرْفَقِ، فَإِذْ ذَلِكَ كَذَلِكَ فَإِنَّمَا يَلْزَمُنَا أَقَلُّ مَا يَقَعُ عَلَيْهِ اسْمُ يَدٍ، لِأَنَّ الْيَدَ مُحَرَّمَةٌ قَطْعُهَا قَبْلَ السَّرِقَةِ، كَمَا جَاءَ النَّصُّ بِقَطْعِ الْيَدِ، فَوَاجِبٌ أَنْ لَا يَخْرُجَ مِنْ التَّحْرِيمِ الْمُتَيَقَّنِ الْمُتَقَدِّمِ شَيْءٌ، إِلَّا مَا تُيُقِّنَ خُرُوجُهُ، وَلَا يَقِينَ إِلَّا فِي الْكَفِّ، فَلَا يَجُوزُ قَطْعُ أَكْثَرَ مِنْهَا.

L42325 And thus we have recognized Allah, the Exalted, when He commanded us concerning tayammum as He says: "If you find no water, then perform tayammum with clean earth and wipe your faces and hands with it" [Surah Al-Ma'idah 5:6].[50]

وَهَكَذَا وَجَدْنَا اللَّهَ تَعَالَى إذْ أَمَرَنَا فِي التَّيَمُّمِ بِمَا أَمَرَ، إذْ يَقُولُ تَعَالَى {فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ مِنْهُ} [المائدة: ٦]

L42326 The Messenger of Allah (peace be upon him and his family) explained the intended meaning of Allah, the Exalted, in mentioning "hands" here—that it refers specifically to the two palms exclusively, in accordance with what we have previously mentioned.

فَفَسَّرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مُرَادَ اللَّهِ تَعَالَى بِذِكْرِ الْأَيْدِي هَاهُنَا، وَأَنَّهُ الْكَفَّانِ فَقَطْ، عَلَى مَا قَدْ أَوْرَدْنَاهُ.

L42327 It has been authentically established from the Prophet—peace be upon him—that there is a distinction between the hadd punishment for a free person and the hadd punishment for a slave, as we have previously mentioned. Since the Prophet (peace be upon him) explicitly stated that the hadd punishment for a slave differs from that of a free person, this constitutes a general ruling that should not be particularized in any aspect without textual evidence or consensus.

وَصَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْفَرْقُ بَيْنَ حَدِّ الْحُرِّ، وَبَيْنَ حَدِّ الْعَبْدِ عَلَى مَا قَدْ ذَكَرْنَاهُ فَإِذْ قَدْ نَصَّ - عَلَيْهِ السَّلَامُ - عَلَى أَنَّ حَدَّ الْعَبْدِ بِخِلَافِ حَدِّ الْحُرِّ، فَهَذَا عُمُومٌ لَا يَنْبَغِي أَنْ يُخَصَّ مِنْهُ شَيْءٌ بِغَيْرِ نَصٍّ، وَلَا إجْمَاعٍ.

L42328 The prescribed punishment—if a slave steals—is that only his fingers (half the hand) be cut off. If a free person steals, his hand is cut off at the wrist joint. As for highway robbery, the free person's hand is cut off at the joint and his leg at the joint, while the slave's fingers are cut off from the hand and half his leg from the shin—as narrated from Ali ibn Abi Talib, may Allah be pleased with him. We accept from the opinions of every scholar what aligns with the scriptural text and discard what contradicts it. Success comes solely through Allah, the Exalted.

فَالْوَاجِبُ - إنْ سَرَقَ الْعَبْدُ - أَنْ تُقْطَعَ أَنَامِلُهُ فَقَطْ، وَهُوَ نِصْفُ الْيَدِ فَقَطْ، وَإِنْ سَرَقَ الْحُرُّ قُطِعَتْ يَدُهُ مِنْ الْكُوعِ هُوَ الْمَفْصَلُ - وَأَمَّا فِي الْمُحَارَبَةِ فَتُقْطَعُ يَدُ الْحُرِّ مِنْ الْمَفْصَلِ، وَرِجْلُهُ مِنْ الْمَفْصَلِ، وَتُقْطَعُ مِنْ الْعَبْدِ أَنَامِلُهُ مِنْ الْيَدِ، وَنِصْفُ قَدَمِهِ مِنْ السَّاقِ - كَمَا رُوِيَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ - رَضِيَ اللَّهُ عَنْهُ - نَأْخُذُ مِنْ قَوْلِ كُلِّ قَائِلٍ مَا وَافَقَ النَّصَّ، وَنَتْرُكُ مَا لَمْ يُوَافِقْهُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[50] **Qur'an references (L42325):** Qur'an 5:6 (Al-Ma'idah).

L42329 As for which of the two hands is to be amputated: Abdullah ibn Rabi‘ reported to us, saying: Ibn Mufarrij reported to us, Qasim ibn Asbagh reported to us, Ibn Waddah reported to us, Sahnun reported to us, Ibn Wahb reported from Makhramah ibn Bukayr ibn al-Ashajj from his father from Nafi‘, the freed slave of Ibn Umar, who said: A thief stole in Iraq during Ali ibn Abi Talib’s time. He was brought forward to have his hand amputated. The thief presented his left hand - while they were unaware - so it was amputated. When Ali ibn Abi Talib was informed of his situation, he left him and did not amputate his other hand. This is the position of Malik and Abu Hanifah. Some of our companions said: The person responsible for the amputation owes the blood money for the hand. Some scholars held: The right hand should be amputated.

وَأَمَّا أَيُّ الْيَدَيْنِ تُقْطَعُ؟ فَإِنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ ثنا، قَالَ: ثنا ابْنُ مُفَرِّجٍ ثنا قَاسِمُ بْنُ أَصْبَغَ ثنا ابْنُ وَضَّاحٍ ثنا سَحْنُونٌ ثنا ابْنُ وَهْبٍ عَنْ مَخْرَمَةَ بْنِ بُكَيْرِ بْنِ الْأَشَجِّ عَنْ أَبِيهِ عَنْ نَافِعٍ مَوْلَى ابْنِ عُمَرَ، قَالَ: سَرَقَ سَارِقٌ بِالْعِرَاقِ فِي زَمَانِ عَلِيِّ بْنِ أَبِي طَالِبٍ، فَقُدِّمَ لِيُقْطَعَ يَدُهُ، فَقَدَّمَ السَّارِقُ يَدَهُ الْيُسْرَى - وَلَمْ يَشْعُرُوا - فَقُطِعَتْ، فَأُخْبِرَ عَلِيُّ بْنُ أَبِي طَالِبٍ خَبَرَهُ فَتَرَكَهُ وَلَمْ يَقْطَعْ يَدَهُ الْأُخْرَى - وَبِهَذَا يَقُولُ مَالِكٌ، وَأَبُو حَنِيفَةَ - وَقَالَ بَعْضُ أَصْحَابِنَا: عَلَى مُتَوَلِّي الْقَطْعِ دِيَةُ الْيَدِ - وَقَالَ قَائِلُونَ: تُقْطَعُ الْيُمْنَى.

L42330 They argued that the obligation is to cut off the right hand, basing this on Ibn Mas‘ūd’s recitation: “As for the male thief and the female thief, cut off their right hands.”

وَاحْتَجُّوا أَنَّ الْوَاجِبَ قَطْعُ الْيُمْنَى - وَاحْتَجُّوا فِي ذَلِكَ بِقِرَاءَةِ ابْنِ مَسْعُودٍ " وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْمَانَهُمَا ".

L42331–42332 The recitation is invalid, and they claimed a consensus—which is false, refuted by Ali’s amputation of the left instead of the right and his sufficiency with that. Had amputating the right been obligatory, amputating the left would not have sufficed—just as cleansing with the right does not suffice, nor is eating with the left permitted. No text exists specifying obligation except for amputating the hand or hands in the Book and the Sunnah. However, we recommend amputating the right hand due to the narration from him (peace be upon him) that “it was obligatory to give preference to the right in all his affairs.”

وَالْقِرَاءَةُ غَيْرُ صَحِيحَةٍ، وَادَّعَوْا إجْمَاعًا - وَهُوَ بَاطِلٌ يَرُدُّهُ قَطْعُ عَلِيٍّ الشِّمَالَ عَنْ الْيَمِينِ وَاكْتِفَاؤُهُ بِذَلِكَ، فَلَوْ وَجَبَ قَطْعُ الْيَمِينِ لَمَا أَجْزَأَ عَنْ ذَلِكَ قَطْعُ الشِّمَالِ، كَمَا لَا يُجْزِئُ الِاسْتِنْجَاءُ بِالْيَمِينِ، وَلَا الْأَكْلُ بِالشِّمَالِ، وَلَا نَصَّ إلَّا وُجُوبُ قَطْعِ الْيَدِ، أَوْ الْأَيْدِي، فِي الْكِتَابِ وَالسُّنَّةِ، إلَّا أَنَّنَا نَسْتَحِبُّ قَطْعَ الْيَمِينِ، لِلْأَثَرِ عَنْهُ - عَلَيْهِ السَّلَامُ - أَنَّهُ «كَانَ يَجِبُ التَّيَمُّنُ فِي شَأْنِهِ كُلِّهِ» .

[مَسْأَلَة مِنْ جَحَدَ الْعَارِيَّةَ هَلْ تقطع يَده]

L42333 **A juridical question: Regarding one who denies a gratuitous loan—should his hand be amputated?**

L42334 2289 - Question: Cutting off the hand of one who denies an entrusted item? Abu Muhammad—may Allah have mercy on him—said: It was narrated to us through Muslim’s chain: ‘Abd ibn Humayd narrated to us, ‘Abd al-Razzaq narrated to us, saying: I heard from Ma‘mar, from al-Zuhri, from ‘Urwah, from ‘A’ishah, who said: “There was a woman from Makhzum who would borrow items and then deny them, so the Messenger of Allah—may Allah’s

٢٢٨٩ - مَسْأَلَةٌ: قَطْعُ الْيَدِ فِيمَنْ جَحَدَ الْعَارِيَّةَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا عَبْدُ بْنُ حُمَيْدٍ نا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ، قَالَتْ: «كَانَتْ امْرَأَةٌ مَخْزُومِيَّةٌ تَسْتَعِيرُ الْمَتَاعَ وَتَجْحَدُهُ، فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى

blessings and peace be upon him and his family—ordered her hand to be cut off. Her family approached Usamah ibn Zayd and spoke to him, so he spoke to the Messenger of Allah—may Allah's blessings and peace be upon him and his family—regarding her," and Abu Muhammad mentioned the hadith.

اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا فَأَتَى أَهْلُهَا أُسَامَةَ بْنَ زَيْدٍ فَكَلَّمُوهُ، فَكَلَّمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِيهَا» وَذَكَرَ الْحَدِيثَ.

L42335 Narrated to us by Humam, narrated to us by Ibn Mufarrij, on the authority of Ibn al-A'rabi, narrated to us by al-Dabari, narrated to us by Abd al-Razzaq, who said: Ma'mar reported from al-Zuhri from Urwah from Aishah, the Mother of the Believers, who said: "There was a woman from the Makhzum tribe who would borrow possessions and then deny them. The Prophet—peace and blessings of Allah be upon him and his family—commanded that her hand be severed. Her family approached Usamah ibn Zayd and spoke to him, so Usamah spoke to the Prophet—peace and blessings of Allah be upon him and his family—about her. The Prophet—peace and blessings of Allah be upon him and his family—said to him: 'O Usamah! Do I see you mediating in a matter pertaining to Allah's ordained punishment?' Then he—peace and blessings of Allah be upon him and his family—rose to deliver a sermon and said: 'Those before you were destroyed because when a noble person among them stole, they spared him, but when a weak person stole, they enforced the penalty upon him. By Him in Whose Hand lies my soul, if Fatimah bint Muhammad were to steal, I would cut her hand.' Thus, they severed the hand of the Makhzumi woman." And from Nafi', on the authority of Ibn Umar, who said: "There was a woman from the Makhzum tribe who would borrow possessions and deny them. The Prophet—peace and blessings of Allah be upon him and his family—commanded that her hand be severed."

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ أَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ، قَالَتْ «كَانَتْ امْرَأَةٌ مَخْزُومِيَّةٌ تَسْتَعِيرُ الْمَتَاعَ فَتَجْحَدُهُ، فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا فَأَتَى أَهْلُهَا أُسَامَةَ بْنَ زَيْدٍ فَكَلَّمُوهُ فَكَلَّمَ أُسَامَةُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِيهَا؟ فَقَالَ لَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: يَا أُسَامَةُ، أَلَا أَرَاكَ تُكَلِّمُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ، ثُمَّ قَامَ - عَلَيْهِ السَّلَامُ - خَطِيبًا فَقَالَ: إِنَّمَا هَلَكَ مَنْ كَانَ قَبْلَكُمْ بِأَنَّهُ إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكُوهُ، وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ قَطَعُوهُ، وَالَّذِي نَفْسِي بِيَدِهِ لَوْ كَانَتْ فَاطِمَةَ بِنْتَ مُحَمَّدٍ لَقَطَعْتُ يَدَهَا فَقَطَعَ يَدَ الْمَخْزُومِيَّةِ» وَعَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ «كَانَتْ امْرَأَةٌ مَخْزُومِيَّةٌ تَسْتَعِيرُ الْمَتَاعَ وَتَجْحَدُهُ، فَأَمَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا» .

L42336–42338 Abdullah ibn Ahmad ibn Hanbal said: I asked my father and said to him: Do you adhere to this *hadith*? He replied: I do not know of anything that refutes it, and said: The borrower's hand must be cut off if he denies [the debt] and later confesses. Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Muʿāwiyah narrated to us: Ahmad ibn Shuʿayb narrated to us: Uthman ibn Abdullah ibn al-Hasan ibn Hammad narrated to us: ʿAmr ibn Hashim, Abu Malik, narrated to us from Ubaydullah ibn ʿUmar ibn Hafs ibn ʿAsim. From Nāfiʿ, from Ibn 'Umar, who said: "A woman used to borrow jewelry from people and then withhold it. The Messenger of Allah (peace be upon him

قَالَ عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَنْبَلٍ: سَأَلْتُ أَبِي، فَقُلْتُ لَهُ: تَذْهَبُ إِلَى هَذَا الْحَدِيثِ؟ فَقَالَ: لَا أَعْلَمُ شَيْئًا يَدْفَعُهُ، وَقَالَ: تُقْطَعُ يَدُ الْمُسْتَعِيرِ إِذَا جَحَدَ ثُمَّ أَقَرَّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عُثْمَانُ بْنُ عَبْدِ اللَّهِ بْنِ الْحَسَنِ بْنِ حَمَّادٍ نا عَمْرُو بْنُ هَاشِمٍ أَبُو مَالِكٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ بْنِ حَفْصِ بْنِ عَاصِمٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ «إِنَّ امْرَأَةً كَانَتْ تَسْتَعِيرُ الْحُلِيَّ لِلنَّاسِ ثُمَّ تُمْسِكُهُ، قَالَ رَسُولُ اللَّهِ - صَلَّى

and his family) said: ‘Let her repent to Allah and His Messenger and return what she takes from the people.’ Then the Messenger of Allah (peace be upon him and his family) said: ‘Arise, O Bilāl! Take her hand and cut it off’?”

Abū Muḥammad (may Allah have mercy on him) said: Among the objections of those who upheld this opinion was their statement regarding the ḥadīth you narrated—that it is disputed. Some narrators reported that the woman from the Makhzūm tribe had stolen, as transmitted to us through Muslim’s chain: Muḥammad ibn Rumḥ narrated to us from al-Layth—that is, Ibn Sa‘d—from Ibn Shihāb from ‘Urwah from ‘Ā’ishah:

“The Quraysh were gravely concerned about the affair of the woman from the Makhzūm tribe who stole. They said: ‘Who will speak to the Messenger of Allah (peace be upon him and his family) concerning her?’ They replied: ‘Who would dare approach him except Usāmah, the dear companion of the Messenger of Allah (peace be upon him and his family)?’ Usāmah interceded with him, and the Messenger of Allah (peace be upon him and his family) said: ‘Do you intercede regarding a ḥadd punishment among Allah’s ordained punishments?’ Then he stood and delivered a sermon, saying: ‘O people! Those before you were destroyed because when a noble among them stole, they spared him, but when a weak person stole, they enforced the ḥadd upon him. By Allah! If Fāṭimah bint Muḥammad were to steal, I would cut off her hand.’”[51]

L42339–42341 From the chain of Muslim, Harmala reported to us: Ibn Wahb informed me, Yunus ibn Yazid informed me from Ibn Shihab, who informed me from Urwah ibn al-Zubayr from Aisha, the wife of the Prophet—may Allah bless him and his family and grant him peace—that Quraysh were gravely concerned about the case of the Makhzumi woman who stole during the era of the Messenger of Allah—may Allah bless him and his family and grant him peace—in the campaign of the Conquest. They said: “Who will speak to the Messenger of Allah—may Allah bless him and his family and grant him peace—concerning her?” They replied: “Who would dare approach him except Usama ibn Zayd, the one beloved to the Messenger of Allah—may

[51] **Hadith references (L42336):** Sunan Ibn Majah 2547; Sunan Abi Dawud 4373.

اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: لِتَتُبْ إِلَى اللَّهِ وَرَسُولِهِ، وَتَرُدَّ مَا تَأْخُذُ عَلَى الْقَوْمِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: قُمْ يَا بِلَالُ فَخُذْ بِيَدِهَا فَاقْطَعْهَا» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَكَانَ مِنْ اعْتِرَاضِ مَنْ انْتَصَرَ لِهَذَا الْقَوْلِ أَنْ قَالَ فِي الْحَدِيثِ الَّذِي رَوَيْتُمْ: مُخْتَلَفٌ فِيهِ، فَرَوَى بَعْضُهُمْ: أَنَّ تِلْكَ الْمَخْزُومِيَّةَ سَرَقَتْ: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ رُمْحٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ عَنْ عَائِشَةَ «أَنَّ قُرَيْشًا أَهَمَّهُمْ شَأْنُ الْمَخْزُومِيَّةِ الَّتِي سَرَقَتْ، فَقَالُوا: مَنْ يُكَلِّمُ فِيهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ فَقَالُوا: وَمَنْ يَجْتَرِئُ عَلَيْهِ إِلَّا أُسَامَةُ حِبُّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ فَكَلَّمَهُ أُسَامَةُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟ ثُمَّ قَامَ فَاخْتَطَبَ، فَقَالَ: يَا أَيُّهَا النَّاسُ إِنَّمَا هَلَكَ الَّذِينَ مِنْ قَبْلِكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمْ الشَّرِيفُ تَرَكُوهُ، وَإِذَا سَرَقَ فِيهِمْ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَايْمُ اللَّهِ، لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا» .

وَمِنْ طَرِيقِ مُسْلِمٍ نا حَرْمَلَةُ أَخْبَرَنِي ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ عَنْ ابْنِ شِهَابٍ أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ عَنْ عَائِشَةَ زَوْجِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «أَنَّ قُرَيْشًا أَهَمَّهُمْ شَأْنُ الْمَخْزُومِيَّةِ الَّتِي سَرَقَتْ فِي عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي غَزْوَةِ الْفَتْحِ، فَقَالُوا: مَنْ يُكَلِّمُ فِيهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ فَقَالُوا: مَنْ يَجْتَرِئُ عَلَيْهِ إِلَّا أُسَامَةُ بْنُ زَيْدٍ حِبُّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَتَى بِهَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَكَلَّمَهُ فِيهَا أُسَامَةُ بْنُ زَيْدٍ - فَتَلَوَّنَ وَجْهُ

Allah bless him and his family and grant him peace?" So Usama came to the Messenger of Allah—may Allah bless him and his family and grant him peace—and interceded for her. The face of the Messenger of Allah—may Allah bless him and his family and grant him peace—changed color, and he said: "Do you intercede concerning a ḥadd among the ḥudud of Allah?" Usama said: "Seek forgiveness for me, O Messenger of Allah!" When evening arrived, the Messenger of Allah—may Allah bless him and his family and grant him peace—stood to deliver a sermon. He praised Allah the Exalted as He deserves, then said: "To proceed—those before you were destroyed because when a noble person among them stole, they would pardon him, but if a weak person among them stole, they would enforce it upon him." "The ḥadd punishment—by the One in whose hand is my soul—is such that if Fāṭimah, the daughter of Muḥammad, were to steal, I would cut off her hand. Thereupon, he ordered the woman who had stolen, and her hand was cut off."

رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَالَ: أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟ فَقَالَ أُسَامَةُ: اسْتَغْفِرْ لِي يَا رَسُولَ اللَّهِ - فَلَمَّا كَانَ الْعَشِيُّ قَامَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَاخْتَطَبَ، فَأَثْنَى عَلَى اللَّهِ تَعَالَى بِمَا هُوَ أَهْلُهُ، ثُمَّ قَالَ: أَمَّا بَعْدُ، فَإِنَّمَا هَلَكَ الَّذِينَ مِنْ قَبْلِكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمْ الشَّرِيفُ تَرَكُوهُ، وَإِنْ سَرَقَ فِيهِمْ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَالَّذِي نَفْسِي بِيَدِهِ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا، ثُمَّ أَمَرَ بِتِلْكَ الْمَرْأَةِ الَّتِي سَرَقَتْ فَقَطَعَ يَدَهَا» .

L42342 Thus, these jurists hold the view that she stole.

فَهَؤُلَاءِ يَرَوْنَ أَنَّهَا سَرَقَتْ.

L42343 They said: Among the evidences indicating it was a single woman and a single case, and that she stole - while whoever narrated "she borrowed" erred - is that the majority of these narrations state they sought intercession for her through Usama ibn Zayd, and that the Messenger of Allah (may Allah bless him and his family and grant him peace) condemned this action, forbidding him from intervening through intercession regarding any prescribed punishment among the Hudūd ordained by Allah the Exalted.

قَالُوا: وَمِنْ الدَّلِيلِ عَلَى أَنَّهَا امْرَأَةٌ وَاحِدَةٌ، وَقِصَّةٌ وَاحِدَةٌ، وَأَنَّهَا سَرَقَتْ وَأَنَّ مَنْ رَوَى " اسْتَعَارَتْ " قَدْ وَهِمَ: أَنَّ فِي جُمْهُورِ هَذِهِ الْآثَارِ أَنَّهُمْ اسْتَشْفَعُوا لَهَا بِأُسَامَةَ بْنِ زَيْدٍ، وَأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْكَرَ ذَلِكَ عَلَيْهِ، وَنَهَاهُ أَنْ يَشْفَعَ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى.

L42344 It is inconceivable that Usāmah ibn Zayd—may Allāh be pleased with him—would have been prohibited by the Messenger of Allāh—peace and blessings be upon him and his family—from interceding in a Ḥudūd punishment ordained by Allāh the Exalted, then return to intercede in another punishment again. They said: "The borrower is a trust-breaker, and there is no amputation for a trust-breaker," especially as narrated through the chain: 'Abdullāh ibn Rabī' 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, who said: "I heard Ibn Jurayj narrating from Abū al-Zubayr al-Makkī from Jābir ibn 'Abdillāh that the Messenger of Allāh—peace and blessings be upon

وَمِنْ الْمُحَالِ أَنْ يَكُونَ أُسَامَةُ بْنُ زَيْدٍ - رَضِيَ اللَّهُ عَنْهُ - قَدْ نَهَاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنْ يَشْفَعَ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى ثُمَّ يَعُودُ فَيَشْفَعُ فِي حَدٍّ آخَرَ مَرَّةً أُخْرَى؟ وَقَالُوا: إنَّ الْمُسْتَعِيرَ خَائِنٌ، وَلَا قَطْعَ عَلَى خَائِنٍ، لَا سِيَّمَا وَقَدْ نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ قَالَ: سَمِعْت ابْنَ جُرَيْجٍ يُحَدِّثُ عَنْ أَبِي الزُّبَيْرِ الْمَكِّيِّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ -

him and his family—said: "There is no amputation for the trust-breaker, the stealthy thief, or the plunderer."'

صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَيْسَ عَلَى الْخَائِنِ، وَلَا عَلَى الْمُخْتَلِسِ، وَلَا عَلَى الْمُنْتَهِبِ: قَطْعٌ» .

L42345 He said: The narration of those who reported that she had borrowed the jewelry and that the Messenger of Allah—peace and blessings be upon him—ordered her hand to be amputated can be interpreted to mean that they sought to establish her identity as the one who had borrowed the jewelry and then stole it. Thus, her hand was amputated for the theft, not for the borrowed item.

قَالَ: وَتَحْتَمِلُ رِوَايَةُ مَنْ رَوَى أَنَّهَا اسْتَعَارَتْ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَطْعِهَا: أَنَّهُمْ أَرَادُوا التَّعْرِيفَ بِأَنَّهَا هِيَ الَّتِي كَانَتْ اسْتَعَارَتْ الْحُلِيَّ وَسَرَقَتْ، فَقُطِعَتْ لِلسَّرِقَةِ لَا لِلْعَارِيَّةِ.

L42346 They said: This is as narrated, "The cupper and the cupped have broken the fast."

قَالُوا: وَهَذَا كَمَا رُوِيَ «أَفْطَرَ الْحَاجِمُ وَالْمَحْجُومُ» .

L42347 The Messenger of Allah - peace and blessings be upon him - saw a man praying behind the row and commanded him to reperform the prayer. They said: "Was it not for a reason other than cupping that he declared their fast invalid? And was it not for a reason other than praying behind the row that he commanded him to reperform the prayer?"

«وَرَأَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - رَجُلًا يُصَلِّي خَلْفَ الصَّفِّ فَأَمَرَهُ بِإِعَادَةِ الصَّلَاةِ» ، قَالُوا: وَلَيْسَ مِنْ أَجَلِ الْحِجَامَةِ أَخْبَرَ بِأَنَّهُمَا أَفْطَرَا، لَكِنْ بِغَيْرِ ذَلِكَ، وَلَيْسَ مِنْ أَجْلِ الصَّلَاةِ خَلْفَ الصَّفِّ أَمَرَهُ بِالْإِعَادَةِ، لَكِنْ بِغَيْرِ ذَلِكَ؟

L42348–42349 Abū Muḥammad—may Allah have mercy on him—said: This is all they have disputed; we have thoroughly examined it. All of that contains no valid argument for them in any part of it, contrary to what we clarify, if Allah the Exalted wills.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا شَغَبُوا بِهِ قَدْ تَقَصَّيْنَاهُ، وَكُلُّ ذَلِكَ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ عَلَى مَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى.

L42350 We say—and with Allah alone is success—: As for their discourse regarding discrepancies in the transmission from al-Zuhrī, they have no basis for this. For Maʿmar and Shuʿayb ibn Abī Ḥamzah—both of the highest reliability and eminence—narrated it from al-Zuhrī, as did Ayyūb ibn Mūsā. All of them state that she would borrow household items and then deny doing so. When this was mentioned to the Prophet—peace and blessings of Allah be upon him—he ordered her hand to be severed and informed that it was a ḥadd [punishment] among the boundaries set by Allah, the Exalted. No inconsistency occurred in Maʿmar's transmission regarding this matter, nor in that of Shuʿayb ibn Abī Ḥamzah—even though al-Layth, Yūnus ibn Abī Yazīd, Ismāʿīl ibn Umayyah, and Isḥāq ibn Rāshid contradicted Maʿmar and Shuʿayb.

فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: أَمَّا كَلَامُهُمْ فِي اخْتِلَافِ الرِّوَايَةِ عَنْ الزُّهْرِيِّ فَلَا مُتَعَلَّقَ لَهُمْ بِهِ؛ لِأَنَّ مَعْمَرًا، وَشُعَيْبَ بْنَ أَبِي حَمْزَةَ، رَوَيَاهُ عَنْ الزُّهْرِيِّ - وَهُمَا فِي غَايَةِ الثِّقَةِ وَالْجَلَالَةِ - وَكَذَلِكَ أَيُّوبُ بْنُ مُوسَى، كُلُّهُمْ يَقُولُونَ: إنَّهَا كَانَتْ تَسْتَعِيرُ الْمَتَاعَ فَتَجْحَدُهُ، فَذُكِرَ ذَلِكَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَأَمَرَ بِقَطْعِ يَدِهَا، وَأَخْبَرَ أَنَّهُ حَدٌّ مِنْ حُدُودِ اللَّهِ تَعَالَى - وَلَمْ يَضْطَرِبْ عَلَى مَعْمَرٍ فِي ذَلِكَ، وَلَا عَلَى شُعَيْبِ بْنِ أَبِي حَمْزَةَ - وَإِنْ كَانَا خَالَفَهُمَا: اللَّيْثُ، وَيُونُسُ بْنُ أَبِي يَزِيدَ، وَإِسْمَاعِيلُ بْنُ أُمَيَّةَ، وَإِسْحَاقُ بْنُ رَاشِدٍ.

فَإِنَّ اللَّيْثَ قَدْ اضْطَرَبَ عَلَيْهِ أَيْضًا، وَكَذَلِكَ عَلَى يُونُسَ بْنِ يَزِيدَ، فَإِنْ اللَّيْثَ، وَيُونُسَ، وَإِسْمَاعِيلَ، وَإِسْحَاقَ لَيْسُوا فَوْقَ مَعْمَرٍ، وَشُعَيْبٍ، فِي الْحِفْظِ، وَقَدْ وَافَقَهُمَا ابْنُ أَخِي الزُّهْرِيِّ عَنْ عَمِّهِ.

L42351 Al-Layth's narrations about him are inconsistent, as are those of Yunus ibn Yazid. For indeed, al-Layth, Yunus, Isma'il, and Ishaq do not surpass Ma'mar and Shu'ayb in reliability of preservation. Al-Zuhri's nephew, transmitting from his uncle, has corroborated both of them.

وَأَمَّا تَنْظِيرُهُمْ فِي ذَلِكَ بِالثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ قَوْلِهِمْ «أَفْطَرَ الْحَاجِمُ وَالْمَحْجُومُ» .

L42352 As for their analogy in this matter to what is established from the Messenger of Allah (peace and blessings be upon him and his family) in his statement: "The cupper and the cupped person break the fast."

وَبِأَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي صَلَّى خَلْفَ الصَّفِّ بِإِعَادَةِ الصَّلَاةِ.

L42353 And by his command (peace and blessings be upon him), the one who prayed behind the row was required to repeat the prayer.

فَمَا زَادُوا عَلَى أَنْ فَضَحُوا أَنْفُسَهُمْ، وَاسْتَحَلُّوا فِي الْكَذِبِ الَّذِي لَا يَسْتَسْهِلُهُ مُسْلِمٌ؛ لِأَنَّهُمْ يَقُولُونَ: إنَّهُمَا أَفْطَرَا، لِأَنَّهُمَا كَانَا يَغْتَابَانِ النَّاسَ؟ فَقِيلَ لَهُمْ: فَمَنْ اغْتَابَ النَّاسَ - وَهُوَ صَائِمٌ - أَفْطَرَ عِنْدَكُمْ؟ قَالُوا: لَا.

L42354 They did nothing more than disgrace themselves and deem permissible the lying that no Muslim would trivialize—for they claimed the two had invalidated their fast because they were backbiting people. They were asked: "Does, in your view, one who backbites people while fasting invalidate their fast?" They replied: "No."

وَهَذِهِ مَضَاحِكُ وَشَمَاتَةُ الْأَعْدَاءِ وَاسْتِخْفَافٌ بِأَوَامِرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَعَ الْكَذِبِ عَلَيْهِ، أَنْ يَقُولَ - عَلَيْهِ السَّلَامُ - «أَفْطَرَ الْحَاجِمُ وَالْمَحْجُومُ» فَيَقُولُونَ هُمْ: لَمْ يُفْطِرْ وَاحِدٌ مِنْهُمَا.

L42355 These are objects of ridicule, the enemies' malicious joy, and contemptuous disregard for the commands of the Prophet—may Allah bless him and his family and grant him peace—combined with falsehood attributed to him, when he—peace be upon him—stated "The cupper and the cupped person have invalidated their fast," yet they themselves say: "Neither of them has invalidated their fasts."

فَإِنْ قِيلَ لَهُمْ: أَتُكَذِّبُونَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي قَوْلِهِ أَفْطَرَا؟ قَالُوا أَفْطَرَا بِغَيْرِ ذَلِكَ، وَهُوَ الْغِيبَةُ.

L42356 If it is said to them, "Do you deny the Prophet—peace and blessings be upon him and his family—in his statement 'they [two] broke their fast'?" they reply, "They broke their fast by something other than that—namely, backbiting."

فَإِنْ قِيلَ لَهُمْ: أَتُفَطِّرُ الْغِيبَةُ؟ قَالُوا: لَا.

L42357 If they are asked, "Does backbiting invalidate the fast?" they respond, "No."

فَرَجَعُوا إلَى مَا فَرُّوا عَنْهُ كَيْدًا لِأَهْلِ الْإِسْلَامِ، وَلِمَنْ اغْتَرَّ بِهِمْ مِنْ الضُّعَفَاءِ الْمَخَاذِيلِ.

L42358–42359 They returned to that from which they had fled, to plot against the people of Islam and against those among the weak and forsaken who had been deluded by them.

L42360 As for the ḥadīth concerning the Prophet's command—peace and blessings be upon him and his family—that whoever prays alone behind the row must

repeat the prayer: had eleven Companions not transmitted through verified chains his directive—peace and blessings be upon him and his family—to properly form the rows, align closely within them, and the warning against neglecting this, it might have been excusable to attribute their error to ignorance. But how could there be no excuse for them? For it is impermissible for a Muslim to presume that the Prophet—peace and blessings be upon him and his family—would say to his Ummah, "The cupper and the one cupped break their fast."

وَأَمَّا حَدِيثُ: أَمْرِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي الْمُصَلِّي خَلْفَ الصَّفِّ وَحْدَهُ بِإِعَادَةِ الصَّلَاةِ، فَلَوْ لَمْ يَرْوِ أَحَدَ عَشَرَ مِنْ الصَّحَابَةِ بِالْأَسَانِيدِ الثَّابِتَةِ أَمْرَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِإِقَامَةِ الصُّفُوفِ، وَالتَّرَاصِّ فِيهَا، وَالْوَعِيدِ عَلَى خِلَافِ ذَلِكَ: لَأَمْكَنَ أَنْ يُعْذَرُوا بِالْجَهْلِ، فَكَيْفَ وَلَا عُذْرَ لَهُمْ؟ ؛ لِأَنَّهُ لَا يَجُوزُ لِمُسْلِمٍ أَنْ يُظَنَّ بِالنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَنَّهُ قَالَ لِأُمَّتِهِ «أَفْطَرَ الْحَاجِمُ وَالْمَحْجُومُ» .

L42361 And he instructed the worshiper who prays alone behind the row to repeat the prayer.

وَأَمَرَ الْمُصَلِّي خَلْفَ الصَّفِّ وَحْدَهُ، بِإِعَادَةِ الصَّلَاةِ.

L42362 Then he does not clarify to them the basis for which the two of them broke their fast, nor the basis, because of it, for which he commanded the one praying behind the row to repeat the prayer.

ثُمَّ لَا يُبَيِّنُ لَهُمْ الْوَجْهَ الَّذِي أَفْطَرَا، بِهِ، وَلَا الْوَجْهَ الَّذِي أَمَرَ مِنْ أَجْلِهِ الْمُصَلِّيَ خَلْفَ الصَّفِّ، بِإِعَادَةِ الصَّلَاةِ.

L42363 This is defamation against the Prophet (peace and blessings of Allah be upon him and his family), so it is not permissible for a Muslim to assume that he (peace and blessings of Allah be upon him and his family) commanded him to repeat something regarding a matter he did not clarify to us.

فَهَذَا طَعْنٌ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَلَا يَحِلُّ لِمُسْلِمٍ أَنْ يَظُنَّ أَنَّهُ - عَلَيْهِ السَّلَامُ - أَمَرَهُ بِالْإِعَادَةِ لِأَمْرٍ لَمْ يُبَيِّنْهُ عَلَيْنَا.

L42364 As for their statement that the denying borrower is a betrayer and that amputation punishment does not apply to a betrayer, along with the ḥadīth transmitted from Jābir regarding this matter—we previously addressed the weakness of this report at the beginning of our discourse on the amputation punishment for theft, clarifying that Ibn Jurayj did not hear it from Abū al-Zubayr, and that Abū al-Zubayr did not hear it from Jābir, since he explicitly acknowledged engaging in *tadlīs* (concealment of flaws in the chain of narration).

وَأَمَّا قَوْلُهُمْ: إنَّ الْمُسْتَعِيرَ الْجَاحِدَ: خَائِنٌ، وَلَا قَطْعَ عَلَى خَائِنٍ، وَالْحَدِيثُ بِذَلِكَ عَنْ جَابِرٍ - وَقَدْ ذَكَرْنَا قَبْلُ فَسَادَ هَذَا الْخَبَرِ فِي صَدْرِ كَلَامِنَا فِي قَطْعِ السَّارِقِ، وَأَنَّ ابْنَ جُرَيْجٍ لَمْ يَسْمَعْهُ مِنْ أَبِي الزُّبَيْرِ، وَأَنَّ أَبَا الزُّبَيْرِ لَمْ يَسْمَعْهُ مِنْ جَابِرٍ؛ لِأَنَّهُ قَدْ أَقَرَّ عَلَى نَفْسِهِ بِالتَّدْلِيسِ.

L42365 Thus, the connection to this report is invalidated—and all praise is due to Allah, Lord of the worlds. Abū Muḥammad—may Allah have mercy on him—said: We therefore say—and by Allah, the Exalted, we seek help—the narration of those who reported that she borrowed, and the Messenger of Allah—peace and blessings of Allah be upon him and his family—subsequently ordered her hand to be cut off, and the narration of those who reported that

فَسَقَطَ التَّعَلُّقُ بِهَذَا الْخَبَرِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَقُولُ - وَبِاَللَّهِ تَعَالَى نَسْتَعِينُ: إنَّ رِوَايَةَ مَنْ رَوَى أَنَّهَا اسْتَعَارَتْ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا، وَرِوَايَةَ مَنْ رَوَى أَنَّهَا سَرَقَتْ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى

she stole, and the Messenger of Allah—peace and blessings of Allah be upon him and his family—subsequently ordered her hand to be cut off: both are sound, with no criticism in them, for both derive from the narrations of reliable narrators through which religious proof is established in accordance with what we have presented.

اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا: صَحِيحَانِ، لَا مَغْمَزَ فِيهِمَا، لِأَنَّ كِلَيْهِمَا مِنْ رِوَايَةِ الثِّقَاتِ الَّتِي تَقُومُ بِهَا الْحُجَّةُ فِي الدِّينِ عَلَى مَا أَوْرَدْنَا.

L42366–42367 The height of astonishment lies in those who make excuses to reject this Sunnah through this contradiction, while they themselves adhere to the hadith: "There is no amputation except for [the theft of] a quarter of a dinar."

وَالْعَجَبُ كُلُّهُ فِيمَنْ يَتَعَلَّلُ فِي رَدِّ هَذِهِ السُّنَّةِ بِهَذَا الِاضْطِرَابِ، وَهُمْ يَأْخُذُونَ بِحَدِيثِ «لَا قَطْعَ إِلَّا فِي رُبْعِ دِينَارٍ» .

L42368 And with the ḥadīth, "Amputation for a shield valued at ten dirhams"—both narrations being part of the inconsistency we previously mentioned, an inconsistency far graver than that in this report. Alternatively, one might take the report of Ibn ʿUmar: "The Messenger of Allāh (ﷺ) amputated for a shield priced at three dirhams"—though it does not clarify that this constitutes the legal punishment of amputation. But does it not conflict with a report of equal authenticity concerning amputation for a quarter of a dinar? Abū Muḥammad—may Allāh have mercy on him—said: "The inconsistency in this aspect does not invalidate any of the reports. Let us therefore state, with the aid of Allāh the Exalted: These two narrations—one stating she borrowed goods and denied [the borrowing], prompting the Messenger of Allāh (ﷺ) to order her amputation; the other stating she stole, leading him to order the amputation of her hand—must necessarily pertain to either two separate incidents involving two different women or a single incident involving one woman. If they are two incidents involving two women, then idle talk ceases entirely, and the commotion is wholly invalidated. The discussion of Usāma's intercession in both cases—as we clarified earlier—is that he interceded regarding theft and was prohibited, then interceded for the borrower while unaware that its punishment was also amputation."

وَبِحَدِيثِ «الْقَطْعِ فِي مِجَنٍّ ثَمَنُهُ عَشَرَةُ دَرَاهِمَ» وَهُمَا مِنْ الِاضْطِرَابِ بِحَيْثُ قَدْ ذَكَرْنَاهُ، وَذَلِكَ الِاضْطِرَابُ أَشَدُّ مِنْ الِاضْطِرَابِ فِي هَذَا الْخَبَرِ بِكَثِيرٍ، أَوْ يَأْخُذُ بِخَبَرِ ابْنِ عُمَرَ: «قَطَعَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي مِجَنٍّ ثَمَنُهُ ثَلَاثَةُ دَرَاهِمَ» وَلَيْسَ فِيهِ بَيَانٌ أَنَّ ذَلِكَ حَدُّ الْقَطْعِ، وَقَدْ عَارَضَهُ مِثْلُهُ فِي الصِّحَّةِ مِنْ الْقَطْعِ فِي رُبْعِ دِينَارٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنَّ فِي هَذَا الْوَجْهِ مِنْ الِاضْطِرَابِ لَيْسَ عِلَّةً فِي شَيْءٍ مِنْ الْأَخْبَارِ، فَلْنَقُلْ بِعَوْنِ اللَّهِ تَعَالَى: إنَّ فِي هَاتَيْنِ الرِّوَايَتَيْنِ اللَّتَيْنِ إحْدَاهُمَا: اسْتَعَارَتْ الْمَتَاعَ فَجَحَدَتْ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِهَا - وَفِي الْأُخْرَى: أَنَّهَا سَرَقَتْ فَأَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِقَطْعِ يَدِهَا: لَا يَخْلُو مِنْ أَنْ يَكُونَا فِي قِصَّتَيْنِ اثْنَتَيْنِ، فِي امْرَأَتَيْنِ مُتَغَايِرَتَيْنِ، أَوْ يَكُونَا فِي قِصَّةٍ وَاحِدَةٍ، فِي امْرَأَةٍ وَاحِدَةٍ؟ فَإِنْ كَانَتْ فِي قِصَّتَيْنِ، وَفِي امْرَأَتَيْنِ، فَقَدْ انْقَطَعَ الْهَذْرُ، وَبَطَلَ الشَّغَبُ جُمْلَةً، وَيَكُونُ الْكَلَامُ فِي شَفَاعَةِ أُسَامَةَ فِيهِمَا جَمِيعًا، عَلَى مَا قَدْ ذَكَرْنَا - مِنْ الْبَيَانِ - مِنْ أَنَّهُ شَفَعَ فِي السَّرِقَةِ فَنُهِيَ، ثُمَّ شَفَعَ فِي الْمُسْتَعِيرَةِ وَهُوَ لَا يَعْلَمُ أَنَّ حَدَّ ذَلِكَ أَيْضًا الْقَطْعُ.

L42369–42371 Moreover, if we were to assert decisively that they are two dissimilar women and two separate cases, we would have a basis—unlike their mere claims devoid of any link except brazen falsehood and audacity in lying. From

Humaam, from Ibn Mufarrij, from Ibn al-A'raabi, from al-Dabari, from 'Abd al-Razzaaq, from Ibn Jurayj, who said: 'Ikrimah ibn Khalid al-Makhzumi informed me that Abu Bakr ibn 'Abd al-Rahman ibn al-Harith ibn Hisham al-Makhzumi informed him: A woman came to another woman and said, "So-and-so wishes to borrow jewelry from you"—while lying—so she lent it to her. She waited but did not see her jewelry again. She then approached the one who had lied against her in it and demanded her jewelry. The woman replied, "I never borrowed anything from you." She went to the other woman and demanded her jewelry, but she denied having borrowed anything from her. Finally, she went to the Prophet—peace be upon him and his family. So he summoned her, and she said, "By the One who sent you with the truth, I did not borrow anything from her." He said, "Go and take it from beneath her bed." So it was taken. Then he ordered regarding her, and she was cut off.

عَلَى أَنَّا لَوْ شِئْنَا الْقَطْعَ، فَإِنَّهُمَا امْرَأَتَانِ مُتَغَايِرَتَانِ، وَقَضِيَّتَانِ اثْنَتَانِ، لَكَانَ لَنَا مُتَعَلَّقٌ، بِخِلَافِ دَعَاوِيهِمْ الْمُجَرَّدَةِ مِنْ كُلِّ عَلْقَةٍ، إِلَّا مِنْ الْمُجَاهَرَةِ بِالْبَاطِلِ، وَالْجَسْرِ عَلَى الْكَذِبِ، لَكَانَ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ، قَالَ: أَخْبَرَنِي عِكْرِمَةُ بْنُ خَالِدٍ الْمَخْزُومِيُّ أَنَّ أَبَا بَكْرِ بْنَ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ هِشَامٍ الْمَخْزُومِيَّ أَخْبَرَهُ «أَنَّ امْرَأَةً جَاءَتْ إِلَى امْرَأَةٍ فَقَالَتْ: إِنَّ فُلَانَةَ تَسْتَعِيرُكِ حُلِيًّا - وَهِيَ كَاذِبَةٌ - فَأَعَارَتْهَا إِيَّاهُ، فَمَكَثَتْ لَا تَرَى حُلِيَّهَا، فَجَاءَتْ الَّتِي كَذَبَتْ عَلَيَّ فِيهَا فَسَأَلَتْهَا حُلِيَّهَا، فَقَالَتْ: مَا اسْتَعَرْتُ مِنْكِ شَيْئًا، فَرَجَعَتْ إِلَى الْأُخْرَى فَسَأَلَتْهَا حُلِيَّهَا، فَأَنْكَرَتْ أَنْ تَكُونَ اسْتَعَارَتْ مِنْهَا شَيْئًا، فَجَاءَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَدَعَاهَا، فَقَالَتْ: وَالَّذِي بَعَثَكَ بِالْحَقِّ مَا اسْتَعَرْتُ مِنْهَا شَيْئًا، فَقَالَ: اذْهَبُوا فَخُذُوهُ مِنْ تَحْتِ فِرَاشِهَا، فَأُخِذَ، وَأَمَرَ بِهَا فَقُطِعَتْ» .

L42372 Ibn Jurayj said: Bishr ibn Tamim informed me that she was Umm ʿAmr, the daughter of Sufyān ibn ʿAbd al-Asad.

قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي بِشْرُ بْنُ تَمِيمٍ أَنَّهَا أُمُّ عَمْرِو بِنْتِ سُفْيَانَ بْنِ عَبْدِ الْأَسَدِ.

L42373 Ibn Jurayj said: "I will not take any other than her, I will not take any other than her." Ibn Jurayj said: Amr ibn Dīnār reported to me that Al-Ḥasan ibn Muḥammad ibn ʿAlī ibn Abī Ṭālib narrated: "A woman was accused of theft and was brought to the Prophet—peace be upon him and his family—whereupon ʿAmr ibn Abī Salamah came and said to the Prophet—peace be upon him and his family—: 'But she is my aunt!' The Prophet—peace be upon him and his family—said: 'If she were Fāṭimah, the daughter of Muḥammad, I would have cut off her hand.'"

قَالَ ابْنُ جُرَيْجٍ: لَا آخُذُ غَيْرَهَا، لَا آخُذُ غَيْرَهَا، قَالَ ابْنُ جُرَيْجٍ: وَأَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ قَالَ: أَخْبَرَنِي الْحَسَنُ بْنُ مُحَمَّدِ بْنِ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ «سَرَقَتْ امْرَأَةٌ، فَأُتِيَ بِهَا النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَجَاءَهُ عَمْرُو بْنُ أَبِي سَلَمَةَ، فَقَالَ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: أَيْ إِنَّهَا عَمَّتِي؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَوْ كَانَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ لَقَطَعْتُ يَدَهَا» .

L42374 So I did not doubt when Hasan said: 'Umar said to the Prophet - peace be upon him and his family - "Is she my paternal aunt? Is she the daughter of al-Aswad ibn Abd al-Asad?" Abu Muhammad - may Allah have mercy on him - said: This is Ibn Jurayj narrating from Amr ibn Dinar that he did not

قَالَ عَمْرُو بْنُ دِينَارٍ: فَلَمْ أَشُكَّ حِينَ قَالَ حَسَنٌ: قَالَ عُمَرُ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إِنَّهَا عَمَّتِي، إِنَّهَا بِنْتُ الْأَسْوَدِ بْنِ عَبْدِ الْأَسَدِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا

doubt the woman who stole was the daughter of al-Aswad ibn Abd al-Asad, and he reports from Bishr at-Taymi that the woman who borrowed was the daughter of Sufyan ibn Abd al-Asad. They were two paternal cousins from the Makhzum tribe, their uncle being Abu Salama ibn Abd al-Asad - may Allah be pleased with him - the husband of Umm Salama - may Allah be pleased with her - before the Messenger of Allah - peace be upon him and his family.

L42375 However, we say—and success is from Allah, the Exalted—suppose she were a lone woman and this were a single incident; there is no proof in it, because the mention of theft is merely from the wording of some narrators, not from the wording of the Prophet—peace be upon him and his family—just as the mention of borrowing is. The actual wording of the Prophet—peace be upon him and his family—is: "If Fāṭimah bint Muḥammad had stolen, I would have cut her hand off."

L42376 Therefore, this is extrapolated according to two aspects, namely the mention of theft.

L42377 One of the two is that the narrator considers borrowing to be theft and thus reports about it using the term for theft.

L42378–42380 The other perspective is that borrowing followed by subsequent denial constitutes actual theft, not metaphorical; this is because the borrower, when he uses another's words, trivializes taking what he has borrowed from another's property and covers it up. By borrowing for himself or others, then claiming ownership of it while concealed and hidden—this unambiguously constitutes theft itself. Thus, this wording is entirely distinct from what we have discussed in the clearest manner, and the phrasing of those who transmitted "the ʿāriyyah" does not permit any alternative interpretation whatsoever. Abū Muḥammad (may Allah have mercy on him) said: The hand of the borrower who denies [the loan] shall be amputated, just as the thief's hand is amputated—absolutely without distinction—for [theft] from gold amounting to a quarter dinar or more, not for less than that, in accordance with the statement of Allah's Messenger (peace be upon him): "No amputation occurs except for a quarter dinar or greater."

ابْنُ جُرَيْجٍ يَحْكِي عَنْ عَمْرِو بْنِ دِينَارٍ: أَنَّهُ لَا يَشُكُّ أَنَّ الَّتِي سَرَقَتْ بِنْتَ الْأَسْوَدِ بْنِ عَبْدِ الْأَسَدِ، وَيُخْبِرُ عَنْ بِشْرٍ التَّيْمِيِّ أَنَّ الَّتِي اسْتَعَارَتْ هِيَ بِنْتُ سُفْيَانَ بْنِ عَبْدِ الْأَسَدِ، وَهُمَا ابْنَتَا عَمٍّ مَخْزُومِيَّتَانِ، عَمُّهُمَا أَبُو سَلَمَةَ بْنُ عَبْدِ الْأَسَدِ - رَضِيَ اللَّهُ عَنْهُ - زَوْجُ أُمِّ سَلَمَةَ - رَضِيَ اللَّهُ عَنْهَا - قَبْلَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

وَلَكِنَّا نَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ -: هَبْكَ أَنَّهَا امْرَأَةٌ وَاحِدَةٌ، وَقِصَّةٌ وَاحِدَةٌ، فَلَا حُجَّةَ فِيهَا؛ لِأَنَّ ذِكْرَ السَّرِقَةِ إنَّمَا هُوَ مِنْ لَفْظِ بَعْضِ الرُّوَاةِ، لَا مِنْ لَفْظِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَكَذَلِكَ ذِكْرُ الِاسْتِعَارَةِ، وَإِنَّمَا لَفْظُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَوْ كَانَتْ فَاطِمَةُ بِنْتُ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُهَا» .

فَهَذَا يُخَرَّجُ عَلَى وَجْهَيْنِ، يَعْنِي ذِكْرَ السَّرِقَةِ:

أَحَدُهُمَا - أَنْ يَكُونَ الرَّاوِي يَرَى أَنَّ الِاسْتِعَارَةَ سَرِقَةٌ، فَيُخْبِرُ عَنْهَا بِلَفْظِ السَّرِقَةِ.

وَالْوَجْهُ الْآخَرُ - هُوَ أَنَّ الِاسْتِعَارَةَ، ثُمَّ الْجَحْدَ سَرِقَةٌ صَحِيحَةٌ لَا مَجَازًا؛ لِأَنَّ الْمُسْتَعِيرَ إذَا أَتَى عَلَى لِسَانِ غَيْرِهِ، فَإِنَّهُ مُسْتَخِفٌّ بِأَخْذِ مَا أَخَذَ مِنْ مَالِ غَيْرِهِ، يُوَرِّي بِالِاسْتِعَارَةِ لِنَفْسِهِ أَوْ لِغَيْرِهِ، ثُمَّ يَمْلِكُهُ مُسْتَتِرًا مُخْتَفِيًا - فَهَذِهِ هِيَ السَّرِقَةُ نَفْسُهَا دُونَ تَكَلُّفٍ، فَكَانَ هَذَا اللَّفْظُ خَارِجًا عَمَّا ذَكَرْنَا أَحْسَنَ خُرُوجٍ، وَكَانَ لَفْظُ مَنْ رَوَى " الْعَارِيَّةَ " لَا يَحْتَمِلُ وَجْهًا آخَرَ أَصْلًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَتُقْطَعُ يَدُ الْمُسْتَعِيرِ الْجَاحِدِ كَمَا تُقْطَعُ مِنْ السَّارِقِ - سَوَاءٌ سَوَاءٌ - مِنْ الذَّهَبِ فِي رُبْعِ دِينَارٍ لَا فِي أَقَلَّ، لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا قَطْعَ إلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا» .

L42381 In cases other than gold—it applies to anything of value, whether small or large—because it entails cutting [of the hand] for property taken covertly, not overtly.

وَفِي غَيْرِ الذَّهَبِ فِي كُلِّ مَا لَهُ قِيمَةٌ - قَلَّتْ أَوْ كَثُرَت -؛ لِأَنَّه قَطْعٌ فِي مَالٍ أُخِذَ اخْتِفَاءً لَا مُجَاهِرَةً.

L42382 The woman is subject to amputation, like the man, due to the consensus of the entire Ummah that the ruling for the man in this matter applies equally to the woman. Some exempt her from amputation, while others obligate it upon her. Amputation is only imposed when there is clear evidence establishing the taking and transfer of ownership, coupled with denial or confession. If the offense recurs, the other hand is amputated, for the Messenger of Allah—peace and blessings be upon him—commanded the amputation of her hand. This constitutes a universal ruling, as one who seeks a loaned item while concealing his method in taking it is deemed a thief, thus making amputation obligatory upon him. Sufficient for us is Allah, and He is the Best Trustee.

وَتُقْطَعُ الْمَرْأَةُ كَالرَّجُلِ، لِإِجْمَاعِ الْأُمَةِ كُلِّهَا عَلَى أَنَّ حُكْمَ الرَّجُلِ فِي ذَلِكَ كَحُكْمِ الْمَرْأَةِ، وَمِنْ مُسْقِطِ الْقَطْعَ عَنْهَا، وَمِنْ مُوجِبٍ الْقَطْعَ عَلَيْهَا، وَلَا قَطْعَ فِي ذَلِكَ إِلَّا بِبَيِّنَةٍ تَقُومُ بِالْأَخْذِ، وَالتَّمْلِيكِ، مَعَ الْجَحْدِ، أَوْ الْإِقْرَارِ بِذَلِكَ، فَإِنْ عَادَ مَرَّةً أُخْرَى قُطِعَتْ الْيَدُ الْأُخْرَى، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَرَ بِقَطْعِ يَدِهَا - وَهَذَا عُمُومٌ، لِأَنَّ الْمُسْتَعِيرَ طَلَبَهُ الْعَارِيَّةَ مُسْتَخْفِيًا بِمَذْهَبِهِ فِي أَخْذِهِ، فَكَانَ سَارِقًا، فَوَجَبَ عَلَيْهِ الْقَطْعُ - وَحَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ.

[مَسْأَلَة مِنْ يُقْرِض فِي الدَّرَاهِم وَالدَّنَانِير هَلْ تقطع يَده]

The legal question regarding someone who lends dirhams and dinars: should his hand be cut off?

L42384 2290 - Issue: Cutting [mutilating] dirhams? Narrated by ʿAbdullāh ibn Muḥammad ibn ʿAlī al-Bājī from Aḥmad ibn Khālid from Abū ʿUbayd ibn Muḥammad al-Kashwārī from Muḥammad ibn Yūsuf al-Ḥudhāfī from ʿAbd al-Razzāq from Dāwūd ibn Qays, who informed me through Khālid ibn Abī Rabīʿah: When Ibn al-Zubayr arrived in Mecca, he found a man cutting dirhams, so he cut off his hand.

٢٢٩٠ - مَسْأَلَةٌ: قَطْعُ الدَّرَاهِمِ؟ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدِ بْنِ عَلِيٍّ الْبَاجِيَّ نا أَحْمَدُ بْنُ خَالِدٍ نا أَبُو عُبَيْدِ بْنِ مُحَمَّدٍ الْكَشْوَرِيُّ نا مُحَمَّدُ بْنُ يُوسُفَ الْحُذَافِيُّ نا عَبْدُ الرَّزَّاقِ نا دَاوُد بْنُ قَيْسٍ أَخْبَرَنِي خَالِدُ بْنُ أَبِي رَبِيعَةَ أَنَّ ابْنَ الزُّبَيْرِ حِينَ قَدِمَ مَكَّةَ وَجَدَ رَجُلًا يَقْرِضُ الدَّرَاهِمَ فَقَطَعَ يَدَهُ.

L42385 Abdullah ibn Rabee’ narrated to us: Ibn Mufarrij narrated to us: Qasim ibn Asbagh narrated to us: Ibn Waddah narrated to us: Sahnoon narrated to us: Ibn Wahb narrated to us: Abdul-Jabbar ibn Umar narrated from Abu Abdur-Rahman at-Taymi, who said: I was with Umar ibn Abdul-Azeez when he was the governor of Medina. A man who was cutting dirhams (and witnesses had testified against him) was brought before him. He had him beaten, shaved his head, ordered him to be paraded around, and commanded him to proclaim: “This is the recompense of one who cuts dirhams.” Then he ordered him to be returned. He said: “The only reason I spared your hand is that I

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ نا عَبْدُ الْجَبَّارِ بْنُ عُمَرَ عَنْ أَبِي عَبْدِ الرَّحْمَنِ التَّيْمِيِّ، قَالَ: كُنْتُ عِنْدَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَهُوَ إِذْ ذَاكَ أَمِيرٌ عَلَى الْمَدِينَةِ - فَأُتِيَ بِرَجُلٍ يَقْطَعُ الدَّرَاهِمَ - وَقَدْ شُهِدَ عَلَيْهِ - فَضَرَبَهُ، وَحَلَقَهُ، وَأَمَرَ بِهِ فَطِيفَ بِهِ وَأَمَرَهُ أَنْ يَقُولَ: هَذَا جَزَاءُ مَنْ يَقْطَعُ الدَّرَاهِمَ،

had not established this precedent before today. Now I have established the precedent. So let whoever wishes [to cut] cut off [the hand]."

ثُمَّ أَمَرَ بِهِ أَنْ يُرَدَّ إِلَيْهِ، فَقَالَ: أَمَا إِنِّي لَمْ يَمْنَعْنِي مِنْ أَنْ أَقْطَعَ يَدَكَ إِلَّا أَنِّي لَمْ أَكُنْ تَقَدَّمْتُ فِي ذَلِكَ قَبْلَ الْيَوْمِ، وَقَدْ تَقَدَّمْتُ فِي ذَلِكَ، فَمَنْ شَاءَ فَلْيَقْطَعْ؟

L42386–42387 Abū Muḥammad—may Allāh have mercy on him—said: We have been narrated through the chain of Saʿīd ibn al-Musayyab that he said: "Would that I witnessed hands being amputated for shaving dinārs and dirhams!" Abū Muḥammad—may Allāh have mercy on him—said: The meaning of this is that dirhams were being transacted by count without weight. Thus, one owing dirhams or dinārs would shave them through their circulation, then give them by count while retaining the surplus from this shaving. Abū Muḥammad—may Allāh have mercy on him—said: This was the practice of Ibn al-Zubayr—and he was a Companion—with no dissent known from the Companions—may Allāh be pleased with them. Yet the Ḥanafīs, in their defense of their false claim that water becomes impure by anything falling into it—even without altering it—present the drawing of Zamzam by a Zinjī as proof and consensus that is impermissible to oppose. However, their narration does not state Zamzam remained unaltered. Perhaps it had changed, or perhaps the water therein measured less than two qullahs—as al-Shāfiʿī states.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَرُوِّينَا مِنْ طَرِيقِ سَعِيدِ بْنِ الْمُسَيِّبِ أَنَّهُ قَالَ: وَدِدْتُ أَنِّي رَأَيْت الْأَيْدِي تُقْطَعُ فِي قَرْضِ الدَّنَانِيرِ وَالدَّرَاهِمِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَعْنَى هَذَا: أَنَّهُ كَانَتْ الدَّرَاهِمُ يُتَعَامَلُ بِهَا عَدَدًا دُونَ وَزْنٍ، فَكَانَ مَنْ عَلَيْهِ دَرَاهِمُ أَوْ دَنَانِيرُ يَقْرِضُ بِالْجَلَمِ مِنْ تَدْوِيرِهَا، ثُمَّ يُعْطِيهَا عَدَدًا، وَيَسْتَفْضِلُ الَّذِي قَطَعَ مِنْ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا عَمَلُ ابْنِ الزُّبَيْرِ - وَهُوَ صَاحِبٌ - لَا يُعْرَفُ لَهُ مُخَالِفٌ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - وَالْحَنَفِيُّونَ يَجْعَلُونَ نَزْحَهُ زَمْزَمَ مِنْ زِنْجِيٍّ وَقَعَ فِيهَا حُجَّةً وَإِجْمَاعًا لَا يَجُوزُ خِلَافُهُ فِي نَصْرِ بَاطِلِهِمْ، فِي أَنَّ الْمَاءَ يُنَجِّسُهُ مَا وَقَعَ فِيهِ - وَإِنْ لَمْ يُغَيِّرْهُ - وَلَيْسَ فِي خَبَرِهِمْ: أَنَّ زَمْزَمَ لَمْ تَكُنْ تَغَيَّرَتْ، وَلَعَلَّهَا قَدْ كَانَتْ تَغَيَّرَتْ، وَلَعَلَّ الْمَاءَ كَانَ فِيهَا قَدْرَ أَقَلَّ مِنْ قُلَّتَيْنِ كَمَا يَقُولُ الشَّافِعِيُّ.

L42388 And how can this be, when it has been authentically established that the believer does not become impure, while they cite this as proof? Yet they disregard the established Sunnah concerning the command of Allah's Messenger—peace and blessings be upon him—"Whoever washes a deceased person must perform ghusl." They argue that the believer does not become impure where there is no basis for impurity, and the ghusl performed after washing the deceased is neither a declaration of impurity from the deceased nor an act of veneration. Rather, he is pure (if he is a believer), but this is a prescribed law, like the ghusl after penetration (even though both private parts are pure) and like the ghusl following a nocturnal emission.

وَكَيْفَ، وَقَدْ صَحَّ أَنَّ الْمُؤْمِنَ لَا يَنْجُسُ، وَهُمْ يَحْتَجُّونَ بِهَذَا، وَإِسْقَاطُهُمْ السُّنَّةَ الثَّابِتَةَ فِي أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ غَسَّلَ مَيِّتًا فَلْيَغْتَسِلْ» فَهُمْ يَحْتَجُّونَ بِأَنَّ الْمُؤْمِنَ لَا يَنْجُسُ حَيْثُ لَا مَدْخَلَ لَهُ فِيهِ، وَلَيْسَ الْغُسْلُ مِنْ غُسْلِ الْمَيِّتِ تَنْجِيسًا مِنْ الْمَيِّتِ، وَلَا كَرَامَةً، بَلْ هُوَ طَاهِرٌ - إنْ كَانَ مُؤْمِنًا - لَكِنَّهَا شَرِيعَةٌ، كَالْغُسْلِ مِنْ الْإِيلَاجِ - وَإِنْ كَانَ كِلَا الْفَرْجَيْنِ طَاهِرًا - وَكَالْغُسْلِ مِنْ الِاحْتِلَامِ.

L42389 If they mention—as narrated by ʿAbdullāh ibn Rabīʿ from Ibn Mufarrij from Qāsim ibn Aṣbagh from Ibn Waḍḍāḥ from Sahnūn from Ibn Wahb from Ibn Lahīʿah from ʿAbd al-Malik ibn ʿAbd al-ʿAzīz—that ʿAbdullāh ibn al-Zubayr

فَإِنْ ذَكَرُوا - مَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ ابْنِ لَهِيعَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عَبْدِ الْعَزِيزِ أَنْ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ

imposed amputation on a man for [stealing] *dinārs* and *dirhams*? We respond—and success is from Allāh, the Exalted—this does not conflict with what we previously stated, for this narration does not specify that it involved a stolen amount equivalent to the threshold that necessitates amputation. Thus, amputation is not obligatory for him.

L42390 As for us, we accept no argument based on anyone's statement apart from the Messenger of Allah—may Allah bless him and his family and grant him peace. No ruling prescribing the punishment of amputation has been reported from him (peace be upon him) regarding loans of dinars and dirhams, nor is the borrower in such cases termed a thief or a borrower. Success is with Allah, the Most High.

L42391 ## A Jurisprudential Issue on the Prohibition of Intoxicants (Khamr) and the Disagreement Among People Concerning the Ḥadd for Consuming It

L42392–42393 A group holds the view that the Messenger of Allah (peace be upon him and his family) did not mandate a hadd punishment for this offense; rather, it was mandated by the one who came after him.

L42394 A group said: There is no ḥadd punishment for it at all because the Messenger of Allah—may Allah bless him and his family and grant him peace—did not prescribe a ḥadd punishment for it.

L42395 A group said: Rather, the Messenger of Allah—peace and blessings of Allah be upon him and his family—prescribed a punishment for it, then they disagreed. One group said eighty, and another said forty. As for those who said the Messenger of Allah—peace and blessings of Allah be upon him and his family—did not fix a punishment for it, they cited the following: Abd al-Raḥmān ibn Abd Allāh ibn Khālid narrated to us, Ibrāhīm ibn Aḥmad narrated to us, al-Farabrī narrated to us, al-Bukhārī narrated to us, Abd Allāh ibn Abd al-Wahhāb al-Ḥajabī narrated to us, Khālid ibn al-Ḥārith narrated to us, Sufyān al-Thawrī narrated to us, Abū Ḥuṣayn said: I heard Umayr ibn Saʿd al-Nakhaʿī say: I heard Alī ibn Abī Ṭālib say: "I would not carry out a prescribed punishment on anyone causing his death and feel remorse

ضَرَبَ رَجُلًا فِي قَطْعِ الدَّنَانِيرِ وَالدَّرَاهِمِ؟ قُلْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: هَذَا لَا يُخَالِفُهُ مَا ذَكَرْنَا عَنْهُ قَبْلُ، لِأَنَّ هَذَا لَيْسَ فِيهِ: أَنَّهُ قَرْضُ مِقْدَارِ مَا يَجِبُ فِيهِ الْقَطْعُ، فَلَا يَلْزَمُهُ قَطْعٌ.

وَأَمَّا نَحْنُ فَلَا حُجَّةَ عِنْدَنَا فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَمْ يَأْتِ عَنْهُ - عَلَيْهِ السَّلَامُ - إيجَابُ الْقَطْعِ فِي قَرْضِ الدَّنَانِيرِ، وَالدَّرَاهِمِ، وَلَا يَقَعُ عَلَيْهِ اسْمُ سَارِقٍ وَلَا مُسْتَعِيرٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ فِي تَحْرِيمِ الْخَمْرِ وَاخْتِلَافِ النَّاسِ فِي حَدِّ شَارِبِهَا]

قَالَتْ طَائِفَةٌ: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَفْرِضْ فِيهَا حَدًّا وَإِنَّمَا فَرَضَهُ مَنْ بَعْدَهُ.

وَقَالَتْ طَائِفَةٌ: لَا حَدَّ فِيهَا أَصْلًا، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَفْرِضْ فِيهَا حَدًّا.

وَقَالَتْ طَائِفَةٌ: بَلْ فَرَضَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِيهَا حَدًّا، ثُمَّ اخْتَلَفُوا - فَقَالَتْ طَائِفَةٌ: ثَمَانِينَ، وَقَالَتْ طَائِفَةٌ: أَرْبَعِينَ؟ فَأَمَّا مَنْ قَالَ: لَمْ يُوَقِّتْ فِيهَا رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَدًّا، فَإِنَّهُمْ ذَكَرُوا فِي ذَلِكَ: مَا نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا عَبْدُ اللَّهِ بْنُ عَبْدِ الْوَهَّابِ الْحَجَبِيُّ نا خَالِدُ بْنُ الْحَارِثِ نا سُفْيَانُ الثَّوْرِيُّ نا أَبُو حُصَيْنٍ قَالَ: سَمِعْتُ عُمَيْرَ بْنَ سَعْدٍ النَّخَعِيَّ يَقُولُ: «سَمِعْتُ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: مَا كُنْتُ لِأُقِيمَ حَدًّا عَلَى أَحَدٍ فَيَمُوتَ

except in the case of the wine-drinker, for if he died, I would pay blood money for him, because the Messenger of Allah—peace and blessings of Allah be upon him and his family—did not prescribe it as a Sunnah precedent." Abū Muḥammad—may Allah have mercy on him—said: This is how Abd al-Raḥmān ibn Abd Allāh narrated to us. Through him, up to al-Bukhārī, Qutaybah ibn Saʿīd narrated to us, Abd al-Wahhāb ibn Abd al-Majīd narrated to us, from Ayyūb al-Sikhtiyānī, from Abd Allāh ibn Abī Mulaykah, from Uqbah ibn al-Ḥārith, who said: An-Nuʿaymān—or Ibn an-Nuʿaymān—was brought in, and he ordered those present in the house to strike him. I was among those who struck him with sandals.

فَأَجِدُ فِي نَفْسِي إِلَّا صَاحِبَ الْخَمْرِ، فَإِنَّهُ لَوْ مَاتَ وَدَيْتُهُ، وَذَلِكَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَمْ يَسُنَّهُ» ؟ . قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: هَكَذَا ناه عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ؟ وَبِهِ - إِلَى الْبُخَارِيِّ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا عَبْدُ الْوَهَّابِ بْنُ عَبْدِ الْمَجِيدِ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ عَنْ عُقْبَةَ بْنِ الْحَارِثِ أَنَّهُ قَالَ: جِيءَ بِالنُّعَيْمَانَ - أَوْ ابْنِ النُّعَيْمَانِ - فَأَمَرَ مَنْ كَانَ فِي الْبَيْتِ أَنْ يَضْرِبُوهُ، فَكُنْتُ أَنَا فِيمَنْ ضَرَبُوهُ بِالنِّعَالِ.

L42396 And through him—to al-Bukhārī: Qutaybah narrated to us: Abū Ḍamrah narrated to us: Anas ibn ʿIyāḍ from Yazīd ibn al-Hādī from Muḥammad ibn Ibrāhīm al-Taymī from Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf from Abū Hurayrah, who said: "A man who had drunk was brought to the Prophet (peace and blessings of Allah be upon him and his family), so he said: 'Strike him.' Abū Hurayrah said: 'Some of us struck him with our hands, some with our sandals, and some with our garments.' When he withdrew, some people said: 'May Allah humiliate you!' He said: 'Do not say this. Do not assist Satan against him.'"

وَبِهِ - إِلَى الْبُخَارِيِّ نا قُتَيْبَةُ نا أَبُو ضَمْرَةَ نا أَنَسُ بْنُ عِيَاضٍ عَنْ يَزِيدَ بْنِ الْهَادِي عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ التَّيْمِيِّ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ قَالَ «أُتِيَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِرَجُلٍ شَرِبَ، فَقَالَ: اضْرِبُوهُ، قَالَ أَبُو هُرَيْرَةَ: فَمِنَّا الضَّارِبُ بِيَدِهِ، وَمِنَّا الضَّارِبُ بِنَعْلِهِ، وَالضَّارِبُ بِثَوْبِهِ، فَلَمَّا انْصَرَفَ قَالَ بَعْضُ الْقَوْمِ: أَخْزَاكَ اللَّهُ، قَالَ: لَا تَقُولُوا هَذَا، لَا تُعِينُوا عَلَيْهِ الشَّيْطَانَ» .

L42397–42399 And with him—to al-Bukhārī—narrated to us Makkī ibn Ibrāhīm from Abī al-Jaʿd from Yazīd ibn Khuṣayfah from... Al-Sa'ib ibn Yazid said, "During the time of the Messenger of Allah (peace and blessings of Allah be upon him and his family), the leadership of Abu Bakr, and the early period of Umar's caliphate, the drinker would be brought to us. We would deal with them using our hands, sandals, and garments, until the latter part of Umar's caliphate, during which he administered forty lashes. Then, when they became insolent and defiant, he administered eighty lashes."

وَبِهِ - إِلَى الْبُخَارِيِّ نا مَكِّيُّ بْنُ إِبْرَاهِيمَ عَنْ أَبِي الْجَعْدِ عَنْ يَزِيدَ بْنِ خُصَيْفَةَ عَنِ السَّائِبِ بْنِ يَزِيدَ قَالَ «كُنَّا نُؤْتَى بِالشَّارِبِ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَإِمْرَةِ أَبِي بَكْرٍ، وَصَدْرًا مِنْ خِلَافَةِ عُمَرَ، فَنَقُومُ إِلَيْهِ بِأَيْدِينَا، وَنِعَالِنَا، وَأَرْدِيَتِنَا، حَتَّى كَانَ آخِرَ إِمْرَةِ عُمَرَ، فَجَلَدَ أَرْبَعِينَ، حَتَّى إِذَا عَتَوْا وَفَسَقُوا جَلَدَ ثَمَانِينَ» .

L42400 And through him—to al-Bukhārī: From Yaḥyā ibn Bukayr, al-Layth ibn Saʿd narrated to me: From Khālid ibn Yazīd, from Saʿīd ibn Hilāl, from Zayd ibn Aslam, from his father, from ʿUmar ibn al-Khaṭṭāb: "There was a man during the lifetime of the Messenger of Allah—peace and blessings be upon him and his family—named ʿAbdullāh, who was nicknamed 'Donkey.' He used to make the Messenger of Allah—peace be upon him—laugh. The Messenger

وَبِهِ - إِلَى الْبُخَارِيِّ نا يَحْيَى بْنُ بُكَيْرٍ ثني اللَّيْثُ بْنُ سَعْدٍ نا خَالِدُ بْنُ يَزِيدَ عَنْ سَعِيدِ بْنِ هِلَالٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ «أَنَّ رَجُلًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ اسْمُهُ عَبْدَ اللَّهِ وَكَانَ يُلَقَّبُ حِمَارًا، وَكَانَ يُضْحِكُ

of Allah—peace be upon him—had previously flogged him for drinking. One day, he was brought again, and the Messenger of Allah—peace be upon him—ordered him to be flogged. A man among the people said: ‘O Allah, curse him! How frequently he is brought forth!’ The Messenger of Allah—peace be upon him—said: ‘Do not curse him. By Allah, I know nothing of him except that he loves Allah and His Messenger.’ When the Messenger of Allah—peace be upon him—passed away, this remained his established Sunnah.”

رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ جَلَدَهُ فِي الشُّرْبِ، فَأُتِيَ بِهِ يَوْمًا، فَأَمَرَ بِهِ فَجُلِدَ، فَقَالَ رَجُلٌ مِنْ الْقَوْمِ: اللَّهُمَّ الْعَنْهُ، مَا أَكْثَرَ مَا يُؤْتَى بِهِ؟ فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: لَا تَلْعَنُوهُ، فَوَاَللَّهِ مَا عَلِمْتُهُ إلَّا يُحِبُّ اللَّهَ وَرَسُولَهُ - فَتُوُفِّيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتِلْكَ سُنَّتُهُ» .

L42401 Then Abu Bakr administered forty lashes for drinking wine. Then Umar administered forty lashes at the beginning of his caliphate. Then Uthman administered both penalties: eighty and forty lashes. Then Mu‘awiyah formalized the penalty as eighty lashes. Abu Muhammad—may Allah have mercy on him—said: “Whoever adheres to the increase instituted by Umar—may Allah be pleased with him—and those who later increased it after him as a form of discretionary punishment ta‘zīr, thereby making it an obligatory and prescribed ḥadd punishment.”

ثُمَّ جَلَدَ أَبُو بَكْرٍ فِي الْخَمْرِ أَرْبَعِينَ، ثُمَّ جَلَدَ عُمَرُ أَرْبَعِينَ صَدْرًا مِنْ إمَارَتِهِ، ثُمَّ جَلَدَ عُثْمَانُ الْحَدَّيْنِ كِلَيْهِمَا ثَمَانِينَ وَأَرْبَعِينَ، ثُمَّ أَثْبَتَ مُعَاوِيَةُ الْحَدَّ ثَمَانِينَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَمَنْ تَعَلَّقَ بِزِيَادَةِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - وَمَنْ زَادَهَا مَعَهُ عَلَى وَجْهِ التَّعْزِيرِ، وَجَعَلَ ذَلِكَ حَدًّا وَاجِبًا مُفْتَرَضًا.

L42402 He is thus obligated to burn the house of the wine seller and establish that as a presumed punishment, because ‘Umar did so—and to also exile the wine drinker and make it an obligatory punishment, because ‘Umar did so? If it is said: “But ‘Umar stated, ‘I will not exile anyone after that,’” it is replied: “He flogged ‘Umar forty or sixty lashes for wine after the eighty lashes, through the most authentic chain of transmission possible.”

فَيَلْزَمُهُ: أَنْ يُحَرِّقَ بَيْتَ بَائِعِ الْخَمْرِ، وَيَجْعَلَ ذَلِكَ حَدًّا مُفْتَرَضًا، لِأَنَّ عُمَرَ فَعَلَهُ - وَأَنْ يَنْفِيَ شَارِبَ الْخَمْرِ أَيْضًا وَيَجْعَلَهُ حَدًّا وَاجِبًا، لِأَنَّ عُمَرَ فَعَلَهُ؟ فَإِنْ قَالَ: قَدْ قَالَ عُمَرُ: لَا أُغَرِّبُ بَعْدَهُ أَحَدًا؟ قِيلَ: وَقَدْ جَلَدَ عُمَرُ أَرْبَعِينَ، وَسِتِّينَ، فِي الْخَمْرِ، بَعْدَ أَنْ جَلَدَ الثَّمَانِينَ، بِأَصَحِّ إسْنَادٍ يُمْكِنُ وُجُودُهُ.

L42403 They are obligated to shave the mustache of anyone who drinks intoxicants after the fourth offense, as Umar did, so they do not impose the hadd punishment at all. They must also necessarily impose eighty lashes, without exception, upon whoever considers Ali superior to Abu Bakr or to Umar, and upon whoever considers Umar superior to Abu Bakr, for Umar and Ali declared this in the presence of the Companions.

وَيَلْزَمُهُمْ أَنْ يَحْلِقُوا شَارِبَ الْخَمْرِ بَعْدَ الرَّابِعَةِ، كَمَا فَعَلَ عُمَرُ، فَلَا يَحُدُّونَهُ أَصْلًا، وَيَلْزَمُهُمْ أَنْ يُوجِبُوا جَلْدَ ثَمَانِينَ أَيْضًا - وَلَا بُدَّ - عَلَى مَنْ فَضَّلَ عَلِيًّا عَلَى أَبِي بَكْرٍ، أَوْ عَلَى عُمَرَ، وَعَلَى مَنْ فَضَّلَ عُمَرَ عَلَى أَبِي بَكْرٍ، لِأَنَّ عُمَرَ وَعَلِيًّا، قَالَا ذَلِكَ، بِحَضْرَةِ الصَّحَابَةِ.

L42404–42405 It is incumbent upon them to administer a hadd of flogging—a binding punishment—to everyone who lies against Allah the Exalted and against the Quran. Otherwise, would they not be contradicting themselves falsely—thereby exposing the corruption of their claim? Abu Muhammad—may Allah have mercy on him—said: What we have mentioned confirms that the

وَيَلْزَمُهُمْ أَنْ يُجْلَدَ حَدًّا وَاجِبًا كُلُّ مَنْ كَذَبَ عَلَى اللَّهِ تَعَالَى، وَعَلَى الْقُرْآنِ، وَإِلَّا فَقَدْ تَنَاقَضُوا بِالْبَاطِلِ - فَظَهَرَ فَسَادُ قَوْلِهِمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَصَحَّ بِمَا ذَكَرْنَا: أَنَّ

ruling of forty lashes regarding khamr is the position of Abu Bakr, Umar, Uthman, Ali, al-Hasan ibn Ali, and Abdullah ibn Ja'far—as witnessed by all the Companions, may Allah be pleased with them.

L42406 And by it—so say Al-Shafi'i, Abu Sulayman, and their adherents—we adopt. And with Allah, the Exalted, is success.

L42407 **Should a wine-drinker be put to death after being subjected to the *hadd* punishment three times?**

L42408 Issue 2292: Is a wine drinker to be executed after being punished three times for it or not? [Abu Muhammad—may Allah have mercy on him—said: Wine is forbidden by the explicit text of the Quran, the Sunnah of Allah's Messenger (peace and blessings of Allah be upon him and his family), and the Consensus (Ijmaʿ) of the Ummah. Whoever among those who heard the textual evidence regarding this matter declares it lawful while knowing the Consensus is an unbelieving apostate, whose blood and wealth are rendered lawful. As for the Quranic evidence, it is Allah's statement: {Indeed, wine, gambling, stone altars, and divining arrows are filth} [5:90] up to His saying: {so avoid them} [5:90]. Thus, He commanded the complete avoidance of all abomination and declared wine to be part of that abomination. He ordained its avoidance as obligatory, for Allah's commands are inherently obligatory unless abrogated by another text clarifying it is not obligatory.[52]

L42409 And He, the Most High, said: {Indeed, my Lord has forbidden shameful deeds—what is apparent of them and what is concealed—and sin and unjust transgression} [Al-Aʿrāf 7:33]. Thus, the Most High has explicitly stated the prohibition of sin.[53]

L42410 And He, the Exalted, said, "They ask you about intoxicants and gambling. Say, 'In them is great sin'" [Al-Baqarah: 219]. Thus, it is established that sin is forbidden, that there is sin in intoxicants, and that engaging in them is engaging in sin. Therefore, it explicitly involves what the Prohibitor has

الْقَوْلَ بِجَلْدِ أَرْبَعِينَ فِي الْخَمْرِ هُوَ قَوْلُ أَبِي بَكْرٍ، وَعُمَرَ، وَعُثْمَانَ، وَعَلِيٍّ، وَالْحَسَنِ بْنِ عَلِيٍّ، وَعَبْدِ اللَّهِ بْنِ جَعْفَرٍ، بِحَضْرَةِ جَمِيعِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -.

وَبِهِ - يَقُولُ الشَّافِعِيُّ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا - وَبِهِ نَأْخُذُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَةٌ هَلْ يُقْتَلُ شَارِبُ الْخَمْرِ بَعْدَ أَنْ يُحَدَّ فِيهَا ثَلَاثَ مَرَّاتٍ]

٢٢٩٢ - مَسْأَلَةٌ: هَلْ يُقْتَلُ شَارِبُ الْخَمْرِ بَعْدَ أَنْ يُحَدَّ فِيهَا ثَلَاثَ مَرَّاتٍ أَمْ لَا؟ [قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْخَمْرُ حَرَامٌ بِنَصِّ الْقُرْآنِ، وَسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَإِجْمَاعِ الْأُمَّةِ، فَمَنْ اسْتَحَلَّهَا مِمَّنْ سَمِعَ النَّصَّ فِي ذَلِكَ، وَعَلِمَ بِالْإِجْمَاعِ فَهُوَ كَافِرٌ، مُرْتَدٌّ، حَلَالُ الدَّمِ، وَالْمَالِ - فَأَمَّا الْقُرْآنُ فَقَوْلُهُ تَعَالَى {إِنَّمَا الْخَمْرُ} [المائدة: ٩٠] إلَى قَوْله تَعَالَى {فَاجْتَنِبُوهُ} [المائدة: ٩٠] فَأَمَرَ تَعَالَى بِاجْتِنَابِ الرِّجْسِ جُمْلَةً وَأَخْبَرَ تَعَالَى أَنَّ الْخَمْرَ مِنْ الرِّجْسِ، فَفَرَضَ اجْتِنَابَهَا، لِأَنَّ أَوَامِرَ اللَّهِ تَعَالَى عَلَى الْفَرْضِ حَتَّى يَأْتِيَ نَصٌّ آخَرُ يُبَيِّنُ أَنَّهُ لَيْسَ فَرْضًا.

وَقَالَ تَعَالَى {إِنَّمَا حَرَّمَ رَبِّيَ الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَالإِثْمَ وَالْبَغْيَ بِغَيْرِ الْحَقِّ} [الأعراف: ٣٣] فَنَصَّ تَعَالَى عَلَى تَحْرِيمِ الْإِثْمِ.

وَقَالَ تَعَالَى {يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ} [البقرة: ٢١٩] . فَصَحَّ أَنَّ الْإِثْمَ حَرَامٌ وَأَنَّ فِي الْخَمْرِ إثْمًا وَأَنَّ مُوَاقِعَهَا مُوَاقِعُ إثْمٍ، فَهُوَ مُوَاقِعُ الْمُحْرِمِ نَصًّا - وَأَمَّا مِنْ السُّنَّةِ فَمَعْلُومٌ مَشْهُورٌ] .

[52] **Qur'an references (L42408):** Qur'an 5:90 (Al-Ma'idah).
[53] **Qur'an references (L42409):** Qur'an 7:33 (Al-A'raf).

forbidden. As for evidence from the Sunnah, it is well-known and widely established.[54]

L42411–42413 Abū Muḥammad—may Allāh have mercy on him—said: People have differed regarding a wine drinker who is subjected to the ḥadd punishment for it, then drinks it again and is subjected to the ḥadd punishment a second time, then drinks it and is subjected to the ḥadd punishment a third time, then drinks it a fourth time—what is the ruling? One group said: "He should be killed," while another group said: "He should not be killed." As for those who said he should be killed, it is as narrated by Aḥmad ibn Qāsim, who reported to us from my father, Qāsim ibn Muḥammad ibn Qāsim, who reported from [...] My grandfather Qāsim ibn Aṣbagh narrated to us through al-Ḥārith—he being Ibn Abī Usāmah—who narrated through ʿAbd al-Wahhāb ibn ʿAṭāʾ from Qurrah ibn Khālid, from al-Ḥasan ibn ʿAbd Allāh ibn al-Naṣrī, from ʿAbd Allāh ibn ʿAmr ibn al-ʿĀṣ, who said: "Bring me a man subjected to the prescribed punishment for wine-drinking. If I do not kill him, then I am a liar." Mālik, al-Shāfiʿī, Abū Ḥanīfah, and others held that no killing is imposed upon him—citing this position from ʿUmar ibn al-Khaṭṭāb and Saʿd ibn Abī Waqqāṣ. Abū Muḥammad—may Allāh have mercy on him—said: "When they differed as mentioned, it became necessary to examine this matter. We found those who advocated killing him supported by the following narrations: ʿAbd Allāh ibn Rabīʿ narrated to us through Muḥammad ibn Isḥāq via Ibn al-Aʿrābī from Abū Dāwūd through Mūsā ibn Ismāʿīl from Abū Salamah through Abān—he being Ibn Yazīd al-ʿAṭṭār—from ʿĀṣim—he being Ibn Abī al-Najūd—from Abū Ṣāliḥ al-Sammān, from Muʿāwiyah ibn Abī Sufyān, who said: The Messenger of Allāh—peace and blessings be upon him—declared: 'When they drink wine, lash them. If they drink again, lash them. If they drink again, kill them.'" Ḥammām narrated to us through Ibn Mufarrij via Ibn al-Aʿrābī from al-Dabarī through ʿAbd al-Razzāq from Sufyān al-Thawrī through ʿĀṣim ibn Abī al-Najūd from Dhakwān—he being Abū Ṣāliḥ al-Sammān—from Muʿāwiyah, that the Prophet—peace and blessings be upon him—said regarding the wine-drinker: "If he drinks, lash him. If he drinks again, lash him. If he drinks a fourth time, strike his neck."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي شَارِبِ الْخَمْرِ يُحَدُّ فِيهَا، ثُمَّ يَشْرَبُهَا، فَيُحَدُّ فِيهَا ثَانِيَةً، ثُمَّ يَشْرَبُهَا فَيُحَدُّ فِيهَا ثَالِثَةً، ثُمَّ يَشْرَبُهَا الرَّابِعَةَ؟ فَقَالَتْ طَائِفَةٌ: يُقْتَلُ - وَقَالَتْ طَائِفَةٌ: لَا يُقْتَلُ. فَأَمَّا مَنْ قَالَ يُقْتَلُ: فَكَمَا نا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا الْحَارِثُ - هُوَ ابْنُ أَبِي أُسَامَةَ - نا عَبْدُ الْوَهَّابِ بْنُ عَطَاءٍ أَنَا قُرَّةُ بْنُ خَالِدٍ عَنْ الْحَسَنِ بْنِ عَبْدِ اللَّهِ بْنِ النَّصْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ الْعَاصِ أَنَّهُ قَالَ: ائْتُونِي بِرَجُلٍ أُقِيمَ عَلَيْهِ حَدٌّ فِي الْخَمْرِ، فَإِنْ لَمْ أَقْتُلْهُ فَأَنَا كَاذِبٌ؟ وَقَالَ مَالِكٌ، وَالشَّافِعِيُّ، وَأَبُو حَنِيفَةَ، وَغَيْرُهُمْ: أَنْ لَا قَتْلَ عَلَيْهِ - وَذَكَرُوا ذَلِكَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَسَعْدِ بْنِ أَبِي وَقَّاصٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ: فَوَجَدْنَا مَنْ رَأَى قَتْلَهُ: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا مُوسَى بْنُ إِسْمَاعِيلَ ثنا أَبُو سَلَمَةَ نا أَبَانُ - هُوَ ابْنُ يَزِيدَ الْعَطَّارُ - عَنْ عَاصِمٍ - هُوَ ابْنُ أَبِي النَّجُودِ - عَنْ أَبِي صَالِحٍ السَّمَّانِ عَنْ مُعَاوِيَةَ بْنِ أَبِي سُفْيَانَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إذَا شَرِبُوا الْخَمْرَ فَاجْلِدُوهُمْ، ثُمَّ إنْ شَرِبُوا فَاجْلِدُوهُمْ، ثُمَّ إنْ شَرِبُوا فَاقْتُلُوهُمْ» حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا سُفْيَانُ الثَّوْرِيُّ عَنْ عَاصِمِ بْنِ أَبِي النَّجُودِ عَنْ ذَكْوَانَ - هُوَ أَبُو صَالِحٍ السَّمَّانُ - عَنْ مُعَاوِيَةَ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ فِي شَارِبِ الْخَمْرِ «إنْ شَرِبَ فَاجْلِدُوهُ ثُمَّ إنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إنْ شَرِبَ الرَّابِعَةَ فَاضْرِبُوا عُنُقَهُ» .

[54] **Qur'an references (L42410):** Qur'an 2:219 (Al-Baqarah).

L42414 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: Muhammad ibn Rafi' narrated to us: Abd al-Razzaq narrated to us: Ma'mar narrated from Suhayl ibn Abi Salih from his father from Abu Hurairah that the Prophet (peace be upon him and his family) said: "Whoever drinks wine, flog him. Then if he drinks again, flog him. Then if he drinks again, flog him. Then if he drinks on the fourth occasion—the narrator used a word meaning execution—then kill him."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ رَافِعٍ نا عَبْدُ الرَّزَّاقِ نا مَعْمَرٌ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فِي الرَّابِعَةِ - ذَكَرَ كَلِمَةً مَعْنَاهَا - فَاقْتُلُوهُ» .

L42415 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 from Suhayl Ibn Abi Salih from his father from Abu Hurayrah that the Messenger of Allah—peace be upon him and his family—said: "Whoever drinks wine, lash him. Then, if he drinks again, lash him. Then, if he drinks again, lash him. Then, if he drinks again, kill him."

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِذَا شَرِبَ فَاقْتُلُوهُ» .

L42416–42418 Abū Muḥammad—may Allah have mercy on him—said: "These are two methods of the highest validity—and it has been narrated through the chain of transmission of" Another narration is not relied upon, and if opponents among the attendees were to seize any part of it, they would spread it far and wide. Among these is what Ahmad ibn Muḥammad ibn ʿAbd Allāh al-Ṭalamankī reported from Ibn Mufarrij, who reported from Ibn al-Aʿrābī, who reported from al-Dabarī, who reported from Muḥammad ibn Ayyūb al-Ṣamūt, who reported from Aḥmad ibn ʿUmar ibn ʿAbd al-Khāliq al-Bazzār, who reported from Muḥammad ibn Yaḥyā al-Qaṭīʿī, who reported from al-Ḥajjāj ibn al-Minhāl, who reported from Ḥammād ibn Salamah, from Jamīl ibn Ziyād, from Nāfiʿ, from Ibn ʿUmar, who said: The Messenger of Allāh (peace and blessings be upon him and his family) said, "Whoever drinks intoxicants, flog him three times. If he does it again a fourth time, execute him."

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَانِ طَرِيقَانِ فِي نِهَايَةِ الصِّحَّةِ - وَقَدْ رُوِيَ مِنْ طَرِيقٍ آخَرَ لَا يُعْتَمَدُ عَلَيْهَا، وَلَوْ ظَفِرَ بِبَعْضِهَا الْمُخَالِفُونَ مِنْ الْحَاضِرِينَ لَطَارُوا بِهِ كُلَّ مَطِيرٍ: مِنْ ذَلِكَ مَا ناه أَحْمَدُ بْنُ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الطَّلَمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ نا أَحْمَدُ بْنُ عُمَرَ بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا مُحَمَّدُ بْنُ يَحْيَى الْقَطِيعِيُّ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ جَمِيلِ بْنِ زِيَادٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ، قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ ثَلَاثًا، فَإِنْ عَادَ فِي الرَّابِعَةِ فَاقْتُلُوهُ» .

L42419 Abdullah ibn Rabi' narrated to us: Muhammad ibn Mu'awiyah narrated to us: Ahmad ibn Shu'ayb narrated to us: From Ishaq ibn Ibrahim — that is, Ibn Rahawayh — from Jarir — that is, Ibn Abd al-Hamid — from al-Mughirah ibn Miqsam, from Abd al-Rahim ibn Ibrahim, from Abdullah ibn Umar ibn al-Khattab and a group of the Companions of the Messenger of Allah —

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا إِسْحَاقُ بْنُ إِبْرَاهِيمَ - هُوَ ابْنُ رَاهْوَيْهِ - أَنَا جَرِيرٌ - هُوَ ابْنُ عَبْدِ الْحَمِيدِ - عَنْ الْمُغِيرَةِ بْنِ مِقْسَمٍ عَنْ عَبْدِ الرَّحِيمِ بْنِ إِبْرَاهِيمَ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ وَنَفَرٍ مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ

peace and blessings be upon him — who said: The Messenger of Allah — peace and blessings be upon him and his family — said, “Whoever drinks intoxicants, flog him. Then if he drinks, flog him. Then if he drinks, flog him. Then if he drinks, kill him.”

Abdullah ibn Rabi’ narrated to us: Muhammad ibn Mu’awiyah narrated to us: Ahmad ibn Shu’ayb narrated to us: Muhammad ibn Yahya ibn Abdullah narrated to us: Muhammad ibn Abdullah al-Raqashi narrated to us: Yazid ibn Zurayʿ narrated from Muhammad ibn Ishaq, from Abdullah ibn Utbah, from Urwah ibn Mas’ud, from Amr ibn al-Sharid, from his father, who said: The Messenger of Allah — peace and blessings be upon him — said, “If he drinks intoxicants, flog him. Then if he drinks, flog him. Then if he drinks, flog him. Then if he drinks, kill him.”[55]

وَسَلَّمَ - قَالُوا: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاقْتُلُوهُ» حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ يَحْيَى بْنِ عَبْدِ اللَّهِ نا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الرَّقَاشِيُّ نا يَزِيدُ بْنُ زُرَيْعٍ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ عَنْ عَبْدِ اللَّهِ بْنِ عُتْبَةَ عَنْ عُرْوَةَ بْنِ مَسْعُودٍ عَنْ عَمْرِو بْنِ الشَّرِيدِ عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إِذَا شَرِبَ الْخَمْرَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاقْتُلُوهُ» .

L42420 Yunus ibn Abd Allah ibn Mughith narrated to us: Abu Bakr ibn Ahmad ibn Khalid narrated to us: My father narrated to us: Ibn Waddāḥ narrated to us: Abu Bakr ibn Abi Shaybah narrated from Shababah ibn Sawwar from Ibn Abi Dhi’b from al-Harith ibn Abd al-Rahman from Abu Salamah ibn Abd al-Rahman ibn Awf from Abu Hurayrah from the Prophet (peace and blessings be upon him and his family) who said: “If he becomes intoxicated, lash him. Then if he becomes intoxicated, lash him. If he becomes intoxicated, lash him. Then if he becomes intoxicated, strike his neck.”

حَدَّثَنَا يُونُسُ بْنُ عَبْدِ اللَّهِ بْنِ مُغِيثٍ أَنَا أَبُو بَكْرِ بْنُ أَحْمَدَ بْنِ خَالِدٍ نا أَبِي نا ابْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ عَنْ شَبَابَةَ بْنِ سَوَّارٍ عَنِ ابْنِ أَبِي ذِئْبٍ عَنِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «إِذَا سَكِرَ فَاجْلِدُوهُ، ثُمَّ إِذَا سَكِرَ فَاجْلِدُوهُ، إِذَا سَكِرَ فَاجْلِدُوهُ، ثُمَّ إِنْ سَكِرَ فَاضْرِبُوا عُنُقَهُ» .

L42421 Aḥmad ibn Qāsim narrated to us: From my father, Qāsim ibn Muḥammad ibn Qāsim; from my grandfather, Qāsim ibn Aṣbagh; from Aḥmad ibn Zuhayr; from Ibrāhīm ibn ʿAbdullāh; from Hishām; from Mughīrah ibn Maʿbad ibn Khālid; from ʿAbd ibn ʿAbd; from Muʿāwiyah, who attributed the ḥadīth to the Prophet, who said: “Whoever drinks wine, flog him; if he repeats, flog him again; if he repeats again, kill him.”

حَدَّثَنَا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا أَحْمَدُ بْنُ زُهَيْرٍ نا إِبْرَاهِيمُ بْنُ عَبْدِ اللَّهِ أَنَا هِشَامٌ أَنَا مُغِيرَةُ بْنُ مَعْبَدِ بْنِ خَالِدٍ عَنْ عَبْدِ بْنِ عَبْدٍ عَنْ مُعَاوِيَةَ رَفَعَ الْحَدِيثَ قَالَ «مَنْ شَرِبَ الْخَمْرَ فَاضْرِبُوهُ، فَإِنْ عَادَ فَاضْرِبُوهُ، فَإِنْ عَادَ فَاقْتُلُوهُ» .

L42422–42423 Aḥmad ibn Zuhayr said: Thus said ʻAbdullāh ibn ʻAbdullāh—and ʻAbdullāh ibn ʻAbdullāh or Abū ʻAbd Allāh al-Jadalī—Aḥmad ibn Zuhayr said: I asked Yaḥyā ibn Maʻīn about Abū ʻAbd Allāh al-Jadalī. He said: He is so-and-so son of ʻAbd, a Kūfan, reliable, from Qays. Yaḥyā was uncertain of his name. Abū

قَالَ أَحْمَدُ بْنُ زُهَيْرٍ: هَكَذَا قَالَ عَبْدُ بْنُ عَبْدٍ - وَعَبْدُ بْنُ عَبْدٍ أَوْ أَبُو عَبْدِ اللَّهِ الْجَدَلِيُّ - قَالَ أَحْمَدُ بْنُ زُهَيْرٍ: سَأَلْتُ يَحْيَى بْنَ مَعِينٍ عَنْ أَبِي عَبْدِ اللَّهِ الْجَدَلِيِّ؟ قَالَ: هُوَ فُلَانُ ابْنُ عَبْدٍ، كُوفِيٌّ، ثِقَةٌ، مِنْ قَيْسٍ، لَمْ يَحْفَظْ يَحْيَى اسْمَهُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -:

[55] **Hadith references (L42419):** Sunan an-Nasai 5661.

وَقَدْ رَوَى هَذَا الْحَدِيثَ أَيْضًا شُرَحْبِيلُ بْنُ أَوْسٍ، وَعَبْدُ اللَّهِ بْنُ عَمْرِو بْنِ الْعَاصِ، وَأَبُو غُطَيْفٍ الْكِنْدِيُّ - كُلُّهُمْ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَقَلُّ مِنْ هَذَا يَجْعَلُونَ فِيمَا وَافَقَهُمْ نَقْلَ تَوَاتُرٍ، كَقَوْلِ الْحَنَفِيِّينَ فِي شُرْبِ النَّبِيذِ الْمُسْكِرِ، وَكَاعْتِمَادِ الْمَالِكِيِّينَ فِي إبْطَالِ السُّنَنِ الثَّابِتَةِ فِي التَّوْقِيتِ فِي الْمَسْحِ عَلَى رِوَايَةِ أَبِي عَبْدِ اللَّهِ الْجَدَلِيِّ، وَغَيْرِ ذَلِكَ لَهُمْ كَثِيرٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَكَانَتْ الرِّوَايَةُ فِي ذَلِكَ عَنْ مُعَاوِيَةَ، وَأَبِي هُرَيْرَةَ، ثَابِتَةً، تَقُومُ بِهَا الْحُجَّةُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

Muḥammad, may Allāh have mercy on him, said: This ḥadīth was also narrated by Shuraḥbīl ibn Aws, ʻAbd Allāh ibn ʻAmr ibn al-ʻĀṣ, and Abū Ghuṭayf al-Kindī—all of them from the Prophet, peace and blessings of Allāh be upon him and his family. Abū Muḥammad, may Allāh have mercy on him, said: They treat even lesser evidence as constituting *tawātur* transmission in matters aligning with their views, such as the Ḥanafīs' stance on consuming intoxicating *nabīdh*, and the Mālikīs' reliance on nullifying established sunnahs regarding the time limit for wiping over footwear based on the narration of Abū ʻAbd Allāh al-Jadalī, among many other similar instances. Abū Muḥammad, may Allāh have mercy on him, said: The narrations concerning this from Muʻāwiyah and Abū Hurayrah are firmly established, serving as conclusive proof—and Allāh alone grants success.

فَنَظَرْنَا فِيمَا احْتَجَّ بِهِ الْمُخَالِفُونَ، فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّ هَذَا الْخَبَرَ مَنْسُوخٌ - وَذَكَرُوا فِي ذَلِكَ: مَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عُبَيْدُ اللَّهِ بْنُ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ سَعْدٍ نا عَمِّي - هُوَ يَعْقُوبُ بْنُ سَعْدٍ - نا شَرِيكٌ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «إذَا شَرِبَ الرَّجُلُ فَاجْلِدُوهُ، فَإِنْ عَادَ فَاجْلِدُوهُ، فَإِنْ عَادَ فَاجْلِدُوهُ، فَإِنْ عَادَ الرَّابِعَةَ فَاقْتُلُوهُ، فَأُتِيَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِرَجُلٍ مِنَّا فَلَمْ يَقْتُلْهُ» .

L42424 We examined the arguments of the opposing party and found them asserting that this narration is abrogated. They cited the following: ʻAbdullāh ibn Rabīʿ narrated to us, Muḥammad ibn Muʿāwiyah narrated to us, Aḥmad ibn Shuʿayb narrated to us: I, ʿUbaydullāh ibn Saʿd ibn Ibrāhīm ibn Saʿd narrated to us—from my uncle, he is Yaʿqūb ibn Saʿd—from Shurayk, from Muḥammad ibn Isḥāq, from Muḥammad ibn al-Munkadir, from Jābir ibn ʿAbdullāh, from the Prophet—peace and blessings be upon him and his family—who said: "When a man drinks intoxicants, flog him. If he repeats it, flog him again. If he repeats it, flog him again. If he repeats it a fourth time, kill him." Then a man from among us was brought to the Messenger of Allah—peace and blessings be upon him and his family—but he did not kill him.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ مُوسَى نا زِيَادُ بْنُ عَبْدِ اللَّهِ الْبَكَّائِيُّ ثني مُحَمَّدُ بْنُ إسْحَاقَ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ شَرِبَ الْخَمْرَ فَاضْرِبُوهُ، فَإِنْ عَادَ فَاضْرِبُوهُ، فَإِنْ عَادَ فَاضْرِبُوهُ، فَإِنْ عَادَ فِي الرَّابِعَةِ فَاضْرِبُوا عُنُقَهُ - فَضَرَبَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نُعَيْمَانَ أَرْبَعَ مَرَّاتٍ» .

L42425 Abdullah ibn Rabee' narrated to us: Muhammad ibn Mu'awiyah narrated to us; Ahmad ibn Shu'ayb narrated to us from Muhammad ibn Musa, who narrated from Ziyad ibn Abdullah al-Bakkā'ī, who narrated from Muhammad ibn Ishaq, from Muhammad ibn al-Munkadir, from Jabir ibn Abdullah, who said: The Messenger of Allah—peace and blessings be upon him—said, "Whoever drinks wine, strike him. If he repeats it, strike him. If he repeats it again, strike him. If he repeats it a fourth time, strike his neck." The Messenger of Allah—peace and blessings be upon him—struck Nu'ayman four times.

L42426–42428 The Muslims held the view that the ḥadd punishment had been lifted and

the death penalty revoked. Hammam narrated to us, from Abbas ibn Asbagh, from Muhammad ibn Abd al-Malik ibn Ayman, from Isma'il ibn Ishaq. Abu Thabit narrated to us: Ibn Wahb informed us, Yunus ibn Yazid informed us, Ibn Shihab informed us that Qabisah ibn Dhu'ayb reported that it reached him from the Messenger of Allah—peace and blessings be upon him—that he said regarding the drinker of intoxicants: "If he drinks, then lash him. Then if he drinks again, lash him. Then if he drinks again, lash him. Then if he drinks again, kill him." A man who had drunk three times was brought to the Prophet, so the Prophet lashed him. Then he was brought a fourth time, and the Prophet lashed him—and abolished the killing from the people.

L42429 Muhammad ibn Abd al-Malik said: Abu Isma'il Muhammad ibn Isma'il al-Tirmidhi narrated to us: Sa'id ibn Abi Maryam narrated to us: Sufyan ibn Uyaynah said: I heard Ibn Shihab saying to Mansur ibn al-Mu'tamir (from the delegate of the people of Iraq) with this narration, meaning this hadith of Qabisa ibn Dhu'ayb.

L42430 Abd al-Rahman ibn Abd Allah ibn Khalid narrated to us: Ibrahim ibn Ahmad al-Farabi narrated to us: al-Bukhari narrated to us: Yahya ibn Bukayr narrated to us: al-Layth narrated to us: Khalid ibn Yazid ibn Abi Hilal narrated to us: from Zayd ibn Aslam: from his father: from Umar ibn al-Khattab: "During the time of the Messenger of Allah—peace and blessings be upon him and his family—there was a man named Abdullah, nicknamed 'the Donkey,' who used to make the Messenger of Allah—peace and blessings be upon him and his family—laugh. The Messenger of Allah—peace and blessings be upon him and his family—had previously flogged him for drinking. One day, he was brought before him, and he ordered him to be flogged. A man among the people said: 'O Allah, curse him! How frequently he is brought!' The Messenger of Allah—peace and blessings be upon him and his family—responded: 'Do not curse him, for by Allah, I know nothing of him except that he loves Allah and His Messenger.'" They also mentioned the established report from the Messenger of Allah—peace and blessings be upon him and his family: "The blood of a Muslim is not lawful except for one of three reasons: apostasy after belief, adultery after marriage, or a life for a

فَرَأَى الْمُسْلِمُونَ أَنَّ الْحَدَّ قَدْ رُفِعَ، وَأَنَّ الْقَتْلَ قَدْ رُفِعَ: حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا إِسْمَاعِيلُ بْنُ إِسْحَاقَ نا أَبُو ثَابِتٍ نا ابْنُ وَهْبٍ أَخْبَرَنِي يُونُسُ بْنُ يَزِيدَ أَخْبَرَنِي ابْنُ شِهَابٍ أَنَّ قَبِيصَةَ بْنَ ذُؤَيْبٍ حَدَّثَهُ أَنَّهُ بَلَغَهُ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ لِشَارِبِ الْخَمْرِ «إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاجْلِدُوهُ، ثُمَّ إِنْ شَرِبَ فَاقْتُلُوهُ - فَأُتِيَ بِرَجُلٍ قَدْ شَرِبَ ثَلَاثَ مَرَّاتٍ، فَجَلَدَهُ، ثُمَّ أُتِيَ بِهِ فِي الرَّابِعَةِ فَجَلَدَهُ - وَوَضَعَ الْقَتْلَ عَنْ النَّاسِ» .

قَالَ مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ: قَدْ نا أَبُو إِسْمَاعِيلَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا سَعِيدُ بْنُ أَبِي مَرْيَمَ أَنَا سُفْيَانُ بْنُ عُيَيْنَةَ قَالَ: سَمِعْتُ ابْنَ شِهَابٍ يَقُولُ لِمَنْصُورِ بْنِ الْمُعْتَمِرِ مِنْ وَافِدِ أَهْلِ الْعِرَاقِ بِهَذَا الْخَبَرِ - يَعْنِي حَدِيثَ قَبِيصَةَ بْنِ ذُؤَيْبٍ هَذَا.

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا يَحْيَى بْنُ بُكَيْرٍ ثني اللَّيْثُ ثني خَالِدُ بْنُ يَزِيدَ بْنِ أَبِي هِلَالٍ عَنْ زَيْدِ بْنِ أَسْلَمَ عَنْ أَبِيهِ عَنْ عُمَرَ بْنِ الْخَطَّابِ «أَنَّ رَجُلًا عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ اسْمُهُ عَبْدَ اللَّهِ، وَكَانَ يُلَقَّبُ حِمَارًا، وَكَانَ يُضْحِكُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَكَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ جَلَدَهُ فِي الشُّرْبِ، فَأُتِيَ بِهِ يَوْمًا فَأَمَرَ بِهِ فَجُلِدَ، فَقَالَ رَجُلٌ مِنْ الْقَوْمِ: اللَّهُمَّ الْعَنْهُ، مَا أَكْثَرَ مَا يُؤْتَى بِهِ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: لَا تَلْعَنُوهُ، فَوَاَللَّهِ مَا عَلِمْتُهُ إِلَّا يُحِبُّ اللَّهَ وَيُحِبُّ رَسُولَهُ» . وَذَكَرُوا الْخَبَرَ الثَّابِتَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إِيمَانٍ، أَوْ زِنًى بَعْدَ إِحْصَانٍ، أَوْ نَفْسٌ

life." Thus, is it impermissible to kill anyone not mentioned in this report? Abu Muhammad—may Allah have mercy on him—said: "If only the Malikis, Hanafis, and Shafi'is were to cite this report as evidence against themselves regarding their killing of those whom Allah the Exalted—nor His Messenger, peace be upon him—ever permitted to be killed: such as the Malikis killing based on a sick person's deathbed claim or the oath of two witnesses in such cases; the Shafi'is killing those who commit the act of the people of Lut or those who acknowledge the obligation of prayer yet say 'I will not pray'; and the Hanafis and Malikis killing the sorcerer."

L42431–42432 And all of these people did not apostatize, nor commit adultery as a muḥṣan (a free, lawfully married person who has had lawful intercourse), nor commit murder.

L42433 All of this refutes their argument regarding the killing of the one who drinks wine on the fourth instance, based on the statement of the Prophet—peace and blessings of Allah be upon him and his family? Abu Muhammad—may Allah have mercy on him—said: This is all the evidence they have cited.

L42434 They mentioned from the Companions: It is not [via] Ḥammām, from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from ʿAbd al-Razzāq, from Muḥammad ibn Rāshid, from ʿAbd al-Karīm ibn Abī Umayya ibn Abī al-Mukhāriq, from Qabīṣa ibn Dhuʾayb that ʿUmar ibn al-Khaṭṭāb flogged Abū Miḥjan eight times for wine - and a similar narration was reported from Saʿīd as well - yet none of this constitutes valid evidence for them, as we shall clarify if God, the Exalted, wills.

L42435 As for the ḥadīth of Jābir ibn ʿAbd Allāh regarding the abrogation of the established ruling to kill the wine drinker on the fourth [occasion], it is not valid because no one narrated it with a connected chain from Ibn al-Munkadir except Sharīk the Judge and Ziyād ibn ʿAbd Allāh al-Bakkāʾī—who reported it from Muḥammad ibn Isḥāq from Ibn al-Munkadir—and both of them are weak narrators.

L42436 As for the narration of Qabīṣa ibn Dhu'ayb, it is broken, and no authoritative evidence can be established in a broken [chain].

بِنَفْسٍ» فَلَا يَجُوزُ أَنْ يُقْتَلَ أَحَدٌ لَمْ يُذْكَرْ فِي هَذَا الْخَبَرِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَوْ أَنَّ الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ، وَالشَّافِعِيِّينَ، احْتَجُّوا عَلَى أَنْفُسِهِمْ بِهَذَا الْخَبَرِ فِي قَتْلِهِمْ مَنْ لَمْ يُبِحْ اللَّهُ تَعَالَى قَتْلَهُ قَطُّ، وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ -: كَقَتْلِ الْمَالِكِيِّينَ بِدَعْوَى الْمَرِيضِ، وَقَسَامَةِ اثْنَيْنِ فِي ذَلِكَ وَقَتْلِهِمْ - وَالشَّافِعِيِّينَ مَنْ فَعَلَ فِعْلَ قَوْمِ لُوطٍ، وَمَنْ أَقَرَّ بِفَرْضِ صَلَاةٍ وَقَالَ: لَا أُصَلِّي. وَكَقَتْلِ الْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ، السَّاحِرَ.

وَكُلُّ هَؤُلَاءِ لَمْ يَكْفُرْ، وَلَا زَنَى وَهُوَ مُحْصَنٌ، وَلَا قَتَلَ نَفْسًا.

فَهَذَا كُلُّهُ نَقَضَ احْتِجَاجَهُمْ فِي قَتْلِ شَارِبِ الْخَمْرِ فِي الرَّابِعَةِ، بِقَوْلِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا كُلُّ مَا احْتَجُّوا بِهِ.

وَذَكَرُوا عَنْ الصَّحَابَةِ: مَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ عَنْ عَبْدِ الْكَرِيمِ بْنِ أَبِي أُمَيَّةَ بْنِ أَبِي الْمُخَارِقِ عَنْ قَبِيصَةَ بْنِ ذُؤَيْبٍ أَنَّ عُمَرَ بْنَ الْخَطَّابِ جَلَدَ أَبَا مِحْجَنٍ فِي الْخَمْرِ ثَمَانِي مَرَّاتٍ - وَرُوِيَ نَحْوُ ذَلِكَ عَنْ سَعِيدٍ أَيْضًا - وَكُلُّ ذَلِكَ لَا حُجَّةَ لَهُمْ فِيهِ، عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى.

أَمَّا حَدِيثُ جَابِرِ بْنَ عَبْدِ اللَّهِ فِي نَسْخِ الثَّابِتِ مِنْ الْأَمْرِ بِقَتْلِ شَارِبِ الْخَمْرِ فِي الرَّابِعَةِ فَإِنَّهُ لَا يَصِحُّ؛ لِأَنَّهُ لَمْ يَرْوِهِ عَنْ ابْنِ الْمُنْكَدِرِ أَحَدٌ مُتَّصِلًا، إلَّا شَرِيكٌ الْقَاضِي، وَزِيَادُ بْنُ عَبْدِ اللَّهِ الْبَكَّائِيُّ عَنْ مُحَمَّدِ بْنِ إسْحَاقَ عَنْ ابْنِ الْمُنْكَدِرِ - وَهُمَا ضَعِيفَانِ.

وَأَمَّا حَدِيثُ قَبِيصَةَ بْنِ ذُؤَيْبٍ فَمُنْقَطِعٌ، وَلَا حُجَّةَ فِي مُنْقَطِعٍ.

وَأَمَّا حَدِيثُ زَيْدِ بْنِ أَسْلَمَ الَّذِي مِنْ طَرِيقِ مَعْمَرٍ عَنْهُ فَمُنْقَطِعٌ - ثُمَّ لَوْ صَحَّ لَمَا كَانَتْ فِيهِ حُجَّةٌ، لِأَنَّهُ لَيْسَ فِيهِ، أَنَّ ذَلِكَ كَانَ بَعْدَ أَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْقَتْلِ، فَإِذْ لَيْسَ ذَلِكَ فِيهِ فَالْيَقِينُ الثَّابِتُ لَا يَحِلُّ تَرْكُهُ لِلضَّعِيفِ الَّذِي لَا يَصِحُّ، وَلَوْ صَحَّ لَكَانَ ظَنًّا - فَسَقَطَ التَّعَلُّقُ بِهِ جُمْلَةً.

L42437 As for the ḥadīth of Zayd ibn Aslam transmitted through Maʿmar from him, it is interrupted. Moreover, even if it were authentic, it would not constitute valid proof, for it does not mention that this occurred after the Messenger of Allah—peace and blessings be upon him—commanded execution. Since this is absent, the established certainty cannot permissibly be abandoned due to a weak report—and even if it were authentic, it would remain conjectural. Thus, all reliance on it is entirely dismissed.

وَلَوْ أَنَّ إنْسَانًا يَجْلِدُهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الْخَمْرِ ثَلَاثَ مَرَّاتٍ قَبْلَ أَنْ يَأْمُرَ بِقَتْلِهِ فِي الرَّابِعَةِ، لَكَانَ مُقْتَضَى أَمْرِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - اسْتِئْنَافُ جِلْدِهِ بَعْدَ ذَلِكَ ثَلَاثَ مَرَّاتٍ وَلَا بُدَّ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - حِينَ لَفَظَ بِالْحَدِيثِ الْمَذْكُورِ أَمَرَ فِي الْمُسْتَأْنَفِ بِضَرْبِهِ إنْ شَرِبَ، ثُمَّ بِضَرْبِهِ إنْ شَرِبَ ثَانِيَةً، ثُمَّ بِضَرْبِهِ ثَالِثَةً، ثُمَّ بِقَتْلِهِ رَابِعَةً - هَذَا نَصُّ حَدِيثِهِ وَكَلَامِهِ - عَلَيْهِ السَّلَامُ -.

L42438 If a man were to be flogged by the Prophet—peace be upon him—three times for drinking wine before he [the Prophet] ordered his execution on the fourth offense, the necessary implication of his command—peace be upon him—would require resuming his flogging three times again afterward. This is because when he—peace be upon him—uttered the mentioned hadith, he ordered flogging if he drinks again, then flogging if he drinks a second time again, then flogging a third time again, then execution on the fourth offense—this is the explicit text of his hadith and his words, peace be upon him.

فَإِنَّمَا كَانَ يَكُونُ حُجَّةً لَوْ بَيَّنَ فِيهِ أَنَّهُ أُتِيَ بِهِ أَرْبَعَ مَرَّاتٍ بَعْدَ أَمْرِهِ - عَلَيْهِ السَّلَامُ - بِقَتْلِهِ فِي الرَّابِعَةِ، وَهَكَذَا الْقَوْلُ - سَوَاءٌ سَوَاءٌ - فِي حَدِيثِ عُمَرَ الَّذِي مِنْ طَرِيقِ سَعِيدِ بْنِ أَبِي هِلَالٍ عَنْ زَيْدِ بْنِ أَسْلَمَ؟

L42439 For it to serve as a valid proof, it would only be so if it clarified that he was brought four times after his command - peace be upon him - to kill him in the fourth instance. And does exactly the same apply to the ḥadīth of ʿUmar transmitted via Saʿīd ibn Abī Hilāl from Zayd ibn Aslam?

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَأَمَّا نَحْنُ فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ: إنَّ الْوَاجِبَ ضَمُّ أَوَامِرِ اللَّهِ تَعَالَى، وَأَوَامِرِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُلِّهَا بَعْضُهَا إلَى بَعْضٍ، وَالِانْقِيَادُ إلَى جَمِيعِهَا، وَالْأَخْذُ بِهَا، وَأَنْ لَا يُقَالَ فِي شَيْءٍ مِنْهَا: هَذَا مَنْسُوخٌ إلَّا بِيَقِينٍ.

L42440–42441 Abu Muhammad—may Allah have mercy on him—said: As for us, we say—and with Allah alone is success—the obligation is to unite all the commands of Allah the Exalted and the commands of His Messenger—peace be upon him—all of them, each part interconnected with the others, to submit to all of them, act upon them, and that it should not be said regarding anything among them: "This is abrogated" except with certainty.

بُرْهَانُ ذَلِكَ: قَوْلُ اللَّهِ تَعَالَى {أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ} [النساء: ٥٩] .

L42442 The proof of that is the saying of Allah, Exalted is He: "Obey Allah and obey the Messenger" [An-Nisa: 59].[56]

فَصَحَّ أَنَّ كُلَّ مَا أَمَرَ اللَّهُ تَعَالَى بِهِ، أَوْ رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَفَرْضٌ عَلَيْنَا الْأَخْذُ بِهِ، وَالطَّاعَةُ لَهُ، وَمَنْ ادَّعَى فِي شَيْءٍ مِنْ ذَلِكَ نَسْخًا، فَقَوْلُهُ مُطَّرَحٌ؛ لِأَنَّهُ

L42443 Thus, it has been established that every command ordained by Allah, the

[56] **Qur'an references (L42442):** Qur'an 4:59 (An-Nisa); Qur'an 24:54 (An-Nur); Qur'an 47:33 (Muhammad).

Exalted, or His Messenger—peace and blessings be upon him and his family—is an obligation upon us to act upon and obey. Whoever claims abrogation in any matter thereof, his assertion is rejected, for he is saying to us: "Do not obey this command from Allah, the Exalted, or His Messenger—peace and blessings be upon him and his family." Therefore, it is incumbent upon us to disobey anyone who commands such, unless there is a clear and explicit text attesting that this command is abrogated, a consensus affirming this, or established chronological evidence clarifying that one of the two abrogates the other.

يَقُولُ لَنَا: لَا تُطِيعُوا هَذَا الْأَمْرَ مِنْ اللَّهِ تَعَالَى، وَلَا مِنْ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَاجِبٌ عَلَيْنَا عِصْيَانُ مَنْ أَمَرَ بِذَلِكَ، إلَّا أَنْ يَأْتِيَ نَصٌّ جَلِيٌّ بَيِّنٌ يَشْهَدُ بِأَنَّ هَذَا الْأَمْرَ مَنْسُوخٌ، أَوْ إجْمَاعٌ عَلَى ذَلِكَ، أَوْ بِتَارِيخٍ ثَابِتٍ مُبَيِّنٍ أَنَّ أَحَدَهُمَا نَاسِخٌ لِلْآخَرِ.

L42444 As for us, our position is that Allah the Exalted has undertaken to preserve His religion and perfect it, and He has forbidden us from following conjecture. Thus, it is entirely impermissible to set aside two texts where one can be specified by the other and harmonized with it, except when it is certain that this is Allah's intended meaning from both, and that there is absolutely no abrogation in this, without any doubt. For if abrogation existed here, Allah the Exalted would have elucidated it with absolute clarity and would not have left it ambiguous or problematic—far be it from Allah—how could that be? Abu Muhammad—may Allah have mercy on him—said: Consequently, the only remaining scenario is to set aside two texts where one could be specified by the other, as it is less comprehensive in scope. It may also be possible that the specific text is abrogated by the general one, and it has been clarified that the specific text undoubtedly precedes the general one. If such a case is found, the ruling necessarily requires abrogation without exception, until another text arrives or a definitive consensus is established confirming that the specific text is indeed specified by the general text that came afterward.

وَأَمَّا نَحْنُ - فَإِنَّ قَوْلَنَا: هُوَ أَنَّ اللَّهَ تَعَالَى قَدْ تَكَفَّلَ بِحِفْظِ دِينِهِ وَأَكْمَلَهُ، وَنَهَانَا عَنْ اتِّبَاعِ الظَّنِّ، فَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يُرَدَّ نَصَّانِ يُمْكِنُ تَخْصِيصُ أَحَدِهِمَا مِنْ الْآخَرِ، وَضَمِّهِ إلَيْهِ، إلَّا وَهُوَ مُرَادُ اللَّهِ تَعَالَى مِنْهُمَا بِيَقِينٍ، وَأَنَّهُ لَا نَسْخَ فِي ذَلِكَ بِلَا شَكٍّ أَصْلًا - وَلَوْ كَانَ فِي ذَلِكَ نَسْخٌ لَبَيَّنَهُ اللَّهُ تَعَالَى بَيَانًا جَلِيًّا، وَلَمَا تَرَكَهُ مُلْتَبِسًا مُشْكِلًا، حَاشَ لِلَّهِ مِنْ هَذَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمْ يَبْقَ إلَّا أَنْ يُرَدَّ نَصَّانِ مُمْكِنٌ أَنْ يَكُونَ أَحَدُهُمَا مَخْصُوصًا مِنْ الْآخَرِ، لِأَنَّهُ أَقَلُّ مَعَانٍ مِنْهُ، وَقَدْ يُمْكِنُ أَنْ يَكُونَ مَنْسُوخًا بِالْأَعَمِّ، وَيَكُونُ الْبَيَانُ قَدْ جَاءَ بِأَنَّ الْأَخَصَّ قَبْلَ الْأَعَمِّ بِلَا شَكٍّ - فَهَذَا إنْ وُجِدَ فَالْحُكْمُ فِيهِ النَّسْخُ وَلَا بُدَّ، حَتَّى يَجِيءَ نَصٌّ آخَرُ أَوْ إجْمَاعٌ مُتَيَقَّنٌ عَلَى أَنَّهُ مَخْصُوصٌ مِنْ الْعَامِّ الَّذِي جَاءَ بَعْدَهُ.

L42445 The proof of that is that Allah, the Exalted, said in His Book: "as an explanation for all things" [An-Nahl: 89].[57]

بُرْهَانُ ذَلِكَ: أَنَّ اللَّهَ تَعَالَى قَالَ فِي كِتَابِهِ {تِبْيَانًا لِكُلِّ شَيْءٍ} [النحل: ٨٩] .

L42446 And He said to the Messenger of Allah—peace and blessings be upon him and his family—{to make clear to people what has been sent down to them} [16:44]. The explanation—without doubt—is what the apparent meaning

وَقَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - {لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إلَيْهِمْ} [النحل: ٤٤] وَالْبَيَانُ - بِلَا شَكٍّ - هُوَ مَا اقْتَضَاهُ ظَاهِرُ اللَّفْظِ الْوَارِدِ، مَا لَمْ يَأْتِ نَصٌّ آخَرُ، أَوْ إجْمَاعٌ مُتَيَقَّنٌ عَلَى نَقْلِهِ عَنْ ظَاهِرِهِ، فَإِذَا اخْتَلَفَ الصَّحَابَةُ فَالْوَاجِبُ الرَّدُّ إلَى مَا

[57] **Qur'an references (L42445):** Qur'an 16:89 (An-Nahl).

of the conveyed wording necessitates, provided no other text arises or a definitive consensus establishes a departure from its apparent meaning. If the Companions disagreed, it becomes obligatory to revert to what Allah the Exalted has obligated to refer back to, as He says: {If you dispute over something, refer it to Allah and the Messenger} [4:59] the verse.[58]

L42447–42448 And the command of the Prophet—peace be upon him—to kill him on the fourth instance has been authenticated, and its abrogation has not been authenticated. Had it been authenticated, we would have upheld it—and there is no valid proof in the statement of anyone apart from the Messenger of Allah—peace be upon him and his family.

L42449 **Issue: Is the hadd punishment imposed on someone who drinks two blended substances?**

L42450 Issue 2293: Regarding mixing two substances. We have previously mentioned in the section on "Permissible and Prohibited Beverages" that dates, fresh dates, semi-dried dates, unripe dates, and raisins - these five exclusively, excluding all other things - may lawfully be prepared as nabidh individually. It is unlawful for any of them to be prepared as nabidh when mixed with another thing - whether from these five or any other thing whatsoever.

L42451 And that it is impermissible to mix the nabīdh of anything—after it has become wholesome or before it becomes wholesome—with another item or with the nabīdh of another item—whether from them or from others—fundamentally. As for what lies beyond these five, it is permissible to make nabīdh from two or more of them together, and to mix the nabīdh of two or more of them or the juice of two or more of them. We have clarified the reported Sunnahs pertaining to this matter. Whoever drinks from the two prohibited blends we mentioned—even if it does not intoxicate—has consumed something unlawful like blood or urine. No prescribed punishment applies in this case, for he did not drink wine, and the prescribed punishment applies exclusively to wine.

[58] **Qur'an references (L42446):** Qur'an 16:44 (An-Nahl); Qur'an 4:59 (An-Nisa).

افْتَرَضَ اللَّهُ تَعَالَى الرَّدَّ إِلَيْهِ، إِذْ يَقُولُ {فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ} [النساء: ٥٩] الْآيَةَ.

وَقَدْ صَحَّ أَمْرُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِهِ فِي الرَّابِعَةِ، وَلَمْ يَصِحَّ نَسْخُهُ، وَلَوْ صَحَّ لَقُلْنَا بِهِ - وَلَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

[مَسْأَلَة هَلْ يحد شَارِب الخلطين]

٢٢٩٣ - مَسْأَلَةٌ: الْخَلِيطَيْنِ؟ قَدْ ذَكَرْنَا " فِيمَا يَحِلُّ وَيَحْرُمُ مِنْ الْأَشْرِبَةِ " أَنَّ التَّمْرَ وَالرُّطَبَ، وَالزَّهْوَ وَالْبُسْرَ، وَالزَّبِيبَ، هَذِهِ الْخَمْسَةُ - خَاصَّةً دُونَ سَائِرِ الْأَشْيَاءِ - يَحِلُّ أَنْ يُنْبَذَ كُلُّ وَاحِدٍ مِنْهَا عَلَى انْفِرَادِهِ، وَلَا يَحِلُّ أَنْ يُنْبَذَ شَيْءٌ مِنْهَا مَعَ شَيْءٍ آخَرَ - لَا مِنْهَا وَلَا مِنْ سَائِرِهَا - فِي الْعَالَمِ.

وَأَنَّهُ لَا يَحِلُّ أَنْ يُخْلَطَ نَبِيذُ شَيْءٍ - بَعْدَ طِيبِهِ أَوْ قَبْلَ طِيبِهِ - لَا بِشَيْءٍ آخَرَ وَلَا بِنَبِيذِ شَيْءٍ آخَرَ - لَا مِنْهَا وَلَا مِنْ غَيْرِهَا - أَصْلًا، وَأَمَّا مَا عَدَا هَذِهِ الْخَمْسَةَ فَجَائِزٌ أَنْ يُنْبَذَ مِنْهَا الشَّيْئَانِ وَالْأَكْثَرُ مَعًا، وَأَنْ يُخْلَطَ نَبِيذُ اثْنَيْنِ مِنْهَا فَصَاعِدًا أَوْ عَصِيرُ اثْنَيْنِ فَصَاعِدًا، وَبَيَّنَّا السُّنَنَ الْوَارِدَةَ فِي ذَلِكَ، فَمَنْ شَرِبَ مِنْ الْخَلِيطَيْنِ الْمُحَرَّمَيْنِ مِمَّا ذَكَرْنَا شَيْئًا لَا يُسْكِرُ فَقَدْ شَرِبَ حَرَامًا كَالدَّمِ، وَالْبَوْلِ، وَلَا حَدَّ فِي ذَلِكَ؛ لِأَنَّهُ لَمْ يَشْرَبْ خَمْرًا، وَلَا حَدَّ إلَّا فِي الْخَمْرِ.

L42452 Based on the statement of the Messenger of Allah—may Allah bless him and his family and grant him peace—"Whoever drinks khamr [intoxicant], lash him," and the authentic narrations confirming that the Messenger of Allah—may Allah bless him and his family and grant him peace—administered lashing for khamr, and his declaration—peace be upon him—"Every intoxicant is khamr": If the substance is not khamr, no prescribed punishment applies; it entails only discretionary punishment, for one has committed a reprehensible act.

لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «وَمَنْ شَرِبَ الْخَمْرَ فَاجْلِدُوهُ» وَلِلْآثَارِ الثَّابِتَةِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - جَلَدَ فِي الْخَمْرِ، وَلِقَوْلِهِ - عَلَيْهِ السَّلَامُ - «كُلُّ مُسْكِرٍ خَمْرٌ» فَإِنْ لَمْ يَكُنْ خَمْرًا فَلَا حَدَّ فِيهِ، وَإِنَّمَا فِيهِ التَّعْزِيرُ فَقَطْ؛ لِأَنَّهُ أَتَى مُنْكَرًا.

L42453 As for every two mixtures from what we have mentioned other than those specified, if they cause intoxication, they are classified as khamr. The drinker thereof is subject to the hadd punishment prescribed for khamr, as per our earlier explanation—and with Allah, the Exalted, is success.

وَأَمَّا كُلُّ خَلِيطَيْنِ مِمَّا ذَكَرْنَا مِنْ غَيْرِ ذَلِكَ إذَا أَسْكَرَ فَهُوَ خَمْرٌ، وَعَلَى شَارِبِهِ حَدُّ الْخَمْرِ، لِمَا ذَكَرْنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَتَى يحد السَّكْرَان]

The issue of when the *hadd* applies to the intoxicated person.

L42454

L42455 2294 - Issue: When should the intoxicated person be subjected to the *hadd* punishment - after becoming sober or while in a state of intoxication? Abu Muhammad (may Allah have mercy on him) said, "People have differed regarding this. It was narrated from Umar ibn Abd al-Aziz and al-Sha'bi that both of them said, 'He is not subjected to the *hadd* punishment until he becomes sober.' This was also stated by Sufyan al-Thawri and Abu Hanifah."

٢٢٩٤ - مَسْأَلَةٌ: مَتَى يُحَدُّ السَّكْرَانُ؟ أَبَعْدَ صَحْوِهِ أَمْ فِي حَالِ سُكْرِهِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَرُوِيَ عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَالشَّعْبِيِّ، أَنَّهُمَا قَالَا: لَا يُحَدُّ حَتَّى يَصْحُوَ، وَبِهِ - قَالَ سُفْيَانُ الثَّوْرِيُّ، وَأَبُو حَنِيفَةَ.

L42456–42457 A school of thought said: He is to be flogged when taken into custody.

وَقَالَتْ طَائِفَةٌ: يُجْلَدُ حِينَ يُؤْخَذُ.

L42458 We know of no basis for those who say the punishment should be delayed until sobriety, except their claim that flogging constitutes an exemplary deterrent and infliction of pain—does the intoxicated person not comprehend this? Abū Muḥammad—may Allah have mercy on him—said: Those who hold that the ḥadd must be carried out immediately upon its legal confirmation cite as evidence the established report from Allah's Messenger—peace and blessings be upon him—through ʿUtbah ibn al-Ḥārith, Anas ibn Mālik, and others: "A drinker was brought to Allah's Messenger—peace and blessings be upon him—and he confessed, whereupon he administered the flogging without awaiting his sobriety."

وَمَا نَعْلَمُ لِمَنْ قَالَ: يُؤَخَّرُ حَتَّى يَصْحُوَ إلَّا أَنْ قَالُوا: إنَّ الْجَلْدَ تَنْكِيلٌ وَإِيلَامٌ، وَالسَّكْرَانُ لَا يَعْقِلُ ذَلِكَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَاحْتَجَّ مَنْ رَأَى أَنَّ الْحَدَّ حِينَ يُؤْخَذُ بِالْخَبَرِ الثَّابِتِ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ طَرِيقِ عُتْبَةَ بْنِ الْحَارِثِ، وَأَنَسِ بْنِ مَالِكٍ، وَغَيْرِهِمْ: «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أُتِيَ بِالشَّارِبِ فَأَقَرَّ، فَضَرَبَهُ وَلَمْ يَنْتَظِرْ أَنْ يَصْحُوَ» .

L42459 Speculative reasoning does not override authentically transmitted textual evidence; therefore, the hadd punishment must be administered when the individual is brought forward, unless they lack consciousness whatsoever and possess no understanding, in which case it is postponed until they attain consciousness—and success is granted by Allah, the Most High.

وَالنَّظَرُ لَا يَدْخُلُ عَلَى الْخَبَرِ الثَّابِتِ، فَالْوَاجِبُ أَنْ يُحَدَّ حِينَ يُؤْتَى بِهِ، إِلَّا أَنْ يَكُونَ لَا يُحِسُّ أَصْلًا، وَلَا يَفْهَمَ شَيْئًا، فَيُؤَخَّرُ حَتَّى يُحِسَّ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L42460 A legal question concerning one who sits with wine-drinkers or entrusts his son to a disbeliever, and the disbeliever subsequently gives the son wine to drink.

[مَسْأَلَة فِيمَنْ جَالَسَ شُرَّابَ الْخَمْرِ أَوْ دَفَعَ ابْنَهُ إلَى كَافِرٍ فَسَقَاهُ خَمْرًا]

L42461 2295 - Issue: Concerning one who sits with drinkers of wine or hands his son over to a disbeliever, and the disbeliever gives him wine to drink. Abu Muhammad (may Allah have mercy on him) said: Abdullah ibn Rabi' narrated to us: Abdullah ibn Muhammad ibn Uthman narrated to us: Ahmad ibn Khalid narrated to us: Ali ibn Abdulaziz narrated to us: Al-Hajjaj ibn Al-Minhal narrated to us: Hammad ibn Salamah narrated from Ali ibn Zayd ibn Jud'an from Al-Hasan Al-Basri that Ibn Amir said: "Whenever a man who handed his son over to a Jew or a Christian, and the disbeliever gave him wine to drink, is brought before me, I will impose the ḥadd on his father by flogging."

٢٢٩٥ - مَسْأَلَةٌ: فِيمَنْ جَالَسَ شُرَّابَ الْخَمْرِ، أَوْ دَفَعَ ابْنَهُ إلَى كَافِرٍ فَسَقَاهُ خَمْرًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: 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 عَلِيِّ بْنِ زَيْدِ بْنِ جُدْعَانَ عَنْ الْحَسَنِ الْبَصْرِيِّ: أَنَّ ابْنَ عَامِرٍ قَالَ: لَا أُوتَى بِرَجُلٍ دَفَعَ ابْنَهُ إلَى يَهُودِيٍّ، أَوْ نَصْرَانِيٍّ، فَسَقَاهُ خَمْرًا إلَّا جَلَدْتُ أَبَاهُ الْحَدَّ.

L42462 And through him—to Hammad ibn Salamah: I am Hisham ibn Urwah from his father, that a fasting man who had invited a group and served them wine—though he did not drink with them—was brought to Marwan ibn al-Hakam. They were flogged the ḥadd punishment, and Marwan flogged him alongside them. Abu Muhammad—may Allah have mercy on him—said: This is not something to be heeded, for the Messenger of Allah—peace and blessings be upon him and his family—said: "Your blood, your wealth, your honor, and your bodily integrity are inviolable upon you."

وَبِهِ - إلَى حَمَّادِ بْنِ سَلَمَةَ أَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ أَنَّ مَرْوَانَ بْنَ الْحَكَمِ أُتِيَ بِرَجُلٍ صَائِمٍ دَعَا قَوْمًا فَسَقَاهُمْ الْخَمْرَ - وَلَمْ يَشْرَبْ مَعَهُمْ - فَجُلِدُوا الْحَدَّ، وَجَلَدَهُ مَعَهُمْ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: لَيْسَ هَذَا مِمَّا يُعْبَأُ بِهِ، وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L42463 We have clarified that there is no hadd punishment except upon a fornicator, apostate, highway robber, one who falsely accuses of unlawful sexual intercourse, thief, one who borrows an item and denies receiving it, or drinker of an intoxicant.

وَقَدْ بَيَّنَّا - أَنْ لَا حَدَّ إلَّا عَلَى زَانٍ، أَوْ مُرْتَدٍّ، أَوْ مُحَارِبٍ، وَقَاذِفٍ، أَوْ سَارِقٍ، أَوْ مُسْتَعِيرٍ جَاحِدٍ، أَوْ شَارِبِ خَمْرٍ.

L42464 As for the one who serves another wine, there is no prescribed punishment

upon him because the act itself is inherently unlawful. No evidence—neither from the Qur'an, nor an authentic Sunnah, nor a weak Sunnah, nor consensus, nor the statement of a Companion—has been established to justify permitting it through the imposition of the prescribed punishment.

L42465–42466 Abu Muhammad—may Allah have mercy on him—said: It is indeed incumbent that those who assert retributive killing for one who detains a person until the detainee is unjustly slain, those who impose the ḥadd for indirect defamation by analogy to explicit defamation, and those who impose the ḥadd for committing the act of the people of Lut, i.e., sodomy, by analogy to fornication must likewise impose the ḥadd on the one who serves wine to others by analogy to the drinker of it—otherwise, their stance contradicts their analogical framework—and success is from Allah, the Exalted.

L42467 **The issue of one who is coerced to drink wine or compelled by necessity to drink it.**

L42468 Question 2296: What is the ruling for one who was compelled to drink intoxicants?

L42469 Abū Muḥammad—may Allah have mercy on him—said: Whoever is coerced into drinking an intoxicant, or forced by dire necessity due to thirst, treatment, or to avert choking, and drinks it, or is ignorant of its nature and does not realize that it is an intoxicant—none of these individuals incurs the prescribed punishment.

L42470 As for the coerced person, he is in a state of dire necessity, for the Most High has said, "He has made clear to you what He has forbidden to you, except that which you are compelled to [consume]" [al-Anʿām 6:119].[59]

L42471 And the Most High has said, "So whoever is compelled, neither intending [to transgress] nor transgressing [limits], there is no sin upon him" [Quran 2:173].[60]

L42472 Therefore, it has been established that the one compelled by necessity is not

[59] **Qur'an references (L42470):** Qur'an 6:119 (Al-An'am).
[60] **Qur'an references (L42471):** Qur'an 2:173 (Al-Baqarah).

وَأَمَّا مَنْ سَقَى غَيْرَهُ الْخَمْرَ فَلَا حَدَّ عَلَيْهِ؛ لِأَنَّ بَشَرَتَهُ حَرَامٌ، وَلَمْ يَأْتِ بِإِبَاحَتِهَا بِإِيجَابِ الْحَدِّ عَلَيْهِ، لَا قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا إجْمَاعٌ، وَلَا قَوْلُ صَاحِبٍ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: لَقَدْ يَلْزَمُ مَنْ رَأَى الْقَوَدَ بِالْقَتْلِ عَلَى الْمُمْسِكِ إنْسَانًا حَتَّى قُتِلَ ظُلْمًا، وَمَنْ رَأَى الْحَدَّ فِي التَّعْرِيضِ قِيَاسًا عَلَى الْقَذْفِ، وَمَنْ رَأَى الْحَدَّ عَلَى فَاعِلِ فِعْلِ قَوْمِ لُوطٍ قِيَاسًا عَلَى الزِّنَى: أَنْ يَرَى الْحَدَّ عَلَى سَاقِي الْقَوْمِ الْخَمْرَ قِيَاسًا عَلَى شَارِبِهَا - وَإِلَّا فَقَدْ تَنَاقَضُوا فِي قِيَاسِهِمْ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مَنْ أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ أَوْ اُضْطُرَّ إلَيْهَا]

٢٢٩٦ - مَسْأَلَةٌ: مَنْ اُضْطُرَّ إلَى شُرْبِ الْخَمْرِ؟

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: مَنْ أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ، أَوْ اُضْطُرَّ إلَيْهَا لِعَطَشٍ، أَوْ عِلَاجٍ، أَوْ لِدَفْعِ خَنْقٍ، فَشَرِبَهَا، أَوْ جَهِلَهَا فَلَمْ يَدْرِ أَنَّهَا خَمْرٌ، فَلَا حَدَّ عَلَى أَحَدٍ مِنْ هَؤُلَاءِ.

أَمَّا الْمُكْرَهُ - فَإِنَّهُ مُضْطَرٌّ، وَقَدْ قَالَ تَعَالَى {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إلا مَا اضْطُرِرْتُمْ إِلَيْهِ} [الأنعام: ١١٩] .

وَقَدْ قَالَ تَعَالَى {فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَلا عَادٍ فَلا إِثْمَ عَلَيْهِ} [البقرة: ١٧٣] .

فَصَحَّ أَنَّ الْمُضْطَرَّ لَا يَحْرُمُ عَلَيْهِ شَيْءٌ مِمَّا اُضْطُرَّ إلَيْهِ مِنْ طَعَامٍ، أَوْ شَرَابٍ.

prohibited from anything he was compelled to [consume], whether food or drink.

L42473 As for the ignorant person, he has not transgressed what Allah the Exalted has prohibited upon him. No hadd punishment applies except to one who knows the prohibition. No two people of the Ummah disagree that if a woman other than his wife is secretly brought to a man, and he has intercourse with her while unaware of her identity—thinking she is his wife—no hadd punishment is incurred upon him.

L42474 As for the one who recites the Quran and alters it out of ignorance, is he not liable? He, the Exalted, said, "That I may warn you thereby and whoever the warning reaches" [Surah al-An'am 6:19]. Thus, it is established that there is no ḥadd punishment except upon the one to whom the prohibition has been conveyed, and upon the one who knows that illicit sexual intercourse is forbidden yet intentionally commits it deliberately—and success comes only from Allah, the Exalted.[61]

L42475 ## The Issue of the Ḥadd of the Dhimmi Concerning Wine

L42476 Abu Muhammad (may God have mercy on him) said: We have elucidated in numerous contexts that the scope of the rulings applied to the People of the Covenant is the same as those applied to the People of Islam.

L42477 Allah, the Exalted, says: "And fight them until there is no persecution and religion is wholly for Allah" (Al-Anfal 8:39).[62]

L42478 And because of His words, the Exalted: *"Judge between them by what Allah has revealed"* (al-Mā'idah 5:49).[63]

L42479–42480 Al-Hasan ibn Ziyād said: "There is no Ḥadd punishment for a Dhimmi unless he becomes intoxicated; if he becomes intoxicated, should the Ḥadd punishment then be applied to him?" Abū Muḥammad—may Allah have

[61] **Qur'an references (L42474):** Qur'an 6:19 (Al-An'am).
[62] **Qur'an references (L42477):** Qur'an 8:39 (Al-Anfal).
[63] **Qur'an references (L42478):** Qur'an 5:49 (Al-Ma'idah).

وَأَمَّا الْجَاهِلُ - فَإِنَّهُ لَمْ يَتَعَدَّ مَا حَرَّمَ اللَّهُ تَعَالَى عَلَيْهِ، وَلَا حَدَّ إلَّا عَلَى مَنْ عَلِمَ التَّحْرِيمَ - وَلَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّهُ مَنْ دُسَّتْ إلَيْهِ غَيْرُ امْرَأَتِهِ فَوَطِئَهَا وَهُوَ لَا يَدْرِي مَنْ هِيَ يَظُنُّ أَنَّهَا زَوْجَتُهُ، فَلَا حَدَّ عَلَيْهِ.

وَأَمَّا مَنْ قَرَأَ الْقُرْآنَ فَبَدَّلَهُ جَاهِلًا، فَلَا شَيْءَ عَلَيْهِ؟ قَالَ تَعَالَى {لِأُنْذِرَكُمْ بِهِ وَمَنْ بَلَغَ} [الأنعام: ١٩] فَصَحَّ أَنَّهُ لَا حَدَّ إلَّا عَلَى مَنْ بَلَغَهُ التَّحْرِيمُ، وَعَلَى مَنْ عَرَفَ أَنَّ الزِّنَى حَرَامٌ فَقَصَدَهُ عَمْدًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة حَدُّ الذِّمِّيِّ فِي الْخَمْرِ]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: قَدْ بَيَّنَّا فِي مَوَاضِعَ جَمَّةٍ مِقْدَارَ الْحُكْمِ عَلَى أَهْلِ الذِّمَّةِ كَالْحُكْمِ عَلَى أَهْلِ الْإِسْلَامِ.

لِقَوْلِ اللَّهِ تَعَالَى {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] .

وَلِقَوْلِهِ تَعَالَى {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] .

قَالَ الْحَسَنُ بْنُ زِيَادٍ: لَا حَدَّ عَلَى الذِّمِّيِّ إلَّا أَنْ يَسْكَرَ، فَإِنْ سَكِرَ فَعَلَيْهِ الْحَدُّ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا تَقْسِيمٌ لَا وَجْهَ لَهُ، لِأَنَّهُ لَمْ يُوجِبْهُ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

mercy on him—said: “This distinction has no valid basis, for it is not made obligatory by the Quran, nor the Sunnah, nor scholarly consensus. And success is from Allah, the Most High.”

[مَسْأَلَة بَيْعُ الْعَصِيرِ مِمَّنْ لَا يُوقِنُ أَنَّهُ يُبْقِيه حَتَّى يَصِيرَ خَمْرًا]

The legal question regarding the sale of juice by someone who is uncertain they will retain it until it becomes wine.

٢٢٩٨ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: جَائِزٌ بَيْعُ الْعَصِيرِ مِمَّنْ لَا يُوقِنُ أَنَّهُ يُبْقِيه حَتَّى يَصِيرَ خَمْرًا، فَإِنْ تَيَقَّنَ أَنَّهُ يَجْعَلُهُ خَمْرًا لَمْ يَحِلَّ بَيْعُهُ مِنْهُ أَصْلًا وَفُسِخَ الْبَيْعُ.

Issue 2298: Abu Muhammad—may Allah have mercy on him—said: It is permissible to sell grape juice from one who does not believe they will keep it until it becomes wine. If the seller becomes certain he will turn it into wine, the sale is entirely impermissible, and the transaction is annulled.

لِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] وَبِيَقِينٍ نَدْرِي أَنَّهُ مَنْ بَاعَ الْعِنَبَ، أَوْ التِّينَ، أَوْ الْخَمْرَ مِمَّنْ يَتَّخِذُهُ خَمْرًا، فَقَدْ أَعَانَهُ عَلَى الْإِثْمِ وَالْعُدْوَانِ - وَهَذَا مُحَرَّمٌ بِنَصِّ الْقُرْآنِ، وَإِذْ هُوَ مُحَرَّمٌ فَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ عَمِلَ عَمَلًا لَيْسَ عَلَيْهِ أَمْرُنَا فَهُوَ رَدٌّ» ؟ .

Due to the statement of Allah the Exalted: {And cooperate in righteousness and piety, and do not cooperate in sin and aggression} [Al-Mā’idah: 2], and with certainty we know that whoever sells grapes, figs, or wine to one who intends to make it into wine has indeed aided them in sin and aggression—and this is prohibited by the explicit text of the Quran. Since it is prohibited, has the Messenger of Allah—peace and blessings be upon him and his family—not said, “Whoever performs a deed not in accordance with our way, it is rejected?”[6465]

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَمَنْ كَسَرَ إنَاءَ خَمْرٍ، أَوْ شَقَّ زِقَّ خَمْرٍ، ضَمِنَهُ؛ لِأَنَّهُ لَمْ يَصِحَّ فِي ذَلِكَ أَثَرٌ، وَأَمْوَالُ النَّاسِ مُحَرَّمَةٌ، وَقَدْ يُغْسَلُ الْإِنَاءُ وَيُسْتَعْمَلُ فِيمَا يَحِلُّ، فَإِفْسَادُهُ إفْسَادٌ لِلْمَالِ. فَإِنْ قِيلَ: إنَّ أَبَا طَلْحَةَ: وَجَمَاعَةً مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - كَسَرُوا خَوَابِيَ الْخَمْرِ؟ قُلْنَا: لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَيْسَ فِي ذَلِكَ الْخَبَرِ أَنَّهُ - عَلَيْهِ السَّلَامُ - عَرَفَ ذَلِكَ فَأَقَرَّهُ - وَالْحَدِيثُ الَّذِي فِيهِ شَقُّ الزِّقَاقِ لَا يَصِحُّ؛ لِأَنَّهُ مِنْ رِوَايَةِ طَلْقٍ، وَلَا يُدْرَى مَنْ هُوَ، عَنْ شَرَاحِيلَ بْنِ نُكَيْلٍ - هُوَ مَجْهُولٌ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَمَنْ طَرَحَ فِي الْخَمْرِ سَمَكًا وَمِلْحًا فَجَعَلَهَا مَرِيًّا؟ فَقَدْ عَصَى اللَّهَ تَعَالَى، وَعَلَيْهِ التَّعْزِيرُ، لِاسْتِعْمَالِهِ الْخَمْرَ الَّذِي لَا يَجُوزُ اسْتِعْمَالُهَا،

Abū Muḥammad—may Allāh have mercy on him—said: Whoever breaks a vessel of wine or slashes a wine-skin is liable for it, as no valid narration exists regarding this matter, for people’s wealth is sacred and protected. The vessel could be washed and used for lawful purposes, so destroying it constitutes destruction of property. If it is objected: Did not Abū Ṭalḥah and a group of Companions—may Allāh be pleased with them—break wine jars? We reply: There is no authoritative evidence in the statement of anyone other than the Messenger of Allāh—peace and blessings be upon him and his family. That report does not mention that he—peace be upon him—was aware of it and approved it. The ḥadīth mentioning the slashing of wine-skins is inauthentic, as it is narrated by Ṭalq—whose identity is unknown—from Sharāḥīl ibn Nukayl, who is an unknown narrator. Abū Muḥammad—may

[6464] **Hadith references (L42483):** Sahih Muslim 1718b; Riyad as-Salihin 1647; Riyad as-Salihin 169.

[6465] **Qur’an references (L42483):** Qur’an 5:2 (Al-Ma’idah).

Allāh have mercy on him—said: If someone throws fish and salt into wine, transforming it into sauce, he has disobeyed Allāh the Exalted and is subject to discretionary punishment for utilizing wine in an impermissible manner. Wine is inherently unlawful in all circumstances, nor is anything permissible to do with it except pouring it out. If he ascertains that the mixture still has the smell, taste, or color of wine, he must pour out all of it.

وَلَا تَحِلُّ فِي شَيْءٍ أَصْلًا، وَلَا يَحِلُّ فِيهَا شَيْءٌ إلَّا الْهَرْقُ، فَإِنْ أَدْرَكَ ذَلِكَ - وَلِلْخَمْرِ رِيحٌ، أَوْ طَعْمٌ، أَوْ لَوْنٌ: هَرَقَ الْجَمِيعَ.

L42485 And likewise, every liquid mixed with wine — even if one does not realize it until after it has fully transformed, leaving no trace — none of it is spoiled, and its consumption and sale are permissible.

وَهَكَذَا كُلُّ مَائِعٍ خُلِطَ فِيهِ خَمْرٌ - وَإِنْ لَمْ يُدْرِكْ ذَلِكَ إلَّا وَقَدْ اسْتَحَالَتْ وَلَمْ يَبْقَ لَهَا أَثَرٌ - فَلَا يَفْسُدُ شَيْءٌ مِنْ ذَلِكَ، وَهُوَ حَلَالٌ أَكْلُهُ، وَبَيْعُهُ.

L42486–42487 It belongs to whoever first appropriates it among people, not to one who discards the wine. When the owner's ownership of it ceases, and when his ownership is terminated, it does not revert to him except by nass (divine text) or ijmāʿ (consensus). And with Allah alone is success, the Most High.

وَهُوَ لِمَنْ سَبَقَ إلَيْهِ مِنْ النَّاسِ، لَا لِمَنْ يَطْرَحُ الْخَمْرَ - فَمَتَى سَقَطَ مِلْكُ صَاحِبِهِ عَنْهُ، وَإِذَا سَقَطَ عَنْهُ مِلْكُهُ: لَمْ يَرْجِعْ إلَيْهِ إلَّا بِنَصٍّ، أَوْ إجْمَاعٍ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42488 **Matters of Discretionary Punishment (taʿzīr) and Those Without Fixed Penalties (ḥadd).**

[مَسَائِلُ التَّعْزِيرِ وَمَا لَا حَدَّ فِيهِ]

L42489 **Legal Principle: Allah the Exalted has no limited boundary, nor does His Messenger, except in seven matters.**

[مَسْأَلَةٌ لَا حَدَّ لِلَّهِ تَعَالَى مَحْدُودٌ وَلَا لِرَسُولِهِ إلَّا فِي سَبْعَةِ أَشْيَاءَ]

L42490 Issues of Discretionary Punishments and Matters Without Prescribed Penalties 2299 - Issue: Abu Muhammad—may Allah have mercy on him—said: We have stated that there is no divinely fixed punishment (hadd) ordained by Allah the Exalted or His Messenger—peace and blessings be upon him and his family—except in seven matters: apostasy, highway robbery before the perpetrator is apprehended, unlawful sexual intercourse, false accusation of unlawful sexual intercourse, consuming intoxicants—whether intoxication occurs or not—theft, and denial of a loaned item.

مَسَائِلُ التَّعْزِيرِ وَمَا لَا حَدَّ فِيهِ ٢٢٩٩ - مَسْأَلَةٌ: قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَقَدْ قُلْنَا: إنَّهُ لَا حَدَّ لِلَّهِ تَعَالَى مَحْدُودٌ وَلَا لِرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَّا فِي سَبْعَةِ أَشْيَاءَ، وَهِيَ: الرِّدَّةُ، وَالْحِرَابَةُ قَبْلَ أَنْ يُقْدَرَ عَلَيْهِ، وَالزِّنَى، وَالْقَذْفِ بِالزِّنَى، وَشُرْبُ الْمُسْكِرِ - سَكِرَ أَوْ لَمْ يَسْكَرْ - وَالسَّرِقَةُ، وَجَحْدُ الْعَارِيَّةِ.

L42491 As for other sins, only discretionary punishment applies—which is disciplinary measures. Among these are certain matters wherein some early scholars deemed an obligatory prescribed punishment. We shall mention these—if Allah the Exalted wills—and present the arguments of those who considered them subject to prescribed punishment and those who did not,

وَأَمَّا سَائِرُ الْمَعَاصِي - فَإِنَّ فِيهَا التَّعْزِيرُ فَقَطْ - وَهُوَ الْأَدَبُ - وَمِنْ جُمْلَةِ ذَلِكَ أَشْيَاءُ، رَأَى فِيهَا قَوْمٌ مِنْ الْمُتَقَدِّمِينَ حَدًّا وَاجِبًا نَذْكُرُهَا - إنْ شَاءَ اللَّهُ تَعَالَى - وَنَذْكُرُ حُجَّةَ مَنْ رَأَى فِيهَا الْحَدَّ وَحُجَّةَ مَنْ لَمْ يَرَهُ لِيَلُوحَ الْحَقُّ فِي ذَلِكَ - بِعَوْنِ اللَّهِ تَعَالَى - كَمَا فَعَلْنَا فِي

so that the truth may become evident in this regard—with the help of Allah the Exalted—as we have done throughout our book. These matters are: intoxication, accusing someone of drinking wine, ambiguous accusations, drinking blood, eating pork and carrion, committing the act of the people of Lot, engaging in bestiality, a woman entering into a marital act with an animal, accusing someone of bestiality, lesbianism, abandoning prayer without denying its obligation, breaking the fast in Ramadan similarly without denying its obligation, and sorcery.

L42492 And we, if Allah, the Exalted, wills, will mention all of that chapter by chapter.

L42493 **An issue concerning what warrants enforcement of the ḥadd punishment upon the intoxicated person.**

L42494 Issue 2300: Question: Intoxication? Abu Muhammad said: Abu Hanifah permitted drinking fermented raisin infusion when cooked, fermented date infusion when cooked, and grape juice when cooked until two-thirds of it is reduced - even if all these cause intoxication - for they remain lawful according to him. There is no hadd for this unless one drinks the intoxicating quantity. If intoxication results from any of these, the hadd applies.

L42495 If one drinks intoxicating fig nabidh, intoxicating honey infusion, intoxicating apple juice, wheat drink, barley drink, or intoxicating corn drink—whether he became intoxicated from all of that or not—there is no prescribed punishment whatsoever. Abu Muhammad—may God have mercy on him—said: "And they say: 'Prescribed punishments are not derived by analogy at all?'"

L42496–42497 We say to them: Where did you find this division? Is it in the Quran, or in a sound, sick, or fabricated Sunnah? Or in consensus, or evidence of consensus? Or in the statement of a Companion, or in the view of someone before you, or in analogy, or in a sound opinion? Do they have no way of finding this in any of the mentioned sources? For if they say: "Allah the Exalted prohibited wine in the Quran," we reply: Yes. Then from where did you derive the prescribed punishment for intoxication from what you

سَائِرِ كَتَابِنَا: وَتِلْكَ الْأَشْيَاءُ: السُّكْرُ، وَالْقَذْفُ بِالْخَمْرِ، وَالتَّعْرِيضُ، وَشُرْبُ الدَّمِ، وَأَكْلُ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَفِعْلُ قَوْمِ لُوطٍ، وَإِتْيَانُ الْبَهِيمَةِ، وَالْمَرْأَةُ تَسْتَنْكِحُ الْبَهِيمَةَ، وَالْقَذْفُ بِالْبَهِيمَةِ، وَسَحْقُ النِّسَاءِ، وَتَرْكُ الصَّلَاةِ غَيْرَ جَاحِدٍ لَهَا، وَالْفِطْرُ فِي رَمَضَانَ كَذَلِكَ، وَالسِّحْرُ.

وَنَحْنُ إِنْ شَاءَ اللَّهُ تَعَالَى ذَاكِرُونَ كُلَّ ذَلِكَ بَابًا بَابًا.

[مَسْأَلَة مِمَّا يحد السَّكْرَان]

٢٣٠٠ - مَسْأَلَةٌ: السُّكْرُ؟ قَالَ أَبُو مُحَمَّدٍ: أَبَاحَ أَبُو حَنِيفَةَ شُرْبَ نَقِيعِ الزَّبِيبِ إِذَا طُبِخَ، وَشُرْبَ نَقِيعِ التَّمْرِ إِذَا طُبِخَ، وَشُرْبَ عَصِيرِ الْعِنَبِ إِذَا طُبِخَ حَتَّى يَذْهَبَ ثُلُثَاهُ - وَإِنْ أَسْكَرَ كُلُّ ذَلِكَ - فَهُوَ عِنْدَهُ حَلَالٌ، وَلَا حَدَّ فِيهِ مَا لَمْ يَشْرَبْ مِنْهُ الْقَدْرَ الَّذِي يُسْكِرُ - وَإِنْ سَكِرَ مِنْ شَيْءٍ مِنْ ذَلِكَ فَعَلَيْهِ الْحَدُّ.

وَإِنْ شَرِبَ نَبِيذَ تِينٍ مُسْكِرٍ، أَوْ نَقِيعَ عَسَلٍ مُسْكِرٍ، أَوْ عَصِيرَ تُفَّاحٍ مُسْكِرٍ، أَوْ شَرَابَ قَمْحٍ، أَوْ شَعِيرٍ، أَوْ ذُرَةٍ مُسْكِرٍ: فَسَكِرَ مِنْ كُلِّ ذَلِكَ، أَوْ لَمْ يَسْكَرْ، فَلَا حَدَّ فِي ذَلِكَ أَصْلًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهُمْ يَقُولُونَ: إِنَّ الْحُدُودَ لَا تُؤْخَذُ قِيَاسًا أَصْلًا؟

فَنَقُولُ لَهُمْ: أَيْنَ وَجَدْتُمْ هَذَا التَّقْسِيمَ؟ أَفِي قُرْآنٍ، أَمْ فِي سُنَّةٍ صَحِيحَةٍ، أَوْ سَقِيمَةٍ، أَوْ مَوْضُوعَةٍ؟ أَوْ فِي إِجْمَاعٍ، أَوْ دَلِيلِ إِجْمَاعٍ؟ أَمْ فِي قَوْلِ صَاحِبٍ، أَمْ فِي قَوْلِ أَحَدٍ قَبْلَكُمْ، أَمْ فِي قِيَاسٍ، أَمْ فِي رَأْيٍ يَصِحُّ؟ فَلَا سَبِيلَ لَهُمْ إِلَى وُجُودِ ذَلِكَ فِي شَيْءٍ مِمَّا ذُكِرَ؟ ؛ لِأَنَّهُمْ، إِنْ قَالُوا: حَرَّمَ اللَّهُ تَعَالَى الْخَمْرَ فِي الْقُرْآنِ؟ قُلْنَا: نَعَمْ، فَمِنْ أَيْنَ وَجَدْتُمْ أَنْتُمُ الْحَدَّ فِي

السُّكْرِ مِمَّا لَيْسَ خَمْرًا عِنْدَكُمْ، بَلْ هُوَ حَلَالٌ عِنْدَكُمْ طَيِّبٌ، وَهُوَ مَطْبُوخُ عَصِيرِ الْعِنَبِ إِذَا ذَهَبَ ثُلُثَاهُ، وَنَقِيعُ الزَّبِيبِ، وَنَقِيعُ التَّمْرِ إِذَا طُبِخَا، وَلَا خَمْرَ هَاهُنَا أَصْلًا؟ فَإِنْ قَالُوا: «جَلَدَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - السَّكْرَانَ إِذْ أُتِيَ بِهِ» .

وَرَوَوْا حَدِيثَ الْخَمْرِ بِعَيْنِهَا، وَالسُّكْرُ مِنْ غَيْرِهَا، أَوْ مِنْ كُلِّ شَرَابٍ، و «اشْرَبُوا فِي الظُّرُوفِ وَلَا تَسْكَرُوا» وَمَا كَانَ فِي مَعْنَى هَذِهِ الْأَخْبَارِ؟ قُلْنَا لَهُمْ: وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - فَأَنْتُمْ أَوَّلُ مَنْ خَالَفَ ذَلِكَ، فَإِنَّكُمْ لَا تَرَوْنَ الْحَدَّ عَلَى مَنْ وُجِدَ سَكْرَانَ.

وَأَيْضًا: فَهَلْ وَجَدْتُمْ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سَأَلَهُ مِمَّاذَا سَكِرَ؟ فَإِنْ قَالَ لَهُ: مِنْ نَبِيذِ عَسَلٍ، أَوْ شَرَابِ شَعِيرٍ، أَوْ شَرَابِ ذُرَةٍ، أَطْلَقَهُ، وَقَدْ كَانَ كُلُّ ذَلِكَ مَوْجُودًا كَثِيرًا عَلَى عَهْدِهِ - عَلَيْهِ السَّلَامُ -.

yourselves do not consider wine—but it is lawful and wholesome according to you, such as boiled grape juice when two-thirds of it has evaporated, raisin infusion, and date infusion when cooked, when there is no wine here at all? If they say: "The Messenger of Allah (peace and blessings be upon him) flogged the intoxicated person when he was brought to him,"

L42498 They narrated the hadith specifically about wine itself, and intoxication from other than it or from any drink, and the hadith, "Drink from the vessels but do not become intoxicated," along with what falls within the meaning of these reports. We said to them—And with Allah alone is success—"You are foremost in contradicting this, for you do not uphold the ḥadd punishment against one found in a state of intoxication."

L42499 Moreover, have you ever found that the Prophet—peace and blessings of Allah be upon him—asked someone about the source of their intoxication? If the person answered: "From honey nabīdh, a barley drink, or a corn drink," he allowed it, though all such beverages were abundantly available during his time—peace be upon him.

وَإِنْ قَالَ لَهُ: مِنْ نَبِيذِ تَمْرٍ، أَوْ نَقِيعِ زَبِيبٍ، أَوْ عَصِيرِ عِنَبٍ: حَدَّهُ.

L42500 If he informs him that it is made from date wine, raisin soak, or grape juice, the ḥadd punishment is incurred.

هَلْ جَاءَ هَذَا قَطُّ فِي نَقْلٍ صَادِقٍ أَوْ كَاذِبٍ؟ فَأَنَّى لَكُمْ هَذَا التَّقْسِيمُ السَّخِيفُ؟ فَعَنْهُ سَأَلْنَاكُمْ، وَعَنْ تَحْرِيمِكُمْ بِهِ، وَتَحْلِيلِكُمْ، وَعَنْ إِبَاحَتِكُمْ بِهِ الْأَشْيَاءَ الْمُحَرَّمَةَ، أَوْ إِسْقَاطِكُمْ حُدُودَ اللَّهِ تَعَالَى الْوَاجِبَةَ؟ فَإِنْ قَالُوا: قَدْ صَحَّ الْإِجْمَاعُ عَلَى حَدِّ الشَّارِبِ بِعَصِيرِ الْعِنَبِ الَّذِي لَمْ يُطْبَخْ إِذَا سَكِرَ، وَاخْتُلِفَ فِيمَا عَدَاهُ؟ قُلْنَا لَهُمْ: فَمِنْ أَيْنَ أَوْجَبْتُمُ الْحَدَّ عَلَى مَنْ سَكِرَ مِنْ نَبِيذِ التَّمْرِ - مَطْبُوخًا كَانَ أَوْ غَيْرَ مَطْبُوخٍ - وَمِنْ نَبِيذِ الرُّطَبِ كَذَلِكَ، وَمِنْ نَبِيذِ الزَّهْوِ، وَمِنْ نَبِيذِ الْبُسْرِ، وَمِنْ نَبِيذِ الزَّبِيبِ كَذَلِكَ، وَلَا إِجْمَاعَ فِي وُجُوبِ الْحَدِّ عَلَيْهِ؟ وَقَدْ رُوِّينَا عَنِ الْحَسَنِ وَغَيْرِهِ: أَنَّهُ لَا حَدَّ عَلَى السَّكْرَانِ مِنَ النَّبِيذِ - وَكَذَلِكَ عَنْ إِبْرَاهِيمَ النَّخَعِيِّ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى - وَلَا يَجِدُونَ أَبَدًا قَوْلَ صَاحِبٍ، وَلَا قَوْلَ تَابِعٍ بِمِثْلِ هَذَا التَّقْسِيمِ.

L42501–42503 Has this ever been conveyed through any truthful or false report? Whence have you come by this preposterous division? We question you concerning it—your prohibitions based on it, your permissions, your permitting of forbidden matters through it, or your annulment of Allah the Exalted's obligatory ḥadd punishments? If they respond: "Consensus has been established regarding the ḥadd punishment for one who drinks uncooked grape juice when intoxicated, while disagreement exists concerning other cases," we reply: From what evidence do you mandate ḥadd punishment for one intoxicated by date wine—whether cooked or otherwise... Uncooked—and likewise nabidh of fresh dates, nabidh of zahw, nabidh of unripe dates, and nabidh of raisins likewise. Is there no consensus regarding the obligation of imposing the *hadd* punishment for it? It has been narrated to us from al-Ḥasan and others that there is no *hadd* punishment for one intoxicated by *nabidh*—similarly from Ibrāhīm al-Nakhaʿī—and this is the opinion of Ibn Abī Laylā. They have never found any opinion of a Companion or a Follower resembling this categorization ever.

وَكَذَلِكَ مَنْ اُضْطُرَّ إِلَى الْخَمْرِ لِعَطَشٍ، أَوْ لِاخْتِنَاقٍ، فَشَرِبَ مِنْهَا مِقْدَارَ مَا يُزِيلُ عَطَشَهُ، أَوْ اخْتِنَاقَهُ، وَذَلِكَ حَلَالٌ لَهُ - عِنْدَنَا وَعِنْدَهُمْ - فَسَكِرَ مِنْ ذَلِكَ؟ وَهَذَا لَا يَقُولُونَهُ.

L42504 If someone is forced by necessity to drink wine due to thirst or suffocation and drinks the amount that alleviates his thirst or suffocation—this is permissible for him according to our school and theirs—but then becomes intoxicated by it? This is not a position they uphold.

فَصَحَّ يَقِينًا أَنَّ السُّكْرَ لَا حَدَّ فِيهِ أَصْلًا، وَإِنَّمَا الْحَدُّ، وَالتَّحْرِيمُ، فِي الْمُسْكِرِ - سَكِرَ مِنْهُ أَوْ لَمْ يَسْكَرْ - وَقَدْ نَجِدُ مَنْ يَسْكَرُ مِنْ ثَلَاثَةِ أَرْطَالٍ - أَوْ أَرْبَعَةٍ سُكْرًا شَدِيدًا - وَنَجِدُ مَنْ لَا يَسْكَرُ مِنْ أَزِيدَ مِنْ عِشْرِينَ رِطْلًا مِنْ خَمْرٍ، وَلَا تَتَغَيَّرُ لَهُ حَالَةٌ أَصْلًا.

L42505 It is thus established with certainty that there is absolutely no prescribed punishment for intoxication itself. Rather, the prescribed punishment and prohibition pertain solely to the intoxicant—whether one becomes intoxicated from it or not. For indeed, we find those who become severely intoxicated from three arṭāl—or four—resulting in severe intoxication, while we find others who do not become intoxicated from more than twenty riṭl of wine, and their condition shows no alteration whatsoever.

L42506 As for accusing someone of drinking wine—we have previously discussed this in earlier chapters. The position of Rajaʿ ibn Ḥaywah and others asserts the obligation of the *ḥadd* punishment in this matter, but we have clarified

that the *ḥadd* is not obligatory here, as it is not substantiated by a Quranic verse, Sunnah, or consensus. Success comes from Allah, the Exalted.

وَأَمَّا الْقَذْفُ بِشُرْبِ الْخَمْرِ - فَقَدْ ذَكَرْنَاهُ قَبْلَ هَذَا بِأَبْوَابٍ وَقَوْلُ رَجَاءِ بْنِ حَيْوَةُ وَغَيْرِهِ إيجَابُ الْحَدِّ فِيهِ، وَبَيَّنَّا أَنَّ الْحَدَّ لَا يَجِبُ فِي ذَلِكَ، إذْ لَمْ يَأْتِ بِهِ قُرْآنٌ، وَلَا سُنَّةٌ، وَلَا إجْمَاعٌ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42507 As for indirect insinuation in accusations of unlawful intercourse (qadhf) - we have previously mentioned in our discussion on the prescribed punishment for qadhf and thoroughly examined there that no punishment applies to indirect insinuation. This is because neither the Quran, nor any Sunnah - whether sound or weak - from the Messenger of Allah (peace be upon him), nor consensus obligates the punishment for it. This is because the Companions (may Allah be pleased with them) disagreed on this matter, and the view of some is no more valid than that of others. We also confirmed the authenticity of the narration from the Messenger of Allah (peace be upon him) regarding "the man who informed him that his wife had borne a black child - while he was insinuating denial of parentage."

وَأَمَّا التَّعْرِيضُ فِي الْقَذْفِ - فَقَدْ ذَكَرْنَاهُ فِي كَلَامِنَا فِي حَدِّ الْقَذْفِ وَتَقَصَّيْنَاهُ هُنَالِكَ أَنَّهُ لَا حَدَّ فِي التَّعْرِيضِ؛ لِأَنَّهُ لَمْ يُوجِبْ الْحَدَّ فِيهِ قُرْآنٌ، وَلَا سُنَّةٌ، عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا صَحِيحَةٌ، وَلَا سَقِيمَةٌ، وَلَا إجْمَاعٌ؛ لِأَنَّ الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - اخْتَلَفُوا فِي ذَلِكَ، وَلَيْسَ قَوْلُ بَعْضِهِمْ أَوْلَى مِنْ قَوْلِ بَعْضٍ - وَذَكَرْنَا صِحَّةَ الْخَبَرِ «عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي الَّذِي أَخْبَرَهُ: أَنَّ امْرَأَتَهُ وَلَدَتْ وَلَدًا أَسْوَدَ - وَهُوَ يُعَرِّضُ بِنَفْيِهِ» .

L42508 And regarding the one who informed him (peace be upon him) that his wife did not repel the hand of a toucher, the Messenger of Allah (peace and blessings be upon him) did not impose upon him the ḥadd punishment for false accusation of adultery. And success is from Allah, the Most High. 2301.

وَفِي «الَّذِي أَخْبَرَهُ - عَلَيْهِ السَّلَامُ -: أَنَّ امْرَأَتَهُ لَا تَرُدُّ يَدَ لَامِسٍ فَلَمْ يُوجِبْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَيْهِ حَدَّ الْقَذْفِ» - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. ٢٣٠١ -

The issue of drinking blood, and eating pork and carrion.

[مَسْأَلَة شُرْبُ الدَّمِ وَأَكْلُ الْخِنْزِيرِ وَالْمَيْتَةِ]

L42509

L42510–42512 [?] Abu Muhammad (may Allah have mercy on him) said: "I am Hammām." Ibn Mufarrij narrated to us: Ibn al-A'rabī narrated to us: al-Dabarī narrated to us [...] Abd al-Razzaq reported from Ibn Jurayj, who said: I asked Ata, "What about a man found eating pork who said, 'I craved it'? Or one who encountered a sacrificial camel and slaughtered it, knowing it was a sacrificial camel? Or a woman who broke her fast during Ramadan? Or a man who had intercourse with his menstruating wife? Or one who intentionally killed game within the sacred precinct? Or someone who drank wine and neglected some prayers?" He mentioned several scenarios. Ata replied, "God is not forgetful. Had He willed, He would have specified that as a named ruling. I have not heard anything about these matters." Then he reconsidered and

؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ، قُلْت لِعَطَاءٍ: رَجُلٌ وُجِدَ يَأْكُلُ لَحْمَ الْخِنْزِيرِ، وَقَالَ: اشْتَهَيْتُهُ - أَوْ مَرَّتْ بِهِ بَدَنَةٌ فَنَحَرَهَا، وَقَدْ عَلِمَ أَنَّهَا بَدَنَةٌ - أَوْ امْرَأَةٌ أَفْطَرَتْ فِي رَمَضَانَ - أَوْ أَصَابَ امْرَأَتَهُ حَائِضًا - أَوْ قَتَلَ صَيْدًا فِي الْحَرَمِ مُتَعَمِّدًا - أَوْ شَرِبَ خَمْرًا فَتَرَكَ بَعْضَ الصَّلَاةِ فَذَكَرَ جُمْلَةً؟ فَقَالَ عَطَاءٌ: مَا كَانَ اللَّهُ نَسِيًّا، لَوْ شَاءَ لَجَعَلَ ذَلِكَ شَيْئًا يُسَمِّيهِ، مَا سَمِعْتُ

said, “If someone does this once, nothing is required of him. But if he repeats it, let him be punished as a deterrent.” He also mentioned the one who kissed his wife and the one who had relations with his spouse during Ramadan.

فِي ذَلِكَ بِشَيْءٍ - ثُمَّ رَجَعَ إلَى أَنْ قَالَ: إذَا فَعَلَ ذَلِكَ مَرَّةً لَيْسَ عَلَيْهِ شَيْءٌ، وَإِذَا عَاوَدَ ذَلِكَ: فَلْيُنَكَّلْ - وَذَكَرَ الَّذِي قَبَّلَ امْرَأَتَهُ، وَالَّذِي أَصَابَ أَهْلَهُ فِي رَمَضَانَ.

L42513 And through him, up to Abd al-Razzaq from Ma’mar from Qatadah, who said: If someone eats the flesh of a pig and then the opportunity for repentance arises for him, if he repents, it is accepted; otherwise, he must be executed.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ قَتَادَةَ، قَالَ: إذَا أَكَلَ لَحْمَ الْخِنْزِيرِ، ثُمَّ عَرَضَتْ لَهُ التَّوْبَةُ، فَإِنْ تَابَ وَإِلَّا قُتِلَ.

L42514 From Ma’mar, from al-Zuhri regarding a man who broke his fast during Ramadan: If he was a transgressor among the transgressors, he is to be punished with a severe punishment and must also perform expiation. If he did that by adopting a religion other than Islam, repentance is presented to him.

بِهِ - إلَى مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي رَجُلٍ أَفْطَرَ فِي رَمَضَانَ، فَقَالَ: إذَا كَانَ فَاسِقًا مِنْ الْفُسَّاقِ: نُكِّلَ نَكَالًا مُوجِعًا، وَيُكَفِّرُ أَيْضًا - وَإِنْ كَانَ فَعَلَ ذَلِكَ انْتِحَالًا لِدِينٍ غَيْرِ الْإِسْلَامِ، عُرِضَتْ عَلَيْهِ التَّوْبَةُ.

L42515 And by him—to Abd al-Razzaq from Sufyan al-Thawri—regarding eating pig meat in all such cases: a punishment equivalent to the punishment for intoxicants.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ فِي أَكْلِ لَحْمِ الْخِنْزِيرِ فِي كُلِّ ذَلِكَ: حَدُّ حَدِّ الْخَمْرِ.

L42516 What we know from the statements of Abū Ḥanīfa, Mālik, al-Shāfiʿī, their followers, and our school’s scholars is that he is subject to *taʿzīr* (discretionary punishment) only.

وَالَّذِي نَعْرِفُهُ مِنْ قَوْلِ أَبِي حَنِيفَةَ، وَمَالِكٍ، وَالشَّافِعِيِّ، وَأَصْحَابِهِمْ، وَأَصْحَابِنَا: أَنَّهُ يُعَزَّرُ فَقَطْ.

L42517 Regarding the pig, there are five opinions: an opinion stating that the prescribed punishment (ḥadd) equals that for wine; an opinion asserting there is no punishment whatsoever for it—this being the view of Sufyān al-Thawrī; and the first of ʿAṭā”s two opinions.

فَهَذِهِ فِي الْخِنْزِيرِ خَمْسَةُ أَقْوَالٍ: قَوْلٌ فِيهِ: الْحَدُّ كَحَدِّ الْخَمْرِ - وَقَوْلٌ فِيهِ: أَنَّهُ لَا شَيْءَ فِيهِ أَصْلًا - وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ - وَأَوَّلُ قَوْلَيْ عَطَاءٍ -

L42518 The third ruling: he must be given the opportunity to repent. If he repents, he is spared; otherwise, he is to be executed. This is the opinion of Qatādah.

وَالثَّالِثُ: أَنَّهُ يُسْتَتَابُ، فَإِنْ تَابَ وَإِلَّا قُتِلَ - وَهُوَ قَوْلُ قَتَادَةَ

L42519 The fourth is that no penalty is imposed on him for the first instance. If he repeats it, he is subject to discretionary punishment.

وَالرَّابِعُ: أَنَّهُ لَا شَيْءَ عَلَيْهِ فِي أَوَّلِ مَرَّةٍ، فَإِنْ عَادَ عُزِّرَ.

L42520 The fifth opinion is that he should be subject to *taʿzīr* (discretionary punishment). Abū Muḥammad—may Allah have mercy on him—said: “We examined the evidence cited by those who hold that a fixed *ḥadd* punishment applies to that, but found nothing supporting their view except *qiyās* (legal

وَقَوْلَةٌ خَامِسَةٌ: أَنَّهُ يُعَزَّرُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَظَرْنَا فِيمَا يَحْتَجُّ بِهِ مَنْ رَأَى أَنَّ فِي ذَلِكَ حَدًّا؟ فَلَمْ نَجِدْ لَهُمْ شَيْئًا إلَّا الْقِيَاسَ، فَلَمَّا كَانَتْ الْخَمْرُ مَطْعُومَةً مُحَرَّمَةً، فِيهَا

analogy). Since wine is a prohibited consumable entailing a fixed *ḥadd* punishment, they argue by analogy to it that every prohibited consumable must likewise entail a fixed *ḥadd* punishment, as with wine—and this is the most valid *qiyās*."

L42521 In the world, if a qiyās is ever valid…

L42522 A group said: The Messenger of Allah (peace and blessings be upon him) did not prescribe it as obligatory, but the Companions unanimously agreed upon its obligation, thus it became binding through consensus.

L42523–42524 And a group maintained that it was legislated by analogy to the ḥadd punishment for qadhf [false accusation of unchastity], because it leads to intoxication, thereby constituting qadhf.

L42525 As for the group that asserted the Messenger of Allah—peace and blessings be upon him—established the legal punishment for intoxicants, their foundational principle is to analogize unmentioned matters to those explicitly stipulated. These individuals analogize sexual contact with the anus to sexual contact with the penis, since both are considered genitalia according to them. Would any person of sound judgment doubt that if analogical reasoning were correct, analogizing drinking blood, consuming pork, and eating carrion to drinking intoxicants would be more correct than analogizing the anus to the penis? Furthermore, they all analogize the ruling of rosewater and honey—in which a mouse or bird dies without altering its color, taste, or smell—to clarified butter in which a mouse dies. Yet analogizing pork, blood, and carrion to intoxicants remains more correct than any of their analogies, even if it were valid for a day.

L42526 As for the sandgrouse, it is not like the rat, for the sandgrouse is consumed while the rat is not consumed. The sandgrouse is valid in both the state of ordinary compliance and ritual consecration, yet it is impermissible to kill it there [in sacred precincts]. The rat is not valid, and it is permissible to kill it there.

L42527 Similarly, rose water and honey are not like ghee, because according to some scholars, honey is subject to zakāt, whereas ghee is not subject to

حَدٌّ مَحْدُودٌ: وَجَبَ أَنْ يَكُونَ كُلُّ مَطْعُومٍ مُحَرَّمٍ، فِيهِ حَدٌّ مَحْدُودٌ كَالْخَمْرِ، قِيَاسًا عَلَيْهَا - وَهَذَا أَصَحُّ قِيَاسٍ.

فِي الْعَالَمِ إِنْ صَحَّ قِيَاسٌ يَوْمًا مَا.

وَطَائِفَةٌ قَالَتْ: لَمْ يَفْرِضْهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَلَكِنَّ الصَّحَابَةَ أَجْمَعَتْ عَلَى فَرْضِهِ فَصَارَ وَاجِبًا بِالْإِجْمَاعِ.

وَطَائِفَةٌ قَالَتْ: إِنَّمَا فُرِضَتْ قِيَاسًا عَلَى حَدِّ الْقَذْفِ، لِأَنَّهَا تُؤَدِّي إِلَى السُّكْرِ، فَيَكُونُ فِيهِ الْقَذْفُ.

فَأَمَّا الْفِرْقَةُ الَّتِي قَالَتْ: إِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَرَضَ حَدَّ الْخَمْرِ، فَمِنْ أَصْلِهِمْ أَنْ يُقَاسَ الْمَسْكُوتُ عَنْهُ عَلَى الْمَنْصُوصِ عَلَيْهِ، وَهَؤُلَاءِ يَقِيسُونَ مَسَّ الدُّبُرِ عَلَى مَسِّ الذَّكَرِ، لِأَنَّ كِلَيْهِمَا عِنْدَهُمْ فَرْجٌ؟ وَلَا يَشُكُّ ذُو حِسٍّ سَلِيمٍ أَنَّهُ لَوْ صَحَّ الْقِيَاسُ، فَإِنَّ قِيَاسَ شُرْبِ الدَّمِ، وَأَكْلِ الْخِنْزِيرِ، وَالْمَيْتَةِ، عَلَى شُرْبِ الْخَمْرِ أَصَحُّ مِنْ قِيَاسِ الدُّبُرِ عَلَى الذَّكَرِ؟ وَكُلُّهُمْ يَقِيسُونَ حُكْمَ مَاءِ الْوَرْدِ، وَالْعَسَلِ، تَمُوتُ فِيهِ الْفَأْرَةُ، أَوْ الْقَطَاةُ، فَلَا تُغَيِّرُ مِنْهُ لَوْنًا وَلَا طَعْمًا وَلَا رِيحًا، عَلَى السَّمْنِ تَمُوتُ فِيهِ الْفَأْرَةُ - وَقِيَاسُ الْخِنْزِيرِ، وَالدَّمِ، وَالْمَيْتَةِ، عَلَى الْخَمْرِ أَصَحُّ مِنْ كُلِّ قِيَاسٍ لَهُمْ، وَلَوْ صَحَّ يَوْمًا مَا.

وَأَمَّا الْقَطَاةُ فَلَيْسَتْ كَالْفَأْرَةِ، لِأَنَّ الْقَطَاةَ تُؤْكَلُ، وَالْفَأْرَةُ لَا تُؤْكَلُ، وَالْقَطَاةُ تُجْزِي فِي الْحِلِّ وَالْإِحْرَامِ، وَلَا يَحِلُّ قَتْلُهَا هُنَالِكَ - وَالْفَأْرَةُ لَا تُجْزِي، وَيَحِلُّ قَتْلُهَا هُنَالِكَ.

zakāt. According to some, rose water is not subject to ribā, while all scholars agree that ghee is subject to ribā. This demonstrates that they abandoned the qiyās they invoke for argumentation, and that they neither perform it well nor apply it consistently.

وَكَذَلِكَ مَاءُ الْوَرْدِ وَالْعَسَلِ، لَيْسَ كَالسَّمْنِ؛ لِأَنَّ الْعَسَلَ عِنْدَ بَعْضِهِمْ فِيهِ الزَّكَاةُ، وَالسَّمْنُ لَا زَكَاةَ فِيهِ، وَمَاءُ الْوَرْدِ لَا رِبَا فِيهِ عِنْدَ بَعْضِهِمْ، وَالسَّمْنُ فِيهِ الرِّبَا عِنْدَ جَمِيعِهِمْ - فَظَهَرَ تَرْكُهُمْ الْقِيَاسَ الَّذِي بِهِ يَحْتَجُّونَ، وَأَنَّهُمْ لَا يُحْسِنُونَهُ، وَلَا يَطْرُدُونَهُ.

L42528 As for the group that asserts: "Indeed, the Companions—may Allah be pleased with them—affirmed the ḥadd penalty for khamr (fermented intoxicants), and qiyās is also binding upon them, just as it was binding upon the aforementioned group."

وَأَمَّا الطَّائِفَةُ الَّتِي تَقُولُ: إنَّ الصَّحَابَةَ - رَضِيَ اللَّهُ عَنْهُمْ - فَرَضُوا حَدَّ الْخَمْرِ، وَالْقِيَاسُ أَيْضًا لَازِمٌ لَهُمْ، كَمَا لَزِمَ الطَّائِفَةَ الْمَذْكُورَةَ.

L42529 As for the group that stated that the punishment for khamr was prescribed by analogy to the punishment for false accusation of unchastity (qadhf), analogy is more binding for them. For just as the punishment for khamr was prescribed by analogy to qadhf, so too should the punishment for eating pork, carrion, and drinking blood be prescribed by analogy to the punishment for khamr—with the majority of them permitting analogy based on the analogized case.

وَأَمَّا الطَّائِفَةُ الَّتِي قَالَتْ: إنَّ حَدَّ الْخَمْرِ إنَّمَا فُرِضَ قِيَاسًا عَلَى حَدِّ الْقَذْفِ، وَالْقِيَاسُ لِهَؤُلَاءِ أَلْزَمُ؛ لِأَنَّهُ كَمَا جَازَ أَنْ يُفْرَضَ حَدُّ الْخَمْرِ قِيَاسًا عَلَى حَدِّ الْقَذْفِ، فَكَذَلِكَ يُفْرَضُ حَدُّ أَكْلِ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَشُرْبِ الدَّمِ، قِيَاسًا عَلَى حَدِّ الْخَمْرِ - وَجُمْهُورُهُمْ يُجِيزُونَ الْقِيَاسَ عَلَى الْمَقِيسِ.

L42530 Thus, it became clear what we stated regarding the invalidity of their statements.

فَوَضَحَ مَا قُلْنَاهُ مِنْ فَسَادِ أَقْوَالِهِمْ.

L42531–42533 Then we examined the statement of those who said: "He should be called upon to repent; if he repents, otherwise he is killed." We found that he had applied the ruling of apostasy in his case based on his own opinion—and this is erroneous, for it constitutes an unsubstantiated claim. It is impermissible to judge a Muslim as an unbeliever on account of a sin he committed unless there exists sound textual evidence or an indisputable consensus establishing that... He thereby becomes a disbeliever, and that act is disbelief. We have neither an explicit text nor a consensus stating that one who eats pork, carrion, or blood without deeming it lawful is a disbeliever. Rather, he is a disobedient, sinful transgressor—unless he commits this act while deeming it lawful, in which case he becomes a disbeliever at that moment. This is because the defiant rejection of what has been established by consensus from the texts of the Quran and the Sunnah of the Messenger of Allah—peace and blessings be upon him—is disbelief about which there is no disagreement.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: يُسْتَتَابُ، فَإِنْ تَابَ وَإِلَّا قُتِلَ، فَوَجَدْنَاهُ قَدْ حَكَمَ لَهُ بِحُكْمِ الرِّدَّةِ عِنْدَهُ - وَهَذَا خَطَأٌ؛ لِأَنَّهُ قَوْلٌ بِلَا بُرْهَانٍ، وَلَا يَجُوزُ أَنْ يُحْكَمَ عَلَى مُسْلِمٍ بِالْكُفْرِ مِنْ أَجْلِ مَعْصِيَةٍ أَتَى بِهَا إلَّا أَنْ يَأْتِيَ نَصٌّ صَحِيحٌ، أَوْ إجْمَاعٌ مُتَيَقَّنٌ، عَلَى أَنَّهُ يَكُونُ بِذَلِكَ كَافِرًا، وَأَنَّ ذَلِكَ الْفِعْلَ كُفْرٌ، وَلَيْسَ مَعَنَا نَصٌّ، وَلَا إجْمَاعٌ، عَلَى أَنَّ آكِلَ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَالدَّمِ غَيْرَ مُسْتَحِلٍّ لِذَلِكَ: كَافِرٌ، وَلَكِنَّهُ عَاصٍ، مُذْنِبٌ، فَاسِقٌ، إلَّا أَنْ يَفْعَلَ ذَلِكَ مُسْتَحِلًّا لَهُ، فَيَكُونُ كَافِرًا حِينَئِذٍ؛ لِأَنَّ مُعَانَدَةَ مَا صَحَّ الْإِجْمَاعُ عَلَيْهِ مِنْ نُصُوصِ الْقُرْآنِ، وَسُنَنِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كُفْرٌ لَا خِلَافَ فِيهِ - فَسَقَطَ هَذَا الْقَوْلُ لِمَا ذَكَرْنَا، وَلِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أُمِرْتُ أَنْ

Thus, this claim is dismissed due to what we have mentioned and the statement of the Messenger of Allah—peace and blessings be upon him—: "I have been commanded to fight people until they testify that there is no deity but Allah and that I am Muhammad, the Messenger of Allah, establish salah, and give zakah. When they do so, their lives and wealth are safeguarded from me except by the due of Islam, and their reckoning rests with Allah."

The issue of one who intentionally neglects the prayer until its time elapses.

L42534

L42535 Issue 2302: Regarding one who deliberately abandons prayer until its time expires. Abu Muhammad—may Allah have mercy on him—said: Malik and Al-Shafi'i maintained that whoever states, "Prayer is an obligatory duty but I do not intend to pray," should be given respite until the prayer time elapses, then executed. Abu Hanifa, Abu Sulayman, and their followers said: He is not to be killed but disciplined until he prays. Abu Muhammad—may Allah have mercy on him—commented: As for Malik and Al-Shafi'i, they regard the one who abandons prayer as we described to remain a Muslim, for they permit his children to inherit his wealth, pray over him themselves, bury him among Muslims, maintain his marriage bond, execute his will, and allow him to inherit from deceased Muslim heirs who preceded him. Since this is their position, their ruling to kill him becomes invalid, for a Muslim's blood is inviolable except in three cases: apostasy after faith, adultery after being muhsan, or murder. The deliberate abandoner of prayer—as described—is necessarily either a disbeliever or not. If he were a disbeliever, they [Malik and Al-Shafi'i] would not hold this view, for this would require imposing upon him the rulings applicable to apostates—dissolving his marriage and other legal consequences. Since he is neither a disbeliever, nor a murderer, nor an adulterer, nor a combatant, nor one who has received the hadd punishment for drinking alcohol three times, his blood remains inviolable by explicit text. Thus their opinion is conclusively invalidated without ambiguity—all praise is due to Allah, Lord of the Worlds.[1]

[1] **Qur'an references (L42535):** Qur'an 37:182 (As-Saffat).

أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنِّي مُحَمَّدٌ رَسُولُ اللَّهِ وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّ الْإِسْلَامِ، وَحِسَابُهُمْ عَلَى اللَّهِ» .

[مَسْأَلَة تَارِكُ الصَّلَاةِ عَمْدًا حَتَّى يَخْرُجَ وَقْتُهَا]

٢٣٠٢ - مَسْأَلَةٌ: تَارِكُ الصَّلَاةِ عَمْدًا حَتَّى يَخْرُجَ وَقْتُهَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: ذَهَبَ مَالِكٌ، وَالشَّافِعِيُّ إلَى أَنَّ مَنْ قَالَ: الصَّلَاةُ حَقٌّ فَرْضٌ إلَّا أَنِّي لَا أُرِيدُ أَنْ أُصَلِّيَ - فَإِنَّهُ يُتَأَنَّى بِهِ حَتَّى يَخْرُجَ وَقْتُ الصَّلَاةِ، ثُمَّ يُقْتَلُ - وَقَالَ أَبُو حَنِيفَةَ، وَأَبُو سُلَيْمَانَ، وَأَصْحَابُهُمَا: لَا قَتْلَ عَلَيْهِ، لَكِنْ يُعَزَّرُ حَتَّى يُصَلِّيَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَمَّا مَالِكٌ، وَالشَّافِعِيُّ، فَإِنَّهُمَا يَرَيَانِ تَارِكَ الصَّلَاةِ الَّذِي ذَكَرْنَا مُسْلِمًا؛ لِأَنَّهُمَا يُوَرِّثَانِ مَالَهُ وَلَدَهُ، وَيُصَلِّيَانِ عَلَيْهِ، وَيَدْفِنَانِهِ مَعَ الْمُسْلِمِينَ، وَلَا يُفَرِّقَانِ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ، وَيُنْفِذَانِ وَصِيَّتَهُ، وَيُوَرِّثَانِهِ مَنْ مَاتَ قَبْلَهُ مِنْ وَرَثَتِهِ مِنْ الْمُسْلِمِينَ، فَإِذْ ذَلِكَ كَذَلِكَ فَقَدْ سَقَطَ قَوْلُهُمَا فِي قَتْلِهِ؛ لِأَنَّهُ لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إيمَانٍ، أَوْ زَنَى بَعْدَ إحْصَانٍ، أَوْ نَفْسٌ بِنَفْسٍ وَتَارِكُ الصَّلَاةِ مُتَعَمِّدًا - كَمَا ذَكَرْنَا - لَا يَخْلُو مِنْ أَنْ يَكُونَ بِذَلِكَ كَافِرًا، أَوْ يَكُونَ غَيْرَ كَافِرٍ - فَإِنْ كَانَ كَافِرًا، فَهُمْ لَا يَقُولُونَ بِذَلِكَ؛ لِأَنَّهُمْ لَوْ قَالُوهُ لَلَزِمَهُمْ أَنْ يُلْزِمُوهُ حُكْمَ الْمُرْتَدِّ فِي التَّفْرِيقِ بَيْنَهُ وَبَيْنَ امْرَأَتِهِ، وَفِي سَائِرِ أَحْكَامِهِ - فَإِذْ لَيْسَ كَافِرًا، وَلَا قَاتِلًا، وَلَا زَانِيًا مُحْصَنًا، وَلَا مُحَارِبًا، وَلَا مَحْدُودًا فِي الْخَمْرِ ثَلَاثَ مَرَّاتٍ، فَدَمُهُ حَرَامٌ بِالنَّصِّ، فَسَقَطَ قَوْلُهُمْ بِيَقِينٍ لَا إشْكَالَ فِيهِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L42536–42538 If they argue using the established report we previously mentioned from the statement of the Messenger of Allah—may Allah bless him and grant him peace—"I have been commanded to fight the people until they testify that there is no deity except Allah, that I am Muhammad the Messenger of Allah, and establish prayer." "And give Zakat. If they do so, they will be guaranteed protection from me for their lives and wealth, except by the right of Islam, and their account is with Allah."

فَإِنْ احْتَجُّوا بِالْخَبَرِ الثَّابِتِ الَّذِي ذَكَرْنَاهُ آنِفًا مِنْ قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أُمِرْت أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوا أَنْ لَا إلَهَ إلَّا اللَّهُ وَأَنِّي مُحَمَّدٌ رَسُولُ اللَّهِ وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ فَإِذَا فَعَلُوا ذَلِكَ عَصَمُوا مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إلَّا بِحَقِّ الْإِسْلَامِ وَحِسَابُهُمْ عَلَى اللَّهِ» .

L42539 "And by the statement of Allah, the Exalted: 'So kill the polytheists wherever you find them, capture them, besiege them, and lie in wait for them at every ambush point. Then if they repent, establish prayer, and give zakāh, release them' [At-Tawbah 9:5]."[2]

وَبِقَوْلِ اللَّهِ تَعَالَى {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ وَاحْصُرُوهُمْ وَاقْعُدُوا لَهُمْ كُلَّ مَرْصَدٍ فَإِنْ تَابُوا وَأَقَامُوا الصَّلاةَ وَآتَوُا الزَّكَاةَ فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] .

L42540 They said: It is impermissible to abandon someone who neither prays nor gives Zakat.

قَالُوا: وَلَا يَجُوزُ تَخْلِيَةُ مَنْ لَمْ يُصَلِّ، وَلَمْ يُزَكِّ.

L42541 They mentioned what was narrated to us via the chain of Imam Muslim: from Haddab ibn Khalid, from Hammam ibn Yahya, from Qatadah, from al-Hasan, from Dabba ibn Muhsin, from Umm Salamah, the Mother of the Believers, that the Messenger of Allah (peace and blessings of Allah be upon him) said: "There will emerge rulers whom you will recognize [their evil] and disapprove. Whoever recognizes [their evil] is free from blame, and whoever disapproves is secure. But as for one who is pleased [with them] and follows them..." They said: "Should we not fight them?" He replied: "No, so long as they pray."

وَذَكَرُوا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا هَدَّابُ بْنُ خَالِدٍ نا هَمَّامُ بْنُ يَحْيَى نا قَتَادَةُ عَنْ الْحَسَنِ عَنْ ضَبَّةَ بْنِ مُحْصَنٍ عَنْ أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «سَتَكُونُ أُمَرَاءُ فَتَعْرِفُونَ وَتُنْكِرُونَ، فَمَنْ عَرَفَ بَرِئَ وَمَنْ أَنْكَرَ سَلِمَ، قَالَ: فَمَنْ رَضِيَ وَتَابِعَ، قَالُوا: أَفَلَا نُقَاتِلُهُمْ؟ قَالَ: لَا، مَا صَلُّوا» .

L42542 Through the chain of Muslim: Dawud ibn Rashid narrated to us, Al-Walid ibn Muslim narrated to us, Abd al-Rahman ibn Yazid ibn Jabir informed me from the freed slave of Banu Fazarah, Zuraiq ibn Hayyan, that he heard Sulaym ibn Qarẓah, the paternal cousin of Awf ibn Malik al-Ashja'i, say: I heard Awf ibn Malik say: I heard the Messenger of Allah—peace and blessings of Allah be upon him—say: "The best of your leaders are those whom you love and they love you, you send blessings upon them and they send blessings upon you. The worst of your leaders are those whom you hate and they hate you, you curse them and they curse you." We said: O Messenger of Allah,

وَمِنْ طَرِيقِ مُسْلِمٍ نا دَاوُد بْنُ رَشِيدٍ نا الْوَلِيدُ بْنُ مُسْلِمٍ نا عَبْدُ الرَّحْمَنِ بْنُ يَزِيدَ بْنِ جَابِرٍ أَخْبَرَنِي مَوْلَى بَنِي فَزَارَةَ زُرَيْقُ بْنُ حَيَّانَ أَنَّهُ سَمِعَ سُلَيْمَ بْنَ قَرَظَةَ ابْنَ عَمِّ عَوْفِ بْنِ مَالِكٍ الْأَشْجَعِيَّ يَقُولُ سَمِعْت عَوْفَ بْنَ مَالِكٍ يَقُولُ سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «خِيَارُ أَئِمَّتِكُمْ الَّذِينَ تُحِبُّونَهُمْ وَيُحِبُّونَكُمْ وَتُصَلُّونَ عَلَيْهِمْ وَيُصَلُّونَ عَلَيْكُمْ، وَشِرَارُ أَئِمَّتِكُمْ الَّذِينَ تُبْغِضُونَهُمْ وَيُبْغِضُونَكُمْ وَتَلْعَنُونَهُمْ وَيَلْعَنُونَكُمْ، قُلْنَا: يَا رَسُولَ اللَّهِ

[2] **Qur'an references (L42539):** Qur'an 9:5 (At-Tawbah).

should we not renounce allegiance to them in that case? He said: "No, as long as they establish prayer among you. No, as long as they establish prayer among you." And he mentioned the remainder of the narration.[3]

L42543 The two hadiths which state: "I forbade the killing of those who pray, thus those are the ones whom Allah has forbidden me to kill," and "No, perhaps he is praying."

L42544–42546 And through the chain of Muslim: Qutaybah narrated to us, Abdul Wahid ibn Ziyad narrated to us from Umarah ibn al-Qa'qa', on the authority of Abd al-Rahman ibn Abi al-Nu'm, who said: I heard Abu Sa'id al-Khudri say, "Ali ibn Abi Talib sent to the Messenger of Allah—may Allah bless him and grant him peace—a small gold nugget in a hide tanned with qaraz that had not been purified of its earthy impurities," and he mentioned the hadith. In it, a man with sunken eyes, prominent cheekbones, a protruding forehead, a thick beard, a shaved head, and tucked-up garments stood and said, "O Messenger of Allah, fear Allah!" The Prophet replied, "Woe to you! Am I not the most deserving of the people of the earth to fear Allah?" The man then turned away. Khalid ibn al-Walid said, "O Messenger of Allah, shall I strike his neck?" The Prophet responded, "Perhaps he prays?"

Abu Muhammad (may Allah have mercy on him) said: Through Muslim's chain: Hannad ibn al-Sariyy narrated to us, Abu al-Ahwas narrated to us from Sa'id ibn Masruq from 'Abd al-Rahman ibn Abi Nu'm from Abu Sa'id al-Khudri, who said: "Ali ibn Abi Talib sent a piece of unrefined gold to the Prophet (peace be upon him)," and he mentioned the incident. In it, a man with a thick beard, prominent cheekbones, sunken eyes, a protruding forehead, and a shaved head came and said, "Fear Allah, O Muhammad!" The Messenger of Allah (peace be upon him) replied, "Who will obey Allah if I do not obey Him? Would Allah entrust me with the people of the earth, and you would not entrust me?" The man then turned away. A man from the group sought permission to kill him—they believed it was Khalid ibn al-Walid—but the Messenger of Allah (peace be upon him) said, "From the descendants of this man will emerge a people who recite the Quran, but it

[3] **Hadith references (L42542):** Sahih Muslim 1855b.

أَفَلَا نُنَابِذُهُمْ عِنْدَ ذَلِكَ؟ قَالَ: لَا، مَا أَقَامُوا فِيكُمُ الصَّلَاةَ، لَا، مَا أَقَامُوا فِيكُمُ الصَّلَاةَ» وَذَكَرَ بَاقِيَ الْخَبَرِ.

وَالْحَدِيثَيْنِ اللَّذَيْنِ فِيهِمَا «نَهَيْتُ عَنْ قَتْلِ الْمُصَلِّينَ فَأُولَئِكَ الَّذِينَ نَهَانِي اللَّهُ عَنْ قَتْلِهِمْ» و " لَا لَعَلَّهُ يَكُونُ يُصَلِّي ".

وَمِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ نا عَبْدُ الْوَاحِدِ - هُوَ ابْنُ زِيَادٍ - عَنْ عُمَارَةَ بْنِ الْقَعْقَاعِ نا عَبْدُ الرَّحْمَنِ بْنُ أَبِي النُّعْمِ قَالَ: سَمِعْتُ أَبَا سَعِيدٍ الْخُدْرِيَّ يَقُولُ «بَعَثَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذُهَيْبَةٍ فِي أَدِيمٍ مَقْرُوظٍ لَمْ تُحَصَّلْ مِنْ تُرَابِهَا وَذَكَرَ الْحَدِيثَ - وَفِيهِ فَقَامَ رَجُلٌ غَائِرُ الْعَيْنَيْنِ مُشْرِفُ الْوَجْنَتَيْنِ، نَاشِزُ الْجَبْهَةِ، كَثُّ اللِّحْيَةِ، مَحْلُوقُ الرَّأْسِ مُشَمِّرُ الْإِزَارِ فَقَالَ: يَا رَسُولَ اللَّهِ اتَّقِ اللَّهَ، فَقَالَ: وَيْلَكَ، أَلَسْتُ أَحَقَّ أَهْلِ الْأَرْضِ أَنْ يَتَّقِيَ اللَّهَ؟ قَالَ: ثُمَّ وَلَّى الرَّجُلُ، فَقَالَ خَالِدُ بْنُ الْوَلِيدِ: يَا رَسُولَ اللَّهِ أَلَا أَضْرِبُ عُنُقَهُ؟ قَالَ: لَعَلَّهُ يَكُونُ يُصَلِّي؟» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمِنْ طَرِيقِ مُسْلِمٍ نا هَنَّادُ بْنُ السَّرِيِّ نا أَبُو الْأَحْوَصِ عَنْ سَعِيدِ بْنِ مَسْرُوقٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي نُعْمٍ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ «بَعَثَ عَلِيُّ بْنُ أَبِي طَالِبٍ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِذَهَبِيَّةٍ فِي تُرْبَتِهَا فَذَكَرَ الْخَبَرَ. وَفِيهِ فَجَاءَ رَجُلٌ كَثُّ اللِّحْيَةِ مُشْرِفُ الْوَجْنَتَيْنِ غَائِرُ الْعَيْنَيْنِ نَاتِئُ الْجَبِينِ مَحْلُوقُ الرَّأْسِ، فَقَالَ: اتَّقِ اللَّهَ يَا مُحَمَّدُ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَمَنْ يُطِعْ اللَّهَ إِنْ لَمْ أُطِعْهُ؟ أَيَأْمَنُنِي عَلَى أَهْلِ الْأَرْضِ، وَلَا تَأْمَنُنِي - ثُمَّ أَدْبَرَ الرَّجُلُ، فَاسْتَأْذَنَ رَجُلٌ مِنْ الْقَوْمِ فِي قَتْلِهِ - يَرَوْنَ أَنَّهُ خَالِدُ بْنُ الْوَلِيدِ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَخْرُجُ مِنْ ضِئْضِئِ هَذَا قَوْمٌ يَقْرَءُونَ الْقُرْآنَ لَا يُجَاوِزُ حَنَاجِرَهُمْ، يَقْتُلُونَ أَهْلَ الْإِسْلَامِ وَيَدَعُونَ أَهْلَ الْأَوْثَانِ، يَمْرُقُونَ مِنْ

will not pass beyond their throats. They will kill the adherents of Islam and spare the idolaters. They will bolt from Islam as an arrow passes through game. If I live to confront them, I will surely annihilate them as ʻAd was annihilated."

Abu Muhammad (may Allah have mercy on him) said: The Prophet (peace be upon him) declared that he would fight people until they professed, "There is no god but Allah," established prayer, and gave zakat. Once they did so, their blood became inviolable. Thus, it is confirmed that if they fail to do so, their blood is permissible. He also forbade killing leaders as long as they pray.

L42547 Thus, it is established that if they do not pray, they are to be fought.

L42548 And it has been established that killing during prayer is forbidden; it necessarily follows that killing outside of prayer is permissible.

L42549 It has been established as authentic that he prohibited killing those performing the ritual prayer.

L42550 It has thus been established that he did not prohibit killing those who do not pray—we do not know of any argument they have for permitting the killing of those who do not pray besides this—and all of it provides no argument for them, in accordance with what we shall clarify, God, the Exalted, willing. As for the verse—its text concerns fighting the polytheists until they establish prayer and give zakāt.

L42551–42553 No two individuals in the Ummah disagree that the Messenger of Allah—peace and blessings be upon him—never ceased calling the polytheists to faith (to attain Allah the Exalted's pleasure and noble reward) until his death, and that throughout all this, he did not compel anyone who... He accepted his call to Islam, remaining until the time of prayer came so he prayed, then until a full year had elapsed so he gave zakah, then he released him—this is a duty none may oppose.

L42554 As for the narrations on this matter: Regarding the ḥadīth of Umm Salamah and ʿAwf ibn Mālik—may Allah be pleased with them—there is no proof for their position in this, for it only prohibits killing rulers as long as they pray.

الْإِسْلَامِ كَمَا يَمْرُقُ السَّهْمُ مِنْ الرَّمِيَّةِ، لَئِنْ أَدْرَكْتُهُمْ لَأَقْتُلَنَّهُمْ قَتْلَ عَادٍ» ؟ . قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَأَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّهُ يُقَاتِلُ النَّاسَ حَتَّى يَقُولُوا: لَا إلَهَ إلَّا اللَّهُ، وَيُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ، فَإِذَا فَعَلُوا ذَلِكَ حَرُمَتْ دِمَاؤُهُمْ. فَصَحَّ أَنَّهُمْ إنْ لَمْ يَفْعَلُوا ذَلِكَ حَلَّتْ دِمَاؤُهُمْ، وَنَهَى عَنْ قَتْلِ الْأَئِمَّةِ مَا صَلَّوْا.

فَصَحَّ أَنَّهُمْ إنْ لَمْ يُصَلُّوا قُوتِلُوا.

وَصَحَّ أَنَّ الْقَتْلَ بِالصَّلَاةِ حَرَامٌ، فَوَجَبَ أَنَّهُ بِغَيْرِ الصَّلَاةِ حَلَالٌ.

وَصَحَّ أَنَّهُ نَهَى عَنْ قَتْلِ الْمُصَلِّينَ.

فَصَحَّ أَنَّهُ لَمْ يَنْهَ عَنْ قَتْلِ غَيْرِ الْمُصَلِّينَ - مَا نَعْلَمُ لَهُمْ حُجَّةً فِي إبَاحَةِ قَتْلِ مَنْ لَا يُصَلِّي غَيْرَ هَذَا - وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ، عَلَى مَا نُبَيِّنُ إنْ شَاءَ اللَّهُ تَعَالَى: أَمَّا الْآيَةَ - فَإِنَّ نَصَّهَا قِتَالُ الْمُشْرِكِينَ حَتَّى يُقِيمُوا الصَّلَاةَ، وَيُؤْتُوا الزَّكَاةَ.

وَلَا يَخْتَلِفُ اثْنَانِ مِنْ الْأُمَّةِ فِي أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَمْ يَزَلْ يَدْعُو الْمُشْرِكِينَ إلَى الْإِيمَانِ حَتَّى مَاتَ - إلَى رِضْوَانِ اللَّهِ تَعَالَى وَكَرَامَتِهِ - وَأَنَّهُ فِي كُلِّ ذَلِكَ لَمْ يَقِفْ مَنْ أَجَابَهُ إلَى الْإِسْلَامِ حَتَّى يَأْتِيَ وَقْتُ صَلَاةٍ فَيُصَلِّيَ، ثُمَّ حَتَّى يَحُولَ الْحَوْلُ فَيُزَكِّيَ، ثُمَّ يُطْلِقُهُ - هَذَا مَا لَا يَقْدِرُ أَحَدٌ عَلَى دَفْعِهِ.

وَأَمَّا الْأَحَادِيثُ فِي ذَلِكَ: فَأَمَّا حَدِيثُ أُمِّ سَلَمَةَ، وَعَوْفِ بْنِ مَالِكٍ - رَضِيَ اللَّهُ عَنْهُمَا - فَلَا حُجَّةَ لَهُمْ فِي ذَلِكَ، فَإِنَّهُ لَيْسَ فِيهِ إِلَّا الْمَنْعُ مِنْ قَتْلِ الْوُلَاةِ مَا صَلُّوا وَلَسْنَا مَعَهُمْ فِي مَسْأَلَةِ الْقِتَالِ، وَإِنَّمَا نَحْنُ مَعَهُمْ فِي مَسْأَلَةِ الْقَتْلِ صَبْرًا وَلَيْسَ كُلُّ مَنْ جَازَ قَتْلُهُ إِذَا قُدِرَ عَلَيْهِ قُتِلَ - قَالَ اللَّهُ تَعَالَى {وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا} [الحجرات: ٩] إِلَى قَوْلِه تَعَالَى: {الْمُقْسِطِينَ} [الحجرات: ٩] فَأَمَرَ اللَّهُ تَعَالَى بِقِتَالِ الْبُغَاةِ مِنْ الْمُؤْمِنِينَ إِلَى أَنْ يَفِيئُوا، ثُمَّ حَرَّمَ قَتْلَهُمْ إِذَا فَاءُوا.

We do not share their view regarding the issue of combat; we only align with them concerning the matter of execution in captivity. Not everyone who may lawfully be killed when captured must necessarily be executed. Allah the Exalted said: “If two groups of believers fight each other, reconcile between them...” (al-Ḥujurāt 49:9) up to His words: “those who act justly.” Thus, Allah commanded fighting the rebels among the believers until they desist, then forbade killing them once they cease.[4]

وَهَكَذَا كُلُّ مَنْ مَنَعَ حَقًّا مِنْ أَيِّ حَقٍّ كَانَ - وَلَوْ أَنَّهُ فِلْسٌ - وَجَبَ عَلَيْهِ لِلَّهِ تَعَالَى، أَوْ لِآدَمِيٍّ، وَامْتَنَعَ دُونَ أَدَائِهِ فَإِنَّهُ قَدْ حَلَّ قِتَالُهُ؛ لِأَنَّهُ بَاغٍ عَلَى أَخِيهِ، وَبَاغٍ فِي الدِّينِ.

L42555 And in this manner, whoever withholds any right—be it even a single coin—that is incumbent upon him toward Allah, the Exalted, or toward another person, and refuses to fulfill it, then indeed it is permissible to fight him, for he is a transgressor against his brother and a transgressor in religion.

وَكَذَلِكَ كُلُّ مَنْ امْتَنَعَ مِنْ عَمَلٍ لِلَّهِ تَعَالَى لَزِمَهُ وَامْتَنَعَ دُونَهُ، وَلَا فَرْقَ، فَإِذَا قُدِرَ عَلَيْهِمْ أُجْبِرُوا عَلَى أَدَاءِ مَا عَلَيْهِمْ بِالتَّعْزِيرِ وَالسَّجْنِ.

L42556 Similarly, anyone who refuses to perform an act ordained by Allah the Exalted that is incumbent upon them and persists in refusing it—there is no difference. If they are subdued, they are to be compelled by means of discretionary punishment and imprisonment to fulfill their obligation.

كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِيمَنْ أَتَى مُنْكَرًا فَلَا يُزَالُ يُؤَدَّبُ حَتَّى يُؤَدِّيَ مَا عَلَيْهِ أَوْ يَمُوتَ - غَيْرَ مَقْصُودٍ إِلَى قَتْلِهِ - وَحُرِمَتْ دِمَاؤُهُمْ بِالنَّصِّ وَالْإِجْمَاعِ، وَتَارِكُ الصَّلَاةِ الْمُمْتَنِعِ مِنْهَا وَاحِدٌ مِنْ هَؤُلَاءِ، إِنْ امْتَنَعَ قُوتِلَ، وَإِنْ لَمْ يَمْتَنِعْ لَمْ يَحِلَّ قَتْلُهُ؛ لِأَنَّهُ لَمْ يُوجِبْ ذَلِكَ نَصٌّ وَلَا إِجْمَاعٌ، بَلْ يُؤَدَّبُ حَتَّى يُؤَدِّيَهَا أَوْ يَمُوتَ كَمَا قُلْنَا - غَيْرَ مَقْصُودٍ إِلَى قَتْلِهِ - وَلَا فَرْقَ.

L42557 As the Messenger of Allah—may Allah’s peace and blessings be upon him—commanded regarding those who commit evil: they are to be disciplined continually until they fulfill their obligation or die—without intending to kill them. Shedding their blood is prohibited by textual evidence and consensus. The prayer-neglecter who refuses to perform it is among these; if he refuses, he is compelled by force, and if he does not refuse, it is unlawful to kill him, for neither textual evidence nor consensus mandates this. Rather, he is disciplined until he performs it or dies, as we stated—without intending to kill him—and no distinction is made.

فَصَحَّ أَنَّ هَذَيْنِ الْحَدِيثَيْنِ - حَدِيثُ أُمِّ سَلَمَةَ، وَحَدِيثُ عَوْفٍ - إِنَّمَا هُوَ فِي بَابِ الْقِتَالِ لِلْأَئِمَّةِ، لَا فِي بَابِ الْقَتْلِ الْمَقْدُورِ عَلَيْهِ لَا يُصَلِّي.

L42558 Thus, it is established that these two hadiths—the hadith of Umm Salamah and the hadith of ‘Awf—pertain solely to the chapter of fighting for the rulers, not to the chapter of the decreed killing of one who does not pray.

[4] **Qur’an references (L42554):** Qur’an 49:9 (Al-Hujurat).

L42559–42561 As for the narration of Abu Sa'id al-Khudri, "Perhaps he is praying," it only prohibits the killing of one who is praying, and it does not mention killing one who does not pray at all. Rather, the matter remains unaddressed. When the Messenger of Allah—peace and blessings be upon him—remains silent about a ruling, it is not permissible for anyone to attribute to him—peace be upon him—what he did not say, thereby lying against him and asserting what he intended without knowledge, thus taking his seat in the Fire. Abu Muhammad—may Allah have mercy on him—said: As for "I prohibited the killing of those who pray" and "Those are the ones I was prohibited from." Allah is free from them. Truly, it is impermissible to kill one who prays except by an explicit text regarding his execution. There is no mention whatsoever in it of killing someone who does not pray if he professes prayer openly—no basis for it.

وَأَمَّا حَدِيثُ أَبِي سَعِيدٍ الْخُدْرِيِّ " لَعَلَّهُ يُصَلِّي " فَإِنَّمَا فِيهِ الْمَنْعُ مِنْ قَتْلِ مَنْ يُصَلِّي، وَلَيْسَ فِيهِ قَتْلُ مَنْ لَا يُصَلِّي أَصْلًا، بَلْ هُوَ مَسْكُوتٌ عَنْهُ، وَإِذَا سَكَتَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَنْ حُكْمٍ فَلَا يَحِلُّ لِأَحَدٍ أَنْ يَقُولَهُ - عَلَيْهِ السَّلَامُ - مَا لَمْ يَقُلْ، فَيَكْذِبُ عَلَيْهِ، وَيُخْبِرُ عَنْ مُرَادِهِ بِمَا لَا عِلْمَ لَهُ بِهِ فَيَتَبَوَّأُ مَقْعَدَهُ مِنْ النَّارِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا «نَهَيْتُ عَنْ قَتْلِ الْمُصَلِّينَ» و " أُولَئِكَ الَّذِينَ نَهَانِي اللَّهُ عَنْهُمْ " فَنَعَمْ، لَا يَحِلُّ قَتْلُ مُصَلٍّ إلَّا بِنَصٍّ وَارِدٍ فِي قَتْلِهِ، وَلَيْسَ فِيهِ ذِكْرٌ لِقَتْلِ مَنْ لَيْسَ مُصَلِّيًا إذَا أَقَرَّ بِالصَّلَاةِ، أَصْلًا.

L42562 We have said: It is not permissible for anyone to attribute to the Messenger of Allah—peace and blessings of Allah be upon him—what he did not say. To one who dares to do this, it is said: Did the Messenger of Allah—peace and blessings of Allah be upon him—utter what you claim? If he answers yes, he is openly declared a liar. If he replies no, but asserts it is implied by his teachings, he is challenged: Where is your evidence for this? He possesses no evidence whatsoever except his false conjecture. Thus, they are left with no valid proof at all—neither from the Quran, the Sunnah, consensus, a companion's opinion, analogy, nor sound reasoning. Any assertion of this kind is undoubtedly erroneous.

وَقَدْ قُلْنَا: إنَّهُ لَا يَحِلُّ لِأَحَدٍ أَنْ يُنْسَبَ إلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا لَمْ يَقُلْ. وَيُقَالُ لِمَنْ جَسَرَ عَلَى هَذَا: أَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - هَذَا الَّذِي تَقُولُ؟ فَإِنْ قَالَ: نَعَمْ، كُذِّبَ جِهَارًا، وَإِنْ قَالَ: لَمْ يَقُلْ، لَكِنَّهُ دَلَّ عَلَيْهِ؟ قِيلَ لَهُ: أَيْنَ دَلِيلُك عَلَى ذَلِكَ؟ فَلَا سَبِيلَ لَهُ إلَى دَلِيلٍ أَصْلًا، إلَّا ظَنَّهُ الْكَاذِبَ - فَلَمْ يَبْقَ لَهُمْ دَلِيلٌ أَصْلًا، لَا مِنْ قُرْآنٍ، وَلَا مِنْ سُنَّةٍ وَلَا مِنْ إجْمَاعٍ، وَلَا قَوْلِ صَاحِبٍ، وَلَا قِيَاسٍ، وَلَا رَأْيٍ صَحِيحٍ - وَمَا كَانَ هَكَذَا مِنْ الْأَقْوَالِ فَهُوَ خَطَأٌ بِلَا شَكٍّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا الْكَلَامُ كُلُّهُ إنَّمَا هُوَ مَعَ مَنْ قَالَ بِقَتْلِهِ، وَهُوَ عِنْدَهُ غَيْرُ كَافِرٍ - وَأَمَّا مَنْ قَالَ بِتَكْفِيرِهِ بِتَرْكِ صَلَاةٍ وَاحِدَةٍ حَتَّى يَخْرُجَ وَقْتُهَا، فَلَيْسَ هَذَا مَكَانُ الْكَلَامِ فِيهِ مَعَهُمْ، فَسَيَقَعُ الْكَلَامُ فِي ذَلِكَ مُتَقَصًّى فِي " كِتَابِ الْإِيمَانِ " مِنْ الْجَامِعِ إنْ شَاءَ اللَّهُ عَزَّ وَجَلَّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ بَطَلَ هَذَا الْقَوْلُ فَإِنَّا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إنَّهُ قَدْ صَحَّ - عَلَى مَا ذَكَرْنَا - فِي قَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

Abū Muḥammad—may Allah have mercy on him—said: All this discourse applies to those who advocate executing him while not deeming him a disbeliever. As for those who declare him a disbeliever for neglecting a single prayer until its time expires, this is not the place to engage their argument. The exhaustive treatment of this matter will occur in the "Book of Faith" within *al-Jāmiʿ*, Allah Almighty willing.

He further said: Since this opinion is invalidated, we affirm—by the guidance of Allah, the Exalted—that the authentic statement of the Messenger of Allah—peace and blessings of Allah be upon him—has been established, as we cited: "Whoever among you witnesses a reprehensible act, let him change

it with his hand if he is able." This is a command to correct those who commit a reprehensible act. Refusing to pray, neglecting purification from major impurity, abandoning Ramadan fasting, withholding zakāh, avoiding Ḥajj, failing to fulfill all obligatory acts, and disregarding any human right—in whatever manner—are all unquestionably reprehensible acts, without doubt or disagreement from any member of the Ummah. For all these are forbidden, and the forbidden is inherently reprehensible by definitive certainty.

«مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إِنْ اسْتَطَاعَ» فَكَانَ هَذَا أَمْرًا بِالْأَدَبِ عَلَى مَنْ أَتَى مُنْكَرًا - وَالِامْتِنَاعُ مِنْ الصَّلَاةِ، وَمِنْ الطَّهَارَةِ مِنْ غُسْلِ الْجَنَابَةِ، وَمِنْ صِيَامِ رَمَضَانَ، وَمِنْ الزَّكَاةِ، وَمِنْ الْحَجِّ، وَمِنْ أَدَاءِ جَمِيعِ الْفَرَائِضِ كُلِّهَا وَمِنْ كُلِّ حَقٍّ لِآدَمِيٍّ - بِأَيِّ وَجْهٍ كَانَ - كُلُّ ذَلِكَ مُنْكَرٌ، بِلَا شَكٍّ وَبِلَا خِلَافٍ مِنْ أَحَدٍ مِنْ الْأُمَّةِ؛ لِأَنَّ كُلَّ ذَلِكَ حَرَامٌ، وَالْحَرَامُ مُنْكَرٌ بِيَقِينٍ.

L42563 Therefore, by the command of the Messenger of Allah—may Allah's peace and blessings be upon him—the permissibility of striking with the hand all those we have mentioned was validated.

فَصَحَّ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إبَاحَةُ ضَرْبِ كُلِّ مَنْ ذَكَرْنَا بِالْيَدِ.

L42564 It has been authentically reported from the Messenger of Allah—peace and blessings be upon him—that one should not strike more than ten times when administering discretionary punishment, according to what we will detail in the chapter titled "The Extent of Discretionary Punishment," Allah the Exalted willing.

وَصَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ لَا يَضْرِبَ فِي التَّعْزِيرِ أَكْثَرُ مِنْ عَشَرَةٍ عَلَى مَا نُورِدُ فِي " بَابِ كَمْ يَكُونُ التَّعْزِيرُ " إنْ شَاءَ اللَّهُ تَعَالَى.

L42565–42566 Therefore, in such a case, it is obligatory to flog everyone we have mentioned ten times. If he fulfills the obligations incumbent upon him—whether prayer or others—he is absolved and owes nothing. If he persists in refusal, he commits another offense through his continued refusal, so he is flogged ten times again—and this continues perpetually—until he fulfills the right owed to God Almighty or dies, without any intention to kill him. The flogging is not suspended at all until the time of the prayer expires and another prayer's time begins; he is then flogged so that he performs the prayer whose time has commenced. This continues perpetually until the midpoint of the night. When the time of Isha expires, he is left, for he cannot pray a prayer whose time has passed. The flogging is then renewed against him when the time of Fajr prayer begins and continues until its time expires. He is subsequently left until the start of Dhuhr. The person who has already prayed should administer the flogging. When another person prays, the first leaves to pray, and the other takes over the flogging—and with God Almighty is success—until he abandons the offense he persists in or dies. The rightful judgment is

فَإِذْ ذَلِكَ كَذَلِكَ فَوَاجِبٌ أَنْ يُضْرَبَ كُلُّ مَنْ ذَكَرْنَا عَشْرَ جَلَدَاتٍ فَإِنْ أَدَّى مَا عَلَيْهِ مِنْ صَلَاةٍ أَوْ غَيْرِهَا، فَقَدْ بَرِئَ وَلَا شَيْءَ عَلَيْهِ، وَإِنْ تَمَادَى عَلَى الِامْتِنَاعِ فَقَدْ أَحْدَثَ مُنْكَرًا آخَرَ بِالِامْتِنَاعِ الْآخَرِ، فَيُجْلَدُ أَيْضًا عَشْرًا - وَهَكَذَا أَبَدًا، حَتَّى يُؤَدِّيَ الْحَقَّ الَّذِي عَلَيْهِ لِلَّهِ تَعَالَى أَوْ يَمُوتَ - غَيْرَ مَقْصُودٍ إلَى قَتْلِهِ - وَلَا يُرْفَعُ عَنْهُ الضَّرْبُ أَصْلًا حَتَّى يَخْرُجَ وَقْتُ الصَّلَاةِ وَتَدْخُلَ أُخْرَى فَيُضْرَبُ لِيُصَلِّيَ الَّتِي دَخَلَ وَقْتُهَا، وَهَكَذَا أَبَدًا إلَى نِصْفِ اللَّيْلِ، فَإِذَا خَرَجَ وَقْتُ الْعَتَمَةِ تُرِكَ؛ لِأَنَّهُ لَا يَقْدِرُ عَلَى صَلَاةٍ مَا خَرَجَ وَقْتُهَا - ثُمَّ يُجَدَّدُ عَلَيْهِ الضَّرْبُ إذَا دَخَلَ وَقْتُ صَلَاةِ الْفَجْرِ حَتَّى يَخْرُجَ وَقْتُهَا - ثُمَّ يُتْرَكُ إلَى أَوَّلِ الظُّهْرِ، وَيَتَوَلَّى ضَرْبَهُ مَنْ قَدْ صَلَّى، فَإِذَا صَلَّى غَيْرُهُ خَرَجَ هَذَا إلَى الصَّلَاةِ وَيَتَوَلَّى

to kill him, yet he remains a Muslim despite that—and with God Almighty is success.

الْآخَرُ ضَرْبَهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ - حَتَّى يَتْرُكَ الْمُنْكَرَ الَّذِي يُحْدِثُ أَوْ يَمُوتُ، فَالْحَقُّ قَتْلُهُ، وَهُوَ مُسْلِمٌ مَعَ ذَلِكَ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of Sodomy (the Act of the People of Lot).

[مَسْأَلَةُ فِعْلُ قَوْمِ لُوطٍ]

L42568 Issue 2303: The act of Lot's people? Abu Muhammad - may Allah have mercy on him - said: The act of Lot's people is among the major abominable forbidden sins - like pork, carrion, blood, wine, fornication, and all other transgressions. Whoever permits it or permits any of what we have mentioned is a disbeliever, a polytheist; his blood and wealth become permissible.

٢٣٠٣ - مَسْأَلَةٌ: فِعْلُ قَوْمِ لُوطٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فِعْلُ قَوْمِ لُوطٍ مِنْ الْكَبَائِرِ الْفَوَاحِشِ الْمُحَرَّمَةِ: كَلَحْمِ الْخِنْزِيرِ، وَالْمَيْتَةِ، وَالدَّمِ، وَالْخَمْرِ، وَالزِّنَى، وَسَائِرِ الْمَعَاصِي، مَنْ أَحَلَّهُ أَوْ أَحَلَّ شَيْئًا مِمَّا ذَكَرْنَا فَهُوَ كَافِرٌ، مُشْرِكٌ حَلَالُ الدَّمِ وَالْمَالِ.

L42569 People have differed regarding what is obligatory for him: one group said the upper and lower parts should be burned, while another group said the upper and lower parts are to be carried to the summit of a mountain in a village—then cast down from it, and stoned.

وَإِنَّمَا اخْتَلَفَ النَّاسُ فِي الْوَاجِبِ عَلَيْهِ: فَقَالَتْ طَائِفَةٌ: يُحْرَقُ بِالنَّارِ الْأَعْلَى وَالْأَسْفَلُ وَقَالَتْ طَائِفَةٌ: يُحْمَلُ الْأَعْلَى وَالْأَسْفَلَ إلَى أَعْلَى جَبَلٍ بِقَرْيَةٍ - فَيُصَبُّ مِنْهُ، وَيُتْبَعُ بِالْحِجَارَةِ.

L42570 A group of scholars held: The free and the slave are to be stoned—whether they are married or unmarried.

وَقَالَتْ طَائِفَةٌ: يُرْجَمُ الْأَعْلَى وَالْأَسْفَلُ - سَوَاءٌ أَحْصَنَا أَوْ لَمْ يُحْصِنَا.

L42571 A group said: Both are to be killed.

وَقَالَتْ طَائِفَةٌ: يُقْتَلَانِ جَمِيعًا.

L42572 A group has said: As for the lower status, he is stoned—whether he is a *muḥṣan* or not. As for the upper status: if he is a *muḥṣan*, he is stoned; and if he is not a *muḥṣan*, he is flogged with the punishment prescribed for *zinā*.

وَقَالَتْ طَائِفَةٌ: أَمَّا الْأَسْفَلُ فَيُرْجَمُ - أَحْصَنَ أَمْ لَمْ يُحْصِنْ - وَأَمَّا الْأَعْلَى فَإِنْ أَحْصَنَ رُجِمَ، وَإِنْ لَمْ يُحْصِنْ جُلِدَ جَلْدَ الزِّنَى.

L42573 A group said: The upper and the lower, both are equivalent – whichever of them is chaste is stoned, and whichever is not chaste is flogged one hundred lashes, as in the case of zinā.

وَقَالَتْ طَائِفَةٌ: الْأَعْلَى وَالْأَسْفَلُ كِلَاهُمَا سَوَاءٌ - أَيُّهُمَا أَحْصَنَ رُجِمَ، وَأَيُّهُمَا لَمْ يُحْصِنْ جُلِدَ مِائَةً، كَالزِّنَى.

L42574 A group held: No ḥadd (prescribed punishment) or killing applies to them; rather, they are disciplined via taʿzīr (discretionary punishment).

وَقَالَتْ طَائِفَةٌ: لَا حَدَّ عَلَيْهِمَا وَلَا قَتْلَ، لَكِنْ يُعَزَّرَانِ.

L42575–42577 As for the first opinion, as narrated by ʿAbdullāh ibn Rabīʿ: he narrated from Ibn Mufarrij, who narrated from Qāsim ibn Aṣbagh, who narrated

from Ibn Waḍḍāḥ. Sahnun narrated to us: Ibn Wahb narrated to us: Ibn Sam'an informed me through a man who reported to him, saying: Some people came to Khalid ibn al-Walid and informed him about a man among them who was being penetrated in marriage as a woman is penetrated, and he was married? Abu Bakr said: "He must be stoned"—and the Companions of the Messenger of Allah (peace and blessings be upon him) concurred with his statement. Then Ali said: "O Commander of the Faithful, the Arabs recoil from the disgrace of such an act and its notoriety—a revulsion they do not harbor toward the prescribed penalties enforced in legal judgments. Therefore, I propose you burn him." Abu Bakr said: "Abu al-Hasan has spoken truthfully," and he wrote to Khalid ibn al-Walid: "Burn him." So he did.

L42578 Ibn Wahb said: It is not my view that Khalid burned him with fire unless he had already killed him, for none may inflict punishment through fire except Allah, the Most High.

L42579 Ibn Habib said: Whoever burns with fire a person who commits the act of the people of Lut has not sinned.

L42580 From Ibn Ḥabīb via Muṭarrif ibn ʿAbdillāh ibn ʿAbd al-ʿAzīz ibn Abī Ḥāzim, who reported from Muḥammad ibn al-Munkadir, Mūsā ibn ʿUqbah, and Ṣafwān ibn Sulaym: Khālid ibn al-Walīd wrote to Abū Bakr al-Ṣiddīq that he had encountered a man on one of the coastal regions who was subjected to sodomy as a woman is, and conclusive evidence had been established against him. Abū Bakr sought counsel from the Companions of the Messenger of Allah—peace and blessings be upon him—regarding this matter. The most severe among them in his opinion that day was ʿAlī ibn Abī Ṭālib, who said: "This is a sin committed by no nation except one, and Allah inflicted upon them what you know. I recommend burning them both with fire." The consensus of the Companions of the Messenger of Allah—peace and blessings be upon him—was to burn him with fire. Abū Bakr thus wrote to Khālid ibn al-Walīd to burn him with fire. Later, Ibn al-Zubayr burned them during his rule, followed by Hishām ibn ʿAbd al-Malik, and then al-Qasrī burned them in Iraq.

فَالْقَوْلُ الْأَوَّلُ - كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي ابْنُ سَمْعَانَ عَنْ رَجُلٍ أَخْبَرَهُ قَالَ: جَاءَ نَاسٌ إِلَى خَالِدِ بْنِ الْوَلِيدِ فَأَخْبَرُوهُ عَنْ رَجُلٍ مِنْهُمْ أَنَّهُ يُنْكَحُ كَمَا تُوطَأُ الْمَرْأَةُ، وَقَدْ أَحْصَنَ؟ فَقَالَ أَبُو بَكْرٍ: عَلَيْهِ الرَّجْمُ - وَتَابَعَهُ أَصْحَابُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى ذَلِكَ مِنْ قَوْلِهِ: فَقَالَ عَلِيٌّ: يَا أَمِيرَ الْمُؤْمِنِينَ إِنَّ الْعَرَبَ تَأْنَفُ مِنْ عَارِ الْمِثْلِ وَشُهْرَتِهِ، أَنَفًا لَا تَأْنَفُهُ مِنْ الْحُدُودِ الَّتِي تَمْضِي فِي الْأَحْكَامِ فَأَرَى أَنْ تُحْرِقَهُ بِالنَّارِ؟ فَقَالَ أَبُو بَكْرٍ: صَدَقَ أَبُو الْحَسَنِ وَكَتَبَ إِلَى خَالِدِ بْنِ الْوَلِيدِ: أَنْ أَحْرِقَهُ بِالنَّارِ؟ فَفَعَلَ.

قَالَ ابْنُ وَهْبٍ: لَا أَرَى خَالِدًا أَحْرَقَهُ بِالنَّارِ إِلَّا بَعْدَ أَنْ قَتَلَهُ، لِأَنَّ النَّارَ لَا يُعَذِّبُ بِهَا إِلَّا اللَّهُ تَعَالَى.

قَالَ ابْنُ حَبِيبٍ: مَنْ أَحْرَقَ بِالنَّارِ فَاعِلَ فِعْلَ قَوْمِ لُوطٍ لَمْ يُخْطِئْ.

وَعَنْ ابْنِ حَبِيبٍ: نا مُطَرِّفُ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ الْعَزِيزِ بْنِ أَبِي حَازِمٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ، وَمُوسَى بْنِ عُقْبَةَ وَصَفْوَانُ بْنُ سُلَيْمٍ: أَنَّ خَالِدَ بْنَ الْوَلِيدِ كَتَبَ إِلَى أَبِي بَكْرٍ الصِّدِّيقِ: أَنَّهُ وَجَدَ فِي بَعْضِ سَوَاحِلِ الْبَحْرِ رَجُلًا يُنْكَحُ كَمَا تُنْكَحُ الْمَرْأَةُ، وَقَامَتْ عَلَيْهِ بِذَلِكَ الْبَيِّنَةُ، فَاسْتَشَارَ أَبُو بَكْرٍ فِي ذَلِكَ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَكَانَ أَشَدُّهُمْ فِيهِ يَوْمَئِذٍ قَوْلًا عَلِيُّ بْنُ أَبِي طَالِبٍ قَالَ: إِنَّ هَذَا ذَنْبٌ لَمْ يَعْصِ بِهِ مِنْ الْأُمَمِ إِلَّا أُمَّةً وَاحِدَةً صَنَعَ اللَّهُ بِهَا مَا قَدْ عَلِمْتُمْ، أَرَى أَنْ تُحْرِقَهُمَا بِالنَّارِ، فَاجْتَمَعَ رَأْيُ صَحَابَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى أَنْ يُحْرِقَهُ بِالنَّارِ؟ فَكَتَبَ أَبُو بَكْرٍ إِلَى

خَالِدِ بْنِ الْوَلِيدِ أَنْ أَحْرِقَهُ بِالنَّارِ - ثُمَّ حَرَقَهُمَا ابْنُ الزُّبَيْرِ فِي زَمَانِهِ - ثُمَّ حَرَقَهُمَا هِشَامُ بْنُ عَبْدِ الْمَلِكِ - ثُمَّ حَرَقَهُمَا الْقَسْرِيُّ بِالْعِرَاقِ.

L42581 Ismāʿīl ibn Dulaym al-Ḥaḍramī, the judge of Majorca, narrated to us, saying: Muḥammad ibn Aḥmad ibn al-Khallāṣ narrated to us; Muḥammad ibn al-Qāsim ibn Shaʿbān narrated to us; Muḥammad ibn Ismāʿīl ibn Aslam narrated to us; Muḥammad ibn Dāwūd ibn Abī Nājiyah narrated to us; Yaḥyā ibn Bukayr narrated from ʿAbd al-ʿAzīz ibn Abī Ḥāzim, from Dāwūd ibn Abī Bakr, Muḥammad ibn al-Munkadir, Mūsā ibn ʿUqbah, and Ṣafwān ibn Sulaym: that Ṣafwān found in some coastal regions near the sea a man who was being used for intercourse as a woman is. (Abū Isḥāq said: The man's name was al-Fujā'ah.) Abū Bakr then consulted the Companions of the Messenger of Allah—peace and blessings be upon him—and subsequently recounted the same narration of ʿAbd al-Malik that we had previously mentioned, verbatim, in the exact same wording.

حَدَّثَنَا إِسْمَاعِيلُ بْنُ دُلَيْمٍ الْحَضْرَمِيُّ قَاضِي مَيُورْقَةَ قَالَ: نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ نا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ نِي مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ أَسْلَمَ نا مُحَمَّدُ بْنُ دَاوُد بْنِ أَبِي نَاجِيَةَ نا يَحْيَى بْنُ بُكَيْرٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ أَبِي حَازِمٍ عَنْ دَاوُد بْنِ أَبِي بَكْرٍ، وَمُحَمَّدِ بْنِ الْمُنْكَدِرِ، وَمُوسَى بْنُ عُقْبَةَ، وَصَفْوَانُ بْنُ سُلَيْمٍ: أَنَّهُ وَجَدَ فِي بَعْضِ ضَوَاحِي الْبَحْرِ رَجُلًا يُنْكَحُ كَمَا تُنْكَحُ الْمَرْأَةُ - قَالَ أَبُو إِسْحَاقَ: كَانَ اسْمُهُ الْفُجَاءَةَ - فَاسْتَشَارَ أَبُو بَكْرٍ أَصْحَابَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - ثُمَّ ذَكَرَ مِثْلَ حَدِيثِ عَبْدِ الْمَلِكِ الَّذِي ذَكَرْنَا حَرْفًا حَرْفًا نَصًّا سَوَاءً.

L42582–42584 As for the one who said he is taken up to the highest mountain in the village... Aḥmad ibn Ismāʿīl ibn Dulaym narrated to us: Muḥammad ibn Aḥmad ibn al-Khullaṣ narrated to us: Muḥammad ibn al-Qāsim ibn Shaʿbān narrated to us: Aḥmad ibn Salamah ibn al-Ḍaḥḥāk reported on the authority of Ismāʿīl ibn Maḥmūd ibn Nuʿaym: Muʿādh narrated to us: ʿAbd al-Raḥmān narrated to us: Ḥassān ibn Maṭar narrated to us: Yazīd ibn Maslamah reported from Abū Naḍrah from Ibn ʿAbbās, who was asked about the legal punishment for homosexual intercourse between men. He said: "He is taken to the highest elevation in the village, then thrown down upside down, then followed by stones."

وَأَمَّا مَنْ قَالَ يُصْعَدُ بِهِ إِلَى أَعْلَى جَبَلٍ فِي الْقَرْيَةِ: فَكَمَا نا أَحْمَدُ بْنُ إِسْمَاعِيلَ بْنِ دُلَيْمٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ نا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ نا أَحْمَدُ بْنُ سَلَمَةَ بْنِ الضَّحَّاكِ عَنْ إِسْمَاعِيلَ بْنِ مَحْمُودِ بْنِ نُعَيْمٍ نا مُعَاذٌ نا عَبْدُ الرَّحْمَنِ نا حَسَّانُ بْنُ مَطَرٍ نا يَزِيدُ بْنُ مَسْلَمَةَ عَنْ أَبِي نَضْرَةَ عَنِ ابْنِ عَبَّاسٍ سُئِلَ عَنْ حَدِّ اللُّوطِيِّ فَقَالَ: يُصْعَدُ بِهِ إِلَى أَعْلَى جَبَلٍ فِي الْقَرْيَةِ ثُمَّ يُلْقَى مُنَكَّسًا ثُمَّ يُتْبَعُ بِالْحِجَارَةِ.

L42585 As for those who said, "The one who penetrates and the one penetrated are to be stoned whether they were of chaste status or not" - this ruling is transmitted through Muḥammad ibn Saʿīd ibn Nubāt, through ʿAbdullāh ibn Naṣr, through Qāsim ibn Aṣbaġ, through Ibn Waḍḍāḥ, through Mūsā ibn Muʿāwiyah, through Wakīʿ, through Ibn Abī Laylā, from al-Qāsim ibn al-Walīd al-Mihrānī, from Yazīd ibn Qays, that ʿAlī stoned a practitioner of sodomy.

وَأَمَّا مَنْ قَالَ: يُرْجَمُ الْأَعْلَى وَالْأَسْفَلُ أَحْصَنَا أَوْ لَمْ يُحْصِنَا: فَكَمَا نا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا عَبْدُ اللَّهِ بْنُ نَصْرٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا مُوسَى بْنُ مُعَاوِيَةَ نا وَكِيعٌ نا ابْنُ أَبِي لَيْلَى عَنِ الْقَاسِمِ بْنِ الْوَلِيدِ الْمِهْرَانِيِّ عَنْ يَزِيدَ بْنِ قَيْسٍ أَنَّ عَلِيًّا رَجَمَ لُوطِيًّا.

L42586 Hummam narrated to us from Ibn Mufarrij, who narrated from Ibn al-A'rabī, who narrated from al-Dabarī, who narrated from 'Abd al-Razzāq, who narrated from Ibn Jurayj, who informed me: 'Abdullāh ibn 'Uthmān ibn Khuthaym reported that he heard Mujāhid and Sa'īd ibn Jubayr narrating from Ibn 'Abbās, who said regarding a virgin found engaging in sodomy: "He is to be stoned."

حَدَّثَنَا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ عُثْمَانَ بْنِ خُثَيْمٍ أَنَّهُ سَمِعَ مُجَاهِدًا، وَسَعِيدَ بْنَ جُبَيْرٍ يُحَدِّثَانِ عَنِ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ فِي الْبِكْرِ يُوجَدُ عَلَى اللُّوطِيَّةِ: أَنَّهُ يُرْجَمُ.

L42587 Ibrahim al-Nakha'i said: If there were anyone deserving to be stoned twice, it would indeed be the sodomite who deserves to be stoned twice.

وَعَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: لَوْ كَانَ أَحَدٌ يَنْبَغِي لَهُ أَنْ يُرْجَمَ مَرَّتَيْنِ لَكَانَ يَنْبَغِي لِلُوطِيِّ أَنْ يُرْجَمَ مَرَّتَيْنِ.

L42588 From Rabī'ah that he said: If a man commits sodomy, he is to be stoned, without consideration of being muḥṣan or any other condition.

وَعَنْ رَبِيعَةَ أَنَّهُ قَالَ: إِذَا أَخَذَ الرَّجُلُ لُوطِيًّا رُجِمَ، لَا يُلْتَمَسُ بِهِ إِحْصَانٌ، وَلَا غَيْرُهُ.

L42589 Al-Zuhri said: The sodomizer is to be stoned, whether chaste (muḥṣan) or unchaste.

وَعَنِ الزُّهْرِيِّ أَنَّهُ قَالَ: عَلَى اللُّوطِيِّ الرَّجْمُ أَحْصَنَ أَوْ لَمْ يُحْصِنْ.

L42590 And Abdullah ibn Rabī' narrated to us: Ibn Mufarrij narrated to us, Qāsim ibn Aṣbagh narrated to us, Ibn Waḍḍāḥ narrated to us, Sahnūn narrated to us, Ibn Wahb narrated to us: Al-Shimr ibn Numayr and Yazīd ibn 'Iyāḍ ibn Ju'dabah narrated to me, along with a trustworthy source, and it was written to Ibn Abī Sabrah. Al-Shimr reported: From Ḥusayn ibn 'Abdillāh ibn Ḍumayrah, from Ḥusayn's father, from his grandfather, from 'Alī ibn Abī Ṭālib. Yazīd ibn 'Iyāḍ ibn Ju'dabah reported: From 'Abd al-Malik ibn 'Ubayd, from Sa'īd ibn al-Musayyab. Ibn Abī Sabrah said: I heard Abū al-Zinād. The one Ibn Abī Sabrah trusted reported: From al-Ḥasan. Then 'Alī, Sa'īd ibn al-Musayyab, Abū al-Zinād, and al-Ḥasan all concurred with the aforementioned statement of al-Zuhrī.

وَحَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي الشِّمْرُ بْنُ نُمَيْرٍ، وَيَزِيدُ بْنُ عِيَاضِ بْنِ جعدبة، وَمِنْ أَثِقُ بِهِ، وَكَتَبَ إِلَى ابْنِ أَبِي سَبْرَةَ، قَالَ الشِّمْرُ: عَنْ حُسَيْنِ بْنِ عَبْدِ اللَّهِ بْنِ ضُمَيْرَةَ عَنْ أَبِيهِ عَنْ جَدِّهِ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَقَالَ يَزِيدُ بْنُ عِيَاضِ بْنِ جعدبة: عَنْ عَبْدِ الْمَلِكِ بْنِ عُبَيْدٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَقَالَ ابْنُ أَبِي سَبْرَةَ: سَمِعْتُ أَبَا الزِّنَادِ، وَقَالَ الَّذِي يَثِقُ بِهِ: عَنِ الْحَسَنِ، ثُمَّ اتَّفَقَ عَلِيٌّ، وَسَعِيدُ بْنُ الْمُسَيِّبِ، وَأَبُو الزِّنَادِ، وَالْحَسَنُ، كُلُّهُمْ مِثْلَ قَوْلِ الزُّهْرِيِّ الْمَذْكُورِ.

L42591 And by it says Al-Shāfi'ī—and it is the opinion of Mālik, al-Layth, and Isḥāq ibn Rāhawayhi.

وَبِهِ يَقُولُ الشَّافِعِيُّ - وَهُوَ قَوْلُ مَالِكٍ، وَاللَّيْثِ، وَإِسْحَاقَ بْنِ رَاهْوَيْهِ.

L42592–42593 As for those who said both are to be executed, this aligns with what was reported from Ibn Abbas who stated: "Kill the active partner and the passive partner." As for those who ruled it analogous to adultery - where the muḥṣan (a legally protected person, i.e., married and free) among them is stoned and the non-muḥṣan receives one hundred lashes - this follows the narration

وَأَمَّا مَنْ قَالَ: يُقْتَلَانِ: فَكَمَا رُوِّينَا عَنِ ابْنِ عَبَّاسٍ، قَالَ: اقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ. وَأَمَّا مَنْ قَالَ: هُوَ كَالزِّنَى يُرْجَمُ الْمُحْصَنُ مِنْهُمَا وَيُجْلَدُ غَيْرُ الْمُحْصَنِ مِائَةَ جَلْدَةٍ: فَكَمَا نا أَحْمَدُ

transmitted by Ahmad ibn Ismāʿīl ibn Dulaym from Muhammad ibn Ahmad ibn al-Khallas, from Muhammad ibn al-Qāsim ibn Shaʿbān, from Ahmad ibn Salamah and al-Ḍaḥḥāk, from Ismāʿīl ibn Muhammad ibn Nuʿaym, from Muʿādh ibn al-Ḥārith, from ʿAbd al-Raḥmān ibn Qays al-Ḍabbī, from al-Yamānī ibn al-Mughīrah, from ʿAṭāʾ ibn Abī Rabāḥ, who said: I witnessed ʿAbd Allāh ibn al-Zubayr when seven men caught in male homosexual acts were brought before him. He questioned them and found four to be muḥṣan. He ordered them removed from al-Ḥaram, then they were stoned with stones until they died. He flogged the remaining three with the ḥadd of one hundred lashes. Ibn Abbas and Ibn ʿUmar were present during this judgment, and neither objected to his ruling.

بْنُ إِسْمَاعِيلَ بْنِ دُلَيْمٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ نا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ نا أَحْمَدُ بْنُ سَلَمَةَ، وَالضَّحَّاكُ عَنْ إِسْمَاعِيلَ بْنِ مُحَمَّدِ بْنِ نُعَيْمٍ نا مُعَاذُ بْنُ الْحَارِثِ نا عَبْدُ الرَّحْمَنِ بْنُ قَيْسٍ الضَّبِّيُّ عَنْ الْيَمَانِي بْنِ الْمُغِيرَةِ نا عَطَاءُ بْنُ أَبِي رَبَاحٍ، قَالَ: شَهِدْت عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ وَأُتِيَ بِسَبْعَةٍ أَخَذُوا فِي اللِّوَاطِ فَسَأَلَ عَنْهُمْ؟ فَوَجَدَ أَرْبَعَةً قَدْ أَحْصَنُوا، فَأَمَرَ بِهِمْ فَأُخْرِجُوا مِنْ الْحَرَمِ - ثُمَّ رُجِمُوا بِالْحِجَارَةِ حَتَّى مَاتُوا، وَجَلَدَ ثَلَاثَةً الْحَدَّ - وَعِنْدَهُ ابْنُ عَبَّاسٍ، وَابْنُ عُمَرَ، فَلَمْ يُنْكِرَا ذَلِكَ عَلَيْهِ.

L42594 It is narrated from Al-Ḥasan al-Baṣrī that he said regarding a man who performs the act of the people of Lūṭ: If he is previously married, he is to be stoned; if he is unmarried, he is to be flogged.

وَعَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ فِي الرَّجُلِ يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ: إنْ كَانَ ثَيِّبًا رُجِمَ، وَإِنْ كَانَ بِكْرًا جُلِدَ.

L42595 As for those who say: If the fornicator is a muḥṣan, he is to be stoned; if he is not a muḥṣan, he is to be lashed one hundred times and exiled for a year. As for the married individual (mankūḥ), he is to be stoned whether he qualifies as a muḥṣan or not—this is a position upheld by Abū Jaʿfar Muḥammad ibn ʿAlī ibn Yūsuf, one of the Shāfiʿī jurists.

وَأَمَّا مَنْ قَالَ: إنَّ الْفَاعِلَ إنْ كَانَ مُحْصَنًا فَإِنَّهُ يُرْجَمُ وَإِنْ كَانَ غَيْرَ مُحْصَنٍ فَإِنَّهُ يُجْلَدُ مِائَةً وَيُنْفَى سَنَةً، وَأَمَّا الْمَنْكُوحُ فَيُرْجَمُ أَحْصَنَ أَوْ لَمْ يُحْصِنْ: فَقَوْلٌ ذَهَبَ إلَيْهِ أَبُو جَعْفَرٍ مُحَمَّدُ بْنُ عَلِيِّ بْنِ يُوسُفَ - أَحَدُ فُقَهَاءِ الشَّافِعِيِّينَ.

L42596 As for the one who said there is no prescribed punishment for that: Muhammad ibn Saʿid ibn Nubat reported from ʿAbdullah ibn Nasr; from Qasim ibn Asbagh; from Ibn Waddah; from Musa ibn Muʿawiyah; from Waki‘; from Sufyan al-Thawri—citing both Mansur ibn al-Muʿtamir and Abu Ishaq al-Shaybani, each transmitting from al-Hakam ibn ʿUtaybah—that he ruled regarding one who commits the act of the people of Lot: He is to be flogged without imposing the prescribed punishment.

وَأَمَّا مَنْ قَالَ: لَا حَدَّ فِي ذَلِكَ: فَكَمَا نا 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 الثَّوْرِيُّ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ، وَأَبِي إِسْحَاقَ الشَّيْبَانِيِّ، كِلَاهُمَا عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ أَنَّهُ قَالَ فِيمَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ: يُجْلَدُ دُونَ الْحَدِّ.

L42597 Abu Hanifah, those who follow him, Abu Sulaymān, and all our companions hold this opinion. Abu Muhammad (may Allah have mercy on him) said: When they differed - as we mentioned - it became necessary for us to examine the evidence presented by those who advocated burning it with fire. We found them asserting: “This constitutes the consensus of the Companions, and it is impermissible to oppose their consensus.”

وَبِهِ يَقُولُ أَبُو حَنِيفَةَ، وَمَنْ اتَّبَعَهُ، وَأَبُو سُلَيْمَانَ، وَجَمِيعُ أَصْحَابِنَا قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّ بِهِ مَنْ رَأَى حَرْقَهُ بِالنَّارِ، فَوَجَدْنَاهُمْ يَقُولُونَ: إنَّهُ إجْمَاعُ الصَّحَابَةِ، وَلَا يَجُوزُ خِلَافُ إجْمَاعِهِمْ.

فَإِنْ قِيلَ: فَقَدْ رُوِيَ عَنْ عَلِيٍّ، وَابْنِ عَبَّاسٍ، وَابْنِ الزُّبَيْرِ، وَابْنِ عُمَرَ، بَعْدَ ذَلِكَ الرَّجْمُ، وَحَدُّ الزِّنَى، وَغَيْرُ ذَلِكَ؟

L42598 If it is asked: “Was it not reported from Ali, Ibn Abbas, Ibn al-Zubayr, and Ibn Umar after that—regarding stoning, the hadd for fornication, and other such matters?”

قِيلَ: هَذَا لَا يَجُوزُ، لِأَنَّهُ خِلَافٌ لِمَا أَجْمَعُوا.

L42599–42600 It is said: This is not permissible because it contradicts the consensus.

فَهَذَا كُلُّ مَا ذَكَرُوا فِي ذَلِكَ، لَا حُجَّةَ لَهُمْ غَيْرَ هَذَا.

L42601 Thus, this is all that they have mentioned regarding that; they have no argument other than this.

وَوَجَدْنَاهُ لَا تَقُومُ بِهِ حُجَّةٌ، لِأَنَّهُ لَمْ يَرْوِهِ إِلَّا ابْنُ سَمْعَانَ عَنْ رَجُلٍ أَخْبَرَهُ - لَمْ يَسْمَعْهُ - أَنَّ أَبَا بَكْرٍ - وَعَبْدَ الْمَلِكِ بْنَ حَبِيبٍ عَنْ مُطَرِّفٍ عَنْ أَبِي حَازِمٍ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ، وَمُوسَى بْنِ عُقْبَةَ، وَصَفْوَانِ بْنِ سُلَيْمٍ، وَدَاوُد بْنِ بَكْرٍ: أَنَّ أَبَا بَكْرٍ - وَابْنَ شَعْبَانَ عَنْ مُحَمَّدِ بْنِ الْعَبَّاسِ بْنِ أَسْلَمَ عَنْ مُحَمَّدِ بْنِ دَاوُد بْنِ أَبِي نَاجِيَةَ عَنْ يَحْيَى بْنِ بُكَيْرٍ عَنْ ابْنِ أَبِي حَازِمٍ عَنْ ابْنِ الْمُنْكَدِرِ، وَمُوسَى بْنِ عُقْبَةَ، وَصَفْوَانَ بْنِ سُلَيْمٍ، وَدَاوُد بْنِ بَكْرٍ: أَنَّ أَبَا بَكْرٍ. فَهَذِهِ كُلُّهَا مُنْقَطِعَةٌ لَيْسَ مِنْهُمْ أَحَدٌ أَدْرَكَ أَبَا بَكْرٍ.

L42602 We found that it does not constitute a valid proof, as it was only narrated by Ibn Samʿān from a man who informed him – without having heard it – that Abū Bakr; and through ʿAbd al-Malik ibn Ḥabīb from Muṭarrif from Abū Ḥāzim from Muḥammad ibn al-Munkadir, Mūsā ibn ʿUqba, Ṣafwān ibn Sulaym, and Dāwūd ibn Bakr: that Abū Bakr; and through Ibn Shaʿbān from Muḥammad ibn al-ʿAbbās ibn Aslam from Muḥammad ibn Dāwūd ibn Abī Nājiya from Yaḥyā ibn Bukayr from Ibn Abī Ḥāzim from Ibn al-Munkadir, Mūsā ibn ʿUqba, Ṣafwān ibn Sulaym, and Dāwūd ibn Bakr: that Abū Bakr. All these chains are interrupted, as none of them met Abū Bakr.

وَأَيْضًا - فَإِنَّ ابْنَ سَمْعَانَ مَذْكُورٌ بِالْكَذِبِ وَصَفَهُ بِذَلِكَ مَالِكُ بْنُ أَنَسٍ.

L42603 Furthermore, Ibn Sam’ān is mentioned for falsehood, and Mālik ibn Anas described him as such.

وَوَجْهٌ آخَرَ - وَهُوَ أَنَّ الْإِحْرَاقَ بِالنَّارِ قَدْ صَحَّ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ نَهَى عَنْ ذَلِكَ: كَمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيِّ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد نا سَعِيدُ بْنُ مَنْصُورٍ نا الْمُغِيرَةُ بْنُ عَبْدِ الرَّحْمَنِ الْحِزَامِيُّ عَنْ أَبِي الزِّنَادِ عَنْ مُحَمَّدِ بْنِ حَمْزَةَ بْنِ عَمْرٍو الْأَسْلَمِيِّ عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَمَّرَهُ عَلَى سَرِيَّةٍ وَقَالَ: إنْ وَجَدْتُمْ فُلَانًا فَأَحْرِقُوهُ بِالنَّارِ، فَوَلَّيْت فَنَادَانِي فَرَجَعْتُ، فَقَالَ: إنْ وَجَدْتُمْ فُلَانًا فَاقْتُلُوهُ وَلَا تُحْرِقُوهُ، فَإِنَّهُ لَا يُعَذِّبُ بِالنَّارِ إلَّا رَبُّ النَّارِ» .

L42604 Another legal opinion is that burning with fire has been authentically established from the Messenger of Allah (peace and blessings be upon him), in that he prohibited it: As narrated by Abdullah ibn Rabee’, who narrated to us from Umar ibn Abd al-Malik al-Khawlani, who narrated to us from Muhammad ibn Bakr, who narrated to us from Abu Dawud, who narrated to us from Sa’eed ibn Mansoor, who narrated to us from al-Mughirah ibn Abd al-Rahman al-Hizami, from Abu al-Zinad, from Muhammad ibn Hamzah ibn Amr al-Aslami, from his father: The Messenger of Allah (peace and blessings be upon him) appointed him to lead an expedition and said, “If you find so-and-so, burn him with fire.” I began to depart, but he called me back. When

I returned, he said, “If you find so-and-so, kill him and do not burn him, for none punishes with fire except the Lord of the Fire.”[5]

L42605 Then we examined the opinion of those who advocated killing them and found them citing as evidence the following narration: Abdullah ibn Rabi’ narrated to us, from Muhammad ibn Ishaq, from Ibn al-A’rabi, from al-Dabari, from Abu Dawud, from Abdullah ibn Muhammad al-Nufayli, from Abd al-Aziz ibn Muhammad—who is Muhammad al-Darawardi’s son—from Amr ibn Abi Amr, from Ikrimah, from Ibn Abbas, who said: The Messenger of Allah—peace and blessings be upon him—declared, “Whoever you find committing the act of the people of Lot, kill the active participant and the passive recipient.”[6]

L42606–42607 Abdullah 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: Al-Qāsim ibn ʿAbdillāh ibn ʿUmar ibn Ḥafṣ informed me: Suhayl ibn Abī Ṣāliḥ reported from his father, from Abū Hurayrah, from the Messenger of Allah (peace and blessings be upon him) who said: “Kill the one who does it and the one to whom it is done.”

L42608 And through him—to Ibn Wahb from Yaḥyā ibn Ayyūb from Ibn Jurayj from Ibn ʿAbbās from the Prophet—may the peace and blessings of Allah be upon him—with a similar wording.

L42609 And through him—up to Yahya ibn Ayyub—from a man who narrated to him from Abdullah ibn Muhammad ibn Aqil ibn Abi Talib from Jabir ibn Abdullah that the Messenger of Allah, peace and blessings be upon him, said: “Whoever commits the act of the people of Lot, then kill him.” This man—Abbad ibn Kathir—...

L42610 Abu Muhammad—may Allah have mercy on him—said: “This is all they have embellished, and none of it has any sound basis from them. As for the

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ رَأَى قَتْلَهُمْ: فَوَجَدْنَاهُمْ يَحْتَجُّونَ: بِمَا نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا أَبُو دَاوُد نا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ النُّفَيْلِيُّ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ - هُوَ ابْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ - عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ أَخْبَرَنِي الْقَاسِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ حَفْصٍ ثني سُهَيْلُ بْنُ أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اُقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ» .

وَبِهِ - إلَى ابْنِ وَهْبٍ عَنْ يَحْيَى بْنِ أَيُّوبَ عَنْ ابْنِ جُرَيْجٍ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِمِثْلِ ذَلِكَ.

وَبِهِ - إلَى يَحْيَى بْنِ أَيُّوبَ عَنْ رَجُلٍ حَدَّثَهُ عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلِ بْنِ أَبِي طَالِبٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ فَاقْتُلُوهُ» وَهَذَا الرَّجُلُ - هُوَ عَبَّادُ بْنُ كَثِيرٍ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا كُلُّ مَا مَوَّهُوا بِهِ، وَكُلُّهُ لَيْسَ لَهُمْ مِنْهُ شَيْءٌ يَصِحُّ: أَمَّا حَدِيثُ ابْنِ عَبَّاسٍ - فَانْفَرَدَ بِهِ عَمْرُو بْنُ أَبِي عَمْرٍو - هُوَ ضَعِيفٌ، وَإِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ ضَعِيفٌ.

[5] **Hadith references (L42604):** Sunan Abi Dawud 2673.

[6] **Hadith references (L42605):** Sunan Ibn Majah 2561; Sunan Abi Dawud 4462; Jami at-Tirmidhi 1456.

hadith of Ibn Abbas, it was solely narrated by ʿAmr ibn Abī ʿAmr—who is weak—and Ibrāhīm ibn Ismāʿīl is also weak."

L42611 As for the ḥadīth of Abū Hurayrah, it was solely transmitted by al-Qāsim ibn ʿAbd Allāh ibn ʿUmar ibn Ḥafṣ—who is discarded as being of the utmost weakness.

وَأَمَّا حَدِيثُ أَبِي هُرَيْرَةَ - فَانْفَرَدَ بِهِ الْقَاسِمُ بْنُ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ حَفْصٍ - وَهُوَ مُطْرَحٌ فِي غَايَةِ السُّقُوطِ.

L42612 As for the ḥadīth of Jābir—it is reported via Yaḥyā ibn Ayyūb—who is weak—then via ʿAbbād ibn Kathīr—who is weaker than him.

وَأَمَّا حَدِيثُ جَابِرٍ - فَعَنْ يَحْيَى بْنِ أَيُّوبَ - وَهُوَ ضَعِيفٌ - عَنْ عَبَّادِ بْنِ كَثِيرٍ - وَهُوَ شَرٌّ مِنْهُ.

L42613 As for the ḥadīth of Ibn Abī al-Ziyād—Ibn Abī al-Zināد is weak, and Muḥammad ibn ʿAbd Allāh is unknown—and the ḥadīth itself is also mursal.

وَأَمَّا حَدِيثُ ابْنِ أَبِي الزِّيَادِ - فَابْنُ أَبِي الزِّنَادِ ضَعِيفٌ، وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ مَجْهُولٌ - وَهُوَ أَيْضًا مُرْسَلٌ.

L42614 Thus, everything in this chapter is abrogated.

فَسَقَطَ كُلُّ مَا فِي هَذَا الْبَابِ.

L42615–42617 It is not permissible to shed the blood of a Jew or Christian from the People of the Dhimma. Indeed, nor is the blood of a combatant permissible based on such narrations—how then could the blood of an evildoer or a repentant person be permissible? Even if any of the things we have mentioned about them were valid. Indeed, we would have said it, and we never considered contradicting it permissible in the least—and success is from Allah, the Exalted.

وَلَا يَحِلُّ سَفْكُ دَمِ يَهُودِيٍّ - أَوْ نَصْرَانِيٍّ مِنْ أَهْلِ الذِّمَّةِ، نَعَمْ، وَلَا دَمُ حَرْبِيٍّ بِمِثْلِ هَذِهِ الرِّوَايَاتِ، فَكَيْفَ دَمُ فَاسِقٍ أَوْ تَائِبٍ؟ وَلَوْ صَحَّ شَيْءٌ مِمَّا قُلْنَا مِنْهَا لَقُلْنَا بِهِ، وَلَمَا اسْتَجَزْنَا خِلَافَهُ أَصْلًا - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

L42618 Then we considered the statement of those who said: "They are both to be stoned together, whether they were married and chaste or not"—and we found them arguing that God, Exalted is He, acted similarly toward the people of Lūṭ. God, Exalted is He, said: *"And We rained upon them stones of layered clay, piled up, ordained by your Lord."* [Hūd 11:82-83].[7]

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: يُرْجَمَانِ مَعًا - أَحْصَنَا أَوْ لَمْ يُحْصِنَا - فَوَجَدْنَاهُمْ يَحْتَجُّونَ: بِأَنَّهُ هَكَذَا فَعَلَ اللَّهُ بِقَوْمِ لُوطٍ، قَالَ اللَّهُ تَعَالَى {وَأَمْطَرْنَا عَلَيْهَا حِجَارَةً مِنْ سِجِّيلٍ مَنْضُودٍ - مُسَوَّمَةً عِنْدَ رَبِّكَ} [هود: ٨٢ - ٨٣] .

L42619 They cited as evidence from the narrations we previously mentioned: What Ahmad ibn Isma'il ibn Dulaym narrated to us, Muhammad ibn Ahmad ibn al-Khallas narrated to us, Muhammad ibn al-Qasim ibn Sha'ban narrated to us, Muhammad ibn Ahmad narrated to us from Yunus ibn Abd al-A'la and

وَاحْتَجُّوا مِنَ الْآثَارِ الَّتِي ذَكَرْنَا آنِفًا: بِمَا نا أَحْمَدُ بْنُ إِسْمَاعِيلَ بْنِ دُلَيْمٍ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ نا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ ثَنِي مُحَمَّدُ بْنُ أَحْمَدَ عَنْ يُونُسَ بْنِ عَبْدِ الْأَعْلَى، وَأَبِي الرَّبِيعِ بْنِ أَبِي رِشْدِينَ نا عُبَيْدُ اللَّهِ بْنُ رَافِعٍ عَنْ عَاصِمِ بْنِ عُبَيْدِ اللَّهِ عَنْ سُهَيْلِ بْنِ

[7] **Qur'an references (L42618):** Qur'an 11:82 (Hud); Qur'an 11:83 (Hud).

أَبِي صَالِحٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «الَّذِي يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ فَارْجُمُوا الْأَعْلَى وَالْأَسْفَلَ» وَقَالَ فِيهِ: وَقَالَ «أَحْصَنَا أَوْ لَمْ يُحْصِنَا» .

Abi al-Rabi' ibn Abi Rashidīn narrated to us, Ubaidullah ibn Rafi' narrated to us from Asim ibn Ubaidullah from Suhail ibn Abi Salih from his father from Abu Hurairah from the Prophet—peace and blessings be upon him—who said: "The one who commits the act of the people of Lut, stone the upper and the lower." He also said in it: "Whether he is married or unmarried."

فَهَذَا كُلُّ مَا شَغَبُوا بِهِ قَدْ تَقَصَّيْنَاهُ - وَكُلُّهُ لَا حُجَّةَ لَهُمْ فِيهِ عَلَى مَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى.

L42620 So this is all they have raised objections about—we have thoroughly examined it, and none of their claims hold any argument against what we will clarify, if Allah, the Exalted, wills.

أَمَّا فِعْلُ اللَّهِ تَعَالَى فِي قَوْمِ لُوطٍ - فَإِنَّهُ لَيْسَ كَمَا ظَنُّوا، لِأَنَّ اللَّهَ تَعَالَى قَالَ {كَذَّبَتْ قَوْمُ لُوطٍ بِالنُّذُرِ} [القمر: ٣٣] {إِنَّا أَرْسَلْنَا عَلَيْهِمْ حَاصِبًا} [القمر: ٣٤] إلَى قَوْله تَعَالَى {فَذُوقُوا عَذَابِي وَنُذُرِ} [القمر: ٣٧] .

L42621 As for the act of Allah the Exalted toward the people of Lot—it was not as they presumed, for Allah the Exalted said: "The people of Lot rejected the warnings" [Quran 54:33], "We sent upon them a pelting storm" [54:34] up to His words: "So taste My punishment and My warnings" [54:37].[8]

وَقَالَ تَعَالَى {إِنَّا مُنَجُّوكَ وَأَهْلَكَ إِلا امْرَأَتَكَ كَانَتْ مِنَ الْغَابِرِينَ} [العنكبوت: ٣٣] .

L42622 And He, the Exalted, said, "Indeed, We will save you and your family, except your wife; she will be among those who remain behind." [Al-Ankabut: 33][9]

قَالَ تَعَالَى {إِنَّهُ مُصِيبُهَا مَا أَصَابَهُمْ} [هود: ٨١] الْآيَةُ، فَنَصَّ تَعَالَى نَصًّا جَلِيًّا عَلَى أَنَّ قَوْمَ لُوطٍ كَفَرُوا، فَأَرْسَلَ عَلَيْهِمْ الْحَاصِبَ.

L42623 He—Exalted is He—said: {Indeed, she will be struck by what strikes them} [Hud: 81], the verse. Thus, Allah—Exalted is He—explicitly states that the people of Lot disbelieved, so He sent upon them a rain of stones.[10]

فَصَحَّ: أَنَّ الرَّجْمَ الَّذِي أَصَابَهُمْ لَمْ يَكُنْ لِلْفَاحِشَةِ وَحْدَهَا، لَكِنْ لِلْكُفْرِ وَلَهَا: فَلَزِمَهُمْ أَنْ لَا يَرْجُمُوا مَنْ فَعَلَ فِعْلَ قَوْمِ لُوطٍ، إلَّا أَنْ يَكُونَ كَافِرًا، وَإِلَّا فَقَدْ خَالَفُوا حُكْمَ اللَّهِ تَعَالَى فَأَبْطَلُوا احْتِجَاجَهُمْ بِالْآيَةِ، إذْ خَالَفُوا حُكْمَهَا.

L42624 It is established that the stoning which befell them was not for the immoral act alone, but for disbelief combined with the act itself. Thus, it became incumbent upon them not to stone anyone who committed the deed of the people of Lut unless he is a disbeliever. Otherwise, they would have opposed the decree of Allah Almighty, thus invalidating their argument based on the verse because they contravened its ruling.

وَأَيْضًا - فَإِنَّ اللَّهَ تَعَالَى أَخْبَرَ: أَنَّ امْرَأَةَ لُوطٍ أَصَابَهَا مَا أَصَابَهُمْ، وَقَدْ عَلِمَ كُلُّ ذِي مَسْكَةِ عَقْلٍ أَنَّهَا لَمْ تَعْمَلْ عَمَلَ قَوْمِ لُوطٍ.

L42625 Moreover, Allah, the Exalted, declared that the wife of Lot was afflicted with what afflicted them, and every person endowed with a share of intellect knows she did not commit the act of Lot's people.

[8] **Qur'an references (L42621):** Qur'an 54:33 (Al-Qamar); Qur'an 54:34 (Al-Qamar); Qur'an 54:37 (Al-Qamar); Qur'an 54:39 (Al-Qamar).

[9] **Qur'an references (L42622):** Qur'an 29:33 (Al-'Ankabut).

[10] **Qur'an references (L42623):** Qur'an 11:81 (Hud).

L42626 Thus, it is valid without doubt that that is a ruling not solely for that action.

فَصَحَّ: أَنَّ ذَلِكَ حُكْمٌ لَمْ يَكُنْ لِذَلِكَ الْعَمَلِ وَحْدَهُ، بِلَا مِرْيَةٍ.

L42627–42628 If they say, “She was aiding them in that deed?” We reply: Then stone everyone who assisted in that deed through guidance or leadership. Otherwise, you have contradicted yourselves, invalidated your Quranic proof, and opposed it.

فَإِنْ قَالُوا: إِنَّهَا كَانَتْ تُعِينُهُمْ عَلَى ذَلِكَ الْعَمَلِ؟ قُلْنَا: فَارْجُمُوا كُلَّ مَنْ أَعَانَ عَلَى ذَلِكَ الْعَمَلِ بِدَلَالَةٍ أَوْ قِيَادَةٍ وَإِلَّا فَقَدْ تَنَاقَضْتُمْ وَأَبْطَلْتُمْ احْتِجَاجَكُمْ بِالْقُرْآنِ، وَخَالَفْتُمُوهُ.

L42629 Moreover, Allah the Exalted revealed that they sought to sexually violate his guests, so He blinded them. Thus, they are necessarily obligated to gouge out the eyes of those who commit the act of Lot’s people [i.e., sodomy], for Allah the Exalted did not merely stone them—rather, He blinded them and then stoned them. Since they have not done this, they have opposed Allah’s ruling in their case and invalidated their argument.

وَأَيْضًا - فَإِنَّ اللَّهَ تَعَالَى أَخْبَرَ أَنَّهُمْ رَاوَدُوهُ عَنْ ضَيْفِهِ، فَطَمَسَ أَعْيُنَهُمْ، فَيَلْزَمُهُمْ وَلَا بُدَّ أَنْ يُسْمِلُوا عُيُونَ فَاعِلِي فِعْلَ قَوْمِ لُوطٍ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يَرْجُمْهُمْ فَقَطْ، لَكِنْ طَمَسَ أَعْيُنَهُمْ، ثُمَّ رَجَمَهُمْ، فَإِذْ لَمْ يَفْعَلُوا هَذَا، فَقَدْ خَالَفُوا حُكْمَ اللَّهِ تَعَالَى فِيهِمْ، وَأَبْطَلُوا حُجَّتَهُمْ.

L42630 And it is also obligatory upon them to gouge out both eyes of anyone who makes sexual advances toward another.

وَيَلْزَمُهُمْ أَيْضًا - أَنْ يَطْمِسُوا عَيْنَيْ كُلِّ مَنْ رَاوَدَ آخَرَ.

L42631 It is also obligatory to burn with fire those who shortchange in weights and measures, because Allah the Exalted destroyed with fire the people of Shu‘ayb for that.

وَيَلْزَمُ أَيْضًا - أَنْ يُحْرِقُوا بِالنَّارِ مَنْ أَنْقَصَ الْمِكْيَالَ وَالْمِيزَانَ، لِأَنَّ اللَّهَ تَعَالَى أَحْرَقَ بِالنَّارِ قَوْمَ شُعَيْبٍ فِي ذَلِكَ.

L42632 They are obligated to kill the one who hamstrung another’s she-camel, for Allah the Exalted destroyed the people of Ṣāliḥ when they hamstrung her. There is no distinction between Allah’s punishment of Lot’s people through blinding their eyes and stoning them to death for committing that abomination; the burning of Shu‘ayb’s people for defrauding in measure and weight; and His destruction of Ṣāliḥ’s people for hamstringing the she-camel. Allah the Exalted said: {Allah’s she-camel and her right to water} [Surah al-Shams 91:13] {But they rejected him and hamstrung her} [Surah al-Shams 91:14] to the end of the chapter.[11]

وَيَلْزَمُهُمْ - أَنْ يَقْتُلُوا مِنْ عُقْرِ نَاقَةِ آخَرَ، لِأَنَّ اللَّهَ تَعَالَى أَهْلَكَ قَوْمَ صَالِحٍ إِذْ عَقَرُوا النَّاقَةَ، إِذْ لَا فَرْقَ بَيْنَ عَذَابِ اللَّهِ تَعَالَى قَوْمَ لُوطٍ بِطَمْسِ الْعُيُونِ، وَالرَّجْمِ - إِذْ أَتَوْا تِلْكَ الْفَاحِشَةَ - وَبَيْنَ إِحْرَاقِ قَوْمِ شُعَيْبٍ إِذْ بَخَسُوا الْمِكْيَالَ وَالْمِيزَانَ - وَبَيْنَ إِهْلَاكِهِ قَوْمَ صَالِحٍ إِذْ عَقَرُوا النَّاقَةَ، قَالَ اللَّهُ تَعَالَى {نَاقَةَ اللَّهِ وَسُقْيَاهَا} [الشمس: ١٣] {فَكَذَّبُوهُ فَعَقَرُوهَا} [الشمس: ١٤] إِلَى آخِرِ السُّورَةِ.

L42633 Then we examined the opinion of those who did not recognize a prescribed punishment (hadd) for that matter. We found them citing as evidence the words of Allah, the Exalted: *“And they do not kill the soul which Allah has

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ لَمْ يَرَ فِي ذَلِكَ حَدًّا: فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِقَوْلِ اللَّهِ تَعَالَى {وَلا يَقْتُلُونَ النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلا بِالْحَقِّ وَلا يَزْنُونَ} [الفرقان: ٦٨] إِلَى قَوْلِهِ {إِلا مَنْ تَابَ} [الفرقان: ٧٠] .

[11] **Qur’an references (L42632):** Qur’an 91:13 (Ash-Shams); Qur’an 91:14 (Ash-Shams).

forbidden except by right, nor do they commit adultery”* [Al-Furqān 25:68] up to His words: *“except those who repent”* [Al-Furqān 25:70].[12]

L42634 The Messenger of Allah, peace and blessings be upon him, said, “It is not lawful to take the life of a Muslim except for one of three reasons: apostasy after belief, adultery after marital chastity, or killing a soul in retribution.”

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إِيمَانٍ وَزِنًى بَعْدَ إِحْصَانٍ أَوْ نَفْسًا بِنَفْسٍ» .

L42635–42637 He (peace be upon him) said, “Indeed, your blood, your wealth, your honor, and your physical integrity are inviolable upon you.” Allah the Exalted has forbidden the blood of every person—Muslim or Dhimmi—except by right, and there is no right except in textual evidence or scholarly consensus.

وَقَالَ - عَلَيْهِ السَّلَامُ - «إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» فَحَرَّمَ اللَّهُ تَعَالَى دَمَ كُلِّ امْرِئٍ - مُسْلِمٍ وَذِمِّيٍّ - إلَّا بِالْحَقِّ، وَلَا حَقَّ إلَّا فِي نَصٍّ أَوْ إجْمَاعٍ.

L42638 The Prophet—peace and blessings of Allah be upon him—prohibited bloodshed except for what he permitted: adultery after being chaste (i.e., by a married person), disbelief after faith, legal retaliation, the prescribed punishment for wine consumption [committed] three times, and the combatant (muharib) before repentance. The perpetrator of the act of the people of Lot (sodomy) is not among these categories—thus his blood is forbidden unless by explicit text or consensus. Have we not stated: “Is there no valid precedent for killing him?” Yes, and there is also no valid report from any Companion—may Allah be pleased with them—regarding this matter. For the narrations about it from Abu Bakr, Ali, and the Companions are all disconnected. One of them is reported by Ibn Samʿān from an unknown narrator.

وَحَرَّمَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الدَّمَ إلَّا بِمَا أَبَاحَهُ بِهِ مِنْ الزِّنَى بَعْدَ الْحِصَانِ، وَالْكُفْرِ بَعْدَ الْإِيمَانِ وَالْقَوَدِ وَالْمَحْدُودِ فِي الْخَمْرِ ثَلَاثًا، وَالْمُحَارِبُ قَبْلَ أَنْ يَتُوبَ - وَلَيْسَ فَاعِلُ فِعْلِ قَوْمِ لُوطٍ وَاحِدًا مِنْ هَؤُلَاءِ، فَدَمُهُ حَرَامٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَقَدْ قُلْنَا: إنَّهُ لَا يَصِحُّ أَثَرٌ فِي قَتْلِهِ؟ نَعَمْ، وَلَا يَصِحُّ أَيْضًا - فِي ذَلِكَ شَيْءٌ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - لِأَنَّ الرِّوَايَةَ فِي ذَلِكَ عَنْ أَبِي بَكْرٍ، وَعَلِيٍّ، وَالصَّحَابَةِ إنَّمَا هِيَ مُنْقَطِعَةٌ: وَإِحْدَاهَا - عَنْ ابْنِ سَمْعَانَ عَنْ مَجْهُولٍ.

L42639 And the other pertains to someone whose narration is not relied upon.

وَالْأُخْرَى عَمَّنْ لَا يَعْتَمِدُ عَلَى رِوَايَتِهِ.

L42640 As for the narrations from Ibn Abbas, one of the two narrations is reported through Muʿadh ibn al-Harith from ʿAbd al-Rahman ibn Qays al-Dabbi from Hassan ibn Matar—all of whom are unknown narrators. Likewise, the narration from Ibn al-Zubayr and Ibn ʿUmar is similarly transmitted from unknown narrators.

وَأَمَّا الرِّوَايَةُ عَنْ ابْنِ عَبَّاسٍ، فَإِحْدَاهُمَا - عَنْ مُعَاذِ بْنِ الْحَارِثِ عَنْ عَبْدِ الرَّحْمَنِ بْنِ قَيْسٍ الضَّبِّيِّ عَنْ حَسَّانَ بْنِ مَطَرٍ - وَكُلُّهُمْ مَجْهُولُونَ - وَالرِّوَايَةُ عَنْ ابْنِ الزُّبَيْرِ، وَابْنِ عُمَرَ مِثْلُ ذَلِكَ عَنْ مَجْهُولِينَ.

L42641 It becomes invalid for anyone to rely on any of the Companions—may Allah

[12] **Qur’an references (L42633):** Qur’an 25:68 (Al-Furqan); Qur’an 19:60 (Maryam); Qur’an 25:70 (Al-Furqan).

be pleased with them—regarding this matter through any valid attribution. As for the one who holds a view less than the prescribed punishment—it is Al-Hakam ibn ʻUtaybah. Abu Muhammad—may Allah have mercy on him—said: Since it has been authentically established that there is neither execution nor fixed punishment upon the offender, because Allah the Exalted has not ordained this nor His Messenger—peace be upon him—the ruling is that he has committed a reprehensible act. Therefore, it is obligatory by the command of Allah's Messenger—peace be upon him—to change the evil by force. Thus, it is obligatory to administer the discretionary punishment that Allah's Messenger defined for this matter—nothing beyond that—and to only ward off his harm from the people.

فَبَطَلَ أَنْ يَتَعَلَّقَ أَحَدٌ فِي هَذِهِ الْمَسْأَلَةِ عَنْ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - بِشَيْءٍ يَصِحُّ - وَأَمَّا مَنْ رَأَى دُونَ الْحَدِّ، فَالْحَكَمُ بْنُ عُتَيْبَةَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ صَحَّ ذَلِكَ أَنَّهُ لَا قَتْلَ عَلَيْهِ وَلَا حَدَّ، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ ذَلِكَ وَلَا رَسُولُهُ - عَلَيْهِ السَّلَامُ - فَحُكْمُهُ أَنَّهُ أَتَى مُنْكَرًا - فَالْوَاجِبُ بِأَمْرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تَغْيِيرُ الْمُنْكَرِ بِالْيَدِ، فَوَاجِبٌ أَنْ يَضْرِبَ التَّعْزِيرَ الَّذِي حَدَّهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ لَا أَكْثَرَ، وَيَكُفُّ ضَرَرَهُ عَنْ النَّاسِ فَقَطْ.

L42642 As we have been narrated through the chain of al-Bukharī: Narrated to us by Muslim ibn Ibrāhīm, narrated to us by Hishām—al-Dastuwā'ī—, narrated to us by Yaḥyā—ibn Abī Kathīr—, from ʻIkrimah, from Ibn ʻAbbās, who said: "The Messenger of Allāh—may Allāh bless him and grant him peace—cursed the effeminate men among males and the masculine-acting women among females. He said: 'Expel them from your houses.' He expelled so-and-so and so-and-so."

كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا مُسْلِمُ بْنُ إبْرَاهِيمَ نا هِشَامٌ - هُوَ الدَّسْتُوَائِيُّ - نا يَحْيَى هُوَ ابْنُ أَبِي كَثِيرٍ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ: قَالَ «لَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُخَنَّثِينَ مِنْ الرِّجَالِ وَالْمُتَرَجِّلَاتِ مِنْ النِّسَاءِ، وَقَالَ: أَخْرِجُوهُمْ مِنْ بُيُوتِكُمْ، وَأَخْرَجَ فُلَانًا، وَأَخْرَجَ فُلَانًا» .

L42643 As for imprisonment—it is grounded in the words of Allah, the Exalted: "Cooperate in righteousness and piety, and do not cooperate in sin and transgression" [Al-Mā'idah 2].[13]

وَأَمَّا السِّجْنُ - فَلِقَوْلِ اللَّهِ تَعَالَى {وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى وَلا تَعَاوَنُوا عَلَى الإِثْمِ وَالْعُدْوَانِ} [المائدة: ٢] .

L42644–42646 And with certainty, every possessor of sound perception knows that warding off the harm of the act of the people of Lot - those who commit intercourse - And those who are married—they are a support for people in righteousness and piety, while neglecting them aids sin and transgression. Thus, it becomes obligatory to restrain them by means that do not justify spilling their blood, harming their bodily integrity, or seizing their wealth. Abu Muhammad—may Allah have mercy on him—said: If some shameless and foolish people were to protest, "Does abstaining from killing them provide a pretext for such misconduct?" Respond to them: Does your refraining from killing every fornicator provide a pretext to legalize fornication among you? Does

وَبِيَقِينٍ يَدْرِي كُلُّ ذِي حِسٍّ سَلِيمٍ أَنَّ كَفَّ ضَرَرِ فِعْلَةِ قَوْمِ لُوطٍ - النَّاكِحِينَ وَالْمَنْكُوحِينَ - عَنْ النَّاسِ عَوْنٌ عَلَى الْبِرِّ وَالتَّقْوَى، وَإِنَّ إهْمَالَهُمْ عَوْنٌ عَلَى الْإِثْمِ وَالْعُدْوَانِ، فَوَجَبَ كَفُّهُمْ بِمَا لَا يُسْتَبَاحُ بِهِ لَهُمْ دَمٌ، وَلَا بَشَرَةٌ، وَلَا مَالٌ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِنْ شَنَّعَ بَعْضُ أَهْلِ الْقِحَةِ وَالْحَمَاقَةِ أَنْ يَقُولَ: إنْ تَرَكَ قَتْلَهُمْ ذَرِيعَةً إلَى هَذَا الْفِعْلِ؟ قِيلَ لَهُمْ: وَتَرَكَكُمْ أَنْ تَقْتُلُوا كُلَّ زَانٍ ذَرِيعَةً إلَى إبَاحَةِ الزِّنَى مِنْكُمْ، وَتَرَكَكُمْ أَنْ تَقْتُلُوا الْمُرْتَدَّ - وَإِنْ تَابَ - تَطْرِيقٌ مِنْكُمْ وَذَرِيعَةٌ إلَى إبَاحَتِكُمْ الْكُفْرَ،

[13] **Qur'an references (L42643):** Qur'an 5:2 (Al-Ma'idah).

your refraining from killing the apostate—even if he repents—constitute a pretext on your part to legitimize disbelief, cross-worship, and denial of the Quran and the Prophet—peace be upon him? Does your refraining from killing those who consume pork, carrion, blood, or drink wine serve as a pretext to legalize these acts? This is merely their retaliation with the same absurdities they spout. *"As for those who retaliate after being wronged, there is no blame on them"* [42:41]. *"Blame lies only against those who wrong people and unjustly spread corruption on earth—these will suffer a painful punishment"* [42:42].[14]

وَعِبَادَةُ الصَّلِيبِ، وَتَكْذِيبُ الْقُرْآنِ وَالنَّبِيِّ - عَلَيْهِ السَّلَامُ - وَتَرْكُكُمْ قَتْلَ آكِلِ الْخِنْزِيرِ وَالْمَيْتَةِ وَالدَّمِ وَشَارِبِ الْخَمْرِ تَطْرِيقٌ مِنْكُمْ وَذَرِيعَةٌ إلَى إبَاحَتِكُمْ أَكْلَ الْخِنْزِيرِ وَالْمَيْتَةِ وَالدَّمِ وَشُرْبِ الْخَمْرِ - وَإِنَّمَا هَذَا انْتِصَارٌ مِنْهُمْ بِمِثْلِ مَا يَهْذِرُونَ بِهِ {وَلَمَنِ انْتَصَرَ بَعْدَ ظُلْمِهِ فَأُولَئِكَ مَا عَلَيْهِمْ مِنْ سَبِيلٍ} [الشورى: ٤١] {إِنَّمَا السَّبِيلُ} [الشورى: ٤٢] الْآيَةُ.

L42647 We seek refuge in Allah from becoming angry for His sake either more than the Exalted is angered for His religion or less than that, or from enacting—with our own opinions—corrupt laws—and we praise Allah the Exalted abundantly for what He has bestowed upon us of adherence to the Quran and the Sunnah—and with Allah, the Exalted, lies all success.

وَنَعُوذُ بِاَللَّهِ مِنْ أَنْ نَغْضَبَ لَهُ بِأَكْثَرَ مِمَّا غَضِبَ تَعَالَى لِدِينِهِ أَوْ أَقَلَّ مِنْ ذَلِكَ، أَوْ أَنْ نُشَرِّعَ - بِآرَائِنَا - الشَّرَائِعَ الْفَاسِدَةَ - وَنَحْمَدُ اللَّهَ تَعَالَى كَثِيرًا عَلَى مَا مَنَّ بِهِ عَلَيْنَا مِنْ التَّمَسُّكِ بِالْقُرْآنِ وَالسُّنَّةِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42648 The legal ruling regarding someone who commits sexual intercourse with a beast.

[مَسْأَلَة فِيمَنْ أَتَى بَهِيمَةً]

L42649 2304 - Issue: Concerning one who commits bestiality. Abū Muḥammad—may God have mercy on him—said: People have differed regarding one who commits bestiality. A group stated: His punishment is the punishment of one who commits zinā—he is stoned if married (muḥṣan), and flogged if unmarried.

٢٣٠٤ - مَسْأَلَةٌ: فِيمَنْ أَتَى بَهِيمَةً؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِيمَنْ أَتَى بَهِيمَةً: فَقَالَتْ طَائِفَةٌ: حَدُّهُ حَدُّ الزَّانِي يُرْجَمُ إنْ أَحْصَنَ، وَيُجْلَدُ إنْ لَمْ يُحْصِنْ.

L42650 A group held that he must be killed without exception.

وَقَالَتْ طَائِفَةٌ: يُقْتَلُ وَلَا بُدَّ.

L42651 A group said: The lesser of the two punishments applies to him, whether he was a muḥṣan (one meeting the conditions of lawful sexual relations) or not.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ أَدْنَى الْحَدَّيْنِ أَحْصَنَ أَوْ لَمْ يُحْصِنْ.

L42652 A group maintained that the ḥadd punishment applies to him unless the beast belongs to him.

وَقَالَتْ طَائِفَةٌ: عَلَيْهِ الْحَدُّ إلَّا أَنْ تَكُونَ الْبَهِيمَةُ لَهُ.

L42653 A group maintained that discretionary punishment (taʿzīr) applies if the animal was his own, slaughtered and not eaten; and if it belonged to someone else, it was not slaughtered.

وَقَالَتْ طَائِفَةٌ: يُعَزَّرُ إنْ كَانَتْ الْبَهِيمَةُ لَهُ، وَذُبِحَتْ وَلَمْ تُؤْكَلْ، وَإِنْ كَانَتْ لِغَيْرِهِ لَمْ تُذْبَحْ.

[14] **Qur'an references (L42644):** Qur'an 42:41 (Ash-Shuraa); Qur'an 42:42 (Ash-Shuraa).

وَقَالَتْ طَائِفَةٌ: فِيهَا اجْتِهَادُ الْإِمَامِ فِي الْعُقُوبَةِ بَالِغَةً مَا بَلَغَتْ.

L42654 A group held that in this matter, the imam's ijtihād (independent juristic reasoning) determines the punishment, extending to its full extent.

وَقَالَتْ طَائِفَةٌ: لَيْسَ فِيهِ إِلَّا التَّعْزِيرُ دُونَ الْحَدِّ.

L42655 And a group said: There is therein only discretionary punishment, excluding the prescribed punishment.

فَالْقَوْلُ الْأَوَّلُ - كَمَا نا أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا أَبُو ذَرٍّ نا عَبْدُ اللَّهِ بْنُ أَحْمَدَ بْنِ حَمَوَيْهِ السَّرَخْسِيُّ نا إِبْرَاهِيمُ بْنُ خُرَيْمِ بْنِ فِهْرٍ الشَّاشِيُّ ثني عَبْدُ بْنُ حُمَيْدٍ نا يَزِيدُ بْنُ هَارُونَ أَنَا سُفْيَانُ بْنُ حُسَيْنٍ عَنْ أَبِي عَلِيٍّ الرَّحَبِيِّ عَنْ عِكْرِمَةَ قَالَ: سُئِلَ الْحَسَنُ بْنُ عَلِيٍّ - مَقْدَمَهُ مِنْ الشَّامِ - عَنْ رَجُلٍ أَتَى بَهِيمَةً، فَقَالَ: إِنْ كَانَ مُحْصَنًا رُجِمَ.

L42656–42658 The first statement: as narrated to us by Aḥmad ibn ʿUmar ibn Anas from Abū Dharr, from ʿAbdullāh ibn Aḥmad ibn Ḥamawayh al-Sarakhsī, from Ibrāhīm ibn Khuraym ibn Fihr al-Shāshī, narrated to me by ʿAbd ibn Ḥumayd, narrated to us by Yazīd ibn Hārūn. On the authority of Sufyān ibn Ḥusayn, from Abū ʿAlī al-Raḥabī, from ʿIkrimah, who said: Al-Ḥasan ibn ʿAlī—after his return from Syria—was asked about a man who had intercourse with an animal. He said: "If he is a *muḥṣan*, he is to be stoned."

وَعَنْ عَامِرٍ الشَّعْبِيِّ أَنَّهُ قَالَ فِي الَّذِي يَأْتِي الْبَهِيمَةَ، أَوْ يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ، قَالَ: عَلَيْهِ الْحَدُّ.

L42659 On the authority of ʿĀmir al-Shaʿbī, who said regarding one who commits bestiality or performs the act of the people of Lūṭ: "The ḥadd punishment applies to him."

وَعَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ قَالَ فِي الَّذِي يَأْتِي الْبَهِيمَةَ: إِنْ كَانَ ثَيِّبًا رُجِمَ، وَإِنْ كَانَ بِكْرًا جُلِدَ - وَهُوَ قَوْلُ قَتَادَةَ، وَالْأَوْزَاعِيُّ، وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ.

L42660 And from Al-Ḥasan al-Baṣrī that he said concerning one who has sexual intercourse with an animal: If the perpetrator is a thayyib (previously married), they are stoned; if a bikr (unmarried), they are flogged. This is the position of Qatādah, Al-Awzāʿī, and one of the two opinions of Al-Shāfiʿī.

وَالْقَوْلُ الثَّانِي - عَنْ ابْنِ الْهَادِي، قَالَ: قَالَ ابْنُ عُمَرَ فِي الَّذِي يَأْتِي الْبَهِيمَةَ: لَوْ وَجَدْتُهُ لَقَتَلْتُهُ - وَهُوَ قَوْلُ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ قَالَ: تُقْتَلُ الْبَهِيمَةُ أَيْضًا.

L42661 The second opinion is from Ibn al-Hādī, who reported that Ibn ʿUmar said regarding one who commits bestiality: "Were I to find him, I would kill him." This is also the opinion of Abū Salamah ibn ʿAbd al-Raḥmān ibn ʿAwf, who said: "The animal is likewise to be killed."

وَالْقَوْلُ الثَّالِثُ - عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ فِي الَّذِي يَأْتِي الْبَهِيمَةَ، قَالَ: عَلَيْهِ أَدْنَى الْحَدَّيْنِ - أَحْصَنَ أَوْ لَمْ يُحْصِنْ.

L42662 The third opinion – from Ma'mar, from al-Zuhrī regarding one who engages in intercourse with an animal – he said: The lesser of the two ḥadd punishments applies to him, whether he is a muḥṣan or not.

وَالْقَوْلُ الرَّابِعُ - عَنْ رَبِيعَةَ أَنَّهُ قَالَ فِي الَّذِي يَأْتِي الْبَهِيمَةَ: هُوَ الْمُبْتَغِي مَا لَمْ يُحَلِّلْ اللَّهُ لَهُ، فَرَأَى الْإِمَامُ فِيهِ الْعُقُوبَةَ بَالِغَةً مَا بَلَغَتْ، فَإِنَّهُ قَدْ أَحْدَثَ فِي الْإِسْلَامِ أَمْرًا عَظِيمًا - وَهُوَ قَوْلُ مَالِكٍ.

L42663 The fourth opinion – from Rabiʿah – is that he said regarding one who commits bestiality: "He seeks what Allah has not permitted him." Thus, the Imam deemed the punishment for it to reach the utmost severity, for he has indeed introduced a grave matter into Islam – and this is the opinion of Malik.

L42664 The fifth opinion (from Ibn Abbas regarding one who has intercourse with an animal: there is no ḥadd upon him) is also attributed to Al-Sha'bi.

وَالْقَوْلُ الْخَامِسُ - عَنْ ابْنِ عَبَّاسٍ فِي الَّذِي يَأْتِي الْبَهِيمَةَ: لَا حَدَّ عَلَيْهِ - وَعَنْ الشَّعْبِيِّ مِثْلُهُ.

L42665 From ʻAṭāʾ concerning one who commits bestiality, he said: "Allah was not forgetful in not revealing a ruling about it, but it is vile—so they declared vile what Allah had declared vile"—and this is the view of our companions. "And is this one of the two opinions of Al-Shāfiʿī?" Abū Muḥammad said: "When they differed as we mentioned, it became obligatory to examine. We examined the position held by the proponents of the first view and found nothing for them except that they analogized it to fornication, saying: 'It is unlawful intercourse.' All analogy is invalid, except that it obligates the one who inserts into an animal's vulva to perform the ritual bath even without ejaculation, treating it like vaginal intercourse, with no distinction."

وَعَنْ عَطَاءٍ فِي الَّذِي يَأْتِي الْبَهِيمَةَ، فَقَالَ: مَا كَانَ اللَّهُ نَسِيًا: أَنْ يَنْزِلَ فِيهِ، وَلَكِنَّهُ قَبِيحٌ، فَقَبَحُوا مَا قَبَّحَ اللَّهُ - وَهُوَ قَوْلُ أَصْحَابِنَا - وَأَحَدُ قَوْلَيْ الشَّافِعِيِّ؟ قَالَ أَبُو مُحَمَّد: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ: فَنَظَرْنَا فِيمَا قَالَ بِهِ أَهْلُ الْقَوْلِ الْأَوَّلِ - فَلَمْ نَجِدْ لَهُمْ إلَّا أَنَّهُمْ قَاسُوهُ عَلَى الزِّنَى، فَقَالُوا: هُوَ وَطْءٌ مُحَرَّمٌ - وَالْقِيَاسُ كُلُّهُ بَاطِلٌ إلَّا أَنَّهُ يَلْزَمُ عَلَى مَنْ أَوْلَجَ فِي حَيَاءِ بَهِيمَةٍ الْغُسْلُ وَإِنْ لَمْ يُنْزِلْ، وَيَجْعَلُهُ كَالْوَطْءِ فِي الْفَرْجِ، وَلَا فَرْقَ.

L42666–42668 In the second opinion, we found them using as proof what we ourselves have transmitted—as narrated to us by Hammām, from ʿAbbās ibn Aṣbagh, from Muḥammad ibn ʿAbd al-Malik ibn Ayman, from al-Ḥārith ibn Abī Usāmah, from ʿAbd al-Wahhāb (he is Ibn ʿAṭāʾ al-Khaffāf), from ʿAbbād (he is Ibn Manṣūr), from ʿIkrimah, from Ibn ʿAbbās, from the Prophet—peace and blessings be upon him. that he said concerning the one who engages in intercourse with an animal: «Kill the perpetrator and the one acted upon».

وَفِي الْقَوْلِ الثَّانِي - فَوَجَدْنَاهُمْ يَحْتَجُّونَ بِمَا رُوِّينَاهُ - كَمَا نا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا الْحَارِثُ بْنُ أَبِي أُسَامَةَ نا عَبْدُ الْوَهَّابِ - هُوَ ابْنُ عَطَاءٍ الْخَفَّافُ - نا عَبَّادٌ - هُوَ ابْنُ مَنْصُورٍ - عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ قَالَ فِي الَّذِي يَأْتِي الْبَهِيمَةَ «اُقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ» .

L42669 Abdullah ibn Rabiʿ narrated to us: Muhammad ibn Ishaq narrated to us: Ibn al-Aʿrabi narrated to us: Abu Dawud narrated to us: An-Nufayli — who is Abdullah ibn Muhammad — narrated to us: ʿAbdul-ʿAziz — who is Ibn Muhammad ad-Darawardi — narrated from ʿAmr ibn Abi ʿAmr ibn ʿIkrimah from Ibn ʿAbbas, who said: The Messenger of Allah — peace and blessings of Allah be upon him — said: "Whoever you find committing the deed of the people of Lut, kill both the doer and the one acted upon. Whoever has sexual intercourse with an animal, kill both him and the animal alongside him." I said: "What about the animal?" He replied: "I believe he only said this because he disapproved of consuming its meat since that act had been committed with it."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا النُّفَيْلِيُّ - هُوَ عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ - نا عَبْدُ الْعَزِيزِ - هُوَ ابْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ - عَنْ عَمْرِو بْنِ أَبِي عَمْرِو بْنِ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلَ قَوْمِ لُوطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ، مَنْ أَتَى بَهِيمَةً فَاقْتُلُوهُ وَاقْتُلُوهَا مَعَهُ» قُلْت: مَا شَأْنُ الْبَهِيمَةِ؟ قَالَ: مَا أَرَاهُ قَالَ ذَلِكَ، إلَّا أَنَّهُ كَرِهَ أَكْلَ لَحْمِهَا وَقَدْ عَمِلَ بِهَا ذَلِكَ الْعَمَلَ.

L42670 Aḥmad ibn Muḥammad al-Ṭalamankī narrated to us from Ibn Mufarrij from

Muḥammad ibn Ayyūb al-Ṣamūṭ al-Raqqī from Aḥmad ibn ʿUmar ibn ʿAbd al-Khāliq al-Bazzār from Ismāʿīl ibn Masʿūd al-Jaḥdarī from Muḥammad ibn Ismāʿīl ibn Abī Fudayk from Ibrāhīm ibn Ismāʿīl—who is Ibn Abī Ḥabībah—from Dāwūd ibn al-Ḥuṣayn from ʿIkrimah from Ibn ʿAbbās from the Prophet (peace be upon him) who said: "Kill those who engage in bestiality—both the active participant and the passive one. Whoever commits the act of the people of Lot, kill the active partner and the passive partner."

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ الطَّلْمَنْكِيُّ نا ابْنُ مُفَرِّجٍ نا مُحَمَّدُ بْنُ أَيُّوبَ الصَّمُوتُ الرَّقِّيُّ نا أَحْمَدُ بْنُ عُمَرَ بْنِ عَبْدِ الْخَالِقِ الْبَزَّارُ نا إِسْمَاعِيلُ بْنُ مَسْعُودٍ الْجَحْدَرِيُّ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ بْنِ أَبِي فُدَيْكٍ نا إِبْرَاهِيمُ بْنُ إِسْمَاعِيلَ - هُوَ ابْنُ أَبِي حَبِيبَةَ - عَنْ دَاوُد بْنِ الْحُصَيْنِ عَنْ عِكْرِمَةَ عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اُقْتُلُوا مُوَاقِعَ الْبَهِيمَةِ، اُقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ، وَمَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ» .

L42671–42673 Abdullah ibn Rabee' narrated to us, Muhammad ibn Mu'awiyah narrated to us, Ahmad ibn Shu'ayb narrated to us, Qutaybah ibn Sa'eed narrated to us, Abdul-Azeez ibn Muhammad Ad-Darāwardī narrated to us, Amr ibn Abi Amr narrated from Ikrimah from Ibn Abbas that the Messenger of Allah — peace and blessings be upon him — said: "May Allah curse whoever does the deed of the people of Lut (three times). May Allah curse whoever has intercourse with a beast. If you find anyone who has mounted a beast, kill him and kill the beast." It was said to Ibn Abbas: "What is the ruling concerning the beast?" He said: "I did not hear anything from the Messenger of Allah — peace and blessings be upon him — regarding that, but I think the Messenger of Allah — peace and blessings be upon him — disliked that its meat be consumed or that any benefit be derived from it after such an act was committed with it." Abu Muhammad said: "They have no proof other than what we mentioned. We have already mentioned in the preceding chapter the weakness of these narrations, because Abbad ibn Mansoor, Amr ibn Abi Amr, and Isma'eel ibn Ibrahim are all weak narrators. Had they been authentic, we would have acted upon them, adhered to them, and it would not have been permissible to oppose them. Since they are not authentic, then no... [text ends here]." It is permissible to adopt this opinion, though it was incumbent upon the Hanafis and Malikis to adopt it according to their principles, for they invoked evidence weaker than this to impose the hadd punishment of eighty [lashes] for wine in numerous cases.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ نا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ نا عَمْرُو بْنُ أَبِي عَمْرٍو عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَعَنَ اللَّهُ مَنْ عَمِلَ عَمَلَ قَوْمِ لُوطٍ - ثَلَاثَ مَرَّاتٍ - لَعَنَ اللَّهُ مَنْ وَاقَعَ بَهِيمَةً، مَنْ وَجَدْتُمُوهُ وَقَعَ عَلَى بَهِيمَةٍ فَاقْتُلُوهُ وَاقْتُلُوا الْبَهِيمَةَ» فَقِيلَ لِابْنِ عَبَّاسٍ: مَا شَأْنُ الْبَهِيمَةِ؟ قَالَ: مَا سَمِعْتُ مِنْ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ذَلِكَ شَيْئًا، وَلَكِنْ أَرَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَرِهَ أَنْ يُؤْكَلَ مِنْ لَحْمِهَا، أَوْ يُنْتَفَعَ بِهَا وَقَدْ عُمِلَ بِهَا ذَلِكَ الْعَمَلُ؟ قَالَ أَبُو مُحَمَّدٍ: لَا حُجَّةَ لَهُمْ غَيْرُ مَا ذَكَرْنَا، وَقَدْ ذَكَرْنَا فِي الْبَابِ الَّذِي قَبْلَ هَذَا ضَعْفَ هَذَا الْآثَارِ لِأَنَّ عَبَّادَ بْنَ مَنْصُورٍ، وَعَمْرَو بْنَ أَبِي عَمْرٍو، وَإِسْمَاعِيلَ بْنَ إِبْرَاهِيمَ ضُعَفَاءُ كُلُّهُمْ وَلَوْ صَحَّتْ لَقُلْنَا بِهَا وَلَجَارَيْنَا عَلَيْهَا وَلَمَا حَلَّ خِلَافُهَا - فَإِذْ لَا تَصِحُّ فَلَا يَجُوزُ الْقَوْلُ بِهَا إِلَّا أَنَّهُ قَدْ كَانَ لَازِمًا لِلْحَنَفِيِّينَ، وَالْمَالِكِيِّينَ الْقَوْلَ بِهَا عَلَى أُصُولِهِمْ، فَإِنَّهُمْ احْتَجُّوا بِأَسْقَطَ مِنْهَا فِي إِيجَابِ حَدِّ الْخَمْرِ ثَمَانِينَ فِي مَوَاضِعَ جَمَّةٍ.

L42674 Then we examined the statement of those who asserted, "The minimum of the two punishments is incumbent upon him"—but we found it devoid of

any foundational proof at all, nor do we recognize any valid justification for it—thus, it is invalidated.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: عَلَيْهِ أَدْنَى الْحَدَّيْنِ - فَوَجَدْنَاهُ لَا حُجَّةَ لَهُ أَصْلًا، وَلَا نَعْرِفُ لَهُ وَجْهًا - فَسَقَطَ.

L42675 Then we examined the statement of those who said: "A *hadd* punishment is to be imposed and the animal is to be killed," and we found it to be the height of corruption.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: " يُحَدُّ وَتُقْتَلُ الْبَهِيمَةُ " فَوَجَدْنَاهُ فِي غَايَةِ الْفَسَادِ.

L42676 Then we examined the statement of those who claimed: "The punishment is his liability according to the Imam's discretion, however severe it may be," and we found it erroneous. For Allah the Exalted has regulated all matters and did not neglect them, nor did the Imams have unrestricted authority over people's blood, their honor, their physical integrity, or their wealth. Rather, He had previously addressed them through His Messenger - peace be upon him - when He said: "Indeed, your blood, your wealth, and your physical integrity are sacredly inviolable to you."

ثُمَّ نَظَرْنَا فِي قَوْلِ مَنْ قَالَ: " عَلَيْهِ الْعُقُوبَةُ بِرَأْيِ الْإِمَامِ بَالِغَةً مَا بَلَغَتْ " فَوَجَدْنَاهُ خَطَأً، لِأَنَّ اللَّهَ تَعَالَى قَدْ زَمَّ الْأُمُورَ وَلَمْ يُهْمِلْهَا، وَلَمْ يُطْلِقْ الْأَئِمَّةُ عَلَى دِمَاءِ النَّاسِ، وَلَا أَعْرَاضِهِمْ، وَلَا أَبْشَارِهِمْ، وَلَا أَمْوَالِهِمْ، بَلْ قَدْ تَقَدَّمَ إلَيْهِمْ عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ - فَقَالَ: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L42677 It may be that the Imam's judgment applies to specific matters concerning an individual - such as confiscating his wealth, executing him, or selling him [into slavery]. If those [who oppose this ruling] are barred from such actions, how can they justify prohibiting this while permitting other [similar] acts? They possess no valid means to distinguish between these cases, rendering their claim baseless and devoid of evidence for its proponent.

وَلَعَلَّ رَأْيَ الْإِمَامِ يَبْلُغُ إلَى خِصَائِهِ، أَوْ إلَى أَخْذِ مَالِهِ، أَوْ إلَى قَتْلِهِ، أَوْ إلَى بَيْعِهِ، فَإِنْ مُنِعُوا مِنْ هَذَا، سُئِلُوا الْفَرْقَ بَيْنَ مَا مُنِعُوا مِنْ هَذَا وَبَيْنَ مَا أَبَاحُوا مِنْ غَيْرِ ذَلِكَ؟ وَلَا سَبِيلَ لَهُمْ إلَيْهِ، فَخَصَلَ هَذَا الْقَوْلُ لَا حُجَّةَ لِقَائِلِهِ.

L42678 Then we examined the sole remaining opinion—that only discretionary punishment is due—and found it sound, because he committed a reprehensible act. Allah the Exalted says: "And those who guard their private parts, except from their spouses or those their right hands possess..." [23:5-6] until His statement: "...the transgressors" [23:7]. There is no disagreement among any in the Ummah that it is categorically impermissible to have sexual intercourse with an animal. Thus, the perpetrator of such an act has committed a reprehensible act. The Messenger of Allah—peace and blessings be upon him—commanded changing the reprehensible act through physical intervention.

ثُمَّ نَظَرْنَا فِي الْقَوْلِ الَّذِي لَمْ يَبْقَ غَيْرُهُ - وَهُوَ أَنَّ عَلَيْهِ التَّعْزِيرَ فَقَطْ - فَوَجَدْنَاهُ صَحِيحًا، لِأَنَّهُ قَدْ أَتَى مُنْكَرًا، فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إِلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٦] إلَى قَوْله تَعَالَى {الْعَادُونَ} [المؤمنون: ٧] وَلَا خِلَافَ بَيْنَ أَحَدٍ مِنْ الْأُمَّةِ أَنَّهُ لَا يَحِلُّ أَنْ تُؤْتَى الْبَهِيمَةُ أَصْلًا، فَفَاعِلُ ذَلِكَ فَاعِلُ مُنْكَرٍ، وَقَدْ أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِتَغْيِيرِ الْمُنْكَرِ بِالْيَدِ، فَعَلَيْهِ مِنْ التَّعْزِيرِ مَا نَذْكُرُهُ - إنْ شَاءَ اللَّهُ تَعَالَى.

Therefore, he is subject to a discretionary punishment, as we will elaborate (if Allah the Exalted wills).[15]

[مَسْأَلَة فِيمَنْ قَذَفَ آخَرَ بِبَهِيمَةٍ أَوْ بِفِعْلِ قَوْمِ لُوطٍ]

A jurisprudential issue concerning one who accuses another of bestiality or sodomy.

٢٣٠٥ - مَسْأَلَةٌ: مَنْ قَذَفَ آخَرَ بِبَهِيمَةٍ، أَوْ بِفِعْلِ قَوْمِ لُوطٍ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي هَذَا: فَقَالَتْ طَائِفَةٌ: عَلَيْهِ حَدُّ الْقَذْفِ.

Issue 2305: Concerning one who accuses another of bestiality or the act of the people of Lot. Abu Muhammad—may Allah have mercy on him—said: "Scholars have differed regarding this matter. A group maintains that the hadd of qadhf applies to him."

كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ الزُّهْرِيِّ قَالَ: مَنْ قَذَفَ آخَرَ بِبَهِيمَةٍ جُلِدَ حَدَّ الْفِرْيَةِ.

From Ḥammām, from Ibn Mufarrij, from Ibn al-Aʿrabī, from al-Dabarī, from ʿAbd al-Razzāq, from Maʿmar, from al-Zuhrī, who said: "Whoever accuses another of bestiality is to be flogged with the *ḥadd* for false accusation."

قَالَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ: لَيْسَ عَلَيْهِ حَدُّ الْفِرْيَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَنْ جَعَلَ إتْيَانَ الْبَهِيمَةِ زِنًى فَقَدْ طَرَدَ أَصْلَهُ، وَكَذَلِكَ مَنْ جَعَلَ فِعْلَ قَوْمِ لُوطٍ زِنًى فَقَدْ طَرَدَ أَصْلَهُ، إذْ جَعَلَ فِي الْقَذْفِ بِهِمَا حَدَّ الزِّنَى، وَقَدْ بَيَّنَّا أَنَّهُمَا لَيْسَا زِنًى فَالْقَذْفُ بِهِمَا لَيْسَ هُوَ الْقَذْفُ الْمُوجِبُ لِلْحَدِّ، وَإِنَّمَا هُوَ أَذًى فَقَطْ فَفِيهِ التَّعْزِيرُ.

Abu Hanifah, Malik, and al-Shafiʿi said: Is the ḥadd punishment for false accusation not applicable to him? Abu Muhammad—may Allah have mercy on him—said: Whoever equates intercourse with an animal to adultery has invalidated its foundation, and likewise whoever equates the act of the people of Lot to adultery has invalidated its foundation, since it applies the ḥadd punishment for adultery to accusations involving them. We have clarified that these two acts are not adultery; thus, accusing someone of them does not constitute the type of false accusation that necessitates the ḥadd punishment. It is merely harm, warranting discretionary punishment (taʿzīr).

وَأَمَّا الْمَالِكِيُّونَ - فَإِنَّهُمْ وَافَقُونَا عَلَى أَنَّ فِعْلَ قَوْمِ لُوطٍ لَيْسَ زِنًى، وَأَنَّ إتْيَانَ الْبَهِيمَةِ لَيْسَ زِنًى، فَسَاوَوْا بَيْنَهُمَا فِي هَذَا الْبَابِ، ثُمَّ إنَّهُمْ جَعَلُوا فِي الْقَذْفِ بِفِعْلِ قَوْمِ لُوطٍ حَدَّ الْقَذْفِ بِالزِّنَى، وَلَمْ يَجْعَلُوا فِي الْقَذْفِ بِإِتْيَانِ الْبَهِيمَةِ حَدَّ الْقَذْفِ بِالزِّنَى، وَهَذَا تَنَاقُضٌ.

As for the Mālikīs, they agreed with us that the act of Lot's people is not adultery and that bestiality is not adultery, thus they equated the two in this regard. Then they applied the ḥadd punishment for false accusation related to adultery to accusations of engaging in the act of Lot's people, yet did not apply the ḥadd punishment for false accusation related to adultery to accusations of bestiality. This is a contradiction.

فَإِنْ قَالُوا: إنَّ فِعْلَ قَوْمِ لُوطٍ أَعْظَمُ مِنْ الزِّنَى؟ قِيلَ لَهُمْ: هَبْكُمْ أَنَّهُ كَالْكُفْرِ، فَهَلَّا جَعَلْتُمْ فِي الْقَذْفِ بِالْكُفْرِ حَدَّ الزِّنَى عَلَى هَذَا الْأَصْلِ الْفَاسِدِ؟ وَهَذَا لَا مَخْلَصَ مِنْهُ؟

If they say: "Indeed, the act of the people of Lot is graver than adultery?" It is said to them: "Suppose it is like disbelief—why then did you not prescribe

[15] **Qur'an references (L42678):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun).

adultery's punishment for accusations of disbelief according to this corrupt principle? There is no escape from it." If they say: "It is adultery, but the gravest form of adultery, so the severest punishment for adultery was prescribed for it—because the person with whom adultery was committed might become lawful at some point in time, whereas the one subjected to the act of Lot's people can never become permissible for the doer, thus it is undoubtedly graver"—it is said to them: "This is invalidated through multiple aspects:"

فَإِنْ قَالُوا: هُوَ زِنًى، وَلَكِنَّهُ أَعْظَمُ الزِّنَى، فَجُعِلَ فِيهِ أَعْظَمُ حُدُودِ الزِّنَى، لِأَنَّ الْمَزْنِيَّ بِهَا قَدْ تَحِلُّ يَوْمًا مِنْ الدَّهْرِ، وَفِعْلَ قَوْمِ لُوطٍ لَا يَحِلُّ الْمَفْعُولُ بِهِ ذَلِكَ لِلْفَاعِلِ أَبَدًا، فَهُوَ أَعْظَمُ بِلَا شَكٍّ؟ قِيلَ لَهُمْ: هَذَا يَبْطُلُ مِنْ وُجُوهٍ:

L42686 One of them is that if someone commits adultery with a female relative unlawful to him—whether by lineage or milk kinship (*radāʿa*)—it is never permissible for him. Therefore, you must impose the severest *ḥudūd* for *zinā* in accordance with this legal principle.

أَحَدُهَا - أَنَّ الزَّانِيَ بِحَرِيمَتِهِ مِنْ نَسَبٍ أَوْ رَضَاعٍ لَا يَحِلُّ لَهُ أَبَدًا، فَاجْعَلُوا فِيهِ أَغْلَظَ حُدُودَ الزِّنَى عَلَى هَذَا الْأَصْلِ.

L42687 The second is that it should be stated to them: A man who penetrates an unrelated woman in her anus has perpetrated an act perpetually impermissible for him. If he marries her, then impose upon him, according to this foundational principle, the most severe hudud punishment for zina.

وَالثَّانِي - أَنْ يُقَالَ لَهُمْ: وَاطِئُ أَجْنَبِيَّةٍ فِي دُبُرِهَا أَتَى مَا لَا يَحِلُّ لَهُ أَبَدًا، فَإِنْ تَزَوَّجَهَا فَاجْعَلُوا فِيهِ عَلَى هَذَا الْأَصْلِ أَغْلَظَ حُدُودَ الزِّنَى.

L42688 The third point is that it may also be said to them: "You commit an act with an animal—you commit what is perpetually impermissible for you." By this very rationale you cited to justify your claim, the act of Lot's people has been equated [to bestiality]. Why then did you not also impose the harshest ḥadd punishment for illicit sexual relations upon it? There is no distinction. Then we return to their assertion: "Indeed, the act of Lot's people is the gravest form of illicit sexual relations"?

وَالثَّالِثُ - أَنْ يُقَالَ لَهُمْ أَيْضًا: آتِي الْبَهِيمَةَ آتِي مَا لَا يَحِلُّ لَهُ أَبَدًا، فَقَدْ سَاوَى فِعْلَ قَوْمِ لُوطٍ فِي هَذِهِ الْعِلَّةِ الَّتِي عَلَّلْتُمْ بِهَا قَوْلَكُمْ، فَهَلَّا جَعَلْتُمْ فِيهِ أَغْلَظَ الْحُدُودِ فِي الزِّنَى أَيْضًا؟ وَلَا فَرْقَ، ثُمَّ رَجَعْنَا إلَى قَوْلِهِمْ " إنَّ فِعْلَ قَوْمِ لُوطٍ أَعْظَمُ الزِّنَى "؟

L42689–42690 We say to them: We have clarified that illicit sexual intercourse (zinā)—linguistically and according to the Sunnah of Allah's Messenger (peace be upon him)—does not apply to the act of the people of Lūṭ. We have explained that it is neither zinā nor greater than zinā, for when Allah's Messenger (peace be upon him) was asked, "Which sin is the gravest?" he said words—their meaning being: associating partners with Allah, then a man killing his child out of fear that he would have to feed the child alongside himself, then committing zinā with the wife of one's neighbor.

فَنَقُولُ لَهُمْ: إنَّا قَدْ أَوْضَحْنَا أَنَّ الزِّنَى بِاللُّغَةِ، وَبِسُنَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَقَعُ عَلَى فِعْلِ قَوْمِ لُوطٍ - وَقَدْ بَيَّنَّا أَنَّهُ لَيْسَ زِنًى وَلَا أَعْظَمَ مِنْ الزِّنَى، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُئِلَ أَيُّ الذَّنْبِ أَعْظَمُ؟ فَقَالَ كَلَامًا - مَعْنَاهُ: الشِّرْكُ، ثُمَّ قَتْلُ الْمَرْءِ وَلَدَهُ مَخَافَةَ أَنْ يُطْعَمَ مَعَهُ، ثُمَّ الزِّنَى بِحَلِيلَةِ الْجَارِ.

L42691 Thus, it is established that adultery with a neighbor's wife is more severe

than the act of the people of Lot, by the report of the Messenger of Allah (peace and blessings be upon him) which no one is permitted to reject. And with Allah, the Exalted, is success.

فَصَحَّ أَنَّ الزِّنَى بِحَلِيلَةِ الْجَارِ أَعْظَمُ مِنْ فِعْلِ قَوْمِ لُوطٍ بِخَبَرِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الَّذِي لَا يَحِلُّ لِأَحَدٍ رَدُّهُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

The Issue of What is Admissible from Witnesses Regarding the Acts of the People of Lot and Bestiality.

[مَسْأَلَة مَا يقْبَل فِي فعل قَوْم لوط وأتيان الْبَهَائِم مِنْ الشُّهُود]

2306. Issue: Testimony regarding what we have mentioned? Abu Muhammad (may Allah have mercy on him) said: There was a difference of opinion among the people: A group among them, including Al-Shāfiʿī, and a group from our companions said: Testimony concerning the act of the people of Lot and bestiality is not accepted with fewer than four witnesses.

٢٣٠٦ - مَسْأَلَةٌ: الشَّهَادَةُ فِيمَا ذَكَرْنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ: قَالَ قَوْم مِنْهُمْ الشَّافِعِيُّ، وَقَوْمٌ مِنْ أَصْحَابِنَا: إنَّهُ لَا يُقْبَلُ فِي فِعْلِ قَوْمِ لُوطٍ، وَإِتْيَانِ الْبَهِيمَةِ أَقَلُّ مِنْ أَرْبَعَةِ شُهُودٍ.

Abu Hanifa and his companions said: "Are two witnesses accepted in this case?" Abu Muhammad said: "As for those who consider these two sins to be fornication, they have contradicted its foundational principle. We have clarified with clear proofs that they are fundamentally not acts of fornication, and therefore they are not subject to any of the rulings specifically designated for fornication."

وَقَالَ أَبُو حَنِيفَةَ، وَأَصْحَابُهُ: يُقْبَلُ فِي ذَلِكَ اثْنَانِ؟ قَالَ أَبُو مُحَمَّدٍ: أَمَّا مَنْ جَعَلَ هَذَيْنِ الذَّنْبَيْنِ زِنًى فَقَدْ طَرَدَ أَصْلَهُ، وَقَدْ أَوْضَحْنَا بِالْبَرَاهِينِ الْوَاضِحَةِ أَنَّهُمَا لَيْسَا مِنْ الزِّنَى أَصْلًا فَلَيْسَ لَهُمَا شَيْءٌ مِمَّا خَصَّ بِهِ حُكْمَ الزِّنَى.

Some of our companions argued in this matter by saying: These specific acts of physical contact are prohibited except by textual evidence or consensus. No consensus exists to permit the physical contact of one who commits the act of the people of Lot, nor the physical contact of one who engages with an animal—whether by discretionary punishment or otherwise—except through four witnesses. Thus, it is impermissible to deem these acts lawful with fewer than that.

وَاحْتَجَّ بَعْضُ أَصْحَابِنَا فِي ذَلِكَ بِأَنْ قَالُوا: إنَّ الْأَبْشَارَ مُحَرَّمَةٌ إلَّا بِنَصٍّ أَوْ إجْمَاعٍ، وَلَمْ يُجْمِعُوا عَلَى إبَاحَةِ بَشَرَةِ فَاعِلِ فِعْلِ قَوْمِ لُوطٍ، وَبَشَرَةِ آتِي الْبَهِيمَةِ بِتَعْزِيرٍ، وَلَا بِغَيْرِهِ، إلَّا بِأَرْبَعَةِ شُهُودٍ، فَلَا يَجُوزُ اسْتِبَاحَتُهُمَا بِأَقَلَّ.

Abū Muḥammad—may Allāh have mercy on him—said: It would necessarily follow for whoever upholds this view that they may not decree retaliation under any circumstance except with four witnesses, because there has been no consensus permitting the shedding of the blood of one accused of murder with fewer than four upright witnesses. If someone were to assert all of this, the discourse with them would take a different course—namely, by stating: There stands established a truthful, definitive, and certain consensus that the Messenger of Allāh—peace be upon him—commanded the acceptance of

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَيَلْزَمُ مَنْ رَاعَى هَذَا أَنْ لَا يَحْكُمَ بِقَوَدٍ أَصْلًا إلَّا بِأَرْبَعَةِ شُهُودٍ، لِأَنَّهُ لَمْ يُجْمِعْ عَلَى إبَاحَةِ دَمِ الْمَشْهُودِ عَلَيْهِ بِالْقَتْلِ بِأَقَلَّ مِنْ أَرْبَعَةِ شُهُودٍ عُدُولٍ؟ فَإِنْ قَالَ بِذَلِكَ كُلِّهِ قَائِلٌ كَانَ الْكَلَامُ مَعَهُ مِنْ غَيْرِ هَذَا، وَهُوَ أَنْ يُقَالَ لَهُ: قَدْ صَحَّ الْإِجْمَاعُ الصَّادِقُ الْقَاطِعُ الْمُتَيَقَّنُ عَلَى أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -

evidence in all legal rulings, from first to last. He specified a number for some rulings and remained silent regarding others. Since this is beyond doubt, we are certain that these two rulings—and others—fall under Allāh the Exalted's command to enforce obligations through the testimony of proof.

أَمَرَ بِقَبُولِ الْبَيِّنَةِ فِي جَمِيعِ الْأَحْكَامِ - أَوَّلُهَا عَنْ آخِرِهَا - وَحَدَّ فِي بَعْضِ الْأَحْكَامِ عَدَدًا وَسَكَتَ عَنْ بَعْضِهَا، فَإِذْ لَا شَكَّ فِي ذَلِكَ، فَهَذَانِ الْحُكْمَانِ، وَغَيْرُهُمَا، قَدْ أَيْقَنَّا أَنَّ اللَّهَ تَعَالَى أَمَرَنَا بِإِنْفَاذِ الْوَاجِبِ فِي ذَلِكَ بِشَهَادَةِ الْبَيِّنَةِ.

L42697–42699 Therefore, the obligation in that regard is to accept whatever falls under the designation of clear evidence, unless a text prohibits something thereof. One must adhere to this, for the text prohibits accepting the testimony of the disbeliever and the morally corrupt. The text states that a woman's testimony is half that of a man, and that minors are not subject to any of the rulings. Thus, these individuals are excluded from the ruling of testimony solely as the text has excluded them.

فَالْوَاجِبُ فِي ذَلِكَ قَبُولُ مَا وَقَعَ عَلَيْهِ اسْمُ بَيِّنَةٍ، إِلَّا أَنْ يَمْنَعَ نَصٌّ مِنْ شَيْءٍ مِنْ ذَلِكَ فَيُوقَفُ عِنْدَهُ، وَقَدْ مَنَعَ النَّصُّ مِنْ قَبُولِ الْكَافِرِ وَالْفَاسِقِ، وَأَخْبَرَ النَّصُّ: أَنَّ شَهَادَةَ الْمَرْأَةِ نِصْفُ شَهَادَةِ الرَّجُلِ، وَأَنَّ الصِّبْيَانَ غَيْرُ مُخَاطَبِينَ بِشَيْءٍ مِنَ الْأَحْكَامِ، فَخَرَجَ هَؤُلَاءِ مِنْ حُكْمِ الشَّهَادَةِ حَسْبَمَا أَخْرَجَهُمْ النَّصُّ فَقَطْ.

L42700 For indeed, Allah, the Exalted, says: {O you who believe, if a transgressor comes to you with news, verify it} [Al-Ḥujurāt: 6]. Thus, it is valid that this is a ruling from Allah, the Exalted, applicable to all judgments He decrees concerning one's blood, wealth, or honor, and to every judgment.[16]

وَأَيْضًا - فَإِنَّ اللَّهَ تَعَالَى يَقُولُ: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَإٍ فَتَبَيَّنُوا} [الحجرات: ٦] الْآيَةُ فَصَحَّ أَنَّ هَذَا حُكْمٌ مِنْ اللَّهِ تَعَالَى وَارِدٌ فِي كُلِّ مَا يَحْكُمُ بِهِ عَلَى أَحَدٍ فِي دَمِهِ وَمَالِهِ، وَبَشَرَتِهِ، وَفِي كُلِّ حُكْمٍ.

L42701 Had it not been for the established text stating that "the Messenger of Allah (peace be upon him) ruled by the oath of the plaintiff along with a single witness" and the verified report that "he (peace be upon him) did not accept the testimony of a single witness unless accompanied by an oath," it would have been obligatory to accept a single witness based on the mentioned verse, except where the text specifies two witnesses or four witnesses.

فَلَوْلَا النَّصُّ الثَّابِتُ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَكَمَ بِيَمِينِ الطَّالِبِ مَعَ الشَّاهِدِ الْوَاحِدِ» وَصَحَّ «أَنَّهُ - عَلَيْهِ السَّلَامُ - لَمْ يَحْكُمْ بِشَهَادَةِ الشَّاهِدِ الْوَاحِدِ دُونَ يَمِينٍ مَعَهَا» لَوَجَبَ قَبُولُ شَاهِدٍ وَاحِدٍ بِالْآيَةِ الْمَذْكُورَةِ، إِلَّا حَيْثُ جَاءَ النَّصُّ بِاثْنَيْنِ أَوْ أَرْبَعَةٍ.

L42702 Since the plaintiff's oath is impermissible in these two rulings—as they are not a single right but belong to Allah, the Exalted—it is obligatory that only what is affirmed by those who permit it is valid. This includes the testimony of two [male witnesses], four women, or one man and two women, consistent with other legal rulings.

فَلَمَّا كَانَ هَذَانِ الْحُكْمَانِ لَا يَجُوزُ فِيهِمَا تَحْلِيفُ الطَّالِبِ، لِأَنَّهَا لَيْسَا حَقًّا وَاحِدًا، وَإِنَّمَا هُمَا لِلَّهِ تَعَالَى وَجَبَ أَنْ لَا يَجُوزَ فِيهِمَا إِلَّا مَا قَالَ قَائِلُونَ بِإِجَازَتِهِ - وَهُوَ شَهَادَةُ اثْنَيْنِ، أَوْ أَرْبَعِ نِسْوَةٍ، أَوْ رَجُلٍ وَامْرَأَتَيْنِ كَسَائِرِ الْأَحْكَامِ.

L42703 As for adultery specifically, it cannot be proven with fewer than four [wit-

[16] **Qur'an references (L42700):** Qur'an 49:6 (Al-Hujurat).

nesses], in accordance with the transmitted scriptural text on the matter—and with Allah, the Exalted, lies all success.

A legal question concerning a woman having sexual relations with another woman.

2307: Issue of Rubbing (al-Sahq) Abū Muḥammad—may Allāh have mercy on him—said: People have differed regarding tribadism (sahq). A group held that each of the two women is to be lashed one hundred times, as narrated from Ḥammām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarrī, from ʿAbd al-Razzāq, from Ibn Jurayj, from Ibn Shihāb, who said: I encountered our scholars stating that if a woman engages with another woman by means of "rubbing" (al-riʿfah) or similar methods—they are both lashed one hundred times—the active party and the passive party.

And by him - to ʿAbd al-Razzāq, from Maʿmar, from Ibn Shihāb, with the like of that.

A group of scholars permitted this matter—as reported from Ḥammām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, who said: Ibn Jurayj informed me through someone I trust, transmitting from al-Ḥasan al-Baṣrī, that he saw no issue with a woman inserting an object to achieve concealment, thereby enabling her to avoid adultery.

Others said—it is forbidden, and there is no prescribed punishment for it, but does discretionary punishment apply? Abu Muhammad (may Allah have mercy on him) said: Since they differed—as we mentioned—it became necessary for us to examine this matter. We examined al-Zuhri's opinion and found no foundational evidence for it whatsoever, unless a speaker were to propose: "Just as the act of the People of Lot was deemed the most severe form of fornication, leading them to establish the harshest prescribed punishment for it, then by analogy—if this act is the least severe form of fornication—should one prescribe the mildest prescribed punishment for it?"

Abu Muhammad—may Allah have mercy on him—said: This is an inescapable and obligatory analogy for those who prescribe stoning for the act

وَأَمَّا الزِّنَى وَحْدَهُ فَلَا يُقْبَلُ فِيهِ أَقَلُّ مِنْ أَرْبَعَةٍ بِالنَّصِّ الْوَارِدِ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة فِي الْمَرْأَة تَأْتِي الْمَرْأَة]

٢٣٠٧ - مَسْأَلَةٌ: السَّحْقِ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي السَّحْقِ: فَقَالَتْ طَائِفَةٌ: تُجْلَدُ كُلُّ وَاحِدَةٍ مِنْهُمَا مِائَةً - كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ ثني ابْنُ جُرَيْجٍ أَخْبَرَنِي ابْنُ شِهَابٍ قَالَ: أَدْرَكْتُ عُلَمَاءَنَا يَقُولُونَ فِي الْمَرْأَةِ تَأْتِي الْمَرْأَةَ بِ " الرِّفْعَةِ " وَأَشْبَاهِهَا يُجْلَدَانِ مِائَةً - الْفَاعِلَةُ وَالْمَفْعُولُ بِهَا.

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ ابْنِ شِهَابٍ بِمِثْلِ ذَلِكَ.

وَرَخَّصَتْ فِيهِ طَائِفَةٌ - كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ أَنَا ابْنُ جُرَيْجٍ أَخْبَرَنِي مَنْ أَصْدُقُ عَنْ الْحَسَنِ الْبَصْرِيِّ أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالْمَرْأَةِ تُدْخِلُ شَيْئًا، تُرِيدُ السِّتْرَ تَسْتَغْنِي بِهِ عَنْ الزِّنَى.

وَقَالَ آخَرُونَ - هُوَ حَرَامٌ وَلَا حَدَّ فِيهِ، وَفِيهِ التَّعْزِيرُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا - كَمَا ذَكَرْنَا - وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ: فَنَظَرْنَا فِي قَوْلِ الزُّهْرِيِّ فَلَمْ نَجِدْ لَهُ حُجَّةً أَصْلًا، إلَّا أَنْ يَقُولَ قَائِلٌ: كَمَا جَعَلَ فِعْلَ قَوْمِ لُوطٍ أَشَدُّ الزِّنَى، فَجَعَلُوا فِيهِ أَعْظَمَ حَدٍّ فِي الزِّنَى، فَكَذَلِكَ هَذَا أَقَلُّ الزِّنَى، فَجَعَلَ فِيهِ أَخَفَّ حَدِّ الزِّنَى؟ .

of the people of Lut, as it is graver than unlawful sexual intercourse. There is absolutely no escape for them from this at all. They must also consider the lesbian sexual act to be more severe than unlawful sexual intercourse, like the act of the people of Lut. Thus, it necessarily becomes binding upon them to prescribe stoning for it, just as they inevitably prescribed it for the act of the people of Lut, for both acts involve diverting the private part to what is perpetually unlawful.

L42712–42714 However, the people do not properly apply analogical reasoning, nor do they comprehend inferential reasoning, nor do they apply their rulings consistently, nor adhere to their own justifications, nor ground themselves in textual sources. Why do they not argue here: "Al-Zuhri met the Companions and senior Successors," thus he would only state this based on their teachings? We know of no disagreement among those who prohibit this act, so why do they adopt his opinion as they would have done if it conformed to their taqlīd (legal adherence)? Abū Muḥammad—may Allah have mercy on him—said: "As for us, analogical reasoning is invalid in our view, and it is not binding to follow anyone's opinion apart from the Messenger of Allah—peace and blessings be upon him. Tribadism (al-saḥq) and non-penetrative intercourse (ar-rifʿah) do not constitute zinā (adultery). Since they are not zinā, the ḥadd punishment for zinā does not apply to them. Nor does anyone have the right to arbitrarily categorize acts—as more severe or lenient—and assign legal punishments accordingly based on personal opinion, just as..." He desires—rather, it is a transgression of the boundaries of Allah, the Exalted, and he has legislated in the religion what Allah, the Exalted, has not permitted—He, the Exalted, says: {And whoever transgresses the boundaries of Allah has indeed wronged himself} [At-Talaq: 1].[17]

L42715 Does this obligation apply only to one against whom the decisive proof has been established, yet persists in error while advocating blind imitation? Abū Muḥammad—may Allāh have mercy on him—said: Since neither the Qur'ān nor an authentic Sunnah corroborates al-Zuhrī's statement, therefore declarations are forbidden and the hudud—there is absolutely no prescribed punishment in this matter whatsoever, and with Allāh, the Exalted, is success.

[17] **Qur'an references (L42712):** Qur'an 65:1 (At-Talaq).

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَهَذَا قِيَاسٌ لَازِمٌ وَاجِبٌ عَلَى مَنْ جَعَلَ الرَّجْمَ فِي فِعْلِ قَوْمِ لُوطٍ، لِأَنَّهُ أَعْظَمُ مِنْ الزِّنَى، وَلَا مُخَلِّصَ لَهُمْ مِنْ هَذَا أَصْلًا، وَأَنْ يَجْعَلُوا " السَّحْقَ " أَيْضًا أَشَدَّ الزِّنَى، كَفِعْلِ قَوْمِ لُوطٍ، فَيَلْزَمُهُمْ أَنْ يَجْعَلُوا فِيهِ الرَّجْمَ، كَمَا جَعَلُوا فِي فِعْلِ قَوْمِ لُوطٍ وَلَا بُدَّ، لِأَنَّ كِلَا الْأَمْرَيْنِ عُدُولٌ بِالْفَرْجِ إلَى مَا لَا يَحِلُّ أَبَدًا.

وَلَكِنَّ الْقَوْمَ لَا يُحْسِنُونَ الْقِيَاسَ، وَلَا يَعْرِفُونَ الِاسْتِدْلَالَ، وَلَا يَطْرُدُونَ أَقْوَالَهُمْ، وَلَا يَلْزَمُونَ تَعْلِيلَهُمْ، وَلَا يَتَعَلَّقُونَ بِالنُّصُوصِ، وَهَلَّا قَالُوا هَاهُنَا: إنَّ الزُّهْرِيَّ أَدْرَكَ الصَّحَابَةَ وَكِبَارَ التَّابِعِينَ؟ فَلَا يَقُولُ هَذَا إلَّا عَنْهُمْ، وَلَا نَعْرِفُ خِلَافًا فِي ذَلِكَ مِمَّنْ يَرَى تَحْرِيمَ هَذَا الْعَمَلِ، فَيَأْخُذُونَ بِقَوْلِهِ، كَمَا كَانُوا يَفْعَلُونَ لَوْ وَافَقَ تَقْلِيدَهُمْ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَأَمَّا نَحْنُ فَإِنَّ الْقِيَاسَ بَاطِلٌ عِنْدَنَا، وَلَا يَلْزَمُ اتِّبَاعُ قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " وَالسَّحْقُ " " وَالرِّفْعَةُ " لَيْسَا زِنًى، فَإِذْ لَيْسَا زِنًى فَلَيْسَ فِيهِمَا حَدُّ الزِّنَى، وَلَا لِأَحَدٍ أَنْ يُقَسِّمَ بِرَأْيِهِ - أَعْلَى وَأَخَفَّ - فَيُقْسِمَ الْحُدُودَ فِي ذَلِكَ كَمَا يَشْتَهِي بَلْ هُوَ تَعَدٍّ لِحُدُودِ اللَّهِ تَعَالَى، وَشَرَعَ فِي الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ تَعَالَى - وَهُوَ يَقُولُ تَعَالَى: {وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ} [الطلاق: ١] .

وَإِنَّمَا يَلْزَمُ هَذَا مَنْ قَامَتْ عَلَيْهِ الْحُجَّةُ فَتَمَادَى عَلَى الْخَطَأِ نَاصِرًا لِلتَّقْلِيدِ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَإِذْ لَمْ يَأْتِ بِمِثْلِ قَوْلِ الزُّهْرِيِّ قُرْآنٌ، وَلَا سُنَّةٌ صَحِيحَةٌ، فَالْأَبْشَارُ مُحَرَّمَةٌ وَالْحُدُودُ، فَلَا حَدَّ فِي هَذَا أَصْلًا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

فَإِنْ ذَكَرُوا: مَا نَاهِ أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا هِشَامُ بْنُ خَالِدٍ نا بَقِيَّةُ بْنُ الْوَلِيدِ ثَنِي عُثْمَانُ بْنُ عَبْدِ الرَّحْمَنِ نِي عَنْبَسَةُ بْنُ سَعِيدٍ نا مَكْحُولٌ عَنْ وَاثِلَةَ بْنِ الْأَسْقَعِ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «السِّحَاقُ زِنًى بِالنِّسَاءِ بَيْنَهُنَّ» فَإِنَّ هَذَا لَا يَصِحُّ، لِأَنَّهُ عَنْ بَقِيَّةٍ - وَهُوَ ضَعِيفٌ - وَلَمْ يُدْرِكْ مَكْحُولًا، وَوَاثِلَةَ، فَهُوَ مُنْقَطِعٌ.

L42716 If they cite the report: From Aḥmad ibn Qāsim—from his father Qāsim ibn Muḥammad ibn Qāsim—from his grandfather Qāsim ibn Aṣbagh—from Muḥammad ibn Waḍḍāḥ—from Hishām ibn Khālid—from Baqiyyah ibn al-Walīd (from ʿUthmān ibn ʿAbd al-Raḥmān)—from ʿAnbasah ibn Saʿīd—from Makhūl—from Wāthilah ibn al-Asqaʿ that the Prophet—peace be upon him and his family—said: "Sexual relations between women constitute adultery among them," then this is invalid. For its transmission relies on Baqiyyah (a weak narrator) who did not contemporaneously meet Makhūl or Wāthilah, resulting in a disconnected chain.

ثُمَّ لَوْ صَحَّ لَمَا كَانَ فِيهِ مَا يُوجِبُ الْحُكْمَ بِالْحَدِّ فِي ذَلِكَ، لِأَنَّهُ - عَلَيْهِ السَّلَامُ - قَدْ بَيَّنَ فِي حَدِيثِ الْأَسْلَمِيِّ مَا هُوَ الزِّنَى الْمُوجِبُ لِلْحَدِّ، وَإِنَّمَا هُوَ إِتْيَانُ الرَّجُلِ مِنْ الْمَرْأَةِ حَرَامًا مَا يَأْتِي مِنْ أَهْلِهِ حَلَالًا.

L42717 Then, even if [the narration] were authentic, it would not necessitate applying the ḥadd in this matter, because the Prophet (peace be upon him) clarified in the *ḥadīth* of the Aslamī what constitutes zinā that necessitates the ḥadd: it is specifically a man's unlawful intercourse with a woman in the same manner he lawfully engages with his spouse.

وَأَخْبَرَ - عَلَيْهِ السَّلَامُ - أَنَّ الْأَعْضَاء تَزْنِي، وَأَنَّ الْفَرْجَ يُكَذِّبُ ذَلِكَ أَوْ يُصَدِّقُهُ فَصَحَّ أَنْ لَا زِنَى بَيْنَ رَجُلٍ وَامْرَأَةٍ إلَّا بِالْفَرْجِ الَّذِي هُوَ الذَّكَرُ فِي الْفَرْجِ الَّذِي هُوَ مَخْرَجُ الْوَلَدِ فَقَطْ.

L42718 He (peace be upon him) conveyed that limbs may commit zinā, while the genitalia either deny or confirm this. Thus, zinā between a man and woman is only established through the penetration of the penis into the vagina—the latter being exclusively the childbirth passage.

وَلَقَدْ كَانَ يَلْزَمُ هَذَا الْخَبَرَ مَنْ رَأَى بِرَأْيِهِ أَنَّ فِعْلَ قَوْمِ لُوطٍ أَعْظَمُ الزِّنَى، فَإِنَّهُ لَيْسَ مَعَهُمْ فِيهِ نَصٌّ أَصْلًا، وَلَوْ وَجَدُوا مِثْلَ هَذَا لَطَغَوْا وَبَغَوْا.

L42719 Indeed, this report binds those who assert—based on personal opinion—that the act of Lot's people constitutes the gravest fornication, for they possess no textual evidence whatsoever regarding it. Had they found anything resembling this, they would have transgressed and acted unjustly.

فَسَقَطَ هَذَا جُمْلَةً وَاحِدَةً.

L42720 Therefore, this was invalidated as a single whole.

ثُمَّ نَظَرْنَا فِي قَوْلِ الْحَسَنِ فِي إبَاحَةِ ذَلِكَ - فَوَجَدْنَاهُ خَطَأً، لِأَنَّ اللَّهَ تَعَالَى يَقُولُ: {وَالَّذِينَ هُمْ لِفُرُوجِهِمْ حَافِظُونَ} [المؤمنون: ٥] {إلا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ} [المؤمنون: ٦] إلَى قَوْلِهِ {الْعَادُونَ} [المؤمنون: ٧] .

L42721 Then we examined Al-Ḥasan's statement permitting that, and found it erroneous, for Allah, the Exalted, says: *"And those who guard their private parts - except with their spouses or those whom their right hands possess"* (23:5-7) up to His words *"the transgressors."*[18]

[18] **Qur'an references (L42721):** Qur'an 23:5 (Al-Mu'minun); Qur'an 70:29 (Al-Ma'arij); Qur'an 23:6 (Al-Mu'minun); Qur'an 70:30 (Al-Ma'arij); Qur'an 23:7 (Al-Mu'minun).

L42722 It has been established by evidence from the Quran and by consensus that a woman is not lawful for her male slaves, and that he is her mahram, because Allah the Exalted exempted the Mothers of the Believers from observing hijab in front of their male slaves and their mahrams from among the women.

وَصَحَّ بِالدَّلِيلِ مِنْ الْقُرْآنِ، وَبِالْإِجْمَاعِ: أَنَّ الْمَرْأَةَ لَا تَحِلُّ لِمِلْكِ يَمِينِهَا وَأَنَّهُ مِنْهَا ذُو مَحْرَمٍ، لِأَنَّ اللَّهَ تَعَالَى أَسْقَطَ الْحِجَابَ عَنْ أُمَّهَاتِ الْمُؤْمِنِينَ عَنْ عَبِيدِهِنَّ مَعَ ذِي مَحَارِمِهِنَّ مِنْ النِّسَاءِ.

L42723–42724 It is established that a slave has a mahram relationship with his master. Thus, if a woman allows someone other than her husband access to her private parts and fails to safeguard it, she has indeed disobeyed Allah the Exalted by doing so. It is also established that her body is forbidden to anyone other than her husband, to whom it has been explicitly permitted by scriptural text. Therefore, if she permits her body to a woman or a man other than her husband, she has permitted what is forbidden.

فَصَحَّ أَنَّ الْعَبْدَ مِنْ سَيِّدِهِ ذُو مَحْرَمٍ فَالْمَرْأَةُ إذَا أَبَاحَتْ فَرْجَهَا لِغَيْرِ زَوْجِهَا فَلَمْ تَحْفَظْهُ، فَقَدْ عَصَتْ اللَّهَ تَعَالَى بِذَلِكَ - وَصَحَّ أَنَّ بَشَرَتَهَا مُحَرَّمَةٌ عَلَى غَيْرِ زَوْجِهَا الَّذِي أُبِيحَتْ لَهُ بِالنَّصِّ، فَإِذَا أَبَاحَتْ بَشَرَتَهَا لِامْرَأَةٍ أَوْ رَجُلٍ غَيْرِ زَوْجِهَا فَقَدْ أَبَاحَتْ الْحَرَامَ.

L42725 It has been narrated to us through the chain of Muslim: Abu Bakr ibn Abi Shaybah narrated to us from Zayd ibn al-Hubab (he is al-Ukli) from al-Dahhak ibn Uthman (he is al-Hizami), who informed me: Zayd ibn Aslam reported from Abd al-Rahman ibn Abi Said al-Khudri from his father, that the Messenger of Allah (peace be upon him) said: "A man must not look at the private parts of another man, nor must a woman look at the private parts of another woman. A man must not be in close contact with another man in a single garment, nor must a woman be in close contact with another woman in the same garment."

وَقَدْ رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا زَيْدُ بْنُ الْحُبَابِ - هُوَ الْعُكْلِيُّ - نا الضَّحَّاكُ بْنُ عُثْمَانَ - هُوَ الْحِزَامِيُّ - أَخْبَرَنِي زَيْدُ بْنُ أَسْلَمَ عَنْ عَبْدِ الرَّحْمَنِ بْنِ أَبِي سَعِيدٍ الْخُدْرِيِّ عَنْ أَبِيهِ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَنْظُرُ الرَّجُلُ إلَى عَوْرَةِ الرَّجُلِ، وَلَا الْمَرْأَةُ إلَى عَوْرَةِ الْمَرْأَةِ، وَلَا يُفْضِ الرَّجُلُ إلَى الرَّجُلِ فِي ثَوْبٍ وَاحِدٍ، وَلَا تُفْضِ الْمَرْأَةُ إلَى الْمَرْأَةِ فِي الثَّوْبِ الْوَاحِدِ» .

L42726 Aḥmad ibn Qāsim narrated to us: His father Qāsim ibn Muḥammad ibn Qāsim narrated to us: His grandfather Qāsim ibn Aṣbagh narrated to us: Muḥammad ibn Waḍḍāḥ narrated to us: Abū Bakr ibn Abī Shaybah narrated to us: Abū al-Aḥwaṣ (who is Salām ibn Sulaym) narrated to us from Manṣūr ibn al-Muʿtamir, from Abū Wā'il (who is Shaqīq ibn Salamah), from ʿAbdullāh ibn Masʿūd, who said: "The Messenger of Allāh—peace and blessings of Allāh be upon him—forbade a woman from having direct contact with another woman in a single garment, lest she describe her to her husband as though he were looking at her."

حَدَّثَنَا أَحْمَدُ بْنُ قَاسِمٍ نا أَبِي قَاسِمُ بْنُ مُحَمَّدِ بْنِ قَاسِمٍ نا جَدِّي قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ وَضَّاحٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا أَبُو الْأَحْوَصِ - هُوَ سَلَّامُ بْنُ سُلَيْمٍ - عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي وَائِلٍ - هُوَ شَقِيقُ بْنُ سَلَمَةَ - عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: «نَهَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ تُبَاشِرَ الْمَرْأَةُ الْمَرْأَةَ فِي ثَوْبٍ وَاحِدٍ - لَعَلَّ أَنْ تَصِفَهَا إلَى زَوْجِهَا كَأَنْ يَنْظُرَ إلَيْهَا» .

L42727 And through him to Qāsim ibn Aṣbagh; narrated to us Muḥammad ibn ʿAbd al-Salām al-Khushanī; narrated to us Muḥammad ibn Bishār (Bundār); I am Muḥammad ibn Jaʿfar (Ghundar); narrated to us Shuʿbah from Qatādah from

ʿIkrimah from Ibn ʿAbbās, who said: “The Messenger of Allah—peace and blessings be upon him—cursed men who imitate women and women who imitate men.”[19]

وَبِهِ - إِلَى قَاسِمِ بْنِ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ - بُنْدَارُ - أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ - غُنْدَرٌ - نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ قَالَ: «لَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُتَشَبِّهِينَ مِنَ الرِّجَالِ بِالنِّسَاءِ، وَالْمُتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ» .

L42728–42730 Abu Muhammad—may Allah have mercy on him—said: These are explicit texts prohibiting a man’s direct contact with another man, and a woman’s direct contact with another woman, alike. Therefore, engaging in such direct contact with someone whom it is forbidden to touch constitutes disobedience to Allah the Exalted and commits something forbidden alike. If such contact involves the genitals, it becomes an intensified prohibition and a multiplied sin. When a woman inserts anything into her genitals other than what is permitted for her—her husband’s genitals or what is used to suppress menstruation—and she fails to safeguard it, then by failing to safeguard it, she has increased in sin. Thus, al-Hasan’s statement on this matter is invalidated. And success is from Allah the Exalted. Abū Muḥammad—may Allāh have mercy on him—said: Since it is established that a woman who engages in lesbian acts with another woman is disobedient, having committed an evil deed, it becomes obligatory to physically intervene to change this, as the Messenger of Allāh—peace and blessings be upon him and his family—commanded: “Whoever witnesses an evil deed must change it with his hand.” Thus, she is liable to discretionary punishment. Abū Muḥammad—may Allāh have mercy on him—said: If she partially exposes her genitalia without insertion leading to ejaculation, this is reprehensible but not sinful. Similarly, male masturbation is entirely equivalent, for a man touching his penis with his left hand is permissible, and a woman touching her genitalia is likewise permissible by the consensus of the entire community. Since this is permissible, there is no transgression beyond the permissible except the deliberate pursuit of ejaculation. This is not fundamentally forbidden, in accordance with Allāh’s statement: *He has already detailed for you what He

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَذِهِ نُصُوصٌ جَلِيَّةٌ عَلَى تَحْرِيمِ مُبَاشَرَةِ الرَّجُلِ الرَّجُلَ، وَالْمَرْأَةِ الْمَرْأَةَ، عَلَى السَّوَاءِ، فَالْمُبَاشَرَةُ مِنْهَا لِمَنْ نَهَى عَنْ مُبَاشَرَتِهِ عَاصٍ لِلَّهِ تَعَالَى، مُرْتَكِبٌ حَرَامًا عَلَى السَّوَاءِ، فَإِذَا اُسْتُعْمِلَتْ بِالْفُرُوجِ كَانَتْ حَرَامًا زَائِدًا، وَمَعْصِيَةً مُضَاعَفَةً، وَالْمَرْأَةُ إِذَا أَدْخَلَتْ فَرْجَهَا شَيْئًا غَيْرَ مَا أُبِيحَ لَهَا مِنْ فَرْجِ زَوْجِهَا، أَوْ مَا تَرُدُّ بِهِ الْحَيْضَ، فَلَمْ تَحْفَظْ فَرْجَهَا، وَإِذْ لَمْ تَحْفَظْهُ فَقَدْ زَادَتْ مَعْصِيَةً - فَبَطَلَ قَوْلُ الْحَسَنِ فِي ذَلِكَ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ صَحَّ - أَنَّ " الْمَرْأَةَ الْمُسَاحَقَةَ " لِلْمَرْأَةِ عَاصِيَةٌ، فَقَدْ أَتَتْ مُنْكَرًا، فَوَجَبَ تَغْيِيرُ ذَلِكَ بِالْيَدِ، كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - " مَنْ رَأَى مُنْكَرًا أَنْ يُغَيِّرَهُ بِيَدِهِ " فَعَلَيْهَا التَّعْزِيرُ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَوْ عَرَضَتْ فَرْجَهَا شَيْئًا دُونَ أَنْ تُدْخِلَهُ حَتَّى يَنْزِلَ فَيُكْرَهُ هَذَا، وَلَا إِثْمَ فِيهِ - وَكَذَلِكَ " الِاسْتِمْنَاءُ " لِلرِّجَالِ سَوَاءٌ سَوَاءٌ، لِأَنَّ مَسَّ الرَّجُلِ ذَكَرَهُ بِشِمَالِهِ مُبَاحٌ، وَمَسَّ الْمَرْأَةِ فَرْجَهَا كَذَلِكَ مُبَاحٌ، بِإِجْمَاعِ الْأُمَّةِ كُلِّهَا، فَإِذْ هُوَ مُبَاحٌ فَلَيْسَ هُنَالِكَ زِيَادَةٌ عَلَى الْمُبَاحِ، إِلَّا التَّعَمُّدُ لِنُزُولِ الْمَنِيِّ، فَلَيْسَ ذَلِكَ حَرَامًا أَصْلًا، لِقَوْلِ اللَّهِ تَعَالَى: {وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ} [الأنعام: ١١٩] وَلَيْسَ هَذَا مِمَّا فَصَّلَ لَنَا تَحْرِيمَهُ فَهُوَ حَلَالٌ، لِقَوْلِهِ تَعَالَى: {خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا} [البقرة: ٢٩] إِلَّا أَنَّنَا نَكْرَهُهُ، لِأَنَّهُ لَيْسَ مِنْ مَكَارِمِ الْأَخْلَاقِ، وَلَا مِنَ الْفَضَائِلِ.

[19] **Hadith references (L42727):** Sahih al-Bukhari 5885; Riyad as-Salihin 1631.

has forbidden upon you* (6:119). As this is not among what He specified as forbidden, it is lawful, per His words: *He created for you all that is on the earth* (2:29). Nevertheless, we disapprove of it, for it is neither among noble moral traits nor virtues.[20]

L42731 People have spoken about this matter, with one group deeming it reprehensible and another permitting it. From Humaam, from Ibn Mufarrij, from Ibn al-Aʿrabi, from al-Dabari, from ʿAbd al-Razzaq, from Sufyan al-Thawri, from ʿAbdullah ibn ʿUthman, from Mujahid, who said: Ibn ʿUmar was asked about masturbation: he replied, "That is self-fornication."

وَقَدْ تَكَلَّمَ النَّاسُ فِي هَذَا فَكَرِهَتْهُ طَائِفَةٌ وَأَبَاحَتْهُ أُخْرَى: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ عَبْدِ اللَّهِ بْنِ عُثْمَانَ عَنْ مُجَاهِدٍ قَالَ: سُئِلَ ابْنُ عُمَرَ عَنْ الِاسْتِمْنَاءِ؟ فَقَالَ: ذَلِكَ نَائِكُ نَفْسِهِ.

L42732 And through him—to Sufyan al-Thawri from al-A'mash from Abu Razin from Abu Yahya from Ibn Abbas—that a man said to him, "I masturbate until I ejaculate?" He replied, "Ugh! Lawful intercourse with a female slave is better than that, and [masturbation] is better than fornication."

وَبِهِ - إلَى سُفْيَانَ الثَّوْرِيِّ عَنْ الْأَعْمَشِ عَنْ أَبِي رَزِينٍ عَنْ أَبِي يَحْيَى عَنْ ابْنِ عَبَّاسٍ أَنَّ رَجُلًا قَالَ لَهُ: إنِّي أَعْبَثُ بِذَكَرِي حَتَّى أُنْزِلَ؟ قَالَ: أُفٍّ، نِكَاحُ الْأَمَةِ خَيْرٌ مِنْهُ، وَهُوَ خَيْرٌ مِنْ الزِّنَى.

L42733 And the permissibility of a group—as has been transmitted to us through the mentioned chain to ʿAbd al-Razzāq: Ibn Jurayj reported to us; Ibrāhīm ibn Abī Bakr informed me from a man from Ibn ʿAbbās—that he said: "It is nothing but one of you rubbing his penis until he releases semen."

وَإِبَاحَةُ قَوْمٌ - كَمَا رُوِّينَا بِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ أَخْبَرَنِي إبْرَاهِيمُ بْنُ أَبِي بَكْرٍ عَنْ رَجُلٍ عَنْ ابْنِ عَبَّاسٍ أَنَّهُ قَالَ: وَمَا هُوَ إلَّا أَنْ يُعْرِكَ أَحَدُكُمْ زُبَّهُ حَتَّى يُنْزِلَ الْمَاءَ.

L42734 Muhammad ibn Saʿīd ibn Nabāt narrated to us: Aḥmad ibn ʿAwn Allāh narrated to us: Qāsim ibn Aṣbagh narrated to us: Muḥammad ibn ʿAbd al-Salām al-Khushanī narrated to us: Muḥammad ibn Bashshār, called Bundar, narrated to us: Muḥammad ibn Jaʿfar, called Ghundar, narrated to us from Shuʿbah, from Qatādah, from a man, from Ibn ʿUmar, who said: "It is merely a nerve that you massage."

حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ - بُنْدَارٌ - أَنَا مُحَمَّدُ بْنُ جَعْفَرٍ - غُنْدَرٌ - نا شُعْبَةُ عَنْ قَتَادَةَ عَنْ رَجُلٍ عَنْ ابْنِ عُمَرَ أَنَّهُ قَالَ: إنَّمَا هُوَ عَصَبٌ تُدَلِّكُهُ.

L42735–42736 On his authority—to Qatādah from al-'Alā' ibn Ziyād from his father—that they would practice it during military expeditions (meaning masturbation): a man would fiddle with his penis, rubbing it until ejaculation. Qatādah said, "Al-Ḥasan said concerning a man who masturbates by fiddling with his

وَبِهِ - إلَى قَتَادَةَ عَنْ الْعَلَاءِ بْنِ زِيَادٍ عَنْ أَبِيهِ أَنَّهُمْ كَانُوا يَفْعَلُونَهُ فِي الْمَغَازِي " يَعْنِي الِاسْتِمْنَاءَ " يَعْبَثُ الرَّجُلُ بِذَكَرِهِ يُدَلِّكُهُ حَتَّى يُنْزِلَ - قَالَ قَتَادَةُ: وَقَالَ الْحَسَنُ فِي الرَّجُلِ يَسْتَمْنِي يَعْبَثُ بِذَكَرِهِ حَتَّى يُنْزِلَ، قَالَ: كَانُوا يَفْعَلُونَ فِي الْمَغَازِي.

[20] **Qur'an references (L42728):** Qur'an 6:119 (Al-An'am); Qur'an 2:29 (Al-Baqarah).

penis and rubbing it until ejaculation: ’They used to do so during military expeditions.”’

L42737 On the authority of Jabir ibn Zayd Abi al-Shaʿtha, who said: “It is your water; therefore, pour it out”—meaning masturbation.

وَعَنْ جَابِرِ بْنِ زَيْدٍ أَبِي الشَّعْثَاءِ قَالَ: هُوَ مَاؤُك فَأَهْرِقْهُ " يَعْنِي الِاسْتِمْنَاءَ ".

L42738 And on the authority of Mujāhid, he said: Those who came before would instruct their youth to practice istimnā’ to preserve their chastity through it. ʿAbd al-Razzāq said: Maʿmar mentioned it from Ayyūb al-Sikhtiyānī, or someone else, from Mujāhid from al-Ḥasan: that al-Ḥasan saw no issue with istimnā’.

وَعَنْ مُجَاهِدٍ قَالَ: كَانَ مَنْ مَضَى يَأْمُرُونَ شَبَابَهُمْ بِالِاسْتِمْنَاءِ يَسْتَعْفُونَ بِذَلِكَ - قَالَ عَبْدُ الرَّزَّاقِ: وَذَكَرَهُ مَعْمَرٌ عَنْ أَيُّوبَ السِّخْتِيَانِيِّ، أَوْ غَيْرِهِ عَنْ مُجَاهِدٍ عَنْ الْحَسَنِ: أَنَّهُ كَانَ لَا يَرَى بَأْسًا بِالِاسْتِمْنَاءِ.

L42739 From Amr ibn Dinar: “I do not see any harm in masturbation.” Abu Muhammad (may Allah have mercy on him) said: The chains of transmission from Ibn Abbas and Ibn Umar regarding both opinions are weak.

وَعَنْ عَمْرِو بْنِ دِينَارٍ: مَا أَرَى بِالِاسْتِمْنَاءِ بَأْسًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْأَسَانِيدُ عَنْ ابْنِ عَبَّاسٍ، وَابْنِ عُمَرَ فِي كِلَا الْقَوْلَيْنِ - مَغْمُوزَةٌ.

L42740 However, dislike is authentically transmitted from ʿAṭāʾ.

لَكِنَّ الْكَرَاهَةَ صَحِيحَةٌ عَنْ عَطَاءٍ.

L42741 The absolute permissibility is sound (ṣaḥīḥ) as narrated from al-Ḥasan.

وَالْإِبَاحَةُ الْمُطْلَقَةُ صَحِيحَةٌ عَنْ الْحَسَنِ.

L42742 From ʿAmr ibn Dīnār, from Ziyād Abū al-ʿAlā, and from Mujāhid.

وَعَنْ عَمْرِو بْنِ دِينَارٍ، وَعَنْ زِيَادٍ أَبِي الْعَلَاءِ، وَعَنْ مُجَاهِدٍ.

L42743 It was narrated by those who transmitted it among these individuals—from those they encountered—and these are the senior Followers who scarcely narrated except from the Companions, may Allah be pleased with them—? Abu Muhammad—may Allah have mercy on him—said: There are transmitted reports regarding a woman deflowering another woman with her finger: As narrated to us by Hammam, narrated to us by Ibn Mufarrij, narrated to us by Ibn al-Aʿrabī, narrated to us by al-Dabarī, narrated to us by ʿAbd al-Razzāq, narrated to us by Ibn Jurayj from ʿAṭāʾ from ʿAlī ibn Abī Ṭālib and al-Ḥasan ibn ʿAlī: That al-Ḥasan issued a legal opinion concerning a woman who deflowered another with her finger, while some women restrained her for that act. He ruled that the blood money is to be apportioned among them, and ʿAlī judged accordingly.

وَرَوَاهُ مَنْ رَوَاهُ مِنْ هَؤُلَاءِ عَمَّنْ أَدْرَكُوا - وَهَؤُلَاءِ - كِبَارُ التَّابِعِينَ الَّذِينَ لَا يَكَادُونَ يَرْوُونَ إلَّا عَنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَقَدْ جَاءَ فِي الْمَرْأَةِ تَفْتَضُّ الْمَرْأَةَ بِأُصْبُعِهَا آثَارٌ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ عَنْ عَطَاءٍ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ، وَالْحَسَنِ بْنِ عَلِيٍّ: أَنَّ الْحَسَنَ أَفْتَى فِي الْمَرْأَةِ افْتَضَّتْ أُخْرَى بِأُصْبُعِهَا وَأَمْسَكَهَا نِسْوَةٌ لِذَلِكَ: أَنَّ الْعَقْلَ بَيْنَهُنَّ - وَقَضَى عَلِيٌّ بِذَلِكَ.

L42744–42746 And through him — to Abd al-Razzaq from Sufyan al-Thawri, from Mansur,

and Mughirah. Mansur said, from... Al-Hakam ibn ʻUtaybah narrated, and Mughirah reported from Ibrahim. Then Al-Hakam and Ibrahim concurred, both narrating from ʻAli and al-Hasan: that al-Hasan issued a legal opinion regarding a woman who deflowered another woman with her finger, ruling that the dowry is incumbent upon her and the withholders, to be divided among them—thus said Mughirah.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ مَنْصُورٍ، وَمُغِيرَةَ، قَالَ مَنْصُورٌ عَنْ الْحَكَمِ بْنِ عُتَيْبَةَ، وَقَالَ مُغِيرَةُ عَنْ إبْرَاهِيمَ، ثُمَّ اتَّفَقَ الْحَكَمُ، وَإِبْرَاهِيمُ عَنْ عَلِيٍّ، وَالْحَسَنِ: أَنَّ الْحَسَنَ أَفْتَى فِي امْرَأَةٍ افْتَضَّتْ امْرَأَةً بِأُصْبُعِهَا أَنَّ عَلَيْهَا وَالْمُمْسِكَاتُ الصَّدَاقُ بَيْنَهُنَّ - هَكَذَا قَالَ الْمُغِيرَةُ.

L42747 And Al-Hakam stated in his narration: "The obligation rests solely on the woman for whom the dower is specified"—and they both concurred that ʿAlī issued this ruling.

وَقَالَ الْحَكَمُ فِي رِوَايَتِهِ: عَلَى الْمُفْتَضَّةِ وَحْدَهَا - وَاتَّفَقَا أَنَّ عَلِيًّا قَضَى بِذَلِكَ.

L42748 From al-Zuhrī: If a woman were to rupture her hymen with her finger, she would lose her dower, equivalent to the dower of a woman among her peers.

وَعَنْ الزُّهْرِيِّ - لَوْ افْتَضَّتْ امْرَأَةٌ بِأُصْبُعِهَا غَرِمَتْ صَدَاقَهَا، كَصَدَاقِ امْرَأَةٍ مِنْ نِسَائِهَا.

L42749 From Iyad ibn Ubayd Allah, the judge of the people of Egypt: He wrote to Umar ibn Abd al-Aziz regarding a young boy who digitally penetrated a girl with his finger. Umar wrote back to him: "Nothing has reached me concerning this matter, and I have considered it. Judge it according to your opinion." He ruled that the boy must pay fifty dinars to her. Abu Muhammad—may Allah have mercy on him—said: "This is a narration with an interrupted chain from Ali."

وَعَنْ عِيَاضِ بْنِ عُبَيْدِ اللَّهِ قَاضِي أَهْلِ مِصْرَ: كَتَبَ إلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ فِي صَبِيٍّ افْتَرَعَ صَبِيَّةً بِأُصْبُعِهِ؟ فَكَتَبَ إلَيْهِ عُمَرُ: لَمْ يَبْلُغْنِي فِي هَذَا شَيْءٌ، وَقَدْ جَمَعْت لِذَلِكَ، فَاقْضِ فِيهِ بِرَأْيِك، فَقَضَى لَهَا عَلَى الْغُلَامِ بِخَمْسِينَ دِينَارًا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا عَنْ عَلِيٍّ مُرْسَلٌ.

L42750 The Messenger of Allah - may Allah grant him peace and blessings - said: "Your blood and your wealth are forbidden upon you."

وَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

L42751 Therefore, it is not permissible to rule for a dower in this case, because it is not a marriage, and no dower exists except within a valid marriage, since neither a textual source nor scholarly consensus has mandated it outside that context. Thus, whether the one who caused the rupture with their finger is male or female, there is absolutely no compensation for this, because Allah, the Exalted, has not imposed any compensation for it, nor has His Messenger—peace and blessings be upon him—imposed it.

فَلَا يَجُوزُ أَنْ يُقْضَى هَاهُنَا بِصَدَاقٍ، لِأَنَّهُ لَيْسَ زَوَاجًا، وَلَا صَدَاقَ إلَّا فِي نِكَاحِ زَوَاجٍ - إذْ لَمْ يُوجِبْهُ فِي غَيْرِ ذَلِكَ نَصٌّ، وَلَا إجْمَاعٌ، فَسَوَاءٌ كَانَ الْمُفْتَضُّ بِأُصْبُعِهِ رَجُلًا أَوْ امْرَأَةً: لَا غَرَامَةَ فِي ذَلِكَ أَصْلًا، لِأَنَّ اللَّهَ تَعَالَى لَمْ يُوجِبْ فِي ذَلِكَ غَرَامَةً، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42752 If they denounce—is this not the position of ʿAlī and al-Ḥasan ibn ʿAlī? We said to them: These two reports contain no obligation whatsoever to inflict exemplary punishment on the man who deflowers a virgin and the deflowered woman. Yet you impose discretionary punishment in this matter.

فَإِنْ شَنَّعُوا - فَإِنَّ هَذَا قَوْلُ عَلِيٍّ، وَالْحَسَنِ بْنِ عَلِيٍّ؟ قُلْنَا لَهُمْ: فَإِنَّ هَذَيْنِ الْخَبَرَيْنِ لَيْسَ فِيهِمَا إيجَابُ نَكَالٍ عَلَى الْمُفْتَضِّ وَالْمُفْتَضَّةِ أَصْلًا، وَأَنْتُمْ تُوجِبُونَ فِي ذَلِكَ الْأَدَبَ،

This contradicts the rulings of ʿAlī and al-Ḥasan—may Allah be pleased with them—which you yourselves denounce. The disgrace and sin of this fall only on those who mandate adherence to narrations from the Companion as an obligatory duty, while being the first to oppose him.

وَهَذَا خِلَافٌ مِنْكُمْ لِمَا تُشَنِّعُونَ بِهِ مِنْ حُكْمِ عَلِيٍّ، وَالْحَسَنِ - رَضِيَ اللَّهُ عَنْهُمَا - وَعَارُ هَذَا وَإِثْمُهُ إنَّمَا يَلْزَمُ مَنْ أَوْجَبَ فَرْضًا اتِّبَاعَ مَا رُوِيَ عَنْ الصَّاحِبِ، ثُمَّ هُوَ مَعَ ذَلِكَ أَوَّلُ مُخَالِفٍ لَهُ.

L42753–42755 As for us, we are not bound to follow anyone except the Messenger of Allah—may Allah bless him and grant him peace—alone. Thus, there is no blame upon us for opposing what we do not deem obligatory. However, taʿzīr (discretionary punishment) applies to: the man who penetrates a woman with his finger, the woman who penetrates another woman with her finger, and one who inserts anything into the anus of another person—for all we have mentioned constitutes sin and a recognized evil, in accordance with the statement of the Messenger of Allah. The Prophet Muhammad, peace and blessings of Allah be upon him, said: "Indeed, your blood, wealth, honor, and bodies are sacred and inviolable to you."

وَأَمَّا نَحْنُ فَلَا يَلْزَمُ عِنْدَنَا اتِّبَاعُ أَحَدٍ غَيْرَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَطْ، فَلَا حَرَجَ عَلَيْنَا فِي مُخَالَفَةِ مَا لَا نَرَاهُ وَاجِبًا، وَلَكِنْ عَلَى الْمُفْتَضِّ بِأُصْبُعِهِ امْرَأَةً، وَالْمُفْتَضَّةِ بِأُصْبُعِهَا امْرَأَةً، وَمُدْخِلُ شَيْءٍ فِي دُبُرِ آخَرَ: التَّعْزِيرُ، لِأَنَّ كُلَّ مَا ذَكَرْنَا مَعْصِيَةٌ وَمُنْكَرٌ، لِقَوْلِ رَسُولِ اللَّهِ: - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L42756 These individuals have violated a sacred bodily boundary, committing a reprehensible act. Whoever commits such an act, Allah has obligated him to rectify it through physical action, as commanded by the Messenger of Allah (may Allah bless him and grant him peace). It is therefore obligatory upon whoever commits this act or any other reprehensible acts to be subject to discretionary legal punishment according to what we will mention—if Allah, the Most High, wills—after this passage.

وَهَؤُلَاءِ قَدْ انْتَهَكُوا بَشَرَةً مُحَرَّمَةً، فَأَتَوْا مُنْكَرًا، وَمَنْ أَتَى مُنْكَرًا فَفَرَضَ عَلَيْهِ تَغْيِيرَهُ بِالْيَدِ، كَمَا أَمَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَوَاجِبٌ عَلَى مَنْ فَعَلَ ذَلِكَ، أَوْ غَيْرِهِ مِنْ الْمُنْكَرَاتِ: التَّعْزِيرُ عَلَى مَا نَذْكُرُهُ - إنْ شَاءَ اللَّهُ تَعَالَى - بَعْدَ هَذَا.

L42757 Abū Muḥammad—may Allāh have mercy on him—said: No one we know of has stated that any of these matters entails the prescribed punishment for adultery or any specified punishment. There is no distinction between this and other matters for which they have mandated legal punishments among matters where there is no valid textual proof—and success is through Allāh, the Exalted.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَلَمْ يَقُلْ أَحَدٌ نَعْلَمُهُ: إنَّ فِي شَيْءٍ مِنْ هَذَا حَدَّ زِنًى، وَلَا حَدًّا مَحْدُودًا، وَلَا فَرْقَ بَيْنَهُ وَبَيْنَ سَائِرِ مَا أَوْجَبُوا فِيهِ الْحُدُودَ مِمَّا لَا نَصَّ فِيهِ يَصِحُّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

[مَسْأَلَة فِي السِّحْر]

L42758 ## A Question on Sorcery

L42759 2308 - Issue: Sorcery? Abu Muhammad—may Allah have mercy on him—said: People have differed concerning sorcery. A group stated: The sorcerer

is to be killed without being called to repent—for sorcery is disbelief—this being the opinion of Mālik. Abū Ḥanīfah said: The sorcerer is to be killed.

٢٣٠٨٠ - مَسْأَلَةٌ: السِّحْرُ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي السِّحْرِ: فَقَالَتْ طَائِفَةٌ: يُقْتَلُ السَّاحِرُ وَلَا يُسْتَتَابُ - وَالسِّحْرُ كُفْرٌ - وَهُوَ قَوْلُ مَالِكٍ - وَقَالَ أَبُو حَنِيفَةَ: يُقْتَلُ السَّاحِرُ.

L42760 Al-Shafi'i and our companions said: If the words used for sorcery constitute disbelief, the sorcerer is an apostate; and if they do not constitute disbelief, he is not killed, for he is not a disbeliever.

وَقَالَ الشَّافِعِيُّ وَأَصْحَابُنَا: إنْ كَانَ الْكَلَامُ الَّذِي يُسْحَرُ بِهِ كُفْرًا فَالسَّاحِرُ مُرْتَدٌّ، وَإِنْ كَانَ لَيْسَ كُفْرًا فَلَا يُقْتَلُ، لِأَنَّهُ لَيْسَ كَافِرًا.

L42761 He mentioned from the predecessors regarding that matter several things: As narrated by Humaam from Ibn Mufarrij from Ibn al-A'raabi from al-Dabari from 'Abd al-Razzaq from Ibn Jurayj, who informed me that 'Amr ibn Dinar said: Verily, 'Umar ibn al-Khattab wrote to Juzayy ibn Mu'awiyah (the uncle of al-Ahnaf ibn Qays), who was a governor under 'Umar ibn al-Khattab, commanding him to kill every sorcerer. Al-Bajalah was Juzayy's scribe. Al-Bajalah said: "We sent out and found three sorceresses, so we beheaded them."

وَذَكَرَ عَنْ الْمُتَقَدِّمِينَ فِي ذَلِكَ أَشْيَاءَ: كَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ، قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ كَتَبَ إلَى جُزَيِّ بْنِ مُعَاوِيَةَ عَمِّ الْأَحْنَفِ بْنِ قَيْسٍ - وَكَانَ عَامِلًا لِعُمَرَ بْنِ الْخَطَّابِ - أَنْ اُقْتُلْ كُلَّ سَاحِرٍ، وَكَانَ بَجَالَةُ كَاتِبَ جُزَيٍّ، قَالَ بَجَالَةُ: فَأَرْسَلْنَا فَوَجَدْنَا ثَلَاثَ سَوَاحِرَ، فَضَرَبْنَا أَعْنَاقَهُنَّ.

L42762 And by him—to 'Abd al-Razzāq, from Ibn 'Uyaynah, from 'Amr ibn Dīnār, from Sālim ibn Abī al-Ja'd—who said, "Qays ibn Sa'd killed a sorcerer."

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ ابْنِ عُيَيْنَةَ عَنْ عَمْرِو بْنِ دِينَارٍ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ قَالَ: إنَّ قَيْسَ بْنَ سَعْدٍ قَتَلَ سَاحِرًا

L42763 From Nafi' on the authority of Ibn 'Umar: A female slave of Hafsa bewitched her and confessed to it. Hafsa commanded that she be dealt with, so 'Abd al-Rahman ibn Zayd killed her. 'Uthman disapproved of Hafsa's action. Ibn 'Umar said to him: "Why do you disapprove of the Mother of the Believers' action concerning a woman who practiced witchcraft and confessed?" 'Uthman fell silent.

وَعَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ: أَنَّ جَارِيَةً لِحَفْصَةَ سَحَرَتْهَا فَاعْتَرَفَتْ بِذَلِكَ فَأَمَرَتْ بِهَا عَبْدَ الرَّحْمَنِ بْنَ زَيْدٍ فَقَتَلَهَا، فَأَنْكَرَ ذَلِكَ عَلَيْهَا عُثْمَانُ، فَقَالَ لَهُ ابْنُ عُمَرَ: مَا تُنْكِرُ عَلَى أُمِّ الْمُؤْمِنِينَ امْرَأَةٌ سَحَرَتْ وَاعْتَرَفَتْ؟ فَسَكَتَ عُثْمَانُ.

L42764–42765 And from Ayyub al-Sikhtiyani, from Nafi': that Hafsah was bewitched, so she ordered her brother 'Ubayd Allah, and he killed two sorceresses. And from al-'Attaf ibn Khalid al-Makhzumi, Abu Safwan, who said: I saw Salim ibn 'Abdullah standing by the wall of a house belonging to orphaned nephews of his. Four boys came to him, accompanied by another, weaker boy. They

وَعَنْ أَيُّوبَ السِّخْتِيَانِيِّ عَنْ نَافِعٍ: أَنَّ حَفْصَةَ سُحِرَتْ فَأَمَرَتْ عُبَيْدَ اللَّهِ أَخَاهَا فَقَتَلَ سَاحِرَتَيْنِ، وَعَنْ الْعَطَّافِ بْنِ خَالِدٍ الْمَخْزُومِيِّ أَبُو صَفْوَانَ قَالَ: رَأَيْت سَالِمَ بْنَ عَبْدِ اللَّهِ وَهُوَ وَاقِفٌ عَلَى جِدَارِ بَيْتٍ لِبَنِي أَخٍ لَهُ يَتَامَى، أَتَاهُ غِلْمَةٌ أَرْبَعَةٌ، وَمَعَهُمْ غُلَامٌ هُوَ أَشَفُّ

said, “O Abu ʻUmar, look at what this one is doing!” He asked, “What is he doing?” They replied, “He pulled out a thread from his garment”—while Salim watched—“then gathered it between two of his fingers, spat on it two or three times, stretched it, and behold, it was intact, with no damage.” I heard Salim say, “If I had any authority in the matter, I would crucify him.”

مِنْهُمْ، فَقَالَ: يَا أَبَا عُمَرَ انْظُرْ مَا يَصْنَعُ هَذَا؟ قَالَ: وَمَاذَا يَصْنَعُ؟ قَالَ: فَسَلْ خَيْطًا مِنْ ثَوْبِهِ فَقَطَعَهُ - وَسَالِمٌ يَنْظُرُ إِلَيْهِ - فَجَمَعَهُ بَيْنَ أُصْبُعَيْنِ مِنْ أَصَابِعِهِ ثُمَّ تَفَلَ عَلَيْهِ مَرَّتَيْنِ أَوْ ثَلَاثًا، ثُمَّ مَدَّهُ، فَإِذَا هُوَ صَحِيحٌ لَيْسَ بِهِ بَأْسٌ، فَسَمِعْت سَالِمًا يَقُولُ: لَوْ كَانَ لِي مِنْ الْأَمْرِ شَيْءٌ لَصَلَبْتُهُ.

L42766 And from Yahya ibn Sa‘id al-Ansari: that Khalid ibn al-Muhajir ibn Khalid killed a Nabataean (dhimmi) who had practiced sorcery.

وَعَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ: أَنَّ خَالِدَ بْنَ الْمُهَاجِرِ بْنِ خَالِدٍ قَتَلَ نَبَطِيًّا سَحَرَ - يَعْنِي ذِمِّيًّا.

L42767 And from Yahya ibn Abi Kathir, he said: A youth in the service of Umar ibn Abd al-Aziz seized a sorceress and cast her into the water, where she floated—thus indicating guilt. Umar ibn Abd al-Aziz wrote to him: Allah did not command you to cast her into the water; if she confesses, then execute her.

وَعَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، قَالَ: إنَّ غُلَامًا لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ أَخَذَ سَاحِرَةً فَأَلْقَاهَا فِي الْمَاءِ فَطَفَتْ، فَكَتَبَ إلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: إنَّ اللَّهَ لَمْ يَأْمُرْك أَنْ تُلْقِيَهَا فِي الْمَاءِ، فَإِنْ اعْتَرَفَتْ فَاقْتُلْهَا.

L42768 On the authority of Ibn Shihāb, he said: “A Muslim sorcerer is to be executed, but a sorcerer from the People of the Book is not to be executed, because the Prophet—peace be upon him and his family—was bewitched by a Jewish man named Ibn Aʿṣam and a woman from Khaybar named Zaynab, so why did he not kill them?”

وَعَنْ ابْنِ شِهَابٍ قَالَ: يُقْتَلُ سَاحِرُ الْمُسْلِمِينَ، وَلَا يُقْتَلُ سَاحِرُ أَهْلِ الْكِتَابِ، لِأَنَّ «النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - سَحَرَهُ رَجُلٌ مِنْ الْيَهُودِ يُقَالُ لَهُ: ابْنُ أَعْصَمَ، وَامْرَأَةٌ مِنْ خَيْبَرَ يُقَالُ لَهَا: زَيْنَبُ، فَلَمْ يَقْتُلْهُمَا؟»

L42769 Abu Muhammad—may Allah have mercy on him—said: These are Umar ibn al-Khattab, Hafsah, his two sons Abdullah, his son Ubaydullah, Uthman, and Qays ibn Rabi’ah.

قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَهَؤُلَاءِ - عُمَرُ بْنُ الْخَطَّابِ، وَحَفْصَةُ، وَعَبْدُ اللَّهِ ابْنَاهُ، وَعُبَيْدُ اللَّهِ ابْنُهُ، وَعُثْمَانُ، وَقَيْسُ بْنُ رَبِيعَةَ.

L42770 The Successors include Salim ibn Abdullah, Khalid ibn al-Muhājir, ʿUmar ibn ʿAbd al-ʿAzīz, and ʿAbd al-Raḥmān ibn Zayd ibn al-Khaṭṭāb.

وَمِنْ التَّابِعِينَ سَالِمُ بْنُ عَبْدِ اللَّهِ، وَخَالِدُ بْنُ الْمُهَاجِرِ، وَعُمَرُ بْنُ عَبْدِ الْعَزِيزِ، وَعَبْدُ الرَّحْمَنِ بْنُ زَيْدِ بْنِ الْخَطَّابِ.

L42771 As for those who differ [with this]: As narrated from Hummām, from Ibn Mufarrij, from Ibn al-Aʿrābī, from al-Dabarī, from ʿAbd al-Razzāq, from Mālik ibn Anas, from Muḥammad ibn ʿAbd al-Raḥmān—he being Abū al-Rijāl—from ʿAmrah bint ʿAbd al-Raḥmān: ʿĀ’ishah, the Mother of the Believers, manumitted a slave girl of hers posthumously. The slave girl had bewitched

وَأَمَّا مَنْ خَالَفَ هَذَا: فَكَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَالِكِ بْنِ أَنَسٍ عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ - هُوَ أَبُو الرِّجَالِ - عَنْ عَمْرَةَ بِنْتِ

ʿĀʾishah and confessed to this, stating, “I desired emancipation.” ʿĀʾishah then ordered her nephew to sell the girl to Bedouins who would mistreat her in her ownership, instructing: “Use the proceeds from her sale to buy another slave and emancipate them.”

عَبْدِ الرَّحْمَنِ: أَنَّ عَائِشَةَ أُمَّ الْمُؤْمِنِينَ أَعْتَقَتْ جَارِيَةً لَهَا عَنْ دُبُرٍ، وَأَنَّهَا سَحَرَتْهَا وَاعْتَرَفَتْ بِذَلِكَ، وَقَالَتْ: أَحْبَبْتُ الْعِتْقَ، فَأَمَرَتْ بِهَا عَائِشَةُ ابْنَ أَخِيهَا أَنْ يَبِيعَهَا مِنَ الْأَعْرَابِ مِمَّنْ يُسِيءُ مَلْكَتَهَا، وَقَالَتْ: ابْتَعْ بِثَمَنِهَا رَقَبَةً فَأَعْتِقْهَا.

L42772–42774 And with him—up to ʿAbd al-Razzāq from Sufyān ibn ʿUyaynah from Yaḥyā ibn Saʿīd al-Anṣārī from Abi al-Rijal narrated from Amrah, who said: Aisha fell ill and her sickness lingered. Her nephews went to a man and described her condition to him. He responded, “Are you informing me about a bewitched woman?” They went to investigate, and found her servant girl had indeed enchanted her, for she had conspired against her. Aisha demanded, “What did you intend against me?” The girl replied, “I wanted you to die so I might gain freedom.” Aisha declared, “I swear by Allah, I must sell you to the strictest Arab queen.” She then sold her and commanded that the payment be used to acquire a replacement of similar status.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ يَحْيَى بْنِ سَعِيدٍ الْأَنْصَارِيِّ عَنْ أَبِي الرِّجَالِ عَنْ عَمْرَةَ، قَالَتْ: مَرِضَتْ عَائِشَةُ فَطَالَ مَرَضُهَا، فَذَهَبَ بَنُو أَخِيهَا إِلَى رَجُلٍ، فَذَكَرُوا لَهُ مَرَضَهَا؟ فَقَالَ: إِنَّكُمْ لَتُخْبِرُونِي خَبَرَ امْرَأَةٍ مَطْبُوبَةٍ، فَذَهَبُوا يَنْظُرُونَ، فَإِذَا جَارِيَةٌ لَهَا قَدْ سَحَرَتْهَا وَكَانَتْ قَدْ دَبَّرَتْهَا، فَقَالَتْ لَهَا: مَا أَرَدْتِ مِنِّي؟ قَالَتْ: أَرَدْتُ أَنْ تَمُوتِي حَتَّى أَعْتِقَ، قَالَتْ: فَإِنَّ لِلَّهِ عَلَيَّ أَنْ تُبَاعَ مِنْ أَشَدِّ الْعَرَبِ مَلِكَةً، فَبَاعَتْهَا، وَأَمَرَتْ بِثَمَنِهَا أَنْ يُجْعَلَ فِي مِثْلِهَا.

L42775 From Rabīʿah ibn ʿAṭāʾ: A male slave used sorcery on an Arab female slave, causing her to become submissive to him under his spell. The matter was brought before ʿUrwah ibn Muḥammad—who served as governor appointed by ʿUmar ibn ʿAbd al-ʿAzīz. ʿUmar ibn ʿAbd al-ʿAzīz wrote to him: “Sell him outside her land and his land, then give her the proceeds from his sale.” Have we not previously mentioned that ʿUthmān—may Allah be pleased with him—rejected the killing of sorcerers? Abū Muḥammad said: When they disagreed as we described, it became necessary to investigate. We examined the view of those who supported executing the sorcerer and found them arguing: Allah the Exalted said: “They followed what the devils recited during Solomon’s reign. Solomon did not disbelieve, but the devils disbelieved by teaching people sorcery” [Al-Baqarah: 102]—the verse. They asserted: Allah the Exalted labeled sorcery as disbelief in His statement: “But the devils disbelieved by teaching people sorcery” [Al-Baqarah: 102].[21]

وَعَنْ رَبِيعَةَ بْنِ عَطَاءٍ أَنَّ رَجُلًا عَبْدًا سَحَرَ جَارِيَةً عَرَبِيَّةً، وَكَانَتْ تَتْبَعُهُ، فَرُفِعَ إِلَى عُرْوَةَ بْنِ مُحَمَّدٍ - وَكَانَ عَامِلَ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ - فَكَتَبَ إِلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: أَنْ يَبِيعَهُ بِغَيْرِ أَرْضِهَا وَأَرْضِهِ، ثُمَّ ادْفَعْ ثَمَنَهُ إِلَيْهَا - وَقَدْ ذَكَرْنَا عَنْ عُثْمَانَ - رَضِيَ اللَّهُ عَنْهُ - إِنْكَارَ قَتْلِ السَّاحِرِ؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ، فَنَظَرْنَا فِي قَوْلِ مَنْ رَأَى قَتْلَ السَّاحِرِ، فَوَجَدْنَاهُمْ يَقُولُونَ: قَالَ اللَّهُ تَعَالَى: {وَاتَّبَعُوا مَا تَتْلُو الشَّيَاطِينُ عَلَى مُلْكِ سُلَيْمَانَ وَمَا كَفَرَ سُلَيْمَانُ وَلَكِنَّ الشَّيَاطِينَ كَفَرُوا يُعَلِّمُونَ النَّاسَ السِّحْرَ} [البقرة: ١٠٢] الْآيَةُ قَالُوا: فَسَمَّى اللَّهُ تَعَالَى السِّحْرَ كُفْرًا بِقَوْلِهِ: {وَلَكِنَّ الشَّيَاطِينَ كَفَرُوا يُعَلِّمُونَ النَّاسَ السِّحْرَ} [البقرة: ١٠٢] .

L42776 He said: “So they teach” is an appositional substitute for “they disbelieved,” thus teaching magic is disbelief.

قَالَ: " فَيُعَلِّمُونَ " بَدَلٌ مِنْ " كَفَرُوا " فَتَعْلِيمُ السِّحْرِ كُفْرٌ.

[21] **Qur’an references (L42775):** Qur’an 2:102 (Al-Baqarah).

L42777 And also by His statement (Exalted is He): “We are only a trial, so do not become disbelievers” [Al-Baqarah 2:102].[22]

وَأَيْضًا بِقَوْلِهِ تَعَالَى: {إِنَّمَا نَحْنُ فِتْنَةٌ فَلا تَكْفُرْ} [البقرة: ١٠٢] .

L42778 And also by His saying, the Exalted: “And they certainly knew that whoever purchased [magic] would have no share in the Hereafter.” [Al-Baqarah: 102][23]

وَأَيْضًا بِقَوْلِهِ تَعَالَى: {وَلَقَدْ عَلِمُوا لَمَنِ اشْتَرَاهُ مَا لَهُ فِي الآخِرَةِ مِنْ خَلاقٍ} [البقرة: ١٠٢] .

L42779 And by His saying, “Evil is that for which they traded their souls, if only they had known” [al-Baqarah 2:102].[24]

وَبِقَوْلِهِ {وَلَبِئْسَ مَا شَرَوْا بِهِ أَنْفُسَهُمْ لَوْ كَانُوا يَعْلَمُونَ} [البقرة: ١٠٢] .

L42780 They mentioned that Ḥammām narrated to us, Ibn Mufarrij narrated to us, Ibn al-Aʿrābī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated to us, from Sufyān ibn ʿUyaynah, from Ismāʿīl ibn Muslim, from al-Ḥasan, who said: The Prophet—peace be upon him—said, “The ḥadd punishment for a sorcerer is execution by the sword.”

وَذَكَرُوا - مَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ إِسْمَاعِيلَ بْنِ مُسْلِمٍ عَنْ الْحَسَنِ قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «حَدُّ السَّاحِرِ ضَرْبُهُ بِالسَّيْفِ» .

L42781–42782 And through him—via ʿAbd al-Razzāq from Ibrāhīm ibn Abī Yaḥyā from Ṣafwān ibn Sulaym—who said: The Messenger of Allah (peace and blessings be upon him) said, “Whoever learns magic, whether a little or a great amount, will have severed his final covenant with Allah.”

وَبِهِ - إلَى عَبْدِ الرَّزَّاقِ عَنْ إبْرَاهِيمَ بْنِ أَبِي يَحْيَى عَنْ صَفْوَانَ بْنِ سُلَيْمٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ تَعَلَّمَ السِّحْرَ قَلِيلًا أَوْ كَثِيرًا كَانَ آخِرَ عَهْدِهِ مِنْ اللَّهِ» .

L42783 We were narrated by Yahya ibn Abd al-Rahman ibn Masud, from Ahmad ibn Juhaym, from Ibrahim ibn Hammad, from Isma’il ibn Ishaq, from al-Hajjaj ibn al-Minhal, from Hammad ibn Salamah, from Sa’id al-Jurayri, from Abu al-’Ala: “The Messenger of Allah (peace and blessings be upon him) passed by ’Uqbah one night and alighted. He began reciting rajaz poetry, saying: ’Jundub—and what is Jundub? The amputee! The news! The news!’ When morning came, his companions said: ’O Messenger of Allah, we have never heard better rajaz poetry than yours tonight. What are Jundub and the amputee?’ He said: ’As for Jundub, he is a man from my community who will strike a blow for which he will be resurrected as a community unto himself on the Day of Judgment. As for the amputee, he is a man whose hand will be severed, and it will enter Paradise ahead of his body for a span of time.’”

حَدَّثَنَا يَحْيَى بْنُ عَبْدِ الرَّحْمَنِ بْنِ مَسْعُودٍ نا أَحْمَدُ بْنُ جُهَيْمٍ نا إبْرَاهِيمُ بْنُ حَمَّادٍ نا إسْمَاعِيلُ بْنُ إِسْحَاقَ نا الْحَجَّاجُ بْنُ الْمِنْهَالِ نا حَمَّادُ بْنُ سَلَمَةَ عَنْ سَعِيدٍ الْجُرَيْرِيِّ عَنْ أَبِي الْعَلَاءِ «أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَانَبَ عُقْبَةَ ذَاتَ لَيْلَةٍ فَنَزَلَ، فَجَعَلَ يَرْتَجِزُ وَيَقُولُ: جُنْدُبٌ وَمَا جُنْدُبٌ وَالْأَقْطَعُ الْخَبَرُ الْخَبَرُ فَلَمَّا أَصْبَحَ قَالَ أَصْحَابُهُ: يَا رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَا رَأَيْنَا رَاجِزًا أَحْسَنَ رَجَزًا مِنْكَ اللَّيْلَةَ، فَمَا جُنْدُبٌ، وَالْأَقْطَعُ؟ قَالَ: أَمَّا جُنْدُبٌ فَرَجُلٌ مِنْ أُمَّتِي يَضْرِبُ ضَرْبَةً يُبْعَثُ بِهَا أُمَّةً وَحْدَهُ يَوْمَ الْقِيَامَةِ وَأَمَّا الْأَقْطَعُ فَرَجُلٌ تُقْطَعُ يَدُهُ فَتَدْخُلُ الْجَنَّةَ قَبْلَ جَسَدِهِ بِبُرْهَةٍ مِنْ الدَّهْرِ» .

[22] **Qur’an references (L42777):** Qur’an 2:102 (Al-Baqarah).
[23] **Qur’an references (L42778):** Qur’an 2:102 (Al-Baqarah).
[24] **Qur’an references (L42779):** Qur’an 2:102 (Al-Baqarah).

فَكَانُوا يَرَوْنَ أَنَّ الْأَقْطَعَ، زَيْدَ بْنَ صُوحَانَ، قُطِعَتْ يَدُهُ يَوْمَ الْيَرْمُوكِ قَبْلَ يَوْمِ الْجَمَلِ مَعَ عَلِيٍّ - وَأَمَّا جُنْدُبٌ، فَهُوَ الَّذِي قَتَلَ السَّاحِرَ.

L42784 They maintained the view that al-Aqṭaʿ, Zayd ibn Ṣūḥān, had his hand severed during the Day of Yarmouk before the Day of the Camel - which occurred with ʿAlī. As for Jundub, he was the one who killed the sorcerer.

وَقَالَ: نا حَمَّادُ بْنُ سَلَمَةَ نا أَبُو عِمْرَانَ - هُوَ الْجَوْنِيُّ - أَنَّ سَاحِرًا كَانَ عِنْدَ الْوَلِيدِ بْنِ عُقْبَةَ فَجَعَلَ يَدْخُلُ فِي بَقَرَةٍ ثُمَّ يَخْرُجُ مِنْهَا، فَرَآهُ جُنْدُبٌ، فَذَهَبَ إِلَى بَيْتِهِ فَالْتَفَعَ عَلَى سَيْفِهِ، فَلَمَّا دَخَلَ السَّاحِرُ جَوْفَ الْبَقَرَةِ ضَرَبَهُمَا، قَالَ {أَفَتَأْتُونَ السِّحْرَ وَأَنْتُمْ تُبْصِرُونَ} [الأنبياء: ٣] فَانْدَفَعَ النَّاسُ وَتَفَرَّقُوا وَقَالُوا: حَرُورِي، فَسَجَنَهُ الْوَلِيدُ، وَكَتَبَ بِهِ إِلَى عُثْمَانَ بْنِ عَفَّانَ فَكَانَ يُفْتَحُ لَهُ بِاللَّيْلِ فَيَذْهَبُ إِلَى أَهْلِهِ، فَإِذَا أَصْبَحَ رَجَعَ إِلَى السِّجْنِ - قَالَ: فَيَرَوْنَ أَنَّ جُنْدُبًا صَاحِبَ الضَّرْبَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: مَا نَعْلَمُ لَهُمْ شَيْئًا غَيْرَ مَا ذَكَرْنَا، قَدْ تَقَصَّيْنَاهُ لَهُمْ غَايَةَ التَّقَصِّي، وَأَتَيْنَا بِمَا لَمْ نَذْكُرْهُ أَيْضًا، وَكُلُّ ذَلِكَ لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ عَلَى مَا نُبَيِّنُ، إِنْ شَاءَ اللَّهُ تَعَالَى فَنَقُولُ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ: أَمَّا مَا ذَكَرُوهُ مِنْ أَقْوَالِ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ - فَلَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ: أَمَّا قَوْلُ عُمَرَ - رَضِيَ اللَّهُ عَنْهُ - فَإِنَّهُ خَبَرٌ صَحِيحٌ عَنْهُ أَخَذُوا مَا اشْتَهَوْا مِنْهُ، وَتَرَكُوا سَائِرَهُ، وَهُوَ خَبَرٌ: نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، وَسُفْيَانَ بْنِ عُيَيْنَةَ، كِلَاهُمَا عَنْ عَمْرِو بْنِ دِينَارٍ قَالَ: سَمِعْتُ بَجَالَةَ كَاتِبَ جُزَيٍّ يُحَدِّثُ أَبَا الشَّعْثَاءِ، وَعَمْرَو بْنَ أَوْسٍ عَنْ صِفَةِ زَمْزَمَ فِي إِمَارَةِ الْمُصْعَبِ بْنِ الزُّبَيْرِ قَالَ: كُنْتُ كَاتِبًا لِجَزِيٍّ - عَمِّ الْأَحْنَفِ بْنِ قَيْسٍ - فَأَتَى كِتَابُ عُمَرَ قَبْلَ مَوْتِهِ، بِسَنَةٍ: اقْتُلُوا كُلَّ سَاحِرٍ وَفَرِّقُوا بَيْنَ كُلِّ ذِي رَحِمٍ مَحْرَمٍ مِنَ الْمَجُوسِ، وَانْهَهُمْ عَنِ الزَّمْزَمَةِ، قَالَ: فَقَتَلْنَا ثَلَاثَ سَوَاحِرَ، قَالَ: وَصَنَعَ طَعَامًا كَثِيرًا وَعَرَضَ السَّيْفَ، ثُمَّ دَعَا الْمَجُوسَ فَأَلْقَوْا وِقْرَ بَغْلٍ، أَوْ بَغْلَيْنِ مِنْ وَرِقٍ أَخِلَّةً، كَانُوا يَأْكُلُونَ بِهَا، وَأَكَلُوا بِغَيْرِ زَمْزَمَةٍ، قَالَ: «وَلَمْ

L42785–42787 He said: Hammad ibn Salama narrated to us, Abu Imran—he is al-Jawni—narrated to us that a sorcerer was with al-Walid ibn Uqba, and he would enter a cow and then emerge from it. Jundub saw him, went to his house, then strapped on his sword. When the sorcerer entered the cow's belly, he struck both of them. He recited: "Do you practice sorcery while you see [its falsehood]?" [Al-Anbiya 21:3]. The people surged and scattered, exclaiming: "A Haruri!" Al-Walid imprisoned the sorcerer and wrote to Uthman ibn Affan regarding him. The sorcerer's cell would be opened at night, allowing him to visit his family, and he would return to prison at dawn. He said: Do they suppose Jundub to be the one who struck the blow? Abu Muhammad—may Allah have mercy on him—said: We know nothing supporting their view beyond what we have mentioned. We have exhaustively scrutinized their claims and presented even what we omitted earlier. None of this constitutes valid evidence for them regarding what we shall clarify, if Allah the Exalted wills. Then we say—and success comes only from Allah, the Exalted: As for their citations from the statements of the Companions—may Allah be pleased with them—there is no proof for them in any of it. As for the statement of ʿUmar—may Allah be pleased with him—it is an authentic report from him wherein they took what they desired from it and left the remainder. The narration is as follows: Ḥummām narrated to us, Ibn Mufarrij narrated to us, Ibn al-Aʿrābī narrated to us, al-Dabarī narrated to us, ʿAbd al-Razzāq narrated to us from Maʿmar and Sufyān ibn ʿUyaynah—both of them from ʿAmr ibn Dīnār—who said: I heard Bajāla, the scribe of Juzayy, relating to Abū al-Shaʿthāʾ and ʿAmr ibn Awṣ regarding the condition of Zamzam during the governorship of al-Muṣʿab ibn al-Zubayr. He said: I was the scribe of Juzayy, the uncle of al-Aḥnaf ibn Qays, when ʿUmar's letter arrived a year before his death, stating: "Kill every sorcerer, separate between every Magian with prohibited kinship ties, and forbid them from Zamzama." He said: We killed three sorceresses. He said: Juzayy prepared abundant food, displayed the sword, then summoned the Magians. They brought a mule-load or two of

silver utensils they used for eating, and they ate without Zamzama. He said: "'Umar did not collect the jizya from the Magians until ʿAbd al-Raḥmān ibn ʿAwf testified that the Prophet—peace and blessings of Allah be upon him—had taken it from the Magians of Hajar." Thus is the hadith.[25]

L42788 The Malikis and the Hanafis oppose Umar in this narration regarding his command—in which disagreement is impermissible—specifically, his order to separate every Magian from their mahram relatives, for this is the injunction of Allah Almighty, as He says: "And judge between them by what Allah has revealed" [Al-Mā'idah 5:49].[26]

L42789 Allah, the Exalted, says: "Fight them until there is no persecution and the religion is wholly for Allah" (Quran 8:39).[27]

L42790 The Hanafis and Malikis said: No distinction is to be made between a Magian and his female kin, and the jizya is taken from every non-scriptuary among the non-Arabs—thereby contradicting the Quran and ʿUmar ibn al-Khaṭṭāb in matters where opposing him is impermissible, while they emulated him—by their claim—in cases where he ruled according to the conclusions of his ijtihad regarding issues not addressed by Quranic text nor supported by an authentic Sunnah. This is contrary to the facts.

L42791 Al-Zamzama refers to speech uttered by the Zoroastrians during their meals, which they cannot do without, and no meal is permissible in their religion without it. It consists of words glorifying Allah the Exalted, which they recite within their mouths innately while keeping their lips firmly closed - they deem any deviation from this impermissible. They use small wooden sticks during this practice and toothpicks for eating. This constitutes foolishness and contrivance on their part.

L42792 Via the aforementioned chain from ʿAbd al-Razzāq via ʿAbd al-Raḥmān via al-Muthannā ibn al-Ṣabbāḥ via ʿAmr ibn Shuʿayb via Saʿīd ibn al-Musayyab:

يَكُنْ عُمَرُ أَخَذَ مِنْ الْمَجُوسِ الْجِزْيَةَ حَتَّى شَهِدَ عَبْدُ الرَّحْمَنِ بْنُ عَوْفٍ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَخَذَهَا مِنْ مَجُوسِ أَهْلِ هَجَرَ» فَهَكَذَا الْحَدِيثُ.

وَالْمَالِكِيُّونَ، وَالْحَنَفِيُّونَ يُخَالِفُونَ عُمَرَ فِي هَذَا الْخَبَرِ فِيمَا لَا يَحِلُّ خِلَافُهُ فِيهِ مِنْ أَمْرِهِ: بِأَنْ يُفَرِّقَ بَيْنَ كُلِّ ذِي رَحِمٍ مَحْرَمٍ مِنْ الْمَجُوسِ، لِأَنَّ هَذَا هُوَ أَمْرُ اللَّهِ تَعَالَى إذْ يَقُولُ تَعَالَى: {وَأَنِ احْكُمْ بَيْنَهُمْ بِمَا أَنْزَلَ اللَّهُ} [المائدة: ٤٩] .

فَهُوَ إذْ يَقُولُ تَعَالَى: {وَقَاتِلُوهُمْ حَتَّى لا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ} [الأنفال: ٣٩] .

فَقَالَ الْحَنَفِيُّونَ وَالْمَالِكِيُّونَ: لَا يُفَرَّقُ بَيْنَ مَجُوسِيٍّ وَبَيْنَ حَرِيمَتِهِ، وَتُؤْخَذُ الْجِزْيَةُ مِنْ كُلِّ مَنْ لَيْسَ كِتَابِيًّا مِنْ الْعَجَمِ - فَخَالَفُوا الْقُرْآنَ، وَعُمَرَ بْنَ الْخَطَّابِ، حَيْثُ لَا يَحِلُّ خِلَافُهُ وَقَلَّدُوهُ - بِزَعْمِهِمْ - حَيْثُ حَكَمَ فِيهِ بِمَا أَدَّاهُ إلَيْهِ اجْتِهَادُهُ، مِمَّا لَمْ يَرِدْ فِيهِ قُرْآنٌ، وَلَا صَحَّتْ بِهِ سُنَّةٌ - فَهَذَا عَكْسُ الْحَقَائِقِ.

وَالزَّمْزَمَةُ - كَلَامٌ تَتَكَلَّمُ بِهِ الْمَجُوسُ عِنْدَ أَكْلِهِمْ، لَا بُدَّ لَهُمْ مِنْهُ، وَلَا يَحِلُّ فِي دِينِهِمْ أَكْلٌ دُونَهُ - وَهُوَ كَلَامُ تَعْظِيمٍ لِلَّهِ تَعَالَى يَتَكَلَّمُونَ بِهِ فِي أَفْوَاهِهِمْ خِلْقَةً وَشِفَاهُهُمْ مُطْبَقَةٌ، لَا يَجُوزُ عِنْدَهُمْ خِلَافُ ذَلِكَ - وَلَهُمْ خَشَبَاتٌ صِغَارٌ يَسْتَعْمِلُونَهَا عِنْدَ ذَلِكَ - وَأَخِلَّةٌ يَأْكُلُونَ بِهَا - وَهَذَا حُمْقٌ مِنْهُمْ وَتَكَلُّفٌ.

وَبِالسَّنَدِ الْمَذْكُورِ إلَى عَبْدِ الرَّزَّاقِ عَنْ عَبْدِ الرَّحْمَنِ عَنْ الْمُثَنَّى بْنِ الصَّبَّاحِ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ: أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَخَذَ سَاحِرًا فَدَفَنَهُ إلَى صَدْرِهِ ثُمَّ تَرَكَهُ حَتَّى مَاتَ.

[25] **Qur'an references (L42785):** Qur'an 21:3 (Al-Anbya).
[26] **Qur'an references (L42788):** Qur'an 5:49 (Al-Ma'idah).
[27] **Qur'an references (L42789):** Qur'an 8:39 (Al-Anfal).

that ʿUmar ibn al-Khaṭṭāb seized a sorcerer, buried him up to the sorcerer's chest, then abandoned him until he died.

وَهُمْ لَا يَأْخُذُونَ بِهَذَا نَفْسَهُ مِنْ حُكْمِ عُمَرَ فِي السَّاحِرِ - وَحَتَّى لَوْ الْتَزَمُوا قَوْلَ عُمَرَ كُلَّهُ لَكَانَ إذْ صَحَّ خِلَافُ عَائِشَةَ لَهُ فِي ذَلِكَ، وَلَمَّا كَانَ قَوْلُهُ أَوْلَى مِنْ قَوْلِهَا، وَلَا قَوْلُهَا أَوْلَى مِنْ قَوْلِهِ.

L42793–42794 They do not adopt this very ruling itself from Umar concerning the sorcerer - and even if they were to fully adhere to all of Umar's opinion, since Aisha's disagreement with him on that matter is valid, his opinion remains more deserving of precedence than hers, and hers is not more deserving of precedence than his.

فَالْوَاجِبُ عِنْدَ التَّنَازُعِ الرُّجُوعُ إلَى مَا افْتَرَضَ اللَّهُ تَعَالَى الرُّجُوعَ إلَيْهِ: مِنْ الْقُرْآنِ، وَالسُّنَّةِ - فَسَقَطَ تَعَلُّقُهُمْ بِعُمَرَ فِي ذَلِكَ.

L42795 In cases of dispute, it is necessary to refer back to what Allah the Exalted has obligated [people] to turn to - such as the Quran and Sunnah. Thus their reliance on 'Umar's position in that matter becomes invalid.

وَأَمَّا حَدِيثُ قَيْسِ بْنِ سَعِيدٍ أَنَّهُ قَتَلَ سَاحِرًا؟ فَقَدْ يُمْكِنُ أَنْ يَكُونَ ذَلِكَ السَّاحِرُ كَافِرًا أَضَرَّ بِمُسْلِمٍ فَقَتَلَهُ - وَهَكَذَا نَقُولُ.

L42796 As for the ḥadīth of Qays ibn Saʿīd—that he killed a sorcerer—is it possible this sorcerer was a disbeliever who had harmed a Muslim, so he killed him? Thus we say.

وَأَيْضًا - فَقَدْ صَحَّ خِلَافُ ذَلِكَ عَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا -.

L42797 Moreover, indeed, a differing opinion on that matter has been authentically established from ʿĀ'ishah (may Allah be pleased with her).

فَسَقَطَ تَعَلُّقُهُمْ بِحَدِيثِ قَيْسٍ.

L42798 Thus, their reliance on the Hadith of Qays was invalidated.

وَأَمَّا حَدِيثُ حَفْصَةَ، وَابْنِ عُمَرَ؟ فَقَدْ قُلْنَا: إنَّهُ لَا حُجَّةَ فِي قَوْلِ أَحَدٍ دُونَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42799 As for the ḥadīth of Ḥafṣah and Ibn ʿUmar—we have already stated: There is no proof in the statement of anyone other than the Messenger of Allāh, peace and blessings be upon him.

ثُمَّ نَظَرْنَا فِي الْآثَارِ الَّتِي ذَكَرُوا فِي ذَلِكَ: فَوَجَدْنَا خَبَرَ الْحَسَنِ مُرْسَلًا، وَلَا حُجَّةَ فِي مُرْسَلٍ - وَلَوْ صَحَّ لَمَا كَانَ لَهُمْ فِيهِ مُتَعَلَّقٌ أَصْلًا، لِأَنَّهُ إنَّمَا فِيهِ حَدُّ السَّاحِرِ: ضَرْبُهُ بِالسَّيْفِ، وَلَيْسَ فِيهِ قَتْلُهُ، وَالضَّرْبَةُ قَدْ تُخْطِئُ فَتَجْرَحُ فَقَطْ، وَقَدْ تَقْتُلُ - فَهُمْ قَدْ خَالَفُوا هَذَا الْخَبَرَ وَأَوْجَبُوا قَتْلَهُ وَلَا بُدَّ.

L42800 Then we examined the traditions they cited regarding that matter and found the report of Al-Hasan to be disconnected in its chain of transmission, for there is no proof in a disconnected report - even if it were authentic, they would have no basis to rely upon it whatsoever, as it merely mentions the prescribed punishment for the sorcerer as striking him with a sword, not killing him. A strike might miss its lethal intent, merely wounding, or it may kill. Yet they have contradicted this report and made killing him obligatory without exception.

L42801 As for the narration of Jundub, it is extremely weak: the first point is that it

is mursal (disconnected), and it is not known from whom Abū al-ʿAlāʾ heard it.

وَأَمَّا خَبَرُ جُنْدُبَ فَفِي غَايَةِ السُّقُوطِ: أَوَّلُ ذَلِكَ - أَنَّهُ مُرْسَلٌ لَا يُدْرَى مِمَّنْ سَمِعَهُ أَبُو الْعَلَاءِ.

L42802 Then nothing remained except the verse—necessitating its examination, which we undertook by the help of Allah the Most High—beginning with its start from the words of the Most High: {But indeed the devils disbelieved, teaching people magic} [Al-Baqarah: 102].[28]

فَلَمْ يَبْقَ إِلَّا الْآيَةُ - فَوَجَبَ النَّظَرُ فِيهَا، فَفَعَلْنَا - بِعَوْنِ اللَّهِ تَعَالَى - وَابْتَدَأْنَا بِأَوَّلِهَا مِنْ قَوْلِه تَعَالَى: {وَلَكِنَّ الشَّيَاطِينَ كَفَرُوا يُعَلِّمُونَ النَّاسَ السِّحْرَ} [البقرة: ١٠٢] .

L42803 Their statement, “they teach,” is a substitute for “they disbelieved.”

وَقَوْلُهُمْ “ يُعَلِّمُونَ ” بَدَلٌ مِنْ “ كَفَرُوا ”.

L42804 So we examined that—and found it not as they presumed, and that their statement is a claim without proof. Rather, the manifest view is that the discourse concluded at the statement of the Exalted: *They disbelieved* [Al-Baqarah: 102]; the narrative was completed, and it stood independently, sound and complete: *But the devils disbelieved* [Al-Baqarah: 102].[29]

فَنَظَرْنَا فِي ذَلِكَ - فَوَجَدْنَاهُ لَيْسَ كَمَا ظَنُّوا، وَأَنَّ قَوْلَهُمْ هَذَا دَعْوَى بِلَا بُرْهَانٍ، بَلْ الْقَوْلُ الظَّاهِرُ هُوَ أَنَّ الْكَلَامَ تَمَّ عِنْدَ قَوْلِه تَعَالَى: {كَفَرُوا} [البقرة: ١٠٢] وَكَمُلَتْ الْقِصَّةُ، وَقَامَتْ بِنَفْسِهَا صَحِيحَةً تَامَّةً {وَلَكِنَّ الشَّيَاطِينَ كَفَرُوا} [البقرة: ١٠٢] .

L42805 Then, the Exalted initiated another commenced narrative, as stated in His verse: {They teach people magic} [Al-Baqarah: 102]. Thus, they teach it - an initial grammatical structure that begins a sentence and does not allow substitution.[30]

ثُمَّ ابْتَدَأَ تَعَالَى قِصَّةً أُخْرَى مُبْتَدَأَةً، وَهُوَ: {يُعَلِّمُونَ النَّاسَ السِّحْرَ} [البقرة: ١٠٢] فَيُعَلِّمُونَ ابْتِدَاءُ كَلَامٍ لَا بَدَلَ.

L42806–42807 Then, even if it were valid that “they teach” stands in substitution for “they disbelieved” and could not bear any other interpretation whatsoever, they would have no argument whatsoever in this matter. For that is a statement from Allah, the Exalted, regarding what constituted the ruling concerning the devils after the time of Solomon—peace be upon him—and that is a divine law which does not bind us. The ruling of Allah, the Exalted, regarding the devils is a ruling external to our own rulings, and every ruling not established within our divine law does not obligate us.

ثُمَّ لَوْ صَحَّ: أَنَّ “ يُعَلِّمُونَ ” بَدَلٌ مِنْ “ كَفَرُوا ” وَلَمْ يَحْتَمِلْ غَيْرَ ذَلِكَ أَصْلًا، لَمَا كَانَ لَهُمْ فِيهِ حُجَّةٌ أَلْبَتَّةَ، لِأَنَّ ذَلِكَ خَبَرٌ مِنْ اللَّهِ تَعَالَى عَنْ أَنَّ ذَلِكَ كَانَ حُكْمَ الشَّيَاطِينِ بَعْدَ أَيَّامِ سُلَيْمَانَ - عَلَيْهِ السَّلَامُ - وَذَلِكَ شَرِيعَةٌ لَا تَلْزَمُنَا، وَحُكْمُ اللَّهِ تَعَالَى فِي الشَّيَاطِينِ حُكْمٌ خَارِجٌ مِنْ حُكْمِنَا، وَكُلُّ حُكْمٍ لَمْ يَكُنْ فِي شَرِيعَتِنَا فَلَا يَلْزَمُنَا.

L42808 Rather, it has been authentically established that the ruling concerning “the jinn” today in our law differs from our rulings, just as it has been authentically reported from the Prophet—peace and blessings be upon him—that he

بَلْ قَدْ صَحَّ: أَنَّ حُكْمَ “ الْجِنِّ ” الْيَوْمَ فِي شَرِيعَتِنَا غَيْرُ حُكْمِنَا، كَمَا قَدْ صَحَّ عَنْ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنَّهُ أَبَاحَ لَهُمْ الرَّوْثَ وَالْعِظَامَ طَعَامًا وَالرَّوْثُ حَرَامٌ عِنْدَنَا

[28] **Qur’an references (L42802):** Qur’an 2:102 (Al-Baqarah).
[29] **Qur’an references (L42804):** Qur’an 2:102 (Al-Baqarah).
[30] **Qur’an references (L42805):** Qur’an 2:102 (Al-Baqarah).

permitted them to consume dung and bones as food, while dung is prohibited for us but permissible for them. So how, when the apparent meaning of the verse admits two interpretations, is it permissible to restrict it to one without definitive proof? We have already clarified that they have no proof for either of them whatsoever.

وَحَلَالٌ لَهُمْ، فَكَيْفَ وَإِذَا احْتَمَلَ ظَاهِرُ الْآيَةِ مَعْنَيَيْنِ، فَلَا يَجُوزُ حَمْلُهَا عَلَى أَحَدِهِمَا دُونَ الْآخَرِ، إِلَّا بِبُرْهَانٍ، وَقَدْ بَيَّنَّا أَنَّ كِلَا الْوَجْهَيْنِ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا.

L42809 Moreover, the textual statement of their position is that the devils disbelieved **by** teaching people magic—while they assert that the two angels teach people magic, yet **in their view**, the two angels do not disbelieve **thereby**. Thus, they have acknowledged that the ruling on teaching magic varies—that it may constitute disbelief or **not** constitute disbelief **thereby**. Since they have stated this, **on what basis** do they derive that the ruling on a human sorcerer is disbelief by analogy to the devils, **without negating disbelief** by analogy to the two angels? How can this stand, when the entire analogy is baseless? Thus, it is confirmed that they have no valid proof for declaring a human sorcerer a disbeliever on the grounds that the devils disbelieve **by** teaching it—this would only hold if it were valid for them that the disbelief of the devils occurred **solely** due to their teaching people magic—and this can never be valid for them.

وَأَيْضًا - فَإِنَّ نَصَّ قَوْلِهِمْ: إنَّ الشَّيَاطِينَ كَفَرُوا بِتَعْلِيمِ النَّاسِ السِّحْرَ - وَهُمْ يَزْعُمُونَ: أَنَّ الْمَلَكَيْنِ يُعَلِّمَانِ النَّاسَ السِّحْرَ، وَلَا يَكْفُرُ الْمَلَكَانِ عِنْدَهُمْ بِذَلِكَ، فَقَدْ أَقَرُّوا بِاخْتِلَافِ حُكْمِ تَعْلِيمِ السِّحْرِ، وَأَنَّهُ يَكُونُ كُفْرًا، وَلَا يَكُونُ كُفْرًا بِذَلِكَ، فَإِذْ قَدْ قَالُوا ذَلِكَ، فَمِنْ أَيْنَ لَهُمْ: أَنَّ حُكْمَ السَّاحِرِ مِنْ النَّاسِ الْكُفْرُ قِيَاسًا عَلَى الشَّيَاطِينِ، دُونَ أَنْ لَا يَكُونَ كُفْرًا قِيَاسًا عَلَى الْمَلَكَيْنِ؟ فَكَيْفَ وَالْقِيَاسُ كُلُّهُ بَاطِلٌ.؟ فَصَحَّ - أَنَّهُ لَا حُجَّةَ لَهُمْ فِي تَكْفِيرِ السَّاحِرِ مِنْ النَّاسِ: بِأَنَّ الشَّيَاطِينَ يَكْفُرُونَ بِتَعْلِيمِهِ - هَذَا لَوْ صَحَّ لَهُمْ أَنَّ كُفْرَ الشَّيَاطِينِ لَمْ يَكُنْ إلَّا بِتَعْلِيمِهِمْ النَّاسَ السِّحْرَ خَاصَّةً - وَهَذَا لَا يَصِحُّ لَهُمْ أَبَدًا.

L42810 Rather, they had already disbelieved before that. Thus, their teaching people magic was an added misguidance and another newly introduced sin. This is the dictate of the verse's apparent meaning, from which it is impermissible to deviate in any way, except by a claim stripped of all proof—and success is by Allah, the Exalted.

بَلْ قَدْ كَفَرُوا قَبْلَ ذَلِكَ، فَكَانَ تَعْلِيمُهُمْ النَّاسَ السِّحْرَ ضَلَالًا زَائِدًا، وَمَعْصِيَةً حَادِثَةً أُخْرَى، وَهَذَا هُوَ مُقْتَضَى ظَاهِرِ الْآيَةِ الَّذِي لَا يَجُوزُ أَنْ يُحَالَ عَنْهُ أَلْبَتَّةَ، إلَّا بِالدَّعْوَى الْعَارِيَّةِ مِنْ الْبُرْهَانِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

L42811 Then we proceeded to the statement of Allah the Exalted: {The two do not teach anyone until they say, "We are but a trial, so do not disbelieve"} [Al-Baqarah: 102]. We found they have no argument in it at all by any means, because this statement only contains a general prohibition of disbelief in totality, and the two did not say: "So do not disbelieve by learning magic" or "by knowing magic." This is what is not understood from the verse at all.[31]

ثُمَّ صِرْنَا إلَى قَوْلِ اللَّهِ تَعَالَى: {وَمَا يُعَلِّمَانِ مِنْ أَحَدٍ حَتَّى يَقُولا إِنَّمَا نَحْنُ فِتْنَةٌ فَلا تَكْفُرْ} [البقرة: ١٠٢] فَوَجَدْنَاهُمْ لَا حُجَّةَ لَهُمْ فِيهِ أَصْلًا بِوَجْهٍ مِنْ الْوُجُوهِ لِأَنَّهُ إنَّمَا فِي هَذَا الْكَلَامِ النَّهْيُ عَنْ الْكُفْرِ جُمْلَةً، وَلَمْ يَقُولَا: فَلَا تَكْفُرْ بِتَعَلُّمِك السِّحْرِ، وَلَا بِعِلْمِك السِّحْرَ، هَذَا مَا لَا يُفْهَمُ مِنْ الْآيَةِ أَصْلًا.

L42812–42814 Such is the statement of the Messenger of Allah (may Allah bless him and

[31] **Qur'an references (L42811):** Qur'an 2:102 (Al-Baqarah).

grant him peace): “Do not revert to disbelief after my death, cutting one another’s throats.” The ruling regarding “some” is solely a prohibition against initial disbelief and only against apostasy—not that they become disbelievers by killing one another. This is evident and unambiguous—and success comes from Allah, the Exalted. Anyone who was compelled into attributing to this verse that Allah’s words—narrating about those who said, “We are but a trial, so do not disbelieve” [Al-Baqarah 2:102]—mean “do not disbelieve by your learning of what we teach you” has lied. He has appended to the Quran what is not in it and what has no basis in evidence whatsoever.[3233]

وَهَكَذَا قَوْلُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا تَرْجِعُوا بَعْدِي كُفَّارًا يَضْرِبُ بَعْضُكُمْ رِقَابَ بَعْضٍ» إنَّمَا هُوَ نَهْيٌ أَنْ يَكْفُرُوا ابْتِدَاءً، وَعَنْ أَنْ يَرْتَدُّوا فَقَطْ، لَا أَنَّهُمْ بِقَتْلِ بَعْضِهِمْ بَعْضًا يَكُونُونَ كُفَّارًا، وَهَذَا بَيِّنٌ لَا خَفَاءَ بِهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ. وَكُلُّ مَنْ أُلْقِمَ فِي هَذِهِ الْآيَةِ: أَنَّ قَوْله تَعَالَى حَاكِيًا عَنْ الْقَائِلِينَ: {إنَّمَا نَحْنُ فِتْنَةٌ فَلَا تَكْفُرْ} [البقرة: ١٠٢] أَنَّ مُرَادَهُمَا لَا تَكْفُرْ بِتَعَلُّمِك مَا نُعَلِّمُك فَقَدْ كَذَبَ، وَزَادَ فِي الْقُرْآنِ مَا لَيْسَ فِيهِ وَمَا لَا دَلِيلَ عَلَيْهِ أَصْلًا.

L42815 Then we proceeded to the Exalted’s words: {So they learn from the two of them that by which they cause separation between a man and his wife} [Al-Baqarah: 102], and we found this even further removed from constituting a plausible pretext for them than all preceding matters. For has any of the people of the Sunnah ever disputed that one who separates a woman from her husband does not thereby become a disbeliever? Rather, we have observed that Malikis and Hanafis separate a man and his wife through means never sanctioned by Allah the Exalted or His Messenger—peace and blessings be upon him—such as invalid stipulations, the option [of divorce], granting divorce authority, impotence, and withholding financial support.[34]

ثُمَّ صِرْنَا إلَى قَوْله تَعَالَى: {فَيَتَعَلَّمُونَ مِنْهُمَا مَا يُفَرِّقُونَ بِهِ بَيْنَ الْمَرْءِ وَزَوْجِهِ} [البقرة: ١٠٢] فَوَجَدْنَا هَذَا أَبْعَدَ مِنْ أَنْ يَكُونَ لَهُمْ فِيهِ شُبْهَةٌ يُمَوِّهُونَ بِهَا مِنْ كُلِّ مَا سَلَفَ، لِأَنَّهُ لَمْ يَخْتَلِفْ أَحَدٌ مِنْ أَهْلِ السُّنَّةِ فِي أَنَّ مَنْ فَرَّقَ بَيْنَ امْرَأَةٍ وَزَوْجِهَا لَا يَكُونُ كَافِرًا بِذَلِكَ؟ بَلْ قَدْ وَجَدْنَا الْمَالِكِيِّينَ، وَالْحَنَفِيِّينَ يُفَرِّقُونَ بَيْنَ الْمَرْءِ وَزَوْجِهِ بِمَا لَمْ يَأْذَنْ اللَّهُ تَعَالَى بِهِ قَطُّ، وَلَا رَسُولُهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَالشُّرُوطِ الْفَاسِدَةِ، وَالتَّخْيِيرِ، وَالتَّمْلِيكِ وَالْعِنَانَةِ، وَعَدَمِ النَّفَقَةِ.

L42816–42818 More astonishing than all of this is the Hanafis’ permission for transgressors with extended influence and those among them of limited means to approach one infatuated with the wife of a Muslim man - that they carry whips on their backs to coerce him into pronouncing her divorce under duress. When she completes her waiting period, the immoral transgressor coerces her through whips to marry him, until she utters consent under compulsion. Yet they consider this a wholesome marriage, a blessed union, and lawful intercourse by which one seeks proximity to Allah the Exalted. By Allah! In the divine

وَأَعْجَبُ مِنْ ذَلِكَ كُلِّهِ إبَاحَةُ الْحَنَفِيِّينَ لِمَنْ طَالَتْ يَدُهُ مِنْ الْفُسَّاقِ، وَلِمَنْ قَصُرَتْ يَدُهُ مِنْهُمْ أَنْ يَأْتِيَ إلَى مَنْ عَشِقَ امْرَأَةَ رَجُلٍ مِنْ الْمُسْلِمِينَ أَنْ يَحْمِلَ السَّوْطَ عَلَى ظَهْرِهِ حَتَّى يَنْطِقَ بِطَلَاقِهَا مُكْرَهٌ، فَإِذَا اعْتَدَّتْ أَكْرَهَهَا الْفَاسِقُ عَلَى أَنْ تَتَزَوَّجَهُ بِالسِّيَاطِ أَيْضًا، حَتَّى تَنْطِقَ بِالرِّضَا مُكْرَهَةً، فَكَانَ ذَلِكَ عِنْدَهُمْ نِكَاحًا طَيِّبًا، وَزَوَاجًا مُبَارَكًا، وَوَطْئًا حَلَالًا يُتَقَرَّبُ بِهِ إلَى اللَّهِ تَعَالَى. وَتَاَللَّهِ، مَا فِي شَرِيعَةِ اللَّهِ تَعَالَى مِنْ التَّفْرِيقِ بَيْنَ الْمَرْءِ وَزَوْجِهِ أَعْظَمُ إثْمًا، وَلَا أَشْنَعُ حَرَامًا وَأَبْعَدُ مِنْ رِضَاءِ اللَّهِ تَعَالَى، وَلَا أَدْنَى، مِنْ رَأْيِ إبْلِيسَ،

[32] **Hadith references (L42812):** Sahih al-Bukhari 121; Sahih al-Bukhari 6868; Sahih al-Bukhari 7077.

[33] **Qur’an references (L42812):** Qur’an 2:102 (Al-Baqarah).

[34] **Qur’an references (L42815):** Qur’an 2:102 (Al-Baqarah).

law of Allah the Exalted, no act holds greater sin than separating a man from his wife, nothing more abominably forbidden, nothing farther from Allah's pleasure, nothing closer to Iblis's design, nor... We ask Allah, the Exalted, for protection from this division which the devils have implemented and permitted, and from the like of this and similar matters.

وَمِنْ الشَّيَاطِينِ، مِنْ هَذَا التَّفْرِيقِ الَّذِي أَمْضَوْهُ، وَأَجَازُوهُ، وَنَسْأَلُ اللَّهَ تَعَالَى الْعَافِيَةَ مِن مِثْلِ هَذَا وشِبْهِهِ.

L42819 And we may find the talebearer causing separation between a person and their spouse, yet he does not thereby become a disbeliever. So how could they possibly declare the sorcerer (sīḥr) a disbeliever for that reason? Thus, their reliance on this text is rendered completely invalid.

وَقَدْ نَجِدُ النَّمَّامَ يُفَرِّقُ بَيْنَ الْمَرْءِ وَزَوْجِهِ فَلَا يَكُونُ بِذَلِكَ كَافِرًا، فَمِنْ أَيْنَ وَقَعَ لَهُمْ أَنْ يُكَفِّرُوا السَّاحِرَ بِذَلِكَ؟ فَبَطَلَ تَعَلُّقُهُمْ بِهَذَا النَّصِّ جُمْلَةً.

L42820 The same applies to the statement of Allah the Exalted: {They could not harm anyone with it except by Allah's permission, and they learn what harms them and does not benefit them} [Al-Baqarah: 102], for not every harm that a person causes renders the one who causes harm a disbeliever; rather, he is a sinner against Allah the Exalted, not a disbeliever, nor is it lawful to shed his blood.[35]

وَهَكَذَا الْقَوْلُ فِي قَوْله تَعَالَى {وَمَا هُمْ بِضَارِّينَ بِهِ مِنْ أَحَدٍ إلا بِإِذْنِ اللَّهِ وَيَتَعَلَّمُونَ مَا يَضُرُّهُمْ وَلا يَنْفَعُهُمْ} [البقرة: ١٠٢] إذْ لَيْسَ كُلُّ مَا ضَرَّ الْمَرْءُ يَكُونُ بِهِ كَافِرًا، بَلْ يَكُونُ عَاصِيًا لِلَّهِ تَعَالَى، لَا كَافِرًا وَلَا حَلَالَ الدَّمِ.

L42821 Then we proceeded to His statement, the Exalted: {And they certainly knew that whoever traded it away} [Al-Baqarah: 102] up to His statement, the Exalted: {If they only knew} [Al-Baqarah: 102]. We found they had no valid argument for declaring the sorcerer a disbeliever or permitting his killing whatsoever, for this attribute could exist in a Muslim by their consensus in agreement with us. As narrated via the chain of Muslim: Shaybān ibn Farrūkh narrated to us, Jarīr ibn Ḥāzim narrated to us, Nāfi' narrated from Ibn 'Umar, who said: The Messenger of Allah—peace and blessings be upon him—said: "Verily, only he who has no share in the Hereafter wears silk in this world."[36]

ثُمَّ صِرْنَا إلَى قَوْله تَعَالَى {وَلَقَدْ عَلِمُوا لَمَنِ اشْتَرَاهُ} [البقرة: ١٠٢] إلَى قَوْله تَعَالَى: {لَوْ كَانُوا يَعْلَمُونَ} [البقرة: ١٠٢] فَوَجَدْنَاهُمْ لَا حُجَّةَ لَهُمْ فِي تَكْفِيرِ السَّاحِرِ، وَلَا فِي إبَاحَةِ دَمِهِ أَصْلًا، لِأَنَّ هَذِهِ الصِّفَةَ قَدْ تَكُونُ فِي مُسْلِمٍ بِإِجْمَاعِهِمْ مَعَنَا: كَمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا شَيْبَانُ بْنُ فَرُّوخَ نا جَرِيرُ بْنُ حَازِمٍ نا نَافِعٌ عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّمَا يَلْبَسُ الْحَرِيرَ فِي الدُّنْيَا مَنْ لَا خَلَاقَ لَهُ فِي الْآخِرَةِ؟» .

L42822 Abū Muḥammad—may Allāh have mercy on him—stated: They unanimously agree that wearing silk does not constitute disbelief, nor is it permissible to kill its wearer. Thus, their reliance upon this verse is rendered invalid, and all praise belongs to Allāh.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهُمْ لَا يَخْتَلِفُونَ فِي أَنَّ لِبَاسَ الْحَرِيرِ لَيْسَ كُفْرًا، وَلَا يَحِلُّ قَتْلُ لَابِسِهِ - فَبَطَلَ تَعَلُّقُهُمْ بِهَذِهِ الْآيَةِ، وَلِلَّهِ الْحَمْدُ.

L42823 So we scrutinized whether there existed for them any foundational basis to

[35] **Qur'an references (L42820):** Qur'an 2:102 (Al-Baqarah).
[36] **Qur'an references (L42821):** Qur'an 2:102 (Al-Baqarah).

rely on in the verse, or in any part of the Quran, or in the Authentic Sunnahs, or in the Weak Sunnahs, or in consensus, or in a Companion's opinion, or in analogy, or in speculative reasoning, or in any valid sound opinion. Rather, all these aspects invalidate their claim.

L42824 When the opinion of those who held that the sorcerer should be killed categorically and the opinion of those who claimed that magic constitutes disbelief wholly were proven invalid, it became obligatory to examine the third opinion. We found that Allah, the Exalted, says: "And do not kill yourselves" [Sūrat al-Nisāʾ 4:29].[37]

L42825–42827 And He, the Exalted, said: "So kill the polytheists wherever you find them" [al-Tawbah 9:5], up to His words: "then let them go their way" [al-Tawbah 9:5]. And He, the Exalted, said: "Do not kill the soul which Allah has forbidden, except by right" [Al-An'am 6:151].[38]

L42828 Allah, the Exalted, said: "And whoever kills a believer intentionally" [Surah An-Nisā 4:93].[39]

L42829 The Messenger of Allah—peace be upon him—said: "Your blood and wealth are sacredly forbidden from violation."

L42830 It has been established by the Qur'an and the Sunnah that the blood of every Muslim is inviolable except by an explicit scriptural ruling or definitive consensus. We then considered whether there exists an established text clarifying the definition of magic. We found—as reported in Ṣaḥīḥ Muslim through the chain: Hārūn ibn Saʿīd al-Aylī narrated to us, Ibn Wahb narrated to us, Sulaymān ibn Bilāl informed me from Thawr ibn Yazīd from Abū al-Ghayth from Abū Hurayrah—that the Messenger of Allah, peace and blessings be upon him, said: "Avoid the seven destructive sins." They asked: "O Messenger of Allah, what are they?" He replied: "Associating partners with Allah, practicing magic, unlawfully killing a soul sanctified by Allah,

فَنَظَرْنَا أَنْ يَكُونَ لَهُمْ فِي الْآيَةِ مُتَعَلَّقٌ أَصْلًا، وَلَا فِي شَيْءٍ مِنْ الْقُرْآنِ، وَلَا مِنْ السُّنَنِ الصِّحَاحِ، وَلَا فِي السُّنَنِ الْوَاهِيَةِ، وَلَا فِي إجْمَاعٍ، وَلَا فِي قَوْلِ صَاحِبٍ، وَلَا فِي قِيَاسٍ، وَلَا نَظَرٍ، وَلَا رَأْيٍ سَدِيدٍ يَصِحُّ، بَلْ كُلُّ هَذِهِ الْوُجُوهِ مُبْطِلَةٌ لِقَوْلِهِمْ.

فَلَمَّا بَطَلَ قَوْلُ مَنْ رَأَى أَنْ يَقْتُلَ السَّاحِرَ جُمْلَةً، وَقَوْلُ مَنْ ادَّعَى أَنَّ السِّحْرَ كُفْرٌ بِالْجُمْلَةِ: وَجَبَ أَنْ نَنْظُرَ فِي الْقَوْلِ الثَّالِثِ: فَوَجَدْنَا اللَّهَ تَعَالَى يَقُولُ {وَلا تَقْتُلُوا أَنْفُسَكُمْ} [النساء: ٢٩] .

وَقَالَ تَعَالَى {فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ} [التوبة: ٥] إلَى قَوْلِهِ: {فَخَلُّوا سَبِيلَهُمْ} [التوبة: ٥] وَقَالَ تَعَالَى {وَلا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إلا بِالْحَقِّ} [الأنعام: ١٥١] .

قَالَ تَعَالَى {وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا} [النساء: ٩٣] الْآيَةُ.

وَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ عَلَيْكُمْ حَرَامٌ» .

فَصَحَّ بِالْقُرْآنِ وَالسُّنَّةِ: أَنَّ كُلَّ مُسْلِمٍ فَدَمُهُ حَرَامٌ إلَّا بِنَصٍّ ثَابِتٍ أَوْ إجْمَاعٍ مُتَيَقَّنٍ - فَنَظَرْنَا هَلْ نَجِدُ فِي السِّحْرِ نَصًّا ثَابِتًا بِتِبْيَانِ مَا هُوَ؟ فَوَجَدْنَا - مِنْ طَرِيقِ مُسْلِمٍ نا هَارُونُ بْنُ سَعِيدٍ الْأَيْلِيُّ نا ابْنُ وَهْبٍ أَخْبَرَنِي سُلَيْمَانُ بْنُ بِلَالٍ عَنْ ثَوْرِ بْنِ يَزِيدَ عَنْ أَبِي الْغَيْثِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ، قِيلَ: يَا رَسُولَ اللَّهِ وَمَا هُنَّ؟ قَالَ: الشِّرْكُ بِاَللَّهِ، وَالسِّحْرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إلَّا بِالْحَقِّ، وَأَكْلُ مَالِ الْيَتِيمِ، وَأَكْلُ الرِّبَا، وَالتَّوَلِّي يَوْمَ الزَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ» .

[37] **Qur'an references (L42824):** Qur'an 4:29 (An-Nisa).

[38] **Qur'an references (L42825):** Qur'an 9:5 (At-Tawbah); Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra).

[39] **Qur'an references (L42828):** Qur'an 4:93 (An-Nisa).

devouring the wealth of orphans, engaging in usury, fleeing from battle, and falsely accusing chaste believing women of adultery."[40]

L42831 This was a clear clarification that magic is not a form of polytheism, but rather a ruinous sin like killing a soul and the like thereof—thus the ambiguity is removed, and all praise belongs to Allah.

L42832 It has been established that magic is not disbelief, and since it is not disbelief, it is not permissible to kill its practitioner, because the Messenger of Allah—may Allah's blessings and peace be upon him and his family—said, "The blood of a Muslim individual is not lawful except for one of three: disbelief after belief, adultery after marriage, and a life for a life."

L42833 The sorcerer is not a disbeliever as we have clarified, nor a murderer, nor a married adulterer. No authentic text exists regarding his execution to justify adding him to these three, as is the case with the highway robber and the one punished with ḥadd three times for wine.

L42834 Thus, the prohibition of his blood was confirmed with certainty, without any ambiguity.

L42835–42837 We also found—via al-Bukhārī's transmission—that ʿAbdullāh ibn Muḥammad informed us, "I heard Sufyān ibn ʿUyaynah." He says: Hisham ibn Urwah narrated to them from his father from Aishah, the Mother of the Believers, who said: "The Messenger of Allah—peace and blessings of Allah be upon him—was bewitched such that he thought he was approaching women but had not done so." Ibn Uyaynah said: This is the most severe form of magic. He said, "O Aishah, do you know that Allah has answered me with a verdict regarding what I sought His guidance about? Two men came to me; one sat at my head and the other at my feet. The one at my head said to the other: What ails this man? He replied: He is bewitched. He asked: Who bewitched him? He answered: Labid ibn Aʿṣam, a man from Banu Zuraiq, an ally of the Jews, who was a hypocrite. He asked: With what? He replied: With a comb and the hair gathered from it. He asked: Where is it? He replied: In the

فَكَانَ هَذَا بَيَانًا جَلِيًّا بِأَنَّ السِّحْرَ لَيْسَ مِنْ الشِّرْكِ، وَلَكِنَّهُ مَعْصِيَةٌ مُوبِقَةٌ كَقَتْلِ النَّفْسِ وَشَبَهِهَا، فَارْتَفَعَ الْإِشْكَالُ - وَلِلَّهِ الْحَمْدُ.

وَصَحَّ أَنَّ السِّحْرَ لَيْسَ كُفْرًا، وَإِذَا لَمْ يَكُنْ كُفْرًا فَلَا يَحِلُّ قَتْلُ فَاعِلِهِ، لِأَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إلَّا بِإِحْدَى ثَلَاثٍ: كُفْرٌ بَعْدَ إيمَانٍ، وَزِنًى بَعْدَ إحْصَانٍ، وَنَفْسٌ بِنَفْسٍ» .

فَالسَّاحِرُ لَيْسَ كَافِرًا كَمَا بَيَّنَّا، وَلَا قَاتِلًا، وَلَا زَانِيًا مُحْصَنًا، وَلَا جَاءَ فِي قَتْلِهِ نَصٌّ صَحِيحٌ فَيُضَافُ إلَى هَذِهِ الثَّلَاثِ، كَمَا جَاءَ فِي الْمُحَارِبِ، وَالْمَحْدُودِ فِي الْخَمْرِ ثَلَاثَ مَرَّاتٍ.

فَصَحَّ تَحْرِيمُ دَمِهِ بِيَقِينٍ لَا إشْكَالَ فِيهِ.

وَوَجَدْنَا أَيْضًا - مِنْ طَرِيقِ الْبُخَارِيِّ نا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ سَمِعْتُ سُفْيَانَ بْنَ عُيَيْنَةَ يَقُولُ: إنَّ هِشَامَ بْنَ عُرْوَةَ حَدَّثَهُمْ عَنْ أَبِيهِ عَنْ عَائِشَةَ أُمِّ الْمُؤْمِنِينَ قَالَتْ «كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - سُحِرَ حَتَّى يَرَى أَنَّهُ يَأْتِي النِّسَاءَ وَلَا يَأْتِيهِنَّ» قَالَ ابْنُ عُيَيْنَةَ: وَهَذَا أَشَدُّ مَا يَكُونُ مِنْ السِّحْرِ «فَقَالَ: يَا عَائِشَةُ - أَعَلِمْتِ أَنَّ اللَّهَ أَفْتَانِي فِيمَا اسْتَفْتَيْتُهُ فِيهِ؟ أَتَانِي رَجُلَانِ، فَقَعَدَ أَحَدُهُمَا عِنْدَ رَأْسِي، وَالْآخَرُ عِنْدَ رِجْلِي، فَقَالَ الَّذِي عِنْدَ رَأْسِي لِلْآخَرِ: مَا بَالُ الرَّجُلِ؟ فَقَالَ: مَطْبُوبٌ، قَالَ: وَمَنْ طَبَّهُ؟ قَالَ: لَبِيدُ بْنُ أَعْصَمَ - رَجُلٌ مِنْ بَنِي زُرَيْقٍ حَلِيفُ الْيَهُودِ، وَكَانَ مُنَافِقًا - قَالَ: وَفِيمَ؟ قَالَ: فِي مُشْطٍ وَمُشَاطَةٍ، قَالَ: وَأَيْنَ؟ قَالَ: فِي جُفِّ طَلْعَةِ ذَكَرٍ، تَحْتَ رَاعُوفَةٍ فِي بِئْرِ ذَرْوَانَ، قَالَ: فَأَتَى الْبِئْرَ حَتَّى

[40] **Qur'an references (L42830):** Qur'an 6:151 (Al-An'am); Qur'an 17:33 (Al-Isra); Qur'an 25:68 (Al-Furqan).

sheath of a male palm spathe, beneath a grindstone in the well of Dharwan." He went to the well and retrieved it, saying, "This is the well I saw—its water appeared like henna infusion, and its palm trees seemed as the heads of devils." It was retrieved, and I said, "Why did you not publicize it?" He replied, "Allah has cured me, and I dislike inciting mischief among the people." Abu Muhammad said: This is an authentic report. Allah the Exalted informed His Messenger—peace and blessings of Allah be upon him—of who bewitched him, yet he did not kill him.

اسْتَخْرَجَهُ، قَالَ: فَهَذِهِ الْبِئْرُ الَّتِي رَأَيْتُهَا، كَأَنَّ مَاءَهَا نُقَاعَةُ الْحِنَّاءِ، وَكَأَنَّ نَخْلَهَا رُءُوسُ الشَّيَاطِينِ، قَالَ: فَاسْتُخْرِجَ، فَقُلْتُ: أَفَلَا تَنَشَّرْتَ؟ قَالَ: أَمَّا اللَّهُ فَقَدْ شَفَانِي، وَأَكْرَهُ أَنْ أُثِيرَ عَلَى النَّاسِ شَرًّا؟» قَالَ أَبُو مُحَمَّد: فَهَذَا خَبَرٌ صَحِيحٌ، وَقَدْ عَرَّفَ اللَّهُ تَعَالَى رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مَنْ سَحَرَهُ، فَلَمْ يَقْتُلْهُ.

L42838 If it is objected: "This ḥadīth states that he was a hypocrite, and in some of its narrations, that he was a Jew—while you assert that if a disbeliever harms a Muslim, he must be killed, the covenant of protection no longer applies to him, and that if a hypocrite is identified, he must be killed?" We reply: "We indeed say this, for conclusive evidence has been established for it."

فَإِنْ قِيلَ: فَإِنَّ فِي هَذَا الْحَدِيثِ: أَنَّهُ كَانَ مُنَافِقًا، وَفِي بَعْضِ رِوَايَاتِهِ: أَنَّهُ كَانَ يَهُودِيًّا - وَأَنْتُمْ تَقُولُونَ: إِنَّ الْكَافِرَ إِذَا أَضَرَّ بِمُسْلِمٍ وَجَبَ قَتْلُهُ، وَبَرِئَتْ مِنْهُ الذِّمَّةُ، وَأَنَّ الْمُنَافِقَ إِذَا عُرِفَ وَجَبَ قَتْلُهُ؟ قُلْنَا: إِنَّنَا كَذَلِكَ نَقُولُ، لِأَنَّ الْبُرْهَانَ قَامَ بِذَلِكَ.

L42839 As for the dhimmi, if he harms a Muslim, [this ruling applies] due to Allah's statement, {until they pay the jizyah directly from their hand while they are subdued} [9:29]. The prohibition against shedding the blood of the People of the Book is contingent upon their adherence to a subdued status. If they abandon this subjugation, their covenant is absolved, the prohibition against their blood is lifted, and it reverts to its original permissibility. For Allah the Exalted has permitted their blood perpetually except when in a state of subjugation. When subjugation ceases, their blood is no longer prohibited. If they harm a Muslim while not in a state of subjugation, even though they have humiliated him, their blood becomes permissible.[41]

وَأَمَّا الذِّمِّيُّ - إِذَا أَضَرَّ بِمُسْلِمٍ، فَلِقَوْلِ اللَّهِ تَعَالَى {حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] فَإِنَّمَا حُرِّمَتْ دِمَاءُ أَهْلِ الْكِتَابِ بِالْتِزَامِ الصَّغَارِ، فَإِذَا فَارَقُوا الصَّغَارَ فَقَدْ بَرِئَتْ ذِمَّتُهُمْ، وَسَقَطَ تَحْرِيمُ دِمَائِهِمْ، وَعَادَتْ حَلَالًا كَمَا كَانَتْ، لِأَنَّ اللَّهَ تَعَالَى أَبَاحَ دِمَاءَهُمْ أَبَدًا إِلَّا بِالصَّغَارِ، فَإِذَا لَمْ يَكُنْ الصِّغَارُ فَدِمَاؤُهُمْ لَمْ تَحْرُمْ، وَهُمْ إِذَا أَضَرُّوا بِمُسْلِمٍ فَلَمْ يَصْغُرْ وَهُمْ وَقَدْ أَصْغَرُوهُ، فَدِمَاؤُهُمْ حَلَالٌ.

L42840 As for the hypocrite - when it is confirmed that he is a disbeliever, the Messenger of Allah (peace and blessings be upon him) said: "Whoever alters his religion, execute him." This hypocrite or Jew - we are certain beyond any doubt that Allah the Exalted had not yet commanded His Messenger (peace and blessings be upon him) to kill those who changed their religion, nor to kill those among the protected non-Muslims who failed to adhere to the humiliating terms.

وَأَمَّا الْمُنَافِقُ - فَإِذَا عُرِفَ أَنَّهُ كَافِرٌ فَقَدْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ» فَهَذَا الْمُنَافِقُ أَوْ الْيَهُودِيُّ، نَحْنُ عَلَى يَقِينٍ لَا مِرْيَةَ فِيهِ: أَنَّهُ لَمْ يَكُنْ اللَّهُ تَعَالَى أَمَرَ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بَعْدُ بِقَتْلِ مَنْ بَدَّلَ دِينَهُ، وَلَا بِقَتْلِ مَنْ لَمْ يَلْتَزِمْ الصَّغَارَ مِنْ أَهْلِ الذِّمَّةِ.

L42841–42842 The proof of this—no one in whose heart is an atom's weight of faith would

[41] **Qur'an references (L42839):** Qur'an 9:29 (At-Tawbah).

doubt that the Messenger of Allah, peace and blessings be upon him, does not ever intentionally disobey his Lord. If his Lord, the Exalted, had commanded him to kill him, he would have executed it. Since he, peace be upon him, did not kill him, we assert with certainty and conclusively resolve that this occurred before the revelation of the verse commanding the killing of the People of the Book if they did not pay the jizyah in humiliation, and before the command was revealed to him to kill those who apostatized from their religion.

L42843 If they say: "Say the same regarding the sorcerer?" We respond: "Yes, this is what we say," meaning the sorcerer's blood is inviolable according to this narration. Similarly, the Jew who harms a Muslim - how then for the leader of the people of Islam (may Allah bless him and grant him peace)? Likewise, one who openly declares Islam while hiding disbelief.

L42844 Then the command of Allah, the Exalted, prohibiting the shedding of blood of the People of the Book in exchange for the jizyah coupled with humiliation, and permitting their bloodshed in the absence thereof, was firmly established—and the command of the Messenger of Allah—peace and blessings of Allah be upon him—to kill whoever apostatizes from their religion was firmly established. Thus, we affirm that, and no sound command has come regarding killing the sorcerer. Therefore, the prohibition against shedding blood remains—so the ambiguity is wholly resolved. And success comes only from Allah, the Exalted.

L42845 ## On the Extent of Taʿzīr (Discretionary Punishment)

L42846 Issue 3209: Discretionary Punishment. Abu Muhammad—may Allah have mercy on him—said: People have differed regarding the measure of discretionary punishment. One group held that it has no defined limit, and that it is permissible for the ruler to extend it as he deems appropriate—even for it to exceed the prescribed punishments in severity, however extensive it may be. This is the opinion of Malik, one of the views of Abu Yusuf, as well as the opinion of Abu Thawr and al-Tahawi from the followers of Abu Hanifa.

بُرْهَانُ ذَلِكَ - لَا يَشُكُّ أَنَّهُ مَنْ فِي قَلْبِهِ مِقْدَارُ ذَرَّةٍ مِنْ إيمَانٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لَا يَتَعَمَّدُ عِصْيَانَ رَبِّهِ، فَلَوْ أَمَرَهُ رَبُّهُ تَعَالَى بِقَتْلِهِمْ لَأَنْفَذَ ذَلِكَ، فَإِذْ لَمْ يَقْتُلْهُ - عَلَيْهِ السَّلَامُ -، فَبِيَقِينٍ نَقْطَعُ وَنَبُتُّ أَنَّ ذَلِكَ كَانَ قَبْلَ نُزُولِ الْآيَةِ بِقَتْلِ أَهْلِ الْكِتَابِ مَا لَمْ يُؤَدُّوا الْجِزْيَةَ مَعَ الصَّغَارِ، وَقَبْلَ أَنْ يَنْزِلَ عَلَيْهِ الْأَمْرُ بِقَتْلِ مَنْ بَدَّلَ دِينَهُ.

فَإِنْ قَالُوا: قُولُوا كَذَلِكَ فِي السَّاحِرِ؟ قُلْنَا: نَعَمْ، هَكَذَا نَقُولُ، وَهُوَ أَنَّ السَّاحِرَ بِهَذَا الْخَبَرِ حَرَامُ الدَّمِ، وَكَذَلِكَ الْيَهُودِيُّ يَضُرُّ بِالْمُسْلِمِ، فَكَيْفَ بِسَيِّدِ أَهْلِ الْإِسْلَامِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَكَذَلِكَ مَنْ أَعْلَنَ الْإِسْلَامَ وَأَسَرَّ الْكُفْرَ.

ثُمَّ صَحَّ أَمْرُ اللَّهِ تَعَالَى بِتَحْرِيمِ دِمَاءِ أَهْلِ الْكِتَابِ بِالْجِزْيَةِ مَعَ الصَّغَارِ، وَإِبَاحَتِهَا بِعَدَمِ ذَلِكَ - وَصَحَّ أَمْرُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ مَنْ بَدَّلَ دِينَهُ، فَصِرْنَا إلَى ذَلِكَ، وَلَمْ يَأْتِ أَمْرٌ صَحِيحٌ بِقَتْلِ السَّاحِرِ، فَبَقِيَ عَلَى تَحْرِيمِ الدَّمِ - فَارْتَفَعَ الْإِشْكَالُ جُمْلَةً - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة مِقْدَار التَّعْزِير]

٣٢٠٩ - مَسْأَلَةٌ: التَّعْزِيرُ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: اخْتَلَفَ النَّاسُ فِي مِقْدَارِ التَّعْزِيرِ: فَقَالَتْ طَائِفَةٌ: لَيْسَ لَهُ مِقْدَارٌ مَحْدُودٌ، وَجَائِزٌ أَنْ يَبْلُغَ بِهِ الْإِمَامُ مَا رَآهُ، وَأَنْ يُجَاوِزَ بِهِ الْحُدُودَ - بَالِغًا مَا بَلَغَ - وَهُوَ قَوْلُ مَالِكٍ - وَأَحَدُ أَقْوَالِ أَبِي يُوسُفَ وَهُوَ قَوْلُ أَبِي ثَوْرٍ، وَالطَّحَاوِيِّ مِنْ أَصْحَابِ أَبِي حَنِيفَةَ.

L42847 A group stated: The discretionary punishment (taʿzīr) is up to one hundred lashes.

وَقَالَتْ طَائِفَةٌ: التَّعْزِيرُ مِائَةُ جَلْدَةٍ فَأَقَلَّ.

L42848 A group states that the maximum discretionary corporal punishment is one hundred lashes except one.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ مِائَةُ جَلْدَةٍ إِلَّا جَلْدَةً.

L42849 A faction held that the maximum punishment for *taʿzīr* is seventy-nine lashes, and the minimum—this being one of the opinions of Abū Yūsuf.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ تِسْعَةٌ وَسَبْعُونَ سَوْطًا فَأَقَلَّ - هُوَ أَحَدُ أَقْوَالِ أَبِي يُوسُفَ.

L42850 A juristic faction held that the maximum *taʿzīr* is seventy-five lashes—with fewer permitted—this being the position of Ibn Abī Laylā and one of the positions upheld by Abū Yūsuf.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ خَمْسَةٌ وَسَبْعُونَ سَوْطًا فَأَقَلَّ - وَهُوَ قَوْلُ ابْنِ أَبِي لَيْلَى، وَأَحَدُ أَقْوَالِ أَبِي يُوسُفَ.

L42851 A group holds that the maximum discretionary punishment is thirty lashes.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ ثَلَاثُونَ سَوْطًا.

L42852–42853 A group said: The maximum discretionary punishment is twenty lashes.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ عِشْرُونَ سَوْطًا.

L42854 A group held that discretionary punishment (ta'zir) should not exceed nine lashes; this is the view of some adherents of Al-Shafi'i's school.

وَقَالَتْ طَائِفَةٌ: لَا يَتَجَاوَزُ بِالتَّعْزِيرِ تِسْعَةً - وَهُوَ قَوْلُ بَعْضِ أَصْحَابِ الشَّافِعِيِّ.

L42855 A group held that the maximum discretionary punishment is ten lashes or less, and it is impermissible to exceed that—this being the opinion of al-Layth ibn Sa'd and our companions. Abu Muhammad—may God have mercy on him—said: Among what was narrated supporting the first opinion is what Ahmad ibn 'Umar ibn Anas reported to us: al-Hasan ibn Ya'qub reported to us: Sa'd ibn Falḥūn reported to us: Yusuf ibn Yahya reported to us: 'Abd al-Malik ibn Habib said: Mutarrif ibn 'Abdullah, a reliable narrator, told me: Hisham ibn 'Abdullah al-Makhzumi—the judge of Medina and one of its virtuous judges—was brought a depraved man notorious for pursuing young boys, who had pressed against a youth in a crowd until he violated him. Hisham referred the case to Malik for consultation and asked, "Do you think I should execute him?"—Hisham was severe in enforcing prescribed punishments. Malik replied, "As for execution, no. But I think you should punish him with a painful chastisement." Hisham asked, "How much?" Malik said, "That is up to you." Hisham ordered him to be flogged four hundred lashes and imprisoned him. He died shortly afterward. When this was mentioned to Malik, he did not disapprove nor consider it an error.

وَقَالَتْ طَائِفَةٌ: أَكْثَرُ التَّعْزِيرِ عَشْرَةُ أَسْوَاطٍ فَأَقَلَّ، لَا يَجُوزُ أَنْ يَتَجَاوَزَ بِهِ أَكْثَرَ مِنْ ذَلِكَ - وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ، وَقَوْلُ أَصْحَابِنَا؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَمِمَّا رُوِيَ فِي الْقَوْلِ الْأَوَّلِ: مَا ناه أَحْمَدُ بْنُ عُمَرَ بْنِ أَنَسٍ نا الْحَسَنُ بْنُ يَعْقُوبَ نا سَعْدُ بْنُ فَلْحُونٍ نا يُوسُفُ بْنُ يَحْيَى نا عَبْدُ الْمَلِكِ بْنُ حَبِيبٍ قَالَ: قَالَ لِي مُطَرِّفُ بْنُ عَبْدِ اللَّهِ ثِقَةٌ: أُتِيَ هِشَامُ بْنُ عَبْدِ اللَّهِ الْمَخْزُومِيُّ - وَهُوَ قَاضِي الْمَدِينَةِ وَمِنْ صَالِحِ قُضَاتِهَا - بِرَجُلٍ خَبِيثٍ مَعْرُوفٍ بِاتِّبَاعِ الصِّبْيَانِ قَدْ لَصِقَ بِغُلَامٍ فِي ازْدِحَامِ النَّاسِ حَتَّى أَفْضَى، فَبَعَثَ بِهِ هِشَامٌ إِلَى مَالِكٍ، وَقَالَ: أَتَرَى أَنْ أَقْتُلَهُ؟ قَالَ: وَكَانَ هِشَامٌ شَدِيدًا فِي الْحُدُودِ، فَقَالَ مَالِكٌ: أَمَّا الْقَتْلُ فَلَا، وَلَكِنْ أُرِي أَنْ تُعَاقِبَهُ عُقُوبَةً مُوجِعَةً، فَقَالَ: كَمْ؟ قَالَ: ذَلِكَ إِلَيْكَ، فَأَمَرَ بِهِ هِشَامٌ فَجُلِدَ أَرْبَعَ مِائَةِ سَوْطٍ، وَأَبْقَاهُ فِي السِّجْنِ، فَمَا لَبِثَ أَنْ مَاتَ، فَذَكَرُوا

ذَلِكَ لِمَالِكٍ، فَمَا اسْتَنْكَرَ، وَلَا رَأَى أَنَّهُ أَخْطَأَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَذَكَرَ مُحَمَّدُ بْنُ سَحْنُونَ بْنِ سَعِيدٍ فِي كِتَابِهِ الَّذِي جَمَعَ فِيهِ أَحْكَامَ أَبِيهِ أَيَّامَ وِلَايَتِهِ قَضَاءَ مَدِينَةِ الْقَيْرَوَانِ لِابْنِ الْأَغْلَبِ، قَالَ: شَكَا إِلَى أَبِي رَجُلٌ يَأْتِي زَوْجَتَهُ أَنَّهُ غَيَّبَ عَنْهُ ابْنَتَهُ، وَحَالَ بَيْنَهُ وَبَيْنَهَا؟ فَبَعَثَ فِي أَبِي الْجَارِيَةِ، قَالَ: أَيْنَ ابْنَتُكَ امْرَأَةُ هَذَا؟ فَقَالَ: وَاَللَّهِ مَا أَتَتْنِي وَلَا أَدْرِي أَيْنَ هِيَ؟ وَلَا لَهَا عِنْدِي عِلْمٌ، قَالَ: فَأَمَرَ بِهِ فَحُمِلَ إِلَى وَسَطِ السُّوقِ، وَضُرِبَ مِائَةَ سَوْطٍ، ثُمَّ سَجَنَهُ، ثُمَّ أَخْرَجَهُ مَرَّةً ثَانِيَةً وَجَلَدَهُ فِي وَسَطِ السُّوقِ مِائَةَ سَوْطٍ - ثُمَّ أَنَا أَشُكُّ أَذَكَرَ الثَّالِثَةَ أَوْ الرَّابِعَةَ أَمْ لَا؟ قَالَ: فَمَاتَ الرَّجُلُ مِنْ الضَّرْبِ فِي السِّجْنِ، ثُمَّ وَجَدَ ابْنَتَهُ فِي بَعْضِ الشِّعَابِ عِنْدَ قَوْمٍ مِنْ أَهْلِ الْفَسَادِ.

Abu Muhammad—may God have mercy on him—said: Muhammad ibn Sahnun ibn Sa'id mentioned in his book compiling the judicial rulings of his father during his tenure as judge of Qayrawan for Ibn al-Aghlab: A man complained to my father that a man who was committing adultery with the complainant's wife had unlawfully taken custody of his daughter and prevented him from seeing her. My father summoned Abu al-Jariyah and asked, "Where is your daughter, the wife of this man [the complainant]?" He swore, "By God, she has not come to me, and I do not know where she is. I have no information about her." My father ordered him to be taken to the middle of the market, flogged one hundred lashes, and imprisoned. He was later brought out a second time and flogged one hundred lashes in the market (I am uncertain whether a third or fourth instance was mentioned). The man died in prison from the flogging. Later, his daughter was found in some ravines among a group of corrupt people.

وَأَمَّا الْقَوْلُ الثَّانِي - فَكَمَا نا حُمَامٌ نا ابْنُ مُفَرِّجٍ نا ابْنُ الْأَعْرَابِيِّ نا الدَّبَرِيُّ نا عَبْدُ الرَّزَّاقِ عَنْ ابْنِ جُرَيْجٍ أَخْبَرَنِي هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ أَنَّ يَحْيَى بْنَ عَبْدِ الرَّحْمَنِ بْنِ حَاطِبٍ حَدَّثَهُ، قَالَ: تُوُفِّيَ عَبْدُ الرَّحْمَنِ بْنُ حَاطِبٍ وَأَعْتَقَ مَنْ صَلَّى مِنْ رَقِيقِهِ وَصَامَ، وَكَانَتْ لَهُ نُوبِيَّةٌ قَدْ صَلَّتْ وَصَامَتْ وَهِيَ أَعْجَمِيَّةٌ لَمْ تَفْقَهْ، فَلَمْ يَرُعْهُ إِلَّا حَمْلُهَا وَكَانَتْ ثَيِّبًا، فَذَهَبَ إِلَى عُمَرَ فَزِعًا فَحَدَّثَهُ؟ فَقَالَ: أَنْتَ الرَّجُلُ لَا تَأْتِي بِخَيْرٍ، فَأَرْسَلَ إِلَيْهَا عُمَرُ فَسَأَلَهَا، فَقَالَ: أَحَبِلْتِ؟ قَالَتْ: نَعَمْ، مِنْ مَرْعُوشٍ بِدِرْهَمَيْنِ، فَصَادَفَ ذَلِكَ عِنْدَهُ: عُثْمَانُ، وَعَلِيًّا، وَعَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ، فَقَالَ: أَشِيرُوا عَلَيَّ وَكَانَ عُثْمَانُ جَالِسًا فَاضْطَجَعَ، فَقَالَ عَلِيٌّ، وَعَبْدُ الرَّحْمَنِ: قَدْ وَقَعَ عَلَيْهَا الْحَدُّ، فَقَالَ: أَشِرْ عَلَيَّ يَا عُثْمَانُ؟ قَالَ: قَدْ أَشَارَ عَلَيْكَ أَخَوَاكَ، قَالَ: أَشِرْ عَلَيَّ أَنْتَ، قَالَ عُثْمَانُ: أَرَاهَا تَسْتَهِلُّ بِهِ كَأَنَّهَا لَا تَعْرِفُهُ، فَلَيْسَ الْحَدُّ

As for the second opinion: 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 from Ibn Jurayj, who said: Hisham ibn Urwah informed me from his father that Yahya ibn Abd al-Rahman ibn Hatib narrated to him, saying: Abd al-Rahman ibn Hatib died, and he freed those of his slaves who prayed and fasted. He had a Nubian slave woman who had prayed and fasted - she was a non-Arab who did not understand. He was taken aback only by her pregnancy, and she was a woman who was no longer a virgin. He went to Umar in alarm and related the matter to him. Umar said, "You are a man who brings no good," then he sent for her. He asked her, saying: "Have you become pregnant?" She replied: "Yes, through Mar'ūsh for two dirhams." He found this matter with him where 'Uthmān, 'Alī, and 'Abd al-Raḥmān ibn 'Awf were present. He said: "Advise me." 'Uthmān had been sitting but then reclined. 'Alī and 'Abd al-Raḥmān said: "The hadd punishment has fallen upon her." He said: "Advise me, O 'Uthmān!" 'Uthmān responded: "Your two brothers have already advised you." He said: "Advise me yourself." 'Uthmān said: "I see her crying out because of it as if she does not acknowledge it. The punishment applies only to one who consciously acknowledges it." 'Umar then ordered her to be flogged one hundred lashes and exiled. He

L42856–42858

concluded: “She told the truth. By Him in whose hand my soul rests, the hadd punishment applies solely to one who acknowledges it.”

إِلَّا عَلَى مَنْ عَلِمَهُ، فَأَمَرَ بِهَا عُمَرُ فَجُلِدَتْ مِائَةً ثُمَّ غَرَّبَهَا، ثُمَّ قَالَ: صَدَقَتْ، وَالَّذِي نَفْسِي بِيَدِهِ مَا الْحَدُّ إِلَّا عَلَى مَنْ عَلِمَهُ.

L42859 And with his chain—to Abd al-Razzaq from Muhammad ibn Rashid, who said: I heard Makhūl narrate that a man found another man in a house after the Isha prayer, wrapped in a mat. Umar struck him a hundred.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ مُحَمَّدِ بْنِ رَاشِدٍ قَالَ: سَمِعْت مَكْحُولًا يُحَدِّثُ أَنَّ رَجُلًا وَجَدَ فِي بَيْتِ رَجُلٍ بَعْدَ الْعَتَمَةِ مُلَفِّفًا فِي حَصِيرٍ، فَضَرَبَهُ عُمَرُ مِائَةً.

L42860 And through him to Abd al-Razzaq: Ibn Jurayj narrated to us; Ja’far ibn Muhammad narrated to us from his father from Ali, that whenever he found a man with a woman under a single blanket, he would flog both of them one hundred lashes each.

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ نا ابْنُ جُرَيْجٍ نا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ عَنْ عَلِيٍّ أَنَّهُ كَانَ إِذَا وَجَدَ الرَّجُلَ مَعَ الْمَرْأَةِ فِي لِحَافٍ وَاحِدٍ، جَلَدَهُمَا مِائَةً كُلُّ إِنْسَانٍ مِنْهُمَا.

L42861 And through him—to Abd al-Razzaq, from Sufyan ibn Uyaynah, from al-A’mash, from al-Qasim ibn Abd al-Rahman ibn Abd Allah ibn Mas’ud, from his father, who said: A man who was found with a woman in a blanket was brought to Ibn Mas’ud. He flogged them both, forty lashes each. The woman’s family and the man’s family went and complained about that to Umar ibn al-Khattab? Umar said to Ibn Mas’ud, “What are these people saying?” He replied, “I did indeed do that.”

وَبِهِ - إِلَى عَبْدِ الرَّزَّاقِ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ الْأَعْمَشِ عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ عَنْ أَبِيهِ قَالَ: أُتِيَ ابْنُ مَسْعُودٍ بِرَجُلٍ وُجِدَ مَعَ امْرَأَةٍ فِي لِحَافٍ، فَضَرَبَهُمَا لِكُلِّ وَاحِدٍ مِنْهُمَا أَرْبَعِينَ سَوْطًا، فَذَهَبَ أَهْلُ الْمَرْأَةِ وَأَهْلُ الرَّجُلِ فَشَكَوْا ذَلِكَ إِلَى عُمَرَ بْنِ الْخَطَّابِ؟ فَقَالَ عُمَرُ لِابْنِ مَسْعُودٍ مَا يَقُولُ هَؤُلَاءِ؟ قَالَ: قَدْ فَعَلْت ذَلِكَ.

L42862 As for the third opinion - it has been reported to us from Sa’id ibn al-Musayyib, and it has also been reported to us from Ibn Shihab, who said: ’Umar ibn al-Khattab imposed fewer than one hundred lashes upon a man who was found alone with a woman at night.’

وَأَمَّا الْقَوْلُ الثَّالِثُ - فَرُوِّينَا عَنْ سَعِيدِ بْنِ الْمُسَيِّبِ، وَرُوِّينَاهُ أَيْضًا عَنْ ابْنِ شِهَابٍ قَالَ: إنَّ عُمَرَ بْنَ الْخَطَّابِ ضَرَبَ رَجُلًا دُونَ الْمِائَةِ وُجِدَ مَعَ امْرَأَةٍ فِي الْعَتَمَةِ.

L42863 As for those who said thirty lashes, it is based on the narration we transmitted from Sufyān ibn ʿUyaynah, from Jāmiʿ, from Shaqīq, who said: A man had a claim against Umm Salamah, the Mother of the Believers. He wrote to her and then came to her, whereupon ʿUmar ordered that he be lashed thirty times.

وَأَمَّا مَنْ قَالَ ثَلَاثُونَ سَوْطًا فَلِمَا رُوِّينَاهُ عَنْ سُفْيَانَ بْنِ عُيَيْنَةَ عَنْ جَامِعٍ عَنْ شَقِيقٍ قَالَ: كَانَ لِرَجُلٍ عَلَى أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ حَقٌّ فَكَتَبَ إلَيْهَا يَخْرُجُ عَلَيْهَا فَأَمَرَ عُمَرُ بِأَنْ يُجْلَدَ ثَلَاثِينَ جَلْدَةً.

L42864–42866 As for those who said twenty lashes—as transmitted to us from Waki‘ and ‘Abd al-Rahman, both of whom concurred, narrating from Sufyan al-Thawri, who reported from Humayd al-A‘raj, who reported from Yahya ibn ‘Abd

وَأَمَّا مَنْ قَالَ عِشْرُونَ سَوْطًا - فَكَمَا رُوِّينَا عَنْ وَكِيعٍ، وَعَبْدِ الرَّحْمَنِ، ثُمَّ اتَّفَقَا كِلَاهُمَا عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ حُمَيْدٍ الْأَعْرَجِ عَنْ يَحْيَى بْنِ عَبْدِ اللَّهِ بْنِ صَيْفِيٍّ أَنَّ عُمَرَ بْنَ

Allah ibn Sayfi that ‘Umar ibn al-Khattab wrote to Abu Musa: “No one shall be lashed in a discretionary punishment exceeding twenty lashes?” Abu Muhammad—may Allah have mercy on him—said: When they differed as mentioned, it became necessary to investigate the matter. We therefore examined the view of those who abolished discretionary punishment entirely and those who held that ten lashes should be added to it, since— Only these two opinions remain, as all other opinions have been dismissed as a whole.

الْخَطَّابِ كَتَبَ إلَى أَبِي مُوسَى لَا يُجْلَدْ فِي تَعْزِيرٍ أَكْثَرُ مِنْ عِشْرِينَ سَوْطًا؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَلَمَّا اخْتَلَفُوا كَمَا ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِي ذَلِكَ: - فَنَظَرْنَا فِي قَوْلِ مَنْ أَسْقَطَ التَّعْزِيرَ جُمْلَةً، وَمَنْ رَأَى أَنَّهُ يُزَادُ فِيهِ عَشْرُ جَلَدَاتٍ، إذْ لَمْ يَبْقَ غَيْرُ هَذَيْنِ الْقَوْلَيْنِ، إذْ سَائِرُ الْأَقْوَالِ قَدْ سَقَطَ التَّعَلُّقُ بِهَا جُمْلَةً وَاحِدَةً.

L42867 We found its prohibition to be comprehensive, as reported from ʿUmar ibn al-Khaṭṭāb and from ʿAṭāʾ—he was the basis for the statement of the Messenger of Allah (peace and blessings be upon him): “Indeed, your blood, your wealth, your honor, and your skins are inviolable for you.”

فَوَجَدْنَا الْمَنْعَ مِنْهُ جُمْلَةً، كَمَا جَاءَ عَنْ عُمَرَ بْنِ الْخَطَّابِ، وَعَنْ عَطَاءٍ هُوَ كَانَ الْأَصْلَ لِقَوْلِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «إنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ وَأَبْشَارَكُمْ عَلَيْكُمْ حَرَامٌ» .

L42868 However, when the Messenger of Allah (peace be upon him) said, “Whoever among you witnesses a reprehensible act, let him change it with his hand if he is able; if he cannot, then with his tongue,” this established an absolute ruling for altering evil by hand. Yet this remained an ambiguous directive—we do not understand the manner of changing it by hand: how is it to be done? For changing evil by hand might involve the sword, a stone, a spear, or striking. Such measures must not be undertaken except through explicit clarification from Allah, the Exalted, conveyed by the words of His Messenger (peace be upon him).

لَكِنْ لَمَّا قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إنْ اسْتَطَاعَ فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ» كَانَ ذَلِكَ مُطْلَقًا لِتَغْيِيرِ الْمُنْكَرِ بِالْيَدِ، فَكَانَ هَذَا أَمْرًا مُجْمَلًا، لَا نَدْرِي كَيْفِيَّةَ ذَلِكَ التَّغْيِيرِ بِالْيَدِ كَيْفَ هُوَ؟ لِأَنَّ التَّغْيِيرَ بِالْيَدِ يَكُونُ بِالسَّيْفِ، وَبِالْحَجَرِ، وَيَكُونُ بِالرُّمْحِ، وَيَكُونُ بِالضَّرْبِ - وَهَذَا لَا يُقْدَمُ عَلَيْهِ إلَّا بِبَيَانٍ مِنْ اللَّهِ تَعَالَى عَلَى لِسَانِ رَسُولِهِ - عَلَيْهِ السَّلَامُ -.

L42869 Then we examined Mālik’s statement and found it the furthest of the opinions from being correct, as it is not grounded in the Qur’ān, nor the Sunnah, nor evidence of consensus, nor the saying of any Companion—may Allah be pleased with them—nor a sound opinion. We reflected on this and found the following narration: ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to us from Ibrāhīm ibn Aḥmad from al-Farabrī from al-Bukhārī from ʿAbd Allāh ibn Yūsuf from al-Layth ibn Saʿd from Yazīd ibn Abī Ḥabīb from Bukayr ibn ʿAbd Allāh from Sulaymān ibn Yasār from ʿAbd al-Raḥmān ibn Jābir ibn ʿAbd Allāh ibn Abī Burdah, who said: The Messenger of Allah—peace and blessings be upon him—used to say, “None shall be flogged beyond ten lashes except in a prescribed punishment from the hudūd of Allah the Exalted.” This constitutes an explicit clarification that none may rightfully transgress it.

ثُمَّ نَظَرْنَا فِي قَوْلِ مَالِكٍ: فَوَجَدْنَاهُ أَبْعَدَ الْأَقْوَالِ مِنْ الصَّوَابِ، لِأَنَّهُ لَمْ يَتَعَلَّقْ بِقُرْآنٍ، وَلَا بِسُنَّةٍ، وَلَا بِدَلِيلِ إجْمَاعٍ، وَلَا بِقَوْلِ أَحَدٍ مِنْ الصَّحَابَةِ - رَضِيَ اللَّهُ عَنْهُمْ -، وَلَا بِرَأْيٍ سَدِيدٍ: فَنَظَرْنَا فِي ذَلِكَ، فَوَجَدْنَا: مَا نا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا عَبْدُ اللَّهِ بْنُ يُوسُفَ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - نِي يَزِيدُ بْنُ أَبِي حَبِيبٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ عَنْ عَبْدِ الرَّحْمَنِ بْنِ جَابِرِ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي بُرْدَةَ قَالَ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ «لَا يُجْلَدُ

فَوْقَ عَشْرِ جَلَدَاتٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى» فَكَانَ هَذَا بَيَانًا جَلِيًّا لَا يَحِلُّ لِأَحَدٍ أَنْ يَتَعَدَّاهُ.

L42870 It has been narrated to us—from Sufyan al-Thawri, from Abu Husayn, from Abu Amir, who said: Ali ibn Abi Talib was brought a man found beneath a woman's bedding. He said, "Take him and turn him back to belly in a putrid place, for the place he was in is worse than that."

وَقَدْ رُوِّينَا - عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي حُصَيْنٍ عَنْ أَبِي عَامِرٍ قَالَ: أُتِيَ عَلِيُّ بْنُ أَبِي طَالِبٍ بِرَجُلٍ وُجِدَ تَحْتَ فِرَاشِ امْرَأَةٍ، فَقَالَ: اذْهَبُوا بِهِ فَقَلِّبُوهُ ظَهْرًا لِبَطْنٍ فِي مَكَانٍ مُنْتِنٍ، فَإِنَّهُ كَانَ فِي مَكَانٍ شَرٍّ مِنْهُ.

L42871 From the chain of Muhammad ibn al-Muthanna, narrated by al-Dhahhak ibn Makhlad, from Sufyan al-Thawri, from Abu Ishaq al-Shaybani, from a man: A man came to Ali ibn Abi Talib with an accuser, saying, "This one had a nocturnal emission involving my mother last night." Ali said to him, "Take him into the sunlight and strike his shadow."

وَمِنْ طَرِيقِ مُحَمَّدِ بْنِ الْمُثَنَّى نا الضَّحَّاكُ بْنُ مَخْلَدٍ عَنْ سُفْيَانَ الثَّوْرِيِّ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ عَنْ رَجُلٍ: أَنَّ رَجُلًا جَاءَ إِلَى عَلِيِّ بْنِ أَبِي طَالِبٍ بِمُسْتَعِدٍّ عَلَيْهِ، فَقَالَ: هَذَا احْتَلَمَ عَلَى أُمِّي الْبَارِحَةَ؟ فَقَالَ لَهُ عَلِيٌّ: اذْهَبْ فَأَقِمْهُ فِي الشَّمْسِ وَاضْرِبْ ظِلَّهُ؟

L42872–42873 Abū Muḥammad—may God have mercy on him—said: Whoever commits multiple forbidden acts, the ruler may flog him with ten lashes or fewer for each forbidden act—even if the total exceeds typical limits—because the ruling on taʿzīr (discretionary punishment) is stated generally regarding one who commits a forbidden act requiring physical discipline. This differs from the case of the fornicator, for which there is established consensus and textual evidence that a single penetration and repeated acts are treated equally; nor is it like drinking, for which there is established consensus and textual evidence that a single sip and intoxication are treated equally; nor like theft, for which there is established consensus that stealing a quarter of a dinar and stealing more are treated equally; nor like false accusation of unchastity (qadhf), for which there is established textual evidence that falsely accusing one person or multiple persons is treated equally. And success is from God, the Exalted.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَمَنْ أَتَى مُنْكَرَاتٍ جَمَّةً، فَلِلْحَاكِمِ أَنْ يَضْرِبَهُ لِكُلِّ مُنْكَرٍ مِنْهَا عَشْرَ جَلَدَاتٍ فَأَقَلَّ - بَالِغًا ذَلِكَ مَا بَلَغَ - لِأَنَّ الْأَمْرَ فِي التَّعْزِيرِ جَاءَ مُجْمَلًا فِيمَنْ أَتَى مُنْكَرًا أَنْ يُغَيَّرَ بِالْيَدِ، وَلَيْسَ هَذَا بِمَنْزِلَةِ الزَّانِي الَّذِي قَدْ صَحَّ الْإِجْمَاعُ وَالنَّصُّ أَنَّ الْإِيلَاجَ وَالتَّكْرَارَ سَوَاءٌ - وَلَا كَالشُّرْبِ الَّذِي قَدْ صَحَّ الْإِجْمَاعُ وَالنَّصُّ عَلَى أَنَّ الْجَرْعَةَ وَالسُّكْرَ سَوَاءٌ - وَلَا كَالسَّرِقَةِ الَّتِي قَدْ صَحَّ الْإِجْمَاعُ بِأَنَّ سَارِقَ رُبْعِ دِينَارٍ وَسَارِقَ أَكْثَرَ مِنْ ذَلِكَ سَوَاءٌ - وَلَا كَالْقَذْفِ الَّذِي قَدْ صَحَّ النَّصُّ بِأَنَّ قَاذِفَ وَاحِدٍ أَوْ أَكْثَرَ مِنْ وَاحِدٍ سَوَاءٌ - وَبِاللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة هَلْ يُقَالُ ذَوُو الْهَيْئَاتِ عَثَرَاتُهُمْ وَكَيْفَ يَتَجَاوَزُ عَنْ مُسِيءٍ الْأَنْصَارِ]

L42874 Question: Is it stated that the faults of those adhering to proper formalities are pardoned, and how should wrongdoing by a member of the Ansar be forgiven?

L42875 3210 – Issue: Should it be said, "Overlook the missteps of people of stand-

ing”? And how should one overlook the wrongdoer among the Ansar—may Allah be pleased with them? Abu Muhammad (may Allah have mercy on him) said: From Abdullah ibn Rabi’, from Umar ibn Abd al-Malik al-Khawlani, from Muhammad ibn Bukayr al-Basri, from Abu Dawud al-Sijistani and Ja’far ibn Musafir al-Tinnisi, from Ibn Abi Fudayk, from Abd al-Malik ibn Zayd—a descendant of Sa’id ibn Zayd ibn Amr ibn Nufayl—from Muhammad ibn Abi Bakr ibn Amr ibn Hazm, from Amrah, from A’ishah, who said: The Messenger of Allah (peace and blessings of Allah be upon him) said, “Overlook the missteps of people of standing, except in cases of ḥudūd.”

٣٢١٠ - مَسْأَلَةٌ: هَلْ يُقَالُ ذَوُو الْهَيْئَاتِ عَثَرَاتُهُمْ؟ وَكَيْفَ يَتَجَاوَزُ عَنْ مُسِيءِ الْأَنْصَارِ - رَضِيَ اللَّهُ عَنْهُمْ -؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيّ نا مُحَمَّدُ بْنُ بُكَيْرٍ الْبَصْرِيُّ نا أَبُو دَاوُد السِّجِسْتَانِيُّ، وَجَعْفَرُ بْنُ مُسَافِرٍ التِّنِّيسِيُّ نا ابْنُ أَبِي فُدَيْكٍ عَنْ عَبْدِ الْمَلِكِ بْنِ زَيْدٍ - مِنْ وَلَدِ سَعِيدِ بْنِ زَيْدِ بْنِ عَمْرِو بْنِ نُفَيْلٍ - عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ عَمْرَةَ عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ إِلَّا الْحُدُودَ» .

L42876 Hammam narrated to us: Abbas ibn Asbagh, Muhammad ibn Abd al-Malik ibn Ayman, Abu Abdullah, Sa’id ibn Mansur, Abu Bakr ibn Nafi’, the client of the Umari clan, who said: I heard Abu Bakr ibn Muhammad ibn Amr ibn Hazm say: Amrah said: Aisha said: The Messenger of Allah (peace and blessings of Allah be upon him) said: “Excuse the people of dignity their stumbles.”

حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَبُو عَبْدِ اللَّهِ نا سَعِيدُ بْنُ مَنْصُورٍ نا أَبُو بَكْرِ بْنُ نَافِعٍ مَوْلَى الْعُمَرِيِّينَ قَالَ: سَمِعْت أَبَا بَكْرِ بْنَ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، قَالَتْ عَمْرَةُ: قَالَتْ عَائِشَةُ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ» .

L42877 Ahmad ibn Qasim narrated to us: Muhammad ibn Qasim ibn Asbagh narrated to us: My father narrated to us: My grandfather narrated to us: Mudar ibn Muhammad narrated to us: Makhlad ibn Malik narrated to us: Abd al-Rahman ibn Muhammad ibn Abi al-Rijal narrated from Ibn Abi Dhi’b, who informed me: Abd al-Aziz ibn Abdullah ibn Abdullah ibn Umar ibn al-Khattab reported that he injured a slave of his, and the slave sought legal redress against him before Ibn Hazm—the governor of Medina. Ibn Hazm said: I heard my grandmother Amrah narrate from Aisha that the Prophet—peace and blessings of Allah be upon him—said: Excuse people of honorable stature their stumbles or slips. Then he added: You are a man of honorable stature, and I have excused you.

حَدَّثَنَا أَحْمَدُ بْنُ قَاسِمٍ نا مُحَمَّدُ بْنُ قَاسِمِ بْنِ أَصْبَغَ نا أَبِي نا جَدِّي نا مُضَرُ بْنُ مُحَمَّدٍ نا مَخْلَدُ بْنُ مَالِكٍ نا عَبْدُ الرَّحْمَنِ بْنُ مُحَمَّدِ بْنِ أَبِي الرِّجَالِ عَنْ ابْنِ أَبِي ذِئْبٍ أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ بْنِ الْخَطَّابِ أَنَّهُ جَرَحَ مَوْلًى لَهُ فَاسْتَعْدَى عَلَيْهِ ابْنُ حَزْمٍ - وَهُوَ وَالِي الْمَدِينَةِ - فَقَالَ ابْنُ حَزْمٍ: سَمِعْت جَدَّتِي عَمْرَةَ عَنْ عَائِشَةَ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ - أَوْ زَلَّاتِهِمْ» وَأَنْتَ ذُو هَيْئَةٍ، وَقَدْ أَقَلْتُك.

L42878–42879 Abdullah ibn Rabee’ narrated to us, from Muhammad ibn Mu’awiyah, from Ahmad ibn Shu’ayb, from Amr ibn Ali, from Abdur-Rahman ibn Mahdi, from Abdul-Malik ibn Zayd al-Madini, from Abu Bakr ibn Muhammad ibn Amr

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا عَمْرُو بْنُ عَلِيٍّ نا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ نا عَبْدُ الْمَلِكِ بْنُ زَيْدٍ الْمَدِينِيُّ عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ

ibn Hazm, from his father, from Amrah, from Aishah, that the Prophet (peace be upon him) said: “Excuse the slips of those with dignified standing.”

عَنْ أَبِيهِ عَنْ عَمْرَةَ عَنْ عَائِشَةَ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ «أَقِيلُوا ذَوِي الْهَيْئَاتِ عَثَرَاتِهِمْ» .

L42880 Narrated by Abdullah ibn Rabee’, narrated by Muhammad ibn Mu’awiyah, narrated by Ahmad ibn Shu’ayb, narrated by Muhammad ibn Hatim, narrated by Suwayd—he is Ibn Nasr—narrated by Abdullah—he is Ibn al-Mubarak—from Abdul-Aziz ibn Abdullah ibn Abdullah ibn Umar, from Muhammad ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm, from his father, from Amrah, that the Messenger of Allah (peace and blessings be upon him and his family) said: “Overlook the misstep of the person of stature.” Abu Muhammad (may Allah have mercy on him) said: The hadith of Abdul-Malik would have been acceptable were it not presumed that Muhammad ibn Abi Bakr did not hear it from Amrah, for this hadith is only transmitted from his father Abu Bakr, from Amrah. As for Abu Bakr ibn Nafi’, he is weak and utterly unreliable—he is not Abu Bakr ibn Nafi’, the freed slave of Ibn Umar; the former has an elevated chain and is trustworthy, whereas the latter is from a later generation. The best of them all is the hadith of Abdur-Rahman ibn Mahdi, for it is sound, and the authoritative proof by it is established.

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ نا مُحَمَّدُ بْنُ حَاتِمٍ نا سُوَيْدٌ - هُوَ ابْنُ نَصْرٍ نا عَبْدُ اللَّهِ - هُوَ ابْنُ الْمُبَارَكِ - عَنْ عَبْدِ الْعَزِيزِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ بْنِ عُمَرَ عَنْ مُحَمَّدِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ عَنْ أَبِيهِ عَنْ عَمْرَةَ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ «تَجَاوَزُوا عَنْ زَلَّةِ ذِي الْهَيْئَةِ؟» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: حَدِيثُ عَبْدِ الْمَلِكِ كَانَ يَكُونُ جَيِّدًا لَوْلَا أَنَّ مُحَمَّدَ بْنَ أَبِي بَكْرٍ مُقَدَّرٌ أَنَّهُ لَمْ يَسْمَعْهُ مِنْ عَمْرَةَ، لِأَنَّ هَذَا الْحَدِيثَ إِنَّمَا هُوَ عَنْ أَبِيهِ أَبِي بَكْرٍ عَنْ عَمْرَةَ - وَأَمَّا أَبُو بَكْرِ بْنُ نَافِعٍ - فَهُوَ ضَعِيفٌ لَيْسَ هُوَ بِشَيْءٍ - وَلَيْسَ هُوَ أَبَا بَكْرِ بْنَ نَافِعٍ مَوْلَى ابْنِ عُمَرَ، ذَلِكَ عَالٍ ثِقَةٌ، وَهَذَا مُتَأَخِّرٌ - وَأَحْسَنُهَا كُلُّهَا حَدِيثُ عَبْدِ الرَّحْمَنِ بْنِ مَهْدِيٍّ فَهُوَ جَيِّدٌ وَالْحُجَّةُ بِهِ قَائِمَةٌ.

L42881 And via the chain of Muslim: Muhammad ibn al-Muthanna narrated to us, Muhammad ibn Ja‘far narrated to us, Shu‘bah narrated to us, stating: I heard Qatadah narrating from Anas ibn Malik that the Messenger of Allah—peace be upon him and his family—said: “The Ansar are my inner circle and my trusted community. People will multiply in number while the Ansar will diminish. Therefore, accept the good from them and overlook the faults of their wrongdoers.”[42]

وَمِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا مُحَمَّدُ بْنُ جَعْفَرٍ نا شُعْبَةُ سَمِعْت قَتَادَةَ يُحَدِّثُ عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَالَ: «الْأَنْصَارُ كَرِشِي وَعَيْبَتِي، وَالنَّاسُ سَيَكْثُرُونَ وَيَقِلُّونَ، فَاقْبَلُوا مِنْ مُحْسِنِهِمْ وَتَجَاوَزُوا عَنْ مُسِيئِهِمْ» .

L42882–42884 Abd al-Rahman ibn Abdullah ibn Khalid narrated to us: Ibrahim ibn Ahmad narrated to us: al-Farbari narrated to us: al-Bukhari narrated to us: Muhammad ibn Yahya Abu Ali al-Sa’igh narrated to us: Shadhan—brother of ʿAbdān—narrated to us: my father narrated to us: Shuʿbah ibn al-Ḥajjaj narrated from Hisham ibn Zayd, who said: I heard Anas ibn Malik say: “Abu

حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا مُحَمَّدُ بْنُ يَحْيَى أَبُو عَلِيٍّ الصَّائِغُ نا شَاذَانُ - أَخُو عَبْدَانَ - نا أَبِي نا شُعْبَةُ بْنُ الْحَجَّاجِ عَنْ هِشَامِ بْنِ زَيْدٍ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ يَقُولُ «مَرَّ أَبُو بَكْرٍ، وَالْعَبَّاسُ، بِمَجْلِسٍ مِنْ

[42] **Hadith references (L42881):** Sahih al-Bukhari 3801.

Bakr and al-ʿAbbās passed by a gathering of the Ansar who were weeping. He asked: 'What makes you weep?' They replied: 'We recalled the Prophet's gathering—peace and blessings be upon him and his family.' He went to the Prophet—peace and blessings be upon him and his family—and informed him of this. The Prophet—peace and blessings be upon him and his family—emerged with his head bound by the edge of a cloak, ascended the pulpit—which he did not ascend after that day—praised Allah and extolled Him, then said:" I commend to you the *Anṣār*, for they are my close kin and my clan. They have fulfilled what was incumbent upon them, and what remains is what is due to them. So accept those who do good among them, and overlook their wrongdoers.[43]

مَجَالِسِ الْأَنْصَارِ وَهُمْ يَبْكُونَ، فَقَالَ: مَا يُبْكِيكُمْ؟ فَقَالُوا: ذَكَرْنَا مَجْلِسَ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنَّا، فَدَخَلَ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَخْبَرَهُ بِذَلِكَ، قَالَ: فَخَرَجَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَقَدْ عَصَبَ رَأْسَهُ بِحَاشِيَةِ بُرْدٍ، فَصَعِدَ الْمِنْبَرَ - وَلَمْ يَصْعَدْهُ بَعْدَ ذَلِكَ الْيَوْمِ - فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ، ثُمَّ قَالَ: أُوصِيكُمْ بِالْأَنْصَارِ فَإِنَّهُمْ كَرِشِي وَعَيْبَتِي، وَقَدْ قَضَوْا الَّذِي عَلَيْهِمْ، وَبَقِيَ الَّذِي لَهُمْ، فَاقْبَلُوا مِنْ مُحْسِنِهِمْ وَتَجَاوَزُوا عَنْ مُسِيئِهِمْ» .

L42885 And via him to al-Bukhārī—Aḥmad ibn Yaʿqūb narrated to us: Ibn al-Mughallis narrated to us, saying: I heard ʿIkrimah say: I heard Ibn ʿAbbās say: "Allah's Messenger—peace and blessings be upon him—came out wearing a mantle wrapped over his shoulders, with a greased headband upon him, until he sat on the pulpit. He praised Allah and extolled Him, then said: 'Now then: O people, people will multiply while the Anṣār will diminish until they become like salt in food.'"

وَبِهِ - إِلَى الْبُخَارِيِّ نا أَحْمَدُ بْنُ يَعْقُوبَ نا ابْنُ الْمُغَلِّسِ قَالَ: سَمِعْت عِكْرِمَةَ يَقُولُ: سَمِعْت ابْنَ عَبَّاسٍ يَقُولُ «خَرَجَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَعَلَيْهِ مِلْحَفَةٌ مُتَعَصِّبًا بِهَا عَلَى مَنْكِبَيْهِ وَعَلَيْهِ عِصَابَةٌ دَسْمَاءُ، حَتَّى جَلَسَ عَلَى الْمِنْبَرِ، فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ، ثُمَّ قَالَ: أَمَّا بَعْدُ: أَيُّهَا النَّاسُ، فَإِنَّ النَّاسَ يَكْثُرُونَ وَتَقِلُّ الْأَنْصَارُ، حَتَّى يَكُونُوا كَالْمِلْحِ فِي الطَّعَامِ» .

L42886 If someone asks: How are these narrations reconciled with the Prophet's statement—peace be upon him and his family—"Whoever among you sees a reprehensible act, let him change it with his hand if he is able," and with what ʿAbd al-Raḥmān ibn ʿAbd Allāh ibn Khālid narrated to you: Ibrāhīm ibn Aḥmad narrated to us, al-Farabarī narrated to us, al-Bukhārī narrated to us, ʿAbdān—who is Ibn ʿUthmān—narrated to us, ʿAbd Allāh ibn al-Mubārak narrated to us, Yūnus—who is Ibn Yazīd—narrated to us from al-Zuhrī, who informed me from ʿUrwah, from ʿĀ'ishah, who said: "The Messenger of Allah—peace be upon him and his family—never avenged himself for any harm inflicted upon him personally unless Allah's sanctities were violated, at which point he would retaliate for the sake of Allah, the Almighty and Majestic."

فَإِنْ قَالَ قَائِلٌ: فَكَيْفَ تُجْمَعُ هَذِهِ الْآثَارُ مَعَ قَوْلِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ إِنْ اسْتَطَاعَ» وَمَعَ مَا حَدَّثَكُمُوهُ عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا عَبْدَانُ - هُوَ ابْنُ عُثْمَانَ - نا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ نا يُونُسُ - هُوَ ابْنُ يَزِيدَ - عَنْ الزُّهْرِيِّ أَخْبَرَنِي عُرْوَةُ عَنْ عَائِشَةَ، قَالَتْ: «مَا انْتَقَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِنَفْسِهِ فِي شَيْءٍ يُؤْتَى إِلَيْهِ، حَتَّى يُنْتَهَكَ مِنْ حُرُمَاتِ اللَّهِ، فَيَنْتَقِمُ لِلَّهِ عَزَّ وَجَلَّ؟» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَنَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ -: إِنَّ جَمِيعَهَا كُلَّهَا حَقٌّ مُمْكِنٌ ظَاهِرٌ، وَذَلِكَ مَا كَانَ مِنْ إِسَاءَةٍ لَا

[43] **Hadith references (L42882):** Sahih al-Bukhari 3799.

Abū Muḥammad—may Allah have mercy on him—said: We respond—and success is from Allah, the Exalted—that all these narrations are entirely true, applicable, and evident. This refers to offenses that do not rise to the level of a reprehensible act, wherein it is obligatory to pardon the Anṣārī in discretionary punishment without extending such leniency to others. Similarly, regarding minor prescribed penalties, the Anṣār receive lighter treatment—such as an Anṣārī being flogged for drinking alcohol with the edge of a garment [to lessen severity], while others are flogged with the hand, palm stalks, or sandals. It is also stated that a person of dignified bearing—one possessing a bearing of knowledge and honor—may be excused for a lapse in harsh conduct or similar matters, provided it does not involve a prescribed penalty or a reprehensible act. Nevertheless, it remains obligatory to enforce prescribed penalties and discretionary punishment—and success is from Allah, the Exalted.

L42887 **The legal question concerning a Qurayshi: If he is punished three times with the ḥadd punishment for adultery or other ḥudūd crimes, should he be executed?**

L42888 Issue: Is a Qurayshi to be executed for offenses requiring the death penalty—such as stoning the *muḥṣan* (a legally accountable married person) if he commits adultery, retribution for murder (*qiṣāṣ*), banditry (*ḥirābah*), apostasy, or drinking wine after being subjected to the *ḥadd* punishment three times—or not?

L42889–42890 Abū Muḥammad—may Allāh have mercy on him—said: Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us; Abū Bakr Aḥmad ibn al-Faḍl al-Dīnawarī narrated to us; Muḥammad ibn Jarīr al-Ṭabarī narrated to us; ʿAbd Allāh ibn Saʿd ibn Ibrāhīm ibn ʿAbd al-Raḥmān ibn ʿAwf al-Zuhrī informed us from his uncle Yaʿqūb ibn Ibrāhīm; Shuʿbah ibn al-Ḥajjāj informed us; ʿAbd Allāh ibn Abī al-Safar informed us; ʿĀmir al-Shaʿbī informed us; ʿAbd Allāh ibn Muṭīʿ ibn al-Aswad informed us; from his father Muṭīʿ—brother of the Banū ʿAdī ibn Kaʿb, whose name was originally al-ʿĀṣ, but the Messenger of Allāh (peace and blessings be upon him and his family) renamed him Muṭīʿ—who said: I heard the Messenger of Allāh (peace and blessings be upon him and

تَبْلُغُ مُنْكَرًا وَجَبَ أَنْ يَتَجَاوَزَ فِيهَا عَنْ الْأَنْصَارِيِّ فِي التَّعْزِيرِ، وَلَمْ يُخَفِّفْ عَنْ غَيْرِهِمْ، وَمَا كَانَ مِنْ حَدٍّ خَفِيفٍ أَيْضًا مِنْ الْأَنْصَارِ مَا لَا يُخَفَّفُ عَنْ غَيْرِهِمْ، مِثْلُ أَنْ يُجْلَدَ الْأَنْصَارِيُّ فِي الْخَمْرِ بِطَرَفِ الثَّوْبِ، وَغَيْرِهِ بِالْيَدِ، أَوْ بِالْجَرِيدِ، وَالنِّعَالِ، وَيُقَالُ ذُو الْهَيْئَةِ - وَهُوَ الَّذِي لَهُ هَيْئَةُ عِلْمٍ وَشَرَفٍ - عَثْرَةٌ فِي جَفَا، وَنَحْوِ ذَلِكَ مَا لَمْ يَكُنْ حَدًّا أَوْ مُنْكَرًا، فَلَا بُدَّ مِنْ إقَامَةِ الْحُدُودِ، وَالتَّعْزِيرِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة الْقُرَشِيّ إذَا حَدّ فِي زَنَى أَوْ غيرة مِنْ الْحُدُود ثَلَاثًا هَلْ يقتل]

٢٣١١ - مَسْأَلَةٌ: هَلْ يُقْتَلُ الْقُرَشِيُّ فِيمَا يُوجِبُ الْقَتْلَ مِنْ رَجْمِ الْمُحْصَنِ إذَا زَنَى، وَالْقَوَدِ، وَالْحِرَابَةِ، وَالرِّدَّةِ، وَإِذَا شَرِبَ الْخَمْرَ، بَعْدَ أَنْ حُدَّ فِيهَا ثَلَاثَ مَرَّاتٍ أَمْ لَا؟

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَبُو بَكْرٍ أَحْمَدُ بْنُ الْفَضْلِ الدِّينَوَرِيُّ نا مُحَمَّدُ بْنُ جَرِيرٍ الطَّبَرِيُّ نا عَبْدُ اللَّهِ بْنُ سَعْدِ بْنِ إبْرَاهِيمَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ الزُّهْرِيُّ نِي عَمِّي يَعْقُوبُ بْنُ إبْرَاهِيمَ نِي شُعْبَةُ بْنُ الْحَجَّاجِ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي السَّفَرِ عَنْ عَامِرٍ الشَّعْبِيِّ عَنْ عَبْدِ اللَّهِ بْنِ مُطِيعِ بْنِ الْأَسْوَدِ عَنْ أَبِيهِ مُطِيعٍ - أَخِي بَنِي عَدِيِّ بْنِ كَعْبٍ وَكَانَ اسْمُهُ الْعَاصِ، فَسَمَّاهُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -:

his family) say in Mecca, “Mecca shall never be invaded after this year, nor shall any man from Quraysh be killed after capture following this year.”

مُطِيعًا - قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِمَكَّةَ يَقُولُ «لَا تُغْزَى مَكَّةُ بَعْدَ هَذَا الْعَامِ أَبَدًا وَلَا يُقْتَلُ رَجُلٌ مِنْ قُرَيْشٍ بَعْدَ هَذَا الْعَامِ صَبْرًا» .

L42891 Aḥmad ibn Muḥammad ibn al-Jasūr narrated to us: Aḥmad ibn al-Faḍl ibn Bahrām narrated to us: Muḥammad ibn Jarīr narrated to us: from ʿAbdullāh ibn Muḥammad al-Zuhrī: Sufyān—he is Ibn ʿUyaynah—narrated to us from Zakariyyā—he is Ibn Abī Zāʾidah—from al-Shaʿbī, who said: Al-Ḥārith ibn Mālik ibn al-Barṣāʾi said: The Messenger of Allāh—peace and blessings be upon him—said: “Never shall Mecca be invaded after this day.”

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ بْنِ بَهْرَامَ نا مُحَمَّدُ بْنُ جَرِيرٍ ثَنِي عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ نا سُفْيَانُ - هُوَ ابْنُ عُيَيْنَةَ - عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ الشَّعْبِيِّ قَالَ: قَالَ الْحَارِثُ بْنُ مَالِكِ بْنِ الْبَرْصَاءِ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «لَا تُغْزَى مَكَّةُ بَعْدَ الْيَوْمِ أَبَدًا» .

L42892 Ahmad ibn Muhammad ibn al-Jasur narrated to us: Ahmad ibn al-Fadl narrated to us: Muhammad ibn Jarir narrated to us: Nasr ibn Abd al-Rahman al-Azdi narrated to us through two intermediaries: Muhammad ibn Ubayd narrated from Zakariyya – who is the son of Abi Za’idah – from Amir al-Sha‘bi, from al-Harith ibn Malik ibn Barṣā’, who said: “I heard the Messenger of Allah – peace and blessings be upon him – say on the day of the conquest of Mecca: ‘No military expedition shall be launched against it after this day until the Day of Resurrection.’” Abu Muhammad – may Allah have mercy on him – said: This al-Harith is al-Harith ibn Malik ibn Qays ibn Awf ibn Jabir ibn Abd Manaf ibn Kinanah ibn Sa‘j ibn Amir ibn Layth ibn Bakr ibn Abd Manaf ibn Kinanah. It is not established that al-Sha‘bi heard from Abdullah ibn Muti‘ – and this Abdullah ibn Muti‘ was killed alongside Abdullah ibn al-Zubayr during the first siege. Nor is it established that Abdullah ibn Muti‘ heard from al-Harith ibn Malik ibn al-Barṣā’. Thus, both reports have interrupted chains, and no valid evidence can be established through an interrupted chain.

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدِ بْنِ الْجَسُورِ نا أَحْمَدُ بْنُ الْفَضْلِ نا مُحَمَّدُ بْنُ جَرِيرٍ ثَنِيّ نَصْرُ بْنُ عَبْدِ الرَّحْمَنِ الْأَزْدِيُّ نا مُحَمَّدُ بْنُ عُبَيْدٍ عَنْ زَكَرِيَّا - هُوَ ابْنُ أَبِي زَائِدَةَ - عَنْ عَامِرٍ الشَّعْبِيِّ عَنْ الْحَارِثِ بْنِ مَالِكِ بْنِ بَرْصَاءَ قَالَ: سَمِعْت رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ فَتْحِ مَكَّةَ وَهُوَ يَقُولُ «لَا تُغْزَى بَعْدَهَا إلَى يَوْمِ الْقِيَامَةِ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْحَارِثُ هَذَا - هُوَ الْحَارِثُ بْنُ مَالِكِ بْنِ قَيْسِ بْنِ عَوْدِ بْنِ جَابِرِ بْنِ عَبْدِ مَنَافِ بْنِ كِنَانَةَ بْنِ سَجْعِ بْنِ عَامِرِ بْنِ لَيْثِ بْنِ بَكْرِ بْنِ عَبْدِ مَنَافِ بْنِ كِنَانَةَ - لَا يُعْرَفُ لِلشَّعْبِيِّ سَمَاعٌ مِنْ عَبْدِ اللَّهِ بْنِ مُطِيعٍ - وَعَبْدُ اللَّهِ بْنُ مُطِيعٍ هَذَا قُتِلَ مَعَ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ فِي الْحِصَارِ الْأَوَّلِ، وَلَا يُعْرَفُ لَهُ أَيْضًا سَمَاعٌ مِنْ الْحَارِثِ بْنِ مَالِكِ بْنِ الْبَرْصَاءِ - فَخَصَلَ الْخَبَرَانِ مُنْقَطِعَيْنِ، وَلَا حُجَّةَ فِي مُنْقَطِعٍ.

L42893 Moreover, if it were valid, the intended meaning would be that he (peace be upon him) would never launch a military expedition against it, nor would he himself execute a captive Qurayshi after that day. This is among the signs of his prophethood (may Allah bless him and his family and grant him peace).

ثُمَّ لَوْ صَحَّ لَكَانَ الْمُرَادُ بِذَلِكَ أَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَغْزُوهَا أَبَدًا، وَلَا يَقْتُلُ هُوَ قُرَشِيًّا بَعْدَ ذَلِكَ الْيَوْمِ صَبْرًا، فَهَذَا مِنْ أَعْلَامِ نُبُوَّتِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L42894–42896 The proof for the validity of this interpretation is Allah the Exalted’s statement: {Do not fight them at all at the Sacred Mosque unless they fight you in

it. But if they fight you in it, then kill them} [Al-Baqarah 191]. The Exalted has informed us that we will fight therein, kill, and be killed. We received the narration via the chain in Muslim's collection: Qutaybah ibn Sa'īd, Abū Bakr ibn Abī Shaybah, and Isḥāq—that is, Ibn Ibrāhīm—with the wording from Qutaybah. Isḥāq said: "He informed us," while the other two said: "Jarīr narrated to us from 'Abd al-'Azīz ibn Rufay' from 'Ubayd Allāh ibn al-Qibṭiyyah, who said: Al-Ḥārith ibn Abī Rabī'ah, 'Abd Allāh ibn Ṣafwān, and I entered upon Umm Salamah, the Mother of the Believers. She said: The Messenger of Allāh—peace be upon him and his family—said, 'A seeker of refuge will take refuge in the Sacred House, then a battalion will be dispatched against him. When they reach al-Baydā' in the land, they will be engulfed by the earth.' I said: O Messenger of Allāh, what about one who is unwilling? He said: 'He will be engulfed with them, but he will be raised on the Day of Resurrection according to his intention.'" Abū Muḥammad—may Allāh have mercy on him—said: We omitted from this report extraneous words by one of its narrators, as they are not part of the ḥadīth whatsoever and are erroneous. He claimed this occurred during Ibn al-Zubayr's era, which is incorrect, for Umm Salamah, the Mother of the Believers—may Allāh be pleased with her—died during the days of Mu'āwiyah. The purpose of the ḥadīth is the statement of the Messenger of Allāh—peace be upon him and his family—not the words of others; thus, it holds no legal proof.[44]

وَبُرْهَانُ صِحَّةِ هَذَا التَّأْوِيلِ: هُوَ قَوْلُ اللَّهِ تَعَالَى {وَلا تُقَاتِلُوهُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ حَتَّى يُقَاتِلُوكُمْ فِيهِ فَإِنْ قَاتَلُوكُمْ فَاقْتُلُوهُمْ} [البقرة: ١٩١] فَأَخْبَرَ تَعَالَى أَنَّنَا سَنُقَاتِلُ فِيهِ وَنَقْتُلُ وَنُقْتَلُ. رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا قُتَيْبَةُ بْنُ سَعِيدٍ، وَأَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَإِسْحَاقُ - هُوَ ابْنُ إِبْرَاهِيمَ - وَاللَّفْظُ لِقُتَيْبَةَ، قَالَ إِسْحَاقُ: أَخْبَرَنَا، وَقَالَ الْآخَرَانِ: نا جَرِيرٌ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ عَنْ عُبَيْدِ اللَّهِ ابْنِ الْقِبْطِيَّةِ، قَالَ: دَخَلَ الْحَارِثُ بْنُ أَبِي رَبِيعَةَ، وَعَبْدُ اللَّهِ بْنُ صَفْوَانَ، وَأَنَا مَعَهُمَا عَلَى أُمِّ سَلَمَةَ أُمِّ الْمُؤْمِنِينَ فَقَالَتْ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - «يَعُوذُ عَائِذٌ بِالْبَيْتِ فَيُبْعَثُ إِلَيْهِ بَعْثٌ فَإِذَا كَانَ بِبَيْدَاءَ مِنَ الْأَرْضِ خُسِفَ بِهِمْ، فَقُلْتُ: يَا رَسُولَ اللَّهِ فَكَيْفَ بِمَنْ كَانَ كَارِهًا؟ قَالَ: يُخْسَفُ بِهِ مَعَهُمْ، وَلَكِنَّهُ يُبْعَثُ يَوْمَ الْقِيَامَةِ عَلَى نِيَّتِهِ» ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: أَسْقَطْنَا مِنْ هَذَا الْخَبَرِ كَلَامًا لِبَعْضِ رُوَاتِهِ لَيْسَ مِنَ الْحَدِيثِ فِي شَيْءٍ، وَهُوَ غَلَطٌ، وَهُوَ أَنَّهُ ذَكَرَ أَنَّ ذَلِكَ كَانَ أَيَّامَ ابْنِ الزُّبَيْرِ - وَهُوَ خَطَأٌ، لِأَنَّ أُمَّ سَلَمَةَ أُمَّ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهَا - مَاتَتْ أَيَّامَ مُعَاوِيَةَ، فَإِنَّمَا الْغَرَضُ مِنَ الْحَدِيثِ كَلَامُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَا كَلَامَ مَنْ دُونَهُ فَلَا حُجَّةَ فِيهِ.

L42897 And through the chain of Muslim: 'Amr ibn Muhammad al-Naqid narrated to us, Sufyan ibn 'Uyaynah narrated to us from Umayyah ibn Safwan, who heard his grandfather 'Abdullah ibn Safwan say: Hafsah informed me that she heard the Prophet—may Allah's blessings and peace be upon him and his family—say: "Most certainly will an army come to attack this House. When they reach the desert of Bayda', they shall be swallowed by the earth from their midst. The first will call out to the last, then all will be swallowed, leaving none except a fugitive to report their fate."

وَمِنْ طَرِيقِ مُسْلِمٍ نا عَمْرُو بْنُ مُحَمَّدٍ النَّاقِدُ نا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أُمَيَّةَ بْنِ صَفْوَانَ سَمِعَ جَدَّهُ عَبْدَ اللَّهِ بْنَ صَفْوَانَ يَقُولُ: أَخْبَرَتْنِي حَفْصَةُ أَنَّهَا سَمِعَتِ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ «لَيُؤَمَّنَّ هَذَا الْبَيْتَ جَيْشٌ يَغْزُونَهُ حَتَّى إِذَا كَانُوا بِبَيْدَاءَ مِنَ الْأَرْضِ يُخْسَفُ بِهِمْ بِأَوْسَطِهِمْ، وَيُنَادِي أَوَّلُهُمْ آخِرَهُمْ، ثُمَّ يُخْسَفُ بِهِمْ فَلَا يَبْقَى إِلَّا الشَّرِيدُ الَّذِي يُخْبِرُ عَنْهُمْ» .

[44] **Qur'an references (L42894):** Qur'an 2:191 (Al-Baqarah).

L42898 From the chain of Muslim: Muḥammad ibn Ḥātim ibn Maymūn reported to me, al-Walīd ibn Ṣāliḥ reported to us, ʿUbaydullāh ibn ʿAmr reported to us, Yazīd ibn Abī Unaysah reported from ʿAbd al-Malik al-ʿĀmirī from Yūsuf ibn Māhak: ʿAbdullāh ibn Ṣafwān informed me from the Mother of the Believers that the Messenger of Allah (peace and blessings of Allah be upon him) said: "A people without protection, numbers, or preparation will return to this House. An army will be sent forth against them until, when they reach Baydāʾ in the land, they will be swallowed up."

وَمِنْ طَرِيقِ مُسْلِمٍ نِي مُحَمَّدُ بْنُ حَاتِمِ بْنِ مَيْمُونٍ نا الْوَلِيدُ بْنُ صَالِحٍ نا عُبَيْدُ اللَّهِ بْنُ عَمْرٍو نا يَزِيدُ بْنُ أَبِي أُنَيْسَةَ عَنْ عَبْدِ الْمَلِكِ الْعَامِرِيِّ عَنْ يُوسُفَ بْنِ مَاهَكَ أَخْبَرَنِي عَبْدُ اللَّهِ بْنُ صَفْوَانَ عَنْ أُمِّ الْمُؤْمِنِينَ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «سَيَعُودُ بِهَذَا الْبَيْتِ قَوْمٌ لَيْسَ لَهُمْ مَنَعَةٌ وَلَا عَدَدٌ وَلَا عُدَّةٌ يُبْعَثُ إِلَيْهِمْ جَيْشٌ حَتَّى إِذَا كَانُوا بِبَيْدَاءَ مِنْ الْأَرْضِ خُسِفَ بِهِمْ» .

L42899–42900 Yusuf said, "The people of al-Sham at that time are traveling to Makkah."

قَالَ يُوسُفُ: وَأَهْلُ الشَّامِ يَوْمَئِذٍ يَسِيرُونَ إِلَى مَكَّةَ.

L42901 Abdullah ibn Safwan declared: "By Allah, he is not with this army!" Via the chain of Imam Muslim: Abu Bakr ibn Abi Shaybah narrated to us, Yunus ibn Muhammad narrated to us, Al-Qasim ibn Al-Fadl Al-Huddani narrated to us from Muhammad ibn Ziyad from Abdullah ibn Al-Zubayr, who said: "Aisha reported: 'The Messenger of Allah—peace and blessings be upon him and his family—fidgeted in his sleep. We asked: "O Messenger of Allah, you did something in your sleep unlike your usual manner." He said: "How remarkable! Certain people from my community will march toward this House (Kaaba) pursuing a Qurayshite who has taken refuge there. When they reach the desert of Al-Bayda, the earth will swallow them." We said: "O Messenger of Allah, the road often gathers diverse travelers." He replied: "Yes – including the perceptive, the coerced, and the wayfarer. They will perish collectively and emerge from disparate origins. Allah will resurrect them according to their intentions.""'

Abu Muhammad—may Allah have mercy on him—stated: "This is a rigorously authentic report transmitted from three Mothers of the Believers—may Allah be pleased with them—and from Ibn Al-Zubayr, the Prophet's close companion. The Prophet—peace and blessings be upon him and his family—had indeed forewarned that Mecca would be attacked after his death."

قَالَ عَبْدُ اللَّهِ بْنُ صَفْوَانَ: أَمَا وَاَللَّهِ مَا هُوَ بِهَذَا الْجَيْشِ؟ وَمِنْ طَرِيقِ مُسْلِمٍ نا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ نا يُونُسُ بْنُ مُحَمَّدٍ نا الْقَاسِمُ بْنُ الْفَضْلِ الْحُدَّانِيُّ عَنْ مُحَمَّدِ بْنِ زِيَادٍ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ قَالَ: إِنَّ عَائِشَةَ قَالَتْ «عَبَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي مَنَامِهِ، فَقُلْنَا: يَا رَسُولَ اللَّهِ صَنَعْتُ شَيْئًا فِي مَنَامِكَ لَمْ تَكُنْ تَفْعَلُهُ، قَالَ: الْعَجَبُ، إِنَّ نَاسًا مِنْ أُمَّتِي يَؤُمُّونَ هَذَا الْبَيْتَ لِرَجُلٍ مِنْ قُرَيْشٍ قَدْ لَجَأَ بِالْبَيْتِ، حَتَّى إِذَا كَانُوا بِالْبَيْدَاءِ خُسِفَ بِهِمْ؟ فَقُلْنَا: يَا رَسُولَ اللَّهِ، فَإِنَّ الطَّرِيقَ قَدْ تَجْمَعُ النَّاسَ، قَالَ: نَعَمْ، فِيهِ الْمُسْتَبْصِرُ، وَالْمُجْبَرُ، وَابْنُ السَّبِيلِ، يَهْلِكُونَ مَهْلَكًا وَاحِدًا، وَيَصْدُرُونَ مَصَادِرَ شَتَّى حَتَّى يَبْعَثَهُمْ اللَّهُ عَلَى نِيَّاتِهِمْ» .؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَهَذَا خَبَرٌ صَحِيحٌ فِي غَايَةِ الصِّحَّةِ عَنْ ثَلَاثَةٍ مِنْ أُمَّهَاتِ الْمُؤْمِنِينَ - رَضِيَ اللَّهُ عَنْهُنَّ - وَعَنْ ابْنِ الزُّبَيْرِ - وَهُوَ صَاحِبُ - قَدْ «أَنْذَرَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنَّ مَكَّةَ تُغْزَى بَعْدَهُ» .

L42902 As for the execution of a Qurayshī through torture: it is due to what was transmitted to us through the chain of Muslim—Muhammad ibn al-Muthannā reported to us from Ibn Abī ʿAdiyy from ʿUthmān ibn Ghiyāth

وَأَمَّا قَتْلُ الْقُرَشِيِّ صَبْرًا: فَلِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا مُحَمَّدُ بْنُ الْمُثَنَّى نا ابْنُ أَبِي عَدِيٍّ عَنْ عُثْمَانَ بْنِ غِيَاثٍ عَنْ أَبِي عُثْمَانَ النَّهْدِيِّ عَنْ أَبِي مُوسَى الْأَشْعَرِيِّ قَالَ «بَيْنَمَا

from Abī ʻUthmān al-Nahdī from Abī Mūsā al-Ashʻarī, who said: "While the Messenger of Allah—may the blessings and peace of Allah be upon him and his family—was in a walled garden of Medina, a man sought permission to enter." He then mentioned the hadith.

L42903 In it [the narration]: "Then another man requested opening, so he said: 'Open,' and gave him glad tidings of Paradise upon a trial that will occur. He said: 'I went, and there was Uthman ibn Affan. I opened for him and gave him glad tidings of Paradise. I conveyed to him what he [the Prophet] had said, so he responded: "O Allah, grant patience – and Allah is the One to be sought for help¡'"

L42904–42906 Abdullah ibn Rabee' narrated to us from Umar ibn Abd al-Malik al-Khawlani, from Muhammad ibn Bakr, from Abu Dawud al-Sijistani, from Musaddad, from Yazid ibn Zurai' and Yahya ibn Sa'id al-Qattan—the latter's wording—both narrated collectively: from Sa'id ibn Abi Arubah, from Qatadah, from Anas ibn Malik, who narrated to them that the Prophet—peace and blessings be upon him and his family— He ascended Mount Uhud, followed by Abu Bakr, Umar, and Uthman. The mountain trembled beneath them, so the Prophet of Allah—peace and blessings of Allah be upon him and his family—struck it with his foot, saying: "Be still, Uhud! For upon you are a Prophet, the Truthful One, and two martyrs." Abu Muhammad—may Allah have mercy on him—said: "The Messenger of Allah—peace and blessings of Allah be upon him and his family—warned that the Kaaba will be destroyed by the one with two spindly legs from Ethiopia—without doubt—and this will occur only after its invasion. He explicitly stated that it would be invaded after him and declared that Uthman would suffer a tribulation as is evident—this foretold his impending martyrdom, and he was a Qurayshi."

L42907 And it is established with certainty: that the narration of Al-Sha'bi from Ibn Mutiʻ and from Al-Harith ibn Barṣāʾ—even if it were authentic, which it is not—would mean that he (peace be upon him) would never raid that place after that day of his until the Day of Resurrection, and that he (peace be upon him) would not execute a Qurayshi in captivity after that day until the Day of Resurrection. And so it was. Therefore, since this is the meaning

رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِي حَائِطٍ مِنْ حَوَائِطِ الْمَدِينَةِ اسْتَفْتَحَ رَجُلٌ» فَذَكَرَ الْحَدِيثَ.

وَفِيهِ «ثُمَّ اسْتَفْتَحَ رَجُلٌ آخَرُ فَقَالَ: افْتَحْ وَبَشِّرْهُ بِالْجَنَّةِ عَلَى بَلْوَى تَكُونُ، قَالَ: فَذَهَبْت فَإِذَا عُثْمَانُ بْنُ عَفَّانَ قَالَ: فَفَتَحْتُ لَهُ وَبَشَّرْتُهُ بِالْجَنَّةِ، فَقُلْتُ الَّذِي قَالَ، فَقَالَ: اللَّهُمَّ صَبْرًا وَاَللَّهُ الْمُسْتَعَانُ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا عُمَرُ بْنُ عَبْدِ الْمَلِكِ الْخَوْلَانِيّ نا مُحَمَّدُ بْنُ بَكْرٍ نا أَبُو دَاوُد السِّجِسْتَانِيُّ نا مُسَدَّدٌ نا يَزِيدُ بْنُ زُرَيْعٍ، وَيَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ - وَاللَّفْظُ لَهُ - قَالَا جَمِيعًا: نا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ عَنْ أَنَسِ بْنِ مَالِكٍ حَدَّثَهُمْ «أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - صَعِدَ أُحُدًا فَتَبِعَهُ أَبُو بَكْرٍ، وَعُمَرُ، وَعُثْمَانُ، فَرَجَفَ بِهِمْ، فَضَرَبَهُ نَبِيُّ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِرِجْلِهِ: اُثْبُتْ أُحُدُ، فَإِنَّمَا عَلَيْكَ نَبِيٌّ، وَصِدِّيقٌ، وَشَهِيدَانِ؟» قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَنْذَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنَّ الْكَعْبَةَ يَهْدِمُهَا ذُو السُّوَيْقَتَيْنِ مِنْ الْحَبَشَةِ وَهَذَا لَا يَكُونُ إلَّا بَعْدَ غَزْوِهَا - بِلَا شَكٍّ - وَقَدْ صَرَّحَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَنَّهَا تُغْزَى بَعْدَهُ، وَصَرَّحَ بِأَنَّ عُثْمَانَ تُصِيبُهُ بَلْوَى كَمَا تَرَى - فَهَذَا أَنْذَرَ بِأَنَّهُ سَيُقْتَلُ، وَهُوَ قُرَشِيٌّ.

وَصَحَّ يَقِينًا: أَنَّ حَدِيثَ الشَّعْبِيِّ عَنْ ابْنِ مُطِيعٍ، وَعَنْ الْحَارِثِ بْنِ بَرْصَاءَ، لَوْ صَحَّ - وَهُوَ لَا يَصِحُّ - لَكَانَ مَعْنَاهُ: أَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يَغْزُوهَا بَعْدَ يَوْمِهِ ذَلِكَ أَبَدًا إلَى يَوْمِ الْقِيَامَةِ، وَأَنَّهُ - عَلَيْهِ السَّلَامُ - لَا يُقْتَلُ قُرَشِيًّا صَبْرًا بَعْدَ ذَلِكَ الْيَوْمِ إلَى يَوْمِ الْقِيَامَةِ،

of that narration if it were authentic—without doubt—it is confirmed that a Qurayshi, like a non-Qurashi, is to be executed if the death penalty is warranted for him, just as others are executed, and that the Hudud are enforced upon him, just as they are enforced upon a non-Qurashi, with no distinction—even though this is a matter of certain consensus, beyond doubt. And success is from Allah, the Most High.

Ruling on reviling a prophet, a messenger, Allah, the Most High, or an angel.

2312 - Issue: Whoever insults the Messenger of Allah—peace and blessings of Allah be upon him and his family—or Allah the Exalted, or a prophet from among the prophets, or an angel from among the angels, or a human from among the righteous: does he thereby become an apostate—if he is a Muslim—or not? And does this act nullify the covenant—if he is a dhimmi—or not? Abu Muhammad said: People have differed regarding one who insults the Prophet—peace and blessings of Allah be upon him and his family—or a prophet from among the prophets, among those who claim to be Muslim. A group said: This is not disbelief.

A group said: This is disbelief, while others abstained from taking a position on the matter. As for abstention, it is the opinion of our school's scholars.

As for the one who said, "It is not disbelief" - we have indeed received reports through a chain whose place is absent from our narration, except... If any man is brought to me who accuses David—peace be upon him—of adultery, I will flog him two ḥadd punishments [contrary to the standard ruling].

As for those who declared it disbelief and thereby permitted his execution—Abdullah ibn Rabi' reported: Muhammad ibn Mu'awiyah narrated to us; Ahmad ibn Shu'ayb narrated to us; Muhammad ibn al-'Ala' narrated to us; Abu Bakr narrated to us; Abu Mu'awiyah narrated to us from al-A'mash, from 'Amr ibn Murrah, from Salim ibn Abi al-Ja'd, from Abu Barzah, who said: Abu Bakr became furious with a man. I asked, "Who is he, O Caliph of the Messenger of Allah?" He replied, "Why do you ask?" I said, "So I might

وَهَكَذَا كَانَ، فَإِذْ هَذَا مَعْنَى ذَلِكَ الْحَدِيثِ لَوْ صَحَّ - بِلَا شَكٍّ - فَقَدْ ثَبَتَ أَنَّ الْقُرَشِيَّ كَغَيْرِ الْقُرَشِيِّ فِي أَنْ يُقْتَلَ إذَا وَجَبَ عَلَيْهِ الْقَتْلُ صَبْرًا، كَمَا يُقْتَلُ غَيْرُهُ، وَأَنَّ الْحُدُودَ تُقَامُ عَلَيْهِ، كَمَا تُقَامُ عَلَى غَيْرِ قُرَشِيٍّ، وَلَا فَرْقَ، مَعَ أَنَّ هَذَا أَمْرٌ مُجْمَعٌ عَلَيْهِ بِيَقِينٍ لَا شَكَّ فِيهِ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

[مَسْأَلَة سَبَّ نبيا أَوْ رسولا أَوْ اللَّهَ تَعَالَى أَوْ مَلَكًا]

٢٣١٢ - مَسْأَلَةٌ: مَنْ سَبَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ اللَّهَ تَعَالَى، أَوْ نَبِيًّا مِنْ الْأَنْبِيَاءِ، أَوْ مَلَكًا مِنْ الْمَلَائِكَةِ، أَوْ إنْسَانًا مِنْ الصَّالِحِينَ، هَلْ يَكُونُ بِذَلِكَ مُرْتَدًّا - إنْ كَانَ مُسْلِمًا - أَمْ لَا؟ وَهَلْ يَكُونُ بِذَلِكَ نَاقِضًا لِلْعَهْدِ - إنْ كَانَ ذِمِّيًّا - أَمْ لَا؟ قَالَ أَبُو مُحَمَّدٍ: اخْتَلَفَ النَّاسُ فِيمَنْ سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ نَبِيًّا مِنْ الْأَنْبِيَاءِ، مِمَّنْ يَقُولُ: إنَّهُ مُسْلِمٌ: فَقَالَتْ طَائِفَةٌ: لَيْسَ ذَلِكَ كُفْرًا.

وَقَالَتْ طَائِفَةٌ: هُوَ كُفْرٌ، وَتَوَقَّفَ آخَرُونَ فِي ذَلِكَ: فَأَمَّا التَّوَقُّفُ فَهُوَ قَوْلُ أَصْحَابِنَا.

وَأَمَّا مَنْ قَالَ: إنَّهُ لَيْسَ كُفْرًا - فَإِنَّنَا رُوِّينَا بِإِسْنَادٍ غَابَ عَنَّا مَكَانُهُ مِنْ رِوَايَتِنَا، إلَّا أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ قَالَ: لَا أُوتَى بِرَجُلٍ قَذَفَ دَاوُد - عَلَيْهِ السَّلَامُ - بِالزِّنَا إلَّا جَلَدْته حَدَّيْنِ.

وَأَمَّا مَنْ قَالَ: إنَّهُ كُفْرٌ فَأَبَاحَ دَمَهُ بِذَلِكَ - فَإِنَّ عَبْدَ اللَّهِ بْنَ رَبِيعٍ قَالَ: نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْعَلَاءِ نا أَبُو بَكْرٍ نا أَبُو مُعَاوِيَةَ عَنْ الْأَعْمَشِ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ عَنْ أَبِي بَرْزَةَ قَالَ: تَغَيَّظَ أَبُو بَكْرٍ عَلَى رَجُلٍ، فَقُلْت: مَنْ هُوَ يَا خَلِيفَةَ رَسُولِ اللَّهِ؟ قَالَ: لِمَ؟ قُلْت لَهُ: لِأَضْرِبَ عُنُقَهُ، إنْ أَمَرْتَنِي

strike his neck if you command me to do so." He asked, "Would you truly have done it?" I answered, "Yes." Then I mentioned words indicating that I intended to lessen the gravity of my words that I spoke in his anger. He then said, "That [authority] was not permissible for anyone after the Messenger of Allah—peace and blessings be upon him."

بِذَلِكَ؟ قَالَ: أَوَ كُنْت فَاعِلًا، قَالَ: قُلْت: نَعَمْ، قَالَ: فَذَكَرْت كَلِمَةً مَعْنَاهَا لَأَذْهَبَ عِظَمُ كَلِمَتِي الَّتِي قُلْت غَضَبَهُ، ثُمَّ قَالَ: مَا كَانَتْ لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42915 Hammam narrated to us, from Abbas ibn Asbagh, from Muhammad ibn Abdul Malik ibn Ayman, from Muhammad ibn Ismail al-Tirmidhi, from al-Humaidi, from Ya'la ibn Ubayd, from al-A'mash, from Amr ibn Murrah, from Abu al-Bakhtari, from Abu Barzah, who said: I passed by Abu Bakr al-Siddiq while he was enraged at one of his companions. I said: "O Caliph of the Messenger of Allah, who is this you are angry with?" He said: "Why do you ask about him?" I replied: "To behead him." He said: "By Allah, I will remove his anger, but I did not say that." Then he said: "It is not for anyone after the Messenger of Allah (peace be upon him)."

حَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا مُحَمَّدُ بْنُ إِسْمَاعِيلَ التِّرْمِذِيُّ نا الْحُمَيْدِيُّ نا يَعْلَى بْنُ عُبَيْدٍ نا الْأَعْمَشُ عَنْ عَمْرِو بْنِ مُرَّةَ عَنْ أَبِي الْبَخْتَرِيِّ عَنْ أَبِي بَرْزَةَ، قَالَ: مَرَرْت عَلَى أَبِي بَكْرٍ الصِّدِّيقِ وَهُوَ مُتَغَيِّظٌ عَلَى رَجُلٍ مِنْ أَصْحَابِهِ، فَقُلْت: يَا خَلِيفَةَ رَسُولِ اللَّهِ مَنْ هَذَا الَّذِي تَغِيظُ عَلَيْهِ؟ قَالَ: وَلِمَ تَسْأَلْ عَنْهُ؟ قُلْت لِأَضْرِبَ عُنُقَهُ قَالَ: فَوَاَللَّهِ لَأَذْهَبَ غَضَبُهُ مَا قُلْت، ثُمَّ قَالَ: مَا كَانَ لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42916 Abdullah ibn Rabee' narrated: Muhammad ibn Mu'awiyah narrated: Ahmad ibn Shu'ayb narrated: Muhammad ibn al-Muthanna narrated from Abu Dawud al-Tayalisi, who narrated from Shu'bah, from Amr ibn Murrah, who said: I heard Abu Nasr—who is Humayd ibn Hilal—narrating from Abu Barzah, who said: I came upon Abu Bakr al-Siddiq when he had spoken harshly to a man, and the man retorted. I said: "Shall I strike his neck?" He rebuked me and said: "This authority belongs to none after the Messenger of Allah—may Allah bless him and grant him peace."

نا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا مُحَمَّدُ بْنُ الْمُثَنَّى عَنْ أَبِي دَاوُد الطَّيَالِسِيِّ نا شُعْبَةُ عَنْ عَمْرِو بْنِ مُرَّةَ قَالَ: سَمِعْت أَبَا نَصْرٍ - هُوَ حُمَيْدُ بْنُ هِلَالٍ - يُحَدِّثُ عَنْ أَبِي بَرْزَةَ، قَالَ: أَتَيْت عَلَى أَبِي بَكْرٍ الصِّدِّيقِ وَقَدْ أَغْلَظَ لِرَجُلٍ فَرَدَّ عَلَيْهِ، فَقُلْت: أَلَا أَضْرِبُ عُنُقَهُ؟ فَانْتَهَرَنِي وَقَالَ: إنَّهَا لَيْسَتْ لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -.

L42917–42919 We were narrated by Abdullah ibn Rabee', on the authority of Muhammad ibn Mu'awiyah, on the authority of Ahmad ibn Shu'ayb who said: Abu Dawud narrated to us, on the authority of Affan, on the authority of Yazid ibn Zurai', on the authority of Yunus ibn 'Ubayd, on the authority of Humaid ibn Hilal, on the authority of Abdullah ibn Mutarrif ibn al-Shikhkhir, on the authority of Abu Barzah al-Aslami, who said: We were with Abu Bakr when he became enraged with a Muslim man, and his anger intensified greatly. When I saw this, I said: "O Caliph of the Messenger of Allah, shall I strike his neck?" When I mentioned killing, he entirely avoided that topic and

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ مُعَاوِيَةَ نا أَحْمَدُ بْنُ شُعَيْبٍ أَنَا أَبُو دَاوُد نا عَفَّانُ نا يَزِيدُ بْنُ زُرَيْعٍ نا يُونُسُ بْنُ عُبَيْدٍ عَنْ حُمَيْدِ بْنِ هِلَالٍ عَنْ عَبْدِ اللَّهِ بْنِ مُطَرِّفِ بْنِ الشِّخِّيرِ عَنْ أَبِي بَرْزَةَ الْأَسْلَمِيِّ قَالَ: كُنَّا عِنْدَ أَبِي بَكْرٍ فَغَضِبَ عَلَى رَجُلٍ مِنْ الْمُسْلِمِينَ، فَاشْتَدَّ غَضَبُهُ جِدًّا، فَلَمَّا رَأَيْت ذَلِكَ قُلْت: يَا خَلِيفَةَ رَسُولِ اللَّهِ أَضْرِبُ عُنُقَهُ؟ فَلَمَّا ذَكَرْت الْقَتْلَ أَضْرَبَ عَنْ ذَلِكَ الْحَدِيثِ أَجْمَعَ إلَى غَيْرِ ذَلِكَ مِنْ النَّحْوِ، قَالَ: فَلَمَّا تَفَرَّقْنَا أَرْسَلَ

إِلَيَّ فَقَالَ: يَا أَبَا بَرْزَةَ مَا قُلْت؟ قَالَ: وَنَسِيت الَّذِي قُلْت؟ فَقُلْت لَهُ: ذَكِّرْنِيه؟ فَقَالَ: أَمَّا تَذْكُرُ مَا قُلْت؟ قُلْت: لَا، وَاَللَّهِ، قَالَ: رَأَيْت حِينَ رَأَيْتنِي غَضِبْت عَلَى الرَّجُلِ، فَقُلْت: أَضْرِبُ عُنُقَهُ يَا خَلِيفَةَ رَسُولِ اللَّهِ، أَمَا تَذْكُرُ ذَلِكَ، أَوَ كُنْت فَاعِلًا ذَلِكَ؟ قُلْت: نَعَمْ، وَاَللَّهِ وَلَئِنْ أَمَرْتنِي فَعَلْت، قَالَ: وَاَللَّهِ مَا هِيَ لِأَحَدٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قَالَ أَبُو مُحَمَّدٍ: فَإِنْ قِيلَ - هَذَا خَبَرٌ رَوَاهُ عَمْرُو بْنُ مُرَّةَ - مَرَّةً عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، وَمَرَّةً عَنْ أَبِي الْبَخْتَرِيِّ، وَكِلَاهُمَا عَنْ أَبِي بَرْزَةَ؟ قُلْنَا: فَكَانَ مَاذَا؟ كُلُّهُمْ ثِقَةٌ، سَمِعَهُ مِنْ كُلِّ وَاحِدٍ فَحَدَّثَ بِهِ كَذَلِكَ، وَعَمْرُو بْنُ مُرَّةَ مِنْ الْجَلَالَةِ وَالثِّقَةِ بِحَيْثُ لَا يَغْمِزُهُ بِمِثْلِ هَذَا إلَّا جَاهِلٌ.

turned to another similar matter. He said: After we dispersed, he sent for me and asked: “O Abu Barzah, what did you say?” I said: “Have I forgotten what I said?” Then I said to him: “Remind me of it.” He replied: “Do you not remember what you said?” I answered: “No, by Allah.” He said: “You saw what you saw of me when you observed me.” I became angry at the man and said: “Shall I strike his neck, O Caliph of the Messenger of Allah? Do you not remember that, or were you the one who did that?” He replied: “Yes, by Allah, and if you were to command me, I would do it.” He said: “By Allah, that is not permissible for anyone after the Messenger of Allah (may Allah bless him and his family and grant him peace).” Abu Muhammad said: If it is said - this is a report narrated by Amr ibn Murrah, once from Salim ibn Abi al-Ja’d and once from Abu al-Buhturi, both from Abu Barzah - we say: So what is the issue? All of them are trustworthy. Amr heard it from each one and narrated it accordingly. Amr ibn Murrah is of such eminence and reliability that none would find fault with him in this except an ignorant person.

فَإِنْ قِيلَ: إنَّ مَعْنَى قَوْلِ أَبِي بَكْرٍ هَذَا إنَّمَا هُوَ مَا كَانَ لِأَحَدٍ أَنْ يُطَاعَ فِي سَفْكِ دَمٍ بَعْدَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -؟ قُلْنَا نَعَمْ، وَأَرَادَ أَيْضًا مَعْنًى آخَرَ، كَمَا رُوِّينَا مُبَيَّنًا بِلَا إشْكَالٍ: حَدَّثَنَا مُحَمَّدُ بْنُ سَعِيدِ بْنِ نُبَاتٍ نا أَحْمَدُ بْنُ عَوْنِ اللَّهِ نا قَاسِمُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ السَّلَامِ الْخُشَنِيُّ نا مُحَمَّدُ بْنُ بَشَّارٍ أَنَا مُعَاذُ بْنُ مُعَاذٍ الْعَنْبَرِيُّ نا شُعْبَةُ عَنْ ثَوْبَةَ الْعَنْبَرِيِّ قَالَ: سَمِعْت أَبَا السَّوَّارِ الْقَاضِيَ عَبْدَ اللَّهِ بْنَ قُدَامَةَ يُحَدِّثُ عَنْ أَبِي بَرْزَةَ قَالَ: أَغْلَظَ رَجُلٌ لِأَبِي بَكْرٍ الصِّدِّيقِ، قُلْت: أَلَا أَقْتُلُهُ؟ فَقَالَ أَبُو بَكْرٍ: لَيْسَ هَذَا إلَّا لِمَنْ شَتَمَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَبَيَّنَ أَبُو بَكْرٍ الصِّدِّيقُ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ لَا يُقْتَلُ مَنْ شَتَمَهُ، لَكِنْ يُقْتَلُ مَنْ شَتَمَ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -.

L42920 If it is said: Does the meaning of Abu Bakr’s statement imply that none may be obeyed in shedding blood after the Messenger of Allah—peace and blessings be upon him and his family? We say: Yes, and he also intended another meaning, as has been clearly transmitted without ambiguity: Muhammad ibn Sa‘id ibn Nubat reported to us, Ahmad ibn ‘Awn Allah reported to us, Qasim ibn Asbagh reported to us, Muhammad ibn ‘Abd al-Salam al-Khushani reported to us, Muhammad ibn Bashshar reported to us, Mu‘adh ibn Mu‘adh al-‘Anbari reported to us, Shu‘bah reported from Thawbah al-‘Anbari who said: I heard Abu al-Sawwar the judge ‘Abd Allah ibn Qudamah narrate from Abu Barzah, who said: A man spoke harshly to Abu Bakr al-Siddiq. I said: “Shall I kill him?” Abu Bakr replied: “This is only for one who insults the Prophet—peace and blessings be upon him and his family.” Thus Abu Bakr al-Siddiq—may Allah be pleased with him—made clear that one who insults him is not to be killed, but one who insults the Prophet—peace and blessings be upon him and his family—is to be killed.

L42921 We affirm that the blood of Muslims is inviolable except by what Allah the Exalted has permitted. He has never permitted it except in cases of apostasy

after embracing faith, adultery by a married person (muḥṣan), retaliation (qiṣāṣ) for killing a believing soul, brigandage and highway robbery, resisting oppression, obstructing a rightful obligation, or for one who has been flogged three times for drinking wine and then drinks it a fourth time—only then [is capital punishment applied].

وَقَدْ عَلِمْنَا أَنَّ دَمَ الْمُسْلِمِينَ حَرَامٌ إِلَّا بِمَا أَبَاحَهُ اللَّهُ تَعَالَى بِهِ، وَلَمْ يُبِحْهُ اللَّهُ تَعَالَى قَطُّ، إِلَّا فِي الْكُفْرِ بَعْدَ الْإِيمَانِ، أَوْ زِنَا الْمُحْصَنِ، أَوْ قَوَدٍ بِنَفْسٍ مُؤْمِنَةٍ، أَوْ فِي الْمُحَارَبَةِ، وَقَطْعِ الطَّرِيقِ، أَوْ فِي الْمُدَافَعَةِ عَنْ الظُّلْمَةِ، أَوْ فِي الْمُمَانَعَةِ مِنْ حَقٍّ، أَوْ فِيمَنْ حُدَّ فِي الْخَمْرِ ثَلَاثَ مَرَّاتٍ، ثُمَّ شَرِبَهَا الرَّابِعَةَ فَقَطْ.

L42922 We know with certainty that whoever insults the Prophet—peace and blessings of Allah be upon him and his family—did not commit adultery, drink wine, intend to wrong a Muslim, or commit highway robbery. The only conclusion is that he is, in the view of Abu Bakr, an unbeliever.

وَقَدْ عَلِمْنَا - أَنَّ مَنْ سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَبِيَقِينٍ نَدْرِي أَنَّهُ لَمْ يَزْنِ، وَلَا شَرِبَ خَمْرًا، وَلَا قَصَدَ ظُلْمَ مُسْلِمٍ، وَلَا قَطَعَ طَرِيقًا - فَلَمْ يَبْقَ إِلَّا أَنَّهُ عِنْدَ أَبِي بَكْرٍ كَافِرٌ.

L42923–42925 Narrated by Abdullah ibn Rabiʿ, from Ibn Mufarrij, from Qasim ibn Asbagh, from Ibn Waḍḍāḥ, from Sahnun, from Ibn Wahb, from Khalid, from Humayd, from Umar ibn Abdullah, from Abd al-Hamid ibn Abd al-Rahman ibn Zayd ibn al-Khattab. He was governing Kufa on behalf of Umar ibn Abd al-Aziz. He wrote to Umar ibn Abd al-Aziz: "I found a man in Kufa insulting you, and conclusive evidence has been established against him. I resolved to kill him, or cut off his hands, or cut out his tongue, or flog him. Then I reconsidered and decided to refer the matter to you." Umar ibn Abd al-Aziz wrote back to him: "Peace be upon you. As for what follows: By the One in whose hand is my soul, if you had killed him, I would have killed you for it; if you had cut him, I would have cut you for it; and if you had flogged him, I would have exacted retaliation from you. When this letter of mine reaches you, take him to the public refuse ground and insult him as he insulted me, or pardon him, for that is more beloved to me. Indeed, it is not permissible to kill a Muslim man who insults anyone among the people except a man who insulted the Messenger of Allah—peace be upon him."

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا ابْنُ مُفَرِّجٍ نا قَاسِمُ بْنُ أَصْبَغَ نا ابْنُ وَضَّاحٍ نا سَحْنُونٌ نا ابْنُ وَهْبٍ عَنْ خَالِدٍ عَنْ حُمَيْدٍ عَنْ عُمَرَ بْنِ عَبْدِ اللَّهِ عَنْ عَبْدِ الْحَمِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ زَيْدِ بْنِ الْخَطَّابِ أَنَّهُ كَانَ عَلَى الْكُوفَةِ لِعُمَرَ بْنِ عَبْدِ الْعَزِيزِ، فَكَتَبَ إِلَى عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: إِنِّي وَجَدْت رَجُلًا بِالْكُوفَةِ يَسُبُّك، وَقَامَتْ عَلَيْهِ الْبَيِّنَةُ، فَهَمَمْت بِقَتْلِهِ، أَوْ قَطْعِ يَدَيْهِ، أَوْ قَطْعِ لِسَانِهِ، أَوْ جَلْدِهِ ثُمَّ بَدَا لِي أَنْ أُرَاجِعَك فِيهِ - فَكَتَبَ إلَيْهِ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ: سَلَامٌ عَلَيْك، أَمَّا بَعْدُ: وَالَّذِي نَفْسِي بِيَدِهِ لَوْ قَتَلْته لَقَتَلْتُك بِهِ، وَلَوْ قَطَعْته لَقَطَعْتُك بِهِ، وَلَوْ جَلَدْته لَأَقَدْته مِنْك، فَإِذَا جَاءَك كِتَابِي هَذَا، فَاخْرُجْ بِهِ إلَى الْكُنَاسَةِ فَسُبَّهُ كَالَّذِي سَبَّنِي، أَوْ اُعْفُ عَنْهُ، فَإِنَّ ذَلِكَ أَحَبُّ إلَيَّ، فَإِنَّهُ لَا يَحِلُّ قَتْلُ امْرِئٍ مُسْلِمٍ يَسُبُّ أَحَدًا مِنْ النَّاسِ إلَّا رَجُلًا سَبَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - "

L42926 Abu Hanifah, Malik, Al-Shafi'i, Ahmad ibn Hanbal, Ishaq ibn Rahwayh, the rest of the scholars of hadith, and their followers maintained that he thereby becomes an apostate and disbeliever. Abu Muhammad said: When they differed as we mentioned, it became obligatory for us to examine the proofs

وَذَهَبَ أَبُو حَنِيفَةَ، وَمَالِكٌ، وَالشَّافِعِيُّ، وَأَحْمَدُ بْنُ حَنْبَلٍ، وَإِسْحَاقُ بْنُ رَاهْوَيْهِ، وَسَائِرُ أَصْحَابِ الْحَدِيثِ، وَأَصْحَابُهُمْ، إلَى أَنَّهُ بِذَلِكَ كَافِرٌ مُرْتَدٌّ؟ قَالَ أَبُو مُحَمَّدٍ: فَلَمَّا اخْتَلَفُوا كَمَا

each group cited to support their position, so we might discern the truth in this matter and follow it—with Allah the Most High's assistance and empowerment. We found that those who claimed one does not become an apostate for this act cited as evidence the narration transmitted through Muslim's chain: Zuhayr ibn Harb narrated to us, Jarir ibn Abd al-Hamid narrated from Mansur ibn al-Mu'tamir from Abu Wa'il from Abdullah ibn Mas'ud regarding the day of Khaybar: "Allah's Messenger (peace and blessings of Allah be upon him and his family) favored certain individuals in the distribution. A man exclaimed, 'By Allah, this distribution was not intended to seek Allah the Most High's pleasure!' I went to Allah's Messenger (peace and blessings of Allah be upon him and his family) and informed him of the man's words. The face of Allah's Messenger (peace and blessings of Allah be upon him and his family) altered until it resembled saffron. Then he said, 'Who will establish justice if Allah and His Messenger do not? May Allah grant Moses mercy—he endured worse harm than this and remained patient.'"

ذَكَرْنَا وَجَبَ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ كُلُّ طَائِفَةٍ لِقَوْلِهَا لِنَعْلَمَ الْحَقَّ مِنْ ذَلِكَ فَنَتَّبِعَهُ - بِعَوْنِ اللَّهِ تَعَالَى وَتَأْيِيدِهِ. فَوَجَدْنَا مَنْ قَالَ: لَا يَكُونُ بِذَلِكَ كَافِرًا يَحْتَجُّونَ بِمَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نا زُهَيْرُ بْنُ حَرْبٍ نا جَرِيرُ بْنُ عَبْدِ الْحَمِيدِ عَنْ مَنْصُورِ بْنِ الْمُعْتَمِرِ عَنْ أَبِي وَائِلٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ لَمَّا كَانَ يَوْمُ خَيْبَرَ «آثَرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - نَاسًا فِي الْقِسْمَةِ فَقَالَ رَجُلٌ: وَاَللَّهِ إنَّ هَذِهِ لَقِسْمَةٌ مَا أُرِيدَ بِهَا وَجْهُ اللَّهِ تَعَالَى فَأَتَيْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَأَخْبَرْتُهُ بِمَا قَالَ، فَتَغَيَّرَ وَجْهُ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - حَتَّى كَانَ كَالصِّرْفِ، ثُمَّ قَالَ: مَنْ يَعْدِلُ إذَا لَمْ يَعْدِلْ اللَّهُ وَرَسُولُهُ؟ يَرْحَمُ اللَّهُ مُوسَى لَقَدْ أُوذِيَ بِأَكْثَرَ مِنْ هَذَا فَصَبَرَ» .

L42927 And according to what has been transmitted to us via the chain transmitted by Al-Bukhari: Amr ibn Hafs ibn Ghiyath narrated to us from his father, from Al-A'mash, Sufyan narrated to us, who said: "Abdullah ibn Mas'ud said: 'It is as though I see the Prophet—peace be upon him and his family—depicting a prophet among the prophets whose people struck him until they made him bleed, while he was wiping the blood from his face and saying: "O Lord, forgive my people, for they do not know."'"

وَبِمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا عَمْرُو بْنُ حَفْصِ بْنِ غِيَاثٍ نا أَبِي عَنْ الْأَعْمَشِ نا سُفْيَانُ قَالَ: «قَالَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ كَأَنِّي أَنْظُرُ إلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَحْكِي نَبِيًّا مِنْ الْأَنْبِيَاءِ ضَرَبَهُ قَوْمُهُ فَأَدْمَوْهُ، وَهُوَ يَمْسَحُ الدَّمَ عَنْ وَجْهِهِ وَيَقُولُ: رَبِّ اغْفِرْ لِقَوْمِي فَإِنَّهُمْ لَا يَعْلَمُونَ» .

L42928–42930 Abū Muḥammad said: None of this provides evidence for their position. As for the one who said concerning the division made by the Messenger of Allāh—peace be upon him and his progeny—"This is a division in which there is no fairness, nor was the Face of Allāh, the Exalted, intended by it," we have already stated that this occurred during the day of Khaybar and was prior to... The fact that Allah the Exalted commands the killing of apostates, and this report does not state that the one who utters this statement is not a disbeliever due to that utterance. Since this is not mentioned in the report, they have no basis to rely upon it. As for the narration of the prophet whose people struck him and made him bleed, the same applies here as well. The meaning of that prophet's supplication (peace be upon him) for

قَالَ أَبُو مُحَمَّدٍ: وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِيهِ: أَمَّا الْقَائِلُ فِي قِسْمَةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - هَذِهِ قِسْمَةٌ مَا عَدَلَ فِيهَا، وَلَا أُرِيدَ بِهَا وَجْهُ اللَّهِ تَعَالَى، فَقَدْ قُلْنَا: إنَّ هَذَا كَانَ يَوْمَ خَيْبَرَ، وَإِنَّ هَذَا كَانَ قَبْلَ أَنْ يَأْمُرَ اللَّهُ تَعَالَى بِقَتْلِ الْمُرْتَدِّينَ، وَلَيْسَ فِي هَذَا الْخَبَرِ أَنَّ قَائِلَ هَذَا الْقَوْلِ لَيْسَ كَافِرًا بِقَوْلِ ذَلِكَ، فَإِذْ لَيْسَ ذَلِكَ فِي الْخَبَرِ فَلَا مُتَعَلَّقَ لَهُمْ بِهِ. وَأَمَّا حَدِيثُ النَّبِيِّ الَّذِي بِهِ ضَرَبَهُ قَوْمُهُ فَأَدْمَوْهُ، فَكَذَلِكَ أَيْضًا، وَمَعْنَى دُعَاءِ ذَلِكَ النَّبِيِّ - عَلَيْهِ السَّلَامُ - لَهُمْ بِالْمَغْفِرَةِ: إنَّمَا هُوَ بِأَنْ يُؤْمِنُوا فَيَغْفِرَ اللَّهُ تَعَالَى لَهُمْ،

وَيُبَيِّنَ أَنَّهُمْ كَانُوا كُفَّارًا بِهِ قَوْلُهُ " فَإِنَّهُمْ لَا يَعْلَمُونَ " فَصَحَّ أَنَّهُمْ كَانُوا لَا يَعْلَمُونَ بِنُبُوَّتِهِ. فَصَحَّ أَنَّ كِلَا الْخَبَرَيْنِ لَا حُجَّةَ لَهُمْ فِيهِ.

their forgiveness is that they should believe, so that Allah the Exalted would forgive them. His statement *"for they do not know"* clarifies that they were disbelievers in him. Thus, it is confirmed that they were unaware of his prophethood. Therefore, it is established that neither of the two reports contains proof for their argument.

وَأَمَّا سَبُّ اللَّهِ تَعَالَى - فَمَا عَلَى ظَهْرِ الْأَرْضِ مُسْلِمٌ يُخَالِفُ فِي أَنَّهُ كُفْرٌ مُجَرَّدٌ، إلَّا أَنَّ الْجَهْمِيَّةَ، وَالْأَشْعَرِيَّةَ - وَهُمَا طَائِفَتَانِ لَا يُعْتَدُّ بِهِمَا - يُصَرِّحُونَ بِأَنَّ سَبَّ اللَّهِ تَعَالَى، وَإِعْلَانَ الْكُفْرِ، لَيْسَ كُفْرًا، قَالَ بَعْضُهُمْ: وَلَكِنَّهُ دَلِيلٌ عَلَى أَنَّهُ يَعْتَقِدُ الْكُفْرَ، لَا أَنَّهُ كَافِرٌ بِيَقِينٍ بِسَبِّهِ اللَّهَ تَعَالَى - وَأَصْلُهُمْ فِي هَذَا أَصْلُ سُوءٍ خَارِجٌ عَنْ إجْمَاعِ أَهْلِ الْإِسْلَامِ - وَهُوَ أَنَّهُمْ يَقُولُونَ: الْإِيمَانُ هُوَ التَّصْدِيقُ بِالْقَلْبِ فَقَطْ - وَإِنْ أَعْلَنَ بِالْكُفْرِ - وَعِبَادَةُ الْأَوْثَانِ بِغَيْرِ تَقِيَّةٍ وَلَا حِكَايَةٍ، لَكِنْ مُخْتَارًا فِي ذَلِكَ الْإِسْلَامَ. قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذَا كُفْرٌ مُجَرَّدٌ، لِأَنَّهُ خِلَافٌ لِإِجْمَاعِ الْأُمَّةِ، وَلِحُكْمِ اللَّهِ تَعَالَى وَرَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَجَمِيعِ الصَّحَابَةِ وَمَنْ بَعْدَهُمْ، لِأَنَّهُ لَا يَخْتَلِفُ أَحَدٌ - لَا كَافِرٌ وَلَا مُؤْمِنٌ - فِي أَنَّ هَذَا الْقُرْآنَ هُوَ الَّذِي جَاءَ بِهِ مُحَمَّدٌ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَذَكَرَ أَنَّهُ وَحْيٌ مِنْ اللَّهِ تَعَالَى، وَإِنْ كَانَ قَوْمٌ مِنْ الرَّوَافِضِ ادَّعُوا أَنَّهُ نُقِصَ مِنْهُ، وَحُرِّفَ، فَلَمْ يَخْتَلِفُوا أَنَّ جُمْلَتَهُ - كَمَا ذَكَرْنَا.

L42931 As for cursing God the Exalted—there is no Muslim upon the earth's surface who disputes that this constitutes pure disbelief, except the Jahmiyyah and Ash'ariyyah—two factions unworthy of consideration—who explicitly declare that cursing God the Exalted and openly proclaiming disbelief do not amount to disbelief. Some of them said: "Rather, it serves as evidence that he holds disbelief in his heart, not that he is a confirmed disbeliever merely by cursing God the Exalted." Their foundation in this matter stems from an evil principle diverging from the consensus of the Muslim community—namely their claim that faith consists solely of heartfelt conviction alone, even if one publicly professes disbelief and worships idols without practicing dissimulation or imitation, but rather chooses that over Islam. Abu Muhammad—may God have mercy on him—said: "This constitutes pure disbelief, for it opposes the consensus of the Ummah, the ruling of God the Exalted, His Messenger—peace be upon him—all the Companions, and those after them. No one—neither disbeliever nor believer—differs regarding the fact that this Quran is what Muhammad—peace be upon him and his family—brought forth, asserting it to be revelation from God the Exalted. Though some among the Rafidah claimed portions were omitted or altered, they did not dispute its entirety as we have described."

وَلَمْ يَخْتَلِفُوا فِي أَنَّ فِيهِ التَّسْمِيَةَ بِالْكُفْرِ، وَالْحُكْمُ بِالْكُفْرِ قَطْعًا عَلَى مَنْ نَطَقَ بِأَقْوَالٍ مَعْرُوفَةٍ، كَقَوْلِهِ تَعَالَى {لَقَدْ كَفَرَ الَّذِينَ قَالُوا إِنَّ اللَّهَ هُوَ الْمَسِيحُ ابْنُ مَرْيَمَ} [المائدة: ١٧] .

L42932 They unanimously agreed that in this matter lies the labeling with disbelief and the definitive ruling of disbelief upon anyone who utters well-known statements, such as His statement, the Exalted: "Certainly those who said, 'Allah is the Messiah, son of Mary,' have disbelieved" (5:17).[45]

وقَوْله تَعَالَى {وَلَقَدْ قَالُوا كَلِمَةَ الْكُفْرِ وَكَفَرُوا بَعْدَ إِسْلامِهِمْ} [التوبة: ٧٤] .

L42933 His saying, the Most High: {And they have certainly spoken a word of

[45] **Qur'an references (L42932):** Qur'an 5:17 (Al-Ma'idah); Qur'an 5:72 (Al-Ma'idah).

disbelief and renounced faith after their submission} [At-Tawbah: 74].[46]

فَصَحَّ أَنَّ الْكُفْرَ يَكُونُ كَلَامًا.

L42934 Therefore, it is established that disbelief is verbal declaration.

وَقَدْ حَكَمَ اللَّهُ تَعَالَى بِالْكُفْرِ عَلَى إبْلِيسَ - وَهُوَ عَالِمٌ بِأَنَّ اللَّهَ خَلَقَهُ مِنْ نَارٍ وَخَلَقَ آدَمَ مِنْ طِينٍ - وَأَمَرَهُ بِالسُّجُودِ لِآدَمَ وَكَرَّمَهُ عَلَيْهِ - وَسَأَلَ اللَّهَ تَعَالَى النَّظِرَةَ إلَى يَوْمِ يُبْعَثُونَ.

L42935 Allah the Exalted decreed disbelief upon Iblis—who knew that Allah had created him from fire and Adam from clay—commanded him to prostrate to Adam, and honored him [Adam] above him [Iblis]. Then Iblis asked Allah the Exalted for respite until the Day they are resurrected.

ثُمَّ يُقَالُ لَهُمْ: إذْ لَيْسَ شَتْمُ اللَّهِ تَعَالَى كُفْرًا عِنْدَكُمْ، فَمِنْ أَيْنَ قُلْتُمْ: إنَّهُ دَلِيلٌ عَلَى الْكُفْرِ؟ فَإِنْ قَالُوا: لِأَنَّهُ مَحْكُومٌ عَلَى قَائِلِهِ بِحُكْمِ الْكُفْرِ؟ قِيلَ لَهُمْ: نَعَمْ، مَحْكُومٌ عَلَيْهِ بِنَفْسِ قَوْلِهِ، لَا بِمَغِيبِ ضَمِيرِهِ الَّذِي لَا يَعْلَمُهُ إلَّا اللَّهُ تَعَالَى فَإِنَّمَا حُكِمَ لَهُ بِالْكُفْرِ بِقَوْلِهِ فَقَطْ، فَقَوْلُهُ هُوَ الْكُفْرُ، وَمَنْ قَطَعَ عَلَى أَنَّهُ فِي ضَمِيرِهِ، وَقَدْ أَخْبَرَ اللَّهُ تَعَالَى عَنْ قَوْمٍ {يَقُولُونَ بِأَفْوَاهِهِمْ مَا لَيْسَ فِي قُلُوبِهِمْ} [آل عمران: ١٦٧] فَكَانُوا بِذَلِكَ كُفَّارًا، كَالْيَهُودِ الَّذِينَ عَرَفُوا صِحَّةَ نُبُوَّةِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَمَا يَعْرِفُونَ أَبْنَاءَهُمْ وَهُمْ مَعَ ذَلِكَ كُفَّارٌ بِاَللَّهِ تَعَالَى قَطْعًا بِيَقِينٍ، إذْ أَعْلَنُوا كَلِمَةَ الْكُفْرِ.

L42936–42937 Then it is said to them: Since insulting Allah the Exalted is not considered disbelief according to you, from where did you claim it constitutes proof of disbelief? If they respond: Because the one who utters it is judged with the ruling of disbelief, it is said to them: Yes, he is judged by his utterance itself, not due to the hidden inner state known only to Allah the Exalted. The ruling of disbelief applies solely because of his speech - thus his statement itself constitutes disbelief. As for those who assert decisively that this depends on inner belief, Allah the Exalted has informed us about people "who say with their mouths what is not in their hearts" (Quran 3:167), yet they became disbelievers through this, like the Jews who recognized the validity of the Messenger of Allah's prophethood (peace and blessings be upon him and his family) as clearly as they recognize their own sons, while remaining disbelievers in Allah the Exalted with absolute certainty, having openly uttered the word of disbelief.[47]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: فَإِذْ قَدْ سَقَطَ هَذَا الْقَوْلُ فَالْوَاجِبُ أَنْ نَنْظُرَ فِيمَا احْتَجَّتْ بِهِ الطَّائِفَةُ الْقَائِلَةُ إنَّ مَنْ سَبَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ نَبِيًّا مِنْ الْأَنْبِيَاءِ، أَوْ مَلَكًا مِنْ الْمَلَائِكَةِ - عَلَيْهِمْ السَّلَامُ - فَهُوَ بِذَلِكَ الْقَوْلِ كَافِرٌ - سَوَاءٌ اعْتَقَدَهُ بِقَلْبِهِ أَوْ اعْتَقَدَ الْإِيمَانَ بِقَلْبِهِ: فَوَجَدْنَاهُمْ يَذْكُرُونَ قَوْلَ اللَّهِ تَعَالَى {قُلْ أَبِاللَّهِ وَآيَاتِهِ وَرَسُولِهِ كُنْتُمْ تَسْتَهْزِئُونَ} [التوبة: ٦٥] {لا تَعْتَذِرُوا قَدْ كَفَرْتُمْ بَعْدَ إِيمَانِكُمْ} [التوبة: ٦٦] .

L42938 Abū Muḥammad—may Allāh have mercy on him—said: Since this opinion has been dismissed, it is obligatory to examine the evidence cited by the faction that asserts anyone who insults the Messenger of Allāh—peace and blessings be upon him and his family—or a prophet from the prophets, or an angel from the angels—peace be upon them—becomes a disbeliever because of that utterance, whether he inwardly accepted that [insult] or maintained faith in his heart. We find them citing Allāh's words: "Say, 'Was it Allāh, His signs, and His Messenger you were ridiculing?'" [9:65] and "Do not make excuses; you have disbelieved after having believed." [9:66][48]

[46] **Qur'an references (L42933):** Qur'an 9:74 (At-Tawbah).
[47] **Qur'an references (L42937):** Qur'an 3:167 (Ali 'Imran).
[48] **Qur'an references (L42938):** Qur'an 9:65 (At-Tawbah); Qur'an 9:66 (At-Tawbah).

وَقَالَ اللَّهُ تَعَالَى {يَا أَيُّهَا الَّذِينَ آمَنُوا لا تَرْفَعُوا أَصْوَاتَكُمْ فَوْقَ صَوْتِ النَّبِيِّ} [الحجرات: ٢] الْآيَةَ. وقَوْله تَعَالَى {فَلا وَرَبِّكَ لا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ} [النساء: ٦٥] قَالَ فَقَضَى اللَّهُ عَزَّ وَجَلَّ وَقَسَمَ وَحَكَمَ: أَنَّهُ لَا يُؤْمِنُ أَحَدٌ حَتَّى يُحَكِّمَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فِيمَا شَجَرَ ثُمَّ لَا يَجِدُ فِي نَفْسِهِ حَرَجًا فِي شَيْءٍ مِمَّا قَضَى بِهِ وَيُسَلِّمُ تَسْلِيمًا.

L42939 Allah the Exalted said: "O you who have believed, do not raise your voices above the voice of the Prophet" [Al-Hujurat: 2]. And His statement the Exalted: "So no, by your Lord, they will not believe until they make you judge concerning that over which they dispute" [An-Nisa: 65]. He said: Thus Allah—Mighty and Majestic—decreed, swore, and judged: that no one believes until he makes the Messenger of Allah—peace and blessings be upon him and his family—the judge in whatever disputes arise, then finds no hesitation within himself regarding anything he has judged, and wholeheartedly submits.[49]

قَالُوا: وَبِضَرُورَةِ الْحِسِّ وَالْمُشَاهَدَةِ نَدْرِي أَنَّ مَنْ سَبَّ اللَّهَ تَعَالَى أَوْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ مَلَكًا مِنْ الْمَلَائِكَةِ، أَوْ نَبِيًّا مِنْ الْأَنْبِيَاءِ - عَلَى جَمِيعِهِمْ السَّلَامُ - أَوْ شَيْئًا مِنْ الشَّرِيعَةِ، أَوْ اسْتَخَفَّ بِشَيْءٍ مِنْ ذَلِكَ كُلِّهِ، فَلَمْ يُحَكِّمْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِمَا أَتَى بِهِ مِنْ تَعْظِيمِ اللَّهِ تَعَالَى، وَإِكْرَامِ الْمَلَائِكَةِ وَالنَّبِيِّينَ، وَتَعْظِيمِ الشَّرِيعَةِ الَّتِي هِيَ شَعَائِرُ اللَّهِ تَعَالَى. فَصَحَّ أَنَّهُ لَمْ يُؤْمِنْ فَقَدْ كَفَرَ إذْ لَيْسَ إلَّا مُؤْمِنٌ أَوْ كَافِرٌ.

L42940–42942 They said: Through the necessity of sensory perception and observation, we know that whoever reviles Allah the Exalted, or the Prophet—may Allah's blessings and peace be upon him and his family—or an angel from the angels, or a prophet from the prophets—peace be upon all of them—or anything from the Sacred Law, or belittles anything thereof, did not submit to the Prophet's judgment—may Allah's blessings and peace be upon him and his family—concerning what he conveyed. From glorifying Allah the Most High, honoring the angels and the prophets, and venerating the Sharia—which constitutes the symbols of Allah the Most High. Thus, it is established that whoever does not believe has disbelieved, for there is no third category beyond a believer or a disbeliever.

قَالُوا: وَقَدْ نَصَّ اللَّهُ تَعَالَى بِإِحْبَاطِ عَمَلِ مَنْ رَفَعَ صَوْتَهُ عَلَى صَوْتِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَإِحْبَاطُ الْعَمَلِ لَا يَكُونُ إلَّا بِالْكُفْرِ فَقَطْ. وَرَفْعُ الصَّوْتِ عَلَى صَوْتِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَدْخُلُ فِيهِ: الِاسْتِخْفَافُ بِهِ - عَلَيْهِ السَّلَامُ -، وَالسَّبُّ لَهُ، وَالْمُعَارَضَةُ مِنْ حَاضِرٍ وَغَائِبٍ.

L42943 They said: Allah the Exalted has explicitly decreed the nullification of deeds for one who raises his voice above the voice of the Prophet—peace and blessings be upon him—and the nullification of deeds can only result from disbelief. Raising one's voice above the voice of the Prophet—peace and blessings be upon him—includes belittling him (peace be upon him), insulting him, and opposing him whether present or absent.

قَالُوا: وَكَانَ قَوْلُهُ تَعَالَى فِي الْمُسْتَهْزِئِينَ بِاَللَّهِ وَبِآيَاتِهِ وَرَسُولِهِ: أَنَّهُمْ كَفَرُوا بِذَلِكَ بَعْدَ إيمَانِهِمْ، فَارْتَفَعَ الْإِشْكَالُ وَصَحَّ يَقِينًا أَنَّ كُلَّ مَنْ اسْتَهْزَأَ بِشَيْءٍ مِنْ آيَاتِ اللَّهِ وَبِرَسُولٍ مِنْ رُسُلِهِ فَإِنَّهُ كَافِرٌ بِذَلِكَ مُرْتَدٌّ.

L42944 The scholars said: The statement of Allah, Exalted is He, regarding those who mock Allah, His signs, and His Messenger—that they thereby disbelieved after their faith—resolved the ambiguity, and it was confirmed with certainty

[49] **Qur'an references (L42939):** Qur'an 49:2 (Al-Hujurat); Qur'an 4:65 (An-Nisa).

that whoever mocks any of Allah's signs or a messenger from His messengers is thereby a disbeliever and an apostate.

L42945 And we have known—that all the angels are messengers of Allah the Exalted, as Allah the Exalted said: {He who makes the angels messengers} [Al-Fatir: 1]. Similarly, we have known by necessary observation: that every reviler and insulter is one who belittles the insulted and mocks him. Is belittling the same as mocking? Abu Muhammad—may Allah have mercy on him—said: We found that Allah the Exalted made Iblis a disbeliever due to his belittling of Adam—peace be upon him—because when he said {I am better than him} [Al-A'raf: 12], Allah the Exalted then commanded him to leave Paradise and expelled him, calling him a disbeliever by His statement {and he was among the disbelievers} [Al-Baqarah: 34].[50]

L42946 And Hammam narrated to us: Abbas ibn Asbagh narrated to us: Muhammad ibn Abd al-Malik ibn Ayman narrated to us: Abu Muhammad Habib al-Bukhari—he is the companion of Abu Thawr, trustworthy and well-known—narrated to us: Muhammad ibn Sahl said: I heard Ali ibn al-Madini say: "I entered the presence of the Commander of the Faithful, and he said to me: 'Do you know a ḥadīth with a connected chain concerning one who insults the Prophet—peace and blessings of Allah be upon him and his family—so that he is killed?' I said, 'Yes,' and then mentioned to him the ḥadīth of Abd al-Razzaq, from Ma'mar, from Simak ibn al-Fadl, from Urwah ibn Muhammad, from a man from Bulqin, who said: 'There was a man who used to insult the Prophet—peace and blessings of Allah be upon him and his family—so the Prophet—peace and blessings of Allah be upon him and his family—said: "Who will relieve me of my enemy¿' Khalid ibn al-Walid said: "I will." So the Prophet—peace and blessings of Allah be upon him and his family—sent him to him, and he killed him.' The Commander of the Faithful said to him: 'This is not a ḥadīth with a connected chain; it is from a man?' I said: 'O Commander of the Faithful, through this chain the man is identified—his name is established through this—and he came to the Prophet—peace and

وَقَدْ عَلِمْنَا - أَنَّ الْمَلَائِكَةَ كُلَّهُمْ رُسُلُ اللَّهِ تَعَالَى، قَالَ اللَّهُ تَعَالَى {جَاعِلِ الْمَلَائِكَةِ رُسُلا} [فاطر: ١] وَكَذَلِكَ عَلِمْنَا بِضَرُورَةِ الْمُشَاهَدَةِ: أَنَّ كُلَّ سَابٍّ وَشَاتِمٍ فَمُسْتَخِفٌّ بِالْمَشْتُومِ مُسْتَهْزِئٌ بِهِ، فَالِاسْتِخْفَافُ وَالِاسْتِهْزَاءُ شَيْءٌ وَاحِدٌ؟ قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: وَوَجَدْنَا اللَّهَ تَعَالَى قَدْ جَعَلَ إبْلِيسَ بِاسْتِخْفَافِهِ بِآدَمَ - عَلَيْهِ السَّلَامُ - كَافِرًا، لِأَنَّهُ إذْ قَالَ {أَنَا خَيْرٌ مِنْهُ} [الأعراف: ١٢] فَحِينَئِذٍ أَمَرَهُ تَعَالَى بِالْخُرُوجِ مِنْ الْجَنَّةِ وَدَحْرِهِ، وَسَمَّاهُ كَافِرًا بِقَوْلِهِ {وَكَانَ مِنَ الْكَافِرِينَ} [البقرة: ٣٤] .

وَحَدَّثَنَا حُمَامٌ نا عَبَّاسُ بْنُ أَصْبَغَ نا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنِ أَيْمَنَ نا أَبُو مُحَمَّدٍ حَبِيبٌ الْبُخَارِيُّ - هُوَ صَاحِبُ أَبِي ثَوْرٍ ثِقَةٌ مَشْهُورٌ - نا مُحَمَّدُ بْنُ سَهْلٍ سَمِعْت عَلِيَّ بْنَ الْمَدِينِيِّ يَقُولُ: " دَخَلْت عَلَى أَمِيرِ الْمُؤْمِنِينَ فَقَالَ لِي: أَتَعْرِفُ حَدِيثًا مُسْنَدًا فِيمَنْ سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَيُقْتَلُ؟ قُلْت: نَعَمْ، فَذَكَرْت لَهُ حَدِيثَ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ عَنْ سِمَاكِ بْنِ الْفَضْلِ عَنْ عُرْوَةَ بْنِ مُحَمَّدٍ عَنْ " رَجُلٍ " مِنْ بُلْقِينَ قَالَ «كَانَ رَجُلٌ يَشْتُمُ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -: مَنْ يَكْفِينِي عَدُوًّا لِي؟ فَقَالَ خَالِدُ بْنُ الْوَلِيدِ: أَنَا فَبَعَثَهُ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - إلَيْهِ فَقَتَلَهُ، فَقَالَ لَهُ أَمِيرُ الْمُؤْمِنِينَ: لَيْسَ هَذَا مُسْنَدًا، هُوَ عَنْ رَجُلٍ؟ فَقُلْتُ: يَا أَمِيرَ الْمُؤْمِنِينَ بِهَذَا يُعْرَفُ هَذَا الرَّجُلُ وَهُوَ اسْمُهُ، قَدْ أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَبَايَعَهُ، وَهُوَ مَشْهُورٌ مَعْرُوفٌ؟ قَالَ: فَأَمَرَ لِي بِأَلْفِ دِينَارٍ؟»

[50] **Qur'an references (L42945):** Qur'an 35:1 (Fatir); Qur'an 2:34 (Al-Baqarah); Qur'an 38:74 (Sad); Qur'an 7:12 (Al-A'raf).

blessings of Allah be upon him and his family—pledged allegiance to him, and he is well-known and recognized.' He said: 'Then he ordered that I be given a thousand dinars.'"

L42947–42948 Abu Muhammad—may Allah have mercy on him—said: This is an authentic, *musnad* (supported by an unbroken chain) hadith. Ali ibn al-Madini narrated it from Abd al-Razzaq as he mentioned. This is a well-known man among the Companions, named "Rajul" (literally 'man') by his family, from Bulqīn.

L42949 Thus, it is established that whoever insults the Prophet—peace and blessings of Allah be upon him and his family—is a disbeliever and an enemy of Allah, the Exalted. He—peace be upon him—does not show enmity toward any Muslim. Allah, the Exalted, said: "The believing men and believing women are allies of one another" [Quran 9:71].[51]

L42950 Thus, it is established by what we have mentioned that anyone who reviles God Almighty, or mocks Him, or reviles an angel among the angels, or mocks that angel, or reviles a prophet among the prophets, or mocks that prophet, or reviles a sign among the signs of God Almighty, or mocks it—since all divine laws are also among the signs of God Almighty, as is the Quran—then such a person is an apostate, subject to the ruling applicable to apostates. This is our position, and success comes from God alone.

L42951 Abū Muḥammad—may Allāh have mercy on him—said: This clarifies what was transmitted to us through the chain of Muslim via Zuhayr ibn Ḥarb via ʿAffān ibn Muslim via Ḥammād ibn Salamah via Thābit al-Bunānī via Anas: "A man was accused of misconduct with the mother of the Prophet's child (umm walad)—peace and blessings be upon him and his family. The Messenger of Allāh—peace and blessings be upon him and his family—said to ʿAlī: 'Go and strike his neck.' ʿAlī approached him while he was in a well cooling off inside it. ʿAlī said: 'Come out.' The man extended his hand, so ʿAlī pulled him out. He found him castrated, lacking male organs—whereupon ʿAlī restrained himself from him. He then came to the Prophet—peace and blessings be upon him and his family—and said: 'O Messenger of Allāh, he is

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا حَدِيثٌ مُسْنَدٌ صَحِيحٌ، وَقَدْ رَوَاهُ عَلِيُّ بْنُ الْمَدِينِيِّ عَنْ عَبْدُ الرَّزَّاقِ كَمَا ذَكَرَهُ، وَهَذَا رَجُلٌ مِنْ الصَّحَابَةِ مَعْرُوفٌ اسْمُهُ الَّذِي سَمَّاهُ بِهِ أَهْلُهُ " رَجُلٌ " مِنْ بُلْقِينَ.

فَصَحَّ بِهَذَا كُفْرُ مَنْ سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَأَنَّهُ عَدُوٌّ لِلَّهِ تَعَالَى، وَهُوَ - عَلَيْهِ السَّلَامُ - لَا يُعَادِي مُسْلِمًا قَالَ تَعَالَى {وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ} [التوبة: ٧١] .

فَصَحَّ بِمَا ذَكَرْنَا أَنَّ كُلَّ مَنْ سَبَّ اللَّهَ تَعَالَى، أَوْ اسْتَهْزَأَ بِهِ، أَوْ سَبَّ مَلَكًا مِنْ الْمَلَائِكَةِ أَوْ اسْتَهْزَأَ بِهِ، أَوْ سَبَّ نَبِيًّا مِنْ الْأَنْبِيَاءِ، أَوْ اسْتَهْزَأَ بِهِ، أَوْ سَبَّ آيَةً مِنْ آيَاتِ اللَّهِ تَعَالَى، أَوْ اسْتَهْزَأَ بِهَا، وَالشَّرَائِعُ كُلُّهَا، وَالْقُرْآنُ مِنْ آيَاتِ اللَّهِ تَعَالَى فَهُوَ بِذَلِكَ كَافِرٌ مُرْتَدٌّ، لَهُ حُكْمُ الْمُرْتَدِّ، وَبِهَذَا نَقُولُ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَيُبَيِّنُ هَذَا مَا رُوِّينَا مِنْ طَرِيقِ مُسْلِمٍ نِي زُهَيْرُ بْنُ حَرْبٍ نا عَفَّانُ بْنُ مُسْلِمٍ نا حَمَّادُ بْنُ سَلَمَةَ نا ثَابِتٌ الْبُنَانِيُّ عَنْ أَنَسٍ «أَنَّ رَجُلًا كَانَ يُتَّهَمُ بِأُمِّ وَلَدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لِعَلِيٍّ: اذْهَبْ فَاضْرِبْ عُنُقَهُ، فَأَتَاهُ عَلِيٌّ فَإِذَا هُوَ فِي رَكِيٍّ يَتَبَرَّدُ فِيهَا، فَقَالَ لَهُ عَلِيٌّ: اُخْرُجْ، فَنَاوَلَهُ يَدَهُ، فَأَخْرَجَهُ، فَإِذَا هُوَ مَجْبُوبٌ - لَيْسَ لَهُ ذَكَرٌ - فَكَفَّ عَلِيٌّ عَنْهُ، ثُمَّ أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّهُ لَمَجْبُوبٌ، مَالَهُ ذَكَرٌ؟»

[51] **Qur'an references (L42949):** Qur'an 9:71 (At-Tawbah).

castrated—he has no male organ!’” Abū Muḥammad—may Allāh have mercy on him—said: This is an authentic report. It establishes that whoever harms the Prophet—peace be upon him—must be executed, even if committing such an act against another Muslim would not necessitate execution. If someone asks: How could the Messenger of Allāh—peace be upon him—command his killing without verifying the matter through revelation, sound knowledge, evidence, or confession? How could he—peace be upon him—order his execution based on suspicion later proven false? How could he—peace be upon him—command the killing of a man whose innocence Allāh subsequently manifested with undeniable certainty? And how could he—peace be upon him—order his execution without ordering hers, when the alleged offense is shared between them?

L42952–42953 Abū Muḥammad—may Allāh have mercy on him—said: These are questions posed only by a disbeliever or an ignorant person seeking to know the way out from all these mentioned objections. Abū Muḥammad—may Allāh have mercy on him—said: The aspect regarding these questions is clear and evident, with no obscurity—and all praise is due to Allāh, Lord of the worlds. Allāh forbid that the Messenger of Allāh—peace and blessings be upon him—would order the killing of anyone based on mere suspicion without a confession, decisive evidence, certain knowledge, eyewitness testimony, revelation, or without such grounds. Rather, the Messenger of Allāh—peace and blessings be upon him—knew with certainty that the accused was innocent and that the accusation was false. He—peace be upon him—intended to establish this through visible proof, so he ordered the execution if the accused had committed what was alleged. This was a sound ruling concerning one who harmed the Messenger of Allāh—peace and blessings be upon him. He—peace be upon him—knew the execution would not be carried out because Allāh the Exalted would manifest the accused’s innocence. His—peace be upon him—action in this matter was akin to what was narrated about his brother Solomon—peace be upon him.

We have been narrated through Bukhārī’s chain of transmission: Abū al-Yamān—al-Ḥakam ibn Nāfiʿ—narrated from Shuʿayb—Ibn Abī Ḥamzah—from Abū al-Zināد, who said: ʿAbd al-Raḥmān al-Aʿraj reported to him

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: هَذَا خَبَرٌ صَحِيحٌ، وَفِيهِ مَنْ آذَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَجَبَ قَتْلُهُ، وَإِنْ كَانَ لَوْ فَعَلَ ذَلِكَ بِرَجُلٍ مِنْ الْمُسْلِمِينَ لَمْ يَجِبْ بِذَلِكَ قَتْلُهُ؟ فَإِنْ قَالَ قَائِلٌ: كَيْفَ يَأْمُرُ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِهِ دُونَ أَنْ يَتَحَقَّقَ عِنْدَهُ ذَلِكَ الْأَمْرُ، لَا بِوَحْيٍ، وَلَا بِعِلْمٍ صَحِيحٍ، وَلَا بِبَيِّنَةٍ، وَلَا بِإِقْرَارٍ؟ وَكَيْفَ يَأْمُرُ - عَلَيْهِ السَّلَامُ - بِقَتْلِهِ فِي قِصَّةٍ بِظَنٍّ قَدْ ظَهَرَ كَذِبُهُ بَعْدَ ذَلِكَ وَبُطْلَانُهُ؟ وَكَيْفَ يَأْمُرُ - عَلَيْهِ السَّلَامُ - بِقَتْلِ امْرِئٍ قَدْ أَظْهَرَ اللَّهُ تَعَالَى بَرَاءَتَهُ بَعْدَ ذَلِكَ بِيَقِينٍ لَا شَكَّ فِيهِ؟ وَكَيْفَ يَأْمُرُ - عَلَيْهِ السَّلَامُ - بِقَتْلِهِ وَلَا يَأْمُرُ بِقَتْلِهَا، وَالْأَمْرُ بَيْنَهُ وَبَيْنَهَا مُشْتَرَكٌ؟

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَهَذِهِ سُؤَالَاتٌ لَا يَسْأَلُهَا إلَّا كَافِرٌ أَوْ إنْسَانٌ جَاهِلٌ يُرِيدُ مَعْرِفَةَ الْمَخْرَجِ مِنْ كُلِّ هَذِهِ الِاعْتِرَاضَاتِ الْمَذْكُورَةِ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: الْوَجْهُ فِي هَذِهِ السُّؤَالَاتِ بَيِّنٌ وَاضِحٌ لَا خَفَاءَ بِهِ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَمَعَاذَ اللَّهِ أَنْ يَأْمُرَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِقَتْلِ أَحَدٍ بِظَنٍّ بِغَيْرِ إقْرَارٍ، أَوْ بَيِّنَةٍ، أَوْ عِلْمٍ أَوْ مُشَاهَدَةٍ، أَوْ وَحْيٍ، أَوْ أَنْ يَأْمُرَ بِقَتْلِهِ دُونَهَا، لَكِنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَدْ عَلِمَ يَقِينًا أَنَّهُ بَرِيءٌ، وَأَنَّ الْقَوْلَ كَذِبٌ فَأَرَادَ - عَلَيْهِ السَّلَامُ - أَنْ يُوقَفَ عَلَى ذَلِكَ مُشَاهَدَةً فَأَمَرَ بِقَتْلِهِ لَوْ فَعَلَ ذَلِكَ الَّذِي قِيلَ عَنْهُ، فَكَانَ هَذَا حُكْمًا صَحِيحًا فِيمَنْ آذَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَقَدْ عَلِمَ - عَلَيْهِ السَّلَامُ - أَنَّ الْقَتْلَ لَا يَنْفُذُ عَلَيْهِ لِمَا يُظْهِرُ اللَّهُ تَعَالَى مِنْ بَرَاءَتِهِ، وَكَانَ - عَلَيْهِ السَّلَامُ - فِي ذَلِكَ، كَمَا أَخْبَرَ بِهِ عَنْ أَخِيهِ سُلَيْمَانَ - عَلَيْهِ السَّلَامُ -، وَقَدْ رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو الْيَمَانِ - هُوَ الْحَكَمُ بْنُ نَافِعٍ - نا شُعَيْبٌ - هُوَ ابْنُ أَبِي حَمْزَةَ - نا أَبُو الزِّنَادِ قَالَ: إنَّ عَبْدَ الرَّحْمَنِ الْأَعْرَجَ حَدَّثَهُ أَنَّهُ سَمِعَ «أَبَا هُرَيْرَةَ يَقُولُ: إنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ

- يَقُولُ: مَثَلِي وَمَثَلُ النَّاسِ - فَذَكَرَ كَلَامًا - وَفِيهِ أَنَّهُ - عَلَيْهِ السَّلَامُ - قَالَ: وَكَانَتْ امْرَأَتَانِ مَعَهُمَا ابْنَاهُمَا جَاءَ الذِّئْبُ فَذَهَبَ بِابْنِ إِحْدَاهُمَا، فَقَالَتْ صَاحِبَتُهَا، إِنَّمَا ذَهَبَ بِابْنِكِ، وَقَالَتْ الْأُخْرَى: إِنَّمَا ذَهَبَ بِابْنِكِ، فَتَحَاكَمَا إِلَى دَاوُد - عَلَيْهِ السَّلَامُ -، فَقَضَى بِهِ لِلْكُبْرَى، فَخَرَجَتَا عَلَى سُلَيْمَانَ - عَلَيْهِ السَّلَامُ - فَأَخْبَرَتَاهُ، فَقَالَ: ائْتُونِي بِالسِّكِّينِ أَشُقُّهُ بَيْنَهُمَا، فَقَالَتْ الصُّغْرَى: لَا تَفْعَلْ يَرْحَمُكَ اللَّهُ، هُوَ ابْنُهَا، فَقَضَى بِهِ لِلصُّغْرَى - قَالَ أَبُو هُرَيْرَةَ: وَاَللَّهِ إِنْ سَمِعْتُ بِالسِّكِّينِ إِلَّا يَوْمَئِذٍ وَمَا كُنَّا نَقُولُ إِلَّا الْمُدْيَةَ؟» قَالَ أَبُو مُحَمَّد - رَحِمَهُ اللَّهُ -: فَبِيَقِينٍ نَدْرِي أَنَّ سُلَيْمَانَ - عَلَيْهِ السَّلَامُ - لَمْ يُرِدْ قَطُّ شَقَّ الصَّبِيِّ بَيْنَهُمَا، وَإِنَّمَا أَرَادَ امْتِحَانَهُمَا بِذَلِكَ، وَبِالْوَحْيِ - فَعَلَ هَذَا بِلَا شَكٍّ - وَكَانَ حُكْمُ دَاوُد - عَلَيْهِ السَّلَامُ - لِلْكُبْرَى عَلَى ظَاهِرِ الْأَمْرِ، لِأَنَّهُ كَانَ فِي يَدِهَا، وَكَذَلِكَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مَا أَرَادَ قَطُّ إنْفَاذَ قَتْلِ ذَلِكَ " الْمَجْبُوبِ " لَكِنْ أَرَادَ امْتِحَانَ عَلِيٍّ فِي إنْفَاذِ أَمْرِهِ، وَأَرَادَ إظْهَارَ بَرَاءَةِ الْمُتَّهَمِ، وَكَذِبِ التُّهْمَةِ عِيَانًا - وَهَكَذَا لَمْ يُرِدْ اللَّهُ تَعَالَى إنْفَاذَ ذَبْحِ إسْمَاعِيلَ بْنِ إبْرَاهِيمَ - صَلَّى اللَّهُ عَلَيْهِمَا وَسَلَّمَ - إذَا أَمَرَ أَبَاهُ بِذَبْحِهِ، لَكِنْ أَرَادَ اللَّهُ تَعَالَى إظْهَارَ تَنْفِيذِهِ لِأَمْرِهِ - فَهَذَا وَجْهُ الْأَخْبَارِ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

that he heard Abū Hurayrah say: "I heard the Messenger of Allāh—peace and blessings be upon him—say: 'My parable and the parable of the people...'—and he mentioned a discourse—in which he—peace be upon him—said: 'There were two women with their sons. A wolf came and took one of the boys. One woman said to the other: "It took your son," while the other said: "It took your son." They took their dispute to David—peace be upon him—who ruled in favor of the older woman. They then went to Solomon—peace be upon him—and informed him. He said: "Bring me a knife to split the child between them." The younger woman said: "Do not do so, may Allāh have mercy on you! He is her son." So Solomon ruled in favor of the younger woman.' Abū Hurayrah said: 'By Allāh, I never heard the word "knife" (sikkīn) used except on that day. We used to say "butcher's knife" (al-mudya).'"

Abū Muḥammad—may Allāh have mercy on him—said: We know with certainty that Solomon—peace be upon him—never intended to split the child between them. He only meant to test them through this, and by revelation, he did this without doubt. David's—peace be upon him—ruling in favor of the older woman was based on the apparent circumstance, as the child was in her possession. Similarly, the Messenger of Allāh—peace and blessings be upon him—never intended to carry out the execution of that accused individual. Rather, he intended to test ʿAlī in fulfilling his command and to manifest the accused's innocence and the falsity of the allegation visibly. Likewise, Allāh the Exalted did not intend for the slaughter of Ishmael, son of Abraham—peace be upon them—to be carried out when He commanded his father to slaughter him. Rather, Allāh the Exalted intended to demonstrate his compliance with His command. This is the correct understanding of these narrations—and all praise is due to Allāh, Lord of the worlds.

فَصَحَّ بِهَذَا أَنَّ كُلَّ مَنْ آذَى رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَهُوَ كَافِرٌ مُرْتَدٌّ يُقْتَلُ، وَلَا بُدَّ - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ؟

L42954 This establishes that whoever harms the Messenger of Allah—peace and blessings be upon him and his family—is an apostate disbeliever who must necessarily be killed, with no alternative—and success is from Allah, the Most High?

L42955–42956 Abū Muḥammad—may Allāh have mercy on him—said: Aḥmad ibn Ismāʿīl ibn Dulaym al-Ḥaḍramī narrated to us: Muḥammad ibn Aḥmad ibn

al-Khallāṣ narrated to us: Muḥammad ibn al-Qāsim ibn Shaʿbān narrated to us: al-Ḥasan ibn ʿAlī al-Hāshimī narrated to us: Muḥammad ibn Sulaymān al-Bāghandī narrated to us: Hishām ibn ʿAmmār said: I heard Mālik ibn Anas say: "Whoever reviles Abū Bakr and ʿUmar should be flogged, and whoever reviles ʿĀ'ishah should be killed." He was asked: "Why is one killed for (reviling) ʿĀ'ishah?" He replied: "Because Allāh the Exalted says regarding ʿĀ'ishah—may Allāh be pleased with her—'Allāh admonishes you never to return to the like of this slander, if you are believers' [al-Nūr 24:17]."[52]

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: نا أَحْمَدُ بْنُ إِسْمَاعِيلَ بْنِ دُلَيْمٍ الْحَضْرَمِيُّ نا مُحَمَّدُ بْنُ أَحْمَدَ بْنِ الْخَلَّاصِ نا مُحَمَّدُ بْنُ الْقَاسِمِ بْنِ شَعْبَانَ نا الْحَسَنُ بْنُ عَلِيٍّ الْهَاشِمِيُّ ثَنِي مُحَمَّدُ بْنُ سُلَيْمَانَ الْبَاغَنْدِيُّ نا هِشَامُ بْنُ عَمَّارٍ قَالَ: سَمِعْت مَالِكَ بْنَ أَنَسٍ يَقُولُ: مَنْ سَبَّ أَبَا بَكْرٍ، وَعُمَرَ جُلِدَ، وَمَنْ سَبَّ عَائِشَةَ قُتِلَ، قِيلَ لَهُ: لِمَ يُقْتَلُ فِي عَائِشَةَ؟ قَالَ: لِأَنَّ اللَّهَ تَعَالَى يَقُولُ فِي عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - {يَعِظُكُمُ اللَّهُ أَنْ تَعُودُوا لِمِثْلِهِ أَبَدًا إِنْ كُنْتُمْ مُؤْمِنِينَ} [النور: ١٧] .

L42957 Mālik said: "Whoever accuses her has contradicted the Quran, and whoever contradicts the Quran is to be killed." Abū Muḥammad—may Allah have mercy on him—said: Mālik's statement here is correct, and accusing her constitutes complete apostasy and a repudiation of Allah Almighty in His definitive ruling of her innocence.

قَالَ مَالِكٌ: فَمَنْ رَمَاهَا فَقَدْ خَالَفَ الْقُرْآنَ، وَمَنْ خَالَفَ الْقُرْآنَ قُتِلَ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: قَوْلُ مَالِكٍ هَاهُنَا صَحِيحٌ، وَهِيَ رِدَّةٌ تَامَّةٌ، وَتَكْذِيبٌ لِلَّهِ تَعَالَى فِي قَطْعِهِ بِبَرَاءَتِهَا.

L42958 Similarly, the same applies to all the Mothers of the Believers without exception. For Allah the Exalted says: *"Good women are for good men, and good men are for good women. These are cleared of what people allege"* [24:26]. Thus, all of them are absolved of false allegations. And all praise is due to Allah, Lord of the worlds.[53]

وَكَذَلِكَ الْقَوْلُ سَائِرُ أُمَّهَاتِ الْمُؤْمِنِينَ، وَلَا فَرْقَ. لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {وَالطَّيِّبَاتُ لِلطَّيِّبِينَ وَالطَّيِّبُونَ لِلطَّيِّبَاتِ أُولَئِكَ مُبَرَّءُونَ مِمَّا يَقُولُونَ} [النور: ٢٦] فَكُلُّهُنَّ مُبَرَّآتٌ مِنْ قَوْلِ إِفْكٍ - وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

L42959 Abu Muhammad (may Allah have mercy on him) said: As for the dhimmi who insults the Prophet (peace and blessings of Allah be upon him and his family), our companions, Malik, and his companions have stated: He must be put to death without exception. This is also the position of al-Layth ibn Saʿd.

قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَأَمَّا الذِّمِّيُّ يَسُبُّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَإِنَّ أَصْحَابَنَا، وَمَالِكًا، وَأَصْحَابَهُ، قَالُوا: يُقْتَلُ وَلَا بُدَّ. وَهُوَ قَوْلُ اللَّيْثِ بْنِ سَعْدٍ.

L42960–42962 Al-Shafiʿi said: It is obligatory for the Muslim authority to stipulate upon them that none of them may mention the Book of Allah Almighty or His Messenger—may Allah bless him and his family and grant him peace—in an improper manner, nor fornicate with a Muslim woman nor marry her. If he commits any of those acts, or waylays Muslims on the road, or aids

وَقَالَ الشَّافِعِيُّ: يَجِبُ أَنْ يَشْتَرِطَ عَلَيْهِمْ: أَنْ لَا يَذْكُرَ أَحَدٌ مِنْهُمْ كِتَابَ اللَّهِ تَعَالَى أَوْ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِمَا لَا يَنْبَغِي، أَوْ زَنَى بِمُسْلِمَةٍ أَوْ تَزَوَّجَهَا، فَإِنْ فَعَلَ شَيْئًا مِنْ ذَلِكَ، أَوْ قَطَعَ الطَّرِيقَ عَلَى مُسْلِمٍ، أَوْ أَعَانَ أَهْلَ الْحَرْبِ بِدَلَالَةٍ عَلَى الْمُسْلِمِينَ، أَوْ آوَى عَيْنًا لَهُمْ، فَقَدْ نَقَضَ عَهْدَهُ، وَحَلَّ دَمُهُ، وَبَرِئَتْ مِنْهُ ذِمَّةُ اللَّهِ تَعَالَى، وَذِمَّةُ

[52] **Qur'an references (L42956):** Qur'an 24:17 (An-Nur).
[53] **Qur'an references (L42958):** Qur'an 24:26 (An-Nur); Qur'an 37:182 (As-Saffat).

hostile forces by guiding them against Muslims, or harbors their spies, he has violated his covenant, his blood becomes permissible to shed, and the protection of Allah Almighty and the Muslims is absolved from him. Some people misinterpreted his position to mean that if this stipulation was not imposed upon them, their blood would not become permissible due to such acts. Ali—may Allah have mercy on him—said: "This is an error by those who attributed this interpretation to him, for there is no disagreement from him or others regarding a dhimmi who waylays Muslims: his blood becomes permissible through this act—whether the authority presented this stipulation to them beforehand or not. It has been narrated from some Malikis that if a dhimmi insults the Prophet—may Allah bless him and his family and grant him peace—" He is not to be killed except for acts constituting disbelief. Thus, some people have inferred that one is not liable for execution if they revile him by accusing him of lying.

الْمُسْلِمِينَ - فَتَأَوَّلَ عَلَيْهِ قَوْمٌ: أَنَّهُ إِنْ لَمْ يَشْتَرِطْ هَذَا عَلَيْهِمْ لَمْ يَسْتَحِلَّ دَمَهُمْ بِذَلِكَ؟ قَالَ عَلِيٌّ - رَحِمَهُ اللَّهُ -: وَهَذَا خَطَأٌ مِمَّنْ تَأَوَّلَ ذَلِكَ عَلَيْهِ، لِأَنَّهُ لَا يَخْتَلِفُ عَنْهُ، وَلَا عَنْ غَيْرِهِ فِي الذِّمِّيِّ يَقْطَعُ الطَّرِيقَ عَلَى الْمُسْلِمِينَ أَنَّهُ قَدْ حَلَّ بِذَلِكَ دَمُهُ - تَقَدَّمَ إِلَيْهِمْ بِذَلِكَ وَشَرَطَ لَهُمْ أَوْ لَمْ يَشْتَرِطْ ذَلِكَ لَهُمْ. وَرُوِيَ عَنْ بَعْضِ الْمَالِكِيِّينَ: أَنَّ الذِّمِّيَّ إِذَا سَبَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِغَيْرِ مَا بِهِ كُفْرٌ يُقْتَلُ، فَاسْتَدَلَّ بَعْضُ النَّاسِ: أَنَّهُ لَا يُقْتَلُ إِذَا سَبَّهُ بِتَكْذِيبٍ.

L42963 Sufyan, Abu Hanifa, and his companions said: If a dhimmi insults Allah Exalted or His Messenger—peace and blessings be upon him and his family—by whatever means he insults Him, he is not to be killed, but rather admonished against it. Some of them said: he is to be subjected to discretionary punishment.

وَقَالَ سُفْيَانُ، وَأَبُو حَنِيفَةَ، وَأَصْحَابُهُ: إِنْ سَبَّ الذِّمِّيُّ اللَّهَ تَعَالَى أَوْ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِأَيِّ شَيْءٍ سَبَّهُ، فَإِنَّهُ لَا يُقْتَلُ، لَكِنْ يُنْهَى عَنْ ذَلِكَ - وَقَالَ بَعْضُهُمْ: يُعَزَّرُ.

L42964 It has been reported from Ibn ʻUmar that he must inevitably be killed.

وَقَدْ رُوِيَ عَنْ ابْنِ عُمَرَ أَنَّهُ يُقْتَلُ وَلَا بُدَّ.

L42965 The Hanafis argued for their misguidance and falsehood by citing the narration transmitted by Abd al-Rahman ibn Abdullah ibn Khalid from Ibrahim ibn Ahmad from al-Farabri from al-Bukhari from Muhammad ibn Muqatil from Abdullah ibn al-Mubarak from Shu'bah from Hisham ibn Zayd, who said: I heard Anas ibn Malik say: "A Jew passed by the Messenger of Allah—peace and blessings of Allah be upon him and his family—and said: *Al-samu ʻalayka* (Death be upon you). The Messenger of Allah—peace and blessings of Allah be upon him and his family—responded: *Wa ʻalayka* (And upon you)." The Prophet—peace be upon him—then asked: "Do you know what he said? He said: *Al-samu ʻalayka*." They asked: "O Messenger of Allah, shall we not kill him?" He replied: "No. When the People of Book greet you with a salutation, respond: *Wa ʻalaykum* (And upon you)."

وَاحْتَجَّ الْحَنَفِيُّونَ لِضَلَالِهِمْ وَإِفْكِهِمْ بِمَا ناه عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ اللَّهِ بْنِ خَالِدٍ نا إِبْرَاهِيمُ بْنُ أَحْمَدَ نا الْفَرَبْرِيُّ نا الْبُخَارِيُّ نا مُحَمَّدُ بْنُ مُقَاتِلٍ أَنَا عَبْدُ اللَّهِ بْنُ الْمُبَارَكِ أَنَا شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدٍ قَالَ: سَمِعْت أَنَسَ بْنَ مَالِكٍ يَقُولُ: «مَرَّ يَهُودِيٌّ بِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالَ: السَّامُ عَلَيْكَ؟ فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَعَلَيْكَ، فَقَالَ - عَلَيْهِ السَّلَامُ -: أَتَدْرُونَ مَا يَقُولُ؟ قَالَ: السَّامُ عَلَيْكَ؟ قَالُوا: يَا رَسُولَ اللَّهِ، أَلَا نَقْتُلُهُ؟ قَالَ: لَا، إِذَا سَلَّمَ عَلَيْكُمْ أَهْلُ الْكِتَابِ، فَقُولُوا: وَعَلَيْكُمْ» . وَمِنْ طَرِيقِ الْبُخَارِيِّ نا أَبُو بُغَيْمٍ عَنْ ابْنِ عُيَيْنَةَ عَنْ الزُّهْرِيِّ عَنْ عُرْوَةَ عَنْ عَائِشَةَ قَالَتْ «اسْتَأْذَنَ

Through another chain transmitted by al-Bukhari: Abu Bughaym reported from Ibn Uyaynah from al-Zuhri from Urwah from Aishah, who said: "A group of Jews sought permission to visit the Prophet—peace and blessings of Allah be upon him and his family—and said: *Al-samu ʻalayka*. I retorted: 'Rather, upon you be death and curse!' The Prophet said: 'O Aishah, Allah is gentle and loves gentleness in all matters.' I protested: 'Did you not hear what they said?' He answered: 'I replied: *Wa ʻalaykum* (And upon you).'"

L42966 Abdullah ibn Rabee' narrated to us: Muhammad ibn Ishaq narrated to us, Ibn al-A'rabi narrated to us, Abu Dawud narrated to us, Yahya ibn Habeeb ibn Adi narrated to us, Khalid ibn al-Harith narrated to us, Shu'bah narrated to us from Hisham ibn Zayd ibn Anas from Anas ibn Malik: "A Jewish woman came to the Prophet—peace and blessings be upon him and his family—with a poisoned ewe, and he ate from it. She was brought to the Messenger of Allah—peace and blessings be upon him and his family—and he questioned her about it. She said: 'I intended to kill you.' He replied: 'Allah would not grant you power over that'—or he said: 'over me.' They asked: 'Will you not kill her?' He said: 'No.'"

L42967–42969 Abu Muhammad said: They contended, "Indeed, the Messenger of Allah (may Allah bless him and his family and grant him peace) heard the Jews say to him, 'May death be upon you'—a statement for which a Muslim would thereby become a disbeliever if he uttered it. The Jewish woman also poisoned food intending to kill him—an act for which a Muslim would thereby become a disbeliever if he committed it. Yet the Prophet (may Allah bless him and his family and grant him peace) did not kill them." Nor did he kill her, and the ḥadīth of Labīd ibn al-Aʿṣam when he bewitched him—peace be upon him—yet he did not kill him? Abū Muḥammad said: We know of no proof for them whatsoever beyond this, and none of this constitutes evidence for them in any respect, as we shall clarify—if Allah the Exalted wills. As for the ḥadīths mentioning the Jews saying to the Prophet—peace be upon him—"as-sāmu ʿalayka" (death be upon you), this is of no consequence, for "as-sām" refers solely to death: as narrated to us through the chain of al-Bukhārī, from Yaḥyā ibn Bukayr, from al-Layth (that is, Ibn Saʿd), from ʿUqayl ibn Khālid, from Ibn Shihāb, who was informed by Abū Salamah ibn ʿAbd

رَهْطٌ مِنْ الْيَهُودِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَقَالُوا: السَّامُ عَلَيْكَ، فَقُلْتُ: بَلَى، وَعَلَيْكُمْ السَّامُ وَاللَّعْنَةُ، فَقَالَ: يَا عَائِشَةُ إِنَّ اللَّهَ رَفِيقٌ يُحِبُّ الرِّفْقَ فِي الْأَمْرِ كُلِّهِ، قُلْتُ: أَوَلَمْ تَسْمَعْ مَا قَالُوا؟ قَالَ: قُلْتُ: وَعَلَيْكُمْ» .

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ رَبِيعٍ نا مُحَمَّدُ بْنُ إِسْحَاقَ نا ابْنُ الْأَعْرَابِيِّ نا أَبُو دَاوُد نا يَحْيَى بْنُ حَبِيبِ بْنِ عَدِيٍّ نا خَالِدُ بْنُ الْحَارِثِ نا شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدِ بْنِ أَنَسٍ عَنْ أَنَسِ بْنِ مَالِكٍ «أَنَّ امْرَأَةً يَهُودِيَّةً أَتَتْ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - بِشَاةٍ مَسْمُومَةٍ فَأَكَلَ مِنْهَا فَجِيءَ بِهَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - فَسَأَلَهَا عَنْ ذَلِكَ، فَقَالَتْ: أَرَدْتُ لِأَقْتُلَكَ، قَالَ: مَا كَانَ اللَّهُ لِيُسَلِّطَكِ عَلَى ذَلِكَ - أَوْ قَالَ عَلَيَّ - فَقَالُوا: أَلَا نَقْتُلُهَا؟ فَقَالَ: لَا» .

قَالَ أَبُو مُحَمَّدٍ: فَقَالُوا: إنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - قَدْ سَمِعَ قَوْلَ الْيَهُودِ لَهُ السَّامُ عَلَيْك - وَهَذَا قَوْلٌ لَوْ قَالَهُ مُسْلِمٌ لَكَانَ كَافِرًا بِذَلِكَ، - وَقَدْ سَمَّتْ الْيَهُودِيَّةُ طَعَامًا لِتَقْتُلَهُ - وَلَوْ أَنَّ مُسْلِمًا يَفْعَلُ ذَلِكَ لَكَانَ بِذَلِكَ كَافِرًا، فَلَمْ يَقْتُلْهُمْ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَلَا قَتَلَهَا، وَحَدِيثُ لَبِيدِ بْنِ الْأَعْصَمِ إذْ سَحَرَهُ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَلَمْ يَقْتُلْهُ؟ قَالَ أَبُو مُحَمَّدٍ: مَا نَعْلَمُ لَهُمْ حُجَّةً غَيْرَ هَذَا أَصْلًا، وَكُلُّ هَذَا لَا حُجَّةَ لَهُمْ فِي شَيْءٍ مِنْهُ عَلَى مَا نُبَيِّنُ - إنْ شَاءَ اللَّهُ تَعَالَى - أَمَّا الْأَحَادِيثُ الَّتِي فِيهَا قَوْلُ الْيَهُودِ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «السَّامُ عَلَيْكَ» فَلَيْسَ بِشَيْءٍ؛ لِأَنَّ السَّامَ إنَّمَا هُوَ الْمَوْتُ: كَمَا رُوِّينَا مِنْ طَرِيقِ الْبُخَارِيِّ نا يَحْيَى بْنُ بُكَيْرٍ نا اللَّيْثُ هُوَ ابْنُ سَعْدٍ - عَنْ عُقَيْلِ بْنِ خَالِدٍ عَنْ ابْنِ شِهَابٍ أَخْبَرَهُ أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ بْنُ عَوْفٍ، وَسَعِيدُ بْنُ الْمُسَيِّبِ

al-Raḥmān ibn ʿAwf and Saʿīd ibn al-Musayyib that Abū Hurayrah informed them he heard Allah's Messenger—peace and blessings be upon him and his family—say regarding black seed: "It is a cure for every ailment except as-sām (death)." Ibn Shihāb said: "As-sām is death." Thus, the meaning of "as-sāmu ʿalayka" is "death be upon you"—a truthful statement, albeit harsh, for Allah the Exalted says: {You will surely die, and they will surely die} [39:30], and He says: {Every soul will taste death} [3:185]. Disbelief results from a Muslim's harshness toward the Prophet—peace and blessings be upon him and his family—and his blood becomes lawful due to such disbelief. The dhimmī is a disbeliever, but it is not asserted that his harshness toward the Prophet—peace and blessings be upon him and his family—makes him a disbeliever, for he was already a disbeliever and remains so. His blood is not made lawful due to his disbelief if his intention is sound, but rather for a reason other than disbelief.[54][55]

L42970–42972 The same ruling applies to Labid ibn al-Aʿṣam al-Zuraqi the Jew for his act against the Messenger of Allah—may Allah bless him and grant him peace—and to the Jewess who poisoned his food—may Allah bless him and grant him peace—with no distinction. The apostasy arising from such an act applies exclusively to a Muslim who commits it against the Prophet—peace be upon him. As for dhimmis, they were disbelievers before such acts and persist in disbelief alongside them. Their blood is not rendered lawful in that context merely due to their intrinsic disbelief while under covenant. Thus, a Muslim is executed for apostasy if he innovates disbelief after accepting Islam, whereas a dhimmi is not executed—even if he repeatedly manifests new forms of disbelief—provided it aligns with the category of disbelief for which he entered the covenant. When we examined the rationale mandating execution for a dhimmi who insults Allah Almighty, His Messenger—peace be upon him—or disparages any aspect of Islam, we found it stems from his violation of the covenant. For he only secures protection and spares his blood by submitting to the jizyah in humiliation. Allah Almighty says: "Fight

" أَنَّ أَبَا هُرَيْرَةَ أَخْبَرَهُمَا أَنَّهُ سَمِعَ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَقُولُ «فِي الْحَبَّةِ السَّوْدَاءِ: شِفَاءٌ مِنْ كُلِّ دَاءٍ إِلَّا السَّامَ؟» قَالَ ابْنُ شِهَابٍ: وَالسَّامُ الْمَوْتُ، فَمَعْنَى السَّامُ عَلَيْك: الْمَوْتُ عَلَيْك، وَهَذَا كَلَامٌ حَقٌّ، وَإِنْ كَانَ فِيهِ جَفَاءٌ؛ لِأَنَّ اللَّهَ تَعَالَى يَقُولُ {إِنَّكَ مَيِّتٌ وَإِنَّهُمْ مَيِّتُونَ} [الزمر: ٣٠] . وَقَالَ تَعَالَى {كُلُّ نَفْسٍ ذَائِقَةُ الْمَوْتِ} [آل عمران: ١٨٥] وَإِنَّمَا يَحْصُلُ بِالْجَفَاءِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - الْكُفْرُ مِنْ الْمُسْلِمِ، وَبِكُفْرِهِ يَحِلُّ دَمُهُ، وَالذِّمِّيُّ كَافِرٌ، وَلَمْ يَقُلْ: إنَّهُ لِجَفَائِهِ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - يَكُونُ كَافِرًا بِجَفَائِهِ، بَلْ كَانَ كَافِرًا، وَهُوَ كَافِرٌ، وَلَا يَحِلُّ دَمُهُ بِكُفْرِهِ، إذَا صَحَّتْ نِيَّتُهُ، لَكِنْ بِمَعْنًى آخَرَ غَيْرَ الْكُفْرِ.

وَهَكَذَا الْقَوْلُ فِي لَبِيدِ بْنِ الْأَعْصَمِ الزُّرَقِيِّ الْيَهُودِيِّ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ -، وَفِي سَمِّ الْيَهُودِيَّةِ لِطَعَامِهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - وَلَا فَرْقَ، إنَّمَا يَحْصُلُ مِنْ ذَلِكَ الْكُفْرُ لِمَنْ فَعَلَهُ بِالنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - مِنْ الْمُسْلِمِينَ، وَالذِّمِّيُّونَ كُفَّارٌ قَبْلَ ذَلِكَ، وَمَعَهُ، وَلَيْسَ بِنَفْسِ كُفْرِهِمْ حَلَّتْ دِمَاؤُهُمْ فِي ذَلِكَ إذَا تَذَمَّمُوا، فَالْمُسْلِمُ يُقْتَلُ بِكُفْرِهِ إذَا أَحْدَثَ كُفْرًا بَعْدَ إسْلَامِهِ، وَالذِّمِّيُّ لَا يُقْتَلُ، وَإِنْ أَحْدَثَ فِي كُلِّ حِينٍ كُفْرًا حَادِثًا غَيْرَ كُفْرِهِ بِالْأَمْسِ، إذَا كَانَ مِنْ نَوْعِ الْكُفْرِ الَّذِي تَذَمَّمَ عَلَيْهِ - فَنَظَرْنَا فِي الْمَعْنَى الَّذِي وَجَبَ بِهِ الْقَتْلُ عَلَى الذِّمِّيِّ إذَا سَبَّ اللَّهَ تَعَالَى أَوْ رَسُولَهُ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ اسْتَخَفَّ بِشَيْءٍ مِنْ دِينِ الْإِسْلَامِ - فَوَجَدْنَاهُ إنَّمَا هُوَ نَقْضُ الذِّمَّةِ؛ لِأَنَّهُ إنَّمَا تَذَمَّمَ، وَحَقَنَ دَمَهُ بِالْجِزْيَةِ عَلَى الصَّغَارِ، قَالَ اللَّهُ تَعَالَى {قَاتِلُوا الَّذِينَ لا يُؤْمِنُونَ بِاللَّهِ وَلا بِالْيَوْمِ الآخِرِ وَلا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ} [التوبة: ٢٩] الْآيَةَ إلَى قَوْلِهِ: {وَهُمْ صَاغِرُونَ} [التوبة: ٢٩] وَقَالَ تَعَالَى {وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ

[54] **Hadith references (L42967):** Sahih al-Bukhari 5688; Sahih Muslim 2215a; Sunan Ibn Majah 3447.

[55] **Qur'an references (L42967):** Qur'an 39:30 (Az-Zumar); Qur'an 3:185 (Ali 'Imran); Qur'an 21:35 (Al-Anbya); Qur'an 29:57 (Al-'Ankabut).

those who do not believe in Allah nor the Last Day, nor prohibit what Allah and His Messenger have prohibited..." [9:29] until His words: "...while they are humbled." [9:29] And He, the Exalted, said: {And if they break their oaths after their covenant and revile your religion, then fight the leaders of disbelief} [At-Tawbah 9:12]. These two verses are explicit texts that do not allow interpretation regarding what we have stated: that the People of the Book are fought **and killed until they pay** the jizyah, and that if a covenant is made with them and their covenant **is concluded**, yet they revile our religion, they have violated their covenant and broken their oaths, and the ruling to fight them **returns to its previous ruling**.[56]

وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا أَئِمَّةَ الْكُفْرِ} [التوبة: ١٢] . فَكَانَ هَاتَانِ الْآيَتَانِ نَصًّا جَلِيًّا لَا يَحْتَمِلُ تَأْوِيلًا فِي بَيَانِ مَا قُلْنَا مِنْ أَنَّ أَهْلَ الْكِتَابِ يُقَاتَلُونَ وَيُقْتَلُونَ حَتَّى يُعْطُوا الْجِزْيَةَ، وَعَلَى أَنَّهُمْ إذَا عُوهِدُوا وَتَمَّ عَهْدُهُمْ، وَطَعَنُوا فِي دِينِنَا فَقَدْ نَقَضُوا عَهْدَهُمْ، وَنَكَثُوا أَيْمَانَهُمْ، وَعَادَ حُكْمُ قِتَالِهِمْ كَمَا كَانَ.

L42973 By necessity of perception and observation, we know that if they openly revile Allah the Exalted, or revile the Messenger of Allah—peace and blessings of Allah be upon him and his family—or anything from the religion of Islam, or any Muslim among the people, they have indeed abandoned their protected status; rather, they have diminished us, humiliated us, and attacked our religion. Thus, they have broken their covenant by that and violated their covenant of protection (dhimma). When they violate their dhimma, does it not become lawful to shed their blood, enslave their captives, and seize their wealth without doubt? Abu Muhammad—may Allah have mercy on him—said: The poisoning incident by the Jewish woman targeting the Prophet—peace and blessings of Allah be upon him and his family—occurred during the Battle of Khaybar without doubt, and this was three years before the revelation of Surah At-Tawbah (Bara'ah).

وَبِضَرُورَةِ الْحِسِّ وَالْمُشَاهَدَةِ نَدْرِي أَنَّهُمْ إنْ أَعْلَنُوا سَبَّ اللَّهِ تَعَالَى أَوْ سَبَّ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - أَوْ شَيْءٍ مِنْ دِينِ الْإِسْلَامِ، أَوْ مُسْلِمٍ مِنْ عَرَضِ النَّاسِ، فَقَدْ فَارَقُوا الصَّغَارَ، بَلْ قَدْ أَصْغَرُونَا، وَأَذَلُّونَا، وَطَعَنُوا فِي دِينِنَا، فَنَكَثُوا بِذَلِكَ عَهْدَهُمْ، وَنَقَضُوا ذِمَّتَهُمْ - وَإِذَا نَقَضُوا ذِمَّتَهُمْ فَقَدْ حَلَّتْ دِمَاؤُهُمْ، وَسَبْيُهُمْ، وَأَمْوَالُهُمْ بِلَا شَكٍّ؟ قَالَ أَبُو مُحَمَّدٍ - رَحِمَهُ اللَّهُ -: وَسَمُّ الْيَهُودِيَّةِ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - كَانَ يَوْمَ خَيْبَرَ بِلَا شَكٍّ وَهُوَ قَبْلَ نُزُولِ " بَرَاءَةٌ " بِثَلَاثَةِ أَعْوَامٍ.

L42974 Similarly, we state concerning the utterance of those Jews, "Death upon you," directed at the Prophet—peace and blessings of Allah be upon him—and the sorcery of Labīd ibn al-Aʿṣam against him, that all this occurred before the command was revealed to not uphold the covenant of protection for the dhimmī except under humiliation. All this was permissible at a time when truce with them was allowed, for the underlying implication in the hadiths concerning "the death" and "the sorcery" aligns with the implication of the hadith instructing to call the ewe "equal, equal." The hadith about the ewe is unquestionably abrogated by what is in Sūrah Barāʾah regarding

وَكَذَلِكَ نَقُولُ فِي قَوْلِ أُولَئِكَ الْيَهُودِ: السَّامُ عَلَيْك لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -. وَفِي سِحْرِ لَبِيدِ بْنِ الْأَعْصَمِ إيَّاهُ وَأَنَّ هَذَا كُلَّهُ كَانَ قَبْلَ أَنْ يُؤْمَرَ بِأَنْ لَا يُثَبِّتَ عَهْدَ الذِّمِّيِّ إلَّا عَلَى الصِّغَارِ، وَأَنَّ كُلَّ ذَلِكَ إذْ كَانَتْ الْمُهَادَنَةُ جَائِزَةً لَهُمْ؛ لِأَنَّ الْمَعْنَى فِي حَدِيثِ " السَّامِ، وَالسِّحْرِ " هُوَ مَعْنَى حَدِيثِ سَمِّ الشَّاةِ سَوَاءً سَوَاءً، وَحَدِيثُ سَمِّ الشَّاةِ مَنْسُوخٌ بِلَا شَكٍّ بِمَا فِي " سُورَةِ بَرَاءَةَ " مِنْ أَنْ لَا يُقَرُّوا إلَّا عَلَى الصِّغَارِ فَحَدِيثُ " السَّامِ،

[56] **Qur'an references (L42970):** Qur'an 9:29 (At-Tawbah); Qur'an 9:12 (At-Tawbah).

not permitting them to remain except under humiliation. Thus, the hadiths concerning "the death" and "the sorcery" are undoubtedly both abrogated. Indeed, certainty has been established in this, as their meanings are abrogated, and acting upon the abrogated is impermissible. It is entirely impermissible for them to remain valid after the revelation of Barāʾah, for it is inconceivable that Allah the Exalted would abrogate something definitively, then revoke the abrogating text, reinstate the abrogated ruling, and fail to provide clarifying evidence dispelling doubt, eliminating conjecture, and nullifying confusion—this is a matter we are assured of, and praise be to Allah.

وَالسِّحْرِ " بِلَا شَكٍّ مَنْسُوخَانِ، بَلْ الْيَقِينُ قَدْ صَحَّ بِذَلِكَ، لِأَنَّ مَعْنَاهُمَا مَنْسُوخٌ وَلَا يَحِلُّ الْعَمَلُ بِالْمَنْسُوخِ، وَلَا يَجُوزُ أَلْبَتَّةَ أَنْ يَكُونَا بَعْدَ نُزُولِ " بَرَاءَةٌ "، لِأَنَّهُ مِنْ الْمُحَالِ أَنْ يَنْسَخَ اللَّهُ تَعَالَى شَيْئًا بِيَقِينٍ، ثُمَّ يَنْسَخَ النَّاسِخَ وَيُعِيدَ حُكْمَ الْمَنْسُوخِ وَلَا يَصْحَبُهُ مِنْ الْبَيَانِ مَا يَرْفَعُ الشَّكَّ، وَيَرْفَعُ الظَّنَّ، وَيُبْطِلُ الْإِشْكَالَ - هَذَا أَمْرٌ قَدْ أَمِنَّاهُ - وَلِلَّهِ الْحَمْدُ.

L42975–42977 If someone were to say: How can you make this claim when you yourselves state that whoever poisons food for a Muslim today incurs no capital punishment, that whoever practices sorcery against a Muslim incurs no capital punishment, and that the Jews today say to us, "as-Sāmu ʿalaykum (death be upon you)," yet no capital punishment is imposed upon them? Why, then, do we not see you ruling except by what you have stated to be abrogated? Our response—and with Allah, the Exalted, lies all success—is that we have not stated that any of these narrations have been abrogated except what... The ruling necessitated by their manner of addressing the Prophet—peace be upon him—specifically, the ruling concerning naming his food specifically, and the ruling of targeting him with magic specifically—these alone were abrogated with nothing more, because the purpose was to venerate the Prophet—peace be upon him—and honor him, ensuring that supplicating to him—peace be upon him—never resembles how we supplicate to one another, remaining forever for both Muslim and disbeliever. We have indeed learned that his statement to God's Messenger—peace be upon him and his family—"Be just, O Muhammad!" constituted valid apostasy, for he neither honored nor revered him as commanded, and raised his voice against him, thus rendering his deeds void.

فَإِنْ قَالَ قَائِلٌ: كَيْفَ تَقُولُونَ هَذَا وَأَنْتُمْ تَقُولُونَ: إنَّ مَنْ سَمَّ الْيَوْمَ طَعَامًا لِأَحَدٍ مِنْ الْمُسْلِمِينَ فَلَا قَتْلَ عَلَيْهِ وَإِنَّ مَنْ سَحَرَ مُسْلِمًا فَلَا قَتْلَ عَلَيْهِ، وَإِنَّ الْيَهُودَ يَقُولُونَ لَنَا الْيَوْمَ: السَّامُ عَلَيْكُمْ، وَلَا قَتْلَ عَلَيْهِمْ فَمَا نَرَاكُمْ تَحْكُمُونَ إلَّا بِمَا ذَكَرْتُمْ أَنَّهُ مَنْسُوخٌ؟ فَجَوَابُنَا - وَبِاَللَّهِ تَعَالَى التَّوْفِيقُ - أَنَّنَا لَمْ نَقُلْ إنَّ هَذِهِ الْأَحَادِيثَ نُسِخَ مِنْهَا إلَّا مَا يُوجِبُهُ حُكْمُ خِطَابِهِمْ لِلنَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خَاصَّةً، وَحُكْمُ سَمِّ طَعَامِهِ خَاصَّةً، وَحُكْمُ قَصْدِهِ بِالسِّحْرِ خَاصَّةً، فَهَذَا هُوَ الَّذِي نُسِخَ وَحْدَهُ فَقَطْ وَلَا مَزِيدَ، لِأَنَّ الْغَرَضَ تَعْظِيمُ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَتَوْقِيرُهُ، وَأَنْ لَا يُجْعَلَ دُعَاؤُهُ - عَلَيْهِ السَّلَامُ - كَدُعَاءِ بَعْضِنَا بَعْضًا بَاقٍ أَبَدًا - عَلَى الْمُسْلِمِ وَالْكَافِرِ. فَقَدْ عَلِمْنَا أَنَّ قَوْلَهُ الَّذِي قَالَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - " اعْدِلْ يَا مُحَمَّدُ " كَانَ رِدَّةً صَحِيحَةً، لِأَنَّهُ لَمْ يُوَقِّرْهُ وَلَا عَظَّمَهُ كَمَا أُمِرَ، وَرَفَعَ صَوْتَهُ عَلَيْهِ فَحَبِطَ عَمَلُهُ.

L42978 If a Muslim or a dhimmi were to say to Abū Bakr al-Ṣiddīq—may Allah be pleased with him—and those below him, "Be just, O Abū Bakr," there would not be anything of reprehensibility in it, nor anything disliked. As for the Jews, if they say to us, "Death be upon you (al-sāmu ʿalaykum)," or

وَلَوْ أَنَّ مُسْلِمًا أَوْ ذِمِّيًّا يَقُولُ لِأَبِي بَكْرٍ الصِّدِّيقِ - رَضِيَ اللَّهُ عَنْهُ - فَمَنْ دُونَهُ: اعْدِلْ يَا أَبَا بَكْرٍ لَمَا كَانَ فِيهِ شَيْءٌ مِنْ النَّكِرَةِ، وَلَا مِنْ الْكَرَاهَةِ، وَالْيَهُودُ إنْ قَالُوا لَنَا: السَّامُ عَلَيْكُمْ، أَوْ قَالُوا: الْمَوْتُ عَلَيْكُمْ، لَقُلْنَا لَهُمْ: صَدَقْتُمْ وَلَا خَفَاءَ فِي هَذَا.

say, “May death overtake you (al-mawtu ʿalaykum),” we would reply to them, “You speak truthfully,” and there is no obscurity in this.

L42979 Similarly, if they dispute with us over a right they claim and raise their voices against us, there is no blame in that. But if such an act is directed at the Messenger of Allah—may Allah bless him and grant him peace—whether by Muslims or others, it constitutes disbelief and a breach of the dhimma.

L42980 Similarly, if a Muslim or non-Muslim sorcerer practices sorcery against us and did not exceed in scheming against us with a plot that does not succeed, Allah the Exalted says: “They have only devised the plot of a sorcerer, and a sorcerer will not succeed wherever he may come” [Ta-Ha: 69]. Such a plot does not nullify the dhimma, because they have not thereby departed from their state of humiliation. However, if this act is directed against the Messenger of Allah—peace and blessings be upon him—with the intent of disbelief and violation of the dhimma, then it nullifies the dhimma, for it contradicts the obligatory veneration uniquely required for him, excluding others.[57]

L42981 Similarly, the poisoning of food against us entails nothing but the corruption of our wealth if it is ours, or deceptive scheming by its perpetrator if the food belongs to them. Neither the corruption of wealth nor deceptive scheming constitutes a breach of the covenant, nor does it render anyone an apostate for such acts—except for one who commits this specifically against the Messenger of Allah (peace and blessings of Allah be upon him and his family). In that case, it constitutes apostasy and a breach of the covenant, for it contradicts the obligatory veneration owed to him by us and by all inhabitants of the earth—its jinn and humankind.

L42982 Similarly, if a Muslim or a dhimmi did not submit to a ruling decreed by Abu Bakr—may Allah be pleased with him—or those after him, and his independent reasoning was in a matter where there is no explicit text or consensus, and there was no acceptance of that ruling, there would be no blame or sin upon him for that. If either a Muslim or a dhimmi refused to submit to a ruling decreed by the Messenger of Allah—may Allah bless him

وَكَذَلِكَ لَوْ خَاصَمُونَا فِي حَقٍّ يَدَّعُونَهُ فَرَفَعُوا أَصْوَاتَهُمْ عَلَيْنَا، مَا كَانَ فِي ذَلِكَ نَكِرَةٌ، وَهُوَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - مِنْ أَهْلِ الْإِسْلَامِ وَغَيْرِهِمْ كُفْرٌ، وَنَقْضٌ لِلذِّمَّةِ.

وَكَذَلِكَ إِذَا سَحَرَنَا سَاحِرٌ مُسْلِمٌ أَوْ كَافِرٌ، فَلَمْ يَزِدْ عَلَى أَنْ كَادَنَا كَيْدًا لَا يُفْلِحُ مَعَهُ، قَالَ اللَّهُ تَعَالَى {إِنَّمَا صَنَعُوا كَيْدُ سَاحِرٍ وَلا يُفْلِحُ السَّاحِرُ حَيْثُ أَتَى} [طه: ٦٩] وَلَيْسَ بِالْكَيْدِ تَنْتَقِضُ الذِّمَّةُ؛ لِأَنَّهُمْ لَمْ يُفَارِقُوا بِهِ الصِّغَارَ، وَهُوَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - إِذَا قُصِدَ بِهِ كُفْرٌ وَنَقْضٌ لِلذِّمَّةِ؛ لِأَنَّهُ خِلَافُ التَّعْظِيمِ الْمُفْتَرَضِ لَهُ خَاصَّةً دُونَ غَيْرِهِ.

وَكَذَلِكَ سَمُّ الطَّعَامِ لَنَا لَيْسَ فِيهِ إِلَّا إِفْسَادُ مَالٍ مِنْ أَمْوَالِنَا إِنْ كَانَ لَنَا، أَوْ كَيْدٌ مِنْ فَاعِلِهِ إِنْ كَانَ الطَّعَامُ لَهُ، وَلَيْسَ بِإِفْسَادِ الْمَالِ وَالْكَيْدِ تَنْتَقِضُ الذِّمَّةُ وَلَا يَكْفُرُ بِذَلِكَ أَحَدٌ إِلَّا مَنْ عَامَلَ بِذَلِكَ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - خَاصَّةً، فَهُوَ كُفْرٌ وَنَقْضٌ لِلذِّمَّةِ؛ لِأَنَّهُ خِلَافُ التَّعْظِيمِ الْمُفْتَرَضِ لَهُ عَلَيْنَا وَعَلَى جَمِيعِ أَهْلِ الْأَرْضِ جِنِّهَا وَإِنْسِهَا.

وَكَذَلِكَ لَوْ أَنَّ مُسْلِمًا أَوْ ذِمِّيًّا لَمْ يُسَلِّمْ لِحُكْمٍ حَكَمَ بِهِ أَبُو بَكْرٍ - رَضِيَ اللَّهُ عَنْهُ - فَمَنْ دُونَهُ فَاجْتِهَادُهُ فِيمَا لَا نَصَّ فِيهِ وَلَا إِجْمَاعَ، وَلَا رِضَى بِذَلِكَ الْقَوْلِ لَمْ يَكُنْ عَلَيْهِ فِي ذَلِكَ حَرَجٌ وَلَا إِثْمٌ، وَلَوْ أَنَّهُمَا لَمْ يُسَلِّمَا لِحُكْمٍ حَكَمَ بِهِ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ - لَكَانَ ذَلِكَ كُفْرًا مِنَ الْمُسْلِمِينَ، بِنَصِّ الْقُرْآنِ، وَإِخْرَاجًا لَهُمْ عَنِ الْإِيمَانِ،

[57] **Qur’an references (L42980):** Qur’an 20:69 (Taha).

and his family and grant him peace—this would constitute disbelief on the part of the Muslims, according to the explicit text of the Quran, expelling them from faith. For the dhimmi, it would be a breach of the dhimma covenant on his part, as it is a rejection of their subordinate status and a disparagement of the religion. This is clear, and abundant praise belongs to Allah.

L42983

وَلَكَانَ ذَلِكَ نَقْضًا لِلذِّمَّةِ مِنْ الذِّمِّيِّ؛ لِأَنَّهُ خُرُوجٌ عَنْ الصَّغَارِ، وَطَعْنٌ فِي الدِّينِ، وَهَذَا بَيِّنٌ - وَلِلَّهِ الْحَمْدُ كَثِيرًا.