

55 – THE BOOK OF WAṢĀYĀ (Wills and Testaments)

٥٥ - كتاب الوصايا

(1) CHAPTER. *Al-Waṣāyā* (The Wills)

(١) بَابُ الْوَصَايَا

And the statement of the Prophet ﷺ: “One should have his *Waṣāyā* (last will and testament) written and kept ready with him.”

وَقَوْلِ النَّبِيِّ ﷺ: «وَصِيَّةُ الرَّجُلِ مَكْتُوبَةٌ عِنْدَهُ». وَقَالَ اللَّهُ عَزَّ وَجَلَّ:

And the Statement of Allāh جل جلاله :

“It is prescribed for you, when death approaches any of you, if he leaves wealth, that he make a bequest to parents... (up to)... some unjust...” (V.2:180-182)

﴿كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ﴾ إِلَى ﴿جَنَفًا﴾ [البقرة: ١٨٠-١٨٢] ﴿جَنَفًا﴾: مَيْلًا، ﴿مُتَجَانِفٍ﴾: مُتَمَائِلٍ.

2738. Narrated ‘Abdullāh bin ‘Umar رضي الله عنهما: Allāh’s Messenger ﷺ said, “It is not permissible for any Muslim who has something to will, to stay for two nights without having his last will and testament written and kept ready with him.”

٢٧٣٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: أَخْبَرَنَا مَالِكٌ، عَنِ نَافِعٍ، عَنِ عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ».

تَابَعَهُ مُحَمَّدُ بْنُ مُسْلِمٍ، عَنِ عَمْرِو، عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ.

2739. Narrated ‘Amr bin Al-Hārith, the brother of the wife of Allāh’s Messenger ﷺ Juwairiya bint Al-Hārith: When Allāh’s Messenger ﷺ died, he did not leave any Dirham or Dīnār (i.e., money) or a slave or a slave-woman or anything else except his white mule, his arms and a piece of land which he had given in charity.

٢٧٣٩ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْحَارِثِ: حَدَّثَنَا يَحْيَى بْنُ أَبِي بُكَيْرٍ: حَدَّثَنَا زُهَيْرُ بْنُ مُعَاوِيَةَ الْجُعْفِيُّ: حَدَّثَنَا أَبُو إِسْحَاقَ، عَنِ عَمْرِو بْنِ الْحَارِثِ خَتَنِ رَسُولِ اللَّهِ ﷺ أَخِي جُوَيْرِيَةَ بِنْتِ الْحَارِثِ قَالَ: مَا تَرَكَ رَسُولُ اللَّهِ ﷺ عِنْدَ مَوْتِهِ دَرَاهِمًا وَلَا دِينَارًا، وَلَا عَبْدًا وَلَا أَمَةً وَلَا شَيْئًا إِلَّا بَعَلَّتُهُ الْبَيْضَاءُ وَسِلَاحُهُ وَأَرْضًا جَعَلَهَا صَدَقَةً. [انظر: ٢٨٧٣، ٢٩١٢،

2740. Narrated Ṭalḥa bin Musarrif: I asked ‘Abdullāh bin Abū Aūfa رَضِيَ اللهُ عَنْهُمَا, “Did the Prophet ﷺ make a will?” He replied, “No.” I asked him, “How is it then that the making of a will has been enjoined on people (or that they are ordered to make a will)?” He replied, “The Prophet ﷺ bequeathed Allāh’s Book (i.e., the Qur’an).”

2741. Narrated Al-Aswad: In the presence of ‘Āishah some people mentioned that the Prophet ﷺ had appointed ‘Alī by will as his successor. ‘Āishah said, “When did he appoint him by will? Verily, when he died he was resting against my chest (or said: in my lap) and he asked for a washbasin and then collapsed while in that state, and I could not even perceive that he had died, so when did he appoint him by will?”

(2) CHAPTER. One would rather leave one’s inheritors wealthy than leave them (poor) begging others.

2742. Narrated Sa’d bin Abi Waqqāṣ رَضِيَ اللهُ عَنْهُ: The Prophet ﷺ came visiting me while I was (sick) in Makkah, (‘Āmir the subnarrator said, and he disliked to die in the land whence he had already migrated). He (i.e., the Prophet ﷺ) said, “May Allāh bestow His Mercy on Ibn ‘Afrā’ (Sa’d bin Khāula).” I said, “O Allāh’s Messenger! May I will all my property (in charity)?” He said, “No.” I said, “Then may I will half of it?” He said, “No.” I said, “One-third?” He said,

٢٧٤٠ - حَدَّثَنَا خَلَادُ بْنُ يَحْيَى: حَدَّثَنَا مَالِكٌ هُوَ ابْنُ مِعْوَلٍ: حَدَّثَنَا طَلْحَةُ بْنُ مِصْرَفٍ قَالَ: سَأَلْتُ عَبْدَ اللَّهِ بْنَ أَبِي أَوْفَى رَضِيَ اللهُ عَنْهُمَا: هَلْ كَانَ النَّبِيُّ ﷺ أَوْصَى؟ فَقَالَ: لَا، فَقُلْتُ: كَيْفَ كُتِبَ عَلَى النَّاسِ الْوَصِيَّةُ أَوْ أُمِرُوا بِالْوَصِيَّةِ؟ قَالَ: أَوْصَى بِكِتَابِ اللَّهِ. [انظر: ٤٤٦٠، ٥٠٢٢]

٢٧٤١ - حَدَّثَنَا عَمْرُو بْنُ زُرَّارَةَ: أَخْبَرَنَا إِسْمَاعِيلُ عَنِ ابْنِ عَوْنٍ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ قَالَ: ذَكَرُوا عِنْدَ عَائِشَةَ أَنَّ عَلِيًّا رَضِيَ اللهُ عَنْهُمَا كَانَ وَصِيًّا فَقَالَتْ: مَتَى أَوْصَى إِلَيْهِ وَقَدْ كُنْتُ مُسِنِدَتَهُ إِلَى صَدْرِي؟ أَوْ قَالَتْ: حَجْرِي، فَدَعَا بِالطَّسْتِ فَلَقِدَ انْحَنَّتْ فِي حَجْرِي فَمَا شَعَرْتُ أَنَّهُ قَدْ مَاتَ، فَمَتَى أَوْصَى إِلَيْهِ؟ [انظر: ٤٤٥٩]

(٢) بَابٌ أَنْ يَتْرَكَ وَرَثَتَهُ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ يَتَكَفَّفُوا النَّاسَ

٢٧٤٢ - حَدَّثَنَا أَبُو نُعَيْمٍ: حَدَّثَنَا سُيَّانٌ، عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ، عَنْ عَامِرِ بْنِ سَعْدٍ، عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ رَضِيَ اللهُ عَنْهُ يَقُولُ: جَاءَ النَّبِيُّ ﷺ يُعَوِّدُنِي وَأَنَا بِمَكَّةَ وَهُوَ يَكْرَهُ أَنْ يَمُوتَ بِالْأَرْضِ الَّتِي هَاجَرَ مِنْهَا. قَالَ: «يُرَحِّمُ اللهُ ابْنَ عَفْرَاءِ»

“Yes, one-third, yet even one-third is too much. It is better for you to leave your inheritors wealthy than to leave them (poor) begging others, and whatever you spend for Allāh’s sake will be considered as a charitable deed, even the handful of food you put in your wife’s mouth. Allāh may lengthen your age so that some people may benefit by you, and some others be harmed by you.”

At that time Sa’d had only one daughter.

(3) CHAPTER. To will one-third of one’s property.

Al-Ḥasan said, “A *Dhimmī* (i.e., a non-Muslim living under the protection of an Islāmic government) is not allowed to will more than one-third of his property. And Allāh عزَّ وجلَّ said: “And so judge (you O Muḥammad ﷺ) among them by what Allāh has revealed...” (V.5:49)

2743. Narrated Ibn ‘Abbās رضي الله عنهما: I recommend that people reduce the proportion of what they bequeath by will to the fourth (of the whole legacy), for Allāh’s Messenger ﷺ said, “One-third, yet even one-third is too much.”

2744. Narrated Sa’d رضي الله عنه: I fell sick and the Prophet ﷺ paid me a visit. I said to him, “O Allāh’s Messenger! I invoke Allāh that He may not let me expire in the land whence I migrated (i.e., Makkah).” He said, “May Allāh give you health and let the people benefit by you.” I said, “I want to will my property, and I have only one daughter

قُلْتُ: يَا رَسُولَ اللَّهِ، أُوصِي بِمَالِي كُلِّهِ؟ قَالَ: «لَا»، قُلْتُ: فَالْشَّطْرُ؟ قَالَ: «لَا»، قُلْتُ: التُّلْتُ؟ قَالَ: «فالتُّلْتُ والتُّلْتُ كثيرٌ، إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ فِي أَيْدِيهِمْ، وَإِنَّكَ مَهْمَا أَنْفَقْتَ مِنْ نَفَقَةٍ فَإِنَّهَا صَدَقَةٌ حَتَّى اللَّقْمَةُ تَرْفَعُهَا إِلَى فِي امْرَأَتِكَ، وَعَسَى اللَّهُ أَنْ يَرْفَعَكَ فَيَنْتَفِعَ بِكَ نَاسٌ وَيُضِرَّ بِكَ آخَرُونَ». وَلَمْ يَكُنْ لَهُ يَوْمَئِذٍ إِلَّا ابْنَةٌ.

(٣) بَابُ الْوَصِيَّةِ بِالتُّلْتِ

وقال الحسن: لا يجوز للذمي وصية إلا بالتُّلْتِ: وقال الله عزَّ وجلَّ: ﴿وَإِنْ أَحْكَمَ بَيْنَهُمْ يَمَا أَنْزَلَ اللَّهُ﴾ [المائدة: ٤٩].

٢٧٤٣ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: حَدَّثَنَا سُفْيَانُ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ: «لَوْ غَضَّ النَّاسُ إِلَى الرَّبْعِ لَأَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: التُّلْتُ والتُّلْتُ كثيرٌ».

٢٧٤٤ - حَدَّثَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحِيمِ: حَدَّثَنَا زَكَرِيَّا بْنُ عَدِيٍّ: حَدَّثَنَا مَرْوَانُ، عَنْ هَاشِمِ بْنِ هَاشِمٍ، عَنْ عَامِرِ ابْنِ سَعِيدٍ، عَنْ أَبِيهِ رَضِيَ اللَّهُ عَنْهُ قَالَ: «مَرِضْتُ فَعَادَنِي النَّبِيُّ

and I want to will half of my property (to be given in charity).” He said, “Half is too much.” I said, “Then I will one-third.” He said, “One-third, yet even one-third is too much.” (The narrator added, “So the people started to will one-third of their property and that was permitted for them.”)

(4) CHAPTER. The saying of a testator to the executor, “Look after my son,” and what is permissible for the executor to claim.

2745. Narrated ‘Āishah رَضِيَ اللهُ عَنْهَا, the wife of the Prophet ﷺ: ‘Utba bin Abī Waqqāsh entrusted (his son) to his brother Sa’d bin Abī Waqqāsh saying, “The son of the slave-girl of Zam’a is my (illegal) son, take him into your custody.” So, during the year of the Conquest (of Makkah) Sa’d took the boy and said, “This is my brother’s son whom my brother entrusted to me.” ‘Abd bin Zam’a got up and said, “He is my brother and the son of the slave-girl of my father and was born on my father’s bed.” Then both of them came to Allāh’s Messenger ﷺ and Sa’d said, “O Allāh’s Messenger! This is my brother’s son whom my brother entrusted to me.”

Then ‘Abd bin Zam’a got up and said, “This is my brother and the son of the slave-girl of my father.” Allāh’s Messenger ﷺ said, “O ‘Abd bin Zam’a! This boy is for you as the boy belongs to the bed (where he was born), and for the adulterer is the stone.” Then the Prophet ﷺ said to his wife Sauda bint Zam’a, “Screen yourself from this boy,” when he saw

رَضِيَ اللهُ عَنْهُ فَقُلْتُ: يَا رَسُولَ اللَّهِ، اذْعُ اللَّهُ أَنْ لَا يَرُدَّنِي عَلَى عَقْبِي، قَالَ: لَعَلَّ اللَّهُ يَرْفَعُكَ وَيَنْفَعُ بِكَ نَاسًا. فَقُلْتُ: أُرِيدُ أَنْ أُوصِي، وَإِنَّمَا لِي ابْنَةٌ، فَقُلْتُ: أَوْصِي بِالنِّصْفِ؟ قَالَ: النِّصْفُ كَثِيرٌ، قُلْتُ: فَالثُّلُثُ؟ قَالَ: الثُّلُثُ وَالثُّلُثُ كَثِيرٌ أَوْ كَبِيرٌ، قَالَ: فَأَوْصَى النَّاسُ بِالثُّلُثِ فَجَارَ ذَلِكَ لَهُمْ.

(٤) بَابُ قَوْلِ الْمُوصِي لِمُوصِيهِ: تَعَاهَدُ لِبَوْلَدِي، وَمَا يَجُوزُ لِلْمُوصِي مِنَ الدَّعْوَى

٢٧٤٥ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ، عَنْ مَالِكٍ، عَنِ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ ابْنِ الزُّبَيْرِ، عَنْ عَائِشَةَ رَضِيَ اللهُ عَنْهَا زَوْجِ النَّبِيِّ ﷺ أَنَّهَا قَالَتْ: «كَانَ عُتْبَةُ بْنُ أَبِي وَقَّاصٍ عَهْدَ إِلَى أُخِيهِ سَعْدِ بْنِ أَبِي وَقَّاصٍ أَنَّ ابْنَ وِلِيدَةَ زَمْعَةَ مَنِي فَاقْبَضَهُ إِلَيْكَ. فَلَمَّا كَانَ عَامُ الْفَتْحِ أَخَذَهُ سَعْدٌ فَقَالَ: ابْنُ أُخِي قَدْ كَانَ عَهْدَ إِلَيَّ فِيهِ، فَتَمَّامَ عَبْدُ بْنُ زَمْعَةَ فَقَالَ: أُخِي وَابْنُ أُمِّ أَبِي، وُلِدَ عَلَيَّ فِرَاشِهِ، فَتَسَاوَقَا إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَ سَعْدٌ: يَا رَسُولَ اللَّهِ، ابْنُ أُخِي كَانَ عَهْدَ إِلَيَّ فِيهِ. فَقَالَ عَبْدُ بْنُ زَمْعَةَ: هُوَ أُخِي وَابْنُ وِلِيدَةَ أَبِي، فَقَالَ رَسُولُ اللَّهِ ﷺ: هُوَ لَكَ يَا عَبْدُ بْنُ زَمْعَةَ، هُوَ الْوَالِدُ لِلْفِرَاشِ وَلِلْعَاهِرِ

the boy's resemblance to 'Utba. Since then the boy did not see Sauda till he died.

الحَجْرُ. ثُمَّ قَالَ لِسَوْدَةَ بِنْتِ زَمْعَةَ: اِخْتَجِبِي مِنْهُ لَمَّا رَأَى مِنْ شَبْهِهِ بِعَبْتَةَ، فَمَا رَأَاهَا حَتَّى لَقِيَ اللَّهَ.»

[راجع: ٢٠٥٣]

(5) CHAPTER. If a patient gives an evident clear sign by nodding, (is that sign to be taken as a valid evidence?).

(٥) بَابُ إِذَا أَوْمَأَ الدَّرِيضُ بِرَأْسِهِ إِشَارَةً بَيِّنَةً تُعْرَفُ

2746. Narrated Anas رَضِيَ اللَّهُ عَنْهُ: A Jew crushed the head of a girl between two stones. She was asked, "Who has done so to you, so-and-so? so-and-so?", till the name of the Jew was mentioned, whereupon she nodded (in agreement). So the Jew was brought and was questioned till he confessed. The Prophet ﷺ then ordered that his head be crushed with stones. (See H. 2413)

٢٧٤٦ - حَدَّثَنَا حَسَّانُ بْنُ أَبِي عَبَادٍ: حَدَّثَنَا هَمَّامٌ، عَنْ قَتَادَةَ، عَنْ أَنَسِ رَضِيَ اللَّهُ عَنْهُ: أَنَّ يَهُودِيًّا رَضَّ رَأْسَ جَارِيَةٍ بَيْنَ حَجَرَيْنِ، فَقِيلَ لَهَا: مَنْ فَعَلَ بِكَ؟ أَفُلَانٌ أَوْ فُلَانٌ؟ حَتَّى سُمِّيَ الْيَهُودِيَّ، فَأَوْمَأَتْ بِرَأْسِهَا فَجِيءَ بِهِ فَلَمْ يَزَلْ حَتَّى اعْتَرَفَ فَأَمَرَ النَّبِيُّ ﷺ فَرَضَّ رَأْسَهُ بِالْحِجَارَةِ.

[راجع: ٢٤١٣]

(6) CHAPTER. A legal heir has no right to inherit⁽¹⁾ through a will.

(٦) بَابُ لَا وَصِيَّةَ لَوَارِثٍ

2747. Narrated Ibn 'Abbās رَضِيَ اللَّهُ عَنْهُمَا: The custom (in olden days) was that the property of the deceased would be inherited by his offspring; as for the parents (of the deceased), they would inherit by will of the deceased. Then Allāh cancelled from that custom whatever He wished and fixed for the male double the amount inherited by the female, and for each parent a sixth (of the whole legacy) and for the wife an eighth⁽²⁾ or a fourth⁽³⁾ and for the husband a half or a fourth.

٢٧٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ، عَنْ وَرْقَاءَ، عَنْ ابْنِ أَبِي نَجِيحٍ، عَنْ عَطَاءٍ، عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ: كَانَ الْمَالُ لِلْوَلَدِ، وَكَانَتِ الْوَصِيَّةُ لِلْوَالِدَيْنِ؛ فَنَسَخَ اللَّهُ مِنْ ذَلِكَ مَا أَحَبَّ فَجَعَلَ لِلذَّكَرِ مِثْلَ حَظِّ الْأُنثَيَيْنِ، وَجَعَلَ لِلْأَبْوَانِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدْسَ،

(1) (Ch. 6) In Islām, what the deceased leaves is distributed among his heirs according to a certain ratio. The deceased may bequeath one-third of his property to other than his legal heirs who should not inherit by means of such a will.

(2) (H. 2747) When the deceased leaves children.

(3) (H. 2747) When the deceased is childless.

وَجَعَلَ لِلْمَرْأَةِ الثَّمَنَ وَالرُّبْعَ، وَلِلزَّوْجِ
الشُّطْرَ وَالرُّبْعَ. [انظر: ٤٥٧٨، ٦٧٣٩]

(7) CHAPTER. Giving in charity at the time of death.

2748. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ: A man asked the Prophet ﷺ, “O Allāh’s Messenger! What kind of charity is the best?” He replied, “To give in charity when you are healthy and greedy, hoping to be wealthy and afraid of becoming poor. Don’t delay giving in charity till the time comes when you are on the deathbed when you say, ‘Give so much to so-and-so and so much to so-and-so,’ and at that time the property is not yours but it belongs to so-and-so (i.e., your inheritors).”

(٧) بَابُ الصَّدَقَةِ عِنْدَ الْمَوْتِ

٢٧٤٨ - حَدَّثَنَا مُحَمَّدُ بْنُ الْعَلَاءِ: حَدَّثَنَا أَبُو أُسَامَةَ، عَنْ سُفْيَانَ، عَنْ عُمَارَةَ، عَنْ أَبِي زُرْعَةَ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ قَالَ: قَالَ رَجُلٌ لِلنَّبِيِّ ﷺ: يَا رَسُولَ اللهِ، أَيُّ الصَّدَقَةِ أَفْضَلُ؟ قَالَ: «أَنْ تَصَدَّقَ وَأَنْتَ صَحِيحٌ حَرِيصٌ، تَأْمُلُ الْغَنَى، وَتَخْشَى الْفَقْرَ، وَلَا تُمَهِّلُ حَتَّى إِذَا بَلَغَتِ الْحُلُقُومَ قُلْتَ: لِفُلَانٍ كَذَا، وَلِفُلَانٍ كَذَا، وَقَدْ كَانَ لِفُلَانٍ».

[راجع: ١٤١٩]

(8) CHAPTER. The Statement of Allāh عزَّ وجلَّ: “...After the payment of legacies he may have bequeathed or debts...” (V.4:11)

It is mentioned that Shuraiḥ, ‘Umar bin ‘Abdul-‘Azīz, Ṭāwūs, ‘Aṭā’ and Ibn Udhaina regarded as valid the acknowledgement of a debt by a sick man. Al-Ḥasan said, “The most valid charity is what is given on the last day of one’s present life and the first day of the life to come (i.e., on the day one dies).”

Ibrāhīm and Al-Ḥakam said, “If a sick person absolves an heir from debt, the heir is regarded as absolved.” Rāfi‘ bin Khadīj made a will that his Fazāriyya wife should not let anybody share with her the contents of her house.

Al-Ḥasan said, “If somebody on his deathbed says to his slave, ‘I have freed

(٨) بَابُ قَوْلِ اللهِ عَزَّ وَجَلَّ: ﴿مَنْ بَعَدَ وَصِيَّتِهِ يُوصِي بِهَا أَوْ دَيْنًا﴾

[النساء: ١١]

وَيُذَكِّرُ أَنْ شَرِيحًا، وَعُمَرَ بْنَ عَبْدِ الْعَزِيزِ، وَطَاوُوسًا، وَعَطَاءَ وَابْنَ أُدَيْنَةَ أَجَازُوا إِقْرَارَ الْمَرِيضِ بِدَيْنِ. وَقَالَ الْحَسَنُ: أَحَقُّ مَا تَصَدَّقَ بِهِ الرَّجُلُ آخِرَ يَوْمٍ مِنَ الدُّنْيَا وَأَوَّلَ يَوْمٍ مِنَ الْآخِرَةِ. وَقَالَ إِبْرَاهِيمُ وَالْحَكَمُ: إِذَا أَبْرَأَ الْوَارِثُ مِنَ الدَّيْنِ بَرِيءٌ. وَأَوْصَى رَافِعُ بْنُ خَدِيجٍ أَنْ لَا تُكْشَفَ امْرَأَتُهُ الْفَزَارِيَّةُ عَمَّا أَعْلَقَ عَلَيْهِ بِأَبِهَا. وَقَالَ الْحَسَنُ: إِذَا قَالَ لِمَمْلُوكِهِ عِنْدَ

you', the manumission is valid."

Ash-Sha'bī said, "If a dying woman says, 'My husband has paid what he owed me and I have received it,' her confession is valid." Some people say, "The dying person's confession (of debt to some of his heirs) is not valid because such a confession rouses suspicion." But they approve of a confession concerning a trust, goods, and silent partnership, but the Prophet ﷺ said, "Avoid suspicion, suspicion is the worst of false tales."

It is not legal for one to eat up the Muslims' wealth (unjustly), for the Prophet ﷺ said, "The sign of a hypocrite is that when he is entrusted with something he proves treacherous." And Allāh تعالى said:

"Verily! Allāh commands that you should render back the trusts to those to whom they are due..." (V.4:58), without restricting this order to the heirs or some other people.

2749. Narrated Abū Hurairah عنه رضي الله عنه: The Prophet ﷺ said, "The signs of a hypocrite are three: (1) Whenever he speaks, he tells a lie; (2) whenever he is entrusted he betrays (proves dishonest); (3) whenever he promises, he breaks his promise." (See H. 33)

(9) CHAPTER. The explanation of the Statement of Allāh تعالى: "...After payment of legacies that they may have bequeathed or debts..." (V.4:12)

The Prophet ﷺ is reported to have judged that the debt should be paid before the execution of the will.

المَوْتِ: كُنْتُ أَعْتَمْتُكَ، جَارًا. وَقَالَ الشَّعْبِيُّ: إِذَا قَالَتِ الْمَرْأَةُ عِنْدَ مَوْتِهَا: إِنَّ زَوْجِي قَضَانِي وَقَبِضْتُ مِنْهُ جَارًا. وَقَالَ بَعْضُ النَّاسِ: لَا يَجُوزُ إِفْرَارُهُ لِسُوءِ الظَّنِّ بِهِ لِلْوَرْتَةِ ثُمَّ اسْتَحْسَنَ فَقَالَ: يَجُوزُ إِفْرَارُهُ بِالْوَدِيعَةِ وَالْبِضَاعَةِ وَالْمُضَارَبَةِ. وَقَدْ قَالَ النَّبِيُّ ﷺ: «إِيَّاكُمْ وَالظَّنَّ فَإِنَّ الظَّنَّ أَكْذَبُ الْحَدِيثِ». وَلَا يَحِلُّ مَالُ الْمُسْلِمِينَ لِقَوْلِ النَّبِيِّ ﷺ: «آيَةُ الْمُنَافِقِ إِذَا اثْمَنَ خَانَ». وَقَالَ اللَّهُ تَعَالَى: ﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا﴾ [النساء: ٥٨] فَلَمْ يَحْصُصْ وَارثًا وَلَا غَيْرَهُ. فِيهِ عَبْدُ اللَّهِ بْنُ عَمْرٍو عَنِ النَّبِيِّ ﷺ.

٢٧٤٩ - حَدَّثَنَا سُلَيْمَانُ بْنُ دَاوُدَ أَبُو الرَّبِيعِ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ: حَدَّثَنَا نَافِعُ ابْنُ مَالِكِ بْنِ أَبِي عَامِرٍ أَبُو سَهْلٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ ﷺ قَالَ: «آيَةُ الْمُنَافِقِ ثَلَاثٌ: إِذَا حَدَّثَ كَذَبَ، وَإِذَا اثْمَنَ خَانَ، وَإِذَا وَعَدَ أَخْلَفَ». [راجع: ٣٣]

(٩) بَابُ تَأْوِيلِ قَوْلِهِ تَعَالَى: ﴿مِنْ بَعْدِ وَصِيَّتِهِ يُوصَىٰ بِهَا أَوْ دِينٍ﴾ [النساء: ١١]

وَيُذَكَّرُ أَنَّ النَّبِيَّ ﷺ قَضَىٰ بِالذَّيْنِ قَبْلَ الْوَصِيَّةِ. وَقَوْلُهُ عَزَّ وَجَلَّ: ﴿إِنَّ

عَزَّ وَجَلَّ: The Statement of Allāh

“Verily! Allāh commands that you should render back the trusts of those, to whom they are due;...” (V.4:58).

So, returning the trust must take precedence over the execution of the voluntary will.

The Prophet ﷺ said, “No giving in charity is recommended except if one is wealthy.” Ibn ‘Abbās said, “A slave cannot make a will without his master’s consent.” The Prophet ﷺ said, “A slave is a guardian of the property of his master.”

2750. Narrated ‘Urwa bin Az-Zubair: Ḥakīm bin Ḥizām رَضِيَ اللهُ عَنْهُ said, “I asked Allah’s Messenger ﷺ for something, and he gave me, and I asked him again and he gave me and said, ‘O Ḥakīm! This wealth is green and sweet (i.e., as tempting as fruits), and whoever takes it without greed then he is blessed in it, and whoever takes it with greediness, he is not blessed in it and he is like one who eats and never gets satisfied.

“The upper (i.e., giving) hand is better than the lower (i.e., taking) hand.” Ḥakīm added, “I said, ‘O Allāh’s Messenger! By Him Who has sent you with the Truth I will never demand anything from anybody after you till I die.’” Afterwards, Abū Bakr used to call Ḥakīm to give him something but he refused to accept anything from him. Then ‘Umar called him to give him (something) but he refused. Then ‘Umar said, “O Muslims! I offered to him (i.e., Ḥakīm) his share which Allāh has ordained for him from this booty and he refuses to take it.” Thus Ḥakīm did not ask anybody for anything after the Prophet ﷺ, till he died - may Allāh bestow His Mercy upon him.

اللَّهُ يَأْمُرُكُمْ أَنْ تُؤَدُّوا أَلْأَمَانَتِ إِيَّاهُمْ أَهْلَهَا ﴿٥٨﴾ [النساء: ٥٨] فَأَدَاءُ الْأَمَانَةِ أَحَقُّ مِنْ تَطَوُّعِ الْوَصِيَّةِ. وَقَالَ النَّبِيُّ ﷺ: «لَا صَدَقَةٌ إِلَّا عَنِ ظَهْرٍ عَنِّي». وَقَالَ ابْنُ عَبَّاسٍ: لَا يُوصِي الْعَبْدُ إِلَّا بِإِذْنِ أَهْلِهِ. وَقَالَ النَّبِيُّ ﷺ: «الْعَبْدُ رَاعٍ فِي مَالِ سَيِّدِهِ».

٢٧٥٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ: أَخْبَرَنَا الْأَوْزَاعِيُّ، عَنِ الرَّهْرِيِّ، عَنِ سَعِيدِ بْنِ الْمُسَيْبِ، وَعُرْوَةَ بْنِ الزُّبَيْرِ: أَنَّ حَكِيمَ بْنَ حِزَامٍ رَضِيَ اللهُ عَنْهُ قَالَ: سَأَلْتُ رَسُولَ اللهِ ﷺ فَأَعْطَانِي، ثُمَّ سَأَلْتُهُ فَأَعْطَانِي، ثُمَّ قَالَ لِي: «يَا حَكِيمُ، إِنَّ هَذَا الْمَالَ خَضِرٌ حُلْوٌ، فَمَنْ أَخَذَهُ بِسَخَاوَةٍ نَفْسٍ بُورِكَ لَهُ فِيهِ، وَمَنْ أَخَذَهُ بِإِشْرَافٍ نَفْسٍ لَمْ يُبَارَكْ لَهُ فِيهِ، وَكَانَ كَالَّذِي يَأْكُلُ وَلَا يَسْبَعُ. وَالْيَدُ الْعُلْيَا خَيْرٌ مِنَ الْيَدِ السُّفْلَى». قَالَ حَكِيمٌ: فَقُلْتُ: يَا رَسُولَ اللهِ، وَالَّذِي بَعَثَكَ بِالْحَقِّ لَا أَرِزُّ أَحَدًا بَعْدَكَ شَيْئًا حَتَّى أَفَارِقَ الدُّنْيَا. فَكَانَ أَبُو بَكْرٍ يَدْعُو حَكِيمًا لِيُعْطِيَهُ الْعَطَاءَ فَيَأْبَى أَنْ يَقْبَلَ مِنْهُ شَيْئًا، ثُمَّ إِنَّ عُمَرَ دَعَاهُ لِيُعْطِيَهُ فَأَبَى أَنْ يَقْبَلَهُ، فَقَالَ: يَا مَعْشَرَ الْمُسْلِمِينَ، إِنِّي أَعْرِضُ عَلَيْهِ

حَقَّهُ الَّذِي قَسَمَ اللَّهُ لَهُ مِنْ هَذَا الْفَيْءِ
فَأَبَى أَنْ يَأْخُذَهُ، فَلَمْ يَرْزَأُ حَكِيمٌ
أَحَدًا مِنَ النَّاسِ بَعْدَ النَّبِيِّ ﷺ حَتَّى
تُوَفِّيَ رَحْمَةُ اللَّهِ. [راجع: ١٤٧٢]

2751. Narrated Ibn ‘Umar رَضِيَ اللَّهُ عَنْهُمَا : I heard Allāh’s Messenger ﷺ saying, “Everyone of you is a guardian and is responsible for his charges: the ruler (i.e., *Imām*) is a guardian and responsible for his subjects; and a man is a guardian of his family and is responsible for his charges; and a lady is a guardian in the house of her husband and is responsible for her charge; and a servant is a guardian of the property of his master and is responsible for his charge.” I think he also said, “And a man is a guardian of the property of his father.”

٢٧٥١ - حَدَّثَنَا بِشْرُ بْنُ مُحَمَّدٍ
السَّخْتِيَانِيُّ: أَخْبَرَنَا عَبْدُ اللَّهِ: أَخْبَرَنَا
يُونُسُ، عَنِ الرَّهْرِيِّ قَالَ: أَخْبَرَنِي
سَالِمٌ، عَنِ ابْنِ عَمْرٍ، عَنِ أَبِيهِ رَضِيَ
اللَّهُ عَنْهُمَا قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ
يَقُولُ: «كُلُّكُمْ رَاعٍ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ،
وَالْإِمَامُ رَاعٍ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ،
وَالرَّجُلُ رَاعٍ فِي أَهْلِهِ وَمَسْئُولٌ عَنْ
رَعِيَّتِهِ، وَالْمَرْأَةُ فِي بَيْتِ زَوْجِهَا رَاعِيَةٌ
وَمَسْئُولَةٌ عَنْ رَعِيَّتِهَا، وَالْخَادِمُ فِي مَالِ
سَيِّدِهِ رَاعٍ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ». قَالَ:
وَأَحْسِبُ أَنْ قَدْ قَالَ: «وَالرَّجُلُ رَاعٍ
فِي مَالِ أَبِيهِ». [راجع: ٨٩٣]

(10) CHAPTER. If somebody finds an endowment (or bequeathes) his relatives by a will (is it permissible?). And who are considered as relatives.

(١٠) بَابُ إِذَا وَقَفَ، أَوْ أَوْصَى
لِأَقَارِبِهِ، وَمِنْ الْأَقَارِبِ؟

Narrated Anas رَضِيَ اللَّهُ عَنْهُ : The Prophet ﷺ said to Abū Ṭalḥa, “Give (your garden) to the poor amongst your relatives.” So he gave it to Ḥassān and Ubaī bin Ka’b.

Anas added in another narration, “So he gave it to Ḥassān and Ubaī bin Ka’b who were nearer relatives to him than I.” The relation between Ḥassān and Ubaī to Abū Ṭalḥa was as follows: Abū Ṭalḥa’s name was Zaid, the son of Sahl, the son of Al-Aswad, the son of Ḥarām, the son of ‘Amr, the son of Zaid Manāt, the son of ‘Adī, the son of

وَقَالَ ثَابِتٌ: عَنِ أَنَسِ، قَالَ النَّبِيُّ
ﷺ لِأَبِي طَلْحَةَ: «اجْعَلْهُ لِفُقَرَاءِ
أَقَارِبِكَ»، فَجَعَلَهَا لِحَسَّانَ وَأُبَيِّ بْنِ
كَعْبٍ، وَقَالَ الْأَنْصَارِيُّ: حَدَّثَنِي
أَبِي، عَنِ ثُمَامَةَ، عَنِ أَنَسِ بِمِثْلِ
حَدِيثِ ثَابِتٍ. قَالَ: «اجْعَلْهَا لِفُقَرَاءِ
قَرَابَتِكَ». قَالَ أَنَسٌ: فَجَعَلَهَا لِحَسَّانَ
وَأُبَيِّ بْنِ كَعْبٍ وَكَانَا أَقْرَبَ إِلَيْهِ مِنِّي،

‘Amr, the son of Mālik, the son of An-Najjār. Ḥassān was the son of Thābit, the son of Al-Mundhir, the son of Ḥarām, this means that Abū Ṭalḥa and Ḥassān had a common great grandfather (i.e., Ḥarām, the third in the line of descent). Ḥassān and Abū Ṭalḥa and Ubāi had a common ancestor, ‘Amr bin Mālik, the sixth in the lineage, as Ubāi was the son of Ka‘b, the son of Qais, the son of ‘Ubaid, the son of Zaid, the son of Mu‘āwīya, the son of ‘Amr, the son of Mālik, the son of An-Najjār.

Some scholars say, “If one wants to will some of his wealth to one’s relatives, they must be among those who share a Muslim common ancestor with one.”

2752. Narrated Anas رَضِيَ اللهُ عَنْهُ: The Prophet ﷺ said to Abū Ṭalḥa, “I recommend that you divide (this garden) amongst your relatives.” Abū Ṭalḥa said, “O Allāh’s Messenger! I will do the same.” So, Abū Ṭalḥa divided it among his relatives and cousins.

Ibn ‘Abbās said, “When the Qur’ānic Verse:

‘And warn your tribe (O Muhammad ﷺ) of near kindred’ (V.26:214) was revealed, the Prophet ﷺ started calling the various big families of Quraysh, ‘O Banī Fihri! O Banī ‘Adī!’”

Abū Hurairah said, “When the Verse: ‘And warn your tribe (O Muhammad ﷺ) of near kindred’, was revealed, the Prophet ﷺ said (in a loud voice), ‘O people of Quraysh!’”

وَكَانَ قَرَابَةُ حَسَّانَ وَأَبِيٍّ مِنْ أَبِي طَلْحَةَ، وَاسْمُهُ زَيْدُ بْنُ سَهْلٍ بْنِ الْأَسْوَدِ ابْنِ حَرَامِ بْنِ عَمْرٍو بْنِ زَيْدِ مَنَاةَ بْنِ عَدِيِّ بْنِ عَمْرٍو بْنِ مَالِكِ بْنِ النَّجَّارِ، وَحَسَّانُ بْنُ ثَابِتِ ابْنِ الْمُنْدِرِ بْنِ حَرَامِ، فَيَجْتَمِعَانِ إِلَى حَرَامِ وَهُوَ الْأَبُ الثَّلَاثُ. وَحَرَامُ بْنُ عَمْرٍو بْنِ زَيْدِ مَنَاةَ بْنِ عَدِيِّ بْنِ عَمْرٍو بْنِ مَالِكِ بْنِ النَّجَّارِ، وَهُوَ يُجَامِعُ حَسَّانَ وَأَبَا طَلْحَةَ وَأَبِيٍّ إِلَى سِتَّةِ آبَاءٍ إِلَى عَمْرٍو بْنِ مَالِكٍ وَهُوَ أَبِيُّ بْنُ كَعْبِ بْنِ قَيْسِ بْنِ عُيَيْدِ بْنِ زَيْدِ بْنِ مُعَاوِيَةَ بْنِ عَمْرٍو بْنِ مَالِكِ بْنِ النَّجَّارِ. فَعَمْرُو بْنُ مَالِكٍ يَجْمَعُ حَسَّانَ وَأَبَا طَلْحَةَ وَأَبِيًّا. وَقَالَ بَعْضُهُمْ: إِذَا أَوْصَى لِقَرَابَتِهِ فَهَوَّ إِلَى آبَائِهِ فِي الْإِسْلَامِ.

٢٧٥٢ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: أَخْبَرَنَا مَالِكٌ، عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ ابْنِ أَبِي طَلْحَةَ: أَنَّهُ سَمِعَ أَنَسًا رَضِيَ اللهُ عَنْهُ قَالَ: قَالَ النَّبِيُّ ﷺ لِأَبِي طَلْحَةَ: «أَرَى أَنْ تَجْعَلَهَا فِي الْأَقْرَبِينَ» فَقَالَ أَبُو طَلْحَةَ: أَفْعَلُ يَا رَسُولَ اللَّهِ، فَقَسَمَهَا أَبُو طَلْحَةَ فِي أَقَارِبِهِ وَبَنِي عَمِّهِ. وَقَالَ ابْنُ عَبَّاسٍ: لَمَّا نَزَلَتْ ﴿وَأَنْذِرْ عَشِيرَتَكَ الْأَقْرَبِينَ﴾ [الشعراء: ٢١٤] جَعَلَ النَّبِيُّ ﷺ يُنَادِي: «يَا بَنِي فَهْرٍ، يَا بَنِي عَدِيِّ»، لِيُطَوِّنَ قُرَيْشًا. وَقَالَ أَبُو

هُرَيْرَةَ: لَمَّا نَزَلَتْ ﴿وَأَنْذِرْ عَشِيرَتَكَ
الْأَقْرَبِينَ﴾ [الشعراء: ٢١٤] قَالَ
النَّبِيُّ ﷺ: «يَا مَعْشَرَ قُرَيْشٍ». [راجع:
١٤٦١]

(11) CHAPTER. Are children and women included under the term of relatives (concerning wills)?

2753. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ: When Allāh revealed the Verse: “And warn your tribe (O Muhammad ﷺ) of near kindred,” Allāh’s Messenger ﷺ got up and said, “O Quraysh people (or said similar words)! Buy (i.e., save) yourselves (from the Hell-fire) as I cannot save you from Allāh’s punishment; O Banī Abd Manāf! I cannot save you from Allāh’s punishment; O ‘Abbās bin ‘Abdul Muṭṭalib! I cannot save you from Allāh’s punishment; O Ṣafīyya, the aunt of Allāh’s Messenger! I cannot save you from Allāh’s punishment: O Fāṭima bint Muḥammad! Ask me anything from my wealth, but I cannot save you from Allāh’s punishment.”⁽¹⁾

(١١) بَابُ: هَلْ يَدْخُلُ النِّسَاءُ
وَالْوَالِدُ فِي الْأَقْرَابِ؟

٢٧٥٣ - حَدَّثَنَا أَبُو الْيَمَانِ:
أَخْبَرَنَا شُعَيْبٌ، عَنِ الزُّهْرِيِّ قَالَ:
أَخْبَرَنِي سَعِيدُ بْنُ الْمُسَيَّبِ، وَأَبُو
سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ: أَنَّ أَبَا هُرَيْرَةَ
رَضِيَ اللهُ عَنْهُ قَالَ: قَامَ رَسُولُ اللهِ
ﷺ حِينَ أَنْزَلَ اللهُ عَزَّ وَجَلَّ ﴿وَأَنْذِرْ
عَشِيرَتَكَ الْأَقْرَبِينَ﴾ [الشعراء: ٢١٤]
قَالَ: «يَا مَعْشَرَ قُرَيْشٍ - أَوْ كَلِمَةً
نَحْوَهَا - اشْتَرُوا أَنْفُسَكُمْ، لَا أُغْنِي
عَنْكُمْ مِنَ اللهِ شَيْئًا. يَا بَنِي عَبْدِ
مَنْافٍ، لَا أُغْنِي عَنْكُمْ مِنَ اللهِ شَيْئًا،
يَا عَبَّاسُ بْنُ عَبْدِ الْمُطَّلِبِ، لَا أُغْنِي
عَنْكَ مِنَ اللهِ شَيْئًا. وَيَا صَفِيَّةُ عَمَّةَ
رَسُولِ اللهِ، لَا أُغْنِي عَنْكَ مِنَ اللهِ
شَيْئًا. وَيَا فَاطِمَةَ بِنْتَ مُحَمَّدٍ ﷺ،
سَلِّبِي مَا شِئْتِ مِنْ مَالِي، لَا أُغْنِي
عَنْكَ مِنَ اللهِ شَيْئًا».

تَابَعَهُ أَصْبَعُ، عَنِ ابْنِ وَهْبٍ، عَنْ
يُونُسَ، عَنِ ابْنِ شِهَابٍ. [انظر:

[٤٧٧١، ٣٥٢٧]

(1) (H. 2753) Every person should try to protect himself from Allāh’s punishment by doing good deeds and by showing obedience to Allāh and to Allāh’s Messenger’s ﷺ orders. Nobody, can do him any good in this respect no matter how close a relative he may be.

(12) CHAPTER. Can the founder of an endowment have the benefit of his endowment?

'Umar رَضِيَ اللهُ عَنْهُ stipulated that the administrator of an endowment could eat from the yield of the endowment. The founder of an endowment or somebody else may be the trustee of the endowment. Similarly, if one offers a *Badana* (i.e., camel for sacrifice) or something else in Allāh's Cause, he is allowed to benefit by it in the same way as others benefit by it even if he did not stipulate that.

2754. Narrated Anas رَضِيَ اللهُ عَنْهُ: The Prophet ﷺ saw a man driving a *Badana* and said to him, "Ride on it." The man said, "O Allāh's Messenger! It is a *Badana*." (The Prophet ﷺ repeated his order) and on the third or fourth time he said, "Ride it, woe to you" or said: "May Allāh be Merciful to you."

2755. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ: Allāh's Messenger ﷺ saw a man driving a *Badana* and said to him, "Ride on it," and on the second or the third time he added, "Woe to you."

(13) CHAPTER. If one declares his wish to found an endowment, his endowment is valid even before its conveyance (to those for whom it is intended).

As 'Umar رَضِيَ اللهُ عَنْهُ founded an endowment and said that it was not sinful for its administrator to eat from its yield, but

(١٢) بَابُ هَلْ يَنْتَفِعُ الْوَاقِفُ بِوَقْفِهِ؟

وَقَدْ اشْتَرَطَ عُمَرُ رَضِيَ اللهُ عَنْهُ:
لَا جُنَاحَ عَلَى مَنْ وَلِيَهُ أَنْ يَأْكُلَ
مِنْهَا، وَقَدْ يَلِي الْوَاقِفُ وَغَيْرُهُ.
وَكَذَلِكَ كُلُّ مَنْ جَعَلَ بَدَنَةً أَوْ شَيْئًا لِلَّهِ
فَلَهُ أَنْ يَنْتَفِعَ بِهَا كَمَا يَنْتَفِعُ غَيْرُهُ وَإِنْ
لَمْ يَشْرَطْ.

٢٧٥٤ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ:
حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ قَتَادَةَ، عَنْ أَنَسِ
رَضِيَ اللهُ عَنْهُ: «أَنَّ النَّبِيَّ ﷺ رَأَى
رَجُلًا يَسُوقُ بَدَنَةً فَقَالَ لَهُ: ارْكَبْهَا،
فَقَالَ: يَا رَسُولَ اللهِ إِنَّهَا بَدَنَةٌ، فَقَالَ
فِي الثَّلَاثَةِ أَوْ فِي الرَّابِعَةِ: ارْكَبْهَا
وَيْلَكَ أَوْ وَيْحَكَ». [راجع: ١٦٩٠]

٢٧٥٥ - حَدَّثَنَا إِسْمَاعِيلُ: حَدَّثَنَا
مَالِكٌ عَنْ أَبِي الزِّنَادِ، عَنِ الْأَعْرَجِ،
عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ: «أَنَّ
رَسُولَ اللهِ ﷺ رَأَى رَجُلًا يَسُوقُ بَدَنَةً
فَقَالَ: ارْكَبْهَا، قَالَ: يَا رَسُولَ اللهِ
إِنَّهَا بَدَنَةٌ، قَالَ: ارْكَبْهَا وَيْلَكَ، فِي
الثَّلَاثَةِ أَوْ فِي الثَّلَاثَةِ». [راجع: ١٦٨٩]

(١٣) بَابُ إِذَا وَقَفَ شَيْئًا قَبْلَ أَنْ
يَدْفَعَهُ إِلَى غَيْرِهِ فَهُوَ جَائِزٌ،

لأنَّ عُمَرَ رَضِيَ اللهُ عَنْهُ أَوْقَفَ
فَقَالَ: لَا جُنَاحَ عَلَى مَنْ وَلِيَهُ أَنْ

he did not specify whether he (i.e., 'Umar) or someone else would be its administrator. The Prophet ﷺ said to Abū Ṭalḥa, "I recommend that you should divide it (i.e., the garden) among your relatives." So Abū Ṭalḥa agreed and distributed it among his relatives and his cousins.

(14) CHAPTER. When someone says, "My house is *Ṣadaqa* (i.e., gift of charity) for Allāh's sake," and does not specify whether it is for the poor or for some other people, then the *Ṣadaqa* is valid and he can give it to his relatives or whomever he wishes.

The Prophet ﷺ allowed Abū Ṭalḥa when he said, "The most beloved of my property is (the garden of) Bairuhā and I wish to give it in charity for Allāh's sake." The Prophet ﷺ considered his deed valid. Some say that it is invalid unless it is specified as to whom the *Ṣadaqa* is to be given. But the first statement (i.e., that it is valid) is more correct.

(15) CHAPTER. If someone says, "My land or my garden is *Ṣadaqa* for Allāh's sake on my mother's behalf," his *Ṣadaqa* is valid even if he did not specify to whom it is to be given.

2756. Narrated Ibn 'Abbās رضي الله عنهما: The mother of Sa'd bin 'Ubāda died in Sa'd's absence. He said, "O Allāh's Messenger! My mother died in my absence; will it be of any benefit for her if I give *Ṣadaqa*⁽¹⁾ on her behalf?" The Prophet ﷺ said, "Yes," Sa'd said, "I make you a witness that I gave my garden called Al-Mikhrāf in charity on her behalf."

يَأْكُلَ، وَلَمْ يُحْصَ أَنْ وَلِيَهُ عُمَرُ أَوْ غَيْرُهُ. وَقَالَ النَّبِيُّ ﷺ لِأَبِي طَلْحَةَ: «أَرَى أَنْ تَجْعَلَهَا فِي الْأَقْرَبِينَ، فَقَالَ: أَفْعَلُ، فَقَسَمَهَا فِي أَقَارِبِهِ وَبَنِي عَمِّهِ».

(١٤) **بَابُ إِذَا قَالَ: دَارِي صَدَقَةٌ لِلَّهِ وَلَمْ يُبَيِّنْ لِلْفُقَرَاءِ أَوْ غَيْرِهِمْ فَهُوَ جَائِزٌ. وَيُعْطِيهَا لِلْأَقْرَبِينَ أَوْ حَيْثُ أَرَادَ،**

قَالَ النَّبِيُّ ﷺ لِأَبِي طَلْحَةَ حِينَ قَالَ: أَحَبُّ أَمْوَالِي إِلَيَّ بَيْرُحَاءَ وَإِنَّهَا صَدَقَةٌ لِلَّهِ، فَأَجَازَ النَّبِيُّ ﷺ ذَلِكَ. وَقَالَ بَعْضُهُمْ: لَا يَجُوزُ حَتَّى يُبَيِّنَ لِمَنْ، وَالْأَوَّلُ أَصَحُّ.

(١٥) **بَابُ إِذَا قَالَ: أَرْضِي أَوْ بُسْتَانِي صَدَقَةٌ لِلَّهِ عَنْ أُمِّي، فَهُوَ جَائِزٌ وَإِنْ لَمْ يُبَيِّنْ لِمَنْ ذَلِكَ**

٢٧٥٦ - حَدَّثَنَا مُحَمَّدٌ: أَخْبَرَنَا مُحَمَّدُ بْنُ يَزِيدَ: أَخْبَرَنَا ابْنُ جُرَيْجٍ قَالَ: أَخْبَرَنِي يَعْلَى: أَنَّهُ سَمِعَ عِكْرِمَةَ يَقُولُ: أَبْنَانَا ابْنُ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ سَعْدَ بْنَ عَبَادَةَ رَضِيَ اللَّهُ عَنْهُ تُوَفِّيَتْ أُمُّهُ وَهُوَ غَائِبٌ عَنْهَا فَقَالَ: يَا رَسُولَ اللَّهِ إِنَّ أُمَّي تُوَفِّيَتْ وَأَنَا غَائِبٌ عَنْهَا، أَيَنْفَعُهَا شَيْءٌ إِنْ تَصَدَّقْتُ بِهَ عَنْهَا؟ قَالَ: «نَعَمْ»، قَالَ:

(1) (H. 2756) *Ṣadaqa*: here means charity. [See H. No. 2762].

فَاتِي أَشْهَدُكَ أَنَّ حَائِطِي الْمِحْرَافَ
صَدَقَةٌ عَلَيْهَا. [انظر: ٢٧٦٢، ٢٧٧٠]

(16) CHAPTER. It is permissible for one to give part of his wealth or some of his slaves or animals in charity or as an endowment.

(١٦) بَابٌ إِذَا تَصَدَّقَ أَوْ وَقَفَ بَعْضُ
مَالِهِ أَوْ بَعْضُ رَقِيقِهِ أَوْ دَوَابِّهِ فَهُوَ
جَائِزٌ

2757. Narrated Ka'b bin Mālik رَضِيَ اللهُ عَنْهُ :
I said, "O Allāh's Messenger! For the acceptance of my repentance I wish to give all my property in charity for Allāh's sake through His Messenger ﷺ." He said, "It is better for you to keep some of the property for yourself." I said, "Then I will keep my share in Khaibar."

٢٧٥٧ - حَدَّثَنَا يَحْيَى بْنُ بُكَيْرٍ :
حَدَّثَنَا اللَّيْثُ، عَنْ عُقَيْلٍ، عَنِ ابْنِ
شِهَابٍ قَالَ: أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ
عَبْدِ اللَّهِ بْنِ كَعْبٍ أَنَّ عَبْدَ اللَّهِ بْنَ
كَعْبٍ قَالَ: سَمِعْتُ كَعْبَ بْنَ مَالِكٍ
رَضِيَ اللَّهُ عَنْهُ يَقُولُ: قُلْتُ: يَا رَسُولَ
اللَّهِ، إِنَّ مِنْ تَوْبَتِي أَنْ أَنْحَلِجَ مِنْ مَالِي
صَدَقَةً إِلَى اللَّهِ وَالِي رَسُولِهِ ﷺ.
قَالَ: «أُمْسِكْ عَلَيْكَ بَعْضَ مَالِكَ،
فَهُوَ خَيْرٌ لَكَ»، قُلْتُ: فَإِنِّي أُمْسِكُ
سَهْمِي الَّذِي بِخَيْبَرَ. [انظر: ٢٩٤٧ -
٢٩٥٠، ٣٠٨٨، ٣٥٥٦، ٣٨٨٩، ٣٩٥١،
٤٤١٨، ٤٦٧٣، ٤٦٧٦، ٤٦٧٧، ٤٦٧٨،
٦٢٥٥، ٦٦٩٠، ٧٢٢٥]

(17) CHAPTER. Whoever gave something to his representative to give in charity and then the latter returned it to him.

2758. Narrated Anas رَضِيَ اللهُ عَنْهُ : When the Holy Verse: 'By no means shall you attain *Al-Birr* (piety, righteousness, it means here Allāh's Reward i.e., Paradise), unless you spend of that which you love...', (V.3:92) was revealed, Abū Ṭalḥa went to Allāh's Messenger ﷺ and said, "O Allāh's Messenger! Allāh, the Blessed, the Superior states in His Book: 'By no means shall you attain *Al-Birr*, unless you spend of that which you love...', (V.3:92) and the

(١٧) بَابٌ مَنْ تَصَدَّقَ إِلَى وَكِيلِهِ،
ثُمَّ رَدَّ الْوَكِيلُ إِلَيْهِ

٢٧٥٨ - وَقَالَ إِسْمَاعِيلُ:
أَخْبَرَنِي عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ بْنِ
أَبِي سَلَمَةَ، عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ
ابْنِ أَبِي طَلْحَةَ، لَا أَعْلَمُهُ إِلَّا عَنْ
أَنْسِ رَضِيَ اللَّهُ عَنْهُ قَالَ: لَمَّا نَزَلَتْ:
﴿لَنْ نَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا مَحَبُوبٌ﴾
[آل عمران: ٩٢] جَاءَ أَبُو طَلْحَةَ إِلَى

most beloved property to me is Bairuhā' (which was a garden where Allāh's Messenger ﷺ used to go to sit in its shade and drink from its water).⁽¹⁾ I give it to Allāh and His Messenger ﷺ hoping for Allāh's Reward in the Hereafter. So, O Allāh's Messenger! Use it as Allāh orders you to use it." Allāh's Messenger ﷺ said, "Bravo! O Abū Ṭalḥa, it is fruitful property. We have accepted it from you and now we return it to you. Distribute it amongst your relatives." So, Abū Ṭalḥa distributed it amongst his relatives, amongst whom were Ubāi and Ḥassān. When Ḥassān sold his share of that garden to Mu'awiya, he was asked, "How do you sell Abū Ṭalḥa's *Ṣadaqa*?" He replied, "Why should not I sell a *Sā'* of dates for a *Sā'* of money?"⁽²⁾ The garden was situated in the courtyard of the palace of Banī Jadila built by Mu'awiya.

رَسُولِ اللَّهِ ﷺ فَقَالَ: يَا رَسُولَ اللَّهِ، يَقُولُ اللَّهُ تَبَارَكَ وَتَعَالَى فِي كِتَابِهِ: ﴿لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا مَحَبُوبٌ﴾ [آل عمران: ٩٢] وَإِنَّ أَحَبَّ أَمْوَالِي إِلَيَّ بَيْرِحَاءٌ - قَالَ: وَكَانَتْ حَدِيقَةً كَانَ رَسُولُ اللَّهِ ﷺ يَدْخُلُهَا وَيَسْتِظِلُّ فِيهَا وَيَشْرَبُ مِنْ مَائِهَا - فَهِيَ إِلَى اللَّهِ عَزَّ وَجَلَّ وَإِلَى رَسُولِهِ ﷺ، أَرْجُو بَرَّهُ وَذُخْرَهُ، فَضَعَهَا أَيُّ رَسُولُ اللَّهِ ﷺ حَيْثُ أَرَاكَ اللَّهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «بِخْ يَا أبا طَلْحَةَ، ذَلِكَ مَالٌ رَابِحٌ قَبْلِنَاهُ مِنْكَ وَرَدَدْنَاهُ عَلَيْكَ فَاجْعَلْهُ فِي الْأَقْرَبِينَ». فَتَصَدَّقَ بِهِ أَبُو طَلْحَةَ عَلَى ذَوِي رَجَمِهِ، قَالَ: وَكَانَ مِنْهُمْ أَبِي وَحَسَّانُ، قَالَ: وَبَاعَ حَسَّانُ حِصَّتَهُ مِنْهُ مِنْ مُعَاوِيَةَ، فَقِيلَ لَهُ: تَبِيعَ صَدَقَةَ أَبِي طَلْحَةَ؟ فَقَالَ: أَلَا أُبِيعُ صَاعًا مِنْ تَمْرٍ بِصَاعٍ مِنْ دَرَاهِمٍ؟ قَالَ: وَكَانَتْ تِلْكَ الْحَدِيقَةُ فِي مَوْضِعٍ قَصْرِ بَنِي حُدَيْلَةَ الَّذِي بَنَاهُ مُعَاوِيَةُ.

[راجع: ١٤٦١]

(18) CHAPTER. The Statement of Allāh تعالى:
 "And when the relatives and the orphans and *Al-Masākīn* (the poor) are present at the time of division, give them out of the property..."
 (V.4:8)

(١٨) بَابُ قَوْلِ اللَّهِ عَزَّ وَجَلَّ: ﴿وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينُ فَأَرْضُوهُمْ مِنْهُ﴾ [النساء: ٨]

2759. Narrated Ibn 'Abbās رضي الله عنهما:

٢٧٥٩ - حَدَّثَنَا مُحَمَّدُ بْنُ الْقَاضِي

(1) (Ch. 17) The description between brackets is said by Anas.

(2) (Ch. 17) This shows that Ka'b did not give his garden as an endowment, otherwise Ḥassān could not have sold it.

Some people claim that the provision in the above Verse is abrogated; by Allāh, it is not abrogated, but the people have stopped acting upon it. There are two kinds of guardians (who are in charge of the inheritance): One is that who inherits; such a person should give (of what he inherits to the relatives, the orphans and the needy, etc.), the other is that who does not inherit (e.g., the guardian of the orphans); such a person should speak kindly and say (to those who are present at the time of distribution), I can not give it to you (as the wealth belongs to the orphans).”

[انظر: ٤٥٧٦]

(19) CHAPTER. It is recommended that something should be given in charity on behalf of a person who dies suddenly. And the execution of the vows of the deceased.

2760. Narrated ‘Aishah رَضِيَ اللهُ عَنْهَا: A man said to the Prophet ﷺ, “My mother died suddenly, and I think that if she could speak, she would have given in charity. May I give in charity on her behalf?” He ﷺ said, “Yes! Give in charity on her behalf.”

أَبُو التُّعْمَانِ: حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ أَبِي بَشِيرٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللهُ عَنْهُمَا قَالَ: إِنَّ نَاسًا يَزْعُمُونَ أَنَّ هَذِهِ الْآيَةَ نُسِخَتْ، وَلَا وَاللَّهِ مَا نُسِخَتْ وَلَكِنَّهَا مِمَّا تَهَاوَنَ النَّاسُ، هُمَا وَالْيَانِ: وَالِ يَرِثُ وَذَلِكَ الَّذِي يَرِثُ، وَوَالٍ لَا يَرِثُ فَذَلِكَ الَّذِي يَقُولُ بِالْمَعْرُوفِ، يَقُولُ: لَا أَمْلِكُ لَكَ أَنْ أُعْطِيكَ.

(١٩) بَابٌ مَا يُسْتَحَبُّ لِمَنْ تُوَفِّي فَجَاءَهُ أَنْ يَتَّصِدَّقُوا عَنْهُ، وَقَضَاءُ النُّذُورِ عَنِ الْمَيِّتِ

٢٧٦٠ - حَدَّثَنَا إِسْمَاعِيلُ قَالَ: حَدَّثَنِي مَالِكٌ، عَنْ هِشَامٍ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ رَضِيَ اللهُ عَنْهَا: أَنَّ رَجُلًا قَالَ لِلنَّبِيِّ ﷺ: إِنَّ أُمَّيْ أَفْتَلَتَتْ نَفْسَهَا وَأَرَاهَا لَوْ تَكَلَّمَتْ تَصَدَّقَتْ، أَفَأَتَصَدَّقُ عَنْهَا؟ قَالَ: «نَعَمْ، تَصَدَّقْ عَنْهَا». [راجع: ١٣٨٨]

2761. Narrated Ibn ‘Abbās رَضِيَ اللهُ عَنْهُمَا: Sa’d bin ‘Ubāda رَضِيَ اللهُ عَنْهُ asked Allāh’s Messenger ﷺ (for his legal opinion) saying, “My mother died and she had had an unfulfilled vow.” The Prophet ﷺ said, “Fulfil it on her behalf.”

٢٧٦١ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: أَخْبَرَنَا مَالِكٌ، عَنِ ابْنِ شِهَابٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللهُ عَنْهُمَا: أَنَّ سَعْدَ بْنَ عَبَادَةَ رَضِيَ اللهُ عَنْهُ اسْتَفْنَى رَسُولَ اللهِ ﷺ فَقَالَ: إِنَّ أُمَّيْ مَاتَتْ وَعَلَيْهَا نَذْرٌ، فَقَالَ: «أَقْضِهِ عَنْهَا».

[انظر: ٦٦٩٨، ٦٩٥٩]

(20) CHAPTER. The witnesses in the foundation of an endowment or in giving in charity.

2762. Narrated Ibn ‘Abbās رَضِيَ اللهُ عَنْهُمَا that the mother of Sa’d bin ‘Ubāda رَضِيَ اللهُ عَنْهُ, the brother of Banī Sā’ida died in Sa’d’s absence, so he came to the Prophet saying, “O Allāh’s Messenger! My mother died in my absence, will it benefit her if I give *Ṣadaqa* (in charity) on her behalf?” The Prophet ﷺ said, “Yes.” Sa’d said, “I take you as my witness that I give my garden Al-Mikhrāf in charity on her behalf.”

(٢٠) بَابُ الْإِشْهَادِ فِي الْوَقْفِ
وَالصَّدَقَةِ

٢٧٦٢ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ مُوسَى: أَخْبَرَنَا هِشَامُ بْنُ يُوسُفَ: أَنَّ ابْنَ جُرَيْجٍ أَخْبَرَهُمْ قَالَ: أَخْبَرَنِي يَعْلَى أَنَّهُ سَمِعَ عِكْرَمَةَ مَوْلَى ابْنِ عَبَّاسٍ يَقُولُ: أُنْبَأَنَا ابْنُ عَبَّاسٍ أَنَّ سَعْدَ بْنَ عَبَادَةَ رَضِيَ اللهُ عَنْهُ أَخَا بَنِي سَاعِدَةَ تُوْفِيَتْ أُمُّهُ وَهُوَ غَائِبٌ، فَأَتَى النَّبِيَّ ﷺ فَقَالَ: يَا رَسُولَ اللهِ، إِنَّ أُمَّي تُوْفِيَتْ وَأَنَا غَائِبٌ عَنْهَا، فَهَلْ يَنْفَعُهَا شَيْءٌ إِنْ تَصَدَّقْتُ بِهِ عَنْهَا؟ قَالَ: «نَعَمْ»، قَالَ: فَإِنِّي أَشْهَدُكَ أَنَّ حَائِطِي الْمِخْرَافَ صَدَقَةٌ عَلَيْهَا.

[راجع: ٢٧٥٦]

(21) CHAPTER. The Statement of Allāh تعالى:

“And give unto orphans their property, and do not exchange (your) bad things for (their) good ones; and devour not their substance (by adding it) to your substance. Surely, this is a great sin.

“And if you fear that you shall not be able to deal justly with the orphan-girls, then marry (other) women of your choice...” (V.4:2,3).

(٢١) بَابُ قَوْلِ اللهِ تَعَالَى: ﴿وَمَا تَوَاتَا الْيَتَامَىٰ أَمْوَالَهُمْ وَلَا تَتَبَدَّلُوا الْخَيْرَاتِ بِالْخَيْرَاتِ وَلَا تَأْكُلُوا أَمْوَالَهُمْ إِلَىٰ أَمْوَالِكُمْ إِنَّهُ كَانَ حُوبًا كَبِيرًا﴾ (٤) وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِمَّنْ وَكَلْتُمْ وَرَبِّعْ فَإِنْ خِفْتُمْ أَلَّا تَعْلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ آذَنُكُمْ أَلَّا تَعُولُوا﴾ (٣)

[النساء: ٢-٣]

2763. Narrated Az-Zuhri: ‘Urwa bin Az-Zubair said that he asked ‘Aishah رَضِيَ اللهُ عَنْهَا about the meaning of the Qur’ānic Verse:

“And if you fear that you shall not be able to deal justly with the orphan-girls then marry (other) women of your choice...” (V.4:2-3)

‘Aishah said, “It is about a female orphan under the guardianship of her guardian who

٢٧٦٣ - حَدَّثَنَا أَبُو الْيَمَانِ: أَخْبَرَنَا شُعَيْبٌ، عَنِ الزُّهْرِيِّ قَالَ: كَانَ عُرْوَةُ بْنُ الزُّبَيْرِ يُحَدِّثُ أَنَّهُ سَأَلَ عَائِشَةَ رَضِيَ اللهُ عَنْهَا ﴿وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ

is inclined towards her because of her beauty and wealth, and likes to marry her with a *Mahr* less than what is given to women of her standard. So they (i.e., guardians) were forbidden to marry the orphans unless they paid them a full appropriate *Mahr*, (otherwise) they were ordered to marry other women instead of them. Later on the people asked Allāh's Messenger ﷺ about it. So Allāh revealed the following Verse :

'They ask your legal instruction (O Muḥammad ﷺ) concerning women, say: Allāh instructs you about them,...' (V.4:127)

"And in this Verse, Allāh indicated that if the orphan-girl was beautiful and wealthy, her guardian would have the desire to marry her without giving her an appropriate *Mahr* equal to what her peers could get, but if she was undesirable for lack of beauty or wealth, then he would not marry her, but seek to marry some other woman instead of her. So, since he did not marry her when he had no inclination towards her, he had not the right to marry her when he had an interest in her, unless he treated her justly by giving her a full *Mahr* and securing all her rights."

النِّسَاءَ مَتَى وَتِلْكَ وَرَبِّعٌ فَإِنْ خِفْتُمْ أَلَّا تَعْلَمُوا
فَوَاحِدَةٌ أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ آدَابُ آلَا
تَعْمَلُوا ﴿٢٢﴾ قَالَتْ: هِيَ الْيَتِيمَةُ فِي
حَجْرٍ وَلِيَّهَا، فَيَرْغَبُ فِي جَمَالِهَا
وَمَالِهَا، وَيُرِيدُ أَنْ يَتَزَوَّجَهَا بِأَدْنَى مِنْ
سُنَّةِ نِسَائِهَا فَتُهْوُوا عَنْ نِكَاحِهَا إِلَّا أَنْ
يُقْسِطُوا لَهُنَّ فِي إِكْمَالِ الصَّدَاقِ،
وَأَمِيرُوا بِنِكَاحِ مَنْ سِوَاهُنَّ مِنَ النِّسَاءِ .
قَالَتْ عَائِشَةُ: ثُمَّ اسْتَفْتَى النَّاسُ
رَسُولَ اللَّهِ ﷺ بَعْدَ، فَأَنْزَلَ اللَّهُ عَزَّ
وَجَلَّ: ﴿وَسْتَفْتُونَكَ فِي النِّسَاءِ قُلْ اللَّهُ
يُنْفِئُكُمْ فِيهِنَّ﴾ [النساء: ١٢٧] قَالَتْ:
فَبَيَّنَ اللَّهُ فِي هَذِهِ أَنَّ الْيَتِيمَةَ إِذَا كَانَتْ
ذَاتَ جَمَالٍ وَمَالٍ رَغِبُوا فِي نِكَاحِهَا،
وَلَمْ يُلْحِقُوهَا بِسُنَّتِهَا بِإِكْمَالِ
الصَّدَاقِ . فَإِذَا كَانَتْ مَرْغُوبَةً عَنْهَا فِي
قَلَّةِ الْمَالِ وَالْجَمَالِ تَرَكَوهَا وَالتَّمَسُّوا
غَيْرَهَا مِنَ النِّسَاءِ . قَالَ: فَكَمَا
يَتْرُكُونَهَا حِينَ يَرْغَبُونَ عَنْهَا فَلَيْسَ لَهُمْ
أَنْ يَنْكِحُوهَا إِذَا رَغِبُوا فِيهَا إِلَّا أَنْ
يُقْسِطُوا لَهَا الْأَوْفَى مِنَ الصَّدَاقِ
وَيُعْطُوهَا حَقَّهَا . [راجع: ٢٤٩٤]

(22) CHAPTER. The Statement of Allāh

نَعَالِي :

"And try orphans (as regards their intelligence) until they reach the age of marriage; if then you find sound judgement in them, release their property to them, but consume it not wastefully and hastily fearing that they should grow up, and whoever (amongst the guardians) is rich, he should

(٢٢) بَابُ قَوْلِ اللَّهِ تَعَالَى: ﴿وَابْتَلُوا
الْيَتَامَى حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ مَا سَمِعْتُمْ
مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا
تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا وَمَنْ كَانَ
غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ
بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ

take no wages, but if he is poor, let him have for himself what is just and reasonable (according to his labour). And when you release their property to them, take witnesses in their presence; and Allāh is All-Sufficient in taking account.

“There is a share for men and a share for women from what is left by parents, and those nearest related, whether the property be small or large – a legal share.” (V.4:6,7)

CHAPTER. How a guardian is to deal with an orphan's wealth and what he can eat thereof according to his labour.

2764. Narrated Ibn ‘Umar رضي الله عنهما: In the lifetime of Allāh's Messenger ﷺ, ‘Umar gave in charity some of his property, a garden of date-palms called Thamgh. ‘Umar said, “O Allāh's Messenger! I have some property which I prize highly and I want to give it in charity.” The Prophet ﷺ said, “Give it in charity (i.e., as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, nor bequeathed, but the fruits are to be spent in charity.” So ‘Umar gave it in charity, and it was for Allāh's Cause, the emancipation of slaves, for the poor, for guests, for travellers, and for kinsmen. The person acting as its administrator could eat from it reasonably and fairly, and could let a friend of his eat from it, provided he had no intention of becoming wealthy by its means.

2765. Narrated ‘Aīshah رضي الله عنها: The following Verse :

فَأَشْهَدُوا عَلَيْهِمْ وَكَفَىٰ بِإِلَٰهِ حَسِيبًا ﴿٦﴾ لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا ﴿٧﴾

[النساء: ٦-٧] حَسِيبًا: يَعْنِي كَافِيًا.

بَابُ وما للوصي أن يعمل في مال اليتيم وما يأكل منه بقدر عمله

٢٧٦٤ - حَدَّثَنَا هَارُونُ بْنُ الْأَشْعَثِ: حَدَّثَنَا أَبُو سَعِيدٍ مَوْلَى بَنِي هَاشِمٍ: حَدَّثَنَا صَخْرُ بْنُ جُوَيْرِيَةَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ عُمَرَ تَصَدَّقَ بِمَالٍ لَهُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ وَكَانَ يُقَالُ لَهُ: ثَمَغٌ، وَكَانَ نَخْلًا، فَقَالَ عُمَرُ: يَا رَسُولَ اللَّهِ، إِنِّي اسْتَفَدْتُ مَالًا وَهُوَ عِنْدِي نَفِيسٌ فَأَرَدْتُ أَنْ أَتَصَدَّقَ بِهِ. فَقَالَ النَّبِيُّ ﷺ: «تَصَدَّقْ بِأَصْلِهِ، لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ، وَلَكِنْ يُنْفَقُ ثَمَرُهُ». فَتَصَدَّقَ بِهِ عُمَرُ فَصَدَّقْتُهُ تِلْكَ فِي سَبِيلِ اللَّهِ وَفِي الرِّقَابِ وَالْمَسَاكِينِ وَالصَّيْفِ وَابْنِ السَّبِيلِ وَلِذِي الْقُرْبَى. وَلَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهُ أَنْ يَأْكُلَ مِنْهُ بِالْمَعْرُوفِ، أَوْ يُؤْكِلَ صَدِيقَهُ غَيْرَ مُتَمَوِّلٍ بِهِ.

[راجع: ٢٣١٣]

٢٧٦٥ - حَدَّثَنَا عُبَيْدُ بْنُ

“...And whoever (amongst the guardian) is rich, he should take no wages, but if he is poor, let him have for himself what is just and reasonable...” (V.4:6) was revealed in connection with the guardian of an orphan, and it means that if he is poor he can have for himself (from the orphan's wealth) what is just and reasonable (according to his labour) from the orphan's share of the inheritance.

(23) CHAPTER. The Statement of Allāh تعالى :
 “Verily, those who unjustly eat up the property of orphans, they eat up only fire into their bellies, and they will be burnt in the blazing Fire!” (V.4:10)

2766. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ :
 The Prophet ﷺ said, “Avoid the seven great destructive sins.” The people enquired, “O Allāh's Messenger! What are they?” He said, “(1) To join others in worship along with Allāh; (2) To practise sorcery, (3) To kill the life which Allāh has forbidden except for a just cause, (according to Islāmic law); (4) To eat up *Ribā* ⁽¹⁾ (usury); (5) To eat up an orphan's wealth; (6) To show one's back to the enemy and fleeing from the battlefield at the time of fighting, and (7) To accuse chaste women, who never even think of anything touching chastity and are good believers.”

(24) CHAPTER. Allāh's Statement :

“...And they ask you concerning orphans. Say: ‘The best thing is to work honestly in their property, and if you mix your affairs with theirs, then they are your brothers. And Allāh knows him who means mischief (e.g.,

إِسْمَاعِيلَ: حَدَّثَنَا أَبُو أُسَامَةَ، عَنْ هِشَامٍ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا ﴿وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعِفُّ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ﴾ [النساء: ٦] قَالَتْ: أَنْزَلْتُ فِي وَالِي التَّيِّمِ أَنْ يُصِيبَ مِنْ مَالِهِ إِذَا كَانَ مُحْتَاجًا يَقْدِرَ مَالِهِ بِالْمَعْرُوفِ. [راجع: ٢٢١٢]

(٢٣) بَابُ قَوْلِ اللَّهِ تَعَالَى: ﴿إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا وَسَيَصْلُونَ سَعِيرًا﴾ [النساء: ١٠]

٢٧٦٦ - حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ قَالَ: حَدَّثَنِي سُلَيْمَانُ بْنُ بِلَالٍ، عَنْ ثَوْرِ بْنِ زَيْدِ الْمَدَنِيِّ عَنْ أَبِي الْعَبْثِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ ﷺ قَالَ: «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ». قَالُوا: يَا رَسُولَ اللَّهِ، وَمَا هُنَّ؟ قَالَ: «الشُّرْكَ بِاللَّهِ، وَالسِّحْرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ الرِّبَا، وَأَكْلُ مَالِ الْيَتِيمِ، وَالتَّوَلَّى يَوْمَ الرَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ الْغَافِلَاتِ.» [انظر: ٥٧٦٤، ٦٨٥٧]

(٢٤) بَابُ ﴿وَسْتَأْذِنُكَ عَنِ الْيَتَامَى قُلْ إِصْلَاحٌ لَّهُمْ خَيْرٌ وَإِنْ تُخَالَفُوهُمْ فَاذْنَبْتُمْ وَاللَّهُ يَعْلَمُ الْمُفْسِدَ مِنَ الْمُصْلِحِ وَلَوْ شَاءَ اللَّهُ لَأَعْنَتَكُمْ إِنْ اللَّهُ عَزِيزٌ حَكِيمٌ﴾

(1) (H. 2766) *Ribā* : See glossary.

to swallow their property) from him who means good (e.g., to save their property). And if Allāh had wished, He could have put you into difficulties. Truly, Allāh is All-Mighty, All-Wise.’” (V.2:220)

2767. Nāfi‘ said, “Ibn ‘Umar never refused to be appointed as a guardian.”

The most beloved thing to Ibn Sīrīn concerning an orphan’s wealth was that the orphan’s advisors and guardians would assemble to decide what is best for him.

When Ṭawūs was asked about something concerning an orphan’s affairs, he would recite:

‘...And Allāh knows him who means mischief from him who means good...’ (V.2:220)

‘Aṭā’ said concerning some orphans, “The guardian is to provide for the young and the old orphans according to their needs from their shares.”

(25) CHAPTER. The employment of an orphan on a journey and at home, provided it is beneficial for him. And (it is obligatory) for the mother and the stepfather of an orphan to look after him (even if they were not his guardians).

2768. Narrated Anas رضي الله عنه: When Allāh’s Messenger ﷺ came to Al-Madīna he did not have any servant. Abū Ṭalḥa (Anas’ stepfather) took me to Allāh’s Messenger ﷺ and said, “O Allāh’s Messenger! Anas is a wise boy, so let him serve you.” So, I served him at home and on journeys. If I did anything, he never asked me why I did it, and if I refrained from doing anything, he never asked me why I refrained from doing it.

[البقرة: ٢٢٠]. ﴿لَاَعْنَتَكُمْ﴾ :
لَاخْرَجَكُمْ وَضَيَّقَ عَلَيْكُمْ، وَ(عَثَّ):
خَصَّصَتْ.

٢٧٦٧ - وَقَالَ لَنَا سُلَيْمَانُ بْنُ
حَرْبٍ: حَدَّثَنَا حَمَادٌ، عَنْ أَيُّوبَ،
عَنْ نَافِعٍ قَالَ: مَا رَدَّ ابْنُ عُمَرَ عَلَى
أَحَدٍ وَصِيَّتِهِ وَكَانَ ابْنُ سِيرِينَ أَحَبَّ
الْأَشْيَاءِ إِلَيْهِ فِي مَالِ الْيَتِيمِ أَنْ يَجْتَمَعَ
إِلَيْهِ نَصْحَاؤُهُ وَأَوْلِيَاؤُهُ فَيَنْظُرُوا الَّذِي
هُوَ خَيْرٌ لَهُ. وَكَانَ طَاوُسٌ إِذَا سُئِلَ
عَنْ شَيْءٍ مِنْ أَمْرِ الْيَتَامَى قَرَأَ: ﴿وَاللَّهُ
يَعْلَمُ الْمُنْفِسَ مِنَ الْمُصْلِحِ﴾ وَقَالَ
عَطَاءٌ فِي يَتَامَى الصَّغِيرِ وَالْكَبِيرِ: يُنْفِقُ
الْوَالِي عَلَى كُلِّ إِنْسَانٍ بِقَدْرِهِ مِنْ
حَصَّتِهِ.

(٢٥) بَابُ اسْتِخْدَامِ الْيَتِيمِ فِي السَّفَرِ
وَالْحَضَرِ إِذَا كَانَ صَاحِبًا لَهُ، وَنَظَرِ
الْأُمِّ أَوْ زَوْجِهَا لِلْيَتِيمِ

٢٧٦٨ - حَدَّثَنَا يَعْقُوبُ بْنُ
إِبْرَاهِيمَ ابْنَ كَثِيرٍ: حَدَّثَنَا ابْنُ عَلِيَّةَ:
حَدَّثَنَا عَبْدُ الْعَزِيزِ، عَنْ أَنَسِ رَضِيَ
اللَّهُ عَنْهُ قَالَ: قَدِمَ رَسُولُ اللَّهِ ﷺ
الْمَدِينَةَ لَيْسَ لَهُ خَادِمٌ فَأَخَذَ أَبُو طَلْحَةَ
بِيَدِي فَأَنْطَلَقَ بِي إِلَى رَسُولِ اللَّهِ ﷺ
فَقَالَ: يَا رَسُولَ اللَّهِ، إِنَّ أَنَسًا غُلَامٌ
كَيْسٌ فَلْيُخْدَمْكَ، قَالَ: فَخَدَمْتُهُ فِي

السَّقَرِ وَالْحَضَرِ مَا قَالَ لِي لِشَيْءٍ
صَنَعْتُهُ: لِمَ صَنَعْتَ هَذَا هَكَذَا؟ وَلَا
لِشَيْءٍ لَمْ أَصْنَعُهُ: لِمَ لَمْ تَصْنَعْ هَذَا
هَكَذَا؟». [انظر: ٦٠٣٨، ٦٩١١]

(٢٦) **بَابُ إِذَا وَقَفَ أَرْضًا وَلَمْ يُبَيِّنِ**
الْحُدُودَ فَهِيَ جَائِزٌ، وَكَذَلِكَ الصَّدَقَةُ

(26) CHAPTER. If somebody gives a piece of land as an endowment and does not mark its boundaries, the endowment is valid. The same is applied to objects of charity.

2769. Narrated Anas bin Mālik رَضِيَ اللهُ عَنْهُ: Abū Ṭalḥa had the greatest wealth of date-palms amongst the *Anṣār* in Al-Madīna, and he prized above all his wealth (his garden) Bairuhā, which was situated opposite the mosque (of the Prophet ﷺ). The Prophet ﷺ used to enter it and drink from its fresh water. When the following Divine Verse were revealed:

“By no means shall you attain *Al-Birr* (piety, righteousness, here it means Allāh’s Reward i.e., Paradise) unless you spend (in Allāh’s Cause) of that which you love...” (V.3:92)

Abū Ṭalḥa got up saying, “O Allāh’s Messenger! Allāh says: ‘By no means shall you attain *Al-Birr*, unless you spend (in Allāh’s Cause) of that which you love...’, and I prize Bairuhā above all my wealth, which I want to give in charity for Allāh’s sake, hoping for its reward from Allāh. So you can use it as Allāh directs you.” On that the Prophet ﷺ said, “Bravo! It is a profitable (or perishable) property. (Ibn Maslama is not sure as to which word is right, i.e., profitable or perishable.) I have heard what you have said, and I recommend that you distribute this amongst your relatives.” On that Abū Ṭalḥa said, “O Allāh’s Messenger! I will do (as you have suggested).” So, Abū Ṭalḥa distributed that garden amongst his relatives and cousins.

٢٧٦٩ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ
مَسْلَمَةَ، عَنْ مَالِكٍ، عَنْ إِسْحَاقَ بْنِ
عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ: أَنَّهُ سَمِعَ
أَنَسَ بْنَ مَالِكٍ رَضِيَ اللهُ عَنْهُ يَقُولُ:
كَانَ أَبُو طَلْحَةَ أَكْثَرَ الْأَنْصَارِ بِالْمَدِينَةِ
مَالًا مِنْ نَخْلٍ، وَكَانَ أَحَبَّ مَالِهِ إِلَيْهِ
بَيْرُحَاءُ، مُسْتَقْبَلَةَ الْمَسْجِدِ، وَكَانَ
النَّبِيُّ ﷺ يَدْخُلُهَا وَيَشْرَبُ مِنْ مَاءٍ
فِيهَا صَيَّبَ. قَالَ أَنَسٌ: فَلَمَّا نَزَلَتْ:
﴿لَنْ نَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا مَحَبُّونَ﴾
قَامَ أَبُو طَلْحَةَ فَقَالَ: يَا رَسُولَ اللَّهِ،
إِنَّ اللَّهَ يَقُولُ: ﴿لَنْ نَنَالُوا الْبِرَّ حَتَّى
تُنْفِقُوا مِمَّا مَحَبُّونَ﴾ وَإِنَّ أَحَبَّ أَمْوَالِي
إِلَيَّ بَيْرُحَاءُ، وَإِنَّهَا صَدَقَةٌ لِلَّهِ أَرْجُو
بِرَّهَا وَدُخْرَهَا عِنْدَ اللَّهِ، فَضَعْتُهَا حَيْثُ
أَرَاكَ اللَّهُ. فَقَالَ: «بِحْ، ذَلِكَ مَالٌ
رَابِحٌ - أَوْ رَائِبٌ، شَكَ ابْنُ مَسْلَمَةَ -
وَقَدْ سَمِعْتُ مَا قُلْتَ، وَإِنِّي أَرَى أَنْ
تَجْعَلَهَا فِي الْأَقْرَبِينَ». قَالَ أَبُو
طَلْحَةَ: أَفَعَلْتُ ذَلِكَ يَا رَسُولَ اللَّهِ،
فَقَسَمْتُهَا أَبُو طَلْحَةَ فِي أَقْرَابِهِ وَبَنِي

عَمَهُ. وَقَالَ إِسْمَاعِيلُ وَعَبْدُ اللَّهِ بْنُ
يُوسُفَ وَيَحْيَى بْنُ يَحْيَى عَنْ مَالِكٍ:
«رَأَيْتُ». [راجع: ١٤٦١]

2770. Narrated Ibn ‘Abbās رَضِيَ اللهُ عَنْهُمَا: A man said to Allāh’s Messenger ﷺ, “My mother has died, will it benefit her if I give in charity on her behalf?” The Prophet ﷺ replied in the affirmative. The man said, “I have a garden and I make you a witness that I give it in charity on her behalf.”

٢٧٧٠ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ
الرَّحِيمِ: أَخْبَرَنَا رَوْحُ بْنُ عُبَادَةَ:
حَدَّثَنَا زَكَرِيَّا بْنُ إِسْحَاقَ قَالَ: حَدَّثَنِي
عَمْرُو بْنُ دِينَارٍ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ
عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ رَجُلًا
قَالَ لِرَسُولِ اللَّهِ ﷺ: إِنَّ أُمَّهُ تُوفِّيَتْ،
أَيَنْفَعُهَا إِنْ تَصَدَّقْتُ عَنْهَا؟ قَالَ:
«نَعَمْ»، قَالَ: فَإِنَّ لِي مِخْرَافًا فَأَنَا
أُشْهِدُكَ أَنِّي قَدْ تَصَدَّقْتُ بِهِ عَنْهَا.
[راجع: ٢٧٥٦]

(27) CHAPTER. If a group of persons give a jointly-owned piece of land as an endowment, the foundation of the endowment is valid.

(٢٧) بَابُ إِذَا وَقَفَ جَمَاعَةٌ أَرْضًا
مُشَاعًا فَهُوَ جَائِزٌ

2771. Narrated Anas رَضِيَ اللهُ عَنْهُ: When the Prophet ﷺ ordered that the mosque be built, he said, “O Banī An-Najjār! Suggest to me the price for this garden of yours.” They replied, “By Allāh! We will demand its price from none but Allāh.”

٢٧٧١ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا
عَبْدُ الْوَارِثِ، عَنْ أَبِي التَّيَّاحِ، عَنْ
أَنْسِ رَضِيَ اللَّهُ عَنْهُ قَالَ: أَمَرَ النَّبِيُّ
ﷺ بِنَاءِ الْمَسْجِدِ، فَقَالَ: «يَا بَنِي
النَّجَّارِ ثَامِنُونِي بِحَائِطِكُمْ هَذَا»،
قَالُوا: لَا وَاللَّهِ لَا نَطْلُبُ ثَمَنَهُ إِلَّا إِلَى
اللَّهِ. [راجع: ٢٣٤]

(28) CHAPTER. How to write the endowment?

(٢٨) بَابُ الْوَقْفِ كَيْفَ يُكْتَبُ؟

2772. Narrated Ibn ‘Umar رَضِيَ اللهُ عَنْهُمَا: When ‘Umar got a piece of land in Khaibar, he came to the Prophet ﷺ saying, “I have got a piece of land better than which I have never got. So, what do you advise me regarding it?”

٢٧٧٢ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا
بَزِيدُ بْنُ زُرَيْعٍ: حَدَّثَنَا ابْنُ عَوْنٍ، عَنْ
نَافِعٍ، عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا

The Prophet ﷺ said, “If you wish you can keep it as an endowment to be used for charitable purposes.” So, ‘Umar gave the land in charity (i.e., as an endowment) on the condition that the land would neither be sold nor given as a present, nor bequeathed, (and its yield) would be used for the poor, the kinsmen, the emancipation of slaves, *Jihād*, and for guests and travellers; and its administrator could eat in a reasonable just manner (according to his labour), and he also could feed his friends without intending to (store anything from it in order to) become wealthy by its means.”

قَالَ: أَصَابَ عُمَرُ بِحَيِّبِ أَرْضاً، فَأَتَى النَّبِيَّ ﷺ فَقَالَ: أَصَبْتُ أَرْضاً لَمْ أُصِبْ مَالاً فَطَوَّأْتُ نَفْسَ مِنْهُ فَكَيْفَ تَأْمُرُنِي بِهِ؟ قَالَ: «إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا». فَتَصَدَّقَ عُمَرُ أَنَّهُ لَا بِيَاعَ أَصْلُهَا وَلَا يُوهَبُ وَلَا يُورَثُ، فِي الْفُقَرَاءِ وَالْقُرْبَى وَالرَّقَابِ وَفِي سَبِيلِ اللَّهِ وَالضَّيْفِ وَابْنِ السَّبِيلِ، لَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ، أَوْ يُطْعِمَ صَدِيقاً، غَيْرَ مُتَمَوِّلٍ فِيهِ.

[راجع: ٢٣١٣]

(29) CHAPTER. The usufruct of an endowment may be spent for the wealthy, the poor and the guests.

(٢٩) بَابُ الْوَقْفِ لِلْغَنِيِّ وَالْفَقِيرِ وَالضَّيْفِ

2773. Narrated Ibn ‘Umar رضي الله عنهما: ‘Umar رضي الله عنه got some property in Khaibar and he came to the Prophet ﷺ and informed him about it. The Prophet ﷺ said to him, “If you wish you can give it in charity.” So, ‘Umar gave it in charity (i.e., as an endowment) the yield of which was to be used for the good of the *Al-Fuqarā* (the poor), *Al-Masākīn* (the poor), the kinsmen, and the guests.

٢٧٧٣ - حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا ابْنُ عُرْوَانَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ: أَنَّ عُمَرَ رَضِيَ اللَّهُ عَنْهُ وَجَدَ مَالاً بِحَيِّبٍ فَأَتَى النَّبِيَّ ﷺ فَأَخْبَرَهُ. قَالَ: «إِنْ شِئْتَ تَصَدَّقْتَ بِهَا». فَتَصَدَّقَ بِهَا فِي الْفُقَرَاءِ وَالْمَسَاكِينِ وَذِي الْقُرْبَى وَالضَّيْفِ. [راجع: ٢٣١٣]

(30) CHAPTER. The foundation of an endowment of a piece of land for building a mosque.

(٣٠) بَابُ وَقْفِ الْأَرْضِ لِلْمَسْجِدِ

2774. Narrated Anas bin Mālik رضي الله عنه: When Allāh’s Messenger ﷺ came to Al-Madīna, he ordered that a mosque be built. He said, “O Banī An-Najjār! Suggest to me the price for this garden of yours.” They replied, “By Allāh, we will demand its price from none but Allāh.”

٢٧٧٤ - حَدَّثَنِي إِسْحَاقُ: أَخْبَرَنَا عَبْدُ الصَّمَدِ قَالَ: سَمِعْتُ أَبِي: حَدَّثَنَا أَبُو التَّيَّاحِ قَالَ: حَدَّثَنِي أَنَسُ بْنُ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ: لَمَّا قَدِمَ رَسُولُ اللَّهِ ﷺ الْمَدِينَةَ أَمَرَ بِالْمَسْجِدِ وَقَالَ:

«يا بَنِي النَّجَارِ ثَامُنُونِي حَايَظَكُم هَذَا»، فَقَالُوا: لَا وَاللَّهِ لَا نَطْلُبُ ثَمَنَهُ إِلَّا إِلَى اللَّهِ. [راجع: ٢٣٤]

(31) CHAPTER. Giving animals; particularly horses and property and gold and silver as endowments.

Az-Zuhrī was asked, “If somebody finds an endowment of one thousand Dīnār and gives the sum to his boy who is a trader to invest it in business and declares that the profit of the money will be given in charity to the poor and the relatives, does the founder have the right to use anything of the profit of the one thousand Dīnār? And if he does not assign its profit to the poor?” Az-Zuhrī said, “He does not have the right to use anything of it (i.e., in either case).”

(٣١) بَابُ وَفِّ الدَّوَابِّ وَالْكَرَاعِ وَالْمُرُوضِ وَالصَّامِتِ

وقال الزهري فيمن جعل ألف دينار في سبيل الله، ودفعها إلى غلام له تاجر يتجر بها، وجعل ربحه صدقة للمساكين والأقربين، هل للرجل أن يأكل من ربح تلك الألف شيئاً؟ وإن لم يكن جعل ربحها صدقة في المساكين، قال: ليس له أن يأكل منها.

2775. Narrated Ibn ‘Umar رضي الله عنهما: Once ‘Umar gave a horse in charity to be used in Allāh’s Cause (*Jihād* – holy fighting). It had been given to him by Allāh’s Messenger ﷺ. ‘Umar gave it to a man in charity to use it in Allāh’s Cause Then ‘Umar was informed that the man has put that horse for sale, so he asked Allāh’s Messenger ﷺ whether he could buy it. Allāh’s Messenger ﷺ replied, “You should neither buy nor take back what you have given in charity.”

٢٧٧٥ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا يَحْيَى: حَدَّثَنَا عُبَيْدُ اللَّهِ قَالَ: حَدَّثَنِي نَافِعٌ، عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ عُمَرَ حَمَلَ عَلَى فَرَسٍ لَهُ فِي سَبِيلِ اللَّهِ أَعْطَاهَا رَسُولُ اللَّهِ ﷺ فَحَمَلَ عَلَيْهَا رَجُلًا، فَأُخْبِرَ عُمَرُ أَنَّهُ قَدْ وَقَفَهَا بَيْعَهَا، فَسَأَلَ رَسُولَ اللَّهِ ﷺ أَنْ يَتَّاعَهَا، فَقَالَ: «لَا تَبْتَاعَهَا وَلَا تَرْجِعَنَّ فِي صَدَقَتِكَ». [راجع: ١٤٨٩]

(32) CHAPTER. The salary of the administrator of an endowment.

2776. Narrated Abū Hurairah رضي الله عنه: Allāh’s Messenger ﷺ said, “My heirs will not inherit a Dīnār or a Dirham (i.e., money), for whatever I leave, excluding the adequate support of my wives and the wages of my employees, is to be given in charity.”

(٣٢) بَابُ نَفَقَةِ الْقَائِمِ لِلْوَقْفِ

٢٧٧٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: أَخْبَرَنَا مَالِكٌ، عَنْ أَبِي الزِّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ: أَنَّ رَسُولَ اللَّهِ ﷺ

قال: «لا تقسم ورثتي ديناراً ولا درهماً، ما تركت بعد نفقة نسائي ومؤنة عاملي فهو صدقة». [انظر:

[٦٧٢٩ .٣٠٩٦

2777. Narrated Ibn ‘Umar رضي الله عنهما: When ‘Umar founded an endowment he stipulated that its administrator could eat from it and also feed his friend without intending to store anything for himself from it in order to become wealthy.

٢٧٧٧ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: حَدَّثَنَا حَمَّادٌ، عَنْ أَيُّوبَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ عُمَرَ اشْتَرَطَ فِي وَفِّهِ أَنْ يَأْكُلَ مَنْ وَلِيَهُ وَيُؤْكِلَ صَدِيقَهُ غَيْرَ مَتَمَوْلٍ مَالاً.

[راجع: ١٢٣١٣

(33) CHAPTER. If somebody keeps a piece of land or a well as an endowment, or stipulates that he should benefit by its water as the other Muslims do (will this be permissible)?

(٣٣) بَابُ إِذَا وَقَفَ أَرْضاً أَوْ بَيْئراً، أَوْ اشْتَرَطَ لِنَفْسِهِ مِثْلَ دِلَاءِ الْمُسْلِمِينَ

Anas kept a house as an endowment and whenever he came (to Al-Madīna) he used to stay in it.

وَوَقَفَ أَنَسٌ دَاراً، فَكَانَ إِذَا قَدِمَ نَزَلَهَا. وَتَصَدَّقَ الرَّبِيرُ بِدَوْرِهِ، وَقَالَ لِلْمَرْدُودَةِ مِنْ بَنَاتِهِ أَنْ تَسْكُنَ غَيْرَ مُضِرَّةٍ وَلَا مُضَرَّ بِهَا، فَإِنْ اسْتَعْنَتْ بِرُوحٍ فَلَيْسَ لَهَا حَقٌّ. وَجَعَلَ ابْنُ عُمَرَ نَصِيْبَهُ مِنْ دَارِ عُمَرَ سُكْنَى لِذَوِي الْحَاجَاتِ مِنْ آلِ عَبْدِ اللَّهِ.

Az-Zubair gave his house in charity (i.e., as an endowment) and told his divorced daughters to dwell therein without harming or being harmed, but if any of them remarried, she would have no right to stay there.

Ibn ‘Umar kept his share from his father’s house to be inhabited by the needy amongst ‘Abdullāh’s family (i.e., his own family).

٢٧٧٨ - وَقَالَ عَبْدَانُ: أَخْبَرَنِي أَبِي، عَنْ شُعْبَةَ، عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي عَبْدِ الرَّحْمَنِ: أَنَّ عُثْمَانَ رَضِيَ اللَّهُ عَنْهُ حَيْثُ حُوصِرَ أَشْرَفَ عَلَيْهِمْ، وَقَالَ: أَنْشِدْكُمْ اللَّهَ وَلَا أَنْشِدْ إِلَّا أَصْحَابَ النَّبِيِّ ﷺ، أَلَسْتُمْ

2778. Abū ‘Abdur-Raḥmān narrated: When ‘Uthmān رضي الله عنه was circled (by the rebels), he looked upon them from above and said, “I ask you by Allāh, I ask nobody but the companions of the Prophet ﷺ, don’t you know that Allāh’s Messenger ﷺ said, ‘Whoever will (buy and) dig the well of Rūma will be granted Paradise,’ and I (bought and) dug it? Don’t you know that he said,

'Whoever equip the army of 'Usra (i.e., Tabūk's *Ghazwa*) will be granted Paradise,' and I equipped it?" They attested whatever he said.

When 'Umar founded his endowment he said, "Its administrator can eat from it." The management of the endowment can be taken over by the founder himself or any other person, for both cases are permissible.

(34) CHAPTER. It is permissible for the founder of an endowment to say, "We will demand its price, from none but Allāh."

2779. Narrated Anas رَضِيَ اللهُ عَنْهُ: The Prophet ﷺ said (at the time of building the mosque), "O Banī An-Najjār! Suggest to me the price for your garden." They replied, "We will demand its price from none but Allāh."

(35) CHAPTER. The Statement of Allāh عزَّ وجلَّ:
"O you who believe! When death approaches any of you, and you make a bequest, (then take) the testimony of two just men of your own folk or two others from outside... (up to)... Allāh guides not the people who are *Al-Fasiqūn* (the rebellious and disobedient)."
 (V.5:106-108)

2780. Ibn 'Abbās رَضِيَ اللهُ عَنْهُمَا said, "A man from the tribe of Banī Sahm went out in the company of Tamīm Ad-Dārī and 'Adī bin Baddā'. The man of Banī Sahm died in a land where there was no Muslim. When Tamīm

تَعْلَمُونَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ حَفَرَ رُومَةَ فَلَهُ الْجَنَّةُ» فَحَفَرْتُهَا؟ أَلَسْتُمْ تَعْلَمُونَ أَنَّهُ قَالَ: «مَنْ جَهَّزَ جَيْشَ الْعُسْرَةِ فَلَهُ الْجَنَّةُ» فَجَهَّزْتُهُ؟ قَالَ: فَصَدَّقُوهُ بِمَا قَالَ. وَقَالَ عُمَرُ فِي وَفْقِهِ: لَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهُ أَنْ يَأْكُلَ. وَقَدْ يَلِيهِ الْوَاقِفُ وَغَيْرُهُ فَهُوَ وَاسِعٌ لِكُلِّ.

(٣٤) بَابُ إِذَا قَالَ الْوَاقِفُ: لَا نَطْلُبُ ثَمَنَهُ إِلَّا إِلَى اللَّهِ، فَهُوَ جَائِزٌ

٢٧٧٩ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا عَبْدُ الْوَارِثِ، عَنْ أَبِي التَّيَّاحِ، عَنْ أَنَسِ رَضِيَ اللَّهُ عَنْهُ قَالَ: قَالَ النَّبِيُّ ﷺ: «يَا بَنِي النَّجَّارِ ثَامِنُونِي بِحَائِطِكُمْ»، قَالُوا: لَا نَطْلُبُ ثَمَنَهُ إِلَّا إِلَى اللَّهِ. [راجع: ٢٣٤]

(٣٥) بَابُ قَوْلِ اللَّهِ عَزَّ وَجَلَّ:
﴿يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَدُوا بَيْنَكُمُ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِّنكُمْ أَوْ آخَرَانِ مِّنْ غَيْرِكُمْ﴾
 إِلَى قَوْلِهِ: ﴿وَاللَّهُ لَا يَهْدِي الْقَوْمَ الْفَاسِقِينَ﴾ [المائدة: ١٠٦-١٠٨]
 الْأَوْلِيَانِ: وَاحِدُهُمَا أَوْلَى، وَمِنْهُ أَوْلَى بِهِ. ﴿عِزُّهُ﴾: ظَهْرُهُ، ﴿أَعْتَرْنَا﴾: أَظْهَرْنَا.

٢٧٨٠ - وَقَالَ لِي عَلِيُّ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا يَحْيَى بْنُ أَدَمَ: حَدَّثَنَا بْنُ أَبِي زَائِدَةَ، عَنْ مُحَمَّدِ بْنِ أَبِي

and 'Adī returned conveying the property of the deceased, they claimed that they had lost a silver bowl with gold engraving. Allāh's Messenger ﷺ made them take an oath (to confirm their claim), and then the bowl was found in Makkah with some people who claimed that they had bought it from Tamīm and 'Adī. Then two witnesses from the relatives of the deceased got up and swore that their witnesses were more valid than the witnesses of 'Adī and Tamīm, and that the bowl belonged to their deceased fellow. So, this Verse was revealed in connection with this case;

‘O you who believe! When death approaches any of you...’ (V.5:106)

القاسم، عَنْ عَبْدِ الْمَلِكِ بْنِ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ أَبِيهِ، عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا، قَالَ: خَرَجَ رَجُلٌ مِنْ بَنِي سَهْمٍ مَعَ تَمِيمِ الدَّارِيِّ وَعَدِيِّ بْنِ بَدَاءٍ، فَمَاتَ السَّهْمِيُّ بِأَرْضِ لَيْسَ بِهَا مُسْلِمٍ فَلَمَّا قَدِمَا بِتَرَكَّتِهِ فَقَدُوا جَامًا مِنْ فِضَّةٍ مُخَوَّصًا مِنْ ذَهَبٍ. فَأَخْلَفَهُمَا رَسُولُ اللَّهِ ﷺ، ثُمَّ وَجَدَ الْجَامَ بِمَكَّةَ، فَقَالُوا: ابْتَعْنَاهُ مِنْ تَمِيمِ وَعَدِيِّ، فَقَامَ رَجُلَانِ مِنْ أَوْلِيَاءِ السَّهْمِيِّ فَخَلَفَا لَشَهَادَتِنَا أَحَقُّ مِنْ شَهَادَتِهِمَا، وَأَنَّ الْجَامَ لِصَاحِبِهِمْ. قَالَ: وَفِيهِمْ نَزَلَتْ هَذِهِ الْآيَةُ: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَدَةُ بَيْنِكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ﴾ [المائدة: ١٠٦].

(36) CHAPTER. The payments of the debts of the deceased by the executor (of the will) in the absence of other inheritors.

2781. Narrated Jābir bin 'Abdullāh Al-Anṣārī رضي الله عنهما: My father was martyred on the day (of the *Ghazwa*) of Uḥud and left six daughters and some debts to be paid. When the time of plucking the date-fruits came, I went to Allāh's Messenger ﷺ and said, “O Allāh's Messenger! You know that my father was martyred on the day of Uḥud and owed much debt, and I wish that the creditors would see you.” The Prophet ﷺ said, “Go and collect the various kinds of dates and place them separately in heaps”. I did accordingly and called him. On seeing him, the creditors started claiming their rights pressingly at that time. When the Prophet ﷺ saw how they behaved, he went round the biggest heap for three times and

(٣٦) بَابُ قَضَاءِ الْوَصِيِّ ذُبُونِ الْمَيْتِ بِغَيْرِ مَحْضَرٍ مِنَ الْوَرَثَةِ
٢٧٨١ - حَدَّثَنَا مُحَمَّدُ بْنُ سَابِقٍ، أَوْ الْفَضْلُ بْنُ يَعْقُوبَ عَنْهُ: حَدَّثَنَا شَيْبَانُ أَبُو مُعَاوِيَةَ، عَنْ فِرَاسٍ قَالَ: قَالَ الشَّعْبِيُّ: حَدَّثَنِي جَابِرُ بْنُ عَبْدِ اللَّهِ الْأَنْصَارِيُّ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ أَبَاهُ اسْتُشْهِدَ يَوْمَ أُحُدٍ وَتَرَكَ سِتَّ بَنَاتٍ وَتَرَكَ عَلَيْهِ ذَيْنًا، فَلَمَّا حَضَرَهُ جِذَادُ النَّخْلِ أَتَيْتُ رَسُولَ اللَّهِ ﷺ فَقُلْتُ: يَا رَسُولَ اللَّهِ، قَدْ عَلِمْتَ أَنَّ وَالِدِي اسْتُشْهِدَ يَوْمَ أُحُدٍ وَتَرَكَ عَلَيْهِ ذَيْنًا كَثِيرًا، وَإِنِّي أُحِبُّ أَنْ يَرَكَ

sat over it and said, "Call your companions (i.e., the creditors)." Then he kept on measuring and giving them, till Allāh cleared all my father's debts. By Allāh, it would have pleased me that Allāh would clear the debts of my father even though I had not taken a single date to my sisters. But by Allāh, all the heaps were complete, (as they were) and I looked at the heap where Allāh's Messenger ﷺ was sitting and noticed as if not a single date had been taken thereof.

Allāh تعالیٰ said: "So we planted amongst them enmity and hatred".

الْعُرْمَاءُ. قَالَ: «أَذْهَبَ فَيَبْدُرُ كُلَّ تَمْرٍ عَلَى نَاحِيَةٍ»، فَفَعَلْتُ ثُمَّ دَعَوْتُهُ، فَلَمَّا نَظَرُوا إِلَيْهِ أُعْرُوا بِي تِلْكَ السَّاعَةَ، فَلَمَّا رَأَى مَا يَصْنَعُونَ طَافَ حَوْلَ أَعْظَمِهَا يَبْدُرًا ثَلَاثَ مَرَّاتٍ ثُمَّ جَلَسَ عَلَيْهِ ثُمَّ قَالَ: «اذْعُ أَصْحَابَكَ» فَمَا زَالَ يَكْبُلُ لَهُمْ حَتَّى آدَى اللَّهُ أَمَانَةَ وَالِدِي، وَأَنَا وَاللَّهِ رَاضٍ أَنْ يُؤَدِّيَ اللَّهُ أَمَانَةَ وَالِدِي، وَلَا أَرْجِعَ إِلَى أَخَوَاتِي تَمْرَةً. فَسَلِمَ وَاللَّهِ الْبَيَادِرُ كُلُّهَا حَتَّى أَنِّي أَنْظُرُ إِلَى الْبَيْدَرِ الَّذِي عَلَيْهِ رَسُولُ اللَّهِ ﷺ كَأَنَّهُ لَمْ يَنْقُصْ تَمْرَةً وَاحِدَةً. قَالَ أَبُو عَبْدِ اللَّهِ: «أُعْرُوا بِي: يَعْنِي هَيَّجُوا بِي. ﴿فَأَعْرَبْنَا بَيْنَهُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ﴾». [راجع: ٢١٢٧]