

In the Name of Allāh,  
the Merciful, the Beneficent

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

### 13. The Chapters On Judgements From The Messenger of Allāh ﷺ

(المعجم ١٣) - أَبْوَابُ الْأَحْكَامِ  
عَنْ رَسُولِ اللَّهِ ﷺ (التحفة ١١)

#### Chapter 1. What Has Been Related From The Messenger of Allāh ﷺ About The Judge

(المعجم ١) - بَابُ مَا جَاءَ، عَنْ رَسُولِ اللَّهِ ﷺ فِي الْقَاضِي (التحفة ١)

1322. ‘Abdullāh bin Mawhab narrated that ‘Uthmān said to Ibn ‘Umar: “Go and judge between the people.” So he said: “Perhaps you can excuse me (from that) O Commander of the Believers!” He said: “Why do you have an aversion for that when your father judged?” He said: “I heard the Messenger of Allāh ﷺ saying: ‘Whoever was a judge and judged with justice, it still would have been better for him to have turned away from it completely.’ What do I want after that ?” (Da‘if)

١٣٢٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْأَعْلَى [الصَّنْعَانِيُّ]: حَدَّثَنَا الْمُعْتَمِرُ بْنُ سُلَيْمَانَ قَالَ: سَمِعْتُ عَبْدَ الْمَلِكِ يُحَدِّثُ عَنْ عَبْدِ اللَّهِ ابْنِ مَوْهَبٍ أَنَّ عُثْمَانَ قَالَ لِابْنِ عُمَرَ: اذْهَبْ فَاقْضِ بَيْنَ النَّاسِ قَالَ: أَوْ تُعَافِنِي يَا أَمِيرَ الْمُؤْمِنِينَ! قَالَ: فَمَا تَكْرَهُ مِنْ ذَلِكَ وَقَدْ كَانَ أَبُوكَ يَقْضِي؟ قَالَ: إِنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ كَانَ قَاضِيًا فَقَضَى بِالْعَدْلِ، فَبِالْحَرِيِّ أَنْ يَنْقَلِبَ مِنْهُ كَفَافًا». فَمَا أَرْجُو بَعْدَ ذَلِكَ؟.

There is a story with this *Hadīth*, and there is something on this topic from Abū Hurairah.

وَفِي الْحَدِيثِ [قَالَ] قِصَّةٌ. وَفِي الْبَابِ عَنْ أَبِي هُرَيْرَةَ.

[Abū ‘Eisā said:] The *Hadīth* of Ibn ‘Umar is *Gharīb*. To me, its chain is not connected. ‘Abdul-Mālik, the one from whom Al-Mu‘tamir reported this, is ‘Abdul-Mālik bin Abī Jamīlah.

[قَالَ أَبُو عِيسَى]: حَدِيثُ ابْنِ عُمَرَ حَدِيثٌ غَرِيبٌ، وَلَيْسَ إِسْنَادُهُ عِنْدِي بِمُتَّصِلٍ وَعَبْدُ الْمَلِكِ الَّذِي رَوَى عَنْهُ الْمُعْتَمِرُ هَذَا، هُوَ عَبْدُ الْمَلِكِ بْنُ أَبِي جَمِيلَةَ.

تخريج: [إسناده ضعيف] وأخرجه أبو يعلى: ٩٣/١٠، ح: ٥٧٢٧ وابن حبان، ح: ١١٩٥ من حديث المعتمر به عبد الملك مجهول (تقريب) \* وفي الباب عن أبي هريرة [يأتي: ١٣٢٥].

**Comments:**

“Whoever was a judge and judged with justice, it still would have been better for him to have turned away...” If there is no reward or punishment for him, then why should he accept this position. For this reason, Ibn ‘Umar refused to accept this post, though ‘Uthmān insisted that he accept it.

**1322B.** [Ibn Buraidah narrated from his father that the Prophet ﷺ said: “The judges are three: Two judges that are in the Fire, and a judge that is in Paradise. A man who judges without the truth, and he knows that. This one is in the Fire. One who judges while not knowing, ruining the rights of the people. So he is in the Fire. A judge who judges with the truth, that is the one in Paradise.”] (*Da‘if*)

١٣٢٢م - [حَدَّثَنَا مُحَمَّدُ بْنُ إِسْمَاعِيلَ: حَدَّثَنِي الْحُسَيْنُ بْنُ بِشْرِ: حَدَّثَنَا شَرِيكٌ عَنْ الْأَعْمَشِ، عَنْ سَهْلِ بْنِ عُيَيْدَةَ، عَنْ ابْنِ بُرَيْدَةَ، عَنْ أَبِيهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «الْقَضَاءُ ثَلَاثَةٌ: قَاضِيَانِ فِي النَّارِ، وَقَاضٍ فِي الْجَنَّةِ: رَجُلٌ قَضَى بِغَيْرِ الْحَقِّ فَعَلِمَ ذَلِكَ فَذَاكَ فِي النَّارِ، وَقَاضٍ لَا يَعْلَمُ فَأَهْلَكَ حُقُوقَ النَّاسِ فَهُوَ فِي النَّارِ، وَقَاضٍ قَضَى بِالْحَقِّ فَذَلِكَ فِي الْجَنَّةِ»].

**تخریج:** [إسناده ضعيف] ورواه أبو داود، القضاء، باب: في القاضي يخطيء، ح: ٣٥٧٣ وابن ماجه، ح: ٢٣١٥ من حديث ابن بريدة، الأعمش وشريك عننا به وله شاهد ضعيف عند الطبراني (مجمع: ١٩٣/٤).

**Comments:**

According to this narration a person who is incompetent of being a judge and has no ability and knowledge of Islamic Jurisprudence, and still takes the responsibility, will go to Hell. Similarly a judge who has all the qualities of being a judge, and knowingly passes wrong verdicts will go to Hell. Only the judge who is a just judge, and gives the judgements according to the standards of justice will go to Paradise. Becoming a judge and accepting this post is a very demanding job, as it is clear from the preceding narrations.

**1322.** Anas bin Mālik narrated that the Messenger of Allāh ﷺ said: “Whoever asks for a postion as a judge, then he is left on his own. And whoever is forced into it, Allāh sends an angel down to him so that he can be correct.” (*Da‘if*)

١٣٢٢ - حَدَّثَنَا هَنَادٌ: حَدَّثَنَا وَكَيْعٌ عَنْ إِسْرَائِيلَ، عَنْ عَبْدِ الْأَعْلَى، عَنْ بِلَالِ بْنِ أَبِي مُوسَى، عَنْ أَنَسِ بْنِ مَالِكٍ، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ سَأَلَ الْقَضَاءَ، وَكِلَإِ إِلَى نَفْسِهِ، وَمَنْ أُجْبِرَ عَلَيْهِ، يُنَزِّلُ اللَّهُ عَلَيْهِ مَلَكًا فَيُسَدِّدُهُ».

**تخریج:** [إسناده ضعيف] وأخرجه ابن ماجه، الأحكام، باب ذكر القضاء، ح: ٢٣٠٩ من حديث وكيع به \* عبدالأعلى الثعلبي ضعيف كما في تسهيل الحاجة، ح: ١٥٥٢.

**Comments:**

The next narration makes it clear that whoever aspires to become a judge and acquire this post, with some influence or links and recommendations, he loses the guidance from Allāh and becomes the slave of one's base self.

**1324.** Anas narrated that the Prophet ﷺ said: "Whoever seeks to be a judge, and asks others to intercede for him with it, then he will be left on his own. And whoever is coerced into it, Allāh sends an angel down to him so that he can be correct." (*Da'if*)

[Abū 'Eisā said:] This *Hadīth* is *Hasan Gharīb*. It is more correct than the narration of Isrā'il (no. 1323) from 'Abdul-A'lā.

١٣٢٤ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ : حَدَّثَنَا يَحْيَى بْنُ حَمَادٍ عَنْ أَبِي عَوَانَةَ، عَنْ عَبْدِ الْأَعْلَى التُّعَلْبِيِّ، عَنْ بِلَالِ بْنِ مِرْدَاسِ الْفَزَارِيِّ، عَنْ حَيْثَمَةَ - وَهُوَ الْبَصْرِيُّ - عَنْ أَنَسٍ عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ ابْتَغَى الْقَضَاءَ، وَسَأَلَ فِيهِ شَفَعَاءَ، وَكَلَّ إِلَى نَفْسِهِ. وَمَنْ أُكْرِهَ عَلَيْهِ، أَنْزَلَ اللَّهُ عَلَيْهِ مَلَكًا يُسَدِّدُهُ». [قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ، وَهُوَ أَصَحُّ مِنْ حَدِيثِ إِسْرَائِيلَ عَنْ عَبْدِ الْأَعْلَى.

تخریج: [إسناده ضعيف] انظر الحديث السابق.

**1325.** Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "Whoever takes the responsibility of judge, or is appointed as a judge between the people, then he has been slaughtered without a knife." (*Hasan*)

[Abū 'Eisā said:] This *Hadīth* is *Hasan Gharīb* from this route. It has also been reported through routes other than this from Abū Hurairah.

١٣٢٥ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ: حَدَّثَنَا الْفُضَيْلُ بْنُ سُلَيْمَانَ عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو، عَنْ سَعِيدِ الْمَقْبُرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ وَلِيَ الْقَضَاءَ، أَوْ جُعِلَ قَاضِيًا بَيْنَ النَّاسِ، فَقَدْ ذُبِحَ بِغَيْرِ سِكِّينٍ». [قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ مِنْ هَذَا الْوَجْهِ. وَقَدْ رُوِيَ أَيْضًا مِنْ غَيْرِ هَذَا الْوَجْهِ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ.

تخریج: [إسناده حسن] وأخرجه أبو داود، القضاء، باب: في طلب القضاء، ح: ٣٥٧١ عن نصر بن علي به وصححه الحاكم: ٩١/٤ ووافقه الذهبي، وله شواهد.

**Comments:**

This narration makes it clear that accepting the post of judge is to put oneself in big troubles. This post is a continuous and permanent test of one's honesty. So one should not aspire to become a judge. If at all this position is entrusted to one, then he should seek Allāh's help and guidance.

**Chapter 2. What Has Been Related About The Judge That Is Correct And The Judge That Is Mistaken**

(المعجم ٢) - بَابُ مَا جَاءَ فِي الْقَاضِي  
يُصِيبُ وَيُخْطِئُ (التحفة ٢)

1326. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: “When the judge passes a judgement in which he strived and was correct, then he receives two rewards. And when he judges and is mistaken, then he receives one reward.” (*Sahih*)

١٣٢٦ - حَدَّثَنَا الْحُسَيْنُ بْنُ مَهْدِيٍّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: حَدَّثَنَا مَعْمَرٌ عَنْ سُفْيَانَ الثَّوْرِيِّ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرٍو بْنِ حَزْمٍ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا حَكَمَ الْحَاكِمُ فَاجْتَهَدَ فَأَصَابَ، فَلَهُ أَجْرَانِ، وَإِذَا حَكَمَ فَأَخْطَأَ فَلَهُ أَجْرٌ وَاحِدٌ».

[He said:] There are narrations on this topic from ‘Amr bin Al-‘Ās, and ‘Uqbah bin ‘Āmir.

[قَالَ:] وَفِي الْبَابِ عَنْ عَمْرٍو بْنِ الْعَاصِ وَعُقْبَةَ بْنِ عَامِرٍ.

[Abū ‘Eisā said:] The *Hadith* of Abū Hurairah is a *Hasan Gharib Hadith* from this route. We do not know of it as a narration of Sufyān Ath-Thawrī, from Yahya bin Sa‘eed, except through the narration of ‘Abdur-Razzāq from Ma‘mar, from Sufyān Ath-Thawrī.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ حَدِيثٌ حَسَنٌ غَرِيبٌ مِنْ هَذَا الْوَجْهِ، لَا نَعْرِفُهُ مِنْ حَدِيثِ سُفْيَانَ الثَّوْرِيِّ، عَنْ يَحْيَى ابْنِ سَعِيدٍ، إِلَّا مِنْ حَدِيثِ عَبْدِ الرَّزَّاقِ عَنْ مَعْمَرٍ، عَنْ سُفْيَانَ الثَّوْرِيِّ.

تخريج: [صحيح] وأخرجه النسائي: ٢٢٤/٨، ح: ٥٣٨٣ (آداب القضاء، باب الإصابة في الحكم) من حديث عبدالرزاق، والبخاري، ح: ٧٣٥٢ ومسلم، ح: ١٧١٦ من حديث أبي بكر بن محمد به \* وفي الباب عن عمرو بن العاص [مسلم، ح: ١٧١٦ والبخاري، ح: ٧٣٥٢] وعقبة بن عامر [أحمد: ٢٠٥/٤].

**Comments:**

This narration proves that a judge or a head of the state who has the qualities and abilities of doing justice, and he tries to know and understand the issue, and its inner intentions and details, and reaches the right decision, then he gets a double reward from Allāh; one for the right decision, and the other for pains taken to reach the right decision. In this process, if in spite of all his sincere efforts, and due to the complications of the issue, he does not reach the right decision he still gets one reward. This reward is for his sincere efforts to reach the truth.

**Chapter 3. What Has Been Related About How The Judge Is To Make A Judgement**

**1327.** Some men who were companions of Mu'adh narrated from Mu'adh that the Messenger of Allāh ﷺ sent Mu'adh to Yemen, so he ﷺ said: "How will you judge?" He said: "I will judge according to what is in Allāh's Book." He said: "If it is not in Allāh's Book?" He said: "Then with the *Sunnah* of the Messenger of Allāh ﷺ." He said: "If it is not in the *Sunnah* of the Messenger of Allāh ﷺ?" He said: "I will give in my view." He said: "All praise is due to Allāh, the One Who made the messenger of the Messenger of Allāh suitable." (*Da'if*)

**تخریج:** [إسناده ضعيف] وأخرجه أبو داود، القضاء، باب اجتهاد الرأي في القضاء، ح: ٣٥٩٢ من حديث شعبة به وضعفه البخاري والدارقطني والعقيلي وغيرهم \* الحارث بن عمرو: مجهول (تقريب) ورجال من أصحاب معاذ: مجاهيل، وفيه علة أخرى.

**1328.** (Another chain of narrators) from some people from the inhabitants of Hims, from Mu'adh, from the Prophet ﷺ, with similar. (*Da'if*)

[Abū 'Eisā said:] We do not know of this *Hadith* except from this route. To me, its chain is not connected. Abū 'Awn Ath-Thaqafi's name is Muḥammad bin 'Ubaidullāh.

(المعجم ٣) - بَابُ مَا جَاءَ فِي الْقَاضِي كَيْفَ يَقْضِي (التحفة ٣)

١٣٢٧ - حَدَّثَنَا هَنَادٌ: حَدَّثَنَا وَكَيْعٌ عَنْ شُعْبَةَ، عَنْ أَبِي عَوْنٍ [الثَّقَفِيُّ]، عَنِ الْحَارِثِ بْنِ عَمْرٍو، عَنْ رِجَالٍ مِنْ أَصْحَابِ مُعَاذٍ، عَنْ مُعَاذٍ أَنَّ رَسُولَ اللَّهِ ﷺ بَعَثَ مُعَاذًا إِلَى الْيَمَنِ فَقَالَ: «كَيْفَ تَقْضِي؟» فَقَالَ: أَقْضِي بِمَا فِي كِتَابِ اللَّهِ. قَالَ: «فَإِنْ لَمْ يَكُنْ فِي كِتَابِ اللَّهِ؟» قَالَ: فَسُنَّةُ رَسُولِ اللَّهِ ﷺ. قَالَ: «فَإِنْ لَمْ يَكُنْ فِي سُنَّةِ رَسُولِ اللَّهِ ﷺ؟» قَالَ: أَجْتَهِدُ رَأْيِي. قَالَ: «الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ ﷺ».

١٣٢٨ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ وَعَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ قَالَا: حَدَّثَنَا شُعْبَةُ عَنْ أَبِي عَوْنٍ، عَنِ الْحَارِثِ بْنِ عَمْرٍو، ابْنِ أَخٍ لِلْمُعِيرَةِ بْنِ شُعْبَةَ، عَنْ أَنَسٍ مِنْ أَهْلِ حِمَصَ، عَنْ مُعَاذٍ عَنِ النَّبِيِّ ﷺ بِنَحْوِهِ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ لَا نَعْرِفُهُ إِلَّا مِنْ هَذَا الْوَجْهِ، وَلَيْسَ إِسْنَادُهُ عِنْدِي بِمُتَّصِلٍ. وَأَبُو عَوْنٍ الثَّقَفِيُّ، اسْمُهُ مُحَمَّدُ بْنُ عُبَيْدِ اللَّهِ.

**تخریج:** [إسناده ضعيف] انظر الحديث السابق.

### Chapter 4. What Has Been Related About The Just *Imām*

(المعجم ٤) - بَابُ مَا جَاءَ فِي الْإِمَامِ  
الْعَادِلِ (التحفة ٤)

1329. Abū Sa'eed narrated that the Messenger of Allāh ﷺ said: "Indeed, the most beloved of people to Allāh on the Day of Judgement, and the nearest to Him in status is the just *Imām*. And the most hated of people to Allāh and the furthest from Him in status is the oppressive *Imām*." (*Da'if*)

[He said:] There is something on this topic from [‘Abdullāh] Ibn Abī Awfā.

[Abū ‘Eisā said:] The *Ḥadīth* of Abū Sa'eed is a *Ḥasan Gharīb Ḥadīth*, we do not know of it except through this route.

تخريج: [إسناده ضعيف] وأخرجه أحمد: ٢٢/٣ من حديث فضيل بن مرزوق به وهو ضعيف كما في تسهيل الحاجة، ح: ٧٧٨، وعطية العوفي ضعيف مدلس \* وفي الباب عن عبدالله بن أبي أوفى [يأتي: ١٣٣٠].

#### Comments:

This narration gives good news and glad tidings to just, upright and honest rulers and the people in authority, that on the Day of Judgement they will be among the most beloved and nearest to Allāh.

1330. [‘Abdullāh] Ibn Abī Al-Awfā narrated that the Messenger of Allāh ﷺ said: "[Indeed] Allāh is with the judge as long as he is not unjust. So when he is unjust, He leaves him and he is attended by *Shaitān*." (*Hasan*)

[Abū ‘Eisā said:] This *Ḥadīth* is [*Hasan*] *Gharīb*, we do not know of it except as a narration of ‘Imrān Al-Qaṭṭān.

١٣٢٩ - حَدَّثَنَا عَلِيُّ بْنُ الْمُنْذِرِ الْكُوفِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ فَضِيلٍ عَنْ فَضِيلِ بْنِ مَرْزُوقٍ، عَنْ عَطِيَّةَ، عَنْ أَبِي سَعِيدٍ، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ أَحَبَّ النَّاسِ إِلَى اللَّهِ يَوْمَ الْقِيَامَةِ، وَأَدْنَاهُمْ مِنْهُ مَجْلِسًا، إِمَامٌ عَادِلٌ؛ وَأَبْعَصَ النَّاسِ إِلَى اللَّهِ، وَأَبْعَدَهُمْ مِنْهُ مَجْلِسًا إِمَامٌ جَائِرٌ».

[قَالَ:] وَفِي الْبَابِ عَنْ [عَبْدِ اللَّهِ] بْنِ أَبِي أَوْفَى.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي سَعِيدٍ حَدِيثٌ حَسَنٌ غَرِيبٌ لَا نَعْرِفُهُ إِلَّا مِنْ هَذَا الْوَجْهِ.

١٣٣٠ - حَدَّثَنَا عَبْدُ الْقُدُّوسِ بْنُ مُحَمَّدٍ أَبُو بَكْرِ الْعَطَّارُ: حَدَّثَنَا عَمْرُو بْنُ عَاصِمٍ: حَدَّثَنَا عِمْرَانُ الْقَطَّانُ عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ، عَنْ [عَبْدِ اللَّهِ] بْنِ أَبِي أَوْفَى، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «[إِنَّ] اللَّهَ مَعَ الْقَاضِي مَا لَمْ يَجْرُ. فَإِذَا جَارَ تَخَلَّى عَنْهُ وَلَزِمَهُ الشَّيْطَانُ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ [حَسَنٌ] غَرِيبٌ لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ عِمْرَانَ الْقَطَّانِ.

تخريج: [حسن] وصححه ابن حبان، ح: ١٥٤٠ والحاكم: ٩٣/٤ ووافقه الذهبي ورواه ابن ماجه، ح: ٢٣١٢ من حديث عمران القطان به بالاختلاف في السند وسنده حسن.

**Comments:**

Allāh is with a head of state and a judge as long as he is not unjust, and he uses his authority only for truth, justice and the welfare of the society. Allāh's help and guidance remains with him as long as he follows the right path of justice and honesty, but when he deviates from this path, Satan overcomes him and leads him to injustice and oppression.

### Chapter 5. What Has Been Related About the Judge Not Judging Between Two Disputants Until He Has Heard Both Of Them

1331. 'Alī narrated: "The Messenger of Allāh ﷺ said to me: 'When two men come to you seeking judgement, do not judge for the first until you have heard the statement of the other. Soon you will know how to judge.'" (Da'if)

'Alī said: "I did not err since then."

[Abū 'Eisā said:] This *Hadīth* is *Hasan*.

تخريج: [إسناده ضعيف] وأخرجه أحمد: ٩٠/١ عن حسين الجعفي، وأبو داود، ح: ٣٥٨٢ من حديث سماك به وصححه الحاكم: ٩٣/٤ والذهبي \* حنث بن المعتمر ضعفه الجمهور ولحديثه شواهد معنوية.

### Chapter 6. What Has Been Related About The *Imām* Who Looks After People

1332. Abul-Ḥasan narrated that 'Amr bin Murrah said to Mu'āwiyah: "I heard the Messenger of Allāh ﷺ saying: 'No *Imām* closes his door on one in need, dire straits and poverty, except that Allāh closes the gates of the

(المعجم ٥) - بَابُ مَا جَاءَ فِي الْقَاضِي  
لَا يَقْضِي بَيْنَ الْحَضْمَيْنِ حَتَّى يَسْمَعَ  
كَلَامَهُمَا (التحفة ٥)

١٣٣١ - حَدَّثَنَا هَنَّادٌ: حَدَّثَنَا حُسَيْنُ بْنُ عَلِيٍّ الْجُعْفِيُّ عَنْ زَائِدَةَ، عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ حَشِّشٍ، عَنْ عَلِيٍّ، قَالَ: قَالَ لِي رَسُولُ اللَّهِ ﷺ: «إِذَا تَقَاضَى إِلَيْكَ رَجُلَانِ، فَلَا تَقْضِ لِلأَوَّلِ حَتَّى تَسْمَعَ كَلَامَ الآخَرِ، فَسَوْفَ تَدْرِي كَيْفَ تَقْضِي».

قَالَ عَلِيٌّ: فَمَا زِلْتُ مَاضِيًا بَعْدُ.  
[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ.

(المعجم ٦) - بَابُ مَا جَاءَ فِي إِمَامٍ  
الرَّعِيَّةِ (التحفة ٦)

١٣٣٢ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبرَاهِيمَ: حَدَّثَنِي عَلِيُّ بْنُ الْحَكَمِ: حَدَّثَنِي أَبُو الْحَسَنِ قَالَ: قَالَ عَمْرُو بْنُ مِرَّةٍ لِمُعَاوِيَةَ: إِنِّي سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَا مِنْ إِمَامٍ يُغْلِقُ بَابَهُ دُونَ دَوِي

Heavens from his dire straits, his needs, and his poverty.' So Mu'āwiyah appointed a man to look after the needs of the people." (*Hasan*)

[He said:] There is something on this topic from Ibn 'Umar.

[Abū 'Eisā said:] The *Hadīth* of 'Amr bin Murrah is a *Gharīb Hadīth*. This *Hadīth* has been reported from routes other than this one. 'Amr bin Murrah Al-Juhni's *Kunyah* is Abū Maryam.

تخريج: [حسن] وأخرجه أحمد: ٢٣١/٤ من حديث علي بن الحكم به وصححه الحاكم: ٤/٩٤ ووافقه الذهبي وللحديث شواهد عند أبي داود، ح: ٢٩٤٨ وأحمد: ٢٣٨/٥ وغيرهما، انظر الحديث الآتي.

**1333.** (Another chain) from Abū Maryam the Companion of the Prophet ﷺ, from the Prophet ﷺ. (*Hasan*)

And it is similar to this *Hadīth* in meaning [Yazīd bin Abī Maryam (one of the narrators) is from *Ash-Shām*, and Bura'id bin Abī Maryam is from Al-Kūfah, and Abū Maryam is 'Amr bin Murrah Al-Juhni].

تخريج: [إسناده حسن] وأخرجه أبو داود، الخراج، باب: فيما يلزم الإمام من أمر الرعية والحجة عنهم، ح: ٢٩٤٨ والطبراني: ٢٢/٣٣١، ح: ٨٣٢ من حديث يحيى بن حمزة به وصححه الحاكم: ٩٤، ٩٣/٤ والذهبي وللحديث شواهد.

**Comments:**

The Four Guided Caliphs of the Prophet ﷺ, modeling after him, never stopped the general public from visiting and approaching them. Sometimes people came to see them at odd hours but they never hesitated to listen to them and solve their problems. When the Kharijities started terrorist attacks, and 'Alī was martyred by them, and Mu'āwiyah was also attacked, he stopped this practice of admitting the people for his safety. 'Amr bin Murrah came to know this news, so he approached him and narrated to him the words of the Prophet ﷺ. Mu'āwiyah, on hearing these words, appointed a person to listen to their complaints and inform him, and decided the problems of the people accordingly.

الْحَاجَةِ وَالخَلَّةِ وَالْمَسْكِنَةِ، إِلَّا أَعْلَقَ اللهُ أَبْوَابَ السَّمَاءِ دُونَ خَلَّتِهِ وَحَاجَّتِهِ وَمَسْكِنَتِهِ. فَجَعَلَ مَعَاوِيَةَ رَجُلًا عَلَى حَوَائِجِ النَّاسِ.

[قَالَ:] وَفِي الْبَابِ عَنِ ابْنِ عُمَرَ.

[قَالَ أَبُو عَيْسَى:] حَدِيثُ عَمْرِو بْنِ مُرَّةٍ حَدِيثٌ غَرِيبٌ وَقَدْ رُوِيَ هَذَا الْحَدِيثُ مِنْ غَيْرِ هَذَا الْوَجْهِ. وَعَمْرُو بْنُ مُرَّةٍ الْجُهَنِيُّ، يُكْنَى أَبَا مَرْيَمَ.

١٣٣٣ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا

يَحْيَى بْنُ حَمْزَةَ عَنْ يَزِيدَ بْنِ أَبِي مَرْيَمَ، عَنْ الْقَاسِمِ بْنِ مُخَيَّمَةَ، عَنْ أَبِي مَرْيَمَ صَاحِبِ النَّبِيِّ ﷺ عَنِ النَّبِيِّ ﷺ: نَحْوَ هَذَا الْحَدِيثِ بِمَعْنَاهُ [وَيَزِيدُ بْنُ أَبِي مَرْيَمَ شَامِيٌّ، وَبُرَيْدُ بْنُ أَبِي مَرْيَمَ كُوفِيٌّ، وَأَبُو مَرْيَمَ هُوَ عَمْرُو بْنُ مُرَّةٍ الْجُهَنِيُّ].



### Chapter 7. What Has Been Related About 'The Judge Is Not To Pass A Judgement While He Is Angry'

1334. 'Abdur-Raḥmān bin Abī Bakrah narrated: "My father wrote to 'Ubaidullāh bin Abī Bakrah who was a judge: "Do not pass a judgement between two people while you are angry, for indeed I heard the Messenger of Allāh ﷺ saying: 'The judge should not judge between two people while he is angry.'" (*Ṣaḥīḥ*)

[Abū 'Eīsā said:] This *Hadīth* is *Ḥasan Ṣaḥīḥ*, and Abū Bakrah's name is Nufai'.

تخریج: متفق علیه، أخرجه مسلم، الأقضية، باب كراهة قضاء القاضي وهو غضبان، ح: ١٧١٧ عن قتيبة والبخاري، ح: ٧١٥٨ من حديث عبد الملك بن عمير به.

#### Comments:

This narration is the best guidance for the judges. They should not sit on the seat of justice when they are in a state of anger. It is not possible for a person to think rationally and reach the right decision in rage and anger, so the judge should not resume his seat of justice until he is calm and rational.

### Chapter 8. What Has Been Related About Gifts Taken By Governors

1335. Mu'ādh bin Jabal narrated: "The Messenger of Allāh ﷺ dispatched me to Yemen. When I had left, he sent a message after me, so I returned and he said: 'Do you know why I sent a message to you? Do not take anything without my permission, for that will be *Ghulūl*,<sup>[1]</sup> and whoever commits

(المعجم ٧) - بَابُ مَا جَاءَ لَا يَقْضِي  
الْقَاضِي وَهُوَ غَضْبَانٌ (التحفة ٧)

١٣٣٤ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا أَبُو عَوَانَةَ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ عَبْدِ الرَّحْمَنِ ابْنِ أَبِي بَكْرَةَ قَالَ: كَتَبَ أَبِي إِلَى عَبْدِ اللَّهِ ابْنِ أَبِي بَكْرَةَ وَهُوَ قَاضٍ، أَنْ لَا تَحْكُمَ بَيْنَ اثْنَيْنِ وَأَنْتَ غَضْبَانٌ. فَأَتَانِي سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا يَحْكُمُ الْحَاكِمُ بَيْنَ اثْنَيْنِ وَهُوَ غَضْبَانٌ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ، وَأَبُو بَكْرَةَ، اسْمُهُ نُفَيْعٌ.

(المعجم ٨) - بَابُ مَا جَاءَ فِي هَدَايَا  
الْأُمَرَاءِ (التحفة ٨)

١٣٣٥ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ دَاوُدَ بْنِ بَرِيدٍ الْأَوْدِيِّ، عَنْ الْمُغِيرَةَ بْنِ شُبَيْلٍ، عَنْ قَيْسِ بْنِ أَبِي حَازِمٍ، عَنْ مُعَاذِ بْنِ جَبَلٍ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى الْيَمَنِ، فَلَمَّا سِرْتُ، أَرْسَلَ فِي أَتْرِي، فَرُدِدْتُ فَقَالَ: «أَتَدْرِي لِمَ بَعَثْتُ إِلَيْكَ؟» لَا

[1] See *Hadīth* no. 1.

*Ghulūl*, he comes with what he took on the Day of Judgement. This is why I called you, so now go and do your job.” (*Da‘īf*)

[He said:] There are narrations on this topic from ‘Adī bin ‘Umair, Buraidah, Al-Mustawrid bin Shaddād, Abū Ḥumaid, and Ibn ‘Umar.

[Abū ‘Eīsā said:] The *Ḥadīth* of Mu‘ādh is a *Ḥasan Gharīb Ḥadīth*, we do not know of it except from this route, as a narration of Abū Umāmah from Dāwūd Al-Awdī.

**تخريج:** [إسناده ضعيف] وأخرجه الطبراني: ١٢٨/٢٠، ح: ٢٥٩ من حديث أبي كريب به \* داود الأودي ضعيف (تقريب) \* وفي الباب عن عدي بن عميرة [مسلم، ح: ١٨٣٣] وبريدة [أبو داود، ح: ٢٩٤٣] والمستورد بن شداد [أبو داود، ح: ٢٩٤٥] وأبي حميد [البخاري، ح: ٧١٧٤] وأحمد: ٤٢٤/٥ [وابن عمر [الحاكم: ١/٣٩٩].

**Comments:**

When a person gets a post and position of authority in some government department, usually people from the general public go to visit him and offer congratulations, and present gifts as a token of good will. These gifts are not presented to him but to his authoritative post. So accepting such gifts is unlawful. These gifts, according to this narration, come under the category of bribery and misuse of authority.

**Chapter 9. What Has Been Related About The One Who Gives A Bribe And The One Who Takes A Bribe For Judgement**

**1336.** Abū Hurairah narrated: “The Messenger of Allāh ﷺ cursed the one who bribes and the one who takes a bribe for a judgement.” (*Ḥasan*)

[He said:] There are narrations on this topic from ‘Abdullāh bin ‘Amr, ‘Āishah, Ibn Ḥadīdah, and Umm Salamah.

[Abū ‘Eīsā said:] The *Ḥadīth* of Abū Hurairah is a *Ḥasan* [*Ṣaḥīḥ*]

تُصَيِّبَنَّ شَيْئًا بِغَيْرِ إِذْنِي فَإِنَّهُ غُلُولٌ، وَمَنْ يَغْلُلْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَامَةِ. لِهَذَا دَعَوْتُكَ، فَأَمُضِ لِعَمَلِكَ».

[قَالَ:] وَفِي الْبَابِ عَنْ عَدِيِّ بْنِ عَمِيرَةَ وَبُرَيْدَةَ وَالْمُسْتَوْرِدِ بْنِ شَدَادٍ وَأَبِي حُمَيْدٍ وَابْنِ عُمَرَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ مُعَاذٍ، حَدِيثُ حَسَنٍ غَرِيبٌ لَا نَعْرِفُهُ إِلَّا مِنْ هَذَا الْوَجْهِ مِنْ حَدِيثِ أَبِي أُسَامَةَ عَنْ دَاوُدَ الْأَوْدِيِّ.

(المعجم ٩) - بَابُ مَا جَاءَ فِي الرَّاشِي وَالْمُرْتَشِي فِي الْحُكْمِ (التحفة ٩)

١٣٣٦ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا أَبُو عَوَانَةَ عَنْ عُمَرَ بْنِ أَبِي سَلَمَةَ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: لَعَنَ رَسُولُ اللَّهِ ﷺ الرَّاشِيَّ وَالْمُرْتَشِيَّ فِي الْحُكْمِ.

[قَالَ:] وَفِي الْبَابِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو، وَعَائِشَةَ، وَابْنِ حَدِيدَةَ وَأُمَّ سَلَمَةَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ أَبِي هُرَيْرَةَ

*Hadīth*. This *Hadīth* was reported from Abū Salamah bin ‘Abdur-Raḥmān, from ‘Abdullāh bin ‘Amr [from the Prophet ﷺ].

It has also been reported from Abū Salamah from the Prophet ﷺ but that is not authentic. He said: I heard ‘Abdullāh bin ‘Abdur-Raḥmān saying: “The *Hadīth* of Abū Salamah from ‘Abdullāh bin ‘Amr, from the Prophet ﷺ is the best thing on this topic and the most correct.”

حَدِيثٌ حَسَنٌ [صَحِيحٌ] وَقَدْ رُوِيَ هَذَا الْحَدِيثُ عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو [عَنِ النَّبِيِّ ﷺ].

وَرُوِيَ عَنْ أَبِي سَلَمَةَ، عَنْ أَبِيهِ عَنِ النَّبِيِّ ﷺ، وَلَا يَصِحُّ. قَالَ: وَسَمِعْتُ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ يَقُولُ: حَدِيثُ أَبِي سَلَمَةَ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنِ النَّبِيِّ ﷺ، أَحْسَنُ شَيْءٍ فِي هَذَا الْبَابِ وَأَصَحُّ.

تخريج: [إسناده حسن] وأخرجه أحمد: ٣٨٨، ٣٨٧/٢، من حديث أبي عوانة به وصححه ابن حبان، ح: ١١٩٦، والحاكم: ١٠٣/٤، وللحديث شواهد كثيرة عند أبي داود وغيره، انظر الحديث الآتي \* وفي الباب عن عبدالله بن عمرو [يأتي: ١٣٣٧] وعائشة [أبو يعلى: ٧٤/٨، ح: ٤٦٠١، وص: ٣٦٠، ح: ٤٩٤٧] وابن حديدة [لم أجده] وأم سلمة [الطبراني: ٣٩٨/٢٣، ح: ٩٥١].

**1337.** ‘Abdullāh bin ‘Amr narrated: “The Messenger of Allāh ﷺ cursed the one who bribes and the one who takes a bribe.” (*Hasan*)

[Abū ‘Eisā said:] This *Hadīth* is *Hasan Ṣaḥīḥ*.

١٣٣٧ - حَدَّثَنَا أَبُو مُوسَى مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا أَبُو عَامِرٍ الْعَقَدِيُّ: حَدَّثَنَا ابْنُ أَبِي ذَنْبٍ عَنْ [خَالِهِ] الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي سَلَمَةَ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو، قَالَ: لَعَنَ رَسُولُ اللَّهِ ﷺ الرُّاشِيَّ وَالْمُرْتَشِيَّ. [قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

تخريج: [إسناده حسن] وأخرجه أبو داود، القضاء، باب: في كراهية الرشوة، ح: ٣٥٨٠، وابن ماجه، ح: ٢٣١٣، من حديث محمد بن عبدالرحمن بن أبي ذئب به وصححه ابن الجارود، ح: ٥٨٦، والحاكم: ١٠٢/٤، ١٠٣، ووافقه الذهبي.

**Comments:**

‘*Ar-Rāshī*’ and ‘*Al-Murtashī*’ both the words are derived from root ‘*Rāshā*’ which means the cord or rope by means of which water is drawn from the well. ‘*Rā’ish*’ is that person who becomes a link or go-between among those who take and give a bribe for making wrong and dishonest decisions.

**Chapter 10. What Has Been Related About Accepting The Gift And Accepting The Invitation**

**1338.** Anas bin Mālik narrated that the Messenger of Allāh ﷺ said: “If trotter (lacking meat) were given to me I would accept, and if I was invited to (a meal of) it I would accept.” (*Ṣaḥīḥ*)

[He said:] There are narrations on this topic from ‘Alī, ‘Āishah, Al-Mughirah bin Shu‘bah, Salmān, Mu‘āwiyah bin Ḥaidah, and ‘Abdur-Raḥmān bin ‘Alqamah.

[Abū ‘Eīsā said:] The *Ḥadīth* of Anas is a *Ḥasan Ṣaḥīḥ Ḥadīth*.

(المعجم ١٠) - بَابُ مَا جَاءَ فِي قَبُولِ  
الْهَدِيَّةِ وَإِجَابَةِ الدَّعْوَةِ (التحفة ١٠)

١٣٣٨ - حَدَّثَنَا [أَبُو بَكْرٍ] مُحَمَّدُ بْنُ عَبْدِ  
اللَّهِ بْنِ بَرِيْعٍ: حَدَّثَنَا يَشْرُ بْنُ الْمُفْضَلِ: حَدَّثَنَا  
سَعِيدٌ عَنْ قَتَادَةَ، عَنْ أَنَسِ بْنِ مَالِكٍ، قَالَ:  
قَالَ رَسُولُ اللَّهِ ﷺ: «لَوْ أُهْدِيَ إِلَيَّ كُرَاعٌ  
لَقَبِلْتُ، وَلَوْ دُعِيَ عَلَيَّ لَأَجَبْتُ».

[قَالَ:] وَفِي الْبَابِ عَنْ عَلِيٍّ وَعَائِشَةَ  
وَالْمُغِيرَةَ بْنِ شُعْبَةَ وَسَلْمَانَ وَمُعَاوِيَةَ بْنِ حَنِيْدَةَ  
وَعَبْدَ الرَّحْمَنِ بْنِ عَلَقَمَةَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ أَنَسٍ حَدِيثٌ  
حَسَنٌ صَحِيْحٌ.

**تخريج:** [صحيح] وأخرجه ابن حبان (موارد): ١٠٦٥ من حديث سعيد بن أبي عروبة به وللحديث شواهد عند البخاري، ح: ٢٥٦٨، ٥١٧٨ وغيره \* وفي الباب عن علي [أبو داود، ح: ٤٠٤٣] وعائشة [البخاري، ح: ٢٥٧٤] والمغيرة بن شعبة [لم أجده] وسلمان [أحمد: ٤٣٧/٥] ومعاوية بن حيدة [تقدم: ٦٥٦] وعبدالرحمن بن علقمة [النسائي، ح: ٣٧٨٩].

**Comments:**

A gift or present is that thing which is given to someone as a token of love. Mutual love and relations develop by exchange of gifts. For the development of understanding, good relations, and love, various ways and means have been suggested in Islam. Inviting friends, relatives and people to visit you and entertaining them with food etc., is also one way to develop good relations.

**Chapter 11. What Has Been Related About The Severe Threat For One Who Is Awarded A Judgement For Something That Is Not His To Take**

**1339.** Umm Salamah narrated that the Messenger of Allāh ﷺ said: “Indeed you come to me with your disputes, and I am only a human being; perhaps one of you is more

(المعجم ١١) - بَابُ مَا جَاءَ فِي  
التَّشْدِيدِ عَلَى مَنْ يُقْضَى لَهُ بِشَيْءٍ لَيْسَ  
لَهُ أَنْ يَأْخُذَهُ (التحفة ١١)

١٣٣٩ - حَدَّثَنَا هَارُونُ بْنُ إِسْحَاقَ  
الْهَمْدَانِيُّ: حَدَّثَنَا عَبْدَةُ بْنُ سُلَيْمَانَ عَنْ هِشَامِ  
ابْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ زَيْنَبِ بِنْتِ أَبِي

eloquent at presenting his argument than the other. If I judge for one of you, giving him something from the rights of his brother, then it is only a piece of the Fire that I am giving him, so do not take anything from it.” (*Sahih*)

[He said:] There are narrations on this topic from Abū Hurairah and ‘Āishah.

[Abū ‘Eīsā said:] The *Hadīth* of Umm Salamah is a *Ḥasan Ṣaḥīḥ Hadīth*.

سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ، قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ، وَإِنَّمَا أَنَا بَشَرٌ، وَلَعَلَّ بَعْضُكُمْ أَنْ يَكُونَ أَلْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ، فَإِنْ قَضَيْتُ لِأَحَدٍ مِنْكُمْ بِشَيْءٍ مِنْ حَقِّ أَخِيهِ، فَإِنَّمَا أَقْطَعُ لَهُ [قِطْعَةً] مِنَ النَّارِ، فَلَا يَأْخُذُ مِنْهُ شَيْئًا».

[قَالَ:] وَفِي الْبَابِ عَنْ أَبِي هُرَيْرَةَ وَعَائِشَةَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ أُمِّ سَلَمَةَ،

حَدِيثٌ حَسَنٌ صَحِيحٌ.

تخريج: متفق عليه، وأخرجه البخاري، الشهادات، باب من أقام البينة بعد اليمين، ح: ٢٦٨٠، ومسلم، ح: ١٧١٣ من حديث هشام بن عروة به \* وفي الباب عن أبي هريرة [ابن ماجه، ح: ٢٣١٨] وعائشة [لعله يشير إلى حديث البخاري، ح: ٢٠٥٣، ٧١٨٢، ومسلم، ح: ١٤٥٧].

### Comments:

The Prophet ﷺ said; I am only a human being and know nothing about those events of the future, and things which are not yet present, without Allāh’s help and guidance. I judge the case presented before me like an ordinary judge on the basis of arguments presented. Maybe one of you is more eloquent and better in presenting the arguments than the other. Under the impression of his eloquence and better presentation of argument, I may give the verdict in his favor, which is actually not his right, and should have not been given in his favor. Such verdicts of mine will not make the things lawful for him in whose favor it has been given.

### Chapter 12. What Has Been Related About ‘The Proof Is Required From The Claimant And The Oath Is Required From The One The Claim Is Against’

1340. ‘Alqamah bin Wā’il [bin Hujr] narrated from his father who said: “A man from Ḥaḍramawt and a man from Kindah came to the Prophet ﷺ. The Ḥaḍramī said: ‘O Messenger of Allāh! This person

(المعجم ١٢) - بَابُ مَا جَاءَ فِي أَنْ

الْبَيِّنَةُ عَلَى الْمُدَّعِي وَالْيَمِينَ عَلَى

الْمُدَّعَى عَلَيْهِ (التحفة ١٢)

١٣٤٠ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا أَبُو

الْأَحْوَصِ عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ عَلْقَمَةَ

ابْنِ وَإِلِ [بْنِ حُجْرٍ]، عَنْ أَبِيهِ، قَالَ: جَاءَ

رَجُلٌ مِنْ حَضْرَمَوْتٍ وَرَجُلٌ مِنْ كِنْدَةَ إِلَى

took some land of mine.' The Kindī said: 'It is my land, It is in my possession, and he has no right to it.' So the Prophet ﷺ said to the Ḥaḍramī: 'Do you have proof?' He said: 'No.' He said: 'Then you will have the oath.' He said: 'O Messenger of Allāh! This man is a liar, it makes not difference what he takes an oath for, he is not ashamed of doing anything!' He said: 'There is nothing you deserve from him except that.' He said: So the man was left to take an oath for it, and in the meantime, the Messenger of Allāh ﷺ said: 'If he takes an oath [for your property] to wrongfully consume it, He will meet Allāh while He is angry with him.' (*Ṣaḥīḥ*)

[He said:] There are narrations on this topic from 'Umar, Ibn 'Abbās, 'Abdullāh bin 'Amr, and Al-Aṣḥa'th bin Qais.

[Abū 'Eīsā said:] The *Ḥadīth* of Wā'il bin Ḥujr is a *Ḥasan Ṣaḥīḥ Ḥadīth*.

النَّبِيِّ ﷺ. فَقَالَ الْحَضْرَمِيُّ: يَا رَسُولَ اللَّهِ! إِنَّ هَذَا غَلَبَنِي عَلَى أَرْضِي لِي. فَقَالَ الْكِنْدِيُّ: هِيَ أَرْضِي وَفِي يَدِي لَيْسَ لَهُ فِيهَا حَقٌّ. فَقَالَ النَّبِيُّ ﷺ لِلْحَضْرَمِيِّ: «أَلَيْكَ بَيِّنَةٌ؟» قَالَ: لَا، قَالَ: «فَلَيْسَ بِكَ يَمِينُهُ» قَالَ: يَا رَسُولَ اللَّهِ! إِنَّ الرَّجُلَ فَاجِرٌ لَا يُبَالِي عَلَى مَا حَلَفَ عَلَيْهِ، وَلَيْسَ يَتَوَرَّعُ مِنْ شَيْءٍ. قَالَ: «لَيْسَ لَكَ مِنْهُ إِلَّا ذَلِكَ».

قَالَ: فَأَنْطَلَقَ الرَّجُلُ لِيَحْلِفَ لَهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ لَمَّا أَدْبَرَ: «لَيْتَ حَلَفَ عَلَى [مَالِكَ] لِيَأْكُلَهُ ظُلْمًا، لِيَلْقَيْنَ اللَّهَ وَهُوَ عَنْهُ مُعْرِضٌ»

[قَالَ:] وَفِي الْبَابِ عَنْ عُمَرَ وَابْنِ عَبَّاسٍ وَعَبْدِ اللَّهِ بْنِ عَمْرٍو وَالْأَشْعَثِ بْنِ قَيْسٍ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ وَاِئِلِ بْنِ حُجْرٍ.

حَدِيثٌ حَسَنٌ صَحِيحٌ.

تخریج: وأخرجه مسلم، الإيمان، باب وعيد من اقتطع حق مسلم بيمين فاجرة بالنار، ح: ۱۳۹ عن قتيبة به \* وفي الباب عن عمر [الدارقطني: ۲۱۸/۴، ح: ۴۴۶۴] وسنده ضعيف جداً] وابن عباس [يأتي: ۱۳۴۲] وعبدالله بن عمرو [يأتي: ۱۳۴۱] والأشعث بن قيس [تقدم: ۱۲۶۹] ويأتي: ۲۹۹۶، مختصراً].

### Comments:

If someone files a lawsuit against another person in the court, even though the plaintiff may be a trustworthy, pious and honourable in the society, the judge cannot give his judgement in his favor on the presumption of his piety and trustworthiness. Islamic Law requires that every claimant should bring witnesses in his favor. If the claimant is unable to produce witnesses before the judge, he can ask the respondent to swear an oath and if the respondent takes an oath, then the case will be decided according to his oath.

**1341.** ‘Amr bin Shu‘aib narrated from his father, from his grandfather, that during a *Khuṭbah*, the Prophet ﷺ said: “The proof is due from the claimant, and the oath is due from the one the claim is made against.” (*Ṣaḥīḥ*)

There is some criticism in the chain of this *Hadīth*, Muḥammad bin ‘Ubaidullāh Al-‘Arzamī was graded weak in *Hadīth* due to his memory – he was considered weak by Ibn Al-Mubārak and others.

**تخريج:** [صحيح] محمد بن عبيدالله العزمي، تابعه ابن جريج في رواية الزنجي عند البيهقي ١٢٣/٨ وللحديث شواهد كثيرة عند مسلم، ح: ١٧١١ والبيهقي: ٢٥٢/١٠ وغيرهما.

**1342.** Ibn ‘Abbās narrated that the Messenger of Allāh ﷺ judged that the oath is due from the one the claim is made against. (*Ṣaḥīḥ*)

[Abū ‘Eīsā said:] This *Hadīth* is *Ḥasan Ṣaḥīḥ*. This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others: The proof is due from the claimant, and the oath is due from the one the claim is made against.

**تخريج:** متفق عليه، وأخرجه البخاري، الرهن في الحضرة، باب: إذا اختلف الراهن والمرتهن ونحوه فالبينة على المدعي واليمين على المدعى عليه، ح: ٢٥١٤ ومسلم، ح: ١٧١١ من حديث نافع بن عمر به.

**Comments:**

If someone lodges a lawsuit in the court, he has to produce witnesses in his favor, and the respondent needs not produce any witness against the claimant, swearing an oath will be enough for him.

١٣٤١ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا عَلِيُّ بْنُ مُسْهِرٍ وَعَبْدُ اللَّهِ عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ فِي حُطْبَتِهِ: «الْبَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى الْمُدَّعَى عَلَيْهِ». هَذَا حَدِيثٌ فِي إِسْنَادِهِ مَقَالٌ وَمُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْعَرَزَمِيُّ يُضَعَّفُ فِي الْحَدِيثِ مِنْ قَبْلِ حِفْظِهِ. ضَعَّفَهُ ابْنُ الْمُبَارَكِ وَعَبْدُ اللَّهِ.

١٣٤٢ - حَدَّثَنَا مُحَمَّدُ بْنُ سَهْلٍ بْنُ عَسْكَرٍ الْبَغْدَادِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ: حَدَّثَنَا نَافِعُ بْنُ عَمَرَ الْجُمَحِيُّ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي مُلَيْكَةَ، عَنِ ابْنِ عَبَّاسٍ: أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى أَنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ. [قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَعَبْدِهِمْ أَنَّ الْبَيِّنَةَ عَلَى الْمُدَّعَى وَالْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ.

**Chapter 13. What Has Been Related About The Oath Along With A Witness**

**1343.** Abū Hurairah narrated: “The Messenger of Allāh ﷺ passed judgement based on an oath along with one witness.” Rabi’ah (one of the narrators) said: “A son of Ibn Sa’d bin ‘Ubadah informed me saying: ‘We found in a book of Sa’d that the Prophet ﷺ passed judgement based on an oath along with a witness.’” (*Sahih*)

He said: There are narrations on this topic from ‘Alī, Jābir, Ibn ‘Abbās, and Surraq.

[Abū ‘Eisā said:] The *Hadīth* of Abū Hurairah, that the Prophet ﷺ passed judgement based on an oath along with a witness, is a *Hasan Gharib Hadīth*.

**تخریج:** [إسناده صحيح] وأخرجه ابن ماجه، الأحكام، باب القضاء بالشاهد واليمين، ح: ٢٣٦٨ عن يعقوب بن إبراهيم به وصححه ابن الجارود، ح: ١٠٠٧ \* وفي الباب عن علي [يأتي: ١٣٤٥] وجابر [يأتي: ١٣٤٤] وابن عباس [مسلم، ح: ١٧١٢] وسرق [ابن ماجه، ح: ٢٣٧١].

**1344.** Jābir narrated: “The Prophet ﷺ passed judgement based on an oath along with a witness.” (*Sahih*)

**تخریج:** [إسناده صحيح] وهو على شرط مسلم وأخرجه ابن ماجه، الأحكام، باب القضاء بالشاهد واليمين، ح: ٢٣٦٩ عن محمد بن بشار به.

**1345.** Ja’far bin Muḥammad narrated from his father: “The Prophet ﷺ passed judgement

(المعجم ١٣) - بَابُ مَا جَاءَ فِي الْيَمِينِ  
مَعَ الشَّاهِدِ (التحفة ١٣)

١٣٤٣ - حَدَّثَنَا يَعْقُوبُ بْنُ إِبْرَاهِيمَ  
الدَّوْرِيِّ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ قَالَ:  
حَدَّثَنِي رَبِيعَةُ بْنُ أَبِي عَبْدِ الرَّحْمَنِ عَنْ سُهَيْلِ  
ابْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ،  
قَالَ: فَضَى رَسُولُ اللَّهِ ﷺ بِالْيَمِينِ مَعَ  
الشَّاهِدِ الْوَاحِدِ قَالَ رَبِيعَةُ: وَأَخْبَرَنِي ابْنُ  
لِسْعَدِ بْنِ عُبَادَةَ قَالَ: وَجَدْنَا فِي كِتَابِ سَعْدِ  
أَنَّ النَّبِيَّ ﷺ فَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ قَالَ:  
وَفِي الْبَابِ عَنْ عَلِيٍّ وَجَابِرٍ وَابْنِ عَبَّاسٍ  
وَسُرَّقَ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ أَنَّ  
النَّبِيَّ ﷺ فَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ، حَدِيثٌ  
حَسَنٌ غَرِيبٌ.

١٣٤٤ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ وَمُحَمَّدُ  
ابْنُ أَبِي بَرٍّ قَالَا: حَدَّثَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ  
عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ، عَنْ أَبِيهِ، عَنْ جَابِرِ أُنَّ  
النَّبِيَّ ﷺ فَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ.

١٣٤٥ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا  
إِسْمَاعِيلُ بْنُ جَعْفَرٍ: حَدَّثَنَا جَعْفَرُ بْنُ مُحَمَّدٍ



based on an oath along with one witness." He said: "And 'Alī judged between you based on it." (*Ṣaḥīḥ*)

[Abū 'Eisā said:] This is more correct. This is how Sufyān Ath-Thawrī reported it from Ja'far bin Muḥammad, from his father, from the Prophet ﷺ, in *Mursal* form. 'Abdul-'Azīz bin Abī Salamah and Yahya bin Sulaim reported this *Ḥadīth* from Ja'far bin Muḥammad, from his father, from 'Alī, from the Prophet ﷺ.

This is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others. They held the view that an oath along with one witness was acceptable in cases of rights and wealth. This is the view of Mālik bin Anas, Ash-Shāfi'ī, Aḥmad, and Ishāq. They said that a judgement is not passed based upon an oath and one witness except in cases of rights and property. Some of the people of knowledge among the people of Al-Kūfah and others did not hold the view that a judgement could be based upon an oath along with one witness.

تخریج: [صحیح] انظر الحديث السابق \* حديث عبدالعزيز بن أبي سلمة، أخرجه الدارقطني: ٤/٢١٢، ٢١٣، ح: ٤٤٤١.

### Comments:

If the claimant has only one witness, then in the light of the *Ṣaḥīḥ* narration, the claimant will take an oath in place of the second witness. Imām Mālik, Imām Ash-Shāfi'ī, Imām Aḥmad, Imām Ishāq and most of the scholars have the same view. One witness and an oath is only for monetary disputes, and for all other types of disputes two witnesses are required. (*Muslim* and *Nawawī*. v. 2. p. 74.).

عَنْ أَبِيهِ: أَنَّ النَّبِيَّ ﷺ قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ الْوَاحِدِ قَالَ: وَقَضَى بِهَا عَلَيَّ فِيكُمْ. [قَالَ أَبُو عِيْسَى]: وَهَذَا أَصَحُّ. وَهَكَذَا رَوَى سُفْيَانُ الثَّوْرِيُّ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ، عَنْ أَبِيهِ عَنِ النَّبِيِّ ﷺ مُرْسَلًا. وَرَوَى عَبْدُ الْعَزِيزِ بْنُ أَبِي سَلَمَةَ وَيَحْيَى بْنُ سُلَيْمٍ هَذَا الْحَدِيثَ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ، عَنْ أَبِيهِ، عَنْ عَلِيٍّ عَنِ النَّبِيِّ ﷺ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ رَأَوْا أَنَّ الْيَمِينَ مَعَ الشَّاهِدِ الْوَاحِدِ جَائِزَةٌ فِي الْحُقُوقِ وَالْأَمْوَالِ. وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ. وَقَالُوا: لَا يُقْضَى بِالْيَمِينِ مَعَ الشَّاهِدِ الْوَاحِدِ إِلَّا فِي الْحُقُوقِ وَالْأَمْوَالِ وَلَمْ يَرَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَهْلِ الْكُوفَةِ وَغَيْرِهِمْ أَنَّ يُقْضَى بِالْيَمِينِ مَعَ الشَّاهِدِ الْوَاحِدِ.

**Chapter 14. What Has Been Related About A Slave Owned By Two Men And One Of Them Frees His Portion Of Him**

(المعجم ١٤) - بَابُ مَا جَاءَ فِي الْعَبْدِ  
يَكُونُ بَيْنَ رَجُلَيْنِ فَيُعْتِقُ أَحَدُهُمَا  
نَصِيبَهُ (التحفة ١٤)

**1346.** Ibn ‘Umar narrated that the Prophet ﷺ said: “Whoever frees a portion” or, he said: “a part” or he said: “a share he owns of a slave, then he can afford the remainder of the price according to the reasonable price, then he will be free. Otherwise he has freed as much as he has freed (only).” Ayyūb (one of the narrators) said: “Perhaps Nāfi‘ said in this *Hadīth*: ‘Meaning he has freed as much of him as he has freed.’” (*Ṣaḥīḥ*)

[Abū ‘Eisā said:] The *Hadīth* of Ibn ‘Umar is a *Ḥasan Ṣaḥīḥ Hadīth*. Sālim has reported similarly from his father, from the Prophet ﷺ.

١٣٤٦ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا  
إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ عَنْ أَيُّوبَ، عَنْ نَافِعٍ،  
عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ أَعْتَقَ  
نَصِيبًا، أَوْ قَالَ: شَفِيعًا، أَوْ قَالَ: شِرْكًَا لَهُ  
فِي عَبْدٍ، فَكَانَ لَهُ مِنَ الْمَالِ مَا يَبْلُغُ ثَمَنَهُ  
بِقِيمَةِ الْعَدْلِ، فَهُوَ عَتِيقٌ، وَإِلَّا فَقَدْ عَتَقَ مِنْهُ  
مَا عَتَقَ». قَالَ أَيُّوبُ: وَرَبَّمَا قَالَ نَافِعٌ فِي  
هَذَا الْحَدِيثِ، يُعْنِي فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ ابْنِ عُمَرَ  
حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رَوَاهُ سَالِمٌ عَنْ  
أَبِيهِ عَنِ النَّبِيِّ ﷺ [نَحْوَهُ].

تخريج: متفق عليه، ومسلم، الأيمان، باب من أعتق شركًا له في عبد، ح: ١٥٠١، ٤٩، بعد، ح: ١٦٦٧ من حديث إسماعيل ابن عليه والبخاري، ح: ٢٤٩١ من حديث أيوب السخيتاني به.

**1347.** Sālim narrated from his father that the Prophet ﷺ said: “Whoever frees a portion of a slave he owns, then he can afford the remainder of the price, then he should free him with his wealth.” (*Ṣaḥīḥ*)

[Abū ‘Eisā said:] This *Hadīth* is [*Ḥasan*] *Ṣaḥīḥ*.

١٣٤٧ - حَدَّثَنَا بِذَلِكَ الْحَسَنُ بْنُ عَلِيٍّ  
الْخَلَّالُ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: حَدَّثَنَا مَعْمَرٌ،  
عَنِ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنْ أَبِيهِ عَنِ النَّبِيِّ  
ﷺ قَالَ: «مَنْ أَعْتَقَ نَصِيبًا لَهُ فِي عَبْدٍ، فَكَانَ  
لَهُ مِنَ الْمَالِ مَا يَبْلُغُ ثَمَنَهُ، فَهُوَ عَتِيقٌ مِنْ  
مَالِهِ».

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ [حَسَنٌ]  
صَحِيحٌ.

تخريج: وأخرجه مسلم، ح: ٥١/١٥٠١، بعد، ح: ١٦٦٧ من حديث عبدالرزاق به وانظر الحديث السابق.

1348. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "Whoever frees a portion" or he said: "a part of a slave, then he should finish paying his price if he can afford it. If he can not afford to pay reasonable price then he should be allowed to work to earn the amount that will free him without overburdening him."

[He said:] There is something on this topic from 'Abdullāh bin 'Amr.

(Another chain) with similar, and he said: "a part." (*Ṣaḥīḥ*)

[Abū 'Eīsā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*.

This was reported by Abān bin Yazīd from Qatādah similar to the narration of Sa'eed bin Abī 'Arūbah (a narrator in the chain of this *Ḥadīth*). *Shu'bah* reported this *Ḥadīth* from Qatādah, but he did not mention the matter of working in it.

The people of knowledge differed over the issue of working. Some of them held the view that he could work to earn in this case, this is the view of Sufyān Ath-Thawrī, the people of Al-Kūfah, and it is the view of Ishāq.

Some of the people of knowledge said: When the slave is owned by two men, and one of them frees his portion of him, then he should pay off the portion of his brother and free the slave if he can afford it. If he can not afford it, then the slave will be free only as much as he freed him, and he is not permitted to work (for the remainder). They

١٣٤٨ - حَدَّثَنَا عَلِيُّ بْنُ حَسْرَمٍ: حَدَّثَنَا عِيسَى بْنُ يُونُسَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنِ النَّضْرِ بْنِ أَنَسٍ، عَنْ بَشِيرِ بْنِ نَهْلِكَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَعْتَقَ نَصِيْبًا، أَوْ هَالًا: شَقِيصًا فِي مَمْلُوكٍ، فَخَلَّصَهُ فِي مَالِهِ إِنْ كَانَ لَهُ مَالٌ، فَإِنْ لَمْ يَكُنْ لَهُ مَالٌ، فَوَومَ قِيَمَةَ عَدْلٍ ثُمَّ يُسْتَسْعَى فِي نَصِيْبِ الَّذِي لَمْ يُعْتَقْ، غَيْرَ مَشْفُوقٍ عَلَيْهِ» [قَالَ:] وَفِي الْبَابِ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو.

حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، نَحْوَهُ. وَقَالَ: «شَقِيصًا».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَهَكَذَا رَوَى أَبَانُ بْنُ يَزِيدَ عَنْ قَتَادَةَ مِثْلَ رِوَايَةِ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، وَرَوَى شُعْبَةُ هَذَا الْحَدِيثَ عَنْ قَتَادَةَ وَلَمْ يَذْكَرْ فِيهِ أَمْرَ السَّعَايَةِ، وَاخْتَلَفَ أَهْلُ الْعِلْمِ فِي السَّعَايَةِ فَرَأَى بَعْضُ أَهْلِ الْعِلْمِ السَّعَايَةَ فِي هَذَا وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَأَهْلِ الْكُوفَةِ وَبِهِ يَقُولُ إِسْحَاقُ. وَقَدْ قَالَ بَعْضُ أَهْلِ الْعِلْمِ: إِذَا كَانَ الْعَبْدُ بَيْنَ رَجُلَيْنِ، فَأَعْتَقَ أَحَدَهُمَا نَصِيْبَهُ، فَإِنْ كَانَ لَهُ مَالٌ: غَرِمَ نَصِيْبَ أُخِيهِ وَعَتَقَ الْعَبْدَ مِنْ مَالِهِ وَإِنْ لَمْ يَكُنْ لَهُ مَالٌ عَتَقَ مِنَ الْعَبْدِ مَا عَتَقَ، وَلَا يُسْتَسْعَى. وَقَالُوا بِمَا رَوَى عَنْ ابْنِ عَمْرٍو عَنِ النَّبِيِّ ﷺ. وَهَذَا قَوْلُ أَهْلِ الْمَدِيْنَةِ. وَبِهِ يَقُولُ مَالِكُ بْنُ أَنَسٍ

held the view according to what is reported by Ibn ‘Umar from the Prophet ﷺ, and this is the saying of the people of Al-Madīnah, and it is the view of Mālik bin Anas, Ash-Shāfi‘ī, Aḥmad, and Ishāq.

وَالشَّافِعِيُّ وَأَحْمَدُ وَإِسْحَاقُ.

**تخریج:** متفق عليه، وأخرجه مسلم، العتق، باب من أعتق شركاً له في عبد، ح: ١٥٠٣ عن علي بن خنسم والبخاري، ح: ٢٥٢٧ من حديث سعيد بن أبي عروبة به \* وفي الباب عن عبدالله ابن عمرو [ابن عدي في الكامل: ٩٦٤/٣].

### Chapter 15. What Has Been Related About A Lifelong Gift (Al-Umrā)

### (المعجم ١٥) - بَابُ مَا جَاءَ فِي الْعُمْرَى (التحفة ١٥)

**1349.** Samurah narrated that the Prophet ﷺ said: “The lifelong gift is permitted for its inhabitant” or: “is an inheritance for its inhabitant.” (*Ṣaḥīḥ*)

١٣٤٩ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا ابْنُ أَبِي عَدِيٍّ عَنْ سَعِيدٍ، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمُرَةَ أَنَّ نَبِيَّ اللَّهِ ﷺ قَالَ: «الْعُمْرَى جَائِزَةٌ لِأَهْلِهَا، أَوْ مِيرَاثٌ لِأَهْلِهَا». [قَالَ] وَفِي الْبَابِ عَنْ زَيْدِ بْنِ ثَابِتٍ وَجَابِرٍ، وَأَبِي هُرَيْرَةَ وَعَائِشَةَ وَابْنِ الزُّبَيْرِ وَمُعَاوِيَةَ.

[He said:] There are narrations on this topic from Zaid bin Thābit, Jābir, Abū Hurairah, ‘Āishah, Ibn Az-Zubair, and Mu‘āwiyah.

**تخریج:** [صحيح] وأخرجه أحمد: ٨/٥ من حديث سعيد بن أبي عروبة، وأبو داود، ح: ٣٥٤٩ من حديث قتادة به وللحديث شواهد كثيرة جداً \* وفي الباب عن زيد بن ثابت [النسائي، ح: ٣٧٥٤-٣٧٤٥ وابن حبان، ح: ١١٤٩، ١١٥٠] وجابر [يأتي: ١٣٥٠] وأبي هريرة [البخاري، ح: ٢٦٢٦ ومسلم، ح: ١٦٢٦] وعائشة [لم أجده] وابن الزبير [جامع المسانيد والسنن لابن كثير: ٥٢٠/٧، ح: ٥٤٨٤ وعزاه للطبراني] ومعاوية [أحمد: ٩٧/٤، ٩٩].

#### Comments:

‘Al-Umrā’ means a gift given for a lifelong period. This word is derived from ‘Umr. This is a particular way of giving a gift. For example, saying, I give you this house to reside in during my entire life. This is lawful and approved by most of the scholars.

**1350.** Jābir narrated that the Prophet ﷺ said: “Whichever man is given a lifelong gift for himself and his offspring, then it belongs to the one whom it was given, it does not return to the one who gave it, for he has given a gift which shall

١٣٥٠ - حَدَّثَنَا الْأَنْصَارِيُّ: حَدَّثَنَا مَعْنٌ: حَدَّثَنَا مَالِكٌ عَنِ ابْنِ شَهَابٍ، عَنْ أَبِي سَلَمَةَ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «أَيُّمَا رَجُلٍ أُعْمِرَ عُمْرَى لَهُ وَلِعَقِبِهِ،

be included in the inheritance.”  
(*Ṣaḥīḥ*)

[Abū ‘Eīsā said:] This *Ḥadīth* is [*Ḥasan*] *Ṣaḥīḥ*. This is how it was reported from Ma‘mar and others from Az-Zuhrī, similar to the narration of Mālik (a narrator in the chain of this *Ḥadīth*). Some of them reported it from Az-Zuhrī, without mentioning “and his offspring” in it.

[And this *Ḥadīth* has been reported through more than one route from Jābir from the Prophet ﷺ who said: “The lifelong gift is permitted for its inhabitant.” And it does not contain: “and his offspring.” This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*.]

This is acted upon according to some of the people of knowledge. They said that when he says: “It is for you as long as you live, and for your offspring.” Then it is his for life, it does not return to the first person. When he does not say: “For your offspring” then it returns to the first person when the one to whom it was given to dies. This is the view of Mālik bin Anas and Ash-Shāfi‘ī.

It has been reported through more than one route that the Prophet ﷺ said: “The lifelong gift is permitted for its inhabitant” and this is acted upon according to some of the people of knowledge, in that they said: “When the one it was given to dies, then it is an inheritance of his, even if it was not allotted for his offspring.” This is the view of Sufyān Ath-Thawrī, Aḥmad, and Ishāq.

فَإِنَّهَا لِلَّذِي يُعْطَاهَا، لَا تَرْجِعُ إِلَى الَّذِي  
أَعْطَاهَا، لِأَنَّهُ أَعْطَى عَطَاءً وَقَعَتْ فِيهِ  
الْمَوَارِيثُ.»

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ [حَسَنٌ]  
صَحِيحٌ. وَهَكَذَا رَوَى مَعْمَرٌ وَغَيْرُ وَاحِدٍ عَنِ  
الرُّهْرِيِّ، مِثْلَ رَوَايَةِ مَالِكٍ. وَرَوَى بَعْضُهُمْ  
عَنِ الرُّهْرِيِّ، وَلَمْ يَذْكُرْ فِيهِ: «وَلِعَقِبِهِ».  
[رَوَى هَذَا الْحَدِيثُ مِنْ غَيْرِ وَجْهِ، عَنْ  
جَابِرٍ عَنِ النَّبِيِّ ﷺ قَالَ: «الْعُمْرَى جَائِزَةٌ  
لِأَهْلِهَا» وَلَيْسَ فِيهَا: «لِعَقِبِهِ» وَهَذَا حَدِيثٌ  
حَسَنٌ صَحِيحٌ]. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ  
أَهْلِ الْعِلْمِ. قَالُوا: إِذَا قَالَ: هِيَ لَكَ،  
حَيَاتِكَ وَلِعَقِبِكَ، فَإِنَّهَا لِمَنْ أُعْمِرَهَا، لَا  
تَرْجِعُ إِلَى الْأَوَّلِ. وَإِذَا لَمْ يَقُلْ: لِعَقِبِكَ.  
فَهِيَ رَاجِعَةٌ إِلَى الْأَوَّلِ إِذَا مَاتَ الْمُعْمَرُ.  
وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ وَالشَّافِعِيِّ. وَرَوَى  
مِنْ غَيْرِ وَجْهِ عَنِ النَّبِيِّ ﷺ قَالَ: «الْعُمْرَى  
جَائِزَةٌ لِأَهْلِهَا» وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ  
أَهْلِ الْعِلْمِ. قَالُوا: إِذَا مَاتَ الْمُعْمَرُ فَهِيَ  
لِوَرَثَتِهِ، وَإِنْ لَمْ تُجْعَلْ لِعَقِبِهِ. وَهُوَ قَوْلُ  
سُفْيَانَ الثَّوْرِيِّ وَأَحْمَدَ وَإِسْحَاقَ.

تخريج: وأخرجه مسلم، الهيات، باب العمرى، ح: ١٦٢٥ من حديث مالك به وهو في الموطأ: ٧٥٦/٢ ورواه البخاري، ح: ٢٦٢٥ من حديث أبي سلمة بن عبدالرحمن به مختصراً.

**Comments:**

As it involves an element of waiting for another person's death, for this reason it has been called 'Ruqbā'. According to 'Allāmah Alī Qarī, in view of Imām Abū Ḥanīfah and Imām Muḥammad, *Ruqba* is not approved. (*Tuḥfat Al-Aḥwadhī*, v. 2. p.284.) According to 'Allāmah Ibn Ḥajar most of the scholars deem *Ruqbā* and 'Umrā to be the same. In view of Imām Abū Ḥanīfah, Imām Malik, and Imām Muḥammad and Imām Abū Yūsuf, *Ruqbā* is not lawful. (*Faṭḥ Al-Bārī* v. 5. p.295.)

**Chapter 16. What Has Been Related About *Ar-Ruqbā*<sup>[1]</sup>**

(المعجم ١٦) - بَابُ مَا جَاءَ فِي الرُّقْبَى  
(التحفة ١٦)

**1351.** Jābir narrated that the Messenger of Allāh ﷺ said: "The lifelong gift is permitted for its inhabitant, and the *Ruqbā* is permitted for its inhabitant." (*Ṣaḥīḥ*)

١٣٥١ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا هُشَيْمٌ عَنْ دَاوُدَ بْنِ أَبِي هِنْدٍ، عَنْ أَبِي الزُّبَيْرِ، عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْعُمْرَى جَائِزَةٌ لِأَهْلِهَا، وَالرُّقْبَى جَائِزَةٌ لِأَهْلِهَا».

[Abū 'Eisā said:] This *Ḥadīth* is *Ḥasan*. Some of them reported it from Abū Az-Zubair [with this chain] from Jābir in *Mawqūf* form [not *Marfū*].

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ. وَقَدْ رَوَاهُ بَعْضُهُمْ عَنْ أَبِي الزُّبَيْرِ [بِهَذَا الْإِسْنَادِ]، عَنْ جَابِرٍ مَوْقُوفًا. [وَلَمْ يَرْفَعُوا وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ أَنَّ الرُّقْبَى جَائِزَةٌ مِثْلَ الْعُمْرَى وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ. وَفَرَّقَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَهْلِ الْكُوفَةِ وَغَيْرِهِمْ بَيْنَ الْعُمْرَى وَالرُّقْبَى، فَأَجَازُوا الْعُمْرَى وَلَمْ يُجِيزُوا الرُّقْبَى.

This is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others. (They say) *Ar-Ruqbā* is permitted just like the lifelong gift is permitted. This is the view of Aḥmad and Ishāq. Some of the people of knowledge among the people of Al-Kufah distinguished between the lifelong gift and *Ar-Ruqbā*; they allowed the lifelong gift but they did not allow *Ar-Ruqbā*.

[قَالَ أَبُو عِيسَى:] وَتَفْسِيرُ الرُّقْبَى أَنْ يَقُولَ: هَذَا الشَّيْءُ لَكَ مَا عَشْتَ، فَإِنْ مِتَّ

[Abū 'Eisā said:] The explanation

[1] A donation with the provision that it will either belong to the one it was donated when the donor dies, or it will revert to the donor when the one it was donated to dies.

of *Ar-Ruqbā* is when someone says: "This thing is yours as long as you live, if you die before me then it returns to me." Aḥmad and Ishāq said: "*Ar-Ruqbā* is the same as the lifelong gift. It belongs to the one it was given, and it does not revert to the first person."

قَبْلِي فِيهِ رَاجِعَةٌ إِلَيَّ. وَقَالَ أَحْمَدُ  
وإِسْحَاقُ: الرُّقْبَى مِثْلُ العُمَرَى. وَهِيَ لِمَنْ  
أَعْطِيهَا، وَلَا تَرْجِعُ إِلَى الْأَوَّلِ.

**تخریج:** [صحيح] وأخرجه أبو داود، البيهقي، باب: في الرقبى، ح: ٣٥٥٨ وابن ماجه، ح: ٢٣٨٣ من حديث هشيم به وصرح أبو الزبير بالسماح، في الرواية الطويلة وللحديث شواهد.

### Chapter 17. What Has Been Related From The Messenger Of Allāh ﷺ About Reconciliation

(المعجم ١٧) - بَابُ مَا ذُكِرَ عَنِ رَسُولِ  
اللَّهِ ﷺ فِي الصُّلْحِ بَيْنَ النَّاسِ (التحفة ١٧)

**1352.** Kathīr bin ‘Amr bin ‘Awf Al-Muzanī narrated from his father, from his grandfather, that the Messenger of Allāh ﷺ said: "Reconciliation is allowed among the Muslims, except for reconciliation that makes the lawful unlawful, or the unlawful lawful. And the Muslims will be held to their conditions, except the conditions that make the lawful unlawful, or the unlawful lawful." (*Ṣaḥīḥ*)

١٣٥٢ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ:  
حَدَّثَنَا أَبُو عَامِرٍ الْعَقَدِيُّ: حَدَّثَنَا كَثِيرُ بْنُ عَبْدِ  
اللَّهِ بْنِ عَمْرٍو بْنِ عَوْفِ الْمُزَنِيِّ عَنْ أَبِيهِ، عَنْ  
جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «الصُّلْحُ جَائِزٌ  
بَيْنَ الْمُسْلِمِينَ، إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ  
أَحَلَ حَرَامًا، وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلَّا  
شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَ حَرَامًا».

[Abū ‘Eīsā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ  
صَحِيحٌ.

**تخریج:** [صحيح] وأخرجه ابن ماجه، الأحكام، باب الصلح، ح: ٢٣٥٣ من حديث كثير العوفي به وسنده ضعيف جدًا ولكن له شواهد عند أبي داود، ح: ٣٥٩٤ وغيره فالحديث بها صحيح.

#### Comments:

This narration has been discussed for its narrator, Kathir bin ‘Abdullāh is regarded as a weak narrator and his narration cannot be accurate and acceptable, but the theme of this narration is correct.

**Chapter 18. What Has Been Related About A Man Placing A Beam On His Neighbor's Enclosure Wall**

**1353.** Al-A'raj narrated from Abū Hurairah, saying: "I heard him saying: 'the Messenger of Allāh ﷺ said: "When one of you seeks his neighbor's permission to affix a wooden beam in his wall, then do not prevent him.'" When Abū Hurairah narrated it, they tilted their heads, so he said: 'Why do I see that you are averse to it? By Allāh! I will continue to narrate it among you.'" (*Ṣaḥīḥ*)

[He said:] There are narrations on this topic from Ibn 'Abbās and Mujammi' bin Jāriyah.

[Abū 'Eisā said:] The *Ḥadīth* of Abū Hurairah is a *Ḥasan Ṣaḥīḥ Ḥadīth*. This is acted upon according to some of the people of knowledge. It is the view of Ash-Shāfi'ī. It has been related from some of the people of knowledge; among them Mālik bin Anas, that they said: "He can prevent his neighbor from affixing a beam in his wall." But the first view is more correct.

**تخریج:** متفق عليه، أخرجه البخاري، المظالم. باب: لا يمنع جار جاره أن يغرز خشبة في جداره، ح: ٢٤٦٣، ٢٤٦٧ ومسلم، ح: ١٦٠٩ من حديث الزهري به ورواه أبو داود، ح: ٣٦٣٤ وغيره من حديث سفیان بن عيينة به \* وفي الباب عن ابن عباس [ابن ماجه، ح: ٢٣٣٧] ومجمع ابن جارية [ابن ماجه، ح: ٢٣٣٦].

**Comments:**

Islam is a religion of peace and a great supporter of the wellbeing of the society. It preaches love and peace among the community members. Its basis are on mutual help, service and care for each other. For this reason it has been advised to allow neighbors to affix a wooden beam on your wall, provided it does not cause much damage.

(المعجم ١٨) - بَابُ مَا جَاءَ فِي الرَّجُلِ يَضَعُ عَلَى حَائِطِ جَارِهِ خَشْبًا (التحفة ١٨)

١٣٥٣ - حَدَّثَنَا سَعِيدُ بْنُ عَبْدِ الرَّحْمَنِ [الْمَخْزُومِيُّ]: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: سَمِعْتُهُ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا اسْتَأْذَنَ أَحَدُكُمْ جَارَهُ أَنْ يَغْرَزَ خَشْبَةً فِي جِدَارِهِ، فَلَا يَمْنَعُهُ».

فَلَمَّا حَدَّثَ أَبُو هُرَيْرَةَ، طَاطَأُوا رُؤُوسَهُمْ، فَقَالَ: مَا لِي أَرَأَيْتُمْ عَنْهَا مُعْرِضِينَ؟ وَاللَّهِ لَأَرْمِينَنَّ بِهَا بَيْنَ أَكْتَانِكُمْ. [قَالَ:] وَفِي الْبَابِ عَنِ ابْنِ عَبَّاسٍ وَمُجَمِّعِ بْنِ جَارِيَةَ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ. وَبِهِ يَقُولُ الشَّافِعِيُّ. وَرَوَى [عَنْ] بَعْضِ أَهْلِ الْعِلْمِ مِنْهُمْ مَالِكُ بْنُ أَنَسٍ، قَالُوا: لَهُ أَنْ يَمْنَعَ جَارَهُ أَنْ يَضَعَ خَشْبَةً فِي جِدَارِهِ. وَالْقَوْلُ الْأَوَّلُ أَصَحُّ.



### Chapter 19. What Has Been Related About: The Oath Is Based Upon What Will Make His Companion Believe Him

1354. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "The oath is based upon what will make your companion believe you." (*Ṣaḥīḥ*)

[Qutaibah (one of the narrators) said: "What will make you believed by your companion."]

[Abū 'Eīsā said:] This *Hadīth* is *Ḥasan Gharīb*. We do not know of it except as a narration of Hushaim from 'Abdullāh bin Abī Ṣāliḥ. 'Abdullāh bin Abī Ṣāliḥ is the brother of Suhail bin Abī Ṣāliḥ.

This is acted upon according to some of the people of knowledge, and it is the view of Aḥmad and Ishāq.

It has been reported that Ibrāhīm An-Nakha'ī said: "When the one the oath is sought from is in the wrong, then the intention is the intention of the one giving the oath. When the one the oath is sought from is being wronged, then the intention is the intention of the one who caused the oath to be sought."

(المعجم ١٩) - بَابُ مَا جَاءَ أَنَّ الْيَمِينَ عَلَى مَا يُصَدِّقُهُ صَاحِبُهُ (التحفة ١٩)

١٣٥٤ - حَدَّثَنَا قُتَيْبَةُ وَأَحْمَدُ بْنُ مَنِيعٍ - الْمَعْنَى وَاحِدٌ - قَالَ: حَدَّثَنَا هُشَيْمٌ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْيَمِينُ عَلَى مَا يُصَدِّقُكَ بِهِ صَاحِبُكَ». [وَقَالَ قُتَيْبَةُ: عَلَى مَا صَدَّقَكَ عَلَيْهِ صَاحِبُكَ].

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ، لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ هُشَيْمٍ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي صَالِحٍ. وَعَبْدُ اللَّهِ بْنُ أَبِي صَالِحٍ هُوَ أَخُو سُهَيْلِ بْنِ أَبِي صَالِحٍ وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ. وَيَبْه يَقُولُ أَحْمَدُ وَإِسْحَاقُ. وَرَوَى عَنْ إِبْرَاهِيمَ النَّخَعِيِّ أَنَّهُ قَالَ: إِذَا كَانَ الْمُسْتَحْلِفُ ظَالِمًا، فَالِنِّيَّةُ يَنِيَّةَ الْحَافِلِ. وَإِذَا كَانَ الْمُسْتَحْلِفُ مَظْلُومًا، فَالِنِّيَّةُ نِيَّةَ الَّذِي اسْتَحْلَفَ.

تخريج: وأخرجه مسلم، الأيمان، باب اليمين على نية المستحلف، ح: ١٦٥٣ من حديث

هشيم به.

**Chapter 20. What Has Been Related About The Road: When There Is A Disagreement About It, How Should It Be Made?**

**1355.** Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "Make the road seven forearm lengths." (*Ṣaḥīh*)

تخريج: [صحيح] وأخرجه ابن ماجه، الأحكام، باب: إذا تشاجروا في قدر الطريق، ح: ٢٣٣٨ من حديث وكيع، وأبو داود، ح: ٣٦٣٣ من حديث المثنى بن سعيد به وصححه ابن الجارود، ح: ١٠١٨ ورواه مسلم، ح: ١٦١٣ من حديث أبي هريرة، بلفظ "إذا اختلفتم في الطريق، جعل عرضه سبع أذرع" ورواه البخاري، ح: ٢٤٧٣ من حديث أبي هريرة به.

**1356.** Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "When you disagree over the road, then make it seven forearm lengths." (*Ṣaḥīh*)

[Abū 'Eisā said:] This is more correct than the narration of Waki' (a narrator in no. 1355). [He said:] There is something on this topic from Ibn 'Abbās.

[Abū 'Eisā said:] The *Hadīth* of Bashīr bin Ka'b [Al-'Adawī] from Abū Hurairah is a *Ḥasan Ṣaḥīh Hadīth*. Some of them reported this from Qatādah, from Bashīr bin Nahīk, from Abū Hurairah, but it is not preserved.

(المعجم ٢٠) - بَابُ مَا جَاءَ فِي الطَّرِيقِ إِذَا اخْتَلَفَ فِيهِ، كَمْ يُجْعَلُ؟ (التحفة ٢٠)

١٣٥٥ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا وَكَيْعٌ عَنِ الْمُثَنَّى بْنِ سَعِيدِ الصُّبَيْعِيِّ، عَنْ قَتَادَةَ، عَنْ بَشِيرِ بْنِ نَهَيْكٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «اجْعَلُوا الطَّرِيقَ سَبْعَةَ أَذْرُعٍ».

تخريج: [صحيح] وأخرجه ابن ماجه، الأحكام، باب: إذا تشاجروا في قدر الطريق، ح: ٢٣٣٨ من حديث وكيع، وأبو داود، ح: ٣٦٣٣ من حديث المثنى بن سعيد به وصححه ابن الجارود، ح: ١٠١٨ ورواه مسلم، ح: ١٦١٣ من حديث أبي هريرة، بلفظ "إذا اختلفتم في الطريق، جعل عرضه سبع أذرع" ورواه البخاري، ح: ٢٤٧٣ من حديث أبي هريرة به.

١٣٥٦ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ: حَدَّثَنَا الْمُثَنَّى بْنُ سَعِيدٍ عَنْ قَتَادَةَ، عَنْ بَشِيرِ بْنِ كَعْبِ الْعَدَوِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا تَشَاجَرْتُمْ فِي الطَّرِيقِ فَاجْعَلُوهُ سَبْعَةَ أَذْرُعٍ».

[قَالَ أَبُو عِيْسَى]: وَهَذَا أَصَحُّ مِنْ حَدِيثِ وَكَيْعٍ. [قَالَ]: وَفِي الْبَابِ عَنِ ابْنِ عَبَّاسٍ.

[قَالَ أَبُو عِيْسَى]: حَدِيثُ بَشِيرِ بْنِ كَعْبِ [الْعَدَوِيِّ] عَنْ أَبِي هُرَيْرَةَ، حَدِيثٌ حَسَنٌ صَحِيحٌ. وَرَوَى بَعْضُهُمْ [هَذَا] عَنْ قَتَادَةَ، عَنْ بَشِيرِ بْنِ نَهَيْكٍ، عَنْ أَبِي هُرَيْرَةَ. وَهُوَ غَيْرُ مَحْفُوظٍ.

تخريج: [صحيح] انظر الحديث السابق \* وفي الباب عن ابن عباس [ابن ماجه، ح: ٢٣٣٩، ٢٣٤١ مختصراً وأحمد: ١/٢٣٥، ٢٥٥، ٣٠٢، ٣١٣، ٣١٧.

**Comments:**

A common street having residential buildings on both sides should be broad enough according to the needs of its residents. A street which is not open for heavy traffic, and there is only limited local use of the way, and the land of the lane is disputed, and there is more than one claimant the land, in this

situation - seven forearms of land should be spared for the common use of the residents. In otherwords, the lane should be at least seven forearms broad. This width can be more or less with mutual approval of the residents. (*Tuhfat Al-Ahwadhī* v. 2. p. 285-286.)

### Chapter 21. What Has Been Related About The Boy Choosing Between His Parents When They Separate

1357. Abū Maimūnah narrated from Abū Hurairah who said: "The Prophet ﷺ gave a boy the choice between his father and his mother." (*Ṣaḥīḥ*)

[He said:] There are narrations on this topic from 'Abdullāh bin 'Amr, and the grandfather of 'Abdul-Ḥamid bin Ja'far.

[Abū 'Eīsā said:] The *Ḥadīth* of Abū Hurairah is a *Ḥasan Ṣaḥīḥ Ḥadīth*. Abū Maimūnah's name is Sulaim.

This is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others. They said: The boy chooses between his parents when there is a disagreement between them over the custody of the child. This is the view of Aḥmad and Ishāq. They said that if the boy is very young then the mother has more right, and when the boy reaches seven years old then he is given the choice between his parents.

Hilāl bin Abī Maimūnah (one of the narrators) is Hilāl bin 'Alī bin Usāmah, of Al-Madīnah, Yaḥya bin Abī Kathīr, Mālik bin Anas and Fulaiḥ bin Sulaimān reported from him.

(المعجم ٢١) - بَابُ مَا جَاءَ فِي تَخْيِيرِ  
الْغُلَامِ بَيْنَ أَبِيهِ إِذَا افْتَرَقَا (التحفة ٢١)

١٣٥٧ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ: حَدَّثَنَا  
سُفْيَانُ عَنْ زِيَادِ بْنِ سَعْدٍ، عَنْ هِلَالِ بْنِ أَبِي  
مَيْمُونَةَ الثَّعْلَبِيِّ، عَنْ أَبِي مَيْمُونَةَ، عَنْ أَبِي  
هُرَيْرَةَ، أَنَّ النَّبِيَّ ﷺ خَيَّرَ غُلَامًا بَيْنَ أَبِيهِ  
وَأُمِّهِ. [قَالَ:] وَفِي الْبَابِ عَنْ عَبْدِ اللَّهِ بْنِ  
عَمْرٍو، وَجَدَّ عَبْدِ الْحَمِيدِ بْنِ جَعْفَرٍ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ  
حَدِيثٌ حَسَنٌ صَحِيحٌ. وَأَبُو مَيْمُونَةَ اسْمُهُ  
سُلَيْمٌ وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ  
مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ. قَالُوا: يُخَيَّرُ  
الْغُلَامُ بَيْنَ أَبِيهِ إِذَا وَقَعَتْ بَيْنَهُمَا الْمُنَازَعَةُ  
فِي الْوَالِدِ. وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ.  
وَقَالَ: مَا كَانَ الْوَالِدُ صَغِيرًا فَالْأُمَّ أَحَقُّ. فَإِذَا  
بَلَغَ الْغُلَامُ سَبْعَ سِنِينَ خُيِّرَ بَيْنَ أَبِيهِ. هِلَالُ  
ابْنِ أَبِي مَيْمُونَةَ هُوَ هِلَالُ بْنُ عَلِيٍّ بْنِ أُسَامَةَ،  
وَهُوَ مَدَنِيٌّ. وَقَدْ رَوَى عَنْهُ يَحْيَى بْنُ أَبِي  
كَثِيرٍ، وَمَالِكُ بْنُ أَنَسٍ، وَفُلَيْحُ بْنُ سُلَيْمَانَ.

**تخریج:** [صحيح] وأخرجه ابن ماجه، الأحكام، باب تخيير الصبي بين أبيه، ح: ٢٣٥١ من حديث سفيان بن عيينة، وأبو داود، ح: ٢٢٧٧ من حديث زياد بن سعد به \* وفي الباب عن عبدالله ابن عمرو [أبو داود، ح: ٢٢٧٦] وجد عبدالحميد بن جعفر [أبو داود، ح: ٢٢٤٤].

**Comments:**

According to this narration a child of separated parents will live with the mother until the age of seven, or when he learns to eat and put on clothes by himself. After the age of seven, the child is given a choice to live with the mother or the father.

**Chapter 22. What Has Been Related About The Father Can Take From The Wealth Of His Son**

(المعجم ٢٢) - **بَابُ مَا جَاءَ أَنَّ الْوَالِدَ يَأْخُذُ مِنْ مَالِ وَلَدِهِ (التحفة ٢٢)**

**1358.** ‘Āishah narrated that the Messenger of Allāh ﷺ said: “Indeed the most wholesome of what you consume is from your earnings, and indeed your children are from your earnings.” (*Ṣaḥīḥ*)

١٣٥٨ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا يَحْيَى بْنُ زَكَرِيَّا بْنُ أَبِي زَائِدَةَ: حَدَّثَنَا الْأَعْمَشُ عَنْ عُمَارَةَ بْنِ عُمَيْرٍ، عَنْ عَمَّتِهِ، عَنْ عَائِشَةَ، قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ أَطْيَبَ مَا أَكَلْتُمْ مِنْ كَسْبِكُمْ، وَإِنَّ أَوْلَادَكُمْ مِنْ كَسْبِكُمْ». [قَالَ:] وَفِي الْبَابِ عَنْ جَابِرٍ وَعَبْدِ اللَّهِ بْنِ عَمْرٍو. قَالَ أَبُو عِيْسَى: [هَذَا حَدِيثٌ حَسَنٌ [صَحِيحٌ]. وَقَدْ رَوَى بَعْضُهُمْ هَذَا عَنْ عُمَارَةَ بْنِ عُمَيْرٍ، عَنْ أُمِّهِ، عَنْ عَائِشَةَ وَأَكْثَرُهُمْ قَالُوا: عَنْ عَمَّتِهِ، عَنْ عَائِشَةَ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ. قَالُوا: إِنَّ يَدَ الْوَالِدِ مَبْسُوطَةٌ فِي مَالِ وَلَدِهِ يَأْخُذُ مَا شَاءَ.

[He said:] There are narrations on this topic from Jābir, and ‘Abdullāh bin ‘Amr.

[Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan* [*Ṣaḥīḥ*]. Some of them have reported this from ‘Umārah bin ‘Umair, from his mother, from ‘Āishah. Most of them said: “from his paternal aunt, from ‘Āishah.

This is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others. They said that the father’s hand is free to take from the wealth of his son as he likes.

وَقَالَ بَعْضُهُمْ: لَا يَأْخُذُ مِنْ مَالِهِ إِلَّا عِنْدَ الْحَاجَةِ إِلَيْهِ.

Some of them said that he is not to take from his son’s wealth except when there is a need for it.

**تخریج:** [صحيح] وأخرجه ابن ماجه، التجارات، باب ما للرجل من مال ولده، ح: ٢٢٩٠ من حديث يحيى بن زكريا به وصححه الذهبي وهو مخرج في نيل المقصود، ح: ٣٥٢٨ ومسنود

الحميدي، ح: ٢٤٧ (بتحقيقي) \* وفي الباب عن جابر [ابن ماجه، ح: ٢٢٩١] وعبدالله بن عمرو [ابن ماجه، ح: ٢٢٩٢].

**Chapter 23. What Has Been Related About When One's Property Has Been Broken, What Is the Judgement For Him From The Property Of The One Who Broke It?**

(المعجم ٢٣) - بَابُ مَا جَاءَ فِيمَنْ يُكْسِرُ لَهُ الشَّيْءَ، مَا يُحْكَمُ لَهُ مِنْ مَالِ الْكَاسِرِ (التحفة ٢٣)

1359. Anas narrated: "One of the wives of the Prophet ﷺ gave the Prophet ﷺ some food in a bowl. Then 'Aishah broke the bowl with her hand, and discarded what was in it. So the Prophet ﷺ said: "Food for food and vessel for vessel." (*Sahih*)

١٣٥٩ - حَدَّثَنَا مُحَمَّدُ بْنُ غَيْلَانَ: حَدَّثَنَا أَبُو دَاوُدَ الْحَفَرِيُّ عَنْ سُمَيَانَ [الثَّوْرِيِّ]، عَنْ حُمَيْدٍ، عَنْ أَنَسٍ قَالَ: أَهْدَتْ بَعْضُ أَزْوَاجِ النَّبِيِّ ﷺ إِلَى النَّبِيِّ ﷺ طَعَامًا فِي قَصْعَةٍ، فَضَرَبَتْ عَائِشَةُ الْقَصْعَةَ بِيَدِهَا، فَأَلْقَتْ مَا فِيهَا، فَقَالَ النَّبِيُّ ﷺ: «طَعَامٌ بِطَعَامٍ، وَإِنَاءٌ بِإِنَاءٍ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

[Abū 'Eisā said:] This *Hadīth* is *Hasan Sahih*.

تخریج: [صحيح] ورواه البخاري، المظالم، باب: إذا كسر قصعة أو شيئًا لغيره، ح: ٤٨١، ٢٤٢٥ من حديث حميد الطويل به.

**Comments:**

This narration proves that if someone breaks or deliberately damages the things of others, he must return the same kind of things, buying it new from the market, or paying them the price of those things.

1360. Anas narrated that the Messenger of Allāh ﷺ borrowed a bowl which broke, so he guaranteed (compensated) it for them. (*Da'if*)

١٣٦٠ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا سُؤدَةُ بْنُ عَبْدِ الْعَزِيزِ عَنْ حُمَيْدٍ، عَنْ أَنَسٍ: أَنَّ النَّبِيَّ ﷺ اسْتَعَارَ قَصْعَةً فَضَاعَتْ فَضَمِنَهَا لَهُمْ.

[Abū 'Eisā said:] This *Hadīth* is not preserved. Suwaid (one of the narrators) only meant to narrate – according to me – the narration reported by Ath-Thawrī (no. 1359). And the narration of Ath-Thawrī is more correct. The name of Abū Dāwūd (one of the narrators of no. 1359) is 'Umar bin Sa'd.

[قَالَ أَبُو عِيسَى:] وَهَذَا حَدِيثٌ غَيْرٌ مَحْفُوظٌ. وَإِنَّمَا أَرَادَ - عِنْدِي - سُؤدَةُ الْحَدِيثَ الَّذِي رَوَاهُ الثَّوْرِيُّ. وَحَدِيثُ الثَّوْرِيِّ أَصَحُّ.

اسم أبي داود عمر بن سعد.

تخريج: [إسناده ضعيف] سويد بن عبدالعزيز ضعيف (تقريب: ٢٦٩٢) والحديث السابق يغني

عنه .

**Comments:**

This narration is not preserved, but the preceding narration proves that if a thing is purposely and deliberately damaged, it must be returned or compensated for, in the form of a new thing of the same kind or with the market price. Similarly, if a borrowed thing is damaged or destroyed, the lender should be compensated. If the owner does not want to be compensated it is up to him.

**Chapter 24. What Has Been Related About The Limits Of Responsibility For A Man And Woman**

(المعجم ٢٤) - بَابُ مَا جَاءَ فِي حَدِّ بُلُوغِ الرَّجُلِ وَالْمَرْأَةِ (التحفة ٢٤)

**1361.** Nāfi‘ narrated that Ibn ‘Umar said: “I was reviewed before the Messenger of Allāh ﷺ in the army, and I was fourteen years old, but he did not accept me. Then I was reviewed before him in the army later while I was fifteen years old, and he accepted me.” Nāfi‘ said: “I narrated this *Hadīth* to ‘Umar bin ‘Abdul-‘Azīz and he said: ‘This is the limit that distinguishes between childhood and adulthood.’ Then he wrote to give salaries to whoever reached fifteen years old.”

١٣٦١ - حَدَّثَنَا مُحَمَّدُ بْنُ وَزِيرِ الْوَاسِطِيِّ: حَدَّثَنَا إِسْحَاقُ بْنُ يُوْسُفَ الْأَزْرَقِيِّ عَنْ سُهَيْبَانَ، عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ، عَنِ نَافِعِ، عَنِ ابْنِ عُمَرَ، قَالَ: عُرِضْتُ عَلَى رَسُولِ اللَّهِ ﷺ فِي جَيْشٍ وَأَنَا ابْنُ أَرْبَعِ عَشْرَةَ فَلَمْ يَقْبَلْنِي، فَعُرِضْتُ عَلَيْهِ مِنْ قَابِلٍ فِي جَيْشٍ وَأَنَا ابْنُ خَمْسِ عَشْرَةَ فَقَبِلْنِي. قَالَ نَافِعٌ: وَحَدَّثْتُ بِهِذَا الْحَدِيثِ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ فَقَالَ: هَذَا حَدٌّ مَا بَيْنَ الصَّغِيرِ وَالْكَبِيرِ، ثُمَّ كَتَبَ أَنْ يُفْرَضَ لِمَنْ بَلَغَ الْخَمْسَ عَشْرَةَ.

(Another chain) from Nāfi‘, from Ibn ‘Umar from the Prophet ﷺ, and it is similar, but he did not mention in it that ‘Umar bin ‘Abdul-‘Azīz wrote that this is the limit that distinguishes between youth and childhood and adulthood. In his narration, Ibn ‘Uyainah said (that Nāfi‘ said): “I narrated it to ‘Umar bin ‘Abdul-‘Azīz and he said: “This is the limit that distinguishes between children and soldiers.”” (*Ṣaḥīh*)

حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُهَيْبَانُ بْنُ عُيَيْنَةَ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ، عَنِ نَافِعِ، عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ، نَحْوَهُ وَلَمْ يَذْكَرْ فِيهِ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ كَتَبَ أَنَّ هَذَا حَدٌّ مَا بَيْنَ الصَّغِيرِ وَالْكَبِيرِ. وَذَكَرَ ابْنُ عُيَيْنَةَ فِي حَدِيثِهِ قَالَ: حَدَّثْتُ بِهِ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ. فَقَالَ: هَذَا حَدٌّ مَا بَيْنَ الدَّرِيِّ وَالْمُقَاتِلَةِ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ

[Abū 'Eisā said:] This *Hadīth* is *Hasan Sahīh*. This is acted upon according to the people of knowledge, and it is the view of [Sufyān] Ath-Thawrī, Ibn Al-Mubārak, Ash-Shāfi'ī, Aḥmad and Ishāq. They held the view that when a boy reaches fifteen years of age then he is judged as a man is judged. If he were to have a wet dream before fifteen years then he would be judged as a man is judged. Aḥmad and Ishāq said that there are three marks for responsibility: Reaching fifteen years of age or having a wet dream, when his age and his having wet dream cannot be ascertained, then *Inbāt* — that is — growing of pubic hairs.

تخريج: متفق عليه، وأخرجه البخاري، المغازي، باب غزوة الخندق وهي الأحزاب، ح: ٤٠٩٧ ومسلم، ح: ١٨٦٨ من حديث عبيد الله بن عمر به.

### Comments:

In view of the scholars, the age of puberty is fifteen years for both male and female. The other criterion of maturity or age of puberty is the start of the wet dream for boys and menstruating for girls. All *A'imma* agree on this point. This narration appears again, see no. 1711. There the author added that it is *Gharib*, that is the first version he cited here.

### Chapter 25. What Has Been Related About A Man Who Married A Woman His Father Was Married To (Previously)

1362. Al-Barā' narrated: "My maternal uncle Abū Burdah Ibn Niyār passed by me and he had a flag with him. I said: 'Where are you going?' He said: 'the Messenger of Allāh ﷺ dispatched me to a man who married a woman his father had been married to: that I should bring him his head.'" (*Sahīh*)

صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ، وَبِهِ يَقُولُ [سُفْيَانُ] الثَّوْرِيُّ وَابْنُ الْمُبَارَكِ وَالشَّافِعِيُّ وَأَحْمَدُ وَإِسْحَاقُ. يَرَوْنَ أَنَّ الْغُلَامَ إِذَا اسْتَكْمَلَ خَمْسَ عَشْرَةَ [سَنَةً]، فَحُكْمُهُ حُكْمُ الرَّجَالِ. وَإِنْ اِخْتَلَمَ قَبْلَ خَمْسَ عَشْرَةَ فَحُكْمُهُ حُكْمُ الرَّجَالِ. وَقَالَ أَحْمَدُ وَإِسْحَاقُ، الْبُلُوغُ ثَلَاثَةُ مَنَازِلَ: بُلُوغُ خَمْسَ عَشْرَةَ، أَوْ الْاِخْتِلَامَ، فَإِنْ لَمْ يَعْرِفْ سِنَهُ وَلَا اِخْتِلَامَهُ فَالْإِنْبَاتُ - يَعْنِي الْعَانَةَ - .

(المعجم ٢٥) - بَابُ: فِيمَنْ تَزَوَّجَ

امْرَأَةَ أَبِيهِ (التحفة ٢٥)

١٣٦٢ - حَدَّثَنَا أَبُو سَعِيدٍ الْأَشْجِيُّ: حَدَّثَنَا حَفْصُ بْنُ غِيَاثٍ عَنْ أَشْعَثَ، عَنْ عَدِيِّ بْنِ ثَابِتٍ، عَنِ الْبَرَاءِ قَالَ: مَرَّ بِي خَالِي أَبُو بُرْدَةَ ابْنُ نِيَّارٍ وَمَعَهُ لَوَاءٌ فَقُلْتُ: أَيْنَ تَرِيدُ؟ فَقَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى رَجُلٍ تَزَوَّجَ امْرَأَةَ أَبِيهِ، أَنْ آتِيَهُ بِرَأْسِهِ. [قَالَ:] وَفِي الْبَابِ عَنْ

[He said:] There is something on this topic from Qurrah [Al-Muzanī].

[Abū 'Eisā said:] The *Ḥadīth* of Al-Barā' is a *Ḥasan Gharīb Ḥadīth*. Muḥammad bin Ishāq reported this *Ḥadīth* from 'Adī bin Thābit, from 'Abdullāh bin Yazīd, from Al-Barā'. This *Ḥadīth* has also been reported from Ash'ath, from 'Adī, from Yazīd bin Al-Barā', from his father. And it has been reported from Ash'ath, from 'Adī, from Yazīd bin Al-Barā', from his maternal uncle, from the Prophet ﷺ.

قُرَّةَ [الْمُزْنِيِّ].

[قَالَ أَبُو عِيسَى:] حَدِيثُ الْبَرَاءِ حَدِيثٌ حَسَنٌ غَرِيبٌ، وَقَدْ رَوَى مُحَمَّدُ بْنُ إِسْحَاقَ هَذَا الْحَدِيثَ عَنْ عَدِيِّ بْنِ ثَابِتٍ، عَنْ عَبْدِ اللَّهِ بْنِ يَزِيدَ، عَنِ الْبَرَاءِ. وَقَدْ رُوِيَ هَذَا الْحَدِيثُ عَنْ أَشْعَثَ، عَنْ عَدِيِّ، عَنْ يَزِيدَ ابْنِ الْبَرَاءِ، عَنْ أَبِيهِ. وَرُوِيَ عَنْ أَشْعَثَ، عَنْ عَدِيِّ، عَنْ يَزِيدَ بْنِ الْبَرَاءِ، عَنْ خَالِهِ عَنِ النَّبِيِّ ﷺ.

**تخریج:** [صحیح] وأخرجه ابن ماجه، الحدود، باب من تزوج امرأة أبيه من بعده، ح: ٢٦٠٧ من حديث حفص بن غياث، وأبو داود، ح: ٤٤٥٧ من حديث عدي بن ثابت به وصححه ابن الجارود، ح: ٦٨١ وابن حبان، ح: ١٥١٦ والحاكم على شرط مسلم: ١٩١/٢ وواقفه الذهبي وفي الباب عن قرة المزني (ابن ماجه: ٢٦٠٨).

### Comments:

If someone goes against definite and decisive orders, for which the *Shari'ah* awards capital punishment, and a judge, *Imām* or head of the state has the right to award him the death sentence. There is difference of opinion on the punishment of an offender who marries the wife of his father, which is strictly prohibited in Islamic law. In the view of Imām Mālik and Imām Shāfi'ī, *Hadd* will be imposed, but in view of Imām Aḥmad and Ishāq, his punishment is death and confiscation of his property.

### Chapter 26. What Has Been Related About The Case Of Two Men And One Of Them Lives Downstream From The Other

(المعجم ٢٦) - بَابُ مَا جَاءَ فِي الرَّجُلَيْنِ يَكُونُ أَحَدُهُمَا أَسْفَلَ مِنَ الْآخَرِ فِي الْمَاءِ (التحفة ٢٦)

1363. 'Abdullāh bin Az-Zubair narrated: "A man from the *Anṣār* disputed with Az-Zubair before the Messenger of Allāh ﷺ about the canals of Ḥarrah which they used to irrigate the date-palms. The *Anṣārī* said: 'Let the water pass.' But he refused. So they brought

١٣٦٣ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنْ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ، أَنَّهُ حَدَّثَهُ، أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ حَدَّثَهُ أَنَّ رَجُلًا مِنَ الْأَنْصَارِ خَاصَمَ الزُّبَيْرَ عِنْدَ رَسُولِ اللَّهِ ﷺ فِي شِرَاجِ الْحَرَّةِ الَّتِي يَسْقُونَ بِهَا النَّخْلَ. فَقَالَ



their dispute to the Messenger of Allāh ﷺ. the Messenger of Allāh ﷺ said to Az-Zubair: ‘O Zubair! Irrigate (your land) then let the water pass to your neighbor.’ The *Anṣārī* became angry and said: ‘[O Messenger of Allāh!] Is this because he is your aunt’s son?’ The face of the Messenger of Allāh ﷺ changed color. Then he said: ‘O Zubair! Irrigate (your land) and then withhold the water until it reaches the walls.’ Az-Zubair said: ‘By Allāh! I think that this *Āyah* was revealed about that: But no, by your Lord, they can have no Faith until they make you (O Muḥammad) judge in all disputes between them, and find in themselves no resistance against your decisions and accept (them) with full submission.’<sup>[1]</sup> (*Ṣaḥīḥ*)

[Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan* [*Ṣaḥīḥ*].

Shu‘bah bin Abī Ḥamzah reported it from Az-Zuhri, from ‘Urwah bin Az-Zubair, from Az-Zubair, and he did not mention “from ‘Abdullāh bin Az-Zubair” in it. ‘Abdullāh bin Wahb reported it from Al-Laith – and, Yūnus from Az-Zuhri – from ‘Urwah, from ‘Abdullāh bin Az-Zubair, (and it is) similar to the first narration.

**تخريج:** متفق عليه، وأخرجه مسلم، الفضائل، باب وجوب اتباعه ﷺ، ح: ٢٣٥٧ عن قتيبة

والبخاري، ح: ٢٣٥٩، ٢٣٦٠ من حديث الليث بن سعد به.

### Comments:

This man from *Anṣār* was a Companion who participated in the Battle of Badr. In anger, he was not patient, and uttered those offensive words. No Muslim ever dares to behave in such a way as he did. This event gives a lesson

الأنصاري. سَرَحَ الْمَاءَ يُمُرُ، فَأَبَى عَلَيْهِ، فَأَخْتَصَمُوا عِنْدَ رَسُولِ اللَّهِ ﷺ. فَقَالَ رَسُولُ اللَّهِ ﷺ لِلزُّبَيْرِ: «اسْقِ يَا زُبَيْرُ! ثُمَّ أَرْسِلِ الْمَاءَ إِلَى جَارِكَ» فَغَضِبَ الْأَنْصَارِيُّ: فَقَالَ: [يَا رَسُولَ اللَّهِ] أُنْ كَانَ ابْنُ أُمَّتِكَ؟ فَتَلَوْنَ وَجْهَهُ رَسُولَ اللَّهِ ﷺ ثُمَّ قَالَ: «يَا زُبَيْرُ! اسْقِ ثُمَّ احْبِسِ الْمَاءَ حَتَّى يَرْجِعَ إِلَى الْجَدْرِ» فَقَالَ الزُّبَيْرُ: وَاللَّهِ! إِنِّي لَأَحْسِبُ نَزَلَتْ هَذِهِ الْآيَةُ فِي ذَلِكَ. ﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِي مَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا سَلِيمًا﴾ [الآية [النساء: ٦٥]].

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ [صَحِيحٌ].

وَرَوَى شُعَيْبُ بْنُ أَبِي حَمْزَةَ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، عَنِ الزُّبَيْرِ، وَلَمْ يَذْكُرْ فِيهِ عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ. وَرَوَاهُ عَبْدُ اللَّهِ بْنُ وَهَبٍ عَنِ اللَّيْثِ. وَيُونُسُ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَبْدِ اللَّهِ بْنِ الزُّبَيْرِ. نَحْوُ الْحَدِيثِ الْأَوَّلِ.

<sup>[1]</sup> *An-Nisā'* 4:65.

to all the Muslims, that they must obey the orders of the Prophet ﷺ without any grumbling and muttering from the depth of their heart. This is the true faith and demand of the loyalty to faith.

### Chapter 27. What Has Been Related About One Who Frees His Slaves When He Dies, While He Has No Wealth Aside From Them

**1364.** ‘Imrān bin Ḥuṣain narrated: “A man from the *Anṣār* freed six slaves of his upon his death, and he did not have any wealth aside from them. That was conveyed to the Prophet ﷺ, and he said some harsh words about him.” He said: “Then he called for them and he divided them and had them draw lots. So he freed two of them and left four as slaves.” (*Ṣaḥīḥ*)

[He said:] There is something on this topic from Abū Hurairah.

[Abū ‘Eīsā said:] The *Ḥadīth* of ‘Imrān bin Ḥuṣain is a *Ḥasan Ṣaḥīḥ Ḥadīth*, and it has been reported through more than one route from ‘Imrān bin Ḥuṣain.

This is acted upon according to some of the people of knowledge [among the Companions of the Prophet ﷺ]. It is the view of Mālik bin Anas, Ash-Shāfi‘ī, Aḥmad, and Ishāq. They held the view that casting of lots could resorted to in this case and others. As for some of the people of knowledge among the people of Al-Kūfah and others, they did not approve of drawing lots. They said: Each one of the slaves should be freed one-third, and they should be allowed to work to earn the price of the other two-thirds.

(المعجم ٢٧) - بَابُ مَا جَاءَ فِيْمَنْ يُعْتَقُ مَمَالِيكُهُ عِنْدَ مَوْتِهِ، وَلَيْسَ لَهُ مَالٌ غَيْرُهُمْ (التحفة ٢٧)

١٣٦٤ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا حَمَادُ بْنُ زَيْدٍ عَنْ أَبِي يُوَيْبٍ، عَنْ أَبِي قِلَابَةَ، عَنْ أَبِي الْمُهَلَّبِ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ أَنَّ رَجُلًا مِنَ الْأَنْصَارِ أَعْتَقَ سِتَّةَ أَعْبِدٍ لَهُ عِنْدَ مَوْتِهِ وَلَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُمْ. فَبَلَغَ ذَلِكَ النَّبِيَّ ﷺ، فَقَالَ لَهُ قَوْلًا شَدِيدًا. قَالَ: ثُمَّ دَعَاهُمْ فَجَزَّأَهُمْ ثُمَّ أَفْرَعَ بَيْنَهُمْ، فَأَعْتَقَ اثْنَيْنِ وَأَرْقَ أَرْبَعَةً. [قَالَ:] وَفِي الْبَابِ عَنْ أَبِي هُرَيْرَةَ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ عِمْرَانَ بْنِ حُصَيْنٍ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رُوِيَ مِنْ غَيْرِ وَجْهِ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ [مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ]. وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ وَالشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ يَزُونَ [اسْتِعْمَالَ] الْفُرْعَةَ فِي هَذَا وَفِي غَيْرِهِ. وَأَمَّا بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَهْلِ الْكُوفَةِ وَغَيْرِهِمْ فَلَمْ يَرَوْا الْفُرْعَةَ. وَقَالُوا: يُعْتَقُ مِنْ كُلِّ عَبْدٍ الثُّلُثُ. وَيُسْتَسْعَى فِي ثُلُثِي قِيَمَتِهِ. وَأَبُو الْمُهَلَّبِ اسْمُهُ عَبْدُ الرَّحْمَنِ بْنُ عَمْرٍو [الْحَرَمِيِّ] وَهُوَ غَيْرُ أَبِي قِلَابَةَ] وَيُقَالُ مُعَاوِيَةُ بْنُ عَمْرٍو [وَأَبُو قِلَابَةَ الْحَرَمِيُّ] اسْمُهُ عَبْدُ اللَّهِ بْنُ زَيْدٍ.

Abū Al-Muhallab's name is 'Abdur-Rahmān bin 'Amr [Al-Jarmī; he is not Abū Qilābah.] And they also say he is Mu'āwiyah bin 'Amr, [and Abū Qilābah Al-Jarmī's name is 'Abdullāh bin Zaid.]

تخريج: وأخرجه مسلم، الأيمان، باب من أعتق شركاً له في عبد، ح: ١٦٦٨ عن قتيبة به \* وفي الباب عن أبي هريرة [اليهقي: ٢٨٦/١٠].

### Comments:

The *Anṣarī* freed six slaves, whereas according to the *Sharī'ah* he had the right to free only two. Now everyone of the freed slaves desired to have freedom, but only two of them could get it. This was an issue that needed no witnesses for its solution, and nobody was ready to forgo his right, so it was solved by drawing lots, because there was no other choice for the solution of this issue. So in the light of this narration, such cases can be solved by drawing lots.

### Chapter 28. What Has Been Related About One Who Owned A *Maḥram* (A Close Relative)

(المعجم ٢٨) - بَابُ مَا جَاءَ فِيْمَنْ مَلَكَ  
ذَا [رَحِم] مَحْرَمٍ (التحفة ٢٨)

1365. Samurah narrated that the Messenger of Allāh ﷺ said: "Whoever owns a related *Maḥram*, then he is free." (*Ḥasan*)

[Abū 'Eisā said:] We do not know of this narration having a complete chain of narration, except as a narration of Ḥammād bin Salamah.

Some have reported something about this from Qatādah, from Al-Ḥasan, from 'Umar.

(Another chain) from Samurah that the Prophet ﷺ said: "Whoever owns a related *Maḥram*, then he is free."

[Abū 'Eisā said:] We do not know of anyone who mentioned 'Āṣim Al-Aḥwal from Ḥammād bin Salamah in this narration, except for Muḥammad bin Bakr.

And this is acted upon according

١٣٦٥ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُعَاوِيَةَ الْجُمُعِيُّ [البصري]: حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمُرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ فَهُوَ حُرٌّ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ لَا نَعْرِفُهُ مُسْنَدًا، إِلَّا مِنْ حَدِيثِ حَمَّادِ بْنِ سَلَمَةَ. وَقَدْ رَوَى بَعْضُهُمْ هَذَا الْحَدِيثَ عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ عُمَرَ، شَيْئًا مِنْ هَذَا.

حَدَّثَنَا عُقْبَةُ بْنُ مُكْرَمٍ الْعَمِّيُّ الْبَصْرِيُّ وَغَيْرُ وَاحِدٍ، قَالُوا: حَدَّثَنَا مُحَمَّدُ بْنُ بَكْرِ الْبُرْسَانِيُّ، عَنْ حَمَّادِ بْنِ سَلَمَةَ، عَنْ قَتَادَةَ. وَعَاصِمٌ الْأَحْوَلُ عَنِ الْحَسَنِ، عَنْ سَمُرَةَ عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ فَهُوَ حُرٌّ».

[قَالَ أَبُو عِيسَى:] وَلَا نَعْلَمُ أَحَدًا ذَكَرَ فِي

to some of the people of knowledge. It has also been reported from Ibn ‘Umar that the Prophet ﷺ said: “Whoever owns a related *Mahram*, then he is free.” Ḍamrah bin Rabī‘ah reported it from Sufyān Ath-Thawrī, from ‘Abdullāh bin Dīnār, from Ibn ‘Umar, from the Prophet ﷺ. But Ḍamrah bin Rabī‘ah is not followed up in narrating this *Hadīth*.<sup>[1]</sup> And this *Hadīth* is a mistake according to the scholars of *Hadīth*.

تخريج: [حسن] وأخرجه أبو داود، العتق، باب: فيمن ملك ذا رحم محرم، ح: ٣٩٤٩، وابن ماجه، ح: ٢٥٢٤ من حديث حماد بن سلمة به وصححه الحاكم: ٢١٤/٢ والذهبي وابن الجارود، ح: ٩٧٣ \* حديث عقبه بن مكرم: رواه ابن ماجه، ح: ٢٥٢٤ عنه وسنده حسن.

**Comments:**

*Mahram* relatives are those who are prohibited to marry each other when one of them is male and the other is female, as father and son, paternal uncle and paternal nephew, maternal uncle and maternal nephew, etc. The father is prohibited from marrying his daughter, a son cannot marry his mother, a brother cannot marry his sister etc. Most of the people of knowledge among the Companions of the Prophet ﷺ and their followers acted according to this narration. The *Ahnaf* and *Hanābilah* also act upon this narration.

**Chapter 29. What Has Been Related About One Who Farms A People’s Land Without Their Permission**

1366. Rāfi‘ bin Khadīj narrated that the Prophet ﷺ said: “Whoever farms a people’s land without their permission, then nothing he farms belongs to him, and its finances are due to him.” (*Da‘if*)

[Abū ‘Eisā said:] This *Hadīth* is

هَذَا الْحَدِيثُ عَاصِمًا الْأَحْوَالَ عَنْ حَمَادِ بْنِ سَلَمَةَ، غَيْرَ مُحَمَّدِ بْنِ بَكْرِ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ. وَقَدْ رُوِيَ عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ فَهُوَ حُرٌّ» رَوَاهُ ضَمْرَةُ بْنُ رَبِيعَةَ عَنْ سُفْيَانَ الثَّوْرِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ دِينَارٍ، عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ.

وَلَا يُتَابِعُ ضَمْرَةُ بْنُ رَبِيعَةَ عَلَى هَذَا الْحَدِيثِ. وَهُوَ حَدِيثٌ خَطَأً عِنْدَ أَهْلِ الْحَدِيثِ.

(المعجم ٢٩) - بَابُ مَا جَاءَ [فِي] مَنْ زَرَعَ فِي أَرْضِ قَوْمٍ بِغَيْرِ إِذْنِهِمْ (التحفة ٢٩)

١٣٦٦ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا شَرِيكُ بْنُ عَبْدِ اللَّهِ النَّخَعِيُّ عَنْ أَبِي إِسْحَاقَ، عَنْ عَطَاءٍ، عَنْ رَافِعِ بْنِ خَدِيجٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «مَنْ زَرَعَ فِي أَرْضِ قَوْمٍ بِغَيْرِ إِذْنِهِمْ، فَلَيْسَ لَهُ مِنَ الزَّرْعِ شَيْءٌ، وَلَهُ نَفَقَتُهُ».

[1] No one else narrates it from Sufyān, which would act as support for Ḍamrah’s narration.

*Hasan Gharīb*, we do not know it as a narration of Abū Ishāq except from this route; the narration of *Sharīk bin ‘Abdullāh*.

This *Hadīth* is acted upon according to some of the people of knowledge, and it is the view of *Aḥmad* and *Ishāq*.

I asked *Muḥammad bin Ismā‘īl* about this *Hadīth* and he said: “It is a *Hasan Hadīth*.” And he said: “I do not know of it as a narration of *Abū Ishāq* except from the report of *Sharīk*.” *Muḥammad* said: “*Ma‘qil bin Mālik Al-Baṣrī* narrated to us: ‘*Uqbah bin Al-Aṣam* narrated to us from ‘*Aṭā*’, from *Rāfi‘ bin Khadij* from the Prophet ﷺ, similarly.”

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ، لَا نَعْرِفُهُ مِنْ حَدِيثِ أَبِي إِسْحَاقَ، إِلَّا مِنْ هَذَا الْوَجْهِ مِنْ حَدِيثِ شَرِيكِ بْنِ عَبْدِ اللَّهِ. وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ، وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ. وَسَأَلْتُ مُحَمَّدَ بْنَ إِسْمَاعِيلَ عَنْ هَذَا الْحَدِيثِ فَقَالَ: هُوَ حَدِيثٌ حَسَنٌ. وَقَالَ: لَا أَعْرِفُهُ مِنْ حَدِيثِ أَبِي إِسْحَاقَ إِلَّا مِنْ رِوَايَةِ شَرِيكٍ. قَالَ مُحَمَّدٌ: حَدَّثَنَا مَعْقِلُ بْنُ مَالِكِ الْبَصْرِيِّ: حَدَّثَنَا عُقْبَةُ بْنُ الْأَصَمِ عَنْ عَطَاءٍ، عَنْ رَافِعِ بْنِ خَدِيجٍ عَنِ النَّبِيِّ ﷺ نَحْوَهُ.

تخریج: [إسناده ضعيف] وأخرجه أبو داود، البيهقي، باب: في زرع الأرض بغير إذن صاحبها، ح: ٣٤٠٣ عن قتيبة به ورواه قيس بن الربيع عن أبي إسحاق به، شريك عن قيس ضعيف وأبو إسحاق عن عطاء وعطاء لم يسمع من رافع (خطابي).

**Comments:**

This narration proves that if someone cultivates the land without the owner’s permission, the produce will belong to the owner of the land and the tiller will get only the expenditure he spent on the cultivation.

**Chapter 30. What Has Been Related About Gifts And Equality Between Children**

(المعجم ٣٠) - بَابُ مَا جَاءَ فِي النَّحْلِ وَالْتَسْوِيَةِ بَيْنَ الْوَالِدِ (التحفة ٣٠)

**1367.** *An-Nu‘mān bin Bashīr* narrated that his father gave a slave to a son of his. So he went to the Prophet ﷺ to have him witness it. He ﷺ said: ‘Have you given a gift similar to this one to all of your sons?’ He replied: ‘No.’ So he said: ‘Then take him back.’” (*Ṣaḥīh*)

[Abū ‘Eisā said:] This *Hadīth* is *Hasan Ṣaḥīh*, and it has been

١٣٦٧ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ وَسَعِيدُ بْنُ عَبْدِ الرَّحْمَنِ الْمَخْزُومِيُّ - الْمَعْنَى وَاحِدٌ - قَالَا: حَدَّثَنَا سُفْيَانُ عَنِ الزُّهْرِيِّ، عَنْ حُمَيْدِ ابْنِ عَبْدِ الرَّحْمَنِ وَعَنْ مُحَمَّدِ بْنِ التُّعْمَانِ بْنِ بَشِيرٍ، يُحَدِّثَانِ عَنِ التُّعْمَانِ بْنِ بَشِيرٍ، أَنَّ أَبَاهُ نَحَلَ ابْنًا لَهُ غُلَامًا. فَآتَى النَّبِيَّ ﷺ يُشْهَدُهُ

reported through more than one route from An-Nu'mān bin Bashīr.

This is acted upon according to some of the people of knowledge. They consider it recommended to maintain equality among sons, to the degree that some of them said he is to treat his sons equally even in kissing. Some of them said he is to treat his sons equally in gifts and presents, [meaning] to treat the males and the females the same. This is the view of Sufyān Ath-Thawrī. Some of them said treating children equally is to give the males a similar portion as that of two females, similar to divisions of inheritance. This is the view of Aḥmad and Ishāq.

فَقَالَ: «أَكْلَلَّ وَلَدِكَ قَدْ نَحَلْتَهُ، مِثْلَ مَا نَحَلْتَ هَذَا؟» قَالَ: لَا، قَالَ: «فَارْزُدْهُ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رُوِيَ مِنْ غَيْرِ وَجْهِ عَنِ التُّعْمَانِ ابْنِ بَشِيرٍ، وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ، يَسْتَحِبُّونَ التَّسْوِيَةَ بَيْنَ الْوَلَدِ، حَتَّى قَالَ بَعْضُهُمْ: يُسَوَّى بَيْنَ وَلَدِهِ حَتَّى فِي الْمُبَلَّغَةِ. وَقَالَ بَعْضُهُمْ: يُسَوَّى بَيْنَ وَلَدِهِ فِي النُّحْلِ وَالْعَطِيَّةِ [بِعَنِي] الذَّكَرُ وَالْأُنثَى سَوَاءً وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ. وَقَالَ بَعْضُهُمْ: التَّسْوِيَةُ بَيْنَ الْوَلَدِ، أَنْ يُعْطَى الذَّكَرُ مِثْلَ حِظِّ الْأُنثِيِّ، مِثْلَ قِسْمَةِ الْمِيرَاثِ، وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ.

تخریج: متفق عليه، وأخرجه مسلم، الهبات، باب كراهة تفضيل بعض الأولاد في الهبة، ح: ١٦٢٣ من حديث سفیان بن عیینة البخاري، ح: ٢٥٨٦ من حديث الزهري به.

### Comments:

The subject of this narration proves that if someone wants to give something to his children in his life time, he will have to give an equal share to every one of them without any consideration of gender or standards of legacy distribution. Another narration made this point clear. The Prophet ﷺ said in an authentic narration, “Treat your children equally. If I want to give extra to one of them, I will give to a female.” (*Baihaqī*)

## Chapter 31. What Has Been Related About Preemption

(المعجم ٣١) - بَابُ مَا جَاءَ فِي الشُّفْعَةِ  
(التحفة ٣١)

1368. Samurah narrated that the Messenger of Allāh ﷺ said: “The neighbor of a home has more right to the home.” (*Hasan*)

Abū ‘Eisā said: There are narrations on this topic from Ash-Sharīd, Abū Rāfi‘, and Anas.

١٣٦٨ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا إِسْمَاعِيلُ ابْنُ عُليَّةَ عَنْ سَعِيدٍ، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمُرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «جَارُ الدَّارِ أَحَقُّ بِالدَّارِ».

قَالَ أَبُو عِيسَى: وَفِي الْبَابِ عَنِ الشَّرِيدِ

The *Hadīth* of Samurah is a *Hasan Sahīh Hadīth*. ‘Eisā bin Yūnus reported similarly from Sa‘eed bin Abī ‘Arūbah, from Qatādah, from Anas, from the Prophet ﷺ.

It has also been reported from Sa‘eed bin Abī ‘Arūbah from Qatādah, from Al-Ḥasan, from Samurah, from the Prophet ﷺ. What is correct according to the people of knowledge is the narration of Al-Ḥasan from Samurah, and we do not know the report of Qatādah from Anas, except as a narration of ‘Eisā bin Yūnus. The *Hadīth* of ‘Abdullāh bin ‘Abdur-Rahmān Aṭ-Ṭā’ifi from ‘Amr bin Aṣh-Sharīd, from his father, from the Prophet ﷺ – on this topic – is a *Hasan Hadīth*. Ibrāhīm bin Maisarah reported it from ‘Amr bin Aṣh-Sharīd, from Abū Rāfi‘, from the Prophet ﷺ.

He said: I heard Muḥammad saying: “Both of the *Ahādīth* are *Sahīh* to me.”

وَأَبِي رَافِعٍ وَأَنْسٍ .

حَدِيثُ سَمُرَةَ حَدِيثٌ حَسَنٌ صَحِيحٌ، وَقَدْ رَوَى عَيْسَى بْنُ يُونُسَ عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنْ أَنْسِ عَنِ النَّبِيِّ ﷺ، مِثْلَهُ .

وَرَوَى عَنْ سَعِيدِ بْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سَمُرَةَ عَنِ النَّبِيِّ ﷺ. وَالصَّحِيحُ عِنْدَ أَهْلِ الْعِلْمِ، حَدِيثُ الْحَسَنِ، عَنْ سَمُرَةَ. وَلَا نَعْرِفُ حَدِيثَ قَتَادَةَ عَنْ أَنْسٍ، إِلَّا مِنْ حَدِيثِ عَيْسَى بْنِ يُونُسَ. وَحَدِيثُ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ الطَّائِفِيِّ عَنْ عَمْرٍو بْنِ الشَّرِيدِ، عَنْ أَبِيهِ عَنِ النَّبِيِّ ﷺ، فِي هَذَا الْبَابِ هُوَ حَدِيثٌ حَسَنٌ. وَرَوَى إِبْرَاهِيمُ بْنُ مَيْسَرَةَ عَنْ عَمْرٍو بْنِ الشَّرِيدِ، عَنْ أَبِي رَافِعٍ عَنِ النَّبِيِّ ﷺ قَالَ: سَمِعْتُ مُحَمَّدًا يَقُولُ كِلَا الْحَدِيثَيْنِ عِنْدِي صَحِيحٌ .

**تخریج:** [حسن] وأخرجه أحمد: ۱۳/۵ عن إسماعيل ابن علي به ورواه أبو داود، ح: ۳۵۱۷ من حديث قتادة وصححه ابن الجارود، ح: ۶۴۴ \* وفي الباب عن الشريد [ابن ماجه، ح: ۲۴۹۶ وأشار إليه المؤلف] وأبي رافع [البخاري، ح: ۲۲۵۸، ۶۹۷۷، ۶۹۸۰ وأشار إليه المؤلف] وأنس [ابن حبان، ح: ۱۱۵۳] وأشار إليه الترمذي] \* حديث عيسى بن يونس رواه ابن حبان، ح: ۱۱۵۳ .

### Comments:

In this narration, it has been made clear, that if a shareholder in a property sells his share without consulting or informing the co-shareholder, then the co-shareholder can buy back the share of property for the same price which it was sold. This is agreed upon; the neighbor loses the right of preemption in the presence of a co-shareholder of the property.

**Chapter 32. What Has Been Related About Preemption For The Absent**

**1369.** Jābir narrated that the Messenger of Allāh ﷺ said: “The neighbor has more right to his preemption. He is to be waited for even if he is absent, when their paths are the same.” (*Hasan*)

[Abū ‘Eisā said:] This *Hadīth* is *Hasan Gharīb*. We do not know of anyone reporting this *Hadīth* other than ‘Abdul-Mālik bin Abī Sulaimān from ‘Atā’, from Jābir. [Shu‘bah criticized ‘Abdul-Mālik bin Abī Sulaimān due to this *Hadīth*.]

‘Abdul-Mālik is trustworthy and honest according to the people of *Hadīth*. We do not know of anyone who criticized him except Shu‘bah because of this *Hadīth*. Wakī’ reported this *Hadīth* from Shu‘bah from ‘Abdul-Mālik [bin Abī Sulaimān]. And it has been reported from Ibn Al-Mubāarak, from Sufyān Ath-Thawrī who said: “Abdul-Mālik bin Abī Sulaimān is a ‘scale.’” Meaning for knowledge.

This *Hadīth* is acted upon according to the people of knowledge. The person has more right to preemption even if he is absent, so when he arrives then the pre-emption is his even if he has gone for a long time.

(المعجم ٣٢) - بَابُ مَا جَاءَ فِي الشُّفْعَةِ  
لِلْغَائِبِ (التحفة ٣٢)

١٣٦٩ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا خَالِدُ بْنُ عَبْدِ اللَّهِ الْوَاسِطِيُّ عَنْ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ، قَالَ. قَالَ رَسُولُ اللَّهِ ﷺ: «الْجَارُ أَحَقُّ بِشُفْعَتِهِ، يُتَنَظَرُ بِهِ وَإِنْ كَانَ غَائِبًا، إِذَا كَانَ طَرِيقَهُمَا وَاحِدًا».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ، وَلَا نَعْلَمُ أَحَدًا رَوَى هَذَا الْحَدِيثَ غَيْرَ عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ، عَنْ عَطَاءٍ، عَنْ جَابِرٍ [وَقَدْ تَكَلَّمَ شُعْبَةُ فِي عَبْدِ الْمَلِكِ بْنِ أَبِي سُلَيْمَانَ مِنْ أَجْلِ هَذَا الْحَدِيثِ].

وَعَبْدُ الْمَلِكِ هُوَ ثِقَّةٌ مَأْمُونٌ عِنْدَ أَهْلِ الْحَدِيثِ، لَا نَعْلَمُ أَحَدًا تَكَلَّمَ فِيهِ غَيْرَ شُعْبَةَ، مِنْ أَجْلِ هَذَا الْحَدِيثِ. وَقَدْ رَوَى وَكَيْعٌ عَنْ شُعْبَةَ، عَنْ عَبْدِ الْمَلِكِ [بْنِ أَبِي سُلَيْمَانَ] هَذَا الْحَدِيثَ. وَرَوَى عَنِ ابْنِ الْمُبَارَكِ، عَنْ سُفْيَانَ الثَّوْرِيِّ قَالَ: عَبْدُ الْمَلِكِ بْنُ أَبِي سُلَيْمَانَ مِيزَانٌ. يَعْنِي فِي الْعِلْمِ. وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ أَهْلِ الْعِلْمِ، أَنَّ الرَّجُلَ أَحَقُّ بِشُفْعَتِهِ وَإِنْ كَانَ غَائِبًا. فَإِذَا قَدِمَ فَلَهُ الشُّفْعَةُ. وَإِنْ تَطَاوَلَ ذَلِكَ.

تخريج: [إسناده حسن] وأخرجه أبو داود، البيوع، باب: في الشفعة، ح: ٣٥١٨ وابن ماجه، ح: ٢٤٩٤ من حديث عبدالملك به.

**Comments:**

Though ‘Abdul-Mālik bin Abī Sulaimān is a reliable and secure narrator, but



this narration from him is deemed to be not preserved and of a lower rank. The neighbor who is not a co-shareholder or does not share the way to the property, according to Islamic Law, has no right of preemption. If someone wants to sell his property, morally he is bound to consult his neighbour, and he should be given priority.

**Chapter 33. (What Has Been Related About) When The Boundaries Are Defined And The Areas Are Fixed Then There Is No Preemption**

1370. Jābir bin ‘Abdullāh narrated that the Messenger of Allāh ﷺ said: “When the boundaries are defined and the streets are fixed, then there is no preemption.” (Saḥīḥ)

[Abū ‘Eisā said:] This *Hadīth* is *Ḥasan Ṣaḥīḥ*, some of them reported it in *Mursal* form from Abū Salamah, from the Prophet ﷺ.

This is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ. Among them was ‘Umar bin Al-Khaṭṭāb and ‘Uthmān bin ‘Affān. It is also the view of some of the *Fuqahā* among the *Tābi‘īn*, like ‘Umar bin ‘Abdul-‘Azīz and others. It is the view of the people of Al-Madīnah, among them Yaḥya bin Sa‘eed Al-Anṣārī, Rabī‘ah bin Abī ‘Abdur-Raḥmān, and Mālik bin Anas. It is the view of Ash-Shāfi‘ī, Aḥmad, and Ishāq. They did not hold the view that there could be a preemption, except if there was an association (partnership). And they did not think that the neighbor had the right to preemption when there is no association.

(المعجم ٣٣) - بَابُ [مَا جَاءَ] إِذَا حُدَّتِ الْحُدُودُ وَوَقَعَتِ السَّهَامُ فَلَا شُفْعَةَ (التحفة ٣٣)

١٣٧٠ - حَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: حَدَّثَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا وَقَعَتِ الْحُدُودُ، وَصُرِّفَتِ الطَّرِيقُ، فَلَا شُفْعَةَ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رَوَاهُ بَعْضُهُمْ مُرْسَلًا، عَنْ أَبِي سَلَمَةَ عَنِ النَّبِيِّ ﷺ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ. مِنْهُمْ عُمَرُ بْنُ الْخَطَّابِ وَعُثْمَانُ بْنُ عَفَّانَ. وَبِهِ يَقُولُ بَعْضُ فُقَهَاءِ التَّابِعِينَ. مِثْلُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ وَغَيْرِهِ. وَهُوَ قَوْلُ أَهْلِ الْمَدِينَةِ. مِنْهُمْ يَحْيَى بْنُ سَعِيدِ الْأَنْصَارِيِّ وَرَبِيعَةُ بْنُ أَبِي عَبْدِ الرَّحْمَنِ وَمَالِكُ بْنُ أَنَسٍ. وَبِهِ يَقُولُ الشَّافِعِيُّ وَأَحْمَدُ وَإِسْحَاقُ. لَا يَرَوْنَ الشُّفْعَةَ إِلَّا لِلْخَلِيطِ، وَلَا يَرَوْنَ لِلْجَارِ شُفْعَةَ إِذَا لَمْ يَكُنْ خَلِيطًا.

وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ: الشُّفْعَةُ لِلْجَارِ، وَاحْتَجُّوا

Some of the people of knowledge among the Companions of the Prophet ﷺ and others said that pre-emption is for the neighbour, and they argued using the *Marfū' Hadīth* of the Prophet ﷺ: "The neighbour of a home has more right to the home" and his saying: "The neighbor has more right because of his nearness." This is the view of Ath-Thawrī, Ibn Al-Mubārak and the people of Al-Kūfah.

بِالْحَدِيثِ الْمَرْفُوعِ عَنِ النَّبِيِّ ﷺ قَالَ: «جَارُ الدَّارِ أَحَقُّ بِالدَّارِ». وَقَالَ: «الْجَارُ أَحَقُّ بِسَقْمِهِ» وَهُوَ قَوْلُ الثَّوْرِيِّ وَابْنِ الْمُبَارَكِ وَأَهْلِ الْكُوفَةِ.

تخریج: وأخرجه البخاري، الحيل، باب: في الهبة والشفعة، ح: ٦٩٧٦ من حديث معمر به.

### Chapter 34. (What Has Been Related About The Partner Is The Preemptor)

(المعجم ٣٤) - بَابُ [مَا جَاءَ أَنَّ الشَّرِيكَ شَفِيعٌ] (التحفة ٣٤)

1371. Ibn 'Abbās narrated that the Messenger of Allāh ﷺ said: "The partner is the preemptor, and preemption is in everything." (*Hasan*)

١٣٧١ - حَدَّثَنَا يُوسُفُ بْنُ عِيسَى: حَدَّثَنَا الْفَضْلُ بْنُ مُوسَى عَنْ أَبِي حَمَزَةَ الشُّكْرِيِّ، عَنْ عَبْدِ الْعَزِيزِ بْنِ رُقَيْعٍ، عَنْ ابْنِ أَبِي مُلَيْكَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الشَّرِيكَ شَفِيعٌ وَالشَّفَعَةُ فِي كُلِّ شَيْءٍ».

[Abū 'Eīsā said:] We do not know of a *Hadīth* like this, except from the narration of Abū Ḥamzah As-Sukkarī. More than one narrator reported it from 'Abdul-'Azīz bin Rufai' from Ibn Abī Mulaikah, from the Prophet ﷺ in *Mursal* form, and this is more correct.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ لَا نَعْرِفُهُ مِثْلَ هَذَا، إِلَّا مِنْ حَدِيثِ أَبِي حَمَزَةَ الشُّكْرِيِّ. وَقَدْ رَوَى غَيْرُ وَاحِدٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُقَيْعٍ، عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنِ النَّبِيِّ ﷺ، مُرْسَلًا وَهَذَا أَصَحُّ.

(Another chain) from Ibn Abī Mulaikah from the Prophet ﷺ with a similar meaning, but "from Ibn 'Abbās" is not in it. Similar to this was reported by more than one narrator from 'Abdul-'Azīz bin Rufai', "from Ibn 'Abbās" is not in it and this is more correct than the narration of Abū Ḥamzah. Abū Ḥamzah is trustworthy, it is

حَدَّثَنَا هَذَا: حَدَّثَنَا أَبُو بَكْرِ بْنُ عَيَّاشٍ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُقَيْعٍ، عَنْ ابْنِ أَبِي مُلَيْكَةَ عَنِ النَّبِيِّ ﷺ، نَحْوَهُ بِمَعْنَاهُ. وَلَيْسَ فِيهِ، عَنْ ابْنِ عَبَّاسٍ وَهَكَذَا رَوَى غَيْرُ وَاحِدٍ عَنْ عَبْدِ الْعَزِيزِ ابْنِ رُقَيْعٍ، مِثْلَ هَذَا. لَيْسَ فِيهِ عَنِ ابْنِ عَبَّاسٍ

possible that the mistake is from someone other than Abū Ḥamzah.

(Another chain) from Ibn Abī Mulaikah from the Prophet ﷺ, and it is similar to the (last) narration of Abū Bakr bin ‘Ayyāsh (above).

Most of the people of knowledge said that preemption only takes place in homes and lands, they did not think that preemption was for everything. Some of the people of knowledge said that preemption was for everything. But the first view is more correct.

وَهَذَا أَصَحُّ مِنْ حَدِيثِ أَبِي حَمَزَةَ، وَأَبُو حَمَزَةَ ثِقَةٌ. يُمَكِّنُ أَنْ يَكُونَ الْخَطَأُ مِنْ غَيْرِ أَبِي حَمَزَةَ.

حَدَّثَنَا هَذَا: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ عَبْدِ الْعَزِيزِ بْنِ رُفَيْعٍ، عَنِ ابْنِ أَبِي مُلَيْكَةَ عَنِ النَّبِيِّ ﷺ، نَحْوَ حَدِيثِ أَبِي بَكْرٍ بْنِ عَيَّاشٍ. وَقَالَ أَكْثَرُ أَهْلِ الْعِلْمِ: إِنَّمَا تَكُونُ الشُّفْعَةُ فِي الدُّورِ وَالْأَرْضِينَ. وَلَمْ يَرَوْا الشُّفْعَةَ فِي كُلِّ شَيْءٍ. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ: الشُّفْعَةُ فِي كُلِّ شَيْءٍ. وَالْقَوْلُ الْأَوَّلُ أَصَحُّ.

تخريج: [إسناده حسن] وأخرجه النسائي في الكبرى (تحفة الأشراف: ٤٥/٥، ح: ٥٧٩٥) والبيهقي: ١٠٩/٦ من حديث الفضل بن موسى به وتابعه الصدوق/ حسن الحديث، نعيم بن حماد عند البيهقي: ١٠٩/٦.

### Comments:

It is correct and proven that on all types of immovable property, the right of preemption is applicable, and movable property is exempt. According to Imām ‘Aṭā, the right of preemption is applicable to all types of property. Imām Mālik also supports this point of view. According to Imām Aḥmad, among the movable property, the right of preemption is applicable only on animals, and all other types of property are exempt.

### Chapter 35. What Has Been Related About Lost Items,<sup>[1]</sup> The Stray Camel And Sheep

(المعجم ٣٥) - بَابُ مَا جَاءَ فِي اللَّقْطَةِ وَصَالَةِ الْإِبِلِ وَالْغَنَمِ (التحفة ٣٥)

1372. Zaid bin Khālid Al-Juhni narrated: “A man asked the Messenger of Allāh ﷺ about lost items. So he said: ‘Make a public announcement about it for one year. Remember its string, its container, and its sack. Then use it, and if its owner comes then give it to him.’ So he said to him: ‘O Messenger of Allāh! What about

١٣٧٢ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، عَنْ يَزِيدَ مَوْلَى الْمُتَّبِعِثِ، عَنْ زَيْدِ بْنِ خَالِدِ الْجُهَنِيِّ: أَنَّ رَجُلًا سَأَلَ رَسُولَ اللَّهِ ﷺ عَنِ اللَّقْطَةِ؟ فَقَالَ: «عَرَفَهَا سَنَةً ثُمَّ اغْرِفْ وَكَاءَهَا وَوَعَاءَهَا وَعِفَاصَهَا، ثُمَّ اسْتَنْفِقْ بِهَا، فَإِنْ

[1] Meaning, items that are found about which it is apparent someone has lost them.

the stray sheep?’ He said: ‘Take it, for it is either for you, your brother, or the wolf.’ He said: ‘O Messenger of Allāh! What about the stray camel?’” He said: “Then the Prophet ﷺ got angry until his cheeks became red or his face became red. He said: ‘What concern is it of yours? It has its feet and its water reserve until it reaches its owner.’” (*Sahīh*)

There are narrations on this topic from Ubayy bin Ka‘b, ‘Abdullāh bin ‘Umar, Al-Jārūd bin Al-Mu‘allā, ‘Iyād bin Ḥimār, and Jarīr bin ‘Abdullāh. The *Ḥadīth* of Zaid bin Khālid is a *Hasan Sahīh Ḥadīth*, it has been reported from him through more than one route.

This is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others. They permitted using the lost item when one announces it for a year and does not find who it belongs to. This is the view of Ash-Shāfi‘ī, Aḥmad, and Iṣḥāq.

Some of the people of knowledge among the Companions of the Prophet ﷺ and others said that he announces it for one year, then either its owner comes or he gives it in charity. This is the view of Sufyān Ath-Thawrī, ‘Abdullāh bin Al-Mubārak, and it is the view of the people of Al-Kūfah. They did not think that the holder of the lost item should use it if he is wealthy. Ash-Shāfi‘ī said he can use it even if he is wealthy, because during the time of the Messenger of Allāh ﷺ, Ubayy

جَاءَ رَبُّهَا فَأَدَّهَا إِلَيْهِ» فَقَالَ [لَهُ]: يَا رَسُولَ اللَّهِ! فَضَالَّةُ الْعَمَلِ؟ فَقَالَ: «حُذَّهَا، فَإِنَّمَا هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذَّبِّ» فَقَالَ: يَا رَسُولَ اللَّهِ! فَضَالَّةُ الْإِبِلِ؟ قَالَ: فَغَضِبَ النَّبِيُّ ﷺ حَتَّى احْمَرَّتْ وَجَنَّتَاهُ، أَوْ احْمَرَ وَجْهَهُ. فَقَالَ: «مَالِكٌ وَلَهَا؟ مَعَهَا حِذَاوُهَا وَسِقَاوُهَا حَتَّى تَلْقَى رَبَّهَا». وَفِي الْبَابِ عَنْ أَبِي بِنِ كَعْبٍ وَعَبْدِ اللَّهِ بْنِ عُمَرَ وَالْجَارُودِ بْنِ الْمُعَلَّى وَعِيَاضِ بْنِ حِمَارٍ وَجَرِيرِ بْنِ عَبْدِ اللَّهِ. حَدِيثُ زَيْدِ بْنِ خَالِدٍ حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رَوَى عَنْهُ مِنْ غَيْرِ وَجْهِ. وَحَدِيثُ يَزِيدَ مَوْلَى الْمُنْبَعِثِ، عَنْ زَيْدِ بْنِ خَالِدٍ، حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رَوَى عَنْهُ مِنْ غَيْرِ وَجْهِ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ، وَرَخَّصُوا فِي اللَّفْطَةِ إِذَا عَرَفَهَا سَنَةً فَلَمْ يَجِدْ مَنْ يَعْرِفُهَا، أَنْ يَنْتَفِعَ بِهَا، وَهُوَ قَوْلُ الشَّافِعِيِّ وَأَحْمَدَ وَإِسْحَاقَ. وَقَالَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ: يُعْرِفُهَا سَنَةً، فَإِنْ جَاءَ صَاحِبُهَا وَإِلَّا تَصَدَّقَ بِهَا. وَهُوَ قَوْلُ سُفْيَانَ الثَّوْرِيِّ وَعَبْدِ اللَّهِ بْنِ الْمُبَارَكِ، وَهُوَ قَوْلُ أَهْلِ الْكُوفَةِ، لَمْ يَرَوْا لِصَاحِبِ اللَّفْطَةِ أَنْ يَنْتَفِعَ بِهَا إِذَا كَانَ غَنِيًّا. وَقَالَ الشَّافِعِيُّ: يَنْتَفِعُ بِهَا وَإِنْ كَانَ غَنِيًّا، لِأَنَّ أَبِي بِنِ كَعْبٍ أَصَابَ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ صُرَّةً فِيهَا مِائَةٌ دِينَارٍ، فَأَمَرَهُ رَسُولُ اللَّهِ ﷺ أَنْ يُعْرِفَهَا ثُمَّ يَنْتَفِعَ بِهَا، وَكَانَ أَبِي كَثِيرَ الْمَالِ، مِنْ

bin Ka'b found a sack with one hundred Dīnār in it. The Messenger of Allāh ﷺ ordered him to announce it, then use it, and Ubayy had alot of wealth, he was one of the wealthy Companions of the Messenger of Allāh. So the Messenger of Allāh ﷺ ordered him to announce it, but he did not find anyone to claim it. So the Prophet ﷺ told him to use it. If the lost item was not lawful except for the one that charity is lawful for, then it would not be lawful for 'Alī bin Abī Tālib. While 'Alī bin Abī Tālib found some Dīnār during the time of the Messenger of Allāh ﷺ and announced it, but he did not find anyone to claim it. So the Prophet ﷺ told him to use it. Charity was not lawful for 'Alī bin Abī Tālib. (*Ṣaḥīḥ*)

When the lost item was of little value, some of the people of knowledge allowed using it without announcing it. Some of them said when it is less than a Dīnār then it is to be announced on Friday, this is the view of Ishāq bin Ibrāhīm.

**تخریج:** متفق عليه، وأخرجه البخاري، كتاب في اللقطة، باب: إذا جاء صاحب اللقطة بعد ستة ردها عليه لأنها وديعة عنده، ح: ٢٤٣٦ ومسلم، ح: ١٧٢٢ عن قتيبة به \* وفي الباب عن أبي ابن كعب [يأتي: ١٣٧٤] وعبدالله بن عمر [صوابه، عبدالله بن عمرو، تقدم: ١٢٨٩ مختصراً وأبو داود، ح: ١٧١٠-١٧١٣] والجارود بن المعلی [أحمد: ٨٠/٥ والدارمي، ح: ٢٦٠٤، ٢٦٠٥] وعياض بن حمار [أبو داود، ح: ١٧٠٩] وجريز بن عبدالله [أبو داود، ح: ١٧٢٠].

### Comments:

If the lost property is able to be secured or preserved, like an animal or handsome amount of money, and there is ample chance of its spoilage or misuse if not picked up or taken in custody, in such circumstances, it can be picked up and kept in custody. Sincere efforts should be made to find the owner, and it should be announced for the period of one full year. After the search of one year, the money can be used by the person who found it, no matter whether he is rich or poor. If later on the owner of the property is found, it must be returned to him.

مَبَاسِيرِ أَصْحَابِ رَسُولِ اللَّهِ ﷺ، فَأَمَرَهُ رَسُولُ اللَّهِ ﷺ أَنْ يُعْرِفَهَا، فَلَمْ يَجِدْ مَنْ يُعْرِفُهَا، فَأَمَرَهُ النَّبِيُّ ﷺ أَنْ يَأْكُلَهَا، فَلَوْ كَانَتْ اللَّقْطَةُ لَمْ تَحِلَّ إِلَّا لِمَنْ تَحِلُّ لَهُ الصَّدَقَةُ، لَمْ تَحِلَّ لِعَلِيِّ بْنِ أَبِي طَالِبٍ، لِأَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ أَصَابَ دِينَارًا عَلَى عَهْدِ النَّبِيِّ ﷺ فَعَرَفَهُ فَلَمْ يَجِدْ مَنْ يَعْرِفُهُ، فَأَمَرَهُ النَّبِيُّ ﷺ بِأَكْلِهِ، وَكَانَ عَلِيٌّ لَا تَحِلُّ لَهُ الصَّدَقَةُ.

وَقَدْ رَخَّصَ بَعْضُ أَهْلِ الْعِلْمِ، إِذَا كَانَتْ اللَّقْطَةُ بَسِيرَةً، أَنْ يَنْتَفِعَ بِهَا وَلَا يُعْرِفَهَا. وَقَالَ بَعْضُهُمْ: إِذَا كَانَ دُونَ دِينَارٍ يُعْرِفُهَا قَدَرِ جُمُعَةٍ، وَهُوَ قَوْلُ إِسْحَاقَ بْنِ إِبْرَاهِيمَ.

**1373.** Zaid bin Khālid Al-Juhnī narrated that the Messenger of Allāh ﷺ was asked about the lost item. He said: “Make a public announcement about it for one year, if it is claimed then give it to him. Otherwise remember its sack, string, and its count. Then use it, and if its owner comes, give it to him.” (*Ṣaḥīḥ*)

[Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ Gharīb* from this route. Aḥmad bin Ḥanbal said: “The most correct thing on this topic is this *Ḥadīth*.”

**Comments:**

In the view of Imām Mālik, the amount can be returned after the recognition and identification of the owner. According to Imām Abū Ḥanifah, if the owner appears genuine, the amount should be returned to him and there is no need to ask for his identification, but if there is a need then it may be requested. Without any genuine reason having doubts is not correct. (*Faṭḥ Al-Bārī* v. 5. p 98.)

**1374.** Suwaid bin Ghafalah said: “I went out with Zaid bin Ṣūḥān and Salmān bin Rabī‘ah, and found a whip.” In his narration Ibn Numair (one of the narrators) said: “I found a lost whip and took it. They said: ‘Leave it.’ I said: ‘I will not leave it to be eaten by the predators. I will take it to make use of it.’ So I met up with Ubayy bin Ka‘b and asked him about that. So he narrated the *Ḥadīth*, he said: ‘That is fine. I found a sack containing one hundred Dīnār during the lifetime of the Messenger of Allāh ﷺ’ He said: ‘So I brought it to him. He said to me: “Make a public announcement about it for one year.” So I

۱۳۷۳ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو بَكْرِ الْحَنْفِيُّ: حَدَّثَنَا الصَّحَّاحُ بْنُ عُثْمَانَ: حَدَّثَنِي سَالِمُ أَبُو النَّضْرِ عَنْ بُسْرِ بْنِ سَعِيدٍ، عَنْ زَيْدِ بْنِ خَالِدِ الْجُهَنِيِّ: أَنَّ رَسُولَ اللَّهِ ﷺ سُئِلَ عَنِ اللَّقْطَةِ فَقَالَ: «عَرَفْهَا سَنَةً، فَإِنْ اعْتَرَفَتْ، فَأَدَّهَا، وَإِلَّا فَأَعْرِفْ عِفَاصَهَا وَوِكَاءَهَا وَعَدَدَهَا، ثُمَّ كُلِّهَا فَإِنْ جَاءَ صَاحِبُهَا فَأَدَّهَا».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ غَرِيبٌ مِنْ هَذَا الْوَجْهِ. وَقَالَ أَحْمَدُ بْنُ حَنْبَلٍ: أَصَحُّ شَيْءٍ فِي هَذَا الْبَابِ هَذَا الْحَدِيثُ. تَخْرِيجٌ: مُتَّفَقٌ عَلَيْهِ، انظُرِ الْحَدِيثَ السَّابِقَ.

۱۳۷۴ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ وَيَزِيدُ بْنُ هَارُونَ عَنْ سُفْيَانَ، عَنْ سَلَمَةَ بْنِ كُهَيْلٍ، عَنْ سُؤَيْدِ بْنِ غَفَلَةَ، قَالَ: خَرَجْتُ مَعَ زَيْدِ بْنِ صُوحَانَ وَسَلْمَانَ بْنِ رَبِيعَةَ، فَوَجَدْتُ سَوْطًا، قَالَ ابْنُ نُمَيْرٍ فِي حَدِيثِهِ: فَالْتَقَطْتُ سَوْطًا فَأَخَذْتُهُ. قَالَ: دَعُهُ. فَقُلْتُ: لَا أَدْعُهُ تَأْكُلُهُ السَّبَاعُ، لِأَخَذْتُهُ فَلَأَسْتَمِيعَنَّ بِهِ، فَقَدِمْتُ عَلَى أَبِي بِنِ كَعْبٍ، فَسَأَلْتُهُ عَنْ ذَلِكَ، وَحَدَّثْتُهُ الْحَدِيثَ. فَقَالَ: أَحْسَنْتَ، وَجَدْتُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ صُرَّةً فِيهَا مِائَةٌ دِينَارٍ، قَالَ، فَأَتَيْتُهُ بِهَا. فَقَالَ لِي: «عَرَفْهَا حَوْلًا» فَعَرَفْتُهَا حَوْلًا

announced it for a year but did not find anyone to claim it. Then I brought it to him. He said to me: "Make a public announcement about it for another year." So I announced it for a year but did not find anyone to claim it. Then I brought it to him. He said: "Make a public announcement about it for another year." And he said: "Remember its amount, its container and its string. If someone comes seeking it and informs you of its amount and its string, then give it to him, otherwise use it." (*Sahih*)

[He said:] This *Hadith* is *Hasan Sahih*.

تخریج: متفق علیه، وأخرجه مسلم، اللقطة، باب معرفة العفاص والوكاء وحكم ضالة الغنم والإبل، ح: ١٧٢٣ من حديث عبدالله بن نمير والبخاري، ح: ٢٤٣٧ من حديث سلمة بن كهيل به.

### Comments:

Announcement of lost and found items is necessary up to one year. If the amount is reasonably valuable, then just for precautionary measures, the announcement to find the owner can be extended for more than one year.

### Chapter 36. What Has Been Related About A *Waqf*

1375. Ismā'il bin Ibrāhīm narrated from Ibn 'Awn, from Nāfi' that Ibn 'Umar said: "Umar got some land from *Khaibar* and said: 'O Messenger of Allāh! I got some wealth from *Khaibar* and I never ever had any wealth as plentiful as it, so what do you order me (to do with it)?" He said: 'If you wish, make it a grant and give charity from it.' So 'Umar gave it in charity: That is not be sold entirely,

فَمَا أَجِدُ مَنْ يَعْرِفُهَا، ثُمَّ أَتَيْتُهَا بِهَا. فَقَالَ: «عَرَّفْهَا حَوْلًا آخَرَ» فَعَرَّفْتُهَا حَوْلًا ثُمَّ أَتَيْتُهَا [بِهَا]. فَقَالَ: «عَرَّفْهَا حَوْلًا [آخَرَ]» وَقَالَ: «أُخْصِ عِدَّتَهَا وَوَعَاءَهَا وَوَكَاءَهَا، فَإِنْ جَاءَ طَالِبُهَا فَأَخْبِرْكَ بِعِدَّتِهَا وَوَعَائِهَا وَوَكَائِهَا فَادْفَعْهَا إِلَيْهِ، وَإِلَّا فَاسْتَمْتِعْ بِهَا» [قَالَ:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

(المعجم ٣٦) - بَابُ مَا جَاءَ فِي الْوَقْفِ

(التحفة ٣٦)

١٣٧٥ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ إِبْرَاهِيمَ عَنِ ابْنِ عَوْنٍ، عَنِ ابْنِ عُمَرَ، قَالَ: أَصَابَ عُمَرُ أَرْضًا بِخَيْبَرَ فَقَالَ: يَا رَسُولَ اللَّهِ! أَصَبْتُ مَالًا بِخَيْبَرَ، لَمْ أَصِبْ مَالًا قَطُّ أَنفَسَ عِنْدِي مِنْهُ. فَمَا تَأْمُرُنِي؟ قَالَ: «إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا» فَتَصَدَّقَ بِهَا عُمَرُ: أَنَّهَا لَا يُبَاعُ أَصْلُهَا وَلَا يُوهَبُ وَلَا يُورَثُ.

nor given away, nor inherited, to be used to produce charity for the needy, those who are near it, for freeing slaves, for the cause of Allāh, the wayfarer, the guest, and that there is no harm on its custodian consuming what is customary from it, or eating from its charity, without trying to amass wealth from it.” (*Ṣaḥīḥ*)

He (Ibn ‘Awn) said: “I mentioned it to Muḥammad bin Sīrīn and he said: “Not to amass wealth.”

Ibn [‘Awn] said: “Another man narrated it to me and he said that he read it on a piece of a tanned skin: ‘Not to amass wealth.’”

Ismā‘īl said: And I read it with Ibn ‘Ubaidullāh bin ‘Umar. It said in it: ‘Not to amass wealth.’”

[Abū ‘Eīsā said:] This *Hadīth* is *Ḥasan Ṣaḥīḥ*. This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others. We do not know of any disagreement among the earlier ones among them over the allowance of granting lands or other things for *Waqf*.

تخریج: متفق علیه، وأخرجه البخاري، الشروط، باب الشروط في الوقف، ح: ٢٧٣٧ ومسلم، ح: ١٦٣٢ من حديث ابن عون به.

### Comments:

‘*Waqf*’ means to stop, and in the *Shari’ah* it means the property, a house or garden, given in charity in the name of Allāh. If the property given in charity is excluded from personal property, it is called an endowment of a trust.

**1376.** Abū Hurairah, may Allāh be pleased with him, narrated that the Messenger of Allāh ﷺ said: “When a person dies, his deeds are cut off except for three: Continuing charity, knowledge that others

تَصَدَّقَ بِهَا فِي الْفُقَرَاءِ وَالْقُرْبَىٰ وَفِي الرَّقَابِ وَفِي سَبِيلِ اللَّهِ، وَابْنِ السَّبِيلِ، وَالضَّيْفِ، لَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ، أَوْ يُطْعِمَ صَدِيقًا، غَيْرَ مُتَمَوِّلٍ فِيهِ. قَالَ: فَذَكَرْتُهُ لِمُحَمَّدِ بْنِ سِيرِينَ فَقَالَ: غَيْرَ مُتَأْتِلٍ مَالًا.

قَالَ ابْنُ [عَوْنٍ]: فَحَدَّثَنِي بِهِ رَجُلٌ آخَرُ أَنَّهُ قَرَأَهَا فِي قِطْعَةِ أَيْدِيمَ أَحْمَرَ غَيْرَ مُتَأْتِلٍ مَالًا.

قَالَ إِسْمَاعِيلُ: وَأَنَا قَرَأْتُهَا عِنْدَ ابْنِ عَبِيدِ اللَّهِ بْنِ عَمْرٍ، فَكَانَ فِيهِ غَيْرَ مُتَأْتِلٍ مَالًا.

[قَالَ أَبُو عَيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَىٰ هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ. لَا نَعْلَمُ بَيْنَ الْمُتَقَدِّمِينَ مِنْهُمْ فِي ذَلِكَ اخْتِلَافًا فِي إِجَارَةِ وَقْفِ الْأَرْضِيِّينَ وَغَيْرِ ذَلِكَ.

١٣٧٦ - حَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ جَعْفَرٍ عَنِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِذَا مَاتَ الْإِنْسَانُ



benefited from, and a righteous son who supplicates for him.” (*Ṣaḥīḥ*)

[Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*.

انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثٍ: صَدَقَةٌ جَارِيَةٌ.

وَعِلْمٌ يُتَّفَعُ بِهِ. وَوَلَدٌ صَالِحٌ يَدْعُو لَهُ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ

صَحِيحٌ.

تخریج: وأخرجه مسلم، الوصية، باب ما يلحق الإنسان من الثواب بعد وفاته، ح: ١٦٣١ عن علي بن حجر به.

### Comments:

Continuing charity is charity the benefit and reward of which continues even after the death of the person. For example, if someone gives property in charity to please Allāh, or does some other deed of charity, like construction of a mosque, or establishes a school, or digs a well for the use of people, it is all continuing charity. Knowledge means preaching, teaching or writing of books for the guidance of people etc., are all deeds of continuing charity.

### Chapter 37. What Has Been Related About Injuries Caused By Domestic Animals

1377. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: “The injuries caused by the animal are without liability,<sup>[1]</sup> and wells are without liability, and mines are without liability, and the *Khumus* is due on *Rikāz*.”<sup>[2]</sup> (*Ṣaḥīḥ*)

(Another chain) from Abū Hurairah, from the Prophet ﷺ with similar meaning.

[He said:] There are narrations on this topic from Jābir, ‘Amr bin ‘Awf Al-Muzanī, and ‘Ubādah bin Aṣ-Ṣāmiṭ.

[Abū ‘Eisā said:] The *Ḥadīth* of Abū Hurairah is a *Ḥasan Ṣaḥīḥ Ḥadīth*.

Al-Anṣārī narrated to us: Ma’n narrated to us, he said: “Mālik bin

(المعجم ٣٧) - بَابُ مَا جَاءَ فِي

الْعَجْمَاءِ جُرْحُهَا جُبَارٌ (التحفة ٣٧)

١٣٧٧ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: حَدَّثَنَا

سُفْيَانُ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ،

عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ:

«الْعَجْمَاءُ جُرْحُهَا جُبَارٌ: وَالْبُئْرُ جُبَارٌ،

وَالْمَعْدِنُ جُبَارٌ، وَفِي الرَّكَازِ الْخُمُسُ».

حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنِ ابْنِ شِهَابٍ

عَنْ سَعِيدِ بْنِ الْمُسَيْبِ وَأَبِي سَلَمَةَ، عَنْ أَبِي

هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ، نَحْوَهُ.

[قَالَ:] وَفِي الْبَابِ عَنْ جَابِرٍ، وَعَمْرٍو بْنِ

عَوْفِ الْمُرَزِيِّ، وَعُبَادَةَ بْنِ الصَّامِتِ.

[قَالَ أَبُو عِيسَى:] حَدِيثُ أَبِي هُرَيْرَةَ

حَدِيثٌ حَسَنٌ صَحِيحٌ.

حَدَّثَنَا الْأَنْصَارِيُّ: حَدَّثَنَا مَعْنٌ قَالَ: قَالَ

[1] Meaning the owner of these is not liable for damages others suffer from them.

[2] Buried treasure. See no. 642.

Anas said: ‘The explanation of the *Hadīth* of the Prophet ﷺ: “The injuries caused by the animals are without liability” it is said: “It is impunity that there is no blood money for.”

[Abū ‘Eisā said:] As for the meaning of his saying: “The injuries caused by the animal are without liability” some of the people of knowledge explained it saying that *Al-‘Ajma’* is the animal that has wandered away from its owner. So whatever it has damaged in its wandering, then it is no crime upon its owner. And: “mines” it is said that when a man excavates a mine and someone falls into it then there is no crime upon him. The same with a well, if a man digs a well by the road and someone falls into it then there is no crime upon the owner. And: “the *Khumus* is due on buried treasure” *Ar-Rikāz* (buried treasure) is something discovered that was buried by the people of *Jāhiliyyah*. Whoever finds such buried treasure, he pays one fifth of it to the *Sulṭān*, whatever remains belongs to him.

مَالِكُ بْنُ أَنَسٍ: وَتَفْسِيرُ حَدِيثِ النَّبِيِّ ﷺ: «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ» يَقُولُ: هَدْرٌ لِأَدِيَّةٍ فِيهِ.

[قَالَ أَبُو عِيْسَى:] وَمَعْنَى قَوْلِهِ: «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ» فَسَّرَ [ذَلِكَ] بَعْضُ أَهْلِ الْعِلْمِ قَالُوا: الْعَجْمَاءُ الدَّائِئَةُ الْمُتْفِلِتَةُ مِنْ صَاحِبِهَا. فَمَا أَصَابَتْ فِي انْفِلَاتِهَا فَلَا غَرْمَ عَلَى صَاحِبِهَا. «وَالْمَعْدِنُ جُبَارٌ» يَقُولُ: إِذَا احْتَفَرَ الرَّجُلُ مَعْدِنًا فَوَقَعَ فِيهِ إِنْسَانٌ فَلَا غَرْمَ عَلَيْهِ، وَكَذَلِكَ الْبُئْرُ إِذَا احْتَفَرَهَا الرَّجُلُ لِلسَّبِيلِ، فَوَقَعَ فِيهَا إِنْسَانٌ فَلَا غَرْمَ عَلَى صَاحِبِهَا. «وَفِي الرَّكَازِ الْخُمْسُ» وَالرَّكَازُ: مَا وَجَدَ مِنْ دَفْنٍ أَهْلِ الْجَاهِلِيَّةِ، فَمَنْ وَجَدَ رِكَازًا أَدَّى مِنْهُ الْخُمْسَ إِلَى السُّلْطَانِ. وَمَا بَقِيَ فَهُوَ لَهُ.

تخريج: متفق عليه، وأخرجه مسلم، الحدود، باب جرح العجماء والمعدن والبئر جبار، ح: ١٧١٠ من حديث سفيان بن عيينة والبخاري، ح: ١٤٩٩ من حديث الزهري به \* وفي الباب عن جابر [أحمد: ٣/ ٣٥٥، ٣٥٣] وعمرو المزني [ابن ماجه، ح: ٢٦٧٤] وعبادة بن الصامت [ابن ماجه، ح: ٢٦٧٥] \* ورواه مسلم، الحدود، باب جرح العجماء والمعدن والبئر جبار، ح: ٤٥/١٧١٠ عن قتيبة، والبخاري، ح: ٦٩١٢ من حديث الليث بن سعد به، وحديث مالك في الموطأ: ٨٦٩/٢ وهو مختصر.

### Comments:

If someone gets hurt by an animal or by falling into a well, there is no compensation for it from the owner of the animal and well.

**Chapter 38. What Has Been Mentioned About Reviving Barren Land**

(المعجم ٣٨) - بَابُ مَا ذُكِرَ فِي إِحْيَاءِ  
أَرْضِ الْمَوَاتِ (التحفة ٣٨)

1378. Sa'eed bin Zaid narrated that the Prophet ﷺ said: "Whoever revives a barren land then it is for him, and there is no right for the unjust root." (*Ṣaḥīḥ*)

[Abū 'Eisā said:] This *Ḥadīth* is *Ḥasan Gharīb*. Some of them reported it from Hishām from 'Urwah, from his father, from the Prophet ﷺ in *Mursal* form.

This [*Ḥadīth*] is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others. It is the view of Aḥmad and Ishāq. They said he may revive the barren land without the permission of the *Sulṭān*. Some of them said he is not to revive it without the permission of the *Sulṭān*. But the first view is more correct.

[He said:] There are narrations on this topic from Jābir, 'Amr bin 'Awf Al-Muzanī's great-grandfather, and Samurah.

Abū Mūsā Muḥammad bin Al-Muthanna narrated to us, he said: "I asked Abul-Walīd Aṭ-Ṭayālīsī about his saying: 'and there is no right for unjust root' he said: 'The unjust root: The usurper who takes what is not his.' I said: 'So he is a man who farms a land that is not his?' He said: 'That is it.'"

١٣٧٨ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الْوَهَّابِ [الثَّقَفِيُّ]: حَدَّثَنَا أَيُّوبُ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ سَعِيدِ بْنِ زَيْدٍ عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ أَحْيَى أَرْضًا مَيِّتَةً فَهِيَ لَهُ، وَلَيْسَ لِعِرْقِ ظَالِمٍ حَقٌّ».  
[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ.

وَقَدْ رَوَاهُ بَعْضُهُمْ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنِ النَّبِيِّ ﷺ، مُرْسَلًا. وَالْعَمَلُ عَلَى هَذَا [الْحَدِيثِ] عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ وَغَيْرِهِمْ وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ. قَالُوا: لَهُ أَنْ يُحْيِيَ الْأَرْضَ الْمَوَاتِ بِغَيْرِ إِذْنِ السُّلْطَانِ. وَ[قَدْ] قَالَ بَعْضُهُمْ: لَيْسَ لَهُ أَنْ يُحْيِيَهَا إِلَّا بِإِذْنِ السُّلْطَانِ وَالْقَوْلُ الْأَوَّلُ أَصَحُّ.

[قَالَ:] وَفِي الْبَابِ عَنْ جَابِرٍ وَعَمْرٍو بْنِ عَوْفِ الْمُزَنِيِّ جَدِّ كَثِيرٍ وَسَمُرَةَ.  
حَدَّثَنَا أَبُو مُوسَى مُحَمَّدُ بْنُ الْمُثَنَّى قَالَ: سَأَلْتُ أَبَا الْوَلِيدِ الطَّيَالِسِيَّ عَنْ قَوْلِهِ: «وَلَيْسَ لِعِرْقِ ظَالِمٍ حَقٌّ» فَقَالَ: الْعِرْقُ الظَّالِمُ: الْعَاصِبُ الَّذِي يَأْخُذُ مَا لَيْسَ لَهُ. قُلْتُ: هُوَ الرَّجُلُ الَّذِي يَغْرِسُ فِي أَرْضٍ غَيْرِهِ؟ قَالَ: هُوَ ذَاكَ.

تخریج: [صحیح] وأخرجه أبو داود، الخراج، باب: في إحياء الموات، ح: ٣٠٧٣ من حديث عبدالوهاب به وإسناده حسن وقواه الحافظ في الفتح \* وفي الباب عن جابر [يأتي: ١٣٧٩]

وعمر بن عوف المزني [ابن عدي في الكامل: ٦/٢٠٧٩] وسمرة [أبو داود، ح: ٣٠٧٧ وأحمد: ١٢/٥، ٢١].

**1379.** Jābir bin ‘Abdullāh narrated that the Prophet ﷺ said: “Whoever revives a barren land, then it is for him.” (*Ṣaḥīh*) [Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīh*.

١٣٧٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الْوَهَّابِ الثَّقَفِيُّ عَنْ أَيُّوبَ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ وَهَبِ بْنِ كَيْسَانَ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ أَحْيَى أَرْضًا مَيِّتَةً فَهِيَ لَهُ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

**تخریج:** [إسناده صحيح] وأخرجه النسائي في الكبرى، ح: ٥٧٥٧ من حديث عبد الوهاب الثقفي به.

**Comments:**

Most of the scholars are of the view that if a cultivator cultivates barren and uncultivated land, which belongs to no one, it belongs to him. In the view of Imām Mālik, this land should be away from any habitation where it is not needed for common use of the community.

**Chapter 39. What Has Been Related About Land Reserves**

(المعجم ٣٩) - بَابُ مَا جَاءَ فِي الْقَطَائِعِ (التحفة ٣٩)

**1380.** *Shumair* narrated that *Abyaḍ bin Ḥammāl* visited the Messenger of Allāh ﷺ who asked him to set aside a reserve of salt (a mine). So he reserved it for him. As he was turning away, a man in the gathering said: “Do you know what you reserved for him? You merely reserved stagnant water for him.” He (*Shumair*) said: “So he left him.” He (*Shumair*) said: “So he asked him (the Prophet ﷺ) about making a private pasture of *Arāk* (a type of tree).” He said: “As long as it is not harmed by the hooves of the camels.” (*Ḥasan*)

١٣٨٠ - [قَالَ:] قُلْتُ لِقُتَيْبَةَ بْنِ سَعِيدٍ: حَدَّثَكُمْ مُحَمَّدُ بْنُ يَحْيَى بْنِ قَيْسِ الْمَأْرِبِيِّ، قَالَ: أَخْبَرَنِي أَبِي عَنْ ثُمَامَةَ بْنِ شَرَّاحِيلَ، عَنْ سَمِيِّ بْنِ قَيْسٍ، عَنْ شُمَيْرٍ، عَنْ أَبِيضِ بْنِ حَمَّالٍ أَنَّهُ وَقَفَ إِلَى رَسُولِ اللَّهِ ﷺ، فَاسْتَقَطَعَهُ الْمِلْحَ، فَطَوَّقَ لَهُ. فَلَمَّا أَنْ وُلِيَ قَالَ رَجُلٌ مِنَ الْمَجْلِسِ: أَتَدْرِي مَا قَطَعْتَ لَهُ؟ إِنَّمَا قَطَعْتَ لَهُ الْمَاءَ الْعِدَّ. قَالَ: فَاتَّرَعَهُ مِنْهُ. قَالَ، وَسَأَلَهُ عَمَّا يُحْمَى مِنَ الْأَرَاكِ؟ قَالَ: «مَا لَمْ تَنْلُهُ خِيفَ الْإِبِلِ» فَأَقْرَبَ بِهِ قُتَيْبَةُ، وَقَالَ: نَعَمْ.

So I (*At-Tirmidhī*) recited that before *Qutaibah* and he said: “Yes.”

حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى بْنِ أَبِي عُمَرَ: حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى بْنِ قَيْسِ الْمَأْرِبِيِّ،

(Another chain) with similar meaning.

[He said:] There are narrations on this topic from Wā'il and Asmā' bint Abī Bakr.

[Abū 'Eisā said:] The *Hadīth* of Abyaḍ bin Ḥammāl is a *Ḥasan Gharīb Hadīth*. This is acted upon according to the people of knowledge among the Companions of the Prophet ﷺ and others regarding reserved land. They thought that it was allowed for the *Imām* (ruler) to reserve land for whomever he saw it fit.

[بِهَذَا الْإِسْنَادِ] نَحْوُهُ.

[الْمَأْرِبُ: نَاجِيَةٌ مِنَ الْيَمَنِ].

[قَالَ:] وَفِي الْبَابِ عَنْ وَاِئِلٍ وَأَسْمَاءِ ابْنَةِ

أَبِي بَكْرٍ.

[قَالَ أَبُو عِيْسَى:] حَدِيثُ أَبِيصَرَ بْنِ

حَمَّالٍ حَدِيثٌ حَسَنٌ غَرِيبٌ. وَالْعَمَلُ عَلَى

هَذَا عِنْدَ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ

وغيرِهِمْ، فِي الْقَطَائِعِ. يَرَوْنَ جَائِزًا أَنْ يُقْطَعَ

الْإِمَامُ لِمَنْ رَأَى ذَلِكَ.

**تخریج:** [حسن] وأخرجه أبو داود، الخراج، باب: في إقطاع الأرضين، ح: ٣٠٦٤ عن قتيبة به وصححه ابن حبان، ح: ١١٤٠، ١٦٤٢ \* وفي الباب عن وائل [يأتي: ١٣٨١] وأسماء بنت أبي بكر [أبو داود، ح: ٣٠٦٩].

### Comments:

Common things which are in common use of the community, and their availability is also abundant, such things like water, grass, waste land in use of people, should not be given as a grant to one person. If such things are given as a grant, it will create a problem for the people.

**1381.** 'Alqamah bin Wā'il narrated from his father that the Prophet ﷺ set aside a land reserve for him in Ḥaḍramawt. (One of the narrators added): "And he sent Mu'āwiyah with him to reserve it for him." (*Ṣaḥīh*)

[Abū 'Eisā said:] This *Hadīth* is *Ḥasan Ṣaḥīh*.

١٣٨١ - حَدَّثَنَا مُحَمَّدُ بْنُ غَيْلَانَ: حَدَّثَنَا

أَبُو دَاوُدَ: أَخْبَرَنَا شُعْبَةُ عَنْ سِمَاكِ قَالَ:

سَمِعْتُ عَلْقَمَةَ بْنَ وَاِئِلٍ يُحَدِّثُ عَنْ أَبِيهِ: أَنَّ

النَّبِيَّ ﷺ أَقْطَعَهُ أَرْضًا بِحَضْرَمَوْتٍ. قَالَ

مُحَمَّدُ: حَدَّثَنَا النَّضْرُ عَنْ شُعْبَةَ، وَزَادَ فِيهِ:

وَبَعَثَ مَعَهُ مُعَاوِيَةَ لِيُقْطِعَهَا إِيَّاهُ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

**تخریج:** [إسناده صحيح] وأخرجه أبو داود، السجستاني، الخراج، باب: في إقطاع الأرضين، ح: ٣٠٥٨ من حديث شعبة به وهو في مسند الطيالسي، ح: ١٠١٧.

**Comments:**

Real purpose of granting an estate to cultivators is to make the land useful for cultivation, and to improve the overall economic condition of the local community and country.

**Chapter 40. What Has Been Related About The Virtue Of Planting**

1382. Anas narrated that the Prophet ﷺ said: “No Muslim plants a plant or sows a crop, then a person, or a bird, or an animal eats from it, except that it will be charity for him.” (*Ṣaḥīḥ*)

[He said:] There are narrations on this topic from Abū Ayyūb, Umm Mubash-shir, Jābir, and Zaid bin Khālid.

[Abū ‘Eīsā said:] The *Ḥadīth* of Anas is a *Ḥasan Ṣaḥīḥ Ḥadīth*.

(المعجم ٤٠) - بَابُ مَا جَاءَ فِي فَضْلِ  
الْغَرْسِ (التحفة ٤٠)

١٣٨٢ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا أَبُو عَوَانَةَ  
عَنْ قَتَادَةَ، عَنْ أَنَسٍ عَنِ النَّبِيِّ ﷺ قَالَ: «مَا  
مِنْ مُسْلِمٍ يَغْرِسُ غَرْسًا، [أَوْ يَزْرَعُ زَرْعًا،  
فَيَأْكُلُ مِنْهُ إِنْسَانٌ، أَوْ طَيْرٌ، أَوْ بَهِيمَةٌ إِلَّا  
كَانَتْ لَهُ صَدَقَةٌ».

[قَالَ:] وَفِي الْبَابِ عَنْ أَبِي أَيُّوبَ وَأُمِّ  
مُبَشَّرٍ وَجَابِرٍ وَزَيْدِ بْنِ خَالِدٍ.  
[قَالَ أَبُو عَيْسَى:] حَدِيثُ أَنَسٍ حَدِيثٌ  
حَسَنٌ صَحِيحٌ.

**تخریج:** متفق عليه، وأخرجه البخاري، الحرث والمزارعة، باب فضل الزرع والغرس إذا  
أكل منه ... الخ، ح: ٢٣٢٠ ومسلم، ح: ١٥٥٣ عن قتيبة به \* وفي الباب عن أبي أيوب  
[أحمد: ٤١٥/٥] وأم مبشر [مسلم: ١١/١٥٥٢] وجابر [مسلم، ح: ١٥٥٢] وزيد بن خالد [لم  
أجده].

**Comments:**

Cultivation of land and planting of trees provide multiple benefits to the society. The environment of the area is improved, fruits, food, grains and vegetables become easily available to the community, jobs are increased and commercial activities take place, and life becomes easier and more comfortable. Therefore, if a Muslim cultivates the land with the sincere intention of bringing benefit to the society, he gets reward from Allāh.

**Chapter 41. What Has Been Related About Agriculture**

1383. Ibn ‘Umar narrated: “The Prophet ﷺ made a deal with the people of Khaibar for half of what was produced from it, whether fruits or crops.” (*Ṣaḥīḥ*)

(المعجم ٤١) - بَابُ مَا جَاءَ فِي  
الْمُرَارَعَةِ (التحفة ٤١)

١٣٨٣ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ:  
حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ،  
عَنِ ابْنِ عُمَرَ أَنَّ النَّبِيَّ ﷺ عَامَلَ  
أَهْلَ خَيْبَرَ بِشَطْرِ مَا يَخْرُجُ مِنْهَا مِنْ تَمْرٍ أَوْ

There are narrations on this topic from Anas, Ibn ‘Abbās, Zaid bin Thābit, and Jābir.

[Abū ‘Eīsā said:] This *Hadīth* is *Hasan Sahīh*.

This is acted upon according to some of the people of knowledge among the Companions of the Prophet ﷺ and others. They saw no harm in share-cropping for half, a third, or a quarter.

Some of them preferred that the owner of the land provide the seeds. This is the view of Aḥmad and Ishāq. Some of the people of knowledge disliked share-cropping for a third and a quarter, and they saw no harm in *Musāqāh*<sup>[1]</sup> with date-palms for a third or a quarter. This is the view of Mālik bin Anas and Ash-Shāfi‘ī. Some of them did not think that any share-cropping was correct, except for renting out the land for gold and silver.

رَزَعُ. وَفِي الْبَابِ عَنْ أَنَسٍ وَابْنِ عَبَّاسٍ وَزَيْدِ ابْنِ ثَابِتٍ وَجَابِرٍ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ ﷺ وَغَيْرِهِمْ. لَمْ يَرَوْا بِالْمُزَارَعَةِ بَأْسًا عَلَى التُّصْفِ وَالثَّلْثِ وَالرُّبْعِ.

وَاخْتَارَ بَعْضُهُمْ أَنْ يَكُونَ الْبَدْرُ مِنْ رَبِّ الْأَرْضِ. وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ. وَكَرِهَ بَعْضُ أَهْلِ الْعِلْمِ الْمُزَارَعَةَ بِالثَّلْثِ وَالرُّبْعِ. وَلَمْ يَرَوْا بِمُسَاقَاةِ التَّخِيلِ بِالثَّلْثِ وَالرُّبْعِ بَأْسًا. وَهُوَ قَوْلُ مَالِكِ بْنِ أَنَسٍ وَالشَّافِعِيِّ. وَلَمْ يَرَ بَعْضُهُمْ أَنْ يَصِحَّ شَيْءٌ مِنَ الْمُزَارَعَةِ، إِلَّا أَنْ يَسْتَأْجَرَ الْأَرْضَ بِالذَّهَبِ وَالْفِضَّةِ.

تخريج: متفق عليه، وأخرجه البخاري، الحرت والمزارعة، باب: إذا لم يشترط السنين في المزارعة، ح: ٢٣٢٩، ومسلم، ح: ١٥٥١ من حديث يحيى بن سعيد القطان به \* وفي الباب عن أنس [ابن ماجه، ح: ٢٤٦٩] وابن عباس [ابن ماجه، ح: ٢٤٦٨] وزيد بن ثابت [أبو داود، ح: ٣٤٠٧] وجابر [أبو داود، ح: ٣٤١٤، ٣٤١٥].

### Comments:

In Islam, there is no restriction or limit on personal property. All the *A‘immah* agree on this point. Giving the land or garden on lease is lawful, provided no party suffers unilateral loss. While giving the land on lease, selecting a particular piece of land by the landlord, or fixing the quantity of the produce beforehand, is not lawful. All the scholars and *A‘immah* agree that land or a garden can be leased with the aforesaid restrictions.

[1] *Musāqāh* is an agreement for someone to water and tend to date-palms for the owner, in exchange for a portion of the produce.

## Chapter 42. About Share-Cropping

1384. Rāfi‘ bin Khadij narrated: “The Messenger of Allāh ﷺ forbade us from a matter that was of benefit to us. When one of us had some land and we would let someone use it for a portion of its produce or some Dirham. He said: ‘When one of you has some land then let him grant it to his brother, or let him farm it.’” (Da‘if)

تخريج: [إسناده ضعيف] أبو بكر بن عياش ضعيف وأخرجه النسائي: ٣٥/٧، ح: ٣٨٩٩ (المزارعة)، ذكر الله الأحاديث المختلفة في النهي عن كراء الأرض بالثلث والربع ... (الخ من حديث أبي حصين به بلفظ آخر وسنده صحيح/ ومجاهد سمعه من أسيد، انظر النسائي: ٣٨٩٥ وغيره ورواه مسلم، ح: ١٥٤٧ من حديث رافع به.

## Comments:

The main purpose of this narration is the same which has been explained in the preceding narration. ‘Minḥah’ means to lend the land for a limited period. They used to lease the land for a certain amount of money. The Prophet ﷺ suggested lending the land, without taking money for a certain period to Muslim brothers. This is only a moral suggestion and not a command of law.

1385. Ibn ‘Abbās narrated: “The Messenger of Allāh ﷺ did not prohibit share-cropping. But he ordered that they be helpful with each other.” (Ṣaḥīḥ)

[Abū ‘Eisā said:] This *Hadīth* is *Ḥasan Ṣaḥīḥ*. The *Hadīth* of Rāfi‘ contains confusion (*Iqtirāb*). This *Hadīth* was reported from Rāfi‘ bin Khadij from his uncles, and it has been reported from him, from Zuhair bin Rāfi‘ who is one of his uncles. And this *Hadīth* has been reported from him with conflicting narrations. There are narrations on this topic from Zaid bin Thābit and

(المعجم ٤٢) - بَابُ: [مِنَ الْمَزَارَعَةِ]

(التحفة ٤٢)

١٣٨٤ - حَدَّثَنَا هَنَّادٌ: حَدَّثَنَا أَبُو بَكْرِ بْنُ عَيَّاشٍ عَنْ أَبِي حُصَيْنٍ، عَنْ مُجَاهِدٍ، عَنْ رَافِعِ بْنِ خَدِيجٍ، قَالَ: نَهَانَا رَسُولُ اللَّهِ ﷺ عَنْ أَمْرٍ كَانَ لَنَا نَافِعًا، إِذَا كَانَتْ لِأَحَدِنَا أَرْضٌ أَنْ يُعْطِيَهَا بِبَعْضِ خَرَاجِهَا أَوْ بِدَرَاهِمٍ. وَقَالَ: «إِذَا كَانَتْ لِأَحَدِكُمْ أَرْضٌ فَلْيَمْنَحْهَا أَخَاهُ أَوْ لِيَزْرَعْهَا».

١٣٨٥ - حَدَّثَنَا مُحَمَّدُ بْنُ عَيَّالَانَ: حَدَّثَنَا الْفَضْلُ بْنُ مُوسَى الشَّيْبَانِيُّ: حَدَّثَنَا شَرِيكٌ عَنْ شُعْبَةَ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ طَاوُسٍ، عَنِ ابْنِ عَبَّاسٍ: أَنَّ رَسُولَ اللَّهِ ﷺ [لَمْ] يُحْرِمِ الْمَزَارَعَةَ.

وَلَكِنْ أَمَرَ أَنْ يَرْفُقَ بَعْضُهُمْ بِبَعْضٍ. [قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَحَدِيثُ رَافِعٍ فِيهِ اضْطِرَابٌ. يُرْوَى هَذَا الْحَدِيثُ عَنْ رَافِعِ بْنِ خَدِيجٍ، عَنْ عُمُومَتَيْهِ. وَيُرْوَى عَنْهُ عَنْ ظَهَيْرِ بْنِ رَافِعٍ، وَهُوَ أَحَدُ عُمُومَتَيْهِ. وَقَدْ رُوِيَ هَذَا الْحَدِيثُ



Jābir, may Allāh be pleased with them.

عَنْهُ عَلَى رِوَايَاتٍ مُّخْتَلَفَةٍ. وَفِي الْبَابِ عَنْ

زَيْدِ بْنِ ثَابِتٍ وَجَابِرِ رَضِيَ اللَّهُ عَنْهُمَا.

تخريج: متفق عليه، وأخرجه مسلم، البيهقي، باب الأرض تمنح، ح: ١٥٥٠ من حديث الفضل بن موسى والبخاري، ح: ٢٣٤٢ من حديث عمرو بن دينار به \* وفي الباب عن زيد بن ثابت [أبو داود، ح: ٣٣٩٠ وغيره] وجابر [أبو داود، ح: ٣٤١٤، ٣٤١٥].