

In the Name of Allāh,
the Merciful, the Beneficent

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

27. Chapters On Inheritance From The Messenger Of Allāh ﷺ

(المعجم ٢٧) - أَبْوَابُ الْفَرَائِضِ
عَنْ رَسُولِ اللَّهِ ﷺ (التحفة ٢٤)

Chapter 1. What Has Been Related About Whoever Leaves Wealth Then It Is For His Heirs

(المعجم ١) - بَابُ مَا جَاءَ فِي مَنْ تَرَكَ
مَالًا فَلِوَرَثَتِهِ (التحفة ١)

2090. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "Whoever leaves wealth then it is for his heirs, and whoever leaves poor dependants then it (the responsibility) is for me." (Hasan)^[1]

٢٠٩٠ - حَدَّثَنَا سَعِيدُ بْنُ يَحْيَى بْنِ سَعِيدٍ
الْأُمَوِيُّ: حَدَّثَنَا أَبِي: حَدَّثَنَا مُحَمَّدُ بْنُ
عَمْرٍو: حَدَّثَنَا أَبُو سَلَمَةَ عَنْ أَبِي هُرَيْرَةَ قَالَ:
قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ تَرَكَ مَالًا فَلِوَرَثَتِهِ،
وَمَنْ تَرَكَ ضَيَاعًا فَإِلَيَّ».

[Abū 'Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. Az-Zuhrī reported it longer and more complete than this from Abū Salamah from Abū Hurairah from the Prophet ﷺ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ
صَحِيحٌ. وَقَدْ رَوَاهُ الزُّهْرِيُّ عَنْ أَبِي سَلَمَةَ،
عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ أَطْوَلَ مِنْ هَذَا
وَأَنَّهُمْ.

There are other narrations on this topic from Jābir and Anas, and his saying: "*Diyā'an*" means wretched, having nothing – then I will take responsibility for him and spend on him.

وَفِي الْبَابِ عَنْ جَابِرٍ وَأَنَسٍ وَمَعْنَى قَوْلِهِ
ضَيَاعًا يَعْنِي ضَائِعًا لَيْسَ لَهُ شَيْءٌ فَأَنَا أَعُولُهُ
وَأُنْفِقُ عَلَيْهِ.

تخريج: [إسناده حسن] وأخرجه أحمد: ٢/٢٨٧ من حديث محمد بن عمرو به وأصله متفق عليه والبخاري، ح: ٢٢٩٨ ومسلم، ح: ١٦١٩ من حديث الزهري عن أبي سلمة به * وفي الباب عن جابر [مسلم، ح: ٨٦٧] وأنس [أحمد: ٣/٢١٥].

Comments:

The *Ḥadīth* makes it the responsibility of the Islamic government to settle the debts of a poor and needy person in the event of his death and take care of the financial needs of his family and children.

^[1] Meaning this chain, while it is recorded through another route by *Al-Bukhārī* (2298 and others) as well as *Muslim* (1619).

Chapter 2. What Has Been Related About Learning The Laws Of Inheritance

(المعجم ٢) - بَابُ مَا جَاءَ فِي تَعْلِيمِ الْفَرَائِضِ (التحفة ٢)

2091. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: "Learn the laws of inheritance and the Qur'ān, and teach the people, for I am a mortal." (*Da'if*)

[Abū 'Eisā said:] There is *Iḍṭirāb* in this *Ḥadīth*. Abū Usāmah reported this *Ḥadīth* from 'Awf, from a man, from Sulaimān bin Jābir, from Ibn Mas'ūd from the Prophet ﷺ.

That was narrated to us by Al-Ḥusain bin Ḥurāith (who said): "Abū Usāmah informed us [from 'Awf] with this, similar in its meaning. And Muḥammad bin Al-Qāsim Al-Asadī was graded weak by Aḥmad bin Ḥanbal and others.]

٢٠٩١ - حَدَّثَنَا عَبْدُ الْأَعْلَى بْنُ وَاصِلٍ: حَدَّثَنَا مُحَمَّدُ بْنُ الْقَاسِمِ الْأَسَدِيُّ: حَدَّثَنَا الْفَضْلُ بْنُ دَلْهَمٍ: حَدَّثَنِي عَوْفٌ عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «تَعَلَّمُوا الْفَرَائِضَ وَالْقُرْآنَ وَعَلَّمُوا النَّاسَ فَإِنِّي مَقْبُوضٌ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ فِيهِ اضْطِرَابٌ. وَرَوَى أَبُو أُسَامَةَ هَذَا الْحَدِيثَ عَنْ عَوْفٍ، عَنْ رَجُلٍ، عَنْ سُلَيْمَانَ بْنِ جَابِرٍ، عَنِ ابْنِ مَسْعُودٍ عَنِ النَّبِيِّ ﷺ. حَدَّثَنَا بِذَلِكَ الْحُسَيْنُ بْنُ حُرَيْثٍ: أَخْبَرَنَا أَبُو أُسَامَةَ [عَنْ عَوْفٍ بِهَذَا نَحْوَهُ بِمَعْنَاهُ، وَمُحَمَّدُ بْنُ الْقَاسِمِ الْأَسَدِيُّ قَدْ ضَعَفَهُ أَحْمَدُ ابْنُ حَنْبَلٍ وَعَیْرُهُ].

تخریج: [ضعیف] * محمد بن القاسم الأسدي كذبوه (تقريب) والفضل بن دلهم: لين ورمي بالاعتزال (أيضاً) وللحديث شواهد ضعيفة عند ابن ماجه، ح: ٢٧١٩ وغيره * سليمان بن جابر وتلميذه: مجهولان كما في التقريب وغيره.

Comments:

The Arabic word *Al-Farā'id* is the plural of *'Farīdah'* meaning an enjoined ordinance or a duty prescribed (prescribed by Allāh). Since the shares of inheritors are meticulously determined and described in the *Sharī'ah*, the science dealing with these laws is known as *Ilm Al-Farā'id* (Laws of Inheritance). There are numerous *Aḥādīth* concerning the learning and teaching of the laws of inheritance in Islam.

Chapter 3. What Has Been Related About The Inheritance For Daughters

(المعجم ٣) - بَابُ مَا جَاءَ فِي مِيرَاثِ الْبَنَاتِ (التحفة ٣)

2092. Jābir bin 'Abdullāh said: "The wife of Sa'd bin Ar-Rabi'

٢٠٩٢ - حَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ: حَدَّثَنِي

came with her two daughters from Sa'd to the Messenger of Allāh ﷺ and said: 'O Messenger of Allāh! These two are daughters of Sa'd bin Ar-Rabi' who fought along with you on the Day of Uḥud and was martyred. Their uncle took their wealth, without leaving any wealth for them, and they will not be married unless they have wealth.' He said: 'Allāh will decide on that matter.' The *Āyah* about inheritance was revealed, so the Messenger of Allāh ﷺ sent (word) to their uncle saying: 'Give the two daughters of Sa'd two thirds, and give their mother one eighth, and whatever remains; then it is for you.' [1] (*Da'if*)

[Abū 'Eisā said:] This *Hadīth* is *Ḥasan Ṣaḥīḥ*, we do not know of it except as a narration of 'Abdullāh bin Muḥammad bin 'Aqīl (a narrator in the chain).

Sharīk also reported it from 'Abdullāh bin Muḥammad bin 'Aqīl.

تخریج: [إسناده ضعيف] وأخرجه أبو داود، الفرائض، باب ما جاء في ميراث الصلب، ح: ٢٨٩١ وابن ماجه، ح: ٢٧٢٠ من حديث ابن عقيل به وصححه الحاكم: ٣٣٣/٤، ٣٣٤ ووافقه الذهبي ابن عقيل تقدم: ١٢٨.

Comments:

What the *Hadīth* instructs us is that just as more than two daughters get two thirds of the inherited wealth; two daughters also get the same, viz. two-thirds of the inherited wealth.

This is the view of the vast majority of scholars, which is on the correct side. The mother of course, in the presence of a child or more, gets just one-eighth of the wealth.

زَكَرِيَّا بْنُ عَدِيٍّ: أَخْبَرَنَا عُبَيْدُ اللَّهِ بْنُ عَمْرٍو عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ، عَنْ جَابِرِ ابْنِ عَبْدِ اللَّهِ قَالَ: جَاءَتْ امْرَأَةٌ سَعْدِ بْنِ الرَّبِيعِ بِابْنَتَيْهَا مِنْ سَعْدٍ إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ! هَاتَانِ ابْنَتَا سَعْدِ بْنِ الرَّبِيعِ قُتِلَ أَبُوهُمَا مَعَكَ يَوْمَ أُحُدٍ شَهِيدًا، وَإِنَّ عَمَّهُمَا أَخَذَ مَالَهُمَا فَلَمْ يَدَعْ لَهُمَا مَالًا، وَلَا تُتَكَحَّانِ إِلَّا وَلَهُمَا مَالٌ. قَالَ: «يَقْضِي اللَّهُ فِي ذَلِكَ». فَتَزَلَّتْ آيَةُ الْمِيرَاثِ، فَبَعَثَ رَسُولُ اللَّهِ ﷺ إِلَى عَمَّهُمَا فَقَالَ: «أَعْطِ ابْنَتِي سَعْدِ الثُّلُثَيْنِ وَأَعْطِ أُمَّهُمَا الثُّمْنَ وَمَا بَقِيَ فَهُوَ لَكَ».

[قَالَ أَبُو عَيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ، لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ. وَقَدْ رَوَاهُ شَرِيكٌ أَيْضًا عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدِ بْنِ عَقِيلٍ.

[1] See the explanation of Ibn Kathīr in his *Tafsīr of An-Nisā'* (4:11), and the narration here in chapter 6. no. 2096.

Chapter 4. What Has Been Related About The Inheritance Of The Daughter Of One's Son Along With One's Own Daughter

2093. Huzail bin Shurahbīl said: "A man came to Abū Musa and Salmān bin Rabī'ah and asked them about a daughter, a son's daughter, a father's sister and a mother's sister. So they said: 'For the daughter is half, for the sister of the father and the mother is what remains.' And they said to him: 'Go to 'Abdullāh (bin Mas'ūd) and ask him, for surely he will concur with us.' So he went to 'Abdullāh mentioning that to him and informing him what they had said. 'Abdullāh said: 'If that were the case, then I would have erred and not been among the rightly-guided (on the matter). Rather, I will judge with what the Messenger of Allāh ﷺ judged: For the daughter is half, for the son's daughter a sixth, totaling two thirds, and for the sister is what remains.'" (*Ṣaḥīḥ*)

[Abū 'Eīsā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*, and Abū Qais Al-Awdī's (a narrator) name is 'Abdur-Raḥmān bin Tharwān Al-Kūfī.

Shu'bah also reported it from Abū Qais.

(المعجم ٤) - بَابُ مَا جَاءَ فِي مِيرَاثِ
بِنْتِ الْإِبْنِ مَعَ بِنْتِ الصُّلْبِ (التحفة ٤)

٢٠٩٣ - حَدَّثَنَا الْحَسَنُ بْنُ عَرَفَةَ: حَدَّثَنَا
يَزِيدُ بْنُ هَارُونَ عَنْ سُفْيَانَ الثَّوْرِيِّ، عَنْ أَبِي
قَيْسِ الْأَوْدِيِّ، عَنْ هُزَيْلِ بْنِ شُرْحَبِيلَ قَالَ:
جَاءَ رَجُلٌ إِلَى أَبِي مُوسَى وَسَلْمَانَ بْنِ رَبِيعَةَ
فَسَأَلَهُمَا، عَنِ ابْنَةِ وَابْنَةِ ابْنٍ وَأُخْتِ لِأَبٍ
وَأُمٍّ، فَقَالَا: لِلْإِبْنَةِ النِّصْفُ، وَلِلْأُخْتِ مِنَ
الْأَبِ وَالْأُمِّ مَا بَقِيَ. وَقَالَا لَهُ: انْطَلِقْ إِلَى
عَبْدِ اللَّهِ فَاسْأَلْهُ فَإِنَّهُ سَيُنَابِعُنَا، فَأَتَى عَبْدَ اللَّهِ
فَذَكَرَ لَهُ ذَلِكَ وَأَخْبَرَهُ بِمَا قَالَا. قَالَ عَبْدُ
اللَّهِ: قَدْ ضَلَلْتُ إِذَا وَمَا أَنَا مِنَ الْمُهْتَدِينَ،
وَلَكِنِّي أَقْضِي فِيهَا كَمَا قَضَى رَسُولُ اللَّهِ ﷺ
لِلْإِبْنَةِ النِّصْفَ وَلِلْأُبْنِ السُّدُسَ تَكْمِلَةً
الثَّلَاثِينَ، وَلِلْأُخْتِ مَا بَقِيَ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ
صَحِيحٌ. وَأَبُو قَيْسِ الْأَوْدِيِّ اسْمُهُ عَبْدُ
الرَّحْمَنِ بْنِ ثَرْوَانَ الْكُوفِيُّ.
وَقَدْ رَوَاهُ أَيْضًا شُعْبَةُ عَنْ أَبِي قَيْسٍ.

تخریج: وأخرجه البخاري، الفرائض، باب ميراث الأخوات مع البنات عصبة، ح: ٦٧٤٢ من حديث سفیان الثوري به مختصراً وللحديث طرق أخرى عن أبي قيس الأودي.

Comments:

If the deceased person has left behind a single daughter plus one daughter or more from the son, unquestionably the daughter would get half of the

inherited wealth since Allāh himself has decreed one half for the single daughter (*An-Nisā'*, 4:11). In case there is one daughter or more from the son then, in order to make good the share of the daughters, one-sixth of the inherited wealth shall go to her (or them).

Chapter 5. What Has Been Related About The Brothers From (The Same) Father And Mother

2094. Al-Ḥārith narrated that ‘Alī said: “You recite this *Āyah*: After payment of legacies he (or she) may have bequeathed or debts, without causing harm.^[1] And indeed the Messenger of Allāh ﷺ judged the debt before the will, and that the children (sons and daughters) from the same mother and father inherit, not the sons from various mothers. The man inherits from his brother from his father, and his mother, not his brother from his father.”^[2] (*Daʿif*)

(Another chain) from ‘Alī, from the Prophet ﷺ with similar meaning.

تخریج: [إسناده ضعيف] وأخرجه ابن ماجه، الفرائض، باب الدين قبل الوصية، ح: 2715 من حديث سفيان الثوري به مختصراً وسنده ضعيف جداً ولمفهوم الحديث شاهد حسن عند ابن ماجه، ح: 2433 وغيره.

Comments:

Clearing the debts takes precedence over implementation of the will of the deceased person, as we shall see in the ensuing chapter devoted solely to this matter.

2095. Al-Ḥārith narrated that ‘Alī said: “The Messenger of Allāh ﷺ judged that the children (sons and daughters) from the same mother and father inherit, not the sons from various mothers.” (*Hasan*)

(المعجم ٥) - بَابُ مَا جَاءَ فِي مِيرَاثِ الْإِخْوَةِ مِنَ الْأَبِ وَالْأُمِّ (التحفة ٥)

٢٠٩٤ - حَدَّثَنَا بُنْدَارٌ: أَخْبَرَنَا يَزِيدُ بْنُ هَارُونَ: أَخْبَرَنَا سُفْيَانُ عَنْ أَبِي إِسْحَاقَ، عَنِ الْحَارِثِ، عَنْ عَلِيٍّ أَنَّهُ قَالَ: إِنَّكُمْ تَقْرَأُونَ هَذِهِ الْآيَةَ: ﴿مَنْ بَعْدَ وَصَيْتِهِ فُؤُوصَاتُ يَهَاءَ أَوْ دَيْنٍ﴾ [النساء: ١٢] وَإِنَّ رَسُولَ اللَّهِ ﷺ قَضَى بِالذَّيْنِ قَبْلَ الْوَصِيَّةِ، وَأَنَّ أَعْيَانَ بَنِي الْأُمِّ يَرِثُونَ دُونَ بَنِي الْعَلَاتِ، الرَّجُلُ يَرِثُ أَخَاهُ لِأَبِيهِ وَأُمَّهُ دُونَ أَخِيهِ لِأَبِيهِ.

حَدَّثَنَا بُنْدَارٌ: أَخْبَرَنَا يَزِيدُ بْنُ هَارُونَ: أَخْبَرَنَا زَكَرِيَّا بْنُ أَبِي زَائِدَةَ عَنْ أَبِي إِسْحَاقَ، عَنِ الْحَارِثِ، عَنْ عَلِيٍّ عَنِ النَّبِيِّ ﷺ مِثْلَهُ.

٢٠٩٥ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: أَخْبَرَنَا سُفْيَانُ: أَخْبَرَنَا أَبُو إِسْحَاقَ عَنِ الْحَارِثِ، عَنْ عَلِيٍّ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ أَنَّ أَعْيَانَ بَنِي الْأُمِّ يَتَوَارَثُونَ دُونَ بَنِي الْعَلَاتِ.

[1] *An-Nisā'* 4:12.

[2] For this and the following narration, see no. 2122.

[Abū 'Eisā said:] We do not know of this *Hadīth* except through the narration of Abū Ishāq from Al-Hārith, from 'Alī, and some of the people of knowledge have criticized Al-Hārith. This *Hadīth* is acted upon according to the people of knowledge [in general].

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ أَبِي إِسْحَاقَ عَنِ الْحَارِثِ، عَنْ عَلِيٍّ. وَقَدْ تَكَلَّمْتُ بَعْضَ أَهْلِ الْعِلْمِ فِي الْحَارِثِ، وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ [عَامَّةِ] أَهْلِ الْعِلْمِ.
تخريج: [حسن] انظر الحديث السابق.

Chapter 6. Inheritance Of The Sons Along With The Daughters

(المعجم ٦) - بَابُ [مِيرَاثِ الْبَنِينَ مَعَ الْبَنَاتِ] (التحفة ٦)

2096. Jābir bin 'Abdullāh said: "The Messenger of Allāh ﷺ came to visit me while I was ill at Banū Salamah. I said: 'O Prophet of Allāh! How shall I divide my wealth among my children?' But he did not say anything to me, until the following was revealed: Allāh commands you regarding your children's (inheritance): To the male, a portion equal to that of two females."^[1] (*Ṣaḥīḥ*)

٢٠٩٦ - حَدَّثَنَا عَبْدُ بَنُ حُمَيْدٍ: أَخْبَرَنَا عَبْدُ الرَّحْمَنِ بْنُ سَعْدٍ: أَخْبَرَنَا عَمْرُو بْنُ أَبِي قَيْسٍ عَنْ مُحَمَّدِ بْنِ الْمُكَدِّرِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: جَاءَنِي رَسُولُ اللَّهِ ﷺ يَعُودُنِي وَأَنَا مَرِيضٌ فِي بَيْتِي سَلَمَةَ، فَقُلْتُ: يَا نَبِيَّ اللَّهِ! كَيْفَ أَقْسِمُ مَالِي بَيْنَ وَلَدِي؟ فَلَمْ يَرُدَّ عَلَيَّ شَيْئًا فَتَنَزَّلَتْ: ﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ﴾ الآية [النساء: ١١].

[Abū 'Eisā said:] This *Hadīth* is *Ḥasan Ṣaḥīḥ*. [Shu'bah and] Ibn 'Uyainah and others reported it from Muḥammad bin Al-Munkadir, from Jābir, may Allāh be pleased with him.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رَوَاهُ [شُعْبَةُ وَ] ابْنُ عُيَيْنَةَ وَعَبْرَهُ عَنْ مُحَمَّدِ بْنِ الْمُكَدِّرِ، عَنْ جَابِرِ رَضِيَ اللَّهُ عَنْهُ.

تخريج: متفق عليه، وأخرجه البخاري، التفسير، باب: ﴿يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ﴾، ح: ٤٥٧٧ ومسلم، ح: ١٦١٦ من حديث محمد بن المنكدر به.

Comments:

We learn from the *Hadīth* contained in the next chapter as well as from the unanimous *Aḥādīth* reported in both *Al-Bukhārī* and *Muslim*, Jābir ؓ was a *Kalālah* (having neither ascendants nor descendants). As such the term *Walad* (children) attributed to him in the *Hadīth* is used for his under-age sisters.

[1] *An-Nisā'* 4:11.

Chapter 7. The Inheritance Of The Sisters

2097. Jābir bin ‘Abdullāh narrated: “I was ill, so the Messenger of Allāh ﷺ came to visit me and found me unconscious. He came walking while Abū Bakr and ‘Umar were with him. The Messenger of Allāh ﷺ performed *Wudu’*, then poured the remaining water on me, so I came to my senses. I said: ‘O Messenger of Allāh! How shall I dispose of my wealth?’ – or – ‘What shall I do with my wealth?’ He did not reply anything to me” – and he had nine sisters – “until the *Āyah* about inheritance was revealed: They ask you for a legal verdict. Say: “Allāh directs (thus) about *Al-Kalālah*.”^[1] Jābir said: “It was revealed regarding me.” (*Ṣaḥīḥ*) [Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*.

(المعجم ٧) - بَابُ مِيرَاثِ الْأَخَوَاتِ
(التحفة ٧)

٢٠٩٧ - حَدَّثَنَا الْفَضْلُ بْنُ الصَّبَّاحِ
الْبَغْدَادِيُّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ: حَدَّثَنَا
مُحَمَّدُ بْنُ الْمُثَنَّدِ، سَمِعَ جَابِرَ بْنَ عَبْدِ اللَّهِ
يَقُولُ: مَرِضْتُ فَأَتَانِي رَسُولُ اللَّهِ ﷺ
يُعَوِّدُنِي، فَوَجَدَنِي قَدْ أُغْمِيَ عَلَيَّ، فَأَتَانِي
وَمَعَهُ أَبُو بَكْرٍ وَعُمَرُ وَهُمَا مَاشِيَانِ، فَتَوَضَّأَ
رَسُولُ اللَّهِ ﷺ فَصَبَّ عَلَيَّ مِنْ وَضُوئِهِ،
فَأَقْفْتُ. فَقُلْتُ: يَا رَسُولَ اللَّهِ! كَيْفَ أَقْضِي
فِي مَالِي؟ أَوْ كَيْفَ أَصْنَعُ فِي مَالِي؟ فَلَمْ
يُجِبْنِي شَيْئًا، وَكَانَ لَهُ تِسْعَ أَخَوَاتٍ حَتَّى
نَزَلَتْ آيَةُ الْمِيرَاثِ ﴿يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ
فِي الْكَلَالَةِ﴾ [الآية [النساء: ١٧٦]].
قَالَ جَابِرٌ: فِيَّ نَزَلَتْ.
[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ
صَحِيحٌ.

تخریج: متفق عليه، وأخرجه البخاري، المرض، باب عيادة المغمى عليه، ح: ٥٦٥١ مسلم، ح: ٧/١٦١٦ من حديث سفیان بن عیینة به.

Comments:

The Qur’ānic Verse makes it clear that if a person dies and leaves behind neither parents nor children, but a single (real) sister, then the sister shall inherit half of his wealth. In case the sisters are more than one, they shall get a share of two-third of his wealth. If there is a brother in addition to the sister as well, the brother shall get twice as much as the sister.

Chapter 8. What Has Been Related About The Inheritance For The ‘Aṣabah

2098. Ibn ‘Abbās narrated that the

(المعجم ٨) - بَابُ مَا جَاءَ فِي مِيرَاثِ
الْمَعْصِيَةِ (التحفة ٨)

٢٠٩٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ

^[1] *An-Nisā’* 4:176.

Prophet ﷺ said: “Give the shares of inheritance to those who are entitled to them. As for what remains, then it is for the closest male relative.” (*Ṣaḥīḥ*)

(Another chain) with similar meaning.

[Abū ‘Eīsā said:] This *Hadīth* is *Ḥasan*. Some of them reported it from Ibn Ṭāwus, from his father, from the Prophet ﷺ in *Mursal* form.

الرَّحْمَنِ: أَخْبَرَنَا مُسْلِمٌ بْنُ إِبْرَاهِيمَ: حَدَّثَنَا وَهَيْبٌ: حَدَّثَنَا ابْنُ طَاوُسٍ عَنْ أَبِيهِ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ قَالَ: «الْحُفُوَا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَهُوَ لِأَوْلَى رَجُلٍ ذَكَرَ».

حَدَّثَنَا عَبْدُ بْنُ حُمَيْدٍ: أَخْبَرَنَا عَبْدُ الرَّزَّاقِ عَنْ مَعْمَرٍ، عَنْ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنْ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ نَحْوَهُ.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ. وَقَدْ رَوَى بَعْضُهُمْ عَنْ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ عَنِ النَّبِيِّ ﷺ مُرْسَلٌ.

تخريج: متفق عليه، وأخرجه البخاري، الفرائض، باب ميراث ابن الابن إذا لم يكن ابن، ح: ٦٧٣٥ عن مسلم بن إبراهيم ومسلم، ح: ١٦١٥ من حديث وهيب به.

Comments:

The Qur’an spells out the shares of four male and eight female members of the deceased person’s family. These shares are known as *Farā’id* (prescribed shares). Those entitled to inherit such shares are called *Ashāb’ Al-Furūd* (recipients of prescribed shares). The law also stipulates that if a portion of the deceased person’s wealth remains undistributed among the eligible heirs, it shall go to *‘Ashabah* (the next of kin from the father’s side not otherwise entitled to get it). *‘Ashabah*, by its very definition, is not related to the deceased person through the intervention of any female member between the two. In case there are more members of this category than one, the one nearest in relation to the deceased person would get precedence over others.

Chapter 9. What Has Been Related About The Inheritance For The Grandfather

2099. ‘Imrān bin Ḥuṣain narrated: “A man came to the Prophet ﷺ and said: ‘My son^[1] died, so what do I inherit from him?’ He said: ‘For you is a sixth.’ When he turned to leave, he called him and said: ‘For you is another sixth.’ So when he turned to leave, he called

(المعجم ٩) - بَابُ مَا جَاءَ فِي مِيرَاثِ الْجَدِّ (التحفة ٩)

٢٠٩٩ - حَدَّثَنَا الْحَسَنُ بْنُ عَرَفَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ عَنْ هَمَّامِ بْنِ يَحْيَى، عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: إِنَّ ابْنِي مَاتَ فَمَا لِي مِنْ مِيرَاثِهِ؟ فَقَالَ: «لَكَ

[1] See the following note.

him, saying: ‘The last sixth is consumable for you.’” [1] (*Da‘if*)

[Abū ‘Eisā said:] This *Hadīth* is *Ḥasan Ṣaḥīḥ*. There is something on this topic from Ma‘qil bin Yasār.

السُّدُسُ، « فَلَمَّا وَلَّى دَعَاَهُ فَقَالَ: «لَكَ سُدُسٌ آخَرَ» فَلَمَّا وَلَّى دَعَاَهُ قَالَ: «إِنَّ السُّدُسَ الْآخَرَ لَكَ طُعْمَةٌ».

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ

صَحِيحٌ. وَفِي الْبَابِ عَنِ مَعْقِلِ بْنِ يَسَارٍ.

تخريج: [إسناده ضعيف] وأخرجه أبو داود، الفرائض، باب: في ميراث الجد، ح: ٢٨٩٦ من حديث همام به وصححه ابن الجارود، ح: ٩٦١ * قتادة عنعن والحسن لم يسمع من عمران كما في نيل المقصود، ح: ٤٤٣ يسر الله لنا طبعه وللحديث طرق أخرى ضعيفة راجع مسند الحميدي، ح: ٨٣٥، ٨٣٦ (بتحقيقي) إن استطعت إليه سبيلاً * وفي الباب عن معقل بن يسار [أبو داود، ح: ٢٨٩٧].

Comments:

The fact of the matter in this case was that a certain person died leaving behind just two daughters and no sons. These daughters were, therefore, entitled to inherit two thirds of their father’s wealth. One third share of the wealth still remained. The deceased person’s father (grandfather to the daughters), therefore, inherited one-sixth of the wealth as recipient of the prescribed share, and another one-sixth as ‘sustenance’ from Allāh in his capacity as *‘Asabah* (a term defined above).

Chapter 10. What Has Been Related About The Inheritance For The Grandmother

(المعجم ١٠) - بَابُ مَا جَاءَ فِي مِيرَاثِ الْجَدَّةِ (التحفة ١٠)

2100. Qabīshah bin Dhuw’aib said: “A grandmother – the mother of a mother, or the mother of a father – came to Abū Bakr and she said: ‘A son of my son’ – or, ‘A son of my daughter died, and I have been

٢١٠٠ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ: حَدَّثَنَا الزُّهْرِيُّ قَالَ مَرَّةً: قَالَ قَبِيصَةُ وَقَالَ مَرَّةً عَنْ رَجُلٍ، عَنْ قَبِيصَةَ بِنِ دُوَيْبٍ قَالَ: جَاءَتِ الْجَدَّةُ أُمُّ الْأُمِّ أَوْ أُمُّ الْأَبِّ إِلَى

[1] There are three things regarding this *Hadīth* that must be noted. First: In the commentary *Tuḥfat Al-Aḥwadhī*, *Sunan Abū Dāwūd*, and *Tuḥfat Al-Ashrāf* it is “My son’s son died,” and this is in accordance with the chapter heading of the author. However, the *Hadīth* itself appears in the printed copy of *Tuḥfat Al-Aḥwadhī* as it appears here in our copy, so the publishers have retained this wording in any case. Second: In both *‘Awn Al-Ma‘būd* and *Tuḥfat Al-Aḥwadhī* it is indicated that the man who died had two daughters, each of whom deserved a third. Third: In the same references, “The last sixth is consumable for you” is explained to mean that he receives this, not because it is a portion due by his relation, but because it is left over, and he is the one in the position to receive what is left over. However, the narration is weak.

informed that there is a right (from the wealth) for me in the Book.’ So Abū Bakr said: ‘I do not find that there is a right for you in the Book, and I have not heard that the Messenger of Allāh ﷺ judged anything for you. I shall ask the people.’ So, Al-Mughīrah bin Shu‘bah testified that the Messenger of Allāh ﷺ gave her (case) a sixth. He said: ‘And who heard that along with you?’ He said: ‘Muḥammad bin Maslamah.’” He said: “So he gave her a sixth. Then the other grandmother who was left behind came to ‘Umar.” Sufyān said: “And Ma‘mar said to me in addition, ‘from Az-Zuhri’ – and I do not remember it to be from Az-Zuhri, rather I remember it to be from Ma‘mar – that ‘Umar said: ‘If the two of you are together then it is for both of you, and whichever of you is alone with it (the sixth), then it is for her.’” (*Ṣaḥīḥ*)

تخريج: [صحيح] رواه أبو داود، الفرائض، باب: في الجدة، ح: ٢٨٩٤ من حديث قبيصة به وصححه ابن الجارود، ح: ٩٥٩ وابن حبان، ح: ١٢٣٤ والحاكم: ٣٣٨١/٤ على شرط الشيخين ووافقه الذهبي وللحديث شواهد.

Comments:

In case the deceased person’s mother is dead but either of the two grandmothers are alive, then she shall get one-sixth. If both grandmothers (one from father’s side and the other from mother’s side) are alive, then both shall share sixth part of the inheritance. The woman visiting Abū Bakr ﷺ was the mother’s mother, while the one going to ‘Umar ﷺ was the father’s mother (*Tuḥfat Al-Aḥwadhī*, v.3, p.181. For details see *Al-Mughni*, v.9, pp. 54-55).

2101. Qabiṣah bin Dhu’waib said: “A grandmother came to Abū Bakr to ask him about her inheritance. He said to her, ‘There is nothing

أَبِي بَكْرٍ فَقَالَتْ: إِنَّ ابْنَ ابْنِي أَوْ أَنَّ ابْنَ ابْتِي مَاتَ، وَقَدْ أُخِيرْتُ أَنْ لِي فِي الْكِتَابِ حَقًّا، فَقَالَ أَبُو بَكْرٍ: مَا أَجِدُ لَكَ فِي الْكِتَابِ مِنْ حَقٍّ، وَمَا سَمِعْتُ مِنْ رَسُولِ اللَّهِ ﷺ قَضَى لَكَ بِشَيْءٍ. وَسَأَسْأَلُ النَّاسَ، فَشَهِدَ الْمُغْبِرَةُ بِنُ شُعْبَةَ أَنَّ رَسُولَ اللَّهِ ﷺ أَعْطَاهَا السُّدُسَ. قَالَ: وَمَنْ سَمِعَ ذَلِكَ مَعَكَ؟ قَالَ: مُحَمَّدٌ بِنُ مَسْلَمَةَ. قَالَ: فَأَعْطَاهَا السُّدُسَ. ثُمَّ جَاءَتِ الْجَدَّةُ الْأُخْرَى الَّتِي تُخَالِفُهَا إِلَى عُمَرَ قَالَ سُفْيَانُ: وَرَأَيْتِي فِيهِ مَعْمَرٌ عَنِ الزُّهْرِيِّ، وَلَمْ أَحْفَظْهُ، عَنِ الزُّهْرِيِّ، وَلَكِنْ حَفِظْتُهُ مِنْ مَعْمَرٍ أَنَّ عُمَرَ قَالَ: إِنْ اجْتَمَعْتُمَا فَهَوَ لَكُمَا وَأَيُّكُمَا انْفَرَدَتْ بِهِ فَهَوَ لَهَا.

٢١٠١ - حَدَّثَنَا الْأَنْصَارِيُّ: حَدَّثَنَا مَعْنٌ: حَدَّثَنَا مَالِكٌ عَنِ ابْنِ شِهَابٍ، عَنْ عُمَانَ بْنِ إِسْحَاقَ بْنِ خَرَشَةَ، عَنْ قَبِيصَةَ بِنِ دُوَيْبِ

for you in the Book of Allāh and there is nothing for you in the *Sunnah* of the Messenger of Allāh ﷺ. So, return until I ask the people. So he asked the people and Al-Mughīrah bin Shu‘bah said: ‘I was present when the Messenger of Allāh ﷺ gave her (case) a sixth.’ So he said: ‘Was anyone else with you?’ Muḥammad bin Salamah stood to say the same as what Al-Mughīrah bin Shu‘bah said. So Abū Bakr implemented that for her.” He said: “Then the other grandmother came to ‘Umar bin Al-Khaṭṭāb to ask him about her inheritance. He said: ‘There is nothing in the Book of Allāh for you, but there is that sixth. So if the two of you are together then it is for both of you, and whichever one of you remains, then it is for her.’” (*Ṣaḥīḥ*)

[Abū ‘Eīsā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*, and it is more authentic than the (previous) narration of Ibn ‘Uyainah. There is a narration on this topic from Buraidah.

تخريج: [صحيح] انظر الحديث السابق وهو في الموطأ: ٥١٣/٢ وللحديث شواهد عند أبي داود، ح: ٢٨٩٥ وغيره * وفي الباب عن بريدة [أبو داود، ح: ٢٨٩٥].

Chapter 11. What Has Been Related About The Inheritance For The Grandmother Along With Her Daughter

2102. ‘Abdullāh bin Mas‘ūd said, about the grandmother along with her daughter: “The Messenger of Allāh ﷺ gave the first grandmother,

قَالَ: جَاءَتِ الْجَدَّةُ إِلَى أَبِي بَكْرٍ فَسَأَلَتْهُ مِيرَاثَهَا، قَالَ لَهَا: مَا لَكَ فِي كِتَابِ اللَّهِ شَيْءٌ، وَمَا لَكَ فِي سُنَّةِ رَسُولِ اللَّهِ ﷺ شَيْءٌ فَارْجِعِي حَتَّى أَسْأَلَ النَّاسَ، فَسَأَلَ النَّاسَ، فَقَالَ الْمُغِيرَةُ بْنُ شُعْبَةَ: حَضَرْتُ رَسُولَ اللَّهِ ﷺ أَعْطَاهَا السُّدُسَ، فَقَالَ: هَلْ مَعَكَ غَيْرُكَ؟ فَقَامَ مُحَمَّدُ بْنُ مَسْلَمَةَ فَقَالَ مِثْلَ مَا قَالَ الْمُغِيرَةُ بْنُ شُعْبَةَ، فَأَنْفَذَهُ لَهَا أَبُو بَكْرٍ. قَالَ: ثُمَّ جَاءَتِ الْجَدَّةُ الْأُخْرَى إِلَى عُمَرَ بْنِ الْخَطَّابِ فَسَأَلَتْهُ مِيرَاثَهَا، فَقَالَ: مَا لَكَ فِي كِتَابِ اللَّهِ شَيْءٌ وَلَكِنْ هُوَ ذَلِكَ السُّدُسُ، فَإِنْ اجْتَمَعْتُمَا فِيهِ فَهُوَ بَيْنَكُمَا، وَأَيُّكُمَا خَلَّتْ بِهِ فَهُوَ لَهَا.

[قَالَ أَبُو عِيسَى: [و] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ وَهُوَ أَصَحُّ مِنْ حَدِيثِ ابْنِ عُيَيْنَةَ وَفِي الْبَابِ عَنْ بُرَيْدَةَ.]

(المعجم ١١) - بَابُ مَا جَاءَ فِي مِيرَاثِ الْجَدَّةِ مَعَ ابْنَتِهَا (التحفة ١١)

٢١٠٢ - حَدَّثَنَا الْحَسَنُ بْنُ عَرَفَةَ: أَخْبَرَنَا يَزِيدُ بْنُ هَارُونَ عَنْ مُحَمَّدِ بْنِ سَالِمٍ، عَنِ الشَّعْبِيِّ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ بْنِ

along with her son, a sixth for them to consume while her son was living.” (*Da'if*)

[Abū 'Eisā said:] We do not know of this *Hadīth* to be *Marfū'* except through this route. Some of the Companions of the Prophet ﷺ gave the grandmother, along with her son inheritance, and some of them did not give her inheritance.

مَسْئُودٌ قَالَ فِي الْجَدَّةِ مَعَ ابْنَيْهَا: إِنَّهَا أَوْلُ
جَدَّةٍ أَطْعَمَهَا رَسُولُ اللَّهِ ﷺ سُدْسًا مَعَ ابْنَيْهَا
وَابْنَيْهَا حَيًّا.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ لَا نَعْرِفُهُ
مَرْفُوعًا إِلَّا مِنْ هَذَا الْوَجْهِ.

وَقَدْ وَرَّثَ بَعْضُ أَصْحَابِ النَّبِيِّ ﷺ
الْجَدَّةَ مَعَ ابْنَيْهَا، وَلَمْ يُوَرِّثْهَا بَعْضُهُمْ.

تخريج: [إسناده ضعيف] * محمد بن سالم: ضعيف كما في التقريب وغيره.

Comments:

In the opinion of 'Umar, Ibn Mas'ūd, and Abū Mūsā Ash'arī ؓ, even in the presence of the deceased person's father, the grandmother would be the recipient of inheritance. Qādī Shuraih, Hasan and Ibn Sirīn concur with this opinion. 'Uthmān, 'Alī and Zaid bin Thābit ؓ, however, are of the view that in the given situation, the grandmother would not get anything from the deceased person's wealth. Imām Ishāq and Aḥmad Ibn Ḥanbal concur with Ibn Mas'ūd's position while Imām Shāfi'ī, Ath-Thawrī, Al-Awzā'ī and the "People of Opinion" are in agreement with the view held by 'Uthmān ؓ.

Chapter 12. What Has Been Related About The Inheritance For The Maternal Uncle

2103. Abū Umāmah bin Sahl bin Ḥunaif said: "Umar bin Al-Khaṭṭāb sent me with a letter to Abū 'Ubaidah (saying) that the Messenger of Allāh ﷺ said: 'Allāh and His Messenger are responsible for the one who has no patron. And the maternal uncle inherits from the one who has no heirs.'" (*Hasan*)

[Abū 'Eisā said:] There are narrations on this topic from 'Āishah and Al-Miqdām bin Ma'dikarib. This *Hadīth* is *Hasan Ṣaḥīh*.

(المعجم ١٢) - بَابُ مَا جَاءَ فِي مِيرَاثِ
الْخَالِ (التحفة ١٢)

٢١٠٣ - حَدَّثَنَا بُنْدَارٌ: أَخْبَرَنَا أَبُو أَحْمَدَ
الرُّبَيْرِيُّ: حَدَّثَنَا سُفْيَانُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ
الْحَارِثِ، عَنْ حَكِيمِ بْنِ حَكِيمِ بْنِ عَبَّادِ بْنِ
حُتَيْبٍ، عَنْ أَبِي أُمَامَةَ بْنِ سَهْلِ بْنِ حُتَيْبٍ
قَالَ: كَتَبَ مَعِيَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أَبِي
عُبَيْدَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «اللَّهُ وَرَسُولُهُ
مَوْلَى مَنْ لَا مَوْلَى لَهُ، وَالْخَالُ وَارِثٌ مَنْ لَا
وَارِثَ لَهُ».

[قَالَ أَبُو عِيسَى:] وَفِي الْبَابِ عَنْ عَائِشَةَ
وَالْمِقْدَامِ بْنِ مَعْدِيكَرِبٍ [وَهَذَا حَدِيثٌ
حَسَنٌ صَحِيحٌ].

تخريج: [حسن] وأخرجه ابن ماجه، الفرائض، باب ذوي الأرحام، ح: ٢٧٣٧ من حديث سفيان الثوري به وصححه ابن الجارود، ح: ٩٦٤ وابن حبان، ح: ١٢٢٧ وله شاهد حسن عند ابن حبان، ح: ١٢٢٦ وغيره وانظر نيل المقصود، ح: ٢٨٩٩، ٢٩٠٠ وغيره * وفي الباب عن عائشة [يأتي: ٢١٠٤] والمقدم بن معديكرب [أبو داود، ح: ٢٨٩٩].

Comments:

Dhawil-Arḥām (loosely translated as ‘kin’) are all those relatives of the deceased person, be they from father’s side or mother’s, who are neither entitled to get the prescribed shares (*Farā’id*) nor do they belong to the category of *‘Asabah* (the next of kin from the father’s side). They are either female members themselves, or are related to the deceased person through some female member - maternal grandfather, maternal grandson, maternal uncle and maternal aunt - and so on. They shall only have their share in inheritance if no recipients of *Farā’id* or members belonging to the *‘Asabah* category are alive.

2104. ‘Āishah narrated that the Messenger of Allāh ﷺ said: “The maternal uncle inherits from the one who has no heirs.” (*Ḥasan*)

This *Ḥadīth* is *Ḥasan Gharīb*. Some of them narrated it in *Mursal* form, not mentioning ‘Āishah in it.

The Companions of the Prophet ﷺ differed regarding this. Some of them granted inheritance to the maternal uncle, maternal aunt, and the paternal aunt. Most of the people of knowledge followed this *Ḥadīth* regarding the inheritance of kin, while Zaid bin Thābit did not grant them inheritance, and he placed the inheritance in the *Bait Al-Māl*.

تخريج: [حسن] وأخرجه النسائي في الكبرى، ح: ٦٣٥٢ من حديث ابن جريج به وأعله وسنده ضعيف ولكن الحديث السابق شاهد له.

٢١٠٤ - أَخْبَرَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَخْبَرَنَا أَبُو عَاصِمٍ عَنِ ابْنِ جُرَيْجٍ، عَنْ عَمْرٍو ابْنِ مُسْلِمٍ، عَنْ طَاوُسٍ، عَنْ عَائِشَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْخَالَ وَارِثٌ مَنْ لَا وَارِثَ لَهُ».

[و]هَذَا حَدِيثٌ حَسَنٌ غَرِيبٌ وَقَدْ أَرْسَلَهُ بَعْضُهُمْ وَلَمْ يَذْكُرْ فِيهِ عَنْ عَائِشَةَ. وَاخْتَلَفَ فِيهِ أَصْحَابُ النَّبِيِّ ﷺ فَوَرَّتْ بَعْضُهُمُ الْخَالَ وَالْخَالََةَ وَالْعَمَّةَ: وَإِلَى هَذَا الْحَدِيثِ ذَهَبَ أَكْثَرُ أَهْلِ الْعِلْمِ فِي تَوْرِيثِ ذَوِي الْأَرْحَامِ وَأَمَّا زَيْدُ بْنُ ثَابِتٍ فَلَمْ يُوَرِّثْهُمْ وَجَعَلَ الْمِيرَاثَ فِي بَيْتِ الْمَالِ.

Chapter 13. What Has Been Related About The One Who Dies And He Has No Heirs

(المعجم ١٣) - بَابُ مَا جَاءَ فِي الَّذِي يَمُوتُ وَلَيْسَ لَهُ وَارِثٌ (التحفة ١٣)

2105. ‘Āishah narrated that a freed slave of the Prophet ﷺ fell

٢١٠٥ - حَدَّثَنَا بُنْدَارٌ: حَدَّثَنَا بَرِيدُ بْنُ

from foilage on a date-palm and died. So the Prophet ﷺ said: "See if he has any heirs." They said: "No." He said: "Pay it to someone among the people of the town." (*Hasan*)

There is a narration on this topic from Buraidah. And this *Hadith* is *Hasan*.

تخريج: [حسن] وأخرجه أبو داود، الفرائض، باب: في ميراث ذوي الأرحام، ح: ٢٩٠٢

Comments:

Since Prophets do not inherit any money or wealth from anyone, the Messenger of Allāh ﷺ took nothing from whatever was left behind by his freed slave, and asked it to be given to some needy person around, although traditionally, the previous master of the deceased person would get the inheritance (*Al-Mughni*, v.9, p.215).

Chapter 14. What Has Been Related About The Inheritance For The Freed Slave

2106. Ibn ‘Abbās narrated that a man died during the time of the Messenger of Allāh ﷺ, and he did not leave any heirs except for a slave that he had freed. So the Prophet ﷺ gave him his inheritance. (*Hasan*)

[Abū ‘Eīsā said:] This *Hadith* is *Hasan*. What is acted upon regarding this topic – according to the people of knowledge – is that when a man dies and he leaves no relatives behind, then his inheritance is placed into the Muslims’ *Bait Al-Māl*.

تخريج: [حسن] وأخرجه ابن ماجه، الفرائض، باب من لا وارث له، ح: ٢٧٤١ من حديث سفيان بن عيينة وأبو داود، ح: ٢٩٠٥ من حديث عمرو بن دينار به وقال النسائي: "عوسجة ليس

هَارُونَ: أَخْبَرَنَا سُفْيَانُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَصْبَهَانِيِّ، عَنْ مُجَاهِدِ بْنِ وَرْدَانَ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ مَوْلَى لِلنَّبِيِّ ﷺ وَقَعَ مِنْ عِدْقِ نَخْلَةٍ فَمَاتَ، فَقَالَ النَّبِيُّ ﷺ: «انظُرُوا هَلْ لَهُ مِنْ وَارِثٍ؟» قَالُوا: لَا، قَالَ: «فَادْفَعُوهُ إِلَى بَعْضِ أَهْلِ الْقَرْيَةِ».

وفي الباب عَنْ بُرَيْدَةَ [و] هَذَا حَدِيثٌ حَسَنٌ.

تخريج: [حسن] وأخرجه أبو داود، الفرائض، باب: في ميراث ذوي الأرحام، ح: ٢٩٠٢ وابن ماجه، ح: ٢٧٣٣ من حديث سفيان الثوري به.

(المعجم ١٤) - بَابُ: [فِي مِيرَاثِ الْمَوْلَى الْأَسْفَلِ] (التحفة ١٤)

٢١٠٦ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ عَوْسَجَةَ، عَنِ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا مَاتَ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ، وَلَمْ يَدَعْ وَارِثًا إِلَّا عَبْدًا هُوَ أَعْتَقَهُ، فَأَعْطَاهُ النَّبِيُّ ﷺ مِيرَاثَهُ.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ. وَالْعَمَلُ عِنْدَ أَهْلِ الْعِلْمِ فِي هَذَا الْبَابِ: إِذَا مَاتَ الرَّجُلُ وَلَمْ يَتْرُكْ عَصَبَةً أَنْ مِيرَاثَهُ يُجْعَلُ فِي بَيْتِ مَالِ الْمُسْلِمِينَ.

تخريج: [حسن] وأخرجه ابن ماجه، الفرائض، باب من لا وارث له، ح: ٢٧٤١ من حديث سفيان بن عيينة وأبو داود، ح: ٢٩٠٥ من حديث عمرو بن دينار به وقال النسائي: "عوسجة ليس

بالمشهور" ووثقه أبو زرعة وابن حبان والترمذي وتعديله راجح.

Comments:

Qāḍi Shuraih and Ṭāwūs hold the view that, if the master has not left behind any heir except for a slave whom he had freed, then the freed slave will get his inheritance just as the master inherits the freed slave, if the latter leaves behind no heirs. But the general view among the scholars is that in such a case the inheritance shall go to *Bait Al-Māl* (public treasury of a Muslim state) (*Tuhfat Al-Aḥwadhī*, v.3, p.183).

Chapter 15. What Has Been Related About Invalidating The Inheritance Between The Muslim And The Disbeliever

المعجم (١٥) - بَابُ مَا جَاءَ فِي إِبْطَالِ الْمِيرَاثِ بَيْنَ الْمُسْلِمِ وَالْكَافِرِ (التحفة ١٥)

2107. Usāmah bin Zaid narrated that the Messenger of Allāh ﷺ said: “The Muslim does not inherit from the disbeliever, nor the disbeliever from the Muslim.” (*Ṣaḥīḥ*)

٢١٠٧ - حَدَّثَنَا سَعِيدُ بْنُ عَبْدِ الرَّحْمَنِ الْمَخْزُومِيُّ وَعَبْدُ وَاحِدٍ قَالُوا: حَدَّثَنَا سُفْيَانُ عَنِ الزُّهْرِيِّ؛ ح: وَحَدَّثَنَا عَلِيُّ بْنُ حُجْرٍ: أَخْبَرَنَا هُشَيْمٌ عَنِ الزُّهْرِيِّ، عَنْ عَلِيِّ بْنِ حُسَيْنٍ، عَنْ عَمْرِو بْنِ عُثْمَانَ، عَنْ أُسَامَةَ بْنِ زَيْدٍ: أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ».

(Another chain) with similar meaning.

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

حَدَّثَنَا ابْنُ أَبِي عَمْرٍ: حَدَّثَنَا سُفْيَانُ: حَدَّثَنَا الزُّهْرِيُّ نَحْوَهُ.

This *Hadīth* is *Ḥasan Ṣaḥīḥ*. This is how it was reported by Ma‘mar and other narrators from Az-Zuhrī. Mālik reported it similarly from Az-Zuhrī from ‘Alī bin Ḥusain, from ‘Umar bin ‘Uthmān, from Usāmah bin Zaid from the Prophet ﷺ. The narration from Mālik is faulty. Mālik erred in it. Some of them reported that Mālik said: “From ‘Amr bin ‘Uthmān” while most of the companions of Mālik said: “From Mālik, from ‘Umar bin ‘Uthmān.” ‘Amr bin ‘Uthmān bin ‘Affān is well-known, he is the son of ‘Uthmān, and we do not know ‘Umar bin ‘Uthmān.

[قَالَ أَبُو عِيسَى:] وَفِي الْبَابِ عَنْ جَابِرٍ وَعَبْدِ اللَّهِ بْنِ عَمْرٍو.

[و]هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. هَكَذَا رَوَاهُ مَعْمَرٌ وَعَبْدُ وَاحِدٍ وَعَنِ الزُّهْرِيِّ نَحْوَهُ هَذَا. وَرَوَى مَالِكٌ عَنِ الزُّهْرِيِّ، عَنْ عَلِيِّ بْنِ حُسَيْنٍ، عَنْ عَمْرِو بْنِ عُثْمَانَ، عَنْ أُسَامَةَ بْنِ زَيْدٍ عَنِ النَّبِيِّ ﷺ نَحْوَهُ. وَحَدِيثُ مَالِكٍ وَهُمْ، وَهُمْ فِيهِ مَالِكٌ. وَرَوَى بَعْضُهُمْ عَنْ مَالِكٍ فَقَالَ عَنْ عَمْرِو بْنِ عُثْمَانَ. وَأَكْثَرُ

This *Hadīth* is acted upon according to the people of knowledge. The people of knowledge differ over the apostate's inheritance. Some of the people of knowledge among the Companions of the Prophet ﷺ and others held that his wealth is to be inherited by the Muslims, while some of them said that his inheritance is not inherited by the Muslims, they cited as proof, the *Hadīth* of the Prophet ﷺ: "The Muslim does not inherit from the disbeliever." And this is the view of *Ash-Shāfi'i*.

أَصْحَابِ مَالِكٍ قَالُوا عَنْ مَالِكٍ، عَنْ عُمَرَ بْنِ
عُثْمَانَ. وَعُمَرُ بْنُ عُثْمَانَ بْنِ عُفَانَ هُوَ مَشْهُورٌ
مِنْ وَلَدِ عُثْمَانَ وَلَا نَعْرِفُ عُمَرَ بْنَ عُثْمَانَ.
وَالْعَمَلُ عَلَى هَذَا الْحَدِيثِ عِنْدَ أَهْلِ الْعِلْمِ.
وَاخْتَلَفَ أَهْلُ الْعِلْمِ فِي مِيرَاثِ الْمُرْتَدِّ،
فَجَعَلَ بَعْضُ أَهْلِ الْعِلْمِ مِنْ أَصْحَابِ النَّبِيِّ
ﷺ وَغَيْرِهِمُ الْمَالَ لِيُورَثَهُ مِنَ الْمُسْلِمِينَ،
وَقَالَ بَعْضُهُمْ: لَا يَرِثُهُ وَرَثَتُهُ مِنَ الْمُسْلِمِينَ،
وَاحْتَجُّوا بِحَدِيثِ النَّبِيِّ ﷺ: «لَا يَرِثُ
الْمُسْلِمُ الْكَافِرَ» وَهُوَ قَوْلُ الشَّافِعِيِّ.

تخریج: متفق عليه، وأخرجه البخاري، الفرائض، باب: لا يرث المسلم الكافر، ولا الكافر المسلم ... إلخ، ح: ٦٧٦٤ ومسلم، ح: ١٦١٤ من حديث الزهري به * وفي الباب عن جابر [يأتي: ٢١٠٨] وعبد الله بن عمرو [أبو داود، ح: ٢٩١١] * حديث مالك في الموطأ: ٥١٩/٢ (يحيى).

Comments:

The people of knowledge are unanimous in their view that a disbeliever cannot inherit from a Muslim, and the majority of jurists among the Companions also believe that a Muslim as well, cannot inherit from a disbeliever.

Chapter 16. The People Of Two Religions Do Not Inherit From Each Other

(المعجم ١٦) - بَابُ: لَا يَتَوَارَثُ أَهْلُ
مِلَّتَيْنِ (التحفة ١٦)

2108. Jābir narrated that the Prophet ﷺ said: "The people of two religions do not inherit from each other." (*Sahīh*)

[Abū 'Eisā said:] This *Hadīth* is *Gharīb*, we do not know it to be a *Hadīth* from Jābir, except through the narration of Ibn Abi Lailā.

٢١٠٨ - حَدَّثَنَا حُمَيْدُ بْنُ مَسْعَدَةَ: أَخْبَرَنَا
حُصَيْنُ بْنُ نُمَيْرٍ عَنِ ابْنِ أَبِي لَيْلَى، عَنْ أَبِي
الزُّبَيْرِ، عَنْ جَابِرِ عَنِ النَّبِيِّ ﷺ قَالَ: «لَا
يَتَوَارَثُ أَهْلُ مِلَّتَيْنِ».
[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ غَرِيبٌ لَا
نَعْرِفُهُ مِنْ حَدِيثِ جَابِرٍ، إِلَّا مِنْ حَدِيثِ ابْنِ
أَبِي لَيْلَى.

تخریج: [صحيح] وسنده ضعيف وله شاهد عند أبي داود، ح: ٢٩١١ وابن ماجه، ح: ٢٧٣١ وغيرهما وإسناده حسن.

Comments:

People of knowledge unanimously hold that disbelievers professing the same faith shall inherit from each other. However, views differ in cases where the disbelievers profess different faiths. But in view of the dictum that says that “All disbelief is one religion”, disbelievers of all hues and denominations can inherit from each other.

Chapter 17. What Has Been Related About Invalidating The Inheritance Of The Murderer

(المعجم ١٧) - بَابُ مَا جَاءَ فِي إِبْطَالِ مِيرَاثِ الْقَاتِلِ (التحفة ١٧)

2109. Abū Hurairah narrated that the Prophet ﷺ said: “The murderer will not inherit.” (*Hasan*) [Abū ‘Eīsā said:] This *Hadīth* is not correct. This is not known except through this route. Ishāq bin ‘Abdullāh bin Abī Farwah was abandoned by some of the people of knowledge, among them Aḥmad bin Ḥanbal.

٢١٠٩ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا اللَّيْثُ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ، عَنِ الزُّهْرِيِّ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ قَالَ: «الْقَاتِلُ لَا يَرِثُ».

This is acted upon according to the people of knowledge, the murderer will not inherit whether the murder was a mistake or on purpose. Some of them said that if the murder was a mistake, then he inherits, and this is the view of Mālik.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ لَا يَصِحُّ، لَا يُعْرَفُ هَذَا إِلَّا مِنْ هَذَا الْوَجْهِ، وَإِسْحَاقُ ابْنُ عَبْدِ اللَّهِ بْنِ أَبِي فَرْوَةَ قَدْ تَرَكَ بَعْضُ أَهْلِ الْعِلْمِ، مِنْهُمْ أَحْمَدُ بْنُ حَنْبَلٍ.

Comments:

وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ، أَنَّ الْقَاتِلَ لَا يَرِثُ، كَانَ الْقَتْلُ خَطَأً أَوْ عَمْدًا. وَقَالَ بَعْضُهُمْ: إِذَا كَانَ الْقَتْلُ خَطَأً، فَإِنَّهُ يَرِثُ، وَهُوَ قَوْلُ مَالِكٍ.

Scholars of religion are unanimous in their view that an intentional murderer will not inherit from the victim. Similarly, most of the scholars hold the view that even the person responsible for manslaughter will not inherit from the victim.

Chapter 18. What Has Been Related About The Inheritance For The Wife From Her Husband’s Blood-Money

(المعجم ١٨) - بَابُ مَا جَاءَ فِي مِيرَاثِ الْمَرْأَةِ مِنْ دِيَةِ زَوْجِهَا (التحفة ١٨)

2110. Sa‘eed bin Al-Musayyab said: “Umar said: ‘The blood-

٢١١٠ - حَدَّثَنَا قُتَيْبَةُ وَأَحْمَدُ بْنُ مَنِيعٍ وَعَبْدُ وَاحِدٍ، قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ

money is upon the *‘Āqilah*, and the wife does not inherit anything from the blood-money of her husband.’ So Ad-Ḍaḥḥāk bin Sufyān Al-Kilābī informed him that the Messenger of Allāh ﷺ wrote to him, (saying) to give the wife of Ashyam Ad-Dabābī the inheritance from her husband’s blood-money.”

(*Ṣaḥīḥ*)

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

عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ قَالَ: قَالَ عُمَرُ: الدِّيَةُ عَلَى الْعَاقِلَةِ وَلَا تَرِثُ الْمَرْأَةُ مِنْ دِيَةِ زَوْجِهَا شَيْئًا، فَأَخْبَرَهُ الضُّحَّاكُ بْنُ سُفْيَانَ الْكِلَابِيِّ أَنَّ رَسُولَ اللَّهِ ﷺ كَتَبَ إِلَيْهِ: أَنْ وَرِثَ امْرَأَةً أَشِيَمَ الضُّبَابِيِّ مِنْ دِيَةِ زَوْجِهَا.

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ

صَحِيحٌ.

تخريج: [صحيح] وأخرجه أبو داود، الفرائض، باب: في المرأة ترث من دية زوجها، ح: ٢٩٢٧ وابن ماجه، ح: ٢٦٤٢ من حديث سفيان بن عيينة به وصححه ابن الجارود، ح: ٩٦٦ وله شواهد عند الطبراني: ٢٧٦/٥، ح: ٥٣١٠ وغيره.

Comments:

As already explained in the chapter on ‘blood-money,’ the wife shall be the inheritor of her husband’s blood-money. The term *‘Āqilah* (i. e. members of a clan from the father’s side responsible for the payment of blood-money on behalf of the murderer) has also been explained in some detail there.

Chapter 19. What Has Been Related About ‘The Inheritance Is For The Heir And The ‘Aql (Blood-Money) Is Due From The ‘Aṣabah (Relatives From The Father’s Side)’

(المعجم ١٩) - بَابُ مَا جَاءَ أَنَّ الْمِيرَاثَ لِلْوَرَثَةِ وَالْعَقْلُ عَلَى الْعَصْبَةِ (التحفة ١٩)

2111. Abū Hurairah narrated that the Messenger of Allāh ﷺ judged the payment of a *Gurrah* male or female slave in the case of a woman’s fetus from Banū Liḥyān which miscarried. Then the woman who was required to give the *Gurrah* died, so the Messenger of Allāh ﷺ judged that her inheritance be given to her children and her husband, and that her blood-money be paid by her *‘Aṣabah*. (*Ṣaḥīḥ*)

٢١١١ - حَدَّثَنَا قُتَيْبَةُ: أَخْبَرَنَا اللَّيْثُ عَنْ ابْنِ شَهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، عَنْ أَبِي هُرَيْرَةَ: أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى فِي جَنِينِ امْرَأَةٍ مِنْ بَنِي لِحْيَانَ سَقَطَ مَيْتًا بِعُرَّةِ عَبْدِ أَوْ أَمَةٍ، ثُمَّ إِنَّ الْمَرْأَةَ الَّتِي قَضَى عَلَيْهَا بِعُرَّةٍ تُوَفِّقَتْ، فَقَضَى رَسُولُ اللَّهِ ﷺ أَنَّ مِيرَاثَهَا لِبَنِيهَا وَزَوْجِهَا، وَأَنَّ عَقْلَهَا عَلَى عَصَبَتِهَا.

[قَالَ أَبُو عِيسَى:] وَرَوَى يُونُسُ هَذَا

الْحَدِيثَ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ

[Abū ‘Eisā said:] Yūnus reported

this *Hadīth* from Az-Zuhri, from Sa'eed bin Al-Musayyab and Abū Salamah, from Abū Hurairah from the Prophet ﷺ, and it is similar. Mālik reported it from Az-Zuhri, from Abū Salamah, from Abū Hurairah and Mālik (reported it) from Az-Zuhri, from Sa'eed bin Al-Musayyab; from the Prophet ﷺ [in *Mursal* form.]

المُسَيَّبِ، وَأَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ ﷺ نَحْوَهُ.
وَرَوَاهُ مَالِكٌ عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ. وَمَالِكٌ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ عَنِ النَّبِيِّ ﷺ [مُرْسَلٌ].

تخريج: متفق عليه، وأخرجه البخاري، الفرائض، باب ميراث المرأة والزوج مع الولد وغيره، ح: ٦٧٤٠ ومسلم، ح: ١٦٨١ عن قتيبة به * حديث مالك في الموطأ: ٨٥٥/٢.

Comments:

The *Hadīth* apparently implies that the woman that had killed the fetus of another woman was a murderer in the eye of the law. Therefore, the Prophet ﷺ ordered the blood-money due from her to be paid by her *'Asabah* on her behalf. However, when the woman in question herself died, the Prophet ﷺ ruled that her inheritance be distributed among her husband and daughters to the exclusion of *'Asabah*.

Chapter 20. What Has Been Related About (The Inheritance Of) The Man Who Accepted Islam At The Hand Of Another Man

(المعجم ٢٠) - بَابُ مَا جَاءَ فِي [مِيرَاثِ] الرَّجُلِ الَّذِي يُسَلِّمُ عَلَى يَدِي الرَّجُلِ (التحفة ٢٠)

2112. 'Abdullāh bin Mawhab – and some of them said – 'Abdullāh bin Wahb, narrated from Tamīm Ad-Dāri who said: "I asked the Messenger of Allāh ﷺ: 'What is the *Sunnah* regarding a man among the people of *Shirk* who accepts Islam at the hand of a man among the Muslims?' So the Messenger of Allāh ﷺ said: 'He is the closest of the people to him in his life and his death.'" (*Hasan*)

٢١١٢ - حَدَّثَنَا أَبُو كُرَيْبٍ: حَدَّثَنَا أَبُو أُسَامَةَ وَابْنُ نُمَيْرٍ وَوَكَيْعٌ عَنْ عَبْدِ الْعَزِيزِ بْنِ عَمْرِو بْنِ عَبْدِ الْعَزِيزِ، عَنْ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ - وَقَالَ بَعْضُهُمْ: عَنْ عَبْدِ اللَّهِ بْنِ وَهَبٍ - عَنْ تَمِيمِ الدَّارِيِّ قَالَ: سَأَلْتُ رَسُولَ اللَّهِ ﷺ: مَا السُّنَّةُ فِي الرَّجُلِ مِنْ أَهْلِ الشِّرْكِ يُسَلِّمُ عَلَى يَدِ رَجُلٍ مِنَ الْمُسْلِمِينَ؟ فَقَالَ رَسُولُ اللَّهِ ﷺ: «هُوَ أَوْلَى النَّاسِ بِمَحْيَاةِ وَمَمَاتِهِ».

[Abū 'Eisā said:] We do not know of this *Hadīth* except as a narration of 'Abdullāh bin Wahb – and it is also narrated as Ibn Mawhab –

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ عَبْدِ اللَّهِ بْنِ وَهَبٍ، وَيُقَالُ:

from Tamīm Ad-Dārī. Some of them entered Qabiṣah bin Dhuwaib between ‘Abdullāh bin Mawhab and Tamīm Ad-Dārī. Yaḥya bin Hamzah reported it from ‘Abdul-‘Azīz bin ‘Umar, and he added “from Qabiṣah bin Dhuwaib” in it, and it is not connected in my view. This [*Hadīth*] is acted upon according to some of the people of knowledge. Some of them said his inheritance is placed in *Bait Al-Māl*. This is the view of Ash-Shāfi‘ī, and as proof, he cited the *Hadīth* of the Prophet ﷺ: “The *Walā’* is for the one who freed him (or her).”^[1]

ابْنُ مَوْهَبٍ عَنْ تَمِيمِ الدَّارِيِّ . وَقَدْ أَدْخَلَ بَعْضُهُمْ بَيْنَ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ وَبَيْنَ تَمِيمِ الدَّارِيِّ قَبِيصَةَ بْنَ ذُوَيْبٍ ، وَرَوَاهُ يَحْيَى بْنُ حَمْرَةَ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمَرَ ، وَزَادَ فِيهِ عَنْ قَبِيصَةَ بْنِ ذُوَيْبٍ وَهُوَ عِنْدِي لَيْسَ بِمُتَّصِلٍ . وَالْعَمَلُ عَلَى هَذَا [الْحَدِيثِ] عِنْدَ بَعْضِ أَهْلِ الْعِلْمِ . وَقَالَ بَعْضُهُمْ : يُجْعَلُ مِيرَاثُهُ فِي بَيْتِ الْمَالِ ، وَهُوَ قَوْلُ الشَّافِعِيِّ ، وَاحْتَجَّ بِحَدِيثِ النَّبِيِّ ﷺ : « أَنَّ الْوَلَاءَ لِمَنْ أَعْتَقَ » .

تخريج: [حسن] وأخرجه ابن ماجه، الفرائض، باب الرجل يسلم على يدي الرجل، ح: ٢٧٥٢ من حديث وكيع، وأبو داود، ح: ٢٩١٨ من حديث عبدالعزيز بن عمر به وعلقه البخاري في صحيحه بصيغة التمريض (فتح: ٤٥/١٢) وصححه الحاكم فتعقبه الذهبي، وضعفه البخاري وأحمد والشافعي وغيرهم، وقال أبوزرعة الدمشقي: "هذا حديث حسن متصل، لم أر أحداً من أهل العلم يدفعه" راجع النيل ولم أر لمضعفه حجة.

Comments:

Most of the scholars believe that *Walā’* (proximity or relationship established) referred to in this narration, generates cooperation and help, but not the right to inherit. This is the view held by Ḥasan, Sha‘bī, Mālik and most of the people of opinion. As for Imām Aḥmad, both kinds of views have been attributed to him.

Chapter 21. What Has Been Related About Invalidating Inheritance For the Child Of Zinā (Illegitimate Sexual Relations)

(المعجم ٢١) - بَابُ [مَا جَاءَ فِي] إِنْطَالِ مِيرَاثِ وَلَدِ الزَّانَا [(التحفة ٢١)

2113. ‘Amr bin Shu‘aib narrated

٢١١٣ - حَدَّثَنَا قُتَيْبَةُ: أَخْبَرَنَا ابْنُ لَهْيَعَةَ

^[1] The reasoning behind this proof is that in the case of a slave who accepts Islam, at the hand of other than his master, the above text would indicate that the one at whose hand he accepted Islam is his heir. While the text used by Ash-Shāfi‘ī indicates that if that slave is freed by his master, then the master who freed him is his heir, and this is an ‘agreed upon’ *Hadīth*, while no. 2112 is not, the preference has been given to the more ‘agreed upon’ text.

from his father, from his grandfather, that the Messenger of Allāh ﷺ said: "Any man who fornicates with a free woman, or a slave woman, then the child born from *Zinā* does not inherit, nor is it inherited from." (*Hasan*)

[Abū 'Eisā said:] This *Hadīth* has been reported from others besides Ibn Lahī'ah, from 'Amr bin *Shu'aib*, and this is acted upon according to the people of knowledge; the child of *Zinā* does not inherit from his father.

تخریج: [حسن] وأخرجه ابن ماجه، الفرائض، باب: في ادعاء الولد، ح: ٢٧٤٥ من حديث عمرو بن شعيب به وللحديث شواهد عند ابن حبان، ح: ١٦٩٩ وغيره وهو بها حسن.

Comments:

Inheritance between the father and his children is established through lineage. No such relationship is established or recognized between the fornicator and his illegitimate child in Islam. As such, neither of them can inherit from the other.

Chapter 22. What Has Been Related About Who Inherits The *Walā'*

(المعجم ٢٢) - بَابُ [مَا جَاءَ فِي] مَنْ يَرِثُ الْوَلَاءَ (التحفة ٢٢)

2114. 'Amr bin *Shu'aib* narrated from his father, from his grandfather, that the Messenger of Allāh ﷺ said: "The one who inherits the *Walā'* is the one who inherits the wealth." (*Da'if*)

٢١١٤ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا ابْنُ لَهِيْعَةَ عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ: أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «يَرِثُ الْوَلَاءَ مَنْ يَرِثُ الْمَالَ».
[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ لَيْسَ إِسْنَادُهُ بِالْقَوِيٍّ.

[Abū 'Eisā said:] The chain of this *Hadīth* is not strong.

تخریج: [إسناده ضعيف] وابن لهيعة حدث به قبل اختلاطه وصرح بالسماع عند أحمد: ١/ ٢٢ وزاد في الأخير: عن عمر رضي الله عنه وسنده ضعيف.

Comments:

When the manumitter dies, then just as his children inherit his wealth, rights of manumission are also transferred to them. By the same token, if a freed slave meets his death and leaves behind neither heirs nor *'Aṣabah*, then his inheritance shall go to the progeny of the manumitter.

Chapter 23. What Has Been Related About What Women Inherit From *Walā'*

(المعجم ٢٣) - بَابُ [مَا جَاءَ مَا يَرِثُ
النِّسَاءُ مِنَ الْوَالِيَةِ] (التحفة ٢٣)

2115. Wāḥilah bin Al-Asqa' narrated that the Messenger of Allāh ﷺ said: "The woman collects three inheritances: Whomever she freed, whomever she found, and the child for which she made *Li'ān*."^[1] (*Da'if*)

This *Ḥadīth* is *Ḥasan Gharīb*, we do not know of it except as a narration of Muḥammad bin Ḥarb from this route.

٢١١٥ - حَدَّثَنَا هَارُونُ أَبُو مُوسَى
الْمُسْتَمْلِيُّ الْبَغْدَادِيُّ: أَخْبَرَنَا مُحَمَّدُ بْنُ
حَرْبٍ: حَدَّثَنَا عُمَرُ بْنُ رُوْبَةَ التَّعْلِبِيُّ عَنْ عَبْدِ
الْوَالِدِ بْنِ عَبْدِ اللَّهِ بْنِ بُسْرِ النَّصْرِيِّ، عَنْ
وَائِلَةَ بْنِ الْأَشْعَقِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ:
«الْمَرْأَةُ تَحُوزُ ثَلَاثَةَ مَوَارِيثَ: عَتِيقَهَا وَلَقِيطَهَا
وَوَلَدَهَا الَّذِي لَاعَتَتْ عَنْهُ». هَذَا حَدِيثُ
حَسَنٍ غَرِيبٍ لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ مُحَمَّدِ
ابْنِ حَرْبٍ عَلَى هَذَا الْوَجْهِ.

تخریج: [إسناده ضعيف] وأخرجه أبو داود، الفرائض، باب ميراث ابن الملائنة،
ح: ٢٩٠٦ وابن ماجه، ح: ٢٧٤٢ من حديث عمر بن روبة به وحديث عمر بن روبة عن عبد
الواحد: ضعيف كما حققته في نيل المقصود.

Comments:

According to the majority of Companions and jurists, if a woman frees a slave and he dies without leaving behind any legal heir or *'Asabah*, then the woman shall inherit from him. (*Al-Mughnī*, v.9, p.239)

[1] See no 1202 and 1203.