

In the Name of Allāh,
the Merciful, the Beneficent

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

28. Chapters On *Waṣāyā* (Wills And Testaments) From The Messenger Of Allāh ﷺ

(المعجم ٢٨) - أَبْوَابُ الْوَصَايَا
عَنْ رَسُولِ اللَّهِ ﷺ (التحفة ٢٥)

Chapter 1. What Has Been Related About Willing One Third

(المعجم ١) - بَابُ مَا جَاءَ فِي الْوَصِيَّةِ
بِالثُّلُثِ (التحفة ١)

2116. ‘Āmir bin Sa’d bin Abī Waqqaṣ narrated from his father who said: “I was ill during the year of the Conquest (of Makkah) with an illness bringing me to the brink of death. So the Messenger of Allāh ﷺ came to visit me, and I said: ‘O Messenger of Allāh! Indeed I have a great deal of wealth and I do not have any heirs except my daughter, so should I will all of my wealth?’ He said: ‘No.’ I said: ‘Then two-thirds of my wealth?’ He said: ‘No.’ I said: ‘Then half?’ He said: ‘No.’ I said: ‘Then a third?’ He said: ‘A third, and a third is too much. If you leave your heirs without need it is better than to leave them in poverty begging from the people. Indeed you do not do any spending (on you family) except that you are rewarded for it, even the morsel of food your raise to your wife’s mouth.” He said: “I said: ‘Will I be left behind from my

٢١١٦ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ، عَنْ أَبِيهِ قَالَ: مَرِضْتُ عَامَ الْفَتْحِ مَرَضًا أَشْفَيْتُ مِنْهُ عَلَى الْمَوْتِ، فَأَتَانِي رَسُولُ اللَّهِ ﷺ يَعُودُنِي، فَقُلْتُ: يَا رَسُولَ اللَّهِ! إِنَّ لِي مَالًا كَثِيرًا وَلَيْسَ يَرِثُنِي إِلَّا ابْنَتِي فَأَوْصِي بِمَالِي كُلِّهِ؟ قَالَ: «لَا»، قُلْتُ: فَتُلْتُنِي مَالِي؟ قَالَ: «لَا»، قُلْتُ: فَالْشُّطْرُ؟ قَالَ: «لَا»، قُلْتُ: فَالثُّلُثُ وَالثُّلُثُ كَثِيرٌ، إِنَّكَ إِنْ تَذَرُ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ، وَإِنَّكَ لَنْ تُنْفِقَ نَفَقَةً إِلَّا أُجِرْتَ فِيهَا، حَتَّى اللَّفْمَةَ تَرْفَعَهَا إِلَى فِي امْرَأَتِكَ». قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! أُخَلِّفُ عَنْ هِجْرَتِي؟ قَالَ: «إِنَّكَ لَنْ تُخَلِّفَ بَعْدِي فَتَعْمَلُ عَمَلًا تُرِيدُ بِهِ وَجْهَ اللَّهِ إِلَّا أزدَدْتَ بِهِ رِفْعَةً، وَدَرَجَةً، وَلَعَلَّكَ إِنْ تُخَلِّفَ حَتَّى يَنْتَقِعَ بِكَ

emigration?''^[1] He said: 'You will not be left behind after me, and do righteous deeds intending Allāh's Face, except that it will add to your elevation in rank. Perhaps you will remain until some people benefit from you and others will be harmed by you. O Allāh! Complete the emigration of my Companions and do not turn them on their heels. But the case of Sa'd bin Khawlah is sad.'" the Messenger of Allāh ﷺ felt sorry for him dying in Makkah. (*Ṣaḥīḥ*)

[Abū 'Eīsā said:] There is a narration on this topic from Ibn 'Abbās.

This *Hadīth* is *Hasan Ṣaḥīḥ*, and this *Hadīth* has been reported from Sa'd bin Abī Waqqāṣ through others routes.

This is acted upon according to the people of knowledge: A man is not to will more than a third. Some of the people of knowledge considered it recommended to make it less than a third, due to the saying of the Messenger of Allāh ﷺ: "And a third is too much."

تخریج: متفق علیه، وأخرجه البخاري، الفرائض، باب ميراث البنات، ح: ٦٧٣٣ ومسلم، ح: ١٦٢٨ من حديث سفيان بن عيينة به * وفي الباب عن ابن عباس [البخاري، ح: ٢٧٤٣ ومسلم، ح: ١٦٢٩].

Comments:

Allāh fulfilled the wish and hope expressed by the Prophet ﷺ about Sa'd bin Abī Waqqāṣ ؓ in this *Hadīth*, and he lived long after the death of the Prophet ﷺ. It was under Sa'd's command that victories were achieved against Iraq and Iran. Sa'd ؓ was also instrumental in bringing a large number of disbelievers into the fold of Islam (Nawawi's commentary on *Ṣaḥīḥ Muslim*, v.2, p.40).

أَقْوَامٌ وَيُضَرَّرُ بِكَ آخَرُونَ. اللَّهُمَّ أَفْضِلْ لِأَصْحَابِي هِجْرَتَهُمْ وَلَا تَرُدَّهُمْ عَلَيَّ أَعْقَابِيهِمْ لَكِنَّ الْبَائِسُ سَعْدُ بْنُ خَوْلَةَ: يَرْتِي لَهُ رَسُولُ اللَّهِ ﷺ أَنْ مَاتَ بِمَكَّةَ.

[قَالَ أَبُو عِيْسَى:] وَفِي الْبَابِ عَنِ ابْنِ عَبَّاسٍ.

وَهَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رُوِيَ هَذَا الْحَدِيثُ مِنْ غَيْرِ وَجْهِ عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ أَنَّهُ لَيْسَ لِلرَّجُلِ أَنْ يُوَصِّيَ بِأَكْثَرَ مِنْ الثُّلُثِ. وَقَدْ اسْتَحَبَّ بَعْضُ أَهْلِ الْعِلْمِ أَنْ يُنْقَصَ مِنَ الثُّلُثِ لِقَوْلِ رَسُولِ اللَّهِ ﷺ: «وَالثُّلُثُ كَثِيرٌ».

[1] Meaning, after having made *Hijrah*, if I die in Makkah, will that reward be lost.

Chapter 2. What Has Been Related About Causing Harm With The Will

(المعجم ٢) - بَابُ [مَا جَاءَ فِي الضَّرَارِ فِي الْوَصِيَّةِ] (التحفة ٢)

2117. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: “Indeed a man, and a woman, perform deeds in obedience to Allāh for sixty years, then death presents itself to them, and they cause such harm in the will that the Fire becomes warranted for them.” Then he recited: After payment of legacies he (or she) may have bequeathed or debts, without causing harm. This is a Commandment from Allāh... up to His saying: That is the magnificent success.^[1] (*Hasan*)

[Abū ‘Eisā said:] This *Hadīth* is *Hasan* [*Ṣaḥīḥ*] *Gharīb* from this route, and Naṣr bin ‘Alī (a narrator in the chain) who reported from Al-Ash‘ath bin Jābir is the grandfather of Naṣr bin ‘Alī Al-Jahḍamī.

٢١١٧ - حَدَّثَنَا نَضْرُ بْنُ عَلِيٍّ [الْجَهْضَمِيُّ]: أَخْبَرَنَا عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ: حَدَّثَنَا نَضْرُ بْنُ عَلِيٍّ [وَهُوَ جَدُّ هَذَا النَّضْرِ]: حَدَّثَنَا الْأَشْعَثُ بْنُ جَابِرٍ عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّهُ حَدَّثَهُ عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «إِنَّ الرَّجُلَ لَيَعْمَلُ وَالْمَرْأَةُ بِطَاعَةِ اللَّهِ سِتِينَ سَنَةً ثُمَّ يَحْضُرُهُمَا الْمَوْتُ فَيُضَارَانِ فِي الْوَصِيَّةِ فَتَجِبُ لَهُمَا النَّارُ، ثُمَّ قَرَأَ عَلِيُّ أَبُو هُرَيْرَةَ: ﴿مَنْ بَعَدَ وَصِيَّتِهِ يُوصِي بِهَا أَوْ دَبَّنَ عَيْرَ مُضَاكِرٍ وَصِيَّتَهُ مَنَ اللَّهُ﴾ إِلَى قَوْلِهِ ﴿ذَلِكَ أَفْقَرُ الْعَظِيمِ﴾» [النساء: ١٢، ١٣].

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ [صَحِيحٌ] غَرِيبٌ مِنْ هَذَا الْوَجْهِ وَنَضْرُ بْنُ عَلِيٍّ الَّذِي رَوَى عَنِ الْأَشْعَثِ بْنِ جَابِرٍ هُوَ جَدُّ نَضْرِ بْنِ عَلِيٍّ الْجَهْضَمِيِّ.

تخريج: [إسناده حسن] وأخرجه أبو داود، الوصايا، باب ما جاء في كراهية الإضرار في الوصية، ح: ٢٨٦٧ من حديث عبدالصمد وابن ماجه، ح: ٢٧٠٤ من حديث الأشعث به وشهر بن حوشب حسن الحديث على الراجح.

Comments:

The *Hadīth* proves that it is not allowed for a believing man or woman to make a will to the detriment of the legal heirs, or to make a disproportionate will in favor of a certain heir to the detriment of others, or to make a false declaration of a debt upon himself or herself in order to do wrong to the heirs — all these acts amount to committing a sin of a proportion whose only recompense is Hellfire.

[1] *An-Nisā*’ 4:12,13.

Chapter 3. What Has Been Related About Encouraging (To Make) The Will

2118. Ibn ‘Umar narrated that the Messenger of Allāh ﷺ said: “It is not right for a Muslim man to spend two nights, having what he would will, without having his will written with him.” (*Ṣaḥīḥ*)

[Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ*. A similar narration has been reported from Az-Zuhri, from Sālim, from Ibn ‘Umar from the Prophet ﷺ.

تخریج: متفق علیه، وأخرجه مسلم، الوصية، باب وصية الرجل مكتوبة عنده، ح: ۳/۱۶۲۷ من حديث أيوب السخيتاني والبخاري، ح: ۲۷۳۸ من حديث نافع به، سفيان هو ابن عيينة.

Comments:

If a man owes some money to someone, or is keeping a trust to be delivered to the rightful owner, then he is duty-bound to make a will in this regard. The will may as well be committed to writing, if necessary.

Chapter 4. What Has Been Related That The Prophet ﷺ Did Not Leave A Will

2119. Ṭalḥah bin Muṣarrif said: “I said to Ibn Abī Awfā: ‘Did the Messenger of Allāh ﷺ leave a will?’ He said: ‘No.’ I said: ‘How is the will written, and how was it enjoined upon the people?’ He said: ‘It was ordered in the Book of Allāh, Most High.’” (*Ṣaḥīḥ*)

[Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīḥ* [*Gharīb*]. We do not know of it except through the narration of Mālik bin Mighwal.

(المعجم ۳) - بَابُ مَا جَاءَ فِي الْحَثِّ عَلَى الْوَصِيَّةِ (التحفة ۳)

۲۱۱۸ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ عَنْ أَبِي يُوْب، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا حَقُّ امْرِئٍ مُسْلِمٍ يَبِيتُ لَيْلَتَيْنِ وَلَهُ مَا يُوصِي فِيهِ إِلَّا لِأَوْصِيَّتِهِ مَكْتُوبَةً عِنْدَهُ».

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رُوِيَ عَنِ الزُّهْرِيِّ، عَنْ سَالِمٍ، عَنِ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ نَحْوَهُ.

(المعجم ۴) - بَابُ مَا جَاءَ أَنَّ النَّبِيَّ ﷺ لَمْ يُوصِ (التحفة ۴)

۲۱۱۹ - حَدَّثَنَا أَحْمَدُ بْنُ مَنِيعٍ: أَخْبَرَنَا أَبُو قَطْرٍ [عَمْرُو بْنُ الْهَيْثَمِ الْبَغْدَادِيُّ]: أَخْبَرَنَا مَالِكُ بْنُ مِغْوَلٍ عَنْ طَلْحَةَ بْنِ مُصَرِّفٍ قَالَ: قُلْتُ لِابْنِ أَبِي أَوْفَى: أَوْصَى رَسُولُ اللَّهِ ﷺ؟ قَالَ: لَا، قُلْتُ: وَكَيْفَ كُتِبَتِ الْوَصِيَّةُ وَكَيْفَ أَمَرَ النَّاسَ؟ قَالَ: أَوْصَى بِكِتَابِ اللَّهِ تَعَالَى.

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ [غَرِيبٌ]. لَا نَعْرِفُهُ إِلَّا مِنْ حَدِيثِ

مَالِكِ بْنِ مَعُولٍ .

تخريج: متفق عليه، وأخرجه البخاري، الوصايا، باب الوصايا، ح: ٢٧٤٠ ومسلم، ح: ١٦٣٤ من حديث مالك بن معول به .

Comments:

The *Shi'ah*, taking their cue from 'Abdullāh bin Ṣabā', falsely propagated the story that the Messenger of Allāh ﷺ had appointed 'Alī ؑ his executor and political successor. That is why everytime the Companions were questioned about whether the Messenger of Allāh ﷺ had left any will, they replied in the negative. The Prophet ﷺ in fact did not make any testament, even regarding his property or wealth.

Chapter 5. What Has Been Related About 'There Is No Will For The Heir'

(المعجم ٥) - بَابُ مَا جَاءَ لِأَوْصِيَّةٍ
لِوَارِثٍ (التحفة ٥)

2120. Abū Umāmah said: "During the year of the Farwell Pilgrimage, I heard the Messenger of Allāh ﷺ saying in his *Khutbah*: 'Indeed Allāh, Most Blessed and Most High, has given the right due to everyone deserving a right. So there is no will for an heir, the child is for the bed, and for the fornicator is the stone,^[1] and their reckoning is for Allāh, Most High. And whoever claims someone other than his father, or an affiliations with other than his *Mawālī*, then upon him is the continued curse of Allāh until the Day of Judgement. The wife is not to spend from her husband's house except with her husband's permission.' They said: 'O Messenger of Allāh! Not even food?' He said: 'That is the most virtuous of our wealth.' And he said: 'The borrowed is to be returned, the endowment is to be

٢١٢٠ - حَدَّثَنَا هَنَّادٌ وَعَلِيُّ بْنُ حُجْرٍ قَالَا: أَخْبَرَنَا إِسْمَاعِيلُ بْنُ عِيَّاشٍ: أَخْبَرَنَا شُرْحَبِيلُ بْنُ مُسْلِمٍ الْحَوْلَانِيُّ عَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ فِي خُطْبَتِهِ عَامَ حَجَّةِ الْوَدَاعِ: «إِنَّ اللَّهَ تَبَارَكَ وَتَعَالَى قَدْ أَعْطَى لِكُلِّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِّوَارِثٍ، الْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ الْحَجَرُ وَحِسَابُهُمْ عَلَى اللَّهِ تَعَالَى، وَمَنْ ادَّعَى إِلَى غَيْرِ أَبِيهِ أَوْ انْتَمَى إِلَى غَيْرِ مَوَالِيهِ فَعَلَيْهِ لَعْنَةُ اللَّهِ التَّابِعَةُ إِلَى يَوْمِ الْقِيَامَةِ، لَا تَنْفِقُ امْرَأَةٌ مِنْ بَيْتِ زَوْجِهَا إِلَّا بِإِذْنِ زَوْجِهَا»، قِيلَ: يَا رَسُولَ اللَّهِ! وَلَا الطَّعَامُ؟ قَالَ: «ذَلِكَ أَفْضَلُ أَمْوَالِنَا». وَقَالَ: «الْعَارِيَةُ مُؤَدَّاةٌ، وَالْمِنْحَةُ مَرْدُودَةٌ، وَالذَّيْنُ مَقْضِيٌّ، وَالرَّعِيمُ غَارِمٌ» .

[قَالَ أَبُو عِيسَى:] وَفِي الْبَابِ عَنْ عَمْرٍو ابْنِ خَارِجَةَ وَأَنْسِ بْنِ مَالِكٍ هَذَا حَدِيثٌ

[1] See number 1157.

refunded, and the debt is to be repaid, and the guarantor is responsible.”^[1] (*Hasan*)

[Abū ‘Eisā said:] There are narrations on this topic from ‘Amr bin Khārijah and Anas bin Mālik. This *Hadīth* is *Hasan* [*Ṣaḥīh*], and it has been reported from Abū Umāmah from the Prophet ﷺ through routes other than this. The narrations of Ismā‘il bin ‘Ayyāsh from the people of Al-‘Irāq and the people of Al-Ḥijāz are not that strong where he is alone in reporting it, because he reported *Munkar* narrations from them. His narrations from the people of *Ash-Shām* are more reliable. This is what Muḥammad bin Ismā‘il said.

He said: I heard Aḥmad bin Al-Ḥasan saying: “Aḥmad bin Ḥanbal said: ‘The condition of ‘Ismā‘il bin ‘Ayyāsh is better then that of Baqiyyah, and Baqiyyah has *Munkar* narrations from trustworthy narrators.’” And I heard ‘Abdullāh bin ‘Abdur-Raḥmān saying: “I heard Zakariyyā bin ‘Adī saying: ‘Abū Ishāq Al-Fazārī said: “Take what Baqiyyah narrated from trustworthy narrators, and do not take what Ismā‘il bin ‘Ayyāsh narrated from trustworthy narrators, nor [from] those who are not trustworthy.”

حَسَنٌ [صَحِيحٌ]. وَقَدْ رُوِيَ عَنْ أَبِي أَمَامَةَ
عَنِ النَّبِيِّ ﷺ مِنْ غَيْرِ هَذَا الْوَجْهِ. وَرِوَايَةُ
إِسْمَاعِيلَ بْنِ عِيَّاشٍ عَنْ أَهْلِ الْعِرَاقِ وَأَهْلِ
الْحِجَازِ لَيْسَ بِذَلِكَ فِيمَا يَتَرَدَّدُ بِهِ لِأَنَّهُ رَوَى
عَنْهُمْ مَنَاصِيرَ. وَرِوَايَتُهُ عَنْ أَهْلِ الشَّامِ أَصْحَحُ؛
هَكَذَا قَالَ مُحَمَّدُ بْنُ إِسْمَاعِيلَ. قَالَ: سَمِعْتُ
أَحْمَدَ بْنَ الْحَسَنِ يَقُولُ: قَالَ أَحْمَدُ بْنُ
حَنْبَلٍ: إِسْمَاعِيلُ بْنُ عِيَّاشٍ أَصْلَحُ بَدَنًا مِنْ
بَقِيَّةٍ، وَلَيْقِيَّةٌ أَحَادِيثُ مَنَاصِيرُ عَنِ الثَّقَاتِ.
وَسَمِعْتُ عَبْدَ اللَّهِ بْنَ عَبْدِ الرَّحْمَنِ يَقُولُ:
سَمِعْتُ زَكَرِيَّا بْنَ عَدِيٍّ يَقُولُ: قَالَ أَبُو
إِسْحَاقَ الْفَزَارِيُّ: خُذُوا عَنْ بَقِيَّةٍ مَا حَدَّثَتْ
عَنِ الثَّقَاتِ وَلَا تَأْخُذُوا عَنْ إِسْمَاعِيلَ بْنِ
عِيَّاشٍ مَا حَدَّثَتْ عَنِ الثَّقَاتِ وَلَا [عَنْ] غَيْرِ
الثَّقَاتِ.

تخریج: [إسناده حسن] وأخرجه أبو داود، الوصايا، باب ما جاء في الوصية للوارث،
ح: ٢٨٧٠ مختصرًا وابن ماجه، ح: ٢٧١٣ من حديث إسماعيل بن عياش به * وفي الباب عن
عمرو بن خارجه [يأتي: ٢١٢١] وأنس بن مالك [ابن ماجه، ح: ٢٧١٤] * قول أحمد صحيح عنه

[1] This last part appeared previously, see no. 1265.

وكذا قول زكريا بن عدي عن أبي إسحاق الفزاري سنده صحيح .

2121. ‘Amr bin *Khārajah* narrated: “The Prophet ﷺ gave a *Khutbah* upon his she-camel, while I was under the front of her neck, and she was chewing her cud, with her saliva dripping between my shoulders. I heard him saying: ‘Indeed Allāh, Most Blessed and Most High, has given the right due to every one deserving a right. So there is no will for an heir, the child is for the bed, and for the fornicator is the stone.’” (*Hasan*)

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

٢١٢١ - حَدَّثَنَا قُتَيْبَةُ: حَدَّثَنَا أَبُو عَوَانَةَ عَنْ قَتَادَةَ، عَنْ شَهْرِ بْنِ حَوْشَبٍ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَنَمٍ، عَنْ عَمْرِو بْنِ خَارِجَةَ: أَنَّ النَّبِيَّ ﷺ حَطَبَ عَلَى نَاقَتِهِ وَأَنَا تَحْتَ جِرَانِهَا وَهِيَ تَقْضَعُ بِجِرْتِهَا وَإِنَّ لُعَابَهَا يَسِيلُ بَيْنَ كَتِفَيَّ فَسَمِعْتُهُ يَقُولُ: «إِنَّ اللَّهَ عَزَّ وَجَلَّ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِرَاثٍ. وَالْوَلَدُ لِلْفِرَاسِ وَلِلْعَاهِرِ الْحَجَرُ».

[قَالَ أَبُو عِيْسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

تخريج: [حسن] وأخرجه النسائي: ٢٤٧/٦، ح: ٣٦٧١ (الوصايا، باب إبطال الوصية للوارث) عن قتيبة، وابن ماجه، ح: ٢٧١٢ من حديث قتادة به ورواه شعبة عن قتادة به (النسائي: ٢٤٧/٦، ح: ٣٦٧٢) * شهر تقدم حاله آنفاً: ٢١١٧.

Comments:

The *Hadīth* conclusively proves that it is prohibited for anyone to make a will or testament in favor of a legal heir, and there is unanimity of opinion among the scholars that no will favoring a particular heir can be made without the consent of all other heirs.

Chapter 6. What Has Been Related About Beginning With The Debt Before The Will

2122. Al-*Hārith* narrated from ‘Alī: “The Prophet ﷺ judged with the debt before the will, and you people recite the will before the debt.” (*Hasan*)

[Abū ‘Eisā said:] This is acted upon according to the people of knowledge in general; the debt is to be (settled) before the will.

(المعجم ٦) - بَابُ مَا جَاءَ يُبَدَأُ بِالذَّيْنِ قَبْلَ الْوَصِيَّةِ (التحفة ٦)

٢١٢٢ - حَدَّثَنَا ابْنُ أَبِي عُمَرَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنْ أَبِي إِسْحَاقَ الْهَمْدَانِيِّ، عَنِ الْحَارِثِ، عَنْ عَلِيٍّ: أَنَّ النَّبِيَّ ﷺ قَضَى بِالذَّيْنِ قَبْلَ الْوَصِيَّةِ وَأَنْتُمْ تَقْرَأُونَ الْوَصِيَّةَ قَبْلَ الذَّيْنِ.

[قَالَ أَبُو عِيْسَى:] وَالْعَمَلُ عَلَى هَذَا عِنْدَ عَامَّةِ أَهْلِ الْعِلْمِ أَنَّهُ يُبَدَأُ بِالذَّيْنِ قَبْلَ الْوَصِيَّةِ.

تخریج: [حسن] وأخرجه ابن ماجه، الفرائض، باب ميراث العصبه، ح: ٢٧٣٩ من حديث أبي إسحاق السبيعي به وسنده ضعيف جداً ولمفهوم الحديث شاهد حسن عند ابن ماجه، ح: ٢٤٣٣ وغيره.

Comments:

Being meticulous about words and their lexical definition is not the best way to understand the real meaning of the Qur'an. An example of this attitude, as rightly mentioned in this *Hadīth*, would be to suppose that since we find the mention of the execution of the will before the (clearing of) debt, the former should precede the latter, which is a patently wrong notion.

Chapter 7. What Has Been Related About A Man Giving Charity Or Freeing A Slave At The Time Of His Death

(المعجم ٧) - بَابُ مَا جَاءَ فِي الرَّجُلِ يَتَصَدَّقُ أَوْ يُعْتِقُ عِنْدَ الْمَوْتِ (التحفة ٧)

2123. Abū Ḥabībah At-Ṭā'ī said: "My brother willed a portion of his wealth to me. So I met Abū Ad-Dardā' and said: 'My brother has willed a portion of his wealth to me, so where do you suggest that I should give it - to the poor, the needy, or the *Mujāhidīn* in Allāh's Cause?' He said: 'As for me, then I would not consider them equal to the *Mujāhidīn*. I heard the Messenger of Allāh ﷺ saying: "The parable of the one who frees a slave at the time of his death is that of the one who gives a gift when he is satisfied (fulfilled his needs)."' (*Hasan*)

٢١٢٣ - حَدَّثَنَا بُنْدَارٌ: حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ مَهْدِيٍّ: حَدَّثَنَا سُفْيَانُ عَنْ أَبِي إِسْحَاقَ، عَنْ أَبِي حَبِيبَةَ الطَّائِيِّ قَالَ: أَوْصَى إِلَيَّ أَخِي بِطَائِفَةٍ مِنْ مَالِهِ، فَلَقِيتُ أَبَا الدَّرْدَاءِ، فَقُلْتُ: إِنَّ أَخِي أَوْصَى إِلَيَّ بِطَائِفَةٍ مِنْ مَالِهِ فَأَيْنَ تَرَى لِي وَضَعَهُ فِي الْفُقَرَاءِ أَوْ الْمَسَاكِينِ أَوْ الْمُجَاهِدِينَ فِي سَبِيلِ اللَّهِ؟ فَقَالَ: أَمَّا أَنَا فَلَوْ كُنْتُ لَمْ أُعْدِلْ بِالْمُجَاهِدِينَ، سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَثَلُ الَّذِي يُعْتِقُ عِنْدَ الْمَوْتِ كَمَثَلِ الَّذِي يُهْدِي إِذَا سَبَعَ».

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

[قال أبو عيسى:] هذا حديث حسن صحيح.

تخریج: [حسن] وأخرجه أبو داود، العتق، باب: في فضل العتق في الصحة، ح: ٣٩٦٨ من حديث سفیان الثوري، والنسائي، ح: ٣٦٤٤ من حديث أبي إسحاق به ورواه شعبة عن أبي إسحاق: سمع أبا حبيبة به وصححه ابن حبان، ح: ١٢١٩ والحاكم: ٢١٣/٢ الذهبي * أبو حبيبة: وثقه ابن حبان والترمذي والحاكم وغيرهم وحديثه لا ينزل عن درجة الحسن.

Comments:

What we learn from the *Ḥadīth* is that true charity meriting greater reward from Allāh is the one that a man makes during the days of his health of body and greed for wealth. To give away the wealth when one is at the brink of death, and the inheritance is about to go to the heirs, is an act of much less value meriting much less reward in the Hereafter.

Chapter 8.

(المعجم ٨) - بَابُ : (التحفة . . .)

2124. ‘Urwah narrated that ‘Āishah had informed him that Barīrah came to her (‘Āishah) seeking her help for her writ of emancipation, and she had not yet paid anything for her writ of emancipation. So ‘Āishah said to her: “Return to your people, and if they agree to me paying for your writ of emancipation and that your *Walā’* will be for me, then I will do so.” So Barīrah mentioned that to her people and they refused. They said: “If she wants the reward for (freeing) you while the *Walā’* is for us, then let her do it.” So I mentioned that to the Messenger of Allāh ﷺ, and the Messenger of Allāh ﷺ said: “Buy her, then free her, for the *Walā’* is only for the one who frees.” Then the Messenger of Allāh ﷺ stood and said: “What is the case of people who make conditions that are not in Allāh’s Book? Whoever makes a condition that is not in Allāh’s Book, then it will not be so for him, even if he were to make a condition a hundred times.” (*Ṣaḥīh*)

٢١٢٤ - حَدَّثَنَا قُتَيْبَةُ: أَخْبَرَنَا اللَّيْثُ عَنْ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ: أَنَّ عَائِشَةَ أَخْبَرَتْهُ أَنَّ بَرِيرَةَ جَاءَتْ تَسْتَعِينُ عَائِشَةَ فِي كِتَابَتِهَا وَلَمْ تَكُنْ قَضَتْ مِنْ كِتَابَتِهَا شَيْئًا، فَقَالَتْ لَهَا عَائِشَةُ: ارْجِعِي إِلَى أَهْلِكَ فَإِنْ أَحْبَبُوا أَنْ أَقْضِيَ عَنْكَ كِتَابَتَكَ وَيَكُونَ وَلَاؤُكَ لِي فَعَلْتُ، فَذَكَرْتُ ذَلِكَ بَرِيرَةَ لِأَهْلِهَا فَأَبَوْا وَقَالُوا: إِنْ شَاءَتْ أَنْ تَحْتَسِبَ عَلَيْكَ وَيَكُونَ لَنَا وَلَاؤُكَ فَلتَفْعَلْ فَذَكَرْتُ ذَلِكَ لِرَسُولِ اللَّهِ ﷺ، فَقَالَ لَهَا رَسُولُ اللَّهِ ﷺ: «ابْتَاعِي فَأَعْتِقِي فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ»، ثُمَّ قَامَ رَسُولُ اللَّهِ ﷺ فَقَالَ: «مَا بَالُ أَقْوَامٍ يَشْتَرُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ؟ مَنْ اشْتَرَطَ شَرْطًا لَيْسَ فِي كِتَابِ اللَّهِ فَلَيْسَ لَهُ وَإِنْ اشْتَرَطَ مِائَةَ مَرَّةٍ».

[قَالَ أَبُو عِيسَى:] هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ. وَقَدْ رُوِيَ مِنْ غَيْرِ وَجَوَّعَ عَنْ عَائِشَةَ وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ أَنَّ الْوَلَاءَ لِمَنْ أَعْتَقَ.

[Abū ‘Eisā said:] This *Ḥadīth* is *Ḥasan Ṣaḥīh*, and it has been reported through more than one

route from 'Āishah. This is acted upon according to the people of knowledge, the *Walā'* is for the one who does the freeing.

تخريج: متفق عليه، وأخرجه البخاري، المكاتب، باب ما يجوز من شروط المكاتب ... إلخ، ح: ٢٥٦١ ومسلم، ح: ٦/١٥٠٤ عن قتبية به.

Comments:

The people of knowledge, on the basis of this *Hadīth* unanimously hold that *Walā'* (right of the master to inherit any property the slave freed by him may acquire after emancipation) belongs only to the person that has freed the person concerned. The *Hadīth* tells us that Barirah ؓ had concluded a contract with her masters to secure her emancipation on payment of a certain amount of money payable in instalments. She was at that time trying to raise money for the purpose, and had already collected some money, but had not until then, paid anything. It was for this purpose that she had come to 'Āishah ؓ for help. 'Āishah ؓ agreed to pay the entire amount in one go, and declared that after her manumission the *Walā'* would belong to her.