

In the Name of Allāh, the Most
Gracious, the Most Merciful

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

38. THE BOOK OF *AD-DIYĀT* (BLOOD MONEY)

(المعجم ٣٨) - أَوَّلُ كِتَابِ الدِّيَّاتِ
(التحفة ٣٣)

Chapter 1. A Life For A Life

(المعجم ١) - بَابُ النَّفْسِ بِالنَّفْسِ
(التحفة ١)

4494. It was narrated that Ibn ‘Abbās said: “There were (the two tribes of) Quraizah and An-Nadir, and An-Nadir were nobler than Quraizah. If a man from Quraizah killed a man from An-Nadir, he would be killed in return, but if a man from An-Nadir killed a man from Quraizah, one hundred *Wasqs* of dates would be paid as *Diyah*. When the Prophet ﷺ was sent, a man from An-Nadir killed a man from Quraizah, and they said: “Hand him over to us so we may execute him.” They said: “Between us and you is the Prophet ﷺ.” So they brought him, and the following “And if you judge, judge with justice between them”^[1] was revealed. Justice means a life for a life. Then the Verse “Do they then seek the judgment of (the days of) Ignorance?”^[2] was revealed.” (*Da‘if*)

Abū Dāwud said: Quraizah and An-Nadīr both descended from

٤٤٩٤ - حَدَّثَنَا مُحَمَّدُ بْنُ الْعَلَاءِ: حَدَّثَنَا
عُبَيْدُ اللَّهِ يَعْنِي ابْنَ مُوسَى عَنْ عَلِيٍّ بْنِ
صَالِحٍ، عَنْ سِمَاكِ بْنِ حَرْبٍ، عَنْ عِكْرِمَةَ،
عَنْ ابْنِ عَبَّاسٍ قَالَ: كَانَ قُرَيْظَةُ وَالنَّضِيرُ
وَكَانَ النَّضِيرُ أَشْرَفَ مِنْ قُرَيْظَةَ فَكَانَ إِذَا قَتَلَ
رَجُلٌ مِنْ قُرَيْظَةَ رَجُلًا مِنَ النَّضِيرِ قُتِلَ بِهِ وَإِذَا
قَتَلَ رَجُلٌ مِنَ النَّضِيرِ رَجُلًا مِنْ قُرَيْظَةَ فُودِيَ
بِمَاءَةٍ وَسُقِيَ مِنْ تَمْرٍ، فَلَمَّا بُعِثَ النَّبِيُّ ﷺ قَتَلَ
رَجُلٌ مِنَ النَّضِيرِ رَجُلًا مِنْ قُرَيْظَةَ فَقَالُوا:
ادْفَعُوهُ إِلَيْنَا نَقْتُلْهُ، فَقَالُوا: بَيْنَنَا وَبَيْنَكُمْ النَّبِيُّ
ﷺ فَأَتَوْهُ فَنَزَلَتْ: ﴿وَإِنْ حَكَمْتَ فَأَحْكُم بَيْنَهُم
بِالْقِسْطِ﴾ [المائدة: ٤٢] وَالْقِسْطُ: النَّفْسُ
بِالنَّفْسِ، ثُمَّ نَزَلَتْ: ﴿أَفَحُكْمَ الْجَهْلِ يَتَّبِعُونَ﴾
[المائدة: ٥٠].

قَالَ أَبُو دَاوُدَ: قُرَيْظَةُ وَالنَّضِيرُ جَمِيعًا مِنْ
وَلَدِ هَارُونَ النَّبِيِّ عَلَيْهِ السَّلَامُ.

[1] *Al-Mā'idah* 5:42.

[2] *Al-Mā'idah* 5:50.

Hārūn the Prophet, peace be upon him.

تخريج: [إسناده ضعيف] أخرجه النسائي، القسامة، باب ذكر الاختلاف على عكرمة في ذلك، ح: ٤٧٣٦ من حديث عبيد الله بن موسى به، وصححه ابن الجارود، ح: ٧٧٢ * سلسلة سماك عن عكرمة ضعيفة كما تقدم، ح: ٢٢٣٨ ولبعض الحديث شاهد ضعيف.

Chapter 2. A Man Is Not To Be Punished For The Wrongs Done By His Father Or Brother

4495. It was narrated that Abū Rimthah said: “I went to the Prophet ﷺ with my father, then the Prophet ﷺ said to my father: “Is this your son?” He said: “Yes, by the Lord of the Ka’bah.” He said: “Is it true?” He said: “I bear witness to it.” The Messenger of Allah ﷺ smiled at my resemblance to my father and my father’s oath concerning me, then he said: “You are not accountable for his wrongdoing, and he is not accountable for yours.” And the Messenger of Allah ﷺ recited the Verse: “No bearer of burdens shall bear the burden of another^[1]

(المعجم ٢) بَابُ: لَا يُؤْخَذُ الرَّجُلُ

بِجَرِيرَةِ أَبِيهِ أَوْ أَخِيهِ (التحفة ٢)

٤٤٩٥ - حَدَّثَنَا أَحْمَدُ بْنُ يُونُسَ: حَدَّثَنَا

عُبَيْدُ اللَّهِ يَعْنِي ابْنَ إِيَادٍ: حَدَّثَنَا إِيَادٌ عَنْ أَبِي رَمْثَةَ قَالَ: انْطَلَقْتُ مَعَ أَبِي نَحْوَ النَّبِيِّ ﷺ ثُمَّ إِنَّ النَّبِيَّ ﷺ قَالَ لِأَبِي: «أَبْنُكَ هَذَا؟» قَالَ: إِي وَرَبِّ الْكَعْبَةِ! قَالَ: «حَقًّا»، قَالَ: أَشْهَدُ بِهِ، قَالَ: فَتَبَسَّمَ رَسُولُ اللَّهِ ﷺ ضَاحِكًا مِنْ ثَبْتِ شَبْهِهِ فِي أَبِي وَمِنْ حَلْفِ أَبِي عَلَيَّ، ثُمَّ قَالَ: «أَمَّا إِنَّهُ لَا يَجْنِي عَلَيْكَ وَلَا تَجْنِي عَلَيْهِ»، وَقَرَأَ رَسُولُ اللَّهِ ﷺ: ﴿وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَى﴾ [الأنعام: ١٦٤].

تخريج: [صحيح] تقدم، ح: ٤٠٦٥، وأخرجه النسائي، ح: ٤٨٣٦ من حديث إياد به.

Chapter 3. The Imām Enjoining A Pardon In The Case Of Bloodshed

4496. It was narrated from Abū Shuraiḥ Al-Khuzā’ī that the Prophet ﷺ said: “Whoever is affected by the slaying of a relative (from whom he inherits) or injury, he is to be given one of three choices: Either he may retaliate, or

(المعجم ٣) - بَابُ الْإِمَامِ يَأْمُرُ بِالْعَفْوِ فِي

الدَّمِّ (التحفة ٣)

٤٤٩٦ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ:

حَدَّثَنَا حَمَادٌ: أَخْبَرَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ الْحَارِثِ بْنِ قُضَيْلٍ، عَنْ سُفْيَانَ بْنِ أَبِي الْعُجْجَاءِ، عَنْ أَبِي شُرَيْحٍ الْخَزَاعِيِّ أَنَّ النَّبِيَّ ﷺ قَالَ: «مَنْ أَصِيبَ بِقَتْلِ أَوْ خَبْلِ فَإِنَّهُ

[1] Al-An’ām 6:164.

he may pardon, or he may accept the *Diyah*. If he seeks a fourth option, then stop him, and whoever exceeds the limits after that will have a painful punishment.” (*Da‘if*)

يَخْتَارُ إِحْدَى ثَلَاثٍ: إِمَّا أَنْ يَقْتَصِرَ وَإِمَّا أَنْ يَغْفِرَ وَإِمَّا أَنْ يَأْخُذَ الدِّيَّةَ، فَإِنْ أَرَادَ الرَّايِعَةَ فَخَذُوا عَلَى يَدَيْهِ، وَمَنْ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ.

تخريج: [إسناده ضعيف] أخرجه ابن ماجه، الديات، باب من قتل له قاتل فهو بالخيار بين إحدى ثلاث، ح: ٢٦٢٣ من حديث محمد بن إسحاق به * سفيان بن أبي العوجاء: ضعيف (تقريب) ولبعض الحديث شاهد حسن عند أحمد: ٣٢/٤.

4497. It was narrated that Anas bin Mālik said: “I never saw the Messenger of Allāh ﷺ when any case involving retaliation was referred to him, but he enjoined pardoning.” (*Sahih*)

٤٤٩٧ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ بَكْرِ بْنِ عَبْدِ اللَّهِ الْمُزَنِيُّ عَنْ عَطَاءِ بْنِ أَبِي مَيْمُونَةَ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: مَا رَأَيْتُ رَسُولَ اللَّهِ ﷺ رُفِعَ إِلَيْهِ شَيْءٌ فِيهِ قِصَاصٌ إِلَّا أَمَرَ فِيهِ بِالْعَفْوِ.

تخريج: [إسناده صحيح] أخرجه ابن ماجه، الديات، باب العفو في القصاص، ح: ٢٦٩٢ والنسائي، ح: ٤٧٨٧ من حديث عبد الله بن بكر به.

Comments:

The family of the murdered victim is encouraged to pardon, if not, one of the other options may be chosen, but if they take the blood-money, then kill the murderer, then they will be guilty of murder themselves.

4498. It was narrated that Abū Hurairah said: “A man was killed during the time of the Prophet ﷺ, and the case was referred to the Prophet ﷺ. He handed him over to the heir of the victim, and the killer said: ‘O Messenger of Allāh, by Allāh, I did not mean to kill him.’ The Messenger of Allāh ﷺ said to the heir: ‘If he is telling the truth, and you kill him, you will go to the Fire. So he let him go.’ He had been tied with a rope, and he went out dragging his rope, so he was called *Dhun-Nis‘ah* (the one with the rope).” (*Sahih*)

٤٤٩٨ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو مُعَاوِيَةَ: حَدَّثَنَا الْأَعْمَشُ عَنْ أَبِي صَالِحٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قُتِلَ رَجُلٌ عَلَى عَهْدِ النَّبِيِّ ﷺ فَرُفِعَ ذَلِكَ إِلَى النَّبِيِّ ﷺ، فَدَفَعَهُ إِلَى وَلِيِّ الْمَقْتُولِ، فَقَالَ الْقَاتِلُ: يَا رَسُولَ اللَّهِ! وَاللَّهِ! مَا أَرَدْتُ قَتْلَهُ. قَالَ: فَقَالَ رَسُولُ اللَّهِ ﷺ لِلْوَلِيِّ: «أَمَا إِنَّهُ إِنْ كَانَ صَادِقًا لَمْ تَقْتُلْهُ دَخَلَ النَّارَ». قَالَ: فَخَلَّى سَبِيلَهُ. قَالَ: وَكَانَ مَكْتُوفًا بِنِسْعَةٍ، فَخَرَجَ يَجْرُ نِسْعَتَهُ، فَسَمِيَ ذَا النِّسْعَةِ.

اب ما جاء في ولي القاتل في القصاص

تخريج: [صحيح] أخرجه الترمذي، الديا

والعفو، ح: ١٤٠٧ والنسائي، ح: ٤٧٢٦ وابن ماجه، ح: ٢٦٩٠ من حديث أبي معاوية الضرير به، وقال الترمذي: "حسن صحيح".

4499. It was narrated from Ḥamzah Abū ‘Umar Al-‘Ā‘idhī (he said): ‘Alqamah bin Wā’il narrated to me, he said: Wā’il bin Ḥujr narrated to me, he said: I was with the Prophet ﷺ, when a man who had killed someone was brought, with a rope around his neck. He called the heir of the victim, and said “Will you pardon?” He said. “No.” He said: “Will you accept the *Diyah*?” He said, “No.” He said: “Will you kill him?” He said, “Yes.” He said: “Take him.” When he turned away, he said: “Will you pardon?” He said. “No.” He said: “Will you accept the *Diyah*?” He said, “No.” He said: “Will you kill him?” He said, “Yes.” He said: “Take him.” The fourth time he said: “If you forgive him, he will bear his own sin, and the sin of his companion (the one whom he killed).” So he forgave him.” He said: “And I saw him dragging his rope.” (*Ṣaḥīḥ*)

٤٤٩٩ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ الْجُشَمِيُّ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ عَنْ عَوْفٍ: حَدَّثَنَا حَمْرَةُ أَبُو عُمَرَ الْعَائِذِيُّ: حَدَّثَنِي عَلْقَمَةُ بْنُ وَائِلٍ قَالَ: حَدَّثَنِي وَائِلُ ابْنِ حُجْرٍ قَالَ: كُنْتُ عِنْدَ النَّبِيِّ ﷺ إِذْ جِيءَ بِرَجُلٍ قَاتِلٍ فِي عُنُقِهِ النَّسْعَةُ، قَالَ: فَدَعَا وَلِيَّ الْمَقْتُولِ فَقَالَ: «أَتَغْفُو؟» قَالَ: لَا، قَالَ: «أَفَتَأْخُذُ الدِّيَّةَ؟» قَالَ: لَا، قَالَ: «أَفَتَقْتُلُ؟» قَالَ: نَعَمْ، قَالَ: «أَذْهَبَ بِهِ»، فَلَمَّا وَلَّى قَالَ: «أَتَغْفُو؟» قَالَ: لَا، قَالَ: «أَفَتَأْخُذُ الدِّيَّةَ؟» قَالَ: لَا، قَالَ: «أَفَتَقْتُلُ؟» قَالَ: نَعَمْ، قَالَ: «أَذْهَبَ بِهِ»، فَلَمَّا كَانَ فِي الرَّابِعَةِ قَالَ: «أَمَّا إِنَّكَ إِنْ عَفَوْتَ عَنْهُ يَبُوءُ بِإِثْمِهِ وَإِثْمِ صَاحِبِهِ»، قَالَ: فَعَفَا عَنْهُ، قَالَ: فَأَنَا رَأَيْتُهُ يَجْرُ النَّسْعَةَ.

تخریج: أخرجه مسلم، القسامة والمحاربين، باب صحة الإقرار بالقتل وتمكين ولي القاتل ... إلخ، ح: ١٦٨٠ من حديث علقة بن وائل، والنسائي، ح: ٤٧٢٨ من حديث يحيى بن سعيد القطان به.

Comments:

If there is fear of the offender running away, then it is allowed to detain him. If the murderer is killed due to legal retaliation, it is hoped that him submitting to the penalty will also count as his atonement. In the case of blood money or pardon, Allāh will judge him as He wills.

4500. It was narrated from Jāmi‘ bin Maṭar, he said: “ ‘Alqamah bin Wā’il narrated to me” with his

٤٥٠٠ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ: حَدَّثَنِي جَامِعُ

chain and its meaning (similar to no. 4500). (*Ṣaḥīḥ*)

ابْنُ مَطَرٍ قَالَ: حَدَّثَنِي عَلَقَمَةُ بْنُ وَائِلٍ بِإِسْنَادِهِ وَمَعْنَاهُ.

تخریج: أخرجه مسلم، انظر الحديث السابق ورواه النسائي، ح: ٥٤١٧ من حديث يحيى القطان به.

4501. It was narrated from Simāk, from ‘Alqamah bin Wā’il, that his father said: “A man brought an Ethiopian man to the Prophet ﷺ, and said: ‘This man killed my brother’s son.’ He said: ‘How did you kill him?’ He said: ‘I struck his head with an axe, but I did not mean to kill him.’ He said: ‘Do you have any wealth with which you can pay the *Diyah*?’ He said: ‘No.’ He said: ‘Do you think that if I let you go and ask of people, you can collect enough to pay the *Diyah*?’ He said: ‘No.’ He said: ‘Will your masters give you the *Diyah*?’ He said: ‘No.’ He said to the man: ‘Take him,’ and he took him out to kill him. The Messenger of Allāh ﷺ said: ‘If he kills him, he will be like him.’ News of that reached the man, and he came and heard what he said, and he said: ‘He is there; issue whatever instructions you wish concerning him.’ The Messenger of Allāh ﷺ said: ‘Let him go – on one occasion he (the narrator) said: let him be – and he will carry the sin of his victim, and his own sin, and he will be one of the people of the Fire.’ So he let him go.” (*Ṣaḥīḥ*)

٤٥٠١ - حَدَّثَنَا مُحَمَّدُ بْنُ عَوْفٍ الطَّائِيُّ: حَدَّثَنَا عَبْدُ الْقُدُّوسُ بْنُ الْحَجَّاجِ: حَدَّثَنَا يَزِيدُ ابْنُ عَطَاءٍ الْوَاسِطِيُّ عَنْ سِمَاكِ، عَنْ عَلَقَمَةَ ابْنِ وَائِلٍ، عَنْ أَبِيهِ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ بِحَبَشِيِّ فَقَالَ: إِنَّ هَذَا قَتَلَ ابْنَ أُخِي، قَالَ: «كَيْفَ قَتَلْتَهُ؟» قَالَ: ضَرَبْتُ رَأْسَهُ بِالْفَأْسِ وَلَمْ أُرِدْ قَتْلَهُ، قَالَ: «هَلْ لَكَ مَالٌ تُؤَدِّي دِيَّتَهُ؟» قَالَ: لَا، قَالَ: «أَفَرَأَيْتَ إِنْ أَرْسَلْتُكَ تَسْأَلُ النَّاسَ تَجْمَعُ دِيَّتَهُ؟» قَالَ: لَا، قَالَ: «فَمَوَالِيكَ يُعْطُونَكَ دِيَّتَهُ؟» قَالَ: لَا، قَالَ لِلرَّجُلِ: «خُذْهُ» فَخَرَجَ بِهِ لِيَقْتُلَهُ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَمَّا إِنَّهُ إِنْ قَتَلَهُ كَانَ مِثْلَهُ». فَلَبَغَ بِهِ الرَّجُلُ حَيْثُ يَسْمَعُ قَوْلَهُ فَقَالَ: «هُوَ ذَا فَمُرْ فِيهِ مَا شِئْتَ». فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَرْسِلْهُ» - قَالَ مَرَّةً: دَعُهُ - يَبُوءُ بِأَنْمِ صَاحِبِهِ وَإِنْمِهِ فَيَكُونُ مِنْ أَصْحَابِ النَّارِ. قَالَ: فَأَرْسَلَهُ.

Comments:

تخریج: [صحيح] انظر الحديثين السابقين.

This case falls under the category of a murder that was not intentional, but was also not a mere accident. For more details, see chapter 17.

4502. It was narrated that Abū Umāmah bin Sahl said: “We were with ‘Uthmān when he was besieged in the house. In the house there was an entrance, where whoever entered it, he could hear the words of those who were in Al-Balāt. ‘Uthmān entered it, then he came out to us, and his color had changed. He said: ‘They were threatening to kill me just now.’ We said: ‘Allāh will suffice you against them, O Commander of the Believers.’ He said: ‘Why would they kill me? I heard the Messenger of Allāh ﷺ say: “It is not permissible to shed the blood of a Muslim except in three cases: *Kufr* after accepting Islam, *Zinā* after getting married, or murder.” By Allāh, I did not commit *Zinā* during *Jāhiliyyah* nor during Islam, nor would I like to have another religion (instead of Islam) since Allāh guided me, and I have not killed anyone, so why would they kill me?” (*Ṣaḥīḥ*)

Abū Dāwud said: ‘Uthmān and Abū Bakr (may Allāh be pleased with them) both gave up *Khamr* during *Jāhiliyyah*.

تخریج: [إسناده صحيح] أخرجه الترمذی، الفتن، باب ما جاء لا یحل دم امرئ مسلم إلا بإحدى ثلاث، ح: ۲۱۵۸ والنسائي، ح: ۴۰۲۴ وابن ماجه، ح: ۲۵۳۳ من حديث حماد بن زيد به، وصححه ابن الجارود، ح: ۸۳۶.

Comments:

“*Kufr* after accepting Islam” is explanative of numbers 4351 and 4352 which preceded.

4503. It was narrated from Muḥammad bin Ja‘far that he heard Ziyād bin Sa‘d bin Ḍumairah Al-Sulamī – and this is the *Ḥadīth*

٤٥٠٢ - حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ: حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ أَبِي أُمَامَةَ بْنِ سَهْلٍ قَالَ: كُنَّا مَعَ عُثْمَانَ وَهُوَ مَحْصُورٌ فِي الدَّارِ وَكَانَ فِي الدَّارِ مَدْخَلٌ مَنْ دَخَلَهُ سَمِعَ كَلَامَ مَنْ عَلَى الْبَلَّاطِ، فَدَخَلَهُ عُثْمَانُ فَخَرَجَ إِلَيْنَا وَهُوَ مُتَغَيِّرٌ لَوْنُهُ فَقَالَ: إِنَّهُمْ لَيَتَوَاعَدُونَنِي بِالْقَتْلِ إِنْفًا قَالَ: قُلْنَا: يَكْفِيكَهُمْ اللَّهُ، يَا أَمِيرَ الْمُؤْمِنِينَ! قَالَ: وَلِمَ يَقْتُلُونَنِي؟ سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِأَحَدٍ ثَلَاثٍ: كُفْرٌ بَعْدَ إِسْلَامٍ، أَوْ زِنَا بَعْدَ إِحْصَانٍ، أَوْ قَتْلُ نَفْسٍ بِغَيْرِ نَفْسٍ. فَوَاللَّهِ! مَا زَيْتُ فِي جَاهِلِيَّةٍ وَلَا فِي إِسْلَامٍ قَطُّ وَلَا أَحْبَبْتُ أَنْ لِي بِدِينِي بَدَلًا مُنْذُ هَدَانِي اللَّهُ، وَلَا قَتَلْتُ نَفْسًا فِيمَ يَقْتُلُونَنِي».

قال أبو داود: عُثْمَانُ وَأَبُو بَكْرٍ رَضِيَ اللَّهُ عَنْهُمَا تَرَكََا الْخَمْرَ فِي الْجَاهِلِيَّةِ.

٤٥٠٣ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا حَمَّادُ قَالَ: حَدَّثَنَا مُحَمَّدٌ يَعْنِي ابْنَ إِسْحَاقَ: فَحَدَّثَنِي مُحَمَّدُ بْنُ جَعْفَرٍ بْنِ الزُّبَيْرِ

of Wahb (one of the narrators) and it is more complete – narrating to ‘Urwah bin Az-Zubair from his father^[1] – Mūsā (one of the narrators) said: and his grandfather, who were both present at (the Battle of) Hunain with the Messenger of Allāh ﷺ; then we go back to the *Hadīth* of Wahb – that Muḥallim bin Jath-thāmah Al-Laiṭhī killed a man from Ashja’ during Islam, and that was the first case of *Diyah* decided by the Messenger of Allāh ﷺ. ‘Uyainah spoke about the killing of the Ashja’ī man because he was from Ghatafān, and Al-Aqra’ bin Hābis spoke on behalf of Muḥallim because he was from Khindif. Their voices became loud and the dispute and noise increased. The Messenger of Allāh ﷺ said: “O ‘Uyainah, will you not accept the *Diyah*?” ‘Uyainah said: “No, by Allāh, not until I inflict upon his womenfolk the fighting and grief that he inflicted upon my womenfolk.” Their voices became loud, and the dispute and noise increased. The Messenger of Allāh ﷺ said: “O ‘Uyainah, will you not accept the *Diyah*?” ‘Uyainah said the same thing, until a man from Banū Laiṭh who was called Mukaitil stood up. He was carrying a weapon, and had a shield made of skin in his hand. He said: “O Messenger of Allāh, I do not find any likeness of what this man has done at the beginning of Islam,

قَالَ: سَمِعْتُ زِيَادَ بْنَ ضُمَيْرَةَ الصَّمَرِيِّ، ح: وَحَدَّثَنَا وَهْبُ بْنُ يَبَّانٍ وَأَحْمَدُ بْنُ سَعِيدٍ الْهَمْدَانِيُّ قَالَا: حَدَّثَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي عَبْدُ الرَّحْمَنِ بْنُ أَبِي الزَّنَادِ عَنْ عَبْدِ الرَّحْمَنِ ابْنِ الْحَارِثِ، عَنْ مُحَمَّدِ بْنِ جَعْفَرٍ أَنَّهُ سَمِعَ زِيَادَ بْنَ سَعْدِ بْنِ ضُمَيْرَةَ السُّلَمِيِّ - وَهَذَا حَدِيثٌ وَهْبٍ وَهُوَ أَثَمٌ - يُحَدِّثُ غُرُوزَةَ بْنَ الزُّبَيْرِ عَنْ أَبِيهِ - قَالَ مُوسَى: وَجَدُوهُ وَكَانَا شَهِدًا مَعَ رَسُولِ اللَّهِ ﷺ حُنَيْنًا، ثُمَّ رَجَعْنَا إِلَى حَدِيثِ وَهْبٍ - أَنَّ مُحَلِّمَ بْنَ حَتَّامَةَ اللَّيْثِيِّ قَتَلَ رَجُلًا مِنْ أَشْجَعٍ فِي الْإِسْلَامِ وَذَلِكَ أَوَّلُ غَيْرِ قَضَى بِهِ رَسُولُ اللَّهِ ﷺ، فَتَكَلَّمْ غُيَيْثُهُ فِي قَتْلِ الْأَشْجَعِيِّ لِأَنَّهُ مِنْ غَطَفَانَ، وَتَكَلَّمْ الْأَفْرَعُ بْنُ حَابِسٍ دُونَ مُحَلِّمٍ لِأَنَّهُ مِنْ خِنْذِفٍ، فَارْتَفَعَتِ الْأَصْوَاتُ وَكَثُرَتْ الْخُصُومَةُ وَاللَّعَطُ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «يَا غُيَيْثُ أَلَا تَقْبَلُ الْغَيْرَ؟» فَقَالَ غُيَيْثُ: لَا وَاللَّهِ! حَتَّى أُدْخِلَ عَلَى نِسَائِهِ مِنَ الْحَرْبِ وَالْحَزَنِ مَا أَدْخَلَ عَلَى نِسَائِي، قَالَ: ثُمَّ ارْتَفَعَتِ الْأَصْوَاتُ وَكَثُرَتْ الْخُصُومَةُ وَاللَّعَطُ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «يَا غُيَيْثُ أَلَا تَقْبَلُ الْغَيْرَ؟» فَقَالَ غُيَيْثُ مِثْلَ ذَلِكَ أَيْضًا، إِلَى أَنْ قَامَ رَجُلٌ مِنْ بَنِي لَيْثٍ يُقَالُ لَهُ: مُكَيْتِلٌ، عَلَيْهِ شِكَّةٌ وَفِي يَدِهِ دَرَقَةٌ فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي لَمْ أَجِدْ لِمَا فَعَلَ هَذَا فِي غَرَّةِ الْإِسْلَامِ مِثْلًا إِلَّا

[1] That is Ziyād reported it from his father Sa’d and his grandfather Dumairah, to ‘Urwah.

except sheep that came to drink and the first of them was shot and the last of them ran away. Judge your way today and change it tomorrow.”^[1] The Messenger of Allāh ﷺ said: “Fifty camels now, and fifty (more) when we return to Al-Madīnah.” That occurred during one of his journeys. Muḥallim was a tall man with a dark complexion, and he was (standing) at the edge of the gathering. They continued to plead for him until he was released, then he sat before the Messenger of Allāh ﷺ, his eyes flowing with tears, and said: “O Messenger of Allāh, I did what you have heard about, and I repent to Allāh. Ask Allāh for forgiveness for me, O Messenger of Allāh.” The Messenger of Allāh ﷺ said: “Did you kill him with your weapon at the beginning of Islam? O Allāh, do not forgive Muḥallim,” in a loud voice.” Abū Salamah^[2] added: “He stood up, wiping his tears with the edge of his garment.”

Ibn Ishāq^[3] said: “His people said that the Messenger of Allāh ﷺ prayed for forgiveness for him after that.” (*Hasan*)

تخريج: [إسناده حسن] وأخرجه ابن ماجه، الدييات، باب من قتل عمداً، فرضوا بالدية، ح: ٢٦٢٥ من حديث محمد بن إسحاق به، وصححه ابن الجارود، ح: ٧٧٧ وحسنه الحافظ في الإصابة: ٦٤/٣ * زياد بن ضميرة حسن الحديث على الراجح.

عَنَّمَا وَرَدَتْ فَرُمِي أَوَّلَهَا فَفَقَرَ آخِرَهَا، اسْتَنْنَ الْيَوْمَ وَعَمَّرَ غَدًا، فَقَالَ رَسُولُ اللَّهِ ﷺ: «حَمْسُونَ فِي قُورِنَا هَذَا، وَحَمْسُونَ إِذَا رَجَعْنَا إِلَى الْمَدِينَةِ»، وَذَلِكَ فِي بَعْضِ أَصْفَارِهِ وَمُحَلِّمٌ رَجُلٌ طَوِيلٌ آدَمٌ وَهُوَ فِي طَرَفِ النَّاسِ، فَلَمْ يَزَالُوا حَتَّى تَخْلَصَ فَجَلَسَ بَيْنَ يَدَيْ رَسُولِ اللَّهِ ﷺ وَعَيْنَاهُ تَدْمَعَانِ، فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي قَدْ فَعَلْتُ الَّذِي بَلَغَكَ، وَإِنِّي أَتُوبُ إِلَى اللَّهِ، فَاسْتَغْفِرِ اللَّهَ لِي يَا رَسُولَ اللَّهِ! فَقَالَ رَسُولُ اللَّهِ ﷺ: «أَقْتَلْتَهُ بِسِلَاحِكَ فِي غُرَّةِ الْإِسْلَامِ، اللَّهُمَّ لَا تَغْفِرْ لِمُحَلِّمٍ»، بِصَوْتٍ عَالٍ. زَادَ أَبُو سَلَمَةَ: فَقَامَ وَإِنَّهُ لَيَتَلَقَّى دُمُوعَهُ بِطَرَفِ رِدَائِهِ. قَالَ ابْنُ إِسْحَاقَ: فَزَعَمَ قَوْمُهُ أَنَّ رَسُولَ اللَّهِ ﷺ اسْتَغْفَرَ لَهُ بَعْدَ ذَلِكَ. قَالَ أَبُو دَاوُدَ: قَالَ النَّضْرُ بْنُ شُمَيْلٍ: الْغَيْرُ الدِّيَّةُ.

[1] It is said that the meaning is, you can be lenient now and more harsh later for his case.

[2] Mūsā bin Ismā'il At-Tabuwḍhākī, Abū Salamah, one of the two *Shaikhs* that the author heard this narration from.

[3] Muḥammad bin Ishāq, he is one of the narrators in the chain of Mūsā bin Ismā'il.

Chapter 4. The Heir Of The One Who Was Killed Deliberately Taking The *Diyah*

(المعجم ٤) - بَابُ وَلِيِّ الْعَمْدِ يَأْخُذُ

الدِّيَّةَ (التحفة ٤)

4504. Abū Shuraiḥ Al-Ka'bī said: "The Messenger of Allāh ﷺ said: 'O (the tribe of) *Khuza'ah*, you have killed this man from *Hudhail*, and I shall pay his *Diyah*. But if anyone is killed after this, his family will have two choices: They may either accept the *Diyah* or kill (the killer).'" (*Ṣaḥīḥ*)

٤٥٠٤ - حَدَّثَنَا مُسَدَّدُ بْنُ مُسْرَهْدٍ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ: حَدَّثَنَا ابْنُ أَبِي ذُئْبٍ: حَدَّثَنِي سَعِيدُ بْنُ أَبِي سَعِيدٍ قَالَ: سَمِعْتُ أَبَا شُرَيْحٍ الْكَعْبِيَّ يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَلَا إِنَّكُمْ يَا مَعْشَرَ خُزَاعَةَ قَتَلْتُمْ هَذَا الْقَتِيلَ مِنْ هَذِيلٍ وَإِنِّي عَاقِلُهُ، فَمَنْ قَتَلَ لَهُ بَعْدَ مَقَاتِلِي هَذِهِ قَتِيلٌ فَأَهْلُهُ بَيْنَ خَيْرَتَيْنِ: بَيْنَ أَنْ يَأْخُذُوا الْعُقْلَ أَوْ يَقْتُلُوا».

تخريج: [إسناده صحيح] أخرجه الترمذي، الديات، باب ما جاء في حكم ولي القتل في القصاص والعفو، ح: ١٤٠٦ من حديث يحيى بن سعيد القطان به، وقال: "حسن صحيح".

4505. Abū Hurairah said: "When Makkah was conquered, the Messenger of Allāh ﷺ stood up and said: 'If anyone has a relative killed, he has two choices: He may either be given the *Diyah*, or he may retaliate.' A man from Yemen, who was called Abū Shāh, stood up and said: 'O Messenger of Allāh, write it for me.' The Messenger of Allāh ﷺ said: 'Write (it) for Abū Shāh.'" This is the wording of the of Aḥmad.^[1] (*Ṣaḥīḥ*)

Abū Dāwud said: "Write it for me," meaning, the *Khuṭbah* of the Prophet ﷺ.

٤٥٠٥ - حَدَّثَنَا عَبَّاسُ بْنُ الْوَلِيدِ بْنِ مَرْيَدٍ: أَخْبَرَنِي أَبِي: حَدَّثَنَا الْأَوْزَاعِيُّ: حَدَّثَنِي يَحْيَى؛ ح: وَحَدَّثَنَا أَحْمَدُ بْنُ إِبْرَاهِيمَ: حَدَّثَنِي أَبُو دَاوُدَ: حَدَّثَنَا حَرْبُ بْنُ شَدَّادٍ: حَدَّثَنَا يَحْيَى بْنُ أَبِي كَثِيرٍ: حَدَّثَنِي أَبُو سَلَمَةَ بْنُ عَبْدِ الرَّحْمَنِ: حَدَّثَنَا أَبُو هُرَيْرَةَ قَالَ: لَمَّا فُتِحَتْ مَكَّةَ قَامَ رَسُولُ اللَّهِ ﷺ فَقَالَ: «مَنْ قَتَلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يُودَى، وَإِمَّا أَنْ يُقَادَ»، فَقَامَ رَجُلٌ مِنْ أَهْلِ الْيَمَنِ يُقَالُ لَهُ: أَبُو شَاهٍ فَقَالَ: يَا رَسُولَ اللَّهِ! اكْتُبْ لِي - قَالَ الْعَبَّاسُ: اكْتُبُوا لِي - فَقَالَ رَسُولُ اللَّهِ ﷺ: «اكْتُبُوا لِأَبِي شَاهٍ» وَهَذَا لَفْظُ حَدِيثِ أَحْمَدَ.

[1] That is Aḥmad bin Ibrāhīm, one of the two that narrated chains for this to the author.

قَالَ أَبُو دَاوُدَ: اكْتُبُوا لِي يَعْنِي خُطْبَةَ النَّبِيِّ ﷺ.

تخريج: أخرجه مسلم، الحج، باب تحريم مكة وتحريم صيدها ... إلخ، ح: ١٣٥٥ والخاري، اللقطة، باب: كيف تعرف لقطة أهل مكة؟ ح: ٢٤٣٤ من حديث الأوزاعي به ومن حديث حرب بن شداد به أخرجه البخاري، ح: ٦٨٨٠.

4506. It was narrated from ‘Amr bin Shu’aib from his father, from his grandfather that the Prophet ﷺ said: “No believer may be killed (in retaliation) for a disbeliever, and whoever kills a believer deliberately, he is to be handed over to the heirs of the victim. If they wish they may kill him, and if they wish they may accept the *Diyah*.” (*Hasan*)

٤٥٠٦ - حَدَّثَنَا مُسْلِمٌ: حَدَّثَنَا مُحَمَّدُ بْنُ رَاشِدٍ: حَدَّثَنَا سُلَيْمَانُ بْنُ مُوسَى عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ، وَمَنْ قَتَلَ مُؤْمِنًا مُتَعَمِّدًا دُفِعَ إِلَى أَوْلِيَاءِ الْمَقْتُولِ فَإِنْ شَاءُوا قَتَلُوهُ وَإِنْ شَاءُوا أَخَذُوا الدِّيَةَ».

تخريج: [إسناده حسن] أخرجه الترمذي، الديات، باب ما جاء في دية الكفار، ح: ١٤١٣ وابن ماجه، ح: ٢٦٥٩ من حديث عمرو بن شعيب به، وقال الترمذي: "حسن غريب".

Comments:

A Muslim cannot be killed in retaliation for a disbeliever. See chapter 11.

Chapter 5. One Who Kills After Accepting The *Diyah*

(المعجم ٥) - بَابُ مَنْ قَتَلَ بَعْدَ أَخْذِ الدِّيَةِ (التحفة ٥)

4507. It was narrated from Maṭar Al-Warrāq – I think he said; from Al-Ḥasan – from Jābir bin ‘Abdullāh, who said: “The Messenger of Allāh ﷺ said: ‘The one who kills after accepting the *Diyah* will not be pardoned.’” (*Da’if*)

٤٥٠٧ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا حَمَادٌ: أَخْبَرَنَا مَطَرُ الْوَرَّاقِ، وَأَحْسَبُهُ: عَنِ الْحَسَنِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا أُعْفَى مَنْ قَتَلَ بَعْدَ أَخْذِ الدِّيَةِ».

تخريج: [إسناده ضعيف] أخرجه أحمد: ٣/٣٦٣ من حديث حماد بن سلمة به * الحسن البصري عنن وشك الراوي في السند.

Comments:

Accepting the blood money, and later on killing the murderer or any of his relatives is pure murder.

Chapter 6. If A Person Gives A Man Poison To Drink Or Eat, And He Dies, Is He Subject To Retaliation?

4508. It was narrated from Anas bin Mālik that a Jewish woman brought a poisoned sheep (meat) to the Messenger of Allāh ﷺ, and he ate some of it. She was brought to the Messenger of Allāh ﷺ, and he asked her about that, and she said: "I wanted to kill you." He said: "Allāh would never give you the power to do that," or he said "(Allāh would never give you that power) over me." They said: "Should we not kill her?" He said: "No." And I always found it (the effect of that poison) in the uvula of the Messenger of Allāh ﷺ. (*Ṣaḥīḥ*)

تخریج: أخرجه مسلم، السلام، باب السم، ح: ٢١٩٠ عن يحيى بن حبيب، والبخاري، الهبة وفضلها والتحريض عليها، باب قبول الهدية من المشركين، ح: ٢٦١٧ من حديث خالد بن الحارث به.

4509. It was narrated from Az-Zuhrī, from Sa'eed, and Abū Salamah – Hārūn (one of the narrators) said: from Abū Hurairah – that a Jewish woman gave the Prophet ﷺ a poisoned sheep, but the Prophet ﷺ did not (have her punished). (*Da'if*)

Abū Dāwud said: That was the sister of Marḥab, the Jewish woman who poisoned the Prophet ﷺ.

(المعجم ٦) بَابُ: فِيمَنْ سَقَى رَجُلًا سُمًّا أَوْ أَطْعَمَهُ فَمَاتَ، أَيَقَادُ مِنْهُ؟

(التحفة ٦)

٤٥٠٨ - حَدَّثَنَا يَحْيَى بْنُ حَبِيبٍ عَنْ عَرَبِيٍّ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا شُعْبَةُ عَنْ هِشَامِ بْنِ زَيْدٍ، عَنْ أَنَسِ بْنِ مَالِكٍ: أَنَّ امْرَأَةً يَهُودِيَّةً أَتَتْ رَسُولَ اللَّهِ ﷺ بِشَاةٍ مَسْمُومَةٍ فَأَكَلَ مِنْهَا، فَجِئَ بِهَا إِلَى رَسُولِ اللَّهِ ﷺ فَسَأَلَهَا عَنْ ذَلِكَ، فَقَالَتْ: أَرَدْتُ لَا أَقْتُلَكَ، فَقَالَ: «مَا كَانَ اللَّهُ لِيُسَلِّطَكَ عَلَى ذَلِكَ»، أَوْ قَالَ: «عَلَيَّ». قَالَ: فَقَالُوا: أَلَا نَقْتُلُهَا؟ قَالَ: «لَا»، فَمَا زِلْتُ أَعْرِفُهَا فِي لَهَوَاتِ رَسُولِ اللَّهِ ﷺ.

٤٥٠٩ - حَدَّثَنَا دَاوُدُ بْنُ رُسَيْدٍ: حَدَّثَنَا عَبَادُ بْنُ الْعَوَامِ، ح: وَحَدَّثَنَا هَارُونُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا سَعِيدُ بْنُ سُلَيْمَانَ: حَدَّثَنَا عَبَادُ عَنْ سُفْيَانَ بْنِ حُسَيْنٍ، عَنْ الزُّهْرِيِّ، عَنْ سَعِيدٍ وَأَبِي سَلَمَةَ - قَالَ هَارُونُ: عَنْ أَبِي هُرَيْرَةَ -: أَنَّ امْرَأَةً مِنَ الْيَهُودِ أَهْدَتْ إِلَى النَّبِيِّ ﷺ شَاةً مَسْمُومَةً. قَالَ: فَمَا عَرَضَ لَهَا النَّبِيُّ ﷺ.

قَالَ أَبُو دَاوُدَ: هَذِهِ أُخْتُ مَرْحَبِ الْيَهُودِيَّةِ الَّتِي سَمَّيَ النَّبِيُّ ﷺ.

تخريج: [إسناده ضعيف] * سفيان بن حسين: ضعيف عن الزهري، ثقة عن غيره.

4510. It was narrated from Ibn Shihāb, he said: "Jābir bin 'Abdullāh would narrate that a Jewish woman from Khaibar poisoned a roasted sheep, then she brought it to the Messenger of Allāh ﷺ. The Messenger of Allāh ﷺ took the leg and ate, along with some of his Companions, then the Messenger of Allāh ﷺ said to them: 'Lift up your hands (meaning, stop eating).' The Messenger of Allāh ﷺ sent for the Jewish woman, and said to her: 'Did you poison this sheep?' The Jewish woman said: 'Who told you?' He said: 'This, which is in my hand, told me, the leg.' She said: 'Yes.' He said: 'What did you intend by that?' She said: 'I said: "If he is a Prophet, it will not harm him, and if he is not a Prophet, we will be rid of him."' So the Messenger of Allāh ﷺ pardoned her and he did not punish her. But some of his Companions who had eaten from that sheep died. The Messenger of Allāh ﷺ was treated with cupping on the upper part of his back because of what he had eaten of that sheep. He was treated by Abū Hind, who was the freed slave of Banū Bayādah, who were among the Anṣār, he used a horn and a knife (for the cupping)."
(Ḍaʿīf)

٤٥١٠ - حَدَّثَنَا سُلَيْمَانُ بْنُ دَاوُدَ الْمَهْرِيُّ: حَدَّثَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ قَالَ: كَانَ جَابِرُ بْنُ عَبْدِ اللَّهِ يُحَدِّثُ أَنَّ يَهُودِيَّةً مِنْ أَهْلِ خَيْبَرَ سَمَّتْ شَاةً مَضْلِيَّةً ثُمَّ أَهْدَتْهَا لِرَسُولِ اللَّهِ ﷺ فَأَخَذَ رَسُولُ اللَّهِ ﷺ الذَّرَاعَ فَأَكَلَ مِنْهَا وَأَكَلَ رَهْطٌ مِنْ أَصْحَابِهِ مَعَهُ، ثُمَّ قَالَ لَهُمْ رَسُولُ اللَّهِ ﷺ: «ارْقَعُوا أَيْدِيَكُمْ»، وَأَرْسَلَ رَسُولُ اللَّهِ ﷺ إِلَى الْيَهُودِيَّةِ فَدَعَاَهَا فَقَالَ لَهَا: «أَسَمَّمْتِ هَذِهِ الشَّاةَ؟» قَالَتْ الْيَهُودِيَّةُ مَنْ أَخْبَرَكَ؟ قَالَ: «أَخْبَرْتَنِي هَذِهِ فِي يَدِي، الذَّرَاعُ». قَالَتْ: نَعَمْ. قَالَ: «فَمَا أَرَدْتِ إِلَى ذَلِكَ؟» قَالَتْ: قُلْتُ: إِنْ كَانَ نَبِيًّا فَلَمْ يَضُرَّهُ، وَإِنْ لَمْ يَكُنْ نَبِيًّا اسْتَرْحَنَّا مِنْهُ، فَعَمَّا عَنْهَا رَسُولُ اللَّهِ ﷺ وَلَمْ يُعَاقِبْهَا، وَتُوفِّيَ بَعْضُ أَصْحَابِهِ الَّذِينَ أَكَلُوا مِنَ الشَّاةِ وَاحْتَجَمَ رَسُولُ اللَّهِ ﷺ عَلَى كَاهِلِهِ مِنْ أَجْلِ الَّذِي أَكَلَ مِنَ الشَّاةِ؛ حَجَمَهُ أَبُو هِنْدٍ بِالْقُرْنِ وَالشَّفْرَةِ وَهُوَ مَوْلَى لِبْنِي بَيَاضَةَ مِنَ الْأَنْصَارِ.

تخريج: [إسناده ضعيف] أخرجه البيهقي: ٤٦/٨ من حديث أبي داود به * الزهري عن جابر: منقطع "لم يسمع منه" (تحفة الأشراف: ٣٥٦/٢).

4511. It was narrated from Muḥammad bin ‘Amr, from Abū Salamah that a Jewish woman gave the Messenger of Allāh ﷺ a roasted sheep at Khaibar – a Ḥadīth like that of Jābir (no. 4510). He said: “And Bishr bin Al-Barā’ bin Ma’rūr Al-Ansārī died. He sent word to the Jewish woman asking: ‘What made you do what you did?’” And he mentioned a Ḥadīth like that of Jābir. “The Messenger of Allāh ﷺ ordered that she be executed.” And he did not mention cupping. (*Hasan*)

٤٥١١ - حَدَّثَنَا وَهْبُ بْنُ بَقِيَّةَ: حَدَّثَنَا خَالِدٌ عَنْ مُحَمَّدِ بْنِ عَمْرٍو، عَنْ أَبِي سَلَمَةَ: أَنَّ رَسُولَ اللَّهِ ﷺ أَهْدَتْ لَهُ يَهُودِيَّةٌ بِخَيْرِ بِشَاءٍ مَضْلِيَّةٍ نَحْوَ حَدِيثِ جَابِرٍ قَالَ: فَمَاتَ بِشْرُ بْنُ الْبَرَاءِ بْنِ مَعْرُورٍ الْأَنْصَارِيُّ، فَأَرْسَلَ إِلَى الْيَهُودِيَّةِ: «مَا حَمَلَكَ عَلَى الَّذِي صَنَعْتَ؟»، فَذَكَرَ نَحْوَ حَدِيثِ جَابِرٍ، فَأَمَرَ بِهَا رَسُولُ اللَّهِ ﷺ فَقَتِلَتْ. وَلَمْ يَذْكُرْ أَمْرَ الْحِجَامَةِ.

تخريج: [حسن] أخرجه البيهقي: ٤٦/٨ من حديث أبي داود به، انظر الحديث الآتي:

Comments:

This was a miracle of the Prophet ﷺ, that a piece of roasted meat informed him about this poison.

4512. Wahb bin Baqiyyah narrated to us, from Khālid, from Muḥammad bin ‘Amr, from Abū Salamah, from Abū Hurairah, who said: “The Messenger of Allāh ﷺ used to accept gifts but he did not eat (that which was given in) charity.” And Wahb bin Baqiyyah narrated to us, elsewhere, from Khālid, from Muḥammad bin ‘Amr, that Abū Salamah – and he did not mention Abū Hurairah – said: “The Messenger of Allāh ﷺ used to accept gifts, but he did not eat (that which was given in) charity.” And he added: “A Jewish woman in Khaibar gave him a roasted sheep that she had poisoned, and the Messenger of Allāh ﷺ ate from it, as did the people. He said: ‘Lift up your

٤٥١٢ - حَدَّثَنَا وَهْبُ بْنُ بَقِيَّةَ عَنْ خَالِدٍ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: كَانَ رَسُولُ اللَّهِ ﷺ يَقْبَلُ الْهَدِيَّةَ وَلَا يَأْكُلُ الصَّدَقَةَ. وَحَدَّثَنَا وَهْبُ بْنُ بَقِيَّةَ فِي مَوْضِعٍ آخَرَ عَنْ خَالِدٍ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو، عَنْ أَبِي سَلَمَةَ - وَلَمْ يَذْكُرْ أَبَا هُرَيْرَةَ - قَالَ: كَانَ رَسُولُ اللَّهِ ﷺ يَأْكُلُ الْهَدِيَّةَ وَلَا يَأْكُلُ الصَّدَقَةَ. رَأَى: فَأَهْدَتْ لَهُ يَهُودِيَّةٌ بِخَيْرِ شَاءٍ مَضْلِيَّةٍ سَمَّتْهَا، فَأَكَلَ رَسُولُ اللَّهِ ﷺ مِنْهَا وَأَكَلَ الْقَوْمُ، فَقَالَ: «ارْفَعُوا أَيْدِيَكُمْ فَإِنَّهَا أَخْبَرْتَنِي أَنَّهَا مَسْمُومَةٌ»، فَمَاتَ بِشْرُ بْنُ الْبَرَاءِ ابْنِ مَعْرُورٍ الْأَنْصَارِيُّ، فَأَرْسَلَ إِلَى الْيَهُودِيَّةِ: «مَا حَمَلَكَ عَلَى الَّذِي صَنَعْتَ؟» قَالَتْ: إِنْ كُنْتُ نَبِيًّا لَمْ يَضُرَّكَ الَّذِي صَنَعْتُ، وَإِنْ كُنْتُ

hands (meaning, stop eating), for it has told me that it is poisoned.’ Bishr bin Al-Barā’ bin Ma’rūr Al-Ansārī died (of that poison), and he sent word to the Jewish woman asking: ‘What made you do what you did?’ She said: ‘If you were a Prophet it would not harm you, and if you were a king the people would have been rid of you.’ The Messenger of Allāh ﷺ ordered that she be killed, then he said during his final illness: ‘I continued to feel pain because of the morsel that I ate at Khaibar, but now it has cut off my aorta.’” (*Hasan*)

تخريج: [إسناده حسن] أخرجه البيهقي في دلائل النبوة: ٢٦٢/٤ من حديث أبي داود به، ورواه أحمد: ٣٥٩/٢ من حديث محمد بن عمرو الليثي به مختصراً.

Comments:

The Prophet ﷺ forgave the woman at first, but when one of his Companions died after eating that meat, she was killed in retaliation. See also *Ṣaḥīḥ Muslim* no. 350.

4513. It was narrated from ‘Abdur-Razzāq: “Ma‘mar informed us, from Az-Zuhri, from the son of Ka‘b bin Mālik, from his father, that Umm Mubashshir said to the Prophet ﷺ, during his final illness: ‘O Messenger of Allāh, what do you think is the cause of your illness? I cannot think of anything that caused my son’s illness except the poisoned sheep that he ate with you at Khaibar.’ The Prophet ﷺ said: ‘And I do not think there is anything wrong with me except that, but now it has cut off my aorta.’” (*Ṣaḥīḥ*)

Abū Dāwud said: Sometimes ‘Abdur-Razzāq narrated this *Ḥadīth* as a *Mursal* report from

مَلِكًا أَرَحْتُ النَّاسَ مِنْكَ، فَأَمَرَ بِهَا رَسُولُ اللَّهِ ﷺ فَقَتَلْتُ، ثُمَّ قَالَ فِي وَجْعِهِ الَّذِي مَاتَ فِيهِ: «مَا زِلْتُ أَجِدُ مِنَ الْأَكْلَةِ الَّتِي أَكَلْتُ بِخَيْرٍ فَهَذَا أَوَانٌ قَطَعَتْ أَبْهَرِي».

٤٥١٣ - حَدَّثَنَا مُحَمَّدُ بْنُ خَالِدٍ قَالَ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَخْبَرَنَا مَعْمَرٌ عَنْ الزُّهْرِيِّ، عَنْ ابْنِ كَعْبٍ بْنِ مَالِكٍ، عَنْ أَبِيهِ: أَنَّ أُمَّ مُبَشِّرٍ قَالَتْ لِلنَّبِيِّ ﷺ فِي مَرَضِهِ الَّذِي مَاتَ فِيهِ: مَا يَتَّبِعُهُ بِكَ يَا رَسُولَ اللَّهِ! فَإِنِّي لَا أَتَاهُمْ بِأَنِّي شَيْئًا إِلَّا الشَّاءَ الْمَسْمُومَةَ الَّتِي أَكَلْتُ مَعَكَ بِخَيْرٍ، وَقَالَ النَّبِيُّ ﷺ: «وَأَنَا لَا أَتَاهُمْ بِنَفْسِي إِلَّا ذَلِكَ فَهَذَا أَوَانٌ قَطَعَتْ أَبْهَرِي».

قَالَ أَبُو دَاوُدَ: وَرُبَّمَا حَدَّثَ عَبْدُ الرَّزَّاقِ بِهَذَا الْحَدِيثِ مُرْسَلًا عَنْ مَعْمَرٍ عَنِ الزُّهْرِيِّ عَنِ النَّبِيِّ ﷺ، وَرُبَّمَا حَدَّثَ بِهِ عَنِ الزُّهْرِيِّ،

Ma'mar from Az-Zuhri from the Prophet ﷺ, and sometimes he narrated it from Az-Zuhri, from 'Abdur-Rahmān bin Ka'b bin Mālik. 'Abdur-Razzāq said that Ma'mar used to narrate the *Hadīth* to them sometimes as a *Mursal* report and they would write it down, and sometimes he would narrate it to them as a *Musnad* report and they would write it down. And both are correct in our view. 'Abdur-Razzāq said: "When Ibn Al-Mubārak came to Ma'mar, Ma'mar narrated to him in a *Musnad* form, the *Aḥādīth* that he used to narrate in a *Mawqūf* form."

عن عَبْدِ الرَّحْمَنِ بْنِ كَعْبٍ بْنِ مَالِكٍ، وَذَكَرَ عَبْدُ الرَّزَّاقِ أَنَّ مَعْمَرًا كَانَ يُحَدِّثُهُمْ بِالْحَدِيثِ مَرَّةً مُرْسَلًا فَيَكْتُبُونَهُ، وَيُحَدِّثُهُمْ مَرَّةً بِهِ فَيَسْنِدُهُ فَيَكْتُبُونَهُ، وَكُلٌُّ صَحِيحٌ عِنْدَنَا. قَالَ عَبْدُ الرَّزَّاقِ: فَلَمَّا قَدِمَ ابْنُ الْمُبَارَكِ عَلَى مَعْمَرٍ أَسْنَدَ لَهُ مَعْمَرٌ أَحَادِيثَ كَانَ يُوقِفُهَا.

تخريج: [صحيح] * وللحديث شواهد، منها الحديث السابق.

4514. It was narrated from Rabāh, from Ma'mar, from Az-Zuhri, from 'Abdur-Rahmān bin 'Abdullāh bin Ka'b bin Mālik, from his mother, Umm Mubashshir. – Abū Sa'eed bin Al-A'rābī said:^[1] "This is what he said: 'from his mother,' but the correct version is from his father, from Umm Mubashshir who entered upon the Prophet ﷺ" – and he mentioned a *Hadīth* like that of Makhḥad bin Khālid (no. 4513), similar to the *Hadīth* of Jābir. He said: "Bishr bin Al-Barā' bin Ma'rūr died, and he ﷺ sent word to the Jewish woman asking: 'What made you do what you did?'" And he mentioned a *Hadīth* like that of Jābir (no. 4510); "The Messenger of Allāh ﷺ ordered that she be killed." And he did not make any mention of cupping. (*Ṣaḥīḥ*)

٤٥١٤ - حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ: حَدَّثَنَا إِبْرَاهِيمُ بْنُ خَالِدٍ قَالَ: حَدَّثَنَا رَبَاحٌ عَنْ مَعْمَرٍ، عَنِ الزُّهْرِيِّ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ، عَنْ أُمِّهِ أُمِّ مُبَشِّرٍ. قَالَ أَبُو سَعِيدٍ بْنُ الْأَعْرَابِيِّ: كَذَا قَالَ عَنْ أُمِّهِ وَالصَّوَابُ عَنْ أَبِيهِ، عَنْ أُمِّ مُبَشِّرٍ دَخَلَتْ عَلَى النَّبِيِّ ﷺ فَذَكَرَ مَعْنَى حَدِيثِ مَخْلَدِ بْنِ خَالِدٍ نَحْوَ حَدِيثِ جَابِرٍ قَالَ: فَمَاتَ بِشْرُ بْنُ الْبَرَاءِ بْنِ مَعْرُورٍ، فَأَرْسَلَ إِلَى الْيَهُودِيَّةِ فَقَالَ: مَا حَمَلَكِ عَلَى الَّذِي صَنَعْتَ؟ فَذَكَرَ نَحْوَ حَدِيثِ جَابِرٍ، فَأَمَرَ بِهَا رَسُولُ اللَّهِ ﷺ فَقُتِلَتْ: وَلَمْ يَذْكُرِ الْحِجَامَةَ.

[1] One of those who heard the text from the author, see the introduction.

تخريج: [صحيح].

Chapter 7. If A Man Kills His Slave Or Mutilates Him, Should Retaliation Be Imposed On Him?

(المعجم ٧) - بَابُ مَنْ قَتَلَ عَبْدَهُ أَوْ مَثَّلَ بِهِ، أَيُقَادُ مِنْهُ؟ (التحفة ٧)

4515. It was narrated from (Shu‘bah and) Hammād, from Qatādah, from Al-Hasan, from Samurah, that the Prophet ﷺ said: “Whoever kills his slave, we will kill him, and whoever cuts off his slave’s nose, we will cut off his nose.” (*Hasan*)

٤٥١٥ - حَدَّثَنَا عَلِيُّ بْنُ الْجَعْدِ: حَدَّثَنَا شُعْبَةُ؛ ح: وَحَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا حَمَّادٌ عَنْ قَتَادَةَ، عَنْ الْحَسَنِ، عَنْ سَمُرَةَ أَنَّ النَّبِيَّ ﷺ قَالَ: «مَنْ قَتَلَ عَبْدَهُ قَتَلْنَاهُ، وَمَنْ جَدَعَ عَبْدَهُ جَدَعْنَاهُ».

تخريج: [حسن] أخرجه الترمذي، الدييات، باب ما جاء في الرجل يقتل عبده، ح: ١٤١٤ وابن ماجه، ح: ٢٦٦٣ والنسائي، ح: ٤٧٤٠، ٤٧٤٢ من حديث قتادة به، وقال الترمذي: "حسن غريب" وهو في مسند علي بن الجعد، ح: ٩٨٤ وصححه الحاكم على شرط البخاري: ٣٦٧/٤ ووافقه الذهبي * حسن عن سمرة: حسن كما تقدم، ح: ٣٥٤.

4516. It was narrated from Mu‘ādh bin Hishām: “My father narrated to me, from Qatādah” with the same chain (as no. 4515). He said: “The Messenger of Allāh ﷺ said: ‘Whoever castrates his slave, we will castrate him.’” Then he mentioned a *Hadīth* like that of Shu‘bah and Hammād. (*Hasan*)
Abū Dāwud said: A *Hadīth* like that of Mu‘ādh was narrated from Abū Dāwud Aṭ-Ṭayālīsī from Hishām.

٤٥١٦ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا مُعَاذُ بْنُ هِشَامٍ: حَدَّثَنِي أَبِي عَنْ قَتَادَةَ بِإِسْنَادِهِ مِثْلَهُ، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ خَصَصَى عَبْدَهُ خَصَصْنَاهُ» ثُمَّ ذَكَرَ مِثْلَ حَدِيثِ شُعْبَةَ وَحَمَّادٍ.

قَالَ أَبُو دَاوُدَ: وَرَوَاهُ أَبُو دَاوُدَ الطَّيَالِسِيُّ عَنْ هِشَامٍ مِثْلَ حَدِيثِ مُعَاذٍ.

تخريج: [حسن] انظر الحديث السابق.

Comments:

According to some scholars both these narrations are weak. According to authentic narrations, the master is not to be killed in retaliation in such cases. According to the scholars who consider these narrations to be *Hasan*, it indicates a strong warning, but not that the master is to be punished. There is also a view that these narrations are abrogated. (See *‘Awn Al-Ma‘būd*.)

4517. It was narrated from Ibn Abī ‘Arūbah, from Qatādah, with the chain of *Shu‘bah*, similarly, and he added: “Then Al-Hasan forgot this *Hadīth* and he used to say: ‘A free man should not be killed (in retaliation) for a slave.’” (*Hasan*)

٤٥١٧ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا سَعِيدُ بْنُ عَامِرٍ عَنْ ابْنِ أَبِي عَرُوبَةَ، عَنْ قَتَادَةَ بِإِسْنَادٍ شُعْبَةَ مِثْلَهُ. زَادَ: ثُمَّ إِنَّ الْحَسَنَ نَسِيَ هَذَا الْحَدِيثَ فَكَانَ يَقُولُ: لَا يُقْتَلُ حُرٌّ بِعَبْدٍ.

تخريج: [حسن] انظر الحديثين السابقين.

4518. It was narrated from Hishām, from Qatādah, from Al-Hasan, who said: “A free man should not be subjected to retaliation in return for a slave.” (*Hasan*)

٤٥١٨ - حَدَّثَنَا مُسْلِمُ بْنُ إِبْرَاهِيمَ: حَدَّثَنَا هِشَامٌ عَنْ قَتَادَةَ، عَنْ الْحَسَنِ قَالَ: لَا يُقَادُ الْحُرُّ بِالْعَبْدِ.

تخريج: [حسن] * وله شواهد منها الحديث السابق: ٤٥١٧.

4519. It was narrated from ‘Amr bin *Shu‘aib*, from his father, from his grandfather who said: “A man came to the Prophet ﷺ seeking his help, and said: ‘A slave woman of his, O Messenger of Allāh!’ He said: ‘Woe to you! What is the matter with you?’ He said: ‘An evil one looked at the slave woman of his master, and he got jealous and cut off his penis.’ The Messenger of Allāh ﷺ said: ‘Bring the man to me.’ They searched for him, but they could not find him. The Messenger of Allāh ﷺ said: ‘Go, for you are free.’ He said: ‘O Messenger of Allāh, who will help me?’ He said: ‘Every Muslim.’ Or he said: ‘Every believer.’” (*Hasan*)

٤٥١٩ - حَدَّثَنَا مُحَمَّدُ بْنُ الْحَسَنِ بْنِ تَسْنِيمٍ الْعَتَكِيُّ: حَدَّثَنَا مُحَمَّدُ بْنُ بَكْرٍ: أَخْبَرَنَا سَوَّارُ أَبُو حَمَزَةَ: حَدَّثَنَا عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: جَاءَ رَجُلٌ مُسْتَصْرِخٌ إِلَى النَّبِيِّ ﷺ فَقَالَ: جَارِيَةٌ لَهُ يَا رَسُولَ اللَّهِ! فَقَالَ: «وَيْحَكَ مَا لَكَ؟» فَقَالَ: سَرَّ أَبْصَرَ لِسَيِّدِهِ جَارِيَةً لَهُ فَعَارَ فَجَبَّ مَذَاقِيرَهُ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «عَلَيَّ بِالرَّجُلِ»، فَطُلِبَ فَلَمْ يُقَدَّرْ عَلَيْهِ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «اذْهَبْ فَأَنْتَ حُرٌّ»، فَقَالَ: يَا رَسُولَ اللَّهِ! عَلَى مَنْ نُصْرَتِي؟ قَالَ: «عَلَى كُلِّ مُسْلِمٍ»، أَوْ قَالَ: «عَلَى كُلِّ مُؤْمِنٍ».

قَالَ أَبُو دَاوُدَ: الَّذِي عَنِيَ كَانَ اسْمُهُ رَوْحُ ابْنِ دِينَارٍ.

Abū Dāwud said: The name of the one who was set free was Rawḥ bin Dinar.

Abū Dāwud said: The one who cut off his penis was Zinbā‘.

Abū Dāwud said: This Zinbā‘ Abū

قَالَ أَبُو دَاوُدَ: الَّذِي جَبَّ زَيْنَبًا.

قَالَ أَبُو دَاوُدَ: هَذَا زَيْنَبَا‘ أَبُو رَوْحٍ كَانَ

مَوْلَى الْعَبْدِ.

Rawh was the master of the slave.

تخريج: [إسناده حسن] أخرجه ابن ماجه، الديات، باب من مثل بعبده فهو حر، ح: ٢٦٨٠ من حديث أبي حمزة سوار به.

Comments:

If a master is cruel to his slave and amputates some of his limbs, the slave will get his freedom automatically. The master will not bear the punishment of retaliation.

Chapter 8. *Al-Qasāmah*

(المعجم ٨) - بَابُ الْقَسَامَةِ (التحفة ٨)

4520. It was narrated from Yahyā bin Sa'eed, from Bushair bin Yasār, from Sahl bin Abī Ḥaṭmah and Rāfi' bin Khadij that Muḥayyisāh bin Mas'ūd and 'Abdullāh bin Sahl went out towards Khaibar, and they parted among the palm trees. 'Abdullāh bin Sahl was killed, and they suspected the Jews. His brother 'Abdur-Raḥmān bin Sahl, and his two cousins Huwayyisāh and Muḥayyisāh came to the Prophet ﷺ, 'Abdur-Raḥmān spoke about his brother, and he was the youngest of them, so the Messenger of Allāh ﷺ said: "Let the eldest speak, let the eldest speak," or "Let the eldest begin." So they spoke about their companion's case, and the Messenger of Allāh ﷺ said: "Let fifty of you swear against one of them, then he will be handed over to you with a rope around his neck." They said: "It is something that we did not witness; how can we swear?" He said: "Then if the Jews swear fifty oaths you do not have to do so." They said: "O Messenger of Allāh, they are a disbelieving people." So the

٤٥٢٠ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ بْنِ مَيْسَرَةَ وَمُحَمَّدُ بْنُ عَبْدِ الْمَعْنَى قَالَا: أَخْبَرَنَا حَمَادُ بْنُ زَيْدٍ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ بُشَيْرِ بْنِ يَسَارٍ، عَنْ سَهْلِ بْنِ أَبِي حَتْمَةَ وَرَافِعِ بْنِ خَدِيجٍ: أَنَّ مُحَيِّصَةَ بِنَ مَسْعُودٍ وَعَبْدُ اللَّهِ بَنَ سَهْلٍ انْطَلَقَا قِتْلَ خَبِيرٍ فَتَفَرَّقَا فِي النَّخْلِ فَقُتِلَ عَبْدُ اللَّهِ بْنُ سَهْلٍ فَأَتَهُمُ الْيَهُودُ، فَجَاءَ أَخُوهُ عَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ وَابْنَا عَمِّهِ: حُوَيْصَةُ وَمُحَيِّصَةُ، فَأَتُوا النَّبِيَّ ﷺ، فَتَكَلَّمَ عَبْدُ الرَّحْمَنِ فِي أَمْرِ أَخِيهِ وَهُوَ أَصْغَرُهُمْ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «الْكَبِيرُ الْكَبِيرُ»، أَوْ قَالَ: «لَيْبِدُ الْكَبِيرِ»، فَتَكَلَّمَا فِي أَمْرِ صَاحِبَيْهِمَا، فَقَالَ رَسُولُ اللَّهِ ﷺ: «يُقْسِمُ خَمْسُونَ مِنْكُمْ عَلَى رَجُلٍ مِنْهُمْ فَلْيَدْفَعْ بِرَمْتِهِ». قَالُوا: أَمْرٌ لَمْ نَشْهَدْهُ كَيْفَ نَخْلِفُ؟ قَالَ: «فَتَبَرُّوكُمْ يَهُودُ بِأَيِّمَانِ خَمْسِينَ مِنْهُمْ». قَالُوا: يَا رَسُولَ اللَّهِ! قَوْمٌ كُفَّارٌ. قَالَ: فَوَدَاهُ رَسُولُ اللَّهِ ﷺ مِنْ قِبَلِهِ. قَالَ: قَالَ سَهْلٌ: دَخَلْتُ مَرْبَدًا لَهُمْ يَوْمًا فَرَكَّضْتَنِي نَاقَةً مِنْ تِلْكَ الْإِبِلِ رَكُضَةً يَرْجُلُهَا. قَالَ حَمَادٌ هَذَا أَوْ نَحْوُهُ.

Messenger of Allāh ﷺ paid the blood money himself. Sahl said: "I entered a *Mirbad* (camel pen) of theirs one day, and a she-camel among those camels (that were given as blood money) kicked me with her foot." Hammād (one of the narrators) said this or something similar. (*Sahīh*)

Abū Dāwud said: It was narrated by Bishr bin Al-Mufaḍḍal and Mālik from Yahyā bin Sa'eed who said in it: "Will you swear fifty oaths, and thus be entitled to the *Diyah* for your companion" – "or your slain one?"

تخريج: أخرجه مسلم، القسامة والمحاربين... إلخ، باب القسامة، ح: ٢/١٦٦٩ عن عبيدالله بن عمر بن مسرة، والبخاري، الأدب، باب إكرام الكبير، ويبدأ الأكبر بالكلام والسؤال، ح: ٦١٤٣ من حديث حماد بن زيد به.

Comments:

Al-Qasamah is derived from *Qasam* (oath) and it means taking oaths in repetition. Here, it refers to the cases wherein a person is killed, and there are no witnesses. Then fifty persons from the claimant tribe will swear about the suspect or suspects that they are the murderers. If the claimants take an oath, the respondent will pay the blood money. If the claimant tribe does not take an oath, the defendant will swear that they are not the killers and they are not aware of the killer, so they will be free of blame, and they will not have to pay the blood money. It will be paid from the public treasury. If the defendant tribe does not swear, they will have to present the murderer or pay the blood money.

4521. It was narrated from Abū Lailā bin 'Abdullāh bin 'Abdur-Raḥmān bin Sahl, that Sahl bin Abī Hathmah, and some other elders of his people told him, that 'Abdullāh bin Sahl and Muḥayyiṣah went out to Khaibar because of some hardship that had befallen them, and Muḥayyiṣah came and said that 'Abdullāh bin Sahl had been killed, and thrown into a well, or a

قَالَ أَبُو دَاوُدَ: رَوَاهُ بِشْرُ بْنُ الْمُفَضَّلِ وَمَالِكٌ عَنْ يَحْيَى بْنِ سَعِيدٍ قَالَ فِيهِ: «اتَّحِلُّونَ خَمْسِينَ يَمِينًا وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ أَوْ قَاتِلِكُمْ». وَلَمْ يَذْكُرْ بِشْرٌ: «دَمَ». وَقَالَ عَبْدُهُ عَنْ يَحْيَى كَمَا قَالَ حَمَادٌ. وَرَوَاهُ ابْنُ عُيَيْنَةَ عَنْ يَحْيَى فَبَدَأَ بِقَوْلِهِ: «تَبَرَّئْتُكُمْ يَهُودُ بِخَمْسِينَ يَمِينًا يَخْلِفُونَ» وَلَمْ يَذْكُرِ الاسْتِحْقَاقَ.

قَالَ أَبُو دَاوُدَ: وَهَذَا وَهُمْ مِنْ ابْنِ عُيَيْنَةَ.

٤٥٢١ - حَدَّثَنَا أَحْمَدُ بْنُ عَمْرٍو بْنِ السَّرْحِ: أَخْبَرَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي مَالِكٌ عَنْ أَبِي لَيْلَى بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ ابْنِ سَهْلٍ، عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ أَنَّهُ أَخْبَرَهُ هُوَ وَرِجَالٌ مِنْ كُتُبَاءِ قَوْمِهِ: أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ وَمُحَيِّصَةَ خَرَجَا إِلَى خَيْبَرَ مِنْ جَهْدِ أَصَابِهِمْ فَأَتَيْتِ مُحَيِّصَةُ فَأَخْبَرَتْ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَدْ قُتِلَ وَطُرِحَ فِي فَقِيرٍ أَوْ عَيْنٍ، فَأَتَى

spring. He went to the Jews and said: "By Allāh, you killed him." They said: "By Allāh, we did not kill him." He went to his people, and told them about that, then he and his brother Ḥuwayyisāh – who was older than him – and his cousin 'Abdur-Raḥmān bin Sahl, came (to the Prophet ﷺ). Muḥayyisāh started to speak, as he was the one who had been in Khaibar, but the Messenger of Allāh ﷺ said: "Let the eldest speak, let the eldest speak." So Ḥuwayyisāh spoke, then Muḥayyisāh spoke. The Messenger of Allāh ﷺ said: "Let them pay the *Diyah* for your companion, or else prepare for war." The Messenger of Allāh ﷺ wrote to them saying that, and they wrote back saying: "By Allāh, we did not kill him." The Messenger of Allāh ﷺ said to Ḥuwayyisāh, Muḥayyisāh and 'Abdur-Raḥmān: "Will you swear, so that you may be entitled to (blood money) for your companion?" They said: "No." He said: "Then should the Jews swear an oath for you?" They said: "They are not Muslims." So the Messenger of Allāh ﷺ paid the *Diyah* himself, and the Messenger of Allāh ﷺ sent them one hundred camels. Sahl said: "A red she-camel among them kicked me." (*Saḥīḥ*)

يَهُودَ فَقَالَ: أَنْتُمْ وَاللَّهِ! قَتَلْتُمُوهُ. قَالُوا: وَاللَّهِ! مَا قَتَلْنَاهُ. فَأَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ فَذَكَرَ لَهُمْ ذَلِكَ، ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ حُوَيْصَةُ - وَهُوَ أَكْبَرُ مِنْهُ - وَعَبْدُ الرَّحْمَنِ بْنِ سَهْلٍ، فَذَهَبَ مُحَيِّصَةُ لِيَتَكَلَّمَ - وَهُوَ الَّذِي كَانَ بِخَيْبَرَ - فَقَالَ رَسُولُ اللَّهِ ﷺ: «كَبِّرْ كَبِّرْ» - يُرِيدُ السِّنَّ - فَتَكَلَّمَ حُوَيْصَةُ ثُمَّ تَكَلَّمَ مُحَيِّصَةُ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّمَا أَنْ يَدُوا صَاحِبَكُمْ، وَإِنَّمَا أَنْ يُؤْذَنُوا بِحَرْبٍ»، فَكَتَبَ إِلَيْهِمْ رَسُولُ اللَّهِ ﷺ بِذَلِكَ، فَكَتَبُوا: إِنَّا وَاللَّهِ! مَا قَتَلْنَاهُ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «لِحُوَيْصَةَ وَمُحَيِّصَةَ وَعَبْدُ الرَّحْمَنِ: «أَتَحْلِفُونَ وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ؟» قَالُوا: لَا، قَالَ: «فَتَحْلِفْ لَكُمْ يَهُودُ؟» قَالُوا: لَيْسُوا مُسْلِمِينَ، فَوَدَّاهُ رَسُولُ اللَّهِ ﷺ مِنْ عِنْدِهِ، فَبَعَثَ إِلَيْهِمْ رَسُولُ اللَّهِ ﷺ بِمِائَةِ نَاقَةٍ حَتَّى أُذِخِلَتْ عَلَيْهِمُ الدَّارُ. قَالَ سَهْلٌ: لَقَدْ رَكَضَتْنِي مِنْهَا نَاقَةٌ حَمْرَاءُ.

تخريج: [صحيح] انظر الحديث السابق، وهو في الموطأ (يحيى): ٨٧٧/٢، ٨٧٨.

Comments:

For making judgments in crimes, non-Muslims may be asked to swear in the Name of Allāh provided the Muslim defendant or accused agrees to that. There are penalties in Islam for such cases, whether the case involves Muslims or non-Muslims. If it is not known who the murderer is, then the blood money is paid from the public treasury.

4522. It was narrated from ‘Amr bin Shu’aib, that the Messenger of Allāh ﷺ executed a man from Banū Naṣr bin Mālīk in Baḥrat Al-Rughā’, on the banks of (the river) Liyyat Al-Baḥrah, on the basis of *Qasāmah*. He said: “The killer and his victim were both from (that tribe).” (*Da‘īf*)

٤٥٢٢ - حَدَّثَنَا مُحَمَّدُ بْنُ حَالِدٍ وَكَثِيرُ ابْنُ عُبَيْدٍ قَالَا: حَدَّثَنَا ح: وَحَدَّثَنَا مُحَمَّدُ ابْنُ الصَّبَّاحِ بْنِ سُفْيَانَ: أَخْبَرَنَا الْوَلِيدُ عَنْ أَبِي عَمْرٍو، عَنْ عَمْرٍو بْنِ شُعَيْبٍ عَنْ رَسُولِ اللَّهِ ﷺ: أَنَّهُ قَتَلَ بِالْقَسَامَةِ رَجُلًا مِنْ بَنِي نَضَرَ ابْنِ مَالِكٍ بِبَحْرَةِ الرُّغَاءِ عَلَى شَطِّ لِيَّةِ الْبَحْرَةِ قَالَ: الْقَاتِلُ وَالْمَقْتُولُ مِنْهُمْ. وَهَذَا لَفْظُ مُحَمَّدٍ، بِبَحْرَةٍ، أَقَامَهُ مُحَمَّدٌ وَحْدَهُ: عَلَى شَطِّ لِيَّةٍ.

تخریج: [إسناده ضعيف] أخرجه البيهقي: ١٢٧/٨ من حديث أبي داود به * السند مرسل، انظر المراسيل لأبي داود، ح: ٢٧٠.

Chapter 9. Not Retaliating On The Basis Of *Qasāmah*

4523. It was narrated from Sa‘eed bin ‘Ubaid At-Ṭā’i, from Bushair bin Yasār (that) an *Anṣārī* man who was called Sahl bin Abī Ḥaṭmah told him that some of his people went to Khaibar and parted there, then they found one of their number slain. They said to those among whom they found him: “Did you kill our companion?” They said: “We did not kill him, and we do not know who killed him.” They went to the Prophet of Allāh ﷺ, and he said to them: “Bring me proof against the one who killed him.” They said: “We have no proof.” He said: “May they swear an oath for you?” They said: “We will not accept the oath of the Jews.” The Messenger of Allāh ﷺ did not like for his blood to be

(المعجم ٩) بَابُ: فِي تَرْكِ الْقَوْدِ بِالْقَسَامَةِ (التحفة ٩)

٤٥٢٣ - حَدَّثَنَا الْحَسَنُ بْنُ مُحَمَّدٍ ابْنِ الصَّبَّاحِ الزُّعْفَرَانِيُّ: حَدَّثَنَا أَبُو نَعِيمٍ: حَدَّثَنَا سَعِيدُ بْنُ عُبَيْدٍ الطَّائِيُّ عَنْ بُشَيْرِ بْنِ يَسَارٍ: رَعِمَ أَنَّ رَجُلًا مِنَ الْأَنْصَارِ يُقَالُ لَهُ: سَهْلُ ابْنِ أَبِي حُثَمَةَ أَخْبَرَهُ أَنَّ نَفَرًا مِنْ قَوْمِهِ انْطَلَقُوا إِلَى خَيْبَرَ فَتَفَرَّقُوا فِيهَا فَوَجَدُوا أَحَدَهُمْ قَتِيلًا، فَقَالُوا لِلَّذِينَ وَجَدُوهُ عَنْدهُمْ: قَتَلْتُمْ صَاحِبَنَا؟ فَقَالُوا: مَا قَتَلْنَاهُ وَلَا عَلِمْنَا قَاتِلًا، فَاِنْطَلَقْنَا إِلَى نَبِيِّ اللَّهِ ﷺ قَالَ: فَقَالَ لَهُمْ: «تَأْتُونِي بِالْبَيِّنَةِ عَلَى مَنْ قَتَلَ هَذَا؟»، قَالُوا: مَا لَنَا بَيِّنَةٌ قَالَ: «فِيَحْلِفُونَ لَكُمْ؟» قَالُوا: لَا نَرْضَى بِأَيْمَانِ الْيَهُودِ، فَكَرِهَ رَسُولُ اللَّهِ ﷺ أَنْ يُبْطِلَ دَمَهُ قَوْدَاهُ مِائَةً مِنْ إِبِلِ الصَّدَقَةِ.

neglected, so he gave one hundred of the *Ṣadaqah* (*Zakāt*) camels as *Diyah*. (*Ṣaḥīḥ*)

تخريج: أخرجه البخاري، الديات، باب القسامة، ح: ٦٨٩٨ عن أبي نعيم الفضل بن دكين ومسلم، القسامة، ح: ٥/١٦٦٩ من حديث سعيد بن عبيد الطائي به وتقدم طرفه: ١٦٣٨.

4524. It was narrated that Rāfi' bin Khadij said: "An Anṣārī man was found slain in the morning at Khaibar. His heirs went to the Prophet ﷺ, and told him about that, and he said: 'Do you have two witnesses who will testify to the murder of your companion?' They said: 'O Messenger of Allāh, no one among the Muslims was there, and they are Jews who sometimes dare to do worse than this.' He said: 'Choose fifty of them, and ask them to swear an oath.' But they refused, so the Prophet ﷺ paid the *Diyah* himself." (*Ṣaḥīḥ*)

٤٥٢٤ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ بْنِ رَاشِدٍ: أَخْبَرَنَا هُشَيْمٌ عَنْ أَبِي حَيَّانَ التَّمِيمِيِّ: حَدَّثَنَا عَبَّادُ بْنُ رِفَاعَةَ عَنْ رَافِعِ بْنِ خَدِيجٍ قَالَ: أَصْبَحَ رَجُلٌ مِنَ الْأَنْصَارِ مَقْتُولًا بِخَيْرٍ فَأَنْطَلَقَ أَوْلِيَائُوهُ إِلَى النَّبِيِّ ﷺ فَذَكَرُوا ذَلِكَ لَهُ، فَقَالَ: «لَكُمْ شَاهِدَانِ يَشْهَدَانِ عَلَيَّ قَتْلَ صَاحِبِكُمْ؟» قَالُوا: يَا رَسُولَ اللَّهِ! لَمْ يَكُنْ ثُمَّ أَحَدٌ مِنَ الْمُسْلِمِينَ، وَإِنَّمَا هُمْ يَهُودٌ وَقَدْ يَجْتَرِئُونَ عَلَى أَعْظَمَ مِنْ هَذَا، قَالَ: «فَاخْتَارُوا مِنْهُمْ خَمْسِينَ فَاسْتَخْلِفُوهُمْ» فَأَبَوْا فَوَدَّاهُ النَّبِيُّ ﷺ مِنْ عِنْدِهِ.

تخريج: [صحيح] أخرجه الطبراني في الكبير: ٢٧٧/٤، ح: ٤٤١٣ من حديث الحسن بن علي به، وللحديث شواهد كثيرة جدًا.

4525. It was narrated that 'Abdur-Raḥmān bin Bujaid said: "By Allāh, Sahl misunderstood the *Ḥadīth* which says that the Messenger of Allāh ﷺ wrote to the Jews saying: 'A slain man was found among you so pay the *Diyah* for him,' and they wrote back swearing by Allāh fifty times: 'We did not kill him and we do not know who killed him.'" He said: "The Messenger of Allāh ﷺ paid the *Diyah* of one hundred camels himself." (*Da'if*)

٤٥٢٥ - حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ يَحْيَى الْحَرَائِيُّ: حَدَّثَنَا مُحَمَّدٌ يَعْنِي ابْنَ سَلَمَةَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ بْنِ الْحَارِثِ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ بُجَيْدٍ قَالَ: إِنَّ سَهْلًا - وَاللَّهِ! - أَوْهَمَ الْحَدِيثَ إِنَّ رَسُولَ اللَّهِ ﷺ كَتَبَ إِلَى يَهُودَ أَنَّهُ قَدْ وَجَدَ بَيْنَ أَظْهُرِكُمْ قَتِيلٌ فَدَوُّهُ، فَكَتَبُوا يَحْلِفُونَ بِاللَّهِ خَمْسِينَ يَمِينًا مَا قَتَلْنَاهُ وَمَا عَلِمْنَا قَاتِلًا قَالَ: فَوَدَّاهُ رَسُولُ اللَّهِ ﷺ مِنْ عِنْدِهِ مِائَةَ نَاقَةٍ.

تخريج: [إسناده ضعيف] * محمد بن إسحاق عنن.

4526. It was narrated from Abū Salamah bin ‘Abdur-Raḥmān and Sulaimān bin Yasār, from some of the *Anṣār*, that the Prophet ﷺ said to the Jews – and he started with them –: “Let fifty men of you swear,” but they refused. Then he said to the *Anṣār*: “Prove your claim.” They said: “Should we take an oath without having witnessed it, O Messenger of Allāh?” So the Messenger of Allāh ﷺ imposed the *Diyah* on the Jews because he was found among them. (*Da‘īf*)

تخريج: [إسناده ضعيف] أخرجه البيهقي: ١٢١/٨ من حديث أبي داود به * الزهري عنن.

Chapter 10. Retaliation On The Killer

4527. It was narrated from Qatādah, from Anas, that a girl was found whose head had been crushed between two rocks. It was said to her: “Who did this to you? Was it so-and-so? Was it so-and-so?” Until the name of the Jew was mentioned, and she nodded her head. The Jew was caught, and he admitted it, so the Prophet ﷺ ordered that his head be crushed with a rock. (*Ṣaḥīḥ*)

تخريج: أخرجه البخاري، الوصايا، باب: إذا أوماً المريض برأسه إشارة بيته تعرف، ح: ٢٧٤٦ ومسلم، القسامة، باب ثبوت القصاص في القتل بالحجر وغيره... إلخ، ح: ١٦٧٢ من حديث همام به.

4528. It was narrated from Ma‘mar, from Ayyūb, from Abū Qilābah, from Anas, that a Jew killed an *Anṣārī* girl for some jewelry of hers, then he threw her

٤٥٢٦ - حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَخْبَرَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ وَسُلَيْمَانَ بْنِ يَسَارٍ عَنْ رِجَالٍ مِنَ الْأَنْصَارِ: أَنَّ النَّبِيَّ ﷺ قَالَ لِلْيَهُودِ - وَبَدَأَ بِهِمْ - «يُخْلِفُ مِنْكُمْ خَمْسُونَ رَجُلًا» فَأَبَوْا، فَقَالَ لِلْأَنْصَارِ: «اسْتَحِقُّوا»، فَقَالُوا: نَخْلِفُ عَلَى الْعَيْبِ يَا رَسُولَ اللَّهِ؟ فَجَعَلَهَا رَسُولُ اللَّهِ ﷺ دِيَّةً عَلَى يَهُودَ لِأَنَّهُ وَجَدَ بَيْنَ أَطْهَرِهِمْ.

(المعجم ١٠) بَابُ: يُقَادُ مِنَ الْقَاتِلِ

(التحفة ١٠)

٤٥٢٧ - حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ: أَخْبَرَنَا هَمَّامٌ عَنْ قَتَادَةَ، عَنْ أَنَسٍ: أَنَّ جَارِيَةً وَجِدَتْ قَدْ رُضَّ رَأْسُهَا بَيْنَ حَجَرَيْنِ فَقِيلَ لَهَا: مَنْ فَعَلَ بِكَ هَذَا؟ أَفُلَانٌ أَوْ أَفُلَانٌ؟ حَتَّى سُمِّيَ الْيَهُودِيُّ فَأَوْمَتْ بِرَأْسِهَا، فَأُخِذَ الْيَهُودِيُّ، فَأَعْتَرَفَ، فَأَمَرَ النَّبِيُّ ﷺ أَنْ يُرَضَّ رَأْسُهُ بِالْحِجَارَةِ.

٤٥٢٨ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَخْبَرَنَا مَعْمَرٌ عَنْ أَيُّوبَ، عَنْ أَبِي قِلَابَةَ، عَنْ أَنَسٍ: أَنَّ يَهُودِيًّا قَتَلَ جَارِيَةً

into a well, and crushed her head with a rock. He was caught, and brought to the Prophet ﷺ, and he ordered that he be stoned to death, so he was stoned to death. (*Sahih*)

Abū Dāwud said: Ibn Juraij reported a similar narration from Ayyūb.

مِنَ الْأَنْصَارِ عَلَى حُلِيِّ لَهَا ثُمَّ أَلْقَاهَا فِي قَلْبٍ وَرَضَخَ رَأْسَهَا بِالْحِجَارَةِ فَأَخَذَ فَأَتَى بِهِ النَّبِيُّ ﷺ فَأَمَرَ بِهِ أَنْ يُرْجَمَ حَتَّى يَمُوتَ، فَرُجِمَ حَتَّى مَاتَ.

قَالَ أَبُو دَاوُدَ: وَرَوَاهُ ابْنُ جُرَيْجٍ عَنْ أَيُّوبَ نَحْوَهُ.

تخریج: أخرجه مسلم من حديث عبد الرزاق به، انظر الحديث السابق.

Comments:

Meaning, he was killed by the same means that he had killed the girl.

4529. It was narrated from Hishām bin Zaid, from his grandfather, Anas, that a girl was wearing some silver ornaments, and a Jew crushed her head with a rock. The Messenger of Allāh ﷺ entered upon her while she was still breathing, and said to her: “Who killed you? Did so-and-so kill you?” and she gestured no with her head. He said: “Did so-and-so kill you? Did so-and-so kill you?” and she gestured no with her head. He said: “Did so-and-so kill you?” and she gestured yes with her head. So the Messenger of Allāh ﷺ ordered that he be killed between two rocks. (*Sahih*)

٤٥٢٩ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا ابْنُ إِدْرِيسَ عَنْ شُعْبَةَ، عَنْ هِشَامِ بْنِ زَيْدٍ، عَنْ جَدِّهِ أَنَسٍ: أَنَّ جَارِيَةً كَانَتْ عَلَيْهَا أَوْصَاحٌ لَهَا فَارْضَخَ رَأْسَهَا يَهُودِيٌّ بِحَجَرٍ، فَدَخَلَ عَلَيْهَا رَسُولُ اللَّهِ ﷺ وَبِهَا رَمَقٌ، فَقَالَ لَهَا: «مَنْ قَتَلَكَ؟ فُلَانٌ قَتَلَكَ؟» فَقَالَتْ: لَا، بِرَأْسِهَا. قَالَ: «مَنْ قَتَلَكَ؟ فُلَانٌ قَتَلَكَ؟» قَالَتْ: لَا، بِرَأْسِهَا. قَالَ: «فُلَانٌ قَتَلَكَ؟» قَالَتْ: نَعَمْ بِرَأْسِهَا. فَأَمَرَ بِهِ رَسُولُ اللَّهِ ﷺ فَقُتِلَ بَيْنَ حَجَرَيْنِ.

تخریج: أخرجه البخاري، الدييات، باب: إذا قتل بحجر أو بعضاً، ح: ٦٨٧٧ ومسلم، القسامة، باب ثبوت القصاص في القتل بالحجر وغيره... إلخ، ح: ١٦٧٢ من حديث عبد الله بن إدريس به.

Chapter 11. Should A Muslim Be Killed In Retaliation For A Disbeliever?

(المعجم ١١) بَابُ: أَيْقَادُ الْمُسْلِمِ مِنَ الْكَافِرِ؟ (التحفة ١١)

4530. It was narrated that Qais bin

٤٥٣٠ - حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ وَمُسَدَّدٌ

‘Ubād said: “Al-Ashtar and I went to ‘Alī, and said: ‘Did the Messenger of Allāh ﷺ give you any instructions that he did not give to all the people?’ He said: ‘No, except what is in this document of mine.’” – Musaddad^[1] said: “He said: ‘He took out a document.’” Aḥmad said: “He took out a document from the sheath of his sword.” – “And in it, it said: ‘The believers’ lives are equal (in value) and they are united against others. The least of them can guarantee their protection (to a non-Muslim). No believer shall be killed for a disbeliever, and the one who has been given a covenant cannot be killed while his covenant is valid. Whoever commits an offence will be accountable for it, and whoever commits any offence or gives shelter to an offender, upon him will be the curse of Allāh, the angels and all the people.’” (*Ṣaḥīḥ*)

تخریج: [صحيح] أخرجه النسائي، القسامة، باب القود بين الأحرار والمماليك في النفس، ح: ٤٧٣٨ من حديث يحيى القطان به وهو في مسند أحمد: ١/١٢٢ وللحديث شواهد عند ابن حبان، ح: ١٦٩٩ وغيره.

Comments:

“The least of them can guarantee their protection” meaning, if a Muslim grants protection to a non-Muslim, all Muslims must honor that, as preceded. See nos. 2763 and 2764.

4531. It was narrated from ‘Amr bin Shu’aib, from his father, that his grandfather said: “The Messenger of Allāh ﷺ said” – and he mentioned a *Ḥadīth* like that of

قَالَ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ: حَدَّثَنَا سَعِيدُ ابْنِ أَبِي عَرُوبَةَ: حَدَّثَنَا قَتَادَةُ عَنْ الْحَسَنِ، عَنْ قَيْسِ بْنِ عُبَادٍ قَالَ: انْطَلَقْتُ أَنَا وَالْأَشْتَرُ إِلَى عَلِيِّ بْنِ قُتَيْبَةَ: هَلْ عَهْدٌ إِلَيْكَ رَسُولُ اللَّهِ ﷺ شَيْئًا لَمْ يَعْهْدْهُ إِلَى النَّاسِ عَامَّةً؟ فَقَالَ: لَا، إِلَّا مَا فِي كِتَابِي هَذَا - قَالَ مُسَدَّدٌ قَالَ: فَأَخْرَجَ كِتَابًا، وَقَالَ أَحْمَدُ: كِتَابًا مِنْ قِرَابِ سَيْفِهِ - فإِذَا فِيهِ: «الْمُؤْمِنُونَ تَكَافَأُوا دِمَاؤُهُمْ وَهُمْ يَدٌ عَلَى مَنْ سِوَاهُمْ وَيَسْعَى بِذِمَّتِهِمْ أَذْنَاهُمْ. أَلَا، لَا يُقْتَلُ مُؤْمِنٌ بِكَافِرٍ وَلَا ذُو عَهْدٍ فِي عَهْدِهِ، مَنْ أَحْدَثَ حَدَثًا فَعَلَى نَفْسِهِ، وَمَنْ أَحْدَثَ حَدَثًا أَوْ آوَى مُحْدِثًا فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ».

قال مُسَدَّدٌ عن ابنِ أَبِي عَرُوبَةَ: فَأَخْرَجَ كِتَابًا.

٤٥٣١ - حَدَّثَنَا عُيَيْدُ اللَّهِ بْنُ عُمَرَ: حَدَّثَنَا هُشَيْمٌ عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ ذَكَرَ نَحْوَ حَدِيثِ عَلِيٍّ، زَادَ فِيهِ:

^[1] The author heard this narration from both Aḥmad bin Ḥanbal and Musaddad.

‘Alī (no. 4530), and added: “and the most distant of them may grant protection, and their strong ones share their spoils with the weak ones, and those who go out on expeditions share their spoils with those who stay behind.” (*Hasan*)

«وَيُجِيرُ عَلَيْهِمْ أَقْصَاهُمْ، وَيَرُدُّ مُشِدُّهُمْ عَلَى مُضْعِفِهِمْ وَمُتَسَرِّهِمْ عَلَى قَاعِدِهِمْ».

تخریج: [حسن] تقدم، ح: ٢٧٥١ أخرجه ابن ماجه، الديات، باب: المسلمون تتكافأ دماؤهم، ح: ٢٦٨٥ من حديث عمرو بن شعيب به.

Chapter 12. If A Man Finds A Man With His Wife, Should He Kill Him?

(المعجم ١٢) بَابُ: فِيمَنْ وَجَدَ مَعَ أَهْلِهِ رَجُلًا، أَيْقُنْتُهُ؟ (التحفة ١٢)

4532. It was narrated from ‘Abdul-‘Azīz bin Muḥammad, from Suhail, from his father, from Abū Hurairah, that Sa’d bin ‘Ubādah said: “O Messenger of Allāh, if a man finds another man with his wife, should he kill him?” The Messenger of Allāh ﷺ said: “No.” Sa’d said: “Yes, by the One Who has honored you with the truth!” The Prophet ﷺ said: “Listen to what your chieftain is saying.” (*Ṣaḥīḥ*)

٤٥٣٢ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ وَعَبْدُ الْوَهَّابِ بْنُ نَجْدَةَ الْحَوْطِيُّ الْمَعْنَى وَاحِدٌ قَالَا: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ عَنْ سُهَيْلٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ: أَنَّ سَعْدَ بْنَ عُبَادَةَ قَالَ: يَا رَسُولَ اللَّهِ! الرَّجُلُ يَجِدُ مَعَ أَهْلِهِ رَجُلًا أَيْقُنْتُهُ؟ قَالَ رَسُولُ اللَّهِ ﷺ: «لَا». قَالَ سَعْدٌ: بَلَى وَالَّذِي أَكْرَمَكَ بِالْحَقِّ! قَالَ النَّبِيُّ ﷺ: «اسْمَعُوا إِلَى مَا يَقُولُ سَيِّدُكُمْ».

‘Abdul-Wahhāb (one of the narrators) said: “... to what Sa’d is saying.”

قَالَ عَبْدُ الْوَهَّابِ: «إِلَى مَا يَقُولُ سَعْدٌ».

تخریج: أخرجه مسلم، اللعان، باب: ١، ح: ١٤٩٨ عن قتيبة به.

4533. It was narrated from Mālik, from Suhail bin Abī Ṣāliḥ, from his father, from Abū Hurairah, that Sa’d bin ‘Ubādah said to the Messenger of Allāh ﷺ: “Do you think that if I find a man with my wife, I should give him time until I bring four witnesses?” He said: “Yes.” (*Ṣaḥīḥ*)

٤٥٣٣ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مَسْلَمَةَ عَنْ مَالِكٍ، عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ: أَنَّ سَعْدَ بْنَ عُبَادَةَ قَالَ لِرَسُولِ اللَّهِ ﷺ: أَرَأَيْتَ لَوْ وَجَدْتُ مَعَ امْرَأَتِي رَجُلًا أُمَهِّلُهُ حَتَّى آتِي بِأَرْبَعَةِ شُهَدَاءَ؟ قَالَ: «نَعَمْ».

تخريج: أخرجه مسلم من حديث مالك به، انظر الحديث السابق، وهو في الموطأ (يحيى): ٧٣٧/٢.

Comments:

If there are not four witnesses, and the woman denies the allegation, then there will be no punishment of stoning to death, but the process of *Li'an* as preceded, see no. 2245 and the narrations that follow it.

Chapter 13. Injury Caused Accidentally By The *Zakāh* Collector

4534. It was narrated from 'Aishah that the Prophet ﷺ sent Abū Jahm bin Ḥudhaifah to collect the *Zakāt* and a man argued with him about his *Ṣadaqah* (*Zakāt*). Abū Jahm struck him, and wounded him in the head. They came to the Prophet ﷺ and said: "Retaliation, O Messenger of Allāh!" The Prophet ﷺ said: "You will have such-and-such." But they did not accept. He said: "You will have such and such." But they did not accept. He said: "You will have such and such," and they accepted. The Prophet ﷺ said: "I am going to address the people in the afternoon and tell them of your acceptance." They said: "Yes." The Messenger of Allāh ﷺ delivered a speech and said: "These *Laithī* people came to me seeking retaliation and I offered them such-and-such and they accepted. Do you accept it?" They said: "No." The *Muhājirīn* wanted to rebuke them, but the Messenger of Allāh ﷺ told them to refrain from doing anything to them, so they refrained. Then he called them, and increased the amount, and said: "Do you accept?" They said: "Yes." He said: "I am going to

(المعجم ١٣) - بَابُ الْعَامِلِ يُصَابُ عَلَى يَدَيْهِ خَطَأً (التحفة ١٣)

٤٥٣٤ - حَدَّثَنَا مُحَمَّدُ بْنُ دَاوُدَ بْنِ سُفْيَانَ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَخْبَرَنَا مَعْمَرٌ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ بَعَثَ أَبَا جَهْمٍ بِنَ حُذَيْفَةَ مُصَدِّقًا فَلَاجَهُ رَجُلٌ فِي صَدَقَتِهِ فَضْرَبَهُ أَبُو جَهْمٍ فَشَجَّهُ، فَأَتَوْا النَّبِيَّ ﷺ فَقَالُوا: الْقَوْدَ يَا رَسُولَ اللَّهِ! فَقَالَ النَّبِيُّ ﷺ: «لَكُمْ كَذَا وَكَذَا»، فَلَمْ يَرْضَوْا، فَقَالَ: «لَكُمْ كَذَا وَكَذَا»، فَلَمْ يَرْضَوْا، فَقَالَ: «لَكُمْ كَذَا وَكَذَا»، فَارْضُوا، فَقَالَ النَّبِيُّ ﷺ: «إِنِّي خَاطَبْتُ الْعُشَيْيَّةَ عَلَى النَّاسِ وَمُخْبِرُهُمْ بِرِضَاكُمْ»، فَقَالُوا: نَعَمْ، فَخَطَبَ رَسُولُ اللَّهِ ﷺ فَقَالَ: «إِنَّ هَؤُلَاءِ اللَّيْثِيَّينَ أَتَوْنِي يُرِيدُونَ الْقَوْدَ فَعَرَضْتُ عَلَيْهِمْ كَذَا وَكَذَا فَارْضُوا، أَرْضَيْتُمْ؟» قَالُوا: لَا، فَهَمَّ الْمُهَاجِرُونَ بِهِمْ، فَأَمَرَهُمْ رَسُولُ اللَّهِ ﷺ أَنْ يَكْفُوا عَنْهُمْ، فَكَفُوا، ثُمَّ دَعَاهُمْ فَزَادَهُمْ فَقَالَ: «أَرْضَيْتُمْ»، فَقَالُوا: نَعَمْ، فَقَالَ: «إِنِّي خَاطَبْتُ عَلَى النَّاسِ وَمُخْبِرُهُمْ بِرِضَاكُمْ»، فَقَالُوا: نَعَمْ، فَخَطَبَ رَسُولُ اللَّهِ ﷺ فَقَالَ: «أَرْضَيْتُمْ؟» قَالُوا: نَعَمْ.

address the people and tell them that you have accepted.” They said: “Yes.” The Messenger of Allāh ﷺ delivered a speech and said: “Do you accept?” They said: “Yes.” (*Da‘if*)

تخريج: [إسناده ضعيف] أخرجه النسائي، القسامة، باب السلطان يصاب على يده، ح: ٤٧٨٢ من حديث عبد الرزاق به وهو في المصنف له، ح: ١٨٠٣٢ وصححه ابن الجارود، ح: ٨٤٥ وابن حبان (الإحسان)، ح: ٤٤٧٠ * الزهري عنعن.

Comments:

Meaning that those authorized by the leader are also accountable for harms they cause.

Chapter 14. Retaliation Without A Weapon Of Iron

(المعجم ١٤) - بَابُ الْقَوْدِ بِغَيْرِ حَدِيدٍ
(التحفة ١٤)

4535. It was narrated from Hammām, from Qatādah, from Anas, that a girl was found with her head crushed between two rocks. It was said to her: “Who did this to you?” Was it so-and-so? Was it so-and-so?” Until the name of the Jew was mentioned, and she nodded her head. The Jew was caught, and he admitted it, and the Prophet ﷺ ordered that his head be crushed with a rock. (*Sahih*)

٤٥٣٥ - [حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ: أَخْبَرَنَا هَمَّامٌ عَنْ قَتَادَةَ، عَنْ أَنَسٍ: أَنَّ جَارِيَةً وَجِدَتْ قَدْ رُضَّ رَأْسُهَا بَيْنَ حَجَرَيْنِ فَقِيلَ لَهَا: مَنْ فَعَلَ بِكَ هَذَا؟ أَفُلَانٌ أَوْ أَفُلَانٌ؟ حَتَّى سَمِيَ الْيَهُودِيُّ، فَأَوْمَتْ بِرَأْسِهَا، فَأُخِذَ الْيَهُودِيُّ فَاعْتَرَفَ فَأَمَرَ النَّبِيُّ ﷺ أَنْ يُرَضَّ رَأْسُهُ بِالْحِجَارَةِ].

تخريج: [صحيح] تقدم، ح: ٤٥٢٧.

Chapter (...) Retaliation Of A Ruler On Himself For Striking Someone

(المعجم ...) - بَابُ الْقَوْدِ مِنَ الضَّرْبَةِ
وَقَصِّ الْأَمِيرِ مِنْ نَفْسِهِ (التحفة ١٥)

4536. It was narrated that Abū Sa‘eed Al-Khudrī said: “While the Messenger of Allāh ﷺ was distributing something, a man came and bent over him, and the Messenger of Allāh ﷺ poked him with a stick that he had with him,

٤٥٣٦ - حَدَّثَنَا أَحْمَدُ بْنُ صَالِحٍ: حَدَّثَنَا ابْنُ وَهْبٍ عَنْ عَمْرِو بْنِ الْحَارِثِ، عَنْ بُكَيْرِ بْنِ الْأَشَجِّ، عَنْ عَيْدَةَ بْنِ مُسَافِعٍ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: بَيْنَمَا رَسُولُ اللَّهِ ﷺ يَقْسِمُ قَسْمًا أَقْبَلَ رَجُلٌ فَأَكَبَّ عَلَيْهِ فَطَعَنَهُ

injuring his face. The Messenger of Allāh ﷺ said to him: 'Come and retaliate.' He said: 'No, I have forgiven, O Messenger of Allāh.'" (*Da'if*)

رَسُولُ اللَّهِ ﷺ يَغْرُجُونِ كَانَ مَعَهُ فَجَرَحَ بَوَجْهِهِ، فَقَالَ لَهُ رَسُولُ اللَّهِ ﷺ: «تَعَالَ فَاسْتَقْدْ»، قَالَ: بَلْ عَفَوْتُ يَا رَسُولَ اللَّهِ!.

تخريج: [إسناده ضعيف] أخرجه النسائي، القسامة، باب القود في الطعنة، ح: ٤٧٧٧ من حديث عبد الله بن وهب به * عبيدة بن مسافع: لم يوثقه غير ابن حبان وقال ابن المدني: "مجهول ولا أدري سمع من أبي سعيد أم لا؟".

4537. It was narrated that Abū Firās said: "Umar bin Al-Khattāb addressed us, and said: 'I do not send my agents to strike your bodies or take your wealth. Whoever has that done to him, let him refer the matter to me, and I will take retaliation for it.' 'Amr bin Al-Āsh said: 'If a man inflicts disciplinary punishment on one of those who are under his authority, will you take retaliation against him?' He said: 'Yes, by the One in Whose Hand is my soul, I will certainly take retaliation. I saw the Messenger of Allāh ﷺ take retaliation on himself.'" (*Da'if*)

٤٥٣٧ - حَدَّثَنَا أَبُو صَالِحٍ: أَخْبَرَنَا أَبُو إِسْحَاقَ الْفَزَارِيُّ عَنْ الْجُرَيْرِيِّ، عَنْ أَبِي نَضْرَةَ، عَنْ أَبِي فِرَاسٍ قَالَ: خَطَبَنَا عُمَرُ بْنُ الْخَطَّابِ فَقَالَ: إِنِّي لَمْ أَبْعَثْ عَمَّالِي لِيَضْرِبُوا أَبْسَارَكُمْ وَلَا لِيَأْخُذُوا أَمْوَالَكُمْ، فَمَنْ فَعَلَ بِهِ ذَلِكَ فَلْيَرْفَعَهُ إِلَيَّ أَقْضُهُ مِنْهُ. قَالَ عَمْرُو بْنُ الْعَاصِ: لَوْ أَنَّ رَجُلًا أَدَبَ بَعْضَ رَعِيَّتِهِ أَتَقْضُهُ مِنْهُ؟ قَالَ: إِي وَالَّذِي نَفْسِي بِيَدِهِ! إِلَّا أَقْضُهُ، وَقَدْ رَأَيْتُ رَسُولَ اللَّهِ ﷺ أَقْضَى مِنْ نَفْسِهِ.

تخريج: [إسناده ضعيف] أخرجه النسائي، القسامة، باب القصاص من السلاطين، ح: ٤٧٨١ من حديث الجريري به مختصراً وصححه ابن الجارود، ح: ٨٤٤ * أبو فراس النهدي: مستور ولم يعرفه أبو زرعة.

Chapter 15. A Woman Has The Right To Waive Retaliation For Killing

(المعجم ١٥) - بَابُ عَفْوِ النِّسَاءِ عَنِ الدَّمِ
(التحفة ١٦)

4538. It was narrated from 'Āishah, that the Prophet ﷺ said: "The family of the murder victim should refrain from retaliating (*Yanḥajizū*), and the closest relative, then the next closest, may make this decision, even if it is a woman." (*Da'if*)

٤٥٣٨ - حَدَّثَنَا دَاوُدُ بْنُ رُسَيْدٍ: حَدَّثَنَا الْوَلِيدُ عَنْ الْأَوْزَاعِيِّ، أَنَّهُ سَمِعَ حِصْنًا، أَنَّهُ سَمِعَ أَبَا سَلَمَةَ يُخْبِرُ عَنْ عَائِشَةَ عَنِ النَّبِيِّ ﷺ أَنَّهُ قَالَ: «عَلَى الْمُقْتَتِلِينَ أَنْ يَنْحَجِزُوا الْأَوَّلُ فَلَاوَلَّ وَإِنْ كَانَتْ امْرَأَةً».

[Abū Dāwud said: Meaning, the pardon of a woman is acceptable if she is one of the heirs. And it was conveyed to me from Abū 'Ubaid,^[1] who said: "*Yanḥajizū*: (meaning) refrain from applying the punishment."]

قَالَ أَبُو دَاوُدَ: يَنْحَجِرُونَ: يَكْفُفُوا عَنِ الْقَوْدِ.

[قَالَ أَبُو دَاوُدَ: يَعْنِي أَنَّ عَفْوَ النِّسَاءِ فِي الْقَتْلِ جَائِزٌ إِذَا كَانَتْ إِحْدَى الْأُولِيَاءِ، وَبَلَّغَنِي عَنْ أَبِي عُبَيْدٍ قَالَ: يَنْحَجِرُونَ: يَكْفُفُوا عَنِ الْقَوْدِ].

تخريج: [إسناده ضعيف] أخرجه النسائي، القسامة، باب عفو النساء عن الدم، ح: ٤٧٩٢ من حديث الوليد بن مسلم به * حصن: مستور.

Chapter (...) One Who Is Killed In A Fight among People And His Killer Is Not Known

(المعجم ...) - بَابُ مَنْ قُتِلَ فِي عِمِّيَا
بَيْنَ قَوْمٍ (التحفة ١٧)

4539. It was narrated (from Ḥammād and) Sufyān, and this is his version, from Ṭāwūs, who said: "Whoever is killed" – Ibn 'Ubaid (one of the narrators) said: "He said: 'The Messenger of Allāh ﷺ said' –: "Whoever is killed, and the killer is not known, because he was killed when people were fighting and throwing stones, or hitting with whips and sticks, it is an accidental killing, and the *Diyah* is the *Diyah* for accidental killing. And whoever is killed deliberately, then it is retaliation. Whoever tries to prevent that (retaliation), then upon him is the curse and wrath of Allāh, and no *Ṣarf* nor *ʿAdl* will be accepted from him."^[2] And the *Hadīth* of Sufyān is more complete. (*Ṣaḥīh*)

٤٥٣٩ - حَدَّثَنَا مُحَمَّدُ بْنُ عُبَيْدٍ: حَدَّثَنَا حَمَّادٌ؛ ح: وَحَدَّثَنَا ابْنُ السَّرْحِ: حَدَّثَنَا سُفْيَانُ، وَهَذَا حَدِيثُهُ عَنْ عَمْرِو، عَنْ طَاوُسٍ قَالَ: مَنْ قُتِلَ - وَقَالَ ابْنُ عُبَيْدٍ: قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ -: «مَنْ قُتِلَ فِي عِمِّيَا فِي رَمِيٍّ يَكُونُ بَيْنَهُمْ بِحِجَارَةٍ أَوْ بِالسَّيَاطِ أَوْ ضَرْبٍ بَعْضًا فَهُوَ خَطَأٌ وَعَقْلُهُ عَقْلُ الْخَطَا. وَمَنْ قُتِلَ عَمْدًا فَهُوَ قَوْدٌ». وَقَالَ ابْنُ عُبَيْدٍ: «قَوْدٌ يَدٌ»، ثُمَّ اتَّفَقَا، «وَمَنْ حَالَ دُونَهُ فَعَلَيْهِ لَعْنَةُ اللَّهِ وَغَضَبُهُ لَا يُقْبَلُ مِنْهُ صَرْفٌ وَلَا عَدْلٌ» وَحَدِيثُ سُفْيَانَ أَتَمُّ.

تخريج: [صحيح] انظر الحديث الآتي :

^[1] Meaning Al-Qāsim bin Sallām who had a famous book on *Gharib* (odd) words in *Hadīth*.

^[2] Meaning, no voluntary nor obligatory acts, or, they say it means no exchange nor trade with any good deeds at all on the Day of Judgment will be accepted from him.

4540. It was narrated from ‘Amr bin Dinar, from Ṭāwūs from Ibn ‘Abbās, who said: “The Messenger of Allāh ﷺ said” – and he narrated a *Hadīth* like that of Sufyān (no. 4539). (*Ṣaḥīh*)

٤٥٤٠ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي غَالِبٍ:
حَدَّثَنَا سَعِيدُ بْنُ سُلَيْمَانَ عَنْ سُلَيْمَانَ بْنِ
كَثِيرٍ: حَدَّثَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ، عَنْ
ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ فَذَكَرَ
مَعْنَى حَدِيثِ سُفْيَانَ.

تخريج: [إسناده صحيح] أخرجه النسائي، القسامة، باب من قتل بحجر أو سوط،
ح: ٤٧٩٣ من حديث سعيد بن سليمان به.

Chapter 16. The Amount Of The *Diyah*

(المعجم ١٦) - بَابُ الدِّيَّةِ كَمْ هِيَ؟
(التحفة ١٨)

4541. It was narrated from Sulaimān bin Mūsā, from ‘Amr bin Shu‘aib, from his father, from his grandfather, that the Messenger of Allāh ﷺ ruled that if a person was killed accidentally, his *Diyah* was one hundred camels: Thirty *Bint Makhād*^[1], thirty *Bint Labūn*, thirty *Hiqqahs* and ten male *Bani Labūn*. (*Ḥasan*)

٤٥٤١ - حَدَّثَنَا مُسْلِمُ بْنُ إِبْرَاهِيمَ قَالَ:
حَدَّثَنَا مُحَمَّدُ بْنُ رَاشِدٍ، ح: وَحَدَّثَنَا هَارُونُ
ابْنُ زَيْدٍ بِنِ أَبِي الزُّرْقَانِ: حَدَّثَنَا أَبِي: حَدَّثَنَا
مُحَمَّدُ بْنُ رَاشِدٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنْ
عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ: أَنَّ
رَسُولَ اللَّهِ ﷺ قَضَى أَنَّ مَنْ قُتِلَ خَطَأً فِدْيَتُهُ
مِائَةٌ مِنَ الْإِبِلِ: ثَلَاثُونَ بِنْتٌ مَخَاضٍ وَثَلَاثُونَ
بِنْتٌ لَبُونٍ وَثَلَاثُونَ حِقَّةً. وَعَشْرُ بَنِي لَبُونٍ
ذُكُورٍ.

تخريج: [إسناده حسن] أخرجه النسائي، القسامة، باب ذكر الاختلاف على خالد الحذاء،
ح: ٤٨٠٥ وابن ماجه، ح: ٢٦٣٠ من حديث محمد بن راشد به.

4542. It was narrated from Ḥusain Al-Mu‘allim, from ‘Amr bin Shu‘aib, from his father, that his grandfather said: “The value of the *Diyah* at the time of the Messenger of Allāh ﷺ was eight hundred Dinars, or eight thousand Dirhams, and the *Diyah* for the people of the

٤٥٤٢ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا
عَبْدُ الرَّحْمَنِ بْنُ عُثْمَانَ: حَدَّثَنَا حُسَيْنُ
الْمُعَلِّمُ عَنْ عَمْرٍو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ
جَدِّهِ قَالَ: كَانَتْ قِيمَةُ الدِّيَّةِ عَلَى عَهْدِ رَسُولِ
اللَّهِ ﷺ ثَمَانِ مِائَةِ دِينَارٍ أَوْ ثَمَانِيَةِ آلَافٍ

[1] See the author's discussion after number 4555 and the glossary for the explanation of these terms.

Book at that time was half of the *Diyah* for the Muslims.” He said: “That remained so, until ‘Umar became the *Khalīfah*. He stood up and delivered a speech, and said: ‘Camels have become expensive.’ So ‘Umar imposed the *Diyah* for those who owned gold as one thousand Dinars, for those who owned silver as twelve thousand Dirhams, for those who owned cattle as two hundred cows, for those who owned sheep as two thousand sheep, and for those who owned *Hullahs* as two hundred *Hullah*.”^[1] He said: “And he left the *Diyah* for *Ahl Adh-Dhimmah* as it was, and did not increase their *Diyah*.” (*Hasan*)

دِرْهَمٍ، وَدِيَّةُ أَهْلِ الْكِتَابِ يَوْمَئِذٍ النُّصْفُ مِنْ دِيَّةِ الْمُسْلِمِينَ. قَالَ: فَكَانَ ذَلِكَ كَذَلِكَ حَتَّى اسْتُخْلِفَ عُمَرُ، فَقَامَ خَطِيبًا فَقَالَ: أَلَا إِنَّ الْإِبِلَ قَدْ غَلَّتْ. قَالَ: فَقَرَضَهَا عُمَرُ عَلَى أَهْلِ الذَّهَبِ أَلْفَ دِينَارٍ، وَعَلَى أَهْلِ الْوَرِقِ اثْنَيْ عَشَرَ أَلْفًا، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْنِ بَقْرَةً، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْنِ شَاةً، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْنِ حُلَّةً. قَالَ: وَتَرَكَ دِيَّةَ أَهْلِ الدِّمَّةِ لَمْ يَرْفَعْهَا فِيمَا رَفَعَ مِنَ الدِّيَّةِ.

تخريج: [إسناده حسن] أخرجه البيهقي: ٧٧/٨، ١٠١ من حديث أبي داود به.

4543. It was narrated from Muḥammad bin Ishāq, from ‘Atā’ bin Abī Rabāḥ, that the Messenger of Allāh ﷺ ruled that the *Diyah* for those who owned camels should be one hundred camels; for those who owned cattle, two hundred cows; for those who owned sheep, two thousand sheep; for those who owned *Hullah*, two hundred *Hullahs*; and for those who owned wheat, something that Muḥammad did not remember. (*Da‘īf*)

٤٥٤٣ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا حَمَّادٌ: أَخْبَرَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ عَطَاءِ بْنِ أَبِي رَبَاحٍ: أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى فِي الدِّيَّةِ عَلَى أَهْلِ الْإِبِلِ مِائَةً مِنَ الْإِبِلِ، وَعَلَى أَهْلِ الْبَقَرِ مِائَتَيْنِ بَقْرَةً، وَعَلَى أَهْلِ الشَّاءِ أَلْفَيْنِ شَاةً، وَعَلَى أَهْلِ الْحُلَلِ مِائَتَيْنِ حُلَّةً، وَعَلَى أَهْلِ الْقَمْحِ شَيْئًا لَمْ يَحْفَظْهُ مُحَمَّدٌ.

تخريج: [إسناده ضعيف] أخرجه البيهقي: ٧٨/٨ من حديث أبي داود به * محمد بن إسحاق نعنن والسند مرسل، وانظر الحديث الآتي:

4544. It was narrated from Muḥammad bin Ishāq, who said:

٤٥٤٤ - قَالَ أَبُو دَاوُدَ: قَرَأْتُ عَلَى سَعِيدِ

^[1] A term used to describe a set of an upper and lower garment made of the same material.

“‘Aṭā’ mentioned that Jābir bin ‘Abdullāh said: ‘The Messenger of Allāh ﷺ ruled...’” and he mentioned a *Ḥadīth* like that of Mūsā (no. 4543) and said: “And for those who own food,” something that I do not remember. (*Da‘īf*)

تخريج: [إسناده ضعيف] أخرجه البيهقي: ٧٨/٨ من حديث أبي داود به * محمد بن إسحاق لم يصرح بالسماع.

4545. It was narrated that ‘Abdullāh bin Mas‘ūd said: “The Messenger of Allāh ﷺ said: ‘The *Diyah* in the case of accidental killing is twenty *Ḥiqqah*, twenty *Jadh‘ah*, twenty *Bint Makhād*, twenty *Bint Labūn*, and twenty male *Banī Makhād*.’” And this is the saying of ‘Abdullāh. (*Da‘īf*)

تخريج: [إسناده ضعيف] أخرجه الترمذي، الديات، باب ما جاء في الدية كم هي من الإبل؟ ح: ١٣٨٦ والنسائي، ح: ٤٨٠٦ وابن ماجه، ح: ٢٦٣١ من حديث الحجاج بن أرطاة به وهو ضعيف مدلس.

4546. It was narrated from Muḥammad bin Muslim, from ‘Amr bin Dinar, from ‘Ikrimah, from Ibn ‘Abbās, that a man from Banū ‘Adiyy was killed, and the Prophet ﷺ set his *Diyah* at twelve thousand (Dirhams). (*Hasan*)

Abū Dāwud said: It was narrated by Ibn ‘Uyainah, from ‘Amr, from ‘Ikrimah, from the Prophet ﷺ, and he did not mention Ibn ‘Abbās.

ابن يَعْقُوبَ الطَّالْقَانِيُّ قَالَ: حَدَّثَنَا أَبُو ثُمَيْلَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ قَالَ: ذَكَرَ عَطَاءٌ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: فَرَضَ رَسُولُ اللَّهِ ﷺ وَذَكَرَ مِثْلَ حَدِيثِ مُوسَى وَقَالَ: وَعَلَى أَهْلِ الطَّعَامِ شَيْئًا لَا أَحْفَظُهُ.

٤٥٤٥ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا عَبْدُ الْوَاحِدِ: حَدَّثَنَا الْحَجَّاجُ عَنْ زَيْدِ بْنِ جُبَيْرٍ، عَنْ خِشْفِ بْنِ مَالِكٍ الطَّائِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «فِي دِيَةِ الْخَطْلِ عَشْرُونَ حِقَّةً وَعَشْرُونَ جَذَعَةً وَعَشْرُونَ بِنْتِ مَخَاضٍ وَعَشْرُونَ بِنْتِ لَبُونٍ وَعَشْرُونَ بَنِي مَخَاضٍ ذُكْرٌ» وَهُوَ قَوْلُ عَبْدِ اللَّهِ.

٤٥٤٦ - حَدَّثَنَا مُحَمَّدُ بْنُ سُلَيْمَانَ الْأَنْبَارِيُّ: حَدَّثَنَا زَيْدُ بْنُ الْحُبَابِ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ: أَنَّ رَجُلًا مِنْ بَنِي عَدِيٍّ قُتِلَ فَجَعَلَ النَّبِيُّ ﷺ دِيَتَهُ اثْنَيْ عَشَرَ أَلْفًا.

قَالَ أَبُو دَاوُدَ: رَوَاهُ ابْنُ عُيَيْنَةَ عَنْ عَمْرِو، عَنْ عِكْرِمَةَ عَنِ النَّبِيِّ ﷺ، لَمْ يَذْكُرْ: ابْنِ عَبَّاسٍ.

تخريج: [إسناده حسن] أخرجه الترمذي، الديات، باب ما جاء في الدية كم هي من

الدرهم؟ ح: ١٣٨٨ والنسائي، ح: ٤٨٠٧ وابن ماجه، ح: ٢٦٢٩ من حديث محمد بن مسلم الطائفي به وأعله النسائي والصواب أنه حسن.

Chapter 17. *Diyah* For A Mistaken Killing That Appears Purposeful

(المعجم ١٧) بَابُ: [فِي دِيَّةِ الْخَطَا شِبْهِ الْعَمْدِ] (التحفة ١٩)

4547. It was narrated from Hammād, from Khālīd, from Al-Qāsim bin Rabī'ah, from 'Uqbah bin Aws, from 'Abdullāh bin 'Amr, that the Messenger of Allāh ﷺ - Musaddad said - delivered a speech on the day of the Conquest of Makkah. He said the *Takbīr* three times, then he said: "There is none worthy of worship but Allāh alone. He has fulfilled His promise, granted victory to His slave, and defeated the confederates alone." - Up to here I memorized it from Musaddad.^[1] - Then the two reports concur: "All the customs of the *Jāhiliyyah* and claims for blood or property are beneath my feet, except the provision of water for those performing *Hajj*, and the custodial duties of the Ka'bah." Then he said: "Except the *Diyah* for a mistaken killing that appears purposeful - that which is done with a whip or a stick - one hundred camels, of which forty should have their young in their bellies." And the *Hadīth* of Musaddad is more complete. (*Ṣaḥīh*)

٤٥٤٧ - حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ وَمُسَدَّدُ الْمَعْنَى قَالَا: حَدَّثَنَا حَمَّادٌ عَنْ خَالِدٍ، عَنِ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنْ عُقْبَةَ بْنِ أَوْسٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو أَنَّ رَسُولَ اللَّهِ ﷺ - مُسَدَّدٌ -: حَطَبَ يَوْمَ الْفَتْحِ بِمَكَّةَ فَكَبَّرَ ثَلَاثًا ثُمَّ قَالَ: «لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ، صَدَقَ وَعْدُهُ، وَنَصَرَ عَبْدُهُ، وَهَزَمَ الْأَحْزَابَ وَحْدَهُ» - إِلَى هَهُنَا حَفِظْتُهُ مِنْ مُسَدَّدٍ - ثُمَّ اتَّفَقَا: «أَلَا إِنَّ كُلَّ مَأْتِرَةٍ كَانَتْ فِي الْجَاهِلِيَّةِ تُذَكَّرُ وَتُذَعَّى مِنْ دَمٍ أَوْ مَالٍ تَحْتَ قَدَمَيَّ إِلَّا مَا كَانَ مِنْ سِقَايَةِ الْحَاجِّ وَسِدَانَةِ الْبَيْتِ». ثُمَّ قَالَ: «أَلَا إِنَّ دِيَّةَ الْخَطَا شِبْهُ الْعَمْدِ - مَا كَانَ بِالسُّوْطِ وَالْعَصَا - مِائَةٌ مِنَ الْإِبِلِ مِنْهَا أَرْبَعُونَ فِي بَطُونِهَا أَوْلَادُهَا» وَحَدِيثُ مُسَدَّدٍ أَتَمُّ.

تخریج: [صحیح] أخرجه ابن ماجه، الديات، باب دية شبه العمد مغلفة، ح: ٢٦٢٧ من

^[1] That is, he heard this from Musad-dad and Sulaimān bin Ḥarb, and the wording up to this point is that of Musad-dad.

حديث سليمان بن حرب به، ورواه النسائي، ح: ٤٧٩٧ وصححه ابن حبان: ١٥٢٦ وابن الجارود، ح: ٧٧٣.

4548. A similar report (as no. 4547) was narrated from Wuhaib, from Khālid, with this chain. (*Ṣaḥīḥ*)

٤٥٤٨ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا وَهَيْبٌ عَنْ خَالِدٍ بِهَذَا الْإِسْنَادِ نَحْوَ مَعْنَاهُ.

تخريج: [صحيح] انظر الحديث السابق.

4549. A similar report was narrated from ‘Alī bin Zaid, from Al-Qāsim bin Rabi‘ah, from Ibn ‘Umar, from the Prophet ﷺ. He said: “The Messenger of Allāh ﷺ delivered a speech on the Day of the Conquest,” or “the Conquest of Makkah, from the steps of the House” or “the Ka‘bah.” (*Da‘īf*)

Abū Dāwud said: It was also narrated thus by Ibn ‘Uyainah from ‘Alī bin Zaid, from Al-Qāsim bin Rabi‘ah, from Ibn ‘Umar, from the Prophet ﷺ. And a *Ḥadīth* like that of Khālid was narrated by Ayyūb As-Sakhtiyānī, from Al-Qāsim bin Rabi‘ah, from ‘Abdullāh bin ‘Amr. And it was narrated by Ḥammād bin Salamah, from ‘Alī bin Zaid, from Ya‘qūb Al-Sadūsī, from ‘Abdullāh bin ‘Amr, from the Prophet ﷺ. And the report of Zaid and Abū Mūsā is similar; and the *Ḥadīth* of ‘Umar, may Allāh be pleased with him, as well.

٤٥٤٩ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا عَبْدُ الْوَارِثِ عَنْ عَلِيِّ بْنِ زَيْدٍ، عَنِ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنْ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ بِمَعْنَاهُ قَالَ: خَطَبَ رَسُولُ اللَّهِ ﷺ يَوْمَ الْفَتْحِ أَوْ فَتْحِ مَكَّةَ عَلَى دَرَجَةِ الْبَيْتِ أَوْ الْكَعْبَةِ.

قَالَ أَبُو دَاوُدَ: كَذَا رَوَاهُ ابْنُ عُيَيْنَةَ أَيْضًا عَنْ عَلِيِّ بْنِ زَيْدٍ، عَنِ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنْ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ. وَرَوَاهُ أَيُّوبُ السَّخْتْيَانِيُّ عَنِ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنْ عَبْدِ اللَّهِ ابْنِ عَمْرٍو مِثْلَ حَدِيثِ خَالِدٍ، وَرَوَاهُ حَمَّادُ بْنُ سَلَمَةَ عَنْ عَلِيِّ بْنِ زَيْدٍ، عَنْ يَعْقُوبَ السَّدُوسِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو عَنِ النَّبِيِّ ﷺ وَقَوْلُ زَيْدٍ وَأَبِي مُوسَى مِثْلُ حَدِيثِ النَّبِيِّ ﷺ وَحَدِيثِ عُمَرَ رَضِيَ اللَّهُ عَنْهُ.

تخريج: [إسناده ضعيف] أخرجه ابن ماجه، الدييات، باب دية شبه العمد مغلظة، ح: ٢٦٢٨ والنسائي، ح: ٤٨٠٣ من حديث علي بن زيد بن جدعان به، وهو ضعيف، وحديث ابن عينة رواه النسائي وابن ماجه.

4550. It was narrated from Ibn Abī Najīh, from Mujāhid, who said: “‘Umar ruled that in the case (of a killing) that appears intentional

٤٥٥٠ - حَدَّثَنَا الْقُفَيْلِيُّ: حَدَّثَنَا سُفْيَانُ عَنْ ابْنِ أَبِي نَجِيحٍ، عَنْ مُجَاهِدٍ قَالَ: قُضِيَ

(the *Diyah* was) thirty *Hiqqah*, thirty *Jadh'ah* and forty *Khalifah* that are between a *Thaniyyah* up to a *Bāzil 'Ām*.^[1] (*Da'if*)

عَمُرُ فِي شِبْهِ الْعَمْدِ ثَلَاثِينَ حِقَّةً وَثَلَاثِينَ جَذَعَةً وَأَرْبَعِينَ خَلْفَةً مَا بَيْنَ ثَنِيَّةٍ إِلَى بَازِلٍ غَامِهَا.

تخریج: [إسناده ضعيف] * مجاهد لم يسمع من عمر رضي الله عنه، فالسند منقطع وفي السند علل أخرى.

4551. It was narrated from Abū Al-Aḥwaṣ, from Abū Ishāq, from 'Āṣim bin Ḍamrah, from 'Alī, that he said: "In the case (of a killing) that appears intentional, (the *Diyah*) is in three parts: Thirty-three *Hiqqah*, thirty-three *Jadh'ah* and thirty-four she-*Thaniyyah* up to *Bāzil 'Ām*, all of which should be *Khalifah*." (*Da'if*)

٤٥٥١ - حَدَّثَنَا هَنَادٌ: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ أَبِي إِسْحَاقَ، عَنْ عَاصِمِ بْنِ ضَمْرَةَ، عَنْ عَلِيٍّ أَنَّهُ قَالَ: فِي شِبْهِ الْعَمْدِ اثْنَلَاثًا ثَلَاثٌ وَثَلَاثُونَ حِقَّةً وَثَلَاثٌ وَثَلَاثُونَ جَذَعَةً وَأَرْبَعٌ وَثَلَاثُونَ ثَنِيَّةً إِلَى بَازِلٍ غَامِهَا كُلُّهَا خَلْفَةً.

تخریج: [ضعيف] أخرجه البيهقي: ٦٩/٨ من حديث أبي داود به * أبو إسحاق السبيعي عنن.

4552. It was narrated from Abū Al-Aḥwaṣ, from Sufyān, from Abū Ishāq, from 'Āṣim bin Ḍamrah, who said: "'Alī said: 'For accidental killing (the *Diyah*) is in four parts: Twenty-five *Hiqqah*, twenty-five *Jadh'ah*, twenty-five *Bint Labūn*, and twenty-five *Bint Makhād*.'" (*Da'if*)

٤٥٥٢ - حَدَّثَنَا هَنَادٌ: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ سُفْيَانَ، عَنْ أَبِي إِسْحَاقَ، عَنْ عَاصِمِ بْنِ ضَمْرَةَ قَالَ: قَالَ عَلِيٌّ: فِي الْخَطِإِ أَرْبَاعًا، خَمْسٌ وَعِشْرُونَ حِقَّةً، وَخَمْسٌ وَعِشْرُونَ جَذَعَةً، وَخَمْسٌ وَعِشْرُونَ بَنَاتِ لَبُونٍ، وَخَمْسٌ وَعِشْرُونَ بَنَاتِ مَخَاضٍ.

تخریج: [ضعيف] انظر الحديث السابق أخرجه الدارقطني: ١٧٧/٣، ح: ٣٣٤١ من حديث سفيان الثوري به، ورواه البيهقي: ٦٩/٨ من حديث أبي داود به.

4553. It was narrated from 'Alqamah and Al-Aswad: "In the case (of a killing) that appears intentional, 'Abdullāh said: 'Twenty-five *Hiqqah*, twenty-five

٤٥٥٣ - حَدَّثَنَا هَنَادٌ: حَدَّثَنَا أَبُو الْأَحْوَصِ عَنْ أَبِي إِسْحَاقَ، عَنْ عَلْقَمَةَ وَالْأَسْوَدِ: قَالَ عَبْدُ اللَّهِ فِي شِبْهِ الْعَمْدِ:

^[1] See the author's discussion after number 4555 and the glossary for the explanation of these terms.

Jadh'ah, twenty-five *Bint Labūn*, and twenty-five *Bint Makhād*.”
(*Da'if*)

خَمْسٌ وَعِشْرُونَ حِقَّةً وَخَمْسٌ وَعِشْرُونَ
جَذَعَةً، وَخَمْسٌ وَعِشْرُونَ بَنَاتٍ لَبُونٍ،
وَخَمْسٌ وَعِشْرُونَ بَنَاتٍ مَخَاضٍ.

تخریج: [ضعیف] أخرجه البيهقي: ٧٤/٨ من حديث أبي داود به، انظر الحديث السابق: ٤٥٥١.

4554. It was narrated from Abū 'Ayāḍ, from 'Uthmān bin 'Affān and Zaid bin Thābit, concerning killing deliberately with something that is not usually used for killing: Forty pregnant *Jadh'ah*, thirty *Hiqqah*, and thirty *Bint Labūn*; and if the killing is not deliberate, thirty *Hiqqah*, thirty *Bint Labūn*, twenty *Banī Labūn*, and twenty *Bint Makhād*. (*Da'if*)

٤٥٥٤ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا سَعِيدٌ عَنْ قَتَادَةَ، عَنْ عَبْدِ رَبِّهِ، عَنْ أَبِي عِيَاضٍ، عَنْ عُثْمَانَ ابْنِ عَفَّانَ وَزَيْدِ بْنِ ثَابِتٍ: فِي الْمَغْلَظَةِ أَرْبَعُونَ جَذَعَةً خَلِيفَةً وَثَلَاثُونَ حِقَّةً وَثَلَاثُونَ بَنَاتٍ لَبُونٍ، وَفِي الْخَطَا ثَلَاثُونَ حِقَّةً وَثَلَاثُونَ بَنَاتٍ لَبُونٍ وَعِشْرُونَ [بَنِي] لَبُونٍ ذُكُورٍ وَعِشْرُونَ بَنَاتٍ مَخَاضٍ.

تخریج: [ضعیف] أخرجه البيهقي: ٦٩/٨ من حديث أبي داود به * قتادة عنعن.

4555. It was narrated from Sa'eed bin Al-Musayyab, from Zaid bin Thābit, concerning killing deliberately with something that is not usually used for killing – and he mentioned a similar report (as no. 4554). (*Da'if*)

٤٥٥٥ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا سَعِيدٌ عَنْ قَتَادَةَ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ زَيْدِ بْنِ ثَابِتٍ فِي الدِّيَةِ الْمَغْلَظَةِ، فَذَكَرَ مِثْلَهُ سَوَاءً.

تخریج: [ضعیف] * سعيد بن أبي عروبة و قتادة عنعنا.

Chapter (...) The Ages Of Camels^[1]

(المعجم ...) - بَابُ أَسْنَانِ الْإِبِلِ

(التحفة ...)

Abū Dāwud said: Abū 'Ubaid^[2] and others said: “When a camel enters its fourth year it is a *Hiqq*,

قَالَ أَبُو دَاوُدَ: قَالَ أَبُو عُبَيْدٍ وَغَيْرُهُ
وَاجِدٌ: إِذَا دَخَلَتِ النَّاقَةُ فِي السَّنَةِ الرَّابِعَةِ

^[1] See the glossary and the chapters on *Zakāt* since some of these terms are also used for other than camels, but will be defined differently in the case of livestock other than camels.

^[2] That is, Al-Qāsim bin Sallām, a famous scholar among whose works is a book on *Gharīb*, or odd terms in *Ḥadīth*.

and the female is *Hiqqah*, because it is worthy (*Yastahiqqu*) of being ridden and loaded. When it enters its fifth year it is a *Jadha'* or *Jadh'ah*. When it enters its sixth year and sheds its front teeth, then it is a *Thaniyy* or *Thaniyyah*. When it enters its seventh year, it is a *Rabā'* or *Rabā'iyah*. When it enters its eighth year, and sheds the teeth that come between the front teeth and the eyeteeth, then it is a *Sadis* or *Sadas*. When it enters its ninth year, and its eyeteeth appear, it is a *Bāzil*. When it enters its tenth year, it is called *Mukhlif*, then it has no particular name, rather it is called *Bāzil 'Ām* or *Bāzil 'Āmain*, or *Mukhlif 'Ām* or *Mukhlif 'Āmain* and so on."

Al-Naḍr bin *Shumail* said: "A *Bint Makhād* is one year old, a *Bint Labūn* is two years old, a *Hiqqah* is three years, a *Jadh'ah* is four, a *Thaniyy* is five, a *Rabā'* is six, a *Sadis* is seven and a *Bāzil* is eight."

Abū Dāwud said: Abū Hātim and Al-Aṣma'i said: "*Jadhū'ah* has to do with time, and has nothing to do with shedding teeth."^[1]

Abū Hātim said: "Some of them said: 'When it sheds its front teeth (*Rabā'iyah*) it is a *Rabā'*, and when it sheds its middle incisors (*Thaniyyah*) it is a *Thaniyy*.'"

Abū 'Ubaid said: "When it becomes pregnant it is a *Khalifah* and it remains a *Khalifah* until it

فَهُوَ حِقٌّ وَالْأُنْثَى حِقَّةٌ لِأَنَّهُ يَسْتَحِقُّ أَنْ يُرَكَبَ عَلَيْهِ وَيُحْمَلَ، فَإِذَا دَخَلَتْ فِي الْخَامِسَةِ فَهُوَ جَذَعٌ وَجَذَعَةٌ، فَإِذَا دَخَلَ فِي السَّادِسَةِ وَالْقَى ثَنِيَّتَهُ فَهُوَ ثَنِيٌّ وَثَنِيَّةٌ، فَإِذَا دَخَلَ فِي السَّابِعَةِ فَهُوَ رَبَاعٌ وَرَبَاعِيَّةٌ، فَإِذَا دَخَلَ فِي الثَّامِنَةِ وَالْقَى السِّنَّ الَّذِي بَعْدَ الرَّبَاعِيَّةِ فَهُوَ سَدِيسٌ وَسَدَسٌ، فَإِذَا دَخَلَ فِي التَّاسِعَةِ وَقَطَرَ نَابُهُ وَطَلَعَ فَهُوَ بَازِلٌ، فَإِذَا دَخَلَ فِي الْعَاشِرَةِ فَهُوَ مُخْلِفٌ ثُمَّ لَيْسَ لَهُ اسْمٌ وَلَكِنْ يُقَالُ بَازِلٌ عَامٍ وَبَازِلٌ عَامِينَ، وَمُخْلِفٌ عَامٍ وَمُخْلِفٌ عَامِينَ إِلَى مَا زَادَ.

وَقَالَ النَّضْرُ بْنُ شُمَيْلٍ: بِنْتُ مَخَاضٍ لِسَنَةٍ وَبِنْتُ لَبُونٍ لِسَنَتَيْنِ، وَحِقَّةٌ لثَلَاثٍ، وَجَذَعَةٌ لَارْبَعٍ، وَثَنِيٌّ لْخَمْسٍ، وَرَبَاعٌ لِسِتٍّ، وَسَدِيسٌ لِسَبْعٍ، وَبَازِلٌ لْثَمَانٍ.

قَالَ أَبُو دَاوُدَ: قَالَ أَبُو حَاتِمٍ وَالْأَصْمَعِيُّ: وَالْجَذَوَعَةُ وَقْتُ وَلَيْسَ بِسَنٍ.

قَالَ أَبُو حَاتِمٍ: قَالَ بَعْضُهُمْ: فَإِذَا أَلْقَى رَبَاعِيَّتَهُ فَهُوَ رَبَاعٌ، وَإِذَا أَلْقَى ثَنِيَّتَهُ فَهُوَ ثَنِيٌّ.

وَقَالَ أَبُو عُبَيْدٍ: إِذَا أُلْقِيَتْ فِيهَا خَلِفَةٌ فَلَا تَرَأَى خَلِفَةً إِلَى عَشْرَةِ أَشْهُرٍ فَإِذَا بَلَغَ عَشْرَةَ أَشْهُرٍ فِيهَا عَشْرَاءُ.

قَالَ أَبُو حَاتِمٍ: إِذَا أَلْقَى ثَنِيَّتَهُ فَهُوَ ثَنِيٌّ وَإِذَا أَلْقَى رَبَاعِيَّتَهُ فَهُوَ رَبَاعٌ.

^[1] Meaning, many of these names refer to not age but when the animal loses certain teeth, like *Thaniyy* and *Rabā'* as follows, he means that this term relates to its age not its teeth.

reaches ten months (of pregnancy), then it becomes an '*Usharā*'."

Abū Hātim said: "When it sheds its middle incisors it is a *Thaniyy* and when it sheds its front teeth it is a *Rabā*'."

Chapter 18. *Diyah* For Lost Limbs

4556. It was narrated from Sa'eed bin Abī 'Arūbah, from Ghālib At-Tammār, from Masrūq bin Aws, from Abū Mūsā, that the Prophet ﷺ said: "Fingers are all the same: Ten camels for each." (*Ṣaḥīḥ*)

(المعجم ١٨) - بَابُ دِيَّاتِ الْأَعْضَاءِ

(التحفة ٢٠)

٤٥٥٦ - حَدَّثَنَا إِسْحَاقُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا عَبْدَةُ يَعْنِي ابْنَ سُلَيْمَانَ: حَدَّثَنَا سَعِيدُ ابْنِ أَبِي عُرْوَةَ عَنْ غَالِبِ التَّمَّارِ، عَنْ حُمَيْدِ ابْنِ هِلَالٍ، عَنْ مَسْرُوقِ بْنِ أَوْسٍ، عَنْ أَبِي مُوسَى عَنِ النَّبِيِّ ﷺ قَالَ: «الْأَصَابِعُ سَوَاءٌ: عَشْرُ عَشْرٍ مِنَ الْإِبِلِ».

تخريج: [صحيح] أخرجه ابن ماجه، الديات، باب دية الأصابع، ح: ٢٦٥٤ والنسائي، ح: ٤٨٤٩ من حديث سعيد بن أبي عروبة به، وصرح بالسمع عند البيهقي: ٩٢/٨ وللحديث طرق أخرى، وصححه ابن حبان: ١٥٢٧.

Comments:

All fingers and hands and feet are equal when it comes to blood money.

4557. It was narrated from Shu'bah from Ghālib At-Tammār, from Masrūq bin Aws, from Al-Asha'ri, that the Prophet ﷺ said: "Fingers are all the same." I said: "Ten for each?" He said: "Yes." (*Ṣaḥīḥ*)

Abū Dāwud said: It was narrated by Muḥammad bin Ja'far from Shu'bah, from Ghālib. He said: "I heard Masrūq bin Aws." And it was narrated by Ismā'il who said: "Ghālib At-Tammār narrated it to me" with the chain of Abū Al-Walīd (no. 4557). And it was narrated by Ḥanzalah bin Abī

٤٥٥٧ - حَدَّثَنَا أَبُو الْوَلِيدِ: حَدَّثَنَا شُعْبَةُ عَنْ غَالِبِ التَّمَّارِ، عَنْ مَسْرُوقِ بْنِ أَوْسٍ، عَنِ الْأَشْعَرِيِّ عَنِ النَّبِيِّ ﷺ قَالَ: «الْأَصَابِعُ سَوَاءٌ». قُلْتُ: عَشْرُ عَشْرٍ؟ قَالَ: «نَعَمْ». قَالَ أَبُو دَاوُدَ: رَوَاهُ مُحَمَّدُ بْنُ جَعْفَرٍ عَنْ شُعْبَةَ، عَنْ غَالِبٍ، قَالَ: سَمِعْتُ مَسْرُوقَ بْنَ أَوْسٍ. وَرَوَاهُ إِسْمَاعِيلُ قَالَ: حَدَّثَنِي غَالِبُ التَّمَّارُ بِإِسْنَادِ أَبِي الْوَلِيدِ. وَرَوَاهُ حَنْظَلَةُ بْنُ أَبِي صَفِيَّةٍ عَنْ غَالِبٍ بِإِسْنَادِ إِسْمَاعِيلَ.

تخريج: [صحيح] انظر الحديث السابق.

Ṣafiyyah from Ghālīb with the chain of Ismā'īl.

4558. It was narrated (from Yaḥyā, Mu'ādh and) Yazīd bin Zurāī, all of them from Shu'bah, from Qatādah, from 'Ikrimah, from Ibn 'Abbās, who said: "The Messenger of Allāh ﷺ said: 'This and this are the same'" meaning the thumb and little finger. (*Ṣaḥīḥ*)

٤٥٥٨ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا يَحْيَى؛
ح: وَحَدَّثَنَا ابْنُ مُعَاذٍ: حَدَّثَنَا أَبِي؛ ح:
وَحَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ: أَخْبَرَنَا يَزِيدُ بْنُ زُرَيْعٍ
كُلُّهُمْ عَنْ شُعْبَةَ، عَنْ قَتَادَةَ، عَنْ عِكْرِمَةَ، عَنْ
ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «هَذِهِ
وَهَذِهِ سَوَاءٌ». قَالَ: يَعْني الإِبْهَامَ وَالْخِنْصَرَ.

تخريج: أخرجه البخاري، الديات، باب دية الأصابع، ح: ٦٨٩٥ من حديث شعبة به.

4559. It was narrated from 'Abduṣ-Ṣamad bin 'Abdul-Wārith: "Shu'bah narrated to me, from Qatādah, from 'Ikrimah, from Ibn 'Abbās, that the Messenger of Allāh ﷺ said: 'The fingers are all the same, and the teeth are all the same, the incisor and the molar are the same, and this and this are the same.'" (*Ṣaḥīḥ*)

Abū Dāwud said: A report like that of 'Abduṣ-Ṣamad was narrated from Al-Naḍr bin Shumail from Shu'bah.

Abū Dāwud said: Ad-Dārimī narrated it to us from An-Naḍr.

٤٥٥٩ - حَدَّثَنَا عَبَّاسُ الْعَنْبَرِيُّ: حَدَّثَنَا
عَبْدُ الصَّمَدِ بْنُ عَبْدِ الْوَارِثِ: حَدَّثَنِي شُعْبَةُ
عَنْ قَتَادَةَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ
رَسُولَ اللَّهِ ﷺ قَالَ: «الْأَصَابِعُ سَوَاءٌ
وَالْأَسْنَانُ سَوَاءٌ الثَّنِيَّةُ وَالضَّرْسُ سَوَاءٌ هَذِهِ
وَهَذِهِ سَوَاءٌ».

قَالَ أَبُو دَاوُدَ: رَوَاهُ النَّصْرُ بْنُ شُمَيْلٍ عَنْ
شُعْبَةَ بِمَعْنَى عَبْدِ الصَّمَدِ.
قَالَ أَبُو دَاوُدَ: حَدَّثَنَا الدَّارِمِيُّ عَنْ
النَّصْرِ.

تخريج: [إسناده صحيح] أخرجه ابن ماجه، الديات، باب دية الأسنان، ح: ٢٦٥٠ عن عباس بن عبد العظيم العنبري به، وانظر الحديث السابق.

4560. It was narrated from Abū Ḥamzah, from Yazīd An-Naḥwī, from 'Ikrimah, from Ibn 'Abbās, who said: "The Messenger of Allāh ﷺ said: 'Teeth are all the same, and fingers are all the same.'" (*Ṣaḥīḥ*)

٤٥٦٠ - حَدَّثَنَا مُحَمَّدُ بْنُ حَاتِمٍ بْنِ بَرِيحٍ:
حَدَّثَنَا عَلِيُّ بْنُ الْحَسَنِ: أَخْبَرَنَا أَبُو حَمْزَةَ عَنْ
يَزِيدَ النَّحْوِيِّ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ
قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «الْأَسْنَانُ سَوَاءٌ
وَالْأَصَابِعُ سَوَاءٌ».

تخريج: [إسناده صحيح] أخرجه ابن ماجه، الديات، باب دية الأسنان، ح: ٢٦٥١ من حديث

علي بن الحسن بن شقيق به وقال الترمذي، ح: ١٣٩١ "حسن صحيح غريب" وصححه ابن حبان، ح: ١٥٢٨.

4561. It was narrated from Ḥusain Al-Mu'allim, from Yazīd An-Naḥwī, from 'Ikrimah, from Ibn 'Abbās who said: "The Messenger of Allāh ﷺ regarded the digits of the hands and feet as all being the same." (*Sahīh*)

٤٥٦١ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عُمَرَ بْنِ مُحَمَّدٍ بْنِ أَبَانَ: حَدَّثَنَا أَبُو ثُمَيْلَةَ عَنْ حُسَيْنِ الْمُعَلِّمِ، عَنْ يَزِيدَ النَّحْوِيِّ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: جَعَلَ رَسُولُ اللَّهِ ﷺ أَصَابِعَ الْيَدَيْنِ وَالرِّجْلَيْنِ سَوَاءً.

تخريج: [صحيح] انظر الحديث السابق * في رواية اللؤلؤي "عن حسين المعلم" والصواب عن "يسار المعلم" وتابعه أبو حمزة.

4562. It was narrated from Hammām: "Ḥusain Al-Mu'allim narrated to us, from 'Amr bin Shu'aib, from his father, from his grandfather that the Prophet ﷺ said in his *Khutbah*, when he was leaning back against the Ka'bah: 'For fingers (the *Diyah*) is ten each.'" (*Hasan*)

٤٥٦٢ - حَدَّثَنَا هُدْبَةُ بْنُ خَالِدٍ: حَدَّثَنَا هَمَّامٌ: حَدَّثَنَا حُسَيْنُ الْمُعَلِّمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ فِي خُطْبَتِهِ وَهُوَ مُسْنِدٌ ظَهْرَهُ إِلَى الْكَعْبَةِ: «فِي الْأَصَابِعِ عَشْرٌ عَشْرٌ».

تخريج: [إسناده حسن] أخرجه النسائي، حديث همام به، وصححه ابن الجارود، ح: ٧٨١.

4563. It was narrated from Yazīd bin Hārūn: "Ḥusain Al-Mu'allim narrated to us, from 'Amr bin Shu'aib, from his father, from his grandfather, that the Prophet ﷺ said: 'For teeth (the *Diyah*) is five each.'" (*Hasan*)

٤٥٦٣ - حَدَّثَنَا زُهَيْرُ بْنُ حَرْبٍ أَبُو خَيْثَمَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: حَدَّثَنَا حُسَيْنُ الْمُعَلِّمِ عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ عَنِ النَّبِيِّ ﷺ قَالَ: «فِي الْأَسْنَانِ خَمْسٌ خَمْسٌ».

تخريج: [إسناده حسن] تقدم، ح: ٥٤٢ أخرجه النسائي، القسامة، باب عقل الأسنان، ح: ٨٤٥ من حديث حسين المعلم به.

4564. Abū Dāwud said: I found it in my book from Shaibān, but I did not hear it from him. And was narrated to us by Abū Bakr – a trustworthy companion of ours –

٤٥٦٤ - قَالَ أَبُو دَاوُدَ: وَجَدْتُ فِي كِتَابِي عَنْ شَيْبَانَ - وَلَمْ أَسْمَعْهُ مِنْهُ - فَحَدَّثَنَا أَبُو بَكْرٍ - صَاحِبُ لَنَا ثِقَةٌ - قَالَ:

who said: “*Shaibān* narrated to us: ‘*Muḥammad*, meaning *Ibn Rāshid*, narrated to us from *Sulaimān*, meaning *Ibn Mūsā*, from ‘*Amr bin Shu‘aib*, from his father, that his grandfather said: ‘The Messenger of Allāh ﷺ fixed the *Diyah* for accidental killing for townspeople at four hundred Dinars or its equivalent in silver, and he fixed it according to the price of camels. If they became expensive, he raised the amount of *Diyah*, and if they became cheap he lowered the amount. At the time of the Messenger of Allāh ﷺ their price reached between four hundred and eight hundred Dinars, or its equivalent in silver, eight thousand Dirhams. And the Messenger of Allāh ﷺ ruled that for people who kept cattle, the *Diyah* was two hundred cows. For those whose *Diyah* was to be paid in sheep, it was two thousand sheep. The Messenger of Allāh ﷺ said: “The *Diyah* is something to be inherited among the heirs of the slain, according to their relationship, and whatever is left over goes to the *Aṣabah* (agnates; male relatives on the father’s side).” And the Messenger of Allāh ﷺ ruled that in the event of the nose being cut off completely, the full *Diyah* was to be given, and if the tip of the nose was cut off, half of the *Diyah* was to be given, fifty camels or their equivalent in gold or silver, or one hundred cows, or one thousand sheep. If the hand was cut off, half of the *Diyah* was to be

حَدَّثَنَا شَيْبَانُ: حَدَّثَنَا مُحَمَّدٌ يَعْنِي ابْنَ رَاشِدٍ
عَنْ سُلَيْمَانَ يَعْنِي ابْنَ مُوسَى، عَنْ عَمْرِو بْنِ
شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: كَانَ رَسُولُ
اللَّهِ ﷺ يَقُومُ دِيَّةَ الْخَطَا عَلَى أَهْلِ الْقَرْيَةِ
أَرْبَعِمِائَةِ دِينَارٍ أَوْ عَذْلَهَا مِنَ الْوَرِقِ وَيُقَوِّمُهَا
عَلَى أَثْمَانِ الْإِبِلِ، فَإِذَا غَلَّتْ رَفَعَ فِي
قِيَمَتِهَا، وَإِذَا هَاجَتْ رَخَّصَ نَقَصَ مِنْ
قِيَمَتِهَا، وَبَلَغَتْ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ مَا
بَيْنَ أَرْبَعِمِائَةِ دِينَارٍ إِلَى ثَمَانِمِائَةِ دِينَارٍ أَوْ
عَذْلَهَا مِنَ الْوَرِقِ ثَمَانِيَةَ آلَافٍ ذِرْهَمٍ قَالَ:
وَقَضَى رَسُولُ اللَّهِ ﷺ عَلَى أَهْلِ الْبَحْرِ مِائَتِي
بَقْرَةً، وَمَنْ كَانَ دِيَّتُهُ عَقْلُهُ فِي الشَّاءِ فَأَلْفِي
شَاةٍ. قَالَ: وَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ الْعَقْلَ
مِيرَاثٌ بَيْنَ وَرَثَةِ الْقَتِيلِ عَلَى قَرَابَتِهِمْ فَمَا
فَضَلَ فَلِلْعَصَبَةِ». قَالَ: وَقَضَى رَسُولُ اللَّهِ ﷺ
فِي الْأَنْفِ إِذَا جُدِعَ الدِّيَّةُ كَامِلَةً وَإِنْ جُدِعَتْ
تُنْدَوُتُهُ فَيَصْفُ الْعَقْلُ خَمْسُونَ مِنَ الْإِبِلِ أَوْ
عَذْلُهَا مِنَ الذَّهَبِ أَوْ الْوَرِقِ أَوْ مِائَةُ بَقَرَةٍ أَوْ
أَلْفُ شَاةٍ، وَفِي الْيَدِ إِذَا قُطِعَتْ نِصْفُ
الْعَقْلِ، وَفِي الرَّجْلِ نِصْفُ الْعَقْلِ، وَفِي
الْمَأْمُومَةِ ثُلُثُ الْعَقْلِ ثَلَاثٌ وَثَلَاثُونَ مِنَ
الْإِبِلِ، وَثُلُثٌ أَوْ قِيَمَتُهَا مِنَ الذَّهَبِ أَوْ الْوَرِقِ
أَوْ الْبَقْرِ أَوْ الشَّاءِ، وَالْجَائِفَةُ مِثْلُ ذَلِكَ، وَفِي
الْأَصَابِعِ فِي كُلِّ إصْبَعٍ عَشْرٌ مِنَ الْإِبِلِ، وَفِي
الْأَسْنَانِ فِي كُلِّ سِنٍّ خَمْسٌ مِنَ الْإِبِلِ.
وَقَضَى رَسُولُ اللَّهِ ﷺ أَنْ عَقَلَ الْمَرْأَةُ بَيْنَ
عَصَبَتَيْهَا مَنْ كَانُوا لَا يَرْتَوُونَ مِنْهَا شَيْئًا إِلَّا مَا

given, and if the foot was cut off, half of the *Diyah* was to be given. In the case of a deep wound to the head (that reaches the membrane surrounding the brain), one third of the *Diyah* was to be given, thirty-three camels, or its equivalent in gold, silver, cattle or sheep. In the event of a deep stab wound, the same amount was to be given. In the case of fingers, for each finger (the *Diyah* was) ten camels, and in the case of teeth, for each tooth (the *Diyah* was) five camels. The Messenger of Allāh ﷺ ruled that if the *Diyah* is imposed on a woman, it is to be paid by her *‘Ashabah* (male relatives on her father’s side), who would not inherit anything from her except that which was left over from her estate. If a woman was killed then her *Diyah* was to be shared among her heirs, and they could execute the killer. The Messenger of Allāh ﷺ said: “The killer gets nothing, and if he has no heir, then his heir is the closest of people to him, and the killer does not inherit anything.”

Muḥammad said: “All of this was narrated to me by Sulaimān bin Mūsā from ‘Amr bin Shu’aib, from his father, from his grandfather from the Prophet ﷺ.”

Abū Dāwud said: Muḥammad bin Rāshid was one of the people of Damascus, who fled to Al-Baṣrah for fear of being killed.

فَصَلَ عَنْ وَرَثَتِهَا، فَإِنْ قُتِلَتْ فَعَقْلُهَا بَيْنَ وَرَثَتِهَا وَهُمْ يَقْتُلُونَ قَاتِلَهُمْ. وَقَالَ رَسُولُ اللَّهِ ﷺ: «لَيْسَ لِلْقَاتِلِ شَيْءٌ وَإِنْ لَمْ يَكُنْ لَهُ وَارِثٌ فَوَارِثُهُ أَقْرَبُ النَّاسِ إِلَيْهِ وَلَا يَرِثُ الْقَاتِلُ شَيْئًا».

قَالَ مُحَمَّدٌ: هَذَا كُلُّهُ حَدَّثَنِي بِهِ سُلَيْمَانُ ابْنُ مُوسَى عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ عَنِ النَّبِيِّ ﷺ.

قَالَ أَبُو دَاوُدَ: مُحَمَّدُ بْنُ رَاشِدٍ مِنْ أَهْلِ دِمَشْقَ، هَرَبَ إِلَى الْبَصْرَةِ مِنَ الْقَتْلِ.

تخریج: [حسن] أخرجه بن ماجه، الديات، باب دية الخطأ، ح: ۲۶۳۰ والنسائي، ح: ۴۸۰۵ من حديث محمد ابن راشد به.

4565. It was narrated from Muḥammad bin Bakkār bin Bilāl Al-‘Āmilī: “Muḥammad, meaning Ibn Rāshid, informed us, from Sulaimān, meaning Ibn Mūsā, from ‘Amr bin Shu’aib, from his father, from his grandfather, that the Prophet ﷺ said: ‘The *Diyah* for killing that resembles intentional (killing) is severe like that for deliberate killing, but the perpetrator is not to be executed.’”

He said: And Khalīl gave us additional information from Ibn Rāshid: “That is when the *Shaitān* incites people to do evil, and blood is shed blindly, without any malice aforethought nor bearing weapons.” (*Hasan*)

تخريج: [إسناده حسن] أخرجه أحمد: ١٨٣/٢ من حديث محمد بن راشد به.

4566. It was narrated from Ḥusain, meaning Al-Mu‘allim, from ‘Amr bin Shu’aib, that his father informed him, from ‘Abdullāh bin ‘Amr, that the Messenger of Allāh ﷺ said: “For a wound that exposes the bone, (the *Diyah* is) five camels.” (*Hasan*)

تخريج: [إسناده حسن] أخرجه النسائي، القسامة، باب المواضع، ح: ٤٨٥٦ من حديث خالد بن الحارث به، وقال الترمذي، ح: ١٣٩٠ "حسن صحيح" وصححه ابن الجارود، ح: ٧٨٥.

4567. It was narrated from Al-‘Alā’ bin Al-Hārith: “Amr bin Shu’aib narrated to me, from his father, that his grandfather said: ‘The Messenger of Allāh ﷺ ruled that for (an injury to) an eye that remained intact, one-third of the *Diyah* was to be given.’” (*Hasan*)

٤٥٦٥ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى بْنِ فَارَسٍ: حَدَّثَنَا مُحَمَّدُ بْنُ بَكَّارِ بْنِ بِلَالٍ الْعَامِلِيُّ: أَخْبَرَنَا مُحَمَّدٌ يَعْنِي ابْنَ رَاشِدٍ عَنْ سُلَيْمَانَ يَعْنِي ابْنَ مُوسَى، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «عَقْلُ شِبْهِ الْعَمْدِ مَغْلُظٌ مِثْلُ عَقْلِ الْعَمْدِ وَلَا يُقْتَلُ صَاحِبُهُ».

قال: وَزَادَنَا خَلِيلٌ عَنْ ابْنِ رَاشِدٍ: «وَذَلِكَ أَنْ يَنْزُو الشَّيْطَانُ بَيْنَ النَّاسِ فَتَكُونُ دِمَاءٌ فِي عِمِّيٍّ فِي غَيْرِ ضَعِيفَةٍ وَلَا حَمَلٍ سِلَاحٍ».

٤٥٦٦ - حَدَّثَنَا أَبُو كَامِلٍ فَضِيلُ بْنُ حُسَيْنٍ أَنَّ خَالِدَ بْنَ الْحَارِثِ حَدَّثَهُمْ قَالَ: حَدَّثَنَا حُسَيْنٌ يَعْنِي الْمُعَلِّمَ، عَنْ عَمْرِو بْنِ شُعَيْبٍ أَنَّ أَبَاهُ أَخْبَرَهُ عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «فِي الْمَوَاضِحِ خَمْسٌ».

٤٥٦٧ - حَدَّثَنَا مَحْمُودُ بْنُ خَالِدٍ السُّلَمِيُّ: حَدَّثَنَا مَرْوَانُ يَعْنِي ابْنَ مُحَمَّدٍ: حَدَّثَنَا الْهَيْثَمُ بْنُ حُمَيْدٍ: حَدَّثَنِي الْعَلَاءُ بْنُ الْحَارِثِ: حَدَّثَنِي عَمْرُو بْنُ شُعَيْبٍ عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ فِي

الْعَيْنِ الْقَائِمَةِ السَّادَّةَ لِمَكَانِهَا ثُلُثُ الدِّيَّةِ.

تخريج: [إسناده حسن] أخرجه النسائي، القسامة، باب العين العوراء السادة لمكانها إذا طمست، ح: ٤٨٤٤ من حديث الهيثم بن حميد به.

Chapter 19. The *Diyah* For A Fetus

(المعجم ١٩) - بَابُ دِيَّةِ الْجَنِينِ

(التحفة ٢١)

4568. It was narrated from *Shu'bah* from *Manşūr*, from *Ibrāhīm*, from *'Ubaid bin Naḍlah*, from *Al-Mughīrah bin Shu'bah*, that two women were married to one man from *Hudhail*. One of them struck the other with a tent-pole and killed her [and her fetus]. They referred the dispute to the Prophet ﷺ. One of the two men said: "How can we pay *Diyah* for one who did not make noise, nor eat, nor drink, nor raise his voice?" He said: "Is this *Saja'* poetry like the *Saja'* poetry of the Bedouin?" And he ruled that the *Diyah* was a male or female slave, to be given by the woman's male relatives, on her father's side. (*Ṣaḥīḥ*)

٤٥٦٨ - حَدَّثَنَا حَفْصُ بْنُ عُمَرَ التَّمَرِيُّ:

حَدَّثَنَا شُعْبَةُ عَنْ مَنْصُورٍ، عَنْ إِبْرَاهِيمَ، عَنْ عُيَيْدِ بْنِ نَضْلَةَ عَنْ الْمُغِيرَةِ بْنِ شُعْبَةَ: أَنَّ امْرَأَتَيْنِ كَانَتَا تَحْتَ رَجُلٍ مِنْ هَذَيْلٍ فَضَرَبَتْ إِحْدَاهُمَا الْأُخْرَى بِعُمُودٍ فَقَتَلَتْهَا [وَجَنِينَهَا] فَأَخْتَصَمَا إِلَى النَّبِيِّ ﷺ: فَقَالَ أَحَدُ الرَّجُلَيْنِ: كَيْفَ نَدِي مَنْ لَا صَاحَ وَلَا أَكَلَ، وَلَا شَرِبَ وَلَا اسْتَهْلَى، فَقَالَ: «أَسْجَعُ كَسَجِيعِ الْأَعْرَابِ»، وَفَضَى فِيهِ بِغُرَّةٍ وَجَعَلَهُ عَلَى عَاقِلَةِ الْمَرْأَةِ.

تخريج: أخرجه مسلم، القسامة، باب دية الجنين ... إلخ، ح: ١٦٨٢ من حديث شعبة به.

4569. A similar report (as no. 4568) was narrated from *Jarīr*, from *Manşūr* with the same chain, and he added: "The Prophet ﷺ imposed the *Diyah* for the slain woman upon the male relatives of the woman who killed her, and (he ordered that) a slave be given (as *Diyah* for) that which was in her belly." (*Ṣaḥīḥ*)

٤٥٦٩ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ:

حَدَّثَنَا جَرِيرٌ عَنْ مَنْصُورٍ بِإِسْنَادِهِ وَمَعْنَاهُ وَزَادَ قَالَ: فَجَعَلَ النَّبِيُّ ﷺ دِيَّةَ الْمَقْتُولَةِ عَلَى عَصَبَةِ الْقَاتِلَةِ وَغُرَّةً لِمَا فِي بَطْنِهَا.

قَالَ أَبُو دَاوُدَ: وَكَذَلِكَ رَوَاهُ الْحَكَمُ عَنْ مُجَاهِدٍ، عَنْ الْمُغِيرَةِ.

Abū Dāwud said: Thus it was

narrated by Al-Hakam from Mujāhid, from Al-Mughīrah.

تخريج: أخرجه مسلم من حديث جرير بن عبد الحميد به، انظر الحديث السابق.

4570. It was narrated from Al-Miswar bin Makhramah that ‘Umar consulted the people regarding a case where a woman was caused to abort (*Imlāsh*). Al-Mughīrah bin Shu‘bah said: “I saw the Messenger of Allāh ﷺ ruling that a male or female slave be given (as *Diyah*). He said: ‘Bring someone who will testify with you.’ He brought Muḥammad bin Maslamah.” Hārūn (one of the narrators) added: “And he bore witness to him,” meaning, that the man had struck his wife’s belly. (*Ṣaḥīḥ*)

Abū Dāwud said: It was conveyed to me from Abū ‘Ubaid: “It was only called ‘*Imlāsh*’ (slipping) because it slipped from the woman before the time it was due, and like that, all of what slips from the hand or other than that, is called *Maliṣ*.”

٤٥٧٠ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ وَهَارُونُ بْنُ عَبَّادٍ الْأَزْدِيُّ الْمَعْنَى قَالَا: حَدَّثَنَا وَكِيعٌ عَنْ هِشَامٍ، عَنْ عُرْوَةَ، عَنْ الْمُسَوِّرِ بْنِ مَخْرَمَةَ: أَنَّ عُمَرَ اسْتَشَارَ النَّاسَ فِي إِمْلَاصِ الْمَرْأَةِ، فَقَالَ الْمُغِيرَةُ بْنُ شُعْبَةَ: شَهِدْتُ رَسُولَ اللَّهِ ﷺ قَضَى فِيهَا بِعُرَّةٍ عَبْدٍ أَوْ أَمَةٍ، فَقَالَ: اتَّبِعْنِي يَمَنْ يَشْهَدُ مَعَكَ. قَالَ: فَأَتَاهُ بِمُحَمَّدِ بْنِ مَسْلَمَةَ. رَأَى هَارُونُ: فَشَهِدَ لَهُ يَعْنِي: ضَرَبَ الرَّجُلُ بَطْنَ امْرَأَتِهِ.

قَالَ أَبُو دَاوُدَ: بَلَغَنِي عَنْ أَبِي عُبَيْدٍ: إِنَّمَا سُمِّيَ إِمْلَاصًا لِأَنَّ الْمَرْأَةَ تَزْلِقُهُ قَبْلَ وَقْتِ الْوِلَادَةِ وَكَذَلِكَ كُلُّ مَا زَلَقَ مِنَ الْيَدِ وَغَيْرِهِ فَقَدْ مَلِصَ.

تخريج: [صحيح] أخرجه مسلم، القسامة، باب دية الجنين . . . إلخ، ح: ١٦٨٣ من حديث وكيع به، ولم يذكر ما زاده هارون بن عباد الأزدي شيخ أبي داود، وأبو داود لا يروي إلا عن ثقة عنده.

4571. A similar report (as no. 4570) was narrated from Wuhaib, from Hishām, from his father, from Al-Mughīrah, from ‘Umar. (*Ṣaḥīḥ*) Abū Dāwud said: Ḥammād bin Zaid and Ḥammad bin Salamah reported it from Hishām bin ‘Urwarh, from his father; that ‘Umar said.

٤٥٧١ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا وَهَيْبٌ عَنْ هِشَامٍ، عَنْ أَبِيهِ، عَنْ الْمُغِيرَةِ، عَنْ عُمَرَ بِمَعْنَاهُ. قَالَ أَبُو دَاوُدَ: رَوَاهُ حَمَّادُ بْنُ زَيْدٍ وَحَمَّادُ ابْنُ سَلَمَةَ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ أَنَّ عُمَرَ قَالَ:

تخريج: أخرجه البخاري، الديات، باب جنين المرأة، ح: ٦٩٠٥ عن موسى بن إسماعيل به.

4572. It was narrated from ‘Amr bin Dinar, that he heard Ṭawūs, (narrate) from Ibn ‘Abbās, that ‘Umar asked about the ruling of the Prophet ﷺ concerning that, and Ḥamal bin Mālik bin An-Nābighah stood up and said: “I was between two women, and one of them struck the other with a tent-pole (*Misṭah*), killing her and her fetus.” The Messenger of Allāh ﷺ ruled that a male or female slave be given (as *Diyah*) for her fetus, and that she should be executed. Abū Dāwud said: An-Naḍr bin Shumail said: “*Al-Misṭah* is a rolling pin.” Abū Dāwud said: “Abū ‘Ubaid said: ‘*Al-Misṭah* is a wooden pole for a tent.’” (*Ṣaḥīḥ*)

٤٥٧٢ - حَدَّثَنَا مُحَمَّدُ بْنُ مَسْعُودٍ الْمِصِّصِيُّ: حَدَّثَنَا أَبُو عَاصِمٍ عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَمْرُو بْنُ دِينَارٍ أَنَّهُ سَمِعَ طَاوُسًا، عَنْ ابْنِ عَبَّاسٍ، عَنْ عُمَرَ أَنَّهُ سَأَلَ عَنْ قَضِيَّةِ النَّبِيِّ ﷺ فِي ذَلِكَ، فَقَامَ حَمَلٌ بِنِ مَالِكِ بْنِ النَّابِغَةِ، فَقَالَ: كُنْتُ بَيْنَ امْرَأَتَيْنِ، فَضَرَبَتْ إِحْدَاهُمَا الْأُخْرَى بِمِسْطَحٍ فَقَتَلَتْهَا وَجَنِينَهَا، فَقَضَى رَسُولُ اللَّهِ ﷺ فِي جَنِينِهَا بِعُرَّةٍ وَأَنْ تُقْتَلَ.

قَالَ أَبُو دَاوُدَ: قَالَ النَّضْرُ بْنُ شُمَيْلٍ: الْمِسْطَحُ هُوَ الصَّوَبُجُ.

قَالَ أَبُو دَاوُدَ: وَقَالَ أَبُو عُبَيْدٍ: الْمِسْطَحُ عُوْدٌ مِنْ أَغْوَادِ الْخَبَاءِ.

تخریج: [إسناده صحيح] أخرجه ابن ماجه، والديات، باب دية الجنين، ح: ٢٦٤١ من حديث أبي عاصم به، ورواه النسائي: ٤٧٤٣ وصححه ابن حبان: ١٥٢٥.

4573. It was narrated from Sufyān, from ‘Amr, from Ṭawūs, who said: “‘Umar stood on the *Minbar* and mentioned something similar, but he did not say that she should be executed.” He added: “A male or female slave.” ‘Umar said: “*Allāhu Akbar*, if I had not heard this, I would have ruled otherwise.” (*Da‘īf*)

٤٥٧٣ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُحَمَّدٍ الزُّهْرِيُّ: حَدَّثَنَا سُفْيَانُ عَنْ عَمْرٍو، عَنْ طَاوُسٍ قَالَ: قَامَ عُمَرُ عَلَى الْمِنْبَرِ، فَذَكَرَ مَعْنَاهُ، وَلَمْ يَذْكُرْ: وَأَنْ تُقْتَلَ. زَادَ: بِعُرَّةٍ عَبْدٍ أَوْ أَمَةٍ، قَالَ: فَقَالَ عُمَرُ: اللَّهُ أَكْبَرُ، لَوْ لَمْ أَسْمَعْ بِهَذَا لَقَضَيْتُ بِغَيْرِ هَذَا.

تخریج: [إسناده ضعيف] والحديث السابق شاهد له * طاوس لم يسمع من عمر رضي الله عنه.

4574. It was narrated that Ibn ‘Abbās said, concerning the story of Ḥamal bin Mālik (no. 4572): “She miscarried a boy whose hair had grown, and he was dead, and the

٤٥٧٤ - حَدَّثَنَا سُلَيْمَانُ بْنُ عَبْدِ الرَّحْمَنِ التَّمَّارِ: أَنَّ عَمْرُو بْنَ طَلْحَةَ حَدَّثَهُمْ قَالَ: حَدَّثَنَا أَسْبَاطُ عَنْ سِمَالِكٍ، عَنْ عِكْرِمَةَ، عَنْ

woman died too. He ruled that her male relatives on her father's side had to pay the *Diyah*, and her paternal uncle said: 'O Prophet of Allāh, she miscarried a boy whose hair had grown.' The father of the killer said: 'He is lying. By Allāh, he did not raise his voice or drink or eat. No compensation can be paid for such a one.' The Prophet ﷺ said: 'Is it *Saja*' (poetry) like the *Saja*' of the *Jahiliyyah* and soothsayers? Give a slave as *Diyah* for the boy.'" (*Da'if*)

Ibn 'Abbās said: "The name of one of them was Mulaikah and the other was Umm Ghutaif."

ابن عَبَّاسٍ فِي قِصَّةِ حَمَلِ بْنِ مَالِكٍ قَالَ: فَاسْقَطَتْ غُلَامًا قَدْ نَبَتَ شَعْرُهُ، مَيِّتًا وَمَاتَتْ الْمَرْأَةُ فَفَضَى عَلَى الْعَاقِلَةِ الدِّيَّةَ، فَقَالَ عَمَّهَا: إِنَّهَا قَدْ اسْقَطَتْ يَا نَبِيَّ اللَّهِ! غُلَامًا قَدْ نَبَتَ شَعْرُهُ، فَقَالَ أَبُو الْقَاتِلَةِ: إِنَّهُ كَاذِبٌ، إِنَّهُ وَاللَّهِ! مَا اسْتَهَلَّ وَلَا شَرِبَ وَلَا أَكَلَ، فَمِثْلُهُ يُطْلُ، فَقَالَ النَّبِيُّ ﷺ: «أَسْجَعُ الْجَاهِلِيَّةِ وَكَهَانَتُهَا؟ أَدَّ فِي الصَّبِيِّ غُرَّةً».

قَالَ ابْنُ عَبَّاسٍ: كَانَ اسْمُ إِحْدَاهُمَا مُلَيْكَةَ وَالْأُخْرَى أُمُّ غُطَيْفٍ.

تخریج: [إسناده ضعيف] أخرجه النسائي، القسامة، باب صفة شبه العمد وعلى من دية الأجنة ... إلخ، ح: ٤٨٣٢ من حديث عمرو بن عكرمة سلسلة ضعيفة.

4575. It was narrated from Jābir bin 'Abdullāh, that there were two women of Hudhail and one of them killed the other. Each of them had a husband and child. The Prophet ﷺ imposed the *Diyah* for the slain woman upon the male relatives of the killer, on her father's side, and he absolved her husband and child of paying any *Diyah*. The male relatives of the slain woman said: "Will we inherit?" The Messenger of Allāh ﷺ said: "No; her estate is for her husband and children." (*Da'if*)

٤٥٧٥ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يُوسُفُ بْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ الْوَاحِدِ ابْنُ زِيَادٍ: حَدَّثَنَا مُجَالِدٌ: حَدَّثَنِي الشَّعْبِيُّ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ: أَنَّ امْرَأَتَيْنِ مِنْ هَذِيلٍ قَتَلَتْ إِحْدَاهُمَا الْأُخْرَى وَلِكُلٍّ وَاحِدَةٌ مِنْهُمَا زَوْجٌ وَوَلَدٌ، قَالَ: فَجَعَلَ النَّبِيُّ ﷺ دِيَّةَ الْمَقْتُولَةِ عَلَى عَاقِلَةِ الْقَاتِلَةِ، وَبَرَّأَ زَوْجَهَا وَوَلَدَهَا. قَالَ: فَقَالَ عَاقِلَةُ الْمَقْتُولَةِ: مِيرَاثُهَا لَنَا؟ قَالَ: فَقَالَ رَسُولُ اللَّهِ ﷺ: «لَا، مِيرَاثُهَا لِزَوْجِهَا وَوَلَدِهَا».

تخریج: [إسناده ضعيف] وأخرجه ابن ماجه، الديات، باب عقل المرأة على عصبته وميراثها لولدها، ح: ٢٦٤٨ من حديث عبد الواحد به، وسنده ضعيف * مجالد ضعيف.

4576. It was narrated from Yūnus, from Ibn Shihāb, from Sa'eed bin Al-Musayyab and Abū Salamah, from Abū Hurairah who said: "Two women of Hudhail had a fight, and one of them threw a rock at the other and killed her. They referred the dispute to the Messenger of Allāh ﷺ, and the Messenger of Allāh ﷺ ruled that the *Diyah* for her fetus should be a male or female slave. And, he ruled that the *Diyah* for the woman should be paid by her male relatives on her father's side, and he made her children and those who were with them her heirs. Ḥamal bin Mālik bin Al-Nābighah Al-Hudhalī said: 'O Messenger of Allāh, how can I pay *Diyah* for one who did not eat, nor drink, nor speak, nor raise his voice? No compensation can be paid for such a one.' The Messenger of Allāh ﷺ said: 'This is one of the brothers of the soothsayers' because of what he heard of his *Saja* (poetry)." (*Ṣaḥīḥ*)

تخريج: أخرجه البخاري، الديات، باب جنين المرأة وأن العقل على الوالد ... إلخ، ح: ٦٩١٠ ومسلم، القسامة، باب دية الجنين ووجوب الدية في قتل الخطأ ... إلخ، ح: ١٦٨١ من حديث عبد الله بن وهب به.

4577. It was narrated from Al-Laith, from Ibn Shihāb, from Ibn Al-Musayyab, from Abū Hurairah, who said about this (as mentioned in no. 4576) story: "Then the woman who had been ordered to give a slave died, and the Messenger of Allāh ﷺ ruled that her estate should go to her sons, and that her male relatives on her father's side should pay the *Diyah*." (*Ṣaḥīḥ*)

٤٥٧٦ - حَدَّثَنَا وَهْبُ بْنُ بَيَّانٍ وَابْنُ السَّرْحِ قَالَا: حَدَّثَنَا ابْنُ وَهْبٍ: أَخْبَرَنِي يُونُسُ عَنْ ابْنِ شِهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ وَأَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: أَقْتَلَتِ امْرَأَتَانِ مِنْ هُذَيْلٍ فَرَمَتْ إِحْدَاهُمَا الْأُخْرَى بِحَجَرٍ فَقَتَلَتْهَا فَاخْتَصَمُوا إِلَى رَسُولِ اللَّهِ ﷺ، فَقَضَى رَسُولُ اللَّهِ ﷺ: دِيَّةُ جَنِينِهَا غَرَّةٌ عَبْدٌ أَوْ وَلِيدَةٌ وَقَضَى بِدِيَةِ الْمَرْأَةِ عَلَى عَاقِلَتِهَا وَوَرَثَتِهَا وَلَدَهَا وَمَنْ مَعَهُمْ، فَقَالَ حَمَلُ بْنُ مَالِكِ بْنِ النَّابِغَةِ الْهُذَلِيِّ: يَا رَسُولَ اللَّهِ! كَيْفَ أَغْرَمَ دِيَّةً مَنْ لَا شَرِبَ وَلَا أَكَلَ، وَطَلَّقَ وَلَا اسْتَهَلَّ، فَمِثْلُ ذَلِكَ يُطَلُّ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّمَا هَذَا مِنْ إِخْوَانِ الْكُفَّانِ». مِنْ أَجْلِ سَجْعِهِ الَّذِي سَجَعَ.

٤٥٧٧ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: حَدَّثَنَا اللَّيْثُ عَنْ ابْنِ شِهَابٍ، عَنْ ابْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ فِي هَذِهِ الْقِصَّةِ قَالَ: ثُمَّ إِنَّ الْمَرْأَةَ الَّتِي قَضَى عَلَيْهَا بِالْغَرَّةِ تُوفِّيَتْ، فَقَضَى رَسُولُ اللَّهِ ﷺ بَأَنَّ مِيرَاثَهَا لِبَنِيهَا وَأَنَّ الْعَقْلَ عَلَى عَصَبَتِهَا.

تخريج: أخرجه البخاري، الفرائض، باب ميراث المرأة والزوج مع الولد وغيره، ح: ٦٧٤٠ ومسلم، القسامة، باب دية الجنين ووجوب الدية في قتل الخطأ... إلخ، ح: ١٦٨١ عن قتيبة به.

4578. It was narrated from ‘Abdullāh bin Buraidah, from his father, that a woman threw a stone at another woman, who miscarried as a result. The matter was referred to the Messenger of Allāh ﷺ, and he ruled that (a *Diyah* of) five hundred sheep be given for her child. And on that day he forbade throwing stones. (*Ṣaḥīḥ*)

Abū Dāwud said: This is what is said in the *Ḥadīth*, five hundred sheep, but the correct number is one hundred.

Abū Dāwud said: This is what ‘Abbās said, but it was a mistake.^[1]

٤٥٧٨ - حَدَّثَنَا عَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُوسَى: حَدَّثَنَا يُونُسُ بْنُ صُهَيْبٍ عَنْ عَبْدِ اللَّهِ بْنِ بُرَيْدَةَ، عَنْ أَبِيهِ: أَنَّ امْرَأَةً حَذَفَتْ امْرَأَةً فَأَسْقَطَتْ فَرْعَ ذَلِكَ إِلَى رَسُولِ اللَّهِ ﷺ، فَجَعَلَ فِي وَلَدِهَا خَمْسَ مِائَةٍ شَاةٍ، وَنَهَى يَوْمَئِذٍ عَنِ الْحَذَفِ.

قَالَ أَبُو دَاوُدَ: كَذَا الْحَدِيثُ خَمْسَ مِائَةٍ شَاةٍ. وَالصَّوَابُ: مِائَةٌ شَاةٍ. قَالَ أَبُو دَاوُدَ: هَكَذَا قَالَ عَبَّاسٌ، وَهُوَ وَهْمٌ.

تخريج: [إسناده صحيح] أخرجه النسائي، القسامة، باب دية جنين المرأة، ح: ٤٨١٧ من حديث عبيد الله بن موسى به.

4579. It was narrated from Muḥammad, meaning Ibn [‘Amr], from Abū Salamah, from Abū Hurairah who said: “The Messenger of Allāh ﷺ ruled that (the *Diyah*) for a fetus was a male or female slave, or a horse, or a mule.” (*Ḥasan*)

Abū Dāwud said: Ḥammad bin Salamah and Khālid bin ‘Abdullāh narrated this *Ḥadīth* from Muḥammad bin ‘Amr, but they did not mention a horse or a mule.

٤٥٧٩ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ مُوسَى الرَّازِيُّ: حَدَّثَنَا عَيْسَى عَنْ مُحَمَّدٍ يَعْنِي ابْنَ [عَمْرٍو]، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ فِي الْجَنِينِ بِعُرَّةٍ عَبْدٍ أَوْ أَمَةٍ أَوْ فَرَسٍ أَوْ بَغْلٍ.

قَالَ أَبُو دَاوُدَ: رَوَى هَذَا الْحَدِيثَ عَنْ مُحَمَّدِ بْنِ عَمْرٍو حَمَّادُ بْنُ سَلَمَةَ وَخَالِدُ بْنُ عَبْدِ اللَّهِ وَلَمْ يَذْكُرَا فَرَسًا وَلَا بَغْلًا.

تخريج: [إسناده حسن] أخرجه الترمذي، الديات، باب ما جاء في دية الجنين، ح: ١٤١٠ وابن ماجه، ح: ٢٦٣٩ من حديث محمد بن عمرو الليثي به وقال الترمذي: "حسن صحيح".

[1] That is, the author's *Shaikh* for the narration; ‘Abbās bin ‘Abdul-‘Azīm.

4580. It was narrated that Ash-Sha'bī said: “(The price of) a male or female slave is five hundred,” meaning; Dirham. (*Da'īf*)

Abū Dāwud said: Rabī'ah said: “A male or female slave is fifty Dinars.”

٤٥٨٠ - حَدَّثَنَا مُحَمَّدُ بْنُ سِنَانٍ الْعَوْفِيُّ قَالَ: حَدَّثَنَا شَرِيكٌ عَنْ مُغِيرَةَ، عَنْ إِبْرَاهِيمَ وَجَابِرٍ، عَنْ الشَّعْبِيِّ قَالَ: الْغُرَّةُ خَمْسُ مِائَةٍ يَغْنِي [دِرْهَمًا].
قَالَ أَبُو دَاوُدَ: قَالَ رَبِيعَةُ: الْغُرَّةُ خَمْسُونَ دِينَارًا.

تخريج: [إسناده ضعيف] * شريك القاضي ومغيرة بن مقسم مدلسان وعننا.

Chapter 20. The *Diyah* Of A *Mukātib*^[1]

(المعجم ٢٠) بَابُ فِي دِيَةِ الْمُكَاتِبِ
(التحفة ٢٢)

4581. It was narrated from Yahyā, meaning Ibn Abī Kathīr, from 'Ikrimah, from Ibn 'Abbās who said: “The Messenger of Allāh ﷺ ruled that in the case of a *Mukātib* who is killed, the *Diyah* of a free man should be paid commensurate with whatever portion of his manumission he had paid, and the rest should be paid at the rate of the *Diyah* for a slave.” (*Da'īf*)

٤٥٨١ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَعْلَى بْنُ عُبَيْدٍ: حَدَّثَنَا حَجَّاجُ الصَّوَّافُ عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ فِي دِيَةِ الْمُكَاتِبِ يُقْتَلُ يُوَدَّى مَا دَّى مِنْ مُكَاتِبَتِهِ دِيَةِ الْحُرِّ وَمَا بَقِيَ دِيَةِ الْمَمْلُوكِ.

تخريج: [إسناده ضعيف] أخرجه النسائي، القسامة، باب دية المكاتب، ح: ٤٨١٤ من حديث يعلى بن عبيد به وصححه ابن الجارود، ح: ٩٨٢ يحيى بن أبي كثير مدلس وعنن.

4582. It was narrated from Hammād bin Salamah, from Ayyūb, from 'Ikrimah, from Ibn 'Abbās that the Messenger of Allāh ﷺ said: “If a *Mukātib* acquires some *Diyah* or inheritance, he can inherit proportionate to how much he has emancipated himself.” (*Ṣaḥīḥ*)

Abū Dāwud said: It was narrated by Wuhaib from Ayyūb, from

٤٥٨٢ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا حَمَّادُ بْنُ سَلَمَةَ عَنْ أَيُّوبَ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «إِذَا أَصَابَ الْمُكَاتِبُ حَدًّا أَوْ وَرَثَ مِيرَاثًا يَرِثُ عَلَى قَدَرِ مَا عَقَّ مِنْهُ».
قَالَ أَبُو دَاوُدَ: رَوَاهُ وَهْبٌ عَنْ أَيُّوبَ، عَنْ عِكْرِمَةَ، عَنْ عَلِيٍّ عَنِ النَّبِيِّ ﷺ،

[1] A slave who has a contract of manumission.

‘Ikrimah, from ‘Ali, from the Prophet ﷺ. Hammād bin Zaid and Ismā‘il narrated it as a *Mursal* report from Ayyūb, from ‘Ikrimah, from the Prophet ﷺ. Ismā‘il bin ‘Ulayyah narrated it as the words of ‘Ikrimah.

وَأَرْسَلَهُ حَمَّادُ بْنُ زَيْدٍ وَإِسْمَاعِيلُ عَنْ أَيُّوبَ، عَنْ عِكْرِمَةَ، عَنِ النَّبِيِّ ﷺ، وَجَعَلَهُ إِسْمَاعِيلُ ابْنَ عَلِيٍّ قَوْلَ عِكْرِمَةَ.

تخريج: [إسناده صحيح] أخرجه الترمذي، البيهقي، باب ما جاء في المكاتب إذا كان عنده ما يؤدي، ح: ١٢٥٩ من حديث حماد بن سلمة به وقال: "حسن" ورواه النسائي، ح: ٤٨١٥.

Chapter 21. The *Diyah* Of A *Dhimmi*

(المعجم ٢١) بَابُ: فِي دِيَةِ الذَّمِيِّ

(التحفة ٢٣)

4583. It was narrated from Muḥammad bin Ishāq, from ‘Amr bin Shu‘aib, from his father, from his grandfather that the Prophet ﷺ said: “The *Diyah* of a *Mu‘āhid*^[1] is half the *Diyah* of a free man.” (*Hasan*)

Abū Dāwud said: A similar report was narrated by Usāmah bin Zaid Al-Laithī and ‘Abdur-Raḥmān bin Al-Hārith from ‘Amr bin Shu‘aib.

٤٥٨٣ - حَدَّثَنَا يَزِيدُ بْنُ خَالِدٍ بْنِ مَوْهَبٍ الرَّمْلِيُّ: حَدَّثَنَا عَيْسَى بْنُ يُونُسَ عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ عَنِ النَّبِيِّ ﷺ قَالَ: «دِيَةُ الْمُعَاهِدِ نِصْفُ دِيَةِ الْحُرِّ».

قَالَ أَبُو دَاوُدَ: رَوَاهُ أُسَامَةُ بْنُ زَيْدٍ اللَّيْثِيُّ وَعَبْدُ الرَّحْمَنِ بْنُ الْحَارِثِ عَنْ عَمْرِو بْنِ شُعَيْبٍ مِثْلَهُ.

تخريج: [حسن] أخرجه أحمد: ٢١٧/٢ من حديث محمد بن إسحاق، والترمذي، ح: ١٤١٣ والنسائي، ح: ٤٨١٠، ٤٨١١ وابن ماجه، ح: ٢٦٤٤ من حديث عمرو بن شعيب به وصححه ابن الجارود، ح: ١٠٥٢ * حديث أسامة بن زيد رواه الترمذي والنسائي، ح: ٤٨١١ وحديث عبد الرحمن بن الحارث رواه ابن ماجه.

Chapter 22. When One Man Attacks Another And He Defends Himself

(المعجم ٢٢) بَابُ: فِي الرَّجُلِ يُقَاتِلُ

الرَّجُلَ فَيُدْفَعُ عَنْ نَفْسِهِ (التحفة ٢٤)

4584. It was narrated from ‘Aṭā’, from Ṣafwān bin Ya‘lā, that his father said: “An employee of mine

٤٥٨٤ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا يَحْيَى عَنْ ابْنِ جُرَيْجٍ قَالَ: أَخْبَرَنِي عَطَاءٌ عَنْ صَفْوَانَ

[1] One who has been granted a covenant or treaty from the authority.

attacked a man and bit his hand. He pulled it away, and his front tooth fell out. He came to the Prophet ﷺ, but he dismissed the case and said: ‘Do you want him to put his hand in your mouth so that you can bite on it like a male camel?’” He said: “Ibn Abī Mulaikah narrated to me, from his grandfather, that Abū Bakr dismissed (such cases) and said: ‘Away with his tooth!’” (*Ṣaḥīḥ*)

تخريج: أخرجه البخاري، الديات، باب: إذا عض رجلاً فوقعت ثنياه، ح: ٦٨٩٣ ومسلم، القسامة، باب الصائل على نفس الإنسان أو عضوه ... إلخ، ح: ١٦٧٤ من حديث ابن جريج به.

4585. It was narrated from ‘Atā’, from Ya’lā bin Umayyah, and he added: “Then he – meaning the Prophet ﷺ – said to the one who had bitten the other: ‘If you wish, you may give him control over your hand, so that he can bite it, then you can pull it away from his mouth.’ And he ruled that there was no *Diyah* for his teeth.” (*Ṣaḥīḥ*)

Chapter 23. One Who Practices Medicine Although He Is Not Known For That, And Causes Harm

4586. It was narrated from Al-Walīd bin Muslim, from Ibn Juriaj, from ‘Amr bin Shu’aib, from his father, from his grandfather that the Messenger of Allāh ﷺ said: “Whoever practices medicine, although he is not known for that, he will be held liable.” (*Da’if*)

ابن يعلی، عن أبيه قال: قاتل أجير لي رجلاً فعض يده فانتزعها فندرت ثنيته فأتى النبي ﷺ فأهدرها، وقال: «أتريد أن يضع يده في فمك تقضمها كالفحل؟» قال: وأخبرني ابن أبي مليك عن جدّه أن أبا بكر أهدرها، وقال: بعدت سنّه.

٤٥٨٥ - حَدَّثَنَا زِيَادُ بْنُ أَيُّوبَ: حَدَّثَنَا هُثَيْمٌ: حَدَّثَنَا حَجَّاجٌ وَعَبْدُ الْمَلِكِ عَنْ عَطَاءٍ، عَنْ يَعْلَى بْنِ أُمَيَّةَ بِهَذَا، رَأَى: ثُمَّ قَالَ يَغْنِي النَّبِيُّ ﷺ، لِلْعَاضِ: «إِنْ شِئْتَ أَنْ تُمَكِّنَهُ مِنْ يَدِكَ فَيَقْضُهَا ثُمَّ تَنْزِعَهَا مِنْ فِيهِ»، وَأَبْطَلَ دِيَةَ أَسْنَانِهِ.

تخريج: [صحيح] انظر الحديث السابق.

(المعجم ٢٣) **بَابُ: فِيمَنْ تَطَبَّبَ وَلَا يُعْلَمُ مِنْهُ طِبٌّ فَأَغْنَتْ** (التحفة ٢٥)

٤٥٨٦ - حَدَّثَنَا نَصْرُ بْنُ عَاصِمٍ الْأَنْطَاكِيُّ وَمُحَمَّدُ بْنُ الصَّبَّاحِ بْنِ سُفْيَانَ أَنَّ الْوَلِيدَ ابْنَ مُسْلِمٍ أَخْبَرَهُمْ عَنْ ابْنِ جُرَيْجٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ تَطَبَّبَ وَلَا يُعْلَمُ مِنْهُ طِبٌّ فَهُوَ ضَامِنٌ».

Naṣr^[1] said: “Ibn Juraij narrated it to me.”

Abū Dāwud said: This was not reported by anyone other than Al-Walīd, and I do not know whether it is *Ṣaḥīḥ* or not.

قَالَ نَصْرٌ: قَالَ: حَدَّثَنِي ابْنُ جُرَيْجٍ.

قَالَ أَبُو دَاوُدَ: هَذَا لَمْ يَرَوْهُ إِلَّا الْوَلِيدُ، لَا نَذْرِي أَصَحِّحٌ هُوَ أَمْ لَا.

تخریج: [إسناده ضعيف] وأخرجه ابن ماجه، الطب، باب من تطب ولم يعلم منه طب، ح: ٣٤٦٦ والنسائي، ح: ٤٨٣٤ من حديث الوليد بن مسلم به * ابن جريج عنن، وللحديث شاهد ضعيف.

Comments:

These narrations demonstrate the gravity of people attempting to delve into matters that they are not qualified for.

4587. ‘Abdul-‘Azīz bin ‘Umar bin ‘Abdul-‘Azīz narrated: “One of the delegation that came to my father, told me: “The Messenger of Allāh ﷺ said: “Any doctor who practices medicine and treats people, although he was not known for practising medicine before that, and he causes harm, he is liable.” (Da‘if)

٤٥٨٧ - حَدَّثَنَا مُحَمَّدُ بْنُ الْعَلَاءِ: حَدَّثَنَا حَفْصٌ: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ: حَدَّثَنِي بَعْضُ الْوَفْدِ الَّذِينَ قَدِمُوا عَلَى أَبِي، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا طَبِيبٍ تَطَبَّبَ عَلَى قَوْمٍ لَا يُعْرِفُ لَهُ تَطَبَّبَ قَبْلَ ذَلِكَ فَأَعْنَتَ فَهُوَ ضَامِنٌ». قَالَ عَبْدُ الْعَزِيزِ: أَمَا إِنَّهُ لَيْسَ بِالنَّعْتِ إِنَّمَا هُوَ قَطْعُ الْعُرُوقِ وَالْبَطُّ وَالْكَيْ.

تخریج: [إسناده ضعيف] بعض الوفد مجهول، وانظر الحديث السابق.

Chapter 24. The *Diyah* For Unintentional Killing That Appears Intentional

(المعجم ٢٤) بَابُ: فِي دِيَّةِ الْخَطَا شِبْهِ الْعَمْدِ (التحفة ٢٦)

4588. It was narrated from Ḥammād, from Khālīd, from Al-Qāsim bin Rabī‘ah, from ‘Uqbah bin Aws, from ‘Abdullāh bin ‘Amr, that the Messenger of Allāh ﷺ – Musad-dad said – delivered a speech on the Day of the Conquest

٤٥٨٨ - حَدَّثَنَا سُلَيْمَانُ بْنُ حَرْبٍ وَمُسَدَّدُ الْمَعْنَى قَالَا: حَدَّثَنَا حَمَّادٌ عَنْ خَالِدٍ، عَنْ الْقَاسِمِ بْنِ رَبِيعَةَ، عَنْ عُقْبَةَ بْنِ أَوْسٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو أَنَّ رَسُولَ اللَّهِ ﷺ - قَالَ مُسَدَّدٌ: خَطَبَ يَوْمَ الْفَتْحِ ثُمَّ

^[1] That is Naṣr bin ‘Āṣim, one of the two *Shaikhs* the author heard it from, and the meaning is that in his version he has Al-Walīd saying: “Ibn Juraij narrated to me.”

of Makkah. – Then the two reports concur:^[1] “All the customs of the *Jāhiliyyah* and claims for blood or property are beneath my feet, except the provision of water for those performing *Hajj*, and the custodial duties of the Ka’bah.” Then he said: “Except the *Diyah* for a mistaken killing that appears intentional is – that which is done with a whip or a stick – one hundred camels, of which forty should have their young in their bellies.” (*Ṣaḥīḥ*)

4589. A similar report (as no. 4588) was narrated from Wuhaib. From *Khālīd* with this chain.

اتَّفَقَا - فَقَالَ: «أَلَا إِنَّ كُلَّ مَأْتَرَةٍ كَانَتْ فِي الْجَاهِلِيَّةِ مِنْ دَمٍ أَوْ مَالٍ تُذَكَّرُ وَتُدْعَى تَحْتَ قَدَمَيَّ إِلَّا مَا كَانَ مِنْ سِقَايَةِ الْحَاجِّ وَسِدَانَةِ الْبَيْتِ»، ثُمَّ قَالَ: «أَلَا إِنَّ دِيَّةَ الْخَطِئِ شِبْهُ الْعَمْدِ - مَا كَانَ بِالسَّوْطِ وَالْعَصَا - مِائَةٌ مِنَ الْإِبِلِ مِنْهَا أَرْبَعُونَ فِي بَطُونِهَا أَوْلَادُهَا».
تخريج: [صحيح] تقدم، ح: ٤٥٤٧.

٤٥٨٩ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا وَهَيْبٌ عَنْ خَالِدٍ بِهَذَا الْإِسْنَادِ نَحْوَ مَعْنَاهُ.

تخريج: [صحيح] تقدم، ح: ٤٥٤٨ وانظر الحديث السابق.

Chapter 30. *Al-Qaṣās* For A Tooth^[2]

4595. It was narrated that Anas bin Mālik said: “Ar-Rubayyi’, the sister of Anas bin An-Naḍr broke the front tooth of a woman, and they came to the Prophet ﷺ. He ruled that retaliation be taken in accordance with the Book of Allāh. Anas bin An-Naḍr said: ‘By the One Who sent you with the truth, her front tooth will not be broken today.’ He said: ‘O Anas, it is the decree of Allāh, *Qaṣās*.’ Then they agreed to accept the *Diyah*. The

(المعجم ٣٠) - بَابُ الْقَصَاصِ مِنَ السِّنِّ (التحفة ٣٢)

٤٥٩٥ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا الْمُعْتَمِرُ عَنْ حُمَيْدِ الطَّوِيلِ، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَسَرَتْ الرُّبَيْعُ أُخْتُ أَنَسِ بْنِ النَّضْرِ نَيَّْةَ امْرَأَةٍ، فَأَتَوْا النَّبِيَّ ﷺ فَقَضَى بِكِتَابِ اللَّهِ الْقَصَاصَ، فَقَالَ أَنَسُ بْنُ النَّضْرِ: وَالَّذِي بَعَثَكَ بِالْحَقِّ! لَا تُكْسِرُ نَيْتَهَا الْيَوْمَ، قَالَ: «يَا أَنَسُ! كِتَابُ اللَّهِ الْقَصَاصُ» فَرَضُوا بِأَرْشٍ أَخَذُوهُ. فَعَجِبَ نَبِيُّ اللَّهِ ﷺ وَقَالَ: «إِنَّ مِنْ

[1] That is, he heard this from Musad-dad and Sulaimān bin Ḥarb, and the wording up to this point is that of Musad-dad, and this and the following appeared previously, see numbers 4547 and 4548.

[2] Some of the manuscripts of the text have a different sequence in this section.

Prophet of Allāh ﷺ was impressed and said: ‘Among the slaves of Allāh are those who, if they swear by Allāh that something will happen or not happen, then Allāh will fulfill their oaths.’” (*Ṣaḥīḥ*)

Abū Dāwud said: I heard Aḥmad bin Ḥanbal saying when it was said to him: “How is retaliation taken for a tooth? He said: ‘(It is broken) with a file.’”

تخريج: أخرجه البخاري، الصلح، باب الصلح في الدية، ح: ٢٧٠٣ من حديث حميد الطويل به.

Chapter 27. A Kick From An Animal

4592. It was narrated from Abū Hurairah that the Messenger of Allāh ﷺ said: “No recompense is due for a leg [and no recompense is due for mines].” (*Ḍaʿīf*)

Abū Dāwud said: (Meaning) if an animal strikes with its leg when it is being ridden.

(المعجم ٢٧) بَابُ: فِي الدَّابَّةِ تَنْفُجُ

بِرَجْلِهَا (التحفة ٢٩)

٤٥٩٢ - حَدَّثَنَا عُثْمَانُ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ يَزِيدَ: حَدَّثَنَا سُفْيَانُ بْنُ حُسَيْنٍ عَنِ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، عَنْ أَبِي هُرَيْرَةَ عَنِ رَسُولِ اللَّهِ ﷺ قَالَ: «الرَّجُلُ جُبَارٌ [وَالْمَعْدُنُ جُبَارٌ]». قَالَ أَبُو دَاوُدَ: الدَّابَّةُ تَضْرِبُ بِرَجْلِهَا وَهُوَ رَاكِبٌ.

تخريج: [إسناده ضعيف] أخرجه النسائي في الكبرى، ح: ٥٧٨٨ من حديث سفیان بن حسين به، وهو ضعيف عن الزهري، تقدم، ح: ٢٥٧٩.

Chapter 28. No Recompense Is Due For Al-ʿAjmaʾ (Beasts), Mines And Wells

4593. Abū Hurairah narrated that the Messenger of Allāh ﷺ said: “No recompense is due for injuries caused by Al-ʿAjmaʾ (beasts) or mines or wells, and the *Khumus* is due on buried treasure.” (*Ṣaḥīḥ*)

(المعجم ٢٨) بَابُ: الْعَجْمَاءُ وَالْمَعْدِنُ

وَالْبُئْرُ جُبَارٌ (التحفة ٣٠)

٤٥٩٣ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا سُفْيَانُ بْنُ الزُّهْرِيِّ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ وَأَبِي سَلَمَةَ سَمِعَا أَبَا هُرَيْرَةَ يُحَدِّثُ، عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «الْعَجْمَاءُ جُرْحُهَا جُبَارٌ وَالْمَعْدِنُ جُبَارٌ

Abū Dāwud said: *Al-'Ajmā'* refers to an animal that is free and untethered and has no one with it; this applies by day, but not by night.^[1]

وَالْبِئْرُ جَبَّارٌ وَفِي الرِّكَازِ الْخُمْسُ». قَالَ أَبُو دَاوُدَ: الْعَجْمَاءُ الْمُتَفَلِّتَةُ الَّتِي لَا يَكُونُ مَعَهَا أَحَدٌ وَتَكُونُ بِالنَّهَارِ لَا تَكُونُ بِاللَّيْلِ.

تخريج: أخرجه مسلم، الحدود، باب: جرح العجماء والمعدن والبئر جبار، ح: ١٧١٠ من حديث سفيان بن عيينة، البخاري، الزكاة، باب: في الركاك الخمس، ح: ١٤٩٩ من حديث الزهري به.

Chapter 29. The Fire That Spreads

(المعجم ٢٩) بَابُ: فِي النَّارِ تَعَدَّى

(التحفة ٣١)

4594. It was narrated that Abū Hurairah said: “The Messenger of Allāh ﷺ said: ‘There is no liability for fire.’” (*Saḥīḥ*)

٤٥٩٤ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُتَوَكِّلِ الْعَسْقَلَانِيُّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ؛ ح: وَحَدَّثَنَا جَعْفَرُ بْنُ مُسَافِرٍ التَّنِيسِيُّ: حَدَّثَنَا زَيْدُ بْنُ الْمُبَارَكِ: حَدَّثَنَا عَبْدُ الْمَلِكِ الصَّنْعَانِيُّ كِلَاهُمَا عَنْ مَعْمَرٍ عَنْ هَمَّامِ بْنِ مُنَبِّهٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «النَّارُ جَبَّارٌ».

تخريج: [إسناده صحيح] أخرجه ابن ماجه، الديات، باب الجبار، ح: ٢٦٧٦ من حديث عبد الرزاق به، وهو في صحيفة همام بن منبه، ح: ١٣٨.

Comments:

If someone lights a fire in his house or on his land, and embers of it result in a fire somewhere else, he is not liable for that, as long as he did not cause that purposefully.

Chapter 25. The Crime Of A Slave Who Belongs To Poor People

(المعجم ٢٥) - بَابُ جِنَايَةِ الْعَبْدِ يَكُونُ لِلْفُقَرَاءِ (التحفة ٢٧)

4590. It was narrated from ‘Imrān bin Ḥuṣāin that the slave of some poor people cut off the ear of the slave of some rich people. His

٤٥٩٠ - حَدَّثَنَا أَحْمَدُ بْنُ حَنْبَلٍ: حَدَّثَنَا مُعَاذُ بْنُ هِشَامٍ: حَدَّثَنِي أَبِي عَنْ قَتَادَةَ، عَنْ أَبِي نَضْرَةَ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ: أَنَّ غُلَامًا

[1] Meaning, as they say, that he can let it wander during the day, and not be liable for harm it causes, but he must tie it during the night, otherwise he will be liable for any harm it causes.

masters came to the Prophet ﷺ and said: "O Messenger of Allāh, we are poor people." So he did not impose any penalty on him. (*Daʿīf*)

لَأَنَاسٍ فُقَرَاءَ قَطَعَ أُذُنَ غُلَامٍ لِّأَنَاسٍ أَغْنِيَاءَ، فَأَتَى أَهْلَهُ النَّبِيُّ ﷺ فَقَالُوا: يَا رَسُولَ اللَّهِ! إِنَّا نَاسٌ فُقَرَاءُ، فَلَمْ يَجْعَلْ عَلَيْهِ شَيْئًا.

تخريج: [إسناده ضعيف] أخرجه النسائي، القسامة، باب سقوط القود بين الممالك فيما دون النفس، ح: ٤٧٥٥ من حديث معاذ بن هشام به، وهو في مسند أحمد: ٤/٤٣٨ * قتادة عن.

Chapter 26. One Who Is Killed Blindly While The People Are Fighting

4590. It was narrated that Ibn ‘Abbās said: “The Messenger of Allāh ﷺ said: ‘Whoever is killed when the people are fighting blindly, or throwing stones, with a stone or a whip, the *Diyah* is the *Diyah* for accidental killing, but whoever is killed deliberately, the complete *Diyah* is due. Whoever harbors him against it, upon him will be the curse of Allāh, the angels and all the people.’” (*Ṣaḥīḥ*)

(المعجم ٢٦) **بَابُ: فِيمَنْ قُتِلَ فِي عَمِيًّا**
بَيْنَ قَوْمٍ (التحفة ٢٨)

٤٥٩١ - قَالَ أَبُو دَاوُدَ: حَدَّثْتُ عَنْ سَعِيدِ ابْنِ سُلَيْمَانَ، عَنْ سُلَيْمَانَ بْنِ كَثِيرٍ قَالَ: حَدَّثَنَا عَمْرُو بْنُ دِينَارٍ عَنْ طَاوُسٍ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ قُتِلَ فِي عَمِيًّا أَوْ رَمِيًّا تَكُونُ بَيْنَهُمْ بِحَجَرٍ أَوْ بِسَوْطٍ فَعَقْلُهُ عَقْلٌ خَطِئٌ، وَمَنْ قُتِلَ عَمْدًا فَقَوْدُ يَدَيْهِ، فَمَنْ حَالَ بَيْنَهُ وَبَيْنَهُ فَعَلَيْهِ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ».

تخريج: [صحيح] تقدم، ح: ٤٥٤٠.

The End of the Book of *Ad-Diyāt*