

[بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ]

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

### 13. The Chapters On Rulings

### (المعجم ١٣) أَبْوَابُ الْأَحْكَامِ (التحفة ١١)

#### Chapter 1. Mention Of Judges

#### (المعجم ١) - بَابُ ذِكْرِ الْقُضَاةِ (التحفة ١)

**2308.** It was narrated from Abu Hurairah that the Prophet ﷺ said: "Whoever is appointed judge between the people, he has been slaughtered without a knife."  
(*Hasan*)

٢٣٠٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُعَلَّى بْنُ مَنصُورٍ، عَنْ عَبْدِ اللَّهِ بْنِ جَعْفَرٍ، عَنْ عُمَانَ بْنِ مُحَمَّدٍ، عَنِ الْمُقْبِرِيِّ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ: «مَنْ جُعِلَ قَاضِيًا بَيْنَ النَّاسِ، فَقَدْ ذُبِحَ بِغَيْرِ سِكِّينٍ».

تخريج: [إسناده حسن] أخرجه أبو داود، القضاء، باب: في طلب القضاء، ح: ٣٥٧٢ من حديث عبدالله بن جعفر به، وصححه الحاكم: ٩١/٤، والذهبي، والعراقي، (تخريج الأحياء: ٣/٣١٦)، وله شواهد.

#### Comments:

- Judging people's disputes and making the right decisions is an important responsibility, yet it is a very sensitive one. The right decisions are a guarantor for permanent peace and tranquility in society, whereas the consequences of wrong decisions appear in the form of anarchy and mischief.
- 'Has been slaughtered without a knife' is an indication towards the sensitivity of its post, and the difficulties in the performance of this duty. Despite this, the presence of this system and the position of a judge in the society are necessary. Therefore he who has this ability, should accept this responsibility and should discharge this duty with justice as required.

**2309.** It was narrated from Anas bin Málík that the Messenger of Allāh ﷺ said: "Whoever asks to be appointed a judge, will be entrusted to himself, but whoever is forced to accept the position, an

٢٣٠٩ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدُ ابْنُ إِسْمَاعِيلَ. قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا إِسْرَائِيلُ، عَنْ عَبْدِ الْأَعْلَى، عَنْ بِلَالِ بْنِ أَبِي مُوسَى، عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: قَالَ رَسُولُ

angel will come down to him and guide him.'” (Da'if)

اللَّهُ ﷻ: «مَنْ سَأَلَ الْقَضَاءَ وَكِلَإً إِلَى نَفْسِهِ. وَمَنْ جُبِرَ عَلَيْهِ نَزَلَ إِلَيْهِ مَلَكٌ فَسَدَّدَهُ».

تخریج: [إسناده ضعيف] أخرجه أبو داود، القضاء، باب في طلب القضاء والتسرع إليه، ح: ٣٥٧٨ من حديث إسرائيل به، وأخرجه الترمذي، ح: ١٣٢٣، وله طريق آخر عند الترمذي، ح: ١٣٢٤، وحسنه، وفي الطريقين عبدالأعلى الثعلبي، وتقدم حاله، ح: ١٥٥٤.

**2310.** It was narrated that 'Ali said: "The Messenger of Allāh ﷺ sent me to Yemen. I said: 'O Messenger of Allāh, you are sending me to judge between them while I am a young man, and I do not know how to judge.' He struck me on the chest with his hand and said: 'O Allāh, guide his heart and make his tongue steadfast.' And after that I never doubted in passing judgment between two people." (Da'if)

٢٣١٠ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا يَعْلَى وَ أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ عَمْرِو بْنِ مُرَّةَ، عَنْ أَبِي الْبُخْتَرِيِّ، عَنْ عَلِيٍّ قَالَ: بَعَثَنِي رَسُولُ اللَّهِ ﷺ إِلَى الْيَمَنِ. فَقُلْتُ: يَا رَسُولَ اللَّهِ تَبْعَنِي وَأَنَا شَابٌّ أَقْضِي بَيْنَهُمْ، وَلَا أَدْرِي مَا الْقَضَاءُ؟ قَالَ، فَضْرَبَ بِيَدِهِ فِي صَدْرِي. ثُمَّ قَالَ: «اللَّهُمَّ اهْدِ قَلْبَهُ وَثَبِّتْ لِسَانَهُ» قَالَ: فَمَا شَكَّكَتُ بَعْدُ فِي قَضَاءِ بَيْنِ اثْنَيْنِ.

تخریج: [إسناده ضعيف] \* أبوالبختري سعيد بن فيروز لم يسمع من علي، ولم يدركه قاله أبوحاتم الرازي، فالسند مقطوع، وله شاهد عند أبي داود، ح: ٣٥٨٢، حسنه الترمذي، ح: ١٣٣١، وصححه الحاكم، والذهبي \* وفيه حش بن المعتمر ضعفه الجمهور.

### Comments:

- If an individual feels that he/she does not have the ability to discharge these obligations which are being assigned to him/her, then the person has the right to refuse the acceptance of the post.
- It will not be regarded as disobedience, to tell about one's weakness or difficulties, to one's elderly peer or to a person in charge.

## Chapter 2. Emphatic Prohibition Against Injustice And Bribery

**2311.** It was narrated that 'Abdullāh said: "The Messenger of Allāh ﷺ said: 'There is no judge who judges between the people but on the Day of Resurrection an angel will come

(المعجم ٢) - بَابُ التَّغْلِيظِ فِي الْحَيْفِ وَالرُّشْوَةِ (التحفة ٢)

٢٣١١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ خَلَّادٍ الْبَاهِلِيُّ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَّانُ: حَدَّثَنَا مَجَالِدٌ عَنْ عَامِرٍ، عَنْ مَسْرُوقٍ، عَنْ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَا مِنْ حَاكِمٍ يَحْكُمُ

and take hold of the back of his head and raise his head towards the sky and if it said: "Throw him," he will throw him into an abyss the depth of forty autumns (years)." (Da'if)

بَيْنَ النَّاسِ إِلَّا جَاءَ يَوْمَ الْقِيَامَةِ، وَمَلَكَ أَخَذُ بِقَفَاهُ. ثُمَّ يَرْفَعُ رَأْسَهُ إِلَى السَّمَاءِ. فَإِنْ قَالَ أَلْقِهِ. أَلْقَاهُ فِي مَهْوَاةٍ أَرْبَعِينَ خَرِيفًا.

تخريج: [إسناده ضعيف] أخرجه أحمد: ٤٣٠/١ عن يحيى به، وانظر، ح: ١١ لعلته، وضعفه البوصيري.

**2312.** It was narrated from 'Abdullâh bin Abu Awfa that the Messenger of Allâh ﷺ said: "Allâh is with the judge so long as he is not unjust, but if he rules unjustly, He entrusts him to himself." (Hasan)

٢٣١٢ - حَدَّثَنَا أَحْمَدُ بْنُ سِنَانٍ: حَدَّثَنَا مُحَمَّدُ بْنُ بِلَالٍ، عَنْ عِمْرَانَ الْقَطَّانِ، عَنْ حُسَيْنِ، يَعْنِي ابْنَ عِمْرَانَ، عَنْ أَبِي إِسْحَاقَ الشَّيْبَانِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي أَوْفَى قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّ اللَّهَ مَعَ الْقَاضِي، مَا لَمْ يَجْرُ. فَإِذَا جَارَ وَكَلَّهُ إِلَى نَفْسِهِ».

تخريج: [إسناده حسن] أخرجه الطبراني من طريقين عن محمد بن بلال به، كما في تهذيب الكمال (مطبوع: ٤٥٨/٦)، وأخرجه ابن عدي: ٢١٤٥/٦ عن ابن صاعد عن أحمد بن سنان القطان به، إلا أنه قال: حسين المعلم، ومن طريقه أخرجه البيهقي: ٨٨/١٠، والصواب: حسين بن عمران دون المعلم، وأخرجه الترمذي، ح: ١٣٣٠، والبيهقي وغيرهما من حديث عمرو بن عاصم ثنا عمران القطان عن الشيباني عن ابن أبي أوفى به، ولم يكن في السند حسينا، وقال الترمذي: غريب، وصححه ابن حبان (موارد)، ح: ١٥٤٠، والحاكم: ٩٣/٤، والذهبي.

### Comments:

If a person has the intention of performing good work, he gets help and power from Allâh. Similarly, if a judge wants to make a correct decision, then Allâh guides him, and it becomes easy for him to find the truth. Despite having a good intention, if a mistake occurs then this mistake is forgiven.

**2313.** It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ said: "The curse of Allâh is upon the one who offers a bribe and the one who takes it." (Hasan)

٢٣١٣ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا ابْنُ أَبِي ذُئْبٍ، عَنْ خَالِهِ الْحَارِثِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي سَلَمَةَ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَعْنَةُ اللَّهِ عَلَى الرَّاشِي وَالْمُرْتَشِي».

تخريج: [إسناده حسن] أخرجه أبو داود، القضاء، باب: في كراهية الرشوة، ح: ٣٥٨٠ من

حديث ابن أبي ذئب به، وصححه الترمذي، ح: ١٣٣٧، والحاكم: ١٠٢/٤، ١٠٣، والذهبي، وابن الجارود، ح: ٥٨٦.

### Comments:

The dishonesty of bribery occurs when a person despite being wrong, wants the decision to be made in his favor; thus the one who bribes, deprives a rightful person of his right and also makes the judge sinful. This twofold sin deprives him of the mercy of Allāh.

### Chapter 3. When The Judge Does His Best (To Reach A Verdict) And Gets It Right

(المعجم ٣) - بَابُ الْحَاكِمِ يَجْتَهِدُ  
فِيصِيبُ الْحَقَّ (التحفة ٣)

2314. It was narrated from 'Amr bin 'Ās that he heard the Messenger of Allāh ﷺ say: "When the judge passes a judgment and does his best and gets it right, he will have two rewards, and if he passes a judgement and does his best and gets it wrong, he will have one reward." (*Sahih*)

Yazid (one of the narrators) said: "So I narrated it to Abu Bakr bin 'Amr bin Hazm. He said: 'This is how it was narrated to me by Abu Salamah from Abu Hurairah.'"

٢٣١٤ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا عَبْدُ  
الْزَبْرِ بْنُ مُحَمَّدٍ الدَّرَّاورِدِيُّ: حَدَّثَنَا يَزِيدُ بْنُ  
عَبْدِ اللَّهِ بْنِ الْهَادِ، عَنْ مُحَمَّدِ بْنِ إِبْرَاهِيمَ  
التَّيْمِيِّ، عَنْ بُسَيْرِ بْنِ سَعِيدٍ، عَنْ أَبِي قَيْسِ  
مَوْلَى عَمْرِو بْنِ الْعَاصِ، عَنْ عَمْرِو بْنِ  
الْعَاصِ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ ﷺ يَقُولُ: «إِذَا  
حَكَمَ الْحَاكِمُ فَاجْتَهَدَ فَأَصَابَ فَلَهُ أَجْرَانِ.  
وَإِذَا حَكَمَ فَاجْتَهَدَ فَأَخْطَأَ فَلَهُ أَجْرٌ».

قَالَ يَزِيدُ: فَحَدَّثْتُ بِهِ أَبَا بَكْرٍ بْنَ عَمْرِو  
ابْنِ حَزْمٍ. فَقَالَ: هَكَذَا حَدَّثَنِيهِ أَبُو سَلَمَةَ عَنْ  
أَبِي هُرَيْرَةَ.

تخريج: أخرجه البخاري، الاعتصام بالكتاب والسنة، باب أجر الحاكم إذا اجتهد فأصاب أو أخطأ، ح: ٧٣٥٢ من حديث ابن الهاد به، ومسلم، الأفضية، باب بيان أجر الحاكم إذا اجتهد، فأصاب أو أخطأ، ح: ١٧١٦ من حديث الدراوردي به.

### Comments:

- Literally *Ijtihād* means to strive hard, and in this context it is to pay full due attention and strive hard with the utmost sincerity, in the light of the proofs and evidences, for giving the correct decision concerning the issue brought forward. It is the duty of the person who will make the decision that he tries his best to make the correct decision.
- If the later generation comes across a mistake that a scholar may have made in adopting a view about an issue, then they should act according to their own research; and they should have a good opinion about the scholar who made the mistake, that he did not intentionally judge the issue incorrectly.

**2315.** Abu Hâshim said: "Were it not for the *Hadith* of Ibn Buraidah from his father, from the Prophet ﷺ who said: 'Judges are of three types, two of whom will be in Hell and one will be in Paradise. The man who knows the truth and rules in accordance with it, will be in Paradise. The man who passes judgment on the people in ignorance will be in Hell, and the man who is unjust in judgment will be in Hell' – we would have said that if the judge does his best he will be in Paradise." (*Da'if*)

٢٣١٥ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ تَوْبَةَ: حَدَّثَنَا خَلْفُ بْنُ خَلِيفَةَ: حَدَّثَنَا أَبُو هَاشِمٍ؛ قَالَ: لَوْلَا حَدِيثُ ابْنِ بُرَيْدَةَ عَنْ أَبِيهِ عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «الْقَضَاءُ ثَلَاثَةٌ. اثْنَانِ فِي النَّارِ، وَوَاحِدٌ فِي الْجَنَّةِ. رَجُلٌ عَلِمَ الْحَقَّ فَقَضَى بِهِ فَهُوَ فِي الْجَنَّةِ. وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ. وَرَجُلٌ جَارَ فِي الْحُكْمِ فَهُوَ فِي النَّارِ» - لَقَلْنَا: إِنَّ الْقَاضِيَ إِذَا اجْتَهَدَ فَهُوَ فِي الْجَنَّةِ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، القضاء، باب: في القاضي يخطيء، ح: ٣٥٧٣ من حديث خلف به، وله شاهد عند الطبراني (مجمع: ٤/١٩٣).

**Comments:**

- a. It is incorrect to give a decision after a minor hearing without the proper investigation in order to verify the truth.
- b. When it is certain that such and such party is in the right, then giving a decision in favor of the other party is injustice. Its chastisement is Hell. This injustice may sometimes give a temporary, worldly benefit and this type of benefit is a part of bribery, which results in a curse. (See *Hadith*: 2313)

**Chapter 4. The Judge Should Not Pass A Judgement When He Is Angry**

**2316.** It was narrated from 'Abdul-Malik bin 'Umair that he heard 'Abdur-Rahmân bin Abu Bakrah (narrate) from his father that the Messenger of Allâh ﷺ said: "Let the judge (*Qâdi*) not pass a judgment when he is angry." (*Sahih*)

In his narration, (one of the narrators) Hishâm said: "The judge (ruler) should not judge between two people when he is angry."

(المعجم ٤) - بَابُ: لَا يَحْكُمُ الْحَاكِمُ وَهُوَ غَضَبَانٌ (التحفة ٤)

٢٣١٦ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ مُحَمَّدٌ ابْنُ عَبْدِ اللَّهِ بْنِ زَيْدٍ، وَأَحْمَدُ بْنُ ثَابِتِ الْجَحْدَرِيُّ قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَبْدِ الْمَلِكِ بْنِ عَمِيرٍ أَنَّهُ سَمِعَ عَبْدَ الرَّحْمَنِ بْنَ أَبِي بَكْرَةَ، عَنْ أَبِيهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَقْضِي الْقَاضِي بَيْنَ اثْنَيْنِ وَهُوَ غَضَبَانٌ».

قَالَ هِشَامٌ، فِي حَدِيثِهِ: لَا يَتَّبِعِي لِلْحَاكِمِ

أَنْ يَقْضِيَ بَيْنَ اثْنَيْنِ وَهُوَ غَضَبَانٌ.

تخريج: أخرجه البخاري، الأحكام، هل يقضي القاضي أو يقضي وهو غضبان؟، ح: ٧١٥٨، ومسلم، الأفضية، باب كراهة قضاء القاضي وهو غضبان، ح: ١٧١٧ من حديث عبدالمك به.

**Comments:**

The intellectual faculty of a person does not remain stable in a state of anger; and due to sentimental factors, the reflection upon all aspects of the matter becomes almost impossible. So it is a risk, that the decision given in the state of anger may be incorrect.

**Chapter 5. The Ruling Of A Judge Does Not Make What Is Forbidden Permissible Nor What Is Permissible Forbidden**

(المعجم ٥) - بَابُ قَضِيَّةِ الْحَاكِمِ لَا تُحِلُّ حَرَامًا وَلَا تُحَرِّمُ حَلَالًا (التحفة ٥)

2317. It was narrated from Umm Salamah that the Messenger of Allâh ﷺ said: "You refer your disputes to me and I am only human. Perhaps some of you may be more eloquent in presenting your case than others, so I rule in your favor because of what I hear from you. If I pass a judgment in favor of one of you that detracts from his brother's rights, then he should not take it, because it is a piece of fire that is given to him which he will bring forth on the Day of Resurrection." (Sahih)

٢٣١٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا هِشَامُ بْنُ عُرْوَةَ عَنْ أَبِيهِ، عَنْ زَيْنَبِ بِنْتِ أُمِّ سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ قَالَتْ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ وَإِنَّمَا أَنَا بَشَرٌ. وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ الْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ. وَإِنَّمَا أَقْضِي لَكُمْ عَلَى نَحْوِ مِمَّا أَسْمَعُ مِنْكُمْ. فَمَنْ قَضَيْتَ لَهُ مِنْ حَقِّ أَخِيهِ شَيْئًا، فَلَا يَأْخُذْهُ. فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ. يَأْتِي بِهَا يَوْمَ الْقِيَامَةِ».

تخريج: أخرجه البخاري، الشهادات، باب من أقام البيعة بعد البيمين، ح: ٧١٦٩، ٦٩٦٧، ٦٦٨٠ من حديث هشام به، ومسلم، الأفضية، باب بيان أن حكم الحاكم لا يغير الباطن، ح: ١٧١٣ عن ابن أبي شيبه به.

**Comments:**

In the light of this *Hadith* the scholars formed a rule that: "the decision of a judge has an apparent implication, but does not change any true reality which is not visible"; so the decision of a judge does not make someone's thing lawful for another person. For example: If a person proves with the help of false witnesses, that his marriage took place with so-and-so woman; while in fact this was not the case, then the matrimonial relations of both man and woman will be unlawful. If he does so, he will be committing

adultery and will get punished for it on the Day of Judgement. Likewise, if a judge gives a decision that so-and-so woman is divorced; but in reality the husband did not divorce her, then the husband will not be sinful in the sight of Allâh for having matrimonial relations with his wife.

**2318.** It was narrated from Abu Hurairah that the Messenger of Allâh ﷺ said: "I am only human, and some of you may be more eloquent in presenting your case than others. If I pass a judgment in his favor that detracts from his brother's rights, I am giving him a piece of fire." (*Hasan*)

٢٣١٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ بَشْرٍ: حَدَّثَنَا مُحَمَّدُ بْنُ عَمْرٍو، عَنْ أَبِي سَلَمَةَ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّمَا أَنَا بَشَرٌ. وَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ أَلْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ. فَمَنْ قَطَعْتَ لَهُ مِنْ حَقِّ أَخِيهِ قِطْعَةً. فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ».

تخریج: [إسناده حسن] أخرجه أحمد: ٣٣٢/٢ عن محمد بن بشر به، وصححه ابن حبان(موارد)، ح: ١١٩٧ من حديث محمد بن عمرو، وقال البوصيري: هذا إسناده صحيح .

**Comments:**

- a. Even the Messenger of Allâh ﷺ had the duty to act and give a decision according to the *Shari'ah*.
- b. 'That detracts from his brother's rights' means that a party was not given its full and deserved right, but rather some extra share mistakenly was given to the other party.

**Chapter 6. One Who Claims Something That Does Not Belong To Him And Disputes About It**

**2319.** It was narrated from Abu Dharr that he heard the Messenger of Allâh ﷺ say: "Whoever claims something that does not belong to him; he is not one of us, so let him take his place in Hell." (*Sahih*)

(المعجم ٦) - بَابُ مَنْ ادَّعَى مَا لَيْسَ لَهُ وَخَاصَمَ فِيهِ (التحفة ٦)

٢٣١٩ - حَدَّثَنَا عَبْدُ الْوَارِثِ بْنُ عَبْدِ الصَّمَدِ ابْنُ عَبْدِ الْوَارِثِ بْنِ سَعِيدٍ، أَبُو عُبَيْدَةَ: حَدَّثَنِي أَبِي عَنْ أَبِيهِ: حَدَّثَنَا الْحُسَيْنُ بْنُ دَكْوَانَ عَنْ عَبْدِ اللَّهِ بْنِ بَرْدَةَ قَالَ: حَدَّثَنِي يَحْيَى بْنُ يَعْمَرَ أَنَّ أَبَا الْأَسْوَدِ الدِّلِيلِيَّ حَدَّثَهُ عَنْ أَبِي دَرٍّ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ ﷺ يَقُولُ: «مَنْ ادَّعَى مَا لَيْسَ لَهُ فَلَيْسَ مِنَّا، وَلَيْتَبَوَّأَ مَقْعَدَهُ مِنَ النَّارِ».

تخریج: أخرجه مسلم، الإيمان، باب بيان حال إيمان من قال لأخيه المسلم ياكافرا!، ح: ٦١

من حديث عبدالصمد به مطولاً .

### Comments:

'Let him take his place in Hell' means that the person should be certain to go to Hell. Therefore, to avoid the chastisement of Hell, he should avoid committing this sin; and if this mistake has taken place, then he should escape Hell by restoring the right of the rightful person and by seeking sincere forgiveness.

**2320.** It was narrated from Ibn 'Umar that the Messenger of Allāh ﷺ said: "Whoever takes the wrongdoer's side in a dispute or supports wrongdoing, he will remain subject to the wrath of Allāh until he gives it up." (*Hasan*)

٢٣٢٠ - حَدَّثَنَا مُحَمَّدُ بْنُ نَعْلَبَةَ بْنِ سَوَاءٍ: حَدَّثَنِي عَمِّي مُحَمَّدُ بْنُ سَوَاءٍ، عَنْ حُسَيْنِ الْمُعَلَّمِ، عَنْ مَطَرِ الْوَرَّاقِ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ أَعَانَ عَلَى خُصُومَةٍ يَظْلِمُ أَوْ يُعِينُ عَلَى ظُلْمٍ لَمْ يَزَلْ فِي سَخَطِ اللَّهِ حَتَّى يَنْزِعَ».

تخريج: [إسناده حسن] أخرجه أبو داود، القضاء، باب: في الرجل يعين على خصومة من غير أن يعلم أمرها، ح: ٣٥٩٨ من حديث مطر به.

### Chapter 7. The Burden Of Proof Rests With The Plaintiff And An Oath Is Required From The One The Claim Is Made Against

**2321.** It was narrated from Ibn 'Abbās that the Messenger of Allāh ﷺ said: "If the people were given what they claimed, some would have claimed the lives and property of men. But the one the claim is made against is obliged to swear an oath." (*Sahih*)

(المعجم ٧) - بَابُ: الْبَيِّنَةُ عَلَى الْمُدَّعِي وَالْيَمِينُ عَلَى الْمُدَّعَى عَلَيْهِ (التحفة ٧)

٢٣٢١ - حَدَّثَنَا حَرَمَلَةُ بْنُ يَحْيَى الْبَصْرِيُّ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ: أَنَّ أَبَانَ ابْنَ جَرِيحٍ، عَنْ ابْنِ أَبِي مُلَيْكَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ، ادَّعَى نَاسٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ. وَلَكِنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ».

تخريج: أخرجه البخاري، التفسير، باب ﴿إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ...﴾ الخ ، ح: ٤٥٥٢ من حديث ابن جريج به، ومسلم، الأفضية، باب اليمين على المدعى عليه، ح: ١٧١١ من حديث ابن وهب به.

### Comments:

When the plaintiff is unable to bring the witnesses regarding a case, then the defendant will be asked to take the oath; and he will testify by swearing



in the Name of Allâh to prove his claim to be true.

- b. The decision cannot be made upon the oath of the plaintiff only rather he is first required to bring a witnesses.

**2322.** It was narrated that Ash'ath bin Qais said: "There was a dispute between myself and a Jewish man concerning some land, and he denied me my rights so I brought him to the Prophet ﷺ. The Messenger of Allâh ﷺ said to me: 'Do you have proof?' I said: 'No.' He said to the Jews, 'Swear an oath.' I said: 'If he swears an oath he will take my property.' Then Allâh, Glorious is He, revealed: 'Verily, those who purchase a small gain at the cost of Allâh's covenant and their oaths, they shall have no portion in the Hereafter (Paradise). Neither will Allâh speak to them nor look at them on the Day of Resurrection nor will He purify them, and they shall have a painful torment.'"<sup>[1]</sup> (*Sahih*)

٢٣٢٢ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ،  
وَعَلِيُّ بْنُ مُحَمَّدٍ. قَالَا: حَدَّثَنَا وَكَيْعٌ وَأَبُو  
مُعَاوِيَةَ. قَالَا: حَدَّثَنَا الْأَعْمَشُ عَنْ شَقِيقٍ،  
عَنِ الْأَشْعَثِ بْنِ قَيْسٍ قَالَ: كَانَ بَيْنِي وَبَيْنَ  
رَجُلٍ مِنَ الْيَهُودِ أَرْضٌ. فَجَحَلَنِي. فَقَدَّمْتُهُ  
إِلَى النَّبِيِّ ﷺ. فَقَالَ لِي رَسُولُ اللَّهِ ﷺ:  
«هَلْ لَكَ بَيِّنَةٌ؟» قُلْتُ: لَا. قَالَ لِلْيَهُودِيِّ:  
«اخْلِفْ» قُلْتُ: إِذَا يَخْلِفُ فِيهِ فَيَذْهَبُ  
بِمَالِي. فَأَنْزَلَ اللَّهُ سُبْحَانَهُ: ﴿إِنَّ الَّذِينَ  
يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلًا﴾ [آل  
عمران: ٧٧] إِلَى آخِرِ الْآيَةِ.

تخریج: أخرجه البخاري، المساقاة، باب الخصومة في البئر والقضاء فيها،  
ح: ٢٣٥٦، ٢٣٥٧. . . الخ، من حديث الأعمش به، ومسلم، الإيمان، باب وعيد من اقتطع حق  
مسلم يمين فاجرة بالنار، ح: ١٣٨ عن ابن نمير به.

**Comments:**

- a. The judge is responsible to give a decision according to his best understanding of the dispute, on the basis of witnesses and evidences; he will not be sinful if he tried his best to give the right decision in the light of the Qur'an and *Hadiith*, even though the decision, mistakenly, happened to be incorrect. But if the claimant knew that the claim was false, he was then not allowed to take the other's right, although the decision had been made in his favor.
- b. 'Neither will Allâh speak to them' means He will not address him with mercy and pleasure, rather He will reckon him with anger, rebuke and admonition.

<sup>[1]</sup> *Âl 'Imrân* 3:77.

### Chapter 8. One Who Swears A False Oath In Order To Seize Wealth Unlawfully

2323. It was narrated from 'Abdullâh bin Mas'ud that the Messenger of Allâh ﷺ said: "Whoever swears a false oath in order to seize the wealth of a Muslim unlawfully, he will meet Allâh when He is angry with him." (*Sahih*)

#### Comments:

- False oath is a major sin, particularly when its purpose is to wrongfully take the property of another person.
- Taking the property of a non-Muslim wrongfully is also a crime, but a Muslim taking the property of another Muslim by unlawful means is an even worst sin and offence.

2324. Abu Umâmah Al-Hârithi narrated that he heard the Messenger of Allâh ﷺ say: "No man seizes the wealth of a Muslim unlawfully by means of his (false) oath, but Allâh will deny Paradise to him and will doom him to Hell." A man among the people said: "O Messenger of Allâh, even if it is something small?" He said: "Even if it is a twig of an *Arâk* tree." (*Sahih*)

تخریج: أخرجه مسلم، الإيمان، باب وعيد من اقتطع حق مسلم بيمين فاجرة بالنار، ح: ۱۳۷ عن ابن أبي شيبة به.

#### Comments:

The fulfillment of human rights is also obligatory along with the fulfillment of the Rights of Allâh. Alongside *Shirk* (associating partners with Allâh) there are other sins for which Hell is prescribed for the perpetrator. He may be released after bearing sufficient punishment; and if he has good deeds

(المعجم ۸) - بَابُ مَنْ حَلَفَ عَلَى  
يَمِينٍ فَاجْرَةً لِيَقْتَطِعَ بِهَا مَالًا (التحفة ۸)

۲۳۲۳ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ بْنِ نُمَيْرٍ: حَدَّثَنَا وَكَيْعٌ وَ أَبُو مُعَاوِيَةَ. قَالَ: حَدَّثَنَا الْأَعْمَشُ عَنْ شَقِيقٍ، عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ عَلَى يَمِينٍ، وَهُوَ فِيهَا فَاجِرٌ، يَقْتَطِعُ بِهَا مَالَ امْرِئٍ مُسْلِمٍ، لَقِيَ اللَّهَ وَهُوَ عَلَيْهِ غَضَبَانٌ».

تخریج: [صحیح] انظر الحديث السابق.

۲۳۲۴ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أُسَامَةَ عَنِ الْوَلِيدِ بْنِ كَثِيرٍ، عَنْ مُحَمَّدِ بْنِ كَعْبٍ أَنَّهُ سَمِعَ أَخَاهُ عَبْدِ اللَّهِ بْنَ كَعْبٍ أَنَّ أَبَا أُمَامَةَ الْحَارِثِيَّ حَدَّثَهُ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا يَقْتَطِعُ رَجُلٌ حَقَّ امْرِئٍ مُسْلِمٍ بِيَمِينِهِ، إِلَّا حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ وَأَوْجَبَ لَهُ النَّارَ». فَقَالَ رَجُلٌ مِنَ الْقَوْمِ: يَا رَسُولَ اللَّهِ وَإِنْ كَانَ شَيْئًا يَسِيرًا؟ قَالَ: «وَإِنْ كَانَ سِوَاكَ مِنْ أَرَاكٍ».

greater than the sin, he may be delivered because of it. Allâh may also forgive him with His special kindness. But the punishment for major *Shirk* and other such blasphemous deeds that brand one out of the fold of Islam is everlasting.

### Chapter 9. Swearing An Oath At The Time Of Usurping People's Rights

2325. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said: 'Whoever swears a false oath near this pulpit of mine, let him take his place in Hell, even if it is for a green twig.' (*Sahih*)

(المعجم ٩) - بَابُ الْيَمِينِ عِنْدَ مَقَاعِصِ الْحَقُوقِ (التحفة ٩)

٢٣٢٥ - حَدَّثَنَا عَمْرُو بْنُ رَافِعٍ: حَدَّثَنَا مَرْوَانَ بْنَ مُعَاوِيَةَ؛ ح: وَحَدَّثَنَا أَحْمَدُ بْنُ ثَابِتِ الْجَحْدَرِيِّ: حَدَّثَنَا صَفْوَانُ بْنُ عَيْسَى. قَالَ: حَدَّثَنَا هَاشِمُ بْنُ هَاشِمٍ عَنْ عَبْدِ اللَّهِ بْنِ نِسْطَاسٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ حَلَفَ بَيْنَيْنِ آئِمَةٍ، عِنْدَ مِثْرِي هَذَا، فَلْيَتَّبِعُوا مَقْعَدَهُ مِنَ النَّارِ. وَلَوْ عَلَيَّ سِوَاكَ أَخْضَرَ».

تخریج: [إسناده صحيح] أخرجه أبو داود، الأيمان والندور، باب ماجاء في تعظيم اليمين عند منبر النبي ﷺ، ح: ٣٢٤٦ من حديث هاشم به، وضححه ابن حبان (موارد)، ح: ١١٩٢، وابن الجارود، ح: ٩٢٧، والحاكم: ٢٩٦/٤، ١٩٧، والذهبي، وله شواهد كثيرة.

#### Comments:

- Taking an oath and demanding an oath is allowed for solving mutual disputes and differences, providing the oath is true, and the sin is only involved if the oath is false.
- Committing an offence or sin at an honored and holy place, is worse in gravity than doing so at an ordinary place, and the punishment for it will be more severe.
- The place in the mosque around the pulpit is more respected and regarded holier. The Prophet ﷺ said: "Between my house (the room of 'Aishah ؓ) and my pulpit is a garden from the Gardens of Paradise." [*Sahih Al-Bukhâri* (1195) and *Sahih Muslim* (1390)]

2326. Muhammad bin Yahya, who is Abu Yunus Al-Qawi, said: I heard Abu Salamah say: I heard Abu Hurairah say: "The Messenger of Allâh ﷺ said: 'No man or woman swears a false oath beside this pulpit, even if it is for a fresh twig, but he will be

٢٣٢٦ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَ زَيْدُ ابْنُ أَحْزَمٍ. قَالَ: حَدَّثَنَا الضَّحَّاكُ بْنُ مَخْلَدٍ: حَدَّثَنَا الْحَسَنُ بْنُ زَيْدِ بْنِ قُرُوحٍ؛ قَالَ مُحَمَّدُ ابْنُ يَحْيَى: وَهُوَ أَبُو يُونُسَ الْقَوِيُّ، قَالَ: سَمِعْتُ أَبَا سَلَمَةَ يَقُولُ: سَمِعْتُ أَبَا هُرَيْرَةَ

doomed to Hell.'” (Sahih)

يَقُولُ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَحْلِفُ عِنْدَ هَذَا الْمَنْبَرِ عَبْدٌ، وَلَا أُمَّةٌ، عَلَى يَمِينِ أُمَّةٍ، وَلَوْ عَلَى سِوَاكَ رَطْبٍ، إِلَّا وَجِبَتْ لَهُ النَّارُ».

تخريج: [إسناده صحيح] أخرجه أحمد: ٥١٨، ٣٢٩/٢ عن الضحاك به، وصححه البوصيري، والمنذري في الترغيب والترهيب: ٦٢٥/٢، والحاكم: ٢٩٧/٤ على شرط الشيخين، وقال الذهبي: صحيح.

### Chapter 10. What The People Of The Book Should Be Asked To Swear By

(المعجم ١٠) - بَابُ بِمَا يُسْتَحْلَفُ أَهْلُ الْكِتَابِ (التحفة ١٠)

2327. It was narrated from Barâ' bin 'Âzib that the Messenger of Allâh ﷺ called one of the Jewish scholars and said: "Swear by the One Who sent the Torah (Tawrâh) down to Musa." (Sahih)

٢٣٢٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ عَنِ الْأَعْمَشِ، عَنْ عَبْدِ اللَّهِ بْنِ مُرَّةَ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ أَنَّ رَسُولَ اللَّهِ ﷺ دَعَا رَجُلًا مِنْ عُلَمَاءِ الْيَهُودِ. فَقَالَ: «أَتَشُدُّكَ بِالَّذِي أَنْزَلَ التَّوْرَةَ عَلَى مُوسَى».

تخريج: أخرجه مسلم، الحدود، باب رجم اليهود، أهل الذمة في الزنى، ح: ١٧٠٠ من حديث أبي معاوية به، وانظر، ح: ٢٥٥٨.

2328. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ said to two Jews: "Swear by Allâh Who sent the Tawrâh down to Musa, peace be upon him." (Da'if)

٢٣٢٨ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو أُسَامَةَ عَنْ مُجَالِدٍ: أَنَّ بَنِي عَازِبٍ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ لِيَهُودِيَيْنِ: «تَشُدُّنَا بِاللَّهِ الَّذِي أَنْزَلَ التَّوْرَةَ عَلَى مُوسَى عَلَيْهِ السَّلَامُ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، الحدود، باب: في رجم اليهوديين، ح: ٤٤٥٢ من حديث أبي أسامة به، وانظر، ح: ١١ لعلته.

### Comments:

- The false oath is also forbidden in the religion of Jews and Christians. Therefore they can be asked to take an oath when needed.
- The non-Muslims should also be asked to swear only by Allâh ﷻ.
- The Jews respect the Torah and claim to have faith in it; the oath can be demanded from them according to their faith, but by using only such words that are not contrary to Islamic faith.

### Chapter 11. When Two Men Claim Some Goods And Neither Of Them Has Any Proof

**2329.** It was narrated from Abu Hurairah that he said that two men laid claim to an animal, and neither of them had any proof, so the Prophet ﷺ commanded them to cast lots as to which of them should swear an oath. (*Da'if*)

(المعجم ١١) - بَابُ: الرَّجُلَانِ يَدْعِيَانِ  
السَّلْعَةَ وَلَيْسَ بَيْنَهُمَا بَيِّنَةٌ (التحفة ١١)

٢٣٢٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا سَعِيدُ بْنُ أَبِي عَرُوبَةَ عَنْ قَتَادَةَ، عَنْ خِلَاسٍ، عَنْ أَبِي رَافِعٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّهُ ذَكَرَ أَنَّ رَجُلَيْنِ ادَّعِيَا دَابَّةً. وَلَمْ يَكُنْ بَيْنَهُمَا بَيِّنَةٌ. فَأَمَرَهُمَا النَّبِيُّ ﷺ أَنْ يَسْتَهِمَا عَلَى التَّمِيمِ.

**تخریج:** [إسناده ضعيف] أخرجه أبو داود، الأفضية، باب الرجلين يدعيان شيئاً وليس بينهما بيينة، ح: ٣٦١٦ من حديث سعيد به، انظر، ح: ٤٢٩، ١٧٥ لعلته.

#### Comments:

- Islamic law stipulates that the claimant should bring forward the witnesses, otherwise the defendant will take an oath.
- In the mentioned form in the *Hadith*, both parties are plaintiffs as well as defendants. Both parties have the right to swear in a situation like this. Therefore drawing lots will decide who should swear.

**2330.** It was narrated from Abu Musa that two men referred a dispute to the Messenger of Allāh ﷺ concerning an animal, and neither of them had proof, so he ruled that it should be divided in half. (*Hasan*)

٢٣٣٠ - حَدَّثَنَا إِسْحَاقُ بْنُ مَثُورٍ، وَ مُحَمَّدُ بْنُ مَعْمَرٍ، وَ زُهَيْرُ بْنُ مُحَمَّدٍ. قَالُوا: حَدَّثَنَا رَوْحُ بْنُ عُبَادَةَ: حَدَّثَنَا [سَعِيدٌ] عَنْ قَتَادَةَ، عَنْ سَعِيدِ بْنِ أَبِي بُرْدَةَ، عَنْ أَبِيهِ، عَنْ أَبِي مُوسَى أَنَّ رَسُولَ اللَّهِ ﷺ اخْتَصَمَ إِلَيْهِ رَجُلَانِ، بَيْنَهُمَا دَابَّةٌ. وَلَيْسَ لِيُؤاحِدٍ مِنْهُمَا بَيِّنَةٌ، فَجَعَلَهَا بَيْنَهُمَا نِصْفَيْنِ.

**تخریج:** [حسن] أخرجه أبو داود، الأفضية، باب الرجلين يدعيان شيئاً وليس بينهما بيينة، ح: ٣٦١٣ من حديث قتادة به، رواه شيبه عن قتادة به (السنن الكبرى للبيهقي: ٢٥٧/١٠، والمسند المطبوع للإمام أحمد: ٤/٤٠٢)، وله شواهد كثيرة جداً.

### Chapter 12. A Person Who Has Something Stolen, And He Finds It In The Possession Of A Man Who Bought It

2331. It was narrated from Samurah bin Jundub that the Messenger of Allāh ﷺ said: "If a man loses something, or it is stolen from him, and he finds it in the possession of a man who bought it, then he has more right to it, and the one who bought it should ask for his money back from the one who sold it to him." (Da'if)

(المعجم ١٢) - بَابُ مَنْ سُرِقَ لَهُ شَيْءٌ، فَوَجَدَهُ فِي يَدِ رَجُلٍ، اشْتَرَاهُ (التحفة ١٢)

٢٣٣١ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا أَبُو مُعَاوِيَةَ: حَدَّثَنَا حَجَّاجٌ عَنْ سَعِيدِ بْنِ عُبَيْدِ بْنِ زَيْدِ بْنِ عُمَيْبَةَ، عَنْ أَبِيهِ، عَنْ سَمُرَةَ بْنِ جُنْدُبٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا ضَاعَ لِلرَّجُلِ مَتَاعٌ، أَوْ سُرِقَ لَهُ مَتَاعٌ، فَوَجَدَهُ فِي يَدِ رَجُلٍ يَبِيعُهُ، فَهُوَ أَحَقُّ بِهِ. وَيرْجِعُ الْمُشْتَرِي عَلَى الْبَائِعِ بِالثَّمَنِ».

تخریج: [إسناده ضعيف] أخرجه البيهقي: ٥١/٦ من حديث أبي معاوية ثنا الحجاج بن أروطة به، وضعفه البوصيري، وانظر، ح: ٤٩٦، ١١٢٩ لعلته.

### Chapter 13. Ruling On Property Damaged By Livestock

2332. It was narrated from Ibn Shihâb that Ibn Muhayyisah Al-Ansârî told him that a she-camel belonging to Barâ' used to wander free. It entered a garden belonging to some people and caused some damage. The Messenger of Allāh ﷺ was told of that, and he ruled that property was to be protected by its owners during the day, but the owners of livestock were responsible for any damage caused by their animals during the night. (Da'if)

Another chain from Harâm bin Muhayyisah, from Barâ' bin 'Âzib, that a she-camel belonging to the family of Barâ' damaged

(المعجم ١٣) - بَابُ الْحُكْمِ فِيمَا أَفْسَدَتِ الْمَوَاشِي (التحفة ١٣)

٢٣٣٢ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ الْبُصَيْرِيُّ: أَنَّ أَبَا النَّبِثِ بْنِ سَعْدٍ، عَنْ ابْنِ شِهَابٍ أَنَّ ابْنَ مُحَيِّصَةَ الْأَنْصَارِيِّ أَخْبَرَهُ أَنَّ نَاقَةَ الْبَرَاءِ، كَانَتْ ضَارِيَةً، دَخَلَتْ فِي حَائِطِ قَوْمٍ. فَأَفْسَدَتْ فِيهَا. فَكَلَّمَ رَسُولُ اللَّهِ ﷺ فِيهَا. فَقَضَى أَنَّ حِفْظَ الْأَمْوَالِ عَلَى أَهْلِهَا بِالنَّهَارِ. وَعَلَى أَهْلِ الْمَوَاشِي مَا أَصَابَتْ مَوَاشِيَهُمْ بِاللَّيْلِ.

حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ بْنِ عَفَّانَ: حَدَّثَنَا مُعَاوِيَةُ بْنُ هِشَامٍ، عَنْ سُفْيَانَ، عَنْ عَبْدِ اللَّهِ ابْنِ عِيسَى، عَنْ الزُّهْرِيِّ، عَنْ حَرَامِ بْنِ مُحَيِّصَةَ، عَنِ الْبَرَاءِ بْنِ عَازِبٍ أَنَّ نَاقَةَ لِالِ

something, and the Messenger of Allāh ﷺ issued a similar ruling.

الْبِرَاءِ أَفْسَدَتْ شَيْئًا. فَقَضَى رَسُولُ اللَّهِ ﷺ،  
بِوَالِيهِ.

تخریج: [إسناده ضعيف] أخرجه أبو داود، البيهقي، باب المواشي تفسد زرع قوم، ح: ٣٥٧٠ من حديث ابن شهاب الزهري به \* الأوزاعي تابعه مالك (الموطأ: ٢/٧٤٧، ٧٤٨) وغيره، ولم أجد تصريح سماع الزهري، وانظر، ح: ٧٠٧.

**Comments:**

The night is for rest, and during the night the animals are kept in enclosures. Therefore, if an animal enters into the field or garden of someone during night, it will be the negligence and fault of the owner of the animal. So he will be responsible to pay for the damage. Contrary to the night, if any damage is done during the day, it will be the fault of the owner of the garden or of the farmer; and the owner of the animal will not be responsible.

**Chapter 14. Ruling Concerning One Who Breaks Something**

(المعجم ١٤) - بَابُ الْحُكْمِ فِيْمَنْ كَسَرَ شَيْئًا (التحفة ١٤)

2333. It was narrated that a man from Banu Suwā'ah said: "I said to 'Āishah: "Tell me about the character of the Messenger of Allāh ﷺ." She said: 'Have you not read the Qur'ān: "And verily, you (O Muhammad) are on an exalted (standard of) character?"<sup>[1]</sup> She said: "The Messenger of Allāh ﷺ was with his Companions, and I made some food for him, and Hafsa made some food for him, but Hafsa got there before me. So I said to the slave girl: "Overturn her bowl." She went and caught up with her, and she was about to put (the bowl) in front of the Messenger of Allāh ﷺ. She overturned it and the bowl broke, scattering the food. The Messenger of Allāh ﷺ

٢٣٣٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَرِيكُ بْنُ عَبْدِ اللَّهِ عَنْ قَيْسِ بْنِ وَهْبٍ، عَنْ رَجُلٍ مِنْ بَنِي سُؤَاةَ قَالَ: قُلْتُ لِعَائِشَةَ: أَخْبِرِينِي عَنْ خُلُقِ رَسُولِ اللَّهِ ﷺ. قَالَتْ: أَوْ مَا تَقْرَأُ الْقُرْآنَ: ﴿وَإِنَّكَ لَعَلَى خُلُقٍ عَظِيمٍ﴾؟ [القلم: ٤] قَالَتْ: كَانَ رَسُولُ اللَّهِ ﷺ مَعَ أَصْحَابِهِ. فَصَنَعْتُ لَهُ طَعَامًا. وَصَنَعْتُ لَهُ حَفْصَةً طَعَامًا. قَالَتْ: فَسَبَقْتَنِي حَفْصَةً. فَقُلْتُ لِلْجَارِيَةِ: انْطَلِقِي فَأَكْثِي قَضَعْتَهَا. فَاحْتَقَتْهَا وَقَدْ هَمَّتْ أَنْ تَضَعَ بَيْنَ يَدَيْ رَسُولِ اللَّهِ ﷺ فَأَكْفَأْتَهَا فَانْكَسَرَتِ الْقَضَعَةُ، وَانْتَشَرَ الطَّعَامُ. قَالَتْ: فَجَمَعَهَا رَسُولُ اللَّهِ ﷺ وَمَا فِيهَا مِنْ الطَّعَامِ عَلَى النَّطْعِ. فَأَكَلُوا. ثُمَّ بَعَثَ بِقَضَعَتِي. فَدَفَعَهَا إِلَيَّ حَفْصَةً. فَقَالَ:

[1] Al-Qalam 68:4.

gathered the pieces and the food on the leather mat, and they ate. Then he sent for my bowl and gave it to Hafsa, and said: "Take this pot in place of your pot, and eat what is in it." And I did not see any expression of anger on the face of the Messenger of Allāh ﷺ." (Da'if)

«خُذُوا ظَرْفًا مَكَانَ ظَرْفِكُمْ وَكُلُوا مَا فِيهَا»  
قَالَتْ: فَمَا رَأَيْتُ ذَلِكَ فِي وَجْهِ رَسُولِ اللَّهِ ﷺ.

تخريج: [إسناده ضعيف] أخرجه ابن أبي شيبة . شيخ المصنّف . في المصنّف: ١٤/ ٢١٤، ٢١٥ به، وضعفه البوصيري: لجهالة رجل من بني سؤاة .

2334. It was narrated that Anas bin Mālik said: "The Prophet ﷺ was with one of the Mothers of the Believers (his wives) and another (wife) sent a bowl containing food. She (the first wife) struck the hand of the Messenger and the bowl fell and broke. The Messenger of Allāh ﷺ took the two pieces and put them back together, then he started gathering up the food and putting it in (the bowl). He said: 'Your mother was jealous. Eat.' So they ate, and she (the wife who broke the bowl) brought the bowl that was in her house and gave the intact bowl to the Messenger, who left the broken bowl in the house of the one who broke it." (Sahih)

٢٣٣٤ - حَدَّثَنَا مُحَمَّدُ بْنُ الْمُثَنَّى: حَدَّثَنَا خَالِدُ بْنُ الْحَارِثِ: حَدَّثَنَا حَمِيدٌ عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ: كَانَ النَّبِيُّ ﷺ عِنْدَ إِحْدَى أُمَّهَاتِ الْمُؤْمِنِينَ. فَأَرْسَلَتْ أُخْرَى بِقِضْعَةٍ فِيهَا طَعَامٌ. فَضْرَبَتْ يَدَ الرَّسُولِ. فَسَقَطَتِ الْقِضْعَةُ فَأَنْكَسَرَتْ. فَأَخَذَ رَسُولُ اللَّهِ ﷺ الْكِسْرَتَيْنِ فَضَمَّ إِحْدَاهُمَا إِلَى الْأُخْرَى. فَجَعَلَ يَجْمَعُ فِيهَا الطَّعَامَ وَيَقُولُ: «عَارَتْ أُمُّكُمْ. كُلُوا» فَأَكَلُوا. حَتَّى جَاءَتْ بِقِضْعَتِهَا، الَّتِي فِي بَيْتِهَا. فَدَفَعَ الْقِضْعَةَ الصَّحِيحَةَ إِلَى الرَّسُولِ، وَتَرَكَ الْمَكْسُورَةَ فِي بَيْتِ الَّتِي كَسَرَتْهَا.

تخريج: [إسناده صحيح] أخرجه أبو داود، البيهقي، باب: فيمن أفسد شيئاً يغرّم مثله، ح: ٣٥٦٧، والنسائي، ح: ٣٤٠٧ عن محمد بن المثنى به، وأخرجه البخاري، والترمذي وغيرهما من طرق عن حميد به، وقال الترمذي، ح: ١٣٥٩ حسن صحيح ، وتابعه ثابت البناني عن أنس به (قط: ٤/ ١٥٣).



### Chapter 15. A Man Fixing Wood To The Wall Of His Neighbor

(المعجم ١٥) - بَابُ الرَّجُلِ يَضَعُ خَشْبَةً عَلَى جِدَارِ جَارِهِ (التحفة ١٥)

2335. It was narrated that 'Abdur-Rahmân Al-A'raj said: "I heard Abu Hurairah narrating that the Prophet ﷺ said: 'When anyone of you asks his neighbor for permission to fix a piece of wood to his wall, he should not refuse him.' When Abu Hurairah told them this, they lowered their heads, and when he saw them he said: 'Why do I see you turning away from it? By Allâh, I will force you to accept it.'" (Sahih)

٢٣٣٥ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، وَ مُحَمَّدُ ابْنُ الصَّبَّاحِ. قَالَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عَبْدِ الرَّحْمَنِ الْأَعْرَجِ قَالَ: سَمِعْتُ أَبَا هُرَيْرَةَ، يُبَلِّغُ بِهِ النَّبِيَّ ﷺ، قَالَ: «إِذَا اسْتَأْذَنَ أَحَدُكُمْ جَارَهُ أَنْ يَغْرِزَ خَشْبَةً فِي جِدَارِهِ فَلَا يَمْنَعُهُ» فَلَمَّا حَدَّثَهُمْ أَبُو هُرَيْرَةَ طَأَطَأُوا رُؤُوسَهُمْ. فَلَمَّا رَأَاهُمْ قَالَ: مَا لِي أَرَأَيْكُمْ عَنْهَا مُعْرِضِينَ. وَاللَّهِ لَأُزَيِّنَنَّ بِهَا بَيْنَ أَكْتَابِكُمْ.

تخریج: أخرجه البخاري، المظالم، باب لا يمنع جار جاره أن يغرز خشبة في جداره، ح: ٢٤٦٣ من حديث الزهري به، ومسلم، المساقاة، باب غرز الخشبة في جدار الجار، ح: ١٦٠٩ من حديث سفیان بن عیینة به.

#### Comments:

- Thrusting wood into the wall means, either to fix a peg, or to place a beam etc., on the wall to put a roof on it.
- Linguistically the Arabic text translates as: 'Keep hitting it on the shoulders' and it means whether you like it or not I shall keep telling you the rule of *Shari'ah* and you will have to act upon it.

2336. 'Ikrimah bin Salamah narrated that there were two brothers from among the sons of Mughirah. One of them swore an oath to set a slave free if the other one fixed a piece of wood to his wall. Mujammi' bin Yazid and many men from among the *Ansâr* came and said: "We bear witness that the Messenger of Allâh ﷺ said: 'None of you should refuse to let his neighbor fix a piece of wood to his wall.'" He said: 'O my brother, judgment has been

٢٣٣٦ - حَدَّثَنَا أَبُو بَشِيرٍ، بِكُرِّ بْنِ خَلْفٍ: حَدَّثَنَا أَبُو عَاصِمٍ، عَنِ ابْنِ جُرَيْجٍ، عَنِ عَمْرِو بْنِ دِينَارٍ أَنَّ هِشَامَ بْنَ يَحْيَى أَخْبَرَهُ أَنَّ عِكْرِمَةَ ابْنَ سَلَمَةَ أَخْبَرَهُ أَنَّ أَخْوَيْنَ مِنْ بَلْمُغِيْرَةَ أَعْتَقَ أَحَدَهُمَا أَنْ لَا يَغْرِزَ خَشْبًا فِي جِدَارِهِ. فَأَقْبَلَ مُجَمِّعُ بْنُ يَزِيدَ وَرَجَالَ كَثِيرٌ مِنَ الْأَنْصَارِ. فَقَالُوا: نَشْهَدُ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَمْنَعُ أَحَدُكُمْ جَارَهُ أَنْ يَغْرِزَ خَشْبَةً فِي جِدَارِهِ» فَقَالَ: يَا أَخِي إِنَّكَ مَقْضِيٌّ

passed in your favor against me, but I have sworn an oath.' So go ahead and fix your wood to my wall."

لَكَ عَلَيَّ. وَقَدْ حَلَفْتُ. فَاجْعَلْ أُسْطُوَانًا دُونَ حَائِطِي أَوْ جِدَارِي. فَاجْعَلْ عَلَيْهِ خَشَبَكَ.

**تخريج:** [إسناده ضعيف] أخرجه أحمد: ٤٧٩/٣، ٤٨٠ من حديث ابن جريج (أخبرني عمرو ابن دينار) به \* عكرمة بن سلمة مجهول (تقريب)، وفيه علة أخرى، وأصل الحديث صحيح، انظر الحديث السابق.

**Comments:**

- a. Taking a conditional oath about one's own thing is permissible; for example: "If I do such and such work then my slave is free."
- b. The Companions and the *Tābi'in* (the successors) would end their dispute by listening to a *Hadith*, and would act in the light of *Hadith*; even if the decision was against them.
- c. One who has taken an oath, should not be forced to break it, but rather encouraged to fulfill it.

**2337.** It was narrated from Ibn 'Abbās that the Prophet ﷺ said: "No one of you should refuse to let his neighbor fix a piece of wood to his wall." (*Sahih*)

٢٣٣٧ - حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ: أَخْبَرَنِي ابْنُ لَهِيْعَةَ، عَنْ أَبِي الْأَسْوَدِ، عَنْ عِكْرَمَةَ، عَنْ ابْنِ عَبَّاسٍ أَنَّ النَّبِيَّ ﷺ قَالَ: «لَا يَمْنَعُ أَحَدَكُمْ جَارُهُ أَنْ يَغْرِزَ خَشَبَةً عَلَى جِدَارِهِ».

**تخريج:** [صحيح] أخرجه أحمد: ٢٥٥/١ من حديث ابن لهيعة به، ولم أجد تصريح سماعه، وضعفه البوصيري، ولكن رواه أيوب وغيره عن عكرمة به، وله شواهد عند البخاري وغيره.

**Chapter 16. When There Is A Dispute As To How Wide A Road Or Path Should Be**

(المعجم ١٦) - بَابُ: إِذَا تَشَاجَرُوا فِي قَدْرِ الطَّرِيقِ (التحفة ١٦)

**2338.** It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Make the path seven forearms length wide." (*Sahih*)

٢٣٣٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكَيْعٌ: حَدَّثَنَا مَتَّى بْنُ سَعِيدٍ الضُّبَيْعِيُّ عَنْ قَتَادَةَ عَنْ بُشَيْرِ بْنِ كَعْبٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «اجْعَلُوا الطَّرِيقَ سَبْعَةَ أَدْرَعٍ».

**تخريج:** [صحيح] أخرجه أبو داود، القضاء، باب: في القضاء، ح: ٣٦٣٣ من حديث المثني به، وصححه الترمذي، ح: ١٣٥٦، وابن الجارود، ح: ١٠١٨، ولم أجد تصريح سماع

قتادة، ح: ١٧٥، وله شواهد عند مسلم، ح: ١٦١٣ وغيره.

**2339.** It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "When you dispute concerning a path, make it seven forearms length wide." (*Sahih*)

٢٣٣٩ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى، وَ مُحَمَّدُ ابْنُ عُمَرَ بْنِ هِيَاجٍ. قَالَ: حَدَّثَنَا قَيْصَةُ: حَدَّثَنَا سُفْيَانُ عَنْ سِمَاكِ، عَنْ عِكْرِمَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا اخْتَلَفْتُمْ فِي الطَّرِيقِ فَاجْعَلُوهُ سَبْعَةَ أَدْرُعٍ».

تخريج: [صحيح] أخرجه أحمد: ٢٣٥/١ من حديث سفيان الثوري به، وتابعه شريك النخعي مع عننته، وصححه البوصيري وانظر، ح: ١٧١ لعلته، وللحديث شواهد عند مسلم، ح: ١٦١٣ وغيره.

**Comments:**

- a. A forearm's length means the length from finger tips to the elbow, which is equal to one and half foot. The measure of seven forearms is equal to three yards or ten and half a feet.
- b. The current era is of cars, buses, trucks and other vehicles; therefore a suitable width of streets, roads and footpaths should be designed. At the time of drawing architectural plans for new settlements, the width of streets and roads must not be less than that mentioned in the *Hadith*.

**Chapter 17. One Who Builds Something On His Own Property That Harms His Neighbor**

(المعجم ١٧) - بَابُ مَنْ بَنَى فِي حَقِّهِ مَا يَضُرُّ بَجَارِهِ (التحفة ١٧)

**2340.** It was narrated from 'Ubâdah bin Sâmit that the Messenger of Allâh ﷺ ruled: "There should be neither harming nor reciprocating harm." (*Da'if*)

٢٣٤٠ - حَدَّثَنَا عَبْدُ رَبِّهِ بْنُ خَالِدٍ النَّمَيْرِيُّ، أَبُو الْمُعَلِّسِ: حَدَّثَنَا فَضِيلُ بْنُ سُلَيْمَانَ: حَدَّثَنَا مُوسَى بْنُ عُقْبَةَ: حَدَّثَنَا إِسْحَاقُ بْنُ يَحْيَى بْنِ الْوَلِيدِ، عَنْ عَبَادَةَ بْنِ الصَّامِتِ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى أَنْ: «لَا ضَرَرَ وَلَا ضِرَارًا».

تخريج: [ضعيف] أخرجه عبدالله بن أحمد في زوائد المسند: ٣٢٧/٥ من حديث فضيل به، وانظر، ح: ٢٢١٣ لعلته، وله شواهد كثيرة جداً، ولم يصح منها شيء.

**Comments:**

- a. If someone tries to cause loss, hurt or annoyance, it is incorrect to retaliate with loss and annoyance, rather the arbitration of the wise and elderly, the council of arbitrators, or a religious court should be used as sources to fulfill

true rights, and to stop the person from making trouble.

- b. Many such issues that appeared after the noble Prophet ﷺ should be resolved in the light of these rules; if something causes loss to an individual, or it is a collective loss, or the public gets hurt, then this must be eliminated.

**2341.** It was narrated from Ibn 'Abbâs that the Messenger of Allâh ﷺ said: "There should be neither harming nor reciprocating harm." (*Da'if*)

٢٣٤١ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَنبَأَنَا مَعْمَرٌ عَنْ جَابِرِ الْجُعْفِيِّ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا ضَرَرَ وَلَا إِضْرَارَ».

تخريج: [إسناده ضعيف جداً] أخرجه أحمد: ٣١٣/١ عن عبدالرزاق به، وانظر، ح: ٣٥٦: علمته، وانظر الحديث السابق.

**2342.** It was narrated from Abu Sirmah that the Messenger of Allâh ﷺ said: "Whoever harms others, Allâh will harm him; and whoever causes hardship to others Allâh will cause hardship to him." (*Da'if*)

٢٣٤٢ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنبَأَنَا اللَّيْثُ ابْنُ سَعْدٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ مُحَمَّدِ ابْنِ يَحْيَى بْنِ حَبَّانَ، عَنْ لَوْلُؤَةَ، عَنْ أَبِي صِرْمَةَ، عَنْ رَسُولِ اللَّهِ ﷺ قَالَ: «مَنْ ضَارَّ أَضْرَّ اللَّهُ بِهِ، وَمَنْ شَاقَّ شَقَّ اللَّهُ عَلَيْهِ».

تخريج: [إسناده ضعيف] أخرجه أبو داود، القضاء، باب: في القضاء، ح: ٣٦٣٥ من حديث الليث به، وحسنه الترمذي، ح: ١٩٤٠ \* لؤلؤة مولاة الأنصار وثقتها الترمذي، والهيثمي في المجموع: ١٠/١٧٨، ولحديثها شواهد كثيرة.

### Comments:

- a. Muslims must care for each other's rest and peace, and must not try to hurt anyone.
- b. 'Allâh will cause hardship to him' also means He will punish him on Judgment Day and reckon him strictly. Another possible meaning is that he will get punishment for it in this life, and he will be swamped in difficulties from Allâh, and will bear losses.

## Chapter 18. Two Men Who Lay Claim To A Hut

**2343.** It was narrated from Nimrân bin Jâriyah, from his father, that some people referred a dispute to the Prophet ﷺ about a hut, so that he could judge between them. He sent Hudhaifah

(المعجم ١٨) - بَابُ: الرَّجُلَانِ يَدْعِيَانِ فِي حُصْنٍ (التحفة ١٨)

٢٣٤٣ - حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ، وَعَمَّارُ ابْنُ خَالِدٍ الْوَاسِطِيُّ. قَالَ: حَدَّثَنَا أَبُو بَكْرِ بْنُ عِيَّاشٍ، عَنْ دَهْتَمِ بْنِ قُرَّانٍ، عَنْ نِمْرَانَ بْنِ جَارِيَةَ، عَنْ أَبِيهِ أَنَّ قَوْمًا اخْتَصَمُوا إِلَى النَّبِيِّ

to judge between them, and he ruled in favor of those who had the rope (with which the hut was binded together). When he went back to the Prophet ﷺ he told him (what he had done) and he said: "You did the right thing, and you did well." (*Da'if*)

﴿ فِي حُصٍّ كَانَ بَيْنَهُمْ . فَبَعَثَ حُدَيْفَةَ يَقْضِي بَيْنَهُمْ . فَقَضَى لِلَّذِينَ لِيْلَهُمُ الْقِمَطُ . فَلَمَّا رَجَعَ إِلَى النَّبِيِّ ﷺ أَخْبَرَهُ فَقَالَ : « أَصَبْتَ وَأَحْسَنْتَ » .

تخريج: [إسناده ضعيف جدًا] أخرجه الطبراني في الكبير: ٢٦٠/٢ من حديث أبي بكر بن عياش به، وقال الدارقطني: ٢٢٨/٤ لم يروه غير دهثم بن قران وهو ضعيف وقد اختلف في إسناده، وقال الحافظ في الإصابة: ٢١٨/١، ت: ١٠٤٨ ولا يعرف له رواية إلا من طريق دهثم ودهثم ضعيف جدًا انتهى \* ونمران مجهول (تقريب)، وأبو بكر بن عياش ضعفه الجمهور، ولم يخرج عنه البخاري إلا متابعة.

**Comments:**

Shaikh Zuhair Shâ'waish said in the footnotes of *Da'if Ibn Mâjah*: 'Khuss is a hut made of reeds (a type of wild plant). The soft end of the reeds is on the same side of threads and strings. The leaves of the date tree and the skin are on the side of the owner and the hard and rough end is on the other side. This description tells that the claimant was wrong in claiming the ownership of the hut, because his beams were on the side of the hard and rough end.'

**Chapter 19. One Who Stipulates The Condition Of Khalâs<sup>[1]</sup>**

2344. It was narrated from ("Uqbah bin 'Âmir or) Samurah bin Jundub that the Messenger of Allâh ﷺ said: "If a product is sold to two men, it is for the one who was first."<sup>[2]</sup> (*Da'if*)

(One of the narrators) Abu Al-Walid said: "This *Hadith* shows that *Khalâs* is invalid."

(المعجم ١٩) - بَابُ مَنْ اشْتَرَطَ

الْخَلَاصَ (التحفة ١٩)

٢٣٤٤ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا أَبُو الْوَلِيدِ: حَدَّثَنَا هَمَّامٌ عَنْ قَتَادَةَ، عَنِ الْحَسَنِ، عَنْ سُمْرَةَ بْنِ جُنْدُبٍ، عَنِ النَّبِيِّ ﷺ قَالَ: « إِذَا بَاعَ الْبَيْعَ مِنْ رَجُلَيْنِ، فَالْبَيْعُ لِلأَوَّلِ » .

قَالَ أَبُو الْوَلِيدِ: فِي هَذَا الْحَدِيثِ إِبْطَالُ الْخَلَاصِ .

تخريج: [ضعيف] تقدم، ح: ٢١٩٠.

[1] *Khalâs*: A condition stipulating that the seller will deliver the product when it comes into his possession.  
 [2] "What was sold, or, for the first of the two purchasers." (Sindi). See no. 2190 where it preceded.

**Comments:**

The meaning of the *Hadith* is that if a person sells an item to someone; then the seller finds another customer who is willing to pay more, and asks the seller to take the item back somehow, and sell it to the new customer; this condition is wrong, as is the second transaction. Only the first sale is correct and legally lawful.

**Chapter 20. Passing Judgment By Casting Lots**

(المعجم ٢٠) - بَابُ الْقَضَاءِ بِالْقُرْعَةِ

(التحفة ٢٠)

**2345.** It was narrated from 'Imrân bin Husain that a man had six slaves, and he did not have any other wealth apart from them, and he set them free when he died. The Messenger of Allâh ﷺ divided them into groups, set two free and left four as slaves. (Sahih)

٢٣٤٥ - حَدَّثَنَا نَصْرُ بْنُ عَلِيٍّ الْجَهْضَمِيُّ، وَ مُحَمَّدُ بْنُ الْمُثَنَّى. قَالَ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا خَالِدُ الْحَدَّاءُ، عَنْ أَبِي قِلَابَةَ، عَنْ أَبِي الْمُهَلَّبِ، عَنْ عِمْرَانَ بْنِ حُصَيْنٍ أَنَّ رَجُلًا كَانَ لَهُ سِتَّةُ مَمْلُوكِينَ. لَيْسَ لَهُ مَالٌ غَيْرُهُمْ. فَأَعْتَقَهُمْ عِنْدَ مَوْتِهِ. فَجَزَّاهُمْ رَسُولُ اللَّهِ ﷺ. فَأَعْتَقَ اثْنَيْنِ وَأَرْقَى أَرْبَعَةً.

تخريج: أخرجه مسلم، الأيمان، باب من أعتق شركاً له في عبد، ح: ١٦٦٨ من حديث أبي

قِلَابَةَ به .

**Comments:**

- It is unlawful to give all of one's wealth in charity at the point of death. Just one third, maximum, of the whole inheritance may be given in charity; and donating less than one third is better. (See *Hadith*: 2708).
- This Companion set free all the slaves while he had the right to set free only two of them. Now every slave had the right to be counted among the two who were set free. It is known from the decision of the Prophet ﷺ, that when more than one claimant has an equal right of something, then the decision will be made by drawing lots.

**2346.** It was narrated from Abu Hurairah that two men disputed concerning a transaction, and neither of them had proof. The Messenger of Allâh ﷺ commanded them to draw lots as to which of them should swear an oath, whether they liked it or not. (Da'if)

٢٣٤٦ - حَدَّثَنَا جَمِيلُ بْنُ الْحَسَنِ الْعَتَكِيُّ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدٌ، عَنْ قَتَادَةَ، عَنْ خِلَاسِ، عَنْ أَبِي رَافِعٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَجُلَيْنِ تَدَارَعَا فِي بَيْعٍ. لَيْسَ لِوَاحِدٍ مِنْهُمَا بَيِّنَةٌ. فَأَمَرَهُمَا رَسُولُ اللَّهِ ﷺ أَنْ يَسْتَهَمَا عَلَى الْيَمِينِ. أَحَبَّأُ ذَلِكَ أَمْ كَرِهَهَا.

تخریج: [ضعیف] تقدم، ح: ۲۳۲۹.

**Comments:**

- When the claimant is unable to bring the witness or his witnesses are unacceptable, then the defendant will be asked to take an oath.
- Both parties can be the claimants in the case mentioned in the *Hadith*; and both can be considered defendants as well. Now who will be the defendant and take an oath will be judged by drawing lots.

**2347.** It was narrated from 'Aishah that when the Prophet ﷺ traveled, he would cast lots among his wives (to decide which one would accompany him). (*Sahih*)

۲۳۴۷ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَحْيَى بْنُ يَمَانَ، عَنْ مَعْمَرٍ، عَنِ الزُّهْرِيِّ عَنِ عُرْوَةَ، عَنْ عَائِشَةَ أَنَّ النَّبِيَّ ﷺ كَانَ إِذَا سَافَرَ أَقْرَعَ بَيْنَ نِسَائِهِ.

تخریج: [صحیح] تقدم، ح: ۱۹۷۰.

**Comments:**

Allāh granted special permission to the noble Prophet ﷺ, therefore, it was not compulsory for the Prophet ﷺ to appoint turns among his wives. (See *Al-Ahzāb* 33: 51), despite that, the Prophet ﷺ would fulfill justice with them. There is a lesson in it for the nation to take the utmost care of justice among wives and children.

**2348.** It was narrated that Zaid bin Arqam said: "A case was brought to 'Ali bin Abu Tālib when he was in Yemen, concerning three men who had had intercourse with a woman during one period of being free from menses. He asked two of them: "Do you affirm that this child belongs to (the third man)?" And they said: "No." He asked another two of them: "Do you affirm that this child belongs to (the third man)?" And they said: "No." Every time he asked two of them whether they affirmed that the child belonged to the third, they would say no. So he cast lots between them, and attributed the child to the one whose name was

۲۳۴۸ - حَدَّثَنَا إِسْحَاقُ بْنُ مَنْصُورٍ: أَنَّ أَبَا عَبْدِ الرَّزَّاقِ: أَنَّ أَبَا تَالِبٍ، عَنِ الشَّعْبِيِّ، عَنْ عَبْدِ خَيْرِ الْحَضْرَمِيِّ، عَنْ زَيْدِ بْنِ أَرْقَمٍ قَالَ: أُتِيَ عَلِيٌّ ابْنُ أَبِي طَالِبٍ، وَهُوَ بِالْيَمَنِ، فِي ثَلَاثَةِ [قَد] وَقَعُوا عَلَى امْرَأَةٍ فِي طَهْرٍ وَاحِدٍ. فَسَأَلَ اثْنَيْنِ. فَقَالَ: أَتَقْرَانِ لِهَذَا بِالْوَلَدِ؟ فَقَالَا: لَا. ثُمَّ سَأَلَ اثْنَيْنِ. فَقَالَ: أَتَقْرَانِ لِهَذَا بِالْوَلَدِ؟ فَقَالَا: لَا. فَجَعَلَ كُلَّمَا سَأَلَ اثْنَيْنِ: أَتَقْرَانِ لِهَذَا بِالْوَلَدِ؟ قَالَ: لَا. فَأَقْرَعَ بَيْنَهُمْ. وَالْحَقُّ الْوَلَدَ بِالَّذِي أَصَابَتْهُ الْقُرْعَةُ. وَجَعَلَ عَلَيْهِ ثُلْثِي اللَّدِيَةِ. فَذَكَرَ ذَلِكَ لِلنَّبِيِّ ﷺ فَصَحَّحَكَ حَتَّى بَدَتْ نَوَاجِدُهُ.

chosen in this manner, and obliged him to pay two thirds of the *Diyah*.<sup>[1]</sup> The Prophet ﷺ was told of this, and he smiled so broadly that his back teeth became visible. (*Da'if*)

تخريج: [إسناده ضعيف] أخرجه أبو داود، الطلاق، باب من قال بالقرعة إذا تنازعا في الولد، ح: ٢٧٧٠ من حديث عبدالرزاق به، وسنده ضعيف من أجل عننة الثوري، ح: ١٦٢، وله شواهد ضعيفة.

**Comments:**

- a. A free human cannot be sold at all; therefore, the human cannot be priced. But in case of a mistaken killing, etc., the blood money is fixed at one hundred camels. 'Ali ﷺ proved this amount as a price of the victim.
- b. If a case were to come about for which there is no exact and precise information in the Qur'ân and *Hadith*, then the decision should be made in the light of dedicated jurisprudence and analogy. But following the juristic and analogical opinion, in the presence of clear and precise wording of the *Shari'ah*, is unlawful.
- c. Although the habit of laughing a lot is disliked, if a matter of happiness or surprise occurs, then laughing for it is not contrary to the virtue of a scholar or an elderly person.

**Chapter 21. Those Who Detect A Family Likeness**

(المعجم ٢١) - بَابُ الْقَافَةِ (التحفة ٢١)

2349. It was narrated that 'Āishah said: "The Messenger of Allāh ﷺ came in one day looking happy, and said: 'O 'Āishah, did you not see that Mujazziz Al-Mudlijji entered upon me and saw Usāmah and Zaid. There was a blanket over them and their faces were covered but their feet were exposed, and he said: 'These feet belong to one another.'" (*Sahih*)

٢٣٤٩ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، وَهَشَامُ بْنُ عَمَّارٍ، وَمُحَمَّدُ بْنُ الصَّبَّاحِ. قَالُوا: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ قَالَتْ: دَخَلَ رَسُولُ اللَّهِ ﷺ ذَاتَ يَوْمٍ مَسْرُورًا وَهُوَ يَقُولُ: «يَا عَائِشَةُ! أَلَمْ تَرَيَّ أَنَّ مُجَزَّزًا الْمُدَلِجِيَّ دَخَلَ عَلَيَّ فَرَأَى أُسَامَةَ وَزَيْدًا، عَلَيْهِمَا قَطِيعَةٌ، فَدَخَلَ عَطِيًّا رُؤُوسَهُمَا وَقَدْ بَدَتْ أَقْدَامُهُمَا. فَقَالَ: إِنَّ هَذِهِ الْأَقْدَامَ، بَعْضُهَا مِنْ بَعْضٍ».

تخريج: أخرجه البخاري، الفرائض، باب القاتف، ح: ٦٧٧١ من حديث سفيان به، ومسلم،

<sup>[1]</sup> *Diyah*: blood money, in this case it refers to the value of the woman (who was a slave).



الرضاع، باب العمل بإلحاق القائف الولد، ح: ١٤٥٩ عن ابن أبي شيبه به.

### Comments:

- Qā'if* (physiognomist) is a person who is well versed in the science of physiognomy; physiognomy is an art of judging a man's nature. A person with the art of physiognomy reads the facial features and apparent physical characteristics and thus he judges the nature of things. Particularly, a physiognomist tries to express his view regarding the lineage relationship between two individuals. In these days some expert human trackers (modern: detectives) who, in search for thieves, are able to recognise a suspicious person with the help of their footprints; are also a kind of *physiognomists*.
- In the time of Ignorance (the pre-Islamic period), if the people had a dispute about who a child belonged to, then they would ask the physiognomist (*Qā'if*) to express his judgement with regard to the lineage of the child. This *Hadith* is a proof that their assistance still can be sought in these days. [I say: This *Hadith* is a fundamental rule for using modern detective devices and other trusted scientific and technical methods; like DNA, drug probes, fingerprints and other methods used to track criminals etc. Islam is a religion that deals with all types of problems, and Islam has always been modern, and a pioneer until the Day of Judgment. — *Usmani*]
- Zaid ؓ, who was the adopted son of the Prophet ﷺ, had a white complexion, but his son Usamah had a brown complexion; about which some of the hypocrites made inappropriate comments. When an Arab expert physiognomist said that these two individuals have the same family lineage, i.e., they are father and son; it uprooted the false propaganda of the hypocrites. So the Prophet ﷺ was very much pleased.

**2350.** It was narrated from Ibn 'Abbās that the Quraish went to a sorceress and they said to her: "Tell us whose footprints most resemble those of the owner of *Al-Maqām* (the station of Ibrāhim)." She said: "If you spread a piece of cloth over this soft earth and walk over it, I will tell you." So they spread out a piece of cloth and the people walked over it. She saw the footprints of the Messenger of Allāh ﷺ and said: "This one most closely resembles him among you." After that twenty years passed, or as long as

٢٣٥٠ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا مُحَمَّدُ بْنُ يُونُسَ: حَدَّثَنَا إِسْرَائِيلُ: حَدَّثَنَا سِمَاكُ بْنُ حَرْبٍ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ عَبَّاسٍ أَنَّ قُرَيْشًا أَتُوا امْرَأَةً كَاهِنَةً. فَقَالُوا لَهَا: أَخْبِرِينَا أَشْبَهْنَا أَمَّا بِصَاحِبِ الْمَقَامِ. فَقَالَتْ: إِنْ أَنْتُمْ جَرَرْتُمْ كِسَاءَ عَلَى هَذِهِ السَّهْلَةِ، ثُمَّ مَشَيْتُمْ عَلَيْهَا: أَنْبَأْتُكُمْ. قَالَ، فَجَرَرُوا كِسَاءً. ثُمَّ مَشَى النَّاسُ عَلَيْهَا. فَأَبْصَرَتْ أَثَرَ رَسُولِ اللَّهِ ﷺ. فَقَالَتْ: هَذَا أَقْرَبُكُمْ إِلَيْهِ سَبْهًا. ثُمَّ مَكَّنُوا بَعْدَ ذَلِكَ عَشْرِينَ سَنَةً، أَوْ مَا شَاءَ اللَّهُ، ثُمَّ بَعَثَ اللَّهُ

Allâh willed, then Allâh sent Muḥammad ﷺ (i.e., missioned him as the Prophet). (*Da'if*)

مُحَمَّدًا ﷺ.

تخریج: [إسناده ضعيف] أخرجه أحمد: ۱/۳۳۲ من حديث إسرائيل به، وانظر، ح: ۱۷۱ لعلته ومع ذلك قال البوصيري: هذا إسناد صحيح، رجاله ثقات .

## Chapter 22. Giving A Child The Choice Between His Parents

(المعجم ۲۲) - بَابُ تَخْيِيرِ الصَّبِيِّ بَيْنَ آبَوَيْهِ (التحفة ۲۲)

2351. It was narrated from Abu Hurairah that the Prophet ﷺ gave a child the choice between his father and his mother (i.e., which parent to live with). He said: "O boy, this is your mother and this is your father." (*Sahih*)

۲۳۵۱ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ زِيَادِ بْنِ سَعْدٍ، عَنْ هِلَالِ بْنِ أَبِي مَيْمُونَةَ، عَنْ أَبِي مَيْمُونَةَ، عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ ﷺ خَيَّرَ غُلَامًا بَيْنَ أَبِيهِ وَأُمِّهِ. وَقَالَ: «يَا غُلَامُ هَذِهِ أُمُّكَ وَهَذَا أَبُوكَ».

تخریج: [صحيح] أخرجه الترمذي، الأحكام، باب ماجاء في تختيار الغلام بين أبويه إذا افترقا، ح: ۱۳۵۷ من حديث سفيان به، وقال: حسن صحيح ، وأخرجه أبو داود، ح: ۲۲۷۷ من حديث ابن جريج أخبرني زياد به، وإسناده صحيح .

2352. It was narrated from 'Abdul-Hamid bin Salamah, from his father, from his grandfather, that his parents referred their dispute to the Prophet ﷺ, and one of them was a disbeliever while the other a Muslim. He gave him the choice and he turned towards the disbeliever. He (the Prophet ﷺ) said: "O Allâh, guide him," and he turned towards the Muslim, and he ruled that he should go with that parent. (*Hasan*)

۲۳۵۲ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا إِسْمَاعِيلُ بْنُ عُثَيْبَةَ، عَنْ عُثْمَانَ النَّبِيِّ، عَنْ عَبْدِ الْحَمِيدِ بْنِ سَلَمَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ آبُوهُ اخْتَصَمَا إِلَى النَّبِيِّ ﷺ. أَحَدُهُمَا كَافِرٌ وَالْآخَرُ مُسْلِمٌ. فَخَيَّرَهُ فَتَوَجَّهَ إِلَى الْكَافِرِ. فَقَالَ: «اللَّهُمَّ اهْدِهِ» فَتَوَجَّهَ إِلَى الْمُسْلِمِ. فَفَضَى لَهُ بِهِ.

تخریج: [حسن] أخرجه النسائي: ۶/۱۸۵، الطلاق، . إسلام أحد الزوجين وتخيير الولد، ح: ۳۵۲۵ من حديث عثمان البتي به، وقال البوصيري: هذا إسناد ضعيف، عبدالحميد وأبوه وجده لا يعرفون ، أخرجه أبو داود، ح: ۲۲۴۴ من حديث عبدالحميد بن جعفر(ابن عبدالله بن الحكم بن

رافع الأنصاري) عن أبيه عن جده رافع بن سنان به، وصححه الحاكم: ٢٠٦/٢، ٢٠٧، ووافقه الذهبي، وسنده صحيح إن ثبت سماع جعفر من جده لأمه رافع، والله أعلم.

#### Comments:

- If the husband or wife embraces Islam, and the other spouse persists in disbelief, then they will be separated; and the wife has the right to marry another man after passing the waiting period.
- If the wife waits for her husband to become a Muslim instead of marrying another man, they will be allowed to establish matrimonial relations again, whenever he embraces Islam, without a new marriage bond. (See *Hadith*: 2009)
- If a husband and wife get separated for some reason; maybe because of divorce or the cancellation of the marriage bond; in this case the child will be given the choice to go with whoever the child pleases. Or the judge will look at the circumstances, to determine who will be better for the child, and then will decide accordingly.

### Chapter 23. Reconciliation

(المعجم ٢٣) - بَابُ الصُّلْحِ (التحفة ٢٣)

2353. Kathir bin 'Abdullāh bin 'Amr bin 'Awf narrated from his father that his grandfather said: "I heard the Messenger of Allāh ﷺ say: 'Reconciling between Muslims is permissible, except reconciliation that forbids something that is allowed, or allows something that is forbidden.'" (*Sahih*)

٢٣٥٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حَالِدُ بْنُ مَخْلَدٍ: حَدَّثَنَا كَثِيرُ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ عَوْفٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ ﷺ يَقُولُ: «الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ. إِلَّا صُلْحًا حَرَّمَ حَلَالًا، أَوْ أَحَلَّ حَرَامًا».

تخریج: [صحيح] أخرجه الترمذي، الأحكام، باب ما ذكر عن رسول الله ﷺ في الصلح بين الناس، ح: ١٣٥٢ من حديث كثير به، وقال: حسن صحيح، وقال الذهبي في ميزان الاعتدال: ٤٠٧/٣، وأما الترمذي فروى من حديثه: الصلح جائز بين المسلمين وصححه، فلهاذا لا يعتمد العلماء على تصحيح الترمذي، وانظر، ح: ١٦٥ لعلته، ولكن كثيرا لم ينفرد به، أخرجه أبو داود، ح: ٣٥٩٤ من حديث الوليد بن رباح عن أبي هريرة به مثله، وإسناده حسن، وصححه ابن الجارود، ح: ٦٣٧، ٦٣٨، وابن حبان (موارد)، ح: ١١٩٩.

#### Comments:

- If there is a dispute among two individuals or two parties, the responsible people should not let it get worse; and they should try to make reconciliation as soon as possible.
- The reconciliation means that one of them accepts his right, maybe even less than the due, just for the sake of ending the dispute. It is a deed of enormous reward.

- c. Any condition which is contrary to the clear rules of the *Shari'ah* cannot be allowed; stipulating such a condition or acting upon it is prohibited.

### Chapter 24. Preventing One Who Will Mishandle His Wealth

**2354.** It was narrated from Anas bin Mâlik that there was a man at the time of the Messenger of Allâh ﷺ whose mental faculties were lacking, and he used to buy and sell. His family came to the Prophet ﷺ and said, "O Messenger of Allâh, stop him." So the Prophet ﷺ called him, and told him not to do that. He said: "O Messenger of Allâh, I cannot bear to be away from business." He said, "If you engage in a transaction, then say: 'Take it (i.e. the goods) and don't cheat (me).'"<sup>[1]</sup> (*Sahih*)

(المعجم ٢٤) - بَابُ الْحَجْرِ عَلَى مَنْ يُفْسِدُ مَالَهُ (التحفة ٢٤)

٢٣٥٤ - حَدَّثَنَا أَبُو زُرَّارٍ بْنُ مَرْوَانَ: حَدَّثَنَا عَبْدُ الْأَعْلَى: حَدَّثَنَا سَعِيدٌ عَنْ قَتَادَةَ، عَنْ أَنَسِ بْنِ مَالِكٍ أَنَّ رَجُلًا كَانَ فِي عَهْدِ رَسُولِ اللَّهِ ﷺ، فِي عَقْدَيْهِ ضَعْفٌ، وَكَانَ يَبِيعُ، وَأَنَّ أَهْلَهُ أَتَوْا النَّبِيَّ ﷺ فَقَالُوا: يَا رَسُولَ اللَّهِ! احْجُرْ عَلَيْهِ. فَدَعَاهُ النَّبِيُّ ﷺ. فَتَهَاةٌ عَنْ ذَلِكَ. فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي لَا أَصْبِرُ عَنِ الْبَيْعِ. فَقَالَ: «إِذَا بَايَعْتَ قُلْ: هَا. وَلَا خِلَابَةَ».

تخريج: [صحيح] أخرجه الترمذي، البيهقي، باب ماجاء في من يخدع في البيع، ح: ١٢٥٠ من حديث عبدالأعلى به، وقال: حسن صحيح غريب، وصححه ابن الجارود، ح: ٥٦٨، والحاكم: ١٠١/٤ على شرط الشيخين، ووافقه الذهبي، وانظر، ح: ١٧٥، ٤٢٩، لعلته، ولكن له شواهد عند البخاري، ومسلم وغيرهما، راجع الموطأ: ٦٨٥/٢ (وسنن أبي داود، ح: ٣٥٠٠، ٣٥٠١ نيل المقصود بتحقيقي).

#### Comments:

- 'And don't cheat' means if you deceive me in this transaction, and later I find out, then I have the right to cancel the transaction.
- Once he was hit in the head and his brain was affected, and that was the reason for him being deceived.
- The person who is mentally unstable can be banned from conducting business deals, and any transaction made by him may be annulled. After having been banned from doing so, whoever makes a business deal with him, will be responsible himself, because his relatives have the right to prove the deal, void.

<sup>[1]</sup> The Prophet ﷺ told him to do that so that people would realize that he was not very smart, so they would be kind to him and treat him fairly, as people at that time were like brothers, and cared for others more than they cared for themselves.

2355. It was narrated that Muhammad bin Yahya bin Habbân said: "My grandfather was Munqidh bin 'Amr. He was a man who had suffered a head wound and lost the power of speech, but that did not stop him from engaging in trade. He was always being cheated, so he went to the Prophet ﷺ and told him about that. He said to him: 'When you buy something, say: "There should be no intention of cheating," and for every product you buy, you have the choice for three nights. If you are pleased with it, keep it, and if you are displeased then return it.'"  
(*Hasan*)

٢٣٥٥ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا عَبْدُ الْأَعْلَى عَنْ مُحَمَّدِ بْنِ إِسْحَاقَ، عَنْ مُحَمَّدِ بْنِ يَحْيَى بْنِ حَبَانَ قَالَ: هُوَ جَدِّي مُنْقِدُ بْنُ عَمْرٍو. وَكَانَ رَجُلًا قَدْ أَصَابَتْهُ أَمَةٌ فِي رَأْسِهِ فَكَسَرَتْ لِسَانَهُ. وَكَانَ لَا يَدْعُ عَلَى ذَلِكَ التَّجَارَةَ. وَكَانَ لَا يِرَالُ يُعِينُ. فَأَتَى النَّبِيَّ ﷺ فَذَكَرَ ذَلِكَ لَهُ. فَقَالَ لَهُ: «إِذَا أَنْتَ بَايَعْتَ فَقُلْ: لَا خِلَابَةَ. ثُمَّ أَنْتَ فِي كُلِّ سَلْعَةٍ ابْتِغَتْهَا بِالْخِيَارِ ثَلَاثَ لَيَالٍ. فَإِنْ رَضِيتَ فَأَمْسِكْ، وَإِنْ سَخِطْتَ فَأَرُدُّهَا عَلَى صَاحِبِهَا».

تخریج: [حسن] أخرجه البخاري في التاريخ الكبير: ١٧/٨، ١٨ من حديث عبدالأعلى قال: نا محمد بن إسحاق قال حدثني محمد بن يحيى بن حبان به، وفي سماعه من جدة نظر، وللحديث شواهد كثيرة عند البخاري، ومسلم وغيرهما من غير تعين حبان بن منقذ أو عمرو بن رضی الله عنهما.

**Comments:**

A less wise person is allowed to buy and sell; however an officer appointed by the Islamic government has the authority to ban him from doing so.

**Chapter 25. Bankruptcy Of A Poor Man, And Selling His Assets To Pay Off His Creditors**

(المعجم ٢٥) - بَابُ تَفْلِيسِ الْمُعْجَمِ  
وَالْبَيْعِ عَلَيْهِ لِغُرْمَائِهِ (التحفة ٢٥)

2356. It was narrated that Abu Sa'eed Al-Khudri said: "At the time of the Messenger of Allâh ﷺ, a man suffered loss of some fruit that he had purchased, and his debts increased. The Messenger of Allâh ﷺ said: 'Give him charity.' So the people gave him charity, but that was not enough to pay

٢٣٥٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَيْبَةُ: حَدَّثَنَا اللَّيْثُ بْنُ سَعْدٍ عَنْ بُكَيْرِ بْنِ عَبْدِ اللَّهِ بْنِ الْأَشَّجِ، عَنْ عِيَّاضِ بْنِ عَبْدِ اللَّهِ ابْنِ سَعْدٍ، عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ قَالَ: أُصِيبَ رَجُلٌ فِي عَهْدِ رَسُولِ اللَّهِ ﷺ فِي نِمْارٍ ابْتِغَاهَا. فَكَثُرَ دَيْنُهُ. فَقَالَ رَسُولُ اللَّهِ ﷺ:

off his debts. The Messenger of Allāh ﷺ said: 'Take what you find, but you have no right to more than that,' meaning his creditors." (*Sahih*)

«تَصَدَّقُوا عَلَيَّ» فَتَصَدَّقَ النَّاسُ عَلَيْهِ. فَلَمْ يَبْلُغْ ذَلِكَ وَفَاءَ دَيْنِهِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «خُذُوا مَا وَجَدْتُمْ، وَلاَ لَكُمْ إِلاَّ ذَلِكَ» يَعْنِي الْغُرْمَاءَ.

تخریج: أخرجه مسلم، المساقاة، باب استحباب الوضع من الدين، ح: ۱۵۵۶ من حديث الليث به.

**Comments:**

- a. The person who has an enormous amount of debt due from him, and is unable to repay it, should be helped with charity, and he is also entitled to receive *Zakāt*.
- b. If the debt is huge, and the amount collected from the people is not enough to repay the debt, then whatever is available should be divided among the creditors according to the percentage of their debts; for example: if a debtor has an amount equal to half of the debt, then every creditor will receive half of his credit.
- c. When a possible amount has been repaid and the debtor has been declared bankrupt; thereafter, the creditors cannot demand more.

2357. It was narrated from Jābir bin 'Abdullāh that the Messenger of Allāh ﷺ rid Mu'ādh bin Jabal of his creditors, then he appointed him governor of Yemen. Mu'ādh said: "The Messenger of Allāh ﷺ settled my debts with my creditors using what wealth I had, then he appointed me as governor." (*Da'if*)

۲۳۵۷ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُسْلِمٍ بْنُ هُرْمُزٍ، عَنْ سَلَمَةَ الْمَكِّيِّ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ خَلَعَ مُعَاذَ بْنَ جَبَلٍ مِنْ غُرْمَائِهِ. ثُمَّ اسْتَعْمَلَهُ عَلَى الْيَمَنِ. فَقَالَ مُعَاذٌ: إِنَّ رَسُولَ اللَّهِ ﷺ اسْتَخْلَصَنِي بِمَالِي ثُمَّ اسْتَعْمَلَنِي.

تخریج: [إسناده ضعيف] \* عبدالله بن مسلم بن هرمز ضعيف كما في التقريب، وسلمة المكي قال البوصيري: لا يعرف حاله، وضعفه البوصيري.

**Chapter 26. One Who Finds His Exact Property With A Man Who Has Become Bankrupt**

(المعجم ۲۶) - بَابُ مَنْ وَجَدَ مَتَاعَهُ بِعَيْنِهِ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ (التحفة ۲۶)

2358. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Whoever finds his

۲۳۵۸ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ؛ ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ

exact property with a man who has become bankrupt, then he has more right to it than anyone else.” (Sahih)

رُوحٌ: أَبَانَا اللَّيْثُ بْنُ سَعْدٍ، جَمِيعًا عَنْ  
يَحْيَى بْنِ سَعِيدٍ، عَنْ أَبِي بَكْرٍ بْنِ مُحَمَّدٍ بْنِ  
عَمْرٍو بْنِ حَزْمٍ، عَنْ عُمَرَ بْنِ عَبْدِ الْعَزِيزِ،  
عَنْ أَبِي بَكْرٍ بْنِ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ  
هَشَامٍ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ  
ﷺ: «مَنْ وَجَدَ مَتَاعَهُ بِعَيْنِهِ عِنْدَ رَجُلٍ قَدْ  
أَفْلَسَ، فَهُوَ أَحَقُّ بِهِ مِنْ غَيْرِهِ».

تخريج: أخرجه البخاري، الاستقراض، باب: إذا وجد ماله عند مفلس في البيع والقرض والوديعة فهو أحق به، ح: ٢٤٠٢، ومسلم، المساقاة، باب من أدرك ما باعه عند المشتري، وقد أفلس، فله الرجوع إليه، ح: ١٥٥٩ من حديث يحيى بن سعيد به.

2359. It was narrated from Abu Hurairah that the Prophet ﷺ said: “Any man who sells a product, then he finds the exact product with the man who has become bankrupt, and he has not taken any of its price, it belongs to him, but if he had taken any of its price, then he is like any other creditor.” (Sahih)

٢٣٥٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا  
إِسْمَاعِيلُ بْنُ عِيَّاشٍ، عَنْ مُوسَى بْنِ عُقْبَةَ،  
عَنِ الزُّهْرِيِّ، عَنْ أَبِي بَكْرٍ بْنِ عَبْدِ الرَّحْمَنِ  
ابْنِ الْحَارِثِ بْنِ هِشَامٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّ  
النَّبِيَّ ﷺ قَالَ: «أَيُّمَا رَجُلٍ بَاعَ سِلْعَةً، فَأَدْرَكَ  
سِلْعَتَهُ بِعَيْنِهَا عِنْدَ رَجُلٍ، وَقَدْ أَفْلَسَ، وَلَمْ  
يَكُنْ قَبْضَ مِنْ ثَمَنِهَا شَيْئًا، فَهِيَ لَهُ. وَإِنْ كَانَ  
قَبْضَ مِنْ ثَمَنِهَا شَيْئًا، فَهُوَ أَسْوَأُ لِلْغَرَمَاءِ».

تخريج: [صحيح] انظر الحديث السابق \* إسماعيل بن عياش ضعيف، والحديث السابق شاهد له.

### Comments:

- If a person under such an enormous amount of debt, is unable to repay it; it is allowed to declare him bankrupt.
- Extra merchandise of the bankrupt person will be sold to repay the debt to the lenders.
- If an item belonging to a creditor is still present with the bankrupt (debtor); then this case has two aspects: A): If the bankrupt debtor did not pay anything towards the item at all, then the creditor will take the thing back; it will be considered as if nothing was sold and bought. B): If the bankrupt debtor has paid something, or the whole price for the item, then now it belongs to the debtor. Now when the households are shared by the creditors, if this thing falls into the share of the creditor, who was the real owner, then

this is fair enough, otherwise in whoever's share it falls, he will take it, and the creditor who initially owned it does not have any right upon it.

**2360.** It was narrated that Ibn Khaldah, who was a judge in Al-Madinah, said: We came to Abu Hurairah and asked him about a companion of ours who had become bankrupt. He said: "This is what the Prophet ﷺ ruled: 'Any man who dies or becomes bankrupt, the owner of the product has more right to it, if he finds the exact thing.' (Hasan)

٢٣٦٠ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُؤَذَّرِ الْجَزَائِيّ وَ عَبْدِ الرَّحْمَنِ بْنُ إِبْرَاهِيمَ الدَّمَشْقِيّ. قَالَ: حَدَّثَنَا أَبُو أَبِي فُدَيْكٍ، عَنِ ابْنِ أَبِي ذُئْبٍ، عَنْ أَبِي الْمُعْتَمِرِ بْنِ عَمْرٍو بْنِ رَافِعٍ، عَنِ ابْنِ خَلْدَةَ الزُّرَقِيِّ، وَكَانَ قَاضِيًا بِالْمَدِينَةِ قَالَ: جِئْنَا أَبَا هُرَيْرَةَ فِي صَاحِبٍ لَنَا قَدْ أَفْلَسَ. فَقَالَ: هَذَا الَّذِي قَضَى فِيهِ النَّبِيُّ ﷺ: «أَيُّمَا رَجُلٍ مَاتَ أَوْ أَفْلَسَ، فَصَاحِبُ الْمَتَاعِ أَحَقُّ بِمَتَاعِهِ. إِذَا وَجَدَهُ بِعَيْنِهِ».

تخريج: [إسناده حسن] أخرجه أبو داود، البيهقي، باب في الرجل يفلس فيجد الرجل متاعه بعينه عنده، ح: ٣٥٢٣ من حديث ابن أبي ذئب به، وصححه ابن الجارود، ح: ٦٣٤، والحاكم: ٥٠، والذهبي \* أبوالمعتمر لم يعرفه ابن عبد البر، ووثقه ابن حبان، وابن الجارود، والحاكم وغيرهم، فحديثه لا ينزل عن درجة الحسن.

**2361.** It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "Any man who dies and has the property of another man, whether he paid something towards it or not, (the owner of those goods) is like any other creditor." (Hasan)

٢٣٦١ - حَدَّثَنَا عَمْرُو بْنُ عُثْمَانَ بْنِ سَعِيدِ ابْنِ كَثِيرٍ بْنِ دِينَارِ الْجُمْصِيِّ: حَدَّثَنَا الْيَمَانُ ابْنُ عَدِيٍّ: حَدَّثَنِي الزُّبَيْدِيُّ مُحَمَّدُ بْنُ الْوَلِيدِ، عَنِ الزُّهْرِيِّ، عَنْ أَبِي سَلَمَةَ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا امْرَأَةٍ مَاتَ وَعِنْدَهُ مَالٌ امْرَأَةٍ بِعَيْنِهِ، اقْتَضَى مِنْهُ شَيْئًا أَوْ لَمْ يَقْتَضِ، فَهُوَ أَسْوَأُ لِلْمَرْمَاءِ».

تخريج: [حسن] أخرجه الدارقطني: ٢٩/٣ من حديث عمرو بن عثمان به، وقال: اليمان بن عدي ضعيف الحديث، وقال: ٢٢٩/٤: خالفه إسماعيل بن عياش عن الزبيدي، وموسى بن عقبة، واليمان بن عدي، وإسماعيل بن عياش ضعيفان، وللحديث شواهد كثيرة جدًا.

### Comments:

If a person borrowed some cash from someone, and the borrower dies before using the cash; the lender cannot claim the whole amount of cash to be repaid to him only; for example: he claims that these are the same notes borrowed from him. This creditor will be just like the other creditors. If the other creditors are repaid fully then he will be repaid fully; otherwise if the



debt is more than the debtor's inheritance, the lender of cash will be paid a lesser amount in proportion to the amount paid to the other creditors. So, in this matter, the cash and other things are not treated equally; as in the case of goods, the creditor may take his goods back. As mentioned in *Hadith* 2359, comment c.

## The Chapters On Testimonies

## أَبْوَابُ الشَّهَادَاتِ

### Comments:

Testimony is that a person tells an account about something accurately as he/she sees and hears.

- \* Only those things should be informed of as testimony which have been seen by the eyes or heard by the ears. Uncertain testimony must not be given.
- \* Two trustworthy persons should testify to the honesty and trustworthiness of the witness.
- \* A false witness should be given some sort of punishment in order to make an example of him for other people in the future.

### Chapter 27. To Give Testimony When One Has Not Been Asked To Do So Is Disliked

(المعجم ٢٧) - بَابُ كَرَاهِيَةِ الشَّهَادَةِ

لِمَنْ لَمْ يُسْتَشْهَدْ (التحفة ٢٧)

**2362.** 'Abdullāh bin Mas'ud said: "The Messenger of Allāh ﷺ was asked, 'Which of the people are best?' He said: 'My generation, then those that follow them, then those that follow them. Then there will come people whose testimony precedes their oath and whose oath precedes their testimony.'" (*Sahih*)

٢٣٦٢ - حَدَّثَنَا عُمَانُ بْنُ أَبِي شَيْبَةَ وَ عَمْرُو  
ابْنُ رَافِعٍ، قَالَا: حَدَّثَنَا جَرِيرٌ عَنْ مَنْصُورٍ،  
عَنْ إِبْرَاهِيمَ، عَنْ عُبَيْدَةَ السُّلَمَانِيِّ قَالَ: قَالَ  
عَبْدُ اللَّهِ بْنُ مَسْعُودٍ: سَأَلَ رَسُولُ اللَّهِ ﷺ:  
أَيُّ النَّاسِ خَيْرٌ؟ قَالَ: «قَرْنِي، ثُمَّ الَّذِينَ  
يَلُونَهُمْ، ثُمَّ الَّذِينَ يَلُونَهُمْ. ثُمَّ يَجِيءُ قَوْمٌ  
تَبَلَّرُوا شَهَادَةً أَحَدِهِمْ يَمِينَهُ، وَيَمِينُهُ شَهَادَتُهُ».

تخريج: أخرجه البخاري، الشهادات، باب: لا يشهد على شهادة جور إذا أشهد، ح: ٢٦٥٢، ٣٦٥١، ٦٦٥٨ وغيره، ومسلم، فضائل الصحابة، باب فضل الصحابة ثم الذين يلونهم، ثم الذين يلونهم، ح: ٢٥٣٣ من حديث منصور به.

### Comments:

- a. *Qarn* means the people of an era; i.e., people of a generation. Here the first *Qarn* (era) means the first generation of Islam, who were the noble Companions of the noble Prophet ﷺ; and those who succeeded them are the *Tābi'in* (the successors) and those who succeeded the *Tābi'in* are the *Taba' Tābi'in* (the successor of the successors); (i.e., first, second and third generations of Islam).
- b. The noble Companions are the most virtuous generation of the Muslim

Nation; a Companion who is smallest in status is more virtuous than the most righteous *Tābi'i* (successor).

- c. Hastening to take an oath before witnessing, and to bear witness before an oath means they will not understand the value, importance and consequences of it. So, they will take false oaths without any hesitation, and particularly, when testifying, to something, they will have no fear of taking a false oath. It is an awful bad habit.

**2363.** It was narrated that Jābir bin Samurah said: 'Umar bin Khattāb addressed us at Jābiyah and said: "The Messenger of Allāh ﷺ stood up among us as I stand among you, and said: 'Honor my Companions for my sake, then those who come after them, then those who come after them. Then lying will prevail until a man will give testimony without being asked to do so, and he will swear an oath without being asked to do so.'" (*Sahih*)

٢٣٦٣ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْجَرَّاحِ: حَدَّثَنَا جَرِيرٌ عَنْ عَبْدِ الْمَلِكِ بْنِ عُمَيْرٍ، عَنْ جَابِرِ بْنِ سَمُرَةَ. قَالَ: خَطَبَنَا عُمَرُ بْنُ الْخَطَّابِ بِالْجَابِيَةِ فَقَالَ: إِنَّ رَسُولَ اللَّهِ ﷺ قَامَ فِيْنَا مِثْلَ مَقَامِي فِيكُمْ فَقَالَ: «أَحْفَظُونِي فِي أَصْحَابِي. ثُمَّ الَّذِينَ يَلُونَهُمْ. ثُمَّ الَّذِينَ يَلُونَهُمْ. ثُمَّ يَفْشُو الْكُذِبُ حَتَّى يَشْهَدَ الرَّجُلُ وَمَا يُسْتَشْهَدُ. وَيَحْلِفَ وَمَا يُسْتَحْلَفُ».

**تخريج:** [إسناده صحيح] أخرجه أحمد: ٢٦/١، والنسائي في الكبرى، عن جرير(بن عبد الحميد) به، وتابعه جرير بن حازم عند النسائي في الكبرى وغيره(وصححه ابن حبان)، وقال أبو داود الطيالسي في مسنده: أخبرنا شعبة عن عبد الملك بن عمير قال: سمعت جابر بن سمرة قال: خطبنا عمر بالجابية به... إلخ كما في مسند الفاروق لابن كثير: ٥٥٤/٢، وللأثر شواهد كثيرة جداً تبلغ حد التواتر.

### Comments:

- a. In the time of Companions, *Tābi'in* and the *Taba' Tābi'in*, in the society, good was overwhelming, whereas the evil was overwhelmed. The general people did not have the moral and behavioural corruption which appeared later; the mistakes that occurred in the earlier era were not that severe and damaging as ones those occurring among the later generations.
- b. The meaning of an oath not to be demanded, is that the witness will be determined to bear witness, but due to corruption and weakness of morality they will be unreliable; therefore they will not be accepted as a witness, and even their oaths will be regarded unreliable.

### Chapter 28. A Man Who Has Testimony To Give, When The Person To Whom It Pertains Is Unaware Of That

(المعجم ٢٨) - بَابُ الرَّجُلِ عِنْدَهُ  
الشَّهَادَةُ لَا يَعْلَمُ بِهَا صَاحِبُهَا  
(التحفة ٢٨)

2364. Zaid bin Khâlid Al-Juhani said that he heard the Messenger of Allâh ﷺ say: "The best of witnesses is the one who gives his testimony before he is asked for it." (*Sahih*)

٢٣٦٤ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ، وَ مُحَمَّدٌ  
ابْنُ عَبْدِ الرَّحْمَنِ الْجُعْفِيُّ قَالَا: حَدَّثَنَا زَيْدُ  
ابْنُ الْحَبَابِ الْعُكْلِيُّ: أَخْبَرَنِي أَبِي بْنُ عَبَّاسِ  
ابْنِ سَهْلٍ بْنُ سَعْدِ السَّاعِدِيِّ: حَدَّثَنِي أَبُو  
بَكْرٍ بْنُ عَمْرٍو بْنِ حَزْمٍ: حَدَّثَنِي مُحَمَّدُ بْنُ  
عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ عُثْمَانَ بْنِ عَفَّانَ:  
حَدَّثَنِي خَارِجَةُ بْنُ زَيْدِ بْنِ ثَابِتٍ: أَخْبَرَنِي  
عَبْدُ الرَّحْمَنِ بْنُ أَبِي عَمْرَةَ الْأَنْصَارِيُّ أَنَّهُ  
سَمِعَ زَيْدَ بْنَ خَالِدِ الْجُهَنِيِّ يَقُولُ: إِنَّهُ سَمِعَ  
رَسُولَ اللَّهِ ﷺ يَقُولُ: «خَيْرُ الشُّهُودِ مَنْ أَدَّى  
شَهَادَتَهُ قَبْلَ أَنْ يُسْأَلَهَا».

تخریج: أخرجه مسلم، الأفضية، باب بيان خير الشهود، ح: ١٧١٩ من حديث أبي بكر بن عمرو بن حزم به.

#### Comments:

It means a true witness, if he does not testify, then someone's right is at risk; this is because perhaps there are no other witnesses, or there is a witness, but he is unreliable.

### Chapter 29. Witnessing Loans

(المعجم ٢٩) - بَابُ الْإِشْهَادِ عَلَى  
الدَّيُونِ (التحفة ٢٩)

2365. It was narrated that Abu Sa'eed Al-Khudri recited this Verse: "O you who believe! When you contract a debt for a fixed period..." until: "then if one of you entrusts the other."<sup>[1]</sup> Then

٢٣٦٥ - حَدَّثَنَا عُبَيْدُ اللَّهِ بْنُ يُوسُفَ  
الْحَبِيرِيُّ، وَ جَمِيلُ بْنُ الْحَسَنِ الْعَتَكِيُّ.  
قَالَا: حَدَّثَنَا مُحَمَّدُ بْنُ مَرْوَانَ الْعُجْلِيُّ:  
حَدَّثَنَا عَبْدُ الْمَلِكِ بْنُ أَبِي نَضْرَةَ، عَنْ أَبِيهِ،

<sup>[1]</sup> Al-Baqarah 2:282-283.

he said: "This abrogates what came before."<sup>[1]</sup> (*Hasan*)

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ: تَلَا هَذِهِ الْآيَةَ: ﴿يَأْتِيهَا الَّذِينَ ءَامَنُوا إِذَا تَدَايَنْتُمْ بِدِينِكُمْ إِلَىٰ أَجَلٍ مُّسَمًّى﴾ حَتَّىٰ بَلَغَ: ﴿فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا﴾ [البقرة: ٢٨٢-٢٨٣] فَقَالَ: هَذِهِ نَسَخَتْ مَا قَبْلَهَا.

**تخریج:** [إسناده حسن] أخرجه ابن أبي حاتم في تفسيره: ٥٧٠/٢، وأبو داود في الناسخ والمنسوخ، والطبراني، ومن طريقه المزني في تهذيب الكمال (ق٢/٨٦٣) من حديث محمد بن مروان به، وقواه ابن كثير في تفسيره، وهذا اجتهاد من أبي سعيد الخدري رضي الله عنه، والله أعلم.

**Comments:**

This 'abrogation' does not mean the Terminological Abrogation. It is a partial abrogation that the first Verse commands for documenting any type of loan.

**Chapter 30. The One Whose Testimony Is Not Permitted**

(المعجم ٣٠) - بَابُ مَنْ لَا تُجْوزُ شَهَادَتُهُ (التحفة ٣٠)

**2366.** It was narrated from 'Amr bin Shu'aib from his father that his grandfather said that the Messenger of Allāh ﷺ said: "The testimony of a man or woman who is treacherous, or of one who has been subjected to one of the *Hadd* punishments of Islam, or of one who bears a grudge against his brother, is not permissible." (*Da'if*)

٢٣٦٦ - حَدَّثَنَا أَيُّوبُ بْنُ مُحَمَّدٍ الرَّقِّيُّ: حَدَّثَنَا مُعَمَّرُ بْنُ سَلَيْمَانَ؛ ح: وَحَدَّثَنَا مُحَمَّدُ ابْنُ يَحْيَى: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ قَالَ: حَدَّثَنَا حَجَّاجُ بْنُ أَرْطَاةَ عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تُجْوزُ شَهَادَةُ خَائِنٍ وَلَا خَائِنَةٍ، وَلَا مَحْدُودٍ فِي الْإِسْلَامِ، وَلَا ذِي غَمْرٍ عَلَىٰ أَخِيهِ».

**تخریج:** [إسناده ضعيف] أخرجه أحمد: ٢٠٨/٢ عن يزيد بن هارون وغيره به، وانظر، ح: ٤٩٦، ١١٢٩ لعلته، وله شواهد ضعيفة، وأصل الحديث صحيح بلفظ: لا تجوز شهادة خائن ولا خائنة ولا زان ولا زانية ولا ذي غمير على أخيه أخرجه أبو داود، ح: ٣٦٠١ وغيره، وسنده

[1] Ibn Kathir said: "Abu Sa'eed, Sha'bi, Rabi' bin Anas, Hasan, Ibn Juraij, and Ibn Zaid said that recording such transactions was necessary before, but was then abrogated by Allāh's Statement," and he cited this portion of *Al-Baqarah* 2:283. See the *Tafsir* of Ibn Kathir, *Al-Baqarah* 2:283.

قوي كما قال الحافظ في التلخيص: ١٩٨/٤، وللحديث شواهد.

**Comments:**

- a. A person behaving treacherously with a trust is not reliable. So, his testimony is unacceptable in the court.
- b. If it is proven that the witness already has unpleasant terms against whom he is testifying, it makes the testimony doubtful. It is possible that due to enmity, he wants to take revenge by testifying against the opponent.

**2367.** It was narrated from Abu Hurairah that he heard the Messenger of Allāh ﷺ say: "The testimony of a Bedouin against a town-dweller is not permissible." (Sahih)

٢٣٦٧ - حَدَّثَنَا حَرْمَلَةُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهَبٍ: أَخْبَرَنِي نَافِعُ بْنُ يَزِيدَ، عَنِ ابْنِ الْهَادِ، عَنْ مُحَمَّدِ بْنِ عَمْرٍو بْنِ عَطَاءٍ، عَنْ عَطَاءِ بْنِ يَسَارٍ، عَنْ أَبِي هُرَيْرَةَ أَنَّهُ سَمِعَ رَسُولَ اللَّهِ ﷺ يَقُولُ: «لَا تَجُوزُ شَهَادَةُ بَدَوِيٍّ عَلَى صَاحِبِ قَرْيَةٍ».

تخریج: [إسناده صحيح] أخرجه أبو داود، القضاء، باب شهادة البدوي على أهل الأمصار، ح: ٣٦٠٢ من حديث ابن وهب به، وصححه ابن الجارود، ح: ١٠٠٩.

**Comments:**

- a. The fact of it, is that the Bedouins are generally at a low level in religion, morals and character; because they do not have the opportunity to sit in the company of the scholars and to learn about the religion. Therefore, there is more possibility they will not testify accurately.
- b. It is necessary that the witness is a trustworthy person.

**Chapter 31. Passing Judgment On The Basis Of A Witness And An Oath**

(المعجم ٣١) - بَابُ الْقَضَاءِ بِالشَّاهِدِ وَالْيَمِينِ (التحفة ٣١)

**2368.** It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ passed judgment on the basis of an oath (from the claimant) along with a (single) witness. [This is in the absence of two witnesses.] (Sahih)

٢٣٦٨ - حَدَّثَنَا أَبُو مُصْعَبٍ [الْمَدَنِيُّ]، أَحْمَدُ بْنُ عَبْدِ اللَّهِ الزُّهْرِيُّ، وَيَعْقُوبُ بْنُ إِبْرَاهِيمَ الدُّورِيُّ، قَالَا: حَدَّثَنَا عَبْدُ الْعَزِيزِ ابْنُ مُحَمَّدٍ الدَّرَاوَرْدِيُّ، عَنْ زَيْبَعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ ﷺ قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ.

**تخریج:** [إسناده صحيح] أخرجه الترمذي، الأحكام، باب ماجاء في اليمين مع الشاهد، ح: ١٣٤٣ عن يعقوب بن إبراهيم به، وقال: حسن غريب، وصححه ابن الجارود، ح: ١٠٠٧، والحدیث منخرج في نيل المقتصد، ح: ٣٦١٠، أخرجه أبو داود من حدیث الدراوردي به.

**2369.** It was narrated from Jābir that the Prophet ﷺ passed judgment on the basis of an oath (from the claimant) along with a (single) witness. (*Sahih*)

٢٣٦٩ - حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ: حَدَّثَنَا عَبْدُ الْوَهَّابِ: حَدَّثَنَا جَعْفَرُ بْنُ مُحَمَّدٍ عَنْ أَبِيهِ، عَنْ جَابِرٍ أَنَّ النَّبِيَّ ﷺ قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ.

**تخریج:** [إسناده صحيح] أخرجه الترمذي، الأحكام، باب ماجاء في اليمين مع الشاهد، ح: ١٣٤٤ عن محمد بن بشار به.

**2370.** It was narrated that Ibn ‘Abbās said: “The Messenger of Allāh ﷺ passed judgment on the basis of a witness along with an oath (by the claimant).” (*Sahih*)

٢٣٧٠ - حَدَّثَنَا أَبُو إِسْحَاقَ الْهَرَوِيُّ إِبْرَاهِيمُ ابْنُ عَبْدِ اللَّهِ بْنِ حَاتِمٍ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْحَارِثِ الْمَخْزُومِيُّ: حَدَّثَنَا سَيْفُ بْنُ سَلِيمَانَ الْمَكِّيُّ: أَخْبَرَنِي قَيْسُ بْنُ سَعْدٍ، عَنْ عَمْرٍو ابْنِ دِينَارٍ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ بِالشَّاهِدِ وَالْيَمِينِ.

**تخریج:** أخرجه مسلم، الأفضية، باب وجوب الحكم بشاهد ويمين، ح: ١٧١٢ من حدیث سيف به.

**2371.** It was narrated from Surraq that the Prophet ﷺ allowed the testimony of a man along with the oath of the claimant. (*Sahih*)

٢٣٧١ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا يَزِيدُ بْنُ هَارُونَ: أَنَّ أَبَانَ جُوَيْرِيَةَ بْنَ أَسْمَاءَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يَزِيدَ، مَوْلَى الْأُمَيْيَةِ، عَنْ رَجُلٍ مِنْ أَهْلِ مِصْرَ، عَنْ سُرَّقِ بْنِ أَبِي النَّبِيِّ ﷺ أَجَازَ شَهَادَةَ الرَّجُلِ وَيَمِينَ الطَّالِبِ.

**تخریج:** [إسناده ضعيف] أخرجه الطبراني: ١٦٦/٧، ح: ٦٧١٧ من حدیث جویریة بن أسماء (في الاصل المطبوع: إسماعیل وهو خطأ) به، وضعفه البوصيري لهجالة تابعیه، ولأصل الحدیث شاهد صحيح تقدم قبله، وفيه غنية عن مثل هذه الرواية المجهولة.

**Comments:**

- a. Two trustworthy witnesses are compulsory to prove a claim to be true.
- b. If the claimant has one witness only, he will then take one oath along with the witness, and thus the claim of the claimant will be proven.

## Chapter 32. False Witness

(المعجم ٣٢) - بَابُ شَهَادَةِ الزُّورِ

(التحفة ٣٢)

2372. It was narrated that Khuraim bin Fâtik Al-Asadi said that the Prophet ﷺ prayed the Morning prayer, and when he had finished, he stood up and said: "Bearing false witness is equivalent to associating others with Allâh," three times. Then he recited this Verse: "And shun lying speech (false statements), *Hunafâ' Lillâh* (i.e., worshiping none but Allâh), not associating partners (in worship) to Him."<sup>[1]</sup> (*Da'if*)

٢٣٧٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا مُحَمَّدُ بْنُ عَيْدٍ: حَدَّثَنَا سَفْيَانُ الْعَصْفَرِيُّ عَنْ أَبِيهِ، عَنْ حَبِيبِ بْنِ النُّعْمَانَ الْأَسَدِيِّ، [عَنْ خُرَيْمِ بْنِ فَاتِكِ الْأَسَدِيِّ] قَالَ: صَلَّى النَّبِيُّ ﷺ الصُّبْحَ. فَلَمَّا انْصَرَفَ قَامَ قَائِمًا. فَقَالَ: «عَدَلْتُ شَهَادَةَ الزُّورِ بِالْإِشْرَاقِ بِاللَّهِ» ثَلَاثَ مَرَّاتٍ. ثُمَّ تَلَا هَذِهِ الْآيَةَ: ﴿وَلَجَّسْتُمْ بِلُغْوِكُمْ بِاللَّهِ﴾ قَوْلَ الزُّورِ ۝ حَقَّافَةٌ لِلَّهِ غَيْرَ مُشْرِكِينَ بِهِ» [الحج: ٣٠-٣١].

تخريج: [إسناده ضعيف] أخرجه أبو داود، القضاء، باب في شهادة الزور، ح: ٣٥٩٩ من حديث محمد بن عبيد به، وعلته جهالة حال أبي سفيان زياد العصفري، وشيخه حبيب بن النعمان، والله أعلم بحالهما.

## Comments:

Bearing false witness is a major sin. There are several authentic *Ahâdith* concerning this issue. The three sins that the noble Prophet ﷺ declared 'the worst of the major sins' are: "Associating partners with Allâh, disobeying parents and bearing false witness." (See *Sahîh Al-Bukhârî*, The Testimonies, Chapter: What is mentioned concerning the false oath)

2373. It was narrated from Ibn 'Umar that the Messenger of Allâh ﷺ said: 'The one who bears false witness will not move away (on the Day of Resurrection) until Allâh condemns him to Hell.'<sup>[1]</sup> (*Da'if*)

٢٣٧٣ - حَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا مُحَمَّدُ بْنُ الْقُرَاتِ، عَنْ مَحَارِبِ بْنِ دِنَارٍ، عَنْ ابْنِ عُمَرَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَنْ تَزُولَ قَدَمَا شَاهِدِ الزُّورِ حَتَّى يُوجِبَ اللَّهُ لَهُ النَّارَ».

تخريج: [ضعيف جداً] أخرجه أبو يعلى، ح: ٥٦٧٢ من حديث محمد بن القرات به، وسنده موضوع، وصححه الحاكم (٩٨/٤)، ووافقه الذهبي \* سويد ضعيف وشيخه محمد بن القرات كذاب كما قال الإمام أحمد، ومحمد بن عبدالله بن عمار وغيرهما، وقال ابن حزم: ضعيف بالاتفاق، والحديث ضعفه البوصيري، وللحديث شاهد ضعيف جداً عند أبي نعيم في حلية

[1] *Al-Hajj* 22:30-31.



الأولياء (٧/٢٦٤).

### Chapter 33. The Testimony Of The People Of The Book Against One Another

(المعجم ٣٣) - بَابُ شَهَادَةِ أَهْلِ  
الْكِتَابِ بَعْضِهِمْ عَلَى بَعْضٍ (التحفة ٣٣)

2374. It was narrated from Jâbir bin 'Abdullâh that the Messenger of Allâh ﷺ allowed the People of the Book to testify against one another. (*Da'if*)

٢٣٧٤ - حَدَّثَنَا مُحَمَّدُ بْنُ طَرِيفٍ: حَدَّثَنَا أَبُو خَالِدٍ الْأَحْمَرُ، عَنْ مُجَالِدٍ، عَنْ عَامِرٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ رَسُولَ اللَّهِ ﷺ أَجَازَ شَهَادَةَ أَهْلِ الْكِتَابِ، بَعْضِهِمْ عَلَى بَعْضٍ.

تخريج: [إسناده ضعيف] أخرجه البيهقي: ١٠/١٦٥ من حديث أبي خالد به، وقال: هو مما أخطأ فيه، وقال البوصيري: هذا إسناده ضعيف من أجل مجالد بن سعيد، وانظر، ح: ١١، وفيه علة أخرى ذكرها البيهقي كما تقدم في كلامه.