

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

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

23. The Chapters On Shares Of Inheritance

(المعجم ٢٣) أَبْوَابُ الْفَرَائِضِ

(التحفة ١٥)

The *Ahādith* in these chapters give us that knowledge regarding who is an heir and who is not, and what is the right of every heir.

a. Grounds of inheritance are:

1. Bloodline relationship: As in father, grandfather, son, grandson, or brother etc.
2. Marriage: Through the tie of marriage, husband and wife become the heir of each other.
3. *Wala*: One who frees a slave becomes the heir of the freed slave.

b. Prohibitions:

1. Infidelity: A Muslim cannot become an heir of a disbeliever and similarly a disbeliever cannot become an heir of a Muslim.
2. Murder: A killer cannot become an heir of the one whom he killed.
3. Slavery: A slave cannot become an heir of anyone.
4. Illegal sexual intercourse: A child born as a result of illegal sexual intercourse cannot become an heir.
5. *Li'ân*: Through *Li'ân*, a husband and wife cease to be the heir of each other.
6. A child born dead cannot be an heir.

c. Conditions:

1. There should be no prohibitions present as mentioned above.
2. An heir must be alive till the death of his progenitor from whom he is to inherit.
3. Firm confirmation of progenitor's death.

Chapter 1. Encouragement To Learn About Inheritance

(المعجم ١) - بَابُ الْحَثِّ عَلَى تَعْلِيمِ
الْفَرَائِضِ (التحفة ١)

2719. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "O Abu Hurairah. Learn about inheritance and teach it, for it is half of knowledge, but it will be forgotten. This is the first thing that will be taken away from my nation." (*Da'if*)

٢٧١٩ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْمُنْذِرِ الْجَرَامِيُّ: حَدَّثَنَا حَفْصُ بْنُ عُمَرَ بْنِ أَبِي الْعَطَافِ: حَدَّثَنَا أَبُو الزُّنَادِ عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «يَا أَبَا هُرَيْرَةَ! تَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُوهَا فَإِنَّهُ نِصْفُ الْعِلْمِ».

وَهُوَ يُنْسَى. وَهُوَ أَوَّلُ شَيْءٍ يُنْزَعُ مِنْ أُمَّتِي».

تخريج: [إسناده ضعيف] أخرجه البيهقي: ٢٠٩/٦ من حديث حفص بن عمر به، وقال: تفرد به حفص بن عمر، وليس بالقوي، والحديث ضعفه الذهبي، والبوصيري من أجل حفص المذكور.

Comments:

'This is the first thing that will be taken away' means that people who learn this knowledge and teach it, will become extinct and the knowledge of inheritance will come to an end.

Chapter 2. Shares For Descendants

(المعجم ٢) - بَابُ فَرَائِضِ الصُّلْبِ

(التحفة ٢)

2720. It was narrated that Jābir bin 'Abdullāh said: "The wife of Sa'd bin Rabi' came with the two daughters of Sa'd to the Prophet ﷺ and said: 'O Messenger of Allāh, these are the two daughters of Sa'd. He was killed with you on the day of Uhud, and their paternal uncle has taken all that their father left behind, and a woman is only married for her wealth.' The Prophet ﷺ remained silent until the Verse of inheritance was revealed to him. Then the Messenger of Allāh ﷺ called the brother of Sa'd bin Rabi' and said: 'Give the two daughters of Sa'd two thirds of his wealth, and give his wife one eighth, and take what is left.'"

(Da'if)

تخريج: [إسناده ضعيف] أخرجه أبو داود، الفرائض، باب ما جاء في ميراث الصلْب، ح: ٢٨٩١ من حديث ابن عقيل به، وصححه الترمذي، ح: ٢٠٩٢، والحاكم: ٣٣٤، ٣٣٣/٤. والذهبي * ابن عقيل ضعيف تقدم، ح: ٣٩٠.

Comments:

a. The Divine law of Islam has fixed the shares of certain heirs. These heirs are called *Ashābul-Furūd*. After giving them their due share, the rest of the legacy is distributed among the bloodline relatives of the deceased, and these are called *Asabah*.

٢٧٢٠ - حَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عُمَرَ الْعَدَنِيُّ: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَبْدِ اللَّهِ بْنِ مُحَمَّدٍ بْنِ عَقِيلٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: جَاءَتِ امْرَأَةُ سَعْدِ بْنِ الرَّبِيعِ بِابْنَتَيْ سَعْدٍ إِلَى النَّبِيِّ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ! هَاتَانِ ابْنَتَا سَعْدٍ. قُتِلَ، مَعَكَ، يَوْمَ أُحُدٍ. وَإِنَّ عَمَّهُمَا أَخَذَ جَمِيعَ مَا تَرَكَ أَبُوهُمَا. وَإِنَّ الْمَرْأَةَ لَا تُنْكَحُ إِلَّا عَلَى مَالِهَا. فَسَكَتَ النَّبِيُّ ﷺ حَتَّى أُنْزِلَتْ آيَةُ الْمِيرَاثِ. فَدَعَا رَسُولُ اللَّهِ ﷺ أَخَا سَعْدِ بْنِ الرَّبِيعِ. فَقَالَ: «أَعْطِ ابْنَتَيْ سَعْدٍ ثُلُثِي مَالِهِ. وَأَعْطِ امْرَأَتَهُ الثُّمْنَ. وَخُذْ أَنْتَ مَا بَقِيَ».

- b. If someone has only one daughter, she will get half of the total legacy, if daughters are more than one, then the total legacy will be divided into three parts, and two thirds will be divided among the daughters. (*An-Nisā'* 4:11)
- c. If the deceased leaves behind sons and daughters among his heirs, then according to their numbers, every male will get two shares and every female one share. (*An-Nisā'* 4: 11.)
- d. If the deceased has no children, then one fourth of his total legacy will go to his wife, and if the deceased has children, as is mentioned in the narration, then the wife will get one eighth of the total legacy, and if there is more than one wife of the deceased, then one fourth or one eighth, according to the situation, will be distributed among the wives.
- e. The brother of the deceased is one of his *Asabah*, therefore, after giving the shares of *Ashābul-Furudh* (wife and daughters) rest will be given to him.
- f. According to the event referred to in this narration, twenty-four total shares were declared, and one eighth shares were given to the wife and sixteen shares, i.e., two thirds were given to two daughters (eight shares to each daughter) and the rest of the shares, i.e., five shares were given to the brother. (Three shares were given to the wife, sixteen shares were given to two daughters, and five shares were given to the brother, totaling twenty-four shares.)

2721. It was narrated that Huzail bin Shurahbil said: "A man came to Abu Musa Al-Ash'ari and Salmān bin Rabī'ah Al-Bāhili and asked them about (the shares of) a daughter, a son's daughter, a sister through one's father and mother. They said: 'The daughter gets one half, and what is left goes to the sister. Go to Ibn Mas'ud, for he will concur with what we say.' So the man went to Ibn Mas'ud, and told him what they had said. 'Abdullāh said: 'I will go astray and will not be guided (if I say that I agree); but I will judge as the Messenger of Allāh ﷺ judged. The daughter gets one half, and the son's daughter gets one-sixth. That makes two-thirds. And what is left goes to the sister.'" (*Sahih*)

٢٧٢١ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا سُفْيَانُ عَنْ أَبِي قَيْسٍ الْأَوْدِيِّ، عَنْ الْهَزَلِيِّ بْنِ شُرَيْبٍ قَالَ: جَاءَ رَجُلٌ إِلَى أَبِي مُوسَى الْأَشْعَرِيِّ وَسَلْمَانَ بْنِ رَبِيعَةَ الْبَاهِلِيِّ. فَسَأَلَهُمَا عَنِ ابْنَةٍ، وَابْنَةِ ابْنٍ، وَأُخْتٍ لِأَبٍ وَأُمٍّ. فَقَالَا: لِلْابْنَةِ النُّصْفُ. وَمَا بَيِّنِي، فَلِلْأُخْتِ. وَابْنُ ابْنِ مَسْعُودٍ، فَسَيِّبَانَا. فَأَتَى الرَّجُلُ ابْنَ مَسْعُودٍ فَسَأَلَهُ، وَأَخْبَرَهُ بِمَا قَالَا. فَقَالَ عَبْدُ اللَّهِ: قَدْ ضَلَلْتُ إِذَا وَمَا أَنَا مِنَ الْمُتَهَيِّدِينَ. وَلَكِنِّي سَأَفْضِي بِمَا قَضَى بِهِ رَسُولُ اللَّهِ ﷺ. لِلْابْنَةِ النُّصْفُ. وَلِلْابْنَةِ الْإِبْنِ السُّدُسُ. تَكْمِلَةُ الثَّلَاثِينَ. وَمَا بَيِّنِي فَلِلْأُخْتِ.

تخریج: أخرجه البخاري، الفرائض، باب ميراث ابنة ابن مع ابنة، ح: ٦٧٣٦ من حديث أبي قيس به، ح: ٦٧٤٢ من حديث سفیان الثوري به مختصراً.

Comments:

- The opinion of the two Companions was most probably based on the principle that in the presence of a close relative, distant relatives do not get any share, therefore, in the presence of a daughter they took the share of the grand-daughter and they suggested to give the remainder to the sister.
- 'Abdullāh bin Mas'ud based his opinion on a principle that was not known to those two Companions.
- If the heirs are only two daughters, their fixed share is two thirds and in the absence of daughters, the share goes to grand daughters. As the share of one daughter is one half; in the absence of a daughter the share will go to the grand-daughter. In the light of these principles, the share of one daughter is one half and the share of one daughter and one granddaughter is two thirds, therefore, after deducting half from the two thirds, one sixth remains, which goes to the granddaughter.
- In this situation, the daughter and granddaughter do not get equal shares because their relationship with the deceased is not equal. In the presence of a daughter or daughters, the granddaughter or granddaughters' share stands as *Asabah*.

Chapter 3. The Shares Of The Grandfather

(المعجم ٣) - بَابُ فَرَائِضِ الْجَدِّ

(التحفة ٣)

2722. It was narrated that Ma'qil bin Yasār Al-Muzani said: "I heard the Prophet ﷺ when a case was brought to him which involved the share of a grandfather. He gave him one third, or one sixth." (*Da'if*)

٢٧٢٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَيْبَةُ: حَدَّثَنَا يُونُسُ بْنُ أَبِي إِسْحَاقَ [عَنْ أَبِي إِسْحَاقَ]، عَنْ عَمْرِو بْنِ مَيْمُونٍ، عَنْ مَعْقِلِ بْنِ يَسَارٍ الْمُرَزِيِّ قَالَ: سَمِعْتُ النَّبِيَّ ﷺ أَمَرَ أَيْ بِفَرِيضَةٍ فِيهَا جَدٌّ. فَأَعْطَاهُ ثُلُثًا، أَوْ سُدُسًا.

تخریج: [إسناده ضعيف] أخرجه النسائي في الكبرى: ٧٢/٤، ح: ٦٣٣٣ من حديث يونس به مطولاً * أبو إسحاق عتق تقدم، ح: ٤٦، وانظر الحديث الآتي، وحديث أبي داود (٢٨٩٤، ٢٨٩٥) يغني عنه.

2723. It was narrated that Ma'qil bin Yasār said: "The Messenger of Allāh ﷺ ruled concerning a grandfather who was among us, that he should receive one sixth." (*Da'if*)

٢٧٢٣ - حَدَّثَنَا أَبُو حَاتِمٍ: حَدَّثَنَا ابْنُ الطَّبَّاعِ: حَدَّثَنَا هُشَيْمٌ عَنْ يُونُسَ، عَنْ الْحَسَنِ، عَنْ مَعْقِلِ بْنِ يَسَارٍ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ فِي جَدٍّ، كَانَ فِينَا، بِالسُّدُسِ.

تخریج: [إسناده ضعيف] أخرجه النسائي في الكبرى: ٧٢/٤، ح: ٦٣٣٤ من حديث هشيم

به، وتابعه خالد عند أبي داود، ح: ٢٨٩٧ وغيره * الحسن تقدم، ح: ٧١.

Comments:

In the absence of the deceased's father, one sixth share goes to the grandfather. If the father is alive, then this share will go to the father and the grandfather gets nothing.

Chapter 4. The Inheritance Of A Grandmother

(المعجم ٤) - بَابُ مِيرَاثِ الْجَدَّةِ

(التحفة ٤)

2724. It was narrated that Ibn Dhu'aib said: "A grandmother came to Abu Bakr Siddiq and asked him for her inheritance. Abu Bakr said to her: 'You have nothing according to the Book of Allāh, and I don't know of any thing for you according to the *Sunnah* of the Messenger of Allāh ﷺ. Go back until I ask the people.' So he asked the people and Al-Mughirah bin Shu'bah said: 'I was present with the Messenger of Allāh ﷺ and he gave her (the grandmother) one sixth.' Abu Bakr said: 'Is there anyone else with you (who will corroborate what you say)?' Muhammad bin Maslamah Al-Ansāri stood up and said something like what Mughirah bin Shu'bah had said. So Abu Bakr applied it in her case."

"Then the other grandmother, on the father's side, came to 'Umar and asked him for her inheritance. He said: 'You have nothing according to the Book of Allāh. The ruling that was passed applied to someone other than you, and I will not make any addition to the shares of inheritance. But it is one sixth. If

٢٧٢٤ - حَدَّثَنَا أَحْمَدُ بْنُ عَمْرٍو بْنِ السَّرْحِ الْمِصْرِيُّ: أَنَّ أَبَا عَبْدِ اللَّهِ بْنِ وَهَبٍ: أَنَّ أَبَا يُونُسَ عَنِ ابْنِ شِهَابٍ: حَدَّثَهُ عَنْ قَبِيصَةَ بِنِ ذُوَيْبٍ، ح: وَحَدَّثَنَا سُؤَيْدُ بْنُ سَعِيدٍ: حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ عَنِ ابْنِ شِهَابٍ، عَنْ عُثْمَانَ ابْنِ إِسْحَاقَ بْنِ خَرَشَةَ، عَنِ ابْنِ ذُوَيْبٍ قَالَ: جَاءَتِ الْجَدَّةُ إِلَى أَبِي بَكْرٍ الصِّدِّيقِ، تَسْأَلُهُ مِيرَاثَهَا. فَقَالَ لَهَا أَبُو بَكْرٍ: مَا لَكَ فِي كِتَابِ اللَّهِ شَيْءٌ. وَمَا عَلِمْتُ لَكَ فِي شَيْءٍ رَسُولِ اللَّهِ ﷺ شَيْئًا. فَارْجِعِي حَتَّى أَسْأَلَ النَّاسَ. فَسَأَلَ النَّاسَ. فَقَالَ الْمُغِيرَةُ بْنُ شُعْبَةَ: حَضَرْتُ رَسُولَ اللَّهِ ﷺ. أَعْطَاهَا السُّدُسَ. فَقَالَ أَبُو بَكْرٍ: هَلْ مَعَكَ غَيْرُكَ؟ فَقَامَ مُحَمَّدُ بْنُ مَسْلَمَةَ الْأَنْصَارِيُّ. فَقَالَ مِثْلَ مَا قَالَ الْمُغِيرَةُ بْنُ شُعْبَةَ. فَأَنْفَذَهُ لَهَا أَبُو بَكْرٍ.

ثُمَّ جَاءَتِ الْجَدَّةُ الْأُخْرَى، مِنْ قِبَلِ الْأَبِ، إِلَى عُمَرَ، تَسْأَلُهُ مِيرَاثَهَا. فَقَالَ: مَا لَكَ فِي كِتَابِ اللَّهِ شَيْءٌ. وَمَا كَانَ الْقَضَاءُ الَّذِي قُضِيَ بِهِ إِلَّا لِعَیْرِكَ. وَمَا أَنَا بِرَأِئِدٍ فِي الْفَرَائِضِ شَيْئًا. وَلَكِنْ هُوَ ذَلِكَ السُّدُسُ. فَإِنْ اجْتَمَعَتَا فِيهِ، فَهُوَ يَبْتَكَمَا. وَأَيُّكُمَا حَلَّتْ بِهِ،

there are two of you then it is to be shared between you, and if one of you is alone then it all belongs to her.''' (Sahih)

فَهُوَ لَهَا .

تخريج: [صحيح] أخرجه أبو داود، الفرائض، باب: في الجدة، ح: ٢٨٩٤ من حديث مالك به، وهو في الموطأ (يحيى): ٥١٣/٢، وصححه الترمذي، ح: ٢١٠١، وابن الجارود، ح: ٩٥٩، وابن حبان، ح: ١٢٢٤، والحاكم: ٣٣٨/٤ على شرط الشيخين، ووافقه الذهبي، وأعله الذهبي، والعسقلاني وغيرهما بأن قبضة لم يسمع من الصديق رضي الله عنه فالسند منقطع، وللحديث شواهد.

Comments:

- The Arabic word *Jaddah* is used for grandmothers, both the mother's mother and the father's mother. In this event the second lady was the father's mother. It clarifies that first lady mentioned in this narration was the mother's mother, and the second was the father's mother.
- The share from the legacy for both grandmothers, either from the side of father or from the side of mother, is fixed, and it is one sixth. If both are alive, this one sixth share is divided between these two ladies.

2725. It was narrated from Ibn 'Abbās that the Messenger of Allāh ﷺ gave a grandmother one sixth of the inheritance. (Sahih)

٢٧٢٥ - حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ عَبْدِ الْوَهَّابِ: حَدَّثَنَا [سَلَمٌ] بْنُ قُتَيْبَةَ عَنْ شَرِيكَ، عَنْ لَيْثٍ، عَنْ طَاوُسٍ، عَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ وَرَثَ جَدَّةً مُمْدُاسًا.

تخريج: [صحيح] أخرجه البيهقي: ٢٣٤/٦ من حديث شريك (القاضي) به، وقال البوصيري: هذا إسناد ضعيف لضعف ليث بن أبي سليم، وتدلّسه، وفيه علة أخرى، وأخرج أبو داود، ح: ٢٨٩٥ بإسناد حسن عن بريدة رضي الله عنه: أن النبي ﷺ جعل للجدة السدس، إذا لم تكن دونها أم، وصححه ابن الجارود، ح: ٩٦٠ * أبو المنيب العنكي حسن الحديث كما في نيل المقصود، ح: ٦٣٦ .

Comments:

In the light of *Hadith* no. 2724, the decision taken on the issue is correct.

Chapter 5. One Who Leaves Behind No Heir

(المعجم ٥) - بَابُ الْكَلَالَةِ (التحفة ٥)

2726. It was narrated from Ma'dān bin Abu Talhah Al-Ya'muri that 'Umar bin Khattāb stood up to deliver a sermon one Friday, or he addressed them one

٢٧٢٦ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا إِسْمَاعِيلُ ابْنُ عُثَيْبٍ عَنْ سَعِيدٍ، عَنْ قَتَادَةَ، عَنْ سَالِمِ بْنِ أَبِي الْجَعْدِ، عَنْ مَعْدَانَ بْنِ أَبِي

Friday. He praised and glorified Allāh, and said: "By Allāh, I am not leaving behind any problem more difficult than the one who leaves behind no heir. I asked the Messenger of Allāh ﷺ, and he never spoke so harshly to me about anything as he spoke to me about this. He jabbed his finger into my side or my chest and said: 'O 'Umar, sufficient for you is the Verse that was revealed in summer, at the end of *Surat An-Nisā'*.'" (*Sahih*)

طَلَحَةُ الْيَعْمُرِيُّ أَنَّ عُمَرَ بْنَ الْخَطَّابِ قَامَ خَطِيباً يَوْمَ الْجُمُعَةِ. أَوْ خَطَبَهُمْ يَوْمَ الْجُمُعَةِ. فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ وَقَالَ: إِنِّي، وَاللَّهِ! مَا أَدْعُ بَعْدِي شَيْئاً هُوَ أَهَمُّ إِلَيَّ مِنْ أَمْرِ الْكَلَالَةِ. وَقَدْ سَأَلْتُ رَسُولَ اللَّهِ ﷺ. فَمَا أَغْلَظَ لِي فِي شَيْءٍ، مَا أَغْلَظَ لِي فِيهَا. حَتَّى طَعَنَ بِإِصْبَعِهِ فِي جَنْبِي، أَوْ فِي صَدْرِي. ثُمَّ قَالَ: «يَا عُمَرُ تَكْفِيكَ آيَةُ الصَّيْفِ الَّتِي نَزَلَتْ فِي آخِرِ سُورَةِ النَّسَاءِ».

Comments: [صحيح] تقدم، ح: ١٠١٤، بعضه، وهو في صحيح مسلم بطوله.

- Those who leave behind neither descendent nor ascendant, their legacy is distributed among their brothers and sisters.
- The Verse revealed in the summer is Verse no. 176 of *Surat An-Nisā'*. In this Verse, it is explained, that if a male dies and he has a sister from his mother and father i.e., real sister, or a sister from his father, i.e., stepsister, she will get one half of her brother's legacy. If the deceased is a female and she has a brother the entire legacy will go to him.
- It is also mentioned in this Verse, that if such a person has two real sisters, or two sisters from his father, but from another mother, they will get two thirds of the legacy.
- If the person who leaves behind no heir has real brothers and sisters, and he also has brothers and sisters from his father, but from another mother, in this situation, the legacy will be distributed such that every brother will get two shares and every sister will get one share.
- In the case where a person has one uterine brother or one uterine sister from the same mother but from different fathers, he/she will get one sixth of the legacy, and if he has two brothers or more, and two sisters or more, they will get one third of the total legacy, and this will be equally distributed among them. In this case, brothers and sisters get equal shares. The brother's share is not double. (*An-Nisā'* 4:12)

2727. 'Umar bin Khattāb said: "There are three things, if the Messenger of Allāh ﷺ had clarified them, that would have been dearer to me than the world and everything in it: a person

٢٧٢٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَ أَبُو بَكْرٍ ابْنُ أَبِي شَيْبَةَ، قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا سُفْيَانُ: حَدَّثَنَا عُمَرُو بْنُ مَرْةً، عَنْ مَرْةِ بْنِ شَرَّاحِيلَ قَالَ: قَالَ عُمَرُ بْنُ الْخَطَّابِ:

who leaves behind no heir, usury, and the caliphate." (*Da'if*)

ثَلَاثٌ، [لَأَنْ] يَكُونَ رَسُولُ اللَّهِ ﷺ بَيْنَهُنَّ، أَحَبُّ إِلَيَّ مِنَ الدُّنْيَا وَمَا فِيهَا: الْكَلَالَةُ وَالرِّبَا وَالْخِلَافَةُ.

تخریج: [إسناده ضعيف] صرح البوصيري بأنه منقطع، ونقل عن أبي حاتم الرازي: مرة عن عمر مرسل، وأخرج البخاري، ح: ٥٥٨٨، ومسلم، ح: ٣٠٣٢ وغيرهما عن عمر رضي الله عنه قال: وثلاث وددت أن رسول الله ﷺ لم يفارقنا حتى يعهد إلينا عهدًا: الجدة والكلاله وأبواب من أبواب الربا ولم يذكر الخلافة.

Comments:

A person who leaves behind no heir, may have three types of brothers and sisters.

- Real brothers and sisters (from the same mother and father).
 - Stepbrothers and sisters (from the same father but from different mothers).
 - Uterine brothers and sisters. (from the same mother but different fathers)
- The explanation of (i) and (ii) is in Verse 176 *Surat An-Nisā'* and the explanation of (iii) is in Verse 12 *Surat An-Nisā'*.

2728. It was narrated from Muhammad bin Munkadir that he heard Jābir bin 'Abdullāh say: "I fell sick and the Messenger of Allāh ﷺ came to visit me, he and Abu Bakr with him, and they came walking. I had lost consciousness, so the Messenger of Allāh ﷺ performed ablution and poured some of the water of his ablution over me. I said: 'O Messenger of Allāh, what should I do? How should I decide about my wealth?' Until the Verse of inheritance was revealed at the end of *An-Nisā'*: "If the man or woman whose inheritance is in question has left neither ascendants nor descendants."^[1] And: "They ask you for a legal verdict. Say: 'Allāh directs (thus) about those who leave neither

٢٧٢٨ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا سُفْيَانُ عَنْ مُحَمَّدِ بْنِ الْمُنْكَدِرِ، سَمِعَ جَابِرَ ابْنَ عَبْدِ اللَّهِ يَقُولُ: مَرَضْتُ فَأَتَانِي رَسُولُ اللَّهِ ﷺ يَعُوذُنِي هُوَ وَأَبُو بَكْرٍ مَعَهُ. وَهُمَا مَاشِيَانِ. وَقَدْ أُغْمِيَ عَلَيَّ. فَتَوَضَّأَ رَسُولُ اللَّهِ ﷺ فَصَبَّ عَلَيَّ مِنْ وُضُوئِهِ. فَقُلْتُ: يَا رَسُولَ اللَّهِ! كَيْفَ أَصْنَعُ؟ كَيْفَ أَقْضِي فِي مَالِي؟ حَتَّى نَزَلَتْ آيَةُ الْمِيرَاثِ، فِي آخِرِ النِّسَاءِ: ﴿وَإِنْ كَانَتْ رَجُلٌ يُورِثُ كَلَالَةً﴾ الْآيَةُ [النساء: ١٢]. ﴿يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ﴾ [النساء: ١٧٦] الْآيَةُ.

^[1] *An-Nisā'* 4:12.

descendants nor ascendants as heirs.”^[1] (*Sahih*)

Comments:

The Second Verse mentioned in the narration explains the shares of real and stepbrothers and sisters, whereas the first Verse mentioned in the narration explains the shares of uterine brothers and sisters. (See comments on *Hadith* 2726)

Chapter 6. The People Of Islam Inheriting From the People Of Polytheism

2729. It was narrated from Usamah bin Zaid, who attributed it to the Prophet ﷺ: “The Muslim does not inherit from a disbeliever and the disbeliever does not inherit from a Muslim.” (*Sahih*)

(المعجم ٦) - بَابُ مِيرَاثِ أَهْلِ الْإِسْلَامِ مِنْ أَهْلِ الشِّرْكِ (التحفة ٦)

٢٧٢٩ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ وَ مُحَمَّدٌ بْنُ الصَّبَّاحِ قَالَا: حَدَّثَنَا سَفْيَانُ بْنُ عُيَيْنَةَ عَنِ الزُّهْرِيِّ، عَنْ عَلِيِّ بْنِ الْحُسَيْنِ، عَنْ عَمْرِو ابْنِ عُثْمَانَ، عَنْ أُسَامَةَ بْنِ زَيْدٍ، رَفَعَهُ إِلَى النَّبِيِّ ﷺ. قَالَ: «لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا الْكَافِرُ الْمُسْلِمَ».

تخريج: أخرجه البخاري، الفرائض، باب: لا يرث المسلم الكافر ولا الكافر المسلم، وإذا أسلم ... الخ، ح: ٦٧٦٤، من حديث الزهري به، ومسلم، الفرائض، باب: لا يرث المسلم الكافر ولا يرث الكافر المسلم، ح: ١٦١٤ من حديث سفیان به.

Comments:

A disbeliever means all non-Muslims like Hindus, Sikhs, Buddhists, Atheists, Qadianis, Baha'ists etc., even Jews and Christians are included in the category of non-Muslims.

2730. It was narrated from Usamah bin Zaid that he said: “O Messenger of Allāh, will you stay in your house in Makkah?” He said: “Has ‘Aqeel left us any houses?”

‘Aqeel had inherited from Abu Tālib, he and Tālib, but neither Ja’far nor ‘Alī had inherited anything, because they were Muslims, but ‘Aqeel and Tālib were disbelievers.

Because of that, ‘Umar used to

٢٧٣٠ - حَدَّثَنَا أَحْمَدُ بْنُ عَمْرِو بْنِ السَّرْحِ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ وَهْبٍ: أَنَّكَ يُوسُفُ عَنِ ابْنِ شِهَابٍ، عَنْ عَلِيِّ بْنِ الْحُسَيْنِ أَنَّهُ حَدَّثَهُ أَنَّ عَمْرَو بْنَ عُثْمَانَ أَخْبَرَهُ عَنْ أُسَامَةَ بْنِ زَيْدٍ أَنَّهُ قَالَ: يَا رَسُولَ اللَّهِ! أَتَنْزِلُ فِي دَارِكَ بِمَكَّةَ؟ قَالَ: «وَهَلْ تَرَكَ لَنَا عَقِيلٌ مِنْ رِبَاعٍ أَوْ دُورٍ؟».

وَكَانَ [عَقِيلٌ] وَرَثَ أَبَا طَالِبٍ، هُوَ

^[1] *An-Nisa'* 4:176. See no. 1436 also.

say: "The believer cannot inherit from a disbeliever."

And Usâmah said: "The Messenger of Allâh ﷺ said: "The Muslim does not inherit from a disbeliever and the disbeliever does not inherit from a Muslim."" (Sahih)

وَطَالِبٌ. وَلَمْ يَرِثْ جَعْفَرٌ وَلَا عَلِيُّ شَيْئًا. لِأَنَّهُمَا كَانَا مُسْلِمَيْنِ. وَكَانَ عَقِيلٌ وَطَالِبٌ كَافِرَيْنِ.

فَكَانَ عُمَرُ، مِنْ أَجْلِ ذَلِكَ، يَقُولُ: لَا يَرِثُ الْمُؤْمِنُ الْكَافِرَ.

وَقَالَ أَسَامَةُ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا الْكَافِرُ الْمُسْلِمَ».

تخريج: أخرجه البخاري، الحج، باب توريث دور مكة وبيعها وشرائها ... الخ، ح: ١٥٨٨ من حديث ابن وهب به، ومسلم، الحج، باب نزول الحاج بمكة وتوريث دورها، ح: ١٣٥١ عن أحمد بن عمرو بن السرح، أبي طاهر به، وانظر الحديث السابق لشطره الأخير.

Comments:

- This incident occurred at the occasion of the last Hajj (Sahih Bukhârî: 3058) or when Abu Tâlib died. 'Aqeel by that time had not embraced Islam, therefore, he got a share from the legacy, because 'Ali and Ja'far had embraced Islam, so they were deprived of the share. 'Aqeel embraced Islam later.
- Imâm Bukhârî inferred from this incident that if a person living in (Dârul-Harb) a non-Muslim country if embraces Islam, he can continue to keep his property as before.
- Hâfiz Ibn Hajar says, "'Aqeel had sold that house.'" (Fathul-Bâri, v. 3. pp. 571)

2731. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allâh ﷺ said: "People of two different religions do not inherit from one another." (Sahih)

٢٧٣١ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ ابْنَ لَهَيْعَةَ عَنْ خَالِدِ بْنِ يَزِيدَ أَنَّ الْمُثَنَّى بْنَ الصَّبَّاحِ أَخْبَرَهُ عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «لَا يَتَوَارَثُ أَهْلُ مِلَّتَيْنِ».

تخريج: [صحيح] أخرجه أبو داود، الفرائض، باب: هل يرث المسلم الكافر، ح: ٢٩١١ من طريق آخر عن عمرو بن شعيب به، وصححه ابن الجارود، ح: ٩٦٧، والحافظ ابن الملقن وغيرهما، وللحديث طرق أخرى عند الترمذي، ح: ٢١٠٨ وغيره.

Comments:

- Two different religions mean Muslims and disbelievers.
- A disbeliever is the heir of another even they are from different types of disbelieving sects.

Chapter 7. Inheritance Of *Walâ'*^[1]

2732. It was narrated from 'Amr bin Shu'aib, from his father, that his grandfather said: "Rabâb bin Hudhaifah (bin Sa'eed) bin Sahm married Umm Wâ'il bint Ma'mar Al-Jumahiyyah, and she bore him three sons. Their mother died and her sons inherited her houses and the *Walâ'* of her freed slaves. 'Amr bin 'Âs took them out to Shâm, and they died of the plague of 'Amwâs. 'Amr inherited from them, and he was their *'Asabah*.^[2] When 'Amr bin 'Âs came back, Banu Ma'mar came to him and they referred their dispute with him concerning the *Walâ'* of their sister to 'Umar. 'Umar said: 'I will judge between you according to what I heard from the Messenger of Allâh ﷺ. I heard him say: "What the son or father acquires goes to his *'Asabah*, no matter who they are.'" So he ruled in our favor and wrote a document to that effect, in which was the testimony of 'Abdur-Rahmân bin 'Awf, Zaid bin Thâbit and someone else. Then when 'Abdul-Malik bin Marwân was appointed caliph, a freed slave of hers (Umm Wâ'il's) died, leaving behind two thousand Dinâr. I heard that that ruling had been changed, so they referred the dispute to Hishâm

(المعجم ٧) - بَابُ مِيرَاثِ الْوَلَاءِ

(التحفة ٧)

٢٧٣٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا أَبُو أُسَامَةَ: حَدَّثَنَا حُسَيْنُ الْمَعْلَمُ عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: تَزَوَّجَ رَبَابُ بْنُ حَدِيثَةَ [بِنْتُ سَعِيدٍ] بَنِي سَهْمٍ، أُمٌّ وَائِلٍ، بِنْتُ مَعْمَرِ الْجُمَيْيَّةِ. فَوَلَدَتْ لَهُ ثَلَاثَةً. فَتَوَفَّيْتُ أُمَّهُمْ. فَوَرَّثَهَا بَنُوهَا، رِبَاعَهَا وَوَلَاءَ مَوَالِيهَا. فَخَرَجَ بِهِمْ عَمْرُو بْنُ الْعَاصِ إِلَى الشَّامِ. فَمَاتُوا فِي طَاعُونِ عَمَوَاسَ. فَوَرَّثَهُمْ عَمْرُو، وَكَانَ عَصَبَتُهُمْ. فَلَمَّا رَجَعَ عَمْرُو بْنُ الْعَاصِ، جَاءَ بَنُو مَعْمَرٍ، يُخَاصِمُونَهُ فِي وَلَاءِ أُخْتِهِمْ، إِلَى عُمَرَ. فَقَالَ عُمَرُ: أَقْضِي بَيْنَكُمْ بِمَا سَمِعْتُ مِنْ رَسُولِ اللَّهِ ﷺ. سَمِعْتُهُ يَقُولُ: «مَا أَخْرَزَ الْوَلَدُ وَالْوَالِدَ فَهُوَ لِعَصَبَتِهِ، مَنْ كَانَ» قَالَ: فَقَضَى لَنَا بِهِ. وَكَتَبَ لَنَا بِهِ كِتَابًا، فِيهِ شَهَادَةُ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، وَزَيْدِ بْنِ ثَابِتٍ وَآخَرٍ. حَتَّى إِذَا اسْتُخْلِفَ عَبْدُ الْمَلِكِ بْنُ مَرْوَانَ، تَوَفَّى مَوْلَى لَهَا. وَتَرَكَ أَلْفَيْ دِينَارٍ. فَبَلَغَنِي أَنَّ ذَلِكَ الْقَضَاءَ قَدْ غَيَّرَ. فَخَاصَمُوا إِلَى هِشَامِ بْنِ إِسْمَاعِيلَ. فَرَفَعْنَا إِلَى عَبْدِ الْمَلِكِ. فَأَتَيْنَاهُ بِكِتَابِ عُمَرَ. فَقَالَ: إِنْ كُنْتُ لَأَرَى أَنَّ هَذَا مِنَ الْقَضَاءِ الَّذِي لَا يُسَكُّ فِيهِ. وَمَا

[1] See no. 2712.

[2] Normally *'Asabah* refers to the remaining male relatives of the deceased on the father's side.

bin Ismâ'il. We referred the matter to 'Abdul-Malik, and brought him the document of 'Umar. He said: 'I thought that this was a ruling concerning which there was no doubt. I never thought that the people of Al-Madinah would reach such a state that they would doubt this ruling. So he ruled in our favor, and it remained like that afterwards."

(*Hasan*)

كُنْتُ أَرَى أَنَّ أَمْرَ أَهْلِ الْمَدِينَةِ بَلَغَ هَذَا. أَنَّ يَشْكُرُوا فِي هَذَا الْقَضَاءِ.

فَقَضَى لَنَا فِيهِ. فَلَمْ تَزَلْ فِيهِ بَعْدُ.

تخريج: [إسناده حسن] أخرجه أبو داود، الفرائض، باب: في الولاء، ح: ٢٩١٧ من حديث حسين به.

Comments:

- Inheritance is first distributed among the *Ashâbul-Furudh* according to their fixed shares, and whatever remains from the legacy is distributed among the *'Asabah*. If a freed slave does not have any *'Asabah* relatives then the one who has freed the slave becomes his *'Asabah*, and if the freed slave does not have *'Ashâbul-Furudh* nor *'Asabah*, then the one who has freed the slave becomes the sole heir of the slave.
- Walâ'* of Umm Wâ'il was given to her sons. After the death of her sons, *Walâ'* remained in the same bloodline family, meaning that it remained in Umm Wâ'il's in-laws' family. Umm Wâ'il's family or her children's maternal family's law suit was rejected.
- In the presence of *'Asabah*, relatives from the side of the wife do not become heirs.

2733. It was narrated from 'Aishah that the freed slave of the Prophet ﷺ fell from a palm tree and died. He left behind wealth but he had no child or close relative. The Prophet ﷺ said: "Give his legacy to a man from his village." (*Hasan*)

٢٧٣٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَعَلِيُّ بْنُ مُحَمَّدٍ قَالَا: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا شَفِيَّانُ عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْأَصْبَهَانِيِّ، عَنْ مُجَاهِدِ بْنِ وَرْدَانَ، عَنْ عُرْوَةَ بْنِ الزُّبَيْرِ، عَنْ عَائِشَةَ أَنَّ مَوْلَى لِلنَّبِيِّ ﷺ وَقَعَ مِنْ نَخْلَةٍ. فَمَاتَ. وَتَرَكَ مَالًا وَلَمْ يَتْرُكْ وَلَدًا وَلَا حَمِيمًا. فَقَالَ النَّبِيُّ ﷺ: «أَعْطُوا مِيرَاثَهُ رَجُلًا مِنْ أَهْلِ قَرْيَتِهِ».

تخريج: [إسناده حسن] أخرجه أبو داود، الفرائض، باب في ميراث ذوي الأرحام،

ح: ٢٩٠٢ من حديث وكيع به، وحسنه الترمذي، ح: ٢١٠٥.

Comments:

- The Noble Prophet ﷺ was the heir to this man. He did not like to take the belongings of the slave, and ordered to distribute his property among his people.
- One who has no heir, his property is deposited in the public treasury which can be used for the common benefits of the Muslim community.
- In the absence of a public treasury, the legacy of a slave having no heirs goes to the people of his town.

2734. It was narrated that the daughter of Hamzah said: "My freed slave died, leaving behind a daughter. The Messenger of Allāh ﷺ divided his wealth between myself and his daughter, giving me half and her half." (*Da'if*)

٢٧٣٤ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا حُسَيْنُ بْنُ عَلِيٍّ عَنْ زَائِدَةَ، عَنْ مُحَمَّدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ أَبِي لَيْلَى، عَنِ الْحَكَمِ، عَنْ عَبْدِ اللَّهِ بْنِ شَدَادٍ، عَنْ بِنْتِ حَمْزَةَ، قَالَ مُحَمَّدٌ، يَعْنِي ابْنَ أَبِي لَيْلَى، وَهِيَ أُخْتُ ابْنِ شَدَادٍ، لِأُمِّهِ قَالَتْ: مَاتَ مَوْلَايَ وَتَرَكَ ابْنَةً. فَقَسَمَ رَسُولُ اللَّهِ ﷺ مَالَهُ بَيْنِي وَبَيْنَ ابْنَتِهِ. فَجَعَلَ لِي النِّصْفَ، وَلَهَا النِّصْفَ.

تخريج: [إسناده ضعيف] أخرجه النسائي في الكبرى: ٨٦/٤، ح: ٦٣٩٨ من حديث حسين بن علي الجعفي به * ابن أبي ليلي تقدم، ح: ٨٥٤، وخالفه شعبة عن الحكم عن عبدالله بن شداد به مرسلًا، أخرجه أبو داود في المراسيل، ح: ٣٦٤، وتابعه غير واحد عن الحكم به، فالحديث منقطع كما قال البيهقي ٢٤١/٦، وللحديث شواهد ضعيفة عند البيهقي وغيره.

Comments:

If a slave dies and leaves a daughter behind, the daughter gets half of the legacy, and second half go to the *Asabah*. In this narration half of the total legacy was given to her daughter, and the remaining half was given to the *Asabah* of that freed slave.

Chapter 8. The Inheritance Of A Killer

(المعجم ٨) - بَابُ مِيرَاثِ الْقَاتِلِ

(التحفة ٨)

2735. It was narrated from Abu Hurairah that the Messenger of Allāh ﷺ said: "The killer does not inherit." (*Hasan*)

٢٧٣٥ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنَّ بَابَا اللَّيْثِ ابْنَ سَعْدٍ عَنْ إِسْحَاقَ بْنِ أَبِي قُرَّةَ، عَنْ ابْنِ شِهَابٍ، عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ، عَنْ أَبِي هُرَيْرَةَ عَنْ رَسُولِ اللَّهِ ﷺ أَنَّهُ قَالَ: «الْقَاتِلُ لَا يَرِثُ».

تخریج: [حسن] تقدم، ح: ٢٦٤٥.

Comments:

- Killing deprives the killer from being a heir. If a killer is a relative of the one killed, by which he would have become the heir, then due to the crime of killing, he loses this right, and is deprived of the right of being heir.
- This order is for every killer, whether he is from 'Ashâbul-Furudh or 'Asabah. For example, a man has two sons; one of them kills his father, then deducting the share of 'Ashâbul-Furudh from the total legacy, the rest will be given to the son who was not involved in the crime of killing, the other son who was the killer gets nothing.
- Usually the motive of such murder is to get the property sooner. The law given in this *Hadith* diminishes, or ends the cause of murder, and safeguards humanity from the crime based on greed.

2736. It was narrated from 'Abdullâh bin 'Amr that the Messenger of Allâh ﷺ stood up, on the day of the conquest of Makkah, and said: "A woman inherits from the blood money and wealth of her husband, and he inherits from her blood money and wealth, so long as one of them did not kill the other. If one of them killed the other deliberately, then he or she inherits nothing from the blood money or wealth. If one of them killed the other by mistake, he or she inherits from the other's wealth, but not from the blood money." (*Hasan*)

٢٧٣٦ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ وَ مُحَمَّدٌ بْنُ يَحْيَى، قَالَا: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ مُوسَى عَنِ الْحَسَنِ بْنِ صَالِحٍ، عَنْ مُحَمَّدِ بْنِ سَعِيدٍ. وَقَالَ مُحَمَّدُ بْنُ يَحْيَى، عَنْ عَمْرِو بْنِ سَعِيدٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ: حَدَّثَنِي أَبِي، عَنْ جَدِّي عَبْدِ اللَّهِ بْنِ عَمْرٍو أَنَّ رَسُولَ اللَّهِ ﷺ قَامَ، يَوْمَ فَتْحِ مَكَّةَ، فَقَالَ: «الْمَرْأَةُ تَرِثُ مِنْ دِيَّةِ زَوْجِهَا وَمَالِهِ. وَهُوَ يَرِثُ مِنْ دِيَّتِهَا وَمَالِهَا. مَا لَمْ يَقْتُلْ أَحَدُهُمَا صَاحِبَهُ. فَإِذَا قَتَلَ أَحَدُهُمَا صَاحِبَهُ عَمْدًا، لَمْ يَرِثْ مِنْ دِيَّتِهِ وَمَالِهِ شَيْئًا. وَإِنْ قَتَلَ أَحَدُهُمَا صَاحِبَهُ خَطَأً، وَرِثَ مِنْ مَالِهِ، وَلَمْ يَرِثْ مِنْ دِيَّتِهِ».

تخریج: [حسن] أخرجه الدارقطني: ٧٢/٤ من حديث عبيد الله بن موسى به، وقال: محمد ابن سعيد الطائفي ثقة، ووافقه البيهقي: ٢٢١/٦ يعينان أنه غير المصلوب، وجاء في رواية محمد ابن يحيى: عمر بن سعيد، ومن طريقه صححه ابن الجارود، ح: ٩٦٧، وله طريق آخر عند الدارقطني: ٧٦، ٧٥/٤ لكنه لا يستشهد به لشدة ضعفه * ابن سعيد، غير المصلوب، جهله صاحب التريب، ووثقه الدارقطني، وابن الجارود، فحديثه لا ينزل عن درجة الحسن، والله أعلم، والسند ضعفه البوصيري على ظن أنه المصلوب.

Chapter 9. Relations Of The Womb

2737. It was narrated from Abu Umamah bin Sahl bin Hunaif that a man shot an arrow at another man and killed him, and he had no heir except a maternal uncle. Abu 'Ubaidah bin Jarrâh wrote to 'Umar about that, and 'Umar wrote back to him saying that the Prophet ﷺ said: "Allâh and His Messenger are the guardians of the one who has no guardian, and the maternal uncle is the heir of one who has no other heir." (Hasan)

(المعجم ٩) - بَابُ ذَوِي الْأَرْحَامِ

(التحفة ٩)

٢٧٣٧ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ وَ عَلِيُّ بْنُ مُحَمَّدٍ: قَالَا: حَدَّثَنَا وَكِيعٌ عَنْ سُفْيَانَ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْحَارِثِ بْنِ عِيَّاشٍ بْنِ أَبِي رَيْبَعَةَ الزُّرَيْجِيِّ، عَنْ حَكِيمِ بْنِ حَكِيمِ بْنِ عَبَّادِ بْنِ حُثَيْفِ الْأَنْصَارِيِّ، عَنْ أَبِي أُمَامَةَ بْنِ سَهْلٍ بْنِ حُثَيْفٍ أَنَّ رَجُلًا رَمَى رَجُلًا بِسَهْمٍ فَقَتَلَهُ. وَلَيْسَ لَهُ وَارِثٌ إِلَّا خَالٌ. فَكَتَبَ فِي ذَلِكَ أَبُو عُبَيْدَةَ بْنُ الْجَرَّاحِ إِلَى عُمَرَ. فَكَتَبَ إِلَيْهِ عُمَرُ أَنَّ النَّبِيَّ ﷺ قَالَ: «اللَّهُ وَرَسُولُهُ مَوْلَى مَنْ لَا مَوْلَى لَهُ. وَالْخَالُ وَارِثٌ مَنْ لَا وَارِثَ لَهُ».

تخريج: [حسن] أخرجه الترمذي، الفرائض، باب ما جاء في ميراث الخال، ح: ٢١٠٣ من حديث سفیان الثوري به، وقال: حسن صحيح، وصححه ابن الجارود، ح: ٩٦٤، وابن حبان (موارد)، ح: ١٢٢٧ قلت: الثوري عن، ولحديثه شاهد حسن عند ابن حبان، ح: ١٢٢٦، وللحديث شواهد أخرى عند أبي داود، ح: ٢٨٩٩، ٢٩٠٠، والحاكم: ٣٤٤/٤ وغيرهما، انظر الحديث الآتي.

Comments:

- The word *Mawâli* is used in both senses, for a freed slave and for the one who frees the slave. On the basis of this relationship, the issue has been discussed in a previous *Hadith*. (See *Hadith* no. 2732) If after the death of a freed slave, there is no one among those who freed him, the inheritance will be deposited in the public treasury as the legacy of an heirless person.
- There are three kind of heirs:
 - Ashabul-Furudh*: Their share has been fixed by the Qur'ân and the *Sunnah* of the Prophet ﷺ.
 - 'Asabah*: Relatives other than the *Ashabul-Furudh* who are from the bloodline of the deceased like (uncle) the father's brother, (nephew) the brother's son, or the son of the father's brother etc.
 - Dhul-Arham*: Those relatives whose relationship to the deceased is through a female link, like the maternal uncle, the deceased's sister's son, the grandfather (mother's father) and grandson, (son of the daughter), etc. In the absence of *'Asabah*, these relatives are heirs.

2738. It was narrated from Miqdâm Abu Karimah, a man from Shâm who was one of the Companions of the Messenger of Allâh ﷺ, that the Messenger of Allâh ﷺ said: "Whoever leaves behind wealth, it is for his heirs. Whoever leaves behind poor dependents and a debt, it is for us to take care of — or he said: 'It is for Allâh and His Messenger (to take care of) — I am the heir of the one who has no heir, I will pay blood money on his behalf and inherit from him. And the maternal uncle is the heir of the one who has no heir, he pays blood money on his behalf and inherits from him.'" (*Sahih*)

٢٧٣٨ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا شَيْبَانُهُ، ح: وَحَدَّثَنَا مُحَمَّدُ بْنُ الْوَلِيدِ: حَدَّثَنَا مُحَمَّدُ بْنُ جَعْفَرٍ، [قَالَ:] حَدَّثَنَا شُعْبَةُ: حَدَّثَنِي بُدَيْلُ بْنُ مَيْسَرَةَ الْعَقِيلِيُّ عَنْ عَلِيِّ بْنِ أَبِي طَلْحَةَ، عَنْ رَاشِدِ بْنِ سَعْدٍ، عَنْ أَبِي عَامِرٍ الْهُوزَنِيِّ، عَنِ الْمُقْدَامِ أَبِي كَرِيمَةَ، رَجُلٍ مِنْ أَهْلِ الشَّامِ، مِنْ أَصْحَابِ رَسُولِ اللَّهِ ﷺ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ تَرَكَ مَالًا، فَلِوَرَثَتِهِ. وَمَنْ تَرَكَ كَلًّا، فَلِإِنْتَا وَرَبَّمَا قَالَ: فَإِلَى اللَّهِ وَإِلَى رَسُولِهِ وَأَنَا وَارِثُ مَنْ لَا وَارِثَ لَهُ. أَعْقِلَ عَنْهُ وَارَثَهُ. وَالْحَالُ وَارِثُ مَنْ لَا وَارِثَ لَهُ. يَعْقِلَ عَنْهُ وَرَثَتُهُ».

تخريج: [صحيح] تقدم، ح: ٢٦٣٤.

Comments:

- An Islamic state is responsible for orphans, poor, needy and indolent persons.
- In case of killing by mistake, the blood money is paid by the 'Asabah, but if there are no 'Asabah (or they are not resident of an Islamic state) then the responsibility is shifted to the state.
- In the absence of the 'Asabah, Dhul-Arham are the heirs and they too are responsible for the payment of blood money. (See *Hadith* no. 2634)

Chapter 10. Inheritance From The Male Relatives From Father's Side

(المعجم ١٠) - بَابُ مِيرَاثِ الْعَصْبَةِ

(التحفة ١٠)

2739. It was narrated that 'Ali bin Abu Tâlib said: "The Messenger of Allâh ﷺ ruled that the sons from the same mother inherit from one another, but not sons from different mothers. A man inherits from his full brother from the same father and mother, but not his brothers from his father." (*Da'if*)

٢٧٣٩ - حَدَّثَنَا يَحْيَى بْنُ حَكِيمٍ: حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا إِسْرَائِيلُ عَنْ أَبِي إِسْحَاقَ عَنِ الْحَارِثِ، عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ قَالَ: قَضَى رَسُولُ اللَّهِ ﷺ أَنَّ أَعْيَانَ بَنِي الْأُمِّ يَتَوَارَثُونَ، دُونَ بَنِي الْأَعْلَالِ. يَرِثُ الرَّجُلُ أَخَاهُ، لِأَبِيهِ وَأُمِّهِ. دُونَ إِخْوَتِهِ لِأَبِيهِ.

تخريج: [ضعيف] تقدم، ح: ٢٧١٥.

Comments:

See *Hadith* no. 2715.

2740. It was narrated that Ibn 'Abbās said: "The Messenger of Allāh ﷺ said: 'Distribute wealth among those who are entitled to shares of inheritance, according to the Book of Allāh, then whatever is left over goes to the nearest male relative.'" (*Sahih*)

٢٧٤٠ - حَدَّثَنَا عَبَّاسُ بْنُ عَبْدِ الْعَظِيمِ الْعُمَيْرِيُّ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَنَّكَ مَعْمَرُ عَنْ ابْنِ طَاوُسٍ، عَنْ أَبِيهِ، عَنْ ابْنِ عَبَّاسٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «اقْسِمُوا الْمَالَ بَيْنَ أَهْلِ الْفَرَائِضِ، عَلَى كِتَابِ اللَّهِ. فَمَا تَرَكْتَ الْفَرَائِضَ، فَلِأَوْلَى رَجُلٍ ذَكَرَ».

تخريج: أخرجه البخاري، الفرائض، باب ميراث الولد من أبيه وأمه، ح: ٦٧٣٥، ٦٧٤٦ من حديث عبدالله بن طائوس به، ومسلم، الفرائض، باب ألحقوا الفرائض بأهلها فما بقي فلأولى رجل ذكر، ح: ١٦١٥ من طريق عبدالرزاق به.

Comments:

- Ashābul-Furudh* means those heirs whose shares have been fixed by the Noble Qur'ān and the *Hadith* of the Prophet ﷺ.
- These are twelve in number: i) Husband. ii) Father. iii) Grandfather (Father's father). iv) Uterine brother. v) Stepbrother. vi) Wife. vii) Mother. viii) Grandmother (Father's mother). ix) Daughter. x) Real sister. xi) Son's daughter (Granddaughter). xii) Uterine sister.
- Among the above mentioned relationships, some change their status in some conditions. Sometimes they have the status of *As-habul Furoodh* and sometimes they become *Asabah*. For example, one daughter or more than one daughter are included in *Ashabul-Furudh*, if there is no son of the deceased. If he has a son, the daughters become *'Asabah*.

Chapter 11. One Who Has No Heir

(المعجم ١١) - بَابُ مَنْ لَا وَارَثَ لَهُ

(التحفة ١١)

2741. It was narrated that Ibn 'Abbās said: "A man died at the time of the Messenger of Allāh ﷺ, and he left no heir except for a slave whom he had set free. The Messenger of Allāh ﷺ gave the legacy to him." (*Hasan*)

٢٧٤١ - حَدَّثَنَا إِسْمَاعِيلُ بْنُ مُوسَى: حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنْ عَمْرِو بْنِ دِينَارٍ، عَنْ عَوْسَجَةَ، عَنْ ابْنِ عَبَّاسٍ قَالَ: مَاتَ رَجُلٌ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ. وَلَمْ يَدَعْ لَهُ وَارِثًا، إِلَّا عَبْدًا، هُوَ أَعْتَقَهُ. فَدَفَعَ النَّبِيُّ ﷺ مِيرَاثَهُ إِلَيْهِ.

تخريج: [إسناده حسن] أخرجه أبو داود، الفرائض، باب: في ميراث ذوي الأرحام، ح: ٢٩٠٥ من حديث عمرو بن دينار به، وحسنه الترمذي، ح: ٢١٠٦ قلت: عوسجة وثقه أبو زرعة،

وابن حبان وغيرهما وتعديله راجح، والله أعلم.

Chapter 12. A Woman May Get Three Types Of Inheritance

2742. It was narrated from Wâthilah bin Asqa' that the Prophet ﷺ said: "A woman may get three types of inheritance: From her freed slave woman, a foundling whom she raised, and her child concerning whom she swore in *Li'ân* that he was legitimate." (*Da'if*)

Muhamamd bin Yazid (one of the narrators) said: "This *Hadith* was not reported by anyone other than Hishâm."

(المعجم ١٢) - بَابُ: تَحْوِزُ الْمَرْأَةِ

ثَلَاثَ مَوَارِيثَ (التحفة ١٢)

٢٧٤٢ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا مُحَمَّدُ بْنُ حَرْبٍ: حَدَّثَنَا عُمَرُ بْنُ رُوَيْبَةَ التَّغْلِبِيُّ، عَنْ عَبْدِ الْوَاحِدِ بْنِ عَبْدِ اللَّهِ النَّصْرِيِّ، عَنْ وَائِلَةَ بْنِ الْأَسْقَعِ عَنِ النَّبِيِّ ﷺ قَالَ: «الْمَرْأَةُ تَحْوِزُ ثَلَاثَ مَوَارِيثَ. عَتِيقَهَا، وَلَقِيطَهَا، وَوَلَدَهَا الَّذِي لَا عَتَّ عَلَيْهِ».

قَالَ مُحَمَّدُ بْنُ يَزِيدَ: مَا رَوَى هَذَا الْحَدِيثَ غَيْرُ هِشَامٍ.

تخريج: [إسناده ضعيف] أخرجه أبو داود، الفرائض، باب ميراث ابن الملاعة، ح: ٢٩٠٦ من طريق محمد بن حرب به، وحسنه الترمذي، ح: ٢١١٥، حديث عمر بن روية عن عبد الواحد ضعيف كما حققته في نيل المقصود.

Comments:

- The issue of the inheritance of a freed slave is mentioned in *Hadith* no. 2734.
- In the case of *Li'ân*, the child belongs to the mother, he is not considered the son of the woman's husband. (See *Hadith* no. 2069), therefore, the mother is the heir of her child for whom she is blamed.

Chapter 13. One Who Rejects His Child

2743. It was narrated that Abu Hurairah said: "When the Verse of *Li'ân* was revealed, the Messenger of Allâh ﷺ said: 'Any woman who attributes her child to people to whom he does not belong, then she has no relation to (the religion of) Allâh, and she will never enter Paradise, and any

(المعجم ١٣) - بَابُ مَنْ أَنْكَرَ وَلَدَهُ

(التحفة ١٣)

٢٧٤٣ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا زَيْدُ بْنُ الْحُبَابِ عَنْ مُوسَى بْنِ عُبَيْدَةَ: حَدَّثَنِي يَحْيَى بْنُ حَرْبٍ عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ الْمَقْبُرِيِّ، عَنْ أَبِي هُرَيْرَةَ قَالَ: لَمَّا نَزَلَتْ آيَةُ اللَّعَانِ، قَالَ رَسُولُ اللَّهِ ﷺ: «أَيُّمَا امْرَأَةٍ أَلْحَقَتْ بِقَوْمٍ مِنْ لَيْسَ مِنْهُمْ، فَلَيْسَتْ مِنَ اللَّهِ

man who rejects his child, while he recognises him, Allāh will screen Himself from him on the Day of Resurrection and disgrace him before the witnesses.”

(Hasan)

تخریج: [حسن] وقال البوصيري: هذا إسناد ضعيف، يحيى بن حرب مجهول * وموسى بن عبيدة تقدم، ح: ٢٥١، وله شاهد حسن عند أبي داود، ح: ٢٢٦٣ وغيره، وصححه الدارقطني، والحاكم، والذهبي.

2744. It was narrated from ‘Amr bin Shu’aib, from his father, from his grandfather, that the Prophet ﷺ said: “It is disbelief for a man to attribute himself to someone other than his father knowingly, or to deny his connection to his father, even subtly.”^[1] (Hasan)

فِي شَيْءٍ. وَلَنْ يُدْخِلَهَا جَنَّتَهُ. وَإِنَّمَا رَجُلٌ أَنْكَرَ وَلَدَهُ، وَقَدْ عَرَفَهُ، اخْتَجَبَ اللَّهُ مِنْهُ يَوْمَ الْقِيَامَةِ، وَفَضَحَهُ عَلَى رُؤُوسِ الْأَشْهَادِ.

٢٧٤٤ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ: حَدَّثَنَا سُلَيْمَانُ بْنُ بِلَالٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ النَّبِيَّ ﷺ قَالَ: «كَفَرُ بِأُمْرِي [ادِّعَاءُ] نَسَبٍ لَا يَعْرِفُهُ، أَوْ جَحْلُهُ، وَإِنْ دَقَّ».

تخریج: [إسناده حسن] أخرجه الطبراني في الصغير: ١٠٨/٢ من طريق أنس بن عياض عن يحيى بن سعيد الأنصاري به، وقال: لم يروه عن يحيى بن سعيد إلا أنس بن عياض، وصححه البوصيري، قلت: يحيى غير مدلس كما حققه الحافظ في النكت على ابن الصلاح: ٢/٦٣٧، ٦٣٨، وله، ولحديثه شواهد.

Comments:

- Almost all the issues of inheritance depend on the proof of bloodline and genealogy; therefore, it is important to be very careful in this matter.
- To make a change in one's bloodline is equal to disbelief.

Chapter 14. Claiming A Child

(المعجم ١٤) - بَابُ: فِي ادِّعَاءِ الْوَلَدِ
(التحفة ١٤)

2745. It was narrated from ‘Amr bin Shu’aib, from his father, from his grandfather that the Messenger of Allāh ﷺ said: “Whoever commits adultery with a slave woman or a free woman,

٢٧٤٥ - حَدَّثَنَا أَبُو حُرَيْبٍ: حَدَّثَنَا ابْنُ الْيَمَانِ عَنِ الْمُثَنَّى بْنِ الصَّبَّاحِ، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «مَنْ عَاهَرَ أَمَةً أَوْ حُرَّةً،

^[1] In his notes on *Musnad Ahmad* Sindi said: “By negating his father's relationship to his grandfather and even further.”

his child is illegitimate, and he cannot inherit from him or be inherited from (i.e., this child cannot inherit from him)."

(Hasan)

تخريج: [حسن] * تقدم حال المثنى، ح: ٢٤٠١، وتابعه ابن لهيعة عند الترمذي، ح: ٢١١٣، وهو أيضًا ضعيف مدلس (انظر، ح: ٣٣٠ وغيره)، وللحديث شاهد عند ابن حبان في صحيحه (موارد)، ح: ١٦٩٩، وانظر الحديث الآتي.

Comments:

- Issues of inheritance depend on the basis of a legal marriage bond. Though a child born as a result of adultery is the son of the adulterer; still, in the eyes of law, he is a bastard, and has no legal relation with his father, therefore, he cannot become his heir.
- The mother is an heir of her child whether her child is legitimate, or born as a result of illicit relations with someone, and the relationship of the child regarding inheritance remains regular. The link of the child also remains regular with maternal family in inheritance matters.

2746. It was narrated from 'Amr bin Shu'aib, from his father, from his grandfather, that the Messenger of Allāh ﷺ said: "Every child who is attributed to his father after his father to whom he is attributed has died, and his heirs attributed him to him after he died, he ruled that^[1] whoever was born to a slave woman whom he owned at the time when he had intercourse with her, he should be named after the one to whom he was attributed, but he has no share of any inheritance that was distributed previously. Whatever inheritance he finds has not yet been distributed, he will have a share of it. But he cannot be named after his father if the man whom he claimed as his father did not acknowledge him.

٢٧٤٦ - حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى: حَدَّثَنَا مُحَمَّدُ بْنُ بَكَّارٍ بْنُ بِلَالٍ الدَّمَشَقِيُّ: أَنَّ أَبَا مُحَمَّدٍ بْنُ رَاشِدٍ عَنْ سُلَيْمَانَ بْنِ مُوسَى، عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «كُلُّ مُسْتَلْحَقٍ اسْتَلْحَقَ بَعْدَ أَبِيهِ، الَّذِي يُدْعَى لَهُ، ادِّعَاءُ وَرَثَتِهِ مِنْ بَعْدِهِ، فَقَضَى أَنْ مَنْ كَانَ مِنْ أُمَةٍ يَمْلِكُهَا يَوْمَ أَصَابَهَا، فَقَدْ لَحِقَ بِمَنِ اسْتَلْحَقَهُ. وَلَيْسَ لَهُ فِيهَا قِسْمٌ قَبْلَهُ مِنَ الْمِيرَاثِ شَيْءٌ. وَمَا أَدْرَكَ مِنْ مِيرَاثٍ لَمْ يُقْسَمْ، فَلَهُ نَصِيْبُهُ. وَلَا يَلْحَقُ إِذَا كَانَ أَبُوهُ الَّذِي يُدْعَى لَهُ أَنْكَرَهُ. وَإِنْ كَانَ مِنْ أُمَةٍ لَا يَمْلِكُهَا. أَوْ مِنْ حُرَّةٍ عَاهَرَ بِهَا، فَإِنَّهُ لَا يَلْحَقُ وَلَا يُورَثُ. وَإِنْ كَانَ الَّذِي يُدْعَى لَهُ هُوَ ادِّعَاءُ، فَهُوَ وَلَدٌ زِنَا. لِأَهْلِ أُمَةٍ

^[1] In the version with Abu Dāwūd it is: "The Prophet ﷺ ruled that every" so this is the meaning here.

If he was born to a slave woman whom his father did not own, or to a free woman with whom he committed adultery, then he cannot be named after him and he does not inherit from him, even if the one whom he claims as his father acknowledges him. So he is an illegitimate child who belongs to his mother's people, whoever they are, whether she is a free woman or a slave." (*Hasan*)

(One of the narrators) Muhammad bin Râshid said: "What is meant by that is what was distributed out during the Ignorance period, before Islam."

مَنْ كَانُوا. حُرَّةً أَوْ أَمَةً.

قَالَ مُحَمَّدُ بْنُ رَاشِدٍ: يَعْنِي بِذَلِكَ مَا قُسِمَ فِي الْجَاهِلِيَّةِ قَبْلَ الْإِسْلَامِ.

تخريج: [إسناده حسن] أخرجه أبو داود، الطلاق، باب: في ادعاء ولد الزنا، ح: ٢٢٦٥

من حديث محمد بن راشد به، وحسنه البوصيري.

Comments:

- a. In the period of Ignorance, illegal sexual intercourse with slave woman was a normal feature of the society, and it was not considered a sin. Illegal sexual intercourse with a free woman was a social vice, but it was a part of the social life.
- b. In the case of various claimants of a child, the Prophet ﷺ issued the following principle:
 - i) A legal child who's father is the husband of a free woman, or master of a slave woman. This type of legal child is an heir of his father.
 - ii) If a man who is attributed as a father of a child disowns the child in his life time, that child will not be deemed his child, and will not get any share from his inheritance, and vice versa.
 - iii) If a child is born as a result of illicit relations and the adulterer admits that he is the father of the child, even then he will not be considered the child's father, nor he/she will get a share from the inheritance, and vice versa.

Chapter 15. Prohibition Of Selling The Right Of Inheritance

(المعجم ١٥) - بَابُ النَّهْيِ عَنِ بَيْعِ
الْوَلَاءِ وَعَنْ هِبَتِهِ (التحفة ١٥)

2747. It was narrated that Ibn 'Umar said: "The Messenger of Allâh ﷺ forbade selling the right

٢٧٤٧ - حَدَّثَنَا عَلِيُّ بْنُ مُحَمَّدٍ: حَدَّثَنَا وَكِيعٌ: حَدَّثَنَا شُعْبَةُ وَ سَفْيَانُ، عَنْ عَبْدِ اللَّهِ

of inheritance or giving it away.”
(*Sahih*)

ابْنُ دِينَارٍ، عَنِ ابْنِ عُمَرَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ الْوَلَاءِ وَعَنْ هَبْتِهِ.

تخریج: أخرجه البخاري، العتق، باب بيع الولاء وهبته، ح: ٢٥٣٥ الفرائض، باب إثم من تبرأ من مواليه، ح: ٦٧٥٦، ومسلم، العتق، باب النهي عن بيع الولاء وهبته، ح: ١٥٠٦ من حديث شعبة، وسفيان الثوري (وغيرهما) به.

2748. It was narrated that Ibn 'Umar said: The Messenger of Allāh ﷺ forbade selling the right of inheritance, or giving it as a gift. (*Sahih*)

٢٧٤٨ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ الْمَلِكِ بْنُ أَبِي الشَّوَّازِ: حَدَّثَنَا يَحْيَى بْنُ سَلِيمٍ الطَّائِفِيُّ، عَنْ عُبَيْدِ اللَّهِ بْنِ عُمَرَ، عَنْ نَافِعٍ، عَنْ ابْنِ عُمَرَ قَالَ: نَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ الْوَلَاءِ وَعَنْ هَبْتِهِ.

تخریج: [صحيح] أخرجه الترمذي، البيوع، باب ما جاء في كراهية بيع الولاء وهبته، ح: ١٢٣٦ من حديث يحيى بن سليم بن معلقاً، وقال: هو وهم، وهم فيه يحيى بن سليم أي السند، ورجح أنه من رواية عبدالله بن دينار عن ابن عمر به، وقال: هذا أصح.

Comments:

- The relation between the one who frees a slave, and the freed slave, is the base of the rights of inheritance. For example, if there is no heir of the one who manumits the slave, the freed slave will be his heir, because the freed slave is considered a member of the tribe of his master who freed him.
- The relationship of the right of inheritance cannot be changed by any means. It cannot be sold or given as a gift to anyone.

Chapter 16. Division Of Inheritance

(المعجم ١٦) - بَابُ قِسْمَةِ الْمَوَارِيثِ

(التحفة ١٦)

2749. It was narrated from 'Abdullāh bin 'Umar that the Messenger of Allāh ﷺ said: "Whatever division of inheritance was made during the Ignorance period, stands according to the division of the Ignorance period, and whatever division of inheritance was made during Islam, it stands according to the division of Islam." (*Hasan*)

٢٧٤٩ - حَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ: أَنْبَأَنَا عَبْدُ اللَّهِ بْنُ لَهَيْعَةَ، عَنْ عُقَيْلٍ أَنَّهُ سَمِعَ نَافِعًا يُخْبِرُ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَا كَانَ مِنْ مِيرَاثٍ قِسْمٍ فِي الْجَاهِلِيَّةِ، فَهُوَ عَلَى قِسْمَةِ الْجَاهِلِيَّةِ. وَمَا كَانَ مِنْ مِيرَاثٍ أَدْرَكَهُ الْإِسْلَامُ، فَهُوَ عَلَى قِسْمَةِ الْإِسْلَامِ».

تخريج: [حسن] أخرجه ابن عدي: ١٤٦٨/٤ من حديث محمد بن ربح به، وضعفه البوصيري من أجل ابن لهيعة، ح: ٣٣٠، وللحديث شاهد حسن، ح: ٢٤٨٥.

Comments:

Even in the period of Ignorance, illegal sexual intercourse was considered a social evil, and there used to be difference between right and wrong, and legal and illegal. Before the advent of Islam, a child born as a result of illicit relations never got the status equal to a child born to a married couple. It has been explained in Chapter no. 14.

Chapter 17. If A Newborn Cries, He Is An Heir

(المعجم ١٧) - بَابُ: إِذَا اسْتَهْلَّ

الْمَوْلُودُ وَرِثَ (التحفة ١٧)

2750. It was narrated from Jābir that the Messenger of Allāh ﷺ said: "If the child has cried, the (funeral) prayer should be offered for him (if he dies) and he is an heir." (*Da'if*)

٢٧٥٠ - حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ: حَدَّثَنَا الرَّبِيعُ بْنُ بَدْرٍ: حَدَّثَنَا أَبُو الزُّبَيْرِ عَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «إِذَا اسْتَهْلَّ الصَّبِيُّ صَلَّيْ عَلَيْهِ، وَوَرِثَ».

تخريج: [إسناده ضعيف جداً] أخرجه ابن عدي: ٩٩٣/٣ من طريق الربيع * والربيع بن بدر تقدم، ح: ٢٦٩ وتابعه سفيان الثوري (المدلس وعنن في جميع الطرق) ابن حبان، ح: ١٢٢٣، وصححه الحاكم، والذهبي على شرط الشيخين: ٣٤٩، ٣٤٨/٤، وتابعهما إسماعيل بن مسلم المكي تقدم، ح: ٣٠١ عند الترمذي، ح: ١٠٣٢ وغيره، وأبو الزبير عنن تقدم، ح: ٣٩٥ فالخير لم يصح بهذه الشواهد، وانظر الحديث الآتي.

2751. It was narrated from Jābir bin 'Abdullāh and Miswar bin Makhramah that the Messenger of Allāh ﷺ said: "No child inherits until he raises his voice or cries." (*Hasan*)

He said: "Raising his voice means crying, yelling or sneezing."

٢٧٥١ - حَدَّثَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ الدَّمَشْقِيُّ: حَدَّثَنَا مَرْوَانُ بْنُ مُحَمَّدٍ: حَدَّثَنَا سُلَيْمَانُ بْنُ بِلَالٍ: حَدَّثَنِي يَحْيَى بْنُ سَعِيدٍ، عَنْ سَعِيدِ ابْنِ الْمُسَيَّبِ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ وَ الْمُسَوِّرِ بْنِ مَخْرَمَةَ قَالَا: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا يَرِثُ الصَّبِيُّ حَتَّى يَسْتَهْلَّ صَارِحًا». قَالَ: وَاسْتَهْلَأَهُ، أَنْ يَبْكِي وَيَصْبَحَ أَوْ يَغْطِسَ.

تخريج: [إسناده حسن] أخرجه الطبراني في الأوسط: ٣٠٣/٥، ح: ٤٥٩٦ من طريق العباس بن الوليد به، وتابعه إبراهيم بن عتيق، أبو إسحاق العباسي عند السهمي في تاريخ جرجان (ص: ٤٧١ ت: ٩٣٨) * وإبراهيم صدوق كما في الجرح والتعديل: ١٢٢/٢.

Comments:

- A child born dead is not a heir.
- To cry is a sign of being alive. Usually immediately after birth, a child cries, and this is a sign of being alive, and any other indication that proves the signs of life is enough to give the child the status of a heir.
- In this situation, the first thing is to determine whether the child was born alive or not. If it was born alive, then the share is determined and afterwards this share is distributed among his heirs.

Chapter 18. A Man Who Becomes Muslim At The Hands Of Another

(المعجم ١٨) - بَابُ الرَّجُلِ يُسْلِمُ عَلَى يَدَيِ الرَّجُلِ (التحفة ١٨)

2752. It was narrated that 'Abdullāh bin Mawhab said: "I heard Tamim Ad-Dâri say: 'I said: O Messenger of Allāh, what is the *Sunnah* concerning a man from among the People of the Book who becomes Muslim at the hands of another man?' He said: 'He is the closest of all people to him in life and in death.'" *(Hasan)*

٢٧٥٢ - حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ: حَدَّثَنَا وَكِيعٌ عَنْ عَبْدِ الْعَزِيزِ بْنِ عُمرَ، عَنْ عَبْدِ اللَّهِ بْنِ مَوْهَبٍ قَالَ: سَمِعْتُ تَمِيمَ الدَّارِيِّ يَقُولُ: قُلْتُ: يَا رَسُولَ اللَّهِ! مَا السُّنَّةُ فِي الرَّجُلِ مِنْ أَهْلِ الْكِتَابِ، يُسْلِمُ عَلَى يَدَيِ الرَّجُلِ؟ قَالَ: «هُوَ أَوْلَى النَّاسِ بِمَحْيَاهُ وَمَمَاتِهِ».

تخريج: [حسن] أخرجه أبو داود، الفرائض، باب: في الرجل يسلم على يدي الرجل، ح: ٢٩١٨ من حديث عبد العزيز به، وصححه الحاكم: ٢/٢١٩، وتعبه الذهبي، وعلقه البخاري في صحيحه بصيغة التمريض (فتح: ٤٥/١٢)، وضعفه الشافعي، وأحمد، والبخاري، والترمذي وغيرهم، وقال أبو زرعة الدمشقي: هذا حديث حسن متصل، لم أر أحداً من أهل العلم يرفعه، وللتفصيل راجع نيل المقصود، ولم أر لمضعفيه حجة.

Comments:

- If a non-Muslim embraces Islam by someone's hand, a relationship of the right of inheritance is established between the two. Relatives of this new Muslim being non-Muslim are not his heirs, and the person at whose hand he accepted Islam is his heir.
- If the one who embraced Islam has other Muslim relatives, they will become his heirs, and if they are *Ashābul-Furoodh* then the person who converted him to Islam will become his *'Asabah*. (Allāh knows better)