



منهج السالكين
الفقه في الدين و توضيح

Manhaj Al-Sālikīn

تأليف الشيخ العلامة
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(d. 1376 AH)

كِتَابُ الْبُيُوعِ

Book of Transactions

شُرُوطُ الْبَيْعِ

Conditions of Transactions

الْأَصْلُ فِيهِ الْحِلُّ, قَالَ تَعَالَى: (وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا)

فَجَمِيعُ الْأَعْيَانِ مِنْ عَقَارٍ وَحَيَوَانٍ وَأَثَاثٍ وَغَيْرِهَا - يُجُوزُ إِيقَاعُ الْعُقُودِ عَلَيْهَا إِذَا تَمَّتْ شُرُوطُ الْبَيْعِ

The default ruling in transactions is permissibility. Allah says, “And Allah has made transactions lawful and prohibited usury.” [2:275] Therefore, all items such as land, animals, furnishings etc. can be transacted so long as the conditions are fulfilled.

فَمِنْ أَعْظَمِ الشُّرُوطِ:

[الشَّرْطُ الْأَوَّلُ]:

الرِّضَا: لِقَوْلِهِ تَعَالَى: (إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ)

The most important conditions include:

The First Condition: Consent – Allah says, “...but trade by mutual consent.” [4:29]

[الشَّرْطُ الثَّانِي]:

وَأَنْ لَا يَكُونَ فِيهَا غَرَرٌ وَجَهَالَةٌ; لِأَنَّ النَّبِيَّ (ﷺ) نَهَى عَنْ بَيْعِ الْغَرَرِ رَوَاهُ مُسْلِمٌ.

فَيَدْخُلُ فِيهِ:

1- بَيْعُ الْآبِقِ وَالشَّارِدِ.

2- وَأَنْ يَقُولَ بِعُتْكَ إِحْدَى السِّلَعَتَيْنِ.

3- أَوْ بِمِقْدَارِ مَا تَبْلُغُ الْحَصَاةُ مِنَ الْأَرْضِ وَنَحْوِهِ.

4- أَوْ مَا تَحْمِلُ أُمْتُهُ أَوْ شَجَرَتُهُ.

5- أَوْ مَا فِي بَطْنِ الْحَامِلِ.

وَسَوَاءٌ كَانَ الْغَرُ فِي الثَّمَنِ أَوْ الْمُثْمَنِ.

The Second Condition – Absence of ambiguity and harm, as the Prophet (ﷺ) forbade this, as collected in Muslim. Examples of this include:

1. The absconding slave or fleeing animal
2. To say, 'I've sold you one of two things'
3. Or, 'By the amount of pebbles on this land'
4. Or 'By what the slave girl carries or the tree'
5. Or 'what is in the womb'

Irrespective of whether the harm is in the price or the item.

[الشَّرْطُ الثَّلَاثُ]:

وَأَنْ يَكُونَ الْعَاقِدُ مَالِكًا لِلشَّيْءِ, أَوْ مَادُونًا لَهُ فِيهِ وَهُوَ بِالْغَرَضِ رَشِيدٌ.

The Third Condition – The person transacting must own the item or be deputised whilst being above the age of puberty and mature.

[الشرط الرابع]

وَمِنْ شُرُوطِ الْبَيْعِ أَيْضًا: أَنْ لَا يَكُونَ فِيهِ رَبًّا عَنْ عِبَادَةِ قَالَ: قَالَ رَسُولُ اللَّهِ (ﷺ): (الذَّهَبُ بِالذَّهَبِ,

وَالْفِضَّةُ بِالْفِضَّةِ, وَالْبُرُّ بِالْبُرِّ, وَالشَّعِيرُ بِالشَّعِيرِ, وَالتَّمْرُ بِالتَّمْرِ, وَالْمِلْحُ بِالْمِلْحِ, مِثْلًا بِمِثْلِ سَوَاءً بِسَوَاءٍ,

فَإِذَا اِخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَيَبْعُوا كَيْفَ شِئْتُمْ, إِذَا كَانَ يَدًا بِيَدٍ, فَمَنْ زَادَ أَوْ اسْتَزَادَ فَقَدْ أَرَبَى (رَوَاهُ

مُسْلِمٌ

The Fourth Condition – Absence of usury. ‘Ubādah narrated that the Prophet (ﷺ) said, “Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, same weight for same weight, same quality for same quality.” [Muslim]

فَلَا يُبَاعُ مَكِيلٌ بِمَكِيلٍ مِنْ جِنْسِهِ إِلَّا هَذَيْنِ الشَّرْطَيْنِ, وَلَا مَوْزُونٌ بِجِنْسِهِ إِلَّا كَذَلِكَ.
وَإِنْ يَبْعَ مَكِيلٌ بِمَكِيلٍ مِنْ غَيْرِ جِنْسِهِ, أَوْ مَوْزُونٌ بِمَوْزُونٍ مِنْ غَيْرِ جِنْسِهِ: جَازَ بِشَرْطِ التَّقَابُضِ
قَبْلَ التَّفَرُّقِ

و إن بيع مكيل بموزون أو عكسه جاز، و لو كان القبض بعد التفرق
Therefore, what is sold by volume or weight of the same item. must be done with the above two conditions. If it is sold by volume or weight and it is different items, it is permissible so long as it is taken on the spot. If something is sold by volume for something sold by weight, it is permissible even if it is not taken on the spot.

و الجهل بالتمائل كالعلم بالتفاضل
كما نهى النبي (ﷺ) عن بيع المزابنة: (و هو شراء التمر بالتمر في رؤوس النخل) مُتَّفَقٌ عَلَيْهِ
(وَرَخَّصَ فِي بَيْعِ الْعَرَايَا, بِحَرْصِهَا, فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ, لِلْمُحْتَاجِ إِلَى الرُّطْبِ, وَلَا ثَمَنَ عِنْدَهُ
يَشْتَرِي بِهِ, بِحَرْصِهَا) رَوَاهُ مُسْلِمٌ

Ignorance of something being equal is the same as knowing that it is unequal. The Prophet (ﷺ) forbade *muzābanah* which is to buy dates on the trees for dates on the ground. [Agreed upon] However, the Prophet (ﷺ) allowed ‘*arāyā*, when it is below five *wasq*, for the one who wants fresh dates to estimate if he cannot purchase them outright.” [Muslim]

[الشَّرْطُ الْخَامِسُ]:

وَمِنْ الشُّرُوطِ: أَنْ لَا يَفْعَ الْعِقْدُ عَلَى مُحَرَّمٍ شَرْعًا:

- 1- إِمَّا لِعَيْنِهِ، كَمَا (نَهَى النَّبِيُّ ﷺ) عَنْ بَيْعِ الْخَمْرِ وَالْمَيْتَةِ وَالْأَصْنَامِ (مُتَّفَقٌ عَلَيْهِ.
- 2- و إِمَّا لِمَا يَتَرْتَبُ عَلَيْهِ مِنْ قِطْعَةٍ مِنَ الْمُسْلِمِ، كَمَا نَهَى النَّبِيُّ ﷺ: (عَنْ الْبَيْعِ عَلَى بَيْعِ الْمُسْلِمِ، وَالشِّرَاءِ عَلَى شِرَائِهِ، وَالنَّجْشِ) مُتَّفَقٌ عَلَيْهِ
- وَمِنْ ذَلِكَ :نَهْيُهُ ﷺ (عَنْ التَّفْرِيقِ بَيْنَ ذِي الرَّحِمِ فِي الرِّقَاقِ).
- 3- وَمِنْ ذَلِكَ: إِذَا كَانَ الْمُشْتَرِي يُعْلَمُ مِنْهُ أَنَّهُ يَفْعَلُ الْمَعْصِيَةَ بِمَا اشْتَرَاهُ، كَاشْتِرَاءِ الْجُوزِ وَالْبَيْضِ لِلْقِمَارِ، أَوْ السِّلَاحِ لِلْفِتْنَةِ، وَعَلَى فُطَّاعِ الطَّرِيقِ.
- 4- وَنَهْيُهُ ﷺ عَنْ تَلْقَى الْجَلْبِ، فَقَالَ: (لَا تَلْقُوا الْجَلْبَ، فَمَنْ تَلْقَى فَاشْتَرَى مِنْهُ، فَإِذَا أَتَى سَيِّدُهُ السُّوقَ فَهُوَ بِالْخِيَارِ) رَوَاهُ مُسْلِمٌ .
- 5- وَقَالَ: (مَنْ عَشَّنَا فَلَيْسَ مِنَّا) رَوَاهُ مُسْلِمٌ.

The Fifth Condition – To make a transaction in what is impermissible:

1. In and of itself, such as the Prophet's (ﷺ) prohibition of transactions in alcohol, carrion and idols. [Agreed upon]
2. Due to causing harm to another Muslim. The Prophet (ﷺ) forbade buying over another Muslim, purchasing over another Muslim and *najsh* [raising the price artificially. [Agreed upon] Likewise, the prohibition to separate close family members of a slave.
3. Similarly, if the seller knows that the buyer will use that item for disobedience, such as items bought for gambling, or weapons to cause harm or sold to bandits.
4. The Prophet (ﷺ) forbade from meeting the trade caravans beyond the city and said, “Whoever does so and buys, when the seller reaches the market, he has the option of cancelling the sale.” [Muslim]
5. The Prophet (ﷺ) said, “Whoever cheats us is not from us.” [Muslim]

وَمِثْلُ الرِّبَا الصَّرِيحُ:

أ- التَّحْيِيلُ عَلَيْهِ بِالْعَيْنَةِ، بِأَنْ يَبِيعَ سِلْعَةً بِمِائَةِ إِلَى أَجَلٍ، ثُمَّ يَشْتَرِيهَا مِنْ مُشْتَرِيهَا بِأَقَلِّ مِنْهَا نَقْدًا، أَوْ بِالْعَكْسِ.

ب- أَوْ التَّحْيِيلُ عَلَى قَلْبِ الدَّيْنِ.

ج- أَوْ التَّحْيِيلُ عَلَى الرِّبَا بِقَرْضٍ: بِأَنْ يُقْرِضَهُ وَيَشْتَرِطَ الْإِنْتِفَاعَ بِشَيْءٍ مِنْ مَالِهِ، أَوْ إِعْطَاءَهُ عَنْ ذَلِكَ عَوَضًا، فَكُلُّ قَرْضٍ جَرَّ نَفْعًا فَهُوَ رِبًا.

د- وَمِنْ التَّحْيِيلِ: بَيْعُ حُلِيِّ فَضَّةٍ مَعَهُ غَيْرُهُ بِفَضَّةٍ، أَوْ مِدِّ عَجْوَةٍ وَدِرْهَمٍ بِدِرْهَمٍ

Transactions that are similar to clear usury:

- i. *Al-īnah* – to sell an item for a hundred at a delayed time, then buy it back for less immediately, or the opposite
- ii. To turn over a debt
- iii. To benefit from giving a loan, by giving a loan and placing a condition that he should be given some benefit in return. Every loan that brings benefits is usury.
- iv. To sell silver jewellery with something else for silver, or ‘*ajwah* and a dirham for a dirham

و سئل النبي (ﷺ) عَنْ بَيْعِ التَّمْرِ بِالزُّطْبِ؟ فَقَالَ: أَيْنُقُصُ إِذَا جَفَّ؟ قَالُوا: نَعَمْ، فَنَهَى عَنْ ذَلِكَ رَوَاهُ الْخُمْسَةُ.

و نهى عن بيع الصبرة من التمر لا يعلم مكيلاها، بالكيل المسمى بالتمر. رَوَاهُ مُسْلِمٌ.

The Prophet (ﷺ) was asked about buying fresh dates with old dates. He asked, “Do dates decrease in weight as they dry out?” He was told that they do, so he forbade it. [Collected by the five] The Prophet (ﷺ) also forbade selling a quantity of dates, the measure of which is unknown for a specific quantity of dates. [Muslim]

وَأَمَّا بَيْعُ مَا فِي الدِّمَّةِ:

أ- فَإِنْ كَانَ عَلَى مَنْ هُوَ عَلَيْهِ جَارٌ، وَذَلِكَ بِشَرْطِ قَبْضِ عَوَضِهِ قَبْلَ التَّفَرُّقِ؛ لِقَوْلِهِ (ﷺ): (لَا بَأْسَ أَنْ تَأْخُذَهَا بِسَعْرِ يَوْمِهَا، مَا لَمْ تَتَفَرَّقَا، وَبَيْنَكُمَا شَيْءٌ) رَوَاهُ الْخُمْسَةُ.

ب- وَإِنْ كَانَ عَلَى غَيْرِهِ لَا يَصِحُّ؛ لِأَنَّهُ غَرَرٌ

As for purchases of obligation:

- i. If it is with the individual the obligation is upon, it is permissible with the condition that the price is taken on the spot. The Prophet (ﷺ) said, “There is no harm in taking the price of the day, so long as you do not depart and there is still unfinished business between you.” [Collected by the five]
- ii. If this transaction is with other than the individual the obligation is upon, then it is impermissible.

بَابُ بَيْعِ الْأُصُولِ وَالشَّجَرِ

Chapter: Transactions of Trees & Fruits

قَالَ (ﷺ): (مَنْ بَاعَ نَخْلًا بَعْدَ أَنْ تُؤَبَّرَ فَتَمَرُّهَا لِلْبَائِعِ، إِلَّا أَنْ يَشْتَرِطَ الْمُبْتَاعُ) مُتَّفَقٌ عَلَيْهِ.

وَكَذَلِكَ سَائِرُ الْأَشْجَارِ إِذَا كَانَ ثَمَرُهُ بَادِيًا.

وَمِثْلُهُ إِذَا ظَهَرَ الزَّرْعُ الَّذِي لَا يُحْصَدُ إِلَّا مَرَّةً وَاحِدَةً.

فَإِنْ كَانَ يُحْصَدُ مَرَارًا فَالْأُصُولُ لِلْمُشْتَرِي، وَالْجَزْءُ الظَّاهِرُ عِنْدَ الْبَيْعِ لِلْبَائِعِ.

The Prophet (ﷺ) said, “Whoever buys a palm tree after it has been pollinated, then its fruits are for the seller, unless the buyer stipulates otherwise.” [Agreed upon] This applies to all trees whose fruits are seen. Similarly, plants that can only be harvested once. If they can be harvested repeatedly, the plants belong to the buyer and that coming harvest is for the seller.

و نهى رسول الله (ﷺ) عن بيع الثمار حتى يبدو صلاحها: نهى البائع و المبتاع.

و سئل عن صلاحها؟ فقال: (حتى تذهب عاهته) و في لفظ: (حتى تحمار أو تصفر)

و نهى عن بيع الحب حتى يشتد. رواه أهل السنن

و قال: (لو بعت من أخيك ثمراً فأصابته جائحة فلا يحل لك أن تأخذ منه شيئاً، بم تأخذ مال أخيك بغير حق؟) رواه مسلم

The Prophet (ﷺ) forbade the selling of fruits until they had ripened; he forbade this for the buyer and seller. He was asked about the ripening and replied, “When they are safe from disease.” In another wording, he said, “When they redden or yellow”. He also forbade the sale of grain until it hardens.” [Collected in the Sunan]

He also said, “If you were to sell fruit to your brother, and then it is smitten by blight, it is not permissible for you to take payment from him. Why would you take the wealth of your brother for no reason?” [Muslim]

بَابُ الْخِيَارِ وَغَيْرِهِ

Chapter: Options

وَإِذَا وَقَعَ الْعَقْدُ صَارَ لَازِمًا، إِلَّا بِسَبَبٍ مِنَ الْأَسْبَابِ الشَّرْعِيَّةِ:

فَمِنْهَا: خِيَارُ الْمَجْلِسِ قَالَ النَّبِيُّ (ﷺ) (إِذَا تَبَايَعَ الرَّجُلَانِ فَكُلُّ وَاحِدٍ مِنْهُمَا بِالْخِيَارِ، مَا لَمْ يَتَفَرَّقَا وَكَانَا جَمِيعًا، أَوْ يُخَيَّرُ أَحَدُهُمَا الْآخَرَ، فَإِنْ خَيَّرَ أَحَدُهُمَا الْآخَرَ فَتَبَايَعَا وَلَمْ يَتْرُكْ وَاحِدٌ مِنْهُمَا الْبَيْعَ، فَقَدْ وَجَبَ الْبَيْعُ) مُتَّفَقٌ عَلَيْهِ

Once the transactions is complete, it is binding, except for a valid *shar'ī* reason. From them are:

Option during the Buying Session. The Prophet (ﷺ) said, “When two people buy and sell, each one has an option so long as they don’t depart and remain together, or unless one of them gives the other the option, in which case if they separate after this with not taking the option, then the sale is final.” [Agreed upon]

وَمِنْهَا: خِيَارُ الشَّرْطِ إِذَا شَرَطَ الْخِيَارَ هُمَا أَوْ لِأَحَدِهِمَا مُدَّةً مَعْلُومَةً.

قَالَ النَّبِيُّ (ﷺ) (الْمُسْلِمُونَ عِنْدَ شُرُوطِهِمْ، إِلَّا شَرْطًا أَحَلَّ حَرَامًا أَوْ حَرَّمَ حَلَالًا) رَوَاهُ أَهْلُ السُّنَنِ

وَمِنْهَا: إِذَا غُبِنَ غِبْنًا يَخْرُجُ عَنِ الْعَادَةِ، إِمَّا بِنَجَشٍ، أَوْ تَلَقِّي الْجَلْبِ أَوْ غَيْرِهِمَا.

Conditional Option --This is when one or both parties place a condition that they have an option for a known time period. The Prophet (ﷺ) said, "Muslims are beholden to their conditions, except for a condition which makes something unlawful lawful, or something lawful unlawful." [Collected in the Sunan]. Likewise, a person has an option if they have been blatantly deceived such as with *najsh* or meeting the trading caravan beyond the city limits, etc.

و منها: خيار التدليس: بأن يدلس البائع على المشتري ما يزيد به الثمن، كتصرية اللبن في ضرع بهيمة الأنعام، قال (ﷺ): (لا تصروا الإبل و الغنم، فمن ابتاعها بعد فهو بخير النظرين بعد أن يحلبها، إن شاء أمسكها و إن شاء درها و صاعا من تمر) متفق عليه، و في لفظ: (فهو بالخيار ثلاثة أيام)

Option in Case of Cheating – This is when the seller deceives the buyer to increase the price, for example, by storing the milk in the udder of the livestock animal. The Prophet (ﷺ) said, “Do not store the milk of the camel and goat. Whoever buys the animal in this way has two choices after having milked it. He can either keep it or return it along with a *ṣā’* of dates.” [Agreed upon] In another wording, “He has a choice for three days.”

و إذا اشترى معييا لم يعلم عيبه فله الخيار بين رده و إمساكه، فإن تعذر رده تعين أرشه.

وَإِذَا احْتَلَفَا فِي التَّمَنِ تَحَالَفَا، وَلِكُلٍّ مِنْهُمَا الْفَسْخُ.

وَقَالَ (ﷺ): (مَنْ أَقَالَ مُسْلِمًا بَيْعَتِهِ أَقَالَهُ اللَّهُ عَثْرَتُهُ) رَوَاهُ أَبُو دَاوُدَ وَابْنُ مَاجَهَ

If someone purchases something faulty but the fault is unknown, he has the option between returning it or keeping it. If he cannot return it, he must be compensated. If the buyer and seller differ over the price, they must take oaths, and each one can cancel the sale. The Prophet (ﷺ) said, “Whoever takes back what he sold to another Muslim, Allah will forgive his fault.” [Abu Dāwūd & Ibn Mājah]

بَابُ السَّلَمِ

Chapter: Advance Sales

يَصِحُّ السَّلَمُ فِي كُلِّ مَا يَنْضَبُطُ بِالصِّفَةِ:
إِذَا ضَبَطَهُ بِجَمِيعِ صِفَاتِهِ الَّتِي يَخْتَلِفُ بِهَا الثَّمَنُ.
وَذَكَرَ أَجَلَهُ.
وَأَعْطَاهُ الثَّمَنَ قَبْلَ التَّفَرُّقِ.

Advanced sales are correct in every item that can be accurately described:

- If one can describe it using those things that would vary its price
- The time limit is set
- The payment is made on the spot

عن ابن عباس قال: قدم النبي (ﷺ) المدينة و هم يسلفون في الثمار السنة و السنتين، فقال: (من أسلف فليسلف في كيل معلوم، ووزن معلوم، إلى أجل معلوم)
وَقَالَ (ﷺ) (مَنْ أَخَذَ أَمْوَالَ النَّاسِ يُرِيدُ أَدَاءَهَا أَدَّاهَا اللَّهُ عَنْهُ، وَمَنْ أَخَذَهَا يُرِيدُ إِثْلَافَهَا أَثْلَفَهُ اللَّهُ)
رَوَاهُ الْبُخَارِيُّ

Ibn ‘Abbās narrated, “The Prophet (ﷺ) came to Madinah and they used to have advanced sales in fruit for a year or two. He said, ‘Whoever wishes to make an advanced sale, then

do so in a known measure or weight and for a set time period.” The Prophet (ﷺ) also said, “Whoever takes the wealth of the people intending to repay it, Allah will repay it on his behalf. Whoever takes wanting to squander it, Allah will cause it the same to happen to him.” [Al-Bukhārī]

بَابُ الرِّهْنِ وَالضَّمَانِ وَالْكَفَالَةِ

Chapter: Securities, Guarantees & Co-Signatories

وَهَذِهِ وَثَائِقُ بِالْحُقُوقِ الثَّابِتَةِ.

فَالرَّهْنُ يَصِحُّ بِكُلِّ عَيْنٍ يَصِحُّ بَيْعُهَا.

فَتَبْقَى أَمَانَةٌ عِنْدَ الْمُرْتَهِنِ لَا يَضْمَنُهَا، إِلَّا إِنْ تَعَدَّى أَوْ فَرَطَ، كَسَائِرِ الْأَمَانَاتِ.

These are all sureties for established rights.

Deposits are permissible in all items it is permissible to sell. The deposit remains in trust with the creditor and he does not have to guarantee it, unless he is careless with it, as is the case with all trusts.

فَإِنْ حَصَلَ الْوَفَاءُ التَّامُّ انْفَكَّ الرَّهْنُ.

وَإِنْ لَمْ يَحْصُلْ، وَطَلَبَ صَاحِبُ الْحَقِّ بَيْعَ الرَّهْنِ، وَجَبَ بَيْعُهُ وَالْوَفَاءُ مِنْ ثَمَنِهِ، وَمَا بَقِيَ مِنَ الثَّمَنِ بَعْدَ

وَفَاءِ الْحَقِّ فَلِرَبِّهِ، وَإِنْ بَقِيَ مِنَ الدَّيْنِ شَيْءٌ يَبْقَى دَيْنًا مُرْسَلًا بِلا رَهْنٍ.

وَإِنْ أَتْلَفَ الرَّهْنُ أَحَدٌ فَعَلَيْهِ ضَمَانُهُ يَكُونُ رَهْنًا

وَمَاؤُهُ تَبِعَ لَهُ، وَمُؤَنَّتُهُ عَلَى رَبِّهِ.

وَلَيْسَ لِلرَّاهِنِ الْإِنْتِفَاعُ بِهِ إِلَّا بِإِذْنِ الْآخِرِ، أَوْ بِإِذْنِ الشَّارِعِ فِي قَوْلِهِ (ﷺ): (الظَّهْرُ يُرَكَّبُ بِنَفَقَتِهِ إِذَا كَانَ مَرْهُونًا، وَلَبَنُ الدَّرِّ يُشْرَبُ بِنَفَقَتِهِ إِذَا كَانَ مَرْهُونًا، وَعَلَى الَّذِي يَرْكَبُ وَيَشْرَبُ النَّفَقَةُ) رَوَاهُ

الْبُخَارِيُّ

If the payment is made in full, the deposit is released. If payment is not made, and the creditor demands the sale of the deposited item, it must be sold and payment made to him. Whatever is left over after full payment is made, goes back to the owner. If the deposit does not cover the full amount, the remainder is considered a debt without deposit.

If anyone squanders the deposit, he must replace it and that then becomes the deposit. Any earnings or by-products of the deposit are part of it, and the maintenance of the deposit is the responsibility of the debtor. The debtor cannot benefit from the deposit except with the permission of the creditor or what is stipulated in the *sharī'ah*. The Prophet (ﷺ) said, "An animal may be ridden for payment when it is deposited, and the milk of the animal may be drunk for payment when deposited. The one who rides and drinks is responsible for payment." [Al-Bukhārī]

وَالضَّامَانُ أَنْ يَضْمَنَ الْحَقُّ عَنِ الَّذِي عَلَيْهِ.

وَالْكَفَالَةُ: أَنْ يَلْتَزِمَ بِإِحْضَارِ بَدَنِ الْخَصْمِ

قَالَ (الزَّعِيمُ غَارِمٌ)

فَكُلُّ مَنْهُمَا ضَامِنٌ إِلَّا:

إِنْ قَامَ بِمَا لَتَزَمَ بِهِ،

أَوْ أَبْرَأَهُ صَاحِبُ الْحَقِّ،

أَوْ بَرِئَ الْأَصِيلُ. وَاللَّهُ أَعْلَمُ.

Guaranteeing is to guarantee the right that is due. The co-signatory guarantees his fellow signatory. The Prophet (ﷺ) said, “The one who stands in surety is responsible.” Thus, each one is responsible unless:

- i. The right is fulfilled
- ii. The creditor forgoes his guarantee
- iii. The creditor's dues are forgone

بَاب الْحَجْرِ لِفَلْسٍ أَوْ غَيْرِهِ

Chapter: Bankruptcy

وَمَنْ لَهُ الْحَقُّ فَعَلَيْهِ أَنْ يُنْظَرَ الْمُعْسِرَ.

و ينبغي أن ييسر على الموسر.

و من عليه الحق فعليه الوفاء كاملا بالقدر و الصفات؟

قال (ﷺ): (مطل الغني ظلم، و إذا أحيل بدينه على مليء فليحتل) مُتَّفَقٌ عَلَيْهِ , وَهَذَا مِنَ الْمَيْسَرَةِ.

The creditor should give more time to the one unable to pay, and he should be easy going with the one who can pay. The debtor should repay in full, both in amount and description. The Prophet (ﷺ) said, “Delaying payment by the able one is oppression, but if one of you is referred to payment to a financially able one then let him be referred.” [Agreed upon] This is from making things easy.

فَالْمَلِيءُ: هُوَ الْقَادِرُ عَلَى الْوَفَاءِ, الَّذِي لَيْسَ مُمَاطِلًا, وَيُمْكِنُ تَحْضِيرُهُ لِمَجْلِسِ الْحُكْمِ.

وَإِذَا كَانَتِ الدُّيُونُ أَكْثَرَ مِنْ مَالِ الْإِنْسَانِ, وَطَلَبَ الْغُرَمَاءُ أَوْ بَعْضُهُمْ مِنَ الْحَاكِمِ أَنْ يَحْجَرَ عَلَيْهِ: حَجَرَ

عَلَيْهِ, وَمَنَعَهُ مِنَ التَّصَرُّفِ فِي جَمِيعِ مَالِهِ, ثُمَّ يُصَفِّي مَالَهُ, وَيُقَسِّمُهُ عَلَى الْغُرَمَاءِ بِقَدْرِ دُيُونِهِمْ

The able one is the one who can repay, who is not delaying and can be presented before a court. If a person's debts are more than his assets, and the creditors or some of them demand that the judge declares him bankrupt; the judge does so. The judge prevents him from accessing his assets. His assets are valued and then used to repay his various debts.

وَلَا يُقَدِّمُ مِنْهُمْ إِلَّا:

صَاحِبَ الرِّهْنِ بِرَهْنِهِ.

وَقَالَ (ﷺ) (مَنْ أَدْرَكَ مَالُهُ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ فَهُوَ أَحَقُّ بِهِ مِنْ غَيْرِهِ) مُتَّفَقٌ عَلَيْهِ

و يجب على ولي الصغير و السفیه و المجنون: أن يمنعهم من التصرف في مالهم الذي يضرهم.

قال تعالى: ((و لا تؤتوا السفهاء أموالكم التي جعل الله لكم قياما))

The creditor this is given preference, is the one who has a security. The Prophet (ﷺ) said, "Whoever finds his wealth with the bankrupt one, he has more right to it than others."
[Agreed upon]

The guardian of the child, immature and mentally ill should prevent his charges from using their wealth in ways that will harm them. Allah says, "Do not entrust your wealth to the feeble-minded. Allah has made it a means of support for you." [4:5]

وَعَلَيْهِ: أَلَّا يَقْرَبَ مَا لَهُمْ إِلَّا بِأَلَّتِي هِيَ أَحْسَنُ مِنْ: حِفْظِهِ، وَالتَّصَرُّفِ النَّافِعِ لَهُمْ، وَصَرَفِ مَا يَخْتَاجُونَ إِلَيْهِ مِنْهُ.

وَوَلِيُّهُمْ: أَبُوهُمْ الرَّشِيدُ، فَإِنْ لَمْ يَكُنْ: جَعَلَ الْحَاكِمُ الْوَكَالَهَ لِأَشَقِّ مَنْ يَجِدُهُ مِنْ أَقَارِبِهِ، وَأَعْرَفِهِمْ، وَأَمْنِهِمْ. وَمَنْ كَانَ غَنِيًّا فَلْيَتَعَفَّفْ، وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ: وَهُوَ الْأَقَلُّ مِنْ أُجْرَةِ مِثْلِهِ أَوْ كِفَايَتِهِ وَاللَّهُ

أَعْلَمُ

The guardian must only do what is best regarding that wealth: in terms of preserving it, using it beneficially and spending upon their needs from it. The guardian is a mature father. In his absence, the judge appoints from the child's relatives the one who is kindest, most knowledgeable and trustworthy. The well-off guardian should abstain from their wealth, and the poor guardian should take what is fair, which is less than the wage one would take for this. Allah knows best.

بَابُ الصُّلْحِ

Chapter: Reconciliation

قَالَ النَّبِيُّ (ﷺ) (الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ, إِلَّا صُلْحًا حَرَمَ حَلَالًا أَوْ حَلَلَ حَرَامًا) . رَوَاهُ أَبُو دَاوُدَ وَالتِّرْمِذِيُّ. وَقَالَ: حَسَنٌ صَحِيحٌ, وَصَحَّحَهُ الْحَاكِمُ.

فَإِذَا صَلَحَتْهُ عَنْ عَيْنٍ بَعَيْنٍ أُخْرَى أَوْ بِدَيْنٍ جَارَ.

وَإِنْ كَانَ لَهُ عَلَيْهِ دَيْنٌ فَصَالِحَتْهُ عَنْهُ بَعَيْنٍ أَوْ بِدَيْنٍ قَبْضُهُ قَبْلَ التَّفَرُّقِ: جَارَ.

أَوْ صَلَحَتْهُ عَلَى مَنْفَعَةٍ فِي عَقَارِهِ أَوْ غَيْرِهِ مَعْلُومَةٍ, أَوْ صَالَحَ عَنِ الدَّيْنِ الْمُؤَجَّلِ بِنَعْضِهِ حَالًا, أَوْ كَانَ لَهُ عَلَيْهِ دَيْنٌ لَا يَعْلَمَانِ قَدْرَهُ فَصَالَحَتْهُ عَلَى شَيْءٍ: صَحَّ ذَلِكَ

وَقَالَ (ﷺ) (لَا يَمْنَعَنَّ جَارٌ جَارَهُ أَنْ يَغْرِزَ حَشْبَهُ عَلَى جِدَارِهِ) رَوَاهُ الْبُخَارِيُّ

The Prophet (ﷺ) said, “Reconciliation is permissible between Muslims, except one in which the lawful is made unlawful, or the unlawful is made lawful.” [Abu Dāwūd & Al-Tirmidhī who declared it *hasan ṣaḥīḥ*, and Al-Ḥākim authenticated it]

If someone reconciles an item for another item or a debt, it is permissible. If he is the creditor, and reconciles an item for another item or a debt that that is taken on the spot, it is permissible. If he reconciles for a defined benefit such as land, or reconciles an owed debt for some of it to be paid immediately, or the amount owed is unknown so they reconcile for an amount; it is permissible. The Prophet (ﷺ) said, “A man should not prevent his neighbour from using their shared wall to build upon.” [Al-Bukhārī]

بَابُ الْوَكَالَةِ وَالشَّرِكَةِ وَالْمُسَاقَاةِ وَالْمُزَارَعَةِ

Chapter: Deputation, Partnerships & Sharecropping

[الْوَكَالَةُ]:

كَانَ النَّبِيُّ (ﷺ) يُوَكِّلُ فِي حَوَائِجِهِ الْخَاصَّةِ، وَحَوَائِجِ الْمُسْلِمِينَ الْمُتَعَلِّقَةِ بِهِ. فَهِيَ عَقْدٌ جَائِزٌ مِنَ الطَّرَفَيْنِ.

Deputation

The Prophet (ﷺ) would deputise in his personal affairs and the general affairs of the Muslims. It is a permissible contract between two parties.

تدخل في جميع الأشياء التي تصلح النيابة فيها : من حقوق الله كتفريق الزكاة والكفارة ونحوها ، ومن حقوق الأدميين كالعقود والفسوخ وغيرها .

وما لا تدخله النيابة من الأمور التي تتعين على الإنسان وتعلق ببدنه خاصة - كالصلاة والطهارة والحلف والقسم بين الزوجات ونحوها - لا تجوز الوكالة فيها .

ولا يتصرف الوكيل في غير ما أذن له فيه نطقاً أو عرفاً .

Deputation can take place in all issues that accept it: from Allah's rights such as the distribution of zakah and expiations, to the rights of people in agreeing and annulling contracts.

Deputation cannot take place in issues that a person must physically carry out themselves such as purification, prayer, taking oaths, spousal rights etc. The deputy may only do what he has been verbally told or what is his to do by custom.

يَجُوزُ التَّوَكُّلُ بِجُعْلٍ أَوْ غَيْرِهِ

وَهُوَ كَسَائِرِ الْأُمْنَاءِ، لَا ضَمَانَ عَلَيْهِمْ إِلَّا بِالتَّعَدِّي أَوْ التَّفْرِيطِ.

وَيُقْبَلُ قَوْلُهُمْ فِي عَدَمِ ذَلِكَ بِالْيَمِينِ.

وَمَنْ ادَّعَى الرَّدَّ مِنَ الْأَمْنَاءِ:

فَإِنْ كَانَ بِجُعْلٍ: لَمْ يُقْبَلْ إِلَّا بَيِّنَةً,

وَإِنْ كَانَ مُتَبَرِّعًا: قُبِلَ قَوْلُهُ بِيَمِينِهِ .

Deputation can be paid or not. Deputies are like other trustees; they do not guarantee unless there is a shortcoming on their part. Their word is accepted along with an oath. Whoever claims that the deputation has ended; if it is with payment, the deputy's word is not accepted without evidence, and if there was no payment, his word is accepted with an oath.

[الشَّرَكَةُ]:

وَقَالَ (ﷺ): (يَفْهُوُ اللَّهُ تَعَالَى: أَنَا ثَالِثُ الشَّرِيكَيْنِ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ, فَإِذَا خَانَ خَرَجْتُ مِنْ بَيْنَهُمَا) رَوَاهُ أَبُو دَاوُدَ.

فالشركة بجميع أنواعها كلها جائزة

وَيَكُونُ الْمُلْكُ فِيهَا وَالرَّيْحُ بِحَسَبِ مَا يَتَّفِقَانِ عَلَيْهِ, إِذَا كَانَ جُزْءًا مُشَاعًا مَعْلُومًا

Partnerships

The Prophet (ﷺ) said, “Alah says, ‘I am the third of the two partners so long as one does not deceive the other. If one does deceive, I will leave them.” [Abu Dāwūd]

All types of partnerships are permissible. The ownership and profits are according to their agreement, so long as it is known and shared.

فَدَخَلَ فِي هَذَا:

- شَرِكَةُ الْعَيْنَانِ وَهِيَ: أَنْ يَكُونَ مِنْ كُلِّ مِنْهُمَا مَالٌ وَعَمَلٌ.
- وَ شَرِكَةُ الْمَضَارِبَةِ بِأَنْ يَكُونَ مِنْ أَحَدِهِمَا الْمَالُ وَمِنْ الْآخَرِ الْعَمَلُ.
- وَ شَرِكَةُ الْوُجُوهِ بِمَا يَأْخُذَانِ بِوُجُوهِهِمَا مِنَ النَّاسِ.
- وَ شَرِكَةُ الْأَبْدَانِ بِأَنْ يَشْتَرِكَا بِمَا يَكْتَسِبَانِ بِأَبْدَانِهِمَا مِنَ الْمُبَاحَاتِ مِنْ حَشِيشٍ وَنَحْوِهِ، وَمَا يَنْقَبِلَانِهِ مِنَ الْأَعْمَالِ.
- وَ شَرِكَةُ الْمَفَاوِضَةِ وَهِيَ الْجَامِعَةُ لِجَمِيعِ ذَلِكَ، وَكُلُّهَا جَائِزَةٌ.

Included in this are:

- Restricted Partnership – Each one has his own wealth and responsibility
- Silent Partnership – One partner gives the capital and the other works
- Reputable Partnership – The partners use their credit worthiness for business
- Labour Partnership – Partners agree to work together and share profits and losses
- Delegated Partnership – Includes all the above

All of these are permissible.

وَيُفْسِدُهَا إِذَا دَخَلَهَا الظُّلْمُ وَالْعَرَزُ لِأَحَدِهِمَا، كَأَنْ يَكُونَ لِأَحَدِهِمَا رِبْحٌ وَقَدْ مُعَيَّنَ، وَلِلْآخَرِ رِبْحٌ وَقَدْ آخَرَ، أَوْ رِبْحٌ إِحْدَى السِّلْعَتَيْنِ، أَوْ إِحْدَى السَّفَرَتَيْنِ، وَمَا يُشَبِّهُ ذَلِكَ.

كَمَا يُفْسِدُ ذَلِكَ الْمُسَافَاةَ وَالْمُزَارَعَةَ.

وَقَالَ رَافِعُ بْنُ خَدِيجٍ: (وَكَانَ النَّاسُ يُؤَاجِرُونَ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ) مَا عَلَى الْمَازِيَانَاتِ، وَأَقْبَالَ الْجَدَاوِلِ، وَشَيْءٌ مِنَ الزَّرْعِ، فَيَهْلِكُ هَذَا وَيَسْلَمُ هَذَا، وَيَسْلَمُ هَذَا وَيَهْلِكُ هَذَا، وَلَمْ يَكُنْ لِلنَّاسِ كِرَاءٌ إِلَّا هَذَا، فَلِذَلِكَ زَجَرَ عَنْهُ. فَأَمَّا شَيْءٌ مَعْلُومٌ مَضْمُونٌ: فَلَا بَأْسَ بِهِ (رَوَاهُ مُسْلِمٌ.

وَعَامِلُ النَّبِيِّ ﷺ) أَهْلٌ خَيْرٌ بِشَطْرِ مَا يَخْرُجُ مِنْهَا مِنْ ثَمَرٍ أَوْ زَرْعٍ مُتَّفَقٌ عَلَيْهِ

The partnership is nullified if oppression or harm enters into it for either party, such as one partner has the profits at one time and the other at another time, or a partner has the profits of a specific item or journey, etc. The partnership is also nullified by sharecropping.

Rāfi' ibn Khadīj said, "In the time of the Prophet (ﷺ), people used to rent land by the river beds and banks of brooks and streams or for a portion of crop. However, this would be destroyed and that not, or that destroyed and this not. This was the wages of the people so he forbade this. As for what is known and guaranteed, then there is no harm in it." [Muslim] The Prophet (ﷺ) agreed with the people of Khaybar that he would receive half of their crop. [Agreed upon]

فَالْمُسَاقَاةُ عَلَى الشَّجَرِ بِأَنْ يَدْفَعَهَا لِلْعَامِلِ، وَيُقْوَمَ عَلَيْهَا، بِحِزْبٍ مَشَاعٍ مَعْلُومٍ مِنَ الثَّمَرَةِ.
والمزارعة: بَأَنْ يَدْفَعَ الْأَرْضَ لِمَنْ يَزْرَعُهَا بِحِزْبٍ مَشَاعٍ مَعْلُومٍ مِنَ الزَّرْعِ
وَعَلَى كُلِّ مِنْهُمَا: مَا جَرَتْ الْعَادَةُ بِهِ وَالشَّرْطُ الَّذِي لَا جَهَالَةَ فِيهِ.
وَلَوْ دَفَعَ دَابَّتَهُ إِلَى آخَرَ يَعْمَلُ عَلَيْهَا، وَمَا حَصَلَ بَيْنَهُمَا: جَازَ.

Musāqāh is when trees are given to a labourer who tends to them, in return for a known and shared portion of the fruit.

Muzāra'ah is to give land to someone who will plant it for a known and shared portion of the crop.

For both of these sharecropping, it is bound by custom and conditions that cannot be ambiguous. If someone was to give their animal to another to work it, and they share the profits, it is permissible.

بَابُ إِحْيَاءِ الْمَوَاتِ

Chapter: Reclamation of Dead Land

وَهِيَ الْأَرْضُ الْبَائِرَةُ الَّتِي لَا يُعْلَمُ لَهَا مَالِكٌ.

فَمَنْ أَحْيَاهَا بِحَائِطٍ، أَوْ حَفَرَ بئرًا، أَوْ إِجْرَاءِ مَاءٍ إِلَيْهَا، أَوْ مَنَعَ مَا لَا تُزْرَعُ مَعَهُ: مَلَكَهَا بِجَمِيعِ مَا فِيهَا، إِلَّا الْمَعَادِنَ الظَّاهِرَةَ; لِحَدِيثِ ابْنِ عُمَرَ : (مَنْ أَحْيَا أَرْضًا لَيْسَتْ لِأَحَدٍ فَهُوَ أَحَقُّ بِهَا) رَوَاهُ الْبُخَارِيُّ .

وَإِذَا تَحَجَّرَ مَوَاتًا: بَأَنْ أَدَارَ حَوْلَهُ أَحْجَارًا، أَوْ حَفَرَ بئرًا، لَمْ يَصِلْ إِلَى مَائِهَا، أَوْ أَقْطَعَ أَرْضًا : فَهُوَ أَحَقُّ بِهَا، وَلَا يَمْلِكُهَا حَتَّى يُحْيِيَهَا بِمَا تَقَدَّمَ.

It is open land that has no known owner.

Whoever reclaims it by erecting a wall, digging a well, channelling water to it or removes excess water from it, owns it and everything upon it, except for any visible precious metals. Ibn 'Umar narrated, "Whoever reclaims land that belongs to no one, has more right to it." [Al-Bukhārī]

Whoever begins reclaiming land, by placing rocks around its boundary, or beginning the digging of a well or is given it by the ruler, he has more right to it. However, he does not own it until the reclamation is complete.

بَابُ الْجُعَالَةِ وَالْإِجَارَةِ

Chapter: Wages & Rent

وَهُمَا: جَعْلُ مَالٍ مَعْلُومٍ لِمَنْ يَعْمَلُ لَهُ عَمَلًا مَعْلُومًا، أَوْ مَجْهُولًا فِي الْجُعَالَةِ، وَمَعْلُومًا فِي الْإِجَارَةِ، أَوْ عَلَى مَنْفَعَةٍ فِي الذِّمَّةِ.

فَمَنْ فَعَلَ مَا جُعِلَ عَلَيْهِ فِيهِمَا: اسْتَحَقَّ الْعَوَضَ, وَإِلَّا فَلَا.
وَعَنْ أَبِي هُرَيْرَةَ مَرْفُوعًا (قَالَ اللَّهُ تَعَالَى: ثَلَاثَةٌ أَنَا حَصْمُهُمْ يَوْمَ الْقِيَامَةِ: رَجُلٌ أَعْطَى بِي ثُمَّ عَدَرَ, وَرَجُلٌ
بَاعَ حُرًّا فَأَكَلَ ثَمَنَهُ, وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا فَاسْتَوْفَى مِنْهُ وَلَمْ يُعْطِهِ أَجْرَهُ) رَوَاهُ مُسْلِمٌ

This is when a specified payment is made for a specific task, or unspecified for a wage but specified for rent, or for an owed benefit. Whoever fulfils the task is owed payment, otherwise they are not. Abu Hurayrah narrated, “Allah says, ‘I will be the claimant for three on the Day of Judgement: the one who takes an oath by Me and then betrays, the one who sells a freeman as a slave and then devours the money, and the one who hires someone who fulfils his task, and then refuses payment.” [Muslim]

وَالْجَعَالَةُ أَوْسَعُ مِنَ الْإِجَارَةِ; لِأَنَّهَا تَجُوزُ عَلَى أَعْمَالِ الْقُرْبِ; وَلِأَنَّ الْعَمَلَ فِيهَا يَكُونُ مَعْلُومًا وَمَجْهُولًا وَلَا تَحْتَ
عَقْدٍ جَائِزٍ, بِخِلَافِ الْإِجَارَةِ .

وَتَجُوزُ إِجَارَةُ الْعَيْنِ الْمُؤَجَّرَةِ لِمَنْ يَقُومُ مَقَامَهُ, لَا بِأَكْثَرِ مِنْهُ ضَرَرًا.

وَلَا ضَمَانَ فِيهِمَا, بِدُونِ تَعَدٍّ وَلَا تَقْرِيطٍ.

و فِي الْحَدِيثِ: (أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَ عَرَقُهُ) رَوَاهُ ابْنُ مَاجَةَ.

The chapter of wages is more generic than rentals, as they can be given for good deeds, and the tasks required can be specified or unspecified. It is also a voluntary contract as opposed to renting. The one renting can re-rent in a similar way, but not by more. There is no guarantee upon them unless they are careless. In the narration, “Give the worker his wages before his sweat dries.” [Ibn Mājah]

بَابُ اللَّقْطَةِ وَاللَّقِيطِ

Chapter: Lost Items & Foundlings

وَهِيَ عَلَى ثَلَاثَةِ أَصْرُبٍ:

أَحَدُهَا: مَا تُقِلُّ قِيَمَتُهُ، كَالسَّوْطِ وَالرَّغِيفِ وَنَحْوَهُمَا، فَيُمْلِكُ بِلَا تَعْرِيفٍ.

وَالثَّانِي: الضَّوَالُ الَّتِي تَمْتَنِعُ مِنْ صِعَارِ السِّبَاعِ، كَالْإِبِلِ، فَلَا تُمْلِكُ إِلَّا لِقَاطٍ مُطْلَقًا.

وَالثَّلَاثُ: مَا سِوَى ذَلِكَ، فَيَجُوزُ الْإِتْقَاطُ، وَيَمْلِكُهُ إِذَا عَرَفَهُ سَنَةً كَامِلَةً.

This is of three categories:

First Category: What is of little value such as a whip or loaf of bread, this can be possessed with no announcements

Second Category: Lost animals that can avoid small predators such as camels, these cannot be retrieved

Third Category: Everything else, this can be retrieved but not owned until announced for a year

وَعَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ، قَالَ: (جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ) فَسَأَلَهُ عَنِ اللَّقْطَةِ؟ فَقَالَ: (اعْرِفْ عِفَاصَهَا وَوَكَاةَهَا، ثُمَّ عَرَفْهَا سَنَةً، فَإِنْ جَاءَ صَاحِبُهَا وَإِلَّا فَشَأْنُكَ بِهَا) قَالَ: فَضَالَةُ الْغَنَمِ؟ قَالَ: (هِيَ لَكَ أَوْ لِأَخِيكَ أَوْ لِلذَّئْبِ) قَالَ: فَضَالَةُ الْإِبِلِ؟ قَالَ: (مَا لَكَ وَلَهَا؟ مَعَهَا سِقَاؤُهَا وَحِذَاؤُهَا، تَرُدُّ الْمَاءَ وَتَأْكُلُ الشَّجَرَ، حَتَّى يَلْقَاهَا رَبُّهَا) مُتَّفَقٌ عَلَيْهِ.

وَالْإِتْقَاطُ اللَّقِيطُ وَالْقِيَامُ بِهِ: فَرَضُ كِفَايَةٍ.

فَإِنْ تَعَذَّرَ بَيْتُ الْمَالِ فَعَلَى مَنْ عِلِمَ بِحَالِهِ.

Zayd ibn Khālid al-Juhanī narrated, “A man came to the Prophet (ﷺ) and asked about lost items. He replied, ‘Note the contents and container and announce it for a year. If the

owner retrieves it then return it or else keep it.' He asked, 'What about stray sheep?' He replied, 'Either you will take it, or your brother or the wolf.' He asked, 'What about stray camels?' He replied, 'What concern is it of yours? It has its stomach and feet, it can find water and eat from the trees, until its owner finds it.'" [Agreed upon]

Retrieving a foundling and caring for it is a collective obligation. If there is no Muslim treasury, then whoever knows of it.

بَابُ الْمُسَابَقَةِ وَالْمُغَالَبَةِ

Chapter: Competitions

وَهِيَ ثَلَاثَةُ أَنْوَاعٍ:

نَوْعٌ: يَجُوزُ بِعَوْضٍ وَغَيْرِهِ، وَهِيَ: مُسَابَقَةُ الْخَيْلِ وَالْإِبِلِ وَالسِّهَامِ

يَجُوزُ بِلَا عَوْضٍ، وَلَا يَجُوزُ بِعَوْضٍ، وَهِيَ: جَمِيعُ الْمُغَالِبَاتِ بِغَيْرِ الثَّلَاثَةِ الْمَذْكُورَةِ، وَبِغَيْرِ التَّرْدِ وَالشَّطْرَنْجِ وَنَحْوِهِمَا، فَتُحَرَّمُ مُطْلَقًا، وَهُوَ النَّوْعُ الثَّلَاثُ؛ لِحَدِيثِ (لَا سَبَقَ إِلَّا فِي خُفٍّ أَوْ نَصْلٍ أَوْ حَافِرٍ) رَوَاهُ أَحْمَدُ وَالثَّلَاثَةُ

وَأَمَّا مَا سِوَاهَا: فَإِنَّهَا دَاخِلَةٌ فِي الْقِمَارِ وَالْمَيْسِرِ.

This is of three categories:

The first is permissible with prizes – this is competitions in horse and camel riding and archery.

The second is permissible without prizes and impermissible with it – this is all other competitions, with the exception of backgammon and chess and similar games, which fall under the third category of always being impermissible. This is due to the narration, "No prizes except in archery, or racing camels and horses." [Ahmad & the three]

Everything else is considered to be a form of gambling.

بَابُ الْغَصْبِ

Chapter: Usurpation

وَهُوَ الْإِسْتِيلَاءُ عَلَى مَالِ الْغَيْرِ بِغَيْرِ حَقٍّ

وَهُوَ مُحَرَّمٌ، لِحَدِيثٍ: (مَنْ اقْتَطَعَ شِبْرًا مِنَ الْأَرْضِ ظُلْمًا طَوَّقَهُ اللَّهُ بِهِ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرْضِينَ) مُتَّفَقٌ عَلَيْهِ.

وَعَلَيْهِ: رَدُّهُ لِصَاحِبِهِ، وَلَوْ غَرِمَ أَضْعَافُهُ.

وَعَلَيْهِ: نَقْصُهُ وَأُجْرَتُهُ مُدَّةَ مُقَامِهِ بِيَدِهِ، وَضَمَانُهُ إِذَا تَلَفَ مُطْلَقًا

وَزِيَادَتُهُ لِرَبِّهِ

وَإِنْ كَانَتْ أَرْضًا فَغَرَسَ أَوْ بَنَى فِيهَا: فَلِرَبِّهِ فَلَعْنُهُ؛ لِحَدِيثٍ (لَيْسَ لِعِرْقٍ ظَالِمٍ حَقٌّ) رَوَاهُ أَبُو دَاوُدَ

و من انتقلت إليه العين من الغاصب، و هو عالم: فحكمه حكم الغاصب

This is to usurp the wealth of others with no due right. It is prohibited due to the narration, “Whoever takes a hand span of land unjustly, will be strangled with it by the likes of the seven earths on the Day of Judgement.” [Agreed upon]

He must return it to its owner even if he stands to lost out multiple times. He must pay rent for the time period he kept it, and replace it if it was lost. Any additions also belong to the owner. If it was land that he planted on or built on, the owner may remove it due to the narration, “The unjust root that was planted has no rights.” [Abu Dāwūd] If someone receives usurped wealth from the usurper and knows its reality, then his ruling is that of the usurper.

بَابُ الْعَارِيَّةِ وَالْوَدِيعَةِ

Chapter: Lending for Use and Safekeeping

الْعَارِيَّةُ: إِبَاحَةُ الْمَنَافِعِ.

وَهِيَ مُسْتَحَبَّةٌ لِدُخُولِهَا فِي الْإِحْسَانِ وَالْمَعْرُوفِ.

قَالَ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: (كُلُّ مَعْرُوفٍ صَدَقَةٌ).

وَإِنْ شَرِطَ ضَمَانُهَا: ضَمِنَهَا.

أَوْ تَعَدَّى أَوْ فَرَطَ فِيهَا: ضَمِنَهَا، وَإِلَّا فَلَا.

Lending for use is allowing someone to benefit. This is permissible due to it being a form of goodness. The Prophet (ﷺ) said, "Every act of goodness is charity." If a condition is placed for its care, he must do so, or if he is careless he must replace it, otherwise no.

وَمَنْ أُوْدِعَ وَدِيعَةً فَعَلَيْهِ حِفْظُهَا فِي حِرْزٍ مِثْلِهَا

وَلَا يَنْتَفِعُ بِهَا بِغَيْرِ إِذْنِ رَبِّهَا

Whoever is entrusted with something for safekeeping must do so in an appropriate place. He cannot benefit from it without the permission of the owner.

بَابُ الشُّفْعَةِ

Chapter: Pre-emption

وَهِيَ اسْتِحْقَاقُ الْإِنْسَانِ انْتِزَاعَ حِصَّةٍ شَرِيكِهِ مِنْ يَدٍ مَنْ انْتَقَلَتْ إِلَيْهِ بَيْعٌ وَنَحْوُهُ

وَهِيَ خَاصَّةٌ فِي الْعُقَارِ الَّذِي لَمْ يَقْسَمْ، لِحَدِيثِ جَابِرٍ: (قَضَى النَّبِيُّ ﷺ) بِالشُّفْعَةِ فِي كُلِّ مَا لَمْ يَقْسَمْ، فَإِذَا وَقَعَتِ الْحُدُودُ وَصَرَفَتِ الطَّرُقَ فَلَا شُفْعَةَ) مُتَّفَقٌ عَلَيْهِ

و لا يحل التحيل لإسقاطها

فإن تحيل لم تسقط، لحديث (إنما الأعمال بالنيات)

This is the right of a person to take the share of his partner from another who bought it or attained it otherwise. This is specific to property that has not been apportioned, due to the narration of Jābir, “The Prophet (ﷺ) ruled with pre-emption in that which has not been apportioned. Once the boundaries have been set and the roads made, then there is no pre-emption.” [Agreed upon]

It is not allowed to deceive in order to make one forego this right. If someone does so, the right is not removed due to the narration, “Indeed, every action is based upon its intention.”

بَابُ الْوَقْفِ

Chapter: Endowments

وَهُوَ تَحْيِيسُ الْأَصْلِ وَتَسْيِيلِ الْمَنَافِعِ.

وَهُوَ أَفْضَلُ الْقُرْبِ وَأَنْفَعُهَا إِذَا كَانَ عَلَى جِهَةِ بَرٍّ، وَسَلِمَ مِنَ الظُّلْمِ، لحديث: (إذا مات العبد انقطع عمله إلا من ثلاث: صدقة جارية، أو علم ينتفع به أو ولد صالح يدعو له) رَوَاهُ مُسْلِمٌ.

وَعَنْ ابْنِ عُمَرَ قَالَ: (أَصَابَ عُمَرُ أَرْضًا بِحَيْرٍ، فَأَتَى النَّبِيَّ (ﷺ) يَسْتَأْذِنُهُ فِيهَا. فَقَالَ: يَا رَسُولَ اللَّهِ، إِنِّي أَصَبْتُ أَرْضًا بِحَيْرٍ لَمْ أُصِبْ مَالًا قَطُّ هُوَ أَنْفَسُ عِنْدِي مِنْهُ، قَالَ: "إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا، قَالَ: فَتَصَدَّقَ بِهَا عُمَرُ، غَيْرَ أَنَّهُ لَا يَبَاعُ أَصْلُهَا وَلَا يُورَثُ وَلَا يُوهَبُ، فَتَصَدَّقَ بِهَا فِي الْفُقَرَاءِ، وَفِي الْقُرْبَى وَفِي الرِّقَابِ، وَفِي سَبِيلِ اللَّهِ، وَابْنِ السَّبِيلِ، وَالضَّيْفِ، لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ، وَيُطْعِمَ صَدِيقًا، غَيْرَ مُتَمَوِّلٍ مَالًا) مُتَّفَقٌ عَلَيْهِ

This is to retain the origin and give away the profits. It is from the greatest and most beneficial of deeds if it is done charitably and is free from oppression., due to the

narration, “When a person dies their actions cease except for three: a continuous charity, beneficial knowledge and a righteous child that supplicates for them.” [Muslim] Ibn ‘Umar narrated, “‘Umar attained land in Khaybar, so he came to the Prophet (ﷺ) to seek his advice about it. He said, ‘O Messenger of Allah, the land I attained in Khaybar is the most valuable thing I own.’ He replied, ‘If you wish, retain the land and give its profits in charity.’ ‘Umar did so, with the land not allowed to be sold, inherited or gifted. He gave its profits in charity to the poor, relatives, slaves, in the path of Allah, the wayfarer and guests. Whoever came across it could eat from it sensibly, or feed another without seeking any financial recompense.” [Agreed upon]

وَأَفْضَلُهُ: أَنْفَعُهُ لِلْمُسْلِمِينَ.

وَيَنْعَقِدُ بِالْقَوْلِ الدَّالِّ عَلَى الْوَقْفِ.

وَيُرْجَعُ فِي مَصَارِفِ الْوَقْفِ وَشُرُوطِهِ إِلَى شَرْطِ الْوَقْفِ حَيْثُ وَافَقَ الشَّرْعَ

و لا يباع إلا أن تتعطل منافعه، فيباع، و يجعل في مثله، أو بعض مثله.

The best endowment is what is most beneficial. An endowment is enacted by a statement that shows the intent. The causes and conditions of the endowment are set by the endower so long as they conform to the *shari’ah*. It cannot be sold unless it is no longer fit for purpose, in which case it is sold and the money placed in the same or similar.

بَابُ أَهْبَةِ وَالْعَطِيَّةِ وَالْوَصِيَّةِ

Chapter: Gifts, Final Donations & Bequeathals

وَهِيَ مِنْ عُقُودِ التَّبَرُّعَاتِ.

فَأَهْبَةُ: التَّبَرُّعُ بِالْمَالِ فِي حَالِ الْحَيَاةِ وَالصِّحَّةِ.

وَالْعَطِيَّةُ التَّبَرُّعُ بِهِ فِي مَرَضٍ مَوْتِهِ الْمَحُوفِ. وَالْوَصِيَّةُ التَّبَرُّعُ بِهِ بَعْدَ الْوَفَاةِ.

فَالْجَمِيعُ دَاخِلٌ فِي الْإِحْسَانِ وَالْبِرِّ.

فَالْهَبَةُ مِنْ رَأْسِ الْمَالِ،

وَالْعَطِيَّةُ وَالْوَصِيَّةُ مِنَ الثُّلْثِ فَأَقْلُ لِعَيْرٍ وَارِثٍ،

فَمَا زَادَ عَنِ الثُّلْثِ، أَوْ كَانَ لَوَارِثٍ: تُوقَفُ عَلَى إِجَازَةِ الْوَرَثَةِ الْمُرْشِدِينَ

These are all charitable contracts.

A gift is what is given in one's life. A final donation is what is given during a terminal illness. A bequeathal is what is given after death. All of these are acts of goodness. A gift is taken from one's wealth, whereas the final donation and bequeathal is taken from the third or less to a non-heir. If it is more than a third or given to an heir, the other mature heirs must agree.

وَكُلُّهَا يَجِبُ فِيهَا الْعَدْلُ بَيْنَ أَوْلَادِهِ; لِحَدِيثِ: (اتَّقُوا اللَّهَ وَاعْدِلُوا بَيْنَ أَوْلَادِكُمْ) مُتَّفَقٌ عَلَيْهِ .

وَبَعْدَ تَقْيِيزِ أَهْبَةِ وَقَبُولِهَا لَا يَحِلُّ الرُّجُوعُ فِيهَا لِحَدِيثِ: (الْعَائِدُ فِي هَبَّتِهِ كَالْكَلْبِ يَقِيءُ ثُمَّ يَعُودُ فِي قَيْئِهِ

(مُتَّفَقٌ عَلَيْهِ ، وَفِي الْحَدِيثِ الْآخَرِ: (لَا يَحِلُّ لِرَجُلٍ مُسْلِمٍ أَنْ يُعْطِيَ الْعَطِيَّةَ ثُمَّ يَرْجِعَ فِيهَا; إِلَّا الْوَالِدُ

فِيمَا يُعْطِي لِوَلَدِهِ) رَوَاهُ أَهْلُ السُّنَنِ.

وَكَانَ النَّبِيُّ (ﷺ) يَقْبَلُ الْهَدِيَّةَ وَيُثِيبُ عَلَيْهَا

In all of the above, one should be fair to their children due to the narration, “Fear Allah and be just to your children.” [Agreed upon] Once a gift has been given and accepted, it is not permissible to ask for it back due to the narration, “The one who seeks the return of his gift is like the dog that vomits and wants to take it back in.” [Agreed upon] In the other narration, “It is not permissible for a Muslim to give a final donation and then demand it back, except for the father in what he gives to his child.” [The Sunan] The Prophet (ﷺ) would accept gifts and gift back.

وَلِلْأَبِ أَنْ يَتَمَلَّكَ مِنْ مَالِ وَلَدِهِ مَا شَاءَ، مَا لَمْ يَضُرَّهُ، أَوْ يُعْطِيَهُ لَوْلَدٍ آخَرَ، أَوْ يَكُونَ بِمَرَضٍ مَوْتٍ أَحَدِهِمَا؛ لِحَدِيثِ: (أَنْتَ وَمَالُكَ لِأَبِيكَ).

و عن ابن عمر مرفوعا: (ما حق امرئ مسلم له شيء يريد أن يوصي فيه، بيت ليلتين، إلا و وصيته مكتوبة عنده) مُتَّفَقٌ عَلَيْهِ.

وَفِي الْحَدِيثِ: (إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ، فَلَا وَصِيَّةَ لَوَارِثٍ) رَوَاهُ أَهْلُ السُّنَنِ، وَفِي لَفْظٍ: (إِلَّا أَنْ يَشَاءَ الْوَرِثَةُ).

وَيَنْبَغِي لِمَنْ لَيْسَ عِنْدَهُ شَيْءٌ يَخْصُلُ فِيهِ إِغْنَاءُ وَرَثَتِهِ أَنْ لَا يُوصِي، بَلْ يَدَعِ التَّرِكَهَ كُلَّهَا لَوَرَثَتِهِ؛ كَمَا قَالَ النَّبِيُّ (ﷺ): (إِنَّكَ إِنْ تَذَرِ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ) مُتَّفَقٌ عَلَيْهِ . وَالْخَيْرُ مَطْلُوبٌ فِي جَمِيعِ الْأَحْوَالِ.

A father can take from the wealth of his child as he pleases so long as this does not harm him, or he gives that wealth to another child or he in a terminal illness, due to the narration, “You and your wealth belong to your father.”

Ibn ‘Umar narrated, “It is incumbent upon the Muslim who wishes to bequeath something, that two nights do not pass by except that they have their final bequest written.” [Agreed upon]

In another narration, “Indeed, Allah has given every person their due right, so there is no bequeathing to an heir.” [The Sunan] In another wording, “Unless the other heirs agree.”

It is not appropriate for the one who owns little to give to his heirs that they bequeath. Rather, they should leave all of their estate to their heirs, as the Prophet (ﷺ) said, “To enrich your heirs that you leave behind is better than to leave them poor and dependant on others.” [Agreed upon]

Goodness is always sought in every situation.

كِتَابُ الْمَوَارِيثِ

The Book of Inheritance

وَهِيَ الْعِلْمُ بِقِسْمَةِ التَّرَكَةِ بَيْنَ مُسْتَحِقِّيْهَا

وَالْأَصْلُ فِيْهَا:

أ - قَوْلُهُ تَعَالَى فِي سُورَةِ النِّسَاءِ: (يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ) إِلَى قَوْلِهِ: (تِلْكَ حُدُودُ اللَّهِ).

ب - وَقَوْلُهُ فِي آخِرِ السُّورَةِ: (يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ).

ج - مَعَ حَدِيثِ ابْنِ عَبَّاسٍ -رَضِيَ اللَّهُ عَنْهُمَا- —رُفُوعًا: (الْحِقُوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَلِأُولَى رَجُلٍ ذَكَرٍ) مُتَّفَقٌ عَلَيْهِ

This is the knowledge of the distribution of the estate amongst the rightful recipients.

The foundation for this is:

- a. Allah's statement in Sūrah al-Nisā', "Allah instructs you regarding your children, a male has the equivalent of two shares to a female... these are the laws of Allah."
[4:11-13]
- b. His statement at the end of this Sūrah, "They ask you for a ruling. Say, 'Allah gives you a ruling about the one who has no surviving ascendants or descendants.'
[4:176]
- c. The narration of Ibn 'Abbās, "Give the fixed shares to their recipients and what remains is for the closest male relative." [Agreed upon]

فَقَدْ اِسْتَمَلَتْ الْآيَاتُ الْكَرِيمَةُ مَعَ حَدِيثِ ابْنِ عَبَّاسٍ عَلَى جُلِّ أَحْكَامِ الْمَوَارِيثِ، وَذَكَرَهَا مُفَصَّلَةً بِشُرُوطِهَا.

فَجَعَلَ اللَّهُ الذُّكُورَ وَالْإِنَاثَ مِنْ أَوْلَادِ الصُّلْبِ، وَأَوْلَادِ الْإِبْنِ، وَمِنْ الْإِخْوَةِ الْأَشْقَاءِ، أَوْ لِغَيْرِ أُمٍّ إِذَا اجْتَمَعُوا يَفْتَسِمُونَ الْمَالَ.

و ما أبقت الفروض: للذكر مثل حظ الأنثيين

و أن الذكور من المذكورين: يأخذون المال أو ما أبقت الفروض

These verses along with the narration of Ibn ‘Abbās contain the majority of inheritance rulings, along with their detailed conditions. Allah gave male and female blood children, the children of sons, full brothers or paternal brothers the recipients of wealth. What remains of the fixed shares: a male gets a double share compared to a female. The males from the abovementioned take the wealth or what remains after the fixed shares.

و أن الواحدة من البنات: لها النصف

و الثنتين فأكثر: لهما الثلثان

و إذا كانت بنت و بنت ابن فللبنات النصف، و لبنت الابن السدس تكملة للثنتين

وَكَذَلِكَ الْأَخَوَاتِ الشَّقِيقَاتِ، وَالْأَلَاةِ لِلْأَبِ فِي الْكَلَالَةِ إِذَا لَمْ يَكُنْ لَهُ وَلَدٌ وَلَا وَالِدٌ.

وَأَنَّهُ إِذَا اسْتَعْرَقَتِ الْبَنَاتُ الثَّلَاثِينَ: سَقَطَ مِنْ دُوْهُنَّ مِنْ بَنَاتِ الْإِبْنِ، إِذَا لَمْ يَعْصِبْنَهُنَّ ذَكَرٌ بِدَرَجَتِهِنَّ أَوْ أَنْزَلَ مِنْهُنَّ.

وَكَذَلِكَ الشَّقِيقَاتِ يُسْقِطْنَ الْأَخَوَاتِ لِلْأَبِ، إِذَا لَمْ يَعْصِبْنَهُنَّ أَخُوهُنَّ

و أن الإخوة لأم و الأخوات: للواحد منهم السدس و للاثنتين فأكثر الثلث، يسوي بين ذكورهم و إناثهم

و أنهم لا يرثون مع الفروع مطلقا، و لا مع الأصول الذكور

A single daughter receives half. Two or more daughters receive two thirds. If there is one daughter along with one son's daughter, the daughter receives half and the granddaughter a sixth to complete the two thirds.

This is the same for full sisters or paternal sisters if there is no parent or child living. If the daughters take the two thirds fixed share, any granddaughters are dropped if they are not strengthened with someone at their level or below. Full sisters also supersede paternal sisters if there is no male to strengthen them.

Maternal brothers and sisters receive a sixth if they are alone, whereas two or more receive a third, with males and females being the same. They do not inherit if any descendants or male ascendants are present.

وَأَنَّ الزَّوْجَ لَهُ النِّصْفُ مَعَ عَدَمِ أَوْلَادِ الزَّوْجَةِ وَالرُّبْعُ مَعَ وُجُودِهِمْ .
وَأَنَّ الزَّوْجَةَ فَأَكْثَرُ لَهَا الرُّبْعُ مَعَ عَدَمِ أَوْلَادِ الزَّوْجِ، وَالثُّمْنُ مَعَ وُجُودِهِمْ.

The husband receives a half share if there were no children from his wife, and a quarter of a share if there were children. The wife or wives receive a quarter if there were no children from the husband, and an eighth if there were children.

وَأَنَّ الْأُمَّ لَهَا السُّدُسُ مَعَ أَحَدٍ مِنَ الْأَوْلَادِ، أَوْ اثْنَيْنِ فَأَكْثَرَ مِنَ الْإِخْوَةِ أَوْ الْأَخَوَاتِ، وَالثُّلُثُ مَعَ عَدَمِ ذَلِكَ.

وَأَنَّ لَهَا ثُلُثَ الْبَاقِي فِي: زَوْجٍ وَأَبَوَيْنِ، أَوْ زَوْجَةٍ وَأَبَوَيْنِ.
وَقَدْ جَعَلَ النَّبِيُّ (ﷺ) لِلْجَدَّةِ السُّدُسَ، إِذَا لَمْ يَكُنْ دُونَهَا أُمٌّ، رَوَاهُ أَبُو دَاوُدَ وَالتِّرْمِذِيُّ.
وَأَنَّ لِلْأَبِ السُّدُسَ، لَا يَزِيدُ عَلَيْهِ مَعَ الْأَوْلَادِ الذُّكُورِ.

وَلَهُ السُّدُسُ مَعَ الْإِنَاثِ، فَإِنْ بَقِيَ بَعْدَ فَرَضِهِنَّ شَيْءٌ أَخَذَهُ تَعَصِيًّا وَكَذَلِكَ الْجَدُّ، وَآلَهُمَا يَرِثَانِ تَعَصِيًّا مَعَ عَدَمِ الْأَوْلَادِ مُطْلَقًا

The mother receives a sixth if there is a child present, or two or more siblings, and a third if none of them are present. The mother receives the remainder of a third share in the case of a husband and parents, or the case of a wife and parents. The Prophet (ﷺ) gave

the grandmother a sixth if there is no closer mother, as collected by Abu Dāwūd and Al-Nasā'ī.

The father receives a sixth, and nothing further in the presence of male offspring. He receives a sixth in the presence of female offspring, and if anything remains after their fixed shares, he takes the remainder. The grandfather is similar. The two of them inherit what remains in the case of there being no descendants.

وَكَذَلِكَ جَمِيعُ الذُّكُورِ - غَيْرَ الزَّوْجِ وَالْأَخِ مِنَ الْأُمِّ - عَصَبَاتٌ وَهُمْ:

1- الْإِخْوَةُ الْأَشْقَاءُ, أَوْ لِأَبٍ, وَأَبْنَاؤُهُمْ.

2- وَالْأَعْمَامُ الْأَشْقَاءُ أَوْ لِأَبٍ, وَأَبْنَاؤُهُمْ, أَعْمَامُ الْمَيِّتِ, وَأَعْمَامُ أَبِيهِ وَجَدُّهُ, وَإِنْ عَلَا.

3- وَكَذَا الْبَنُونَ وَبَنُوهُمْ.

All male recipients with the exceptions of the husband and maternal brother are *'aṣabah*.

These are:

1. Full or paternal brothers and their sons
2. Paternal uncles or half paternal uncles and their sons, and the paternal uncles of the father and grandfather etc.
3. Sons and their sons

وحكم العاصب : أن يأخذ المال كله إذا انفرد ، وإن كان معه صاحب فرض أخذ الباقي بعده . وإذا

استغرقت الفروض التركة لم يبق للعاصب شيء ، ولا يمكن أن تستغرق مع ابن الصلب ولا مع الأب .

The *'aṣabah* takes all the estate if he is alone. If there is a fixed share recipient, he takes the remainder. If the fixed share recipients take the whole estate, he receives nothing. This cannot happen in the presence of a child or father.

وإن وجد عاصبان فأكثر فجهات العصوبة على الترتيب الآتي :

بنوة ،

ثم أبوة ،

ثم أخوة وبنوهم ،

ثم أعمام وبنوهم

ثُمَّ الْوَلَاءُ وَهُوَ الْمُعْتَقُ، وَعَصْبَاتُهُ الْمُتَعَصِّبُونَ بِأَنْفُسِهِمْ

فَيُقَدَّمُ مِنْهُمْ الْأَقْرَبُ جِهَةً.

فَإِنْ كَانُوا فِي جِهَةٍ وَاحِدَةٍ: قُدِّمَ الْأَقْرَبُ مَنْزِلَةً.

فَإِنْ كَانُوا فِي الْمَنْزِلَةِ سَوَاءً: قُدِّمَ الْأَقْوَى مِنْهُمْ. وَهُوَ الشَّقِيقُ عَلَى الَّذِي لِأَبٍ

و كل عاصب غير الأبناء و الإخوة لا ترث أخته معه شيئا

If there is more than one 'aṣabah, then they are given precedence in order of:

1. Sons
2. Fathers
3. Brothers and their sons
4. Paternal uncles and their sons
5. The freed slave and his 'aṣabah

The closest one is given precedence. If they are related the same way, the closer one is given precedence. If they are both as close, the one with stronger ties is given precedence like the full brother over the half paternal brother. Every 'aṣabah other than children and siblings do not share with their female counterparts.

و إذا اجتمعت فروض تزيد على المسألة، بحيث يسقط بعضهم بعضا: عَالَتْ بِقَدْرِ فُرُوضِهِمْ:

1 - فَإِذَا كَانَ زَوْجٌ وَأُمٌّ وَأُخْتُ لِعَيْرِ أُمٍّ: فَأَصْلُهَا سِتَّةٌ، وَتَعُولُ لثَمَانِيَةٍ.

2 - فَإِنْ كَانَ لَهُمْ أَخٌ لِأُمِّ فَكَذَلِكَ.

3 - فَإِنْ كَانُوا اثْنَيْنِ: عَالَتْ لِتِسْعَةٍ.

4 - فَإِنْ كَانَ الْأَحْوَاثُ لِغَيْرِ أُمِّ ثِنْتَيْنِ عَالَتْ إِلَى عَشْرَةٍ.

5 - وَإِذَا كَانَ بِنْتَانِ وَأُمٌّ وَزَوْجٌ عَالَتْ مِنْ اثْنَتَيْ عَشْرَةَ إِلَى ثَلَاثَةِ عَشْرٍ.

6- فَإِنْ كَانَ مَعَهُمْ أَبٌ عَالَتْ إِلَى خَمْسَةِ عَشْرٍ

7- فَإِنْ خَلْفَ زَوْجَتَيْنِ وَأَخْتَيْنِ لِأُمٍّ وَأَخْتَيْنِ لغيرها و أم: عالت إلى سبعة عشر

8 - فَإِنْ كَانَ أَبَوَانِ وَابْنَتَانِ وَزَوْجَةٌ: عَالَتْ مِنْ أَرْبَعَةٍ وَعِشْرِينَ إِلَى سَبْعَةٍ وَعِشْرِينَ

If all the fixed shares exceed the division formula which would lead to some missing out, the formula is reworked:

1. In the case of a husband, mother and a non-maternal sister, the division formula would have been six, but is reworked to eight
2. Similarly, if there is a maternal brother
3. If there are two of them, it is reworked to nine
4. If there are two non-maternal sisters, it is reworked to ten
5. If there are two daughters, mother and a husband, it is reworked from twelve to thirteen
6. If the father is also present, it is reworked to fifteen
7. If someone leave behind two wives, two maternal sisters and two non-maternal sisters and a mother, it is reworked to seventeen
8. If there are two parents, two daughters and a wife, it is reworked from twenty-four to twenty-seven

وَأِنْ كَانَتْ الْقُرُوضُ أَقَلَّ مِنَ الْمَسْأَلَةِ وَلَمْ يَكُنْ مَعَهُمْ عَاصِبٌ : رُدَّ الْفَاضِلُ عَلَى كُلِّ ذِي فَرَضٍ بِقَدْرِ فَرَضِهِ

فَإِنْ عُدِمَ أَصْحَابُ الْقُرُوضِ وَالْعَصَبَاتِ : وَرِثَ ذَوُو الْأَرْحَامِ, وَهُمْ مِنْ سِوَى الْمَذْكُورِينَ, وَيَنْزِلُونَ مَنْزِلَةَ مَنْ أَدُلُّوا بِهِ.

وَمَنْ لَا وَارِثَ لَهُ فَمَالُهُ لِيَبْتَ الْمَالِ , يُصْرَفُ فِي الْمَصَالِحِ الْعَامَةِ وَالْخَاصَةِ

If the fixed shares are less than the division formula and there is no 'aṣabah present, the remainder is redistributed to each recipient of a fixed share according to their shares. If there are no fixed share recipients or 'aṣabah, other relatives inherit; these are other than the aforementioned and take the place of their counterparts. If there is no living heir, the wealth goes to the treasury to be spent on specific and general causes.

و إذا مات الإنسان تعلق بتركته أربعة حقوق مرتبة:

- 1- أولها: مؤن التجهيز
- 2 - ثُمَّ الدُّيُونُ الْمُؤْتَقَّةُ وَالْمُرْسَلَةُ مِنْ رَأْسِ الْمَالِ.
- 3 - ثُمَّ إِذَا كَانَ لَهُ وَصِيَّةٌ تَنْفَعُ مِنْ ثُلُثِهِ لِلْأَجْنَبِيِّ.
- 4 - ثُمَّ الْبَاقِي لِلْوَرَثَةِ الْمَذْكُورِينَ, وَاللَّهُ أَعْلَمُ.

When a person dies, there are four rights connected to their estate:

1. The funeral expenses
2. Guaranteed and unguaranteed debts
3. Bequests up to a third to a non-heir
4. Distribution of estate to the heirs. Allah knows best

وَأَسْبَابُ الْإِرْثِ ثَلَاثَةٌ:

- 1 - النَّسَبُ,
- 2 - وَالنِّكَاحُ الصَّحِيحُ
- 3 - وَالْوَلَاءُ.

The causes of inheritance are three:

1. Blood relations
2. Marriage
3. Allegiance through emancipation

– وَمَوَانِعُهُ ثَلَاثَةٌ:

1 – الْقَتْلُ،

2 – وَالرَّقُّ،

3 – وَاخْتِلَافُ الدِّينِ

The obstacles to inheritance are also three:

1. Murder
2. Slavery
3. Different religions

وَإِذَا كَانَ بَعْضُ الْوَرَثَةِ حَمَلًا أَوْ مَفْقُودًا أَوْ نَحْوَهُ: عَمِلْتَ بِالْإِحْتِيَاظِ وَوَقَفْتَ لَهُ، إِنْ طَلَبَ الْوَرَثَةُ قِسْمَةَ الْمِيرَاثِ عَمِلْتَ مَا يَحْصُلُ بِهِ الْإِحْتِيَاظُ عَلَى حَسَبِ مَا قَرَّرَهُ الْفُقَهَاءُ – رَحِمَهُمُ اللَّهُ تَعَالَى.

If some of the heirs are foetuses or lost etc., you take the cautious approach, if the other heirs want the estate to be distributed with caution as mentioned by the scholars.

بَابُ الْعِتْقِ

Chapter: Emancipation

وَهُوَ تَحْرِيرُ الرَّقَبَةِ وَتَخْلِيصُهَا مِنَ الرَّقِّ

و هو من أفضل العبادات لحديث: (أيما امرئ مسلم أعتق امراة مسلما استنقذ الله بكل عضو منه عضوا منه من النار) مُتَّفَقٌ عَلَيْهِ.

وَسُئِلَ رَسُولُ اللَّهِ ﷺ (أَيُّ الرِّقَابِ أَفْضَلُ؟ فَقَالَ: أَعْلَاهَا ثَمَنًا، وَأَنْفَسُهَا عِنْدَ أَهْلِهَا) مُتَّفَقٌ عَلَيْهِ

Emancipation is to free a slave. It is from the greatest acts of worship due to the narration, "Whichever Muslim frees another Muslim, Allah will free him from the Fire for each limb he freed." [Agreed upon] The Prophet (ﷺ) was asked, "Which slave is best to free?" He replied, "The most expensive and valuable." [Agreed upon]

وَيَحْصُلُ الْعِتْقُ:

أ - بِالْقَوْلِ: وَهُوَ لَفْظُ "الْعِتْقِ" وَمَا فِي مَعْنَاهُ.

ب - وَبِالْمَلِكِ, فَمَنْ مَلَكَ ذَا رَحِمٍ مُحَرَّمٍ مِنَ النَّسَبِ عَتَقَ عَلَيْهِ.

ج - وَبِالتَّمْثِيلِ بَعْدَهُ بِقَطْعِ عُضْوٍ مِنْ أَعْضَائِهِ أَوْ تَحْرِيقِهِ.

د - وَبِالسَّرَايَةِ ; لِحَدِيثِ: (مَنْ أَعْتَقَ شِرْكَاءَ لَهُ فِي عَبْدٍ فَكَانَ لَهُ مَالٌ يَبْلُغُ ثَمَنَ الْعَبْدِ قُومَ عَلَيْهِ قِيمَةً عَدْلٍ, فَأُعْطِيَ شِرْكَاءُوهُ حِصَصَهُمْ, وَعَتَقَ عَلَيْهِ الْعَبْدُ, وَإِلَّا فَقَدْ عَتَقَ مِنْهُ مَا عَتَقَ) وَفِي لَفْظِ: ("وَالْأَقْوَمَ عَلَيْهِ, وَاسْتُسْعِيَ غَيْرَ مَشْفُوقٍ عَلَيْهِ) مُتَّفَقٌ عَلَيْهِ

Emancipation takes place by:

- Speech, by using the word 'free' or similar words
- Ownership – whoever purchases a *maḥram* has freed it
- Disfigurement – by cutting off a limb or burning
- Freeing a portion due to the narration, "Whoever frees a portion of a slave and has wealth, a fair price for the slave should be fixed, his partner given their shares and the slave freed. Otherwise, he has freed only his share." In another wording, "Else he will be valued and will work to pay for his freedom without overburdening him." [Agreed upon]

فَإِنْ عَلِقَ عِتْقَهُ بِمَوْتِهِ فَهُوَ الْمُدَبَّرُ, يُعْتَقُ بِمَوْتِهِ إِذَا خَرَجَ مِنَ الثُّلُثِ; فَعَنْ جَابِرٍ (أَنَّ رِجَالًا مِنَ الْأَنْصَارِ أَعْتَقَ غُلَامًا لَهُ عَنْ دُبُرٍ لَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ, فَبَلَغَ ذَلِكَ النَّبِيَّ (ﷺ) فَقَالَ: مَنْ يَشْتَرِيهِ مِنِّي؟ فَاشْتَرَاهُ نَعِيمُ بْنُ عَبْدِ اللَّهِ بِثَمَانِمِائَةِ دِرْهَمٍ, وَكَانَ عَلَيْهِ دَيْنٌ فَأَعْطَاهُ, وَقَالَ: إِفْضِ دَيْنَكَ) مُتَّفَقٌ عَلَيْهِ

If someone emancipates a slave at the time of his death it is called *mudabbbar*, he is freed if his value is less than a third of the estate. Jābir narrated, “A man from the Anṣār freed a slave of his at the time of his death and had no other wealth. The Prophet (ﷺ) heard this and asked who would purchase the slave. Nu’aym ibn Abdillāh bought him for 800 dirhams. He was in debt so he gave it to him and told him to fulfil his debts.” [Agreed upon]

وَالْكِتَابَةِ أَنْ يَشْتَرِيَ الرَّقِيقَ نَفْسَهُ مِنْ سَيِّدِهِ بِثَمَنِ مُؤَجَّلٍ بِأَجَلَيْنِ فَأَكْثَرَ.
 قَالَ تَعَالَى: (فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا) [النُّور: 33] يَعْنِي: صَلَاحًا فِي دِينِهِمْ وَكَسْبًا.
 فَإِنْ خِيفَ مِنْهُ الْفُسَادُ بَعْتُهُ أَوْ كِتَابَتَهُ، أَوْ لَيْسَ لَهُ كَسَبٌ: فَلَا يُشْرَعُ عِتْقُهُ وَلَا كِتَابَتُهُ.
 وَ لَا يَعْتَقُ الْمَكَاتِبُ إِلَّا بِالْأَدَاءِ، لِحَدِيثِ: (المكاتب عبد ما بقي عليه من كتابته درهم) رَوَاهُ أَبُو دَاوُدَ
 وَعَنْ ابْنِ عَبَّاسٍ مَرْفُوعًا، وَعَنْ عُمَرَ مَوْقُوفًا: (أَيُّمَا أَمَةٍ وَلَدَتْ مِنْ سَيِّدِهَا فَهِيَ حُرَّةٌ بَعْدَ مَوْتِهِ) أَخْرَجَهُ
 ابْنُ مَاجَهٍ ،وَالرَّاجِحُ الْمَوْقُوفُ عَلَى عُمَرَ وَاللَّهُ أَعْلَمُ.

A contracted slave is the one who wishes to purchase his own freedom from his master for a delayed price, delayed twice. Allah says, “...make a contract with them if you know they have good in them.” [24:33] i.e. they have good in their religion and the ability to work.

If someone fears that evil from their emancipation or contract or the slave cannot provide for themselves, they are not freed or contracted.

The contracted slave is not free until the full payment is made due to the narration, “The contracted slave is still a slave so long as one dirham remains.” [Abu Dāwūd]

Ibn ‘Abbās narrated from the Prophet (ﷺ) heard, and it is narrated also as a statement of ‘Umar, “Whichever she-slave gives birth from her master will be freed upon his death.” [Ibn Mājah] This is more likely to be the statement of ‘Umar. Allah knows best.

كِتَابُ النِّكَاحِ

The Book of Marriage

وَهُوَ مِنْ سُنَنِ الْمُرْسَلِينَ.

وَفِي الْحَدِيثِ: (يَا مَعْشَرَ الشَّبَابِ, مَنْ اسْتَطَاعَ مِنْكُمُ الْبَاءَةَ فَلْيَتَزَوَّجْ, فَإِنَّهُ أَغْضُ لِلْبَصَرِ وَأَحْصَنُ لِلْفَرْجِ, وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ, فَإِنَّهُ لَهُ وَجَاءٌ) مُتَّفَقٌ عَلَيْهِ.

وَقَالَ (ﷺ): (تُنْكَحُ الْمَرْأَةُ لِأَرْبَعٍ لِمَالِهَا, وَحَسَبِهَا, وَجَمَالِهَا, وَدِينِهَا, فَاظْفَرْ بِذَاتِ الدِّينِ تَرُبَّتْ يَمِينُكَ) مُتَّفَقٌ عَلَيْهِ.

وَيَنْبَغِي أَنْ يَتَحَيَّرَ ذَاتُ الدِّينِ وَالْحَسَبِ, الْوُدُودِ الْوُلُودِ الْحَسْبِيَّةِ

It is from the practice of the Prophets.

In the narration, “O youngsters, whoever has the means should get married for it is more modest for the eyes and the private parts. Whoever cannot marry should fast as it is a protection.” [Agreed upon]

The Prophet (ﷺ) also said, “A woman is married for four reasons: her wealth, lineage, beauty and religion. Choose religion and you will be successful.” [Agreed upon]

A man should choose a spouse with religion and good lineage, who is loving and able to bear children.

و إِذَا وَقَعَ فِي قَلْبِهِ خُطْبَةُ امْرَأَةٍ فَلَهُ أَنْ يَنْظُرَ مِنْهَا مَا يَدْعُوهُ إِلَى نِكَاحِهَا
وَلَا يَحِلُّ لِلرَّجُلِ أَنْ يَخْطُبَ عَلَى خُطْبَةِ أَخِيهِ الْمُسْلِمِ, حَتَّى يَأْذَنَ أَوْ يَتْرُكَ.
وَلَا يَجُوزُ التَّصْرِيحُ بِخُطْبَةِ الْمُعْتَدَّةِ مُطْلَقًا .

وَيَجُوزُ التَّعْرِيزُ فِي خُطْبَةِ الْبَائِنِ بِمَوْتِ أَوْ غَيْرِهِ ; لِقَوْلِهِ تَعَالَى: (وَلَا جُنَاحَ عَلَيْكُمْ فِيَمَا عَرَّضْتُمْ
بِهِ مِنْ خُطْبَةِ النِّسَاءِ) [الْبَقَرَةُ: 235] .

وَصِفَةُ التَّعْرِيزِ : أَنْ يَقُولَ: إِنِّي فِي مِثْلِكَ لَرَاغِبٌ, أَوْ لَا تُفَوِّتْنِي نَفْسَكَ, وَنَحْوَهَا.

When a man decides to propose to a woman he can see that which will enable him to proceed with the marriage.

It is impermissible for a Muslim to propose over his brother's proposal, unless he gives his permission or decides to leave his proposal.

It is impermissible to directly propose to a woman on her waiting period.

It is permissible to subtly show interest to the woman who is on a final waiting period due to death or something else. Allah says, "There is no blame on you for subtly showing interest in proposing to women..." [2:235]

The way of showing subtle interest is to say, "I'm looking for someone like you", or, "Don't overlook me" etc.

و ينبغي أن يخطب في عقد النكاح بخطبة ابن مسعود، قال: علمنا رسول الله (ﷺ) التشهد في الحاجة: ((إن الحمد لله نحمده، ونستعينه، ونستغفره، ونعوذ بالله من شرور أنفسنا و سيئات أعمالنا، من يهده الله فلا مضل له، و من يضلل فلا هادي له، و أشهد أن لا إله إلا الله وحده لا شريك له، و أشهد أن محمدا عبده و رسوله)) و يقرأ ثلاث آيات. رواه أهل السنن، و الثلاث الآيات فسرهما بعضهم، و هي:

- 1- قوله تعالى: يا أيها الذين ءامنوا اتقوا الله حق تقاته ولا تموتن إلا و أنتم مسلمون
- 2- و الآية الأولى من سورة النساء: يا أيها الناس اتقوا ربكم الذي خلقكم من نفس واحدة و خلق منها زوجها و بث منهما رجالا كثيرا و نساء و اتقوا الله الذي تساءلون به والأرحام إن الله كان عليكم رقيبا
- 3- و قوله تعالى: يا أيها الذين ءامنوا اتقوا الله و قولوا قولا سديدا يصلح لكم أعمالكم و يغفر لكم ذنوبكم و من يطع الله و رسوله فقد فاز فوزا عظيما

The marriage sermon should start in the way mentioned by Ibn Mas'ud, "The Prophet (ﷺ) taught us how to begin the sermon, 'All praise is due to Allah, we praise Him, seek His divine aid and seek His forgiveness. We seek Allah's refuge from the evil consequences of our souls and our evil deeds. Whomsoever Allah guides none can misguide, and whomsoever He misguides cannot be guided. I testify that none has the right to be

worshipped except Allah and the Muhammad is His slave and Messenger.” He would then recite the three verses. [Collected in the Sunan]

The three verses are:

1. “O you who believe, fear Allah as He ought to be feared and do not die except as Muslims.” [3:102]
2. “O mankind, fear your Lord who created you from a single soul and from it, he created his spouse, and from them two brought forth many men and women. Fear Allah in whose name you ask and your rights of kinship. Indeed, Allah is over you a watcher.” [4:1]
3. “O you who believe, fear Allah and say an upright statement. He will rectify your actions for you and forgive your sins. Whosoever obeys Allah and His Messenger has indeed attained the greatest success.” [33:70-71]

و لا يجب إلا:

أ- الإيجاب وهو اللفظ الصادر من الولي، كقوله: زَوَّجْتُكَ، أَوْ أَنْكَحْتُكَ.

ب- والقبول: وهو اللفظ الصادر من الزوج أو نائيه، كقوله: قَبِلْتُ هَذَا الزَّوْجَ، أَوْ قَبِلْتُ وَنَحْوَهُ

The compulsory parts are only:

1. The Offer – this is the statement made by the male guardian, such as “I marry to you...”
2. The Acceptance – this is the statement made by the groom or his representative, such as, “I accept.”

بَابُ شُرُوطِ النِّكَاحِ

Chapter: Conditions of Marriage

وَلَا بُدَّ فِيهِ مِنْ رِضَا الزَّوْجَيْنِ إِلَّا:

أ- الصَّغِيرَةُ فَيُجْبِرُهَا أَبُوهَا.

ب- وَالْأَمَةُ فَيُجْبِرُهَا سَيِّدُهَا.

وَلَا بُدَّ فِيهِ مِنَ الْوَلِيِّ، قَالَ (ﷺ): (لَا نِكَاحَ إِلَّا بِوَلِيٍّ) حَدِيثٌ صَحِيحٌ، رَوَاهُ الْخَمْسَةُ

Both the groom and bride must willingly accept, unless:

- i. She is young
- ii. She is a slave girl

The male guardian must be present due to the statement of the Prophet (ﷺ), "There is no marriage without the male guardian." [Authentic, collected by the five]

وَأَوَّلَى النَّاسِ بِتَزْوِيجِ الْحُرَّةِ:

1- أَبُوهَا وَإِنْ عَالَا.

2- ثُمَّ ابْنُهَا وَإِنْ نَزَلَ.

3- ثُمَّ الْأَقْرَبُ فَلَا أَقْرَبُ مِنْ عَصَبَاتِهَا.

وَفِي الْحَدِيثِ الْمُتَّفَقِ عَلَيْهِ: (لَا تُنْكَحُ الْأَيِّمُ حَتَّى تُسْتَأْمَرَ، وَلَا تُنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ، قَالُوا: يَا رَسُولَ اللَّهِ، وَكَيْفَ إِذْهَاتَا؟ قَالَ: أَنْ تَسْكُتَ)

The guardian who has most right in representing the free woman is:

1. Her father or any of his male ancestors
2. Son or any of his male descendants
3. Her closest male relatives from her father's side

In the *hadith*, “The non-virgin woman is not to be married until consulted, and the virgin is not to be married until her permission is sought.” They said, “O Messenger of Allah, what is her permission?” He said, “Her silence.” [Agreed upon]

وَقَالَ النَّبِيُّ (ﷺ) (اَعْلِنُوا النِّكَاحَ) رَوَاهُ أَحْمَدُ.

و من إعلانه: شهادة عدلين، و إشهاره و إظهاره، و الضرب عليه بالدف، و نحوه

وَلَيْسَ لَوَلِيِّ الْمَرْأَةِ تَزْوِيجُهَا بِغَيْرِ كُفٍّ لَهَا، فَلَيْسَ الْفَاجِرُ كُفُّوًا لِلْعَفِيفَةِ وَالْعَرَبُ بَعْضُهُمْ لِبَعْضٍ أَكْفَاءٌ.

فَإِنْ عُدِمَ وَلِيُّهَا، أَوْ غَابَ غَيْبَةً طَوِيلَةً، أَوْ اِمْتَنَعَ مِنْ تَزْوِيجِهَا كُفُّوًا : زَوَّجَهَا الْحَاكِمُ، كَمَا فِي الْحَدِيثِ: (السُّلْطَانُ وَلِيُّ مَنْ لَا وَلِيَ لَهُ) أَخْرَجَهُ أَصْحَابُ السُّنَنِ إِلَّا النَّسَائِيُّ

He (ﷺ) also said, “Announce the marriage” [Ahmad]

Announcing the marriage is to have two witnesses present, making it public and announcing it, and striking the *daff*.

A male guardian cannot marry his charge to someone who is not her equal, so the sinner is not equal to a chaste woman. Arabs are equals to one another.

If there is no male guardian or he is absent for a prolonged period, or refuses to marry her to an equal, the Muslim ruler becomes her guardian as is in the narration, “The ruler is the guardian for the one who has no guardian.” [The Sunan except Al-Nasā’ī]

وَلَا بُدَّ مِنْ تَعْيِينِ مَنْ يَقَعُ عَلَيْهِ الْعَقْدُ، فَلَا يَصِحُّ: زَوَّجْتُكَ بِنْتِي وَلَهُ غَيْرُهَا، حَتَّى يُمَيِّزَهَا بِاسْمِهَا أَوْ

وَلَا بُدَّ أَيْضًا مِنْ عَدَمِ الْمَوَانِعِ بِأَحَدِ الزَّوْجَيْنِ، وَهِيَ الْمَذْكُورَةُ فِي بَابِ الْمُحَرَّمَاتِ فِي النِّكَاحِ

In the contract, the person needs to be specified, so you cannot say, “I marry one of my daughters to you...”, but she must be named and known.

There cannot be any obstacles to the marriage which will be mentioned in the next chapter.

بَابُ الْمُحَرَّمَاتِ فِي النِّكَاحِ

Chapter: Prohibitions in Marriage

وَهُنَّ قِسْمَانِ:

أ- مُحَرَّمَاتٌ إِلَى الْأَبَدِ .

ب- وَمُحَرَّمَاتٌ إِلَى أَمَدٍ.

The prohibitions are of two categories:

- A. Permanent prohibitions
- B. Temporary prohibitions

- فَالْمُحَرَّمَاتُ إِلَى الْأَبَدِ:

أ- سَبْعٌ مِنَ النَّسَبِ وَهُنَّ:

1- الْأُمّهَاتُ وَإِنْ عَلَوْنَ.

2- وَالْبَنَاتُ وَإِنْ نَزَلْنَ، وَلَوْ مِنْ بَنَاتِ ابْنَتٍ.

3- وَالْأَخَوَاتُ مُطْلَقًا.

4- وَبَنَاتُهُنَّ.

5 و بنات الإخوة

6، 7 - و العمات، و الخالات، له أو لأحد أصوله

Permanent prohibitions are:

1. Seven due to blood lineage:
 - i. Mothers and grandmothers
 - ii. Daughters and granddaughters
 - iii. All sisters
 - iv. Their daughters
 - v. Brother's daughters
 - vi. Paternal aunts, either direct or of a parent
 - vii. Maternal aunts, either direct or of a parent

ب - و سبع من الرضاع، نظير المذكورات

ج- وَأَرْبَعٌ مِنَ الصَّهْرِ وَهُنَّ:

1- أُمَّهَاتُ الزَّوْجَاتِ, وَإِنْ عَلَوْنَ,

2- وَبَنَاتُهُنَّ, وَإِنْ نَزَلْنَ, إِذَا كَانَ قَدْ دَخَلَ بِأُمَّهَاتِهِنَّ.

3- وَزَوْجَاتُ الْأَبَاءِ, وَإِنْ عَلَوْنَ,

4- وَزَوْجَاتُ الْأَبْنَاءِ, وَإِنْ نَزَلْنَ, مِنْ نَسَبٍ أَوْ رِضَاعٍ.

2. Seven due to milk fostering, which are the same as the seven mentioned above

3. Four due to marriage:

- i. Mother in law, direct or above
- ii. Step daughters or below, once the marriage is consummated
- iii. Step mothers, direct or above
- iv. Daughter in laws from lineage or milk fostering

وَالْأَصْلُ فِي هَذَا:

قَوْلُهُ تَعَالَى: (حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ) إِلَى آخِرِهَا [النِّسَاءِ: 23, 24] .

وَقَوْلُهُ (ﷺ) (يَحْرُمُ مِنَ الرِّضَاعِ مَا يَحْرُمُ مِنَ النَّسَبِ) مُتَّفَقٌ عَلَيْهِ

The basis of this is:

- a. Allah's statement, "Impermissible for you are your mothers..." [4:23-24]
- b. The Prophet's (ﷺ) statement, "Impermissible from milk fostering is that which is impermissible from lineage or birth." [Agreed upon]

وَأَمَّا الْمَحْرَمَاتُ إِلَى أَمَدٍ:

1- فَمِنْهُنَّ قَوْلُهُ (ﷺ) (لَا يُجْمَعُ بَيْنَ الْمَرْأَةِ وَعَمَّتِهَا, وَلَا بَيْنَ الْمَرْأَةِ وَخَالَتِهَا) مُتَّفَقٌ عَلَيْهِ.

2- مَعَ قَوْلِهِ تَعَالَى: (وَأَنْ تَجْمَعُوا بَيْنَ الْأُخْتَيْنِ) [النِّسَاءِ: 23] .

وَلَا يَجُوزُ لِلْحَرِّ أَنْ يَجْمَعَ أَكْثَرَ مِنْ أَرْبَعٍ , وَلَا لِلْعَبْدِ أَنْ يَجْمَعَ أَكْثَرَ مِنْ زَوْجَتَيْنِ.

وَأَمَّا مِلْكُ الْيَمِينِ: فَلَهُ أَنْ يَطَأَ مَا شَاءَ .

وَإِذَا أَسْلَمَ الْكَافِرُ وَتَحْتَهُ أُخْتَانِ: اخْتَارَ إِحْدَاهُمَا, أَوْ عِنْدَهُ أَكْثَرُ مِنْ أَرْبَعِ زَوَاجَاتٍ: اخْتَارَ أَرْبَعًا, وَفَارَقَ الْبَوَاقِي.

Temporary prohibitions:

1. From them is the saying of the Prophet (ﷺ), “Do not join between a woman and her paternal or maternal aunt.” [Agreed upon]
2. Allah’s statement, “Do not join between two sisters.” [4:23]

It is also not permissible for a free man to have more than four wives, or for a slave to have more than two wives.

As for slave girls, there is no limit.

If a non-Muslim accepts Islam and he has two sisters as wives, he must choose one, or if he has more than four wives, he chooses four and divorces the remainder.

وَتَحْرُمُ:

- 1- الْمُحْرَمَةُ حَتَّى تَحِلَّ مِنْ إِحْرَامِهَا.
 - 2- و المعتدة من الغير حتى يبلغ الكتاب أجله
 - 3- و الزانية على الزاني و غيره حتى تتوب
 - 4- وَتَحْرُمُ مُطَلَّقَتُهُ ثَلَاثًا حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ, وَيَطُؤَهَا وَيُفَارِقُهَا وَتَنْقُضِي عِدَّتَهَا .
- وَيَجُوزُ الْجَمْعُ بَيْنَ الْأُخْتَيْنِ بِالْمِلْكِ, وَلَكِنْ إِذَا وَطِئَ إِحْدَاهُمَا لَمْ تَحِلَّ لَهُ الْأُخْرَى حَتَّى يُحْرِمَ الْمَوْطُوءَةَ بِإِخْرَاجٍ عَنْ مِلْكِهِ, أَوْ تَزُوجَ لَهَا بَعْدَ الْإِسْتِبْرَاءِ

Also impermissible are:

1. A pilgrim until their *ihram* ends
2. A woman on her waiting period from another man until the period ends
3. The adulteress until she repents
4. A woman divorced by you three times until she marries another man, consummates the marriage and is then subsequently divorced and her waiting period elapses.

One can own two sisters who are slave girls, but if he is intimate with one of them, he cannot be with the other, until he makes the first impermissible for himself by selling her or she marries.

وَالرَّضَاعُ الَّذِي يُحَرِّمُ : مَا كَانَ قَبْلَ الْفِطَامِ .

وَهُوَ خَمْسُ رَضَعَاتٍ فَأَكْثَرُ.

فَيَصِيرُ بِهِ الطِّفْلُ وَأَوْلَادُهُ أَوْلَادًا لِلْمُرْضِعَةِ وَصَاحِبِ اللَّبَنِ.

وَيَنْتَشِرُ التَّحْرِيمُ مِنْ جِهَةِ الْمُرْضِعَةِ وَصَاحِبِ اللَّبَنِ كَانْتِشَارِ النَّسَبِ.

The milk fostering which makes things impermissible is the one before weaning.

It is with five or more sucks, whereby the child and their future children are like children to the woman and her husband. Their relatives then also take the similar rulings as one's own blood relatives.

بَابُ الشُّرُوطِ فِي النِّكَاحِ

Chapter: Conditions in the Marriage Contract

وَهِيَ مَا يَشْتَرِطُهُ أَحَدُ الزَّوْجَيْنِ عَلَى الْآخَرِ .

وَهِيَ قِسْمَانِ:

1 صحیح، كَاشْتَرَا طِ أَنْ لَا يَتَزَوَّجَ عَلَيْهَا، أَوْ لَا يَتَسَرَّى وَلَا يُخْرِجَهَا مِنْ دَارِهَا، أَوْ بَلَدِهَا، أَوْ زِيَادَةَ

مَهْرٍ أَوْ نَفَقَةٍ، وَنَحْوِ ذَلِكَ، فَهَذَا وَنَحْوُهُ كُلُّهُ دَاخِلٌ فِي قَوْلِهِ (ﷺ) (إِنَّ أَحَقَّ الشُّرُوطِ أَنْ تُؤْفُوا

بِهِ: مَا اسْتَحْلَلْتُمْ بِهِ الْفُرُوجَ) مُتَّفَقٌ عَلَيْهِ

These are the conditions one spouse places upon another.

They are of two types:

1. Correct – such as a condition that the husband doesn't remarry or take a slave girl. Likewise, that she isn't removed from her home or city. Other conditions can be an increase in dowry or spending etc. All of these are included in the Prophet's (ﷺ)

statement, “The conditions that have the most right to be fulfilled are the ones by which you make permissible one’s chastity.” [Agreed upon]

وَمِنْهَا شُرُوطٌ فَاسِدَةٌ، كِنِكَاحِ الْمُتَنَعَةِ، وَالتَّحْلِيلِ وَالشَّعَارِ .

وَرَحَّصَ النَّبِيُّ (ﷺ) فِي الْمُتَنَعَةِ أَوَّلًا ثُمَّ حَرَّمَهَا.

وَلَعَنَ الْمُحْلِلَ وَالْمُحَلَّلَ لَهُ.

وَهَى عَنْ نِكَاحِ الشَّعَارِ وَهُوَ: أَنْ يُزَوِّجَهُ مُوَلِّيَّتُهُ عَلَى أَنْ يُزَوِّجَهُ الْآخَرُ مُوَلِّيَّتَهُ، وَلَا مَهْرَ بَيْنَهُمَا.

وَكُلُّهَا أَحَادِيثُ صَحِيحَةٌ.

Incorrect Conditions – such as *mut’ah*, *tahlil* and *shighār*.

Mut’ah used to be allowed at the beginning but was then outlawed.

He (ﷺ) also cursed the two who practise *tahlil*.

Shighār is where one male guardian marries another’s charge and vice versa without a dowry.

All of these are authentically narrated.

بَابُ الْعُيُوبِ فِي النِّكَاحِ

Chapter: Faults in Marriage

إِذَا وَجَدَ أَحَدُ الزَّوْجَيْنِ بِالْآخَرِ عَيْبًا لَمْ يَعْلَمْ بِهِ قَبْلَ الْعَقْدِ، كَالْجُنُونِ وَالْجُدَامِ وَالْبَرَصِ وَنَحْوَهَا، فَلَهُ فُسْخُ النِّكَاحِ.

وَإِذَا وَجَدْتُهُ عَيْنًا أُجِّلَ إِلَى سَنَةٍ، فَإِنْ مَضَتْ وَهُوَ عَلَى حَالِهِ فَلَهَا الْفُسْخُ.

وَإِنْ عَتَقَتْ وَزَوَّجَهَا رَقِيقًا: خَيْرَتْ بَيْنَ الْمَقَامِ مَعَهُ وَفِرَاقِهِ ; لِحَدِيثِ عَائِشَةَ الطَّوِيلِ فِي قِصَّةِ بَرِيرَةَ (خَيْرَتْ بَرِيرَةَ عَلَى زَوْجِهَا حِينَ عَتَقَتْ) مُتَّفَقٌ عَلَيْهِ

وَإِذَا وَقَعَ الْفُسْخُ قَبْلَ الدُّخُولِ فَلَا مَهْرَ.

وَبَعْدَهُ يَسْتَقِرُّ، وَيَرْجِعُ الزَّوْجُ عَلَى مَنْ عَرَّه.

If one spouses finds a fault in the other that wasn't disclosed before the contract, such as insanity or leprosy, they can cancel the marriage contract.

If the man is found to be impotent, they wait for a year, and if his condition remains the same, she has the right to cancel the marriage contract.

If the slave girl is freed and her husband is still a slave, she is given the choice to remain with him or separation, due to the long narration of 'Ā'ishah about the story of Barīrah, that she was given the choice when she was freed. [Agreed upon]

If the marriage contract is cancelled before consummation, there is no dowry.

After consummation there is a dowry, and the husband should go to the one who deceived.

كِتَابُ الصَّدَاقِ

Book of Dowry

يَنْبَغِي تَخْفِيفُهُ.

وَسُئِلَتْ عَائِشَةُ: كَمْ كَانَ صَدَاقُ النَّبِيِّ (ﷺ) قَالَتْ: (كَانَ صَدَاقُهُ لِأَزْوَاجِهِ ثِنْتَيْ عَشْرَةَ أُوقِيَّةً وَنَشًا، أَتَدْرِي مَا النَّشُ؟ قُلْتُ: لَا، قَالَتْ: نِصْفُ أُوقِيَّةٍ، فَتِلْكَ خَمْسُمِائَةٍ دِرْهَمٍ) رَوَاهُ مُسْلِمٌ.

(وَأَعْتَقَ صَفِيَّةَ وَجَعَلَ عِنَقَهَا صَدَاقَهَا) مُتَّفَقٌ عَلَيْهِ.

وَقَالَ لِرَجُلٍ: (الْتَمِسْ وَلَوْ حَاتِمًا مِنْ حَدِيدٍ) مُتَّفَقٌ عَلَيْهِ فَكُلُّ مَا صَحَّ ثَمَنًا وَأُجْرَةً -وَإِنْ قَلَّ- صَحَّ صَدَاقًا

It should be lessened.

'Ā'ishah was asked, "How much did the Prophet (ﷺ) give in dowry?" She replied, "His dowry to his wives was twelve *uwqiyyah* and a *nash*. Do you know what a *nash* is?" I said, "No." She said, "Half an *uwqiyyah*; 500 dirhams." [Muslim]

He also freed Ṣafiyyah and made her freedom her dowry. [Agreed upon]

He said to a man, “Search for even an iron ring.” [Agreed upon]

Therefore, anything which can be used to purchase or rent can be given in dowry.

فَإِنْ تَزَوَّجَهَا وَلَمْ يُسَمِّ لَهَا صَدَاقًا فَلَهَا مَهْرُ الْمِثْلِ.

فَإِنْ طَلَّقَهَا قَبْلَ الدُّخُولِ: فَلَهَا الْمُتَعَّةُ, عَلَى الْمُوسِعِ قَدْرُهُ, وَعَلَى الْمُقْتِرِ قَدْرُهُ, لقوله تعالى: (لا جناح عليكم إن طلقتم النساء ما لم تمسوهن أو تفرضوا لهن فريضة و متعهن على الموسع قدره و على المقتتر قدره متعا بالمعروف حقا على المحسنين)

و يتقرر الصداق كاملا بالموت، أو الدخول

و يتنصف بكل فرقة قبل الدخول من جهة الزوج، كطلاقه

و يسقط:

1- بفرقة من قبلها

2- أو فسخة لعيبها

و ينبغي لمن طلق زوجته أن يمتعها بشيء يحصل به جبر خاطرها، لقوله تعالى (و للمطلقت متع بالمعروف حقا على المتقين)

If someone marries and does not stipulate the dowry, then a like for like dowry is given.

If he divorces her before consummation, then she is given a gift, for the well-off person according to his means and for the poor according to his means. Allah says, “There is no blame if you divorce women before the marriage is consummated or the dowry is settled. But give them a suitable compensation – the rich according to his means and the poor according to his. A reasonable compensation is an obligation on the good-doers.” [2:236]

The full dowry is due when death occurs or consummation.

It is halved due to any separation caused by the husband such as divorce.

It is foregone when:

- i. If she demands separation
- ii. Or the marriage is annulled due to a defect in her

It is appropriate for the one who divorces his wife to gift her something which will help her, due to Allah's saying, "Reasonable provisions must be made for divorced women – a duty on those mindful of Allah." [2:241]

بَابُ عَشْرَةِ النِّسَاءِ

Chapter: Spousal Life

يَلْزَمُ كُلُّ وَاحِدٍ مِنَ الزَّوْجَيْنِ مُعَاشَرَةُ الْآخَرِ بِالْمَعْرُوفِ مِنَ الصُّحْبَةِ الْجَمِيلَةِ، وَكَفِّ الْأَذَى، وَأَلَّا يَمْطُلُهُ بَحَقُّهُ

و يلزمها:

أ – طاعته في الاستمتاع

ب – و عدم الخروج و السفر إلا بإذنه

ج – و القيام بالخبز و العجن و الطبخ و نحوها

Each spouse should live with the other in a good way – good companionship, withholding harm and do not withholding rights.

The wife must:

- Obey his desires for intimacy
- Not leave or travel without his permission
- Look after his needs such as cooking etc.

و عليه: نفقتها و كسوتها بالمعروف

كما قال تعالى: (وعاشروهن بالمعروف)

و في الحديث: (استوصوا بالنساء خيرا)

و فيه: (خيركم خيركم لأهله)

و قال (ﷺ): (إذا دعا الرجل امرأته إلى فراشه فأبت أن تجيء: لعنتها الملائكة حتى تصبح) متفق عليه

The husband must: provide for her and clothe her in a good way.

Allah says, "Live with them in a good way." [4:19]

In the *ḥadīth*, “Treat your womenfolk well.”

He also said, “The best of you are those best to their families.”

He (ﷺ) further said, “If a man calls his wife to his bed and she refuses, the angels curse her until the morning.” [Agreed upon]

وَعَلَيْهِ: أَنْ يَعْدِلَ بَيْنَ زَوْجَاتِهِ فِي الْقَسَمِ، وَالنَّفَقَةِ وَالْكِسْوَةِ وَمَا يَقْدِرُ عَلَيْهِ مِنَ الْعَدْلِ.

وَفِي الْحَدِيثِ: (مَنْ كَانَ لَهُ امْرَأَتَانِ فَمَالَ إِلَى إِحْدَاهُمَا: جَاءَ يَوْمَ الْقِيَامَةِ وَشِقُّهُ مَائِلٌ) مُتَّفَقٌ عَلَيْهِ.

و عن أنس: من السنة: إذا تزوج الرجل البكر على الثيب أقام عندها سبعا، ثم قسم، و إذا تزوج الثيب: أقام عندها ثلاثا، ثم قسم (مُتَّفَقٌ عَلَيْهِ.

وَقَالَتْ عَائِشَةُ: (كَانَ رَسُولُ اللَّهِ ﷺ إِذَا أَرَادَ السَّفَرَ أَفْرَعَ بَيْنَ نِسَائِهِ، فَأَيُّتُهُنَّ خَرَجَ سَهْمُهَا خَرَجَ بِهَا) مُتَّفَقٌ عَلَيْهِ

The husband should also be just with all his wives in terms of allotting time, spending, clothing and what he can control.

In the narration, “Whoever has two wives and he veers towards one of them, he will come on the Day of Judgement and his cheek will be drooping.” [Agreed upon]

Anas said, “From the *Sunnah* is that when a man marries a virgin and he already has wives, he spends the first seven nights with her and then divides, and if his next spouse is a non-virgin, then he spends the first three nights with her and then divides.” [Agreed upon]

‘Ā’ishah said, “When the Prophet (ﷺ) wanted to travel he would draw lots between his wives, and whoever’s lot was drawn he would travel with her.” [Agreed upon]

وَأِنْ أَسْقَطَتِ الْمَرْأَةُ حَقَّهَا مِنَ الْقَسَمِ، أَوْ مِنَ النَّفَقَةِ أَوْ الْكِسْوَةِ بِإِذْنِ الزَّوْجِ جَازَ ذَلِكَ.

وَقَدْ وَهَبَتْ سَوْدَةُ بِنْتُ زَمْعَةَ يَوْمَهَا لِعَائِشَةَ، فَكَانَ النَّبِيُّ ﷺ يَقْسِمُ لِعَائِشَةَ يَوْمَهَا وَيَوْمَ سَوْدَةَ مُتَّفَقٌ عَلَيْهِ

If a woman foregoes her right in division, provision or clothing with her husband’s permission, it is permissible.

Sawdah bint Zam'ah gifted her day to 'Ā'ishah, so the Prophet (ﷺ) would give to 'Ā'ishah her own day and Sawdah's day." [Agreed upon]

وَإِنْ خَافَ نُشُوزَ امْرَأَتِهِ، وَظَهَرَتْ مِنْهَا قَرَائِنُ مَعْصِيَتِهِ:

أ - وعظها

ب - فَإِنْ أَصْرَتْ هَجْرَهَا فِي الْمَضْجَعِ

ج - فَإِنْ لَمْ تَرْتَدَعْ ضَرْبَهَا ضَرْبًا غَيْرَ مَبْرَحٍ

و يَمْنَعُ مِنْ ذَلِكَ إِنْ كَانَ مَانِعًا لِحَقِّهَا

و إِنْ خِيفَ الشَّقَاقُ بَيْنَهُمَا: بَعَثَ الْحَاكِمَ حَكَمًا مِنْ أَهْلِهِ وَ حَكَمًا مِنْ أَهْلِهَا، يَعْرِفَانِ الْأُمُورَ
و الْجَمْعَ وَ التَّفْرِيقَ، يَجْمَعَانِ إِنْ رَأَيَا بَعُوضَ أَوْ غَيْرَهُ، أَوْ يَفْرِقَانِ، فَمَا فَعَلَا جَازَ عَلَيْهِمَا. وَ اللَّهُ
أَعْلَمُ

If the husband fears his wife's disobedience, he should:

- i. Remind her
- ii. If she continues, he should avoid her bed
- iii. If she continues, he should strike her lightly without leaving marks

He is prevented from this if he is withholding her rights.

If the two of them dispute, a judge from his side and a judge from her side are sent who know the affairs and how to reconcile or separate. They can reconcile if they see fit or separate, and what they decide is allowed. Allah knows best.

بَابُ الْخُلْعِ

Chapter: Separation

وَهُوَ فِرَاقُ زَوْجَتِهِ بِعَوَضٍ مِنْهَا أَوْ مِنْ غَيْرِهَا.

وَالْأَصْلُ فِيهِ:

قَوْلُهُ تَعَالَى: (فَإِنْ خِفْتُمْ أَلَّا تُقِيمَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ) [الْبَقَرَةُ: 229] .

This is when the wife separates in return for payment from her or someone else.

The basis for this is the statement of Allah, "If the two of you fear you cannot uphold Allah's boundaries, there is no blame if the wife compensates the husband for her divorce." [2:229]

فَإِذَا كَرِهَتْ الْمَرْأَةُ خُلُقَ زَوْجِهَا أَوْ خُلُقَهُ، وَخَافَتْ أَلَّا تُقِيمَ حُقُوقَهُ الْوَاجِبَةَ بِإِقَامَتِهَا مَعَهُ، فَلَا بَأْسَ أَنْ تَبَدِّلَ لَهُ عِوَضًا لِيُفَارِقَهَا.

وَيَصِحُّ فِي كُلِّ قَلِيلٍ وَكَثِيرٍ مِمَّنْ يَصِحُّ طَلَاؤُهُ.

فَإِنْ كَانَ لِغَيْرِ خَوْفٍ أَلَّا تُقِيمَ حُدُودَ اللَّهِ فَقَدْ وَرَدَ فِي الْحَدِيثِ: (مَنْ سَأَلَتْ زَوْجَهَا الطَّلَاقَ مِنْ غَيْرِ مَا بَأْسٍ فَحَرَامٌ عَلَيْهَا رَائِحَةُ الْجَنَّةِ)

If the wife dislikes her husband's character or appearance, and fears that she will not be able to fulfil his rights by remaining with him, she can buy her divorce from him.

Everything small or big is enacted for those who can pronounce divorce.

If the reason for her separation request is not that she fears not being able to uphold Allah's boundaries, then in the narration, "Whoever asks for divorce from her husband for no valid reason, will have the scent of Paradise prohibited upon her."

كِتَابُ الطَّلَاقِ

Book of Divorce

وَالْأَصْلُ فِيهِ:

قَوْلُهُ تَعَالَى: (يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ) [الطَّلَاقُ: 1] .

The basis of this is the statement of Allah, "O Prophet, when any of you intend to divorce women, do so at a time when their prescribed waiting period can properly start." [65:1]

وطلاقهن لعدتهن فسر حديث ابن عمر ، حيث { طلق زوجته وهي حائض ، فسأل عمر رسول الله (ﷺ) عن ذلك ، فقال : مره فليراجعها ثم ليتركها حتى تطهر ثم تحيض ثم تطهر ، ثم إذا شاء أمسك بعد وإن شاء طلق قبل أن يمس ، فتلك العدة التي أمر الله أن تطلق لها النساء { متفق عليه . وفي رواية : { مره فليراجعها ، ثم ليطلقها طاهرا أو حاملا { وهذا دليل على أنه لا يحل له أن يطلقها وهي حائض أو في طهر وطئ فيه إلا إن تبين حملها .

This is further clarified in the narration of Ibn 'Umar, when he divorced his wife during her menses. 'Umar asked the Prophet (ﷺ) about this and he replied, "Tell him to take her back and keep her until her menses finish. Then wait for another cycle to come and finish. He can then either stay married to her or divorce her before being intimate with her. This is the waiting period that Allah commanded for the divorce of women." [Agreed upon] In another wording, "Tell him to take her back and then divorce her after her menses finish or if she is pregnant."

This is an evidence that it is impermissible to divorce a woman during her menses, or in a period in which he has been intimate with her, unless she becomes pregnant.

و يَفْعُ الطَّلَاقُ بِكُلِّ لَفْظٍ دَلَّ عَلَيْهِ مِنْ:

أ- صَرِيحٍ, لَا يُفْهَمُ مِنْهُ سِوَى الطَّلَاقِ, كَلَفْظِ "الطَّلَاقِ", وَمَا تَصَرَّفَ مِنْهُ, وَمَا كَانَ مِثْلَهُ.

ب- وَكِنَايَةٍ, إِذَا نَوَى بِهَا الطَّلَاقَ, أَوْ دَلَّتِ الْقَرِينَةُ عَلَى ذَلِكَ

Divorce is enacted with every statement that points to it that is:

1. Explicit – Only divorce can be intended by it, such as the word ‘divorce’ and similar words
2. Implicit – If the intention of divorce is present or a sign which points to it.

وَيَقْعُ الطَّلَاقُ:

أ- مُنْجَزًا.

ب- أَوْ مُعَلَّقًا عَلَى شَرْطٍ, كَقَوْلِهِ: إِذَا جَاءَ الْوَقْتُ الْفُلَانِي فَأَنْتِ طَالِقٌ, فَمَتَّى وُجِدَ الشَّرْطُ الَّذِي عُلِّقَ عَلَيْهِ الطَّلَاقُ وَقَعَ.

Divorce takes place either:

- i. Immediately
- ii. Conditionally – Such as saying, ‘When such and such a time comes then you are divorced’. When such conditions are found, the divorce takes place.

فَصْلٌ

Section

وَيَمْلِكُ الْخُرُّ ثَلَاثَ طَلَقَاتٍ

فَإِذَا تَمَّتْ لَهُ، لَمْ تَحِلْ لَهُ حَتَّى تَنْكَحَ زَوْجًا غَيْرَهُ بِنِكَاحٍ صَحِيحٍ وَ يَطَّأَهَا، لِقَوْلِهِ تَعَالَى: (الطَّلُقُ مَرَّتَانِ) إِلَى قَوْلِهِ: (فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ حَتَّى تَنْكَحَ زَوْجًا غَيْرَهُ)

The free man has three divorces.

After this, that woman is no longer allowed for him until she marries another man with a correct marriage contract and then consummates the marriage. Allah says, “Divorce can happen twice... If a husband re-divorces his wife after the second divorce, she will not be lawful for him until she has taken another husband...” [2:229-230]

و يقع الطلاق بآثنا في أربع مسائل:

1 – هذه إحداها

2 – و إذا طلق قبل الدخول لقوله تعالى: (يأيها الذين ءامنوا إذا نكحتم المؤمنات ثم طلقتموهن

من قبل أن تمسوهن فما لكم عليهن من عدة تعتدونها)

3 – و إذا كان في نكاح فاسد

4 – وَإِذَا كَانَ عَلَى عَوَضٍ

A final divorce is issues in four ways:

1. The above is the first way
2. Divorce before consummation as Allah says, “O believers, you have no right to expect a waiting period when you marry believing women and then divorce them before you have touched them.” [33:49]
3. If the marriage contract is annulled
4. If it is done in exchange for payment

وَمَا سِوَى ذَلِكَ: فَهُوَ رَجْعِيٌّ، يَمْلِكُ الزَّوْجُ رَجْعَةَ زَوْجَتِهِ مَا دَامَتْ فِي الْعِدَّةِ؛ لِقَوْلِهِ تَعَالَى: (وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا) [الْبَقَرَةُ: 228] .

و الرجعية حكمها حكم الزوجات إلا في وجوب القسم

All other divorces are returnable, in which the husband can return his wife so long as she remains in the waiting period. Allah says, “Their husbands have more right to have them returned if they wish to put things right in doing so...” [2:228]

The woman returning after this type of divorce is like all other wives except in division.

وَالْمَشْرُوعُ: إِعْلَانُ النِّكَاحِ وَالطَّلَاقِ وَالرَّجْعَةِ وَالْإِشْهَادُ عَلَى ذَلِكَ؛ لِقَوْلِهِ تَعَالَى: (وَأَشْهَدُوا دَوَى عَدْلٍ مِنْكُمْ) [الطَّلَاق: 2] .

وَفِي الْحَدِيثِ: (ثَلَاثٌ جِدُّهُنَّ جِدٌّ، وَهَزُّهُنَّ جِدٌّ: النِّكَاحُ، وَالطَّلَاقُ، وَالرَّجْعَةُ) رَوَاهُ الْأَرْبَعَةُ إِلَّا النَّسَائِيَّ.

وَفِي حَدِيثِ ابْنِ عَبَّاسٍ, مَرْفُوعًا: (إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ) رَوَاهُ ابْنُ مَاجَهَ

It is legislated to announce marriage, divorce and return and to have witnesses to all of these, as Allah says, “Call two just witnesses from you...” [65:2]

In the *ḥadīth*, “Three affairs are serious if being said seriously and serious if said jokingly: marriage, divorce and return.” [The four except Al-Nasaā’i]

In the narration of Ibn ‘Abbās, “Allah has absolved my Ummah from their mistakes, forgetfulness and for what they do under compulsion.” [Ibn Mājah]

بَابُ الْإِيلَاءِ وَالظَّهَارِ وَاللَّعَانِ

Chapter: *Iylā’*, *Zihār* and *Li’ān*

فَالْإِيلَاءُ: أَنْ يَخْلِفَ عَلَى تَرْكِ وَطْءِ زَوْجَتِهِ أَبَدًا، أَوْ مُدَّةً تَزِيدُ عَلَى أَرْبَعَةِ أَشْهُرٍ .

فَإِذَا طَلَبَتْ الزَّوْجَةُ حَقَّهَا مِنَ الْوَطْءِ، أُمِرَ بِوَطْئِهَا، وَضُرِبَتْ لَهُ أَرْبَعَةُ أَشْهُرٍ:

- فَإِنْ وَطِئَ كَفَّرَ كَفَّارَةً يَمِينٍ،

- وَإِنْ اِمْتَنَعَ أُلْزِمَ بِالطَّلَاقِ؛

لِقَوْلِهِ تَعَالَى: (لِلَّذِينَ يُؤْلُونَ مِنْ نِسَائِهِمْ تَرِيصُ أَرْبَعَةِ أَشْهُرٍ فَإِنْ فَاءُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ وَإِنْ عَزَمُوا

الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ) [البقرة: 226, 227]

Iylā’ is when a man takes an oath that he will never have intimate relations with his wife or for a period exceeding four months.

If the wife demands her rights of intimacy, he is commanded to fulfil them and has four months in which to do so:

- If he does so then he expiates for his oath
- If he refuses he is made to issue a divorce.

Allah says, “For those who swear that they will not approach their wives, there shall be a waiting period of four months: if they go back, remember Allah is oft-forgiving and most

merciful. But if they are determined to divorce, remember that Allah hears and knows all.” [2:226-227]

وَالظَّهَارُ: أَنْ يَقُولَ لِزَوْجَتِهِ: أَنْتِ عَلَيَّ كَظَهْرِ أُمِّي، وَنَحْوَهُ مِنْ أَلْفَاظِ التَّحْرِيمِ الصَّرِيحَةِ لِزَوْجَتِهِ.
فهو منكر و زور.

و لا تحرم الزوجة بذلك، لكن لا يحل له أن يمسه حتى يفعل ما أمره الله به في قوله: (والذين يظهرون من نسائهم ثم يعودون لما قالوا) إلى آخر الآيات

1 – فيعتق رقبة مؤمنة سالمة من العيوب الضارة بالعمل

2 – فإن لم يجد: صام شهرين متتابعين

3 – فإن لم يستطع: أطعم ستين مسكينا

و سواء كان الظهار مطلقا أو مؤقتا بوقت كرمضان و نحوه

وَأَمَّا تَحْرِيمُ الْمَمْلُوكَةِ وَالطَّعَامِ وَاللِّبَاسِ وَغَيْرِهَا فَفِيهِ كَفَّارَةٌ بِمِثْلِ

لِقَوْلِهِ تَعَالَى: (يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُحَرِّمُوا طَيِّبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ) [الْمَائِدَةُ: 87-89] إِلَى أَنْ ذَكَرَ اللَّهُ كَفَّارَةَ الْيَمِينِ فِي هَذِهِ الْأُمُورِ.

Zihār is when a husband says to his wife, ‘You are like my mother’s back to me’, or similar statements or explicit prohibition.

This is wrong and sinful.

One’s wife does not become unlawful by this statement, but he can no longer be intimate with her until he does as Allah commands in the verses, “Those of you who say such a thing to their wives, then go back on what they have said...” [58: 3-4] He must:

1. Free a believing slave who is free from any physical defects
2. If he cannot do that, then he fasts two consecutive months
3. If he cannot do that, he feeds sixty poor people

This is the same for whether the *zihār* was unspecified or limited to a time period such as Ramadan.

As for making other things unlawful upon one's self, such as food and drink, then an oath's expiation is given. Allah says, "O believers, do not make unlawful the pure things that Allah has made lawful for you..." until the end of these verses in which Allah mentions the expiation for such oaths. [5:87-89]

وَأَمَّا اللَّعَانُ: فَإِذَا رَمَى الرَّجُلُ زَوْجَتَهُ بِالزِّنَا فَعَلَيْهِ حَدُّ الْقَذْفِ ثَمَانُونَ جَلْدَةً إِلَّا:

أ- أَنْ يُقِيمَ الْبَيِّنَةَ: أَرْبَعَةَ شُهُودٍ عُدُولٍ, فَيَقَامُ عَلَيْهَا الْحَدُّ.

ب- أَوْ يُلَاعِنُ فَيَسْقُطُ عَنْهُ حَدُّ الْقَذْفِ.

و صِفَةُ اللَّعَانِ عَلَى مَا ذَكَرَ اللَّهُ فِي سُورَةِ النُّورِ: (وَالَّذِينَ يَزْمُونَ أَزْوَاجَهُمْ) إِلَى آخِرِ الْآيَاتِ [النُّور: 9-6].

أ- فَيَشْهَدُ خَمْسَ شَهَادَاتٍ بِاللَّهِ إِنَّهَا لِزَانِيَّةٌ, وَيَقُولُ فِي الْخَامِسَةِ: "وَإِنَّ لَعْنَةَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ".

ب- ثُمَّ تَشْهَدُ هِيَ خَمْسَ مَرَّاتٍ بِاللَّهِ إِنَّهُ لِمَنْ الْكَاذِبِينَ, وَتَقُولُ فِي الْخَامِسَةِ: "وَإِنَّ غَضَبَ اللَّهِ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ".

فَإِذَا تَمَّ اللَّعَانُ:

أ- سَقَطَ عَنْهُ الْحَدُّ,

ب- وَانْدَرَأَ عَنْهَا الْعَذَابُ,

ج - وَ حَصَلَتِ الْفَرْقَةُ بَيْنَهُمَا وَ التَّحْرِيمُ الْمُؤَبَّدُ

د- وَانْتَفَى الْوَلَدُ إِذَا ذُكِرَ فِي اللَّعَانِ . وَاللَّهُ أَعْلَمُ.

Li'ān – If a husband accuses his wife of adultery, he is lashed 80 times for slander, unless:

- He has evidence of four witnesses, in which case she is punished
- They each make *li'ān* in which case the slander charge is removed

Li'ān is made as described by Allah in Surah al-Nūr, "Those who accuse their wives..." to the end of these verses. [24:6-9]

1. The husband testifies five times that she is an adulteress, adding on the fifth time "May Allah's curse be upon him if he is a liar."
2. The wife then testifies five times that her husband is a liar, adding on the fifth time, "May Allah's anger be upon her if he is truthful."

Once the *li'ān* is complete:

- i. The punishment is lifted
- ii. The couple are separated permanently
- iii. The name of the father is removed from that child if the wife is pregnant

Allah knows best

كِتَابُ الْعِدَّةِ وَالْإِسْتِبْرَاءِ

Book of Waiting Periods and Clearance of Pregnancies

الْعِدَّةُ تَرْتَبُصُ مَنْ فَارَقَهَا زَوْجُهَا بِمَوْتٍ أَوْ طَلَاقٍ.

فَالْمُفَارَقَةُ بِالْمَوْتِ إِذَا مَاتَ عَنْهَا تَعَتَّدُ عَلَى كُلِّ حَالٍ

أ- فَإِنْ كَانَتْ حَامِلًا فَعِدَّتُهَا وَضَعُهَا جَمِيعَ مَا فِي بَطْنِهَا; لِقَوْلِهِ تَعَالَى: (وَأُولَاتِ الْأَحْمَالِ أَجَلُهُنَّ أَنْ يَضَعْنَ حَمْلَهُنَّ [الطَّلَاقُ: 4] . وَهَذَا عَامٌّ فِي الْمُفَارَقَةِ بِمَوْتٍ أَوْ حَيَاةٍ.

ب- وَإِنْ لَمْ تَكُنْ حَامِلًا فَعِدَّتُهَا أَرْبَعَةُ أَشْهُرٍ وَعَشْرَةُ أَيَّامٍ.

The waiting period is what takes place for the one who has been separated from her husband by death or divorce.

Separation by death always necessitates a waiting period which is:

1. If she is pregnant, then the waiting period is until she has given birth to however many she is carrying. Allah says, "The pregnant women's limit is when they have given birth." [65:4]

This is the same for all who are pregnant whether the separation is due to death or otherwise.

2. If the wife is not pregnant, then the waiting period is four months and ten days.

وَيَلْزَمُ فِي مُدَّةِ هَذِهِ الْعِدَّةِ أَنْ تُحِدَّ الْمَرْأَةُ:

أ- بِأَنْ تَتْرَكَ الزَّيْنَةَ وَالطِّيبَ وَالْحُلِيِّ، وَالتَّحْسِينَ بِحِنَاءٍ وَنَحْوِهِ

ب - و أن تلزم بيتها الذي مات زوجها و هي فيه، فلا تخرج منه إلا لحاجتها نهاراً، لقوله تعالى: (والذين يتوفون منكم و يذرون أزوجاً يتربصن بأنفسهن أربعة أشهر و عشرة) الآية

During this waiting period, the woman should:

- Abstain from beautifying herself, perfume and jewellery, or beautifying with henna etc.
- She should remain within the home that she shared with her husband, and should not leave unless for a need during daytime. Allah says, "Those amongst you who die and leave behind wives should wait for four months and ten days..." [2:234]

و أما المفارقة في حال الحياة:

1 - فإذا طلقها قبل أن يدخل بها، فلا عدة له عليها، لقوله تعالى: (يأيها الذين ءامنوا إذا نكحتم المؤمنات ثم طلقتموهن من قبل أن تمسوهن فما لكم عليهن من عدة تعتدونها)

2 - و إن كان قد دخل بها أو خلا بها:

أ - فإذا كانت حاملاً فعدتها وضع حملها، قصرت المدة أو طالت

ب - و إن لم تكن حاملاً:

- فإن كانت تحيض فعدتها ثلاث حيض كاملة، لقوله تعالى: (والمطلقات يتربصن بأنفسهن ثلاثة قروء)

- وَإِنْ لَمْ تَكُنْ تَحِيضُ - كَالصَّغِيرَةِ، وَمَنْ لَمْ تَحْضِ، وَالْأَيْسَةِ - فَعِدَّتُهَا ثَلَاثَةُ أَشْهُرٍ؛ لقوله تعالى:

(والى يئسن من المحيض من نسائكم إن ارتبتم فعدتهن ثلاثة أشهر والى لم يحضن)

- فَإِنْ كَانَتْ تَحِيضُ وَارْتَفَعَ حَيْضُهَا لِرِضَاعٍ وَنَحْوِهِ: اِنْتَظَرَتْ حَتَّى يَعُودَ الْحَيْضُ فَتَعْتَدُ بِهِ

- وَإِنْ ارْتَفَعَ وَلَا تَدْرِي مَا رَفَعَهُ: اِنْتَظَرَتْ تِسْعَةَ أَشْهُرٍ اِحْتِيَاظًا لِلْحَمْلِ، ثُمَّ اِعْتَدَتْ بِثَلَاثَةِ أَشْهُرٍ

- وَإِذَا ارْتَابَتْ بَعْدَ انْقِضَاءِ الْعِدَّةِ لظُهُورِ أَمَارَاتِ الْحَمْلِ لَمْ تَتَزَوَّجْ حَتَّى تَرُؤَلَ الرِّبَّةُ .

As for separation during a person's lifetime:

1. If the divorce is before consummation, then there is no waiting period. Allah says, "O believers, if you marry believing women and then divorce them before touching them, then there is no waiting period you should expect from them." [33:49]
2. If seclusion or consummation has taken place:
 - a. If the wife is pregnant, then the waiting period ends with birth, whether the pregnancy is short or long
 - b. If she is not pregnant:
 - i. If she has regular menstrual cycles, then her waiting period is three full cycles. Allah says, "Divorced women must wait for three monthly periods before remarrying." [2:228]
 - ii. If she does not have regular monthly cycles such as a youngster or someone who has passed the menopause, their waiting period is three months. Allah says, "If you are in doubt, the period of waiting will be three months for those women who have ceased menstruating and for those who have not [yet] menstruated." [65:4]
 - iii. If she does have monthly cycles but they have stopped due to breastfeeding etc., then she waits until her cycles restart and then she waits the full period.
 - iv. If her monthly cycles have paused and she doesn't know the reason as to why that is, she waits for nine months, erring on the side of caution in case she is pregnant, she then begins her three month waiting period.

If she is in doubt after her waiting period elapses due to the signs of pregnancy appearing, she does not remarry until that doubt is removed.

وَأَمْرَأَةُ الْمَفْقُودِ تَنْتَظِرُ حَتَّى يُحْكَمَ بِمَوْتِهِ, بِحَسَبِ اجْتِهَادِ الْحَاكِمِ ثُمَّ تَعْتَدُ.

وَلَا تَحِبُّ النِّفْقَةَ إِلَّا:

أ- لِلْمُعْتَدَةِ الرَّجْعِيَّةِ.

ب- أَوْ لِمَنْ فَارَقَهَا زَوْجُهَا فِي الْحَيَاةِ وَهِيَ حَامِلٌ; لِقَوْلِهِ تَعَالَى: (وَإِنْ كُنَّ أُولَاتٍ حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ) [الطَّلَاقُ: 6] .

The wife of a lost man waits until the judge issues a ruling regarding his death, and then begins her waiting period.

There is no financial assistance due to except for:

1. The one who can be returned during the waiting period
2. Or the woman divorced by a living husband and she is pregnant. Allah says, "If they are pregnant, then spend on them until they give birth." [65:6]

وَأَمَّا إِلَّا سَتَبْرَاءَ فَهُوَ تَرْبُصُ الْأَمَةِ الَّتِي كَانَ سَيِّدُهَا يَطْوَها

فلا يطؤها بعده زوج أو سيد:

أ - حتى تحيض حيضة واحدة

ب - و إن لم تكن من ذوات الحيض تستبرئ بشهر

ج - أو وضع حملها إن كانت حاملا

Clearing one of pregnancy is for the slave girl who waits after her master used to have intimate relations with her.

No other master or husband can have relations with her until:

- i. She has one menstrual cycle
- ii. If she does not have menstrual cycles, she waits for one month
- iii. Or she gives birth if she was pregnant

بَابُ النَّفَقَاتِ لِلزَّوْجَاتِ وَالْأَقَارِبِ وَالْمَمَالِكِ وَالْحَضَانَةِ

Chapter: Spending on Wives, Relatives, Slaves and Childcare

عَلَى الْإِنْسَانِ نَفَقَةُ زَوْجَتِهِ وَكِسْوَتُهَا وَمَسْكَنُهَا بِالْمَعْرُوفِ بِحَسَبِ حَالِ الزَّوْجِ; لِقَوْلِهِ تَعَالَى: (لِيُنْفِقْ ذُو

سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا (الطَّلَاقُ: 7)

وَيَلْزِمُ بِالْوَجِبِ مِنْ ذَلِكَ إِذَا طَلَبَتْ،

وَفِي حَدِيثِ جَابِرِ الَّذِي رَوَاهُ مُسْلِمٌ: (وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ)

A person is responsible for spending on his wife, clothing her and housing her in a good way according to his means. Allah says, "Let the wealthy man spending according to his

wealth. But let him whose provision is restricted spend according to what Allah has given him: Allah does not burden any soul with more than He has given it..." [65:7]

He must provide the obligatory amount if she requests it.

In the narration of Jabir in Muslim, "Their right over you is the provide and clothe them in a good way."

و على الإنسان:

أ - نفقة أصوله و فروعه الفقراء إذا كان غنيا

ب - و كذلك من يرثه بفرض أو تعصيب

A person must also:

- Provide for his poor ascendants and descendants if he is wealthy
- Also to provide for his heirs if need be

وَفِي الْحَدِيثِ: (لِلْمَمْلُوكِ طَعَامُهُ وَكِسْوَتُهُ، وَلَا يُكَلَّفُ مِنَ الْعَمَلِ إِلَّا مَا يُطِيقُ) رَوَاهُ مُسْلِمٌ .

وَإِنْ طَلَبَ التَّزْوُجَ زَوْجَهُ وَجُوبًا.

وَعَلَى الْإِنْسَانِ أَنْ يُقَيِّتَ بَهَائِمَهُ طَعَامًا وَشَرَابًا، وَلَا يُكَلِّفُهَا مَا يَضُرُّهَا،

وَفِي الْحَدِيثِ: (كَفَى بِالْمَرْءِ إِثْمًا أَنْ يَحْبَسَ عَمَّنْ يَمْلِكُ قُوَّتَهُ) رَوَاهُ مُسْلِمٌ

In the narration, "Slaves should be fed and clothed, and not overburdened in their tasks beyond their ability." [Muslim]

If they request to be married, the master must do so.

A person must also sustain their animals with food and drink, and not overwork them in a harmful way.

In the narration, "It is sufficient in sin to withhold sustenance from one who is under your care." [Muslim]

و الْحَضَانَةُ هِيَ حِفْظُ الطِّفْلِ عَمَّا يَضُرُّهُ، وَالْقِيَامُ بِمَصَالِحِهِ.

وَهِيَ وَاجِبَةٌ عَلَى مَنْ تَجِبُ عَلَيْهِ النَّفَقَةُ.

و لكن الأم أحق بولدها ذكرًا كان أو أنثى إن كان دون سبع

فإذا بلغ سبعة:

أ – فإذا كان ذكرًا خير بين أبويه، فكان مع من اختار

ب – و إن كانت أنثى فعند من يقوم بمصلحتها من أمها أو أبيها

وَلَا يُتْرَكُ الْمَخْضُوعُ بِيَدِ مَنْ لَا يَصُونُهُ وَيُصْلِحُهُ

Childcare is to protect your child from harm and take care of their affairs.

It is an obligation upon the one who is responsible for their provision.

However, the mother has more right to care for the male or female child below seven years.

Once they reach seven years:

- A male child is given the choice between both parents, and goes with whosoever he chooses
- A female child goes with the one who will better care for her from her mother or father

A child is not left with someone who will not protect and care for them.

كِتَابُ الْأَطْعَمَةِ

Book of Food

وَهِيَ نَوْعَانِ: حَيَوَانٌ وَغَيْرُهُ:

أ – فَأَمَّا غَيْرُ الْحَيَوَانِ مِنْ -الْحَبُوبِ وَالْتِّمَارِ وَغَيْرِهَا- فَكُلُّهُ مُبَاحٌ، إِلَّا مَا فِيهِ مَضَرَّةٌ، كَالسَّمِّ وَنَحْوِهِ،

و الْأَشْرَبَةُ كُلُّهَا مُبَاحَةٌ إِلَّا مَا أَسْكَرَ فَإِنَّهُ يَحْرُمُ كَثِيرُهُ وَقَلِيلُهُ;

لِحَدِيثٍ: (كُلُّ مُسْكِرٍ حَرَامٌ، وَمَا أَسْكَرَ مِنْهُ الْفَرْقُ فَمِلْءُ الْكَفِّ مِنْهُ حَرَامٌ).

وَأِنْ انْقَلَبَتِ الْخُمُرُ حَلًّا حَلَّتْ.

They are of two types: Animals and other food types

1. As for other than animals – such as grains, fruits etc., it is all permissible except for that which is harmful such as poison etc.

Similarly, all drinks are permissible except that which intoxicates, whether in small or great amounts due to the narration, “All intoxicants are impermissible. What intoxicates in a great amount is impermissible even as a handful.”

If wine changes into vinegar, then it is permissible.

ب- وَالْحَيَوَانُ قِسْمَانِ:

1- بَحْرِيٌّ، فَيَحِلُّ كُلُّ مَا فِي الْبَحْرِ حَيًّا وَمَيِّتًا؛ قَالَ تَعَالَى: (أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ) [الْمَائِدَةُ: 96].

2- وَأَمَّا الْبَرِّيُّ: فَأَلْأَصْلُ فِيهِ الْحِلُّ، إِلَّا مَا نَصَّ عَلَيْهِ الشَّارِعُ فَمِنْهَا:

أ- مَا فِي حَدِيثِ ابْنِ عَبَّاسٍ: (كُلِّ ذِي نَابٍ مِنَ السَّبَاعِ فَأَكَلُهُ حَرَامٌ)

ب- (وَهَى عَنْ كُلِّ ذِي مَخْلَبٍ مِنَ الطَّيْرِ) رَوَاهُ مُسْلِمٌ.

ج- (وَهَى عَنْ لُحُومِ الْخُمُرِ الْأَهْلِيَّةِ) مُتَّفَقٌ عَلَيْهِ.

د- "وَهَى عَنْ قَتْلِ أَرْبَعٍ مِنَ الدَّوَابِّ: النَّمْلَةُ، وَالنَّحْلَةُ، وَالْهُدْهُدُ، وَالصُّرْدُ" رَوَاهُ أَحْمَدُ وَأَبُو دَاوُدَ.

ه- وَجَمِيعُ الْخَبَائِثِ مُحَرَّمَةٌ كَالْحَشَرَاتِ وَنَحْوَهَا.

و- "وَهَى النَّبِيُّ (ﷺ) عَنْ الْجَلَالَةِ وَالْبَاهَا" حَتَّى تُحْبَسُ، وَتُطْعَمُ الطَّاهِرَ ثَلَاثًا"

2. Animals are of a further two types:

- a. Sea animals – all living and dead sea animals are permissible. Allah says, “It is permitted for you to catch and eat seafood.” [5:96]
- b. As for land animals – the default is that they are permissible, unless stated otherwise in texts, such as:
 - i. In the narration of Ibn ‘Abbās, “All canine toothed predators are impermissible.”
 - ii. Likewise, all clawed predatory birds. [Muslim]

- iii. He also forbade domesticated donkeys [Agreed upon]
- iv. He forbade killing four animals: ants, bees, the hoopee bird and shrikes [Aḥmad & Abu Dāwūd]
- v. All filthy things are impermissible such as insects etc.
- vi. The Prophet (ﷺ) also forbade animals that live off filth and their milk until they are cleansed, and fed pure food for three days

بَابُ الذَّكَاةِ وَالصَّيْدِ

Chapter: Slaughter & Hunting

الْحَيَوَانَاتُ الْمُبَاحَةُ لَا تُبَاحُ بِدُونِ الذَّكَاةِ إِلَّا السَّمَكُ وَالْجَرَادُ.

و يُشْتَرَطُ فِي الذَّكَاةِ:

1- أَنْ يَكُونَ الْمُذَكِّي مُسْلِمًا أَوْ كِتَابِيًّا.

2- وَأَنْ يَكُونَ بِمُحَدَّدٍ.

3- وَأَنْ يُنْهَرَ الدَّمُ .

4- وَأَنْ يَقْطَعَ الْخُلُقُومَ وَالْمَرِيءَ.

5- وَأَنْ يَذْكُرَ اسْمَ اللَّهِ عَلَيْهِ.

Lawful animals are not permissible to consume until slaughtered, except for fish and locusts.

The conditions of slaughter are:

1. That the butcher be Muslim or from the people of the Book
2. The implement be sharp
3. The blood be spilled
4. The main arteries must be cut
5. The name of Allah is mentioned

وَكَذَلِكَ يُشْتَرَطُ فِي الصَّيْدِ، إِلَّا أَنَّهُ يَحِلُّ بَعْفُهُ فِي أَيِّ مَوْضِعٍ مِنْ بَدَنِهِ.

وَمِثْلُ الصَّيْدِ مَا نَفَرَ وَعَجَزَ عَنْ ذَبْحِهِ.

وَعَنْ رَافِعِ بْنِ خَدِيجٍ مَرْفُوعًا قَالَ: (مَا أَهْرَ الدَّمُ، وَذُكِرَ اسْمُ اللَّهِ عَلَيْهِ فَكُلْ، لَيْسَ السِّنُّ وَالظُّفْرُ، أَمَّا السِّنُّ: فَعَظْمٌ، وَأَمَّا الظُّفْرُ فَمُدَى الْحَبَشَةِ) مُتَّفَقٌ عَلَيْهِ

Similar conditions apply to hunting, except that any part of the body that is cut is permissible. Likewise, similar to hunting is any animal which flees and cannot be slaughtered.

Rāfi' ibn Khadij narrated, "Whatever has had its blood spilled and the name of Allah recited over it, then eat, so long as it is not a tooth or nail that is used. Teeth are bones and nails are from the tools used by the Abyssinians." [Agreed upon]

وَيُبَاحُ صَيْدُ الْكَلْبِ الْمُعَلَّمِ - بِأَنْ يَسْتَرْسِلَ إِذَا أُرْسِلَ، وَيَنْزَجِرَ إِذَا زُجِرَ، وَإِذَا أَمْسَكَ لَا يَأْكُلُ - وَيُسَمِّي صَاحِبُهَا عَلَيْهَا إِذَا أُرْسَلَهُ.

وَعَنْ عَدِيِّ بْنِ حَاتِمٍ قَالَ: قَالَ رَسُولُ اللَّهِ (ﷺ) (إِذَا أُرْسِلَتْ كَلْبُكَ الْمُعَلَّمِ فَادْكُرْ اسْمَ اللَّهِ عَلَيْهِ،

- فَإِنْ أَمْسَكَ عَلَيْكَ فَأَذْرَكْتَهُ حَيًّا فَادْبَحْهُ،

- وَإِنْ أَذْرَكْتَهُ قَدْ قَتَلَهُ وَلَمْ يَأْكُلْ مِنْهُ فَكُلْهُ،

- وَإِنْ وَجَدْتَ مَعَ كَلْبِكَ كَلْبًا غَيْرَهُ وَقَدْ قَتَلَهُ فَلَا تَأْكُلْ، فَإِنَّكَ لَا

تَدْرِي أَيُّهُمَا قَتَلَهُ؟

- وَإِنْ رَمَيْتُ سَهْمَكَ فَادْكُرْ اسْمَ اللَّهِ عَلَيْهِ

- فَإِنْ غَابَ عَنْكَ يَوْمًا فَلَمْ تَرَ فِيهِ إِلَّا أَثَرَ سَهْمِكَ فَكُلْ إِنْ شِئْتَ،

- فَإِنْ وَجَدْتَهُ غَرِيبًا فِي الْمَاءِ فَلَا تَأْكُلْ) مُتَّفَقٌ عَلَيْهِ.

وَفِي الْحَدِيثِ: (إِنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ، فَإِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ، وَإِذَا ذَبَحْتُمْ فَأَحْسِنُوا

الذَّبْحَةَ، وَلْيُحَدِّثْ أَحَدُكُمْ شَفْرَتَهُ، وَلْيُزَيِّحْ ذَبِيحَتَهُ) رَوَاهُ مُسْلِمٌ.

و قال (ﷺ): (ذكاة الجنين ذكاة أمه) رَوَاهُ أَحْمَدُ

A trained hunting dog is also permissible, whereby it listens to the command to go and to stop. Also, when the dog catches the animal to kill, it does not eat it. In this hunting, the owner recites Allah's name as he releases the dog to hunt.

Adiyy ibn Hatim narrated that the Prophet (ﷺ) said, "When you send your trained dog, then recite Allah's name. When it catches its pray, if you find the animal still alive then slaughter it. If the animal is dead when you arrive and the dog has not eaten from it, then eat from it. If you find another dog alongside yours and the animal is dead then do not eat, for you do not know which dog made the kill. When you shoot your arrow then recite Allah's name. if it takes you a day to find your kill, and you only see your arrow mark, then eat from it if you wish. However, if you find the animal drowned in water, then do not eat it." [Agreed upon]

In the other narration, "Allah legislated excellence upon everything. Therefore, when you kill, do so with excellence, and when you slaughter, do so with excellence. Let one of you sharpen his blade and put his animal to rest." [Muslim]

He (ﷺ) also said, "The animal in the womb is slaughtered by the slaughtering of its mother." [Ahmad]

بَابُ الْأَيْمَانِ وَالنُّدُورِ

Chapter: Oaths

لَا تَنْعَقِدُ الْيَمِينَ إِلَّا بِاللَّهِ أَوْ إِسْمٍ مِنْ أَسْمَائِهِ, أَوْ صِفَةٍ مِنْ صِفَاتِهِ.

وَالْحَلْفُ بِغَيْرِ اللَّهِ شِرْكٌ, لَا تَنْعَقِدُ بِهِ الْيَمِينُ.

وَلَا بُدَّ أَنْ تَكُونَ الْيَمِينُ الْمُوجِبَةُ لِلْكَفَّارَةِ عَلَى أَمْرٍ مُسْتَقْبَلٍ

فَإِنْ كَانَتْ عَلَى مَاضٍ -وَهُوَ كَاذِبٌ عَالِمًا- فَهِيَ الْيَمِينُ الْعَمُوسُ.

وَإِنْ كَانَ يَظُنُّ صِدْقَ نَفْسِهِ فَهِيَ مِنْ لَعْوِ الْيَمِينِ, كَقَوْلِهِ: لَا وَاللَّهِ, وَبَلَى وَاللَّهِ, فِي عَرَضِ حَدِيثِهِ.

An oath is not enacted unless made in the name of Allah, or one of His other names or attributes.

Taking an oath by other than Allah is shirk, and such an oath is not enacted.

The oath that incurs expiation must for something to be done in the future.

If it is for something from the past, and he lies intentionally, then this is a deliberate perjury.

If a person believes himself to be truthful, then this is from vain oaths, such as saying, 'No by Allah' or, 'Yes by Allah', in the course of conversation.

وَإِذَا حَنَثَ فِي يَمِينِهِ - بِأَنْ فَعَلَ مَا حَلَفَ عَلَى تَرْكِهِ، أَوْ تَرَكَ مَا حَلَفَ عَلَى فِعْلِهِ -: وَجَبَتْ عَلَيْهِ الْكَفَّارَةُ:

أ- عَتَقُ رَقَبَةٍ، أَوْ إِطْعَامُ عَشْرَةِ مَسَاكِينَ أَوْ كِسْوَتُهُمْ.

ب- فَإِنْ لَمْ يَجِدْ صَامَ ثَلَاثَةَ أَيَّامٍ .

و عن عبد الرحمن بن سمرة قال: قال رسول الله (ﷺ): (إذا حلفت على يمين فرأيت غيرها خيرا منها فكفر عن يمينك واث الذي هو خير) مُتَّفَقٌ عَلَيْهِ.

If a person breaks their oath, by doing that which they swore not to do or leaving that which they swore to do, they must expiate by:

1. Freeing a slave, or feeding ten poor people or clothing them
2. If he cannot do the above, he fasts three days

'Abdur-Rahmān ibn Samurah narrated that the Prophet (ﷺ) said, "If you take an oath and then see a better course of action, expiate your oath and do that which is better." [Agreed upon]

وَفِي الْحَدِيثِ: (مَنْ حَلَفَ عَلَى يَمِينٍ فَقَالَ: إِنْ شَاءَ اللَّهُ، فَلَا حَنْثَ عَلَيْهِ) رَوَاهُ الْخُمْسَةُ.

وَيُرْجَعُ فِي الْأَيْمَانِ إِلَى:

أ- نِيَّةُ الْحَالِفِ.

ب- ثُمَّ إِلَى السَّبَبِ الَّذِي هَيَّجَ الْيَمِينَ.

ج - ثم إلى اللفظ الدال على النية و الإرادة

إلا في الدعاوى، ففي الحديث: (اليمين على نية المستحلف) رَوَاهُ مُسْلِمٌ

In another narration, “Whoever takes an oath and then says, ‘If Allah wills’, there is no expiation upon them.” [The five]

In oaths, what is considered is:

- The intention of the one taking the oath
- The cause for the oath to be made
- The wording used to show the intent

This is in all cases except in legal claims, as the narration says, “The oath taken is according to the intention of the one who asks for it.” [Muslim]

وَعَقْدُ النَّذْرِ مَكْرُوهٌ وَقَدْ نَهَى النَّبِيُّ (ﷺ) عَنِ النَّذْرِ، وَقَالَ: (إِنَّهُ لَا يَأْتِي بِخَيْرٍ، وَإِنَّمَا يُسْتَخْرَجُ بِهِ مِنَ الْبَخِيلِ) مُتَّفَقٌ عَلَيْهِ.

فَإِذَا عَقَدَهُ عَلَى بَرٍّ: وَجَبَ عَلَيْهِ الْوَفَاءُ؛ لِقَوْلِهِ (ﷺ) (مَنْ نَذَرَ أَنْ يُطِيعَ اللَّهَ فَلْيُطِعهُ، وَمَنْ نَذَرَ أَنْ يَعْصِيَ اللَّهَ فَلَا يَعْصِهِ) مُتَّفَقٌ عَلَيْهِ.

وَإِنْ كَانَ النَّذْرُ مُبَاحًا أَوْ جَارِيًا مَجْرَى الْيَمِينِ - كَنَذْرِ اللَّجَاجِ وَالْعَضْبِ - أَوْ كَانَ نَذْرَ مَعْصِيَةٍ:

- لَمْ يَجِبْ الْوَفَاءُ بِهِ.

- وَفِيهِ كَفَّارَةٌ يَمِينٍ إِذَا لَمْ يُوفَّ بِهِ.

- وَيَحْرُمُ الْوَفَاءُ بِهِ فِي الْمَعْصِيَةِ.

An oath of worship is disliked. The Prophet (ﷺ) forbade this and said, “It brings no good, but only extracts from the miser.” [Agreed upon]

However, if the oath of worship is made for an act of goodness, it must be fulfilled, due to the statement of the Prophet (ﷺ), “Whoever makes an oath of worship to obey Allah, then let him obey Him. And whoever makes an oath of worship to disobey Allah, then do not disobey Him.” [Agreed upon]

If the oath of worship is for something permissible or is said in vain speech, such as an oath made in anger or debate, or it is for a sinful act:

- It does not have to be fulfilled
- There is an expiation if it is not fulfilled
- It is impermissible to fulfil if it is for a sin

كِتَابُ الْجَنَائِاتِ

Book of Assaults

الْقَتْلُ بِغَيْرِ حَقٍّ يَنْقَسِمُ إِلَى ثَلَاثَةِ أَقْسَامٍ

أَحَدُهَا: الْعَمْدُ الْعُدْوَانُ، وَهُوَ: أَنْ يَقْصِدَهُ جِنَايَةً تَقْتُلُ غَالِيًا، فَهَذَا يُخَيَّرُ الْوَلِيُّ فِيهِ بَيْنَ الْقَتْلِ وَالِدِّيَّةٍ ;

لِقَوْلِهِ (ﷺ) (مَنْ قُتِلَ لَهُ قَتِيلٌ فَهُوَ بِخَيْرِ النَّظَرَيْنِ: إِمَّا أَنْ يُقْتَلَ، وَإِمَّا أَنْ يُفْدِيَ) مُتَّفَقٌ عَلَيْهِ .

الثَّانِي: شِبْهُ الْعَمْدِ، وَهُوَ: أَنْ يَتَعَمَّدَ الْجِنَايَةَ عَلَيْهِ بِمَا لَا يُقْتَلُ غَالِيًا.

الثَّلَاثُ الْخَطَأُ، وَهُوَ أَنْ تَقَعَ الْجِنَايَةُ مِنْهُ بِغَيْرِ قَصْدٍ، بِمُبَاشَرَةٍ أَوْ سَبَبٍ.

Unlawful murder is of three categories:

The First: Intentional – this is when a person intends to kill someone:

In this case, the guardian has the choice of demanding their execution or blood money, due to the statement of the Prophet (ﷺ), “Whoever has a family member murdered, has the best of two choices: execution or blood money.” [Agreed upon]

The Second: Unintentional – This is when a person does not intend to kill but ends up doing so.

The Third: Accidental – This is when a person did not intend to kill but did so either directly or indirectly.

فَفِي الْأَخِيرِ لَا قَوْدَ بَلْ :

أ- الْكَفَّارَةُ فِي مَالِ الْقَاتِلِ

ب- وَالِدِيَّةَ عَلَى عَاقِلَتِهِ، وَهُمْ: عَصْبَاتُهُ كُلُّهُمْ، قَرِيبُهُمْ وَبَعِيدُهُمْ، تَوَزَّعَ عَلَيْهِمْ بِقَدْرِ حَالِهِمْ، وَتُؤَجَّلُ

عَلَيْهِمْ ثَلَاثَ سِنِينَ، كُلِّ سَنَةٍ يَحْمِلُونَ ثُلُثَهَا.

In the last category, there is no execution. Instead;

- a. The murderer gives expiation

- b. Blood money from his paternal relatives, close and distant, which is distributed amongst them according to their means, over a three-year period, so that each year they give a third

و الدِّيَّاتُ لِلنَّفْسِ وَغَيْرِهَا قَدْ فَصَّلْتُ فِي حَدِيثِ عَمْرِو بْنِ حَزْمٍ: أَنَّ النَّبِيَّ (ﷺ) كَتَبَ إِلَى أَهْلِ الْيَمَنِ وَفِيهِ:

أَنَّ مَنْ إعتَبَطَ مُؤْمِنًا قَتْلًا عَنْ بَيِّنَةٍ فَإِنَّهُ قَوْدٌ إِلَّا أَنْ يَرْضَى أَوْلِيَاءُ الْمَقْتُولِ. - وَإِنْ فِي النَّفْسِ: الدِّيَّةُ، مِائَةٌ مِنْ الْإِبِلِ .

- وَفِي الْأَنْفِ إِذَا أُوعِبَ جَدْعًا الدِّيَّةُ.

- وَفِي اللِّسَانِ: الدِّيَّةُ.

- وَفِي الشَّفَتَيْنِ: الدِّيَّةُ.

- وَفِي الذَّكَرِ : الدِّيَّةُ.

- وَفِي الْبَيْضَتَيْنِ: الدِّيَّةُ.

- وَفِي الصُّلْبِ: الدِّيَّةُ .

- وَفِي الْعَيْنَيْنِ: الدِّيَّةُ.

- وَفِي الرَّجُلِ الْوَاحِدَةِ: نِصْفُ الدِّيَّةِ.

- وَفِي الْمَأْمُومَةِ ثُلُثُ الدِّيَّةِ.

- وَفِي الْجَائِفَةِ ثُلُثُ الدِّيَّةِ.

- وَفِي الْمُنْقَلَةِ خَمْسُ عَشْرَةَ مِنْ الْإِبِلِ.

- وَفِي كُلِّ إِصْبَعٍ مِنْ أَصَابِعِ الْيَدِ وَالرَّجْلِ: عَشْرٌ مِنْ الْإِبِلِ.

و في السن خمس من الإبل.

– وفي الموضحة خمس من الإبل.

– وأنَّ الرَّجُلَ يُقْتَلُ بِالْمَرْأَةِ.

– وَعَلَى أَهْلِ الذَّهَبِ أَلْفُ دِينَارٍ (رَوَاهُ أَبُو دَاوُدَ

The blood money for a life or less than that is detailed in the narration of ‘Amr ibn Ḥazm, that the Prophet (ﷺ) wrote to the people of Yemen saying:

“Whoever murders a believer with clear evidence is executed unless the guardian of the victim agree otherwise. For a life, the blood money is 100 camels. There is also blood money for cutting off the nose, the tongue, the lips, the male private part, the testicles, the back, the eyes. For one foot there is half due, for a head wound and stomach wound, a third is due. A dislocated bone has 15 camels due, and for every finger and toe, ten camels are due. A tooth is worth five camels as is a facial wound that exposes the bone. A male murderer can be executed for a female victim, and the people who own gold should pay 1000 dinars.” [Abu Dāwūd]

و يشترط في وجوب القصاص:

1 – كون القاتل مكلفا

2 – و المقتول معصوما، و مكافئا للجاني في الإسلام، و الرق و الحرية، فلا يقتل المسلم بالكافر، و لا الحر بالعبد

3 – و ألا يكون والدا للمقتول، فلا يقتل الأبوان بالولد

4 – و لا بد من اتفاق الأولياء المكلفين

5 – و الأمن من التعدي في الاستيفاء

It is obligatory when seeking execution as a punishment that:

1. The murderer is above the age of puberty
2. The victim is innocent and of an equal rank in terms of religion and freedom. A Muslim is not executed for a non-Muslim and a free man is not executed for a slave
3. The murderer cannot be the parent of the victim, as parents are not executed over their children

4. The guardians of the victim must all agree
5. There is no chance of further transgression

و تقتل الجماعة بالواحد

وَيُقَادُ كُلُّ غُضُوٍّ بِمِثْلِهِ إِذَا أُمِكنَ بِدُونِ تَعَدٍّ ; لِقَوْلِهِ تَعَالَى : (وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ)
(إِلَى آخِرِ الْآيَةِ [الْمَائِدَةُ: 45] .

وَدِيَّةُ الْمَرْأَةِ عَلَى نِصْفِ دِيَّةِ الذَّكَرِ إِلَّا فِيمَا دُونَ ثُلْثِ الدِّيَّةِ فَهُمَا سَوَاءٌ.

A group of people can be executed for an individual.

Every limb can be used to expiate for its like without transgression. Allah says, “We prescribed for them a life for a life...” [5:45]

The blood money of a woman is half of that for a man, except for what is below a third, in which case they are equal.

كِتَابُ الْحُدُودِ

Book of Crimes

لَا حَدَّ إِلَّا عَلَى مُكَلَّفٍ مُلْتَزِمٍ عَالِمٍ بِالتَّحْرِيمِ

وَلَا يُقِيمُهُ إِلَّا الْإِمَامُ أَوْ نَائِبُهُ, إِلَّا السَّيِّدُ, فَإِنَّ لَهُ إِقَامَتَهُ بِالْجُلْدِ خَاصَّةً عَلَى رَقِيقِهِ.

و حَدُّ الرَّقِيقِ فِي الْجُلْدِ نِصْفُ حَدِّ الْحَرِّ.

There is no penal punishment except upon one over the age of puberty who knows that they committed a crime.

Penal punishments are only carried out by the leader or his deputy, except the master who can carry out the punishment of lashes only.

The penal punishments of slaves is half of that of a free person.

حُدُّ الزَّانَا - وَهُوَ فِعْلُ الْفَاحِشَةِ فِي قُبُلٍ أَوْ دُبُرٍ -:

-إِنْ كَانَ مُحْصَنًا- وَهُوَ الَّذِي قَدْ تَزَوَّجَ وَوَطَّئَهَا وَهِيَ حُرَّانٍ مُكَلَّفَانِ - فَهَذَا يُرْجَمُ حَتَّى يَمُوتَ.

- وَإِنْ كَانَ غَيْرَ مُحْصَنٍ: جُلِدَ مِائَةً جَلْدَةً، وَغُرِّبَ عَنْ وَطَنِهِ عَامًا.

وَلَكِنْ بِشَرْطٍ أَنْ يُقَرَّرَ بِهِ أَرْبَعَ مَرَّاتٍ، أَوْ يَشْهَدَ عَلَيْهِ أَرْبَعَةُ عُذُولٍ يُصَرِّحُونَ بِشَهَادَتِهِمْ

قال تعالى: (الزانية و الزاني فاجلدوا كل واحد منهما مائة جلدة)

و عن عبادة بن الصامت مرفوعا: (خذوا عني، خذوا عني، فقد جعل الله لهن سبيلا: البكر بالبكر

جلد مائة و نفى سنة، و الثيب بالثيب: جلد مائة و الرجم) رواه مسلم

وَأَخِرُ الْأَمْرَيْنِ الْإِقْتِصَارُ عَلَى رَجْمِ الْمُحْصَنِ، كَمَا فِي قِصَّةِ مَا عِزَّ وَالْغَامِذِيَّةِ

The penal punishment for zina – which is any act of sex in either private part:

- i. If the person is a non-virgin – a person who was married and then has sexual relations, where both are free and responsible – this person is stoned until death
- ii. If the person is a virgin – they are lashed 100 times, and exiled for a year

The condition for the above is that they confess four times, or four trustworthy witnesses who saw the act testify.

Allah says, “Strike the adulteress and the adulterer one hundred times...” [24:2]

‘Ubādah ibn al-Ṣāmit, “Take from me, take from me. Allah has made a way out for them, a virgin with a virgin is lashed one hundred times and exile for a year, and a non-virgin with a non-virgin is one hundred lashes and stoning.” [Muslim]

This was then abrogated to stoning alone as in the stories of Mā‘iz and the Ghāmidīyyah.

وَمَنْ قَذَفَ بِالزَّانَا مُحْصَنًا أَوْ شَهِدَ عَلَيْهِ بِهِ، وَلَمْ تَكْمُلْ الشَّهَادَةُ: جُلِدَ ثَمَانِينَ جَلْدَةً

و قذف غير المحصن فيه التعزير

و المحصن: هو الحر البالغ المسلم العاقل العفيف

The penal punishment for slandering a non-virgin or testifying falsely or where the testimony is incomplete, is 80 lashes.

Slandering others requires non-penal punishment.

The non-virgin is every free, above puberty, Muslim, of sound mind who is chaste.

وَاجِبُ التَّعْزِيرِ وَاجِبٌ فِي كُلِّ مَعْصِيَةٍ لَا حَدَّ فِيهَا وَلَا كَفَّارَةَ

Non-penal punishments are compulsory for every sin in which there is no penal punishment or expiation.

وَمَنْ سَرَقَ رُبْعَ دِينَارٍ مِنْ الذَّهَبِ أَوْ مَا يُسَاوِيهِ مِنَ الْمَالِ مِنْ حِرْزِهِ: قُطِعَتْ يَدُهُ الْيُمْنَى مِنْ مَفْصِلِ الْكَفِّ, وَحُسِمَتْ.

فَإِنْ عَادَ قُطِعَتْ رِجْلُهُ الْيُسْرَى مِنْ مَفْصِلِ الْكَعْبِ وَحُسِمَتْ

فَإِنْ عَادَ حَبَسَ

و لا يقطع غير يد رجل

قال تعالى: (و السارق و السارقة فاقطعوا أيديهما)

و عن عائشة مرفوعا: (لا تقطع يد سارق إلا في ربع دينار فصاعدا) مُتَّفَقٌ عَلَيْهِ .

وَفِي الْحَدِيثِ: (لَا قَطْعَ فِي ثَمَرٍ وَلَا كَثْرٍ) رَوَاهُ أَهْلُ السُّنَنِ

The penal punishment for theft:

Whoever steals a quarter dinar or more of gold or an equal amount from an enclosed place, has their right hand cut from the wrist and cauterised.

If that person steals again, his left foot is cut from the ankle and is cauterised.

If he steals again, he is imprisoned.

Only one hand and foot is cut off.

Allah says, “Cut off the hands of thieves, whether they are man or woman...” [5:38]

‘Ā’ishah narrated, “A thief’s hand is not cut off for anything less than a quarter dinar.” [Agreed upon]

In the other narration, “There is no cutting for fruits or spadix.” [The Sunan]

وَقَالَ تَعَالَى فِي الْمُحَارِبِينَ: (إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ) إِلَى آخِرِهَا [الْمَائِدَةُ: 33]

وَهُمُ الَّذِينَ يَخْرُجُونَ عَلَى النَّاسِ، وَيَقْطَعُونَ الطَّرِيقَ عَلَيْهِمْ بِنَهْبٍ أَوْ قَتْلِ.

أ- فَمَنْ قَتَلَ وَأَخَذَ مَالًا: قُتِلَ وَصُلِبَ،

ب- وَمَنْ قَتَلَ: تَحْتَمَ قَتْلُهُ،

ج- وَمَنْ أَخَذَ مَالًا: قُطِعَتْ يَدُهُ الْيُمْنَى وَرِجْلُهُ الْيُسْرَى،

د- وَمَنْ أَخَافَ النَّاسَ: نُفِيَ مِنَ الْأَرْضِ

The penal punishment for open warfare:

Allah says, "Those who wage war against Allah and His Messenger and strive to spread corruption in the land should be punished by death, crucifixion, the amputation of an alternate hand and foot, or banishment from the land..." [5:33]

These are the people who wage war against others, cut off their roads by stealing and killing:

- Whoever kills and steals wealth is killed and crucified
- Whoever kills, is killed
- Who steals, has his alternate hand and foot severed
- Whoever strikes fear into people is exiled

وَمَنْ خَرَجَ عَلَى الْإِمَامِ يُرِيدُ إِزَالَتَهُ عَنْ مَنْصِبِهِ: فَهُوَ بَاغٍ.

وَعَلَى الْإِمَامِ: مُرَاسَلَةُ الْبُعَاةِ، وَإِزَالَةُ مَا يَنْقِمُونَ عَلَيْهِ مِمَّا لَا يَجُوزُ، وَكَشْفُ شَبْهِهِمْ

فَإِنْ انْتَهَوْا كَفَّ عَنْهُمْ، وَإِلَّا قَاتَلَهُمْ إِذَا قَاتَلُوا.

وَعَلَى رَعِيَّتِهِ: مَعُونَتُهُ عَلَى قِتَالِهِمْ.

فَإِنْ أُضْطُرَّ إِلَى قَتْلِهِمْ أَوْ تَلَفَ مَا لَهُمْ: فَلَا شَيْءَ عَلَى الدَّافِعِ.

وَأِنْ قُتِلَ الدَّافِعُ كَانَ شَهِيدًا.

وَلَا يُتَّبَعُ لَهُمْ مُدِيرٌ، وَلَا يُجْهَزُ عَلَى جَرِيحٍ، وَلَا يُغْنَمُ لَهُمْ مَالٌ، وَلَا يُسَبَّى لَهُمْ ذُرِّيَّةٌ.

وَلَا ضَمَانَ عَلَى أَحَدِ الْفَرِيقَيْنِ فِيمَا أُتْلِفَ حَالَ الْحَرْبِ مِنْ نَفُوسٍ وَأَمْوَالٍ.

Whoever revolts against the ruler is a transgressor.

In this case, the ruler should speak to them, abstain from things which they say if they are impermissible and remove their doubts.

If the transgressors then stop, he leaves them alone, otherwise he kills them if they continue.

The people should support their ruler in this.

If a person in supporting the ruler has to kill in defence or destroy their wealth, there is no compensation due.

If the defender is killed, then he is a martyr.

Their fleeing are not chased and their injured are not harmed, they do not take war booty from them or enslave their family members.

Neither side has to compensate for what is lost of wealth and life.

بَابُ حُكْمِ الْمُرْتَدِّ

Chapter: Apostates

وَالْمُرْتَدُّ هُوَ: مَنْ خَرَجَ عَنِ دِينِ الْإِسْلَامِ إِلَى الْكُفْرِ، بِفِعْلٍ أَوْ قَوْلٍ أَوْ إِعْتِقَادٍ أَوْ شَكٍّ.

وَقَدْ ذَكَرَ الْعُلَمَاءُ -رَحِمَهُمُ اللَّهُ- تَفَاصِيلَ مَا يُخْرِجُ بِهِ الْعَبْدُ مِنَ الْإِسْلَامِ، وَتَرْجِعُ كُلُّهَا إِلَى جَحْدِ مَا جَاءَ

بِهِ الرَّسُولُ (ﷺ) أَوْ جَحْدِ بَعْضِهِ غَيْرَ مُتَأَوِّلٍ فِي جَحْدِ الْبَعْضِ.

فَمَنْ ارْتَدَّ: أُسْتُيِبَ ثَلَاثَةَ أَيَّامٍ، فَإِنْ رَجَعَ وَإِلَّا قُتِلَ بِالسَّيْفِ.

The apostate is the one who leaves the religion of Islam for disbelief, by action, statement, belief or doubt.

The scholars have detailed what takes one outside the fold of Islam; all of which goes back to rejecting what the Prophet (ﷺ) brought or rejecting some of it, so long as that some does cannot be interpreted in that way.

Whoever apostates is given three days to repent, he either does so or is executed.

كِتَابُ الْقَضَاءِ وَالِدَّعَاوَى، وَالْبَيِّنَاتِ وَأَنْوَاعِ الشَّهَادَاتِ

Book of Judiciary, Claims, Evidence and Testimonies

وَالْقَضَاءُ لَا بُدَّ لِلنَّاسِ مِنْهُ فَهُوَ فَرَضٌ كِفَايَةٌ .

يَجِبُ عَلَى الْإِمَامِ نَصْبُ مَنْ يَحْصُلُ فِيهِ الْكِفَايَةُ مِمَّنْ لَهُ مَعْرِفَةٌ بِالْقَضَاءِ بِمَعْرِفَةِ الْأَحْكَامِ الشَّرْعِيَّةِ، وَتَطْبِيقُهَا عَلَى الْوَقَائِعِ الْجَارِيَةِ بَيْنَ النَّاسِ.

وَعَلَيْهِ أَنْ يُؤَيِّيَ الْأَمَثَلَ فَالْأَمَثَلُ فِي الصِّفَاتِ الْمُعْتَبَرَةِ فِي الْقَاضِي.

وَيَتَعَيَّنُ عَلَى مَنْ كَانَ أَهْلًا، وَلَمْ يُوجَدْ غَيْرُهُ، وَلَمْ يَشْغَلْهُ عَمَّا هُوَ أَهْمٌ مِنْهُ.

وَقَدْ قَالَ النَّبِيُّ (ﷺ) (الْبَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ)

و قال: (إنما أقضي بنحو ما أسمع)

A judiciary is necessary for people, and so is a collective obligation.

The ruler must appoint someone who is qualified to be a judge and has knowledge of the rulings of the Shari'ah, and can implement those rulings upon the cases of people brought before him.

He should appoint the one most qualified, and the next most qualified based on the attributes needed for a judge.

It is compulsory on such a person to accept if there is no one else available and he is not doing something more important.

The Prophet (ﷺ) said, "Evidence should be brought by the claimant and the oath is upon the defendant."

He also said, "I judge according to what I hear."

فَمَنْ ادَّعَى مَا لَا وَخْوَ فَعَلَيْهِ الْبَيِّنَةُ

أ- إِمَّا شَاهِدَانِ عَدْلَانِ،

ب- أَوْ رَجُلٌ وَامْرَأَتَانِ

ج- أَوْ رَجُلٌ وَيَمِينُ الْمُدَّعِي؛

لِقَوْلِهِ تَعَالَى: (وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ) [البقرة: 282] .

"وَقَدْ قَضَى النَّبِيُّ (ﷺ) بِالشَّاهِدِ مَعَ الْيَمِينِ وَهُوَ حَدِيثٌ صَحِيحٌ

The one who makes a claim for stolen wealth must provide evidence in the form of:

- Two trustworthy male witnesses
- One male and two female witnesses
- One male witness and the claimant's oath

Allah says, "Call in two men as witnesses. If two men are not there, then call one man and two women out of those you approve of as witnesses..." [2:282]

The Prophet (ﷺ) in an authentic *ḥadīth* judged with one witness and an oath.

فَإِنْ لَمْ يَكُنْ لَهُ بَيِّنَةٌ: حَلَفَ الْمُدَّعَى عَلَيْهِ وَبَرَّئَ.

فَإِنْ نَكَلَ عَنْ الْحَلْفِ قُضِيَ عَلَيْهِ بِالنُّكُولِ, أَوْ رُدَّتْ الْيَمِينُ عَلَى الْمُدَّعِي, فَإِذَا حَلَفَ مَعَ نُكُولِ الْمُدَّعَى عَلَيْهِ أَخَذَ مَا ادَّعَى بِهِ.

وَمِنْ الْبَيِّنَةِ: الْقَرِينَةُ الدَّلَالَةُ عَلَى صِدْقِ أَحَدِ الْمُتَدَاعِيَيْنِ

أ- مِثْلُ أَنْ تَكُونَ الْعَيْنُ الْمُدَّعَى بِهَا بَيِّنَةً أَحَدَهُمَا, فَهِيَ لَهُ بَيِّنَةٌ.

ب- وَمِثْلُ أَنْ يَتَدَاعَى اثْنَانِ مَالًا لَا يَصْلُحُ إِلَّا لِأَحَدِهِمَا, كَتَنَازُعِ نَجَّارٍ وَنَحْوِهِ بِأَلَةِ نِجَارَتِهِ وَحَدَّادٍ وَنَحْوِهِ بِأَلَةِ حَدَادَةٍ, وَنَحْوِ ذَلِكَ

If there is no evidence, the defendant gives his oath and is set free.

If he refuses to give an oath, he is judged accordingly, or the oath is given to the claimant to make. If the claimant gives his oath with the defendant refusing to do so, the judgement is made.

Evidence also includes anything which points to the truthfulness of either party:

- i. For example, if the claimant is holding his eye, it is his claim along with his oath
- ii. Another example is if two people claim wealth that can only belong to one of them, such as carpenters arguing over a tool or ironsmiths arguing over a tool

و تحمل الشهادة في حقوق الآدميين: فرض كفاية

و أداؤها: فرض عين

و يشترط أن يكون الشاهد عدلاً ظاهراً و باطناً

و العدل: هو من رضيّه الناس، لقوله تعالى: (ممن ترضون من الشهداء)

و لا يجوز أن يشهد إلا بما يعلمه:

1 – برؤية

2 – أو سماع من المشهود عليه

3 – أو استفاضة يحصل بها العلم في الأشياء التي يحتاج فيها إليها، كالأنساب و نحوها

و قال النبي (ﷺ) لرجل: (تري الشمس؟) قال: نعم، قال: (على مثلها فاشهد أو دع) رواه ابن عدي

Being a witness to something is a collective obligation. Testifying is an individual obligation.

The condition for a witness is that they are outwardly and inwardly trustworthy.

Trustworthiness is what the people are happy to accept as Allah says, “...out of those you approve of as witnesses...” [2:282]

The witness must only testify to what they have knowledge of through:

1. Seeing
2. Hearing directly
3. Or something well-known in certain things such as lineage

The Prophet (ﷺ) said to the man, “Do you see the sun?” He replied that he did. He said, “Testify when something is as clear as that or leave it.” [Ibn ‘Adiyy]

و من موانع الشهادة: مَظَنَّةُ التُّهْمَةِ, كَشَهَادَةِ الْوَالِدَيْنِ لِأَوْلَادِهِمْ, وَبِالْعَكْسِ, وَأَحَدِ الزَّوْجَيْنِ لِلْآخَرِ, وَالْعَدْوُ عَلَى عَدُوِّهِ

كَمَا فِي الْحَدِيثِ: (لَا تَجُوزُ شَهَادَةُ حَائِنٍ وَلَا خَائِنَةٍ، وَلَا ذِي غِمْرٍ عَلَى أَحِيهِ، وَلَا تَجُوزُ شَهَادَةُ الْقَانِعِ لِأَهْلِ الْبَيْتِ) رَوَاهُ أَحْمَدُ وَأَبُو دَاوُدَ.

و فِي الْحَدِيثِ: (مَنْ حَلَفَ عَلَى يَمِينٍ يَقْتَطِعُ بِهَا مَالَ امْرِئٍ مُسْلِمٍ، هُوَ فِيهَا فَاجِرٌ: لَقِيَ اللَّهَ وَ هُوَ عَلَيْهِ غَضَبَانِ) مُتَّفَقٌ عَلَيْهِ

Obstacles to testimony include any type of suspicion such as parents testifying for their children and vice versa, or one spouse for the other or an enemy against his enemy.

In the narration, “The testimony of the male or female deceiver is not accepted, nor the one who holds enmity against his brother, nor the favoured servant for his household.” [Aḥmad & Abu Dāwūd]

In the other narration, “Whoever takes a false oath in order to unjustly devour the wealth of another, he will meet Allah and Allah will be angry with him.” [Agreed upon]

بَابُ الْقِسْمَةِ

Chapter: Distribution

و هي نوعان:

- 1 - قسمة إجبار فيما لا ضرر فيه، و لا رد عوض، كالمثلثات، و الدور الكبار و الأملاك الواسعة
- 2 - قسمة تراض، و هي ما فيه ضرر على أحد الشركاء في القسمة، أو فيه رد عوض، فلا بد فيها من رضا الشركاء كلهم

و إن طلب أحدهم فيها البيع: وجبت إجابته

و إن أجروها: كانت الأجرة فيها على قدر ملكهم فيها. والله أعلم

This is of two types:

1. A compulsory distribution in which there is no harm or compensation due, such as things that have an equal, big houses and large lands
2. A settled distribution in which there is harm to one of the partners after distribution or compensation is due. In this case, all the partners have to be pleased with the outcome

If one of them requests that the item be sold, his request must be honoured.

If they rent it out, they each receive the amount equal to their respective shares. Allah knows best.

بَابُ الْإِقْرَارِ

Chapter: Confession

وَهُوَ اعْتِرَافُ الْإِنْسَانِ بِحَقِّ عَلَيْهِ، بِكُلِّ لَفْظٍ دَالٍ عَلَى الْإِقْرَارِ، بِشَرْطِ كَوْنِ الْمُقَرِّرِ مُكَلَّفًا.
وَهُوَ مِنْ أَبْلَغِ الْبَيِّنَاتِ.

وَيَدْخُلُ فِي جَمِيعِ أَبْوَابِ الْعِلْمِ مِنَ الْعِبَادَاتِ وَالْمُعَامَلَاتِ وَالْأَنْكِحَةِ وَالْجَنَائِيَّاتِ وَغَيْرِهَا.
وَفِي الْحَدِيثِ: (لَا عُذْرَ لِمَنْ أَقَرَّ)

وَيَجِبُ عَلَى الْإِنْسَانِ أَنْ يَعْتَرِفَ بِجَمِيعِ الْحُقُوقِ الَّتِي عَلَيْهِ لِلْأَدَمِيِّينَ لِيُخْرِجَ مِنَ التَّبَعَةِ بِأَدَاءٍ أَوْ اسْتِحْلَالٍ.
وَاللَّهُ أَعْلَمُ.

This is when a person accepts the right upon him, by any word which shows acceptance, with the condition that the person is responsible.

This is from the clearest forms of evidence.

It is used in all the chapters of worship, transactions, marriage, crimes, etc.

In the narration, "There is no excuse for the one who confesses."

It is obligatory upon a person to acknowledge all of the right that others have upon him, so that he may fulfil them or excuse himself from them. Allah knows best