



THE BOOK OF TRANSACTIONS & INHERITANCE

MANŞŪR IBN YŪNUS AL-BAHŪTĪ



Al-Isnad

Speaker Profile

Instructor: **Shaykh Ahsan Hanif**



Born and bred in Birmingham, UK, Shaykh Ahsan is well known in his community as the young Qari who memorised the Qur'an at the tender age of 13 and who delivered regular halaqaat in Birmingham.

In the year 2000, he gained a scholarship to enter the Islamic University of Madinah. After completing his Arabic diploma, he graduated from the Faculty of Shari'ah in 2006 with honours. He obtained ijazah in the Qur'an as well as studying under a number of well-known scholars, such as

Sh. Abdul Muhsin al-Abbad and Sh. Muhammad ibn Muhammad Mukhtar al-Shinqiti.

Upon his return to the UK he attained his PhD from the University of Birmingham. He is currently an imam at Green Lane Masjid, Birmingham as well as the head of the Qur'an & Hadith Studies Department for AlMaghrib Institute.

He has spoken at Islamic conferences in various countries, published translations of Arabic works and is a presenter of IslamQA for Islam Channel.



About Al-Isnad Institute ...

Al-Isnad is an ijazah accredited 5-6 year study programme which aims to familiarise students with major authentic Islamic works. We want to ensure that through this programme we educate individuals and help them in developing themselves as well-rounded and grounded students.

We aim to continue the centuries old tradition of learning from classical texts for our future imams and provide an opportunity to those individuals who may not be able to study abroad at Islamic institutions.

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كتاب البيع، من باب الحجر من

The Book of Transactions from

عمدة الطالب لنيل المآرب

العلامة منصور بن يونس البهوتي

The Student's Foundation

By

Manṣūr ibn Yūnus al-Bahūtī

و بلوغ المرام

الحافظ ابن حجر العسقلاني

And

Bulūgh al-Marām

By

Ibn Ḥajar al-'Asqalānī



باب الحَجْر

Chapter: Legal Incapacity

مَنْ عَجَزَ عَنْ وِفَاءِ شَيْءٍ مِنْ دَيْنِهِ حُرِّمَ طَلْبُهُ وَحَبْسُهُ.

Whoever is unable to repay part of his debt, it is unlawful to demand payment from him or to detain him.

وَمَنْ مَالُهُ قَدَّرَ دَيْنَهُ أَوْ أَكْثَرَ لَمْ يُحْجَرْ عَلَيْهِ، وَأَمْرٌ بِوَفَائِهِ، فَإِنْ أَبَى حُبِسَ بِطَلْبِ رَبِّهِ فَإِنْ أَصْرَ بَاعَهُ حَاكِمٌ، وَقَضَاهُ، وَلَا يُطَالَبُ بِمَوْجَلٍ

Whoever possesses wealth equal to or greater than the amount of his debt is not to be placed under legal restriction. He shall be instructed to settle it, and if he refuses, he may be detained at the request of his creditor. Should he persist in his refusal, the judge shall sell it and settle the debt. He may not, however, be required to pay what is not yet due.

وَمَنْ مَالُهُ لَا يَفِي بِحَالِ دَيْنِهِ حُجِرَ عَلَيْهِ بِسُؤَالِ بَعْضِ غَرَمَائِهِ. وَيُسْتَحَبُّ إِظْهَارُهُ فَلَا يَنْفَذُ تَصْرُفَهُ فِيهِ بَعْدَهُ وَلَا إِقْرَارَهُ عَلَيْهِ

Whoever's wealth is insufficient to cover his due debts shall be placed under legal restriction at the request of any of his creditors. It is recommended that this restriction be publicly declared; thereafter, none of his transactions in his wealth shall be valid, nor any acknowledgment he makes regarding it.

وَمَنْ وَجَدَ عَيْنَ مَا بَاعَهُ أَوْ أَقْرَضَهُ لَهُ وَنَحْوَهُ وَلَوْ بَعْدَ حَجْرِهِ جَاهِلًا بِهِ رَجَعَ بِهِ، وَإِنْ تَصَرَّفَ فِي ذِمَّتِهِ أَوْ أَقْرَرَ بَدِينٍ طُولِبَ بِهِ بَعْدَ قَلْبِ حَجْرِهِ.

If someone finds the very item he sold, lent, etc — even after he has been placed under legal restriction, provided he was unaware of his legal incapacity — he may reclaim it. However, if he has acted by giving assurances or acknowledged a debt, it is requested of him after the restriction is lifted.

وَيَبِيعُ حَاكِمٌ مَا لَهُ وَيَقْسِمُهُ بِالْمُحَاصَّةِ وَلَا يَحِلُّ مَوْجَلُ حَجْرٍ وَلَا مَوْتٌ إِنْ وُثِّقَ بِرَهْنٍ أَوْ كَفِيلٍ مَلِيٍّ

The judge may sell what belongs to him and distribute it proportionally among the creditors. An undue debt may not be collected through *hajr*, nor is it due because the debtor's death, if it is secured by a pledge or a solvent guarantor.



وإن ظَهَرَ غَريمٌ بعدَ قسمةٍ رَجَعَ على الغُرماءِ بقسطه. ولا ينفكُّ حَجْرُهُ إلا بوفائه أو حُكْمِ حاكم، ويُجبر على تَكسِبٍ لوفاءٍ بَقِيَّةٍ

If a creditor appears after the division, he may claim his share from the other creditors. His legal restriction (*hajr*) is not lifted except upon full repayment or by a judge's ruling. He may also be compelled to earn so as to settle the remainder of his debt.

فصل

Section

مَنْ دَفَعَ مَالَهُ لمحجورٍ عَلَيْهِ لِحِطَّةٍ كصَغِيرٍ ومجنونٍ وسَفِيهِ رَجَعَ بِهِ إن بقي، وإن أَتْلَفُوهُ فلا ضَمَانَ، وَعَلَيْهِمْ أَرَشٌ ما جَنَّوْهُ وَضَمَانَ ما لم يُدْفَعْ إِلَيْهِمْ

Whoever gives his wealth to a person under legal restriction (*hajr*)—such as a minor, a mentally incapacitated person, or a prodigal—may reclaim it if it remains. If they have wasted it, there is no liability on them. They are, however, responsible for any *arsh* (compensation) due, and the guarantee of anything not yet delivered to them.

وَإِذَا تَمَّ لصَغِيرٍ خَمْسَ عَشْرَةَ سَنَةً، أَوْ أُنْزَلَ، أَوْ نَبَتْ حَوْلَ قُبُلِهِ شَعْرٌ خَشِنٌ، أَوْ حَاضَتْ أَنْثَى فَقَدْ بَلَغَ

A minor is considered to have reached maturity when they attain the age of fifteen, or experiences wet dreams, or when coarse hair grows around the genital area; and for a female, when she menstruates.

وَلَا يُعْطَى مَالُهُ حَتَّى يُؤْنَسَ رُشْدُهُ، وَهُوَ صِلَاحُ الْمَالِ بِالْأَلَا يُغْبَنَ غَالِباً فِي تَصَرُّفِهِ وَلَا يَبْذُلُ مَالَهُ فِي حَرَامٍ، أَوْ مَا لَا فَائِدَةَ فِيهِ وَيُخْتَبَرُ قَبْلَ بُلُوغِهِ بِلَائِقٍ بِهِ، فَإِذَا عُلِمَ رُشْدُهُ وَبُلُوغُهُ دُفِعَ إِلَيْهِ مَالُهُ بِلا قَضَاءٍ لَا قَبْلَهُ

بِحَالٍ

A minor's property shall not be handed over to him until his maturity (*rushd*) is established. Maturity entails the proper management of wealth, ensuring that he is not usually deceived in his transactions and does not squander his wealth on what is forbidden or of no benefit. Before he reaches maturity, he should be tested for his suitability accordingly. Once his maturity and puberty are confirmed, his wealth should be given to him in full, without judicial intervention, but never before that under any circumstances.



ووليهم حال الحجر أب ثم وصيه ثم حاكم، ولا يتصرف لهم إلا بالأحظ، وله دفع ماله مضاربة بجزء من ربحه

During the period of legal restriction (*hajr*), their guardian is first the father, then a trustee, and finally the judge. The guardian shall act on their behalf only in what is most advantageous. He may invest their wealth in a partnership, for a stipulated profit.

ويأكل فقير من مال موليه الأقل من كفايته أو أجرته مجاناً، ومع غناه ما فرضه حاكم

A poor person may consume from the wealth of their ward whichever is less, what suffices for their needs or their wages, free of charge, or what is determined by the judge if they are wealthy.

ويقبل قول ولي بعد رشده في قدر نفقة بلائق وتلف وغبطة أو ضرورة لبيع عقار وكذا في دفع إليه إن تبرع

The statement of a guardian is accepted after the ward reaches maturity (*rushd*) regarding the amount of expenditure for suitable maintenance, for compensation for loss, the benefit or need for the sale of real estate; likewise, it is accepted in transferring property to the ward if he did so without payment.

وما استدان عبداً بإذن سيده فعليه، وإلا ففي رقبة كأرش جنايته وقيمة متلفه ولا يصح تصرفه بلا إذن سيده فإن أذن صح ولو مُميراً

If a servant borrows with the permission of his master, the responsibility lies with the latter; otherwise, it falls upon his neck, such as compensation for any loss or damage caused. His transactions are not valid without his master's permission; if permission is granted, they are valid, even if the servant is capable of distinguishing.



بَابُ التَّفْلِيسِ وَالْحَجْرِ

Chapter: Bankruptcy and Legal Incapacity

عَنْ أَبِي هُرَيْرَةَ - رضي الله عنه - [قَالَ: [سَمِعْتُ رَسُولَ اللَّهِ - صلى الله عليه وسلم - يَقُولُ: «مَنْ أَدْرَكَ مَالَهُ بِعَيْنِهِ عِنْدَ رَجُلٍ قَدْ أَفْلَسَ، فَهُوَ أَحَقُّ بِهِ مِنْ غَيْرِهِ. «مُتَّفَقٌ عَلَيْهِ

Abū Hurayrah said: I heard the Messenger of Allah (ﷺ) say: 'Whoever finds his wealth with a man who has gone bankrupt has a stronger claim to it than anyone else.' Agreed upon

وَرَوَاهُ أَبُو دَاوُدَ، وَمَالِكُ: مِنْ رِوَايَةِ أَبِي بَكْرٍ بْنِ عَبْدِ الرَّحْمَنِ مُرْسَلًا بِلَفْظٍ: «أَيُّمَا رَجُلٍ بَاعَ مَتَاعًا فَأَفْلَسَ الَّذِي ابْتَاعَهُ، وَلَمْ يَقْبِضِ الَّذِي بَاعَهُ مِنْ ثَمَنِهِ شَيْئًا، فَوَجَدَ مَتَاعَهُ بِعَيْنِهِ، فَهُوَ أَحَقُّ بِهِ، وَإِنْ مَاتَ الْمُشْتَرِي فَصَاحِبُ الْمَتَاعِ أَسْوَدُ الْعُرْمَاءِ («وَوَصَلَهُ الْبَيْهَقِيُّ، وَضَعَفَهُ تَبَعًا لِأَبِي دَاوُدَ .

It was collected by Abū Dāwūd and Mālik, from the narration of Abū Bakr ibn 'Abd al-Raḥmān, as *mursal*, with the wording: 'If a man sells goods and the buyer goes bankrupt, and the seller has not received any part of the price, and he finds his goods in person, he has a stronger claim to them; and if the buyer dies, the owner of the goods is treated like the creditors.' Al-Bayhaqī, who, following Abū Dāwūd, weakened it.

وَرَوَى أَبُو دَاوُدَ، وَابْنُ مَاجَةَ: مِنْ رِوَايَةِ عُمَرَ بْنِ خُلْدَةَ قَالَ: أَتَيْنَا أَبَا هُرَيْرَةَ فِي صَاحِبٍ لَنَا قَدْ أَفْلَسَ، فَقَالَ: لَا أَقْضِيَنَّ فِيكُمْ بِقَضَاءِ رَسُولِ اللَّهِ - صلى الله عليه وسلم: «مَنْ أَفْلَسَ أَوْ مَاتَ فَوَجَدَ رَجُلًا مَتَاعَهُ بِعَيْنِهِ فَهُوَ أَحَقُّ بِهِ. «وَصَحَّحَهُ الْحَاكِمُ، وَضَعَفَ أَبُو دَاوُدَ هَذِهِ الزِّيَادَةَ فِي ذِكْرِ الْمَوْتِ

Abū Dāwūd and Ibn Mājah narrated, from 'Umar ibn Khaldah, who said: 'We came to Abū Hurayrah regarding a man who had gone bankrupt, and he said: I shall judge among you according to the judgment of the Messenger of Allah (ﷺ): "Whoever goes bankrupt or dies, and a man finds his goods in person, he has a stronger claim to them." Al-Hākim authenticated it, while Abū Dāwūd weakened this addition concerning the mention of death.

وَعَنْ عَمْرِو بْنِ الشَّرِيدِ، عَنْ أَبِيهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم: «لِيُؤْجَدَ يُحْلُ عِرْضُهُ وَعُقُوبَتُهُ. «رَوَاهُ أَبُو دَاوُدَ، وَالنَّسَائِيُّ، وَعَلَّقَهُ الْبُخَارِيُّ، وَصَحَّحَهُ ابْنُ حِبَّانَ

On the authority of 'Amr ibn al-Sharīd, from his father, who said: The Messenger of Allah (ﷺ) said: 'The delay of the one who can repay allows for stern words to him and punishment.' Abū Dāwūd and al-Nasā'ī; al-Bukhārī mu'allaq, and Ibn Hibbān authenticated it.



وَعَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ - رضي الله عنه - قَالَ: أُصِيبَ رَجُلٌ فِي عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي ثَمَارٍ ابْتَاعَهَا، فَكَثُرَ دَيْنُهُ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - «تَصَدَّقُوا عَلَيْهِ»، فَتَصَدَّقَ النَّاسُ عَلَيْهِ، وَلَمْ يَبْلُغْ ذَلِكَ وَفَاءَ دَيْنِهِ، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِعُرْمَائِهِ: «خُذُوا مَا وَجَدْتُمْ، وَلَيْسَ لَكُمْ إِلَّا ذَلِكَ». «رَوَاهُ مُسْلِمٌ».

On the authority of Abū Sa‘īd al-Khudrī who said: During the time of the Messenger of Allah (ﷺ), a man suffered a loss in fruits he had purchased, and his debt increased. The Messenger of Allah (ﷺ) said: ‘Give charity on his behalf.’ The people gave charity for him, but it did not fully cover his debt. The Messenger of Allah (ﷺ) then said to his creditors: ‘Take what you find, and nothing more is due to you.’ *Muslim*

وَعَنْ ابْنِ كَعْبِ بْنِ مَالِكٍ، عَنْ أَبِيهِ; - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - حَجَرَ عَلَى مُعَاذٍ مَالَهُ، وَبَاعَهُ فِي دَيْنٍ كَانَ عَلَيْهِ. رَوَاهُ الدَّارَقُطْنِيُّ، وَصَحَّحَهُ الْحَاكِمُ، وَأَخْرَجَهُ أَبُو دَاوُدَ مُرْسَلًا، وَرَجَّحَ

On the authority of Ibn Ka‘b ibn Mālik, from his father, who said: The Messenger of Allah (ﷺ) placed a legal restriction (*hajr*) on Mu‘ādh’s wealth and sold it because of his debt. *Al-Daraqutnī, authenticated by al-Ḥākim, and also reported by Abū Dāwūd as a mursal, and this is stronger*

وَعَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: عُرِضْتُ عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ أُحُدٍ، وَأَنَا ابْنُ أَرْبَعِ عَشْرَةَ سَنَةً، فَلَمْ يُجِزْنِي، وَعُرِضْتُ عَلَيْهِ يَوْمَ الْخُنْدَقِ، وَأَنَا ابْنُ خَمْسِ عَشْرَةَ سَنَةً، فَأَجَازَنِي. مُتَّفَقٌ عَلَيْهِ. وَفِي رِوَايَةٍ لِلْبَيْهَقِيِّ: «فَلَمْ يُجِزْنِي، وَلَمْ يَرِنِي بَلْعْتُ». «وَصَحَّحَهَا ابْنُ حُرَيْمَةَ».

On the authority of Ibn ‘Umar, who said: I was presented to the Prophet (ﷺ) on the day of Uhud when I was fourteen years old, and he did not permit me. I was presented to him on the day of the Battle of the Trench when I was fifteen, and he permitted me.” *Agreed upon*

In a narration by al-Bayhaqī: ‘He did not permit me, and he did not see that I had reached puberty.’ It was authenticated by Ibn Khuzaymah.

وَعَنْ عَطِيَّةِ الْفَرِظِيِّ - رضي الله عنه - قَالَ: عُرِضْنَا عَلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَوْمَ فُرَيْظَةَ، فَكَانَ مَنْ أَتَبَتْ قُتِلَ، وَمَنْ لَمْ يُنْبِتْ خُلِّي سَبِيلُهُ، فَكُنْتُ فِي مَن لَمْ يُنْبِتْ فَخُلِّي سَبِيلِي. رَوَاهُ الْخَمْسَةُ، وَصَحَّحَهُ ابْنُ حِبَّانَ، وَالْحَاكِمُ.

On the authority of ‘Atīyah al-Qurādhī who said: We were presented to the Prophet (ﷺ) on the day of Qurayzah. Whoever sprouted [i.e., hairs] was killed, and whoever had not sprouted was spared. I was among those who had not sprouted, so I was spared.” *The five, authenticated by Ibn Ḥibbān and al-Ḥākim.*



وَعَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ؛ أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَجُوزُ لِمَرْأَةٍ عَطِيَّةٌ إِلَّا بِإِذْنِ زَوْجِهَا.»

وَفِي لَفْظٍ: «لَا يَجُوزُ لِلْمَرْأَةِ أَمْرٌ فِي مَالِهَا، إِذَا مَلَكَ زَوْجُهَا عِصْمَتَهَا.» «رَوَاهُ أَحْمَدُ، وَأَصْحَابُ السُّنَنِ إِلَّا التِّرْمِذِيَّ، وَصَحَّحَهُ الْحَاكِمُ.

On the authority of ‘Amr ibn Shu‘ayb, from his father, from his grandfather, that the Messenger of Allah (ﷺ) said: ‘A woman may not give a gift except with the permission of her husband.’ In another wording: ‘A woman has no authority over her wealth if her husband holds guardianship over her.’ *Ahmad and the other Sunan except al-Tirmidhī; authenticated by al-Hākim.*

وَعَنْ قَبِيصَةَ بِنِ مُخَارِقٍ [الْهَلَالِي] - [رَضِيَ اللَّهُ عَنْهُ] - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «إِنَّ الْمَسْأَلَةَ لَا تَحِلُّ إِلَّا لِأَحَدٍ ثَلَاثَةً: رَجُلٌ تَحْمَلُ حِمْلًا فَحَلَّتْ لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَهَا ثُمَّ يُمْسِكَ، وَرَجُلٌ أَصَابَتْهُ جَائِحَةٌ اجْتَاَحَتْ مَالَهُ، فَحَلَّتْ لَهُ الْمَسْأَلَةُ حَتَّى يُصِيبَ قِوَامًا مِنْ عَيْشٍ، وَرَجُلٌ أَصَابَتْهُ فَاقَةٌ حَتَّى يَقُولَ ثَلَاثَةً مِنْ ذَوِي الْحِجَى مِنْ قَوْمِهِ: لَقَدْ أَصَابَتْ فُلَانًا فَاقَةٌ، فَحَلَّتْ لَهُ الْمَسْأَلَةُ.» «رَوَاهُ مُسْلِمٌ.

On the authority of Qabiṣah ibn Mukhāriq al-Hilālī who said: The Messenger of Allah (ﷺ) said: ‘Asking for money is permissible only for one of three categories: a man who has taken on a burden, in which case seeking assistance is permissible until he attains it and then he refrains; a man struck by a calamity that has destroyed his wealth, in which case seeking assistance is permissible until he secures a sufficient livelihood; and a man afflicted by poverty, when three people of integrity from his community testify that he has indeed been afflicted by poverty, in which case seeking assistance becomes permissible.’ *Muslim.*



باب الْوَكَاة

Chapter of Agency

تصح بكل قول دل على إذن وقبول بقول أو فعل دل عليه فوراً ومُتراجياً كشركة ومُساقاة.

It is valid with any expression that indicates authorization and acceptance—whether by words or by any act signifying them—whether this occurs immediately or after some delay, as in the cases of partnership and agricultural share-cropping.

ومن له التصرف في شيء فله التوكيل والتوكل فيه، وتصح في كل حق آدمي من عقل وفسخ وعتق وطلاق ورجعية وإقرار ونحوه دون ظهار ولعان وبمين، وتصح أيضاً في إخراج زكاة، وكفارة ونذر وإقامة حد، وإثباته، وفي حج وعمره مع عجز

Whoever has the right to dispose of a matter has the right to appoint another to act on his behalf in it and to rely on him. Agency is valid in every right belonging to a human being: in compensation for injury, in annulment, manumission, divorce, return after divorce, acknowledgement, and the like—though not in *zihār*, *li'ān*, or oaths. It is also valid for the payment of *zakāh*, expiation, vows, the enforcement of a prescribed penalty and establishing proof for it, as well as for the performance of Hajj and 'Umrah when one is unable to perform them oneself.

ولوكيل أن يوكل فيما وُكل فيه مع عجز عنه، وإذا لم يتوَلَّ مثله أو يأذن مُوكلاً فقط. وتنفسح بموت أحدهما، وجنونه، وعزله

It is within the power of the agent to delegate the authority in matters for which he has been appointed, even if he himself is unable to perform them; if he does not act, the principal alone may authorize another. The agency is terminated by the death of either party, by insanity, or by dismissal.

ومن وُكل في بيع أو نحوه لم يبيع من نفسه ولا من عُمودِيّ نسبه أو زوجته، ولا بغير نقد البلد، ولا بعرض أو نساء، وإن باع بدون ثمن مثل أو ما قُدر له صحَّ وضمّن النقص، وكذا إن اشترى بأزيد.

Whoever is appointed as an agent in a sale or a similar transaction may not sell from his own property, nor from that of his father, nor from that of his wife; nor may he sell except for the standard currency of the town, nor may he sell property or women. If he sells without an equivalent price, or for less than its estimated value, the sale is valid and he bears responsibility for the deficiency. Likewise, if he purchases at an excessive price, the transaction is binding.



وإن اشترى معيماً علمه لزمه إن لم يرض موكله، وإن جهل فله رده. ووكيل البيع يسلمه ولا يقبض الثمن إن لم يفض إلى ربا

If he purchases a defective item knowingly, he is bound by it unless his principal objects; if he was unaware, he may return it. The agent in a sale delivers the item but does not receive the price unless it is free from interest (riba).

ويُسَلَّمُ وكيلٌ مُشْتَرٍ ثَمَنًا، فَإِنْ أَحْرَهُ بِلَا عَذْرِ ضَمِنَهُ، وَإِنْ وَكَّلَهُ فِي كُلِّ قَلِيلٍ وَكَثِيرٍ أَوْ شَرَاءَ مَا شَاءَ أَوْ عَيْنًا بِمَا شَاءَ لَمْ يَصِحَّ، مَا لَمْ يُعَيَّنْ نَوْعًا وَقَدَرٌ ثَمَنٍ وَلَيْسَ لَوَكِيلٍ فِي خُصُومَةِ قَبْضٍ بِخِلَافٍ عَكْسِهِ

The agent of a buyer delivers the price; if he delays without excuse, he is liable. If he is authorized to act in all matters, whether small or large, or to purchase whatever he wishes, or any specific item he chooses, the agency is not valid unless the type and price are clearly specified. An agent has no right to receive payment in a dispute, except where the law explicitly provides otherwise.

وَأَقْبَضَ حَقِّي مِنْ زَيْدٍ، لَا يَقْبِضُهُ مِنْ وَرَثَتِهِ لَا إِنْ قَالَ الَّذِي قَبِلَهُ، وَيُضْمَنُ وَكِيلٌ فِي قَضَاءٍ دَيْنٍ بَغَيْرِ حَضُورِ مُوَكَّلٍ إِنْ لَمْ يَشْهَدْ لَا فِي إِيدَاعٍ

‘Receive my due from Zayd’—the agent does not collect it from his heirs, nor if the person addressed says he will pay. An agent tasked with collecting a debt without the principal being present is liable unless he has witnessed the transaction; the same applies in the case of a deposit.

وَالْوَكِيلُ أَمِينٌ يُقْبَلُ قَوْلُهُ فِيمَا وَكِّلَ فِيهِ، وَلَا يَضْمَنُ مَا تَلَفَ بِيَدِهِ بِلَا تَقْرِيطٍ وَيُقْبَلُ قَوْلُهُ فِيهِ بِيَمِينِهِ.

The agent is trustworthy; his statement is accepted in matters for which he has been appointed. He is not liable for what is lost through no negligence, and his statement is accepted when sworn by his oath.

وَمَنْ ادَّعَى وَكَالَةَ زَيْدٍ فِي قَبْضِ حَقِّهِ مِنْ عَمْرٍو لَمْ يَلْزَمْ دَفْعُهُ إِلَيْهِ مَعَ تَصْدِيقٍ وَلَا يَمِينُهُ مَعَ تَكْذِيبٍ، وَإِنْ دَفَعَ إِلَيْهِ وَأَنْكَرَ زَيْدُ الْوَكَالَةِ وَحَلَفَ ضَمِنَهُ عَمْرٍو وَإِنْ كَانَ الْمَدْفُوعُ وَدِيعَةً ضَمِنَهَا آخِذُهَا فَإِنْ تَلَفَتْ ضَمَّنَ أُيْهِمَا شَاءَ.

If someone claims to be Zayd’s agent in collecting his due from ‘Amr, ‘Amr is not obliged to pay him, even if the claim is affirmed, nor is the agent’s oath accepted if he is denied. If ‘Amr pays him and Zayd denies the agency and swears, he is liable. If what is paid is a deposit, the recipient is liable; should it be lost, either party may be held responsible at the choice of the claimant.



باب الشركة

Chapter: Partnership

وهي أنواع:

شركة عِنان: بأن يشترك اثنان فأكثر بنقدٍ معلومٍ يُحضراه، ولو من جنسين أو متفاوتًا، ليعملا فيه والربح بينهما بحسب الشرط

Partnerships are of several types:

A partnership of capital (*shirkah 'inan*): this occurs when two or more persons contribute a known sum of money—whether of the same type or of different kinds or unequal amounts—to work with it, and the profit is shared between them according to the agreed terms.

فينقذ تصرف كلٍّ بحكم الملك في نصيبه والوكالة في نصيب شريكه، فإن لم يذكر الربح أو شرط لأحدهما جزء مجهول، أو دراهم معلومة، أو ربح سلعة، أو سفرة، ونحوه أو كان المال غير نقدٍ أو ثقرة أو مغشوشاً كثيراً لم تصح كمضاربة والوضعية بقدر المال، ولا يُشترط خلط المالين

Each partner may manage his share as owner, and may act on behalf of his partner through agency. If the profit or the conditions for either partner are not specified, the share is uncertain. This applies whether it concerns a known sum of money, the profit from goods, a journey, or similar matters. If the capital is not in cash, or is in coins, or largely adulterated, the partnership is not valid, unlike a *mudārabah* or a deposit proportionate to the capital. It is not required that the partners' capitals be mixed together.

الثاني: المضاربة: كاتجر بهذا والربح بيننا، فيتناصفاه وإن سُمي لأحدهما فالباقي للآخر، وإن اختلفا لمن المشروط فلعامل كمساقاة ومزارعة

The second type: *Mudārabah* (profit-sharing): one provides the capital while the other trades with it. The profit is shared between them; if a specific portion is assigned to one, the remainder belongs to the other. If there is disagreement, the share goes to the one for whom it was stipulated. The partner who works is treated similarly to a sharecropper or in a cultivation agreement (*musāqah* or *muzāra'ah*).

ولا يضارب لآخر إن ضرَّ بالأول بلا إذنه، فإن فعل ردَّ حصته في الشركة، ولا يشتري من يعتق على رب المال بلا إذنه، فإن فعل ضمَّ ثمنه، وعتق

One may not trade on behalf of another if it harms the first partner without his permission; if he does, his share in the partnership is forfeited. Likewise, one may not purchase a slave for manumission from the owner of the capital without permission; if he does, he is liable for the price, and the slave is considered freed.



ولا يُقسم ربحٌ مع بقاء عقدٍ إلا باتفاقهما، وإن تَلَفَ رأس المال أو بعضه بعد تصرف أو خسر حُسب من الربح قبل قسمه ناضاً أو تنضيضه مع المحاسبة

Profit cannot be divided while the contract remains in force except by mutual agreement. If the capital, or part of it, is lost after being put to use, or if there is a loss, the portion of profit already accrued before division is to be calculated and accounted for before distribution.

الثالث: شركة الوجوه: كأن يشتركا في ربح ما يَشْتَرِيَان في ذمهما بجاههما، فما ربحا فبينهما ونحوه. وكلُّ وكيلٍ صاحبه وكفيلُهُ بالثمن، والمملك والربح كما شَرَطَا والخُسران بحسب ملكيهما.

The third type: a partnership of credit (*shirkah al-wujūh*): this occurs when partners share in the profit of what they acquire on credit through their reputation. Whatever profit they make is shared between them, and each acts as the agent of the other and guarantees the payment. Ownership and profit are as they have agreed, while any loss is borne according to their respective ownership.

الرابع: شركة الأبدان: كأن يشتركا فيما يكتسبان من مباح كاحتشاشٍ واصطيادٍ، أو يتقبلان من عمل كحدادين ونجارين

The fourth type: a partnership of persons (*shirkah al-abdān*): this occurs when partners share in what they earn from lawful activities, such as gathering wild plants or hunting, or from their labor, as in the case of blacksmiths or carpenters working together.

ويلزمهما فعلٌ ما تَقَبَّلَهُ أحدهما، ومن مَرَضٍ أُقِيمَ مُقَامَهُ بِطَلْبِ شريكه، والكسب بينهما، ولا تصح شركة دلالين

They are both bound by whatever work either of them undertakes. If one falls ill, his place is filled at the request of the partner, and the earnings are shared between them. A partnership of brokers (*dalālīn*) is not valid.

الخامس: شركة المفاوضة: كأن يفوض كلٌّ منهما للآخر كل تصرف ماليٍّ وبدنيٍّ وإن أدخلَا كسباً نادراً أو غرامة فسَدَتْ، ولكلٍّ كسبه وعليه ضمان غصبه ونحوه

The fifth type: a partnership of mutual authorization (*shirkah al-mufāwadah*): this occurs when each partner empowers the other to act on his behalf in all financial and personal matters. If they acquire a rare gain or suffer a fine, it is invalid. Each retains his own earnings and is responsible for any losses arising from coercion or similar circumstances.



بَابُ الشَّرَكَةِ وَالْوَكَالَةِ

Chapter: Agency & Partnership

عَنْ أَبِي هُرَيْرَةَ - رضي الله عنه - قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم - «أَنَا ثَالِثُ الشَّرِيكَيْنِ مَا لَمْ يَخُنْ أَحَدُهُمَا صَاحِبَهُ، فَإِذَا خَانَ خَرَجْتُ مِنْ بَيْنِهِمَا». «رَوَاهُ أَبُو دَاوُدَ، وَصَحَّحَهُ الْحَاكِمُ».

On the authority of Abū Hurayrah, who said that the Messenger of Allah (ﷺ) said: ‘Allah said: “I am the third partner of two partners, as long as neither of them betrays the other. But if one betrays, I withdraw from between them.”’ *Abū Dāwūd and authenticated by al-Hākim.*

وَعَنْ السَّائِبِ بْنِ يَزِيدَ الْمَخْزُومِيِّ - أَنَّهُ كَانَ شَرِيكَ النَّبِيِّ - صلى الله عليه وسلم - قَبْلَ الْبُعْثَةِ، فَجَاءَ يَوْمَ الْفَتْحِ، فَقَالَ: «مَرْحَبًا بِأَخِي وَشَرِيكِي». «رَوَاهُ أَحْمَدُ، وَأَبُو دَاوُدَ، وَابْنُ مَاجَةَ».

On the authority of As-Sā'ib ibn Yazīd al-Makhzūmī, who was a partner of the Prophet (ﷺ) before the Prophethood. On the day of the conquest, he came and said: “Welcome, my brother and my partner.” *Aḥmad, Abū Dāwūd, and Ibn Mājah*

وَعَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ - رضي الله عنه - قَالَ: اشْتَرَكْتُ أَنَا وَعَمَّارٌ وَسَعْدٌ فِيمَا نُصِيبُ يَوْمَ بَدْرٍ ... الْحَدِيثُ. رَوَاهُ النَّسَائِيُّ وَغَيْرُهُ

On the authority of ‘Abdullāh ibn Mas‘ūd who said: “Ammār, Sa’d, and I shared together in what we gained on the day of Badr...” *An-Nasā’ī and others*

وَعَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ - رضي الله عنهما - قَالَ: أَرَدْتُ الْخُرُوجَ إِلَى حَيْبَرَ، فَأَتَيْتُ النَّبِيَّ - صلى الله عليه وسلم - فَقَالَ: «إِذَا أَتَيْتَ وَكَيْلِي بِحَيْبَرَ، فَخُذْ مِنْهُ خُمْسَةَ عَشَرَ وَسَقًا». «رَوَاهُ أَبُو دَاوُدَ وَصَحَّحَهُ

On the authority of Jābir ibn ‘Abdullāh who said: “I intended to go out to Khaybar, so I came to the Prophet (ﷺ) and he said: ‘When you reach my agent in Khaybar, take from him fifteen water-measures.’” *Abū Dāwūd and authenticated by him*

وَعَنْ عُزْوَةَ الْبَارِقِيِّ - رضي الله عنه - أَنَّ رَسُولَ اللَّهِ - صلى الله عليه وسلم - بَعَثَ مَعَهُ بِدِينَارٍ يَشْتَرِي لَهُ أُضْحِيَّةً ... الْحَدِيثُ. رَوَاهُ الْبُخَارِيُّ فِي أَثْنَاءِ حَدِيثِهِ، وَقَدْ تَقَدَّمَ.

On the authority of ‘Urwah al-Bāriqī who said: “The Messenger of Allah (ﷺ) sent me with a dinar to purchase a sacrificial animal on his behalf...” *Al-Bukhārī within another report, as previously mentioned*



وَعَنْ أَبِي هُرَيْرَةَ - رضي الله عنه - قَالَ: بَعَثَ رَسُولُ اللَّهِ - صلى الله عليه وسلم - عُمَرَ عَلَى الصَّدَقَةِ ... الْحَدِيثُ. مُتَّفَقٌ عَلَيْهِ.

On the authority of Abū Hurayrah who said: "The Messenger of Allah (ﷺ) sent 'Umar to administer the alms (ṣadaqah)..." *Agreed upon*

وَعَنْ جَابِرٍ - رضي الله عنه - أَنَّ النَّبِيَّ - صلى الله عليه وسلم - نَحَرَ ثَلَاثًا وَسِتِّينَ، وَأَمَرَ عَلِيًّا أَنْ يَذْبَحَ الْبَاقِي ... الْحَدِيثُ. رَوَاهُ مُسْلِمٌ.

On the authority of Jābir who said: "The Prophet (ﷺ) slaughtered sixty-three animals and ordered 'Alī to slaughter the remainder..." *Muslim*

وَعَنْ أَبِي هُرَيْرَةَ - رضي الله عنه - فِي قِصَّةِ الْعَسِيفِ. قَالَ النَّبِيُّ - صلى الله عليه وسلم - : «وَأَعْدُ يَا أُتَيْسُ عَلَى امْرَأَةِ هَذَا، فَإِنْ اعْتَرَفَتْ فَارْجُمُهَا» ... الْحَدِيثُ. مُتَّفَقٌ عَلَيْهِ

On the authority of Abū Hurayrah, regarding the incident of the 'Asīf, the Prophet (ﷺ) said: "Go Unays, to the wife of this man; if she confesses, stone her..." *Agreed upon*

باب المساقاة

Chapter on Sharecropping

تَصَحَّ عَلَى شَجَرٍ لَهُ ثَمَرٌ يُوْكَلُ بِجَزْءٍ مِنْهُ، وَعَلَى شَجَرٍ يَغْرِسُهُ وَيَعْمَلُ فِيهِ بِجَزْءٍ مِنْهُ، أَوْ مِنْ ثَمَرِهِ.

It is valid for a tree that bears edible fruit, with a share of its produce, and for a tree that one plants and tends, with a share from its produce or fruit.

فَإِنْ فُسَخَ مَالِكٌ قَبْلَ ظَهْوَرِ ثَمَرِهِ فَلْعَامِلٌ أَجْرٌ مِثْلُهُ، لَا إِنْ فُسَخَ هُوَ

If the owner terminates the agreement before the fruit appears, the cultivator is entitled to an equivalent wage; but if he himself terminates it, he is not.

وَعَلَى عَامِلٍ مَا فِيهِ صَلاَحٌ مِنْ حَرْثٍ وَسَقْيٍ وَزَبَارٍ وَتَلْقِيحٍ وَتَشْمِيسٍ وَإِصْلَاحٍ مَوْضِعِهِ وَطُرُقِ الْمَاءِ وَحَصَادٍ وَنَحْوِهِ، وَعَلَى رَبِّ مَالٍ مَا يُصْلِحُهُ كَسَدٍ حَائِطٍ وَإِجْرَاءٍ نَحِيرٍ وَدَوْلَابٍ وَنَحْوِهِ وَعَلَيْهِمَا جِذَاذٌ بِقَدَرِ حَقِّهِمَا لَا إِنْ شَرِطَ عَلَى عَامِلٍ

The cultivator is responsible for what he can manage, such as ploughing, watering, weeding, pollination, exposing to sunlight, maintaining the plot, irrigation channels, harvesting, and the like. The owner is responsible for what he can manage, such as repairing walls, maintaining a water channel or a waterwheel, and similar tasks. Each is entitled to a share in proportion to their contribution, unless a specific condition is imposed on the cultivator.



وتصح المزارعة بجزء مشاعٍ معلومٍ من زرعٍ بشرط علم بذرٍ وقَدْرِهِ، وكونه من رَبِّ أرضٍ كغرسٍ في مناصبة، وإذا آجَرَهُ أرضاً وساقاهُ على شجرها صَحَّ بلا حيلة

Sharecropping is valid with a known share of jointly owned crops, provided that the type and quantity of the seed are specified, and that it belongs to the landowner, as in the case of a planted tree in a joint plot. If the owner leases land to a cultivator and the latter tends its trees, the arrangement is valid without any special stipulation.

باب الإجارة

Chapter on Hire

تصحُّ بلفظها، ولفظ كَرَى وبيع مُضافاً للمنفعة

It is valid by its own wording, and also by the terms *karā'* (leasing) or *bay'* (sale) when combined with the intended benefit.

وشروطها ثلاثة:

مَعْرِفَةُ منفعةٍ بعُرف كسكنى دارٍ، وخدمة آدمي، أو وصفٍ كحملٍ وحرثٍ وكتابةٍ وقودٍ أعمى ونحوها

Its conditions are three:

Knowing the benefit according to custom, such as occupying a house; a human service; or a defined task, such as carrying, ploughing, writing, supplying firewood, and the like

الثاني: معرفةُ أجرةٍ، كثمنن، وتصح في أجيرٍ وظئيرٍ بطعامهما، ومن دَخَلَ حَمَّامًا، أو سفينةً، أو أعطى ثوبه لَقَصَّارٍ ونحوه بلا عقدٍ فأجرةٌ مثله

The second condition: knowing the wage, as one knows the price. This applies to a hired worker or animal when their food is provided, or to someone who uses a bathhouse or a ship, or entrusts his garment to a tailor, and the like, even without a formal contract; the customary wage for such work is due.

الثالث: كَوْنُ نفعٍ مُباحاً متقوِّماً مقدوراً عليه يُستوفى دون الأجزاء، فلا تصح لمحرم كزنا، وزمير، وغناءٍ وجعلٍ دارِهِ كنيسةً، أو لبيعِ الخمر، ولا على تفاحةٍ لشمٍ، ولا إجارةٍ مشاعٍ لغير شريك، ولا صابونٍ لغسلٍ وشمعٍ لوقودٍ وحيوانٍ لأخذٍ لبنه

The third condition: the benefit must be lawful, measurable, and manageable, and fully obtainable. It is not valid for something forbidden, such as adultery, musical instruments, singing, turning one's house into a church, or selling wine. Nor is it valid for an apple just for smelling, a joint lease for a non-partner, soap for washing, wax for fuel, or an animal solely for



وَتَصِحُّ فِي حَائِطٍ لَوْضَعَ خَشَبٌ عَلَيْهِ، وَلَا تُؤْجَرُ امْرَأَةٌ بِلَا إِذْنِ زَوْجِهَا

It is valid for a wall to be hired for placing timber upon it, but a woman may not be hired without the permission of her husband.

فَصْلٌ

Section

وَشُرْطٌ فِي إِجَارَةِ عَيْنٍ:

مَعْرِفَتُهَا بِرُؤْيَةٍ أَوْ وَصْفٍ غَيْرِ نَحْوِ أَرْضٍ

The conditions for hiring a specific object (*'ayn*) are: knowing it either by direct observation or by a description; this does not apply, for example, to land.

وَاشْتِمَالُهَا عَلَى الْمَنْفَعَةِ؛ فَلَا تَصِحُّ فِي سَبْخَةٍ لَزْرَعٍ، وَلَا زَمَنَةً لِحَمَلٍ.

It must involve a usable benefit; thus, it is not valid for a salt-flat for cultivation, nor for a fixed period of time for carrying.

وَقُدْرَةٌ عَلَى تَسْلِيمِهَا بِخِلَافِ آبَقٍ وَنَحْوِهِ

There must be the ability to deliver it, unlike a fugitive or similar cases.

وَتَصِحُّ لَوْقْفٍ مِنْ نَازِرِهِ، وَتَبْطُلُ بِمَوْتِهِ أَنْ آجَرَ لَكُونَ الْوَقْفِ عَلَيْهِ فَقَطْ

It is valid for a charitable endowment (*waqf*) with the consent of its administrator, but it becomes void if he dies, when the lease pertains solely to him.

وَلَمُسْتَأْجِرٍ أَنْ يُؤْجَرَ لِمَنْ يَفُومُ مَقَامَهُ لَا أَكْثَرَ ضَرَرًا مِنْهُ.

A lessee may sublet to someone who will fulfill his role, provided that it causes no greater harm than he himself would cause.

وَإِنْ اسْتَأْجَرَ مُدَّةً اشْتَرَطَ عِلْمُهَا، وَأَنْ يَغْلِبَ عَلَى الظَّنِّ بَقَاءُ الْعَيْنِ فِيهَا، وَإِنْ طَالَتْ.

If a period of hire is stipulated, it must be known, and it should be reasonably expected that the object will remain available for that duration, even if the period is long.

وَلِعَمَلٍ كَرَكُوبٍ وَحَرْثٍ وَدِيَّاسٍ وَدَلَالَةٍ عَلَى طَرِيقٍ اشْتَرَطَ عِلْمُهُ وَضَبُّهُ بِمَا لَا يُخْتَلَفُ مَعَهُ

For a task, such as riding, ploughing, threshing, or guiding along a route, the work must be specified and clearly defined in a way that leaves no room for dispute.

وَلَا تَصِحُّ الْإِجَارَةُ عَلَى عَمَلٍ يَخْتَصُّ أَنْ يَكُونَ فَاعِلُهُ مِنْ أَهْلِ الْقُرْبَةِ؛ كَأَذَانٍ وَقَضَاءٍ، بِخِلَافِ جَعَالَةٍ

Hire is not valid for work that must be performed by someone of a particular status, such as the call to prayer or judicial duties, unlike a commission (*ja'alah*).



وعلى مُؤجر ما يتمكّن به مستأجرٌ من نفعٍ كزمامٍ ورحلٍ وحزامٍ ورفعٍ وشدٍّ وحيطٍّ ولزومٍ بغيرٍ لحاجة نزولٍ وعمارة دارٍ ومفتاحها، لا تفريغٍ بالوعةٍ أو كنيفٍ إن سلمها فارغة فعلى مستأجرٍ.

The lessor is responsible for what enables the lessee to benefit, such as a bridle, pack-saddle, belt, lifting, hauling, unloading, or tethering a camel for purposes of settlement or building a house and its key. It does not include emptying a cesspool or a granary; if these are delivered empty, the lessee is responsible.

فصلٌ

Section

وهي عقدٌ لازمٌ لا يبطلُ بموتٍ أحدهما، ولا فسخه، وإن حوّلَهُ مَالُكَ أو مَنَعَهُ، ولو بعضَ المدة فلا شيءَ له، وإن لم يَسْكُنْ مستأجرٌ أو تحوّلَ فعليه الأجرة.

It is a binding contract; it is not nullified by the death of either party, nor by its revocation. If the owner transfers it or prevents its use, even for part of the term, he has no right to anything. If the lessee does not occupy it or the benefit is transferred, the agreed wage is still due from him.

وتنفسخ بتلفٍ مؤجرة، وموتٍ مرتضع، وانقلاعٍ ضررٍ اكترى لقلعه أو بُرْثُهُ، لا موتٍ راكبٍ أو ضياعٍ نفقته، أو احتراقٍ متاعه

It is terminated by the destruction of the leased item, the death of a suckling animal, or the loss of a tooth rented for extraction or its being healed. It is not terminated by the death of a rider, the loss of his expenses, or the burning of his belongings.

وإن اكترى داراً فأنهدمت أو أرضاً فانقطع مأؤها أو غرقت انفسخت فيما بقي، وإن تعيبت مؤجرة، أو كانت معيبة فله الفسخُ وعليه أجره ما مضى

If a house is rented and it collapses, or land is rented and its water source is cut off or it floods, the remaining lease is terminated. If the leased item becomes defective, or was defective from the start, the lessee may terminate the contract, but must pay the rent for the period that has passed.

ولا يضمن أجيرٌ خاصّاً ما جَنَت يده خطأً

A hired worker is not liable for what he unintentionally gains through his work.



ويضمن مشترك ما تلف بفعله لا جزه، ولا أجرة له

A partner is liable for what is lost through his own actions, not for what is lost despite his precautions, and he is not entitled to a wage.

ولا حجام وبيطار وطبيب حاذق لم تجن يده وأذن فيه، ولا راع لم يتعد أو يفريط

A skilled barber, veterinarian, or physician is not liable if their work causes no harm and consent was given, nor is a shepherd liable if he does not exceed his duty or act negligently.

وتجب أجرة لم تؤجل بعقد، وتستحق بتسليم عمل في ذمة وتستقر بفراغ مدة ونحوه، وإن تسلم في فاسدة فأجرة مثل ونفقة مؤجرة على مالك كمؤنة رد.

Wages are due even if they were not deferred by contract, and they are earned upon the delivery of work performed on behalf of another. They are established when the agreed period ends or in similar circumstances. If the work is received defective, the wage is equivalent, and the expenses of the leased item are borne by the owner, like the cost of its replacement.

بَابُ الْمَسَاقَاةِ وَالْإِجَارَةِ

Chapter on Sharecropping and Hire

عَنِ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَامَلَ أَهْلَ خَيْبَرَ بِشَطْرِ مَا يَخْرُجُ مِنْهَا مِنْ تَمْرٍ، أَوْ زَرْعٍ. مُتَّفَقٌ عَلَيْهِ.

وَفِي رِوَايَةٍ لَهُمَا: فَسَأَلُوا أَنْ يُقَرَّهُمْ بِهَا عَلَى أَنْ يَكْفُوا عَمَلَهَا وَهُمْ نِصْفُ الثَّمَرِ، فَقَالَ لَهُمْ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «نُقَرِّكُمْ بِهَا عَلَى ذَلِكَ مَا شِئْنَا، «فَقَرُّوا بِهَا، حَتَّى أَجْلَاهُمْ عُمَرُ.

وَلِمُسْلِمٍ: أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - دَفَعَ إِلَى يَهُودِ خَيْبَرَ نَخْلَ خَيْبَرَ وَأَرْضَهَا عَلَى أَنْ يَعْتَمِلُوهَا مِنْ أَمْوَالِهِمْ، وَلَهُ شَطْرُ ثَمَرِهَا.

On the authority of Ibn ‘Umar, that the Messenger of Allah (ﷺ) employed the people of Khaybar on half of what came from its produce or crops. *Agreed upon*

In another narration: they asked to be confirmed in it on the condition that they would provide the labor, and that they would receive half the produce. The Messenger of Allah (ﷺ) said: “We confirm it for you on that basis as we wish,” and they agreed to it, until ‘Umar removed them.

It is also reported from a Muslim source that the Messenger of Allah (ﷺ) entrusted the Jews of Khaybar with its palm trees and land, on the condition that they would cultivate it from their own resources, and he would receive half its produce.



وَعَنْ حَنْظَلَةَ بْنِ قَيْسٍ قَالَ: سَأَلْتُ رَافِعَ بْنَ خَدِيجٍ - رَضِيَ اللَّهُ عَنْهُ - عَنْ كِرَاءِ الْأَرْضِ بِالذَّهَبِ وَالْفِضَّةِ؟ فَقَالَ: لَا بَأْسَ بِهِ، إِنَّمَا كَانَ النَّاسُ يُؤَاجِرُونَ عَلَى عَهْدِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عَلَى الْمَازِيَانَاتِ، وَأَقْبَالِ الْجَدَاوِلِ، وَأَشْيَاءَ مِنَ الزَّرْعِ، فَيَهْلِكُ هَذَا وَيَسْلَمُ هَذَا، وَيَسْلَمُ هَذَا وَيَهْلِكُ هَذَا، وَلَمْ يَكُنْ لِلنَّاسِ كِرَاءٌ إِلَّا هَذَا، فَلِذَلِكَ رَجَرَ عَنْهُ، فَأَمَّا شَيْءٌ مَعْلُومٌ مَضْمُونٌ فَلَا بَأْسَ بِهِ. رَوَاهُ مُسْلِمٌ.

وَفِيهِ بَيَانٌ لِمَا أُجْمِلَ فِي الْمُتَّفَقِ عَلَيْهِ مِنْ إِطْلَاقِ النَّهْيِ عَنْ كِرَاءِ الْأَرْضِ

On the authority of Ḥanzalah ibn Qays, who said: I asked Rāfi' ibn Khadīj about hiring land with gold and silver. He said: "There is no harm in it. In the past, people used to lease land in the time of the Messenger of Allah (ﷺ) for mares, for the produce of canals, and for portions of crops, so that sometimes this portion perished while that was preserved, or that was preserved while this perished. People had no lease except for this, and for that reason he discouraged it. But for something known and guaranteed, there is no harm."

Narrated by Muslim

This also clarifies what was summarized in the agreement regarding the general prohibition on leasing land.

وَعَنْ ثَابِتِ بْنِ الضَّحَّاكِ - رَضِيَ اللَّهُ عَنْهُ - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنِ الْمُرَارَعَةِ وَأَمَرَ بِالْمُؤَاجَرَةِ. رَوَاهُ مُسْلِمٌ أَيْضًا

On the authority of Thābit ibn al-Ḍaḥḥāk, who said that the Messenger of Allah (ﷺ) forbade sharecropping and commanded hiring. *Also narrated by Muslim*

وَعَنْ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّهُ قَالَ: اخْتَجَمَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - وَأَعْطَى الَّذِي حَجَمَهُ أَجْرَهُ، وَلَوْ كَانَ حَرَامًا لَمْ يُعْطِهِ. رَوَاهُ الْبُخَارِيُّ

On the authority of Ibn 'Abbās who said: "The Messenger of Allah (ﷺ) had a cupping treatment and gave the practitioner his wage; if it had been forbidden, he would not have given it to him." *Al-Bukhārī*

وَعَنْ رَافِعِ بْنِ خَدِيجٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - : كَسَبُ الْحُجَّامِ حَيْثُ .» رَوَاهُ مُسْلِمٌ.

On the authority of Rāfi' ibn Khadīj who said that the Messenger of Allah (ﷺ) said: "The earnings of the cupping practitioner are impure." *Muslim*



وَعَنْ أَبِي هُرَيْرَةَ - رضي الله عنه - قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم: «قَالَ اللَّهُ - عز وجل: ثَلَاثَةٌ أَنَا خَصْمُهُمْ يَوْمَ الْقِيَامَةِ: رَجُلٌ أَعْطَى بِي ثُمَّ غَدَرَ، وَرَجُلٌ بَاعَ حُرًّا، فَأَكَلَ ثَمَنَهُ، وَرَجُلٌ اسْتَأْجَرَ أَجِيرًا، فَاسْتَوْفَى مِنْهُ، وَلَمْ يُعْطِهِ أَجْرَهُ». «رَوَاهُ مُسْلِمٌ

On the authority of Abū Hurayrah, who said that the Messenger of Allah (ﷺ) said: "Allah said: 'Three are under My special dispute on the Day of Resurrection: a man who is entrusted with something by Me and then betrays it; a man who sells a free person and consumes the price; and a man who hires a worker, takes the full benefit from him, but does not pay his wage.'"

Muslim

وَعَنْ ابْنِ عَبَّاسٍ - رضي الله عنه - قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم: «إِنَّ أَحَقَّ مَا أَخَذْتُمْ عَلَيْهِ حَقًّا كِتَابُ اللَّهِ». «أَخْرَجَهُ الْبُخَارِيُّ

On the authority of Ibn 'Abbās, who said that the Messenger of Allah (ﷺ) said: "The most just thing you have taken as a right is the Book of Allah." *Al-Bukhari*

وَعَنْ ابْنِ عُمَرَ - رضي الله عنهما - قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم: «أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرْقُهُ». «رَوَاهُ ابْنُ مَاجَهٍ.

On the authority of Ibn 'Umar, who said that the Messenger of Allah (ﷺ) said: "Give the worker his wage before his sweat dries." *Ibn Majah*

وَعَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ - رضي الله عنه - أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «مَنْ اسْتَأْجَرَ أَجِيرًا، فَلَيْسَ لَهُ أَجْرَتُهُ». «رَوَاهُ عَبْدُ الرَّزَّاقِ وَفِيهِ انْقِطَاعٌ، وَوَصَلَهُ الْبَيْهَقِيُّ مِنْ طَرِيقِ أَبِي حَنِيفَةَ

On the authority of Abū Sa'īd al-Khudrī, who said that the Prophet (ﷺ) said: "Whoever hires a worker should determine his wage for him." *Narrated by 'Abdul-Razzāq, with a break; al-Bayhaqī connected it through the chain of Abū Ḥanīfah*



باب الجعالة

Chapter on Commissioned Work

يَصِحُّ جُعْلٌ مَعْلُومٌ لِمَنْ يَعْمَلُ لَهُ عَمَلًا، وَلَوْ غَيْرَ مَعْلُومٍ، أَوْ مُدَّةً وَلَوْ مَجْهُولَةً؛ كَرَدِّ عَبْدٍ وَلُقْطَةٍ، وَخِيَاطَةِ ثَوْبٍ، وَبِنَاءِ حَائِطٍ، وَتَأْذِينَ بِمَسْجِدٍ شَهْرًا وَنَحْوِهِ، فَمَنْ فَعَلَهُ بَعْدَهُ اسْتَحَقَّهُ، وَتَقَسَّيَمَهُ الْجَمَاعَةُ، وَإِنْ فَسَخَ عَامِلٌ لَمْ يَسْتَحِقْ شَيْئًا، وَجَاعِلٌ بَعْدَ شُرُوعِ عَامِلٍ فَأُجْرَةُ عَمَلِهِ.

A commission (*ja'alah*) is valid whether the reward is specified for a particular task or not, or for a set period even if unknown. This applies to returning a slave, picking up a lost item, sewing a garment, building a wall, giving the call to prayer in a mosque for a month, and the like. Whoever performs the task after it is set becomes entitled to the reward, which is shared if done by a group. If the worker renounces it, he earns nothing; if the commissioner withdraws after the worker has begun, the worker is entitled to the reward for his work.

وَإِنْ اخْتَلَفَا فِي جُعْلٍ أَوْ قَدَرِهِ، فَقَوْلُ جَاعِلٍ

If there is a disagreement about the commission or its amount, the word of the commissioner prevails.

وَمَنْ عَمِلَ لغيره عَمَلًا بِلَا إِذْنٍ وَلَا جُعْلٍ فَلَا شَيْءَ لَهُ، إِلَّا مَنْ رَدَّ أَبَقًا فِدِينَارًا، أَوْ اثْنَا عَشَرَ دِرْهَمًا، وَمَا أَنْفَقَهُ عَلَيْهِ، وَمَنْ حَلَّصَ مَتَاعَ غَيْرِهِ أَوْ قَتَلَ مِنْ هَلَكَةٍ فَأُجْرَةُ مِثْلِهِ

Whoever works for another without permission or a commission is entitled to nothing, except for someone who returns a fugitive, in which case he earns a dinar or twelve dirhams and reimbursement for his expenses, or someone who saves another's property or protects it from destruction, for which he is entitled to a reward equivalent to the value of the service.



باب السِّبَق

Chapter: Racing

يَصْحُحُ عَلَى الْأَقْدَامِ، وَسَائِرِ الْحَيَوَانَاتِ، وَالسُّفُنِ وَنَحْوِهَا، لَا بِعَوَظٍ إِلَّا فِي إِبِلٍ وَخَيْلٍ وَسِهَامٍ

Racing is valid on foot, on all animals, ships, and the like, but it is not for a prize except in the case of camels, horses, and arrows.

وَلَا بُدَّ مِنْ تَعْيِينِ الْمَرْكُوبِينَ، وَاتِّحَادِهِمَا نَوْعًا، وَالرُّمَّةَ وَالْمَسَافَةَ بِقَدَرٍ مُعْتَادٍ وَاتِّحَادِ نَوْعِ الْقَوْسِينَ، وَخُرُوجٍ عَنْ شَبِّهِ قِمَارٍ

It is necessary to specify the animals to be raced, to ensure they are of the same type; the archers, the distance in a customary measure; the bows must be of the same type; and the competition must avoid any element resembling gambling.

وَلِكُلٍّ فَسْخُؤُهُمَا، وَلَا تَصِحُّ مُنَاضَلَةٌ إِلَّا عَلَى مُعَيَّنٍ يُحْسِنُ الرَّمِي

Each party may annul the agreement, and a contest is valid only for a specified target at which one is skilled in shooting.

باب العَارِيَّةِ

Chapter on Loan for Use

تَصِحُّ إِعَارَةُ كُلِّ ذِي نَفْعٍ مُبَاحٍ، غَيْرِ الْبُضْعِ وَعَبْدٍ مُسْلِمٍ لِكَافِرٍ يَخْدُمُهُ، وَصَيْدٍ مُحَرَّمٍ

The loan for use (*‘āriyyah*) is valid for anything that provides a lawful benefit, except for merchandise, a Muslim slave to a non-Muslim for servitude, and game prohibited to a pilgrim.

وَلَا تُعَارَى أَمَةٌ شَابَّةٌ لَغَيْرِ مُحَرَّمٍ أَوْ امْرَأَةٌ

A young female slave or a woman may not be loaned to anyone who is not a mahram.

وَمَنْ أَعَارَ حَائِطًا لَوْضَعَ خَشَبٌ لَمْ يَرْجِعْ حَتَّى يَسْقُطَ، وَلَا أُجْرَةٌ، فَإِنْ سَقَطَ لَمْ يَرُدَّ بِلَا إِذْنِهِ

If someone loans a wall for placing timber upon it, it is not returned until it collapses, and no wage is due. If it falls, it is not to be replaced without the lender's permission.

وَتُضْمَنُ الْعَارِيَّةُ وَلَوْ لَمْ يُفَرِّطْ أَوْ شَرَطَ نَفْيَ ضَمَانِهَا، غَيْرَ كُتْبٍ وَقَفٍ وَنَحْوِهَا، وَعَلَيْهِ مَوْنَةُ رَدِّهَا

A loan for use (*‘āriyyah*) is liable for damage even if there is no negligence or explicit condition excluding liability, except in the case of endowment books and similar items. The borrower is responsible for the cost of returning it.



ولا يُعِير مُسْتَعِيرٌ، ولا يُؤَجَّر، فَإِنْ تَلَفَتْ عِنْد ثَانٍ صَمَّنَ أَيهما شاء، ولا يُضَمَّنُ مُنْقَطِعُ أَزْكَبَ لِلثَّوَابِ ولا ضيف ولا رديف ربها، أو وكيله

A borrower may not loan or lease the item to another. If it is damaged while in the possession of a second person, the borrower may be held liable at the owner's discretion. A borrowed item is not liable if it was given for reward to a rider, a guest, the owner's companion, or the owner's agent.

وإن قال :أَعْرَيْتُكَ، قال :بل أَجْرَتَنِي -والعَيْنُ تالفة- فقولُ مَالِكٍ، وكذا أَجْرَتُكَ، قال :بل أَعْرَيْتَنِي -عَقِبَ عَقْدٍ-، فإن مَضَى مَالُهُ أَجْرَةً فَأُجْرَةٌ مِثْلُ مَا ضَى

If one says, 'I loaned it to you,' and the other replies, 'No, you hired it to me,' while the item is damaged, the owner's statement prevails. Likewise, if one says, 'I hired it to you,' and the other replies, 'No, you loaned it to me,' after a contract, the owner's statement governs. If the item has already provided benefit as a hire, the equivalent wage is due for the period elapsed.

وَأَعْرَيْتَنِي أو أَجْرَتَنِي أو أَوْدَعْتَنِي، قال :بل غصبتني، أو اختلفا في ردِّ فقولُ مَالِكٍ بيمينه

If someone says, 'You loaned it to me,' or 'You hired it to me,' or 'You deposited it with me,' and the other replies, 'No, you seized it from me,' or if there is a disagreement about its return, the word of the owner, sworn by an oath, prevails.

باب العارية

Chapter on Loan for Use

عَنْ سَمُرَةَ بْنِ جُنْدُبٍ - رضي الله عنه - قَالَ :قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم- :عَلَى الْيَدِ مَا أَخَذْتَ حَتَّى تُؤَدِّيَهُ .«رَوَاهُ أَحْمَدُ، وَالْأَزْبَعَةُ، وَصَحَّحَهُ الْحَاكِمُ

On the authority of Samurah ibn Jundub, who said that the Messenger of Allah (ﷺ) said: "Liability rests on the hand for whatever it takes until it is delivered." *Ahmad and the four, and authenticated by Hakim*

وَعَنْ أَبِي هُرَيْرَةَ - رضي الله عنه - قَالَ :قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم- :أَدِّ الْأَمَانَةَ إِلَى مَنْ ائْتَمَنَكَ، وَلَا تَخُنْ مَنْ خَانَكَ .«رَوَاهُ أَبُو دَاوُدَ، وَالتِّرْمِذِيُّ وَحَسَنُهُ، وَصَحَّحَهُ الْحَاكِمُ، وَاسْتَنْكَرَهُ أَبُو حَاتِمٍ الرَّازِيُّ

On the authority of Abū Hurayrah, who said that the Messenger of Allah (ﷺ) said: "Deliver the trust to those who entrusted you, and do not betray those who betray you." *Abū Dāwūd and at-Tirmidhī, who deemed it good; authenticated by al-Hākim, but criticized by Abū Ḥatīm ar-Rāzī*



وَعَنْ يَعْلَى بْنِ أُمَيَّةَ - رضي الله عنه - قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم: «إِذَا أَتَتْكَ رُسُلِي فَأَعْطِهِمْ ثَلَاثِينَ دِرْعًا»، قُلْتُ: يَا رَسُولَ اللَّهِ! أَعَارِيَّةٌ مَضْمُونَةٌ أَوْ عَارِيَّةٌ مُؤَدَّاءُ؟ قَالَ: «بَلْ عَارِيَّةٌ مُؤَدَّاءُ». «رَوَاهُ أَحْمَدُ، وَأَبُو دَاوُدَ، وَالنَّسَائِيُّ، وَصَحَّحَهُ ابْنُ حِبَّانَ

On the authority of Ya'lā ibn Umayyah, who said that the Messenger of Allah (ﷺ) said: "When My messengers come to you, give them thirty coats of mail." I asked, "O Messenger of God! Should they be guaranteed loans or delivered loans?" He said: "Delivered loans." *Ahmad, Abu Dawud, Al-Nasa'i and authenticated by Ibn Hibban*

وَعَنْ صَفْوَانَ بْنِ أُمَيَّةَ; - أَنَّ النَّبِيَّ - صلى الله عليه وسلم - اسْتَعَارَ مِنْهُ دُرُوعًا يَوْمَ حُنَيْنٍ. فَقَالَ: أَغَصَبْتُ يَا مُحَمَّدُ؟ قَالَ: «بَلْ عَارِيَّةٌ مَضْمُونَةٌ». «رَوَاهُ أَبُو دَاوُدَ، وَالنَّسَائِيُّ، وَصَحَّحَهُ الْحَاكِمُ. وَأَخْرَجَ لَهُ شَاهِدًا ضَعِيفًا عَنِ ابْنِ عَبَّاسٍ.

On the authority of Şafwān ibn Umayyah, who said that the Prophet (ﷺ) borrowed armour from him on the Day of Ḥunayn. He asked, "Is this seizure, O Muḥammad?" He replied, "No, it is a guaranteed loan." *Abū Dāwūd and an-Nasā'ī, authenticated by al-Hākim. A weak report was also narrated through a witness from Ibn 'Abbās.*

بَابُ الْغَصْبِ

Chapter on Usurpation

يُضْمَنُ بِهِ عَقَارٌ كَأَمِّ وَلَدٍ لَا كَلْبٌ يُقْتَنَى وَلَا خَمْرٌ ذَمِيٍّ، وَبُرْدَانٌ، وَلَا جِلْدُ مَيْتَةٍ، وَلَا خُرٌّ فَإِنْ حَبَسَهُ، أَوْ اسْتَعْمَلَهُ كُرْهًا فَأَجَرَتْهُ

Liability (*ghasb*) applies to immovable property, such as a mother camel, but not to a dog kept for use or wine belonging to a non-Muslim, which must be returned. It does not apply to animal skins of carrion or to a free person; if he is detained or compelled to work, then his wage is due.

وَيَجِبُ رَدُّ مَغْصُوبٍ بِزِيَادَتِهِ وَلَوْ تَكَلَّفَ أَضْعَافَ قِيَمَتِهِ، وَإِنْ نَقَصَ فَعَلَيْهِ نَقْصُ قِيَمَتِهِ

It is obligatory to return what has been unlawfully seized (*maghşūb*) along with any increase, even if this requires multiplying its value. If it has decreased, the reducer bears the loss of its diminished value.

وَأِنْ بَنَى أَوْ غَرَسَ مَغْصُوبَةً لَزِمَهُ قَلْعُهُ وَأَرْشُ نَقْصِهَا وَتَسْوِيطُهَا وَأُجْرَتُهَا، وَإِنْ زَرَعَهَا فَلِرَبِّهَا قَبْلَ حَصْدِهِ، تَمْلِكُهُ بِمَثَلِ بَذَرِهِ وَعَوَاضُ لَوَاقِحِهِ، وَلَا أَجْرَةٌ إِذَنْ

If someone builds on or plants a usurped property, they are obliged to remove it, level any deficiencies, and pay the wage for the work done. If they sow crops, the owner may take them before harvest, in which case they own the equivalent of the seed and compensation for what follows, but no wage is due.



وإن غَصَبَ جَارِحاً أو عَبْدًا أو فَرَسًا فَصَادَ بِهِ، أو غَنِمَ فِلْمَالِكِهِ بِلَا أُجْرَةٍ زَمَنَهُ

If someone seizes a hunting animal, a slave, or a horse, and uses it, or takes the spoils, they belong to the owner without any wage for the time used.

وإن ضَرَبَ الْعَصَبَ دِرَاهِمًا، أو صَاغَهُ، أو نَسَجَ الْعَزْلَ، أو قَصَّرَ الثَّوبَ أو نَجَرَ الخَشَبَ، أو صَارَ الحَبُّ زَرْعًا، أو الْبَيْضَةُ فَرْخًا، أو النُّوَى غَرَسًا رَدَّهُ وَأَرْشَ نَقْصِهِ، وَلَا شَيْءَ لْغَاصِبٍ إِنْ زَادَ وَلَا لِعَمَلِهِ

If the usurper coins money, fashions it, spins yarn, shortens a garment, carpenters wood, or if grain becomes a crop, an egg hatches, or a seedling grows, it must be returned and any deficiency compensated. Nothing is due to the usurper for any increase or for their labor.

وإن حَصَى رَقِيقًا رَدَّهُ مَعَ قِيَمَتِهِ، وإن قَطَعَ يَدُهُ رَدَّهُ وَأَكْثَرَ الْأَمْرَيْنِ مِمَّا نَقَصَ وَأَرْشَ الْجَنَائِيَةِ وَلَا يُضْمَنُ نَقْصُ سَعْرِ

If someone castrates a slave, the slave must be returned along with their value. If they cut off the slave's hand, the slave is returned and the greater of the two—either the added damage or the reduction in value—must be compensated as a penalty. Loss of market price is not guaranteed.

وإن خُلِطَ بِمِثْلِهِ وَلَمْ يَتَمَيَّزْ كَرِيَتٍ وَحَنْطَةٍ فَشَرِيكَانَ، وَكَذَا لَوْ صَبَّغَ ثَوْبًا، وَيُضْمَنُ نَقْصُ الْقِيَمَةِ، وإن زَادَتْ قِيَمَةُ أَحَدِهِمَا فَلصَاحِبِهِ، وَلَا جَبْرٌ عَلَى قَلْعِ صُبْغٍ

If something is mixed with its like and cannot be distinguished, such as oil or wheat, it is considered joint property, and the same applies if a garment is dyed. The loss in value must be compensated. If the value of one increases, it belongs to its owner. There is no obligation to remove a dye.

وإن اسْتَحَقَّتْ أَرْضٌ فَقْلَعَ غَرَسٌ مَشْتَرٍ وَبَنَاؤُهُ رَجَعَ بِمَا غَرَمَهُ عَلَى بَائِعِهِ، وَتَصَرَّفُ غَاصِبٍ فِيهِ بَاطِلٌ، وَمَالِكُهُ تَضْمِينُهُ وَتَضْمِينُ مَنْ صَارَ إِلَيْهِ، وَيُضْمَنُ مِثْلِيٌّ تَلَفَ بِمِثْلِهِ وَمُتَقَوِّمٌ بِقِيَمَتِهِ

If land becomes due, and the purchaser uproots a planting or builds upon it, the losses are returned to the one who incurred them from the seller. Any act of the usurper on it is null, and the owner may claim compensation, as may anyone who acquires it. Twofold compensation is due for something lost of the same kind, and full value for something assessable in price.

وَيُقْبَلُ قَوْلُهُ فِيهَا وَفِي قَدْرِهِ وَصِفَتِهِ لَا عِيَبِهِ وَرَدَّهُ، وإن جَهِلَ رَبُّهُ تَصَدَّقَ بِهِ عَنْهُ مَضْمُونًا

His statement regarding it, its quantity, and its description is accepted; its defects are not grounds for returning it. If the owner is unaware, he may donate it on behalf of the usurper, who remains liable.



ومن فَتَحَ قَفَصاً أَوْ بَاباً أَوْ وَكَاءً أَوْ رِبَاطاً أَوْ قِيداً فَذَهَبَ مَا فِيهِ، أَوْ أَتْلَفَ شَيْئاً وَنَحْوَهُ ضَمِنَهُ كَرَبَطَ دَابَّةً بِطَرِيقٍ ضَيِّقٍ،
وَاقْتَنَاءَ كَلْبٍ عَقُورٍ إِنْ دَخَلَ بِإِذْنِهِ أَوْ عَقَرَهُ خَارِجَ مَنْزِلِهِ

Whoever opens a cage, door, locker, tether, or restraint and its contents are lost, or damages something in the process, is liable. This includes tying an animal on a narrow path or owning a fierce dog; if it enters with his permission or bites outside his home, he is responsible.

وَيُضْمَنُ رَبُّ بَهِيمَةٍ مَا أَتْلَفَتْ مِنْ زَرْعٍ وَغَيْرِهِ لَيْلاً لَا نَهَاراً، إِنْ لَمْ تَرْسَلْ بِقَرْبِهِ وَيُضْمَنُ رَاكِبٌ وَسَائِقٌ وَقَائِدٌ جُنَايَةَ يَدِهَا
وَفَمِهَا وَوُطْئَهَا بِرَجْلِهَا لَا مَا نَفَحَتْ بِهَا، أَوْ بَذَنِبَهَا

The owner of an animal is liable for any damage it causes to crops or other property at night, but not during the day unless it is sent near him. A rider, driver, or leader is liable for the damage caused by the animal's head, mouth, or hoof, but not for what it grazes with its mouth or strikes with its tail

وَلَا يُضْمَنُ قَتْلُ صَائِلٍ وَلَا كَسْرَ مِزْمَارٍ أَوْ صَلِيبٍ، وَلَا كَسْرَ آنِيَةِ ذَهَبٍ وَفُضَّةٍ وَآنِيَةِ خَمْرٍ غَيْرِ مُحْتَرَمَةٍ

One is not liable for the killing by a beggar, nor for breaking a pipe or crosspiece, nor for breaking vessels of gold or silver, or vessels of wine that are not considered sacred.



بابُ الغُصْبِ

Chapter on Usurpation

عَنْ سَعِيدِ بْنِ زَيْدٍ -رَضِيَ اللَّهُ عَنْهُمَا-; أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ اقْتَطَعَ شِبْرًا مِنَ الْأَرْضِ ظُلْمًا طَوَّفَهُ اللَّهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرْضِينَ». «مُتَّفَقٌ عَلَيْهِ».

On the authority of Sa'īd ibn Zayd, who said that the Messenger of Allah (ﷺ) said: "Whoever unjustly takes even a span of land, Allah will encircle him on the Day of Resurrection with it from seven earths." *Agreed Upon*

وَعَنْ أَنَسٍ; - أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - كَانَ عِنْدَ بَعْضِ نِسَائِهِ، فَأَرْسَلَتْ إِحْدَى أُمَّهَاتِ الْمُؤْمِنِينَ مَعَ خَادِمٍ لَهَا بِقِصْعَةٍ فِيهَا طَعَامٌ، فَكَسَرَتِ الْقِصْعَةَ، فَضَمَّهَا، وَجَعَلَ فِيهَا الطَّعَامَ. وَقَالَ: «كُلُوا» وَدَفَعَ الْقِصْعَةَ الصَّحِيحَةَ لِلرَّسُولِ، وَحَبَسَ الْمَكْسُورَةَ. رَوَاهُ الْبُخَارِيُّ.

وَالْتِّرْمِذِيُّ، وَسَمَّى الضَّارِبَةَ عَائِشَةَ، وَزَادَ: فَقَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «طَعَامٌ بِطَعَامٍ، وَإِنَاءٌ بِإِنَاءٍ». «وَصَحَّحَهُ»
On the authority of Anas, who said that the Prophet (ﷺ) was at the house of one of his wives when one of the Mothers of the Believers sent a servant with a bowl of food. The bowl was broken, so he gathered it and put the food into another bowl. He said, "Eat," and gave the intact bowl to the Prophet (ﷺ) while keeping the broken one. *Al-Bukhārī*.

At-Tirmidhī also narrated and authenticated it, naming 'Ā'ishah as the one who broke it, and added that the Prophet (ﷺ) said: "Food goes into food, and vessel into vessel."

وَعَنْ رَافِعِ بْنِ خَدِيجٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «مَنْ زَرَعَ فِي أَرْضِ قَوْمٍ بَغَيْرِ إِذْنِهِمْ، فَلَيْسَ لَهُ مِنَ الزَّرْعِ شَيْءٌ، وَلَهُ نَفَقَتُهُ». «رَوَاهُ أَحْمَدُ، وَالْأَرْبَعَةُ إِلَّا النَّسَائِيُّ، وَحَسَنَةُ التِّرْمِذِيُّ».

وَيُقَالُ: إِنَّ الْبُخَارِيَّ ضَعَّفَهُ

On the authority of Rāfi' ibn Khadīj, who said that the Messenger of Allah (ﷺ) said: "Whoever plants crops in the land of people without their permission has no claim to the produce, though he may recover his expenses." *Ahmad and the four compilers except an-Nasā'ī; At-Tirmidhī authenticated it. It is reported that al-Bukhārī considered it weak.*



وَعَنْ عُرْوَةَ بْنِ الزُّبَيْرِ قَالَ: قَالَ رَجُلٌ مِنَ الصَّحَابَةِ: مِنْ أَصْحَابِ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِنَّ رَجُلَيْنِ اخْتَصَمَا إِلَى رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فِي أَرْضٍ، غَرَسَ أَحَدُهُمَا فِيهَا نَخْلًا، وَالْأَرْضُ لِلْآخَرِ، فَقَضَى رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - بِالْأَرْضِ لِصَاحِبِهَا، وَأَمَرَ صَاحِبَ النَّخْلِ أَنْ يُخْرِجَ نَخْلَهُ. وَقَالَ: لَيْسَ لِعِرْقٍ ظَلَمٌ حَقٌّ. «رَوَاهُ أَبُو دَاوُدَ، وَإِسْنَادُهُ حَسَنٌ».

وَأَخْرَجَهُ عِنْدَ أَصْحَابِ السُّنَنِ مِنْ رِوَايَةِ عُرْوَةَ، عَنْ سَعِيدِ بْنِ زَيْدٍ. وَاخْتُلِفَ فِي وَصْلِهِ وَإِرْسَالِهِ، وَفِي تَعْيِينِ صَحَابِيَّهِ
On the authority of 'Urwah ibn az-Zubayr, who said: A man from the Companions of the Messenger of Allah (ﷺ) reported that two men disputed before the Prophet (ﷺ) over a piece of land. One of them had planted date palms in it, but the land belonged to the other. The Prophet (ﷺ) ruled that the land belonged to its rightful owner and ordered the one who had planted the palms to remove them. He said, "An unjust lineage has no right."
Abū Dāwūd; its chain of transmission is considered sound. At the end of the narration in the Sunan collections, it is transmitted from 'Urwah on the authority of Sa'īd ibn Zayd. There is disagreement regarding its connection or irsal, as well as the identification of the Companions involved.

وَعَنْ أَبِي بَكْرَةَ: - رَضِيَ اللَّهُ عَنْهُ - أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: فِي خُطْبَتِهِ يَوْمَ النَّحْرِ يَمًى «(إِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ) عَلَيْكُمْ حَرَامٌ، كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا». «مُتَّفَقٌ عَلَيْهِ»

On the authority of Abū Bakrah, who reported that the Prophet (ﷺ) said in his sermon on the Day of Sacrifice at Mina: "Your lives, your wealth, and your honour are sacred to you, just as sacred as this day of yours, in this city of yours, in this month of yours." *Agreed upon*



بَابُ الشُّفْعَةِ

Chapter: Pre-emption

يَحْرَمُ التَّحْيِيلُ لِإِسْقَاطِهَا، وَتَثْبُتُ لَشْرِيكَ فِي أَرْضٍ تَقْسَمُ إِجْبَاراً بِبَيْعَتِ بَثْمَنِهِ الَّذِي اسْتَقَرَّ عَلَيْهِ الْعَقْدُ، فَلَا شُفْعَةَ لْجَارٍ وَلَا فِي بِنَاءٍ مُفْرَدٍ وَلَا فِي نَحْوِ حَمَّامٍ وَدَارٍ صَغِيرَةٍ، وَلَا فِيمَا أُخِذَ صَدَاقاً وَنَحْوَهُ، وَيَدْخُلُ غَرَسٌ وَبِنَاءٌ تَبَعاً لِأَرْضٍ، لَا زَرْعٍ وَثَمَرٍ

It is forbidden to employ stratagems to nullify the right of shuf'ah. Shuf'ah is established for a partner in land that can be compulsorily divided, when it is sold, and he takes it for the price upon which the contract has finally settled. There is no shuf'ah for a neighbour, nor in a standalone building, nor in things like a bathhouse or a small house. Nor is there shuf'ah in what is taken as a dowry or the like. Plantings and buildings follow the land (and are included with it), but not crops or fruits.

وهي على الفور وقت علمه، فَإِنْ أَخَّرَ بِلَا عُذْرٍ، أَوْ كَذَّبَ عَدَلاً بَطَلَتْ، كَمَا لَوْ طَلَبَ أَخَذَ الْبَعْضُ

Shuf'ah must be exercised immediately upon (the partner) knowing of the sale. If he delays without a valid excuse, or if he rejects the report of an upright witness, it becomes void — just as it becomes void if he requests to take only part (of the property).

وهي بين شركاء بقدر ملكهم فَإِنْ عفا البعض أخذ الباقي الكلّ أو ترك

The right of pre-emption is shared among the partners in proportion to their ownership. If one of them waives his share, the remaining partner may take the entire property or decline it.

وَمَنْ بَاعَ شِقْصاً وَسِيفاً وَنَحْوَهُ فَلشْفِيعٍ أَخَذَ شَقِصٍ بِحَصَّتِهِ مِنْ ثَمَنِ كَمَا لَوْ تَلَفَ بَعْضُهُ

If someone sells a divided share, a sword, or the like, the pre-emptor takes a proportionate part of the price, as if part of it had been destroyed.

ولا شفعة بشركة وقف، ولا في غير ملك سابق، ولا لكافر على مسلم

There is no right of pre-emption in an endowed partnership (*waqf*), nor over property that was not previously owned, nor can a non-Muslim exercise it against a Muslim.



فصل

Section

وَإِنْ تَصَرَّفَ مُشْتَرٍ قَبْلَ طَلْبِ بَهِيَّةٍ أَوْ وَقْفٍ وَنَحْوِهِ أَوْ رَهْنٍ سَقَطَتْ، وَبَعْدَهُ لَا يَصِحُّ تَصَرُّفُهُ، وَبَيْعٌ فَلَهُ أَخْذُهُ بِأَيِّ الْبَيْعِينَ شَاءَ

If a buyer disposes of the property before a pre-emptor claims it—whether it is a gift, endowment, or pledge—the pre-emption right is lost. After the claim, such a disposal is invalid. In the case of a sale, the pre-emptor may take it from any of the sellers he chooses

وَإِنْ بَنَى أَوْ غَرَسَ فَإِنْ لَمْ يَقْلَعْهُ فَلشَفِيعٍ تَمْلِكُهُ بِقِيمَتِهِ، أَوْ قَلْعُهُ وَضَمَانُ نَقْصِهِ

If the buyer has built or planted, and does not remove it, the pre-emptor may either take ownership by paying its value or remove it and claim compensation for any loss.

وَإِنْ مَاتَ شَفِيعٌ قَبْلَ طَلْبِ سَقَطَتْ، وَبَعْدَهُ لَوَارِثِهِ

If the pre-emptor dies before making a claim, the right is lost; after making a claim, it passes to his heir.

وَإِنْ عَجَزَ عَنْ بَعْضِ الثَّمَنِ سَقَطَتْ شَفَعَتُهُ فَإِنْ كَانَ مُؤَجَّلًا أَخْذَهُ مَلِيٌّ بِهِ وَإِلَّا فَبِكَفِيلٍ، وَإِنْ اخْتَلَفَا فِي قَدْرِ ثَمَنِ فَقَوْلُ مُشْتَرٍ، وَعَهْدَةُ شَفِيعٍ عَلَى مُشْتَرٍ وَمُشْتَرٍ عَلَى بَائِعٍ

If the pre-emptor cannot pay part of the price, his right is lost; if the payment is deferred, he takes it in full, otherwise through a guarantor. If they disagree on the amount of the price, the buyer's statement prevails. The pre-emptor is responsible to the buyer, and the buyer is responsible to the seller.



بَابُ الشُّفْعَةِ

Chapter: Pre-emption

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ -رَضِيَ اللَّهُ عَنْهُمَا- قَالَ: قَضَى رَسُولُ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- بِالشُّفْعَةِ فِي كُلِّ مَا لَمْ يُقَسِّمْ، فَإِذَا وَقَعَتِ الْحُدُودُ وَصُرِفَتِ الطُّرُقُ فَلَا شُفْعَةَ. مُتَّفَقٌ عَلَيْهِ، وَاللَّفْظُ لِلْبُخَارِيِّ.

وَفِي رِوَايَةِ مُسْلِمٍ: «الشُّفْعَةُ فِي كُلِّ شَرِكٍ: أَرْضٍ، أَوْ رُبْعٍ، أَوْ حَائِطٍ، لَا يَصْلُحُ أَنْ يَبِيعَ حَتَّى يَعْضَرَ عَلَى شَرِيكِهِ». وَفِي رِوَايَةِ الطَّحَاوِيِّ: قَضَى النَّبِيُّ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- بِالشُّفْعَةِ فِي كُلِّ شَيْءٍ، وَرِجَالُهُ ثِقَاتٌ.

On the authority of Jābir ibn ‘Abdullah, who said that the Messenger of Allah (ﷺ) ruled that the right of pre-emption applies to everything that has not been divided. Once boundaries are fixed and roads laid out, there is no pre-emption. *Agreed upon*

In a narration by Muslim: “Pre-emption applies to any partnership—whether in land, a quarter, or a wall. It is not permissible to sell until it is offered to the partner.” According to al-Ṭahāwī, the Prophet (ﷺ) ruled that pre-emption applies to everything. Its narrators are trustworthy.

وَعَنْ أَبِي رَافِعٍ -رَضِيَ اللَّهُ عَنْهُ- قَالَ: قَالَ رَسُولُ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ-: الْجَارُ أَحَقُّ بِسَقْفِهِ. «أَخْرَجَهُ الْبُخَارِيُّ، وَفِيهِ قِصَّةٌ

On the authority of Abū Rāfi‘, who said that the Messenger of Allah (ﷺ) said: “The neighbour has the foremost right in a competition (or precedence).” *Al-Bukhārī, and the narration includes a story*

وَعَنْ أَنَسِ بْنِ مَالِكٍ -رَضِيَ اللَّهُ عَنْهُ- قَالَ: قَالَ رَسُولُ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ-: جَارُ الدَّارِ أَحَقُّ بِالدَّارِ. «رَوَاهُ النَّسَائِيُّ، وَصَحَّحَهُ ابْنُ حِبَّانَ، وَلَهُ عِلَّةٌ.

On the authority of Anas ibn Mālik, who said that the Messenger of Allah (ﷺ) said: “The neighbour of a house has the foremost right to it.” *An-Nasā’ī, and authenticated by Ibn Hibbān, and it has a defect*

وَعَنْ جَابِرٍ قَالَ: قَالَ رَسُولُ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ-: الْجَارُ أَحَقُّ بِشُفْعَةِ جَارِهِ، يُنْتَظَرُ بِهَا -وَإِنْ كَانَ غَائِبًا- إِذَا كَانَ طَرِيقُهُمَا وَاحِدًا. «رَوَاهُ أَحْمَدُ، وَالْأَزْهَرِيُّ، وَرِجَالُهُ ثِقَاتٌ

On the authority of Jābir, who said that the Messenger of Allah (ﷺ) said: “The neighbour has the foremost right to pre-emption over his neighbour. He should be waited for, even if absent, provided their paths are shared.” *Ahmad and the four compilers; the narrators are trustworthy.*



وَعَنِ ابْنِ عُمَرَ -رَضِيَ اللَّهُ عَنْهُمَا-، عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: الشُّفْعَةُ كَحَلِّ الْعِقَالِ. رَوَاهُ ابْنُ مَاجَهَ وَالْبَزَّازُ، وَزَادَ: «وَلَا شُفْعَةَ لِعَائِبٍ». «وَأِسْنَادُهُ ضَعِيفٌ»

On the authority of Ibn ‘Umar, from the Prophet (ﷺ) who said: “Pre-emption is like tightening the straps of a camel.” Ibn Mājah and al-Bazzār, who added: “And there is no pre-emption for the absent.” The chain of transmission is weak.

باب الْوَدِيعَةِ

Chapter: Deposits

تُسْتَحَبُّ لِمَنْ قَوِيَ عَلَى الْحِفْظِ، وَلَا يَضْمَنُهَا بِتَلْفٍ وَلَا تَعَدٍّ، وَلَوْ مِنْ بَيْنِ مَالِهِ

Keeping a deposit is recommended for anyone able to safeguard it, and the custodian is not held liable for its loss unless there is negligence or deliberate misuse—even if the item is taken from among his own property.

وَعَلَيْهِ حِفْظُهَا فِي حِرْزٍ مِثْلِهَا، وَإِنْ عَيَّنَهُ رَبُّهَا فَأَحْرَزَهَا بِدُونِهِ بِمَا لَمْ يَلْفِ دَابَّةً وَلَا قَوْلَ رَبِّهَا أَوْ قَالَ أَتْرَكَهَا فِي جَيْبِكَ فَتْرَكَهَا فِي يَدِهِ أَوْ كَمَّهُ ضَمِنَ لَا عَكْسَهُ

The custodian must preserve the deposit with care comparable to its own value. If the owner specifies how it is to be kept, the custodian is responsible even if he does not follow it without necessity. Likewise, if he fails to feed an animal entrusted to him, or is told to leave it in his pocket and he leaves it in his hand or sleeve, he is liable; the reverse does not apply.

وَلَهُ دَفْعُهَا لِمَنْ يَحْفَظُ مَالَهُ أَوْ مَالِ رَبِّهَا، لَا حَاكِمٍ أَوْ أَجْنَبِيٍّ وَقَرَّارِ ضَمَانٍ عَلَى وَدِيعٍ إِنْ جَهَلَ، وَإِنْ حَدَّثَ خَوْفٌ عَامٌّ رَدَّهَا عَلَى رَبِّهَا

The custodian may hand over the deposit only to someone who can safeguard it, whether it belongs to him or to its owner; not to a judge or a stranger. If the depositor is uncertain, the custodian remains responsible. In the case of a general danger, the deposit must be returned to its owner.

وَلَهُ السَّفَرُ بِهَا مَعَ حَضْرِهِ نَصًّا مَا لَمْ يَنْهَ، وَإِنْ خَافَ عَلَيْهَا أَوْدَعَهَا ثِقَةً

The custodian is permitted to transport the deposit with the owner present, as long as the owner does not forbid it. If he fears for its safety, he should place it in the care of someone trustworthy.



وإن ركبها مودع لغير نفعها، أو لبسها لا لخوف عثٍّ، أو أخرج نحو دراهم من حرزها، أو فكّ ختمها ونحوه عنها، أو خلطها بغير متميّز فضاعت ضَمَن

If the custodian uses the deposit for purposes other than its intended benefit, wears it without fear of loss, removes from its secure place items such as coins, breaks its seal, or mixes it with indistinguishable items so that it is lost, he is held fully liable.

ويُقبل قوله في ردّها لربها أو غيره بإذنه وتلفها ونفي تفريط

The custodian's statement regarding the return of the deposit—to its owner or another with the owner's permission—is accepted, as is his account of any loss, provided there was no negligence.

وإن قال لم تودعني ثم ثبتت لم تقبل دعواه ردّاً أو تلفاً سابقين لجحوده ولو بينة، لا إن قال: مالك عندي شيءٌ ونحوه، ولا تُقبل دعوى وارثه ردّاً بلا بينة، ولوديع ونحوه طلبٌ غاصِبٍ بها

If someone claims that a deposit was not entrusted to him, but it is established that it was, his denial is not accepted to avoid return or to dispute previous loss, even with evidence. Similarly, if he says, "Your property is with me," or something similar, the claim of an heir for its return is not accepted without proof. The same applies if a depositor's property is sought by a usurper.



باب الودیعة

Chapter: Deposits

عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: مَنْ أُوْدِعَ وَدِيعَةً، فَلَيْسَ عَلَيْهِ ضَمَانٌ - أَخْرَجَهُ ابْنُ مَاجَةَ، وَإِسْنَادُهُ ضَعِيفٌ.

‘Amr ibn Shu‘ayb, from his father, from his grandfather, reported that the Prophet (ﷺ) said: “Whoever is entrusted with a deposit is not liable for its loss.” *Ibn Mājah, its chain of transmission is weak.*

باب إحياء الموات

Chapter: Reviving Unclaimed Land

مَنْ أَحْيَا أَرْضًا لَا مَالِكَ لَهَا، وَلَمْ تَتَّعَلِقْ بِمَصَالِحِ الْعَامِرِ مَلَكَهَا مُسْلِمًا أَوْ كَافِرًا بِإِذْنِ إِمَامٍ أَوْ دُونِهِ مِنْ عَنَوَةٍ أَوْ غَيْرِهَا.

Whoever brings to life a piece of land that has no owner and is not linked to the interests of a cultivator, owns it—whether it be a Muslim or a non-Muslim—either with the permission of the ruler or even without it, whether by initiative or otherwise.

وَعَلَى ذِمِّي خَرَايَ مَا أَحْيَا مِنْ مَوَاتٍ عَنَوَةً

And a non-Muslim subject (*dhimmī*) is liable to pay the land tax (*kharāj*) on any wasteland he brings to life without permission.

وَمَنْ أَحَاطَ مَوَاتًا بِمَنْعٍ أَوْ حَفَرَ فِيهِ بئرًا وَصَلَ مَاءَهُ، أَوْ أَجْرَاهُ إِلَيْهِ مِنْ نَحْوِ عَيْنٍ أَوْ حَبَسَهُ عَنْهَا لِتَزْرَعَ فَقَدْ أَحْيَاهَا

Whoever encloses wasteland with a fence, or digs a well in it and channels water to it, or diverts water from it for cultivation, has thereby “brought it to life” (revived it).

وَحَرِيمُ الْبئرِ الْعَادِيَةِ خَمْسُونَ ذِرَاعًا مِنْ كُلِّ جَانِبٍ، وَالْبَدْيَةُ نَصْفُهَا، وَالشَّجَرَةُ قَدْرَ مَدِّ أَغْصَانِهَا، وَلِلْإِمَامِ إِقْطَاعُ مَوَاتٍ

لِمَنْ يَحْيِيهِ، وَجُلُوسٌ فِي طَرَفٍ وَاسِعَةٍ بَلَا ضَرَرَ فَيَكُونُ أَحَقَّ بِهَا

The protected area around an ordinary well extends fifty cubits on every side, and in the desert it is half that. For a tree, it is measured by the spread of its branches. The Imam has the authority to grant wastelands (*iqṭāʾ*) to those who bring them to life, and anyone who sits in wide public roads without causing harm has the greater right to them.

وَبَلَا إِقْطَاعٍ لِمَنْ سَبَقَ الْجُلُوسُ مَا دَامَ قُماشُهُ فِيهَا، وَلِمَنْ فِي أَعْلَى مَاءٍ مَبَاحٍ سَقْيٍ وَحَبَسَ مَاءٍ حَتَّى يَصِلَ إِلَى كَعْبِهِ ثُمَّ

يُرْسِلُهُ إِلَى مَنْ يَلِيهِ

And without formal grant (*iqṭāʾ*), the one who occupies the land first has the right, as long as his cultivation remains there. Likewise, whoever is at the upper reach of a lawful water source may irrigate and retain the water until it reaches his foot, then release it to the next person downstream.



ولإمام وحده حمى مرعى لدواب المسلمين بلا ضرر

And the Imam alone has the authority over the protected grazing land (*himā*) for the livestock of the Muslims, ensuring it is used without causing harm.

بَابُ إِحْيَاءِ الْمَوَاتِ

Chapter: Reviving Unclaimed Land

عَنْ عُرْوَةَ، عَنْ عَائِشَةَ -رَضِيَ اللَّهُ عَنْهَا-؛ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ عَمَّرَ أَرْضًا لَيْسَتْ لِأَحَدٍ، فَهُوَ أَحَقُّ بِهَا». قَالَ عُرْوَةُ: وَقَضَى بِهِ عُمَرُ فِي خِلَافَتِهِ. رَوَاهُ الْبُخَارِيُّ

Narrated 'Urwah, from 'Ā'ishah: The Prophet (ﷺ) said, "Whoever cultivates land that belongs to no one, he has the greater right to it." 'Urwah added that 'Umar ruled according to this during his caliphate. *Al-Bukhari*

وَعَنْ سَعِيدِ بْنِ زَيْدٍ - رَضِيَ اللَّهُ عَنْهُ - عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ». رَوَاهُ الثَّلاَثَةُ، وَحَسَنَهُ التِّرْمِذِيُّ.

وَقَالَ: زُوِيَ مُرْسَلًا. وَهُوَ كَمَا قَالَ، وَاحْتُلِفَ فِي صَحَابِيهِ، فَقِيلَ: جَابِرٌ، وَقِيلَ: عَائِشَةُ، وَقِيلَ: عَبْدُ اللَّهِ بْنُ عَمْرٍو، وَالرَّاجِحُ الْأَوَّلُ.

Narrated Sa'īd ibn Zayd that the Prophet (ﷺ) said: "Whoever revives a dead land, it belongs to him." The three compilers and was declared *hasan* by al-Tirmidhi. He said that it is *mursal* and it is as he said. There is disagreement as to who the Companions in it is: some say it was narrated on the authority of Jabir, others from 'Ā'ishah, and others from 'Abdullah ibn 'Amr; the first opinion is the strongest.

وَعَنِ ابْنِ عَبَّاسٍ؛ أَنَّ الصَّعْبَ بْنَ جَنَّامَةَ - رَضِيَ اللَّهُ عَنْهُ - أَخْبَرَهُ أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا حِمَى إِلَّا لِلَّهِ وَلِرَسُولِهِ». رَوَاهُ الْبُخَارِيُّ

Narrated Ibn 'Abbas that al-Sa'b ibn Jaththamah informed him that the Prophet (ﷺ) said: "There is no protected sanctuary except for Allah and His Messenger." *Al-Bukhari*

وَعَنِ ابْنِ عَبَّاسٍ -رَضِيَ اللَّهُ عَنْهُمَا- قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «لَا ضَرَرَ وَلَا ضِرَارَ». رَوَاهُ أَحْمَدُ، وَابْنُ مَاجَةَ. وَلَهُ مِنْ حَدِيثِ أَبِي سَعِيدٍ مِثْلُهُ، وَهُوَ فِي الْمُوطَأِ مُرْسَلٌ

Narrated Ibn 'Abbas that the Messenger of Allah (ﷺ) said: "There should be no harm and no reciprocating harm." Ahmad and Ibn Majah. A similar report is attributed to Abu Sa'īd and appears in the *Muwatta'* as a *mursal* narration.



وَعَنْ سَمُرَةَ بْنِ جُنْدُبٍ - رضي الله عنه - قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم: «مَنْ أَحَاطَ خَائِطًا عَلَى أَرْضٍ فَهِيَ لَهُ». «رَوَاهُ أَبُو دَاوُدَ، وَصَحَّحَهُ ابْنُ الْجَارُودِ

Narrated Samurah ibn Jundub: The Messenger of Allah (ﷺ) said: "Whoever encloses a piece of land with a wall, it becomes his." Abu Dawud, and authenticated by Ibn al-Jarud.

وَعَنْ عَبْدِ اللَّهِ بْنِ مُعَقَّلٍ - رضي الله عنه - أَنَّ النَّبِيَّ - صلى الله عليه وسلم - قَالَ: «مَنْ حَفَرَ بَيْتًا فَلَهُ أَرْبَعُونَ ذِرَاعًا عَطْنَا لِمَاشِيَّتِهِ». «رَوَاهُ ابْنُ مَاجَةَ بِإِسْنَادٍ ضَعِيفٍ

Narrated 'Abdullah ibn Mughaffal: The Prophet (ﷺ) said: "Whoever digs a well, forty cubits of surrounding land belong to him for the grazing of his livestock." Ibn Mājah, the chain of narration is weak.

وَعَنْ عَلْقَمَةَ بْنِ وَائِلٍ، عَنْ أَبِيهِ؛ - أَنَّ النَّبِيَّ - صلى الله عليه وسلم - أَقْطَعَهُ أَرْضًا بِحَضْرَمَوْتَ. رَوَاهُ أَبُو دَاوُدَ، وَالتِّرْمِذِيُّ، وَصَحَّحَهُ ابْنُ حِبَّانَ

Narrated 'Alqama ibn Wa'il, from his father: The Prophet (ﷺ) granted him a tract of land in Hadramawt. Abu Dawud and al-Tirmidhi, and authenticated by Ibn Hibban.

وَعَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا -، أَنَّ النَّبِيَّ - صلى الله عليه وسلم - أَقْطَعَ الزُّبَيْرَ حُضْرَ فَرَسِهِ، فَأَجْرَى الْقَرَسَ حَتَّى قَامَ، ثُمَّ رَمَى سَوْطَهُ. فَقَالَ: «أَعْطُوهُ حَيْثُ بَلَغَ السَّوْطُ». «رَوَاهُ أَبُو دَاوُدَ وَفِيهِ ضَعْفٌ

Narrated Ibn 'Umar: The Prophet (ﷺ) granted al-Zubayr a horse. He let the horse run until it stopped, then threw his whip, saying: "Give it to him where the whip lands." Abu Dawud, and its chain is considered weak.

وَعَنْ رَجُلٍ مِنَ الصَّحَابَةِ - رضي الله عنه - قَالَ: غَزَوْتُ مَعَ رَسُولِ اللَّهِ - صلى الله عليه وسلم - فَسَمِعْتُهُ يَقُولُ: «النَّاسُ شُرَكَاءُ فِي ثَلَاثٍ: فِي الْكَلَاءِ، وَالْمَاءِ، وَالنَّارِ». «رَوَاهُ أَحْمَدُ، وَأَبُو دَاوُدَ، وَرِجَالُهُ ثِقَاتٌ

Narrated a Companion: I participated in a battle alongside the Messenger of Allah (ﷺ) and heard him say: "People are partners in three things: pastures, water, and fire." Ahmad and Abu Dawud, and its narrators are reliable.

باب اللُّقْطَةِ

Chapter: Lost Property

الرَّغِيفِ وَالسَّوْطِ وَنَحْوِهِ مِمَّا لَا تَتَّبِعُهُ هِمَّةُ الْأَوْسَاطِ يُمْلِكُ بِلَا تَعْرِيفٍ.

Items like a loaf of bread, a whip, or similar small, ordinary objects—things that people do not usually take special care to track—can be owned immediately by the finder without the need for formal identification or declaration.



وما امتنع من صغيرٍ سباعٍ كإبلٍ وبقيرٍ يحرم التقاطه.

Small animals that are naturally considered part of larger livestock—like young camels or calves—cannot be claimed simply by finding them.

وما عدا ذلك من حيوانٍ وغيره يجوز التقاطه لمن أمن نفسه، وقوي على تعريفه، وإلا فكغاصب، وبملكه حكماً بتعريفه حولاً عادّةً، ولا يتصرف فيه قبل معرفة صفاته، ومتى جاء طالبها فوصفها لزم دفعها إليه، وإن تلفت في

الحول بلا تفريط لم يضمنها. والسفينة والصغير يُعرف لقطته وليه

Anything else—whether an animal or another lost item—may be claimed by the finder if they are confident in their ability to secure it and able to properly identify it. Otherwise, taking it would be considered wrongful seizure (ghasb). The finder acquires ownership legally by identifying it for a year according to customary practice, but they may not dispose of it before knowing its characteristics. When the original owner comes and describes it, the finder is obliged to return it. If it perishes within the year without negligence, the finder is not held liable. For minors or those lacking full understanding, their guardian or custodian is responsible for identifying the found item.

ومن ترك حيواناً بفلاةٍ لنقطاعه، أو عجز ربه عنه ملكه أخذه.

And whoever abandons an animal in an open land—either because it strayed or because its owner is unable to manage it—the person who takes possession of it becomes its lawful owner.

ومن أخذ نعله ونحوه ووجد موضعه غيره فلقطة يُعرفه ثم يأخذ حقه منه ويتصدق بباقي

And whoever loses a sandal or similar item, and another person finds its original place empty, it is considered a *luqṭah* (found item). The finder must identify it to its owner, then take what is rightfully theirs, and give the remainder in charity.



بَابُ اللَّقِيطِ

Chapter: Lost Children

إِذَا نُبِدَ أَوْ ضَلَّ طِفْلٌ لَا يُعْرَفُ نَسَبُهُ وَلَا رَقَّةٌ فَأَخَذَهُ فَرَضُ كِفَايَةِ

If a child is abandoned or lost, and neither their lineage nor delicate status is known, taking care of them becomes a collective obligation (*farḍ kifāyah*) upon the community.

وَهُوَ حَرٌّ مُسْلِمٌ وَمَا وُجِدَ مَعَهُ أَوْ تَحْتَهُ، أَوْ مَدْفُونًا طَرِيقًا، أَوْ مُتَّصِلًا بِهِ كَحَيَوَانٍ وَنَحْوِهِ أَوْ قَرِيبًا مِنْهُ فَلَهُ، وَيُنْفِقُ عَلَيْهِ

وَاجِدُهُ مِنْهُ بِلَا إِذْنِ حَاكِمٍ، وَإِلَّا مِنْ بَيْتِ الْمَالِ، فَإِنْ تَعَدَّرَ فَعَلَى مَنْ عَلِمَ بِهِ

If the child is a free Muslim, and nothing else is found with or under them, or they are buried alive, or connected to someone like an animal or something similar, or nearby someone, then that person has guardianship over the child. The one who finds the child is obliged to spend on them without seeking the ruler's permission; if that is not possible, the bayt al-māl provides, and if even that fails, then anyone aware of the child is responsible.

وَحَضَانَتُهُ لَهُ وَمِيرَاثُهُ لِبَيْتِ الْمَالِ، وَوَلِيِّهِ إِنْ قُتِلَ الْإِمَامُ، وَمَنْ أَقَرَّ أَنَّهُ وَلَدُهُ لَحِقَ بِهِ وَلَوْ امْرَأَةً ذَاتَ زَوْجٍ أَوْ كَافِرًا، وَلَا

يَلْحَقُهُ فِي دِينِهِ إِلَّا بَيِّنَةٌ

The custody of the child belongs to the finder, while the inheritance goes to the Bayt al-Māl. If the ruler is killed, the guardian assumes responsibility. If someone acknowledges the child as their own, the child legally attaches to them, even if the parent is a married woman or a non-Muslim. However, the child's religion is not attributed to that parent without clear evidence.

وَلَا يُقْبَلُ مِنْ لَقِيطٍ أَنَّهُ رَقِيقٌ أَوْ كَافِرٌ

It is not accepted to claim that a foundling (*laqīṭ*) is a slave or a non-Muslim.

وَإِنْ ادَّعَاهُ أَكْثَرُ مِنْ وَاحِدٍ قُدِّمَ مَنْ لَهُ بَيِّنَةٌ وَإِلَّا فَمَنْ أَلْحَقَتْهُ بِهِ الْفَاقَةُ

If more than one person claims him, priority is given to the one who has proof; if there is no proof, he is assigned to the one whom the attributor links him to.



باب اللُّقْطَةِ

Chapter: Lost Property

عَنْ أَنَسٍ - رضي الله عنه - قَالَ: مَرَّ النَّبِيُّ - صلى الله عليه وسلم - بِتَمْرَةٍ فِي الطَّرِيقِ، فَقَالَ: «لَوْلَا أَنِّي أَخَافُ أَنْ تَكُونَ مِنَ الصَّدَقَةِ لَأَكَلْتُهَا». مُتَّفَقٌ عَلَيْهِ

Anas ibn Malik reported: The Prophet (ﷺ) passed by a date lying on the road and said, "If I were not concerned that it might belong to charity, I would have eaten it." *Agreed upon*

وَعَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ - رضي الله عنه - قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ - صلى الله عليه وسلم - فَسَأَلَهُ عَنِ اللُّقْطَةِ؟ فَقَالَ: «اعْرِفْ عِفَاصَهَا وَوِكَاءَهَا، ثُمَّ عَرِّفْهَا سَنَةً، فَإِنْ جَاءَ صَاحِبُهَا وَإِلَّا فَشَأْنُكَ بِهَا». قَالَ: فَضَالَةُ الْغَنَمِ؟ قَالَ: «هِيَ لَكَ، أَوْ لِأَخِيكَ، أَوْ لِلذِّئْبِ». قَالَ: فَضَالَةُ الْإِبِلِ؟ قَالَ: «مَا لَكَ وَلَهَا؟ مَعَهَا سِقَاؤُهَا وَحِذَاؤُهَا، تَرُدُّ الْمَاءَ، وَتَأْكُلُ الشَّجَرَ، حَتَّى يَلْقَاهَا رَبُّهَا». مُتَّفَقٌ عَلَيْهِ

Zayd ibn Khalid al-Juhani reported: A man came to the Prophet (ﷺ) and asked about found property. He said, "Recognize its size and its container, then identify it for a year; if its owner comes, return it to him, otherwise it is yours to keep." The man asked, "What about stray sheep?" He said, "They are yours, or your brother's, or the wolf's." He asked, "And stray camels?" He said, "What is it to you? They come with their water and grazing; they drink and eat until they meet their owner." *Agreed upon*

وَعَنْهُ قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم -: «مَنْ آوَى ضَالَّةً فَهُوَ ضَالٌّ، مَا لَمْ يُعْرِفْهَا». «رَوَاهُ مُسْلِمٌ»

He – meaning Zayd – reported that the Messenger of Allah (ﷺ) said: **"Whoever takes in a stray animal or lost property is considered its possessor, unless he identifies it."** *Muslim*

وَعَنْ عِيَاضِ بْنِ حِمَارٍ - رضي الله عنه - قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم -: «مَنْ وَجَدَ لُقْطَةً فَلْيُشْهِدْ ذَوْيَ عَدْلٍ، وَلْيَحْفَظْ عِفَاصَهَا وَوِكَاءَهَا، ثُمَّ لَا يَكْتُمُ، وَلَا يُعَيِّبُ، فَإِنْ جَاءَ رَبُّهَا فَهُوَ أَحَقُّ بِهَا، وَإِلَّا فَهُوَ مَالُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ». «رَوَاهُ أَحْمَدُ، وَالْأَرْبَعَةُ إِلَّا التِّرْمِذِيُّ، وَصَحَّحَهُ ابْنُ حُرَيْمَةَ، وَابْنُ الْجَارُودِ، وَابْنُ جِبَّانٍ»

Iyad ibn Himar reported that the Messenger of Allah (ﷺ) said: **"Whoever finds a lost item must have two trustworthy witnesses, safeguard its distinguishing features and container, and neither conceal it nor misplace it. If its owner comes forward, he has the stronger right to it; otherwise, it becomes the property of Allah, and He gives it to whomever He wills."** *Ahmad and the four compilers except al-Tirmidhi, and authenticated by Ibn Khuzaymah, Ibn al-Jarud, and Ibn Hibban.*



وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ عُثْمَانَ التَّيْمِيِّ - رضي الله عنه، أَنَّ النَّبِيَّ - صلى الله عليه وسلم - نَهَى عَنْ لُقْطَةِ الْحَاجِّ. رَوَاهُ مُسْلِمٌ

Abd al-Rahman ibn Uthman al-Taymi reported that the Prophet ((ﷺ forbade taking the lost property of a pilgrim. *Muslim*

وَعَنْ الْمُقْدَامِ بْنِ مَعْدِي كَرِبَ - رضي الله عنه - قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم -: «أَلَا لَا يَحِلُّ ذُو نَابٍ مِنَ السَّبَاعِ، وَلَا الْحِمَارُ الْأَهْلِيُّ، وَلَا اللَّفْطَةُ مِنْ مَالٍ مُعَاهَدٍ، إِلَّا أَنْ يَسْتَغْنِيَ عَنْهَا». رَوَاهُ أَبُو دَاوُدَ

Al-Miqdām ibn Ma’dī Karib reported that the Prophet ((ﷺ said: “Be aware! It is not lawful to take a wild beast with fangs, nor a domesticated donkey, nor lost property belonging to the wealth of a treaty-holder, unless one becomes independent of need for it.” *Abu Dawud*

كتاب الوقف

Book of Endowments

يَصِحُّ: بِفَعْلٍ دَالٍ عَلَيْهِ؛ كَجَعَلَ أَرْضَهُ مَسْجِدًا وَيَأْذَنُ لِلنَّاسِ فِي الصَّلَاةِ فِيهِ، أَوْ مَقْبَرَةً وَيَأْذَنُ فِي الدَّفْنِ فِيهَا .
وَقَوْلٍ؛ وَصَرِيحُهُ: وَقَفْتُ وَحَبَسْتُ وَسَبَّلْتُ

A valid endowment may be made by an act that clearly indicates it, such as designating one’s land to be a mosque and giving people permission to pray in it, or making it a graveyard and allowing burials there. And it may be made by a verbal declaration. Its explicit expressions include: “I have endowed (waqafu),” “I have set aside (ḥabastu),” and “I have made it a public benefit (sabbaltu).”

وَكُنَايَتُهُ: تَصَدَّقْتُ وَحَرَمْتُ وَأَبَدْتُ، يَنْعَقِدُ بِهَا مَعَ نِيَّةٍ، أَوْ قَرَنَهَا بِأَحَدِ الْأَلْفَاظِ الْخَمْسَةِ، أَوْ حُكْمِ الْوَقْفِ

Its implicit expressions include: “I have given it in charity (taṣaddaqtu),” “I have forbidden its sale or transfer (ḥarramt),” and “I have made it perpetual (abbadt).” A waqf is valid with such expressions when accompanied by an intention, or if the speaker links them to one of the five explicit terms, or to a ruling that clearly indicates endowment.



وُشْتَرِطُ مُصَادَفَتُهُ عَيْنًا يُتَتَفَعُّ بِهَا مَعَ بَقَائِهَا؛ كَعَقَارٍ وَحَيَوَانٍ وَكُتُبٍ وَنَحْوِهَا، وَأَنْ يَكُونَ عَلَى بَرٍّ؛ كَمَسَاجِدَ وَقَنَاطِرَ وَفُقَرَاءَ وَنَحْوِهِمْ، لَا كَنِيسَةً وَنَسْخَ تَوْرَةٍ وَنَحْوِهَا، وَيَصِحُّ عَلَى ذِمِّي مُعَيَّنٍ، وَكَذَا الْوَصِيَّةُ، لَا عَلَى مَلَكٍ أَوْ بَهِيمَةٍ أَوْ حَمَلٍ وَيَدْخُلُ تَبَعًا، وَلَا يُشْتَرِطُ قَبُولُهُ، وَلَا إِخْرَاجُهُ عَنْ يَدِهِ

It is a condition that the endowment apply to a tangible property from which benefit may be taken while it remains intact—such as real estate, animals, books, and the like. It must also be directed towards a recognised form of good, such as mosques, bridges, the poor, and similar causes—not towards a church, or the copying of the Torah, and the like.

A waqf may validly be made for a specific non-Muslim under covenant (dhimmī), and likewise an endowment through a bequest. But it may not be made for an angel, an animal, or a foetus—though these may benefit only incidentally. The beneficiary's acceptance is not required, nor is it a condition that the property be physically removed from the founder's possession.

وَالْوَقْفُ عَلَى نَفْسِهِ يُصَرَّفُ فِي الْحَالِ لِمَنْ بَعْدِهِ

An endowment made for one's own benefit is instead to be directed immediately to those who come after him.

فصل

Section

يُرْجَعُ لِشَرْطِ وَاقِفٍ فِي قَسْمِهِ وَتَقْدِيمِ وَنَظَرِ وَمُدَّةِ إِجَارَةٍ وَغَيْرِهَا، فَإِنْ أَطْلَقَ سُؤْيَ بَيْنَ الْمُوقُوفِ عَلَيْهِمْ، وَالنَّظَرَ لِمَوْقُوفٍ عَلَيْهِ كُلُّ عَلَى حِصَّتِهِ

One must refer back to the conditions set by the donor regarding how the endowment is to be distributed, who is to be given precedence, who is to administer it, the term of any lease, and other such matters. If he leaves it unrestricted, then those for whom the endowment is made are to be treated equally. The supervision of the endowment belongs to the beneficiaries, each in proportion to his allotted share.

وَمَنْ وَقَفَ عَلَى وَلَدِهِ ثُمَّ الْمَسَاكِينَ شَمَلَ أَوْلَادَهُ الذَّكَورَ وَالْإِنَاثَ بِالسَّوِيَّةِ، ثُمَّ أَوْلَادَ بَنِيهِ وَإِنْ نَزَلُوا طَبَقَةً بَعْدَ طَبَقَةٍ، دُونَ أَوْلَادِ بَنَاتِهِ، وَكَذَا لَوْ وَقَفَ عَلَى ذُرِّيَّتِهِ أَوْ نَسْلِهِ وَعَقْبِهِ فَلَا يَدْخُلُ وَلَدُ بَنَاتٍ إِلَّا بِنَصٍّ أَوْ قَرِينَةٍ

If someone endows property for his children, and then includes the poor, it is distributed equally among his male and female children. Then it passes to the children of his sons, even if they belong to successive generations, but excludes the children of his daughters. Similarly, if the endowment is made for his descendants or lineage, the children of daughters are only included if there is a clear text or strong indication allowing them.



وعلى بنيه أو بني فلان فلذكورهم، إلا أن يكونوا قبيلةً، وعلى قرابته، أو أهل بيته، أو قومه فلذكر وأنثى من أولاده وأولاد أبيه وجدّه وجدّ أبيه

If the endowment is for his sons or the sons of a specific person, it goes to their male children, unless they form a tribe. If it is for his relatives, household, or people, then it includes both male and female children of his sons, and also the children of his father, grandfather, or paternal great-grandfather.

وإن وقف على من يمكن حصرهم وجب تعميمهم والتسوية بينهم، وإلا جاز التفضيل والإقتصار على واحد

If the endowment is made for those who can be clearly enumerated, it is obligatory to include them all and treat them equally. Otherwise, it is permissible to give preference or limit it to one person.

والوقف عقد لازم لا يفسخ ولا يباع إلا أن تتعطل منافعه المقصودة بخراب ونحوه ولو مسجداً ويصرف ثمنه في مثله، وما فضل من آتية ونحوه حصره جاز صرفه لمسجد آخر والصدقة به

A waqf (endowment) is a binding contract that cannot be revoked or sold, except if its intended benefits are hindered due to ruin or similar circumstances, even if it is a mosque. In such a case, its value may be applied to another property of the same kind. Likewise, any surplus from its equipment or restricted assets may be used for another mosque or for charitable purposes.

بَابُ الْوَقْفِ

Chapter: Endowments

عَنْ أَبِي هُرَيْرَةَ - رضي الله عنه - أَنَّ رَسُولَ اللَّهِ - صلى الله عليه وسلم - قَالَ: «إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثٍ: صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ». «رَوَاهُ مُسْلِمٌ

Abu Huraira reported that the Messenger of Allah (ﷺ) said: "When a person dies, their deeds come to an end except in three cases: a continuing charity, knowledge from which people benefit, or a righteous child who prays for them." *Muslim*



وَعَنِ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: أَصَابَ عُمَرُ أَرْضًا بِحَيَّيْرَ، فَأَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَسْتَأْمِرُهُ فِيهَا، فَقَالَ: يَا رَسُولَ اللَّهِ! إِنِّي أَصَبْتُ أَرْضًا بِحَيَّيْرَ لَمْ أَصِبْ مَالًا قَطُّ هُوَ أَنْفَسُ عِنْدِي مِنْهُ قَالَ: «إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا، وَتَصَدَّقْتَ بِهَا». «قَالَ: فَتَصَدَّقَ بِهَا عُمَرُ» غَيْرَ [أَنَّهُ لَا يُبَاعُ أَصْلُهَا، وَلَا يُورَثُ، وَلَا يُوهَبُ، فَتَصَدَّقَ بِهَا فِي الْفُقَرَاءِ، وَفِي الْفُرَى، وَفِي الرِّقَابِ، وَفِي سَبِيلِ اللَّهِ، وَابْنِ السَّبِيلِ، وَالضَّيْفِ، لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ، وَيُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ مَالًا. مُتَّفَقٌ عَلَيْهِ، وَاللَّفْظُ لِمُسْلِمٍ.

وَفِي رِوَايَةِ لِلْبُخَارِيِّ: تَصَدَّقَ بِأَصْلِهِ، لَا يُبَاعُ وَلَا يُوهَبُ، وَلَكِنْ يُنْفَقُ ثَمَرُهُ

Ibn 'Umar reported: Umar came into possession of land in Khaybar and went to the Prophet (ﷺ) to seek his advice about it. He said, "O Messenger of Allah, I have acquired land in Khaybar. I have never obtained wealth more precious to me than this." The Prophet (ﷺ) said, "If you wish, you may keep its original land intact and give it in charity." So Umar gave it in charity, with the condition that the land itself may neither be sold, inherited, nor gifted. He distributed its produce among the poor, his relatives, freeing slaves, in the way of Allah, to travellers, and to guests. There is no blame on the custodian of this land if they consume from it in a rightful manner or feed a friend who is not wealthy with it. *Agreed upon, and the wording is from Muslim.*

In another narration from al-Bukhari: Umar gave the land itself in charity; it may not be sold or gifted, but its produce may be spent.

وَعَنْ أَبِي هُرَيْرَةَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: بَعَثَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - عُمَرَ عَلَى الصَّدَقَةِ ... الْحَدِيثَ، وَفِيهِ: وَأَمَّا خَالِدٌ فَقَدْ احْتَبَسَ أَذْرَاعَهُ وَأَعْتَادَهُ فِي سَبِيلِ اللَّهِ. مُتَّفَقٌ عَلَيْهِ .

Abu Huraira reported: The Messenger of Allah (ﷺ) appointed Umar to distribute charity. In the narration, it is mentioned: "As for Khalid, he retained his own measure and maintained it for the cause of Allah." *Agreed upon*



باب الهبة

Chapter: Gifts

لا تصح في مجهول غير ما تعذر علمه

It is not valid for something unknown, except in cases where knowing it is impossible.

وتعقد بإيجاب وقبول، وبمعاطاة، وتلزم قبض بإذن واهب، ويقوم وارث واهب مقامه

A gift becomes valid through an offer and acceptance, or by handing over. It is binding once possession is taken with the donor's consent, and the heir of the donor assumes the donor's position in this regard.

وتصح البراءة من الدين بكل لفظ دل عليها ولو مجهولاً، أو لم يقبل مدين. وما صح بيعه صحَّت هبته.

A discharge from a debt is valid by any statement that indicates it, even if the debtor is unknown, or if the debtor does not accept it. And whatever cannot be sold may nevertheless be validly given as a gift.

ويجب التعديل في عطية بين ورثته بقدر إرثهم، فإن فضل سوى رجوع أو زيادة، فإن مات قبله ثبتت لأخذ، ولا

رجوع لواهب في هبة لازمة غير أب وزوجة وهبته يسأله ثم ضرهما بطلاق ونحوه

It is obligatory to adjust a gift among the heirs according to their respective shares of the inheritance. If one heir receives more, it must be equalized either by return or by giving additional share. If the donor dies before the adjustment, what has been taken remains valid for the recipient. There is no return to the donor in a binding gift, except in the case of a father or spouse, and only if the gift was given upon their request and then harmed by divorce or a similar circumstance.

ولأب تملك من مال ولده ما لا يحتاجه، ولا يصح تصرفه في ماله ببيع، أو عتق أو إبراء غريم، ونحوه، ويملكه بقبضه

مع قول أو نية، وليس لولد مطالبه أبيه بدين ونحوه، بل بعين ماله أو نفقة واجبة.

A father has ownership over the property of his child to the extent that he does not need it for the child's support. He may not dispose of it through sale, manumission, settling a debt, or similar actions. He acquires ownership by taking possession of it, accompanied by a statement or intention. The child, however, does not have the right to demand repayment from the father in money or similar forms; rather, the claim is limited to the specific property or any obligatory maintenance due.



فصل

Section

يلزمُ تصرفُ مريضٍ غيرِ مريضٍ موتٍ مخوفٍ كصحيح، ولو مات منه

The actions of a person who is ill—but not facing an imminent death—are binding, just as if they were healthy, even if the person later dies.

وإن كان مخوفاً كبيراً وذات جنبٍ، ودوام قيام أو زعاف، وأول فالج وآخر سُليٍّ وحُمى مُطبِّقة، وما قال عدلان من أهل الطب أنه مخوف، ومن وقع الطاعون ببلده، ومن أخذها الطلق حتى تنجو: فعطيته كوصيته، إن مات منه، وإلا فكصحيح.

If the illness is considered serious—such as smallpox, gonorrhoea, persistent bleeding, or severe fever—or any condition that medical experts do not classify as life-threatening, or if the plague occurs in one’s land, or someone contracts a contagious disease until recovery, then the person’s actions are treated as a bequest if they die from it; otherwise, they remain fully valid as if the person were healthy.

ويعتبر ثلثه عند موته، ويبدأ في عطائاه بالأول فالأول

A third of his estate is regarded as his to dispose of at the time of his death, and in distributing his gifts, the principle of “first come, first served” applies.

ولا رجوع فيها بعد لزومها، ويُعتبر قبولها عندها، ويثبت الملك فيها إذن بخلاف وصية في الكل

There is no revocation once the gift has become binding, and acceptance is considered effective at that moment. Ownership is established immediately, unlike a bequest which concerns the entirety of the estate.



باب الهبة

Chapter: Gifts

عَنِ النُّعْمَانِ بْنِ بَشِيرٍ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّ أَبَاهُ أَتَى بِهِ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنِّي نَحَلْتُ ابْنِي هَذَا غُلَامًا كَانَ لِي، فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «أَكُلْ وَلَدِكَ نَحْلَتَهُ مِثْلَ هَذَا؟». «فَقَالَ: لَا. فَقَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: فَارْجِعْهُ».

وَفِي لَفْظٍ: فَأَنْطَلَقَ أَبِي إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - لِيُشْهَدَهُ عَلَى صَدَقَتِي. فَقَالَ: «أَفَعَلْتَ هَذَا بِوَلَدِكَ كُلِّهِمْ؟». «قَالَ: لَا. قَالَ: اتَّقُوا اللَّهَ، وَاعْدِلُوا بَيْنَ أَوْلَادِكُمْ». «فَرَجَعَ أَبِي، فَرَدَّ تِلْكَ الصَّدَقَةَ. مُتَّفَقٌ عَلَيْهِ».

وَفِي رِوَايَةٍ لِمُسْلِمٍ قَالَ: «فَأَشْهَدُ عَلَى هَذَا غَيْرِي» ثُمَّ قَالَ: «أَيَسُرُّكَ أَنْ يَكُونُوا لَكَ فِي الْبَرِّ سَوَاءٌ؟» قَالَ: بَلَى. قَالَ: «فَلَا إِذَا»

Nu'man ibn Bashir reported that his father brought him to the Prophet (ﷺ) and said: "I have granted my son this boy as a gift." The Prophet (ﷺ) asked, "Have you given all your children gifts like this?" He replied, "No." The Prophet (ﷺ) then said, "Return him."

In another narration, his father went to the Prophet (ﷺ) to have him witness the gift. The Prophet (ﷺ) asked, "Have you done this for all your children?" He replied, "No." The Prophet (ﷺ) said: "Fear Allah and be just between your children." So his father returned and revoked that gift." *Agreed Upon*

In another narration of Muslim's, the Prophet (ﷺ) also said: "Have someone else witness this on my behalf," then asked, "Would you like them to be equal in piety and dutifulness toward you?" He replied, "Yes." The Prophet (ﷺ) then said, "Then you must not favor one over the others."

وَعَنِ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: قَالَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْعَائِدُ فِي هَبْتِهِ كَالْكَلْبِ يَقِيءُ، ثُمَّ يَعُودُ فِي قَيْئِهِ». «مُتَّفَقٌ عَلَيْهِ».

وَفِي رِوَايَةٍ لِلْبُخَارِيِّ: «لَيْسَ لَنَا مِثْلُ السَّوْءِ، الَّذِي يَعُودُ فِي هَبْتِهِ كَالْكَلْبِ يَرْجِعُ فِي قَيْئِهِ».

Ibn 'Abbas reported that the Prophet (ﷺ) said: "One who takes back what he has gifted is like a dog that vomits and then eats it again." *Agreed upon*

In another wording of Bukhari: "There is no example worse than the one who retracts his gift, like a dog that returns to what it has vomited."



وَعَنِ ابْنِ عُمَرَ، وَابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمْ -، عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَحِلُّ لِرَجُلٍ مُسْلِمٍ أَنْ يُعْطِيَ الْعَطِيَّةَ، ثُمَّ يَرْجِعَ فِيهَا؛ إِلَّا الْوَالِدُ فِيمَا يُعْطِي وَلَدَهُ». «رَوَاهُ أَحْمَدُ، وَالْأَزْهَرِيُّ، وَصَحَّحَهُ التِّرْمِذِيُّ، وَابْنُ حِبَّانَ، وَالْحَاكِمُ»

Ibn 'Umar and Ibn 'Abbas reported that the Prophet (ﷺ) said: "It is not lawful for a Muslim to give a gift and then take it back, except that a parent may do so with what he gives to his child." *Ahmad and the four, and it was authenticated by Al-Tirmidhi, Ibn Hibban, and Al-Hakim.*

وَعَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - قَالَتْ: كَانَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقْبَلُ الْهَدِيَّةَ، وَيُثِيبُ عَلَيْهَا. رَوَاهُ الْبُخَارِيُّ.

'A'isha reported that the Prophet (ﷺ) used to accept gifts and would reward the giver for them. *Al-Bukhari.*

وَعَنِ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: وَهَبَ رَجُلٌ لِرَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَاقَةً، فَأَثَابَهُ عَلَيْهَا، فَقَالَ: «رَضِيتُ؟» قَالَ: لَا. فَرَّادَهُ، فَقَالَ: «رَضِيتُ؟» قَالَ: لَا. فَرَّادَهُ. قَالَ: «رَضِيتُ؟» قَالَ: نَعَمْ. رَوَاهُ أَحْمَدُ، وَصَحَّحَهُ ابْنُ حِبَّانَ.

Ibn 'Abbas reported that a man gifted a she-camel to the Messenger of Allah (ﷺ). The Prophet (ﷺ) rewarded him for it and then asked, "Are you pleased?" The man said, "No." So the Prophet (ﷺ) increased the reward and asked again, "Are you pleased?" The man again said, "No." The Prophet (ﷺ) increased it once more and asked, "Are you pleased?" The man replied, "Yes." *Ahmad and authenticated by Ibn Hibban.*

وَعَنْ جَابِرٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْعُمْرَى لِمَنْ وَهَبَتْ لَهُ». «مُتَّفَقٌ عَلَيْهِ

وَلِمُسْلِمٍ»: أَمْسِكُوا عَلَيْكُمْ أَمْوَالَكُمْ وَلَا تُفْسِدُوهَا، فَإِنَّهُ مَنْ أَعْمَرَ عُمْرَى فَهِيَ لِلَّذِي أَعْمَرَهَا حَيًّا وَمَيِّتًا، وَلِعَقِبِهِ.»

وَفِي لَفْظٍ: «إِنَّمَا الْعُمْرَى الَّتِي أَجَازَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَنْ يَقُولَ: هِيَ لَكَ وَلِعَقِبِكَ، فَأَمَّا إِذَا قَالَ: هِيَ لَكَ مَا عِشْتَ، فَإِنَّهَا تَرْجِعُ إِلَى صَاحِبِهَا.»

وَلَا يُبِي دَاوُدَ وَالنَّسَائِيُّ: «لَا تُرْقِبُوا، وَلَا تُعْمِرُوا، فَمَنْ أَرْقَبَ شَيْئًا أَوْ أَعْمَرَ شَيْئًا فَهُوَ لَوَرَثَتِهِ»

Jabir reported that the Messenger of Allah (ﷺ) said: "Al-'Umra belongs to the one to whom it is gifted." *Agreed upon*

In Muslim, it was said: "Hold fast to your wealth and do not corrupt it, for whoever is granted an 'Umra, it belongs to the one for whom it was granted, alive or dead, and to their descendants." In another wording: "Only the 'Umra that the Messenger of Allah (peace be upon him) permitted to be given with the words 'It is yours and for your descendants' belongs as such. But if he said, 'It is yours for as long as you live,' then it returns to its owner."

Abu Dawud and an-Nasa'i reported: "Do not make it contingent or grant it for life; whoever is granted or made contingent something, it belongs to his heirs."



وَعَنْ عُمَرَ - رضي الله عنه - قَالَ: حَمَلْتُ عَلَى فَرَسٍ فِي سَبِيلِ اللَّهِ، فَأَضَاعَهُ صَاحِبُهُ، فَظَنَنْتُ أَنَّهُ بَائِعُهُ بِرُخْصٍ، فَسَأَلْتُ رَسُولَ اللَّهِ - صلى الله عليه وسلم - عَنْ ذَلِكَ. فَقَالَ: «لَا تَبْتَغِهِ، وَإِنْ أَعْطَاكَهُ بِدِرْهَمٍ...» الْحَدِيثُ. مُتَّفَقٌ عَلَيْهِ

'Umar reported: "I mounted a horse in the way of Allah, and its owner lost it. I thought he might have sold it permissibly, so I asked the Messenger of Allah (ﷺ) about it. He said: 'Do not buy it, and if he gives it to you for a dirham...' " *Agreed upon*

وَعَنْ أَبِي هُرَيْرَةَ - رضي الله عنه - عَنِ النَّبِيِّ - صلى الله عليه وسلم - قَالَ: «تَهَادُّوا تَحَابُّوا». رَوَاهُ الْبُخَارِيُّ فِي «الْأَدَبِ الْمُفْرَدِ» وَأَبُو يَعْلَى بِإِسْنَادٍ حَسَنٍ

Abu Hurairah reported that the Prophet (ﷺ) said: "Exchange gifts, and you will love one another." *Al-Bukhari in Al-Adab al-Mufrad and by Abu Ya'la with a reliable chain.*

وَعَنْ أَنَسٍ - رضي الله عنه - قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم - «تَهَادُّوا، فَإِنَّ أَلْهَدِيَّةَ تَسْلُ السَّخِيمَةَ». رَوَاهُ الْبَزَّازُ بِإِسْنَادٍ ضَعِيفٍ

Anas reported that the Prophet (ﷺ) said: "Exchange gifts, for gifts remove ill-feelings." *Al-Bazzar, with a weak chain*

وَعَنْ أَبِي هُرَيْرَةَ - رضي الله عنه - قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم - «يَا نِسَاءَ الْمُسْلِمَاتِ! لَا تَحْقِرَنَّ جَارَةً لْجَارَتِهَا وَلَوْ فَرَسَنَ شَاةٍ». مُتَّفَقٌ عَلَيْهِ.

Abu Hurairah reported that the Messenger of Allah (ﷺ) said: "O Muslim women! Let no neighbor underestimate another neighbor, even if it is just an ewe's foot." *Agreed upon*

وَعَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - عَنِ النَّبِيِّ - صلى الله عليه وسلم - قَالَ: «مَنْ وَهَبَ هَبَةً، فَهُوَ أَحَقُّ بِهَا، مَا لَمْ يُنَبَّ عَلَيْهَا». رَوَاهُ الْحَاكِمُ وَصَحَّحَهُ، وَالْمَحْفُوظُ مِنْ رِوَايَةِ ابْنِ عُمَرَ، عَنْ عُمَرَ قَوْلُهُ.

Ibn 'Umar reported that the Prophet (ﷺ) said: "Whoever gives a gift, he has the greatest right over it, as long as it has not been established (taken) by the recipient." *Al-Hakim, who authenticated it, and it is preserved in the narration of Ibn 'Umar from 'Umar's own words.*



كتاب الوصية

Book of Wills

تُسَنُّ لمن ترك ما لا كثيراً بِحُمُسِهِ، ولا تجوز لوارث بشيءٍ، ولا لأجنبيٍّ بزائدٍ عن ثُلثٍ إلا مع إجازة بعد الموت فتتفد .
وتُكره وصية فقيرٍ وارثه محتاج، وتجوز بالكلِّ ممن لا وارث له. فإن لم يَفِ الثلث بوصاياهُ تَخَاصُّوا

It is recommended for someone who leaves behind abundant wealth to bequeath one-fifth of it. A will is not valid for an heir regarding any part of their inheritance, nor for a non-heir beyond one-third, except with permission that takes effect after death. It is disliked for a poor person whose heir is needy to make a will, but a will is permissible for anyone who has no heirs. If the total of their wills does not reach one-third, the heirs may agree among themselves to distribute it proportionately.

وإن وصَّى لوارثٍ فصَارَ عند الموت غير وارثٍ نفذت، وعكسُهُ بعكسِهِ

If someone bequeaths to an heir who, at the time of death, is no longer an heir, the will is executed. Conversely, if the bequest is to a non-heir who later becomes an heir, it does not take effect.

ومحل قبولها بعد موتٍ ويثبت الملك به، ولا يصح الرَّد بعده ويصح الرجوع في الوصية ويبدأ بواجب من دين ونذرٍ وكفارة، وحج وإن لم يوص به، ثم الثلث من الباقي

The bequest takes effect after death, and ownership is established through it; it cannot be revoked thereafter. However, it is permissible to retract a will before death. The execution of bequests begins with obligations such as debts, vows, and expiations, followed by the pilgrimage if not already performed, and then the remaining third of the estate.



فصل

Section

تصح لمن يصح تملكه، ولعبد برقبته ويعتق بقبوله، وبمَشَاع كثلته ويعتق منه بقدره، فإن فضل شيء أخذ لا بمائة أو ثوب ونحوه

A bequest is valid for anyone who is legally able to own property, and it extends to a slave through the will of their master, becoming effective when accepted. In joint ownership, such as a one-third share, it applies proportionally, and the testator may take any remaining portion that exceeds their share, even if it is a hundred units, a garment, or similar.

وتصح بحمل وله إن تحقق وجوده قبلها، ولا تصح للملك، ولا بهيمة وميت، فإن وصى لحي وميت فللحي النصف وإن وصى بماله لابنيه وأجنبي فردا وصيته، فله التسع، وإن وصى بألف في حج نفل صرف من ثلثه في حجة بعد أخرى حتى ينفد

A bequest is valid for a child if the child exists at the time of making it, but it is not valid for an animal, a slave, or a deceased person. If a bequest is made for both a living and a deceased person, the living one receives half. If one bequeaths property to one's children and to an unrelated person, the unrelated person receives their share, leaving the remainder to the children. If a sum, such as a thousand, is bequeathed for a supererogatory pilgrimage, it is to be taken from the one-third portion and may be applied over successive pilgrimages until it is exhausted.



فصل

Section

تصح بما يُعجز عن تسليمه كآبقٍ وطيرٍ في هواءٍ، وبمعدوم كما تحمل أمته أو شجره أبداً، أو مدة معينة، فإن لم يحصل شيء بطلت

A bequest is valid even for something that cannot be physically delivered, such as a camel on the move or a bird in flight, and for something that does not yet exist, like a future crop or tree, whether intended permanently or for a fixed period. If the item never comes into existence, the bequest becomes void.

وبكلب صيدٍ ونحوه وزيت متنجس، وله ثلثهما ولو كثر المال إن لم يجز

A bequest may also be made in the form of a hunting dog or similar, and even in impure oil. The bequest is limited to one-third of such possessions, even if the total wealth is greater; it cannot exceed this limit

وبمجهول كعبد وشاة، ويعطي ما يقع عليه الاسم اللغوي وإذا وصى بثلثه فحدث له مالٌ ولو ديته دحل في الوصية، وإن وصى بمعينٍ فتلغ بطلت

A bequest may also be made regarding something unknown, such as a slave or a sheep. What is given is that which is identified by its common name. If one bequeaths a third of their wealth and then acquires more wealth, even in the form of blood-money, it falls under the bequest. But if the bequest was made specifying a particular item and it perishes, the bequest is nullified.

فصل

Section

من وصّى له بنصيب وارثٍ مُعينٍ أو بمثله ، فله مثل نصيبه مضموماً إلى المسألة

If a bequest is made to someone specifying a particular heir's share or its equivalent, then the beneficiary receives the same share, which is included in the calculation of the estate.

وإن وصّى بمثل بنصيب أحدٍ ورثته ولم يعينه فمثل ما لأقلمهم، وبسهمٍ من ماله فسُدس بمنزلة سُدس مفروضٍ، وبشيءٍ أو جزءٍ أو حظٍ أو نصيبٍ فله ما شاء وارثٌ

If a bequest is made "in the manner of" one of the heirs but without specifying which one, it is treated like the share of the smallest among them. If it is made as a portion of the testator's property, such as a sixth, it is treated like a sixth of the prescribed share. If it is made as a particular item, a part, or a share, the beneficiary receives whatever portion the heir would be entitled to.



فصل

Section

تصح الوصية إلى مسلم مكلف عدل رشيد ولو عبداً ويقبل بإذن سيده

A will is valid if made to a responsible, mature, and trustworthy Muslim, and it is also valid to a slave, provided the slave acts with the permission of their master.

إن وصي لزيد بعد وصيته لغيره - ولم يعزل الأول - اشتركا، ولا ينفرد غير مفرد إلا بجعله له.

If someone makes a bequest to Zayd after having bequeathed to another, and does not revoke the first, both bequests stand together. No one can take exclusively unless the testator explicitly grants it to them alone.

ولا تصح إلا في تصرف معلوم يملكه موص كقضاء دين وتفرقة ثلث ونظر على محجور أولاده.

A bequest is only valid if it concerns a specific, lawful disposition that the testator actually owns or has authority over—such as settling a debt, distributing a third of the estate, or making decisions concerning the property of a minor child under guardianship.

ومن وصي في شيء لم يصر وصياً في غيره، وإن ظهر دين مستغرق بعد تفرقة وصي لم يضمن. وضع ثلثي حيث

شئت: لا يحل له ولا لولده

Whoever is bequeathed something does not automatically become the executor (or guardian) over anything else. And if a debt emerges after the distribution of a bequest that consumes part of the estate, the legatee is not held liable for it. He may allocate two-thirds of his share as he wishes, but neither he nor his children may dispose of it unlawfully.

ومن مات حيث لا حاكم ولا وصي حاز بعض من حضره تركته، وعمل فيها الأصلح من بيع وغيره

Whoever dies in a place where there is neither a ruler nor an executor, what remains of what he possessed at his death becomes part of the estate, and the most appropriate action is taken with it—such as selling it or otherwise managing it wisely.



بَابُ الْوَصَايَا

Chapter: Wills

عَنْ ابْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُرِيدُ أَنْ يُوصِيَ فِيهِ يَبِيتَ لَيْلَتَيْنِ إِلَّا وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ. «مُتَّفَقٌ عَلَيْهِ» .

Ibn 'Umar reported that the Messenger of Allah (ﷺ) said: "It is not permissible for a Muslim who wishes to make a will concerning anything to spend two nights without his will being written down." *Agreed upon*

وَعَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: قُلْتُ: يَا رَسُولَ اللَّهِ! أَنَا ذُو مَالٍ، وَلَا يَرِثُنِي إِلَّا ابْنَتُهُ لِي وَاحِدَةٌ، أَفَأَتَصَدَّقُ بِثُلُثِي مَالِي؟ قَالَ: «لَا»، قُلْتُ: أَفَأَتَصَدَّقُ بِشَطْرِهِ؟ قَالَ: «لَا»، قُلْتُ: أَفَأَتَصَدَّقُ بِثُلَاثِهِ؟ قَالَ: «الْثُلُثُ، وَالْثُلُثُ كَثِيرٌ، إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ. «مُتَّفَقٌ عَلَيْهِ» .

Sa'd ibn Abi Waqqas reported: He said, "O Messenger of Allah, I have wealth, and only one daughter will inherit me. Should I give away two-thirds of my wealth in charity?" The Prophet (ﷺ) said: "No." Sa'd asked: "Should I give half of it?" He said: "No." Sa'd asked: "Should I give a third of it?" He said: "A third; and a third is much. Verily, it is better that you leave your heirs wealthy than to leave them needy and dependent on others." *Agreed upon*

وَعَنْ عَائِشَةَ - رَضِيَ اللَّهُ عَنْهَا - أَنَّ رَجُلًا أَتَى النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: يَا رَسُولَ اللَّهِ! إِنَّ أُمِّي أُفْتِلَتْ نَفْسُهَا وَلَمْ تُوصِ، وَأُظْنُّهَا لَوْ تَكَلَّمَتْ تَصَدَّقَتْ، أَفَلَهَا أَجْرٌ إِنْ تَصَدَّقْتُ عَنْهَا؟ قَالَ: «نَعَمْ. «مُتَّفَقٌ عَلَيْهِ، وَاللَّفْظُ لِمُسْلِمٍ» .

'A'isha reported: A man came to the Prophet (ﷺ) and said: "O Messenger of Allah, my mother passed away without leaving a will, and I think that if she had spoken, she would have given in charity. Will she have reward if I give charity on her behalf?" The Prophet (ﷺ) said: "Yes." *Agreed upon, the wording is from Muslim.*

وَعَنْ أَبِي أُمَامَةَ الْبَاهِلِيِّ - رَضِيَ اللَّهُ عَنْهُ - سَمِعْتُ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - يَقُولُ: «إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ، فَلَا وَصِيَّةَ لَوَارِثٍ. «رَوَاهُ أَحْمَدُ، وَالْأَرْبَعَةُ إِلَّا النَّسَائِيَّ، وَحَسَنَةُ أَحْمَدُ وَالتِّرْمِذِيُّ، وَقَوَاهُ ابْنُ حُزَيْمَةَ، وَابْنُ الْجَارُودِ» .

Abu Umamah al-Bahili reported that he heard the Messenger of Allah (ﷺ) say: "Indeed, Allah has given every rightful heir his due, so there is no will for an heir." *Ahmad and the four except an-Nasa'i; Ahmad and at-Tirmidhi regarded it as hasan, and it was strengthened by Ibn Khuzaymah and Ibn al-Jarud.*

وَرَوَاهُ الدَّارِقُطْنِيُّ مِنْ حَدِيثِ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - وَرَدَ فِي آخِرِهِ: «إِلَّا أَنْ يَشَاءَ الْوَرَثَةُ. «وَأِسْنَادُهُ حَسَنٌ» .

It was also reported by ad-Daraqutni from the narration of Ibn 'Abbas, and he added at the end: "Except if the heirs so wish." *Its chain of transmission is considered hasan (good).*



وَعَنْ مُعَاذِ بْنِ جَبَلٍ - رضي الله عنه - قَالَ: «قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «إِنَّ اللَّهَ تَصَدَّقَ عَلَيْكُمْ بِثُلُثِ أَمْوَالِكُمْ عِنْدَ وفَاتِكُمْ; زِيَادَةٌ فِي حَسَنَاتِكُمْ». «رَوَاهُ الدَّارِقُطْنِيُّ .

وَأَخْرَجَهُ أَحْمَدُ، وَالْبَزَّازُ مِنْ حَدِيثِ أَبِي الدَّرْدَاءِ .

وَأَبْنُ مَاجَهَ: مِنْ حَدِيثِ أَبِي هُرَيْرَةَ .

وَكُلُّهَا ضَعِيفَةٌ، لَكِنْ قَدْ يَقْوَى بَعْضُهَا بِبَعْضٍ. وَاللَّهُ أَعْلَمُ

It was reported from Mu'adh ibn Jabal that he said: The Prophet (ﷺ) said: "Allah has given you the opportunity to give in charity one-third of your wealth at your death; it will be an increase in your good deeds." *Al-Daraqutni, and Ahmad and al-Bazzar from Abu ad-Darda', and by Ibn Majah from Abu Hurayrah. All these chains of narration are weak, though some of them may be strengthened when considered together. Allah knows best.*

كتاب الفرائض

Book of Inheritance

أسباب إرث: رَحْمٌ وَنِكَاحٌ وَوَلَاءٌ

The causes of inheritance are three: kinship, marriage, and allegiance.

وَالْوَرَاثُ: ذُو فَرْصٍ، وَعَصَبَةٌ، وَرَحِمٌ

The heirs are of three types: those with prescribed shares, agnatic heirs, and kinship heirs.

فَذُو الْفَرْصِ عَشْرَةٌ: الزَّوْجَانِ، وَالْأَبَوَانِ، وَالْجَدُّ وَالْجَدَّةُ، وَالْبَنْتُ، وَبَنْتُ الْإِبْنِ، وَالْأَخْتُ مُطْلَقًا، وَالْأَخُ لَأَمٍ

There are ten heirs with prescribed shares: the two spouses, the two parents, the grandfather and grandmother, the daughter, the son's daughter, the sister in all her categories, and the uterine brother.

فَلِلزَّوْجِ نِصْفٌ مَعَ عَدَمِ فَرْعٍ وَارِثٍ، وَرُبْعٌ مَعَهُ.

The husband receives one half when there are no descendants to inherit; if there are such heirs, he receives one quarter.

وَلِلزَّوْجَةِ فَأَكْثَرُ رُبْعٌ مَعَ عَدَمِ الْفَرْعِ، وَثَمَنٌ مَعَهُ

A wife (or wives) together receive one-quarter if there are no descendants, and one-eighth if there are.



وللأب سدسٌ مع فرعٍ ذكرٍ، وما أبقت الفروضُ إن عديمَ فرعِهِ، ويجمعُ بين فرضٍ وتغصيبٍ مع فرعٍ أنثى إن فصلَ شيءٌ.

The father receives one-sixth if there is a male descendant, and otherwise he takes what remains after the fixed shares. He may combine a fixed share with inheritance by 'asabah' if there is a female descendant and something remains.

والجد مع عديمه كهو فيما ذكر.

The grandfather inherits in the same manner as the father when the latter is absent, in the scenarios previously mentioned.

فصلٌ

Section

لجدٍّ مع إخوةٍ لغير أمٍّ كأحدهم إن لم تُنقصهُ المَقاسمةُ عن الثلث؛ كجدٍّ وأخ، وإلا فالثلث كجدٍّ وثلاثة أخوة

The grandfather, when there are only brothers without a maternal brother, takes the same share as any one of them, provided that partitioning does not reduce his portion below one-third, such as in the case of a grandfather and one brother; otherwise, the grandfather and three siblings together take one-third.

ومع ذي فرضٍ بعده الأخطُ من مقاسمةٍ أو ثلث الباقي أو سدس الجميع

And when there is someone entitled to a fixed share after him, he takes the larger of what remains from partitioning, or one-third of the remainder, or one-sixth if all are combined.

فإن لم يبقَ غيرُ السدسِ أخذه وسقط الأخوة إلا في الأَكْدَرِيَّةِ، وهي: زوجٌ وأمٌّ وجدٌّ وأخوةٌ لغير أمٍّ، فيُعَال لها بالنصفِ ثم يُقاسمها الجدُّ فيما سُمِّيَ لهما

If, after distributing the fixed shares, only a sixth remains, the grandfather takes it, and the siblings drop out—except in the case of the 'Akdariyyah', which includes a husband, mother, grandfather, and paternal brothers. In this case, the Akdariyyah's share is first set at half, and then the grandfather shares what remains according to the prescribed portions.

ولا يُعَال هنا ولا يُفرض لأختٍ معه ابتداءً إلا فيها

Here, no adjustment is made, and no fixed share is assigned to a sister alongside him initially—except in this specific case.



وإذا اجتمع معه وَلَدُ أبوين وولِدُ أبٍ حُسِبَ عَلَيْهِ ثُمَّ يَأْخُذُ عَصْبَةُ وَلَدِ الْأَبوين مَا سَمِيَ لَوْلَدِ الْأَبِ، وَالْأُنْثَى إِلَى تَمَامِ فَرَضِهَا النِّصْفَ، فَإِنْ فَضَّلَ شَيْءٌ فَلَوْلَدِ الْأَبِ كَالرَّيْدِيَّاتِ

And if he is joined by the children of both parents and the child of the father alone is counted, then the heirs who are children of both parents take what has been allotted to the child of the father, while the daughter receives half of her prescribed share. If anything remains, it goes to the child of the father, as in the 'Zaydi' scheme.

فَصْلٌ

Section

وَلِلْأُمِّ سُدُسٌ مَعَ فِرْعٍ وَارِثٍ، أَوْ اثْنَيْنِ فَأَكْثَرَ مِنْ إِخْوَةٍ أَوْ أَخَوَاتٍ. وَالثُّلُثُ مَعَ عَدَمِهِمْ

The mother receives one-sixth if there is a child who inherits, or if there are two or more siblings. If none of these exist, she takes one-third.

وَفِي زَوْجٍ وَأَبوين، وَزَوْجَةٍ وَأَبوين: ثُلُثُ الْبَاقِي

If there is a husband and both parents, or a wife and both parents, she takes one-third of the remainder.

وَعَصْبَةُ وَلَدِ زَنَى، وَمَنْفِيٍّ بِلْعَانٍ بَعْدَ ذُكُورٍ وَلَدَهُ عَصْبَةُ أُمِّهِ

The 'asabah of an illegitimate child, and a repudiated child after the legitimate sons, are the 'asabah of his mother.

وَلِجَدَّةٍ فَأَكْثَرَ سُدُسٌ مَعَ عَدَمٍ، وَتَرَتْ أُمُّ أَبِي وَأُمُّ جَدٍّ مَعَهُمَا، وَلَا يَرِثُ أَكْثَرَ مِنْ ثَلَاثِ جَدَّاتٍ: أُمُّ الْأُمِّ، وَأُمُّ الْأَبِ،

وَأُمُّ أَبِي الْأَبِ، وَإِنْ عَلَوْنَ أُمُومَةٌ، وَتَحْجُبُ الْقُرْبَى الْبُعْدَى مُطْلَقًا. وَتَرَتْ ذَاتُ قَرَابَتَيْنِ ثُلْثِي السُّدُسِ

For two or more grandmothers, they share one-sixth if there are no other heirs. The mother of the father and the mother of the grandfather inherit together with them. No more than three grandmothers inherit: the maternal grandmother, the paternal grandmother, and the great-grandmother on the father's side, even if other grandmothers exist. Closer relatives always block more distant ones. A woman related through two lines (dual relationship) inherits two-thirds of the one-sixth share



فصل

Section

ولبنتٍ مُنفردةٍ النَّصفُ، ثم لبنتِ ابنٍ كذلك، ثم لأختٍ لأبوين، ثم لأختٍ لأبٍ كذلك

A daughter who is alone inherits half; likewise, a granddaughter (daughter of a son) inherits half if alone. Next in line is a full sister (sharing both parents), then a paternal half-sister (sharing only the father).

والثلثان لثنتين فأكثر منهن. وإن عَصَبَهُنَّ ذَكَرٌ بِإِزَائِهِنَّ فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ

Two or more daughters collectively inherit two-thirds of the estate. If a male inherits alongside them, he receives a share equal to that of two females.

ولبنتِ ابنٍ فَأَكْثَرُ لَمْ تُعَصَّبِ السُّدُسُ مع بنتِ صُلْبٍ واحدة، وكذا بنتُ ابنِ ابنٍ مع بنتِ ابنٍ أعلى منها، وأخت لأبٍ مع أخت لأبوين

For one granddaughter or more with no 'asabah, she inherits one-sixth alongside a single daughter; similarly, a great-granddaughter inherits alongside a granddaughter above her in rank, and a paternal half-sister inherits alongside a full sister.

وَتَسْقُطُ بِنْتُ ابْنٍ لَمْ تُعَصَّبِ مَعَ بَنَتَيْنِ فَأَكْثَرَ، وكذا بنتُ ابنِ ابنٍ مع بنتِ صُلْبٍ وبنتِ ابنٍ، وكذا أخت لأبٍ مع أختين لأبوين

A granddaughter who has no 'asabah with her, does not inherit if there are two or more daughters; likewise, a great-granddaughter is excluded when there is a daughter and a granddaughter; similarly, a paternal half-sister is excluded if there are two full sisters.

وَيُعَصَّبُ بَنَاتُ ابْنٍ مَنْ هُوَ أَنْزَلُ مِنْهُنَّ إِذَا احتَجْنَ إِلَيْهِ

The granddaughters become 'asabah for those who are lower in rank, if they are in need of it.

والأختُ لغيرِ أمٍ مع بنتٍ أو بنتِ ابنٍ عَصَبَةٌ تَرِثُ ما أَبْقَتْ الفروضُ

A non-maternal sister together with a daughter or granddaughter, inherits as an agnate ('asabah), taking what remains after the fixed shares have been allotted.

ولولدٍ أمٍ ذَكَرٍ أو أنثى السُّدُسُ، ولِاثْنَيْنِ فَأَكْثَرَ مِنْهُمُ التُّلُثُ بالسوية

A maternal child, whether male or female, takes one-sixth; and if there are two or more, they collectively take one-third, shared equally among them.



فصل

Section

يَسْقُطُ جَدُّ بِأَبٍ، وَأَبْعَدُ بِأَقْرَبٍ، وَالْجَدَّاتُ بِالْأُمِّ، وَوَلَدُ الْإِبْنِ بِالْإِبْنِ، وَوَلَدُ الْأَبَوَيْنِ بِالْأَبِ، وَالْإِبْنُ وَابْنُ الْإِبْنِ وَوَلَدُ الْأَبِ بِهِمُ وَبِالْأَخِ لِأَبَوَيْنِ، وَوَلَدُ الْأُمِّ بِالْوَلَدِ، وَوَلَدُ الْإِبْنِ، وَالْأَبُ، وَالْجَدُّ

A grandfather is excluded if a father is present, and more distant relatives yield to closer ones. Grandmothers are excluded through the mother. A son's child is excluded by the son. The child of both parents is excluded by the father, son and grandson. The child of the father are excluded by the father, son and descendants or a full brother is present. A maternal child is excluded by the child, grandchild, the father, and the grandfather.

باب الْعَصَبَةِ

Chapter: The Agnatic Heirs

أَقْرَبُهُمْ ابْنٌ فَابْنُهُ وَإِنْ نَزَلَ، ثُمَّ أَبٌ ثُمَّ أَبُوهُ وَإِنْ عَلَا، وَتَقَدَّمَ حَكْمُهُ مَعَ إِخْوَةٍ، ثُمَّ أَخٌ لِأَبَوَيْنِ، ثُمَّ لِأَبٍ، ثُمَّ ابْنَاهُمَا كَذَلِكَ، ثُمَّ عَمٌّ لِأَبَوَيْنِ ثُمَّ لِأَبٍ، ثُمَّ ابْنَاهُمَا كَذَلِكَ، ثُمَّ أَعْمَامُ أَبِيهِ ثُمَّ بَنُوهُمْ كَذَلِكَ، ثُمَّ أَعْمَامُ جَدِّهِ ثُمَّ بَنُوهُمْ كَذَلِكَ الْأَقْرَبُ فَالْأَقْرَبُ

The closest among them is the son, then his son even if he is of a lower generation, followed by the father, then the grandfather even if he is of a higher generation. His ruling alongside brothers has preceded. Next comes a full brother, then a paternal half-brother, followed by their sons similarly. Then come the full paternal uncles, followed by their sons likewise, then the uncles of the father and their sons in the same manner, then the uncles of the grandfather and their sons in the same manner — always proceeding from the closest relative to the more distant.

فَأَخٌ لِأَبٍ أَوْلَى مِنْ ابْنِ أَخٍ لِأَبَوَيْنِ، وَابْنُ أَخٍ لِأَبٍ أَوْلَى مِنْ ابْنِ ابْنِ أَخٍ لِأَبَوَيْنِ، وَإِذَا انفرد عَصَبٌ أَخَذَ كُلُّ الْمَالِ أَوْ مَا أَبْقَتْ الْفُرُوضُ، وَإِنْ اسْتَوَى عَصَبَانِ اشْتَرَكَا، فَإِنْ غُذِمَ عَصَبَةُ النَّسَبِ وَرَثَ الْمُعْتَقُ ثُمَّ عَصَبَتُهُ الْأَقْرَبُ فَالْأَقْرَبُ

A paternal half-brother takes precedence over a nephew from a full brother; a nephew from the paternal half-brother takes precedence over a grandson of a nephew from a full brother. If a single residuary (‘āṣib) remains, he takes all the estate or what remains after the fixed shares. If two remain; they are equal and they share it. When no residuary by lineage exists, the former master inherits, followed by his closest residuary in order of proximity.



ولا ترث بنت أخ مع أخ، ولا بنت عم مع ابن عم، ولا عَمَّة مع عم لغير أم، وابنا عم أحدهما زوج أو أخ لأم له فرض، والباقي لهما وإذا استغرقت الفروض التركة سقط العاصب

A paternal niece does not inherit alongside a brother, nor does a the uncle's daughter inherit alongside his son, nor does a maternal aunt inherit alongside a paternal uncle of a different mother. If there are two sons of a paternal uncle, and one is a spouse or a maternal brother, he is entitled to a fixed share, and the rest of the estate goes to them. If the fixed shares exhaust the estate, the residuary ('āṣib) misses out.

باب

Chapter

أصول المسائل سبعة: اثنان كزوج وأخت

The primary whole numbers are seven: two such as in the case of a husband and sister

وثلاثة: كأم وولدها، وأربعة: كزوج وابن، وستة: كجدة وعم

Three as in the case of a mother her child. Four as in the case of a husband and son. Six as in the case of a grandmother and paternal uncle.

وثمانية: كزوجة وابن، واثنان عشر: كزوج وأم وابن، وأربعة وعشرون: كزوجة وأم ووابن

Eight as in the case of a wife and son. Twelve as in the case of a husband, mother and son. Twenty four as in the case of a wife, mother and son.

وتعول الستة لعشرة، والإثنا عشر أفرداً لسبعة عشر، والأربعة وعشرون لسبعة وعشرين، كالمينرية

Six can be corrected to ten. Twelve to the odd numbers up to seventeen. Twenty four to twenty seven such as in the case of Al-Minbariyah.

وإذا انكسر سهم فريق عليهم ضربت عددهم أو وقفه في المسألة وعوّلها إن عالت فما بلغ صحت منه

And if a group's share is broken, multiply it by their number or share in the primary number or corrected number, and the result is the new number.



فصل

Section

إِنْ مَاتَ بَعْضُ الْوَرَثَةِ قَبْلَ الْقِسْمَةِ؛ فَإِنْ وَرِثُوهُ كَالْأَوَّلِ كِاخْوَةٍ فَاقْسِمْ عَلَى مَنْ بَقِيَ

If some heirs die before the division of the estate, and they would have inherited like him, then the estate is divided among those who remain.

وَإِنْ كَانَ وَرَثَةُ كُلِّ مَيِّتٍ لَا يَرِثُونَ غَيْرَهُ، كِاخْوَةٍ لَهُمْ بَنُونَ؛ فَصَحِّحِ الْأَوَّلَى وَأَقْسِمِ سَهْمَ كُلِّ مَيِّتٍ عَلَى مَسْأَلَتِهِ، وَصَحِّحِ كَالْإِنْكَسَارِ عَلَى أَكْثَرِ مِنْ فَرِيقٍ، وَإِلَّا صَحِّحْتَ الْأَوَّلَى وَقَسَمْتَ سَهَامَ الثَّانِي عَلَى مَسْأَلَتِهِ، فَإِنْ انْقَسَمَتْ صَحَّتَا مِنَ الْأَوَّلَى وَإِلَّا ضَرَبْتَ كُلَّ الثَّانِيَةِ أَوْ وَقَفَّهَا لِلْسَّهَامِ فِي الْأَوَّلَى

If the heirs of each deceased person do not inherit anyone else's share—like siblings whose children would inherit—then correct the first method: divide each deceased person's share according to their own heirs. If the shares break across more than one group, correct it. Otherwise, use the first method and divide the second deceased's shares according to their heirs. If this division aligns with the first, it is valid; otherwise, multiply the second group's shares or adjust them proportionally to match the first group's shares

وَمَنْ لَهُ شَيْءٌ مِنْهَا فَاضْرِبْهُ فِيمَا ضَرَبْتَهُ فِيهَا، وَمَنْ لَهُ شَيْءٌ مِنَ الثَّانِيَةِ ففِي سَهَامِ الثَّانِي أَوْ وَقَفَّهَا، وَتَعْمَلُ فِي ثَالِثٍ فَأَكْثَرُ كَذَلِكَ

And whoever has a share in the first group, assign it according to how you distributed that group; and whoever has a share in the second group, assign it according to the shares of the second group or proportionally. The same method applies if there is a third group or more.

باب ذوي الأرحام

Chapter: Other Relatives

يَرِثُونَ بِتَنْزِيلِهِمْ مَنْزِلَةً مَنْ أَدْلَوْا بِهِ ذَكَرٌ وَأُنْثَى سَوَاءً

They inherit according to the rank of the relative they come through, with males and females treated equally.



فَوَلَدُ بِنْتٍ، وَوَلَدُ بِنْتِ ابْنٍ، وَوَلَدُ أُخْتٍ كَأُمِّهَاتِهِمْ، وَبَنَاتُ الْأَخَوَةِ، وَبَنَاتُ بَنِيهِمْ، وَوَلَدُ أَخٍ لِأُمِّ كَأَبَائِهِمْ

Thus, the son of a daughter, the son of a paternal granddaughter and the son of a sister, are treated like their mothers. The daughters of brothers and the daughters of nephews, and the son of a maternal brother, are treated like their fathers.

حَالٌ وَخَالَةٌ، وَأَبُو أُمِّ كَأَمٍّ، وَعَمَّةٌ وَعَمٌّ لِأُمِّ كَأَبٍ

A maternal uncle and maternal aunt, and the paternal grandmother are like a mother, and a paternal or maternal aunt or uncle of the mother are like a father.

فَيُجْعَلُ نَصِيبُ كُلِّ وَارِثٍ لِمَنْ أَذْلَى بِهِ، وَإِنْ سَقَطَ بَعْضُهُمْ بِبَعْضٍ عُمِلَ بِهِ

The share of each heir is calculated according to the position through which they are connected. If some of them are excluded because of others, the calculation is adjusted accordingly.

وَالْجِهَاتُ: الْأَبَوَةُ، وَأُمُّوَّةٌ، وَبُنُوَّةٌ.

The categories of kinship are three: paternal, maternal, and descendants.

بَابٌ

Chapter

يُوقَفُ لِحَمَلٍ فِي الْوَرِثَةِ إِنْ طَلَبُوا الْقِسْمَةَ الْأَكْثَرَ مِنْ إِرْثِ ذَكَرَيْنِ أَوْ أَنْثَيْنِ

A share may be allocated on behalf of a child among the heirs if they request the division, provided it exceeds the inheritance of two males or females.

فَإِذَا وُلِدَ أَخَذَ حَقَّهُ وَالْبَاقِي لِمُسْتَحَقِّهِ، وَلَا يُعْطَى مَنْ سَقَطَ بِهِ شَيْئًا، وَمَنْ لَا يَحْجِبُهُ يَأْخُذُ إِرْثَهُ، وَمَنْ يُنْقِصُهُ يَأْخُذُ الْيَقِينَ.

When a child is born, he receives his rightful share, and the remainder goes to those entitled. No one is given if they may lose out because of the child; those who are not blocked by others take their inheritance, and whoever is reduced receives what is certain to them.

وَيَرِثُ وَيُورِثُ إِنْ اسْتَهْلَ صَارِحًا أَوْ عَطَسَ، أَوْ بَكَى أَوْ رَضَعَ أَوْ تَنَفَّسَ لَا إِنْ اخْتَلَجَ فَقَطْ

An heir inherits and can be inherited from as soon as he begins life—whether by crying out, sneezing, weeping, suckling, or breathing—but not merely by internal conception without these signs.



والخنثى المشكل يَرِثُ نِصْفَ مِيرَاثِ ذَكَرٍ وَنِصْفَ مِيرَاثِ أُنْثَى إِنْ لَمْ يُرْجَ اتِّضَاعُهُ وَإِلَّا فَالْيَقِينِ

A hermaphrodite whose sexual identity is uncertain inherits half the share of a male and half the share of a female, if their true gender cannot be determined; otherwise, the certain gender's share is applied.

فصل

Section

مَنْ خَفِيَ حَبْرُهُ بِسَفَرٍ غَالِبِهِ السَّلَامَةُ؛ كَأَسْرِ وَتِجَارَةٍ انْتُظِرَ بِهِ تَمَامُ تِسْعِينَ سَنَةً مِنْذُ وُلِدَ

If someone's whereabouts are unknown due to travel, with safety presumed—such as in cases of captivity or trade—they are awaited for a full ninety years from birth.

وَإِنْ كَانَ غَالِبُهُ الْهَلَاكُ كَمِنْ بَيْنِ أَهْلِهِ، أَوْ بِمَفَازَةٍ مَهْلِكَةٍ فَأَرْبَعُ سِنِينَ مِنْذُ فُقِدَ ثُمَّ يُقَسَّمُ مَالُهُ فِيهِمَا

But if the person is most likely dead, such as being among their people in a fatal situation or in a perilous place, then four years are counted from the time of disappearance, and their property is divided among heirs in that period.

فصل

Section

وَإِنْ مَاتَ مُتَوَارِثَانِ كَأَخَوَيْنِ لِأَبٍ يَحْدُمُ أَوْ غَرِقَ أَوْ نَحَوْهُ وَجُهِلَ السَّابِقُ مَوْتًا وَلَمْ يَخْتَلِفُوا فِيهِ وَرِثَ كُلُّ مَنْهُمَا الْآخَرَ مِنْ

تِلَادِ مَالِهِ دُونَ مَا وَرِثَهُ مِنْهُ، وَإِنْ اخْتَلَفُوا فِي السَّابِقِ لَمْ يَرِثْ كُلُّ مَنْ الْآخَرَ شَيْئًا

And if two heirs, such as two paternal brothers, die simultaneously due to collapse, drowning, or a similar cause, and it is unknown who died first, and they do not differ in this matter, then each inherits from the other only their prior wealth, excluding what they inherit from each other. But if there is a dispute as to who died first, then neither inherits anything from the other.



فصل

Section

ولا إرث مع اختلاف دين، إلا بالولاء، وإذا أسلم كافر قبل قسم ميراث قريبه المسلم

There is no inheritance in cases of differing religion, except through *walā'* (emancipation). Or, if a non-Muslim converts to Islam before the division of a relative's estate who is Muslim, then inheritance is valid.

ويتوارث حربي وذمي ومستأمن إن اتحد دينهم، وهم ملل شتى لا يتوارثون مع اختلافها

An enemy (*ḥarbī*), a protected non-Muslim (*dhimmī*), and a person under security (*must'aman*) inherit from one another if they share the same religion. However, people of different religions do not inherit from each other.

والمرتد لا يرث ولا يورث، وماله فيء

An apostate neither inherits nor is inherited from, and their property comes under state control.

ويرث مجوسي ونحوه أسلم، أو حاكم إلينا بقرابته، وكذا إن وطئ مسلم ذات محرم بشبهة، لا بنكاح لا يُقر عليه لو أسلم.

A Zoroastrian or similar non-Muslim who embraces Islam, or submits to our authority through kinship, inherits. Likewise, if a Muslim has intercourse with a woman he is forbidden to marry (*mahram*) through doubt—without a valid marriage. Not a marriage that is rejected, even if they become Muslim.



فصل

Section

يتوارث الزوجان في عدة طلاق رجعي لا بائن، في صحة أو مرض غير مخوف، وإن أبانها في مرض مؤته المخوف مع همتيه بقصد حرمانها، أو علّق إبانها في صحته على مرضه، أو على فعل له ففعله في مرضه ونحوه لم يرثها، وترثه في العدة وبعدها ما لم تتزوج أو ترد

A husband and wife inherit from each other during the 'iddah' (waiting period) of a revocable (*raj'i*) divorce, not an irrevocable (*ba'in*) one, and in good health or illness without a feared risk of death. If he makes the divorce irrevocable during a fatal illness with intent to deprive her, or suspends it during his health, to later enact it in his illness or by an act he commits in his sickness, she does not inherit him. She inherits him during the 'iddah' and afterward, provided she does not remarry or apostatize.

فصل

Section

لا يرث قاتل انفراد أو شارك فيه مباشرة أو سبباً، ولو غير مكلف إن لزمه قود أو كفارة أو دية، بخلاف قاتل بحق، كقود وحيد وشاهد ونحوه

A killer does not inherit, whether he acted alone or not, and whether he participated directly or indirectly. This applies even if he is not legally accountable (*mukallaf*), provided he is liable for *qawad*, expiation, or *diyah* (blood-money). This is distinct from a killer who acted in a legitimate context, such as in carrying out *qawad*, *hudud* punishments, or as a witness, etc.

ولا يرث رقيق ولا يؤرث، ويرث مبعوض ويورث ويحجب بقدر حريته

A slave neither inherits nor is inherited. A partially free slave both inherits and can be inherited, though their share is limited according to the extent of their freedom.

ومن أعتق عبداً فله ولاؤه، وإن اختلف دينهما، ولا يرث نساء بولاء إلا من أعتقن، أو أعتقه من أعتقن بكتابة أو غيرها

Whoever frees a slave retains the allegiance (*wala'*) of that slave, even if their religions differ. Women do not inherit through *wala'* except those they have freed, or were freed by someone they themselves had freed, whether by contract or otherwise.



بَابُ الْفَرَائِضِ

Chapter: Inheritance

عَنِ ابْنِ عَبَّاسٍ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «أَحْبِقُوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَهُوَ لِأَوَّلَى رَجُلٍ ذَكَرَ». «مُتَّفَقٌ عَلَيْهِ»

Ibn 'Abbas reported: The Messenger of Allah (ﷺ) said: 'Assign the prescribed shares to those entitled to them, and whatever remains belongs to the nearest male relative.'" *Agreed upon*

وَعَنْ أُسَامَةَ بْنِ زَيْدٍ - رَضِيَ اللَّهُ عَنْهُمَا - أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ، وَلَا يَرِثُ الْكَافِرُ الْمُسْلِمَ». «مُتَّفَقٌ عَلَيْهِ»

"Usama ibn Zayd reported that the Prophet (ﷺ) said: 'A Muslim does not inherit from a disbeliever, nor does a disbeliever inherit from a Muslim.'" *Agreed upon*

وَعَنِ ابْنِ مَسْعُودٍ - رَضِيَ اللَّهُ عَنْهُ - فِي بِنْتٍ، وَبِنْتِ ابْنٍ، وَأُخْتٍ - قَضَى النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «لِلْبِنْتِ النِّصْفَ، وَلِلْبِنْتِ الْإِبْنِ السُّدُسَ - تَكْمِلَةَ الثُّلُثَيْنِ - وَمَا بَقِيَ فَلِلْأُخْتِ». «رَوَاهُ الْبُخَارِيُّ»

Ibn Mas'ud reported regarding a daughter, a granddaughter, and a sister that the Prophet (ﷺ) ruled: 'The daughter receives half, the granddaughter one-sixth—which completes the two-thirds—and what remains goes to the sister.'" *Al-Bukhari*

وَعَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «لَا يَتَوَارَثُ أَهْلُ مِلَّتَيْنِ». «رَوَاهُ أَحْمَدُ، وَالْأَرْبَعَةُ إِلَّا التِّرْمِذِيُّ»

وَأَخْرَجَهُ الْحَاكِمُ بِلَفْظِ أُسَامَةَ. وَرَوَى النَّسَائِيُّ حَدِيثَ أُسَامَةَ بِهَذَا اللَّفْظِ

'Abdullah ibn 'Amr narrated that the Prophet (ﷺ) said, "The people of two different religions do not inherit from one another." *Ahmad, and by the four compilers except for at-Tirmidhi. Al-Hakim also narrated it as the wording of Usamah, and al-Nasa'i reported as Usamah's narration with this wording.*



وَعَنْ عِمْرَانَ بْنِ حُصَيْنٍ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَقَالَ: إِنَّ ابْنَ ابْنِي مَاتَ، فَمَا لِي مِنْ مِيرَاثِهِ؟ فَقَالَ: «لَكَ السُّدُسُ فَلَمَّا وَلَّى دَعَاهُ، فَقَالَ: «لَكَ سُدُسٌ آخَرُ» فَلَمَّا وَلَّى دَعَاهُ. فَقَالَ: «لَكَ السُّدُسُ الْآخَرُ طُعْمَةٌ». «رَوَاهُ أَحْمَدُ وَالْأَزْبَعَةُ، وَصَحَّحَهُ التِّرْمِذِيُّ.

وَهُوَ مِنْ رِوَايَةِ الْحَسَنِ الْبَصْرِيِّ عَنْ عِمْرَانَ، وَقِيلَ: إِنَّهُ لَمْ يَسْمَعْ مِنْهُ

Imran ibn Husayn narrated, "A man came to the Prophet (ﷺ) and said: "My grandson (son of my son) has died; do I inherit from him?" The Prophet (ﷺ) said: "You are entitled to one-sixth." When the man turned away, the Prophet (ﷺ) called him again and said: "You are entitled to another one-sixth." When he turned away again, the Prophet (ﷺ) called him a third time and said: "The second sixth is extra." *Ahmad and the four compilers, and authenticated by at-Tirmidhi. It is narrated from al-Hasan al-Basri on the authority of 'Imran ibn Husayn, though some say he did not directly hear it from him.*

وَعَنْ ابْنِ بُرَيْدَةَ، عَنْ أَبِيهِ; أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - جَعَلَ لِلْجَدَّةِ السُّدُسَ، إِذَا لَمْ يَكُنْ ذُوهَا أُمٌّ. رَوَاهُ أَبُو دَاوُدَ، وَالنَّسَائِيُّ، وَصَحَّحَهُ ابْنُ حُرَيْمَةَ، وَابْنُ الْجَارُودِ، وَقَوَّاهُ ابْنُ عَدِيٍّ

Ibn Burayda reported from his father that the Prophet (ﷺ) prescribed one-sixth of the inheritance for the grandmother, provided that the deceased had no mother." *Abu Dawud and Nasa'i, and authenticated by Ibn Khuzaymah, Ibn Jarud and strengthened by Ibn 'Adiyy*

وَعَنْ الْمِقْدَامِ بْنِ مَعْدِي كَرِبَ - رَضِيَ اللَّهُ عَنْهُ - قَالَ: قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -: «الْحَالُ وَارِثٌ مَنْ لَا وَارِثَ لَهُ». «أَخْرَجَهُ أَحْمَدُ، وَالْأَزْبَعَةُ سِوَى التِّرْمِذِيِّ، وَحَسَنَهُ أَبُو زُرْعَةَ الرَّازِيُّ، وَصَحَّحَهُ ابْنُ حِبَّانَ، وَالْحَاكِمُ

Al-Miqdam ibn Ma'di Karib reported that the Messenger of Allah (ﷺ) said: 'The maternal uncle inherits from one who has no heirs.'" *Ahmad and the four except at-Tirmidhi. It was declared hasan by Abu Zur'ah al-Razi, verified by Ibn Hibban and al-Hakim.*

وَعَنْ أَبِي أُمَامَةَ بْنِ سَهْلٍ قَالَ: كَتَبَ مَعِيَ عُمَرُ إِلَى أَبِي عُبَيْدَةَ - رَضِيَ اللَّهُ عَنْهُمْ -; أَنَّ رَسُولَ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ: «اللَّهُ وَرَسُولُهُ مَوْلَى مَنْ لَا مَوْلَى لَهُ، وَالْحَالُ وَارِثٌ مَنْ لَا وَارِثَ لَهُ». «رَوَاهُ أَحْمَدُ، وَالْأَزْبَعَةُ سِوَى أَبِي دَاوُدَ، وَحَسَنَهُ التِّرْمِذِيُّ، وَصَحَّحَهُ ابْنُ حِبَّانَ.

Abu Umamah ibn Sahl reported: 'Umar wrote to Abu Ubaidah that the Messenger of Allah (ﷺ) said: "Allah and His Messenger are the guardians of whoever has no guardian, and the maternal uncle inherits from whoever has no heirs." *Ahmad and the four, except Abu Dawud, and declared hasan by at-Tirmidhi, and authenticated by Ibn Hibban.*



وَعَنْ جَابِرٍ - رضي الله عنه - عَنْ النَّبِيِّ - صلى الله عليه وسلم - قَالَ: «إِذَا اسْتَهْلَلَ الْمَوْلُودُ وَوَرِثَ». «رَوَاهُ أَبُو دَاوُدَ، وَصَحَّحَهُ ابْنُ حِبَّانَ».

Jabir reported that the Prophet (ﷺ) said: 'If a newborn cries, it is entitled to inheritance.'" *Abu Dawud and authenticated by Ibn Hibban*

وَعَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم - «لَيْسَ لِلْقَاتِلِ مِنَ الْمِيرَاثِ شَيْءٌ». «رَوَاهُ النَّسَائِيُّ، وَالْذَاقُطْنِيُّ، وَقَوَّاهُ ابْنُ عَبْدِ الْبَرِّ، وَأَعْلَلَهُ النَّسَائِيُّ، وَالصَّوَابُ: وَفَّقَهُ عَلَى عُمَرَ

'Amr ibn Shu'ayb, from his father, from his grandfather, reported that the Prophet (ﷺ) said: "The killer has no share in inheritance." *An-Nasa'i and Ad-Daraqutni, strengthened by Ibn 'Abd al-Barr, and declared defective by An-Nasa'i, and it is correct as a statement of 'Umar*

وَعَنْ عُمَرَ بْنِ الْخَطَّابِ - رضي الله عنه - قَالَ: سَمِعْتُ رَسُولَ اللَّهِ - صلى الله عليه وسلم - يَقُولُ: «مَا أَخْرَزَ الْوَالِدُ أَوْ الْوَلَدُ فَهُوَ لِعَصَبَتِهِ مَنْ كَانَ». «رَوَاهُ أَبُو دَاوُدَ، وَالنَّسَائِيُّ، وَابْنُ مَاجَةَ، وَصَحَّحَهُ ابْنُ الْمَدِينِيِّ، وَابْنُ عَبْدِ الْبَرِّ».

Umar ibn al-Khattab reported: I heard the Messenger of Allah (ﷺ) say: "Whatever the parent or child preserves (from wealth or property), it belongs to the agnatic heirs of the person to whom it pertains." *Abu Dawud, An-Nasa'i, and Ibn Majah, and authenticated by Ibn al-Madini and Ibn 'Abd al-Barr.*

وَعَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ - رَضِيَ اللَّهُ عَنْهُمَا - قَالَ: قَالَ النَّبِيُّ - صلى الله عليه وسلم - «الْوَلَاءُ لِحُمَةِ كُلِّ حِمَةِ النَّسَبِ، لَا يُبَاعُ، وَلَا يُوهَبُ». «رَوَاهُ الْحَاكِمُ: مِنْ طَرِيقِ الشَّافِعِيِّ، عَنْ مُحَمَّدِ بْنِ الْحَسَنِ، عَنْ أَبِي يُوسُفَ، وَصَحَّحَهُ ابْنُ حِبَّانَ، وَأَعْلَلَهُ الْبَيْهَقِيُّ

Abdullah ibn 'Umar reported: The Prophet (ﷺ) said: "Al-Walā' (manumission) is a bond like kinship through lineage; it cannot be sold or given as a gift." *Al-Hakim via ash-Shafi'i, from Muhammad ibn al-Hasan, from Abu Yusuf, and it was authenticated by Ibn Hibban and al-Bayhaqi said it was defective.*

وَعَنْ أَبِي قِلَابَةَ، عَنْ أَنَسٍ قَالَ: قَالَ رَسُولُ اللَّهِ - صلى الله عليه وسلم - «أَفْرَضُكُمْ زَيْدُ بْنُ ثَابِتٍ». «أَخْرَجَهُ أَحْمَدُ، وَالْأَرْبَعَةُ سِوَى أَبِي دَاوُدَ، وَصَحَّحَهُ التِّرْمِذِيُّ، وَابْنُ حِبَّانَ، وَالْحَاكِمُ، وَأَعْلَلَهُ بِالْإِزْسَالِ

Abu Qilabah reported, from Anas: The Messenger of Allah (ﷺ) said: "The most well-versed in inheritance among you is Zayd ibn Thabit." *Ahmad and the four except Abu Dawud. It was authenticated by At-Tirmidhi, Ibn Hibban, and Al-Hakim, it is said that it is a mursal narration.*

