

Hudaibiya and they had milch camels (or their women and children) with them, and will wage war against you, and will prevent you from visiting the Ka'bah." Allāh's Messenger ﷺ said, "We have not come to fight anyone, but to perform the 'Umra. No doubt, the war has weakened Quraish and they have suffered great losses, so if they wish, I will conclude a truce with them, during which they should refrain from interfering between me and the people (i.e., the Arab infidels other than Quraish), and if I have victory over those infidels, Quraish will have the option to embrace Islām as the other people do, if they wish; they will at least get strong enough to fight. But if they do not accept the truce, by Allāh in Whose Hands my soul is, I will fight with them defending my Cause till I get killed, but (I am sure) Allāh will definitely make His Cause victorious." Budail said, "I will inform them of what you have said." So, he set off till he reached Quraish and said, "We have come from that man (i.e., Muḥammad ﷺ) whom we heard saying something which we will disclose to you if you should like." Some of the fools among Quraish shouted that they were not in need of this information, but the wiser among them said, "Relate what you heard him saying." Budail said, "I heard him saying so and so," relating what the Prophet ﷺ had told him. 'Urwa bin Mas'ūd got up and said, "O people! Aren't you the sons?" They said, "Yes." He added, "Am I not the father?" They said, "Yes." He said, "Do you mistrust me?" They said, "No." He said, "Don't you know that I invited the people of 'Ukāz for your help, and when they refused I brought my relatives and children and those who obeyed me (to help you)?" They said, "Yes." He said, "Well, this man (i.e., the Prophet ﷺ) has offered you a reasonable

ﷺ مِنْ أَهْلِ تِهَامَةَ فَقَالَ: إِنِّي تَرَكْتُ كَعْبَ بْنَ لُؤَيٍّ وَعَامِرَ بْنَ لُؤَيٍّ نَزَلُوا أَعْدَادَ مِيَاهِ الْحُدَيْبِيَّةِ وَمَعَهُمُ الْعُودُ الْمَطَافِيلُ وَهُمْ مُقَاتِلُوكَ وَصَادُوكَ عَنِ الْبَيْتِ. فَقَالَ رَسُولُ اللَّهِ ﷺ: «إِنَّا لَمْ نَجِئْ لِقِتَالِ أَحَدٍ وَلَكِنَّا جِئْنَا مُعْتَمِرِينَ، وَإِنَّ فُرَيْشًا قَدْ نَهَكْتَهُمُ الْحَرْبُ وَأَضْرَبَتْ بِهِمْ فَإِنْ شَاؤُوا مَا دَدْتُهُمْ مَدَّةً وَيُحَلُّوا بَيْنِي وَبَيْنَ النَّاسِ فَإِنْ أَظْهَرَ، فَإِنْ شَاؤُوا أَنْ يَدْخُلُوا فِيمَا دَخَلَ فِيهِ النَّاسُ فَعَلُوا وَإِلَّا فَقَدَّ جَمُومًا. وَإِنْ هُمْ أَبَوْا فَوَالَّذِي نَفْسِي بِيَدِهِ لَأُقَاتِلَنَّهُمْ عَلَى أَمْرِي هَذَا حَتَّى تَنْفَرَدَ سَالِقَتِي، وَلْيُنْفِذَنَّ اللَّهُ أَمْرَهُ». فَقَالَ بُدَيْلٌ: سَأَبْلَغُهُمْ مَا تَقُولُ. قَالَ: فَاَنْطَلَقَ حَتَّى أَتَى فُرَيْشًا، قَالَ: إِنَّا قَدْ جِئْنَاكُمْ مِنْ هَذَا الرَّجُلِ وَسَمِعْنَاهُ يَقُولُ قَوْلًا، فَإِنْ شِئْتُمْ أَنْ نَعْرِضَهُ عَلَيْكُمْ فَعَلْنَا. فَقَالَ سَفْهَاؤُهُمْ: لَا حَاجَةَ لَنَا أَنْ تُخْبِرَنَا عَنْهُ بَشِيءٌ. وَقَالَ ذُووُ الرَّأْيِ مِنْهُمْ: هَاتِ مَا سَمِعْتَهُ يَقُولُ، قَالَ: سَمِعْتُهُ يَقُولُ كَذَا وَكَذَا، فَحَدَّثْتُهُمْ بِمَا قَالَ النَّبِيُّ ﷺ فَقَامَ عُرْوَةُ بْنُ مَسْعُودٍ فَقَالَ: أَيُّ قَوْمٍ، أَلَسْتُمْ بِالْوَالِدِ؟ وَالْأَسْتِ بِالْوَالِدِ قَالُوا: بَلَى، قَالَ: فَهَلْ تَتَّهَمُونِي؟ قَالُوا: لَا، قَالَ: أَلَسْتُمْ تَعْلَمُونَ أَنِّي اسْتَنْفَرْتُ أَهْلَ عُكَاظٍ فَلَمَّا بَلَغُوا عَلَيَّ جِئْتُمْكَمُ بِأَهْلِي

on the right." By Allāh, Khālid did not perceive the arrival of the Muslims till the dust arising from the march of the Muslim army reached him, and then he turned back hurriedly to inform Quraish. The Prophet ﷺ went on advancing till he reached the Ḥudāibiya (i.e., a mountainous way) through which one would go to them (i.e., people of Quraish). The she-camel of the Prophet ﷺ sat down. The people tried their best to cause the she-camel to get up but in vain, so they said, Al-Qaṣwā' (i.e., the she-camel's name) has become stubborn! Al-Qaṣwā' has become stubborn!" The Prophet ﷺ said, "Al-Qaṣwā' has not become stubborn, for stubbornness is not her habit, but she was stopped by Him Who stopped the elephant." Then he said, "By the Name of Him in Whose Hands my soul is, if they (i.e., the Quraish infidels) ask me anything which will respect the Ordinances of Allāh, I will grant it to them." The Prophet ﷺ then rebuked the she-camel and she got up. The Prophet ﷺ changed his way till he dismounted at the farthest end of Al-Ḥudāibiya at a pit (i.e., well) containing a little water which the people used in small amounts, and in a short while the people used up all its water and complained to Allāh's Messenger ﷺ of thirst. The Prophet ﷺ took an arrow out of his arrow-case and ordered them to put the arrow in that pit. By Allāh, the water started and continued sprouting out till all the people quenched their thirst and returned with satisfaction. While they were still in that state, Budail bin Warqa Al-Khuzā'i came with some persons from his tribe Khuzā'a and they were the advisers of Allāh's Messenger ﷺ who would keep no secret from him and were from the people of Tihāma. Budail said, "I left Ka'b bin Lu'ai and 'Āmir bin Lu'ai residing at the profuse water of Al-

كُلِّ وَاحِدٍ مِنْهُمَا حَدِيثٌ صَاحِبِهِ قَالَا :  
خَرَجَ رَسُولُ اللَّهِ ﷺ زَمَنَ الْحُدَيْبِيَّةِ  
حَتَّى إِذَا كَانُوا بِبَعْضِ الطَّرِيقِ قَالَ  
النَّبِيُّ ﷺ: «إِنَّ خَالِدَ بْنَ الْوَلِيدِ  
بِالْعَمِيمِ فِي حَبْلِ لِقْرِيشٍ طَلِيعَةً فَخَذُوا  
ذَاتَ الْيَمِينِ»، فَوَاللَّهِ مَا شَعَرَ بِهِمْ  
خَالِدٌ حَتَّى إِذَا هُمْ بِقَتْرَةِ الْحَيْشِ  
فَانطَلَقَ يَرْغُضُ نَذِيرًا لِقْرِيشٍ، وَسَارَ  
النَّبِيُّ ﷺ حَتَّى إِذَا كَانَ بِالنَّبِيَّةِ الَّتِي  
يُهَيِّطُ عَلَيْهِمْ مِنْهَا بَرَكَتٌ بِهِ رَاجِلَتُهُ.  
فَقَالَ النَّاسُ: حَلَّ حَلٌّ، فَالْحَتُّ  
فَقَالُوا: خَلَّاتِ الْقَصْوَاءُ، خَلَّاتِ  
الْقَصْوَاءُ. فَقَالَ النَّبِيُّ ﷺ: «مَا  
خَلَّاتِ الْقَصْوَاءُ، وَمَا ذَاكَ لَهَا بِخُلَّتِي  
وَلَكِنْ حَبَسَهَا حَابِسُ الْفَيْلِ»، ثُمَّ  
قَالَ: «وَالَّذِي نَفْسِي بِيَدِهِ لَا يَسْأَلُونِي  
خُطَّةً يَعْظُمُونَ فِيهَا حُرْمَاتِ اللَّهِ إِلَّا  
أَعْطَيْتُهُمْ إِيَّاهَا». ثُمَّ زَجَرَهَا فَوَثَّتْ،  
قَالَ: فَعَدَلَّ عَنْهُمْ حَتَّى نَزَلَ بِأَفْصَى  
الْحُدَيْبِيَّةِ عَلَى تَمَدِّ قَلِيلِ الْمَاءِ يَتَبَرَّضُهُ  
النَّاسُ تَبَرُّضًا، فَلَمْ يَلْبِثُهُ النَّاسُ حَتَّى  
نَزَحُوهُ وَشَكِيَّ إِلَى رَسُولِ اللَّهِ ﷺ  
الْعَطَشُ. فَاَنْتَزَعَ سَهْمًا مِنْ كِنَانَتِهِ ثُمَّ  
أَمَرَهُمْ أَنْ يَجْعَلُوهُ فِيهِ، فَوَاللَّهِ مَا زَالَ  
يَجِيئُ لَهُمْ بِالرِّيِّ حَتَّى صَدَرُوا عَنْهُ  
فَيَيْنَمَا هُمْ كَذَلِكَ إِذْ جَاءَ بُدَيْلُ بْنُ  
وَرْقَاءَ الْخَزَاعِيِّ فِي نَفَرٍ مِنْ قَوْمِهِ مِنْ  
خَزَاعَةَ وَكَانُوا عَيْبَةً نُضِحَ رَسُولُ اللَّهِ

they are our enemies and the only people whom we suspect, I have made up my mind to exile them.” When ‘Umar decided to carry out his decision, one of Abū Al-Ḥuqīq’s sons came and addressed ‘Umar, “O chief of the believers, will you exile us although Muḥammad (ﷺ) allowed us to stay at our places, and made a contract with us about our properties, and accepted the condition of our residence in our land?” ‘Umar said, “Do you think that I have forgotten the statement of Allāh’s Messenger ﷺ, i.e.: What will your condition be when you are expelled from Kḥaibar and your camel will be carrying you night after night?” The Jew replied, “That was a joke from Abul-Qāsim.” ‘Umar said, “O the enemy of Allāh! You are telling a lie.” ‘Umar then drove them out and paid them the price of their properties in the form of fruits, money, camel saddles and ropes, etc.”

اللَّهِ»، وَإِنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ خَرَجَ إِلَى مَالِهِ هُنَاكَ فَعُدِّيَ عَلَيْهِ مِنَ اللَّيْلِ فَفَدَعَتْ يَدَاهُ وَرِجْلَاهُ وَلَيْسَ لَنَا هُنَاكَ عَدُوٌّ غَيْرُهُمْ هُمْ عَدُونَا وَتُهُمَّتْنَا، وَقَدْ رَأَيْتُ إِجْلَاءَهُمْ. فَلَمَّا أَجْمَعَ عُمَرُ عَلَى ذَلِكَ أَنَاهُ أَحَدُ بَنِي أَبِي الْحُقَيْقِيِّ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ، أَتُخْرِجُنَا وَقَدْ أَقْرَأْنَا مُحَمَّدًا ﷺ وَعَامَلْنَا عَلَى الْأَمْوَالِ وَشَرَطْنَا ذَلِكَ لَنَا؟ فَقَالَ عُمَرُ: أَظَنَنْتُ أَنِّي نَسِيتُ قَوْلَ رَسُولِ اللَّهِ ﷺ: «كَيْفَ بِكَ إِذَا أُخْرِجْتَ مِنْ خَيْبَرَ تَعْدُو بِكَ قَلْوَصُكَ لَيْلَةً بَعْدَ لَيْلَةٍ؟» فَقَالَ: كَانَ ذَلِكَ هَزِيلَةً مِنْ أَبِي الْقَاسِمِ، فَقَالَ: كَذَبْتَ يَا عَدُوَّ اللَّهِ، فَأَجْلَاهُمْ عُمَرُ وَأَعْطَاهُمْ قِيَمَةَ مَا كَانَ لَهُمْ مِنَ الثَّمَرِ مَالًا وَإِبِلًا وَعُرُوضًا مِنْ أَقْتَابٍ وَجِبَالٍ وَغَيْرِ ذَلِكَ. رَوَاهُ حَمَادُ بْنُ سَلَمَةَ، عَنْ عُبَيْدِ اللَّهِ، أَحْسِبُهُ عَنْ نَافِعِ، عَنِ ابْنِ عُمَرَ، عَنْ عُمَرَ عَنِ النَّبِيِّ ﷺ اخْتَصَرَهُ.

(15) CHAPTER. The conditions of *Jihād* and peace treaties with (non-Muslim) warriors, and the writing of the conditions.

(١٥) بَابُ الشَّرُوطِ فِي الْجِهَادِ وَالْمُصَالِحَةِ مَعَ أَهْلِ الْحَرْبِ وَكِتَابَةِ الشَّرُوطِ

2731, 2732. Narrated Al-Miswar bin Makhrama and Marwān whose narrations attest each other: Allāh’s Messenger ﷺ set out at the time of *Al-Hudaibiya* (treaty), and when they proceeded for a distance, he said, “Kḥālid bin Al-Walīd leading the cavalry of Quraish constituting the front of the army, is at a place called Al-Gḥamīm, so take the way

٢٧٣١، ٢٧٣٢ - حَدَّثَنِي عَبْدُ اللَّهِ ابْنُ مُحَمَّدٍ: حَدَّثَنَا عَبْدُ الرَّزَّاقِ: أَخْبَرَنَا مَعْمَرٌ قَالَ: أَخْبَرَنِي الزُّهْرِيُّ قَالَ: أَخْبَرَنِي عُرْوَةُ بْنُ الزُّبَيْرِ، عَنِ الْمِسْوَرِ بْنِ مَخْرَمَةَ وَمَرْوَانَ، يُصَدِّقُ

“If your masters agree, I will pay them the whole sum provided the *Walā'* will be for me.” Barīra went to her masters and told them about it, but they refused the offer and she returned from them while Allāh's Messenger ﷺ was sitting. She said, “I presented the offer to them, but they refused unless the *Walā'* would be for them.” When the Prophet ﷺ heard that and 'Aīshah told him about it, he said to her, “Buy Barīra and let them stipulate that her *Walā'* will be for them, as the *Walā'* is for the manumitter.” 'Aīshah did so. After that Allāh's Messenger got up amidst the people, glorified and praised Allāh and said, “What is wrong with some people who stipulate things which are not in Allāh's Laws? Any condition which is not in Allāh's Laws is invalid even if there were a hundred such conditions. Allāh's Rules are the most valid and Allāh's Conditions are the most solid. The *Walā'* is for the manumitter.”

(14) CHAPTER. If the landlord stipulates in the contract of share-cropping that he would terminate the contract whenever he likes.

2730. Narrated Ibn 'Umar رَضِيَ اللهُ عَنْهُمَا: When the people of Khaibar dislocated 'Abdullāh bin 'Umar's hands and feet, Umar got up delivering a *Khutba* (religious talk) saying, “No doubt, Allāh's Messenger ﷺ made a contract with the Jews concerning their properties, and said to them, ‘We allow you (to stand in your land) as long as Allāh allows you.’ Now 'Abdullāh bin 'Umar went to his land and was attacked at night, and his hands and feet were dislocated, and as we have no enemies there except those Jews,

فِي كُلِّ عَامٍ أَوْفِيَّةٌ فَأَعِينِنِي، فَقَالَتْ: إِنَّ أَحِبُّوْا أَنْ أَعِدَّهَا لَهُمْ وَيَكُوْنُ وَلَاؤُكَ لِي فَعَلْتُ، فَذَهَبَتْ بِرَبْرَةَ إِلَى أَهْلِهَا فَقَالَتْ لَهُمْ فَأَبَوْا عَلَيْهَا. فَجَاءَتْ مِنْ عِنْدِهِمْ وَرَسُولُ اللَّهِ ﷺ جَالِسٌ فَقَالَتْ: إِنِّي قَدْ عَرَضْتُ ذَلِكَ عَلَيْهِمْ فَأَبَوْا إِلَّا أَنْ يَكُوْنَ الْوَلَاءُ لَهُمْ، فَسَمِعَ النَّبِيُّ ﷺ فَأَخْبَرَتْ عَائِشَةُ النَّبِيَّ ﷺ فَقَالَ: «خُذِيهَا وَاشْتَرِيْ لَهُمُ الْوَلَاءَ، فَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ». فَفَعَلْتُ عَائِشَةَ، ثُمَّ قَامَ رَسُولُ اللَّهِ ﷺ فِي النَّاسِ فَحَمِدَ اللَّهَ وَأَثْنَى عَلَيْهِ ثُمَّ قَالَ: «مَا بَالُ رِجَالٍ يَشْتَرِطُوْنَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ، مَا كَانَ مِنْ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَإِنْ كَانَ مِائَةَ شَرْطٍ، قَضَاءُ اللَّهِ أَحَقُّ وَشَرْطُ اللَّهِ أَوْثَقُ، وَإِنَّمَا الْوَلَاءُ لِمَنْ أَعْتَقَ». [راجع: ٤٥٦]

(١٤) بَابُ إِذَا اشْتَرَطَ فِي الْمُرَارَعَةِ:

إِذَا شِئْتُ أَخْرَجْتُكَ

٢٧٣٠ - حَدَّثَنَا أَبُو أَحْمَدَ: حَدَّثَنَا مُحَمَّدُ بْنُ يَحْيَى أَبُو عَسَّانَ الْكِنَانِيُّ: أَخْبَرَنَا مَالِكٌ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ: لَمَّا فَدَعَ أَهْلُ حَيِّيرَ عَبْدَ اللَّهِ بْنِ عُمَرَ قَامَ عُمَرُ حَظِيْبًا فَقَالَ: إِنَّ رَسُولَ اللَّهِ ﷺ كَانَ عَامِلًا يَهُودَ حَيِّيرَ عَلَى أَمْوَالِهِمْ وَقَالَ: «نُقِرُّكُمْ مَا أَقْرَكُمُ

السلام) the Messenger of Allāh,” and then he narrated the whole story about him. Al-Khidr said to Mūsa, “Did I not tell you that you would not be able to have patience with me.” (V.18:72). Mūsa then violated the agreement for the first time because of forgetfulness, then Moses promised that if he asked Al-Khidr about anything, the latter would have the right to desert him. Mūsa abided by that condition and on the third occasion he intentionally asked Al-Khidr and caused that condition to be applied. The three occasions referred to above are referred to by the following Verses:

‘...Call me not to account for what I forgot, and be not hard upon me for my affair (with you).’ (V.18:73)

‘...Till they met a boy and he (Al-Khidr) killed him...’

‘Then they both proceeded ... found therein a wall about to collapse and he (Al-Khidr) set it up straight...’<sup>(1)</sup> (V.18:77)

مُوسَى: أَخْبَرَنَا هِشَامٌ: أَنَّ ابْنَ جُرَيْجٍ أَخْبَرَهُ قَالَ: أَخْبَرَنِي يَعْلى بْنُ مُسْلِمٍ، وَعَمْرُو بْنُ دِينَارٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، يَزِيدُ أَحَدُهُمَا عَلَى صَاحِبِهِ، وَعَیْرُهُمَا: قَدْ سَمِعْتُهُ يُحَدِّثُهُ عَنْ سَعِيدِ بْنِ جُبَيْرٍ قَالَ: إِنَّا لَعِنْدَ ابْنِ عَبَّاسٍ رَضِيَ اللهُ عَنْهُمَا قَالَ: حَدَّثَنِي أَبِي بْنُ كَعْبٍ قَالَ: قَالَ رَسُولُ اللهِ ﷺ: «مُوسَى رَسُولُ اللهِ»، فَذَكَرَ الْحَدِيثَ. قَالَ: «أَلَمْ أَقُلْ إِنَّكَ لَنْ تَسْتَطِيعَ مَعِيَ صَبْرًا» [الكهف: ٧٢] كَانَتْ الْأُولَى نِسْبَانَا، وَالْوَسْطَى شَرْطًا، وَالثَّالِثَةُ عَمْدًا، «قَالَ لَا تُؤَاخِذْنِي بِمَا نَسِيتُ وَلَا تُرْهِقْنِي مِنْ أَمْرِي عَسْرًا» [الكهف: ٧٣]، «لَقِيَا غُلَامًا فَقَتَلَهُ» «فَأَنْطَلَقَا حَتَّى إِذَا أَنِيَا أَهْلَ قَرْيَةٍ اسْتَطَعَمَا أَهْلَهَا فَأَبَوْا أَنْ يُضَيِّقُوهُمَا فَوَجَدَا فِيهَا جِدَارًا يُرِيدُ أَنْ يَنْقُضَ فَأَقَامَهُ» [الكهف: ٧٧] قَرَأَهَا ابْنُ عَبَّاسٍ (أَمَامَهُمْ مَلِكٌ).

[راجع: ٧٤]

### (١٣) بَابُ الشُّرُوطِ فِي الْوَلَاءِ

#### (13) CHAPTER. Conditions for *Walā'*.

2729. Narrated 'Urwa: 'Āishah رضي الله عنها said, "Barīra came to me and said, 'My people (masters) have written the contract for my emancipation for nine *Awaq* (of gold) to be paid in yearly installments, one *Uqīya* per year; so help me.'" 'Āishah said (to her),

٢٧٢٩ - حَدَّثَنَا إِسْمَاعِيلُ: حَدَّثَنَا مَالِكٌ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ قَالَتْ: جَاءَتْنِي بَرِيرَةُ فَقَالَتْ: كَاتَبَتْ أَهْلِي عَلَى تِسْعِ أَوَاقٍ

(1) (H. 2728) In the second case Moses abided by the condition though there was no written agreement or witnesses. So when Khidr said to him, "This is the parting between me and you. 'Moses accepted his decision because it agreed with the condition he himself had set up.

Barira?' He said, 'Buy her and manumit her, no matter what they stipulate.' 'Āishah added, 'I bought and manumitted her, though her masters had stipulated that her *Walā'* would be for them.' The Prophet ﷺ said, 'The *Walā'* is for the liberator, even if the other stipulated a hundred conditions.'

ولائي، قَالَتْ: لَا حَاجَةَ لِي فِيكَ. فَسَمِعَ ذَلِكَ النَّبِيُّ ﷺ أَوْ بَلَّغَهُ، فَقَالَ: «مَا شَأْنُ بَرِيرَةَ؟» فَقَالَ: «اشْتَرَيْهَا فَأَعْتَقْتُهَا، وَلَيْسَتْ رَطُوا مَا شَاؤُوا. قَالَتْ: فَاشْتَرَيْتُهَا فَأَعْتَقْتُهَا، وَاشْتَرَطَ أَهْلُهَا وَلاَءَهَا. فَقَالَ النَّبِيُّ ﷺ: «الْوَلَاءُ لِمَنْ أَعْتَقَ وَإِنْ اشْتَرَطُوا مِائَةَ شَرْطٍ». [راجع: ٤٥٦]

(11) CHAPTER. Conditions concerning divorce.

(١١) بَابُ الشَّرْطِ فِي الطَّلَاقِ

وقال ابن المسيب والحسن وعطاء: إن بدأ بالطلاق أو أحرر فهو أحق بشرطه.

2727. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ: Allāh's Messenger ﷺ forbade:

٢٧٢٧ - حَدَّثَنَا مُحَمَّدُ بْنُ عَرُورَةَ: حَدَّثَنَا شُعْبَةُ، عَنْ عَدِيِّ بْنِ ثَابِتٍ، عَنْ أَبِي حازِمٍ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ قَالَ: نَهَى رَسُولُ اللهِ ﷺ عَنِ التَّلْقِي، وَأَنْ يَبْتَاعَ الْمُهَاجِرُ لِلْأَعْرَابِيِّ، وَأَنْ تَشْتَرِطَ الْمَرْأَةُ طَلَاقَ أُخْتِهَا، وَأَنْ يَسْتَأْمَ الرَّجُلُ عَلَى سَوْمِ أُخِيهِ، وَنَهَى عَنِ النَّجْشِ، وَعَنِ التَّضْرِيَةِ. تَابَعَهُ مُعَاذٌ وَعَبْدُ الصَّمَدِ عَنْ شُعْبَةَ. وَقَالَ عُنْدَرٌ وَعَبْدُ الرَّحْمَنِ: نُهِيَ. وَقَالَ آدَمُ: نُهِينَا. وَقَالَ النَّضْرُ وَحَجَّاجُ بْنُ مِنْهَالٍ: نُهِيَ. [راجع: ٢١٤٠]

- (i) The meeting of the caravan (of goods) on the way,
- (ii) That a residing person sells goods of a bedouin,
- (iii) That a woman stipulates the divorce of the wife of the would be husband,
- (iv) That a man tries to cause the cancellation of a bargain concluded by another. He also forbade *An-Najsh* and that one withholds the milk in the udder of an animal so that he may deceive people on selling it.

[See *Hadith* 2656]

(12) CHAPTER. Verbal conditions with the people.

(١٢) بَابُ الشَّرْطِ مَعَ النَّاسِ بِالْقَوْلِ

2728. Narrated Ubai bin Ka'b رَضِيَ اللهُ عَنْهُ: Allāh's Messenger ﷺ said, "Mūsa (Moses عليه

٢٧٢٨ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ

be stoned to death. So, in lieu of that I ransomed my son by paying one hundred sheep and a slave-girl. Then I asked the religious scholars about it, and they informed me that my son must be lashed one hundred lashes, and be exiled for one year, and the wife of this (man) must be stoned to death.” Allāh’s Messenger ﷺ said, “By Him in Whose Hands my soul is, I will judge between you according to Allāh’s Laws. The slave-girl and the sheep are to be returned to you, your son is to receive a hundred lashes and be exiled for one year. You, O Unais, go to the wife of this (man) and if she confesses her guilt, stone her to death.” Unais went to that woman next morning and she confessed. Allāh’s Messenger ﷺ ordered that she be stoned to death.

فَأَفْضِ بَيْنَنَا بِكِتَابِ اللَّهِ وَائْذَنْ لِي، فَقَالَ رَسُولُ اللَّهِ ﷺ: «قُلْ»، قَالَ: إِنَّ ابْنِي كَانَ عَسِيفاً عَلَى هَذَا فَرْزَنِي بَامْرَأَتِهِ وَإِنِّي أُخْبِرْتُ أَنَّ عَلَى ابْنِي الرَّجْمَ فَاغْتَدَيْتُ مِنْهُ بِمِائَةِ شَاةٍ وَوَلِيدَةٍ، فَسَأَلْتُ أَهْلَ الْعِلْمِ فَأَخْبَرُونِي أَنَّ عَلَى ابْنِي مِائَةَ جَلْدَةٍ وَتَغْرِيبَ عَامٍ، وَأَنَّ عَلَى امْرَأَةِ هَذَا الرَّجْمَ، فَقَالَ رَسُولُ اللَّهِ ﷺ: «وَالَّذِي نَفْسِي بِيَدِهِ لِأَفْضَيْنَ بَيْنَكُمَا بِكِتَابِ اللَّهِ، الْوَلِيدَةَ وَالْعَنْمَ رَدْ عَلَيْكَ، وَعَلَى ابْنِكَ جَلْدُ مِائَةٍ وَتَغْرِيبُ عَامٍ. اغْدُ يَا أُتَيْسُ إِلَى امْرَأَةِ هَذَا فَإِنِ اعْتَرَفَتْ فَارْجُمِهَا». قَالَ: فَعَدَا عَلَيْهَا فَاعْتَرَفَتْ فَأَمَرَ بِهَا رَسُولُ اللَّهِ ﷺ فَرَجِمَتْ.

[راجع: ٢٣١٤، ٢٣١٥]

(10) CHAPTER. The conditions permissible in the case of a slave who has a writing for emancipation, if he agrees to be sold to somebody else who promises to free him.

(١٠) بَابُ مَا يَجُوزُ مِنْ شُرُوطِ الْمُكَاتَبِ إِذَا رَضِيَ بِالْبَيْعِ عَلَى أَنْ يُعْتَقَ

2726. Narrated Aiman Al-Makkī : When I visited ‘Āishah رَضِيَ اللَّهُ عَنْهَا she said, “Barira who had a written contract for her emancipation for a certain amount came to me and said, ‘O Mother of the believers! Buy me and manumit me, as my masters will sell me.’ ‘Āishah agreed to it. Barira said, ‘My masters will sell me on the condition that my *Walā*<sup>(1)</sup> will go to them.’ ‘Āishah said to her, ‘Then I am not in need of you.’ The Prophet ﷺ heard of that, or was told about it and so he asked ‘Āishah, ‘What is the problem of

٢٧٢٦ - حَدَّثَنَا خَلَادُ بْنُ يَحْيَى: حَدَّثَنَا عَبْدُ الْوَاحِدِ بْنُ أَيْمَنِ الْمَكِّيُّ، عَنْ أَبِيهِ قَالَ: دَخَلْتُ عَلَى عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ: دَخَلْتُ عَلَيَّ بِرَبِيرَةَ وَهِيَ مُكَاتَبَةٌ فَقَالَتْ: يَا أُمَّ الْمُؤْمِنِينَ اشْتَرِنِي فَإِنَّ أَهْلِي يَبِيعُونِي فَأَعْقِبْنِي، قَالَتْ: نَعَمْ. قَالَتْ: إِنَّ أَهْلِي لَا يَبِيعُونِي حَتَّى يَشْتَرُونِي

(1) (H. 2726) *Walā*: See the glossary.

did not give any yield, so we were forbidden (by the Prophet ﷺ) to follow such a system, but we were allowed to rent the land for money.

الرُّزْقِيَّ قَالَ: سَمِعْتُ رَافِعَ بْنَ خَدِيجٍ رَضِيَ اللَّهُ عَنْهُ يَقُولُ: كُنَّا أَكْثَرَ الْأَنْصَارِ حَقْلًا فَكُنَّا نُكْرِي الْأَرْضَ، فَرُبَّمَا أَخْرَجَتْ هَذِهِ وَلَمْ تُخْرَجْ ذُوهُ، فَتُهِنَا عَنْ ذَلِكَ وَلَمْ نُتَّهِ عَنِ الْوَرِقِ.

[راجع: ٢٢٨٦]

(8) CHAPTER. The conditions which are not permissible in the contracts of marriage.

(٨) بَابُ مَا لَا يَجُوزُ مِنَ الشَّرُوطِ

فِي النِّكَاحِ

2723. Narrated Abū Hurairah رَضِيَ اللَّهُ عَنْهُ: The Prophet ﷺ said, "No town-dweller should sell for a bedouin. Do not practise *Najsh* (i.e., do not offer a high price for a thing which you do not want to buy, in order to deceive the people). No Muslim should offer more for a thing already bought by his Muslim brother, nor should he demand the hand of a girl already engaged to another Muslim. A Muslim woman shall not try to bring about the divorce of her sister (i.e., another Muslim woman) in order to take her place herself."

٢٧٢٣ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا يَزِيدُ ابْنُ زُرَيْعٍ: حَدَّثَنَا مَعْمَرٌ، عَنِ الرَّهْرِيِّ، عَنْ سَعِيدٍ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ ﷺ قَالَ: «لَا يَبِيعُ حَاضِرٌ لِبَادٍ، وَلَا تَنَاجَشُوا وَلَا يَزِيدَنَّ عَلَى بَيْعِ أَخِيهِ، وَلَا يَحْطُبَنَّ عَلَى خِطْبَتِهِ، وَلَا تَسْأَلِ الْمَرْأَةُ طَلَاقَ أُخْتِهَا لِتَسْتَكْفِيَ إِنْءَاءَهَا».

[راجع: ٢١٤٠]

(9) CHAPTER. The conditions which are not permissible in the legal punishments prescribed by Allāh.

(٩) بَابُ الشَّرُوطِ الَّتِي لَا تَحِلُّ فِي

الْحُدُودِ

2724, 2725. Narrated Abū Hurairah and Zaid bin Khālid Al-Juhānī رَضِيَ اللَّهُ عَنْهُمَا: A bedouin came to Allāh's Messenger ﷺ and said, "O Allāh's Messenger! I ask you by Allāh to judge my case according to Allāh's Laws." His opponent, who was more learned than he, said, "Yes, judge between us according to Allāh's Laws, and allow me to speak." Allāh's Messenger ﷺ said, "Speak." He (i.e., the bedouin or the other man) said, "My son was working as a labourer for this (man) and he committed illegal sexual intercourse with his wife. The people told me that it was obligatory that my son should

٢٧٢٤، ٢٧٢٥ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: حَدَّثَنَا لَيْثٌ، عَنِ ابْنِ شِهَابٍ، عَنْ عَبْدِ اللَّهِ ابْنِ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ، عَنْ أَبِي هُرَيْرَةَ وَزَيْدِ بْنِ خَالِدٍ الْجُهَيْنِيِّ رَضِيَ اللَّهُ عَنْهُمَا أَنَّهُمَا قَالَا: إِنَّ رَجُلًا مِنَ الْأَعْرَابِ أَتَى رَسُولَ اللَّهِ ﷺ فَقَالَ: يَا رَسُولَ اللَّهِ، أَنْشَدُكَ اللَّهُ أَلَّا قَضَيْتَ لِي بِكِتَابِ اللَّهِ. فَقَالَ الْخَضْمُ الْآخَرُ وَهُوَ أَفْقَهُ مِنْهُ: نَعَمْ،

2720. Narrated 'Abdullāh bin 'Umar رَضِيَ اللهُ عَنْهُمَا: Allāh's Messenger ﷺ gave the land of Khaibar to the Jews on the condition that they would work on it and cultivate it and they would get half of its yield.

(6) CHAPTER. The terms and the conditions of *Mahr* at the time of the marriage contract.

'Umar said, "The rights are limited by the conditions, and you will get only what you stipulate."

Narrated Al-Miswar, "I heard the Prophet ﷺ once mentioning his son-in-law and praising him highly as a sincere son-in-law. He said, 'Whenever he talked to me, he spoke the truth and whenever he promised me, he fulfilled his promise.'"

2721. Narrated 'Uqba bin 'Āmir رَضِيَ اللهُ عَنْهُ: Allāh's Messenger ﷺ said, "From among all the conditions which you have to fulfill, the conditions which make it legal for you to have sexual relations (i.e., the marriage contract) have the greatest right to be fulfilled."

(7) CHAPTER. The conditions in share-cropping.

2722. Narrated Rāfi' bin Khadij رَضِيَ اللهُ عَنْهُ: We used to work in the fields more than the other *Anṣār*, and we used to rent the land (for the yield of a specific portion of it). But sometimes that portion or the rest of the land

وَتُشْرِكُكُمْ فِي الثَّمَرَةِ»، قَالُوا: سَمِعْنَا وَأَطَعْنَا. [راجع: ٢٣٢٥]

٢٧٢٠ - حَدَّثَنَا مُوسَى بْنُ إِسْمَاعِيلَ: حَدَّثَنَا جُوَيْرِيَةُ بْنُ أَسْمَاءَ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ رَضِيَ اللَّهُ عَنْهُ قَالَ: أُعْطِيَ رَسُولُ اللَّهِ ﷺ خَيْبَرَ الْيَهُودَ أَنْ يَعْمَلُوهَا وَيَزْرَعُوهَا وَلَهُمْ شَطْرُ مَا يَخْرُجُ مِنْهَا. [راجع: ٢٢٨٥]

(٦) بَابُ الشَّرْطِ فِي الْمَهْرِ عِنْدَ عَقْدَةِ النِّكَاحِ

وَقَالَ عُمَرُ: إِنَّ مَقَاطِعَ الْحَقُوقِ عِنْدَ الشَّرْطِ، وَلَكَ مَا شَرَطْتَ. وَقَالَ الْمِسْوَرُ: سَمِعْتُ النَّبِيَّ ﷺ ذَكَرَ صِهْرًا لَهُ فَأَثْنَى عَلَيْهِ فِي مُصَاهَرَتِهِ فَأَحْسَنَ، قَالَ: حَدَّثَنِي فَصَدَّقَنِي وَوَعَدَنِي فَوَفَى لِي.

٢٧٢١ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: حَدَّثَنَا اللَّيْثُ قَالَ: حَدَّثَنِي يَزِيدُ بْنُ أَبِي حَبِيبٍ، عَنْ أَبِي الْخَيْرِ، عَنْ عُقْبَةَ بْنِ عَامِرٍ رَضِيَ اللَّهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «أَحَقُّ الشَّرْطِ أَنْ تُوفُوا بِهِ مَا اسْتَحَلَلْتُمْ بِهِ الْفُرُوجَ». [انظر: ٥١٥١]

(٧) بَابُ الشَّرْطِ فِي الْمُرَاعَةِ

٢٧٢٢ - حَدَّثَنَا مَالِكُ بْنُ إِسْمَاعِيلَ: حَدَّثَنَا ابْنُ عُيَيْنَةَ: حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ قَالَ: سَمِعْتُ حَنْظَلَةَ

أكثر وأصحُّ عندي. وقال عُبَيْدُ اللَّهِ  
 وابنُ إِسْحَاقَ، عَنْ وَهَبِ، عَنْ  
 جَابِرٍ: اشْتَرَاهُ النَّبِيُّ ﷺ بِأَوْقِيَّةٍ.  
 وَتَابَعَهُ زَيْدُ بْنُ أَسْلَمَ، عَنْ جَابِرٍ.  
 وَقَالَ ابْنُ جُرَيْجٍ، عَنْ عَطَاءٍ وَعَبْدِ  
 عَنِ جَابِرٍ: أَخَذْتُهُ بِأَرْبَعَةِ دَنَانِيرَ،  
 وَهَذَا يَكُونُ أَوْقِيَّةً عَلَى حِسَابِ الدِّينَارِ  
 بِعَشْرَةِ دَرَاهِمٍ. وَلَمْ يُبَيِّنِ الثَّمَنَ  
 مُعَيَّرَةً، عَنِ الشَّعْبِيِّ، عَنْ جَابِرٍ. وَابْنُ  
 الْمُكَدِّرِ وَأَبُو الزُّبَيْرِ عَنْ جَابِرٍ. وَقَالَ  
 الْأَعْمَشُ، عَنْ سَالِمٍ، عَنْ جَابِرٍ:  
 أَوْقِيَّةٌ ذَهَبٍ. وَقَالَ أَبُو إِسْحَاقَ، عَنْ  
 سَالِمٍ، عَنْ جَابِرٍ: بِمِائَتِي دِرْهَمٍ.  
 وَقَالَ دَاوُدُ بْنُ قَيْسٍ، عَنْ عُبَيْدِ اللَّهِ بْنِ  
 مِقْسَمٍ، عَنْ جَابِرٍ: اشْتَرَاهُ بِطَرِيقِ  
 تَبُوكَ، أَحْسِبُهُ قَالَ: بِأَرْبَعِ أَوْاقٍ.  
 وَقَالَ أَبُو نَضْرَةَ: عَنْ جَابِرٍ: اشْتَرَاهُ  
 بِعِشْرِينَ دِينَارًا. وَقَوْلُ الشَّعْبِيِّ: بِأَوْقِيَّةٍ  
 أَكْثَرُ؛ الْاِشْتِرَاطُ أَكْثَرُ وَأَصْحُ عِنْدِي،  
 قَالَهُ أَبُو عَبْدِ اللَّهِ.

(5) CHAPTER. Conditions in contracts (of share-cropping etc.).

(٥) بَابُ الشَّرْطِ فِي الْمُعَامَلَةِ

2719. Narrated Abū Hurairah رَضِيَ اللَّهُ عَنْهُ:

The *Anṣār* said to the Prophet ﷺ, "Divide our date-palms between us and our emigrant brothers." The Prophet ﷺ said, "No." The *Anṣār* said to the emigrants, "You may do the labour (in our gardens) and we will share the fruits with you." The emigrants said, "We hear and obey."

٢٧١٩ - حَدَّثَنَا أَبُو الْيَمَانِ:

أَخْبَرَنَا شُعَيْبٌ: حَدَّثَنَا أَبُو الزَّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ: قَالَتِ الْأَنْصَارُ لِلنَّبِيِّ ﷺ: اقْسِمْ بَيْنَنَا وَبَيْنَ إِخْوَانِنَا النَّخِيلِ قَالَ: «لا»، فقال الأنصار: «تكفوننا المؤنة»