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55 - THE BOOK OF WAṢĀYĀ (Wills and Testaments)

٥٥ - كتاب الوصايا

(1) CHAPTER. *Al-Waṣāyā* (The Wills)

(١) بَابُ الْوَصَايَا

And the statement of the Prophet ﷺ: "One should have his *Waṣāyā* (last will and testament) written and kept ready with him."

وَقَوْلِ النَّبِيِّ ﷺ: «وَصِيَّةُ الرَّجُلِ مَكْتُوبَةٌ عِنْدَهُ». وَقَالَ اللَّهُ عَزَّ وَجَلَّ:

And the Statement of Allāh جل جلاله:

"It is prescribed for you, when death approaches any of you, if he leaves wealth, that he make a bequest to parents... (up to)... some unjust..." (V.2:180-182)

﴿كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ﴾ إِلَى ﴿جَنَفًا﴾ [البقرة: ١٨٠-١٨٢] ﴿جَنَفًا﴾: مَيْلًا، ﴿مُتَجَانِفٍ﴾: مُتَمَائِلٍ.

2738. Narrated 'Abdullāh bin 'Umar رضي الله عنهما: Allāh's Messenger ﷺ said, "It is not permissible for any Muslim who has something to will, to stay for two nights without having his last will and testament written and kept ready with him."

٢٧٣٨ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: أَخْبَرَنَا مَالِكٌ، عَنِ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ».

تَابَعَهُ مُحَمَّدُ بْنُ مُسْلِمٍ، عَنْ عَمْرِو، عَنْ ابْنِ عُمَرَ عَنِ النَّبِيِّ ﷺ.

2739. Narrated 'Amr bin Al-Hārith, the brother of the wife of Allāh's Messenger ﷺ Juwairiya bint Al-Hārith: When Allāh's Messenger ﷺ died, he did not leave any Dirham or Dīnār (i.e., money) or a slave or a slave-woman or anything else except his white mule, his arms and a piece of land which he had given in charity.

٢٧٣٩ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ الْحَارِثِ: حَدَّثَنَا يَحْيَى بْنُ أَبِي بُكَيْرٍ: حَدَّثَنَا زُهَيْرُ بْنُ مُعَاوِيَةَ الْجُعْفِيُّ: حَدَّثَنَا أَبُو إِسْحَاقَ، عَنْ عَمْرِو بْنِ الْحَارِثِ خَتَنِ رَسُولِ اللَّهِ ﷺ أَخِي جُوَيْرِيَةَ بِنْتِ الْحَارِثِ قَالَ: مَا تَرَكَ رَسُولُ اللَّهِ ﷺ عِنْدَ مَوْتِهِ دَرَاهِمًا وَلَا دِينَارًا، وَلَا عَبْدًا وَلَا أَمَةً وَلَا شَيْئًا إِلَّا بَعَلَّتُهُ الْبَيْضَاءُ وَسِلَاحُهُ وَأَرْضًا جَعَلَهَا صَدَقَةً. [انظر: ٢٨٧٣، ٢٩١٢،

2740. Narrated Ṭalḥa bin Musarrif: I asked ‘Abdullāh bin Abū Aūfa رَضِيَ اللهُ عَنْهُمَا, “Did the Prophet ﷺ make a will?” He replied, “No.” I asked him, “How is it then that the making of a will has been enjoined on people (or that they are ordered to make a will)?” He replied, “The Prophet ﷺ bequeathed Allāh’s Book (i.e., the Qur’an).”

2741. Narrated Al-Aswad: In the presence of ‘Āishah some people mentioned that the Prophet ﷺ had appointed ‘Alī by will as his successor. ‘Āishah said, “When did he appoint him by will? Verily, when he died he was resting against my chest (or said: in my lap) and he asked for a washbasin and then collapsed while in that state, and I could not even perceive that he had died, so when did he appoint him by will?”

(2) CHAPTER. One would rather leave one’s inheritors wealthy than leave them (poor) begging others.

2742. Narrated Sa’d bin Abi Waqqāṣ رَضِيَ اللهُ عَنْهُ: The Prophet ﷺ came visiting me while I was (sick) in Makkah, (‘Āmir the subnarrator said, and he disliked to die in the land whence he had already migrated). He (i.e., the Prophet ﷺ) said, “May Allāh bestow His Mercy on Ibn ‘Afrā’ (Sa’d bin Khāula).” I said, “O Allāh’s Messenger! May I will all my property (in charity)?” He said, “No.” I said, “Then may I will half of it?” He said, “No.” I said, “One-third?” He said,

٢٧٤٠ - حَدَّثَنَا خَلَادُ بْنُ يَحْيَى: حَدَّثَنَا مَالِكٌ هُوَ ابْنُ مِعْوَلٍ: حَدَّثَنَا طَلْحَةُ بْنُ مِصْرَفٍ قَالَ: سَأَلْتُ عَبْدَ اللَّهِ بْنَ أَبِي أَوْفَى رَضِيَ اللهُ عَنْهُمَا: هَلْ كَانَ النَّبِيُّ ﷺ أَوْصَى؟ فَقَالَ: لَا، فَقُلْتُ: كَيْفَ كُتِبَ عَلَى النَّاسِ الْوَصِيَّةُ أَوْ أُمِرُوا بِالْوَصِيَّةِ؟ قَالَ: أَوْصَى بِكِتَابِ اللَّهِ. [انظر: ٤٤٦٠، ٥٠٢٢]

٢٧٤١ - حَدَّثَنَا عَمْرُو بْنُ زُرَّارَةَ: أَخْبَرَنَا إِسْمَاعِيلُ عَنِ ابْنِ عَوْنٍ، عَنْ إِبْرَاهِيمَ، عَنِ الْأَسْوَدِ قَالَ: ذَكَرُوا عِنْدَ عَائِشَةَ أَنَّ عَلِيًّا رَضِيَ اللهُ عَنْهُمَا كَانَ وَصِيًّا فَقَالَتْ: مَتَى أَوْصَى إِلَيْهِ وَقَدْ كُنْتُ مُسِنِدَتَهُ إِلَى صَدْرِي؟ أَوْ قَالَتْ: حَجْرِي، فَدَعَا بِالطَّسْتِ فَلَقِدَ انْحَنَّتْ فِي حَجْرِي فَمَا شَعَرْتُ أَنَّهُ قَدْ مَاتَ، فَمَتَى أَوْصَى إِلَيْهِ؟ [انظر: ٤٤٥٩]

(٢) بَابٌ أَنْ يَتْرَكَ وَرَثَتَهُ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ يَتَكَفَّفُوا النَّاسَ

٢٧٤٢ - حَدَّثَنَا أَبُو نُعَيْمٍ: حَدَّثَنَا سُيَّانٌ، عَنْ سَعْدِ بْنِ إِبْرَاهِيمَ، عَنْ عَامِرِ بْنِ سَعْدٍ، عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ رَضِيَ اللهُ عَنْهُ يَقُولُ: جَاءَ النَّبِيُّ ﷺ يُعَوِّدُنِي وَأَنَا بِمَكَّةَ وَهُوَ يَكْرَهُ أَنْ يَمُوتَ بِالْأَرْضِ الَّتِي هَاجَرَ مِنْهَا. قَالَ: «يُرَحِّمُ اللهُ ابْنَ عَفْرَاءِ»

“Yes, one-third, yet even one-third is too much. It is better for you to leave your inheritors wealthy than to leave them (poor) begging others, and whatever you spend for Allāh’s sake will be considered as a charitable deed, even the handful of food you put in your wife’s mouth. Allāh may lengthen your age so that some people may benefit by you, and some others be harmed by you.”

At that time Sa’d had only one daughter.

(3) CHAPTER. To will one-third of one’s property.

Al-Ḥasan said, “A *Dhimmī* (i.e., a non-Muslim living under the protection of an Islāmī government) is not allowed to will more than one-third of his property. And Allāh عزَّ وجلَّ said: “And so judge (you O Muḥammad ﷺ) among them by what Allāh has revealed...” (V.5:49)

2743. Narrated Ibn ‘Abbās رضي الله عنهما: I recommend that people reduce the proportion of what they bequeath by will to the fourth (of the whole legacy), for Allāh’s Messenger ﷺ said, “One-third, yet even one-third is too much.”

2744. Narrated Sa’d رضي الله عنه: I fell sick and the Prophet ﷺ paid me a visit. I said to him, “O Allāh’s Messenger! I invoke Allāh that He may not let me expire in the land whence I migrated (i.e., Makkah).” He said, “May Allāh give you health and let the people benefit by you.” I said, “I want to will my property, and I have only one daughter

قُلْتُ: يَا رَسُولَ اللَّهِ، أُوصِي بِمَالِي كُلِّهِ؟ قَالَ: «لَا»، قُلْتُ: فَالْشَّطْرُ؟ قَالَ: «لَا»، قُلْتُ: التُّلْتُ؟ قَالَ: «فالتُّلْتُ والتُّلْتُ كثيرٌ، إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ فِي أَيْدِيهِمْ، وَإِنَّكَ مَهْمَا أَنْفَقْتَ مِنْ نَفَقَةٍ فَإِنَّهَا صَدَقَةٌ حَتَّى اللَّقْمَةُ تَرْفَعُهَا إِلَى فِي امْرَأَتِكَ، وَعَسَى اللَّهُ أَنْ يَرْفَعَكَ فَيَنْتَفِعَ بِكَ نَاسٌ وَيُضِرَّ بِكَ آخَرُونَ». وَلَمْ يَكُنْ لَهُ يَوْمَئِذٍ إِلَّا ابْنَةٌ.

(٣) بَابُ الْوَصِيَّةِ بِالتُّلْتِ

وقال الحسن: لا يجوز للذمي وصية إلا بالتُّلْتِ: وقال الله عزَّ وجلَّ: ﴿وَإِنْ أَحْكَمَ بَيْنَهُمْ يَأْتِزِلْ اللَّهُ﴾ [المائدة: ٤٩].

٢٧٤٣ - حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ: حَدَّثَنَا سُفْيَانُ عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ: «لَوْ غَضَّ النَّاسُ إِلَى الرَّبْعِ لَأَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: التُّلْتُ والتُّلْتُ كثيرٌ».

٢٧٤٤ - حَدَّثَنِي مُحَمَّدُ بْنُ عَبْدِ الرَّحِيمِ: حَدَّثَنَا زَكَرِيَّا بْنُ عَدِيٍّ: حَدَّثَنَا مَرْوَانُ، عَنْ هَاشِمِ بْنِ هَاشِمٍ، عَنْ عَامِرِ ابْنِ سَعِيدٍ، عَنْ أَبِيهِ رَضِيَ اللَّهُ عَنْهُ قَالَ: «مَرِضْتُ فَعَادَنِي النَّبِيُّ

and I want to will half of my property (to be given in charity).” He said, “Half is too much.” I said, “Then I will one-third.” He said, “One-third, yet even one-third is too much.” (The narrator added, “So the people started to will one-third of their property and that was permitted for them.”)

(4) CHAPTER. The saying of a testator to the executor, “Look after my son,” and what is permissible for the executor to claim.

2745. Narrated ‘Āishah رَضِيَ اللهُ عَنْهَا, the wife of the Prophet ﷺ: ‘Utba bin Abī Waqqāsh entrusted (his son) to his brother Sa’d bin Abī Waqqāsh saying, “The son of the slave-girl of Zam’a is my (illegal) son, take him into your custody.” So, during the year of the Conquest (of Makkah) Sa’d took the boy and said, “This is my brother’s son whom my brother entrusted to me.” ‘Abd bin Zam’a got up and said, “He is my brother and the son of the slave-girl of my father and was born on my father’s bed.” Then both of them came to Allāh’s Messenger ﷺ and Sa’d said, “O Allāh’s Messenger! This is my brother’s son whom my brother entrusted to me.”

Then ‘Abd bin Zam’a got up and said, “This is my brother and the son of the slave-girl of my father.” Allāh’s Messenger ﷺ said, “O ‘Abd bin Zam’a! This boy is for you as the boy belongs to the bed (where he was born), and for the adulterer is the stone.” Then the Prophet ﷺ said to his wife Sauda bint Zam’a, “Screen yourself from this boy,” when he saw

رَضِيَ اللهُ عَنْهُ فَقُلْتُ: يَا رَسُولَ اللهِ، اذْعُ اللهُ أَنْ لَا يَرُدَّنِي عَلَى عَقْبِي، قَالَ: لَعَلَّ اللهُ يَرْفَعُكَ وَيَنْفَعُ بِكَ نَاسًا. فَقُلْتُ: أُرِيدُ أَنْ أُوصِي، وَإِنَّمَا لِي ابْنَةٌ، فَقُلْتُ: أَوْصِي بِالنِّصْفِ؟ قَالَ: النِّصْفُ كَثِيرٌ، قُلْتُ: فَالثُّلُثُ؟ قَالَ: الثُّلُثُ وَالثُّلُثُ كَثِيرٌ أَوْ كَبِيرٌ، قَالَ: فَأَوْصَى النَّاسُ بِالثُّلُثِ فَجَازَ ذَلِكَ لَهُمْ.

(٤) بَابُ قَوْلِ الْمُوصِي لِمُوصِيهِ: تَعَاهَدُ لِبَوْلَدِي، وَمَا يَجُوزُ لِلْمُوصِي مِنَ الدَّعْوَى

٢٧٤٥ - حَدَّثَنَا عَبْدُ اللهِ بْنُ مَسْلَمَةَ، عَنْ مَالِكٍ، عَنِ ابْنِ شِهَابٍ، عَنْ عُرْوَةَ ابْنِ الزُّبَيْرِ، عَنْ عَائِشَةَ رَضِيَ اللهُ عَنْهَا زَوْجِ النَّبِيِّ ﷺ أَنَّهَا قَالَتْ: «كَانَ عُتْبَةُ بْنُ أَبِي وَقَّاصٍ عَهْدَ إِلَى أُخِيهِ سَعْدِ بْنِ أَبِي وَقَّاصٍ أَنَّ ابْنَ وِلِيدَةَ زَمْعَةَ مَنِي فَاقْبَضَهُ إِلَيْكَ. فَلَمَّا كَانَ عَامُ الْفَتْحِ أَخَذَهُ سَعْدٌ فَقَالَ: ابْنُ أُخِي قَدْ كَانَ عَهْدَ إِلَيَّ فِيهِ، فَقَامَ عَبْدُ بْنُ زَمْعَةَ فَقَالَ: أُخِي وَابْنُ أُمِّ أَبِي، وُلِدَ عَلَيَّ فِرَاشِهِ، فَتَسَاوَقَا إِلَى رَسُولِ اللهِ ﷺ فَقَالَ سَعْدٌ: يَا رَسُولَ اللهِ، ابْنُ أُخِي كَانَ عَهْدَ إِلَيَّ فِيهِ. فَقَالَ عَبْدُ بْنُ زَمْعَةَ: هُوَ أُخِي وَابْنُ وِلِيدَةَ أَبِي، فَقَالَ رَسُولُ اللهِ ﷺ: هُوَ لَكَ يَا عَبْدُ بْنُ زَمْعَةَ، هُوَ الْوَالِدُ لِلْفِرَاشِ وَلِلْعَاهِرِ

the boy's resemblance to 'Utba. Since then the boy did not see Sauda till he died.

الحَجْرُ. ثُمَّ قَالَ لِسَوْدَةَ بِنْتِ زَمْعَةَ: اِخْتَجِبِي مِنْهُ لَمَّا رَأَى مِنْ شَبْهِهِ بِعَبْتَةَ، فَمَا رَأَاهَا حَتَّى لَقِيَ اللَّهَ.»

[راجع: ٢٠٥٣]

(5) CHAPTER. If a patient gives an evident clear sign by nodding, (is that sign to be taken as a valid evidence?).

(٥) بَابُ إِذَا أَوْمَأَ الدَّرِيضُ بِرَأْسِهِ إِشَارَةً بَيِّنَةً تُعْرَفُ

2746. Narrated Anas رَضِيَ اللَّهُ عَنْهُ: A Jew crushed the head of a girl between two stones. She was asked, "Who has done so to you, so-and-so? so-and-so?", till the name of the Jew was mentioned, whereupon she nodded (in agreement). So the Jew was brought and was questioned till he confessed. The Prophet ﷺ then ordered that his head be crushed with stones. (See H. 2413)

٢٧٤٦ - حَدَّثَنَا حَسَّانُ بْنُ أَبِي عَبَادٍ: حَدَّثَنَا هَمَّامٌ، عَنْ قَتَادَةَ، عَنْ أَنَسِ رَضِيَ اللَّهُ عَنْهُ: أَنَّ يَهُودِيًّا رَضَّ رَأْسَ جَارِيَةٍ بَيْنَ حَجَرَيْنِ، فَقِيلَ لَهَا: مَنْ فَعَلَ بِكَ؟ أَوْ فُلَانٌ أَوْ فُلَانٌ؟ حَتَّى سُمِّيَ الْيَهُودِيَّ، فَأَوْمَأَتْ بِرَأْسِهَا فَجِيءَ بِهِ فَلَمْ يَزَلْ حَتَّى اعْتَرَفَ فَأَمَرَ النَّبِيُّ ﷺ فَرَضَّ رَأْسَهُ بِالْحِجَارَةِ.

[راجع: ٢٤١٣]

(6) CHAPTER. A legal heir has no right to inherit⁽¹⁾ through a will.

(٦) بَابُ لَا وَصِيَّةَ لَوَارِثٍ

2747. Narrated Ibn 'Abbās رَضِيَ اللَّهُ عَنْهُمَا: The custom (in olden days) was that the property of the deceased would be inherited by his offspring; as for the parents (of the deceased), they would inherit by will of the deceased. Then Allāh cancelled from that custom whatever He wished and fixed for the male double the amount inherited by the female, and for each parent a sixth (of the whole legacy) and for the wife an eighth⁽²⁾ or a fourth⁽³⁾ and for the husband a half or a fourth.

٢٧٤٧ - حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ، عَنْ وَرْقَاءَ، عَنْ ابْنِ أَبِي نَجِيحٍ، عَنْ عَطَاءٍ، عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ: كَانَ الْمَالُ لِلْوَلَدِ، وَكَانَتِ الْوَصِيَّةُ لِلْوَالِدَيْنِ؛ فَنَسَخَ اللَّهُ مِنْ ذَلِكَ مَا أَحَبَّ فَجَعَلَ لِلذَّكَرِ مِثْلَ حَظِّ الْأُنثِيَيْنِ، وَجَعَلَ لِلْأَبْوَانِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدْسَ،

(1) (Ch. 6) In Islām, what the deceased leaves is distributed among his heirs according to a certain ratio. The deceased may bequeath one-third of his property to other than his legal heirs who should not inherit by means of such a will.

(2) (H. 2747) When the deceased leaves children.

(3) (H. 2747) When the deceased is childless.