

Some people claim that the provision in the above Verse is abrogated; by Allāh, it is not abrogated, but the people have stopped acting upon it. There are two kinds of guardians (who are in charge of the inheritance): One is that who inherits; such a person should give (of what he inherits to the relatives, the orphans and the needy, etc.), the other is that who does not inherit (e.g., the guardian of the orphans); such a person should speak kindly and say (to those who are present at the time of distribution), I can not give it to you (as the wealth belongs to the orphans).”

[انظر: ٤٥٧٦]

(19) CHAPTER. It is recommended that something should be given in charity on behalf of a person who dies suddenly. And the execution of the vows of the deceased.

2760. Narrated ‘Aishah رَضِيَ اللهُ عَنْهَا: A man said to the Prophet ﷺ, “My mother died suddenly, and I think that if she could speak, she would have given in charity. May I give in charity on her behalf?” He ﷺ said, “Yes! Give in charity on her behalf.”

أَبُو التُّعْمَانِ: حَدَّثَنَا أَبُو عَوَانَةَ، عَنْ أَبِي بَشِيرٍ، عَنْ سَعِيدِ بْنِ جُبَيْرٍ، عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللهُ عَنْهُمَا قَالَ: إِنَّ نَاسًا يَزْعُمُونَ أَنَّ هَذِهِ الْآيَةَ نُسِخَتْ، وَلَا وَاللَّهِ مَا نُسِخَتْ وَلَكِنَّهَا مِمَّا تَهَاوَنَ النَّاسُ، هُمَا وَالْيَانِ: وَالِ يَرِثُ وَذَلِكَ الَّذِي يَرِثُ، وَوَالٍ لَا يَرِثُ فَذَلِكَ الَّذِي يَقُولُ بِالْمَعْرُوفِ، يَقُولُ: لَا أَمْلِكُ لَكَ أَنْ أُعْطِيكَ.

(١٩) بَابُ مَا يُسْتَحَبُّ لِمَنْ تُوَفِّي فَجَاءَهُ أَنْ يَتَصَدَّقُوا عَنْهُ، وَقَضَاءُ النُّذُورِ عَنِ الْمَيِّتِ

٢٧٦٠ - حَدَّثَنَا إِسْمَاعِيلُ قَالَ: حَدَّثَنِي مَالِكٌ، عَنْ هِشَامٍ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ رَضِيَ اللهُ عَنْهَا: أَنَّ رَجُلًا قَالَ لِلنَّبِيِّ ﷺ: إِنَّ أُمَّيْ أِفْتَلَتَتْ نَفْسَهَا وَأَرَاهَا لَوْ تَكَلَّمَتْ تَصَدَّقَتْ، أَفَأَتَصَدَّقُ عَنْهَا؟ قَالَ: «نَعَمْ، تَصَدَّقْ عَنْهَا». [راجع: ١٣٨٨]

2761. Narrated Ibn ‘Abbās رَضِيَ اللهُ عَنْهُمَا: Sa’d bin ‘Ubāda رَضِيَ اللهُ عَنْهُ asked Allāh’s Messenger ﷺ (for his legal opinion) saying, “My mother died and she had had an unfulfilled vow.” The Prophet ﷺ said, “Fulfil it on her behalf.”

٢٧٦١ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: أَخْبَرَنَا مَالِكٌ، عَنِ ابْنِ شِهَابٍ، عَنْ عُبَيْدِ اللَّهِ بْنِ عَبْدِ اللَّهِ، عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللهُ عَنْهُمَا: أَنَّ سَعْدَ بْنَ عَبَادَةَ رَضِيَ اللهُ عَنْهُ اسْتَفْنَى رَسُولَ اللهِ ﷺ فَقَالَ: إِنَّ أُمَّيْ مَاتَتْ وَعَلَيْهَا نَذْرٌ، فَقَالَ: «أَقْضِهِ عَنْهَا».

[انظر: ٦٦٩٨، ٦٩٥٩]

(20) CHAPTER. The witnesses in the foundation of an endowment or in giving in charity.

2762. Narrated Ibn ‘Abbās رَضِيَ اللهُ عَنْهُمَا that the mother of Sa’d bin ‘Ubāda رَضِيَ اللهُ عَنْهُ, the brother of Banī Sā’ida died in Sa’d’s absence, so he came to the Prophet saying, “O Allāh’s Messenger! My mother died in my absence, will it benefit her if I give *Ṣadaqa* (in charity) on her behalf?” The Prophet ﷺ said, “Yes.” Sa’d said, “I take you as my witness that I give my garden Al-Mikhrāf in charity on her behalf.”

(٢٠) بَابُ الْإِشْهَادِ فِي الْوَقْفِ  
وَالصَّدَقَةِ

٢٧٦٢ - حَدَّثَنَا إِبْرَاهِيمُ بْنُ مُوسَى: أَخْبَرَنَا هِشَامُ بْنُ يُوسُفَ: أَنَّ ابْنَ جُرَيْجٍ أَخْبَرَهُمْ قَالَ: أَخْبَرَنِي يَعْلى أَنَّهُ سَمِعَ عِكْرَمَةَ مَوْلَى ابْنِ عَبَّاسٍ يَقُولُ: أُنْبَأَنَا ابْنُ عَبَّاسٍ أَنَّ سَعْدَ بْنَ عَبَادَةَ رَضِيَ اللهُ عَنْهُ أَخَا بَنِي سَاعِدَةَ تُوِّفِيَتْ أُمُّهُ وَهُوَ غَائِبٌ، فَأَتَى النَّبِيَّ ﷺ فَقَالَ: يَا رَسُولَ اللهِ، إِنَّ أُمَّي تُوِّفِيَتْ وَأَنَا غَائِبٌ عَنْهَا، فَهَلْ يَنْفَعُهَا شَيْءٌ إِنْ تَصَدَّقْتُ بِهِ عَنْهَا؟ قَالَ: «نَعَمْ»، قَالَ: فَإِنِّي أَشْهَدُكَ أَنَّ حَائِطِي الْمِخْرَافَ صَدَقَةٌ عَلَيْهَا.

[راجع: ٢٧٥٦]

(21) CHAPTER. The Statement of Allāh تعالى:

“And give unto orphans their property, and do not exchange (your) bad things for (their) good ones; and devour not their substance (by adding it) to your substance. Surely, this is a great sin.

“And if you fear that you shall not be able to deal justly with the orphan-girls, then marry (other) women of your choice...” (V.4:2,3).

(٢١) بَابُ قَوْلِ اللهِ تَعَالَى: ﴿وَمَا تَوَاتَأَ الْيَتَامَىٰ أَمْوَالَهُمْ وَلَا تَتَبَدَّلُوا الْخَيْرَاتِ بِالْخَيْرَاتِ وَلَا تَأْكُلُوا أَمْوَالَهُمْ إِلَىٰ أَمْوَالِكُمْ إِنَّهُ كَانَ حُوبًا كَبِيرًا﴾ (٢) وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مِمَّنْ وَكَلْتُمْ وَرَبِّعْ فَإِنْ خِفْتُمْ أَلَّا تَعْلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ آدَبُ الَّذِي آتَىٰكُمْ فَلَا تُؤْمَلُوا (٣) ﴿

[النساء: ٢-٣]

2763. Narrated Az-Zuhri: ‘Urwa bin Az-Zubair said that he asked ‘Aishah رَضِيَ اللهُ عَنْهَا about the meaning of the Qur’ānic Verse:

“And if you fear that you shall not be able to deal justly with the orphan-girls then marry (other) women of your choice...” (V.4:2-3)

‘Aishah said, “It is about a female orphan under the guardianship of her guardian who

٢٧٦٣ - حَدَّثَنَا أَبُو الْيَمَانِ: أَخْبَرَنَا شُعَيْبٌ، عَنِ الزُّهْرِيِّ قَالَ: كَانَ عُرْوَةُ بْنُ الزُّبَيْرِ يُحَدِّثُ أَنَّ سَأَلَ عَائِشَةَ رَضِيَ اللهُ عَنْهَا ﴿وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ

is inclined towards her because of her beauty and wealth, and likes to marry her with a *Mahr* less than what is given to women of her standard. So they (i.e., guardians) were forbidden to marry the orphans unless they paid them a full appropriate *Mahr*, (otherwise) they were ordered to marry other women instead of them. Later on the people asked Allāh's Messenger ﷺ about it. So Allāh revealed the following Verse :

'They ask your legal instruction (O Muḥammad ﷺ) concerning women, say: Allāh instructs you about them,...' (V.4:127)

"And in this Verse, Allāh indicated that if the orphan-girl was beautiful and wealthy, her guardian would have the desire to marry her without giving her an appropriate *Mahr* equal to what her peers could get, but if she was undesirable for lack of beauty or wealth, then he would not marry her, but seek to marry some other woman instead of her. So, since he did not marry her when he had no inclination towards her, he had not the right to marry her when he had an interest in her, unless he treated her justly by giving her a full *Mahr* and securing all her rights."

النِّسَاءَ مَتَى وَتِلْكَ وَرَبِّعَ فَإِنْ خِفْتُمْ أَلَّا تَعْلَمُوا  
فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ آدَابُ آلَا  
تَعْلَمُوا ﴿٢٢﴾ قَالَتْ: هِيَ الْيَتِيمَةُ فِي  
حَجْرٍ وَلِيَّهَا، فَيَرَعُبُ فِي جَمَالِهَا  
وَمَالِهَا، وَيُرِيدُ أَنْ يَتَزَوَّجَهَا بِأَدْنَى مِنْ  
سُنَّةِ نِسَائِهَا فَتُهْوُوا عَنْ نِكَاحِهَا إِلَّا أَنْ  
يُقْسِطُوا لَهُنَّ فِي إِكْمَالِ الصَّدَاقِ،  
وَأَمِيرُوا بِنِكَاحِ مَنْ سِوَاهُنَّ مِنَ النِّسَاءِ .  
قَالَتْ عَائِشَةُ: ثُمَّ اسْتَفْتَى النَّاسُ  
رَسُولَ اللَّهِ ﷺ بَعْدَ، فَأَنْزَلَ اللَّهُ عَزَّ  
وَجَلَّ: ﴿وَسْتَفْتُونَكَ فِي النِّسَاءِ قُلْ اللَّهُ  
يُنْفِئُكُمْ فِيهِنَّ﴾ [النساء: ١٢٧] قَالَتْ:  
فَبَيَّنَ اللَّهُ فِي هَذِهِ أَنَّ الْيَتِيمَةَ إِذَا كَانَتْ  
ذَاتَ جَمَالٍ وَمَالٍ رَغِبُوا فِي نِكَاحِهَا،  
وَلَمْ يُلْحِقُوهَا بِسُنَّتِهَا بِإِكْمَالِ  
الصَّدَاقِ . فَإِذَا كَانَتْ مَرْعُوبَةً عَنْهَا فِي  
قَلَّةِ الْمَالِ وَالْجَمَالِ تَرَكَوهَا وَالتَّمَسُّوا  
غَيْرَهَا مِنَ النِّسَاءِ . قَالَ: فَكَمَا  
يَتَرَكُونَهَا حِينَ يَرَعُبُونَ عَنْهَا فَلَيْسَ لَهُمْ  
أَنْ يَنْكِحُوهَا إِذَا رَغِبُوا فِيهَا إِلَّا أَنْ  
يُقْسِطُوا لَهَا الْأَوْفَى مِنَ الصَّدَاقِ  
وَيُعْطُوهَا حَقَّهَا . [راجع: ٢٤٩٤]

## (22) CHAPTER. The Statement of Allāh

نَعَالِي :

"And try orphans (as regards their intelligence) until they reach the age of marriage; if then you find sound judgement in them, release their property to them, but consume it not wastefully and hastily fearing that they should grow up, and whoever (amongst the guardians) is rich, he should

(٢٢) بَابُ قَوْلِ اللَّهِ تَعَالَى: ﴿وَابْتَلُوا  
الْيَتَامَى حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ مَا سَمِعْتُمْ  
مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا  
تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا وَمَنْ كَانَ  
غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ  
بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ

take no wages, but if he is poor, let him have for himself what is just and reasonable (according to his labour). And when you release their property to them, take witnesses in their presence; and Allāh is All-Sufficient in taking account.

“There is a share for men and a share for women from what is left by parents, and those nearest related, whether the property be small or large – a legal share.” (V.4:6,7)

**CHAPTER.** How a guardian is to deal with an orphan's wealth and what he can eat thereof according to his labour.

2764. Narrated Ibn ‘Umar رضي الله عنهما: In the lifetime of Allāh's Messenger ﷺ, ‘Umar gave in charity some of his property, a garden of date-palms called Thamgh. ‘Umar said, “O Allāh's Messenger! I have some property which I prize highly and I want to give it in charity.” The Prophet ﷺ said, “Give it in charity (i.e., as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, nor bequeathed, but the fruits are to be spent in charity.” So ‘Umar gave it in charity, and it was for Allāh's Cause, the emancipation of slaves, for the poor, for guests, for travellers, and for kinsmen. The person acting as its administrator could eat from it reasonably and fairly, and could let a friend of his eat from it, provided he had no intention of becoming wealthy by its means.

2765. Narrated ‘Aīshah رضي الله عنها: The following Verse:

فَأَشْهَدُوا عَلَيْهِمْ وَكَفَىٰ بِإِلَهِهِمْ حَسِيبًا ﴿٦﴾ لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا ﴿٧﴾

[النساء: ٦-٧] حَسِيبًا: يَعْنِي كَافِيًا.

**بَابُ** وما للوصي أن يعمل في مال اليتيم وما يأكل منه بقدر عمله

٢٧٦٤ - حَدَّثَنَا هَارُونُ بْنُ الْأَشْعَثِ: حَدَّثَنَا أَبُو سَعِيدٍ مَوْلَى بَنِي هَاشِمٍ: حَدَّثَنَا صَخْرُ بْنُ جُوَيْرِيَةَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ عُمَرَ تَصَدَّقَ بِمَالٍ لَهُ عَلَى عَهْدِ رَسُولِ اللَّهِ ﷺ وَكَانَ يُقَالُ لَهُ: تَمْعٌ، وَكَانَ نَحْلًا، فَقَالَ عُمَرُ: يَا رَسُولَ اللَّهِ، إِنِّي اسْتَفَدْتُ مَالًا وَهُوَ عِنْدِي نَفِيسٌ فَأَرَدْتُ أَنْ أَتَصَدَّقَ بِهِ. فَقَالَ النَّبِيُّ ﷺ: «تَصَدَّقْ بِأَصْلِهِ، لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ، وَلَكِنْ يُنْفَقُ ثَمَرُهُ». فَتَصَدَّقَ بِهِ عُمَرُ فَصَدَّقْتُهُ تِلْكَ فِي سَبِيلِ اللَّهِ وَفِي الرِّقَابِ وَالْمَسَاكِينِ وَالصَّيْفِ وَابْنِ السَّبِيلِ وَلِذِي الْقُرْبَى. وَلَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهُ أَنْ يَأْكُلَ مِنْهُ بِالْمَعْرُوفِ، أَوْ يُؤْكِلَ صَدِيقَهُ غَيْرَ مُتَمَوِّلٍ بِهِ.

[راجع: ٢٣١٣]

٢٧٦٥ - حَدَّثَنَا عُبَيْدُ بْنُ

“...And whoever (amongst the guardian) is rich, he should take no wages, but if he is poor, let him have for himself what is just and reasonable...” (V.4:6) was revealed in connection with the guardian of an orphan, and it means that if he is poor he can have for himself (from the orphan's wealth) what is just and reasonable (according to his labour) from the orphan's share of the inheritance.

(23) CHAPTER. The Statement of Allāh تعالى :  
 “Verily, those who unjustly eat up the property of orphans, they eat up only fire into their bellies, and they will be burnt in the blazing Fire!” (V.4:10)

2766. Narrated Abū Hurairah رَضِيَ اللهُ عَنْهُ :  
 The Prophet ﷺ said, “Avoid the seven great destructive sins.” The people enquired, “O Allāh's Messenger! What are they?” He said, “(1) To join others in worship along with Allāh; (2) To practise sorcery, (3) To kill the life which Allāh has forbidden except for a just cause, (according to Islāmic law); (4) To eat up *Ribā* <sup>(1)</sup> (usury); (5) To eat up an orphan's wealth; (6) To show one's back to the enemy and fleeing from the battlefield at the time of fighting, and (7) To accuse chaste women, who never even think of anything touching chastity and are good believers.”

(24) CHAPTER. Allāh's Statement :

“...And they ask you concerning orphans. Say: ‘The best thing is to work honestly in their property, and if you mix your affairs with theirs, then they are your brothers. And Allāh knows him who means mischief (e.g.,

إِسْمَاعِيلَ: حَدَّثَنَا أَبُو أُسَامَةَ، عَنْ هِشَامٍ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا ﴿وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعِفُّ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ﴾ [النساء: ٦] قَالَتْ: أَنْزَلْتُ فِي وَالِي التَّيِّمِ أَنْ يُصِيبَ مِنْ مَالِهِ إِذَا كَانَ مُحْتَاجًا يَقْدِرَ مَالِهِ بِالْمَعْرُوفِ. [راجع: ٢٢١٢]

(٢٣) بَابُ قَوْلِ اللَّهِ تَعَالَى: ﴿إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا وَسَيَصْلُونَ سَعِيرًا﴾ [النساء: ١٠]

٢٧٦٦ - حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ عَبْدِ اللَّهِ قَالَ: حَدَّثَنِي سُلَيْمَانُ بْنُ بِلَالٍ، عَنْ ثَوْرِ بْنِ زَيْدِ الْمَدَنِيِّ عَنْ أَبِي الْعَبْثِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ ﷺ قَالَ: «اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ». قَالُوا: يَا رَسُولَ اللَّهِ، وَمَا هُنَّ؟ قَالَ: «الشُّرْكَ بِاللَّهِ، وَالسِّحْرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ الرِّبَا، وَأَكْلُ مَالِ الْيَتِيمِ، وَالتَّوَلَّى يَوْمَ الرَّحْفِ، وَقَذْفُ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ الْغَافِلَاتِ.» [انظر: ٥٧٦٤، ٦٨٥٧]

(٢٤) بَابُ ﴿وَسْأَلُونَكَ عَنِ الْيَتَامَى قُلْ إِصْلَاحٌ لَّهُمْ خَيْرٌ وَإِنْ تُخَالطُوهُمْ فَلِخَوَانِكُمْ وَاللَّهُ يَعْلَمُ الْمُنْفِيسَ مِنَ الْمُصْلِحِ وَلَوْ شَاءَ اللَّهُ لَأَعْنَتَكُمْ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ﴾

(1) (H. 2766) *Ribā* : See glossary.

to swallow their property) from him who means good (e.g., to save their property). And if Allāh had wished, He could have put you into difficulties. Truly, Allāh is All-Mighty, All-Wise.’” (V.2:220)

2767. Nāfi‘ said, “Ibn ‘Umar never refused to be appointed as a guardian.”

The most beloved thing to Ibn Sīrīn concerning an orphan’s wealth was that the orphan’s advisors and guardians would assemble to decide what is best for him.

When Ṭawūs was asked about something concerning an orphan’s affairs, he would recite:

‘...And Allāh knows him who means mischief from him who means good...’ (V.2:220)

‘Aṭā’ said concerning some orphans, “The guardian is to provide for the young and the old orphans according to their needs from their shares.”

(25) CHAPTER. The employment of an orphan on a journey and at home, provided it is beneficial for him. And (it is obligatory) for the mother and the stepfather of an orphan to look after him (even if they were not his guardians).

2768. Narrated Anas رضي الله عنه: When Allāh’s Messenger ﷺ came to Al-Madīna he did not have any servant. Abū Ṭalḥa (Anas’ stepfather) took me to Allāh’s Messenger ﷺ and said, “O Allāh’s Messenger! Anas is a wise boy, so let him serve you.” So, I served him at home and on journeys. If I did anything, he never asked me why I did it, and if I refrained from doing anything, he never asked me why I refrained from doing it.

[البقرة: ٢٢٠]. ﴿لَاَعْنَتَكُمْ﴾ :  
لَاخْرَجَكُمْ وَضَيَّقَ عَلَيْكُمْ، وَ(عَثَّ):  
خَصَّصَتْ.

٢٧٦٧ - وَقَالَ لَنَا سُلَيْمَانُ بْنُ  
حَرْبٍ: حَدَّثَنَا حَمَادٌ، عَنْ أَيُّوبَ،  
عَنْ نَافِعٍ قَالَ: مَا رَدَّ ابْنُ عُمَرَ عَلَى  
أَحَدٍ وَصِيَّتِهِ وَكَانَ ابْنُ سِيرِينَ أَحَبَّ  
الْأَشْيَاءِ إِلَيْهِ فِي مَالِ الْيَتِيمِ أَنْ يَجْتَمَعَ  
إِلَيْهِ نَصْحَاؤُهُ وَأَوْلِيَاؤُهُ فَيَنْظُرُوا الَّذِي  
هُوَ خَيْرٌ لَهُ. وَكَانَ طَاوُسٌ إِذَا سُئِلَ  
عَنْ شَيْءٍ مِنْ أَمْرِ الْيَتَامَى قَرَأَ: ﴿وَاللَّهُ  
يَعْلَمُ الْمُنْفِسَ مِنَ الْمُصْلِحِ﴾ وَقَالَ  
عَطَاءٌ فِي يَتَامَى الصَّغِيرِ وَالْكَبِيرِ: يُنْفِقُ  
الْوَالِي عَلَى كُلِّ إِنْسَانٍ بِقَدْرِهِ مِنْ  
حَصَّتِهِ.

(٢٥) بَابُ اسْتِخْدَامِ الْيَتِيمِ فِي السَّفَرِ  
وَالْحَضَرِ إِذَا كَانَ صَاحِبًا لَهُ، وَنَظَرِ  
الْأُمِّ أَوْ زَوْجِهَا لِلْيَتِيمِ

٢٧٦٨ - حَدَّثَنَا يَعْقُوبُ بْنُ  
إِبْرَاهِيمَ ابْنَ كَثِيرٍ: حَدَّثَنَا ابْنُ عَلِيَّةَ:  
حَدَّثَنَا عَبْدُ الْعَزِيزِ، عَنْ أَنَسِ رَضِيَ  
اللَّهُ عَنْهُ قَالَ: قَدِمَ رَسُولُ اللَّهِ ﷺ  
الْمَدِينَةَ لَيْسَ لَهُ خَادِمٌ فَأَخَذَ أَبُو طَلْحَةَ  
بِيَدِي فَانْطَلَقَ بِي إِلَى رَسُولِ اللَّهِ ﷺ  
فَقَالَ: يَا رَسُولَ اللَّهِ، إِنَّ أَنَسًا غُلَامٌ  
كَيْسٌ فَلْيُخْدَمْكَ، قَالَ: فَخَدَمْتُهُ فِي

السَّقَرِ وَالْحَضَرِ مَا قَالَ لِي لِشَيْءٍ  
صَنَعْتُهُ: لِمَ صَنَعْتَ هَذَا هَكَذَا؟ وَلَا  
لِشَيْءٍ لَمْ أَصْنَعُهُ: لِمَ لَمْ تَصْنَعْ هَذَا  
هَكَذَا؟». [انظر: ٦٠٣٨، ٦٩١١]

(٢٦) **بَابُ إِذَا وَقَفَ أَرْضًا وَلَمْ يُبَيِّنِ**  
**الْحُدُودَ فَهِيَ جَائِزٌ، وَكَذَلِكَ الصَّدَقَةُ**

(26) CHAPTER. If somebody gives a piece of land as an endowment and does not mark its boundaries, the endowment is valid. The same is applied to objects of charity.

2769. Narrated Anas bin Mālik رَضِيَ اللهُ عَنْهُ: Abū Ṭalḥa had the greatest wealth of date-palms amongst the *Anṣār* in Al-Madīna, and he prized above all his wealth (his garden) Bairuhā, which was situated opposite the mosque (of the Prophet ﷺ). The Prophet ﷺ used to enter it and drink from its fresh water. When the following Divine Verse were revealed:

“By no means shall you attain *Al-Birr* (piety, righteousness, here it means Allāh’s Reward i.e., Paradise) unless you spend (in Allāh’s Cause) of that which you love...” (V.3:92)

Abū Ṭalḥa got up saying, “O Allāh’s Messenger! Allāh says: ‘By no means shall you attain *Al-Birr*, unless you spend (in Allāh’s Cause) of that which you love...’, and I prize Bairuhā above all my wealth, which I want to give in charity for Allāh’s sake, hoping for its reward from Allāh. So you can use it as Allāh directs you.” On that the Prophet ﷺ said, “Bravo! It is a profitable (or perishable) property. (Ibn Maslama is not sure as to which word is right, i.e., profitable or perishable.) I have heard what you have said, and I recommend that you distribute this amongst your relatives.” On that Abū Ṭalḥa said, “O Allāh’s Messenger! I will do (as you have suggested).” So, Abū Ṭalḥa distributed that garden amongst his relatives and cousins.

٢٧٦٩ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ  
مَسْلَمَةَ، عَنْ مَالِكٍ، عَنْ إِسْحَاقَ بْنِ  
عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ: أَنَّهُ سَمِعَ  
أَنَسَ بْنَ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ يَقُولُ:  
كَانَ أَبُو طَلْحَةَ أَكْثَرَ الْأَنْصَارِ بِالْمَدِينَةِ  
مَالًا مِنْ نَخْلٍ، وَكَانَ أَحَبَّ مَالِهِ إِلَيْهِ  
بَيْرُحَاءُ، مُسْتَقْبَلَةَ الْمَسْجِدِ، وَكَانَ  
النَّبِيُّ ﷺ يَدْخُلُهَا وَيَشْرَبُ مِنْ مَاءٍ  
فِيهَا صَيَّبَ. قَالَ أَنَسٌ: فَلَمَّا نَزَلَتْ:  
﴿لَنْ نَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا مَحَبُّونَ﴾  
قَامَ أَبُو طَلْحَةَ فَقَالَ: يَا رَسُولَ اللَّهِ،  
إِنَّ اللَّهَ يَقُولُ: ﴿لَنْ نَنَالُوا الْبِرَّ حَتَّى  
تُنْفِقُوا مِمَّا مَحَبُّونَ﴾ وَإِنَّ أَحَبَّ أَمْوَالِي  
إِلَيَّ بَيْرُحَاءُ، وَإِنَّهَا صَدَقَةٌ لِلَّهِ أَرْجُو  
بِرَّهَا وَدُخْرَهَا عِنْدَ اللَّهِ، فَضَعْتُهَا حَيْثُ  
أَرَاكَ اللَّهُ. فَقَالَ: «بِحُجٍّ، ذَلِكَ مَالٌ  
رَابِحٌ - أَوْ رَائِبٌ، شَكَ ابْنُ مَسْلَمَةَ -  
وَقَدْ سَمِعْتُ مَا قُلْتَ، وَإِنِّي أَرَى أَنْ  
تَجْعَلَهَا فِي الْأَقْرَبِينَ». قَالَ أَبُو  
طَلْحَةَ: أَفْعَلُ ذَلِكَ يَا رَسُولَ اللَّهِ،  
فَقَسَمَهَا أَبُو طَلْحَةَ فِي أَقْرَابِهِ وَبَنِي

عَمَهُ. وَقَالَ إِسْمَاعِيلُ وَعَبْدُ اللَّهِ بْنُ  
يُوسُفَ وَيَحْيَى بْنُ يَحْيَى عَنْ مَالِكٍ:  
[رَأَيْحٌ]. [راجع: ١٤٦١]

2770. Narrated Ibn ‘Abbās رَضِيَ اللهُ عَنْهُمَا: A man said to Allāh’s Messenger ﷺ, “My mother has died, will it benefit her if I give in charity on her behalf?” The Prophet ﷺ replied in the affirmative. The man said, “I have a garden and I make you a witness that I give it in charity on her behalf.”

٢٧٧٠ - حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ  
الرَّحِيمِ: أَخْبَرَنَا رَوْحُ بْنُ عُبَادَةَ:  
حَدَّثَنَا زَكَرِيَّا بْنُ إِسْحَاقَ قَالَ: حَدَّثَنِي  
عَمْرُو بْنُ دِينَارٍ، عَنْ عِكْرِمَةَ، عَنِ ابْنِ  
عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ رَجُلًا  
قَالَ لِرَسُولِ اللَّهِ ﷺ: إِنَّ أُمَّهُ تُوفِّيَتْ،  
أَيَنْفَعُهَا إِنْ تَصَدَّقْتُ عَنْهَا؟ قَالَ:  
«نَعَمْ»، قَالَ: فَإِن لِي مِخْرَافًا فَأَنَا  
أُشْهِدُكَ أَنِّي قَدْ تَصَدَّقْتُ بِهِ عَنْهَا.  
[راجع: ٢٧٥٦]

(27) CHAPTER. If a group of persons give a jointly-owned piece of land as an endowment, the foundation of the endowment is valid.

2771. Narrated Anas رَضِيَ اللهُ عَنْهُ: When the Prophet ﷺ ordered that the mosque be built, he said, “O Banī An-Najjār! Suggest to me the price for this garden of yours.” They replied, “By Allāh! We will demand its price from none but Allāh.”

(٢٧) بَابُ إِذَا وَقَفَ جَمَاعَةٌ أَرْضًا  
مُشَاعًا فَهُوَ جَائِزٌ

٢٧٧١ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا  
عَبْدُ الْوَارِثِ، عَنْ أَبِي التَّيَّاحِ، عَنْ  
أَنْسِ رَضِيَ اللَّهُ عَنْهُ قَالَ: أَمَرَ النَّبِيُّ  
ﷺ بِنَاءِ الْمَسْجِدِ، فَقَالَ: «يَا بَنِي  
النَّجَّارِ ثَامِنُونِي بِحَائِطِكُمْ هَذَا»،  
قَالُوا: لَا وَاللَّهِ لَا نَطْلُبُ ثَمَنَهُ إِلَّا إِلَى  
اللَّهِ. [راجع: ٢٣٤]

(28) CHAPTER. How to write the endowment?

2772. Narrated Ibn ‘Umar رَضِيَ اللهُ عَنْهُمَا: When ‘Umar got a piece of land in Khaibar, he came to the Prophet ﷺ saying, “I have got a piece of land better than which I have never got. So, what do you advise me regarding it?”

٢٧٧٢ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا  
يَزِيدُ بْنُ زُرَيْعٍ: حَدَّثَنَا ابْنُ عَوْنٍ، عَنْ  
نَافِعٍ، عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا

The Prophet ﷺ said, “If you wish you can keep it as an endowment to be used for charitable purposes.” So, ‘Umar gave the land in charity (i.e., as an endowment) on the condition that the land would neither be sold nor given as a present, nor bequeathed, (and its yield) would be used for the poor, the kinsmen, the emancipation of slaves, *Jihād*, and for guests and travellers; and its administrator could eat in a reasonable just manner (according to his labour), and he also could feed his friends without intending to (store anything from it in order to) become wealthy by its means.”

قَالَ: أَصَابَ عُمَرُ بِحَيِّبِ أَرْضاً، فَأَتَى النَّبِيَّ ﷺ فَقَالَ: أَصَبْتُ أَرْضاً لَمْ أُصِبْ مَالاً فَطَوَّأْتُ نَفْسَ مِنْهُ فَكَيْفَ تَأْمُرُنِي بِهِ؟ قَالَ: «إِنْ شِئْتَ حَبَسْتَهُ أَصْلَهَا وَتَصَدَّقْتَ بِهَا». فَتَصَدَّقَ عُمَرُ أَنَّهُ لَا بِيَاعَ أَصْلَهَا وَلَا يُوهَبُ وَلَا يُورَثُ، فِي الْفُقَرَاءِ وَالْقُرْبَى وَالرَّقَابِ وَفِي سَبِيلِ اللَّهِ وَالضَّيْفِ وَابْنِ السَّبِيلِ، لَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ، أَوْ يُطْعِمَ صَدِيقاً، غَيْرَ مُتَمَوِّلٍ فِيهِ.

[راجع: ٢٣١٣]

(29) CHAPTER. The usufruct of an endowment may be spent for the wealthy, the poor and the guests.

(٢٩) بَابُ الْوَقْفِ لِلْغَنِيِّ وَالْفَقِيرِ وَالضَّيْفِ

2773. Narrated Ibn ‘Umar رضي الله عنهما: ‘Umar رضي الله عنه got some property in Khaibar and he came to the Prophet ﷺ and informed him about it. The Prophet ﷺ said to him, “If you wish you can give it in charity.” So, ‘Umar gave it in charity (i.e., as an endowment) the yield of which was to be used for the good of the *Al-Fuqarā* (the poor), *Al-Masākīn* (the poor), the kinsmen, and the guests.

٢٧٧٣ - حَدَّثَنَا أَبُو عَاصِمٍ: حَدَّثَنَا ابْنُ عُرْوَانَ، عَنْ نَافِعٍ، عَنِ ابْنِ عُمَرَ: أَنَّ عُمَرَ رَضِيَ اللَّهُ عَنْهُ وَجَدَ مَالاً بِحَيِّبٍ فَأَتَى النَّبِيَّ ﷺ فَأَخْبَرَهُ. قَالَ: «إِنْ شِئْتَ تَصَدَّقْتَ بِهَا». فَتَصَدَّقَ بِهَا فِي الْفُقَرَاءِ وَالْمَسَاكِينِ وَذِي الْقُرْبَى وَالضَّيْفِ. [راجع: ٢٣١٣]

(30) CHAPTER. The foundation of an endowment of a piece of land for building a mosque.

(٣٠) بَابُ وَقْفِ الْأَرْضِ لِلْمَسْجِدِ

2774. Narrated Anas bin Mālik رضي الله عنه: When Allāh’s Messenger ﷺ came to Al-Madīna, he ordered that a mosque be built. He said, “O Banī An-Najjār! Suggest to me the price for this garden of yours.” They replied, “By Allāh, we will demand its price from none but Allāh.”

٢٧٧٤ - حَدَّثَنِي إِسْحَاقُ: أَخْبَرَنَا عَبْدُ الصَّمَدِ قَالَ: سَمِعْتُ أَبِي: حَدَّثَنَا أَبُو التَّيَّاحِ قَالَ: حَدَّثَنِي أَنَسُ بْنُ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ: لَمَّا قَدِمَ رَسُولُ اللَّهِ ﷺ الْمَدِينَةَ أَمَرَ بِالْمَسْجِدِ وَقَالَ:

«يا بَنِي النَّجَارِ ثَامُنُونِي حَايَظَكُم هَذَا»، فَقَالُوا: لَا وَاللَّهِ لَا نَطْلُبُ ثَمَنَهُ إِلَّا إِلَى اللَّهِ. [راجع: ٢٣٤]

**(31) CHAPTER. Giving animals; particularly horses and property and gold and silver as endowments.**

Az-Zuhrī was asked, “If somebody finds an endowment of one thousand Dīnār and gives the sum to his boy who is a trader to invest it in business and declares that the profit of the money will be given in charity to the poor and the relatives, does the founder have the right to use anything of the profit of the one thousand Dīnār? And if he does not assign its profit to the poor?” Az-Zuhrī said, “He does not have the right to use anything of it (i.e., in either case).”

**(٣١) بَابُ وَفِّ الدَّوَابِّ وَالْكَرَاعِ وَالْمُرُوضِ وَالصَّامِتِ**

وقال الزهري فيمن جعل ألف دينار في سبيل الله، ودفعها إلى غلام له تاجر يتجر بها، وجعل ربحه صدقة للمساكين والأقربين، هل للرجل أن يأكل من ربح تلك الألف شيئاً؟ وإن لم يكن جعل ربحها صدقة في المساكين، قال: ليس له أن يأكل منها.

2775. Narrated Ibn ‘Umar رضي الله عنهما: Once ‘Umar gave a horse in charity to be used in Allāh’s Cause (*Jihād* – holy fighting). It had been given to him by Allāh’s Messenger ﷺ. ‘Umar gave it to a man in charity to use it in Allāh’s Cause. Then ‘Umar was informed that the man has put that horse for sale, so he asked Allāh’s Messenger ﷺ whether he could buy it. Allāh’s Messenger ﷺ replied, “You should neither buy nor take back what you have given in charity.”

٢٧٧٥ - حَدَّثَنَا مُسَدَّدٌ: حَدَّثَنَا يَحْيَى: حَدَّثَنَا عُبَيْدُ اللَّهِ قَالَ: حَدَّثَنِي نَافِعٌ، عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ عُمَرَ حَمَلَ عَلَى فَرَسٍ لَهُ فِي سَبِيلِ اللَّهِ أَعْطَاهَا رَسُولُ اللَّهِ ﷺ فَحَمَلَ عَلَيْهَا رَجُلًا، فَأُخْبِرَ عُمَرُ أَنَّهُ قَدْ وَقَفَهَا بَيْعَهَا، فَسَأَلَ رَسُولَ اللَّهِ ﷺ أَنْ يَتَّاعَهَا، فَقَالَ: «لَا تَبْتَاعَهَا وَلَا تَرْجِعَنَّ فِي صَدَقَتِكَ». [راجع: ١٤٨٩]

**(32) CHAPTER. The salary of the administrator of an endowment.**

2776. Narrated Abū Hurairah رضي الله عنه: Allāh’s Messenger ﷺ said, “My heirs will not inherit a Dīnār or a Dirham (i.e., money), for whatever I leave, excluding the adequate support of my wives and the wages of my employees, is to be given in charity.”

٢٧٧٦ - حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ: أَخْبَرَنَا مَالِكٌ، عَنْ أَبِي الزِّنَادِ، عَنِ الْأَعْرَجِ، عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ: أَنَّ رَسُولَ اللَّهِ ﷺ