



SALES

بَابُ التِّجَارَةِ وَالشَّرْطِ فِي الْبَيْعِ

236. TRADE, AND STIPULATIONS IN SALES

٧٣٠ - مُحَمَّدٌ قَالَ : أَحْبَبْنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا يَحْيَى بْنُ عَامِرٍ عَنْ رَجُلٍ عَنْ عَتَّابِ بْنِ أُسَيْدٍ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ لَهُ : انْطَلِقْ إِلَى أَهْلِ اللَّهِ - يَعْنِي أَهْلَ مَكَّةَ - فَاتَّهَمُوا عَنْ أَرْبَعِ خِصَالٍ : عَنْ بَيْعِ مَا لَمْ يَقْبَضُوا ، وَعَنْ رِبْحِ مَا لَمْ يَضْمَنُوا ، وَعَنْ شَرْطَيْنِ فِي بَيْعٍ ، وَعَنْ سَلْفٍ وَبَيْعٍ .

730. Muḥammad said, “Abū Hanīfah informed us saying, ‘Yaḥyā ibn ‘Amir¹⁸⁹⁸ narrated to us from a man from ‘Attāb ibn Asīd رضي الله عنه that the Prophet صلى الله عليه وسلم said to him,¹⁸⁹⁹ “Go to the people of Allah” – meaning the people of Makkah – “and forbid them to do four things: selling something they have not taken full possession of, profiting from something they do not stand guarantee for, making two stipulations¹⁹⁰⁰ in a sale, and [combining] an advance payment¹⁹⁰¹ and a sale.”¹⁹⁰²

قَالَ مُحَمَّدٌ : وَبِهَذَا كُلُّهُ نَأْخُذُ ، وَأَمَّا قَوْلُهُ : (سَلْفٌ وَبَيْعٌ) ؛ فَالرَّجُلُ يَقُولُ لِلرَّجُلِ : أبيعك عبدي هذا بكذا وكذا على أن تُقرضني كذا وكذا ، أو يقول : تُقرضني على أن أبيعك فلا يَبْنِغِي هَذَا ، وَقَوْلُهُ : (شَرْطَيْنِ فِي بَيْعٍ) ؛ الشَّيْءُ فِي الْحَالِ بِالْفِ دَرَاهِمَ ، وَإِلَى شَهْرٍ بِالْفَيْنِ ، فَيَقَعُ عُقْدَةُ الْبَيْعِ عَلَى هَذَا ، فَهَذَا لَا يَجُوزُ ، وَأَمَّا قَوْلُهُ : (رِبْحٌ مَا لَمْ يَضْمَنُوا) ؛ فَالرَّجُلُ يَشْتَرِي الشَّيْءَ فَيَبِيعُهُ قَبْلَ أَنْ يَقْبِضَهُ بِرِبْحٍ ، فَلَيْسَ يَبْنِغِي لَهُ ذَلِكَ ،

¹⁸⁹⁸ Ash-Sharīf al-Husaynī said in *at-Tadhkirah*, “The correct position is that it is from Yaḥyā from ‘Amir ash-Sha‘bī.”

¹⁸⁹⁹ When he sent him as amir to Makkah.

¹⁹⁰⁰ Binding (*taqvīd*) of a sale with two stipulations is effectively prohibited by unanimous agreement, and also with one stipulation it is not permissible because the prohibition of a sale along with a stipulation is narrated (*Lum‘āt*). Sale is in itself a stipulation, so that if one makes another stipulation this would be two stipulations in one sale.

¹⁹⁰¹ *salaf*: advance payment, is a loan, meaning that it is not permissible to sell something with the stipulation of a loan.

¹⁹⁰² An-Nasā‘ī narrated it by the route of ‘Abdullāh ibn ‘Amr in *as-Sunan al-kubrā* in the book on “setting slaves free”, and al-Hākim in the *Mustadrak*, vol.2, p.17.

وَكذَلِكَ لَا يَنْبَغِي لَهُ أَنْ يَبِيعَ شَيْئًا اشْتَرَاهُ حَتَّى يَقْبِضَهُ، وَهَذَا كُلُّهُ قَوْلُ أَبِي حَنِيفَةَ، إِلَّا فِي خِصْلَةٍ وَاحِدَةٍ: الْعَقَارُ مِنَ الدُّورِ وَالْأَرْضِينَ قَالَ: لَا بَأْسَ أَنْ يَبِيعَهَا الَّذِي اشْتَرَاهَا قَبْلَ أَنْ يَقْبِضَهَا لِأَنَّهَا لَا يَحْوَلُ عَنْ مَوْضِعِهَا .

Muḥammad said, “We adhere to all of this. As for his words, ‘[combining] an advance payment and a sale,’ it is when someone says to another, ‘I will sell you this slave of mine for such-and-such provided that you lend me such-and-such,’ or he says, ‘You lend me provided that I sell to you,’ and this is not fitting. His saying, ‘making two stipulations in a sale,’ is when someone sells¹⁹⁰³ something for a thousand dirhams immediately or for payment of two thousand¹⁹⁰⁴ in a month, and so the contract of purchase takes place on this basis, and this is not valid. As for his saying, ‘profiting from what they do not stand guarantee for,’ it is when someone buys something and then sells it for a profit before taking possession of it, and one ought not to do that. Similarly, one ought not to sell something that he bought before taking possession of it. All of this is the verdict of Abū Ḥanīfah except in one respect: property, both buildings and land, about which he said, ‘There is no harm in a purchaser selling them before taking possession of them, because they cannot move from their place.’”

قَالَ مُحَمَّدٌ: وَهَذَا عِنْدَنَا لَا يَجُوزُ، وَهُوَ كَثِيرٌ مِنَ الْأَشْيَاءِ .

Muḥammad said, “According to us this is not valid, and it [the property] is the same as other things.”

٧٣١ - مُحَمَّدٌ قَالَ: أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَادٍ عَنْ إِبْرَاهِيمَ فِي الرَّجُلِ يَشْتَرِي الْجَارِيَةَ وَيَشْتَرِطُ عَلَيْهِ: أَنْ لَا يَبِيعَ، وَلَا يَهَبَ، فَكْرِهَهُ، وَقَالَ: لَيْسَتْ بِأَمْرَأَةٍ تَزَوَّجَهَا، وَلَا بِمَلِكٍ يَمِينٍ تَصْنَعُ بِهَا مَا تَصْنَعُ بِمَلِكٍ يَمِينِكَ .

731. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād from Ibrāhīm concerning a man who purchases a slave woman and a stipulation is imposed on him that he should not sell [her], that he abhorred it. He said, ‘She is not a woman you have married, nor [do you have] ownership so that you can do with her what you can do with those you own.’”

¹⁹⁰³ Its second explanation is that he says, for example, “I will sell my slave to you for a thousand if you will sell me your slave girl for a hundred.”

¹⁹⁰⁴ That a man sells a slave for a thousand on the basis that the purchaser sells him a slave woman for a hundred.

قَالَ مُحَمَّدٌ : وَبِهَذَا كُلَّهُ نَأْخُذُ ، كُلُّ شَرْطٍ أُشْرِطَ فِي الْبَيْعِ لَيْسَ مِنَ الْبَيْعِ ، فِيهِ مَنْفَعَةٌ
لِلْبَائِعِ أَوْ لِلْمُشْتَرِي ، أَوْ لِلْمُشْتَرَى لَهُ فَالْبَيْعُ فِيهِ فَاسِدٌ ، وَمَا كَانَ مِنْ شَرْطٍ لَا مَنْفَعَةَ فِيهِ
لِوَاحِدٍ مِنْهُمَا فَالْبَيْعُ فِيهِ جَائِزٌ ، وَالشَّرْطُ فِيهِ بَاطِلٌ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ
تَعَالَى .

Muḥammad said, “We adhere to all of this. For every stipulation laid down in a sale that is not a part of the sale, in which there is some benefit for the seller or the purchaser, the transaction of a sale on that basis is invalid. For whatever stipulation there is which is of no benefit¹⁹⁰⁵ to either party, the transaction of a sale on that basis is valid but the stipulation in it is invalid, and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٣٢ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : سَمِعْتُ عَطَاءَ بْنَ أَبِي رَبَاحٍ وَسُئِلَ عَنْ
ثَمَنِ الْهَرِّ ، فَلَمْ يَرَّ بِهِ بِأَسًا .

732. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘I heard ‘Aṭā’ ibn Abī Rabāḥ being asked about the price of a cat and he saw no harm in it.’”¹⁹⁰⁶

قَالَ مُحَمَّدٌ : وَبِهَذَا نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى . لَا بَأْسَ بِبَيْعِ السَّبَاعِ
كُلِّهَا إِذَا كَانَ لَهَا قِيَمَةٌ .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him. There is no harm in selling any beast of prey if it has a value.”



¹⁹⁰⁵ Which is such the stipulation that he should not sell him, not dress in a robe, etc.

¹⁹⁰⁶ Ash-Shāfiʿī رحمه الله said that it is not permissible to sell a dog. Aṭ-Ṭahāwī answered the hadith in prohibition of taking the price of a dog that this was when there was the judgement on killing dogs, but that then when it was prohibited to kill dogs and permitted to make use of them for hunting etc., the prohibition on selling them and taking a price for them was abrogated.

بَابُ مَنْ بَاعَ نَخْلًا حَامِلًا أَوْ عَبْدًا وَلَهُ مَالٌ

237. SOMEONE WHO SELLS FECUNDATED DATE-PALMS OR A SLAVE WHO HAS PROPERTY

٧٣٣ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ أَبِي الزُّبَيْرِ عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ الْأَنْصَارِيِّ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ : مَنْ بَاعَ نَخْلًا مُؤَبَّرًا أَوْ عَبْدًا لَهُ مَالٌ فَتَمَرْتُهُ وَالْمَالُ لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَ الْمُشْتَرِي .

733. Muḥammad said, “Abū Ḥanīfah informed us from Abū’z-Zubayr from Jābir ibn ‘Abdullāh al-Anṣārī رضي الله عنه that the Prophet صلى الله عليه وسلم said, ‘Whoever sells a pollinated¹⁹⁰⁷ date-palm or a slave who has property,¹⁹⁰⁸ the fruit and the property belong to the seller unless the purchaser stipulates it.’^{1909 1910}”

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، إِذَا طَلَعَ الثَّمَرُ فِي النَّخْلِ أَوْ كَانَ فِي الْأَرْضِ زَرْعٌ نَابِتٌ ، فَبَاعَهَا صَاحِبُهَا فَالثَّمَرَةُ وَالزَّرْعُ لِلْبَائِعِ إِلَّا أَنْ يَشْتَرِطَ ذَلِكَ الْمُشْتَرِي .

Muḥammad said, “We adhere to this. If the fruit of the date-palm is sprouting or there are crops in the land which are growing and their owner sells them [the date-palms and the land], the fruit and the crops belong to the seller unless the purchaser stipulates that.”

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَكَذَلِكَ الْعَبْدُ إِذَا كَانَ لَهُ مَالٌ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this. It is the same in the case of a slave who has property, and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



¹⁹⁰⁷ This indicates the appearance of fruit because of the fact that in the main it has to happen [if they have been pollinated].

¹⁹⁰⁸ On his person or in his hand such as one who has been granted permission, for otherwise slaves possess nothing.

¹⁹⁰⁹ Meaning, for himself.

¹⁹¹⁰ Al-Bukhārī narrated it from Ibn ‘Umar as a *marfū‘* hadith under “date-crop sharing” in the chapter on “a man who has a thoroughfare or drinking water [on the land for sale],” and Muslim under “sales” in the chapter on “someone who sells date palms on which there is fruit.”

بَابُ مَنْ اشْتَرَى سِلْعَةً فَوَجَدَ بِهَا عَيْبًا أَوْ حَبْلًا

238. SOMEONE WHO PURCHASES GOODS AND FINDS A DEFECT IN THEM OR A PREGNANCY

٧٣٤ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنِ الْهَيْثَمِ عَنِ ابْنِ سِيرِينَ عَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ رَضِيَ اللَّهُ عَنْهُ فِي الرَّجُلِ يَشْتَرِي الْجَارِيَةَ فَيَطَّأُهَا ثُمَّ يَجِدُ بِهَا عَيْبًا قَالَ : لَا يَسْتَطِيعُ رَدَّهَا ، وَلَكِنَّهُ يَرْجِعُ بِنَقْصَانِ الْعَيْبِ .

734. Muḥammad said, “Abū Ḥanīfah narrated to us from Haytham from Ibn Sirīn that ‘Alī ibn Abī Ṭālib رضي الله عنه said about a man who buys a slave woman and has intercourse with her, but then finds a defect in her, ‘He is unable to return her,¹⁹¹¹ but he may return [to the seller for a reduction in the price] for the shortcoming of the defect.’”

قَالَ مُحَمَّدٌ : وَبِهَذَا نَأْخُذُ ، وَكَذَلِكَ إِنْ لَمْ يَطَّأْهَا وَحَدَّثَ بِهَا عَيْبٌ عِنْدَهُ ، ثُمَّ وَجَدَ بِهَا عَيْبًا دَلَّسَهُ لَهُ الْبَائِعُ فَإِنَّهُ لَا يَسْتَطِيعُ رَدَّهَا ، وَلَكِنَّهُ يَرْجِعُ بِحِصَّةِ الْعَيْبِ الْأَوَّلِ مِنَ الثَّمَنِ ، إِلَّا أَنْ يَشَاءَ الْبَائِعُ أَنْ يَأْخُذَهَا بِالْعَيْبِ الَّذِي حَدَّثَ عِنْدَ الْمُشْتَرِي ، وَلَا يَأْخُذُ لِلْعَيْبِ أَرْشًا ، وَلَا لِلْوَطْئِ عُقْرًا ، فَإِنْ شَاءَ ذَلِكَ أَخَذَهَا وَأَعْطَى الثَّمَنَ كُلَّهُ ، وَهَذَا كُلُّهُ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this, and it is similar in the case in which he had not had sexual intercourse with her but something happened to impair her during his ownership and then he found a defect in her that the seller had concealed from him: he is unable to return her, but he may return [to the seller for a reduction] in the price in proportion to the first defect unless the seller wants to to take her back along with the defect that happened to her in the possession of the purchaser. He [the seller] may not take a compensatory payment¹⁹¹² for the defect [that happened in the possession of the purchaser] nor a compensatory dowry¹⁹¹³ for the act of sexual intercourse. If he wishes

¹⁹¹¹ Since in returning it there is hardship for the seller because it left his possession in a sound state and returned with a defect and so he refused. One has to repel any harm from him and so specifically one has to return with a shortcoming unless the seller is content to take it with its defect because he is content with the harm.

¹⁹¹² *arsh* is that which the purchaser takes from the seller if he discovers a defect in the object sold.

¹⁹¹³ *uqr*: compensatory dowry, is that which a woman receives for sexual intercourse performed because of a mistaken understanding.

he may take her and pay the complete price for her, and that is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٣٥ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ أَنَّهُ قَالَ : مَنْ بَاعَ جَارِيَةً حُبْلَى ثُمَّ ادَّعَى الْوَلَدَ الْمُشْتَرِيَّ وَالْبَائِعُ جَمِيعًا فَهُوَ لِلْمُشْتَرِي ، فَإِنْ ادَّعَاهُ الْبَائِعُ وَنَفَاهُ الْمُشْتَرِي فَهُوَ وَلَدُهُ . وَإِنْ نَفَاهُ جَمِيعًا فَهُوَ عَبْدٌ لِلْمُشْتَرِي ، وَإِنْ شَكَ فِيهِ فَهُوَ بَيْنَهُمَا ، يَرْتَبِعُهُمَا وَيَرْتَابُهُ .

735. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said, ‘If someone sells a pregnant slave woman and then both purchaser and seller lay claim to [the paternity of] the child, he pertains to the purchaser. If the seller claims him and the purchaser repudiates him then he is his child,¹⁹¹⁴ but if they both repudiate him then he is a slave [and the property] of the purchaser. If they are both in doubt, he pertains to both of them, and he inherits from them and they from him.’”

قَالَ مُحَمَّدٌ : وَاسْتَأْنَا نَأْخُذُ بِهَذَا ، وَلَكِنَّا نَقُولُ : إِنْ جَاءَتْ بِهِ عِنْدَ الْمُشْتَرِي لِأَقَلِّ مِنْ سِتَّةِ أَشْهُرٍ ، فَادَّعَاهُ جَمِيعًا مَعًا فَهُوَ ابْنُ الْبَائِعِ ، وَيَنْتَقِضُ الْبَيْعُ فِيهِ وَفِي أُمَّهِ ، وَإِنْ جَاءَتْ بِهِ لِأَكْثَرِ مِنْ سِتَّةِ أَشْهُرٍ مُنْذُ وَقَعَ الشَّرَاءُ فَهُوَ ابْنُ الْمُشْتَرِي ، وَلَا دَعْوَةَ لِلْبَائِعِ فِيهِ عَلَى كُلِّ حَالٍ ، وَإِنْ شَكَ فِيهِ أَوْ جَحَدَاهُ فَهُوَ عَبْدٌ لِلْمُشْتَرِي ، وَهَذَا كُلُّهُ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We do not adhere to this, but our verdict is that if she gives birth to him while in the ownership of the purchaser for less than six months and they both lay claim to him, he is the child of the seller, and his sale and the sale of his mother are invalidated. If she gives birth to him more than six months after the sale took place, he is the purchaser’s child and the seller has no claim on him in any circumstances. If they are both in doubt about him or they argue about him, he is a slave belonging to the purchaser, and that is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٣٦ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ قَالَ : إِذَا وَطِئَ الْمُتْلُوكَةَ ثَلَاثَةَ نَفَرٍ فِي طَهْرٍ وَاحِدٍ ، فَادَّعَوْهُ جَمِيعًا فَهُوَ لِلْآخِرِ ، وَإِنْ نَفَوْهُ جَمِيعًا فَهُوَ عَبْدٌ لِلْآخِرِ ، فَإِنْ قَالُوا : لَا نَدْرِي ، وَرَبُّهُ وَوَرِثَتُهُمْ جَمِيعًا .

¹⁹¹⁴ Meaning the seller’s child.

736. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said, ‘If a slave woman is made love to by three men during one period of purity and they all lay claim to him [the child], he is [the child] of the last. If they all repudiate him, he is a slave of the last one.’¹⁹¹⁵ If they all say, ‘We do not know,’ [if he dies] they all inherit from him and [if they die] he inherits from all of them.”

قَالَ مُحَمَّدٌ : وَلَسْنَا نَأْخُذُ بِهَذَا ، وَلَكِنَّهُمْ إِنْ ادَّعَوْهُ جَمِيعًا مَعًا نَظَرْنَا بِكُمْ جَاءَتْ بِهِ مِنْذُ
مَلَكِهِ الْآخِرِ؟ فَإِنْ كَانَتْ جَاءَتْ بِهِ لِأَكْثَرِ مِنْ سِتَّةِ أَشْهُرٍ فَهُوَ ابْنُ الْمُشْتَرِي الْآخِرِ ، وَإِنْ
كَانَتْ جَاءَتْ بِهِ لِأَقَلِّ مِنْ سِتَّةِ أَشْهُرٍ مِنْذُ بَاعَهَا الْأَوَّلُ فَهُوَ ابْنُ الْأَوَّلِ ، وَإِنْ نَفَوْهُ جَمِيعًا
أَوْ شَكُوا فِيهِ فَهُوَ عَبْدٌ لِلْآخِرِ ، وَلَا يَلْزَمُ النَّسَبُ بِالشَّكِّ حَتَّى يَأْتِيَ الْيَقِينُ ، وَهَذَا كُلُّهُ
قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We do not adhere to this, but if they lay claim to him, we investigate how long after the last one bought her she gave birth. If she had given birth to him after more than six months, he is the child of the last purchaser. But if she had given birth to him less than six months after the first one sold her, he is the child of the first. If they all repudiate him or are in doubt concerning him, he is the slave of the last one, and no ascription of kinship may be made in cases of doubt until certainty has been established, and this is all the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ الْفُرْقَةِ بَيْنَ الْأُمَةِ وَزَوْجِهَا وَوَلَدِهَا

239. SEPARATING A SLAVE WOMAN, HER HUSBAND HER CHILD

٧٣٧ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا عَبْدُ اللَّهِ بْنُ الْحَسَنِ قَالَ : أَقْبَلَ
رَبْدُ بْنُ حَارِثَةَ رَضِيَ اللَّهُ عَنْهُ بِرَقِيقٍ مِنَ الْيَمَنِ ، فَاحْتَاكَ إِلَى التَّقَةِ يُنْفِقُ عَلَيْهِمْ ،
فَبَاعَ غُلَامًا مِنَ الرَّقِيقِ كَانَ مَعَهُ أُمُّهُ ، فَلَمَّا قَدِمَ عَلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَصَفَّحَ
الرَّقِيقَ ، فَبَصَرَ بِالْأُمِّ ، قَالَ : مَا لِي أَرَى هَذِهِ وَالْهَيْهَةَ ؟ قَالَ : احْتَجْنَا إِلَى تَقَةِ ، فَبِعْنَا ابْنًا
لَهَا ، فَأَمَرَهُ أَنْ يَرْجِعَ فَيُرُدَّهُ .

¹⁹¹⁵ On the assumption that they were all three successive owners of the slave woman.

737. Muḥammad said, “Abū Ḥanīfah informed us saying, “Abdullāh ibn al-Ḥasan narrated to us saying, “Zayd ibn al-Ḥārithah رضي الله عنه returned from the Yemen with slaves. He was in need of some money for their maintenance and so he sold a boy from among the slaves whose mother was with him. When he came to the Prophet ﷺ, he examined¹⁹¹⁶ the slaves and noticed the mother. He said, ‘Why do I see this one overcome by intense grief?’ He said, ‘We were in need of some money for maintenance and so we sold a son of hers,’ and he ﷺ told him to go back and get him back.”¹⁹¹⁷

قَالَ مُحَمَّدٌ : وَبِهَذَا نَأْخُذُ ، نَكْرَهُ أَنْ يُفْرَقَ بَيْنَ الْوَالِدَةِ أَوْ الْوَالِدِ وَوَلَدِهِ إِذَا كَانَ صَغِيرًا ،
وَكَذَلِكَ الْإِخْوَانَ ، وَكُلُّ ذِي رَجْمٍ مَحْرَمٍ إِذَا كَانَا صَغِيرَيْنِ . أَوْ كَانَ أَحَدُهُمَا صَغِيرًا ،
وَلَا يَنْبَغِي أَنْ يُفْرَقَ بَيْنَهُمَا فِي الْبَيْعِ ، فَأَمَّا إِذَا كَانُوا كِبَارًا كُلَّهُمْ فَلَا بَأْسَ بِالْفُرْقَةِ بَيْنَهُمْ ،
وَهَذَا كُلُّهُ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this; we abhor a mother or father being separated from a child if he is young, and similarly brothers and sisters and everyone of the degree of kinship that prohibits their marrying each other [*mahram*], if they are young, or if one of the two of them is young. The two of them ought not to be sold separately. As for if they are all adults, there is no harm in separating them, and this is all the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٣٨ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ عَنْ ابْنِ مَسْعُودٍ رَضِيَ
اللَّهُ عَنْهُ فِي الْمَمْلُوكَةِ تَبَاعٌ وَلَهَا زَوْجٌ قَالَ : بَيْعُهَا طَلَاقُهَا .

738. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād from Ibrāhīm from Ibn Mas‘ūd رضي الله عنه concerning a slave woman who is sold whilst married, and he said, ‘Her sale is her divorce.’¹⁹¹⁸

قَالَ مُحَمَّدٌ : وَلَسْنَا نَأْخُذُ بِهَذَا ، هِيَ امْرَأَتُهُ وَإِنْ بِيَعَتْ ، قَالَ : بَلَّغْنَا ذَلِكَ عَنْ عُمَرَ بْنِ
الْخَطَّابِ وَعَنْ عَلِيِّ بْنِ أَبِي طَالِبٍ ، وَعَنْ عَبْدِ الرَّحْمَنِ بْنِ عَوْفٍ ، وَحَدِيثَهُ بِنِ الْيَمَانِ
رَضِيَ اللَّهُ تَعَالَى عَنْهُمْ ، وَلَكِنْ لَا بَأْسَ أَنْ يُفْرَقَ بَيْنَهُمَا فِي الْبَيْعِ وَهِيَ امْرَأَتُهُ عَلَى حَالِهَا ،
وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

¹⁹¹⁶ Meaning that he examined their states.

¹⁹¹⁷ Abū Yūsuf narrated it on p.159.

¹⁹¹⁸ Ibn Abī Shaybah narrated the like of it in the *Muṣannaḥ*, vol.4, p.105.

Muḥammad said, “We do not adhere to this; she remains his wife even if she is sold.” He said, “That has reached us from ‘Umar ibn al-Khaṭṭāb ؓ, ‘Alī ibn Abī Ṭālib, ‘Abd ar-Raḥmān ibn ‘Awf and Ḥudhayfah ibn al-Yamān ؓ. However, there is no harm in selling them separately, she remaining his wife in that state of hers. That is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ السَّلْمِ فِيْمَا يُكَالُ وَيُوزَنُ

240. ADVANCE PAYMENTS¹⁹¹⁹ FOR SOMETHING THAT IS MEASURED¹⁹²⁰ OR WEIGHED

٧٣٩ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ قَالَ : أَسْلَمَ مَا يُكَالُ فِيْمَا يُوزَنُ ، وَمَا يُوزَنُ فِيْمَا يُكَالُ ، وَلَا يُسَلِّمُ مَا يُكَالُ فِيْمَا يُكَالُ ، وَلَا مَا يُوزَنُ فِيْمَا يُوزَنُ ، وَإِذَا اخْتَلَفَ التَّوَعَانِ فِيْمَا لَا يُكَالُ وَلَا يُوزَنُ فَلَا بَأْسَ بِأَثْنَيْنِ بَوَاحِدٍ يَدًا يَدًا ، وَلَا بَأْسَ بِهِ نَسَاءً ، وَإِذَا كَانَ مِنْ نَوْعٍ وَاحِدٍ مِمَّا لَا يُكَالُ وَلَا يُوزَنُ فَلَا بَأْسَ بِهِ أَثْنَيْنِ بَوَاحِدٍ يَدًا يَدًا ، وَلَا خَيْرَ فِيهِ نَسَاءً .

739. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said, ‘Advance payment can be made with something which is measured for something which is weighed, and with something which is weighed for something which is measured, but advance payment may not be made with something which is measured for something which is measured nor with something which is weighed for something which is weighed. If the two varieties of those things which are not measured or weighed are different, there is no harm in paying two for one, hand to hand, nor is there any harm in deferred payment¹⁹²¹ in it. And if they are from the same variety of those things which are not measured nor weighed, there is no harm in two for one, hand to hand **and there is no good in deferred payment in it.**”¹⁹²²

¹⁹¹⁹ *Salam*: advance payment, lexically it is from *taslīm*: to deliver or to hand over. In the usage of the *fuqahā'* it is an expression denoting selling something on the basis that it will be a debt against the seller with specific preconditions in the *Sharī'ah*. It is said something to be delivered later for something paid immediately such that the price is paid immediately and the object for which the price is paid is paid after a period of time, and it is permissible by unanimous agreement. The word *salaf* is also used with the same meaning (*al-Lum'āt*). *Salam* is permissible in things which are measured by volume, weighed and measured by length and width, and similarly with things which are counted which are not very far apart from each other.

¹⁹²⁰ In the sense of measured by volume. – Trans.

¹⁹²¹ Meaning to sell it [to be paid] at a specific time.

¹⁹²² Abū Yūsuf narrated it on p.187.

قَالَ مُحَمَّدٌ : وَبِهَذَا كُلِّهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to all of this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٤٠ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ فِي الرَّجُلِ يَكُونُ لَهُ عَلَى الرَّجُلِ الدَّيْنُ وَيَجْعَلُهُ فِي السَّلْمِ قَالَ : لَا خَيْرَ فِيهِ حَتَّى يَقْبُضَهُ .

740. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning a man who is owed a debt by another man and makes it into an advance payment, ‘There is no good in it until he takes possession of [what is owed him].’”¹⁹²³

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ لِأَنَّ ذَلِكَ يَبِيعُ الدَّيْنُ بِالدَّيْنِ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this, because it is of the same nature as selling a debt for a debt, and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ السَّلْمِ فِي الْفَاكِهَةِ إِلَى الْقَطَاعِ وَغَيْرِهِ

241. ADVANCE PAYMENT FOR FRUIT “UNTIL THE CUTTING [OF THE FRUIT]”¹⁹²⁴ AND OTHER THINGS

٧٤١ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ قَالَ : يُكْرَهُ السَّلْمُ إِلَى الْحَصَادِ ، وَإِلَى الْقَطَاعِ .

741. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said, ‘Advance payment “until harvest”¹⁹²⁵ or “until the cutting [of the fruit]” is abhorrent.’”

¹⁹²³ Abū Yūsuf narrated it on p.188.

¹⁹²⁴ Our original text had ‘*atā*’ “the payment of the stipend” but our typed version has as above “until the cutting [of the fruit] which makes more sense, as one would not make an advance payment *before* receiving the stipend. – Trans.

¹⁹²⁵ The cutting of crops or fruit.

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، لِأَنَّهُ أَجَلٌ مَجْهُولٌ يَتَقَدَّمُ وَيَتَأَخَّرُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this, because it is an unknown period of time, which may come early or be delayed, and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٤٢ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ فِي الرَّجُلِ يُسَلِّمُ فِي الْفَاكِهَةِ إِلَى الْقَطَاعِ يَأْخُذُ فَنِيْزًا فَنِيْزًا قَالَ : لَا خَيْرَ فِيهِ .

742. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning a man who makes an advance payment ‘until the cutting [of the fruit]’ taking a *qafīz* at a time, ‘There is no good in it.’”¹⁹²⁶

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٤٣ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا حَمَّادٌ عَنْ إِبْرَاهِيمَ فِي الرَّجُلِ يُسَلِّمُ فِي الثَّمْرِ قَالَ : لَا ؛ حَتَّى يُطْعَمَ .

743. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Ḥammād narrated to us that Ibrāhīm said concerning a man making advance payment for fruits,¹⁹²⁷ “No, not until it can be eaten.”’”¹⁹²⁸

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، لَا يَنْبَغِي أَنْ يُسَلِّمَ فِي ثَمْرَةٍ لَيْسَتْ فِي أَيْدِي النَّاسِ إِلَّا فِي زَمَانِهَا بَعْدَ بُلُوغِهَا ، وَيَجْعَلُ أَجَلَ السَّلْمِ قَبْلَ انْقِطَاعِهَا ، فَإِذَا فَعَلَ ذَلِكَ فَهُوَ جَائِزٌ ، وَإِلَّا فَلَا خَيْرَ فِيهِ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

¹⁹²⁶ Abū Yūsuf narrated it on p.188.

¹⁹²⁷ Fruits here are *thamar*, meaning the fruits of trees such as olives, etc., whereas fruit elsewhere is *fākihah*, meaning sweet fruit in general. – Trans.

¹⁹²⁸ Abū Yūsuf narrated it on pp.187-8.

Muḥammad said, “We adhere to this. One ought not to make advance payment for fruits that are not yet in people’s possession, except in their time¹⁹²⁹ after their reaching ripeness, and the term for making the advance payment is before they are cut. If he does that, it is valid, and if not, there is no good in it,¹⁹³⁰ and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ السَّلْمِ فِي الْحَيَوَانِ

242. ADVANCE PAYMENT FOR ANIMALS

٧٤٤ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا حَمَادٌ عَنْ إِبْرَاهِيمَ قَالَ : دَفَعَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ إِلَى زَيْدِ بْنِ خُوَيْلِدَةَ الْبَكْرِيِّ مَالًا مَضَارَبَةً ، فَاسْتَلَمَ زَيْدٌ إِلَى عَتْرِسِ بْنِ عَرْقُوبِ الشَّيْبَانِيِّ فِي فَلَاتِصَ ، فَلَمَّا حَلَّتْ أَحَدَ بَعْضًا وَبَقِيَ بَعْضٌ ، فَأَعْسَرَ عَتْرِسٌ ، وَبَلَغَهُ أَنَّ الْمَالَ لِعَبْدِ اللَّهِ رَضِيَ اللَّهُ عَنْهُ ، فَأَتَاهُ يَسْتَرْفِقُهُ ، فَقَالَ عَبْدُ اللَّهِ رَضِيَ اللَّهُ عَنْهُ : أَفَعَلَ زَيْدٌ ؟ قَالَ : نَعَمْ ، فَأَرْسَلَ إِلَيْهِ ، فَسَأَلَهُ ، فَقَالَ لَهُ عَبْدُ اللَّهِ رَضِيَ اللَّهُ عَنْهُ : ارْزُدْ مَا أَخَذْتَ وَخُذْ رَأْسَ مَالِكَ ، وَلَا تُسَلِّمَنَّ مَالَنَا فِي شَيْءٍ مِنَ الْحَيَوَانِ .

744. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Ḥammād narrated to us from Ibrāhīm who said, “‘Abdullāh ibn Mas‘ūd ﷺ paid to Zayd ibn Khuwaylidah al-Bakrī¹⁹³¹ some money as a profit-sharing loan (*muḍārabah*) and Zayd paid an advance payment to ‘Itrīs ibn ‘Urqūb ash-Shaybānī for some young female camels. When the term fell due, he took¹⁹³² some and some remained. That caused problems for ‘Itrīs and then it reached him that the money belonged to ‘Abdullāh ﷺ and he came to him asking him to help him.¹⁹³³ ‘Abdullāh ﷺ asked, ‘Did Zayd do that?’ He said, ‘Yes.’ So he sent for

¹⁹²⁹ Meaning the time of the fruit, i.e., an advance payment is not permissible until the thing being paid for in advance does exist from the time of the contract until the time payment falls due, so much so that even if it is non-existent at the time of the contract and exists at the time payment falls due, or vice-versa, or it is non-existent in between that, then it is not permissible.

¹⁹³⁰ Meaning that it is not permissible. The refutation of permissibility [a second time] is by way of emphasis.

¹⁹³¹ Al-Bakrī is a mistake for al-Yashkurī which is the correct name as is mentioned by al-Bukhārī in his *Tārīkh*.

¹⁹³² Zayd took some of what he had paid in advance for, i.e., the young female camels, from ‘Itrīs.

¹⁹³³ Asking him to be kind to him and to grant him a delay.

him and asked him. ‘Abdullāh ﷺ said to him, ‘Return what [camels] you took and take your capital sum and do not give our money in advance payments for anything in the nature of animals.’”¹⁹³⁴

قَالَ مُحَمَّدٌ: وَبِهَذَا كُلَّهُ نَأْخُذُ، لَا يَجُوزُ السَّلْمُ فِي شَيْءٍ مِنَ الْحَيَوَانِ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to all of this. Advance payment is not permissible for anything in the nature of animals, and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ الْكَفِيلِ وَالرَّهْنِ فِي السَّلْمِ

243. SECURITY AND A PAWNED ITEM¹⁹³⁵ MADE IN ADVANCE PAYMENT

٧٤٥ - مُحَمَّدٌ قَالَ: أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ: حَدَّثَنَا حَمَادٌ عَنْ إِبْرَاهِيمَ قَالَ: لَا بَأْسَ بِالرَّهْنِ وَالْكَفِيلِ فِي السَّلْمِ .

745. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Ḥammād narrated to us from Ibrāhīm who said, “There is no harm¹⁹³⁶ in a pawned item or something left as security in advance payment.””¹⁹³⁷

قَالَ مُحَمَّدٌ: وَبِهِ نَأْخُذُ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

¹⁹³⁴ Abū Yūsuf narrated it on pp.186-7.

¹⁹³⁵ Lexically it means something retained for whatever reason, and in the *Sharī ah* it means to make something to be retained for a due which it is possible to pay back in full for the pledged item such as debts.

¹⁹³⁶ Because the Prophet ﷺ bought food from a Jew for payment at a later date and pawned his shield with him, with which Ibrāhīm argues the permissibility of pawning something in the case of making an advance payment because of the permissibility of surety for it because of the fact that it is a receipt as is something pawned.

¹⁹³⁷ Abū Yūsuf narrated it on p.188.

٧٤٦ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبرَاهِيمَ فِي السَّلَمِ فِي الْفُلُوسِ
فَيَأْخُذُ الْكَفِيلَ قَالَ : لَا بَأْسَ بِهِ .

746. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning an advance payment made in *fulūs* (small change) for which one takes a security, ‘There is no harm in it.’”¹⁹³⁸

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ السَّلَمِ يَأْخُذُ بَعْضَهُ وَبَعْضَ رَأْسِ مَالِهِ

244. ADVANCE PAYMENT FOR WHICH ONE TAKES PART OF IT [THE ITEMS BEING BOUGHT] AND PART OF ONE’S CAPITAL SUM

٧٤٧ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا أَبُو عَمْرٍو عَنْ سَعِيدِ بْنِ جُبَيْرٍ
عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا فِي السَّلَمِ يَحُلُّ ، فَيَأْخُذُ بَعْضَهُ وَيَأْخُذُ بَعْضَ رَأْسِ مَالِهِ
فِيمَا بَقِيَ ، قَالَ : هَذَا الْمَعْرُوفُ الْحَسَنُ الْجَمِيلُ .

747. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Abū ‘Amr¹⁹³⁹ narrated to us from Sa‘īd ibn Jubayr from Ibn ‘Abbās ؓ concerning an advance payment whose payment falls due¹⁹⁴⁰ for which one takes part of it [the items paid for]¹⁹⁴¹ and takes part of one’s capital sum for whatever remains, that he said, ‘This is the good well-recognised practice.’”¹⁹⁴²

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

¹⁹³⁸ Abū Yūsuf narrated it on p.187.

¹⁹³⁹ Abū ‘Umar not Abū ‘Amr and I think he is Dharr ibn ‘Abdullāh al-Marhabī because his *kunya* was Abū ‘Umar.

¹⁹⁴⁰ Meaning, the term [agreed upon].

¹⁹⁴¹ The cancellation of something for which one paid in advance is permissible because it is annulment, and it is similar in the case of a part of it.

¹⁹⁴² Abū Yūsuf narrated it on p.186.

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ السَّلْمِ فِي الثِّيَابِ

245. ADVANCE PAYMENT FOR FABRIC

٧٤٨ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَادٍ عَنْ إِبْرَاهِيمَ قَالَ : إِذَا أُسْلِمَ فِي الثِّيَابِ وَكَانَ مَعْرُوفًا عَرْضُهُ وَرُقْعَتُهُ فَهُوَ جَائِزٌ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

748. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said, ‘If someone pays in advance for fabric and its width and [substance or] thickness are known, it is valid, and that is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.’”¹⁹⁴³

قَالَ مُحَمَّدٌ : وَيَه نَأْخُذُ إِذَا سَمِيَ الطُّولُ ، وَالْعَرْضُ ، وَالرُّقْعَةُ ، وَالْجِنْسُ ، وَالْأَجَلُ ، وَنَقَدَ الثَّمَنَ قَبْلَ أَنْ يَتَفَرَّقَا فَهُوَ جَائِزٌ .

Muḥammad said, “We adhere to this if its length, width, thickness, its type and the period of time are all named and the price is paid in ready money before they separate, then it is valid.”

٧٤٩ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَادٍ عَنْ إِبْرَاهِيمَ فِي الرَّجُلِ يُسَلِّمُ الثِّيَابَ فِي الثِّيَابِ قَالَ : إِذَا اخْتَلَفَتْ أَنْوَاعُهُ فَلَا بَأْسَ بِهِ .

749. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning a man who pays with fabric in advance for fabric, ‘If they are of different types, there is no harm in it.’”¹⁹⁴⁴

قَالَ مُحَمَّدٌ : وَيَه نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

¹⁹⁴³ Abū Yūsuf narrated it on p.187.

¹⁹⁴⁴ Abū Yūsuf narrated it on p.187.

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ السَّوْمِ عَلَى سَوْمِ أَخِيهِ

246. OFFERING TO BUY ON TOP OF ONE'S BROTHER'S OFFER TO BUY

٧٥٠ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ عَنْ أَبِي سَعِيدِ الْخُدْرِيِّ ، وَأَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُمَا ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ : (لَا يَسْتَأْمُ الرَّجُلُ عَلَى سَوْمِ أَخِيهِ ، وَلَا يَخْطُبُ عَلَى خِطْبَتِهِ ، وَلَا تَنَاجَشُوا ، وَلَا تَبَايَعُوا بِالْقَاءِ الْحَجَرِ ، وَمَنْ اسْتَأْجَرَ أَجِيرًا فَلْيُعَلِّمُهُ أَجْرَهُ ، وَلَا تُرْوَجِ الْمَرْأَةُ عَلَى عَمَّتِهَا ، وَلَا عَلَى خَالَاتِهَا ، وَلَا تَسْأَلُ طَلَاقَ أُخْتِهَا لِتُكْفِيَ مَا فِي صَحْفَتِهَا ، فَإِنَّ اللَّهَ هُوَ رَازِقُهَا) .

750. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād from Ibrāhīm from Abū Sa‘īd al-Khudrī and Abū Hurayrah ﷺ that the Prophet ﷺ said, ‘A man must not offer to buy¹⁹⁴⁵ on top of his brother’s offer to buy, nor propose marriage on top of his marriage proposal. Do not bid against each other in order to up the price¹⁹⁴⁶ and do not sell to each other [settling the sale] by throwing pebbles.¹⁹⁴⁷ If someone hires an employee, he should let him know his wage. A woman should not be married along with her paternal or maternal aunt, nor should she ask for her sister’s divorce in order to overturn¹⁹⁴⁸ what is in her bowl,¹⁹⁴⁹ for Allah is her Provider.’”¹⁹⁵⁰

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى . وَأَمَّا قَوْلُهُ : (وَلَا تَنَاجَشُوا) ؛ فَالرَّجُلُ يَبِيعُ الشَّيْءَ فَيَزِيدُ الرَّجُلَ الْآخَرَ فِي الثَّمَنِ ، وَهُوَ لَا يُرِيدُ أَنْ يَشْتَرِيَ

¹⁹⁴⁵ The negation is here in the sense of prohibition because it is more satisfactory in a rhetorical sense. Bidding on top of another’s bid is only deplored in the case when the seller’s heart inclines to the price that the purchaser has named. If his heart does not incline and he is not pleased with it there is no harm in someone else buying it at a higher price.

¹⁹⁴⁶ The origin of *najash* is to drive people away from something to something else. [Thus, *tanājush* means to bid against someone not really intending to buy the item but merely to up the price, or to praise it in front of someone, deliberately luring them into the purchase. – Trans.]

¹⁹⁴⁷ *tabāy’ ū bi alqā’ al-ḥajar* is taken to be a form of *munābadhah*, which is forbidden in itself, in which traders cast garments to each other.

¹⁹⁴⁸ To overturn it in order to empty out what is in it.

¹⁹⁴⁹ Her bowl and her vessel. This is a metaphor for a co-wife’s causing her fellow-wife’s right due to her from her husband to incline towards herself by her asking [him] for her divorce.

¹⁹⁵⁰ Al-Bukhārī narrated it partially from a hadith of Abū Hurayrah under “sales” in the chapter on “there is no sale on top of one’s brother’s sale,” and Muslim partially under “sales” in the chapter on “the prohibition of a man selling on top of his brother’s sale.”

لِيَسْمَعَ بِذَلِكَ غَيْرَهُ، وَيَشْتَرِي عَلَى سَوْمِهِ، فَهَذَا هُوَ النَّجَشُ، فَلَا يَنْبَغِي، وَأَمَّا قَوْلُهُ:
 (لَا تَبَايَعُوا بِالْقَاءِ الْحَجَرِ) فَهَذَا كَانَ يَنْعَا فِي الْجَاهِلِيَّةِ، يَقُولُ أَحَدُهُمْ: إِذَا قَتَيْتُ الْحَجَرَ
 فَقَدْ وَجَبَ الْبَيْعُ، فَهَذَا مَكْرُوهٌ، فَلَا يَنْبَغِي، وَالْبَيْعُ فِيهِ فَاسِدٌ .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him. As for his saying, ‘Do not bid against each other in order to up the price,’ it is when a man sells something and another man increases the price without intending to buy it so that someone else might overhear it and thus purchase it on top of his offer, and this is falsely bidding up the price (*najash*) which ought not to be done. As for his saying, ‘do not sell to each other [settling the sale] by throwing pebbles,’ it was a type of sale that was done in the age of ignorance (*jāhiliyyah*) in which one of the two would say, ‘When I throw the stone, the sale is binding,’ and this is abhorrent and ought not to be done, and a sale done this way is invalid.”



بَابُ حَمْلِ التِّجَارَةِ إِلَى أَرْضِ الْحَرْبِ

247. CONVEYING TRADE TO LAND AT WAR (*DĀR AL-ḤARB*)

٧٥١ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ أَنَّهُ قَالَ فِي التَّاجِرِ
 يَحْتَلِفُ إِلَى أَرْضِ الْحَرْبِ : إِنَّهُ لَا بَأْسَ بِذَلِكَ مَا لَمْ يَحْمِلْ إِلَيْهِمْ سِلَاحًا ، أَوْ كِرَاعًا ، أَوْ
 سَلَابًا .

751. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning a trader who goes regularly to land at war, ‘There is no harm in that as long as he does not convey weapons, horses (*kurā*)¹⁹⁵¹ or booty (*salab*).’^{1952 1953}

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

¹⁹⁵¹ *kurā* literally means that which is below the ankle in animals. Then horses in particular were given this as a name. [Imam] Muḥammad said that *kurā* are horses, mules and donkeys.

¹⁹⁵² Presumably a prohibition of his taking booty seized from the enemy back to them to sell it to them. – Trans.

¹⁹⁵³ Abū Yūsuf narrated it on p.195.

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ التِّجَارَةِ فِي الْعَصِيرِ وَالْخَمْرِ

248. TRADING IN PRESSED FRUIT JUICES AND WINE

٧٥٢ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ فِي الْعَصِيرِ قَالَ : لَا بَأْسَ بِأَنْ تَبِيعَهُ مَنْ يَصْنَعُهُ خَمْرًا .

752. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning pressed fruit juice, ‘There is no harm in selling it to someone who manufactures wine from it.’¹⁹⁵⁴”

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

[Muḥammad said], “And we adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٥٣ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا مُحَمَّدُ بْنُ قَيْسٍ عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ : سَأَلَهُ رَفِيقٌ لَهُ عَنْ بَيْعِ الْخَمْرِ وَعَنْ أَكْلِ ثَمَنِهَا ، قَالَ : قَاتَلَ اللَّهُ الْيَهُودَ ، وَحَرَّمَتْ عَلَيْهِمُ الشُّحُومَ أَنْ يَأْكُلُوهَا ، فَاسْتَحَلُّوا بَيْعَهَا وَأَكَلُ ثَمَنِهَا ، إِنَّ اللَّهَ حَرَّمَ الْخَمْرَ ، فَحَرَامٌ بَيْعُهَا وَأَكْلُ ثَمَنِهَا .

753. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Muḥammad ibn Qays narrated to us from Ibn ‘Umar رضي الله عنهما who said that a friend of his had asked¹⁹⁵⁵ about selling wine and eating [from] its proceeds and he said, “May Allah fight the Jews! Fat (*shuhūm*)¹⁹⁵⁶ was forbidden them to eat and so they declared the sale of them permissible and ate from the proceeds. Allah forbade wine, and so its sale and eating from its proceeds are *ḥarām*.”’¹⁹⁵⁷”

¹⁹⁵⁴ Because the disobedience does not reside in it itself but on the contrary after its alteration.

¹⁹⁵⁵ And in the *Musnad* of al-Imam al-A‘zam from Muḥammad ibn Qays there is that he said, “I asked Ibn ‘Umar,” or “Abū Kathīr asked him” and then he mentioned the hadith.

¹⁹⁵⁶ *shuhūm* is the fat around the kidneys, the stomach and intestines. – Trans.

¹⁹⁵⁷ Abū Yūsuf narrated it on pp.227-8.

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٥٤ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا مُحَمَّدُ بْنُ قَيْسٍ : أَنَّ رَجُلًا مِنْ ثَقِيفٍ يُكْنَى أَبُو عَامِرٍ كَانَ يُهْدِي لِرَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كُلَّ عَامٍ رَاوِيَةً مِنْ خَمْرٍ ، فَأَهْدَى إِلَيْهِ فِي الْعَامِ الَّذِي حُرِّمَتْ رَاوِيَتُهُ كَمَا كَانَ يُهْدِي ، فَقَالَ لَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : يَا أَبَا عَامِرٍ ! إِنَّ اللَّهَ قَدْ حَرَّمَ الْخَمْرَ ، فَلَا حَاجَةَ لَنَا فِي خَمْرِكَ ، قَالَ فَحُذِّهَا يَا رَسُولَ اللَّهِ ، فَبِعَهَا ، وَاسْتَعْنُ بِثَمَنِهَا عَلَى حَاجَتِكَ ، فَقَالَ لَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : يَا أَبَا عَامِرٍ ! إِنَّ الَّذِي حَرَّمَ شُرْبَهَا حَرَّمَ بَيْعَهَا وَأَكْلَ ثَمَنِهَا .

754. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Muḥammad ibn Qays narrated to us that every year a man from Thaḳīf¹⁹⁵⁸ whose honorific was Abū ‘Āmir used to give a three-skinned leathern water-bag containing wine as a gift to the Messenger of Allah ﷺ. In the year in which it [wine] was prohibited he presented his water-bag as a gift as he ordinarily did, and the Prophet ﷺ said to him, “Abū ‘Āmir, Allah has made wine *ḥarām* so we are in no need of your wine.” He said, “Then take it Messenger of Allah and sell it, and seek benefit from its proceeds for your own needs.” So the Prophet ﷺ said to him, “Abū ‘Āmir! The One Who forbade drinking it, forbade its sale and eating from its proceeds.””¹⁹⁵⁹

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



¹⁹⁵⁸ Ath-Thaḳāfī the Companion. His personal name is not known.

¹⁹⁵⁹ Abū Yūsuf narrated it on p.228.

بَابُ بَيْعِ صَيْدِ الْأَجَامِ وَالسَّمَكِ وَالْقَصَبِ

249. THE SALE OF GAME IN REED THICKETS,¹⁹⁶⁰ FISH AND BAMBOO

٧٥٥ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا حَمَادٌ عَنْ إِبْرَاهِيمَ : أَنَّهُ كَانَ يَكْرَهُ بَيْعَ صَيْدِ الْأَجَامِ وَقَصَبِهَا .

755. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Ḥammād narrated to us of Ibrāhīm, “He used to abhor¹⁹⁶¹ the sale of game in reed thickets and their bamboo trees.””

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٥٦ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا حَمَادٌ قَالَ : طَلَبْتُ مِنْ أَبِي عَبْدِ الْحَمِيدِ أَنْ يَكْتُبَ إِلَيَّ عُمَرُ بْنُ عَبْدِ الْعَزِيزِ يَسْأَلُهُ عَنْ بَيْعِ صَيْدِ الْأَجَامِ وَقَصَبِهَا ، فَكَتَبَ إِلَيْهِ عُمَرُ رَضِيَ اللَّهُ عَنْهُ : إِنَّهُ الْجُنْسُ ، لَا بَأْسَ بِهِ .

756. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Ḥammād narrated to us saying, “I asked Abū ‘Abd al-Ḥamīd to write to ‘Umar ibn ‘Abd al-‘Azīz and ask him about selling game caught in reed thickets and their bamboo trees, and so ‘Umar رضي الله عنه wrote to him, ‘It is all one species and there is no harm in it.’”

وَلَسْنَا نَأْخُذُ بِهَذَا ، نُجِيزُ بَيْعَ الْقَصَبِ إِذَا بَاعَهُ خَاصَّةً ، فَأَمَّا الصَّيْدُ فَلَا نُجِيزُ بَيْعَهُ إِلَّا أَنَّهُ يَكُونُ يُؤْخَذُ بِغَيْرِ صَيْدٍ ، فَيَجُوزُ الْبَيْعُ فِيهِ ، وَيَكُونُ صَاحِبُهُ بِالْحِيَارِ إِذَا رَأَاهُ ، إِنْ شَاءَ أَخَذَهُ ، وَإِنْ شَاءَ تَرَكَهُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

¹⁹⁶⁰ *ājām* is the plural of *ajām* meaning a thicket.

¹⁹⁶¹ This relates particularly to game and bamboo which are permissible.

And we do not adhere to this. We permit the sale of bamboo trees if someone is selling them in particular, but as for game¹⁹⁶² we do not permit its sale unless it is taken without hunting¹⁹⁶³ in which case sale is permissible for it, and its buyer has a choice when he sees it such that if he wishes he may take it, and if he wishes he may leave it, and that is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ شِرَاءِ الذَّهَبِ وَالْفِضَّةِ تَكُونُ فِي السَّبْرِ وَالْجَوْهَرِ

250. THE PURCHASE OF GOLD AND SILVER SET IN SOMETHING OF GOOD APPEARANCE (*SIBR*), AND JEWELS

٧٥٧ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ قَالَ : إِذَا كَانَ الْخَاتَمُ فِضَّةً وَفِيهِ فَصٌّ فَاشْتَرِهِ بِمَا شِئْتَ ، إِنْ شِئْتَ قَلِيلًا ، وَإِنْ شِئْتَ كَثِيرًا .

757. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said, ‘If a ring is silver and there is a gem in it, then buy it for whatever you wish; a little if you wish or a lot if you wish.’”

وَلَسْنَا نَأْخُذُ بِهِدَا ، وَلَا نَجِيزُ الْبَيْعَ حَتَّى يُعْلَمَ أَنَّ الثَّمَنَ أَكْثَرَ مِنَ الْفِضَّةِ الَّتِي فِي الْخَاتَمِ ، فَيَكُونُ فَضْلُ الثَّمَنِ بِالْفِضَّةِ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“And we do not adhere to this, and we do not permit the sale until it is known that the price is more than the silver in the ring and that the extra price is for the gem, and that is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٥٨ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا الْوَلِيدُ بْنُ سَرِيحٍ عَنْ أَنَسِ بْنِ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ قَالَ : بُعِثَ إِلَى عُمَرَ رَضِيَ اللَّهُ عَنْهُ بِإِنَاءٍ مِنْ فِضَّةٍ خُسْرَوَانِيٍّ قَدْ أَحْكَمْتُ صَنْعَتَهُ ، فَأَمَرَ الرَّسُولُ أَنْ يَبِيعَهُ ، فَرَجَعَ الرَّسُولُ فَقَالَ : إِنِّي أَرَادُ عَلَى وَرَثَتِهِ ، قَالَ عُمَرُ رَضِيَ اللَّهُ عَنْهُ : لَا ؛ فَإِنَّ الْفِضْلَ رَبًّا .

¹⁹⁶² Meaning before it has been hunted and caught, then it is not permissible to sell it since that is the sale of something which one does not have in one's possession.

¹⁹⁶³ Meaning that if it is in the state such that it is caught without hunting then it is permissible to sell it because one has it in one's possession and is able to deliver it.

758. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Al-Walīd ibn Sarīḥ narrated to us from Anas ibn Mālik رضي الله عنه who said, “A Khusrāwī¹⁹⁶⁴ vessel of silver of very strong workmanship was sent to ‘Umar رضي الله عنه and he told the messenger to sell it. The messenger returned and said, ‘I was given more than its value in silver.’ ‘Umar رضي الله عنه said, ‘No, because the extra amount is usury.’””

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“And we adhere to this, and that is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”¹⁹⁶⁵



بَابُ شِرَاءِ الدَّرَاهِمِ الثَّقَالِ بِالْخِفَافِ وَالرِّبَا

251. PURCHASING HEAVY DIRHAMS WITH LIGHT ONES, AND USURY

٧٥٩ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا مَرْزُوقٌ عَنْ أَبِي جَبَلَةَ عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ : قُلْتُ لَهُ : إِنَّا نَقْدُمُ الْأَرْضَ بِهَا الْوَرِقَ الثَّقَالَ الْكَاسِدَةَ ، وَمَعَنَا وَرِقٌ خِفَافٌ نَافِقَةٌ ، أُنْبِيعُ وَرِقَنَا بِوَرِقِهِمْ؟ قَالَ : لَا ، وَلَكِنْ بَعْ وَرِقَكَ بِالذَّنَائِيرِ ، وَاشْتَرِ وَرِقَهُمْ ، وَلَا تَفَارِقْ صَاحِبَكَ شِبْرًا حَتَّى تَسْتَوْفِيَ مِنْهُ ، فَإِنْ صَعِدَ فَوْقَ الْبَيْتِ فَاصْعِدْ مَعَهُ ، وَإِنْ وَتَبَ فَبَيْتْ مَعَهُ .

759. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Marzūq narrated to us from Abū Jabalah¹⁹⁶⁶ from Ibn ‘Umar رضي الله عنه and he [Abū Jabalah] said, “I said to him [Ibn ‘Umar], ‘We are coming to a land with weighty silver in piles and we have light silver which is in much demand; may we sell our silver for theirs?’ He said, ‘No, but sell your silver for dinars and then buy their silver, and do not part from your customer (*ṣāhib*) for even a span until you take it from him in full. If he climbs up¹⁹⁶⁷ above the house, then climb there with him, and if he jumps, jump with him.’”¹⁹⁶⁸

¹⁹⁶⁴ So named for Khusraw Shāh, one of the kings of Persia. – Trans.

¹⁹⁶⁵ Abū Yūsuf narrated it on p.183.

¹⁹⁶⁶ Abū Jabalah is a mistake for Jabalah ibn Suḥaym at-Taymī (*Flā’ as-sunan*).

¹⁹⁶⁷ Showing that exchange before separating in monetary exchanges is a right, even if standing without parting does not prevent the continuance of the contract.

¹⁹⁶⁸ Abū Yūsuf narrated it on pp.184-5.

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“We adhere to this and that is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٦٠ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا عَطِيَّةُ الْعَوْفِيُّ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ : الذَّهَبُ بِالذَّهَبِ مِثْلٌ بِمِثْلٍ وَالْفِضَّةُ بِالْفِضَّةِ مِثْلٌ بِمِثْلٍ وَالْفُضْلُ رِبًا ، وَالْحِنْطَةُ بِالْحِنْطَةِ مِثْلٌ بِمِثْلٍ وَالْفُضْلُ رِبًا ، وَالشَّعِيرُ بِالشَّعِيرِ مِثْلٌ بِمِثْلٍ وَالْفُضْلُ رِبًا ، وَالتَّمْرُ بِالتَّمْرِ مِثْلٌ بِمِثْلٍ وَالْفُضْلُ رِبًا ، وَالْمِلْحُ بِالْمِلْحِ مِثْلٌ بِمِثْلٍ وَالْفُضْلُ رِبًا .

760. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Atīyyah al-ʿAwfī narrated to us from Abū Saʿīd al-Khudrī رضي الله عنه from the Prophet صلى الله عليه وسلم that he said, “Gold for gold, like for like and any excess is usury. Silver for silver, like for like, and any excess is usury. Wheat for wheat, like for like and any excess is usury. Barley for barley, like for like and any excess is usury. Dates for dates, like for like and any excess is usury. Salt for salt, like for like, and any excess is usury.”’”¹⁹⁶⁹

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ الْقَرْضِ

252. LOANS

٧٦١ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ فِي رَجُلٍ أَقْرَضَ رَجُلًا وَرَقًا فَبَجَّاهُ بِأَفْضَلٍ مِنْهَا قَالَ : الْوَرِقُ بِالْوَرِقِ أَكْرَهُ الْفُضْلُ فِيهَا حَتَّى يَأْتِيَ بِمِثْلِهَا .

761. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning a man who lent another man silver, and that man

¹⁹⁶⁹ Muslim narrated it under “date-crop sharing” in the chapter on “selling food, like for like.”

brought him back more than it, ‘Silver for silver, and I abhor excess in it.’¹⁹⁷⁰
Let him bring the same as it.’”¹⁹⁷¹

وَلَسْنَا نَأْخُذُ بِهَذَا، لَا بَأْسَ بِهَذَا مَا لَمْ يَكُنْ شَرْطًا اشْتَرَطَهُ عَلَيْهِ، فَإِذَا كَانَ شَرْطًا
اشْتَرَطَهُ فَلَا خَيْرَ فِيهِ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“We do not adhere to this. There is no harm in this as long as it is not a precondition he laid on him. If it is a precondition he laid on him, there is no good in it. That is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٦٢ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ فِي الرَّجُلِ يُقْرِضُ الرَّجُلَ
الدَّرَاهِمَ عَلَى أَنْ يُوفِيَهُ بِالرَّيِّ قَالَ : أَكْرَهُ .

762. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād from Ibrāhīm concerning a man who lends another man dirhams on the condition that he pay him back in Rayy.¹⁹⁷² He said, ‘I abhor it.’”¹⁹⁷³

وَبِهِ نَأْخُذُ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٦٣ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ قَالَ : كُلُّ قَرْضٍ جَرَّ
مَنْعَةً فَلَا خَيْرَ فِيهِ .

763. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said, ‘Every loan which draws some benefit¹⁹⁷⁴ [to the person making the loan] has no good in it.’”

¹⁹⁷⁰ He said this out of taking scrupulous pains because there is no dispute concerning the permissibility of discharging a debt with something qualitatively better than that lent to one without any stipulations.

¹⁹⁷¹ Abū Yūsuf narrated it on p.184.

¹⁹⁷² He repays the loan and as an extra transports the coins to Rayy.

¹⁹⁷³ Abū Yūsuf narrated it on p.184.

¹⁹⁷⁴ The extra benefit is usury.

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ الْعَقَارِ وَالشُّفْعَةِ

253. PROPERTIES AND PRE-EMPTION¹⁹⁷⁵

٧٦٤ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ عَنْ شُرَيْحٍ قَالَ : الشُّفْعَةُ مِنْ قِبَلِ الْأَبْوَابِ .

764. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād from Ibrāhīm from Shurayḥ who said, ‘Pre-emption [belongs to those dwelling] in front of the doors.’”¹⁹⁷⁶

وَلَسْنَا نَأْخُذُ بِهَذَا ، الشُّفْعَةُ لِلْجِيرَانِ الْمُتَلَازِقِينَ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“We do not adhere to this. Pre-emption belongs to adjoining¹⁹⁷⁷ neighbours, and that is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٦٥ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ قَالَ : لَا شُّفْعَةَ إِلَّا فِي أَرْضٍ أَوْ دَارٍ .

765. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said, ‘There is only pre-emption in the case of land or a dwelling.’”

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

¹⁹⁷⁵ The option to purchase a property if and when it is put up for sale.

¹⁹⁷⁶ Abū Yūsuf narrated it on p.167.

¹⁹⁷⁷ The *fatwā* is issued according to this, that pre-emption belongs to adjoining neighbours who are those whose plots of land connect with each other, even if their doors are on different streets at some distance from each other.

“We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٦٦ - مُحَمَّدٌ قَالَ: أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ: حَدَّثَنَا عَبْدُ الْكَرِيمِ عَنِ الْمِسْوَرِ بْنِ مَخْرَمَةَ عَنْ رَافِعِ بْنِ خَدِيجٍ رَضِيَ اللَّهُ عَنْهُ قَالَ: عَرَضَ عَلَيَّ سَعْدٌ رَضِيَ اللَّهُ عَنْهُ نَيْئًا لَهُ فَقَالَ: خُذْهُ فَإِنِّي قَدْ أُعْطِيتُ بِهِ أَكْثَرَ مِمَّا تُعْطِينِي بِهِ، وَلَكِنَّكَ أَحَقُّ لِإِنِّي سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: الْجَارُ أَحَقُّ بِسَقْبِهِ.

766. Muḥammad said, “Abū Ḥanīfah informed us saying, “Abd al-Karīm narrated to us from al-Miswar ibn Makhramah from Rāfi¹⁹⁷⁸ ibn Khadij رضي الله عنه who said, “Sa’d رضي الله عنه offered me a house of his and he said, ‘Take it, for I was given more¹⁹⁷⁹ for it than you give me for it, but you have more right because I heard the Messenger of Allah صلى الله عليه وسلم saying, ‘The neighbour has more right to pre-emption (*saqb*).’”^{1980 1981}

قَالَ مُحَمَّدٌ: وَبِهِ نَأْخُذُ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ الْمُضَارَبَةِ بِالثُّلُثِ ، وَالْمُضَارَبَةِ بِمَالِ الْيَتِيمِ وَمُخَاظَتِهِ

254. PROFIT-SHARING TRANSACTIONS¹⁹⁸² FOR A THIRD, AND PROFIT-SHARING TRANSACTIONS WITH THE PROPERTY OF ORPHANS, AND BECOMING PARTNERS WITH THEM

٧٦٧ - مُحَمَّدٌ قَالَ: أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَادٍ عَنْ إِبْرَاهِيمَ فِي الرَّجُلِ يُعْطِي الْمَالَ

¹⁹⁷⁸ Al-Hārithī said, “The *ṣaḥīḥ* is that he is Abū Rāfi‘ the *mawlā* of the Messenger of Allah صلى الله عليه وسلم.”

¹⁹⁷⁹ In some narrations, there is “Take it for seven hundred because I was given eight hundred for it.”

¹⁹⁸⁰ *saqb* means pre-emption, and has the sense of “close.” The hadith means that the neighbour has more right to pre-emption if he is an adjoining neighbour.

¹⁹⁸¹ Al-Bukhārī narrated it under “pre-emption” in the chapter on “offering [the right of] pre-emption to the one to whom it is due before selling.”

¹⁹⁸² *muḍārabah* denotes a contract between two people to go into a partnership in trade [not manufacture] with the wealth of one of the two parties and the work of the other.

مُضَارَبَةٌ بِالثُّلُثِ ، أَوْ النِّصْفِ وَزِيَادَةَ عَشْرَةِ دَرَاهِمٍ قَالَ : لَا خَيْرَ فِي هَذَا ، أَرَأَيْتَ لَوْ لَمْ
يُرَبِّحْ دِرْهَمًا مَا كَانَ لَهُ ؟

767. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning a man who gives property in a profit-sharing transaction for a third [of the profits] or a half, with an added ten dirhams,¹⁹⁸³ ‘There is no good¹⁹⁸⁴ in this. What would you think if he did not gain a dirham in profit, what would he have?’¹⁹⁸⁵

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٦٨ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ عَنْ عَائِشَةَ رَضِيَ اللَّهُ
عَنْهَا أَنَّهَا قَالَتْ : لَوْ وُلِّيتُ مَالَ يَتِيمٍ خَلَطْتُ طَعَامَهُ بِطَعَامِي ، وَشَرَابَهُ بِشَرَابِي ، وَلَمْ
أَجْعَلْهُ بِمَنْزِلَةِ الرَّجْسِ .

768. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād from Ibrāhīm that ‘Ā’ishah ؓ said, ‘If I were put in charge¹⁹⁸⁶ of the property of an orphan, I would intermix his food with my food and his drink with my drink and would not consider it the same status as an impurity.’¹⁹⁸⁷

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٦٩ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ فِي مَالِ الْيَتِيمِ قَالَ : مَا

¹⁹⁸³ One of its stipulations is that the profit should be shared between them, neither of them deserving a specified dirham of the profit. If someone specifies some extra amount then the contract is invalid, and the man who did the work receives a wage of someone the like of him.

¹⁹⁸⁴ Meaning that it is not valid.

¹⁹⁸⁵ Abū Yūsuf narrated it on p.160.

¹⁹⁸⁶ When “Do not go near the property of orphans...” (Sūrat al-Isrā’: 34) was revealed, those who had orphans in their care went and separated their food and drink and began to show preference to them in terms of food and would keep it for them until they ate or until it became rotten, and that became extremely difficult for them. Then Allah revealed, “They will ask you about the property of orphans. Say, ‘Managing it in their best interests is best.’ If you mix your property with theirs, they are your brothers” (Sūrat an-Nisā’: 218).

¹⁹⁸⁷ Abū Yūsuf narrated the like of it on p.174.

شَاءَ الْوَصِيِّ صَنَعَ بِهِ، إِنْ رَأَى أَنْ يُودِعَهُ أَوْدَعَهُ، وَإِنْ رَأَى أَنْ يَتَّجَرَ بِهِ لَا يَتَّجِرَ بِهِ، وَإِنْ رَأَى أَنْ يُدْفَعَهُ مُضَارَبَةً دَفَعَهُ .

769. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning the property of orphans, ‘The person entrusted [with responsibility for the orphan] may do whatever he wishes to do: if he thinks he should deposit it in a safe place, he may do so, and if he thinks he should trade with it, he may trade with it, and if he thinks he should pay it over as a profit-sharing loan, he may do so.’”

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٧٠ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَادٍ عَنْ إِبْرَاهِيمَ عَنْ سَعِيدِ بْنِ جُبَيْرٍ أَنَّهُ قَالَ فِي هَذِهِ الْآيَةِ : ﴿ مَنْ كَانَ غَنِيًّا فَلْيَسْعِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ ﴾ قَالَ : قَرْضًا .

770. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād from Ibrāhīm that Sa‘īd ibn Jubayr spoke concerning this *āyah*, ‘Those who are wealthy¹⁹⁸⁸ should abstain from it altogether. Those who are poor should use it sensibly and correctly¹⁹⁸⁹’ (Sūrat an-Nisā’: 6) and he said, ‘[...should use it sensibly and correctly] as a loan¹⁹⁹⁰ [which they repay later].’”

٧٧١ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنِ الْهَيْثَمِ عَنْ رَجُلٍ عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ : لَا يَأْكُلُ الْوَصِيُّ مَالَ الْيَتِيمِ شَيْئًا قَرْضًا وَلَا غَيْرَهُ .

771. Muḥammad said, “Abū Ḥanīfah informed us from al-Haytham from a man that ‘Abdullāh ibn Mas‘ūd رضي الله عنه said, ‘The person entrusted [with responsibility for the orphan] should not consume¹⁹⁹¹ any of the orphan’s property, neither as a loan [to be repaid later] nor in any other way.’”

¹⁹⁸⁸ Meaning, those of the guardians who have property should withhold themselves from making use of orphans’ wealth.

¹⁹⁸⁹ *bi’l-mā’ rāf* means according to need.

¹⁹⁹⁰ As to whether it can be considered a wage, ash-Shāfi‘ī took that position, but our school is that it cannot, meaning that one uses orphans’ property according to need and considering it as a loan.

¹⁹⁹¹ Meaning, if one has no need of it.

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٧٢ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ قَالَ : حَدَّثَنَا لَيْثُ بْنُ أَبِي سُلَيْمٍ عَنْ مُجَاهِدٍ عَنْ ابْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ : لَيْسَ فِي مَالِ الْيَتِيمِ زَكَاةٌ .

772. Muḥammad said, “Abū Ḥanīfah informed us saying, ‘Layth ibn Abī Sulaym narrated to us from Mujāhid that Ibn Mas‘ūd رضي الله عنه said, “There is no *zakāh* on the property of an orphan.””¹⁹⁹²

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ .

“We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ مَنْ كَانَ عِنْدَهُ مَالٌ مُضَارَبَةً أَوْ وَدِيعَةً

255. SOMEONE WHO HAS MONEY AS A PROFIT-SHARING INVESTMENT OR A DEPOSIT HELD ON TRUST

٧٧٣ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ فِي الْمُضَارَبَةِ وَالْوَدِيعَةِ إِذَا كَانَتْ عِنْدَ الرَّجُلِ فَمَاتَ وَعَلَيْهِ دَيْنٌ قَالَ : يَكُونُونَ جَمِيعًا أَسْوَةَ الْغُرَمَاءِ إِذَا لَمْ تُعْرَفَا بِأَعْيَانِهِمَا الْوَدِيعَةُ وَالْمُضَارَبَةُ .

773. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning a profit-sharing investment¹⁹⁹³ and a deposit held on trust which a man has who then dies owing a debt, “They are all equal as creditors¹⁹⁹⁴ if the two of them do not recognise specifically their own cash, the deposit left on trust and the profit-sharing investment.”¹⁹⁹⁵

¹⁹⁹² Abū Yūsuf narrated it on p.92.

¹⁹⁹³ Paid to the active partner as a trust in his possession, and for that reason its ruling is that it is a deposit.

¹⁹⁹⁴ *ghuramā* ordinarily means debtors but sometimes means creditors. – Trans.

¹⁹⁹⁵ Abū Yūsuf narrated it on p.160.

وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

“We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

بَابُ الْمَزَارَعَةِ بِالثُّلُثِ وَالرُّبْعِ

256. CROP-SHARING¹⁹⁹⁶ FOR A THIRD OR A QUARTER [OF THE CROP]

٧٧٤ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ أَنَّهُ سَأَلَ طَاوُسًا وَسَالِمَ بْنَ عَبْدِ اللَّهِ عَنِ الزَّرَاعَةِ بِالثُّلُثِ أَوْ الرَّبْعِ ، فَقَالَ : لَا بَأْسَ بِهِ ، فَذَكَرْتُ ذَلِكَ لِإِبْرَاهِيمَ فَكَرِهَهُ ، فَقَالَ : إِنَّ طَاوُسًا لَهُ أَرْضٌ يُزَارِعُهُ ، فَمِنْ أَجْلِ ذَلِكَ قَالَ ذَلِكَ .

774. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that he asked Ṭāwus and Sālim ibn ‘Abdullāh about cultivating land for a third or a quarter [of the crop] and he [Ṭāwus] said, ‘There is no harm in it,’ and so ‘I [Ḥammād] asked Ibrāhīm about that and he abhorred it.¹⁹⁹⁷ He said, “Ṭāwus has land which he cultivates in crop-sharing arrangements and it was because of that he said that.”¹⁹⁹⁸”

قَالَ مُحَمَّدٌ : كَانَ أَبُو حَنِيفَةَ يَأْخُذُ بِقَوْلِ إِبْرَاهِيمَ ، وَيَحْتَجُّ نَأْخُذُ بِقَوْلِ سَالِمٍ وَطَاوُسٍ ، لَا تَرَى بِذَلِكَ بَأْسًا .

Muḥammad said, “Abū Ḥanīfah used to adhere to the verdict of Ibrāhīm, but we adhere to the verdict of Sālim and Ṭāwus. We see no harm in that.”

¹⁹⁹⁶ A contract for cultivation in return for a portion of the crop, which is invalid according to Abū Ḥanīfah, but the two of them [Muḥammad and Abū Yūsuf] said that it is permissible. In *Flā’ as-sunan* there is, “Whoever investigates the traditions cannot fail to see that some of the narrators from Rāfi‘ restricted the types which are prohibited and made clear the reason for the prohibition which is that it is feared that the crops may perish and that is an uncertain transaction in exchange that necessarily means that it is invalid. So if we correlate all of the different narrations from Rāfi‘ it becomes necessary to interpret the traditions relating to the prohibition to refer to the case where the crop-sharing takes place on invalid stipulations such as the stipulation of streams and rivers etc. The Prophet ﷺ forbade crop-sharing with such stipulations because they are unknown. When the shares are known, such as a half or a third, and there are no invalid stipulations, crop-sharing is permissible.”

¹⁹⁹⁷ There is no proof in this of the invalid nature of crop-sharing for a third or a quarter according to the Imam. The limit is that he abhorred it out of scrupulousness just as Ibn ‘Umar gave it up out of scrupulousness, and in that Ibrāhīm an-Nakha‘ī followed him.

¹⁹⁹⁸ Abū Yūsuf narrated it on p.188.

٧٧٥ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا عَبْدُ الرَّحْمَنِ الْأَوْزَاعِيُّ عَنْ وَاصِلِ بْنِ أَبِي جَمِيلٍ عَنْ مُجَاهِدٍ قَالَ : اشْتَرَكُ أَرْبَعَةً نَفَرًا عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ وَاحِدٌ : مِنْ عِنْدِي الْبُذْرُ ، وَقَالَ الْآخَرُ : مِنْ عِنْدِي الْعَمَلُ ، وَقَالَ الْآخَرُ : مِنْ عِنْدِي الْفُدَّانُ ، وَقَالَ الْآخَرُ : مِنْ عِنْدِي الْأَرْضُ . قَالَ : فَالْفَعَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صَاحِبَ الْأَرْضِ ، وَجَعَلَ لِصَاحِبِ الْفُدَّانِ أَجْرًا مَسْمًى ، وَجَعَلَ لِصَاحِبِ الْعَمَلِ دِرْهَمًا لِكُلِّ يَوْمٍ ، وَالْحَقُّ الزَّرْعُ كُلَّهُ بِصَاحِبِ الْبُذْرِ .

775. Muḥammad said, “Abd ar-Raḥmān al-Awzā’ī informed us from Wāṣil ibn Abī Jamīl from Mujāhid who said, ‘Four people entered into a partnership at the time of the Messenger of Allah ﷺ and one said, “I will supply the seed.”¹⁹⁹⁹ Another said, “I will do the work.” Another said, “I will supply oxen and a plough (*faddān*).”²⁰⁰⁰ Another said, “I will supply the land.”’ He said, ‘The Messenger of Allah ﷺ declared the [participation of the] owner of the land null and void. He appointed a specific payment for the owner of the oxen and the plough. He appointed a dirham a day for the man who opted to do the work, and he gave all of the crop to the owner of the seed.’”



بَابُ مَا يُكْرَهُ مِنَ الزِّيَادَةِ عَلَى مَنْ آجَرَ شَيْئًا بِأَكْثَرٍ مِمَّا اسْتَأْجَرَهُ

257. WHAT IS ABHORED OF RENTING OUT SOMETHING FOR MORE THAN THAT FOR WHICH ONE RENTED IT

٧٧٦ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ فِي الرَّجُلِ يَسْتَأْجِرُ الْأَرْضَ ثُمَّ يُوَاجِرُهَا بِأَكْثَرٍ مِمَّا اسْتَأْجَرَهَا قَالَ : لَا خَيْرَ فِي الْفُضْلِ إِلَّا أَنْ يُحْدِثَ فِيهَا شَيْئًا .

776. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning a man who rents land then himself rents it out for more than that for which he is renting it, ‘There is no good²⁰⁰¹ in the excess²⁰⁰² unless he himself has done something to it.’”

¹⁹⁹⁹ Because of this those who regard crop-sharing as permissible do so, and they say that with these attributes it is invalid because of what it contains of stipulation on one of the two parties of yoked oxen and the implements of cultivation, and because of what is in it of paying the seed as a part of the crop-sharing contract in isolation, each one of which invalidates the contract.

²⁰⁰⁰ *faddān* and *faddān* cover a number of meanings including the bull or the pair of oxen, and the plough and the equipment necessary for ploughing. – Trans.

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٧٧ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ أَبِي الْحُسَيْنِ عُثْمَانَ بْنِ عَاصِمِ
التَّقِيِّ عَنْ ابْنِ رَافِعٍ عَنْ أَبِيهِ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ مَرَّ بِحَائِطٍ فَأَعْجَبَهُ ،
فَقَالَ : لِمَنِ هَذَا ؟ فَقَالَ : لِي يَا رَسُولَ اللَّهِ ، اسْتَأْجَرْتُهُ ، قَالَ : لَا تَسْتَأْجِرْهُ بِشَيْءٍ
مِنْهُ .

777. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād from Abū’l-Ḥuşayn ‘Uthmān ibn ‘Aṣim ath-Thaqafī from Ibn Rāfi‘ from his father that the Prophet ﷺ passed by a walled garden of palm-trees and it delighted him. So he said, ‘Whose is this?’ He said, ‘It is mine, Messenger of Allah, I rented it.’ He said, ‘Do not rent it²⁰⁰³ with something that is from it.’”²⁰⁰⁴

٧٧٨ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ عَبْدِ اللَّهِ بْنِ أَبِي زِيَادٍ عَنْ ابْنِ أَبِي نَجِيحٍ
عَنْ ابْنِ عَمْرٍو رَضِيَ اللَّهُ عَنْهُمَا عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ : إِنَّ اللَّهَ حَرَّمَ
مَكَّةَ ، فَحَرَامٌ بَيْعُ رِبَاعِهَا ، وَأَكْلُ ثَمَنِهَا ، وَقَالَ : مَنْ أَكَلَ مِنْ أَجُورِ بَيْتِ مَكَّةَ شَيْئًا فَإِنَّمَا
يَأْكُلُ نَارًا .

778. Muḥammad said, “Abū Ḥanīfah informed us from ‘Abdullāh ibn Abī Ziyād from Ibn Abī Najīḥ from Ibn ‘Amr ؓ that the Prophet ﷺ said, ‘Allah has made Makkah a sanctuary (*ḥaram*) so it is forbidden (*ḥarām*) to sell its

²⁰⁰¹ Aḥmad stated that it is permissible for the lessee to rent out the leased property for the same rent and a bit more and ash-Shāfi‘ī gave that verdict. It is narrated from Aḥmad, “If he has done something extra with the original then it is permissible for him to rent [that extra] out but otherwise it is not permissible to charge extra. If he does so, then he should give the extra away as *ṣadaqah*,” and Abū Ḥanīfah gave that verdict because he profits by that for which he does not [directly] stand surety.

²⁰⁰² It is authentically transmitted from Ibrāhīm that he said, “The excess is rejected; it is usury.”

²⁰⁰³ This gives the sense that the *musāqah* [contract in which a man tends and waters palm-trees for a share of the crop] is also not permissible just like the crop-sharing contract (*muzāra‘ah*) and this is the position of Abū Ḥanīfah, but Abū Yūsuf, Muḥammad and the three Imams took contrary positions. *Musāqah* is from the verb “to water” (*saqā*) which is the act of tending trees for a share of their produce. The discussion concerning this is the same as the discussion concerning crop-sharing.

²⁰⁰⁴ Abū Yūsuf narrated it on pp.189-90.

dwellings²⁰⁰⁵ and consume the proceeds,' and he said, 'Whoever consumes anything of the rents of a Makkan house is only consuming a fire.'

قَالَ مُحَمَّدٌ : وَيِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى ، يُكْرَهُ أَنْ تُبَاعَ الْأَرْضُ ،
وَلَا يُكْرَهُ بَيْعُ الْبِنَاءِ ، وَاللَّهُ أَعْلَمُ .

Muḥammad said, "We adhere to this and it is the verdict of Abū Ḥanifah, may Allah, exalted is He, have mercy on him. It is abhorrent to sell the land [of Makkah] but not to sell the buildings, and Allah knows best."



بَابُ الْعَبْدِ يَأْذَنُ لَهُ سَيِّدُهُ فِي التِّجَارَةِ إِنَّهُ ضَامِنٌ

258. IF A SLAVE'S OWNER GIVES HIM PERMISSION TO
TRADE, HE [THE OWNER] IS THE GUARANTOR

٧٧٩ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ فِي الْعَبْدِ يَأْذَنُ لَهُ سَيِّدُهُ فِي التِّجَارَةِ ، فَصَارَ عَلَيْهِ دَيْنٌ فَأَعْتَقَهُ صَاحِبُهُ : إِنَّ عَلَيْهِ قِيَمَتَهُ ، فَإِنْ فَضَلَ عَلَيْهِ بَعْدَ قِيَمَتِهِ مِنَ الدَّيْنِ الَّذِي كَانَ عَلَيْهِ فَضْلٌ طَلَبَ الْغُرْمَاءُ الْعَبْدَ بِمَا كَانَ فَضَلَ عَلَيْهِ مِنْ فَضْلٍ ، وَإِنْ بَاعَهُ السَّيِّدُ غُرْمًا لِلْغُرْمَاءِ ثَمَنَهُ ، فَإِنْ أَعْتَقَ الْعَبْدُ يَوْمًا مِنَ الدَّهْرِ أَحَدَهُ الْغُرْمَاءَ بِمَا كَانَ فَضَلَ عَلَيْهِ مِنَ الدَّيْنِ بَعْدَ ثَمَنِهِ .

779. Muḥammad said, "Abū Ḥanifah informed us from Ḥammād from Ibrāhīm concerning a slave whose owner permits him to trade and [the slave] gets into debt and then his owner sets him free,²⁰⁰⁶ that [the owner] must stand surety for him to the extent of [the slave's] value, such that if there is any of the debt [the slave] owed remaining²⁰⁰⁷ after his value [paid by his ex-

²⁰⁰⁵ *ribā* is the plural of *rab* meaning a house. Abū Ḥanifah and Muḥammad said that it is not permissible to sell the land of Makkah nor to rent it out. Abū Yūsuf said that there is no harm in buying or renting out its land, and he regarded it as being the same as all other cities, to which view at-Ṭahāwī inclined in that he mentioned that at the end of the chapter [concerning that in his book].

²⁰⁰⁶ For setting him free is permissible because his authority (*mulk*) over him continues and he is responsible for as much as his price to his creditors because he spoiled that which relates to their trade right and [he has spoiled] their [right to] compensation from his price [if he were sold as a slave].

²⁰⁰⁷ Meaning that whatever debts remained over are demanded back from him after his being set free because the debt is his responsibility, and nothing is due from the master except as much as the measure that he spoiled as a security (*damān*) so that the remainder remains due from him as it had done.

owner] then the creditors seek the excess from the slave. If his owner sells him, he owes his value to the creditors, and if he sets the slave free one day, the creditors take hold of him for the extra sum of the debt remaining over his price.”²⁰⁰⁸

قَالَ مُحَمَّدٌ : وَيَبِي نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ إِذَا أَجَازَ الْعَرْمَاءُ الْبَيْعَ ، فَإِنْ لَمْ يُحِيزُوهُ
كَانَ لَهُمْ أَنْ يَنْفُصُوهُ حَتَّى يُبَاعَ الْعَبْدُ لَهُمْ فِي دَيْنِهِمْ ، إِلَّا أَنْ يَقْضِيَهُمُ الْبَائِعُ أَوْ الْمُشْتَرِي
دَيْنَهُمْ ، فَيَجُوزُ الْبَيْعُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and that is the verdict of Abū Ḥanīfah if the creditors permit the sale. If they do not permit it, they have the right to undo it so that the slave is sold for them for their debt, except in a case where the seller or the purchaser discharges their debt in which case the sale is permissible, and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

بَابُ ضَمَانِ الْأَجِيرِ الْمَشْرُوكِ

259. THE STANDING SURETY OF A SHARED HIRED MAN²⁰⁰⁹

٧٨٠ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ : أَنَّ شُرَيْحًا لَمْ يُضْمَنْ
أَجِيرًا قَطُّ .

780. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād from Ibrāhīm that Shurayḥ never required a guarantee of a hired man.”²⁰¹⁰

قَالَ مُحَمَّدٌ : وَهَذَا قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى ، لَا يُضْمَنْ الْأَجِيرُ الْمَشْرُوكُ إِلَّا
مَا جَنَّتْ يَدُهُ .

²⁰⁰⁸ Ibn Abī Shaybah narrated the like of it in the *Muṣannaḥin*, vol.4, p.387.

²⁰⁰⁹ *al-ajir al-mushtarak*: The hired man [that is shared in; i.e.] whose work no one has for himself exclusively of others, but who works for everyone who repairs to him for work, like the tailor in the sitting places of the markets; or who works for whom he pleases. (Lane’s *Arabic English Lexicon*.) – Trans.

²⁰¹⁰ A shared hired man is someone who does not get his wage until he works, such as the dyer and bleacher, and in whose hands the goods are a trust such that if then they perish nothing (the text has *laka* which I take as a mistake for *lā*. Trans.) is guaranteed according to Abū Ḥanīfah. Abū Yūsuf and Muḥammad said that he must stand surety for it except for some exceptional circumstance such as overwhelming fire or an enemy that takes from him by force. The dedicated hired man [employed by only one person rather than available for hire by everyone] is the one who deserves a wage by surrendering himself for a period of time even if he does not work, and he is not required to stand surety for that which is spoiled while in his possession nor that of his work which is spoiled.

Muḥammad said, “This is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him; a shared hired man does not stand surety except for his own handiwork.”

٧٨١ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ بَشِيرٍ ، أَوْ بَشِيرٍ - شَكَ مُحَمَّدٌ - عَنْ أَبِي جَعْفَرٍ مُحَمَّدِ بْنِ عَلِيٍّ : أَنَّ عَلِيَّ بْنَ أَبِي طَالِبٍ رَضِيَ اللَّهُ عَنْهُ كَانَ لَا يُضْمَنُ الْقَصَّارَ ، وَلَا الصَّانِعَ ، وَلَا الْحَائِنَكَ .

781. Muḥammad said, “Abū Ḥanīfah informed us from Bishr or Bashīr (Muḥammad was in doubt) from Abū Ja‘far Muḥammad ibn ‘Alī that ‘Alī ibn Abī Ṭālib رضي الله عنه used not to make launderers, goldsmiths or weavers stand surety.”²⁰¹¹

قَالَ مُحَمَّدٌ : وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”



بَابُ الرِّهْنِ وَالْعَارِيَةِ وَالْوَدِيعَةِ مِنَ الْحَيَوَانِ وَغَيْرِهِ

260. ON PAWNED ITEMS, BORROWED THINGS, AND THINGS DEPOSITED FOR SAFEKEEPING OF ANIMALS AND OTHER THINGS

٧٨٢ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ أَنَّهُ قَالَ فِي الْعَارِيَةِ مِنَ الْحَيَوَانِ وَالْمَتَاعِ مَا لَمْ يُخَافِ الْمُسْتَعِيرُ إِلَى غَيْرِ الَّذِي كَانَ ، فَسُرِقَ الْمَتَاعُ أَوْ أَضَلَّ ، أَوْ فَتَّتِ الدَّابَّةُ فَلَيْسَ عَلَيْهِ ضَمَانٌ .

782. Muḥammad said, “Abū Ḥanīfah informed us from Ḥammād that Ibrāhīm said concerning borrowed animals and goods – as long as the borrower does not go against [the agreement] to something other than what he had said – and the goods are stolen or he loses them or the animal dies, that he does not have to stand surety.”

²⁰¹¹ Abū Yūsuf narrated it on p.158.

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanifah, may Allah, exalted is He, have mercy on him.”

٧٨٣ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ أَنَّهُ لَمْ يَكُنْ يُضَمَّنُ الْعَارِيَةَ .

783. Muḥammad said, “Abū Ḥanifah informed us from Ḥammād that Ibrāhīm did not require a borrower to stand surety.”

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanifah, may Allah, exalted is He, have mercy on him.”

٧٨٤ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ حَمَّادٍ عَنْ إِبْرَاهِيمَ قَالَ : إِذَا كَانَ الرَّهْنُ يَسْوِي أَكْثَرَ مِمَّا فِيهِ فَهُوَ فِي الْفَضْلِ مُؤْتَمَّنٌ ، فَإِذَا كَانَ الرَّهْنُ أَقْلَ مِمَّا رَهِنَ فِيهِ ذَهَبَ مِنْ حَقِّهِ بِقَدْرِ الرَّهْنِ ، وَكَانَ مَا بَقِيَ عَلَى صَاحِبِ الرَّهْنِ .

784. Muḥammad said, “Abū Ḥanifah informed us from Ḥammād that Ibrāhīm said, ‘If the item deposited as security for a debt is equal to²⁰¹² more²⁰¹³ than what [he was lent on the basis] of it, then [the person who received the pledge] is trusted for the excess. If the item deposited as security for a debt is of less value²⁰¹⁴ than that which he borrowed on the basis of it, then the measure of the pawned item has been reduced from his due,²⁰¹⁵ and whatever is left over is due from the person²⁰¹⁶ who deposited the item as security for a debt.’”^{2017 2018}

²⁰¹² Thus it is in the original but it is not its meaning here.

²⁰¹³ Meaning, than the debt for which he put something in pawn.

²⁰¹⁴ Meaning, less than the debt.

²⁰¹⁵ From the due of the one who receives the pledge.

²⁰¹⁶ Because the pledge is ensured for the lesser of two things: its price or the debt. Thus if the pledge perishes in the possession of the person who received it as a pledge, and the value of the pledge and the debt are equal then it is that the person who received the pledge becomes the one who discharges the debt, in effect. If the value of the pledge is more than the debt then the extra is a trust with the man who received the pledge. If it is less than the debt, then that much of the debt is discharged and the man who received the pledge returns to [the man who pledged] for the extra amount.

²⁰¹⁷ The person who receives a pledge which is of more value than the sum of money lent is trusted to hand over the surplus if the person who took the loan does not repay and the former claims the pledged item. However, if the pledge is of less value than the money borrowed using

قَالَ مُحَمَّدٌ : وَبِهِ نَأْخُذُ ، وَهُوَ قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى .

Muḥammad said, “We adhere to this and it is the verdict of Abū Ḥanīfah, may Allah, exalted is He, have mercy on him.”

٧٨٥ - مُحَمَّدٌ قَالَ : أَخْبَرَنَا أَبُو حَنِيفَةَ عَنْ عَلِيِّ بْنِ الْأَقْمَرِ عَنْ شُرَيْحٍ قَالَ : أَتَيْتُ شُرَيْحًا رَجُلٌ وَأَنَا عِنْدَهُ فَقَالَ : دَفَعَ إِلَيَّ هَذَا ثَوْبَهُ لِأَصْبِغَهُ ، فَأَحْتَرَقَ بَيْتِي وَأَحْتَرَقَ ثَوْبَهُ فِي بَيْتِي قَالَ : ادْفَعْ إِلَيْهِ ثَوْبَهُ . قَالَ : ادْفَعْ إِلَيْهِ ثَوْبَهُ وَقَدْ أَحْتَرَقَ بَيْتِي ؟ قَالَ : أَرَأَيْتَ لَوْ أَحْتَرَقَ بَيْتُهُ أَكُنْتَ تَدْعُ أَجْرَكَ ؟ قَالَ : لَا .

785. Muḥammad said, “Abū Ḥanīfah informed us from ‘Alī ibn al-Aqmar from Shurayḥ. [‘Alī ibn al-Aqmar] said, ‘A man came to Shurayḥ while I was with him and said, “This person gave me his garment to dye but my house burnt down and his garment was burnt in my house.” He said, “Give him²⁰¹⁹ his garment.” He said, “I should give him his garment when my house has burnt down?” He said, “What do you think: if his house had burnt down, would you give up your fee?” He said, “No.””

قَالَ مُحَمَّدٌ : قَالَ أَبُو حَنِيفَةَ : لَا يَضْمَنُ مَا أَحْتَرَقَ فِي بَيْتِهِ لِأَنَّ هَذَا لَيْسَ مِنْ جَنَائِهِ بِدِهِ .

Muḥammad said, “Abū Ḥanīfah said, ‘He does not have to stand surety for what was burnt in his house, because it was not something he himself did wrong.’”



it as security then if the borrower does not repay the loan and the person who received the pledge claims it as his, the borrower has to pay him – Trans.

²⁰¹⁸ Abū Yūsuf narrated it on p.156.

²⁰¹⁹ The upshot of the discussion is that nothing is established from the Companions on this matter, neither in the sense of making someone stand surety or otherwise, which is only established of the Followers. Thus from Shurayḥ there is that he made one who whitened clothes stand surety, and from ‘Aṭā’ there is that he considered there to be surety due from a manufacturer or an employee. Ash-Shāfi‘ī chose the verdict of Shurayḥ and Abū Yūsuf and Muḥammad took that position, but Abū Ḥanīfah took the verdict of ‘Aṭā’.