

مَنْشُورَاتُ الْمَجْلِسِ الْعِلْمِيِّ الْأَعْلَى

كِتَابُ
الْمَوْحَاةِ

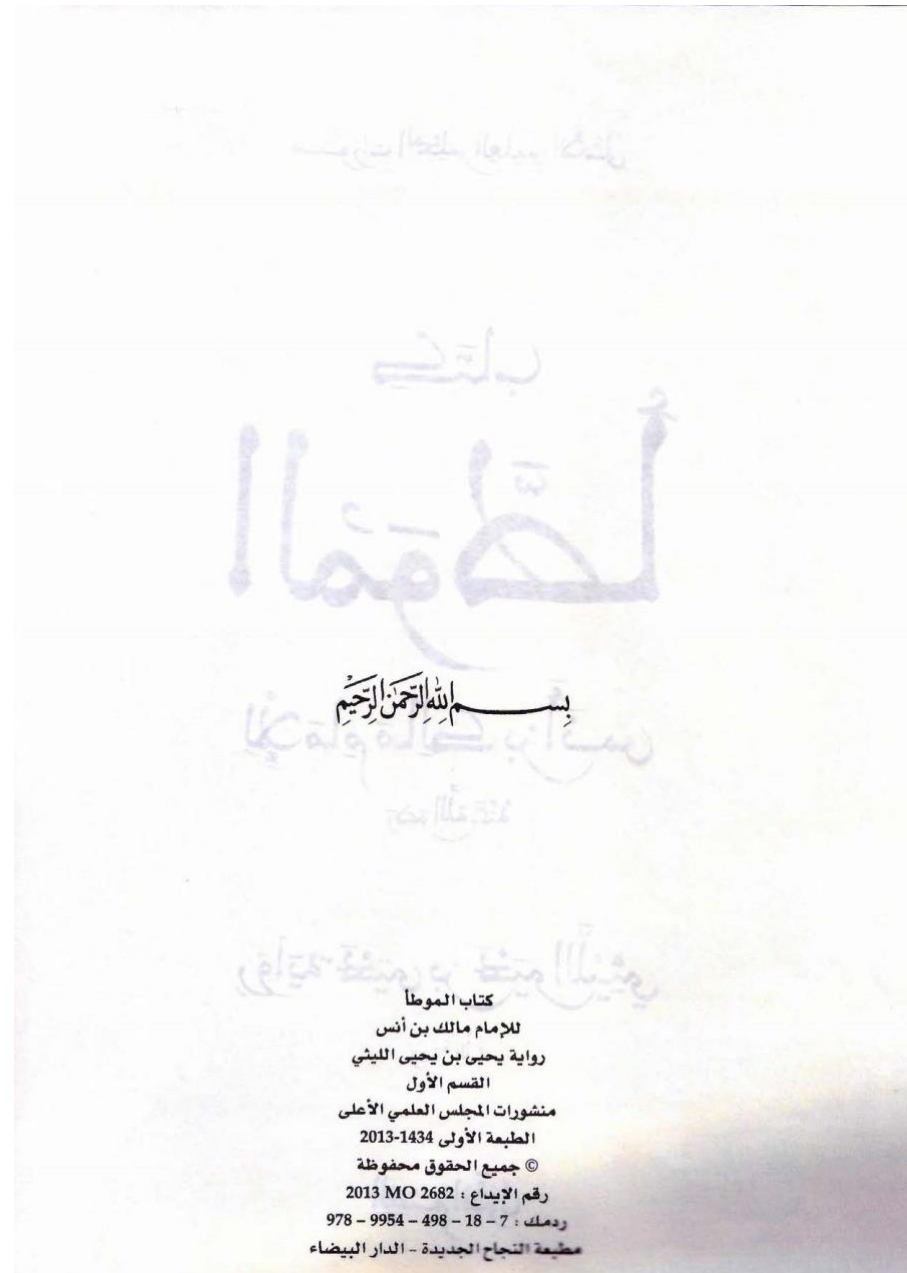
لِلْإِمَامِ مَالِكِ بْنِ أَنَسٍ
رَضِيَ اللَّهُ عَنْهُ

رَوَايَةُ تَخْتِي بْنِ تَخْتِيمِ اللَّيْثِيِّ
رَحِمَهُ اللَّهُ

الْفِئْمَةُ الْأَوَّلُ

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Book 35 The Book of Judicial Rulings (*Aqdiyya*)

In the Name of God, the Merciful, the Compassionate

May God Grace Muhammad and His Family
and Grant Them Perfect Tranquility.

Chapter 1. The Merits of Good Faith in Litigation

2116. According to Mālik, Hishām b. ‘Urwa reported from his father, from Zaynab bt. Abī Salama, from Umm Salama, the wife of the Prophet (pbuh), that the Messenger of God (pbuh) said, “I am only a human being. You bring your disputes to me. Sometimes one of you is more eloquent than the other in pleading his case, and as a result I rule in his favor on the basis of what he has told me. Accordingly, if I rule in favor of a party, giving him something that rightfully belongs to the other, he should refuse it in its entirety, for in that case I am only awarding him a piece of Hell.”

2117. According to Mālik, Yahyā b. Sa‘īd reported from Sa‘īd b. al-Musayyab that a Muslim and a Jew brought a dispute to ‘Umar b. al-Khaṭṭāb. ‘Umar determined that the Jew was in the right and so ruled in his favor. The Jew said to him, “By God, you have judged rightly.” ‘Umar poked him with his whip and said, “What makes you so sure?” The Jew said, “We believe that every judge, as long as he determines to rule justly, has an angel on his right and an angel on his left, the twain guiding him and succoring him, so that he may rule rightly. If he turns his back on justice, however, they ascend to heaven and abandon him.”

Chapter 2. On Giving Truthful Testimony

2118. According to Mālik, ‘Abd Allāh b. Abī Bakr b. Ḥazm reported from his father, from ‘Abd Allāh b. ‘Amr b. ‘Uthmān, from Abū ‘Amra al-Anṣārī, from Zayd b. Khālīd al-Juhanī, that the Messenger of God (pbuh) said, “Do you know who makes the best witness? The one who gives his testimony before it is demanded of him and relates it before he is questioned about it.”

35 - كتاب الأفضية⁽¹⁾

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

وَصَلَّى اللَّهُ عَلَى مُحَمَّدٍ، وَعَلَى آلِهِ وَسَلَّمَ تَسْلِيمًا⁽²⁾

1 - التَّرْغِيبُ فِي الْقَضَاءِ بِالْحَقِّ

2116 - مَالِك، عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ، عَنْ زَيْنَبِ بِنْتِ أَبِي سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ، زَوْجِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «إِنَّمَا أَنَا بَشَرٌ⁽³⁾ وَإِنَّكُمْ تَخْتَصِمُونَ إِلَيَّ، فَلَعَلَّ بَعْضُكُمْ⁽⁴⁾ أَنْ يَكُونَ الْحَنَ بِحُجَّتِهِ⁽⁵⁾ مِنْ بَعْضٍ فَأَقْضِي لَهُ عَلَى نَحْوِ مِمَّا⁽⁶⁾ أَسْمَعُ مِنْهُ⁽⁷⁾، فَمَنْ قَضَيْتُ لَهُ بِشَيْءٍ مِنْ حَقِّ أَخِيهِ، فَلَا

(1) في (ب) : البسمة والتصلة قبل كتاب الأفضية. وجاء كتاب الأفضية في (ش) بعد كتاب الطلاق وابتدئ ببسم الله الرحمن الرحيم.

(2) في (ب) : بشر مثلكم.

(3) في (ب) : «أحدكم».

(4) قال الواقفي في التعليق على الموطأ 178/2 : «معنى الحن : أظن وأحذق، واللحن بفتح الحاء، يقال : لحن يلحن فهو لحن، وفي الخطأ : لحن يلحن فهو لاحن والمصدر لحن، وربما فتحوها، ويقال : فلان ألحن من فلان : فيحتمل وجهين : الخطأ والحلق».

(5) في (ب) : ما. وفي (د) «على نحو ما»، وكتب في الهامش : «على نحو مما».

(6) سقطت «منه» من (ب).

(7) بهامش الأصل : «يأخذن»، وعليها «ع ب ط».

2119. According to Mālik, Rabī'a b. Abī 'Abd al-Raḥmān reported that an Iraqi man went to 'Umar b. al-Khaṭṭāb and said, "I have come to complain to you about a pitiable state of affairs, one that has no beginning or end." 'Umar said to him, "What is it?" The man said, "Perjury has spread to every corner of our land." 'Umar then said to him, "Is that indeed so?" The man said, "Yes, indeed." 'Umar said, "By God, no man may be detained under the law of Islam except on the basis of the testimony of honest witnesses."

2120. According to Mālik, it reached him that 'Umar b. al-Khaṭṭāb said, "Neither the testimony of a party to the case nor that of someone having an interest in the outcome of a case is admissible."

Chapter 3. The Judicial Ruling (*Qaḍā'*) regarding the Admissibility of Testimony (*Shahāda*) of a Witness Who Has Been Duly Punished for Slander

2121. According to Mālik, it reached him from Sulaymān b. Yasār and others that they had been asked whether the testimony of a man who has been duly punished for slander is admissible. They said, "Yes, if he has subsequently manifested sincere remorse."

2122. According to Mālik, he heard someone ask Ibn Shihāb this question, and his view was the same as that of Sulaymān b. Yasār.

2123. Yahyā said, "Mālik said, "That is the rule among us (*dhālika al-amr 'indanā*). This is because God, Blessed and Sublime is He, says, "Those who slander chaste women but produce not four witnesses in support of their allegations—scourge them with eighty lashes and never again accept their testimony, for these are the wicked transgressors; save those who repent thereafter and make right. God, indeed, is Oft-Forgiving, Compassionate."⁸⁴⁴

2124. Yahyā said, "Mālik said, "The rule about which there is no dissent among us (*al-amr alladhī lā ikhtilāfa fīhi 'indanā*) is that the testimony of someone who has been duly punished for slander but has subsequently manifested sincere remorse and thereafter acted uprightly is admissible. Of all the views that I have heard regarding that question, this is the one I prefer most."

يَأْخُذُ⁽⁷⁾ مِنْهُ شَيْئًا، فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ⁽⁸⁾.

2117 - مَالِك، عَنْ يَحْيَى بْنِ سَعِيدٍ عَنْ سَعِيدِ بْنِ الْمُسَيْبِ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ اخْتَصَمَ إِلَيْهِ مُسْلِمٌ وَيَهُودِيٌّ، فَرَأَى عُمَرُ أَنَّ الْحَقَّ لِلْيَهُودِيِّ، فَقَضَى لَهُ ابْنُ الْخَطَّابِ، فَقَالَ لَهُ الْيَهُودِيُّ : وَاللَّهِ لَقَدْ قَضَيْتَ بِالْحَقِّ. فَضَرَبَهُ عُمَرُ بْنُ الْخَطَّابِ⁽²⁾ بِالذَّرَّةِ، ثُمَّ قَالَ : وَمَا يُدْرِيكَ ؟ فَقَالَ الْيَهُودِيُّ : إِنَّا نَجِدُ أَنَّهُ لَيْسَ قَاضِي يَفْضِي بِالْحَقِّ، إِلَّا كَانَ عَنْ يَمِينِهِ مَلَكٌ، وَعَنْ شِمَالِهِ مَلَكٌ يُسَدِّدَانِهِ وَيُوقَفَانِهِ لِلْحَقِّ، مَا دَامَ مَعَ الْحَقِّ، فَإِذَا تَرَكَ الْحَقَّ عَرَجًا وَتَرَكَاهُ⁽³⁾.

(1) قال الباجي في المنتقى 129/7: «قوله صلى الله عليه وسلم: «وإنما أنا بشر»، على معنى الإقرار على نفسه بصفة البشر من أنه لا يعلم الغيب، ولا يعلم المحق من الخصمين من المبطّل، والخبار بأن حاله من ذلك، حال غيره؛ لأنه لا يعلم الغيب إلا ما اطلع عليه بالوحي. ولما كانت الدنيا دار تكليف، وكانت الأحكام تجري على ذلك أجرى في غالب أحكامه في هذا الوجه على أحوال سائر الأحكام، ولذلك لم يقل في مسألة المتلاعنين أنه أعلم بالكاذب منهما، وقال: «يعلم الله أن أحدكما كاذب، فهل منكما من تائب».

(2) «بن الخطاب» لم ترد في (ب) وألحقت في هامش الأصل بخط دقيق جدا. ولم يقرأه الأعظمي فأخرج «بن الخطاب» من المتن.

(3) قال الباجي في المنتقى 139/7: «قوله: إن عمر اختصم إليه يهودي ومسلم، ف قضى عمر لليهودي لما رأى أن الحق له على حكم الإسلام؛ لأن كل حكم بين مسلم وكافر، وإنما يقضى فيه بحكم الإسلام؛ لأنه إنما عقدت لهم الذمة لتجري عليهم أحكام الإسلام، إلا فيما يخصهم، وأما إذا لم يكونوا ذمة، وكانوا أهل حرب، فإن أمكن الحكم بين المسلم وبينهم على حكم الإسلام، نفذ، وإن تعذر ذلك، لم يخرج أمرهم على وجه الحكم، وذهب إلى معنى الصلح».