# Judgements - Muwatta Malik - Sunnah.com - Sayings and Teachings of Prophet Muhammad (صلى الله عليه و سلم)

Yahya related to me from Malik from Hisham ibn Urwa from his  
father from Zaynab bint Abi Salama from Umm Salama, the wife of the  
Prophet, may Allah bless him and grant him peace, that the Messenger  
of Allah, may Allah bless him and grant him peace, said, "I am but a  
man to whom you bring your disputes. Perhaps one of you is more  
eloquent in his proof than the other, so I give judgement according to  
what I have heard from him. Whatever I decide for him which is part of  
the right of his brother, he must not take any of it, for I am  
granting him a portion of the Fire."

حَدَّثَنَا يَحْيَى، عَنْ مَالِكٍ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، عَنْ زَيْنَبَ بِنْتِ أَبِي سَلَمَةَ، عَنْ أُمِّ سَلَمَةَ، زَوْجِ النَّبِيِّ صلى الله عليه وسلم أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَالَ ‏  
"‏ إِنَّمَا أَنَا بَشَرٌ وَإِنَّكُمْ تَخْتَصِمُونَ إِلَىَّ فَلَعَلَّ بَعْضَكُمْ أَنْ يَكُونَ أَلْحَنَ بِحُجَّتِهِ مِنْ بَعْضٍ فَأَقْضِيَ لَهُ عَلَى نَحْوِ مَا أَسْمَعُ مِنْهُ فَمَنْ قَضَيْتُ لَهُ بِشَىْءٍ مِنْ حَقِّ أَخِيهِ فَلاَ يَأْخُذَنَّ مِنْهُ شَيْئًا فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ ‏"‏ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 1Arabic reference : Book 36, Hadith 1402Report Error | Share | Copy ▼

----------------------------------------

Malik related to me from Yahya ibn Said from Said ibn al-Musayyab  
that Umar ibn al-Khattab had a dispute brought to him between a muslim  
and a jew. Umar saw that the right belonged to the jew and decided in  
his favour. The jew said to him, "By Allah! You have judged  
correctly.'' So Umar ibn al-Khattab struck him with a whip and said,  
"How can you be sure." The jew said to him, "We find that there is no  
judge who judges correctly but that there is an angel on his right  
side and an angel on his left side who guide him and give him success  
in the truth as long as he is with the truth. When he leaves the  
truth, they rise and leave him."

وَحَدَّثَنِي مَالِكٌ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، أَنَّ عُمَرَ بْنَ الْخَطَّابِ، اخْتَصَمَ إِلَيْهِ مُسْلِمٌ وَيَهُودِيٌّ فَرَأَى عُمَرُ أَنَّ الْحَقَّ لِلْيَهُودِيِّ فَقَضَى لَهُ فَقَالَ لَهُ الْيَهُودِيُّ وَاللَّهِ لَقَدْ قَضَيْتَ بِالْحَقِّ ‏.‏ فَضَرَبَهُ عُمَرُ بْنُ الْخَطَّابِ بِالدِّرَّةِ ثُمَّ قَالَ وَمَا يُدْرِيكَ فَقَالَ لَهُ الْيَهُودِيُّ إِنَّا نَجِدُ أَنَّهُ لَيْسَ قَاضٍ يَقْضِي بِالْحَقِّ إِلاَّ كَانَ عَنْ يَمِينِهِ مَلَكٌ وَعَنْ شِمَالِهِ مَلَكٌ يُسَدِّدَانِهِ وَيُوَفِّقَانِهِ لِلْحَقِّ مَادَامَ مَعَ الْحَقِّ فَإِذَا تَرَكَ الْحَقَّ عَرَجَا وَتَرَكَاهُ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 2Arabic reference : Book 36, Hadith 1403Report Error | Share | Copy ▼

----------------------------------------

Yahya related to me from Malik from Abdullah ibn Abi Bakr ibn  
Muhammad ibn Amr ibn Hazm from his father from Abdullah ibn Amr ibn  
Uthman from Abu Amra al-Ansari from Zayd ibn Khalid al-Juhani that the  
Messenger of Allah, may Allah bless him and grant him peace, said,  
"Shall I not tell you who is the best of witnesses? The one who brings  
his testimony before he is asked for it, or tells his testimony before  
he is asked for it."

حَدَّثَنَا يَحْيَى، عَنْ مَالِكٍ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ مُحَمَّدِ بْنِ عَمْرِو بْنِ حَزْمٍ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرِو بْنِ عُثْمَانَ، عَنْ أَبِي عَمْرَةَ الأَنْصَارِيِّ، عَنْ زَيْدِ بْنِ خَالِدٍ الْجُهَنِيِّ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَالَ ‏  
"‏ أَلاَ أُخْبِرُكُمْ بِخَيْرِ الشُّهَدَاءِ الَّذِي يَأْتِي بِشَهَادَتِهِ قَبْلَ أَنْ يُسْأَلَهَا أَوْ يُخْبِرُ بِشَهَادَتِهِ قَبْلَ أَنْ يُسْأَلَهَا ‏"‏ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 3Arabic reference : Book 36, Hadith 1404Report Error | Share | Copy ▼

----------------------------------------

Malik related to me that Rabia ibn Abi Abd ar-Rahman said, "An  
Iraqi man came before Umar ibn al-Khattab and said, 'I have come to  
you because of a matter which has no beginning and no end.' Umar said,  
'What is it?' The man said, 'False testimony has appeared in our  
land.' Umar said, 'Is that so?' He said, 'Yes.' Umar said, 'By Allah!  
A man is not detained in Islam without just witnesses.' "

وَحَدَّثَنِي مَالِكٌ، عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، أَنَّهُ قَالَ قَدِمَ عَلَى عُمَرَ بْنِ الْخَطَّابِ رَجُلٌ مِنْ أَهْلِ الْعِرَاقِ فَقَالَ لَقَدْ جِئْتُكَ لأَمْرٍ مَا لَهُ رَأْسٌ وَلاَ ذَنَبٌ ‏.‏ فَقَالَ عُمَرُ مَا هُوَ قَالَ شَهَادَاتُ الزُّورِ ظَهَرَتْ بِأَرْضِنَا ‏.‏ فَقَالَ عُمَرُ أَوَقَدْ كَانَ ذَلِكَ قَالَ نَعَمْ ‏.‏ فَقَالَ عُمَرُ وَاللَّهِ لاَ يُؤْسَرُ رَجُلٌ فِي الإِسْلاَمِ بِغَيْرِ الْعُدُولِ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 4Arabic reference : Book 36, Hadith 1405Report Error | Share | Copy ▼

----------------------------------------

Malik related to me that Umar ibn al-Khattab said, "The testimony of  
some one known to bear a grudge or to be unreliable is not accepted."

وَحَدَّثَنِي مَالِكٌ، أَنَّهُ بَلَغَهُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ، قَالَ لاَ تَجُوزُ شَهَادَةُ خَصْمٍ وَلاَ ظَنِينٍ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 4Arabic reference : Book 36, Hadith 1406Report Error | Share | Copy ▼

----------------------------------------

Yahya said from Malik that he heard from Sulayman ibn Yasar and  
others that when they were asked whether the testimony of a man  
flogged for a hadd crime was permitted, they said, "Yes, when  
repentance (tawba) appears from him."  
  
  
Malik related to me  
that he heard Ibn Shihab being asked about that and he said the like  
of what Sulayman ibn Yasar said.  
  
  
Malik said, "That is what is  
done in our community. It is by the word of Allah, the Blessed, the  
Exalted, 'And those who accuse women who are muhsan, and then do not  
bring four witnesses, flog them with eighty lashes, and do not accept  
any testimony of theirs ever. They indeed are evil-doers, save those  
who turn in tawba after that and make amends. Allah is Forgiving,  
Merciful.' " (Sura 24 ayat 4).

قَالَ يَحْيَى عَنْ مَالِكٍ، أَنَّهُ بَلَغَهُ عَنْ سُلَيْمَانَ بْنِ يَسَارٍ، وَغَيْرِهِ، أَنَّهُمْ سُئِلُوا عَنْ رَجُلٍ، جُلِدَ الْحَدَّ أَتَجُوزُ شَهَادَتُهُ فَقَالُوا نَعَمْ إِذَا ظَهَرَتْ مِنْهُ التَّوْبَةُ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 4Arabic reference : Book 36, Hadith 1407Report Error | Share | Copy ▼

----------------------------------------

وَحَدَّثَنِي مَالِكٌ، أَنَّهُ سَمِعَ ابْنَ شِهَابٍ، يُسْأَلُ عَنْ ذَلِكَ، فَقَالَ مِثْلَ مَا قَالَ سُلَيْمَانُ بْنُ يَسَارٍ ‏.‏ قَالَ مَالِكٌ وَذَلِكَ الأَمْرُ عِنْدَنَا وَذَلِكَ لِقَوْلِ اللَّهِ تَبَارَكَ وَتَعَالَى ‏{‏وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلاَ تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ \* إِلاَّ الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ‏}‏‏.‏ قَالَ مَالِكٌ فَالأَمْرُ الَّذِي لاَ اخْتِلاَفَ فِيهِ عِنْدَنَا أَنَّ الَّذِي يُجْلَدُ الْحَدَّ ثُمَّ تَابَ وَأَصْلَحَ تَجُوزُ شَهَادَتُهُ وَهُوَ أَحَبُّ مَا سَمِعْتُ إِلَىَّ فِي ذَلِكَ ‏.‏

Arabic reference : Book 36, Hadith 1408Report Error | Share | Copy ▼

----------------------------------------

Yahya said, "Malik said from Jafar ibn Muhammad from his father  
that the Messenger of Allah, may Allah bless him and grant him peace,  
pronounced judgement on the basis of an oath with one witness."

قَالَ يَحْيَى قَالَ مَالِكٌ عَنْ جَعْفَرِ بْنِ مُحَمَّدٍ، عَنْ أَبِيهِ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَضَى بِالْيَمِينِ مَعَ الشَّاهِدِ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 5Arabic reference : Book 36, Hadith 1409Report Error | Share | Copy ▼

----------------------------------------

From Malik from Abu'z-Zinad that Umar ibn Abd al-Aziz wrote to  
Abd al-Hamid ibn Abd ar-Rahman ibn Zayd ibn al-Khattab who was the  
governor of Kufa, "Pronounce judgement on the basis of an oath with  
one witness."

وَعَنْ مَالِكٍ، عَنْ أَبِي الزِّنَادِ، أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ، كَتَبَ إِلَى عَبْدِ الْحَمِيدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ زَيْدِ بْنِ الْخَطَّابِ وَهُوَ عَامِلٌ عَلَى الْكُوفَةِ أَنِ اقْضِ بِالْيَمِينِ مَعَ الشَّاهِدِ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 6Arabic reference : Book 36, Hadith 1410Report Error | Share | Copy ▼

----------------------------------------

Malik related to me that he heard that Abu Salama ibn Abd ar-  
Rahman and Sulayman ibn Yasar were both asked, "Does one pronounce  
judgement on the basis of an oath with one witness?" They both said,  
"Yes."  
  
  
Malik said, "The precedent of the sunna in judging by  
an oath with one witness is that if the plaintiff takes an oath with  
his witness, he is confirmed in his right. If he draws back and  
refuses to take an oath, the defendant is made to take an oath. If he  
takes an oath, the claim against him is dropped. If he refuses to take  
an oath, the claim is confirmed against him."  
  
  
Malik said,  
"This procedure pertains to property cases in particular. It does not  
occur in any of the hadd-punishments, nor in marriage, divorce,  
freeing slaves, theft or slander. If some one says, 'Freeing slaves  
comes under property,' he has erred. It is not as he said. Had it been  
as he said, a slave could take an oath with one witness, if he could  
find one, that his master had freed him.  
  
  
"However, when a  
slave lays claim to a piece of property, he can take an oath with one  
witness and demand his right as the freeman demands his right."  
  
  
Malik said, "The sunna with us is that when a slave brings  
somebody who witnesses that he has been set free, his master is made  
to take an oath that he has not freed him, and the slave's claim is  
dropped."  
  
  
Malik said, "The sunna about divorce is also like  
that with us. When a woman brings somebody who witnesses that her  
husband has divorced her, the husband is made to take an oath that he  
has not divorced her. If he takes the oath, the divorce does not  
proceed . "  
  
  
Malik said, "There is only one sunna of bringing  
a witness in cases of divorce and freeing a slave. The right to make  
an oath only belongs to the husband of the woman, and the master of  
the slave. Freeing is a hadd matter, and the testimony of women is not  
permitted in it because when a slave is freed, his inviolability is  
affirmed and the hadd punishments are applied for and against him. If  
he commits fornication and he is a muhsan, he is stoned. If he kills a  
slave, he is killed for it. Inheritance is established for him,  
between him and whoever inherits from him. If somebody disputes this,  
arguing that if a man frees his slave and then a man comes to demand  
from the master of the slave payment of a debt, and a man and two  
women testify to his right, that establishes the right against the  
master of the slave so that his freeing him is cancelled if he only  
has the slave as property, inferring by this case that the testimony  
of women is permitted in cases of setting free. The case is not as he  
suggests (i.e. it is a case of property not freeing). It is like a man  
who frees his slave, and then the claimant of a debt comes to the  
master and takes an oath with one witness, demanding his right. By  
that, the freeing of the slave would be cancelled. Or else a man comes  
who has frequent dealings and transactions with the master of the  
slave. He claims that he is owed money by the master of the slave.  
Someone says to the master of the slave, 'Take an oath that you don't  
owe what he claims'. If he draws back and refuses to take an oath, the  
one making the claim takes an oath and his right against the master of  
the slave is confirmed. That would cancel the freeing of the slave if  
it is confirmed that property is owed by the master."  
  
  
Malik  
said, "It is the same case with a man who marries a slave-girl and  
then the master of the slave-girl comes to the man who has married her  
and claims, 'You and so-and-so have bought my slave-girl from me for  
such an amount of dinars. The husband of the slave-girl denies that.  
The master of the slave-girl brings a man and two women and they  
testify to what he has said. The sale is confirmed and his claim is  
considered true. So the slave-girl is haram for her husband and they  
have to separate, even though the testimony of women is not accepted  
in divorce."  
  
  
Malik said, "It is also the same case with a man  
who accuses a free man, so the hadd falls on him. A man and two women  
come and testify that the one accused is a slave. That would remove  
the hadd from the accused after it had befallen him, even though the  
testimony of women is not accepted in accusations involving hadd  
punishments."  
  
  
Malik said, "Another similar case in which  
judgement appears to go against the precedent of the sunna is that two  
women testify that a child is born alive and so it is necessary for  
him to inherit if a situation arises where he is entitled to inherit,  
and the child's property goes to those who inherit from him, if he  
dies, and it is not necessary that the two women witnesses should be  
accompanied by a man or an oath even though it may involve vast  
properties of gold, silver, live-stock, gardens and slaves and other  
properties. However, had two women testified to one dirham or more or  
less than that in a property case, their testimony would not affect  
anything and would not be permitted unless there was a witness or an  
oath with them."  
  
  
Malik said, "There are people who say that  
an oath is not acceptable with only one witness and they argue by the  
word of Allah the Blessed, the Exalted, and His word is the Truth,  
'And call in to witness two witnesses, men; or if the two be not men,  
then one man and two women, such witnesses as you approve of.' (Sura 2  
ayat 282). Such people argue that if he does not bring one man and two  
women, he has no claim and he is not allowed to take an oath with one  
witness."  
  
  
Malik said, "Part of the proof against those who  
argue this, is to reply to them, 'Do you think that if a man claimed  
property from a man, the one claimed from would not swear that the  
claim was false?' If he swears, the claim against him is dropped. If  
he refuses to take an oath, the claimant is made to take an oath that  
his claim is true, and his right against his companion is established.  
There is no dispute about this with any of the people nor in any  
country. By what does he take this? In what place in the Book of Allah  
does he find it? So if he confirms this, let him confirm the oath with  
one witness, even if it is not in the Book of Allah, the Mighty, the  
Majestic! It is enough that this is the precedent of the sunna.  
However, man wants to recognise the proper course of action and the  
location of the proof. In this there is a clarification for what is  
obscure about that, if Allah ta'ala wills."

وَحَدَّثَنِي مَالِكٌ، أَنَّهُ بَلَغَهُ أَنَّ أَبَا سَلَمَةَ بْنَ عَبْدِ الرَّحْمَنِ، وَسُلَيْمَانَ بْنَ يَسَارٍ، سُئِلاَ هَلْ يُقْضَى بِالْيَمِينِ مَعَ الشَّاهِدِ فَقَالاَ نَعَمْ ‏.‏ قَالَ مَالِكٌ مَضَتِ السُّنَّةُ فِي الْقَضَاءِ بِالْيَمِينِ مَعَ الشَّاهِدِ الْوَاحِدِ يَحْلِفُ صَاحِبُ الْحَقِّ مَعَ شَاهِدِهِ وَيَسْتَحِقُّ حَقَّهُ فَإِنْ نَكَلَ وَأَبَى أَنْ يَحْلِفَ أُحْلِفَ الْمَطْلُوبُ فَإِنْ حَلَفَ سَقَطَ عَنْهُ ذَلِكَ الْحَقُّ وَإِنْ أَبَى أَنْ يَحْلِفَ ثَبَتَ عَلَيْهِ الْحَقُّ لِصَاحِبِهِ ‏.‏ قَالَ مَالِكٌ وَإِنَّمَا يَكُونُ ذَلِكَ فِي الأَمْوَالِ خَاصَّةً وَلاَ يَقَعُ ذَلِكَ فِي شَىْءٍ مِنَ الْحُدُودِ وَلاَ فِي نِكَاحٍ وَلاَ فِي طَلاَقٍ وَلاَ فِي عَتَاقَةٍ وَلاَ فِي سَرِقَةٍ وَلاَ فِي فِرْيَةٍ فَإِنْ قَالَ قَائِلٌ فَإِنَّ الْعَتَاقَةَ مِنَ الأَمْوَالِ ‏.‏ فَقَدْ أَخْطَأَ لَيْسَ ذَلِكَ عَلَى مَا قَالَ وَلَوْ كَانَ ذَلِكَ عَلَى مَا قَالَ لَحَلَفَ الْعَبْدُ مَعَ شَاهِدِهِ إِذَا جَاءَ بِشَاهِدٍ أَنَّ سَيِّدَهُ أَعْتَقَهُ وَأَنَّ الْعَبْدَ إِذَا جَاءَ بِشَاهِدٍ عَلَى مَالٍ مِنَ الأَمْوَالِ ادَّعَاهُ حَلَفَ مَعَ شَاهِدِهِ وَاسْتَحَقَّ حَقَّهُ كَمَا يَحْلِفُ الْحُرُّ ‏.‏ قَالَ مَالِكٌ فَالسُّنَّةُ عِنْدَنَا أَنَّ الْعَبْدَ إِذَا جَاءَ بِشَاهِدٍ عَلَى عَتَاقَتِهِ اسْتُحْلِفَ سَيِّدُهُ مَا أَعْتَقَهُ وَبَطَلَ ذَلِكَ عَنْهُ ‏.‏ قَالَ مَالِكٌ وَكَذَلِكَ السُّنَّةُ عِنْدَنَا أَيْضًا فِي الطَّلاَقِ إِذَا جَاءَتِ الْمَرْأَةُ بِشَاهِدٍ أَنَّ زَوْجَهَا طَلَّقَهَا أُحْلِفَ زَوْجُهَا مَا طَلَّقَهَا فَإِذَا حَلَفَ لَمْ يَقَعْ عَلَيْهِ الطَّلاَقُ ‏.‏ قَالَ مَالِكٌ فَسُنَّةُ الطَّلاَقِ وَالْعَتَاقَةِ فِي الشَّاهِدِ الْوَاحِدِ وَاحِدَةٌ إِنَّمَا يَكُونُ الْيَمِينُ عَلَى زَوْجِ الْمَرْأَةِ وَعَلَى سَيِّدِ الْعَبْدِ وَإِنَّمَا الْعَتَاقَةُ حَدٌّ مِنَ الْحُدُودِ لاَ تَجُوزُ فِيهَا شَهَادَةُ النِّسَاءِ لأَنَّهُ إِذَا عَتَقَ الْعَبْدُ ثَبَتَتْ حُرْمَتُهُ وَوَقَعَتْ لَهُ الْحُدُودُ وَوَقَعَتْ عَلَيْهِ وَإِنْ زَنَى وَقَدْ أُحْصِنَ رُجِمَ وَإِنْ قَتَلَ الْعَبْدَ قُتِلَ بِهِ وَثَبَتَ لَهُ الْمِيرَاثُ بَيْنَهُ وَبَيْنَ مَنْ يُوَارِثُهُ فَإِنِ احْتَجَّ مُحْتَجٌّ فَقَالَ لَوْ أَنَّ رَجُلاً أَعْتَقَ عَبْدَهُ وَجَاءَ رَجُلٌ يَطْلُبُ سَيِّدَ الْعَبْدِ بِدَيْنٍ لَهُ عَلَيْهِ فَشَهِدَ لَهُ عَلَى حَقِّهِ ذَلِكَ رَجُلٌ وَامْرَأَتَانِ فَإِنَّ ذَلِكَ يُثْبِتُ الْحَقَّ عَلَى سَيِّدِ الْعَبْدِ حَتَّى تُرَدَّ بِهِ عَتَاقَتُهُ إِذَا لَمْ يَكُنْ لِسَيِّدِ الْعَبْدِ مَالٌ غَيْرُ الْعَبْدِ يُرِيدُ أَنْ يُجِيزَ بِذَلِكَ شَهَادَةَ النِّسَاءِ فِي الْعَتَاقَةِ فَإِنَّ ذَلِكَ لَيْسَ عَلَى مَا قَالَ وَإِنَّمَا مَثَلُ ذَلِكَ الرَّجُلُ يَعْتِقُ عَبْدَهُ ثُمَّ يَأْتِي طَالِبُ الْحَقِّ عَلَى سَيِّدِهِ بِشَاهِدٍ وَاحِدٍ فَيَحْلِفُ مَعَ شَاهِدِهِ ثُمَّ يَسْتَحِقُّ حَقَّهُ وَتُرَدُّ بِذَلِكَ عَتَاقَةُ الْعَبْدِ أَوْ يَأْتِي الرَّجُلُ قَدْ كَانَتْ بَيْنَهُ وَبَيْنَ سَيِّدِ الْعَبْدِ مُخَالَطَةٌ وَمُلاَبَسَةٌ فَيَزْعُمُ أَنَّ لَهُ عَلَى سَيِّدِ الْعَبْدِ مَالاً فَيُقَالُ لِسَيِّدِ الْعَبْدِ احْلِفْ مَا عَلَيْكَ مَا ادَّعَى فَإِنْ نَكَلَ وَأَبَى أَنْ يَحْلِفَ حُلِّفَ صَاحِبُ الْحَقِّ وَثَبَتَ حَقُّهُ عَلَى سَيِّدِ الْعَبْدِ فَيَكُونُ ذَلِكَ يَرُدُّ عَتَاقَةَ الْعَبْدِ إِذَا ثَبَتَ الْمَالُ عَلَى سَيِّدِهِ ‏.‏ قَالَ وَكَذَلِكَ أَيْضًا الرَّجُلُ يَنْكِحُ الأَمَةَ فَتَكُونُ امْرَأَتَهُ فَيَأْتِي سَيِّدُ الأَمَةِ إِلَى الرَّجُلِ الَّذِي تَزَوَّجَهَا فَيَقُولُ ابْتَعْتَ مِنِّي جَارِيَتِي فُلاَنَةَ أَنْتَ وَفُلاَنٌ بِكَذَا وَكَذَا دِينَارًا ‏.‏ فَيُنْكِرُ ذَلِكَ زَوْجُ الأَمَةِ فَيَأْتِي سَيِّدُ الأَمَةِ بِرَجُلٍ وَامْرَأَتَيْنِ فَيَشْهَدُونَ عَلَى مَا قَالَ فَيَثْبُتُ بَيْعُهُ وَيَحِقُّ حَقُّهُ وَتَحْرُمُ الأَمَةُ عَلَى زَوْجِهَا وَيَكُونُ ذَلِكَ فِرَاقًا بَيْنَهُمَا وَشَهَادَةُ النِّسَاءِ لاَ تَجُوزُ فِي الطَّلاَقِ ‏.‏ قَالَ مَالِكٌ وَمِنْ ذَلِكَ أَيْضًا الرَّجُلُ يَفْتَرِي عَلَى الرَّجُلِ الْحُرِّ فَيَقَعُ عَلَيْهِ الْحَدُّ فَيَأْتِي رَجُلٌ وَامْرَأَتَانِ فَيَشْهَدُونَ أَنَّ الَّذِي افْتُرِيَ عَلَيْهِ عَبْدٌ مَمْلُوكٌ فَيَضَعُ ذَلِكَ الْحَدَّ عَنِ الْمُفْتَرِي بَعْدَ أَنْ وَقَعَ عَلَيْهِ وَشَهَادَةُ النِّسَاءِ لاَ تَجُوزُ فِي الْفِرْيَةِ ‏.‏ قَالَ مَالِكٌ وَمِمَّا يُشْبِهُ ذَلِكَ أَيْضًا مِمَّا يَفْتَرِقُ فِيهِ الْقَضَاءُ وَمَا مَضَى مِنَ السُّنَّةِ أَنَّ الْمَرْأَتَيْنِ يَشْهَدَانِ عَلَى اسْتِهْلاَلِ الصَّبِيِّ فَيَجِبُ بِذَلِكَ مِيرَاثُهُ حَتَّى يَرِثَ وَيَكُونُ مَالُهُ لِمَنْ يَرِثُهُ إِنْ مَاتَ الصَّبِيُّ وَلَيْسَ مَعَ الْمَرْأَتَيْنِ اللَّتَيْنِ شَهِدَتَا رَجُلٌ وَلاَ يَمِينٌ وَقَدْ يَكُونُ ذَلِكَ فِي الأَمْوَالِ الْعِظَامِ مِنَ الذَّهَبِ وَالْوَرِقِ وَالرِّبَاعِ وَالْحَوَائِطِ وَالرَّقِيقِ وَمَا سِوَى ذَلِكَ مِنَ الأَمْوَالِ وَلَوْ شَهِدَتِ امْرَأَتَانِ عَلَى دِرْهَمٍ وَاحِدٍ أَوْ أَقَلَّ مِنْ ذَلِكَ أَوْ أَكْثَرَ لَمْ تَقْطَعْ شَهَادَتُهُمَا شَيْئًا وَلَمْ تَجُزْ إِلاَّ أَنْ يَكُونَ مَعَهُمَا شَاهِدٌ أَوْ يَمِينٌ ‏.‏ قَالَ مَالِكٌ وَمِنَ النَّاسِ مَنْ يَقُولُ لاَ تَكُونُ الْيَمِينُ مَعَ الشَّاهِدِ الْوَاحِدِ ‏.‏ وَيَحْتَجُّ بِقَوْلِ اللَّهِ تَبَارَكَ وَتَعَالَى وَقَوْلُهُ الْحَقُّ ‏{‏وَاسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ‏}‏ يَقُولُ فَإِنْ لَمْ يَأْتِ بِرَجُلٍ وَامْرَأَتَيْنِ فَلاَ شَىْءَ لَهُ وَلاَ يُحَلَّفُ مَعَ شَاهِدِهِ ‏.‏ قَالَ مَالِكٌ فَمِنَ الْحُجَّةِ عَلَى مَنْ قَالَ ذَلِكَ الْقَوْلَ أَنْ يُقَالَ لَهُ أَرَأَيْتَ لَوْ أَنَّ رَجُلاً ادَّعَى عَلَى رَجُلٍ مَالاً أَلَيْسَ يَحْلِفُ الْمَطْلُوبُ مَا ذَلِكَ الْحَقُّ عَلَيْهِ فَإِنْ حَلَفَ بَطَلَ ذَلِكَ عَنْهُ وَإِنْ نَكَلَ عَنِ الْيَمِينِ حُلِّفَ صَاحِبُ الْحَقِّ إِنَّ حَقَّهُ لَحَقٌّ ‏.‏ وَثَبَتَ حَقُّهُ عَلَى صَاحِبِهِ فَهَذَا مَا لاَ اخْتِلاَفَ فِيهِ عِنْدَ أَحَدٍ مِنَ النَّاسِ وَلاَ بِبَلَدٍ مِنَ الْبُلْدَانِ فَبِأَىِّ شَىْءٍ أَخَذَ هَذَا أَوْ فِي أَىِّ مَوْضِعٍ مِنْ كِتَابِ اللَّهِ وَجَدَهُ فَإِنْ أَقَرَّ بِهَذَا فَلْيُقْرِرْ بِالْيَمِينِ مَعَ الشَّاهِدِ وَإِنْ لَمْ يَكُنْ ذَلِكَ فِي كِتَابِ اللَّهِ عَزَّ وَجَلَّ وَأَنَّهُ لَيَكْفِي مِنْ ذَلِكَ مَا مَضَى مِنَ السُّنَّةِ وَلَكِنِ الْمَرْءُ قَدْ يُحِبُّ أَنْ يَعْرِفَ وَجْهَ الصَّوَابِ وَمَوْقِعَ الْحُجَّةِ فَفِي هَذَا بَيَانُ مَا أَشْكَلَ مِنْ ذَلِكَ إِنْ شَاءَ اللَّهُ تَعَالَى ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 7Arabic reference : Book 36, Hadith 1411Report Error | Share | Copy ▼

----------------------------------------

Yahya said that Malik spoke about a man who died and had a debt  
owing to him and there was one witness, and some people had a debt  
against him and they had only one witness, and his heirs refused to  
take an oath on their rights with their witness. He said, "The  
creditors take an oath and take their rights. If there is anything  
left over, the heirs do not take any of it. That is because the oaths  
were offered to them before and they abandoned them, unless they say,  
'We did not know that our companion had extra,' and it is known that  
they only abandoned the oaths because of that. I think that they  
should take an oath and take what remains after his debt."

USC-MSA web (English) reference : Book 36, Hadith 7Report Error | Share | Copy ▼

----------------------------------------

Yahya said, "Malik said about Jamil ibn Abd ar-Rahman al-Muadhdin  
that he was present with Umar ibn Abd al-Aziz when he was judging  
between people. If a man came to him with a claim against a man, he  
examined whether or not there were frequent transactions and dealings  
between them. If there were, the defendant could make an oath. If  
there was nothing of that nature he did not accept an oath from him."  
  
  
Malik summed up, "What is done in our community is that if  
some one makes a claim against a man, it is examined. If there are  
frequent transactions and dealings between them, the defendant is made  
to take an oath. If he takes an oath, the claim against him is  
dropped. If the defendant refuses to take an oath, and returns the  
oath to the claimant, the one claiming his right takes an oath and  
takes his due."

قَالَ يَحْيَى قَالَ مَالِكٌ عَنْ جَمِيلِ بْنِ عَبْدِ الرَّحْمَنِ الْمُؤَذِّنِ، أَنَّهُ كَانَ يَحْضُرُ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ وَهُوَ يَقْضِي بَيْنَ النَّاسِ فَإِذَا جَاءَهُ الرَّجُلُ يَدَّعِي عَلَى الرَّجُلِ حَقًّا نَظَرَ فَإِنْ كَانَتْ بَيْنَهُمَا مُخَالَطَةٌ أَوْ مُلاَبَسَةٌ أَحْلَفَ الَّذِي ادُّعِيَ عَلَيْهِ وَإِنْ لَمْ يَكُنْ شَىْءٌ مِنْ ذَلِكَ لَمْ يُحَلِّفْهُ ‏.‏ قَالَ مَالِكٌ وَعَلَى ذَلِكَ الأَمْرُ عِنْدَنَا أَنَّهُ مَنِ ادَّعَى عَلَى رَجُلٍ بِدَعْوَى نُظِرَ فَإِنْ كَانَتْ بَيْنَهُمَا مُخَالَطَةٌ أَوْ مُلاَبَسَةٌ أُحْلِفَ الْمُدَّعَى عَلَيْهِ فَإِنْ حَلَفَ بَطَلَ ذَلِكَ الْحَقُّ عَنْهُ وَإِنْ أَبَى أَنْ يَحْلِفَ وَرَدَّ الْيَمِينَ عَلَى الْمُدَّعِي فَحَلَفَ طَالِبُ الْحَقِّ أَخَذَ حَقَّهُ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 8Arabic reference : Book 36, Hadith 1412Report Error | Share | Copy ▼

----------------------------------------

Yahya said, "Malik said from Hisham ibn Urwa that Abdullah ibn  
az-Zubayr gave judgment based on the testimony of children concerning  
the injuries between them."  
  
  
Malik said, "The generally agreed  
on way of doing things in our community is that the testimony of  
children is permitted concerning injuries between them. It is not  
accepted about anything else. It is only permitted between them if  
they testify before they leave the scene of the incident and have been  
deceived or instructed. If they leave the scene, they have no  
testimony unless they call just witnesses to witness their testimony  
before they leave."

قَالَ يَحْيَى قَالَ مَالِكٌ عَنْ هِشَامِ بْنِ عُرْوَةَ، أَنَّ عَبْدَ اللَّهِ بْنَ الزُّبَيْرِ، كَانَ يَقْضِي بِشَهَادَةِ الصِّبْيَانِ فِيمَا بَيْنَهُمْ مِنَ الْجِرَاحِ ‏.‏ قَالَ مَالِكٌ الأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَنَا أَنَّ شَهَادَةَ الصِّبْيَانِ تَجُوزُ فِيمَا بَيْنَهُمْ مِنَ الْجِرَاحِ وَلاَ تَجُوزُ عَلَى غَيْرِهِمْ وَإِنَّمَا تَجُوزُ شَهَادَتُهُمْ فِيمَا بَيْنَهُمْ مِنَ الْجِرَاحِ وَحْدَهَا لاَ تَجُوزُ فِي غَيْرِ ذَلِكَ إِذَا كَانَ ذَلِكَ قَبْلَ أَنْ يَتَفَرَّقُوا أَوْ يُخَبَّبُوا أَوْ يُعَلَّمُوا فَإِنِ افْتَرَقُوا فَلاَ شَهَادَةَ لَهُمْ إِلاَّ أَنْ يَكُونُوا قَدْ أَشْهَدُوا الْعُدُولَ عَلَى شَهَادَتِهِمْ قَبْلَ أَنْ يَفْتَرِقُوا ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 9Arabic reference : Book 36, Hadith 1413Report Error | Share | Copy ▼

----------------------------------------

Yahya said, Malik related to us from Hisham ibn Hisham ibn Utba  
ibn Abi Waqqas from Abdullah ibn Nistas from Jabir ibn Abdullah al-  
Ansari that the Messenger of Allah, may Allah bless him and grant him  
peace, said, 'If someone swears a false oath near this mimbar of mine,  
he will take his seat in the fire.' "

قَالَ يَحْيَى حَدَّثَنَا مَالِكٌ، عَنْ هَاشِمِ بْنِ هَاشِمِ بْنِ عُتْبَةَ بْنِ أَبِي وَقَّاصٍ، عَنْ عَبْدِ اللَّهِ بْنِ نِسْطَاسٍ، عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ الأَنْصَارِيِّ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَالَ ‏  
"‏ مَنْ حَلَفَ عَلَى مِنْبَرِي آثِمًا تَبَوَّأَ مَقْعَدَهُ مِنَ النَّارِ ‏"‏ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 10Arabic reference : Book 36, Hadith 1414Report Error | Share | Copy ▼

----------------------------------------

Malik related to me from al-Ala ibn Abd ar-Rahman from Mabad ibn  
Kab as-Salami from his brother Abdullah ibn Kab ibn Malik al-Ansari  
from Abu Umama that the Messenger of Allah, may Allah bless him and  
grant him peace, said, "Whoever cuts off the right of a muslim man by  
his oath, Allah forbids him the Garden and obliges the Fire for him."  
They said, "Even if it is something insignificant, Messenger of  
Allah?" He said, "Even if it is a tooth-stick, even if it is a tooth-  
stick," repeating it three times.

وَحَدَّثَنِي مَالِكٌ، عَنِ الْعَلاَءِ بْنِ عَبْدِ الرَّحْمَنِ، عَنْ مَعْبَدِ بْنِ كَعْبٍ السَّلَمِيِّ، عَنْ أَخِيهِ عَبْدِ اللَّهِ بْنِ كَعْبِ بْنِ مَالِكٍ الأَنْصَارِيِّ، عَنْ أَبِي أُمَامَةَ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَالَ ‏"‏ مَنِ اقْتَطَعَ حَقَّ امْرِئٍ مُسْلِمٍ بِيَمِينِهِ حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ وَأَوْجَبَ لَهُ النَّارَ ‏"‏ ‏.‏ قَالُوا وَإِنْ كَانَ شَيْئًا يَسِيرًا يَا رَسُولَ اللَّهِ قَالَ ‏"‏ وَإِنْ كَانَ قَضِيبًا مِنْ أَرَاكٍ وَإِنْ كَانَ قَضِيبًا مِنْ أَرَاكٍ وَإِنْ كَانَ قَضِيبًا مِنْ أَرَاكٍ ‏"‏ ‏.‏ قَالَهَا ثَلاَثَ مَرَّاتٍ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 11Arabic reference : Book 36, Hadith 1415Report Error | Share | Copy ▼

----------------------------------------

Yahya said that Malik had said from Da'ud ibn al-Husayn that he  
heard Abu Ghatafan ibn Tarif al-Muriyi say, "Zayd ibn Thabit al-Ansari  
and Ibn Muti had a dispute about a house which they shared. They went  
to Marwan ibn al-Hakam who was the Amir of Madina. Marwan decided that  
Zayd ibn Thabit must take an oath on the mimbar. Zayd ibn Thabit said,  
'I swear to it where I am.' Marwan said, 'No, by Allah! only in the  
place of sorting out claims (i.e. the mimbar).' Zayd ibn Thabit began  
to take an oath that his right was true, and he refused to take an  
oath near the mimbar. Marwan ibn al-Hakam began to wonder at that."  
  
  
Malik said, "I do not think that anyone should be made to  
take an oath near the mimbar for less than a fourth of a dinar, and  
that is three dirhams."

قَالَ يَحْيَى قَالَ مَالِكٌ عَنْ دَاوُدَ بْنِ الْحُصَيْنِ، أَنَّهُ سَمِعَ أَبَا غَطَفَانَ بْنَ طَرِيفٍ الْمُرِّيَّ، يَقُولُ اخْتَصَمَ زَيْدُ بْنُ ثَابِتٍ الأَنْصَارِيُّ وَابْنُ مُطِيعٍ فِي دَارٍ كَانَتْ بَيْنَهُمَا إِلَى مَرْوَانَ بْنِ الْحَكَمِ وَهُوَ أَمِيرٌ عَلَى الْمَدِينَةِ فَقَضَى مَرْوَانُ عَلَى زَيْدِ بْنِ ثَابِتٍ بِالْيَمِينِ عَلَى الْمِنْبَرِ ‏.‏ فَقَالَ زَيْدُ بْنُ ثَابِتٍ أَحْلِفُ لَهُ مَكَانِي ‏.‏ قَالَ فَقَالَ مَرْوَانُ لاَ وَاللَّهِ إِلاَّ عِنْدَ مَقَاطِعِ الْحُقُوقِ ‏.‏ قَالَ فَجَعَلَ زَيْدُ بْنُ ثَابِتٍ يَحْلِفُ أَنَّ حَقَّهُ لَحَقٌّ ‏.‏ وَيَأْبَى أَنْ يَحْلِفَ عَلَى الْمِنْبَرِ - قَالَ - فَجَعَلَ مَرْوَانُ بْنُ الْحَكَمِ يَعْجَبُ مِنْ ذَلِكَ ‏.‏ قَالَ مَالِكٌ لاَ أَرَى أَنْ يُحَلَّفَ أَحَدٌ عَلَى الْمِنْبَرِ عَلَى أَقَلَّ مِنْ رُبُعِ دِينَارٍ وَذَلِكَ ثَلاَثَةُ دَرَاهِمَ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 12Arabic reference : Book 36, Hadith 1416Report Error | Share | Copy ▼

----------------------------------------

Yahya said, "Malik related to us from Ibn Shihab from Sa'id ibn  
al-Musayyab that the Messenger of Allah, may Allah bless him and grant  
him peace, said, 'The pledge given as security is not forfeited.' "  
  
  
Malik said, "The explanation of that according to what we  
think - and Allah knows best - is that a man gives a pledge to  
somebody in security for something. The pledge is superior to that for  
which he pawned it. The pledger says to the pawn-broker, 'I will bring  
you your due, after such-and-such a time. If not, the pledge is yours  
for what it was pawned for.' "  
  
  
Malik said, "This transaction  
is not good and it is not halal. This is what was forbidden. If the  
owner brings what he pledged it for after the period, it is his. I  
think that the time condition is void."

قَالَ يَحْيَى حَدَّثَنَا مَالِكٌ، عَنِ ابْنِ شِهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَالَ ‏  
"‏ لاَ يَغْلَقُ الرَّهْنُ ‏"‏ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 13Arabic reference : Book 36, Hadith 1417Report Error | Share | Copy ▼

----------------------------------------

Yahya said, "I heard Malik say that if a man pledges his garden  
for a stated period and the fruits of that garden are ready before the  
end of that period, the fruits are not included in the pledge with the  
real estate, unless it is stipulated by the pledger in his pledge.  
However, if a man receives a slave-girl as a pledge and she is  
pregnant or she becomes pregnant after his taking her as a pledge, her  
child is included with her.  
  
  
"A distinction is made between  
the fruit and the child of the slave-girl. The Messenger of Allah, may  
Allah bless him and grant him peace, said, 'If someone sells a palm  
which has been pollinated, the fruit belongs to the seller unless the  
buyer stipulates its inclusion.' The undisputed way of doing things in  
our community is that if a man sells a slave-girl or an animal with a  
foetus in its womb, the foetus belongs to the buyer, whether or not  
the buyer stipulates it. The palm is not like the animal. Fruit is not  
like the foetus in its mother's womb. Part of what clarifies that is  
also that it is the usage of people to have a man pawn the fruit of  
the palm apart from the palm. No one pawns the foetus in its mother's  
womb whether of slaves or animals."

USC-MSA web (English) reference : Book 36, Hadith 13Report Error | Share | Copy ▼

----------------------------------------

Yahya said that he had heard Malik say, "The undisputed way of  
doing things in our community concerning pledges is that in cases  
where land or a house or an animal are known to have been destroyed  
whilst in the possession of the broker of the pledge, and the  
circumstances of the loss are known, the loss is against the pledger.  
There is no deduction made from what is due to the broker at all. Any  
pledge which perishes in the possession of the broker and the  
circumstances of its loss are only known by his word, the loss is  
against the broker and he is liable for its value. He is asked to  
describe whatever was destroyed and then he is made to take an oath  
about that description and what he loaned on security for it. "Then  
people of discernment evaluate the description. If the pledge was  
worth more than what the broker loaned, the pledger takes the extra.  
If the assessed value of the pledge is less than what he was loaned,  
the pledger is made to take an oath as to what the broker loaned and  
he does not have to pay the extra which the broker loaned above the  
assessed value of the pledge. If the pledger refuses to take an oath,  
he has to give the broker the extra above the assessed value of the  
pledge. If the broker says that he doesn't know the value of the  
pledge, the pledger is made to take an oath on the description of the  
pledge and that is his if he brings a matter which is not disapproved  
of."  
  
  
Malik said, "All this applies when the broker takes the  
pledge and does not put it in the hands of another."

USC-MSA web (English) reference : Book 36, Hadith 13Report Error | Share | Copy ▼

----------------------------------------

Yahya said that he heard Malik speak about two men who had a  
pledge between them. One of them undertook to sell his pledge, and the  
other one had asked him to wait a year for his due. He said, "If it is  
possible to divide the pledge, and the due of the one who asked him to  
wait will not be decreased, half the pledge which is between them is  
sold for him and he is given his due. If it is feared that his right  
will be decreased, all the pledge is sold, and the one who undertook  
to sell his pledge is given his due from that. If the one who asked  
him to wait for his due is pleased in himself, half of the price is  
paid to the pledger. If not, the pledgee is made to take an oath that  
he only asked him to wait so that he could transfer my pledge to me in  
its form.' Then he is given his due immediately."  
  
  
Yahya said  
that he heard Malik say about a slave whose master had pledged him and  
the slave had property of his own, "The property of the slave is not  
part of the pledge unless the broker stipulates that."

USC-MSA web (English) reference : Book 36, Hadith 13Report Error | Share | Copy ▼

----------------------------------------

Yahya said that he heard Malik speak about someone who pledged  
goods as security for a loan, and they perished with the broker. The  
one who took out the loan confirmed its specification. They agreed on  
the amount of the loan, but challenged each other about the value of  
the pledge, the pledger saying that it had been worth twenty dinars,  
whilst the broker said that it had been worth only ten, and that the  
amount loaned on security was twenty dinars. Malik said, "It is said  
to the one in whose hand the pledge is, 'describe it.' If he describes  
it he is made to take an oath on it and then the people of experience  
evaluate that description. If the value is more than what was loaned  
on security for it, it is said to the broker, 'Return the rest of his  
due to the pledger.' If the value is less than what was loaned on  
security for it, the broker takes the rest of his due from the  
pledger. If the value is the exact amount of the loan, the pledge is  
compensated for by the loan."  
  
  
Yahya said that he heard Malik  
say, "What is done in our community about two men who have a dispute  
about an amount of money loaned on the security of a pledge - the  
pledger claiming that he pledged it for ten dinars and the broker  
insisting that he took the pledge as security for twenty dinars, and  
the pledge is clearly in the possession of the broker - is that the  
broker is made to take an oath when the value of the pledge is fully  
known. If the value of the pledge is exactly what he swore that he had  
loaned on security for it, the broker takes the pledge as his right.  
He is more entitled to take precedence with an oath since he has  
possession of the pledge. If the owner of the pledge wants to give him  
the amount which he swore that he was owed, he can take the pledge  
back. If the pledge is worth less than the twenty dinars he loaned,  
then it is said to the pledger, 'Either you give him what he has sworn  
to and take your pledge back, or you swear to what you said you  
pledged it for.' If the pledger takes the oath, then what the broker  
has increased over the value of the pledge will become invalid. If the  
pledger does not take an oath, he must pay what the broker swore to."  
  
  
Malik said, "If a pledge given on security for a loan  
perishes, and both parties deny each other's rights, with the broker  
who is owed the loan saying that he gave twenty dinars, and the  
pledger who owes the loan saying that he was given only ten, and with  
the broker who is owed the loan saying the pledge was worth ten  
dinars, and the broker who owes the loan saying it was worth twenty,  
then the broker who is owed the loan is asked to describe the pledge.  
If he describes it, he must take an oath on its description. Then  
people with experience of it evaluate that description. If the value  
of the pledge is estimated to be more than what the broker claims it  
was, he takes an oath as to what he claimed, and the pledger is given  
what is over from the value of the pledge. If its value is less than  
what the broker claims of it, he is made to take an oath as to what he  
claims is his. Then he demands settlement according to the actual  
value of the pledge. The one who owes the loan is then made to take an  
oath on the extra amount which remains owing against him to the  
claimant after the price of the pledge is reached. That is because the  
broker becomes a claimant against the pledger. If he takes an oath,  
the rest of what the broker swore to of what he claimed above the  
value of the pledge is invalidated. If he draws back, he is bound to  
pay what remains due to the broker after the value of the pledge."

USC-MSA web (English) reference : Book 36, Hadith 13Report Error | Share | Copy ▼

----------------------------------------

Yahya said that he heard Malik say, "What is done in our  
community about a man who rents an animal for a journey to a specified  
place and then he goes beyond that place and further, is that the  
owner of the animal has a choice. If he wants to take extra rent for  
his animal to cover the distance overstepped, he is given that on top  
of the first rent and the animal is returned. If the owner of the  
animal likes to sell the animal from the place where he over-steps, he  
has the price of the animal on top of the rent. If, however, the hirer  
rented the animal to go and return and then he overstepped when he  
reached the city to which he rented him, the owner of the animal only  
has half the first rent. That is because half of the rent is going,  
and half of it is returning. If he oversteps with the animal, only  
half of the first rent is obliged for him. Had the animal died when he  
reached the city to which it was rented, the hirer would not be liable  
and the renter would only have half the rent."  
  
  
Malik said,  
"That is what is done with people who overstep and dispute about what  
they took the animal for."  
  
  
Malik said, "It is also like that  
with some one who takes qirad-money from his companion. The owner of  
the property says to him, 'Do not buy such-and-such animals or such-  
and-such goods.' He names them and forbids them and disapproves of his  
money being invested in them. The one who takes the money then buys  
what he was forbidden. By that, he intends to be liable for the money  
and take the profit of his companion. When he does that, the owner of  
the money has an option. If he wants to enter with him in the goods  
according to the original stipulations between them about the profit,  
he does so. If he likes, he has his capital guaranteed against the one  
who took the capital and over stepped the mark."  
  
  
Malik said,  
"It is also like that with a man with whom another man invests some  
goods. The owner of the property orders him to buy certain goods for  
him which he names. He differs, and buys with the goods something  
other than what he was ordered to buy. He exceeded his orders. The  
owner of the goods has an option. If he wants to take what was bought  
with his property, he takes it. If he wants the partner to be liable  
for his capital he has that."

USC-MSA web (English) reference : Book 36, Hadith 13Report Error | Share | Copy ▼

----------------------------------------

Malik related to me from Ibn Shihab that Abd al-Malik ibn Marwan  
gave a judgment that the rapist had to pay the raped woman her bride-  
price.  
  
  
Yahya said that he heard Malik say, "What is done in  
our community about the man who rapes a woman, virgin or non-virgin,  
if she is free, is that he must pay the bride-price of the like of  
her. If she is a slave, he must pay what he has diminished of her  
worth. The hadd-punishment in such cases is applied to the rapist, and  
there is no punishment applied to the raped woman. If the rapist is a  
slave, that is against his master unless he wishes to surrender him."

حَدَّثَنِي مَالِكٌ، عَنِ ابْنِ شِهَابٍ، أَنَّ عَبْدَ الْمَلِكِ بْنَ مَرْوَانَ، قَضَى فِي امْرَأَةٍ أُصِيبَتْ مُسْتَكْرَهَةً بِصَدَاقِهَا عَلَى مَنْ فَعَلَ ذَلِكَ بِهَا ‏.‏ قَالَ يَحْيَى سَمِعْتُ مَالِكًا يَقُولُ الأَمْرُ عِنْدَنَا فِي الرَّجُلِ يَغْتَصِبُ الْمَرْأَةَ بِكْرًا كَانَتْ أَوْ ثَيِّبًا إِنَّهَا إِنْ كَانَتْ حُرَّةً فَعَلَيْهِ صَدَاقُ مِثْلِهَا وَإِنْ كَانَتْ أَمَةً فَعَلَيْهِ مَا نَقَصَ مِنْ ثَمَنِهَا وَالْعُقُوبَةُ فِي ذَلِكَ عَلَى الْمُغْتَصِبِ وَلاَ عُقُوبَةَ عَلَى الْمُغْتَصَبَةِ فِي ذَلِكَ كُلِّهِ وَإِنْ كَانَ الْمُغْتَصِبُ عَبْدًا فَذَلِكَ عَلَى سَيِّدِهِ إِلاَّ أَنْ يَشَاءَ أَنْ يُسَلِّمَهُ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 14Arabic reference : Book 36, Hadith 1418Report Error | Share | Copy ▼

----------------------------------------

Yahya said that he heard Malik say, "What is done in our  
community about someone who consumed an animal without the permission  
of its owner, is that he must pay its price on the day he consumed it.  
He is not obliged to replace it with a similar animal nor does he  
compensate the owner with any kind of animal. He must pay its price on  
the day it was consumed, and giving the value is more equitable in  
compensation for animals and goods."  
  
  
Yahya said that he heard  
Malik say about someone who consumes some food without the permission  
of its owner, "He returns to the owner a like weight of the same kind  
of food. Food is in the position of gold and silver. Gold and silver  
are returned with gold and silver. The animal is not in the position  
of gold in that. What distinguishes between them is the sunna and the  
behaviour which is in force.  
  
  
Yahya said that he heard Malik  
say, "If a man is entrusted with some wealth and then trades with it  
for himself and makes a profit, the profit is his because he is  
responsible for the property until he returns it to its owner. "

USC-MSA web (English) reference : Book 36, Hadith 14Report Error | Share | Copy ▼

----------------------------------------

Yahya related to me from Malik from Zayd ibn Aslam that the  
Messenger of Allah, may Allah bless him and grant him peace, said, "If  
someone changes his deen - strike his neck!"  
  
  
The meaning of  
the statement of the Prophet, may Allah bless him and grant him peace,  
in our opinion and Allah knows best, is that "if someone changes his  
deen, strike his neck!" refers to those who leave Islam for other than  
it - like the heretics and their like, about whom it is known. They  
are killed without being called to tawba because their tawba is not  
recognised. They were hiding their kufr and publishing their Islam, so  
I do not think that one calls such people to tawba, and one does not  
accept their word. As for the one who goes out of Islam to something  
else and divulges it, one calls him to tawba. If he does not turn in  
tawba, he is killed. If there are people in that situation, I think  
that one should call them to Islam and call them to tawba. If they  
turn in tawba, that is accepted from them. If they do not turn in  
tawba, they are killed. That does not refer as we see it, and Allah  
knows best, to those who come out of Judaism to Christianity or from  
Christianity to Judaism, nor to someone who changes his deen from the  
various forms of deen except for Islam. Whoever comes out of Islam to  
other than it and divulges that, that is the one who is referred to,  
and Allah knows best!

حَدَّثَنَا يَحْيَى، عَنْ مَالِكٍ، عَنْ زَيْدِ بْنِ أَسْلَمَ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَالَ ‏"‏ مَنْ غَيَّرَ دِينَهُ فَاضْرِبُوا عُنُقَهُ ‏"‏ ‏.‏ وَمَعْنَى قَوْلِ النَّبِيِّ صلى الله عليه وسلم فِيمَا نُرَى - وَاللَّهُ أَعْلَمُ - ‏"‏ مَنْ غَيَّرَ دِينَهُ فَاضْرِبُوا عُنُقَهُ ‏"‏ ‏.‏ أَنَّهُ مَنْ خَرَجَ مِنَ الإِسْلاَمِ إِلَى غَيْرِهِ مِثْلُ الزَّنَادِقَةِ وَأَشْبَاهِهِمْ فَإِنَّ أُولَئِكَ إِذَا ظُهِرَ عَلَيْهِمْ قُتِلُوا وَلَمْ يُسْتَتَابُوا لأَنَّهُ لاَ تُعْرَفُ تَوْبَتُهُمْ وَأَنَّهُمْ كَانُوا يُسِرُّونَ الْكُفْرَ وَيُعْلِنُونَ الإِسْلاَمَ فَلاَ أَرَى أَنْ يُسْتَتَابَ هَؤُلاَءِ وَلاَ يُقْبَلُ مِنْهُمْ قَوْلُهُمْ وَأَمَّا مَنْ خَرَجَ مِنَ الإِسْلاَمِ إِلَى غَيْرِهِ وَأَظْهَرَ ذَلِكَ فَإِنَّهُ يُسْتَتَابُ فَإِنْ تَابَ وَإِلاَّ قُتِلَ وَذَلِكَ لَوْ أَنَّ قَوْمًا كَانُوا عَلَى ذَلِكَ رَأَيْتُ أَنْ يُدْعَوْا إِلَى الإِسْلاَمِ وَيُسْتَتَابُوا فَإِنْ تَابُوا قُبِلَ ذَلِكَ مِنْهُمْ وَإِنْ لَمْ يَتُوبُوا قُتِلُوا وَلَمْ يُعْنَ بِذَلِكَ فِيمَا نُرَى وَاللَّهُ أَعْلَمُ مَنْ خَرَجَ مِنَ الْيَهُودِيَّةِ إِلَى النَّصْرَانِيَّةِ وَلاَ مِنَ النَّصْرَانِيَّةِ إِلَى الْيَهُودِيَّةِ وَلاَ مَنْ يُغَيِّرُ دِينَهُ مِنْ أَهْلِ الأَدْيَانِ كُلِّهَا إِلاَّ الإِسْلاَمَ فَمَنْ خَرَجَ مِنَ الإِسْلاَمِ إِلَى غَيْرِهِ وَأَظْهَرَ ذَلِكَ فَذَلِكَ الَّذِي عُنِيَ بِهِ وَاللَّهُ أَعْلَمُ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 15Arabic reference : Book 36, Hadith 1419Report Error | Share | Copy ▼

----------------------------------------

Malik related to me from Abd ar-Rahman ibn Muhammad ibn Abdullah  
ibn Abd al-Qari that his father said, "A man came to Umar ibn al-  
Khattab from Abu Musa al-Ashari. Umar asked after various people, and  
he informed him. Then Umar inquired, 'Do you have any recent news?' He  
said, 'Yes. A man has become a kafir after his Islam.' Umar asked,  
'What have you done with him?' He said, 'We let him approach and  
struck off his head.' Umar said, 'Didn't you imprison him for three  
days and feed him a loaf of bread every day and call on him to tawba  
that he might turn in tawba and return to the command of Allah?' Then  
Umar said, 'O Allah! I was not present and I did not order it and I am  
not pleased since it has come to me!' "

وَحَدَّثَنِي مَالِكٌ، عَنْ عَبْدِ الرَّحْمَنِ بْنِ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ بْنِ عَبْدٍ الْقَارِيِّ، عَنْ أَبِيهِ، أَنَّهُ قَالَ قَدِمَ عَلَى عُمَرَ بْنِ الْخَطَّابِ رَجُلٌ مِنْ قِبَلِ أَبِي مُوسَى الأَشْعَرِيِّ فَسَأَلَهُ عَنِ النَّاسِ، فَأَخْبَرَهُ ثُمَّ، قَالَ لَهُ عُمَرُ هَلْ كَانَ فِيكُمْ مِنْ مُغَرِّبَةِ خَبَرٍ فَقَالَ نَعَمْ رَجُلٌ كَفَرَ بَعْدَ إِسْلاَمِهِ ‏.‏ قَالَ فَمَا فَعَلْتُمْ بِهِ قَالَ قَرَّبْنَاهُ فَضَرَبْنَا عُنُقَهُ ‏.‏ فَقَالَ عُمَرُ أَفَلاَ حَبَسْتُمُوهُ ثَلاَثًا وَأَطْعَمْتُمُوهُ كُلَّ يَوْمٍ رَغِيفًا وَاسْتَتَبْتُمُوهُ لَعَلَّهُ يَتُوبُ وَيُرَاجِعُ أَمْرَ اللَّهِ ثُمَّ قَالَ عُمَرُ اللَّهُمَّ إِنِّي لَمْ أَحْضُرْ وَلَمْ آمُرْ وَلَمْ أَرْضَ إِذْ بَلَغَنِي ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 16Arabic reference : Book 36, Hadith 1420Report Error | Share | Copy ▼

----------------------------------------

Yahya related to me from Malik from Suhayl ibn Abi Salih as-  
Samman from his father from Abu Hurayra that Sad ibn Ubada said to the  
Messenger of Allah, may Allah bless him and grant him peace, "What do  
you think if I find a man with my wife? Shall I grant him a respite  
until I bring four witnesses?" The Messenger of Allah, may Allah bless  
him and grant him peace, replied, "Yes."

حَدَّثَنَا يَحْيَى، عَنْ مَالِكٍ، عَنْ سُهَيْلِ بْنِ أَبِي صَالِحٍ السَّمَّانِ، عَنْ أَبِيهِ، عَنْ أَبِي هُرَيْرَةَ، أَنَّ سَعْدَ بْنَ عُبَادَةَ، قَالَ لِرَسُولِ اللَّهِ صلى الله عليه وسلم أَرَأَيْتَ إِنْ وَجَدْتُ مَعَ امْرَأَتِي رَجُلاً أَأُمْهِلُهُ حَتَّى آتِيَ بِأَرْبَعَةِ شُهَدَاءَ فَقَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏  
"‏ نَعَمْ ‏"‏ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 17Arabic reference : Book 36, Hadith 1421Report Error | Share | Copy ▼

----------------------------------------

Malik related to me from Yahya ibn Said from Said ibn al-Musayyab  
that a Syrian man called Ibn Khaybari found a man with his wife and  
killed him, or killed them both. Muawiya ibn Abi Sufyan found it  
difficult to make a decision and he wrote to Abu Musa al-Ashari to ask  
Ali ibn Abi Talib for him about that. So Abu Musa asked Ali ibn Abi  
Talib and AIi said to him, "Is this thing in my land? I adjure you,  
you must tell me." Abu Musa explained to him how Muawiya ibn Abi  
Sufyan had written him to ask Ali about it. Ali said, "I am Abu Hasan.  
If he does not bring four witnesses, then let him be completely handed  
over," (to the relatives of the murdered man).

وَحَدَّثَنِي مَالِكٌ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، أَنَّ رَجُلاً، مِنْ أَهْلِ الشَّامِ - يُقَالُ لَهُ ابْنُ خَيْبَرِيٍّ - وَجَدَ مَعَ امْرَأَتِهِ رَجُلاً فَقَتَلَهُ أَوْ قَتَلَهُمَا مَعًا فَأَشْكَلَ عَلَى مُعَاوِيَةَ بْنِ أَبِي سُفْيَانَ الْقَضَاءُ فِيهِ فَكَتَبَ إِلَى أَبِي مُوسَى الأَشْعَرِيِّ يَسْأَلُ لَهُ عَلِيَّ بْنَ أَبِي طَالِبٍ عَنْ ذَلِكَ فَسَأَلَ أَبُو مُوسَى عَنْ ذَلِكَ عَلِيَّ بْنَ أَبِي طَالِبٍ فَقَالَ لَهُ عَلِيٌّ إِنَّ هَذَا الشَّىْءَ مَا هُوَ بِأَرْضِي عَزَمْتُ عَلَيْكَ لَتُخْبِرَنِّي ‏.‏ فَقَالَ لَهُ أَبُو مُوسَى كَتَبَ إِلَىَّ مُعَاوِيَةُ بْنُ أَبِي سُفْيَانَ أَنْ أَسْأَلَكَ عَنْ ذَلِكَ ‏.‏ فَقَالَ عَلِيٌّ أَنَا أَبُو حَسَنٍ إِنْ لَمْ يَأْتِ بِأَرْبَعَةِ شُهَدَاءَ فَلْيُعْطَ بِرُمَّتِهِ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 18Arabic reference : Book 36, Hadith 1422Report Error | Share | Copy ▼

----------------------------------------

Yahya said that Malik related from Ibn Shihab that Sunayn Abi  
Jamila, a man from the Banu Sulaym, found an abandoned child in the  
time of Umar ibn al-Khattab. Sunayn took him to Umar ibn al-Khattab.  
He asked, "What has induced you to take this person?" He answered, "I  
found him lost, so I took him.'' Umar's advisor said to him,' 'Amir  
al-Muminin! He is a man who does good." Umar inquired of him, "Is it  
so?" He replied, "Yes." Umar ibn al-Khattab said, "Go, he is free, and  
you have his wala' inheritance, and we will provide for him."  
  
  
Yahya said that he heard Malik say, "What is done in our community  
about an abandoned child is that he is free, and his wala' inheritance  
belongs to the muslims, and they inherit from him and pay his blood  
money."

قَالَ يَحْيَى قَالَ مَالِكٌ عَنِ ابْنِ شِهَابٍ، عَنْ سُنَيْنٍ أَبِي جَمِيلَةَ، رَجُلٌ مِنْ بَنِي سُلَيْمٍ أَنَّهُ وَجَدَ مَنْبُوذًا فِي زَمَانِ عُمَرَ بْنِ الْخَطَّابِ قَالَ فَجِئْتُ بِهِ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَ مَا حَمَلَكَ عَلَى أَخْذِ هَذِهِ النَّسَمَةِ فَقَالَ وَجَدْتُهَا ضَائِعَةً فَأَخَذْتُهَا ‏.‏ فَقَالَ لَهُ عَرِيفُهُ يَا أَمِيرَ الْمُؤْمِنِينَ إِنَّهُ رَجُلٌ صَالِحٌ ‏.‏ فَقَالَ لَهُ عُمَرُ أَكَذَلِكَ قَالَ نَعَمْ ‏.‏ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ اذْهَبْ فَهُوَ حُرٌّ وَلَكَ وَلاَؤُهُ وَعَلَيْنَا نَفَقَتُهُ ‏.‏

USC-MSA web (English) reference : Book 36, Hadith 19Arabic reference : Book 36, Hadith 1423Report Error | Share | Copy ▼

----------------------------------------