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

Malik related to me from Nafi from Abdullah ibn Umar that the  
Messenger of Allah, may Allah bless him and grant him peace, said, "It  
is the duty of a muslim man who has something to be given as a bequest  
not to spend two nights without writing a will about it."  
  
  
Malik said, "The generally agreed-on way of doing things in our  
community is that when the testator writes something in health or  
illness as a bequest, and it has freeing slaves or things other than  
that in it, he can alter it in any way he chooses, until he is on his  
deathbed. If he prefers to abandon a bequest or change it, he can do  
so unless he has made a slave mudabbar (to be freed after his death).  
If he has made him mudabbar, there is no way to change what he has  
made mudabbar. He is allowed to change his testament because the  
Messenger of Allah, may Allah bless him and grant him peace, said, "It  
is the duty of a muslim man who has something to be given as a bequest  
not to spend two nights without writing a will about it."  
  
  
Malik explained, "Had the testator not been able to change his will  
nor what was mentioned in it about freeing slaves, each testator might  
withhold making bequests from his property, whether in freeing slaves  
or other than it. A man gives a bequest in his health and in his  
travelling." (i.e. he does not wait till his death bed ) .  
  
  
Malik summed up, "The way of doing things in our community about which  
there is no dispute is that he can change whatever he likes of that  
except for the mudabbar."

حَدَّثَنِي مَالِكٌ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم قَالَ ‏  
"‏ مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَىْءٌ يُوصَى فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلاَّ وَوَصِيَّتُهُ عِنْدَهُ مَكْتُوبَةٌ ‏"‏ ‏.‏

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Malik related to me from Abdullah ibn Abi Bakr ibn Hazm that Amr  
ibn Sulaym az-Zuraqi informed his father that it had been said to Umar  
ibn al-Khattab, "There is here an adolescent boy who has not yet  
reached puberty. He is from the Ghassan tribe and his heir is in ash-  
Sham. He has property. Here he only has the daughter of one of his  
paternal uncles." Umar ibn al-Khattab instructed, "Let him leave her a  
bequest." He willed her a property called the well of Jusham.  
  
  
Malik added, "That property was sold for 30,000 dirhams, and the  
daughter of the paternal uncle to whom he willed it was the mother of  
Amr ibn Sulaym az-Zuraqi."

حَدَّثَنِي مَالِكٌ، عَنْ عَبْدِ اللَّهِ بْنِ أَبِي بَكْرِ بْنِ حَزْمٍ، عَنْ أَبِيهِ، أَنَّ عَمْرَو بْنَ سُلَيْمٍ الزُّرَقِيَّ، أَخْبَرَهُ أَنَّهُ، قِيلَ لِعُمَرَ بْنِ الْخَطَّابِ إِنَّ هَا هُنَا غُلاَمًا يَفَاعًا لَمْ يَحْتَلِمْ مِنْ غَسَّانَ وَوَارِثُهُ بِالشَّامِ وَهُوَ ذُو مَالٍ وَلَيْسَ لَهُ هَا هُنَا إِلاَّ ابْنَةُ عَمٍّ لَهُ ‏.‏ قَالَ عُمَرُ بْنُ الْخَطَّابِ فَلْيُوصِ لَهَا ‏.‏ قَالَ فَأَوْصَى لَهَا بِمَالٍ يُقَالُ لَهُ بِئْرُ جُشَمٍ قَالَ عَمْرُو بْنُ سُلَيْمٍ فَبِيعَ ذَلِكَ الْمَالُ بِثَلاَثِينَ أَلْفَ دِرْهَمٍ وَابْنَةُ عَمِّهِ الَّتِي أَوْصَى لَهَا هِيَ أُمُّ عَمْرِو بْنِ سُلَيْمٍ الزُّرَقِيِّ ‏.‏

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Malik related to me from Yahya ibn Said from Abu Bakr ibn Hazm  
that a boy from Ghassan was dying in Madina while his heir was in  
Syria. That was mentioned to Umar ibn al-Khattab. It was said to him,  
"So-and-so is dying. Shall he make a bequest?" He said, "Let him make  
a bequest."  
  
  
Yahya ibn Said said that Abu Bakr had said, "He  
was a boy of ten or twelve years." Yahya said, "He willed the well of  
Jusham, and his people sold it for 30,000 dirhams."  
  
  
Yahya  
said that he heard Malik say, "The generally agreed-on way of doing  
things in our community is that a simpleton, an idiot, or a lunatic  
who recovers at times, can make wills if they have enough of their  
wits about them to recognise what they will. Someone who has not  
enough wits to recognise what he wills, and is overcome in his  
intellect, cannot make a bequest."

وَحَدَّثَنِي مَالِكٌ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ أَبِي بَكْرِ بْنِ حَزْمٍ، أَنَّ غُلاَمًا، مِنْ غَسَّانَ حَضَرَتْهُ الْوَفَاةُ بِالْمَدِينَةِ وَوَارِثُهُ بِالشَّامِ فَذُكِرَ ذَلِكَ لِعُمَرَ بْنِ الْخَطَّابِ فَقِيلَ لَهُ إِنَّ فُلاَنًا يَمُوتُ أَفَيُوصِي قَالَ فَلْيُوصِ ‏.‏ قَالَ يَحْيَى بْنُ سَعِيدٍ قَالَ أَبُو بَكْرٍ وَكَانَ الْغُلاَمُ ابْنَ عَشْرِ سِنِينَ أَوِ اثْنَتَىْ عَشْرَةَ سَنَةً ‏.‏ قَالَ فَأَوْصَى بِبِئْرِ جُشَمٍ فَبَاعَهَا أَهْلُهَا بِثَلاَثِينَ أَلْفَ دِرْهَمٍ ‏.‏ قَالَ يَحْيَى سَمِعْتُ مَالِكًا يَقُولُ الأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَنَا أَنَّ الضَّعِيفَ فِي عَقْلِهِ وَالسَّفِيهَ وَالْمُصَابَ الَّذِي يُفِيقُ أَحْيَانًا تَجُوزُ وَصَايَاهُمْ إِذَا كَانَ مَعَهُمْ مِنْ عُقُولِهِمْ مَا يَعْرِفُونَ مَا يُوصُونَ بِهِ فَأَمَّا مَنْ لَيْسَ مَعَهُ مِنْ عَقْلِهِ مَا يَعْرِفُ بِذَلِكَ مَا يُوصِي بِهِ وَكَانَ مَغْلُوبًا عَلَى عَقْلِهِ فَلاَ وَصِيَّةَ لَهُ ‏.‏

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Malik related to me from Ibn Shihab from Amir ibn Sad ibn Abi  
Waqqas that his father said, "The Messenger of Allah, may Allah bless  
him and grant him peace, came to me to treat me for a pain which  
became hard to bear in the year of the farewell hajj. I said,  
'Messenger of Allah, you can see how far the pain has reached me. I  
have property and only my daughter inherits from me. Shall I give two  
thirds of my property as sadaqa?' The Messenger of Allah, may Allah  
bless him and grant him peace, said, 'No.' I said, 'Half?' He said,  
'No.' Then the Messenger of Allah, may Allah bless him and grant him  
peace, said, 'A third, and a third is a lot. Leaving your heirs rich  
is better than leaving them poor to beg from people. You never spend  
anything on maintenance desiring the Face of Allah by it, but that you  
are rewarded for it, even what you appoint for your wife.' Sad said,  
'Messenger of Allah, will I be left here in Makka after my companions  
have departed for Madina?' The Messenger of Allah, may Allah bless him  
and grant him peace, said, 'If you are left behind, and do sound deeds  
you will increase your degree and elevation by them. Perhaps you will  
be left behind so that some people may benefit by you and others may  
be harmed by you. O Allah! complete their hijra for my companions, and  
do not turn them back on their heels. The unfortunate one is Said ibn  
Khawla.' The Messenger of Allah, may Allah bless him and grant him  
peace, was distressed on his account for he had died at Makka."  
  
  
Yahya said that he heard Malik speak about a man who willed a  
third of his property to a man and said as well, "My slave will serve  
so-and-so (another man) for as long as he lives, then he is free,"  
then that was looked into, and the slave was found to be a third of  
the property of the deceased. Malik said, "The service of the slave is  
evaluated. Then the two of them divide it between them. The one who  
was willed a third takes his third, as a share, and the one who was  
willed the service of the slave takes what was evaluated for him of  
the slave's service. Each of them takes, from the service of the slave  
or from his wage if he has a wage, according to his share. If the one  
who was given the service of the slave for as long as he lived dies,  
then the slave is freed."  
  
  
Yahya said that he heard Malik  
speak about someone who willed his third and said "So-and-so has such-  
and-such, and so-and-so has such-and-such," naming some of his  
property, and his heirs protested that it was more than a third."  
Malik said, "The heirs then have an option between giving the  
beneficiaries their full bequests and taking the rest of the property  
of the deceased, or between dividing among the beneficiaries the third  
of the property of the deceased and surrendering to them their third.  
If they wish, their rights in it reach as far as they reach."

حَدَّثَنِي مَالِكٌ، عَنِ ابْنِ شِهَابٍ، عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ، عَنْ أَبِيهِ، أَنَّهُ قَالَ جَاءَنِي رَسُولُ اللَّهِ صلى الله عليه وسلم يَعُودُنِي عَامَ حَجَّةِ الْوَدَاعِ مِنْ وَجَعٍ اشْتَدَّ بِي فَقُلْتُ يَا رَسُولَ اللَّهِ قَدْ بَلَغَ بِي مِنَ الْوَجَعِ مَا تَرَى وَأَنَا ذُو مَالٍ وَلاَ يَرِثُنِي إِلاَّ ابْنَةٌ لِي أَفَأَتَصَدَّقُ بِثُلُثَىْ مَالِي قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏"‏ لاَ ‏"‏ ‏.‏ فَقُلْتُ فَالشَّطْرُ قَالَ ‏"‏ لاَ ‏"‏ ‏.‏ ثُمَّ قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏"‏ الثُّلُثُ وَالثُّلُثُ كَثِيرٌ إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ وَإِنَّكَ لَنْ تُنْفِقَ نَفَقَةً تَبْتَغِي بِهَا وَجْهَ اللَّهِ إِلاَّ أُجِرْتَ حَتَّى مَا تَجْعَلُ فِي فِي امْرَأَتِكَ ‏"‏ ‏.‏ قَالَ فَقُلْتُ يَا رَسُولَ اللَّهِ أَأُخَلَّفُ بَعْدَ أَصْحَابِي فَقَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏"‏ إِنَّكَ لَنْ تُخَلَّفَ فَتَعْمَلَ عَمَلاً صَالِحًا إِلاَّ ازْدَدْتَ بِهِ دَرَجَةً وَرِفْعَةً وَلَعَلَّكَ أَنْ تُخَلَّفَ حَتَّى يَنْتَفِعَ بِكَ أَقْوَامٌ وَيُضَرَّ بِكَ آخَرُونَ اللَّهُمَّ أَمْضِ لأَصْحَابِي هِجْرَتَهُمْ وَلاَ تَرُدَّهُمْ عَلَى أَعْقَابِهِمْ لَكِنِ الْبَائِسُ سَعْدُ ابْنُ خَوْلَةَ يَرْثِي لَهُ رَسُولُ اللَّهِ صلى الله عليه وسلم أَنْ مَاتَ بِمَكَّةَ ‏"‏ ‏.‏

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Yahya said that he heard Malik say, "The best of what I have  
heard about the testament of a pregnant woman and about what  
settlements she is permitted in her property is that the pregnant  
woman is like the sick person. When the illness is light, and one does  
not fear for the sick person, he does with his property what he likes.  
If the illness is such that his life is feared for, he can only  
dispose of a third of his estate."  
  
  
He said, "It is the same  
with a woman who is pregnant. The beginning of pregnancy is good news  
and joy. It is not illness and no fear because Allah the Blessed, the  
Exalted, said in His Book, 'We gave her good news of Ishaq and after  
Ishaq, Yaqub.' (Sura ll ayat 71). And He said, 'She bore a light  
burden and passed by with it, but when she became heavy, they called  
upon Allah, their Lord, "If you give us a good-doing son, we will be  
among the thankful." '(Sura 7 ayat 189).  
  
  
"When a pregnant  
woman becomes heavy, she is only permitted to dispose of a third of  
her estate. The beginning of this restriction is after six months.  
Allah, the Blessed, the Exalted, said in His Book, 'Mothers suckle  
their children for two complete years.' And He said, 'his bearing and  
weaning are thirty months.' (Sura 2 ayat 233).  
  
  
"When six  
months have passed for the pregnant woman from the day she conceived,  
she is only permitted to dispose of a third of her property."  
  
  
Yahya said that he heard Malik say, "A man who is advancing in the row  
for battle, can only dispose of a third of his property. He is in the  
same position as a pregnant woman or an ill person who is feared for,  
as long as he is in that situation."

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Yahya said that he heard Malik say, "This ayat is abrogated. It  
is the word of Allah, the Blessed, the Exalted, 'If he leaves goods,  
the testament is for parents and kinsmen.' What came down about the  
division of the fixed shares of inheritance in the Book of Allah, the  
Mighty, the Exalted, abrogated it."  
  
  
Yahya said that he heard  
Malik say, "The established sunna with us, in which there is no  
dispute, is that it is not permitted for a testator to make a bequest  
(in addition to the fixed share) in favour of an heir, unless the  
other heirs permit him. If some of them permit him and others refuse,  
he is allowed to diminish the share of those who have given their  
permission. Those who refuse take their full share from the  
inheritance.  
  
  
Yahya said that he heard Malik speak about an  
invalid who made a bequest and asked his heirs to give him permission  
to make a bequest when he was so ill that he only had command of a  
third of his property, and they gave him permission to leave some of  
his heirs more than his third. Malik said, "They cannot revoke that.  
Had they been permitted to do so, every heir would have done that, and  
then, when the testator died, they would take that for themselves and  
prevent him from bequeathing his third and what was permitted to him  
with respect to his property."  
  
  
Malik said, "If he asks  
permission of his heirs to grant a bequest to an heir while he is well  
and they give him permission, that is not binding on them. The heirs  
can rescind that if they wish. That is because when a man is well, he  
is entitled to all his property and can do what he wishes with it. If  
he wishes, he can spend all of it. He can spend it and give sadaqa  
with it or give it to whomever he likes. His asking permission of his  
heirs is permitted for the heirs, when they give him permission when  
authority over all his property is closed off from him and nothing  
outside of the third is permitted to him, and when they are more  
entitled to the two-thirds of his property than he is himself. That is  
when their permission becomes relevant. If he asks one of the heirs to  
give his inheritance to him when he is dying, and the heir agrees and  
then the dying man does not dispose of it at all, it is returned to  
the one who gave it unless the deceased said to him, 'So-and-so - (one  
of his heirs) - is weak, and I would like you to give him your  
inheritance.' So he gives it to him. That is permitted when the  
deceased specified it for him."  
  
  
Malik said, "When a man gives  
the dying man free use of his share of the inheritance, and the dying  
man distributes some of it and some remains, it is returned to the  
giver, after the man has died."  
  
  
Yahya said that he heard  
Malik speak about someone who made a bequest and mentioned that he had  
given one of his heirs something which he had not taken possession of,  
so the heirs refused to permit that. Malik said, "That gift returns to  
the heirs as inheritance according to the Book of Allah because the  
deceased did not mean that to be taken out of the third and the heirs  
do not have a portion in the third (which the dying man is allowed to  
bequeath)."

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Malik said from Hisham ibn Urwa from his father that an  
effeminate man was with Umm Salama, the wife of the Prophet, may Allah  
bless him and grant him peace. He said to Abdullah ibn Abi Umayya  
while the Messenger of Allah, may Allah bless him and grant him peace,  
was listening. "Abdullah! If Allah grants you victory over Ta'if  
tomorrow, I will lead you to the daughter of Ghailan. She has four  
folds on her front and eight folds on her back." The Messenger of  
Allah, may Allah bless him and grant him peace, said, "This sort of  
man should not enter freely with you." (It was customary to allow men  
with no sexual inclination to enter freely where there were women).

حَدَّثَنِي مَالِكٌ، عَنْ هِشَامِ بْنِ عُرْوَةَ، عَنْ أَبِيهِ، أَنَّ مُخَنَّثًا، كَانَ عِنْدَ أُمِّ سَلَمَةَ زَوْجِ النَّبِيِّ صلى الله عليه وسلم ‏.‏ فَقَالَ لِعَبْدِ اللَّهِ بْنِ أَبِي أُمَيَّةَ وَرَسُولُ اللَّهِ صلى الله عليه وسلم يَسْمَعُ يَا عَبْدَ اللَّهِ إِنْ فَتَحَ اللَّهُ عَلَيْكُمُ الطَّائِفَ غَدًا فَأَنَا أَدُلُّكَ عَلَى ابْنَةِ غَيْلاَنَ فَإِنَّهَا تُقْبِلُ بِأَرْبَعٍ وَتُدْبِرُ بِثَمَانٍ ‏.‏ فَقَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏  
"‏ لاَ يَدْخُلَنَّ هَؤُلاَءِ عَلَيْكُمْ ‏"‏ ‏.‏

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Malik related to me that Yahya ibn Said said that he heard al-  
Qasim ibn Muhammad say, "A woman of the Ansar was married to Umar ibn  
al-Khattab. She bore Asim ibn Umar to him, and then he separated from  
her. Umar came to Quba and found his son Asim playing in the courtyard  
of the mosque. He took him by the arm and placed him before him on his  
mount. The grandmother of the child saw him and argued with Umar about  
the child so they went to Abu Bakr as-Siddiq. Umar said, 'My son.' The  
woman said, 'My son.' Abu Bakr said, 'Do not interfere between a child  
and its mother.' Umar did not repeat his words."  
  
  
Yahya said  
that he heard Malik say, "This is what I would have done in that  
situation."

وَحَدَّثَنِي مَالِكٌ، عَنْ يَحْيَى بْنِ سَعِيدٍ، أَنَّهُ قَالَ سَمِعْتُ الْقَاسِمَ بْنَ مُحَمَّدٍ، يَقُولُ كَانَتْ عِنْدَ عُمَرَ بْنِ الْخَطَّابِ امْرَأَةٌ مِنَ الأَنْصَارِ فَوَلَدَتْ لَهُ عَاصِمَ بْنَ عُمَرَ ثُمَّ إِنَّهُ فَارَقَهَا فَجَاءَ عُمَرُ قُبَاءً فَوَجَدَ ابْنَهُ عَاصِمًا يَلْعَبُ بِفِنَاءِ الْمَسْجِدِ فَأَخَذَ بِعَضُدِهِ فَوَضَعَهُ بَيْنَ يَدَيْهِ عَلَى الدَّابَّةِ فَأَدْرَكَتْهُ جَدَّةُ الْغُلاَمِ فَنَازَعَتْهُ إِيَّاهُ حَتَّى أَتَيَا أَبَا بَكْرٍ الصِّدِّيقَ فَقَالَ عُمَرُ ابْنِي ‏.‏ وَقَالَتِ الْمَرْأَةُ ابْنِي ‏.‏ فَقَالَ أَبُو بَكْرٍ خَلِّ بَيْنَهَا وَبَيْنَهُ ‏.‏ قَالَ فَمَا رَاجَعَهُ عُمَرُ الْكَلاَمَ ‏.‏ قَالَ وَسَمِعْتُ مَالِكًا يَقُولُ وَهَذَا الأَمْرُ الَّذِي آخُذُ بِهِ فِي ذَلِكَ ‏.‏

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Yahya said that he heard Malik speak about a man who bought goods  
- animals or clothes or wares, and the sale was found not to be  
permitted so it was revoked and the one who had taken the goods was  
ordered to return the owner his goods. Malik said, "The owner of the  
goods only has their value on the day they were taken from him, and  
not on the day they are returned to him. That is because the man is  
liable for them from the day he took them and whatever loss is in them  
after that is against him. For that reason, their increase and growth  
are also his. A man may take the goods at a time when they are selling  
well and are in demand, and then have to return them at a time when  
they have fallen in price and no one wants them. For instance, the man  
may take the goods from the other man, and sell them for ten dinars or  
keep them while their price is that. Then he may have to return them  
while their price is only a dinar. He should not go off with nine  
dinars from the man's property. Or perhaps they are taken by the man,  
and he sells them for a dinar or keeps them, while their price is only  
a dinar, then he has to return them, and their value on the day he  
returns them is ten dinars. The one who took them does not have to pay  
nine dinars from his property to the owner. He is only obliged to pay  
the value of what he took possession of on the day it was taken ."  
  
  
He said, "Part of what clarifies this is that when a thief  
steals goods, only their price on the day he stole them is looked at.  
If cutting off the hand is necessary because of it, that is done. If  
the cutting off is delayed, either because the thief is imprisoned  
until his situation is examined or he flees and then is caught, the  
delay of the cutting off of the hand does not make the hadd, which was  
obliged for him on the day he stole, fall from him even if those goods  
become cheap after that. Nor does delay oblige cutting off the hand if  
it was not obliged on the day he took those goods, even if they become  
expensive after that."

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Malik related to me from Yahya ibn Said that Abu'd-Darda wrote to  
Salman al-Farsi, "Come immediately to the holy land." Salman wrote  
back to him, "Land does not make anyone holy. Man's deeds make him  
holy. I have heard that you were put up as a doctor to treat and cure  
people. If you are innocent, then may you have delight! If you are a  
quack, then beware lest you kill a man and enter the Fire!" When  
Abu'd-Darda judged between two men, and they turned from him to go, he  
would look at them and say, "Come back to me, and tell me your story  
again. A quack! By Allah!"  
  
  
Yahya said that he heard Malik  
say, "If someone makes use of a slave, without permission of its  
master, in anything important to him, whose like has a fee, he is  
liable for what befalls the slave if anything befalls him. If the  
slave is safe and his master asks for his wage for what he has done,  
that is the master's right. This is what is done in our community."  
  
  
Yahya said that he heard Malik say about a slave who is part  
free and part enslaved, "His property is suspended in his hand and he  
cannot begin anything with it. He eats from it and clothes himself in  
an approved fashion. If he dies, his property belongs to the one to  
whom he is in slavery."  
  
  
Yahya said that he heard Malik say,  
"The way of doing things in our community is that a parent can take  
his child to account for what he spends on him from the day the child  
has property, cash or goods, if the parent wants that."

حَدَّثَنِي مَالِكٌ، عَنْ يَحْيَى بْنِ سَعِيدٍ، أَنَّ أَبَا الدَّرْدَاءِ، كَتَبَ إِلَى سَلْمَانَ الْفَارِسِيِّ أَنْ هَلُمَّ إِلَى الأَرْضِ الْمُقَدَّسَةِ فَكَتَبَ إِلَيْهِ سَلْمَانُ إِنَّ الأَرْضَ لاَ تُقَدِّسُ أَحَدًا وَإِنَّمَا يُقَدِّسُ الإِنْسَانَ عَمَلُهُ وَقَدْ بَلَغَنِي أَنَّكَ جُعِلْتَ طَبِيبًا تُدَاوِي فَإِنْ كُنْتَ تُبْرِئُ فَنِعِمَّا لَكَ وَإِنْ كُنْتَ مُتَطَبِّبًا فَاحْذَرْ أَنْ تَقْتُلَ إِنْسَانًا فَتَدْخُلَ النَّارَ ‏.‏ فَكَانَ أَبُو الدَّرْدَاءِ إِذَا قَضَى بَيْنَ اثْنَيْنِ ثُمَّ أَدْبَرَا عَنْهُ نَظَرَ إِلَيْهِمَا وَقَالَ ارْجِعَا إِلَىَّ أَعِيدَا عَلَىَّ قِصَّتَكُمَا مُتَطَبِّبٌ وَاللَّهِ ‏.‏ قَالَ وَسَمِعْتُ مَالِكًا يَقُولُ مَنِ اسْتَعَانَ عَبْدًا بِغَيْرِ إِذْنِ سَيِّدِهِ فِي شَىْءٍ لَهُ بَالٌ وَلِمِثْلِهِ إِجَارَةٌ فَهُوَ ضَامِنٌ لِمَا أَصَابَ الْعَبْدَ إِنْ أُصِيبَ الْعَبْدُ بِشَىْءٍ وَإِنْ سَلِمَ الْعَبْدُ فَطَلَبَ سَيِّدُهُ إِجَارَتَهُ لِمَا عَمِلَ فَذَلِكَ لِسَيِّدِهِ وَهُوَ الأَمْرُ عِنْدَنَا ‏.‏ قَالَ وَسَمِعْتُ مَالِكًا يَقُولُ فِي الْعَبْدِ يَكُونُ بَعْضُهُ حُرًّا وَبَعْضُهُ مُسْتَرَقًّا إِنَّهُ يُوقَفُ مَالُهُ بِيَدِهِ وَلَيْسَ لَهُ أَنْ يُحْدِثَ فِيهِ شَيْئًا وَلَكِنَّهُ يَأْكُلُ فِيهِ وَيَكْتَسِي بِالْمَعْرُوفِ فَإِذَا هَلَكَ فَمَالُهُ لِلَّذِي بَقِيَ لَهُ فِيهِ الرِّقُّ ‏.‏ قَالَ وَسَمِعْتُ مَالِكًا يَقُولُ الأَمْرُ عِنْدَنَا أَنَّ الْوَالِدَ يُحَاسِبُ وَلَدَهُ بِمَا أَنْفَقَ عَلَيْهِ مِنْ يَوْمِ يَكُونُ لِلْوَلَدِ مَالٌ - نَاضًّا كَانَ أَوْ عَرْضًا - إِنْ أَرَادَ الْوَالِدُ ذَلِكَ ‏.‏

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Malik related to me from Umar ibn Abd ar-Rahman ibn Dalaf al-  
Muzani from his father that a man from the Juhayna tribe used to buy  
camels before people set out for hajj and sell them at a higher price.  
Then he travelled quickly and used to arrive in Makka before the  
others who set out for hajj. He went bankrupt and his situation was  
put before Umar ibn al-Khattab, who said, "O People! al-Usayfi, al-  
Usayfi of the Juhayna, was satisfied with his deen and his trust  
because it was said of him that he arrived before the others on hajj.  
He used to incur debts which he was not careful to repay, so all of  
his property has been eaten up by it. Whoever has a debt against him,  
let him come to us tomorrow and we will divide his property between  
his creditors. Beware of debts! Their beginning is a worry and their  
end is destitution. "

وَحَدَّثَنِي مَالِكٌ، عَنْ عُمَرَ بْنِ عَبْدِ الرَّحْمَنِ بْنِ دَلاَفٍ الْمُزَنِيِّ، عَنْ أَبِيهِ، أَنَّ رَجُلاً، مِنْ جُهَيْنَةَ كَانَ يَسْبِقُ الْحَاجَّ فَيَشْتَرِي الرَّوَاحِلَ فَيُغْلِي بِهَا ثُمَّ يُسْرِعُ السَّيْرَ فَيَسْبِقُ الْحَاجَّ فَأَفْلَسَ فَرُفِعَ أَمْرُهُ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَ أَمَّا بَعْدُ أَيُّهَا النَّاسُ فَإِنَّ الأُسَيْفِعَ أُسَيْفِعَ جُهَيْنَةَ رَضِيَ مِنْ دِينِهِ وَأَمَانَتِهِ بِأَنْ يُقَالَ سَبَقَ الْحَاجَّ أَلاَ وَإِنَّهُ قَدْ دَانَ مُعْرِضًا فَأَصْبَحَ قَدْ رِينَ بِهِ فَمَنْ كَانَ لَهُ عَلَيْهِ دَيْنٌ فَلْيَأْتِنَا بِالْغَدَاةِ نَقْسِمُ مَالَهُ بَيْنَهُمْ وَإِيَّاكُمْ وَالدَّيْنَ فَإِنَّ أَوَّلَهُ هَمٌّ وَآخِرَهُ حَرْبٌ ‏.‏

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Yahya said that he heard Malik say, "The sunna with us about the  
crime of slaves is that the hand is not cut off for any harm that a  
slave causes a man, or something he pilfers, or something guarded  
which he steals, or hanging dates he cuts down or ruins, or steals.  
That is against the slave's person and does not exceed the price of  
the slave whether it is little or much. If his master wishes to give  
the value of what the slave took or ruined, or pay the blood-price for  
the injury, he pays it and keeps his slave. If he wishes to surrender  
him, he surrenders him, and none of that is against him. The master  
has the option in that."

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Malik related to me from Ibn Shihab from Said ibn al-Musayyab  
that Uthman ibn Affan said, "If someone gives something to his small  
child who is not old enough to look after it himself, and in order  
that his gift might be permitted he makes the gift public and has it  
witnessed, the gift is permitted, even if the father keeps charge of  
it."  
  
  
Malik said, "What is done in our community is that if a  
man gives his small child some gold or silver and then dies and he has  
it in his own keeping, the child has none of it unless the father set  
it aside in coin or placed it with a man to keep for the son. If he  
does that, it is permitted for the son."

حَدَّثَنِي مَالِكٌ، عَنِ ابْنِ شِهَابٍ، عَنْ سَعِيدِ بْنِ الْمُسَيَّبِ، أَنَّ عُثْمَانَ بْنَ عَفَّانَ، قَالَ مَنْ نَحَلَ وَلَدًا لَهُ صَغِيرًا لَمْ يَبْلُغْ أَنْ يَحُوزَ نُحْلَهُ فَأَعْلَنَ ذَلِكَ لَهُ وَأَشْهَدَ عَلَيْهَا فَهِيَ جَائِزَةٌ وَإِنْ وَلِيَهَا أَبُوهُ ‏.‏ قَالَ مَالِكٌ الأَمْرُ عِنْدَنَا أَنَّ مَنْ نَحَلَ ابْنًا لَهُ صَغِيرًا ذَهَبًا أَوْ وَرِقًا ثُمَّ هَلَكَ وَهُوَ يَلِيهِ إِنَّهُ لاَ شَىْءَ لِلاِبْنِ مِنْ ذَلِكَ إِلاَّ أَنْ يَكُونَ الأَبُ عَزَلَهَا بِعَيْنِهَا أَوْ دَفَعَهَا إِلَى رَجُلٍ وَضَعَهَا لاِبْنِهِ عِنْدَ ذَلِكَ الرَّجُلِ فَإِنْ فَعَلَ ذَلِكَ فَهُوَ جَائِزٌ لِلاِبْنِ ‏.‏

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