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

Malik related to me from Nafi that Abdullah ibn Umar said, "A  
mukatab is a slave as long as any of his kitaba remains to be paid."

حَدَّثَنِي مَالِكٌ، عَنْ نَافِعٍ، أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ، كَانَ يَقُولُ الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ مِنْ كِتَابَتِهِ شَىْءٌ ‏.‏

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Malik related to me that he had heard that Urwa ibn az-Zubayr and  
Sulayman ibn Yasar said, "The mukatab is a slave as long as any of his  
kitaba remains to be paid."  
  
  
Malik said, "This is my opinion  
as well."  
  
  
Malik said, "If a mukatab dies and leaves more  
property than what remains to be paid of his kitaba and he has  
children who were born during the time of his kitaba or whose kitaba  
has been written as well, they inherit any property that remains after  
the kitaba has been paid."

وَحَدَّثَنِي مَالِكٌ، أَنَّهُ بَلَغَهُ أَنَّ عُرْوَةَ بْنَ الزُّبَيْرِ، وَسُلَيْمَانَ بْنَ يَسَارٍ، كَانَا يَقُولاَنِ الْمُكَاتَبُ عَبْدٌ مَا بَقِيَ عَلَيْهِ مِنْ كِتَابَتِهِ شَىْءٌ ‏.‏ قَالَ مَالِكٌ وَهُو رَأْيِي ‏.‏ قَالَ مَالِكٌ فَإِنْ هَلَكَ الْمُكَاتَبُ وَتَرَكَ مَالاً أَكْثَرَ مِمَّا بَقِيَ عَلَيْهِ مِنْ كِتَابَتِهِ وَلَهُ وَلَدٌ وُلِدُوا فِي كِتَابَتِهِ أَوْ كَاتَبَ عَلَيْهِمْ وَرِثُوا مَا بَقِيَ مِنَ الْمَالِ بَعْدَ قَضَاءِ كِتَابَتِهِ ‏.‏

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Malik related to me from Humayd ibn Qays al-Makki that a son of  
al-Mutawakkil had a mukatab who died at Makka and left (enough to pay)  
the rest of his kitaba and he owed some debts to people. He also left  
a daughter. The governor of Makka was not certain about how to judge  
in the case, so he wrote to Abd al-Malik ibn Marwan to ask him about  
it. Abd al-Malik wrote to him, "Begin with the debts owed to people,  
and then pay what remains of his kitaba. Then divide what remains of  
the property between the daughter and the master."  
  
  
Malik  
said, "What is done among us is that the master of a slave does not  
have to give his slave a kitaba if he asks for it. I have not heard of  
any of the Imams forcing a man to give a kitaba to his slave. I heard  
that one of the people of knowledge, when someone asked about that and  
mentioned that Allah the Blessed, the Exalted, said, 'Give them their  
kitaba, if you know some good in them' (Sura 24 ayat 33) recited these  
two ayats, 'When you are free of the state of ihram, then hunt for  
game.' (Sura 5 ayat 3) 'When the prayer is finished, scatter in the  
land and seek Allah's favour.' " (Sura 62 ayat 10)  
  
  
Malik  
commented, "It is a way of doing things for which Allah, the Mighty,  
the Majestic, has given permission to people, and it is not obligatory  
for them." Malik said, "I heard one of the people of knowledge say  
about the word of Allah, the Blessed, the Exalted, 'Give them of the  
wealth which Allah has given you,' that it meant that a man give his  
slave a kitaba and then reduce the end of his kitaba for him by some  
specific amount."  
  
  
Malik said, "This is what I have heard from  
the people of knowledge and what I see people doing here."  
  
  
Malik said, "I have heard that Abdullah ibn Umar gave one of his  
slaves his kitaba for 35,000 dirhams, and then reduced the end of his  
kitaba by 5,000 dirhams."  
  
  
Malik said, "What is done among us  
is that when a master gives a mukatab his kitaba, the mukatab's  
property goes with him but his children do not go with him unless he  
stipulates that in his kitaba."  
  
  
Yahya said, "I heard Malik  
say that if a mukatab whose master had given him a kitaba had a slave-  
girl who was pregnant by him, and neither he nor his master knew that  
on the day he was given his kitaba, the child did not follow him  
because he was not included in the kitaba. He belonged to the master.  
As for the slave-girl, she belonged to the mukatab because she was his  
property."  
  
  
Malik said that if a man and his wife's son (by  
another husband) inherited a mukatab from the wife and the mukatab  
died before he had completed his kitaba, they divided his inheritance  
between them according to the Book of Allah. If the slave paid his  
kitaba and then died, his inheritance went to the son of the woman,  
and the husband had nothing of his inheritance.  
  
  
Malik said  
that if a mukatab gave his own slave a kitaba, the situation was  
looked at. If he wanted to do his slave a favour and it was obvious by  
his making it easy for him, that was not permitted. If he was giving  
him a kitaba from desire to find money to pay off his own kitaba, that  
was permitted for him.  
  
  
Malik said that if a man had  
intercourse with a mukataba of his and she became pregnant by him, she  
had an option. If she liked she could be an umm walad. If she wished,  
she could confirm her kitaba. If she did not conceive, she still had  
her kitaba.  
  
  
Malik said, "The generally agreed on way of doing  
things among us about a slave who is owned by two men is that one of  
them does not give a kitaba for his share, whether or not his  
companion gives him permission to do so, unless they both write the  
kitaba together, because that alone would effect setting him free. If  
the slave were to fulfil what he had agreed on to free half of  
himself, and then the one who had given a kitaba for half of him was  
not obliged to complete his setting free, that would be in opposition  
to the words of the Messenger of Allah, may Allah bless him and grant  
him peace. 'If someone frees his share in a slave and has enough money  
to cover the full price of the slave, justly evaluated for him, he  
must give his partners their shares, so the slave is completely free .  
' "  
  
  
Malik said, "If he is not aware of that until the mukatab  
has met the terms or before he has met them the owner who has written  
him the kitaba returns what he has taken from the mukatab to him, and  
then he and his partner divide him according to their original shares  
and the kitaba is invalid. He is the slave of both of them in his  
original state."  
  
  
Malik spoke about a mukatab who was owned by  
two men and one of them granted him a delay in the payment of the  
right which he was owed, and the other refused to defer it, and so the  
one who refused to defer the payment exacted his part of the due.  
Malik said that if the mukatab then died and left property which did  
not complete his kitaba, "They divide it according to what they are  
still owed by him. Each of them takes according to his share. If the  
mukatab leaves more than his kitaba, each of them takes what remains  
to them of the kitaba, and what remains after that is divided equally  
between them. If the mukatab is unable to pay his kitaba fully and the  
one who did not allow him to defer his payment has exacted more than  
his associate did, the slave is still divided equally between them,  
and he does not return to his associates the excess of what he has  
exacted, because he only exacted his right with the permission of his  
associate. If one of them remits what is owed to him and then his  
associate exacts part of what he is owed by him and then the mukatab  
is unable to pay, he belongs to both of them. And the one who has  
exacted something does not return anything because he only demanded  
what he was owed. That is like the debt of two men in one writing  
against one man. One of them grants him time to pay and the other is  
greedy and exacts his due. Then the debtor goes bankrupt. The one who  
exacted his due does not have to return any of what he took."

وَحَدَّثَنِي مَالِكٌ، عَنْ حُمَيْدِ بْنِ قَيْسٍ الْمَكِّيِّ، أَنَّ مُكَاتَبًا، كَانَ لاِبْنِ الْمُتَوَكِّلِ هَلَكَ بِمَكَّةَ وَتَرَكَ عَلَيْهِ بَقِيَّةً مِنْ كِتَابَتِهِ وَدُيُونًا لِلنَّاسِ وَتَرَكَ ابْنَتَهُ فَأَشْكَلَ عَلَى عَامِلِ مَكَّةَ الْقَضَاءُ فِيهِ فَكَتَبَ إِلَى عَبْدِ الْمَلِكِ بْنِ مَرْوَانَ يَسْأَلُهُ عَنْ ذَلِكَ فَكَتَبَ إِلَيْهِ عَبْدُ الْمَلِكِ أَنِ ابْدَأْ بِدُيُونِ النَّاسِ ثُمَّ اقْضِ مَا بَقِيَ مِنْ كِتَابَتِهِ ثُمَّ اقْسِمْ مَا بَقِيَ مِنْ مَالِهِ بَيْنَ ابْنَتِهِ وَمَوْلاَهُ ‏.‏ قَالَ مَالِكٌ الأَمْرُ عِنْدَنَا أَنَّهُ لَيْسَ عَلَى سَيِّدِ الْعَبْدِ أَنْ يُكَاتِبَهُ إِذَا سَأَلَهُ ذَلِكَ وَلَمْ أَسْمَعْ أَنَّ أَحَدًا مِنَ الأَئِمَّةِ أَكْرَهَ رَجُلاً عَلَى أَنْ يُكَاتِبَ عَبْدَهُ وَقَدْ سَمِعْتُ بَعْضَ أَهْلِ الْعِلْمِ إِذَا سُئِلَ عَنْ ذَلِكَ فَقِيلَ لَهُ إِنَّ اللَّهَ تَبَارَكَ وَتَعَالَى يَقُولُ ‏{‏فَكَاتِبُوهُمْ إِنْ عَلِمْتُمْ فِيهِمْ خَيْرًا‏}‏ ‏.‏ يَتْلُو هَاتَيْنِ الآيَتَيْنِ ‏{‏وَإِذَا حَلَلْتُمْ فَاصْطَادُوا‏}‏ ‏.‏ ‏{‏فَإِذَا قُضِيَتِ الصَّلاَةُ فَانْتَشِرُوا فِي الأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ‏}‏ ‏.‏ قَالَ مَالِكٌ وَإِنَّمَا ذَلِكَ أَمْرٌ أَذِنَ اللَّهُ عَزَّ وَجَلَّ فِيهِ لِلنَّاسِ وَلَيْسَ بِوَاجِبٍ عَلَيْهِمْ ‏.‏ قَالَ مَالِكٌ وَسَمِعْتُ بَعْضَ أَهْلِ الْعِلْمِ يَقُولُ فِي قَوْلِ اللَّهِ تَبَارَكَ وَتَعَالَى ‏{‏وَآتُوهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَاكُمْ‏}‏ ‏.‏ إِنَّ ذَلِكَ أَنْ يُكَاتِبَ الرَّجُلُ غُلاَمَهُ ثُمَّ يَضَعُ عَنْهُ مِنْ آخِرِ كِتَابَتِهِ شَيْئًا مُسَمًّى ‏.‏ قَالَ مَالِكٌ فَهَذَا الَّذِي سَمِعْتُ مِنْ أَهْلِ الْعِلْمِ وَأَدْرَكْتُ عَمَلَ النَّاسِ عَلَى ذَلِكَ عِنْدَنَا ‏.‏   
 قَالَ مَالِكٌ وَقَدْ بَلَغَنِي أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ كَاتَبَ غُلاَمًا لَهُ عَلَى خَمْسَةٍ وَثَلاَثِينَ أَلْفَ دِرْهَمٍ ثُمَّ وَضَعَ عَنْهُ مِنْ آخِرِ كِتَابَتِهِ خَمْسَةَ آلاَفِ دِرْهَمٍ ‏.‏ قَالَ مَالِكٌ الأَمْرُ عِنْدَنَا أَنَّ الْمُكَاتَبَ إِذَا كَاتَبَهُ سَيِّدُهُ تَبِعَهُ مَالُهُ وَلَمْ يَتْبَعْهُ وَلَدُهُ إِلاَّ أَنْ يَشْتَرِطَهُمْ فِي كِتَابَتِهِ ‏.‏ قَالَ يَحْيَى سَمِعْتُ مَالِكًا يَقُولُ فِي الْمُكَاتَبِ يُكَاتِبُهُ سَيِّدُهُ وَلَهُ جَارِيَةٌ بِهَا حَبَلٌ مِنْهُ لَمْ يَعْلَمْ بِهِ هُوَ وَلاَ سَيِّدُهُ يَوْمَ كِتَابَتِهِ فَإِنَّهُ لاَ يَتْبَعُهُ ذَلِكَ الْوَلَدُ لأَنَّهُ لَمْ يَكُنْ دَخَلَ فِي كِتَابَتِهِ وَهُوَ لِسَيِّدِهِ فَأَمَّا الْجَارِيَةُ فَإِنَّهَا لِلْمُكَاتَبِ لأَنَّهَا مِنْ مَالِهِ ‏.‏ قَالَ مَالِكٌ فِي رَجُلٍ وَرِثَ مُكَاتَبًا مِنِ امْرَأَتِهِ هُوَ وَابْنُهَا إِنَّ الْمُكَاتَبَ إِنْ مَاتَ قَبْلَ أَنْ يَقْضِيَ كِتَابَتَهُ اقْتَسَمَا مِيرَاثَهُ عَلَى كِتَابِ اللَّهِ وَإِنْ أَدَّى كِتَابَتَهُ ثُمَّ مَاتَ فَمِيرَاثُهُ لاِبْنِ الْمَرْأَةِ وَلَيْسَ لِلزَّوْجِ مِنْ مِيرَاثِهِ شَىْءٌ ‏.‏ قَالَ مَالِكٌ فِي الْمُكَاتَبِ يُكَاتِبُ عَبْدَهُ قَالَ يُنْظَرُ فِي ذَلِكَ فَإِنْ كَانَ إِنَّمَا أَرَادَ الْمُحَابَاةَ لِعَبْدِهِ وَعُرِفَ ذَلِكَ مِنْهُ بِالتَّخْفِيفِ عَنْهُ فَلاَ يَجُوزُ ذَلِكَ وَإِنْ كَانَ إِنَّمَا كَاتَبَهُ عَلَى وَجْهِ الرَّغْبَةِ وَطَلَبِ الْمَالِ وَابْتِغَاءِ الْفَضْلِ وَالْعَوْنِ عَلَى كِتَابَتِهِ فَذَلِكَ جَائِزٌ لَهُ ‏.‏ قَالَ مَالِكٌ فِي رَجُلٍ وَطِئَ مُكَاتَبَةً لَهُ إِنَّهَا إِنْ حَمَلَتْ فَهِيَ بِالْخِيَارِ إِنْ شَاءَتْ كَانَتْ أُمَّ وَلَدٍ وَإِنْ شَاءَتْ قَرَّتْ عَلَى كِتَابَتِهَا فَإِنْ لَمْ تَحْمِلْ فَهِيَ عَلَى كِتَابَتِهَا ‏.‏ قَالَ مَالِكٌ الأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَنَا فِي الَعَبْدِ يَكُونُ بَيْنَ الرَّجُلَيْنِ إِنَّ أَحَدَهُمَا لاَ يُكَاتِبُ نَصِيبَهُ مِنْهُ أَذِنَ لَهُ بِذَلِكَ صَاحِبُهُ أَوْ لَمْ يَأْذَنْ إِلاَّ أَنْ يُكَاتِبَاهُ جَمِيعًا لأَنَّ ذَلِكَ يَعْقِدُ لَهُ عِتْقًا وَيَصِيرُ إِذَا أَدَّى الْعَبْدُ مَا كُوتِبَ عَلَيْهِ إِلَى أَنْ يَعْتِقَ نِصْفُهُ وَلاَ يَكُونُ عَلَى الَّذِي كَاتَبَ بَعْضَهُ أَنْ يَسْتَتِمَّ عِتْقَهُ فَذَلِكَ خِلاَفُ مَا قَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏"‏ مَنْ أَعْتَقَ شِرْكًا لَهُ فِي عَبْدٍ قُوِّمَ عَلَيْهِ قِيمَةَ الْعَدْلِ ‏"‏ ‏.‏ قَالَ مَالِكٌ فَإِنْ جَهِلَ ذَلِكَ حَتَّى يُؤَدِّيَ الْمُكَاتَبُ أَوْ قَبْلَ أَنْ يُؤَدِّيَ رَدَّ إِلَيْهِ الَّذِي كَاتَبَهُ مَا قَبَضَ مِنَ الْمُكَاتَبِ فَاقْتَسَمَهُ هُوَ وَشَرِيكُهُ عَلَى قَدْرِ حِصَصِهِمَا وَبَطَلَتْ كِتَابَتُهُ وَكَانَ عَبْدًا لَهُمَا عَلَى حَالِهِ الأُولَى ‏.‏ قَالَ مَالِكٌ فِي مُكَاتَبٍ بَيْنَ رَجُلَيْنِ فَأَنْظَرَهُ أَحَدُهُمَا بِحَقِّهِ الَّذِي عَلَيْهِ وَأَبَى الآخَرُ أَنْ يُنْظِرَهُ فَاقْتَضَى الَّذِي أَبَى أَنْ يُنْظِرَهُ بَعْضَ حَقِّهِ ثُمَّ مَاتَ الْمُكَاتَبُ وَتَرَكَ مَالاً لَيْسَ فِيهِ وَفَاءٌ مِنْ كِتَابَتِهِ قَالَ مَالِكٌ يَتَحَاصَّانِ بِقَدْرِ مَا بَقِيَ لَهُمَا عَلَيْهِ يَأْخُذُ كُلُّ وَاحِدٍ مِنْهُمَا بِقَدْرِ حِصَّتِهِ فَإِنْ تَرَكَ الْمُكَاتَبُ فَضْلاً عَنْ كِتَابَتِهِ أَخَذَ كُلُّ وَاحِدٍ مِنْهُمَا مَا بَقِيَ مِنَ الْكِتَابَةِ وَكَانَ مَا بَقِيَ بَيْنَهُمَا بِالسَّوَاءِ فَإِنْ عَجَزَ الْمُكَاتَبُ وَقَدِ اقْتَضَى الَّذِي لَمْ يُنْظِرْهُ أَكْثَرَ مِمَّا اقْتَضَى صَاحِبُهُ كَانَ الْعَبْدُ بَيْنَهُمَا نِصْفَيْنِ وَلاَ يَرُدُّ عَلَى صَاحِبِهِ فَضْلَ مَا اقْتَضَى لأَنَّهُ إِنَّمَا اقْتَضَى الَّذِي لَهُ بِإِذْنِ صَاحِبِهِ وَإِنْ وَضَعَ عَنْهُ أَحَدُهُمَا الَّذِي لَهُ ثُمَّ اقْتَضَى صَاحِبُهُ بَعْضَ الَّذِي لَهُ عَلَيْهِ ثُمَّ عَجَزَ فَهُوَ بَيْنَهُمَا وَلاَ يَرُدُّ الَّذِي اقْتَضَى عَلَى صَاحِبِهِ شَيْئًا لأَنَّهُ إِنَّمَا اقْتَضَى الَّذِي لَهُ عَلَيْهِ وَذَلِكَ بِمَنْزِلَةِ الدَّيْنِ لِلرَّجُلَيْنِ بِكِتَابٍ وَاحِدٍ عَلَى رَجُلٍ وَاحِدٍ فَيُنْظِرُهُ أَحَدُهُمَا وَيَشِحُّ الآخَرُ فَيَقْتَضِي بَعْضَ حَقِّهِ ثُمَّ يُفْلِسُ الْغَرِيمُ فَلَيْسَ عَلَى الَّذِي اقْتَضَى أَنْ يَرُدَّ شَيْئًا مِمَّا أَخَذَ ‏.

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Malik said, "The generally agreed on way of doing things among us  
is that when slaves write their kitaba together in one kitaba, and  
some are responsible for others, and they are not reduced anything by  
the death of one of the responsible ones, and then one of them says,  
'I can't do it,' and gives up, his companions can use him in whatever  
work he can do and they help each other with that in their kitaba  
until they are freed, if they are freed, or remain slaves if they  
remain slaves."  
  
  
Malik said, "The generally agreed on way of  
doing things among us is that when a master gives a slave his kitaba,  
it is not permitted for the master to let anyone assume the  
responsibility for the kitaba of his slave if the slave dies or is  
incapable. This is not part of the sunna of the muslims. That is  
because when a man assumes responsibility to the master of a mukatab  
for what the mukatab owes of his kitaba, and then the master of the  
mukatab pursues that from the one who assumes the responsibility, he  
takes his money falsely. It is not as if he is buying the mukatab, so  
that what he gives is part of the price of something that is his, and  
neither is the mukatab being freed so that the price established for  
him buys his inviolability as a free man. If the mukatab is unable to  
meet the payments he reverts to his master and is his slave. That is  
because kitaba is not a fixed debt which can be assumed by the master  
of the mukatab. It is something which, when it is paid by the mukatab,  
sets him free. If the mukatab dies and has a debt, his master is not  
one of the creditors for what remains unpaid of the kitaba. The  
creditors have precedence over the master. If the mukatab cannot meet  
the payments, and he owes debts to people, he reverts to being a slave  
owned by his master and the debts to the people are the liability of  
the mukatab. The creditors do not enter with the master into any share  
of the price of his person."  
  
  
Malik said, "When people are  
written together in one kitaba and there is no kinship between them by  
which they inherit from each other, and some of them are responsible  
for others, then none of them are freed before the others until all  
the kitaba has been paid. If one of them dies and leaves property and  
it is more than all of what is against them, it pays all that is  
against them . The excess of the property goes to the master, and none  
of those who have been written in the kitaba with the deceased have  
any of the excess. The master's claims are overshadowed by their  
claims for the portions which remain against them of the kitaba which  
can be fulfilled from the property of the deceased, because the  
deceased had assumed their responsibility and they must use his  
property to pay for their freedom. If the deceased mukatab has a free  
child not born in kitaba and who was not written in the kitaba, it  
does not inherit from him because the mukatab was not freed until he  
died."

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Malik related to me that he heard that Umm Salama, the wife of  
the Prophet, may Allah bless him and grant him peace, made a  
settlement with her mukatab for an agreed amount of gold and silver.  
  
  
Malik said, "The generally agreed on way of doing things  
among us in the case of a mukatab who is shared by two partners, is  
that one of them cannot make a settlement with him for an agreed price  
according to his portion without the consent of his partner. That is  
because the slave and his property are owned by both of them, and so  
one of them is not permitted to take any of the property except with  
the consent of his partner. If one of them settled with the mukatab  
and his partner did not, and he took the agreed price, and then the  
mukatab died while he had property or was unable to pay, the one who  
settled would not have anything of the mukatab's property and he could  
not return that for which he made settlement so that his right to the  
slave's person would return to him. However, when someone settles with  
a mukatab with the permission of his partner and then the mukatab is  
unable to pay, it is preferable that the one who broke with him return  
what he has taken from the mukatab for the severance and he can have  
back his portion of the mukatab. He can do that. If the mukatab dies  
and leaves property, the partner who has kept hold of the kitaba is  
paid in full the amount of the kitaba which remains to him against the  
mukatab from the mukatab's property. Then what remains of property of  
the mukatab is between the partner who broke with him and his partner,  
according to their shares in the mukatab. If one of the partners  
breaks off with him and the other keeps the kitaba, and the mukatab is  
unable to pay, it is said to the partner who settled with him, 'If you  
wish to give your partner half of what you took so the slave is  
divided between you, then do so. If you refuse, then all of the slave  
belongs to the one who held on to possession of the slave.' "  
  
  
Malik spoke about a mukatab who was shared between two men and one of  
them made a settlement with him with the permission of his partner.  
Then the one who retained possession of the slave demanded the like of  
that for which his partner had settled or more than that and the  
mukatab could not pay it. He said, "The mukatab is shared between them  
because the man has only demanded what is owed to him. If he demands  
less than what the one who settled with him took and the mukatab can  
not manage that, and the one who settled with him prefers to return to  
his partner half of what he took so the slave is divided in halves  
between them, he can do that. If he refuses then all of the slave  
belongs to the one who did not settle with him. If the mukatab dies  
and leaves property, and the one who settled with him prefers to  
return to his companion half of what he has taken so the inheritance  
is divided between them, he can do that. If the one who has kept the  
kitaba takes the like of what the one who has settled with him took,  
or more, the inheritance is between them according to their shares in  
the slave because he is only taking his right."  
  
  
Malik spoke  
about a mukatab who was shared between two men and one of them made a  
settlement with him for half of what was due to him with the  
permission of his partner, and then the one who retained possession of  
the slave took less than what his partner settled with him for and the  
mukatab was unable to pay. He said, "If the one who made a settlement  
with the slave prefers to return half of what he was awarded to his  
partner, the slave is divided between them. If he refuses to return  
it, the one who retained possession has the portion of the share for  
which his partner made a settlement with the mukatab."  
  
  
Malik  
said, "The explanation of that is that the slave is divided in two  
halves between them. They write him a kitaba together and then one of  
them makes a settlement with the mukatab for half his due with the  
permission of his partner. That is a fourth of all the slave. Then the  
mukatab is unable to continue, so it is said to the one who settled  
with him, 'If you wish, return to your partner half of what you were  
awarded and the slave is divided equally between you.' If he refuses,  
the one who held to the kitaba takes in full the fourth of his partner  
for which he made settlement with the mukatab. He had half the slave,  
so that now gives him three-fourths of the slave. The one who broke  
off has a fourth of the slave because he refused to return the  
equivalent of the fourth share for which he settled."  
  
  
Malik  
spoke about a mukatab whose master made a settlement with him and set  
him free and what remained of his severance was written against him as  
debt, then the mukatab died and people had debts against him. He said,  
"His master does not share with the creditors because of what he is  
owed from the severance. The creditors begin first."  
  
  
Malik  
said, "A mukatab cannot break with his master when he owes debts to  
people. He would be set free and have nothing because the people who  
hold the debts are more entitled to his property than his master. That  
is not permitted for him."  
  
  
Malik said, "According to the way  
things are done among us, there is no harm if a man gives a kitaba to  
his slave and settles with him for gold and reduces what he is owed of  
the kitaba provided that only the gold is paid immediately. Whoever  
disapproves of that does so because he puts it in the category of a  
debt which a man has against another man for a set term. He gives him  
a reduction and he pays it immediately. This is not like that debt.  
The breaking of the mukatab with his master is dependent on his giving  
money to speed up the setting free. Inheritance, testimony and the  
hudud are obliged for him and the inviolability of being set free is  
established for him. He is not buying dirhams for dirhams or gold for  
gold. Rather it is like a man who having said to his slave, 'Bring me  
such-and-such an amount of dinars and you are free', then reduces that  
for him, saying, 'If you bring me less than that, you are free.' That  
is not a fixed debt. Had it been a fixed debt, the master would have  
shared with the creditors of the mukatab when he died or went  
bankrupt. His claim on the property of the mukatab would join theirs."

حَدَّثَنِي مَالِكٌ، أَنَّهُ بَلَغَهُ أَنَّ أُمَّ سَلَمَةَ، زَوْجَ النَّبِيِّ صلى الله عليه وسلم كَانَتْ تُقَاطِعُ مُكَاتَبِيهَا بِالذَّهَبِ وَالْوَرِقِ ‏.‏ قَالَ مَالِكٌ الأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَنَا فِي الْمَكَاتَبِ يَكُونُ بَيْنَ الشَّرِيكَيْنِ فَإِنَّهُ لاَ يَجُوزُ لأَحَدِهِمَا أَنْ يُقَاطِعَهُ عَلَى حِصَّتِهِ إِلاَّ بِإِذْنِ شَرِيكِهِ وَذَلِكَ أَنَّ الْعَبْدَ وَمَالَهُ بَيْنَهُمَا فَلاَ يَجُوزُ لأَحَدِهِمَا أَنْ يَأْخُذَ شَيْئًا مِنْ مَالِهِ إِلاَّ بِإِذْنِ شَرِيكِهِ وَلَوْ قَاطَعَهُ أَحَدُهُمَا دُونَ صَاحِبِهِ ثُمَّ حَازَ ذَلِكَ ثُمَّ مَاتَ الْمُكَاتَبُ وَلَهُ مَالٌ أَوْ عَجَزَ لَمْ يَكُنْ لِمَنْ قَاطَعَهُ شَىْءٌ مِنْ مَالِهِ وَلَمْ يَكُنْ لَهُ أَنْ يَرُدَّ مَا قَاطَعَهُ عَلَيْهِ وَيَرْجِعَ حَقُّهُ فِي رَقَبَتِهِ وَلَكِنْ مَنْ قَاطَعَ مُكَاتَبًا بِإِذْنِ شَرِيكِهِ ثُمَّ عَجَزَ الْمُكَاتَبُ فَإِنْ أَحَبَّ الَّذِي قَاطَعَهُ أَنْ يَرُدَّ الَّذِي أَخَذَ مِنْهُ مِنَ الْقَطَاعَةِ وَيَكُونُ عَلَى نَصِيبِهِ مِنْ رَقَبَةِ الْمُكَاتَبِ كَانَ ذَلِكَ لَهُ وَإِنْ مَاتَ الْمُكَاتَبُ وَتَرَكَ مَالاً اسْتَوْفَى الَّذِي بَقِيَتْ لَهُ الْكِتَابَةُ حَقَّهُ الَّذِي بَقِيَ لَهُ عَلَى الْمُكَاتَبِ مِنْ مَالِهِ ثُمَّ كَانَ مَا بَقِيَ مِنْ مَالِ الْمُكَاتَبِ بَيْنَ الَّذِي قَاطَعَهُ وَبَيْنَ شَرِيكِهِ عَلَى قَدْرِ حِصَصِهِمَا فِي الْمُكَاتَبِ وَإِنْ كَانَ أَحَدُهُمَا قَاطَعَهُ وَتَمَاسَكَ صَاحِبُهُ بِالْكِتَابَةِ ثُمَّ عَجَزَ الْمُكَاتَبُ قِيلَ لِلَّذِي قَاطَعَهُ إِنْ شِئْتَ أَنْ تَرُدَّ عَلَى صَاحِبِكَ نِصْفَ الَّذِي أَخَذْتَ وَيَكُونُ الْعَبْدُ بَيْنَكُمَا شَطْرَيْنِ وَإِنْ أَبَيْتَ فَجَمِيعُ الْعَبْدِ لِلَّذِي تَمَسَّكَ بِالرِّقِّ خَالِصًا ‏.‏ قَالَ مَالِكٌ فِي الْمُكَاتَبِ يَكُونُ بَيْنَ الرَّجُلَيْنِ فَيُقَاطِعُهُ أَحَدُهُمَا بِإِذْنِ صَاحِبِهِ ثُمَّ يَقْتَضِي الَّذِي تَمَسَّكَ بِالرِّقِّ مِثْلَ مَا قَاطَعَ عَلَيْهِ صَاحِبُهُ أَوْ أَكْثَرَ مِنْ ذَلِكَ ثُمَّ يَعْجِزُ الْمُكَاتَبُ ‏.‏ قَالَ مَالِكٌ فَهُوَ بَيْنَهُمَا لأَنَّهُ إِنَّمَا اقْتَضَى الَّذِي لَهُ عَلَيْهِ وَإِنِ اقْتَضَى أَقَلَّ مِمَّا أَخَذَ الَّذِي قَاطَعَهُ ثُمَّ عَجَزَ الْمُكَاتَبُ فَأَحَبَّ الَّذِي قَاطَعَهُ أَنَّ يَرُدَّ عَلَى صَاحِبِهِ نِصْفَ مَا تَفَضَّلَهُ بِهِ وَيَكُونُ الْعَبْدُ بَيْنَهُمَا نِصْفَيْنِ فَذَلِكَ لَهُ وَإِنْ أَبَى فَجَمِيعُ الْعَبْدِ لِلَّذِي لَمْ يُقَاطِعْهُ وَإِنْ مَاتَ الْمُكَاتَبُ وَتَرَكَ مَالاً فَأَحَبَّ الَّذِي قَاطَعَهُ أَنْ يَرُدَّ عَلَى صَاحِبِهِ نِصْفَ مَا تَفَضَّلَهُ بِهِ وَيَكُونُ الْمِيرَاثُ بَيْنَهُمَا فَذَلِكَ لَهُ وَإِنْ كَانَ الَّذِي تَمَسَّكَ بِالْكِتَابَةِ قَدْ أَخَذَ مِثْلَ مَا قَاطَعَ عَلَيْهِ شَرِيكُهُ أَوْ أَفْضَلَ فَالْمِيرَاثُ بَيْنَهُمَا بِقَدْرِ مِلْكِهِمَا لأَنَّهُ إِنَّمَا أَخَذَ حَقَّهُ ‏.‏ قَالَ مَالِكٌ فِي الْمُكَاتَبِ يَكُونُ بَيْنَ الرَّجُلَيْنِ فَيُقَاطِعُ أَحَدُهُمَا عَلَى نِصْفِ حَقِّهُ بِإِذْنِ صَاحِبِهِ ثُمَّ يَقْبِضُ الَّذِي تَمَسَّكَ بِالرِّقِّ أَقَلَّ مِمَّا قَاطَعَ عَلَيْهِ صَاحِبُهُ ثُمَّ يَعْجِزُ الْمُكَاتَبُ ‏.‏ قَالَ مَالِكٌ إِنْ أَحَبَّ الَّذِي قَاطَعَ الْعَبْدَ أَنْ يَرُدَّ عَلَى صَاحِبِهِ نِصْفَ مَا تَفَضَّلَهُ بِهِ كَانَ الْعَبْدُ بَيْنَهُمَا شَطْرَيْنِ وَإِنْ أَبَى أَنْ يَرُدَّ فَلِلَّذِي تَمَسَّكَ بِالرِّقِّ حِصَّةُ صَاحِبِهِ الَّذِي كَانَ قَاطَعَ عَلَيْهِ الْمُكَاتَبَ ‏.‏ قَالَ مَالِكٌ وَتَفْسِيرُ ذَلِكَ أَنَّ الْعَبْدَ يَكُونُ بَيْنَهُمَا شَطْرَيْنِ فَيُكَاتِبَانِهِ جَمِيعًا ثُمَّ يُقَاطِعُ أَحَدُهُمَا الْمُكَاتَبَ عَلَى نِصْفِ حَقِّهِ بِإِذْنِ صَاحِبِهِ وَذَلِكَ الرُّبُعُ مِنْ جَمِيعِ الْعَبْدِ ثُمَّ يَعْجِزُ الْمُكَاتَبُ فَيُقَالُ لِلَّذِي قَاطَعَهُ إِنْ شِئْتَ فَارْدُدْ عَلَى صَاحِبِكَ نِصْفَ مَا فَضَلْتَهُ بِهِ وَيَكُونُ الْعَبْدُ بَيْنَكُمَا شَطْرَيْنِ ‏.‏ وَإِنْ أَبَى كَانَ لِلَّذِي تَمَسَّكَ بِالْكِتَابَةِ رُبُعُ صَاحِبِهِ الَّذِي قَاطَعَ الْمُكَاتَبَ عَلَيْهِ خَالِصًا وَكَانَ لَهُ نِصْفُ الْعَبْدِ فَذَلِكَ ثَلاَثَةُ أَرْبَاعِ الْعَبْدِ وَكَانَ لِلَّذِي قَاطَعَ رُبُعُ الْعَبْدِ لأَنَّهُ أَبَى أَنْ يَرُدَّ ثَمَنَ رُبُعِهِ الَّذِي قَاطَعَ عَلَيْهِ ‏.‏ قَالَ مَالِكٌ فِي الْمُكَاتَبِ يُقَاطِعُهُ سَيِّدُهُ فَيَعْتِقُ وَيَكْتُبُ عَلَيْهِ مَا بَقِيَ مِنْ قَطَاعَتِهِ دَيْنًا عَلَيْهِ ثُمَّ يَمُوتُ الْمُكَاتَبُ وَعَلَيْهِ دَيْنٌ لِلنَّاسِ ‏.‏ قَالَ مَالِكٌ فَإِنَّ سَيِّدَهُ لاَ يُحَاصُّ غُرَمَاءَهُ بِالَّذِي عَلَيْهِ مِنْ قَطَاعَتِهِ وَلِغُرَمَائِهِ أَنْ يُبَدَّءُوا عَلَيْهِ ‏.‏ قَالَ مَالِكٌ لَيْسَ لِلْمُكَاتَبِ أَنْ يُقَاطِعَ سَيِّدَهُ إِذَا كَانَ عَلَيْهِ دَيْنٌ لِلنَّاسِ فَيَعْتِقُ وَيَصِيرُ لاَ شَىْءَ لَهُ لأَنَّ أَهْلَ الدَّيْنِ أَحَقُّ بِمَالِهِ مِنْ سَيِّدِهِ فَلَيْسَ ذَلِكَ بِجَائِزٍ لَهُ ‏.‏ قَالَ مَالِكٌ الأَمْرُ عِنْدَنَا فِي الرَّجُلِ يُكَاتِبُ عَبْدَهُ ثُمَّ يُقَاطِعُهُ بِالذَّهَبِ فَيَضَعُ عَنْهُ مِمَّا عَلَيْهِ مِنَ الْكِتَابَةِ عَلَى أَنْ يُعَجِّلَ لَهُ مَا قَاطَعَهُ عَلَيْهِ أَنَّهُ لَيْسَ بِذَلِكَ بَأْسٌ وَإِنَّمَا كَرِهَ ذَلِكَ مَنْ كَرِهَهُ لأَنَّهُ أَنْزَلَهُ بِمَنْزِلَةِ الدَّيْنِ يَكُونُ لِلرَّجُلِ عَلَى الرَّجُلِ إِلَى أَجَلٍ فَيَضَعُ عَنْهُ وَيَنْقُدُهُ وَلَيْسَ هَذَا مِثْلَ الدَّيْنِ إِنَّمَا كَانَتْ قَطَاعَةُ الْمُكَاتَبِ سَيِّدَهُ عَلَى أَنْ يُعْطِيَهُ مَالاً فِي أَنْ يَتَعَجَّلَ الْعِتْقَ فَيَجِبُ لَهُ الْمِيرَاثُ وَالشَّهَادَةُ وَالْحُدُودُ وَتَثْبُتُ لَهُ حُرْمَةُ الْعَتَاقَةِ وَلَمْ يَشْتَرِ دَرَاهِمَ بِدَرَاهِمَ وَلاَ ذَهَبًا بِذَهَبٍ وَإِنَّمَا مَثَلُ ذَلِكَ مَثَلُ رَجُلٍ قَالَ لِغُلاَمِهِ ائْتِنِي بِكَذَا وَكَذَا دِينَارًا وَأَنْتَ حُرٌّ فَوَضَعَ عَنْهُ مِنْ ذَلِكَ فَقَالَ إِنْ جِئْتَنِي بِأَقَلَّ مِنْ ذَلِكَ فَأَنْتَ حُرٌّ ‏.‏ فَلَيْسَ هَذَا دَيْنًا ثَابِتًا وَلَوْ كَانَ دَيْنًا ثَابِتًا لَحَاصَّ بِهِ السَّيِّدُ غُرَمَاءَ الْمُكَاتَبِ إِذَا مَاتَ أَوْ أَفْلَسَ فَدَخَلَ مَعَهُمْ فِي مَالِ مُكَاتَبِهِ ‏.‏

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Malik said, "The best of what I have heard about a mukatab who  
injures a man so that blood-money must be paid, is that if the mukatab  
can pay the blood-money for the injury with his kitaba, he does so,  
and it is against his kitaba. If he cannot do that, and he cannot pay  
his kitaba because he must pay the blood-money of that injury before  
the kitaba, and he cannot pay the blood-money of that injury, then his  
master has an option. If he prefers to pay the blood-money of that  
injury, he does so and keeps his slave and he becomes an owned slave.  
If he wishes to surrender the slave to the injured, he surrenders him.  
The master does not have to do more than surrender his slave."  
  
  
Malik spoke about people who were in a general kitaba and one of  
them caused an injury which entailed blood-money. He said, "If any of  
them does an injury involving blood-money, he and those who are with  
him in the kitaba are asked to pay all the blood-money of that injury.  
If they pay, they are confirmed in their kitaba. If they do not pay,  
and they are incapable then their master has an option. If he wishes,  
he can pay all the blood-money of that injury and all the slaves  
revert to him. If he wishes, he can surrender the one who did the  
injury alone and all the others revert to being his slaves since they  
could not pay the blood-money of the injury which their companion  
caused."  
  
  
Malik said, "The way of doing things about which  
there is no dispute among us, is that when a mukatab is injured in  
some way which entails blood-money or one of the mukatab's children  
who is written with him in the kitaba is injured, their blood-money is  
the blood-money of slaves of their value, and what is appointed to  
them as their blood-money is paid to the master who has the kitaba and  
he reckons that for the mukatab at the end of his kitaba and there is  
a reduction for the blood-money that the master has taken for the  
injury."  
  
  
Malik said, "The explanation of that is say, for  
example, he has written his kitaba for three thousand dirhams and the  
blood-money taken by the master for his injury is one thousand  
dirhams. When the mukatab has paid his master two thousand dirhams he  
is free. If what remains of his kitaba is one thousand dirhams and the  
blood-money for his injury is one thousand dirhams, he is free  
straightaway. If the blood-money of the injury is more than what  
remains of the kitaba, the master of the mukatab takes what remains of  
his kitaba and frees him. What remains after the payment of the kitaba  
belongs to the mukatab. One must not pay the mukatab any of the blood-  
money of his injury in case he might consume it and use it up. If he  
could not pay his kitaba completely he would then return to his master  
one eyed, with a hand cut off, or crippled in body. His master only  
wrote his kitaba against his property and earnings, and he did not  
write his kitaba so that he would take the blood-money for what  
happened to his child or to himself and use it up and consume it. One  
pays the blood-money of injuries to a mukatab and his children who are  
born in his kitaba, or their kitaba is written, to the master and he  
takes it into account for him at the end of his kitaba."

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Malik said, "The best of what is said about a man who buys the  
mukatab of a man is that if the man wrote the slave's kitaba for  
dinars or dirhams, he does not sell him unless it is for merchandise  
which is paid immediately and not deferred, because if it is deferred,  
it would be a debt for a debt. A debt for a debt is forbidden."  
  
  
He said, "If the master gives a mukatab his kitaba for certain  
merchandise of camels, cattle, sheep, or slaves, it is more correct  
that the buyer buy him for gold, silver, or different goods than the  
ones his master wrote the kitaba for, and that must be paid  
immediately, not deferred."  
  
  
Malik said, "The best of what I  
have heard about a mukatab when he is sold is that he is more entitled  
to buy his kitaba than the one who buys him if he can pay his master  
the price for which he was sold in cash. That is because his buying  
himself is his freedom, and freedom has priority over what bequests  
accompany it. If one of those who have written the kitaba for the  
mukatab sells his portion of him, so that a half, a third, a fourth,  
or whatever share of the mukatab is sold, the mukatab does not have  
the right of pre-emption in what is sold of him. That is because it is  
like the severance of a partner, and a partner can only make a  
settlement for a partner of the one who is mukatab with the permission  
of his partners because what is sold of him does not give him complete  
rights as a free man and his property is barred from him, and by  
buying part of himself, it is feared that he will become incapable of  
completing payment because of what he had to spend. That is not like  
the mukatab buying himself completely unless whoever has some of the  
kitaba remaining due to him gives him permission. If they give him  
permission, he is more entitled to what is sold of him."  
  
  
Malik said, "Selling one of the instalments of a mukatab is not halal.  
That is because it Is an uncertain transaction. If the mukatab cannot  
pay it, what he owes is nullified. If he dies or goes bankrupt and he  
owes debts to people, then the person who bought his instalment does  
not take any of his portion with the creditors. The person who buys  
one of the instalments of the mukatab is in the position of the master  
of the mukatab. The master of the mukatab does not have a share with  
the creditors of the mukatab for what he is owed of the kitaba of his  
slave. It is also like that with the kharaj, (a set amount deducted  
daily from the slave against his earnings), which accumulates for a  
master from the earnings of his slave. The creditors of his slave do  
not allow him a share for what has accumulated for him from those  
deductions."  
  
  
Malik said, "There is no harm in a mukatab  
paying off his kitaba with coin or merchandise other than the  
merchandise for which he wrote his kitaba if it is identical with it,  
on time (for the instalment) or delayed. "  
  
  
Malik said that if  
a mukatab died and left an umm walad and small children by her or by  
someone else and they could not work and it was feared that they would  
be unable to fulfil their kitaba, the umm walad of the father was sold  
if her price would pay all the kitaba for them, whether or not she was  
their mother. They were paid for and set free because their father did  
not forbid her sale if he feared that he would be unable to complete  
his kitaba. If her price would not pay for them and neither she nor  
they could work, they all reverted to being slaves of the master.  
  
  
Malik said, "What is done among us in the case of a person who  
buys the kitaba of a mukatab, and then the mukatab dies before he has  
paid his kitaba, is that the person who bought the kitaba inherits  
from him. If, rather than dying, the mukatab cannot pay, the buyer has  
his person. If the mukatab pays his kitaba to the person who bought  
him and he is freed, his wala' goes to the person who wrote the kitaba  
and the person who bought his kitaba does not have any of it."

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Malik related to me that he heard that Urwa ibn az-Zubayr and  
Sulayman ibn Yasar when asked whether the sons of a man, who had a  
kitaba written for himself and his children and then died, worked for  
the kitaba of their father or were slaves, said, "They work for the  
kitaba of their father and they have no reduction at all for the death  
of their father."  
  
  
Malik said, "If they are small and unable  
to work, one does not wait for them to grow up and they are slaves of  
their father's master unless the mukatab has left what will pay their  
instalments for them until they can work. If there is enough to pay  
for them in what he has left, that is paid for on their behalf and  
they are left in their condition until they can work, and then if they  
pay, they are free. If they cannot do it, they are slaves."  
  
  
Malik spoke about a mukatab who died and left property which was not  
enough to pay his kitaba, and he also left a child with him in his  
kitaba and an umm walad, and the umm walad wanted to work for them. He  
said, "The money is paid to her if she is trustworthy with it and  
strong enough to work. If she is not strong enough to work and not  
trustworthy with property, she is not given any of it and she and the  
children of the mukatab revert to being slaves of the master of the  
mukatab."  
  
  
Malik said, "If people are written together in one  
kitaba and there is no kinship between them, and some of them are  
incapable and others work until they are all set free, those who  
worked can claim from those who were unable, the portion of what they  
paid for them because some of them assumed the responsibility for  
others."

حَدَّثَنِي مَالِكٌ، أَنَّهُ بَلَغَهُ أَنَّ عُرْوَةَ بْنَ الزُّبَيْرِ، وَسُلَيْمَانَ بْنَ يَسَارٍ، سُئِلاَ عَنْ رَجُلٍ، كَاتَبَ عَلَى نَفْسِهِ وَعَلَى بَنِيهِ ثُمَّ مَاتَ هَلْ يَسْعَى بَنُو الْمُكَاتَبِ فِي كِتَابَةِ أَبِيهِمْ أَمْ هُمْ عَبِيدٌ فَقَالاَ بَلْ يَسْعَوْنَ فِي كِتَابَةِ أَبِيهِمْ وَلاَ يُوْضَعُ عَنْهُمْ لِمَوْتِ أَبِيهِمْ شَىْءٌ ‏.‏ قَالَ مَالِكٌ وَإِنْ كَانُوا صِغَارًا لاَ يُطِيقُونَ السَّعْىَ لَمْ يُنْتَظَرْ بِهِمْ أَنْ يَكْبَرُوا وَكَانُوا رَقِيقًا لِسَيِّدِ أَبِيهِمْ إِلاَّ أَنْ يَكُونَ الْمُكَاتَبُ تَرَكَ مَا يُؤَدَّى بِهِ عَنْهُمْ نُجُومُهُمْ إِلَى أَنْ يَتَكَلَّفُوا السَّعْىَ فَإِنْ كَانَ فِيمَا تَرَكَ مَا يُؤَدَّى عَنْهُمْ أُدِّيَ ذَلِكَ عَنْهُمْ وَتُرِكُوا عَلَى حَالِهِمْ حَتَّى يَبْلُغُوا السَّعْىَ فَإِنْ أَدَّوْا عَتَقُوا وَإِنْ عَجَزُوا رَقُّوا ‏.‏ قَالَ مَالِكٌ فِي الْمُكَاتَبِ يَمُوتُ وَيَتْرُكُ مَالاً لَيْسَ فِيهِ وَفَاءُ الْكِتَابَةِ وَيَتْرُكُ وَلَدًا مَعَهُ فِي كِتَابَتِهِ وَأُمَّ وَلَدٍ فَأَرَادَتْ أُمُّ وَلَدِهِ أَنْ تَسْعَى عَلَيْهِمْ إِنَّهُ يُدْفَعُ إِلَيْهَا الْمَالُ إِذَا كَانَتْ مَأْمُونَةً عَلَى ذَلِكَ قَوِيَّةً عَلَى السَّعْىِ وَإِنْ لَمْ تَكُنْ قَوِيَّةً عَلَى السَّعْىِ وَلاَ مَأْمُونَةً عَلَى الْمَالِ لَمْ تُعْطَ شَيْئًا مِنْ ذَلِكَ وَرَجَعَتْ هِيَ وَوَلَدُ الْمُكَاتَبِ رَقِيقًا لِسَيِّدِ الْمُكَاتَبِ ‏.‏ قَالَ مَالِكٌ إِذَا كَاتَبَ الْقَوْمُ جَمِيعًا كِتَابَةً وَاحِدَةً وَلاَ رَحِمَ بَيْنَهُمْ فَعَجَزَ بَعْضُهُمْ وَسَعَى بَعْضُهُمْ حَتَّى عَتَقُوا جَمِيعًا فَإِنَّ الَّذِينَ سَعَوْا يَرْجِعُونَ عَلَى الَّذِينَ عَجَزُوا بِحِصَّةِ مَا أَدَّوْا عَنْهُمْ لأَنَّ بَعْضَهُمْ حُمَلاَءُ عَنْ بَعْضٍ ‏.‏

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Malik related to me that he heard Rabia ibn Abi Abd ar-Rahman and  
others mention that al-Furafisa ibn Umar al-Hanafi had a mukatab who  
offered to pay him all of his kitaba that he owed. Al-Furafisa refused  
to accept it and the mukatab went to Marwan ibn al-Hakam who was the  
amir of Madina and brought up the matter. Marwan summoned al-Furafisa  
and told him to accept. He refused. Marwan then ordered that the  
payment be taken from the mukatab and placed in the treasury. He said  
to the mukatab "Go, you are free." When al-Furafisa saw that, he took  
the money.  
  
  
Malik said, "What is done among us when a mukatab  
pays all the instalments he owes before their term, is that it is  
permitted to him. The master cannot refuse him that. That is because  
payment removes every condition from the mukatab as well as service  
and travel. The setting free of a man is not complete while he has any  
remaining slavery, and neither would his inviolability as a free man  
be complete and his testimony permitted and inheritance obliged and  
such things in that situation. His master must not make any  
stipulation of service on him after he has been set free."  
  
  
Malik said that it was permitted for a mukatab who became extremely  
ill and wanted to pay his master all his instalments because his heirs  
who were free would then inherit from him and he had no children with  
him in his kitaba, to do so, because by that he completed his  
inviolability as a free man, his testimony was permitted, and his  
admission of what he owed of debts to people was permitted. His  
bequest was permitted as well. His master could not refuse him that by  
saying, "He is escaping from me with his property."

حَدَّثَنِي مَالِكٌ، أَنَّهُ سَمِعَ رَبِيعَةَ بْنَ أَبِي عَبْدِ الرَّحْمَنِ، وَغَيْرَهُ، يَذْكُرُونَ أَنَّ مَكَاتَبًا، كَانَ لِلْفُرَافِصَةِ بْنِ عُمَيْرٍ الْحَنَفِيِّ وَأَنَّهُ عَرَضَ عَلَيْهِ أَنْ يَدْفَعَ إِلَيْهِ جَمِيعَ مَا عَلَيْهِ مِنْ كِتَابَتِهِ فَأَبَى الْفُرَافِصَةُ فَأَتَى الْمُكَاتَبُ مَرْوَانَ بْنَ الْحَكَمِ وَهُوَ أَمِيرُ الْمَدِينَةِ فَذَكَرَ ذَلِكَ لَهُ فَدَعَا مَرْوَانُ الْفُرَافِصَةَ فَقَالَ لَهُ ذَلِكَ فَأَبَى فَأَمَرَ مَرْوَانُ بِذَلِكَ الْمَالِ أَنْ يُقْبَضَ مِنَ الْمُكَاتَبِ فَيُوضَعَ فِي بَيْتِ الْمَالِ وَقَالَ لِلْمُكَاتَبِ اذْهَبْ فَقَدْ عَتَقْتَ ‏.‏ فَلَمَّا رَأَى ذَلِكَ الْفُرَافِصَةُ قَبَضَ الْمَالَ ‏.‏ قَالَ مَالِكٌ فَالأَمْرُ عِنْدَنَا أَنَّ الْمُكَاتَبَ إِذَا أَدَّى جَمِيعَ مَا عَلَيْهِ مِنْ نُجُومِهِ قَبْلَ مَحِلِّهَا جَازَ ذَلِكَ لَهُ وَلَمْ يَكُنْ لِسَيِّدِهِ أَنْ يَأْبَى ذَلِكَ عَلَيْهِ وَذَلِكَ أَنَّهُ يَضَعُ عَنِ الْمُكَاتَبِ بِذَلِكَ كُلَّ شَرْطٍ أَوْ خِدْمَةٍ أَوْ سَفَرٍ لأَنَّهُ لاَ تَتِمُّ عَتَاقَةُ رَجُلٍ وَعَلَيْهِ بَقِيَّةٌ مِنْ رِقٍّ وَلاَ تَتِمُّ حُرْمَتُهُ وَلاَ تَجُوزُ شَهَادَتُهُ وَلاَ يَجِبُ مِيرَاثُهُ وَلاَ أَشْبَاهُ هَذَا مِنْ أَمْرِهِ وَلاَ يَنْبَغِي لِسَيِّدِهِ أَنْ يَشْتَرِطَ عَلَيْهِ خِدْمَةً بَعْدَ عَتَاقَتِهِ ‏.‏ قَالَ مَالِكٌ فِي مُكَاتَبٍ مَرِضَ مَرَضًا شَدِيدًا فَأَرَادَ أَنْ يَدْفَعَ نُجُومَهُ كُلَّهَا إِلَى سَيِّدِهِ لأَنْ يَرِثَهُ وَرَثَةٌ لَهُ أَحْرَارٌ وَلَيْسَ مَعَهُ فِي كِتَابَتِهِ وَلَدٌ لَهُ ‏.‏ قَالَ مَالِكٌ ذَلِكَ جَائِزٌ لَهُ لأَنَّهُ تَتِمُّ بِذَلِكَ حُرْمَتُهُ وَتَجُوزُ شَهَادَتُهُ وَيَجُوزُ اعْتِرَافُهُ بِمَا عَلَيْهِ مِنْ دُيُونِ النَّاسِ وَتَجُوزُ وَصِيَّتُهُ وَلَيْسَ لِسَيِّدِهِ أَنْ يَأْبَى ذَلِكَ عَلَيْهِ بِأَنْ يَقُولَ فَرَّ مِنِّي بِمَالِهِ ‏.‏

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Malik related to me that he had heard that Said ibn al-Musayyab  
was asked about a mukatab who was shared between two men. One of them  
freed his portion and then the mukatab died and left a lot of money.  
Said replied, "The one who kept his kitaba is paid what remains due to  
him, and then they divide what is left between them both equally."  
  
  
Malik said, "When a mukatab who fulfils his kitaba and  
becomes free dies, he is inherited from by the people who wrote his  
kitaba and their children and paternal relations - whoever is most  
deserving."  
  
  
He said, "This is also for whoever is set free  
when he dies after being set free - his inheritance is for the nearest  
people to him of children or paternal relations who inherit by means  
of the wala'."  
  
  
Malik said, "Brothers, written together in the  
same kitaba, are in the same position as children to each other when  
none of them have children written in the kitaba or born in the  
kitaba. When one of them dies and leaves property, he pays for them  
all that is against them of their kitaba and sets them free. The money  
left over after that goes to his children rather than his brothers."

حَدَّثَنِي مَالِكٌ، أَنَّهُ بَلَغَهُ أَنَّ سَعِيدَ بْنَ الْمُسَيَّبِ، سُئِلَ عَنْ مُكَاتَبٍ، كَانَ بَيْنَ رَجُلَيْنِ فَأَعْتَقَ أَحَدُهُمَا نَصِيبَهُ فَمَاتَ الْمُكَاتَبُ وَتَرَكَ مَالاً كَثِيرًا فَقَالَ يُؤَدَّى إِلَى الَّذِي تَمَاسَكَ بِكِتَابَتِهِ الَّذِي بَقِيَ لَهُ ثُمَّ يَقْتَسِمَانِ مَا بَقِيَ بِالسَّوِيَّةِ ‏.‏ قَالَ مَالِكٌ إِذَا كَاتَبَ الْمُكَاتَبُ فَعَتَقَ فَإِنَّمَا يَرِثُهُ أَوْلَى النَّاسِ بِمَنْ كَاتَبَهُ مِنَ الرِّجَالِ يَوْمَ تُوُفِّيَ الْمُكَاتَبُ مِنْ وَلَدٍ أَوْ عَصَبَةٍ ‏.‏ قَالَ وَهَذَا أَيْضًا فِي كُلِّ مَنْ أُعْتِقَ فَإِنَّمَا مِيرَاثُهُ لأَقْرَبِ النَّاسِ مِمَّنْ أَعْتَقَهُ مِنْ وَلَدٍ أَوْ عَصَبَةٍ مِنَ الرِّجَالِ يَوْمَ يَمُوتُ الْمُعْتَقُ بَعْدَ أَنْ يَعْتِقَ وَيَصِيرَ مَوْرُوثًا بِالْوَلاَءِ ‏.‏ قَالَ مَالِكٌ الإِخْوَةُ فِي الْكِتَابَةِ بِمَنْزِلَةِ الْوَلَدِ إِذَا كُوتِبُوا جَمِيعًا كِتَابَةً وَاحِدَةً إِذَا لَمْ يَكُنْ لأَحَدٍ مِنْهُمْ وَلَدٌ كَاتَبَ عَلَيْهِمْ أَوْ وُلِدُوا فِي كِتَابَتِهِ أَوْ كَاتَبَ عَلَيْهِمْ ثُمَّ هَلَكَ أَحَدُهُمْ وَتَرَكَ مَالاً أُدِّيَ عَنْهُمْ جَمِيعُ مَا عَلَيْهِمْ مِنْ كِتَابَتِهِمْ وَعَتَقُوا وَكَانَ فَضْلُ الْمَالِ بَعْدَ ذَلِكَ لِوَلَدِهِ دُونَ إِخْوَتِهِ ‏.‏

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Malik spoke to me about a man who wrote a kitaba for his slave  
for gold or silver and stipulated against him in his kitaba a journey,  
service, sacrifice or similar, which he specified by its name, and  
then the mukatab was able to pay all his instalments before the end of  
the term.  
  
  
He said, "If he pays all his instalments and he is  
set free and his inviolability as a free man is complete, but he still  
has this condition to fulfil, the condition is examined, and whatever  
involves his person in it, like service or a journey etc., is removed  
from him and his master has nothing in it. Whatever there is of  
sacrifice, clothing, or anything that he must pay, that is in the  
position of dinars and dirhams, and is valued and he pays it along  
with his instalments, and he is not free until he has paid that along  
with his instalments."  
  
  
Malik said, "The generally agreed-on  
way of doing things among us about which there is no dispute, is that  
a mukatab is in the same position as a slave whom his master will free  
after a service of ten years. If the master who will free him dies  
before ten years, what remains of his service goes to his heirs and  
his wala' goes to the one who contracted to free him and to his male  
children or paternal relations."  
  
  
Malik spoke about a man who  
stipulated against his mukatab that he could not travel, marry, or  
leave his land without his permission, and that if he did so without  
his permission it was in his power to cancel the kitaba. He said, "If  
the mukatab does any of these things it is not in the man's power to  
cancel the kitaba. Let the master put that before the Sultan. The  
mukatab, however, should not marry, travel, or leave the land of his  
master without his permission, whether or not he stipulates that. That  
is because the man may write a kitaba for his slave for 100 dinars and  
the slave may have 1000 dinars or more than that. He goes off and  
marries a woman and pays her bride-price which sweeps away his money  
and then he cannot pay. He reverts to his master as a slave who has no  
property. Or else he may travel and his instalments fall due while he  
is away. He cannot do that and kitaba is not to be based on that. That  
is in the hand of his master. If he wishes, he gives him permission in  
that. If he wishes, he refuses it."

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Malik said, "When a mukatab sets his own slaves free, it is only  
permitted for a mukatab to set his own slaves free with the consent of  
his master. If his master gives his consent and the mukatab sets his  
slave free, his wala' goes to the mukatab . If the mukatab then dies  
before he has been set free himself, the wala' of the freed slave goes  
to the master of the mukatab. If the freed one dies before the mukatab  
has been set free, the master of the mukatab inherits from him."  
  
  
Malik said, "It is like that also when a mukatab gives his slave a  
kitaba and his mukatab is set free before he is himself. The wala'  
goes to the master of the mukatab as long as he is not free. If this  
one who wrote the kitaba is set free, then the wala' of his mukatab  
who was freed before him reverts to him. If the first mukatab dies  
before he pays, or he cannot pay his kitaba and he has free children,  
they do not inherit the wala' of their father's mukatab because the  
wala' has not been established for their father and he does not have  
the wala' until he is free."  
  
  
Malik spoke about a mukatab who  
was shared between two men and one of them forewent what the mukatab  
owed him and the other insisted on his due. Then the mukatab died and  
left property.  
  
  
Malik said, "The one who did not abandon any  
of what he was owed, is paid in full. Then the property is divided  
between them both just as if a slave had died because what the first  
one did was not setting him free. He only abandoned a debt that was  
owed to him ."  
  
  
Malik said, "One clarification of that is that  
when a man dies and leaves a mukatab and he also leaves male and  
female children and one of the children frees his portion of the  
mukatab, that does not establish any of the wala' for him. Had it been  
a true setting free, the wala' would have been established for  
whichever men and women freed him."  
  
  
Malik said, "Another  
clarification of that is that if one of them freed his portion and  
then the mukatab could not pay, the value of what was left of the  
mukatab would be altered because of the one who freed his portion. Had  
it been a true setting-free, his estimated value would have been taken  
from the property of the one who set free until he had been set  
completely free as the Messenger of Allah, may Allah bless him and  
grant him peace, said, 'Whoever frees his share in a slave and has  
money to cover the full price of the slave, justly evaluated for him,  
gives his partners their shares. If not, he frees of him what he  
frees.' " (See Book 37 hadith 1).  
  
  
He said, "Another  
clarification of that is that part of the sunna of the muslims in  
which there is no dispute, is that whoever frees his share of a  
mukatab, the mukatab is not set fully free using his property. Had he  
been truly set free, the wala' would have been his alone rather than  
his partners. Part of what will clarify that also is that part of the  
sunna of the muslims is that the wala' belongs to whoever writes the  
contract of kitaba. The women who inherit from the master of the  
mukatab do not have any of the wala' of the mukatab. If they free any  
of their share, the wala' belongs to the male children of the master  
of the mukatab or his male paternal relations."

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Malik said, "If people are together in one kitaba, their master  
cannot free one of them without consulting his companions who are with  
him in the kitaba and obtaining their consent. If they are young,  
however, their consultation means nothing and it is not permitted to  
them. That is because a man might work for all the people and he might  
pay their kitaba for them to complete their freedom. Their master  
approaches the one who will pay for them and their rescue from slavery  
is through him. He frees him and so makes those who remain unable to  
pay. He does it intending benefit and increase for himself. It is not  
permitted for him to do that to those of them who remain. The  
Messenger of Allah, may Allah bless him and grant him peace, said,  
'There must be no harm nor return of harm.' This is the most severe  
harm."  
  
  
Malik said about slaves who wrote a kitaba together  
that it was permitted for their master to free the old and exhausted  
of them and the young when neither of them could pay anything, and  
there was no help nor strength to be had from any of them in their  
kitaba.

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Malik said about a man who had his slave in a kitaba and then the  
mukatab died and left his umm walad, and there remained for him some  
of his kitaba to pay and he left what would pay it, "The umm walad is  
a slave since the mukatab was not freed until he died and he did not  
leave children that were set free by his paying what remained, so that  
the umm walad of their father was freed by their being set free."  
  
  
Malik said about a mukatab who set free a slave of his or gave  
sadaqa with some of his property and his master did not know that  
until he had set the mukatab free, "That has been performed by him and  
the master does not rescind it. If the master of the mukatab knows  
before he sets the mukatab free, he can reject that and not permit it.  
If the mukatab is then freed and it becomes in his power to do so, he  
does not have to free the slave, nor give the sadaqa unless he does it  
voluntarily from himself."

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Malik said, The best of what I have heard about a mukatab whose  
master frees him at death, is that the mukatab is valued according to  
what he would fetch if he were sold. If that value is less than what  
remains against him of his kitaba, his freedom is taken from the third  
that the deceased can bequeath. One does not look at the number of  
dirhams which remain against him in his kitaba. That is because had he  
been killed, his killer would not be in debt for other than his value  
on the day he killed him. Had he been injured, the one who injured him  
would not be liable for other than the blood-money of the injury on  
the day of his injury. One does not look at how much he has paid of  
dinars and dirhams of the contract he has written because he is a  
slave as long as any of his kitaba remains. If what remains in his  
kitaba is less than his value, only whatever of his kitaba remains  
owing from him is taken into account in the third of the property of  
the deceased. That is because the deceased left him what remains of  
his kitaba and so it becomes a bequest which the deceased made."  
  
  
Malik said, "The illustration of that is that if the price of the  
mukatab is one thousand dirhams, and only one hundred dirhams remain  
of his kitaba, his master leaves him the one hundred dirhams which  
complete it for him. It is taken into account in the third of his  
master and by it he becomes free."  
  
  
Malik said that if a man  
wrote his slave a kitaba at his death, the value of the slave was  
estimated. If there was enough to cover the price of the slave in one  
third of his property, that was permitted for him.  
  
  
Malik  
said, "The illustration of that is that the price of the slave is one  
thousand dinars. His master writes him a kitaba for two hundred dinars  
at his death. The third of the property of his master is one thousand  
dinars, so that is permitted for him. It is only a bequest which he  
makes from one third of his property. If the master has left bequests  
to people, and there is no surplus in the third after the value of the  
mukatab, one begins with the mukatab because the kitaba is setting  
free, and setting free has priority over bequests. When those bequests  
are paid from the kitaba of the mukatab, they follow it. The heirs of  
the testator have a choice. If they want to give the people with  
bequests all their bequests and the kitaba of the mukatab is theirs,  
they have that. If they refuse and hand over the mukatab and what he  
owes to the people with bequests they can do that, because the third  
commences with the mukatab and because all the bequests which he makes  
are as one."  
  
  
If the heirs then say, "What our fellow  
bequeathed was more than one third of his property and he has taken  
what was not his," Malik said, "His heirs choose. It is said to them,  
'Your companion has made the bequests you know about and if you would  
like to give them to those who are to receive them according to the  
deceased's bequests, then do so. If not, hand over to the people with  
bequests one third of the total property of the deceased.' "  
  
  
Malik continued, "If the heirs surrender the mukatab to the people  
with bequests, the people with bequests have what he owes of his  
kitaba. If the mukatab pays what he owes of his kitaba, they take that  
in their bequests according to their shares. If the mukatab cannot  
pay, he is a slave of the people with bequests and does not return to  
the heirs because they gave him up when they made their choice, and  
because when he was surrendered to the people with bequests, they were  
liable. If he died, they would not have anything against the heirs. If  
the mukatab dies before he pays his kitaba and he leaves property  
which is more than what he owes, his property goes to the people with  
bequests. If the mukatab pays what he owes, he is free and his wala'  
returns to the paternal relations of the one who wrote the kitaba for  
him."  
  
  
Malik spoke about a mukatab who owed his master ten  
thousand dirhams in his kitaba, and when he died he remitted one  
thousand dirhams from it. He said, "The mukatab is valued and his  
value is taken into consideration. If his value is one thousand  
dirhams and the reduction is a tenth of the kitaba, that portion of  
the slave's price is one hundred dirhams. It is a tenth of the price.  
A tenth of the kitaba is therefore reduced for him. That is converted  
to a tenth of the price in cash. That is as if he had had all of what  
he owed reduced for him. Had he done that, only the value of the slave  
- one thousand dirhams - would have been taken into account in the  
third of the property of the deceased. If that which he had remitted  
is half of the kitaba, half the price is taken into account in the  
third of the property of the deceased. If it is more or less than  
that, it is according to this reckoning."  
  
  
Malik said, "When a  
man reduces the kitaba of his mukatab by one thousand dirhams at his  
death from a kitaba of ten thousand dirhams, and he does not stipulate  
whether it is from the beginning or the end of his kitaba, each  
instalment is reduced for him by one tenth."  
  
  
Malik said, "If  
a man remits one thousand dirhams from his mukatab at his death from  
the beginning or end of his kitaba, and the original basis of the  
kitaba is three thousand dirhams, the mukatab's cash value is  
estimated. Then that value is divided. That thousand which is from the  
beginning of the kitaba is converted into its portion of the price  
according to its proximity to the term and its precedence and then the  
thousand which follows the first thousand is according to its  
precedence also until it comes to its end, and every thousand is paid  
according to its place in advancing and deferring the term because  
what is deferred of that is less in respect of its price. Then it is  
placed in the third of the deceased according to whatever of the price  
befalls that thousand according to the difference in preference of  
that, whether it is more or less, then it is according to this  
reckoning."  
  
  
Malik spoke about a man who willed a man a fourth  
of a mukatab or freed a fourth, and then the man died and the mukatab  
died and left a lot of property, more than he owed. He said, "The  
heirs of the first master and the one who was willed a fourth of the  
mukatab are given what they are still owed by the mukatab. Then they  
divide what is left over, and the one willed a fourth has a third of  
what is left after the kitaba is paid. The heirs of his master gets  
two-thirds. That is because the mukatab is a slave as long as any of  
his kitaba remains to be paid. He is inherited from by the possession  
of his person."  
  
  
Malik said about a mukatab whose master freed  
him at death, "If the third of the deceased will not cover him, he is  
freed from it according to what the third will cover and his kitaba is  
decreased according to that. If the mukatab owed five thousand dirhams  
and his value is two thousand dirhams cash, and the third of the  
deceased is one thousand dirhams, half of him is freed and half of the  
kitaba has been reduced for him." Malik said about a man who said in  
his will, "My slave so-and-so is free and write a kitaba for so-and-  
so", that the setting free had priority over the kitaba.

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