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

Yahya related to me that Malik said, "What is done in our  
community in the case of a man who makes his slave-girl a mudabbara  
and she gives birth to children after that, and then the slave-girl  
dies before the one who gave her a tadbir is that her children are in  
her position. The conditions which were confirmed for her are  
confirmed for them. The death of their mother does not harm them. If  
the one who made her mudabbara dies, they are free if their value is  
less than one third of his total property."  
  
  
Malik said, "For  
every mother by birth as opposed to mother by suckling, her children  
are in her position. If she is free and she gives birth after she is  
free, her children are free. If she is a mudabbara or mukataba, or  
freed after a number of years in service, or part of her is free or  
pledged or she is an umm walad, each of her children are in the same  
position as their mother. They are set free when she is set free and  
they are slaves when she is a slave."  
  
  
Malik said about the  
mudabbara given a tadbir while she was pregnant, "Her children are in  
her position. That is also the position of a man who frees his slave-  
girl while she is pregnant and does not know that she is pregnant."  
  
  
Malik said, "The sunna about such women is that their  
children follow them and are set free by their being set free."  
  
  
Malik said, "It is the same as if a man had bought a slave-girl  
while she was pregnant. The slave-girl and what is in her womb belong  
to the one who bought her whether or not the buyer stipulates that."  
  
  
Malik continued, "It is not halal for the seller to make an  
exception about what is in her womb because that is an uncertain  
transaction. It reduces her price and he does not know if that will  
reach him or not. That is as if one sold the foetus in the womb of the  
mother. That is not halal because it is an uncertain transaction ."  
  
  
Malik said about the mukatab or mudabbar who bought a slave-  
girl and had intercourse with her and she became pregnant by him and  
gives birth, "The children of both of them by a slave-girl are in his  
position. They are set free when he is set free and they are slaves  
when he is a slave."  
  
  
Malik said, "When he is set free, the  
umm walad is part of his property which is surrendered to him when he  
is set free."

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Malik spoke about a mudabbar who said to his master, "Free me  
immediately and I will give fifty dinars which I will have to pay in  
instalments." His master said, "Yes. You are free and you must pay  
fifty dinars, and you will pay me ten dinars every year." The slave  
was satisfied with this. Then the master dies one, two or three days  
after that. He said, "The freeing is confirmed and the fifty dinars  
become a debt against him. His testimony is permitted, his  
inviolability as a free man is confirmed, as are his inheritance and  
his liability to the full hudud punishments. The death of his master,  
however, does not reduce the debt for him at all."  
  
  
Malik said  
that if a man who made his slave a mudabbar died and he had some  
property at hand and some absent property, and in the property at hand  
there was not enough (in the third he was allowed to bequeath) to  
cover the value of the mudabbar, the mudabbar was kept there together  
with this property, and his tax (kharaj) was gathered until the  
master's absent property was clear. Then if a third of what his master  
left would cover his value, he was freed with his property and what  
had gathered of his tax. If there was not enough to cover his value in  
what his master had left, as much of him was freed as the third would  
allow, and his property was left in his hands.

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Malik said, "The generally agreed-on way of doing things in our  
community is that any setting-free which a man makes in a bequest that  
he wills in health or illness can be rescinded by him when he likes  
and changed when he likes as long as it is not a tadbir. There is no  
way to rescind a tadbir once he has made it.  
  
  
"As for every  
child born to him by a slave-girl who he wills to be set free but he  
does not make mudabbara, her children are not freed with her when she  
is freed. That is because her master can change his will when he likes  
and rescind it when he likes, and being set free is not confirmed for  
her. She is in the position of a slave-girl whose master says, 'If so-  
and-so remains with me until I die, she is free.' " (i.e. he does not  
make a definite contract.)  
  
  
Malik said, "If she fulfils that,  
that is hers. If he wishes, before that, he can sell her and her child  
because he has not entered her child into any condition he has made  
for her.  
  
  
"The bequest in setting free is different from the  
tadbir. The precedent of the sunna makes a distinction between them.  
Had a bequest been in the position of a tadbir, no testator would be  
able to change his will and what he mentioned in it of setting free.  
His property would be tied up and he would not be able to use it."  
  
  
Malik said about a man who made all his slaves mudabbar while  
he was well and they were his only property, "If he made some of them  
mudabbar before the others, one begins with the first until the third  
of his property is reached. (i.e. their value is matched against the  
third, and those whose value is covered are free.) If he makes the  
mall mudabbar in his illness, and says in one statement, 'So-and-so is  
free. So-and-so is free. So-and-so is free if my death occurs in this  
illness,' or he makes them all mudabbar in one statement, they are  
matched against the third and one does not begin with any of them  
before the others. It is a bequest and they have a third of his  
property divided between them in shares. Then the third of his  
property frees each of them according to the extent of his share.  
  
  
"No single one of them is given preference when that all occurs in  
his illness."  
  
  
Malik spoke about a master who made his slave a  
mudabbar and then he died and the only property he had was the  
mudabbar slave and the slave had property. He said, "A third of the  
mudabbar is freed and his property remains in his possession."  
  
  
Malik said about a mudabbar whose master gave him a kitaba and  
then the master died and did not leave any property other than him, "A  
third of him is freed and a third of his kitaba is reduced, and he  
owes two-thirds."  
  
  
Malik spoke about a man who freed half of  
his slave while he was ill and made irrevocable his freeing half of  
him or all of him, and he had made another slave of his mudabbar  
before that. He said, "One begins with the slave he made mudabbar  
before the one he freed while he was ill. That is because the man  
cannot revoke what he has made mudabbar and cannot follow it with a  
matter which will rescind it. When this mudabbar is freed, then what  
remains of the third goes to the one who had half of him freed so as  
to complete his setting-free entirely in the third of the property of  
the deceased. If what is left of the third does not cover that,  
whatever is covered by what is left of the third is freed after the  
first mudabbar is freed . "

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Malik related to me from Nafi that Abdullah ibn Umar made two of  
his slave-girls mudabbara, and he had intercourse with them while they  
were mudabbara.

حَدَّثَنِي مَالِكٌ، عَنْ نَافِعٍ، أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ، دَبَّرَ جَارِيَتَيْنِ لَهُ فَكَانَ يَطَؤُهُمَا وَهُمَا مُدَبَّرَتَانِ ‏.‏

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Malik related to me from Yahya ibn Said that Said ibn al-Musayyab  
used to say, "When a man makes his slave-girl mudabbara, he can have  
intercourse with her. He cannot sell her or give her away and her  
children are in the same position as her."

وَحَدَّثَنِي مَالِكٌ، عَنْ يَحْيَى بْنِ سَعِيدٍ، أَنَّ سَعِيدَ بْنَ الْمُسَيَّبِ، كَانَ يَقُولُ إِذَا دَبَّرَ الرَّجُلُ جَارِيَتَهُ فَإِنَّ لَهُ أَنْ يَطَأَهَا وَلَيْسَ لَهُ أَنْ يَبِيعَهَا وَلاَ يَهَبَهَا وَوَلَدُهَا بِمَنْزِلَتِهَا ‏.‏

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Malik said, "The generally agreed on way of doing things in our  
community about a mudabbar is that the owner cannot sell him or change  
the position in which he has put him. If a debt overtakes the master,  
his creditors cannot sell the mudabbar as long as the master is alive.  
If the master dies and has no debts, the mudabbar is included in the  
third (of the bequest) because he expected his work from him as long  
as he lived. He cannot serve him all his life, and then he frees him  
from his heirs out of the main portion of his property when he dies.  
If the master of the mudabbar dies and has no property other than him,  
one third of him is freed, and two thirds of him belong to the heirs.  
If the master of the mudabbar dies and owes a debt which encompasses  
the mudabbar, he is sold to meet the debt because he can only be freed  
in the third (which is allowed for bequest) ."  
  
  
He said, "If  
the debt only includes half of the slave, half of him is sold for the  
debt. Then a third of what remains after the debt is freed. "  
  
  
Malik said, "It is not permitted to sell a mudabbar and it is not  
permitted for anyone to buy him unless the mudabbar buys himself from  
his master. He is permitted to do that. Or else some one gives the  
master of the mudabbar money and his master who made him a mudabbar  
frees him. That is also permitted for him."  
  
  
Malik said, "His  
wala' belongs to his master who made him a mudabbar."  
  
  
Malik  
said, "It is not permitted to sell the service of a mudabbar because  
it is an uncertain transaction since one does not know how long his  
master will live. That is uncertain and it is not good."  
  
  
Malik spoke about a slave who was shared between two men, and one of  
them made his portion mudabbar. He said, "They estimate his value  
between them. If the one who made him mudabbar buys him, he is all  
mudabbar. If he does not buy him, his tadbir is revoked unless the one  
who retains ownership of him wishes to give his partner who made him  
mudabbar his value. If he gives him to him for his value, that is  
binding, and he is all mudabbar."  
  
  
Malik spoke about the  
christian man who made a christian slave of his mudabbar and then the  
slave became muslim. He said, "One separates the master and the slave,  
and the slave is removed from his christian master and is not sold  
until his situation becomes clear. If the christian dies and has a  
debt, his debt is paid from the price of the slave unless he has in  
his estate what will pay the debt. Then the mudabbar is set free."

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Malik related to me that he heard that Umar ibn Abd al-Aziz gave  
a judgement about the mudabbar who did an injury. He said, "The master  
must surrender what he owns of him to the injured person. He is made  
to serve the injured person and recompense (in the form of service) is  
taken from him as the blood-money of the injury. If he completes that  
before his master dies, he reverts to his master."  
  
  
Malik  
said, "The generally agreed on way of doing things in our community  
about a mudabbar who does an injury and then his master dies and the  
master has no property except him is that the third (allowed to be  
bequeathed) is freed, and then the blood-money for the in jury is  
divided into thirds. A third of the blood-money is against the third  
of him which was set free, and two-thirds are against the two-thirds  
which the heirs have. If they wish, they surrender what they have of  
him to the party with the injury, and if they wish, they give the  
injured person two-thirds of the blood-money and keep their portion of  
the slave. That is because that injury is a criminal action by the  
slave and it is not a debt against the master by which whatever  
setting free and tadbir the master had done would be abrogated. If  
there were a debt to people held against the master of the slave, as  
well as the criminal action of the slave, part of the mudabbar would  
be sold in proportion to the blood-money of the injury and according  
to the debt. Then one would begin with the blood-money which was for  
the criminal action of the slave and it would be paid from the price  
of the slave. Then the debt of his master would be paid, and then one  
would look at what remained after that of the slave. His third would b  
be set free, and two-thirds of him would belong to the heirs. That is  
because the criminal action of the slave is more important than the  
debt of his master. That is because, if the man dies and leaves a  
mudabbar slave whose value is one hundred and fifty dinars, and the  
slave strikes a free man on the head with a blow that lays open the  
skull, and the blood-money is fifty dinars, and the master of the  
slave has a debt of fifty dinars, one begins with the fifty dinars  
which are the blood-money of the head wound, and it is paid from the  
price of the slave. Then the debt of the master is paid. Then one  
looks at what remains of the slave, and a third of him is set free and  
two-thirds of him remain for the heirs. The blood-money is more  
pressing against his person than the debt of his master. The debt of  
his master is more pressing than the tadbir which is a bequest from  
the third of the property of the deceased. None of the tadbir is  
permitted while the master of the mudabbar has a debt which is not  
paid. It is a bequest. That is because Allah, the Blessed, the  
Exalted, said, 'After any bequest that is made or any debt.' " (Sura 4  
ayat 10)  
  
  
Malik said, "If there is enough in the third  
property that the deceased can bequeath to free all the mudabbar, he  
is freed and the blood-money due from his criminal action is held as a  
debt against him which follows him after he is set free even if that  
blood-money is the full blood-money. It is not a debt on the master."  
  
  
Malik spoke about a mudabbar who injured a man and his master  
surrendered him to the injured party, and then the master died and had  
a debt and did not leave any property other than the mudabbar, and the  
heirs said, "We surrender the mudabbar to the party," whilst the  
creditor said, "My debt exceeds that." Malik said that if the  
creditor's debt did exceed that at all , he was more entitled to it  
and it was taken from the one who owed the debt, according to what the  
creditor was owed in excess of the blood-money of the injury. If his  
debt did not exceed it at all, he did not take the slave.  
  
  
Malik spoke about a mudabbar who did an injury and had property, and  
his master refused to ransom him. He said, "The injured party takes  
the property of the mudabbar for the blood-money of his injury. If  
there is enough to pay it, the injured party is paid in full for the  
blood-money of his injury and the mudabbar is returned to his master.  
If there is not enough to pay it, he takes it from the blood-money and  
uses the mudabbar for what remains of the blood-money."

حَدَّثَنِي مَالِكٌ، أَنَّهُ بَلَغَهُ أَنَّ عُمَرَ بْنَ عَبْدِ الْعَزِيزِ، قَضَى فِي الْمُدَبَّرِ إِذَا جَرَحَ أَنَّ لِسَيِّدِهِ أَنْ يُسَلِّمَ مَا يَمْلِكُ مِنْهُ إِلَى الْمَجْرُوحِ فَيَخْتَدِمُهُ الْمَجْرُوحُ وَيُقَاصُّهُ بِجِرَاحِهِ مِنْ دِيَةِ جَرْحِهِ فَإِنْ أَدَّى قَبْلَ أَنْ يَهْلِكَ سَيِّدُهُ رَجَعَ إِلَى سَيِّدِهِ ‏.‏ قَالَ مَالِكٌ وَالأَمْرُ عِنْدَنَا فِي الْمُدَبَّرِ إِذَا جَرَحَ ثُمَّ هَلَكَ سَيِّدُهُ وَلَيْسَ لَهُ مَالٌ غَيْرُهُ أَنَّهُ يُعْتَقُ ثُلُثُهُ ثُمَّ يُقْسَمُ عَقْلُ الْجَرْحِ أَثْلاَثًا فَيَكُونُ ثُلُثُ الْعَقْلِ عَلَى الثُّلُثِ الَّذِي عَتَقَ مِنْهُ وَيَكُونُ ثُلُثَاهُ عَلَى الثُّلُثَيْنِ اللَّذَيْنِ بِأَيْدِي الْوَرَثَةِ إِنْ شَاءُوا أَسْلَمُوا الَّذِي لَهُمْ مِنْهُ إِلَى صَاحِبِ الْجَرْحِ وَإِنْ شَاءُوا أَعْطَوْهُ ثُلُثَىِ الْعَقْلِ وَأَمْسَكُوا نَصِيبَهُمْ مِنَ الْعَبْدِ وَذَلِكَ أَنَّ عَقْلَ ذَلِكَ الْجَرْحِ إِنَّمَا كَانَتْ جِنَايَتُهُ مِنَ الْعَبْدِ وَلَمْ تَكُنْ دَيْنًا عَلَى السَّيِّدِ فَلَمْ يَكُنْ ذَلِكَ الَّذِي أَحْدَثَ الْعَبْدُ بِالَّذِي يُبْطِلُ مَا صَنَعَ السَّيِّدُ مِنْ عِتْقِهِ وَتَدْبِيرِهِ فَإِنْ كَانَ عَلَى سَيِّدِ الْعَبْدِ دَيْنٌ لِلنَّاسِ مَعَ جِنَايَةِ الْعَبْدِ بِيعَ مِنَ الْمُدَبَّرِ بِقَدْرِ عَقْلِ الْجَرْحِ وَقَدْرِ الدَّيْنِ ثُمَّ يُبَدَّأُ بِالْعَقْلِ الَّذِي كَانَ فِي جِنَايَةِ الْعَبْدِ فَيُقْضَى مِنْ ثَمَنِ الْعَبْدِ ثُمَّ يُقْضَى دَيْنُ سَيِّدِهِ ثُمَّ يُنْظَرُ إِلَى مَا بَقِيَ بَعْدَ ذَلِكَ مِنَ الْعَبْدِ فَيَعْتِقُ ثُلُثُهُ وَيَبْقَى ثُلُثَاهُ لِلْوَرَثَةِ وَذَلِكَ أَنَّ جِنَايَةَ الْعَبْدِ هِيَ أَوْلَى مِنْ دَيْنِ سَيِّدِهِ وَذَلِكَ أَنَّ الرَّجُلَ إِذَا هَلَكَ وَتَرَكَ عَبْدًا مُدَبَّرًا قِيمَتُهُ خَمْسُونَ وَمِائَةُ دِينَارٍ وَكَانَ الْعَبْدُ قَدْ شَجَّ رَجُلاً حُرًّا مُوضِحَةً عَقْلُهَا خَمْسُونَ دِينَارًا وَكَانَ عَلَى سَيِّدِ الْعَبْدِ مِنَ الدَّيْنِ خَمْسُونَ دِينَارًا ‏.‏ قَالَ مَالِكٌ فَإِنَّهُ يُبْدَأُ بِالْخَمْسِينَ دِينَارًا الَّتِي فِي عَقْلِ الشَّجَّةِ فَتُقْضَى مِنْ ثَمَنِ الْعَبْدِ ثُمَّ يُقْضَى دَيْنُ سَيِّدِهِ ثُمَّ يُنْظَرُ إِلَى مَا بَقِيَ مِنَ الْعَبْدِ فَيَعْتِقُ ثُلُثُهُ وَيَبْقَى ثُلُثَاهُ لِلْوَرَثَةِ فَالْعَقْلُ أَوْجَبُ فِي رَقَبَتِهِ مِنْ دَيْنِ سَيِّدِهِ وَدَيْنُ سَيِّدِهِ أَوْجَبُ مِنَ التَّدْبِيرِ الَّذِي إِنَّمَا هُوَ وَصِيَّةٌ فِي ثُلُثِ مَالِ الْمَيِّتِ فَلاَ يَنْبَغِي أَنْ يَجُوزَ شَىْءٌ مِنَ التَّدْبِيرِ وَعَلَى سَيِّدِ الْمُدَبَّرِ دَيْنٌ لَمْ يُقْضَ وَإِنَّمَا هُوَ وَصِيَّةٌ وَذَلِكَ أَنَّ اللَّهَ تَبَارَكَ وَتَعَالَى قَالَ ‏{‏مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ‏}‏ ‏.‏ قَالَ مَالِكٌ فَإِنْ كَانَ فِي ثُلُثِ الْمَيِّتِ مَا يَعْتِقُ فِيهِ الْمُدَبَّرُ كُلُّهُ عَتَقَ وَكَانَ عَقْلُ جِنَايَتِهِ دَيْنًا عَلَيْهِ يُتَّبَعُ بِهِ بَعْدَ عِتْقِهِ وَإِنْ كَانَ ذَلِكَ الْعَقْلُ الدِّيَةَ كَامِلَةً وَذَلِكَ إِذَا لَمْ يَكُنْ عَلَى سَيِّدِهِ دَيْنٌ ‏.‏ وَقَالَ مَالِكٌ فِي الْمُدَبَّرِ إِذَا جَرَحَ رَجُلاً فَأَسْلَمَهُ سَيِّدُهُ إِلَى الْمَجْرُوحِ ثُمَّ هَلَكَ سَيِّدُهُ وَعَلَيْهِ دَيْنٌ وَلَمْ يَتْرُكْ مَالاً غَيْرَهُ فَقَالَ الْوَرَثَةُ نَحْنُ نُسَلِّمُهُ إِلَى صَاحِبِ الْجُرْحِ ‏.‏ وَقَالَ صَاحِبُ الدَّيْنِ أَنَا أَزِيدُ عَلَى ذَلِكَ إِنَّهُ إِذَا زَادَ الْغَرِيمُ شَيْئًا فَهُوَ أَوْلَى بِهِ وَيُحَطُّ عَنِ الَّذِي عَلَيْهِ الدَّيْنُ قَدْرُ مَا زَادَ الْغَرِيمُ عَلَى دِيَةِ الْجَرْحِ فَإِنْ لَمْ يَزِدْ شَيْئًا لَمْ يَأْخُذِ الْعَبْدَ ‏.‏ وَقَالَ مَالِكٌ فِي الْمُدَبَّرِ إِذَا جَرَحَ وَلَهُ مَالٌ فَأَبَى سَيِّدُهُ أَنْ يَفْتَدِيَهُ فَإِنَّ الْمَجْرُوحَ يَأْخُذُ مَالَ الْمُدَبَّرِ فِي دِيَةِ جُرْحِهِ فَإِنْ كَانَ فِيهِ وَفَاءٌ اسْتَوْفَى الْمَجْرُوحُ دِيَةَ جُرْحِهِ وَرَدَّ الْمُدَبَّرَ إِلَى سَيِّدِهِ وَإِنْ لَمْ يَكُنْ فِيهِ وَفَاءٌ اقْتَضَاهُ مِنْ دِيَةِ جُرْحِهِ وَاسْتَعْمَلَ الْمُدَبَّرَ بِمَا بَقِيَ لَهُ مِنْ دِيَةِ جُرْحِهِ ‏.‏

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Malik said in the case of an umm walad who injured someone, "The  
blood-money of that injury is the responsibility of her master from  
his property, unless the blood-money of the injury is greater than the  
value of the umm walad. Her master does not have to pay more than her  
value. That is because when the master of a slave or slave-girl  
surrenders his slave or slave-girl for an injury which one of them has  
done, he does not owe any more than that, even if the blood-money is  
greater. As the master of the umm walad cannot surrender her because  
of the precedent of the sunna, when he pays her price, it is as if he  
had surrendered her. He does not have to pay more than that. This is  
the best of what I have heard about the matter. The master is not  
obliged to assume responsibility for more than an umm walad's value  
because of her criminal action."

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