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

Yahya related to me from Malik from Abu Layla ibn Abdullah ibn  
Abd ar-Rahman ibn Sahl from Sahl ibn Abi Hathma that some of the great  
men of his people informed him that Abdullah ibn Sahl and Muhayyisa  
went out to Khaybar because extreme poverty had overtaken them.  
Muhayyisa returned and said that Abdullah ibn Sahl had been killed and  
thrown in a shallow well or spring. The jews came and he said, "By  
Allah! You have killed him." They said, "By Allah! We have not killed  
him!" Then he made for his people and mentioned that to them. Then he,  
his brother Huwayyisa, who was older than him, and Abd ar-Rahman, set  
out. Muhayyisa began to speak, as he had been at Khaybar. The  
Messenger of Allah, may Allah bless him and grant him peace, said to  
him, "The greater first, the greater first," meaning in age. So  
Huwayyisa spoke and then Muhayyisa spoke. The Messenger of Allah, may  
Allah bless him and grant him peace, said, "Either they pay your  
companion's blood-money or we will declare war against them." The  
Messenger of Allah, may Allah bless him and grant him peace, wrote  
that to them and they wrote, "By Allah, we did not kill him!" The  
Messenger of Allah, may Allah bless him and grant him peace, said to  
Huwayyisa, Muhayyisa, and Abd ar-Rahman, "Do you swear and claim the  
blood of your companion?" They said, "No." He said, "Shall the jews  
swear to you?" They said, "But they are not muslims." The Messenger of  
Allah, may Allah bless him and grant him peace, gave blood-money from  
his own property, and sent them one hundred camels to their house.  
  
  
Sahl added, "A red camel among them kicked me."

حَدَّثَنِي يَحْيَى، عَنْ مَالِكٍ، عَنْ أَبِي لَيْلَى بْنِ عَبْدِ اللَّهِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ سَهْلٍ، عَنْ سَهْلِ بْنِ أَبِي حَثْمَةَ، أَنَّهُ أَخْبَرَهُ رِجَالٌ، مِنْ كُبَرَاءِ قَوْمِهِ أَنَّ عَبْدَ، اللَّهِ بْنَ سَهْلٍ وَمُحَيِّصَةَ خَرَجَا إِلَى خَيْبَرَ مِنْ جَهْدٍ أَصَابَهُمْ فَأُتِيَ مُحَيِّصَةُ فَأُخْبِرَ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ قَدْ قُتِلَ وَطُرِحَ فِي فَقِيرِ بِئْرٍ أَوْ عَيْنٍ فَأَتَى يَهُودَ فَقَالَ أَنْتُمْ وَاللَّهِ قَتَلْتُمُوهُ ‏.‏ فَقَالُوا وَاللَّهِ مَا قَتَلْنَاهُ ‏.‏ فَأَقْبَلَ حَتَّى قَدِمَ عَلَى قَوْمِهِ فَذَكَرَ لَهُمْ ذَلِكَ ثُمَّ أَقْبَلَ هُوَ وَأَخُوهُ حُوَيِّصَةُ وَهُوَ أَكْبَرُ مِنْهُ وَعَبْدُ الرَّحْمَنِ فَذَهَبَ مُحَيِّصَةُ لِيَتَكَلَّمَ وَهُوَ الَّذِي كَانَ بِخَيْبَرَ فَقَالَ لَهُ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏"‏ كَبِّرْ كَبِّرْ ‏"‏ يُرِيدُ السِّنَّ فَتَكَلَّمَ حُوَيِّصَةُ ثُمَّ تَكَلَّمَ مُحَيِّصَةُ ‏.‏ فَقَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏"‏ إِمَّا أَنْ يَدُوا صَاحِبَكُمْ وَإِمَّا أَنْ يُؤْذِنُوا بِحَرْبٍ ‏"‏ ‏.‏ فَكَتَبَ إِلَيْهِمْ رَسُولُ اللَّهِ صلى الله عليه وسلم فِي ذَلِكَ فَكَتَبُوا إِنَّا وَاللَّهِ مَا قَتَلْنَاهُ ‏.‏ فَقَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم لِحُوَيِّصَةَ وَمُحَيِّصَةَ وَعَبْدِ الرَّحْمَنِ ‏"‏ أَتَحْلِفُونَ وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ ‏"‏ ‏.‏ فَقَالُوا لاَ ‏.‏ قَالَ ‏"‏ أَفَتَحْلِفُ لَكُمْ يَهُودُ ‏"‏ قَالُوا لَيْسُوا بِمُسْلِمِينَ ‏.‏ فَوَدَاهُ رَسُولُ اللَّهِ صلى الله عليه وسلم مِنْ عِنْدِهِ فَبَعَثَ إِلَيْهِمْ بِمِائَةِ نَاقَةٍ حَتَّى أُدْخِلَتْ عَلَيْهِمُ الدَّارَ ‏.‏ قَالَ سَهْلٌ لَقَدْ رَكَضَتْنِي مِنْهَا نَاقَةٌ حَمْرَاءُ ‏.‏

Sunnah.com reference : Book 44, Hadith 1USC-MSA web (English) reference : Book 44, Hadith 1Arabic reference : Book 44, Hadith 1599Report Error | Share | Copy ▼

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Yahya said from Malik from Yahya ibn Said that Bushayr ibn Yasar  
informed him that Abdullah ibn Sahl al-Ansari and Muhayyisa ibn Masud  
went out to Khaybar, and they separated on their various businesses  
and Abdullah ibn Sahl was killed. Muhayyisa, and his brother Huwayyisa  
and Abd ar-Rahman ibn Sahl went to the Prophet, may Allah bless him  
and grant him peace, and Abd ar-Rahman began to speak before his  
brother. The Messenger of Allah, may Allah bless him and grant him  
peace, said, "The older first, the older first.   
  
  
Therefore  
Huwayyisa and then Muhayyisa spoke and mentioned the affair of  
Abdullah ibn Sahl. The Messenger of Allah, may Allah bless him and  
grant him peace, said to them, "Do you swear with fifty oaths and  
claim the blood-money of your companion or the life of the murderer?"  
They said, "Messenger of Allah, we did not see it and we were not  
present." The Messenger of Allah, may Allah bless him and grant him  
peace, said, "Will you acquit the jews for fifty oaths?' They said,  
"Messenger of Allah, how can we accept the oaths of a people who are  
kafirun?"  
  
  
Yahya ibn Said said, "Bushayr ibn Yasar claimed  
that the Messenger of Allah, may Allah bless him and grant him peace,  
paid the blood-money from his own property."  
  
  
Malik said, "The  
generally agreed on way of doing things in our community and that  
which I heard from whoever I am content with, concerning the oath of  
qasama, and upon which the past and present imams agree, is that those  
who claim revenge begin with the oaths and swear. The oath for revenge  
is only obligatory in two situations. Either the slain person says,  
'My blood is against so-and-so,' or the relatives entitled to the  
blood bring a partial proof of it that is not irrefutable against the  
one who is the object of the blood-claim. This obliges taking an oath  
on the part of those who claim the blood against those who are the  
object of the blood-claim. With us, swearing is only obliged in these  
two situations."  
  
  
Malik said, "That is the sunna in which  
there is no dispute with us and which is still the behaviour of the  
people. The people who claim blood begin the swearings, whether it is  
an intentional killing or an accident."  
  
  
Malik said, "The  
Messenger of Allah, may Allah bless him and grant him peace, began  
with Banu Harith in the case of the killing of their kinsman murdered  
at Khaybar."  
  
  
Malik said, "If those who make the claim swear,  
they deserve the blood of their kinsman and whoever they swear against  
is slain. Only one man can be killed in the qasama. Two cannot be  
killed in it. Fifty men from the blood-relatives must swear fifty  
oaths. If their number is less or some of them draw back, they can  
repeat their oaths, unless one of the relatives of the murdered man  
who deserves blood and who is permitted to pardon it, draws back. If  
one of these draws back, there is no way to revenge."  
  
  
Yahya  
said that Malik said, "The oaths can be made by those of them who  
remain if one of them draws back who is not permitted to pardon. If  
one of the blood-relatives draws back who is permitted to pardon, even  
if he is only one, more oaths can not be made after that by the blood-  
relatives. If that occurs, the oaths can be on behalf of the one  
against whom the claim is made. So fifty of the men of his people  
swear fifty oaths. If there are not fifty men, more oaths can be made  
by those of them who already swore. If there is only the defendant, he  
swears fifty oaths and is acquitted."  
  
  
Yahya said that Malik  
said, "One distinguishes between swearing for blood and oaths for  
one's rights. When a man has a money-claim against another man, he  
seeks to verify his due. When a man wants to kill another man, he does  
not kill him in the midst of people. He keeps to a place away from  
people. Had there only been swearing in cases where there is a clear  
proof and had one acted in it as one acts about one's rights (i.e.  
needing witnesses), the right of blood retribution would have been  
lost and people would have been swift to take advantage of it when  
they learned of the decision on it. However, the relatives of the  
murdered man were allowed to initiate swearing so that people might  
restrain themselves from blood and the murderer might beware lest he  
was put into a situation like that (i.e. qasama) by the statement of  
the murdered man.' "  
  
  
Yahya said, "Malik said about a people  
of whom a certain number are suspected of murder and the relatives of  
the murdered man ask them to take oaths and they are numerous, so they  
ask that each man swears fifty oaths on his own behalf. The oaths are  
not divided out between them according to their number and they are  
not acquitted unless each man among them swears fifty oaths on his own  
behalf."  
  
  
Malik said, "This is the best I have heard about the  
matter."  
  
  
He said, "Swearing goes to the paternal relatives of  
the slain. They are the blood-relatives who swear against the killer  
and by whose swearing he is killed."

قَالَ يَحْيَى عَنْ مَالِكٍ، عَنْ يَحْيَى بْنِ سَعِيدٍ، عَنْ بُشَيْرِ بْنِ يَسَارٍ، أَنَّهُ أَخْبَرَهُ أَنَّ عَبْدَ اللَّهِ بْنَ سَهْلٍ الأَنْصَارِيَّ وَمُحَيِّصَةَ بْنَ مَسْعُودٍ خَرَجَا إِلَى خَيْبَرَ فَتَفَرَّقَا فِي حَوَائِجِهِمَا فَقُتِلَ عَبْدُ اللَّهِ بْنُ سَهْلٍ فَقَدِمَ مُحَيِّصَةُ فَأَتَى هُوَ وَأَخُوهُ حُوَيِّصَةُ وَعَبْدُ الرَّحْمَنِ بْنُ سَهْلٍ إِلَى النَّبِيِّ صلى الله عليه وسلم فَذَهَبَ عَبْدُ الرَّحْمَنِ لِيَتَكَلَّمَ لِمَكَانِهِ مِنْ أَخِيهِ فَقَالَ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏"‏ كَبِّرْ كَبِّرْ ‏"‏ ‏.‏ فَتَكَلَّمَ حُوَيِّصَةُ وَمُحَيِّصَةُ فَذَكَرَا شَأْنَ عَبْدِ اللَّهِ بْنِ سَهْلٍ ‏.‏ فَقَالَ لَهُمْ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏"‏ أَتَحْلِفُونَ خَمْسِينَ يَمِينًا وَتَسْتَحِقُّونَ دَمَ صَاحِبِكُمْ أَوْ قَاتِلِكُمْ ‏"‏ ‏.‏ قَالُوا يَا رَسُولَ اللَّهِ لَمْ نَشْهَدْ وَلَمْ نَحْضُرْ ‏.‏ فَقَالَ لَهُمْ رَسُولُ اللَّهِ صلى الله عليه وسلم ‏"‏ فَتُبْرِئُكُمْ يَهُودُ بِخَمْسِينَ يَمِينًا ‏"‏ ‏.‏ فَقَالُوا يَا رَسُولَ اللَّهِ كَيْفَ نَقْبَلُ أَيْمَانَ قَوْمٍ كُفَّارٍ قَالَ يَحْيَى بْنُ سَعِيدٍ فَزَعَمَ بُشَيْرُ بْنُ يَسَارٍ أَنَّ رَسُولَ اللَّهِ صلى الله عليه وسلم وَدَاهُ مِنْ عِنْدِهِ ‏.‏ قَالَ مَالِكٌ الأَمْرُ الْمُجْتَمَعُ عَلَيْهِ عِنْدَنَا وَالَّذِي سَمِعْتُ مِمَّنْ أَرْضَى فِي الْقَسَامَةِ وَالَّذِي اجْتَمَعَتْ عَلَيْهِ الأَئِمَّةُ فِي الْقَدِيمِ وَالْحَدِيثِ أَنْ يَبْدَأَ بِالأَيْمَانِ الْمُدَّعُونَ فِي الْقَسَامَةِ فَيَحْلِفُونَ وَأَنَّ الْقَسَامَةَ لاَ تَجِبُ إِلاَّ بِأَحَدِ أَمْرَيْنِ إِمَّا أَنْ يَقُولَ الْمَقْتُولُ دَمِي عِنْدَ فُلاَنٍ أَوْ يَأْتِيَ وُلاَةُ الدَّمِ بِلَوْثٍ مِنْ بَيِّنَةٍ وَإِنْ لَمْ تَكُنْ قَاطِعَةً عَلَى الَّذِي يُدَّعَى عَلَيْهِ الدَّمُ فَهَذَا يُوجِبُ الْقَسَامَةَ لِلْمُدَّعِينَ الدَّمَ عَلَى مَنِ ادَّعَوْهُ عَلَيْهِ وَلاَ تَجِبُ الْقَسَامَةُ عِنْدَنَا إِلاَّ بِأَحَدِ هَذَيْنِ الْوَجْهَيْنِ ‏.‏ قَالَ مَالِكٌ وَتِلْكَ السُّنَّةُ الَّتِي لاَ اخْتِلاَفَ فِيهَا عِنْدَنَا وَالَّذِي لَمْ يَزَلْ عَلَيْهِ عَمَلُ النَّاسِ أَنَّ الْمُبَدَّئِينَ بِالْقَسَامَةِ أَهْلُ الدَّمِ وَالَّذِينَ يَدَّعُونَهُ فِي الْعَمْدِ وَالْخَطَإِ ‏.‏ قَالَ مَالِكٌ وَقَدْ بَدَّأَ رَسُولُ اللَّهِ صلى الله عليه وسلم الْحَارِثِيِّينَ فِي قَتْلِ صَاحِبِهِمُ الَّذِي قُتِلَ بِخَيْبَرَ ‏.‏ قَالَ مَالِكٌ فَإِنْ حَلَفَ الْمُدَّعُونَ اسْتَحَقُّوا دَمَ صَاحِبِهِمْ وَقَتَلُوا مَنْ حَلَفُوا عَلَيْهِ وَلاَ يُقْتَلُ فِي الْقَسَامَةِ إِلاَّ وَاحِدٌ لاَ يُقْتَلُ فِيهَا اثْنَانِ يَحْلِفُ مِنْ وُلاَةِ الدَّمِ خَمْسُونَ رَجُلاً خَمْسِينَ يَمِينًا فَإِنْ قَلَّ عَدَدُهُمْ أَوْ نَكَلَ بَعْضُهُمْ رُدَّتِ الأَيْمَانُ عَلَيْهِمْ إِلاَّ أَنْ يَنْكُلَ أَحَدٌ مِنْ وُلاَةِ الْمَقْتُولِ وُلاَةِ الدَّمِ الَّذِينَ يَجُوزُ لَهُمُ الْعَفْوُ عَنْهُ فَإِنْ نَكَلَ أَحَدٌ مِنْ أُولَئِكَ فَلاَ سَبِيلَ إِلَى الدَّمِ إِذَا نَكَلَ أَحَدٌ مِنْهُمْ ‏.‏ قَالَ يَحْيَى قَالَ مَالِكٌ وَإِنَّمَا تُرَدُّ الأَيْمَانُ عَلَى مَنْ بَقِيَ مِنْهُمْ إِذَا نَكَلَ أَحَدٌ مِمَّنْ لاَ يَجُوزُ لَهُ عَفْوٌ فَإِنْ نَكَلَ أَحَدٌ مِنْ وُلاَةِ الدَّمِ الَّذِينَ يَجُوزُ لَهُمُ الْعَفْوُ عَنِ الدَّمِ وَإِنْ كَانَ وَاحِدًا فَإِنَّ الأَيْمَانَ لاَ تُرَدُّ عَلَى مَنْ بَقِيَ مِنْ وُلاَةِ الدَّمِ إِذَا نَكَلَ أَحَدٌ مِنْهُمْ عَنِ الأَيْمَانِ وَلَكِنِ الأَيْمَانُ إِذَا كَانَ ذَلِكَ تُرَدُّ عَلَى الْمُدَّعَى عَلَيْهِمْ فَيَحْلِفُ مِنْهُمْ خَمْسُونَ رَجُلاً خَمْسِينَ يَمِينًا فَإِنْ لَمْ يَبْلُغُوا خَمْسِينَ رَجُلاً رُدَّتِ الأَيْمَانُ عَلَى مَنْ حَلَفَ مِنْهُمْ فَإِنْ لَمْ يُوجَدْ أَحَدٌ إِلاَّ الَّذِي ادُّعِيَ عَلَيْهِ حَلَفَ هُوَ خَمْسِينَ يَمِينًا وَبَرِئَ ‏.‏ قَالَ يَحْيَى قَالَ مَالِكٌ وَإِنَّمَا فُرِقَ بَيْنَ الْقَسَامَةِ فِي الدَّمِ وَالأَيْمَانِ فِي الْحُقُوقِ أَنَّ الرَّجُلَ إِذَا دَايَنَ الرَّجُلَ اسْتَثْبَتَ عَلَيْهِ فِي حَقِّهِ وَأَنَّ الرَّجُلَ إِذَا أَرَادَ قَتْلَ الرَّجُلِ لَمْ يَقْتُلْهُ فِي جَمَاعَةٍ مِنَ النَّاسِ وَإِنَّمَا يَلْتَمِسُ الْخَلْوَةَ ‏.‏ قَالَ فَلَوْ لَمْ تَكُنِ الْقَسَامَةُ إِلاَّ فِيمَا تَثْبُتُ فِيهِ الْبَيِّنَةُ وَلَوْ عُمِلَ فِيهَا كَمَا يُعْمَلُ فِي الْحُقُوقِ هَلَكَتِ الدِّمَاءُ وَاجْتَرَأَ النَّاسُ عَلَيْهَا إِذَا عَرَفُوا الْقَضَاءَ فِيهَا وَلَكِنْ إِنَّمَا جُعِلَتِ الْقَسَامَةُ إِلَى وُلاَةِ الْمَقْتُولِ يُبَدَّءُونَ بِهَا فِيهَا لِيَكُفَّ النَّاسُ عَنِ الدَّمِ وَلِيَحْذَرَ الْقَاتِلُ أَنْ يُؤْخَذَ فِي مِثْلِ ذَلِكَ بِقَوْلِ الْمَقْتُولِ ‏.‏ قَالَ يَحْيَى وَقَدْ قَالَ مَالِكٌ فِي الْقَوْمِ يَكُونُ لَهُمُ الْعَدُوُّ يُتَّهَمُونَ بِالدَّمِ فَيَرُدُّ وُلاَةُ الْمَقْتُولِ الأَيْمَانَ عَلَيْهِمْ وَهُمْ نَفَرٌ لَهُمْ عَدَدٌ أَنَّهُ يَحْلِفُ كُلُّ إِنْسَانٍ مِنْهُمْ عَنْ نَفْسِهِ خَمْسِينَ يَمِينًا وَلاَ تُقْطَعُ الأَيْمَانُ عَلَيْهِمْ بِقَدْرِ عَدَدِهِمْ وَلاَ يَبْرَءُونَ دُونَ أَنْ يَحْلِفَ كُلُّ إِنْسَانٍ عَنْ نَفْسِهِ خَمْسِينَ يَمِينًا ‏.‏ قَالَ مَالِكٌ وَهَذَا أَحْسَنُ مَا سَمِعْتُ فِي ذَلِكَ ‏.‏ قَالَ وَالْقَسَامَةُ تَصِيرُ إِلَى عَصَبَةِ الْمَقْتُولِ وَهُمْ وُلاَةُ الدَّمِ الَّذِينَ يَقْسِمُونَ عَلَيْهِ وَالَّذِينَ يُقْتَلُ بِقَسَامَتِهِمْ ‏.‏

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Yahya said that Malik said, "The way of doing things in our  
community about which there is no dispute is that women do not swear  
in the swearing for the intentional act. If the murdered man only has  
female relatives, the women have no right to swear for blood and no  
pardon in murder."  
  
  
Yahya said that Malik said about a man who  
is murdered, "If the paternal relatives of the murdered man or his  
mawali say, 'We swear and we demand our companion's blood,' that is  
their right."  
  
  
Malik said, "If the women want to pardon him,  
they cannot do that. The paternal relatives and mawali are entitled to  
do that more than them because they are the ones who demand blood and  
swear for it."  
  
  
Malik said, "If the paternal relatives or  
mawali pardon after they demand blood and the women refuse and say,  
'We will not abandon our right against the murderer of our companion,'  
the women are more entitled to that because whoever takes retaliation  
is more entitled than the one who leaves it among the women and  
paternal relatives when the murder is established and killing  
obliged."  
  
  
Malik said, "At least two claimants must swear in  
murder. The oaths are repeated by them until they swear fifty oaths,  
then they have the right to blood. That is how things are done in our  
community."  
  
  
Malik said, "When people beat a man and he dies  
in their hands, they are all slain for him. If he dies after their  
beating, there is swearing. If there is swearing, it is only against  
one man and only he is slain. We have never known the swearing to be  
against more than one man."  
  
  
Malik spoke about a slave who had  
his hand or foot broken and then the break mended . He said, "The one  
who injured him is not obliged to pay anything. If that break causes  
him loss or scar, the one who injured him must pay according to what  
he diminished of the value of the slave."  
  
  
Malik said, "What  
is done in our community about retaliation between slaves is that it  
is like retaliation between freemen. The life of the slave-girl for  
the life of the slave, and her injury for his injury. When a slave  
intentionally kills a slave, the master of the murdered slave has a  
choice. If he wishes, he kills him, and if he wishes, he takes the  
blood-money. If he takes the blood-money, he takes the value of his  
slave. If the owner of the slave who killed wishes to give the value  
of the murdered slave, he does it. If he wishes, he surrenders his  
slave. If he surrenders him, he is not obliged to do anything other  
than that. When the owner of the murdered slave takes the slave who  
murdered and is satisifed with him, he must not kill him. All  
retaliations between slaves for cutting off of the hand and foot and  
such things are dealt with in the same way as in the murder."  
  
  
Malik said about a muslim slave who injures a jew or christian, "If  
the master of the slave wishes to pay blood-money for him according to  
the injury, he does it. Or else he surrenders him and he is sold, and  
the jew or christian is given the blood-money of the injury or all the  
price of the slave if the blood-money is greater than his price. The  
jew or christian is not given a muslim slave."

قَالَ يَحْيَى قَالَ مَالِكٌ الأَمْرُ الَّذِي لاَ اخْتِلاَفَ فِيهِ عِنْدَنَا أَنَّهُ لاَ يَحْلِفُ فِي الْقَسَامَةِ فِي الْعَمْدِ أَحَدٌ مِنَ النِّسَاءِ وَإِنْ لَمْ يَكُنْ لِلْمَقْتُولِ وُلاَةٌ إِلاَّ النِّسَاءُ فَلَيْسَ لِلنِّسَاءِ فِي قَتْلِ الْعَمْدِ قَسَامَةٌ وَلاَ عَفْوٌ ‏.‏ قَالَ يَحْيَى قَالَ مَالِكٌ فِي الرَّجُلِ يُقْتَلُ عَمْدًا أَنَّهُ إِذَا قَامَ عَصَبَةُ الْمَقْتُولِ أَوْ مَوَالِيهِ فَقَالُوا نَحْنُ نَحْلِفُ وَنَسْتَحِقُّ دَمَ صَاحِبِنَا ‏.‏ فَذَلِكَ لَهُمْ ‏.‏ قَالَ مَالِكٌ فَإِنْ أَرَادَ النِّسَاءُ أَنْ يَعْفُونَ عَنْهُ فَلَيْسَ ذَلِكَ لَهُنَّ الْعَصَبَةُ وَالْمَوَالِي ‏.‏ أَوْلَى بِذَلِكَ مِنْهُنَّ لأَنَّهُمْ هُمُ الَّذِينَ اسْتَحَقُّوا الدَّمَ وَحَلَفُوا عَلَيْهِ ‏.‏ قَالَ مَالِكٌ وَإِنْ عَفَتِ الْعَصَبَةُ أَوِ الْمَوَالِي بَعْدَ أَنْ يَسْتَحِقُّوا الدَّمَ وَأَبَى النِّسَاءُ وَقُلْنَ لاَ نَدَعُ قَاتِلَ صَاحِبِنَا فَهُنَّ أَحَقُّ وَأَوْلَى بِذَلِكَ لأَنَّ مَنْ أَخَذَ الْقَوَدَ أَحَقُّ مِمَّنْ تَرَكَهُ مِنَ النِّسَاءِ وَالْعَصَبَةِ إِذَا ثَبَتَ الدَّمُ وَوَجَبَ الْقَتْلُ ‏.‏ قَالَ مَالِكٌ لاَ يُقْسِمُ فِي قَتْلِ الْعَمْدِ مِنَ الْمُدَّعِينَ إِلاَّ اثْنَانِ فَصَاعِدًا تُرَدَّدُ الأَيْمَانُ عَلَيْهِمَا حَتَّى يَحْلِفَا خَمْسِينَ يَمِينًا ثُمَّ قَدِ اسْتَحَقَّا الدَّمَ وَذَلِكَ الأَمْرُ عِنْدَنَا ‏.‏ قَالَ مَالِكٌ وَإِذَا ضَرَبَ النَّفَرُ الرَّجُلَ حَتَّى يَمُوتَ تَحْتَ أَيْدِيهِمْ قُتِلُوا بِهِ جَمِيعًا فَإِنْ هُوَ مَاتَ بَعْدَ ضَرْبِهِمْ كَانَتِ الْقَسَامَةُ وَإِذَا كَانَتِ الْقَسَامَةُ لَمْ تَكُنْ إِلاَّ عَلَى رَجُلٍ وَاحِدٍ وَلَمْ يُقْتَلْ غَيْرُهُ وَلَمْ نَعْلَمْ قَسَامَةً كَانَتْ قَطُّ إِلاَّ عَلَى رَجُلٍ وَاحِدٍ ‏.‏

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Yahya said that Malik said, "The way of doing things in our  
community about Yahya said that Malik said, "The procedure in swearing  
in manslaughter is that those who claim blood swear and it becomes due  
by their swearing. They swear fifty oaths, and there is blood-money  
for them according to the division of their inheritances. If it is not  
possible to divide up the oaths which they swear between them evenly,  
one looks to the one who has most of those oaths against him, and that  
oath is obliged against him."  
  
  
Malik said, "If the slain man  
only has female heirs, they swear and take the blood-money. If he only  
has one male heir, he swears fifty oaths and takes the blood-money.  
That is only in the accidental killing, not in the intentional one."

قَالَ يَحْيَى قَالَ مَالِكٌ الْقَسَامَةُ فِي قَتْلِ الْخَطَإِ يُقْسِمُ الَّذِينَ يَدَّعُونَ الدَّمَ وَيَسْتَحِقُّونَهُ بِقَسَامَتِهِمْ يَحْلِفُونَ خَمْسِينَ يَمِينًا تَكُونُ عَلَى قَسْمِ مَوَارِيثِهِمْ مِنَ الدِّيَةِ فَإِنْ كَانَ فِي الأَيْمَانِ كُسُورٌ إِذَا قُسِمَتْ بَيْنَهُمْ نُظِرَ إِلَى الَّذِي يَكُونُ عَلَيْهِ أَكْثَرُ تِلْكَ الأَيْمَانِ إِذَا قُسِمَتْ فَتُجْبَرُ عَلَيْهِ تِلْكَ الْيَمِينُ ‏.‏ قَالَ مَالِكٌ فَإِنْ لَمْ يَكُنْ لِلْمَقْتُولِ وَرَثَةٌ إِلاَّ النِّسَاءُ فَإِنَّهُنَّ يَحْلِفْنَ وَيَأْخُذْنَ الدِّيَةَ فَإِنْ لَمْ يَكُنْ لَهُ وَارِثٌ إِلاَّ رَجُلٌ وَاحِدٌ حَلَفَ خَمْسِينَ يَمِينًا وَأَخَذَ الدِّيَةَ وَإِنَّمَا يَكُونَ ذَلِكَ فِي قَتْلِ الْخَطَإِ وَلاَ يَكُونُ فِي قَتْلِ الْعَمْدِ ‏.‏

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Yahya said that Malik said, "When the relatives of the deceased  
accept the blood-money then it is inherited according to the Book of  
Allah. Daughters of the dead man inherit and so do sisters, and  
whichever women would inherit from him ordinarily.  
  
  
If the  
women do not take all his inheritance, then what remains goes to the  
agnatic relations who most deserve to inherit from him in conjunction  
with the women."  
  
  
Malik said, "When one of the heirs of a man  
killed by mistake attempts to take his due from the blood-money while  
his companions are absent, he may not do that, and he has no right to  
any of the blood-money, however large or small, unless the qasama has  
been completed by him. If he swears fifty oaths then he has the right  
to his portion of the blood-money. That is because the blood-money is  
not established as due without there being fifty oaths, and the blood-  
money is not established as due unless the responsibility for the  
blood is established. If any one of the heirs comes after that he  
swears a number of the oaths commensurate with his fraction of the  
inheritance and takes his right until all the heirs exact their  
complete right. If a maternal uncle comes he has one sixth and must  
swear one sixth of the fifty oaths. So whoever swears may take his due  
from the blood-money and whoever abstains annuls his right. If one of  
the heirs is absent or is a child who has not reached puberty, those  
who are present swear fifty oaths and if the one who was absent comes  
after that or the child reaches puberty, they swear. and they swear  
according to their due of the blood-money and according to their  
shares of inheritance from it."  
  
  
Yahya said that Malik said,  
"This is the best I have heard on the matter."

قَالَ يَحْيَى قَالَ مَالِكٌ إِذَا قَبِلَ وُلاَةُ الدَّمِ الدِّيَةَ فَهِيَ مَوْرُوثَةٌ عَلَى كِتَابِ اللَّهِ يَرِثُهَا بَنَاتُ الْمَيِّتِ وَأَخَوَاتُهُ وَمَنْ يَرِثُهُ مِنَ النِّسَاءِ فَإِنْ لَمْ يُحْرِزِ النِّسَاءُ مِيرَاثَهُ كَانَ مَا بَقِيَ مِنْ دِيَتِهِ لأَوْلَى النَّاسِ بِمِيرَاثِهِ مَعَ النِّسَاءِ ‏.‏ قَالَ مَالِكٌ إِذَا قَامَ بَعْضُ وَرَثَةِ الْمَقْتُولِ الَّذِي يُقْتَلُ خَطَأً يُرِيدُ أَنْ يَأْخُذَ مِنَ الدِّيَةِ بِقَدْرِ حَقِّهِ مِنْهَا وَأَصْحَابُهُ غَيَبٌ لَمْ يَأْخُذْ ذَلِكَ وَلَمْ يَسْتَحِقَّ مِنَ الدِّيَةِ شَيْئًا قَلَّ وَلاَ كَثُرَ دُونَ أَنْ يَسْتَكْمِلَ الْقَسَامَةَ يَحْلِفُ خَمْسِينَ يَمِينًا فَإِنْ حَلَفَ خَمْسِينَ يَمِينًا اسْتَحَقَّ حِصَّتَهُ مِنَ الدِّيَةِ وَذَلِكَ أَنَّ الدَّمَ لاَ يَثْبُتُ إِلاَّ بِخَمْسِينَ يَمِينًا وَلاَ تَثْبُتُ الدِّيَةُ حَتَّى يَثْبُتَ الدَّمُ فَإِنْ جَاءَ بَعْدَ ذَلِكَ مِنَ الْوَرَثَةِ أَحَدٌ حَلَفَ مِنَ الْخَمْسِينَ يَمِينًا بِقَدْرِ مِيرَاثِهِ وَأَخَذَ حَقَّهُ حَتَّى يَسْتَكْمِلَ الْوَرَثَةُ حُقُوقَهُمْ إِنْ جَاءَ أَخٌ لأُمٍّ فَلَهُ السُّدُسُ وَعَلَيْهِ مِنَ الْخَمْسِينَ يَمِينًا السُّدُسُ فَمَنْ حَلَفَ اسْتَحَقَّ مِنَ الدِّيَةِ وَمَنْ نَكَلَ بَطَلَ حَقُّهُ وَإِنْ كَانَ بَعْضُ الْوَرَثَةِ غَائِبًا أَوْ صَبِيًّا لَمْ يَبْلُغْ حَلَفَ الَّذِينَ حَضَرُوا خَمْسِينَ يَمِينًا فَإِنْ جَاءَ الْغَائِبُ بَعْدَ ذَلِكَ أَوْ بَلَغَ الصَّبِيُّ الْحُلُمَ حَلَفَ كُلٌّ مِنْهُمَا يَحْلِفُونَ عَلَى قَدْرِ حُقُوقِهِمْ مِنَ الدِّيَةِ وَعَلَى قَدْرِ مَوَارِيثِهِمْ مِنْهَا ‏.‏ قَالَ يَحْيَى قَالَ مَالِكٌ وَهَذَا أَحْسَنُ مَا سَمِعْتُ ‏.

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Yahya said that Malik said, "What is done in our community about  
slaves is that when a slave is struck intentionally or accidentally  
and the master brings a witness, he swears with his witness one oath  
and then he has the value of the slave. There is no swearing for  
revenge in slaves, accidentally or intentionally, and I have not heard  
any of the people of knowledge say that there was."  
  
  
Malik  
said, "If a slave is killed intentionally or accidentally, the master  
of the slave who is slain has no swearing or oath. The master cannot  
demand his right except with a fair proof or a witness if he swears  
with one witness."  
  
  
Yahya said that Malik said, "This is the  
best of what I have heard on the matter.''

قَالَ يَحْيَى قَالَ مَالِكٌ الأَمْرُ عِنْدَنَا فِي الْعَبِيدِ أَنَّهُ إِذَا أُصِيبَ الْعَبْدُ عَمْدًا أَوْ خَطَأً ثُمَّ جَاءَ سَيِّدُهُ بِشَاهِدٍ حَلَفَ مَعَ شَاهِدِهِ يَمِينًا وَاحِدَةً ثُمَّ كَانَ لَهُ قِيمَةُ عَبْدِهِ وَلَيْسَ فِي الْعَبِيدِ قَسَامَةٌ فِي عَمْدٍ وَلاَ خَطَإٍ وَلَمْ أَسْمَعْ أَحَدًا مِنْ أَهْلِ الْعِلْمِ قَالَ ذَلِكَ ‏.‏ قَالَ مَالِكٌ فَإِنْ قُتِلَ الْعَبْدُ عَمْدًا أَوْ خَطَأً لَمْ يَكُنْ عَلَى سَيِّدِ الْعَبْدِ الْمَقْتُولِ قَسَامَةٌ وَلاَ يَمِينٌ وَلاَ يَسْتَحِقُّ سَيِّدُهُ ذَلِكَ إِلاَّ بِبَيِّنَةٍ عَادِلَةٍ أَوْ بِشَاهِدٍ فَيَحْلِفُ مَعَ شَاهِدِهِ ‏.‏ قَالَ يَحْيَى قَالَ مَالِكٌ وَهَذَا أَحْسَنُ مَا سَمِعْتُ ‏.

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