

[Translation of Malik's Muwatta, Book 38:](#)

## *Setting Free and Wala'*

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### **Section: Freeing a Share Held in a Slave**

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*Book 38, Number 38.1.1:*

Malik related to me from Nafi from Abdullah ibn Umar that the Messenger of Allah, may Allah bless him and grant him peace, said, "If a man frees his share of a slave and has enough money to cover the full price of the slave justly evaluated for him, he must buy out his partners so that the slave is completely freed. If he doesn't have the money, he partially frees him.

Malik said, "The generally agreed-on way of doing things among us in the case of slave whose master makes a bequest to free part of him - a third, a fourth, a half, or any share after his death, is that only the portion of him is freed that his master has named. This is because the freeing of that portion is only obliged to take place after the death of the master because the master has the option to withdraw the bequest as long as he lives. When the slave is freed from his master, the master is a testator and the testator only has access to free what he can take from his property, being the third of the property he is allowed to bequeath, and the rest of the slave is not free because the man's property has gone out of his hands. How can the rest of the slave which belongs to other people be free when they did not initiate the setting free and did not confirm it and they do not have the wala' established for them? Only the deceased could do that. He was the one who freed him and the one for whom the wala' was confirmed. That is not to be borne by another's property unless he bequeaths within the third of his property what remains of a slave to be freed. That is a request against his partners and inheritors and the partners must not refuse the slave that when it is within the third of the dead man's property because there is no harm in that to the inheritors."

Malik said, "If a man frees a third of his slave while he is critically ill, he must complete the emancipation so all of him is free from him, if it is within the third of his property that he has access to, because he is not treated in the same way as a man who frees a third of a slave after his death, because had the one who freed a third of his slave after his death lived, he could have cancelled it and the slave's being set free would be of no effect. The master who made the freeing of the third of the slave irrevocable in his illness, would still have to free all of him if he lived. If he died, the slave would be set free within the third of the bequest. That is because the command of the deceased is permissible in his third as the command of the healthy is permissible in all his property."

### **Section: Making Conditions when Freeing a Slave**

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*Book 38, Number 38.2.2:*

Malik said, "A master who frees a slave of his and settles his emancipation so that his testimony is permitted, his inviolability complete, and his right to inherit confirmed, cannot impose stipulations on him like what he imposes on a slave about property or service, nor get him to do anything of slavery, because the Messenger of Allah, may Allah bless him and grant him peace, said, "If a man frees his share of 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 commented, "If he owns the slave completely, it is more proper to free him completely and not mingle any slavery with it."

### **Section: People who Free Slaves and Own No Other Property**

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*Book 38, Number 38.3.3:*

Malik related to me from Yahya ibn Said and somebody else from al-Hasan ibn Abi al-Hasan al-Basri and from Muhammad ibn Sirin that a man in the time of the Messenger of Allah, may Allah bless him and grant him peace, freed six of his slaves while he was dying. The Messenger of Allah, may Allah bless him and grant him peace, drew lots between them and freed a third of those slaves.

Malik added that he had heard that the man did not have any property other than them.

*Book 38, Number 38.3.4:*

Malik related to me from Rabia ibn Abi Abd ar-Rahman that a man in the time of Aban ibn Uthman's amirate freed all of his slaves and did not have other property than them. Aban ibn Uthman took charge of the slaves and they were divided into three groups. Then he drew lots on the basis that which ever group drew the dead man's arrow would be free. The arrow fell to one of the thirds, and that third was freed.

### **Section: Judgement on the Property of Slaves when Set Free**

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*Book 38, Number 38.4.5:*

Malik related to me that he heard Ibn Shihab say, "The precedent of the sunna is that when a slave is freed, his property follows him."

Malik said, "One thing which makes clear that the property of a slave follows him when he is freed is that when the contract (mukatab) is written for his freedom, his property follows him even if he did not stipulate it. That is because the bond of kitaba is the bond of wala' when it is complete. The property of a slave and a mukatab is not treated in the same way as any children they may have. Their children are only treated in the same way as their own slaves, not in the same way as their property. This is because the sunna, in which there is no dispute, is that when a slave

is freed, his property follows him and his children do not follow him, and when a mukatab writes the contract for his freedom, his property follows him and his children do not follow him."

Malik said, "One thing which makes that clear is that when a slave or a mukatab are bankrupt, their property is taken but the mothers of their children and their children are not taken because they are not their property."

Malik said, "Another thing which makes it clear is that when a slave is sold and the person who buys him stipulates the inclusions of his property, his children are not included in his property."

Malik said, "Another thing which makes it clear is that when a slave does injure some one, he and his property are taken, and his children are not taken."

## **Section: Freeing Slaves who are Umm Walad and a General Chapter on Freeing**

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*Book 38, Number 38.5.6:*

Malik related to me from Nafi from Abdullah ibn Umar that Umar ibn al-Khattab said, "If a slave-girl gives birth to a child by her master, he must not sell her, give her away, or bequeath her. He enjoys her and when he dies she is free ."

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*Book 38, Number 38.5.7:*

Malik related to me that he had heard that a slave-girl came to Umar ibn al-Khattab (who had been beaten by her master with a red hot iron) and he set her free.

Malik said, "The generally agreed-on way of doing things among us is that a man is not permitted to be freed while he has a debt against him which exceeds his property. A boy is not allowed to be set free until he has reached puberty. The young person whose affairs are managed cannot set free in his property, even when he reaches puberty, until he manages his property."

## **Section: Slaves Permitted to be Freed when a Slave must be Freed by Obligation**

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*Book 38, Number 38.6.8:*

Malik related to me from Hilal ibn Usama from Ata ibn Yasar that Umar ibn al-Hakam said, "I went to the Messenger of Allah, may Allah bless him and grant him peace, and said, 'Messenger of Allah, a slave girl of mine was tending my sheep. I came to her and one of the sheep was lost. I asked her about it and she said that a wolf had eaten it, so I became angry and I am one of the children of Adam, so I struck her on the face. As it happens, I have to set a slave free, shall I free her?' The Messenger of Allah, may Allah bless him and grant him peace, questioned her, 'Where is Allah?' She said, 'In heaven.' He said, 'Who am I?' She said, 'You are the Messenger of Allah.' The Messenger of Allah, may Allah bless him and grant him

peace, said, 'Free her.' "

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*Book 38, Number 38.6.9:*

Malik related to me from Ibn Shihab from Ubaydullah ibn Abdullah ibn Utba ibn Masud that one of the Ansar came to the Messenger of Allah, may Allah bless him and grant him peace, with a black slave-girl of his. He said, "Messenger of Allah, I must set a slave free who is a mumina. If you think that she is mumina, I will free her." The Messenger of Allah, may Allah bless him and grant him peace, questioned her, "Do you testify that there is no god but Allah?" She said, "Yes." "Do you testify that Muhammad is the Messenger of Allah?" She said, "Yes." "Are you certain about the rising after death?" She said, "Yes." The Messenger of Allah, may Allah bless him and grant him peace, said, "Free her."

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*Book 38, Number 38.6.10:*

Malik related to me that he had heard that al-Maqburi said that Abu Hurayra was asked whether a man who had to free a slave, could free an illegitimate child to fulfil that obligation. Abu Hurayra said, "Yes. That will give satisfaction for him."

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*Book 38, Number 38.6.11:*

Malik related to me that he had heard that Fadala ibn Ubayd al-Ansari who was one of the companions of the Messenger of Allah, may Allah bless him and grant him peace, was asked whether it was permissible for a man who had to free a slave to free an illegitimate child. He said, "Yes, That will give satisfaction for him."

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### **Section: Slaves Not Permitted to be Freed when a Slave must be Freed by Obligation**

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*Book 38, Number 38.7.12:*

Malik related to me that he had heard that Abdullah ibn Umar was asked whether a slave could be bought on the specific condition that it was to be used to fulfil the obligation of freeing a slave, and he said, "No."

Malik said, "That is the best of what I have heard on the obligation of freeing slaves. Someone who has to set a slave free because of an obligation on him, may not buy one on the condition that he sets it free because if he does that, whatever he buys is not completely a slave because he has reduced its price by the condition he has made of setting it free."

Malik added, "There is no harm, however, in someone buying a person expressly to set him free."

Malik said, "The best of what I have heard on the obligation of freeing slaves is that it is not permitted to free a christian or a jew to fulfil it, and one does not free a mukatab or a mudabbar or an umm walad or a slave to be freed after a certain number of years, or a blind person. There is no harm in freeing a christian, jew, or magian

voluntarily, because Allah, the Blessed, the Exalted, said in His Book, 'either as a favour then or by ransom,' (Sura 47 ayat 4) The favour is setting free."

Malik said, "As for obligations of freeing slaves which Allah has mentioned in the Book, one only frees a mumin slave for them."

Malik said, "It is like that in feeding poor people for kaffara. One must only feed muslims and one does not feed anyone outside of the deen of Islam."

### **Section: Freeing the Living for the Dead**

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*Book 38, Number 38.8.13:*

13 Malik related to me from Abd ar-Rahman ibn Abi Amra al-Ansari that his mother had wanted to make a bequest, but she delayed until morning and died. She had intended to set someone free, so Abd ar-Rahman said, 'I said to al-Qasim ibn Muhammad, 'Will it help her if I free a slave for her?' Al-Qasim replied, 'Sad ibn Ubada said to the Messenger of Allah, may Allah bless him and grant him peace, 'My mother died, will it help her if I set a slave free for her?' The Messenger of Allah, may Allah bless him and grant him peace, said "Yes." "'

*Book 38, Number 38.8.14:*

Malik related to me that Yahya ibn Said said, "Abd ar-Rahman ibn Abi Bakr died in his sleep, and A'isha, the wife of the Prophet, may Allah bless him and grant him peace, set free many slaves for him." Malik said, "This is what I like best of what I have heard on the subject."

### **Section: The Excellence of Freeing Slaves, Freeing Adulteresses and Illegitimate Children**

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*Book 38, Number 38.9.15:*

Malik related to me from Hisham ibn Urwa from his father from A'isha, the wife of the Prophet, may Allah bless him and grant him peace, that the Messenger of Allah, may Allah bless him and grant him peace, was asked what was the most excellent kind of slave to free. The Messenger of Allah, May Allah bless him and grant him peace, answered, "The most expensive and the most valuable to his master."

*Book 38, Number 38.9.16:*

Malik related to me from Nafi that Abdullah ibn Umar freed an illegitimate child and its mother.

### **Section: The Right of the One who Sets Free to the Wala'**

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*Book 38, Number 38.10.17:*

Malik related to me from Hisham ibn Urwa from his father that A'isha, the wife of

the Prophet, may Allah bless him and grant him peace, said, "Barira came to me and said, 'I have written myself as mukatab for my people for nine uqiyas, one uqiya per year, so help me.' A'isha said, 'If your people agree that I pay it all to them for you, and that if I pay it, your wala' is mine, then I will do it.' Barira went to her masters and told them that and they didn't agree. She came back from her masters while the Messenger of Allah, may Allah bless him and grant him peace, was sitting. She said to A'isha, 'I offered that to them and they refused me unless they had the wala'.' The Messenger of Allah, may Allah bless him and grant him peace, heard that and asked her about it A'isha told him and the Messenger of Allah, may Allah bless him and grant him peace, said, 'Take her and stipulate that the wala' is yours, for the wala' is for the one who sets free.' So A'isha did that and then the Messenger of Allah, may Allah bless him and grant him peace, stood up in front of the people, and praised Allah and gave thanks to Him. Then he said, 'What is wrong with the people who make conditions which are not in the Book of Allah? Any condition which is not in the Book of Allah is invalid even if it is a hundred conditions. The decree of Allah is truer and the conditions of Allah are firmer, and the wala' only belongs to the one who sets free.' "

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*Book 38, Number 38.10.18:*

Malik related to me from Nafi from Abdullah ibn Umar that A'isha umm al-muminin wanted to buy a slave-girl and set her free. Her people said, "We will sell her to you provided that her wala' is ours." She mentioned that to the Messenger of Allah, may Allah bless him and grant him peace, and he said, "Don't let that hinder you, for the wala' only belongs to the one who sets free."

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*Book 38, Number 38.10.19:*

Malik related to me from Yahya ibn Said from Amra bint Abd ar-Rahman that Barira came asking the help of A'isha, umm al-muminin. A'isha said, "If your masters agree that I pay them your price in one lump sum and set you free I will do it." Barira mentioned that to her masters and they said, "No, not unless your wala' is ours." Yahya ibn Said added that Amra bint Abd ar-Rahman claimed that A'isha mentioned that to the Messenger of Allah, may Allah bless him and grant him peace, and the Messenger of Allah, may Allah bless him and grant him peace said, "Buy her and set her free. The wala' only belongs to the one who sets free."

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*Book 38, Number 38.10.20:*

Malik related to me from Abdullah ibn Dinar from Abdullah ibn Umar that the Messenger of Allah, may Allah bless him and grant him peace, forbade selling or giving away the wala'.

Malik said that it was not permissible for a slave to buy himself from his master on the provision that he could give the wala' to whomever he wished as the wala' was for the one who set him free, and that had a man given permission to his mawla to give the wala' to whomever he wished, that would not have been permitted, because the Messenger of Allah, may Allah bless him and grant him peace, had said, "The

wala' is for the one who sets free. " The Messenger of Allah, may Allah bless him and grant him peace, forbade selling or giving away the wala'. For if it was permitted to the master to stipulate that for him and to give him permission to give the wala' to whomever he liked, that would be a gift.

### **Section: Slaves Attracting the Wala' When Set Free**

*Book 38, Number 38.11.21:*

Malik related to me from Rabia ibn Abd ar-Rahman that az-Zubayr ibn al-Awwam bought a slave and set him free. The slave had children by a free woman. When az-Zubayr freed him, he said, "They are my mawali." The man argued, "They are the mawali of their mother. Rather, they are our mawali." They took the dispute to Uthman ibn Affan, and Uthman gave a judgement that az-Zubayr had their wala'.

Malik related to me that he had heard that Said ibn al-Musayyab was asked who had the wala' of the children whom a slave had by a free woman. Said said, "If their father dies and he is a slave who was not set free, their wala' belongs to the mawali of their mother."

Malik said, "That is like the child of a woman who is a mawla who has been divorced by lian; the child is attached to the mawali of his mother and they are his mawali. If he dies, they inherit from him. If he commits a crime, they pay the blood-money for him. If his father acknowledges him, he is given a kinship to him and his wala' goes to the mawali of his father. They are his heirs, they pay his blood-money and his father is punished with the hadd-punishment."

Malik said, "It is like that with a free-born woman divorced by lian. If her husband who curses her by lian does not acknowledge her child, the child is dealt with in the same way except that the rest of his inheritance after the inheritance of his mother and his brothers from his mother goes to all the muslims as long as he was not given kinship to his father. The child of the lian is attached to the patronage of the mawali of his mother until his father acknowledges him because he does not have a lineage or paternal relations. If his lineage is confirmed, it goes to his paternal relations."

Malik said, "The generally agreed-on way of doing things among us about a child of a slave by a free woman, while the father of the slave is free, is that the grandfather (the father of the slave), attracts the wala' of his son's free children by a free woman. They leave their inheritance to him as long as their father is a slave. If the father becomes free, the wala' returns to his mawali. If he dies and he is still a slave, the inheritance and the wala' go to the grandfather. If the slave has two free sons, and one of them dies while the father is still a slave, the grandfather, the father of the father, attracts the wala' and the inheritance."

Malik spoke about a slave-girl who was set free while she was pregnant and her husband was a slave and then her husband became free before she gave birth, or after she gave birth. He said, "The wala' of what is in her womb goes to the person who set the mother free because slavery touched the child before the mother was set free. It is not treated in the same way as a child conceived by its mother after she has been

set free because the wala' of such a child, is attracted by the father when he is set free."

Malik said that if a slave asked his master's permission to free a slave of his and his master gave permission, the wala' of the freed slave went to the master of his master, and his wala' did not return to the master who had set him free, even if he were to become free himself."

### **Section: The Inheritance of the Wala'**

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*Book 38, Number 38.12.22:*

Malik related to me from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm from Abd al-Malik ibn Abi Bakr ibn Abd ar-Rahman ibn al-Harith ibn Hisham that his father told him that al-Asi ibn Hisham had died and left three sons, two by one wife and one by another wife. One of the two with the same mother died and left property and mawali. His full brother inherited his property and the wala' of his mawali. Then he also died, and left as heirs his son and his paternal half brother. His son said, "I obtain what my father inherited of property and the wala' of the mawali." His brother said, "It is not like that. You obtain the property. As for the wala' of the mawali, it is not so. Do you think that had it been my first brother who died today, I would not have inherited from him?" They argued and went to Uthman ibn Affan. He gave a judgement that the brother had the wala' of the mawali.

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*Book 38, Number 38.12.23:*

Malik related to me from Abdullah ibn Abi Bakr ibn Hazm that his father told him that he was sitting with Aban ibn Uthman, and an argument was brought to him between some people from the Juhayna tribe and some people from the Banu al-Harith ibn al-Khazraj. A woman of the Juhayna tribe was married to a man from the Banu al-Harith ibn al-Khazraj, called Ibrahim ibn Kulayb. She died and left property and mawali, and her son and husband inherited them from her. Then her son died and his heirs said, "We have the wala' of the mawali. Her son obtained them." Those of the Juhayna said, "It is not like that. They are the mawali of our female associate. When her child died, we have their wala' and we inherit them." Aban ibn Uthman gave a judgement that the people from the Juhayna tribe did indeed have the wala' of the mawali.

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*Book 38, Number 38.12.24:*

Malik related to me that he had heard that Said ibn al-Musayyab spoke about a man who died and left three sons and left mawali whom he had freed. Then two of his sons died and left children. He said, "The third remaining son inherits the mawali. When he dies, his children and the children of his brothers share equally in the wala' of the mawali."

### **Section: The Inheritance of Slaves Set Free and the Wala' of Jews and Christians Who Set Slaves Free**



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*Book 38, Number 38.13.25:*

Malik related to me that he had asked Ibn Shihab about a slave who was released. He said, "He gives his wala' to whomever he likes. If he dies and has not given his wala' to anyone, his inheritance goes to the muslims and his blood-money is paid by them."

Malik said, "The best of what has been heard about a slave who is released is that no one gets his wala', and his inheritance goes to the muslims, and they pay his blood-money."

Malik said that when the slave of a jew or christian became muslim and he was freed before being sold, the wala' of the freed slave went to the muslims. If the jew or christian became muslim afterwards, the wala' did not revert to him. "

He said, "However, if a jew or christian frees a slave from their own deen, and then the freed one becomes muslim before the jew or christian who freed him becomes muslim and then the one who freed him has become muslim, his wala' reverts to him because the wala' was confirmed for him on the day he freed him."

Malik said that the muslim child of a jew or christian inherited the mawali of his jewish or christian father when the freed mawla became muslim before the one who freed him became muslim. If the freed one was already muslim when he was freed, the muslim children of the christian or jew had nothing of the wala' of a muslim slave because the jew and the christian did not have the wala'. The wala' of a muslim slave went to the community of muslims.

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