

[Translation of Malik's Muwatta, Book 39:](#)

## *The Mukatab*

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### **Section: Judgement on the Mukatab**

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*Book 39, Number 39.1.1:*

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."

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*Book 39, Number 39.1.2:*

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."

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*Book 39, Number 39.1.3:*

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."

### **Section: Assuming the Responsibility in Kitaba**

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*Book 39, Number 39.2.4:*

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."

### **Section: Severance in the Kitaba for an Agreed Price**

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*Book 39, Number 39.3.5:*

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."

## **Section: Injuries Caused by Mukatabs**

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*Book 39, Number 39.4.6:*

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."

## Section: Selling Mukatabs

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*Book 39, Number 39.5.7:*

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."

## **Section: The Labour of Mukatabs**

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*Book 39, Number 39.6.8:*

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."

## **Section: Freeing a Mukatab if he Pays what he Owes before the End of the**



## Term

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*Book 39, Number 39.7.9:*

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."

## Section: The Inheritance of a Mukatab when he is Set Free

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*Book 39, Number 39.8.10:*

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."

## **Section: Conditions Concerning Mukatabs**

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*Book 39, Number 39.9.11:*

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."

## **Section: The Wala' of the Mukatab when he is Set Free**

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*Book 39, Number 39.10.12:*

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."

## **Section: What is Not Permitted in Freeing a Mukatab**

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*Book 39, Number 39.11.13:*

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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*Book 39, Number 39.11.14:*

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."

## **Section: Bequests involving Mukatabs**

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*Book 39, Number 39.12.15:*

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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