

[Translation of Malik's Muwatta, Book 37:](#)

Wills and Testaments

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Section: Command to Write Testaments

Book 37, Number 37.1.1:

Malik related to me from Nafi from Abdullah ibn Umar that the Messenger of Allah, may Allah bless him and grant him peace, said, "It is the duty of a muslim man who has something to be given as a bequest not to spend two nights without writing a will about it."

Malik said, "The generally agreed-on way of doing things in our community is that when the testator writes something in health or illness as a bequest, and it has freeing slaves or things other than that in it, he can alter it in any way he chooses, until he is on his deathbed. If he prefers to abandon a bequest or change it, he can do so unless he has made a slave mudabbar (to be freed after his death). If he has made him mudabbar, there is no way to change what he has made mudabbar. He is allowed to change his testament because the Messenger of Allah, may Allah bless him and grant him peace, said, "It is the duty of a muslim man who has something to be given as a bequest not to spend two nights without writing a will about it."

Malik explained, "Had the testator not been able to change his will nor what was mentioned in it about freeing slaves, each testator might withhold making bequests from his property, whether in freeing slaves or other than it. A man gives a bequest in his health and in his travelling." (i.e. he does not wait till his death bed) .

Malik summed up, "The way of doing things in our community about which there is no dispute is that he can change whatever he likes of that except for the mudabbar."

Section: Permissibility of the Bequest of the Child, the Simpleton, the Lunatic and the Idiot

Book 37, Number 37.2.2:

Malik related to me from Abdullah ibn Abi Bakr ibn Hazm that Amr ibn Sulaym az-Zuraqi informed his father that it had been said to Umar ibn al-Khattab, "There is here an adolescent boy who has not yet reached puberty. He is from the Ghassan tribe and his heir is in ash-Sham. He has property. Here he only has the daughter of one of his paternal uncles." Umar ibn al-Khattab instructed, "Let him leave her a bequest." He willed her a property called the well of Jusham.

Malik added, "That property was sold for 30,000 dirhams, and the daughter of the paternal uncle to whom he willed it was the mother of Amr ibn Sulaym az-Zuraqi."

Book 37, Number 37.2.3:

Malik related to me from Yahya ibn Said from Abu Bakr ibn Hazm that a boy from Ghassan was dying in Madina while his heir was in Syria. That was mentioned to Umar ibn al-Khattab. It was said to him, "So-and-so is dying. Shall he make a bequest?" He said, "Let him make a bequest."

Yahya ibn Said said that Abu Bakr had said, "He was a boy of ten or twelve years." Yahya said, "He willed the well of Jusham, and his people sold it for 30,000 dirhams."

Yahya said that he heard Malik say, "The generally agreed-on way of doing things in our community is that a simpleton, an idiot, or a lunatic who recovers at times, can make wills if they have enough of their wits about them to recognise what they will. Someone who has not enough wits to recognise what he wills, and is overcome in his intellect, cannot make a bequest."

Section: Limiting the Bequest to One-Third of the Estate

Book 37, Number 37.3.4:

Malik related to me from Ibn Shihab from Amir ibn Sad ibn Abi Waqqas that his father said, "The Messenger of Allah, may Allah bless him and grant him peace, came to me to treat me for a pain which became hard to bear in the year of the farewell hajj. I said, 'Messenger of Allah, you can see how far the pain has reached me. I have property and only my daughter inherits from me. Shall I give two thirds of my property as sadaqa?' The Messenger of Allah, may Allah bless him and grant him peace, said, 'No.' I said, 'Half?' He said, 'No.' Then the Messenger of Allah, may Allah bless him and grant him peace, said, 'A third, and a third is a lot. Leaving your heirs rich is better than leaving them poor to beg from people. You never spend anything on maintenance desiring the Face of Allah by it, but that you are rewarded for it, even what you appoint for your wife.' Sad said, 'Messenger of Allah, will I be left here in Makka after my companions have departed for Madina?' The Messenger of Allah, may Allah bless him and grant him peace, said, 'If you are left behind, and do sound deeds you will increase your degree and elevation by them. Perhaps you will be left behind so that some people may benefit by you and others may be harmed by you. O Allah! complete their hijra for my companions, and do not turn them back on their heels. The unfortunate one is Said ibn Khawla.' The Messenger of Allah, may Allah bless him and grant him peace, was distressed on his account for he had died at Makka."

Yahya said that he heard Malik speak about a man who willed a third of his property to a man and said as well, "My slave will serve so-and-so (another man) for as long as he lives, then he is free," then that was looked into, and the slave was found to be a third of the property of the deceased. Malik said, "The service of the slave is evaluated. Then the two of them divide it between them. The one who was willed a third takes his third, as a share, and the one who was willed the service of the slave takes what was evaluated for him of the slave's service. Each of them takes, from the service of the slave or from his wage if he has a wage, according to his share. If the

one who was given the service of the slave for as long as he lived dies, then the slave is freed."

Yahya said that he heard Malik speak about someone who willed his third and said "So-and-so has such-and-such, and so-and-so has such-and-such," naming some of his property, and his heirs protested that it was more than a third." Malik said, "The heirs then have an option between giving the beneficiaries their full bequests and taking the rest of the property of the deceased, or between dividing among the beneficiaries the third of the property of the deceased and surrendering to them their third. If they wish, their rights in it reach as far as they reach."

Section: Dealing with the Property of the Pregnant Woman, the Sick Person and Someone Present in Battle

Book 37, Number 37.4.4a:

Yahya said that he heard Malik say, "The best of what I have heard about the testament of a pregnant woman and about what settlements she is permitted in her property is that the pregnant woman is like the sick person. When the illness is light, and one does not fear for the sick person, he does with his property what he likes. If the illness is such that his life is feared for, he can only dispose of a third of his estate."

He said, "It is the same with a woman who is pregnant. The beginning of pregnancy is good news and joy. It is not illness and no fear because Allah the Blessed, the Exalted, said in His Book, 'We gave her good news of Ishaq and after Ishaq, Yaqub.' (Sura II ayat 71). And He said, 'She bore a light burden and passed by with it, but when she became heavy, they called upon Allah, their Lord, "If you give us a good-doing son, we will be among the thankful." '(Sura 7 ayat 189).

"When a pregnant woman becomes heavy, she is only permitted to dispose of a third of her estate. The beginning of this restriction is after six months. Allah, the Blessed, the Exalted, said in His Book, 'Mothers suckle their children for two complete years.' And He said, 'his bearing and weaning are thirty months.' (Sura 2 ayat 233).

"When six months have passed for the pregnant woman from the day she conceived, she is only permitted to dispose of a third of her property."

Yahya said that he heard Malik say, "A man who is advancing in the row for battle, can only dispose of a third of his property. He is in the same position as a pregnant woman or an ill person who is feared for, as long as he is in that situation."

Section: Bequests to Heirs and Right of Possession

Book 37, Number 37.5.4b:

Yahya said that he heard Malik say, "This ayat is abrogated. It is the word of Allah, the Blessed, the Exalted, 'If he leaves goods, the testament is for parents and kinsmen.' What came down about the division of the fixed shares of inheritance in

the Book of Allah, the Mighty, the Exalted, abrogated it."

Yahya said that he heard Malik say, "The established sunna with us, in which there is no dispute, is that it is not permitted for a testator to make a bequest (in addition to the fixed share) in favour of an heir, unless the other heirs permit him. If some of them permit him and others refuse, he is allowed to diminish the share of those who have given their permission. Those who refuse take their full share from the inheritance.

Yahya said that he heard Malik speak about an invalid who made a bequest and asked his heirs to give him permission to make a bequest when he was so ill that he only had command of a third of his property, and they gave him permission to leave some of his heirs more than his third. Malik said, "They cannot revoke that. Had they been permitted to do so, every heir would have done that, and then, when the testator died, they would take that for themselves and prevent him from bequeathing his third and what was permitted to him with respect to his property."

Malik said, "If he asks permission of his heirs to grant a bequest to an heir while he is well and they give him permission, that is not binding on them. The heirs can rescind that if they wish. That is because when a man is well, he is entitled to all his property and can do what he wishes with it. If he wishes, he can spend all of it. He can spend it and give sadaqa with it or give it to whomever he likes. His asking permission of his heirs is permitted for the heirs, when they give him permission when authority over all his property is closed off from him and nothing outside of the third is permitted to him, and when they are more entitled to the two-thirds of his property than he is himself. That is when their permission becomes relevant. If he asks one of the heirs to give his inheritance to him when he is dying, and the heir agrees and then the dying man does not dispose of it at all, it is returned to the one who gave it unless the deceased said to him, 'So-and-so - (one of his heirs) - is weak, and I would like you to give him your inheritance.' So he gives it to him. That is permitted when the deceased specified it for him."

Malik said, "When a man gives the dying man free use of his share of the inheritance, and the dying man distributes some of it and some remains, it is returned to the giver, after the man has died."

Yahya said that he heard Malik speak about someone who made a bequest and mentioned that he had given one of his heirs something which he had not taken possession of, so the heirs refused to permit that. Malik said, "That gift returns to the heirs as inheritance according to the Book of Allah because the deceased did not mean that to be taken out of the third and the heirs do not have a portion in the third (which the dying man is allowed to bequeath)."

Section: Effeminate Men and Custody of Children

Book 37, Number 37.6.5:

Malik said from Hisham ibn Urwa from his father that an effeminate man was with Umm Salama, the wife of the Prophet, may Allah bless him and grant him peace. He

said to Abdullah ibn Abi Umayya while the Messenger of Allah, may Allah bless him and grant him peace, was listening. "Abdullah! If Allah grants you victory over Ta'if tomorrow, I will lead you to the daughter of Ghailan. She has four folds on her front and eight folds on her back." The Messenger of Allah, may Allah bless him and grant him peace, said, "This sort of man should not enter freely with you." (It was customary to allow men with no sexual inclination to enter freely where there were women).

Book 37, Number 37.6.6:

Malik related to me that Yahya ibn Said said that he heard al-Qasim ibn Muhammad say, "A woman of the Ansar was married to Umar ibn al-Khattab. She bore Asim ibn Umar to him, and then he separated from her. Umar came to Quba and found his son Asim playing in the courtyard of the mosque. He took him by the arm and placed him before him on his mount. The grandmother of the child saw him and argued with Umar about the child so they went to Abu Bakr as-Siddiq. Umar said, 'My son.' The woman said, 'My son.' Abu Bakr said, 'Do not interfere between a child and its mother.' Umar did not repeat his words."

Yahya said that he heard Malik say, "This is what I would have done in that situation."

Section: Liability for Defect Goods

Book 37, Number 37.7.6a:

Yahya said that he heard Malik speak about a man who bought goods - animals or clothes or wares, and the sale was found not to be permitted so it was revoked and the one who had taken the goods was ordered to return the owner his goods. Malik said, "The owner of the goods only has their value on the day they were taken from him, and not on the day they are returned to him. That is because the man is liable for them from the day he took them and whatever loss is in them after that is against him. For that reason, their increase and growth are also his. A man may take the goods at a time when they are selling well and are in demand, and then have to return them at a time when they have fallen in price and no one wants them. For instance, the man may take the goods from the other man, and sell them for ten dinars or keep them while their price is that. Then he may have to return them while their price is only a dinar. He should not go off with nine dinars from the man's property. Or perhaps they are taken by the man, and he sells them for a dinar or keeps them, while their price is only a dinar, then he has to return them, and their value on the day he returns them is ten dinars. The one who took them does not have to pay nine dinars from his property to the owner. He is only obliged to pay the value of what he took possession of on the day it was taken ."

He said, "Part of what clarifies this is that when a thief steals goods, only their price on the day he stole them is looked at. If cutting off the hand is necessary because of it, that is done. If the cutting off is delayed, either because the thief is imprisoned until his situation is examined or he flees and then is caught, the delay of the cutting off of the hand does not make the hadd, which was obliged for him on the day he

stole, fall from him even if those goods become cheap after that. Nor does delay oblige cutting off the hand if it was not obliged on the day he took those goods, even if they become expensive after that."

Section: General Chapter on Making Judgement and Shying Away From It

Book 37, Number 37.8.7:

Malik related to me from Yahya ibn Said that Abu'd-Darda wrote to Salman al-Farsi, "Come immediately to the holy land." Salman wrote back to him, "Land does not make anyone holy. Man's deeds make him holy. I have heard that you were put up as a doctor to treat and cure people. If you are innocent, then may you have delight! If you are a quack, then beware lest you kill a man and enter the Fire!" When Abu'd-Darda judged between two men, and they turned from him to go, he would look at them and say, "Come back to me, and tell me your story again. A quack! By Allah!"

Yahya said that he heard Malik say, "If someone makes use of a slave, without permission of its master, in anything important to him, whose like has a fee, he is liable for what befalls the slave if anything befalls him. If the slave is safe and his master asks for his wage for what he has done, that is the master's right. This is what is done in our community."

Yahya said that he heard Malik say about a slave who is part free and part enslaved, "His property is suspended in his hand and he cannot begin anything with it. He eats from it and clothes himself in an approved fashion. If he dies, his property belongs to the one to whom he is in slavery."

Yahya said that he heard Malik say, "The way of doing things in our community is that a parent can take his child to account for what he spends on him from the day the child has property, cash or goods, if the parent wants that."

Book 37, Number 37.8.8:

Malik related to me from Umar ibn Abd ar-Rahman ibn Dalaf al-Muzani from his father that a man from the Juhayna tribe used to buy camels before people set out for hajj and sell them at a higher price. Then he travelled quickly and used to arrive in Makka before the others who set out for hajj. He went bankrupt and his situation was put before Umar ibn al-Khattab, who said, "O People! al-USayfi, al-USayfi of the Juhayna, was satisfied with his deen and his trust because it was said of him that he arrived before the others on hajj. He used to incur debts which he was not careful to repay, so all of his property has been eaten up by it. Whoever has a debt against him, let him come to us tomorrow and we will divide his property between his creditors. Beware of debts! Their beginning is a worry and their end is destitution. "

Section: About Damages and Injuries Caused by Slaves

Book 37, Number 37.9.8a:

Yahya said that he heard Malik say, "The sunna with us about the crime of slaves is that the hand is not cut off for any harm that a slave causes a man, or something he pilfers, or something guarded which he steals, or hanging dates he cuts down or ruins, or steals. That is against the slave's person and does not exceed the price of the slave whether it is little or much. If his master wishes to give the value of what the slave took or ruined, or pay the blood-price for the injury, he pays it and keeps his slave. If he wishes to surrender him, he surrenders him, and none of that is against him. The master has the option in that."

Section: What is Permitted of Gifts

Book 37, Number 37.10.9:

Malik related to me from Ibn Shihab from Said ibn al-Musayyab that Uthman ibn Affan said, "If someone gives something to his small child who is not old enough to look after it himself, and in order that his gift might be permitted he makes the gift public and has it witnessed, the gift is permitted, even if the father keeps charge of it."

Malik said, "What is done in our community is that if a man gives his small child some gold or silver and then dies and he has it in his own keeping, the child has none of it unless the father set it aside in coin or placed it with a man to keep for the son. If he does that, it is permitted for the son."

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