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[Maliks Muwatta] Divorce

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Maliks Muwatta.
Book : 29. Divorce.

029 : 001 : Section 373

Yahya related to me from Malik that he had heard that a man said to Abdullah ibn Abbas, "I have divorced my wife by saying I divorce you a hundred times. What do you think my situation is?" Ibn Abbas said to him, "She was divorced from you by three pronouncements, and by the ninety-seven, you have mocked the ayat of Allah."

029 : 002 : Section 373

Yahya related to me from Malik that he had heard that a man came to Abdullah ibn Masud and said, "I have divorced my wife by saying I divorce you eight times." Ibn Masud said to him, "What have people told you?" He replied, "I have been told that I have to part absolutely from her." Ibn Masud said, "They have spoken the truth. A person who divorces as Allah has commanded, Allah makes it clear for him, and a person who obscures himself in error, we make stay by his error. So do not confuse yourselves and pull us into your confusion. It is as they have said."

029 : 003 : Section 373

Yahya related to me from Malik from Yahya ibn Said from Abu Bakr ibn Hazm that Umar ibn Abd al-Aziz had asked him what people said about the 'irrevocable' divorce, and Abu Bakr had replied that Aban ibn Uthman had clarified that it was declared only once. Umar ibn Abd al-Aziz said, "Even if divorce had to be declared a thousand times, the 'irrevocable' would use them all up. A person who says, 'irrevocably' has cast the furthest limit."

029 : 004 : Section 373

Yahya related to me from Malik from Ibn Shihab that Marwan ibn al-Hakam decided that if someone made three pronouncements of divorce, he had divorced his wife irrevocably.

Malik said, "That is what I like best of what I have heard on the subject."

029 : 005 : Section 373

Yahya related to me from Malik that he had heard that Umar ibn al-Khattab had heard in a letter from Iraq that a man said to his wife, "Your rein is on your withers (i.e. you have free rein)." Umar ibn al-Khattab wrote to his governor to order the man to come to him at Makka at the time of hajj. While Umar was doing tawaf around the House, a man met him and greeted him. Umar asked him who he was, and he replied that he was the man that he had ordered to be brought to him. Umar said to him, "I ask you by the Lord of this building, what did you mean by your statement, 'Your rein is on your withers.?' " The man replied, "Had you made me swear by other than this place, I would not have told you the truth. I intended separation by that." Umar ibn al-Khattab said, "It is what you intended."

029 : 006 : Section 373

Yahya related to me from Malik that he had heard that Ali ibn Abi Talib used to say that if a man said to his wife, "You are haram for me," it counted as three pronouncements of divorce.

Malik said, "That is the best of what I have heard on the subject."

029 : 007 : Section 373

Yahya related to me from Malik from Nafi that Abdullah ibn Umar said that statements like "I cut myself off from you", or "You are abandoned", were considered as three pronouncements of divorce.

Malik said that any strong statements such as these or others were considered as three pronouncements of divorce for a woman whose marriage had been consummated. In the case of a woman whose marriage had not been consummated, the man was asked to make an oath on his deen, as to whether he had intended one or three pronouncements of divorce. If he had intended one pronouncement, he was asked to make an oath by Allah to confirm it, and he became a suitor among other suitors, because a woman whose marriage had been consummated, required three pronouncements of divorce to make her inaccessible for the husband, whilst only one pronouncement was needed to make a woman whose marriage had not been consummated inaccessible.

Malik added, "That is the best of what I have heard about the matter."

029 : 008 : Section 373

Yahya related to me from Malik from Yahya ibn Said from al-Qasim ibn Muhammad that a certain man had taken a slave-girl belonging to somebody else as a wife. He said to her people, "She is your concern," and people considered that to be one pronouncement of divorce.

029 : 009 : Section 373

Yahya related to me from Malik that he heard Ibn Shihab say that if a man said to his wife, "You are free of me, and I am free of you," it counted as three pronouncements of divorce as if it were an 'irrevocable' divorce.

Malik said that if a man made any strong statement such as these to his wife, it counted as three pronouncements of divorce for a woman whose marriage had been consummated, or it was written as one of three for a woman whose marriage had not been consummated, whichever the man wished. If he said he intended only one divorce he swore to it and he became one of the suitors because, whereas a woman whose marriage had been consummated was made inaccessible by three pronouncements of divorce, the woman whose marriage had not been consummated was made inaccessible by only one pronouncement.

Malik said, "That is the best of what I have heard."

029 : 010 : Section 374

Yahya related to me from Malik that he had heard that a man came to Abdullah ibn Umar, and said, "Abu Abd ar-Rahman! I placed the command of my wife in her hand, and she divorced herself, what do you think?" Abdullah ibn Umar said, "I think that it is as she said." The man said, "Don't do it, Abu Abd ar-Rahman!" Ibn Umar said, "You did it, it has nothing to do with me."

029 : 011 : Section 374

Yahya related to me from Malik from Nafi that Abdullah ibn Umar said, "When a man gives a woman command over herself, then the result is as she decides unless he denies it and says that he only meant to give her one divorce and he swears to it - then he has access to her while she is in her idda."

029 : 012 : Section 375

Yahya related to me from Malik from Said ibn Sulayman ibn Zayd ibn Thabit that Kharija ibn Zayd ibn Thabit told him that he was sitting with Zayd ibn Thabit when Muhammad ibn Abi Atiq came to him with his eyes brimming with tears. Zayd asked him what the matter was. He said, "I gave my wife command of herself, and she separated from me." Zayd said to him, "What made you do that?" He said, "The Decree." Zayd said, "Return to her if you wish for it is only one pronouncement, and you have access to her."

029 : 013 : Section 375

Yahya related to me from Malik from Abd ar-Rahman ibn al-Qasim from his father that a man of Thaqif gave his wife command over herself, and she said, "You are divorced." He was silent. She said, "You are divorced." He said, "May a stone be in your mouth." She said, "You are divorced." He said, "May a stone be in your mouth." They argued and went to Marwan ibn al-Hakam. He took an oath that he had only given her control over one pronouncement, and then she returned to him.

Malik said that Abd ar-Rahman declared that this decision had amazed al-Qasim, who thought it the best that he had heard on the subject.

Malik added, "That is also the best of what I have heard on the subject."

029 : 014 : Section 376

Yahya related to me from Malik from Abd ar-Rahman ibn al-Qasim from his father that A'isha, umm al-muminin, proposed to Qurayba bint Abi Umayya on behalf of Abd ar-Rahman ibn Abi Bakr. They married her to him and her people found fault with Abd ar-Rahman and said, "We only gave in marriage because of A'isha." A'isha therefore sent for Abd ar-Rahman and told him about it. He gave Qurayba authority over herself and she chose her husband and so there was no divorce.

029 : 015 : Section 376

Yahya related to me from Malik from Abd ar-Rahman ibn al-Qasim from his father that A'isha, the wife of the Prophet, may Allah bless him and grant him peace, gave Hafsa bint Abd arRahman in marriage to al-Mundhir ibn az-Zubayr while Abd ar-Rahman was away in Syria. When Abd ar-Rahman arrived, he said, "Shall someone like me have this done to him? Am I the kind of man to have something done to him without his consent?"

A'isha spoke to al-Mundhir ibn az-Zubayr, and al-Mundhir said, "It is in the hands of Abd ar-Rahman." Abd ar-Rahman said, "I won't oppose something that you have already completed." Hafsa was confirmed with al-Mundhir, and there was no divorce.

029 : 016 : Section 376

Yahya related to me from Malik that he had heard that Abdullah ibn Umar and Abu Hurayra were asked about a man who gave his wife power over herself, and she returned it to him without doing anything with it. They said that there was no divorce. (i.e. The man's giving his wife power over herself was not interpreted as a desire for divorce on his part.)

Yahya related to me from Malik from Yahya ibn Said that Said ibn al-Musayyab said, "If a man gives his wife authority over herself, and she does not separate from him and remains with him, there is no divorce."

Malik said that a woman whose husband gave her power over herself and they separated while she was unwilling, had no power to revoke the divorce. She only had power over herself as long as they remained together.

029 : 017 : Section 377

Yahya related to me from Malik from Jafar ibn Muhammad from his father that Ali ibn Abi Talib said, "When a man takes a vow to abstain from intercourse, divorce does not occur immediately. If four months pass, he must declare his intent and either he is divorced or he revokes his vow."

Malik said, "That is what is done among us."

029 : 018 : Section 377

Yahya related to me from Malik from Nafi that Abdullah ibn Umar said, "When a man makes a vow to abstain from intercourse with his wife and four months have passed he must declare his intent and either he is divorced or he revokes his vow. Divorce does not occur until four months have passed and he continues to abstain."

Yahya related to me from Malik from Ibn Shihab that Said al-Musayyab and Abu Bakr ibn Abd ar-Rahman said about a man who made a vow to abstain from intercourse with his wife, "If four months pass it is a divorce. The husband can go back to his wife as long as she is in her idda."

029 : 019A : Section 377

Yahya related to me from Malik that he had heard that Marwan ibn al-Hakam decided about a man who had made a vow to abstain from intercourse with his wife, that when four months had passed, it was a divorce and he could return to her as long as she was in her idda.

Malik added, "That was also the opinion of Ibn Shihab."

Malik said that if a man made a vow to abstain from intercourse with his wife and at the end of four months he declared his intent to continue to abstain, he was divorced. He could go back to his wife, but if he did not have intercourse with her before the end of her idda, he had no access to her and he could not go back to her unless he had an excuse - illness, imprisonment, or a similar excuse. His return to her maintained her as his wife. If her idda passed and then he married her after that and did not have intercourse with her until four months had passed and he declared his intent to continue to abstain, divorce was applied to him by the first vow. If four months passed, and he had not returned to her, he had no idda against her nor access because he had married her and then divorced her before touching her.

Malik said that a man who made a vow to abstain from intercourse with his wife and continued to abstain after four months and so divorced her, but then returned and did not touch her and four months were completed before her idda was completed, did not have to declare his intent and divorce did not befall him. If he had intercourse with her before the end of her idda, he was entitled to her. If her idda passed before he had intercourse with her, he had no access to her. This is what Malik preferred of what he had heard on the subject.

Malik said that if a man made a vow to abstain from intercourse with his wife and then divorced her, and the four months of the vow were completed before completion of the idda of the divorce, it counted as two pronouncements of divorce. If he declared his intention to continue to abstain and the idda of the divorce finished before the four months the vow of abstention was not a divorce. That was because the four months had passed and she was not his on that day.

Malik said, "If someone makes a vow not to have intercourse with his wife for a day or a month and then waits until more than four months have passed, it is not ila. Ila only applies to someone who vows more than four months. As for the one who vows not to have intercourse with his wife for four months or less than that, I do not think that it is ila because when the term enters into it at which it stops, he comes out of his oath and he does not have to declare his intention."

Malik said, "If someone vows to his wife not to have intercourse with her until her child has been weaned, that is not ila. I have heard that Ali ibn Abi Talib was asked about that and he did not think that it was ila."

029 : 019B : Section 378

Yahya related to me from Malik that he had asked Ibn Shihab about the ila of the slave. He said that it was like the ila of the free man, and it put an obligation on him. The ila of the slave was two months.

029 : 020 : Section 379

Yahya related to me from Malik from Said ibn Amr ibn Sulaym az-Zuraqi that he asked al-Qasim ibn Muhammad about a man who made divorce conditional on his marrying a woman i.e. if he married her he would automatically divorce her. Al-Qasim ibn Muhammad said, "If a man marries a woman whom he has made as his mother's back, i.e. has made haram for him, Umar ibn al-Khattab ordered him not to go near her if he married her until he had done the kaffara for pronouncing dhihar."

029 : 021 : Section 379

Yahya related to me from Malik that he had heard that a man asked al-Qasim ibn Muhammad and Sulayman ibn Yasar about a man who pronounced dhihar from his wife before he had married her. They said, "If he marries her, he must not touch her until he has done the kaffara for pronouncing dhihar."

029 : 022 : Section 379

Yahya related to me from Malik from Hisham ibn Urwa that his father said that a man who pronounced a dhihar from his four wives in one statement, had only to do one kaffara. Yahya related the same as that to me from Malik from Rabia ibn Abi Abd ar-Rahman.

Malik said, "That is what is done among us. Allah, the Exalted said about the kaffara for pronouncing dhihar, 'It is to free a slave before they touch one another. If he does not find the means to do that, then fasting for two consecutive months before they touch one another. If he cannot do that, it is to feed sixty poor people.'" (Sura 58 ayats 4,5).

Malik said that a man who pronounced dhihar from his wife on various occasions had only to do one kaffara. If he pronounced dhihar, and then did kaffara, and then pronounced dhihar after he had done the kaffara, he had to do kaffara again.

Malik said, "Some one who pronounces dhihar from his wife and then has intercourse with her before he has done kaffara, only has to do one kaffara. He must abstain from her until he does kaffara and ask forgiveness of Allah. That is the best of what I have heard."

Malik said, "It is the same with dhihar using any prohibited relations of fosterage and ancestry."

Malik said, "Women have no dhihar."

Malik said that he had heard that the commentary on the word of Allah, the Blessed, the Exalted, "Those of you who pronounce the dhihar about their wives, and then retract what they have said," (Sura 56 ayat 3), was that a man pronounced dhihar on his wife and then decided to keep her and have intercourse with her. If he decided on that, he must do kaffara. If he divorced her and did not decide to retract his dhihar of her and to keep her and have intercourse with her, there would be no kaffara incumbent on him.

Malik said, "If he marries her after that, he does not touch her until he has completed the kaffara of pronouncing dhihar."

Malik said that if a man who pronounced dhihar from his slave-girl wanted to have intercourse with her, he had to do the kaffara of the dhihar before he could sleep with her.

Malik said, "There is no ıla in a man's dhihar unless it is evident that he does not intend to retract his dhihar."

029 : 023 : Section 379

Yahya related to me from Malik from Hisham ibn Urwa that he heard a man ask Urwa ibn az-Zubayr about a man who said to his wife, "Any woman I marry along with you as long as you live will be like my mother's back to me." Urwa ibn az-Zubayr said, "The freeing of slaves is enough to release him from that."

029 : 024 : Section 380

Yahya related to me from Malik that he asked Ibn Shihab about the dhihar of a slave. He said, "It is like the dhihar of a free man."

Malik said, "He meant that the same conditions were applied in both cases."

Malik said, "The dhihar of the slave is incumbent on him, and the fasting of the slave in the dhihar is two months."

Malik said that there was no ila for a slave who pronounced a dhihar from his wife. That was because if he were to fast the kaffara for pronouncing a dhihar, the divorce of the ila would come to him before he had finished the fast.

029 : 025 : Section 381

Yahya related to me from Malik from Rabia ibn Abd ar-Rahman from al-Qasim ibn Muhammad that A'isha umm al-muminin, said, "There were three sunnas established in connection with Barira| firstly was that when she was set free she was given her choice about her husband, secondly, the Messenger of Allah, may Allah bless him and grant him peace, said about her, 'The right of inheritance belongs to the person who has set a person free,' thirdly, the Messenger of Allah, may Allah bless him and grant him peace, came in and there was a pot with meat on the boil. Bread and condiments were brought to him from the stock of the house. The Messenger of Allah, may Allah bless him and grant him peace, said, 'Didn't I see a pot with meat in it?' They said, 'Yes, Messenger of Allah. That is meat which was given as sadaqa for Barira, and you do not eat sadaqa.' The Messenger of Allah, may Allah bless him and grant him peace, said, 'It is sadaqa for her, and it is a gift for us.'"

029 : 026 : Section 381

Yahya related to me from Malik from Nafi that Abdullah ibn Umar said that a female slave who was the wife of a slave and then was set free, had the right of choice as long as he did not have intercourse with her.

Malik said, "If her husband has intercourse with her and she claims that she did not know, she still has the right of choice. If she is suspect and one does not believe her claim of ignorance, then she has no choice after he has had intercourse with her."

029 : 027 : Section 381

Yahya related to me from Malik from Ibn Shihab from Urwa ibn az-Zubayr that a mawla of the tribe of Banu Adi called Zabra told him that she had been the wife of a slave when she was a slave-girl. Then she was set free and she sent a message to Hafsa, the wife of the Prophet, may Allah bless him and grant him peace. Hafsa called her and said, "I will tell you something., but I would prefer that you did not act upon it. You have authority over yourself as long as your husband does not have intercourse with you. If he has intercourse with you, you have no authority at all." Therefore she pronounced her divorce from him three times.

029 : 028 : Section 381

Yahya related to me from Malik that he had heard that Said ibn al-Musayyab said that if a man married a woman, and he was insane or had a physical defect, she had the right of choice. If she wished she could stay, and if she wished she could separate from him.

029 : 029 : Section 381

Malik said that if a slave-girl, who was the wife of a slave, was set free before he had consummated the marriage, and she chose herself, then she had no bride-price and it was a pronouncement of divorce. That was what was done among them.

029 : 030 : Section 381

Yahya related to me that Malik heard Ibn Shihab say, "When a man gives his wife the right of choice, and she chooses him, that is not divorce."

Malik added, "That is the best of what I have heard."

Malik said that if a woman who had been given the right of choice by her husband chose herself, she was divorced trebly. If her husband said, "But I only gave her the right of choice in one," he had none of that. That was the best of what he had heard.

Malik said, "If the man gives his wife the right of choice and she says, 'I accept one', and he says, 'I did not mean that, I have given the right of choice in all three together,' then if she only accepts one, she remains with him in her marriage, and that is not separation if Allah, the Exalted wills."

029 : 031 : Section 382

Yahya related to me from Malik from Yahya ibn Said that Amra bint Abd ar-Rahman told him from Habiba bint Sahl al-Ansari that she had been the wife of Thabit ibn Qays ibn Shammās. The Messenger of Allah, may Allah bless him and grant him peace, went out for the dawn prayer, and found Habiba bint Sahl at his door in the darkness. The Messenger of Allah, may Allah bless him and grant him peace, said to her, "Who is this?" She said, "I am Habiba bint Sahl, Messenger of Allah." He said, "What do you want?" She said, "That Thabit ibn Qays and I separate." When her husband, Thabit ibn Qays came, the Messenger of Allah, may Allah bless him and grant him peace, said to him,

"This is Habiba bint Sahl. She mentioned what Allah willed that she mention." Habiba said, "Messenger of Allah, all that he has given me is with me!" The Messenger of Allah, may Allah bless him and grant him peace, said to Thabit ibn Qays, "Take it from her," and he took it from her, and she stayed in the house of her family.

029 : 032 : Section 382

Yahya related to me from Malik from Nafi from a mawla of Safiyya bint Abi Ubayd that she gave all that she possessed to her husband as compensation for her divorce from him, and Abdullah ibn Umar did not disapprove of that.

Malik said that divorce was ratified for a woman who ransomed herself from her husband, when it was known that her husband was detrimental to her and was oppressive for her, and it was known that he wronged her, and he had to return her property to her. Malik added, "This is what I have heard, and it is what is done among us."

Malik said, "There is no harm if a woman ransoms herself from her husband for more than he gave her."

029 : 033 : Section 383

Yahya related to me from Malik from Nafi that Rubayyi bint Muawwidh ibn Afra came with her paternal uncle to Abdullah ibn Umar and told him that she had divorced her husband for a compensation in the time of Uthman ibn Affan, and he heard about it and did not disapprove. Abdullah ibn Umar said, "Her idda is the idda of a divorced woman."

Yahya related to me from Malik that he had heard that Said ibn al-Musayyab and Sulayman ibn Yasar and Ibn Shihab all said that a woman who divorced for a compensation had the same idda as a divorced woman - three periods.

Malik said that a woman who ransomed herself could not return to her husband except by a new marriage. If someone married her and then separated from her before he had intercourse with her, there was no idda against her from the recent marriage, and she rested on her first idda.

Malik said, "That is the best that I have heard on the matter."

Malik said, "If, when a woman offers to compensate her husband, he divorces her straightaway, then that compensation is confirmed for him. If he makes no response, and then at a later date, does divorce her, he is not entitled to that compensation."

029 : 034 : Section 384

Yahya related to me from Malik from Ibn Shihab that Sahl ibn Sad as-Saidi told him that Uwaymir al-Ajlani came to Asim ibn Adi al-Ansari and said to him, "Asim! What do you think a man who finds another man with his wife should do? Should he kill him and then be killed himself, or what should he do? Asim! ask the Messenger of Allah, may Allah bless him and grant him peace, about that for me." Asim asked the Messenger of Allah, may Allah bless him and grant him peace, about it. The Messenger of Allah, may Allah bless him and grant him peace, was revolted by the questions and reproved them until what he heard from the Messenger of Allah, may Allah bless him and grant him peace, was intolerable for Asim. When Asim returned to his people, Uwaymir came to him and said, "Asim! what did the Messenger of Allah, may Allah bless him and grant him peace, say to you?" Asim said to Uwaymir, "You didn't bring me any good. The Messenger of Allah, may Allah bless him and grant him peace, was revolted by the question which I asked him." Uwaymir said, "By Allah! I will not stop until I ask him about it!" Uwaymir stood up and went to the Messenger of Allah, may Allah bless him and grant him peace, in the middle of the people and said, "Messenger of Allah! What do you think a man who finds another man with his wife should do? Should he kill him and then be killed himself, or what should he do?" The Messenger of Allah, may Allah bless him and grant him peace, said, "Something has been sent down about you and your wife, so go and bring her."

Sahl continued, "They mutually cursed one another in the presence of the Messenger, may Allah bless him and grant him peace, and I was present with the people. When they finished cursing each other, Uwaymir said, 'I shall have lied about her, Messenger of Allah, if I keep her,' and pronounced the divorce three times before the Messenger of Allah, may Allah bless him and grant him peace, ordered him to do it."

Malik said that Ibn Shihab said, "That was how the sunna of a couple mutually cursing each other was established (lian)."

029 : 035 : Section 384

Yahya related to me from Malik from Nafic from Abdullah ibn Umar that a man cursed his wife in the time of the Messenger of Allah, may Allah bless him and grant him peace, and disowned her child. The Messenger of Allah, may Allah bless him and grant him peace, separated them and gave the child to the woman.

Malik said, "Allah the Blessed, the Exalted, said, 'The testimony of men who accuse their wives but do not have any witnesses except themselves is to testify by Allah four times that he is being truthful, and a fifth time, that the curse of Allah will be upon him, if he should be a liar. She will avoid punishment if she testifies by Allah four times that he is a liar, and a fifth time, that the wrath of Allah shall be upon her, if he should be telling the

truth."(Sura 24 ayat 6).

Malik said, "The sunna with us is that those who curse each other are never to be remarried. If the man calls himself a liar, (i.e. takes back his accusation), he is flogged with the hadd-punishment, and the child is given to him, and his wife can never return to him. There is no doubt or dispute about this sunna among us."

Malik said, "If a man separates from his wife by an irrevocable divorce by which he cannot return to her, and then he denies the paternity of the child she is carrying, whilst she claims that he is the father, and it is possible by the timing, that he be so, he must curse her, and the child is not recognised as his."

Malik said, "That is what is done among us, and it is what I have heard from the people of knowledge."

Malik said that a man who accused his wife after he had divorced her trebly while she was pregnant, and he had at first accepted being the father but then claimed that he had seen her committing adultery before he separated from her, was flogged with the hadd-punishment, and did not curse her.

If he denied the paternity of her child after he had divorced her trebly, and he had not previously accepted it, then he cursed her.

Malik said, "This is what I have heard."

Malik said, "The slave is in the same position as the free man as regards making accusations and invoking mutual curses (lian). He acts in the lian as the free man acts although there is no hadd applied for slandering a female-slave."

Malik said, "The muslim slave-girl and the christian and jewish free woman also do lian when a free muslim marries one of them and has intercourse with her. That is because Allah - may He be blessed and Exalted, said in His Book, 'As for those who accuse their wives,' and they are their wives. This is what is done among us.

Malik said that a man who did the lian with his wife, and then stopped and called himself a liar after one or two oaths and he had not cursed himself in the fifth one, had to be flogged with the hadd-punishment, but they did not have to be separated.

Malik said that if a man divorced his wife and then after three months the woman said, "I am pregnant," and he denied paternity, then he had to do lian.

Malik said that the husband of a female slave who pronounced the lian on her and then bought her, was not to have intercourse with her, even if he owned her. The sunna which had been handed down about a couple who mutually cursed each other in the lian was that they were never to return to each other.

Malik said that when a man pronounced the lian against his wife before he had consummated the marriage, she only had half of the bride price.

029 : 036 : Section 385

Yaha related to me from Malik that he had heard that Urwa ibn az-Zubayr said that if the child of the woman against whom lian had been pronounced or the child of fornication, died, his mother inherited from him her right in the Book of Allah the Exalted, and his maternal half-brothers had their rights. The rest was inherited by the owners of his mother's wala' if she was a freed slave. If she was an ordinary free woman, she inherited her right, his maternal brothers inherited their rights, and the rest went to the muslims.

Malik said, "I heard the same as that from Sulayman ibn Yasar, and it is what I saw the people of knowledge in our city doing."

029 : 037 : Section 386

Yahya related to me from Malik from Ibn Shihab from Muhammad ibn Abd ar-Rahman ibn Thawban that Muhammad ibn Iyas ibn al-Bukayr said, "A man divorced his wife three times before he had consummated the marriage, and then it seemed good to him to marry her. Therefore, he wanted an opinion, and I went with him to ask Abdullah ibn Abbas and Abu Hurayra on his behalf about it, and they said, 'We do not think that you should marry her until she has married another husband.' He protested that his divorcing her had been only once. Ibn Abbas said, 'You threw away what you had of blessing.'"

029 : 038 : Section 386

Yahya related to me from Malik from Yahya ibn Said from Bukayr ibn Abdullah al-Ashajj from an-Numan ibn Abi Ayyash al-Ansari from Ata ibn Yasar that a man came and asked Abdullah ibn Amr ibn al-As about a man who divorced his wife three times before he had had intercourse with her Ata said, "The divorce of the virgin is one. Abdullah ibn Amr ibn al-As said to me, 'You say one pronouncement separates her and three makes her haram until she has married another husband.'"

029 : 039 : Section 386

Yahya related to me from Malik from Yahya ibn Said that Bukayr ibn Abdullah al-Ashajj informed him that Muawiya ibn Abi Ayyash al-Ansari told him that he was sitting with

Abdullah ibn az-Zubayr and Asim ibn Umar ibn al-Khattab when Muhammad ibn Iyas ibn al-Bukayr came up to them and said, "A man from the desert has divorced his wife three times before consummating the marriage, what do you think?" Abdullah ibn az-Zubayr said "This is something about which we have no statement. Go to Abdullah ibn Abbas and Abu Hurayra. I left them with A'isha. Ask them and then come and tell us." He went and asked them. Ibn Abbas said to Abu Hurayra, "Give an opinion, Abu Hurayra! A difficult one has come to you." Abu Hurayra said, "One pronouncement separates her and three makes her haram until she has married another husband." Ibn Abbas said the like of that.

Malik said, "That is what is done among us, and when a man marries a woman who has been married before, and he has not had intercourse with her, she is treated as a virgin - one pronouncement separates her and three make her haram until she has married another husband."

029 : 040 : Section 387

Yahya related to me from Malik from Ibn Shihab that Talha ibn Abdullah ibn Awf said, and he knew that better than them, from Abu Salama ibn Abd ar-Rahman ibn Awf that Abd ar-Rahman ibn Awf divorced his wife irrevocably while he was terminally ill, and Uthman ibn Affan made her an heir after the end of her idda.

029 : 041 : Section 387

Yahya related to me from Malik from Abdullah ibn al-Fadl from al-Araj that Uthman ibn Affan made the wives of ibn Mukmil inherit from him, and he had divorced them while he was terminally ill.

029 : 042 : Section 387

Yahya related to me from Malik that he heard Rabia ibn Abi Abd ar-Rahman say, "I heard that the wife of Abd ar-Rahman ibn Awf asked him to divorce her. He said, 'When you have menstruated and are pure, then come to me.' She did not menstruate until Abd ar-Rahman ibn Awf was ill. When she was purified, she told him and he divorced her irrevocably or made a pronouncement of divorce which was all that he had left over her Abd arRahman ibn Awf was terminally ill at the time, so Uthman ibn Affan made her one of the heirs after the end of her idda."

029 : 043 : Section 387

Yahya related to me from Malik from Yahya ibn Said that Muhammad ibn Yahya ibn Habban said, "My grandfather Habban had two wives, one from the Hashimites and one from the Ansars. He divorced the Ansariyya while she was nursing, and a year passed and he died and she had still not yet menstruated. She said, 'I inherit from him. I have not menstruated yet.' The wives quarrelled and went to Uthman ibn Affan. He decided that she did inherit, and the Hashimiyya rebuked Uthman. He said, 'This is the practice of the son of your paternal uncle. He pointed this out to us.' He meant Ali ibn Abi Talib."

029 : 044 : Section 387

Yahya related to me from Malik that he had heard Ibn Shihab say, "When a man who is terminally ill divorces his wife three times, she inherits from him."

Malik said, "If he divorces her while he is terminally ill before he has consummated the marriage, she has half of the bride-price and inherits, and she does not have to do an idda. If he consummated the marriage, she has all the dowry and inherits. The virgin and the previously married woman are the same in this situation according to us."

029 : 045 : Section 388

Yahya related to me from Malik that he had heard that Abd ar-Rahman ibn Awf divorced his wife, and gave her compensation in the form of a slave-girl.

Yahya related to me from Malik from Nafi that Abdullah ibn Umar said, "Every divorced woman has compensation except for the one who is divorced and is allocated a bride-price and has not been touched. She has half of what was allocated to her."

029 : 046 : Section 388

Yahya related to me from Malik that Ibn Shihab said, "Every divorced woman has compensation."

Malik said, "I have also heard the same as that from al-Qasim ibn Muhammad."

Malik said, "There is no fixed limit among us as to how small or large the compensation is."

029 : 047 : Section 389

Yahya related to me from Malik from Abu'z-Zinad from Sulayman ibn Yasar that Nufay, a mukatab of Umm Salama the wife of the Prophet, may Allah bless him and grant him peace, or her slave, had a free woman as a wife. He divorced her twice, and then he wanted to return to her. The wives of the Prophet, may Allah bless him and grant him peace, ordered him to go to Uthman ibn Affan to ask him about it. He found him at ad-Daraj with Zayd ibn Thabit. He asked them, and they both anticipated him and said, "She is haram for you. She is haram for you."

029 : 048 : Section 389

Yahya related to me from Malik from Ibn Shihab from Said ibn al-Musayyab that Nufay, a mukatab of Umm Salama, the wife of the Prophet, may Allah bless him and grant him peace, divorced his free wife twice, so he asked Uthman ibn Affan for an opinion, and he said, "She is haram for you."

029 : 049 : Section 389

Yahya related to me from Malik from Abdu Rabbih ibn Said from Muhammad ibn Ibrahim ibn al-Harith at-Taymi that Nufay, a mukatab of Umm Salama, the wife of the Prophet, may Allah bless him and grant him peace, asked Zayd ibn Thabit for an opinion. He said, "I have divorced my free wife twice." Zayd ibn Thabit said, "She is haram for you."

029 : 050 : Section 389

Yahya related to me from Malik from Nafi that Abdullah ibn Umar said, "When the slave divorces his wife twice, she is haram for him until she has married another husband, whether she is free or a slave. The idda of a free woman is three menstrual periods, and the idda of a slave-girl is two periods."

029 : 051A : Section 389

Yahya related to me from Malik from Nafi that Abdullah ibn Umar said, "If a man gives his slave permission to marry, the divorce is in the hand of the slave, and nobody else has any power over his divorce. Nothing is held against a man who takes the slave-girl of his

male slave or the slave-girl of his female-slave."

029 : 051B : Section 390

Malik said, "Neither a free man nor a slave who divorces a slave-girl nor a slave who divorces a free woman, in an irrevocable divorce, is obliged to pay maintenance even if she is pregnant, and he cannot return to her."

Malik said, "A free man is not obliged to pay for the suckling of his son when he is a slave of other people, nor is a slave obliged to spend his money for what his master owns except with the permission of his master."

029 : 052 : Section 391

Yahya related to me from Malik from Yahya ibn Said from Said ibn al-Musayyab that Umar ibn al-Khattab said, "The woman who loses her husband and does not know where he is, waits for four years, then she does idda for four months, and then she is free to marry."

Malik said, "If she marries after her idda is over, regardless of whether the new husband has consummated the marriage or not, her first husband has no means of access to her."

Malik said, "That is what is done among us and if her husband reaches her before she has remarried, he is more entitled to her."

Malik said that he had seen people disapproving of someone who said that one of the people (of knowledge) attributed to Umar ibn al-Khattab that he said, "Her first husband chooses when he comes either her bride-price or his wife."

Malik said, "I have heard that Umar ibn al-Khattab, speaking about a woman whose husband divorced her while he was absent from her, and then he took her back and the news of his taking her back had not reached her, while the news of his divorcing her had, and so she had married again, said, 'Her first husband who divorced her has no means of access to her whether or not the new husband has consummated the marriage.'"

Malik said, "This is what I like the best of what I heard about the missing man."

029 : 053 : Section 392

Yahya related to me from Malik from Nafi that Abdullah ibn Umar divorced his wife

while she was menstruating in the time of the Messenger of Allah, may Allah bless him and grant him peace, Umar ibn al-Khattab asked the Messenger of Allah, may Allah bless him and grant him peace, about it. The Messenger of Allah, may Allah bless him and grant him peace, said, "Go and tell him to take her back and keep her until she is purified and then has a period and then is purified. Then if he wishes, he can keep her, and if he wishes he should divorce her before he has intercourse with her. That is the idda which Allah has commanded for women who are divorced."

029 : 054 : Section 392

Yahya related to me from Malik from Ibn Shihab from Urwa ibn az-Zubayr from A'isha, umm al-muminin, that she took Hafsa ibn Abd ar-Rahman ibn Abi Bakr as-Siddiq into her house when she had entered the third period of her idda. Ibn Shihab said, "That was mentioned to Amra bint Abd ar-Rahman, and she said that Urwa had spoken the truth and people had argued with A'isha about it. They said that Allah, the Blessed, the Exalted, said in His Book, 'Three quru.' A'isha said, 'You spoke the truth. Do you know what quru are? Quru are times of becoming pure after menstruation.'"

029 : 055 : Section 392

Yahya related to me from Malik that Ibn Shihab said that he heard Abu Bakr ibn Abd ar-Rahman say, "I have never seen any of our fuqaha who did not say that this was what the statement of A'isha meant."

029 : 056 : Section 392

Yahya related to me from Malik from Nafi and Zayd ibn Aslam from Sulayman ibn Yasar that al-Ahwas died in Syria when his wife had begun her third menstrual period after he had divorced her. Muawiya ibn Abi Sufyan wrote and asked Zayd ibn Thabit about that. Zayd wrote to him, "When she began her third period, she was free from him and he was free from her, and he does not inherit from her nor she from him."

029 : 057 : Section 392

Yahya related to me from Malik that he had heard that Abu Bakr ibn Abd ar-Rahman and Sulayman ibn Yasar and Ibn Shihab used to say, "When the divorced woman enters the beginning of her third period, she is clearly separated from her husband and there is no inheritance between them and he has no access to her."

029 : 058 : Section 392

Yahya related to me from Malik from Nafi that Abdullah ibn Umar said, "When a man divorces his wife and she begins her third period, she is free from him and he is free from her."

Malik said, "This is how things are done among us."

029 : 059 : Section 392

Yahya related to me from Malik from al-Fudayl ibn Abi Abdullah, the mawla of al-Mahri that al-Qasim ibn Muhammad and Salim ibn Abdullah said, "When a woman is divorced and begins her third period, she is clearly separated from him and is free to marry again."

029 : 060 : Section 392

Yahya related to me from Malik that he had heard that Said ibn al-Musayyab and Ibn Shihab and Sulayman ibn Yasar all said, "The idda of the woman with a khul divorce is three periods."

029 : 061 : Section 392

Yahya related to me from Malik that he heard Ibn Shihab say, "The idda of the divorced woman is reckoned by the menstrual cycles even if she is estranged." (The reason the idda is normally reckoned by the menstrual cycle is to see whether the woman is pregnant or not.)

029 : 062 : Section 392

Yahya related to me from Malik from Yahya ibn Said from a man of the Ansar that his wife asked him for a divorce, and he said to her, "When you have had your period, then tell me." When she had her period, she told him. He said, "When you are purified then tell me." When she was purified, she told him and he divorced her.

Malik said, "This is the best of what I have heard about it."

029 : 063 : Section 393

Yahya related to me from Malik that Yahya ibn Said heard al-Qasim ibn Muhammad and Sulayman ibn Yasar both mention that Yahya ibn Said ibn al-As divorced the daughter of Abd ar-Rahman ibn al-Hakam irrevocably, so Abd ar-Rahman ibn al-Hakam took her away A'isha umm al-muminin sent to Marwan ibn al-Hakam who was the Amir of al-Madina at that time. She said, "Fear Allah and make him return the woman to her house." Marwan said in what Sulayman related, "Abd ar-Rahman has the upper hand over me." Marwan said in what al-Qasim related, "Hasn't the affair of Fatima bint Qays reached you?" A'isha said, "You are forced to mention the story of Fatima" Marwan said, "If you know that evil, whatever evil there was between those two is enough for you." (See hadith 67.)

029 : 064 : Section 393

Yahya related to me from Malik from Nafi that the daughter of Said ibn Zayd ibn Amr ibn Nufayl was the wife of Abdullah ibn Umar ibn Uthman ibn Affan, and he divorced her irrevocably and she moved out. Abdullah ibn Umar rebuked her for that.

029 : 065 : Section 393

Yahya related to me from Malik from Nafi that Abdullah ibn Umar divorced one of his wives in the house of Hafsa, the wife of the Prophet, may Allah bless him and grant him peace, while he was on the way to the mosque. He went another route from behind the houses being averse to ask permission to enter until he returned to her.

029 : 066 : Section 393

Yahya related to me from Malik from Yahya ibn Said that Said ibn al-Musayyab was asked who was obliged to pay the rent for a woman whose husband divorced her while she was in a leased house. Said ibn al-Musayyab said, "Her husband is obliged to pay it." Someone asked, "what if her husband does not have it?" He said, "Then she must pay it." Someone asked, "And if she does not have it?" He said, "Then the Amir must pay it."

029 : 067 : Section 394

Yahya related to me from Malik from Abdullah ibn Yazid, the mawla of al-Aswad ibn Sufyan from Abu Salama ibn Abd ar-Rahman ibn Awf from Fatima bint Qays that Abu Amr ibn Hafs divorced her absolutely while he was away in Syria. His agent sent her some barley and she was displeased with it, saying, "By Allah, I don't expect anything from you." She went to the Messenger of Allah, may Allah bless him and grant him peace, and mentioned it to him. He said, "You have no maintenance." He then ordered her to spend her idda in the house of Umm Sharik. Then he said, "This is a woman whom my companions visit. Spend the idda in the house of Ibn Umm Maktum. He is a blind man and you can undress at his home. When you are free to remarry, tell me."

She continued, "When I was free to remarry, I mentioned to him that Muawiya ibn Abi Sufyan and Abu Jahm ibn Hisham had asked for me in marriage. The Messenger of Allah, may Allah bless him and grant him peace, said, 'As for Abu Jahm, he never puts down his stick from his shoulder (i.e. he is always travelling), and as for Muawiya he is a poor man with no property. Marry Usama ibn Zayd.' I objected to him and he said, 'Marry Usama ibn Zayd,' so I married him, and Allah put good in it and I was content with him."

029 : 068 : Section 394

Yahya related to me from Malik that he heard Ibn Shihab say, "The woman who is absolutely divorced does not leave her house until she is free to remarry. She has no maintenance unless she is pregnant. In that circumstance the husband spends on her until she gives birth."

Malik said, "This is what is done among us."

029 : 069 : Section 395

Malik said, "What is done among us when a slave divorces a slave-girl when she is a slave and then she is set free, is that her idda is the idda of a slave-girl, and her being set free does not change her idda whether or not he can still return to her. Her idda is not altered."

Malik added, "The hadd-punishment which a slave incurs is the same as this. When he is freed after he has incurred but before the punishment has been executed, his hadd is the hadd of the slave."

Malik said, "When a free man divorces a slave-girl three times, her idda is two periods. When a slave divorces a free woman twice, her idda is three periods."

Malik said about a man who had a slave-girl as a wife, and he bought her and set her free, "Her idda is the idda of a slave-girl, i.e. two periods, as long as he has not had intercourse with her. If he has had intercourse with her after buying her and before he set her free, she only has to wait until one period has passed."

029 : 070 : Section 396

Yahya related to me from Malik from Yahya ibn Said and from Yazid ibn Abdullah ibn Qusayt al-Laythi that Said ibn al-Musayyab said, "Umar ibn al-Khattab said, 'If a woman is divorced and has one or two periods and then stops menstruating, she must wait nine months. If it is clear that she is pregnant, that is that. If not, she must do an idda of three months after the nine, and then she is free to marry.'"

Yahya related to me from Malik from Yahya ibn Said that Said ibn al-Musayyab said, "Divorce belongs to men, and women have the idda."

029 : 071 : Section 396

Yahya related to me from Malik from Ibn Shihab that Said ibn al-Musayyab said, "The idda of the woman who bleeds constantly is a year."

Malik said, "What is done among us about a divorced woman whose periods stop when her husband divorces her is that she waits nine months. If she has not had a period in them, she has an idda of three months. If she has a period before the end of the three months, she accepts the period. If another nine months pass without her having a period, she does an idda of three months. If she has a second period before the end of those three months, she accepts the period. If nine months then pass without a period, she does an idda of three months. If she has a third period, the idda of the period is complete. If she does not have a period, she waits three months, and then she is free to marry. Her husband can return to her before she becomes free to marry unless he made her divorce irrevocable."

Malik said, "The sunna with us is that when a man divorces his wife and has the option to return to her, and she does part of her idda and then he returns to her and then parts from her before he has had intercourse with her, she does not add to what has passed of her idda. Her husband has wronged himself and erred if he returned to her and had no need of her."

Malik said, "What is done among us is that if a woman becomes a muslim while her husband is a kafir and then he becomes muslim, he is entitled to her as long as she is in her idda. If her idda is finished, he has no access to her. If he remarries her after the end of her idda, however, that is not counted as divorce. Islam removed her from him without divorce."

029 : 072 : Section 397

Yahya related to me from Malik that he had heard that Ali ibn Abi Talib said about the two arbiters about whom Allah, the Exalted, said, "If you fear a breach between the two, appoint an arbiter from his people, and an arbiter from her people. If they desire to set things aright, Allah will make peace between them, surely Allah is Knowing, Aware," (Sura 4 ayat 35), that the separation and the joining were overseen by the two of them.

Malik said, "That is the best of what I have heard from the people of knowledge. Whatever the two arbiters say concerning separation or joining is taken into consideration."

029 : 073 : Section 398

Yahya related to me from Malik that he had heard that Umar ibn al-Khattab, Abdullah ibn Umar, Abdullah ibn Masud, Salim ibn Abdullah, al-Qasim ibn Muhammad, Ibn Shihab, and Sulayman ibn Yasar all said, "If a man has vowed to divorce his wife before marrying her and then he breaks his vow, divorce is obligatory for him when he marries her."

Yahya related to me from Malik that he had heard that Abdullah ibn Masud said that there was nothing binding on someone who said, "Every woman I marry is divorced," if he did not name a specific tribe or woman.

Malik said, "That is the best of what I have heard."

Malik said about a man saying to his wife, "You are divorced, and every woman I marry is divorced," or that all his property would be sadaqa if he did not do such-and-such, and he broke his oath| "As for his wives, it is divorce as he said, and as for his statement, 'Every woman I marry is divorced', if he did not name a specific woman, tribe, or land, or such, it is not binding on him and he can marry as he wishes. As for his property, he gives a third of it away as sadaqa."

029 : 074 : Section 399

Yahya related to me from Malik from Ibn Shihab that Said ibn al-Musayyab said, "If someone marries a woman and cannot have intercourse with her, there is a deadline of a year set for him to have intercourse with her. If he does not, they are separated."

029 : 075 : Section 399

Yahya related to me from Malik that he had asked Ibn Shihab about whether the deadline was set from the day he had married her, or from the day she raised the question before the Sultan. He said. 'It is from the day she presents it before the Sultan.'

Malik said, "As for someone who has intercourse with his wife and then is prevented from intercourse with her, I have not heard that there is a deadline set for him or that they are separated."

029 : 076 : Section 400

Yahya related to me from Malik that Ibn Shihab said, "I have heard that the Messenger of Allah, may Allah bless him and grant him peace, said to a man from Thaqif who had ten wives when he became muslim, 'Take four and separate from the rest.'"

029 : 077 : Section 400

Yahya related to me from Malik that Ibn Shihab said that he had heard Said ibn al-Musayyab, Humayd ibn Abd ar-Rahman ibn Awf, Ubaydullah ibn Abdullah ibn Utba ibn Masud, and Sulayman ibn Yasarall say, that they had heard Abu Hurayra say that he had heard Umar ibn al-Khattab say, "If a woman is divorced by her husband once or twice, and he leaves her until she is free to marry and she marries another husband and he dies or divorces her, and then she marries her first husband, she is with him according to what remains of her divorce."

Malik said, "That is what is done among us and there is no dispute about it."

029 : 078 : Section 400

Yahya related to me from Malik from Thabit ibn al-Ahnaf that he married an umm walad of Abd ar-Rahman ibn Zayd ibn al-Khattab. He said, "Abdullah ibn Abd ar-Rahman ibn Zayd ibn al-Khattab summoned me and I went to him. I came in upon him and there were whips and two iron fetters placed there, and two of his slaves whom he had made to sit there. He said, 'Divorce her, or by He by whom one swears, I will do such-and-such to you!' I said, 'It is divorce a thousand times.' Then I left him and I saw Abdullah ibn Umar on the road to Makka and I told him about my situation. Abdullah ibn Umar was furious, and said, 'That is not divorce, and she is not haram for you, so return to your home.' I was still not at ease so I went to Abdullah ibn az-Zubayr who was the Amir of Makka at that time. I told him about my situation and what Abdullah ibn Umar had said to me."

Abdullah ibn az-Zubayr said to me, 'She is not haram for you, so return to your home,' and he wrote to Jabir ibn al-Aswad az-Zuhra who was the Amir of Madina and ordered him to punish Abdullah ibn Abdar-Rahman and to have him leave me and my family alone. I went to Madina, and Safiyya, the wife of Abdullah ibn Umar fitted out my wife so that she could bring her to my house with the knowledge of Abdullah ibn Umar. Then I invited Abdullah ibn Umar on the day of my wedding to the wedding feast and he came."

029 : 079 : Section 400

Yahya related to me from Malik that Abdullah ibn Dinar said, "I heard Abdullah ibn Umar recite from the Qur'an, 'Prophet! When you divorce women, divorce them at the beginning of their idda.'"

Malik said, "He meant by that, to make one pronouncement of divorce at the beginning of each period of purity."

029 : 080 : Section 400

Yahya related to me from Malik from Hisham ibn Urwa that his father said, "It used to be that a man would divorce his wife and then return to her before her idda was over, and that was alright, even if he divorced her a thousand times. The man went to his wife and then divorced her and when the end of her idda was in sight, he took her back and then divorced her and said, 'No! By Allah, I will not go to you and you will never be able to marry again.' Allah, the Blessed, the Exalted, sent down, 'Divorce is twice, then honourable retention or setting free kindly.' People then turned towards divorce in a new light from that day whether or not they were divorced or not divorced."

029 : 081 : Section 400

Yahya related to me from Malik from Thawr ibn Zayd ad-Dili that Allah, the Blessed, the Exalted, sent down about a man who divorced his wife and then returned to her while he had no need of her and did not mean to keep her so as to make the idda period long for her by that in order to do her harm, "Do not retain them by force, to transgress. Whoever does that has wronged himself." (Sura 2 ayat 231). Allah warns them by that ayat.

029 : 082 : Section 400

Yahya related to me from Malik that he had heard that Said ibn al-Musayyab and Sulayman ibn Yasar were asked about a man who divorced when he was drunk. They said, "When a drunk man divorces, his divorce is allowed. If he kills, he is killed for it."

Malik said, "That is what is done among us."

Yahya related to me from Malik that he had heard that Said ibn al-Musayyab said, "If a man does not find the means to spend on his wife, they are to be separated."

Malik said, "That is what I saw the people of knowledge in our city doing."

029 : 083 : Section 401

Yahya related to me from Malik from Abdu Rabbih ibn Said ibn Qays that Abu Salama ibn Abd ar-Rahman said that Abdullah ibn Abbas and Abu Hurayra were asked when a pregnant woman whose husband had died could remarry. Ibn Abbas said, "At the end of two periods." Abu Hurayra said, "When she gives birth, she is free to marry." Abu Salama ibn Abd ar-Rahman visited Umm Salama, the wife of the Prophet, may Allah bless him and grant him peace, and asked her about it Umm Salama said, "Subaya al-Aslamiya gave birth half a month after the death of her husband, and two men asked to marry her. One was young and the other was old. She preferred the young man and so the older man said, 'You are not free to marry yet.' Her family were away and he hoped that when her family came, they would give her to him. She went to the Messenger of Allah, may Allah bless him and grant him peace, and he said, 'You are free to marry, so marry whomever you wish.'"

029 : 084 : Section 401

Yahya related to me from Malik from Nafi that Abdullah ibn Umar was asked about a woman whose husband died while she was pregnant, and he said, "When she gives birth, she is free to marry." A man of the Ansar who was with him told him that Umar ibn al-Khattab had said, "Had she given birth while her husband was still on his bed, unburied, she would be free to marry."

029 : 085 : Section 401

Yahya related to me from Malik from Hisham ibn 'Urwa from his father that al-Miswar ibn Makhrama told him that Subaya al-Aslamiya gave birth a few nights after the death of

her husband. The Messenger of Allah, may Allah bless him and grant him peace, said to her, "You are free to marry, so marry whomever you wish."

029 : 086 : Section 401

Yahya related to me from Malik from Yahya ibn Said from Sulayman ibn Yasar that Abdullah ibn Abbas and Abu Salama ibn Abd ar-Rahman ibn Awf differed on the question of a woman who gave birth a few nights after the death of her husband. Abu Salama said, "When she gives birth to the child she is carrying, she is free to marry." Ibn Abbas said, "At the end of two periods." Abu Hurayra came and said, "I am with my nephew", meaning Abu Salama. They sent Kurayb, a mawla of Abdullah ibn Abbas to Umm Salama, the wife of the Prophet, may Allah bless him and grant him peace, to ask her about it. He came back and told them that she had said that Subaya al-Aslamiya had given birth a few nights after the death of her husband, and she had brought the matter to the Messenger of Allah, may Allah bless him and grant him peace, and he had said, "You are free to marry, so marry whomever you wish."

Malik said, "This is how the people of knowledge here continue to act."

029 : 087 : Section 401

Yahya related to me from Malik from Said ibn Ishaq ibn Kab ibn Ujra from his paternal aunt, Zaynab bint Kab ibn Ujra that al-Furaya bint Malik ibn Sinan, the sister of Abu Said al-Khudri, informed her that she went to the Messenger of Allah, may Allah bless him and grant him peace, and asked to be able to return to her people among the Banu Khudra since her husband had gone out in search of some of his slaves who had run away and he had caught up with them near al-Qudum, (which is 6 miles from Madina), and they had killed him.

She said, "I asked the Messenger of Allah, may Allah bless him and grant him peace, if I could return to my people in the Banu Khudra, as my husband had not left me in a dwelling which belonged to him, and had left me no maintenance. The Messenger of Allah, may Allah bless him and grant him peace, said, 'Yes.' So I left. When I was in the courtyard, the Messenger of Allah, may Allah bless him and grant him peace, called me or summoned me, and I answered him. He said, 'What did you say?' I repeated the story about my husband. He said, 'Stay in your house until what is written reaches its term.' I did the idda in the house for four months and ten days."

She added, "When Uthman ibn Affan sent for me, I told him that, and he followed it and made decisions by it."

029 : 088 : Section 401

Yahya related to me from Malik from Humayd ibn Qays al-Makki from Amr ibn Shuayb from Said ibn al-Musayyab that Umar ibn al-Khattab sent back widows from the desert and prevented them from doing the hajj.

Yahya related to me from Malik from Yahya ibn Saqd that he had heard that as-Sa'ib ibn Khabbab died, and his wife went to Abdullah ibn Umar and mentioned to him that her husband had died and mentioned some land which they had at Qanah, (a district on the outskirts of Madina), and asked him if it would be alright for her to stay overnight there. He forbade her to do so. So, she went out before dawn from Madina and spent the whole day on their land, but when evening came, she spent the night in her house.

029 : 089 : Section 401

Yahya related to me from Malik that Hisham ibn Urwa said about a Bedouin woman whose husband died, that she was to stay where her people stayed.

Malik said, "This is what is done among us."

029 : 090 : Section 401

Yahya related to me from Malik from Nafi that Abdullan ibn Umar said, "The only place a woman whose husband has died and a woman who is absolutely divorced can spend the night is in their houses."

029 : 091 : Section 402

Yahya related to me from Malik that Yahya ibn Said said that he had heard al-Qasim ibn Muhammad say that Zayd ibn Abd al-Malik separated some men and their wives who were slave-girls who had borne children to men who had died, because they had married them after one or two menstrual periods. He separated them until they had done an idda of four months and ten days. Al-Qasim ibn Muhammad said, "Glory be to Allah! Allah says in His Book, "Those of you who die, leaving wives, they are not wives."

029 : 092 : Section 402

Malik related to me from Nafi that Abdullah ibn Umar said, "The idda of an umm walad when her master dies is one menstrual period."

Yahya related to me from Malik from Yahya ibn Said that al-Qasim ibn Muhammad said, "The idda of an umm walad when her master dies is one menstrual period."

Malik said, "This is what is done among us."

Malik added, "If she does not have a menstrual period, her idda is three months."

029 : 093 : Section 403

Yahya related to me from Malik that he had heard that Said ibn al-Musayyab and Sulayman ibn Yasar said, "The idda of a slave-girl when her husband dies is two months and five days."

029 : 094 : Section 403

Yahya related to me the like of that from Malik from Ibn Shihab.

Malik said, about a slave who divorced a slave-girl but did not make it absolute, "He can return to her. If he then dies while she is still in the idda from her divorce, she does the idda of a slave-girl whose husband dies, and it is two months and five days. If she has been set free and he can return to her, and she does not choose to separate after she has been set free, and he dies while she is in the idda from the divorce, she does the idda of a free woman whose husband has died, four months and ten days. That is because the idda of widowhood befell her while she was free, so her idda is the idda of a free woman."

Malik said, "That is what is done among us."

029 : 095 : Section 404

Yahya related to me from Malik from Rabia ibn Abi Abd ar-Rahman from Muhammad ibn Yahya ibn Habban that Ibn Muhayriz said, "I went into the mosque and saw Abu Said al-Khudri and so I sat by him and asked him about coitus interruptus. Abu Said al-Khudri said, 'We went out with the Messenger of Allah, may Allah bless him and grant him peace, on the expedition to the Banu al-Mustaliq. We took some Arabs prisoner, and we desired the women as celibacy was hard for us. We wanted the ransom, so we wanted to

practise coitus interruptus. We said, 'Shall we practise coitus interruptus while the Messenger of Allah, may Allah bless him and grant him peace, is among us before we ask him?' We asked him about that and he said, 'You don't have to not do it. There is no self which is to come into existence up to the Day of Rising but that it will come into existence.'"

029 : 096 : Section 404

Yahya related to me from Malik from Abu'n-Nadr, the mawla of Umar ibn Ubaydullah from Amir ibn Sad ibn Abi Waqqas from his father that he used to practise coitus interruptus.

029 : 097 : Section 404

Yahya related to me from Malik from Abu'n-Nadr, the mawla of Umar ibn Ubaydullah from Ibn Aflah, the mawla of Abu Ayyub al-Ansari from an umm walad of Abu Ayyubal-Ansari that he practised coitus interruptus.

029 : 098 : Section 404

Yahya related to me from Malik from Nafi that Abdullah ibn Umar did not practise coitus interruptus and thought that it was disapproved.

029 : 099 : Section 404

Yahya related to me from Malik from Damra ibn Said al-Mazini from al-Hajjaj ibn Amr ibn Ghaziya that he was sitting with Zayd ibn Thabit when Ibn Fahd came to him. He was from the Yemen. He said, "Abu Said! I have slave-girls. None of the wives in my keep are more pleasing to me than them, and not all of them please me so much that I want a child by them, shall I then practise coitus interruptus?" Zayd ibn Thabit said, "Give an opinion, Hajjaj!" "I said, 'May Allah forgive you! We sit with you in order to learn from you!' He said, 'Give an opinion!' I said, 'She is your field, if you wish, water it, and if you wish, leave it thirsty. I heard that from Zayd.' Zayd said, 'He has spoken the truth.'"

029 : 100 : Section 404

Yahya related to me from Malik from Humayd ibn Qays al-Makki that a man called Dhafif said that Ibn Abbas was asked about coitus interruptus. He called a slave-girl of his and said, "Tell them." She was embarrassed. He said, "It is alright, and I do it myself."

Malik said, "A man does not practise coitus interruptus with a free woman unless she gives her permission. There is no harm in practising coitus interruptus with a slave-girl without her permission. Someone who has someone else's slave-girl as a wife, does not practise coitus interruptus with her unless her people give him permission."

029 : 101 : Section 405

Yahya related to me from Malik from Abdullah ibn Abi Bakr ibn Muhammad ibn Amr ibn Hazm from Humayd ibn Nafi that Zaynab bint Abi Salama related these three traditions to him. Zaynab said, "I visited Umm Habiba, the wife of the Prophet, may Allah bless him and grant him peace, when her father Abu Sufyan ibn Harb had died. Umm Habiba called for a yellowy perfume perhaps khaluq or something else. She rubbed the perfume first on a slave-girl and she then wiped it on the sides of her face and said, 'By Allah! I have no need of perfume but I heard the Messenger of Allah, may Allah bless him and grant him peace, say, 'It is not halal for a woman who trusts in Allah and the Last Day to abstain from adornment in mourning for someone who has died, for more than three nights, except for four months and ten days for a husband.'"

029 : 102 : Section 405

Zaynab said, "I went to the house of Zaynab bint Jahsh, the wife of the Prophet, may Allah bless him and grant him peace, when her brother had died. She called for perfume and put some on and said, 'By Allah! I have no need of perfume, but I heard the Messenger of Allah, may Allah bless him and grant him peace, say, 'It is not halal for a woman who trusts in Allah and the Last Day to abstain from adornment in mourning for someone who has died for more than three nights, except for four months and ten days for a husband.'"

029 : 103 : Section 405

Zaynab said, "I heard my mother, Umm Salama, the wife of the Prophet, may Allah bless him and grant him peace, say that a woman came to the Messenger of Allah, may Allah bless him and grant him peace, and said, 'Messenger of Allah! My daughter's husband died, and her eyes are troubling her, can she put kohl on them?' The Messenger of Allah,

may Allah bless him and grant him peace, said, 'No' two or three times. Then he said, 'It is only four months and ten days. In the Jahiliyya, none of you threw away the piece of dung until a year had passed.'"

Humayd ibn Nafi said, "I asked Zaynab to explain what 'throwing away the piece of dung at the end of a year' meant. Zaynab said, 'In the Jahiliyya when a woman's husband died, she went into a small tent and dressed in the worst of clothes. She did not touch perfume or anything until a year had passed. Then she was brought an animal - a donkey, a sheep, or a bird, and she would break her idda with it, by rubbing her body against it (taftaddu). Rarely did she break her idda with anything (by rubbing herself against it) but that it died. Then she would come out and would be given a piece of dung. She would throw it away and then return to whatever she wished of perfumes or whatever.'"

Malik explained, 'Taftaddu' means to wipe her skin with it in the same way as with a healing charm."

029 : 104 : Section 405

Yahya related to me from Malik from Nafi from Safiyya bint Abi Ubayd from A'isha and Hafsa, the wives of the Prophet, may Allah bless him and grant him peace, that the Messenger of Allah, may Allah bless him and grant him peace, said, "It is not halal for a woman in mourning for someone who has died, if she trusts in Allah and the Last Day, to abstain from adornment for more than three nights, except for a husband."

029 : 105 : Section 405

Yahya related to me from Malik that he had heard that Umm Salama, the wife of the Prophet, may Allah bless him and grant him peace, said to a woman in mourning for her husband whose eyes were troubling her and the pain had become very strong, "Apply jala kohl at night and wipe it off in the day."

029 : 106 : Section 405

Yahya related to me from Malik that he had heard that Salim ibn Abdullah and Sulayman ibn Yasar said that if a woman whose husband had died feared that an inflammation of her eyes might affect her sight or that some complaint might befall her, she should put kohl on and seek a remedy with kohl or some other cure even if it had perfume in it.

Malik said, "If there is a necessity, the deen of Allah is ease."

029 : 107 : Section 405

Yahya related to me from Malik from Nafic that Saffiyya bint Abi Ubayd suffered from an eye-complaint while she was in mourning for her husband, Abdullah ibn Umar. She did not apply kohl until her eyes almost had rams (a dry white secretion in the corners of the eye).

Malik said, "A woman whose husband has died should anoint her eyes with olive oil and sesame oil and the like of that since there is no perfume in it."

Malik said, "A woman in mourning for her husband should not put on any jewellery - rings, anklets, or such-like, neither should she dress in any sort of colourful, striped garment unless it is coarse. She should not wear any cloth dyed with anything except black, and she should only dress her hair with things like lotus-tree leaves which do not dye the hair."

029 : 108 : Section 405

Yahya related to me from Malik that he had heard that the Messenger of Allah, may Allah bless him and grant him peace, visited Umm Salama while she was in mourning for Abu Salama and she had put aloes on her eyes. He said, "What is this, Umm Salama?" She said, "It is only aloes, Messenger of Allah." He said, "Put it on at night and wipe it off in the daytime."

Malik said, "The mourning of a young girl who has not yet had a menstrual period takes the same form as the mourning of one who has had a period. She avoids what a mature woman avoids if her husband dies."

Malik said, "A slave-girl mourns her husband when he dies for two months and five nights like her idda."

Malik said, "An umm walad does not have to mourn when her master dies, and a slave-girl does not have to mourn when her master dies. Mourning is for those with husbands."

029 : 109 : Section 405

Yahya related to me from Malik that he had heard that Umm Salama, the wife of the Prophet, may Allah bless him and grant him peace, said, "A mourning woman can rub her head with lotus leaves and olive oil."