

not think that any retaliation is inflicted on him for any injury except killing because killing overrides all of that."

Malik said, "What is done in our community is that when a murdered person is found among the main body of a people in a village or other place, the house or place of the nearest people to him is not responsible. That is because the murdered person can be slain and then cast at the door of some people to shame them by it. No-one is responsible for the like of that."

Malik said about a group of people who fight with each other and when the fight is broken up, a man is found dead or wounded, and it is not known who did it, "The best of what is heard about that is that there is blood-money for him, and the blood-money is against the people who argued with him. If the injured or slain person is not from either of the two parties, his blood-money is against both of the two parties together."

43.19 Killing Secretly by Trickery and Sorcery

13 Yahya related to me from Malik from Yahya ibn Sa'id from Sa'id ibn al-Musayyab that 'Umar ibn al-Khattab killed five or seven people for one man whom they had killed secretly by trickery. 'Umar said, "Had all the people of San'a joined forces against him, I would have killed them all."

14 Yahya related to me from Malik from Muhammad ibn 'Abd ar-Rahman ibn Sa'd ibn Zurara that he had heard that Hafsa, the wife of the Prophet, may Allah bless him and grant him peace, killed one of her slave-girls who had used sorcery against her. She was a mudabbara. Hafsa gave the order, and she was killed.

Malik said, "The sorcerer is the one who uses sorcery for himself and no one else uses that for him. It is like the one about whom Allah, the Blessed, the Exalted, said in His Book, '*They know the one who devotes himself to it will have no share in the Next World.*' (Sura 2 ayat 102) I think that that person is killed if he does that himself."

43.20 What Is Obligatory for Intentional Injury

15 Yahya related to me from Malik from 'Umar ibn Husayn, the mawla of 'A'isha bint Qudama, that 'Abd al-Malik ibn Marwan imposed retaliation against a man who killed a mawla with a stick and so the mawla's patron killed the man with a stick.

Malik said, "The generally agreed on way of doing things in our community about which there is no dispute is that when a man strikes another man with a stick or hits him with a rock or intentionally strikes him causing his death, that is an intentional injury and there is retaliation for it."

Malik said, "Intentional murder with us is that a man intentionally goes to a man and strikes him until his life goes. Part of intentional injury also is that a man strikes a man in a quarrel between them. He leaves him while he is alive, and he bleeds to death and so dies. There is retaliation for that."

Malik said, "What is done in our community is that a group of free men are killed for the intentional murder of one free man, and a group of women for one woman, and a group of slaves for one slave."

43.21 Retaliation in Killing

Yahya related to me from Malik that he had heard that Marwan ibn al-Hakam wrote to Mu'awiya ibn Abi Sufyan to mention to him that a drunkard was brought to him who had killed a man. Mu'awiya wrote to him to kill him in retaliation for the dead man.

Yahya said that Malik said, "The best of what I have heard on the interpretation of this ayat, the word of Allah, the Blessed, the Exalted, '*The free man for the free man and the slave for the slave - these are men - and the woman for the woman,*' (Sura 2 ayat 178) is that retaliation is between women as it is between men. The free woman is killed for the free woman as the free man is killed for the free man. The slave-girl is slain for the slave-girl as the slave is slain for the slave. Retaliation is between women as it is between men. That is because Allah, the Blessed, the Exalted, said in His Book, '*We have written for them in it that it is a life for a life and an eye for an eye, a nose for a nose, and an ear for an ear, and a tooth for a tooth, and for wounds there is retaliation.*' (Sura 5 ayat 48) Allah, the Blessed, the Exalted, mentioned that it is a life for a

life. It is the life of a free woman for the life of a free man, and her injury for his injury."

Malik said about a man who held a man fast for another man to hit, and he died on the spot, "If he held him and he thought that he meant to kill him, the two of them are both killed for him. If he held him and he thought that he meant to beat him as people sometimes do, and he did not think that he meant to kill him, the murderer is slain and the one who held him is punished with a very severe punishment and jailed for a year. There is no killing against him."

Malik said about a man who murdered a man intentionally or gouged out his eye intentionally, and then was slain or had his eye gouged out himself before retaliation was inflicted on him, "There is no blood-money nor retaliation against him. The right of the one who was killed or had his eye gouged out goes when the thing which he is claiming as retaliation goes. It is the same with a man who murders another man intentionally and then the murderer dies. When the murderer dies, the one seeking blood-revenge has nothing of blood-money or anything else. That is by the word of Allah, the Blessed the Exalted, *'Retaliation is written for you in killing. The free man for the free man and the slave for the slave.'*"

Malik said, "He only has retaliation against the one who killed him. If the man who murdered him dies, he has no retaliation or blood-money."

Malik said, "There is no retaliation held against a free man by a slave for any injury. The slave is killed for the free man when he intentionally murders him. The free man is not slain for the slave, even if he murders him intentionally. It is the best of what I have heard."

43.22 Pardoning Murder

Yahya related to me from Malik that he saw whomever he was satisfied with among the people of knowledge say about a man who willed that his murderer be pardoned when he murdered him intentionally, "That is permitted for him. He is more entitled to the man's blood than any of his relatives after him."

Malik said about a man who pardoned murder, after he had claimed his right and it was obliged for him, "There is no blood-money against the murderer

unless the one who pardons him stipulates that when he pardons him."

Malik said about the murderer when he was pardoned, "He is flogged one hundred lashes and jailed for a year."

Malik said, "When a man murders intentionally and there is a clear proof of that, and the murdered man has sons and daughters and the sons pardon and the daughters refuse to pardon, the pardon of the sons is permitted in opposition to the daughters and there is no authority for the daughters with the sons in demanding blood and pardoning."

43.23 Retaliation in Injury

Yahya said that Malik said, "The generally agreed on way of doing things in our community is that retaliation is taken from some one who breaks someone's hand or foot intentionally and not blood-money."

Malik said, "Retaliation is not inflicted on anyone until the wound of the injured party has healed. Then retaliation is inflicted on him. If the wound of the person on whom the retaliation has been inflicted is like the first person's wound when it heals, it is retaliation. If the wound of the one on whom the retaliation has been inflicted becomes worse or he dies, there is nothing held against the one who has taken retaliation. If the wound of the person on whom the retaliation has been inflicted heals and the injured party is paralysed or his injury has healed but he has a scar, defect, or blemish, the person on whom the retaliation has been inflicted does not have his hand broken again and further retaliation is not taken for his injury."

He said, "But there is blood-money from him according to what he has impaired or maimed of the hand of the injured party. The bodily injury is also like that."

Malik said, "When a man intentionally goes to his wife and gouges out her eye or breaks her hand or cuts off her finger or such like, and does it intentionally, retaliation is inflicted on him. As for a man who strikes his wife with a rope or a whip and hits what he did not mean to hit or does what he did not intend to do, he pays blood-money for what he has struck according to this principle, and retaliation is not inflicted on him."

Yahya related to me from Malik that he had heard that Abu Bakr ibn Muhammad ibn 'Amr ibn Hazm took retaliation for the breaking of a leg.

43.24 The Blood-Money and Crime of the Slave Set Free and from Whom his Former Master does Not Inherit

Yahya related to me from Malik from Abu'z-Zinad from Sulayman ibn Yasar that a slave was set free by one of the people on hajj and his master had abandoned the right to inherit from him. The ex-slave then killed a man from the Banu 'A'idh tribe. An 'A'idhi, the father of the slain man came to 'Umar ibn al-Khattab seeking the blood-money of his son. 'Umar said, "He has no blood-money." The 'A'idhi said, "What would you think if it had been my son who killed him?" 'Umar said, "Then you would pay his blood-money." He said, "He is then like the black and white Arqam snake. If it is left, it devours and if it is killed, it takes revenge." □