

Hanbali Fiqh: Book of Emancipation

Explanatory Notes on *Akhsar al-Mukhtasaraat* Based on Lectures of
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- I. *'Itq*: to **free** something
 - A. Technical: **freeing** a slave from **bondage**
- II. It is **sunnah** to free a slave that can **earn** on his **own**
 - A. Because it **benefits** the slave and the society
- III. It is **disliked** to free a slave that **neither** has power nor can he earn on his own
 - A. Because it **harms** the slave and the society
- IV. In some cases, it may be **obligatory** to free a slave
 - A. Ex: breaking an oath, sex in Ramadan while fasting, etc.
- V. In some cases, it may be **forbidden** to free a slave
 - A. Ex: if the slave is likely to cause destruction or corruption if freed
- VI. It is **valid** to **attach** the **freedom** of a slave to the master's **death**
 - A. Ex: a master can stipulate in his/her will that after his/her death the slave is free
 - B. Condition: the slave is **not** worth more than $\frac{1}{3}$ of the master's wealth, in which case, we will free the slave according to the **percentage** of the slave's **value** in the wealth
 1. We can **request** the inheritors if they are ok with freeing the slave completely
 - C. If the slave's **value** in the master's wealth is **less** or **equal** to $\frac{1}{3}$, then we **free** the slave **completely** after the master's death
- VII. *Al-Kitaabah*: a slave that is in a **contract** with his master for **freedom**. He **pays** the master in **installments** for his freedom
 - A. It is **sunnah** to **accept** this type of contract from a slave provided:
 1. The slave is **able** to **earn** on his own
 2. The slave is **trustable**
 - B. It is **disliked** to accept this type of contract from a slave that is **unable** to earn on his own
 1. Because it will make it **difficult** for the slave
 - C. It is **permitted** to sell such a type of slave even if he has **not** completely paid off his debt
 1. The **new buyer** will **receive** rest of the payments in **installments** from the slave
 2. *Walaah'* will **transfer** to the **new buyer** when the slave is finally freed from his debt
 - a) *Walaah'* is when a master **inherits** wealth of a **freed** slave that has **no relatives** to inherit him/her after death
 - b) This is discussed a bit more in detail later

Umm al-Walad

- I. Def: a slave-girl that gives **birth** to her master's child that **resembles a human being** even if only **slightly**. It does **not** matter whether the child is born **alive** or **dead**, the ruling will **still** apply
 - A. If she gave birth to just a lump of dead flesh that is **not** considered a human being, then the rulings of *Umm al-Walad* will **not** apply to her
- II. **Two conditions** for the slave-girl to be **legitimately** considered *Umm al-Walad*
 - A. The master **must** own her
 1. Even if he **owns** her in **any** of the following ways:
 - a) Full ownership
 - b) Partial ownership
 - (1) If a slave-girl is owned by **multiple masters**, then **nobody** is allowed to have sex with her
 - (a) If she bore a child to one of them, then the child will **belong** to the one who had **intercourse** with her and the slave-girl will become **that** master's *Umm al-Walad*
 - (i) The **others** will have to be **paid off** through that master's **inheritance** after his death because she would be **freed** and no longer considered a shared property
 - c) *Al-Kitaabah*
 - (1) This is a slave that is in a **contract** to **free** herself from the master through **installments** until the agreed upon price is paid
 - d) The slave-girl is someone whom it is **forbidden** to have intercourse with
 - (1) Ex: aunt, foster sister through milk, slave-girl on her menses, etc.
 - (2) If he owned a slave-girl that is from such a category, then it is **forbidden** to have intercourse with her
 - (a) This situation could arise if, for example, a non-Muslim family member was captured as a prisoner of war
 - B. The baby must **resemble** a human being even if just **slightly**
 - III. Rulings related to her are the **same** as that of a regular slave-girl **except**:
 - A. **Ownership** of her can **never** be **transferred** to another in **any** form
 1. Ex:
 - a) She **cannot** be **sold**
 - b) She **cannot** be given to another as a **gift**
 - c) She **cannot** be put up as **mortgage**
 - B. The **master's child** born to her is considered **free** and **not** a slave
 - C. She will **automatically** become **freed** after her master's **death** even if she is the **only** property he has
 1. She **cannot** be restricted with the $\frac{1}{3}$ rule that was discussed earlier above
 2. **All** of her kids **not** through that master will **also** be **freed** because of her **after** the master's death

- IV. If a **son** owns a slave-girl with whom he has **never** had intercourse but his **father** does which results in a child
 - A. She will **become** *Umm al-Walad* of the **father** because the son has **never** had intercourse with her. The **son** will **also** now be **prohibited** from having intercourse with her in the **future**
 - 1. Ex: a son owns a slave-girl and the son's father has intercourse with her which results in a child. The son has never had intercourse with the slave-girl. She will now become *Umm al-Walad* of the father
 - 2. The **same** rules apply if the situation was reversed (i.e. father owns a slave-girl with whom he never had intercourse with but the son does which results in a child)
- V. Master **can** get her **married** but then he **cannot** continue to have intercourse with her
 - A. If he married her to another **slave**, then after the master's death her **husband** is **not** included among the automatically **freed**

Al-Walaa'

- I. Def: when a master **inherits** wealth of a **freed** slave that has **no relatives** to inherit him/her after death
 - A. **Regardless** of whether the master is a **male** or **female**
 - B. The **freed slave** can **also** inherit the deceased master's wealth who freed him/her if that master does **not** have **any** surviving relatives